BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

AR 506/AR 510

In the matter of a Rulemaking to Amend and Adopt Permanent Rules in OAR 860, Division 028 Regarding Sanctions for Pole Attachments	))))	Second Round Comments of Oregon Joint Use Association

The Oregon Joint Use Association wishes to clarify its position regarding its deletion of the language "or wireless carriers" from the definition of "licensee" in OAR 860-028-0020(10). The OJUA's intent with this amendment is to strongly urge the Commission to address all wireless issues, including both safety and rate-related issues, in a separate docket.

Our recommendation regarding the deletion of this language should not be construed as support or opposition for the inclusion of wireless within the definition of "licensee". The OJUA has not yet taken a substantive position on this matter. We do, however, strongly support the addition of a separate docket with a more generous timeline to provide a much needed, full airing of all access, safety, and rate issues. A new docket would also greatly assist in avoiding the unintended consequences resulting from a last-minute addition of wireless into this rulemaking.

In summary, our concerns focus on access issues, procedural concerns such as improper notice, the effect of the inclusion of wireless on the safety, rate, and sanctions rules already negotiated and drafted, and the unintended consequences of acting too quickly. Below we provide further details specifying why a separate rulemaking is necessary.

I. Authority to Access Issues

The Commission, the OJUA, and all industry representatives must have adequate opportunity to discuss and provide guidance on access issues. Specifically, further discussion is warranted regarding which entities have authority to access poles and towers. This is a critical threshold issue for the future of joint use and for the Commission and should be considered separately from the rate discussion.

It appears to the OJUA that the Commission is now in effect considering the issue of whether *any* provider of telecommunications services has the authority to access poles. If this is so, this is an entirely new question and participants must be allowed more time to confer and advise. One example of a topic that warrants further discussion is the definition of "wireless". Participants in the workgroups have used this term liberally, but no clear definition of the term presently exists in the Oregon Administrative Rules. Another example of a topic warranting further discussion is whether all attachees would have access to both poles *and* towers under these rules. This issue has serious safety and rate implications and also warrants further discussion.

Lastly, the OJUA proposes that the Commission take a new approach to solving these access issues. Currently, the Commission is considering adding wireless to the definition of "licensee," but this approach does not adequately address the universe of problems regarding access. The real issue which should be before the Commission is how to define the types of utility and telecommunications services which should be regulated and included under the PUC's protectionary umbrella. Creating a clear parameters outlining when a certain technologies fall under PUC regulation (rather than adding

new technologies in an ad hoc fashion) will aid the Commission in the future when new technologies are created. It will also provide industry with clear guidance on authority to access issues. Some examples of topics that warrant further discussion in this area are: 1) whether the technology seeking inclusion within the rules is in need of protectionary regulation; 2) whether the technology serves the public; and 3) whether the technology needs access to poles or towers to serve the public.

II. Notice Issues

The OJUA is also concerned that this access issue was not properly noticed in the Notice of Rulemaking issued for this docket. For this reason, the OJUA recommends the creation of a separate docket and separate issues list for these new access issues involving wireless.

III. Effect on Current and Proposed Rules

If a separate docket for wireless is not opened, the OJUA strongly recommends a full re-evaluation of the 506/510 dockets and an extension of the docket timelines. This re-evaluation is critical because all decisions made during 506/510 were made assuming that wireless was discluded. The eleventh hour inclusion of wireless would pose several access, rate, and safety questions regarding the 506/510 rules.

At no time during these lengthy negotiations did the OJUA or Staff seriously contemplate the inclusion of wireless as attachees. The eleventh-hour proposal to include wireless may or may not conflict with the rules as they are presently drafted. A thorough review has not been done.

The inclusion of wireless will likely affect not only safety-based regulations, but also rate-based and sanctions-based regulations. For example, the safety issue of whether an entity should have access to the area of the pole above the high voltage equipment may also effect “usable space” rate calculations. Lastly, many of the sanctions provisions have been crafted to have an equally punitive effect on all violators, despite their size or market dominance. This was done through a careful consideration of each industry’s sanctions methods, pole rental rates, and revenues. The addition of wireless necessitates that the Commission revisit these sanctions calculations.

IV. Avoiding Unintended Consequences

It is safe to assume that there will be unintended consequences of including an entire industry as an afterthought at the eleventh hour of a rulemaking process that has progressed for over a year. OJUA urges the Commission to consider that there is *less chance of harm* in creating a separate docket with new timelines than there is in tacking on an entire industry in the last minutes of a long-negotiated rulemaking. The creation of a new docket with new timelines would benefit all rulemaking participants, including wireless, the public, and the Commission.