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BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

CHARTER COMMUNICATIONS  
HOLDING COMPANY, LLC,; FALCON  
TELECABLE, L.P., FALCON CABLE  
SYSTEMS COMPANY II, L.P., AND  
FALCON COMMUNITY VENTURES I,  
L.P.

Complainants,

v.

CENTRAL LINCOLN PEOPLE’S UTILITY  
DISTRICT,

Defendant.

Case No. UM-1241

**COMPLAINANTS’ CROSS MOTION  
FOR PARTIAL SUMMARY  
JUDGMENT**

Charter Communications Holding Company, LLC, on its own behalf and on behalf of its subsidiaries, Falcon Telecable, L.P., Falcon Cable Systems Company II, L.P., and Falcon Community Ventures I, L.P. (jointly “Charter”), pursuant to ORCP 47 and OAR 860-011-0000(3) respectfully moves the Commission for an order granting Charter summary judgment on Counts 1, 2, 3, 4, and 5, in part, of its Complaint. This Motion is supported by the following and Complainants’ Response In Opposition to ORCP 21 Motions Of Defendant And In Support Of Complainants’ Cross-Motion For Partial Summary Judgment (“Opposition Brief”), which is filed this date and incorporated herein by reference.

1 **I. INTRODUCTION AND SUMMARY**

2 This case involves the rights of a cable operator, specifically Charter, to attach to Central  
3 Lincoln’s utility poles under reasonable rates, terms and conditions. Central Lincoln has  
4 imposed unreasonable fees and terms of attachment on Charter while operating under an  
5 egregious pole attachment agreement that Charter was forced to sign in order to avoid millions of  
6 dollars worth of sanction from Central Lincoln. While the pole attachment agreement between  
7 the parties is relatively new, many of the legal and factual issues in this case are not. Indeed, the  
8 facts and law in this case are identical to those fully litigated and decided in the recent decisions  
9 of this Commission in *Central Lincoln People’s Util. Dist. v. Verizon Northwest, Inc.*, Docket  
10 No. UM-1087 *Central Lincoln People’s Util. Dist. v. Verizon Northwest, Inc.*, Order No. 05-042,  
11 2005 Ore. PUC Lexis 36 (Jan. 19, 2005) (“Central Lincoln 1”); *Central Lincoln People’s Util.*  
12 *Dist. v. Verizon Northwest, Inc.*, Order No. 05-583, 2005 Ore. PUC Lexis 241 (May 16, 2005)  
13 (“Central Lincoln 2”) (collectively “UM-1087” or “*Central Lincoln*”). The application of the  
14 Commission’s UM-1087 decisions to this case entitles Charter to judgment on Counts 1, 3, 3, 4,  
15 and 5, in part, of its Complaint.  
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19 **II. THE COMMISSION’S DECISIONS IN UM-1087 ARE BINDING ON CENTRAL**  
20 **LINCOLN, AND CHARTER IS ENTITLED TO JUDGMENT AS A MATTER OF**  
21 **LAW ON THOSE ISSUES**

22 Summary judgment is appropriate where there is no genuine issue as to any material fact,  
23 and based on those facts, the moving party is entitled to a judgment as a matter of law. ORCP 47  
24 *C. See also Jones v. General Motors Corp.*, 325 Or. 404 (1997); *Seeborg v. General Motors*  
25 *Corp.*, 284 Or. 695 (1978). As detailed below, with regard to Count 1, 2, 3, 4, and 5, in part,  
26 there is no issue as to any material fact that may be raised by Central Lincoln in response to

1 Charter's claims, as the Commission has decided the issues in the previous case against Central  
2 Lincoln.

3 The basis for Charter's Motion is more fully set forth in Part III.A. of the accompanying  
4 Opposition Brief, which Charter incorporates herein by reference, but Charter also summarizes  
5 the points in support of this Motion below.  
6

7 Under Oregon law, "[i]ssue preclusion arises in a subsequent proceeding when an issue  
8 of ultimate fact has been determined by a valid and final determination in a prior proceeding."  
9 *Nelson v. Emerald People's Utility Dist.*, 318 Ore. 99, 103, 862 P.2d 1293 (1993). The Supreme  
10 Court of Oregon has identified five requirements for the application of issue preclusion:

- 11 (1) the issue in the two proceedings is identical;
- 12 (2) the issue actually was litigated and was essential to a final decision on the  
13 merits in the prior proceeding;
- 14 (3) the party sought to be precluded has had a full and fair opportunity to be heard  
15 on that issue;
- 16 (4) the party sought to be precluded was a party or was in privity with a party to  
17 the prior proceeding; and
- 18 (5) the prior proceeding was the type of proceeding to which this court will give  
19 preclusive effect.

20 *Id.* at 104 (internal citations omitted). Those five requirements are satisfied as to the issues  
21 raised in Counts 1, 2, 3, 4, and 5, in part, of Charter's Complaint. Accordingly, Charter is  
22 entitled to a judgment as a matter of law on these issues.

23 First, the issues raised by Charter are identical to issues that were determined in the UM-  
24 1087 case, specifically:

- 25 (1) Central Lincoln's maximum annual rental rate, and the costs that go into calculating  
26 it; (Complaint ¶¶ 29-37, 74-85; *Central Lincoln I* at pp. 13-16);

1 (2) Central Lincoln’s attempt to charge separate annual fees for various other  
2 attachments, such as attachments in unusable space and attachments to Central Lincoln  
3 anchors; (Complaint ¶¶ 32-36, 38, 41, 86-93; *Central Lincoln I* at pp. 14, 16, *Central*  
4 *Lincoln II* at pp. 6-7);

5  
6 (3) Central Lincoln’s attempt to impose separate application fees; (Complaint ¶¶ 32, 67-  
7 73; *Central Lincoln I* at pp. 15-16);

8 (4) Central Lincoln’s charges for rearrangements for pole changes that benefit Central  
9 Lincoln; (Complaint ¶¶ 60-65, 94-98; *Central Lincoln II* at p. 4, *as modified by Central*  
10 *Lincoln People’s Util. Dist. v. Verizon Northwest, Inc.*, Order No. 05-981, 2005 Ore.  
11 PUC Lexis 446 (Sept. 7, 2005); and

12 (5) the terms of Central Lincoln’s standard pole attachment agreement. (Complaint ¶¶ 10,  
13 12-21, 28, 101-102; *Central Lincoln II* at Attachment A).

14  
15 Charter’s Opposition Brief at pages 7 to 8.

16 Second, the issues raised by Charter were also actually litigated and essential to a final  
17 decision on the merits in the *Central Lincoln* proceeding, as evidenced by the Commission’s  
18 Orders. Charter Opposition Brief at pages 9 to 10 .

19 Third, Central Lincoln, the party that Charter seeks to preclude, was the complainant in  
20 the *Central Lincoln* matter, and it had a full and fair opportunity, through discovery, briefing,  
21 and live hearings to be heard on the issues in its prior case against Verizon. Charter Opposition  
22 Brief at page 11.

23  
24 Fourth, although the *Central Lincoln* case was an administrative proceeding, the  
25 decisions rendered are still afforded preclusive effect because: the administrative forum  
26

1 maintains procedures that are sufficiently formal and comprehensive; the proceedings are  
2 ‘trustworthy’; issue preclusion would facilitate prompt, orderly and fair problem resolution; and  
3 the same quality of proceedings and the opportunity to litigate is present in both proceedings.

4 Charter Opposition Brief at pages 11 to13.  
5

6 Accordingly, issue preclusion applies in this case to prevent Central Lincoln from  
7 relitigating the merits of those issues raised by Charter in Counts 1, 2, 3, 4, and 5, in part, of its  
8 Complaint.  
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2 **III. CONCLUSION**

3 For the foregoing reasons and the reasons identified on pages 6 to 13 in Charter's  
4 simultaneously-filed Opposition Brief, the Commission should grant Complainants' Cross  
5 Motion for Partial Summary Judgment on Counts 1, 2, 3, 4, and 5, in part, of its Complaint and  
6 grant Charter the relief requested in paragraphs 1-7, and 9-10 of the Prayer For Relief in its  
7 Complaint.

8  
9 DATED this 16th day of March, 2006.

10 MILLER NASH LLP

11 

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Case No. UM 1241

Complainants,

v.

CENTRAL LINCOLN PEOPLE’S UTILITY  
DISTRICT,

Defendant.

**CERTIFICATE OF SERVICE**

I hereby certify that true and correct copies of the following pleading:

- Complainants’ Cross Motion For Partial Summary Judgment

was served this day via e-mail transmission, and by U.S. Mail in sealed envelopes upon the following:

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Dated this 16th day of March, 2006, at Washington, D.C.

/S/ T. Scott Thompson