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Carla M. Butler
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August 22, 2006

Annette Taylor
Oregon Public Utility Commission
550 Capitol St., NE
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Re: AR 506

Dear Ms. Taylor:

Enclosed for filing in the above entitled matter please find an original and (5) copies of Qwest Corporation's Further Comments re the Fiscal Impact Regarding the Costs Resulting From Staff's Proposed Safety Rules as Reflected in its Proposed Changes to Division 24 of OAR 860, along with a certificate of service.

If you have any questions, please do not hesitate to give me a call.

Sincerely,



Carla M. Butler

CMB:

Enclosure

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BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

AR 506

In the Matter of a Rulemaking to Amend and Adopt Permanent Rules in OAR 860, Divisions 024 and 028, Regarding Pole Attachment Use and Safety.

QWEST CORPORATION'S FURTHER COMMENTS RE THE FISCAL IMPACT REGARDING THE COSTS RESULTING FROM STAFF'S PROPOSED SAFETY RULES AS REFLECTED IN ITS PROPOSED CHANGES TO DIVISION 24 OF OAR 860

Pursuant to the Commission's Notice of Proposed Rulemaking sent to the Secretary of State on July 13, 2006 and served on the parties on July 19, 2006, Qwest Corporation ("Qwest") hereby submits its further comments regarding the fiscal impact resulting from Staff's proposed safety rules as reflected in its proposed changes to Division 24 of Oregon Administrative Rule (OAR) Chapter 860. Qwest's comments also are in general support of the comments that the Oregon Joint Use Association ("OJUA") and Verizon have filed on these issues in this proceeding, as well as their comments on these issues in the informal rulemaking proceeding in 2005.

COMMENTS

GENERAL COMMENTS ABOUT QWEST'S POLE ATTACHMENT COSTS IN OREGON

Preliminarily, Qwest notes that it costs far more for it to attach facilities to poles in Oregon than in any other state in its 14-state service territory. The reason for these greater costs are the regulatory requirements as a result of the Commission's existing Division 24 and Division 28 administrative rules and pole-related policies.

Specifically, Qwest recently performed a study of pole joint use expenses across Qwest's 14 states from January of 2005 through April of 2006. The study included direct costs invoiced to Qwest by other pole owners and Qwest's program costs for inspections and corrections required under current Commission policies in Oregon and Qwest's other states. During this

period, Qwest spent approximately **\$9.7 million** in Oregon, compared to an average of **\$1.4 million** in the other 13 states (more than six times greater than the average)¹. The states with the next highest expenses were New Mexico (\$4.6 million), Washington (\$4 million) and Colorado (\$3.9 million). When Qwest compared only the *direct* costs invoiced to Qwest by other pole owners in nearby states, Qwest documented the following costs per non-owned pole:

Oregon - \$33.33/pole
Washington - \$20.82/pole
Utah – \$12.13/pole
Idaho - \$11.99/pole
Montana - \$7.71/pole

In addition, the cost per pole in Oregon increases an additional **\$19.25** per non-owned pole for Oregon Commission-required inspection and correction costs. These costs increase the total cost per pole in Oregon to **\$52.58**.

Finally, Oregon is the only state in Qwest’s region in which Qwest Staff is specifically designated to administer and manage such programs. These internal additional costs were not included in the study, however. Currently, Qwest staffs 28 full time equivalent (FTE) employees to meet these requirements in Oregon. These 28 *FTEs* do not include any contractor labor or equipment that Qwest may utilize. Because Qwest operates under price cap regulation pursuant to ORS 759.400, *et seq.*, Qwest does not have any opportunity to recover these costs, or the additional costs that would result from the Staff’s proposed rules, and thus cannot pass the costs on its customers.

SPECIFIC COMMENTS ABOUT CERTAIN PROPOSED RULES AND COSTS

I. COMMUNICATIONS TREE TRIMMING

¹ This is a total dollar amount. Qwest recognizes that each state is necessarily different based on its size, its number of access lines, and the number of Qwest-owned poles versus non-owned others. Nevertheless, it is still clear that Oregon has vastly disproportionate costs, especially compared to larger states like Arizona, Colorado, Minnesota and Washington, and further, especially given the cost per pole in Oregon compared to other states.

Proposed Rule: OAR 860-024-0016 (Vegetation Clearance Requirements)

(8) Each operator of communication facilities must trim or remove vegetation that poses a risk to their facilities. Risk to facilities includes, but is not limited to, deflection of cables, wires, or messengers, or those contacts which cause damage to facilities.

QWEST'S COMMENTS

As Qwest mentioned in its September 29, 2005 comments in the informal rulemaking proceeding that preceded this docket, this proposed rule is an extreme departure from the NESC and the Commission's own policies. (See e.g., OAR 860-024-0017 and the Commission's Staff Policy "Tree to Power Line Clearances.") The Commission would be attempting to impose electrical utility requirements onto communications companies. Thus, Qwest submits that all references to "Communications Facilities," with the exception of those affecting the climbing space around a pole, should be deleted.

The primary purpose of the NESC language in Rule 218 and in the Commission's own policy is the *prevention of fire*, as well as *electrical contact* with workers and the public. A secondary purpose pertains to improved system reliability. There have been no documented cases, however, of communications facilities in contact with vegetation resulting in fire. Communications facilities are not energized, and therefore pose little (if any) risk of electrical contact. Moreover, vegetation management affecting reliability is typically dealt with on a case-by-case basis. Further still, the NESC allows mechanical separation through the use of guarding techniques to prevent abrasion. Accordingly, Qwest estimates the financial impact of this proposed rule on its maintenance budget to be an additional **\$1.5 million** each year, and as Qwest mentioned, it cannot seek a rate increase to recover these costs.

Qwest also believes that this proposed rule would be in direct conflict with city and county ordinances in metropolitan areas throughout Oregon. The complaints from municipal arborists, the public and Qwest customers resulting from adoption of this proposed rule would

likely be overwhelming. As Qwest mentioned, Qwest utilizes licensed tree-trimming contractors to perform vegetation management as needed on a case-by-case basis. Qwest also incorporates identification and correction of potential problems affecting reliability into its Detailed Facility Inspections program. Thus, Qwest has demonstrated that it can manage vegetation issues internally, and therefore, that there is no need for a Commission rule on these issues.

Finally, Qwest agrees with and supports the comments that the OJUA and Verizon have filed in this docket, as well as any comments they filed in the informal proceeding in 2005.

II. MANDATORY INSPECTIONS IN AREAS DESIGNATED BY ELECTRIC OPERATORS

Proposed Rule: OAR 860-024-0011 (Inspections and Compliance of Electric Supply and Communication Facilities)

(1) An operator of electric supply facilities or an operator of communication facilities must:

(d) Conduct detailed inspections of its overhead facilities to identify violations of the Commission Safety Rules. The maximum interval between detailed inspections is ten years, with a recommended minimum inspection rate of 10 percent of overhead facilities per year. This inspection must cover the area designated in subsection (2)(a) of this rule by the operator of electric supply facilities each year. *Operators of communication facilities are required to inspect the same area designated by the operators of the electric supply facilities during the same time period.* (Emphasis added.)

QWEST'S COMMENTS

The suggestion in this rule that Qwest (as a communications provider) must perform inspections and then follow with corrections in areas designated by the power companies causes adverse administrative and financial impacts to Qwest. Qwest provides service in common with approximately 30 power companies in Oregon. Currently, Qwest administers one program to inspect 10 per cent of its facilities per year. Qwest could potentially have to coordinate and project manage inspection programs in each of these areas simultaneously in any given year, and then immediately follow with correction programs. Thus, the Staff's proposed rules for

coordinated inspections (as well as prioritization of repairs) would require significant additional staffing, for both internal costs and for contractor labor.

Finally, Qwest agrees with and supports the comments that the OJUA and Verizon have filed in this docket, as well as any comments they filed in the informal proceeding in 2005.

III. TIMEFRAMES FOR REPAIR

Proposed Rule: OAR 860-024-0012 (Prioritization of Repairs by Operators of Electric Supply Facilities and Operators of Communication Facilities)

(2) Except as otherwise provided by this rule, *the operator must correct violations of Commission Safety Rules no later than two years after discovery.*

(3) An operator may elect to defer for a third year corrections of no more than 5 percent of violations identified during the operator's detailed facility inspection each year. Violations qualifying for deferral under this section cannot reasonably be expected to endanger life or property. The operator must develop a plan detailing how it will remedy each such deferral. If more than one operator is affected by the deferral, all affected operators must agree to the plan or the violation(s) may not be a part of the third year deferral. (Emphasis added.)

QWEST'S COMMENTS

Qwest agrees with and supports the OJUA's May 3, 2006 comments in this docket, as well as its May 26, 2006 comments about the definition of "material violation" (OAR 860-024-0001(4)), especially because the definition of "material violation" is a deciding factor regarding when an operator may be placed into shorter inspection cycles. The shortening of an inspection cycle is an extremely expensive endeavor and thus should be a punitive action that is reserved only for irresponsible operators. Further still, the current NESC rule allows for repairs for violations other than for imminent danger to be made during the normal course of business operations. Thus, the Staff's proposed rules for prioritization of repairs (as well as for coordinated inspections) would require significant additional staffing, for both internal costs and for contractor labor.

Finally, Qwest agrees with and supports the comments that the OJUA and Verizon have filed in this docket, as well as any comments they filed in the informal proceeding in 2005.

CONCLUSION

For the reasons stated above, including the unnecessary costs involved, Qwest requests that the Commission not adopt the Division 24 rules that Staff has proposed. Further, as Qwest mentioned, the state of Oregon is already the most expensive state, by a significant margin, in Qwest's 14-state region with respect to pole attachment issues. Further compounding these costs with the types of requirements that Staff proposes in its proposed re-write of OAR 860, Division 24, especially regarding vegetation clearance requirements, coordinated inspections and compliance and prioritization of repairs, would only further increase Qwest's (and numerous other utilities,' pole owners' and pole attachers') costs, but without any demonstrable increase to safety, which is the focus of Division 24 rules in the first place.

DATED: August 22, 2006

Respectfully submitted,



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CERTIFICATE OF SERVICE VIA ELECTRONIC E-MAIL SERVICE

AR 506

I hereby certify that on the 22nd day of August, 2006, a true and correct copy of the foregoing QWEST CORPORATION'S FURTHER COMMENTS RE THE FISCAL IMPACT REGARDING THE COSTS RESULTING FROM STAFF'S PROPOSED SAFETY RULES AS REFLECTED IN ITS PROPOSED CHANGES TO DIVISION 24 OF OAR 860, in the above entitled docket, was served upon the following persons via means of e-mail transmission to the e-mail addresses listed on the following pages.

Dated this 22nd day of August, 2006.

Qwest Corporation



by: _____

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