



November 17, 2006

Oregon Public Utility Commission
Attention: Filing Center
P.O. Box 2148
Salem, Oregon 97308-2148

Re: Docket AR 506/510 – Rulemaking to Amend OAR 860, Division 028.

The Oregon Telecommunications Association (OTA) is a statewide trade association representing telecommunications utilities operating throughout Oregon. The OTA appreciates the opportunity to provide comments in this proceeding.

In the second round comments submitted by Staff and dated November 8, 2006, Staff continues to advocate that communications owners and occupants should be required to trim and remove vegetation. OTA disagrees. ORS 758.282 and 758.284 provides immunity for electric utilities for pruning or removing of vegetation. Communications owners and occupants are not provided any such immunity.

For this reason alone, OTA believes it is inappropriate to impose any requirements relating to vegetation management and trimming through this rulemaking proceeding. The OTA believes that if any requirements of this nature are implemented then communications owners and occupants will be placed in a position of potential liability by adhering to rules adopted by the OPUC. In effect, two separate and unequal classes of pole occupants would be created if vegetation management rules were to be implemented: those with liability protection and those without liability protection.

The Oregon Joint Use Association (OJUA) in it's proposed rules dated November 16, 2006 suggests language in 860-028-0120 (4) that attempts to placate the desire for the inclusion of vegetation management requirements. While the OTA applauds the effort of the OJUA, our objection to the inclusion of any vegetation management, removal or pruning requirements stands.

OJUA in it's proposed 860-028-150 (5) requests that pole owners have the authority to immediately impose sanctions for alleged safety violations occurring in new construction. The OTA does not agree with that suggestion and objects to the adoption of such authority for pole owners.

Rather, the OTA recommends that a safe harbor timeline, similar to that proposed relating to legacy violations, be considered for violations occurring in new construction situations. The OTA believes that punitive sanctions were originally authorized in order to compel bad actors to correct behavior that resulted in chronic unauthorized or unsafe attachment situations. Punitive sanctions should not now be authorized as a means to punish occupants for either an incorrect inspection or work that has occurred after an occupant has completed it's own attachment. The OTA believes that immediate sanctions with zero opportunity for correction is bad public policy.

Additionally, the OTA would like to see adoption of language that clarifies duties of pole owners and occupants relating to change out of poles. The OTA advocates for language that would ensure costs for pole change outs are fairly borne by the parties involved. As a suggestion:

Duties of Electric Supply and Communication Pole Owners

860-028-0115

(8) If a pole larger than the existing pole is placed solely for the benefit of the occupant then the occupant shall pay to the owner a sum equal to the difference of the existing pole and the new pole.

(9) If a new pole is required due to the pole owner being out of compliance with applicable safety rules then the pole owner shall pay the entire cost, regardless of any compliance issues with any of the pole occupants.

Bill Kiggins, Clear Creek Telephone and Television and OJUA Board member commented on this issue at the last public meeting held in this docket. The OTA realizes this is the last date for comment and suggesting such language at this late date may present difficulties for other parties. However, the OTA respectfully requests that the suggested language be given consideration.

Thank you for consideration of these comments. Please do not hesitate to contact me if you have any questions.

Sincerely,

Brant Wolf