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December 3, 2004

**VIA FACSIMILE, E-MAIL & FEDERAL EXPRESS**

Ms. Annette Taylor  
Oregon Public Utility Commission  
550 Capitol Street N.E., Suite 215  
Salem, Oregon 97301

Subject: Docket No. UM 1087

Dear Ms. Taylor:

Enclosed, for filing, are an original and five copies of the Reply Brief Of Oregon Cable Telecommunications Association in the above-referenced docket.

Very truly yours,



Brooks E. Harlow

cc w/enc: All Parties of Record

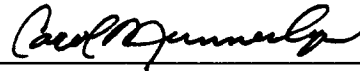
CERTIFICATE OF SERVICE  
UM 1087

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by electronic mail and by U.S. first-class mail, properly addressed with postage prepaid, to the following parties:

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DATED at Seattle, Washington this 3<sup>rd</sup> day of December, 2004.

Miller Nash LLP



Carol Munnery, Secretary

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BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON

CENTRAL LINCOLN PEOPLE'S UTILITY  
DISTRICT,

Complainant,

v.

VERIZON NORTHWEST INC.,

Defendant.

Case No. UM 1087

**REPLY BRIEF OF  
OREGON CABLE TELECOMMUNICATIONS ASSOCIATION**

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**I. INTRODUCTION**

The Oregon Cable Telecommunications Association (“OCTA”) files this short reply to Central Lincoln PUD, Staff, and Verizon. Except as noted in OCTA’s opening brief and below, OCTA is in agreement with the positions of Verizon. OCTA has very little to say in reply to the opening brief of Central Lincoln PUD (“CLPUD”), because CLPUD completely failed to address the issues of interest to the OCTA. Finally, the OCTA opposes the recommendations of Staff under the circumstances presented in this docket.

**II. ARGUMENT**

**A. Reply to CLPUD**

The OCTA focused its brief almost exclusively on the proposed rates, terms, and conditions of CLPUD’s contract. It is indisputable that the question of whether or not CLPUD’s proposed contract rates, terms, and conditions are fair, just, reasonable, and otherwise lawful, are central issues in this docket. Thus, it is inexplicable that CLPUD neglected to include any discussion of the issues that OCTA addressed in its opening brief. Under the circumstances, there is nothing in the CLPUD’s opening brief to which OCTA might reply. Because there is no further opportunity for reply, should CLPUD attempt to address these issues in its reply brief, they should be disregarded and stricken. Instead, the Commission should find in favor of OCTA’s and Verizon’s arguments on these issues by reason of CLPUD’s default.

**B. Reply to Staff**

If there were evidence in this record that the dispute between CLPUD and Verizon had led to any material and significant violation of the Commission’s safety standards and regulations, then Staff’s recommendations might be appropriate. As a general principal, OCTA would agree that safety is paramount. However, no such evidence exists in this docket.

1           It is puzzling that the Staff would make its recommendations without any  
2 evidence of safety problems in the record and particularly for the first time in a post-hearing  
3 brief. OCTA cannot determine whether Staff has information—undisclosed and not on the  
4 record—to lead it to believe there are ongoing safety violations. Alternatively, OCTA might  
5 speculate that Staff simply wants to increase Commission oversight on safety issues. Either  
6 way, the Staff’s recommendation should be rejected in this docket.

7           If the Staff legitimately has information of safety violations, then it should  
8 commence a new docket against the violator(s) and develop an appropriate record to support its  
9 recommendations. If Staff merely wants to step up oversight, it should not do so in response to  
10 a complaint between two parties that addresses rates, terms, and conditions of pole attachment  
11 contracts. There is no reason to single out parties who bring a contract dispute before the  
12 Commission for enhanced regulatory oversight. Such an approach is somewhat punitive  
13 because the increased scrutiny of the parties bears no relationship to any demonstrated safety  
14 concerns. Such an approach would, if adopted in this docket, have a significant chilling effect  
15 on others parties’ willingness and ability to bring legitimate contractual disputes before the  
16 Commission. Moreover, it unfairly singles out parties with contractual disputes and unduly  
17 raises their costs.<sup>1</sup> If the Staff wishes to step up oversight generally, it should bring a more  
18 generic proceeding that would fairly and equally spread the burden among all pole owners and  
19 attachers.

20           **C.     Reply to Verizon**

21           OCTA continues to disagree with Verizon’s position regarding use of a “single  
22 Joint Use Agreement” as opposed to a license. Verizon Opening Post-Hearing Brief at 14-15.

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23           <sup>1</sup> Even more arbitrarily, Staff would impose this burden only on parties who go all the way through the  
24 process. OCTA notes that staff did not seek to impose this burden on PGE and Verizon in Docket UM  
25 1096. Indeed, there Staff supported dismissal of the action. The record in this docket contains no more  
26 evidence of safety violations than the record in UM 1096. *See generally*, OPUC Order 04 653 (Nov. 2,  
2004)

1 Verizon states it is “convinced that each party will be dealt with more fairly” with a single  
2 document. *Id.* at 15. What this admission really reflects, however, is that Verizon will be more  
3 fairly treated with a single agreement. As OCTA discussed in its opening brief, this is probably  
4 the case and is also the reason that Verizon's request should be rejected.

5 The use of a single agreement gives Verizon an advantage in dealing with  
6 CLPUD. However, this advantage is one that only Verizon can obtain. The other 13 or so pole  
7 attachers in CLPUD’s territory are unable to obtain this advantage. Thus, the effect of  
8 Verizon’s recommendation would be to give it a more favorable contract with CLPUD than the  
9 other attachers. Such discrimination is unlawful, as discussed in OCTA’s opening brief.  
10 Verizon’s recommendation on this issue should not be adopted.

11 **III. CONCLUSION**

12 For the foregoing reasons and the reasons set forth in OCTA's opening brief: the  
13 recommendations of Verizon, except with regard to a single Joint Use Agreement, and the  
14 recommendations of OCTA should be adopted; the positions of CLPUD should be rejected;  
15 and the recommendations of Staff should not be adopted.

16 Respectfully submitted this 3<sup>rd</sup> day of December, 2004.

17 MILLER NASH LLP

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19 Brooks E. Harlow  
20 OSB No. 03042

21 Attorneys for Intervenor  
22 Oregon Cable Telecommunications  
23 Association