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NOVEMBER 17, 2006

VIA E-MAIL AND FEDERAL EXPRESS

Filing Center
Public Utility Commission of Oregon
550 Capitol Street NE, Suite 215
Salem, Oregon 97308

Re: AR 506/510 -- Comments of Charter Communications, Inc.

Dear Clerk:

Charter Communications, Inc. ("Charter") respectfully submits an original plus five copies of the accompanying final comments and exhibits in Phase II of AR 506 and AR 510, along with Charter's proposed redline of the Division 028 pole attachment rules. Charter appreciates the opportunity to comment on these rules.

If you have any questions, please contact us.

Sincerely,

T. Scott Thompson
Jill M. Valenstein

Enclosures

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BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

AR 506/AR 510

PHASE II

In the Matter of **Rulemaking to Amend and Adopt Permanent Rules in OAR 860, Divisions 024 and 028, Regarding Pole Attachments Use and Safety.**	) **FINAL ROUND COMMENTS OF CHARTER COMMUNICATIONS**))))

Charter Communications Inc., (Charter) respectfully submits these Final Comments pursuant to Administrative Law Judge Christina M. Hayes' October 10, 2006 Ruling amending the schedule for the final round of comments in this rulemaking.[1] Charter appreciates the time and effort this Commission has devoted to standardizing pole attachment rates and practices in Oregon to promote a more effective, reasonable and cooperative joint-use environment. Adopting "clear and [] comprehensive regulations for joint use" that balance the interests of the parties, provide predictability, allow full cost-recovery for pole owners, but not over-recovery, will ensure that "Oregon's utility lines and facilities accommodate competitive changes and are constructed, operated, and maintained in a safe and efficient manner," as the Commission hoped when instituting this proceeding.[2]

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[1] Disposition: Docket Schedule Modified; Agenda For Commission Workshop Set.

[2] Notice of Proposed Rulemaking Hearing, filed with the Secretary of State June 15, 2006 ("NPRM").

As Judge Hayes requested at the November 8, 2006 Hearing, Charter's Final Round of Comments largely focus on rate-related issues, as well as Staff's "2nd Round Comments," filed the date of the Hearing.[3] In these Comments, Charter reiterates its support for adopting the "FCC Formula" for calculating the maximum rate under Oregon law. To illustrate the ease with which the FCC Formula can be applied, Charter has also set forth a narrative describing "The Mechanics Of The FCC Formula" (*see* Section II.A.4, below) and accompanying calculation spreadsheets. Exhibits 4-6. Charter was disappointed to see that Staff modified its original rule proposals in ways that Charter believes conflict with Oregon law, particularly with respect to pole attachment rates.

Charter incorporates by reference its First Round Comments in AR 506 and AR 510, along with its rules redlines in those dockets, all filed on September 28, 2006.[4] Charter does not duplicate its First Round Comments here, except to the extent relevant to Staff's 2nd Round Comments and the Oregon Joint Use Association's November 16, 2006 "Proposed Sanctions Rules," proposal, which Charter addresses in Section III.

Charter also generally supports the opening comments of the Oregon Cable Telecommunications Association ("OCTA"), also dated September 28, 2006, and Verizon Northwest, Inc. ("Verizon), filed September 28, 2006, as amended on October 2, 2006. Charter will also address the at the end of these Comments.

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[3] 2nd Round Comments of PUC Staff in AR 506, filed Nov. 8, 2006.

[4] *See* First Round Comments of Charter Communications, AR 506-Phase II, filed Sept. 28, 2006 (hereinafter "Charter's First Round Comments"); *see also* First Round Comments of Charter Communications, AR 510, filed Sept. 28, 2006 (hereinafter "Charter's First Round Comments in AR 510")

I. INTRODUCTION AND BACKGROUND

Poles are "essential" facilities, access to which is vital for the distribution of facilities-based communications services, including broadband.[5] Because utilities possess monopoly ownership of poles, pole owners have often abused their control over these facilities for monetary, competitive and other gains.[6] Oregon pole owners, particularly electric utilities, which own the vast majority of poles in the state, are no exception. Indeed, the sanctions regulations, coupled with the lack of specific pole attachment rules, have encouraged *excessive* abuses by Oregon's electric utilities.

As Charter described in its First Round Comments in AR 510, over the last several years, Charter has diligently pursued its Commission-approved, Inspection/Correction and Permit Reconciliation Program, paying for and documenting thousands of safety violations *by all attachers*, including pole owners, on over 150,000 poles, as well as notifying pole owners of self-identified unpermitted attachments (expending a total of $8.5 million in the process).[7] Nevertheless, some pole owners continue to sanction Charter, sending a bill with every violation notice—even for minor,

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[5] It is a declared "goal of the [State of Oregon] to promote access to broadband services for all Oregonians in order to improve the economy in Oregon, improve the quality of life in Oregon communities and reduce the economic gap between Oregon communities that have access to broadband digital applications and services and those that do not . . . ." ORS 759.016(1). *See also* Oregon Telecommunications Coordinating Council, Building the Internet Forest: Proposal Submitted on behalf of ORTCC for the Oregon Business Plan 5th Annual Leadership Summit, (Oct. 30, 2006) at 1 ("Broadband telecommunications capability is an accelerator of economic development. There are significant economic benefits to using broadband technologies for business. With broadband access, worker productivity increases, jobs are created, and wages grow").

[6] *See National Cable and Telecom. Ass'n v. Gulf Power*, 122 S. Ct. 782, 784 (2002) (finding that cable companies have "found it convenient, and often essential, to lease space for their cables on telephone and electric utility poles. . . . Utilities, in turn, have found it convenient to charge monopoly rents"); *see also FCC v. Florida Power Corp.*, 480 U.S. 245, 247 (1987) (upholding the "FCC Formula" and stating that "[t]he Pole Attachments Act . . . was enacted as a solution to a perceived danger of anticompetitive practices by utilities in connection with cable television service. Cable television operators, in order to deliver their signals to their subscribers, must have a physical carrier for the cable; in most instances underground installation of the necessary cables is impossible or impracticable. Utility company poles provide, under such circumstances, virtually the only practical physical medium for the installation of television cables").

[7] Charter's First Round Comments in AR 510, at 4-5.

"technical" code violations.[8] Also, and perhaps more ironic, even though attachers agreed to the sanctions regime in exchange for rental relief, there are many pole owners who refuse to give Charter reduced rent even though Charter is in significant compliance around the state and is widely regarded as a responsible attacher. [9]

In addition, because the Commission's rules do not specify a methodology (*e.g.*, the Federal Communications Commission's ("FCC") Formula") for achieving the maximum allowable rental rate, electric utilities routinely charge rents using outdated information and that Charter believes exceed the statutory rate ceiling by including, in addition to the fully allocated rent, charges for: (1) facilities that Charter does not use or uses infrequently (such as street lights and transmission poles);[10] (2) unsubstantiated administrative surcharges;[11] (3) and inflation escalators, to name a few items.[12] Some pole owners also illegally charge Charter additional rent for (1) equipment in "unusable space," in violation of Oregon's rental rate statute and rules, which (like the federal statute) only allows pole owners to charge for attachments in usable space and (2)

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[8] *Id.*

[9] *Id.* at 5.

[10] *See* "Pole Rental For Year 2005 For Attachments To Portland General Electric Company Combined Transmission, Distribution, & Streetlight Poles Calculated In Conformance With Oregon PUC Rules," dated Mar. 28, 2005. As the title indicates, PGE includes the gross investment associated with transmission poles, distribution poles and street lights, even though the vast majority of attachments reside on distribution poles and attachers do not attach to street lights. Moreover, there is no adjustment made to the usable space presumptions to account for lengthier transmission poles which can be as high as 80 feet and PGE helps itself to a smaller appurtenance deduction for transmission poles (i.e., 5.2% v. the typical 15% figure). In addition, the calculation includes no reference to the rental rate reduction, which is presumed unless the pole owner proves an attacher does not deserve the reduction, in accordance with OAR 860-028-0230(3)-(4). Charter has attached PGE's Rental Rate Calculations as Exhibit 1 hereto.

[11] *See* Exhibit 1, at 2; *see also* State of Oregon 2003, Computation of Annual Pole Attachment Rental Rate PacifiCorp, d.b.a. Pacific Power & Utah Power, attached hereto as Exhibit 2.

[12] *See* Exhibits 1 and 2; *see also* Computation of Annual Pole Attachment Rental Rate, Tillamook P.U.D., in which TPUD not only includes an inflation escalator, the costs of towers and other items that do not comport with the Commission's existing rules, TPUD also has unilaterally decided that there is only 8.27 feet of usable space on its poles.

attachments to support equipment, although the costs associated with "support equipment," as defined in the rules, is already recovered in the fully allocated rate.[13]

Moreover, as Verizon described during the November 8, 2006 Hearing, because the Commission's current rules provide no definition of a "special inspection," which is the only type of chargeable inspection under the existing rules, Charter and other attachers are constantly bombarded with invoices for repetitive, unnecessary and inaccurate inspections that greatly benefit the pole owner and generate revenue.

Consequently, Charter has been forced to expend a great deal of resources on unreasonable over-charges—resources that could have been used to provide more advanced broadband communications services for Oregon's consumers and lower cable rates.

Eliminating the existing sanctions regime will go a long way towards alleviating some of these abuses. But this rulemaking (AR 506) must adequately address the less blatant abuses if the Commission is to achieve its stated objectives and the kind of "effective" pole attachment regulation mandated by the federal Pole Attachment Act.[14]

To that end, Charter (and other attachers), like the Commission, came to this process hoping to advance from the *status quo* and move towards a more cooperative, safe and effective joint-use environment. In its First Round Comments and during the workshops, Charter offered a number of specific proposals, founded on Oregon law, FCC precedent, other certified state rules and standard industry practices that will provide guidance to the Commission when resolving disputes, balance the interests of the parties

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[13] *See infra* Section II.B.2.a. and Charter's First Round Comments at 14-18.

[14] 47 U.S.C. § 224(c)(3) provides that "a State shall not be considered to regulate the rates, terms, and conditions of pole attachments—unless [a] State has issued and made effective rules and regulations implementing the State's regulatory authority over pole attachments . . . ."

and ensure reasonable cost-recovery for pole owners, while promoting the deployment of broadband.

For example, as Charter urged in its First Round Comments and throughout the proceeding (and again in Section II of these Comments below), Charter believes the best way to achieve the various goals of this rulemaking is to adopt the specific rate methodology used by the FCC and relied upon by the vast majority of certified states. Application of the FCC cable formula allows pole owners to recover the fully allocated operating expenses and capital costs incurred in owning and maintaining poles, according to the ratio that the space used by cable bears to the usable space on the pole, just as the Oregon rate statute was designed to do. Application of the simple and expeditious FCC cable rate Formula that relies on publicly available data will provide much-needed guidance to the Commission when resolving rate disputes and, more importantly, often prevents them in the first instance. Using the FCC Formula also "takes the guess work out of 'what should be a direct charge[],'"[15] and encourages competition and investment by mitigating the inhibiting effects of artificially excessive pole rents.

Charter also proposed, among other things, that the Commission include seven essential "Duties of Structure Owners" that will provide predictability for joint-use relationships and guide the Commission in resolving disputes. Specifically, Charter recommended that the Commission incorporate standardized notice requirements (modeled after FCC and other certified state rules, and incorporated in the Central Lincoln-Verizon contract);[16] pole labeling requirements to ensure audit accuracy

[15] *See* First Round Comments at 34-36; *see also* Section II, generally.
[16] *See* First Round Comments at 39.

(modeled after Utah's rules)[17] and detailed invoicing requirements, which promote cooperation and reduce disputes (which is a standard industry practice).[18]

Charter also believes there should be a specific mechanism to ensure that pole owners acquire and submit accurate audit and inspection data (which is particularly important in Oregon where inspection error rates are sometimes more than 50%),[19] and that pole owners should be responsible for coordinating joint use of their poles (from FCC, Vermont and Utah rules), which is a critical factor for ensuring safe and reliable plant.[20] Pole owners should also pay the costs related to their own service, engineering and safety requirements (from the Pole Attachment Act and incorporated in the Central Lincoln-Verizon contract), just as attachers are required to do.[21] This "duty" is especially critical as pole owners begin to compete directly with their attachers.[22] Incorporating these "Duties" will lead to a more certain, equitable and less contentious atmosphere in Oregon, where broadband deployment can flourish, as Charter fully explained in its opening comments.

In contrast to communications attachers, electric pole owners have offered nothing constructive or new in their scant, legally insufficient first round comments, during the workshops or in the Hearing. Rather, electric pole owners' formidable

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[17] *Id.* at 30.
[18] *Id.* at 40-41.
[19] *Id.* at 41.
[20] *Id.* at 41-42.
[21] *Id.* at 42-43. It is important to note here, now that owners and attachers have largely completed compliance work in the state that involved merely rearranging existing attachments, the next phase is to begin changing out poles where clearance issues and loading problems still exist. As Clearview Cable stated at the Hearing, attachers are concerned that the costs associated with those pole changeouts will fall squarely on attachers whether or not they are responsible for the problem. The Commission must caution owners that this is unacceptable and adopt the federal statute and FCC rules in this regard, just as it did in *Central Lincoln People's Utility District v. Verizon Northwest, Inc.*, UM 1087, Order NO. 05-583 Contract Terms Established (May 16, 2005) ("UM 1087"), Pole Attachment Agreement, § 3.5 (hereinafter "*CLPUD - Verizon Contract*").
[22] *See nn.* 115-16, *infra* (discussing Broadband Over Power Lines and Verizon's Fios).

resistance to change has been evident throughout the process, despite the Commission's articulated reasons for commencing this rulemaking. Alleging unsubstantiated safety risks and subsidy claims,[23] Oregon's electric utilities seek to maintain the *status quo* so that they may continue charging illegal rents and fees,[24] using internal, "confidential" and unverifiable rate data[25] and imposing excessive sanctions.[26] According to statements made at the workshops and during the Hearing, electric pole owners also utterly fail to acknowledge that governmental authorities, including this Commission, typically require joint-use of poles, related facilities and rights-of-way where possible for important public policy reasons, including promoting widespread broadband deployment.[27]

For these reasons, Charter urges the Commission to adopt Charter's proposals in its First Round Comments (to the extent consensus was not reached during the workshops) and in these Final Comments, and reject the electric utilities' intransigence.

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[23] *See, e.g.,* PacifiCorp Talking Points Regarding Division 28, presented at the Hearing, Nov. 8, 2006 and filed with the Commission on Nov. 15, 2006.

[24] *See, e.g.,* PacifiCorp's First Set of Comments Regarding Division 28 at12 (advocating adjustment of annual rates for inflation).

[25] *Id.* at 8 (objecting to producing rate data to attachers to support rent calculations outside the "context of a docket").

[26] *See, e.g.,* PacifiCorp's First Set of Comments Regarding Sanctions Rules at 3, filed Oct. 4, 2006 ("PacifiCorp does not feel that it is appropriate to eliminate the ability of the pole owner to apply sanctions or to modify the sanction amounts to anything less than what is currently available under the existing administrative rules on sanctions").

[27] *See, e.g.,* proposed rule OAR 860-028-0060(1)(requiring that "[a]ny entity requiring pole attachments to serve customers should use poles jointly as much as practicable").

It is also important to mention, in the context of these rules, that "pole and conduit facilities are frequently already in the rate base of telephone and electric utilities. Add to this the equation that a vast majority of these poles sit on right-of-way that was either fully contributed to the utility or leased at a discounted rate . . . . [and] one begins to understand that the general public has an ownership interest in these [facilities] and should benefit accordingly. Be it the benefit of greater facilities-based competition [or] the benefit of rapid deployment of advance services. . . . Stewardship of the public resource should be the primary concern of pole owners." John Mann, CPA, *Pole Attachments*, Presented at the 2001 NARUC WINTER MEETINGS IN WASHINGTON, D.C., at p. 30 (Feb. 2001).

II. STAFF'S SECOND ROUND RULE PROPOSALS

As a preliminary matter, Charter supports many of Staff's "2nd Round" proposed rules. Staff's rules include several important principles, such as non-discriminatory access standards, reasonable timeframes and the ability to construct and hire contractors if pole owners fail to meet those timeframes. These rules will provide attachers with the tools they need to attain and serve customers in a timely fashion, particularly as pole owners compete directly with Charter. That said, Staff's "2nd Round" proposals fail in several significant ways to provide the kind of clarity and guidance the Commission sought when instituting this proceeding. Indeed, Staff has taken a giant step back from their original proposal by including provisions that serve to enforce monopoly power, rather than restrain it, violating Oregon law in the process.

For example, Charter was troubled to discover that Staff had removed, without apparent reason or comment, the reference to using "publicly available data," for rental rate purposes.[28] Reliance on publicly available data allows regulators and attachers alike to verify whether rates are just and reasonable without a full-blown rate case, as Charter explains in detail below. Staff also revised the definition of "Special inspection" so that the term means any "field visit for all non-periodic inspections," rather than "a field visit made at the request of the Licensee," which Charter supported in its First Round Comments.[29] This revision is problematic not only because there is no definition of "non-periodic inspections," but it also essentially codifies the kind of costly, erroneous, repetitive and unnecessary inspections that attachers have complained about throughout

[28] *See* Staff's (original) Proposed Pole and Conduit Attachment Rules at OAR 860-028-0020(3), defining "Carrying Charge" and requiring "owner's data from the most recent calendar year and that are publicly available to the greatest extent possible," compared to "2nd Round" rules merely requiring "owner's data from the most recent calendar year available."

[29] *See* discussion in Section II.C.1., below.

this process. Equally concerning is Staff's rejection of the FCC formula in favor of a "blended" rate method, [30] where pole owners are invited to dump transmission pole costs in with distribution pole costs, even though the vast majority of attachments reside on distribution poles and some attachers have no transmission pole attachments at all. It also appears that Staff, without legal basis or justification, has exempted equipment in "unusable space" from Commission regulation, contrary to the clear language of the Oregon pole statute.[31]

Charter urges the Commission to expressly reject these and other Staff proposals that, if adopted, would undermine the intent of this process and, in any event, are contrary to Oregon law, as Charter demonstrates below. Instead, Charter believes its First Round and Final Comments (including the Rules Redlines), modifying Staff's proposals, will better serve the Commission's goals and foster a safe, effective and cooperative joint-use environment where pole owners recover all their costs (and then some) and access can proceed at just, fair and reasonable rates, terms and conditions. In its Final Rules Redline attached to these Comments, Charter has revised these specific Staff provisions back to their original language and made other adjustments in accordance with its statements below.[32]

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[30] *See, e.g.,* 2nd Round Comments of PUC Staff at 5-6 discussing "Carrying Charges" and "Rebuttable Pole Costs, Dimensions and Definitions."
[31] *See* discussion in Section II.B.3, below.
[32] *See generally*, Final Charter Rules Redline, attached hereto.

A. Adopting The FCC Cable Rate Methodology (the "FCC Formula") Will Provide Numerous Benefits And Serve The Various Goals Of This Proceeding.

As Charter argued in its First Round Comments and throughout the proceeding, one of the best ways to achieve the Commission's varied objectives in this rulemaking is to adopt the FCC Formula to calculate the maximum (*i.e.*, ceiling) rate under the Oregon pole rate statute. Oregon pole owners (which all currently charge *at least* fully allocated rates) should be prohibited from selecting, at their own discretion, which costs should be allocated to the carrying charges and which should be a direct charge (a practice this Commission expressly rejected in UM 1087). Instead, pole owners should be required to calculate fully allocated rates based on the FCC Formula. Application of the FCC Formula will ensure reasonable rates for all parties (full cost recovery for pole owners and no over-charging to attachers) and take the guess-work out of which costs may be charged directly. Only then will pole owners be accountable for the rates and fees charged to attachers, allowing joint-use to proceed in a more cooperative and effective manner.

Charter reiterates that it is *not* suggesting that the Commission revise its usable space presumptions for distribution poles.[33] Charter is also *not* suggesting that utilities should not be able to recover directly for non-recurring, incremental costs such as pre-construction, make-ready and other necessary engineering work that solely benefits the attacher.[34] Charter is merely recommending that the Commission adopt the specific FCC methodology for computing pole cost and carrying charges at the maximum allowable

[33] *See* First Round Comments at 36 (explaining that Charter does not advocate amending Oregon's usable space presumptions even though Oregon "pole owners recover a larger share of the pole costs than" under a strict application of the FCC Formula).
[34] *See id.* at 34-26.

rate under Oregon law, rather than Staff's vague and imprecise proposals that do nothing to serve the Commission's express rulemaking goals. (*See* Section II.A.4, below, explaining in detail the "Mechanics Of The FCC Formula"). As Charter emphasized in its First Round Comments and throughout the proceeding, the benefits of the FCC Formula redound to pole owners, attachers and regulators alike.[35]

1. Adopting The FCC Formula, Which Relies On Publicly Available Data, Will Reduce The Number Of Rate-Related Disputes In Oregon And Provide The Commission The Guidance It Seeks When Rate Disputes Do Arise.

The FCC formula is a straight-forward, self-executing and economic approach for determining just and reasonable pole attachment and conduit occupancy rates using existing accounting measures to determine costs, based on an historical (or actual) cost methodology and publicly available data. "Congress did not believe that special accounting measures or studies would be necessary [in determining pole and conduit rates, as some pole owners here suggest] because most cost and expense items attributable to utility pole, duct and conduit plant were already established and reported to various regulatory bodies . . . ."[36] Even when there is an actual rate dispute, application of the FCC formula helps avoid "a prolonged and expensive complaint process."[37] Indeed, "[p]ermitting the use of non-public data would contravene the [Congressional] mandate [to] provid[e] a simple and expeditious process rather than a full-blown rate case."[38] Reliance on publicly available data—ARMIS reports in the case of ILECs and FERC Form 1 in the case of electric utilities—has allowed utility pole owners and

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[35] *Id.* at 30-36.
[36] *Alabama Cable Telecomm. Ass'n v. Alabama Power*, 15 FCC Rcd 17346 at ¶ 5 (2000) ("*Alabama Power*").
[37] *Alabama Power* at ¶ 6.
[38] S. Rep. No. 95-580, 98th Cong., 1st Sess. (1977).

attaching parties to resolve hundreds of rate issues without FCC or state commission involvement.

For example, the typical pole attachment agreement permits pole rates to be recalculated annually to reflect a utility's most recently filed cost information. Despite these annual increases, in states (including certified states) that use the FCC formula, neither the utilities nor cable operators find it necessary to seek FCC or state commission intervention to check those calculations. Instead, the industries have established transparent, private review mechanisms that apply the FCC formula to current data, thereby allowing almost all disputes to be resolved without federal or state agency intervention. What makes the process work in these states is the simplicity of the formula, its reliance on data that ties to publicly available ARMIS or FERC Form 1 reports, and the confidence of the parties that errors would be swiftly adjudicated at the FCC or state commission. As the FCC has recognized:

> An important attribute of the Commission's pole attachment program has been that the parties can compute the rate themselves without the necessity of filing a complaint before the Commission. This has facilitated negotiations and settlements among the parties either after complaints have been filed or before the dispute reached the level of a formal complaint since both parties knew what the Commission's determination would be.[39]

As Charter explained, all an attacher (or the Commission in a rate case) needs to do to verify whether a rate is just and reasonable under the FCC Formula, is download the data from the FCC's ARMIS or the FERC websites and plug it into the formula.[40]

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[39] *Amendment of Rules and Policies Governing the Attachment of Cable Television Hardware to Utility Poles*, 104 FCC 2d 412, ¶ 12 (1986).

[40] As Charter has mentioned throughout the proceeding, the one data point that *electric* utilities do not file that is needed to compute the rate is the pole count. That is why it is essential that the Commission clarify that the discovery rule set forth at OAR 860-028-0070(4)(e)(B) (Resolution of Disputes for Proposed New

When attachers are able to calculate rates under a specific formula that uses financial data filed with a public agency and certified by an officer of the company, they can be confident that the rates are just and reasonable. On the other hand, if the maximum rental rate is dependent on access to unverifiable, internal information controlled by the utility, as Staff (since it removed the reference to publicly available data) and the electric utilities unjustifiably recommend here, attachers have no independent means of assessing rates, short of filing a complaint and commencing a lengthy and complicated rate-making case.

2. The FCC Formula Is Tried, Tested And Widely Used.

Developed and refined over a period of 27 years, the FCC's methodology and embedded cost-based approach has survived several court challenges,[41] including at the United States Supreme Court, and has been repeatedly affirmed by Congress.[42] The FCC Formula has worked so well that more than 40 states, including the vast majority of "certified states," follow the FCC's approach. Indeed, every certified state commission that has considered its homegrown rate methodology since the passage of the Telecommunications Act of 1996,[43] has shifted to the FCC Formula, to take advantage of

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or Amended Contractual Provisions), which requires a pole owner to provide rate data to an attacher upon request "[i]n cases in which the Commission's review of a rate is required," must also apply *whenever* the attacher receives notice of its annual rent increase.

[41] *See FCC v. Florida Power Corp.*, 480 U.S. 245, 253-54 (1987)(upholding the FCC's pole formula and finding that it could not be "seriously argued, that a rate providing for the recovery of fully allocated cost, including the cost of capital, is confiscatory"). *See also Alabama Power Co. v. FCC*, 311 F.3d 1357 (11th Cir. 2002) (finding that "[b]efore a power company can seek compensation above marginal cost, it must show with regard to each pole that (1) the pole is at full capacity and (2) either (a) another buyer of the space is waiting in the wings or (b) the power company is able to put the space to a higher-valued use with its own operations. Without such proof, any implementation of the Cable Rate (which provides for much more than marginal cost) necessarily provides just compensation").

[42] In 1983, Congress lifted the five-year sunset provision that was contained in the original version of Section 224, indicating a clear intent that the formula was achieving the goals set forth in the Pole Act. Similarly, in amending Section 224 as part of the broad sweeping Cable Communications Policy Act of 1984, Congress left the formula intact. Congress also retained the formula without amendment in 1992 when it passed the Cable Television Consumer Protections and Competition Act, and, again in 1996 in the Telecommunications Act.

[43] Pub. L. No. 104-104, 100 Stat. 56 (1996).

the formula's varied benefits. State Commissions also find that the formula's historical cost methodology encourages competition by inhibiting the effects of artificially high pole rents.[44]

The New York Public Service Commission ("NYPSC") was one of the first certified states to conform to the federal approach for pricing pole attachments, following the 1996 Act. After studying extensive expert testimony suggesting alternative formulas, the NYPSC adopted the FCC Formula, explaining that application of the formula along with federal access standards would promote competition and assist telecommunications providers in deploying telecommunications facilities seamlessly across state lines. In reaching its decision, the Commission recognized that:

> Since the enactment of the Telecommunications Act of 1996, there has emerged a clear need for cooperative federalism in this and other areas of telecommunications so as to provide consumers the full benefits available from the development of competitive markets. In adopting the federal formula, the NYPSC sought "to make it easier for service providers to do business by eliminating unnecessary variation in regulatory requirements" and to "make it possible for firms operating nationally to compare favorably New York's practices and those followed elsewhere.[45]

For similar reasons, the Michigan Public Service Commission ("MPSC") also adopted the FCC Formula in 1997, following years of using its own rate standard. Faced with utility applications for steep pole rental increases, the MPSC concluded that the FCC

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[44] *See, e.g., Order Instituting Rulemaking on the Commission's Own Motion Into Competition of Local Exchange Service*, R.95-04-043, I.95-04-044, Decision 98-10-058, 1998 Cal. PUC LEXIS 879 (Oct. 22, 1998) ("By this decision, we take a further significant step in our program to open the local exchange market within California to competition.") (hereinafter "California Order").

[45] Case 95-C-0341, *In the Matter of Certain Pole Attachment Issues Which Arose in Case 94-C-0095*, Opinion and Order Setting Pole Attachment Rates (issued June 17, 1997).

approach was the most desirable and aligned pole rates in Michigan "more closely with other states that already adhere to this standard."[46]

A year later, in April, 1998, the Massachusetts Department of Telecommunications and Energy ("DTE") decided to model its approach on the FCC formula "in order to promote the goal of resolving pole attachment complaints by a simple and expeditious procedure based on public records so that all of the parties can calculate pole attachment rates as prescribed by the [DTE] without the need for our intervention."[47] The DTE found that "[w]hile no approach is without administrative difficulties . . . the FCC method simplifies the regulation of pole attachment rates as much as possible by adopting standards that rely on publicly available . . . data.[48]

In 2001, the Vermont Public Service Board issued new rules, essentially adopting the FCC formula for cable attachments, but with a more favorable presumption concerning usable space to reflect the taller plant typically in use today.[49] The Board believed that the reduction in pole attachment costs to cable companies, resulting from application of the formula, would "lead to cable services becoming available in some additional low-density

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[46] *Consumers Power Co., et al., Mich. Pub. Serv.* Case Nos. U-10741, U-10816, U-10831 at 27, 1997 Mich. PSC LEXIS 26 (Feb. 11, 1997), *reh'g denied*, 1997 Mich. PSC LEXIS 119 (April 24, 1997), *aff'd Detroit Edison Co. v. Mich. Pub. Serv. Comm'n,* No. 203421 (Mich. Court of Appeals , Nov. 24, 1998); *aff'd Consumers Energy Co. v. Mich. Pub. Serv. Comm'n,* No. 113689 (Mich. Sup. Ct. Aug. 31, 1999).

[47] *A Complaint and Request for Hearing of Cablevision of Boston Co., et al, pursuant to G.L. Chapter 166 § 25A and 220 C.M.R. § 45.04 of the Department's Procedural Rules seeking relief from alleged unlawful and unreasonable pole attachment fees, terms and conditions imposed on Complainants by Boston Edison Co.*, D.P.U./D.T.E. 97-82, p. 19 (Apr. 15, 1998).

[48] *Id.* The DTE recognized that the FCC approach "meets Massachusetts statutory standards as it adequately assures that [the utility] recovers any additional costs caused by the attachment of [] cables . . . while assuring that the [cable operators] are required to pay no more than the fully allocated costs for the pole space occupied by them." *Id.* at 18.

[49] VT. PUB. SER. BD. R. § 3.706(D)(2)(c).

rural areas. . . . [Thus creating] even more value for Vermonters as cable TV companies are increasingly offering high-speed Internet service to new customers."[50]

In 2002, the Regulatory Commission of Alaska issued new pole regulations adopting the FCC cable formula for both cable and telecommunications attachments.[51] In adopting the FCC's cable formula, the Alaska Commission specifically concluded that:

> The CATV formula is reasonable and should be the default formula for calculating pole attachment rates if the pole owner and the attachers cannot negotiate their own agreement. We find that the formula provides the right balance given the significant power and control of the pole owner over its facilities. We are also concerned that changing the formula to increase the revenues to the pole owner may inadvertently increase overall costs to consumers during a transition period before the pole owning utility reduces its rates to compensate for the increased pole revenues. Applying the CATV formula also comes with the benefit that a single formula (based on use) can be applied to the entire pole. We believe it is fair to assign the unusable portion of the pole based on how the usable portion of the pole is assigned. We are not convinced from the record that alternative formulas before us are any more accurate and reasonable than the existing CATV formula.[52]

Other certified state commissions that have adopted the FCC Formula include California,[53] New Jersey,[54] and, most recently, Utah.[55]

3. Most Oregon Utilities Already Base Their Rate Calculations On The FCC Formula.

Because Oregon's rate formula and rules are modeled closely after the FCC Formula, as Charter detailed in its First Round Comments,[56] implementing the federal

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[50] Policy Paper and Comment Summary on PSB Rule 3.700, at 6, available at http://www.state.vt.us/psb/rules/proposed/3700/PolicyComments3700.pdf.
[51] *In Re: Consideration of Rules Governing Joint Use of Utility Facilities and Amending Joint-Use Regulations Adopted Under 3 AAC 52.900 – 3 AAC 52.940*, Order Adopting Regulations, 2002 Alas. PUC LEXIS 489 (Alas. PUC Oct. 2, 2002).
[52] *Id.*
[53] California Order.
[54] *Readoption with Amendments*: N.J.A.C. 1418, 35 N.J. Reg. 5294 (Nov. 17, 2003).
[55] UTAH ADMIN. CODE R746-345 Pole Attachments (2006).
[56] First Round Comments at 30-31.

methodology will take relatively little effort. Virtually all pole owners know how the formula works. Indeed, Oregon ILECs like Verizon and Qwest, which operate in multiple states, calculate their Oregon rates precisely as they do in FCC states. Moreover, while electric utilities have exploited the lack of specificity in the Commission's current rules, loading up the Pole Cost with transmission pole costs, and tacking on illegal inflation escalators and unspecified overhead costs, their underlying calculations are nevertheless similar to the FCC Formula.

Even PUDs and Coops keep "FERC Accounting," as Mike Wilson of Central Lincoln PUD confirmed during the workshops. Therefore, although PUDs and Coops may not "publicly file" their financial information in a way that is accessible to attachers, they are nevertheless perfectly capable of calculating their rates in accordance with the FCC Formula and should be required to do so.[57]

4. Mechanics Of The FCC Formula.

The FCC rate formula, like the Oregon formula, creates a range of compensation, the low end of which is the "incremental costs [or] those costs the utility would not have incurred 'but for' the pole attachments in question," and the high end of which is an allocation of the fully-loaded "operating expenses and capital costs [including a return on investment] that a utility incurs in owning and maintaining poles that are associated with the space occupied by the pole attachments."[58] Therefore, anything above incremental costs is a contribution to the utility's overall revenue requirements. In this regard, most utilities recover such incremental or out-of-pocket costs in advance of any pole

[57] Otherwise, Coops and PUDs will act with impunity, loading up their rates with in appropriate "costs." *See, e.g.*, Exhibit 3 (Tillamook PUD calculations).

[58] *In the Matter of Implementation of Section 703(e) of the Telecommunications Act of 1996, Amendment of the Commission's Rules and Policies Governing Pole Attachments*, 13 FCC Rcd. 6777, ¶ 96 n. 303 (1998).

attachment through the imposition of "makeready" charges and therefore receive at least the minimum required by law.[59] Makeready generally refers to the modification of existing plant to accommodate additional facilities. Nevertheless, the FCC has long interpreted the rate formula statute to provide that when application of the formula reduces the pole owner's calculation in a rate case, the FCC will only reduce the rate to the statutory maximum.[60]

a. Electric Utility Rate Calculation

Under the FCC Formula, the maximum annual pole attachment rent is determined by multiplying the percentage of the total usable space occupied by the pole attachment by the sum of the operating expenses and actual capital costs of the utility attributable to the entire pole.[61]

The first step in the FCC's rate methodology, as it applies to electric utilities, is to calculate the utility's actual capital costs for poles, based on booked costs as reported in the FERC Form 1. For poles, the utility's capital cost is expressed as net pole investment, defined as gross pole investment (FERC Account 364), less accumulated depreciation for pole plant,[62] less accumulated deferred taxes for poles.[63] This generates

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[59] *Amendment of Rules and Policies Governing Pole* Attachments, Report and Order, ¶ 7 (2000).
[60] *See Florida Power*, 480 U.S. at 254.
[61] 47 U.S.C. § 224(d); *see also Amendment of Commission's Rules and Policies Governing Pole Attachments,* Order on Reconsideration, 16 FCC Rcd. 12103 at Appendix D-2 (2001) (setting forth the specific formulas and FERC accounts to be used when calculating the pole rate for electric utilities) (hereinafter "*FCC Order on Reconsideration*").
[62] Because electric utilities do not directly account for accumulated depreciation for poles, this figure must be derived. As the FCC explained, "[w]e divide gross pole investment [FERC Account 364] by the gross [electric] plant investment and multiply that figure by the [electric] plant accumulated depreciation to determine what portion of the plant accumulated depreciation is reasonable related to gross pole investment." *RCN Telecom Services of Philadelphia, Inc. v. PECO Energy Co.*, 17 FCC Rcd. 25238 at ¶ 8 (2002) (hereinafter "*PECO*").
[63] The amount of accumulated deferred taxes for poles is computed in a manner similar to accumulated depreciation, *i.e.*, by dividing gross pole investment [FERC Account 364] by the gross electric plant investment and then multiplying that figure by the electric plant accumulated deferred taxes (the sum of FERC Accounts 190, 281, 282 and 283).

the net investment in pole plant, which is then reduced by deducting the value (presumed to be 15 percent in the case of electric utilities) of appurtenances from which cable operators derive no benefit (*e.g.*, cross-arms). This generates the net investment in "bare" pole plant, which is then divided by the statewide total of poles the utility has in service, producing a net cost per bare pole.[64]

The next step is to calculate the carrying charges. The carrying charges are comprised of the maintenance, depreciation, administrative and taxes expenses, along with the overall rate of return. The carrying charges are expressed as percentages of expense to plant in service. The sum of the carrying charges is then multiplied by the net cost per bare pole. This produces an annual carrying cost per pole. The various carrying charges are computed as follows:

- **Maintenance Expense**: The maintenance carrying charge is derived by dividing pole maintenance FERC Account 593 (the book costs of which is includible in accounts 364 (distribution poles), 365 (overheard conductors and devices related to distribution poles) and 369 (services related to distribution poles)), by the net investment in FERC Accounts 364, 365 and 369.[65]
- **Depreciation Expense**: The depreciation expense is derived by multiplying the utility's depreciation rate for poles (as reported to the FERC) by the ratio of its gross investment in pole plant (FERC Account 364) to its net investment in pole plant (FERC Account 364 less accumulated depreciation and less accumulated deferred taxes).

[64] Again, the pole count is not available publicly and attachers must rely on pole owners for this data point.
[65] Net investment for FERC Accounts 364, 365 and 369 is computed by summing the gross amount in each account and subtracting accumulated depreciation (prorated for each account) and accumulated deferred taxes (prorated for each account).

- **Administrative Expense**: The administrative expense is derived by dividing the utility's total annual administrative expenses (the sum of FERC Accounts 920-931 and 935) by its net *electric* plant investment (gross *electric* plant investment less *electric* plant accumulated depreciation and less *electric* plant accumulated deferred taxes).[66]
- **Tax Carrying Charge**: The FCC Formula calls for inclusion of the following FERC tax accounts: 408.1, 409.1, 410.1, 411.4 and (less) 411.1. The tax expense carrying charge is derived by dividing the utility's operating tax expenses by the utility's net *total* plant investment (gross *total* plant investment less *total* plant accumulated depreciation and less *total* plant accumulated deferred taxes).[67]
- **Return**: The FCC formula includes a rate of return component as one of the annual carrying charges. FCC rules describe the rate of return component as the "rate of return authorized for the utility for interstate service ... [as defined in] the latest decision of the state regulatory body or state court which establishes this authorized rate of return."[68] In the absence of a state authorized rate of return, the FCC has set a "default rate of return" of 11.25%.[69]

Finally, the "use ratio" must then be computed. Attaching parties only pay for a proportional percentage of the pole plant they actually use in relation to the amount of "usable space" on the pole. The use ratio is therefore expressed as the portion of space occupied by an attachment divided by the "usable space" on a utility pole. FCC rules

[66] The administrative carrying charge in the FCC formula relates to the overall *electric* plant because utilities do not report administrative expenses for poles (*i.e.*, related to FERC Account 364).
[67] "Where the utility provides both electric and other services, [the FCC] use[s] total electric plant for [its] calculations, except for the tax element, where total plant values are used." *PECO* at n.32 (internal citation omitted).
[68] 47 C.F.R. § 1.1404(10).
[69] *FCC Order on Reconsideration*, at Appendix D-2.

presume that cable and CLEC attachers occupy one foot of space on a utility pole.[70] It is also presumed that an average utility pole is 37.5 feet tall and has an average of 13.5 feet of usable space.[71] The presumed use ratio is therefore 1 foot ÷ 13.5 feet, or 7.41%. In Oregon, it is presumed that poles are 40 feet tall, with an average of 10.67 feet of usable space.

As a final step, the net cost per bare pole, the annual carrying charges and the use ratio are multiplied to formulate the maximum allowable pole rental rate. Expressed as an equation, the FCC formula is as follows:

$$\textbf{Maximum Rate} = \frac{\textbf{Space Occupied}}{\textbf{Total Usable Space}} \textbf{ x Carrying Charges x Net Bare Pole Cost}$$[72]

Charter has attached a spreadsheet demonstrating how the FCC Formula works, including the page number where each FERC data point is found.[73]

b. Telephone Utility Rate Calculation

As Charter stated above, the telephone utilities in Oregon already calculate their rates in accordance with the FCC Formula. Moreover, the FCC requires telephone utilities to file ARMIS data for pole and conduit rate purposes on one convenient table.[74] In requiring all the data necessary to calculate the pole attachment rate and locating it on

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[70] *See Adoption of Rules for the Regulation of Cable Television Pole Attachments*, Mem. Op. and Second Report and Order, 72 F.C.C.2d 59 at ¶¶ 69-70 (1979) (establishing a rebuttable presumption of one foot); *see also Petition to Adopt Rules Concerning Usable Space on Utility Poles*, FCC 84-325 at ¶ 10 (July 25, 1984) (affirming presumption); *Amendment of Rules and Policies Governing Pole Attachments*, 15 FCC Rcd 6453 at ¶ 19 (Apr. 3, 2000) (same).

[71] *See* 47 C.F.R. § 1.1418. Based on National Electrical Safety Code guidelines and data received during rulemaking proceedings, and "[t]o avoid a pole by pole rate calculation, the Commission adopted rebuttable presumptions of (1) an average 37.5 foot pole height; (2) 13.5 feet of usable space; and (3) one foot as the amount of space a cable television attachment occupies." *Amendment of Rules and Policies Governing Pole Attachments*, Report and Order, 15 FCC Rcd. 6453 at ¶ 16 (Apr. 3, 2000).

[72] *See* 47 C.F.R. § 1.1409(e).

[73] *See* Spreadsheet: Calculation of Maximum Pole Attachment Rate – Electric Utility Based on FERC Form 1 Data (used in states that follow the FCC formula) With Oregon Usable Space Presumptions, Col. 1-Per ORS 757.282, attached hereto as Exhibit 4.

[74] *See* FCC Report 43-10, the ARMIS Annual Summary Report, Table III – Pole And Conduit Rental Calculation Information (for Verizon Northwest, Inc.- Oregon), attached hereto as Exhibit 5.

one Table, the FCC reemphasized its long-standing policy that "[r]eliance on publicly available data allow[s] pole owners and attaching parties to resolve rate issues without Commission involvement, which is a cost-savings benefit to utilities, cable operators, other attaching parties and the Commission."[75]

Other than a couple of minor differences (*e.g.*, the appurtenance deduction for telephone companies is 5%, not 15%), the rate calculation for telephone companies is nearly identical to the electric utility rate methodology. Charter has attached a sample telephone pole rate calculation that ties to "Table III – Pole And Conduit Rental Calculation Information," and demonstrates how simple this FCC Formula rate calculation is.[76]

B. Rejecting The FCC Approach In Favor Of Staff's Vague, "Blended Rate" Approach Will Undermine The Goals Of This Proceeding And Lead To Illegal Cost Over-Recovery.

Despite the obvious benefits and wide-ranging acceptance of the FCC Formula for calculating just and reasonable maximum rates, Staff (without any legitimate justification) does not support referencing the FCC Formula in the rules. Staff merely concludes that because their proposed definition of "Carrying Charge" is "flexible enough to include both" distribution pole and transmission pole accounts, they "do not recommend a direct reference to the FCC formulas—which include only distribution accounts . . . ."[77] Consequently, Staff, along with the electric utilities, appears to believe that allowing electric pole owners to continue charging unverifiable, unaccountable and, probably, illegal, pole attachment rents, is a better option. On the contrary, Staff's vague,

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[75] *2000 Biennial Regulatory Review—Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2*, Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-199, et al., (rel. Nov. 5, 2001).
[76] Sample ILEC Pole Rate Calculation, attached hereto as Exhibit 6.
[77] *See* "2nd Round Comments" of Staff at 5.

"blended-rate" approach, will result in the kind of over-charging and other monopolistic abuses that this rulemaking was designed to prevent. Additionally, Charter is concerned that more fair-minded utilities that do not currently over-charge may be tempted to do so if Staff's proposals are "codified."

1. Backing-Out Costs From The Relevant FERC Accounts That Factor Into The Carrying Charges So They Can Be Charged Directly Leads To Over-Recovery, Mistrust and Uncertainty.

Throughout this process, certain electric pole owners (all of which charge at least fully allocated rates) have argued that they should be able to continue to "back out" costs that are otherwise booked to publicly available FERC Accounts and apportion them instead as direct charges.[78] This practice was rejected in UM 1087 and should be rejected here, whether or not the FCC Formula is adopted.[79] While Staff has "cautioned" pole owners that "there can be no double-charging,"[80] Charter wonders how attachers can be assured they are not over-charged short of full-blown, annual ratemaking cases, unless the FCC formula is adopted. Indeed, allowing pole owners to pick and chose the costs they recover through the carrying charges and rely on internal, unverifiable data (which is exactly what Staff's latest proposal does), will lead to the kind of disputes this rulemaking was intended to prevent.

PGE has argued, for instance, that "[t]o the extent that the pole owner keeps adequate records that allow it to break out [administrative] costs and demonstrate that they are not rolled into the rental rates, the pole owner should be allowed to apportion these costs

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[78] *See* First Round Comments of Portland General Electric at 2 (filed Sept. 28, 2006).
[79] *Central Lincoln People's Utility District v. Verizon Northwest, Inc.*, UM 1087, Order NO. 05-042 at 15 (Jan. 19, 2005) (hereinafter "*CLPUD v. Verizon Order*").
[80] "2nd Round Comments" of Staff at 5.

as reasonably as possible to the entity that causes them to be incurred."[81] At the workshops PGE assured attachers that it does its best to make sure there is no double-recovery and that if an attacher has concerns it is free to review PGE's financial records and billing practices. Charter does not believe forcing attachers to delve into a utility's accounting processes in an attempt to ensure they are not being over-charged is what the Commission intended when it instituted this rulemaking. Nor is that what Congress had in mind when mandating a "simple and expeditious process" for determining rates, "rather than a full-blown rate case."

While it is theoretically possible to back costs out of the relevant FERC Accounts that factor in to the annual rate so that they may be charged directly to each attacher as an application processing fee, for example, no utility has ever convinced the FCC that such a time-consuming and complex endeavor is a reasonable substitute for strict application of the formula. For example, in *Texas Cable & Telecom. Ass'n v. Entergy Serv., Inc.*, Entergy claimed that its application fees were appropriate because it deducted a portion of costs booked to FERC Accounts and thus did not double-recover. The FCC found Entergy's arguments unpersuasive:

> [Entergy] points out that ". . . to the extent those costs are booked to FERC accounts included in the Commission's pole attachment formula, a deduction is made from the appropriate FERC account. Entergy does not, therefore, recover twice for any costs." *Entergy also asserts that, if it did include those costs in the accounts, they would be*

[81] PGE First Round Comments at 2 (emphasis added). Pole owners claim (and Staff seems to believe) that pole owners charge administrative and other costs directly because they are concerned about fairness to smaller attachers. That is a dubious claim. Based on the comments of certain smaller cable operators in the workshops and in other discussions, Charter understands that smaller operators overwhelmingly favor the transparency and fairness of the FCC Formula over the copious unverifiable direct charges that are constantly assessed against them. Moreover, smaller operators need more certainty for budgeting and other purposes. Smaller operators have found it very difficult to operate in Oregon because they never know when they might be hit for unexpected inspection charges, program, sanction costs and the like. Upon information and belief, Charter understands that every cable operator in Oregon, small and large, fully supports adoption of the FCC formula in Oregon. Pole owners' motives for direct charging are transparent: they want to generate revenue from the pole resource, as Verizon demonstrated at the Hearing.

> *reflected in the pole attachment rate and be borne by all attachers. . . ." That costs included in a [sic] such a rate are borne by all users is expected.* Entergy has not made a persuasive argument that the annual rate it would charge together with these fees would be significantly less than one based upon fully allocated costs, or that recovering these costs through direct reimbursement rather than through the annual fee is preferable.[82]

The FCC made a similar finding in *The Cable Television Ass'n of Georgia v. Georgia Power Co.*, 18 FCC Rcd 16333, ¶ 18 (2003) *recon. denied*, 18 FCC Rcd. 22287 (Oct. 29, 2003), when Georgia Power attempted to include a provision in a pole attachment agreement requiring cable operators to pay for a number of administrative services. The FCC rejected this provision, stating:

> We agree that this provision of the New Contract is unreasonable. Through the annual rate derived by the Commission's formula, an attacher pays a portion of the total administrative costs incurred by a utility. Included in the total plant administrative expenses is a panoply of accounts that covers a broad spectrum of expenses. A utility would doubly recover if it were allowed to receive a proportionate share of these expenses based on the fully-allocated costs formula and additional amounts for administrative expense. The allocated portion of administrative expenses covers any routine administrative costs associated with pole attachments. . . . Georgia Power has not argued persuasively that recovering these costs through direct reimbursement rather than through the annual rental rate is preferable or reasonable.

Likewise, the FCC has also rejected utility attempts to substitute its own "more accurate" data in place of the requisite FERC data in order to avoid "a prolonged and contentious ratemaking process."[83] In *Warner Amex Cable Comm., Inc. v. Arkansas*

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[82] *Texas Cable & Telecom. Ass'n v. Entergy Serv., Inc.*, 14 FCC Rcd 9138 ¶¶ 13-14 (1999) (emphasis added).

[83] *In the Matter of Amendment of Rules and Policies Governing Pole Attachments; In the Matter of Implementation of Section 703(e) of the Telecommunications Act of 1996*, 16 FCC Rcd 12103, at ¶ 128 (2001).

Power and Light Co., Mimeo No. 100 (1983), for example, the FCC disallowed the inclusion of certain expenses requested by the utility because although such inclusion "would be accurate [these] expenses are not reported in a separate account in FERC Form 1, and to provide the kind of detail necessary to support allocation of the accounts used to compute components of the carrying charges would unduly complicate and unnecessarily delay the process of determining the maximum lawful rate."[84]

2. Support Equipment, Application Processing Fees And The Costs "Related To Unauthorized Attachments" Are Recovered In The Carrying Charges Or Otherwise Recovered Under The Rules.

For the same reasons, Staff's conclusion that fully allocated "rental rates do not include the costs of attachment to support equipment, permit processing . . . or the costs related to unauthorized attachments," is, simply, wrong and arguably violates Oregon's rental rate statute, ORS 757.282. Again, all pole owners charge at least fully allocated rental rates in Oregon. Consequently, as Charter fully explained in its First Round Comments and during the workshops and hearing, the costs associated with "support equipment" as defined in the rules, "permit processing" (in which pole owners charge for office workers who handle the paper-work associated with applications) and "the costs

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[84] *Warner Amex Cable* at ¶ 13. *See also American Cablesystems of Florida Ltd., et al. v. Florida Power and Light Co.*, 10 FCC Rcd 10934 at ¶ 10 (1995) (declining to allow the utility to back out certain amounts from the FERC Account because "[t]he formulas rely on data electric utilities must report for specific accounts on FERC Form 1. The exclusion Florida Power proposes disaggregates one of those accounts in a way favorable to Florida Power. If we were to allow that exclusion, we would also, for fairness to [the cable operator], require Florida Power to disaggregate other accounts to eliminate other mismatches between investments and expenses. We decline to take that step because it would unduly complicate the pole attachment rate calculation process without materially increasing its accuracy"). To be sure, although PGE, PPL and others advocate recovering certain costs directly that would otherwise be allocated to the carrying charges, Charter is doubtful that any pole owner removes the expenses related to the employment of professional consultants, property, fire and other insurance premiums, franchise payments, to name but a few items that are recovered in Administrative FERC Accounts 920-930 and 935. Just as the FCC found in the American Cablesystems of Florida case, the pole owners cannot have it both ways.

related to unauthorized attachments," are indeed already recovered in the fully allocated rent.

a. Support Equipment

The term "Support Equipment," as defined in proposed OAR 860-028-0020(29) means "guy wires, anchors, anchor rods, and other accessories of the pole owner used by the licensee to support or stabilize pole attachments." FERC Account 364 (which is the capital account for distribution poles) already includes the cost installed of "anchors, head arm[s] and other guys, including guy guards, guy clamps, strain insulators, pole plates, etc."[85] Therefore, to the extent a licensee uses a pole owner's anchors, (which the pole owner often does not even allow—which is, in and of itself, inappropriate), the pole owner already recovers those costs in the annual pole rental rate.[86] A licensee would never use a pole owner's guys in any event, but is required to supply its own guys as necessary. Moreover, the 15% "appurtenance" deduction in the "Pole Cost" does not include a reduction for anchors and guys.[87] Those costs are included in the net bare pole cost. The 15% exclusion from Account 364 accounts for only non-pole related appurtenances, such as cross-arms. Finally, there is nothing in the Oregon pole rental

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[85] *See* 18 C.F.R. Part 101, FERC Account 364.

[86] *See, e.g., Amendment of Rules and Policies Governing the Attachment of Cable Television Hardware to Utility Poles*, Second Report and Order, 2 FCC Rcd 15, ¶ 20 (1987)("[T]he costs of the guys and anchors supplied by the utility should be included in the cost of a bare pole even if the cable operator supplied some of its own guys and anchors") (hereinafter "*1987 FCC Order*"); *Arlington Telecommunications Corp. et al. v. VEPCO*, 50 RR 2d 1152 (January 6, 1982) (disallowing separate charge for anchor attachments because it is already included in the investment component of the formula used to establish attachment rates); *Cox Cable Norfolk, Inc. et al. v. Virginia Electric and Power Co.*, 53 RR 2d 860 ¶ 33 (April 6, 1983) (finding that VEPCO could not deny right to attach to its anchors).

[87] *See, e.g., 1987 FCC Order*, at ¶ 18 ("We reject the argument that guys and anchors are solely user-related and therefore utility supplied guys and anchors should be excluded from the net cost of a bare pole. We believe that guys and anchors are required to stabilize the pole plant and are therefore pole-related within the meaning of 224(d))."); *Clear Picture v. United Telephone Co. of Ohio*, PA-81-0029, Mimeo No. 003181 (September 1, 1981), *recon. denied*, PA-81-0029, Mimeo No. 4591 (June 7, 1983) (cost of anchors and guys not subtracted from investment as appurtenances); *Teleprompter Corp. v. New England Telephone & Telegraph Co. and Public Service Co. of New Hampshire*, PA-79-0044, Mimeo No. 34556 (April 18, 1984) (cost of anchors and guys included in investment).

rate statute itself that could be construed to allow pole owners to charge a separate rental rate for "support equipment."

Consequently, in order to prevent over-recovery, confusion and disputes, the Commission should strike the proposed definitions of "Support Equipment" and "Support Equipment Cost," OAR 860-028-0020(29) and (30) respectively.

b. Permit Processing And Costs Related To Unauthorized Attachments

When pole owners charge attachers for "permit processing," they are attempting to recover a portion of the salaries of employees involved with joint use issues and/or administrative costs related to processing application paperwork. Those costs, however, should be allocated to the appropriate carrying charge, as the Commission correctly decided in UM 1087.[88] Pole owners recover directly for any engineering costs incurred to perform the pre-construction survey and in make ready charges associated with attacher applications.

Similarly, Staff's proposal allowing pole owners to recover any "costs related to unauthorized attachments" also violates Oregon's rate statute and should be rejected. Pole owners recover a large sanction in the event an "unauthorized attachment" is discovered. In this way, pole owners typically recover more than the annual rental rate they would have recovered if the attachment had been permitted. Moreover, ORS 757.271(2) allows pole owners to recover "any expenses incurred as a result of an unauthorized attachment," which would account for *actual* engineering expenses that the unauthorized attachment

[88] *See* UM 1987 at 15-16 ("The salaries of the people involved with 'joint use issues' or pole maintenance and operation must be calculated and allocated as part of the carry charge. Similarly, to the extent the application fees do not related to 'special inspections or preconstruction, make ready, change out, and rearrangement work,' application fees may not be recovered, and administrative charges related to processing new attachments should be allocated with the carrying charge").

caused the owner to incur, if any. Likewise, any administrative costs "related to unauthorized attachments" (*i.e.*, for salaries of the people involved in joint-use, including tracking unauthorized attachments) should be recovered in the carrying charges. Simply put, there are no other "costs related to unauthorized attachments," and Staff's proposal simply invites pole owners to create such "costs."[89]

For these reasons, *existing* OAR 860-028-0110(6), providing that the rental rates . . . do not cover the costs of special inspections or preconstruction, make ready, change out, and rearrangement work," and that "[c]harges for those activities shall be based on actual (including administrative) costs," appears to be consistent with the Oregon rental rate statute, ORS 757.282.

As a final matter, Charter strenuously objects to Staff's placement of the words "including administrative costs," at the end of their proposed rule. As Charter has

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[89] *See, e.g., Mile Hi Cable Partners v. Pub. Serv. Co. of Colo.*, 15 FCC Rcd 11450, ¶¶ 10-14 (2000) ("Although an unauthorized attachment penalty may exceed the annual pole attachment rent, the amount of the penalty and the circumstances under which it is imposed must be just and reasonable. . . . The only benefit to [the attacher] of failure to make application for attachment is the annual fee that it would not pay due to [the Pole Owner]'s ignorance of the particular attachment. An unauthorized attachment provides *no benefit to [the attacher] with regard to safety. [The attacher] is under the same obligation to make its attachments safely and incurs the same liability for any safety violations for unauthorized attachments as it does for authorized ones. Any compromise to the integrity of the pole jeopardizes [the attacher]'s installation and service as it does that of [the pole owner].* [The Pole Owner] suggests that the cost avoided by [the Attacher] for unauthorized attachments is the present value of fourteen years of annual fees plus some speculative amount related to supposed increased safety risks and administrative costs. First, it is unreasonable to infer that the alleged unauthorized attachments at issue have existed for fourteen years. Second, because [the Attacher] must always comply with safety concerns, there is no cost avoided by [the Attacher] related to safety issues. Third, because [the Attacher] is obligated to pay the maximum allowable rent, which is based upon fully allocated costs, any indirect administrative costs are recovered in the annual fee. . . . We believe that a reasonable penalty for unauthorized attachments will not exceed an amount approximately equal to the annual pole attachment fee for the number of years since the most recent inventory or five years, whichever is less. . . . ")(emphasis added), *aff'd*, 2002 FCC LEXIS 1589, ¶ 9 (2002), *aff'd, Pub. Serv. Co. of Colo. v. FCC*, 328 F.3d 675, 680 (D.C. Cir. 2003) ("Contrary to PSCo's assertions, the FCC's decision did take into account PSCO's safety concerns. The Commission noted that the agreement provisions obligate TCI to comply with the applicable state and local government safety regulations, and indemnify PSCo for any liability associated with its attachments (authorized or not). It then concluded reasonably that TCI's exclusive liability for hazards related to its attachments, and the detrimental effect that unsafe attachments would have on its own services, offer adequate incentives to heed the pertinent safety codes. Without any additional evidence, such as widespread safety or deterrence failures in similar agreements at the industry rate, the Commission was not compelled to consider formulating a higher one").

emphasized throughout this proceeding, any administrative costs associated with pole attachments should be allocated to the appropriate carrying charge. Charter believes that the wording of the existing rule, which places the phrase in parentheses, was intended to refer to administrative costs that are already inclusive in engineering labor rates. Charter therefore urges the Commission to retain existing rule OAR 860-028-0110(6) and has revised Staff's rules accordingly.

3. The Unusable Space On The Pole Is Covered Under The Oregon And Federal Pole Statutes And Rental Charges For Equipment In Unusable Space Are Illegal Under Both Statutes.

There has been much discussion in the workshops regarding whether these rules are intended to cover "unusable" space, and, if so, whether pole owners may charge rent for equipment placed in that space (*i.e.*, the 20 feet of clearance space from the ground to the lowest line attachment). Staff claims that "[t]he AR 506 pole attachment proposal rules (phase I and II) were primarily made with attachments in mind that are installed within the 'communications usable space' on the pole."[90] Thus Staff appears to agree with pole owners who believe that they are free to grant or deny access to that space at will and charge whatever unregulated fees they deem appropriate. Charter believes that both Staff and electric pole owners are mistaken. Oregon's rules have always applied to the entire pole and charging rent for equipment in unusable space violates the Oregon pole rate statute.

a. Equipment In Unusable Space Is Regulated Under Oregon Law

The Oregon pole statute defines "Attachment" as:

> [A]ny 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 electricity for light, heat or power, *and any*

[90] "2nd Round Comments" of Staff at 1.

> *related device, apparatus, or auxiliary equipment, installed upon any pole* or in any telegraph, telephone, electrical, cable television or communications right of ay, duct, conduit, manhole or handhole or other similar facility or facilities owned or controlled, in whole or in part, by one or more public utility, telecommunications utility or consumer-owned utility.[91]

Thus, according to the plain language of the statute, any "device, apparatus, or auxiliary equipment," related to "any wire or cable" installed upon any pole," is considered an attachment under Oregon's pole statute. Nothing in the statute exempts equipment in "unusable space." Indeed, the kind of equipment that Charter (and all attachers) places in the unusable space, typically power supplies and risers, are always "related" to the wire or cable it places in the communications space. Even if the Commission did not exert jurisdiction over attachments in unusable space, contrary to the Oregon legislature's explicit direction, those attachments would otherwise be regulated by the FCC.[92]

Moreover, Charter and all other attachers, including electric companies, have been placing equipment in unusable space for as long as there have been poles. Charter seeks pole owner permission to install power supplies and risers. Pole owners have always been able to deny access to unusable space for "insufficient capacity, safety, reliability and generally applicable engineering standards."[93] Charter also pays the utility for the electricity used to power its power supplies. In addition, while Charter is not opposed to placing its power supplies underground or on stub poles or ground-mounts when requested by a utility,

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[91] ORS 757.270(1) (emphasis added).
[92] The Pole Attachment Act covers "any attachment by a cable television system or provider of telecommunications service . . . ." 224(a)(4).
[93] Pole owners appear to claim that attachments in unusable space are unsafe. That is untrue. Otherwise, pole owners would not place their own equipment in that space. Charter finds it curious that pole owners do not seem to have a safety problem with equipment in unusable space if they can charge rent for it.

municipalities often forbid such activities. Therefore, as with the vast majority of pole attachments, Charter often has no choice but to locate its power supplies on existing poles.

b. Rental Charges For Equipment In Unusable Space Are Illegal

The Oregon rental rate statute, ORS 757.282, provides that "a just and reasonable rate shall ensure the public utility . . . no[] more than the actual capital and operating expenses, including just compensation, of the public utility . . . attributable to that portion of the pole . . . used for the pole attachment, including a share of the required support and clearance space *in proportion to the space used for [sic] pole attachment above minimum attachment grade level* . . . ."[94] Similarly, existing rule OAR 860-028-0110(3), which, presumably, is based on the statute, also clarifies that "[a] disputed pole attachment rental rate will be computed by taking the pole costs times the carrying charge times the portion of *usable space* occupied by the licensee's attachment." (Emphasis added).

Accordingly, as Judge Smith (now Hayes) correctly concluded in UM 1087, based on existing OAR 860-028-0110(3), "usable space must be allocated according to the actual *usable space occupied* by Verizon's attachment points, as long as they are made in accordance with accepted industry."[95]

Judge Smith's ruling also comports with longstanding FCC decisions. For example, in *Capital Cities Cable, Inc. v. Mountain States Tel. and Tel. Co.*, the pole owner attempted to charge a higher rental rate by "adjust[ing] the [FCC]'s-adopted one-

[94] ORS § 747.282(1) (emphasis added). This statutory language also demonstrates that attachers pay their share of the *entire* pole, not just for the usable space on the pole, contrary to statements made during the Workshops that attachers only pay for usable space and thus rental payments for equipment in unusable space is justified.

[95] *CLPUD v. Verizon Order* at p. 16 (emphasis added).

foot figure to account for space occupied by 'multiple attachments.'"[96] The FCC rejected this approach, explaining that attachments located in unusable space do not increase the amount of usable space occupied by a cable operator's bolted cable attachment.[97]

During its recent rulemaking, the Utah PSC also examined this issue and adopted rules that essentially codify FCC case law, in this respect. The new Utah rule specifies that "[a]dditional equipment that is placed within an attaching entity's existing 'Attachment Space,'" (within the *usable* space) *and* "equipment place in the unusable space which is used in conjunction with the attachments, is not an additional pole attachment for rental rate purposes."[98]

c. *If Rental Payments Are Allowed For Equipment In Unusable Space, That Space Must Then Be Considered "Usable."*

If pole owners insist upon charging rent for Charter's equipment in unusable space, that space must then become usable, which would result in reduced rates overall. Pole owners cannot have it both ways (*i.e.*, charging for equipment in that space but considering it unusable for rental rate calculation purposes).

To demonstrate that adjusting the usable space to include the 20 feet of ground clearance space (now considered unusable) would lead to reduced rates overall, Charter

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[96] 1984 FCC LEXIS 2443, ¶ 23 (1984).

[97] *Id.* ("*[T]he space deemed occupied by CATV includes not only the cable itself, but also any other equipment normally required by the presence of CATV.* Thus, the company has not met the burden of showing that CATV occupies an additional .67 feet of space because of dips and power supplies. Under the circumstances, then, it is appropriate to use the Commission's previously adopted figure of one foot occupied by CATV"); *see also Texas Cablevision Company v. Southwestern Electric Power Company*, PA-84-0007, ¶ 6 (1985) ("SWEPCO has apparently defined 'multiple attachments' to include not only attachments of multiple cables, but also attachment of facilities other than cable such as power supply cables and underground risers. SWEPCO is misguided. First, in adopting a standard of one foot for space deemed occupied by CATV, *the Commission not only included that space occupied by the cable itself, but also the space associated with any equipment normally required by the presence of the cable television attachment. Moreover, to the extent this ancillary equipment may occupy the 18-28 feet designated as 'ground clearance,' which by definition is excluded from usable space, it is to be omitted from any measurements*") (internal citations omitted) (emphasis added).

[98] UTAH ADMIN. CODE R746-345-2(C).

used calculations from a rate case decided by the FCC in 2002[99] and adjusted the usable space presumptions on the attached spreadsheet (Exhibit 4) as follows: (1) Column 1 entitled "As Per ORS 757.282," simply incorporates Oregon's usable space presumptions instead of the FCC's usable space presumptions (*i.e.*, 1/10.67 feet *vs.* 1/13.5 feet) in the "Total Usable Space" row[100] and (2) Column 2 entitled "20 Feet Added to Usable Space," incorporates the entire amount of clearance space (*i.e.*, 10.67 feet + 20 feet = 30.67 feet) in the "Total Usable Space" row.[101]

As the first column shows, if the rate is calculated using Oregon's current usable space presumption (*i.e.*, 10.67 feet), the rate would be $8.59 per foot per pole.[102] When the usable space presumptions are adjusted to assume that the 20 feet of clearance space where the power supplies, equipment boxes and risers (of *all* attachers, including pole owners) are located is "useable," the rate plummets to $2.99 per foot per pole.[103] Although under the adjusted usable space approach the attacher would be charged for the total amount of usable and (previously) unusable space occupied by a power supply and/or riser, power supplies are located on only 1 pole in every 1 to 4 miles (*i.e.*, there is often just one power supply for several miles). Thus, a utility could only charge for more than one foot of space on the limited number of poles with power supplies (@ 4 feet x $2.99), for example. In the meantime, the vast majority of poles, where Charter still uses only one foot of useable space, would yield a rate of only $2.99. The frequency of risers

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[99] *See RCN Telecom Serv. of Philadelphia v. PECO Energy Co.*, 17 FCC Rcd 25238 (2002).
[100] *See* "Calculation of Maximum Pole Attachment Rate – Electric Utility, Based on FERC Form 1 data (used in states that follow the FCC formula), with Oregon Usable Space Presumptions," attached hereto as Exhibit 4, at Column 1.
[101] Exhibit 4 at Column 2.
[102] *Id.* at Column 1.
[103] *Id.* at Column 2.

depends on the area, but can be as low as 1 in every 2 miles. Consequently, overall, pole owners would experience drastically reduced rates overall.

On the other hand, allowing a pole owner to charge for the vertical space occupied by risers would in many cases lead to over-recovery—even if rates were reduced in general. For example, it is very common for all attachers, including the pole owner, to place risers in the unusable space *on the same pole.* (Risers are most commonly used where facilities are going from underground to aerial or vice versa; thus, all the providers that were in an underground run will come up onto the first pole in line at the same place). Thus, allowing a pole owner to charge rent for space occupied for each attacher's vertical riser would mean that the pole owner was "recovering" two or three times, depending on the number of attachers on that pole, for the same pole space, resulting in an unjustified windfall. In addition, there is disagreement in the industry about what constitutes a "riser." For example, some vertical attachments are pencil-thin and made of light-weight flexible plastic. Still others are made of rigid plastic and are much wider and heavier. If pole owners were encouraged to charge for risers, disagreements would ensue over which vertical attachments were indeed "risers." Consequently, allowing a pole owner to charge for risers will not only lead to over-recovery on certain poles but also further disputes.

For these reasons, Charter recommends that the existing usable space presumptions be maintained and that pole owners be expressly forbidden from charging rent for attachments in unusable space. While increasing the usable space figures when calculating rates would reduce rates for attachers overall, Charter does not advocate such

an approach because it is contrary to applicable law, would unnecessarily complicate rate calculations, lead to disputes and result in over-recovery on some poles.

In order to prevent Oregon pole owners from including attachments in unusable space in the calculation of the rental rate, Charter suggests that the Commission add the following language to the end of 860-028-0110(5)(a): "*In no event shall licensee equipment or other Attachment located in the 20 feet of safety clearance space be considered as occupying Authorized Attachment Space for rental rate purposes.*" Finally, for further clarity and consistency, Charter recommends that proposed rule 860-028-0110(5)(c) distinguish between "additional or modified attachment[s]" in usable *versus* unusable space. Specifically, Charter suggests the following revision (proposed language in italics):

> An additional or modified attachment by the licensee that meets the Commission safety rules and that is placed within the licensee's existing authorized attachment space *and equipment in the 20 feet of safety clearance space* will be considered a component of the existing pole permit for rental rate determination purposes. . . .

4. Combining Distribution Pole Costs With Transmission Pole Costs Will Result In Rates That Exceed The Statutory Maximum.

There has also been a lot of debate over whether transmission poles and other transmission facilities are covered under Oregon's pole statute, and, if so, how rent for leasing space on those facilities should be calculated. Charter argued in its First Round Comments, that "[a]s far as Charter can determine, there is nothing that precludes the Commission from regulating pole attachments to structures other than distribution poles, and the term "utility pole" as used in OAR 860-028-0050(1)(a) should be clarified to include other structures over which the Commission has jurisdiction. Charter is therefore

pleased that Staff has proposed that the definition of "Pole," should be redefined to include transmission poles.[104] Charter does not agree, however, that "the calculation of the carrying charge percentages should include both distribution [FERC Account 364] and transmission [FERC Account 355] poles accounts," as Staff recommends in its 2nd Round Comments.[105] Indeed, Charter has consistently argued against this "blended" rate approach used by some pole owners because it unjustifiably inflates pole rents, in violation of the ORS 757.282.

Charter explained in its First Round Comments that pole owners feel justified including transmission pole costs in with the distribution pole rent calculation because some attachers attach to transmission poles. These claims are without merit. The vast majority of licensee attachments are located on distribution poles. For example, of the 92,000 PacifiCorp poles Charter occupies, only about 2200 (or 2.4%) of these are transmission poles. Some attachers have no attachments on transmission poles.

Moreover, while some pole owners insist on including FERC Account 355 (transmission poles) in the Pole Cost, these same pole owners fail to make an appropriate upward adjustment to pole height and usable space (the more usable space on the pole, the lower the rent), relying instead on distribution pole presumptions (*i.e.*, 40 foot poles with 10.67 feet of usable space.). Transmission poles are much taller than distribution poles and thus have more usable space. Therefore, even assuming a "blended" rate was justified (which it is not) then, a pole owner seeking to use such a methodology would have to adjust the usable space figure to account for the taller poles.

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[104] *See* Staff 2nd Round Rules at OAR 860-028-0020(21).
[105] Staff 2nd Round Comments at 5.

Rather than allow utilities to charge unlawful rates for every single pole, Charter suggested that the Commission instead should require pole owners with attachments on their transmission poles to provide two separate rates: one for distribution poles and one for transmission poles.

a. Proposed Transmission Pole Rate Formula

The FCC distribution pole Formula (described in detail above) can easily be transformed into a transmission formula, as follows:

First, in order to calculate the net cost per bare transmission pole, the formula would use FERC Account 355 (instead of FERC Account 364), less accumulated depreciation for transmission poles, less accumulated deferred taxes for transmission poles (both calculated using the same proration method in the distribution pole formula). As with the distribution pole calculation, the net investment in transmission pole plant would then be reduced by 15% to account for appurtenances, to produce the net investment in bare poles. That figure would then be divided by the statewide total of transmission poles in service to yield the net cost per bare pole.[106]

Next, the maintenance, depreciation, administrative, tax and rate of return carrying charges would be computed.

- Maintenance Expense: The maintenance carrying charge for transmission poles would be calculated similarly to distribution poles. Instead of dividing FERC Maintenance Expense Account 593 by the net investment in FERC Accounts 364, 365 and 369, in the transmission calculation, FERC Maintenance Expense Account 571 (which is the maintenance expense of overhead lines the book costs

[106] Neither distribution pole counts nor transmission pole counts are reported to the FERC. Therefore, the pole owner should be required to supply the transmission pole count to the attacher.

of which is includible in accounts 354 (transmission towers and fixtures), 355 (transmission poles and fixtures), 356 (overhead conductors and devices used for transmission purposes) and 359 (roads, trails and bridges used as transmission facilities)) is divided by the net investment in FERC capital Accounts 354, 355, 356 and 359.

- Depreciation Expense: As in the distribution pole formula, the depreciation expense for transmission poles would be calculated by multiplying the utility's depreciation rate for transmission poles by the ratio of the gross investment in transmission pole plant to its net investment in transmission pole plant.
- Administrative Expense; Tax and Rate of Return Expenses: The administrative, tax and rate of return carrying charges would be calculated exactly the same in the transmission pole formula because those carrying charges relate to either total electric plant or total utility plant in operation.

After the carrying charges are computed, the "use ratio" must be derived. Under the Oregon distribution pole formula, the use ratio is 1/10.67 feet (or 9.37%). Because transmission poles are much taller than distribution poles, the use ratio should be adjusted. Staff recommended that "a rebuttable presumption with respect to transmission poles in not practical . . . and that the Commission should make a fact-based determination on a case by case basis."[107] Charter disagrees. This proceeding was meant to establish standards that the Commission may use when resolving disputes. Although there is some variation on the size of transmission poles, just like there is for distribution poles, Charter understands that the most common height for transmission poles is 60 feet. If parties disagree, they can rebut the presumption in a disputed case.

[107] Staff 2nd Round Comments at 6.

In addition, a 60 foot pole would have to be buried more deeply for stability. Therefore, rather than a 6 foot setting or burial depth, a 60 foot pole would be set 8 feet below ground.[108] Ground clearance and safety space, however, should be maintained at 20 feet and 40 inches, respectively.

Using these figures, the use ratio on a 60 foot transmission pole would be: 1/28.67 feet (60 - 20 - 8 minus 3.33 = 28.67) or 3.48%. The final rental calculation would be performed just as the distribution calculation: net cost of bare distribution pole multiplied by the carrying charge percentage, multiplied by the use ratio.

Charter has revised the rules in accordance with this suggested methodology.

In the alterative, if the Commission is not prepared to adopt a transmission pole rate methodology, Charter recommends that pole owners be obligated to provide access to transmission poles but that all rates be derived using the FCC Formula for distribution poles. Under this approach, utilities would still be fully compensated under the rate statute for any incremental costs for providing access to their poles (through make-ready and other direct payments), and would receive fully allocated rates for the vast majority of attachments, which reside on distribution poles.

C. Additional Comments To Staff's Second Proposal.

Further to Charter's First Round Comments and the issues raised in these Final Comments regarding rates, Charter has the following, additional comments to Staff's Second set of proposed rules.[109]

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[108] *See Cablecom - General, Inc. v. General Telephone Company of the Southwest*, 50 R.R.2d 662 (1981), PA-81-0036, Mimeo No. 388 (November 5, 1981), in which the FCC used the following calculation to determine burial depth for certain pole heights in a case where a utility attempted to rebut the typical usable space presumptions: setting depth = 10% of pole height plus 2 feet.

[109] While Charter does not address the same issues here that it has already raised in its First Round Comments, Charter's rules redline attached to these Final Comments nevertheless incorporates both its First Round and Final Comments.

1. 860-028-0020(28): Definition of Special Inspection

Charter is concerned that Staff has revised its original definition of the term, "Special Inspection" without basis. Specifically, in Staff's first version, Special Inspection is defined as "an owner's field visit *made at the request of the licensee* for all nonperiodic inspections. A special inspection does not include preconstruction activity or post construction inspection."[110] In Staff's new proposal, "Special Inspection" is redefined as "an owner's field visit for all non-periodic inspections. . . ."[111] This modification is problematic because the costs for a "Special Inspection" may be recovered directly from the attacher. Without some limitation on a pole owner's ability to charge for inspections, they will continue to abuse their inspection programs for financial gain and to upgrade their own facilities on the attacher's dime. Indeed, because "periodic" inspection remains an undefined term, pole owners are free to classify any inspection as a "special inspection" so they may charge for the inspection. Charter therefore suggests that the Commission include a definition of "periodic inspection" as follows: "A Periodic Inspection means any inspection done at the option of the pole owner, including any required inspection pursuant to Division 24, the cost of which is recovered in the carrying charge."[112]

In the alternative, Charter continues to support the original definition of "Special Inspection."

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[110] Staff's original proposal at OAR 860-028-0020(26) (emphasis added).
[111] Staff 2nd Round Rules at OAR 860-028-0020(28).
[112] *See* Charter First Round Comments at 12-13.

2. 860-028-0100(3)-(5): Application Process

a. Access Standards

Charter supports Staff's inclusion of the federal, pro-competitive access standard in section 860-028-0100(3)(d). Specifically, this new section reads: "The owner may deny access for the following reasons: insufficient capacity, safety, reliability, and generally applicable engineering standards." Not only does this standard comport with federal law, this standard is also included in the CLPUD – Verizon Contract.

Incorporation of the Congressionally-mandated nondiscriminatory access principles of the federal Pole Attachment Act, is critical to promoting advanced communications services and achieving a less contentious pole attachment environment. These principles ensure that "no party can use its control of the enumerated facilities and property to impede, inadvertently or otherwise, the installation and maintenance of telecommunications and cable equipment by those seeking to compete in those fields."[113] This is particularly important in today's fiercely competitive environment, as electric utilities are poised to offer Broadband over Power Lines (or "BPL")[114] and as incumbent

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[113] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, First Report and Order, 11 FCC Rcd 15499, ¶ 1123 (1996) (hereinafter "Local Competition Order").

[114] The 1996 Act not only amended the Pole Attachment Act to mandate access for both cable and telecommunications providers, Congress also granted utilities the right to enter into competitive businesses. P.L. 104-104, § 103 (1996). "Perhaps fearing that electricity companies would now have a perverse incentive to deny potential rivals the pole attachments they need, Congress made access mandatory." *FCC v. Alabama Power*, 311 F.3d. 1357, 1363 (11th Cir. 2002). As a result of the 1996 Act, electric utilities have moved into competitive lines of businesses and must not be permitted to use their control over the pole asset to thwart competitions.

Indeed, just ten days ago, the FCC classified BPL as an "information service under the Communications Act of 1934." United Power Line Council's Petition for Declaratory Ruling Regarding Classification of Broadband over Power Line Internet Access Service as an Information Service, WC Docket No. 06-10, at 1 (Nov. 7, 2006). In so doing, the FCC, "remov[ed] regulatory uncertainty regarding the classification of the service. This approach is consistent with the framework that the [FCC] established for cable modem service and wireline broadband Internet access, as it establishes a minimal regulatory environment for BPL-enabld Internet access service that promotes a goal of ubiquitous availability of broadband for all Americans." *Id.* (internal citations omitted).

LECs, such as Verizon, are competing directly with cable operators, offering video, high-speed Internet over fiber and like services.[115]

Equally important, access decisions based on objective criteria, like safety, reliability and generally applicable engineering standards (*e.g.*, the National Electrical Safety Code), help to assure attachers that any access denials are fair, just and reasonable. The application of objective criteria to access requests will also aid the Commission during any related dispute.

b. Application Turn-around

Charter does not entirely support Staff's new version of rule 860-028-0100(3)(e), which allows attachers to proceed with their attachment if the owner does not respond to an attachment request in 45 days, but does not "deem [the application] approved," as Staff's original version of 860-028-0100(4)(d) provided. That means, although the owner failed to act timely, in accordance with the rules, the attacher will be ultimately punished with an unauthorized attachment sanction if it chooses to build without approval. Arguments regarding safety are a red herring, in this context. Attachers are always under the same obligation to attach in a compliant manner, whether or not the permit is approved. Without safe plant, communications attachers' own services would be in jeopardy.

Charter therefore urges the Commission to retain the original language, which not only accords with federal law, UM 1087 and other certified state rules, but also provides some predictability for attachers when competing for customers.

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[115] *See Verizon's Fios Services Build Momentum*, c/netnews.com, Aug. 1, 2006, http://www.news.com/; Mike Rogoway, *Verizon Will Take On Comcast Cable TV In Washington County*, The Oregonian, Dec. 15, 2005 ("Verizon Communications Inc. plans to begin offering television service in parts of Washington County in about two years, presenting the region's first credible challenge to Comcast . . . .").

For the same reasons, Charter does not understand why Staff removed the language from its original rule proposal allowing attachers to build upon notice that make-ready is not required (860-028-0100(4)(a)) and requiring make-ready to be done as quickly and inexpensively as possible (860-028-0100(5)). Those two provisions as originally written are exactly the kind of rules that this process was designed to generate.

III. OJUA PROPOSED SANCTIONS RULES NOVEMBER 16, 2006 VERISON

Charter believes that pole owners should have legitimate tools to ensure safe practices and proper rental payments. But pole owners have instead used the sanctions rules to generate profits and achieve undue, improper leverage over attachers. That is why in its First Round Comments in Docket AR 510, Charter "urge[d] the wholesale replacement of the sanctions with a cost-based approach that more closely accords with the standard industry practices around the nation. In the alternative, Charter would accept the [OJUA's September 11, 2006] submission, as further revised by Charter."[116]

While Charter maintains it original position, unfortunately the OJUA has back-pedaled significantly from its original proposal. Specifically, while the OJUA's first proposal was not perfect, it allowed attachers a grace period prior to the imposition of any sanction. Therefore, virtually every attacher agreed that it could live with the revised sanction proposal because the "gotcha" factor, along with the impetus to perform inefficient, erroneous audits and inspections was largely removed.

Half way through the process, however, the OJUA had a change of heart and included an immediate sanction for "violations occurring on attachments which are newly-constructed and newly-permitted or are caused by the occupant's transfer of

[116] *See* Charter First Round Comments in AR 510 at 1.

currently-permitted facilities to new poles."[117] Notwithstanding that Judge Hayes called an immediate sanction "draconian" and Commissioner Buyer asked the OJUA to revise it, immediate sanctions for new construction remain in the OJUA's final proposal. For the reasons set forth below and discussed throughout this proceeding, Charter urges the Commission to reject OJUA's immediate sanction for new construction and transfers in favor of OJUA's September 11, 2006 proposal (as further modified in the workshops).

First, although attachers attempt to achieve perfection when installing new facilities, that is not always possible, particularly when performing a large build (*e.g.*, building an entire town). Second, while pole owners are free to put attachers out of compliance, which they often do,[118] and perform significantly erroneous inspections and audits, Charter does not believe an immediate sanction for attachers could be considered "just, fair or reasonable," under ORS 757.273. Third, and perhaps most significantly, Charter is very concerned that allowing a pole owner to impose immediate sanctions on new construction will transform the "post-construction inspection," which many pole owners now do not even perform, into the revenue-generating program that currently characterizes some pole owners' audit and periodic inspection programs. These inspection "programs" are one of the primary sources of discontent and disharmony in the state. Therefore, if OJUA's proposal is adopted as is, the Commission can only expect the same kinds of disputes that led to this rulemaking.

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[117] OAR 860-028-0150(5).

[118] For example, once an attacher has an established attachment, pole owners often place a transformer that encroaches on the safety space, without notice to the attacher. Pole owners also place risers that do not run high enough so that they stop in the safety space, putting the attacher out of compliance, or run a secondary service wire to a building, causing lack of clearance to the attacher's mainline or drop, to list a few owner transgressions.

Charter also objects to an immediate sanction with regard to transfers. Attacher transfers are often performed by utility workers, for efficiency purposes, without notice to attachers. Indeed, many pole attachment agreements include a provision allowing the utility to perform such transfers. Therefore, allowing a pole owner to charge an immediate sanction for a transfer will generate disputes over which party actually performed the transfer.

Finally, Charter objects to the provision allowing a pole owner to charge repetitive sanctions for unpermitted attachments. Specifically, OAR 860-028-0140(3) allows unauthorized attachment sanctions, which are 5 times the rent if self-reported and 5 times the rent plus $100 if owner-discovered, to be applied every 60 days. That means within one year, an owner can assess a sanction of 30 times the rent plus $600.

The unauthorized attachment penalty should serve to compensate a pole owner for lost rent, not punish an attacher that fails for whatever reason (including because of a dispute over whether the attachment is actually unauthorized) to submit a permit upon notice of an unauthorized attachment. Indeed, because owners' audits are often considerably inaccurate, it takes time for attachers to verify that the audit results are correct. Charter recommends that this provision be revised so that pole owners may impose the sanction once annually if the attacher has failed to submit a permit.

IV. CONCLUSION

For the foregoing reasons, Charter urges the Commission to adopt the Staff's proposals as modified by Charter's First Round and Final Comments. These rules, as modified, will provide guidance for the parties, as well as the Commission, and will ensure that Oregon's utility lines and facilities accommodate competitive changes and are constructed, operated, and maintained in a safe and efficient manner.

Respectfully submitted this 17th day of November, 2006.

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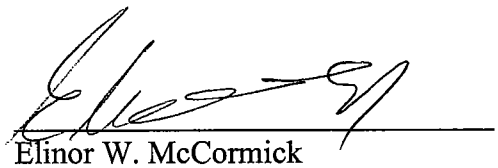
CERTIFICATE OF SERVICE

I certify that I have this day served a copy of the foregoing Comments of Charter Communications, Inc. upon all parties of record in AR 506/510 by delivering a copy in person or by mailing a copy properly addressed with First Class Postage, pre-paid or by electronic mail, pursuant to OAR 860-013-0070, to all parties or attorneys of parties listed on the Commission's service list in this matter.



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28-Mar-05

POLE RENTAL RATE FOR YEAR 2005
FOR ATTACHMENTS TO
PORTLAND GENERAL ELECTRIC COMPANY
COMBINED TRANSMISSION, DISTRIBUTION, & STREETLIGHT POLES
CALCULATED IN CONFORMANCE WITH OREGON PUC RULES

1.	NET COST OF A BARE POLE	
	A. Gross Pole Investment Accts. 355, 364, and 373	$209,539,623
	B. Depreciation Reserve-Poles	128,191,250
	C. Accum. Def. Income Taxes	5,353,011
	D. Net Pole Investment (A-B-C)	75,995,362
	E. X-arms, Etc. = (Distr. Pole Invest*15%+Trans Pole Invest*5.2%)	9,776,083
	F. Net Pole Inv. Less X-arms (D-E)	66,219,279
	G. Total Poles in Service	256,029
	H. Net Cost of Bare Pole (F/G)	258.64
2.	DEPRECIATION RATE ADJUSTED TO REFLECT NET INVESTMENT	
	A. Depreciation Rate For Gross Pole Investment	6.78%
	B. Gross Pole Investment	$209,539,623
	C. Net Pole Investment	75,995,362
	D. Gross Pole/Net Pole Investment Ratio Equals (B/C)	2.757
	E. Depreciation Rate Net Investment (A*D)	18.70%
3.	ADMINISTRATIVE & GENERAL EXPENSE FACTOR	
	A. Total Admin. & Gen. Exp	$88,913,724
	B. Gross Plant Investment	3,705,832,509
	C. Plant Depreciation Reserve	1,767,363,405
	D. Accum. Def. Income Taxes	199,965,013
	E. Net Plant Investment (B-C-D)	1,738,504,091
	F. Admin & Gen Expense Factor (A/E)	5.11%
4.	MAINTENANCE EXPENSE FACTOR	
	A. Overhead Line Maint Exp.	$18,338,135
	B. Gross Pole Investment	177,335,477
	C. Gross OH Conductor Invest.	294,388,731
	D. Gross Services Invest.	240,446,807

	H. Net Plant Investment		1,738,504,091
	I. Normalized Tax Factor (G/H)		7.91%
6.	COST OF CAPITAL = AUTHORIZED RATE OF RETURN		
	A. Authorized Rate of Return		9.08%
7.	COMBINED CARRYING CHARGE FACTOR - POLES		
	A. Depreciation Exp Factor		18.70%
	B. Admin & Gen Exp Factor		5.11%
	C. Maintenance Exp Factor		5.60%
	D. Tax Normalization Factor		7.91%
	E. Authorized Rate of Return		9.08%
	F. Total Carrying Charge Factor (A thru E)		46.41%
8.	AMOUNT OF REQUESTED SPACE / USABLE SPACE		
	A. Usable space on 40' pole (1)	10.67	
	B. Requested space	1	0.09375
9.	ANNUAL RENTAL RATE PER POLE ATTACHMENT		
	A. Net cost of Bare Poles (1H)		$258.64
	B. Total Carrying Charge Factor (7F)		0.4641
	C. Percentage of Requested Space (8B)		0.0938
	D. 2002 Basic Rental Rate (A*B*C)		$11.25
	E. 2005 Basic Pole Attachment Rental Rate (2002 Annual Rate Escalated at 2.5% per Year) =		$12.12
	F. UAM Overhead not in Carrying Charges		$438,009
	G. Number of Attachments to PGE Poles		220,173
	H. Total Overhead per Attachment (9F/9G)		$1.99
	I. 2005 Total Overhead per Attachment (2004 Annual Rate Escalated at 2.5% per Year) =		$2.04
	J. 2005 Annual per Pole Attachment Rental Rate (9E+9I)		$14.16

(1) Despite pole-height variability between distribution and transmission poles, 40' poles still predominate on a combined basis. Also, according to PGE engineering, the first 34' above ground consist of the same usable-space dimensions, regardless of pole type.

STATE OF OREGON
2003
COMPUTATION OF ANNUAL POLE ATTACHMENT RENTAL RATE
PACIFICORP, d.b.a. PACIFIC POWER & UTAH POWER

A.	Net Investment Per Bare Pole			
	(1)	Investment in wood poles & fixtures	$337,135,365	
	(2)	Less depreciation reserve associated with Item (1)	($163,574,283)	
	(3)	Less deferred Federal income taxes associated with Item (1)	($16,681,758)	
	(4)	Net investment in poles and support equipment	$156,879,324	
	(5)	Less Crossarms & Appurtenances	($23,531,899)	
	(6)	Net investment in poles and support equipment	$133,347,426	
	(7)	Total number of wood poles	÷ 387,170	
		Net Pole Value		**$344.42 (PV)**
B.	Annual Carrying Charge			
	(I)	Depreciation Expenses	11.12%	
	(2)	Administration and General Expenses	3.02%	
	(3)	Maintenance Expenses	4.52%	
	(4)	Taxes	5.59%	
	(5)	Authorized Cost of capital	8.61%	
				32.86% (CC)
C.	Use Ratio Per Pole			
	(1)	Usable space on pole, in feet	10.67	
	(2)	Effective space occupied by Licensee Attachment	1.0	
				9.38% (PR)
D.	Annual Pole Attachment Rate			
		(PV) X (CC) X (PR)		**$10.62**
E.	2003 Basic Rate (2001 escalated at 2.5% per year)			**$11.15**
F.	Surcharge for actual A&G costs directly associated to pole attachments			**$0.40**
	2003 TOTAL ANNUAL RENTAL RATE PER ATTACHMENT			**$11.55**

NOTE: All data is as of end of business on December 31, 2001 except where noted.

Charter Communications
AR 506, Exhibit 2

Attachment B

Computation of Annual Pole Attachment Rental Rate
Tillamook P.U.D.

I. Pole Cost Computation		
Poles, Towers, and Fixtures X 85%		$6,926,675
Total Electric Plant	$56,753,330	
Accum Depr	$15,299,707	
Net Electric Plant	$41,453,623	
Depr %		*26.96%*
Less Accum Depr on Poles		$1,867,311
Net Pole Cost		$5,059,364
Number of Poles		22,917
Net Average Cost of Pole		220.77
II. Carrying Charge Computation		
Distr Exp - O&M Net of Direct Labor & Tree Trimming		*8.14%*
A&G Exp		*7.36%*
Depr and Amort Exp		*3.73%*
Taxes		*1.56%*
Net Income - Cost of Cap		*6.10%*
Total Carrying Charge		*26.88%*
III. Pole Rental Rate Computation		
Net Cost of Pole		$221
Carrying Charge		*26.88%*
Annual Pole Cost		$59
Average Pole Height	37.33	
Non-usable Space		
Below Ground	5.73	
Clearance	20.00	
Safety	3.33	
Total Non-usable	29.06	
Usable Space		8.27
Communication Space		
Space per Attachment	1.00	
Usable Space	8.27	*12.10%*
2003 Pole Rental Rate		$7.18
Escalation rate to 2005: (1.025)^2		*1.051*
2003 Annual Rate Escalated to 2005		$7.54
Direct Labor Costs (2004)		$90,562
Total Number of Contacts		22,111
Per Contact Assessment		$4.10
COLA Escalation rate to 2005: (1.03)		$4.22
Annual Pole Contact Rate		**$11.76**

Calculation of Maximum Pole Attachment Rate -- Electric Utility
Based on FERC Form 1 Data (used in states that follow the FCC formula)
With Oregon Usable Space Presumptions

	Per ORS 757.282	20 Feet Added To "Usable" Space
Net Investment Per Bare Pole		
Investment in Pole Plant	$311,042,370	$311,042,370
- Depreciation Reserve for Poles	$243,965,632	$243,965,632
- Accumulated Deferred Taxes	$47,592,560	$47,592,560
Net Investment in Pole Plant	$19,484,178	$19,484,178
- Investment in Appurtenances	$2,922,627	$2,922,627
Investment in Bare Pole Plant	$16,561,551	$16,561,551
/ Number of Poles - Equivalent	405,570	405,570
Net Investment per Bare Pole	$40.84	$40.84
Carrying Charges		
Maintenance		
Maintenance Expenses	$71,410,003	$71,410,003
/ Net Investment in 364,365,369	$66,841,394	$66,841,394
= Maintenance Carrying Charge	106.83%	106.83%
Depreciation		
Annual Depreciation Rate for Poles	2.25%	2.25%
Gross Investment in Pole Plant	$311,042,370	$311,042,370
Net Investment in Pole Plant	$19,484,178	$19,484,178
Gross Net Adjustment	1596.38%	1596.38%
Deprec Rate Applied to Net Pole Plant	35.92%	35.92%
Administrative		
Administrative Expenses	$332,918,874	$332,918,874
Total Plant--Electric	$14,626,785,648	$14,626,785,648
- Depreciation Reserve--Electric	$11,472,498,140	$11,472,498,140
- Accumulated Deferred Taxes--Electric	$2,238,042,911	$2,238,042,911
Net Plant in Service	$916,244,597	$916,244,597
Administrative Carrying Charge	36.34%	36.34%
Taxes		
Normalized Tax Expense	$639,281,736	$639,281,736
Total Plant	$16,262,102,070	$16,262,102,070
- Depreciation Reserve	$11,986,776,038	$11,986,776,038
- Accumulated Deferred Taxes	$2,400,545,719	$2,400,545,719
Net Plant in Service	$1,874,780,313	$1,874,780,313
Tax Carrying Charge	34.10%	34.10%
Return	11.23%	11.23%
Total Carrying Charges	224.42%	224.42%
Allocation of Annual Carrying Costs		
Space Occupied by Cable	1	1
/ Total Useable Space	10.67	30.67
Charge Factor	9.37%	3.26%
Maximum Rate		
Investment Per Bare Pole	$40.84	$40.84
*Carrying Charges	224.42%	224.42%
*Charge Factor	9.37%	3.26%
= MAXIMUM RATE	$8.59	$2.99

DATA INPUT SOURCE			FERC FORM 1 (pg. #'s) except as otherwise noted.
Accumulated Deferred Taxes 190 (Plant)	$427,981,196	$427,981,196	pg. 234, c 18
Accumulated Deferred Taxes 281 (Plant)	$0	$0	pg. 273, k 17
Accumulated Deferred Taxes 282 (Plant)	$2,778,232,854	$2,778,232,854	pg. 275, k 9
Accumulated Deferred Taxes 283 (Plant)	$50,294,061	$50,294,061	pg. 277, k 19
Accumulated Deferred Taxes-Total (Plant)	$2,400,545,719	$2,400,545,719	sum
Accumulated Deferred Taxes 190 (Electric)	$356,087,833	$356,087,833	pg. 234, c 8
Accumulated Deferred Taxes 281 (Electric)	$0	$0	pg. 273, k 8
Accumulated Deferred Taxes 282 (Electric)	$2,549,735,158	$2,549,735,158	pg. 275, k 2
Accumulated Deferred Taxes 283 (Electric)	$44,395,586	$44,395,586	pg. 277, k 9
Accumulated Deferred Taxes-Total (Electric	$2,238,042,911	$2,238,042,911	sum
Taxes 408.1	$239,087,226	$239,087,226	pg. 114, c 14
Taxes 409.1 Federal	$308,288,599	$308,288,599	pg. 114, c 15
Taxes 409.1 Other	$85,112,124	$85,112,124	pg. 114, c 16
Taxes 410.1	$10,485,895	$10,485,895	pg. 114, c 17
Taxes 411.1 Cr.	-$10,592,224	-$10,592,224	pg. 114, c 18
Taxes 411.4	-$14,284,332	-$14,284,332	pg. 114, c 19
Total Normalized Taxes	$639,281,736	$639,281,736	sum
Gross Investment in Total Plant	$16,262,102,070	$16,262,102,070	pg. 200, b 8
Gross Investment in Total Plant--Electric	$14,626,785,648	$14,626,785,648	pg. 200, c 8
Accumulated Prov for Deprec.--Total	$11,986,776,038	$11,986,776,038	pg. 200, b 22
Accumulated Prov for Deprec.--Electric	$11,472,498,140	$11,472,498,140	pg. 200, c 22
Gross Investment in 364	$311,042,370	$311,042,370	pg. 207, g 64
Gross Investment in 365	$498,003,170	$498,003,170	pg. 207, g 65
Gross Investment in 369	$258,000,034	$258,000,034	pg. 207, g 69
Sum	$1,067,045,574	$1,067,045,574	sum
Pole Maintenance Expense 593	$71,410,003	$71,410,003	pg. 322, b 119
Administrative Expense 920-931	$332,758,306	$332,758,306	pg 323, b 165
Administrative Expense 935	$160,568	$160,568	pg 323, b 167
Total Administrative Expenses	$332,918,874	$332,918,874	sum
Depreciation Reserve for 364 (prorated)	$243,965,632	$243,965,632	prorated
Depreciation Reserve for 365 (prorated)	$390,608,065	$390,608,065	prorated
Depreciation Reserve for 369 (prorated)	$202,361,953	$202,361,953	prorated
Total Depreciation Reserve	$836,935,651	$836,935,651	sum
Accumulated Deferred Taxes (Prorated to 3	$47,592,560	$47,592,560	prorated
Accumulated Deferred Taxes (Prorated to 3	$76,199,412	$76,199,412	prorated
Accumulated Deferred Taxes (Prorated to 3	$39,476,558	$39,476,558	prorated
Total Accumulated Deferred Taxes (prorate	$163,268,529	$163,268,529	sum
Depreciation Rate for Poles	2.25%	2.25%	pg 337.1 e 25
Overall Rate of Return	11.23%	11.23%	PUC rate case
Number of Poles	405,570	405,570	Pole Count-Elec. Co.

FORMULA FOR ELECTRIC UTILITY POLE RENT
(USING FERC ACCOUNTS FROM FERC Form 1)

Net Investment

Net Cost of a Bare Pole (A) = (Gross Pole Investment (Acc. 364) - Depreciation Reserve (Poles) - Accumulated Deferred Income Taxes (Poles)* - .15 of Net Pole Investment**) / Number of Poles

Carrying Charges***

Depreciation Expense = Depreciation Rate for Gross Pole x (Gross Pole Investment / Net Pole Investment**)

+

Administrative Expense = Total Administrative and General Expenses Administrative (Accounts 920 – 935) / (Gross Plant Investment - Depreciation Reserve - Accumulated Deferred Income Taxes)

+

Maintenance Expense = Account 593 / (Investment in Accounts 364 + 365 + 369 - Depreciation in Accounts 364 + 365 + 369 - Accumulated Deferred Income Taxes Related to Accounts 364 + 365 + 369*)

+

Normalized Taxes (Expressed As A Percentage of Net Plant Investment) = Accounts (408.1 + 409.1 + 409.1 + 410.1 + 411.4) - 411.1 / (Gross Plant - Depreciation Reserve - Deferred Income Taxes*)

+

Rate of Return = Annual Carrying Cost (B) = Rate Last Authorized by PSC or 11.25% (presumption)

Use Ratio

Use Ratio (C) = Space Occupied by Cable (1 foot) / Total Useable Space (13.5 feet)

Maximum Rate

Maximum Rate = (A) x (B) x (C)

* Deferred taxes are treated here as a rate base deduction.

** For purposes of these calculations Net Pole Investment equals Gross Pole Investment (Account 364) minus the Depreciation Reserve Related to Poles minus Accumulated Deferred Income Taxes Related to Poles.

*** Where the utility provides both electric and other services, the FCC uses the total electric plant for its calculations except for the tax element, in which total plant figures are used.

Data Run Date: 11/17/2006

FCC Report 43-01, the ARMIS Annual Summary Report

FCC Report 43-01
ARMIS ANNUAL SUMMARY REPORT

COMPANY: VERIZON NORTHWEST, INC.
STUDY AREA: OREGON
PERIOD: From: Jan 2005 To: Dec 2005
COSA: GTOR

Approved by OMB
3060-0512
Edition Date: 12/2005
Unrestricted Version

SUBMISSION 01
TABLE III

TABLE III - POLE AND CONDUIT RENTAL CALCULATION INFORMATION

ROW	ROW TITLE (a)	Amount (b)
Financial Information ($000)		
100	Telecommunications Plant-in-Service	1,273,155
101	Gross Investment - Poles	18,641
102	Gross Investment - Conduit	103,465
200	Accumulated Depreciation - Total Plant-in-Service	753,840
201	Accumulated Depreciation - Poles	16,986
202	Accumulated Depreciation - Conduit	30,571
301	Depreciation Rate - Poles	7.40
302	Depreciation Rate - Conduit	2.30
401	Net Current Deferred Operating Income Taxes - Poles	-20
402	Net Current Deferred Operating Income Taxes - Conduit	-108
403	Net Current Deferred Operating Income Taxes - Total	-1,333
404	Net Non-current Deferred Operating Income Taxes - Poles	1,635
405	Net Non-current Deferred Operating Income Taxes - Conduit	9,074
406	Net Non-current Deferred Operating Income Taxes - Total	111,662
501.1	Pole Maintenance Expense	312
501.2	Pole Rental Expense	1,906
501	Pole Expense	2,217
502.1	Conduit Maintenance Expense	83
502.2	Conduit Rental Expense	1
502	Conduit Expense	83
503	General & Administrative Expense	40,366
504	Operating Taxes	34,292

Operational Data (Actual)		
601	Equivalent Number of Poles	37,409
602	Conduit System Trench Kilometers	286
603	Conduit System Duct Kilometers	475
700	Additional Rental Calculation Information	0

There are no footnotes available for this table.

	A	B	C
1	**SAMPLE ILEC RATE CALCULATION OF MAXIMUM POLE ATTACHMENT RATE**		
2	**Verizon, Oregon**		
3	**Year End 2005**		
4			
5		**FCC Formula Rate Calculation**	
6			
7	**NET INVESTMENT PER BARE POLE**		
8			
9	Gross Investment in Pole Plant	$18,641,000.00	
10	-Depreciation Reserve for Poles	$16,986,000.00	
11	-Accumulated Deferred Taxes	$1,615,000.00	
12	=Net Investment in Pole Plant	$40,000.00	
13	-Net Investment in Appurtenances (5%)	$2,000.00	
14	=Net Investment in Bare Pole Plant	$38,000.00	
15	/Number of Poles	37,409.00	
16	=Net Investment per Bare Pole	$1.02	
17			
18	**CARRYING CHARGES**		
19			
20	**Maintenance**		
21	Chargeable Maintenance Expenses	$311,000.00	
22	/Net Investment in Pole Plant	$40,000.00	
23	=Maintenance Carrying Charge	777.50%	
24			
25	**Depreciation**		
26	Annual Depreciation Rate for Poles	7.40%	
27	Gross Investment in Pole Plant	$18,641,000.00	
28	/Net Investment in Pole Plant	$40,000.00	
29	=Gross/Net Adjustment	46602.50%	
30	Deprec Rate Applied to Net Pole Plant	3448.59%	
31			
32			
33			
34			

	A	B	C
35	CARRYING CHARGES CONTINUED		
36			
37	**Administrative**		
38	Administrative Expenses	$40,366,000.00	
39	Total Plant In Service	$1,273,155,000.00	
40	-Depreciation Reserve for TPIS	$753,840,000.00	
41	-Accumulated Deferred Taxes	$445,188,000.00	
42	=Net Plant in Service	$74,127,000.00	
43	Administrative Carrying Charge	54.46%	
44			
45	**Taxes**		
46	Normalized Tax Expense	$34,292,000.00	
47	Total Plant In Service	$1,273,155,000.00	
48	-Depreciation Reserve for TPIS	$753,840,000.00	
49	-Accumulated Deferred Taxes	$445,188,000.00	
50	=Net Plant in Service	$74,127,000.00	
51	Tax Carrying Charge	46.26%	
52			
53	**Return**		
54	FCC Default Rate	11.25%	
55			
56	TOTAL CARRYING CHARGES	4338.05%	
57			
58	ALLOCATION OF ANNUAL CARRYING COSTS		
59	Space Occupied by Cable	1.0	
60	/Total Useable Space	13.50	
61	Charge Factor	7.41%	
62			
63	MAXIMUM RATE		
64	Net Investment Per Bare Pole	$1.02	
65	*Carrying Charges	4338.05%	
66	*Charge Factor	7.41%	
67			
68	**MAXIMUM POLE RATE**	$3.26	
69			

	A	B	C
70	DATA ENTRY AND SOURCE		ARMIS OR OTHER
71	Gross Investment in Pole Plant	$18,641,000.00	43-01:Tbl III Row 101(b)
72	Gross Investment in Total Plant	$1,273,155,000.00	43-01:Tbl III Row 100(b)
73	Depreciation Reserve for Pole Plant	$16,986,000.00	43-01:Tbl III Row 201(b)
74	Depreciation Reserve for TPIS	$753,840,000.00	43-01:Tbl III Row 200(b)
75	Pole Maintenance Expense 6411	$2,217,000.00	43-01:Tbl III Row 501(b)
76	Pole Rents	$1,906,000.00	43-01:Tbl III Row 501.2(b)
77	Chargeable Pole Maintenance	311,000.00	43-01:Tbl III Row 501.1(b) (sum)
78	Depreciation Rate for Poles	7.40%	43-01:Tbl III Row 301(b)
81	Total General and Administrative	$40,366,000.00	43:01:Tbl III Row 503(b)
82	Taxes	$34,292,000.00	43-01:Tbl III Row 504(b)
83	Current Accumulated Deferred Taxes	-1,333,000.00	43-01:Tbl III Row 403(b)
84	Noncurrent Accumulated Deferred Taxes	446,521,000.00	43-01:Tbl III Row 406(b)
85	Total Accumulated Deferred Taxes	445,188,000.00	(Sum)
86	Current Accumulated Deferred Taxes (Poles)	-20,000.00	43-01:Tbl III Row 401(b)
87	Noncurrent Accumulated Deferred Taxes (Poles)	1,635,000.00	43-01:Tbl III Row 404(b)
88	Total Accumulated Deferred Taxes (Poles)	1,615,000.00	(Sum)
89	Overall Rate of Return	11.25%	FCC Default Rate
90	Number of Poles	37,409	43-01:Tbl III Row 601(b)

[Charter also recommends that the definitions used within other definitions be capitalized to alleviate any confusion over what is meant by a particular rule]

Pole and Conduit Attachments

860-028-0020
Definitions for Pole and Conduit Attachment Rules
For purposes of this Division:
(1) "Attachment" has the meaning given in ORS 757.270 and 759.650.
(2) "Authorized attachment space" means the space occupied by one or more attachments on a pole by an occupant with the pole owner's permission.
(3) "Carrying charge" means the costs incurred by the owner in owning and maintaining poles or conduits regardless of the presence of pole attachments or occupation of any portion of the conduits by licensees. The carrying charge is expressed as a percentage. The carrying charge is the sum of the percentages calculated for the following expense elements, using owner's data from the most recent calendar year and that are publicly available, to the greatest extent possible. The Carrying Charge should be calculated in accordance with the formula required by the Federal Communications Commission pursuant to 47 U.S.C. § 224(d) for distribution poles:
(a) The administrative and general percentage is total general and administrative expense as a percent of net investment in total plant.
(b) The maintenance percentage is maintenance of overhead lines expense or conduit maintenance expense as a percent of net investment in overhead plant facilities or conduit plant facilities.
(c) The depreciation percentage is the depreciation rate for gross pole or conduit investment multiplied by the ratio of gross pole or conduit investment to net investment in poles or conduit.
(d) Taxes are total operating taxes, including, but not limited to, current , deferred, and "in lieu of" taxes, as a percent of net investment in total plant.
(e) The cost of money is calculated as follows:
(A) For a telecommunications utility, the cost of money is equal to the rate of return on investment authorized by the Commission in the pole or conduit owner's most recent rate or cost proceeding;
(B) For a public utility, the cost of money is equal to the rate of return on investment authorized by the Commission in the pole or conduit owner's most recent rate or cost proceeding; or
(C) For a consumer-owned utility, the cost of money is equal to the weighted average of the utility's embedded cost of debt and the most recent cost of equity authorized by the Commission for ratemaking purposes for an electric company as defined in OAR 860-038-0005.
(4) For transmission poles:

(a) The maintenance percentage is maintenance of overhead lines expense in FERC Account 571 as a percent of net investment in overhead plant facilities in FERC Accounts 354, 355, 356 and 359.
(b) The depreciation percentage is the depreciation rate for gross transmission pole investment multiplied by the ratio of gross transmission pole investment to net investment in transmission poles.
(c) The administrative and general, taxes and cost of money percentages should be calculated the same as for distribution poles.

(**~~2~~4**) "Commission pole attachment rules" mean **~~OAR 860-028-0110 through 860-028-0240~~ the rules provided in OAR Chapter 860, Division 028**.
(**~~3~~5**) "Commission safety rules" mean **~~OAR 860-024-0010~~ the rules provided in OAR Chapter 860, Division 024**.
(**~~4~~6**) "Conduit" means any structure, or section thereof, containing one or more ducts, **~~conduits,~~**, manholes, or handholes, **~~bolts, or other facilities~~** used for any **~~telegraph,~~** telephone, cable television, electrical, or communications conductors**~~,~~** or cable**s ~~rights-of-way,~~** owned or controlled, in whole or in part, by one or more public, telecommunications, or consumer-owned utilities.
(**~~5~~7**) "Consumer-owned utility" has the meaning given in ORS 757.270.
(8) "Day" means any one day in a calendar year, unless otherwise specified.
(9) "Duct" means a single enclosed raceway for conductors or cables.
(**~~6~~10**) "Government entity" means a city, a county, a municipality, the state, or other political subdivision within Oregon.
(**~~7~~11**) "Licensee" has the meaning given in ORS 757.270 or ORS 759.650. **"Licensee" does not include a government entity.**
(12) "Make ready work" means ~~administrative,~~ engineering, or construction activities necessary to make a pole, conduit, or other support equipment available for a new attachment, attachment modifications, or additional facilities. Make ready work costs are nonrecurring costs, and are not contained in carrying charges.
(13) "Net investment" is equal to the gross investment, from which is first subtracted the accumulated depreciation, from which is next subtracted related accumulated deferred income taxes, if any.
(14) "Net linear cost of conduit" is equal to net investment in conduit divided by the total length of conduit in the system.
(**~~8~~15**) "Notice" means written notification sent by mail, electronic mail, **telephonic facsimile,** or **~~telefax~~ other such means.**
(**~~9~~16**) "Occupant" means any licensee, government entity, or other entity that constructs, operates, or maintains attachments on poles or within conduits.
(1**~~0~~7**) "Owner" means a public **utility**, telecommunications **utility**, or consumer-owned utility that owns or controls poles, ducts, **or** conduits and other similar facilities, pursuant to ORS 757.270 **~~or rights-of-way~~**.
(1**~~1~~8**) "Pattern" means a **course~~pattern~~** of behavior that results in a material breach of a contract, or permits, or in frequent **~~or serious~~** violations of OAR 860-028-0120.
(19) "Percentage of conduit capacity occupied" means the product of the quotient of the number "one" divided by the number of inner ducts multiplied by the quotient of the

number "one" divided by the number of ducts in the conduit [i.e. (1/Number of Inner Ducts (≥2)) x (1/Number of Ducts in Conduit)].

(20) "Permit" means the written or electronic record or invoice by which an owner authorizes an occupant to attach one or more attachments on a pole or poles, in a conduit, or on support equipment. Attachments to poles for which an occupant has received an invoice for rent should be considered an authorized and permitted attachment by the owner and for the purpose of the Commission's Pole Attachment Rules.

(21) "Periodic Inspection" means any inspection done at the option of the owner, including any required inspection pursuant to Division 24, the cost of which is recovered in the carrying charge.

(221) "Pole" means a ~~transmission pole or a~~ distribution pole or a transmission pole owned or controlled by a public utility, telecommunications utility or a consumer-owned utility.

(232) "Pole cost" means the depreciated original installed cost of an average bare pole to include support equipment of the pole owner, from which is subtracted related accumulated deferred taxes, if any. There is a rebuttable presumption that the average bare distribution pole is 40 feet and the ratio of bare pole to total pole for a public utility or consumer-owned utility is 85 percent, and 95 percent for a telecommunications utility. There is a rebuttable presumption that the average bare transmission pole is 60 feet and the ratio of bare pole to total pole for a public utility or consumer-owned utility is 85 percent.

(243) "Post construction inspection" means work that may be performed to verify and ensure the construction complies with the permit, governing agreement, and Commission safety rules. Any post construction inspection performed by owner must occur within 30 calendar days of licensee's notice to owner that construction is complete. Owner should provide notice to licensee prior to any post construction inspection so that licensee has an opportunity to participate. Following any post construction inspection, the owner shall provide licensee with the results of the post-construction inspection in writing.

(254) "Preconstruction activity" means engineering, survey and estimating work required to ~~prepare cost estimates for an attachment application by which the applicant may use to permit or re-route~~ determine whether make ready work is necessary and the estimated costs attendant to such make ready work. Pre-construction activity includes costs incurred as a result of a occupant request up to but not including make ready or carrying charges.

(**~~12~~**2265~~)~~) "Public utility" has the meaning given in ORS 757.005.

(**~~13~~**276~~)~~) "Serious injury" means "serious injury to person" or "serious injury to property" as defined in OAR 860-024-0050.

(**~~14~~**287~~)~~) "Service drop" means ~~**a connection from distribution facilities to a single family, duplex, or triplex residence or similar small commercial facility**~~**the overhead conductors between the electric distribution supply or communication distribution line and the building or structure being served, not to exceed 1,000 feet and not using a separate supporting messenger.**

(298) "Special inspection" means an owner's field visit made at the request of the licensee for all non-periodic inspections. A special inspection does not include pre-construction activity or post-construction inspection.

~~**(29) "Support equipment" means guy wires, anchoring systems and other accessories of the pole owner used to support the structural integrity of the pole to which the licensee is attached.**~~
~~**(30) "Support equipment cost" means the average depreciated original installed cost of support equipment.**~~
(301) "Surplus ducts" means ducts other than: (a) those occupied by the conduit owner or a prior licensee; (b) an unoccupied duct held for emergency use; or (c) other unoccupied ducts that the owner reasonably expects to use within the next 60 months.
(~~15~~3~~1~~2) "Telecommunications utility" has the meaning given in ORS 759.005.
(323) "Threshold number of poles" means 50 poles, or one-tenth of one percent (0.10 percent) of the owner's poles whichever is less, over any 30 day period.
(334) "Unauthorized attachment" means an attachment that does not have a permit -and a governing agreement subject to the provisions of 860-028-0120(1).

Stat. Auth.: ORS Ch. 183, 756, 757 & 759
Stats. Implemented: ORS 756.040, 757.035, 757.270 through 757.290, 759.045 & 759.650 through 759.675
Hist.: PUC 15-2000, f. 8-23-00 & ef. 1-01-01 (Order No. 00-467); renumbered from OARs 860-022-0110 and 860-034-0810; PUC 23-2001, f. & ef. 10-11-01 (Order No. 01-839)

860-028-0050
General
(1) Purpose and scope of this Division:
(a) Consistent with ORS 757.270(1), OAR Chapter 860 Division 028 governs access to utility poles or telegraph, telephone, electrical, cable television or communications rights of way, ducts, conduits, manholes or handholes or other similar facility or facilities owned or controlled, in whole or in part, by one or more public utilities, including ~~and~~ support equipment, by occupants in Oregon, and it is intended to provide just and reasonable provisions when the parties are unable to agree on certain terms.
(b) Except where otherwise provided, the following rules contained in this Division are mandatory: OAR 860-028-0050 through OAR 860-028-0080, OAR 860-028-0115, and OAR 860-028-0120.
(c) Except for the rules specified in subsection (b) of this rule, parties may mutually agree on terms that differ from those provided in the rules contained in this Division. However, in the event of a dispute submitted for Commission resolution, the Commission will deem the terms and conditions specified in the rules contained in this Division as presumptively reasonable. In the event of a dispute that is submitted to the Commission for resolution, the burden of proof is on any party advocating a deviation from the rules in this Division to show the deviation is just, fair and reasonable.
(2) After the owner provides reasonable notice to a licensee of a hazard or situation requiring prompt attention, and after allowing the licensee a reasonable opportunity to repair or correct the hazard or situation, and if the hazard or situation remains uncorrected, the owner may correct the attachment deficiencies and charge the licensee for

its costs. An Owner may charge a licensee for any fines, fees, damages, or other costs the licensee's attachments cause the pole owner to incur.

(3) An owner or occupant that is an operator of communication facilities must trim or remove vegetation that poses a significant risk to its facilities or through contact with its facilities poses a significant risk to a structure of an operator of a jointly used system.

Stat. Auth.: ORS Ch. 183, 756, 757 & 759
Stats. Implemented: ORS 756.040, 757.035, 757.270 through 757.290, 759.045 & 759.650 through 759.675
Hist.: NEW

860-028-0060
Attachment Contracts or Agreements
(1) Any entity requiring pole attachments to serve customers should use poles jointly as much as practicable.
(2) To facilitate joint use of poles, entities must execute contracts or agreements establishing the rates, terms, and conditions of pole use in accordance with OAR 860-028-0120.
(3) Parties must negotiate pole attachment contracts and agreements in good faith.
(4) Unless otherwise provided for by contract or agreement, when the parties are negotiating a new or amended contract or agreement, the last effective contract or agreement between the parties will continue in effect until a new or amended contract or agreement between the parties goes into effect, notwithstanding the termination date contained in the contract or any termination notice issues by the owner.

Stat. Auth.: ORS Ch. 183, 756, 757 & 759
Stats. Implemented: ORS 756.040, 757.035, 757.270 through 757.290, 759.045, 759.650 through 759.675
Hist.: NEW

860-028-0070
Resolution of Disputes for Proposed New or Amended Contractual Provisions
(1) This rule applies to a complaint alleging a violation of ORS 757.273, 757.276, 757.279, 759.655, 759.660, or 759.665. Except as otherwise required by this rule, the procedural rules generally applicable to proceedings before the Commission also apply to such complaints and parties may file complaints under these rules for reasons other than disputes over new and amended contract provisions. The party filing a complaint under this rule is the "complainant." The other party to the contract, against whom the complaint is filed, is the "respondent."
(2) Before a complaint is filed with the Commission, one party must request, in writing, negotiations for a new or amended attachment agreement from the other party.

(3) Ninety (90) days after one party receives a request for negotiation from another party, either party may file a complaint with the Commission for a proceeding under ORS 757.279 or ORS 759.660.
(4) The complaint must contain each of the following:
(a) Proof that a request for negotiation was received at least 90 days earlier. The complainant must specify the attempts at negotiation or other methods of dispute resolution undertaken since receipt of the request date and indicate that the parties have been unable to resolve the dispute.
(b) A statement of the specific attachment rate, term, and condition provisions that are claimed to be unjust or unreasonable.
(c) A description of the complainant's position on the unresolved provisions.
(d) A proposed agreement addressing all issues, including those on which the parties have reached agreement and those that are in dispute.
(e) All information available as of the date the complaint is filed with the Commission that the complainant relied upon to support its claims:
(A) In cases in which the Commission's review of a rate is required, the complaint must include all data and information in support of its allegations, in accordance with the administrative rules set forth to evaluate the disputed rental rate.
(B) If the licensee is the complainant, the complainant must request the data and information required by this rule from the respondent. The respondent must provide the complainant the information required in this rule, as applicable, within 30 days of the receipt of the request. The complainant must submit this information with its complaint. Owner's requirement to provide rate data to a licensee applies whether or not the licensee has disputed the rate.
(C) If the respondent does not provide the data and information required by this rule after a request by the complainant, the complainant will include a statement indicating the steps taken to obtain the information from the respondent, including the dates of all requests.
(D) No complaint will be dismissed because the respondent has failed to provide the applicable data and information required under subsection (4)(e)(C) of this rule.
(5) Within 30 calendar days of receiving a copy of the complaint, the respondent will file its response to the complaint with the Commission, addressing in detail each claim raised in the complaint and a description of the respondent's position on the unresolved provisions.
(6) If the Commission determines after a hearing that a rate, term, or condition that is the subject of the complaint is not just, fair, and reasonable, it may reject the proposed rate, term or condition and may prescribe a just and reasonable rate, term, or condition.
(7) The Commission may also order a refund, or payment, if appropriate. The refund or payment will normally be the difference between the amount paid under the unjust or unreasonable rate, term or condition and the amount that would have been paid under the rate, term or condition established by the Commission from the date the complaint was filed, plus interest.

Stat. Auth.: ORS Ch. 183, 756, 757 & 759
Stats. Implemented: ORS 756.040, 757.035, 757.270 through 757.290, 759.045, 759.650 through 759.675

Hist.: NEW

860-028-0080
Costs of Hearing in Attachment Contract Disputes
(1) When the Commission issues an order in an attachment contract dispute that applies to a consumer-owned utility, as defined by ORS 757.270, the order will also provide for payment by the parties of the cost of the hearing process.
(2) The cost of the hearing process includes, but is not limited to, the cost of Commission employee time, the use of facilities, and other costs incurred. The rates will be set at cost. The Commission shall keep the parties apprised of the accruing costs of the hearing throughout its course on a periodic basis.
(3) The Joint Use Association is not considered a party for purposes of this rule when participating in a case under OAR 860-028-0200(1)(b).
(4) The Commission will allocate costs in a manner that it considers equitable. The Commission will consider the following factors in determining payment:
(a) Merits of the party's positions throughout the course of the proceeding; and
(b) Other factors that the Commission deems relevant.

Stat. Auth.: ORS Ch. 183, 756, 757 & 759
Stats. Implemented: ORS 756.040, 757.279, and 759.660
Hist.: NEW

860-028-0100
Application Process for New or Modified Attachments
(1) An applicant requesting a new or modified attachment will submit an application providing the following information in writing or electronically to the owner:
(a) Information for contacting the applicant.
(b) The pole owner may require the applicant to provide the following information:
(A) Location and identifying pole or conduit for which the attachment is requested;
(B) The amount of space requested;
(C) The number and type of attachment for each pole or conduit;
(D) Physical characteristics of attachments;
(E) Attachment location on pole;
(F) Description of installation;
(G) Proposed route, and
(H) Proposed schedule for construction.
(2) The owner will provide notice to the applicant within 14 days of the application receipt date confirming receipt and listing any deficiencies with the application, including missing information. If required information is missing, the owner may suspend processing the application until the missing information is provided.
(3) Upon receipt of a completed application, the owner will provide notice to the applicant no later than 45 days from the date the completed application is received. The owner's reply must state whether the application is approved, approved with modifications or conditions, or denied.
(a) An approved application will be valid for 180 days unless extended by the owner.

(b) The owner may require the applicant to provide notice of work completion within 45 days.

(c) If the owner approves an application that requires make ready work, the owner will provide a detailed list of the make ready work needed to accommodate the applicant's facilities, an estimate for the time required for the make ready work, and the cost for such make ready work.

(d) The owner may deny access for the following reasons: insufficient capacity, safety, reliability, and generally applicable engineering purposes. In denying an application the owner will state the reasons for denial.

(e) If the owner does not provide the applicant with notice that the application is approved, approved with conditions, or denied within 45 days from its receipt, the application is deemed approved and the applicant may begin installation.

(4) If the owner approves an application that does not require make ready work, the applicant may begin construction. If the owner approves an application that requires make ready work, the owner will perform such work at the applicant's expense. This work will be completed as quickly and inexpensively as is reasonably possible consistent with applicable legal, safety, and reliability requirements~~in a timely manner and at a reasonable cost~~. Where this work requires more than 45 days to complete, the parties must negotiate a mutually satisfactory period of time to complete the make ready work.

(5) If an owner can not meet the time frames established by this rule, preconstruction activity, application, and make ready work may be performed by a mutually acceptable third party at licensee's request.

(6) If the application involves more than the threshold number of poles, the parties must negotiate a mutually satisfactory longer time frame to complete the approval process.

Stat. Auth.: ORS Ch. 183, 756, 757 & 759
Stats. Implemented: ORS 756.040, 757.035, 757.270 through 757.290, 759.045 & 759.650 through 759.675
Hist.: NEW

860-028-0110
Rental Rates and Charges for Attachments ~~by Licensees~~ to Poles Owned by Public Utilities, Telecommunications Utilities, and Consumer-Owned Utilities

(1) This rule applies whenever a party files a complaint with the Commission pursuant to ORS 757.270 through ORS 757.290 or ORS 759.650 through ORS 759.675.

~~(2) In this rule:~~

~~(a) "Carrying Charge" means the percentage of operation, maintenance, administrative, general, and depreciation expenses, taxes, and money costs attributable to the facilities used by the licensee. The cost of money component shall be equal to the return on investment authorized by the Commission in the pole owner's most recent rate proceeding.~~

~~(b) "Pole Cost" means the depreciated original installed cost of an average bare pole of the pole owner.~~

~~(c) "Support Equipment" means guy wires, anchors, anchor rods, grounds, and other accessories of the pole owner used by the licensee to support or stabilize pole attachments.~~

~~(d) "Support Equipment Cost" means the average depreciated original installed cost of support equipment.~~
~~(e) "Usable Space" means all the space on a pole, except the portion below ground level, the 20 feet of safety clearance space above ground level, and the safety clearance space between communications and power circuits. There is a rebuttable presumption that six feet of a pole are buried below ground level.~~
(**~~3~~2**) **The maximum allowable rate for distribution poles under these rules shall be calculated in accordance with the formula required by the Federal Communications Commission pursuant to 47 U.S.C. § 224(d) applied to attachments in usable space on a per foot basis~~A disputed~~** ~~pole attachment rental rate~~ **~~per foot will be~~ is** ~~computed by taking~~**multiplying** ~~the pole cost~~ **~~times~~by** ~~the carrying charge~~ **~~and then dividing the resultant product by the usable space per pole~~.**
(a) Usable space means all the space on a pole, except: the portion below ground level, the 20 feet of safety clearance space above ground level, and the communication worker safety zone between the communications and power circuits, which is considered "Unusable Space" for rental rate purposes. There is a rebuttable presumption for distribution poles that six feet of a pole is below ground level. There is a rebuttable presumption that for transmission pole that 8 feet of a pole is below ground level.
(3) The rental rate per pole is computed from the rental rate per foot of usable space used ~~times~~ multiplied by the **licensee's authorized attachment space.** **~~portion of the usable space occupied by the licensee's attachment.~~**
~~(4) A disputed support equipment rental rate will be computed by taking the support equipment cost times the carrying charge times the portion of the usable space occupied by the licensee's attachment.~~
~~(5) The minimum usable space occupied by a licensee's attachment is one foot.~~
(**~~6~~4**) The rental rate**~~s~~** referred to in section**~~s~~ ~~(3) and (4)~~(2)** of this rule do not **~~cover~~include** ~~the costs~~ **~~of attachment to support equipment, permit application processing,~~** special inspections**, ~~or~~** preconstruction **activity, post construction inspection**, or make ready**~~, change out, and rearrangement~~** work; **and any expenses incurred as a result of ~~or the costs related to~~ unauthorized attachments**. Charges for those activities **~~shall be~~are** based on actual (including administrative)**~~(including administrative)~~** costs**~~., including administrative costs,~~ and will be charged in addition to the rental rate. The owner must be able to demonstrate that charges under this section of this rule have been excluded from the rental rate calculation.**
(~~7~~) ~~Licensees shall report all attachments to the pole owner. A pole owner may impose sanctions for violations of OAR 860-028-0120. A pole owner may also charge for any expenses it incurs as a result of an unauthorized attachment.~~
(8) ~~All attachments shall meet state and federal clearance and other safety requirements, be adequately grounded, guyed, and anchored, and meet the provisions of contracts executed between the pole owner and the licensee. A pole owner may, at its option, correct any attachment deficiencies and charge the licensee for its costs. Each licensee shall pay the pole owner for any fines, fees, damages, or other costs the licensee's attachments cause the pole owner to incur.~~

(5) Authorized attachment space for rental rate determination must comply with the following:
(a) The initial authorized attachment space on a pole must not be less than 12 inches. The owner may authorize additional attachment space in increments of less than 12 inches. In no event shall licensee equipment or other attachments located in the 20 feet of clearance space be considered as occupying authorized attachment space for rental rate purposes.
(b) For each attachment permit, the owner will specify the authorized attachment space on the pole that is to be used for one or more attachments. This authorized attachment space will be specified in the owner's attachment permit.
(c) An additional or modified attachment by the occupant that meets the Commission safety rules and that is placed within the occupant's existing authorized attachment space and equipment in the 20 feet of safety clearance space will be considered a component of the existing pole permit for rental rate determination purposes.
(6) The owner may require prepayment of the owner's estimated costs for any of the work covered by OAR 860-028-0100. The final invoice will reflect actual costs less any prepayment. The owner must be able to demonstrate that charges under this section of this rule have been excluded from the rental rate calculation.
(7) The owner must provide notice to the occupant of any change in rental rate or fee schedule a minimum of 90 days prior to the effective date of the change. The occupant has 60 days from the date of the notice to dispute the rate or fee schedule. If no dispute is filed, with the owner, the rate and fee schedule shall be deemed effective for the term of the rental period. This subsection shall become effective on January 1, 2008.

Stat. Auth.: ORS Ch. 183, 756, 757 & 759
Stats. Implemented: ORS 756.040, 757.270 through 757.290, 759.045 & 759.650 through 759.675
Hist.: PUC 9-1984, f. & ef. 4-18-84 (Order No. 84-278); PUC 16-1984, f. & ef. 8-14-84 (Order No. 84-608); PUC 9-1998, f. & ef. 4-28-98 (Order No. 98-169); PUC 15-2000, f. 8-23-00 & ef. 1-01-01 (Order No. 00-467); renumbered from OARs 860-022-0055 and 860-034-0360; PUC 23-2001, f. & ef. 10-11-01 (Order No. 01-839)

860-028-0115
Duties of Electric Supply and Communication Pole Owners
(1) An owner shall install, maintain, and operate its facilities in compliance with Commission safety rules.
(2) An owner must establish, maintain, and make available to occupants its joint-use construction standards and practices for attachments to its distribution poles. Standards for attachment must apply uniformly to all operators, including the owner.
(3) An owner must establish and maintain mutually agreeable protocols for communications between the owner and occupants.
(6) A Pole owner must respond to a pole occupant's notice request for assistance to make corrections within 45 days.
(7) A Pole owner shall provide an occupant no less than 60 days written notice prior to: (1) removal of facilities or termination of any service to those facilities; (2) any increase in pole

rental rates; or (3) any modification of facilities that will affect the occupant's attachment (to the extent possible), other than routine maintenance or modification in response to emergencies.~~A Pole owners will ensure the accuracy of inspection data prior to transmitting information to a pole occupant~~.
(8) A Pole owner shall label any new pole immediately upon installation. Existing poles shall be labeled at the time of routine maintenance, normal replacement, rearrangement, rebuilding, or reconstruction and whenever practicable.
(9) When owner provides any invoice under these rules, for make ready work or other work, the invoice at a minimum shall include: date of work; description of work; location of work; unit cost or labor cost per hour; cost of itemized materials; and any miscellaneous charges. Upon licensee request, an owner shall provide a breakdown of its basic engineering rates.
(10) If an owner performs an audit of poles to determine the number of licensee's attachments or performs any other inspection the owner shall provide the results to the licensee in writing. If following a sampling of the audit or inspection data, the licensee determines that 5% or more of the data is erroneous, the licensee shall notify the owner in writing and the owner shall be required to re-perform the audit or inspection.
(11) An owner is presumed to have control of its facilities and is responsible for coordinating all activity on its facilities.
(12) Whenever the owner of facilities intends to modify or alter such facilities, the owner shall provide written notification of such action to any occupant that has obtained an attachment to such facilities so that such occupant has a reasonable opportunity to add to or modify its existing attachment. Any occupant that adds to or modifies its existing attachment after receiving such notification shall bear a proportionate share of the costs incurred by the owner in making such facility accessible.
(13) An occupant that obtains an attachment to an owner facility shall not be required to bear any of the costs in rearranging or replacing its attachment, if such rearrangement or replacement is required as a result of an additional attachment or the modification of an existing attachment sought by any other occupant or owner,

Stat. Auth.: ORS Ch. 183, 756, 757 & 759
Stats. Implemented: ORS 756.040, 757.035, 757.270 through 757.290, 759.045 & 759.650 through 759.675
Hist.: NEW

860-028-0310
Rental Rates and Charges for Attachments by Licensees to Conduits Owned by Public Utilities, Telecommunications Utilities, and Consumer-Owned Utilities
(1) This rule applies whenever a party files a complaint with the Commission pursuant to ORS 757.270 through ORS 757.290 or ORS 759.650 through ORS 759.675.
~~(2) As used in this rule:~~
~~(a) "Annual Carrying Charge" shall be equal to the return on investment authorized by the Commission in the conduit owner's most recent rate proceeding times the conduit cost.~~

~~**(b) "Annual Operating Expense" means annual operating maintenance, administrative, general, depreciation, income tax, property tax, and other tax expenses attributable, on a per-duct basis, to the section of conduit occupied by the licensee.**~~
~~**(c) "Conduit Cost" means the depreciated original installed cost, on a per-duct basis, of the section of conduit occupied by the licensee.**~~
~~**(d) "Duct" means a single enclosed raceway for conductors or cable.**~~
~~**(e) "Surplus Ducts" means ducts other than those occupied by the conduit owner or a prior licensee, one unoccupied duct held as an emergency use spare, and other unoccupied ducts that the owner reasonably expects to use within the next 18 months.**~~
(~~**3**~~**2**) **The**~~**A disputed**~~ conduit rental rate should be computed in accordance with the formula required by the Federal Communications Commission pursuant to 47 U.S.C. § 224(d) for conduit and duct~~**per linear foot will be**~~**is** ~~computed by~~ ~~**adding the annual operating expense to the annual carrying charge and then multiplying by the number of ducts occupied by the licensee**~~**multiplying the percentage of conduit capacity occupied by the net linear cost of conduit and then multiplying that product by the carrying charge**~~**.**
(~~**4**~~**3**) ~~A licensee occupying part of a duct **shall be**~~**is** ~~deemed to occupy the entire duct.~~
(~~**5**~~**4**) Licensees ~~**shall**~~**must** report all attachments to the conduit owner. A conduit owner may impose a penalty charge for failure to report or pay for all attachments. If a conduit owner and licensee do not agree on the penalty and submit the dispute to the Commission, the penalty amount will be five times the normal rental rate from the date the attachment was made until the penalty is paid. If the date the attachment was made cannot be clearly established, the penalty rate ~~**shall**~~**will** apply from the date the conduit owner last inspected the conduit in dispute. The last inspection **date** ~~**shall be**~~**is** deemed to be no more than ~~**three**~~**five** years before the unauthorized attachment is discovered. The conduit owner also ~~**shall**~~**may** charge for any expenses it incurs as a result of the unauthorized attachment.
(~~**6**~~**5**) The conduit owner ~~**shall**~~**must** give a licensee 18 months' notice of its need to occupy licensed conduit and ~~**shall**~~**will** propose that the licensee take the first feasible action listed:
(a) Pay revised conduit rent designed to recover the cost of retrofitting the conduit with multiplexing, optical fibers, or other space-saving technology sufficient to meet the conduit owner's space needs;
(b) Pay revised conduit rent based on the cost of new conduit constructed to meet the conduit owner's space needs;
(c) Vacate ducts that are no longer surplus;
(d) Construct and maintain sufficient new conduit to meet the conduit owner's space needs.
~~**(7) When two or more licensees occupy a section of conduit, the last licensee to occupy the conduit shall be the first to vacate or construct new conduit. When conduit rent is revised because of retrofitting of space-saving technology or construction of new conduit, all licensees shall bear the increased cost.**~~
~~**(8) All conduit attachments shall meet local, state, and federal clearance and other safety requirements, be adequately grounded and anchored, and meet the provisions of contracts executed between the conduit owner and the licensee. A conduit owner may, at its option, correct any attachment deficiencies and charge the licensee for its costs. Each licensee shall pay the conduit owner for any fines, fees, damages, or other costs the licensee's attachments cause the conduit owner to incur.**~~

(6) The rental rates referenced in section (2) of this rule do not include the costs of ~~permit application processing,~~ special inspections, preconstruction activity, post construction inspection, make ready work, and the actual expenses caused by licensee's ~~costs related to~~ unauthorized attachments. Charges for activities not included in the rental rates will be based on actual costs ~~,~~ (including administrative costs)~~,~~ and will be charged in addition to the rental rate.
(7) The owner may require reasonable prepayments from a licensee of owner's estimated costs for any of the work allowed by OAR 860-028-0100. The owner's estimate will be adjusted to reflect the owner's actual cost upon completion of the requested tasks. The owner will promptly refund any overcharge to the licensee.
(8) The owner must be able to demonstrate that charges under sections (6) and (7) of this rule have been excluded from the rental rate calculation.

Stat. Auth.: ORS Ch. 183, 756, 757 & 759
Stats. Implemented: ORS 756.040, 757.270 through 757.290, 759.045 & 759.650 through 759.675
Hist.: PUC 2-1986, f. & ef. 2-7-86 (Order No. 86-107); PUC 9-1998, f. & ef. 4-28-98 (Order No. 98-169); renumbered from OARs 860-022-0060 and 860-034-0370; PUC 23-2001, f. & ef. 10-11-01 (Order No. 01-839)