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Via E-mail and Federal Express

Chairman Lee Beyer
Commissioner John Savage
Commissioner Ray Baum
Public Utility Commission of Oregon
550 Capitol Street, N.E., Suite 215
Salem, OR 97301-2551

Re: Tillamook People's Utility District – Petition for Declaratory Ruling (DR 42), Charter Communications' Comments in Opposition

Dear Chairman Beyer and Commissioners Savage and Baum:

Charter Communications ("Charter") hereby submits the following Comments in Opposition to the Petition for Declaratory Ruling filed December 23, 2008 by Tillamook People's Utility District ("TPUD") with the Public Utility Commission of Oregon ("Commission").[1]

I. INTRODUCTION

TPUD's Petition is nothing more than an obvious attempt to evade the retroactive application of an unfavorable term in its decade-old pole attachment agreement with Charter. The Commission's Declaratory Ruling process is not the appropriate mechanism for amending

[1] Tillamook People's Utility District Petition for Declaratory Ruling, DR 42, filed Dec. 23, 2008 (hereinafter "Petition")

an existing pole attachment agreement, however. Indeed, TPUD is not at liberty to seek unilateral, retroactive reformation of the parties' contract through a declaratory ruling proceeding. Under the Commission's rules, a party seeking amendment of an existing pole attachment agreement must first request renegotiation of the agreement and then file a complaint if the request fails. If the Commission finds, *after a fact-finding hearing*, that the rate, term or condition complained of is unjust and unreasonable, the Commission may prescribe a just and reasonable rate, term or condition, *prospectively*.

TPUD is well aware that utilizing the proper complaint procedure will only provide prospective relief, however. In order to avoid that result, TPUD is attempting to circumvent the Commission's pole attachment complaint procedures in order to obtain retroactive relief to which it is not entitled and also avoid scrutiny of its actions in a fact-finding hearing. The Commission should reject TPUD's clear abuse of the Commission's declaratory ruling process and pole attachment rules and decline to open a docket. Even if the Commission were inclined to open a docket, it should not as TPUD's Petition also fails on its merits and TPUD is not entitled to the relief requested.

II. EXECUTIVE SUMMARY

This matter concerns express language in the parties' 10 year-old pole attachment agreement and arose more than 3 years ago over a disagreement about the meaning and applicability of that language. Charter believes that Article IX of the parties' pole attachment agreement requires TPUD to pay for "basic" pole change-outs (*i.e.*, poles that are of a certain strength and height) in all cases. TPUD disagrees with Charter and claims that, in any event, the express language should not apply to Charter because Charter is not a pole owner. As a result, over the past several years TPUD has refused to change out any poles to assist Charter in correcting violations. While the parties are certainly at an impasse on this issue, this dispute cannot be resolved by simply applying Commission law to assumed facts, as ORS § 756.450 requires. Indeed, a declaratory ruling proceeding may not be used to unilaterally abrogate a negotiated pole attachment agreement or settle a contract interpretation dispute. In any event, declaratory rulings are binding only between the Commission and the petitioner. Further, even if the Commission considered the term at issue unjust and unreasonable, the Commission may only amend existing pole attachment agreements *after* a fact-finding, pole attachment complaint proceeding.

To the extent TPUD is unhappy with the terms of its own pole attachment agreement (which Charter acquired from its predecessor-in-interest in 1999), TPUD had ample time to cancel or renegotiate the agreement over 3 years ago when it became aware of Charter's position on the relevant contract language. TPUD could have also sought a contract amendment under the Commission's pole attachment complaint procedures, which are specifically designed to resolve disputes over existing pole attachment agreements. Charter has suggested TPUD renegotiate the contract on several occasions. Nevertheless, TPUD inexplicably failed to take any appropriate action in a timely manner. TPUD recognizes that terminating the contract or pursuing a pole attachment complaint at this point in the dispute will only provide it with

prospective relief. TPUD would also be subject to fact-finding in a pole attachment complaint case. As a result, TPUD is seeking an inappropriate remedy to obtain unilateral, retroactive amendment of its own contract and avoid fact-finding scrutiny under the Commission's pole attachment complaint procedures.

Charter also takes issue with the facts alleged in TPUD's Petition. Indeed, several of TPUD's statements are disputed, as well as misleading, and should not serve as the basis for any type of decision. TPUD also failed to reveal many critical facts necessary for the Commission to fully understand the parties' dispute. Indeed, TPUD's efforts to misrepresent Charter's positions and conceal the lengthy background of the parties' dispute and other facts unfavorable to its petition, exemplifies why this case is wholly inappropriate for a declaratory ruling, where the petitioner's alleged facts are assumed and fact-finding is not permitted. For example, while TPUD alleges that Charter refuses to pay the cost for TPUD to rearrange its equipment, in addition to the basic pole change-out costs, that statement is false. Also, during a pole attachment hearing, TPUD would be required at a minimum to explain its failure to renegotiate the contract over the past 3 years, prove why the agreement language does not apply to Charter and defend its other actions during the parties' 3 year-long dispute under cross-examination. Making any finding merely on the facts alleged by TPUD would lead to an unjust result.

If the Commission does choose to reach the merits, the Commission should find that the Petition is without legal basis. In addition to its failure to demonstrate that TPUD is entitled to unilaterally modify the parties 10 year-old agreement without a hearing, TPUD also failed to cite a single statute or rule that would clearly and unambiguously trump the language in the parties' pole attachment agreement. There is also nothing in the contract that would allow TPUD to decide unilaterally that certain provisions of the parties' signed pole attachment agreement are inapplicable to Charter. Moreover, the Agreement may only be amended by mutual agreement of the Parties.

For these reasons, and those set forth in detail below, the Commission should reject TPUD's efforts to abuse the Commission's Declaratory Ruling and pole attachment complaint procedures and decline to consider the Petition.[2] In the alternative, to the extent the Commission grants TPUD's Petition, any relief must be prospective so that TPUD's neglect in addressing the issue in a timely and proper manner is not rewarded and for consistency with the Commission's pole attachment complaint procedures.

III. ARGUMENT

A. The Commission Should Decline To Consider TPUD's Petition Because The Petition Is An Improper Attempt To Obtain Unilateral, Retroactive Amendment Of The

[2] The Commission has the discretion to decide whether or not to consider a petition for declaratory ruling. *See* ORS § 756.450 ("On petition of any interested person, the Public Utility Commission *may* issue a declaratory ruling. . . .") (Emphasis added).

Parties' Pole Attachment Agreement Through The Declaratory Ruling Process And Evade The Commission's Pole Attachment Complaint Procedures

On July 12, 1999, Tillamook People's Utility District and Falcon Telecable, Charter's predecessor-in-interest, entered into a pole attachment agreement.[3] On November 12, 1999, Charter acquired the Falcon system on TPUD's poles, along with the Agreement. Since it acquired the system, Charter has made very few new attachments. The vast majority of attachments on TPUD's poles were installed by Falcon. As far as Charter knows, TPUD made no attempt to revise the Agreement when Charter acquired the system in 1999 (or since) or inform Charter that parts of the Agreement were inapplicable to Charter because Charter is not a pole owner. Nor does any provision in the Agreement indicate that certain sections are inapplicable to Charter. Although either party has the right to terminate the 1999 Agreement upon 365 days notice,[4] the Agreement remains in effect.

Article IX of the Agreement (entitled: "Division of Costs, Poles"), contains express language requiring the pole owner to pay to replace existing poles with basic 40 foot, Class 4 poles, even when that pole replacement is for the benefit of the attaching party. If the benefitting party needs a taller/stronger pole to accommodate its attachments "for reasons other than normal or abnormal decay,"[5] the benefitting party pays the difference between the cost of a basic pole and the taller/stronger pole, along with additional expenses. This language in Article IX is the basis of the parties' dispute.

Specifically, Section 9.5 of the Agreement provides:

> 9.5 The expense of maintaining joint use poles shall be borne by the pole Owner except that the cost of replacing poles shall be borne by the Parties hereto in the manner provided in Sections 9.1 and 9.3.

Sections 9.1b and 9.1c provide:

> 9.1 The cost of erecting new joint poles, or constructing new pole lines, pursuant to this Agreement shall be borne by the Parties as follows:
>
> b. A pole larger than the basic, the extra height or strength of which is due wholly to the pole Owner's requirements, including

[3] Joint Use Agreement between Tillamook People's Utility District (TPUD) and Falcon Telecable, executed July 12, 1999, attached hereto as Exhibit 1 (hereinafter "Agreement").

[4] *See* Agreement, Section 17.1.

[5] *Id.* at Section 9.3.

> requirements as to keeping the pole Owner's wires clear of trees, shall be erected at the sole expense of the pole Owner.
>
> c. In the case of a pole larger than the basic, the extra height or strength of which is due wholly to the requirements of the Party requesting attachment, including requirements as to keeping such Party's wires clear of trees, such Party shall pay to the pole Owner a sum equal to the difference between the cost, in place, of such pole and the cost, in place, of a basic joint pole. The rest of the cost of erecting such pole shall be borne by the pole Owner, except as otherwise provided in Section 9.3.

In turn, Section 9.3 provides:

> 9.3 Where an existing pole is prematurely replaced (for reasons other than normal or abnormal decay) by a new pole solely for the benefit of the Party requesting attachment, or in order to permit joint use, the cost of the new pole shall be borne by the Parties as specified in Section 9.1b, or 9.1c, and the Party requesting attachment shall also pay the pole Owner the remaining life value of the old pole in place, plus the cost of removal, less the salvage value of such pole. The pole Owner shall remove and may retain or dispose of such pole as sole owner thereof.

Consequently, when read together, Article IX requires TPUD to pay for basic poles, in all instances. In accordance with these unambiguous provisions, in November 2005, Charter informed TPUD that Charter would not pay for the entire cost of a larger than "basic" pole, even if installed to assist Charter in the correction of its violations. Charter would pay the difference between the basic pole and the larger than basic pole, along with the other expenses as required in the Agreement.[6] Charter reiterated its position in December 2005,[7] June 2006,[8] and several times thereafter.[9] Charter also offered to work out a mutual agreement in June 2006,[10] and again

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[6] *See* Letter to Richard G. Lorenz (TPUD Counsel) from T. Scott Thompson (Charter Counsel), dated Dec. 20, 2005, pp. 2-3, attached hereto as Exhibit 2 (referring to Letter to TPUD from Matt McGinnity (Charter), dated November 7, 2005).

[7] *Id.*

[8] Letter to Richard G. Lorenz from T. Scott Thompson, dated June 27, 2006, pp. 1-2, attached hereto as Exhibit 3.

[9] *See, e.g.*, Letter to Thomas B. Magee (TPUD Counsel) from Jill Valenstein (Charter Counsel), dated August 15, 2008, p. 3, attached hereto as Exhibit 4, (stating that "Charter has consistently maintained (since at least 2005) that when Charter is at fault (or accused to be at fault) for a specific violation that can only be corrected with a pole change-out, Charter would only be liable for a portion of the pole cost.")

[10] *See* Exhibit 3, at p. 2 ("In order to avoid future conflict, Charter suggests that the Parties reach a mutually acceptable understanding of responsibility based on the Joint Use Agreement.")

in February 2008,[11] but TPUD never responded to Charter's overtures in this regard. Charter later suggested that if TPUD was "dissatisfied with the terms of its own pole attachment agreement, the remedy is not to ignore its terms, but to terminate it and negotiate a new agreement."[12]

Although TPUD claims that other Agreement terms require Charter to pay certain expenses in general, there are no other specific provisions in the Agreement relating to the division of costs for pole change-outs that Charter believes would trump Section 9.3. This is, and has been, the crux of the parties' dispute since 2005. In other words, the matter before the Commission is a contract dispute, plain and simple, as TPUD readily admits in its Petition.[13] In the meantime, TPUD has refused to perform any necessary pole change-outs identified by Charter since at least 2006.

1. TPUD Must Seek Relief Under The Commission's Pole Attachment Complaint Procedures In Order To Amend A Pole Attachment Agreement

Despite this long-standing dispute, TPUD did not cancel the contract, seek renegotiation of the disputed term or file a pole attachment complaint, at any time since it became aware of Charter's position over 3 years ago. Instead, without any notice to Charter, TPUD filed its Petition on December 23, 2008, seeking unilateral, retroactive reformation of the parties' Agreement through the declaratory ruling process to make up for TPUD's obvious failures.

The Commission's Declaratory Ruling Statute, ORS § 756.450, provides, in relevant part:

> On petition of any interested person, the Public Utility Commission may issue a declaratory ruling with respect to the applicability to any person, property, or state of facts of any rule or statute enforceable by the [C]omission. A declaratory ruling is binding between the [C]omission and the petitioner on the state of facts alleged. . . ."

Although TPUD has attempted to disguise this dispute as the simple application of Commission law to an assumed set of facts, this dispute actually involves a disagreement over an existing term in the parties' negotiated pole attachment agreement and TPUD's desire to evade it. A declaratory ruling is not the proper forum to resolve a dispute that is "a matter of

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[11] *See*, e.g., Letter to Richard Lorenz from Jill Valenstein, dated Feb. 12, 2008, attached hereto as Exhibit 5, at p. 4 ("As a final matter, my client has asked me to raise the parties' long-unresolved dispute involving cost allocations for pole replacements and power facility rearrangement work, with respect to the compliance project. My client would like to have a teleconference, including you and me, to discuss this issue, and any other unresolved issues, at your client's earliest convenience.")

[12] Letter to Thomas B. Magee from Jill Valenstein, dated Oct. 2008, p. 2., attached hereto as Exhibit 6

[13] *See* Petition at p. 6.

negotiation between the parties"[14] or amend a pole attachment agreement. Instead, OAR § 860-028-0070 governs the process for the "Resolution of Disputes for Proposed New or Amended Contractual Provisions," and is a mandatory rule.[15]

Specifically, in order to amend an existing pole attachment agreement in accordance with Commission rules, a party must first "request, in writing, negotiations for a new or amended attachment agreement from the other party."[16] If the parties fail to reach some sort of agreement in 90 days from the date of the request, either party may file a complaint.[17] The complaint must contain, among other things, "[a] statement of the specific attachment rates, terms and conditions that are claimed to be unjust or unreasonable; [a] description of the complainant's position on the unresolved provisions [and a] proposed agreement addressing all issues, including those on which the parties have reached agreement and those that are in dispute."[18] Then, "[w]ithin 30 calendar days . . . the respondent must file its response with the Commission, addressing in detail each claim raised in the complaint and a description of the respondent's position on the unresolved provision."[19] Finally, OAR 860-028-0070(8) provides that "[i]f the Commission determines *after a hearing* that a rate, term or condition that is the subject of the complaint is not just, fair, and reasonable, it may reject the . . . rate, term or condition and may prescribe a just and reasonable rate, term or condition."[20]

Consequently, if TPUD believes the term requiring it to pay for basic pole change-outs is unjust and unreasonable, and "is not applicable to"[21] Charter, then TPUD must submit a request to Charter to renegotiate and if the effort fails, file a complaint pursuant to the Commission's pole attachment complaint rules. These rules specify *the mandatory* process available under the Commission's rules for the reformation of an existing pole attachment agreement. TPUD should not be permitted to unilaterally reform the parties' Agreement improperly through the declaratory ruling process to obtain retroactive relief on its own assumed facts.

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[14] *Re: Oregon Energy Company, LLC*, DR 14, Order No. 96-137, 1996 WL 361449, p.4 (May 27, 1996 Or. PUC) (denying petition).

[15] *See* OAR § 860-028-0050(3)(setting forth mandatory rules).

[16] OAR § 860-028-0070(4); this requirement is also consistent with the parties' Agreement, which expressly provides that the "Agreement can only be modified or amended in writing by authorized representatives of the Parties." Agreement, Section 14.1.

[17] *Id.* at 0070(5).

[18] *Id.* at 0070(6)(b)-(d).

[19] *Id.* at 0070(7). At times, TPUD's Petition reads as if it were a complaint, claiming that Charter carries the burden of proof. While Charter disagrees that it carries the burden of proof in this dispute (*see* discussion at Section III.B.2.), because TPUD failed to follow proper procedures and file a pole attachment complaint, Charter would not be able to prove its case in this declaratory ruling proceeding, even if it had the burden of proof.

[20] *Id.* at 0070(8) (emphasis added)

[21] Petition at p. 13.

Incredibly, TPUD relies on OAR § 860-028-0050(3) for the proposition that OAR § 860-028-0100(5), which permits, but does not require, a pole owner to seek reimbursement from an attacher for make-ready work for *new* attachments is "presumptively reasonable" and thus should govern over the express language in the Agreement.[22] Apparently, TPUD believes that any possible inconsistency between the parties' contract and the Commission's rules should result in automatic reformation of the parties' 10 year-old Agreement, without a hearing and based on its own, less than candid, alleged facts. Perhaps TPUD failed to notice that OAR § 860-028-0050(3), which allows the Commission to deem the terms and conditions in its pole attachment rules as "presumptively reasonable," only operates *pursuant to a pole attachment complaint case*.[23] In any event, the Commission's pole attachment rules specify that "the last effective contract between the parties will continue in effect until a new contract between the parties goes into effect."[24] In other words, the existing Agreement, with all its terms, will remain in effect until TPUD and Charter enter into a new pole attachment agreement, either voluntarily or pursuant to the Commission's pole attachment complaint procedures.

2. The Number Of Disputed And Misleading Facts Contained In TPUD's Petition Further Exemplifies Why This Matter Is Inappropriate For A Declaratory Ruling On TPUD's Alleged Facts

The Commission's declaratory ruling statute permits the Commission to provide a binding ruling on the application of agency law to particular facts. The declaratory ruling may be used to obtain an opinion based on alleged, hypothetical, or actual facts.[25] In a normal declaratory ruling proceeding, the ruling on the alleged facts is intended to be binding only between the Commission and the petitioner. Therefore, the Commission does "not assume the accuracy of the factual claims" because "[i]f the [a]ssumed facts do not mirror a real world set of facts, the declaratory judgment may be of little use to the petitioner."[26] In this case, however, TPUD will benefit from "assumed facts that do not mirror a real world set of facts," to Charter's detriment. That is not the intended effect of a declaratory ruling and precisely why pole attachment agreement disputes (which typically include two parties and disputed facts) are decided only after a fact-finding hearing, where the parties are subject to discovery and cross-examination before the Commission.

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[22] *Id.* at p. 9.

[23] *See* OAR § 860-028-0050(3)(referring to disputes submitted for Commission resolution).

[24] OAR § 860-028-0060(4).

[25] *Re: Portland General Electric Co.*, DR 25, Order No. 00-159, 2000 WL 562285, p. 3. (Mar. 17, 2000 Or. PUC) (denying petition).

[26] *In the Matter of the Petition of Northwest Natural Gas Company for a Declaratory Ruling Pursuant to ORS 756.450 regarding Whether Joint Bypass to Two or More Industrial Customers Violates ORS 758.400 et seq.*, DR 23 (on recon.), Order No. 01017, p. 3. (Or. PUC).

Indeed, the Commission has denied petitions for declaratory ruling on merely an apparent dispute over facts.[27] Here, TPUD's Petition is replete with misleading and disputed statements that require scrutiny and cannot form the basis of any Commission decision. In addition to concealing the long-standing nature of this dispute, for example, TPUD claims that Charter has refused to pay for TPUD's rearrangement costs.[28] This is false. Charter agreed it would pay TPUD's rearrangement costs over 5 months ago.[29] TPUD claims that Charter has never disputed the violations "reported" by TPUD.[30] This is also untrue. Over the last 5 years, since Charter began receiving violation notices from TPUD in 2005, Charter has disputed hundreds of so-called "violations" contained on the notices.[31] Similarly, TPUD's statement that "[a]ll of the Charter violations identified in TPUD's Notices are 'reported' to have exceeded the NESC. . . ." is similarly misleading.[32] TPUD's inspection data is often faulty and unclear. As a result, and at great expense to Charter, Charter has had to re-inspect much of the data provided by TPUD to determine whether a true violation existed. Charter often finds no violation. To date, Charter has spent over $1 million inspecting and correcting attachments in TPUD's service area, including to identify and assist TPUD in fixing its own violations.

In addition to this sampling of known disputed facts, TPUD alleges that "as a rule, [it] does not perform rearrangements or pole replacements to enable the correction of safety violations for any . . . other pole occupant[] without reimbursement."[33] If that is true, perhaps those occupants have pole attachment agreements containing different terms. That is the kind of information that would be revealed in a fact-finding pole attachment proceeding. Other critical, relevant facts missing from TPUD's allegations include: an explanation of why it never cancelled the Agreement and sought renegotiation with Charter, which Charter expressly invited, and why it provided Falcon with a joint-use agreement in the first instance, if TPUD believes it is the wrong agreement. For these reasons, making any finding merely on the facts alleged in TPUD's Petition would result in gross injustice.

In sum, TPUD's Petition, seeking unilateral, retroactive amendment of the parties' pole attachment agreement (back more than 3 years), is clearly inappropriate. The Commission's rules require a party seeking amendment of an existing pole attachment agreement to do so

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[27] *See, e.g., Roats Water System, Inc. v. Golfside Investments, LLC*, UM 1248, Order No. 07-048, p. 1 (Feb. 10, 2007) ("After review, the Commission declined to grant the petition for declaratory ruling. Because of an apparent dispute regarding factual issues, the Commission instead concluded that it was more appropriate for Roats to file a complaint against Golfside.")

[28] Petition at pp. 6 and 11.

[29] Letter to Thomas B. Magee from Jill Valenstein, dated Sept. 11, 2008, at p. 1, attached hereto as Exhibit 7. At the same time, TPUD never reimburses Charter when Charter must rearrange its own facilities to assist TPUD to fix its own violations.

[30] Petition at p.5.

[31] *See, e.g.*, Letters to Thomas B. Magee from Jill Valenstein, dated Aug. 22, 2008, attached hereto as Exhibit 8 (stating that TPUD's violation numbers "are inaccurate and have been challenged by Charter repeatedly.")

[32] Petition at p. 8

[33] *Id.* at p. 6.

through the Commission's fact-finding pole attachment complaint process and obtain prospective relief. The declaratory ruling process is not intended to allow pole owners to circumvent the pole attachment rules, as TPUD is attempting to do in this case. For these reasons, the Commission should decline to open a docket to consider the Petition.

B. TPUD's Petition Also Fails On The Merits And Should Be Denied

If the Commission does choose to reach the merits, the Commission should find that the Petition is without legal basis and deny it. First, TPUD failed to cite a single legal authority that would allow the Commission to reform a mutually agreed-to term in a pole attachment agreement, particularly without a hearing. Second, even if the Commission's rules allowed for contract reformation without a hearing, TPUD also could not point to one Commission statute or rule that is clearly and unambiguously contrary to the disputed term in the Agreement. Also, parties to a pole attachment agreement are free to agree to terms contrary to the Commission's rules, except for the "mandatory rules." (In any event, the Agreement at issue was executed 8 years before the Commission's mandatory rules became effective.) Third, there is also no other term in the Agreement that would trump the disputed language or allow TPUD to selectively pick and choose which terms do and do not apply to Charter. Last, whether or not Charter paid for pole change-outs at some point during the term of the Agreement, the parties are free to enforce their rights at any time, in accordance with the Agreement's waiver clause.

If the Commission does grant TPUD's Petition, any relief would have to be prospective so that TPUD's delay in addressing this issue is not rewarded and for consistency with the Commission's pole attachment complaint procedures.

1. TPUD Has Failed To Demonstrate That The Commission's Rules Allow A Pole Attachment Agreement To Be Amended Without Resort To The Pole Attachment Complaint Procedures

First and foremost, as demonstrated above, even if the disputed term of the Agreement is inconsistent with Commission laws, TPUD has provided no legal authority that would allow the Commission to amend disputed language in a pole attachment agreement, absent a fact-finding hearing.[34] The Agreement also expressly disallows contract modification except as mutually agreed.

2. TPUD Has Not Demonstrated That Commission Law Conflicts With The Disputed Agreement Language

If the Commission was authorized to automatically amend a pole attachment agreement without a hearing due to an consistency with its pole attachment rules, TPUD has not made a showing that the disputed term is inconsistent with any statute or rule.

[34] *See* Section III.A.

Specifically, although ORS § 757.271(2) "expressly permits," pole owners to charge licensees for expenses incurred as a result of an unauthorized attachment or safety violation, as TPUD claims,[35] the statute does not require it. Similarly, as discussed above, OAR § 860-028-0100(5) (which allows pole owners to charge for make-ready) does not contradict the disputed Agreement term. First, OAR § 860-028-0100(5) refers to make-ready for new attachments, not to assist in corrections. Second, OAR § 860-028-0100(5) does not require a pole owner to charge the attacher for the work. Third, OAR § 860-028-0100(5) is not a mandatory rule. Thus, the parties are free to agree on terms that differ from OAR § 860-028-0100(5), particularly because that rule was not in effect when the Agreement was executed in 1999.

Although, as TPUD also contends, OAR § 860-028-120(5)(b) requires pole occupants to reimburse a pole owner that performs corrections on the occupant's behalf, that is only true "if the pole occupant fails to respond within the [given] deadlines. . . ."[36] That is not the case here. In any event, the parties to a pole attachment agreement are free to negotiate their own terms, regardless of Commission law, policy or standard industry practice; and, there were no mandatory rules in effect when the Agreement was executed 10 years ago.

Finally, aside from the obvious absurdity of TPUD's statement that Charter "carries the burden" of proof in this case, (even though TPUD has not filed a complaint against Charter and already judged for itself that "Charter's burden, however, is impossible"),[37] TPUD is mistaken. TPUD carries the burden of proof in this case. For example, even if TPUD could show that the Commission's rules and policies conflict with the disputed term, which it can not, parties to a pole attachment are permitted to agree on certain terms that differ from the Commission's rules, as discussed above, including which party pays for basic pole change-outs. Therefore, TPUD would have to explain why it executed an Agreement with Falcon containing the disputed term ten years ago and never attempted to modify the Agreement if it believed the term was inapplicable to Falcon and then Charter.

3. TPUD Has Not Demonstrated That Other Terms Of The Agreement Contradict Article IX

TPUD has not demonstrated that any other provision in the Agreement trumps the specific language in Article IX (Division of Costs, Poles), requiring TPUD to pay to erect "basic" poles in all cases, even when poles are "prematurely replaced (for reasons other than normal or abnormal decay)."[38] The language could not be more clear and unambiguous and nothing in the Agreement contradicts it or qualifies it.

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[35] Petition at p. 7.

[36] OAR § 860-028-120(5)(b).

[37] Petition at pp. 9-10.

[38] Agreement, Section 9.3. In addition, in the event the non-pole owning party requires "a pole larger than the basic," then, that party would pay "a sum equal to the difference between the cost of such pole and the cost, in place, of a basic joint pole." *Id.* at Section 9.1(c). The non-pole owning party would also pay for "the remaining life value

Although, as TPUD claims, Section 3.5 requires the attacher to reimburse the owner for the expenses to accommodate the attacher's new attachments, Section 3.5 says nothing about how the cost of replacing poles should be shared. Moreover, nothing in Article IX makes reference to Section 3.5. Instead, Section 9.5 expressly and clearly states: "[t]he expense of maintaining joint poles shall be borne by the pole Owner except that the cost of replacing poles shall be borne by the Parties hereto in the manner provided in Sections 9.1 and 9.3." By contrast, Section 9.4, which governs placing, maintaining, rearranging, transferring and removing attachments, requires the parties to do so "at their own expense, except as otherwise expressly provided."

TPUD also claims that Section 15.2 "requires Charter to reimburse TPUD when TPUD corrects a Charter default."[39] This is not accurate. Section 15.2 actually provides that if either party defaults in the performance of any work that it is obligated to do under the Agreement, the other party may elect to do such work and seek reimbursement.[40] In this case, TPUD has not performed any work that Charter was required to do. Instead, Charter has asked TPUD to change out poles, as per Article IX of the Agreement, to enable Charter to make corrections, and TPUD refuses to do so.

Finally, there is absolutely nothing in the Agreement that supports TPUD's contention that Article IX of the Agreement "is not applicable to the relationship" between TPUD and Falcon (Charter's predecessor-in-interest).[41] For example, "TPUD and FALCON" are "Parties," under Section 1.5 of the Agreement. Article IX governs how the cost of erecting poles "shall be borne by the Parties."[42] If TPUD did not believe that this form agreement was appropriate for Falcon in 1999 it should have provided Falcon with a different agreement. Or, it could have renegotiated the terms when Charter acquired the system in November 1999 or any time since.

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of the old pole in place, plus the cost of removal, less the salvage value of such pole." *Id.* at Section 9.3. These costs are not insignificant. Moreover, the larger than basic pole becomes the property of the owner upon installation. Because poles come in 5 foot increments only, when the pole owner receives a larger than basic pole, it can use that pole for its own service requirements and rent it out to others.

[39] Petition at p. 12. TPUD also misrepresents the language it claims is the subject of the default, *i.e.*, Section 13.1. Specifically, TPUD claims that Section 13.1 "requires Charter to maintain its attachments 'in accordance with accepted modern practices [that are] no less stringent than the requirements of the National Electric Safety Code. . . ." TPUD is well-aware that Section 13.1 does not require Charter to maintain its attachments in accordance with the NESC. Indeed, Charter has pointed this out to TPUD in the past. *See* Exhibit 2, at p. 2. What Section 13.1 actually states is that "the *Specifications* of each Party for the construction, operation, and maintenance of its respective poles and other facilities that are jointly used or involved in joint use shall be in accordance with accepted modern practices and shall be no less stringent that the requirements of the National Electrical Safety Code. . . ." Agreement, Section 13.1 (emphasis added). This is just one more example of how TPUD has attempted to mislead the Commission in this case and why the Commission cannot rely on TPUD's alleged facts to make a decision.

[40] *See* Section 15.2.

[41] Petition at p. 13.

[42] Agreement, Section 9.1.

4. TPUD Has Not Established A Course Of Dealing That Limits Charter's Right To Enforce The Express Language Of The Agreement

Last, TPUD claims that payments Charter made years ago for pole change-outs should determine an established "course of dealing," and limit Charter's ability to enforce the express language of the Agreement. While it is true that Charter paid for some complete pole change-outs early on in the parties' relationship, the Agreement's waiver clause expressly states that "[t]he failure of either Party to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain, at all times, in full force and effect,"[43] as TPUD has reminded Charter in the past.[44] Therefore, Charter has an absolute right to enforce that clause as intended and did so more than 3 years ago.[45]

In conclusion, TPUD failed to show that the Commission may modify a negotiated pole attachment agreement, without a hearing, particularly in the retroactive manner TPUD seeks. There is also no statute or rule that is clearly and unambiguously contrary to the disputed term in the Agreement. TPUD and Falcon were free to negotiate any terms that suited them in 1999. TPUD also failed to demonstrate that any other provision in the Agreement contradicts, supersedes or qualifies TPUD's obligation to pay to change out basic poles under the Agreement. Finally, whether or not Charter paid for pole change-outs at some point during the term of the Agreement, the parties are free to enforce their rights at any time, in accordance with the Agreement's waiver clause. For these reasons, TPUD's Petition has no merit and should be denied.

C. TPUD's Reference To Bankruptcy Is Irrelevant to The Parties' Dispute

TPUD also improperly alleges that Charter's financial condition requires that Charter pay make-ready up front. TPUD's reference to articles discussing Charter's financial state is irrelevant to the dispute and intended to inject a false sense of urgency. Any payments Charter owes to TPUD are made pursuant to the parties' Agreement and it is too speculative to assert in the absence of any actions to the contrary that Charter could default sometime in the future. In any event, if this were to occur, TPUD could resort to the default clause, which entitles TPUD to its contractual remedies.[46]

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[43] Agreement, Section 23.1.

[44] *See* letter to T. Scott Thompson (Counsel for Charter) from Richard Lorenz (Counsel for TPUD), dated Mar. 20, 2006, at p.3 (referring to the waiver clause to enforce rights under the Agreement not previously enforced).

[45] As a matter of fact, TPUD has often used the language in the Agreement as a sword against Charter, particularly for monetary gain, including when it assessed a $250,000 penalty against Charter that Charter believed was unreasonable but TPUD insisted was allowed under the language of the Agreement.

[46] *See* Agreement, Article XV.

D. TPUD's Request To Modify Charter's Pole Attachment Rent Without A Hearing Is A Further Abuse Of The Declaratory Ruling Process And The Pole Attachment Rules

TPUD requests that if the Commission determines that TPUD must bear the expense of the pole replacements and rearrangement costs (which, again, Charter agreed to pay months ago), the Commission should allow TPUD to recover the costs in Charter's annual pole rent. TPUD claims that the Commission "is empowered to modify a pole attachment rate if it determines that the collected rate is unjust and unreasonable," pursuant to ORS § 759.660(1).[47] Again, TPUD conveniently ignores that the statute it cites authorizes the Commission to modify a pole attachment rate *only* "after hearing had upon complaint by a licensee or people's utility district. . . ."[48] TPUD has failed to file any such complaint and the declaratory ruling process is no substitute. Granting this relief would thus be tantamount to a unilateral, retroactive reformation of the parties' negotiated contract.

In addition, Charter already pays TPUD the maximum allowable rent permitted under Oregon law, *i.e.*, the fully allocated rent. Further, through the annual rent, Charter also pays a portion of the costs TPUD incurs to fix its own violations, including pole change-outs. These fully allocated rental payments are in addition to the costs Charter incurs to rearrange its own equipment to assist TPUD in correcting TPUD's violations.

For these reasons, the Commission should reject TPUD's request to modify Charter's rent through its improper Petition.

E. In The Alternative, If The Commission Grants TPUD's Request For Relief, It Should Do So On A Prospective Basis Only

Charter informed TPUD that it would not pay to install "basic" poles in November 2005. Since that time, TPUD has refused to change out any pole identified by Charter as necessary to assist Charter in correcting its violations. Therefore, because TPUD has been on notice for more than 3 years regarding Charter's position on this issue, if the Commission does grant TPUD's relief, it must do so prospectively, *i.e.*, no earlier than the date of the order issued pursuant to TPUD's Petition. Any other result would reward TPUD for its intransigence and neglect in dealing with this issue. Granting prospective relief would also be consistent with Commission's pole attachment complaint procedures.

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[47] Petition, at p. 18.

[48] ORS § 759.660(1).

IV. CONCLUSION

For the foregoing reasons, the Commission should decline to consider TPUD's Petition or deny it on the merits. In the alternative, if the Commission does grant TPUD's relief, it should do so on a prospective basis.

Very truly yours,
Davis Wright Tremaine LLP

Jill Valenstein

cc: Michael Weirich
Jerry Murray

Exhibit 1

JOINT USE AGREEMENT

This Joint Use Agreement is made and entered into this 7 Day of July, 1999 between Tillamook People's Utility District (TPUD) and FALCON TELECABLE (FALCON).

WITNESSETH

WHEREAS, TPUD is engaged in the business of providing electric service to customers in certain areas within Tillamook, Clatsop, and Yamhill Counties in the State of Oregon; and

WHEREAS, FALCON and TPUD sometimes place and maintain poles or pole lines upon or along the same highways, streets, or alleys and other public or private places for the purpose of supporting the wires and facilities used in their respective businesses; and

WHEREAS, the Parties desire to cooperate in establishing joint use of their respective poles when and where joint use of their poles shall be of mutual advantage; and

WHEREAS, the desirability of joint use of particular poles is dependent upon the service requirements of each Party, including considerations of safety and economy, and each Party should determine, in its sole judgement, whether or not such service requirements can properly be met by the joint use of particular poles.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein, the Parties hereby agree as follows:

ARTICLE I
DEFINITIONS

1.1 "Agreement" means this Joint Use Agreement entered into between TPUD and FALCON.

1.2 "Applicant" means FALCON seeking permission to place Equipment upon District poles as provided in Article III.

1.3 "Equipment" means the cables and facilities which the Owner may give the Applicant written permission to install on a pole.

1.4 "Owner" means the Party which owns the poles.

1.5 "Party" means TPUD or FALCON, as the context requires. "Parties" means TPUD and FALCON.

1.6 "Service cable" means conductor that is installed from a pole to a building to provide communication or electrical service.

1.7 "Coax or Fiber" means a particular type of telecommunications conductor used to provide television service for a single customer.

ARTICLE II
SCOPE OF AGREEMENT

2.1 This Agreement shall apply to all areas served by the Parties in the State of Oregon and shall cover all poles of each of the Parties within said state which are presently jointly used, as well as poles which are now existing or which shall hereafter be erected in areas mutually served when such poles are included within the scope of this Agreement in accordance with the procedures hereinafter set forth.

2.2 Each Party reserves the right to reject applications for the joint use of poles which, in its sole judgement as the Owner thereof, are necessary for its own sole use or otherwise undesirable for joint use.

ARTICLE III
ESTABLISHING JOINT USE OF POLES

3.1 Whenever either Party desires to place its Equipment on any pole owned by the other Party, it shall make written application thereof, and attach a Project Plan. The Project Plan shall specify the Equipment, the location of the poles in question and the Owners pole numbers, the space desired on each pole, and sufficient engineering data to assure NESC violations are not created. Said application shall be made on a form acceptable to both Parties and shall be directed to the Owner at the address specified in Article XXI of this Agreement. If the application is approved, the Owner shall, within thirty (30) days after receipt of the application, sign and return a copy of the application to the Applicant. If the application is rejected, the Owner shall, within said thirty (30) day period, provide oral or written notice of the rejection to Applicant. If the Owner has not provided notice of its approval or rejection of the application within said thirty (30) day period, the application shall be deemed to be rejected.

3.2 Installation of service wire, "Coax or Fiber" wire may be done prior to the approval of such application provided the following conditions are met:

1) The application will be filed with the Owner not more than five (5) business days after the installation of the service wire or "Coax or Fiber" wire.

2) Installation will not violate any NESC codes or Pole Owner's construction standards.

3) The Applicant agrees to modify the installation at their sole expense as required by the Owner.

4) The Applicant agrees to pay all costs for the rearrangement or addition of any facilities on an existing pole or the replacement of an existing pole necessitated by the Applicant's installation.

All other applications shall meet the requirements of Section 3.3, 3.4, and 3.5 Article III.

3.3 Upon receiving the signed copy of the application, but not before, the Applicant shall have the right to install, maintain and use its Equipment described in the application upon the poles identified therein in accordance with the terms of the application and this Agreement. The Applicant shall not have the right to place, nor shall it place, any Equipment in addition to that initially authorized without first making application and receiving permission to do so, nor shall the Applicant change the position of any Equipment attached to any pole without the Owner's prior written approval.

3.4 The Applicant shall complete the installation of its Equipment upon the poles covered by each approved application within such reasonable time limit as the Owner shall designate on the application for such installation. In the event Applicant should fail to complete the installation within the prescribed time limit, the permission granted by the Owner to place the Equipment upon the poles shall thereupon be revoked and Applicant shall not have the right to place the Equipment upon the poles without first reapplying for and receiving written permission to do so. Upon completion of an attachment project the attaching Party, shall provide written certification to the pole-owner that the project is complete and complies with the NESC.

3.5 If in the sole judgement of the Owner, the accommodation of any of Applicant's Equipment necessitates the rearrangement or addition of any facilities on an existing pole, or the replacement of any existing pole, Owner shall specify on the application the changes necessary to accommodate the Equipment and the estimated cost thereof and return it to Applicant. If Applicant still desire to use the pole and returns the application marked to so indicate, Owner shall make such rearrangements, transfers and replacements of existing facilities, and additions of new facilities, as may be required, and Applicant shall reimburse Owner for the entire expense thereby actually incurred by Owner.

ARTICLE IV
RIGHTS OF OTHER PARTIES

4.1 Nothing herein contained shall be construed as affecting any rights or privileges previously conferred by either Party, by contract or otherwise, to others not parties 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 such existing rights or privileges, or to grant others the right or privilege to use poles owned by the Party.

ARTICLE V
RENTALS

5.1 On or about July 1 of each year, but not later than July 31, TPUD shall make a tabulation from its records of joint use permits of the total number of FALCON and TPUD owned poles jointly occupied, or on which space has been specifically reserved by the other Party, as of the preceding June 30. For the purpose of the tabulation, any pole owned by one Party which is used by the other Party for the purpose of attaching Equipment thereto, either directly or by means of a pole top extension fixture, shall be considered a joint pole and subject to rental fees. There shall be no abatement or reduction in such fees for Equipment in place for less than the full one-year period.

5.2 Within sixty (60) days after the completion of the tabulation referred to in Section 5.1, TPUD shall calculate and invoice FALCON for the rental amount owing specifying on such invoice the rental period covered. The rental amount to be calculated by deducting the number of FALCON owned poles that TPUD contacts from the number of TPUD owned poles that FALCON contacts and multiplying the difference by the rental rate shown in Attachment B, which is attached hereto and incorporated herein by this reference. Payment of the invoiced amount shall be made within thirty (30) days of receipt of the invoice and shall constitute payment in advance for rental for the twelve (12) month period beginning July 1. Past due rental amounts shall bear interest at the lesser of the rate specified in Attachment A hereto or the maximum rate permitted by applicable law.

5.3 Compensation payable by third parties for the joint use of poles shall be collected and retained by the Owner of the poles.

5.4 If a Party attaches Equipment to a pole without obtaining prior authorization from the Owner in accordance with this Agreement, the Owner may assess that Party an unauthorized attachment charge, in the amount specified in Attachment A. Said unauthorized attachment charge shall be payable to the Owner within sixty (60) days after receipt of the invoice for that charge. Such charge will be in addition to back-rent as determined by the pole Owner for the period of attachment to the first day of the fiscal year for which the annual rental fee billing is rendered. The back-rent determination shall be based on the number of years (for this purpose a partial year shall be considered to be one full year) multiplied by the rental rate in effect on the date of discovery of the unauthorized attachment.

ARTICLE VI
PERIODIC ADJUSTMENT OF RENTALS

6.1 On July 1 following the effective date of this Agreement, and on each July 1 thereafter, either Party may request in writing that the rental amount per pole per annum thereafter payable be adjusted. In the event the Parties are unable to agree upon an adjustment of rentals, either Party shall have the right to pursue any and all legal rights and remedies it may have to obtain such adjustment. Attachment B hereto shall be revised from time to time to reflect any adjustments.

ARTICLE VII
PAYMENT OF TAXES

7.1 Each Party shall pay promptly all taxes and assessments lawfully levied on its own property except that any tax, fee, or charge levied on a Party's poles solely because of their use by the other Party shall be paid by the other Party.

ARTICLE VIII
PAYMENT FOR WORK

8.1 Upon the completion of work performed hereunder by either Party, the expense of which is to be borne wholly or in part by the other Party, the Party performing the work shall present to the other Party an itemized statement of the costs incurred and such other Party shall, within sixty (60) days after such statement and invoice are presented, pay to the Party doing the work such other Party's proportion of the cost of said work. Past due payments shall bear interest at the lesser of the rate specified in Attachment A or the maximum rate permitted by applicable law.

ARTICLE IX
DIVISION OF COSTS, POLES

9.1 The cost of erecting new joint poles, or constructing new pole lines, pursuant to this Agreement shall be borne by the Parties as follows:

a. A basic joint pole, or a joint pole smaller than the basic, shall be erected at the sole expense of the pole owner. (The size of the basic pole is as specified in Attachment A hereto.)

b. A pole larger than the basic, the extra height or strength of which is due wholly to the pole Owner's requirements, including requirements as to keeping the pole Owner's wires clear of trees, shall be erected at the sole expense of the pole Owner.

c. In the case of a pole larger than the basic, the extra height or strength of which is due wholly to the requirements of the Party requesting attachment, including requirements as to keeping such Party's wires clear of trees, such Party shall pay to the pole Owner a sum equal to the difference between the cost, in place, of such pole and the cost, in place, of a basic joint pole. The rest of the cost of erecting such pole shall be borne by the pole Owner, except as otherwise provided in Section 9.3.

d. In the case of a pole larger than the basic, the extra height or strength of which is 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), the Party requesting attachment shall pay to the pole Owner a sum equal to one-half the difference between the cost, in place, of such pole and the cost, in place, of a basic joint pole, the rest of the cost of erecting such pole to be borne by the pole Owner.

9.2 Any payments for pole made by the Party requesting attachments shall not entitle such Party to the ownership of any part of said poles.

9.3 Where an existing pole is prematurely replaced (for reasons other than normal or abnormal decay) by a new pole solely for the benefit of the Party requesting attachment, or in order to permit joint use, the cost of the new pole shall be borne by the Parties as specified in Section 9.1b, or 9.1c, and the Party requesting attachment shall also pay the pole Owner the remaining life value of the old pole in place, plus the cost of removal, less the salvage value of such pole. The pole Owner shall remove and may retain or dispose of such pole as sole owner thereof.

9.4 Each Party shall place, maintain, rearrange, transfer, and remove its own attachments at its own expense except as otherwise expressly provided.

9.5 The expense of maintaining joint poles shall be borne by the pole Owner except that the cost of replacing poles shall be borne by the Parties hereto in the manner provided in Sections 9.1 and 9.3

9.6 Where service drops of one Party crossing over lines of the other Party are attached to such other Party's poles, either directly or by means of a pole top extension fixture, the cost shall be borne as follows:

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

b. Where an existing pole is replaced with a taller pole to provide the necessary clearance for the benefit of the Party requesting attachments, such Party shall pay to the pole owner a sum as determined under Section 9.3

9.7 All tree trimming and brush cutting in connection with the initial placement of wires or equipment shall be borne entirely by the Party placing the wires or equipment. Each party shall be responsible for any and all additional tree trimming and brush cutting related to its wires and equipment. However, in areas of the system where FALCON and TPUD have jointly used poles and TPUD performs right-of-way maintenance including tree trimming or brush cutting, TPUD shall bill FALCON for 25% of the costs of such maintenance, when such maintenance is required at the communication level to preserve the integrity of District poles. Payments of the invoiced amount shall be made within sixty (60) days of the receipt of invoice. Said tree trimming costs shall not exceed $5,000 to Falcon annually unless agreed to in writing by Falcon.

9.8 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.

ARTICLE X
MAINTENANCE OF POLES

10.1 The pole Owner shall maintain its jointly used poles in a safe and serviceable condition, and shall, under the provisions of Article IX, replace, reinforce, or repair such of those poles as become defective. The pole Owner 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 one Party is replaced by the other Party because of auto damage or storm damage, the pole Owner shall pay the other Party for the actual costs of such pole replacement.

10.2 Whenever it is necessary to replace, move, reset, or relocate a jointly used pole, the Owner thereof shall, give notice of the work performed. The Party with Equipment attached to the pole shall arrange to transfer such Equipment promptly to the new pole and shall notify the pole Owner when such transferring has been completed. The Party who is the last to transfer to the new pole shall be responsible for removal and disposal of the old pole. Except as specified in Paragraph 10.3, in the event such transfer is not completed within sixty (60) days after the time specified in the notice given by the pole Owner, the other Party shall assume ownership of the original pole for all purposes at the conclusion of such sixty (60) day period, shall indemnify and hold harmless the former Owner of such pole from all obligations, liabilities, damages, loss, expenses, or charges incurred in connection with such pole thereafter, and shall apply to the former pole Owner the salvage value of the pole, if any, upon delivery of a bill of sale. Should the pole Owner perform any work for the other Party, or the other Party perform any work for the pole Owner to facilitate completion of the above work or in cases of emergency, such as transferring equipment, setting or lowering poles, digging holes, hauling poles, etc., the Party for whom work was performed shall pay, upon receipt of an invoice, the actual cost of such work.

10.3 TPUD reserves the right to transfer FALCON Equipment from the replaced pole to the replacement pole in a reasonable manner consistent with industry practices (a) as an accommodation to and upon the request or consent of FALCON, or (b) upon FALCON failure to transfer its Equipment after TPUD has given an additional ten (10) working days' advance notice, and FALCON will reimburse TPUD for all actual costs incurred. Should TPUD give up the right to serve additional notice immediately following the initial sixty (60) day period, FALCON shall assume ownership of the pole subject to the terms of Paragraph 10.2.

10.4 When a jointly used pole carrying underground conduit connections needs to be replaced, the pole Owner shall attempt to set the new pole in the same hole or, a mutually agreed upon location generally adjacent to the previous hole.

10.5 When FALCON performs maintenance to or removes or replaces it's equipment on a TPUD pole, FALCON must treat all field drilled holes with TPUD approved materials and plug any unused holes, such as those resulting from removal of equipment.

ARTICLE XI
ABANDONMENT OF JOINTLY USED POLES

11.1 If the Owner of a jointly used pole desires at any time to abandon the use thereof, it shall give the other Party notice in writing to that effect at least sixty (60) days prior to the date upon which it intends to abandon such pole. In the event that the other Party shall not have removed all of its attachments from such pole by the date specified in the notice, the other Party shall become the owner of the pole, shall indemnify and hold harmless the former Owner of such pole from all obligation, liability, damages, costs, expenses, or charges incurred in connection with such pole thereafter, and upon receipt of an invoice and bill of sale therefor, shall pay to the former pole Owner the value, in place, at that time, of such abandoned pole, less cost of removal, but in no event less than zero even should such value fall below zero. Credit shall be allowed for any payments made by the other Party under the provisions of Article IX.

11.2 The Party with Equipment attached to a pole may, at any time, abandon the use of jointly used pole by giving the pole Owner notice in writing and by removing any and all attachments such Party may have thereon. Such Party shall continue to be subject to rental obligations on the abandoned pole until its Equipment has been removed from the pole and such Party shall not be entitled to any refund or credit related to the annual rental for the use of such pole.

ARTICLE XII
GUYS AND ANCHORS

12.1 A Party requesting attachment of Equipment to a new pole shall be responsible for the installation of guys sufficient in size and strength to support its Equipment on the new pole.

12.2 When, in the opinion of both Parties, existing anchors are adequate in size and strength to support the equipment of both Parties, the other Party may attach its guys thereto at no additional cost. When anchors are not of adequate size and strength, the Party requiring additional anchors shall, at its own expense, place additional anchors or replace existing anchors with anchors adequate in size and strength for the use of both Parties. The ownership of anchors so replaced shall vest immediately in the owner of the pole.

ARTICLE XIII
SPECIFICATIONS

13.1 The Specifications of each Party for the construction, operation, and maintenance of its respective poles and other facilities that are jointly used or involved in joint use shall be in accordance with accepted modern practices and shall be no less stringent than the requirements of the National Electrical Safety Code or the latest supplement or revision thereof and the distribution construction standards of TPUD or the latest supplement or revision thereof; provided that in the event a lawful requirement of any governmental authority or agency having jurisdiction may be more stringent, the latter will govern. Modification of, additions to, or construction practices supplementing wholly or in part the requirements of the National Electrical Safety Code and the distribution construction standards of TPUD may, when accepted by both Parties hereto, likewise govern joint use of poles.

13.2 Attachments by either Party on a pole of the other Party shall be made and maintained in accordance with a reasonable aesthetic criteria mutually agreed to by both parties. Such aesthetic criteria shall apply without being limited to the type and design of the attachment, circuit arrangements, conductor or cable sags, and service drop arrangements within the provisions of Section 13.1.

13.3 Unless otherwise agreed in writing, attachments shall be made in conformance with the TPUD distribution construction standards.

13.4 FALCON (including its employees and contractors) shall not enter the electric utility space for any purpose including making connections to the TPUD neutral. If FALCON requires grounding on an existing pole where grounding conductor does not exist, FALCON shall request TPUD to install grounding at the sole expense of FALCON. The ownership of Grounds shall vest immediately in the owner of the pole.

ARTICLE XIV
EXISTING CONTRACTS

14.1 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) Equipment currently attached to poles in accordance with approvals granted by the Owner under prior agreements 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 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.

ARTICLE XV
BREACH AND REMEDIES

15.1 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 Party until the default is cured; (ii) termination, without further notice, of this Agreement 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 15.2; and (vi) litigation to recover sums due.

15.2 If either Party shall default in the performance of any work that 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 sixty (60) days after receipt of an invoice therefor.

15.3 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, including attorney's fees at trial and on appeal.

ARTICLE XVI
RIGHT TO TERMINATE FURTHER GRANTING OF JOINT USE

16.1 Subject to the provisions of Article XV, this Agreement may be terminated by either Party, so far as concerns further granting of joint use by either Party, upon sixty (60) days' notice to the other Party; provided, however, that notwithstanding such termination, this Agreement shall remain in full force and effect with respect to all poles jointly used under the terms of this Agreement by the Parties at the time of such termination.

ARTICLE XVII
TERMINATION OF AGREEMENT

17.1 The Agreement shall remain in full force and effect unless and until it is terminated by either Party upon three hundred sixty-five (365) days notice to the other Party. If this Agreement is terminated, FALCON shall remove all of its Equipment from TPUD poles and TPUD shall remove all of its Equipment from FALCON poles within two years after termination of this Agreement. 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 either Party remaining upon poles of the other Party until such time as all such Equipment has been removed.

ARTICLE XVIII
OBTAINING NECESSARY CONSENTS FOR ATTACHMENTS

18.1 The Applicant shall be responsible for obtaining from public authorities and private owners of real property and maintaining in effect any and all consents, permits, licenses or grants necessary for the lawful exercise of the permission granted under any approved application. The Owner shall in no way be liable or responsible in the event the Applicant shall at any time be prevented from placing or maintaining its equipment on the Owner's poles because Applicant lacks the necessary consents, permits, licenses or grants.

ARTICLE XIX
LIABILITY AND DAMAGES

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

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

19.3 The indemnifying Party shall have the right 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 with the written consent of the indemnitor.

ARTICLE XX
ASSIGNMENT OF RIGHTS

20.1 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 the corporate re-organization, or any corporation acquiring all or substantially all of its property or to any corporation into which it is merged or consolidated.

ARTICLE XXI
NOTICE

21.1 Unless otherwise specified herein, all notices concerning this Agreement shall be addressed to:

Tillamook People's Utility District at:

Tillamook P.U.D.
Attn: Engineering Dept.
P O Box 433
Tillamook OR 97141

FALCON at:

1344 Hwy 18W
Lincoln City OR
97367

or at such other addresses as may be designated in writing to the other party.

21.2 Unless otherwise provided herein, notices to the addresses specified in Section 21.1 shall be sent by United States mail or by personal delivery.

ARTICLE XXII
CHOICE OF LAW

22.1 In the event of any legal action to enforce any of the terms, conditions, or covenants of this Agreement, the Parties agree that this Agreement shall be interpreted in accordance with the laws of the State of Oregon.

ARTICLE XXIII
WAIVER

23.1 The failure of either Party to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain, at all times, in full force and effect.

ARTICLE XXIV
MISCELLANEOUS

24.1 The provisions of this Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns.

24.2 All obligations of the Parties to indemnify, release or make payments to each other which have accrued prior to the termination of this Agreement shall survive such termination.

ARTICLE XXV
INTERPRETATION

25.1 References to article and sections are references to the relevant portion of this Agreement.

25.2 A reference of business or working days shall refer to days other than a Saturday, Sunday or federal holiday when banks are authorized to be closed.

25.3 The headings are inserted for convenience and shall not affect the construction of this Agreement.

25.4 Attachments A and B are attachd hereto and made a part hereof.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized officers as of the date first herein written.

FALCON	TILLAMOOK PEOPLE'S UTILITY DISTRICT
By: _____	By: _____
Title: REGIONAL MANAGER	Title: General Manager
Date: 7-7-99	Date: 7/12/99

ATTACHMENT A

I. INTEREST RATE

Eighteen (18) percent per annum compounded daily
(Reference Article V, Paragraph 5.2 & Article VIII, Paragraph 8.1).

II. UNAUTHORIZED ATTACHMENT CHARGE

$60.00 PER POLE
(Reference Article V, Paragraph 5.4).

III. BASIC POLE HEIGHT
Forty (40) ft. Class 4, FIR or Equivalent
(Reference Article IX, Paragraph 9.1a).

ATTACHMENT B

COMPUTATION OF ANNUAL POLE ATTACHMENT RENTAL RATE
TILLAMOOK PUD

A. Net Investment Per Bare Pole

(1)	Investment in poles, grounds, anchor and guy support equipment		$5,267,093
(2)	Less depreciation reserve associated with Item (1)		$1,384,192
(3)	Net investment in poles and support equipment		$3,882,901
(4)	Total number of poles	÷22,564	
			$172.08 (PV)

B. Annual Carrying Charge

(1)	Depreciation Expenses	4.3 %
(2)	Administration and General Expenses	7.1 %
(3)	Maintenance Expenses	6.6 %
(4)	Taxes	1.8 %
(5)	Cost of capital	8.1 %
		27.9 % (CC)

C. Use Ratio

(1)	Average Pole Height		36.91'
(2)	Non-useable space on pole, in feet		
	(a) Below Ground	6.00'	
	(b) Ground Clearance	20.00'	
	(d) Safety Clearance	3.33'	
			29.33'
(3)	Usable space on pole, in feet		7.58'
	(a) Space rented by FALCON		1.00'
	(b) Percent of Useable Space		13.19%

D. Annual Pole Attachment Rate

(PV) X (CC) X (PR) = ($172.08)*(27.9%)*(13.19%) $ 6.33

Exhibit 2

COLE, RAYWID & BRAVERMAN, L.L.P.
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DECEMBER 20, 2005

VIA FACSIMILE & FIRST CLASS MAIL

Richard G. Lorenz
Cable Huston Benedict Haagensen & Lloyd, LLP
1001 SW Fifth Ave
Suite 2000
Portland, OR 97204

Re: Charter Communications Connections To Tillamook PUD Poles

Dear Mr. Lorenz:

This letter responds to your letter dated December 12, 2005 to Matt McGinnity of Charter Communications ("Charter"), regarding invoices sent to Charter by Tillamook PUD ("TPUD").

In your letter, you assert that the invoices that TPUD has submitted to Charter "are for work performed by TPUD to correct National Electric Safety Code ("NESC") violations associated with Charter's attachments to TPUD's poles." TPUD's assertions, however, are mistaken in several aspects.

First, TPUD has presented no evidence demonstrating that any alleged NESC violations, even if correctly identified, were "associated with" or the fault of Charter's attachments. The point of Mr. McGinnity's November 7, 2005 letter was to explain that Charter's attachments were fully permitted. Accordingly, under Section 3.5 of the Joint Use Agreement between Charter and Tillamook, if any of Charter's attachments required rearrangement of facilities or a pole change out, that would have been identified by Tillamook on Charter's application at the time of permitting, and attachment would not have taken place until the required changes were made. In other words, Charter's attachments were in compliance with NESC when installed. If they were not, then Tillamook would not have permitted the installation until necessary changes/make ready had been performed. Since the attachments were in compliance when made, then to the extent there may now be an NESC compliance problem related to the pole, the problem (if any) was caused by work performed by some other party. For example, subsequent attachments by a telephone company or even TPUD itself could have created clearance issues.

However, those new clearance issues would not have been caused by Charter, and Charter could not be held responsible for them.

In addition, without going into the details of every single allegation made by TPUD, we have seen situations were an attachment was in compliance with the relevant NESC requirements at the time it was made, but subsequent NESC changes may appear to place the attachment in violation. However, the NESC grandfathers most such situations, and thus no actual noncompliance exists.

Because Charter's attachments were not the cause of any alleged NESC problem, the problem must be attributable to TPUD or some other attaching party. Charter, therefore is not liable for any cost of replacing the poles.

Charter also does not agree with your assertion that "by maintaining attachments that are out of compliance with the NESC, Charter has failed to meet an express obligation [Section 13.1] of the Joint Use Agreement." Section 13.1 of the agreement does not state that Charter must maintain its attachments in compliance with the NESC. Rather, it states that the "Specifications" for construction, operation, and maintenance of each Party's "respective poles and other facilities that are jointly used or involved in joint use" shall be "in accordance with accepted modern practices and shall be no less stringent that the requirements of the [NESC]. . . ." The language of Section 13.1 is focused on "Specifications," not attachments, and its additional language further indicates that the "Specifications" to which it refers are for the joint use poles, not line attachments. The point is further emphasized by Section 13.2 which, in contrast to Section 13.1, specifically addresses "***Attachments*** by either party. . . ." (Emphasis added). Section 13.1 does not make failure to maintain attachments in compliance with the NESC into a breach of the agreement.

Second, even if Charter were the cause of the new pole installations, it is not required to pay the full price, as sought by TPUD in its invoices. As Mr. McGinnity's letter explained, the invoices sent to Charter are for installation of new/larger poles. Article IX of the Joint Use Agreement between Charter and TPUD addresses the division of costs in the event that a new joint pole must be erected. Under Section 9.1(c), even if we were to assume that Charter were the sole cause of the need for a new pole, Charter would not required to pay the full cost of the new pole, as TPUD's invoices appear to seek. Rather, Section 9.1(c) provides that when

> the extra height or strength of [pole larger than basic] is due wholly to the requirements of the Party requesting attachment . . . such Party shall pay to the pole Owner *a sum equal to the difference between the cost, in place, of such pole and the cost, in place, of a basic joint pole.* The rest of the cost of erecting such pole shall be borne by the pole Owner, except as otherwise provided in Section 9.3. (Emphasis added).

Accordingly, even if Charter were wholly the cause of the pole change, Charter is only liable for a portion of the cost. While Charter does not concede that it is liable, at a minimum, ever if

Charter were liable, TPUD's invoices to Charter would be substantially in excess of the appropriate charge.

Finally, I note that contrary to your assertion, Charter has been in constant communication with TPUD regarding the alleged NESC violations. More importantly, in an e-mail from Mark Beaubien of Charter to Terry Blanc of TPUD on June 17, 2005, Charter explicitly told TPUD:

> Charter will not be able to give you its intention by the date you requested. ***We are not authorizing any work to be done on our behalf. If you proceed with pole replacements, please do so at your cost.*** You will be informed of our intentions on our before July 15th 2005. (Emphasis added).

Thus, TPUD was explicitly informed that Charter did not agree that it was liable for the costs of the changes and that it was not authorizing TPUD to do any work on its behalf.

As the foregoing demonstrates, TPUD's claims for payment to install new poles are misplaced, as there has been no demonstration that Charter was the cause of any alleged NESC violation. Moreover, even if Charter were the cause of the need for a new pole, the cost of installing that pole does not fall wholly on Charter. Under Section 9.1(c), Charter would only be liable for a small portion of the cost.

Charter is happy to discuss these issues with TPUD, but it will not pay the invoices as sent, and certainly disagrees that TPUD could lawfully impose any of the various remedies you assert in your letter. Accordingly, please contact me in order to discuss resolution of this matter.

Sincerely,

T. Scott Thompson

cc: Matt McGinnity

Exhibit 3

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JUNE 27, 2006

VIA E-MAIL AND FIRST CLASS MAIL

Richard G. Lorenz
Cable Huston Benedict Haagensen & Lloyd, LLP
1001 SW Fifth Ave
Suite 2000
Portland, OR 97204

Re: Charter Communications Attachments to Tillamook PUD Poles

Dear Mr. Lorenz:

This letter responds to your letter dated March 20, 2006.

While Charter maintains that Tillamook People's Utility District ("TPUD") has not established that Charter caused alleged NESC violations on the subject poles, I will not re-hash the merits of your assertions regarding TPUD's claim. My letter dated December 20, 2005 explained clearly that Charter's attachments were in compliance with the NESC when originally installed, and how if they had not been, TPUD would have identified that non-compliance at the time pursuant to the Joint Use Agreement's permitting and inspection processes. Nothing in your letter changes or rebuts our previous explanation. For example, you assert that because Charter *identified* NESC problems on poles to which it was attached in a 2001 and 2002 inspection that Charter must be the *cause* of the NESC problems. Your conclusion simply does not follow. Under your logic, if TPUD had identified the NESC problems, then TPUD must have caused all of them.

Setting aside the "causation" issue as something on which Charter and TPUD agree to disagree, the key issue here is TPUD's attempt to charge Charter the entire cost for pole change outs. Contrary to your assertion, and as I explained in my prior letter, even if Charter were the cause of NESC violations on a particular pole and that as a result a new, larger pole is required to remedy the situation, under the Joint Use Agreement, Charter is not liable for the entire cost of pole change outs required to correct the problem.

First, you have based your assertions on a misstatement of the Joint Use Agreement. You state that Section 9.1 of the Joint Use Agreement "governs the allocation of expenses for the installation of a new pole or pole line where one does not currently exist." You further state that

"[t]his is not a case in which TPUD installed *new* poles or pole lines where one did not previously exist." (Emphasis in original). At no point in Section 9.1 of the Joint Use Agreement does the provision state or even suggest that it applies only to new poles or pole lines "where such a line does not exist." Indeed, the specific language of the provisions clearly contemplates that the section would apply in the case where an existing pole is being replaced by a new pole. For example, Section 9.1(c) and Section 9.1(d) both allocate cost by referring to the "cost, in place," which clearly suggests the pole is in existence.

Second, you ignore Section 9.3 of the Joint Use Agreement, which clearly addresses the situation where an "existing pole is prematurely replaced . . . by a new pole solely for the benefit of the Party requesting attachment. . . ." Section 9.3 in turn refers to Section 9.1, stating that the costs of the new pole in such a situation "shall be borne by the Parties as specified in Section 9.1b, or 9.1c, and the Party requesting attachment shall also pay the pole Owner the remaining life value of the old pole in place, plus the cost of removal, less the salvage value of such pole." Accordingly, the cost allocation scheme of Section 9.1 is clearly applicable in this case. As a result, Charter is not liable for the full cost of the pole change out.

Your assertion that Charter has essentially waived Section 9.1 by in the past paying the full cost of pole change outs is inconsistent with your own letter, where you point out that Section 23.1 of the Joint Use Agreement provides that "[t]he failure of either Party to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain, at all times, in full force and effect." Charter is entitled to the cost allocations set forth in Article 9 of the Joint Use Agreement.

As I stated in my prior letter, Charter is willing to discuss these issues with TPUD, including a discussion of a mutually agreeable settlement. We would hope that TPUD will agree to such discussions.

In addition, at this point, these issues are relevant to Charter's review and response to the 2004 and 2005 inspections performed by TPUD. Also, the above analysis applies to the replacement of the pole located at Carmel & Treasure Cove, Manzanita (pole # 1-03-10-29-4300), which Charter and TPUD are currently discussing. Under Sections 9.3 and 9.1 of the Joint Use Agreement, Charter is not liable for the entire cost of such a pole change out.

In order to avoid future conflict, Charter suggests that the Parties reach a mutually acceptable understanding of responsibility based on the Joint Use Agreement.

Please contact me to further advance the resolution of this situation.

Sincerely,

T. Scott Thompson

cc: Matthew McGinnity
Gary Lee

Exhibit 4

LAWYERS

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August 15, 2008

VIA E-MAIL AND U.S. MAIL

Mr. Thomas B. Magee
Keller and Heckman LLP
1001 G Street, N.W.
Washington, D.C. 20001

Re: Tillamook Public Utility District ("TPUD")-Notices of Violations: 2005-2006 Revised Notices, dated 6/13/08; 2007 Revised Notice, dated 6/5/08 and 2008 Notice, dated 7/18/08

Dear Tom:

This letter responds to your July 28, 2008 letter, seeking an amicable resolution to the outstanding inspection and correction issues between TPUD and Charter Communications ("Charter"). According to your letter, TPUD will consider any reasonable proposals that Charter may have to help the parties reach that goal. Charter believes it has already offered several reasonable proposals that qualify as Plans of Correction. Every other pole owner with whom Charter works has accepted similar proposals. The large number of alleged violations identified in TPUD's Notices require adequate time to engineer and document, *i.e.*, more than 60 days. Therefore, set forth below is another, eminently reasonable proposal that Charter hopes TPUD will accept to resolve (as far as Charter is capable without the assistance of TPUD and Embarq) all issues in the 2005-2006 Revised Notices, each dated June 13, 2008, the 2007 Revised Notice, dated June 5, 2008 and the 2008 Notice, dated July 18, 2008. Charter would like to schedule a call between the parties, including counsel, for either the week of September 1st or September 8th to discuss its proposal in detail.

Charter's Efforts and Concerns

As a preliminary matter, Charter takes issue with the accusatory tone of your letter. As you may or may not know, Charter has consistently maintained that TPUD never established that the violations identified in TPUD's notices were caused by Charter. (*See, e.g.,* Letter to Richard G. Lorenz from T. Scott Thompson, dated December 20, 2005; Letter to Richard G. Lorenz from T. Scott Thompson, dated June 27, 2006, hereinafter "Thompson Letters"). Nevertheless, since

Charter began receiving notices in 2001, it has tried to be a good pole tenant and corrected issues TPUD identified as Charter's, even though Charter disagreed on the causation issue. Over the years, Charter also consistently communicated with TPUD to move the process along. Indeed, Charter has spent a great deal of time and over $1 million dollars to date engineering and correcting hundreds of violations on TPUD's poles that Charter may or may not have caused. It is also important to point out that TPUD and Embarq have many of their own code violations and that last winter's storm wreaked havoc on TPUD's plant as well. Charter also paid TPUD approximately $250,000 to settle all bootlegs made by Falcon (Charter's predecessor-in-interest).

As you also may or may not know, although TPUD recently sent Charter *Revised* Notices for the years 2005 and 2006, Charter had already repaired the vast majority of violations on the *original* 2005 and 2006 notices, and also disputed hundreds of alleged violations on each original notice. Charter has notified TPUD that in order for Charter to repair the remaining 149 and 146 violations on the original 2005 and 2006 notices, respectively, "TPUD must perform work." It appears, however, that TPUD has not performed any of that necessary work, even though OAR 860-028-115(5) requires a pole owner to respond to a pole occupant's request for assistance in making a correction within 45 days, and instead merely identified many of the same violations on the 2005 and 2006 Revised Notices that Charter has already engineered, repaired, disputed and/or identified as needing TPUD to perform work. Because TPUD failed to indicate on its revised notices which, if any, of the violations on the 2005 and 2006 Revised Notices are new, Charter is left with the task of sorting through the violations to make that determination.

In addition, TPUD's insistence on performing its inspections using the latest edition of the National Electrical Safety Code ("NESC") on plant TPUD knows Falcon constructed decades ago, has forced Charter to spend time and money identifying grandfathered situations that could easily be determined during TPUD's initial inspection. For instance, Charter has already identified approximately 500 grandfathered bond issues on the 2007 Revised Notice and 2008 Notice. If TPUD is interested in a speedy resolution of these issues, it may wish to rethink its approach during future inspections. Similarly, setting aside any differences the parties may have on the specific information required for each violation notice, because TPUD refuses to specify which NESC rule it believes has been violated for each violation, Charter is forced to make its own determination. Making such determinations takes a great deal of time, particularly when over one-thousand alleged violations are contained on a single Notice. Moreover, without specific information indicating which NESC rule has allegedly been violated, it is difficult to dispute violations in accordance with the OPUC rules, which require a detailed response.

TPUD has also been dilatory with its responses to Charter's proposed Plans of Corrections. These delays have interfered with Charter's ability to continue its response and repair work. For example, as you know, Charter's Gary Lee met with TPUD personnel, including Terry Blanc, on March 25 to discuss the original 2007 Notice. According to Gary Lee, TPUD appeared to be receptive to Charter's Plan during the meeting. To that end, Gary memorialized Charter's "Plan of Correction" in a March 31st letter to Terry. Despite the fact that TPUD seemed to agree with Charter's Plan of Correction during the March 25th meeting and knew that Gary Lee was operating with that understanding, TPUD without any prior warning rejected Charter's Plan *10*

weeks later, on June 5th. Even after Gary proposed an alternative Plan of Correction on June 30th, pursuant to suggestions from Terry, stating that Charter was "prepared with the necessary resources and funding to begin immediately," Charter again heard nothing from TPUD until almost one month later when it received your unexpected July 28th letter demanding yet another Plan of Correction by August 4th.

For these reasons, Charter does not believe it will be able to satisfy TPUD's unreasonable demand to provide what TPUD apparently would consider "valid" Plans of Corrections for the 2005-2006 Revised Notices, the 2007 Revised Notice and the 2008 Notice by August 12, 2008 (which has already passed), August 4, 2008 (which has also already passed) and September 16, 2008, respectively. Charter is nevertheless prepared to commit to the following Plan:

- Within 90 days from the date TPUD accepts Charter's Plan, Charter will engineer all the poles (that have not previously been engineered) on every notice;

- By 12/31/08, Charter will repair all violations it is capable of repairing (without assistance from TPUD and/or Embarq) on the 2007 Notice (Charter was unaware that it was going to receive Revised Notices for 2005 and 2006 and a new Notice for 2008 and has only budgeted for the 2007 work this year. In any case, Charter believes it has completed all possible work on the 2005 and 2006 Notices, without assistance from TPUD and that the bulk of Charter work that needs to be done is on the 2007 Notice.) As a further good faith gesture, Charter will revisit the balance of poles where the original violation was re-issued, (assuming that TPUD reissued the violation because TPUD believes it is possible for Charter to effect the repair), as well as the 17 poles listed as "MQAC" (during our conference call, your client can clarify the meaning of "MQAC");

- Within 12 months from the date TPUD accepts Charter's Plan, Charter will repair all violations it is capable of repairing (without assistance from TPUD and/or Embarq) on the 2005 and 2006 Revised Notices, and 2008 Notice; and

- Charter will provide regular progress reports to TPUD.

As a final matter, it appears that TPUD's refusal to perform the work Charter identified pursuant to the 2005 and 2006 original Notices as "TPUD work required (including taller pole requests)," stems from a long-standing dispute over which party is responsible to pay for certain work in accordance with the parties' Joint Use Agreement. For example, Charter has consistently maintained (since at least 2005) that when Charter is at fault (or accused to be at fault) for a specific violation that can only be corrected with a pole change-out, Charter would only be liable for a portion of the pole cost. (*See* Thompson Letters, citing Joint Use Agreement, Article IX, Sections 9.1 and 9.3.) While Charter has been prepared to discuss and resolve this issue for several years, TPUD has not made a good faith effort to cooperate with Charter in this regard. Indeed, just this past February 12, 2008, I wrote to TPUD's outside counsel, Richard Lorenz, to request a teleconference to "discuss this issue, and any other unresolved issues, at [TPUD's]

earliest convenience." (Letter to Richard Lorenz from Jill Valenstein, dated February 12, 2008.) Neither Mr. Lorenz nor anyone else at TPUD ever responded to my letter. Charter hereby reiterates its request to try and resolve this long-standing issue during the upcoming call.

Please let me know as soon as possible if you and your client are available for a call during either the week of September 1st or September 8th. Once you provide some possible dates, I will get back to you with Charter's availability. In the meantime, we are also in the process of preparing a response to your July 31, 2008 letter regarding TPUD's notice of pole attachment rate change/loss of rental rate reduction.

Very truly yours,

Davis Wright Tremaine LLP

Jill Valenstein

cc: Frank Antonovich (e-mail only)
Matt McGinnity (e-mail only)
Suzanne Curtis, Esq. (e-mail only)
Gary Lee (e-mail only)
Brad Shely (e-mail only)
Terry Blanc (U.S. Mail)
J.R. Gonzales (U.S. Mail)
Gary Putnam (U.S. Mail)
John Wallace (U.S. Mail)

Exhibit 5

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February 12, 2008

***Via* Federal Express**

Richard G. Lorenz
Cable Huston Benedict Haagensen & Lloyd, LLP
1001 SW Fifth Ave.
Suite 2000
Portland, OR 97204

Re: Tillamook PUD ("TPUD") Pole Attachment Rates and Fees

Dear Mr. Lorenzo:

Thank you for your January 17, 2008 letter, which, in turn, responded to my November 12, 2007 letter, regarding TPUD's rental rates and fees. I am writing to (1) correct TPUD's misconceptions regarding the rental rate calculations; application processing fees and the parties' dispute over violations; (2) clarify the parties' understanding with regard to proper post-construction procedures and charges and (3) attempt to bring closure to a long-standing issue between the parties over make-ready cost allocation.

As a preliminary matter, I wanted to update you on Charter's progress on the 90 or so outstanding transfer tickets. Charter has hired a contractor and has begun the transfers. Charter expects the work to be completed by month's end, except perhaps for a set of poles that is located in a partially flooded area. The transfers on those poles may not be possible to perform until Spring.

Rental Rate and Application Processing Fees

Although Charter appreciates TPUD's agreement to accept Charter's payment of $5.67 per pole for the 2007-2008 rental period (which I understand was paid last November), it appears that TPUD does not fully understand how I arrived at that rate, despite the fully allocated (FCC) rate calculations attached to my November 12 letter. Specifically, I arrived at that rate using the data your provided to me in your October 1, 2007 (*i.e.*, the data one uses to calculate the fully allocated (FCC) rental rate). I did not rely on the computations set forth in Attachment B to the July 16, 2007 to Gary Lee, pursuant to which TPUD arrived at its $6.04 rate. Indeed, the

"computations" on Attachment B lacked the actual pole cost and carrying charge calculations and merely presented final numbers. That is why I requested TPUD's raw "FERC" data, as reported in TPUD's Annual Financial Report.

You are correct that my final result was lower due to TPUD's failure to use the proper usable space presumptions (without a proper rebuttal). But, if you had reviewed my calculations, you would have noticed that my FCC fully allocated calculations actually yielded a higher pole cost ($188 in the TPUD "computation" *v.* $197.31 in the FCC calculation) and carrying charges (25.48% in the TPUD "computation" *v.* 30.65% in the FCC calculations) than TPUD's July computation. If I had merely used TPUD's July computation, along with the proper usable space presumptions, the non-compliant rate would have been only $4.49 (*i.e.*, $188 x 25.48 x 9.37% = $4.49). Instead, I used the data you provided to me on October 12, as reported in TPUD's Annual Financial report, and calculated a *fully allocated* $5.67 non-compliant rate (*i.e.*, $197.31 x 30.65% x 9.37% = $5.67), which Charter paid.

Therefore, because Charter has already paid the fully allocated rental rate for 2007-2008 (and has the right to demand a fully allocated rate so it can verify TPUD's annual rent), contrary to TPUD's erroneous claim, please instruct your client to refrain from sending any further "permit processing" fees.[1]

Charter is currently in receipt of 22 "permit processing" charges totaling $105.55 for the month of December. It is my understanding that except for one fee charged to "process" a permit for an unauthorized attachment (NJUNS Number PT559656), none of these fees even relate to a request for a permit. Rather, some of the purported "permit processing" fees are pursuant to NJUNS tickets issued by Charter informing TPUD that Charter is no longer attached to a particular pole. Other of these fees relate to TPUD transfer requests through NJUNS. Even if permit application processing fees were allowed (which they are not), TPUD appears to be charging a "permit processing" fee each time it sends or receives an NJUNS ticket—whether it relates to a permit request or not. All that said, Charter has decided to pay these charges, as a good faith gesture and because the total is small, with the understanding that Charter will pay no more processing fees in the future.

---

[1] Please also be advised that the maintenance expense account that factors into the FCC fully allocated calculation (FERC Account 593, of which I used the entire amount in my calculation) has nothing to do with permit processing. Rather, the salaries, pensions, office supplies, etc., of the TPUD employees responsible for processing permits are actually recovered in TPUD's administrative and general expenses accounts. *See* Tillamook People's Utility District Annual Financial Report, Years Ended December 31, 2006 and 2005, Schedule 4, at p. 27 (setting forth the "Total administrative and general expense" for year end 2006 as $2,293,334). This figure representing TPUD's total administrative and general expense figure of $2,293,334 is the same figure set forth in your October 1, 2007 letter and is what I used in my rate calculation.

Post Construction Inspection Fees

Similarly, Charter agreed that TPUD may charge directly for post construction inspections (even though post-construction inspections are not permitted under the parties' pole attachment agreement and TPUD has never before performed them) on new or modified attachments involving construction. Nevertheless, what TPUD is actually doing, is calling certain inspections that have nothing to do with new or modified construction "post construction inspections" so it can charge for them. This is not allowed under Oregon law. Specifically, Charter is in receipt of 13 so-called "post-construction inspection" charges totaling $216.06 for the month of December. There is only one legitimate post-construction inspection fee charged on the invoice (NJUNS Number PA53633). The remainder relate to NJUNS tickets issued by Charter informing TPUD that Charter is no longer attached to a particular pole. A "post construction inspection" means work performed to verify and ensure the *construction* complies with the permit, governing agreement, and Commission safety rules." OAR 860-028-0020(23). If TPUD wants to inspect poles where Charter has removed an attachment, that is TPUD's choice. But, TPUD is not at liberty to pass that cost directly to Charter. It must recover such costs through the annual rent. *Rulemaking to Amend and Adopt Rules in OAR 860, Division 024 and 028, Regarding Pole Attachment Use and Safety, AR 506*, Order, p.14 (OPUC Apr. 10, 2007) ("[O]nly post-construction inspections and special inspections requested by pole occupants may be charged separately; all other inspection charges, including safety inspections made under Division 024 rules, should be calculated in the rental rate.").

Moreover, TPUD may only charge directly for post-construction inspections performed on new construction within 90 days of Charter's notice that construction is complete. Subsequent inspections occurring after that 90 day period are considered "periodic inspections," whose cost must be recovered in the annual rent. *See, e.g.*, OAR 860-028-0150(5)(a).

Charter will pay these December invoices as a good faith gesture. Going forward, however, Charter will only pay for post-construction fees as permitted under the Commission's rules.

The Parties' Dispute Over Violations

You are correct that a subset of the parties' dispute at the OJUA involves TPUD's unreasonable attempt to inspect all of Charter's existing plant—the vast majority of which was constructed decades ago, as TPUD is fully aware—under the 2007 edition of the NESC. It is my understanding, however, that the crux of the dispute is that TPUD improperly notified Charter of its purported violations. Indeed, just as TPUD failed to demonstrate that Charter was not entitled to a rental rate reduction in accordance with OAR 860-028-0230, TPUD also neglected to include in its violation notices "the provision of the rule each attachment allegedly violates [and] an explanation of how the attachment violates the rule," as required by OAR 860-028-0190. Instead TPUD merely issued notices referencing "deviations between equipment" and expected Charter to guess at each violation. Consequently, as I think you will agree, TPUD's failure to issue complete violation notices is a clear violation of the rules.

Cost Allocation For Pole Change-Outs

As a final matter, my client has asked me to raise the parties' long-unresolved dispute involving cost allocations for pole replacements and power facility rearrangement work, with respect to the compliance project. My client would like to have a teleconference, including you and me, to discuss this issue, and any other unresolved issues, at your client's earliest convenience.

Please let me know when Tillamook might be amenable to such a call.

Very truly yours,

Davis Wright Tremaine LLP

Jill Valenstein

cc: Matt McGinnity
Suzanne Curtis

Exhibit 6

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October 1, 2008

VIA E-MAIL AND FIRST CLASS MAIL

Mr. Thomas B. Magee
Keller and Heckman LLP
1001 G Street, N.W.
Washington, D.C. 20001

Re: Tillamook Public Utility District ("TPUD") and Charter Communications ("Charter") Pole Attachment Issues

Dear Tom:

I am writing in response to your September 19, 2008 letter, rejecting Charter's September 11, 2008 proposal, which Charter believes was eminently reasonable, considering the large amount of inspection data (much of it faulty and inscrutable) TPUD has transmitted to Charter over the last several years.

In an effort to avoid what Charter believes would be an unreasonable assessment of sanctions, however, Charter is prepared to commit to the following:

Revised Charter Proposal

- Charter will visit and effect all repairs it is capable of without assistance from TPUD, or any other pole occupant, on all the poles contained in the Notices it has received to date (*i.e.*, all 3,328 alleged violations on the 2005-2007 Revised Notices and the 2008 Notice), within the 180 day timeframe provided in the OARs. The repairs that Charter is unable to effect without assistance are: (a) repairs that require Charter to relocate it facilities underground and obtain city and/or county permits; (b) repairs that require the rearrangement of TPUD or other pole occupant facilities and (c) repairs that require pole change outs.

As Charter has emphasized repeatedly, this first bullet point will take care of more than 90% of the existing issues. As we have also previously stated, although TPUD recently sent Charter Revised Notices for 2005 and 2006, Charter has already repaired the vast majority of violations on the original 2005 and 2006 Notices. Charter has notified TPUD that in order to repair the remaining 149 and 146 violations on the original 2005 and 2006 Notices, respectively, "TPUD must perform work." None of that work has been performed, however, despite TPUD's obligation to "respond to a pole occupant's request for assistance in making a correction within 45 days," under *mandatory* OAR 860-028-0115(5).

- Charter will also pay all of TPUD's reasonable and necessary rearrangement costs *except* where the necessary rearrangements clearly were not the result of a violation caused by Charter. To that end, Charter requests once again that TPUD provide an estimate of TPUD's average rearrangement costs associated with the Revised 2005 Notice to allow Charter to budget for these costs. We have attached a spreadsheet for TPUD's convenience (the same spreadsheet Charter originally provided to TPUD in December 2007) that indicates 55 locations where TPUD "must perform work," without a pole change-out. Please have TPUD provide Charter an estimate for the work contained on the spreadsheet as soon as possible. As we noted previously, Charter believes it can project the 2005 costs to the 2006-2008 Notices.

Please be advised that Charter is agreeing to repair all the violations in the Notices within the 180 day timeframes in a good faith effort to resolve these issues once and for all, even though the error rate associated with TPUD's inspection data is high. For example, Charter has determined that the error rate in TPUD's 2007 data (for which all fielding is complete) is 17%. Of the 653 alleged violations contained on the 2008 Notice that Charter has inspected to date, the error rate is over 20%. These error rates do not even include the hundreds of grandfathered locations, where violations do not exist because the facilities were in compliance with the National Electrical Safety Code when installed. As a result, Charter would be well within its rights under the OARs to reject this data wholesale, due to TPUD's failure to "ensure the accuracy of inspection data prior to transmitting the information" Charter, in accordance with *mandatory* rule OAR 860-028-0115(6).

With regard to the allocation of costs for pole change-outs, Charter has stated its position. Article IX clearly governs any premature pole change-outs. Charter does not agree that any other section of the Agreement applies or that anything in the pole statute or OARs would supersede the parties' Agreement in this regard. If TPUD is dissatisfied with the terms of its own pole attachment agreement, the remedy is not to ignore its terms, but to terminate it and negotiate a new agreement. More importantly, Charter does not believe it is appropriate for TPUD to refuse to perform critical correction work over a contract dispute or threaten sanctions to gain leverage in such a dispute.

We look forward to receiving TPUD's cost estimates for the rearrangement work. Please contact me if you have any questions.

Very truly yours,

Davis Wright Tremaine LLP

Jill Valenstein

Attachments (1)

cc: Matt McGinnity (E-mail only)
Suzanne Curtis, Esq. (E-mail only)
Gary Lee (E-mail only)
Brad Shely (E-mail only)

Gig #	Charter map #	Item	Pole #	ADDRESS	DEV_CODE_D	EQUIP1_DES	EQUIP2_DES	NOTES	Charter is complete	Charter drop work	Charter Mainline work	Embarq must perform work	TPUD must perform work
10	EB-52	19	2 01 09 31 1710	1675 TILLAMOOK RIVER RD,	Mid-span/Vertical clearanc	COMM drop	PWR secondary	PWR NEEDS TO TAKE UP POLE TO POLE SEC SERV	1				1
14	EB-50	11	2 01 10 25 2100	590 WYSS RD, CNTY	Mid-span/Vertical clearanc	COMM main line	PWR neutral	TPUD NEEDS TO TAKE SAG OUT OF NEUTRAL	1				1
18	DZ-41	11	2 01 10 30 1502	1220 BAY OCEAN RD, CNTY	Mid-span/Vertical clearanc	COMM main line	PWR secondary	PWR NEEDS TO RAISE SEC SERV	1				1
21	DZ-41	9	2 01 10 30 1504	1245 PACIFIC AVE, CNTY	Mid-span/Vertical clearanc	COMM main line	PWR secondary	PWR NEEDS TO RAISE SEC SERV	1				1
29	DY-41	35	2 01 10 30 1610	1455 TILLAMOOK AVE, CNTY	Pole/Vertical clearance	COMM main line	PWR Drip-loop	PWR TO ADDRESS SERV LOOPS	1				1
31	DZ-41	23	2 01 10 30 1613	1345 TILLAMOOK AVE, CNTY	Mid-span/Vertical clearanc	COMM main line	PWR secondary	PWR NEEDS TO RAISE SEC SERV	1				1
203	EB-51	11	2 01 10 36 6800	1455 TONE RD, CNTY	Mid-span/Vertical clearanc	COMM main line	PWR neutral	PWR NEEDS TO TIGHTEN POLE TO POLE NEUTRAL WIRE	1				1
207	EC-52	12	2 01 10 36 8300	1905 MATEJECK RD, CNTY	Pole/Vertical clearance	COMM drop	PWR Drip-loop	PWR NEEDS TO RAISE WEATHER HEAD ON METER POLE	1				1
212	DX-41	9	2 01 11 24 8302	2270 CAPE MEARES LP, CNTY	Pole/Vertical clearance	COMM main line	Riser	PWR NEEDS TO EXTEND CONDUIT ON RISER CATV TO LOWER LATER			1		1
234			2 01 11 25 8720	Portland Ave	Mid-span/Vertical clearanc	COMM main line	PWR service drop	PWR NEEDS TO RAISE POLE TO POLE SEC SERV	1				1
235			2 01 11 25 8720	Portland Ave	Mid-span/Vertical clearanc	COMM main line	Driveable surface	PWR NEEDS TO RAISE POLE TO POLE SEC SERV. RAISE ML AFTER PWR RAISES	1				1
236			2 01 11 25 8721	Portland Ave	Mid-span/Vertical clearanc	COMM main line	PWR secondary	PWR NEEDS TO RAISE POLE TO POLE SEC SERV	1				1
244			2 01 11 25 8806	1900 MAXWELL MOUNTAIN RD,	Pole/Vertical clearance	COMM main line	PWR secondary	PWR NEEDS TO ADDRESS LOOPS	1				1
262	EH-52	6	2 02 09 07 1500	2200 SUTTON CREEK RD, CNTY	Mid-span/Vertical clearanc	COMM main line	PWR neutral	PWR NEEDS TO TIGHTEN POLE TO POLE NEUTRAL WIRE	1				1
264	EH-52	4	2 02 09 07 1600	2365 SUTTON CREEK RD, CNTY	Pole/Vertical clearance	COMM main line	Riser	RAISE WEATHER HEAD ON PS	1				1
280	EI-53	3	2 02 09 07 6340	6295 TILLAMOOK RIVER RD,	Pole/Vertical clearance	COMM messenger	PWR secondary	PWR NEEDS TO REMOVE UNUSED SEC SEV LINE	1				1
284	EI-53	34	2 02 09 07 7100	6605 BEWLEY CREEK RD, CNTY	Pole/Vertical clearance	COMM main line	PWR Drip-loop	PWR TO TAKE SAG OUT OF NEUTRAL	1				1
293	EI-54	3	2 02 09 08 2101	6730 SOUTH PRAIRIE RD, CNTY	Mid-span/Vertical clearanc	COMM main line	PWR neutral	PWR NEEDS TO TIGHTEN POLE TO POLE NEUTRAL WIRE	1				1
307	EL-56	1	2 02 09 16 5301	8105 SOUTH PRAIRIE RD, CNTY	Pole/Vertical clearance	COMM main line	PWR secondary	METER WEATHER HEAD NEEDS TO BE RAISED, ADDRESS LOOPS, EXPOSED SEC SERV TRI -PLEX	1				1

Gig #	Charter map #	Item	Pole #	ADDRESS	DEV_CODE_D	EQUIP1_DES	EQUIP2_DES	NOTES	Charter is complete	Charter drop work	Charter Mainline work	Embarq must perform work	TPUD must perform work
310	EJ-53	8	2 02 09 17 1700	7205 BEWLEY CREEK RD, CNTY	Pole/Vertical clearance	COMM main line	PWR Drip-loop	CANNOT LOWER .TPUD WORK ADDRESS LOOPS FOR 40" VIO	1				1
320	EJ-55	7	2 02 09 17 6702	7290 SOUTH PRAIRIE RD, CNTY	Mid-span/Vertical clearanc	COMM main line	PWR secondary	PWR NEEDS TO RAISE POLE TO POLE SEC SERV	1				1
358	EJ-53	15	2 02 09 18 8600	7595 BEWLEY CREEK RD, CNTY	Pole/Vertical clearance	COMM main line	PWR service drop	EXTEND WEATHER HEAD ON PS 40" VIO	1				1
507	EF-45	8	2 02 10 04 3201	2500 WHISKEY CREEK RD, CNTY	Mid-span/Vertical clearanc	COMM main line	Driveable surface	PWR TO EXTEND WEATHERHEAD SO CATV CAN RAISE FOR DRWY CLR	1				1
582	ED-43	33A	2 02 10 05 4718	4725 ALDER COVE RD, CNTY	Mid-span/Vertical clearanc	COMM main line	PWR secondary	PWR NEEDS TO RAISE SEC SERV	1				1
622	EF-44	66	2 02 10 05 6314	2210 MARTIN AVE, CNTY	Mid-span/Vertical clearanc	COMM main line	PWR secondary	CANNOT LWR ML TPUD NEEDS TO RAISE SEC SERV	1				1
623	EF-44	67	2 02 10 05 6316	2240 MARTIN AVE, CNTY	Mid-span/Horizontal cleara	COMM main line	Pole	PWR NEEDS TO RAISE SEC SERV ON POLE	1				1
624	EF-44	67	2 02 10 05 6316	2240 MARTIN AVE, CNTY	Mid-span/Vertical clearanc	COMM drop	PWR secondary	PWR NEEDS TO RAISE SEC SERV ON POLE	1				1
625	EF-44	67	2 02 10 05 6316	2240 MARTIN AVE, CNTY	Mid-span/Vertical clearanc	COMM main line	PWR secondary	PWR NEEDS TO RAISE SEC SERV ON POLE	1				1
626	EF-44	67	2 02 10 05 6316	2240 MARTIN AVE, CNTY	Mid-span/Vertical clearanc	COMM drop	PWR secondary	PWR NEEDS TO RAISE SEC SERV ON POLE	1				1
665	EG-44	9	2 02 10 08 5800	3125 NETARTS BAY RD, CNTY	Mid-span/Vertical clearanc	COMM main line	PWR neutral	PWR TO TAKE NEUTRAL WIRE FOR MS CLR	1				1
728	EL-51	2	2 02 10 24 6802	9100 BEWLEY CREEK RD, CNTY	Mid-span/Vertical clearanc	COMM main line	PWR neutral	PWR TO TIGHTEN LOOSE NEUTRAL WIRE	1				1
732	EL-51	3	2 02 10 24 6803	9088 BEWLEY CREEK RD, CNTY	Pole/Vertical clearance	COMM main line	PWR secondary	PWR ADDRESS LOOPS 2 02 10 24 6806 TO CLR OTHER VIOS	1				1
746	EU-53	5	2 03 09 06 8501	16020 HWY 101 , CNTY	Pole/Vertical clearance	COMM main line	PWR secondary	METER POLE HAS EXPOSED TRI PLEX IN COMM SPACE NEEDS TO BE ADDRESSED SO CATV CAN	1				1
752	EY-52	7	2 03 09 07 3300	18850 BLANCHARD RD, CNTY	Mid-span/Vertical clearanc	COMM main line	PWR neutral	PWR NEEDS TO TIGHTEN POLE TO POLE NEUTRAL WIRE	1				1
798	P-3		2 03 09 29 1300	20140 BLAINE RD, CNTY	Pole/Vertical clearance	COMM main line	PWR Drip-loop	PWR TO ADDRESS SERV LOOPS	1				1
818	P-2	8	2 03 09 29 1704	23225 HWY 101 , CNTY	Mid-span/Vertical clearanc	COMM main line	Driveable surface	TPUD NEEDS TO RAISE SEC SERV SO CATV CAN RAISE	1				1
819	P-2	8	2 03 09 29 1704	23225 HWY 101 , CNTY	Mid-span/Vertical clearanc	COMM main line	PWR secondary	TPUD NEEDS TO RAISE SEC SERV	1				1
859	O-3	51	2 03 09 30 7201	19725 NESTUCCA DR, CNTY	Pole/Vertical clearance	COMM main line	PWR Drip-loop	PWR TO ADDRESS NEUTRAL LOOP FROM WEATHERHEAD	1				1

Gig #	Charter map #	Item	Pole #	ADDRESS	DEV_CODE_D	EQUIP1_DES	EQUIP2_DES	NOTES	Charter is complete	Charter drop work	Charter Mainline work	Embarq must perform work	TPUD must perform work
963	K-99	25	2 03 10 17 8502	19850 SANDLAKE RD, CNTY	Pole/Vertical clearance	COMM main line	PWR service drop	TPUD RAISE SECONDARY	1				1
1025	J-4	36	2 03 10 31 5200	26500 SANDLAKE RD, CNTY	Pole/Grounding	COMM messenger	MGN	RAISE POWER WEATHERHEAD	1				1
1027	J-4	33	2 03 10 31 5208	26500 SANDLAKE RD, CNTY	Pole/Vertical clearance	COMM main line	PWR Drip-loop	RAISE POWER WEATHERHEAD	1				1
1056	N-4	2	2 03 10 36 7500	25875 HWY 101 , CNTY	Pole/Vertical clearance	Riser	COMM main line	PER TO ADDRESS LOOPS	1				1
1058	O-4	2	2 03 10 36 8601	25650 HWY 101 , CNTY	Mid-span/Vertical clearanc	COMM main line	Driveable surface	PWR TO ADDRESS LOOPS	1				1
1060	O-4	4	2 03 10 36 8606	25650 HWY 101 , CNTY	Mid-span/Vertical clearanc	COMM messenger	PWR secondary	PWR RAISE SEC SERV	1				1
1082	N-5	58	2 04 10 01 7400	27175 HWY 101 , CNTY	Pole/Vertical clearance	COMM main line	PWR secondary	PWR TO RAISE NEUTRAL AND SEC SERV FOR CATV TO RAISE ML FOR DRWY CLR			1		1
1083	N-5	56	2 04 10 01 7400	27175 HWY 101 , CNTY	Mid-span/Vertical clearanc	COMM main line	Driveable surface	PWR TO RAISE NEUTRAL AND SEC SERV FOR CATV TO RAISE ML FOR DRWY CLR			1		1
1118	I-5	15	2 04 10 06 1517	5925 GUARDENIA AVE, CNTY	Mid-span/Vertical clearanc	COMM main line	PWR secondary	PWR TO ADDRESS SEC SERV	1				1
1132	I-6	12	2 04 10 07 1402	30060 NANTUCKET DR, CNTY	Pole/Vertical clearance	COMM main line	PWR Drip-loop	PWR TO ADDRESS SERV LOOPS	1				1
1133	I-6	13	2 04 10 07 1403	30060 NANTUCKET DR, CNTY	Mid-span/Vertical clearanc	COMM main line	PWR secondary	PWR TO ADDRESS SERV DROP	1				1
1157	N-6	43	2 04 10 12 5806	29025 HWY 101 , CNTY	Mid-span/Vertical clearanc	COMM main line	PWR secondary	PWR REMV UNUSED STREET LIGHT CIRCUIT	1				1
1158	N-6	43	2 04 10 12 5806	29025 HWY 101 , CNTY	Pole/Vertical clearance	COMM main line	PWR secondary	PWR REMV UNUSED STREET LIGHT CIRCUIT	1				1
1164	N-6	19	2 04 10 12 5701	29025 HWY 101 , CNTY	Mid-span/Vertical clearanc	COMM main line	Driveable surface	POLE 2 04 10 126700 NEEDS TO BE STRAIGHTEND UP AND GUYED. TAKE UP SLACK FOR DRIVEABLE	1				1
1171	N-6	36	2 04 10 12 8701	17955 EVERGREEN DR, CNTY	Pole/Vertical clearance	COMM main line	PWR Drip-loop	PWR TO RAISE WEATHERHEAD ON METER POLE	1				1
1215	I-5	36	2 04 11 01 8405	5865 COATS AVE, CNTY	Mid-span/Vertical clearanc	COMM main line	PWR service drop	FIXED AFTER PWR COMPLETES ITEM 37	1				1
1217	I-5	37	2 04 11 01 8407	5785 COATS AVE, CNTY	Mid-span/Vertical clearanc	COMM main line	PWR secondary	PWR NEEDS TO ADDRESS P-P SEC SERV	1				1

Exhibit 7

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September 11, 2008

VIA E-MAIL AND FIRST CLASS MAIL

Mr. Thomas B. Magee
Keller and Heckman LLP
1001 G Street, N.W.
Washington, D.C. 20001

Re: Tillamook Public Utility District and Charter Communications September 8, 2008 Teleconference Re: Pole Attachment Issues

Dear Tom:

I am writing to memorialize the proposal Charter made during the parties' September 9, 2008 teleconference. I also wanted to thank you and your client for agreeing to the call and considering Charter's proposal. Charter remains committed to effecting repairs in a timely and reasonable manner and believes its proposal does just that.

Charter Proposal

- Charter will commit to the inspection and correction plan set forth on page 3 of its August 15, 2008 letter.

- Pending Charter's review of Tillamook's estimate of Tillamook's average rearrangement costs associated with the Revised 2005 Notice (Charter believes it can project the 2005 costs to the 2006-2008 Notices), Charter will agree to pay (subject to reasonable negotiation), Tillamook's rearrangement costs for those years. Charter believes this is a major concession on its part given that Section 9.4 of the parties' pole attachment agreement ("Agreement") provides that each party "shall place, maintain, rearrange, transfer, and remove its own attachments at its own expense except as otherwise expressly provided." From Charter's reading of the contract, it appears that Charter would be required to pay to rearrange Tillamook's facilities only when Charter was seeking to make a new attachment, as per Sections 3.2 and 3.5 of the Agreement.

- Charter will agree to share in the cost of any necessary pole change-outs, in accordance with Article IX of the parties' Agreement. Article IX clearly governs any premature pole change-outs. Charter does not agree that any other section of the Agreement applies or that anything in the pole statute or OARs would supersede the parties' Agreement in this regard. As Charter pointed out during the teleconference, Charter has not challenged the vast majority of issues with regard to causation, even though Charter could have challenged a larger portion. Indeed, Charter has often paid to correct Tillamook's own violations, including paying for pole change-outs, even though Charter was not required to do so under the parties' Agreement.

- Charter will continue to challenge obvious issues where causation is clearly questionable and expects that Tillamook will meet with Charter (without requiring Charter to request a special inspection) at Tillamook's own expense to decide the best course of action on these particular violations. These challenges would be in addition to Charter's routine disputes over whether there is a violation at all, *e.g.*, with respect to grandfathering issues.

If Tillamook is dissatisfied with the terms of its own pole attachment agreement, the remedy is not to ignore its terms, but to terminate it and negotiate a new agreement. More importantly, however, as Charter stressed repeatedly during the parties' teleconference, even if the parties were unable to agree on the pole change-out portion of Charter's proposal, the first two bullet points would remedy and pay for more than 90% of the issues. Indeed, the number one priority for both parties should be to make sure all the repairs are completed as soon as possible.

Charter looks forward to receiving Tillamook's response shortly. In the meantime, Charter will proceed as set forth in its August 15, 2008 letter. Charter remains hopeful that Tillamook will withhold the imposition of any sanctions, which Charter believes are intended for bad actors, not those who work in good faith to effect repairs. Please do not hesitate to contact me if you have any questions.

Very truly yours,

Davis Wright Tremaine LLP

Jill Valenstein

cc: Matt McGinnity (E-mail only)
Suzanne Curtis, Esq. (E-mail only)
Gary Lee (E-mail only)
Brad Shely

Exhibit 8

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August 22, 2008

VIA E-MAIL AND U.S. MAIL

Mr. Thomas B. Magee
Keller and Heckman LLP
1001 G Street, N.W.
Washington, D.C. 20001

Re: Tillamook Public Utility District ("TPUD") 2008-2009 Rate/Non-Compliant Rate

Dear Tom:

I am writing in response to your July 31, 2008 letter regarding TPUD's 2008 Pole Attachment Rental Rate calculations and decision to assess the non-compliant rate.

Non-Compliant Rate

First and foremost, Charter Communications ("Charter") absolutely disagrees with the violation figures presented in your letter. These numbers are inaccurate and have been challenged by Charter repeatedly. *See, e.g.*, Letter to Richard Lorenz from Jill Valenstein, dated November 12, 2007 (explaining that 36% of the data reported on TPUD's 2007 Notice is inaccurate) (hereinafter "November 12, 2007 Letter"). As I further explained in my recent August 15, 2008 letter to you, although Charter has been a good pole tenant and paid to repair violations TPUD identified as Charter's (at approximately $1 million to date), Charter never agreed that it caused all the violations it has repaired. In addition, TPUD's detailed inspections are typically fraught with errors, including TPUD's insistence on identifying issues that are clearly grandfathered by the National Electric Safety Code. Moreover, Charter has completed all possible work (without the assistance of TPUD and/or Embarq) on the vast majority of violations identified in TPUD's 2004-2006 detailed inspections, and has already identified 500 grandfathering issues on TPUD's 2007 and 2008 Notices.

Second, Charter continuously tries to stay on top of the large volume of transfers it receives from TPUD and performs them as quickly as possible. For example, TPUD recently completed a pole realignment project requiring Charter to perform transfers on approximately 40-50 poles on Sollie Smith Road, and Charter has already completed 80% of the required transfers.

Third, as you know, Charter completed a full self-audit of its attachments in 2002 and shared the data with TPUD. Rather than welcome the data and acknowledge that TPUD's permitting process was not formalized when Charter's predecessor-in-interest, Falcon, made its original attachments, TPUD instead fined Charter over $230,000 in penalties. In exchange for the penalties, Charter received a blanket permit for what it believed were all its existing unpermitted attachments. Contrary to your claim, Charter has not made unpermitted attachments since its original audit. Any additional bootlegs found since Charter's original audit are most likely attachments that Charter inadvertently missed during its original inspection. In addition, Charter has already received permits for the bootlegs identified in 2004-2006 and it is inappropriate to use this old, inaccurate data to deny Charter a rental rate reduction now. The same is true for the alleged bootlegs identified by TPUD in 2007, which have already been validated, brought into compliance as necessary, and are in the process of being permitted.

For these reasons, Charter believes it is entitled to the compliant rate and most reasonable pole owners would agree. Indeed, the non-compliant rate is reserved for bad actors. Charter has worked diligently to meet TPUD's ever-changing expectations and has already spent almost $1million in TPUD's territory alone on plant clean-up (including correcting violations that Charter did not cause). Charter hereby requests that TPUD reconsider its non-compliant rate assessment.

Rental Rate Calculations

It is my understanding from your letter that TPUD's proposed distribution pole rate is not fully allocated, and, as a result, TPUD believes it may charge permit application processing fees on top of the pole rent. TPUD made the same claim last year. Please be advised that Charter continues to believe that it is entitled to a fully allocated rate based on the Federal Communications Commission's ("FCC") cable formula, in accordance with the Oregon Public Utility Commission's ("OPUC") April 10, 2007 Order No. 07-137. In Order No. 07-137, the OPUC declined to adopt "recommendations that administrative costs for pole maintenance and operation be broken out separately." Order No. 07-137 at p. 13. The Oregon PUC agreed with the FCC that pole owners are not entitled to the "best of both worlds, that is, a nearly fully allocated rate and additional recurring costs added to that rate." *Id.* (internal citations omitted). In other words, TPUD is not permitted to back out some of its booked costs and charge them directly as permit processing fees. Moreover, Charter does not agree that Oregon law allows for what TPUD refers to as a "base plus" rate. Instead, Order No. 07-137 clearly requires that pole owners charge rates calculated using the FCC cable formula.

To that end, and in order for Charter to verify TPUD's proper fully allocated distribution pole rate, please provide Tillamook PUD's "Annual Financial Report," for the year end 2007, along with your revised rental rate calculations. TPUD provided its "Annual Financial Report, Years Ended December 31, 2006, and 2005," last year, which allowed me to ensure that Charter was charged a lawful rate.

Similarly, as I also advised Mr. Lorenz last year, "TPUD is not free to substitute its own [pole height and usable space] figures . . . without rebutting the [OPUC's] presumptions, in accordance with applicable law." *See* November 12, 2007 Letter at p. 2. As I explained to Mr. Lorenz, in order to rebut the usable space presumptions, a utility must survey or use actual data *regarding the poles to which cable attachments have been made. See id.* at pp. 203, n. 1 (emphasis added and internal citations omitted). According to the continuing property records set forth on Attachment B of your July 31 letter, TPUD's usable space figures are based on all of TPUD's poles, not just those to which Charter is attached. Unless TPUD can properly rebut the usable space presumptions, TPUD must rely on the OPUC's usable presumptions, as it did last year, apparently, due to the same failure. *See, e.g.,* Letter to Jill Valenstein from Richard Lorenz, dated January 17, 2008.

I look forward to receiving TPUD's Annual Financial Report with year end 2007 data, along with your revised calculations, consistent with this letter. Please do not hesitate to contact me if you have any questions in the meantime.

Very truly yours,

Davis Wright Tremaine LLP

Jill Valenstein

cc: Matt McGinnity (e-mail only)
Suzanne Curtis, Esq. (e-mail only)
Gary Lee (e-mail only)
Brad Shely (e-mail only)
Terry Blanc (U.S. Mail)

Exhibit 9

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March 20, 2006

VIA FACSIMILE/(202) 452-0067
& FIRST CLASS MAIL

T. Scott Thompson
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Washington, D.C. 20006

Re: Charter Communications' Non-Complying Connections To Tillamook PUD Poles

Dear Mr. Thompson:

I have received your letter dated December 20, 2005. You present several theories why you believe Charter Communications ("Charter") should not be liable for invoices ("Invoices") sent to it by Tillamook Peoples Utility District ("TPUD") for work performed by TPUD to correct violations of the National Electric Safety Code ("NESC") caused by Charter's attachments to TPUD's poles. Since receiving your letter, TPUD has given careful consideration to the points that you raise on behalf of Charter. In the final analysis, however, TPUD rejects your theories and has instructed me to respond as follows:

1. There is ample evidence that the NESC violations were caused by Charter.

You first state in your letter that TPUD has submitted no evidence demonstrating that the NESC violations identified and corrected by TPUD were caused by Charter. You then suggest that further attachments by another entity—or even TPUD itself—could have created the clearance problems attributed to Charter. You conclude that "the problem must be attributable to TPUD or some other attaching party. Charter, therefore [sic] is not liable for any cost of replacing the poles."

What your client apparently has not told you, however, is that there is a long history behind Charter's non-compliant attachments on TPUD's poles. For example, Charter performed an independent inspection of its attachments in the area in 2001 and 2002. TPUD received and has in its possession an electronic copy of Charter's findings. In looking at the data Charter collected regarding its own attachments on TPUD owned poles, it appears that Charter itself documented an attachment non-compliance on each pole that is subject to the Invoices. Charter has, therefore, essentially admitted that it caused the violations corrected by TPUD.

Furthermore, if Charter truly believed that it was not the cause of the NESC violations identified in the Invoices then it could have simply notified TPUD to that affect. TPUD gave Charter 60 days to dispute the violations, correct the violations or submit an acceptable Plan of Correction. Instead of using this time to work with TPUD to either find the responsible party or correct the violations, Charter simply did nothing. Charter's failure to deny responsibility for the violations at any time prior to your letter of December 20 can only be interpreted as a tacit admission of liability.

2. Charter's assertion that its attachments were "fully permitted" does not exempt Charter from compliance with the NESC.

The second contention that you raise in your letter is that Charter could not have violated the NESC because Charter's attachments are "fully permitted." Your reasoning, apparently, is that TPUD would not have issued Charter a permit if its attachments were not in compliance with the NESC. TPUD refutes both your reasoning and your conclusion.

As an initial matter, TPUD does not concede that all of Charter's attachments are "fully permitted." It is my understanding, for example, that Charter made many attachments under the auspices of Section 3.2 of the Agreement. Section 3.2 allows Charter to install a service drop prior to obtaining a permit for such attachment. In many cases, however, TPUD believes that Charter either did not subsequently submit the required permit application or the attachment exceeds the scope of what is allowed under Section 3.2. In fact, that is one of the reasons that TPUD initiated the process of inspecting all of attachments to TPUD's poles—to identify those that do not meet the requirements of Oregon law or applicable agreements.

Even if Charter had sought and received a permit for the non-compliant attachments, however, your contention that such permit somehow exempts Charter from maintaining its attachments in compliance with the NESC is simply a non-sequitor. Whether the attachment was in compliance at the time it was made is not relevant to whether the attachment is currently in compliance. TPUD has identified numerous attachments that are not currently in compliance. Some of those attachments belong to Charter. TPUD's primary interest in such case is not to ascertain whether the violations arose before, during or after permitting but simply to get them corrected as expeditiously as possible.

TPUD's actions are consistent with the Agreement and Oregon law, both of which unambiguously require Charter to install, operate and *maintain* its attachments in compliance with the NESC. Section 13.1 of the Agreement provides that the specifications for the "construction, operation, *and maintenance*" of any facilities involved in joint use "shall be no less stringent than the requirements of the National Electrical Safety Code or the latest supplement or revision thereof * * *." (Emphasis added).

Furthermore, even if TPUD did not enforce strict compliance with the NESC at the time the attachments were permitted or made, that would not preclude TPUD from enforcing strict

compliance now. Section 23.1 provides that "[t]he failure of either Party to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain, at all times, in full force and effect." Thus, TPUD is within its rights to enforce the requirements of Section 13.1

The relevant terms of the Agreement are consistent with TPUD's rights under Oregon law. ORS 757.271(2) provides:

> A licensee shall report all pole attachments to the pole owner. A pole owner may impose on a licensee a penalty charge for failing to report an attachment. *The pole owner also may charge the licensee for any expenses incurred as a result of an unauthorized attachment or any attachment that exceeds safety limits established by rule of the commission.*

(Emphasis added). The "safety limits established by rule of the commission" clearly include the NESC. *See* OAR 860-024-0010. Thus, Oregon law confers upon TPUD the statutory right to charge Charter for any expenses incurred by TPUD as a result of any Charter attachments that does not comply with the NESC.

Charter's legal obligation to maintain its attachments in compliance with the NESC is echoed by the administrative rules adopted by the OPUC. OAR 860-028-0110(8) confirms that:

> *All attachments shall meet state and federal clearance and other safety requirements*, be adequately grounded, guyed, and anchored, *and meet the provision of contracts executed between the pole owner and the licensee. A pole owner may, at its option, correct any deficiencies and charge the licensee for its costs.* Each licensee shall pay the pole owner for any fines, fees, damages, or other costs the licensee's attachments cause the pole owner to incur.

(Emphasis added). OAR 860-024-0010 specifically confirms that the state's safety requirements applicable to pole attachments includes the provisions of the NESC. Under Oregon law, therefore, Charter is required to maintain its attachments in compliance with the NESC. You will also notice that compliance with the Agreement is itself a separate obligation under OAR 860-028-0110(8), and therefore can not be raised as a defense for violating the NESC.

In short, Charter's obligation to maintain its attachments in compliance with the NESC and other applicable safety rules and specifications is not satisfied simply because Charter believes that a permit has been issued for the attachment.

3. Changes to the NESC are not a valid defense in this case.

Another point raised in your letter is that Charter is not responsible for complying with changes in the NESC. You state generically that "we have seen situations were [sic] an attachment was in compliance with the relevant NESC requirements at the time it was made, but subsequent NESC changes may appear to place the attachment in violation. However, the NESC grandfathers most such situations, and thus no actual noncompliance exists."

As you admit in your letter, however, there is no evidence that any of the violations identified by TPUD were caused by changes in the NESC. Furthermore, your basic contention is contrary to Charter's commitment under the Agreement. Section 13.1 provides that the specifications for the "construction, operation, and maintenance" of any facilities involved in joint use "shall be no less stringent than the requirements of the National Electrical Safety Code *or the latest supplement or revision thereof* * * *." (Emphasis added).

4. Charter is responsible for paying the entire amount of the Invoices.

You assert in your letter that Charter, even if it were the cause of the violations, is not liable for the full cost of changing the poles. You rely on Section 9.1, which governs the allocation of expenses for the installation of a new pole or pole line where one does not currently exist.

The section of the Agreement that you cite in your letter is not applicable in this case. This is not a case in which TPUD installed *new* poles or pole lines where one did not previously exist. Rather, this is a case in which TPUD was required to change out *existing* poles because it found attachments in violation of the NESC. In response to such violations, TPUD requested that Charter dispute the violation, correct the violation or submit a Plan of Correction. Charter refused and thereafter was in breach of the Agreement both by maintaining non-compliance attachments and by refusing to submit the required Plans of Correction. The relevant provisions of the Agreement are Sections 15.1 and 15.2, which provide that one of TPUD's express remedies for breach of the Agreement is to substitute performance for Charter subject to reimbursement by Charter.

Furthermore, TPUD's invoicing Charter for the entire cost of a pole change-out done solely for Charter's benefit is consistent with an established course of performance between the two parties under the Agreement. TPUD has never relied on or applied Section 9 of the Agreement to correct a violation of the NESC. To the contrary, TPUD's practice has been to charge Charter for the full cost of the pole change. More important, Charter's practice has been to pay the full cost of such pole change out. Under Oregon law, this course of performance between the parties would be relevant to interpreting and applying the Agreement. *See generally Moini v. Hewes*, 93 Or.App. 598, 601, 763 P.2d 414, 416 (Or. Ct. Ap. 1988) ("[N]ormally a course of performance is relevant to the interpretation of a * * * contract * * *.").

5. Charter is not empowered to unilaterally amend the provisions of the Agreement and Oregon law through an email.

Charter is not permitted to effect a unilateral amendment to the Agreement simply by sending an email indicating that Charter does not intend to comply with its terms. You cite an email dated June 17, 2005, in which Mark Beaubien informed Terry Blanc that Charter is not authorizing any work to be done on Charter's behalf. TPUD already had all the authorization that it needed under both the Agreement and Oregon law to perform the corrective work at Charter's expense. Unless Charter intended for Mr. Beaubien's email to serve as a repudiation of the Agreement, the email did nothing to change the parties' respective legal rights and obligations.

Conclusion

Upon consideration of the points raised in your letter, TPUD remains firmly convinced that Charter is obligated to reimburse TPUD for all of the costs incurred to correct Charter's NESC violations. TPUD has been more than generous in allowing Charter time to resolve this situation and it is apparent that Charter is simply unwilling to do so. TPUD has no choice at this time but to pursue the legal remedies available to it under the Agreement and Oregon law.

Sincerely,

Richard G. Lorenz

RGL/tr

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

DR 42

In the Matter of	)	
	)	
TILLAMOOK PEOPLE'S UTILITY DISTRICT	)	COMMENTS OF CHARTER COMMUNICATIONS
	)	
Petition for Declaratory Ruling.	)	

Charter Communications ("Charter") hereby submits these brief Comments in support of the Commission Staff Report, dated February 17, 2009, in which the Staff recommends that the Commission deny Tillamook People's Utility District's ("TPUD") Petition for Declaratory Ruling (hereinafter "Staff Recommendation").

Charter concurs with Staff's Recommendation that TPUD's Petition is "too complex"[1] and "involves disputed factual issues that are not appropriate for a declaratory ruling proceeding,"[2] as Charter also fully explained in its January 21, 2009 Comments to the Commission opposing TPUD's Petition.[3] Staff is correct, based on its review of TPUD's Petition, as well as Charter's Initial Comments and TPUD's February 6, 2009 Comments,[4] that "[a]ll of the Petition Items involve timeline issues associated with the applicability of various Commission statutes, rules, orders and the parties' [pole attachment] agreement."[5] As a result, "[i]t would be difficult to address these timing issues without investigating the evidence provided by both TPUD and Charter[,] along with their pole attachment agreement,"[6] which would not be possible in a declaratory ruling proceeding.

Charter also agrees, that if TPUD wishes to resolve this dispute at the Commission, TPUD should adhere to the Commission's complaint procedures,[7] including its pole attachment complaint procedures found at OAR 860-028-0070. Indeed, to the extent this matter may result in reformation of the parties' pole attachment agreement, OAR 860-028-0070 specifically governs the process for the "Resolution of Disputes for Proposed New or Amended Contractual Provisions," and is a mandatory rule.[8]

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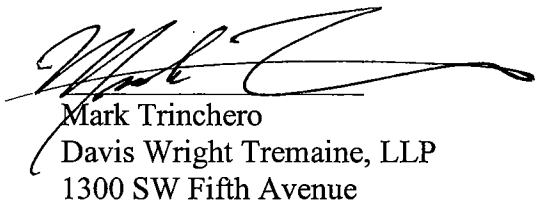
[1] Staff Recommendations at p. 1.
[2] *Id.* at p. 3.
[3] *See* January 21, 2009 Letter Comments to Chairman Beyer and Commissioners Savage and Baum, from Jill Valenstein, opposing TPUD's Petition, at pp. 3 and 8-10, attached hereto as Exhibit A, and incorporated herein for filing in DR 42 (hereinafter "Charter's Initial Comments").
[4] *See* February 6, 2009 Letter Comments to Chairman Beyer and Commissioners Savage and Baum, from Thomas Magee, (hereinafter "TPUD Comments"). While the Staff Recommendation has rendered a specific Charter reply to the TPUD Comments superfluous, Charter hereby reserves its right to address the TPUD Comments more specifically, as necessary, at the Commission's February 24, 2009 public meeting.
[5] Staff Recommendations at p. 3.
[6] *Id.*
[7] *See id.* at pp. 1 and 3-4.
[8] *See* OAR § 860-028-0050(3) (setting forth mandatory rules).

For these reasons, Charter concurs with Staff's Recommendation that the Commission deny TPUD's Petition. Even if the Commission were inclined to open a docket, it should not, as TPUD's Petition also fails on the merits and TPUD is not entitled to the relief requested, as Charter further demonstrated in its Initial Comments.[9]

Respectfully submitted,



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[9] *See* Charter's Initial Comments at pp. 10-13.

CERTIFICATE OF SERVICE

DR 42

I hereby certify on this 20th day of February, 2009, the **Tillamook People's Utility District – Petition for Declaratory Rule (DR 42), Charter Communications' Comments in Opposition** and **Comments of Charter Communications** were sent via UPS overnight mail to the Oregon Public Utility Commission.

A copy of the filing was also mailed to this service list.

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