

1 **BEFORE THE PUBLIC UTILITY COMMISSION**
2 **OF OREGON**

3 **AR 506**

4 In the Matter of

5 Rulemaking to Amend and Adopt Permanent
6 Rules in OAR 860, Divisions 024 and 028,
7 Regarding Pole Attachment Use and Safety.

FIRST ROUND OF COMMENTS OF
ELECTRIC LIGHTWAVE, LLC

8
9 Pursuant to the Administrative Law Judge's Ruling issued September 5, 2006 (the
10 "Ruling"), Electric Lightwave, LLC hereby submits the following comments on proposed
11 revisions to Division 28 of Chapter 860 of the Oregon Administrative Rules.

12 **INTRODUCTION**

13 Electric Lightwave appreciates the work that Commission Staff and the Oregon Joint Use
14 Association ("OJUA") have done in establishing the issues list set forth in the Ruling and
15 proposing revisions to the rules. In general, Electric Lightwave supports the proposed revisions
16 with the following comments. Electric Lightwave limits its comments herein to certain issues
17 identified in the September 5 Ruling, but Electric Lightwave looks forward to engaging in a full
18 discussion of the issues in the workshops currently set for October 5 and 12, 2006 and reserves
19 its right to comment on other issues as necessary.

20 **COMMENTS**

21 **OAR 860-028-0020 (Definitions).**

22 Electric Lightwave makes the following comments on the proposed revisions to the
23 definitions section:
24

- 25
- Electric Lightwave supports Staff's definition of carrying charge without
reference to inflation.

1 COMMENTS OF ELECTRIC LIGHTWAVE

- 1 ▪ Government entities and wireless carriers should be considered licensees and
- 2 subject to the same obligations as other licensees.
- 3 ▪ Electric Lightwave supports defining “pattern” more specifically.
- 4 ▪ Electric Lightwave believes the definition of “percentage of conduit capacity
- 5 occupied” could be made clearer and looks forward to discussing this issue at the
- 6 workshop.

7
8 **OAR 860-028-0070 (Resolution of Disputes).**

9 Should time for response to a complaint be lengthened from 30 days? No. Thirty days is

10 a sufficient amount of time to respond to a complaint.

11 Clarifying 860-028-0070(4)(e)(B). It is unclear what “data and information” means in

12 this rule. The term appears to relate to the requirement in 860-028-0070(4)(e)(A) that the

13 complainant must provide detailed information regarding rate calculations if the complainant

14 takes issue with the pole attachment rate imposed by the pole owner. Since the pole owner has

15 such information, it is unfair to require a licensee to provide detailed information regarding the

16 pole cost, the carrying charge, and the usable space per pole.

17 Nevertheless, if the licensee bears the burden of providing such information, Electric

18 Lightwave suggests adding a sentence to OAR 860-028-0060(3) that states: “As part of good

19 faith negotiations, pole owners must provide information to occupants or prospective occupants

20 sufficient to demonstrate that the proposed pole attachment rate complies with OAR 860-028-

21 0110. A pole owner shall have 30 days from the date of a request to provide such information.”

22 With this obligation in place, OAR 860-028-0070(4)(e) may be streamlined to simply require the

23 complainant to provide such information with its complaint. Electric Lightwave suggests

24 placing the provisions under OAR 860-028-0070(4)(b) as follows:

25

- (b) A statement of the specific attachment rate, term, and condition provisions that
- are claimed to be unjust or unreasonable.

2 COMMENTS OF ELECTRIC LIGHTWAVE

1 (1) If complainant alleges an attachment rate is unjust or unreasonable,
2 complainant shall state in detail why such rate does not comply with OAR
3 860-028-0110 and shall provide information sufficient to demonstrate such
4 non-compliance, including the information required by OAR 860-028-
5 0060(3).

6 (2) If complainant fails to provide the information required by subsection (1),
7 complainant must provide a statement indicating the steps taken to obtain the
8 information, including the dates of all requests.

9 (3) No complaint by a licensee or prospective licensee will be dismissed because
10 the pole owner has failed to provide the information required by OAR 860-
11 028-0060(3) and subsection (1).

12
13 Timeline. Electric Lightwave recommends a more streamlined procedure than the 360
14 days currently allowed for a Commission decision involving a pole attachment complaint. Under
15 proposed OAR 860-028-0070, a complainant is required to submit a detailed complaint that
16 includes proposed contract terms, so adjudication of those issues should proceed more quickly
17 than almost a full year. Six months is a reasonable period of time for a decision. Absent such
18 streamlining, parties could find themselves without a pole attachment contract for as long as 450
19 days (90 days to negotiate and 360 days for Commission decision).

20
21 **OAR 860-028-0100 (New or Modified Attachments).**

22 Should government entities be required to have permits for attachments? Yes. There is
23 no legitimate reason to distinguish between government entities and non-governmental entities.
24 The purpose of the pole attachment rules are to facilitate joint use while ensuring public safety.
25 Those issues apply equally to government entities. Government entities, like any other pole
occupant, should be required to get a pole owner's permission before attaching and provide a

1 pole owner with information sufficient to allow the pole owner to adequately track the facilities
2 on its poles and remedy safety violations.

3 Should the timelines be in calendar days or business days? The requirements should be in
4 calendar days. Calendar days are easier to track than business days, which would require
5 consideration of holidays and weekends. Using business days would unnecessarily complicate
6 the calculation of deadlines.

7 What should applicable timelines be? As written, the proposal allows too much time
8 between submission of the application and its approval. If the proposed language were accepted,
9 it could take as long as 70 business days, or approximately three months, after filing an
10 application before a pole occupant could begin construction if make-ready work is required.

11 Electric Lightwave would support substantially shortening the timeframes set forth in proposed
12 OAR 860-028-0100. Pole owners should be required to acknowledge receipt of an application
13 within five days and approve or reject an application within thirty days or sooner if possible.

14 Presumptive approval. Electric Lightwave supports presumptive approval if permits are
15 not responded to within a reasonable period of time. Electric Lightwave also supports allowing
16 occupants to begin construction of pole attachments.

17 What should owner have to provide as reasons for denial of permit? The only acceptable
18 reasons for denying a permit are: (1) there is no space for the attachment, or (2) there are
19 uncorrectable loading issues that would violate NESC standards if the attachment were allowed.

20 **OAR 860-028-0110 (Rental Rates and Charges).**

21 Electric Lightwave makes the following comments on the proposed revisions to this
22 regulation:

- 23 ■ The pole rental rate should not be adjusted for inflation.
- 24 ■ If an attachment permit does not specify the amount of authorized space, the pole

25 owner should assume the authorized space is one foot.

4 COMMENTS OF ELECTRIC LIGHTWAVE

1 ▪ Cross-arms or extension arms should be added to the list of additional or modified
2 attachments that are considered a component of the existing pole permit under proposed
3 OAR 860-028-0110(4)(c).

4 ▪ An occupant should not be required to prepay for make ready work unless there is
5 a legitimate concern about its ability to pay. Currently, Electric Lightwave does not
6 prepay for make ready work; instead, Electric Lightwave pays for the actual make ready
7 work after it is completed. The prepayment proposal as written, however, would
8 introduce the complexity of paying first and crediting later if the work does not cost as
9 much as estimated. Both parties would be required to adjust their accounting procedures
10 to accommodate this new requirement. Prepayment would be difficult from an
11 accounting perspective and unnecessary from a business perspective. If pole owners
12 believe there is a need for prepayment, Electric Lightwave could support a prepayment
13 requirement that would apply only to new occupants or occupants that are not
14 creditworthy.
15

16 **OAR 860-028-0115 (Duties of Structure Owners).**

17 Should communication protocols be mutually acceptable to owner and licensee? Yes.

18 Since joint use requires cooperation and communication among multiple companies, all
19 occupants and owners should have the ability to agree on communication protocols.
20

21 Should an owner be required to respond to other problems with the pole, not just
22 violations of Commission Safety Rules? Yes. Even if an issue does not rise to the level of a
23 safety violation, it may impact joint use. Pole owners should be required to respond to written
24 notifications by occupants.

25 Should an owner be responsible for maintaining towers for joint use? Electric Lightwave
would like clarification on the definition of “tower” before commenting on this issue.

5 COMMENTS OF ELECTRIC LIGHTWAVE

1 What are the responsibilities of structure owners? Structure owners carry primary
2 responsibility for safety, engineering practices, inter-operator communications, and coordination.
3 While occupants are responsible for their own attachments, they do not control the pole or have
4 responsibility for communicating with other joint users. Only pole owners are able to do so;
5 therefore, the primary responsibility for safety, engineering, and related joint use issues must lie
6 solely with pole owners.

7 Note: Electric Lightwave supports the OJUA's proposal that would allow licensees to
8 recover costs incurred when disproving sanctioned pole violations. Violations are sometimes
9 attributed to the wrong user, and an occupant that is notified of a violation has no choice but to
10 incur the costs associated with verifying and, in some cases, refuting the charge. The pole
11 occupant should be allowed to recover those costs from the pole owner, and Electric Lightwave
12 would support a separate docket to examine this issue.

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15 Dated this 28th day of September, 2006.

16 Respectfully submitted,

17 ELECTRIC LIGHTWAVE, LLC.

18
19 By: /s/ Jay Nusbaum

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