

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

RITA TEWARI
DIRECT DIAL
202-828-9823
RTEWARI@CRBLAW.COM

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

MAY 25, 2006

VIA E-MAIL AND FEDERAL EXPRESS

Filing Center
Public Utility Commission of Oregon
550 Capitol Street NE, Suite 215
Salem, Oregon 97308

Re: AR 506 -- Comments of Charter Communications, Inc.

Dear Clerk:

Charter Communications, Inc. ("Charter") respectfully submits the accompanying comments on the Commission Staff's proposed amendments to the Commission's pole attachment rules (OAR Division 24). Charter appreciates the Commission's interest in developing comprehensive pole attachment regulations and obtaining the input of affected parties as part of the regulation development process.

If you have any questions, please contact us.

Sincerely,



T. Scott Thompson
Rita Tewari

BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

In the Matter of
Rulemaking to Amend and Adopt Permanent
Rules in OAR 860, Divisions 24 and 28,
Regarding Pole Attachment Use and Safety.

Docket AR 506

COMMENTS OF CHARTER COMMUNICATIONS, INC.

Charter Communications, Inc. respectfully submits these comments in response to this Commission Staff's draft of the Division 24 rules submitted on May 16, 2006 ("May 16th Rules"), and revised on May 23, 2006 ("May 23rd Rules"), in the above-captioned proceeding. Charter appreciates the opportunity to comment on the Commission Staff's proposed rules in the Commission's Docket AR 506 and suggests revisions to certain provisions Charter believes are impractical and will result in undue cost and hardship. Charter offers these comments from the perspective of a non-pole owning attacher in the hopes that they will aid the Commission in developing reasonable pole safety rules that maintain the safety and integrity of Oregon's distribution facilities while promoting facilities-based competition.

I. CHARTER OBJECTS TO VEGETATION CLEARANCE REQUIREMENTS IMPOSED ON OPERATORS OF COMMUNICATION FACILITIES

In its May 16th Rules, Commission Staff set forth a requirement in Section 8 of rule 860-024-0016 which forced operators of communication facilities to conduct vegetation clearance on the poles. However, in its May 23rd Rules Commission Staff deleted this requirement from its proposed language. Charter supports this revision and agrees with the Commission Staff that this matter should appropriately be addressed in the Division 28 rulemaking. Nonetheless, Charter believes it is important to explain below, why Charter believes that Section 860-024-0016(8) as previously drafted in the May 16th Rules is unreasonable, overbroad and impractical and should therefore be revised before it is taken up in the Division 28 portion.

A. The Proposed Vegetation Clearance Rules Are Overreaching and Impractical

As a preliminary matter, Charter believes that Section 860-024-0016 of the May 16th Rules is too broad and could not be implemented in Oregon without causing major damage to trees and vegetation in the State. The May 16th Rules take an extremely aggressive approach to vegetation clearance that would result large amounts of unnecessary pruning of trees that pose no harm to the poles or the public. Indeed, as the Oregon Department of Forestry has noted, the aggressive pruning required by the proposed rule will result in a decline in the health of urban forests throughout the state and could ultimately cause both utilities and cities far more problems.¹ In fact, the vegetation clearance requirement could result in the creation of hazardous trees and thereby lessen the public safety. The Commission Staff has presented no evidence of significant line safety issues that warrant such an aggressive vegetation clearance

¹ Comments of the Oregon Department of Forestry dated May 10, 2006 (acknowledging “[t]he broad-stroke approach of aggressive pruning of all trees will ultimately cause both utilities and cities far more problems than they solve.”).

policy. Charter believes that vegetation clearance requirements adopted by this Commission should address situations where true public safety violations exist rather than create broad-stroke regulations that will cause more harm than good.

B. Vegetation Clearance Should Remain the Responsibility of the Pole Owner

To the extent that the Commission intends to adopt vegetation clearance regulations, Charter specifically objects to Section 8 of the 860-024-0016 of the May 16th Rules, which requires an operator of communication facilities to conduct tree trimming and remove vegetation that poses a significant risk to facilities. This provision, as drafted, would impose a burden on attachers to conduct tree trimming on the poles. While Charter recognizes the need for pole owners to conduct routine vegetation removal for reasons of safety and to maintain the integrity of their poles, Charter does not agree that this routine maintenance obligation should be passed along to the attachers on the poles. Indeed, Oregon's pole rental rate structure affirms that vegetation clearance is the responsibility of the pole owner, and not the attacher.

The Oregon pole rental formula permits the pole owner to factor the cost of maintaining the pole in the carrying charge and allocated it to the attacher the annual rent. *See* OAR 860-028-0110(2)(a). A utility's pole maintenance costs are publicly reported in FERC Account 593 for electric pole owners and ARMIS Account 6411 for ILEC pole owners. *See, e.g., In Re Amendment of Rules and Policies Governing the Attachment of Cable Television Hardware to Utility Poles*, 2 FCC Rcd 4387, at Appendix A (1987) (setting forth the calculation of the maintenance component of the carrying charge to include Account 593) (hereinafter "*1987 Amendment*"); *In Re Amendment of Rules and Policies Governing Pole Attachments*, 15 FCC Rcd 6453, ¶ 57 (2000) (reaffirming the formula used to determine the maintenance element of the carrying charge and citing the *1987 Amendment*). These Accounts include the utility's costs

associated with tree trimming.² As a result, the pole owner has the responsibility to conduct periodic tree-trimming around the poles and recovers the associated costs in the annual rent. It is unreasonable to require the attacher to pay the utility for tree trimming and then impose on the attacher an affirmative obligation to conduct the tree trimming itself. This duty has already been determined under FERC and ARMIS accounting to fall to the pole owner.³

Furthermore, cable operators, such as Charter, do not enjoy the same immunity from liability that electric pole owners have for any claims arising from vegetation clearance. Under ORS § 758.284, electric utilities are “immune from any civil liability for pruning or removing vegetation that is growing on property on which the electric facilities are located.” Clearly, the Oregon legislature recognized the electric utilities’ duty to conduct tree trimming, and as a result, insulated them from liability resulting from it. On the other hand, attachers to the poles, such as cable operators, do not have the same protections. If a cable attacher is forced to comply with the May 16th Rules, it could open itself up to civil suits from property owners who object to any tree trimming that a cable operator may have to make around a pole.

Finally, the May 16th Rules as drafted are not practical as it would lead to duplicative work and waste time, energy and labor. For example, if a tree interferes with the facilities of 3 different occupants on the pole, each attacher would be required to individually go out to the pole and trim back the branches impacting its own lines. However, if the pole owner is made solely responsible for the maintenance of the pole—as is envisioned by the pole rate structure—the requisite tree trimming would be conducted only once, rather than by 3 separate parties.

² See 18 C.F.R. Part 101 (describing Account 593 to include “the cost of labor, materials used and expenses incurred in the maintenance of overhead distribution line facilities, the book cost of which is includible in account 364, Poles, Towers and Fixtures . . . [including] [t]rimming trees and clearing brush.”). See also 47 C.F.R. § 32.2411 (recognizing that “[t]his account shall also include the cost of clearing pole line routes and of tree trimming but shall exclude the cost of maintaining previously cleared routes.”); 47 C.F.R. § 32.6411 (“This account shall include expenses associated with poles.”).

Consequently, placing the tree trimming responsibility directly in the hands of the pole owner would save all parties time and labor and lead to greater efficiency in handling pole safety issues.

C. The May 16th Rules Are Unnecessary and Invite Abuse by Pole Owners

Under the May 16th Rules, Commission Staff is attempting to impose a vegetation clearance requirement on communication attachers even though there is no evidence that communication facilities proximity to vegetation has caused a pattern of personal injury. Indeed, the Staff's proposals appear to be based on hypotheticals that are not grounded in science or fact (e.g., the prospect of a person climbing out to the farthest expanse of a tree limb—a remarkably stout tree limb apparently—then reaching out their arm to grab a utility line). There is no evidence demonstrating a pattern of injuries that are attributable to insufficient vegetation clearance near communication lines. Despite this fact, the May 16th Rules subject cable attachers to requirements that would cost possibly millions of dollars to comply with and threaten substantial financial harm to the attacher for even the most trivial failure to comply.

Under the May 16th Rules, a communication attacher is required to trim vegetation where it poses a “significant risk” to its facilities or that of another attacher on the pole. However, the May 16th Rules fails to identify what constitutes a “significant risk,” thus leaving the language up for interpretation. Charter is concerned that pole owners state that any contact made by cable attachment to vegetation around the poles would constitute a “significant risk,” and therefore would be considered a safety violation. This is notable because under the Commissions current penalty structure, a pole owner may impose a fine of \$200 per pole for safety violations made by attachers.⁴ This amount goes directly to the pole owner and may provide incentive for the pole

³ In addition, most communities require authorization from a city arborist before a tree can be cut, which would create an additional layer of bureaucracy and cost that the attacher would be required to endure.

⁴ See OAR 860-028-0150.

owner to invent new ways of assessing fines on attachers. Thus, the May 16th Rules as drafted give the pole owner the ability to reap a large financial windfall by charging attacher for each instance its lines come in contact with a tree. As Charter has previously stated, it objects to the sanctions established under the current rules. To permit these sanctions to be further expanded to include tree trimming obligations will place a large economic burden on the cable operator, and further divert funds away from consumer services and the roll-out of advanced technologies.

II. CHARTER OBJECTS TO THE PROPOSED RULE 860-024-0011 REQUIREMENT THAT COMMUNICATIONS FACILITIES BE INSPECTED AT THE SAME TIME AS ELECTRIC FACILITIES

Under 860-024-0011(1)(b) as proposed by Staff in the May 16th and the May 23rd Rules, “[o]perators of communications facilities are required to inspect, either jointly or independently, the same geographic area designated by the operators of the electric supply facilities during the same designated annual period.” Charter opposes this requirement because it would cause undue hardship and cost and force Charter to re-inspect facilities that have recently been inspected and brought into compliance.

Pursuant to this Commission’s policies, Charter voluntarily conducted a detailed inspection of its facilities in Oregon beginning in late 2001 which lasted until late 2005. In this inspection, Charter conducted safety checks and assured that its facilities complied with all safety standards, including the NESC. The cost of this inspection was approximately \$4.4 million. However, if the Commission’s proposed rules are adopted, Charter could be forced to re-inspect facilities it has just recently examined—not based on need or safety issues—but rather based solely on the arbitrary decision that Charter must inspect at the same time and place as all electric supply operators to whose poles it attaches. According to Charter’s system layout and its relation to the electric facilities, the proposed rules could result in Charter being forced to

simultaneously conduct 17 different inspection programs throughout the State of Oregon. Given that the electric utility chooses the area, Charter could be forced into inspections in far flung corners of the State with no logical plan and no ability to forecast future inspection locations or costs. As mentioned above, with the ability to plan and act efficiently, the inspection process cost Charter approximately \$4.4 million. Staff's proposal would impose on Charter a similar, if not greater, cost burden. And again, there is no evidence of a need that would justify requiring Charter to follow the schedules of 17 different pole owners. While it may appear to be more efficient to require cable operators to perform simultaneous joint inspections with all utilities, that is not the case here.

Therefore, at a minimum, Charter proposes that the Commission hold off on the immediate imposition of any simultaneous inspection requirement, and instead adopt a 6 year phase in of this provision. This would prevent companies, such as Charter, from being punished for voluntarily complying with the Commission's previous inspection policies and permit Charter to properly allocate its time, labor and money so as to best assure safety compliance of all of its facilities.

III. CONCLUSION

There is no debate that the basic integrity of electric and communications distribution networks need to be maintained and that safety is paramount. Charter therefore hopes its comments will assist the Commission in developing reasonable pole safety rules. Charter supports the adoption of pole safety regulations that are practical and promote plant integrity.

Respectfully submitted this 25th day of May, 2006.



COLE, RAYWID & BRAVERMAN, LLP

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

Attorneys for Charter Communications, Inc.

CERTIFICATE OF SERVICE

I, Rita Tewari, do hereby certify that on this 25th day of May, 2006 a true and a correct copy of the foregoing has been sent via Email to the following:

Matt Coons
matt.coons@comspanusa.net

Jim Deason
Attorney at Law
521 SW Clay ST, Suite 107
Portland, OR 97201-5407
jimdeason@comcast.net

Central Lincoln PUD
Denise Estep
Post Office Box 1126
Newport, OR 97365
destep@cencoast.com

Central Lincoln PUD
Michael L. Wilson
Interim General Manager
2129 N Coast Hwy
Newport, OR 97365-0090
mwilson@cencoast.com

Centurytel of Oregon, Inc.
Doug Cooley
707 13th Street, Suite 280
Salem, OR 97301
doug.cooley@centurytel.com

Centurytel of Oregon, Inc.
David Luchini
Post Office Box 327
Aurora, OR 97002
dave.luchini@centurytel.com

Clear Creek Mutual Telephone Co.
Bill Kiggins, Operations Manager
18238 S. Fischers Mill Road
Oregon City, OR 970445-9696
bkiggins@clearcreek.coop

CN Utility Consulting
Stephen R. Cieslewicz, President
Post Office Box 746
Novato, CA 94948-0746
steve@cutility.com

Comspanusa
Sebastian McCrohan
sebastian.mccrohan@comspanusa.net

Consumer Power Inc.
Stuart Sloan
Post Office Box 1180
Philomath, OR 97370
stuarts@cip.coop

Coos Curry Electric Cooperative
Linda L. Spurgeon
Post Office Box 1268
Port Orford, OR 97465
spurgeon@cooscurryelectric.com

Department of Justice
Michael T. Weirich
Assistant Attorney General
Regulated Utility & Business Section
1162 Court St NE
Salem, OR 97301-4096
michael.weirich@doj.state.or.us

Emerald PUD
Craig Andrus
Customer Engineering Supervisor
33733 Seavey Loop Road
Eugene, OR 97405-9614
craig.andrus@epud.org

Harold Leahy & Kieran
Christy Monson
223 A Street, Suite D
Springfield, OR 97477-4500
ckm@haroldleahy.com

IBEW Local 659
Ronald W. Jones
4480 Rogue Valley, Hwy #3
Central Point, OR 97502-1695
ronjones@ibew659.org

Idaho Power Company
Brent Van Patten
Joint Use Engineer
Post Office Box 70
Boise, ID 83707
bvanpatten@idahopower.com

Davis Wright Tremaine
Sarah K. Wallace
Attorney at Law
1300 SW Fifth Avenue, Suite 2300
Portland, OR 97201
sarahwallace@dwt.com

Electric Lightwave, LLC
Charles L. Best
Attorney at Law
Post Office Box 8905
Vancouver, WA 98668-8905
charles_best@eli.net

Eschelon Telecom of Oregon, Inc.
Catherine A. Murray
MGR – Regulatory Affairs
730 Second Avenue, Suite 900
Minneapolis, MN 55402-2489
camurray@eschelon.com

Hunter Communications, Inc.
Richard W. Ryan, President/CEO
801 Enterprise Dr., Suite 101
Central Point, OR 97502
rryan@coreds.net

Idaho Power Company
Jeannette C. Bowman
Post Office Box 70
Boise, ID 83707
jbowman@idahopower.com

League of Oregon Cities
Andrea Fogue
Senior Staff Associate
Post Office Box 928
1201 Court St NE, Suite 200
Salem, OR 97308
afogue@orcities.org

McMinnville City of Water and Light
Scott Rosenbalm
Post Office Box 638
McMinnville, OR 97128-0638
sgr@mc-power.com

Miller Nash, LLP
Brooks Harlow, Attorney
601 Union Street, Suite 4400
Seattle, WA 98101-2352
Brooks.harlow@millernash.com

City of Monmouth
Dave Wildman
401 N. Hogan Road
Monmouth, OR 97361
dwildman@ci.monmouth.or.us

Oregon Joint Use Association
Genoa Ingram
1286 Court St NE
Salem, OR 97301
genoa@westernadvocates.com

Oregon Joint Use Association
William C. Woods
9605 SW Nimbus Avenue
Beaverton, OR 97008
william_woods@comcast.com

Oregon PUD Association
Don Godard
727 Center Street, NE, Suite 305
Salem, OR 97301
dogard@opuda.org

Millennium Digital Media
Eugene A. Fry
3633 136th Place SE #107
Bellevue, WA 98006
gry@mdm.net

City of Monmouth
Jim Hough, City Manager
151 W. Main Street
Monmouth, OR 97361
jhough@ci.monmouth.or.us

Oregon Cable and Telecommunications Assoc.
Michael Dewey, Executive Director
1249 Commercial Street SE
Salem, OR 97302
mdewey@oregoncable.com

Oregon Joint Use Association
John Sullivan
2213 SW 153Rd Dr
Beaverton, OR 97006
John.sullivan@pgn.com

Oregon Municipal Electric Utilities Assoc.
Tom O'Connor, Executive Director
Post Office Box 928
Salem, OR 97308-0928
toconnor@teleport.com

Oregon Rural Electric Cooperative Assn.
Jack Evans
3632 SE Dune Avenue
Lincoln City, OR 97367-1740
jevans@oreca.org

Oregon Telecommunications Assn
Brant Wolf, Executive Vice President
707 13th Street SE, Suite 280
Salem, OR 97301-4036
bwolf@ota-telecom.org

Pacific Power and Light
Cece L. Coleman
825 NE Multnomah, Suite 800
Portland, OR 97232
cece.coleman@pacificorp.com

Pacific Power and Light
Corey Fitzgerald
825 NE Multnomah, Suite 800
Portland, OR 97232
corey.fitz-gerald@pacificorp.com

Pacific Power and Light
Randall Miller
1407 W N Temple, Suite 220
Salt Lake City, UT 84116
randy.miller@pacificorp.com

Pacificorp
Jim Marquis, Director, O&M Support
830 Old Salem Road
Albany, OR 97321
james_1.marquis@pacificorp.com

Pacificorp dba Pacific Power and Light
Andrea L. Kelly
Vice President – Regulation
825 NE Multnomah Street, Suite 2000
Portland, OR 97232
andrea.kelly@pacificorp.com

Pioneer Telephone Cooperative
General Manger
1304 Main Street
Post Office Box 631
Philomath, OR 97370

Portland City of – Office of Transportation
Richard Gray
1120 SW 5th Avenue, Room 800
Portland, OR 97204
richard.gray@pdxtrans.org

Portland General Electric
Jennifer Bosch
121 SW Salmon Street
Portland, OR 97204
jennifer.bosch@pgn.com

Portland General Electric
Randall Dahlgren
121 SW Salmon Street
Portland, OR 97204
randy.dahlgren@pgn.com

Portland General Electric
Doug Kuns
121 SW Salmon Street
Portland, OR 97204
doug.kuns@pgn.com

Inara K. Scott
121 SW Salmon Street
Portland, OR 97204
inara.scott@pgn.com

Portland General Electric
David P. Van Bossuyt
4245 Kale Street NE
Salem, OR 97305
dave.vanbossuyt@pgn.com

Preston Gates Ellis Ruvelas & Meeds
Christopher S. Huther
1735 New York Avenue, NW, Suite 500
Washington, DC 20006-5209
chuther@prestongtes.com

Priorityone Telecommunications, Inc.
Post Office Box 758
La Grande, OR 97850-6462
kmutch@p1tel.com

Public Utility Commission
Jerry Murray
Post Office Box 2148
Salem, OR 97308-2148
jerry.murray@state.or.us

Public Utility Commission
John Wallace
Post Office Box 2148
Salem, OR 97308-2148
john.wallace@state.or.us

Quality Telephone Inc.
Frank McGovern
Post Office Box 141048
Dallas, TX 75214
fmcgovern@qtelephone.com

Qwest
Jeff Kent
8021 SW Capitol Hill Road, Room 180
Portland, OR 97219
jeffrey.kent@qwest.com

Qwest Corporation
Alex M. Duarte
421 SW Oak Street, Suite 810
Portland, OR 97204
alex.duarte@qwest.com

Salem Electric
Roger Kuhlman
Post Office Box 5588
Salem, OR 97304-0055
kuhlman@salemelectric.com

Sprint Communications Co. LP
Barbara Young
902 Wasco Street – ORHDRA0412
Hood River, OR 97031-3105
barbara.c.young@mail.sprint.com

Sprint/United Telephone Co of the Northwest
Nancy Judy
902 Wasco Street A0412
Hood River, OR 97031
nancy.judy@sprint.com

Tom McGowan
902 Wasco St
Hood River, OR 97031
tom.a.mcgowan@sprint.com

Time Warner Telecom
Kevin O'Connor
520 SW 6th Avenue
Portland, OR 97204
kevin.oconnor@twtelecom.com

Time Warner Telecom of Oregon LLC
Brian Thomas
223 Taylor Ave N
Seattle, WA 98109-5017
brian.thomas@twtelecom.com

Verizon
Steven Lindsay
Post Office Box 1033
Everett, WA 98206
steve.lindsay@verizon.com

Verizon Northwest, Inc.
Richard Stewart
600 Hidden ridge
HQE03J28
Irving, TX 75038
richard.stewart@verizon.com

Renee Willer
20575 NW Von Neumann Drive MC ORO30156
Hillsboro, OR 97006
renee.willer@verizon.com

Wantel, Inc.
Mary Patrovsky
1016 SE Oak Avenue
Roseburg, OR 97470
marty.patrovsky@comspanusa.net

City of Ashland
Scott Johnson
90 North Mountain Avenue
Ashland, OR 97520
johnson@ashland.or.us

Dated this 25th day of May, 2006 at Washington, DC.



Rita Tewari