BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

DOCKET NO. UM 1191

QWEST CORPORATION Complainant, v. CENTRAL ELECTRIC COOPERATIVE, INC., Defendant.	QWEST'S ISSUES OUTLINE

Pursuant to the Commission's Prehearing Conference Report issued April 4, 2005, Complainant Qwest Corporation ("Qwest") hereby submits its Issues Outline in which Qwest specifies the provisions in Defendant Central Electric Cooperative's ("CEC") contract that Qwest believes are unjust and unreasonable, provides Qwest's reasons, and articulates alternative language for those provisions. The numbering of the contract provisions is taken from the proposed agreement that CEC sent to Qwest on March 24, 2005. Qwest understands that the purpose of this Issues Outline is to facilitate negotiations with CEC; therefore, it is not intended to foreclose Qwest from raising additional issues, or modifying its position on these issues, as the negotiation process progresses.

Recitals

CEC's Proposed Language: Whereas, Licensor owns, operates and maintains lines of poles extending in Deschutes, Crook, Jefferson, Grant, Lake, Wasco and Linn Counties, in the state of Oregon.

Qwest's Position: CEC's proposed language does not adequately account for the fact that the joint use contract is mutual. In some cases, CEC will be the licensee and Qwest will be the

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licensor. Therefore, the recital of the location of lines and poles owned by the licensor should not be limited to the Central Oregon counties listed by CEC.

Qwest's Proposed Language: Whereas, Licensor owns, operates and maintains lines of poles extending in the State of Oregon, including but not limited to Deschutes, Crook, Jefferson, Grant, Lake, Wasco and Linn Counties, in the state of Oregon.

Definitions (§ 1)[1]

CEC's Proposed Language (Basic Pole): A Basic Pole shall be defined as the average height of all of Licensor's poles as calculated by Licensor on January 1 of each year.

Qwest's Position: This definition is unreasonable because it does not define the term "basic pole" with certainty. The height of non-joint use power poles, such as transmission poles, which are typically taller than distribution poles, should have no bearing on the determination of a basic joint use pole or calculation of the rental rate. Qwest's proposed language below follows FCC guidelines in defining a basic pole as a 40' pole and is reasonable.

Qwest's Proposed Language: A 40’ pole, or as otherwise agreed to by the parties. This definition is used solely for the purpose of computing pole rental rates.

CEC's Proposed Language (Pole Attachment): An Attachment by the Licensee to Licensor's pole. The type of Attachments requiring an application and permit include but are not limited to the following:

- Initial bolt Attachment inside the telecommunication space
- Additional bolt Attachments or other facilities attached to the pole

Qwest's Position: CEC's proposed language is unreasonable because it does not provide the certainty required for the parties' joint use relationship and appears to give CEC the discretion

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[1] Qwest expects that, as the parties negotiate the substantive terms of their new joint use contract, the definitions above and in CEC's proposed contract may be modified or new definitions may be added. Qwest reserves its right to identify issues and propose alternative language relating to additional or modified definitions as they arise.

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to determine when an application and permit are required. The Commission discouraged such discretion in joint use contracts in Order No. 05-042. To avoid any ambiguity as to which attachments require applications and permits, Qwest recommends the parties adopt specific language, such as Qwest's proposed language below.

Qwest's Proposed Language: An attachment by the Licensee to the pole, falling into one of the following categories:

(1) Attachments requiring permits and rental fees. Includes the following:

- Initial bolt attachment inside the Telecommunications Space
- Additional bolt attachment attached to the pole inside the Telecommunications Space
- Attachments inside the Power Space

(2) Attachments requiring permits but no additional rental fee. Includes the following:

- Overlashing on own equipment
- Reconductoring

(3)* Attachments requiring notification of the pole owner, but not requiring a permit or fee. Includes the following:

- New Licensee down guy attached to Licensee's or other's anchors
- New Licensee anchors

(4)* Attachments not requiring notification, permits or fees. Includes the following:

- Off-pole installations such as
  - Mid-span drops
  - Terminals
  - Taps
  - Amplifiers
  - Snow shoes
  - Splice enclosures

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- Wind Dampeners
- Mid-span crossovers

* If Licensor believes that a Pole Attachment by Licensee does not fall within either of these two categories, it may notify Licensee promptly and the parties shall endeavor in good faith to resolve any disagreement about the Pole Attachment at issue. Once the parties have resolved any such disagreement and determined which of the above categories the Pole Attachment at issue belongs in, Licensee shall follow the requirements that relate to that Attachment as set forth above.

CEC's Proposed Language (Sanction): A financial penalty as set forth by the then existing Oregon Public Utilities Commission ("OPUC") regulations.

Qwest's Position: The referenced sanctions are set forth in the PUC rules and are applicable unless they are amended or deemed invalid, so this provision is unnecessary. In light of Qwest's current challenge to the validity of the PUC's pole attachment penalty rules, it is unfair, unreasonable and unjust for CEC to attempt to incorporate those rules into the joint use contract. Moreover, the proposed language is vague and potentially overbroad because it includes, but is not limited to, "then existing OPUC regulations" without specifying the meaning of "then existing." The provision should be eliminated.

CEC's Proposed Language (Telecommunication Space): Space on the pole between 20 and 23 feet on the pole unless otherwise agreed upon by Licensor and Licensee.

Qwest's Position: Qwest's proposed language below is more specific and would eliminate any potential ambiguity.

Qwest's Proposed Language: Space on Licensor’s basic pole between 20 and 23 feet on the pole unless otherwise specified.

In addition to the above, the contract should define other laws that may be applicable to the contract between the parties to avoid any ambiguity regarding the parties' relationship. Qwest suggests the following definition, which is reasonable and is standard in the industry:

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> **Applicable law:** All valid and effective applicable federal, state, and local laws, rules, regulations, as may be amended and all orders of courts and governmental agencies with jurisdiction over the matters set forth in this Agreement. Nothing contained herein shall substitute for or be deemed a waiver of the parties' respective rights and obligations under applicable federal, state and local laws, regulations and guidelines, including (without limitation) Section 224 of the Communications Act of 1934, as amended (47 U.S.C. 224).

Moreover, because the contract will be reciprocal, in addition to a definition of "telecommunication space," it should include a definition of "power space" to accommodate CEC's operations on its poles and the Qwest poles that it jointly uses. Qwest provides the following definition: "**Power Space:** Any portion of a basic pole above the communications worker safety zone."

Term of Agreement

CEC Language (§ 2): This Agreement shall remain in full force and effect for a term of five (5) years, unless and until either Licensor or Licensee terminates it upon one hundred eighty (180) days' notice to the other party. Notice shall be in writing and mailed by certified mail, return receipt requested, postage prepaid, or delivered by a reputable overnight courier with tracking capabilities, addressed to the parties as indicated in Section 24 of this Agreement. If this Agreement is terminated, Licensee shall remove all of its Equipment from the Licensor's poles within one (1) year after termination of this agreement. During the one (1) year removal period, all of the applicable provisions of this Agreement, specifically including the payment of rent for joint use poles, shall remain in full force and effect with respect to any and all Equipment of Licensee remaining upon Licensor poles until such time as all such Equipment has been removed. Any attachments that remain after the one (1) year removal period expires shall be denied to the attachments without a pole attachment agreement and shall be subject to the sanctions provided in the then existing OPUC regulations.

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Qwest's Position: It is in the public interest to encourage joint use of utility poles. Joint use preserves space in the public right-of-way while ensuring that residents receive efficient and cost-effective utility service. It is contrary to the public interest to have joint use contracts expire after a term of years without any safe harbor for continuing the use of the pole owner's poles to deliver utility service. See ORS 757.279 (requiring PUC to consider interest of customers in determining just and reasonable joint use terms). The contract should continue on an "evergreen" basis after expiration until one party terminates the agreement.

Moreover, because of the strong public interest in maintaining joint use wherever possible, the pole owner should be required to give more than six months' notice of termination and one year to remove attachments. Qwest's proposed language below adopts the one-year notice provision and two-year period to remove attachments from the agreement attached to the Verizon/CLPUD order, which is more reasonable and practicable than the six-month and one-year periods in CEC's version.

Finally, it is also in the public interest to have the termination period tolled while the parties negotiate a new agreement. Even a two-year equipment removal period does not provide much time to remove all attachments on the roughly 14,000 CEC-owned poles that Qwest jointly uses. The public should not be forced to bear the costs of beginning the process of removing all equipment on the 14,000 poles and placing that equipment on other poles or otherwise in the public right-of-way where the parties intend to negotiate a replacement agreement.

Qwest's Proposed Language: This Agreement shall continue in force and effect for a period of one (1) year from and after the date of this Agreement, and thereafter from year to year unless terminated by either party by giving written notice of its intention to do so not less than three hundred sixty-five (365) days' notice to the other party. Notice shall be in writing and mailed by certified mail, return receipt requested, postage prepaid, or delivered by a reputable overnight courier with tracking capabilities, addressed to the parties as indicated in Section 26 of this Agreement. If the parties begin negotiating a new agreement at any time after either party

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gives written notice of its intention to terminate and before the expiration of the three hundred sixty-five (365) days, then the 365-day termination period shall be tolled until such time as either party notifies the other in writing that continued negotiation is no longer desired.

If this Agreement is terminated, the parties shall remove all of their respective equipment and Pole Attachments from the other party's poles within two years after termination of this Agreement. All of the applicable provisions of this Agreement, specifically including but not limited to the payment of rent for joint use poles, shall remain in full force and effect with respect to any and all equipment or Pole Attachments of either party remaining upon poles of the other party until such time as all such equipment and Pole Attachments have been removed, or unless otherwise agreed to by the parties.

Specifications

CEC's Proposed Language (§ 3(g)): When, in the opinion of Licensor and Licensee, existing anchors are adequate in size and strength to support the equipment of both Parties the Licensee may attach its guys thereto at no additional cost. To prevent galvanic corrosion of anchor rods, all down guys should be insulated. All guys attached to Licensor anchor shall be insulated. When anchors are not of adequate size and strength, the Licensee shall at its own expense place additional anchors or replace existing anchors with anchors adequate in size and strength.

Qwest's Position: The NESC does not require all down guys to be insulated even if they share a common anchor; as long as the down guy is either insulated or bonded and grounded it meets the code. Nevertheless, while Qwest is willing to insulate all guys attached to CEC's anchor, but it is unreasonable to require *all* down guys to be insulated. Down guys that are attached to Qwest's or a third party's anchors should be bonded and grounded in accordance with NESC standards. Adherence to NESC standards is addressed elsewhere in the proposed contract.

Qwest's Proposed Language: Qwest proposes eliminating the sentence: "To prevent galvanic corrosion of anchor rods, all down guys should be insulated."

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Application for Attachment

CEC's Proposed Language (§ 4(a) Permit Application): Licensee shall not attach or modify any of its pole Attachments (except for service drops) to Licensor's poles or joint use poles without first having made written and/or electronic application to Licensor and having received written and/or electronic permission from Licensor, or had the application deemed approved by Licensor's failure to respond to Licensee's application as set forth in Subparagraph (b). Permission to make pole Attachments described in the application may be granted or denied by Licensor. Licensee must apply for a permit within seven (7) days of the attachment of a service drop and install the service drop in compliance with the OPUC Safety Rules.

Qwest's Position: CEC's proposed language is unreasonable because it does not account for Qwest's obligation to provide service as a carrier of last resort where the permit approval process takes longer than the specified time period. Qwest's proposed language below reflects industry standards and protects the public interest by permitting Qwest to fulfill its service obligation. It also requires application and permission to be transmitted solely via NJUNS, which helps eliminate any miscommunication between the parties.

Qwest's Proposed Language: Licensee shall not attach or modify any of its Pole Attachments described in Section 1(e)(1) and (2) (except for service drops) to Licensor's poles or joint use poles on which Licensor has its pole contacts without first having made electronic application via NJUNS to Licensor and having received electronic permission via NJUNS from Licensor, or had the application deemed approved by Licensor's failure to respond to Licensee's application as set forth in subsection (b) below. However, if Licensee is required by Applicable Law to attach or modify such Pole Attachments within a certain time period, and it has applied for, but has not received permission from the Licensor before the expiration of this time period, then Licensee may attach or modify such Pole Attachments before receiving permission. Licensee must apply for a permit within seven (7) days of the attachment of a service drop and install the service drop in compliance with the NESC.

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CEC's Proposed Language (§ 4(b) Application Procedure): Until further notice, whenever Licensee desires to attach to any Licensor pole, Licensee shall submit to Licensor a "Pole Attachment Ticket" electronically via the NJUNS and/or written permit application and shall specify the location and identifying number for the pole(s) on which attachment is requested, the amount of vertical space required, and the number of Attachments for each pole. Licensor shall have the authority to deny applications for attachment to its poles on a non-discriminatory basis where there is insufficient capacity, or for reasons of safety, reliability, and generally applicable engineering purposes. Notwithstanding the foregoing, Licensor may reserve space on its poles if it projects a need for that space for its core utility service in the future. Licensor shall permit use of its reserved space until such time as it has an actual need for that space. At that time, Licensor may recover the reserved space for its own use, upon giving Licensee 180 days notice, and Licensee shall be required to remove its attachments at Licensee's cost. Licensor shall give Licensee the opportunity to pay for the cost of any reasonable modifications necessary to accommodate Licensee's displaced attachments. Licensor shall respond to Licensee's application within thirty (30) days of receipt. Licensor shall notify the Licensee in writing and/or electronically via NJUN's of its decision on the application. If the application is approved, the Licensee shall have the right hereunder to affix such Attachments in accordance with the application, as approved, and in compliance with the specifications, terms and conditions of this Agreement. If notice is not received from the Licensor within thirty (30) days, the application shall be deemed approved and Licensee may proceed with the Attachment(s). If Licensor is reserving space for future use then it may grant Licensee a conditional approval subject to Licensor's right to recover the space for its own use in the future. If the application is denied then Licensor shall provide Licensee with a written denial describing with specificity all relevant evidence and information supporting the denial and how such evidence and information relates to the lack of capacity, safety, reliability, or generally applicable engineering standards.

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Qwest's Position: The term "core utility service" should be defined to avoid any ambiguity. Qwest anticipates being able to define that term in the negotiation process with CEC. Along those lines, the application procedure should be specifically limited to the types of attachments that require applications. Qwest's language below limits the application procedure to those attachments that require an application.

Qwest's Proposed Language: (1) Whenever Licensee desires to make a Pole Attachment described in Section 1(e)(1) and (2) to any Licensor pole, Licensee shall submit to Licensor a “Pole Attachment Ticket” electronically via NJUNS and shall specify the location of the pole(s) on which attachment is requested and the number of contacts requested for each pole.

(2) Licensor reserves the right to reject or modify such application(s) where there is insufficient capacity or for reasons of safety or reliability. Notwithstanding the foregoing, Licensor may reserve space on its poles if it projects a need for that space in the provision of its core utility service. Licensor shall permit use of its reserved space until such time as it has an actual need for that space. At that time, Licensor may recover the reserved space for its own core utility use. Licensor shall give Licensee the opportunity to pay for any reasonable modifications needed to accommodate its displaced attachments.

(3) Licensor shall respond to Licensee’s application within thirty (30) days of receipt. If the application is approved, Licensor shall notify the Licensee electronically via NJUNS of said approval and the Licensee shall have the right as a Licensee hereunder to affix such attachments in accordance with the application, as approved, and in compliance with the specifications, terms and conditions of this Agreement. Any denial of an application shall identify the specific reasons for denial. If notice is not received from Licensor within thirty (30) days from the date of the application, the application shall be deemed approved and Licensee may proceed with the attachment. Any denial of an application by Licensor must be in writing and describe with specificity all relevant evidence and information supporting the denial and how such evidence and information relates to the lack of capacity, safety, or reliability.

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CEC's Proposed Language (§ 4(c) Application Planning): Each application shall involve sufficient engineering and planning by the Licensee to ensure compliance with standards identified in section 3(a) of this Agreement during construction and upon completion. The Licensee is responsible for conducting engineering studies of Licensee's facilities to ensure proper spacing, equipment bonding and clearances. The Licensor shall be responsible for engineering studies of pole and down guy strength requirements for horizontal and vertical loading. The Licensor may elect in writing to allow the Licensee to conduct pole, down guy and strength studies.

In addition to the written and or electronic application via NJUN's, and where required by the Licensor, the application shall include sufficient design drawings and specifications so that qualified personnel can safely make the Attachments in compliance with the NESC and this Agreement. It is the responsibility of the Licensee to ensure that only trained, qualified persons work on Licensor's facilities. Qualified persons shall be knowledgeable in applicable NESC rules and must be able to demonstrate competence as required by the NESC. They shall also be trained to recognize and prevent NESC violations and conflicts, and to maintain safe working clearances from energized lines and equipment. Upon completion of the installation, the Licensee shall give written or electronic notification to the Licensor that the facilities are complete.

Qwest Position: CEC's proposed language regarding engineering studies, design drawings, and notification of completion exceeds industry practices and is unreasonable. Generally, all relevant information required to assess the feasibility and safety of any typical attachment is transmitted with the NJUNS ticket. The provision requiring design drawings is not only unnecessary and unreasonable because it would impose additional expense, it also is impermissibly vague and apparently reserves discretion for CEC to determine whether a drawing is "sufficient" to allow "qualified personnel" to safely make the attachments. The Commission discouraged such discretionary provisions in *Central Lincoln PUD v. Verizon*, Order No. 05-042.

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Moreover, there is no legitimate reason to require notification of completion of attachments, and such a step would add unnecessary expense to the joint use process.

Qwest Proposed Language: Each application shall involve sufficient engineering and planning by the Licensee to ensure compliance with standards identified in Section 2(a) of this Agreement during construction and upon completion. The Licensee is responsible for conducting engineering studies of Licensee's facilities to ensure proper spacing, equipment bonding and clearances.

It is the responsibility of the Licensee to ensure that only trained, qualified persons work on Licensor's facilities. Qualified persons shall be knowledgeable in applicable NESC rules and must be able to demonstrate competence as required by the NESC. They shall also be trained to recognize and prevent NESC violations and conflicts, and to maintain safe working clearances from energized lines and equipment.

CEC's Proposed Language (§ 4(e) Make-ready Pole Replacements): Whenever any pole to which Licensee seeks attachment must be modified or replaced to accommodate Licensee's Attachments and Licensor's existing facilities, as well as the Attachments of other occupants, Licensor will provide Licensee with a detailed cost estimate of make-ready work it believes to be necessary to prepare the pole for Licensee's facilities. Licensor will provide Licensee with such estimate within sixty (60) days of receiving Licensee's application for Attachment. After receiving this estimate, if Licensee still desires to make such Attachments, Licensee shall notify Licensor with ninety (90) days of receiving such estimate of such continuing desire to attach, and shall pay to Licensor any required advance payment for such make-ready work, which may include engineering, materials (including poles and associated hardware), cost of removal (less any salvage value), and the expense of transferring Licensor's facilities from the existing to the new pole(s). Where the advance payment of estimated expenses made to Licensor by Licensee for both non-replacement make-ready or pole replacement work is less than the actual cost of work described above, Licensee agrees to pay

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Licensor all sums due excess of the amount of the advanced payment within thirty (30) days from receipt of the invoice. Where the advanced payment of estimated expenses paid to Licensor by Licensee exceeds such actual costs, Licensor agrees to refund the difference to Licensee within sixty (60) days of completion of the make ready work. The Licensor shall make satisfactory arrangements with the owner or owners of other facilities attached to said pole(s) for the transfer or rearrangement of other facilities.

Qwest's Position: CEC's proposed language is unreasonable because it allows CEC too much discretion to require make-ready work without it relating to CEC's core function. Qwest's proposed language below would require any make-ready work caused by CEC's modifications to its attachments to be related to CEC's core business and would not permit CEC to cause such make-ready work for modifications to non-utility attachments, such as attachments of any telecommunications provider affiliated with CEC. In addition, language in Qwest's proposed language below is taken from the Verizon-CLPUD agreement in Docket UM 1087, which has already been subject to Commission scrutiny. It is also unreasonable to not permit a licensee to recover costs that exceed 110 percent of the make-work estimate. Qwest's language permits that recovery, while CEC's does not. Finally, Qwest's proposed language requires payment within 45, rather than 30, days from an invoice, which is consistent with Qwest's accounting system and program. It is reasonable in such situations to approve estimated charges in advance rather than requiring advance payment of estimated charges.

Qwest's Proposed Language: Whenever any pole to which Licensee seeks attachment must be modified or replaced to accommodate Licensee's facilities and Licensor's existing attachments necessary for its core function, as well as the existing attachments of other occupants, Licensor will provide Licensee with a detailed written cost estimate of make-ready work it believes to be necessary to prepare the pole for Licensee's facilities. Licensor will provide Licensee with such estimate within thirty (30) days of receiving Licensee's application for attachment. After receiving this estimate, if Licensee still desires to make such attachments,

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Licensee shall notify Licensor within thirty (30) days of receiving such estimate of its continuing desire to attach, and shall approve any required payment to Licensor for such make-ready work, which may include engineering, materials (including poles and associated hardware), cost of removal (less any salvage value), and the expense of transferring Licensor's facilities from the old to the new pole(s). To the extent that actual costs to Licensor of make-ready work are anticipated to be greater than 110% of Licensor's estimate, these costs must be approved in writing by Licensee prior to the completion of the make-ready work. Where any payment of estimated expenses made to Licensor by Licensee for both non-replacement make-ready or pole replacements is less than the actual cost of work described above, Licensee agrees to pay Licensor, within forty-five (45) days of receipt of an invoice, all sums in excess of the amount of the advanced payment up to the amount of the actual cost of the work, less any amount in excess of 110% of the cost estimate if that amount was not previously approved as provided above. Where the payment of estimated expenses made to Licensor by Licensee exceeds such costs, Licensor agrees to refund the difference to Licensee within forty-five (45) days of completion of the make-ready work. The Licensor shall also make satisfactory arrangements with the owner or owners of other facilities attached to said poles for the transfer or rearrangement of such other facilities.

CEC's Proposed Language (§ 4(h) Right-of-way Clearing and Tree Trimming):

Licensor has established a regular and routine procedure for trimming trees or removing trees with inadequate clearance to conductors, poles bind equipment. Licensee shall be responsible for tree trimming, right-of-way clearing and debris removal necessary for installation and safe clearance from its cable, Equipment or conductors as mandated by the NESC and OPUC. In the event that Licensee is unable or fails to perform the necessary clearing and tree trimming in the communication space and Licensee has obtained all necessary easements, permits and rights-of-way to attach to Licensor's poles, Licensor will perform the necessary right-of-way clearing and tree trimming. In such case Licensee agrees to pay Licensor 100% of the tree

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trimming and debris removal necessary in the communication space for each pole and the wire in its backspan on which Licensee attaches its facilities plus administrative costs. The costs for tree trimming, debris removal and administrative costs conducted behalf of Licensee by Licensor shall be paid by Licensee within thirty (30) days from receipt of the invoice. In the event there is more than one Licensee attaching to a specific pole, then the tree trimming costs for that pole shall be divided equally among the number of Licensees attaching to that pole.

Qwest's Position: CEC's proposed language is unreasonable because it places the burden of tree trimming and clearing on the licensee. Qwest's proposed language below follows the industry standard of making the pole owner responsible for the original tree trimming and each party responsible for necessary tree trimming thereafter. It is taken from the Verizon-CLPUD agreement.

Qwest's Proposed Language: Licensor shall bear the cost of the original tree trimming, brushing and clearing required for the placement of a new pole line. All tree trimming and brush cutting in connection with the initial placement of wires or equipment on an existing pole line shall be borne entirely by the party placing the wires or equipment. Unless the parties otherwise agree, each party shall be responsible for any and all additional tree trimming and brush cutting related to its wires or equipment.

Inspections and Pole Attachment Survey

CEC's Proposed Language (§ 5(a) Inspections): Licensor shall have the right to perform an Inspection of each installation of Licensee's Attachments and other Equipment, upon and in the vicinity of, Licensor's poles at any time. The Licensor may charge Licensee for the pro-rata expense of any non-routine Inspections during or after installation, in connection with Attachments that do not comply with the terms of this Agreement. The Licensor shall recover the costs for all periodic, routine Inspection that benefits Licensee in the annual rent. Such inspections, whether made or not, shall in no manner relieve the Licensee of any responsibility, obligation, or liability assumed under this Agreement or arising otherwise.

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Qwest Position: Qwest objects to CEC's proposal because the phrases "in the vicinity of" and "for all periodic, routine Inspections that benefit Licensee" are vague, potentially ambiguous, and arguably would allow the licensor to take action that it does not have authority to take. The phrases should be eliminated or modified to express their meaning clearly. Qwest also believes that it is reasonable to require the licensee to be notified and permitted to participate in the inspection. Qwest's proposed language below is taken from the Verizon-CLPUD agreement and is reasonable.

Qwest's Proposed Language: Licensor shall have the right to perform an Inspection of Licensee's Pole Attachments on Licensor's poles at any time. Licensor may charge Licensee for the pro-rata expense of any non-routine inspections during or after installation, in connection with Pole Attachments that do not comply with the terms of this Agreement. Licensor shall notify Licensee of any performance concerns that trigger Inspections at least two (2) business days prior to activating such inspection during installation and thirty (30) days after completion and provide Licensee an opportunity to participate in such inspections. Such inspections, whether made or not, shall in no manner relieve Licensee of any responsibility, obligation, or liability assumed under this Agreement or arising otherwise.

CEC's Proposed Language (§ 5(b) Pole Attachment Survey): Licensor may conduct a Pole Attachment Survey at any time for the effective date of this Agreement and not more often than once every third year subsequent to each such Pole Attachment Survey. Licensor shall give Licensee at least thirty (30) days prior written notice of such Pole Attachment Survey. Licensee shall advise Licensor if Licensee desires to be present during the survey within thirty (30) days of such notice. The Licensor and Licensee shall jointly select an independent contractor for conducting the inventory and agree on the scope and extent of the Pole Attachment Survey that is reimbursable by Licensee. The cost of the Pole Attachment survey shall be recovered by Licensor in the annual rent. The Contractor shall provide Licensee and Licensee with a report of such Pole Attachment Survey within a reasonable time after its completion. The survey data

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from Licensor's Pole Attachment Survey shall be used to update Licensor's Attachment billing records where applicable. Licensee shall make any objections to the inventory data within sixty (60) days of mailing of the Pole Attachment Survey report or such objections shall be waived. Objections raised to inventory data from a Pole Attachment Survey shall not relieve Licensee of the obligation to pay undisputed amounts when due, as set forth in this Agreement. The Licensor and Licensee agree to cooperate in good faith to resolve any disputed amounts,

Qwest's Position: CEC's proposed language is impractical and unreasonable because it does not provide the licensee with sufficient time to respond to a notice of survey, nor does it specify in sufficient detail the format of the results of the survey or allow the licensee to *participate* in, rather than simply be present for, the survey. Those potential ambiguities should be addressed. Moreover, the cost recovery should be prorated based on which party benefits from the survey, and the survey results should be transmitted in a format that is useable for the parties. Most of Qwest's proposed language below is taken from the Verizon-CLPUD agreement and is a reasonable solution for these issues.

Qwest's Proposed Language: The Licensor may conduct an Occupancy Survey not more often than every fifth year from the date of this Agreement, and subsequent to each such Occupancy Survey. The Licensor shall give Licensee at least thirty (30) days prior notice of its desire to conduct such Occupancy Survey. Licensee shall advise the Licensor if Licensee desires to participate in the inventory within sixty (60) days of such notice. The parties shall jointly select an independent contractor for conducting the inventory and agree on the scope and extent of the Occupancy Survey that is reimbursable by Licensee. The cost of the Occupancy Survey shall be recovered in the annual rent. The Contractor shall provide the Parties with a detailed report of such Occupancy Survey including both the Licensor's and Licensee's pole numbers (to the extent that Licensee's pole numbers are on the pole and clearly identified as Licensee's pole tag at the time of the survey) and other information required to update each party's inventory databases within a reasonable time after its completion. The inventory data shall be delivered in

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a format that is useable for the parties as specified by the parties. The inventory data from the Licensor's Occupancy Survey shall be used to update the Licensee's attachment billing records where applicable. Licensee shall make any objections to the inventory data within sixty (60) days of receipt of the Occupancy Survey report or such objections shall be waived. Objections raised to inventory data from an Occupancy Survey shall not relieve Licensee of the obligation to pay undisputed amounts when due, as set forth in Article V above. The Parties agree to cooperate in good faith to resolve any disputed amounts.

Safety

CEC's Proposed Language (§ 6(a) Licensee Practices): Licensee shall have written practices that address construction standards to be followed in attaching facilities to Licensor's poles. The standards should specify any obligations that exceed NESC regulations. These standards shall be made readily available to Licensor.

Qwest's Position: Qwest is willing to agree to satisfy the relevant NESC standards, but it is redundant, overreaching, and unreasonable to require either party to have specific practices and to provide those practices to the other party. The language should be eliminated.

CEC's Proposed Language (§ 6(b) Conflicts with Electric Lines): Licensor shall provide Licensee written notice of any NESC or safety violations it discovers. NESC violations and conflicts to electric lines shall be corrected by Licensee within the time frame required by the OPUC, if Licensee created the violation. In some instances, the NESC requires that qualified electrical workers perform the work. In that event, Licensee shall either have qualified contractors perform the work or pay Licensor to perform the work. Licensee may also be subject to OPUC sanctions for failure to comply with OPUC safety rules. Failure by Licensee to act in a prompt and responsible manner may result in the Licensor taking appropriate measures to correct the safety violations involved and Licensee shall be responsible for the cost thereof. In such cases, the inspection, design, repair, and coordination charges shall be borne by Licensee if it

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failed to perform necessary duties required by OPUC and shall pay the cost with thirty (30) days from receipt of the invoice.

Qwest's Position: As described elsewhere herein, it is unnecessary and unreasonable to incorporate PUC penalties into the contract, especially where those regulations are subject to a challenge before the Oregon Court of Appeals. Additionally, the timeframe for correcting a violation is established by the NESC and should be referenced in the contract. Finally, because of Qwest's accounting systems and program, any payment obligation should include a 45-day payment period instead of 30 days.

Qwest's Proposed Language: Licensor shall provide Licensee notice of any NESC violations it discovers. NESC violations and conflicts to electric lines shall be corrected in accordance with NESC standards and the time frames described therein, as amended, by the Licensee if Licensee created the violation. In some instances, the NESC requires that qualified electrical workers perform the work. In that event, Licensee shall either have qualified contractors or pay Licensor to perform the work. Failure by Licensee to act in a prompt and responsible manner may result in the Licensor taking appropriate measures to correct the safety violations involved and Licensee shall be responsible for the cost thereof. In such cases, the inspection, design, repair, and coordination charges shall be borne by Licensee if it failed to perform necessary duties required by Oregon law.

In addition to the above provisions regarding safety, the contract should include a provision relating to entry into the power space on jointly used poles as follows, which is taken from the Verizon-CLPUD agreement:

> Licensee (including its employees and contractors) shall not enter the Power Space on Licensor poles for any purpose including making connections to the Licensor neutral. If Licensee requires grounding on an existing Licensor pole where a grounding conductor does not exist, Licensee shall request the Licensor to install grounding at the sole expense of Licensee. If the Licensor is unable to install said grounding within thirty (30) days of the date requested, Licensee has the option of hiring qualified electrical contractors to perform this work. Licensee, its

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employees and its contractors, shall at all times exercise its rights and responsibilities under the terms of this Agreement in a manner that treats all electric facilities as energized at all times. Licensee shall assume complete responsibility for its employees' conduct and Licensee shall determine and provide the appropriate training and safety precautions to be taken by its employees and contractors. Licensee shall indemnify, defend, and hold the Licensor harmless from any liability of any sort derived from Licensee's employees' or contractors' failure to abide by the terms of this Section except to the extent of the Licensor's negligence or willful misconduct.

Maintenance of Poles, Attachments and Right-of-Way

CEC's Proposed Language (§ 8):

(a) The Licensor shall, at its own expense, inspect and maintain the poles in accordance with industry practices and the specifications outlined in Section 3, and shall replace, reinforce or repair such poles as are determined to be defective.

(b) Except as otherwise provided in subparagraph (c) of this section, Licensee shall at all times maintain all of its Attachments in accordance with the specifications outlined in Section 3 and shall keep them in good repair. All necessary right-of-way maintenance, including tree trimming or cutting, shall be borne by the parties as provided in Section 4(h).

(c) Any existing joint use construction that does not conform to the specifications outlined in Section 3 shall be brought into conformity as outlined in Section 3 except for identified NESC or OPUC violations which must be corrected in the time frame specified by the OPUC. When such existing construction shall have been brought into conformity with said specifications, it shall at all times thereafter be maintained as provided in (a) and (b) of this Section. Should Licensee fail to comply, the Licensor may elect to do such work and the Licensee shall pay the Licensor the cost within thirty (30) days from receipt of the invoice.

Qwest's Position: CEC's proposed language does not address several items relating to pole maintenance that should be addressed. For example, Qwest's proposed language below specifically addresses the collection of damages for broken, damaged, or replaced poles. Qwest's

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proposed language also addresses, among other things, the costs and procedure associated with relocation of poles. Such language is taken from the Verizon-CLPUD agreement and is more reasonable than CEC's proposed language because it (a) eliminates any ambiguity about particular situations, (b) requires the parties to cooperate, and (c) provides for a reasonable timeframe for accomplishing notice and relocation. As a general matter, the agreement should include language that requires the pole owner to consult with the licensee on the location of new poles when necessary to replace, move, or reset a joint use pole. It also should recognize that the licensee may need additional time to remove attachments where it must wait for third parties to remove their attachments. Finally, any payment obligation should include a 45-day payment period rather than a 30-day period due to Qwest's accounting systems and program.

Qwest's Proposed Language:

(a) The expense of maintaining jointly used poles shall be borne by Licensor, and Licensor shall maintain its jointly used poles in a safe and serviceable condition, and shall, under the other provisions of this Agreement, replace, reinforce, or repair such poles as become defective. Licensor shall be solely responsible for collection for damages for poles broken or damaged. The party with equipment attached to the pole shall be responsible for collecting damages to its own equipment. If a pole owned by Licensor is replaced by Licensee because of auto damage or storm damage, Licensor shall pay Licensee for the actual costs of such pole replacement.

(b) Whenever right-of-way considerations or public regulations make relocation of a pole necessary, such relocation shall be made by the Licensor at its own expense, except each party shall bear the cost of transferring its own attachments.

(c) Whenever it is necessary to replace, move, reset or relocate a jointly used pole, the Licensor shall consult with Licensee on the location of the new pole before making such replacement or relocation, and at least thirty (30) days prior to such replacement, move, resetting or relocation, shall give Licensee notice via NJUNS (except in case of emergency, when verbal

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notice will be given and subsequently confirmed via NJUNS within five (5) days of verbal notice), specifying in such notice the work to be performed and the time of such proposed replacement, move, resetting or relocation. If the pole to be replaced or relocated contains underground circuits in which aerial lines transition to underground lines, the pole shall be replaced or relocated in the same hole or in a mutually agreed-upon location, or Licensor shall reimburse Licensee for the costs of relocating the underground circuit to the new location. Licensor shall inform Licensee that it has completed its work within thirty (30) days of such completion. Licensee shall then transfer its attachments to the new or relocated joint pole and notify Licensor when such transfer is complete. Should the Licensee fail to transfer its attachments to the new or relocated joint pole within thirty (30) days after receiving notice from Licensor that its work is completed, the Licensor may elect to do such work, and the Licensee shall pay the Licensor the cost of such work. In the event that third parties, not subject to this agreement, have equipment attached to the Licensor's pole, such thirty (30) day period shall commence upon removal of third party attachments. In the event the Licensee fails to transfer its attachments and the Licensor does such work, the Licensor shall not be liable for any loss or damage to the Licensee's facilities that may result, except in the case of gross negligence or willful misconduct. Licensor shall be responsible for removal of the old pole and restoring the area or reimbursing the Licensee for the costs of removing the old pole and restoring the area.

(d) Except as otherwise provided in subparagraph (c) of this Section, each party shall at all times maintain all of its attachments in accordance with the specifications mentioned in Section 2 and shall keep them in good repair. All necessary right-of-way maintenance, including tree trimming or cutting, shall be borne by the parties as provided in Section 7(e).

(e) Any existing joint use construction that does not conform to the specifications mentioned in Section 2 shall be brought into conformity as soon as practicable. When such existing construction shall have been brought into conformity with said specifications, it shall at all times thereafter be maintained as provided in (a) and (d) of this Section. Should the Licensee

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fail to comply, the Licensor may elect to do such work and the Licensee shall pay the Licensor the cost.

(f) Licensee expressly assumes responsibility for determining the condition of all poles to be climbed by its employees, contractors, or employees of contractors. Licensor disclaims any warranty or representation regarding the condition and safety of the poles of the Licensor. Licensor agrees that, upon written notification, it will replace any pole that is unserviceable.

Recovery, Rearranging or Relocation of Facilities

CEC's Proposed Language (§ 9):

(b) In any case where facilities of Licensor are required to be rearranged on the poles of the Licensor to accommodate the Attachments of Licensee, Licensee shall pay to Licensor the total costs incurred by Licensor in rearranging such facilities in advance of construction. The Licensee shall also reimburse other customers of the poles of Licensor for their costs of rearrangement to provide space or clearance for the facilities of Licensee.

(c) Whenever it is necessary to replace or relocate jointly used pole, the Licensor shall give notice in writing and/or electronic means except in the case of an emergency, when prior notice may not be possible (but will subsequently be confirmed as reasonable). Licensee shall, at the time so specified by the Licensor, transfer its Attachments to the new or relocated joint pole at the time specified for such transfer of Attachments, the Licensor may elect to do such work, and the Licensee shall pay the Licensor the cost within thirty (30) days from receipt of the invoice. In the event the Licensee fails to transfer its Attachments and the Licensor does such work, the Licensor shall not be liable for any loss or damage to the Licensee's facilities that may result and Licensee shall become liable for any abandoned poles as per Section 13.

Qwest's Position: Qwest would prefer that notice be given solely via NJUNS, rather than via NJUNS or written means, as this has lead to confusion in the past. Any payment obligation should include a 45-day payment period rather than a 30-day period.

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Qwest's Proposed Language: (a) Once Licensee has an approved permit to attach to Licensor's pole, any pole replacement due to additional space requirements will be borne by the requesting party, not Licensee.

(b) If in the sole judgment of the Licensor, the accommodation of any new Pole Attachments of Licensor to Licensor's poles necessitates the rearrangement or addition of any existing facilities on an existing pole, or the replacement of any existing pole, Licensor shall specify on the Application the changes necessary to accommodate the Pole Attachments and the estimated cost thereof and return it to Licensee. If Licensee still desires to use the pole and returns the application marked to so indicate, Licensor shall make such rearrangements, transfers and replacements of existing facilities, and additions of new facilities, as may be required, and Licensor shall reimburse Licensor for any additional expenses thereby actually incurred by Licensor not otherwise prescribed in this Agreement.

(c) Whenever it is necessary to replace or change the location of a joint use pole, for reasons other than those set out in Section 10 (a) and (b), and over which Licensee and Licensor have no control, Licensor shall, before making such change, give prompt notice to the Licensee via NJUNS, specifying in such notice the time of such proposed change, and the Licensee shall promptly begin to transfer or remove its attachments. In case of any such pole replacement or change where Licensor has transferred or removed its attachments and Licensee has not transferred or removed its attachments within sixty (60) days after receipt of such notice, Licensee shall become liable for such old pole as provided in Section 14, except where Licensee's transfer is delayed by a third party.

Indemnification and Insurance

CEC's Proposed Language (§ 10): (a) Licensee agrees to indemnify and hold harmless Licensor, its directors, officers, employees and agents against and from any and all claims, demands, suits, losses, costs and damages, including attorneys' fees, for or on account of bodily or personal injury to, or death of, any persons(s), including without limitation Licensor's

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employees, agents, representatives and subcontractors of any tier, or loss of or damage to any property of Licensor, or any third party, to the extent resulting from any negligent act, omission, or fault of Licensor its employees, agents, representatives, or subcontractors of any tier, their employees, agents, or representatives, in the exercise, performance or nonperformance of Licensee's rights or obligations under this Agreement. Except for liability caused by the negligence of Licensee, the Licensor shall also indemnify and hold harmless Licensee from and against any and all claims, demands, suits, all costs, and damages, including attorneys' fees, arising from any interruption, discontinuance, or interference with the Licensor's service to its customers which may be caused, or which may be claimed to have been caused, by any action of Licensee pursuant to or consistent with this Agreement.

(b) The indemnifying Party shall have the right, but not the obligation, to defend the other regarding any claims, demands or causes of action indemnified against. Each Party shall give the other prompt notice of any claims, demands or causes of actions for which the other may be required under this Agreement. Each Party shall fully cooperate with the other in the defense of any such demand or cause of action. Neither shall settle any claim, demand or cause of action relating to a matter for which such Party is indemnified without the written consent of the indemnitor.

(c) Licensee shall carry and keep in force, while this Agreement is in effect, insurance contracts, policies and protection in company or companies in amounts and for coverage deemed necessary for its protection by Licensee, but in no event for amounts or coverage less than the following minimum requirements:

1. Licensee shall also carry and keep in force, while the Agreement is in effect, workers' compensation insurance in compliance with the laws of the state of Oregon and employers' liability insurance with minimum limits of $10,000,000 per accident.

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2. Licensee shall furnish Licensor with certificates of insurance showing that such insurance is in force and will not be canceled or materially modified without thirty (30) days prior written notice to the Licensor. Neither acceptance nor knowledge (by and of Licensor) or the procurement of Licensee of insurance protection of lesser scope than that that required to be procured by them under this Agreement shall in any manner or for any purpose constitute or be deemed a waiver by Licensor of the requirements imposed respecting insurance protection, nor shall any such acceptance or knowledge of insurance protection of lesser scope in any manner or for any purpose lessen or modifies or constitute a limiting interpret of the scope of the matters covered by and obligations of Licensee under this Agreement.

Qwest's Position: It is unreasonable to have an indemnification provision that is not mutual, especially where, as here, both parties use each others' poles. Additionally, it is standard in the industry and reasonable to specify with as much detail as possible the type and amount of insurance the parties must obtain, including the ratings of the insurance companies, as does Qwest's proposed language below.

Qwest's Proposed Language:

(a) Licensee agrees to indemnify and hold harmless Licensor, its directors, officers, employees, and agents against and from any and all claims, demands, suits, losses, costs, and damages, including attorneys' fees, for or on account of bodily or personal injury to, or death of, any person(s), including without limitation Licensee's employees, agents, representatives and subcontractors of any tier, or loss of or damage to any property of Licensee, or any third party, to the extent resulting from any negligent act, omission, or fault of Licensee, its employees, agents, representatives, or subcontractors of any tier, their employees, agents, or representatives, in the exercise, performance or nonperformance of Licensee's rights or obligations under this Agreement. Except for liability caused by the sole negligence of Licensor or its employees,

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agents, representatives, or subcontractors of any tier, Licensee shall also indemnify and hold harmless Licensor from and against any and all claims, demands, suits, losses, costs, and damages, including attorney's fees, arising from any interruption, discontinuance, or interference with Licensee's service to its customers which may be caused, or which may be claimed to have been caused, by any action of Licensor pursuant to or consistent with this Agreement.

(b) Licensor agrees to indemnify and hold harmless Licensee, its directors, officers, employees and agents against, and from any and all claims, demands, suits, losses, costs, and damages, including attorneys' fees, for or on account of bodily or personal injury to, or death of, any person(s), including without limitation Licensor's employees, agents, representatives and subcontractors of any tier, or loss of or damage to any property of Licensor, or any third party, to the extent resulting from any negligent act, omission, or fault of Licensor, its employees, agents, representatives, or subcontractors of any tier, their employees, agents, or representatives, in the exercise, performance or non performance, of Licensor's rights or obligations under this Agreement. Except for liability caused by the sole negligence of Licensee or its employees, agents, representatives, or subcontractors of any tier, Licensor shall also indemnify and hold harmless Licensee from and against any and all claims, demands, suits, losses, costs, and damages, including attorney's fees, arising from any interruption, discontinuance, or interference with Licensor's service to its customers which may be caused, or which may be claimed to have been caused, by any action of Licensee pursuant to or consistent with this Agreement.

(c) The indemnifying party shall have the right, but not the obligation, to defend the other regarding any claims, demands or causes of action indemnified against. Each party shall give the other prompt notice of any claims, demands or causes of actions for which the other may be required to indemnify under this Agreement. Each party shall fully cooperate with the other in the defense of any such claim, demand or cause of action. Neither shall settle any claim, demand or cause of action relating to a matter for which such party is indemnified without the written consent of the indemnitor.

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(d) Each party shall carry insurance in such form and in such companies as are satisfactory to the other party to protect the parties from and against any and all claims, demands, actions, judgments, costs, expenses and liabilities of every name and nature which may arise or result directly or indirectly from or by reason of such loss, injury or damage subject to the terms and conditions of the policies. To the extent permitted, such insurance policies shall name the other party as an additional insured. Notwithstanding the above, neither party shall be liable to the other for any incidental, indirect, special or consequential damages of any kind, including but not limited to, any loss of use, loss of business or loss of profit; provided, however, there shall be no limitation on a party's liability to the other for any fines or penalties imposed on the other party by any court of competent jurisdiction or federal, state or local administrative agency resulting from the failure of the party to comply with any term or condition of this agreement or any valid and applicable law, rule or regulation.

(e) Each party shall carry and keep in force, while this Agreement is in effect, insurance contracts, policies and protection in company or companies that maintain at least a "Best's" rating of A- VII in amounts and for coverage deemed necessary for its protection by the other party, but in no event for amounts or coverage less than the following minimum requirements:

1. Comprehensive general liability insurance, ISO Form CG 0001 10 01 or equivalent, including independent contractors insurance coverage, with minimum limits of $10,000,000 combined single limit each occurrence and aggregate for bodily injury and property damage, including coverage for damage caused by blasting, collapse or structural injury, and/or damage to underground facilities, protecting the insured party against and in respect to all matters, liabilities, contingencies, and responsibilities arising under the Agreement and subject to the policy's terms and conditions, including without limiting the foregoing, contractual liability insurance covering the insured party's obligations under this Agreement included in the above minimum limits of $10,000,000 combined single limit each occurrence and aggregate for bodily

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injury and property damage to indemnify and to hold the other party harmless for bodily injury or property damage caused in whole or in part by the insured party.

2. Each party shall also carry and keep in force, while the Agreement is in effect, workers' compensation insurance in compliance with the laws of the state of Oregon and employers' liability insurance with minimum limits of $1,000,000 per accident.

3. Upon request, each party shall furnish the other with certificates of insurance showing that such insurance is in force and will not be canceled or materially modified without thirty (30) days prior written notice to the other party's President/CEO. Neither acceptance nor knowledge (by and of the other party) or the procurement of the insured party of insurance protection of lesser scope than that required to be procured by them under this Agreement shall in any manner or for any purpose constitute or be deemed a waiver by either party of the requirements imposed respecting insurance protection, nor shall any such acceptance or knowledge of insurance protection of lesser scope in any manner or for any purpose lessen or modify or constitute a limiting interpretation of the scope of the matters covered by and obligations of either party under this Agreement.

Breach and Remedies

CEC's Proposed Language (§ 11): (a) If either Party shall default in any of its obligations under this agreement and such default continues thirty (30) days after notice thereof has been provided to the defaulting Party, the Party not in default may exercise any of the remedies available to it. The remedies available to each Party shall include, without limitation: (i) refusal to grant any additional joint use to the other Patty until the default is cured; (ii) termination, without further notice, of this as far as concerns the further granting of joint use; (iii) litigation for injunctive relief; (iv) litigation for damages and costs; (v) substitute performance as provided in Section 11 (b); termination of the entire agreement upon 180 days notice as provided in Section 2 with removal of all Equipment; and (vi) litigation to recover sums due.

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(b) If Licensee shall default in the performance of any work that it is obligated to do under this Agreement, Licensor may elect to do such work, and the Licensee shall reimburse the other Party for the cost thereof within thirty (30) days from receipt of the invoice.

(c) In the event either Party is required to bring suit for the collection of amounts due or the enforcement of any right hereunder, the prevailing Party shall be entitled to recover its reasonable attorney's fees and costs, including attorney's fees and costs at trial, on appeal, arbitration, mediation or any appearances before the OPUC.

(d) Notwithstanding the aforementioned remedies, appropriate representatives of the Parties shall meet promptly upon request and attempt in good faith to resolve disputes that arise concerning this Agreement. If the Parties are unable to reach a resolution themselves, a Party may, by written notice, request the other Party to agree to an alternative dispute resolution procedure (e.g. non-binding mediation, binding arbitration) for the dispute, and the other Party shall respond in writing within ten (10) working days.

Qwest's Position: Joint pole agreements serve the public interest by preserving the public rights-of-way and ensuring that utility service is provided as efficiently as possible. Such agreements are not to be terminated lightly. It would be unreasonable to allow termination of a joint use contract because of any default, no matter how small. The contract should include a notice and cure provision and a tolling provision while the parties attempt in good faith to resolve any dispute. It is in the best interests of both parties, and their customers, to facilitate communication and to permit cure of breaches so that utility service is not unduly or unnecessarily interrupted. Moreover, joint use contracts historically have not included attorneys' fee provisions, and one is not necessary here. Finally, the breach provisions must be mutual in order to be considered reasonable. Qwest's proposed language below reflects these reasonable provisions.

Qwest's Proposed Language: (a) If either party shall default in any of its material obligations under this Agreement, then the non-defaulting party shall have the right to terminate

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this Agreement as to future joint use or may terminate the permit covering the pole or poles in respect to which such default or noncompliance shall have occurred; provided, however, that (i) the non-defaulting party shall first give the defaulting party written notice, in the manner described in Section 25, of such default and the non-defaulting party's intent to terminate, and (ii) upon receiving such notice, (A) the defaulting party shall have thirty (30) days in which to cure such default; or (B) if within five (5) days of receiving such notice, the defaulting party notifies the non-defaulting party why it cannot reasonably cure within thirty (30) days and submits a plan of correction describing how it shall undertake to correct such default and by when such correction will be completed, the defaulting party shall proceed with reasonable diligence and in good faith to correct such noncompliance or default as set forth in the plan of correction. Nothing herein shall affect any obligation to provide notice as described in Section 25 for termination that does not involve default of a material obligation. Any termination will be subject to the survival provisions of Section 19 herein.

(b) In case of default and subject to the provisions of subsection (a) above and Section 19 of this Agreement, the non-defaulting party may, at its option, terminate the Agreement as to future joint use or may terminate the license covering the new Pole Attachment(s) in respect to which such default shall have occurred. In case of such termination, no refund of unused rental shall be made.

(c) If either party shall default in the performance of any work that it is obligated to do under this Agreement, the other party may elect to do such work, and the party in default shall reimburse the other party for the cost thereof within thirty (30) days after receipt of an invoice therefor.

(d) Notwithstanding the aforementioned remedies, appropriate representatives of the parties shall meet promptly upon request and attempt in good faith to resolve disputes that arise concerning this Agreement. If the parties are unable to reach a resolution themselves, a party may, by written notice, request the other party to agree to an alternative dispute resolution

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procedure (e.g. non-binding mediation, binding arbitration) for the dispute, and the other party shall respond in writing within ten (10) working days. Any deadline or timeframe described in Section 13 herein shall be tolled while the parties attempt in good faith to resolve disputes as described in this subsection (d).

Licensee's Pole Attachment Removal

CEC's Proposed Language (§ 12): (a) Licensee may at any time remove its Attachments from any of Licensor's poles and, in each case Licensee shall immediately notify Licensor through electronic notification via NJUNS of such removal. Removal of the Attachments from any pole shall constitute a termination of Licensee's right to use such pole. Licensee will not be entitled to a refund of any rental on account of any such removal. When Licensee performs maintenance to or removes or replace its equipment on Licensor's pole, Licensee must chemically treat all field drilled holes' and plug any unused holes, including those resulting from removal of equipment. If Licensee fails to adequately plug and treat such holes, Licensor may do so at Licensee's sole risk and expense and Licensee shall pay the cost to Licensor within thirty (30) days from receipt of the invoice.

(b) In the event that Licensee shall fail to make any change in its plant required by Licensor or shall fail to remove any Attachments upon cancellation of any specific permit or upon termination of this Agreement, Licensor shall have the right to make such changes or effect such removals and shall pay the cost to Licensor within thirty (30) days from receipt of the invoice.

(c) If Licensee shall make default in the performance of any work which it is obligated to do under this Agreement, Licensor may elect to do such Work, and Licensee shall reimburse Licensor for the actual cost thereof within thirty (30) days from receipt of the invoice.

Qwest's Position: In general, Qwest does not dispute the language of section 12(a). However, the language in section 12(b) requires clarification because it is unclear when a licensor would be able to make a licensee change its plant. In general, Qwest believes it is

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unreasonable for a pole owner to dictate the type of equipment a pole occupant may use. Additionally, it is unreasonable to require payment within a time period that is insufficient given Qwest's accounting systems and program. Any payment period should be 45 days.

Abandonment of Joint Use Poles

CEC's Proposed Language (§ 13): If Licensor desires at any time to abandon any joint use pole, it shall give Licensee notice to that effect. If, after said notice, Licensor shall have no Equipment on such pole that Licensee shall not have removed all of its Attachments, such pole shall immediately become the property of Licensee, and Licensee shall hold harmless the Licensor from every obligation, liability, or cost, and from all damages, expenses or charges incurred thereafter, arising out of, or because of, the presence of or the condition of such pole or any Attachments.

If the Licensor abandons the pole and relocates facilities underground, the Licensor shall request that the Licensee also relocate facilities underground or shall abandon the vacated pole to the Licensee. This Agreement would be negotiated on a case by case basis.

Qwest's Position: CEC's proposed language is unreasonable and unjust because it does not specify how much notice the licensor must give to the licensee before the licensor abandons the pole. In addition, it does not account for the cost of abandoning and removing a pole, which Qwest's proposed language does. Qwest's proposed language also addresses the situation in which a licensee abandons a pole, so it provides certainty, which CEC's language lacks. Finally, no other utility should have the ability to dictate or request whether another utility places its facilities above or below ground. Qwest's proposed language is taken from the Verizon-CLPUD agreement and is reasonable.

Qwest's Proposed Language: (a) If Licensor desires at any time to abandon any joint use pole, it shall give Licensee notice in writing via NJUNS to that effect at least thirty (30) days prior to the date on which it intends to abandon such pole. If, at the expiration of said period Licensor shall have no attachments on such pole but Licensee shall not have removed all of its

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attachments, such pole may, at the Licensor's discretion, become the property of Licensee, and Licensee shall hold harmless the Licensor from every obligation, liability, or cost, and from all damages, expenses or charges incurred thereafter, arising out of, or because of, the presence of or the condition of such pole or any attachments, and shall pay the Licensor a sum equal to the present value of such abandoned pole or poles, less cost of removal, but in no event less than zero even should such value fall below zero, or such other equitable sum as may then be agreed upon between the parties, and Licensor shall provide Licensee with properly authorized bill of sale for such pole(s). Licensor must top the pole to a useable condition before abandoning the pole to Licensee. The preferred method of topping a pole shall be at a 45-degree angle with at least two (2) feet of the pole above the telecommunication space or "cut and capped" to prevent decay.

(b) If the Licensor abandons the pole and relocates facilities underground, the Licensor shall abandon the vacated pole to the Licensee.

(c) Licensee may at any time abandon the use of a joint use pole by giving Licensor due notice in writing via NJUNS of such abandonment, as provided in (a) of this Section, and removing from such pole all attachments that Licensee may have. In case of such abandonment of the use of any such pole, Licensee shall pay to Licensor the full rental for the current year for the space on said pole set aside for the use of Licensee.

Rental Charges and Rates

CEC's Proposed Language (§ 14): (a) On or about January 1 of each year, the Licensor shall make a tabulation of the total number of its jointly occupied poles, or on which License has specifically reserved space, as of December 31 of the prior year. For the purpose of the tabulation, any Licensor-owned pole which is used by License for the purpose of attaching Equipment thereto, shall be considered a joint pole and subject to rental fees. Rental fees will not be prorated for Equipment which occupies a pole for less than the full one-year period.

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(b) Within sixty (60) days after completion of the tabulations referred to in Section 14 (a), the Licensor shall invoice the Licensee for the rental amount owing, as calculated in accordance with the then existing OPUC Administrative Rules. Payment of the invoiced amount shall be made within thirty (30) days from receipt of the invoice and shall constitute payment for rental of the prior twelve (12) month period beginning January 1. Past due rental amounts shall bear interest at the lesser of the maximum rate permitted by applicable law or 18 percent per annum compounded daily.

(c) Compensation payable by third parties for the joint use of pole shall be collected and retained by the Licensor.

(d) If Licensee attaches Equipment to a pole without obtaining prior authorization from Licensor in accordance with this Agreement, Licensor may levy sanctions against the Licensee as specified in OPUC Administrative Rules then in effect including but not limited to those then existing OPUC regulations. The unauthorized attachment charge shall be payable to the Licensor within thirty (30) days from receipt of the invoice for that charge. Past due unauthorized attachment charges shall bear interest at the lesser of the maximum rate permitted by applicable law or 18 percent per annum compounded daily.

(e) In the event that Licensee requires a source of electrical energy power supply to its equipment which constitutes a part of the licensed pole Attachment and apparatus, such energy will be supplied by Licensor in accordance with the provisions of its standard service extension policies and approved rates and tariffs.

Qwest's Position: CEC's proposed language is unjust, unfair, and unreasonable because it does not accurately reflect the industry standard regarding cost allocation as expressed in PUC Order No. 05-042. Qwest's language below is taken from the Verizon-CLPUD agreement and is reasonable and specific. Moreover, the referenced sanctions are set forth in the PUC rules and are applicable unless they are amended or deemed invalid, so it is unnecessary to reference them in the contract. In light of Qwest's current challenge to the validity of the PUC's pole attachment

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penalty rules, it is unfair, unreasonable and unjust for CEC to attempt to incorporate those rules into the joint use contract. Moreover, the proposed language is vague and potentially overbroad because it includes, but is not limited to, "then existing OPUC regulations" without specifying the meaning of "then existing" or other rules that could apply. The provision should be eliminated.

Qwest's Proposed Language: (a) On or about December 31 of each year, the parties, acting in cooperation, shall tabulate the total number of pole contacts in use as of the preceding day. This tabulation shall indicate the number of poles on which rentals are to be paid.

(b) The yearly rental period covered by this Agreement shall be the twelve month calendar year period between January 1 and December 31. Within thirty (30) days after the completion of the tabulation referred to above, Licensor shall invoice Licensee for the rental amount owing, as calculated in accordance with Exhibit B[2] and Applicable Law, which is attached hereto and incorporated herein by this reference, specifying on such invoice the rental period covered. Payment of the invoiced amount shall be made within forty-five (45) days of receipt of the invoice. The annual rental rate per pole shall apply to any Pole Attachments made or removed during the year and rents shall not be prorated; provided however, that if this Agreement is executed between July 1 and December 31 of the same calendar year, Licensee shall pay to Licensor only one-half (1/2) of the annual rental due for attachments made during that period. Consistent with the terms of this provision, the components of the rental rates, and the methodology employed to determine the rental rates specified in Exhibit B of this Agreement (which are subject to the valid and effective provisions of the OAR and OPUC rules and regulations, as may be amended, and Applicable Law) may be modified or replaced by an agreement by the parties. Such modifications or replacements (which also are subject to the valid

[2] Qwest's proposed Exhibit B is attached hereto. Exhibit B sets forth the formula for determining the rental rate. As CEC has not provided any information relating to that formula, Qwest reserves the right to address that information as it becomes available.

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and effective provisions of the OAR and OPUC rules and regulations, as may be amended, and Applicable Law) shall become effective on the first day of the year following the agreement of the parties. Thus, for example, if such changes were to be agreed upon in December of 2006, they would become effective as of January 1, 2007.

(c) In the event that Licensee requires a source of electrical energy for power supply to the cable system which constitutes a part of the licensed pole contacts and apparatus, such energy will be supplied by Licensor in accordance with the provisions of its standard service extension policies and approved rates and tariffs.

(d) Unless otherwise provided, all undisputed amounts payable under this Agreement upon completion of work performed hereunder by either party, the expense of which is to be borne wholly or in part by the other party, shall be due and payable within forty-five (45) days of receipt of an appropriate invoice.

(e) Licensor and Licensee shall define the guidelines and definition for compliance as it pertains to this Agreement, and Licensee shall receive a rent reduction as provided in Exhibit B if the Licensee is in compliance as provided for in ORS 757.282(3) and OAR 860-028-0230, as may be amended Nothing herein shall be construed as a waiver of Licensee's right to request a settlement conference, contest the denied rental reduction, or otherwise avail itself of the rights and procedures set forth in OAR 860-028-0230, as may be amended.

(f) Subject to the other provisions of this Agreement, the cost of erecting new joint poles, constructing new pole lines, making extensions to existing pole lines, or replacing existing poles, pursuant to this Agreement shall be borne by the Parties as follows:

1. Poles should be erected at the sole expense of Licensor.

2. If a pole larger than that which is already installed is necessary, due wholly to the Licensee's requirements, including requirements as to keeping Licensee's wires clear of trees, Licensee shall pay to Licensor a sum equal to the difference between the cost, in place, of such pole and the cost, in place, of the existing pole. Licensor shall bear the rest of the cost

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of erecting such pole, except as otherwise provided in subsection (h) below.

3. If a pole larger than that which is already installed is necessary, due to the requirements of both parties, or the requirements of public authorities or of property owners (other than requirements with regard to keeping the wires of one party only clear of trees), Licensee shall pay to Licensor a sum equal to one-half the difference between the cost, in place, of such pole and the cost, in place, of the existing pole; Licensor shall bear the rest of the cost of erecting such pole. Where there are more than the two Parties to this agreement attached to a pole, the cost of such pole replacements will be divided equally among all parties attached to the pole.

4. In the case of an interset pole required solely by Licensee in Licensor's alignment, Licensor shall erect and own such pole and retain ownership, and Licensee shall pay to Licensor a sum equal to the cost in place of the interset or midspan pole.

(g) Any payments for poles made by Licensee shall not entitle Licensee to the ownership of any part of said poles.

(h) Where an existing pole is prematurely replaced (for reasons other than normal or abnormal decay) by a new pole solely for the benefit of Licensee, or in order to permit joint use, the cost of the new pole shall be borne by the parties as specified in subsection (f) above, and Licensee shall also pay Licensor the remaining life value of the old pole in place, plus the cost of removal, less the salvage value of such pole. Licensor shall remove and may retain or dispose of such pole as sole owner thereof.

(i) Each party shall place, maintain, rearrange, transfer, and remove its own attachments at its own expense except as otherwise expressly provided.

(j) The expense of the poles shall be borne by Licensor except that the cost of replacing poles shall be borne by the Parties hereto in the manner provided in subsections (f) and (h) above.

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(k) Where Licensee's service drops cross over Licensor's lines and are attached to Licensor's poles, either directly or by means of a pole top extension fixture, the cost shall be borne as follows:

1. Pole top extension fixtures shall be provided and installed at the sole expense of the party using them.

2. Where an existing pole is replaced with a taller pole to provide the necessary clearance for Licensee's benefit, Licensee shall pay to Licensor a sum as determined under subsection (h) above.

(l) In the event that Licensor requires Licensee to transfer equipment, or set, lower, haul and/or dispose of Licensor's poles, Licensor shall reimburse Licensee for the cost of such services with forty-five (45) days of receipt of an appropriate invoice.

(m) Nothing herein shall preclude the establishment of other arrangements for the division of costs of joint poles as the Parties may agree to in writing.

Defaults

CEC's Proposed Language (§ 15): (a) If Licensee shall fail to comply with any of the provisions of this Agreement or should default in any of its obligations under this Agreement, and shall fail within thirty (30) days after written notice from Licensor to correct such noncompliance or default, Licensor may, at its option, and without further notice, declare this Agreement to be terminated in its entirety, or may terminate the permit covering the pole or poles in respect to which such default or noncompliance shall have occurred. In case of such termination, no refund of accrued rental shall be made.

(b) If Licensee shall make default in the performance of any work which it is obligated to do under this Agreement, the Licensor may elect to do such work, and the Licensee shall pay to the Licensor for the cost within thirty (30) days from receipt of the invoice.

Qwest's Position: CEC's proposed language is largely duplicative of the language in the section on breach and remedies and is unnecessary. The parties do not need to address default in two different sections, and to do so could lead to confusion and potential ambiguity.

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Qwest's Proposed Language: See section on breach and remedies above.

Sanctions

CEC's Proposed Language (§ 16): The Licensor may levy sanctions against the Licensee for unauthorized Attachments or for other violations of the duties of pole occupants as specified in OPUC Administrative Rules including but not limited to those then existing OPUC regulations.

Qwest's Position: The referenced sanctions are set forth in the PUC rules and are applicable unless they are amended or deemed invalid, so this provision is unnecessary. In light of Qwest's current challenge to the validity of the PUC's pole attachment penalty rules, it is unfair, unreasonable and unjust for CEC to attempt to incorporate those rules into the joint use contract. Moreover, the proposed language is vague and potentially overbroad because it includes, but is not limited to, "then existing OPUC regulations" without specifying the meaning of "then existing" or other rules that could apply. The provision should be eliminated.

Rights of Other Parties

CEC's Proposed Language (§ 17): Nothing herein shall be construed to limit the right of Licensor, by contract or otherwise, to confer upon others, not parties to this Agreement, rights or privileges to use the joint use poles covered by this Agreement.

Qwest's Position: CEC's proposed language is unreasonable because it is limited to licensor's rights, whereas a reasonable provision would address the relationships of both licensor and licensee to third parties. Qwest's proposed language below is taken from the Verizon-CLPUD agreement and is reasonable.

Qwest's Proposed Language: Nothing herein contained shall be construed as affecting any rights or privileges previously conferred by either party, by contract or otherwise, to others not party to this Agreement to use any poles owned by such party. Further, nothing herein contained shall be construed to affect either party's right to continue, modify, extend or amend

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such existing rights or privileges, or to grant others the right or privilege to use poles owned by the Party.

Licensee shall not enter into any agreement with third parties for attachment to a pole owned by Licensor within Licensee's allocated space or otherwise. Licensor may enter into attachment agreements with third parties and will administer all third party attachments for space outside Licensee's allocated space. As to any such agreements between Licensee and third parties that predate this Agreement, Licensee will, by appropriate means, transfer the administration of such attachments to Licensor.

Survival of Certain Obligations

CEC's Proposed Language (§ 18): Any termination of this Agreement in whole or in part shall not release Licensee from any liability or obligations hereunder, whether of indemnity or otherwise, which may have accrued or which may be accruing or which arises out of any claim that may have accrued or be accruing at the time of or prior to termination. However, the survival of certain obligations after this Agreement is terminated shall not relieve Licensee from OPUS [*sic*] sanctions for attachments without a pole attachment agreement.

Qwest's Position: As stated above, it is not reasonable or necessary to refer to PUC sanctions in the joint use contract. Qwest's proposed language below is taken from the Verizon agreement and is reasonable because it is specifically tailored to the parties' joint use agreement.

Qwest's Proposed Language: Any termination of this Agreement in whole or in part shall not be effective as to those provisions of the Agreement governing the liability or obligations of Licensee, including, without limiting the generality of the foregoing, the approval of and obligation to continue to pay charges for pole attachments as provided elsewhere in this Agreement, for such time as Licensee’s attachments remain on Licensor’s poles. Any such provisions shall survive termination of the remainder of the Agreement.

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Interest and Payments

CEC's Proposed Language (§ 22): Past due amounts shall bear interest at the lesser of the maximum rate permitted by applicable law or 18 percent per annum compounded daily.

Qwest's Position: CEC's proposed language is unreasonable, unjust, and unfair because it would impose a rate of interest that is substantially higher than the industry standard without justification.

Qwest's Proposed Language: All undisputed amounts to be paid by Licensee to Licensor under this Agreement shall be due and payable within forty-five (45) days after an invoice is received by the Licensee. Any payment of undisputed amounts not made within forty-five (45) days from the due date shall bear interest at the prime rate plus 2 percent, but in no event greater than that allowed by Applicable Law.

Notices

CEC's Proposed Language (§ 24): Any notice, request, consent, demand or statement which is contemplated to be made upon either party by the other party under any of the provisions of this Agreement, shall be in writing and shall be treated as duly delivered when it is either (a) delivered to the office of Licensor in the ease of a notice to be given to Licensor, or personally delivered to the office of Licensee in the case of a notice to be given to Licensee, or (b) deposited in the United States mail, postage prepaid and properly addressed to the party to be served as follows:

(i) If notice is to Licensor:

Central Electric Cooperative Inc.

P.O. Box 846 or 2098 N. Hwy 97

Redmond, Oregon 97756

If a provision of this agreement allows notice by electronic means then notice may be given to Licensor, only for purposes of the provision allowing electronic notice, at:

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_____

email or electronic address

(ii) If notice is to Licensee,

_____

_____

_____

If a provision of this agreement allows notice by electronic means then notice may be given to Licensee, only for purposes of the provision allowing electronic notice, at:

_____

email or electronic address

Qwest's Position: Given the parties' recent history, Qwest believes that all required notices, especially any notice of default or termination, should be provided by certified mail, return receipt requested, to a location that is specified in the contract. This will ensure that the notice does not go unheeded. Qwest has numerous "offices" in Oregon, and it would be unreasonable to allow CEC to deliver a required notice to any branch office and to any person, who would not have the authority to make decisions about the contract. Similarly, email notification is inappropriate for the same reason. Finally, the parties should be able to change the address to which written notice must be sent, as long as that change is in writing.

Qwest's Proposed Language: Any notice, request, consent, demand or statement that is required to be made upon either party by the other party under any provision of this Agreement, other than where made via NJUNS, shall be in writing and shall be treated as duly delivered when it is deposited in the United States certified mail, postage prepaid, return receipt requested, and properly addressed to the party to be served as follows:

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(i) If notice is to Licensor:

Central Electric Cooperative Inc.

P.O. Box 846 or 2098 N. Hwy 97

Redmond, Oregon 97756

(ii) If notice is to Licensee,

Qwest Corporation

Joint Use

700 W. Mineral Ave. MT G28.24

Littleton, CO 80120

Notice may be given at such other address as may be designated in writing by the other party.

Construction of Agreement

CEC's Language (§ 25): This Agreement is deemed executed in the state of Oregon and shall be construed under the laws of the state of Oregon and the OPUC. In the event that a suit or action is instituted to enforce or interpret any of the terms of this Agreement, the parties agree that the proper venue for said suit or action shall be in the Circuit Court for Deschutes County, Oregon.

Qwest's Position: CEC's proposed language is unjust and unreasonable because it is too narrow. There may be laws other than those of the State of Oregon and the PUC, such as FCC regulations, that apply to the contract. The parties should not be precluded from citing those laws. Moreover, Qwest will not agree to Deschutes County Circuit Court as the exclusive venue for any dispute. Such a provision is unfair because it precludes other potential forums, such as federal court or the PUC.

Qwest's Proposed Language: This Agreement is deemed executed in the State of Oregon and shall be construed under the laws of the State of Oregon and the Applicable Law.

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Prior Agreements Superseded

CEC's Proposed Language (§ 26): This Agreement supersedes and replaces any and all previous Agreements entered into by and between Licensor and Licensee with respect to the subject matter of the Agreement.

Qwest's Position: CEC's proposed language is unjust, unfair, and unreasonable because it does not account for the parties' longstanding joint use relationship and ongoing daily interactions. Qwest's proposed language below is taken from the Verizon-CLPUD agreement and is reasonable because it provides certainty in the continuity of obligations. Such certainty protects the public interest in continued joint use.

Qwest's Proposed Language: This Agreement constitutes the entire Agreement between the parties and it supersedes all prior negotiations, agreements and representations, whether oral or written, between the parties relating to the subject matter of this Agreement; provided, however, that (i) existing Pole Attachments made prior to the date of this Agreement and approved by Licensor, and applications in progress for permits, shall continue in effect under the terms and conditions of this Agreement; (ii) nothing herein shall relieve either party from obligations and liabilities, or deprive either party of any rights or privileges, that arose or were incurred under prior agreements; and (iii) any rental obligations of the parties currently in arrears under any prior agreement shall be recalculated according to the terms of this Agreement as of the effective date hereof. This Agreement can only be modified or amended in writing by authorized representatives of the parties.

Assignment of Agreement

CEC's Language (§ 27): Neither party shall assign or otherwise transfer this Agreement or any of its rights and interests to any firm, corporation or individual, without the prior written consent of the other party, except to an affiliate, and such assignment shall not be unreasonably withheld.

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Qwest's Position: CEC's proposed language is unreasonable because it could be interpreted as unnecessarily restricting the ability of the parties to assign their interests in the contract to entities that are not technically affiliates, even though there would be no legitimate reason to prevent such an assignment in certain circumstances such as a corporate reorganization or an asset sale. It also is incorrect in that it is the written consent, not the assignment, that shall not be unreasonably withheld. Qwest's proposed language below is taken verbatim from section 21.1 of the Verizon-CLPUD agreement and is reasonable because it clearly and unambiguously describes the types of assignments permitted.

Qwest's Proposed Language: Neither Party shall assign, transfer, or otherwise dispose of this Agreement or any of its rights, benefits, or interests under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld. No assignment of this Agreement shall operate to discharge the assignor of any duty or obligation hereunder without the written consent of the other Party. Each Party may assign all its rights and obligations under this Agreement to its parent corporation, to its subsidiary corporation, to a subsidiary of its parent corporation, to its survivor in connection with a corporate reorganization, to any corporation acquiring all or substantially all of its property or to any corporation into which it is merged or consolidated.

DATED: April 15, 2005.

PERKINS COIE LLP

By: _/s/ John P. (Jay) Nusbaum
Lawrence H. Reichman, OSB No. 86083
John P. (Jay) Nusbaum, OSB No. 96378
Telephone: (503) 727-2000

Of Attorneys for Complainant Qwest Corporation

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EXHIBIT B: RENTAL RATE WORKSHEET (to be filled in by the parties)

Total Value of Poles & Fixtures

Less Depreciation Reserves

Net Value of Poles and Fixtures

Ratio of Bare Pole to Total Pole

Value of all Bare Poles

Number of Poles

Average Cost per Pole

Annual Carrying Charge

Operation expense

Maintenance expense

Customer expense

Admin. & General expense

Taxes

Depreciation

Bond Debt Interest/Amortization Expense

Current net income

Net Book Value

Carrying Charge per Total Usable Space

Available Usable Space (in feet)

Rental Rate per foot

Space occupied (in feet)

RENTAL RATE PER POLE

RENTAL REDUCTION PER ORS 757.282(3) AND OAR 860-028-0230

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CERTIFICATE OF SERVICE

I hereby certify that on April 15, 2005 I served the foregoing **Qwest's Issues List** on the following person by causing to be emailed and mailed a full, true and correct copy thereof contained in a sealed envelope with postage prepaid addressed to said to person at the following addresses and deposited in the post office at Portland, Oregon:

Martin Hansen
Francis, Hansen & Martin, LLP
1148 N.W. Hill Street
Bend, OR 97701-1914

Amy Tykeson
Bend Cable Communications, Inc.
63090 Sherman Rd.
Bend, OR 97701

Michael Weirich
Department Of Justice
Regulated Utility & Business Section
1162 Court St. N.E.
Salem, OR 97301-4096

Brooks Harlow
Miller Nash LLP
601 Union St., Ste. 4400
Seattle, WA 98101-2352

Roger Harris
Crestview Cable Communications
125 South Fir Street
Medford, OR 97501

DATED: April 15, 2005.

PERKINS COIE LLP

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Lawrence H. Reichman, OSB No. 86083
John P. (Jay) Nusbaum, OSB No. 96378
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BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

DOCKET NO. UM 1191

QWEST CORPORATION Complainant, v. CENTRAL ELECTRIC COOPERATIVE, INC., Defendant.	QWEST'S ISSUES OUTLINE

Pursuant to the Commission's Prehearing Conference Report issued April 4, 2005, Complainant Qwest Corporation ("Qwest") hereby submits its Issues Outline in which Qwest specifies the provisions in Defendant Central Electric Cooperative's ("CEC") contract that Qwest believes are unjust and unreasonable, provides Qwest's reasons, and articulates alternative language for those provisions. The numbering of the contract provisions is taken from the proposed agreement that CEC sent to Qwest on March 24, 2005. Qwest understands that the purpose of this Issues Outline is to facilitate negotiations with CEC; therefore, it is not intended to foreclose Qwest from raising additional issues, or modifying its position on these issues, as the negotiation process progresses.

Recitals

CEC's Proposed Language: Whereas, Licensor owns, operates and maintains lines of poles extending in Deschutes, Crook, Jefferson, Grant, Lake, Wasco and Linn Counties, in the state of Oregon.

Qwest's Position: CEC's proposed language does not adequately account for the fact that the joint use contract is mutual. In some cases, CEC will be the licensee and Qwest will be the licensor. Therefore, the recital of the location of lines and poles owned by the licensor should not be limited to the Central Oregon counties listed by CEC.

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Qwest's Proposed Language: Whereas, Licensor owns, operates and maintains lines of poles extending in the State of Oregon, including but not limited to Deschutes, Crook, Jefferson, Grant, Lake, Wasco and Linn Counties, in the state of Oregon.

Definitions (§ 1)[1]

CEC's Proposed Language (Basic Pole): A Basic Pole shall be defined as the average height of all of Licensor's poles as calculated by Licensor on January 1 of each year.

Qwest's Position: This definition is unreasonable because it does not define the term "basic pole" with certainty. The height of non-joint use power poles, such as transmission poles, which are typically taller than distribution poles, should have no bearing on the determination of a basic joint use pole or calculation of the rental rate. Qwest's proposed language below follows FCC guidelines in defining a basic pole as a 40' pole and is reasonable.

Qwest's Proposed Language: A 40' pole, or as otherwise agreed to by the parties. This definition is used solely for the purpose of computing pole rental rates.

CEC's Proposed Language (Pole Attachment): An Attachment by the Licensee to Licensor's pole. The type of Attachments requiring an application and permit include but are not limited to the following:

- Initial bolt Attachment inside the telecommunication space
- Additional bolt Attachments or other facilities attached to the pole

Qwest's Position: CEC's proposed language is unreasonable because it does not provide the certainty required for the parties' joint use relationship and appears to give CEC the discretion to determine when an application and permit are required. The Commission discouraged such discretion in joint use contracts in Order No. 05-042. To avoid any ambiguity as to which

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[1] Qwest expects that, as the parties negotiate the substantive terms of their new joint use contract, the definitions above and in CEC's proposed contract may be modified or new definitions may be added. Qwest reserves its right to identify issues and propose alternative language relating to additional or modified definitions as they arise.

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attachments require applications and permits, Qwest recommends the parties adopt specific language, such as Qwest's proposed language below.

Qwest's Proposed Language: An attachment by the Licensee to the pole, falling into one of the following categories:

(1) Attachments requiring permits and rental fees. Includes the following:

- Initial bolt attachment inside the Telecommunications Space
- Additional bolt attachment attached to the pole inside the Telecommunications Space
- Attachments inside the Power Space

(2) Attachments requiring permits but no additional rental fee. Includes the following:

- Overlashing on own equipment
- Reconductoring

(3)* Attachments requiring notification of the pole owner, but not requiring a permit or fee. Includes the following:

- New Licensee down guy attached to Licensee's or other's anchors
- New Licensee anchors

(4)* Attachments not requiring notification, permits or fees. Includes the following:

- Off-pole installations such as
  - Mid-span drops
  - Terminals
  - Taps
  - Amplifiers
  - Snow shoes
  - Splice enclosures
  - Wind Dampeners
  - Mid-span crossovers

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* If Licensor believes that a Pole Attachment by Licensee does not fall within either of these two categories, it may notify Licensee promptly and the parties shall endeavor in good faith to resolve any disagreement about the Pole Attachment at issue. Once the parties have resolved any such disagreement and determined which of the above categories the Pole Attachment at issue belongs in, Licensee shall follow the requirements that relate to that Attachment as set forth above.

CEC's Proposed Language (Sanction): A financial penalty as set forth by the then existing Oregon Public Utilities Commission ("OPUC") regulations.

Qwest's Position: The referenced sanctions are set forth in the PUC rules and are applicable unless they are amended or deemed invalid, so this provision is unnecessary. In light of Qwest's current challenge to the validity of the PUC's pole attachment penalty rules, it is unfair, unreasonable and unjust for CEC to attempt to incorporate those rules into the joint use contract. Moreover, the proposed language is vague and potentially overbroad because it includes, but is not limited to, "then existing OPUC regulations" without specifying the meaning of "then existing." The provision should be eliminated.

CEC's Proposed Language (Telecommunication Space): Space on the pole between 20 and 23 feet on the pole unless otherwise agreed upon by Licensor and Licensee.

Qwest's Position: Qwest's proposed language below is more specific and would eliminate any potential ambiguity.

Qwest's Proposed Language: Space on Licensor's basic pole between 20 and 23 feet on the pole unless otherwise specified.

In addition to the above, the contract should define other laws that may be applicable to the contract between the parties to avoid any ambiguity regarding the parties' relationship. Qwest suggests the following definition, which is reasonable and is standard in the industry:

> **Applicable law:** All valid and effective applicable federal, state, and local laws, rules, regulations, as may be amended and all orders of courts and

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governmental agencies with jurisdiction over the matters set forth in this Agreement. Nothing contained herein shall substitute for or be deemed a waiver of the parties' respective rights and obligations under applicable federal, state and local laws, regulations and guidelines, including (without limitation) Section 224 of the Communications Act of 1934, as amended (47 U.S.C. 224).

Moreover, because the contract will be reciprocal, in addition to a definition of "telecommunication space," it should include a definition of "power space" to accommodate CEC's operations on its poles and the Qwest poles that it jointly uses. Qwest provides the following definition: "**Power Space:** Any portion of a basic pole above the communications worker safety zone."

Term of Agreement

CEC Language (§ 2): This Agreement shall remain in full force and effect for a term of five (5) years, unless and until either Licensor or Licensee terminates it upon one hundred eighty (180) days' notice to the other party. Notice shall be in writing and mailed by certified mail, return receipt requested, postage prepaid, or delivered by a reputable overnight courier with tracking capabilities, addressed to the parties as indicated in Section 24 of this Agreement. If this Agreement is terminated, Licensee shall remove all of its Equipment from the Licensor's poles within one (1) year after termination of this agreement. During the one (1) year removal period, all of the applicable provisions of this Agreement, specifically including the payment of rent for joint use poles, shall remain in full force and effect with respect to any and all Equipment of Licensee remaining upon Licensor poles until such time as all such Equipment has been removed. Any attachments that remain after the one (1) year removal period expires shall be denied to the attachments without a pole attachment agreement and shall be subject to the sanctions provided in the then existing OPUC regulations.

Qwest's Position: It is in the public interest to encourage joint use of utility poles. Joint use preserves space in the public right-of-way while ensuring that residents receive efficient and cost-effective utility service. It is contrary to the public interest to have joint use contracts expire

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after a term of years without any safe harbor for continuing the use of the pole owner's poles to deliver utility service. See ORS 757.279 (requiring PUC to consider interest of customers in determining just and reasonable joint use terms). The contract should continue on an "evergreen" basis after expiration until one party terminates the agreement.

Moreover, because of the strong public interest in maintaining joint use wherever possible, the pole owner should be required to give more than six months' notice of termination and one year to remove attachments. Qwest's proposed language below adopts the one-year notice provision and two-year period to remove attachments from the agreement attached to the Verizon/CLPUD order, which is more reasonable and practicable than the six-month and one-year periods in CEC's version.

Finally, it is also in the public interest to have the termination period tolled while the parties negotiate a new agreement. Even a two-year equipment removal period does not provide much time to remove all attachments on the roughly 14,000 CEC-owned poles that Qwest jointly uses. The public should not be forced to bear the costs of beginning the process of removing all equipment on the 14,000 poles and placing that equipment on other poles or otherwise in the public right-of-way where the parties intend to negotiate a replacement agreement.

Qwest's Proposed Language: This Agreement shall continue in force and effect for a period of one (1) year from and after the date of this Agreement, and thereafter from year to year unless terminated by either party by giving written notice of its intention to do so not less than three hundred sixty-five (365) days' notice to the other party. Notice shall be in writing and mailed by certified mail, return receipt requested, postage prepaid, or delivered by a reputable overnight courier with tracking capabilities, addressed to the parties as indicated in Section 26 of this Agreement. If the parties begin negotiating a new agreement at any time after either party gives written notice of its intention to terminate and before the expiration of the three hundred sixty-five (365) days, then the 365-day termination period shall be tolled until such time as either party notifies the other in writing that continued negotiation is no longer desired.

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If this Agreement is terminated, the parties shall remove all of their respective equipment and Pole Attachments from the other party's poles within two years after termination of this Agreement. All of the applicable provisions of this Agreement, specifically including but not limited to the payment of rent for joint use poles, shall remain in full force and effect with respect to any and all equipment or Pole Attachments of either party remaining upon poles of the other party until such time as all such equipment and Pole Attachments have been removed, or unless otherwise agreed to by the parties.

Specifications

CEC's Proposed Language (§ 3(g)): When, in the opinion of Licensor and Licensee, existing anchors are adequate in size and strength to support the equipment of both Parties the Licensee may attach its guys thereto at no additional cost. To prevent galvanic corrosion of anchor rods, all down guys should be insulated. All guys attached to Licensor anchor shall be insulated. When anchors are not of adequate size and strength, the Licensee shall at its own expense place additional anchors or replace existing anchors with anchors adequate in size and strength.

Qwest's Position: The NESC does not require all down guys to be insulated even if they share a common anchor; as long as the down guy is either insulated or bonded and grounded it meets the code. Nevertheless, while Qwest is willing to insulate all guys attached to CEC's anchor, but it is unreasonable to require *all* down guys to be insulated. Down guys that are attached to Qwest's or a third party's anchors should be bonded and grounded in accordance with NESC standards. Adherence to NESC standards is addressed elsewhere in the proposed contract.

Qwest's Proposed Language: Qwest proposes eliminating the sentence: "To prevent galvanic corrosion of anchor rods, all down guys should be insulated."

Application for Attachment

CEC's Proposed Language (§ 4(a) Permit Application): Licensee shall not attach or modify any of its pole Attachments (except for service drops) to Licensor's poles or joint use

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poles without first having made written and/or electronic application to Licensor and having received written and/or electronic permission from Licensor, or had the application deemed approved by Licensor's failure to respond to Licensee's application as set forth in Subparagraph (b). Permission to make pole Attachments described in the application may be granted or denied by Licensor. Licensee must apply for a permit within seven (7) days of the attachment of a service drop and install the service drop in compliance with the OPUC Safety Rules.

Qwest's Position: CEC's proposed language is unreasonable because it does not account for Qwest's obligation to provide service as a carrier of last resort where the permit approval process takes longer than the specified time period. Qwest's proposed language below reflects industry standards and protects the public interest by permitting Qwest to fulfill its service obligation. It also requires application and permission to be transmitted solely via NJUNS, which helps eliminate any miscommunication between the parties.

Qwest's Proposed Language: Licensee shall not attach or modify any of its Pole Attachments described in Section 1(e)(1) and (2) (except for service drops) to Licensor's poles or joint use poles on which Licensor has its pole contacts without first having made electronic application via NJUNS to Licensor and having received electronic permission via NJUNS from Licensor, or had the application deemed approved by Licensor's failure to respond to Licensee's application as set forth in subsection (b) below. However, if Licensee is required by Applicable Law to attach or modify such Pole Attachments within a certain time period, and it has applied for, but has not received permission from the Licensor before the expiration of this time period, then Licensee may attach or modify such Pole Attachments before receiving permission. Licensee must apply for a permit within seven (7) days of the attachment of a service drop and install the service drop in compliance with the NESC.

CEC's Proposed Language (§ 4(b) Application Procedure): Until further notice, whenever Licensee desires to attach to any Licensor pole, Licensee shall submit to Licensor a "Pole Attachment Ticket" electronically via the NJUNS and/or written permit application and

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shall specify the location and identifying number for the pole(s) on which attachment is requested, the amount of vertical space required, and the number of Attachments for each pole. Licensor shall have the authority to deny applications for attachment to its poles on a non-discriminatory basis where there is insufficient capacity, or for reasons of safety, reliability, and generally applicable engineering purposes. Notwithstanding the foregoing, Licensor may reserve space on its poles if it projects a need for that space for its core utility service in the future. Licensor shall permit use of its reserved space until such time as it has an actual need for that space. At that time, Licensor may recover the reserved space for its own use, upon giving Licensee 180 days notice, and Licensee shall be required to remove its attachments at Licensee's cost. Licensor shall give Licensee the opportunity to pay for the cost of any reasonable modifications necessary to accommodate Licensee's displaced attachments. Licensor shall respond to Licensee's application within thirty (30) days of receipt. Licensor shall notify the Licensee in writing and/or electronically via NJUN's of its decision on the application. If the application is approved, the Licensee shall have the right hereunder to affix such Attachments in accordance with the application, as approved, and in compliance with the specifications, terms and conditions of this Agreement. If notice is not received from the Licensor within thirty (30) days, the application shall be deemed approved and Licensee may proceed with the Attachment(s). If Licensor is reserving space for future use then it may grant Licensee a conditional approval subject to Licensor's right to recover the space for its own use in the future. If the application is denied then Licensor shall provide Licensee with a written denial describing with specificity all relevant evidence and information supporting the denial and how such evidence and information relates to the lack of capacity, safety, reliability, or generally applicable engineering standards.

Qwest's Position: The term "core utility service" should be defined to avoid any ambiguity. Qwest anticipates being able to define that term in the negotiation process with CEC. Along those lines, the application procedure should be specifically limited to the types of

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attachments that require applications. Qwest's language below limits the application procedure to those attachments that require an application.

Qwest's Proposed Language: (1) Whenever Licensee desires to make a Pole Attachment described in Section 1(e)(1) and (2) to any Licensor pole, Licensee shall submit to Licensor a "Pole Attachment Ticket" electronically via NJUNS and shall specify the location of the pole(s) on which attachment is requested and the number of contacts requested for each pole.

(2) Licensor reserves the right to reject or modify such application(s) where there is insufficient capacity or for reasons of safety or reliability. Notwithstanding the foregoing, Licensor may reserve space on its poles if it projects a need for that space in the provision of its core utility service. Licensor shall permit use of its reserved space until such time as it has an actual need for that space. At that time, Licensor may recover the reserved space for its own core utility use. Licensor shall give Licensee the opportunity to pay for any reasonable modifications needed to accommodate its displaced attachments.

(3) Licensor shall respond to Licensee's application within thirty (30) days of receipt. If the application is approved, Licensor shall notify the Licensee electronically via NJUNS of said approval and the Licensee shall have the right as a Licensee hereunder to affix such attachments in accordance with the application, as approved, and in compliance with the specifications, terms and conditions of this Agreement. Any denial of an application shall identify the specific reasons for denial. If notice is not received from Licensor within thirty (30) days from the date of the application, the application shall be deemed approved and Licensee may proceed with the attachment. Any denial of an application by Licensor must be in writing and describe with specificity all relevant evidence and information supporting the denial and how such evidence and information relates to the lack of capacity, safety, or reliability.

CEC's Proposed Language (§ 4(c) Application Planning): Each application shall involve sufficient engineering and planning by the Licensee to ensure compliance with standards identified in section 3(a) of this Agreement during construction and upon completion. The

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Licensee is responsible for conducting engineering studies of Licensee's facilities to ensure proper spacing, equipment bonding and clearances. The Licensor shall be responsible for engineering studies of pole and down guy strength requirements for horizontal and vertical loading. The Licensor may elect in writing to allow the Licensee to conduct pole, down guy and strength studies.

In addition to the written and or electronic application via NJUN's, and where required by the Licensor, the application shall include sufficient design drawings and specifications so that qualified personnel can safely make the Attachments in compliance with the NESC and this Agreement. It is the responsibility of the Licensee to ensure that only trained, qualified persons work on Licensor's facilities. Qualified persons shall be knowledgeable in applicable NESC rules and must be able to demonstrate competence as required by the NESC. They shall also be trained to recognize and prevent NESC violations and conflicts, and to maintain safe working clearances from energized lines and equipment. Upon completion of the installation, the Licensee shall give written or electronic notification to the Licensor that the facilities are complete.

Qwest Position: CEC's proposed language regarding engineering studies, design drawings, and notification of completion exceeds industry practices and is unreasonable. Generally, all relevant information required to assess the feasibility and safety of any typical attachment is transmitted with the NJUNS ticket. The provision requiring design drawings is not only unnecessary and unreasonable because it would impose additional expense, it also is impermissibly vague and apparently reserves discretion for CEC to determine whether a drawing is "sufficient" to allow "qualified personnel" to safely make the attachments. The Commission discouraged such discretionary provisions in *Central Lincoln PUD v. Verizon*, Order No. 05-042. Moreover, there is no legitimate reason to require notification of completion of attachments, and such a step would add unnecessary expense to the joint use process.

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Qwest Proposed Language: Each application shall involve sufficient engineering and planning by the Licensee to ensure compliance with standards identified in Section 2(a) of this Agreement during construction and upon completion. The Licensee is responsible for conducting engineering studies of Licensee's facilities to ensure proper spacing, equipment bonding and clearances.

It is the responsibility of the Licensee to ensure that only trained, qualified persons work on Licensor's facilities. Qualified persons shall be knowledgeable in applicable NESC rules and must be able to demonstrate competence as required by the NESC. They shall also be trained to recognize and prevent NESC violations and conflicts, and to maintain safe working clearances from energized lines and equipment.

CEC's Proposed Language (§ 4(e) Make-ready Pole Replacements): Whenever any pole to which Licensee seeks attachment must be modified or replaced to accommodate Licensee's Attachments and Licensor's existing facilities, as well as the Attachments of other occupants, Licensor will provide Licensee with a detailed cost estimate of make-ready work it believes to be necessary to prepare the pole for Licensee's facilities. Licensor will provide Licensee with such estimate within sixty (60) days of receiving Licensee's application for Attachment. After receiving this estimate, if Licensee still desires to make such Attachments, Licensee shall notify Licensor with ninety (90) days of receiving such estimate of such continuing desire to attach, and shall pay to Licensor any required advance payment for such make-ready work, which may include engineering, materials (including poles and associated hardware), cost of removal (less any salvage value), and the expense of transferring Licensor's facilities from the existing to the new pole(s). Where the advance payment of estimated expenses made to Licensor by Licensee for both non-replacement make-ready or pole replacement work is less than the actual cost of work described above, Licensee agrees to pay Licensor all sums due excess of the amount of the advanced payment within thirty (30) days from receipt of the invoice. Where the advanced payment of estimated expenses paid to Licensor by

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Licensee exceeds such actual costs, Licensor agrees to refund the difference to Licensee within sixty (60) days of completion of the make ready work. The Licensor shall make satisfactory arrangements with the owner or owners of other facilities attached to said pole(s) for the transfer or rearrangement of other facilities.

Qwest's Position: CEC's proposed language is unreasonable because it allows CEC too much discretion to require make-ready work without it relating to CEC's core function. Qwest's proposed language below would require any make-ready work caused by CEC's modifications to its attachments to be related to CEC's core business and would not permit CEC to cause such make-ready work for modifications to non-utility attachments, such as attachments of any telecommunications provider affiliated with CEC. In addition, language in Qwest's proposed language below is taken from the Verizon-CLPUD agreement in Docket UM 1087, which has already been subject to Commission scrutiny. It is also unreasonable to not permit a licensee to recover costs that exceed 110 percent of the make-work estimate. Qwest's language permits that recovery, while CEC's does not. Finally, Qwest's proposed language requires payment within 45, rather than 30, days from an invoice, which is consistent with Qwest's accounting system and program. It is reasonable in such situations to approve estimated charges in advance rather than requiring advance payment of estimated charges.

Qwest's Proposed Language: Whenever any pole to which Licensee seeks attachment must be modified or replaced to accommodate Licensee's facilities and Licensor's existing attachments necessary for its core function, as well as the existing attachments of other occupants, Licensor will provide Licensee with a detailed written cost estimate of make-ready work it believes to be necessary to prepare the pole for Licensee's facilities. Licensor will provide Licensee with such estimate within thirty (30) days of receiving Licensee's application for attachment. After receiving this estimate, if Licensee still desires to make such attachments, Licensee shall notify Licensor within thirty (30) days of receiving such estimate of its continuing desire to attach, and shall approve any required payment to Licensor for such make-ready work,

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which may include engineering, materials (including poles and associated hardware), cost of removal (less any salvage value), and the expense of transferring Licensor's facilities from the old to the new pole(s). To the extent that actual costs to Licensor of make-ready work are anticipated to be greater than 110% of Licensor's estimate, these costs must be approved in writing by Licensee prior to the completion of the make-ready work. Where any payment of estimated expenses made to Licensor by Licensee for both non-replacement make-ready or pole replacements is less than the actual cost of work described above, Licensee agrees to pay Licensor, within forty-five (45) days of receipt of an invoice, all sums in excess of the amount of the advanced payment up to the amount of the actual cost of the work, less any amount in excess of 110% of the cost estimate if that amount was not previously approved as provided above. Where the payment of estimated expenses made to Licensor by Licensee exceeds such costs, Licensor agrees to refund the difference to Licensee within forty-five (45) days of completion of the make-ready work. The Licensor shall also make satisfactory arrangements with the owner or owners of other facilities attached to said poles for the transfer or rearrangement of such other facilities.

CEC's Proposed Language (§ 4(h) Right-of-way Clearing and Tree Trimming):

Licensor has established a regular and routine procedure for trimming trees or removing trees with inadequate clearance to conductors, poles bind equipment. Licensee shall be responsible for tree trimming, right-of-way clearing and debris removal necessary for installation and safe clearance from its cable, Equipment or conductors as mandated by the NESC and OPUC. In the event that Licensee is unable or fails to perform the necessary clearing and tree trimming in the communication space and Licensee has obtained all necessary easements, permits and rights-of-way to attach to Licensor's poles, Licensor will perform the necessary right-of-way clearing and tree trimming. In such case Licensee agrees to pay Licensor 100% of the tree trimming and debris removal necessary in the communication space for each pole and the wire in its backspan on which Licensee attaches its facilities plus administrative costs. The costs for tree

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trimming, debris removal and administrative costs conducted behalf of Licensee by Licensor shall be paid by Licensee within thirty (30) days from receipt of the invoice. In the event there is more than one Licensee attaching to a specific pole, then the tree trimming costs for that pole shall be divided equally among the number of Licensees attaching to that pole.

Qwest's Position: CEC's proposed language is unreasonable because it places the burden of tree trimming and clearing on the licensee. Qwest's proposed language below follows the industry standard of making the pole owner responsible for the original tree trimming and each party responsible for necessary tree trimming thereafter. It is taken from the Verizon-CLPUD agreement.

Qwest's Proposed Language: Licensor shall bear the cost of the original tree trimming, brushing and clearing required for the placement of a new pole line. All tree trimming and brush cutting in connection with the initial placement of wires or equipment on an existing pole line shall be borne entirely by the party placing the wires or equipment. Unless the parties otherwise agree, each party shall be responsible for any and all additional tree trimming and brush cutting related to its wires or equipment.

Inspections and Pole Attachment Survey

CEC's Proposed Language (§ 5(a) Inspections): Licensor shall have the right to perform an Inspection of each installation of Licensee's Attachments and other Equipment, upon and in the vicinity of, Licensor's poles at any time. The Licensor may charge Licensee for the pro-rata expense of any non-routine Inspections during or after installation, in connection with Attachments that do not comply with the terms of this Agreement. The Licensor shall recover the costs for all periodic, routine Inspection that benefits Licensee in the annual rent. Such inspections, whether made or not, shall in no manner relieve the Licensee of any responsibility, obligation, or liability assumed under this Agreement or arising otherwise.

Qwest Position: Qwest objects to CEC's proposal because the phrases "in the vicinity of" and "for all periodic, routine Inspections that benefit Licensee" are vague, potentially ambiguous,

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and arguably would allow the licensor to take action that it does not have authority to take. The phrases should be eliminated or modified to express their meaning clearly. Qwest also believes that it is reasonable to require the licensee to be notified and permitted to participate in the inspection. Qwest's proposed language below is taken from the Verizon-CLPUD agreement and is reasonable.

Qwest's Proposed Language: Licensor shall have the right to perform an Inspection of Licensee's Pole Attachments on Licensor's poles at any time. Licensor may charge Licensee for the pro-rata expense of any non-routine inspections during or after installation, in connection with Pole Attachments that do not comply with the terms of this Agreement. Licensor shall notify Licensee of any performance concerns that trigger Inspections at least two (2) business days prior to activating such inspection during installation and thirty (30) days after completion and provide Licensee an opportunity to participate in such inspections. Such inspections, whether made or not, shall in no manner relieve Licensee of any responsibility, obligation, or liability assumed under this Agreement or arising otherwise.

CEC's Proposed Language (§ 5(b) Pole Attachment Survey): Licensor may conduct a Pole Attachment Survey at any time for the effective date of this Agreement and not more often than once every third year subsequent to each such Pole Attachment Survey. Licensor shall give Licensee at least thirty (30) days prior written notice of such Pole Attachment Survey. Licensee shall advise Licensor if Licensee desires to be present during the survey within thirty (30) days of such notice. The Licensor and Licensee shall jointly select an independent contractor for conducting the inventory and agree on the scope and extent of the Pole Attachment Survey that is reimbursable by Licensee. The cost of the Pole Attachment survey shall be recovered by Licensor in the annual rent. The Contractor shall provide Licensee and Licensee with a report of such Pole Attachment Survey within a reasonable time after its completion. The survey data from Licensor's Pole Attachment Survey shall be used to update Licensor's Attachment billing records where applicable. Licensee shall make any objections to the inventory data within sixty

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(60) days of mailing of the Pole Attachment Survey report or such objections shall be waived. Objections raised to inventory data from a Pole Attachment Survey shall not relieve Licensee of the obligation to pay undisputed amounts when due, as set forth in this Agreement. The Licensor and Licensee agree to cooperate in good faith to resolve any disputed amounts,

Qwest's Position: CEC's proposed language is impractical and unreasonable because it does not provide the licensee with sufficient time to respond to a notice of survey, nor does it specify in sufficient detail the format of the results of the survey or allow the licensee to *participate* in, rather than simply be present for, the survey. Those potential ambiguities should be addressed. Moreover, the cost recovery should be prorated based on which party benefits from the survey, and the survey results should be transmitted in a format that is useable for the parties. Most of Qwest's proposed language below is taken from the Verizon-CLPUD agreement and is a reasonable solution for these issues.

Qwest's Proposed Language: The Licensor may conduct an Occupancy Survey not more often than every fifth year from the date of this Agreement, and subsequent to each such Occupancy Survey. The Licensor shall give Licensee at least thirty (30) days prior notice of its desire to conduct such Occupancy Survey. Licensee shall advise the Licensor if Licensee desires to participate in the inventory within sixty (60) days of such notice. The parties shall jointly select an independent contractor for conducting the inventory and agree on the scope and extent of the Occupancy Survey that is reimbursable by Licensee. The cost of the Occupancy Survey shall be recovered in the annual rent. The Contractor shall provide the Parties with a detailed report of such Occupancy Survey including both the Licensor's and Licensee's pole numbers (to the extent that Licensee's pole numbers are on the pole and clearly identified as Licensee's pole tag at the time of the survey) and other information required to update each party's inventory databases within a reasonable time after its completion. The inventory data shall be delivered in a format that is useable for the parties as specified by the parties. The inventory data from the Licensor's Occupancy Survey shall be used to update the Licensee's attachment billing records

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where applicable. Licensee shall make any objections to the inventory data within sixty (60) days of receipt of the Occupancy Survey report or such objections shall be waived. Objections raised to inventory data from an Occupancy Survey shall not relieve Licensee of the obligation to pay undisputed amounts when due, as set forth in Article V above. The Parties agree to cooperate in good faith to resolve any disputed amounts.

Safety

CEC's Proposed Language (§ 6(a) Licensee Practices): Licensee shall have written practices that address construction standards to be followed in attaching facilities to Licensor's poles. The standards should specify any obligations that exceed NESC regulations. These standards shall be made readily available to Licensor.

Qwest's Position: Qwest is willing to agree to satisfy the relevant NESC standards, but it is redundant, overreaching, and unreasonable to require either party to have specific practices and to provide those practices to the other party. The language should be eliminated.

CEC's Proposed Language (§ 6(b) Conflicts with Electric Lines): Licensor shall provide Licensee written notice of any NESC or safety violations it discovers. NESC violations and conflicts to electric lines shall be corrected by Licensee within the time frame required by the OPUC, if Licensee created the violation. In some instances, the NESC requires that qualified electrical workers perform the work. In that event, Licensee shall either have qualified contractors perform the work or pay Licensor to perform the work. Licensee may also be subject to OPUC sanctions for failure to comply with OPUC safety rules. Failure by Licensee to act in a prompt and responsible manner may result in the Licensor taking appropriate measures to correct the safety violations involved and Licensee shall be responsible for the cost thereof. In such cases, the inspection, design, repair, and coordination charges shall be borne by Licensee if it failed to perform necessary duties required by OPUC and shall pay the cost with thirty (30) days from receipt of the invoice.

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Qwest's Position: As described elsewhere herein, it is unnecessary and unreasonable to incorporate PUC penalties into the contract, especially where those regulations are subject to a challenge before the Oregon Court of Appeals. Additionally, the timeframe for correcting a violation is established by the NESC and should be referenced in the contract. Finally, because of Qwest's accounting systems and program, any payment obligation should include a 45-day payment period instead of 30 days.

Qwest's Proposed Language: Licensor shall provide Licensee notice of any NESC violations it discovers. NESC violations and conflicts to electric lines shall be corrected in accordance with NESC standards and the time frames described therein, as amended, by the Licensee if Licensee created the violation. In some instances, the NESC requires that qualified electrical workers perform the work. In that event, Licensee shall either have qualified contractors or pay Licensor to perform the work. Failure by Licensee to act in a prompt and responsible manner may result in the Licensor taking appropriate measures to correct the safety violations involved and Licensee shall be responsible for the cost thereof. In such cases, the inspection, design, repair, and coordination charges shall be borne by Licensee if it failed to perform necessary duties required by Oregon law.

In addition to the above provisions regarding safety, the contract should include a provision relating to entry into the power space on jointly used poles as follows, which is taken from the Verizon-CLPUD agreement:

> Licensee (including its employees and contractors) shall not enter the Power Space on Licensor poles for any purpose including making connections to the Licensor neutral. If Licensee requires grounding on an existing Licensor pole where a grounding conductor does not exist, Licensee shall request the Licensor to install grounding at the sole expense of Licensee. If the Licensor is unable to install said grounding within thirty (30) days of the date requested, Licensee has the option of hiring qualified electrical contractors to perform this work. Licensee, its employees and its contractors, shall at all times exercise its rights and responsibilities under the terms of this Agreement in a manner that treats all electric facilities as energized at all times. Licensee shall assume

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complete responsibility for its employees' conduct and Licensee shall determine and provide the appropriate training and safety precautions to be taken by its employees and contractors. Licensee shall indemnify, defend, and hold the Licensor harmless from any liability of any sort derived from Licensee's employees' or contractors' failure to abide by the terms of this Section except to the extent of the Licensor's negligence or willful misconduct.

Maintenance of Poles, Attachments and Right-of-Way

CEC's Proposed Language (§ 8):

(a) The Licensor shall, at its own expense, inspect and maintain the poles in accordance with industry practices and the specifications outlined in Section 3, and shall replace, reinforce or repair such poles as are determined to be defective.

(b) Except as otherwise provided in subparagraph (c) of this section, Licensee shall at all times maintain all of its Attachments in accordance with the specifications outlined in Section 3 and shall keep them in good repair. All necessary right-of-way maintenance, including tree trimming or cutting, shall be borne by the parties as provided in Section 4(h).

(c) Any existing joint use construction that does not conform to the specifications outlined in Section 3 shall be brought into conformity as outlined in Section 3 except for identified NESC or OPUC violations which must be corrected in the time frame specified by the OPUC. When such existing construction shall have been brought into conformity with said specifications, it shall at all times thereafter be maintained as provided in (a) and (b) of this Section. Should Licensee fail to comply, the Licensor may elect to do such work and the Licensee shall pay the Licensor the cost within thirty (30) days from receipt of the invoice.

Qwest's Position: CEC's proposed language does not address several items relating to pole maintenance that should be addressed. For example, Qwest's proposed language below specifically addresses the collection of damages for broken, damaged, or replaced poles. Qwest's proposed language also addresses, among other things, the costs and procedure associated with relocation of poles. Such language is taken from the Verizon-CLPUD agreement and is more

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reasonable than CEC's proposed language because it (a) eliminates any ambiguity about particular situations, (b) requires the parties to cooperate, and (c) provides for a reasonable timeframe for accomplishing notice and relocation. As a general matter, the agreement should include language that requires the pole owner to consult with the licensee on the location of new poles when necessary to replace, move, or reset a joint use pole. It also should recognize that the licensee may need additional time to remove attachments where it must wait for third parties to remove their attachments. Finally, any payment obligation should include a 45-day payment period rather than a 30-day period due to Qwest's accounting systems and program.

Qwest's Proposed Language:

(a) The expense of maintaining jointly used poles shall be borne by Licensor, and Licensor shall maintain its jointly used poles in a safe and serviceable condition, and shall, under the other provisions of this Agreement, replace, reinforce, or repair such poles as become defective. Licensor shall be solely responsible for collection for damages for poles broken or damaged. The party with equipment attached to the pole shall be responsible for collecting damages to its own equipment. If a pole owned by Licensor is replaced by Licensee because of auto damage or storm damage, Licensor shall pay Licensee for the actual costs of such pole replacement.

(b) Whenever right-of-way considerations or public regulations make relocation of a pole necessary, such relocation shall be made by the Licensor at its own expense, except each party shall bear the cost of transferring its own attachments.

(c) Whenever it is necessary to replace, move, reset or relocate a jointly used pole, the Licensor shall consult with Licensee on the location of the new pole before making such replacement or relocation, and at least thirty (30) days prior to such replacement, move, resetting or relocation, shall give Licensee notice via NJUNS (except in case of emergency, when verbal notice will be given and subsequently confirmed via NJUNS within five (5) days of verbal notice), specifying in such notice the work to be performed and the time of such proposed

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replacement, move, resetting or relocation. If the pole to be replaced or relocated contains underground circuits in which aerial lines transition to underground lines, the pole shall be replaced or relocated in the same hole or in a mutually agreed-upon location, or Licensor shall reimburse Licensee for the costs of relocating the underground circuit to the new location. Licensor shall inform Licensee that it has completed its work within thirty (30) days of such completion. Licensee shall then transfer its attachments to the new or relocated joint pole and notify Licensor when such transfer is complete. Should the Licensee fail to transfer its attachments to the new or relocated joint pole within thirty (30) days after receiving notice from Licensor that its work is completed, the Licensor may elect to do such work, and the Licensee shall pay the Licensor the cost of such work. In the event that third parties, not subject to this agreement, have equipment attached to the Licensor's pole, such thirty (30) day period shall commence upon removal of third party attachments. In the event the Licensee fails to transfer its attachments and the Licensor does such work, the Licensor shall not be liable for any loss or damage to the Licensee's facilities that may result, except in the case of gross negligence or willful misconduct. Licensor shall be responsible for removal of the old pole and restoring the area or reimbursing the Licensee for the costs of removing the old pole and restoring the area.

(d) Except as otherwise provided in subparagraph (c) of this Section, each party shall at all times maintain all of its attachments in accordance with the specifications mentioned in Section 2 and shall keep them in good repair. All necessary right-of-way maintenance, including tree trimming or cutting, shall be borne by the parties as provided in Section 7(e).

(e) Any existing joint use construction that does not conform to the specifications mentioned in Section 2 shall be brought into conformity as soon as practicable. When such existing construction shall have been brought into conformity with said specifications, it shall at all times thereafter be maintained as provided in (a) and (d) of this Section. Should the Licensee fail to comply, the Licensor may elect to do such work and the Licensee shall pay the Licensor the cost.

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(f) Licensee expressly assumes responsibility for determining the condition of all poles to be climbed by its employees, contractors, or employees of contractors. Licensor disclaims any warranty or representation regarding the condition and safety of the poles of the Licensor. Licensor agrees that, upon written notification, it will replace any pole that is unserviceable.

Recovery, Rearranging or Relocation of Facilities

CEC's Proposed Language (§ 9):

(b) In any case where facilities of Licensor are required to be rearranged on the poles of the Licensor to accommodate the Attachments of Licensee, Licensee shall pay to Licensor the total costs incurred by Licensor in rearranging such facilities in advance of construction. The Licensee shall also reimburse other customers of the poles of Licensor for their costs of rearrangement to provide space or clearance for the facilities of Licensee.

(c) Whenever it is necessary to replace or relocate jointly used pole, the Licensor shall give notice in writing and/or electronic means except in the case of an emergency, when prior notice may not be possible (but will subsequently be confirmed as reasonable). Licensee shall, at the time so specified by the Licensor, transfer its Attachments to the new or relocated joint pole at the time specified for such transfer of Attachments, the Licensor may elect to do such work, and the Licensee shall pay the Licensor the cost within thirty (30) days from receipt of the invoice. In the event the Licensee fails to transfer its Attachments and the Licensor does such work, the Licensor shall not be liable for any loss or damage to the Licensee's facilities that may result and Licensee shall become liable for any abandoned poles as per Section 13.

Qwest's Position: Qwest would prefer that notice be given solely via NJUNS, rather than via NJUNS or written means, as this has lead to confusion in the past. Any payment obligation should include a 45-day payment period rather than a 30-day period.

Qwest's Proposed Language: (a) Once Licensee has an approved permit to attach to Licensor's pole, any pole replacement due to additional space requirements will be borne by the requesting party, not Licensee.

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(b) If in the sole judgment of the Licensor, the accommodation of any new Pole Attachments of Licensor to Licensor's poles necessitates the rearrangement or addition of any existing facilities on an existing pole, or the replacement of any existing pole, Licensor shall specify on the Application the changes necessary to accommodate the Pole Attachments and the estimated cost thereof and return it to Licensee. If Licensee still desires to use the pole and returns the application marked to so indicate, Licensor shall make such rearrangements, transfers and replacements of existing facilities, and additions of new facilities, as may be required, and Licensor shall reimburse Licensor for any additional expenses thereby actually incurred by Licensor not otherwise prescribed in this Agreement.

(c) Whenever it is necessary to replace or change the location of a joint use pole, for reasons other than those set out in Section 10 (a) and (b), and over which Licensee and Licensor have no control, Licensor shall, before making such change, give prompt notice to the Licensee via NJUNS, specifying in such notice the time of such proposed change, and the Licensee shall promptly begin to transfer or remove its attachments. In case of any such pole replacement or change where Licensor has transferred or removed its attachments and Licensee has not transferred or removed its attachments within sixty (60) days after receipt of such notice, Licensee shall become liable for such old pole as provided in Section 14, except where Licensee's transfer is delayed by a third party.

Indemnification and Insurance

CEC's Proposed Language (§ 10): (a) Licensee agrees to indemnify and hold harmless Licensor, its directors, officers, employees and agents against and from any and all claims, demands, suits, losses, costs and damages, including attorneys' fees, for or on account of bodily or personal injury to, or death of, any persons(s), including without limitation Licensor's employees, agents, representatives and subcontractors of any tier, or loss of or damage to any property of Licensor, or any third party, to the extent resulting from any negligent act, omission, or fault of Licensor its employees, agents, representatives, or subcontractors of any tier, their

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employees, agents, or representatives, in the exercise, performance or nonperformance of Licensee's rights or obligations under this Agreement. Except for liability caused by the negligence of Licensee, the Licensor shall also indemnify and hold harmless Licensee from and against any and all claims, demands, suits, all costs, and damages, including attorneys' fees, arising from any interruption, discontinuance, or interference with the Licensor's service to its customers which may be caused, or which may be claimed to have been caused, by any action of Licensee pursuant to or consistent with this Agreement.

(b) The indemnifying Party shall have the right, but not the obligation, to defend the other regarding any claims, demands or causes of action indemnified against. Each Party shall give the other prompt notice of any claims, demands or causes of actions for which the other may be required under this Agreement. Each Party shall fully cooperate with the other in the defense of any such demand or cause of action. Neither shall settle any claim, demand or cause of action relating to a matter for which such Party is indemnified without the written consent of the indemnitor.

(c) Licensee shall carry and keep in force, while this Agreement is in effect, insurance contracts, policies and protection in company or companies in amounts and for coverage deemed necessary for its protection by Licensee, but in no event for amounts or coverage less than the following minimum requirements:

1. Licensee shall also carry and keep in force, while the Agreement is in effect, workers' compensation insurance in compliance with the laws of the state of Oregon and employers' liability insurance with minimum limits of $10,000,000 per accident.
2. Licensee shall furnish Licensor with certificates of insurance showing that such insurance is in force and will not be canceled or materially modified without thirty (30) days prior written notice to the Licensor. Neither acceptance nor knowledge (by and of Licensor) or the procurement of Licensee of insurance protection of

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lesser scope than that that required to be procured by them under this Agreement shall in any manner or for any purpose constitute or be deemed a waiver by Licensor of the requirements imposed respecting insurance protection, nor shall any such acceptance or knowledge of insurance protection of lesser scope in any manner or for any purpose lessen or modifies or constitute a limiting interpret of the scope of the matters covered by and obligations of Licensee under this Agreement.

Qwest's Position: It is unreasonable to have an indemnification provision that is not mutual, especially where, as here, both parties use each others' poles. Additionally, it is standard in the industry and reasonable to specify with as much detail as possible the type and amount of insurance the parties must obtain, including the ratings of the insurance companies, as does Qwest's proposed language below.

Qwest's Proposed Language:

(a) Licensee agrees to indemnify and hold harmless Licensor, its directors, officers, employees, and agents against and from any and all claims, demands, suits, losses, costs, and damages, including attorneys' fees, for or on account of bodily or personal injury to, or death of, any person(s), including without limitation Licensee's employees, agents, representatives and subcontractors of any tier, or loss of or damage to any property of Licensee, or any third party, to the extent resulting from any negligent act, omission, or fault of Licensee, its employees, agents, representatives, or subcontractors of any tier, their employees, agents, or representatives, in the exercise, performance or nonperformance of Licensee's rights or obligations under this Agreement. Except for liability caused by the sole negligence of Licensor or its employees, agents, representatives, or subcontractors of any tier, Licensee shall also indemnify and hold harmless Licensor from and against any and all claims, demands, suits, losses, costs, and damages, including attorney's fees, arising from any interruption, discontinuance, or interference

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with Licensee's service to its customers which may be caused, or which may be claimed to have been caused, by any action of Licensor pursuant to or consistent with this Agreement.

(b) Licensor agrees to indemnify and hold harmless Licensee, its directors, officers, employees and agents against, and from any and all claims, demands, suits, losses, costs, and damages, including attorneys' fees, for or on account of bodily or personal injury to, or death of, any person(s), including without limitation Licensor's employees, agents, representatives and subcontractors of any tier, or loss of or damage to any property of Licensor, or any third party, to the extent resulting from any negligent act, omission, or fault of Licensor, its employees, agents, representatives, or subcontractors of any tier, their employees, agents, or representatives, in the exercise, performance or non performance, of Licensor's rights or obligations under this Agreement. Except for liability caused by the sole negligence of Licensee or its employees, agents, representatives, or subcontractors of any tier, Licensor shall also indemnify and hold harmless Licensee from and against any and all claims, demands, suits, losses, costs, and damages, including attorney's fees, arising from any interruption, discontinuance, or interference with Licensor's service to its customers which may be caused, or which may be claimed to have been caused, by any action of Licensee pursuant to or consistent with this Agreement.

(c) The indemnifying party shall have the right, but not the obligation, to defend the other regarding any claims, demands or causes of action indemnified against. Each party shall give the other prompt notice of any claims, demands or causes of actions for which the other may be required to indemnify under this Agreement. Each party shall fully cooperate with the other in the defense of any such claim, demand or cause of action. Neither shall settle any claim, demand or cause of action relating to a matter for which such party is indemnified without the written consent of the indemnitor.

(d) Each party shall carry insurance in such form and in such companies as are satisfactory to the other party to protect the parties from and against any and all claims, demands, actions, judgments, costs, expenses and liabilities of every name and nature which may arise or

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result directly or indirectly from or by reason of such loss, injury or damage subject to the terms and conditions of the policies. To the extent permitted, such insurance policies shall name the other party as an additional insured. Notwithstanding the above, neither party shall be liable to the other for any incidental, indirect, special or consequential damages of any kind, including but not limited to, any loss of use, loss of business or loss of profit; provided, however, there shall be no limitation on a party's liability to the other for any fines or penalties imposed on the other party by any court of competent jurisdiction or federal, state or local administrative agency resulting from the failure of the party to comply with any term or condition of this agreement or any valid and applicable law, rule or regulation.

(e) Each party shall carry and keep in force, while this Agreement is in effect, insurance contracts, policies and protection in company or companies that maintain at least a "Best's" rating of A- VII in amounts and for coverage deemed necessary for its protection by the other party, but in no event for amounts or coverage less than the following minimum requirements:

1. Comprehensive general liability insurance, ISO Form CG 0001 10 01 or equivalent, including independent contractors insurance coverage, with minimum limits of $10,000,000 combined single limit each occurrence and aggregate for bodily injury and property damage, including coverage for damage caused by blasting, collapse or structural injury, and/or damage to underground facilities, protecting the insured party against and in respect to all matters, liabilities, contingencies, and responsibilities arising under the Agreement and subject to the policy's terms and conditions, including without limiting the foregoing, contractual liability insurance covering the insured party's obligations under this Agreement included in the above minimum limits of $10,000,000 combined single limit each occurrence and aggregate for bodily injury and property damage to indemnify and to hold the other party harmless for bodily injury or property damage caused in whole or in part by the insured party.

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2. Each party shall also carry and keep in force, while the Agreement is in effect, workers' compensation insurance in compliance with the laws of the state of Oregon and employers' liability insurance with minimum limits of $1,000,000 per accident.

3. Upon request, each party shall furnish the other with certificates of insurance showing that such insurance is in force and will not be canceled or materially modified without thirty (30) days prior written notice to the other party's President/CEO. Neither acceptance nor knowledge (by and of the other party) or the procurement of the insured party of insurance protection of lesser scope than that required to be procured by them under this Agreement shall in any manner or for any purpose constitute or be deemed a waiver by either party of the requirements imposed respecting insurance protection, nor shall any such acceptance or knowledge of insurance protection of lesser scope in any manner or for any purpose lessen or modify or constitute a limiting interpretation of the scope of the matters covered by and obligations of either party under this Agreement.

Breach and Remedies

CEC's Proposed Language (§ 11): (a) If either Party shall default in any of its obligations under this agreement and such default continues thirty (30) days after notice thereof has been provided to the defaulting Party, the Party not in default may exercise any of the remedies available to it. The remedies available to each Party shall include, without limitation: (i) refusal to grant any additional joint use to the other Patty until the default is cured; (ii) termination, without further notice, of this as far as concerns the further granting of joint use; (iii) litigation for injunctive relief; (iv) litigation for damages and costs; (v) substitute performance as provided in Section 11 (b); termination of the entire agreement upon 180 days notice as provided in Section 2 with removal of all Equipment; and (vi) litigation to recover sums due.

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(b) If Licensee shall default in the performance of any work that it is obligated to do under this Agreement, Licensor may elect to do such work, and the Licensee shall reimburse the other Party for the cost thereof within thirty (30) days from receipt of the invoice.

(c) In the event either Party is required to bring suit for the collection of amounts due or the enforcement of any right hereunder, the prevailing Party shall be entitled to recover its reasonable attorney's fees and costs, including attorney's fees and costs at trial, on appeal, arbitration, mediation or any appearances before the OPUC.

(d) Notwithstanding the aforementioned remedies, appropriate representatives of the Parties shall meet promptly upon request and attempt in good faith to resolve disputes that arise concerning this Agreement. If the Parties are unable to reach a resolution themselves, a Party may, by written notice, request the other Party to agree to an alternative dispute resolution procedure (e.g. non-binding mediation, binding arbitration) for the dispute, and the other Party shall respond in writing within ten (10) working days.

Qwest's Position: Joint pole agreements serve the public interest by preserving the public rights-of-way and ensuring that utility service is provided as efficiently as possible. Such agreements are not to be terminated lightly. It would be unreasonable to allow termination of a joint use contract because of any default, no matter how small. The contract should include a notice and cure provision and a tolling provision while the parties attempt in good faith to resolve any dispute. It is in the best interests of both parties, and their customers, to facilitate communication and to permit cure of breaches so that utility service is not unduly or unnecessarily interrupted. Moreover, joint use contracts historically have not included attorneys' fee provisions, and one is not necessary here. Finally, the breach provisions must be mutual in order to be considered reasonable. Qwest's proposed language below reflects these reasonable provisions.

Qwest's Proposed Language: (a) If either party shall default in any of its material obligations under this Agreement, then the non-defaulting party shall have the right to terminate

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this Agreement as to future joint use or may terminate the permit covering the pole or poles in respect to which such default or noncompliance shall have occurred; provided, however, that (i) the non-defaulting party shall first give the defaulting party written notice, in the manner described in Section 25, of such default and the non-defaulting party's intent to terminate, and (ii) upon receiving such notice, (A) the defaulting party shall have thirty (30) days in which to cure such default; or (B) if within five (5) days of receiving such notice, the defaulting party notifies the non-defaulting party why it cannot reasonably cure within thirty (30) days and submits a plan of correction describing how it shall undertake to correct such default and by when such correction will be completed, the defaulting party shall proceed with reasonable diligence and in good faith to correct such noncompliance or default as set forth in the plan of correction. Nothing herein shall affect any obligation to provide notice as described in Section 25 for termination that does not involve default of a material obligation. Any termination will be subject to the survival provisions of Section 19 herein.

(b) In case of default and subject to the provisions of subsection (a) above and Section 19 of this Agreement, the non-defaulting party may, at its option, terminate the Agreement as to future joint use or may terminate the license covering the new Pole Attachment(s) in respect to which such default shall have occurred. In case of such termination, no refund of unused rental shall be made.

(c) If either party shall default in the performance of any work that it is obligated to do under this Agreement, the other party may elect to do such work, and the party in default shall reimburse the other party for the cost thereof within thirty (30) days after receipt of an invoice therefor.

(d) Notwithstanding the aforementioned remedies, appropriate representatives of the parties shall meet promptly upon request and attempt in good faith to resolve disputes that arise concerning this Agreement. If the parties are unable to reach a resolution themselves, a party may, by written notice, request the other party to agree to an alternative dispute resolution

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procedure (e.g. non-binding mediation, binding arbitration) for the dispute, and the other party shall respond in writing within ten (10) working days. Any deadline or timeframe described in Section 13 herein shall be tolled while the parties attempt in good faith to resolve disputes as described in this subsection (d).

Licensee's Pole Attachment Removal

CEC's Proposed Language (§ 12): (a) Licensee may at any time remove its Attachments from any of Licensor's poles and, in each case Licensee shall immediately notify Licensor through electronic notification via NJUNS of such removal. Removal of the Attachments from any pole shall constitute a termination of Licensee's right to use such pole. Licensee will not be entitled to a refund of any rental on account of any such removal. When Licensee performs maintenance to or removes or replace its equipment on Licensor's pole, Licensee must chemically treat all field drilled holes' and plug any unused holes, including those resulting from removal of equipment. If Licensee fails to adequately plug and treat such holes, Licensor may do so at Licensee's sole risk and expense and Licensee shall pay the cost to Licensor within thirty (30) days from receipt of the invoice.

(b) In the event that Licensee shall fail to make any change in its plant required by Licensor or shall fail to remove any Attachments upon cancellation of any specific permit or upon termination of this Agreement, Licensor shall have the right to make such changes or effect such removals and shall pay the cost to Licensor within thirty (30) days from receipt of the invoice.

(c) If Licensee shall make default in the performance of any work which it is obligated to do under this Agreement, Licensor may elect to do such Work, and Licensee shall reimburse Licensor for the actual cost thereof within thirty (30) days from receipt of the invoice.

Qwest's Position: In general, Qwest does not dispute the language of section 12(a). However, the language in section 12(b) requires clarification because it is unclear when a licensor would be able to make a licensee change its plant. In general, Qwest believes it is

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unreasonable for a pole owner to dictate the type of equipment a pole occupant may use. Additionally, it is unreasonable to require payment within a time period that is insufficient given Qwest's accounting systems and program. Any payment period should be 45 days.

Abandonment of Joint Use Poles

CEC's Proposed Language (§ 13): If Licensor desires at any time to abandon any joint use pole, it shall give Licensee notice to that effect. If, after said notice, Licensor shall have no Equipment on such pole that Licensee shall not have removed all of its Attachments, such pole shall immediately become the property of Licensee, and Licensee shall hold harmless the Licensor from every obligation, liability, or cost, and from all damages, expenses or charges incurred thereafter, arising out of, or because of, the presence of or the condition of such pole or any Attachments.

If the Licensor abandons the pole and relocates facilities underground, the Licensor shall request that the Licensee also relocate facilities underground or shall abandon the vacated pole to the Licensee. This Agreement would be negotiated on a case by case basis.

Qwest's Position: CEC's proposed language is unreasonable and unjust because it does not specify how much notice the licensor must give to the licensee before the licensor abandons the pole. In addition, it does not account for the cost of abandoning and removing a pole, which Qwest's proposed language does. Qwest's proposed language also addresses the situation in which a licensee abandons a pole, so it provides certainty, which CEC's language lacks. Finally, no other utility should have the ability to dictate or request whether another utility places its facilities above or below ground. Qwest's proposed language is taken from the Verizon-CLPUD agreement and is reasonable.

Qwest's Proposed Language: (a) If Licensor desires at any time to abandon any joint use pole, it shall give Licensee notice in writing via NJUNS to that effect at least thirty (30) days prior to the date on which it intends to abandon such pole. If, at the expiration of said period Licensor shall have no attachments on such pole but Licensee shall not have removed all of its

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attachments, such pole may, at the Licensor's discretion, become the property of Licensee, and Licensee shall hold harmless the Licensor from every obligation, liability, or cost, and from all damages, expenses or charges incurred thereafter, arising out of, or because of, the presence of or the condition of such pole or any attachments, and shall pay the Licensor a sum equal to the present value of such abandoned pole or poles, less cost of removal, but in no event less than zero even should such value fall below zero, or such other equitable sum as may then be agreed upon between the parties, and Licensor shall provide Licensee with properly authorized bill of sale for such pole(s). Licensor must top the pole to a useable condition before abandoning the pole to Licensee. The preferred method of topping a pole shall be at a 45-degree angle with at least two (2) feet of the pole above the telecommunication space or "cut and capped" to prevent decay.

(b) If the Licensor abandons the pole and relocates facilities underground, the Licensor shall abandon the vacated pole to the Licensee.

(c) Licensee may at any time abandon the use of a joint use pole by giving Licensor due notice in writing via NJUNS of such abandonment, as provided in (a) of this Section, and removing from such pole all attachments that Licensee may have. In case of such abandonment of the use of any such pole, Licensee shall pay to Licensor the full rental for the current year for the space on said pole set aside for the use of Licensee.

Rental Charges and Rates

CEC's Proposed Language (§ 14): (a) On or about January 1 of each year, the Licensor shall make a tabulation of the total number of its jointly occupied poles, or on which License has specifically reserved space, as of December 31 of the prior year. For the purpose of the tabulation, any Licensor-owned pole which is used by License for the purpose of attaching Equipment thereto, shall be considered a joint pole and subject to rental fees. Rental fees will not be prorated for Equipment which occupies a pole for less than the full one-year period.

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(b) Within sixty (60) days after completion of the tabulations referred to in Section 14 (a), the Licensor shall invoice the Licensee for the rental amount owing, as calculated in accordance with the then existing OPUC Administrative Rules. Payment of the invoiced amount shall be made within thirty (30) days from receipt of the invoice and shall constitute payment for rental of the prior twelve (12) month period beginning January 1. Past due rental amounts shall bear interest at the lesser of the maximum rate permitted by applicable law or 18 percent per annum compounded daily.

(c) Compensation payable by third parties for the joint use of pole shall be collected and retained by the Licensor.

(d) If Licensee attaches Equipment to a pole without obtaining prior authorization from Licensor in accordance with this Agreement, Licensor may levy sanctions against the Licensee as specified in OPUC Administrative Rules then in effect including but not limited to those then existing OPUC regulations. The unauthorized attachment charge shall be payable to the Licensor within thirty (30) days from receipt of the invoice for that charge. Past due unauthorized attachment charges shall bear interest at the lesser of the maximum rate permitted by applicable law or 18 percent per annum compounded daily.

(e) In the event that Licensee requires a source of electrical energy power supply to its equipment which constitutes a part of the licensed pole Attachment and apparatus, such energy will be supplied by Licensor in accordance with the provisions of its standard service extension policies and approved rates and tariffs.

Qwest's Position: CEC's proposed language is unjust, unfair, and unreasonable because it does not accurately reflect the industry standard regarding cost allocation as expressed in PUC Order No. 05-042. Qwest's language below is taken from the Verizon-CLPUD agreement and is reasonable and specific. Moreover, the referenced sanctions are set forth in the PUC rules and are applicable unless they are amended or deemed invalid, so it is unnecessary to reference them in the contract. In light of Qwest's current challenge to the validity of the PUC's pole attachment

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penalty rules, it is unfair, unreasonable and unjust for CEC to attempt to incorporate those rules into the joint use contract. Moreover, the proposed language is vague and potentially overbroad because it includes, but is not limited to, "then existing OPUC regulations" without specifying the meaning of "then existing" or other rules that could apply. The provision should be eliminated.

Qwest's Proposed Language: (a) On or about December 31 of each year, the parties, acting in cooperation, shall tabulate the total number of pole contacts in use as of the preceding day. This tabulation shall indicate the number of poles on which rentals are to be paid.

(b) The yearly rental period covered by this Agreement shall be the twelve month calendar year period between January 1 and December 31. Within thirty (30) days after the completion of the tabulation referred to above, Licensor shall invoice Licensee for the rental amount owing, as calculated in accordance with Exhibit B[2] and Applicable Law, which is attached hereto and incorporated herein by this reference, specifying on such invoice the rental period covered. Payment of the invoiced amount shall be made within forty-five (45) days of receipt of the invoice. The annual rental rate per pole shall apply to any Pole Attachments made or removed during the year and rents shall not be prorated; provided however, that if this Agreement is executed between July 1 and December 31 of the same calendar year, Licensee shall pay to Licensor only one-half (1/2) of the annual rental due for attachments made during that period. Consistent with the terms of this provision, the components of the rental rates, and the methodology employed to determine the rental rates specified in Exhibit B of this Agreement (which are subject to the valid and effective provisions of the OAR and OPUC rules and regulations, as may be amended, and Applicable Law) may be modified or replaced by an agreement by the parties. Such modifications or replacements (which also are subject to the valid

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[2] Qwest's proposed Exhibit B is attached hereto. Exhibit B sets forth the formula for determining the rental rate. As CEC has not provided any information relating to that formula, Qwest reserves the right to address that information as it becomes available.

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and effective provisions of the OAR and OPUC rules and regulations, as may be amended, and Applicable Law) shall become effective on the first day of the year following the agreement of the parties. Thus, for example, if such changes were to be agreed upon in December of 2006, they would become effective as of January 1, 2007.

(c) In the event that Licensee requires a source of electrical energy for power supply to the cable system which constitutes a part of the licensed pole contacts and apparatus, such energy will be supplied by Licensor in accordance with the provisions of its standard service extension policies and approved rates and tariffs.

(d) Unless otherwise provided, all undisputed amounts payable under this Agreement upon completion of work performed hereunder by either party, the expense of which is to be borne wholly or in part by the other party, shall be due and payable within forty-five (45) days of receipt of an appropriate invoice.

(e) Licensor and Licensee shall define the guidelines and definition for compliance as it pertains to this Agreement, and Licensee shall receive a rent reduction as provided in Exhibit B if the Licensee is in compliance as provided for in ORS 757.282(3) and OAR 860-028-0230, as may be amended Nothing herein shall be construed as a waiver of Licensee's right to request a settlement conference, contest the denied rental reduction, or otherwise avail itself of the rights and procedures set forth in OAR 860-028-0230, as may be amended.

(f) Subject to the other provisions of this Agreement, the cost of erecting new joint poles, constructing new pole lines, making extensions to existing pole lines, or replacing existing poles, pursuant to this Agreement shall be borne by the Parties as follows:

1. Poles should be erected at the sole expense of Licensor.

2. If a pole larger than that which is already installed is necessary, due wholly to the Licensee's requirements, including requirements as to keeping Licensee's wires clear of trees, Licensee shall pay to Licensor a sum equal to the difference between the cost, in place, of such pole and the cost, in place, of the existing pole. Licensor shall bear the rest of the cost

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of erecting such pole, except as otherwise provided in subsection (h) below.

3. If a pole larger than that which is already installed is necessary, due to the requirements of both parties, or the requirements of public authorities or of property owners (other than requirements with regard to keeping the wires of one party only clear of trees), Licensee shall pay to Licensor a sum equal to one-half the difference between the cost, in place, of such pole and the cost, in place, of the existing pole; Licensor shall bear the rest of the cost of erecting such pole. Where there are more than the two Parties to this agreement attached to a pole, the cost of such pole replacements will be divided equally among all parties attached to the pole.

4. In the case of an interset pole required solely by Licensee in Licensor's alignment, Licensor shall erect and own such pole and retain ownership, and Licensee shall pay to Licensor a sum equal to the cost in place of the interset or midspan pole.

(g) Any payments for poles made by Licensee shall not entitle Licensee to the ownership of any part of said poles.

(h) Where an existing pole is prematurely replaced (for reasons other than normal or abnormal decay) by a new pole solely for the benefit of Licensee, or in order to permit joint use, the cost of the new pole shall be borne by the parties as specified in subsection (f) above, and Licensee shall also pay Licensor the remaining life value of the old pole in place, plus the cost of removal, less the salvage value of such pole. Licensor shall remove and may retain or dispose of such pole as sole owner thereof.

(i) Each party shall place, maintain, rearrange, transfer, and remove its own attachments at its own expense except as otherwise expressly provided.

(j) The expense of the poles shall be borne by Licensor except that the cost of replacing poles shall be borne by the Parties hereto in the manner provided in subsections (f) and (h) above.

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(k) Where Licensee's service drops cross over Licensor's lines and are attached to Licensor's poles, either directly or by means of a pole top extension fixture, the cost shall be borne as follows:

1. Pole top extension fixtures shall be provided and installed at the sole expense of the party using them.

2. Where an existing pole is replaced with a taller pole to provide the necessary clearance for Licensee's benefit, Licensee shall pay to Licensor a sum as determined under subsection (h) above.

(l) In the event that Licensor requires Licensee to transfer equipment, or set, lower, haul and/or dispose of Licensor's poles, Licensor shall reimburse Licensee for the cost of such services with forty-five (45) days of receipt of an appropriate invoice.

(m) Nothing herein shall preclude the establishment of other arrangements for the division of costs of joint poles as the Parties may agree to in writing.

Defaults

CEC's Proposed Language (§ 15): (a) If Licensee shall fail to comply with any of the provisions of this Agreement or should default in any of its obligations under this Agreement, and shall fail within thirty (30) days after written notice from Licensor to correct such noncompliance or default, Licensor may, at its option, and without further notice, declare this Agreement to be terminated in its entirety, or may terminate the permit covering the pole or poles in respect to which such default or noncompliance shall have occurred. In case of such termination, no refund of accrued rental shall be made.

(b) If Licensee shall make default in the performance of any work which it is obligated to do under this Agreement, the Licensor may elect to do such work, and the Licensee shall pay to the Licensor for the cost within thirty (30) days from receipt of the invoice.

Qwest's Position: CEC's proposed language is largely duplicative of the language in the section on breach and remedies and is unnecessary. The parties do not need to address default in two different sections, and to do so could lead to confusion and potential ambiguity.

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Qwest's Proposed Language: See section on breach and remedies above.

Sanctions

CEC's Proposed Language (§ 16): The Licensor may levy sanctions against the Licensee for unauthorized Attachments or for other violations of the duties of pole occupants as specified in OPUC Administrative Rules including but not limited to those then existing OPUC regulations.

Qwest's Position: The referenced sanctions are set forth in the PUC rules and are applicable unless they are amended or deemed invalid, so this provision is unnecessary. In light of Qwest's current challenge to the validity of the PUC's pole attachment penalty rules, it is unfair, unreasonable and unjust for CEC to attempt to incorporate those rules into the joint use contract. Moreover, the proposed language is vague and potentially overbroad because it includes, but is not limited to, "then existing OPUC regulations" without specifying the meaning of "then existing" or other rules that could apply. The provision should be eliminated.

Rights of Other Parties

CEC's Proposed Language (§ 17): Nothing herein shall be construed to limit the right of Licensor, by contract or otherwise, to confer upon others, not parties to this Agreement, rights or privileges to use the joint use poles covered by this Agreement.

Qwest's Position: CEC's proposed language is unreasonable because it is limited to licensor's rights, whereas a reasonable provision would address the relationships of both licensor and licensee to third parties. Qwest's proposed language below is taken from the Verizon-CLPUD agreement and is reasonable.

Qwest's Proposed Language: Nothing herein contained shall be construed as affecting any rights or privileges previously conferred by either party, by contract or otherwise, to others not party to this Agreement to use any poles owned by such party. Further, nothing herein contained shall be construed to affect either party's right to continue, modify, extend or amend

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such existing rights or privileges, or to grant others the right or privilege to use poles owned by the Party.

Licensee shall not enter into any agreement with third parties for attachment to a pole owned by Licensor within Licensee's allocated space or otherwise. Licensor may enter into attachment agreements with third parties and will administer all third party attachments for space outside Licensee's allocated space. As to any such agreements between Licensee and third parties that predate this Agreement, Licensee will, by appropriate means, transfer the administration of such attachments to Licensor.

Survival of Certain Obligations

CEC's Proposed Language (§ 18): Any termination of this Agreement in whole or in part shall not release Licensee from any liability or obligations hereunder, whether of indemnity or otherwise, which may have accrued or which may be accruing or which arises out of any claim that may have accrued or be accruing at the time of or prior to termination. However, the survival of certain obligations after this Agreement is terminated shall not relieve Licensee from OPUS [*sic*] sanctions for attachments without a pole attachment agreement.

Qwest's Position: As stated above, it is not reasonable or necessary to refer to PUC sanctions in the joint use contract. Qwest's proposed language below is taken from the Verizon agreement and is reasonable because it is specifically tailored to the parties' joint use agreement.

Qwest's Proposed Language: Any termination of this Agreement in whole or in part shall not be effective as to those provisions of the Agreement governing the liability or obligations of Licensee, including, without limiting the generality of the foregoing, the approval of and obligation to continue to pay charges for pole attachments as provided elsewhere in this Agreement, for such time as Licensee's attachments remain on Licensor's poles. Any such provisions shall survive termination of the remainder of the Agreement.

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Interest and Payments

CEC's Proposed Language (§ 22): Past due amounts shall bear interest at the lesser of the maximum rate permitted by applicable law or 18 percent per annum compounded daily.

Qwest's Position: CEC's proposed language is unreasonable, unjust, and unfair because it would impose a rate of interest that is substantially higher than the industry standard without justification.

Qwest's Proposed Language: All undisputed amounts to be paid by Licensee to Licensor under this Agreement shall be due and payable within forty-five (45) days after an invoice is received by the Licensee. Any payment of undisputed amounts not made within forty-five (45) days from the due date shall bear interest at the prime rate plus 2 percent, but in no event greater than that allowed by Applicable Law.

Notices

CEC's Proposed Language (§ 24): Any notice, request, consent, demand or statement which is contemplated to be made upon either party by the other party under any of the provisions of this Agreement, shall be in writing and shall be treated as duly delivered when it is either (a) delivered to the office of Licensor in the ease of a notice to be given to Licensor, or personally delivered to the office of Licensee in the case of a notice to be given to Licensee, or (b) deposited in the United States mail, postage prepaid and properly addressed to the party to be served as follows:

(i) If notice is to Licensor:

Central Electric Cooperative Inc.

P.O. Box 846 or 2098 N. Hwy 97

Redmond, Oregon 97756

If a provision of this agreement allows notice by electronic means then notice may be given to Licensor, only for purposes of the provision allowing electronic notice, at:

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_____

email or electronic address

(ii) If notice is to Licensee,

_____

_____

_____

If a provision of this agreement allows notice by electronic means then notice may be given to Licensee, only for purposes of the provision allowing electronic notice, at:

_____

email or electronic address

Qwest's Position: Given the parties' recent history, Qwest believes that all required notices, especially any notice of default or termination, should be provided by certified mail, return receipt requested, to a location that is specified in the contract. This will ensure that the notice does not go unheeded. Qwest has numerous "offices" in Oregon, and it would be unreasonable to allow CEC to deliver a required notice to any branch office and to any person, who would not have the authority to make decisions about the contract. Similarly, email notification is inappropriate for the same reason. Finally, the parties should be able to change the address to which written notice must be sent, as long as that change is in writing.

Qwest's Proposed Language: Any notice, request, consent, demand or statement that is required to be made upon either party by the other party under any provision of this Agreement, other than where made via NJUNS, shall be in writing and shall be treated as duly delivered when it is deposited in the United States certified mail, postage prepaid, return receipt requested, and properly addressed to the party to be served as follows:

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(i) If notice is to Licensor:

Central Electric Cooperative Inc.

P.O. Box 846 or 2098 N. Hwy 97

Redmond, Oregon 97756

(ii) If notice is to Licensee,

Qwest Corporation

Joint Use

700 W. Mineral Ave. MT G28.24

Littleton, CO 80120

Notice may be given at such other address as may be designated in writing by the other party.

Construction of Agreement

CEC's Language (§ 25): This Agreement is deemed executed in the state of Oregon and shall be construed under the laws of the state of Oregon and the OPUC. In the event that a suit or action is instituted to enforce or interpret any of the terms of this Agreement, the parties agree that the proper venue for said suit or action shall be in the Circuit Court for Deschutes County, Oregon.

Qwest's Position: CEC's proposed language is unjust and unreasonable because it is too narrow. There may be laws other than those of the State of Oregon and the PUC, such as FCC regulations, that apply to the contract. The parties should not be precluded from citing those laws. Moreover, Qwest will not agree to Deschutes County Circuit Court as the exclusive venue for any dispute. Such a provision is unfair because it precludes other potential forums, such as federal court or the PUC.

Qwest's Proposed Language: This Agreement is deemed executed in the State of Oregon and shall be construed under the laws of the State of Oregon and the Applicable Law.

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Prior Agreements Superseded

CEC's Proposed Language (§ 26): This Agreement supersedes and replaces any and all previous Agreements entered into by and between Licensor and Licensee with respect to the subject matter of the Agreement.

Qwest's Position: CEC's proposed language is unjust, unfair, and unreasonable because it does not account for the parties' longstanding joint use relationship and ongoing daily interactions. Qwest's proposed language below is taken from the Verizon-CLPUD agreement and is reasonable because it provides certainty in the continuity of obligations. Such certainty protects the public interest in continued joint use.

Qwest's Proposed Language: This Agreement constitutes the entire Agreement between the parties and it supersedes all prior negotiations, agreements and representations, whether oral or written, between the parties relating to the subject matter of this Agreement; provided, however, that (i) existing Pole Attachments made prior to the date of this Agreement and approved by Licensor, and applications in progress for permits, shall continue in effect under the terms and conditions of this Agreement; (ii) nothing herein shall relieve either party from obligations and liabilities, or deprive either party of any rights or privileges, that arose or were incurred under prior agreements; and (iii) any rental obligations of the parties currently in arrears under any prior agreement shall be recalculated according to the terms of this Agreement as of the effective date hereof. This Agreement can only be modified or amended in writing by authorized representatives of the parties.

Assignment of Agreement

CEC's Language (§ 27): Neither party shall assign or otherwise transfer this Agreement or any of its rights and interests to any firm, corporation or individual, without the prior written consent of the other party, except to an affiliate, and such assignment shall not be unreasonably withheld.

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Qwest's Position: CEC's proposed language is unreasonable because it could be interpreted as unnecessarily restricting the ability of the parties to assign their interests in the contract to entities that are not technically affiliates, even though there would be no legitimate reason to prevent such an assignment in certain circumstances such as a corporate reorganization or an asset sale. It also is incorrect in that it is the written consent, not the assignment, that shall not be unreasonably withheld. Qwest's proposed language below is taken verbatim from section 21.1 of the Verizon-CLPUD agreement and is reasonable because it clearly and unambiguously describes the types of assignments permitted.

Qwest's Proposed Language: Neither Party shall assign, transfer, or otherwise dispose of this Agreement or any of its rights, benefits, or interests under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld. No assignment of this Agreement shall operate to discharge the assignor of any duty or obligation hereunder without the written consent of the other Party. Each Party may assign all its rights and obligations under this Agreement to its parent corporation, to its subsidiary corporation, to a subsidiary of its parent corporation, to its survivor in connection with a corporate reorganization, to any corporation acquiring all or substantially all of its property or to any corporation into which it is merged or consolidated.

DATED: April 15, 2005.

PERKINS COIE LLP

By: /s/ John P. (Jay) Nusbaum
Lawrence H. Reichman, OSB No. 86083
John P. (Jay) Nusbaum, OSB No. 96378
Telephone: (503) 727-2000

Of Attorneys for Complainant Qwest Corporation

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EXHIBIT B: RENTAL RATE WORKSHEET (to be filled in by the parties)

Total Value of Poles & Fixtures

Less Depreciation Reserves

Net Value of Poles and Fixtures

Ratio of Bare Pole to Total Pole

Value of all Bare Poles

Number of Poles

Average Cost per Pole

Annual Carrying Charge

Operation expense

Maintenance expense

Customer expense

Admin. & General expense

Taxes

Depreciation

Bond Debt Interest/Amortization Expense

Current net income

Net Book Value

Carrying Charge per Total Usable Space

Available Usable Space (in feet)

Rental Rate per foot

Space occupied (in feet)

RENTAL RATE PER POLE

RENTAL REDUCTION PER ORS 757.282(3) AND OAR 860-028-0230

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CERTIFICATE OF SERVICE

I hereby certify that on April 15, 2005 I served the foregoing **Qwest's Issues List** on the following person by causing to be emailed and mailed a full, true and correct copy thereof contained in a sealed envelope with postage prepaid addressed to said to person at the following addresses and deposited in the post office at Portland, Oregon:

Martin Hansen
Francis, Hansen & Martin, LLP
1148 N.W. Hill Street
Bend, OR 97701-1914

Amy Tykeson
Bend Cable Communications, Inc.
63090 Sherman Rd.
Bend, OR 97701

Michael Weirich
Department Of Justice
Regulated Utility & Business Section
1162 Court St. N.E.
Salem, OR 97301-4096

Brooks Harlow
Miller Nash LLP
601 Union St., Ste. 4400
Seattle, WA 98101-2352

Roger Harris
Crestview Cable Communications
125 South Fir Street
Medford, OR 97501

DATED: April 15, 2005.

PERKINS COIE LLP

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