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**EMBARQ**<sup>TM</sup>

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October 4, 2006

Oregon Public Utility Commission  
Attention: Filing Center  
550 Capitol Street, N.E., Suite 215  
Salem, OR 97308-2148

**Re: AR 510; In the Matter of Rulemaking to Amend Rules in OAR  
860, Division 028 Relating to Sanctions for Attachments to Utility  
Poles and Facilities**

Please find enclosed the Initial Comments of United Telephone Company of the Northwest d/b/a Embarq. If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

William E. Hendricks

Enclosure

**BEFORE THE PUBLIC UTILITY COMMISSION OF  
OREGON  
AR 510**

In the Matter of )  
 ) Initial Comments of United  
In the Matter of Rulemaking to Amend Rules ) Telephone Company of the  
in OAR 860, Division 028 Relating to ) Northwest d/b/a Embarq  
Sanctions for Attachments to Utility Poles and )  
Facilities )  
\_\_\_\_\_ )

**COMMENTS OF EMBARQ**

United Telephone Company of the Northwest, d/b/a Embarq (“Embarq”), submits these initial comments to the proposed draft rules in this docket. Embarq is both a pole owner and occupant in Oregon and therefore has an interest in the outcome of this proceeding.<sup>1</sup>

Embarq is concerned with the manner in which the draft rules were created. Until the September 20, 2006 Workshop, the discussion of the draft rules had occurred primarily, if not entirely, among the OJUA board, with little or no input from other industry representatives. Although the OJUA provided some limited explanation of how and why the draft rules were formulated, no written minutes of these negotiations have been provided. And while Embarq does now have the opportunity to comment on the draft, the force and effect of its comments are muted by the fact that Embarq’s unique interests were not represented in the initial stages of the rule drafting process.

The rules as drafted do represent a slight improvement over the prior rules. The threat of unreasonable sanctions is, in some circumstances, nominally reduced as compared to the existing rules. *See* OAR 860-028-0130 through -0150. There are also some added safeguards that appear to limit the imposition of sanctions. *See* OAR 860-028-0120. Embarq understands that these improvements were not easily achieved and therefore it recognizes the substantial effort put forth by the OJUA.

Unfortunately, the sanctions in the rules continue to be unreasonable and overly punitive. They encourage pole owners to create uneconomic bureaucracies that treat sanctions as a revenue stream, rather than purely as a deterrent to unsafe pole

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<sup>1</sup> To the extent that Embarq suggests changes to the rules, it does not waive its right to challenge any provision of the rules as unlawful or as otherwise inappropriate.

attachment practices. In addition, there are insufficient limitations on the pole owners' ability to charge for inspections and auditing costs, in addition to sanctions.

The magnitude of the sanctions in these rules creates an environment that is anticompetitive and a barrier to entry, because it encourages pole owners to exercise their monopoly power over poles and, in effect, discourages pole occupants from providing services using those poles. Furthermore, the additional and unreasonable costs that the sanctions create take away from the real reason that poles are leased; to provide the best quality services to as many citizens of the state of Oregon as possible.

The rules therefore go well beyond the original intent, which is to encourage the safe and responsible use of poles to provide power and telecommunications services. Embarq therefore urges the Commission to, at a minimum, reduce the sanctions in the rules to a level that is reasonable, not arbitrary, and based on no more than the actual cost incurred to remedy attachment violations.

In addition, Embarq provides the following specific comments to the proposed draft rules:

**OAR 860-028-0120:**

(5) Failure of Occupant to Promptly Repair, Disconnect, or Isolate ~~Hazardous~~ Conditions that Present an Immediate Hazard to Person or Property: A pole owner may correct deficiencies which cause immediate hazardous conditions to person or property and charge the costs of the correction to the occupant if:  
(a) the owner provides reasonable notice of a hazard ~~situation~~-requiring prompt attention, including vegetation posing an imminent threat to the supporting structure

**OAR 860-028-0140:**

(5) Sanctions imposed under this section shall be:  
(b) 5 times the owner's current annual rental fee per pole in addition to a sanction of \$100 per pole for each pole on which there is one or more violations and which is reported by the pole owner.

**OAR 860-028-0170:**

This section should be clarified so that an occupant that complies with a portion of correction plan is not sanctioned for that portion. For example:

(d) If a pole occupant completes a portion, but not all, of a correction plan, no sanctions shall be due for the completed portion.

**OAR 860-028-0190:**

Additional discussion among the parties is necessary to clarify this section.

Embarq respectfully submits these comments this 4<sup>th</sup> day of October, 2006.

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

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