

Qwest

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Alex M. Duarte
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July 21, 2006

Honorable Christina Smith
Administrative Law Judge
Public Utility Commission of Oregon
P. O. Box 2148
Salem, OR 97308-2148

Re: AR 506 (Division 24/28 Rulemaking)- Qwest's Issues List for Division 28

Dear Judge Smith:

The following are Qwest's proposed additions to the Issues List that the Oregon Joint Use Association ("OJUA") recently submitted in this rulemaking proceeding regarding Division 28 of the Commission's administrative rules (OAR Chapter 860). These issues are broken down by the specific Commission rule in Division 28 (although the first three rules for which Qwest proposes additional issues, OAR 860-028-0130, 860-028-0140 and 860-028-0150, are grouped together). These issues are all in addition to, and do not repeat, those on the OJUA list.

Further, although the issues regarding the lawfulness of the Commission's sanction rules are presently on appeal before the Oregon Supreme Court, Qwest's additions of these issues to the Issues List for this phase are under a reservation of rights and without waiver of the legal arguments and positions Qwest has previously raised or will raise in the future in that appeal.

OAR 860-028-0130 (Sanctions for Having No Contract), OAR 860-028-0140 (Sanctions for Having No Permit) and OAR 860-028-0150 (Sanctions for Violation of Other Duties)

- Address PUC's statutory authority to authorize pole owners to impose and collect sanctions for the different types of conduct addressed by these rules.
- Are the penalty amounts "just, fair, and reasonable" as required by ORS 757.273 and 757.276, and consistent with constitutional limitations?
- Should pole owners' recovery be limited to compensation for damages suffered, rather than penalties, as a matter of public policy and law?
- Should all penalties be paid to the state rather than to pole owners, as a matter of public policy and law?
- What procedures should be required for the imposition of penalties to ensure that they are imposed in appropriate circumstances and amounts?
- What factors should be considered in determining amount of penalty imposed in any given case?
- Is the imposition of penalties by interested pole owners fair and consistent with pole occupants' legal rights?

- Should court actions or PUC proceedings be required for the imposition of penalties?
- If PUC proceedings, what procedures are appropriate to protect the rights of pole occupants?
- What review should be provided of pole owners' decisions to impose penalties and what procedures should apply in obtaining such review?
- Should governmental entities that attach to poles be exempt from the imposition of penalties? If so, should governmental entities that are pole owners be entitled to impose and collect penalties when they are exempt from application of penalties?
- Address application of penalties in competitive situations.

OAR 860-028-0160 (Choice of Sanctions)

- Address PUC's statutory authority to validate different penalty provisions provided in contracts.

OAR 860-028-0170 (Time Frame for Securing Reduction in Sanctions) and OAR 860-028-0180 (Progressive Increases in Sanctions)

- Under current scheme, it appears that any penalty amount must either be reduced or escalated. When do actual penalty amounts under 860-028-0130 to -150 ever apply?
- Are escalation time frames and amounts reasonable?

OAR 860-028-0190 (Notice of Violation)

- May notice of a violation ever be provided *after* a violation has been corrected, or must a notice be of an *existing* violation?

OAR 860-028-0210 (Resolution of Disputes over Plans of Correction) and OAR 860-028-0220 (Resolution of Factual Disputes)

- Are existing procedures for resolution by PUC of factual disputes adequate and consistent with parties' legal rights?
- Should parties be permitted to present evidence and to cross-examine witnesses, rather than having the PUC resolve factual disputes based only on "comments"?

If you have any questions about this matter, please feel free to call me at your convenience. Thank you for your attention to this request.

Very truly yours,



Alex M. Duarte

CERTIFICATE OF SERVICE VIA E-MAIL TRANSMISSION

AR 506

I hereby certify that on the 21st day of July, 2006, a true and correct copy of the foregoing QWEST CORPORATION'S LETTER TO THE HONORABLE CHRISTINA SMITH, in the above entitled docket, was served upon the following persons via means of e-mail transmission to the e-mail addresses listed on the following pages.

Dated this 21st day of July, 2006.

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by: _____

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