

August 18, 2006

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Via Electronic Filing and Overnight Delivery

Oregon Public Utility Commission
Attn: Filing Center
550 Capital Street NE #215
Salem, OR 97308-2148

Re: AR 506, Reply to Staff Comments

Sir or Madam:

I have attached Cingular and Sprint Nextel's Reply to Staff's Comments. The Administrative Hearings Division indicated that our reply comments may be filed today.

Thank you for your assistance. If you have any questions, please don't hesitate to contact me.

Very truly yours,

GRAHAM & DUNN PC



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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

AR 506

In the Matter of)	
Rulemaking to Amend and Adopt Permanent)	REPLY TO STAFF'S COMMENTS BY
Rules in OAR 860, Divisions 024 and 028)	NEW CINGULAR WIRELESS PCS, LLC,
Regarding Pole Attachment Use and Safety.)	SPRINT SPECTRUM L.P., AND
)	NEXTEL WEST CORP.
)	

New Cingular Wireless PCS, LLC (“Cingular”), Sprint Spectrum L.P., and Nextel West Corp. (“Sprint Nextel”) hereby submit these comments in reply to Staff’s August 16, 2006 Comments.

The Wireless Industry’s Pricing Issues are within the Scope of the NPRM. Staff first takes the position that the wireless industry’s pricing issues should be in a separate safety docket “that will promote safe and efficient utility poles, attachment installation practices and rights of way” because the issues are not within the scope of the Notice of Proposed Rulemaking (“NPRM”) for Phase II. To the contrary, all five issues raised by the wireless industry relate to pole attachment rates, a topic which is expressly included within the Phase II NPRM.

The wireless industry’s pricing issues are: (1) the definition of “authorized attachment space”; (2) the definition of “licensee” should include wireless carriers; (3) the definition of “pole” should include towers and poles; (4) pole attachment rates and make ready charges should be nondiscriminatory and documented, and (5) conduit attachment rates and make ready charges should be nondiscriminatory and documented. Each of these issues directly affect pole attachment rates.

Contrary to Staff's assertion, the NPRM expressly includes references to pole attachment rates—at least six times.¹ Therefore, pricing issues are expressly included within the scope of the NPRM, and the wireless industry's issues should be considered in Phase II along with the pricing issues raised by other pole attachment licensees.

The Relevant Statutes Include Wireless Carriers. Staff also encourages the ALJ to move the wireless industry's pricing issues to a separate safety docket, arguing that ORS 757.270 – 757.290 do not specifically address wireless operators or their facilities on utility poles.² Even if the Commission ultimately agrees with Staff's unexplained interpretation of ORS 757-270(3), it is inappropriate to eliminate the wireless industry's pricing issues now—at the issue development stage in the rulemaking proceedings—without any briefing or analysis of Staff's interpretation.

However, if the Commission will decide at this stage in the proceeding whether the statutes include wireless carriers, it is clear that wireless carriers are “licensees” as defined by ORS 757.270(3) because wireless carriers are authorized to construct attachments upon the public ways. (*See, e.g.*, Charter of City of Portland, Sections 10-201 through 10-218; City of Eugene Ordinance No. 20083.) In addition, the Oregon Joint Use Association has already

¹ NPRM dated June 15, 2006: (i) Need for the Rule(s), paragraph 1: “These disputes generally involve the rates, terms and conditions for operators that make attachments to utility poles and other facilities.” (ii) Need for the Rule(s), paragraph 1: “Increasing issues related to unsafe practices and unfair costs between utility facility owners and occupants . . . indicate the need for clear and more comprehensive regulations for joint use attachments. (iii) Need for the Rule(s), paragraph 2: “Also, many pole occupants are claiming that their pole attachment costs are too high and attachment contracts unfair.” (iv) Documents Relied Upon, and where they are available, Item #7, OPUC Staff report dated 12-15-03, page 12 of 17: “5. Annual pole attachment rates charged by a pole owner. A. Are the rates fair, just and reasonable?” (v) Documents Relied Upon, and where they are available, Item #7, OPUC Staff report dated 12-15-03, Attachment A, Page A-1 of 2, Item #1: “Pole owners and occupants continue to disagree on specific contract obligations, rates, terms and conditions in many areas.” (vi) Documents Relied Upon, and where they are available, Item #7, OPUC Staff report dated 12-15-03, Attachment E, Items P4 and P8: nondiscrimination in rates, terms and conditions, and fair rates and cost recovery. (Emphasis added.)

² Staff Comments, Page 2, Paragraph 4, Lines 5 – 7.

discussed the wireless industry's status when considering the proposed rules, so this issue has already been discussed in preparation for this rulemaking proceeding.³

Conclusion. Staff's rationale for excluding the wireless industry's pricing issues is not supported by the facts or by applicable law. The Phase II issues list should include the wireless industry's pricing issues, along with the pricing related issues for all other pole attachment licensees.

DATED this 18th day of August, 2006.

Respectfully submitted,



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³ Unresolved Issues List for Division 28 Submitted by the Oregon Joint Use Association, July 21, 2006, OAR 860-028-0020, Issue 3.

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of Cingular's and Sprint Nextel's Reply to Proposed Issues List in Phase II, Docket AR 506, to the parties by electronic mail, or by US Mail if no electronic mail address is included on the attached service list.

DATED this 18th day of August, 2006.

Joyce G. Morgan

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