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JANUARY 6, 2006

BY FEDERAL EXPRESS

Public Utility Commission Of Oregon
Attn: Filing Center
550 Capitol Street N.E., Suite 215
Salem, Oregon 97308

**Re: Charter Communications Holding Company, LLC v. Central Lincoln
People's Utility District**

Dear Sir/Madam:

Enclosed, for filing, are an original and one copy each of the following:

- Complaint of Charter Communications Holding Company, LLC, *et al.* ("Charter") against Central Lincoln People's Utility District ("CLPUD"), and accompanying exhibits 1 through 5.
- Charter's Motion For Emergency Interim Relief, accompanying exhibits 1 through 14, and Declarations of Frank Antonovich and Gary Lee in support of Charter's Motion.
- Motion for Admission *Pro Hac Vice*, and accompanying Declaration of T. Scott Thompson in support.

Also enclosed is an additional copy of each of the above filings, which we request that the Commission stamp as filed and return to the below-signed via the enclosed pre-paid FedEx package.

A copy of each of the enclosed filings has also been electronically filed with the Commission today, and served via FedEx on Paul Davies, General Manager of CLPUD, at 2129 N. Coast Hwy, Newport OR 97365.

Public Utility Commission Of Oregon

January 6, 2006

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If you have any questions, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Scott Thompson". The signature is fluid and cursive, with the first name "T." being particularly prominent.

T. Scott Thompson

Enclosures

cc: Paul Davies, CLPUD (w/ enclosures)
Peter Gintner, Esq., Counsel for CLPUD (w/ enclosures)
Brooks E. Harlow, Esq.

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BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

CHARTER COMMUNICATIONS
HOLDING COMPANY, LLC,; FALCON
TELECABLE, L.P., FALCON CABLE
SYSTEMS COMPANY II, L.P., AND
FALCON COMMUNITY VENTURES I,
L.P.

Complainants,

v.

CENTRAL LINCOLN PEOPLE’S UTILITY
DISTRICT,

Defendant.

Case No.

**COMPLAINT TO SET FAIR, JUST,
REASONABLE AND NON-
DISCRIMINATORY POLE
ATTACHMENT RATES AND FOR
REFUNDS OF OVERCHARGES, AND
PETITION FOR DECLARATORY
RULING**

Charter Communications Holding Company, LLC, on its own behalf and on behalf of its subsidiaries, Falcon Telecable, L.P., Falcon Cable Systems Company II, L.P., and Falcon Community Ventures I, L.P. (jointly “Charter”), hereby complains against Central Lincoln People’s Utility District (“Central Lincoln” or “CLPUD”), as follows:

I. PARTIES

1. Claimant Charter is a Delaware Limited Liability Company that through its subsidiaries provides cable television and other services in the State of Oregon. Charter’s principal place of business is 12405 Powerscourt Dr., St. Louis, Missouri 63131.

1 2. Respondent Central Lincoln is a People’s Utility District and a Consumer Owned
2 Utility in the State of Oregon. Central Lincoln’s principal place of business is 2129 North Coast
3 Highway, Newport, OR 97365.

4 **II. JURISDICTION AND VENUE**

5 3. The Commission has jurisdiction over this dispute pursuant to Or. Rev. Stat.
6 §§ 756.450, 756.555, 757.276, 757.279, 758.020, and 758.035, and OAR §§ 860-28-0195, 860-
7 28-0220. The State of Oregon has certified to the Federal Communications Commission that it
8 regulates the rates, terms and conditions for pole attachments, which includes conduits. *See*
9 Public Notice, *States That Have Certified That They Regulate Pole Attachments*, 7 FCC Rcd.
10 1498 (1992).

11 4. Central Lincoln is a Consumer-Owned Utility, as defined in ORS § 757.270(2),
12 which owns or controls poles.

13 5. Charter owns facilities that are attachments to Central Lincoln’s poles.

14 6. Charter has the right of access to Central Lincoln’s poles on just, reasonable and
15 non-discriminatory rates, terms and conditions. *See* Or. Rev. Stat. §§ 757.020, 757.273, 757.276,
16 758.035.

17 7. Charter currently attaches to Central Lincoln-owned poles in Oregon pursuant to a
18 contract executed on or about March 17, 2003 Pole Occupancy License Agreement
19 (“Agreement”) and permits executed pursuant thereto. *See* Pole Occupancy License Agreement
20 attached hereto as Exhibit 1. Prior to March 17, 2003, Charter and its predecessors-in-interest
21 attached to Central Lincoln-owned poles pursuant to predecessor agreements.
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1 **III. GENERAL ALLEGATIONS**

2 **A. Background Regarding Central Lincoln's Imposition Of The Current Pole**
3 **Attachment Agreement**

4 8. Charter, through its predecessors-in-interest, has been attached to Central
5 Lincoln's poles since at least as early as 1985.

6 9. By letter dated December 26, 2001, Central Lincoln notified Charter that as of
7 June 30, 2002, Central Lincoln would terminate the then-existing "General Agreement For Joint
8 Use Of Poles" that governed Charter's attachment to Central Lincoln's poles.

9 10. On June 27, 2002, Central Lincoln presented Charter with a new "Pole
10 Occupancy License Agreement" ("June 27, 2002 Draft") and requested Charter's signature.

11 11. Charter did not sign the June 27, 2002 Draft.

12 12. On information and belief, the proposed Pole Occupancy License Agreement
13 presented to Charter on June 27, 2002 by Central Lincoln was the same agreement presented by
14 Central Lincoln to Verizon for signature, and the subject of litigation before this Commission in
15 Docket UM 1087.

16 13. After Central Lincoln's presentation of the June 27, 2002 Draft to Charter,
17 Charter and Central Lincoln engaged in several rounds of discussions regarding the terms of the
18 proposed agreement, with Charter submitting to Central Lincoln various proposed changes to the
19 draft agreement.
20

21 14. While between June 27, 2002 and January 2003, Charter and Central Lincoln
22 were able to compromise on some issues, critical, fundamental issues remained in dispute.
23

24 15. For example, Charter specifically objected to Central Lincoln's annual rental
25 charges and various other fees; Central Lincoln's insistence on unreasonable provisions
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1 governing attachments for service drops; including but not limited to such matters as load studies
2 and application fees, and Central Lincoln’s insistence on language allowing it to draw from a
3 bond even if Charter contested that the funds were due.

4
5 16. Charter had no choice but to ultimately accept Central Lincoln’s demands, as
6 Central Lincoln used its unequal bargaining power and threat of artificially created sanctions to
7 force Charter to agree to provisions demanded by Central Lincoln.

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9 17. For example, by letter dated January 6, 2003, Central Lincoln’s attorney
10 “notified” Charter that because “negotiations have failed to produce an agreement” Charter “is in
11 violation of OAR 860-028-0120(1)(a). This regulation requires a pole occupant attaching to one
12 or more poles of a pole owner to have a written contract with the pole owner. . . .” The letter
13 then provided that sanctions were \$500 per pole or 60 times Central Lincoln’s annual rental fee
14 per pole, whichever is greater and that Charter has attachments on approximately 13,500 Central
15 Lincoln poles. The letter states that “[s]anctions will be reduced by 60% if Charter
16 Communications enters into a written contract within 10 days from the date of this notice.”

17
18 18. Similarly, by letter dated February 13, 2003, Central Lincoln’s attorney – in the
19 process of rejecting Charter’s proposal to resolve the impasse between the companies and
20 explaining that Central Lincoln’s January 7, 2003 draft should be considered the District’s final
21 offer – again reiterated that “[t]o the extent that I have not made it clear, if we do not reach an
22 agreement by roughly March 17, 2003, I will advise my client to file with the Oregon PUC to
23 begin the process of imposing sanctions on Charter Communications.” He further stated that
24 “our petition will include the ultimate sanction of having Charter Communications remove its
25 equipment off of Central Lincoln PUD’s poles and other facilities.”
26

1 19. Thus, Central Lincoln unilaterally terminated Charter's pole attachment
2 agreement. Then, in order to dictate terms and conditions of a new agreement, Central Lincoln
3 threatened Charter with approximately \$6.75 million in sanctions for failure to have a pole
4 attachment agreement.

5
6 20. On March 17, 2003, the deadline established in Central Lincoln's letter, Charter
7 submitted to Central Lincoln a signed copy of the new Agreement ("Agreement"). (A copy of the
8 executed Agreement is attached hereto as Exhibit 1).

9 21. Charter's execution of the Agreement was under protest and accompanied by a
10 letter explaining that Charter was signing under protest. (A copy of Charter's March 17, 2003
11 cover letter is attached hereto as Exhibit 2).

12
13 **B. Central Lincoln's Unlawful Fee Imposition, And Charter's Request To**
14 **Negotiate A New, Lawful Pole Attachment Agreement**

15 22. At the same time that Central Lincoln notified Charter that it was terminating
16 Charter's pole attachment agreement effective June 30, 2002, Central Lincoln purported to notify
17 Verizon that Central Lincoln was terminating Verizon's pole attachment agreement effective
18 June 30, 2002.

19 23. By letter dated June 27, 2002, Central Lincoln, as it did with Charter, submitted to
20 Verizon two copies of a new pole attachment agreement for signature by Verizon.

21 24. On information and belief, the agreement submitted by Central Lincoln to
22 Verizon via cover letter dated June 27, 2002 was substantively identical to the June 27, 2002
23 Draft submitted to Charter via cover letter dated June 27, 2002.

24 25. After discussions with Central Lincoln, Verizon refused to succumb to Central
25 Lincoln's demands and did not enter into a new pole agreement.
26

1 26. On May 27, 2003, Central Lincoln filed a petition with the Commission, alleging
2 that Verizon was attached to Central Lincoln's poles without a contract and seeking sanctions,
3 including an order for Verizon to remove its attachments. Verizon filed a counter complaint
4 alleging that various rates, terms and conditions of Central Lincoln's proposed new agreement
5 were unjust and unreasonable.
6

7 27. After litigation by the parties, by Order dated January 19, 2005, the Commission
8 rejected Central Lincoln's claims, and held numerous provisions of Central Lincoln's proposed
9 agreement to be unjust and unreasonable. The Commission also held that Central Lincoln's
10 rental rate was unjust and unreasonable and calculated the maximum lawful rental rate as \$4.14
11 per foot.
12

13 28. A number of the provisions held unjust and unreasonable by the Commission in
14 Docket UM 1087 were provisions imposed by Central Lincoln in its Agreement with Charter.

15 29. On July 1, 2004, Central Lincoln notified Charter of Central Lincoln's "Fee
16 Schedule" for 2005, and in December 2004 issued the final version of its 2004 Fee Schedule. (A
17 copy of Central Lincoln's final Fee Schedule is attached hereto as Exhibit 3).

18 30. With its Fee Schedule, Central Lincoln notified Charter that Central Lincoln's
19 annual rental rate would be \$10.98 per "attachment point," (\$9.93 after rental reduction for
20 compliance).
21

22 31. Central Lincoln's Fee Schedule identified 7 different attachment types subject to
23 varying annual fees.
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1 32. In addition, on July 1, 2004, Central Lincoln notified Charter of a host of other
2 charges that Central Lincoln was going to impose. Central Lincoln's Fee Schedule identified 7
3 separate types of "Application Fees" and 2 different "inspection fees." Exhibit 3.
4

5 33. By letters dated August 26, 2004, October 5, 2004, and December 2, 2004,
6 Charter notified Central Lincoln that it believed Central Lincoln's annual rental and various
7 other charges were not just and reasonable and consistent with the Commission's rules, and
8 Charter asked Central Lincoln to provide data supporting the fees and charges.

9 34. In its January 19, 2005 Order in UM 1087, the Commission held that the
10 maximum lawful rate Central Lincoln could charge for occupation of one foot of pole space was
11 \$4.14.
12

13 35. Yet, Central Lincoln sent Charter three invoices dated February 8, 2005, seeking
14 rental payments for each "Joint Pole Attachment Point" and "Joint Pole Non Inv" at a rate of
15 \$9.93 per attachment point. (Copies of Central Lincoln's three February 8, 2005 invoices are
16 attached hereto as Exhibit 4).

17 36. Central Lincoln's February 2005 invoices also sought to charge Charter for other
18 "attachments," specifically anchors, communications risers, equipment in ground space, and
19 "Joint Pole No Attachment." (Exhibit 4).
20

21 37. The annual pole attachment rental rate Central Lincoln imposed on Charter is
22 more than double the lawful annual rate that the Commission established in its January 2005
23 Order and, on information and belief, is more than double the rate Central Lincoln is charging
24 Verizon.
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1 38. With its fee schedule and its invoices, Central Lincoln seeks to charge Charter for
2 every attachment point to a pole, and to anchors, rather than charging once for the one foot of
3 space allotted to Charter's attachments.

4 39. In May 2005, in response to the February 8, 2005 invoices, Charter paid Central
5 Lincoln \$123,340.53.

6 40. Charter's May 2005 payment of \$123,340.53 was for the 12,421 "attachments"
7 identified in the invoices as either "Joint Pole Attachment Point," or "Joint Pole Attachment Non
8 Inv" at a rate of \$9.93 each. Charter did not pay for the anchors, communications risers,
9 equipment in ground space, and "Joint Pole No Attachment."
10

11 41. The amount invoiced in the February 8, 2005 invoices for anchors,
12 communications risers, equipment in ground space, and "Joint Pole No Attachment" and which
13 Charter did not pay, was \$4997.87. (Exhibit 4).
14

15 42. Based on the Commission's decisions in Docket UM 1087, by letter dated June
16 10, 2005, Charter requested that Central Lincoln negotiate a new pole attachment agreement to
17 reflect terms consistent with the Commission's holdings in UM 1087. (A copy of Charter's June
18 10, 2005 Letter is attached hereto as Exhibit 5).
19

20 43. Charter's June 10, 2005 letter further requested that Central Lincoln refund to
21 Charter \$71,917.59, which was the difference between the \$123,340.53 paid by Charter in May
22 at the unlawful rate of \$9.93, and the amount that would have been due for 12,421 attachments at
23 the lawful rate of \$4.14.
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1 44. Central Lincoln has refused to negotiate with Charter a new pole attachment
2 agreement containing just and reasonable terms and conditions consistent with the Commission’s
3 holdings in UM 1087.

4 45. Central Lincoln has also refused to refund Charter the annual rental overcharge,
5 and has demanded that Charter pay the \$4,997.87 withheld for rental on anchors, risers, other
6 types of attachments in unusable space, and “Joint Pole No Attachments.”

7 46. By letter dated June 24, 2005, Central Lincoln also informed Charter that Central
8 Lincoln would not process any permits submitted by Charter unless Charter paid – in advance –
9 all the fees demanded by Central Lincoln to process Charter’s then-pending permit applications,
10 in an amount equal to approximately \$20,000.

11 47. After June 24, 2005, Central Lincoln has subsequently continued to refuse to
12 process any permit application or permit Charter to perform any work on its facilities attached to
13 Central Lincoln poles unless and until Charter succumbs to Central Lincoln’s monetary
14 demands.

15 48. Central Lincoln has never provided Charter with an exact amount of money that
16 Central Lincoln demands, nor has Central Lincoln ever provided Charter with any detail
17 regarding what alleged permit processing fees would be covered by the demanded \$20,000.
18

19 C. **Central Lincoln’s Current Refusal To Process Permits Or Allow Needed**
20 **Maintenance Work**

21 49. Charter currently has two pole-related projects that it seeks to complete involving
22 Central Lincoln-owned poles. Those projects, for which Charter has submitted applications,
23 relate to a significant plant replacement project, necessary plant upgrades, and general day-to-
24

1 day operational issues, including transfer of lines in order to accommodate poles moved by
2 Central Lincoln.

3 50. Specifically, one of Charter's outstanding projects involves 186 poles from
4 Yaquina Heights to Ona Curves, and the other project involves 1,482 poles in the Yachats area.

5 51. Central Lincoln, since at least June 2005, refuses to process any permit
6 application submitted by Charter for any work. Central Lincoln is therefore prohibiting Charter
7 from undertaking necessary construction and as a result affecting Charter's ability to do business
8 and subjecting Charter to potential liabilities and, more importantly, prohibiting maintenance and
9 repairs necessary to ensure that Charter's facilities are safe to those people who may come in
10 contact with them.

11 52. Coaxial cable and fiber optic cable lines are not directly attached to utility poles.
12 Rather, a bare steel "strand" line is attached to the poles, and the fiber optic or coaxial cable lines
13 are then lashed to the strand.

14 53. Due to environmental conditions in the Yachats area, the strand that is holding
15 Charter's lines has become badly corroded and weakened. Replacing the strand in the Yachats
16 area is a pressing safety issue that Charter seeks to address promptly.

17 54. The work that Charter seeks to do in the Yaquina Heights to Ona Curves area is
18 necessary for Charter to complete an upgrade of its cable television system.

19 55. The construction work to be done by Charter in the Yaquina Heights to Ona
20 Curves project will involve overlashing of fiber optic lines to existing Charter facilities.

1 56. Overlashing of facilities does not involve a new attachment to the pole, and it is
2 not reasonable or consistent with industry practice nationwide to require new permits for
3 overlashing.

4 57. As a result of Central Lincoln's refusal to process Charter's permit applications,
5 Charter is also not able to perform any new customer connections in the portions of its region in
6 Oregon where Charter must use Central Lincoln poles.

7 58. As a result of Central Lincoln's refusal to process Charter's permit applications,
8 Charter is not able to perform work on its facilities necessary to address potential safety hazards.

9 59. As a result of Central Lincoln's refusal to process Charter's permit applications,
10 Charter is not able to perform work necessary to upgrade its facilities.

11 60. In June 2005, Central Lincoln installed approximately 17 new poles along
12 Highway 101 in South Beach, approximately 10 to 40 feet from the 17 corresponding existing
13 poles, and transferred its lines to the new poles. Central Lincoln has also permitted other
14 entities, other than Charter, to transfer their facilities to the new poles. Charter had fully
15 authorized, permitted attachments to those existing poles.

16 61. Contrary to the Agreement, and in an unjust and unreasonable term of access,
17 Central Lincoln has refused to allow Charter to transfer its facilities from the existing poles to the
18 new poles.

19 62. Sections 5.9, 5.9.1, and 5.9.2 of the Agreement, provide a procedure whereby in
20 the event that Central Lincoln replaces jointly used poles, Charter's facilities are to be transferred
21 to the new poles. Indeed, under Section 5.9.2, if Charter fails to timely transfer its facilities to
22 the new poles, Charter is declared in noncompliance with the Pole Attachment Agreement and
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1 the attachment permits for the existing attachments are terminated, subjecting Charter to
2 sanctions and alleged costs.

3 63. On November 22, 2005, Charter was informed by Central Lincoln that until
4 Charter paid all permit application fees demanded by Central Lincoln, Central Lincoln would
5 consider Charter's existing attachments to the old poles – which were fully permitted and
6 authorized – to be unauthorized attachments, and that Central Lincoln would begin assessing
7 unauthorized attachment sanctions on the poles “beginning next week.”
8

9 64. Pursuant to Section 2.1 of the Pole Attachment Agreement, Charter is not required
10 to apply for or obtain a new permit in order to transfer existing facilities to new poles in the
11 event of pole changes initiated by Central Lincoln. Nonetheless, in response to Central Lincoln's
12 issuance of “transfer tickets” on the NJUNs system, between June 22 and June 29, 2005, Charter
13 submitted permit application materials for approval to move its facilities to the new poles along
14 Highway 101 in South Beach. Central Lincoln has not approved or otherwise processed the
15 applications related to the transfer and therefore Charter has not moved its facilities.
16

17 65. To the extent that Central Lincoln asserts that Charter must apply for and obtain a
18 permit in order to transfer its facilities to new poles installed by Central Lincoln for Central
19 Lincoln's benefit, and to pay any fees or costs as a result of a transfer caused entirely by and for
20 the benefit of Central Lincoln, such requirements and such fees or charges are unjust and
21 unreasonable terms and conditions of attachment.
22

23 66. On information and belief, Central Lincoln's refusal to allow Charter to do any
24 work, including transferring to new poles when Central Lincoln transfers poles, is retaliatory for
25 Charter's assertion of its legal rights under Oregon statutes and the Commission's Regulations.
26

1 **COUNT 1**
2 **(Violation of ORS § 757.276 – Unjust and Unreasonable Rates, Terms & Conditions**
3 **Imposition Of Unlawful Application Fees and Refusal to Allow Attachment)**

4 67. Charter incorporates by reference paragraphs 1 through 66 above as if set forth
5 fully herein.

6 68. As set forth in its Fee Schedule, and in the invoices sent to Charter, Central
7 Lincoln seeks to charge Charter myriad “application” fees as direct costs in addition to annual
8 rental payments.

9 69. Central Lincoln has invoiced Charter for “application fees” at the rates identified
10 in the Fee Schedule.

11 70. Charter has not paid the application fees sought by Central Lincoln.

12 71. Central Lincoln’s application fees, as set forth in its Fee Schedule and invoices,
13 are unlawful, unjust and unreasonable fees in excess of the maximum lawful fees Central
14 Lincoln may charge.

15 72. In *Central Lincoln People’s Util. Dist. v. Verizon Northwest, Inc.*, Order No. 05-
16 042, 2005 Ore. PUC Lexis 36 (Jan. 19, 2005), the Commission held that Central Lincoln’s
17 application fees were unlawful and unenforceable.

18 73. Despite its application fees being held unlawful, Central Lincoln refuses to
19 process Charter’s pole attachment permits unless Charter pays the unlawful application fees.
20 The requirement for Charter to pay application fees – as also embodied in the Agreement,
21 including Sections 3.1.4 and 3.2 – violates ORS § 757.276 and OAR 860-028-0110.
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1 **COUNT 2**
2 **(Violation of ORS § 757.276 – Unjust and Unreasonable Rates, Terms & Conditions**
3 **Unlawful Annual Rental Rates)**

4 74. Charter incorporates by reference paragraphs 1 through 73 above as if set forth
5 fully herein.

6 75. Central Lincoln sent Charter 3 invoices dated February 8, 2005 for annual pole
7 attachment rental for the year 2005. (Exhibit 4).

8 76. In its February 8, 2005 invoices, Central Lincoln charged Charter a rate of \$9.93
9 per attachment point for each “Joint Pole Attachment Point” and “Joint Pole Attachment Non
10 Inv.” (Exhibit 4).

11 77. By letters dated August 26, 2004, October 5, 2004, and December 21, 2004,
12 Charter notified Central Lincoln that it believed Central Lincoln’s annual rental and various
13 other charges were not just and reasonable and consistent with the Commission’s rules, and
14 Charter asked Central Lincoln to provide data supporting the fees and charges.
15

16 78. While Central Lincoln submitted to Charter a calculation of its annual fee, Central
17 Lincoln has never provided Charter with data from which Charter could independently calculate
18 the appropriate lawful fee.

19 79. On information and belief, Central Lincoln’s annual rate improperly includes “net
20 income” and “customer expenses,” among other improper costs.
21

22 80. On January 19, 2005, the Commission issued an Order holding that the maximum
23 lawful annual rental charge Central Lincoln could charge an attaching entity, based on
24 application of Central Lincoln’s costs to the Commission’s regulations, is \$4.14 per foot per
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1 year. *Central Lincoln People’s Util. Dist. v. Verizon Northwest, Inc.*, Order No. 05-042, 2005
2 Ore. PUC Lexis 36 (Jan. 19, 2005).

3 81. The annual attachment rental fees imposed by Central Lincoln for “Joint Pole
4 Attachment Points” and “Joint Pole Attachment Non Inv” exceeded the \$4.14 per foot maximum
5 rate.
6

7 82. On information and belief, the annual attachment rental fees imposed by Central
8 Lincoln for “Joint Pole Attachment Points” and “Joint Pole Attachment Non Inv” also imposed
9 charges on Charter for every attachment within the one foot of space allocated to Charter’s
10 attachments.

11 83. The annual pole attachment rental fees charged by Central Lincoln on Charter for
12 “Joint Pole Attachment Point” and “Joint Pole Attachment Non Inv” were and are unjust and
13 unreasonable and therefore in violation of ORS §§ 757.276 and 757.282, and OAR 860-028-
14 0110.
15

16 84. On information and belief, the annual pole attachment rental fees charged by
17 Central Lincoln to Charter are discriminatory and therefore in violation of ORS §§ 757.276 and
18 757.282, and OAR 860-028-0110.

19 85. The annual pole attachment rental fees charged by Central Lincoln to Charter for
20 the years 2000, 2001, 2002, 2003, and 2004 were also far in excess of \$4.14 per foot and
21 therefore were unjust and unreasonable and in violation of ORS §§ 757.276 and 757.282, and
22 OAR 860-028-0110.
23

24 **COUNT 3**
25 **(Violation of ORS § 757.276 – Unjust and Unreasonable Rates, Terms & Conditions**
26 **Unlawful Annual Fees On Attachments – Risers, Anchors, Etc.)**

1 86. Charter incorporates by reference paragraphs 1 through 85 above as if set forth
2 fully herein.

3 87. In addition to annual rental for “Joint Pole Attachment Points” and “Joint Pole
4 Attachment Non Inv,” Central Lincoln imposed on Charter annual rental for anchor attachments,
5 riser attachments, equipment in unusable space, and “joint pole no attachment.” (Exhibit 4).
6

7 88. Pursuant to ORS §§ 757.282(3) and OAR 860-028-0110, Central Lincoln may
8 charge Charter annual rental only for one foot of *useable* space of the pole, unless Charter’s
9 actual use of useable space exceeds the one foot.

10 89. Communications risers are conduits located in the unusable space on a pole, and
11 therefore exempt from rental charges, which only apply to useable space occupied.

12 90. Equipment attachments are made in the unusable ground clearance space on a
13 pole, and therefore are exempt from rental charges, which only apply to useable space occupied.
14

15 91. Pole owners, including on information and belief Central Lincoln, include their
16 investment in anchors in the calculation of annual pole attachments rates, and therefore separate
17 attachment fees for anchor attachments are double recovery and unjust and unreasonable.

18 92. Central Lincoln’s separate attachment rental fees are unjust and unreasonable and
19 in violation of ORS §§ 757.276 & 757.282, and OAR 860-028-0110.
20

21 93. Central Lincoln also imposes its annual rental fees on a per attachment basis,
22 rather than for the one foot of useable space actually used. As such, the annual rental fees are
23 unjust, unfair, and unreasonable in violation of ORS §§ 757.276 & 757.282 and OAR 860-028-
24 0110.

25 **COUNT 4**

26 **Violation of ORS § 757.276 – Unjust and Unreasonable Rates, Terms & Conditions**

1 100. In addition to the unjust, unreasonable and unlawful fees imposed by Central
2 Lincoln under the Agreement, Central Lincoln has imposed on Charter additional unjust and
3 unreasonable terms and conditions of attachment in the Agreement.
4

5 101. The terms and conditions of the Agreement are more burdensome and less
6 favorable for Charter than those in the agreement established by the Commission between
7 Central Lincoln and Verizon. Central Lincoln's refusal to give Charter the same terms and
8 conditions of attachment afforded Verizon is discriminatory and unjust, unfair, and unreasonable
9 in violation of ORS § 757.276.

10 102. The following provisions and requirements of the Agreement are also unjust,
11 unfair, and unreasonable in violation of ORS § 757.276:
12

- 13 a. Section 1.4, to the extent that it requires permits for Charter's overlashed
14 facilities and makes Charter's overlashed facilities "bootleg" if they do
15 not have a permit;
16
- 17 b. Section 2.2 – In correlation with the definitions, Section 2.2 requires
18 permits for each attachment, including Charter's overlashed facilities;
19
- 20 c. Sections 3.1, 3.1.1, 3.1.4, 3.1.6 & Exhibit A – Central Lincoln's permit
21 application process is unreasonably burdensome and excessive in light of
22 industry standards and legitimate safety and engineering concerns. The
23 information required under Section 3.1, Section 3.1.1, Section 3.1.6, and
24 Exhibit A to the Agreement exceeds the information required under the
25 agreement established in UM 1087, and particularly as applied to service
26 drops, is excessively burdensome, expensive, and unnecessary in light of

1 industry standards and legitimate safety and engineering concerns. As
2 noted above, a permit application fee, Section 3.1.4, is unlawful.

3
4 d. Sections 3.1-3.4.6 – As a whole, these provisions lack a meaningful and
5 enforceable timeframe in which for Central Lincoln to act on permit
6 applications and related work. In UM 1087, the Commission established
7 that Central Lincoln must respond within 30 days or the application will
8 be deemed granted, and also held that Central Lincoln must provide a
9 written rejection with specificity and all relevant evidence and
10 information related to lack of capacity, safety, reliability, or generally
11 applicable engineering standards.

12 e. Section 3.4.5 – This provision requires Charter to give Central Lincoln
13 the opportunity to install a new pole where Central Lincoln does not
14 currently have one, rather than Charter doing the installation itself. This
15 would be at Charter’s expense. Yet, Charter would not get ownership of
16 the pole and would otherwise be subject to the continuing control of
17 Central Lincoln. This is unjust and unreasonable. If nothing else, it is
18 Central Lincoln’s leverage of its monopoly control over an essential
19 facility to prevent Charter installing its own facilities – thus perpetuating
20 Central Lincoln’s monopoly.

21
22 f. Section 3.5 – It is unjust and unreasonable for Central Lincoln to require
23 Charter to submit new permit applications, pay fees for processing of
24 such applications, and pay to rearrange its facilities, for which it has
25 already obtained permits, due to Central Lincoln’s change in plans.
26

- 1 g. Section 3.7 – Because of the broad definition of an “attachment,” this
2 provision would make overlashed facilities into unauthorized attachments
3 subject to penalty, which is not just, fair, or reasonable.
4
- 5 h. Sections 4.1 and 4.3 – As discussed above, these provisions are unlawful to
6 the extent that they impose annual rental for “each permit issued,” which
7 when coupled with Section 2.2 means that Central Lincoln imposes annual
8 rental on all attachments to a pole, rather than only to the one foot of
9 useable space actually occupied.
- 10 i. Section 4.4 – As demonstrated above, the fees set forth in Exhibit B to the
11 Agreement are unlawful.
12
- 13 j. Section 4.6 – This provision seeks to impose costs that are otherwise
14 recovered through the annual rental fee, and as such are unlawful.
- 15 k. Section 5.5 – As noted elsewhere herein, Central Lincoln’s requirement
16 for a permit for every piece of equipment, every modification of
17 equipment, and Charter’s overlashing of its own facilities is unjust and
18 unreasonable.
19
- 20 l. Section 5.9 – As noted elsewhere herein, Central Lincoln’s pole transfer
21 requirements, including but not limited to the fees imposed on Charter,
22 are unjust and unreasonable.
- 23 m. Section 5.12.1 and 5.12.2 – These provisions do not guarantee Charter use
24 of Central Lincoln’s anchors, and imposes a separate fee for their use.
25 However, Central Lincoln recovers in its annual rental fees the costs of
26

1 anchors, and thus Charter is already paying for them. Charter, therefore,
2 should be entitled to use them, and without paying an additional fee. To
3 charge an additional fee would allow double recovery.
4

- 5 n. Sections 7.1, 7.2, and 7.3 – Central Lincoln’s indemnification
6 requirements are unreasonably broad, and are not bilateral.
- 7 o. Section 7.8 – On information and belief, Central Lincoln has failed to
8 give Charter the option of entering into a nondiscriminatory
9 indemnification provision based on the indemnification provision in
10 Central Lincoln’s agreements with other providers.
- 11
- 12 p. Section 9.3.3 – This provision requires that a security bond contain a
13 provision that the surety will pay to the District any unpaid sum
14 demanded by the District whether or not Charter contests its liability to
15 pay such sum. This is patently unreasonable, and it is an unjust, unfair,
16 and unreasonable term and condition of attachment.
- 17 q. Section 10.5 and Exhibit C – The sanctions set forth in Section 10.5 and
18 Exhibit C of the Agreement for attaching to a Central Lincoln pole
19 without a permit, violation of the Commission’s safety rules, and breach
20 of the Agreement are unjust and unreasonable, including but not limited
21 to, in light of standard industry practice and legitimate safety and
22 engineering concerns.
23
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1 **IV. PRAYER FOR RELIEF**

2 **WHEREFORE**, based on the foregoing, Charter respectfully requests that the
3 Commission issue an Order granting Charter relief as follows:

4
5 1. Ordering Central Lincoln to refund to Charter \$71,917.59, plus interest, for
6 overcharges for 2005 pole attachment rentals;

7 2. Ordering Central Lincoln to refund to Charter an amount to be established at
8 hearing for payments made by Charter to Central Lincoln in the years 2000, 2001, 2002, 2003,
9 and 2004 for charges by Central Lincoln for pole attachments in excess of the maximum lawful
10 rate;

11 3. Fixing the maximum annual rental rate Central Lincoln may charge Charter as
12 \$4.14 per foot of useable space;

13 4. Declaring that Central Lincoln may not require Charter to pay fees for
14 processing of permit applications;

15 5. Declaring that Central Lincoln may not require Charter to pre-pay application
16 processing, or other permit application related costs, as a precondition of permit application
17 processing and attachment;

18 6. Declaring that Central Lincoln may not charge Charter annual rental fees for
19 risers, anchors, guy wires, equipment in grounded space, and “non-attachments;”

20 7. Declaring that Central Lincoln may not charge Charter rental fees per
21 attachment;

22 8. Ordering that all currently pending permit applications submitted by Charter
23 be deemed granted, and ordering Central Lincoln to immediately initiate all make ready work
24 necessary, if any, under the permit applications;

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9. Declaring Sections 1.4, 2.2, 3.1, 3.1.1, 3.1.4, 3.1.6, 3.1-3.4.6, 3.4.5, 3.5, 3.7, 4.1, 4.3, 4.4, 4.6, 5.5, 5.9, 5.12.1, 5.12.2, 7.1, 7.2, 7.3, 7.8, 9.3.3, 10.5, and Exhibits A, B, & C of the Agreement are unlawful and unenforceable;

10. Prohibiting Central Lincoln from enforcing Sections 1.4, 2.2, 3.1, 3.1.1, 3.1.4, 3.1.6, 3.1-3.4.6, 3.4.5, 3.5, 3.7, 4.1, 4.3, 4.4, 4.6, 5.5, 5.9, 5.12.1, 5.12.2, 7.1, 7.2, 7.3, 7.8, 9.3.3, 10.5, and Exhibits A, B, & C of the Agreement;

11. Ordering Central Lincoln to immediately enter into a new pole attachment agreement with Charter under the terms and conditions set forth in the Commission’s May 16, 2005 Order in *Central Lincoln People’s Util. Dist. v. Verizon Northwest, Inc.*, UM 1087;

12. Ordering Central Lincoln to pay all the costs for the hearing pursuant to ORS 757.279(2) and 759.660(2); and

13. Such other relief as the Commission deems fair and reasonable.

1
2 DATED this 5th day of January, 2006.

3
4 MILLER NASH LLP

5 

6 Brooks E. Harlow
OSB No. 03042

7 Attorneys for Complainants
8 Charter Communications Holding
9 Company, LLC, Falcon Telecable, L.P.,
Falcon Cable Systems Company II, L.P.,
And Falcon Community Ventures I, L.P.

10 COLE, RAYWID & BRAVERMAN, LLP

11 /S/ T. Scott Thompson

12 T. Scott Thompson
13 (admission *pro hac vice* pending)
14 Rita Tewari
15 1919 Pennsylvania Avenue, N.W.
16 Suite 200
Washington DC 20006
(202) 659-9750
(202) 452-0067 (fax)
sthompson@crblaw.com

17 Attorneys for Complainants Charter
18 Communications Holding Company,
19 LLC, Falcon Telecable, L.P., Falcon
Cable Systems Company II, L.P., And
Falcon Community Ventures I, L.P.

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COMPLAINT EXHIBIT 1

POLE OCCUPANCY LICENSE AGREEMENT

DATE: March 18, 2003

PARTIES: Charter Communications Holding Company, LLC, on its own behalf and as agent ("Licensee") for its subsidiaries listed on Addendum One hereto.

12405 Powerscourt Drive

St. Louis, Missouri 63131-3674

Central Lincoln People's Utility District,
("District")

an Oregon People's Utility District
2129 North Coast Hwy.
Newport, OR 97365

RECITALS:

A. Licensee desires access to District's pole, ducts, conduits and rights-of-way within the District's distribution area.

B. District is willing to license under certain conditions, on a revocable, non-exclusive license basis, to the extent it may lawfully do so, the placement of Licensee's attachments on District's poles, ducts, conduits and rights-of-way where reasonably available in its distribution area.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the parties do mutually covenant and agree as follows:

SECTION 1. DEFINITIONS

Definitions in General. Except as the context otherwise requires, the terms defined in this License Agreement shall, as used herein, have the meanings set forth in Section 1.1 through 1.15.

1.1 Attachment. The term "Attachment" means any wire or cable for the transmission of intelligence by telegraph, telephone or television (including cable television), light waves or other phenomena, or for the transmission of electric power, and any related device, apparatus, or auxiliary equipment, installed individually upon any portion of a pole or in any telegraph, telephone, electrical, cable television or communications right of way, duct, conduit, manhole or hand hole or other similar facility or facilities owned or controlled, in whole or in part, by the District.

POLE OCCUPANCY LICENSE AGREEMENT

1.2 Attachment Project. The term "Attachment Project" refers to any attachment that materially changes the clearance, mechanical, structural, or electrical characteristics of the joint use pole installation.

1.3 Attachment Maintenance Project. The term "Attachment Maintenance Project" refers to the replacement or maintenance of existing attachments that do not modify the attachment mounting style or location, change pole loading characteristics or clearances, or affect other joint-pole users

1.4 Bootleg. The term "Bootleg" refers to the occupancy of an attachment point on a pole, joint pole, District anchor, by an Aerial Cable Attachment, Service Drop Attachment, Equipment Attachment, Anchor Attachment, and Communication Riser Attachment or an Over-Lash of an existing Aerial Cable Attachment without a valid occupancy permit. A Service Drop will be considered a Bootleg if District has not received a Service Drop Application within seven (7) days of occupancy.

1.5 Facilities. The term "Facility" and "Facilities" refer to any property or equipment utilized in the provision of services by Licensee or District.

1.6 Foreign Joint Pole. The term "Foreign Joint Pole" refers to a utility pole owned and maintained by a utility other than the District, which may be occupied with District attachments.

1.7 Joint Pole. The term "Joint Pole" refers to a utility pole owned and maintained by the District and occupied with attachments of other electric and telephone utilities, cable television companies, fiber optic companies, government agencies, or other private companies and individuals.

1.8 Licensee's Equipment. The term "Licensee's Equipment" refers to auxiliary equipment directly attached to a joint pole such as Power Supplies for TV amplifiers, Junction Boxes, Splice Boxes.

1.9 Make-Ready. The term "Make-Ready" refers to engineering and/or construction work required to modify or replace an existing pole or joint pole to render it suitable for an additional or modified attachment or occupancy.

1.10 NESC. The term "NESC" refers to the National Electric Safety Code.

1.11 NJUNS. The term "NJUNS" refers to the National Joint Utilities Notification System, an electronic Internet program (www.njuns.com) for attachment permit application to a joint pole, attachment removal from a joint pole, attachment relocation on a joint pole and attachment transfer to a replacement joint pole.

1.12 Pole. The term "Pole" refers to a utility pole owned and maintained and occupied by the District.

1.13 Senior Attachment. The term "Senior Attachment" refers to the attachment of a joint pole with the earliest current valid permit date.

POLE OCCUPANCY LICENSE AGREEMENT

1.14 Transmission Pole. The term "Transmission Pole" refers to a utility pole owned, maintained, and occupied by the District with a transmission electrical circuit with line to line voltage of 69 or 115 KV.

1.15 Transmission/Distribution Pole. The term "Transmission/Distribution Pole" refers to a utility pole owned, maintained, and occupied by the District with a transmission electrical circuit with line to line voltage of 69 or 115 KV and one or more distribution electrical circuits with line to line voltage of 12.47KV.

SECTION 2. GENERAL AGREEMENT

2.1 Permits. Subject to the terms and conditions set forth in this License Agreement, District shall issue to Licensee one or more permits authorizing Licensee to make attachments to specified poles owned or controlled by District. District may deny a permit application if District determines in its reasonable judgment that there is insufficient capacity, or for reasons of safety, reliability and generally applicable engineering standards. Nothing contained in this Agreement, or any permit issued pursuant to this Agreement, shall be construed to compel the District to maintain any of its poles for a period longer than is necessary for District's service requirements.

2.2 Specific Permits Required. Except for service drops pursuant to Section 3.1.6 and Attachment Maintenance Projects as defined in Section 1.3, the Licensee shall have no right pursuant to this Agreement to attach to any pole of the District until a specific permit has been granted as to that pole for each attachment. Licensee shall be subject to sanctions pursuant to Section 10.5, for any attachment by Licensee to a pole owned by the District without a permit.

2.3 Distribution Area. The distribution area covered by this Agreement shall be those portions of Lincoln, Lane, Douglas, and Coos Counties, State of Oregon, as served by the District.

2.4 Foreign Joint Poles. District does not own some of the joint poles for which permits are sought from the District under this Agreement and that such joint poles that the District has in use may be owned by others. Licensee understands and agrees that it is required to make appropriate agreements for permits, licenses, or other written consent for Licensee's use of a foreign joint pole with owner(s) of such foreign joint pole; provided further, that Licensee hereby agrees to be responsible for obtaining the appropriate permission from all owner(s) and Licensee further agrees to hold harmless and indemnify the District herein from any claims or damages alleged against District by reason of the failure of Licensee to secure or obtain the appropriate permission, license, or permit from any owner(s) of such foreign joint poles.

2.5 District/Licensee Relationship. No use, however extended, of any of the poles under this Agreement shall create or vest in Licensee any ownership or property rights herein, but Licensee's rights therein shall be and remain a mere license, which, as to any particular pole or poles, may be terminated at any time by the District pursuant to Section 10.3. Licensee understands and agrees that the permit rights granted herein and

POLE OCCUPANCY LICENSE AGREEMENT

the specific permits granted pursuant to this Agreement are non-exclusive and revocable, and that District may grant attachment rights to other parties for the use of the same poles for which Licensee has specific attachment permits; provided, however, that pole attachment rights subsequently granted by District to other private parties pursuant to licenses, permits and/or rental agreements shall not limit or interfere with any prior attachment rights granted to Licensee hereunder. In all cases, the Senior Attachment shall have priority over subsequent attachments.

2.6 Primary Use of Poles. Licensee understands and agrees that the District's poles are used and are to continue to be used primarily for the District's purposes; therefore, the Licensee's use will be a secondary use and that this Agreement is made and all permits granted hereunder are granted as an accommodation to the Licensee, subject to District's legal obligation. Attachment requests to District Transmission/Distribution Poles shall be governed by this Agreement with the exception that all engineering, inspections and make-ready work shall be charged by actual cost. Attachment requests to District Transmission Poles shall be by separate agreement and at the sole discretion of the District.

2.7 Prohibited Equipment. Under no circumstances shall a permit be granted hereunder for the attachment of any equipment that is intended to either transmit or receive any radio frequency licensable by the FCC. Such prohibition shall include both direct attachments to the District's poles and the placement of antennae between pole spans, utilizing existing attachments. However, nothing in this Agreement shall prevent the District from authorizing the attachment of such equipment to District poles, or any other District facilities, under a separate agreement containing terms and conditions for such attachments which are acceptable to the District in its sole discretion.

SECTION 3. PROCEDURES AND COSTS

3.1 Application Forms. To apply for a permit under this Agreement, Licensee shall submit to District a signed copy of an Application for Pole Attachment, a copy of which is attached as Exhibit "A", or electronic application using NJUNS. Licensee shall also submit to District a signed copy of the Joint Occupant Load Data Information Form, a copy of which is attached as Exhibit "A". The Application for Pole Attachment and Joint Occupant Load Data Information Form may be revised from time to time in the reasonable discretion of the District. Licensee may cancel a permit under this Agreement pursuant to Section 10.3.1.

3.1.1 Required Information. Each application for a permit under this Agreement shall specify the District's Site Location Number (normally attached to the pole), or the physical location description with accompanying map of the pole or poles in which Licensee desires to make an attachment, and other identifying pole information; a description of Licensee's equipment which will be attached to each pole, complete cable, wire, and equipment wind and tension loading information, installation diagram of equipment placement in relation to District's facilities, and existing Licensee's attachment if any. Incomplete applications shall be returned to the Licensee without further consideration for a permit to attach.

POLE OCCUPANCY LICENSE AGREEMENT

3.1.2 Attachments per Application. Each application for a permit under this Agreement shall have a maximum of ten (10) attachments located on one (1) to ten (10) poles.

3.1.3 Large Attachment Projects. A single Attachment project involving thirty (30) or more poles or joint poles or a group of small attachment projects involving more than forty five (45) poles within a thirty (30) day period shall require sixty (60) calendar days of advance notification and a project planning meeting between Licensee and District to determine scope of work, party responsibility, time schedule, and additional chargeable costs before work begins on processing attachment permits. The District shall make the sole determination of what constitutes a large attachment project.

3.1.4 Application Fee. An application fee in the amount set forth in Exhibit "B" shall be assessed for each attachment application. Such application fee shall cover the average costs of the preliminary survey described in Section 3.2 below and one (1) post construction inspection of the completed attachment, along with cost for discontinuance of the attachment permit to include (1) one removal verification inspection. Licensee agrees to pay for any and all subsequent inspection(s) if the installation is not in material compliance with any Section of this Agreement, NESC, and/or OPUC policies in amount set forth in Exhibit "B". See Section 4.4 regarding annual review of application fees.

3.1.5 NJUNS. Use of the Internet NJUNS program is the preferred method of permit applications, notifications and transaction recording. See Exhibit A for written application and discontinuance notification forms.

3.1.6 Service Drop Exception. With respect to service drops only, District grants Licensee preliminary permission for such occupancy to be made prior to the issuance of a permit; provided further that such preliminary permission shall be subject to subsequent receipt of a properly completed electronic application using NJUNS or the Application for Pole Attachment, and receipt of a completed Joint Occupant Load Data Information Form or an equivalent service drop loading data sent with the attachment application in a mutually agreed upon format. Failure by Licensee to meet all requirements for service drops will result in District revoking preliminary permission for occupancy and shall be considered a bootleg attachment subject to the Section 3.7. Upon receipt of the electronic application or written Application for Pole Attachment and Joint Occupant Load Data Information Form or equivalent service drop loading data from Licensee, the District shall review the application pursuant to the procedure set forth in this Section 3.

3.2 Preliminary Survey. Upon receipt of a written or electronic NJUNS application, the Joint Occupant Load Data Information Form, application fee and location map (if District pole site location numbers were not available), the District shall conduct a preliminary survey of the pole(s) in question and, if the Licensee requests, with representatives of the Licensee. The preliminary survey shall determine:

- (a) Whether such poles are available for the Licensee's attachments;
- (b) Whether any rearrangement or other changes are necessary in the facilities of the District or of other joint users of the pole or joint use pole in question to accommodate Licensee's proposed attachments;

POLE OCCUPANCY LICENSE AGREEMENT

- (c) Whether any pole or joint use pole in question requires strengthening, including guying, anchoring, and/or stubbing; and
- (d) Whether any pole or joint use pole requires replacement by a taller or higher strength class pole.
- (e) Provide a cost for any pole or joint use pole that requires make-ready that will be charged to the Licensee.

3.3 Completion of Preliminary Survey. The District shall make reasonable effort to complete the preliminary survey and send either written or electronic notification using NJUNS, to the Licensee within thirty (30) days after receipt of the completed attachment application, engineering data information form, for attachment projects not determined to be large attachment projects.

3.3.1 Issue of Permit on Preliminary Survey. District shall identify to Licensee as to which of the pole(s) or joint use pole(s) in the application are available for Licensee's proposed attachment, including the location on the pole or joint use pole available for Licensee's proposed attachments.

3.3.2 Rejection of Attachment on Preliminary Survey. District shall identify to Licensee as to which of the pole(s) or joint use pole(s) in the application are not available for Licensee's proposed attachment. A make-ready cost if required will be noted for the rejected poles.

3.4 Make-Ready Work. District final engineering for make-ready work will commence upon receipt of Licensee's electronic notification accepting the make-ready cost and receipt of the make ready fees from the Licensee.

3.4.1 Licensee's Engineering Review. Upon Licensee's request, the District shall permit the Licensee to review the proposed work prints, together with available supporting cost details, in order for the Licensee to satisfy itself as to the make-ready work proposed and the costs estimated by the District. The District may consider any reasonable objections or comments by the Licensee; provided, however, that the District's decision regarding the necessity and cost for any make-ready work remains in the District's reasonable discretion.

3.4.2 Costing. The District shall determine the estimated costs of make-ready work. The engineering and/or construction work required to modify or replace an existing pole or joint pole rendering it suitable for an additional or modified attachment or occupancy shall include those items described in Sections 3.2(b), 3.2(c), and 3.2(d). The estimated costs of make-ready work may include, but not be limited to labor and equipment costs to transport, set and remove a pole, labor cost to strengthen pole or other such costs necessitated by the Licensee's attachment. Make-ready costs may also include the specialized engineering and construction labor costs, including overtime, and board and lodging where necessary to meet the Licensee's requirements. District shall utilize standard construction unit costs, where applicable and amended from time to time, as set forth in the attached Exhibit "B".

POLE OCCUPANCY LICENSE AGREEMENT

3.4.3 Confirmation by Licensee. Within thirty (30) days after the District notifies the Licensee of the contemplated make-ready work and the estimated make-ready work cost, Licensee shall confirm with a written notice or an electronic notice using NJUNS its decision to proceed with the make-ready work. In the event Licensee does not confirm with a written or electronic notice using NJUNS within thirty (30) days, its application pursuant to Section 3.1 shall be deemed withdrawn and the application fee provided in Section 3.1.4 shall not be refunded.

3.4.4 Advance Payment of Estimated Costs. In the event Licensee confirms its application, Licensee shall pay to District in advance the full amount of the make-ready work costs as estimated by the District. In the event Licensee fails to make advance payments within ten (10) days of confirmation pursuant to Section 3.4.3, the District shall be under no further obligation to perform or continue any make-ready work. In no event shall Licensee commence any construction or attempt to attach its facilities to the District's poles until Licensee has paid to District the costs of all make-ready work, and District has authorized and notified electronically using NJUNS that Licensee can proceed.

3.4.5 Pole Strength, Space or Availability. In the event Licensee finds it necessary to erect a pole in a location where District's pole or joint pole is not presently located or an existing foreign pole or foreign joint pole is not available for attachment by Licensee pursuant to Section 2.4 of this agreement, Licensee shall notify District in writing of its need for such pole facilities and grant District a right to determine whether it wishes to provide pole facilities in such locations and in such manner as will fulfill the Licensee's requirements. If District elects to provide pole facilities for Licensee, District shall, at Licensee's expense, erect pole facilities in such locations and in such a manner as to reasonably meet the service requirements of both Licensee and District. If other Licensees request occupancy space on said pole within a sixty (60) month period from the setting month, the District shall collect a prorated share of the setting fee and reimburse Licensee the prorated share. District's right of first refusal does not obligate District to provide pole space nor to grant Licensee permission to use any particular pole. District understands and agrees that if it declines to provide new pole facilities sufficient to meet Licensee's requirements, Licensee shall have the right to make any other arrangements it deems reasonably appropriate to provide for its equipment at the location desired; provided, however, that Licensee's pole plant or alternative arrangements for its facilities shall not unreasonably interfere with the existing poles and facilities of District.

3.4.6 Issuance of Permit. If Licensee's application for a pole attachment is approved, and all required make-ready work completed, District will execute and return a permit to Licensee, as appropriate, authorizing Licensee to attach or place the specified facilities on District's poles. A copy of the permit will be required to be on site with the construction crew during construction of the attachment.

3.5 Subsequent Modifications of Licensee's Attachments. Licensee acknowledges that, from time to time, it may be necessary or desirable for District to change out poles, relocate, reconstruct, or rearrange facilities contained therein or connected thereto and that such change may be necessitated by District's business needs and that it is clear the beneficiary of such rearrangements is District. In these instances, Licensee agrees that Licensee will, upon District's request, and at Licensee's expense,

POLE OCCUPANCY LICENSE AGREEMENT

participate with District (and other Licensees) in the relocation, reconstruction, or modification of District's poles or facilities rearrangement. Licensee shall make all rearrangements of its facilities within such a period of time as is jointly deemed reasonable by the parties based on the amount of rearrangements necessary. If Licensee fails to make the required rearrangements within the time requested and prescribed or within such extended periods of time as may be granted by District in writing, District may perform such rearrangements with written notice to Licensee, and Licensee shall reimburse District for actual costs and expenses incurred by District in connection with the rearrangement of Licensee's facilities.

3.6 Emergency Repairs and Pole Replacements. In general, Licensee shall be responsible for making emergency repairs to its own facilities and for formulating appropriate plans and practices that will enable it to make such emergency repairs. District shall be under no obligation to perform any repair or service restoration work of any kind with respect to Licensee's facilities. District may, at its option, correct any emergency attachment deficiencies and charge the Licensee for its actual costs.

3.7 Unauthorized Pole Attachment - Penalty. In the event Licensee occupies a District pole with an attachment without a specific attachment permit for such attachment, Licensee shall have a bootleg attachment in non-compliance for the attachment permit and be subject to sanctions and penalties pursuant to Section 10.5.

3.8 Cost Allocation among Multiple Applications. When applications to occupy the same pole have been received from two or more prospective Licensees, make-ready, if any, costs shall be pro-rated equitably among such simultaneously attaching occupants.

POLE OCCUPANCY LICENSE AGREEMENT

SECTION 4. RENTALS, CHARGES, AND RATES

4.1 Pole Rental Amount. Each permit issued pursuant to this Agreement shall be subject to an annual attachment or occupancy fee as set forth in the attached Exhibit "B".

4.2 Payment. Annual billings shall be rendered on February 1st of each year. Rental bills shall be considered delinquent if payment is not received in full within ninety (90) days of the billing date. Notification of delinquency will be sent as stated in section 11.2.

4.3 Annual Rental Method of Computation. The amount of annual payment due shall be determined by District based upon the total number of permitted attachments on joint poles multiplied by the respective annual attachment rental fee as of December 31st prior to the February 1st billing date.

4.4 Exhibit "B" Fee Schedule Annual Review and Approval. District shall review the Exhibit "B" Fee Schedule by June 30th of each year. Written notice shall be sent to Licensee with the proposed Exhibit "B" Fee Schedule. The Licensee shall have sixty (60) days to comment on the proposed Exhibit "B" Fee Schedule. The revised Exhibit "B" Fee Schedule will be presented to the District's Board of Directors for their review and approval during a regular scheduled District board meeting after the sixty day comment period with an effective date of following January 1st. A letter of notification and approved Exhibit "B" Fee Schedule will be sent to the Licensee by electronic and registered mail to the Licensee. The letter of notification along with the accompanying Exhibit "B" shall be incorporated in, and governed by terms and conditions of this Agreement. If the changes are not acceptable to Licensee, Licensee may only dispute the revised fee amounts. The amount in dispute shall be placed into escrow by Licensee until the disputed amount is resolved.

4.5 Late Payment Penalty. A late payment penalty fee in an amount set forth in the attached Exhibit "B" shall be added on the unpaid amount past due under this Agreement.

4.6 Miscellaneous Charges. To the extent not already included in Exhibit "B" Fee Schedule, Licensee shall pay, in addition to the charges specified in this Section, all costs incurred by District in connection with any work performed by the District pursuant to this Agreement in order to provide or maintain space on any poles for the Licensee's attachments, and any other costs incurred by the District arising out of this Agreement. Licensee shall be responsible for any consent, permits, taxes, licenses or other reasonable requirements and charges that may be imposed upon District by reason of this Agreement and to pay all such taxes, fees, reasonable charges, and expenses as may be imposed upon District as a result of this Agreement.

POLE OCCUPANCY LICENSE AGREEMENT

SECTION 5. OPERATIONS AND MAINTENANCE

5.1 Permission from Other Authority. Licensee shall be responsible for obtaining any building licenses, permits, authorizations or certificates from governmental authorities necessary to construct, operate, maintain and remove its facilities on public or private property. Licensee shall not attach or place its facilities to or on District's poles located on any property for which it or District has not first obtained all required authorizations. District shall have the right to request evidence that all appropriate authorizations have been obtained. All facilities owned by Licensee on District's poles, anchors, or guys must serve a lawful purpose and the uses made of Licensee's facilities must comply with all applicable federal, state, and local laws and with all federal, state, and local regulatory rules, regulations, and requirements. In this regard, Licensee shall not utilize any facilities occupying or attached to District's poles for the purpose of providing any services which it is not authorized by law to provide or for the purpose of enabling any other person or entity to provide any such services.

5.1.1 Existing Easements. Licensee understands that District's existing easements do not include the facilities and attachments of Licensee. Licensee shall secure the necessary easements for the facilities and attachments of the Licensee.

5.1.2 Future Easements. In the event District elects to procure easement rights for its poles and facilities, District shall only seek the rights that cover District's poles and facilities.

5.2 Construction, Attaching, and Placing Facilities. Licensee shall be responsible for constructing its own facilities and attaching those facilities to District's poles at Licensee's sole cost and expense. A copy of the attachment permit is required on site during construction. Licensee shall be solely responsible for paying all persons and entities who provide materials, labor, access to real or personal property, or other goods and services in connection with the construction and placement of Licensee's facilities and for directing the activities of all persons acting on Licensee's behalf while they are physically present on District's pole, or in the vicinity of District's poles. Licensee shall not permit any mechanic's lien, materialman's lien, or any other lien, claim, or security interest to attach or encumber any of District's real or personal property at any time.

5.3 Specifications and Standards. Licensee shall construct, attach, place and maintain its facilities in compliance with all requirements and specifications set forth in this Agreement, the statutes of the State of Oregon, the current NESC and its amendments, and with the Construction Standards and Specifications For Joint Use Attachments set forth in the attached Exhibit "D", which may be revised from time to time in the sole discretion of the District.

5.4 Maintenance Duties. Licensee shall maintain its facilities in accordance with the provisions of this Agreement at Licensee's sole cost and expense. When maintaining the facilities, the provisions of Sections 5.2 and 5.3 shall apply.

5.5 Modifications - District Permission Required. Permits are for the specific equipment, facilities and location specified in the original application. Any subsequent

POLE OCCUPANCY LICENSE AGREEMENT

material modification in the nature or location of the attachment specified on the permit (including but not limited to over-lashing or otherwise adding additional cable loading to the original attachment) shall require the Licensee to request modification to the existing permit or to apply for a separate permit for such additional attachment. Unauthorized material modifications in the nature or location of attachments shall be considered a bootleg attachment and subject to the provisions of Sections 3.7 and 5.10.

5.6 Inspection. District shall have the right to make periodic inspections of any part of Licensee's facilities attached to District's poles, joint poles, anchors or guys no more than once every two (2) years, or spot inspections at any time of any part of Licensee's facilities attached to District's poles, anchors, or guys for the limited purpose of determining whether Licensee's facilities are in compliance with the terms of this Agreement and permits hereunder; provided, that such inspections are non-invasive. Such inspections shall be conducted at Licensee's expense as set forth in Exhibit "B". Neither the act of inspection by District of Licensee's facilities nor any failure to inspect such facilities shall operate to impose on District any liability of any kind whatsoever or to relieve Licensee of any responsibility, obligations, or liability under this Agreement.

5.7 Maintenance Rights. District reserves the right to maintain its poles and to operate its facilities thereon in such manner as will best enable them to fulfill its public service requirements.

5.8 Time for Removal. Whenever Licensee is required to remove its attachments from any poles, such removal shall be made in accordance with Section 10.4.

5.9 Transfer of Attachments. The District, in the course of replacement or removal of joint poles shall notify Licensee, in writing or electronically using NJUNS, of the District's anticipated schedule of work and required last attachment transfer date thirty (30) calendar days prior to the performance of the work. Licensee, upon receipt of the anticipated work schedule, may elect to contact District's local operations office and attempt to coordinate the work or to approve the District to transfer the Licensee's facilities and charge Licensee a transfer fee as set forth in Exhibit "B". District is not required to provide exact time schedules, but to the extent such information is available to the District, shall make reasonable efforts to provide the Licensee with information regarding construction schedules and dates if Licensee contacts District on individual transfer notifications. The District reserves the right to change such schedules, and will make a reasonable attempt to notify Licensee of such changes. District is under no obligation to coordinate such work with Licensee with the exception of work sites that require all entities involved to coordinate the work for the purpose of safety of the crews and public. In the event the Licensee is able to coordinate the transfer of Licensee's facilities during the course of the work simultaneously being performed by the District, Licensee shall perform such work in a time and manner so as to permit District to remove original pole(s) during the course of District's work. District shall not be required to remain at a work site longer than sixty (60) minutes to allow Licensee to complete its work such that the District performs removal of original pole(s).

5.9.1 Set Pole Notification. District shall provide written notification or electronic notification using NJUNS to the Licensee of the completion date of District's set new

POLE OCCUPANCY LICENSE AGREEMENT

transfer pole(s) work. District agrees that Licensee shall have thirty (30) days following such notice by District in which to transfer its attachments. District, in the event of a bona fide emergency situation requiring prompt action, shall have the option to transfer Licensee's attachments at its sole discretion and charge Licensee a transfer fee as set forth in Exhibit "B".

5.9.2 Failure to Transfer. In the event Licensee fails to transfer its attachment or attachments to the new pole by the required transfer date or thirty (30) days following set pole notification, and has not notified the District in writing or electronically using NJUNS with an acceptable transfer date, Licensee shall be in noncompliance with this Agreement and the attachment permit for the pole will be terminated. Licensee will be subject to sanctions and actual cost accrued by District as set forth in Exhibit "C".

5.10 Crossing Facilities. Except for service drops, Licensee's conductor or wire facilities that cross or intersect District facilities may be required, at Licensee's expense, to be attached to a joint pole at the sole discretion of the District.

5.11 Loading Method. Licensee's facilities shall be constructed to NESC Medium Loading District Grade "C" specifications unless special conditions or locations, at District's sole discretion, require Grade "B", Grade "C Crossing", or Extreme Wind loadings. Loading parameters are outlined in Exhibit "D". District poles or joint poles will be analyzed using Licensee's attachment loading data or by data recorded in a field inspection.

5.12 Balance Pole Moment Loading. Licensee shall provide, install and maintain anchors and guys to insure a balanced pole loading moment. Maximum allowed non-wind load moment at the base of the pole per attachment will be one-thousand (1,000) foot pounds.

5.12.1 Use of District's Anchors. Where the anchor requirements of the Licensee and District coincide with respect to certain poles, the strains of Licensee's equipment and of District's equipment on said poles may be held by the same anchors. If District determines that District's anchor has sufficient holding capacity and attachment space to accommodate Licensee's guys, Licensee may, at its option and expense, utilize District's anchor. See Exhibit "B" for anchor attachment fee.

5.12.2 Anchor Replacement. In those cases where existing District owned anchors are inadequate to hold Licensee's strains and separate anchors are not desired by Licensee, District shall replace existing anchors with adequate anchors at the expense of the Licensee, and Licensee shall reimburse the District in accordance with Section 3 and Exhibit "B".

5.13 Identification Tagging. In the event any applicable federal, state, or local laws, regulatory rules, regulations, or requirements require the identification tagging of poles during the course of this Agreement, Licensee shall accept reasonable means chosen by District to comply with identification tagging requirements.

POLE OCCUPANCY LICENSE AGREEMENT

SECTION 6. SAFETY, NESC, OPUC

6.1 New Installations. District shall have the right to inspect each new installation of Licensee's attachments or re-inspect if a Licensee's installation was found in noncompliance from a previous inspection. District reserves the right to charge Licensee for the expense of any field inspections during installation of Licensee's attachments, inspections after construction or re-inspections after corrective action by Licensee on its facilities to a noncompliance sanction. Any inspections performed shall in no way relieve Licensee of any responsibility, obligation, or liability assumed under this Agreement.

6.2 Licensee Practices. Licensee shall have written standard practices that address construction standards and communication protocols to be followed in attaching to District's poles pursuant to the requirements in Section 5.3. The standards shall specify any obligations that exceed NESC regulations, address communication methods, and contain contacts for notifications, project plans, authorizations and compliance certifications. These standards shall be made readily available to District upon twenty (20) days written notice to Licensee.

6.3 Safety Violation. District shall provide Licensee written notice or electronic notice using NJUNS of any violation of the Oregon Public Utility Commission's safety rules. Upon notice of a safety violation, Licensee shall either correct the violation within sixty (60) days or submit a plan of correction within thirty (30) days of its receipt of notice. District may, at its option, correct any attachment deficiencies and charge the Licensee for its costs. Licensee shall be subject to the sanctions contained in Section 10.5 for any safety violation pursuant to this Section.

6.4 Vegetation Trim Around Licensee's Attachments and Facilities. Licensee agrees to maintain a minimum distance in accordance with NESC and OPUC tree trimming rules. Failure to maintain minimum clearance will result in Licensee non-compliance with the Agreement. District shall notify Licensee upon discovery when vegetation trimming is required for its attachments and give Licensee a reasonable time to trim its facilities. District shall at its sole option, trim vegetation that it deems hazardous to the operations of the District or safety of the public that is located in the communication space and charge the Licensee a proportional share among all joint occupiers amount for its costs.

POLE OCCUPANCY LICENSE AGREEMENT

SECTION 7. INDEMNITY; REPRESENTATIONS AND WARRANTIES

7.1 Indemnification. Except for District's sole acts, Licensee shall indemnify, protect and save harmless District, its directors, officers, employees and agents, District's other Licensees, and Joint User(s) from and against any and all claims, demands, causes of action, damages, and costs, including reasonable attorney's fees through appeals incurred by District, District's other Licensee and joint user(s) as a result of acts by the Licensee, its employees, agents or contractors, including but not limited to the cost of relocating pole(s), anchor(s), guy(s), or conduit system(s) resulting from a loss of right-of-way or property owner consents and/or the cost of defending those rights and/or consents.

7.2 Indemnification. Except for District's sole acts, Licensee shall indemnify, protect and save harmless District, its directors, officers, employees and agents, District's other Licensees, and joint user(s) from and against any and all claims, demands, causes of actions and costs, including reasonable attorney's fees through appeals for damages to property and injury or death to persons, including but not limited to payments under any Worker's Compensation Law or under any plan for employee's disability and death benefits, caused by, arising from, incident to, connected with or growing out of the erection, rearrangement, maintenance, presence, use of, removal of Licensee's attachments, or by their proximity to the attachments of all parties attached to a pole, anchor, and/or guy, or placed in a conduit system, or by any act or omission of the Licensee's employees, agents or contractors in the vicinity of District's pole(s), anchor(s), guy(s) or conduit system(s).

7.3 Indemnification. Except for District's sole acts, Licensee shall indemnify, protect and save harmless District, its directors, officers, employees and agents, District's other Licensees, and joint user(s) from and against any and all claims, demands, causes of actions and costs, including reasonable attorney's fees through appeals, which arise directly or indirectly from the construction and operation of Licensee's facilities, including but not limited to taxes, special charges by others, claims and demands for damages or loss from infringement of copyrights, for libel and slander, for unauthorized use of television or radio broadcast programs and other program material, and from infringement of patents with respect to the construction, maintenance, use and operation of Licensee's facilities in combination with pole(s), anchor(s), conduit system(s) or otherwise.

7.4 Damage. Licensee shall exercise reasonable care to avoid damaging the facilities of District and of others attached to pole(s), anchor(s), or guy(s) and shall make an immediate report to the owner of the occurrence of any such damage caused by Licensee's employee, agents, or contractors. Licensee agrees to reimburse District for all reasonable costs incurred by District for the physical repair of such facilities damaged by Licensee.

7.5 Service Interference. Except for District's sole acts, District shall not be liable to Licensee for any interruption of Licensee's service or for interference with the operation of Licensee's attachments, or for any special, indirect, or consequential damages arising in any manner, including District's negligence out of the use of pole(s), anchor(s), or guy(s) or District's actions or omissions in regard thereto and Licensee shall indemnify and save harmless District from and against any and all claims, demands, causes of action,

POLE OCCUPANCY LICENSE AGREEMENT

costs, and reasonable attorney's fees with respect to such special, indirect or consequential damages.

7.6 Notice. Each party shall promptly advise the other of all claims relating to damage of property or injury to or death of persons, arising or alleged to have arisen in any manner, directly or indirectly, by the erection, maintenance, repair, replacement, presence, use or removal of the Licensee's facilities or otherwise arising under this Agreement. Each party shall promptly notify the other party in writing of any suits or causes of action which may involve the other party and upon the request of the other party, copies of all relevant accident reports and statements made to either party's insurer by a party or other shall be furnished promptly to the other party. Any notices required by the terms of this Agreement shall be sufficient if the writing is in a sealed envelope, deposited in the United States mail with postage prepaid and addressed to the other party at the party's last known address.

7.7 Warranties. Licensee acknowledges and agrees that District does not warrant the condition or safety of District's poles, conduits, or rights-of-way, or the premises surrounding the same. Licensee hereby assumes all risks of any damage, injury or loss of any nature whatsoever caused by or in connection with the use of the poles, conduits, and rights-of-way and associated attachments and equipment on, within or surrounding the same. District makes no express or implied warranties with regard to District poles, conduits, or rights-of-way or other facilities all of which are hereby disclaimed and expressly disclaims any implied warranties of merchantability or fitness for a particular purpose. Nothing contained in this Section is intended to limit District's responsibility for its sole acts under Sections 7.1, 7.2 and 7.3 herein.

7.8 Favored Nations Provision. In the event District contracts with one of District's other Licensees for a more beneficial (to Licensee) indemnification provision, District agrees to give Licensee the option to enter into the same or similar indemnification provision.

SECTION 8. INSURANCE

8.1 Insurance. Licensee shall obtain and maintain insurance, including endorsements insuring the contractual liability and indemnification provisions of this Agreement, upon such reasonable terms and in such company or companies as District shall approve, to protect District, other authorized Licensees, and joint users from and against all claims, demands, causes of action, judgments, costs, including reasonable attorney's fees, expenses and liabilities of every kind and nature which may arise or result, directly or indirectly, from or by reason of such loss, injury or damage as covered in this Agreement. Licensee will immediately deliver to District, Certificates of Liability Insurance thereof, evidencing the required coverage, and shall furnish evidence that the policies remain in force within thirty (30) days of renewal of such policies.

8.2 Insurance Limits. Licensee shall maintain the following amounts of insurance in compliance with Section 8.1 above:

POLE OCCUPANCY LICENSE AGREEMENT

8.2.1 Commercial General Liability Insurance with limits of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate.

8.2.2 Products and Completed Operations with limits of not less than \$2,000,000 per occurrence and in the aggregate.

8.2.3 Automobile Liability insurance covering any auto with combined single limits of \$1,000,000.

8.2.4 Workers Compensation Insurance in statutory amounts and Employers Liability Insurance in the amount of \$500,000 per accident.

8.3 Increase in Limits. Licensee agrees that District may reasonably require an increase in the limits of liability insurance and Licensee further agrees to provide such insurance in increased amounts as a condition to Licensee's continued use of District's poles.

8.4 Required insurance shall remain in force until such time Licensee's attachments have been removed from all such pole(s), anchor(s), conduit system(s), or rights-of-way. In the event that the Licensee shall fail to maintain the required insurance coverage, District may pay any premium thereon falling due, and the Licensee shall forthwith reimburse District for any such premium paid.

8.5 Certificates of Insurance. District shall be named as an additional insured on the policies described under Sections 8.2.1, 8.2.2, and 8.2.3. Licensee shall submit to District certificates by each company insuring Licensee with respect to any insurance required hereunder, such certificate(s) to specify the coverage provided and that such company will not cancel or change any such policy of insurance issued to Licensee except after sixty (60) days written notice to District.

8.6 Notification of Claims. The Licensee shall promptly advise the District of all claims relating to damage to property or injury to or death of persons, arising or alleged to have arisen in any manner by, or directly or indirectly associated with, the erection, maintenance, presence, use or removal of the Licensee's equipment. Copies of all accident or other reports made to any insurer by the Licensee shall be furnished to the District in a timely manner.

POLE OCCUPANCY LICENSE AGREEMENT

SECTION 9. SECURITY

9.1 Security Requirement. District will require that the Licensee furnish security to the District for the performance of the Licensee's obligations under this Agreement to make any and all payments demanded by the District as due under this Agreement, including without limitation any pole contact fees with respect to permits, District's costs of modifying or removing Licensee's plant, and District's cost of enforcement under Section 10. Such security shall be maintained in full force and effect throughout the term of this Agreement, including any renewals thereof. At any time during the term of this Agreement, Licensee shall, upon District's request, furnish District with evidence that the security is in full force and effect. In the event of cancellation, termination, or alteration of the security District may, at its option, terminate this Agreement unless Licensee makes other arrangements satisfactory to District to guarantee the performance of its obligations under this Agreement.

9.2 Amount of Security. The amount of the security required shall be the amount as set forth in Exhibit "E". District shall annually review its Bonding Fee Schedule in Exhibit "E" and provide at least six (6) months written notice to Licensee of any increase or decrease in the amount of security requirements with a revised Exhibit "E". The letter of notification shall be incorporated in, and governed by terms and conditions of this Agreement.

9.3 Form of Security. The form of the security provided by Licensee may be one, or a combination of the following: cash deposit of money with District, a surety bond, a letter of credit, a personal guaranty, a corporate guaranty, or such other reasonable security as the Licensee may propose. The amount of the bond, letter of credit or other security shall not operate as a limitation upon the obligations of Licensee hereunder.

9.3.1 District's Approval Required. The form and sufficiency of security proposed by Licensee must be approved by District; provided, that District may require financial statements or other appropriate evidence as to the solvency and financial capability of the surety, guarantor, or financial institution.

9.3.2 Cash Deposits. If Licensee elects to provide a cash deposit, such deposit or deposits shall be held during the term of this Agreement as security for any and all amounts which are due to the District under this Agreement. Said cash deposit shall be placed in an interest-bearing account and Licensee shall be entitled to a credit for the interest income on said cash deposit.

9.3.3 Surety Bond. If the Licensee elects to provide a surety bond, a commercial bonding company selected by the Licensee and satisfactory to District shall issue such bond to District in a form satisfactory to District; shall not be subject to termination or cancellation except upon three hundred sixty five (365) days prior written notice as stated in section 11.2, or replace with another surety bond from another bonding company selected by the Licensee and satisfactory to the District upon sixty (60) days prior written notice as stated in section 11.2; and shall be filed with and approved by the District prior to the installation of any Licensee's equipment on joint poles. The surety bond must contain a provision that the surety will pay to District subject to the dollar limits of the bond any

POLE OCCUPANCY LICENSE AGREEMENT

unpaid sum demanded by District as due under this Agreement whether or not Licensee contests its liability to pay such sum.

9.4 Security Obligations. The furnishing of security shall not relieve Licensee of any of its obligations under this Agreement, and the security shall not be released until all obligations under this Agreement have been discharged.

9.5 Advance Payment of Annual Attachment Rental Fees. Licensee may elect to pay in advance the annual attachment rental fees as set forth in Exhibit B in substitution for other forms of security in Section 9. Sections 9.1 through 9.5 would not be applicable.

SECTION 10. DEFAULT, TERMINATION AND REMEDIES

10.1 Events of Agreement Termination. This Agreement shall terminate upon the occurrence of any one of the following events:

- (a) Upon six (6) months written notice of termination.
- (b) Failure of Licensee to pay the amounts due pursuant to Section 4.2.
- (c) Failure of Licensee to obtain insurance in increased limits pursuant to Section 8.3.
- (d) Whenever Licensee violates, breaches or is in default of any term or condition of this Agreement or any permit including but not limited to the:
 - 1) Construction, operation or maintenance of Licensee's attachment in violation of law or in aid of any lawful act or undertaking;
 - 2) Construction, operation or maintenance of Licensee's attachment without the insurance or security coverage required under this Agreement.

Within thirty (30) days of notice from District, Licensee shall take immediate corrective action to eliminate any above mentioned condition or other violation of any term or condition of this Agreement within thirty (30) days and shall confirm in writing to District that the cited violations have been corrected. If Licensee fails to discontinue or correct these violations or fails to give the required confirmation, District may immediately terminate this Agreement and any of Licensee's rights hereunder without limiting or restricting any further rights or remedies District may have against Licensee.

10.2 Effect of Agreement Termination. Termination of this Agreement pursuant to Section 10.1 shall terminate all occupancy permits and their respective permit dates. Licensee shall have three hundred sixty five (365) days to remove all attachments made upon District's poles and be liable for and pay all fees and charges pursuant to the terms of this Agreement to District until Licensee's attachments are actually removed. Termination of this Agreement or any permits issued hereunder shall not affect Licensee's liabilities and obligations incurred hereunder prior to the effective date of such termination. Even after the termination of this Agreement or cancellation of a permit pursuant to Section 10.3,

POLE OCCUPANCY LICENSE AGREEMENT

Licensee's responsibility and indemnity obligations shall continue with respect to any claims or demands related to Licensee's attachments under this Agreement.

10.3 Permit Cancellation. Licensee shall have the right to cancel and District the right to revoke a permit without terminating this Agreement as follows:

10.3.1 Licensee. Licensee may cancel a permit by removing its attachments from the corresponding pole and by giving District either a written notice using the Notice of Removal of Equipment, a copy of which is attached in Exhibit "A", or by electronic notice using NJUNS within ten (10) days of removal. Licensee shall remain liable for and pay to District all fees and charges pursuant to the provisions of this Agreement until said attachments are physically removed from District's poles and all permitting requirements have been completed.

10.3.2 District. District may revoke a permit authorizing an attachment to any specific pole or poles for cause or if District is required to remove a specific pole pursuant to a government, or other nondiscriminatory requirement, by giving thirty (30) days written notice to Licensee specifying the reason for revocation. Upon receipt of notice, Licensee agrees to remove said attachment within thirty (30) days unless District and Licensee agree otherwise. In the event District has granted a specific permit for the use of a pole, but Licensee has not made its attachment to that pole within one hundred eighty (180) days of the permit issue date, District shall have the right to revoke such permit on five (5) days' electronic notice using NJUNS.

10.4 Removal of Licensee's Attachments. Licensee, at its expense, shall remove its attachments from any of District's poles within sixty (60) days after notice of revocation of the permit, except in agreement termination as stated in section 10.2. If Licensee fails to remove its attachments within sixty (60) days, District shall have the right to remove such attachments at Licensee's expense and without any liability on the part of District for damage or injury to Licensee's attachment or equipment. Licensee releases District from any liability for any interruption, discontinuance or interference with Licensee's service to its customers caused by or resulting from such removal. In case of emergency or immediate service needs of District, District may perform such removal without notice to Licensee, provided District sends written notice of the action and the reasons for such action within a reasonable time.

10.5 Remedies. Sanctions for attaching to District's pole without a permit, violation of the Oregon Public Utility Commission's safety rules, breach of this Agreement, and violation of rules pertaining to service drops pursuant to Section 3.1.6 shall apply as determined by the sanction matrix found in Exhibit "C", which may be revised from time to time in the sole discretion of the District. Notice shall be sent to Licensee with a revised Exhibit "C" reflecting the revised sanctions. Any change in sanctions shall take effect on the date specified in said notice. The letter of notification shall be incorporated in, and governed by terms and conditions of this Agreement.

POLE OCCUPANCY LICENSE AGREEMENT

SECTION 11. MISCELLANEOUS

11.1 Assignment. Licensee shall not assign or transfer this Agreement or any License or any right or authorization granted under this Agreement and this Agreement shall not inure to the benefit of Licensee's successors or assigns, without the prior written consent of District. District shall not unreasonably withhold or delay such consent. In the event such consent or consents are granted by District, then the provisions of this Agreement shall apply to and bind the successors and assigns of the Licensee.

11.2 Notices. Except by use of NJUNS otherwise stated in the Agreement, any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be mailed by certified mail, return receipt requested, postage prepaid, or delivered by a reputable overnight courier, with tracking capabilities, addressed to the parties as follows:

Licensee: Charter Communications
Utilities Coordinator
N. W. Regional Office
203 S.E. Park Plaza Drive
Suite 290
Vancouver, WA 98684

Charter Communications
Legal Department-Operations
12405 Powerscourt Drive
St. Louis, MO 63131-3674

District: Central Lincoln People's Utility District
Attention: Joint Use Administrator
P.O. Box 1126
Newport, Oregon 97365

Any notice or other communication shall be deemed to be given at the expiration of the third day after the date of deposit in the United States mail or upon actual delivery if sent by overnight courier. The addresses to which notices or other communications shall be mailed to the last know address which may be changed from time to time by giving written notice to the other party as provided in this Section.

11.3 Attorney Fees. If any suit or action is filed by any party to enforce this Agreement or otherwise with respect to the subject matter of this Agreement, the prevailing party shall be entitled to recover reasonable attorney fees incurred in preparation or in prosecution or defense of such suit or action as fixed by the trial court, and if any appeal is taken from the decision of the trial court, reasonable attorney fees as fixed by the appellate court.

POLE OCCUPANCY LICENSE AGREEMENT

11.4 Amendment. Except as reserved herein, this Agreement may be amended only by an instrument in writing executed by all the parties.

11.5 Headings. The headings used in this Agreement are solely for convenience of reference, are not part of this Agreement, and are not to be considered in construing or interpreting this Agreement.

11.6 Entire Agreement. This Agreement (including the exhibits) sets forth the entire understanding of the parties with respect to the subject matter of this Agreement and supersedes any and all prior understandings and agreements, whether written or oral, between the parties with respect to such subject matter.

11.7 Counterparts. This Agreement may be executed by the parties in separate counterparts, each of which when executed and delivered shall be an original, but all of which together shall constitute one and the same instrument.

11.8 Severability. If any provision of this Agreement shall be invalid or unenforceable in any respect for any reason, the validity and enforceability of any such provision in any other respect and of the remaining provisions of this Agreement shall not be in any way impaired.

11.9 Waiver. A provision of this Agreement may be waived only by a written instrument executed by the party waiving compliance. No waiver of any provision of this Agreement shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. Failure to enforce any provision of this Agreement shall not operate as a waiver of such provision or any other provision.

11.10 Department of Revenue; Public Utilities Commission ("PUC"). In the event the Department of Revenue of the State of Oregon or the PUC shall require the District to provide certain information concerning Licensee, Licensee agrees to cooperate with and assist District in providing information, data, or such other matters as may be required by said Department of Revenue or PUC. Licensee specifically agrees to provide District with appropriate data as determined or required by the Department of Revenue or PUC concerning its pole attachments in each taxing District and such other data as may hereafter be required by the Department of Revenue or PUC.

11.11 Time of Essence. Time is of the essence for each and every provision of this Agreement.

11.12 Expenses. Each party shall bear its own expenses in connection with this Agreement and the transactions contemplated by this Agreement.

11.13 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the state of Oregon.

11.14 Venue. This Agreement has been made entirely within the state of Oregon. This Agreement shall be governed by and construed in accordance with the laws of the state of Oregon. If any suit or action is filed by any party to enforce this Agreement or

POLE OCCUPANCY LICENSE AGREEMENT

otherwise with respect to the subject matter of this Agreement, venue shall be in the federal court of Oregon or state courts in Lincoln County, Oregon.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in duplicate as of the day and year first above written.

CENTRAL LINCOLN PEOPLE'S
UTILITY DISTRICT

By: Paul Allen

Title: GM

Charter Communications Holding Company, LLC

By: J. Chubb

Title: VP

- Attached Exhibits:
- A — Application, Notice of Removal, Inspection and Engineer Information Datasheet Forms
 - B — Fee Schedule
 - C — Sanctions Matrix
 - D — Construction Standards and Specifications
 - E — Bonding Fee Schedule

CHARTER LEGAL DEPT.	
Reviewed By:	Approved By: <u>[Signature]</u>

ADDENDUM ONE

CLPUD Contract Entities

<u>Service Area</u>	<u>Entity</u>
Lincoln County	Falcon Telecable, a California Limited Partnership
Lane County	Falcon Cable Systems Company II, L.P.
Douglas County	Falcon Cable Systems Company II, L.P. Falcon Community Ventures I, Limited Partnership
Coos County	Falcon Cable Systems Company II, L.P.

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COMPLAINT EXHIBIT 2

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

JILL M. VALENSTEIN, ESQUIRE

ADMITTED IN DC AND MD

DIRECT DIAL

202-828-9845

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

JVALENSTEIN@CRBLAW.COM

March 17, 2003

By Federal Express

Mr. Mike Wilson
Ms. Denise Estep
Central Lincoln People's Utility District
2129 N. Coast Highway
P.O. Box 1126
Newport, OR 97365

**Re: Pole Occupancy License Agreement Between Charter Communications and
Central Lincoln PUD ("Agreement")**

Dear Ms. Estep and Mr. Wilson:

Enclosed please find two (2) partially executed originals of the above-referenced Agreement. Please have an authorized agent for Central Lincoln PUD sign the Agreement and return one fully-executed original to my attention. The Certificate of Insurance and form of security will be forwarded to you separately.

As you know, although Charter has decided to sign the Agreement, Charter continues to find several terms and conditions contained in the final Agreement to be unreasonable. Most significantly, Charter does not think that the contractual provision allowing Central Lincoln PUD to charge rent for new and existing risers is reasonable, although Charter does welcome the utility's agreement to gradually assess the rent over three years. As far as Charter is aware, Central Lincoln PUD is the only utility in Oregon that has decided to charge rent for risers. Consequently, Charter is concerned that this new requirement will establish a precedent in the State, which, if imposed by other utilities, would have a significant impact on Charter's ability to provide new, competitive services to its Oregon customers. Charter is also troubled by the contractual requirement that each service drop undergo a load study following installation. Charter does not believe that a typical service drop adds much, if any, load to the pole. Charter is therefore hopeful that repeated load calculations will bear this out and that the utility will discontinue the requirement, especially as cooperation between the parties grows.

Denise Estep
Mike Wilson
March 17, 2003
Page 2

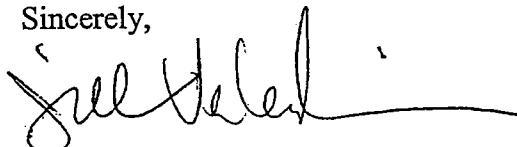
Additionally, although Central Lincoln PUD was not willing to insert language into the Agreement stating that it will modify the Agreement upon any formal OPUC or court ruling on the riser and service drop issues to the contrary, Central Lincoln PUD's outside counsel, Mr. Peter Gintner, has indicated that he would advise the utility to do so.

Finally, despite the disagreements between the parties, Charter nevertheless believes that the parties engaged in good faith negotiations throughout. Charter especially appreciates Central Lincoln PUD's agreement to waive safety sanctions as long as Charter continues to work with the utility to diligently pursue Charter's inspection and correction program.

If you have any questions please do not hesitate to contact me.

Thank you.

Sincerely,



Jill Valenstein

Enclosures

cc: Frank Antonovich (via First Class Mail)
Matt McGinnity (via First Class Mail)
Gary Lee (via First Class Mail)
Mike Marshall, Esq. (via First Class Mail)
Jerry Lambert (via First Class Mail)

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COMPLAINT EXHIBIT 3

The



Central Lincoln People's Utility District

General Office • 2129 North Coast Highway • P.O. Box 1126 • Newport, OR 97365 • (541) 265-3211 • FAX: (541) 265-5208

December 6, 2004

Utilities Coordinator
Charter Communications
N.W. Regional Office
203 S.E. Park Plaza Drive, Suite 290
Vancouver, Washington 98684

CERTIFIED MAIL: 7002 2410 0003 0497 8078

RECEIVED
ACCOUNTS PAYABLE DEPT.
2004 DEC - 8 A 6:09
NW REGION
CHARTER COMMUNICATIONS

Gentlemen:

On November 17, 2004 the District Board of Director's approved Resolution Number 828 adopting schedule 900 for the 2005 rates of pole attachment and occupancy services.

In response to the comments received from our Licensee's, the Exhibit "B" fee schedule has been revised to consolidate several attachment definitions and associated fees for 2005.

If you have any questions regarding these rates, please call me.

Sincerely,

Denise Estep
Joint Pole Administrator

Enclosures

Exhibit B Fee Schedule

Effective January 1, 2005

Definitions for Exhibit B

Aerial Cable Attachment The term "Aerial Cable Attachment" refers to a messenger wire, self supporting cable or a combination of messenger wire lashed with one or more cables. An Aerial Cable Attachment may be attached to an Aerial Cable Pole Attachment Point, or other Aerial Cable Attachment.

Aerial Cable Pole Attachment Point The term "Aerial Cable Pole Attachment Point" refers to a single or double connection point (both ends of a thru-mounting attachment hardware or support arm) on a joint pole. The Aerial Cable Pole Attachment Point can have one or more Aerial Cables, Service Drop Attachments, Down Guy Attachments, or Support Arm attached. Each Aerial Cable Pole Attachment Point provides for one (1) vertical linear foot of pole space.

Anchor Attachment Point The term "Anchor Attachment Point" refers to the one (1) Down Guy Attachment installed on a District's anchor.

Annual Attachment Rental Fee The term "Annual Attachment Rental Fee" refers to an annual rental fee charged by the District for a one Aerial Cable Attachment Point, Service Drop Attachment Point, Down Guy Attachment Point, Equipment Attachment, Communication Riser Attachment or Anchor Attachment in the amount listed on page 3 of this Exhibit B.

Application Fee The term "Application Fee" as stated in section 3.1.4 of the Pole Occupancy License Agreement, refers to the one time fee charged by the District for processing each new attachment application permit request for each individual Aerial Cable Attachment, Anchor Attachment, Communication Riser Attachment, Down Guy Attachment, Equipment Attachment, Over-lash of an existing Aerial Cable Attachment, and/or Service Drop Attachment.

Communication Riser Attachment The term "Communication Riser Attachment" refers to one (1) communication cable, one (1) securely bundled group of cables or one (1) conduit used to enclose one or more communication cables attached directly or by standoff brackets vertically to a joint pole between the communication space and ground level. A Communication Riser Attachment shall have a (6) six inch maximum size diameter.

Down Guy Attachment The term "Down Guy Attachment" refers to a supporting guy wire used to support the unbalanced pole load caused by Licensee's Aerial Cable, Communication Riser, Equipment, and/or Service Drop Attachments during all pole loading conditions.

Down Guy Attachment Point The term "Down Guy Attachment Point" refers to a single or double connection point (both ends of a thru-mounting attachment hardware bolt) on a joint pole supporting one (1) or more Down Guy Attachments only.

Exhibit B Fee Schedule

Equipment Attachment The term "Equipment Attachment" refers to auxiliary equipment (other than Communications Risers) attached to a joint pole at an Equipment Attachment Point. Equipment Attachments can be located in the communication space and/or the ground clearance space. Each Equipment Attachment provides one (1) foot of vertical pole space if located in the communication space or three (3) feet if located in the ground clearance space. Equipment requiring more than one vertical foot of space in the communication space will be charged an additional communication space annual attachment rental fee for each additional one (1) foot vertical space used. Equipment requiring more than three (3) vertical feet of space in the communication space will be charged an additional ground clearance space annual attachment rental fee for each additional one (1) foot vertical space used. Power supplies, junction cabinets, or other equipment enclosures are considered equipment. A 120volt power conduit riser supplying power for the attached equipment is included with the Equipment Attachment annual rental fee.

Over-Lash The term "Over-Lash" refers to the procedure of securing one or more additional cables or conductors on an existing messenger, messenger cable/conductor combination or a self-supporting cable attachment by lashing or other bundling techniques.

Re-Inspection Fee The term "Re-Inspection Fee" is the charge applied to a Licensee for one (1) re-visit to joint pole to verify attachment construction compliance with NESC, OPUC regulations or with the Pole Occupancy License Agreement of one (1) or more attachments on a single joint pole.

Service Drop Attachment The term "Service Drop Attachment" refers to a service wire or conductor from a Service Drop Attachment point to a single family, duplex, or triplex residence or similar small commercial facility. A Service Drop may be attached to Joint Pole attachment point, support bracket, or an aerial cable.

Service Drop Pole Attachment Point The term "Service Drop Pole Attachment Point" refers to a single or double connection point (both ends of a thru-mounting attachment hardware) or a single "J-Hook" connection point on a joint pole. The Service Drop Pole Attachment Point can have one or more Service Drop Attachments, or Down Guy Attachments attached. Each Aerial Cable Pole Attachment Point provides for one (1) vertical linear foot of pole space.

Area Survey Audit Inspection The term "Area Survey Audit Inspection" is a pole inspection that occurs when a District or contract inspector performs an attachment inventory audit, a NESC/OPUC safety inspection, and an agreement construction compliance inspection of District poles and joint poles in a defined geographical area. A fee is assessed for each Joint Pole occupied and inspected in the Area Survey Audit Inspection.

Exhibit B Fee Schedule

<u>Annual Attachment Rental Fees</u>	Standard	Compliance
Joint Pole Attachment Point	\$ 10.98	\$ 9.93
Anchor Attachment Point	\$ 3.17	\$ 3.17
Communication Riser Attachment *	\$ 2.12	\$ 2.12
Down Guy Attachment Point	\$ 10.98	\$ 9.93
Equipment Attachment	\$ 3.17	\$ 3.17
Non-Inventoried Joint Pole **	\$ 10.98	\$ 9.93
No-Attachment ***	\$ 3.17	\$ 3.17

Application Fees

Aerial Cable Attachment	\$ 62.00
Anchor Attachment Point	\$ 19.00
Communication Riser Attachment	\$ 15.00
Down Guy Attachment	\$ 15.00
Equipment Attachment	\$ 15.00
Over-Lash	\$ 29.00
Service Drop Attachment	\$ 12.00

Other Fees and Charges

Re-inspection	\$ 55.00
Area Survey Audit Inspection	\$ 5.00

Interest Rate

Deposit Annual Interest	0.24%
Late Payment Charge per month	1.50%

* $\frac{2}{3}$ rate of CY2005 Direct Joint Use Administration and General Cost divided by total number of Pole Attachments

** Joint Poles not inventoried, default one (1) Aerial Cable Attachment.

*** Joint Pole with valid attachment permit without an inventoried attachment.

Exhibit B Fee Schedule

Construction Flat Rate Unit Fees "Construction Flat Rate Unit Fee" may be used to determine make-ready costs by construction units when District is required to perform work to set pole only. Additional charges for transfer of District facilities may apply. (Pole replacements required for make-ready cost are for labor and equipment only. Remaining life value charges for a prematurely removed pole shall also apply to the make-ready cost.)

Construction Flat Rate Unit Fees

Install 30ft-55ft Distribution Pole		
Secondary	\$	408.00
1 Phase Tangent	\$	612.00
1 Phase Dead End	\$	816.00
1 Phase Double Dead End	\$	1020.00
2 Phase Tangent	\$	612.00
2 Phase Dead End	\$	816.00
2 Phase Double Dead End	\$	1020.00
3 Phase Tangent	\$	1224.00
3 Phase Dead End	\$	1428.00
3 Phase Double Dead End	\$	1632.00
Install Transmission Pole with Distribution Under-build	\$	Actual Cost
Install CLPUD Anchor for Joint Use	\$	408.00
Install Joint Use Guy	\$	200.00
Install Joint Use Sidewalk Guy	\$	300.00
Install Pole Grounds	\$	100.00
Topping Pole	\$	75.00
Connect Underground Grounding Leads	\$	50.00
Replace/Relocate Street Light Bracket for Clearance	\$	100.00
Lower and Haul Joint Pole	\$	225.00

Transfer Flat Rate Unit Fee "Transfer Flat Rate Unit Fee" may apply to work District performs on Licensee's equipment by construction units. Actual costs will be billed for transferring equipment not covered by Transfer Flat Unit Fees. Decision to transfer will be made solely by Central Lincoln PUD.

Transfer Flat Rate Unit Fees

Down Guy or Span Guy	\$	150.00
Cable Termination (No Splice)	\$	150.00
Support Arm	\$	170.00
Service Drop (No Splice)	\$	40.00
Messenger and cable bolted to pole (No Splice)	\$	150.00
Messenger dead-ends	\$	190.00
Communication riser single	\$	175.00
Communication riser multiple	\$	350.00

SCHEDULE 900 – POLE ATTACHMENT & OCCUPANCY SERVICE

Available: Throughout the District's service area in Lincoln, Lane, Douglas and Coos Counties to customers desiring access to District's poles, ducts, conduits and rights-of-way within the District's distribution area. A written contract is required.

Applicable To: All individuals or commercial and government entities requesting the service.

Character of Service: These fees are established by our Pole Occupancy License Agreement, Exhibit B and are charged to the customer for each pole and transaction occurrence that pertains.

Tax Adjustments: Fees may be increased in the communities or areas where taxes or assessments are imposed by any governmental authority. Any such increase will continue in effect only for the duration of such taxes and assessments.

Rules and Regulations: Service under this schedule is subject to the District's Rules, Regulations and Practices on file and available at the offices of the District.

Annual Pole Attachment Fees, Per Pole Attachment or Occurrence:

	Standard	Compliance
Joint Pole Attachment Point (Aerial Cable, Service Drop, Guy)	10.98	9.93
Joint Pole Non-Inventoried	10.98	9.93
Joint Pole No Attachment***	3.17	3.17
Equipment Attachment	3.17	3.17
Anchor Attachment	3.17	3.17
Communication Riser Attachment	2.12	2.12

Application, Inspection & Other Fees, Per Occurrence:

Aerial Cable Attachment	62.00
Anchor Attachment	19.00
Communication Riser Attachment	15.00
Down Guy Attachment	15.00
Equipment Attachment	15.00
Over-Lash	29.00
Service Drop Attachment	12.00
Reinspection	55.00
Area Survey Audit Inspection	5.00

Sanction & Penalty Fees, Per Pole (Exhibit C)

Sanction – No Agreement Level 1	263.52
Sanction – No Agreement Level 2	988.20
Sanction – No Agreement Level 3	1,317.60
Sanction – No Permit Level 1	131.76
Sanction – No Permit Level 2	494.10
Sanction – No Permit Level 3	658.80
Sanction – Safety or Agreement Non Compliance Level 1	65.88
Sanction – Safety or Agreement Non Compliance Level 2	329.40
Sanction – Safety or Agreement Non Compliance Level 3	439.20

***Joint Pole with valid attachment permit without an inventoried attachment.

Adopted: November 17, 2004

Effective: January 1, 2005

Resolution: 828

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COMPLAINT EXHIBIT 4

Logged

Central Lincoln P.U.D.
REMIT TO: ACCOUNTING, PO BOX 1126
NEWPORT OR 97365
(541) 265-3211

***** INVOICE *****

Page Number- 1
Date - 02/08/05
Customer - 11475
Brn/Plt - 20
Related PO -
Order Nbr - 3066 SN
Invoice - 2094 RI

Coos Bay

Sold To: CHARTER COMMUNICATIONS
ATTN STEPHEN LAMORA
1400 NEWMARK AVE
COOS BAY OR 97420-2913

Ship To: CHARTER COMMUNICATIONS
ATTN STEPHEN LAMORA
1400 NEWMARK AVE
COOS BAY OR 97420-2913

08/21/05

Supplier: 143975
Vertex: 494201
Coding: 83416000.2405

David Torrey
DAVID TORREY 3/1
KMA Mngr

Tax ID:
NJUNS #:

Request Date Customer P.O. F.O.B. JO # :
02/08/05

Ln/Rq Dt	Description	Item Number	UM	Quantity	Price	Extended Price	Tax
ANNUAL POLE ATTACHMENT BILLING FOR THE PERIOD OF 01/01/04 TO 12/31/04 RETURN COPY OF INVOICE WITH REMITTANCE							
1.000	Pole Attach-Ancor	APANC	EA	73	3.1700	231.41	N
02/08/05					Per EA		
2.000	Pole Attachment - Comm Riser	APCRA	EA	249	2.1200	527.88	N
02/08/05					Per EA		
3.000	Pole Attach-Equip Ground Space	APEGS	EA	33	3.1700	104.61	N
02/08/05					Per EA		
4.000	Joint Pole Attachment Point	APACARR	EA	1806	9.9300	17,933.58	N
02/08/05					Per EA		
5.000	Joint Pole No Attachment	APNOA	EA	58	3.1700	183.86	N
02/08/05					Per EA		
6.000	Joint Pole Attachment Non Inv	APNINVAR	EA	484	9.9300	4,806.12	N
02/08/05					Per EA		

Central Lincoln P.U.D.
REMIT TO: ACCOUNTING, PO BOX 1126
NEWPORT OR 97365
(541) 265-3211

Page Number- 2
Date - 02/08/05
Customer - 11475
Brn/Pit - 20
Related PO -
Order Nbr - 3066 SN
Invoice - 2094 RI

***** INVOICE *****

Ⓟ

Sold To: CHARTER COMMUNICATIONS
ATTN STEPHEN LAMORA
1400 NEWMARK AVE
COOS BAY OR 97420-2913

Ship To: CHARTER COMMUNICATIONS
ATTN STEPHEN LAMORA
1400 NEWMARK AVE
COOS BAY OR 97420-2913

Tax ID:
NJUNS #:

Request Date	Customer P.O.	F.O.B.	JO # :
02/08/05			

Ln/Rq Dt	Description	Item Number	UM	Quantity	Price	Extended Price	Tax
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System #	83A16
Dept #	
GL #	
PO's Attached (if necessary)	
Yes	No
General Manager Signature: STEPHEN LAMORA	

Norm Casey
Plant Manager
Coos Bay, Oregon

Norm Casey

Frank Antonovich
FRANK ANTONOVICH
VP/GM

RECEIVED
FEB 10 2005
By _____

Matt McGinnity
MATT MCGINNITY
KMA Dirtr

Total Order

23,787.75

22,739.70

Terms Net 10.1.5% after 90 days Net. Due Date 02/18/05

logged

Central Lincoln P.U.D.
REMIT TO: ACCOUNTING, PO BOX 1125
NEWPORT OR 97365
(541) 265-3211

***** INVOICE *****

Page Number- 1
Date - 02/08/05
Customer - 11474
Brn/Plt - 20
Related PO -
Order Nbr - 3067 SN
Invoice - 2095 RI

Florence

Sold To: CHARTER COMMUNICATIONS
ATTN STEPHEN LAMORA
1400 NEWMARK AVE
COOS BAY OR 97420-2913

Ship To: CHARTER COMMUNICATIONS
ATTN STEPHEN LAMORA
1400 NEWMARK AVE
COOS BAY OR 97420-2913

02/21/05

Supplier: 142975
Vertex: 494201

David Torrey
DAVID TORREY
KMA Mngr 3/14/2

Tax ID:
NJUNS #:

Coding:
83916000240S

Request Date 02/08/05 Customer P.O. F.O.B. JO # :

Ln/Rq Dt	Description	Item Number	UM	Quantity	Price	Extended Price	Tax
ANNUAL POLE ATTACHMENT BILLING FOR THE PERIOD OF 01/01/04 TO 12/31/04 RETURN COPY OF INVOICE WITH REMITTANCE							
1.000	Pole Attach-Anchor	APANC	EA	202	3.1700	640.34	N
02/08/05					Per EA		
2.000	Pole Attachment - Comm Riser	APCRA	EA	136	2.1200	288.32	N
02/08/05					Per EA		
3.000	Pole Attach-Equip Ground Space	APEGS	EA	57	3.1700	180.69	N
02/08/05					Per EA		
4.000	Joint Pole Attachment Point	APACARR	EA	2089	9.9300	20,743.77	N
02/08/05					Per EA		
5.000	Joint Pole No Attachment	APNOA	EA	53	3.1700	168.01	N
02/08/05					Per EA		
5.000	Joint Pole Attachment Non Inv	APNINVAR	EA	1202	9.9300	11,935.86	N
02/08/05					Per EA		

\$ 32,679.63

Central Lincoln P.U.D.
 REMIT TO: ACCOUNTING, PO BOX 1126
 NEWPORT OR 97365
 (541) 265-3211

***** INVOICE *****

Page Number- 2
 Date - 02/08/05
 Customer - 11474
 Brn/Plt - 20
 Related PO -
 Order Nbr - 3067 SN
 Invoice - 2095 RI

Sold To: CHARTER COMMUNICATIONS
 ATTN STEPHEN LAMORA
 1400 NEWMARK AVE
 COOS BAY OR 97420-2913

Ship To: CHARTER COMMUNICATIONS
 ATTN STEPHEN LAMORA
 1400 NEWMARK AVE
 COOS BAY OR 97420-2913

Tax ID:
 NJUNS #:

Request Date 02/08/05 Customer P.O. F.O.B. JO # :

Ln/Rq Dt	Description	Item Number	UM	Quantity	Price	Extended Price	Tax
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Nora Casey
Nora Casey
 Plant Manager
 Coos Bay, Oregon

System #	83416
Dept #	
GL #	
PO's Attached (if necessary)	
Yes	No
<i>STEPHEN LAMORA</i>	
General Manager Signature:	

Nora Casey

Frank Antonovich
 FRANK ANTONOVICH
 VP/GM

RECEIVED
 FEB 10 2005
 By _____

Matt McGinnity
 MATT MCGINNITY
 KMA Dirctr

Total Order

Terms Net 10.1.5% after 90 days Net Due Date 02/18/05

33,956.99
 # 32,679.63

Logged

Central Lincoln P.U.D.
REMIT TO: ACCOUNTING, PO BOX 1126
NEWPORT OR 97365
(541) 265-3211

***** INVOICE *****

Page Number- 1
Date - 02/08/05
Customer - 11473
Brn/Plt - 20
Related PO -
Order Nbr - 3068 SN
Invoice - 2096 RI

Newport

Sold To: CHARTER COMMUNICATIONS
ATTN ACCOUNTS PAYABLE
1344 NE HIGHWAY 101
LINCOLN CITY OR 97367-3339

Ship To: CHARTER COMMUNICATIONS
ATTN ACCOUNTS PAYABLE
1344 NE HIGHWAY 101
LINCOLN CITY OR 97367-3339

Supplier: 143975
Vertex: 4942043
Coding: 834116000.2405

David Torrey
DAVID TORREY 3/A
KMA Mngr

Tax ID:
NJUNS #:

Request Date 02/08/05 Customer P.O. F.O.B. JO # :

Ln/Rq Dt	Description	Item Number	UM	Quantity	Price	Extended Price	Tax
ANNUAL POLE ATTACHMENT BILLING FOR THE PERIOD OF 01/01/04 TO 12/31/04 RETURN COPY OF INVOICE WITH REMITTANCE							
1.000	Pole Attach-Anchor	APANC	EA	143	3.1700	453.31	N
02/08/05					Per EA		
2.000	Pole Attachment - Comm Riser	APCRA	EA	383	2.1200	811.96	N
02/08/05					Per EA		
3.000	Pole Attach-Equip Ground Space APEGS		EA	26	3.1700	82.42	N
02/08/05					Per EA		
4.000	Joint Pole Attachment Point	APACARR	EA	3123	9.9300	31,011.39	N
02/08/05					Per EA		
5.000	Joint Pole No Attachment	APNOA	EA	418	3.1700	1,325.06	N
02/08/05					Per EA		
6.000	Joint Pole Attachment Non Inv	APNINVAR	EA	3717	9.9300	36,909.81	N
02/08/05					Per EA		

\$67,921.20

Central Lincoln P.U.D.
 REMIT TO: ACCOUNTING, PO BOX 1126
 NEWPORT OR 97365
 (541) 265-3211

***** INVOICE *****

Page Number - 2
 Date - 02/08/05
 Customer - 11473
 Brn/Plt - 20
 Related PO -
 Order Nbr - 3068 SN
 Invoice - 2096 RI

Sold To: CHARTER COMMUNICATIONS
 ATTN ACCOUNTS PAYABLE
 1344 NE HIGHWAY 101
 LINCOLN CITY OR 97367-3339

Ship To: CHARTER COMMUNICATIONS
 ATTN ACCOUNTS PAYABLE
 1344 NE HIGHWAY 101
 LINCOLN CITY OR 97367-3339

Tax ID:
 NJUNS #:

Request Date Customer P.O. F.O.B. JO # :

02/08/05

Ln/Rq Dt	Description	Item Number	UM	Quantity	Price	Extended Price	Tax
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System # 83416	
Dept #	
GL #	
PO's Attached (if necessary)	
Yes	(No)
M. Beaubien	
Department Manager Signature	
General Manager Signature	

MARK BEAUBIEN
 PLANT MGR

Frank Antonovich
 FRANK ANTONOVICH
 VP/GM

Matt McGinnity
 MATT MCGINNITY
 KMA Dirct

Total Order

Terms Net 10.1.5% after 90 days Net Due Date 02/18/05

~~70,583.95~~
 * 67,921.20
 FEB 11 2005

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COMPLAINT EXHIBIT 5

HOGAN & HARTSON
L.L.P.

Writer's Direct Dial:
202-637-5447

COLUMBIA SQUARE
555 THIRTEENTH STREET, NW
WASHINGTON, DC 20004-1109
TEL (202) 637-5600
FAX (202) 637-5910
WWW.HHLAW.COM

June 10, 2005

BY CERTIFIED MAIL

Mr. Peter Gintner
Macpherson, Gintner, Gordon and Diaz
423 North Coast Highway
Newport, Oregon 97365

**Re: Central Lincoln PUD-Charter Communications Pole
Occupancy License Agreement**

Dear Mr. Gintner:

I am writing on behalf of my client, Charter Communications, regarding the above-referenced Pole Occupancy Agreement ("Agreement") that Charter signed in March of 2003. As you may remember, Charter considered a number of the Agreement's rates, terms and conditions unreasonable. Charter was particularly concerned about the myriad of fees contained in the Agreement, including rental charges for risers. Charter nevertheless felt compelled to sign the Agreement under threat of the no contract sanctions.¹ In light of the Oregon Public Utility Commission's recent January and May Orders declaring Central Lincoln People Utility's District's ("Central Lincoln") form Pole Occupancy Agreement

¹ See letter dated January 6, 2003 to Jill Valenstein from Peter Gintner (threatening "failure to have a written contract" sanctions if Charter failed to sign Central Lincoln's pole attachment agreement); see also letter dated February 13, 2003 to Jill Valenstein from Peter Gintner (stating "[t]o the extent we have not made it clear, if we do not reach an agreement by roughly March 17, 2003, I will advise my client to file with the Oregon PUC to begin the process of imposing sanctions on Charter Communications."). Such coercive tactics are against current PUC policies. See *The Battle for the Utility Pole and the End-Use Customer*, A PUC Staff Report, Attachment E, Pole Joint Use Principles, P10-Improper Use of Sanctions (Dec. 15, 2003) ("A pole owner shall not apply pole attachment sanctions to existing attachments for 'no contract' or 'no permit' to force a revised contract on an existing occupant.") (hereinafter "Staff White Paper"). When Charter decided to sign the Agreement, there was no such express policy.

unlawful² and establishing a just and reasonable one in its place,³ Charter requests that the parties immediately commence good faith negotiations to enter into a replacement pole agreement based on the Commission-approved contract. Charter also requests that Central Lincoln refund Charter for rental and application fee over-charges that have been declared unreasonable, as set forth in detail below.

Establishment Of Just And Reasonable Agreement

Charter's request to negotiate a new pole attachment agreement based on the one established by the Commission, should come as no surprise to Central Lincoln. Indeed, at the time Charter was forced to sign Central Lincoln's Agreement (by Central Lincoln's arbitrary and unreasonable deadline), Charter requested that Central Lincoln include a provision stating that it would modify the agreement in accordance with Oregon law, in the event any subsequent Commission decisions rendered certain of Central Lincoln's positions unlawful.⁴ Although Central Lincoln failed to accede to that request, you indicated that you saw "no reason why we would insist on contract provisions not consistent with Oregon law."⁵ Likewise, pursuant to Charter's objections to Central Lincoln's extremely one-sided indemnity clause, Central Lincoln added a Most Favored Nations clause. That clause provides that "[i]n the event District contracts with one of District's other Licensees for a more beneficial (to Licensee) indemnification provision, District agrees to give Licensee the option to enter into the same or similar indemnification provisions."⁶

Even if Central Lincoln disagrees that the parties intended to revise the Agreement pursuant to any applicable Commission decisions, Charter believes that the rates, terms and conditions of the Agreement are no longer enforceable as a matter of law. First, the Agreement is governed by Oregon law and the Oregon Commission has ruled that the rates, terms and conditions of the same agreement are unjust and unreasonable. Second, as the Commission acknowledged, the federal pole attachment statute requires non-discriminatory access to essential pole facilities.⁷ Now that the Commission has established a just and reasonable

² *Central Lincoln People's Utility District v. Verizon Northwest, Inc.*, UM 1087, Order No. 05-042 (Jan. 19, 2005) (hereinafter "January Order").

³ *Central Lincoln People's Utility District v. Verizon Northwest, Inc.*, UM 1087, Order No. 05-583 (May 16, 2005) (hereinafter "May Order").

⁴ See e-mail dated February 26, 2003 from Jill Valenstein to Peter Gintner, cc: to Mike Wilson.

⁵ See e-mail dated February 26, 2003 from Peter Gintner to Jill Valenstein, cc: to Mike Wilson.

⁶ Agreement, Section 7.8.

⁷ See, e.g., January Order at p. 6.

Mr. Peter Gintner

June 10, 2005

Page 3 of 5

agreement between Central Lincoln and Verizon, Charter believes it is entitled to the same rates, terms and conditions.⁸ Last, any argument that this Agreement is "presumed reasonable," as contemplated under ORS § 757.285, was negated by Central Lincoln's threat to impose sanctions if Charter failed to sign the Agreement by a date certain.

Refunds Of Overcharges

In December 2004, Charter advised Central Lincoln that it would seek refunds in the event the Commission found Central Lincoln's rental rate and fees unjust and unreasonable.⁹ Now that the Commission has determined the rental rate that Central Lincoln lawfully may charge and established a standard for application fees, Charter hereby requests that Central Lincoln refund Charter for overpayments made since December 21, 2004 in the amount of \$72,840.59.

Rental Over-Charges

Specifically, in May 2005, Charter paid Central Lincoln \$123,340.53 following receipt of ten separate invoices totaling \$127,785.40.¹⁰ Charter paid \$9.93 for each legitimate attachment charged on the invoices. In its May Order, however, the Commission ruled that the maximum allowable rental rate that Central Lincoln may charge is \$4.14 per foot of space.¹¹ Charter therefore seeks refunds for rental overcharges in the amount of \$ \$71,917.59 (*i.e.*, Charter paid for 12,421 attachments @ \$9.93 = \$123,340.53 minus 12,421 x \$4.14 = \$51,422.94 = \$71,9917.59).

Also, please note that Charter held back approximately five-thousand dollars (\$5,000) of the invoiced rental amounts charged for anchors, risers, other

⁸ PUC Staff concurs. See Staff White Paper at Attachment E, Public Interest Principles (High Priority)-Non-Discrimination and Preferential Treatment ("Pole owner rates, terms and conditions of access shall be uniformly applied to telecommunications carriers and cable operators that have or seek access.").

⁹ See Letter dated December 21, 2004 to Denise Estep from Jill Valenstein, attached hereto. Attached to Charter's December letter are two additional letters, dated August 26, 2004 and October 5, 2004, respectively. In those letters, Charter sought justification for each of the rental and non-rental fees on Central Lincoln's revised Fee Schedule. Central Lincoln, however, never provided that justification.

¹⁰ These 10 invoice numbers are: 2094RI; 2095RI; 2096RI; 2105RI; 2072RI; 2106RI; 2119RI; 2118RI; 2185RI and 2251RI.

¹¹ *Id.* at Appendix A.

attachments in unusable space and for "Joint Pole No Attachments." Charter does not believe that Central Lincoln may legally charge rent for these items. For example, the Commission ruled that pole owners only may charge rent based on the amount of *usable* space used by the attachment.¹² The Commission further held that the "minimum space for a single attachment point (*i.e.*, bolt) on a pole is one foot, but if there is more than one attachment point (*i.e.*, bolt) on a pole, the rental rate should be calculated based on the actual space used.¹³ Consequently, Central Lincoln may not charge additional rent for risers, other equipment in unusable space, and, certainly not for attachments that do not exist. The Commission also "rejected" Central Lincoln's "proposed change seeking additional rent for . . . guys attached to its anchors" because guys are not pole attachments under the Oregon pole statute.¹⁴

Application Fees:

As you know, the Commission ruled that "to the extent . . . application fees do not relate to 'special inspections or preconstruction, make ready, change out, and rearrangement work,' application fees may not be recovered, and the administrative charges related to processing new attachments should be allocated with the carrying charge."¹⁵ Although Charter repeatedly requested that Central Lincoln justify its application fees and demonstrate that those costs were not otherwise recovered (or required to be recovered) in the rental rate, Central Lincoln failed to do so.¹⁶ For these reasons, Charter disputes each of the application fees charged on the ten invoices and withheld those amounts from its May payment. Charter will continue to object to any application fees unless Central Lincoln can demonstrate that its application fees cover the costs of actual work related to *necessary* special inspections, preconstruction surveys or make ready work, as required by the Commission. Please note, however, that Charter paid \$923 for application fees assessed since its December 21 letter, for which it now seeks a refund.

¹² January Order at p. 15.

¹³ *Id.*

¹⁴ May Order at p. 7.

¹⁵ January Order at p. 15.

¹⁶ *See, e.g.*, December 2004 letter.

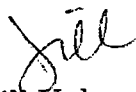
Conclusion

In its May Order, the Commission adopted the Federal Communications Commission's approach to terminating unjust and unreasonable rates, terms and conditions and substituting just and reasonable provisions.¹⁷ Rather than pursue a replacement agreement through a contested case, however, Charter believes it would be preferable, from both parties' perspectives, to engage in good faith negotiations as soon as possible. Pending execution of a new agreement, Charter expects that Central Lincoln will operate in accordance with the Commission's Orders rather than continue to impose specific rates, terms and conditions that have been ruled unjust and unreasonable.

Please contact me no later than June 22, 2005 to discuss transitioning to a replacement pole attachment agreement. Also, please remit a refund check in the amount of \$72,840.59 to: David Torrey, Charter Communications, Accounting Department, 521 NE 136th Avenue, Vancouver, WA 98684. Charter reserves its rights to pursue any and all available remedies if Central Lincoln fails to contact Charter to discuss a new agreement by the date set forth above or pay the refund within 45 days of the date of this letter.

In the meantime, please do not hesitate to contact me if you have any questions. Please note that I am with a new law firm. I look forward to hearing from you.

Sincerely,



Jill Valenstein
Associate

Enclosures

cc: Frank Antonovich, VP/GM Northwest KMA
Matt McGinnity, Director of Technical Operations
Northwest KMA
Gary Lee, Utilities Coordinator, Northwest KMA
Shannon Dunham, Esq.

¹⁷ See May Order at pp. 2-3.

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4 BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON
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7 CHARTER COMMUNICATIONS
8 HOLDING COMPANY, LLC, FALCON
9 TELECABLE, L.P., FALCON CABLE
10 SYSTEMS COMPANY II, L.P., AND
11 FALCON COMMUNITY VENTURES I,
12 L.P.

11 Complainants,

12 v.

13 CENTRAL LINCOLN PEOPLE'S UTILITY
14 DISTRICT,

15 Defendant.

Case No.

16 **CERTIFICATE OF SERVICE**

17 I hereby certify that true and correct copies of the following pleadings

- 18
- 19 • Complaint of Charter Communications Holding Company, LLC, *et al.* ("Charter")
20 against Central Lincoln People's Utility District ("CLPUD"), and accompanying exhibits
21 1 through 5.
 - 22 • Charter's Motion For Emergency Interim Relief, accompanying exhibits 1 through 14,
23 and Declarations of Frank Antonovich and Gary Lee in support of Charter's Motion.
 - 24 • Motion for Admission *Pro Hac Vice*, and accompanying Declaration of T. Scott
25 Thompson in support.

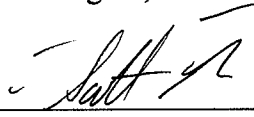
26 were served via e-mail transmission, and by FedEx in sealed envelopes upon the following:

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Paul Davies General Manager Central Lincoln People's Utility District 2129 N. Coast Hwy Newport, OR 97365	
Peter Gintner Macpherson, Gintner, Gordon & Diaz 423 North Coast Highway P.O. Box 1270 Newport, OR 97365	

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Dated this 6th day of January, 2006, at Washington, D.C.



T. Scott Thompson
Counsel for Charter