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JANUARY 6, 2006

**BY FEDERAL EXPRESS**

Public Utility Commission Of Oregon  
Attn: Filing Center  
550 Capitol Street N.E., Suite 215  
Salem, Oregon 97308

**Re: Charter Communications Holding Company, LLC v. Central Lincoln  
People's Utility District**

Dear Sir/Madam:

Enclosed, for filing, are an original and one copy each of the following:

- Complaint of Charter Communications Holding Company, LLC, *et al.* ("Charter") against Central Lincoln People's Utility District ("CLPUD"), and accompanying exhibits 1 through 5.
- Charter's Motion For Emergency Interim Relief, accompanying exhibits 1 through 14, and Declarations of Frank Antonovich and Gary Lee in support of Charter's Motion.
- Motion for Admission *Pro Hac Vice*, and accompanying Declaration of T. Scott Thompson in support.

Also enclosed is an additional copy of each of the above filings, which we request that the Commission stamp as filed and return to the below-signed via the enclosed pre-paid FedEx package.

A copy of each of the enclosed filings has also been electronically filed with the Commission today, and served via FedEx on Paul Davies, General Manager of CLPUD, at 2129 N. Coast Hwy, Newport OR 97365.

Public Utility Commission Of Oregon

January 6, 2006

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If you have any questions, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Scott Thompson". The signature is fluid and cursive, with the first name being the most prominent.

T. Scott Thompson

Enclosures

cc: Paul Davies, CLPUD (w/ enclosures)  
Peter Gintner, Esq., Counsel for CLPUD (w/ enclosures)  
Brooks E. Harlow, Esq.

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BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

CHARTER COMMUNICATIONS  
HOLDING COMPANY, LLC, FALCON  
TELECABLE, L.P., FALCON CABLE  
SYSTEMS COMPANY II, L.P., AND  
FALCON COMMUNITY VENTURES I,  
L.P.

Case No.

Complainants,

v.

CENTRAL LINCOLN PEOPLE’S UTILITY  
DISTRICT,

Defendant.

**CHARTER’S MOTION FOR EMERGENCY INTERIM RELIEF**

Pursuant to Oregon Rule of Civil Procedure 79, OAR 860-011-0000(3), and ORS § 757.276, Claimant Charter Communications Holding Company, LLC on its own behalf and on behalf of its subsidiaries, Falcon Telecable, L.P., Falcon Cable Systems Company II, L.P., and Falcon Community Ventures I, L.P. (jointly “Charter”) respectfully moves the Commission for an order in the nature of a preliminary injunction, effective until the conclusion of the above-captioned case, which is being simultaneously filed, requiring Respondent Central Lincoln People’s Utility District (“Central Lincoln”) to cease denying Charter access to Central Lincoln poles, immediately grant Charter’s pending applications for pole attachment permits and to allow

1 Charter to make the attachments and perform the work requested in its hundreds of pending  
2 permit applications.

3 This motion, and the Complaint being filed simultaneously herewith, present the  
4 Commission with the opportunity to remedy Central Lincoln's disregard for the Commission's  
5 orders and Oregon law. Just months after the Commission has held certain pole attachment-  
6 related fees and practices by Central Lincoln unlawful, Central Lincoln is nonetheless imposing  
7 those very same fees and practices on Charter. Indeed, Charter now must seek this preliminary  
8 injunction because Central Lincoln is refusing to process any of Charter's pole attachment permit  
9 applications or allow any other standard pole attachment work unless Charter accedes to Central  
10 Lincoln's unlawful demands. As a result of Central Lincoln's unlawful actions, Charter is  
11 suffering irreparable harm, and potentially significant public safety concerns are implicated, as  
12 Charter cannot undertake work on Central Lincoln poles.

13  
14 **I. FACTS**

15 **A. Central Lincoln Cancels Charter's Pole Agreement And Then Leverages**  
16 **Unreasonable Provisions With Threats Of Sanctions**

17 Charter, through its predecessors, has been attached to Central Lincoln's poles  
18 since at least as early as 1985. By letter dated December 26, 2001, Central Lincoln notified  
19 Charter that as of June 30, 2002, Central Lincoln would terminate the then-existing "General  
20 Agreement For Joint Use Of Poles"<sup>1</sup> that governed Charter's attachment to Central Lincoln's  
21 poles. (A copy of Central Lincoln's letter is attached hereto as Exhibit 1). On June 27, 2002,  
22 Central Lincoln presented Charter with a new "Pole Occupancy License Agreement" ("June 27,  
23  
24

25 \_\_\_\_\_  
26 <sup>1</sup> Charter's predecessors-in-interest had been attached to Central Lincoln's poles under various  
agreements dating back to at least 1985.



1 2002 Draft”) and requested Charter’s signature. (Attached hereto as Exhibit 2). Charter did not  
2 sign the June 27, 2002 Draft.<sup>2</sup>

3           After Central Lincoln’s presentation of the June 27, 2002 Draft to Charter,  
4 Charter and Central Lincoln engaged in several rounds of discussions regarding the terms of the  
5 proposed agreement, with Charter submitting to Central Lincoln various proposed changes to the  
6 draft agreement. (Declaration of Frank Antonovich ¶ 4). While between June 27, 2002 and  
7 January 2003, Charter and Central Lincoln were able to compromise on some issues, critical,  
8 fundamental issues remained in dispute. In particular, Charter specifically objected to Central  
9 Lincoln’s annual rental charges, Central Lincoln’s insistence on unreasonable provisions  
10 governing attachments for service drops, including but not limited to such matters as load studies  
11 and application fees, and Central Lincoln’s insistence on language allowing it to draw from a  
12 bond even if Charter contested that the funds were due. (*Id.* ¶ 5).

13           Charter had no choice, however, but to ultimately accept Central Lincoln’s  
14 demands, as Central Lincoln used its unequal bargaining power and threat of artificially created  
15 sanctions to force Charter to sign. (*Id.* ¶ 6). For example, by letter dated January 6, 2003,  
16 Central Lincoln’s attorney “notified” Charter that because “negotiations have failed to produce  
17 an agreement” Charter “is in violation of OAR 860-028-0120(1)(a). This regulation requires a  
18 pole occupant attaching to one or more poles of a pole owner to have a written contract with the  
19 pole owner. . . .” (A copy of the letter is attached hereto as Exhibit 3). The letter then provides  
20 that sanctions were \$500 per pole or 60 times Central Lincoln’s annual rental fee per pole,  
21 whichever is greater and that Charter has attachments on approximately 13,500 Central Lincoln  
22 poles. *Id.* The letter states that “[s]anctions will be reduced by 60% if Charter Communications  
23 enters into a written contract within 10 days from the date of this notice.” *Id.*

24  
25 \_\_\_\_\_  
26 <sup>2</sup> Charter believes that the proposed Pole Occupancy License Agreement presented to Charter on  
June 27, 2002 by Central Lincoln was the same agreement presented by Central Lincoln to  
Verizon for signature, and the subject of litigation before this Commission in Docket UM 1087.

1 Similarly, by letter dated February 13, 2003, Central Lincoln’s attorney – in the  
2 process of rejecting Charter’s proposal to resolve the impasse between the companies and  
3 explaining that Central Lincoln’s January 7, 2003 draft should be considered the District’s final  
4 offer – again reiterated that “[t]o the extent that I have not made it clear, if we do not reach an  
5 agreement by roughly March 17, 2003, I will advise my client to file with the Oregon PUC to  
6 begin the process of imposing sanctions on Charter Communications.” He further stated that  
7 “our petition will include the ultimate sanction of having Charter Communications remove its  
8 equipment off of Central Lincoln PUD’s poles and other facilities.” (A copy of the letter is  
9 attached hereto as Exhibit 4).

10 Thus, Central Lincoln unilaterally terminated Charter’s pole attachment  
11 agreement. Then, in order to dictate terms and conditions of a new agreement, Central Lincoln  
12 threatened Charter with approximately \$6.75 million in sanctions for failure to have a pole  
13 attachment agreement.

14 On March 17, 2003, the deadline established in Central Lincoln’s letter, Charter  
15 submitted to Central Lincoln a signed copy of the new Agreement. (Attached hereto as Exhibit  
16 5). Charter’s execution of the Agreement was under protest and accompanied by a letter  
17 explaining that Charter was submitting the agreement under protest. (A copy of Charter’s March  
18 17, 2003 cover letter is attached hereto as Exhibit 6).

19  
20 **B. Central Lincoln’s Unlawful Fee Imposition, And Charter’s Request To**  
21 **Negotiate A New, Lawful Pole Attachment Agreement**

22 Central Lincoln’s treatment of Charter was not unique. Indeed, it appears to have  
23 been part of an orchestrated strategy. On the same day that Central Lincoln notified Charter that  
24 it was terminating Charter’s pole attachment agreement effective June 30, 2002, Central Lincoln  
25 purported to notify Verizon that Central Lincoln was terminating Verizon’s pole attachment  
26 agreement also effective June 30, 2002. Then, by letter dated June 27, 2002 – exactly as it did

1 with Charter – Central Lincoln submitted to Verizon two copies of a new pole attachment  
2 agreement for signature by Verizon. *Central Lincoln People’s Util. Dist. v. Verizon Northwest,*  
3 *Inc.*, Order No. 05-042, 2005 Ore. PUC Lexis 36 (Jan. 19, 2005) (“*Central Lincoln I*”). Charter  
4 understands that the agreement submitted by Central Lincoln to Verizon via cover letter dated  
5 June 27, 2002 was identical to the June 27, 2002 Draft submitted to Charter via cover letter dated  
6 June 27, 2002.

7  
8 Verizon refused to accede to Central Lincoln’s demands and did not enter into a  
9 new pole agreement. On May 27, 2003, Central Lincoln filed a petition with the Commission,  
10 alleging that Verizon was attached to Central Lincoln’s poles without a contract and seeking  
11 sanctions, including an order for Verizon to remove its attachments. Verizon filed a counter  
12 complaint alleging that various rates, terms and conditions of Central Lincoln’s proposed new  
13 agreement were unjust and unreasonable.

14 After litigation by the parties, by Order dated January 19, 2005, the Commission  
15 rejected Central Lincoln’s claims, and held numerous provisions of Central Lincoln’s proposed  
16 agreement to be unjust and unreasonable. The Commission also held that Central Lincoln’s  
17 rental rate was unjust and unreasonable and calculated the maximum lawful rental rate as \$4.14  
18 per foot. A number of the fees and requirements held unjust and unreasonable by the  
19 Commission in Docket UM 1087 are provisions imposed by Central Lincoln in its agreement  
20 with Charter.

21 On July 1, 2004, Central Lincoln notified Charter of Central Lincoln’s Fee  
22 Schedule for 2005, and in December 2004 issued the final version of the “Fee Schedule” for  
23 2004. (A copy of Central Lincoln’s Fee Schedule is attached hereto as Exhibit 7). With its Fee  
24 Schedule, Central Lincoln notified Charter that Central Lincoln’s annual rental rate would be  
25 \$10.98 per “attachment point,” (\$9.93 after rental reduction for compliance). In addition, Central  
26

1 Lincoln's Fee Schedule identified 7 different attachment types subject to varying annual fees –  
2 which are charged in addition to the "attachment point" rental for Charter's actual lines.

3 In addition, on July 1, 2004, Central Lincoln notified Charter of a host of other  
4 charges that Central Lincoln was going to impose. Indeed, Central Lincoln's Fee Schedule  
5 identified 7 separate types of "Application Fees" and 2 different "inspection fees." Exhibit 7.

6 By letters dated August 26, 2004, October 5, 2004, and December 21, 2004,  
7 Charter notified Central Lincoln that it believed Central Lincoln's annual rental and various  
8 other charges were not just and reasonable and consistent with the Commission's rules, and  
9 Charter asked Central Lincoln to provide data supporting the fees and charges. (Copies of the  
10 letters are attached hereto as Exhibits 8, 9, & 10 respectively). The final Fee Schedule issued by  
11 Central Lincoln for 2004 ultimately failed to meaningfully reflect Charter's comments and  
12 concerns. (Exhibit 7).

13 In its January 19, 2005 Order in Docket UM 1087, the Commission held that the  
14 maximum lawful rate Central Lincoln could charge for occupation of one foot of pole space was  
15 \$4.14. *Central Lincoln I*, 2005 Ore. PUC Lexis at \*36, Attachment A. Yet, Central Lincoln sent  
16 Charter invoices dated February 8, 2005, seeking rental payments at a rate of \$9.93 per  
17 attachment for "Joint Pole Attachment Points" and "Joint Pole Non Inv." (Copies of the invoices  
18 are attached hereto as Exhibit 11). In other words, the rate Central Lincoln imposed on Charter  
19 is more than double the lawful annual rate that the Commission established in its January 2005  
20 Order. The total charge imposed by the invoices for each "Joint Pole Attachment Points" and  
21 "Joint Pole Non Inv" – as opposed to the myriad other attachment rentals, like anchors and risers  
22 – was \$127,785.40. (Antonovich Decl. ¶ 9; Exh. 11).

23 In its February 8, 2005 invoices to Charter, Central Lincoln also imposed charges  
24 for anchors, risers, equipment in ground space, as well as something call "Joint Pole No  
25 Attachments," totaling \$4,997.87. (Exh. 11). Thus, with its fee schedule and invoices, Central  
26

1 Lincoln seeks to charge Charter for every attachment point to a pole rather than charging once  
2 for the one foot of useable space allotted to Charter's attachments.

3 In May 2005, Charter paid Central Lincoln \$123,340.53 for each of the "Joint  
4 Pole Attachment Point" and "Joint Pole Non Inv" attachments identified in Central Lincoln's  
5 February 8, 2005 invoices (12,421 "attachments" at a rate of \$9.93). (Antonovich Decl. ¶ 10).  
6 However, Charter refused to pay the \$4,997.87 invoiced by Central Lincoln for anchors, risers,  
7 equipment in ground space, and "Joint Pole No Attachments." (Antonovich Decl. ¶ 10). Rather,  
8 based on the Commission's decisions in Docket UM 1087, by letter dated June 10, 2005, Charter  
9 requested that Central Lincoln negotiate a new pole attachment agreement to reflect terms  
10 consistent with the Commission's holdings in UM 1087. (A copy of Charter's June 10, 2005  
11 Letter is attached hereto as Exhibit 12). Charter's June 10, 2005 letter further requested that  
12 Central Lincoln refund to Charter the overcharges paid by Charter in May at the unlawful rate of  
13 \$9.93. (Exh. 12).

14 Central Lincoln has refused to negotiate with Charter a new pole attachment  
15 agreement containing just and reasonable terms and conditions consistent with the Commission's  
16 holdings in UM 1087. (Antonovich Decl. ¶ 12). Central Lincoln has also refused to refund  
17 Charter the annual rental overcharge, and has demanded that Charter pay the \$4,997.87 withheld  
18 for rental on anchors, risers, other types of attachments in unusable space, and "Joint Pole No  
19 Attachments." Indeed, by letter dated June 24, 2005, Central Lincoln informed Charter that  
20 Central Lincoln ***will not process any permits*** submitted by Charter unless Charter pays – in  
21 advance – all the application fees relating to Charter's then-pending permit applications. (A  
22 copy of the June 24, 2005 letter is attached hereto as Exhibit 13). Central Lincoln's letter asserts  
23 that the application fees will be in an amount equal to approximately \$20,000.

24 After June 24, 2005, Central Lincoln has subsequently continued to refuse to  
25 process any permit application, or permit Charter to perform any work on its facilities attached to  
26

1 Central Lincoln poles unless and until Charter succumbs to Central Lincoln's monetary  
2 demands. (Antonovich Decl. ¶ 13). Moreover, Central Lincoln has never provided Charter with  
3 an exact amount of money that Central Lincoln demands, nor has Central Lincoln ever provided  
4 Charter with any detail regarding what alleged permit processing fees would be covered by the  
5 demanded \$20,000.

6  
7 **C. Central Lincoln's Current Refusal To Process Permits Or Allow Needed**  
8 **Maintenance Work**

9 Charter currently has two pole-related projects that it seeks to complete, involving  
10 Central Lincoln-owned poles. Those applications relate to a significant plant replacement  
11 project, plant upgrades, and general day-to-day operational issues, including transfer of lines in  
12 order to accommodate poles moved by Central Lincoln. Central Lincoln, however, since at least  
13 June 2005, has refused to process any permit application submitted by Charter for any work.  
14 Central Lincoln is therefore prohibiting Charter from undertaking necessary construction and as  
15 a result affecting Charter's ability to do business and subjecting Charter to potential liabilities.

16 Charter has attempted to resolve these issues with Central Lincoln without  
17 recourse to the Commission, with formal communication as recently as late October 2005.  
18 Central Lincoln has not been willing to compromise and further attempts at informal resolution  
19 would be futile.

20  
21 **D. Central Lincoln Is Preventing Repair Of Potentially Significant Safety Issues**  
22 **In The Yachats Area**

23 Coaxial cable and fiber optic cable lines are not directly attached to utility poles.  
24 Rather, a bare steel "strand" line is attached to the poles, and the fiber optic or coaxial cable lines  
25 are then lashed to the strand. If the strand strength is compromised, the attached lines may fall.  
26 One of the outstanding projects that Charter has pending with Central Lincoln is in the Yachats,

1 Oregon area. The Yachats project involves 1,482 of Central Lincoln's poles. (Declaration of  
2 Gary Lee ¶ 5). Due to environmental conditions in the Yachats area, the strand that is holding  
3 Charter's lines has become prematurely corroded and weakened. (Lee Decl. ¶ 7). Replacing the  
4 strand in the Yachats area presents a safety issue that Charter seeks to address promptly. (Lee  
5 Decl. ¶ 7-8).  
6

7 In order to undertake the Yachats area project, Charter submitted 254 applications  
8 to Central Lincoln between June 1, 2005 and November 4, 2005. (Lee Decl. ¶ 6). However,  
9 Central Lincoln refuses to approve Charter's applications and allow Charter to do the work.

10 **E. Central Lincoln Is Preventing Charter From Performing Plant Upgrades**

11 The second major project that Charter has outstanding with Central Lincoln is  
12 from Yaquina Heights to Ona Curves and involves 186 Central Lincoln poles. (Lee Decl. ¶ 5).  
13 Charter has submitted 72 new permit applications in its attempt to obtain approval for the  
14 Yaquina Heights to Ona Curves project. (Lee Decl. ¶ 12). The Yaquina Heights to Ona Curves  
15 attachments are necessary for Charter to complete an upgrade of its cable television system in the  
16 area. (Lee Decl. ¶ 12). The construction work to be done by Charter in the Yaquina Heights to  
17 Ona Curves area will involve overlashing of 108-count fiber optic lines, which are approximately  
18 5/8 inch in diameter, to existing Charter facilities. Overlashing of facilities does not involve a  
19 new attachment to the pole, and it is not reasonable or consistent with industry practice  
20 nationwide to require new permits for overlashing. (Lee Decl. ¶ 13; *Amendment of Rules and*  
21 *Policies Governing Pole Attachments, In the Matter of Implementation of Section 703(e) of The*  
22 *Telecommunications Act of 1996*, 16 FCC Rcd.12103 at ¶ 75 (rel. May 25, 2001) (stating "We  
23 affirm our policy that . . . the host attaching entity [is not required to] obtain additional approval  
24 or consent of the utility for overlashing other than the approval obtained for the host  
25 attachment")).  
26

1 As a result of Central Lincoln's refusal to process Charter's permit applications,  
2 Charter is also not able to perform any new customer connections in the portions of its region in  
3 Oregon where Charter must use Central Lincoln poles.  
4

5 **F. Central Lincoln Is Prohibiting Charter From Moving Its Facilities Along**  
6 **With A Pole Transfer Done Solely For Central Lincoln**

7 In June 2005, Central Lincoln installed approximately 17 new poles along  
8 Highway 101 in South Beach, Oregon, in most cases approximately 10 feet from the 17  
9 corresponding existing poles, and transferred its lines to the new poles. (Lee Decl. ¶ 14).  
10 Entities other than Charter have been permitted to transfer their facilities to the new poles as  
11 well. (Lee Decl. ¶ 14). That pole change was entirely for Central Lincoln's benefit. (Lee Decl.  
12 ¶ 14). Charter had fully authorized, permitted attachments to the existing poles. (Lee Decl. ¶  
13 14).  
14

15 Contrary to the Agreement, and in an unjust and unreasonable term of access,  
16 Central Lincoln has refused to allow Charter to transfer its facilities from the existing poles to the  
17 new poles unless and until Charter accedes to Central Lincoln's unlawful fee demands. (See Lee  
18 Decl. ¶ 15). Indeed, on November 22, 2005, Charter was informed by Central Lincoln that until  
19 Charter paid all permit application fees demanded by Central Lincoln, Central Lincoln would  
20 consider Charter's existing attachments to the old poles – which were fully permitted and  
21 authorized – to be unauthorized attachments, and that Central Lincoln would begin assessing  
22 unauthorized attachment sanctions on the poles “beginning next week.” (A copy of the  
23 November 22, 2005 e-mail from Denise Estep to Peter Kalnins is attached hereto as Exhibit 14).  
24  
25  
26



1 In addition, Central Lincoln has required Charter to file new pole permit  
2 applications for the new poles, and seeks to impose application fees for those permits, as well as  
3 the costs of transferring the facilities. Yet, the pole change was initiated by and for the benefit of  
4 Central Lincoln. (Lee Decl. ¶ 14, 16).

5 While Charter believes that under Section 2.1 of the Agreement it is not required  
6 to apply for or obtain a new permit in order to transfer existing facilities to new poles in the  
7 event of pole changes initiated by Central Lincoln, nonetheless, between June 22 and June 29,  
8 2005, Charter submitted permit applications materials required by Central Lincoln for approval  
9 to move its facilities to the new poles along Highway 101 in South Beach. (Lee Decl. ¶ 17).  
10 Central Lincoln has not approved or otherwise processed Charter's applications related to the  
11 transfer, and therefore Charter has not moved its facilities. (Lee Decl. ¶ 17).

## 13 **II. ARGUMENT**

14 In this case, Charter has simply refused to pay Central Lincoln a portion of fees  
15 that were held unlawful by the Commission mere months ago. In apparent retaliation, Central  
16 Lincoln has shut down all pole attachment activity, and is even threatening sanctions against  
17 Charter for a situation that is purely of Central Lincoln's making. The result of Central  
18 Lincoln's retaliatory behavior and disregard for the Commission's rules and orders is that  
19 Charter cannot repair plant that poses a potential threat to public safety, cannot upgrade plant to  
20 provide new services and improved reliability to consumers, and cannot timely respond to  
21 customer new service connection requests, among other things. While this case is pending, in  
22 order to restore the *status quo*, protect public safety, promote the public's interest in reliable  
23 service,<sup>3</sup> and prevent Charter from suffering irreparable harm, the Commission should grant  
24

25 <sup>3</sup> Some of Charter's customers may be using their cable modem service to access a third-party  
26 VoIP provider as a substitute for telephone service, and therefore may lose 911 service if  
Charter's services are interrupted.

1 Charter a preliminary injunction, ordering Central Lincoln to immediately issue the permits  
2 applied for by Charter and undertake any make ready work, if any, necessary to facilitate the  
3 attachments.

4           In considering requests for preliminary injunction or similar interim relief, the  
5 Commission has generally looked to Oregon Rule of Civil Procedure 79, which applies to the  
6 Commission’s proceedings pursuant to OAR 860-011-0000(3). *See, e.g., Rio Communications,*  
7 *Inc. v. US West Communications, Inc.*, Order No. 99-349, 1999 Ore PUC Lexis 276 (May 24,  
8 1999); *Wah Chang v. Pacificorp*, Order No. 01-185, 2001 Ore. PUC Lexis 119 (Feb. 21, 2001).  
9 While the Commission has not identified a single formulation of a relevant standard, looking to  
10 ORCP 79 for guidance, the Commission has identified two factors that apply: (1) whether the  
11 moving party will be irreparably harmed if the relief is not granted, and (2) whether the moving  
12 party is likely to prevail in its underlying complaint. *Wah Chang*, 2001 Ore. PUC Lexis 119 at  
13 \*7-8. Indeed, the *Wah Chang* formulation is the more strict of the formulations used by the  
14 Commission. In contrast, in *Rio Communications*, the Commission looked only at the general  
15 equities and whether the movant would “suffer injury” (as opposed to suffering “irreparable  
16 injury”) absent the interim relief. 1999 Ore. PUC Lexis 276 at \*8.

17           Ultimately, the Commission’s approach is consistent with the approach of the  
18 Oregon courts. The Oregon Supreme Court has found that injunctive relief is dependent on the  
19 facts and equities of a particular case, stating “[i]njunctive relief depends upon broad principles  
20 of equity and may, in the discretion of the court, be granted or denied in accordance with the  
21 justice and equity of the case. Courts balance the equities between the parties in determining  
22 what, if any, relief to give.” *Hickman v. Six Dimension Custom Homes, Inc.*, 543 P.2d 1043,  
23 1045 (Or. 1975) (internal citations excluded).

24           Under any formulation of the elements, Charter should be granted the requested  
25 interim relief in this case. Charter is substantially likely to succeed on the merits of its  
26

1 Complaint, which challenges rates, terms, and conditions that were held unlawful just months  
2 ago. Absent the requested interim relief, Charter is likely to suffer irreparable harm. And the  
3 equities and public interest in safety militate substantially in favor of allowing Charter to  
4 undertake the pole attachments it seeks.  
5

6 **A. The Requested Interim Relief Is Necessary To Protect Public Safety**

7 Central Lincoln's unreasonable and retaliatory disregard for the Commission's  
8 rules is creating a potential risk to public safety that requires immediate remedy. In the Yachats,  
9 Oregon area, the unique coastal environment has lead to premature corroding of the strand  
10 holding Charter's lines to Central Lincoln's poles. (Lee Decl. ¶ 7-8). Left unattended, the strand  
11 could fail and break, which in turn could cause Charter's coaxial cable and fiber optic lines to  
12 fall, creating a potential public safety risk.  
13

14 Indeed, the strand in the Yachats area has already failed in a number of cases,  
15 particularly as a result of recent wind storms, and is in precarious condition in others. (Lee Decl.  
16 ¶ 9). Charter is concerned with the potential for injury and liability that is being caused by  
17 Central Lincoln's unwillingness to abide by the Commission's rules and orders.

18 In order to remedy the strand degradation situation in Yachats, Charter must do a  
19 full change out of all of its attachments in the area. In order to accomplish this, Charter has  
20 submitted 254 permit applications to Central Lincoln, starting in June 2005. (Lee Decl. ¶ 6).  
21 Charter is fully prepared to perform the work necessary, and is willing to work with Central  
22 Lincoln on the logistical issues involved in processing such a large project in a prompt fashion,  
23 including but not limited to paying for third party contractors to undertake make ready work for  
24 Central Lincoln, if it is unable to process the load in a timely fashion. (Lee Decl. ¶ 6-10).  
25 However, at this point, Central Lincoln simply refuses to grant the permits. Central Lincoln's  
26

1 unjustified position is threatening public safety and placing Charter in a situation of potential  
2 liability. This factor, alone, should be sufficient to merit grant of the interim relief.  
3

4 **B. Charter Is Likely To Succeed On The Merits**

5 Central Lincoln's pole attachment rates, terms and conditions are not new to the  
6 Commission. Just a few months ago, the Commission addressed Central Lincoln's pole  
7 attachment contract and its rental rates and various fees, and in three separate orders repeatedly  
8 confirmed that Central Lincoln's rates, terms, and conditions of attachment were unreasonable  
9 and unlawful. *Central Lincoln People's Util. Dist. v. Verizon Northwest, Inc.*, Order No. 05-042,  
10 2005 Ore. PUC Lexis 36 (Jan. 19, 2005) ("*Central Lincoln I*"); Order No. 05-583, 2005 Ore.  
11 PUC Lexis 241 (May 16, 2005) ("*Central Lincoln II*"); Order No. 05-981, 2005 Ore. PUC Lexis  
12 446 (Sept. 7, 2005) ("*Central Lincoln III*").  
13

14 The rates, terms, and conditions that Charter challenges in this proceeding are, in  
15 almost every instance, identical to those struck down by the Commission in the *Central Lincoln*  
16 orders. For example, in *Central Lincoln I*, the Commission calculated the maximum lawful  
17 annual rental rate, per foot, that Central Lincoln may charge based on its costs. That maximum  
18 amount was \$4.14 per foot. *Central Lincoln I*, 2005 Ore. PUC Lexis 36, at \*36, Attachment A.  
19 Because Central Lincoln's pole costs are the same whether the attaching party is Verizon or  
20 Charter, the formula results in the same amount, and the maximum annual rental Central Lincoln  
21 can charge Charter is also \$4.14. Yet, only three weeks after the Commission issued its January  
22 19, 2005 Order, Central Lincoln sent Charter invoices seeking \$9.93 per attachment. (Exh. 11).  
23 Nothing has changed in the intervening months that would allow Central Lincoln to charge more  
24 than double the maximum annual rate calculated by the Commission in January, and thus Charter  
25 is likely to succeed on the merits.  
26

1 Similarly, in the *Central Lincoln I* order, the Commission explicitly held that  
2 Central Lincoln may not charge “application fees” for processing permit applications. *Central*  
3 *Lincoln I*, 2005 Ore. PUC Lexis 36, at \*35-36. Yet, again, just weeks later, Central Lincoln was  
4 already trying to charge Charter application fees for every permit application filed. (Exh. 11).  
5 As a final example, the Commission also made clear that Central Lincoln could charge annual  
6 rental only for the amount of useable space occupied, with a minimum presumption of one foot.  
7 *Central Lincoln I*, 2005 Ore. PUC Lexis 36, at \*33-35. However, Central Lincoln has  
8 subsequently invoiced Charter for myriad “attachments” outside the one foot of useable space,  
9 such as risers and anchor attachments. (Exh. 11).

10 These challenged requirements by Central Lincoln, and the others detailed in  
11 Charter’s complaint, are blatant challenges to the Commission’s authority. There is no new fact,  
12 rule, or statute that would change the outcome of the Commission’s holdings in the *Central*  
13 *Lincoln* orders. Thus, Charter is likely to succeed on the merits of its claims.<sup>4</sup>

14  
15 **C. Without The Requested Interim Relief, Charter Will Suffer Irreparable**  
16 **Harm**

17 Under the plain language of ORCP 79 A(1)(a), absent the requested relief, Charter  
18 will suffer harm. The strand in Yachats has already failed in a number of places. If the strand  
19 fails and someone is injured, it may expose Charter to potentially significant liability. Of course,  
20 the interest in public safety is an even greater concern. Under *Wah Chang*, Charter need only  
21 demonstrate some potential for injury absent the injunction, which is clearly identified in this  
22 case. However, even under the irreparable harm approach, Charter satisfies the requirement. For  
23 example, under the radically broad indemnification provisions required by Central Lincoln in the

24 \_\_\_\_\_  
25 <sup>4</sup> Indeed, the issue preclusion doctrine prohibits Central Lincoln from re-litigating these same  
26 issues before the Commission. Central Lincoln actually litigated these very issues less than a  
year ago, and is therefore bound by the Commission’s holding against it. *See, e.g., Nelson v.*  
*Emerald People’s Utility Dist.*, 318 Or. 99, 104 (1993)

1 Agreement, (Exh. 5, §§ 7.1, 7.2, 7.3), Charter may have no monetary recourse from Central  
2 Lincoln to make it whole in the case of such a loss. That is the definition of irreparable harm.

3 In addition, because Central Lincoln will not allow Charter to correct the strand  
4 issues in Yachats, Charter's customers have lost cable service (and more will do so absent  
5 corrective measures). Loss of service is a significant issue with cable television subscribers.  
6 (Antonovich Decl. ¶ 14). Moreover, in the area served by these lines Charter faces substantial  
7 competition from satellite-transmitted video services (also known as Direct Broadcast Satellite),  
8 such as DirectTV. (Antonovich Decl. ¶ 14). Additional service interruptions will harm  
9 Charter's reputation with its subscribers.

10 It is well recognized that injuries to a company's competitive position and  
11 customer goodwill are intangible and irreparable by monetary damages.<sup>5</sup> Accordingly, the  
12 damage to Charter's reputation and good will that will result from Central Lincoln's actions will  
13 be irreparable.

14 Central Lincoln's refusal to allow Charter to perform the corrective measures in  
15 Yachats may also cause the cable lines to become out of compliance with the National Electric  
16 Safety Code ("NESC"). As a result, Charter could be held to be in violation of various  
17 regulations, including the Commission's Part 24 rules. A citation against Charter for being in  
18 violation of the NESC could ultimately impact its ability to maintain its franchise in the County,  
19 as well as having a detrimental effect on its relationship with other communities, as those local  
20

---

21 <sup>5</sup> See, e.g., *Cable TV Fund 14-A, Ltd. v. Property Owners Association Chesapeake Ranch*  
22 *Estates, Inc.*, 706 F. Supp. 422 (D. Md. 1989); *General Mills, Inc. v. Kellogg Co.*, 824 F.2d 622,  
23 625 (8th Cir. 1987); *Brennan Petroleum Prods. Co. v. Pasco Petroleum Co.*, 373 F. Supp. 1312,  
24 1316 (D. Ariz. 1974); *Interphoto Corp. v. Minolta Corp.*, 417 F.2d 621 (2d Cir. 1969);  
25 *Continental Cablevision of Cook County, Inc. v. Miller*, 606 N.E.2d 587, 596 (Ill. App. Ct.  
26 1992), *appeal denied*, 612 N.E.2d 512 (Ill. 1993); *American Tel. and Tel. Co. v. Village of*  
*Arlington Heights*, 528 N.E.2d 1000, 1004 (Ill. App. Ct. 1988), *appeal denied*, 535 N.E.2d 398  
(Ill. 1988); *Allied Mktg. Group, Inc. v. CDL Mktg., Inc.*, 878 F.2d 806, 810 (5th Cir. 1989);  
*Pipkin v. JVM Operating, L.C.*, No. 6:95cv699, 1996 U.S. Dist. LEXIS 8592 at \*20 (E.D. Tex.  
June 17, 1996); *Body Support Sys., Inc. v. Blue Ridge Tables, Inc.*, 934 F. Supp. 749, 757-58  
(N.D. Miss. 1996) (citing *Allied Marketing*).

1 authorities would learn that Charter had been found out of compliance with the NESC in the  
2 Yachats area. The harm that will result to Charter's regulatory relationships and reputation  
3 caused by Central Lincoln's unlawful actions is also immeasurable and irreparable.  
4

5 **D. The Balance Of Equities Tips Decidedly In Favor Of Charter**

6 In comparison to the significant injury that will befall Charter absent the requested  
7 interim relief, Central Lincoln faces no risk whatsoever. Charter will ultimately be permitted to  
8 make the requested attachments regardless of the outcome of this dispute. The sole issue is  
9 whether Charter will have to pay the unlawful fees demanded by Central Lincoln and whether  
10 the Agreement must be reformed. If Charter were to lose on all of its Complaint counts, all that  
11 would happen is that Charter would have to pay Central Lincoln's fee demands. Charter would  
12 still have access to Central Lincoln's poles. Central Lincoln is not prohibiting Charter's  
13 proposed attachments based on safety or engineering issues. It appears to be purely retaliatory  
14 for Charter's exercise of its rights under law, and is solely a matter of whether, as a matter of  
15 law, Central Lincoln is entitled to be paid its demanded fees or not. This lack of any potential  
16 risk for Central Lincoln further militates in favor of granting the interim relief.  
17  
18

19 **E. THE COMMISSION SHOULD ISSUE THE REQUESTED RELIEF,**  
20 **ORDERING CENTRAL LINCOLN TO IMMEDIATELY ISSUE ALL**  
21 **PENDING PERMITS AND UNDERTAKE NECESSARY MAKE READY**

22 As explained above, Central Lincoln's stubborn refusal to abide by the  
23 Commission's rules and its abuse of its monopoly control over essential facilities is threatening  
24 Charter with irreparable harm, and more importantly, may be placing the public at risk of injury.  
25 Accordingly, based on the foregoing, Charter respectfully submits that the Commission should  
26 enter an order requiring Central Lincoln to issue the permits sought by all presently pending  
applications within 10 days and to within 30 days thereafter initiate make ready, if any is

1 necessary, on the first 500 poles to be identified by Charter as of the highest priority, with all  
2 subsequent make ready to be performed based on a schedule to be agreed upon between Charter  
3 and Central Lincoln. The Commission should also clarify in its Order that Central Lincoln must  
4 undertake these actions without requiring any pre-payment by Charter or any payment of any  
5 application-related fees by Charter.

6 DATED this 5th day of January, 2006.

7 MILLER NASH LLP

8 

9  
10 Brooks E. Harlow  
OSB No. 03042

11 Attorneys for Claimant  
12 Charter Communications Holding  
Company, LLC; Falcon Telecable, L.P.,  
13 Falcon Cable Systems Company II, L.P.,  
And Falcon Community Ventures I, L.P.

14  
15 /s/ T. Scott Thompson

16 T. Scott Thompson  
(admission *pro hac vice* pending)  
Rita Tewari  
17 COLE, RAYWID & BRAVERMAN, LLP  
1919 Pennsylvania Avenue, N.W.  
Suite 200  
18 Washington DC 20006  
(202) 659-9750  
19 (202) 452-0067 (fax)  
[sthompson@crblaw.com](mailto:sthompson@crblaw.com)

20  
21 Attorneys for Claimant Charter  
22 Communications Holding Company,  
LLC, Falcon Telecable, L.P., Falcon  
23 Cable Systems Company II, L.P., And  
Falcon Community Ventures I, L.P.



1  
2 **CHARTER MOTION FOR EMERGENCY INTERIM RELIEF**  
3 **EXHIBIT LIST**

- 4 1. December 26, 2001 Letter from Central Lincoln to Charter  
5 2. June 26, 2002 Draft Agreement with cover letter from Central Lincoln to Charter  
6 3. January 6, 2003 Letter from Peter Gintner  
7 4. February 13, 2003 Letter from Peter Gintner  
8 5. March 17, 2003 Pole Occupancy License Agreement  
9 6. March 17, 2003 Cover Letter from Charter to Central Lincoln  
10 7. 2004 Central Lincoln Fee Schedule  
11 8. August 26, 2004 Letter from Charter to Central Lincoln  
12 9. October 5, 2004 Letter from Charter to Central Lincoln  
13 10. December 21, 2004 Letter from Charter to Central Lincoln  
14 11. February 8, 2005 Invoices from Central Lincoln to Charter  
15 12. June 10, 2005 Letter from Charter to Central Lincoln  
16 13. June 24, 2005 Letter from Central Lincoln to Charter  
17 14. November 22, 2005 e-mail from Denise Estep of Central Lincoln to Peter Kalnins of  
18 Charter  
19  
20  
21  
22  
23  
24  
25  
26

**Motion for Emergency Interim Relief**  
**Exhibit 1**



General Office • 2129 North Coast Highway • P.O. Box 1126 • Newport, OR 97365 • (541) 265-3211 • FAX: (541) 265-5208  
December 26, 2001

Charter Communications  
Regional Office  
1175 East Main  
Medford, Oregon 97504

This letter shall serve as official notice that Central Lincoln People's Utility District is terminating the Pole Attachment rental agreements with Charter Communications for the Newport, Florence and Reedsport areas pursuant to paragraph 20 of the original agreements. The original agreements were with TCI Cable Television with an effective date of March 10, 1986 (Newport), McCaw CableVision with an effective date of October 1, 1986 (Florence), and Falcon Cable Systems Company with an effective date of November 1, 1989. The effective termination date will be June 30, 2002.

The District anticipates beginning negotiation of the new Joint Use Occupancy agreement with Charter Communications during the first quarter of calendar year 2002. This agreement shall become effective on July 1, 2002.

Beginning January 1, 2002, all requests for attachment permits, with the exception of service drops, as defined in OAR 860-034-0820 (3) (a) on Central Lincoln PUD owned poles will not be processed or approved without a completed Engineering Load Data Information Form (see attachment). A completed Engineering Load Data Information Form will also be required for a service drop within (7) seven days of installation. Please utilize NJUNS with member code CLPUDA for all attachment requests. Mail or Fax completed Engineering Load Data Information Form to:

Central Lincoln PUD  
Attn: Pole Attachment Administrator  
PO Box 1126  
Newport, Oregon 97365

Fax # 541.574.2100  
Attn: Pole Attachment Administrator

Questions regarding the termination notice should be forwarded to: Central Lincoln PUD  
Attn: Michael Wilson P.E.  
PO Box 1126  
Newport, Oregon 97365  
541.574.2065

Sincerely,

Paul Davies  
General Manager

SERVING LINCOLN • LANE • DOUGLAS • COOS COUNTIES ON THE OREGON COAST

NJUNS Serial #	Company	Date
<b>STEP #</b>	<b>CLPUD Pole #</b>	<b>Other #</b>
FS Bearing	FS Length	Attachment Height
BS Bearing	BS Length	Attachment Bearing
X Offset	Y Offset	Z Offset
<b>Attachment Type</b>		
<input type="checkbox"/> Messenger	<input type="checkbox"/> Internal Messenger	<input type="checkbox"/> Self Support Cable
<input type="checkbox"/> Over-Lash	<input type="checkbox"/> Power Supply	<input type="checkbox"/> Junction Box
<input type="checkbox"/> Power Riser	<input type="checkbox"/> Comm Riser	<input type="checkbox"/> Down Guy
<input type="checkbox"/> Other	<input type="checkbox"/> Anchor	
JBSize <input type="checkbox"/> S <input type="checkbox"/> M <input type="checkbox"/> L		
Guy Bearing	Guy Size	Anchor Holding
Guy Length	Mid Span Distance	
Note:		
<b>Messenger/Cable/Conductor Type and Loading Information</b>		
<input type="checkbox"/> TelCo Trunk Cable	<input type="checkbox"/> Multi.TelCo Cables	<input type="checkbox"/> TelCo Sevice Drop
<input type="checkbox"/> Single Coax Cable	<input type="checkbox"/> Multi Coax Cables	<input type="checkbox"/> Comm Service Drop
<input type="checkbox"/> Fiber Optic Cable	<input type="checkbox"/> Fiber Cable Storage	<input type="checkbox"/> Other
1 Name	Dia.	Area
Lbs/foot	RBS	Inst T
Wire Coefficient	1/F	Modulus of Elasticity
2 Name	Dia.	Area
Lbs/foot	RBS	Inst T
Wire Coefficient	1/F	Modulus of Elasticity
3 Name	Dia.	Area
Lbs/foot	RBS	Inst T
Wire Coefficient	1/F	Modulus of Elasticity
4 Name	Dia.	Area
Lbs/foot	RBS	Inst T
Wire Coefficient	1/F	Modulus of Elasticity
Addition Information:		

**Motion for Emergency Interim Relief**  
**Exhibit 2**

The



Central Lincoln People's Utility District

General Office • 2129 North Coast Highway • P.O. Box 1126 • Newport, OR 97365 • (541) 265-3211 • FAX: (541) 265-5208

June 27, 2002

Charter Communications  
203 SE Park Plaza Dr., Suite 290  
Vancouver, WA 98684

Attn: Joel Godson

CERTIFIED MAIL: 7099 3400 0017 5666 6311

Dear Mr. Godson:

As indicated in previous correspondence sent to your company on December 26, 2001, the District will terminate the existing General Agreement for Joint Use of Poles on June 30, 2002. Enclosed please find two new Pole Occupancy License Agreements for your signature, along with one copy of the Exhibits A, B, C, D, and E. I would like to have the signed Joint Pole Agreement sent back by August 30, 2002.

Please sign both of the Agreements and return to me. I will return a fully executed copy to you for your records after our General Manager has signed the Agreement.

We will also need for your company to furnish the following:

1. Certificate of Insurance as defined in Section 8 of the Agreement.
2. Cash Deposit or Performance Bond as defined in Section 9 of the Agreement.

If you have any questions, please call me at (541)574-2065, or Denise Estep, Joint Pole Administrator at (541)574-2011.

Sincerely,

Michael L. Wilson, PE  
Chief Engineer & Systems Operations Manager

Enclosures

COPY

## POLE OCCUPANCY LICENSE AGREEMENT

DATE: \_\_\_\_\_, 2002

PARTIES: \_\_\_\_\_  
("Licensee")

*Central Lincoln People's Utility District,*  
("District")

an Oregon people's utility district  
2129 North Coast Hwy.  
Newport, OR 97365

### RECITALS:

A. Licensee desires access to District's pole, ducts, conduits and rights-of-way within the District's distribution area.

B. District is willing to license under certain conditions, on a revocable, non-exclusive license basis, to the extent it may lawfully do so, the placement of Licensee's attachments on District's poles, ducts, conduits and rights-of-way where reasonably available in its distribution area.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the parties do mutually covenant and agree as follows:

### SECTION 1. DEFINITIONS

**Definitions in General.** Except as the context otherwise requires, the terms defined in this License Agreement shall, as used herein, have the meanings set forth in Section 1.1 through 1.15.

**1.1 Attachment.** The term "Attachment" means any wire or cable for the transmission of intelligence by telegraph, telephone or television (including cable television), light waves or other phenomena, or for the transmission of electric power, and any related device, apparatus, or auxiliary equipment, installed individually upon any portion of a pole or in any telegraph, telephone, electrical, cable television or communications right of way, duct, conduit, manhole or hand hole or other similar facility or facilities owned or controlled, in whole or in part, by the District.

**1.2 Attachment Project.** The term "Attachment Project" refers to any addition, modification or removal of any electric supply line, signal line, device, apparatus,

equipment, or structural member that materially changes the clearance, mechanical, structural, or electrical characteristics of the joint use pole installation.

**1.3 Attachment Maintenance Project.** The term "Attachment Maintenance Project" refers to the replacement or maintenance of existing attachments that do not modify the installation or location, change pole loading characteristics or clearances, or affect other joint-pole users.

**1.4 Bootleg.** The term "Bootleg" refers to the occupancy of an attachment on a pole, joint use pole or on a messenger cable attached to a pole or joint use pole without a valid occupancy permit. A Service Drop will be considered a Bootleg if District has not received a Service Drop Application within seven (7) days of occupancy.

**1.5 Facilities.** The term "Facility" and "Facilities" refer to any property or equipment utilized in the provision of services by Licensee or District.

**1.6 Foreign Joint Pole.** The term "Foreign Joint Pole" refers to a utility pole owned and maintained by a utility other than the District, which may be occupied with District attachments.

**1.7 Joint Pole.** The term "Joint Pole" refers to a utility pole owned and maintained by the District and occupied with attachments of other electric and telephone utilities, cable television companies, fiber optic companies, government agencies, or other private companies and individuals.

**1.8 Licensee's Equipment.** The term "Licensee's Equipment" refers to those cables, wires, and appliances together with associated messenger cables, guy wires, anchors, and other appurtenances to be used in the normal course of providing telephone, utility and/or communication service to Licensee's customers.

**1.9 Make-Ready.** The term "Make-Ready" refers to engineering and/or construction work required to modify or replace an existing pole or joint pole to render it suitable for an additional or modified attachment or occupancy.

**1.10 NESC.** The term "NESC" refers to the National Electric Safety Code.

**1.11 NJUNS.** The term "NJUNS" refers to the National Joint Utilities Notification System, an electronic internet program ([www.njuns.com](http://www.njuns.com)) for attachment permit application to a joint pole, attachment removal from a joint pole, attachment relocation on a joint pole and attachment transfer to a replacement joint pole.

**1.12 Pole.** The term "Pole" refers to a utility pole owned and maintained and occupied by the District.

**1.13 Senior Attachment.** The term "Senior Attachment" refers to the attachment of a joint pole with the earliest current valid permit date.



**1.14 Transmission Pole.** The term "Transmission Pole" refers to a utility pole owned, maintained, and occupied by the District with a transmission electrical circuit with line to line voltage of 69 or 115 KV.

**1.15 Transmission/Distribution Pole.** The term "Transmission/Distribution Pole" refers to a utility pole owned, maintained, and occupied by the District with a transmission electrical circuit with line to line voltage of 69 or 115 KV and one or more distribution electrical circuits with line to line voltage of 12.47KV.

## **SECTION 2. GENERAL AGREEMENT**

**2.1 Permits.** Subject to the terms and conditions set forth in this License Agreement, District shall issue to Licensee one or more permits authorizing Licensee to make attachments to specified poles owned or controlled by District. District may deny a permit application if District determines in its sole judgment that the pole space specifically requested by Licensee is needed to meet District's present or future requirements, or is Licensed by District to another Licensee, or is otherwise unavailable based on engineering or other valid concerns. Nothing contained in this Agreement, or any permit issued pursuant to this Agreement, shall be construed to compel the District to maintain any of its poles for a period longer than is necessary for District's service requirements.

**2.2 Specific Permits Required.** Except for service drops pursuant to Section 3.1.5 and Attachment Maintenance Projects as defined in Section 1.3, the Licensee shall have no right pursuant to this Agreement to attach to any pole of the District until a specific permit has been granted as to that pole for each attachment. Licensee shall be subject to sanctions pursuant to Section 10.5, for any attachment by Licensee to a pole owned by the District without a permit.

**2.3 Distribution Area.** The distribution area covered by this Agreement shall be those portions of Lincoln, Lane, Douglas, and Coos Counties, State of Oregon, as served by the District.

**2.4 Foreign Joint Poles.** District does not own some of the joint poles for which permits are sought from the District under this Agreement and that such joint poles that the District has in use may be owned by others. Licensee understands and agrees that it is required to make appropriate agreements for permits, licenses, or other written consent for Licensee's use of a foreign joint pole with owner(s) of such foreign joint pole; provided further, that Licensee hereby agrees to be responsible for obtaining the appropriate permission from all owner(s) and Licensee further agrees to hold harmless and indemnify the District herein from any claims or damages alleged against District by reason of the failure of Licensee to secure or obtain the appropriate permission, license, or permit from any owner(s) of such foreign joint poles.

**2.5 District/Licensee Relationship.** No use, however extended, of any of the poles under this Agreement shall create or vest in Licensee any ownership or property

rights herein, but Licensee's rights therein shall be and remain a mere license, which, as to any particular pole or poles, may be terminated at any time by the District pursuant to Section 10.3. Licensee understands and agrees that the permit rights granted herein and the specific permits granted pursuant to this Agreement are non-exclusive and revocable, and that District may grant attachment rights to other parties for the use of the same poles for which Licensee has specific attachment permits; provided, however, that pole attachment rights subsequently granted by District to other private parties pursuant to licenses, permits and/or rental agreements shall not limit or interfere with any prior attachment rights granted to Licensee hereunder. In all cases, the Senior Attachment shall have priority over subsequent attachments.

**2.6 Primary Use of Poles.** Licensee understands and agrees that the District's poles are used and are to continue to be used primarily for the District's purposes; therefore, the Licensee's use will be a secondary use and that this Agreement is made and all permits granted hereunder are granted as an accommodation to the Licensee. Attachment requests to District Transmission/Distribution Poles shall be governed by this Agreement with the exception that all engineering, inspections and make-ready work shall be charged by actual cost. Attachment requests to District Transmission Poles shall be by separate agreement and at the sole discretion of the District.

**2.7 Prohibited Equipment.** Under no circumstances shall a permit be granted hereunder for the attachment of any equipment that is intended to either transmit or receive any radio frequency licensable by the FCC. Such prohibition shall include both direct attachments to the District's poles and the placement of antennae between pole spans, utilizing existing attachments. However, nothing in this Agreement shall prevent the District from authorizing the attachment of such equipment to District poles, or any other District facilities, under a separate agreement containing terms and conditions for such attachments which are acceptable to the District in its sole discretion.

## **SECTION 3. PROCEDURES AND COSTS**

**3.1 Application Forms.** To apply for a permit under this Agreement, Licensee shall submit to District a signed copy of an Application for Pole Attachment, a copy of which is attached as Exhibit "A", or electronic application using NJUNS. Licensee shall also submit to District a signed copy of the Joint Occupant Load Data Information Form, a copy of which is attached as Exhibit "A". The Application for Pole Attachment and Joint Occupant Load Data Information Form may be revised from time to time in the sole discretion of the District. Licensee may cancel a permit under this Agreement pursuant to Section 10.3.1.

**3.1.1 Required Information.** Each application for a permit under this Agreement shall specify the District's Site Location Number (normally attached to the pole), physical location description of the pole or poles in which Licensee desires to make an attachment and other identifying pole information; a description of Licensee's equipment which will be attached to each pole, complete cable, wire, and equipment wind and tension loading information, installation diagram of equipment placement in relation to District's facilities,

and existing Licensee's attachment if any. Incomplete applications shall be returned to the Licensee without further consideration for a permit to attach.

**3.1.2 Attachments per Application.** Each initial application for a permit under this Agreement shall have a maximum of 10 attachments located on 1 to 10 poles. Subsequent application resulting from make-ready work rejections of an initial application shall be for 1 pole.

**3.1.3 Large Attachment Projects.** Attachment projects involving a large number of poles and attachments shall require sixty (60) calendar days of advance notification and a project planning meeting between Licensee and District to determine scope of work, party responsibility, time schedule, additional fee and chargeable costs before work begins on processing attachment permits. The District shall make the sole determination of what constitutes a large attachment project.

**3.1.4 Application/Inspection Fee.** An application fee in the amount set forth in Exhibit "B" shall be billed for each attachment application. The District shall bill the application fees monthly. Such application fee shall cover the average costs of the preliminary survey described in Section 3.2 below and one (1) post construction inspection of the completed attachment. Licensee agrees to pay for any and all subsequent inspection(s) if the installation is not in compliance with any Section of this Agreement, NESC, and/or OPUC policies in amount set forth in Exhibit "B". See Section 4.6 regarding annual review of application fees.

**3.1.5 NJUNS.** Use of the internet NJUNS program is the preferred method of permit applications, notifications and transaction recording. If Licensee elects not to use NJUNS, Licensee shall notify District in writing and agree to pay a written application/notification fee in the amount set forth in Exhibit "B". See Section 4.6 regarding annual review of application fees.

**3.1.6 Service Drop Exception.** With respect to service drops only, District grants Licensee preliminary permission for such occupancy to be made prior to the issuance of a permit, provided further that such preliminary permission shall be subject to subsequent receipt of a properly completed electronic application using NJUNS or the Application for Pole Attachment, and receipt of a completed Joint Occupant Load Data Information Form. Failure by Licensee to meet all requirements for service drops will result in District revoking preliminary permission for occupancy and shall be considered a bootleg attachment subject to the Section 3.7. Upon receipt of the electronic application or written Application for Pole Attachment and Joint Occupant Load Data Information Form from Licensee, the District shall review the application pursuant to the procedure set forth in this Section 3.

**3.2 Preliminary Survey.** Upon receipt of a written or electronic NJUNS application, the Joint Occupant Load Data Information Form, application fee and location map, the District shall conduct a preliminary survey of the pole(s) in question and, if the Licensee requests, with representatives of the Licensee. The preliminary survey shall determine:

- (a) Whether such poles are available for the Licensee's attachments;
- (b) Whether any rearrangement or other changes are necessary in the facilities of the District or of other joint users of the pole or joint use pole in question to accommodate Licensee's proposed attachments;
- (c) Whether any pole or joint use pole in question requires strengthening, including guying, anchoring, and/or stubbing; and
- (d) Whether any pole or joint use pole requires replacement by a taller or higher strength class pole.

**3.3 Completion of Preliminary Survey.** The District shall complete the preliminary survey and send either written or electronic notification using NJUNS, to the Licensee within thirty (30) days after receipt of the complete attachment application, engineering data information form, for attachment projects not determined to be large attachment projects.

**3.3.1 Issue of Permit on Preliminary Survey.** District shall identify to Licensee as to which of the pole(s) or joint use pole(s) in the application are available for Licensee's proposed attachment, including the location on the pole or joint use pole available for Licensee's proposed attachments.

**3.3.2 Rejection of Attachment on Preliminary Survey.** District shall identify to Licensee as to which of the pole(s) or joint use pole(s) in the application are not available for Licensee's proposed attachment. An estimated make-ready cost will be noted for the rejected poles. Rejected pole(s) will require a new individual attachment application in order to proceed with the permitting process.

**3.4 Make-Ready Work.** District final engineering for make-ready work will commence upon receipt of the re-application for pole attachment.

**3.4.1 Licensee's Engineering Review.** Upon Licensee's request, the District shall permit the Licensee to review the proposed work prints, together with available supporting cost details, in order for the Licensee to satisfy itself as to the make-ready work proposed and the costs estimated by the District. The District may consider any reasonable objections or comments by the Licensee; provided, however, that the District's decision regarding the necessity and cost for any make-ready work remains in the District's sole discretion.

**3.4.2 Costing.** The District shall determine the estimated costs of make-ready work. The engineering and/or construction work required to modify or replace an existing pole or joint pole to render it suitable for an additional or modified attachment or occupancy shall include those items described in Sections 3.2(b), 3.2(c), and 3.2(d). The estimated costs of make-ready work may include, but not be limited to, replacement costs of poles or joint poles. Replacement costs shall include the total costs of the new pole, removal of the old pole, all transferring of the District's attachments from the old to the new pole, and such other costs necessitated by the Licensee's attachment less the salvage value and the costs of such portion of the new pole which represents space reserved for the use of the District

and any joint users greater than that provided for on the old pole. Make-ready costs may also include all materials, supplies, engineering, labor including overtime, board and lodging where necessary to meet the Licensee's requirements, supervision, contract engineering services, transportation, travel time, taxes, general overhead, appropriate loadings for such items as pension accruals, social security taxes, vacations, holidays, sickness, workman's compensation, and any other accounts under the uniform system of accounts applicable to District as prescribed by the Federal Energy Regulatory Commission. District shall utilize standard construction unit costs, where applicable and amended from time to time, as set forth in the attached Exhibit "B".

**3.4.3 Confirmation by Licensee.** Within thirty (30) days after the District notifies the Licensee of the contemplated make-ready work and the estimated make-ready work cost, Licensee shall confirm with a written notice or an electronic notice using NJUNS its decision to proceed with the make-ready work. In the event Licensee does not confirm with a written or electronic notice using NJUNS within thirty (30) days, its application pursuant to Section 3.1 shall be deemed withdrawn and the application fee provided in Section 3.1.3 shall not be refunded. Licensee shall also be responsible for payment to the District of the costs of determining the make-ready work costs; provided, however, that such costs shall not be duplicated.

**3.4.4 Advance Payment of Estimated Costs.** In the event Licensee confirms its application, Licensee shall pay to District in advance the full amount of the make-ready work costs as estimated by the District, or by mutual agreement District will bill Licensee upon completion of make-ready work. In the event Licensee fails to make advance payments within ten (10) days of confirmation pursuant to Section 3.4.3, the District shall be under no further obligation to perform or continue any make-ready work. In no event shall Licensee commence any construction or attempt to attach its facilities to the District's poles until Licensee has paid to District the costs of all make-ready work, and District has authorized and notified electronically using NJUNS that Licensee can proceed.

**3.4.5 Pole Strength, Space or Availability.** In the event existing poles of District are not available for attachment by Licensee pursuant to Section 2.4 of this Agreement, or if District shall not have poles or pole facilities sufficient to fulfill Licensee's requirements for the attachment of Licensee's equipment, Licensee shall notify District in writing of its need for such pole facilities and grant District a right of first refusal to determine whether it wishes to provide pole facilities in such locations and in such manner as will fulfill the Licensee's requirements. If District elects to exercise its right of first refusal to provide pole facilities for Licensee, District shall, at Licensee's expense, erect pole facilities in such locations and in such a manner as to reasonably meet the service requirements of both Licensee and District. If other Licensees request occupancy space on said pole within a sixty (60) month period from the setting month, the District shall collect a prorated share of the setting fee and reimburse Licensee the prorated share. District's right of first refusal does not obligate District to provide pole space nor to grant Licensee permission to use any particular pole. District understands and agrees that if it declines to grant a permit to Licensee to attach to an existing District pole, or to provide new pole facilities sufficient to meet Licensee's requirements, Licensee shall have the right to make any other

arrangements it deems reasonably appropriate to provide for its equipment at the location desired; provided, however, that Licensee's pole plant or alternative arrangements for its facilities shall not unreasonably interfere with the existing poles and facilities of District. In no case shall Licensee place a pole in line with the District's pole line.

**3.4.6 Issuance of Permit.** If Licensee's application for a pole attachment is approved, and all required make-ready work completed, District will execute and return a permit to Licensee, as appropriate, authorizing Licensee to attach or place the specified facilities on District's poles.

**3.4.7 Final Billing Payment.** Upon completion of make-ready work, Licensee will be billed the difference between the actual make-ready work less the advance payment. Licensee agrees to pay to District within thirty (30) days of the date of the final bill.

**3.5 Subsequent Modifications of Licensee's Attachments.** Licensee acknowledges that, from time to time, it may be necessary or desirable for District to change out poles, relocate, reconstruct, or rearrange facilities contained therein or connected thereto and that such change may be necessitated by District's business needs and that it is clear the beneficiary of such rearrangements is District. In these instances, Licensee agrees that Licensee will, upon District's request, and at Licensee's expense, participate with District (and other Licensees) in the relocation, reconstruction, or modification of District's poles or facilities rearrangement. Licensee shall make all rearrangements of its facilities within such a period of time as is jointly deemed reasonable by the parties based on the amount of rearrangements necessary. If Licensee fails to make the required rearrangements within the time requested and prescribed or within such extended periods of time as may be granted by District in writing, District may perform such rearrangements with written notice to Licensee, and Licensee shall reimburse District for actual costs and expenses incurred by District in connection with the rearrangement of Licensee's facilities.

**3.6 Emergency Repairs and Pole Replacements.** In general, Licensee shall be responsible for making emergency repairs to its own facilities and for formulating appropriate plans and practices which will enable it to make such emergency repairs. District shall be under no obligation to perform any repair or service restoration work of any kind with respect to Licensee's facilities. District may, at its option, correct any attachment deficiencies and charge the licensee for its costs.

**3.7 Unauthorized Pole Attachment - Penalty.** In the event Licensee occupies a District pole with an attachment without a specific attachment permit for such attachment, Licensee shall have a bootleg attachment in non-compliance for the attachment permit and be subject to sanctions and penalties pursuant to Section 10.5.

**3.8 Cost Allocation Among Multiple Applications.** When applications to occupy the same pole have been received from two or more prospective Licensees, including Licensee, before permits are granted, applicable make-ready costs shall be pro-rated equitably among such simultaneously attaching occupants. Each occupant, including

Licensee, shall be responsible for an additional inspection cost on its individual attachments.

#### **SECTION 4. RENTALS, CHARGES, AND RATES**

**4.1 Pole Rental Amount.** Each permit issued pursuant to this Agreement shall be subject to an annual attachment or occupancy fee as set forth in the attached Exhibit "B".

**4.2 Payment.** Annual billings shall be rendered on February 1<sup>st</sup> of each year. Rental bills shall be considered delinquent if payment is not received in full within thirty (30) days of the billing date.

**4.3 Annual Rental Method of Computation.** The amount of annual payment due shall be determined by District based upon the total number of attachments, service drop attachments, equipment attachments, anchor attachments, and riser attachments permits on poles as of December 31<sup>st</sup> prior to the February 1<sup>st</sup> billing date.

**4.4 Annual Attachment Rental Fee Review.** District shall annually review the attachment rental fees in Exhibit "B" by June 30<sup>th</sup> of each year. Notice shall be sent to Licensee with a revised Exhibit "B" reflecting any increase or decrease in the attachment rental fees. Any annual increase or decrease in fees shall take effect on the date specified in said notice. The letter of notification shall be incorporated in, and governed by terms and conditions of this Agreement. If such changes are not acceptable to Licensee, Licensee may dispute the revised attachment fee amount. The amount in dispute shall be placed into escrow by Licensee until the disputed amount is resolved.

**4.5 Late Payment Penalty.** A late payment penalty fee in an amount set forth in the attached Exhibit "B" shall be added on the unpaid amount past due under this Agreement.

**4.6 Application Fee Review.** District shall annually review the Fee Schedule in Exhibit "B" and provide at least six (6) months written notice to Licensee of any increase or decrease in fees with a revised Exhibit "B". The letter of notification shall be incorporated in, and governed by terms and conditions of this Agreement.

**4.7 Miscellaneous Charges.** Licensee shall pay, in addition to the charges specified in this Section, all costs incurred by District in connection with any work performed by the District pursuant to this Agreement in order to provide or maintain space on any poles for the Licensee's attachments, and any other costs incurred by the District arising out of this Agreement. Licensee shall be responsible for any consent, permits, taxes, licenses or other requirements and charges that may be imposed upon District by reason of this Agreement and to pay all such taxes, fees, charges, and expenses as may be imposed upon District as a result of this Agreement.

## **SECTION 5. OPERATIONS AND MAINTENANCE**

**5.1 Permission from Other Authority.** Licensee shall be responsible for obtaining any building licenses, permits, authorizations or certificates from governmental authorities necessary to construct, operate, maintain and remove its facilities on public or private property. Licensee shall not attach or place its facilities to or on District's poles located on any property for which it or District has not first obtained all required authorizations. District shall have the right to request evidence that all appropriate authorizations have been obtained. All facilities owned by Licensee on District's poles, anchors, or guys must serve a lawful purpose and the uses made of Licensee's facilities must comply with all applicable federal, state, and local laws and with all federal, state, and local regulatory rules, regulations, and requirements. In this regard, Licensee shall not utilize any facilities occupying or attached to District's poles for the purpose of providing any services which it is not authorized by law to provide or for the purpose of enabling any other person or entity to provide any such services.

**5.1.1 Existing Easements.** Licensee understands that District's existing easements do not include the facilities and attachments of Licensee. Licensee shall secure the necessary easements for the facilities and attachments of the Licensee.

**5.1.2 Future Easements.** In the event District elects to procure easement rights for its poles and facilities, District shall only seek the rights that cover District's poles and facilities.

**5.2 Construction, Attaching, and Placing Facilities.** Licensee shall be responsible for constructing its own facilities and attaching those facilities to District's poles at Licensee's sole cost and expense. Licensee shall be solely responsible for paying all persons and entities who provide materials, labor, access to real or personal property, or other goods and services in connection with the construction and placement of Licensee's facilities and for directing the activities of all persons acting on Licensee's behalf while they are physically present on District's pole, or in the vicinity of District's poles. Licensee shall not permit any mechanic's lien, materialman's lien, or any other lien, claim, or security interest to attach or encumber any of District's real or personal property at any time.

**5.3 Specifications and Standards.** Licensee shall construct, attach, place and maintain its facilities in compliance with all requirements and specifications set forth in this Agreement, the statutes of the State of Oregon, the current NESC and its amendments, and with the Construction Standards and Specifications For Joint Use Attachments set forth in the attached Exhibit "D", which may be revised from time to time in the sole discretion of the District.

**5.4 Maintenance Duties.** Licensee shall maintain its facilities in accordance with the provisions of this Agreement at Licensee's sole cost and expense. When maintaining the facilities, the provisions of Sections 5.2 and 5.3 shall apply.

**5.5 Modifications - District Permission Required.** Permits are for the specific equipment, facilities and location specified in the original application. Any subsequent



modification in the nature or location of the attachment specified on the permit (including but not limited to over-lashing or otherwise adding additional cable loading to the original attachment) shall require the Licensee to request modification to the existing permit or to apply for a separate permit for such additional attachment. Unauthorized modifications in the nature or location of attachments shall be considered a bootleg attachment and subject to the provisions of Sections 3.7 and 5.10.

**5.6 Inspection.** District shall have the right to make periodic or spot inspections at any time of any part of Licensee's facilities attached to District's poles, anchors, or guys for the limited purpose of determining whether Licensee's facilities are in compliance with the terms of this Agreement and permits hereunder; provided, that such inspections are non-invasive. Inspections may be made pursuant to the Inspection Form, a copy of which is attached as Exhibit "A". Such inspections shall be conducted at Licensee's expense. Neither the act of inspection by District of Licensee's facilities nor any failure to inspect such facilities shall operate to impose on District any liability of any kind whatsoever or to relieve Licensee of any responsibility, obligations, or liability under this Agreement.

**5.7 Maintenance Rights.** District reserves the right to maintain its poles and to operate its facilities thereon in such manner as will best enable them to fulfill its public service requirements.

**5.8 Time for Removal.** Whenever Licensee is required to remove its attachments from any poles, such removal shall be made in accordance with Section 10.4.

**5.9 Transfer of Attachments.** The District, in the course of replacement or removal of joint poles shall notify Licensee, in writing or electronically using NJUNS, of the District's anticipated schedule of work and required last attachment transfer date fifteen (15) calendar days prior to the performance of the work. Licensee, upon receipt of the anticipated work schedule, may elect to contact District's local operations office and attempt to coordinate the work. District is not required to provide exact time schedules, but to the extent such information is available to the District, shall make reasonable efforts to provide the Licensee with information regarding crew assignments. The District reserves the right to change such schedule, but shall make a reasonable attempt to notify Licensee of such changes. District is under no obligation to coordinate such work with Licensee with the exception of work sites that require all entities involved to coordinate the work for the purpose of safety of the crews and public. In the event the Licensee is able to coordinate the transfer of Licensee's facilities during the course of the work simultaneously being performed by the District, Licensee shall perform such work in a time and manner so as to permit District to remove original pole(s) during the course of District's work. District shall not be required to remain at a work site longer than thirty (30) minutes to allow Licensee to complete its work such that the District performs removal of original pole(s).

**5.9.1 Set Pole Notification.** District shall provide written notification or electronic notification using NJUNS to the Licensee of the completion date of District's set new transfer pole(s) work. District agrees that Licensee shall have thirty (30) days following such notice by District in which to transfer its attachments; provided, however, that said

time period may be shortened in the event of a bona fide emergency situation requiring prompt action. Upon notice to Licensee, District shall have the option to transfer Licensee's attachments at its sole discretion and charge Licensee a transfer fee as set forth in Exhibit "B".

**5.9.2 Failure to Transfer.** In the event Licensee fails to transfer its attachment or attachments to the new pole by the required transfer date or thirty (30) days following set pole notification, and has not notified the District in writing or electronically using NJUNS with an acceptable transfer date Licensee shall be in noncompliance with this Agreement and the attachment permit for the pole will be terminated. Licensee will be subject to sanctions and actual cost accrued by District as set forth in Exhibit "C".

**5.10 Crossing Facilities.** Except for service drops, Licensee's conductor or wire facilities that cross or intersect District facilities may be required, at Licensee's expense, to be attached to a joint pole at the sole discretion of the District.

**5.11 Loading Method.** Licensee's facilities shall be constructed to NESC Medium Loading District Grade "C" specifications unless special conditions or locations, at District's sole discretion, require Grade "B" or Extreme Wind loadings. Loading parameters are outlined in Exhibit "D". Licensee pole loading calculations will be required before an attachment permit is processed pursuant to Section 3.

**5.12 Balance Pole Moment Loading.** Licensee shall provide, install and maintain anchors and guys to insure a balanced pole loading moment. Maximum allowed non-wind load moment at the base of the pole per attachment will be one-thousand (1,000) foot pounds.

**5.12.1 Use of District's Anchors.** Where the anchor requirements of the Licensee and District coincide with respect to certain poles, the strains of Licensee's equipment and of District's equipment on said poles may be held by the same anchors. If District determines that District's anchor has sufficient holding capacity and attachment space to accommodate Licensee's guys, Licensee may, at its option and expense, utilize District's anchor. See Exhibit "B" for anchor attachment fee.

**5.12.2 Anchor Replacement.** In those cases where existing District owned anchors are inadequate to hold Licensee's strains and separate anchors are not desired by Licensee, District shall replace existing anchors with adequate anchors at the expense of the Licensee, and Licensee shall reimburse the District in accordance with Section 3 and Exhibit "B".

**5.13 Identification Tagging.** In the event any applicable federal, state, or local laws, regulatory rules, regulations, or requirements require the identification tagging of poles during the course of this Agreement, Licensee shall accept the means chosen by District to comply with identification tagging requirements. Licensee also agrees to provide District with the location of all poles requiring identification tagging used by Licensee, or if

colors are used for identification tagging, install the identification tagging on its attachments.

## **SECTION 6. SAFETY, NESC, OPUC**

**6.1 New Installations.** District shall have the right to inspect each new installation of Licensee's attachments upon and in the vicinity of such poles and to make periodic inspections of Licensee's attachments as it deems necessary. District reserves the right to charge Licensee for the expense of any field inspections, including inspections for make-ready work, inspections during installation of Licensee's attachments, inspections after construction, and any further periodic inspections deemed necessary by District. Any inspections performed shall in no way relieve Licensee of any responsibility, obligation, or liability assumed under this Agreement.

**6.2 Licensee Practices.** Licensee shall have written standard practices that address construction standards and communication protocols to be followed in attaching to District's poles pursuant to the requirements in Section 5.3. The standards shall specify any obligations that exceed NESC regulations, address communication methods, and contain contacts for notifications, project plans, authorizations and compliance certifications. These standards shall be made readily available to District upon twenty (20) days written notice to Licensee.

**6.3 Safety Violation.** District shall provide Licensee written notice or electronic notice using NJUNS of any violation of the Oregon Public Utility Commission's safety rules. Upon notice of a safety violation, Licensee shall either correct the violation within sixty (60) days or submit a plan of correction within thirty (30) days of its receipt of notice. District may, at its option, correct any attachment deficiencies and charge the Licensee for its costs. Licensee shall be subject to the sanctions contained in Section 10.5 for any safety violation pursuant to this Section.

**6.4 Vegetation Trim Around Licensee's Attachments and Facilities.** Licensee agrees to maintain a minimum distance from vegetation of one (1) foot during normal Oregon coast high wind conditions. Failure to maintain minimum clearance will result in Licensee non-compliance with the Agreement and Licensee agrees to accept full liability and hold harmless the District in the event of pole damage or failure during any weather condition. District may, at its sole option, trim vegetation that it deems hazardous to the operations of the District or safety of the public that are located in the communication space and charge the Licensee a prorated amount for its costs.

## **SECTION 7. INDEMNITY; REPRESENTATIONS AND WARRANTIES**

**7.1 Indemnification.** Licensee shall indemnify, protect and save harmless District, its directors, officers, employees and agents, District's other Licensees, and Joint User(s) from and against any and all claims, demands, causes of action, damages, and costs, including reasonable attorney's fees through appeals incurred by District, District's

other Licensee and joint user(s) as a result of acts by the Licensee, its employees, agents or contractors, including but not limited to the cost of relocating pole(s), anchor(s), guy(s), or conduit system(s) resulting from a loss of right-of-way or property owner consents and/or the cost of defending those rights and/or consents.

**7.2** The Licensee shall indemnify, protect and save harmless District, its directors, officers, employees and agents, District's other Licensees, and joint user(s) from and against any and all claims, demands, causes of actions and costs, including reasonable attorney's fees through appeals for damages to property and injury or death to persons, including but not limited to payments under any Worker's Compensation Law or under any plan for employee's disability and death benefits, caused by, arising from, incident to, connected with or growing out of the erection, rearrangement, maintenance, presence, use of, removal of Licensee's attachments, or by their proximity to the attachments of all parties attached to a pole, anchor, and/or guy, or placed in a conduit system, or by any act or omission of the Licensee's employees, agents or contractors in the vicinity of District's pole(s), anchor(s), guy(s) or conduit system(s).

**7.3** The Licensee shall indemnify, protect and save harmless District, its directors, officers, employees and agents, District's other Licensees, and joint user(s) from and against any and all claims, demands, causes of actions and costs, including reasonable attorney's fees through appeals, which arise directly or indirectly from the construction and operation of Licensee's facilities, including but not limited to taxes, special charges by others, claims and demands for damages or loss from infringement of copyrights, for libel and slander, for unauthorized use of television or radio broadcast programs and other program material, and from infringement of patents with respect to the construction, maintenance, use and operation of Licensee's facilities in combination with pole(s), anchor(s), conduit system(s) or otherwise.

**7.4 Damage.** Licensee shall exercise reasonable care to avoid damaging the facilities of District and of others attached to pole(s), anchor(s), or guy(s) and shall make an immediate report to the owner of the occurrence of any such damage caused by Licensee's employee, agents, or contractors. Licensee agrees to reimburse District for all reasonable costs incurred by District for the physical repair of such facilities damaged by Licensee.

**7.5 Service Interference.** District shall not be liable to Licensee for any interruption of Licensee's service or for interference with the operation of Licensee's attachments, or for any special, indirect, or consequential damages arising in any manner, including District's negligence out of the use of pole(s), anchor(s), or guy(s) or District's actions or omissions in regard thereto and Licensee shall indemnify and save harmless District from and against any and all claims, demands, causes of action, costs, and reasonable attorney's fees with respect to such special, indirect or consequential damages.

**7.6 Notice.** Licensee shall promptly advise District of all claims relating to damage of property or injury to or death of persons, arising or alleged to have arisen in any

manner, directly or indirectly, by the erection, maintenance, repair, replacement, presence, use or removal of the Licensee's facilities. Licensee shall promptly notify District in writing of any suits or causes of action which may involve District and upon the request of District, copies of all relevant accident reports and statements made to Licensee's insurer by Licensee or other shall be furnished promptly to District.

**7.7 Warranties.** Licensee acknowledges and agrees that District does not warrant the condition or safety of District's poles, conduits, or rights-of-way, or the premises surrounding the same. Licensee hereby assumes all risks of any damage, injury or loss of any nature whatsoever caused by or in connection with the use of the poles, conduits, and rights-of-way and associated attachments and equipment on, within or surrounding the same. District makes no express or implied warranties with regard to District poles, conduits, or rights-of-way or other facilities all of which are hereby disclaimed and expressly disclaims any implied warranties of merchantability or fitness for a particular purpose.

## **SECTION 8. INSURANCE**

**8.1 Insurance.** Licensee shall obtain and maintain insurance, including endorsements insuring the contractual liability and indemnification provisions of this Agreement, upon such reasonable terms and in such company or companies as District shall approve, to protect District, other authorized Licensees, and joint users from and against all claims, demands, causes of action, judgments, costs, including reasonable attorney's fees, expenses and liabilities of every kind and nature which may arise or result, directly or indirectly, from or by reason of such loss, injury or damage as covered in this Agreement. Licensee will immediately deliver to District a copy of all such policies, or certificates thereof, evidencing the required coverage, and shall furnish evidence that the policies remain in force within thirty (30) days of renewal of such policies.

**8.2 Insurance Limits.** Licensee shall maintain the following amounts of insurance in compliance with Section 8.1 above:

**8.2.1 Commercial General Liability Insurance** with limits of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate.

**8.2.2 Products and Completed Operations** with limits of not less than \$2,000,000 per occurrence and in the aggregate.

**8.2.3 Automobile Liability insurance** covering any auto with combined single limits of \$1,000,000.

**8.2.4 Workers Compensation Insurance in statutory amounts and Employers Liability Insurance in the amount of \$500,000 per accident.**

**8.3 Increase in Limits.** Licensee agrees that District may reasonably require an increase in the limits of liability insurance and Licensee further agrees to provide such insurance in increased amounts as a condition to Licensee's continued use of District's poles.

**8.4 Required insurance shall remain in force until such Licensee's attachments have been removed from all such pole(s), anchor(s), conduit system(s), or rights-of-way. In the event that the Licensee shall fail to maintain the required insurance coverage, District may pay any premium thereon falling due, and the Licensee shall forthwith reimburse District for any such premium paid.**

**8.5 Certificates of Insurance.** District shall be named as an additional insured on the policies described under Sections 8.2.1, 8.2.2, and 8.2.3. Licensee shall submit to District certificates by each company insuring Licensee with respect to any insurance required hereunder, such certificate(s) to specify the coverage provided and that such company will not cancel or change any such policy of insurance issued to Licensee except after sixty (60) days written notice to District.

**8.6 Notification of Claims.** The Licensee shall promptly advise the District of all claims relating to damage to property or injury to or death of persons, arising or alleged to have arisen in any manner by, or directly or indirectly associated with, the erection, maintenance, presence, use or removal of the Licensee's equipment. Copies of all accident or other reports made to any insurer by the Licensee shall be furnished to the District in a timely manner.

## **SECTION 9. SECURITY**

**9.1 Security Requirement.** The Licensee shall furnish security to the District for the performance of the Licensee's obligations under this Agreement to make any and all payments demanded by the District as due under this Agreement, including without limitation any pole contact fees with respect to permits, District's costs of modifying or removing Licensee's plant, and District's cost of enforcement under Section 10. Such security shall be maintained in full force and effect throughout the term of this Agreement, including any renewals thereof. At any time during the term of this Agreement, Licensee shall, upon District's request, furnish District with evidence that the security is in full force and effect. In the event of cancellation, termination, or alteration of the security District may, at its option, terminate this Agreement unless Licensee makes other arrangements satisfactory to District to guarantee the performance of its obligations under this Agreement.

**9.2 Amount of Security.** The amount of the security required shall be the amount as set forth in Exhibit "E". District shall annually review its Bonding Fee Schedule in Exhibit "E" and provide at least six (6) months written notice to Licensee of any increase or decrease in the amount of security requirements with a revised Exhibit "E". The letter of notification shall be incorporated in, and governed by terms and conditions of this Agreement.

**9.3 Form of Security.** The form of the security provided by Licensee may be one, or a combination of the following: cash deposit of money with District, a performance bond from an acceptable surety, a letter of credit, a personal guaranty, a corporate guaranty, or such other reasonably security as the Licensee may propose. The amount of the bond, letter of credit or other security shall not operate as a limitation upon the obligations of Licensee hereunder.

**9.3.1 District's Approval Required.** The form and sufficiency of security proposed by Licensee must be approved by District; provided, that District may require financial statements or other appropriate evidence as to the solvency and financial capability of the surety, guarantor, or financial institution.

**9.3.2 Cash Deposits.** If Licensee elects to provide a cash deposit, such deposit or deposits shall be held during the term of this Agreement as security for any and all amounts which are or may become due to the District under this Agreement. Said cash deposit shall be placed in an interest-bearing account and Licensee shall be entitled to a credit for the interest income on said cash deposit. If Licensee fails to pay any sum demanded by District as due under this Agreement, District shall have the right, without prior notice to Licensee, to apply immediately any or all amounts on deposit with District towards payment of the sums due District, whether or not Licensee contests the amount due or its liability to pay, and whether or not District exercises or has exercised any option it may have to terminate this Agreement. If Licensee contests its liability to pay any sum claimed by District, Licensee's sole remedy shall be an action at law to recover the amounts in dispute. In the event District shall apply some or all of the cash deposit towards payment of an amount due to District, Licensee must restore to its deposit the amount so applied within thirty (30) days after notice of such application irrespective of whether or not Licensee contests its liability or commences any legal proceedings to determine its liability. Failure to restore its cash deposit to the required security amount shall constitute a default under this Agreement.

**9.3.3 Performance Bond.** If the Licensee elects to provide a performance bond, a commercial bonding company satisfactory to District shall issue such bond to District in a form satisfactory to District. The initial bond shall be for a term of five (5) years; renewal bonds shall be provided by Licensee to District at least two (2) months before expiration of an existing bond. A bond must contain a provision that the surety will pay to District subject to the dollar limits of the bond any sum demanded by District as due under this Agreement, whether or not Licensee contests its liability to pay such sum, and whether or not District exercises or has exercised any option it may have to terminate this Agreement. If any such

amounts are paid by the surety, Licensee within thirty (30) days after notice of such payment shall provide to District security in the full amount, irrespective of whether or not Licensee contests its liability to District or brings or has brought any legal proceedings or appeals to local, state, or federal regulatory agencies to determine its liability. Failure to restore the security shall constitute a default under this Agreement.

**9.4 Defenses Waived.** The form of security provided by Licensee must include a provision in which the surety, guarantor, or other party providing the security specifically agrees that it will not assert defenses against the claims of the District upon such security. The security provided by Licensee shall be absolute, irrespective of whether or not Licensee contests its liability to District or brings or has brought any legal proceedings or appeals to any local, state or federal regulatory agencies or courts of law to determine its liability.

**9.5 Security Obligations.** The furnishing of security shall not relieve Licensee of any of its obligations under this Agreement, and the security shall not be released until all obligations under this Agreement have been discharged.

## **SECTION 10. DEFAULT, TERMINATION AND REMEDIES**

**10.1 Events of Agreement Termination.** This Agreement shall terminate upon the occurrence of any one of the following events:

- (a) Upon six (6) months written notice of termination.
- (b) Upon Licensee's failure to apply for a permit within six (6) months from the date of this Agreement.
- (c) Except for pending permit applications with the District, one (1) year from the date of this Agreement if no permit has been granted by the District pursuant to this Agreement.
- (d) Failure of Licensee to pay the amounts due pursuant to Section 4.2.
- (e) Failure of Licensee to obtain insurance in increased limits pursuant to Section 8.3.
- (f) Whenever Licensee violates, breaches or is in default of any term or condition of this Agreement or any permit including but not limited to the 1)Construction, operation or maintenance of Licensee's attachment in violation of law or in aid of any lawful act or undertaking; or 2)Construction, operation or maintenance of Licensee's attachment without the insurance or security coverage required under this Agreement. Within thirty (30) days of notice from District, Licensee shall take immediate corrective action to eliminate any above mentioned condition or other violation of any term or condition of this Agreement within thirty (30) days and shall confirm in writing to District that the cited violations have been corrected. If Licensee fails to discontinue or correct these violations or fails to give the required confirmation, District may immediately terminate this Agreement and any of Licensee's rights hereunder without limiting or restricting any further rights or remedies District may have against Licensee.



**10.2 Effect of Agreement Termination.** Termination of this Agreement pursuant to Section 10.1 shall terminate all occupancy permits and their respective permit dates. Licensee shall have thirty (30) days to remove all attachments made upon District's poles and be liable for and pay all fees and charges pursuant to the terms of this Agreement to District until Licensee's attachments are actually removed. Termination of this Agreement or any permits issued hereunder shall not affect Licensee's liabilities and obligations incurred hereunder prior to the effective date of such termination. Even after the termination of this Agreement or cancellation of a permit pursuant to Section 10.3, Licensee's responsibility and indemnity obligations shall continue with respect to any claims or demands related to Licensee's attachments under this Agreement.

**10.3 Permit Cancellation.** Licensee shall have the right to cancel and District the right to revoke a permit without terminating this Agreement as follows:

**10.3.1 Licensee.** Licensee may cancel a permit by removing its attachments from the corresponding pole and by giving District either a written notice using the Notice of Removal of Equipment, a copy of which is attached in Exhibit "A", or by electronic notice using NJUNS within ten (10) days of removal. Licensee shall remain liable for and pay to District all fees and charges pursuant to the provisions of this Agreement until said attachments are physically removed from District's poles.

**10.3.2 District.** District may revoke a permit authorizing the attachment, service drop attachment, equipment attachment, anchor attachment, or riser attachment to any specific pole or poles by giving thirty (30) days written notice to Licensee specifying the reason for revocation. Upon receipt of notice, Licensee agrees to remove said attachments within thirty (30) days unless District and Licensee agree otherwise. In the event District has granted a specific permit for the use of a pole, but Licensee has not made its attachment to that pole within ninety (90) days of the permit issue date, District shall have the right to revoke such permit on five (5) days' electronic notice using NJUNS.

**10.4 Removal of Licensee's Attachments.** Licensee, at its expense, shall remove its attachments from any of District's poles within thirty (30) days after notice of revocation of the permit or termination of the Agreement covering such attachments. If Licensee fails to remove its attachments within thirty (30) days, District shall have the right to remove such attachments at Licensee's expense and without any liability on the part of District for damage or injury to Licensee's attachment. Licensee releases District from any liability for damage to Licensee's equipment, or for any interruption, discontinuance or interference with Licensee's service to its customers caused by or resulting from such removal. In case of emergency or immediate service needs of District, District may perform such removal without notice to Licensee, provided District sends written notice of the action and the reasons for such action within a reasonable time.

**10.5 Remedies.** Sanctions for attaching to District's pole without a permit, violation with the Oregon Public Utility Commission's safety rules, breach of this Agreement, and violation of rules pertaining to service drops pursuant to Section 3.1.5 shall apply as determined by the sanction matrix found in Exhibit "C", which may be revised from time to

time in the sole discretion of the District. Notice shall be sent to Licensee with a revised Exhibit "C" reflecting the revised sanctions. Any change in sanctions shall take effect on the date specified in said notice. The letter of notification shall be incorporated in, and governed by terms and conditions of this Agreement.

## **SECTION 11. MISCELLANEOUS**

**11.1 Assignment.** Licensee shall not assign or transfer this Agreement or any License or any right or authorization granted under this Agreement and this Agreement shall not inure to the benefit of Licensee's successors or assigns, without the prior written consent of District. District shall not unreasonably withhold such consent. In the event such consent or consents are granted by District, then the provisions of this Agreement shall apply to and bind the successors and assigns of the Licensee.

**11.2 Notices.** Except by use of NJUNS otherwise stated in the Agreement, any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be mailed by certified mail, return receipt requested, postage prepaid, addressed to the parties as follows:

Licensee:

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District:

Central Lincoln People's Utility District  
Attention: Joint Use Administrator  
P.O. Box 1126  
Newport, Oregon 97365

Any notice or other communication shall be deemed to be given at the expiration of the third day after the date of deposit in the United States mail. The addresses to which notices or other communications shall be mailed may be changed from time to time by giving written notice to the other party as provided in this Section.

**11.3 Attorney Fees.** If any suit or action is filed by any party to enforce this Agreement or otherwise with respect to the subject matter of this Agreement, the prevailing party shall be entitled to recover reasonable attorney fees incurred in preparation or in prosecution or defense of such suit or action as fixed by the trial court, and if any appeal is taken from the decision of the trial court, reasonable attorney fees as fixed by the appellate court.

**11.4 Amendment.** Except as reserved herein, this Agreement may be amended only by an instrument in writing executed by all the parties.

**11.5 Headings.** The headings used in this Agreement are solely for convenience of reference, are not part of this Agreement, and are not to be considered in construing or interpreting this Agreement.

**11.6 Entire Agreement.** This Agreement (including the exhibits) sets forth the entire understanding of the parties with respect to the subject matter of this Agreement and supersedes any and all prior understandings and agreements, whether written or oral, between the parties with respect to such subject matter.

**11.7 Counterparts.** This Agreement may be executed by the parties in separate counterparts, each of which when executed and delivered shall be an original, but all of which together shall constitute one and the same instrument.

**11.8 Severability.** If any provision of this Agreement shall be invalid or unenforceable in any respect for any reason, the validity and enforceability of any such provision in any other respect and of the remaining provisions of this Agreement shall not be in any way impaired.

**11.9 Waiver.** A provision of this Agreement may be waived only by a written instrument executed by the party waiving compliance. No waiver of any provision of this Agreement shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. Failure to enforce any provision of this Agreement shall not operate as a waiver of such provision or any other provision.

**11.10 Department of Revenue; Public Utilities Commission ("PUC").** In the event the Department of Revenue of the State of Oregon or the PUC shall require the District to provide certain information concerning Licensee, Licensee agrees to cooperate with and assist District in providing information, data, or such other matters as may be required by said Department of Revenue or PUC. Licensee specifically agrees to provide District with appropriate data as determined or required by the Department of Revenue or PUC concerning its pole attachments in each taxing District and such other data as may hereafter be required by the Department of Revenue or PUC.

**11.11 Time of Essence.** Time is of the essence for each and every provision of this Agreement.

**11.12 Expenses.** Each party shall bear its own expenses in connection with this Agreement and the transactions contemplated by this Agreement.

**11.13 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the state of Oregon.

**11.14 Venue.** This Agreement has been made entirely within the state of Oregon. This Agreement shall be governed by and construed in accordance with the laws of the state of Oregon. If any suit or action is filed by any party to enforce this Agreement or

otherwise with respect to the subject matter of this Agreement, venue shall be in the federal court of Oregon or state courts in Lincoln County, Oregon.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in duplicate as of the day and year first above written.

CENTRAL LINCOLN PEOPLE'S  
UTILITY DISTRICT

By: \_\_\_\_\_

Title: \_\_\_\_\_

LICENSEE

By: \_\_\_\_\_

Title: \_\_\_\_\_

- Attached Exhibits:
- A — Application, Notice of Removal, Inspection and Engineer Information Datasheet Forms
  - B — Fee Schedule
  - C — Sanctions Matrix
  - D — Construction Standards and Specifications
  - E — Bonding Fee Schedule

EXHIBIT A

APPLICATION FOR POLE ATTACHMENT

*This section to be completed by Licensee*

Date: \_\_\_\_\_ Licensee: \_\_\_\_\_

Location: City: \_\_\_\_\_  
Address: \_\_\_\_\_

Pole Number: \_\_\_\_\_ (submit additional forms as needed per pole)

Load Data Form Included? Please √ Yes  No

Application Fee Included? Please √ Yes  No

Remarks: \_\_\_\_\_  
(Attach separate sheet(s) if necessary)

Authorized Signature: \_\_\_\_\_

*This section to be completed by pole owner*

**Attachment Accepted** Date: \_\_\_\_\_ Permit # \_\_\_\_\_

Permission is hereby granted to Licensee to place the equipment as described on the Load Data Form for the above identified pole, subject to the terms and conditions as set forth in the Pole Occupancy License Agreement.

**Attachment Rejected** Reason: Please √ all that apply

Application Incomplete  Preliminary Loading Analysis Failed

Additional Engineering Required for Make-ready Costs

Other \_\_\_\_\_

Re-submit New Application

Authorized Signature: \_\_\_\_\_

**Central Lincoln People's Utility District**

**EXHIBIT A**

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EXHIBIT A

**DISCONTINUE PERMIT NOTICE**

***This section to be completed by Licensee***

Date: \_\_\_\_\_ Licensee: \_\_\_\_\_

Permit Number: \_\_\_\_\_

Location: City: \_\_\_\_\_ Address: \_\_\_\_\_

Pole Number: \_\_\_\_\_ (submit additional forms as needed per pole)

All equipment permitted to Licensee under the above permit number for the pole indicated has been removed and notice is given to Central Lincoln People's Utility District to discontinue this permit, subject to the terms and conditions as set forth in the Pole Occupancy License Agreement.

Authorized Signature: \_\_\_\_\_

***This section to be completed by pole owner***

**Notice Accepted/Permit Discontinued** Date: \_\_\_\_\_

**Notice Rejected** Reason: Please  all that apply

No Record of Permit  Information Furnished Inaccurate/Incomplete

Licensee's Equipment Has Not Been Removed

Other \_\_\_\_\_

Re-submit New Notice

Authorized Signature: \_\_\_\_\_

**Central Lincoln People's Utility District**

**EXHIBIT A**

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**EXHIBIT A**  
**CLPUD JOINT OCCUPANT LOAD DATA INFORMATION FORM**

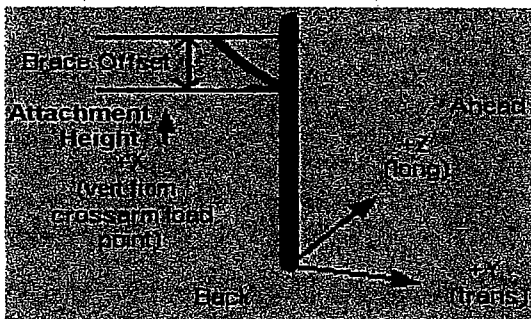
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# EXHIBIT A

## Joint Occupant Load Data Information Form

**NJUNS Serial #** PA NJUNS ticket serial number. Blank if not using NJUNS.  
**Company** Applying company name.  
**Date** Date on NJUNS ticket or current date if not using NJUNS  
**Step #** Step row number from 1 to 10 found on the PA NJUNS ticket that the attachment's load data is related to.  
**CLPUD Pole#** CLPUD's unique pole number assigned to the pole by the CLPUD's mapping system.  
**Other #** Other joint occupant's pole number found on the pole or Applicants pole number.  
**BS Bearing** Back span bearing is the reference bearing for the structure and is set at 180 deg. The back span bearing is normally in the direction of conductor/cable messenger source The span direction of a one span dead-end as referenced from the end pole.  
**BS Length** Back span length in feet.  
**BSC Bearing** Back span compass bearing.  
**FS/TS Bearing** Front span or Tap Span bearing is the bearing angle of the conductor, cable, going away from the pole to the next pole or customer structure using the back span bearing as reference direction. Service drops have only front span bearings.  
**FS/TS Length** Front span or Tap Span length in feet  
**Attachment Height** The height of the attachment point on the pole measured from ground line to the top attachment mounting attachment hardware.  
**Att Pole Bearing** Attachment bearing is the bearing of the attachment hardware point on the pole as referenced from the back span.  
**Offsets** Offsets are distances in tenths of feet from the **center** of the pole the attachment point of the cable, conductor or messenger is located. Normally is used for attachments connected to standoff brackets, cross-arms, or swinging corners.

**X Offset** is the height of attachment on support  
**Y Offset** is how far away from pole it is  
**Z Offset** is used to state how far down the span



### **Messenger/Cable/Conductor Type** (Check all that apply)

**Messenger/Span Guy** Support wire use to support lashed cable or cables, also used as a span guy to support pole load imbalance.  
**SS Wire or Cable** Self supporting wire or cable not requiring a messenger for span support.  
**SS Fiber Optic Cable** Self supporting fiber optic cable not requiring a messenger for span support  
**Service Drop** Single self supporting cable or wire that is the last span to a customer structure; may be attached to the pole, messenger close to the pole or as a mid span drop from a messenger wire of self supporting cable.  
**Single Coax Cable** Single coax cable lashed to a messenger or self support wire or cable  
**Multi Coax Cables** More than one coax cable lashed to a messenger wire or self supporting cable  
**Mesgr Span Tap Point** Connection point to a messenger; self supporting wire, cable, or fiber optic cable; or lashed cable bundle is attached to a messenger, self supporting cable or wire in the span between two poles away from the ether end pole and is connected to a third pole  
**Guy** Wire or cable attached to pole and to an anchor used to support pole moment load imbalance.  
**Telco Trunk Cable** Single telephone multi wire trunk cable lashed to a messenger wire or self supporting cable.  
**Multi Telco Cables** More than one Telco Trunk Cable lashed to a messenger wire or self supporting cable.  
**Over-Lash** To attach a new cable or conductor by use of lashing wire or tie wraps to and existing cable or wire bundle.  
**CLPUD Anchor** Applicant request attachment to CLPUD Anchor.

# EXHIBIT A

## Joint Occupant Load Data Information Form

### Messenger/Self Support Cable/Service Drop Loading Data (Information on single conductors and messengers)

**Name** Industry standard or company standard name of the messenger, self supporting cable, or service drop conductor

**Dia** Diameter of the messenger, self supporting cable, or service drop conductor

**Area** Cross sectional area of the messenger, self supporting cable, or service drop conductor

**Lbs/foot** Pounds per foot of the messenger, self supporting cable, or service drop conductor

**RBS** Rated breaking strength of the messenger, self supporting cable, or service drop conductor

**Inst T** Installed tension in pounds of the messenger, self supporting cable, or service drop conductor at 60<sup>deg</sup> F

**Inst S** Installed sag in feet of the messenger, self supporting cable, or service drop conductor at 60<sup>deg</sup> F

**Wire Coefficient** Temperature coefficient of the messenger, self supporting cable, or service drop conductor (thermal expansion coefficient).

**Modulus of Elasticity** Mechanical constant for the strength member of the messenger, self supporting cable, or service drop conductor

### Lashed Cables and/or Conductor Load Data (Information on lashed cables)

**Name** Industry standard or company standard name of the cable, coax or conductor to be lashed

**Dia** Diameter of the cable, coax, or conductor

**Lbs/foot** Pounds per foot of the cable, coax or conductor

### Guy Information (Information on guy and anchor loads)

**Type** Check box for the type of unbalanced load guy is correcting. DE—dead end; BISEC—bisector guy for angles; SDWLK—side walk guy; OTHER—other guy types

**Size** Check box for guy size in fractional inches

**Material** Check box for the type of guy material

**RBS** Check box for guy size by rated breaking strength

**Ht** Guy attachment height

**Lt** Guy lead length from center of pole to anchor ground line

**Bg** Guy bearing with the back span for the pole as the reference point

**PreLoad** Tension of the guy before installation of messenger, self supporting cable, or conductor

**AncLoad** Maximum anchor loading from attached guy (needed when attached to CLPUD anchor)

### Other Attachment Types (Information on other attachment types)

**Power Supply** A specialized equipment box supplying power to TV line amp equipment.

**Equipment Box** An enclosed box used to protect junction terminals or other equipment.  
S—less than 8" h x 8" w x 4" d; M—between than 8" h x 8" w x 4" d and 12" h x 12" w x 6" d  
L—larger than 12" h x 12" w x 6" d but must be less than 26" h x 26" w x 16" d

**Comm Riser** Conduit riser attached to bracket or pole which may be enclosed by conduit PA—pole attached; BA—bracket attached

**FOC Storage** Fiber Optic Storage

**Telco Splice** Telco splice enclosure usually located on messenger.

**TV Amp** TV amplifier box usually located on messenger

**Other** Attachment not previously, must be clarified in additional information at bottom of form.

### Messenger Span Tap Point (Information to determine Mid Span Tap Point Location)

**Permit#** Permit number of messenger or self supporting cable that the mid span tap will be attached to

**NJUNS#** NJUNS PA ticket number for the attachment application project for which the mid span tap is a step attachment request.

**Step#** Step number on the NJUNS PA ticket attachment application project for which the mid span tap is part of the attachment requests.

**Z Off Set** Distance from center from pole center to the tap point or equipment center end closest to the pole on the messenger or self support cable (Attachment points located on the back span are in a minus (-) Z off set direction)

### Additional Information (Additional information that may clarify attachment information)

## Exhibit B

### Fee Schedule

Effective July 1, 2002

#### Definitions for Exhibit B

**Anchor Attachments.** Each anchor attachment fee provides one anchor point for one attached down guy.

**Annual Attachment Rental Fee.** The term "Annual Attachment Rental Fee" refers to the annual fee charged by the District for a single attachment connection point or location to a pole or messenger wire attached to a pole.

**Aerial Cable Attachments.** The term "Aerial Cable Attachments" refers to a specialized attachment that is a single physical attachment connection point to a pole or messenger attached to a pole of one or more Aerial Service Drops. Each aerial attachment fee provides one foot of vertical pole space and provides for a maximum of one pole attachment point. Aerial Cables with a combined diameter over (4) four inches at one attachment point will be charged one additional Aerial Cable Attachment Rental Fee for each additional (2) two inches of diameter.

**Communication Riser Attachment.** The term "Communication Riser Attachment" refers to communication cable, securely bundled cables or conduit use to enclose communication cables attached to a joint pole between the communication space and ground level that are directly attached to the pole or pole riser brackets. Communication riser fee provides for one vertical communication riser conduit or bundled communications cables, with a (6) six inch maximum size, attached vertically between the communication space and ground level.

**Equipment Attachment.** The term "Equipment Attachment" refers to Licensee's auxiliary equipment attached to a joint pole. Equipment Attachments can be located in the Communication Space and the Ground Clearance Space. Each equipment attachment fee provides one foot of vertical pole space. Equipment requiring more than one vertical foot of space on the pole will be charged an attachment fee for each additional vertical space used. Power supplies, junction cabinets, and splice boxes are considered equipment. A power conduit riser used to supply power for the attached equipment fee is included with the equipment rental fee.

**Guy Attachment.** The term "Guy Attachment" refers to supporting conductor or wire used to support the unbalanced pole load

**Inspection / Re-Inspection Fee.** Inspection / re-inspection fee consists of one visit to joint pole to verify attachment construction compliance with NESC and agreement of (1) one or more attachments on a single joint pole

**Minimum Attachment Rental Space.** The term "Minimum Attachment Rental Space" refers to one (1) vertical foot of pole space

## Exhibit B

**Service Drop Attachment.** The term "Service Drop Attachment" refers to a specialized attachment that is a single physical attachment connection point to a pole or messenger attached to a pole of one or more Service Drops.

**Service Drop.** The term "Service Drop" refers to a attachment connection from an overhead distribution facility to a single family, duplex, or triplex residence or similar small commercial facility.

**Survey Audit Inspection Fee.** Survey inspection fee is applied when the CLPUD or its contractors performs and audit area inspection fee is one visit to joint pole to verify attachment construction compliance with NESC and agreement of (1) one or more attachments on a single joint pole.

**Joint Pole Hole Drilling Fee.** Joint pole drilling fee shall a one time fee for each hole an occupant field drills to attach its equipment on a joint pole.

**Joint Pole Identification Tag.** Joint pole identification tag is a tag attached to a joint pole that have a joint pole occupant label installed for each occupant with an attachment on that joint pole along with an indication of the pole owner.

**Joint Pole Occupant Label.** Unique identification label for each of the District's valid joint pole occupants.

**Transfer Flat Rate Unit Fee.** Transfer flat rate unit fee shall apply to work District performs on Licensee's equipment.

**Transfer Rates for Not Listed Units.** "Actual" costs will be billed for transferring equipment not covered by Transfer Flat Unit Fees.

Exhibit B

**Annual Attachment Rental Fees**

Aerial Cable Attachment	\$	10.40
Service Drop Attachment Pole	\$	10.40
Messenger	\$	3.71
Communication Riser Attachment	\$	10.40
Equipment Attachment		
In Communication Space	\$	10.40
In Ground Clearance Space	\$	3.71
Guy Attachment	\$	N/A
Anchor Attachment	\$	3.71

**Application Fees**

Aerial Cable Attachment	\$	50.00
Service Drops Attachment	\$	15.00
Service Drops	\$	5.00
Guy Attachments	\$	15.00
Anchor Attachments	\$	20.00
Equipment Attachments	\$	15.00
Communication Riser Attachments	\$	15.00

**Other Fees and Charges**

Inspection/Re-inspection	\$	50.00
Survey Audit Inspection	\$	5.00
Joint Pole Hole Drilling	\$	15.00

**Construction Flat Rate Unit Fees**

Install 30ft-55ft Distribution Pole		
Secondary	\$	408.00
1 Phase Tangent	\$	612.00
1 Phase Dead End	\$	816.00
1 Phase Double Dead End	\$	1020.00
2 Phase Tangent	\$	612.00
2 Phase Dead End	\$	816.00
2 Phase Double Dead End	\$	1020.00
3 Phase Tangent	\$	1224.00
3 Phase Dead End	\$	1428.00
3 Phase Double Dead End	\$	1632.00
Install Transmission Pole with Distribution Under-build	\$	Actual
Install CLPUD Anchor for Joint Use	\$	408.00
Install Joint Use Guy	\$	200.00
Install Joint Pole Attachment Identification Tag	\$	15.00
Maintain Occupier's Identification Label	\$	5.00

Exhibit B

**Transfer Flat Rate Unit Fees**

Guy strand or O.H. Guy	\$	150.00
Cable Termination (No Splice)	\$	150.00
Crossarms, all types	\$	170.00
Service Drop (No Splice)	\$	40.00
Messenger and cable bolted to pole (No Splice)	\$	150.00
Messenger deadends	\$	190.00
Remove pole from ground	\$	150.00
Hauling pole to yard	\$	75.00
Communication riser single	\$	175.00
Communication riser multiple	\$	350.00
Sidewalk guy and pipe	\$	300.00
Topping Pole	\$	75.00

**Transfer Rates for Not Listed Units**

"Actual" costs will be billed for transferring equipment not covered by Transfer Flat Rate Unit Fees.

Decision to transfer will be made solely by Central Lincoln PUD.



Sanctions\*

#	Violation	Sanction Amount (whichever is greater)		Potential Sanction Reduction  (for first notice only)	Timeline	Correction Action Required	Progressive Increase in Sanctions
		Fixed	Variable				
#1	No contract	\$500 per pole	60 times utility's annual rental fee per pole	60% <sup>(2)</sup>	60/30 days <sup>(3)</sup>	Enter into Contract with District. Pay all charges and sanctions.	Progressive increase in sanctions <sup>(4)</sup>
#2	No permit <sup>(1)</sup>	\$250 per pole	30 times utility's annual rental fee per pole	60% <sup>(2)</sup>	60/30 days <sup>(3)</sup>	Obtain permit from District. Pay all charges and sanctions.	Same as above.
#3	Violation of other Duties	\$200 per pole	20 times utility's annual rental fee per pole	70% <sup>(2)</sup>	60/30 days <sup>(3)</sup>	Correct all violations if applicable, comply with service drop requirements. Pay all charges and sanctions.	Same as above.

\* The District's costs and charges allowed in the Agreement and its accompanying Exhibits are in addition to and are not covered by these sanctions.

Notes: (District = pole owner; days = calendar days; Notice of Violation = notice of each attachment in violation, the specific rule or contract violation, and the time for correction)  
 (1) Exception-service drops made in compliance with the Agreement are excluded from sanctions for this violation if a permit application is made within 7 days of installation.  
 (2) Applicable if the corrective action requirements are met within the time specified in the Notice of Violation. Avoidable amounts do not include District recovery costs or charges as provided elsewhere.

<sup>(3)</sup> 60/30 means the time for compliance as set forth in the Notice of Violation and may either be 60 days, or shorter if, in the District's discretion, it determines a shorter time for completion is deemed critical to public safety. As an alternative however, Licensee may within 30 days of the Notice of Violation, submit a reasonable plan of correction. Until the District accepts or rejects a plan of correct, the Licensee's time for correction is tolled.

<sup>(4)</sup> Sanctions shall be 1.5 times the original sanction amount if Licensee fails to correct the violation within the time specified in the Notice of Violation; 2.0 times the original sanction amount if the Licensee fails to correct the violation within the time specified in the Notice of Violation by 30 or more days; Request from PUC for removal of attachment if Licensee fails to correct the violation within the time specified in the Notice of Violation by 60 or more days.

**EXHIBIT C  
Sanctions for Attachments  
Without a Contract**

To correct this violation, Licensee shall either submit a reasonable plan of correction to the District, or Licensee shall complete the following within the time set forth in the graph below:

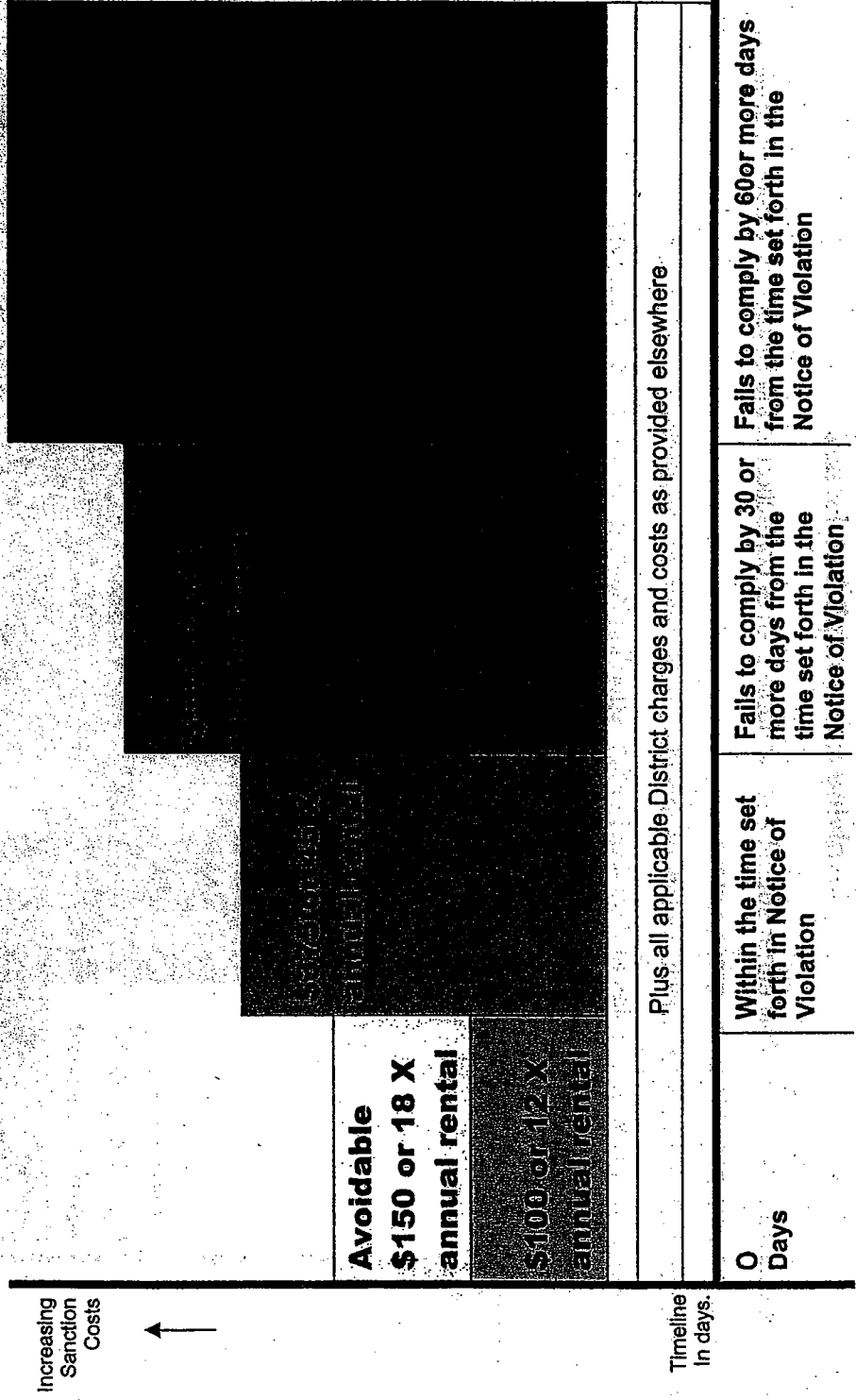
1. Enter into a Pole Occupancy License Agreement with the District; and
2. Pay all applicable charges and sanctions to the District.

Increasing Sanction Costs ↑	<b>Avoidable \$300 or 36 X annual rental</b>	<b>\$200 or 24 X annual rental</b>	<b>Plus all applicable utility charges and costs as provided elsewhere</b>
Timeline In days.	Within the time set forth in Notice of Violation	Fails to comply by 30 or more days the time set forth in the Notice of Violation	Fails to comply by 60 or more days the time set forth in the Notice of Violation
Days	0	0	0

**Sanctions for Attachments  
Without a Permit**

To correct this violation, Licensee shall either submit a reasonable plan of correction to the District, or Licensee shall complete the following within the time set forth in the graph below:

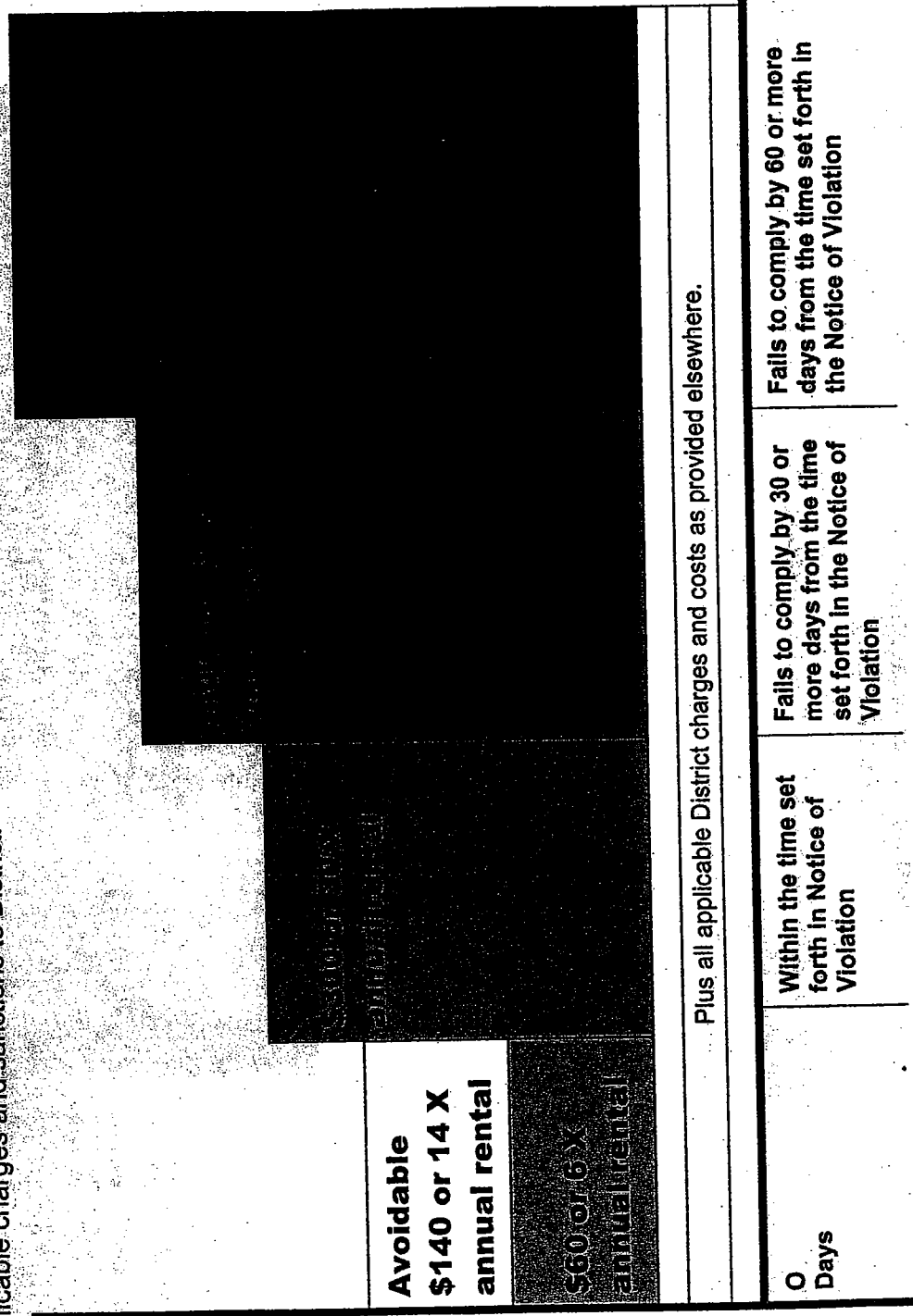
1. Obtain a permit from District for the specific pole(s) containing the unauthorized attachment; and
2. Pay all applicable charges and sanctions to District.



**Sanctions for Attachments  
Involving Non-compliance Issues**

To correct this violation, Licensee shall either submit a reasonable plan of correction to the District, or Licensee shall complete the following within the time set forth in the graph below:

1. Correct contract, permit and/or PUC violations including notification of completion to District; and
2. If applicable, comply with all rules and contract terms regarding installation of service drops; and
3. Pay all applicable charges and sanctions to District.



Increasing  
Sanction  
Costs  
↑

Timeline  
in days.

## Exhibit D

# Construction Standards and Specifications for Joint Pole Attachments

### Joint Pole

This document establishes the attachment, grounding and vertical clearance requirements for non-District-owned communications cables, wires and equipment attached to District owned poles. The District service area includes parts of Lincoln, Lane, Douglas and Coos Counties, see District boundary map

### Contents

This document contains the following:

Subject	Page
Definitions	1
Attachment Requirements	4
Grounding Requirements	8
Clearance Requirements	9
Street Light Clearances	16
Sag and Tension	18

### Definitions

These are definitions of terms used in this standard. Figure 1 illustrates these terms.

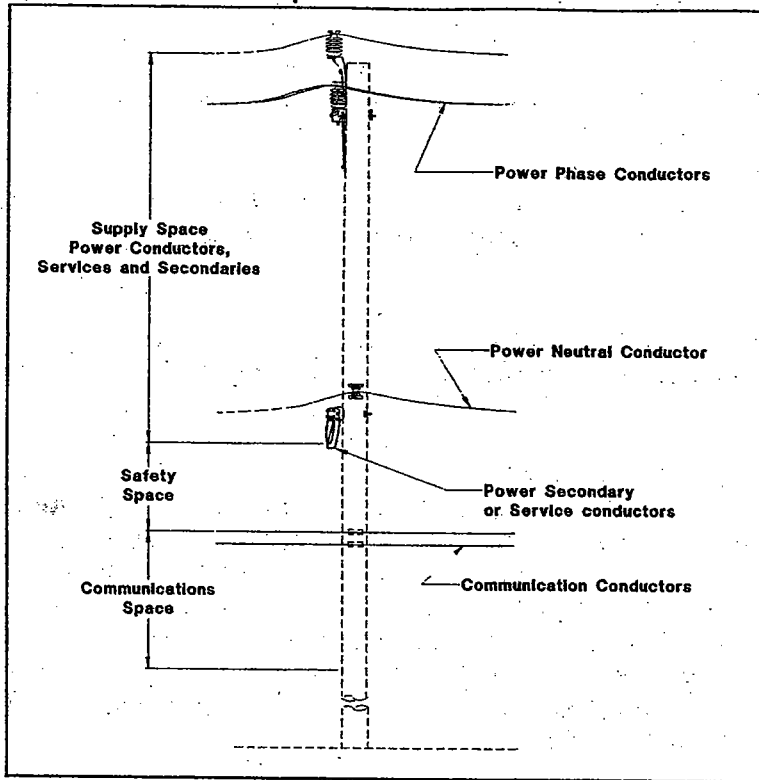
Term	Definition
Clearance	The clear distance between the nearest surfaces of two objects.
Communication Space	The vertical space on a pole below the CWSZ occupied by communication cables and above the ground clearance space. <i>Note:</i> Wires, cables, or equipment attached in the communications space shall start at the lowest level of the pole above the required ground clearance space, unless the pole has been pre drilled at the communication level -then Cable TV will start at top communication hole and Telephone will start at bottom hole, while maintaining required separations and ground clearances. This applies regardless of the type of construction used in the supply space.
Communications Workers Safety Zone (CWSZ)	The vertical space on a pole below the supply space and above the communications space. This space is intended to provide a working clearance space for workers in the communications space.
Covered street light wire	Insulated street light conductor covered with a seconded protective insulated coating or molding. <b>Figures 12 and 13</b>

## Exhibit D

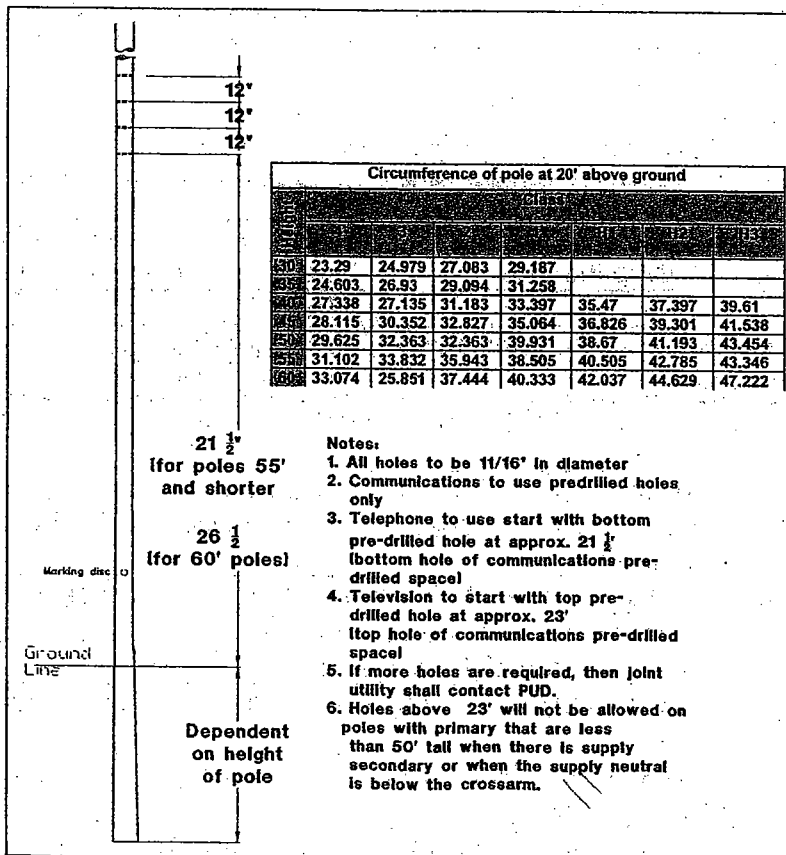
CLPUD	Central Lincoln People's Utility District (also DISTRICT)
Field face quadrant	The quarter section of a pole on the field side of the pole marking disc. <b>Figure 2</b>
Ground Clearance Space	Vertical space on the pole below the communication space to the ground line.
Joint Occupant	For the purposes of the document, any entity (telephone utility; cable TV company; communications company; federal, state, or federal public agency, or other private company or individual) other than CLPUD that attaches equipment to a CLPUD owned pole.
Pole face	The side or half of the pole that contains the pole marking disc.
Pole marking disc	The metal disc on the pole that contains the pole manufacturing information located visibly above ground.
Road face quadrant	The quarter section of the pole on the road side of the pole marking disc.
Safety Space	See Communications Worker Safety Zone <i>Note: :The term "safety space" is used in the standard for purpose of clarity.</i>
Service Drop	A specialized attachment connection from distribution facilities to a single family, duplex, or triplex residence or similar small commercial facility.
Supply space	The vertical space on a pole that is occupied by CLPUD supply conductors and/or hardware. The bottom of the supply space is the bottom of the lowest supply-owned conductor, communications conductor, hardware, or equipment on the pole, excluding street light hardware (or drip loop)

# Exhibit D

**Figure A** Space allocation on a pole:



**Figure B** Attachment Pole Drilling Location



## Exhibit D

### Attachment Requirements

#### Applications

The application and pole joint occupant load information forms are detailed in the Exhibit A.

#### Approval Required Before Construction

Application for an occupancy permit from CLPUD will be required **before** installing each attachment for each CLPUD pole; except for service drops (SD).

#### Service Drop Approval

An occupancy permit shall be applied for service drops (SD) within 7 days of physical installation. An occupancy permit will be issued upon verification of application information and inspection of the installation.

#### Attachment Technical Data Requirements

The Joint Occupant shall provide engineering data for each attachment. Data required for messenger wires, span/guy wires, conductors self supporting cables, service drops and/or any other wire or cable that applies tension loads to poles or other structures, shall include, but not limited to, requested attachment location, modulus of elasticity, wire coefficient, weight / foot, diameter, material, bundle diameter, attachment height, span length, span bearing, installed tension and sag. Data required for attachments not applying tension loads shall include, but not limited to, requested attachment location, mounting orientation, diameter or surface dimensions, surface area, weight or weight per foot.

#### Codes

All equipment and hardware shall be mounted on the pole in a way that provides adequate climbing and working space. In all cases, clearances and separations as required in NESC shall be met. All construction on newly installed poles shall be installed on the same approved side of pole and meet the requirements of the 2002 NESC and this standard.

#### Cables and Wires Pole Location

For...	Do This ...	
<b>Cables &amp; Wires</b>	If. . .	Then . . .
	The power neutral conductor is attached directly to the pole	Communication cables shall be installed on the same side of the pole
	If. . .	Then . . .
	The power neutral conductor is on a primary crossarm.	Communication cables shall be installed on the road side of the pole
	Install cables so that all NESC clearances are maintained on structure and mid-span.	
	All service drops and tap lines toward the opposite side of the pole shall be made on a minimum 30 inches away from the surface of the pole on the support messenger if available.	
	Service Drops will be attached to the pole at only (2) two points on the pole.	
	Tension or guy Joint Occupant cables & wire to not alter the existing angle of the structure or change the sag of the power supply conductors.	
<b>Guys &amp; Anchors</b>	Install Joint Occupant anchors with a minimum of (4) four horizontal feet from CLPUD anchors.	
	Existing CLPUD anchors may be used for Joint Occupant guys with an approved CLPUD anchor attachment permit.	
	Install and pre-tension guys before installation of messenger, wire or self supporting cable.	



## Exhibit D

### Pole

Joint Occupant may request CLPUD to set a new Joint Use Pole if an existing pole's will not satisfy Joint Occupant's requirements or a pole for the sole initial use of the Joint Occupant. The cost determination and availability to set poles will be the sole discretion of CLPUD.

### Pole Drilling

Existing holes shall be used for equipment mounting whenever possible. TV and other communication companies shall install attachment at the upper most pre-drilled available hole in the communications area. Telephone Utilities shall install attachments at the lowest pre-drilled hole available in the communications area. *See Figure B.*

*Note:* No field drilling shall be done without DISTRICT approval prior to drilling. Drilling location will be determined by DISTRICT.

Field drilled holes will be subject to a one time drilling charge.

### Equipment Mounting

The Joint Occupant shall provide and install all materials necessary to support a communications enclosure a minimum of (5) inches from the face of the pole.

Communications enclosures shall be mounted directly above the pole marking disc. If this is not possible, they shall be mounted on the road face quadrant of the pole.

The power riser for an enclosure requiring electric power shall be install high enough on the pole to ensure the (40) inch safety space requirement is maintained between the bottom of the drip loop and the top of the communications space and enough supply wire is coiled at the power riser weather-head to reach the transformer secondary connections.

The Joint Occupant shall apply for electric service through the local CLPUD business office when the enclosure requires electrical power service.

No power supply shall be installed on any of DISTRICT joint poles on which are already installed transformer, primary and/or secondary power risers, capacitor banks, or sectionalizing equipment.

The Joint Occupant may, with the prior written approval of the DISTRICT, install cross-arms, alley-arms, or cable extension arms for the support of any of its facilities. However, Joint Occupant shall not use any crossarm or alley arm brace that which is mounted above the arm.

All bolts used by Joint Occupant to attach its facilities shall **not** extend or project more that one inch beyond its nut.

## Exhibit D

### Grounding Requirements

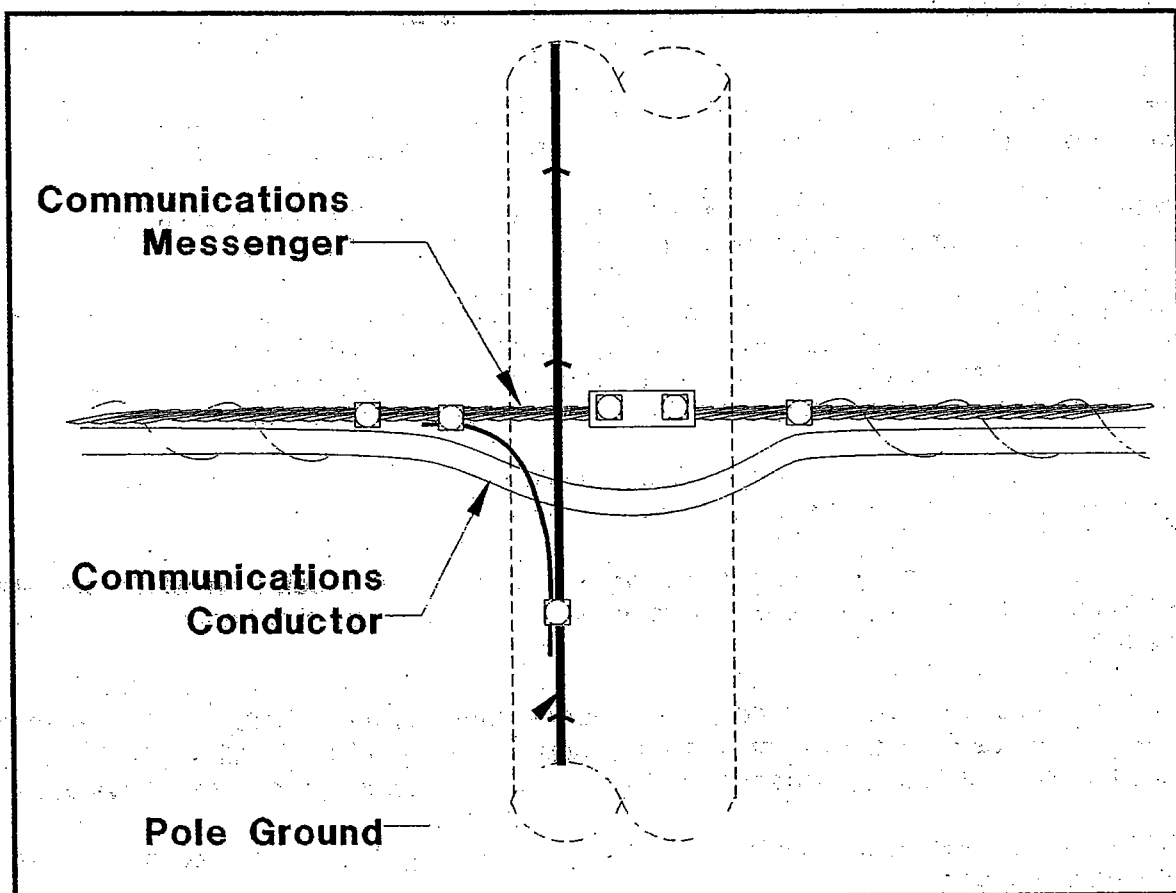
#### Metallic Messenger Bonding

Communications metallic or conductive messengers shall be bonded to the pole ground conductor:

- A minimum of eight times per mile, not including service drop grounds. More frequent bonding is recommended.
- By the attaching company.

*Note:* Nonmetallic/nonconductive self-supporting messengers (i.e., Kevlar-type) do not require bonding.

**Figure 4** Grounding communications messengers at supports



#### Safety

Do not cut or damage the pole ground when attaching communications ground conductors.

## Exhibit D

### Clearance Requirements

#### Transmission Pole and Span Clearances

CLPUD Systems Engineering (Newport office) shall determine if Joint Occupant's attachments will be allowed on transmission structure (69kv and 115kv) without a power supply distribution circuits. If allowed, CLPUD will provide attachment heights and locations on the structures.

#### Distribution Pole Clearance (up to and including 12.5 kV)

The Joint Occupant shall determine which clearance listed below applies, based upon the type of supply equipment or construction on the pole. The District may determine that a Joint pole occupier needs to install a pole for clearance. *Note:* All clearances are measured vertically.

#### Vertical Span Clearance

It is the responsibility of the occupant to consider how much sag (see Sag and Tension pg\_\_ ) will occur after stretching from initial to final sag, sag changes due to temperature, ice loading, etc., and initially install the facilities high enough that the required clearances will be met under maximum sag conditions.

#### Above Ground Clearance

In general, determination of the appropriate mounting height for wires, conductors and cables above stationary objects or land features is relatively easy, since generally only the conductor moves with seasonal or electrical loadings. The assumption here is that certain road districts require a 20 foot clearance above the road, However ODOT and Coos County requires more. It is the responsibility of the attaching occupant to know the local road districts requirements and plan accordingly. However, determinations of mounting heights to assure required vertical clearances between crossing conductors are complicated by the fact that both conductors move with seasonal and electrical loadings.

#### Crossing Clearances

For crossing conductors, both upper and lower conductors will change position between summer and winter maximum sag conditions. The movement of both conductors after installation to their closest approach in the summer and their closest approach in the winter must be considered, as detailed in NESC Rule 233.

Temperature	Upper Conductor	Lower Conductor
-20°F	At its highest load no wind, ambient temperature	No load, at ambient temperature
Coldest temperature at which upper conductor can be heated by line losses to 32°F and still retain the ice loading	Loaded with max ice as 32°F	At ambient temperature no ice
32°F	Loaded with max ice at 32°F	At ambient temperature no ice
60°F	At max thermal loading consistent with a 60°F day	At ambient temperature (initial sag)
95°F	At max thermal loading consistent with a 95°F day	At ambient temperature + solar rise (in some areas without solar rise)
110°F	At max thermal loading	At ambient temperature + solar rise

### Clearance Requirements *Continued*

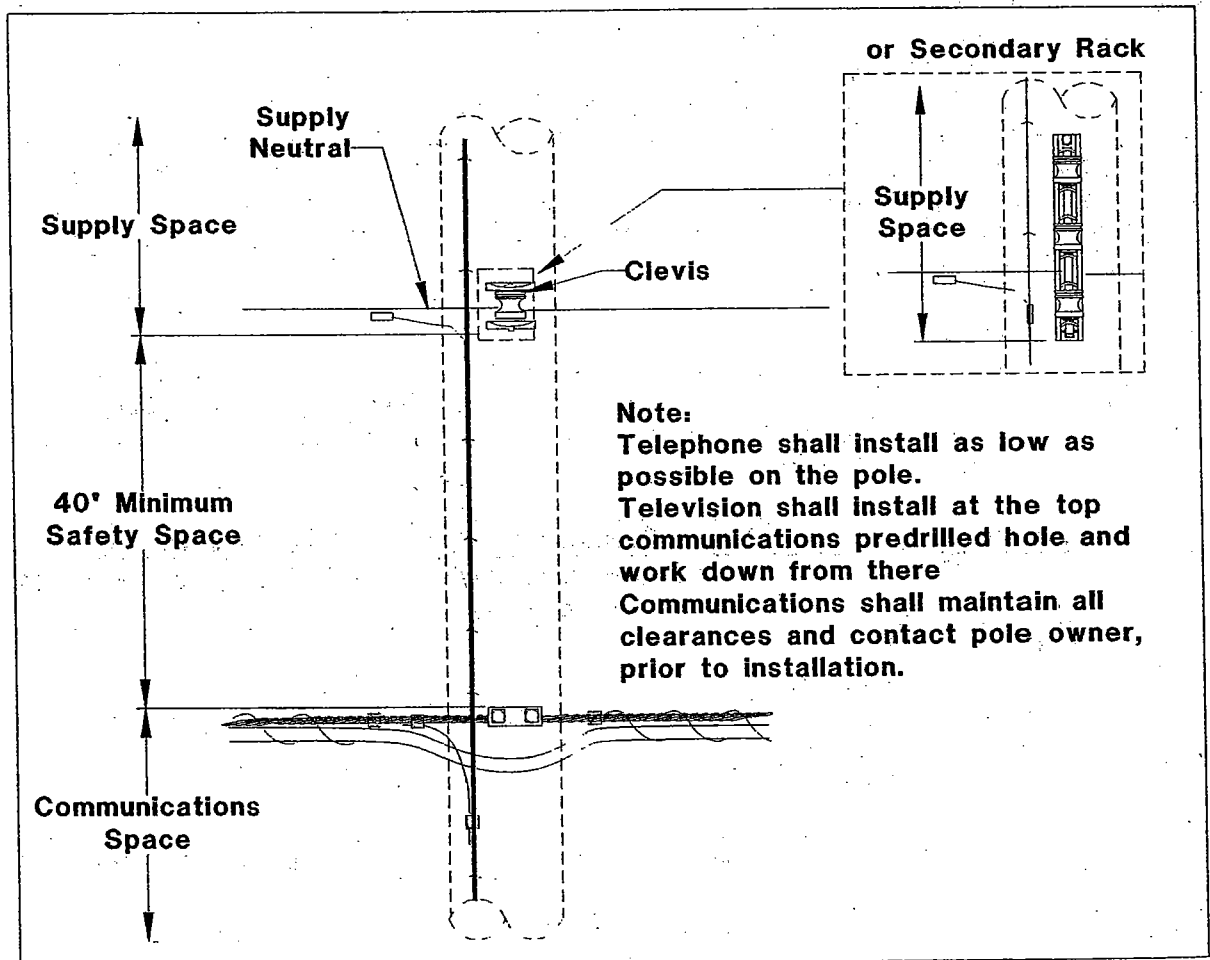
## Exhibit D

### Clearance at Supports

The minimum clearance at supports between power company equipment and the top of communications space depends upon the type of construction and equipment on the pole.

If...	And...	Then...	However...
All Primary conductors and neutral are mounted on a cross arm at the same level (either single or double arm construction)	There is no additional power equipment below the primary arm	9 feet minimum clearances is required.  <i>Note:</i> This clearance is measured from the bottom of the bolt of the insulator to the top of the communications space	If there is supply secondary installed on the pole later then attachment can be no closer than 12 feet from cross arm thru-bolt. Then communications will need relocated at their expense

**Figure 5** Clearance between power conductors and communications space.



### Clearance Requirements *Continued*

#### Supply Equipment

## Exhibit D

If any of the following supply equipment is mounted on the pole, a minimum clearance of 40 inches is required, depending upon whether the supply equipment is ungrounded or grounded.

This clearance is measured from the bottom of the lowest piece of supply equipment to the top of the communications space.

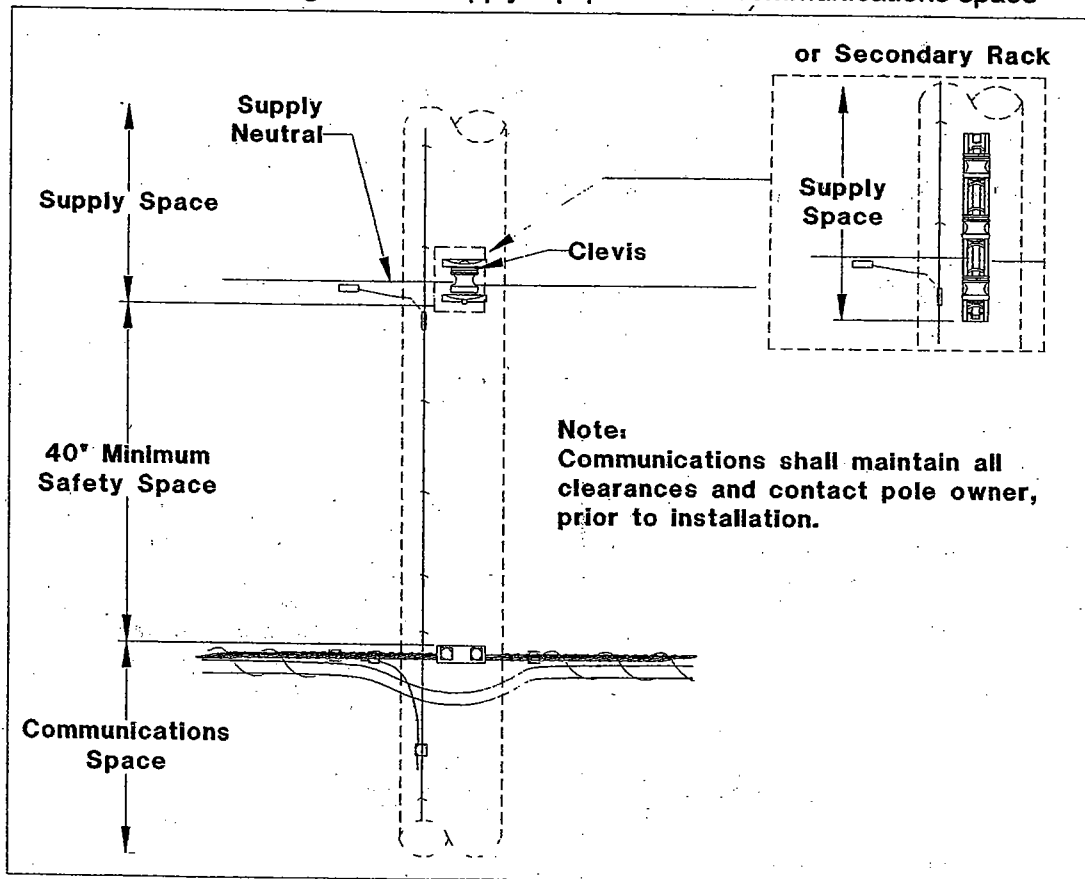
### Ungrounded Equipment

Ungrounded equipment has a 40 inch clearance.

Equipment	See Illustration
Rigid clevis	Figure 6
Secondary rack	Figure 6
Exposed supply wire <i>This does not apply to street light supply wire drip loops.</i>	Figure 7 and Figure 8

**Figure 6**

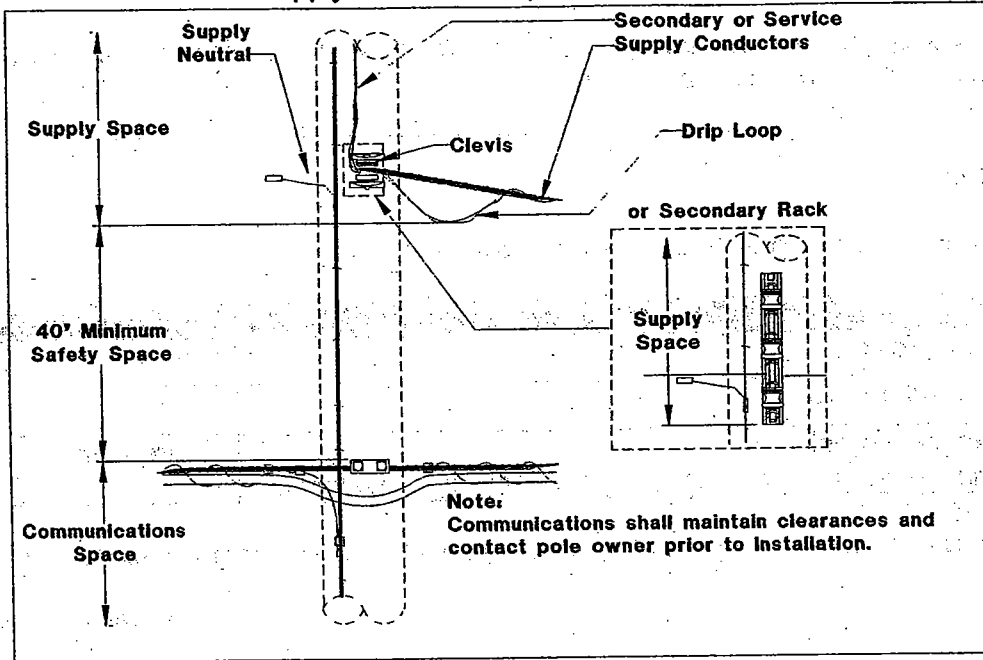
Clearance between ungrounded supply equipment and communications space



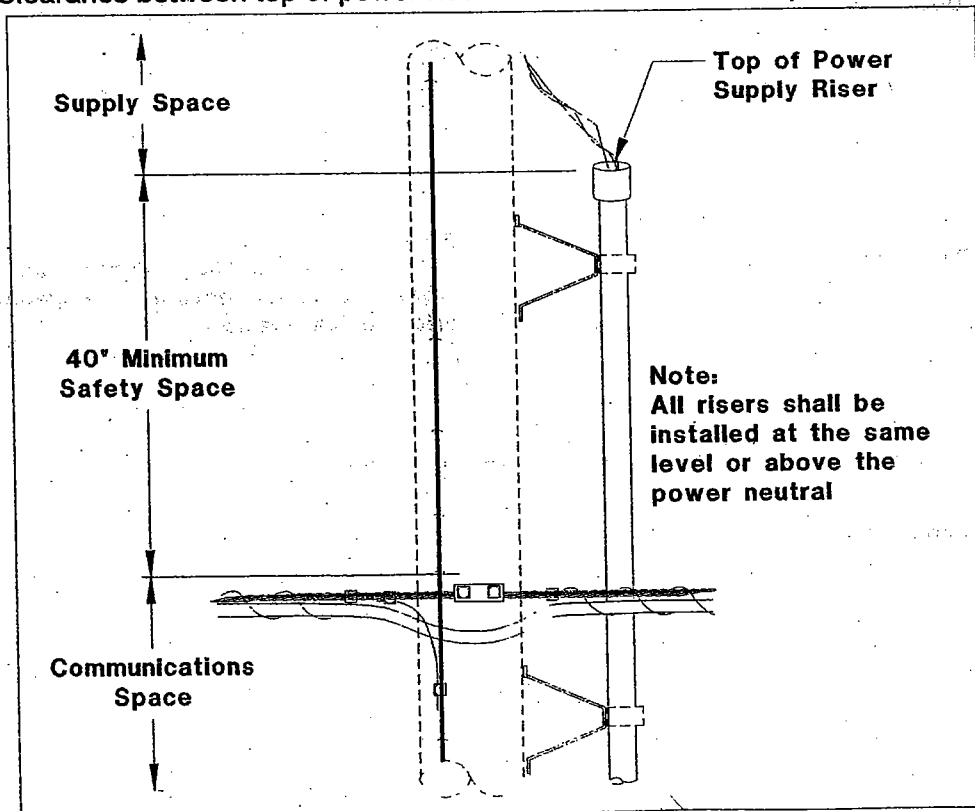
# Exhibit D

## Clearance Requirements *Continued*

**Figure 7** Clearance between supply conductor drip loop and communications space



**Figure 8** Clearance between top of power riser and communications space



## Exhibit D

### Clearance Requirements *Continued*

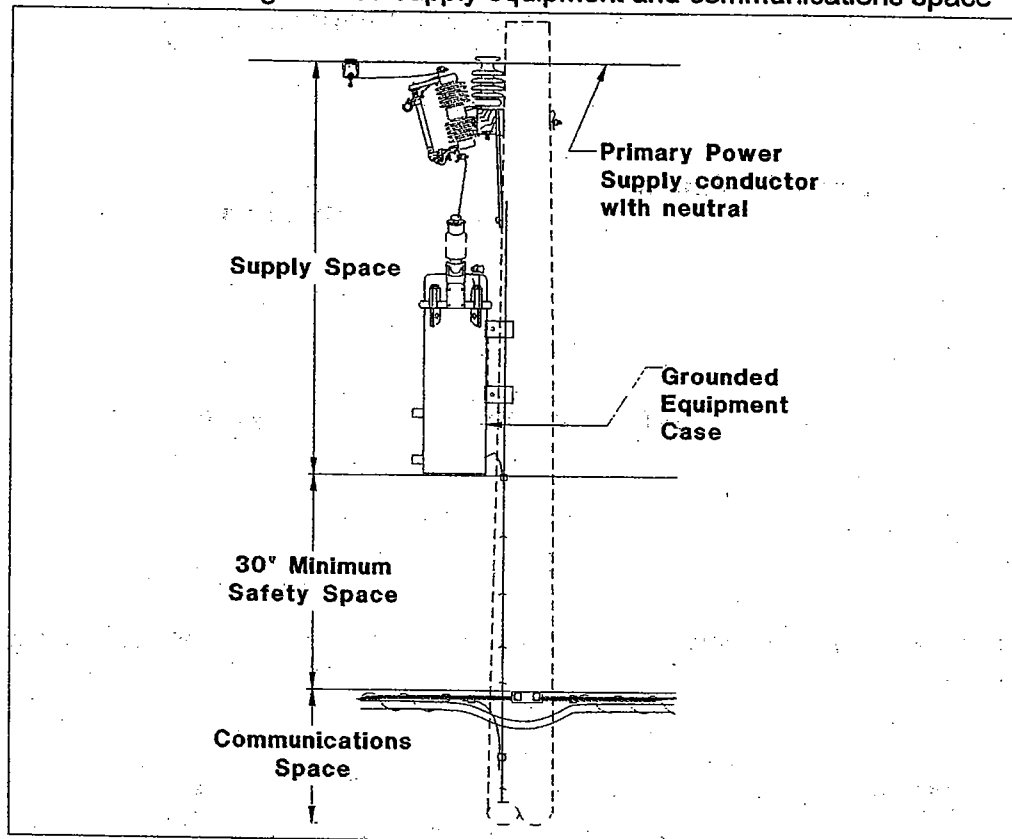
#### Grounded Equipment

Grounded equipment has a 30 inch clearance.

Relcosure, Regulator, Sectionalizer Capacitor	Figure 9
-----------------------------------------------	----------

Figure 9

Clearance between grounded supply equipment and communications space



#### Midspan Clearance

This minimum clearance at any point in the span between power and communications cables is either 48, 40 or 30 inches, depending upon the power line voltage. These midspan clearances are required when both power and communications conductors are at the final sag at the maximum temperature at which they were designed to operate.

They are measured under the same ambient conditions, and from the closest point.

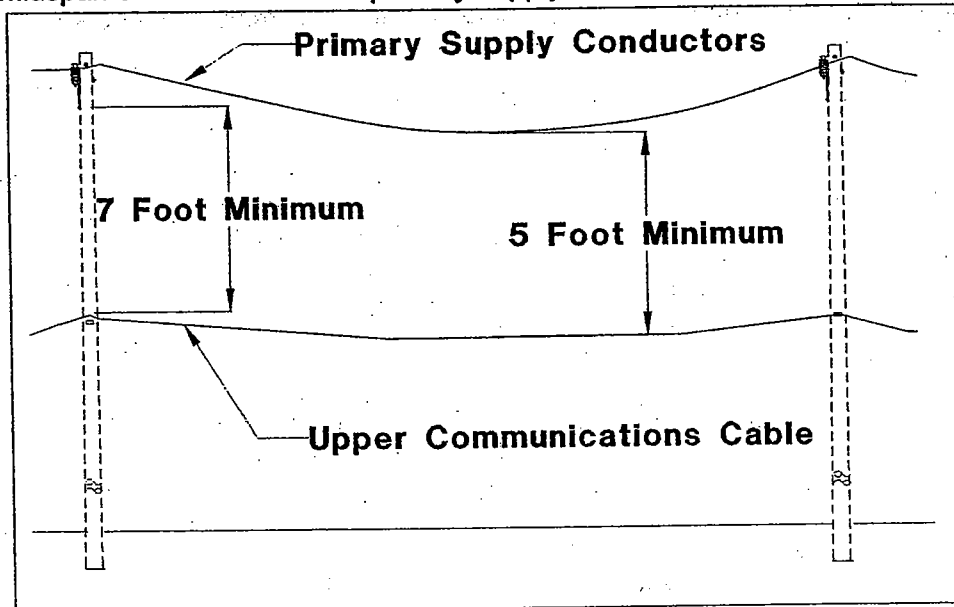
*Note:* Check distance between conductors at midpoint under various conditions (i.e. summer and winter) with each conductor exposed to the same ambient temperature, but with upper conductor loaded and lower conductor unloaded to cause the closest approach.

## Exhibit D

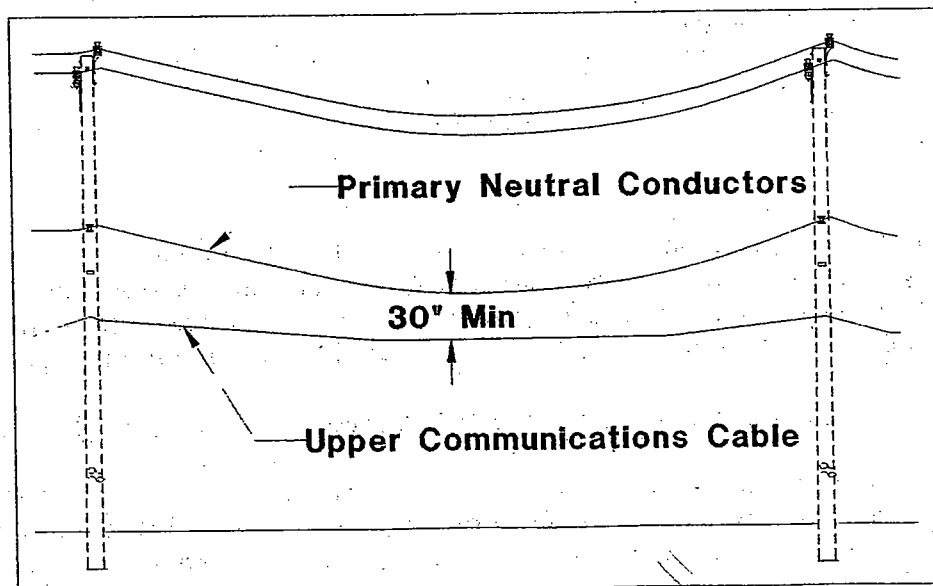
### Clearance Requirements *Continued*

Equipment	Voltage	Clearance Required
Primary supply conductors (Figure 10)	750 V to 12.5 kV	A 48 inch clearance
Power neutral to triplex (Figure 11)	0-750 V	A 30 inch clearance
Open wire secondary (covered neutral)	0-750 V	A 40 inch clearance
Bare neutral secondary	0-750 V	A 30 inch clearance

**Figure 10** Midspan clearance between primary supply conductors and communications cables



**Figure 11** Midspan clearance between secondary or neutral conductors and communications cables.





## Exhibit D

### **Service Drop – Climbing Space Clearance**

All service drops for communication and telephone companies shall be installed and maintained so as to provide at least a (30) thirty inch square climbing space directly over and corresponding to the each others joint pole attachments

### **Vegetation Clearance**

The Joint Pole Occupant's equipment shall be constructed and maintained to allow for no incidental contact that will apply addition loading to the supporting joint poles.

## Exhibit D

### Street Light Clearances

Special clearances exist between street lights and communications cables because:

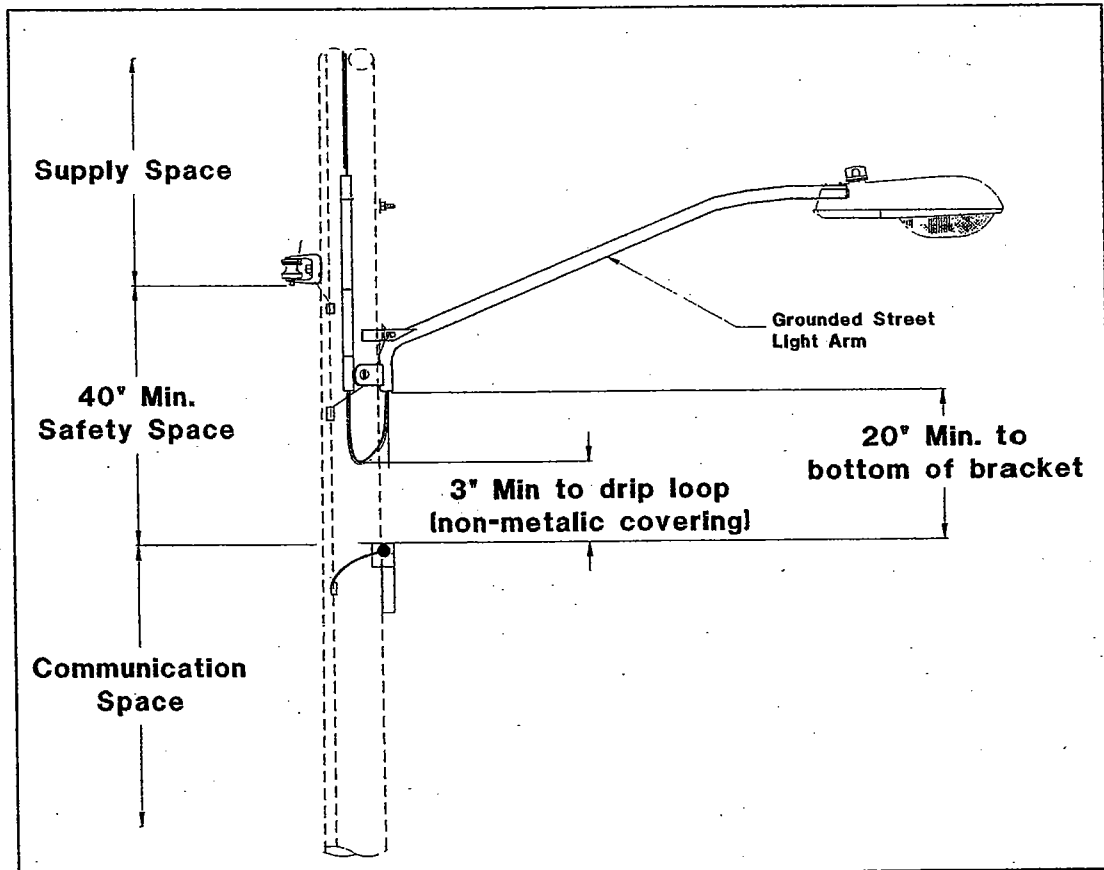
- Street lights are considered ungrounded for clearance purposes
- They may be installed anywhere on the pole, assuming all clearance requirements are met.
- Vertical runs of street light supply wire may or may not be covered with protective molding.

### Cables Installed Below Street Lights

When communication cables are installed below a street light on a pole, all of the following minimum clearance requirements shall be met:

Clearance Location	Required Clearance
Street light bracket and the top of the communications space	20 inches
Drip loop of the street light supply wire and the top of the communications space.	12 inches
Supply space and the top of the communications space	40 inches
If supply cable is covered	3 inches

**Figure 12** Clearances for communications cable installed below street lights



## Exhibit D

### Street Light Clearances *Continued* Cables installed above street lights

Communication conductors shall not be installed above street lights unless minimum cable-to-ground clearances cannot be met in a lower position on the pole.

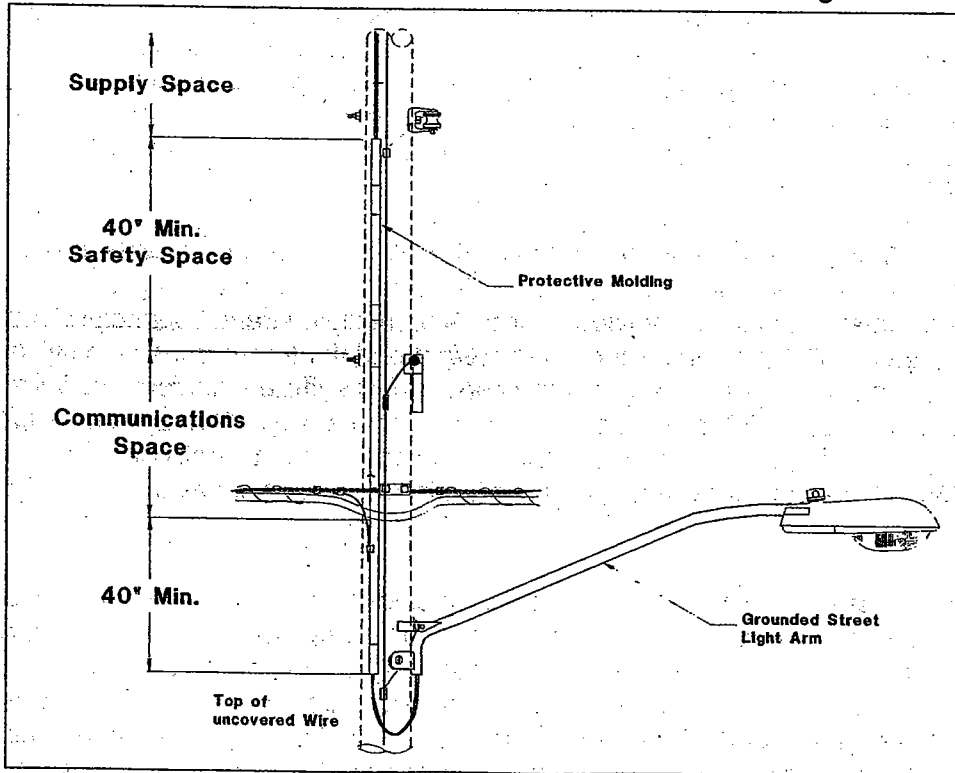
When this is the case, all of the following minimum clearance requirements shall be met:

Between	Required Clearance
Top of the street light bracket and the bottom of the communications space.	20 inches
Bottom of the street light supply wire molding (where wire is exposed at a drip loop) and the bottom of the communications space.	40 inches
Top of the street light supply wire molding (where wire is exposed) and the top of the communications space	40 inches

Figure 13 illustrates these clearance requirements.

**Caution:** Communications cables shall not be installed above street lights if the vertical run of street light supply wire is not covered with protective molding.

**Figure 13** Clearances for communications cables installed above street lights



## Exhibit D

### Sag and Tension

#### Secondary Poles

Secondary poles are poles that do not have supply primary and neutral attached. They still require a 40 inch separation on the pole and a 30" separation at the mid span. Supply secondary has more sag in general than doe's primary. Therefore it is still necessary to provide all sag data for secondary poles.

#### Primary Poles

District's most frequently installed primary pole (a pole that has supply primary and neutral) is 45 foot tall. However if DISTRICT has more facilities on the pole such as 2 sets of cross arms, special equipment, primary risers, or if the terrain requires we will install a taller pole. Unless the Joint Pole Occupier informs DISTRICT that it needs more clearance, DISTRICT will design for its' needs.

All communications conductors on poles 45 feet and shorter with a supply neutral below the primary, and/or secondary should not have a sag of more than 2 feet to avoid road clearance issues.

#### Sag

Sag is the displacement of a wire, conductor, or cable from its line of sight caused by its own weight and ice/wind loadings, if any. Vertical sag is caused by the attraction between the mass of the earth and the mass of the wire, conductor, or cable. Under wind loading, the wire, conductor or cable will deflect horizontally and will stretch under the additional loading, thus increasing the sag.

#### Initial Sag

This sag of wire, conductor, or cable/messenger when initially installed. Typical sag and tension charts for initial sag assume that a conductor is pulled into place through stringing blocks (pulleys) on one day and tied into place the next day. This allows the evening and early morning temperature/tension changes to equalize tension between spans. Where conductors will not be tied in place until several days after pulling into the stringing blocks, special sag and tension charts must be used to prevent over-tensioning.

#### Final Sag

This is the essentially stabilized sag after the wire, conductor, or cable messenger has been in place long enough to experience the full range of its loadings. Wire strands will stretch some amount and individual strands of multiple strand conductors and messengers will lay in, under their own weight and the forces caused by wind loading, ice and thermal expansion and contractions. After sufficient loading, the wire, conductor, or cable will reach near equilibrium at final sag. Although some further creep may occur during the life of the installation, it usually is not significant. Many sag and tension calculations show final sag after the initial large changes and 10 years of creep.

#### Maximum Sag

The greatest sag that will occur under worst-case summer or winter loading is the maximum sag. Under the NESC, this will occur at maximum conductor temperature (not less than 120°F) or 32°F with specified ice loadings. The maximum conductor temperature will occur under the extreme thermal loading due to line losses on a hot day under emergency loading conditions. For small conductors in icing areas, the 32°F with ice condition will typically produce the greatest sag. For large conductors thermal conditions will typically produce the greatest sag. NESC vertical clearances must be met with the wire, conductor, or cable at maximum sag. As a result, the normal vertical clearance under ordinary operating conditions is greater.

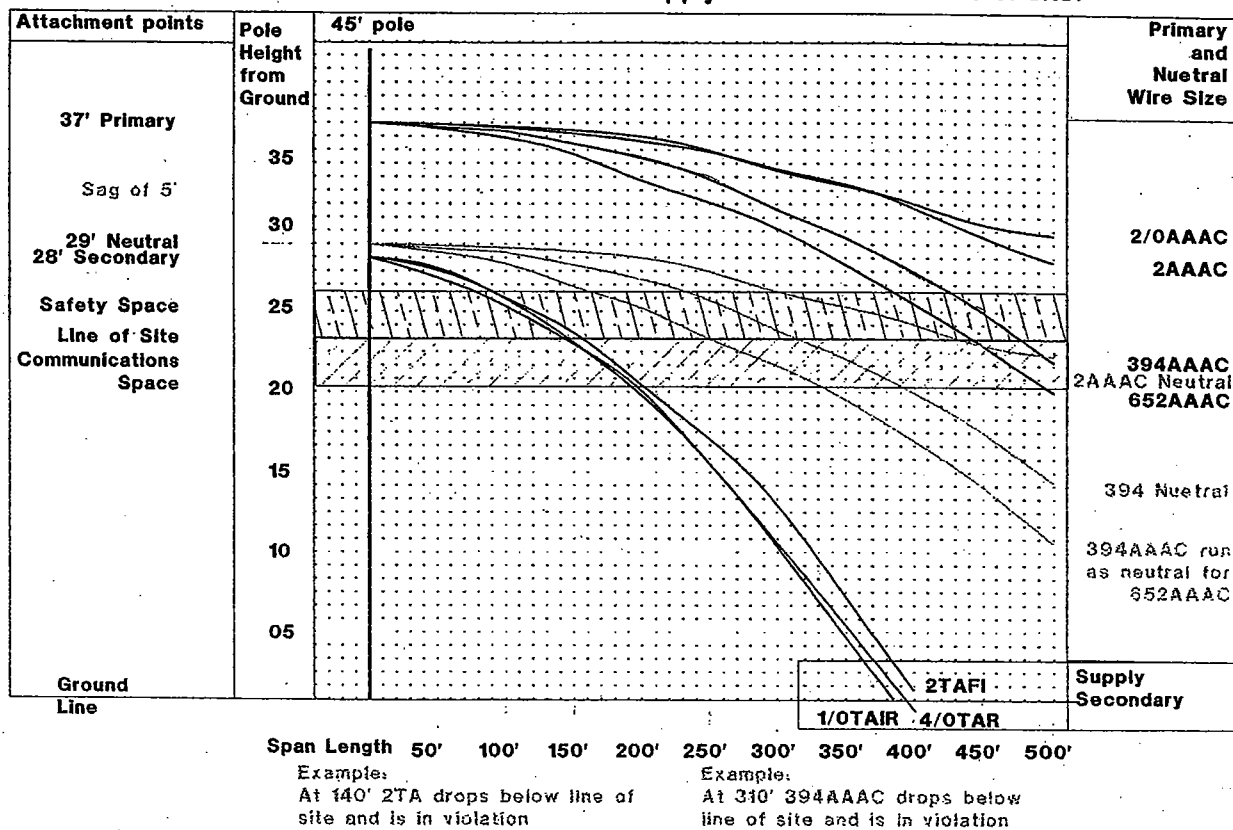
## Exhibit D

**Line of Site** Line of site refers to the straight line between the attachment points at each end of the span of wire.

New or modified communication installations shall be low enough on the pole that supply conductors do not drop beneath the line of site of Joint Pole Occupier's wires or cables.

*Note:* The 30 inch separation and all NESC rules still apply however sag of supply secondary and neutral must not be below the line of site.

**Figure B** Clearances for communications cables beneath supply conductors and line of site.



### Loading Method

The Joint pole occupier will use the NESC "Medium Loading District Grade C" unless the District requires Grade B or Extreme Wind loadings, and provide the District with the loading calculations.

**Exhibit E**  
**Bonding Fee Schedule**

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COPY

**POLE OCCUPANCY LICENSE AGREEMENT**

DATE: \_\_\_\_\_, 2002

PARTIES: \_\_\_\_\_  
("Licensee")

*Central Lincoln People's Utility District,*  
("District")

an Oregon people's utility district  
2129 North Coast Hwy.  
Newport, OR 97365

**RECITALS:**

- A. Licensee desires access to District's pole, ducts, conduits and rights-of-way within the District's distribution area.
- B. District is willing to license under certain conditions, on a revocable, non-exclusive license basis, to the extent it may lawfully do so, the placement of Licensee's attachments on District's poles, ducts, conduits and rights-of-way where reasonably available in its distribution area.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the parties do mutually covenant and agree as follows:

**SECTION 1. DEFINITIONS**

**Definitions in General.** Except as the context otherwise requires, the terms defined in this License Agreement shall, as used herein, have the meanings set forth in Section 1.1 through 1.15.

**1.1 Attachment.** The term "Attachment" means any wire or cable for the transmission of intelligence by telegraph, telephone or television (including cable television), light waves or other phenomena, or for the transmission of electric power, and any related device, apparatus, or auxiliary equipment, installed individually upon any portion of a pole or in any telegraph, telephone, electrical, cable television or communications right of way, duct, conduit, manhole or hand hole or other similar facility or facilities owned or controlled, in whole or in part, by the District.

**1.2 Attachment Project.** The term "Attachment Project" refers to any addition, modification or removal of any electric supply line, signal line, device, apparatus,

equipment, or structural member that materially changes the clearance, mechanical, structural, or electrical characteristics of the joint use pole installation.

**1.3 Attachment Maintenance Project.** The term "Attachment Maintenance Project" refers to the replacement or maintenance of existing attachments that do not modify the installation or location, change pole loading characteristics or clearances, or affect other joint-pole users.

**1.4 Bootleg.** The term "Bootleg" refers to the occupancy of an attachment on a pole, joint use pole or on a messenger cable attached to a pole or joint use pole without a valid occupancy permit. A Service Drop will be considered a Bootleg if District has not received a Service Drop Application within seven (7) days of occupancy.

**1.5 Facilities.** The term "Facility" and "Facilities" refer to any property or equipment utilized in the provision of services by Licensee or District.

**1.6 Foreign Joint Pole.** The term "Foreign Joint Pole" refers to a utility pole owned and maintained by a utility other than the District, which may be occupied with District attachments.

**1.7 Joint Pole.** The term "Joint Pole" refers to a utility pole owned and maintained by the District and occupied with attachments of other electric and telephone utilities, cable television companies, fiber optic companies, government agencies, or other private companies and individuals.

**1.8 Licensee's Equipment.** The term "Licensee's Equipment" refers to those cables, wires, and appliances together with associated messenger cables, guy wires, anchors, and other appurtenances to be used in the normal course of providing telephone, utility and/or communication service to Licensee's customers.

**1.9 Make-Ready.** The term "Make-Ready" refers to engineering and/or construction work required to modify or replace an existing pole or joint pole to render it suitable for an additional or modified attachment or occupancy.

**1.10 NESC.** The term "NESC" refers to the National Electric Safety Code.

**1.11 NJUNS.** The term "NJUNS" refers to the National Joint Utilities Notification System, an electronic internet program ([www.njuns.com](http://www.njuns.com)) for attachment permit application to a joint pole, attachment removal from a joint pole, attachment relocation on a joint pole and attachment transfer to a replacement joint pole.

**1.12 Pole.** The term "Pole" refers to a utility pole owned and maintained and occupied by the District.

**1.13 Senior Attachment.** The term "Senior Attachment" refers to the attachment of a joint pole with the earliest current valid permit date.



**1.14 Transmission Pole.** The term "Transmission Pole" refers to a utility pole owned, maintained, and occupied by the District with a transmission electrical circuit with line to line voltage of 69 or 115 KV.

**1.15 Transmission/Distribution Pole.** The term "Transmission/Distribution Pole" refers to a utility pole owned, maintained, and occupied by the District with a transmission electrical circuit with line to line voltage of 69 or 115 KV and one or more distribution electrical circuits with line to line voltage of 12.47KV.

## **SECTION 2. GENERAL AGREEMENT**

**2.1 Permits.** Subject to the terms and conditions set forth in this License Agreement, District shall issue to Licensee one or more permits authorizing Licensee to make attachments to specified poles owned or controlled by District. District may deny a permit application if District determines in its sole judgment that the pole space specifically requested by Licensee is needed to meet District's present or future requirements, or is licensed by District to another Licensee, or is otherwise unavailable based on engineering or other valid concerns. Nothing contained in this Agreement, or any permit issued pursuant to this Agreement, shall be construed to compel the District to maintain any of its poles for a period longer than is necessary for District's service requirements.

**2.2 Specific Permits Required.** Except for service drops pursuant to Section 3.1.5 and Attachment Maintenance Projects as defined in Section 1.3, the Licensee shall have no right pursuant to this Agreement to attach to any pole of the District until a specific permit has been granted as to that pole for each attachment. Licensee shall be subject to sanctions pursuant to Section 10.5, for any attachment by Licensee to a pole owned by the District without a permit.

**2.3 Distribution Area.** The distribution area covered by this Agreement shall be those portions of Lincoln, Lane, Douglas, and Coos Counties, State of Oregon, as served by the District.

**2.4 Foreign Joint Poles.** District does not own some of the joint poles for which permits are sought from the District under this Agreement and that such joint poles that the District has in use may be owned by others. Licensee understands and agrees that it is required to make appropriate agreements for permits, licenses, or other written consent for Licensee's use of a foreign joint pole with owner(s) of such foreign joint pole; provided further, that Licensee hereby agrees to be responsible for obtaining the appropriate permission from all owner(s) and Licensee further agrees to hold harmless and indemnify the District herein from any claims or damages alleged against District by reason of the failure of Licensee to secure or obtain the appropriate permission, license, or permit from any owner(s) of such foreign joint poles.

**2.5 District/Licensee Relationship.** No use, however extended, of any of the poles under this Agreement shall create or vest in Licensee any ownership or property

rights herein, but Licensee's rights therein shall be and remain a mere license, which, as to any particular pole or poles, may be terminated at any time by the District pursuant to Section 10.3. Licensee understands and agrees that the permit rights granted herein and the specific permits granted pursuant to this Agreement are non-exclusive and revocable, and that District may grant attachment rights to other parties for the use of the same poles for which Licensee has specific attachment permits; provided, however, that pole attachment rights subsequently granted by District to other private parties pursuant to licenses, permits and/or rental agreements shall not limit or interfere with any prior attachment rights granted to Licensee hereunder. In all cases, the Senior Attachment shall have priority over subsequent attachments.

**2.6 Primary Use of Poles.** Licensee understands and agrees that the District's poles are used and are to continue to be used primarily for the District's purposes; therefore, the Licensee's use will be a secondary use and that this Agreement is made and all permits granted hereunder are granted as an accommodation to the Licensee. Attachment requests to District Transmission/Distribution Poles shall be governed by this Agreement with the exception that all engineering, inspections and make-ready work shall be charged by actual cost. Attachment requests to District Transmission Poles shall be by separate agreement and at the sole discretion of the District.

**2.7 Prohibited Equipment.** Under no circumstances shall a permit be granted hereunder for the attachment of any equipment that is intended to either transmit or receive any radio frequency licensable by the FCC. Such prohibition shall include both direct attachments to the District's poles and the placement of antennae between pole spans, utilizing existing attachments. However, nothing in this Agreement shall prevent the District from authorizing the attachment of such equipment to District poles, or any other District facilities, under a separate agreement containing terms and conditions for such attachments which are acceptable to the District in its sole discretion.

## **SECTION 3. PROCEDURES AND COSTS**

**3.1 Application Forms.** To apply for a permit under this Agreement, Licensee shall submit to District a signed copy of an Application for Pole Attachment, a copy of which is attached as Exhibit "A", or electronic application using NJUNS. Licensee shall also submit to District a signed copy of the Joint Occupant Load Data Information Form, a copy of which is attached as Exhibit "A". The Application for Pole Attachment and Joint Occupant Load Data Information Form may be revised from time to time in the sole discretion of the District. Licensee may cancel a permit under this Agreement pursuant to Section 10.3.1.

**3.1.1 Required Information.** Each application for a permit under this Agreement shall specify the District's Site Location Number (normally attached to the pole), physical location description of the pole or poles in which Licensee desires to make an attachment and other identifying pole information; a description of Licensee's equipment which will be attached to each pole, complete cable, wire, and equipment wind and tension loading information, installation diagram of equipment placement in relation to District's facilities,

and existing Licensee's attachment if any. Incomplete applications shall be returned to the Licensee without further consideration for a permit to attach.

**3.1.2 Attachments per Application.** Each initial application for a permit under this Agreement shall have a maximum of 10 attachments located on 1 to 10 poles. Subsequent application resulting from make-ready work rejections of an initial application shall be for 1 pole.

**3.1.3 Large Attachment Projects.** Attachment projects involving a large number of poles and attachments shall require sixty (60) calendar days of advance notification and a project planning meeting between Licensee and District to determine scope of work, party responsibility, time schedule, additional fee and chargeable costs before work begins on processing attachment permits. The District shall make the sole determination of what constitutes a large attachment project.

**3.1.4 Application/Inspection Fee.** An application fee in the amount set forth in Exhibit "B" shall be billed for each attachment application. The District shall bill the application fees monthly. Such application fee shall cover the average costs of the preliminary survey described in Section 3.2 below and one (1) post construction inspection of the completed attachment. Licensee agrees to pay for any and all subsequent inspection(s) if the installation is not in compliance with any Section of this Agreement, NESC, and/or OPUC policies in amount set forth in Exhibit "B". See Section 4.6 regarding annual review of application fees.

**3.1.5 NJUNS.** Use of the internet NJUNS program is the preferred method of permit applications, notifications and transaction recording. If Licensee elects not to use NJUNS, Licensee shall notify District in writing and agree to pay a written application/notification fee in the amount set forth in Exhibit "B". See Section 4.6 regarding annual review of application fees.

**3.1.6 Service Drop Exception.** With respect to service drops only, District grants Licensee preliminary permission for such occupancy to be made prior to the issuance of a permit; provided further that such preliminary permission shall be subject to subsequent receipt of a properly completed electronic application using NJUNS or the Application for Pole Attachment, and receipt of a completed Joint Occupant Load Data Information Form. Failure by Licensee to meet all requirements for service drops will result in District revoking preliminary permission for occupancy and shall be considered a bootleg attachment subject to the Section 3.7. Upon receipt of the electronic application or written Application for Pole Attachment and Joint Occupant Load Data Information Form from Licensee, the District shall review the application pursuant to the procedure set forth in this Section 3.

**3.2 Preliminary Survey.** Upon receipt of a written or electronic NJUNS application, the Joint Occupant Load Data Information Form, application fee and location map, the District shall conduct a preliminary survey of the pole(s) in question and, if the Licensee requests, with representatives of the Licensee. The preliminary survey shall determine:

- (a) Whether such poles are available for the Licensee's attachments;
- (b) Whether any rearrangement or other changes are necessary in the facilities of the District or of other joint users of the pole or joint use pole in question to accommodate Licensee's proposed attachments;
- (c) Whether any pole or joint use pole in question requires strengthening, including guying, anchoring, and/or stubbing; and
- (d) Whether any pole or joint use pole requires replacement by a taller or higher strength class pole.

**3.3 Completion of Preliminary Survey.** The District shall complete the preliminary survey and send either written or electronic notification using NJUNS, to the Licensee within thirty (30) days after receipt of the complete attachment application, engineering data information form, for attachment projects not determined to be large attachment projects.

**3.3.1 Issue of Permit on Preliminary Survey.** District shall identify to Licensee as to which of the pole(s) or joint use pole(s) in the application are available for Licensee's proposed attachment, including the location on the pole or joint use pole available for Licensee's proposed attachments.

**3.3.2 Rejection of Attachment on Preliminary Survey.** District shall identify to Licensee as to which of the pole(s) or joint use pole(s) in the application are **not** available for Licensee's proposed attachment. An estimated make-ready cost will be noted for the rejected poles. Rejected pole(s) will require a new individual attachment application in order to proceed with the permitting process.

**3.4 Make-Ready Work.** District final engineering for make-ready work will commence upon receipt of the re-application for pole attachment.

**3.4.1 Licensee's Engineering Review.** Upon Licensee's request, the District shall permit the Licensee to review the proposed work prints, together with available supporting cost details, in order for the Licensee to satisfy itself as to the make-ready work proposed and the costs estimated by the District. The District may consider any reasonable objections or comments by the Licensee; provided, however, that the District's decision regarding the necessity and cost for any make-ready work remains in the District's sole discretion.

**3.4.2 Costing.** The District shall determine the estimated costs of make-ready work. The engineering and/or construction work required to modify or replace an existing pole or joint pole to render it suitable for an additional or modified attachment or occupancy shall include those items described in Sections 3.2(b), 3.2(c), and 3.2(d). The estimated costs of make-ready work may include, but not be limited to, replacement costs of poles or joint poles. Replacement costs shall include the total costs of the new pole, removal of the old pole, all transferring of the District's attachments from the old to the new pole, and such other costs necessitated by the Licensee's attachment less the salvage value and the costs of such portion of the new pole which represents space reserved for the use of the District

and any joint users greater than that provided for on the old pole. Make-ready costs may also include all materials, supplies, engineering, labor including overtime, board and lodging where necessary to meet the Licensee's requirements, supervision, contract engineering services, transportation, travel time, taxes, general overhead, appropriate loadings for such items as pension accruals, social security taxes, vacations, holidays, sickness, workman's compensation, and any other accounts under the uniform system of accounts applicable to District as prescribed by the Federal Energy Regulatory Commission. District shall utilize standard construction unit costs, where applicable and amended from time to time, as set forth in the attached Exhibit "B".

**3.4.3 Confirmation by Licensee.** Within thirty (30) days after the District notifies the Licensee of the contemplated make-ready work and the estimated make-ready work cost, Licensee shall confirm with a written notice or an electronic notice using NJUNS its decision to proceed with the make-ready work. In the event Licensee does not confirm with a written or electronic notice using NJUNS within thirty (30) days, its application pursuant to Section 3.1 shall be deemed withdrawn and the application fee provided in Section 3.1.3 shall not be refunded. Licensee shall also be responsible for payment to the District of the costs of determining the make-ready work costs; provided, however, that such costs shall not be duplicated.

**3.4.4 Advance Payment of Estimated Costs.** In the event Licensee confirms its application, Licensee shall pay to District in advance the full amount of the make-ready work costs as estimated by the District, or by mutual agreement District will bill Licensee upon completion of make-ready work. In the event Licensee fails to make advance payments within ten (10) days of confirmation pursuant to Section 3.4.3, the District shall be under no further obligation to perform or continue any make-ready work. In no event shall Licensee commence any construction or attempt to attach its facilities to the District's poles until Licensee has paid to District the costs of all make-ready work, and District has authorized and notified electronically using NJUNS that Licensee can proceed.

**3.4.5 Pole Strength, Space or Availability.** In the event existing poles of District are not available for attachment by Licensee pursuant to Section 2.4 of this Agreement, or if District shall not have poles or pole facilities sufficient to fulfill Licensee's requirements for the attachment of Licensee's equipment, Licensee shall notify District in writing of its need for such pole facilities and grant District a right of first refusal to determine whether it wishes to provide pole facilities in such locations and in such manner as will fulfill the Licensee's requirements. If District elects to exercise its right of first refusal to provide pole facilities for Licensee, District shall, at Licensee's expense, erect pole facilities in such locations and in such a manner as to reasonably meet the service requirements of both Licensee and District. If other Licensees request occupancy space on said pole within a sixty (60) month period from the setting month, the District shall collect a prorated share of the setting fee and reimburse Licensee the prorated share. District's right of first refusal does not obligate District to provide pole space nor to grant Licensee permission to use any particular pole. District understands and agrees that if it declines to grant a permit to Licensee to attach to an existing District pole, or to provide new pole facilities sufficient to meet Licensee's requirements, Licensee shall have the right to make any other

arrangements it deems reasonably appropriate to provide for its equipment at the location desired; provided, however, that Licensee's pole plant or alternative arrangements for its facilities shall not unreasonably interfere with the existing poles and facilities of District. In no case shall Licensee place a pole in line with the District's pole line.

**3.4.6 Issuance of Permit.** If Licensee's application for a pole attachment is approved, and all required make-ready work completed, District will execute and return a permit to Licensee, as appropriate, authorizing Licensee to attach or place the specified facilities on District's poles.

**3.4.7 Final Billing Payment.** Upon completion of make-ready work, Licensee will be billed the difference between the actual make-ready work less the advance payment. Licensee agrees to pay to District within thirty (30) days of the date of the final bill.

**3.5 Subsequent Modifications of Licensee's Attachments.** Licensee acknowledges that, from time to time, it may be necessary or desirable for District to change out poles, relocate, reconstruct, or rearrange facilities contained therein or connected thereto and that such change may be necessitated by District's business needs and that it is clear the beneficiary of such rearrangements is District. In these instances, Licensee agrees that Licensee will, upon District's request, and at Licensee's expense, participate with District (and other Licensees) in the relocation, reconstruction, or modification of District's poles or facilities rearrangement. Licensee shall make all rearrangements of its facilities within such a period of time as is jointly deemed reasonable by the parties based on the amount of rearrangements necessary. If Licensee fails to make the required rearrangements within the time requested and prescribed or within such extended periods of time as may be granted by District in writing, District may perform such rearrangements with written notice to Licensee, and Licensee shall reimburse District for actual costs and expenses incurred by District in connection with the rearrangement of Licensee's facilities.

**3.6 Emergency Repairs and Pole Replacements.** In general, Licensee shall be responsible for making emergency repairs to its own facilities and for formulating appropriate plans and practices which will enable it to make such emergency repairs. District shall be under no obligation to perform any repair or service restoration work of any kind with respect to Licensee's facilities. District may, at its option, correct any attachment deficiencies and charge the licensee for its costs.

**3.7 Unauthorized Pole Attachment - Penalty.** In the event Licensee occupies a District pole with an attachment without a specific attachment permit for such attachment, Licensee shall have a bootleg attachment in non-compliance for the attachment permit and be subject to sanctions and penalties pursuant to Section 10.5.

**3.8 Cost Allocation Among Multiple Applications.** When applications to occupy the same pole have been received from two or more prospective Licensees, including Licensee, before permits are granted, applicable make-ready costs shall be pro-rated equitably among such simultaneously attaching occupants. Each occupant, including

Licensee, shall be responsible for an additional inspection cost on its individual attachments.

#### **SECTION 4. RENTALS, CHARGES, AND RATES**

**4.1 Pole Rental Amount.** Each permit issued pursuant to this Agreement shall be subject to an annual attachment or occupancy fee as set forth in the attached Exhibit "B".

**4.2 Payment.** Annual billings shall be rendered on February 1<sup>st</sup> of each year. Rental bills shall be considered delinquent if payment is not received in full within thirty (30) days of the billing date.

**4.3 Annual Rental Method of Computation.** The amount of annual payment due shall be determined by District based upon the total number of attachments, service drop attachments, equipment attachments, anchor attachments, and riser attachments permits on poles as of December 31<sup>st</sup> prior to the February 1<sup>st</sup> billing date.

**4.4 Annual Attachment Rental Fee Review.** District shall annually review the attachment rental fees in Exhibit "B" by June 30<sup>th</sup> of each year. Notice shall be sent to Licensee with a revised Exhibit "B" reflecting any increase or decrease in the attachment rental fees. Any annual increase or decrease in fees shall take effect on the date specified in said notice. The letter of notification shall be incorporated in, and governed by terms and conditions of this Agreement. If such changes are not acceptable to Licensee, Licensee may dispute the revised attachment fee amount. The amount in dispute shall be placed into escrow by Licensee until the disputed amount is resolved.

**4.5 Late Payment Penalty.** A late payment penalty fee in an amount set forth in the attached Exhibit "B" shall be added on the unpaid amount past due under this Agreement.

**4.6 Application Fee Review.** District shall annually review the Fee Schedule in Exhibit "B" and provide at least six (6) months written notice to Licensee of any increase or decrease in fees with a revised Exhibit "B". The letter of notification shall be incorporated in, and governed by terms and conditions of this Agreement.

**4.7 Miscellaneous Charges.** Licensee shall pay, in addition to the charges specified in this Section, all costs incurred by District in connection with any work performed by the District pursuant to this Agreement in order to provide or maintain space on any poles for the Licensee's attachments, and any other costs incurred by the District arising out of this Agreement. Licensee shall be responsible for any consent, permits, taxes, licenses or other requirements and charges that may be imposed upon District by reason of this Agreement and to pay all such taxes, fees, charges, and expenses as may be imposed upon District as a result of this Agreement.

## **SECTION 5. OPERATIONS AND MAINTENANCE**

**5.1 Permission from Other Authority.** Licensee shall be responsible for obtaining any building licenses, permits, authorizations or certificates from governmental authorities necessary to construct, operate, maintain and remove its facilities on public or private property. Licensee shall not attach or place its facilities to or on District's poles located on any property for which it or District has not first obtained all required authorizations. District shall have the right to request evidence that all appropriate authorizations have been obtained. All facilities owned by Licensee on District's poles, anchors, or guys must serve a lawful purpose and the uses made of Licensee's facilities must comply with all applicable federal, state, and local laws and with all federal, state, and local regulatory rules, regulations, and requirements. In this regard, Licensee shall not utilize any facilities occupying or attached to District's poles for the purpose of providing any services which it is not authorized by law to provide or for the purpose of enabling any other person or entity to provide any such services.

**5.1.1 Existing Easements.** Licensee understands that District's existing easements do not include the facilities and attachments of Licensee. Licensee shall secure the necessary easements for the facilities and attachments of the Licensee.

**5.1.2 Future Easements.** In the event District elects to procure easement rights for its poles and facilities, District shall only seek the rights that cover District's poles and facilities.

**5.2 Construction, Attaching, and Placing Facilities.** Licensee shall be responsible for constructing its own facilities and attaching those facilities to District's poles at Licensee's sole cost and expense. Licensee shall be solely responsible for paying all persons and entities who provide materials, labor, access to real or personal property, or other goods and services in connection with the construction and placement of Licensee's facilities and for directing the activities of all persons acting on Licensee's behalf while they are physically present on District's pole, or in the vicinity of District's poles. Licensee shall not permit any mechanic's lien, materialman's lien, or any other lien, claim, or security interest to attach or encumber any of District's real or personal property at any time.

**5.3 Specifications and Standards.** Licensee shall construct, attach, place and maintain its facilities in compliance with all requirements and specifications set forth in this Agreement, the statutes of the State of Oregon, the current NESC and its amendments, and with the Construction Standards and Specifications For Joint Use Attachments set forth in the attached Exhibit "D", which may be revised from time to time in the sole discretion of the District.

**5.4 Maintenance Duties.** Licensee shall maintain its facilities in accordance with the provisions of this Agreement at Licensee's sole cost and expense. When maintaining the facilities, the provisions of Sections 5.2 and 5.3 shall apply.

**5.5 Modifications - District Permission Required.** Permits are for the specific equipment, facilities and location specified in the original application. Any subsequent



modification in the nature or location of the attachment specified on the permit (including but not limited to over-lashing or otherwise adding additional cable loading to the original attachment) shall require the Licensee to request modification to the existing permit or to apply for a separate permit for such additional attachment. Unauthorized modifications in the nature or location of attachments shall be considered a bootleg attachment and subject to the provisions of Sections 3.7 and 5.10.

**5.6 Inspection.** District shall have the right to make periodic or spot inspections at any time of any part of Licensee's facilities attached to District's poles, anchors, or guys for the limited purpose of determining whether Licensee's facilities are in compliance with the terms of this Agreement and permits hereunder; provided, that such inspections are non-invasive. Inspections may be made pursuant to the Inspection Form, a copy of which is attached as Exhibit "A". Such inspections shall be conducted at Licensee's expense. Neither the act of inspection by District of Licensee's facilities nor any failure to inspect such facilities shall operate to impose on District any liability of any kind whatsoever or to relieve Licensee of any responsibility, obligations, or liability under this Agreement.

**5.7 Maintenance Rights.** District reserves the right to maintain its poles and to operate its facilities thereon in such manner as will best enable them to fulfill its public service requirements.

**5.8 Time for Removal.** Whenever Licensee is required to remove its attachments from any poles, such removal shall be made in accordance with Section 10.4.

**5.9 Transfer of Attachments.** The District, in the course of replacement or removal of joint poles shall notify Licensee, in writing or electronically using NJUNS, of the District's anticipated schedule of work and required last attachment transfer date fifteen (15) calendar days prior to the performance of the work. Licensee, upon receipt of the anticipated work schedule, may elect to contact District's local operations office and attempt to coordinate the work. District is not required to provide exact time schedules, but to the extent such information is available to the District, shall make reasonable efforts to provide the Licensee with information regarding crew assignments. The District reserves the right to change such schedule, but shall make a reasonable attempt to notify Licensee of such changes. District is under no obligation to coordinate such work with Licensee with the exception of work sites that require all entities involved to coordinate the work for the purpose of safety of the crews and public. In the event the Licensee is able to coordinate the transfer of Licensee's facilities during the course of the work simultaneously being performed by the District, Licensee shall perform such work in a time and manner so as to permit District to remove original pole(s) during the course of District's work. District shall not be required to remain at a work site longer than thirty (30) minutes to allow Licensee to complete its work such that the District performs removal of original pole(s).

**5.9.1 Set Pole Notification.** District shall provide written notification or electronic notification using NJUNS to the Licensee of the completion date of District's set new transfer pole(s) work. District agrees that Licensee shall have thirty (30) days following such notice by District in which to transfer its attachments; provided, however, that said

time period may be shortened in the event of a bona fide emergency situation requiring prompt action. Upon notice to Licensee, District shall have the option to transfer Licensee's attachments at its sole discretion and charge Licensee a transfer fee as set forth in Exhibit "B".

**5.9.2 Failure to Transfer.** In the event Licensee fails to transfer its attachment or attachments to the new pole by the required transfer date or thirty (30) days following set pole notification, and has not notified the District in writing or electronically using NJUNS with an acceptable transfer date Licensee shall be in noncompliance with this Agreement and the attachment permit for the pole will be terminated. Licensee will be subject to sanctions and actual cost accrued by District as set forth in Exhibit "C".

**5.10 Crossing Facilities.** Except for service drops, Licensee's conductor or wire facilities that cross or intersect District facilities may be required, at Licensee's expense, to be attached to a joint pole at the sole discretion of the District.

**5.11 Loading Method.** Licensee's facilities shall be constructed to NESC Medium Loading District Grade "C" specifications unless special conditions or locations, at District's sole discretion, require Grade "B" or Extreme Wind loadings. Loading parameters are outlined in Exhibit "D". Licensee pole loading calculations will be required before an attachment permit is processed pursuant to Section 3.

**5.12 Balance Pole Moment Loading.** Licensee shall provide, install and maintain anchors and guys to insure a balanced pole loading moment. Maximum allowed non-wind load moment at the base of the pole per attachment will be one-thousand (1,000) foot pounds.

**5.12.1 Use of District's Anchors.** Where the anchor requirements of the Licensee and District coincide with respect to certain poles, the strains of Licensee's equipment and of District's equipment on said poles may be held by the same anchors. If District determines that District's anchor has sufficient holding capacity and attachment space to accommodate Licensee's guys, Licensee may, at its option and expense, utilize District's anchor. See Exhibit "B" for anchor attachment fee.

**5.12.2 Anchor Replacement.** In those cases where existing District owned anchors are inadequate to hold Licensee's strains and separate anchors are not desired by Licensee, District shall replace existing anchors with adequate anchors at the expense of the Licensee, and Licensee shall reimburse the District in accordance with Section 3 and Exhibit "B".

**5.13 Identification Tagging.** In the event any applicable federal, state, or local laws, regulatory rules, regulations, or requirements require the identification tagging of poles during the course of this Agreement, Licensee shall accept the means chosen by District to comply with identification tagging requirements. Licensee also agrees to provide District with the location of all poles requiring identification tagging used by Licensee, or if

colors are used for identification tagging, install the identification tagging on its attachments.

## **SECTION 6. SAFETY, NESC, OPUC**

**6.1 New Installations.** District shall have the right to inspect each new installation of Licensee's attachments upon and in the vicinity of such poles and to make periodic inspections of Licensee's attachments as it deems necessary. District reserves the right to charge Licensee for the expense of any field inspections, including inspections for make-ready work, inspections during installation of Licensee's attachments, inspections after construction, and any further periodic inspections deemed necessary by District. Any inspections performed shall in no way relieve Licensee of any responsibility, obligation, or liability assumed under this Agreement.

**6.2 Licensee Practices.** Licensee shall have written standard practices that address construction standards and communication protocols to be followed in attaching to District's poles pursuant to the requirements in Section 5.3. The standards shall specify any obligations that exceed NESC regulations, address communication methods, and contain contacts for notifications, project plans, authorizations and compliance certifications. These standards shall be made readily available to District upon twenty (20) days written notice to Licensee.

**6.3 Safety Violation.** District shall provide Licensee written notice or electronic notice using NJUNS of any violation of the Oregon Public Utility Commission's safety rules. Upon notice of a safety violation, Licensee shall either correct the violation within sixty (60) days or submit a plan of correction within thirty (30) days of its receipt of notice. District may, at its option, correct any attachment deficiencies and charge the Licensee for its costs. Licensee shall be subject to the sanctions contained in Section 10.5 for any safety violation pursuant to this Section.

**6.4 Vegetation Trim Around Licensee's Attachments and Facilities.** Licensee agrees to maintain a minimum distance from vegetation of one (1) foot during normal Oregon coast high wind conditions. Failure to maintain minimum clearance will result in Licensee non-compliance with the Agreement and Licensee agrees to accept full liability and hold harmless the District in the event of pole damage or failure during any weather condition. District may, at its sole option, trim vegetation that it deems hazardous to the operations of the District or safety of the public that are located in the communication space and charge the Licensee a prorated amount for its costs.

## **SECTION 7. INDEMNITY; REPRESENTATIONS AND WARRANTIES**

**7.1 Indemnification.** Licensee shall indemnify, protect and save harmless District, its directors, officers, employees and agents, District's other Licensees, and Joint User(s) from and against any and all claims, demands, causes of action, damages, and costs, including reasonable attorney's fees through appeals incurred by District, District's

**8.2.4 Workers Compensation Insurance in statutory amounts and Employers Liability Insurance in the amount of \$500,000 per accident.**

**8.3 Increase in Limits.** Licensee agrees that District may reasonably require an increase in the limits of liability insurance and Licensee further agrees to provide such insurance in increased amounts as a condition to Licensee's continued use of District's poles.

**8.4 Required insurance shall remain in force until such Licensee's attachments have been removed from all such pole(s), anchor(s), conduit system(s), or rights-of-way. In the event that the Licensee shall fail to maintain the required insurance coverage, District may pay any premium thereon falling due, and the Licensee shall forthwith reimburse District for any such premium paid.**

**8.5 Certificates of Insurance.** District shall be named as an additional insured on the policies described under Sections 8.2.1, 8.2.2, and 8.2.3. Licensee shall submit to District certificates by each company insuring Licensee with respect to any insurance required hereunder, such certificate(s) to specify the coverage provided and that such company will not cancel or change any such policy of insurance issued to Licensee except after sixty (60) days written notice to District.

**8.6 Notification of Claims.** The Licensee shall promptly advise the District of all claims relating to damage to property or injury to or death of persons, arising or alleged to have arisen in any manner by, or directly or indirectly associated with, the erection, maintenance, presence, use or removal of the Licensee's equipment. Copies of all accident or other reports made to any insurer by the Licensee shall be furnished to the District in a timely manner.

## **SECTION 9. SECURITY**

**9.1 Security Requirement.** The Licensee shall furnish security to the District for the performance of the Licensee's obligations under this Agreement to make any and all payments demanded by the District as due under this Agreement, including without limitation any pole contact fees with respect to permits, District's costs of modifying or removing Licensee's plant, and District's cost of enforcement under Section 10. Such security shall be maintained in full force and effect throughout the term of this Agreement, including any renewals thereof. At any time during the term of this Agreement, Licensee shall, upon District's request, furnish District with evidence that the security is in full force and effect. In the event of cancellation, termination, or alteration of the security District may, at its option, terminate this Agreement unless Licensee makes other arrangements satisfactory to District to guarantee the performance of its obligations under this Agreement.

**9.2 Amount of Security.** The amount of the security required shall be the amount as set forth in Exhibit "E". District shall annually review its Bonding Fee Schedule in Exhibit "E" and provide at least six (6) months written notice to Licensee of any increase or decrease in the amount of security requirements with a revised Exhibit "E". The letter of notification shall be incorporated in, and governed by terms and conditions of this Agreement.

**9.3 Form of Security.** The form of the security provided by Licensee may be one, or a combination of the following: cash deposit of money with District, a performance bond from an acceptable surety, a letter of credit, a personal guaranty, a corporate guaranty, or such other reasonably security as the Licensee may propose. The amount of the bond, letter of credit or other security shall not operate as a limitation upon the obligations of Licensee hereunder.

**9.3.1 District's Approval Required.** The form and sufficiency of security proposed by Licensee must be approved by District; provided, that District may require financial statements or other appropriate evidence as to the solvency and financial capability of the surety, guarantor, or financial institution.

**9.3.2 Cash Deposits.** If Licensee elects to provide a cash deposit, such deposit or deposits shall be held during the term of this Agreement as security for any and all amounts which are or may become due to the District under this Agreement. Said cash deposit shall be placed in an interest-bearing account and Licensee shall be entitled to a credit for the interest income on said cash deposit. If Licensee fails to pay any sum demanded by District as due under this Agreement, District shall have the right, without prior notice to Licensee, to apply immediately any or all amounts on deposit with District towards payment of the sums due District, whether or not Licensee contests the amount due or its liability to pay, and whether or not District exercises or has exercised any option it may have to terminate this Agreement. If Licensee contests its liability to pay any sum claimed by District, Licensee's sole remedy shall be an action at law to recover the amounts in dispute. In the event District shall apply some or all of the cash deposit towards payment of an amount due to District, Licensee must restore to its deposit the amount so applied within thirty (30) days after notice of such application irrespective of whether or not Licensee contests its liability or commences any legal proceedings to determine its liability. Failure to restore its cash deposit to the required security amount shall constitute a default under this Agreement.

**9.3.3 Performance Bond.** If the Licensee elects to provide a performance bond, a commercial bonding company satisfactory to District shall issue such bond to District in a form satisfactory to District. The initial bond shall be for a term of five (5) years; renewal bonds shall be provided by Licensee to District at least two (2) months before expiration of an existing bond. A bond must contain a provision that the surety will pay to District subject to the dollar limits of the bond any sum demanded by District as due under this Agreement, whether or not Licensee contests its liability to pay such sum, and whether or not District exercises or has exercised any option it may have to terminate this Agreement. If any such

amounts are paid by the surety, Licensee within thirty (30) days after notice of such payment shall provide to District security in the full amount, irrespective of whether or not Licensee contests its liability to District or brings or has brought any legal proceedings or appeals to local, state, or federal regulatory agencies to determine its liability. Failure to restore the security shall constitute a default under this Agreement.

**9.4 Defenses Waived.** The form of security provided by Licensee must include a provision in which the surety, guarantor, or other party providing the security specifically agrees that it will not assert defenses against the claims of the District upon such security. The security provided by Licensee shall be absolute, irrespective of whether or not Licensee contests its liability to District or brings or has brought any legal proceedings or appeals to any local, state or federal regulatory agencies or courts of law to determine its liability.

**9.5 Security Obligations.** The furnishing of security shall not relieve Licensee of any of its obligations under this Agreement, and the security shall not be released until all obligations under this Agreement have been discharged.

## **SECTION 10. DEFAULT, TERMINATION AND REMEDIES**

**10.1 Events of Agreement Termination.** This Agreement shall terminate upon the occurrence of any one of the following events:

- (a) Upon six (6) months written notice of termination.
- (b) Upon Licensee's failure to apply for a permit within six (6) months from the date of this Agreement.
- (c) Except for pending permit applications with the District, one (1) year from the date of this Agreement if no permit has been granted by the District pursuant to this Agreement.
- (d) Failure of Licensee to pay the amounts due pursuant to Section 4.2.
- (e) Failure of Licensee to obtain insurance in increased limits pursuant to Section 8.3.
- (f) Whenever Licensee violates, breaches or is in default of any term or condition of this Agreement or any permit including but not limited to the 1) Construction, operation or maintenance of Licensee's attachment in violation of law or in aid of any lawful act or undertaking; or 2) Construction, operation or maintenance of Licensee's attachment without the insurance or security coverage required under this Agreement. Within thirty (30) days of notice from District, Licensee shall take immediate corrective action to eliminate any above mentioned condition or other violation of any term or condition of this Agreement within thirty (30) days and shall confirm in writing to District that the cited violations have been corrected. If Licensee fails to discontinue or correct these violations or fails to give the required confirmation, District may immediately terminate this Agreement and any of Licensee's rights hereunder without limiting or restricting any further rights or remedies District may have against Licensee.

**10.2 Effect of Agreement Termination.** Termination of this Agreement pursuant to Section 10.1 shall terminate all occupancy permits and their respective permit dates. Licensee shall have thirty (30) days to remove all attachments made upon District's poles and be liable for and pay all fees and charges pursuant to the terms of this Agreement to District until Licensee's attachments are actually removed. Termination of this Agreement or any permits issued hereunder shall not affect Licensee's liabilities and obligations incurred hereunder prior to the effective date of such termination. Even after the termination of this Agreement or cancellation of a permit pursuant to Section 10.3, Licensee's responsibility and indemnity obligations shall continue with respect to any claims or demands related to Licensee's attachments under this Agreement.

**10.3 Permit Cancellation.** Licensee shall have the right to cancel and District the right to revoke a permit without terminating this Agreement as follows:

**10.3.1 Licensee.** Licensee may cancel a permit by removing its attachments from the corresponding pole and by giving District either a written notice using the Notice of Removal of Equipment, a copy of which is attached in Exhibit "A", or by electronic notice using NJUNS within ten (10) days of removal. Licensee shall remain liable for and pay to District all fees and charges pursuant to the provisions of this Agreement until said attachments are physically removed from District's poles.

**10.3.2 District.** District may revoke a permit authorizing the attachment, service drop attachment, equipment attachment, anchor attachment, or riser attachment to any specific pole or poles by giving thirty (30) days written notice to Licensee specifying the reason for revocation. Upon receipt of notice, Licensee agrees to remove said attachments within thirty (30) days unless District and Licensee agree otherwise. In the event District has granted a specific permit for the use of a pole, but Licensee has not made its attachment to that pole within ninety (90) days of the permit issue date, District shall have the right to revoke such permit on five (5) days' electronic notice using NJUNS.

**10.4 Removal of Licensee's Attachments.** Licensee, at its expense, shall remove its attachments from any of District's poles within thirty (30) days after notice of revocation of the permit or termination of the Agreement covering such attachments. If Licensee fails to remove its attachments within thirty (30) days, District shall have the right to remove such attachments at Licensee's expense and without any liability on the part of District for damage or injury to Licensee's attachment. Licensee releases District from any liability for damage to Licensee's equipment, or for any interruption, discontinuance or interference with Licensee's service to its customers caused by or resulting from such removal. In case of emergency or immediate service needs of District, District may perform such removal without notice to Licensee, provided District sends written notice of the action and the reasons for such action within a reasonable time.

**10.5 Remedies.** Sanctions for attaching to District's pole without a permit, violation with the Oregon Public Utility Commission's safety rules, breach of this Agreement, and violation of rules pertaining to service drops pursuant to Section 3.1.5 shall apply as determined by the sanction matrix found in Exhibit "C", which may be revised from time to

time in the sole discretion of the District. Notice shall be sent to Licensee with a revised Exhibit "C" reflecting the revised sanctions. Any change in sanctions shall take effect on the date specified in said notice. The letter of notification shall be incorporated in, and governed by terms and conditions of this Agreement.

## **SECTION 11. MISCELLANEOUS**

**11.1 Assignment.** Licensee shall not assign or transfer this Agreement or any License or any right or authorization granted under this Agreement and this Agreement shall not inure to the benefit of Licensee's successors or assigns, without the prior written consent of District. District shall not unreasonably withhold such consent. In the event such consent or consents are granted by District, then the provisions of this Agreement shall apply to and bind the successors and assigns of the Licensee.

**11.2 Notices.** Except by use of NJUNS otherwise stated in the Agreement, any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be mailed by certified mail, return receipt requested, postage prepaid, addressed to the parties as follows:

Licensee: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

District: Central Lincoln People's Utility District  
Attention: Joint Use Administrator  
P.O. Box 1126  
Newport, Oregon 97365

Any notice or other communication shall be deemed to be given at the expiration of the third day after the date of deposit in the United States mail. The addresses to which notices or other communications shall be mailed may be changed from time to time by giving written notice to the other party as provided in this Section.

**11.3 Attorney Fees.** If any suit or action is filed by any party to enforce this Agreement or otherwise with respect to the subject matter of this Agreement, the prevailing party shall be entitled to recover reasonable attorney fees incurred in preparation or in prosecution or defense of such suit or action as fixed by the trial court, and if any appeal is taken from the decision of the trial court, reasonable attorney fees as fixed by the appellate court.

**11.4 Amendment.** Except as reserved herein, this Agreement may be amended only by an instrument in writing executed by all the parties.



**11.5 Headings.** The headings used in this Agreement are solely for convenience of reference, are not part of this Agreement, and are not to be considered in construing or interpreting this Agreement.

**11.6 Entire Agreement.** This Agreement (including the exhibits) sets forth the entire understanding of the parties with respect to the subject matter of this Agreement and supersedes any and all prior understandings and agreements, whether written or oral, between the parties with respect to such subject matter.

**11.7 Counterparts.** This Agreement may be executed by the parties in separate counterparts, each of which when executed and delivered shall be an original, but all of which together shall constitute one and the same instrument.

**11.8 Severability.** If any provision of this Agreement shall be invalid or unenforceable in any respect for any reason, the validity and enforceability of any such provision in any other respect and of the remaining provisions of this Agreement shall not be in any way impaired.

**11.9 Waiver.** A provision of this Agreement may be waived only by a written instrument executed by the party waiving compliance. No waiver of any provision of this Agreement shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. Failure to enforce any provision of this Agreement shall not operate as a waiver of such provision or any other provision.

**11.10 Department of Revenue; Public Utilities Commission ("PUC").** In the event the Department of Revenue of the State of Oregon or the PUC shall require the District to provide certain information concerning Licensee, Licensee agrees to cooperate with and assist District in providing information, data, or such other matters as may be required by said Department of Revenue or PUC. Licensee specifically agrees to provide District with appropriate data as determined or required by the Department of Revenue or PUC concerning its pole attachments in each taxing District and such other data as may hereafter be required by the Department of Revenue or PUC.

**11.11 Time of Essence.** Time is of the essence for each and every provision of this Agreement.

**11.12 Expenses.** Each party shall bear its own expenses in connection with this Agreement and the transactions contemplated by this Agreement.

**11.13 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the state of Oregon.

**11.14 Venue.** This Agreement has been made entirely within the state of Oregon. This Agreement shall be governed by and construed in accordance with the laws of the state of Oregon. If any suit or action is filed by any party to enforce this Agreement or

otherwise with respect to the subject matter of this Agreement, venue shall be in the federal court of Oregon or state courts in Lincoln County, Oregon.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in duplicate as of the day and year first above written.

**CENTRAL LINCOLN PEOPLE'S  
UTILITY DISTRICT**

By: \_\_\_\_\_

Title: \_\_\_\_\_

**LICENSEE**

By: \_\_\_\_\_

Title: \_\_\_\_\_

- Attached Exhibits:
- A — Application, Notice of Removal, Inspection and Engineer Information Datasheet Forms
  - B — Fee Schedule
  - C — Sanctions Matrix
  - D — Construction Standards and Specifications
  - E — Bonding Fee Schedule

**Motion for Emergency Interim Relief**  
**Exhibit 3**

# Macpherson, Gintner, Gordon & Diaz

## LAWYERS

423 North Coast Highway  
P.O. Box 1270  
Newport, Oregon 97365  
(541) 265-8881 \ (800) 829-8881  
FAX (541) 265-3571  
email:[gintner@mggdllaw.com](mailto:gintner@mggdllaw.com)

**Peter Gintner**

Also Admitted in Alaska

~~January 6, 2002~~

Jill M. Valenstein  
Cole, Raywid & Braverman  
1919 Pennsylvania Ave., N.W.  
Washington, D.C. 20006

RE: Charter Communications - Notice of Violation of OAR 860-028-0120

Dear Ms. Valenstein:

This firm represents the Central Lincoln People's Utility District, located at 2129 North Coast Highway, in Newport, Oregon. On December 26, 2001, Central Lincoln PUD gave notice by written letter to Charter Communications of its intent to terminate the then existing General Agreement for Joint Use of Poles on June 30, 2002. On June 27, 2002, Central Lincoln PUD sent Charter Communications a new Pole Occupancy License Agreement for its signature by August 30, 2002. Despite our good faith efforts, including a willingness to waive any potential fees, negotiations have failed to produce an agreement.

You are hereby notified that Charter Communication is in violation of OAR 860-028-0120(1)(a). This regulation requires a pole occupant attaching to one or more poles of a pole owner to have a written contract with the pole owner that specifies the general conditions for attachments on the poles of the pole owner. Enclosed is a list of poles owned by the Central Lincoln PUD that Charter Communications currently is attached to without a written contract.

Sanctions for violation of the regulation are \$500 per pole or 60 times Central Lincoln PUD's annual rental fee per pole, whichever is greater. Our records indicate that Charter Communications currently has attachments on approximately 13,500 Central Lincoln PUD poles. Sanctions will be reduced by 60% if Charter Communications enters into a written contract within 10 days from the date of this notice. No field correction is necessary for compliance with the regulation. Failure to take prompt action pursuant to the above regulation will result in further action on the part of Central Lincoln PUD, including but not limited to, increasing the sanctions up to two times the amount, and requesting an order from the Oregon PUC authorizing removal of Charter Communications' attachments from Central Lincoln PUD's poles.

Jill M. Valenstein

January 6, 2003

Page 2

Please call me as soon as possible so that we may rectify this situation. If a written contract is not entered into for use of Central Lincoln PUD's poles by Charter Communications within 10 days from the date of this letter, we will seek to enforce our rights through the appropriate legal action. Thank you for your time and attention to this matter. If you have any questions please feel free to contact me.

Sincerely,



Peter Gintner

PG/aio

Enclosure

cc: Mike Wilson

**Motion for Emergency Interim Relief**  
**Exhibit 4**

FILE CLPUD

# Macpherson, Gintner, Gordon & Braz

## LAWYERS

423 North Coast Highway  
P.O. Box 1270  
Newport, Oregon 97365  
(541) 265-8881 \ (800) 829-8881  
FAX (541) 265-3571  
e-mail: [gintner@mggd.com](mailto:gintner@mggd.com)

**Peter Gintner**

Also Admitted In Alaska

February 13, 2003

**SENT BY FACSIMILE AND FIRST CLASS MAIL**

Jill M. Valenstein  
Cole, Raywid & Braverman, L.L.P.  
Attorneys at Law  
1919 Pennsylvania Avenue, N.W., Suite 200  
Washington, D.C. 20006-3458

**Re: Central Lincoln PUD / Charter Communications - Pole Attachment Agreement**

Dear Jill:

This is in response to your letter of February 6, 2003 wherein you offer a proposal to resolve the impasse between Charter and CLPUD. Except to the extent specifically agreed to by my client before January 7, 2003, each and every point of your counter-offer is hereby rejected. Although the parties have been, in my estimation, engaging in good faith negotiations, some issues are simply bottom line matters that no amount of negotiation can resolve.

Mike Wilson's last offer, which by my email copy is dated January 7, 2003, should be considered the District's final offer. This includes a subsequent email dated January 17, 2003 regarding section 9.3.3 among other things. Although Central Lincoln does not relish the thought of expending funds to proceed on with the process enumerated in the statutes and invoking the jurisdiction of the Oregon PUC, the Central Lincoln board is duty bound to its ratepayers to make sure that all state law is followed and that the District be left whole regardless of the contract details.

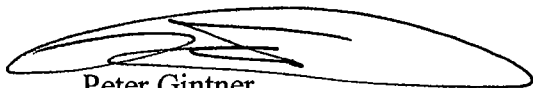
I would like to also address the issues brought up in your January 10, 2003 letter wherein you characterize my email of January 8, 2003. To the extent that I have not made it clear, if we do not reach an agreement by roughly March 17, 2003, I will advise my client to file with the Oregon PUC to begin the process of imposing sanctions on Charter Communications. Although I believe the Oregon PUC will rule somewhere short of this, our petition will include the ultimate sanction of having Charter Communications remove its equipment off of Central Lincoln PUD's poles and other facilities. To the extent not clear in my email, this process will be rendered

moot *only* by Central Lincoln PUD and Charter Communications entering into a written agreement sometime before that date. The "time marker" I referred to relates solely to the triggering of what we believe is a time requirement for filing with the Oregon PUC to have Charter's attachments removed. We are not now imposing monetary sanctions nor will we seek same during the period until roughly March 17, 2003. At that time, or shortly thereafter, we intend to file a complaint for any and all remedies available to us. My intention is for the parties to reach an agreement, hence the relief from, at least temporarily, of imposing monetary sanctions. Once we file, we will seek monetary sanctions in addition to the removal of the offending equipment.

It is unfortunate that the negotiations have reached this impasse; however, as I have mentioned to you on the phone prior to this, given that this is a new body of law and that none of us are fully comfortable with how the Oregon PUC will rule, it may be best for all to proceed on and adjudicate this matter to a conclusion. As an indication of our sincerity in this matter, for occupiers who also have poles on which Central Lincoln occupies with its facilities and equipment, we have signed virtually identical agreements to the one which we are proposing to Charter Communications. In other words, in situations where both parties are both occupier and owner, we have requested no more nor any less than what we require of occupiers.

I would hope that we could still reach an agreement; but for that to happen, we must work off of basically the agreement emailed to you which is dated January 7, 2003, the subsequent email of January 17, 2003 and any other minor items which Mike Wilson is willing to concede. The issues you bring up in your letter of February 6, 2003, are too much of a change from where we need to be and we are better off proceeding to some sort of adjudicatory process. Thank you for all of your efforts in this matter. I await your response.

Sincerely,



Peter Gintner

PG/ae

cc: Paul Davies  
Mike Wilson  
Denise Estep



**Motion for Emergency Interim Relief**  
**Exhibit 5**

POLE OCCUPANCY LICENSE AGREEMENT

DATE: March 18, 2003

PARTIES: Charter Communications Holding Company, LLC, on its own behalf and as agent ("Licensee") for its subsidiaries listed on Addendum One hereto.

12405 Powerscourt Drive

St. Louis, Missouri 63131-3674

*Central Lincoln People's Utility District,*  
("District")

an Oregon People's Utility District  
2129 North Coast Hwy.  
Newport, OR 97365

**RECITALS:**

A. Licensee desires access to District's pole, ducts, conduits and rights-of-way within the District's distribution area.

B. District is willing to license under certain conditions, on a revocable, non-exclusive license basis, to the extent it may lawfully do so, the placement of Licensee's attachments on District's poles, ducts, conduits and rights-of-way where reasonably available in its distribution area.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the parties do mutually covenant and agree as follows:

**SECTION 1. DEFINITIONS**

**Definitions in General.** Except as the context otherwise requires, the terms defined in this License Agreement shall, as used herein, have the meanings set forth in Section 1.1 through 1.15.

**1.1 Attachment.** The term "Attachment" means any wire or cable for the transmission of intelligence by telegraph, telephone or television (including cable television), light waves or other phenomena, or for the transmission of electric power, and any related device, apparatus, or auxiliary equipment, installed individually upon any portion of a pole or in any telegraph, telephone, electrical, cable television or communications right of way, duct, conduit, manhole or hand hole or other similar facility or facilities owned or controlled, in whole or in part, by the District.

## POLE OCCUPANCY LICENSE AGREEMENT

**1.2 Attachment Project.** The term "Attachment Project" refers to any attachment that materially changes the clearance, mechanical, structural, or electrical characteristics of the joint use pole installation.

**1.3 Attachment Maintenance Project.** The term "Attachment Maintenance Project" refers to the replacement or maintenance of existing attachments that do not modify the attachment mounting style or location, change pole loading characteristics or clearances, or affect other joint-pole users

**1.4 Bootleg.** The term "Bootleg" refers to the occupancy of an attachment point on a pole, joint pole, District anchor, by an Aerial Cable Attachment, Service Drop Attachment, Equipment Attachment, Anchor Attachment, and Communication Riser Attachment or an Over-Lash of an existing Aerial Cable Attachment without a valid occupancy permit. A Service Drop will be considered a Bootleg if District has not received a Service Drop Application within seven (7) days of occupancy.

**1.5 Facilities.** The term "Facility" and "Facilities" refer to any property or equipment utilized in the provision of services by Licensee or District.

**1.6 Foreign Joint Pole.** The term "Foreign Joint Pole" refers to a utility pole owned and maintained by a utility other than the District, which may be occupied with District attachments.

**1.7 Joint Pole.** The term "Joint Pole" refers to a utility pole owned and maintained by the District and occupied with attachments of other electric and telephone utilities, cable television companies, fiber optic companies, government agencies, or other private companies and individuals.

**1.8 Licensee's Equipment.** The term "Licensee's Equipment" refers to auxiliary equipment directly attached to a joint pole such as Power Supplies for TV amplifiers, Junction Boxes, Splice Boxes.

**1.9 Make-Ready.** The term "Make-Ready" refers to engineering and/or construction work required to modify or replace an existing pole or joint pole to render it suitable for an additional or modified attachment or occupancy.

**1.10 NESC.** The term "NESC" refers to the National Electric Safety Code.

**1.11 NJUNS.** The term "NJUNS" refers to the National Joint Utilities Notification System, an electronic Internet program ([www.njuns.com](http://www.njuns.com)) for attachment permit application to a joint pole, attachment removal from a joint pole, attachment relocation on a joint pole and attachment transfer to a replacement joint pole.

**1.12 Pole.** The term "Pole" refers to a utility pole owned and maintained and occupied by the District.

**1.13 Senior Attachment.** The term "Senior Attachment" refers to the attachment of a joint pole with the earliest current valid permit date.

## POLE OCCUPANCY LICENSE AGREEMENT

**1.14 Transmission Pole.** The term "Transmission Pole" refers to a utility pole owned, maintained, and occupied by the District with a transmission electrical circuit with line to line voltage of 69 or 115 KV.

**1.15 Transmission/Distribution Pole.** The term "Transmission/Distribution Pole" refers to a utility pole owned, maintained, and occupied by the District with a transmission electrical circuit with line to line voltage of 69 or 115 KV and one or more distribution electrical circuits with line to line voltage of 12.47KV.

### SECTION 2. GENERAL AGREEMENT

**2.1 Permits.** Subject to the terms and conditions set forth in this License Agreement, District shall issue to Licensee one or more permits authorizing Licensee to make attachments to specified poles owned or controlled by District. District may deny a permit application if District determines in its reasonable judgment that there is insufficient capacity, or for reasons of safety, reliability and generally applicable engineering standards. Nothing contained in this Agreement, or any permit issued pursuant to this Agreement, shall be construed to compel the District to maintain any of its poles for a period longer than is necessary for District's service requirements.

**2.2 Specific Permits Required.** Except for service drops pursuant to Section 3.1.6 and Attachment Maintenance Projects as defined in Section 1.3, the Licensee shall have no right pursuant to this Agreement to attach to any pole of the District until a specific permit has been granted as to that pole for each attachment. Licensee shall be subject to sanctions pursuant to Section 10.5, for any attachment by Licensee to a pole owned by the District without a permit.

**2.3 Distribution Area.** The distribution area covered by this Agreement shall be those portions of Lincoln, Lane, Douglas, and Coos Counties, State of Oregon, as served by the District.

**2.4 Foreign Joint Poles.** District does not own some of the joint poles for which permits are sought from the District under this Agreement and that such joint poles that the District has in use may be owned by others. Licensee understands and agrees that it is required to make appropriate agreements for permits, licenses, or other written consent for Licensee's use of a foreign joint pole with owner(s) of such foreign joint pole; provided further, that Licensee hereby agrees to be responsible for obtaining the appropriate permission from all owner(s) and Licensee further agrees to hold harmless and indemnify the District herein from any claims or damages alleged against District by reason of the failure of Licensee to secure or obtain the appropriate permission, license, or permit from any owner(s) of such foreign joint poles.

**2.5 District/Licensee Relationship.** No use, however extended, of any of the poles under this Agreement shall create or vest in Licensee any ownership or property rights herein, but Licensee's rights therein shall be and remain a mere license, which, as to any particular pole or poles, may be terminated at any time by the District pursuant to Section 10.3. Licensee understands and agrees that the permit rights granted herein and

## POLE OCCUPANCY LICENSE AGREEMENT

the specific permits granted pursuant to this Agreement are non-exclusive and revocable, and that District may grant attachment rights to other parties for the use of the same poles for which Licensee has specific attachment permits; provided, however, that pole attachment rights subsequently granted by District to other private parties pursuant to licenses, permits and/or rental agreements shall not limit or interfere with any prior attachment rights granted to Licensee hereunder. In all cases, the Senior Attachment shall have priority over subsequent attachments.

**2.6 Primary Use of Poles.** Licensee understands and agrees that the District's poles are used and are to continue to be used primarily for the District's purposes; therefore, the Licensee's use will be a secondary use and that this Agreement is made and all permits granted hereunder are granted as an accommodation to the Licensee, subject to District's legal obligation. Attachment requests to District Transmission/Distribution Poles shall be governed by this Agreement with the exception that all engineering, inspections and make-ready work shall be charged by actual cost. Attachment requests to District Transmission Poles shall be by separate agreement and at the sole discretion of the District.

**2.7 Prohibited Equipment.** Under no circumstances shall a permit be granted hereunder for the attachment of any equipment that is intended to either transmit or receive any radio frequency licensable by the FCC. Such prohibition shall include both direct attachments to the District's poles and the placement of antennae between pole spans, utilizing existing attachments. However, nothing in this Agreement shall prevent the District from authorizing the attachment of such equipment to District poles, or any other District facilities, under a separate agreement containing terms and conditions for such attachments which are acceptable to the District in its sole discretion.

### SECTION 3. PROCEDURES AND COSTS

**3.1 Application Forms.** To apply for a permit under this Agreement, Licensee shall submit to District a signed copy of an Application for Pole Attachment, a copy of which is attached as Exhibit "A", or electronic application using NJUNS. Licensee shall also submit to District a signed copy of the Joint Occupant Load Data Information Form, a copy of which is attached as Exhibit "A". The Application for Pole Attachment and Joint Occupant Load Data Information Form may be revised from time to time in the reasonable discretion of the District. Licensee may cancel a permit under this Agreement pursuant to Section 10.3.1.

**3.1.1 Required Information.** Each application for a permit under this Agreement shall specify the District's Site Location Number (normally attached to the pole), or the physical location description with accompanying map of the pole or poles in which Licensee desires to make an attachment, and other identifying pole information; a description of Licensee's equipment which will be attached to each pole, complete cable, wire, and equipment wind and tension loading information, installation diagram of equipment placement in relation to District's facilities, and existing Licensee's attachment if any. Incomplete applications shall be returned to the Licensee without further consideration for a permit to attach.

## POLE OCCUPANCY LICENSE AGREEMENT

**3.1.2 Attachments per Application.** Each application for a permit under this Agreement shall have a maximum of ten (10) attachments located on one (1) to ten (10) poles.

**3.1.3 Large Attachment Projects.** A single Attachment project involving thirty (30) or more poles or joint poles or a group of small attachment projects involving more than forty five (45) poles within a thirty (30) day period shall require sixty (60) calendar days of advance notification and a project planning meeting between Licensee and District to determine scope of work, party responsibility, time schedule, and additional chargeable costs before work begins on processing attachment permits. The District shall make the sole determination of what constitutes a large attachment project.

**3.1.4 Application Fee.** An application fee in the amount set forth in Exhibit "B" shall be assessed for each attachment application. Such application fee shall cover the average costs of the preliminary survey described in Section 3.2 below and one (1) post construction inspection of the completed attachment, along with cost for discontinuance of the attachment permit to include (1) one removal verification inspection. Licensee agrees to pay for any and all subsequent inspection(s) if the installation is not in material compliance with any Section of this Agreement, NESC, and/or OPUC policies in amount set forth in Exhibit "B". See Section 4.4 regarding annual review of application fees.

**3.1.5 NJUNS.** Use of the Internet NJUNS program is the preferred method of permit applications, notifications and transaction recording. See Exhibit A for written application and discontinuance notification forms.

**3.1.6 Service Drop Exception.** With respect to service drops only, District grants Licensee preliminary permission for such occupancy to be made prior to the issuance of a permit; provided further that such preliminary permission shall be subject to subsequent receipt of a properly completed electronic application using NJUNS or the Application for Pole Attachment, and receipt of a completed Joint Occupant Load Data Information Form or an equivalent service drop loading data sent with the attachment application in a mutually agreed upon format. Failure by Licensee to meet all requirements for service drops will result in District revoking preliminary permission for occupancy and shall be considered a bootleg attachment subject to the Section 3.7. Upon receipt of the electronic application or written Application for Pole Attachment and Joint Occupant Load Data Information Form or equivalent service drop loading data from Licensee, the District shall review the application pursuant to the procedure set forth in this Section 3.

**3.2 Preliminary Survey.** Upon receipt of a written or electronic NJUNS application, the Joint Occupant Load Data Information Form, application fee and location map (if District pole site location numbers were not available), the District shall conduct a preliminary survey of the pole(s) in question and, if the Licensee requests, with representatives of the Licensee. The preliminary survey shall determine:

- (a) Whether such poles are available for the Licensee's attachments;
- (b) Whether any rearrangement or other changes are necessary in the facilities of the District or of other joint users of the pole or joint use pole in question to accommodate Licensee's proposed attachments;

## POLE OCCUPANCY LICENSE AGREEMENT

- (c) Whether any pole or joint use pole in question requires strengthening, including guying, anchoring, and/or stubbing; and
- (d) Whether any pole or joint use pole requires replacement by a taller or higher strength class pole.
- (e) Provide a cost for any pole or joint use pole that requires make-ready that will be charged to the Licensee.

**3.3 Completion of Preliminary Survey.** The District shall make reasonable effort to complete the preliminary survey and send either written or electronic notification using NJUNS, to the Licensee within thirty (30) days after receipt of the completed attachment application, engineering data information form, for attachment projects not determined to be large attachment projects.

**3.3.1 Issue of Permit on Preliminary Survey.** District shall identify to Licensee as to which of the pole(s) or joint use pole(s) in the application are available for Licensee's proposed attachment, including the location on the pole or joint use pole available for Licensee's proposed attachments.

**3.3.2 Rejection of Attachment on Preliminary Survey.** District shall identify to Licensee as to which of the pole(s) or joint use pole(s) in the application are not available for Licensee's proposed attachment. A make-ready cost if required will be noted for the rejected poles.

**3.4 Make-Ready Work.** District final engineering for make-ready work will commence upon receipt of Licensee's electronic notification accepting the make-ready cost and receipt of the make ready fees from the Licensee.

**3.4.1 Licensee's Engineering Review.** Upon Licensee's request, the District shall permit the Licensee to review the proposed work prints, together with available supporting cost details, in order for the Licensee to satisfy itself as to the make-ready work proposed and the costs estimated by the District. The District may consider any reasonable objections or comments by the Licensee; provided, however, that the District's decision regarding the necessity and cost for any make-ready work remains in the District's reasonable discretion.

**3.4.2 Costing.** The District shall determine the estimated costs of make-ready work. The engineering and/or construction work required to modify or replace an existing pole or joint pole rendering it suitable for an additional or modified attachment or occupancy shall include those items described in Sections 3.2(b), 3.2(c), and 3.2(d). The estimated costs of make-ready work may include, but not be limited to labor and equipment costs to transport, set and remove a pole, labor cost to strengthen pole or other such costs necessitated by the Licensee's attachment. Make-ready costs may also include the specialized engineering and construction labor costs, including overtime, and board and lodging where necessary to meet the Licensee's requirements. District shall utilize standard construction unit costs, where applicable and amended from time to time, as set forth in the attached Exhibit "B".

## POLE OCCUPANCY LICENSE AGREEMENT

**3.4.3 Confirmation by Licensee.** Within thirty (30) days after the District notifies the Licensee of the contemplated make-ready work and the estimated make-ready work cost, Licensee shall confirm with a written notice or an electronic notice using NJUNS its decision to proceed with the make-ready work. In the event Licensee does not confirm with a written or electronic notice using NJUNS within thirty (30) days, its application pursuant to Section 3.1 shall be deemed withdrawn and the application fee provided in Section 3.1.4 shall **not** be refunded.

**3.4.4 Advance Payment of Estimated Costs.** In the event Licensee confirms its application, Licensee shall pay to District in advance the full amount of the make-ready work costs as estimated by the District. In the event Licensee fails to make advance payments within ten (10) days of confirmation pursuant to Section 3.4.3, the District shall be under no further obligation to perform or continue any make-ready work. In no event shall Licensee commence any construction or attempt to attach its facilities to the District's poles until Licensee has paid to District the costs of all make-ready work, and District has authorized and notified electronically using NJUNS that Licensee can proceed.

**3.4.5 Pole Strength, Space or Availability.** In the event Licensee finds it necessary to erect a pole in a location where District's pole or joint pole is not presently located or an existing foreign pole or foreign joint pole is not available for attachment by Licensee pursuant to Section 2.4 of this agreement, Licensee shall notify District in writing of its need for such pole facilities and grant District a right to determine whether it wishes to provide pole facilities in such locations and in such manner as will fulfill the Licensee's requirements. If District elects to provide pole facilities for Licensee, District shall, at Licensee's expense, erect pole facilities in such locations and in such a manner as to reasonably meet the service requirements of both Licensee and District. If other Licensees request occupancy space on said pole within a sixty (60) month period from the setting month, the District shall collect a prorated share of the setting fee and reimburse Licensee the prorated share. District's right of first refusal does not obligate District to provide pole space nor to grant Licensee permission to use any particular pole. District understands and agrees that if it declines to provide new pole facilities sufficient to meet Licensee's requirements, Licensee shall have the right to make any other arrangements it deems reasonably appropriate to provide for its equipment at the location desired; provided, however, that Licensee's pole plant or alternative arrangements for its facilities shall not unreasonably interfere with the existing poles and facilities of District.

**3.4.6 Issuance of Permit.** If Licensee's application for a pole attachment is approved, and all required make-ready work completed, District will execute and return a permit to Licensee, as appropriate, authorizing Licensee to attach or place the specified facilities on District's poles. A copy of the permit will be required to be on site with the construction crew during construction of the attachment.

**3.5 Subsequent Modifications of Licensee's Attachments.** Licensee acknowledges that, from time to time, it may be necessary or desirable for District to change out poles, relocate, reconstruct, or rearrange facilities contained therein or connected thereto and that such change may be necessitated by District's business needs and that it is clear the beneficiary of such rearrangements is District. In these instances, Licensee agrees that Licensee will, upon District's request, and at Licensee's expense,



## POLE OCCUPANCY LICENSE AGREEMENT

participate with District (and other Licensees) in the relocation, reconstruction, or modification of District's poles or facilities rearrangement. Licensee shall make all rearrangements of its facilities within such a period of time as is jointly deemed reasonable by the parties based on the amount of rearrangements necessary. If Licensee fails to make the required rearrangements within the time requested and prescribed or within such extended periods of time as may granted by District in writing, District may perform such rearrangements with written notice to Licensee, and Licensee shall reimburse District for actual costs and expenses incurred by District in connection with the rearrangement of Licensee's facilities.

**3.6 Emergency Repairs and Pole Replacements.** In general, Licensee shall be responsible for making emergency repairs to its own facilities and for formulating appropriate plans and practices that will enable it to make such emergency repairs. District shall be under no obligation to perform any repair or service restoration work of any kind with respect to Licensee's facilities. District may, at its option, correct any emergency attachment deficiencies and charge the Licensee for its actual costs.

**3.7 Unauthorized Pole Attachment - Penalty.** In the event Licensee occupies a District pole with an attachment without a specific attachment permit for such attachment, Licensee shall have a bootleg attachment in non-compliance for the attachment permit and be subject to sanctions and penalties pursuant to Section 10.5.

**3.8 Cost Allocation among Multiple Applications.** When applications to occupy the same pole have been received from two or more prospective Licensees, make-ready, if any, costs shall be pro-rated equitably among such simultaneously attaching occupants.

# POLE OCCUPANCY LICENSE AGREEMENT

## SECTION 4. RENTALS, CHARGES, AND RATES

**4.1 Pole Rental Amount.** Each permit issued pursuant to this Agreement shall be subject to an annual attachment or occupancy fee as set forth in the attached Exhibit "B".

**4.2 Payment.** Annual billings shall be rendered on February 1<sup>st</sup> of each year. Rental bills shall be considered delinquent if payment is not received in full within ninety (90) days of the billing date. Notification of delinquency will be sent as stated in section 11.2.

**4.3 Annual Rental Method of Computation.** The amount of annual payment due shall be determined by District based upon the total number of permitted attachments on joint poles multiplied by the respective annual attachment rental fee as of December 31<sup>st</sup> prior to the February 1<sup>st</sup> billing date.

**4.4 Exhibit "B" Fee Schedule Annual Review and Approval.** District shall review the Exhibit "B" Fee Schedule by June 30<sup>th</sup> of each year. Written notice shall be sent to Licensee with the proposed Exhibit "B" Fee Schedule. The Licensee shall have sixty (60) days to comment on the proposed Exhibit "B" Fee Schedule. The revised Exhibit "B" Fee Schedule will be presented to the District's Board of Directors for their review and approval during a regular scheduled District board meeting after the sixty day comment period with an effective date of following January 1<sup>st</sup>. A letter of notification and approved Exhibit "B" Fee Schedule will be sent to the Licensee by electronic and registered mail to the Licensee. The letter of notification along with the accompanying Exhibit "B" shall be incorporated in, and governed by terms and conditions of this Agreement. If the changes are not acceptable to Licensee, Licensee may only dispute the revised fee amounts. The amount in dispute shall be placed into escrow by Licensee until the disputed amount is resolved.

**4.5 Late Payment Penalty.** A late payment penalty fee in an amount set forth in the attached Exhibit "B" shall be added on the unpaid amount past due under this Agreement.

**4.6 Miscellaneous Charges.** To the extent not already included in Exhibit "B" Fee Schedule, Licensee shall pay, in addition to the charges specified in this Section, all costs incurred by District in connection with any work performed by the District pursuant to this Agreement in order to provide or maintain space on any poles for the Licensee's attachments, and any other costs incurred by the District arising out of this Agreement. Licensee shall be responsible for any consent, permits, taxes, licenses or other reasonable requirements and charges that may be imposed upon District by reason of this Agreement and to pay all such taxes, fees, reasonable charges, and expenses as may be imposed upon District as a result of this Agreement.

# POLE OCCUPANCY LICENSE AGREEMENT

## SECTION 5. OPERATIONS AND MAINTENANCE

**5.1 Permission from Other Authority.** Licensee shall be responsible for obtaining any building licenses, permits, authorizations or certificates from governmental authorities necessary to construct, operate, maintain and remove its facilities on public or private property. Licensee shall not attach or place its facilities to or on District's poles located on any property for which it or District has not first obtained all required authorizations. District shall have the right to request evidence that all appropriate authorizations have been obtained. All facilities owned by Licensee on District's poles, anchors, or guys must serve a lawful purpose and the uses made of Licensee's facilities must comply with all applicable federal, state, and local laws and with all federal, state, and local regulatory rules, regulations, and requirements. In this regard, Licensee shall not utilize any facilities occupying or attached to District's poles for the purpose of providing any services which it is not authorized by law to provide or for the purpose of enabling any other person or entity to provide any such services.

**5.1.1 Existing Easements.** Licensee understands that District's existing easements do not include the facilities and attachments of Licensee. Licensee shall secure the necessary easements for the facilities and attachments of the Licensee.

**5.1.2 Future Easements.** In the event District elects to procure easement rights for its poles and facilities, District shall only seek the rights that cover District's poles and facilities.

**5.2 Construction, Attaching, and Placing Facilities.** Licensee shall be responsible for constructing its own facilities and attaching those facilities to District's poles at Licensee's sole cost and expense. A copy of the attachment permit is required on site during construction. Licensee shall be solely responsible for paying all persons and entities who provide materials, labor, access to real or personal property, or other goods and services in connection with the construction and placement of Licensee's facilities and for directing the activities of all persons acting on Licensee's behalf while they are physically present on District's pole, or in the vicinity of District's poles. Licensee shall not permit any mechanic's lien, materialman's lien, or any other lien, claim, or security interest to attach or encumber any of District's real or personal property at any time.

**5.3 Specifications and Standards.** Licensee shall construct, attach, place and maintain its facilities in compliance with all requirements and specifications set forth in this Agreement, the statutes of the State of Oregon, the current NESC and its amendments, and with the Construction Standards and Specifications For Joint Use Attachments set forth in the attached Exhibit "D", which may be revised from time to time in the sole discretion of the District.

**5.4 Maintenance Duties.** Licensee shall maintain its facilities in accordance with the provisions of this Agreement at Licensee's sole cost and expense. When maintaining the facilities, the provisions of Sections 5.2 and 5.3 shall apply.

**5.5 Modifications - District Permission Required.** Permits are for the specific equipment, facilities and location specified in the original application. Any subsequent

## POLE OCCUPANCY LICENSE AGREEMENT

material modification in the nature or location of the attachment specified on the permit (including but not limited to over-lashing or otherwise adding additional cable loading to the original attachment) shall require the Licensee to request modification to the existing permit or to apply for a separate permit for such additional attachment. Unauthorized material modifications in the nature or location of attachments shall be considered a bootleg attachment and subject to the provisions of Sections 3.7 and 5.10.

**5.6 Inspection.** District shall have the right to make periodic inspections of any part of Licensee's facilities attached to District's poles, joint poles, anchors or guys no more than once every two (2) years, or spot inspections at any time of any part of Licensee's facilities attached to District's poles, anchors, or guys for the limited purpose of determining whether Licensee's facilities are in compliance with the terms of this Agreement and permits hereunder; provided, that such inspections are non-invasive. Such inspections shall be conducted at Licensee's expense as set forth in Exhibit "B". Neither the act of inspection by District of Licensee's facilities nor any failure to inspect such facilities shall operate to impose on District any liability of any kind whatsoever or to relieve Licensee of any responsibility, obligations, or liability under this Agreement.

**5.7 Maintenance Rights.** District reserves the right to maintain its poles and to operate its facilities thereon in such manner as will best enable them to fulfill its public service requirements.

**5.8 Time for Removal.** Whenever Licensee is required to remove its attachments from any poles, such removal shall be made in accordance with Section 10.4.

**5.9 Transfer of Attachments.** The District, in the course of replacement or removal of joint poles shall notify Licensee, in writing or electronically using NJUNS, of the District's anticipated schedule of work and required last attachment transfer date thirty (30) calendar days prior to the performance of the work. Licensee, upon receipt of the anticipated work schedule, may elect to contact District's local operations office and attempt to coordinate the work or to approve the District to transfer the Licensee's facilities and charge Licensee a transfer fee as set forth in Exhibit "B". District is not required to provide exact time schedules, but to the extent such information is available to the District, shall make reasonable efforts to provide the Licensee with information regarding construction schedules and dates if Licensee contacts District on individual transfer notifications. The District reserves the right to change such schedules, and will make a reasonable attempt to notify Licensee of such changes. District is under no obligation to coordinate such work with Licensee with the exception of work sites that require all entities involved to coordinate the work for the purpose of safety of the crews and public. In the event the Licensee is able to coordinate the transfer of Licensee's facilities during the course of the work simultaneously being performed by the District, Licensee shall perform such work in a time and manner so as to permit District to remove original pole(s) during the course of District's work. District shall not be required to remain at a work site longer than sixty (60) minutes to allow Licensee to complete its work such that the District performs removal of original pole(s).

**5.9.1 Set Pole Notification.** District shall provide written notification or electronic notification using NJUNS to the Licensee of the completion date of District's set new

## POLE OCCUPANCY LICENSE AGREEMENT

transfer pole(s) work. District agrees that Licensee shall have thirty (30) days following such notice by District in which to transfer its attachments. District, in the event of a bona fide emergency situation requiring prompt action, shall have the option to transfer Licensee's attachments at its sole discretion and charge Licensee a transfer fee as set forth in Exhibit "B".

**5.9.2 Failure to Transfer.** In the event Licensee fails to transfer its attachment or attachments to the new pole by the required transfer date or thirty (30) days following set pole notification, and has not notified the District in writing or electronically using NJUNS with an acceptable transfer date, Licensee shall be in noncompliance with this Agreement and the attachment permit for the pole will be terminated. Licensee will be subject to sanctions and actual cost accrued by District as set forth in Exhibit "C".

**5.10 Crossing Facilities.** Except for service drops, Licensee's conductor or wire facilities that cross or intersect District facilities may be required, at Licensee's expense, to be attached to a joint pole at the sole discretion of the District.

**5.11 Loading Method.** Licensee's facilities shall be constructed to NESC Medium Loading District Grade "C" specifications unless special conditions or locations, at District's sole discretion, require Grade "B", Grade "C Crossing", or Extreme Wind loadings. Loading parameters are outlined in Exhibit "D". District poles or joint poles will be analyzed using Licensee's attachment loading data or by data recorded in a field inspection.

**5.12 Balance Pole Moment Loading.** Licensee shall provide, install and maintain anchors and guys to insure a balanced pole loading moment. Maximum allowed non-wind load moment at the base of the pole per attachment will be one-thousand (1,000) foot pounds.

**5.12.1 Use of District's Anchors.** Where the anchor requirements of the Licensee and District coincide with respect to certain poles, the strains of Licensee's equipment and of District's equipment on said poles may be held by the same anchors. If District determines that District's anchor has sufficient holding capacity and attachment space to accommodate Licensee's guys, Licensee may, at its option and expense, utilize District's anchor. See Exhibit "B" for anchor attachment fee.

**5.12.2 Anchor Replacement.** In those cases where existing District owned anchors are inadequate to hold Licensee's strains and separate anchors are not desired by Licensee, District shall replace existing anchors with adequate anchors at the expense of the Licensee, and Licensee shall reimburse the District in accordance with Section 3 and Exhibit "B".

**5.13 Identification Tagging.** In the event any applicable federal, state, or local laws, regulatory rules, regulations, or requirements require the identification tagging of poles during the course of this Agreement, Licensee shall accept reasonable means chosen by District to comply with identification tagging requirements.

## POLE OCCUPANCY LICENSE AGREEMENT

### SECTION 6. SAFETY, NESC, OPUC

**6.1 New Installations.** District shall have the right to inspect each new installation of Licensee's attachments or re-inspect if a Licensee's installation was found in noncompliance from a previous inspection. District reserves the right to charge Licensee for the expense of any field inspections during installation of Licensee's attachments, inspections after construction or re-inspections after corrective action by Licensee on its facilities to a noncompliance sanction. Any inspections performed shall in no way relieve Licensee of any responsibility, obligation, or liability assumed under this Agreement.

**6.2 Licensee Practices.** Licensee shall have written standard practices that address construction standards and communication protocols to be followed in attaching to District's poles pursuant to the requirements in Section 5.3. The standards shall specify any obligations that exceed NESC regulations, address communication methods, and contain contacts for notifications, project plans, authorizations and compliance certifications. These standards shall be made readily available to District upon twenty (20) days written notice to Licensee.

**6.3 Safety Violation.** District shall provide Licensee written notice or electronic notice using NJUNS of any violation of the Oregon Public Utility Commission's safety rules. Upon notice of a safety violation, Licensee shall either correct the violation within sixty (60) days or submit a plan of correction within thirty (30) days of its receipt of notice. District may, at its option, correct any attachment deficiencies and charge the Licensee for its costs. Licensee shall be subject to the sanctions contained in Section 10.5 for any safety violation pursuant to this Section.

**6.4 Vegetation Trim Around Licensee's Attachments and Facilities.** Licensee agrees to maintain a minimum distance in accordance with NESC and OPUC tree trimming rules. Failure to maintain minimum clearance will result in Licensee non-compliance with the Agreement. District shall notify Licensee upon discovery when vegetation trimming is required for its attachments and give Licensee a reasonable time to trim its facilities. District shall at its sole option, trim vegetation that it deems hazardous to the operations of the District or safety of the public that is located in the communication space and charge the Licensee a proportional share among all joint occupiers amount for its costs.

## POLE OCCUPANCY LICENSE AGREEMENT

### SECTION 7. INDEMNITY; REPRESENTATIONS AND WARRANTIES

**7.1 Indemnification.** Except for District's sole acts, Licensee shall indemnify, protect and save harmless District, its directors, officers, employees and agents, District's other Licensees, and Joint User(s) from and against any and all claims, demands, causes of action, damages, and costs, including reasonable attorney's fees through appeals incurred by District, District's other Licensee and joint user(s) as a result of acts by the Licensee, its employees, agents or contractors, including but not limited to the cost of relocating pole(s), anchor(s), guy(s), or conduit system(s) resulting from a loss of right-of-way or property owner consents and/or the cost of defending those rights and/or consents.

**7.2 Indemnification.** Except for District's sole acts, Licensee shall indemnify, protect and save harmless District, its directors, officers, employees and agents, District's other Licensees, and joint user(s) from and against any and all claims, demands, causes of actions and costs, including reasonable attorney's fees through appeals for damages to property and injury or death to persons, including but not limited to payments under any Worker's Compensation Law or under any plan for employee's disability and death benefits, caused by, arising from, incident to, connected with or growing out of the erection, rearrangement, maintenance, presence, use of, removal of Licensee's attachments, or by their proximity to the attachments of all parties attached to a pole, anchor, and/or guy, or placed in a conduit system, or by any act or omission of the Licensee's employees, agents or contractors in the vicinity of District's pole(s), anchor(s), guy(s) or conduit system(s).

**7.3 Indemnification.** Except for District's sole acts, Licensee shall indemnify, protect and save harmless District, its directors, officers, employees and agents, District's other Licensees, and joint user(s) from and against any and all claims, demands, causes of actions and costs, including reasonable attorney's fees through appeals, which arise directly or indirectly from the construction and operation of Licensee's facilities, including but not limited to taxes, special charges by others, claims and demands for damages or loss from infringement of copyrights, for libel and slander, for unauthorized use of television or radio broadcast programs and other program material, and from infringement of patents with respect to the construction, maintenance, use and operation of Licensee's facilities in combination with pole(s), anchor(s), conduit system(s) or otherwise.

**7.4 Damage.** Licensee shall exercise reasonable care to avoid damaging the facilities of District and of others attached to pole(s), anchor(s), or guy(s) and shall make an immediate report to the owner of the occurrence of any such damage caused by Licensee's employee, agents, or contractors. Licensee agrees to reimburse District for all reasonable costs incurred by District for the physical repair of such facilities damaged by Licensee.

**7.5 Service Interference.** Except for District's sole acts, District shall not be liable to Licensee for any interruption of Licensee's service or for interference with the operation of Licensee's attachments, or for any special, indirect, or consequential damages arising in any manner, including District's negligence out of the use of pole(s), anchor(s), or guy(s) or District's actions or omissions in regard thereto and Licensee shall indemnify and save harmless District from and against any and all claims, demands, causes of action,

## POLE OCCUPANCY LICENSE AGREEMENT

costs, and reasonable attorney's fees with respect to such special, indirect or consequential damages.

**7.6 Notice.** Each party shall promptly advise the other of all claims relating to damage of property or injury to or death of persons, arising or alleged to have arisen in any manner, directly or indirectly, by the erection, maintenance, repair, replacement, presence, use or removal of the Licensee's facilities or otherwise arising under this Agreement. Each party shall promptly notify the other party in writing of any suits or causes of action which may involve the other party and upon the request of the other party, copies of all relevant accident reports and statements made to either party's insurer by a party or other shall be furnished promptly to the other party. Any notices required by the terms of this Agreement shall be sufficient if the writing is in a sealed envelope, deposited in the United States mail with postage prepaid and addressed to the other party at the party's last known address.

**7.7 Warranties.** Licensee acknowledges and agrees that District does not warrant the condition or safety of District's poles, conduits, or rights-of-way, or the premises surrounding the same. Licensee hereby assumes all risks of any damage, injury or loss of any nature whatsoever caused by or in connection with the use of the poles, conduits, and rights-of-way and associated attachments and equipment on, within or surrounding the same. District makes no express or implied warranties with regard to District poles, conduits, or rights-of-way or other facilities all of which are hereby disclaimed and expressly disclaims any implied warranties of merchantability or fitness for a particular purpose. Nothing contained in this Section is intended to limit District's responsibility for its sole acts under Sections 7.1, 7.2 and 7.3 herein.

**7.8 Favored Nations Provision.** In the event District contracts with one of District's other Licensees for a more beneficial (to Licensee) indemnification provision, District agrees to give Licensee the option to enter into the same or similar indemnification provision.

## SECTION 8. INSURANCE

**8.1 Insurance.** Licensee shall obtain and maintain insurance, including endorsements insuring the contractual liability and indemnification provisions of this Agreement, upon such reasonable terms and in such company or companies as District shall approve, to protect District, other authorized Licensees, and joint users from and against all claims, demands, causes of action, judgments, costs, including reasonable attorney's fees, expenses and liabilities of every kind and nature which may arise or result, directly or indirectly, from or by reason of such loss, injury or damage as covered in this Agreement. Licensee will immediately deliver to District, Certificates of Liability Insurance thereof, evidencing the required coverage, and shall furnish evidence that the policies remain in force within thirty (30) days of renewal of such policies.

**8.2 Insurance Limits.** Licensee shall maintain the following amounts of insurance in compliance with Section 8.1 above:



## POLE OCCUPANCY LICENSE AGREEMENT

**8.2.1 Commercial General Liability Insurance** with limits of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate.

**8.2.2 Products and Completed Operations** with limits of not less than \$2,000,000 per occurrence and in the aggregate.

**8.2.3 Automobile Liability insurance** covering any auto with combined single limits of \$1,000,000.

**8.2.4 Workers Compensation Insurance** in statutory amounts and **Employers Liability Insurance** in the amount of \$500,000 per accident.

**8.3 Increase in Limits.** Licensee agrees that District may reasonably require an increase in the limits of liability insurance and Licensee further agrees to provide such insurance in increased amounts as a condition to Licensee's continued use of District's poles.

**8.4** Required insurance shall remain in force until such time Licensee's attachments have been removed from all such pole(s), anchor(s), conduit system(s), or rights-of-way. In the event that the Licensee shall fail to maintain the required insurance coverage, District may pay any premium thereon falling due, and the Licensee shall forthwith reimburse District for any such premium paid.

**8.5 Certificates of Insurance.** District shall be named as an additional insured on the policies described under Sections 8.2.1, 8.2.2, and 8.2.3. Licensee shall submit to District certificates by each company insuring Licensee with respect to any insurance required hereunder, such certificate(s) to specify the coverage provided and that such company will not cancel or change any such policy of insurance issued to Licensee except after sixty (60) days written notice to District.

**8.6 Notification of Claims.** The Licensee shall promptly advise the District of all claims relating to damage to property or injury to or death of persons, arising or alleged to have arisen in any manner by, or directly or indirectly associated with, the erection, maintenance, presence, use or removal of the Licensee's equipment. Copies of all accident or other reports made to any insurer by the Licensee shall be furnished to the District in a timely manner.

# POLE OCCUPANCY LICENSE AGREEMENT

## SECTION 9. SECURITY

**9.1 Security Requirement.** District will require that the Licensee furnish security to the District for the performance of the Licensee's obligations under this Agreement to make any and all payments demanded by the District as due under this Agreement, including without limitation any pole contact fees with respect to permits, District's costs of modifying or removing Licensee's plant, and District's cost of enforcement under Section 10. Such security shall be maintained in full force and effect throughout the term of this Agreement, including any renewals thereof. At any time during the term of this Agreement, Licensee shall, upon District's request, furnish District with evidence that the security is in full force and effect. In the event of cancellation, termination, or alteration of the security District may, at its option, terminate this Agreement unless Licensee makes other arrangements satisfactory to District to guarantee the performance of its obligations under this Agreement.

**9.2 Amount of Security.** The amount of the security required shall be the amount as set forth in Exhibit "E". District shall annually review its Bonding Fee Schedule in Exhibit "E" and provide at least six (6) months written notice to Licensee of any increase or decrease in the amount of security requirements with a revised Exhibit "E". The letter of notification shall be incorporated in, and governed by terms and conditions of this Agreement.

**9.3 Form of Security.** The form of the security provided by Licensee may be one, or a combination of the following: cash deposit of money with District, a surety bond, a letter of credit, a personal guaranty, a corporate guaranty, or such other reasonable security as the Licensee may propose. The amount of the bond, letter of credit or other security shall not operate as a limitation upon the obligations of Licensee hereunder.

**9.3.1 District's Approval Required.** The form and sufficiency of security proposed by Licensee must be approved by District; provided, that District may require financial statements or other appropriate evidence as to the solvency and financial capability of the surety, guarantor, or financial institution.

**9.3.2 Cash Deposits.** If Licensee elects to provide a cash deposit, such deposit or deposits shall be held during the term of this Agreement as security for any and all amounts which are due to the District under this Agreement. Said cash deposit shall be placed in an interest-bearing account and Licensee shall be entitled to a credit for the interest income on said cash deposit.

**9.3.3 Surety Bond.** If the Licensee elects to provide a surety bond, a commercial bonding company selected by the Licensee and satisfactory to District shall issue such bond to District in a form satisfactory to District; shall not be subject to termination or cancellation except upon three hundred sixty five (365) days prior written notice as stated in section 11.2, or replace with another surety bond from another bonding company selected by the Licensee and satisfactory to the District upon sixty (60) days prior written notice as stated in section 11.2; and shall be filed with and approved by the District prior to the installation of any Licensee's equipment on joint poles. The surety bond must contain a provision that the surety will pay to District subject to the dollar limits of the bond any

## POLE OCCUPANCY LICENSE AGREEMENT

unpaid sum demanded by District as due under this Agreement whether or not Licensee contests its liability to pay such sum.

**9.4 Security Obligations.** The furnishing of security shall not relieve Licensee of any of its obligations under this Agreement, and the security shall not be released until all obligations under this Agreement have been discharged.

**9.5 Advance Payment of Annual Attachment Rental Fees.** Licensee may elect to pay in advance the annual attachment rental fees as set forth in Exhibit B in substitution for other forms of security in Section 9. Sections 9.1 through 9.5 would not be applicable.

### SECTION 10. DEFAULT, TERMINATION AND REMEDIES

**10.1 Events of Agreement Termination.** This Agreement shall terminate upon the occurrence of any one of the following events:

- (a) Upon six (6) months written notice of termination.
- (b) Failure of Licensee to pay the amounts due pursuant to Section 4.2.
- (c) Failure of Licensee to obtain insurance in increased limits pursuant to Section 8.3.
- (d) Whenever Licensee violates, breaches or is in default of any term or condition of this Agreement or any permit including but not limited to the:
  - 1) Construction, operation or maintenance of Licensee's attachment in violation of law or in aid of any lawful act or undertaking;
  - 2) Construction, operation or maintenance of Licensee's attachment without the insurance or security coverage required under this Agreement.

Within thirty (30) days of notice from District, Licensee shall take immediate corrective action to eliminate any above mentioned condition or other violation of any term or condition of this Agreement within thirty (30) days and shall confirm in writing to District that the cited violations have been corrected. If Licensee fails to discontinue or correct these violations or fails to give the required confirmation, District may immediately terminate this Agreement and any of Licensee's rights hereunder without limiting or restricting any further rights or remedies District may have against Licensee.

**10.2 Effect of Agreement Termination.** Termination of this Agreement pursuant to Section 10.1 shall terminate all occupancy permits and their respective permit dates. Licensee shall have three hundred sixty five (365) days to remove all attachments made upon District's poles and be liable for and pay all fees and charges pursuant to the terms of this Agreement to District until Licensee's attachments are actually removed. Termination of this Agreement or any permits issued hereunder shall not affect Licensee's liabilities and obligations incurred hereunder prior to the effective date of such termination. Even after the termination of this Agreement or cancellation of a permit pursuant to Section 10.3,

## POLE OCCUPANCY LICENSE AGREEMENT

Licensee's responsibility and indemnity obligations shall continue with respect to any claims or demands related to Licensee's attachments under this Agreement.

**10.3 Permit Cancellation.** Licensee shall have the right to cancel and District the right to revoke a permit without terminating this Agreement as follows:

**10.3.1 Licensee.** Licensee may cancel a permit by removing its attachments from the corresponding pole and by giving District either a written notice using the Notice of Removal of Equipment, a copy of which is attached in Exhibit "A", or by electronic notice using NJUNS within ten (10) days of removal. Licensee shall remain liable for and pay to District all fees and charges pursuant to the provisions of this Agreement until said attachments are physically removed from District's poles and all permitting requirements have been completed.

**10.3.2 District.** District may revoke a permit authorizing an attachment to any specific pole or poles for cause or if District is required to remove a specific pole pursuant to a government, or other nondiscriminatory requirement, by giving thirty (30) days written notice to Licensee specifying the reason for revocation. Upon receipt of notice, Licensee agrees to remove said attachment within thirty (30) days unless District and Licensee agree otherwise. In the event District has granted a specific permit for the use of a pole, but Licensee has not made its attachment to that pole within one hundred eighty (180) days of the permit issue date, District shall have the right to revoke such permit on five (5) days' electronic notice using NJUNS.

**10.4 Removal of Licensee's Attachments.** Licensee, at its expense, shall remove its attachments from any of District's poles within sixty (60) days after notice of revocation of the permit, except in agreement termination as stated in section 10.2. If Licensee fails to remove its attachments within sixty (60) days, District shall have the right to remove such attachments at Licensee's expense and without any liability on the part of District for damage or injury to Licensee's attachment or equipment. Licensee releases District from any liability for any interruption, discontinuance or interference with Licensee's service to its customers caused by or resulting from such removal. In case of emergency or immediate service needs of District, District may perform such removal without notice to Licensee, provided District sends written notice of the action and the reasons for such action within a reasonable time.

**10.5 Remedies.** Sanctions for attaching to District's pole without a permit, violation of the Oregon Public Utility Commission's safety rules, breach of this Agreement, and violation of rules pertaining to service drops pursuant to Section 3.1.6 shall apply as determined by the sanction matrix found in Exhibit "C", which may be revised from time to time in the sole discretion of the District. Notice shall be sent to Licensee with a revised Exhibit "C" reflecting the revised sanctions. Any change in sanctions shall take effect on the date specified in said notice. The letter of notification shall be incorporated in, and governed by terms and conditions of this Agreement.

# POLE OCCUPANCY LICENSE AGREEMENT

## SECTION 11. MISCELLANEOUS

**11.1 Assignment.** Licensee shall not assign or transfer this Agreement or any License or any right or authorization granted under this Agreement and this Agreement shall not inure to the benefit of Licensee's successors or assigns, without the prior written consent of District. District shall not unreasonably withhold or delay such consent. In the event such consent or consents are granted by District, then the provisions of this Agreement shall apply to and bind the successors and assigns of the Licensee.

**11.2 Notices.** Except by use of NJUNS otherwise stated in the Agreement, any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be mailed by certified mail, return receipt requested, postage prepaid, or delivered by a reputable overnight courier, with tracking capabilities, addressed to the parties as follows:

Licensee: Charter Communications  
Utilities Coordinator  
N. W. Regional Office  
203 S.E. Park Plaza Drive  
Suite 290  
Vancouver, WA 98684

Charter Communications  
Legal Department-Operations  
12405 Powerscourt Drive  
St. Louis, MO 63131-3674

District: Central Lincoln People's Utility District  
Attention: Joint Use Administrator  
P.O. Box 1126  
Newport, Oregon 97365

Any notice or other communication shall be deemed to be given at the expiration of the third day after the date of deposit in the United States mail or upon actual delivery if sent by overnight courier. The addresses to which notices or other communications shall be mailed to the last know address which may be changed from time to time by giving written notice to the other party as provided in this Section.

**11.3 Attorney Fees.** If any suit or action is filed by any party to enforce this Agreement or otherwise with respect to the subject matter of this Agreement, the prevailing party shall be entitled to recover reasonable attorney fees incurred in preparation or in prosecution or defense of such suit or action as fixed by the trial court, and if any appeal is taken from the decision of the trial court, reasonable attorney fees as fixed by the appellate court.

## POLE OCCUPANCY LICENSE AGREEMENT

**11.4 Amendment.** Except as reserved herein, this Agreement may be amended only by an instrument in writing executed by all the parties.

**11.5 Headings.** The headings used in this Agreement are solely for convenience of reference, are not part of this Agreement, and are not to be considered in construing or interpreting this Agreement.

**11.6 Entire Agreement.** This Agreement (including the exhibits) sets forth the entire understanding of the parties with respect to the subject matter of this Agreement and supersedes any and all prior understandings and agreements, whether written or oral, between the parties with respect to such subject matter.

**11.7 Counterparts.** This Agreement may be executed by the parties in separate counterparts, each of which when executed and delivered shall be an original, but all of which together shall constitute one and the same instrument.

**11.8 Severability.** If any provision of this Agreement shall be invalid or unenforceable in any respect for any reason, the validity and enforceability of any such provision in any other respect and of the remaining provisions of this Agreement shall not be in any way impaired.

**11.9 Waiver.** A provision of this Agreement may be waived only by a written instrument executed by the party waiving compliance. No waiver of any provision of this Agreement shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. Failure to enforce any provision of this Agreement shall not operate as a waiver of such provision or any other provision.

**11.10 Department of Revenue; Public Utilities Commission ("PUC").** In the event the Department of Revenue of the State of Oregon or the PUC shall require the District to provide certain information concerning Licensee, Licensee agrees to cooperate with and assist District in providing information, data, or such other matters as may be required by said Department of Revenue or PUC. Licensee specifically agrees to provide District with appropriate data as determined or required by the Department of Revenue or PUC concerning its pole attachments in each taxing District and such other data as may hereafter be required by the Department of Revenue or PUC.

**11.11 Time of Essence.** Time is of the essence for each and every provision of this Agreement.

**11.12 Expenses.** Each party shall bear its own expenses in connection with this Agreement and the transactions contemplated by this Agreement.

**11.13 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the state of Oregon.

**11.14 Venue.** This Agreement has been made entirely within the state of Oregon. This Agreement shall be governed by and construed in accordance with the laws of the state of Oregon. If any suit or action is filed by any party to enforce this Agreement or

POLE OCCUPANCY LICENSE AGREEMENT

otherwise with respect to the subject matter of this Agreement, venue shall be in the federal court of Oregon or state courts in Lincoln County, Oregon.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in duplicate as of the day and year first above written.

CENTRAL LINCOLN PEOPLE'S  
UTILITY DISTRICT

By: Paul Alder

Title: GM

Charter Communications Holding Company, LLC

By: J. L. Chubb

Title: VP

- Attached Exhibits:
- A — Application, Notice of Removal, Inspection and Engineer Information Datasheet Forms
  - B — Fee Schedule
  - C — Sanctions Matrix
  - D — Construction Standards and Specifications
  - E — Bonding Fee Schedule

CHARTER LEGAL DEPT.	
Reviewed By:	Approved By: <u>[Signature]</u>

# ADDENDUM ONE

## CLPUD Contract Entities

### Service Area

### Entity

Lincoln County

Falcon Telecable, a California Limited Partnership

Lane County

Falcon Cable Systems Company II, L.P.

Douglas County

Falcon Cable Systems Company II, L.P.  
Falcon Community Ventures I, Limited Partnership

Coos County

Falcon Cable Systems Company II, L.P.



**Motion for Emergency Interim Relief**  
**Exhibit 6**

COLE, RAYWID & BRAVERMAN, L.L.P.

ATTORNEYS AT LAW  
1919 PENNSYLVANIA AVENUE, N.W., SUITE 200  
WASHINGTON, D.C. 20006-3458  
TELEPHONE (202) 659-9750  
FAX (202) 452-0067  
WWW.CRBLAW.COM

ADMITTED IN DC AND MD  
DIRECT DIAL  
202-828-9845  
JVALENSTEIN@CRBLAW.COM

LOS ANGELES OFFICE  
2381 ROSECRANS AVENUE, SUITE 110  
EL SEGUNDO, CALIFORNIA 90245-4290  
TELEPHONE (310) 643-7999  
FAX (310) 643-7997

March 17, 2003

**BY FEDERAL EXPRESS**

Mr. Mike Wilson  
Ms. Denise Estep  
Central Lincoln People's Utility District  
2129 N. Coast Highway  
P.O. Box 1126  
Newport, OR 97365

**Re: Pole Occupancy License Agreement Between Charter Communications and  
Central Lincoln PUD ("Agreement")**

Dear Ms. Estep and Mr. Wilson:

Enclosed please find two (2) partially executed originals of the above-referenced Agreement. Please have an authorized agent for Central Lincoln PUD sign the Agreement and return one fully-executed original to my attention. The Certificate of Insurance and form of security will be forwarded to you separately.

As you know, although Charter has decided to sign the Agreement, Charter continues to find several terms and conditions contained in the final Agreement to be unreasonable. Most significantly, Charter does not think that the contractual provision allowing Central Lincoln PUD to charge rent for new and existing risers is reasonable, although Charter does welcome the utility's agreement to gradually assess the rent over three years. As far as Charter is aware, Central Lincoln PUD is the only utility in Oregon that has decided to charge rent for risers. Consequently, Charter is concerned that this new requirement will establish a precedent in the State, which, if imposed by other utilities, would have a significant impact on Charter's ability to provide new, competitive services to its Oregon customers. Charter is also troubled by the contractual requirement that each service drop undergo a load study following installation. Charter does not believe that a typical service drop adds much, if any, load to the pole. Charter is therefore hopeful that repeated load calculations will bear this out and that the utility will discontinue the requirement, especially as cooperation between the parties grows.

Denise Estep  
Mike Wilson  
March 17, 2003  
Page 2

Additionally, although Central Lincoln PUD was not willing to insert language into the Agreement stating that it will modify the Agreement upon any formal OPUC or court ruling on the riser and service drop issues to the contrary, Central Lincoln PUD's outside counsel, Mr. Peter Gintner, has indicated that he would advise the utility to do so.

Finally, despite the disagreements between the parties, Charter nevertheless believes that the parties engaged in good faith negotiations throughout. Charter especially appreciates Central Lincoln PUD's agreement to waive safety sanctions as long as Charter continues to work with the utility to diligently pursue Charter's inspection and correction program.

If you have any questions please do not hesitate to contact me. Thank you.

Sincerely,

Jill Valenstein

cc: Frank Antonovich (*via* First Class Mail)  
Matt McGinnity (*via* First Class Mail)  
Gary Lee (*via* First Class Mail)  
Mike Marshall, Esq. (*via* First Class Mail)  
Jerry Lambert (*via* First Class Mail)

**Motion for Emergency Interim Relief**  
**Exhibit 7**

The



**Central Lincoln People's Utility District**

General Office • 2129 North Coast Highway • P.O. Box 1126 • Newport, OR 97365 • (541) 265-3211 • FAX: (541) 265-5208

December 6, 2004

Utilities Coordinator  
Charter Communications  
N.W. Regional Office  
203 S.E. Park Plaza Drive, Suite 290  
Vancouver, Washington 98684

CERTIFIED MAIL: 7002 2410 0003 0497 8078

RECEIVED  
ACCOUNTS PAYABLE DEPT.  
2004 DEC - 8 A 6:09  
NW REGION  
CHARTER COMMUNICATIONS

Gentlemen:

On November 17, 2004 the District Board of Director's approved Resolution Number 828 adopting schedule 900 for the 2005 rates of pole attachment and occupancy services.

In response to the comments received from our Licensee's, the Exhibit "B" fee schedule has been revised to consolidate several attachment definitions and associated fees for 2005.

If you have any questions regarding these rates, please call me.

Sincerely,

  
Denise Estep  
Joint Pole Administrator

Enclosures

## Exhibit B Fee Schedule

Effective January 1, 2005

### Definitions for Exhibit B

**Aerial Cable Attachment** The term "Aerial Cable Attachment" refers to a messenger wire, self supporting cable or a combination of messenger wire lashed with one or more cables. An Aerial Cable Attachment may be attached to an Aerial Cable Pole Attachment Point, or other Aerial Cable Attachment.

**Aerial Cable Pole Attachment Point** The term "Aerial Cable Pole Attachment Point" refers to a single or double connection point (both ends of a thru-mounting attachment hardware or support arm) on a joint pole. The Aerial Cable Pole Attachment Point can have one or more Aerial Cables, Service Drop Attachments, Down Guy Attachments, or Support Arm attached. Each Aerial Cable Pole Attachment Point provides for one (1) vertical linear foot of pole space.

**Anchor Attachment Point** The term "Anchor Attachment Point" refers to the one (1) Down Guy Attachment installed on a District's anchor.

**Annual Attachment Rental Fee** The term "Annual Attachment Rental Fee" refers to an annual rental fee charged by the District for a one Aerial Cable Attachment Point, Service Drop Attachment Point, Down Guy Attachment Point, Equipment Attachment, Communication Riser Attachment or Anchor Attachment in the amount listed on page 3 of this Exhibit B.

**Application Fee** The term "Application Fee" as stated in section 3.1.4 of the Pole Occupancy License Agreement, refers to the one time fee charged by the District for processing each new attachment application permit request for each individual Aerial Cable Attachment, Anchor Attachment, Communication Riser Attachment, Down Guy Attachment, Equipment Attachment, Over-lash of an existing Aerial Cable Attachment, and/or Service Drop Attachment.

**Communication Riser Attachment** The term "Communication Riser Attachment" refers to one (1) communication cable, one (1) securely bundled group of cables or one (1) conduit used to enclose one or more communication cables attached directly or by standoff brackets vertically to a joint pole between the communication space and ground level. A Communication Riser Attachment shall have a (6) six inch maximum size diameter.

**Down Guy Attachment** The term "Down Guy Attachment" refers to a supporting guy wire used to support the unbalanced pole load caused by Licensee's Aerial Cable, Communication Riser, Equipment, and/or Service Drop Attachments during all pole loading conditions.

**Down Guy Attachment Point** The term "Down Guy Attachment Point" refers to a single or double connection point (both ends of a thru-mounting attachment hardware bolt) on a joint pole supporting one (1) or more Down Guy Attachments only.

## Exhibit B Fee Schedule

**Equipment Attachment** The term "Equipment Attachment" refers to auxiliary equipment (other than Communications Risers) attached to a joint pole at an Equipment Attachment Point. Equipment Attachments can be located in the communication space and/or the ground clearance space. Each Equipment Attachment provides one (1) foot of vertical pole space if located in the communication space or three (3) feet if located in the ground clearance space. Equipment requiring more than one vertical foot of space in the communication space will be charged an additional communication space annual attachment rental fee for each additional one (1) foot vertical space used. Equipment requiring more than three (3) vertical feet of space in the communication space will be charged an additional ground clearance space annual attachment rental fee for each additional one (1) foot vertical space used. Power supplies, junction cabinets, or other equipment enclosures are considered equipment. A 120volt power conduit riser supplying power for the attached equipment is included with the Equipment Attachment annual rental fee.

**Over-Lash** The term "Over-Lash" refers to the procedure of securing one or more additional cables or conductors on an existing messenger, messenger cable/conductor combination or a self-supporting cable attachment by lashing or other bundling techniques.

**Re-Inspection Fee** The term "Re-Inspection Fee" is the charge applied to a Licensee for one (1) re-visit to joint pole to verify attachment construction compliance with NESC, OPUC regulations or with the Pole Occupancy License Agreement of one (1) or more attachments on a single joint pole.

**Service Drop Attachment** The term "Service Drop Attachment" refers to a service wire or conductor from a Service Drop Attachment point to a single family, duplex, or triplex residence or similar small commercial facility. A Service Drop may be attached to Joint Pole attachment point, support bracket, or an aerial cable.

**Service Drop Pole Attachment Point** The term "Service Drop Pole Attachment Point" refers to a single or double connection point (both ends of a thru-mounting attachment hardware) or a single "J-Hook" connection point on a joint pole. The Service Drop Pole Attachment Point can have one or more Service Drop Attachments, or Down Guy Attachments attached. Each Aerial Cable Pole Attachment Point provides for one (1) vertical linear foot of pole space.

**Area Survey Audit Inspection** The term "Area Survey Audit Inspection" is a pole inspection that occurs when a District or contract inspector performs an attachment inventory audit, a NESC/OPUC safety inspection, and an agreement construction compliance inspection of District poles and joint poles in a defined geographical area. A fee is assessed for each Joint Pole occupied and inspected in the Area Survey Audit Inspection.

## Exhibit B Fee Schedule

<u>Annual Attachment Rental Fees</u>	Standard	Compliance
Joint Pole Attachment Point	\$ 10.98	\$ 9.93
Anchor Attachment Point	\$ 3.17	\$ 3.17
Communication Riser Attachment *	\$ 2.12	\$ 2.12
Down Guy Attachment Point	\$ 10.98	\$ 9.93
Equipment Attachment	\$ 3.17	\$ 3.17
Non-Inventoried Joint Pole **	\$ 10.98	\$ 9.93
No-Attachment ***	\$ 3.17	\$ 3.17

### Application Fees

Aerial Cable Attachment	\$ 62.00
Anchor Attachment Point	\$ 19.00
Communication Riser Attachment	\$ 15.00
Down Guy Attachment	\$ 15.00
Equipment Attachment	\$ 15.00
Over-Lash	\$ 29.00
Service Drop Attachment	\$ 12.00

### Other Fees and Charges

Re-inspection	\$ 55.00
Area Survey Audit Inspection	\$ 5.00

### Interest Rate

Deposit Annual Interest	0.24%
Late Payment Charge per month	1.50%

\*  $\frac{2}{3}$  rate of CY2005 Direct Joint Use Administration and General Cost divided by total number of Pole Attachments

\*\* Joint Poles not inventoried, default one (1) Aerial Cable Attachment.

\*\*\* Joint Pole with valid attachment permit without an inventoried attachment.



## Exhibit B Fee Schedule

**Construction Flat Rate Unit Fees** "Construction Flat Rate Unit Fee" may be used to determine make-ready costs by construction units when District is required to perform work to set pole only. Additional charges for transfer of District facilities may apply. (Pole replacements required for make-ready cost are for labor and equipment only. Remaining life value charges for a prematurely removed pole shall also apply to the make-ready cost.)

### Construction Flat Rate Unit Fees

<b>Install 30ft-55ft Distribution Pole</b>	
Secondary	\$ 408.00
1 Phase Tangent	\$ 612.00
1 Phase Dead End	\$ 816.00
1 Phase Double Dead End	\$ 1020.00
2 Phase Tangent	\$ 612.00
2 Phase Dead End	\$ 816.00
2 Phase Double Dead End	\$ 1020.00
3 Phase Tangent	\$ 1224.00
3 Phase Dead End	\$ 1428.00
3 Phase Double Dead End	\$ 1632.00
<b>Install Transmission Pole with Distribution Under-build</b>	\$ Actual Cost
<b>Install CLPUD Anchor for Joint Use</b>	\$ 408.00
<b>Install Joint Use Guy</b>	\$ 200.00
<b>Install Joint Use Sidewalk Guy</b>	\$ 300.00
<b>Install Pole Grounds</b>	\$ 100.00
<b>Topping Pole</b>	\$ 75.00
<b>Connect Underground Grounding Leads</b>	\$ 50.00
<b>Replace/Relocate Street Light Bracket for Clearance</b>	\$ 100.00
<b>Lower and Haul Joint Pole</b>	\$ 225.00

**Transfer Flat Rate Unit Fee** "Transfer Flat Rate Unit Fee" may apply to work District performs on Licensee's equipment by construction units. Actual costs will be billed for transferring equipment not covered by Transfer Flat Unit Fees. Decision to transfer will be made solely by Central Lincoln PUD.

### Transfer Flat Rate Unit Fees

<b>Down Guy or Span Guy</b>	\$ 150.00
<b>Cable Termination (No Splice)</b>	\$ 150.00
<b>Support Arm</b>	\$ 170.00
<b>Service Drop (No Splice)</b>	\$ 40.00
<b>Messenger and cable bolted to pole (No Splice)</b>	\$ 150.00
<b>Messenger dead-ends</b>	\$ 190.00
<b>Communication riser single</b>	\$ 175.00
<b>Communication riser multiple</b>	\$ 350.00

**SCHEDULE 900 – POLE ATTACHMENT & OCCUPANCY SERVICE**

**Available:** Throughout the District's service area in Lincoln, Lane, Douglas and Coos Counties to customers desiring access to District's poles, ducts, conduits and rights-of-way within the District's distribution area. A written contract is required.

**Applicable To:** All individuals or commercial and government entities requesting the service.

**Character of Service:** These fees are established by our Pole Occupancy License Agreement, Exhibit B and are charged to the customer for each pole and transaction occurrence that pertains.

**Tax Adjustments:** Fees may be increased in the communities or areas where taxes or assessments are imposed by any governmental authority. Any such increase will continue in effect only for the duration of such taxes and assessments.

**Rules and Regulations:** Service under this schedule is subject to the District's Rules, Regulations and Practices on file and available at the offices of the District.

**Annual Pole Attachment Fees, Per Pole Attachment or Occurrence:**

	Standard	Compliance
Joint Pole Attachment Point (Aerial Cable, Service Drop, Guy)	10.98	9.93
Joint Pole Non-Inventoried	10.98	9.93
Joint Pole No Attachment***	3.17	3.17
Equipment Attachment	3.17	3.17
Anchor Attachment	3.17	3.17
Communication Riser Attachment	2.12	2.12

**Application, Inspection & Other Fees, Per Occurrence:**

Aerial Cable Attachment	62.00
Anchor Attachment	19.00
Communication Riser Attachment	15.00
Down Guy Attachment	15.00
Equipment Attachment	15.00
Over-Lash	29.00
Service Drop Attachment	12.00
Reinspection	55.00
Area Survey Audit Inspection	5.00

**Sanction & Penalty Fees, Per Pole (Exhibit C)**

Sanction – No Agreement Level 1	263.52
Sanction – No Agreement Level 2	988.20
Sanction – No Agreement Level 3	1,317.60
Sanction – No Permit Level 1	131.76
Sanction – No Permit Level 2	494.10
Sanction – No Permit Level 3	658.80
Sanction – Safety or Agreement Non Compliance Level 1	65.88
Sanction – Safety or Agreement Non Compliance Level 2	329.40
Sanction – Safety or Agreement Non Compliance Level 3	439.20

\*\*\*Joint Pole with valid attachment permit without an inventoried attachment.

**Adopted:** November 17, 2004  
**Effective:** January 1, 2005  
**Resolution:** 828

**Motion for Emergency Interim Relief**  
**Exhibit 8**

COLE, RAYWID & BRAVERMAN, L.L.P.

JILL M. VALENSTEIN, ESQUIRE

ADMITTED IN DC AND MD

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JVALENSTEIN@CRBLAW.COM

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August 26, 2004

**Certified Mail, Return Receipt Requested**

Ms. Denise Estep  
Joint Pole Administrator  
Central Lincoln People's Utility District  
P.O. Box 1126  
Newport, OR 97365

**Re: Pole Occupancy License Agreement ("Agreement")—Proposed Fee Schedule  
For 2005**

Dear Ms. Estep:

I am writing on behalf of my client, Charter Communications, in response to your July 1, 2004 notification of Central Lincoln PUD's revised Fee Schedule for the year 2005. According to your cover letter enclosing the newly proposed rates, licensee comments must be sent to Central Lincoln PUD by October 1, 2004 to be considered. To that end, Charter has the following concerns and comments regarding Central Lincoln PUD's proposed 2005 rates.

First, Charter requests that Central Lincoln PUD provide back up for each of the revised rates; *i.e.*, the calculations, methodology and underlying financial data supporting the revised rates, including the Application Fees. Also, please advise whether you intend to give Charter the rental rate reduction. If not, please provide the basis for denying such reduction in accordance with OAR § 860-028-0230.

Second, Charter requests that Central Lincoln PUD provide a legal basis for charging a rental fee for 9 different types of "attachments." Charter continues to believe that Central Lincoln PUD's rental scheme results in a rate that far exceeds a fair, just and reasonable rate in violation of ORS § 757.282. Indeed, Charter understands that this very issue is central to the dispute in *Central Lincoln People's Utility District v. Verizon Northwest, Inc.*, Petition for Removal of Attachments, UM 1087 (filed 5/22/09 Oregon PUC). Please advise whether Central Lincoln PUD is currently charging Verizon for 9 different types of attachments. Also, please explain whether a "Service Drop Pole Attachment Point" rental charge is assessed on poles

Ms. Denise Estep  
Joint Pole Administrator  
Central Lincoln People's Utility District  
August 26, 2004  
Page 2

where Charter also pays rent for a mainline pole attachment. Finally, please provide the legal basis for the three new rental charges listed on the Fee Schedule, namely: Down Guy Attachment Point; Non-Inventoried Joint Pole; and No-Attachment. Specifically, please explain how Central Lincoln can legally charge for both an anchor attachment **and** a guy attachment; how Central Lincoln can legally charge the full rate on a joint pole and, most curiously, how Central Lincoln can charge for an attachment that does not exist (*i.e.*, for "No-Attachment").

If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Jill Valenstein", with a long horizontal flourish extending to the right.

Jill Valenstein

cc: Frank Antonovich  
Shannon Dunham, Esq.  
Gary Lee

SENDER COMPLETE THIS SECTION	COMPLETER COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> <li>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>■ Print your name and address on the reverse so that we can return the card to you.</li> <li>■ Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	A. Signature <b>X</b> <span style="float: right;"><input type="checkbox"/> Agent <input type="checkbox"/> Addressee</span>	
1. Article Addressed to: <b>Ms. Denise Estep            Joint Pole Administrator            Central Lincoln People's Utility District            Post Office Box 1126            Newport, OR 97365</b>	B. Received by ( <i>Printed Name</i> )	C. Date of Delivery
	D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
2. Article Number <i>(Transfer from service label)</i>	3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
	4. Restricted Delivery? ( <i>Extra Fee</i> ) <input type="checkbox"/> Yes	
7002 0510 0003 3345 8119		
PS Form 3811, August 2001                      Domestic Return Receipt                      102595-02-M-1540		

**Motion for Emergency Interim Relief**  
**Exhibit 9**

COLE, RAYWID & BRAVERMAN, L.L.P.

JILL M. VALENSTEIN, ESQUIRE

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October 5, 2004

**Certified Mail, Return-Receipt Requested**

Ms. Denise Estep  
Joint Pole Administrator  
Central Lincoln People's Utility District  
P.O. Box 1126  
Newport, OR 97365

7001 2510 0005 7224 0907

**Re: Pole Occupancy License Agreement ("Agreement")—Proposed Fee Schedule For 2005**

Dear Denise:

Thank you for responding to Charter's August 26<sup>th</sup> request for data and providing Central Lincoln PUD's pole rental rate calculations. As I mentioned during last week's conference, I reviewed the data and calculations you provided and have some specific questions and concerns.

First and foremost, according to the calculations, Central Lincoln PUD has improperly added a "direct cost" surcharge of \$3.17 for each of Charter's "attachments," on top of the base rent. This type of surcharge is not allowed under the Oregon pole attachment rate formula statute.<sup>1</sup> Furthermore, it is difficult for Charter to understand how Central Lincoln PUD could ever justify tacking on such a surcharge in light of the myriad of "application/inspection" fees and the 9 separate "attachment rental fees" Central Lincoln PUD has listed on its revised Fee Schedule. Central Lincoln PUD has also added inappropriate expenses to the carrying charges. Please explain the "customer," the "bond debt interest/amortization," and the "current net

<sup>1</sup> "A just and reasonable rate shall ensure the . . . utility the recovery from the licensee of not less than all the additional costs of providing and maintaining pole attachment space for the licensee *nor more than* the actual capital and operating expenses, including just compensation, of the . . . utility attributable to that portion of the pole . . . used for the pole attachment. . . . ORS § 757.282(1)(emphasis added).



Ms. Denise Estep  
Joint Pole Administrator  
Central Lincoln People's Utility District  
October 5, 2004  
Page 2

income" expenses and the legal basis for adding these expenses, which do not appear to be permitted under the formula.<sup>2</sup>

Second, setting aside that Charter does not believe Central Lincoln can legally justify charging 7 separate application processing fees for attaching to Central Lincoln's poles, Charter has several other questions regarding these fees. For example, how does Central Lincoln justify charging the attacher with the "vehicle" costs for traveling to and from a pole, when those costs are most likely recovered in the carrying charges that make up the annual pole rent? Similarly, please justify the 17% overhead charge tacked on to each application processing/inspection fee. Overhead charges are also typically comprised of costs that are recovered in the carrying charges. Consequently, please demonstrate that the "vehicle" and "overhead" costs are not otherwise recovered in the carrying charges. Also, please explain what types of costs you claim to be recovering in the overhead charge and how Central Lincoln arrived at a 17% rate. Finally, please describe the task(s) of each person who is listed under each fee.

Third, in my August 26<sup>th</sup> letter, I asked that Central Lincoln "provide a legal basis for charging a rental fee for 9 different types of 'attachments.'" I also asked whether a "Service Drop Pole Attachment Point" rental charge is assessed on poles where Charter also pays rent for an "aerial" attachment. I disagree with your assessment that these items "are not directly related to the 2005 proposed fee schedule." These fees are on the 2005 Fee Schedule and must be justified by Central Lincoln PUD before they may be assessed. In fact, there are 3 new rental fees on the 2005 Fee schedule that did not appear on the previous schedule and Charter does not understand the basis for these new attachment fees. I further inquired whether Central Lincoln has assessed these fees on Verizon, as I understand this issue is central to your case now pending at the PUC. Charter reiterates each of its requests in this respect and that Central Lincoln PUD provide its response in writing.

Fourth, I understand that Central Lincoln will make a decision "at a later date" as to whether Charter will be denied a rental rate reduction. Can you please provide the criteria that will factor into Central Lincoln's decision in this regard.

In sum, Charter cannot agree to pay Central Lincoln PUD's proposed 2005 rental rate because Central Lincoln PUD has included inappropriate charges in its calculation of the rate. Instead, Charter will pay a rate calculated in accordance with the Oregon pole rental statute, unless and until Central Lincoln provides a legal justification for the additional carrying charges and "direct costs" surcharge, and demonstrates that they are permitted under the statute. Furthermore, Charter will not pay any increased or new applications processing/inspection fees in the year 2005 until Central Lincoln provides the information Charter has requested that relates to those fees, along with a legal justification supporting the imposition of the fees.

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<sup>2</sup> "'Carrying Charge' means the percentage of operation, maintenance, administrative, general, and depreciation expenses, taxes, and money costs (return on investment) attributable to the facilities used by the licensee." OAR 860-028-0110(2)(a).

Ms. Denise Estep  
Joint Pole Administrator  
Central Lincoln People's Utility District  
October 5, 2004  
Page 3

All that said, I enjoyed meeting you and Mike last week in California and I look forward to hearing from you soon in the hopes of resolving these issues. If you have any questions, please do not hesitate to contact me.

Sincerely,



Jill Valenstein

cc: Frank Antonovich  
Matt McGinnity  
Shannon Dunham, Esq.  
Gary Lee

**Motion for Emergency Interim Relief**  
**Exhibit 10**

JV  
File

# Cole, Raywid & Braverman, L.L.P.

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jvalenstein@crblaw.com

December 21, 2004

Via Certified Mail, Return-Receipt Requested

Ms. Denise Estep  
Joint Pole Administrator  
Central Lincoln People's Utility District  
P.O. Box 1126  
Newport, OR 97365

## Re: Central Lincoln PUD's 2005 Pole Attachment Fee Schedule

Dear Denise:

Charter is in receipt of Central Lincoln PUD's Board "approved" fee schedule for 2005. Although your December 6, 2004 cover letter expressly states that the PUD has revised the fee schedule "in response to the comments received from our Licensee's" [sic], I can discern no substantive difference between the rates contained on the "approved" fee schedule and the proposed schedule from July. The only differences appear to be that Central Lincoln has consolidated "aerial cable pole attachment point;" "service drop pole attachment point;" and "down guy attachment point;" under the heading "Joint Pole Attachment Point;" and Equipment Attachment in Communications Space and Equipment Attachment in Ground Space, under the heading "Equipment Attachment." Indeed, despite the assurance in your September 17, 2004 letter that Central Lincoln PUD would contact me in response to my August 26<sup>th</sup> letter (attached hereto as Exhibit 1), requesting support for: (1) "each of the revised rates . . . including the Applications Fees;" (2) "a legal basis for charging for 9 different types of 'attachments'" and (3) "the legal basis for the three new rental charges listed on the Fee Schedule, namely: Down Guy Attachment Point; Non-Inventoried Joint Pole; and No-Attachment," the PUD never provided any response Charter's specific inquiries.

Similarly, while Central Lincoln PUD did provide me with its rental rate calculations in September, Central Lincoln never responded to my October 5, 2004 letter (attached hereto as Exhibit 2) reiterating Charter's earlier requests regarding the fee schedule and seeking justification for the \$3.17 "direct costs" surcharge and various other incidental carrying charges not authorized by the Oregon pole rental statute, and, thus, leading to cost over-recovery.

Ms. Denise Estep  
December 21, 2004  
Page 2

Consequently, Charter reiterates its position set forth in its October letter. Specifically, "Charter cannot agree to pay Central Lincoln PUD's proposed 2005 rental rate because Central Lincoln PUD has included inappropriate charges in the calculation of its rate. Instead, Charter will pay a rate calculated in accordance with the Oregon pole rental state, unless and until Central Lincoln provides a legal justification for the additional carrying charges and 'direct costs' surcharge, and demonstrates that they are permitted under the statute. Furthermore, Charter will not pay any increased or new applications processing/inspection fees in the year 2005 until Central Lincoln provides the information Charter has requested that relates to those fees, along with a legal justification supporting the imposition of the fees." In other words, Charter will pay the compliant rate, minus the \$3.17 surcharge, for a total of \$6.76 for annual rent, and will continue to pay at the 2004 rate for applications and other fees.

Finally, I understand that Central Lincoln's rental invoice does not indicate precisely which type of "attachments" Charter is being charged rent for. Therefore, please provide a breakdown specifying exactly which types of attachments (*i.e.*, aerial, service drop within the same one foot of space as a mainline attachment, etc.) are contained on Central Lincoln's 2005 invoice, so Charter can seek refunds as necessary, *i.e.*, in the event the Oregon PUC determines in the pending case that Central Lincoln PUD's rental scheme is unreasonable and leads to cost over-recovery. Charter hereby reserves its rights to seek refunds of those payments, and any other fees paid to Central Lincoln PUD in the year 2005 that the PUC deems unreasonable.

Please let me know if you have any questions.

Sincerely,



Jill Valenstein

Enc. (2)

cc: Ms. Shannon Dunham, Esq. (w/o enclosures)  
Mr. Gary Lee (w/o enclosures)

**EXHIBIT 1**

COLE, RAYWID & BRAVERMAN, L.L.P.

JILL M. VALENSTEIN, ESQUIRE

ADMITTED IN DC AND MD

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August 26, 2004

**Certified Mail, Return Receipt Requested**

Ms. Denise Estep  
Joint Pole Administrator  
Central Lincoln People's Utility District  
P.O. Box 1126  
Newport, OR 97365

**Re: Pole Occupancy License Agreement ("Agreement")—Proposed Fee Schedule  
For 2005**

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Ms. Denise Estep  
Joint Pole Administrator  
Central Lincoln People's Utility District  
August 26, 2004  
Page 2

where Charter also pays rent for a mainline pole attachment. Finally, please provide the legal basis for the three new rental charges listed on the Fee Schedule, namely: Down Guy Attachment Point; Non-Inventoried Joint Pole; and No-Attachment. Specifically, please explain how Central Lincoln can legally charge for both an anchor attachment **and** a guy attachment; how Central Lincoln can legally charge the full rate on a joint pole and, most curiously, how Central Lincoln can charge for an attachment that does not exist (*i.e.*, for "No-Attachment").

If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Jill Valenstein", with a long horizontal flourish extending to the right.

Jill Valenstein

cc: Frank Antonovich  
Shannon Dunham, Esq.  
Gary Lee



**EXHIBIT 2**

COLE, RAYWID & BRAVERMAN, L.L.P.

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FAX (202) 452-0067  
WWW.CRBLAW.COM

LOS ANGELES OFFICE  
238 I ROSECRANS AVENUE.  
SUITE 110  
EL SEGUNDO, CALIFORNIA  
90245-4290  
TELEPHONE (310) 643-7999  
FAX (310) 643-7997

October 5, 2004

**Certified Mail, Return-Receipt Requested**

Ms. Denise Estep  
Joint Pole Administrator  
Central Lincoln People's Utility District  
P.O. Box 1126  
Newport, OR 97365

**Re: Pole Occupancy License Agreement ("Agreement")—Proposed Fee Schedule  
For 2005**

Dear Denise:

Thank you for responding to Charter's August 26<sup>th</sup> request for data and providing Central Lincoln PUD's pole rental rate calculations. As I mentioned during last week's conference, I reviewed the data and calculations you provided and have some specific questions and concerns.

First and foremost, according to the calculations, Central Lincoln PUD has improperly added a "direct cost" surcharge of \$3.17 for each of Charter's "attachments," on top of the base rent. This type of surcharge is not allowed under the Oregon pole attachment rate formula statute.<sup>1</sup> Furthermore, it is difficult for Charter to understand how Central Lincoln PUD could ever justify tacking on such a surcharge in light of the myriad of "application/inspection" fees and the 9 separate "attachment rental fees" Central Lincoln PUD has listed on its revised Fee Schedule. Central Lincoln PUD has also added inappropriate expenses to the carrying charges. Please explain the "customer," the "bond debt interest/amortization," and the "current net

<sup>1</sup> "A just and reasonable rate shall ensure the . . . utility the recovery from the licensee of not less than all the additional costs of providing and maintaining pole attachment space for the licensee *nor more than* the actual capital and operating expenses, including just compensation, of the . . . utility attributable to that portion of the pole . . . used for the pole attachment. . . . ORS § 757.282(1)(emphasis added).

Ms. Denise Estep  
Joint Pole Administrator  
Central Lincoln People's Utility District  
October 5, 2004  
Page 2

income" expenses and the legal basis for adding these expenses, which do not appear to be permitted under the formula.<sup>2</sup>

Second, setting aside that Charter does not believe Central Lincoln can legally justify charging 7 separate application processing fees for attaching to Central Lincoln's poles, Charter has several other questions regarding these fees. For example, how does Central Lincoln justify charging the attacher with the "vehicle" costs for traveling to and from a pole, when those costs are most likely recovered in the carrying charges that make up the annual pole rent? Similarly, please justify the 17% overhead charge tacked on to each application processing/inspection fee. Overhead charges are also typically comprised of costs that are recovered in the carrying charges. Consequently, please demonstrate that the "vehicle" and "overhead" costs are not otherwise recovered in the carrying charges. Also, please explain what types of costs you claim to be recovering in the overhead charge and how Central Lincoln arrived at a 17% rate. Finally, please describe the task(s) of each person who is listed under each fee.

Third, in my August 26<sup>th</sup> letter, I asked that Central Lincoln "provide a legal basis for charging a rental fee for 9 different types of 'attachments.'" I also asked whether a "Service Drop Pole Attachment Point" rental charge is assessed on poles where Charter also pays rent for an "aerial" attachment. I disagree with your assessment that these items "are not directly related to the 2005 proposed fee schedule." These fees are on the 2005 Fee Schedule and must be justified by Central Lincoln PUD before they may be assessed. In fact, there are 3 new rental fees on the 2005 Fee schedule that did not appear on the previous schedule and Charter does not understand the basis for these new attachment fees. I further inquired whether Central Lincoln has assessed these fees on Verizon, as I understand this issue is central to your case now pending at the PUC. Charter reiterates each of its requests in this respect and that Central Lincoln PUD provide its response in writing.

Fourth, I understand that Central Lincoln will make a decision "at a later date" as to whether Charter will be denied a rental rate reduction. Can you please provide the criteria that will factor into Central Lincoln's decision in this regard.

In sum, Charter cannot agree to pay Central Lincoln PUD's proposed 2005 rental rate because Central Lincoln PUD has included inappropriate charges in its calculation of the rate. Instead, Charter will pay a rate calculated in accordance with the Oregon pole rental statute, unless and until Central Lincoln provides a legal justification for the additional carrying charges and "direct costs" surcharge, and demonstrates that they are permitted under the statute. Furthermore, Charter will not pay any increased or new applications processing/inspection fees in the year 2005 until Central Lincoln provides the information Charter has requested that relates to those fees, along with a legal justification supporting the imposition of the fees.


<sup>2</sup> "'Carrying Charge' means the percentage of operation, maintenance, administrative, general, and depreciation expenses, taxes, and money costs (return on investment) attributable to the facilities used by the licensee." OAR 860-028-0110(2)(a).

COLE, RAYWID & BRAVERMAN, L.L.P.

Ms. Denise Estep  
Joint Pole Administrator  
Central Lincoln People's Utility District  
October 5, 2004  
Page 3

All that said, I enjoyed meeting you and Mike last week in California and I look forward to hearing from you soon in the hopes of resolving these issues. If you have any questions, please do not hesitate to contact me.

Sincerely,



Jill Valenstein

cc: Frank Antonovich  
Matt McGinnity  
Shannon Dunham, Esq.  
Gary Lee

CLASS

FIRST CLASS

FIRST CLASS

FIRST CLASS

FIRST CLASS

FIRST CLASS

FIRST CLASS

FIRST CLASS

FIRST CLASS

FIRST CLASS

COLE, RAYWID & BRAVERMAN, L.L.P.  
ATTORNEYS AT LAW

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Ms. Denise Estep  
 Joint Pole Administrator  
 Central Lincoln People's  
 Utility District  
 P.O. Box 1126  
 Newport, OR 97365

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  Agent  
 Addressee  
**X**

B. Received by (*Printed Name*) C. Date of Delivery

D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No

3. Service Type  
 Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (*Extra Fee*)  Yes

2. Article Number 7003 1680 0005 2834 0858  
 (Transfer from service label)

Ms. Denise Estep  
 Joint Pole Administrator  
 Central Lincoln People's  
 Utility District  
 P.O. Box 1126  
 Newport, OR 97365

**FIRST CLASS**

**Motion for Emergency Interim Relief**  
**Exhibit 11**

*Looped*

Central Lincoln P.U.D.  
REMIT TO: ACCOUNTING, PO BOX 1126  
NEWPORT OR 97365  
(541) 265-3211

\*\*\*\*\* INVOICE \*\*\*\*\*

Page Number- 1  
Date - 02/08/05  
Customer - 11475  
Brn/Plt - 20  
Related PO -  
Order Nbr - 3066 SN  
Invoice - 2094 RI

*Coos Bay*

Sold To: CHARTER COMMUNICATIONS  
ATTN STEPHEN LAMORA  
1400 NEWMARK AVE  
COOS BAY OR 97420-2913

Ship To: CHARTER COMMUNICATIONS  
ATTN STEPHEN LAMORA  
1400 NEWMARK AVE  
COOS BAY OR 97420-2913

*08/21/05*

Supplier: 143975

Vertex: 494201

Coding: 83416000.2405

*David Torrey*  
DAVID TORREY 3/1  
KMA Mngr

Tax ID:  
NJUNS #:

Request Date      Customer P.O.      F.O.B.      JO # :

02/08/05

Ln/Rq Dt	Description	Item Number	UM	Quantity	Price	Extended Price	Tax
ANNUAL POLE ATTACHMENT BILLING FOR THE PERIOD OF 01/01/04 TO 12/31/04 RETURN COPY OF INVOICE WITH REMITTANCE							
1.000	Pole Attach-Anchor	APANC	EA	73	3.1700	231.41	N
02/08/05					Per EA		
2.000	Pole Attachment - Comm Riser	APCRA	EA	249	2.1200	527.88	N
02/08/05					Per EA		
3.000	Pole Attach-Equip Ground Space	APEGS	EA	33	3.1700	104.61	N
02/08/05					Per EA		
4.000	Joint Pole Attachment Point	APACARR	EA	1806	9.9300	17,933.58	N
02/08/05					Per EA		
5.000	Joint Pole No Attachment	APNOA	EA	58	3.1700	183.86	N
02/08/05					Per EA		
6.000	Joint Pole Attachment Non Inv	APNINVAR	EA	484	9.9300	4,806.12	N
02/08/05					Per EA		

Central Lincoln P.U.D.  
 REMIT TO: ACCOUNTING, PO BOX 1126  
 NEWPORT OR 97365  
 (541) 265-3211

Page Number - 2  
 Date - 02/08/05  
 Customer - 11475  
 Brn/Prt - 20  
 Related PO -  
 Order Nbr - 3066 SN  
 Invoice - 2094 RI

\*\*\*\*\* INVOICE \*\*\*\*\*

①

Sold To: CHARTER COMMUNICATIONS  
 ATTN STEPHEN LAMORA  
 1400 NEWMARK AVE  
 COOS BAY OR 97420-2913

Ship To: CHARTER COMMUNICATIONS  
 ATTN STEPHEN LAMORA  
 1400 NEWMARK AVE  
 COOS BAY OR 97420-2913

Tax ID:  
 NJUNS #:

Request Date 02/08/05      Customer P.O.      F.O.B.      JO # :

Ln/Rq Dt	Description	Item Number	UM	Quantity	Price	Extended Price	Tax
----------	-------------	-------------	----	----------	-------	----------------	-----

*Norm Casey*  
*Norm Casey*  
 Plant Manager  
 Coos Bay, Oregon

System #	83416
Dept #	
GL#	
PO's Attached (if necessary)	
Yes	No
<i>STEPHEN LAMORA</i>	
General Manager Signature:	

*Norm Casey*

*Frank Antonovich*  
 FRANK ANTONOVICH  
 VP/GM

RECEIVED  
 FEB 10 2005  
 By \_\_\_\_\_

*Matt McGinnity*  
 MATT MCGINNITY  
 KMA Drctr

Total Order

Terms Net 10.1.5% after 90 days      Net Due Date 02/18/05

23,787.75  
 \$ 22,739.70



*logged*

Central Lincoln P.U.D.  
REMIT TO: ACCOUNTING, PO BOX 1126  
NEWPORT OR 97365  
(541) 265-3211

\*\*\*\*\* INVOICE \*\*\*\*\*

Page Number- 1  
Date - 02/08/05  
Customer - 11474  
Brn/Pit - 20  
Related PO -  
Order Nbr - 3067 SN  
Invoice - 2095 RI

*Florence*

Sold To: CHARTER COMMUNICATIONS  
ATTN STEPHEN LAMORA  
1400 NEWMARK AVE  
COOS BAY OR 97420-2913

Ship To: CHARTER COMMUNICATIONS  
ATTN STEPHEN LAMORA  
1400 NEWMARK AVE  
COOS BAY OR 97420-2913

*02/01/05*

Supplier: 142975  
Vertex: 494201

*David Torrey*  
DAVID TORREY 3/14/05  
KMA Mngr

Tax ID:  
NJUNS #:

Coding:  
839116000:240S

Request Date 02/08/05 Customer P.O. F.O.B. JO # :

Ln/Rq Dt	Description	Item Number	UM	Quantity	Price	Extended Price	Tax
ANNUAL POLE ATTACHMENT BILLING FOR THE PERIOD OF 01/01/04 TO 12/31/04 RETURN COPY OF INVOICE WITH REMITTANCE							
1.000	Pole Attach-Anchor	APANC	EA	202	3.1700	640.34	N
02/08/05					Per EA		
2.000	Pole Attachment - Comm Riser	APCRA	EA	136	2.1200	288.32	N
02/08/05					Per EA		
3.000	Pole Attach-Equip Ground Space	APEGS	EA	57	3.1700	180.69	N
02/08/05					Per EA		
4.000	Joint Pole Attachment Point	APACARR	EA	2089	9.9300	20,743.77	N
02/08/05					Per EA		
5.000	Joint Pole No Attachment	APNOA	EA	53	3.1700	168.01	N
02/08/05					Per EA		
6.000	Joint Pole Attachment Non Inv	APNINVAR	EA	1202	9.9300	11,935.86	N
02/08/05					Per EA		

*\$ 32,679.63*

Central Lincoln P.U.D.  
 REMIT TO: ACCOUNTING, PO BOX 1126  
 NEWPORT OR 97365  
 (541) 265-3211

Page Number- 2  
 Date - 02/08/05  
 Customer - 11474  
 Arn/Pit - 20  
 Related PO -  
 Order Nbr - 3067 SN  
 Invoice - 2095 RI

\*\*\*\*\* INVOICE \*\*\*\*\*

Sold To: CHARTER COMMUNICATIONS  
 ATTN STEPHEN LAMORA  
 1400 NEWMARK AVE  
 COOS BAY OR 97420-2913

Ship To: CHARTER COMMUNICATIONS  
 ATTN STEPHEN LAMORA  
 1400 NEWMARK AVE  
 COOS BAY OR 97420-2913

Tax ID:  
 NJUNS #:

Request Date 02/08/05      Customer P.O.      F.O.B.      JO # :

Ln/Rq Dt	Description	Item Number	UM	Quantity	Price	Extended Price	Tax
----------	-------------	-------------	----	----------	-------	----------------	-----

System #	83416
Dept #	
GL#	
PO's Attached (if necessary)	
Yes	No
<i>STEPHEN LAMORA</i>	
General Manager Signature:	

*Stephen Casey*  
*Stephen Casey*  
 Plant Manager  
 Coos Bay, Oregon

*Stephen Casey*

*Frank Antonovich*  
 FRANK ANTONOVICH  
 VP/GM

RECEIVED  
 FEB 10 2005  
 By \_\_\_\_\_

*Matt McGinnity*  
 MATT MCGINNITY  
 KMA Dirctr

Total Order

Terms Net 10,1.5% after 90 days      Net Due Date 02/18/05

33,956.99  
 # 32,679.63

*Logan*

Central Lincoln P.U.D.  
REMIT TO: ACCOUNTING, PO BOX 1126  
NEWPORT OR 97365  
(541) 265-3211

\*\*\*\*\* INVOICE \*\*\*\*\*

Page Number- 1  
Date - 02/08/05  
Customer - 11473  
Brn/Plt - 20  
Related PO -  
Order Nbr - 3068 SN  
Invoice - 2096 RI

*Newport*

Sold To: CHARTER COMMUNICATIONS  
ATTN ACCOUNTS PAYABLE  
1344 NE HIGHWAY 101  
LINCOLN CITY OR 97367-3339

Ship To: CHARTER COMMUNICATIONS  
ATTN ACCOUNTS PAYABLE  
1344 NE HIGHWAY 101  
LINCOLN CITY OR 97367-3339

Supplier: 143975  
Vertex: 4942013  
Coding: 83416000.2405

*David Torrey*  
DAVID TORREY 3A  
KMA Mngr

Tax ID:  
NJUNS #:

Request Date 02/08/05  
Customer P.O.  
F.O.B.  
JO #:

Ln/Rq Dt	Description	Item Number	UM	Quantity	Price	Extended Price	Tax
ANNUAL POLE ATTACHMENT BILLING FOR THE PERIOD OF 01/01/04 TO 12/31/04 RETURN COPY OF INVOICE WITH REMITTANCE							
1.000 02/08/05	Pole Attach-Anchor	APANC	EA	143	3.1700	453.31	N
					Per	EA	
2.000 02/08/05	Pole Attachment - Comm Riser	APCRA	EA	383	2.1200	811.96	N
					Per	EA	
3.000 02/08/05	Pole Attach-Equip Ground Space	APEGS	EA	26	3.1700	82.42	N
					Per	EA	
4.000 02/08/05	Joint Pole Attachment Point	APACARR	EA	3123	9.9300	31,011.39	N
					Per	EA	
5.000 02/08/05	Joint Pole No Attachment	APNOA	EA	418	3.1700	1,325.06	N
					Per	EA	
6.000 02/08/05	Joint Pole Attachment Non Inv	APNINVAR	EA	3717	9.9300	36,909.81	N
					Per	EA	

*\$67,921.20*

Central Lincoln P.U.D.  
 REMIT TO: ACCOUNTING, PO BOX 1126  
 NEWPORT OR 97365  
 (541) 265-3211

\*\*\*\*\* INVOICE \*\*\*\*\*

Page Number - 2  
 Date - 02/08/05  
 Customer - 11473  
 Bra/Plt - 20  
 Related PO -  
 Order Nbr - 3068 SN  
 Invoice - 2096 RI

Sold To: CHARTER COMMUNICATIONS  
 ATTN ACCOUNTS PAYABLE  
 1344 NE HIGHWAY 101  
 LINCOLN CITY OR 97367-3339

Ship To: CHARTER COMMUNICATIONS  
 ATTN ACCOUNTS PAYABLE  
 1344 NE HIGHWAY 101  
 LINCOLN CITY OR 97367-3339

Tax ID:  
 NJUNS #:

Request Date	Customer P.O.	F.O.B.	JO # :
02/08/05			

Ln/Rq Dt	Description	Item Number	UM	Quantity	Price	Extended Price	Tax
----------	-------------	-------------	----	----------	-------	----------------	-----

System # 83416	
Dept #	
GL #	
PO's Attached (if necessary)	
Yes	No
M. Beaubien	
Department Manager Signature	
General Manager Signature	

MARK BEAUBIEN  
 PLANT MGR

*Frank Antonovich*  
 FRANK ANTONOVICH  
 VP/GM

*Matt McGinnity*  
 MATT MCGINNITY  
 KMA Dirct

Total Order

Terms Net 10.1.5% after 90 days Net Due Date 02/18/05

70,583.95  
 67,921.20  
 FEB 11 2005

**Motion for Emergency Interim Relief**  
**Exhibit 12**

# HOGAN & HARTSON

L.L.P.

Writer's Direct Dial:  
202-637-5447

COLUMBIA SQUARE  
555 THIRTEENTH STREET, NW  
WASHINGTON, DC 20004-1109  
TEL (202) 637-5600  
FAX (202) 637-5910  
WWW.HHLAW.COM

June 10, 2005

*BY CERTIFIED MAIL*

Mr. Peter Gintner  
Macpherson, Gintner, Gordon and Diaz  
423 North Coast Highway  
Newport, Oregon 97365

**Re: Central Lincoln PUD-Charter Communications Pole  
Occupancy License Agreement**

Dear Mr. Gintner:

I am writing on behalf of my client, Charter Communications, regarding the above-referenced Pole Occupancy Agreement ("Agreement") that Charter signed in March of 2003. As you may remember, Charter considered a number of the Agreement's rates, terms and conditions unreasonable. Charter was particularly concerned about the myriad of fees contained in the Agreement, including rental charges for risers. Charter nevertheless felt compelled to sign the Agreement under threat of the no contract sanctions.<sup>1</sup> In light of the Oregon Public Utility Commission's recent January and May Orders declaring Central Lincoln People Utility's District's ("Central Lincoln") form Pole Occupancy Agreement

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<sup>1</sup> See letter dated January 6, 2003 to Jill Valenstein from Peter Gintner (threatening "failure to have a written contract" sanctions if Charter failed to sign Central Lincoln's pole attachment agreement); see also letter dated February 13, 2003 to Jill Valenstein from Peter Gintner (stating "[t]o the extent we have not made it clear, if we do not reach an agreement by roughly March 17, 2003, I will advise my client to file with the Oregon PUC to begin the process of imposing sanctions on Charter Communications."). Such coercive tactics are against current PUC policies. See *The Battle for the Utility Pole and the End-Use Customer*, A PUC Staff Report, Attachment E, Pole Joint Use Principles, P10-Improper Use of Sanctions (Dec. 15, 2003) ("A pole owner shall not apply pole attachment sanctions to existing attachments for 'no contract' or 'no permit' to force a revised contract on an existing occupant.") (hereinafter "Staff White Paper"). When Charter decided to sign the Agreement, there was no such express policy.

unlawful<sup>2</sup> and establishing a just and reasonable one in its place,<sup>3</sup> Charter requests that the parties immediately commence good faith negotiations to enter into a replacement pole agreement based on the Commission-approved contract. Charter also requests that Central Lincoln refund Charter for rental and application fee over-charges that have been declared unreasonable, as set forth in detail below.

### Establishment Of Just And Reasonable Agreement

Charter's request to negotiate a new pole attachment agreement based on the one established by the Commission, should come as no surprise to Central Lincoln. Indeed, at the time Charter was forced to sign Central Lincoln's Agreement (by Central Lincoln's arbitrary and unreasonable deadline), Charter requested that Central Lincoln include a provision stating that it would modify the agreement in accordance with Oregon law, in the event any subsequent Commission decisions rendered certain of Central Lincoln's positions unlawful.<sup>4</sup> Although Central Lincoln failed to accede to that request, you indicated that you saw "no reason why we would insist on contract provisions not consistent with Oregon law."<sup>5</sup> Likewise, pursuant to Charter's objections to Central Lincoln's extremely one-sided indemnity clause, Central Lincoln added a Most Favored Nations clause. That clause provides that "[i]n the event District contracts with one of District's other Licensees for a more beneficial (to Licensee) indemnification provision, District agrees to give Licensee the option to enter into the same or similar indemnification provisions."<sup>6</sup>

Even if Central Lincoln disagrees that the parties intended to revise the Agreement pursuant to any applicable Commission decisions, Charter believes that the rates, terms and conditions of the Agreement are no longer enforceable as a matter of law. First, the Agreement is governed by Oregon law and the Oregon Commission has ruled that the rates, terms and conditions of the same agreement are unjust and unreasonable. Second, as the Commission acknowledged, the federal pole attachment statute requires non-discriminatory access to essential pole facilities.<sup>7</sup> Now that the Commission has established a just and reasonable

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<sup>2</sup> *Central Lincoln People's Utility District v. Verizon Northwest, Inc.*, UM 1087, Order No. 05-042 (Jan. 19, 2005) (hereinafter "January Order").

<sup>3</sup> *Central Lincoln People's Utility District v. Verizon Northwest, Inc.*, UM 1087, Order No. 05-583 (May 16, 2005) (hereinafter "May Order").

<sup>4</sup> See e-mail dated February 26, 2003 from Jill Valenstein to Peter Gintner, cc: to Mike Wilson.

<sup>5</sup> See e-mail dated February 26, 2003 from Peter Gintner to Jill Valenstein, cc: to Mike Wilson.

<sup>6</sup> Agreement, Section 7.8.

<sup>7</sup> See, e.g., January Order at p. 6.

agreement between Central Lincoln and Verizon, Charter believes it is entitled to the same rates, terms and conditions.<sup>8</sup> Last, any argument that this Agreement is "presumed reasonable," as contemplated under ORS § 757.285, was negated by Central Lincoln's threat to impose sanctions if Charter failed to sign the Agreement by a date certain.

### Refunds Of Overcharges

In December 2004, Charter advised Central Lincoln that it would seek refunds in the event the Commission found Central Lincoln's rental rate and fees unjust and unreasonable.<sup>9</sup> Now that the Commission has determined the rental rate that Central Lincoln lawfully may charge and established a standard for application fees, Charter hereby requests that Central Lincoln refund Charter for overpayments made since December 21, 2004 in the amount of \$72,840.59.

#### Rental Over-Charges

Specifically, in May 2005, Charter paid Central Lincoln \$123,340.53 following receipt of ten separate invoices totaling \$127,785.40.<sup>10</sup> Charter paid \$9.93 for each legitimate attachment charged on the invoices. In its May Order, however, the Commission ruled that the maximum allowable rental rate that Central Lincoln may charge is \$4.14 per foot of space.<sup>11</sup> Charter therefore seeks refunds for rental overcharges in the amount of \$ \$71,917.59 (*i.e.*, Charter paid for 12,421 attachments @ \$9.93 = \$123,340.53 minus 12,421 x \$4.14 = \$51,422.94 = \$71,917.59).

Also, please note that Charter held back approximately five-thousand dollars (\$5,000) of the invoiced rental amounts charged for anchors, risers, other

---

<sup>8</sup> PUC Staff concurs. See Staff White Paper at Attachment E, Public Interest Principles (High Priority)-Non-Discrimination and Preferential Treatment ("Pole owner rates, terms and conditions of access shall be uniformly applied to telecommunications carriers and cable operators that have or seek access.").

<sup>9</sup> See Letter dated December 21, 2004 to Denise Estep from Jill Valenstein, attached hereto. Attached to Charter's December letter are two additional letters, dated August 26, 2004 and October 5, 2004, respectively. In those letters, Charter sought justification for each of the rental and non-rental fees on Central Lincoln's revised Fee Schedule. Central Lincoln, however, never provided that justification.

<sup>10</sup> These 10 invoice numbers are: 2094RI; 2095RI; 2096RI; 2105RI; 2072RI; 2106RI; 2119RI; 2118RI; 2185RI and 2251RI.

<sup>11</sup> *Id.* at Appendix A.



attachments in unusable space and for "Joint Pole No Attachments." Charter does not believe that Central Lincoln may legally charge rent for these items. For example, the Commission ruled that pole owners only may charge rent based on the amount of *usable* space used by the attachment.<sup>12</sup> The Commission further held that the "minimum space for a single attachment point (*i.e.*, bolt) on a pole is one foot, but if there is more than one attachment point (*i.e.*, bolt) on a pole, the rental rate should be calculated based on the actual space used.<sup>13</sup> Consequently, Central Lincoln may not charge additional rent for risers, other equipment in unusable space, and, certainly not for attachments that do not exist. The Commission also "rejected" Central Lincoln's "proposed change seeking additional rent for . . . guys attached to its anchors" because guys are not pole attachments under the Oregon pole statute.<sup>14</sup>

Application Fees:

As you know, the Commission ruled that "to the extent . . . application fees do not relate to 'special inspections or preconstruction, make ready, change out, and rearrangement work,' application fees may not be recovered, and the administrative charges related to processing new attachments should be allocated with the carrying charge."<sup>15</sup> Although Charter repeatedly requested that Central Lincoln justify its application fees and demonstrate that those costs were not otherwise recovered (or required to be recovered) in the rental rate, Central Lincoln failed to do so.<sup>16</sup> For these reasons, Charter disputes each of the application fees charged on the ten invoices and withheld those amounts from its May payment. Charter will continue to object to any application fees unless Central Lincoln can demonstrate that its application fees cover the costs of actual work related to *necessary* special inspections, preconstruction surveys or make ready work, as required by the Commission. Please note, however, that Charter paid \$923 for application fees assessed since its December 21 letter, for which it now seeks a refund.

---

<sup>12</sup> January Order at p. 15.

<sup>13</sup> *Id.*

<sup>14</sup> May Order at p. 7.

<sup>15</sup> January Order at p. 15.

<sup>16</sup> *See, e.g.*, December 2004 letter.

Mr. Peter Gintner  
June 10, 2005  
Page 5 of 5

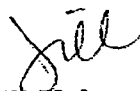
### Conclusion

In its May Order, the Commission adopted the Federal Communications Commission's approach to terminating unjust and unreasonable rates, terms and conditions and substituting just and reasonable provisions.<sup>17</sup> Rather than pursue a replacement agreement through a contested case, however, Charter believes it would be preferable, from both parties' perspectives, to engage in good faith negotiations as soon as possible. Pending execution of a new agreement, Charter expects that Central Lincoln will operate in accordance with the Commission's Orders rather than continue to impose specific rates, terms and conditions that have been ruled unjust and unreasonable.

Please contact me no later than June 22, 2005 to discuss transitioning to a replacement pole attachment agreement. Also, please remit a refund check in the amount of \$72,840.59 to: David Torrey, Charter Communications, Accounting Department, 521 NE 136<sup>th</sup> Avenue, Vancouver, WA 98684. Charter reserves its rights to pursue any and all available remedies if Central Lincoln fails to contact Charter to discuss a new agreement by the date set forth above or pay the refund within 45 days of the date of this letter.

In the meantime, please do not hesitate to contact me if you have any questions. Please note that I am with a new law firm. I look forward to hearing from you.

Sincerely,



Jill Valenstein  
Associate

### Enclosures

cc: Frank Antonovich, VP/GM Northwest KMA  
Matt McGinnity, Director of Technical Operations  
Northwest KMA  
Gary Lee, Utilities Coordinator, Northwest KMA  
Shannon Dunham, Esq.

---

<sup>17</sup> See May Order at pp. 2-3.

**Motion for Emergency Interim Relief**  
**Exhibit 13**

FLC

# Macpner, Gintner, Gordon & Diaz

## LAWYERS

423 North Coast Highway  
P.O. Box 1270  
Newport, Oregon 97365  
(541) 265-8881 (800) 829-8881  
FAX (541) 265-3571  
email: [gintner@mgsdlaw.com](mailto:gintner@mgsdlaw.com)

**Peter Gintner**  
Also admitted in Alaska

June 24, 2005

Ms. Jill Valenstein  
Hogan & Hartson LLP  
Columbia Square  
555 Thirteenth Street NW  
Washington, DC 20004-1109

Re: Central Lincoln PUD-Charter

Dear Jill:

Thank you for your letter of June 10, 2005. As you know, the Oregon Public Utility Commission is in the process of adopting new administrative rules regarding pole attachment contracts, dispute resolution, safety, and whatever else that is required to effectively administer pole contacts. To say that the current regulatory scheme is a failure would be a mild understatement. If you recall, I prefaced all of our discussions with the understanding that things would change. Although Central Lincoln did not agree with parts of the regulatory scheme, we all were grappling with administering the law as best we could. Given the liabilities that can attach to electric utilities, this was a prudent course.

The PUC order containing the default agreement between Central Lincoln and Verizon is of no value to Charter. I am not at all surprised that you would wish it to be otherwise. Within months, whatever it is you have gleaned from the current regulatory scheme will be changed. Frankly, Central Lincoln and Verizon are currently operating under their 1987 agreement. If you would like to explore the possibilities of having Charter enter into a similar agreement to the 1987 Central Lincoln PUD/Verizon agreement, I am authorized to explore those options with you. However, whatever we work out will be good for merely the time until the law changes. I would suggest that we exert our efforts in making sure that the new, improved regulatory scheme works for all parties. Although Central Lincoln is more than willing to discuss the current agreement, it would seem premature to finalize anything.

As for your demand for a refund: it is hereby rejected. My client will be enforcing the current agreement between us to the fullest extent of the law. To that end, I hereby make demand on Charter Communications for \$4,997.87 for unpaid rent. If some satisfactory arrangement is not

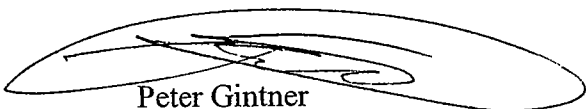
made for payment of these amounts, I will file a claim in Lincoln County Circuit Court under ORS 20.080 for the full amount, plus attorney fees. Due to the current outstanding amounts, Central Lincoln will require a prior payment for all the fees necessary to process a roughly 1,500-pole project that Charter desires to complete this summer. If Charter is amenable to this I will contact you with the details of the amounts necessary to proceed with the project. My understanding is that the amounts necessary are in the \$20,000 range.

In response to another point in your letter, Charter is a "most favored nation," amongst all contracted attachers to Central Lincoln's poles. My assertion may be subjective and, therefore, I am more than willing to recommend to my client that Charter be offered the same or similar terms and conditions of the 1987 agreement between Verizon and Central Lincoln. There are no other agreements that Central Lincoln has with any other party. I have no idea what facts you use in order for you to make the assertion that Charter has somehow been left out. It is almost a certainty that we all will be affected by the proposed PUC regulations. I see no reason why Charter and Central Lincoln cannot be active participants in that process in order to make a more workable regulatory scheme for all of us.

So, in summary, your claim of refund is rejected. Central Lincoln makes demand upon you for unpaid amounts equaling roughly \$5,000. In order to proceed with a roughly 1,500-pole project, Charter will be required to give Central Lincoln the amount specified by the PUD staff. It is my understanding that this amount is roughly \$20,000.

Nothing I read in your letter repudiates our current agreement. That is probably, more than likely, a good thing. My client is more than willing to enter into negotiations and discuss terms on a go forward basis. Given the flux that the current regulatory scheme is in, it may be prudent to schedule any negotiations for several months down the road. I will leave that part up to you. As for the monetary amounts specified above, the current contract is clear and will be enforced according to law. It is my opinion that Charter currently is a "most favored nation" as to the agreements Central Lincoln currently has with pole attachers. If you would like a copy of the current agreement Central Lincoln has with Verizon, I believe I can arrange for that to be sent to you.

Sincerely,



Peter Gintner

PG:dmp

cc: Paul Davies  
Mike Wilson

ARTICLE 7160 3901 9842 6002 6523  
NUMBER

Mr Peter Gintner  
Macpherson, Gintner,  
Gordon and Diaz  
423 North Coast Highway  
Newport, Oregon 97365



FORM #35662W LABEL  
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1-800-882-3811

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LINE 1

REFERENCE:

**Motion for Emergency Interim Relief**  
**Exhibit 14**

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**From:** Estep, Denise [mailto:DEstep@cencoast.com]  
**Sent:** Tuesday, November 22, 2005 8:52 AM  
**To:** Kalnins, Peter  
**Cc:** Wilson, Mike; Beckham, Donna; Perkins, Jack; Grove, Randy; Myres, Brad; Beaubien, Mark  
**Subject:** RE: PA #'s for Yachats

Pete:

Thank you for your inquiry regarding Charter's unauthorized attachments on CLPUD poles located in the rebuild project. I have discussed your concern with Mike Wilson and we have agreed that Central Lincoln's position regarding Charter's payment of application fees (or a written agreement for same) remains unchanged and therefore **Charter is not authorized** to transfer any attachments to the new poles that do not have a valid permit on file. Until such time that Charter has fulfilled its contractual obligation for payment of **all** permit application fees, unauthorized attachments are considered a violation and subject to sanction. Beginning next week, Central Lincoln will begin assessing these fees for all such attachments.

I hope this answers your question regarding these transfers. If you should have any additional questions, please feel free to contact either myself or Mike Wilson.

Sincerely,  
Denise Estep  
Joint Pole Administrator  
Central Lincoln PUD

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**From:** Kalnins, Peter [mailto:PKalnins@chartercom.com]  
**Sent:** Tuesday, November 22, 2005 7:11 AM  
**To:** Estep, Denise  
**Cc:** Beaubien, Mark  
**Subject:** RE: PA #'s for Yachats

I am just wondering how we can complete our transfers that require PA's to be submitted when we have already submitted the PA's through our rebuild project which Charter is being told they are being held. So does that mean our transfers are being held also?  
I would like to just complete our work and get off the old pole line. Is there any way without resubmitting new PA's for just these transfers to get the transfer poles approved or would we need to submit additional PA's on top of the ones we have already submitted to get these transfers done?  
Thank you

11/30/2005



Pete Kalnins  
Technical Supervisor  
Newport Or.  
Cell 1-541-921-4050  
Office 1-541-265-9230 Ext-109

-----Original Message-----

**From:** Beckham, Donna [mailto:DonnaB@cencoast.com]  
**Sent:** Monday, November 14, 2005 1:59 PM  
**To:** Kalnins, Peter  
**Subject:** PA #'s for Yachats

Pete,

I have checked w/Denise and have verified that the PA's for Yachats are being held pending an agreement to pay the application fees and notification of who will be doing the pole loading, etc.

If you have any questions, please call Denise at 541 574 2011 or Mike Wilson at 541 574 2065.

Thanks,  
Donna Beckham  
Central Lincoln PUD  
Engineering Assistant  
(541) 574-2125  
[dbeckham@cencoast.com](mailto:dbeckham@cencoast.com)

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11/30/2005



then lashed to the strand. If the strand strength is compromised, the attached lines may fall.

5. Charter currently has two pole-related projects that it seeks to complete involving Central Lincoln-owned poles. One involves 186 poles from Yaquina Heights to Ona Curves, and the other project involves 1,482 poles in the Yachats area.
6. In order to undertake the Yachats area work, Charter has submitted 254 applications to Central Lincoln between June 1, 2005 and November 4, 2005.
7. Due to environmental conditions in the Yachats area, the strand that is holding Charter's lines has become prematurely corroded and weakened. Left unattended, the strand will fail and break, which in turn would cause Charter's coaxial cable and fiber optic lines to fall, potentially harming someone.
8. Replacing the strand in the Yachats area is a pressing safety issue.
9. The strand in the Yachats area had already failed in at least 29 locations, and due to wind storms along the coast in the past week, lines have come down six times recently.
10. Charter is prepared to perform the work necessary to undertake the Yachats area project, and is willing to work with Central Lincoln on the logistical issues involved in processing this fairly large project in a prompt fashion, including but not limited to paying for third party contractors to undertake make ready work for Central Lincoln, if it is unable to process the load in a timely fashion. However, at this point, Central Lincoln simply refuses to grant the permits.
11. Central Lincoln's unjustified position may be threatening public safety
12. For the Yaquina Heights to Ona Curves project, Charter has submitted 72 new permits in 2005. The Ona Curves project attachments are necessary for Charter to complete an

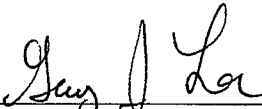
upgrade of its cable television system serving the area. The construction work to be done by Charter in the Ona Curves area will involve overlashing of fiber optic lines to existing Charter facilities. Overlashing of facilities does not involve a new attachment to the pole. Rather, consistent with long-standing industry standards and safe engineering practices, cable operators overlash new fiber to the existing lines, rather than completely removing the existing lines and lashing the new fiber or coax to the strand. In the Ona Curves project, Charter would be attaching a 108-count fiber bundle that is 5/8 inch in diameter.

13. Because there is no new attachment to the pole, and because it is consistent with safety standards, it is not reasonable or, in my experience over 25 years in various states, consistent with industry practice to require new permits for overlashing.
14. In June 2005, Central Lincoln installed approximately 17 new poles along Highway 101 in South Beach, Oregon and transferred its lines to the new poles. The new poles were for the most part approximately 10 feet, but in some cases as many as 40 feet, from the 17 corresponding existing poles. Other entities who were attached to the original poles have also been permitted to transfer their facilities to the new poles. The pole change was entirely for the benefit of Central Lincoln. Charter did not request the pole change or any work that lead to the pole change. Charter had fully authorized, permitted attachments to the existing poles.
15. Central Lincoln has refused to allow Charter to transfer its facilities from the existing poles to the new poles unless and until Charter accedes to Central Lincoln's fee demands.
16. In addition, Central Lincoln has required Charter to file new pole permit applications for the new poles, and seeks to impose application fees for those permits, as well as the costs

of transferring the facilities. Yet, the pole change was initiated by and for the benefit of Central Lincoln.

17. While it is my understanding that Charter is not required to apply for or obtain a new permit in order to transfer existing facilities to new poles in the event of pole changes initiated by Central Lincoln, nonetheless, between June 22 and June 29, 2005, Charter submitted 17 permit applications for approval to move its facilities to the new poles along Highway 101 in South Beach. Specifically, Central Lincoln had created 17 "transfer tickets" using the NJUNs system informing Charter that it must transfer its facilities to the new poles. Charter has responded by submitting "PA" and "PT" tickets containing load information required by Central Lincoln. Yet, Central Lincoln has not approved or otherwise processed the 17 applications related to the transfer and therefore Charter has not moved its facilities.

I swear under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

  
\_\_\_\_\_  
Gary Lee

January 4, 2006

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**BEFORE THE OREGON PUBLIC UTILITIES COMMISSION**

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CHARTER COMMUNICATIONS HOLDING )  
COMPANY, LLC )

Claimant, )

vs. )

**Docket No.** \_\_\_\_\_ )

CENTRAL LINCOLN PEOPLE'S UTILITY )  
DISTRICT, )

Respondent. )  
)  
)  
)  
)

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**DECLARATION OF FRANK D. ANTONOVICH**

I, Frank D. Antonovich , declare as follows:

1. I am currently employed as the Vice President/General Manager Northwest KMA for Charter Communications. I have held that position for approximately 2 years. As a result of my duties and responsibilities in my current position, I am personally familiar with the facts described herein, and also with the pole attachment-related relationship between Charter and Central Lincoln People's Utility District ("Central Lincoln").
2. I submit this declaration in support of Charter's Motion For Emergency Interim Relief in the above-captioned matter.
3. Charter, through its predecessors, has been attached to Central Lincoln's poles since at least as early as 1985. Yet, by letter dated December 26, 2001, Central Lincoln notified Charter that as of June 30, 2002, Central Lincoln would terminate the then-existing "General Agreement For Joint Use Of Poles" that governed Charter's attachment to Central Lincoln's poles. On June 27, 2002, Central Lincoln presented Charter with a new

“Pole Occupancy License Agreement” (“June 27, 2002 Draft”) and requested Charter’s signature. Charter did not sign the June 27, 2002 Draft.

4. After Central Lincoln presented Charter with the June 27, 2002 Draft, Charter and Central Lincoln engaged in several rounds of discussions regarding the terms of the proposed agreement, with Charter submitting to Central Lincoln various proposed changes to the draft agreement.
5. While between June 27, 2002 and January 2003, Charter and Central Lincoln were able to compromise on some issues, critical, fundamental issues remained in dispute. In particular, Charter specifically objected to Central Lincoln’s annual rental charges, Central Lincoln’s insistence on unreasonable provisions governing attachments for service drops, including but not limited to such matters as load studies and application fees, and Central Lincoln’s insistence on language allowing it to draw from a bond even if Charter contested that the funds were due.
6. As the correspondence from the time demonstrates, Charter had no choice, however, but to ultimately accept Central Lincoln’s demands. Central Lincoln used its unequal bargaining power and threat of artificially created sanctions to force Charter to sign. In particular, Central Lincoln made clear that if Charter did not sign the new agreement, Central Lincoln would impose sanctions on Charter on the theory that every one of the approximately 13,500 Central Lincoln poles to which Charter was attached was now “unauthorized” because Charter had no agreement to maintain those attachments. Of course, Charter had an agreement before Central Lincoln unilaterally terminated it. But nonetheless, the potential exposure of approximately \$6.75 million was too great a risk. As our attorney’s March 17, 2003 cover letter explained, with such leverage being



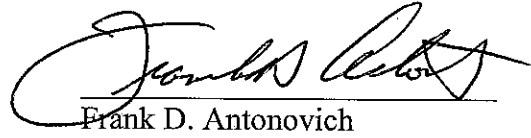
applied, Charter had no choice but to sign the agreement containing the terms insisted upon by Central Lincoln.

7. On March 17, 2003, the deadline established in Central Lincoln's letter, Charter submitted to Central Lincoln a signed copy of the new Agreement. As I explained above, Charter signed the Agreement under protest and sent a letter with the document explaining that it was signing under protest.
8. Charter and Central Lincoln have subsequently encountered additional problems.
9. In 2004, Central Lincoln sent Charter a new schedule of fees and attachment rentals. Charter objected to the rates and fees, and corresponded with Central Lincoln about the fee schedule. Nonetheless, Central Lincoln sent Charter invoices dated February 8, 2005, seeking rental payments at a rate of \$9.93 per attachment. The total payment imposed by the invoices for "Joint Pole Attachment Points" and "Joint Pole Non Inv" attachments – as opposed to the myriad other attachment rentals identified in Central Lincoln's fee schedule – was \$127,785.40.
10. In May 2005, Charter paid Central Lincoln \$123,340.53 for 12,421 "Joint Pole Attachment Points" and "Joint Pole Non Inv" attachments at a rate of \$9.93. However, Charter refused to pay the \$4,997.87 invoiced by Central Lincoln for anchors, risers, equipment in ground space, and "Joint Pole No Attachments."
11. Subsequently, after the Oregon Commission issued its decisions in the *Central Lincoln v. Verizon*, Docket UM 1087, litigation, Charter communicated to Central Lincoln its desire to negotiate a new pole attachment agreement with terms consistent with those held by the Commission in the *Central Lincoln* case. In addition, Charter requested that Central Lincoln refund the overcharged annual rentals.

12. Central Lincoln has refused to negotiate with Charter a new pole attachment agreement containing just and reasonable terms and conditions consistent with the Commission's holdings in UM 1087. Central Lincoln has also refused to refund Charter the annual rental overcharge, and has demanded that Charter pay the \$4,997.87 withheld for rental on anchors, risers, other types of attachments in unusable space, and "Joint Pole No Attachments." Indeed, by letter dated June 24, 2005, Central Lincoln informed Charter that Central Lincoln *will not process any permits* submitted by Charter unless Charter pays – in advance – all the application fees relating to Charter's then-pending permit applications.
13. After June 24, 2005, Central Lincoln has subsequently continued to refuse to process any permit application or allow Charter to perform any work on its facilities attached to Central Lincoln poles unless and until Charter succumbs to Central Lincoln's monetary demands.
14. Among the work that Central Lincoln will not permit Charter to perform is strand replacement in the Yachats, Oregon area, where the underlying strand supporting Charter's lines has prematurely degraded. Because Central Lincoln will not allow Charter to correct the strand issues in Yachats, Charter's customers have lost cable service (and more will do so absent corrective measures). Loss of service is a significant issue with cable television subscribers. Moreover, in the area served by these lines Charter faces substantial competition from satellite video services (also known as DBS or Direct Broadcast Satellite), such as DirectTV. Thus, additional service interruptions will harm Charter's reputation with its subscribers.

15. Charter cannot reasonably calculate the monetary harm that it suffers from the loss of consumer confidence, reputation, and goodwill.

I swear under penalty of perjury that the foregoing is true and correct to the best of my knowledge.



Frank D. Antonovich

January 5, 2006

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BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

CHARTER COMMUNICATIONS  
HOLDING COMPANY, LLC, FALCON  
TELECABLE, L.P., FALCON CABLE  
SYSTEMS COMPANY II, L.P., AND  
FALCON COMMUNITY VENTURES I,  
L.P.

Complainants,

v.

CENTRAL LINCOLN PEOPLE'S UTILITY  
DISTRICT,

Defendant.

Case No.

**CERTIFICATE OF SERVICE**

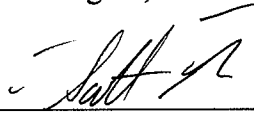
I hereby certify that true and correct copies of the following pleadings

- Complaint of Charter Communications Holding Company, LLC, *et al.* ("Charter") against Central Lincoln People's Utility District ("CLPUD"), and accompanying exhibits 1 through 5.
- Charter's Motion For Emergency Interim Relief, accompanying exhibits 1 through 14, and Declarations of Frank Antonovich and Gary Lee in support of Charter's Motion.
- Motion for Admission *Pro Hac Vice*, and accompanying Declaration of T. Scott Thompson in support.

were served via e-mail transmission, and by FedEx in sealed envelopes upon the following:

1	Paul Davies	
2	General Manager	
3	Central Lincoln People's Utility District	
4	2129 N. Coast Hwy	
	Newport, OR 97365	
5	Peter Gintner	
6	Macpherson, Gintner, Gordon & Diaz	
7	423 North Coast Highway	
	P.O. Box 1270	
	Newport, OR 97365	

8  
9 Dated this 6th day of January, 2006, at Washington, D.C.

10  
11   
12 \_\_\_\_\_  
13 T. Scott Thompson  
14 Counsel for Charter

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