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**EMBARQ™**

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November 2, 2006

Public Utility Commission of Oregon  
Attn: Filing Center  
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RE: OPUC Docket AR 506 – Phase II Second Round of Comments

Enclosed please find the Comments of United Telephone Company of the Northwest  
d/b/a EMBARQ on the proposed rules in the above-captioned docket.

Sincerely,

*Nancy L. Judy*  
Nancy L. Judy

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**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

In the Matter of	)	
Rulemaking to Amend and Adopt	)	AR 506 Phase II
Permanent Rules in OAR 860, Division	)	Supplemental Comments
24 and 28, Regarding Pole Attachment	)	of United Telephone Company of the
Use and Safety	)	Northwest d/b/a Embarq
_____	)	

**COMMENTS OF EMBARQ**

United Telephone Company of the Northwest d/b/a Embarq ("Embarq") respectfully submits the following supplemental comments regarding the Staff's latest revision of Proposed Rules which were attached to the ruling issued by the Administrative Law Judge on October 24, 2006. Additionally, Embarq stands by its comments filed September 28, 2006 except as modified herein.

**1. 860-028-0020(2) Definition of Authorized Attachment Space**

Embarq agrees partially with the modification recommended by Verizon in its September 28 comments. The minimum authorized attachment space should be 12 inches.

(2) "Authorized attachment space" means the ~~usable space occupied~~ specified by ~~one or more attachments on a pole by an~~ the owner and occupant ~~with the pole owner's permission.~~ in a pole attachment agreement as the average amount of space for one or more attachments on a policy by the occupant. The authorized attachment space must not be less than 12 inches.<sup>1</sup>

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<sup>1</sup> Embarq generally endorses Staff's proposed rules and uses them as the basis for its proposed changes. The proposed changes to Staff's proposal are indicated in legislative format.

## 2. 860-028-0020(3) Definition of Carrying Charge

An exception should be made to subsections (a) – (d) of this rule when net pole investment is zero or negative. The FCC has noted that when the net pole investment is zero or negative, the carrying charge formula cannot be calculated properly.<sup>2</sup> The FCC has determined that when net pole investment is zero or negative, the most reasonable and efficient method is to apply the formula using gross figures rather than net figures, with the exception of the rate of return (cost of money) element of the carrying charges, which is always a net calculation. That is because a pole owner continues to incur maintenance, administrative, and tax expenses related to poles even if the poles are fully depreciated.

Embarq does not agree with OJUA's proposal to adjust the carrying charge for inflation. However, if the Commission were to decide that pole costs need to be adjusted for inflation, the more logical place for the adjustment would be in 860-028-0020(12), not in the carrying charge.

Embarq agrees with Verizon that administrative costs related to processing new attachments, employee and contractor expenses, routine inspections and other administrative expenses related to operation and maintenance are included in the calculation of carrying charges and should not be double recovered by the pole owner in additional direct charges. Additionally, Embarq agrees with Verizon that only the costs related to distribution facilities should be included in the carrying charge. Any carrying charge for transmission facilities or towers should be separately calculated.

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<sup>2</sup> In the Matter of Rules and Policies Governing Pole Attachments; Implementation of Section 703(e) of the Telecommunications Act of 1996, Summary of *Order on Reconsideration*, 66 FCC Rcd. 34569, 34571-72 ¶¶ 2 (June 29, 2001).

(3) "Carrying Charge" means the costs incurred by the owner in owning and maintaining distribution 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. Unless net pole investment is zero or negative, the carrying charge will consist of the following expense components:

(a) The administrative and general percentage is total general and administrative expense as a percent of total plant net investment.

(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 on net investment in total plant.

When net pole investment is zero or negative, the carrying charge will be calculated according to (a) – (e) except that total plant gross investment will be used in place of net investment.

(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 consumer-owned 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.

(D) These carrying charge expense elements include administrative costs related to processing new attachments, employee and contractor expenses, routine inspections and other administrative expenses related to operation and maintenance.

(E) The carrying charge must not include net income and customer, advertising, marketing and similar expenses.

(F) The carrying charge must be calculated using the following accounts:

(a) For a utility providing communications service,

Appendix E-1 Section 224(E) Telecom formula for determining the maximum rate for use of LEC utility poles using FCC ARMIS Accounts; or

(b) For utility providing electric or power service, Appendix E-2 Section 224(E) Telecom formula for determining maximum rate of use of electric utility poles using FERC Form 1 Accounts.

**3. 860-028-0020(10) Definition of Licensee**

Embarq agrees with Staff that the definition for licensee should be the same as the definition given in ORS 757.270(3) and ORS 759.260. It would be helpful if the rule further clarified whether government entities and wireless providers are authorized to construct attachments. Embarq proffers no legal opinion at this time as to whether such entities are authorized, or who should make such an authorization. However, Embarq agrees with Staff and the OJUA that there are a number of issues surrounding wireless and non-standard pole attachments, including safety concerns, that warrant further discussion in a separate docket.

**4. 860-028-0020(11) Definition of Make Ready Work**

Embarq supports Verizon's proposed definition of "make ready work," and in fact prefers it to the definition Embarq proposed in its first set of comments. As stated by Verizon, routine inspections should not be included and recovered as direct costs, but rather should be captured in carrying charges. As proposed by Verizon, the rule would read:

(11) "Make ready work" means rearrangement, change-out or replacement administrative, engineering or construction work necessary to make prepare a pole, conduit, or other support structure equipment available for a new attachment, modified attachment modifications, or additional facilities, including pole change-out and pole extension activities, and may include a field inspection of such structure if such inspection is necessary to determine if the structure is suitable. Make ready work costs are nonrecurring costs, and are not included in carrying charges. shall not include work performed to conduct a routine inspection, to process an application or permit or to perform any other work for which charges are included in the carry charge component of the pole attachment rental rate.

**5. 860-028-0020(19) Definition of Permit**

Embarq endorses the recommendation made by OCTA that states “an owner’s invoice to an occupant for rental for attachment to a pole is prima facie evidence of the issue of a permit to the occupant for that attachment.”

(19) “Permit” means the written or electronic record by which an owner authorizes ~~an~~ a licensee or occupant to attach one or more attachments on a pole or poles, in a conduit, or on support equipment. An owner’s invoice to an occupant for rental for attachment to a pole is prima facie evidence of the issue of a permit to the occupant for that attachment.

**6. 860-028-0020(20) Definition of Pole Cost**

Embarq proposes to add the following verbiage to this definition:

(20) “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 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. “Pole cost” when calculating rental rates for transmission poles or towers, means the depreciated original installed cost of an average transmission tower to include support equipment of the pole owner, from which is subtracted accumulated deferred taxes, if any. The rebuttable presumptions stated above do not apply to transmission towers.

This addition closely adheres to the recommendation made by wireless companies in their September 28, 2006 comments.

**7. 860-028-0020(21) Definition of Post Construction Inspection**

Embarq supports Verizon’s proposed definition which clarifies that the term “post construction inspection” applies only to new construction for new attachments, and not for existing attachments. This definition, however, should incorporate the modifications previously suggested by Embarq. Thus, the definition would read:

(21) “Post construction inspection” means ~~work performed~~ inspection on new attachments to verify and ensure the occupant’s construction complies with the permit, the governing pole attachment agreement, and the NESC and Commission safety rules.”

**8. 860-028-0020(26) Definition of Special Inspection**

After reviewing Verizon’s suggestion, Embarq withdraws its earlier proposal and agrees with Verizon that special inspections should be deleted throughout the rules and should be governed by contract between the requesting and performing parties.

~~(26) “Special inspection” means an owner’s filed visit made at the request of the licensee for all non-periodic inspections. A special inspection does not include preconstruction activity or post construction inspection.~~

**9. 860-028-0020(XX) Definition of Routine Inspections**

Embarq endorses Verizon’s proposed definition for routine inspections.

(XX) “Routine Inspection” means, in order to ensure proper construction, an inspection by an owner of all poles, ducts, conduits or rights-of-way for new line installations and attachments thereto including those of pole occupants and safety inspections to identify violations of the commission safety and inspections for unauthorized attachments, or other defects or deteriorations. The costs for routine inspections can not be passed on to the pole occupants directly. These costs are part of normal maintenance.

**10. 860-028-0050(2) Owner Correction**

Although Embarq had suggested a modification to the OJUA’s proposed “owner correction” section, it now agrees with Verizon that the OJUA’s proposed language should be rejected because it is so vague that it could lead to abuse by pole owners.

**11. 860-028-0060 Attachment Contracts**

Embarq supports Verizon’s proposed modification to this rule which would prohibit owners and operators from placing poles in or near an existing pole or pole line of another company without consent.

Attachment Contracts

~~(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 establishing rates, terms, and conditions pole use in accordance with OAR 860-028-120.~~

(1) Unless otherwise allowed by contract between the parties, owners and operators shall not place poles in or near an existing pole or pole line of another company.

(2) Parties must negotiate pole attachment contracts in good faith.

(3) Unless otherwise expressly prohibited provided for by contract, the last effective contract between the parties will continue in effect until a new or amended contract between the parties goes into effect.

**12. 860-028-100(3) New or Modified Attachments**

Embarq now agrees with Verizon that this rule should be eliminated because the 10-day confirmation process would be burdensome and unnecessary given the prevalent use of the NJUNS system. If, however, the Commission decides to retain this rule, Embarq suggests that written notification be replaced with electronic notification.

~~(3) The owner will provide written or electronic notification to the applicant within ten business 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.~~

**13. 860-028-100(4)(d) New or Modified Attachments**

Embarq favors Staff's language over that proposed by the OJUA. Occupants should have the right to an answer within a reasonable amount of time as to whether an attachment is allowed. Staff's proposal would deem the attachment allowable if the owner does not provide a timely response. Conversely, the OJUA's latest proposal



allows the occupant to proceed, but creates the risk that the attachment will be rejected by the pole owner after construction.

**14. 860-028-110(2) Rental Rates and Charges**

Idaho Power, in its Supplemental Comments filed October 25, 2006, makes some fundamental changes to Staff's pole rental rate which hike usable space to 16 feet instead of 10.67 feet. Idaho Power's 16 feet is made up of the 10.67 feet usable space calculated by Staff, plus 3.33 feet safety space, plus 2 feet of cable sag. Under Idaho Power's method, renters are being asked to pay for these two differences, as evidenced by a single renter jumping from \$4.69 to \$16.66 for 1 foot of space. As renters are added, each renter's share of those safety and sag charges begins to drop.

Staff's formula has safety space shared by all users, which is a more reasonable position than the Idaho Power proposal. Power companies benefit from the safety space just as much as licensees, because without licensees, power companies have no ability to generate rental fees. Furthermore, the safety space acts as an envelope around the power circuit in the same way that licensees pay for space outside their circuits - i.e., licensees pay for 12 inches despite only using 2 inches, in the same way that power companies can pay for a share of the safety space.

Staff already properly accounts for cable sag by using a 20 foot ground clearance, not 18 feet as suggested by Idaho Power. For a cable to be 18 feet off the ground at mid-span *between* the poles, it attaches at 20 feet above ground *at* the pole to account for cable sag. It is normal for each cable - power or licensee - to sag *between* poles. This in no way impacts the space used *at* the pole, which is the standard of measurement, but

Idaho Power would have us believe otherwise. Staff properly accounts for ground clearance at 20 feet.


Idaho Power's proposal of a sliding rate scale would create a record-keeping nightmare. To calculate the formula, one would need to know the numbers of licensees, which could change daily. Even though averages could be established, their predictability would be an issue. By contrast, Staff offers a stable rate to each licensee, where the third licensee pays no more or less than the second. Space that is not rented is still available to the owner. Presumably, the owner has correctly sized the pole in the first place where nine licensees are not needed to properly fund their investment as has been implied by Idaho Power, and a fair balance of pole use to pole cost is maintained. If the pole is undersized, make ready charges more-than compensate the owner, as they receive a new pole funded by the new licensee.

Although not relevant to their calculation and proposal, Idaho Power is misleading in its depiction of the FCC Telecom formula, as the FCC does not produce a rate nearly as high the \$21.25 Idaho Power implies. Because the FCC counts the owner as a licensee, a single licensee would pay only \$12<sup>3</sup>. In context, the FCC assumes three to five licensees, and does not contemplate charging the kind of rates implied by Idaho Power.

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<sup>3</sup>  $(1 + .667*(24/2))/37.5 = 24\%$  sharing factor  
24% share X \$50 pole cost = \$12 rent

Respectfully submitted this 2nd day of November, 2006.

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