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March 25, 2005

VIA FACSIMILE AND OVERNIGHT MAIL

Administrative Hearings Division
Public Utility Commission of Oregon
P. O. Box 2148
Salem, OR 97308-2148

Re: UM 1087

Dear Sir or Madam:

Enclosed for filing in the above-referenced matter are an original and five copies of the following documents:

1. Verizon's Responsive Technical Comments; and
2. Certificate of Service.

We have also enclosed face pages of each pleading to be conformed and returned to our office in the enclosed stamped envelope.

Thank you for your assistance in this regard.

Very truly yours,

Veronica Moore
Secretary for Timothy J. O'Connell

Encls.
cc: Parties of Record (with enclosures)

BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

UM 1087

CENTRAL LINCOLN PEOPLE'S UTILITY DISTRICT, Complainant, v. VERIZON NORTHWEST, INC., Defendant.	VERIZON'S RESPONSIVE TECHNICAL COMMENTS

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I. INTRODUCTION

In considering the parties' opening comments on the proposed Pole Attachment Agreement issued by the Commissioner (Appendix A to Order 05-042, hereinafter the "Proposed Agreement"), the Commission is undoubtedly struck by the extreme positions of some parties. For example, while some parties seek to maximize the "costs" recovered from pole attachers, others appear to operate without any regard for the realities of administering an extensive outside plant network.

Verizon Northwest, Inc.'s ("Verizon") comments, however, seek to draw a middle ground. Verizon's position, repeatedly made clear throughout this proceeding, results from having feet in both camps: while it is a pole attacher in CLPUD's serving territory, Verizon also owns thousands of poles throughout Oregon. This perspective leads to Verizon's balanced comments, which should be applied by the Commission.

II. GENERAL COMMENTS

Verizon first addresses issues raised by the parties that are not directly tied to specific provisions in the Proposed Agreement. Following these general comments are discussions of specific provisions.

A. CLPUD

Central Lincoln People's Utility District ("CLPUD") points out, correctly, that the Commission found that the predecessor 1987 Joint Use Agreement between the parties is still in effect. This does not imply, however, that this process is moot. To the contrary, through this process the Commission is identifying fair terms and conditions for Verizon and CLPUD to utilize in a replacement contract to the 1987 Joint Use Agreement that CLPUD has evidenced every intent to terminate. Moreover, in setting terms and conditions of an actual agreement, the Commission will provide guidance to other parties negotiating pole attachment agreements.

B. Staff

Staff's proposed modifications to the terms and conditions of the Proposed Agreement suffer from a recurring problem: they are wholly unsupported by any evidence in the record. For example, Staff's suggestion that there has been a "lack of coordination and agreement between pole owners and occupants on new attachments that has resulted in numerous safety violations and conflicts" does not even pretend to cite to the record. See Staff Comments Re: Contract at 2. Indeed, this is not just a situation where a party inadvertently fails in its briefing to cite to material in the record. Rather, Staff was a party to this proceeding and did not put any such evidence regarding an alleged "lack of coordination" in the record—nor did any other party. No such evidence is in the record, at all. Clearly, any contractual terms imposed on the parties premised on such arguments would not be supported by substantial evidence, and should thus be disregarded.

C. OCTA

Oregon Cable Telecommunications Association's ("OCTA") comments are helpful and add substantial value to this proceeding. However, OCTA's positions are compromised by the fact that its members own no utility poles in Oregon. OCTA's comments, therefore, routinely do not recognize the day-to-day difficulties faced by a company maintaining an

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extensive outside plant infrastructure. The Commission should not similarly underestimate those operational concerns.

D. PGE

Portland General Electric Company's ("PGE") comments offer suggestions about contract wording, many of which are useful. However, PGE's most substantive comments discuss topics that the Commission directed were not to be the subject of these comments: specifically, the Commission barred any attempts to reargue substantive decisions made by the Commission in its Order in this case. See Order No. 05-042 (hereinafter, the "Order") at 17. For example, PGE argues that the Proposed Agreement should not constitute precedent. Clearly, the Proposed Agreement reflects the record made in this docket between these parties. Just as clearly, the Proposed Agreement reflects the Commission's view on terms that are fair, just and reasonable. See id. To suggest that those terms should have no precedential value disregards the normal utility of Commission decisions.

Similarly, PGE attempts to reargue the issue of breaking out "direct costs," presumably to be layered on top of the carrying charge. See PGE comments at 6-7. This Commission expressly rejected CLPUD's similar attempt to do so. Order at 14-16. Moreover, the Commission was correct to do so. To the degree that the carrying charge methodology is useful, its usefulness arises from the fact that it is easy to calculate. The parties need only look at their regular books of account in order to determine the appropriate fee. Clearly, if the Commission was to pursue an alternative method of computing pole costs – such as utilizing only costs directly associated with the poles to which an attacher attaches – such simplicity would be lost. While PGE would be quick to add costs associated with administering joint use, it does not appear so willing to delete from the carrying charge calculation portions of its cost structure associated with all aspects of its operations not involved in joint use poles. The Commission has, wisely, already rejected PGE's argument. PGE should not be permitted to reargue the issue, contrary to the Commission's directives.

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III. SECTION BY SECTION COMMENTS

Whereas clauses.

Verizon agrees with the comments of OCTA that specific reference to the federal Pole Attachment Act would be helpful.

Article 1.

Verizon agrees with OCTA that the revision of Section 1.1 to "Pole Attachment Agreement" would be useful. Verizon does not believe that any other revision to the definition section of the contract is appropriate, however. The Proposed Agreement does not need to be revised to define terms already expressed in the governing statutes or regulations. Wood v. Lovett, 313 U.S. 362, 370 (1941) ("the laws which subsist at the time and place of the making of a contract . . . enter into and form a part of it, as if they were expressly referred to or incorporated in its terms").

Section 2.2.

OCTA points out that pole attachers pay rent for all distribution poles, and further notes that the exclusion in the Proposed Agreement of poles carrying lines with a nominal voltage above 34,500 volts is a vestige from the older agreement originally proposed by Verizon. Verizon—and CLPUD—believe in principle that OCTA's comments are well taken. Attachers should not be excluded from poles they pay to occupy. Verizon and CLPUD agree in principle that the Proposed Agreement should be revised to extend to all distribution poles; specific contractual terms are being worked on by the parties.

Section 2.3.

OCTA objects to the open-ended nature of the potential ability of a pole owner to block access to space based on its future plans. Verizon and CLPUD similarly objected. The Proposed Agreement submitted by Verizon with its Opening Technical Comments sets forth language limiting a pole owner's ability to refuse space on the poles only if the owner has a

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bona fide plan for use of that space within a year. This language, which accomplishes the suggestions made by OCTA, should be adopted.

Section 3.1.

All parties made some comments about Section 3.1. Considering the extremes of those comments, however, the balanced submission offered by Verizon should be accepted. As the Commission can ascertain, Verizon and CLPUD are largely agreed that this section should make allowance for electronic notification. Verizon respectfully submits that this is in the public interest. Both parties also agree that special allowance for large projects should be made. Subsequent to the filing of opening comments, Verizon and CLPUD have reached agreement on how many poles must be involved to constitute a "large" project. Verizon and CLPUD have agreed that a large project would be one involving 50 or more poles.

The major source of disagreement on this section is Staff's objection to a useful mechanism agreed to by the parties: if an application is not rejected within the applicable time limits, it is deemed approved.[1] Staff's objections to the "deemed approved" provisions are wholly without merit. As noted, the factual basis for Staff's allegation — that such arrangements have somehow generated safety concerns — is simply without any support whatsoever in the record. It would not be permissible, as a matter of administrative law, to upset an agreement between the parties on the basis of wholly unsupported allegations. This is all the more so when, by statute, provisions agreed to by the parties are presumed reasonable. ORS 757.285.

[1] Staff's other objection, that the 30 days for permit review should be lengthened to 45 days, is simply not well taken. Preliminarily, the parties have agreed that 30 days is a sufficient period for routine operations. Since every day of delay in reviewing a pole attachment permit application can result in a delay providing service to Oregon consumers, the Commission should defer to the judgment of the parties actually providing this installation over what is adequate. Again, Staff's rationale for this change — an alleged need for more extensive engineering — is simply not supported by the record in this case in any way.

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The law aside, Staff's concern is not well taken. Both CLPUD and Verizon have been providing services to Oregon consumers for many years. Both use skilled workers readily able to install their equipment on utility poles in Oregon in a safe manner — as they have done for decades. A handful of safety violations — many of them highly technical alleged violations of the NESC (raising no realistic threat to public safety) — are the exceptions that prove the general rule applicable to the tens of thousands of poles to which Verizon attaches. In Verizon's experience the same is true of CLPUD's installations. Moreover, if Staff's recommendation were accepted, a pole owner could keep an application in limbo by simply not responding. This would keep Oregon customers from receiving prompt service. Furthermore, it is not an appropriate mechanism to suggest that every instance of clerical delay should institute the parties' dispute resolution procedures, potentially leading to a dispute before the Commission. Rather, as suggested by Verizon and CLPUD, the routine operating method that these parties have used for many years should be accepted.

Section 3.2.

The major objection to Section 3.2 is voiced by OCTA, which expresses concern that the language of this section would prevent routine maintenance operations. To the contrary, this provision — which has been used by Verizon for years and has never been read to bar service and maintenance activities — allows for routine maintenance. Furthermore, if maintenance includes rearrangement of existing facilities within the existing space, an attacher is permitted to do so in the course of normal maintenance and repair.

Section 3.4.

The OCTA objects to the "sole judgment" provision of this section. But from the perspective of a pole owner attempting to control and operate its network, it is important that judgments such as those discussed in this provision not be easily second guessed on a routine

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basis. Moreover, Verizon has never experienced difficulties with this standard. The existing contract language should be retained.

Section 3.5.

The most serious objection to Section 3.5 of the Proposed Agreement is CLPUD's attempt to have existing pole attachers pay for rearrangement of existing attachments in its space if they interfere with new activity by the pole owner. Verizon has not agreed to this proposal. The existing Proposed Agreement is to the contrary, and accurately reflects federal law, as OCTA correctly notes. Moreover, the principles expressed in federal law should be followed by the Commission. If pole attachers are to be granted nondiscriminatory access to the available space on a pole owner's pole, they should not be charged when sometime thereafter the pole owner desires to make additional use of that facility. Doing so would render pole attachers' efficient use of the right-of-way completely untenable; if their existing attachments would be, for all practical purposes, at the sufferance of any further use of the facility by the pole owner. CLPUD's proposed revision should be rejected. The existing contract language should be retained.

Section 5.1.

Verizon has no difficulty conceding to CLPUD's request to revise this section to reflect a calendar year payment cycle. Verizon strenuously objects, however, to CLPUD's attempt to quantify the "attachment space utilized," as suggested in CLPUD's comments. This issue, not previously raised by CLPUD, suggests that CLPUD is attempting to return to its "per attachment point" charge by counting the actual space used for each attachment. For the reasons the Commission already decided in the Order, this is administratively unacceptable. The long-standing contract between these parties allocated 1.5 feet of space to Verizon, and Verizon was entitled, this Commission decided, to place additional attachments within its allocated space. CLPUD should not be permitted to return by this back-door mechanism to a payment scheme expressly rejected by the Commission.

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Section 5.4.

All parties' comments are essentially equivalent on this issue. The language proposed by Verizon is preferable.

Section 6.1.

Again, CLPUD is seeking to reestablish through its "default one foot" language charges assessed on a per attachment basis. This has been rejected by the Commission. CLPUD should not be allowed to reinsert the same mechanism at this juncture.

OCTA suggests referencing the formula set out in ORS 757.282(2). While that formula is the basis for the carrying charge computed by the Commission and was adopted by the parties, there is no reason to introduce ambiguity in this contract when the calculation formula is expressly set forth in Attachment A. OCTA's suggestion should be rejected.

Finally, PGE suggests that the contract be revised to permit the pole owner to unilaterally raise rates subject to the attacher's ability to protest. With all due respect, such a mechanism is unfair. If the pole owner and co-attacher cannot agree on a rate, the proposed contract language suggests a method for resolving that dispute. It would leave the playing field unlevel to suggest that the owner can unilaterally change the rates subject to some ability for the attacher to bring the matter forward.

Section 9.1.

CLPUD's proposed revision to Section 9.1(a) makes it virtually identical to, and wholly redundant of, Section 9.1(b). Section 9.1(a) accomplishes different purposes, and should be retained as originally set forth in the Proposed Agreement.

OCTA proposes extensive revisions to Sections 9.1 through 9.7. OCTA's suggestions are not well taken. OCTA appears to not recognize that the language in these sections have worked well in the past, and not generated disputes between Verizon and pole owners. Proven contract terms should not be changed just because another attorney might

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write them differently if starting fresh. The Proposed Agreement should be maintained as originally proposed by Verizon and accepted by the Commission.

Section 9.6.

Verizon agrees with CLPUD that this paragraph should be deleted. PGE also appears to agree in this regard.

Section 9.9.

Staff's suggestion that the paragraph dealing with inspections should be revised to include time frames for corrections of detected deficiencies is not well taken, given the overall context of the Proposed Agreement. Simply put, if an attachment is not in compliance with the NESC or other applicable requirements, then the attaching party is in breach as to that attachment. The Proposed Agreement already has provisions for dealing with noncompliant attachments, including time periods for cure and remedies for breach. It would be inconsistent with the overall structure of the Proposed Agreement to insert special time frames in this section.

While other parties have proposed additional revisions to the contract language in Section 9.9, Verizon respectfully submits that its proposed revisions leave the document in its most workable form. Furthermore, as OCTA correctly notes, the costs of inspecting a pole owner's outside plant are part of the routine maintenance and administration of that plant. Therefore, there should be no additional reason to break those costs out from the regular operations and maintenance expenditures included in the carrying charge. Thus, no additional charge is appropriate for plant inspections.

Section 9.10.

Verizon and CLPUD are in agreement that they will not perform occupancy surveys. CLPUD has advised Verizon that it inadvertently neglected to strike section 9.10 in its proposed comments. See Attachment A. Again, the agreement of the parties is presumed reasonable. ORS 757.285. Furthermore, as the Commission is aware, in 2002 these parties

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went through an extensive audit to ensure that their plant records were correct. The parties believe that since that time they have consistently kept up-to-date plant records. Thus, there is no point to an occupancy survey. The parties' agreement should be given effect and that section should be eliminated.

Section 10.2.

Verizon and CLPUD are in agreement on this section. The suggested language should therefore be adopted.

Section 10.3.

OCTA objects to the reference to third party attachments in Section 10.3. Their objection is not well taken. If a pole must be replaced or acquired by Verizon, the final 30 days for Verizon to assume ownership of the pole would not commence until all other parties had removed their facilities from the pole. While OCTA may not be concerned with such an assumption of ownership, given that its members own no poles, Verizon must evaluate carefully whether it will add such an asset to its rate base. The provision is appropriate.

Section 10.5.

PGE argues that this section should contain a provision making it subject to any new regulations adopted by the Commission in the proposed rule making on the issue of pole attachments. PGE was undoubtedly not aware of the parties' agreement to adopt language permitting revision of the Proposed Agreement in the event of a change in law. See Section 25.3 in the proposed agreement attached to Verizon's Opening Technical Comments. That provision would subsume the issue identified by PGE. Therefore, no specific change should be made to this section.

Section 10.7.

PGE proposes that pole owners choose the chemical attachers may use to treat any field drilled holes. PGE's proposed revision should be rejected. These parties have agreed that each may use the chemicals it deems appropriate. Insofar as different chemicals may

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involve different treatment applications that either party does not currently employ, pole owners should not be permitted to impose such operational disruption on attachers. In light of the parties' agreement to the existing language, PGE's comments should be rejected.

Section 11.11.

PGE proposes that this section be modified to indemnify pole owners for governmental fines resulting from the actions of attachers. PGE's comment is not well taken. The parties have dealt with indemnification issues extensively in Article 20. No stand-alone indemnification obligation should be placed into Article 11.

Section 12.1.

OCTA notes that an attacher must have nondiscriminatory access to a pole owners anchors. Verizon agrees. But, Verizon does not believe that the existing contract language would permit discriminatory rejections of a permit for attachment to an anchor. Discriminatory rejection of a permit would be a breach of the agreement and subject to all normal remedies for breach.

Section 12.2.

Both OCTA and CLPUD propose eliminating the requirement that, to prevent galvanic corrosion, all down guys be insulated. As a regular matter, Verizon requires that down guys be either insulated or grounded. Verizon would thus not object to such a revision to the Proposed Agreement.

More troubling, however, is CLPUD's attempt to reserve its "sole discretion" to determine whether attachment to anchors can be permitted. This is unacceptable for all the reasons identified in response to Section 12.1 above. That is say, CLPUD should not be permitted to reject an application to an anchor under any different standards than it would be permitted to reject an application to attach to any of its other poles. Anchors are part and parcel of the outside plant system and such supporting structures should not be treated differently than the poles at the core of these concerns. Additionally, because anchors are

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merely supporting structures, CLPUD should not be permitted to attempt to charge extra rent for attachment to them. If an anchor can support additional guys, attachers should be permitted to utilize the support structure for the facilities which they are renting.

Section 13.1.

Staff proposes that this section be moved, apparently for the sole purpose of making it seem more important. See Staff's Comments at 1. Staff's comments unduly emphasize form over substance. Every portion of every contract Verizon enters into is important. Indeed, as a long-standing matter of Oregon law, contracts are to be interpreted as a whole. United States National Bank of Oregon v. Caldwell, 60 Or. App. 639, 643, 655 P.2d 180 (1983) ("We must construe the Agreement as a whole, employing reasonable methods of interpretation so that we may give effect to every word and phrase[.]"); Ramsey Signs, Inc. v. Dyck, 215 Or. 653, 658, 337 P.2d 309 (1959) (same). To suggest that one section should be treated as "more important" and moved to the beginning of the document is illogical. Moreover, staff's proposal does violence to the structure of the Proposed Agreement. Article 13 deals with specifications. Section 13.1 sets out some of those specifications. It would be illogical to have a separate, stand-alone section dealing with specifications at an illogical place in the document.

OCTA's objection to Section 13.1 is more substantive. In essence, OCTA proposes that reference to specifications being "no less stringent that the requirements of the National Electrical Safety Code" be eliminated, and that no requirements greater than the NESC be permitted. OCTA's objection is not well taken. Reference to the NESC is appropriate, and local jurisdictions may attempt to enact more stringent safety requirements. Verizon respectfully submits that the Commission should not attempt to preclude local governments from enforcing safety requirements without, at the least, giving them an opportunity to be heard on that issue. OCTA's comments in that regard are more appropriately deferred to the rule making that the Commission has indicated it will open on this topic.

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Section 13.2.

Both OCTA and PGE propose, in essence, that the agreement delete any references to aesthetic criteria. Verizon has experienced no difficulty with CLPUD in this regard, and the parties should be permitted some latitude to consider the impact of their activities on the appearance of their communities. Intervenor's comments should thus be rejected.

Section 13.3.

Both OCTA and PGE seize on the reference to the use of contractors in Section 13.3 and attempt to broaden the topic to more generally address the use of contractors by attachers. Such proposed revisions should be rejected. Generally, this Agreement has been used by Verizon for many years, and it does not restrict Verizon from using contractors to perform Verizon's routine telecommunications work. Section 13.3 deals with the unusual situation when Verizon must enter the electrical space on the pole. In such cases, Verizon is required to utilize qualified electrical workers. Because Verizon does not routinely employ such qualified electricians, it must utilize contractors for this work. OCTA and PGE's more generalized objection to this provision should be rejected.

Section 18.1.

OCTA notes that, if the agreement is modified to eliminate the reference to poles carrying lines of certain voltages, this entire article becomes obsolete. Again, Verizon and CLPUD agree in principle with a revision to the Proposed Agreement limiting its application to distribution poles, with a special provision to be made for attachment to transmission poles. Verizon and CLPUD agree in principle that this article would need to be extensively revised.

Section 23.1.

OCTA argues that Section 23.1 should be revised to incorporate federal law, and specifically reference the Pole Attachment Act. As previously stated, Verizon agrees with this revision.

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Rental Rate Worksheet.

PGE's comments regarding the Rental Rate Worksheet expressly violate the Commission's Order. PGE is arguing an issue previously decided by the Commission. These comments were not to be an attempt to seek reconsideration of the Commission's decisions. See Order at 17. PGE's comments should simply be disregarded.

Respectfully submitted this 25th day of March, 2005.

STOEL RIVES LLP

Timothy J. O'Connell
Attorneys for Verizon Northwest Inc.

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EXHIBIT A

O'Connell, Timothy J.

From: Charles Simmons [simmons@mggdlaw.com]
Sent: Monday, March 21, 2005 8:03 PM
To: O'Connell, Timothy J.
Cc: Peter Gintner; Rick Diaz
Subject: RE: agmt items/concurrence

Tim,

In looking over my notes, it looks like that was one of the things that was agreed to. I inadvertently omitted it from the comments we filed with the PUC.

Let me know if you have any other questions regarding the comments.

Charles M. Simmons

>>> "O'Connell, Timothy J." <TJOCONNELL@stoel.com> 03/21/05 03:10PM >>>
Pete:

As I was going through the comments the District filed with the Commission, one omission caught my eye. This was Section 9.10 in the Commission's proposed contract, imposing the requirement for an "Occupancy Survey." I thought we agreed in our meeting in Portland that the District was not interested in doing those, and neither was Verizon -- and that was what I understood you to say below. But, there is no mention of this (one way or the other) in the comments you filed.

Any rationale you'd care to share?

Tim

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CERTIFICATE OF SERVICE

I hereby certify that I have this 25th day of March, 2005, served the true and correct original, along with the correct number of copies, of the foregoing document upon the Public Utility Commission of Oregon, via the method(s) noted below, properly addressed as follows:

Public Utility Commission of Oregon
550 Capital Street NE
Salem, OR 97308
Facsimile: (503) 378-6163

___ Hand Delivered
___ U.S. Mail (1st class, postage prepaid)
_X_ Overnight Mail
_X_ Facsimile
___ Email

I hereby certify that I have this 25th day of March, 2005, served a true and correct copy of the foregoing document upon parties noted below via E-Mail and U.S. Mail:

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I declare under penalty under the laws of the State of Washington that the foregoing is correct and true.

DATED this 25th day of March, 2005, at Seattle, Washington.

Veronica Moore, Legal Secretary