COLE, RAYWID & BRAVERMAN, L.L.P.
ATTORNEYS AT LAW
1919 PENNSYLVANIA AVENUE, N.W., SUITE 200
WASHINGTON, D.C. 20006-3458
TELEPHONE (202) 659-9750
FAX (202) 452-0067
WWW.CRBLAW.COM

T. SCOTT THOMPSON
DIRECT DIAL
202-828-9807
STHOMPSON@CRBLAW.COM

LOS ANGELES OFFICE
2381 ROSECRANS AVENUE, SUITE 110
EL SEGUNDO, CALIFORNIA 90245-4290
TELEPHONE (310) 643-7999
FAX (310) 643-7997

SEPTEMBER 28, 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 first round comments in Phase II of AR 506 and AR 510, along with Charter's proposed redlines of the Division 028 pole attachments rules and sanctions rules. Charter appreciates the opportunity to comment on these rules.

If you have any questions, please contact us.

Sincerely,

Jill M. Valenstein

T. Scott Thompson
Jill M. Valenstein

Enclosures

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

AR 510

In the Matter of	)	
	)	**FIRST ROUND COMMENTS OF**
Rulemaking to Amend Rules in OAR	)	**CHARTER COMMUNICATIONS**
860, Division 028 Relating to	)	
Sanctions for Attachments to Utility	)	
Poles and Facilities.	)	

Charter Communications, Inc. ("Charter") respectfully submits these Comments pursuant to Chief Administrative Law Judge Michael Grant's September 20, 2006 Ruling establishing the Schedule for Docket AR 510, which will address the "sanctions rules" related to pole attachments and run parallel to AR 506.[1] Charter welcomes the opportunity to comment on the sanctions rules. While Charter believes that pole owners should have legitimate tools to ensure safe practices and proper rental payments, pole owners have used the sanctions rules instead to generate profits and achieve undue, improper leverage over attachers. Charter urges the wholesale replacement of the sanctions with a cost-based approach that more closely accords with standard industry practices around the nation. In the alternative, Charter would accept the Oregon Joint Use Association's ("OJUA") submission, as further revised by Charter.[2]

I. INTRODUCTION

Charter is one of Oregon's largest cable television operators, serving approximately 173,000 subscribers in the State. Charter commends Staff's continuing efforts to improve the

---

[1] *In the Matter of Rulemaking to Amend Rules in OAR 860, Division 028 Relating to Sanctions for Attachments to Utility Poles and Facilities*, AR 510, Ruling (Sept. 20, 2006).

[2] *See* Charter's accompanying redline of the OJUA proposal, attached hereto.

condition of outside plant, as well as industry and Commission practices in this regard. Charter, too, is committed to public and line worker safety and grid integrity because without a reliable, safe and secure system of poles and related facilities Charter could not serve its customers. Charter has worked diligently and expended considerable resources to carry out its Commission-approved Inspection/Correction and Permit Reconciliation Program, since the Legislature passed House Bill 2271, and has partnered successfully with several Oregon pole owners in this regard. Charter nevertheless believes that the sanctions framework is fundamentally flawed and encourages utility abuses, over safety.

II. COMMENTS

A. Need To Eliminate Sanctions Rules

House Bill 2271 was intended to provide a mechanism to achieve compliant plant for pole owners, and, in turn, rental relief for attachers. The premise of the H.B. 2271 compromise was a good one: encourage pole users to attach in a safe manner in exchange for reduced rent. What the sanctions actually produced is an acrimonious joint-use environment and numerous disputes, both formal and informal.[3] Although Charter understands that pole occupants participated in the regulatory effort that led to the sanctions, none of the participants could have anticipated that the joint-use situation would deteriorate so dramatically as a result.

Ever since the sanctions regulations were implemented, communications attachers, including Incumbent Local Exchange Carriers ("ILECs," which own far fewer poles than electric utilities), have been unfairly and severely penalized (or threatened with penalties) and forced to accept unreasonable rates (including a proliferation of application processing and permitting fees), terms and conditions both in agreements and in the field, or risk penalties. In

[3] *See, e.g., Central Lincoln People's Utility District v. Verizon Northwest*, UM 1087, Petition for Removal of Attachments, (Pub. Util. Comm'n Or.) (seeking an order for Verizon to pay $1,248 per pole in sanctions for "no contract" and the removal of Verizon's attachments) (hereinafter "*CLPUD v. Verizon*").

addition, while pole occupants believed that the sanctions would be reserved for use against egregious attachers, even overwhelmingly compliant attachers, are routinely sanctioned or threatened with sanctions for the pole owner to gain leverage. Indeed, because the sanctions are paid directly to pole owners there is a perverse incentive to exploit the safety inspection and audit processes for profit, creating suspicion, mistrust and deteriorating field relationships. Even when there is no question about compliance, many pole owners still refuse to give the rental rate reduction, most without explanation.

Charter's own experience demonstrates how at least one responsible attacher that has tried to work within the new system, nevertheless has received few benefits and continues to be sanctioned.

1. Contract Negotiations

Following implementation of the sanctions regulations, nearly every pole owner in Oregon cancelled their existing contracts and presented Charter with a new one—each with the full complement of sanctions. While some pole owners have negotiated in good faith, several have abused the sanctions in order to gain leverage over Charter. One pole owner threatened that if Charter did not sign its pole agreement by a date certain, it would impose the "no contract" sanctions, which would have resulted in an instant liability to Charter of about $6.7 million. Other owners have abused the sanctions to gain further advantages during negotiations (even though pole owners already have superior bargaining power).[4]

To be sure, Charter has felt compelled to accept various unjust and unreasonable rates, terms and conditions, or risk possible imposition of sanctions for "no contract." Although Charter appreciates that Staff has admonished pole owners against abusing the sanctions in this

[4] *See infra* note 11.

manner, Charter believes that as long as the sanctions exist they will be used improperly as leverage during contract and disputed fee negotiations, as well as in the field.

2. Compliance Issues

Although 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, Charter has encountered the same abuses with respect to compliance issues.

For example, at its own expense, pursuant to its Program, Charter has provided attaching parties and owners with the documentation it has collected in the field, detailing the code violations of all parties and specifying any engineering work that must be done in order to achieve compliance on a particular pole. Charter has incurred all the costs associated with its Program and has not sought financial recovery from any other attacher, even though it is reasonably entitled to reimbursement. Charter has even coordinated the cleanup efforts between attaching parties and pole owners, although Charter believes this is (and should be) the responsibility of the pole owner. Indeed, because Charter has no leverage either over pole owners or other attaching parties (other than on the basis of its in-field and inter-personal relationships), trying to convince other occupants and pole owners to modify their attachments upon Charter's request has proven to be one of the most problematic, costly and time-consuming aspects of Charter's Program.[5]

Despite Charter's efforts, including the expenditure of $8.5 million, certain pole owners continue to sanction Charter, sending a bill with every violation notice—even for minor,

[5] This is one of the reasons why Charter believes the inclusion of a pole owner coordination function responsibility, as advocated in its Comments to AR 506, is essential. *See* Charter First Round Comments, at Section III.H.(d).

"technical" code violations. Also, and perhaps more ironic, even though attachers agreed to the sanctions regime in exchange for rental relief, there are still pole owners who refuse to give Charter reduced rent even though Charter is in significant compliance around the State.[6]

3. Rules To Be Rescinded

Charter specifically recommends that the Commission rescind OARs 860-028-0130 (Sanctions for Having No Contract); 0140 (Sanctions for Having No Permit) and 0150 (Sanctions for Violations of Other Duties). If OARs 860-028-0130 through 0150 are eliminated, then, OARs 0160 (Choice of Sanctions); 0170 (Time Frame for Securing Reduction in Sanctions); 0180 (Progressive Increases in Sanctions); 0190 (Notice of Violation); 0195 (Time Frame for Final Action by Commission);[7] 0210 (Resolution of Disputes over Plans of Correction); 0240 (Effective Dates), would no longer be necessary. In these Comments, Charter only specifically addresses OARs 860-028-0130 through 0150.[8]

B. Legal Background

Monopoly owned utility poles provide virtually the only practical physical medium for the installation of cable operators' and other communications attachers' facilities and are

---

[6] When attachers receive a rental reduction in Oregon, they are merely receiving 20 inches (half the required 40 inches of separation space between the lowest electrical attachment and the highest communications attachment) of space added back to the usable space presumption. The more usable space the lower the rent. Although Charter does not now advocate a change in Oregon's pole formula, because it believes that it is, by and large, fair to all parties, there is one significant difference between Oregon's formula and the Federal Communications Commission ("FCC") formula that prevails in approximately 40 states. Unlike the Oregon formula, under the FCC approach, the entire 40 inches of clearance space is **always** considered usable space. Therefore, pole owners in Oregon always (even with the reduction) receive a larger share of pole costs than the vast majority of pole owners in the nation.

[7] Charter recommends that if this section applies to disputes in general, in addition to sanctions disputes, that it be relocated to OAR-028-0070, the proposed Dispute Resolution rule.

[8] Charter takes no position with regard to OAR 860-028-0230 (Pole Attachment Rental Reductions). As Charter mentioned above, many pole owners fail to give the reduction; and Charter is willing to forego the reduction for removal of the sanctions. Charter understands, however, that some pole owners seek to retain the reduction. Charter, of course, would support that position, but only if the sanctions are eliminated in their entirety or severely curbed.

therefore recognized as essential facilities.[9] The 1978 federal Pole Attachment Act ("PAA")[10] was the legislative response to substantial evidence of abuse by monopoly pole-owning utilities, including the imposition of "exorbitant fees and other unfair terms . . . on cable operators."[11] Congress recognized that without pole attachment regulation, "utilities by virtue of their size and exclusive control over access to pole lines, are unquestionably in a position to extract monopoly rents from cable TV systems in the form of unreasonably high pole attachment rates."[12]

The federal PAA instructs the FCC to adopt procedures necessary to hear and resolve complaints and to ensure just and reasonable rates, terms and conditions for the use of these essential, bottleneck facilities. The PAA also sets forth a cost-based, pole attachment rent formula that "accomplishes key objectives of assuring, to both the utility and the attaching parties, just and reasonable rates; establishes accountability for prior cost recoveries; and accords with generally accepted accounting principles."[13]

Similar to the federal PAA, the Oregon pole enabling statute mandates that "[a]ll rates, terms and conditions made, demanded or received by any . . . utility for any attachment . . .

---

[9] *See* 123 Cong. Rec. H35006 (1977) (remarks of Rep. Wirth, sponsor of the Pole Attachments Act, Pub. L. No. 95-234, 92 Stat. 25 (1987), codified at 47 U.S.C. § 224) ("The cable television industry has traditionally relied on telephone and power companies to provide space on poles for the attachment of CATV cables. Primarily, because of environmental concerns, local governments have prohibited cable operators from constructing their own poles. Accordingly, cable operators are virtually dependent on the telephone and power companies. . . ."); S. REP NO. 580, 95th Cong., 1st Sess. 13 (1977) ("Owing to a variety of factors, including environmental or zoning restrictions and the costs of erecting separate CATV poles or entrenching CATV cables underground, there is often no practical alternative to a CATV system operator except to utilize available space on existing poles").

[10] Pub. L. No. 95-234, 92 Stat. 33 (1978) (codified at 47 U.S.C. § 224).

[11] *Amendment of Rules and Policies Governing Pole Attachments; Implementation of Section 703(e) of The Telecommunications Act of 1996*, Consolidated Partial Order on Reconsideration, 16 FCC Rcd 12130, ¶ 21 (2001) (hereinafter "*2001 FCC Order*").

[12] H.R. Rep. No. 94-1630 at 5 (1976).

[13] *2001 FCC Order* at ¶ 15. Specifically, the FCC's cable pole formula "[a]ssures a utility the recovery of not less than the additional costs of providing pole attachments, nor more than an amount determined by multiplying the percentage of the total usable space . . . which is occupied by the pole attachment by the sum of the operating expenses and actual capital costs of the utility attributable to the entire pole . . . ." 47 U.S.C. § 224(d).

shall be just, fair and reasonable".[14] Despite this express statutory mandate, rather than mitigate the monopoly power of pole owners as intended by the statute, the sanctions rules give pole owners *additional* leverage by improperly allowing them – indeed encouraging them – to demand and impose severe penalties on attachers and thus serve to strengthen a pole owner's ability to impose *unjust* rates, terms and conditions.

Additionally, although the Commission is tasked with protecting "the health [and] safety of all [utility] employees, customers, [and] the public,"[15] the Commission is also obligated to ensure that utilities do not recover more than their allowable share of costs for pole attachments.[16] Consequently, while the Commission may have implemented the penalty rules in theory to encourage safe pole installation and maintenance practices, in reality the sanctions rules instead provide a windfall to electric utilities in the process. That is because, as addressed in detail below, imposition of the sanctions in addition to fully allocated rents (which attachers pay in Oregon), allows pole owners in Oregon to recover more than their legal share of providing pole attachments in direct violation of Oregon's pole attachment cost recovery statute.

---

[14] ORS 757.273.
[15] ORS 757.035.
[16] *See* ORS 757.282. Similar to the federal pole formula, the cost-based, Oregon pole rate statute: "ensure[s] the public utility, telecommunications utility or consumer-owned utility the recovery of not less than all the additional costs of providing and maintaining pole attachment space for the licensee nor more than the actual capital and operating expenses, including just compensation of the . . . utility attributable to that portion of the pole, duct or conduit used for the pole attachment, including a share of the required support and clearance space in proportion to the space used for pole attachment above minimum grade level, as compared to all other uses made of the subject facilities, and uses that remain available to the owner or owners of the subject facilities." *Id.*

C. The Sanctions Rules Must Be Rescinded Because They Undermine The Very Purpose of Oregon Pole Attachment Law And Allow Pole Owners To Recover Supra-Compensatory Rates.

1. The Sanctions Have Created Inappropriate Incentives That Encourage Utility Abuses And Undermine Pole Regulation.

While Charter considers each of the sanctions rules to be excessive and non-compensatory, and addresses those aspects of the rules below, the "no contract" penalty is a particularly striking example of how the penalty rules undermine the purpose of pole regulation. Indeed, the very existence of the "no contract" penalty, coupled with the essential nature of monopoly-owned poles, gives pole owners a significant advantage when negotiating the required "written contract"—one of the very abuses pole regulation was intended to prevent.[17]

Even with extensive federal regulation of utility pole attachments, "utilities still maintain a superior bargaining position over CATV systems in negotiating the rates, terms and conditions for pole agreements" because of their control over essential facilities.[18] Nevertheless, in states where the FCC has jurisdiction over pole attachments, attachers may rely on a substantial number of pole attachment rules and decisions through which the FCC

---

[17] "For example, the relevant Senate report [associated with the PAA] refers to testimony received in committee concerning: 'the local monopoly in ownership or control over of poles' by the utilities; the 'superior bargaining position' enjoyed by utilities over cable operators in negotiating rates terms and conditions for pole attachments; and allegations of 'exorbitant rental fees and other unfair terms' demanded by the utilities in return for the right to lease pole space. As the Senate report and the case law bear out, Congress clearly acted to protect cable operators from anticompetitive conduct by utilities." *Heritage Cablevision Assoc. of Dallas v. Texas Util. Elec. Co.*, 6 FCC Rcd 7099, ¶ 14 (1991) (internal citations omitted).

[18] *Amendment of Rules and Policies Governing the Attachment of Cable Television Hardware to Utility Poles,* Report and Order, 2 FCC Rcd 4387, ¶ 77 (1987) (hereinafter "*1987 FCC Order*"). *See also, Federal Communications Commission Issues Biennial Regulatory Review Report For The Year 2000*, 2001 FCC LEXIS 378, Part 1, Subpart J-Pole Attachment Complaint Procedures (2001) ("At the time of adoption of section 224, utilities enjoyed a superior bargaining position over attachers in negotiating the rates, terms and conditions for pole attachments due to the utilities' monopoly position in ownership or control of these facilities. That monopoly position has not changed, hence there remains the possibility of anticompetitive practices by utilities against cable or competitive telecommunications providers in the absence of section 224").

and reviewing courts have established the boundaries of just and reasonable terms and conditions.

In addition, attachers have other tools that serve to level the playing field during written contract (or "pole attachment agreement") negotiations. For example, pole owners in FCC states are required to negotiate pole attachment agreements in "good faith."[19] Additionally, when attachers are presented with an unjust and unreasonable pole attachment agreement that a utility refuses to negotiate commensurate with federal pole attachment law, attachers can also rely on the "sign and sue" rule. The "sign and sue" rule was established to ameliorate the superior bargaining position held by utilities and ensure that attachers receive the full protections of the PAA. The rule, which has been upheld by the United States Court of Appeals for the District of Columbia Circuit, allows attachers to "sign" unreasonable agreements and "sue" on them at the FCC later.

> For example, one scenario in which 'sign and sue' is likely to arise is when the attacher acquiesces in a utility's 'take it or leave it' demand that it pay more than the statutory maximum or relinquish some other valuable right—without any *quid pro quo* other than the ability to attach its wires on unreasonable or discriminatory terms. Of course the Pole Attachments Act was designed to prevent such an exercise of monopoly power that would nullify the statutory rights of cable systems or telecommunications carriers to obtain both immediate access and timely regulatory relief to the extent access is unreasonable or discriminatory. The utility is statutorily required to grant prompt, nondiscriminatory access and may not erect unreasonable barriers or engage in unreasonable delaying tactics. So in this scenario, where the utility gives nothing of value in exchange for the attacher's coerced 'agreement' to accept unreasonable or discriminatory access, the utility has no right to complain if the attacher 'signs and sues' to challenge this

[19] *See 1987 FCC Order* ("Our willingness to review contract provisions and the possibility of either revising an unlawful term or condition or ordering an adjustment to the maximum rate because of an onerous term or condition should serve as an impetus to utilities to negotiate in good faith with regard to terms and conditions of the agreement before they are presented to the [FCC]").

> abuse of the utility's monopoly control over the essential transport facilities.[20]

In comparison, the penalty for "no written contract" of $500 per pole or sixty times the rental fee per pole, whichever is greater, gives pole owners in Oregon a mechanism that actually *reinforces* their superior bargaining position over attachers, contrary to the precise intended effect of pole regulation. As a result, and especially given that pole owners in Oregon are currently under no express obligation to negotiate in good faith,[21] when presented with a "written contract" that contains unjust and unreasonable terms, attachers in Oregon are forced to accept one of two unattractive alternatives: (1) either sign the unreasonable agreement and try to operate under its terms and conditions and perhaps bring a costly complaint at the Commission; or (2) refuse to sign the agreement and face severe penalties or a potential collections action upon refusal to pay, as well as forced removal of an existing network.[22]

Given these options, an attacher may have no choice but to accept the first alternative to ensure the continued delivery of its services, or, for new entrants, to gain initial access. Forced acceptance of one bad option over a worse option, is, however, a factor that led to pole regulation in the first instance.[23]

---

[20] *Southern Co. Serv., Inc. v. F.C.C.*, 313 F.3d 574, 583 (D.C. Cir. 2002) (quoting, with approval, the agency's brief and upholding, *inter alia*, the "sign and sue" rule).

[21] ORS 757.285; *contra Selkirk Comm., Inc. v. Florida Power and Light Co.*, 8 FCC Rcd 387, ¶ 17 (1993) ("Due to the inherently superior bargaining position of the utility over the cable operator in negotiating the rates, terms and conditions for pole attachments, pole attachment rates cannot be held reasonable simply because they have been agreed to by a cable company").

Proposed OAR 860-028-0060(3) requiring parties to "negotiate pole attachment contracts in good faith," is therefore a critical addition to the new Division 028 rules.

[22] This scenario essentially describes what occurred in *Central Lincoln People's Utility District v. Verizon Northwest*, UM 1087, Petition for Removal of Attachments, (Pub. Util. Comm'n Or.) (seeking an order for Verizon to pay $1,248 per pole in penalties for "no contract" and the removal of Verizon's attachments).

[23] In the days before regulation, cable operators seeking to attach coaxial facilities to poles faced delays in installation, overcharges, restrictive tariffs forbidding competitive telecommunications, and efforts to force cable operators into "lease-back" arrangements in which the telephone company would have exclusive control over the installation, maintenance, and operation of the cable attachments on the pole. *See, e.g., Communications Act Amendments of 1977: Hearings on S. 1547 Before the Subcomm. on Communications of the Senate Comm. on Commerce, Science, and Transportation*, 95th Cong. (1977) ("*S.1547 Hearings*"); S. REP. NO. 95-580, at 13

For these reasons and others, the "no contract" penalty rule undermines the purpose of pole regulation, *i.e.*, to mitigate the superior bargaining position held by utilities, and therefore should be rescinded.

2. The Non-Compensatory Nature Of The Sanctions Rules Allows Utilities To Over-Recover In Violation of Oregon Pole Attachment Law.

The Commission's primary responsibility is "to protect . . . customers, and the public generally, from unjust and unreasonable exactions and practices and to obtain for them adequate services at fair and reasonable rates."[24] Consistent with that charge, the Commission is required to ensure that the rates demanded by utilities for pole attachments "shall be just, fair and reasonable."[25] To that end, and in accordance with the basic "revenue-requirement-standard" of utility rate regulation, which allows a utility "to set rates that will both cover operating costs and provide an opportunity to earn a reasonable rate of return on the property devoted to the business,"[26] a just and reasonable *pole attachment rate* in Oregon:

> [E]nsure[s] the public utility, telecommunications utility or consumer-owned utility the recovery of not less than all the additional costs of providing and maintaining pole attachment space for the licensee nor more than the actual capital and operating expenses, including just compensation of the . . . utility attributable to that portion of the pole, duct or conduit used for the pole attachment, including a share of the required support and clearance space in proportion to the space used for pole attachment above minimum grade level, as compared to all other

---

(1977); *Better T.V., Inc. of Duchess County, N.Y. v. New York Tel. Co.*, 31 F.C.C.2d 939, 967 (1971), *recon. denied*, 34 F.C.C.2d 142 (1972) (stating that independent operators "quickly took the hint about the lack of manpower to perform make-ready work and accepted channel service rather than run the risk of having the competing channel service customer get such a head start as to make a grant of its request for a pole attachment agreement an empty and worthless gesture"); *General Tel. Co. of California (formerly California Water & Tel. Co.) The Associated Bell System Companies, Applicability of Section 214 of the Communications Act with Regard To Tariffs for Channel Service for Use by Community Antenna Tele. Systems*, 13 F.C.C.2d 448, 463 (1968) (by control over poles, the telephone company is in a position to preclude an unaffiliated CATV system from commencing service).

[24] ORS § 756.040.

[25] ORS § 757.273.

[26] CHARLES F. PHILLIPS, JR., THE REGULATION OF PUBLIC UTILITIES 176, (4th ed. 2003) (1993).

> uses made of the subject facilities, and uses that remain available to the owner or owners of the subject facilities.[27]

Likewise, under the federal pole attachment rate statute, upon which the Oregon rate statute is based, a rate is just and reasonable:

> [I]f it assures a utility the recovery of not less than the additional costs of providing pole attachments, nor more than an amount determined by multiplying the percentage of the total usable space . . . which is occupied by the pole attachment by the sum of the operating expenses and actual capital costs of the utility attributable to the entire pole . . . .[28]

In other words, **both** the Oregon and federal pole rate statutes create a similar range of allowable compensation relating to pole attachments. The low end of the range is the "incremental costs [,or] those that the utility would not have incurred 'but for' the pole attachments in question."[29] The high end of the range is the fully-allocated "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."[30]

---

[27] ORS § 757.282(2). With regard to the "just compensation" reference in the Oregon rate statute, it is important to note that the FCC formula, which the Oregon rate statute is modeled after, satisfies just compensation requirements. *See Alabama Power v. F.C.C.*, 311 F.3d 1357, 1358 (11th Cir. 2002); *cert. denied*, 124 S.Ct. 50 (U.S. Oct 06, 2003) (No. 02-1474). In *Alabama Power*, the Court found that the formula provides just compensation except possibly where poles are unusually crowded and even then, the formula exceeds marginal cost sufficiently that crowded poles should not be subject to higher rentals outside of the range established by the formula. *See also FCC v. Florida Power Corp.*, 480 U.S. 245, 253-54 (1987) (upholding the FCC formula and finding that it could not be "seriously argued, that a rate providing for the recovery of fully allocated costs, including the cost of capital, is confiscatory").

[28] 47 U.S.C. § 224(d).

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

[30] *Id.* Although the Oregon rate statute sets a range of recoverable costs, as does the federal statute, the PUC 's existing rules only refer to the upper range of compensation in the event of a dispute. *See* OAR § 860-028-0110(2)-(3)("A disputed pole attachment rental rate will be computed by taking the pole cost times the carrying charge times the portion of the usable space occupied by the licensee's attachment"). OAR 860-028-0110(2)(a) defines "carrying charge" as "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"). This is similar to the federal rule that applies in disputed cases: *i.e.,* when application of the formula reduces a contractual rental rate the FCC will only reduce the rate to the statutory maximum. *See, e.g., FCC v. Florida Power Corp.,* 480 U.S. 245, 254 (1987). Indeed, in Charter's experience most if not all utilities in FCC and certified states charge the fully allocated (maximum upper range) pole rental rate.

Most utilities recover the "incremental" or out-of-pocket costs in advance of any pole attachment or conduit occupancy through the imposition of "make-ready" expenses, and, in this way, receive at least the minimum required under both rate statutes (even before any pole rental is paid).[31] Anything above incremental costs is therefore a contribution to the utility's overall revenue requirements. Consequently, any fees or charges that a utility imposes on an attacher beyond the fully allocated rental rate that either (1) are also recovered in the rent or (2) do not reflect actual costs incurred for the specific benefit of the attacher, necessarily exceed the maximum cost recovery allowed under both the federal and state pole rate statutes.

The sanctions at issue here are imposed *in addition* to the fully allocated rental rate and do not reflect or even attempt to approximate the actual costs, if any, that are or may be incurred by pole owners when "pole occupants" fail to perform their requisite "duties."[32] Indeed, under separate rules, pole owners in Oregon are reimbursed for "any fines, fees, damages, or other costs the [attacher's] attachments cause the pole owner."[33] Thus, as Charter explains more fully below, looking to federal authority for guidance as necessary, any imposition of the penalties allowed under Oregon's penalty rules amounts to over-recovery under Oregon's own pole attachment cost recovery statute, and thus the sanctions must be rescinded.

---

[31] *See, e.g., Amendment of Rules and Policies Governing Pole* Attachments, Report and Order, ¶ 7 (2000). The Commission's rules also specify that the "rental rate[] . . . do[es] not cover the costs of special inspections, or preconstruction, make ready, change out and rearrangement work. Charges for those activities shall be based on actual (including administrative) costs." OAR 860-0280110(e)6).

[32] Consistent with the Commission pole attachment rental rate regulations, which only reference the upper range of the allowable compensation, *see* OAR 860-028-0110(2)-(3), it is Charter's experience that most, if not all, Oregon utilities impose, at least, the fully allocated rent.

[33] OAR 860-028-0110(8). *See also id.* at 110(6) ("The rental rates . . . do not cover the costs of special inspections or preconstruction, make ready, change out, and rearrangement work. Charges for those activities shall be based on actual (including administrative) costs"). It is also important to note that virtually every pole attachment agreement requires an attacher to indemnify the pole owner for any and all damages caused by the attacher and also contains insurance requirements. Many agreements also require performance bonds.

a. The Penalty For No Contract Is Neither Compensatory Nor Intended To Approximate Actual Damages, And Its Imposition Results In Over-Recovery.

In addition to the abusive manner in which this sanction has been imposed, the "no contract" penalty is neither compensatory nor reasonable. Rather, the penalty is set at an arbitrary amount (*i.e.,* the higher of $500 per pole or 60 times the annual rate per pole) and punishes the attacher, excessively, for its failure to carry out its "duty" to have a written contract. It is difficult to conceive, however, what possible damage a pole owner would suffer in the event an attacher failed to have a written contract, beyond the actual "damages" a pole owner is entitled to under other regulatory provisions – *i.e.*, rent.[34] Indeed, Charter understands that some pole owners and attachers operated normally for years in Oregon without a formal written contract prior to H.B. 2271.

b. The Penalty For No Permit Is Neither Compensatory Nor Intended To Approximate Actual Damages, And Its Imposition Results In Over-Recovery.

Under the Commission's rules, a pole occupant's failure to have a permit may result in a penalty that is the *higher* of "$250 per pole" or "30 times the owner's annual rental fee per pole."[35] This penalty is also arbitrary rather than compensatory or reflective of the actual costs, if any, a pole owner would incur when an attacher does not have a permit. It is unlikely, for example, that any attachments in Oregon have existed for 30 years without having been detected previously by the pole owner in a pole audit or some other type of pole inspection. Moreover, even if the last audit was 30 years ago, "a hard-and-fast rule requiring back rent to the date of the last inspection could grossly overcompensate [the pole owner] if an

[34] *See* OAR 860-028-0110(6) and (8) (permitting pole owners to recover all actual and other costs incurred, including "damages," for pole attachments beyond the fully allocated rental rate). A similar provision is included in Staff's newly proposed rules. *See* proposed rule 860-028-0050(2).
[35] OAR 860-028-0140(1)(a)-(b)(emphasis added).

unauthorized attachment were installed long after the last inspection."[36] Further, if the pole owner does incur other costs in the event of an unpermitted attachment, pole owners in Oregon are fully compensated for all of their actual costs.[37]

A more appropriate way to structure an unpermitted attachment penalty, so that it does not result in gross over-recovery and provide perverse incentives to seek unpermitted attachments,[38] is to tie the calculation of the back rent owed to audit frequency, which, under standard industry practices, is five years, or some other reasonable measure of actual costs owed. At the same time, the penalty should not preclude the use of more precise information regarding the attachment date, and there must also be a reasonable cap so the back rent is not unreasonable in the event audit frequency is more than 5 years.

The unauthorized attachment penalty adopted by the FCC in *Mile Hi Cable Partners v. Pub. Serv. Co. of Colo.*, effectively accomplishes these goals by allowing the pole owner to recover back rent from the time of the last inventory or for 5 years, whichever is less, plus interest. In arriving at this penalty, the FCC concluded:

> 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 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

---

[36] *The Cable Tele. Ass'n of Georgia v. Georgia Power*, 18 FCC Rcd 16333, ¶ 22 (2003) ("While providing for calculation based on the date of the last inspection might be a reasonable proxy where no other information is available, it precludes the use of more precise information regarding the attachment, which would permit an accurate calculation of back rent. Alternatively, if the use of actual attachment dates is not practical, a reasonable maximum period could be included to ensure that the back rent assessment is not unreasonable").

[37] *See supra* notes 33 and 34.

[38] For example, this large unpermitted attachment sanction has resulted in numerous audits that are wholly inaccurate and have forced attachers to spend considerable time and money on audit verification. That is why Charter recommends in its Comments to AR 506 that if the attacher determines in a sampling that the pole owner's audit is at least 5% inaccurate, the pole owner should be required to redo the audit. *See* Charter First Round Comments to AR 506, at Section II.H.1(d). Hopefully, revised sanctions rules will also curtail the practice of providing erroneous audit results.

> 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.[39]

Importantly, the FCC found that this penalty provided "incentive for [attachers] to comply with a reasonable application process while encouraging utilities not to delay audits of unauthorized attachments."[40] The FCC also recognized that an unauthorized attachment fee that does not approximate the back rent actually owed, is "unenforceable on grounds of public policy as a penalty."[41] This is similar to Oregon law that prohibits private parties from imposing penalties that are disproportionate to any damage they could suffer.[42]

For these reasons, in place of the current excessive, non-compensatory sanction, Charter recommends that the Commission adopt the *Mile Hi*, five year back rent penalty standard. Indeed, based on Charter's experience as a multi-state cable operator, a 5 year back rent cap is consistent with standard industry practice and is contained in the vast majority of pole attachment agreements around the nation.

---

[39] *Mile Hi Cable Partners v. Pub. Serv. Co. of Colo.*, 15 FCC Rcd 11450, ¶¶ 10-13 (2000), *aff'd*, 17 FCC Rcd 6268 (2002) ("We find that the Bureau's determination—*i.e.*, that a just and reasonable unauthorized attachment fee is five times the annual rent that [the attacher] would have paid if the attachment had been authorized—is appropriate in these circumstances"), *aff'd, Pub. Serv. Co. of Colo. v. F.C.C.*, 328 F.3d 675, 680 (D.C. Cir. 2003) ("In its analysis, the FCC . . . showed that most utilities currently charge a one-time fee of $15.00 to $25.00 per pole, or charges based on back rent for no more than three years. Finding no reason to doubt [the Complainant's] uncontested expert testimony regarding industry practices, the [FCC] correctly figured that an attachment rate based on the years of unpaid annual rent, on average $3.77 per pole plus interest, would put the charge right in the middle of the industry range").

[40] *Mile Hi* at ¶ 14.

[41] *Mile Hi Cable Partners, LP, et al v. Pub. Serv. Co. of Colorado*, 17 FCC Rcd 6268 (2002) (citing the *Restatement (Second) of Contracts* § 356).

[42] *See Secord v. Portland Shopping News*, 126 Or. 218, 223, 269 P.2d 228 (1928).

c. *The Penalty For Safety Violations Is Neither Compensatory Nor Intended To Approximate Actual Damages, And Its Imposition Would Result In Over-Recovery.*

Finally, none of the sanction rules under which pole owners can penalize an attacher for "safety violations" (*i.e.*, failure to maintain and install attachment in compliance with the pole owner's contract, permit, or the Commission's safety rules) $200 per pole or 20 times the annual rent, whichever is higher, compensate the pole owner for any actual losses.[43] Pole owners are compensated under a separate regulatory provision for "any fines, fees, damages, or other costs the licensee's attachments cause the pole owner to incur" as the result of a deficient attachment, including the cost of correction.[44] While compensating a pole owner for the actual costs incurred to correct a safety violation or for associated damages is reasonable, a pole owner should not be permitted to impose "penalties" or any other non-compensatory expense for safety violations, because it would result in over-recovery.[45] Additionally, like the sanction for unpermitted attachments, the safety sanction also encourages pole owners and/or their contractors to find "violations," often leading to inaccurate results.

Charter understands that during the recent Utah pole rulemaking, a similar sanction proposal was rejected by the Utah PSC; and Charter knows of no other certified state that has allowed such penalties.

---

[43] OAR 860-028-0150 ("Violations of Other Duties").

[44] OAR 860-028-0110(8). A similar provision is contained in the proposed rules. *See* proposed rule 860-028-0050(2).

[45] *See, e.g.*, *Mile Hi*, 17 FCC Rcd 6268, ¶ 12 (2002) ("[T]here is no basis in the record to support . . . exemplary or punitive damages beyond compensatory damages, and indeed, [pole owner] has attempted to justify its fee in terms of its actual losses. [Pole owner] was unable to support its claim for the present value of fourteen years of annual fees plus some speculative amount related to alleged increased safety risks and administrative costs. . . . [The attacher] must also pay all just and reasonable costs associated with safety compliance issues in addition to any unauthorized attachment fee. [Pole owner] was unable to provide support for actual losses in excess of the unauthorized attachment fee approved by the [Cable] Bureau."), *aff'd Pub. Serv. Co. of Colo. v. FCC*, 328 F.3d 675, 679-80 (2003).

OAR 860-028-0150 is also objectionable in that it purports to impose by rule liquidated damages for any and all violations of a pole attachment agreement. Liquidated damages are supposed to represent the parties' good faith attempt to quantify in advance the damages that would be suffered in the event of a particular type of contract breach, when those damages would otherwise be difficult to quantify. Yet, in OAR 860-028-0150, the Commission purports to impose a mandatory liquidated damage for any and all breaches of a pole attachment agreement, even if no actual damage would result. There is no record support for such an imposition, and it is arbitrary and capricious.

For these reasons, the imposition of the "safety" sanctions result in over-compensation to pole owners and thus exceed the maximum recovery allowed under the Oregon cost recovery statute and should be rescinded.

D. The Commission's Penalty Rules Undermine The Promotion Of Communications Deployment In Violation Of The Express Public Policies of Both The State And Federal Governments.

"In 1985, the Legislative Assembly adopted a goal for the State of Oregon 'to secure and maintain high-quality universal service at just and reasonable rates for all classes of customers and to encourage innovation within the industry by a balanced program of regulation and competition.'"[46] The Commission is charged with administering "the statutes with respect to telecommunications rates and services in accordance with this policy."[47]

---

[46] THE STATUS OF COMPETITION AND REGULATION IN THE TELECOMMUNICATIONS INDUSTRY, PUBLIC UTILITY COMMISSION OF OREGON, Jan. 2004, at 1-4 (citing ORS 759.015).

[47] ORS 759.015. *See also* Public Utilities Commission Website, *History Duties and Functions at* http://www.puc.state.or.us/consumer/history.htm ("The Oregon Public Utility Commission regulates utility industries to ensure that customers receive safe, reliable services at reasonable rates, while promoting competitive markets").

In passing the 1996 Act, Congress similarly sought to "accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening telecommunications markets to competition . . . ."[48] The "Telecommunications Act of 1996 . . . charges the [FCC] with 'encourag[ing] the deployment on a reasonable and timely basis of advanced telecommunications capability . . .' by 'regulatory forbearance, measures that promote competition . . . *or other regulating methods that remove barriers to infrastructure investment.*'"[49] To that end, in the 1996 Act Congress extended the protections of the 1978 PAA to cover "telecommunications carriers," as well as "cable television systems," recognizing the significance of just and reasonable pole rates, terms and conditions on the development of competitive markets.[50] Congress also required the utilities to grant access upon request of any cable television system or telecommunications carrier.[51] Part of the rationale for requiring access was the recognition that utilities could enter competitive lines of business such that there would be additional incentives to deny access to third party attachers. "Perhaps fearing that electricity companies would now have a perverse incentive to deny potential rivals the pole attachments they need, Congress made access mandatory."[52] Indeed, as a result of the 1996 Act, electric utilities have moved into competitive lines of

---

[48] H.R. CONF. REP. No. 104-458 (1996). The Communications Act of 1934, as amended by the Telecommunications Act of 1996, applies "to all interstate and foreign communications by wire or radio and all interstate and foreign transmission of energy by radio, which originates and/or is received within the United States, and to all persons engaged within the United States in such communication or such transmission of energy by radio . . . . The provisions of this Act shall apply with respect to cable service, to all persons engaged within the United States in providing such service, and to the facilities of cable operators which relate to such service, as provided in title VI [Cable Communications]." 47 U.S.C. § 152(a).

[49] *Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities; Internet Over Cable Declaratory Ruling; Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities,* Declaratory Ruling and Notice of Proposed Rulemaking, 17 FCC Rcd 4798, ¶ 4 (2002) (internal citations omitted) (emphasis added).

[50] *2001 FCC Order* at ¶ 9 (describing how the 1996 Act amended Section 224 in several respects to fulfill Congress' stated policy goals).

[51] 47 U.S.C § 224(f)(1).

[52] *Alabama Power v. F.C.C.*, 311 F.3d 1357, 1363 (11th Cir. 2002).

business and thus are poised to compete and gain a substantial advantage in Oregon, particularly if they can impose excessive penalties and unreasonable terms on third party attachers.[53]

However, the constant threat of excessive utility sanctions shadowing communications companies in Oregon creates uncertainty and a hostile environment for their efforts to deploy and innovate. Pole and conduit rents, and related expenses, already represent significant components of the fixed operational costs of a competitive network. The more money communications attachers are forced to spend on these costs, let alone on excessive and non-compensatory penalties, the less they will have to invest in communications infrastructure and the development and provision of new and innovative services that consumers demand.

Just as monopoly pricing of pole rents was once a barrier to "the wider development of cable television service to the public,"[54] the sanctions rules serve to undermine the express goals of both Oregon's Legislative Assembly and the United States Congress.[55]

E. In The Alternative, Charter Endorses The OJUA Proposal.

While Charter believes that the sanctions should be rescinded in their entirety, alternatively, Charter supports the OJUA proposal (as further revised by Charter). The OJUA proposal allows an attacher a reasonable time period to verify and correct violations prior to the imposition of a safety sanction and reduces all the sanction amounts.

---

[53] *See, e.g.,* BROADCASTING & CABLE, John Eggerton, *Powering Up BPL* [Broadband over Power Lines], Aug. 25, 2006 (quoting a utility representative stating that "the FCC had given utilities a 'tremendous green light' for the service, and that investors like Google and Goldman Sachs were putting hundreds of millions of dollars into the technology, which delivers broadband to electrical outlets at a speed and price . . . [that] would be competitive").

[54] *2001 FCC Order* at ¶ 21 (citing S. REP. NO. 95-580, 95th Cong., 1st Sess. (1977), *reprinted in* 1978 U.S.C.C.A.N. 109).

[55] Furthermore, because the penalty rules are so extreme, they may also "have the effect of prohibiting the ability of [a new entrant or any] entity to provide interstate or intrastate telecommunications service," in violation of 47 U.S.C. § 253(a) of the 1996 Act.

Charter would revise the back rent penalty for self and owner identified unpermitted attachments to be the *lesser of* 5 years back rent *or back to the last audit*, in OAR 860-028-0140(2). Charter would also reduce the additional penalty for owner identified unpermitted attachments to $50, rather than $100; and would make a similar reduction from $200 to $100 per pole for violations referenced in OAR 860-028-0150. Finally, Charter would recommend that resort to the OJUA for resolution of "factual disputes" in the first instance, be permissive, rather than mandatory, in OAR 860-028-0200. Attachers should have the right to pursue all available remedies when necessary.

III. CONCLUSION

In accordance with the foregoing, Charter urges the Commission to eliminate the current sanctions rules. Rescinding the sanctions implemented pursuant to H.B. 2271, and incorporating fair and compensatory penalties, will promote a safer and more equitable joint-use environment, reduce the incidence of disputes and satisfy the Commission's mandate to provide "just, fair and reasonable" rates, terms and conditions. In the alternative, Charter supports the OJUA proposal, as further revised by Charter.

Respectfully submitted,

COLE, RAYWID & BRAVERMAN, LLP

T. Scott Thompson
Jill Valenstein
1919 Pennsylvania Avenue, N.W.
Suite 200
Washington DC 20006
(202) 659-9750
(202) 452-0067 (fax)
sthompson@crblaw.com
jvalenstein@crblaw.com

Attorneys for Charter Communications, Inc.

CERTIFICATE OF SERVICE

I certify that I have this day served a copy of the forgoing Comments of Charter Communications, Inc. upon all parties of record in AR 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.

/s/ T. Scott Thompson
T. Scott Thompson

September 28, 2006

Charter Rules Redline (Modifying OJUA Proposal)

AR 510

OAR 028 – Relating to Sanctions

860-028-0120
Duties of Pole Occupants
(1) Except as provided in sections (2) and (3) of this rule, a pole occupant attaching to one or more poles of a pole owner shall:
(a) Have a written contract with the pole owner that specifies general conditions for attachments on the poles of the pole owner;
(b) Have a permit issued by the pole owner for each pole on which the pole occupant has attachments;
(c) Install and maintain the attachments in compliance with the written contracts required under subsection (1)(a) of this rule and with the permits required under subsection (1)(b) of this rule; and
(d) Install and maintain the attachments in compliance with Commission safety rules.
(2) A pole occupant that is a government entity is not required to enter into a written contract required by subsection (1)(a) of this rule, but when obtaining a permit from a pole owner under subsection (1)(b) of this rule, the government entity shall agree to comply with Commission safety rules.
(3) A pole occupant may install a service drop without the permit required under subsection (1)(b) of this rule, but the pole occupant must:
(a) Apply for a permit within seven **calendar** days of installation;
(b) Except for a pole occupant that is a government entity, install the attachment in compliance with the written contract required under subsection (1)(a) of this rule; and
(c) Install the service drop in compliance with Commission safety rules.

(4)Failure of an Occupant to Promptly Respond to a Notification of Violation: If an occupant fails to respond to a notification of violation of the Commission Safety Rules within 60 calendar days after notification, the pole owner may perform the corrections or have the corrections performed by a third party. Such corrections shall be performed at the occupant's expense and shall be charged to the occupant at cost, plus an additional 15%. An occupant's response to a notification of violation shall consist of either a submission of a plan of correction or actual correction of the violation.

(5) Failure of Occupant to Promptly Repair, Disconnect or Isolate Hazardous Conditions: A pole owner may correct deficiencies which cause hazardous conditions and charge the costs of the correction to the occupant if:
(a) the owner provides reasonable notice of a hazard or situation requiring prompt attention, including vegetation posing an imminent threat to the supporting structure; and
(b) the occupant is allowed a reasonable opportunity to repair or correct the hazard or situation.

(c) In the event of an emergency, notice or pre-authorization shall not be required.

Stat. Auth.: ORS 183, ORS 757 & ORS 759
Stats. Implemented: ORS 756.040, ORS 757.035, ORS 757.270 - 757.290, ORS 759.045 & ORS 759.650 - ORS 759.675
Hist.: PUC 15-2000, f. 8-23-00, cert. ef. 1-1-01; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 23-2001, f. & cert. ef. 10-11-01, Renumbered from 860-022-0120 & 860-034-0820

860-028-0130

Sanctions for Having No Contract

(1) Except as provided in section~~s~~ (2)~~ and (3)~~ of this rule, a pole owner may impose a sanction on a pole occupant that is in violation of OAR 860-028-0120(1)(a). The sanction ~~may be the higher of~~ shall be $500 per pole. ~~:~~

~~(a) $500 per pole; or~~

~~(b) 60 times the owner's annual rental fee per pole.~~

~~(2) A pole owner shall reduce the sanction provided in section (1) of this rule by 60 percent if the pole occupant complies with OAR 860-028-0120 within the time allowed by OAR 860-028-0170.~~

~~(3)~~ (2) This rule does not apply to a pole occupant that is a government entity or to entities operating under a recently expired or terminated contract who are participating in good faith efforts to renegotiate a contract.

Stat. Auth.: ORS 183, ORS 756, ORS 757 & ORS 759
Stats. Implemented: ORS 756.040, ORS 757.035, ORS 757.270 - ORS 757.290, ORS 759.045 & ORS 759.650 - ORS 759.675
Hist.: PUC 15-2000, f. 8-23-00, cert. ef. 1-1-01; PUC 23-2001, f. & cert. ef. 10-11-01, Renumbered from 860-022-0130 & 860-034-0830

860-028-0140

Sanctions for Having No Permit

(1) Except as provided in sections (2) and (3) of this rule, a pole owner may impose a sanction on a pole occupant that is in violation of OAR 860-028-0120(1)(b), except as provided in OAR 860-027-0120(3). The sanction ~~may be the higher of:~~ shall be

~~(a) $250 per pole; or~~

~~(b) 30 times the owner's annual rental fee per pole.~~

~~(2) A pole owner shall reduce the sanction provided in section (1) of this rule by 60 percent if the pole occupant complies with OAR 860-028-0120 within the time allowed by OAR 860-028-0170.~~

(2) Sanctions imposed under this section shall be:

(a) for each unpermitted attachment that is self-reported by the occupant or discovered through a joint, cooperative inspection between the pole owner and pole occupant, 5 times the owner's current annual rental fee ~~per pole~~ for each unpermitted attachment or the owner's annual rental fee for each unpermitted attachment back to the last inventory, whichever is less~~violation which is self-reported by the occupant or discovered through a joint, cooperative inspection between the pole owner and pole occupant~~; or

(b) for each unpermitted attachment that is reported by the pole owner, 5 times the owner's current annual rental fee for each unpermitted attachment or the owner's annual rental fee for each unpermitted attachment back to the last inventory, whichever is less, ~~per pole~~ in addition to a sanction of $~~10~~50 for each unpermitted attachment, ~~per pole for each violation which is reported by the pole owner~~.

(3) This rule does not apply to a pole occupant that is a government entity. [Charter recommends in its AR 506 Comments that government entities be subject to the Commission's pole attachment rules.]

Stat. Auth.: ORS 183, ORS 756, ORS 757 & ORS 759
Stats. Implemented: ORS 756.040, ORS 757.035, ORS 757.270 - ORS 757.290, ORS 759.045 & ORS 759.650 - ORS 759.675
Hist.: PUC 15-2000, f. 8-23-00, cert. ef. 1-1-01; PUC 23-2001, f. & cert. ef. 10-11-01, Renumbered from 860-022-0140 & 860-034-0840

860-028-0150

Sanctions for Violation of ~~Other Duties~~ Commission Safety Rules and Terms of Contract (1) ~~Except as provided in sections (2) and (3) of this rule, a~~ A pole owner may impose a sanction on a pole occupant that is in violation of OAR 860-028-0120(1)(c), (1)(d), or (3). The sanction shall be ~~the higher of~~: $~~2~~100 per pole.

~~(b) Twenty times the pole owner's annual rental fee per pole.~~

~~(2) A pole owner shall reduce the sanction provided in section (1) of this rule by 70 percent if the pole occupant complies with OAR 860-028-0120 within the time allowed by OAR 860-028-0170.~~

(2) A pole occupant is not liable for sanctions under this section if :

(a) the violation is corrected by the pole occupant within 180 days of notification of the violation; or

(b) the pole occupant submits a plan of correction, as provided for in OAR 860-028-0170, within 60 days of notification of a violation.

(3) If a pole occupant submits a plan of correction, as provided for in OAR 860-028-0170, the pole occupant must adhere to the provisions of that plan unless the pole owner consents to a plan amendment.

(3) This rule does not apply to a pole occupant that is a government entity.

Stat. Auth.: ORS 183, ORS 756, ORS 757 & OSR 759
Stats. Implemented: ORS 756.040, ORS 757.035, ORS 757.270 - ORS 757.290, ORS 759.045 & ORS 759.650 - ORS 759.675
Hist.: PUC 15-2000, f. 8-23-00, cert. ef. 1-1-01; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 23-2001, f. & cert. ef. 10-11-01, Renumbered from 860-022-0150 & 860-034-0850

860-028-0160

Choice of Sanctions

(1) If a pole owner contends that an attachment of a pole occupant violates more than one rule that permits the pole owner to impose a sanction, then the pole owner may select only one such rule on which to base the sanction.

(2) If a pole owner has a contract with a pole occupant that imposes sanctions that differ from those set out in these rules, then the sanctions in the contract apply unless the pole owner and pole occupant agree otherwise.

Stat. Auth.: ORS 183, ORS 756, ORS 757 & ORS 759
Stats. Implemented: ORS 756.040, ORS 757.035, ORS 757.270 - ORS 757.290, ORS 759.045 & ORS 759.650 - ORS 759.675
Hist.: PUC 15-2000, f. 8-23-00, cert. ef. 1-1-01; PUC 23-2001, f. & cert. ef. 10-11-01, Renumbered from 860-022-0160 & 860-034-0860

860-028-0170

~~**Time Frame for Securing Reduction in Sanctions**~~ **Plans of Correction**

~~(1) Except as provided in section (2) of this rule, a pole owner shall reduce the sanctions provided in these rules, if the pole occupant:~~

~~(a) On or before the 60th day of its receipt of notice, complies with OAR 860-028-0120 and provides the pole owner notice of its compliance; or~~

~~(b) On or before the 30th day of its receipt of notice, submits to the pole owner a reasonable plan of correction, and thereafter, complies with that plan, if the pole owner accepts it, or with another plan approved by the pole owner.~~

~~(2) Notwithstanding section (1) of this rule, a pole owner may, if there is a critical need, or if there is no field correction necessary to comply with OAR 860-028-0120, shorten the times set forth in section (1). A pole occupant that disagrees with the reduction must request relief under OAR 860-028-0220 prior to the expiration of the shortened time period, or within seven days of its receipt of notice of the reduction, whichever is later.~~

~~(3)~~ (1) A plan of correction shall, at a minimum, set out:

(a) Any disagreement, as well as the facts on which it is based, that the pole occupant has with respect to the violations alleged by the pole owner in the notice;

(b) The pole occupant's suggested compliance date, as well as reasons to support the date, for each pole that the pole occupant agrees is not in compliance with OAR 860-028-0120.

(4) If a pole occupant suggests a compliance date of more than ~~60~~ 180 days following receipt of notice, then the pole occupant must show good cause.

(5) Upon its receipt of a plan of correction that a pole occupant has submitted under subsection (1)~~(b)~~ (a) of this rule, a pole owner shall give notice of its acceptance or rejection of the plan .

~~(a) If the pole owner accepts the plan, then the pole owner shall reduce the sanctions to the extent that the pole occupant complies with OAR 860-028-0120 and provides the pole owner notice of its compliance, on or before the dates set out in the plan;~~

~~(b)~~ (a) If the pole owner rejects the plan, then it shall set out all of its reasons for rejection and, for each reason, shall state an alternative that is acceptable to it;

~~(c)~~ (b) ~~Until the pole owner accepts or rejects a plan of correction, the pole occupant's time for compliance with OAR 860-028-0120 is tolled;~~ Until the pole owner accepts or rejects a plan of correction, the pole occupant’s time for compliance with the timelines dictated by the plan of corrections is not commenced.

~~(d)~~ (c) If a plan of correction is divisible and if the pole owner accepts part of it, then the pole occupant shall carry out that part of the plan.

Stat. Auth.: ORS 183, ORS 756, ORS 757 & ORS 759
Stats. Implemented: ORS 756.040, ORS 757.035, ORS 757.270 - 757.290, ORS 759.045 & 759.650 - 759.675
Hist.: PUC 15-2000, f. 8-23-00, cert. ef. 1-1-01; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 23-2001, f. & cert. ef. 10-11-01, Renumbered from 860-022-0170 & 860-034-0870

~~860-028-0180~~

~~Progressive Increases in Sanctions~~ Removal of Pole Occupant Attachments

~~(1) Except as provided in sections (2) and (3) of this rule, if the pole occupant fails to comply with OAR 860-028-0120 within the time allowed under OAR 860-028-0170, then the pole owner may sanction the pole occupant 1.5 times the amount otherwise due under these rules.~~

~~(2) If the pole occupant has failed to meet the time limitations set out in OAR 860-028-0170 by 30 or more days, then the pole owner may sanction the pole occupant 2.0 times the amount otherwise due under these rules.~~

~~(3)~~ (1) If the pole occupant has failed to meet the time limitation set out in OAR 860-028-~~0170~~ 0150 by 60 or more days, then the pole owner may request an order from the Commission authorizing removal of the pole occupant's attachments.

~~(4)~~ (2) This rule does not apply to a pole occupant that is a government entity.

Stat. Auth.: ORS ORS 183,ORS 756, ORS 757 & ORS 759
Stats. Implemented: ORS 756.040, ORS 757.035, ORS 757.270 - ORS 757.290, ORS 759.045 & ORS 759.650 - ORS 759.675
Hist.: PUC 15-2000, f. 8-23-00, cert. ef. 1-1-01; PUC 23-2001, f. & cert. ef. 10-11-01, Renumbered from 860-022-0180 & 860-034-0880

860-028-0190

Notice of Violation

A pole owner that seeks, under these rules, any type of relief against a pole occupant for violation of OAR 860-028-0120 shall provide the pole occupant notice of each attachment allegedly in violation of the rule, including ~~the~~ a provision and explanation of the rule each attachment allegedly violates~~.~~ ,the pole number and location, including pole owner maps and GPS coordinates if available.

Stat. Auth.: ORS 183, ORS 756, ORS 757 & ORS 759
Stats. Implemented: ORS 756.040, ORS 757.035, ORS 757.270 - ORS 757.290, ORS 759.045 & ORS 759.650 - ORS 759.675
Hist.: PUC 15-2000, f. 8-23-00, cert. ef. 1-1-01; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 23-2001, f. & cert. ef. 10-11-01, Renumbered from 860-022-0190 & 860-034-0890

860-028-0195

Time Frame for Final Action by Commission

Notwithstanding the timelines provided for in OAR 860-028,0070, t ~~T~~he Commission shall issue its final order within 180 ~~360~~ days of the date a complaint is filed in accordance with these rules. This rule does not apply to a complaint involving the attachment(s) of an "incumbent local exchange carrier" (as that phrase is defined in 47 U.S.C. Section 251(h) (2002)).

Stat. Auth.: ORS 183, 756, 757 & 759, 47 USC ¦ 224(c)(3)(B)(ii)
Stats. Implemented: ORS 756.040, 757.270-290, 759.045 & 759.650-675
Hist.: PUC 9-2004, f. & cert. ef. 4-21-04

860-028-0200

Joint-Use Association

(1) Pole owners and pole occupants shall establish a Joint-Use Association (JUA). The Association shall elect a Board from the JUA, which shall include representatives of pole owners, pole occupants, and government entities. The Board shall act as an advisor to the Commission with respect to:

(a) Adoption, amendment, or repeal of administrative rules governing pole owners and pole occupants; and

(b) Settlement of disputes between a pole owner and a pole occupant that arise under administrative rules governing pole owners and pole occupants, except the JUA's participation in a complaint proceeding under OAR 860-028-0070 shall occur only when both parties to a proceeding agree to seek JUA assistance at any time before or during a formal dispute.

(2) In the event a representative is involved in a dispute under subsection (1)(b) of this rule, then the representative shall not participate in resolution of the dispute, and the JUA shall appoint a temporary representative with a similar interest.

Stat. Auth.: ORS 183, ORS 756, ORS 757 & OSR 759
Stats. Implemented: ORS 756.040, OSR 757.035, ORS 757.270 - ORS 757.290, ORS 759.045 & ORS 759.650 - ORS 759.675
Hist.: PUC 15-2000, f. 8-23-00, cert. ef. 1-1-01; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 23-2001, f. & cert. ef. 10-11-01, Renumbered from 860-022-0200 & 860-034-0900

860-028-0210

Resolution of Disputes over Plans of Correction

(1) If a pole occupant and a pole owner have a dispute over the reasonableness of the plan of correction, then either party may request an order from the Commission to resolve the dispute. The party requesting resolution shall provide notice of its request to the Commission and to the other party:

(a) Upon receipt of a request, the Commission Staff shall, within 15 days, provide to the parties a recommended order for the Commission;

(b) Either party may, within 15 days of receipt of the recommended order, submit written comments to the Commission regarding the recommended order;

(c) Upon receipt of written comments, the Commission shall, within 15 days, issue an order.

(2) Notwithstanding section (1) of this rule, either the pole owner or pole occupant may request a settlement conference with the Joint-Use Association. The settlement conference shall be in addition to, not in lieu of, the process set forth in section (1).

Stat. Auth.: ORS 183, ORS 756,ORS 757 & ORS 759
Stats. Implemented: ORS 756.040, ORS 757.035, ORS 757.270 - ORS 757.290, ORS 759.045 & ORS 759.650 - ORS 759.675
Hist.: PUC 15-2000, f. 8-23-00, cert. ef. 1-1-01; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 23-2001, f. & cert. ef. 10-11-01, Renumbered from 860-022-0210 & 860-034-0910

860-028-0220

Resolution of Factual Disputes

(1) If a pole occupant and pole owner have a dispute over facts that the pole occupant and pole owner must resolve so that the pole owner can impose appropriate sanctions, or in the event that a pole occupant is alleging that a pole owner is unreasonably delaying the approval of a written contract or the issuance of a permit, then either the pole owner or the pole occupant may request a settlement conference before the Joint-Use Association (JUA), provided that nothing in this rule shall preclude a pole occupant or pole owner from filing a complaint and requesting a hearing before the Commission, rather than first requesting s settlement conference before the JUA. The party making the request for a settlement conference before the JUA shall provide notice to the other party and to the JUA.

(2) If the JUA does not settle a dispute described in section (1) of this rule within 90 days of the notice, then either the pole owner or the pole occupant may request a hearing before the Commission and an order from the Commission to resolve the dispute:

(a) Upon receipt of a request, the Commission Staff shall, within 30 days, provide to the parties a recommended order for the Commission;

(b) Either party may, within 30 days of receipt of the recommended order, submit written comments to the Commission regarding the recommended order;

(c) Upon receipt of written comments, the Commission shall, within 30 days, issue an order.

Stat. Auth.: ORS 183, ORS 756, ORS 757 & ORS 759
Stats. Implemented: ORS 756.040, ORS 757.035, ORS 757.270 - 757.290, ORS 759.045 & ORS 759.650 - ORS 759.675
Hist.: PUC 15-2000, f. 8-23-00, cert. ef. 1-1-01; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 23-2001, f. & cert. ef. 10-11-01, Renumbered from 860-022-0220 & 860-034-0920

860-028-0230

Pole Attachment Rental Reductions

(1) Except as provided in section (3), a licensee shall receive a rental reduction.

(2) The rental reduction shall be based on ORS 757.282(3) and OAR 860-028-0110.

(3) A pole owner or the Commission may deny the rental reduction to a licensee, if either the pole owner or the Commission can show that:

(a) The licensee has caused serious injury to the pole owner, another pole joint-use entity, or the public resulting from non-compliance with Commission safety rules and Commission pole attachment rules or its contract or permits with the pole owner;

(b) The licensee does not have a written contract with the pole owner that specifies general conditions for attachments on the poles of the pole owner;

(c) The licensee has engaged in a pattern of failing to obtain permits issued by the pole owner for each pole on which the pole occupant has attachments;

(d) The licensee has engaged in a pattern of non-compliance with its contract or permits with the pole owner, Commission safety rules, or Commission pole attachment rules;

(e) The licensee has engaged in a pattern of failing to respond promptly to the pole owner, PUC Staff, or civil authorities in regard to emergencies, safety violations, or pole modification requests; or

(f) The licensee has engaged in a pattern of delays, each delay greater than 60 days from the date of billing, in payment of fees and charges due the pole owner.

(4) A pole owner that contends that a licensee is not entitled to the rental reduction provided in section (1) of this rule shall notify the licensee of the loss of reduction in writing. The written notice shall:

(a) State how and when the licensee has violated either the Commission's rules or the terms of the contract;

(b) Specify the amount of the loss of rental reduction which the pole owner contends the licensee should incur; and

(c) Specify the amount of any losses that the conduct of the licensee caused the pole owner to incur.

(5) If the licensee wishes to discuss the allegations of the written notice before the Joint-Use Association (JUA), the licensee may request a settlement conference. The licensee shall provide notice of its request to the pole owner and to the JUA. The licensee may also seek resolution under section (6) of this rule.

(6) If the licensee wishes to contest the allegations of the written notice before the Commission, the licensee shall send its response to the pole owner, with a copy to the Commission. The licensee shall also attach a true copy of the written notice that it received from the pole owner.

(a) Upon receipt of a request, the Commission Staff shall, within 30 days, provide to the parties a recommended order for the Commission;

(b) Either party may, within 30 days of receipt of the recommended order, submit written comments to the Commission regarding the recommended order;

(c) Upon receipt of written comments, the Commission shall, within 30 days, issue an order.

(7) Except for the rental reduction amount in dispute, the licensee shall not delay payment of the pole attachment rental fees due to the pole owner.

Stat. Auth.: ORS 183, ORS 756, ORS 757 & ORS 759
Stats. Implemented: ORS 756.040, ORS 757.035, ORS 757.270 - ORS 757.290, ORS 759.045 & ORS 759.650 - ORS 759.675
Hist.: PUC 15-2000, f. 8-23-00, cert. ef. 1-1-01; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 23-2001, f. & cert. ef. 10-11-01, Renumbered from 860-022-0230 & 860-034-0930

860-028-0240

Effective Dates

(1) Except as provided in section (2) of this rule, OARs 860-028-0120 through 860-028-0230 are effective on January 1, 2001.

(2) OAR 860-028-0150 does not apply to attachments installed on or before December 31, 2000, until January 1, 2003.

JERRY, PLEASE FEEL FREE TO DRAFT THE FOLLOWING (We know DOJ will have an opinion.) : OUR RECOMMENDED EFFECTIVE DATE FOR OUR CHANGES IS: JAN 1 2007 OR EFFECTIVE UPON THE ISSUANCE OF THE ORDER, WHICHEVER IS LATER. THE NEW RULES APPLY ONLY TO ATTACHMENTS ABOUT WHICH A POLE OWNER OR OCCUPANT IS NOTIFIED ON OR BEFORE THE EFFECTIVE DATE.

Stat. Auth.: ORS 183, ORS 756, ORS 757 & ORS 759
Stats. Implemented: ORS 756.040, ORS 757.035, ORS 757.270 - ORS 757.290, ORS 759.045 & ORS 759.650 - ORS 759.675
Hist.: PUC 15-2000, f. 8-23-00, cert. ef. 1-1-01; PUC 23-2001, f. & cert. ef. 10-11-01, Renumbered from 860-022-0240 & 860-034-0940

Conduit Attachments

860-028-0310

Attachments by Licensees to Conduits Owned by Public, Telecommunications, 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) A disputed conduit rental rate will be computed by adding the annual operating expense to the annual carrying charge and then multiplying by the number of ducts occupied by the licensee.

(4) A licensee occupying part of a duct shall be deemed to occupy the entire duct.

(5) Licensees shall 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 apply from the date the conduit owner last inspected the conduit in dispute. The last inspection shall be deemed to be no more than three years before the unauthorized attachment is discovered. The conduit owner also shall charge for any expenses it incurs as a result of the unauthorized attachment.

(6) The conduit owner shall give a licensee 18 months' notice of its need to occupy licensed conduit and shall 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.

Stat. Auth.: ORS 183, ORS 756, ORS 757 & ORS 759
Stats. Implemented: ORS 756.040, ORS 757.270 - ORS 757.290, ORS 759.045 & ORS 759.650 - ORS 759.675
Hist.: PUC 2-1986, f. & ef. 2-7-86 (Order No. 86-107); PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 9-1998, f. & cert. ef. 4-28-98; PUC 12-1998, f. & cert. ef. 5-7-98; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 23-2001, f. & cert. ef. 10-11-01.
Renumbered from 860-022-0060 & 860-034-0370

Alphabetical Index by Agency Name

Numerical Index by OAR Chapter Number

Search the Text of the OARs

Questions about Administrative Rules?

Link to the Oregon Revised Statutes (ORS)

Return to Oregon State Archives Home Page

Comments of Charter Communications, Inc.
Service List

SUSAN BURKE
VERIZON

PHIL CHARLTON
ELECTRIC LIGHTWAVE

MATT COONS

SEBASTIAN MC CROHAN
COMSPANUSA

KARLA WENZEL
PORTLAND GENERAL ELECTRIC

SCOTT THOMPSON
COLE RAYWID & BRAVERMAN LLP
1919 PENNSYLVANIA AVE NW STE 200
WASHINGTON DC 20006

JILL VALENSTEIN
COLE, RAYWID, & BRAVERMAN, LLP
1919 PENNSYLVANIA AVE NW, STE 200
WASHINGTON DC 20006

KEVIN L SAVILLE
FRONTIER COMMUNICATIONS OF AMERICA INC
2378 WILSHIRE BLVD.
MOUND MN 55364

CATHERINE A MURRAY
ESCHELON TELECOM OF OREGON INC
730 SECOND AVE S STE 900
MINNEAPOLIS MN 55402-2489

RICHARD STEWART
VERIZON NORTHWEST INC
600 HIDDEN RIDGE
HQEO3J28
IRVING TX 75038

FRANK X MCGOVERN
QUALITY TELEPHONE INC
PO BOX 7310
DALLAS TX 75209-0310

THOMAS DIXON
VERIZON CORPORATE SERVICES
707 17TH STREET
DENVER CO 80202

JEANNETTE C BOWMAN
IDAHO POWER COMPANY
PO BOX 70
BOISE ID 83707

BRENT VAN PATTEN
IDAHO POWER COMPANY
PO BOX 70
BOISE ID 83707

RANDALL MILLER
PACIFIC POWER & LIGHT
1407 W N TEMPLE STE 220
SALT LAKE CITY UT 84116

KRISTIN L JACOBSON
SPRINT NEXTEL
201 MISSION ST STE 1400
SAN FRANCISCO CA 94105

STEPHEN R CIESLEWICZ
CN UTILITY CONSULTING
PO BOX 746
NOVATO CA 94948-0746

DAVID LUCHINI
CENTURYTEL OF OREGON INC
PO BOX 327
AURORA OR 97002

JOHN SULLIVAN
OREGON JOINT USE ASSOCIATION
2213 SW 153RD DR
BEAVERTON OR 97006

RENEE WILLER
VERIZON NORTHWEST INC
20575 NW VON NEUMANN DR STE 150 MC OR030156
HILLSBORO OR 97006

SCOTT WHEELER
COMCAST PHONE OF OREGON LLC
9605 SW NIMBUS AVE
BEAVERTON OR 97008

WILLIAM C WOODS
OREGON JOINT USE ASSOCIATION
9605 SW NIMBUS AVE
BEAVERTON OR 97008

KEENE C BASSO
CLATSKANIE PUD
PO BOX 216
CLATSKANIE OR 97016

NANCY JUDY
EMBARQ COMMUNICATIONS INC
902 WASCO ST A0412
HOOD RIVER OR 97031

TOM MCGOWAN
UNITED TELEPHONE COMPANY OF THE NORTHWEST
902 WASCO ST
HOOD RIVER OR 97031

BARBARA YOUNG
UNITED TELEPHONE COMPANY OF THE
NORTHWEST/EMBARQ
902 WASCO ST - ORHDRA0412
HOOD RIVER OR 97031-3105

BILL KIGGINS
CLEAR CREEK MUTUAL TELEPHONE CO
18238 S FISCHERS MILL RD
OREGON CITY OR 970445-9696

SCOTT ROSENBALM
MCMINNVILLE CITY OF WATER & LIGHT
PO BOX 638
MCMINNVILLE OR 97128-0638

SARAH K WALLACE
DAVIS WRIGHT TREMAINE
1300 SW FIFTH AVENUE
SUITE 2300
PORTLAND OR 97201

MARK P TRINCHERO
DAVIS WRIGHT TREMAINE LLP
1300 SW FIFTH AVE STE 2300
PORTLAND OR 97201-5682

JENNIFER BUSCH
PORTLAND GENERAL ELECTRIC
121 SW SALMON ST
PORTLAND OR 97204

RANDALL DAHLGREN
PORTLAND GENERAL ELECTRIC
121 SW SALMON ST 1WTC 0702
PORTLAND OR 97204

ALEX M DUARTE
QWEST CORPORATION
421 SW OAK ST STE 810
PORTLAND OR 97204

RICHARD GRAY
PORTLAND CITY OF - OFFICE OF TRANSPORTATION
1120 SW 5TH AVE RM 800
PORTLAND OR 97204

BARBARA HALLE
PORTLAND GENERAL ELECTRIC
121 SW SALMON ST 1 WTC-13
PORTLAND OR 97204

DOUG KUNS
PORTLAND GENERAL ELECTRIC
121 SW SALMON ST
PORTLAND OR 97204

KEVIN O'CONNOR
TIME WARNER TELECOM
520 SW 6TH AVE
PORTLAND OR 97204

INARA K SCOTT
PORTLAND GENERAL ELECTRIC
121 SW SALMON ST
PORTLAND OR 97204

JEFF KENT
QWEST
8021 SW CAPITOL HILL RD
ROOM 180
PORTLAND OR 97219

HEIDI CASWELL
PACIFICORP
825 NE MULTNOMAH ST
PORTLAND OR 97232

CECE L COLEMAN
PACIFIC POWER & LIGHT
825 NE MULTNOMAH STE 800
PORTLAND OR 97232

PETE CRAVEN
PACIFICORP
825 NE MULTNOMAH - STE 300
PORTLAND OR 97232

BILL CUNNINGHAM
PACIFICCORP
825 NE MULTNOMAH STE 1500
PORTLAND OR 97232

WILLIAM EAQUINTO
PACIFIC POWER & LIGHT
825 NE MULTNOMAH - STE 1700
PORTLAND OR 97232

COREY FITZGERALD
PACIFIC POWER & LIGHT
825 NE MULTNOMAH STE 800
PORTLAND OR 97232

ANDREA L KELLY
PACIFICORP DBA PACIFIC POWER & LIGHT
825 NE MULTNOMAH ST STE 2000
PORTLAND OR 97232

LAURA RAYPUSH
PACIFICORP
825 NE MULTNOMAH, STE 1700
PORTLAND OR 97232

JIM DEASON
ATTORNEY AT LAW
1 SW COLUMBIA ST, SUITE 1600
PORTLAND OR 97258-2014

SUSAN K ACKERMAN
ATTORNEY
PO BOX 10207
PORTLAND OR 97296-0207

DOUG COOLEY
CENTURYTEL OF OREGON INC
707 13TH ST STE 280
SALEM OR 97301

DON GODARD
OREGON PUD ASSOCIATION
727 CENTER ST NE - STE 305
SALEM OR 97301

GENOA INGRAM
OREGON JOINT USE ASSOCIATION
1286 COURT ST NE
SALEM OR 97301

SANDRA FLICKER
OREGON RURAL ELECTRIC COOPERATIVE ASSN
707 13TH ST SE STE 200
SALEM OR 97301-4005

BRANT WOLF
OREGON TELECOMMUNICATIONS ASSN
707 13TH ST SE STE 280
SALEM OR 97301-4036

MICHAEL T WEIRICH
DEPARTMENT OF JUSTICE
REGULATED UTILITY & BUSINESS SECTION
1162 COURT ST NE
SALEM OR 97301-4096

MICHAEL DEWEY
OREGON CABLE AND TELECOMMUNICATIONS ASSOCIATION
1249 COMMERCIAL ST SE
SALEM OR 97302

ROGER KUHLMAN
633 7TH ST NW
SALEM OR 97304

DAVID P VAN BOSSUYT
PORTLAND GENERAL ELECTRIC
4245 KALE ST NE
SALEM OR 97305

ANDREA FOGUE
LEAGUE OF OREGON CITIES
PO BOX 928
1201 COURT ST NE STE 200
SALEM OR 97308

TOM O'CONNOR
OREGON MUNICIPAL ELECTRIC UTILITIES ASSOC
PO BOX 928
SALEM OR 97308-0928

JERRY MURRAY
PUBLIC UTILITY COMMISSION
PO BOX 2148
SALEM OR 97308-2148

GARY PUTNAM
PUBLIC UTILITY COMMISSION
PO BOX 2148
SALEM OR 97308-2148

JOHN WALLACE
PUBLIC UTILITY COMMISSION
PO BOX 2148
SALEM OR 97308-2148

THE HONORABLE ROBERT ACKERMAN
OREGON HOUSE OF REPRESENTATIVES
900 COURT ST NE RM H-389
SALEM OR 97310

JIM MARQUIS
PACIFICORP
830 OLD SALEM RD
ALBANY OR 97321

J WHITE
MONMOUTH CITY OF
151 W MAIN ST
MONMOUTH OR 97361

DAVE WILDMAN
MONMOUTH CITY OF
401 N HOGAN RD
MONMOUTH OR 97361

DENISE ESTEP
CENTRAL LINCOLN PUD
PO BOX 1126
NEWPORT OR 97365

MICHAEL L WILSON
CENTRAL LINCOLN PUD
2129 N COAST HWY
NEWPORT OR 97365-0090

GENERAL MANAGER
PIONEER TELEPHONE COOPERATIVE
1304 MAIN ST PO BOX 631
PHILOMATH OR 97370

STUART SLOAN
CONSUMER POWER INC
PO BOX 1180
PHILOMATH OR 97370

CHRISTY MONSON
SPEER, HOYT, JONES, FEINMAN, ET AL
975 OAK STREET, SUITE 700
EUGENE OR 97401

CRAIG ANDRUS
EMERALD PUD
33733 SEAVEY LOOP RD
EUGENE OR 97405-9614

MARK OBERLE
EUGENE WATER & ELECTRIC BOARD (EWEB)
PO BOX 10148
EUGENE OR 97440

SCOTT ADAMS
COOS-CURRY ELECTRIC COOPERATIVE INC
PO BOX 1268
PORT ORFORD OR 97465

LINDA L SPURGEON
COOS CURRY ELECTRIC COOPERATIVE
PO BOX 1268
PORT ORFORD OR 97465

MARTY PATROVSKY
WANTEL INC
1016 SE OAK AVE
ROSEBURG OR 97470

TAMARA JOHNSON
SPRINGFIELD UTILITY BOARD
PO BOX 300
SPRINGFIELD OR 97477

RICHARD W RYAN
HUNTER COMMUNICATIONS INC
801 ENTERPRISE DR STE 101
CENTRAL POINT OR 97502

RONALD W JONES
IBEW LOCAL 659
4480 ROGUE VALLEY HWY #3
CENTRAL POINT OR 97502-1695

SCOTT JOHNSON
ASHLAND CITY OF
90 NORTH MOUNTAIN AVE
ASHLAND OR 97520

PRIORITYONE TELECOMMUNICATIONS INC
PO BOX 758
LA GRANDE OR 97850-6462

EUGENE A FRY
MILLENNIUM DIGITAL MEDIA
3633 136TH PL SE #107
BELLEVUE WA 98006

CINDY MANHEIM
CINGULAR WIRELESS
PO BOX 97061
REDMOND WA 98073

BROOKS HARLOW
MILLER NASH LLP
601 UNION ST STE 4400
SEATTLE WA 98101-2352

BRIAN THOMAS
TIME WARNER TELECOM OF OREGON LLC
223 TAYLOR AVE N
SEATTLE WA 98109-5017

RICHARD J BUSCH
GRAHAM & DUNN PC
PIER 70
2801 ALASKAN WAY STE 300
SEATTLE WA 98121-1128

STEVEN LINDSAY
VERIZON
C/O SUSAN BURKE
1800 41ST ST
EVERETT WA 98201

GARY LEE
CHARTER COMMUNICATIONS CORP
521 NE 136TH AV
VANCOUVER WA 98684

Labels: 89