

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

DOCKET NO. UM 1191

QWEST CORPORATION,)	
)	
Complainant,)	DEFENDANT CEC'S
)	OPPOSITION TO PETITION
vs.)	TO INTERVENE BY BEND CABLE
)	AND CRESTVIEW CABLE
)	
CENTRAL ELECTRIC COOPERATIVE,)	
INC.,)	
)	
Defendant.)	
_____)	

**SUMMARY OF CEC'S OPPOSITION TO
PETITION TO INTERVENE**

Defendant Central Electric Cooperative ("CEC") hereby opposes the Petition to Intervene in PUC proceedings that has been filed herein by Bend Cable Communications and Crestview Cable Communications. The petitioners, like Qwest in this docket, are blatantly attempting to manipulate the Commission and PUC proceedings to gain leverage in petitioners' ongoing negotiations with CEC. Petitioners have failed to raise any valid issues or interests to justify their intervention in this proceeding.

1. Petitioners' Motion To Intervene Was Filed In Bad Faith Because Petitioners Are Still In Negotiations With CEC.

As described in the attached Affidavit of Counsel, CEC has been actively engaged in negotiations with petitioners over a new joint pole agreement. Petitioners have almost entirely failed to reciprocate CEC's efforts to negotiate. In July 2004, CEC provided petitioners with a new draft joint pole agreement to reflect current PUC rules and

regulations. Neither petitioner responded at all to either accept or negotiate the new agreement by the end of the year, even though petitioner Bend Cable had numerous illegal "bootleg" attachments to CEC poles that were brought to Bend Cable's attention. Despite the fact that petitioners ignored the agreement that CEC sent them in July 2004, CEC sent another revised agreement to petitioners in December 2004.

Bend cable finally acknowledged receipt of the new agreement and even requested a 30-day extension (which CEC granted) to their current agreement set to expire February 28th 2005, for the express purpose of allowing petitioners more time to negotiate with CEC and respond to the agreement CEC submitted. CEC's negotiations with petitioners was conducted in good faith, yet without warning Bend Cable and Crestview Cable filed their petition to intervene and have thereafter made no attempts at further negotiation with CEC, despite their assertions to the contrary in their Petition, and even though CEC has as recently as february 13th 2005 sent yet another proposed agreement to petitioners.

Petitioners have not even tried to create an illusion of negotiation, such as complainant Qwest tried to do in the weeks preceeding its PUC Complaint. Petitioners have consistently deflected CEC's attempts to negotiate a contract with CEC prior to filing their Petition. Petitioners even acknowledge in their Petition that their negotiations with CEC are not ripe for consideration by the PUC. The Petition is full of promises and speculation. For example, Bend Cable says it "will be entering into a new pole contract," Crestview believes that CEC "will propose" an unfavorable contract to Crestview, and CEC "may seek to impose on Petitioners the contract that results from this proceeding." The mere fact that Qwest has improperly filed a PUC Complaint as leverage against CEC in

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ongoing negotiations does not mean that petitioners can do the same thing and thereby avoid their own duties to independently negotiate with CEC.

2. Petitioners Cannot Intervene In PUC Proceedings To Extort A More Favorable Bargaining Position.

Bend Cable and Crestview Cable have failed to identify any legitimate issues they will raise by intervention in this docket. What petitioners really hope to do is to use the PUC and its proceedings as weight and leverage against CEC before they even enter negotiations with CEC. In paragraph 5 of their Petition, they say that they are qualified to intervene because the issues they intend to raise will be the same as those raised by Qwest, namely, to set rates and conditions for petitioners' joint pole agreement. (See Qwest Complaint filed herein). In the very same paragraph, petitioners contradict themselves by denying that their Petition amounts to an attempt to "negotiate their own contracts directly in this proceeding." Petitioners then threaten in their footnote that they will further burden the PUC by filing a separate PUC action against CEC if petitioners cannot negotiate an agreement with CEC. Bend Cable and Crestview Cable have therefore failed to identify any valid reasons for intervention. Like Qwest, petitioners are merely attempting to prematurely use the PUC to do their negotiate for them.

3. Petitioners Are Not Sufficiently Interested To InterveneHave Failed To Identify Any Issues It Will Raise By Intervention.

Under OAR 860-012-0001, a petitioner must not only allege the issues that it intends to raise by intervention (petitioners have failed to do so), it must also be sufficiently interested in the PUC proceedings and must not seek to broaden the issues, burden the

record, or delay the proceedings. Petitioners have claimed that they do not seek to use PUC proceedings as their forum for entering negotiations with CEC. At the same time, petitioners have not clearly identified how they could aid these proceedings. Their assertion that they are differently situated than Qwest undermines their unconvincing claim that they will not broaden the issues before the PUC. Petitioners' admission that they have not even started to negotiate their new contracts with CEC and might file separate PUC proceedings undermine their claims that they belong in these proceedings and will not unduly delay them. Finally, it goes without saying that just because counsel for petitioners may be experienced in PUC proceedings does not mean that petitioners have a sufficient interest to warrant intervention.

CONCLUSION

CEC has attempted to negotiate in good faith with petitioners. Petitioners have ignored negotiation with CEC and are now blatantly attempting to use the PUC and this proceeding as a negotiating tool. The Commission should reject the Petition to Intervene because petitioners are not sufficiently interested in these proceedings and are attempting to intervene for an improper purpose.

DATED this 23rd day of February, 2005.

FRANCIS HANSEN & MARTIN, LLP

/s/ Martin E. Hansen
Martin E. Hansen, OSB #80052
Of Attorneys for Plaintiff

CERTIFICATE OF TRUE COPY

I hereby certify that the foregoing **OPPOSITION TO PETITION TO INTERVENE** is a true, exact and full copy of the original thereof.

DATED: February 23, 2005

Martin E. Hansen, OSB #80052
Of Attorneys for Defendant
Central Electric Cooperative, Inc.

CERTIFICATE OF MAILING

I certify that I served the foregoing document(s) by fax and by depositing a true, full and exact copy thereof in the United States Post Office at Bend, Oregon, on February 23, 2005, enclosed in a sealed envelope with postage thereon, addressed to:

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/s Martin E. Hansen
Martin E. Hansen, OSB #80052
Of Attorneys for Defendant
Central Electric Cooperative, Inc.

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

DOCKET NO. UM 1191

QWEST CORPORATION,)
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 Complainant,)
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 vs.)
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 CENTRAL ELECTRIC COOPERATIVE,)
 INC.,)
)
 Defendant.)
 _____)

**AFFIDAVIT OF CEC COUNSEL
MARTIN E. HANSEN IN
OPPOSITION TO PETITION TO
INTERVENE BY BEND CABLE
AND CRESTVIEW CABLE**

STATE OF OREGON)
) ss.
 County of Deschutes)

I, Martin E. Hansen, am the attorney for Central Electric Cooperative.

1.

In July 2004, Central Electric Cooperative delivered to Crestview Cable and Bend Cable a new joint pole agreement for use by these companies in their pole attachments with CEC. The new joint pole agreement was drafted to take into account the current PUC rules and regulations for joint pole agreements.

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2.

Neither Bend Cable nor Crestview Cable responded in any fashion to receipt of the joint pole agreement. Neither company made any effort to contact CEC to attempt to sign or negotiate those contracts. By the end of the year CEC had heard nothing from either company concerning these contracts.

3.

In the end of 2004, CEC identified a substantial amount of bootleg attachments put on CEC's facilities by Bend Cable. Only after those bootlegs were brought to the attention of Bend Cable did Bend Cable even acknowledge that they had received, though ignored, the joint pole agreement submitted to them in July of 2004.

4.

In December 2004, CEC made revisions to the joint pole agreement based on input from various sources, including other companies utilizing CEC's facilities. That agreement was submitted to Bend Cable and Crestview Cable. Comments were received back from Bend Cable (but no comments were received from Crestview Cable).

5.

Bend Cable's pole attachment permit with CEC was scheduled to expire at the end of February 2005. Bend Cable, through their attorney, asked CEC for an extension of thirty (30) days to allow further communications and negotiations on the joint pole agreement. CEC immediately granted Bend Cable's request and gave them the thirty-day extension that they requested. That extension took place during the week of January 31, 2005.

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6.

Part of the reason for the extension granted to Bend Cable was the PUC's ruling that had come out on January 19, 2005 in the Verizon v. CLPUD case.

7.

CEC was making revisions to its joint pole agreement to acknowledge the PUC ruling in the Verizon case when, without warning, Bend Cable and Crestview Cable petitioned to intervene in the current case

8.

Both Bend Cable and Crestview Cable are aware that CEC has been negotiating a joint pole agreement in good faith. However, as Qwest had done previously, Bend Cable and Crestview Cable are now attempting to abuse the PUC process by filing this petition to intervene in a case when they have no basis.

9.

The petition to intervene filed by Bend Cable and Crestview Cable acknowledges that CEC and these companies are still negotiating a joint pole agreement. Given that acknowledgement, their attempt to intervene in the Qwest Corporation case is simply an improper utilization of the PUC process. Bend Cable and Crestview Cable are potentially attempting intimidate CEC through this petition process so they can obtain a more favorable joint pole agreement.

10.

CEC wishes in fairness to reach the same joint pole agreement with all of the companies utilizing their facilities. We are striving to take into account not only the comments of the various participants in our joint pole system but also the PUC rulings that

have come out in mid-January. To that effect, CEC drafted a joint use agreement that reflected these factors, and sent it to Bend Cable, Crestview, Qwest, and other companies who have attached to CEC's property. The Agreement that Bend Cable and Crestview received this month is attached hereto as Exhibit 1. The cover letters that accompanied the agreements sent out on the same day to petitioners and Qwest are attached hereto as Exhibits 2 and 3.

11.

In light of the ongoing negotiations between CEC and Bend Cable and CEC and Crestview Cable, the Petition to Intervene by Bend Cable and Crestview Cable should be dismissed by the PUC as it is without basis and obviously on its face filed in bad faith. The PUC should not tolerate this abuse of the PUC system.

DATED this 14th day of February, 2005.

FRANCIS HANSEN & MARTIN, LLP

 /s Martin E. Hansen
Martin E. Hansen, OSB #80052
Of Attorneys for Plaintiff

SUBSCRIBED and sworn to before me this ____ day of February, 2005.

Notary Public for Oregon
My Commission Expires: _____

Final
2/11/05

POLE ATTACHMENT LICENSE AGREEMENT

This pole license Agreement made and entered into the ____ day of _____, 20__, by and between Central Electric Cooperative, an Oregon Cooperative Corporation, with its principal place of business at _____ (hereinafter called "Licensor"), and _____, with its principal place of business at _____ (hereinafter called "Licensee").

RECIPROCAL AGREEMENT

Any occupancy by the Cooperative on the facilities of the Licensee shall be governed by the terms and conditions of this Agreement as though the Cooperative was the Licensee and the Licensee was the Cooperative.

Witnesseth

Whereas, Licensor owns, operates and maintains lines of poles extending in Deschutes, Crook, Jefferson, Grant, Lake, Wasco and Linn Counties, in the state of Oregon; and

Whereas, Licensee desires to place certain lines, attachments and apparatus, hereinafter called "Attachments" on certain poles of Licensor, for the limited purpose of furnishing lawful telecommunications or electrical services in compliance with any and all local, state or federal regulations; provided, that Licensor may only deny access to poles where there is insufficient capacity or for the reasons of safety, reliability and generally applicable engineering purposes.

Whereas, Licensor is willing to permit Licensee, to the extent it may lawfully do so, to place Attachments on said poles, on a non-exclusive basis, in the area shown on Exhibit "A" attached hereto and made a part hereof;

Now, therefore, in consideration of the mutual covenants, terms and conditions herein contained the parties hereto, for themselves, their successors and assigns, do hereby covenant and agree as follows:

1. Definitions:

- (a) **Agreement:** This Pole Attachment License Agreement entered into between Licensor and Licensee is for the area specified in Exhibit A1 and in any area where Licensee attaches its equipment to poles owned by Licensor.
- (b) **Application:** A written and/or electronic request by Licensee for a permit to attach to Licensor's pole.
- (c) **Basic Pole:** A Basic Pole shall be defined as the average height of all of Licensor's poles as calculated by Licensor on January 1 of each year.

- (d) **Equipment**: The wires and facilities that the Licensor may give Licensee written and/or electronic permission to install on a pole.
- (e) **Inspection**: The examination by Licensor of Licensor's pole or poles occupied by Licensee and any of Licensee's Attachments or equipment situated upon or in the vicinity of such poles for the purpose of i) verifying the number and location of all Attachments and any other pole-mounted equipment of Licensee, or ii) determining whether Licensee is in compliance with the requirements and specifications of Section 3 or any other obligations of Licensee under the terms of this Agreement.
- (f) **Joint Use Pole**: A pole owned and maintained by the Licensor and used jointly by the Licensee.
- (g) **National Joint Utility Notification System ("NJUNS")**: NJUNS is the electronic system used by Licensor that Licensee will utilize to submit applications for permission to affix, relocate, or remove equipment or Attachments under the terms of this Agreement, and to respond to Licensor upon a request for work to be performed by Licensee. It is also the system that Licensor will utilize to initiate pole transfers, and to respond to Licensee's applications.
- (h) **Party**: The Licensor or Licensee as the context requires. "Parties" means the Licensor and Licensee
- (i) **Permit**: Licensor's written and/or electronic approval of a pole attachment application as set forth in Section 4.
- (j) **Pole**: A utility pole owned and maintained solely by Licensor.
- (k) **Pole Attachment**: An Attachment by the Licensee to Licensor's pole.

The type of Attachments requiring an application and permit include but are not limited to the following:

- Initial bolt Attachment inside the telecommunication space
- Additional bolt Attachments or other facilities attached to the pole

- (l) **Pole Attachment Survey**: The Inspection by Licensor of all or any number of Licensor's poles in the area covered by this Agreement.
- (m) **Sanction**: A financial penalty as set forth by the then existing Oregon Public Utilities Commission ("OPUC") regulations.
- (n) **Telecommunication Space**: Space on the pole between 20 and 23 feet on the pole unless otherwise agreed upon by Licensor and Licensee.

2. **Term of Agreement:**

This Agreement shall remain in full force and effect for a term of five (5) years, unless and until either Licensor or Licensee terminates it upon one hundred eighty (180) days' notice to the other party. Notice shall be in writing and mailed by certified mail, return receipt requested, postage prepaid, or delivered by a reputable overnight courier with tracking capabilities, addressed to the parties as indicated in Section 24 of this Agreement. If this Agreement is terminated, Licensee shall remove all of its Equipment from the Licensor's poles within one (1) year after termination of this Agreement. During the one (1) year removal period, all of the applicable provisions of this Agreement, specifically including the payment of rent for joint use poles, shall remain in full force and effect with respect to any and all Equipment of Licensee remaining upon Licensor poles until such time as all such Equipment has been removed. Any attachments that remain after the one (1) year removal period expires shall be deemed to be attachments without a pole attachment agreement and shall be subject to the sanctions provided in the then existing OPUC regulations.

3. **Specifications:**

- (a) The specifications of the Licensor and Licensee for the construction, operation, and maintenance of its poles and other facilities that are jointly used, or involved in joint use, shall be in accordance with accepted modern practices and shall be no less stringent than the requirements of the National Electric Safety Code (NESC), provided that in the event a lawful requirement of any governmental authority or agency having jurisdiction may be more stringent, the latter will govern. Modification of or additions to the construction practices supplementing the requirements of the NESC, set out in Exhibit "B" attached hereto and made a part of, will also govern the joint use of poles.
- (b) In the event that the above-referenced specifications should change, Licensee agrees to make such changes or alterations in its new facility installations or during maintenance of its existing facilities as may be required in order to fully comply with the provisions of such notice. Licensee agrees to make all required changes or alterations on new installations, and existing attachments shall be brought into conformity at the time of their normal replacement, rearrangement, rebuilding, or reconstruction unless otherwise specified by a lawful requirement.
- (c) Licensee's attachments on a Licensor-owned pole shall be made and maintained in accordance with a reasonable aesthetic criteria mutually agreed to by both parties. Such aesthetic criteria shall apply without being limited to the type and design of the Attachment, Equipment, conductor or cable sags, and service drop arrangements within the provisions of Section 3 (a).

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- (d) No tag, brand or other device showing Licensee's name or insignia shall be placed on, or attached to, any pole of Licensor, except such tag or insignia which shows Licensee to be the Licensee or lessee of such pole and not the owner thereof, and then only after obtaining the written consent of Licensor. Where required by the Licensor, the Licensee agrees to attach information identifying its facilities on the pole, in a format specified by the Oregon Joint Use Association (OJUA).
- (e) The strength of poles covered by this Agreement shall be sufficient to withstand the transverse, vertical and longitudinal loads imposed upon them under the storm loading requirements of the NESC assumed for the area in which they are located.
- (f) Any unbalanced loading of Licensor's pole caused by the placement of Licensee's Equipment shall be properly guyed and anchored by Licensee, at no expense to Licensor. Licensee shall attach its guys only to its own anchors unless otherwise agreed to by Licensor.
- (g) When, in the opinion of Licensor and Licensee, existing anchors are adequate in size and strength to support the equipment of both Parties the Licensee may attach its guys thereto at no additional cost. To prevent galvanic corrosion of anchor rods, all down guys should be insulated. All guys attached to a Licensor anchor shall be insulated. When anchors are not of adequate size and strength, the Licensee shall at its own expense place additional anchors or replace existing anchors with anchors adequate in size and strength.

4. Application for Attachment

(a) Permit Application

Licensee shall not attach or modify any of its pole Attachments (except for service drops) to Licensor's poles or joint use poles without first having made written and/or electronic application to Licensor and having received written and/or electronic permission from Licensor, or had the application deemed approved by Licensor's failure to respond to Licensee's application as set forth in Subparagraph

(b). Permission to make pole Attachments described in the application may be granted or denied by Licensor. Licensee must apply for a permit within seven (7) days of the attachment of a service drop and install the service drop in compliance with the OPUC Safety Rules.

(b) Application Procedure

Until further notice, whenever Licensee desires to attach to any Licensor pole, Licensee shall submit to Licensor a "Pole Attachment Ticket" electronically via the NJUNS and/or written permit application and shall specify the location and identifying number for the pole(s) on which attachment is requested, the amount of vertical space required, and the number of Attachments for each pole. Licensor

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shall have the authority to deny applications for attachment to its poles where there is insufficient capacity, or for reasons of safety, reliability, and generally applicable engineering purposes. Notwithstanding the foregoing, Licensor may reserve space on its poles if it projects a need for that space for its own use in the future. Licensor shall permit use of its reserved space until such time as it has an actual need for that space. At that time, Licensor may recover the reserved space for its own use, upon giving Licensee 180 days notice, and Licensee shall be required to remove its attachments at Licensee's cost. Licensor shall give Licensee the opportunity to pay for the cost of any reasonable modifications necessary to accommodate Licensee's displaced attachments. Licensor shall respond to Licensee's application within thirty (30) days of receipt. Licensor shall notify the Licensee in writing and/or electronically via NJUN's of its decision on the application. If the application is approved, the Licensee shall have the right hereunder to affix such Attachments in accordance with the application, as approved, and in compliance with the specifications, terms and conditions of this Agreement. If notice is not received from the Licensor within thirty (30) days, the application shall be deemed approved and Licensee may proceed with the Attachment(s). If Licensor is reserving space for future use then it may grant Licensee a conditional approval subject to Licensor's right to recover the space for its own use in the future. If the application is denied then Licensor shall provide Licensee with a written denial describing with specificity all relevant evidence and information supporting the denial and how such evidence and information relates to the lack of capacity, safety, reliability, or generally applicable engineering standards.

(c) **Application Planning**

Each application shall involve sufficient engineering and planning by the Licensee to ensure compliance with standards identified in Section 3(a) of this Agreement during construction and upon completion. The Licensee is responsible for conducting engineering studies of Licensee's facilities to ensure proper spacing, equipment bonding and clearances. The Licensor shall be responsible for engineering studies of pole and down guy strength requirements for horizontal and vertical loading. The Licensor may elect in writing to allow the Licensee to conduct pole, down guy and strength studies.

The application shall include sufficient design drawings and specifications so that qualified personnel can safely make the Attachments in compliance with the NESC and this Agreement. It is the responsibility of the Licensee to ensure that only trained, qualified persons work on Licensor's facilities. Qualified persons shall be knowledgeable in applicable NESC rules and must be able to demonstrate competence as required by the NESC. They shall also be trained to recognize and prevent NESC violations and conflicts, and to maintain safe working clearances from energized lines and equipment. Upon completion of the installation, the

Licensee shall give written or electronic notification to the Licensor that the facilities are complete.

(d) **Installation Time Limits**

Licensee shall complete the installation of its Attachment(s) upon the pole(s) covered by each approved individual application within ninety (90) days of such approval. Licensee may request, in writing, an extension of time for installation of large projects subject to written approval by Licensor. Licensor shall approve such requests unless it identifies a reasonable justification for denial of such requests. In the event Licensee should fail to complete the installation of the Attachment(s) within the prescribed time limit, including any extensions which were granted, the permission granted by Licensor to place the Attachment(s) upon the pole(s) shall thereupon be automatically revoked and Licensee shall not have the right to place the Attachment(s) upon the pole(s) without first reapplying for and receiving written and/or electronic permission to do so.

(e) **Make-ready Pole Replacements**

Whenever any pole to which Licensee seeks attachment must be modified or replaced to accommodate Licensee's Attachments and Licensor's existing Facilities, as well as the Attachments of other occupants, Licensor will provide Licensee with a detailed cost estimate of make-ready work it believes to be necessary to prepare the pole for Licensee's facilities. Licensor will provide Licensee with such estimate within sixty (60) days of receiving Licensee's application for Attachment. After receiving this estimate, if Licensee still desires to make such Attachments, Licensee shall notify Licensor within ninety (90) days of receiving such estimate of such continuing desire to attach, and shall pay to Licensor any required advance payment for such make-ready work, which may include engineering, materials (including poles and associated hardware), cost of removal (less any salvage value), and the expense of transferring Licensor's facilities from the existing to the new pole(s). Where the advance payment of estimated expenses made to Licensor by Licensee for both non-replacement make-ready or pole replacement work is less than the actual cost of work described above, Licensee agrees to pay Licensor all sums due in excess of the amount of the advanced payment within thirty (30) days from receipt of the invoice. Where the advanced payment of estimated expenses made to Licensor by Licensee exceeds such actual costs, Licensor agrees to refund the difference to Licensee within sixty (60) days of completion of the make ready work. The Licensee shall also make satisfactory arrangements with the owner or owners of other facilities attached to said pole(s) for the transfer or rearrangement of such other facilities.

(f) **Cost Allocation Among Multiple Users**

When applications to occupy the same pole(s) have been received from two or more prospective occupants, including Licensee, before a permit is granted, and, if to accommodate their respective Attachments on the pole it would be necessary to rearrange existing Attachments or replace the pole, the applicable costs of rearrangement or replacement incurred in conjunction with such simultaneous applications shall be pro-rated equitably among such simultaneously attaching parties. In this context, "simultaneous" refers to all pending applications.

(g) **Non-Interference with Licensor Facilities**

Licensee at all times shall insure that its agents, servants, employees, and contractors or contractors' employees neither take, nor attempt to take any action whatsoever to Licensor's facilities attached to or supported by poles covered by this Agreement. Each party shall exercise reasonable precautions to avoid damage to the facilities of the other. Licensor at all times reserves the right to maintain and operate its own equipment in such a manner as will best enable it to fulfill its own service requirements and such requirements shall have priority over all pole occupants.

(h) **Right-of-way Clearing and Tree Trimming**

Licensor has established a regular and routine procedure for trimming trees or removing trees with inadequate clearance to conductors, poles and equipment. Licensee shall be responsible for tree trimming, right-of-way clearing and debris removal necessary for installation and safe clearance from its cable, Equipment or conductors as mandated by the NESC and OPUC. In the event that Licensee is unable or fails to perform the necessary clearing and tree trimming in the communication space and Licensee has obtained all necessary easements, permits and rights-of-way to attach to Licensor's poles, Licensor will perform the necessary right-of-way clearing and tree trimming. In such case, Licensee agrees to pay Licensor 100% of the tree trimming and debris removal costs necessary in the communication space for each pole and the wire in its backspan on which Licensee attaches its facilities plus administrative costs. The costs for tree trimming, debris removal and administrative costs conducted on behalf of Licensee by Licensor shall be paid by Licensee within thirty (30) days from receipt of the invoice. In the event there is more than one Licensee attaching to a specific pole, then the tree trimming costs for that pole shall be divided equally among the number of Licensees attaching to that pole.

(i) **Pole Ownership**

All poles on which Attachments are made under this Agreement shall remain the property of the Licensor, and any payments made by the Licensee for changes in

pole lines under this Agreement shall not entitle the Licensee to ownership of any of said poles except for those poles abandoned by Licensor as outlined in Section 13.

5. Inspections and Pole Attachment Survey

(a) Inspections

Licensor shall have the right to perform an Inspection of each installation of Licensee's Attachments and other Equipment, upon and in the vicinity of, Licensor's poles at any time. The Licensor may charge Licensee for the pro-rata expense of any non-routine Inspections during or after installation, in connection with Attachments that do not comply with the terms of this Agreement. The Licensor shall recover the costs for all periodic, routine Inspections that benefit Licensee in the annual rent. Such inspections, whether made or not, shall in no manner relieve the Licensee of any responsibility, obligation, or liability assumed under this Agreement or arising otherwise.

(b) Pole Attachment Survey

Licensor may conduct a Pole Attachment Survey at any time after the effective date of this Agreement and not more often than once every third year subsequent to each such Pole Attachment Survey. Licensor shall give Licensee at least thirty (30) days prior written notice of such Pole Attachment Survey. Licensee shall advise Licensor if Licensee desires to be present during the survey within thirty (30) days of such notice. The Licensor and Licensee shall jointly select an independent contractor for conducting the inventory and agree on the scope and extent of the Pole Attachment Survey that is reimbursable by Licensee. The cost of the Pole Attachment survey shall be recovered by Licensor in the annual rent. The Contractor shall provide Licensor and Licensee with a report of such Pole Attachment Survey within a reasonable time after its completion. The survey data from Licensor's Pole Attachment Survey shall be used to update Licensor's Attachment billing records where applicable. Licensee shall make any objections to the inventory data within sixty (60) days of mailing of the Pole Attachment Survey report or such objections shall be waived. Objections raised to inventory data from a Pole Attachment Survey shall not relieve Licensee of the obligation to pay undisputed amounts when due, as set forth in this Agreement. The Licensor and Licensee agree to cooperate in good faith to resolve any disputed amounts.

6. **Safety**

(a) **Licensee Practices**

Licensee shall have written practices that address construction standards to be followed in attaching facilities to Licensor's poles. The standards should specify any obligations that exceed NESC regulations. These standards shall be made readily available to Licensor.

(b) **Conflicts with Electric Lines**

Licensor shall provide Licensee written notice of any NESC or safety violations it discovers. NESC violations and conflicts to electric lines shall be corrected by Licensee within the time frame required by the OPUC, if Licensee created the violation. In some instances, the NESC requires that qualified electrical workers perform the work. In that event, Licensee shall either have qualified contractors perform the work or pay Licensor to perform the work. Licensee may also be subject to OPUC sanctions for failure to comply with OPUC safety rules. Failure by Licensee to act in a prompt and responsible manner may result in the Licensor taking appropriate measures to correct the safety violations involved and Licensee shall be responsible for the cost thereof. In such cases, the inspection, design, repair, and coordination charges shall be borne by Licensee if it failed to perform necessary duties required by OPUC and shall pay the cost within thirty (30) days from receipt of the invoice.

7. **No Warranty:**

The Licensor does not warrant or assure to Licensee any right-of-way privilege or easements or that Licensor owns a property right that permits attachment, and if the Licensee shall at any time be prevented from placing or maintaining its Attachment on Licensor's poles or joint poles, no liability shall attach to Licensor. Each party shall be responsible for obtaining its own permits, easements and right-of-way.

8. **Maintenance of Poles, Attachments and Right-of-Way:**

(a) The Licensor shall, at its own expense, inspect and maintain the poles in accordance with industry practices and the specifications outlined in Section 3, and shall replace, reinforce or repair such poles as are determined to be defective.

(b) Except as otherwise provided in subparagraph (c) of this Section, Licensee shall at all times maintain all of its Attachments in accordance with the specifications outlined in Section 3 and shall keep them in good repair. All necessary right-of-way maintenance, including tree trimming or cutting, shall be borne by the parties as provided in Section 4(h).

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- (c) Any existing joint use construction that does not conform to the specifications outlined in Section 3 shall be brought into conformity as outlined in Section 3 except for identified NESC or OPUC violations which must be corrected in the time frame specified by the OPUC. When such existing construction shall have been brought into conformity with said specifications, it shall at all times thereafter be maintained as provided in (a) and (b) of this Section. Should Licensee fail to comply, the Licensor may elect to do such work and the Licensee shall pay the Licensor the cost within thirty (30) days from receipt of the invoice.
- (d) Licensee expressly assumes responsibility for determining the condition of all poles to be climbed by its employees, contractors, or employees of contractors. Licensor disclaims any warranty or representation regarding the condition and safety of the poles of the Licensor. Licensor agrees that, upon written notification, it will replace any pole deemed to be unserviceable within a reasonable time or as specified in OPUC requirements.

9. Recovery, Rearranging or Relocation of Facilities:

- (a) Once Licensee has an approved permit to attach to Licensor's pole, any pole replacement costs due to additional space requirements will be borne by the requesting party, not the Licensee.
- (b) In any case where facilities of Licensor are required to be rearranged on the poles of the Licensor to accommodate the Attachments of Licensee, Licensee shall pay to Licensor the total costs incurred by Licensor in rearranging such facilities in advance of construction. The Licensee shall also reimburse other users of the poles of Licensor for their costs of rearrangement to provide space or clearance for the facilities of Licensee.
- (c) Whenever it is necessary to replace or relocate a jointly used pole, the Licensor shall give notice in writing and/or electronic means except in the case of an emergency, when prior notice may not be possible (but will subsequently be confirmed as reasonable). Licensee shall, at the time so specified by the Licensor, transfer its Attachments to the new or relocated joint pole at the time specified for such transfer of Attachments, the Licensor may elect to do such work, and the Licensee shall pay the Licensor the cost within thirty (30) days from receipt of the invoice. In the event the Licensee fails to transfer its Attachments and the Licensor does such work, the Licensor shall not be liable for any loss or damage to the Licensee's facilities that may result and Licensee shall become liable for any abandoned poles as per Section 13.

10. Indemnification and Insurance:

- (a) Licensee agrees to indemnify and hold harmless Licensor, its directors, officers, employees and agents against and from any and all claims, demands, suits, losses,

EXHIBIT 1

costs and damages, including attorneys' fees, for or on account of bodily or personal injury to, or death of, any persons(s), including without limitation Licensor's employees, agents, representatives and subcontractors of any tier, or loss of or damage to any property of Licensor, or any third party, to the extent resulting from any negligent act, omission, or fault of Licensor, its employees, agents, representatives, or subcontractors of any tier, their employees, agents, or representatives, in the exercise, performance or nonperformance of Licensor's rights or obligations under this Agreement. Except for liability caused by the negligence of Licensee, the Licensor shall also indemnify and hold harmless Licensee from and against any and all claims, demands, suits, losses, costs, and damages, including attorneys' fees, arising from any interruption, discontinuance, or interference with the Licensor's service to its customers which may be caused, or which may be claimed to have been caused, by any action of Licensee pursuant to or consistent with this Agreement.

- (b) The indemnifying Party shall have the right, but not the obligation, to defend the other regarding any claims, demands or causes of action indemnified against. Each Party shall give the other prompt notice of any claims, demands or causes of actions for which the other may be required under this Agreement. Each Party shall fully cooperate with the other in the defense of any such claim, demand or cause of action. Neither shall settle any claim, demand or cause of action relating to a matter for which such Party is indemnified without the written consent of the indemnitor.
- (c) Licensee shall carry and keep in force, while this Agreement is in effect, insurance contracts, policies and protection in company or companies in amounts and for coverage deemed necessary for its protection by Licensee, but in no event for amounts or coverage less than the following minimum requirements:
1. Licensee shall also carry and keep in force, while the Agreement is in effect, workers' compensation insurance in compliance with the laws of the state of Oregon and employers' liability insurance with minimum limits of \$10,000,000 per accident.
 2. Licensee shall furnish Licensor with certificates of insurance showing that such insurance is in force and will not be canceled or materially modified without thirty (30) days prior written notice to the Licensor. Neither acceptance nor knowledge (by and of Licensor) or the procurement of Licensee of insurance protection of lesser scope than that required to be procured by them under this Agreement shall in any manner or for any purpose constitute or be deemed a waiver by Licensor of the requirements imposed respecting insurance protection, nor shall any such acceptance or knowledge of insurance protection of lesser scope in any manner or for any purpose lessen or modify or constitute a limiting interpretation of the scope of the matters covered by and obligations of Licensee under this Agreement.

11. Breach and Remedies

- (a) If Licensee shall default in any of its obligations under this Agreement and such default continues thirty (30) days after notice thereof has been provided to the Licensee, the Licensor may exercise any of the remedies available to it. The remedies available to Licensor shall include, without limitation: (i) refusal to grant any additional joint use to Licensee until the default is cured; (ii) termination, without further notice, of this Agreement as far as concerns the further granting of joint use; (iii) litigation for injunctive relief; (iv) litigation for damages and costs; (v) substitute performance as provided in Section 11 (b); termination of the entire agreement upon 180 days notice as provided in Paragraph 2 with removal of all contracts; and (vi) litigation to recover sums due.
- (b) If Licensee shall default in the performance of any work that it is obligated to do under this Agreement, Licensor may elect to do such work, and the Licensee shall reimburse the other Party for the cost thereof within thirty (30) days from receipt of the invoice.
- (c) In the event Licensor is required to bring suit for the collection of amounts due or the enforcement of any right hereunder, the Licensor shall be entitled to recover its reasonable attorney's fees and costs, including attorney's fees and costs at trial, on appeal, arbitration, mediation or any appearances before the OPUC.
- (d) Notwithstanding the aforementioned remedies, appropriate representatives of the Parties shall meet promptly upon request and attempt in good faith to resolve disputes that arise concerning this Agreement. If the Parties are unable to reach a resolution themselves, a Party may, by written notice, request the other Party to agree to an alternative dispute resolution procedure (e.g. non-binding mediation, binding arbitration) for the dispute, and the other Party shall respond in writing within ten (10) working days.

12. Licensee's Pole Attachment Removal

- (a) Licensee may at any time remove its Attachments from any of Licensor's poles and, in each case Licensee shall immediately notify Licensor through electronic notification via NJUNS of such removal. Removal of the Attachments from any pole shall constitute a termination of Licensee's right to use such pole. Licensee will not be entitled to a refund of any rental on account of any such removal. When Licensee performs maintenance to or removes or replaces its equipment on Licensor's pole, Licensee must chemically treat all field drilled holes and plug any unused holes, including those resulting from removal of equipment. If Licensee fails to adequately plug and treat such holes, Licensor may do so at Licensee's sole risk and expense and Licensee shall pay the cost to Licensor within thirty (30) days from receipt of the invoice.

- (b) In the event that Licensee shall fail to make any change in its plant required by Licensor or shall fail to remove any Attachments upon cancellation of any specific permit or upon termination of this Agreement, Licensor shall have the right to make such changes or effect such removals and shall pay the cost to Licensor within thirty (30) days from receipt of the invoice.
- (c) If Licensee shall make default in the performance of any work which it is obligated to do under this Agreement, Licensor may elect to do such work, and Licensee shall reimburse Licensor for the actual cost thereof within thirty (30) days from receipt of the invoice.

13. Abandonment of Joint Use Poles:

If Licensor desires at any time to abandon any joint use pole, it shall give Licensee notice to that effect. If, after said notice, Licensor shall have no Equipment on such pole but Licensee shall not have removed all of its Attachments, such pole shall immediately become the property of Licensee, and Licensee shall hold harmless the Licensor from every obligation, liability, or cost, and from all damages, expenses or charges incurred thereafter, arising out of, or because of, the presence of or the condition of such pole or any Attachments.

If the Licensor abandons the pole and relocates facilities underground, the Licensor shall request that the Licensee also relocate facilities underground or shall abandon the vacated pole to the Licensee. This Agreement would be negotiated on a case-by-case basis.

14. Rental Charges and Rates:

- (a) On or about January 1 of each year, the Licensor shall make a tabulation of the total number of its jointly occupied poles, or on which Licensee has specifically reserved space, as of December 31 of the prior year. For the purpose of the tabulation, any Licensor-owned pole which is used by Licensee for the purpose of attaching Equipment thereto, shall be considered a joint pole and subject to rental fees. Rental fees will not be prorated for Equipment which occupies a pole for less than the full one-year period.
- (b) Within sixty (60) days after completion of the tabulations referred to in Section 14 (a), the Licensor shall invoice the Licensee for the rental amount owing, as calculated in accordance with the then existing OPUC Administrative Rules. Payment of the invoiced amount shall be made within thirty (30) days from receipt of the invoice and shall constitute payment for rental for the prior 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.

EXHIBIT 1

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- (c) Compensation payable by third parties for the joint use of poles shall be collected and retained by the Licensor.
- (d) If Licensee attaches Equipment to a pole without obtaining prior authorization from Licensor in accordance with this Agreement, Licensor may levy sanctions against the Licensee as specified in OPUC Administrative Rules then in effect including but not limited to those then existing OPUC regulations. The unauthorized attachment charge shall be payable to the Licensor within thirty (30) days from receipt of the invoice for that charge. Past due unauthorized attachment charges shall bear interest at the lesser of the maximum rate permitted by applicable law or 18 percent per annum compounded daily.
- (e) In the event that Licensee requires a source of electrical energy for power supply to its equipment which constitutes a part of the licensed pole Attachment and apparatus, such energy will be supplied by Licensor in accordance with the provisions of its standard service extension policies and approved rates and tariffs.

15. Defaults:

- (a) If Licensee shall fail to comply with any of the provisions of this Agreement or should default in any of its obligations under this Agreement, and shall fail within thirty (30) days after written notice from Licensor to correct such noncompliance or default, Licensor may, at its option, and without further notice, declare this Agreement to be terminated in its entirety, or may terminate the permit covering the pole or poles in respect to which such default or noncompliance shall have occurred. In case of such termination, no refund of accrued rental shall be made.
- (b) If Licensee shall make default in the performance of any work which it is obligated to do under this Agreement, the Licensor may elect to do such work, and the Licensee shall pay to the Licensor for the cost within thirty (30) days from receipt of the invoice.

16. Sanctions:

The Licensor may levy sanctions against the Licensee for unauthorized Attachments or for other violations of the duties of pole occupants as specified in OPUC Administrative Rules including but not limited to those then existing OPUC regulations.

17. Rights of Other Parties:

Nothing herein shall be construed to limit the right of Licensor, by contract or otherwise, to confer upon others, not parties to this Agreement, rights or privileges to use the joint use poles covered by this Agreement.

18. Survival of Certain Obligations:

Any termination of this Agreement in whole or in part shall not release Licensee from any liability or obligations hereunder, whether of indemnity or otherwise, which may have accrued or which may be accruing or which arises out of any claim that may have accrued or be accruing at the time of or prior to termination. However, the survival of certain obligations after this Agreement is terminated shall not relieve Licensee from OPUC sanctions for attachments without a pole attachment agreement.

19. Waiver of Terms or Conditions:

The failure of either party to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but such conditions and terms shall be and remain at all times in full force and effect.

20. Supplemental Agreements:

This Agreement may be amended or supplemented at any time upon written Agreement by the parties hereto. Should an amendment or supplement become necessary, the party desiring such amendment or supplement shall give thirty (30) days written notice to the other party setting out in detail the changes or additions desired.

21. Payment of Taxes:

Each party shall pay all taxes and assessments lawfully levied on its own property upon said jointly used poles, and the taxes and the assessments which are levied on said joint use poles shall be paid by the Licensor thereof, but any tax, fee or charge levied on Licensor's poles solely because of their use by the Licensee shall be paid by Licensee.

22. Interest and Payments:

Past due amounts shall bear interest at the lesser of the maximum rate permitted by applicable law or 18 percent per annum compounded daily.

23. License Only:

No use, however extended, of any of the facilities under the Agreement shall create or vest in Licensee any ownership or property rights therein, but Licensee's rights therein shall be and remain a mere license.

24. Notices:

Any notice, request, consent, demand or statement which is contemplated to be made upon either party by the other party under any of the provisions of this Agreement, shall be in writing and shall be treated as duly delivered when it is either (a) personally delivered to the office of Licensor in the case of a notice to be given to Licensor, or personally delivered to the office of Licensee in the case of a notice to be given to Licensee, or (b) deposited in the United States mail, postage prepaid and properly addressed to the party to be served as follows:

- (i) If notice is to Licensor,
 Central Electric Cooperative, Inc.
 P.O. Box 846 or 2098 N. Hwy 97
 Redmond, Oregon 97756

If a provision of this agreement allows notice by electronic means then notice may be given to Licensor, only for purposes of the provision allowing electronic notice, at:

email or electronic address

- (ii) If notice is to Licensee,

If a provision of this agreement allows notice by electronic means then notice may be given to Licensee, only for purposes of the provision allowing electronic notice, at:

email or electronic address

25. Construction of Agreement:

This Agreement is deemed executed in the state of Oregon and shall be construed under the laws of the state of Oregon. In the event that a suit or action is instituted to enforce or interpret any of the terms of this Agreement, the parties agree that the proper venue for said suit or action shall be in the Circuit Court for Deschutes County, Oregon.

26. Prior Agreements Superseded:

This Agreement supersedes and replaces any and all previous Agreements entered into by and between Licensor and Licensee with respect to the subject matter of the Agreement.

27. Assignment of Agreement:

Neither party shall assign or otherwise transfer this Agreement or any of its rights and interests to any firm, corporation or individual, without the prior written consent of the other party, except to an affiliate.

28. Entire Agreement:

This agreement constitutes the entire agreement between the parties pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understandings of the parties. No supplement, modification, or amendment of this agreement will be binding unless executed in writing by all the parties. No waiver of any of the provisions of this agreement will constitute a waiver of any other provision, whether or not similar, nor will any waiver constitute a continuing waiver. No waiver will be binding unless executed in writing by the party making the waiver.

29. Savings Clause:

If any provision of this agreement is held invalid or unenforceable by any court of final jurisdiction, it is the intent of the parties that all other provisions of this agreement be construed to remain fully valid, enforceable, and binding on the parties.

In witness whereof, the parties have caused this Agreement to be duly executed.

DATED this _____ day of _____, 20____.

(Licensor) _____
Central Electric Cooperative, Inc.,
an Oregon cooperative corporation

(Licensee) _____

By _____

By _____

Date _____

Date _____

Its President/CEO

Its _____

EXHIBIT 1

POLE ATTACHMENT LICENSE AGREEMENT EXHIBITS

Exhibit A: Map of Licensor service area

Exhibit A1: Map of Licensee service area

Exhibit B: Rules and Practices for Telecommunication Attachments

Exhibit B1: Standard Clearance Drawings

- 40 Foot Pole – Space Allocation, Dwg. #JU1
- Clearance between Power Neutral and CATV or Phone Attachment, Dwg. #JU2
- Clearance from Overhead Service Wire to CATV or Phone Attachment, Dwg. #JU3
- Clearance from Transformer and Overhead or Underground Service Wire to CATV or Phone Attachment, Dwg. #JU4
- Clearance from 7.2/12.5 kV Primary Underground Riser to CATV or Phone Attachment, Dwg. #JU5
- Clearance from Lights to CATV or Phone Attachments, Dwg. #JU6

Exhibit A: Map of Licensor service area

Exhibit A1: Map of Licensee service area

(Supplied by Licensee)

EXHIBIT "B"

RULES AND PRACTICES FOR TELECOMMUNICATION ATTACHMENTS

1. All Licensee facilities attached to Licensor's poles shall be installed in a manner to ensure compliance with the requirements of the National Electrical Safety Code (NESC) in effect at the time of installation.
2. The location of Licensee's Attachments on Licensor's poles shall be approved in writing by the Licensor. Except for services, no Attachments shall be made without prior approval of Licensor.
3. All Licensee Attachments shall be located on the same side of each pole as any existing Attachment, or as designated by the Licensor.
4. On jointly used poles where Licensor has secondary conductors, all Licensee Attachments shall be located to maintain adequate climbing space as per the NESC.
5. No bolt used by Licensee to attach its facilities to a pole shall extend or project more than one (1) inch beyond its nut.
6. Licensee shall install and maintain any and all of its facilities in a neat and workmanlike manner consistent with the overall appearance of the jointly used pole and Licensee shall be solely responsible for compliance with the specifications referred to in Section 3 of this License Agreement.
7. All down guys, head guys or messenger dead ends installed by Licensee shall be attached to jointly used poles by the use of "thru" bolts. Such bolts placed in a "bucking" position shall have at least three inches vertical clearance. Under no circumstances shall Licensee install down guys, head guys or messenger dead ends by means of encircling jointly used poles with such Attachments. All guys and anchors shall be installed prior to installation of any messenger wire or cables.
8. The following steps and conditions shall be followed when Licensee removes old poles from the field. The entire butt of the old pole shall be removed. DO NOT partially pull the butt, cut it off and/or leave a remaining portion in the ground. Fully remove all associated hardware, including anchors and ground rods, with the old pole. Fill and compact the pole hole to eliminate future settling. Restore landscaping, ditches, streets and sidewalks to the specifications required by the governing authority having jurisdiction over said infrastructure.

EXHIBIT 1

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Exhibit B1: Standard Clearance Drawings

EXHIBIT 1
22 OF 22

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† Admitted in Oregon and California

February 11, 2005

Brooks E Harlow
Miller Nash LLP
601 Union St Ste 4400
Seattle WA 98101

Re: CEC - Bend Cable Revised Joint Pole Agreement

Dear Mr. Harlow:

As promised, I am submitting with this letter CEC's revised joint pole agreement. By "revised" I'm referring to the changes made in light of the recent PUC orders that we've discussed previously.

Please review this contract with your client and call me with any questions. We will need this agreement signed soon. Remember your permit is expiring.

Sincerely,

MARTIN E. HANSEN

MEH:ph

enclosure

cc: Dave Markam

EXHIBIT 2

1 OF 1

FRANCIS HANSEN & MARTIN, LLP

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February 11, 2005

Jay Nusbaum
Perkins Coie LLP
1120 NW Couch 10th Floor
Portland, OR 97209

Re: CEC vs. Qwest – Revised Joint Pole Agreement

Dear Jay:

I'm enclosing with this letter a copy of CEC's revised joint pole agreement. As we discussed previously, CEC has revised its joint pole agreement to take into account our discussions with the PUC and our review of the PUC recent rulings in the CLPUD v. Verizon case.

We believe this agreement is in total compliance with the PUC rules and regulations and is a very fair reciprocal agreement. We would ask that you review this with your client and have your client execute this agreement and return it to me.

Call if you have any questions.

Sincerely,

MARTIN E. HANSEN

MEH:ph

cc:

Dave Markham

EXHIBIT 3
1 OF 1