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BEFORE THE PUBLIC UTILITY COMMISSION
OF THE STATE OF OREGON

UM 1087

CENTRAL LINCOLN PEOPLE’S UTILITY
DISTRICT,

Complainant,

v.

VERIZON NORTHWEST INC.,

Defendant.

**Central Lincoln People’s Utility
District’s Technical Comments
Regarding Commission’s Proposed
Contract**

Complainant, Central Lincoln People’s Utility District (“CLPUD”), submits the following technical comments regarding the proposed contract attached to the Commission’s Order No. 05-042, dated January 19, 2005.

A. Introduction.

CLPUD understands from the Commission’s Order that the General Agreement for Joint Use of Poles Between Central Lincoln People’s Utility District and General Telephone Company of the Northwest, Inc. dated 1987 has not been terminated and is still in effect. *See* Order No. 05-042 at 8-9, 12-13, n. 7. The parties have been operating under the 1987 Agreement continuously since the time it was executed, and throughout the course of these proceedings, including paying the rates in effect under that Agreement. While there have been some further negotiations between the parties, the 1987 Agreement remains in effect, and continues to govern the parties’ rights and responsibilities.

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1 In the event the parties were to seek a new contract, CLPUD submits the following
2 technical comments on the contract proposed in the Commission's Order:

3 **B. General Comments.**

4 1. The proposed agreement does not have provisions to reflect the use of electronic
5 notification for attachments.

6
7 2. The proposed agreement in some sections does not appear to follow the current
8 Oregon Revised Statutes and Oregon Administrative Rules governing joint use.

9 3. The proposed agreement still has some vestiges of a reciprocal joint use pole
10 agreement and inconsistent with a license agreement.

11 **C. Comments on Specific Sections.**

12 **1. Sections 3.1 and 3.2.**

13
14 **a.** This section has no provision for large project applications involving a large
15 number of joint use poles. With section 3.3 having a provision for the licensee to extend the time
16 to attach, it should be reasonable for the pole owner to have extended time to process large
17 projects.

18 **b.** This section has no provision for electronic notification.

19 **c.** This section is in contradiction with section 3.2 on the ability to make an
20 attachment before application for the attachment is sent.

21 Suggested wording:

22
23 3.1 Whenever Verizon desires to place its Equipment on any pole owned by
24 the District, it shall make application therefore, **via a "PA" ticket, furnishing the**
25 **permit information set forth in Attachment F using the National Joint Use**
26 **Notification System ("NJUNS"). Verizon shall direct the application to the**
District's NJUNS Member Code, and the application shall contain the
District's facility identification number, all required information set forth on
the standard NJUNS permit application. The District shall return the
application to Verizon's Member Code via the NJUNS. If the application is

1 approved, the District shall, within thirty (30) days after receipt of this
2 application, **respond through the NJUNS system.** If notice is not received from
3 the District within thirty (30) days, the application shall be deemed approved and
4 Verizon may proceed with the attachment. If the application is rejected, the
5 District shall, within said thirty (30) day period, **provide the rejection to Verizon**
6 **through NJUNS** and Verizon shall remove any equipment that may have been
7 placed on the District's pole. Any denial of an application must be in writing and
8 describe with specificity all relevant evidence and information supporting the
9 denial and how such evidence and information relates to the lack of capacity,
10 safety, reliability, or generally applicable engineering standards. **In the event**
11 **that Verizon submits applications for large projects that exceed the District's**
12 **ability to respond within thirty (30) days, the parties shall confer on a**
13 **mutually agreeable response time. Large projects are those that involve a**
14 **permit to attach to 25 or more District poles.**

9 **3.2 Verizon shall notify the District within thirty (30) days of completing**
10 **the work associated with the permit, through NJUNS.** Verizon shall have the
11 right to install, maintain and use its Equipment described in the application upon
12 the **joint use** poles identified therein in accordance with the terms of the
13 application and this agreement. With the exception of Service Drop attachments,
14 Verizon shall not have the right to place nor shall it place, any Equipment in
15 addition to that initially authorized without first making application and receiving
16 permission to do so. Nor shall Verizon change the position of any Equipment
17 attached to any joint use pole without District's prior written approval.

15 **2. Section 3.5.c.**

16 Pole owners should not have to rate base costs for joint use expenses that would not occur
17 if the pole was not a joint use pole.

18 Suggested wording:

19 c. If Verizon's existing Equipment interferes with District's existing
20 Equipment **or new equipment to be attached,** Verizon shall be responsible for
21 the reasonable and actual cost of making the changes set out in Subsection b
22 above.

22 **3. Sections 5.1 and 5.2.**

23
24 The calendar year would be better in line with all District Pole Occupancy License
25 Agreements. Rental fees would be prorated until January 1. This would also allow plenty of
26 time to develop rates before the January 1, 2006

1 5.1 On or about **January 1** of each year, but not later than **January 31**, the
2 District shall make a tabulation of the total number of its **jointly used poles and**
3 **attachment space utilized**, or on which Verizon has specifically reserved space,
4 as of the preceding **December 31** of the preceding year. **For the purposes of**
5 **attaching Equipment thereto directly shall be considered a joint pole and**
subject to rental fees. Rental fees will not be prorated for Equipment which
occupies a joint use pole for less than the full one-year period.

6 5.2 Within sixty (60) days after the completion of the tabulation referred to in
7 Section 5.1, the District shall invoice Verizon for the rental amount owing, as
8 calculated in accordance with Attachment A, which is attached hereto and
9 incorporated herein by this reference, specifying on such invoice the rental period
10 covered. Payment of the invoiced amount shall be made within thirty (30) days of
11 receipt of the invoice and shall constitute payment in advance for rental for the
twelve (12) month period beginning **January 1**. Past due rental amounts shall
bear interest at the lesser of the maximum rate permitted by applicable law or 18
percent per annum compounded daily.

12 **4. Section 5.4.**

13 This section is not in accordance with current OAR 860-028-0140.

14
15 5.4 If Verizon attaches Equipment to a pole without obtaining prior
16 authorization from the District in accordance with this Agreement, the District
17 may assess Verizon an unauthorized attachment charge per pole **in accordance**
with OAR 860-028-0140. The unauthorized attachment charge shall be payable
18 to the District within thirty (30) days after receipt of the invoice for that charge.

19 **5. Section 6.1.**

20 This section should be revised for the calendar year as indicated for section 5.1, above,
21 and remove vestige of reciprocal joint use agreement. Revisions to the OAR's in 860-28-0110
22 should make the automatic appeal process to the Commission unnecessary. The District is in the
23 process of inventorying its joint use poles to determine total rental space utilized by Verizon.

24 6.1 On or about **July 1** following the effective date of this Agreement and on
25 each **July 1** thereafter **the District may adjust its rental amount per one (1)**
foot joint use pole attachment rental space. Default one foot rental space will
26 **be calculated by completing the appropriate fields in the ANNUAL RATE**

1 **WORKSHEET (see attachment A). The District will forward a copy of the**
2 **ANNUAL RATE WORKSHEET accompanied with all the appropriate**
3 **supporting documents to Verizon by August 1. The adjusted rate will**
4 **become effective the following January rental billing period.**

4 **6. Section 9.1.a.**

5 A pole owner should not be responsible for vegetation trimming of a pole renter by
6 absorbing the cost of pole replacement instead of vegetation trimming.

7 9.1.a If a pole larger than that which is already installed in necessary, due wholly to
8 Verizon's requirements, Verizon shall pay to the District a sum equal to the difference
9 between the cost, in place, of such pole and the cost, in place, of the existing pole. The
10 District shall bear the rest of the cost erecting such pole, except as otherwise provided in
11 Section 9.3.

11 **7. Section 9.6.**

12 This section should be deleted. The District will not allow communication lines to be
13 over the top of its power system. This in not acceptable industry practices. This section is a
14 vestige of reciprocal joint use agreements where a power company is allowed to install a pole to
15 extension on a communication owned joint use pole.

16 **8. Section 9.9.**

17 This inspection section is unclear on when an inspection can be held and prior
18 notification before inspection. Also it is unclear how the cost recovery for periodic or routine
19 inspection is added to only Verizon's annual attachment space rental bill. The following is a
20 simplified section with cost recovery for inspections to be part of the Annual Carrying Charge.
21 If a violation is found during the course of an inspection, the sanction fees available in OAR 860-
22 28-0140 through 860-28-0220 would suffice for any addition general administration cost to
23 process the sanction.

24 9.9 *Inspections.* The District shall have the right to perform an Inspection of
25 Verizon's Attachments and other Equipment upon, and in the vicinity of, the
26 District's joint use poles at any time. The District shall recover the cost for all

1 periodic or routine Inspections in the annual rent. **A non-routine Inspection**
2 **resulting in a sanction violation to Verizon shall have its cost recovered by**
3 **the sanction amount as authorized by OAR 860-28-0140 through 860-28-**
4 **0220.** Such Inspections, whether made or not, shall in no manner relieve Verizon
of any responsibility, obligation or liability assumed under this Agreement or
arising otherwise.

5 **9. Section 10.1.**

6 The District does not have other joint pole users change a District owned pole.

7 10.1 The expense of maintaining jointly used poles shall be borne by the
8 District, and the District shall maintain its jointly used poles in a safe and
9 serviceable condition, and shall, under provisions of Article XIII replace,
10 reinforce, or repair such poles as become defective. The District shall be solely
11 responsible for collection for damages for poles broken or damaged. The Party
with Equipment attached to the pole shall be responsible for collecting damages to
its own Equipment. ~~If a pole owned by the District is replaced by Verizon
because of auto damage or storm damage, the District shall pay Verizon for
the actual costs of such pole replacement.~~

12 **10. Section 10.2.**

13 The contract should allow electronic notification with NJUNS instead of written
14 communications. The term “salvage value” should be changed to “remaining life value”

15 10.2 Whenever it is necessary to replace, move, reset, or relocate a jointly used
16 pole, the District shall, before making such replacement, move, or relocation, give
17 written notice thereof to Verizon **through NJUNS** (except in case of emergency,
18 when oral notice shall be given and subsequently confirmed in writing **or**
through NJUNS), specifying in such notice the work to be performed and the
19 time of such proposed replacement or relocation. Verizon shall arrange to
20 transfer such Equipment promptly to the new pole and shall notify the District
when the such transferring has been completed. Except as specified in Paragraph
21 10.3, in the event such transfer is not completed within thirty (30) days after the
22 time specified in the notice given by the District, Verizon shall assume ownership
of the original pole for all purposes at the conclusion of such thirty (30) day
23 period, shall indemnify and hold harmless the District from all obligations,
liabilities, damages, costs, expenses, or charges incurred in connection with such
24 pole thereafter, and shall pay to the District the **remaining life value** of the pole,
if any, upon delivery of a bill of sale. In the event that third parties, not subject to
25 this agreement, have equipment attached to the District’s pole, such thirty (30)
day period shall commence upon removal of third party attachments. Should
26 either Party perform any work for the other Party to facilitate completion of the
above work or in cases of emergency, such as transferring equipment, setting or
lowering poles, digging holes, hauling poles, etc., the Party for whom work was

1 performed shall pay, upon receipt of an invoice, the actual cost of such work.

2 **11. Section 10.4.**

3 This section should be revised to give Verizon 30 days notice before setting the pole. If
4 no communication is received from Verizon before the setting date then the District will assume
5 that there is no pole set location problem.
6

7 10.4 When a jointly used pole carrying underground conduit connections needs
8 to be replaced, **the District shall provide Verizon with thirty (30) days notice**
9 **of its intent and give Verizon an opportunity to respond with pole setting**
10 **concerns. Thereafter, the District shall set the new pole in a location mutually**
11 **agreed to by the Parties, or without communication from Verizon before the**
12 **setting date, set the new pole in to a location generally adjacent to the**
13 **previous hole.** The District shall reimburse Verizon its excess costs to modify
14 its facilities to attach to the replacement pole **if the District sets the new pole**
15 **before the notified pole setting date or in a new location that was not**
16 **mutually agreed upon before setting date,** except where the District replaced
17 the pole pursuant to a requirement of the requisite local governing body.

18 **12. Sections 10.5 and 10.6.**

19 The District does not perform joint pole test and treat inspections on other owners
20 poles.
21

22 **13. Section 12.2.**

23 This section retains vestiges of a reciprocal joint pole use agreement and not a license
24 agreement. On District owned joint use pole and anchoring systems the District will be the sole
25 determinor if the anchors are of sufficient capacity to allow Verizon to utilize and will assign an
26 annual rental charge as allowed in OAR 860-028-0110(4). The District grounds all of its guys to
the anchor and pole grounds. The requirement of insulated guys only should be removed.
District does not expect to nor is willing to use anchor systems installed by Verizon on the
District owned joint use poles.

27 12.2 When **in the sole opinion of the District** existing anchors are adequate in
28 size and strength to support the equipment of both Parties, **Verizon** may attach its
29 guys thereto **at an annual rental rate determined by Attachment A. The**

1 **District Guy and Anchor system are grounded and Verizon will be required**
2 **to ground the tail of its guy to the anchor and pole ground if the guy is not**
3 **insulated.** When **the District** anchors are not of adequate size and strength **and**
4 **Verizon is requesting to attach its guys, the District will install the required**
5 **anchors with adequate size for both Parties at Verizon expense.**

6
7
8 **14. Section 14.1.**

9 The existing 1987 Verizon-CLPUD agreement is still in effect and rental obligations of
10 the Parties are still in force and calculated in the methodology of that agreement.

11
12 **15. Section 15.2.**

13 Change 30 days to 45 days.

14 15.2 If either Party shall default in the performance of any work that it is
15 obligated to do under this Agreement, the other Party may elect to do such work,
16 and the party in default shall reimburse the other Party for the cost thereof within
17 **forty-five (45)** days after receipt of an invoice therefor.

18 Dated this ____ day of March, 2005.

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Charles M. Simmons, OSB No. 02455
Of Attorneys for Complainant
Central Lincoln People's Utility District

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I served a complete and true copy of the foregoing CENTRAL
3 LINCOLN PEOPLE’S UTILITY DISTRICT’S TECHNICAL COMMENTS REGARDING
4 COMMISSION’S PROPOSED CONTRACT on the following persons:

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17 by mailing a copy thereof contained in a sealed envelope, with postage paid, and deposited in the United
18 States Post Office in Newport, Oregon on the date set forth below.

19 Dated this 11th day of March, 2005.

20 _____
21 Peter Gintner, OSB No. 83211
Of Attorneys for Complainant

22 **Complainant:**
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