ORDER NO. 05-042

ENTERED JAN 19 2005

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1087

CENTRAL LINCOLN PEOPLE'S UTILITY DISTRICT,	)	
Complainant,	)	ORDER
v.	)	
VERIZON NORTHWEST INC.,	)	
Defendant.	)	

DISPOSITION: PETITION DENIED; COUNTER COMPLAINT GRANTED.

In this case of first impression, Central Lincoln People's Utility District (CLPUD) brought a Petition for Removal of Pole Attachments against Verizon Northwest Inc. (Verizon) for connecting to its poles without a contract. Verizon filed a counter-complaint stating that CLPUD's proposed rates, terms and conditions for a new pole attachment agreement were unreasonable and requested that the Commission impose Verizon's proposed contract. We deny the petition and grant the counter-complaint.

Procedural Background

On May 22, 2003, CLPUD filed a petition against Verizon asserting that Verizon was unlawfully connected to 144 of its utility poles without a contract, and requesting that the Commission order Verizon to remove the unlawful attachments. CLPUD stated that (1) there was no contract between CLPUD and Verizon for pole attachments; (2) CLPUD had sent Verizon a notice of violation; (3) CLPUD had sanctioned Verizon; and (4) the sanctions had doubled.

Verizon filed its answer on June 18, 2003. In its answer, Verizon stated that CLPUD unilaterally terminated the original contract and proposed a new contract that

was unreasonable and unworkable. Verizon also noted that CLPUD is not subject to sanction under the relevant administrative rules, argued that CLPUD is abusing that position in its negotiations with Verizon, and asserted that the Commission should waive CLPUD's immunity from sanctions and sanction CLPUD for its violations. In addition, Verizon filed a counter-complaint requesting the Commission hold a hearing in this matter to set the rates and terms in a new contract between the parties.

CLPUD filed its response to Verizon's answer on October 1, 2003. CLPUD asserted that Verizon's counter-complaint is without foundation and that the Commission cannot waive the administrative rules that protect CLPUD from sanction as a government entity.

After delays caused by protracted evidentiary disputes,[1] a hearing was held on October 7 and 8, 2004. The Commission Staff (Staff), CLPUD, Verizon, and the Oregon Cable Telecommunications Association (OCTA) participated in the hearing. Those parties filed opening briefs on November 15, and CLPUD, Verizon, and OCTA filed reply briefs on December 3. The Commissioners heard oral arguments on December 14, 2004. Portland General Electric Company (PGE) also sought and was granted party status in the proceeding but did not actively participate.

Factual Background

Termination of the Agreement

After weighing the written testimony and evidence presented at hearing, we find the following facts: In 1987, CLPUD and GTE Northwest, Inc. (now Verizon) executed a contract that provided for joint use of utility poles. *See* General Agreement for Joint Use of Poles Between Central Lincoln People's Utility District and General Telephone Company of the Northwest, Inc., CLPUD/3. Under that contract, the parties "establish[ed] joint use of new poles," Article III, "establish[ed] joint use of existing poles," Article IV, and carefully divided costs between the parties, Article VII. Notices under the agreement were to be mailed to designated addresses: a post office box in

[1] Many motions were filed in this case, but are not discussed in the order because they did not have a substantive impact on the outcome. CLPUD filed a motion for default on June 17, 2003, which was denied on July 17, 2003. CLPUD also filed sixteen motions under Oregon Rule of Civil Procedure 21 on July 3, 2003, which were denied on August 6, 2003. On February 18, 2004, Verizon filed a motion to strike CLPUD's legal memorandum in support of opening testimony, which was granted on March 4, 2004. CLPUD filed a motion for a protective order on March 25, 2004, which may be more appropriately characterized as an objection to certain data requests, which was denied on April 6, 2004. On April 1, 2004, Verizon filed a motion to compel responses to its data requests served on Peter Gintner, which was granted in a ruling and then, after a motion to certify by CLPUD, by Commission order. The April 1, 2004, filing by Verizon also sought to strike the testimony of CLPUD's witness Michael Wilson; that part of the motion was denied. On the eve of hearing, CLPUD filed a motion for sanctions and a motion *in limine* to exclude evidence; both were denied by ruling on October 6, 2004.

Newport, Oregon, for CLPUD, and a post office box in Everett, Washington, for the telephone company, "or to such other address as either party may from time to time designate in writing." CLPUD/3, Article XVI. The final provision, Article XVIII, outlines how the contract may be terminated:

> This Agreement may be terminated, in whole or in part, by either party upon six (6) months' notice in writing to the other. Upon any termination or such expiration, each party shall remove all of its existing attachments on poles of the other party in an orderly manner and within the period of five (5) years thereafter unless a longer period of time is agreed to in writing. All of the applicable provisions of this Agreement shall remain in full force and effect with respect to any and all attachments of either party remaining upon poles of the other party, until such time as all of such attachments have been removed.

On October 12, 2001, Verizon submitted a letter to CLPUD stating that it was "restructuring the Joint Use Department" and requesting that "all invoices and notifications regarding Joint Use" be sent to a new street address in Everett, Washington, at zip code 98201. *See* Verizon letter (Oct 12, 2001), CLPUD/4. A "Received" stamp on the letter indicated that CLPUD received the letter on October 22, 2001. *Id.*

On December 26, 2001, CLPUD sent a letter to Verizon to a post office box in Beaverton, Oregon, which stated in relevant part,

> This letter shall serve as official notice that [CLPUD] is terminating the General Agreement for Joint Use of Poles dated July 1, 1992 with Verizon Telephone, in accordance with Article XI, page 11, of said agreement. The effective termination date will be June 30, 2002.
>
> The District anticipates negotiation of the new Joint Use Occupancy agreement with Verizon Telephone during the first quarter of calendar year 2002. The new agreement will have an effective date of July 1, 2002.

See CLPUD letter (Dec 26, 2001), CLPUD/5. The letter also had a handwritten note on the top indicating that CLPUD later mailed a copy of the letter on January 2, 2002, to the street address designated in the October 2001, Verizon letter, with the incorrect zip code of 98206. *See* CLPUD/5.

The next correspondence between the parties was a letter sent by CLPUD to Verizon near the purported termination date of the joint use agreement, notably sent to the correct address and zip code. In the letter, CLPUD submitted two identical contracts for signature, alternately called "Pole Occupancy License Agreements" and "Joint Pole Agreement[s]." *See* CLPUD letter (June 27, 2002), CLPUD/13. Verizon received the letter on July 9. *See* CLPUD/13 at 2 (confirmation slip dated July 9, 2002). Verizon responded by e-mail on July 10. *See* CLPUD/14. The companies then exchanged e-mails regarding proposed contracts. *See* CLPUD/14; CLPUD/15; Verizon/111; Verizon/114; Verizon/115. Another letter sent on November 22, 2002, from CLPUD again insisted that Verizon sign the "Pole Occupancy License Agreements." *See* CLPUD letter (Nov 22, 2002), CLPUD/16. The companies exchanged additional e-mails but were ultimately unable to agree on a new contract. *See* CLPUD/17; CLPUD/18.

Attachments to 144 Poles

From January 2001 through September 2002, CLPUD conducted route patrols, or feeder patrols, to audit attachments to their poles. Hrg TR 17-21; CLPUD response to ALJ bench request (Dec 3, 2004). As a result of those patrols, CLPUD compiled two lists of what it believed were Verizon attachments on CLPUD poles without a permit. *See* CLPUD letter (Aug 21, 2002), Verizon/128; CLPUD letter (Oct 8, 2002), Verizon/129. Those lists were sent to Verizon with nearly identical cover letters, which stated:

> Central Lincoln PUD has completed their (sic) route patrol and found the following bootlegged attachments. At this time, CLPUD is providing Verizon with a list of said bootlegs and map's [sic] to help locate in a timely fashion.
>
> In the past CLPUD has normally enclosed an invoice taxing the bootlegs at 5 times the normal attachment cost. At this time, we are allowing 60 days for Verizon to verify the attachments and submit electronic application as well as load data information for permits through NJUNS [National Joint Utilities Notification System]. For these unauthorized attachments only, CLPUD will waive the $50.00 per pole application fee.
>
> After the 60 day grace period, any bootlegged attachments not rectified will be automatically charged the normal attachment fee times 5 plus a $50.00 per structure engineering fee.

After review and consultation with CLPUD, Verizon agreed that there were 144 attachments on CLPUD poles for which Verizon did not have permits. Verizon then submitted NJUNS tickets, or permits, for those attachments. *See* CLPUD/6. CLPUD did not process those tickets because it believed that it had terminated its contract with Verizon by that point, nor did it inform Verizon that it would not process those tickets. *See* CLPUD/1 at 6. Those tickets formed the basis for the 144 attachments CLPUD believes were unlawfully attached, and CLPUD's requests that those attachments be removed immediately, and that Verizon be sanctioned for those attachments.[2]

Verizon has 1,078 poles to which CLPUD is connected. CLPUD has 2,099 poles to which Verizon is connected, including the 144 that CLPUD argues are unlawful. The original contract, including the rates, continues to govern the connections to the remaining poles because that contract allows the parties five years to remove their connections after termination of the contract. *See* CLPUD/3 at 12. On February 13, 2003, CLPUD billed Verizon at the rates proposed in its new contract for pole attachments, $10.40 per pole. *See* Verizon/100 at 17:2. On March 31, 2003, Verizon paid CLPUD at the rates under the old contract, set at $9.11 per pole. *See* Verizon/100 at 17:10-11. On April 15, 2003, CLPUD sent Verizon another bill for the unpaid balance of its initial bill at the new rates, which Verizon returned with a letter of refusal on May 2, 2003. *See* Verizon/100 at 20-21.

On May 27, 2003, CLPUD filed this complaint.

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[2] CLPUD sent a notice of violation to Verizon as a precursor to sanctioning Verizon for the unlawful 144 attachments. *See* OAR 860-028-0190; CLPUD's Petition for Removal of Pole Attachments at 2. To introduce the notice, the author, CLPUD attorney Peter Gintner, submitted opening testimony. Verizon replied by submitting data requests for Mr. Gintner's response. CLPUD answered some of the data requests but not others, claiming attorney-client privilege. On April 1, 2004, Verizon filed a motion to compel an answer to all of the questions. The initial ruling stated that CLPUD had to answer the data requests, erroneously relying on OEC 503(4)(d). Upon certification, the Commission upheld the ruling on other grounds, stating, "Allowing testimony without cross-examination makes it difficult to determine whether the testimony is credible." *See* Order No. 04-379 at 5. The Commission gave CLPUD the choice of answering the data requests or submitting substitute testimony. CLPUD chose to answer the data requests.

At hearing, Verizon called Mr. Gintner to the stand for cross-examination. At the third question, regarding an exhibit he sponsored, Mr. Gintner asserted the attorney-client privilege and refused to answer. The presiding ALJ ultimately ruled that CLPUD exhibit 10, Verizon exhibit 116, and related testimony were stricken from the record because no cross-examination could be had on those matters. However, CLPUD exhibits 2, 11, and 20 remain in the record, albeit in redacted form, and the record reflects "that Verizon received the notice of violation, but the contents of the notice were stricken from the record." Hrg TR 258:22-24. In its opening brief, CLPUD argued that the ruling should be overturned because Mr. Gintner could not be compelled to breach attorney-client confidentiality. We appreciate Mr. Gintner's obligation to his client, but the Commission also has an obligation to create a full evidentiary record. CLPUD could have chosen to have another witness introduce the exhibits, so as not to force its attorney into a choice between breaching attorney-client confidentiality or testifying. *See* Order No. 04-379. Due to our analysis regarding the 144 attachments, the notice of violation is not relevant to our disposition, nor is the dispute regarding Mr. Gintner's testimony.

Applicable Law

The Oregon legislature first enacted pole attachment statutes in 1979, providing the Public Utility Commissioner jurisdiction over public utilities and the Director of the Department of Commerce jurisdiction over people's utility districts. *See* Or L 1979, ch 356. Administrative rules were promulgated in tandem between the two agencies. *See* Order No. 84-608. In 1987, when the Department of Commerce was abolished, the legislature amended the statutes to provide the Public Utility Commission jurisdiction over pole attachment disputes involving all utilities, even those it did not typically regulate. *See* Or L 1987, ch 414, §§ 164-166.

Congress revised its pole attachment laws as part of the Telecommunications Act of 1996. *See* P L 104-104 § 703. A guiding principle of that law was to provide nondiscriminatory access to essential facilities to competing communications carriers. *See id.* at § 251(c). The federal pole attachment statute, codified at 47 USC § 224, established the jurisdiction of the Federal Communications Commission (FCC) over disputes, unless a state certifies that it has rules and regulations in place and takes action within a certain period of time. *See* 47 USC § 224(c) (2004). The statute also sets out a few general rules to guide the FCC in determining whether rates are "just, reasonable, and nondiscriminatory." *See* 47 USC § 224(e) (2004). The FCC promulgated the relevant rules at 47 CFR §§ 1.1401–1.1418. The rules do not provide for sanctions, but otherwise are more specific than Oregon rules in outlining the procedures for attaching to poles and the process required to bring a complaint before the FCC.

In 1999, the Oregon legislature updated the pole attachment statutes. *See* Or L 1999, ch 832. The amendments required a contract between the pole owner and the pole attacher before an attachment was made. *See id.* at § 2. The attacher could be sanctioned if it made an attachment without a contract but could receive a rental reduction for its use of the pole if it was in compliance with Commission rules. *See id.* at §§ 2, 7. The law also provided for formation of "a task force consisting of utility pole owners and utility pole users to advise the commission on policies and regulations." *Id.* at § 9. To implement the changed statutes, the Commission adopted rules which governed pole attachment sanctions and rental reductions, and which created the Joint-Use Association (JUA). *See* Order No. 00-467. In 2001, the Commission consolidated the pole attachment rules in chapter 28. *See* Order No. 01-839.

Analysis

We note at the outset that this dispute should have first been aired before the JUA. OAR 860-028-0220 states: "If a pole occupant and pole owner have a dispute over facts that the pole occupant and pole owner must resolve so that the pole owner can impose appropriate sanctions * * * then either the pole owner or the pole occupant may

request a settlement conference before the" JUA. The JUA is also to "act as an advisor to the Commission with respect to * * * [s]ettlement of disputes between a pole owner and a pole occupant." OAR 860-028-0200. While the involvement of the JUA is not mandatory, the participation of a specialized and knowledgeable group of industry representatives would have been helpful and may have resolved some disputed issues before this matter came to the Commission, thereby reducing the time and expense to the parties in this case. The role of the JUA may be an issue the Commission will revisit in the future.

CLPUD's Petition

In its petition, CLPUD claims it is entitled to sanctions and a Commission order requiring Verizon to remove its attachments. CLPUD relies on two theories: (1) it terminated its contract with Verizon and Verizon made 144 attachments after termination, or (2) Verizon made the attachments without the proper permits before the contract was terminated. CLPUD also claims that the attachments are not covered by the contract because the contract requires a permit for an attachment. Verizon argues the contract was not terminated, and even if it was, CLPUD is estopped from claiming sanctions because it invited Verizon to submit applications for those attachments.

Termination of Contract

CLPUD argues that the first step in the analysis is whether the contract was terminated. CLPUD contends it was and notes that it sent two notices of termination. The first notice was received by Verizon's Coos Bay Engineering Office, and no evidence was presented that Verizon did not receive the second notice. CLPUD also points to a lack of evidence in the record that Verizon was confused as to whether the contract terminated on June 30, 2002. Verizon counters that the content of the notice contained several technical errors, such as referring to the wrong date of the contract and specifying the wrong provision in terminating the contract. Most significantly, Verizon argues that CLPUD never sent the notice to the correct address and zip code, and its Joint Use Department never received the notice. Verizon notes that it must not have effectively received the notices because it took no action—in contrast to the prompt action taken after receiving CLPUD's proposed contract sent to the correct address on June 27, 2002.

Oregon law is not definitive on the subject of notice requirements to terminate a contract. A contract is usually interpreted according to the specific language in the document. *See New Zealand Ins. v. Griffith Rubber*, 270 Or 71, 75 (1974). Some courts have held that the address to which a notice is sent is not a critical part of the contract and may be construed liberally. *See U Emerg Med Found v. Rapier Inv, Ltd*, 197 F3d 18, 21-22 (1st Cir 1999). In this case, however, the evidence indicates that the

specific address is a critical part of the contract and affected whether Verizon effectively received the document, as discussed below.

In cases interpreting statutes, Oregon courts have held that notice requirements are to be liberally construed where actual notice has been given. *See Stroh v. SAIF*, 261 Or 117 (1972). Even where the entity sent the notice to the old address, not the new address, notice was still valid where it was forwarded to the new address and actually received. *See McComas v. Employment Dept*, 133 Or App 577, *rev den* 321 Or 246 (1995). More specifically, where notice was sent to a specific person in a large organization, and that person was the proper recipient, notice was considered valid even though it was not sent to the organization as required under the statute. *See Webb v. Highway Division of Oregon*, 293 Or 645, 651 (1982).

But the courts have cautioned against construing notice requirements too liberally. "Substantial compliance [with a notice requirement] depends on the facts * * * and requires 'compliance in respect to the essential matters necessary to assure every reasonable objective of the [requirement].'" *State v. Vandepoll*, 118 Or App 193, 197 n 6, *rev den* 317 Or 163 (1993) (*quoting Rogers v. Roberts*, 300 Or 687, 691 (1986)). Similarly, the Oregon Court of Appeals held that "evidentiary and procedural rules usually have an irreducible hard core of necessary function that cannot be dispensed with in any orderly investigation of the merits of a case." *Albiar v. Silvercrest Industries*, 30 Or App 281, 284 (1977) (internal quotation marks omitted).

Reviewing the evidence in the record, we find that the contract was not properly terminated. CLPUD never complied with the terms of the contract, that is, it never sent the termination to the address specified by Verizon. The purpose of supplying that address was to make sure the notice got to the correct office of a large organization. That became clear when the wrong office received the notice, and the notice was not responded to or processed correctly. Hrg TR 42, 241. In contrast, when CLPUD sent a proposed contract to Verizon for signature at the correct address and zip code, Verizon replied by e-mail the very next day. The correct address was, in this situation, "an irreducible hard core of necessary function" to ensure that the correct persons at Verizon knew that the contract was being terminated. Because CLPUD did not comply with that provision, the two notices sent by CLPUD to incorrect addresses did not properly terminate the contract.

Sanctions for 144 Attachments

The second step of CLPUD's analysis, and crux of its petition, is that Verizon made attachments after the contract expired. CLPUD first contends that the NJUNS tickets submitted by Verizon in the fall of 2002 were for *new* attachments. *See* CLPUD brief, 24 (Nov 15, 2004). Because CLPUD did not accept those tickets and no contract was in place, CLPUD asserts, the 144 new attachments are unlawful because

they were made without a contract in place. Under this theory, CLPUD contends that Verizon should be subject to financial penalties under OAR 860-028-0130 and the Commission should order removal of the attachments under OAR 860-028-0180(3).

In keeping with our finding that the contract was not properly terminated, we also find that Verizon's 144 attachments were made when a contract was in place. At worst, Verizon would be subject to sanctions for attaching to CLPUD poles without a permit. *See* OAR 860-028-0140.[3] But CLPUD waived its right to levy sanctions in its letters to Verizon in which CLPUD stated that it would not charge the "bootleg fee" of five times the attachment fee, plus an application fee, if Verizon submitted NJUNS tickets for those attachments within 60 days of the letter. *See* Verizon/128; Verizon/129.

Even if we were to assume that the contract was terminated during the summer of 2002, CLPUD failed to establish that the disputed attachments were attached after that date. When asked about this issue at hearing, CLPUD's chief engineer testified he had "no idea" of the physical attachment dates. *See* Hrg TR 81. The attachments were discovered by route patrols that were conducted from January 2001 through September 2002. CLPUD bears the burden of proof as the petitioner, and they did not prove that the attachments were made after the contract was purportedly terminated. To the contrary, the evidence in the record indicates that the attachments were likely madeprior to CLPUD's unsuccessful attempt to terminate the contract.

CLPUD argues that the contract does not apply to attachments made without a permit. Article IV, Section 1 of the contract requires a party seeking space for an attachment to "make written application therefore." However, the contract also appears to acknowledge that there will be "unauthorized" attachments, under Article X, Section 2.[4] Even if the contract had been terminated, as argued by CLPUD, "[a]ll of the applicable provisions of this Agreement shall remain in full force and effect with respect to any and all attachments of either party remaining upon poles of the other party, until such time as all of such attachments have been removed." CLPUD/3, Art XVIII. Presumably, "any and all attachments" include unauthorized attachments, such as the 144 attachments disputed here.

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[3] We are aware that Verizon filed an *amicus curiae* brief in *Qwest Corp v. PUC*, CA A123511, in which Qwest challenged the Commission's authority to promulgate rules levying sanctions against companies and delegate imposition of sanctions to private third parties. Verizon echoed many of Qwest's concerns in its brief, but did not raise them in the instant case, so we do not address those issues here. As of the date of this order, that case is still being briefed at the Court of Appeals.

[4] The term "unauthorized attachment" originated in a joint order by the Department of Commerce and the Public Utility Commissioner in Order No. 84-278, amended on reconsideration by Order No. 84-608, which was incorporated in the 1987 contract between CLPUD and Verizon's predecessor. Order No. 84-278 states, "Pole owners complain that they are not always notified when equipment is attached to their poles. The Proposed Rules provide that pole owners may charge those who make unauthorized attachments twice the normal rental rate from the date of their last inspection until the date of discovery." The order ultimately settled on a penalty of five times the normal rental rate, which was also incorporated into the contract between CLPUD and Verizon. *See* CLPUD/3, Art X, § 2.

Oregon case law supports the conclusion that CLPUD is estopped from claiming sanctions. "Waiver refers to the intentional relinquishment of a known right, claim or privilege. Estoppel is an equitable principle that precludes someone from exercising a right to another's detriment if the right holder, through words or conduct, has led the other to believe that the right would not be exercised." *Daly v. Fitch*, 70 Or App 18, 21 n 2 (1984). "[E]stoppel does not require consideration to be binding, but it does require detrimental reliance; a waiver, however, is ordinarily unilateral and does not require consideration or injurious reliance to be binding." *Mitchell v. Pacific First Bank*, 130 Or App 65, 75 n 7 (1994). CLPUD waived the right to sanction Verizon under OAR 860-028-0140. Particularly because CLPUD solicited the NJUNS tickets, CLPUD must process the applications to the extent the tickets comply with safety requirements, in accordance with the letters it sent to Verizon.[5] *See* Verizon/128, Verizon/129. CLPUD's claims for relief relating to the 144 attachments listed in its petition are denied.

Verizon's Counter-Complaint

Verizon's counter-complaint relates to the exchange of proposed new contracts between CLPUD and Verizon. At the beginning, we address CLPUD's jurisdictional argument. Although Verizon first raised the issue in its counter-claim, CLPUD declined to brief the issue, except to argue that "the Commission does not have the authority to regulate the pole attachment rates adopted by the people's utility district, such as CLPUD," citing Article XI, Section 12 of the Oregon Constitution.[6]

Article XI, Section 12

We interpret CLPUD's statement as an ORCP 21 motion to dismiss the counter-complaint on the grounds that the Commission lacks subject-matter jurisdiction over Verizon's counter-complaint regarding CLPUD's proposed rates, terms

[5] CLPUD stated at oral argument that it only waived sanctions because it believed that Verizon would soon sign a new contract and that it revoked its waiver when Verizon refused to sign. Oral Arg TR 26-27. Nothing in the letters indicates that the waiver was conditioned upon signing a new contract. By submitting permit applications, Verizon has taken the steps necessary to make the attachments "authorized" under the contract.

[6] CLPUD filed ORCP 21 motions on July 3, 2003, including Motion 8, which sought to strike the jurisdictional paragraph in Verizon's counter-complaint as "a bald legal conclusion." That motion was denied. *See* ALJ Ruling (Aug 6, 2003). In neither filing did CLPUD elaborate on its argument that the Commission does not have jurisdiction over pole attachment contract rates. When asked at oral argument, CLPUD again refused to elaborate on its argument. Oral Arg TR 31-32.

and conditions for a new pole attachment agreement. Oregon Rule of Civil Procedure 21A(1)

> provides that "lack of jurisdiction over subject matter" may be challenged by a motion to dismiss. The concept of subject matter jurisdiction is well defined as pertaining to the authority of the court to deal with the general subject involved in the action. "It exists when the constitution, the legislature or the law has told a specific court to do something about the specific kind of dispute in issue."

Black v. Arizala, 182 Or App 16, 25 (2002), *aff'd* 337 Or 250 (2004) (citations omitted). A motion for lack of subject matter jurisdiction may be raised at any time during the proceeding. *See Spada v. Port of Portland*, 55 Or App 148, 150 (1981).

Article XI, Section 12 of the Oregon Constitution, passed by initiative in 1930, provides for the creation of people's utility districts for the purpose of providing water or electricity. They can hold elections, levy taxes, enter into contracts, and exercise eminent domain, among other powers. The last clause of the Section states, "The legislative assembly shall and the people may provide any legislation, that may be necessary, in addition to existing laws, to carry out the provisions of this Section." Or Const, Art XI, § 12. Oregon courts have held that clause is critical in implementing the provision. *See Emerald PUD v. PP&L*, 302 Or 256, 261 (1986). The Oregon Supreme Court stated:

> It is our belief that the words were employed, not as fetters for the legislature, but as enabling provisions; that is, they enable the legislature to make provision for people's utility districts and enable the people to organize such districts after the legislature has written the needed legislation. To interpret the provision as forever barring the legislature from imposing a tax on people's utility districts would be an unjustifiable gloss on the text of the constitution.
>
> Further aid may be gained from the fact, already mentioned, that Art XI, § 12, is not self-executing. The legislature could not have been compelled to pass any legislation pursuant to Art XI, § 12, and, thus, it could have prevented the formation of people's utility districts entirely.

> To say that once it had created them according to the constitutional mold, it subsequently burdened them, the objects of its own creation, would be an imposition upon the wide scope of legislative action heretofore recognized by this court.

People's Util Dist et al v. Wasco Co et al, 210 Or 1, 19 (1957).

The legislature expressly conferred "the authority to regulate the rates, terms and conditions for attachments by licensees to poles or other facilities of people's utility districts," first to the Director of the Department of Commerce, Or L 1979, c 356, § 4, then, when the Department of Commerce was abolished, to the Commission, Or L 1987, c 414, § 164. Because the Oregon Constitution gave the legislature the ability to create and empower people's utility districts, and the legislature gave the Commission authority to regulate the rates, terms and conditions of pole attachments, we have jurisdiction over Verizon's counter-complaint and deny CLPUD's arguments to the contrary.

Contract Rates, Terms and Conditions

CLPUD asserts that the matter of a new contract between it and Verizon should be sent to the JUA for resolution. Verizon and OCTA disagree, arguing that they have presented testimony and briefing here, the Commission has jurisdiction over establishment of a new contract, and they should not be forced to spend additional resources due to CLPUD's refusal to address the issue before the Commission. We agree with Verizon and OCTA. ORS 757.279(1) sets out the requirements for Commission jurisdiction:

> Whenever the Public Utility Commission of Oregon finds, after hearing had upon complaint by a licensee, a public utility, a telecommunications utility or a consumer-owned utility that the rates, terms or conditions demanded, exacted, charged or collected in connection with attachments or availability of surplus space for such attachments are unjust or unreasonable, or that such rates or charges are insufficient to yield a reasonable compensation for the attachment and the costs of administering the same, the commission shall determine the just and reasonable rates, terms and conditions thereafter to be observed and in force and shall fix the same by order.

In this case, Verizon has filed a complaint that CLPUD demanded excessive rates and unreasonable terms. The Commission clearly has the authority to determine just and reasonable rates and terms for a new contract under the statute.[7]

CLPUD's arguments and reliance on OAR 860-028-0220(1) is misplaced. The rule states,

> If a pole occupant and pole owner have a dispute over facts that the pole occupant and pole owner must resolve so that the pole owner can impose appropriate sanctions, or in the event that a pole occupant is alleging that a pole owner is unreasonably delaying the approval of a written contract or the issuance of a permit, then either the pole owner or pole occupant may request a settlement conference before the Joint-Use Association (JUA).

First, the rule is permissive; either party "may request" the JUA's participation. It is not mandatory before seeking Commission involvement, though it may be helpful. Second, we note that CLPUD's petition regarding sanctions appears to fall under the first phrase, yet at no time did CLPUD seek a settlement conference with the JUA. At oral argument, CLPUD asserted that it did not believe there were any factual disputes to be resolved related to sanctions, yet it did not file for a judgment on the pleadings, or after factual disputes arose, move to remove this dispute to the JUA. CLPUD chose not to use the JUA; it cannot now complain that Verizon should have first pursued its counter-complaint there. Third, this docket was initiated by CLPUD; Verizon's claim was part of its response to CLPUD. For the sake of efficiency, we believe that all parts of the complaint should be resolved at this time.

Turning to the merits of Verizon's counter-complaint, we begin with the financial terms of the contract between the two parties. First, Verizon argues that CLPUD improperly calculates rates based on the number of cables attached to the pole, not the number of attachment points, which may be fewer. In Verizon's view, using CLPUD's method is a strained interpretation of Oregon rules, national safety codes, and established industry practice. Second, Verizon contends that CLPUD seeks to unfairly add a "direct cost" surcharge to its *pro rata* carrying charge already levied on pole users. Third, Verizon asserts that CLPUD improperly calculates the carrying charge by including net income, or operating profit, and customer expenses, which are not permitted under OAR 860-028-0110. Fourth, Verizon argues that CLPUD did not use the true amount of usable space in calculating the ratio of used to usable space to arrive at

[7] Given our finding that the 1987 contract remains in effect, it is unclear what legal mechanism terminates that contract and installs a new one as determined by this Commission. We rely on the negotiations by both parties, the attempted termination by CLPUD, and the complaint by Verizon as indicators that they seek a new contract.

the share an occupier would owe for using the pole, but instead assumed one foot of space for each attachment.

OCTA also takes issue with CLPUD's proposed rates and terms of the pole use agreement. As to rates, OCTA argues that CLPUD began with calculating its rental rate at the ceiling of acceptable rates under Oregon law,[8] then erred in its calculations which resulted in an overstatement of the charge, then misapplied the rate to each attachment, rather than each point of attachment, and finally added "a smorgasbord of fees on top of the over-compensatory recurring rental charges." OCTA brief at 10. OCTA also asserts that additional application fees are unlawful and should be calculated with the carrying cost.

We begin with OAR 860-028-0110(3), which states, "A disputed pole attachment rental rate will be computed by taking the pole cost times the carrying charge times the portion of the usable space occupied by the licensee's attachment." The pole cost is defined as "the depreciated original installed cost of an average bare pole of the pole owner." OAR 860-028-0110(2)(b). Cost should be based on the actual cost incurred by the pole owner, as should the other numbers used in the calculation. The carrying charge is "the percentage of operation, maintenance, administrative, general, and depreciation expenses, taxes, and money costs attributable to the facilities used by the licensee." *Id.* at (2)(a). The rule also provides, "The cost of money component shall be equal to the return on investment authorized by the Commission in the pole owner's most recent rate proceeding."[9] CLPUD justifies its charge for "operating profit" or "net income" as a "contribution to reserves for pole replacement" on the basis that depreciation does not cover its expenses for the poles. Hrg TR 153-1554. However, the rules do not provide for that cost in the carrying charge. Nor do they provide for "customer expense," a charge that Verizon alleges CLPUD added for promotional expenses. Costs that do not fall into one of the categories set out in the carrying charge may not be added into the rental rate.[10]

In determining what costs can be attributed to the facilities used by the licensee, the parties should allocate costs based on actual usable space. Usable space is defined as, "all the space on a pole, except the portion below ground level, the 20 feet of

[8] OCTA notes that ORS 757.282(1) sets a range of acceptable charges, but OAR 860-028-0110(3) appears to codify the ceiling of the calculation as the only acceptable rate. We note OCTA's concern and may consider that in a future rulemaking docket.

[9] This rule appears to be inequitable to utilities that are not rate-regulated by the Commission, such as people's utility districts, and may be reexamined in a future rulemaking docket. CLPUD appears to recover its bond debt interest in its annual rental rate, a sum that would approximate the "cost of money component" for a rate-regulated utility. Because Verizon does not challenge that amount, it will remain in CLPUD's calculation.

[10] It is unclear whether the figures provided by CLPUD for maintenance, taxes, and other costs relate solely to poles, or for other facilities as well. Only costs related to poles should be factored into the carrying charge. Verizon does not raise that issue in this case, so we decline to investigate it further.

safety clearance space above ground level, and the safety clearance space between communications and power circuits." *Id.* at (2)(e). CLPUD determines usable space assuming a forty foot pole, but the rule requires measurement of the actual usable space available for attachment. In addition, the amount of usable space used by attachments in the rental rate should not be calculated by allocating one foot per attachment.[11] CLPUD cites OAR 860-028-0110(5), which states, "The minimum usable space occupied by a licensee's attachment is one foot." That rule, in effect since 1984, *see* Order No. 84-608, is a minimum requirement if, for instance, only one attachment is on a pole. In their 1987 contract, the parties interpreted the rule as meaning that each party should have a minimum of one foot of space, but thereafter, space could be allocated in portions of a foot. *See* CLPUD/3 at 18. Mr. Wilson testified at the hearing that CLPUD would require a minimum space of one foot, and also require one foot of space per attachment point. *See* Hrg TR 133-135. Verizon argued that since the National Electrical Safety Code (NESC) requires less than one foot between certain attachment points, CLPUD should not be able to require and bill for one foot for each attachment point. We conclude that the minimum space for a single attachment point on a pole is one foot, but if there is more than one attachment point on a pole, the rental rate should be calculated based on the actual space used, and the attachment points must be made in compliance with accepted industry safety standards, including the NESC. *See* ORS 757.035; OAR 860-024-0010.

Certain other direct costs may be charged in addition to the annual rental rate for "special inspections or preconstruction, make ready, change out, and rearrangement work," including administrative costs related to these charges. OAR 860-028-0110(6). No definitions are provided for those terms. CLPUD adds the salaries of its employees as "direct costs" as an additional annual charge. OCTA also challenges application fees as an additional direct cost. Wilson testified that he calculated parts of three salaries in direct costs, which are not recovered in application fees or make ready fees. Hrg TR 139-141. While CLPUD may recover direct costs for specialty work, it may not recover for administrative costs related to operation and maintenance in direct costs. The salaries of the people involved with "joint use issues" or pole maintenance and operation must be calculated and allocated as part of the carrying charge. Similarly, to the extent the application fees do not relate to "special inspections or preconstruction, make ready, change out, and rearrangement work," application fees may not be recovered, and administrative charges related to processing new attachments should be

[11] The statute defines an attachment as "any wire or cable for the transmission of intelligence by telegraph, telephone or television * * * or for the transmission of electricity * * * or auxiliary equipment." ORS 757.270(1). At hearing, CLPUD witness engineer Wilson stated, "If the attacher, the licensee, has an attachment, existing attachment on the pole with one location bolt attachment, and they elect to put the service drop on that support bolt or on the messenger of that attachment, they can do it and we do not charge them an annual rental." Hrg TR 134:7-11. An attachment appears to specify the device used to attach the equipment to the pole, and not just indicate a wire or cable, and multiple cables may be connected to a single device. Although included in the statutory definition as an attachment, for practical purposes, we will refer to Wilson's description as an "attachment point."

allocated with the carrying charge. Other charges discussed by Wilson, such as inspection fees and make ready fees and related administrative costs, may be added as "direct costs." *See* Hrg TR 140.

In summary, we conclude that the annual rental rate must be calculated using the actual usable space available for attachment. In its "carrying charge" under OAR 860-028-0110(3), CLPUD may not include customer expense or its net income, but should include the salaries of employees who work with "joint use issues," including the processing of new attachment permit applications. Calculations for pole costs, usable space, and carrying charges will be made based on the actual usable space available for attachment. Further, usable space must be allocated according to the actual usable space occupied by Verizon's attachment points, as long as they are made in accordance with accepted industry safety standards, such as the NESC. For purposes of this contract, we propose the rates attached at Attachment A. The worksheet was originally created by CLPUD, and modified by Verizon using the same principles that we have adopted. As set forth in Section 6.1 of the contract, the parties will be able to negotiate adjustments to rates using the same form designated as Attachment A. The parties will have an opportunity to comment on the rates, using the process set out below, and then rates will be adopted for use in the contract between CLPUD and Verizon.

As to the non-financial terms of the contract, Verizon argues that the parties should have a joint use agreement that establishes reciprocal rights and responsibilities. Without this reciprocity, Verizon expresses the concern that CLPUD could capriciously terminate its agreement allowing Verizon to use CLPUD poles. Verizon argues that the joint use agreement it proposes more closely conforms to Oregon law and established practice in creating a reciprocal relationship and appropriate pole rental rates. OAR 860-028-0120 does not require CLPUD to have a contract to attach to Verizon poles, and we cannot mandate a contract that would require CLPUD to have a contract it does not need. For this reason, we require only a license agreement. However, we are aware of Verizon's concerns that the contract should not be so loosely written that CLPUD could amend the contract or interpret it in such a way that it could remove Verizon's attachments and hamper Verizon's obligations as the incumbent local exchange carrier in the area. Contractual provisions cannot be so easily changed that they could be construed as illusory promises insufficient to make a contract binding. With this in mind, we turn to other issues related to the non-financial terms of the contract.

Verizon raises several concerns: that CLPUD proposed specific construction standards which it could change at any time at its own discretion; that CLPUD would not be bound to certain time schedules for its work; that CLPUD refused to coordinate its work with Verizon; and that CLPUD would unilaterally determine if Verizon's attachments were not in compliance with the contract and remove the offending attachments. OCTA also points to two areas in which CLPUD's demands exceed

industry standards, thereby increasing time and costs required of pole users: (1) submission of detailed engineering data for service drops, which are light and cause low stress to the pole, and (2) submission of detailed forms for new pole attachments, which depart from the nationally recognized NJUNS tickets.

With their testimony, the parties attached draft contracts. Because CLPUD refused to respond to Verizon's and OCTA's arguments, the record supports adoption of Verizon's contract. CLPUD also did not put forward any evidence as to why it has more safety concerns than other utilities that would necessitate extra safety forms along with NJUNS tickets.[12] Therefore, we adopt Verizon's contract, as we have read and modified it to be just and reasonable.

The parties have 30 days from the date of this order to file one round of comments on the proposed contract and rates, attached at Appendix A and Attachment A, respectively. The contract was drafted to conform with the decisions set forth in this order; therefore, the parties' comments should be limited to technical corrections and provisions negotiated and jointly submitted by the parties. This is not an opportunity to submit late-filed testimony or briefing on general principles that should have been presented earlier in the proceeding. To recommend a change, the parties should challenge specific provisions by providing their proposed replacement language along with their arguments as to why their language should prevail.[13] Within 30 days of the comment deadline, we will issue a final order setting out the contract and rates, as we deem them to be just and reasonable in accordance with Oregon and federal law.

Costs of Hearing

In yet another matter of first impression for this Commission, Verizon cites ORS 759.660(2) in requesting that CLPUD pay costs for the hearing. The statute provides, "When the order [related to the rates, terms and conditions of a pole attachment agreement] applies to a people's utility district, the order also shall provide for payment

[12] Beyond that, CLPUD refused to brief issues related to the rates, terms and conditions of a future contract with Verizon. CLPUD responded with scant testimony, but otherwise decided not to make any arguments because, "they wanted the PUC to decide what should or shouldn't be in these agreements." Oral Arg TR 29. CLPUD's failure to meaningfully respond to briefing is regrettable. Determined advocacy from both sides of an issue leads to more discussion and analysis of various facets than one-sided advocacy in which the fact-finder must fill in the blanks. Issues related to pole attachments are not clear-cut, and this is the first case of its kind before the Commission. Briefing by both sides in the case would have been helpful.

[13] We have found that the process used in this case to resolve terms of a proposed contract between two parties is difficult, and may propose a new process, similar to that used to resolve terms of a new interconnection contract between telecommunications carriers. That process requires a party petitioning for arbitration to set out the specific disputed issues and differences in provision language, along with related arguments. The other party then responds, addressing the same provisions. This process has several benefits: the parties agree to the bulk of the contract, they disagree on specific provisions, and they provide the decision maker with specific solutions. This approach may be adopted in a future rulemaking.

by the parties of the cost of the hearing. The payment shall be made in a manner which the commission considers equitable." ORS 759.660(2). A similar provision in ORS 757.279(2) applies to consumer-owned utilities, a category which includes people's utility districts. *See* ORS 757.270(2). Verizon asserts, "the Commission should require CLPUD to bear all costs of this hearing. This should include reimbursement for the cost of ordering the hearing transcript, which Verizon was forced to bear."

The statutes and administrative rules provide no direct definition of the "cost of the hearing;" however, examination of other statutes and rules provide some guidance. A statute relating to the Commission providing dispute resolution services to the Board of Maritime Pilots (Board) states, "The board may defray the costs and expenses of the hearing by assessing, in its final order, all or a portion of the costs and expenses of the hearing to a party to the hearing." ORS 776.129(2). In implementing that statute, the Commission has a contract with the Board under which the Board is charged for the time and expenses incurred by Commission employees in adjudicating Board disputes under the statute. Similarly, ORS 343.167(5) provides that "the State Board of Education * * * shall bill the school district for all reasonable costs connected with the appointment of an independent hearing officer and the conduct of a due process hearing." The district must then make payment to the Department of Education "for the cost of the hearing." ORS 343.167(5). In contrast, other statutes clearly assign attorney fees and party costs to the prevailing party. *See* ORS 279.045(4); ORS 279B.425; ORS 279C.450. From these statutes, we interpret "the cost of the hearing" to be the Commission's costs in processing the complaint, holding the hearing, and preparing the order. Verizon may not recover costs from CLPUD under this statute.

The cost provision is not triggered unless certain entities are involved in the case. The statutes apply to a case involving "a consumer-owned utility," ORS 757.279(2), which is defined in ORS 757.270(2) as "a people's utility district organized under ORS chapter 261, a municipal utility organized under ORS chapter 225 or an electric cooperative organized under ORS chapter 62," or "a people's utility district," ORS 759.660(2), which is defined in ORS 759.650(3) as "any concern providing electricity organized pursuant to ORS 261.010, and includes any entity cooperatively organized or owned by federal, state or local government or a subdivision of state or local government," ORS 759.650(3).

The cost provision in ORS 757.279(2) was first enacted in 1983 to compensate the Department of Commerce for hearing pole attachment complaints. *See* Or Laws 1983, ch 251, § 1. The Commission did not have authority over certain utilities, such as people's utility districts and cooperatives, which made it difficult to enforce pole attachment laws in disputes involving those utilities. *See* testimony of Lou McCanna, Deputy Director, Department of Commerce, House Committee on State & Federal Affairs, minutes at 5 (Feb 15, 1983). Then, as now, the Commission "fund[ed] its hearings through an annual fee assessed against the utilities under ORS 756.310." Staff Measure Analysis, HB 2105, Senate

Committee on Energy and Environment, June 8, 1983. The Department of Commerce was given jurisdiction over complaints involving public utilities, but had "no source of funding for hearings." *Id.* The cost provision allowed the Commerce Department to hear pole attachment disputes involving people's utility districts, cooperatives, and municipal utilities, and pass the cost of the hearings along to the parties. *See* McCanna testimony, House Committee on State & Federal Affairs, at 5 (Feb 15, 1983); *see also* Staff Measure Analysis, HB 2105, House Committee on State & Federal Affairs, Feb 15 and 17, 1983. When the Department of Commerce was abolished by the legislature in 1987, the cost provision was amended to allow the Commission to recover costs from utilities from which the Department of Commerce would have been entitled to recover. *See* Or Laws 1987, ch 414, § 165.

Based on this analysis, Commission costs related to employee time and expense spent on this case since the complaint was first filed in May 2003 should be calculated and allocated to the parties. Because this is the first case of its kind, and the cost provision has never been invoked, we will not surprise the parties with a bill for costs incurred up to this point. However, the parties should be aware that they may be responsible for costs in the future, as considered equitable by the Commission.

Conclusions

We conclude CLPUD is not entitled to sanctions against Verizon. The contract was not terminated because CLPUD never sent the termination notice to the address specified in the contract. Even if the contract could be found to have been terminated because Verizon's Coos Bay Engineering Office received the notice, that does not change the outcome related to the 144 attachments. The attachments were made prior to the purported contract termination date, and CLPUD's letter relating to the audits of those attachments waived sanctions if Verizon submitted applications for those attachments within a certain time period. Further, the 1987 contract between CLPUD and Verizon applies to the disputed attachments. Due to our conclusions on the 144 attachments, issues related to Mr. Gintner's testimony regarding the notice of violation are also moot. CLPUD's petition is denied.

As to Verizon's counter-complaint, we conclude that, based on the evidence in the record, CLPUD's proposed contract and annual rental rate conflicts with the related administrative rules and is not just and reasonable. Verizon's proposed contract and rate schedule, as amended on review, are supported by the evidence. They are attached as Appendix A and Attachment A, respectively, and the parties are asked to comment as set out above. After reviewing the comments, we will establish a final contract by order.

Consideration of many issues related to pole attachment disputes in this case revealed gaps in the related administrative rules. We acknowledge that Commission staff has been working with industry representatives and applaud the progress being made

through those cooperative efforts. But we anticipate opening a rulemaking docket after the close of this case to clarify our rules relating to how contractual disputes should be brought before the Commission, how costs of such disputes should be allocated, the role of the JUA, and other issues to better implement ORS 757.270 through 757.290.

ORDER

IT IS ORDERED that:

1. Central Lincoln People's Utility District's petition to sanction and remove certain attachments of Verizon Northwest Inc. is denied;

2. Verizon's counter-complaint is granted; and

3. The parties shall file technical comments and negotiated amendments to the proposed contract and rates set out in Appendix A and Attachment A within 30 days from the date of this order.

Made, entered, and effective _____.

_____
Lee Beyer
Chairman

_____
John Savage
Commissioner

_____
Ray Baum
Commissioner

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order to a court pursuant to applicable law.

GENERAL AGREEMENT

FOR

JOINT USE OF FACILITIES

BETWEEN

CENTRAL LINCOLN PEOPLE'S UTILITY DISTRICT

AND

VERIZON NORTHWEST INC.

TABLE OF CONTENTS

POLE ATTACHMENT AGREEMENT

This Pole Attachment Agreement is made and entered into this _____ day of _____, 2005, between Central Lincoln People's Utility District ("District"), and Verizon Northwest Inc. ("Verizon").

WITNESSETH

WHEREAS, the District is engaged in the business of providing electric service to customers in certain areas within the state of Oregon; and

WHEREAS, Verizon conducts its communication business in a number of the same areas within the state; and

WHEREAS, Verizon and the District sometimes place and maintain poles or pole lines upon or along the same highways, streets, or alleys and other public or private places for the purpose of supporting the wires and facilities used in their respective businesses; and

WHEREAS, applicable federal and state law provide that a utility pole owner may only deny access to poles and rights-of-way where there is insufficient capacity or for reasons of safety, reliability and generally applicable engineering purposes;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein, the Parties hereby agree as follows:

ARTICLE I
DEFINITIONS

1.1 "Agreement" means this Pole Use Agreement entered into between the District and Verizon.

1.2 "The District" means the Central Lincoln People's Utility District and its successors.

1.3 "Equipment" means the wires and facilities that the District may give Verizon written permission to install on a pole.

1.4 "Jointly used pole" means a pole owned by the District on which the District and Verizon both have attached Equipment.

1.5 "Party" means the District or Verizon, as the context requires. "Parties" means the District and Verizon.

1.6 "Verizon" means Verizon Northwest Inc., and its successors.

ARTICLE II
SCOPE OF AGREEMENT

2.1 This Agreement shall apply to all areas served by the Parties in the State of Oregon and shall cover all District-owned poles within said state which are presently jointly used, as well as poles which are now existing or which shall hereafter be erected in areas mutually served when such poles are included within the scope of this Agreement in accordance with the procedures hereinafter set forth.

2.2 With the exception of increases in circuit voltage on joint use poles, as provided in Article XVIII, this Agreement shall not apply to the use by Verizon of the District poles which support, or are designed to support, wires with a nominal voltage higher than 34,500 volts. All applications for the joint use of poles that support, or are designed to support, wires with a nominal voltage higher than 34,500 volts shall be considered individually and shall, if granted, be covered by a separate agreement.

2.3 The District reserves the right to reject 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, the District may reserve space on its poles if it projects a need for that space in the provision of its core utility service. The District shall permit use of its reserved space until such time as it has an actual need for that space. At that time, the District may recover the reserved space for its own use. The District shall give Verizon the opportunity to pay for any reasonable modifications needed to accommodate its displaced attachments.

ARTICLE III
ESTABLISHING JOINT USE OF POLES

3.1 Whenever Verizon desires to place its Equipment on any pole owned by the District, it shall make written application therefore, specifying the Equipment, the location of the poles in question, and the space desired on each pole. Said application shall be made on a form acceptable to both Parties and shall be directed to the District at the address specified in Article XXII of this Agreement. If the application is approved, the District shall, within thirty (30) days after receipt of this application, sign and return a copy of the application to the Applicant. If notice is not received from the District within thirty (30) days, the application shall be deemed approved and Verizon may proceed with the attachment. If the application is rejected, the District shall, within said thirty (30) day period, provide oral or written notice of the rejection to Verizon and Verizon shall remove any equipment that may have been placed on the District's pole. Any denial of an application must be in writing and describe 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.

3.2 Upon sending a completed, signed copy of the application to the pole owner before, but not later than, the close of the following business day after making attachment, Verizon shall have the right to install, maintain and use its Equipment described in the application upon the poles identified therein in accordance with the terms of the application and

this Agreement. With the exception of service drops, Verizon shall not have the right to place, nor shall it place, any Equipment in addition to that initially authorized without first making application and receiving permission to do so, nor shall Verizon change the position of any Equipment attached to any pole without the District's prior written approval.

3.3 Verizon shall complete the installation of its attachments upon the pole(s) covered by each approved application within ninety (90) days of approval by the District. Verizon may request, in writing, an extension of time for installation of large projects subject to written approval by the District. The District shall approve such requests for extension of time unless the District identifies a reasonable justification for denial of such request. In the event Verizon should fail to complete the installation within the prescribed time limit, the permission granted by the District to place the Equipment upon the poles shall thereupon be revoked and Verizon shall not have the right to place the Equipment upon the poles without first reapplying for and receiving written permission to do so.

3.4 If in the sole judgment of the District, the accommodation of any new Equipment to be attached by Verizon to the District's poles necessitates the rearrangement or addition of any existing facilities on an existing pole, or the replacement of any existing pole, the District shall specify on the application the changes necessary to accommodate the Equipment and the estimated cost thereof and return it to Verizon. If Verizon still desires to use the pole and returns the application marked to so indicate, the District shall make such rearrangements, transfers and replacements of existing facilities, and additions of new facilities, as may be required, and Verizon shall reimburse the District for any additional expenses thereby actually incurred by the District that are not prescribed in Article IX, Division of Costs, Poles.

3.5 With the exception of increases in circuit voltage on poles, which are provided for under Article XVIII, if, in the District's sole judgment, Verizon's existing Equipment on any pole interferes with the District's existing Equipment or prevents the District from placing any additional Equipment necessary for its core function on an existing pole, the Parties shall take action as follows:

a. The District will notify Verizon of the rearrangements of Equipment, or pole replacement and Equipment transfer, required in order to continue the accommodation of Verizon's Equipment, together with an estimate of the cost of making any such changes.

b. If Verizon desires to continue to maintain its Attachments on the pole, and so notifies the District within thirty (30) days, Verizon may perform the necessary work, or Verizon shall authorize the District to perform the work. Should Verizon authorize the District to perform the work, the District shall make such changes as may be required.

c. If Verizon's existing Equipment interferes with the District's existing Equipment, Verizon shall be responsible for the reasonable and actual cost of making the changes set out in subSection b above. If Verizon's existing Equipment interferes with new Equipment to be attached by the District, the

District shall be responsible for the reasonable and actual cost of making the changes set out in subSection b above.

d. If Verizon does not so notify the District of its intent to perform the necessary work or authorize the District to perform the work, Verizon shall remove its attachments from the affected pole or poles within an additional thirty (30) days from such original notification by the District for a total of sixty (60) days; provided, however, that the District in any emergency may require Verizon to remove its attachments within the time required by the emergency.

e. If Verizon has not removed it attachments at the end of the sixty (60) day period, or in the case of emergencies, within the period specified by the District, the District may remove Verizon's Equipment at Verizon's sole risk and expense, and Verizon shall pay the District for all reasonable and actual costs incurred.

ARTICLE IV
RIGHTS OF OTHER PARTIES

4.1 Nothing herein contained shall be construed as affecting any rights or privileges previously conferred by either Party, by contract or otherwise, to others not party to this Agreement to use any poles owned by such Party. Further, nothing herein contained shall be construed to affect either Party's right to continue, modify, extend or amend such existing rights or privileges, or to grant others the right or privilege to use poles owned by the Party.

4.2 Verizon shall not enter into any agreement with third parties for attachment to a pole owned by the District within the Verizon's allocated space or otherwise. The District may enter into attachment agreements with third parties and will administer all third party attachments for space outside Verizon's allocated space. As to any such agreements between Verizon and third parties that predate this Agreement, Verizon will, by appropriate means, transfer the administration of such attachments to the District.

ARTICLE V
RENTALS

5.1 On or about July 1 of each year, but not later than July 31, the District shall make a tabulation of the total number of its jointly occupied poles, or on which Verizon has specifically reserved space, as of the preceding June 30 of the same year. For the purpose of the tabulation, any District-owned pole which is used by Verizon for the purpose of attaching Equipment thereto, either directly or by means of a pole top extension fixture, 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.

5.2 Within sixty (60) days after the completion of the tabulation referred to in Section 5.1, the District shall invoice Verizon for the rental amount owing, as calculated in accordance with Attachment A, which is attached hereto and incorporated herein by this reference, specifying on such invoice the rental period covered. Payment of the invoiced amount shall be

made within thirty (30) days of receipt of the invoice and shall constitute payment in advance for rental for the twelve (12) month period beginning July 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.

5.3 Compensation payable by third parties for the joint use of poles shall be collected and retained by the District.

5.4 If Verizon attaches Equipment to a pole without obtaining prior authorization from the District in accordance with this Agreement, the District may assess Verizon an unauthorized attachment charge per pole with an unauthorized attachment of sixty (60) times the rental fee for that year. The unauthorized attachment charge shall be payable to the District within thirty (30) days after receipt of the invoice for that charge.

ARTICLE VI
PERIODIC ADJUSTMENT OF RENTALS

6.1 On April 1 following the effective date of this Agreement, and on each April 1 thereafter, either Party may request in writing that the rental amount per pole per annum thereafter payable be adjusted. In the event the Parties are unable to agree upon an adjustment of rentals by April 30, the Parties will resolve their dispute using the following procedure: the District will submit to the Commission its proposed rate by April 30 using the rate worksheet at Appendix A, accompanied by supporting documentation; Verizon will respond within 21 days; and the Commission will make a determination within the next 30 days.

ARTICLE VII
PAYMENT OF TAXES

7.1 The District shall pay promptly all taxes and assessments lawfully levied on its poles and its own property attached to jointly used poles, except that any tax, fee, or charge levied on the District's poles solely because of their use by Verizon shall be paid by Verizon.

ARTICLE VIII
PAYMENT FOR WORK

8.1 Upon the completion of work performed hereunder by either Party, the expense of which is to be borne wholly or in part by the other Party, the Party performing the work shall present to the other Party an itemized statement of the costs incurred, and such other Party shall, within thirty (30) days after such statement and invoice are presented, pay to the Party doing the work such other Party's proportion of the cost of said work. Past due payments shall bear interest at the lesser of the maximum rate permitted by applicable law or the rate of 18 percent per annum compounded daily.

ARTICLE IX
DIVISION OF COSTS, POLES

9.1 The cost of erecting new joint poles, constructing new pole lines, making extensions to existing pole lines, or replacing existing poles, pursuant to this Agreement shall be borne by the Parties as follows:

a. Poles should be erected at the sole expense of the District.

b. If a pole larger than that which is already installed is necessary, due wholly to the Verizon's requirements, including requirements as to keeping Verizon's wires clear of trees, Verizon shall pay to the District a sum equal to the difference between the cost, in place, of such pole and the cost, in place, of the existing pole. The District shall bear the rest of the cost of erecting such pole, except as otherwise provided in Section 9.3.

c. If a pole larger than that which is already installed is necessary, due to the requirements of both Parties, or the requirements of public authorities or of property owners (other than requirements with regard to keeping the wires of one Party only clear of trees), Verizon shall pay to the District a sum equal to one-half the difference between the cost, in place, of such pole and the cost, in place, of the existing pole; the District shall bear the rest of the cost of erecting such pole. Where there are more than the two Parties to this agreement attached to a pole, the cost of such pole replacements will be divided equally among all Parties attached to the pole.

d. In the case of an interset pole required solely by Verizon in the District's alignment, the District shall erect and own such pole and retain ownership, and Verizon shall pay to the District a sum equal to the cost in place of the interset or midspan pole.

9.2 Any payments for poles made by Verizon shall not entitle Verizon to the ownership of any part of said poles.

9.3 Where an existing pole is prematurely replaced (for reasons other than normal or abnormal decay) by a new pole solely for the benefit of Verizon, or in order to permit joint use, the cost of the new pole shall be borne by the Parties as specified in Section 9.1, and Verizon shall also pay the District the remaining life value of the old pole in place, plus the cost of removal, less the salvage value of such pole. The District shall remove and may retain or dispose of such pole as sole owner thereof.

9.4 Each Party shall place, maintain, rearrange, transfer, and remove its own attachments at its own expense except as otherwise expressly provided.

9.5 The expense of the poles shall be borne by the District except that the cost of replacing poles shall be borne by the Parties hereto in the manner provided in Sections 9.1 and 9.3.

9.6 Where Verizon's service drops cross over the District's lines and are attached to the District's poles, either directly or by means of a pole top extension fixture, the cost shall be borne as follows:

a. Pole top extension fixtures shall be provided and installed at the sole expense of the Party using them.

b. Where an existing pole is replaced with a taller pole to provide the necessary clearance for Verizon's benefit, Verizon shall pay to the District a sum as determined under Section 9.3.

9.7 The District shall bear the cost of the original tree trimming, brushing and clearing required for the placement of a new pole line. All tree trimming and brush cutting in connection with the initial placement of wires or equipment on an existing pole line shall be borne entirely by the Party placing the wires or equipment. Unless the Parties otherwise agree, each Party shall be responsible for any and all additional tree trimming and brush cutting related to its wires or equipment.

9.8 Nothing herein shall preclude the establishment of other arrangements for the division of costs of joint poles as the Parties may agree to in writing.

9.9 *Inspections.* The District shall have the right to perform an Inspection of Verizon's Attachments and other Equipment upon, and in the vicinity of, the District's poles at any time. The District may charge Verizon 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 District shall notify Verizon of any performance concerns that trigger Inspections at least two (2) Business Days prior to activating such Inspection during installation and thirty (30) days after completion and provide Verizon an opportunity to participate in such Inspections. The District shall recover the costs for all periodic, routine Inspections that benefit Verizon in the annual rent. 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.

9.10 *Occupancy Survey*. The District may conduct an Occupancy Survey anytime after the effective date of this Agreement and not more often than every fifth year subsequent to each such Occupancy Survey. The District shall give Licensee at least thirty (30) days prior notice of such Occupancy Survey. Verizon shall advise the District if Verizon desires to participate in the inventory with the District not less than ninety (90) days prior to the scheduled date of such Occupancy Survey. The Parties shall jointly select an independent contractor for conducting the inventory and agree on the scope and extent of the Occupancy Survey that is reimbursable by Verizon. The cost of the Occupancy Survey shall be recovered in the annual rent. The Contractor shall provide the Parties with a detailed report of such Occupancy Survey including

both the District's and Verizon's pole numbers (to the extent that Verizon's pole numbers are on the pole and clearly identified as Verizon's pole tag at the time of the survey) within a reasonable time after its completion. The inventory data from the District's Occupancy Survey shall be used to update the District's attachment billing records where applicable. Verizon shall make any objections to the inventory data within sixty (60) days of receipt of the Occupancy Survey report or such objections shall be waived. Objections raised to inventory data from an Occupancy Survey shall not relieve Verizon of the obligation to pay undisputed amounts when due, as set forth in Article V above. The Parties agree to cooperate in good faith to resolve any disputed amounts.

ARTICLE X
MAINTENANCE OF POLES

10.1 The expense of maintaining jointly used poles shall be borne by the District, and the District shall maintain its jointly used poles in a safe and serviceable condition, and shall, under the provisions of Article XIII, replace, reinforce, or repair such poles as become defective. The District shall be solely 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.

10.2 Whenever it is necessary to replace, move, reset, or relocate a jointly used pole, the District shall, before making such replacement, move, or relocation, give written notice thereof to Verizon (except in case of emergency, when oral notice shall be given and subsequently confirmed in writing), specifying in such notice the work to be performed and the time of such proposed replacement or relocation. Verizon shall arrange to 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 10.3, in the event such transfer is not completed within thirty (30) days after the 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 period, shall indemnify and hold harmless the District from all obligations, liabilities, damages, costs, expenses, or charges incurred in connection with such pole thereafter, and shall pay to the District the salvage value of the pole, if any, upon delivery of a bill of sale. In the event that third parties, not subject to this agreement, have equipment attached to the District's pole, such thirty (30) day period shall commence upon removal of third party attachments. Should 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 performed shall pay, upon receipt of an invoice, the actual cost of such work.

10.3 The District reserves the right to transfer Verizon’s Equipment from the replaced pole to the replacement pole in a reasonable manner consistent with industry practices (a) as an accommodation to and upon the request or consent of Verizon, or (b) upon Verizon’s failure to transfer its Equipment after the District has given an additional ten (10) working days’ advance notice, and Verizon will reimburse the District for all actual costs incurred. Should the District give up the right to serve additional notice immediately following the initial thirty (30) day

period, Verizon shall assume ownership of the pole subject to the terms of Paragraph 10.2. In the event that third parties, not subject to this agreement, have equipment attached to the District's pole, such thirty (30) day period shall commence upon removal of third party attachments.

10.4 When a jointly used pole carrying underground conduit connections needs to be replaced, the District shall set the new pole in the same hole or, when mutually agreed to by the Parties, to a location generally adjacent to the previous hole. When the District replaces a jointly used pole carrying underground conduit connections, or any other jointly used pole carrying equipment other than underground conduit connections, to a location different than and not adjacent to its original location, and when, after good-faith negotiation, the Parties cannot agree on the new location, the District shall reimburse Verizon its excess costs to modify its facilities to attach to the replacement pole, except where the District replaced the pole pursuant to a requirement of the requisite local governing body.

10.5 The District may, as an accommodation and with prior written approval by Verizon, by its own personnel or by a contractor mutually agreed upon by the District and Verizon, inspect and/or treat for wood decay and NESC Code violations jointly used poles owned by Verizon which support the District conductors concurrently with inspection and/or treatment of the District poles located in same geographic area; however, reinspection and/or treatment shall not be repeated more frequently than every ten (10) years. Verizon shall reimburse the District the reasonable and actual cost of inspection and/or treatment. The District intends to test and treat approximately ten (10) percent of its joint use facilities each year in all districts of its service area. A listing of each Verizon pole treated and the treatment method used shall be provided to Verizon upon completion of any inspection and/or treatment plan.

10.6 In the event that the District, itself or by a contractor, performs such inspection and/or treatment, Verizon hereby releases the District from any responsibility for such services or liabilities arising out of the performance of such services, including but not limited to omissions of the District or its contractor in the performance thereof but excluding negligence or gross misconduct of the District or its contractor.

10.7 When either Party performs maintenance to or removes or replaces its equipment on the District's poles, it must chemically treat all field drilled holes and plug any unused holes, such as those resulting from removal of equipment.

ARTICLE XI
ABANDONMENT OF JOINTLY USED POLES

11.1 If the District desires at any time to abandon the use of a jointly used pole, it shall give Verizon written notice at least thirty (30) days prior to the intended date of abandonment. In the event that Verizon has not removed all of its attachments from that pole by the specified date, Verizon shall become the owner of the pole, shall indemnify and hold harmless the District from all obligation, liability, damages, costs, expenses, or charges incurred in connection with such pole thereafter; and upon receipt of an invoice and bill of sale therefor, shall pay to the District the value, in place, at that time, of such abandoned pole, less cost of removal, but in no

event less than zero, even should such value fall below zero. Credit shall be allowed for any payments made by Verizon under the provisions of Article IX; however, such sales will not exceed pole heights of forty (40) feet for pricing purposes. In the event that third parties, not subject to this agreement, have equipment attached to the District's pole, such thirty (30) day period shall commence upon removal of third party attachments.

11.2 Verizon may, at any time, abandon the use of a jointly used pole by giving the District notice in writing and by removing any and all attachments Verizon may have thereon. Verizon shall continue to be subject to rental obligations on the abandoned pole until its Equipment has been removed from the pole, and Verizon shall not be entitled to any refund or credit related to the annual rental for the use of such pole.

11.3 The Parties acknowledge that during the period covered by this Agreement, an agency of the federal, state or local government may classify chemicals used as a preservative or other treatment of wood poles subject to this Agreement as hazardous or toxic waste requiring special disposal procedures. The Party which is the Owner of a given pole at the time of disposal shall bear the full cost of any special disposal procedures, except that where a Party takes ownership pursuant to abandonment by the other Party, the new Owner shall bear such costs only if (1) it has given notice in writing to the abandoning Party that it intends to maintain such pole, or (2) it maintained attachments on the pole for a period exceeding sixty (60) days from the date on which it acquired title by abandonment under this Agreement. For purposes of this article, such sixty (60) day period for transfer of facilities shall commence upon transfer or removal of facilities owned by third parties licensed by the original Owner.

ARTICLE XII
ANCHORS

12.1 When Verizon requests attachment of Equipment to a new pole, it shall be responsible for the installation of anchors and guys sufficient in size and strength to support its Equipment on the new pole. Verizon shall attach its guys only to its own anchors.

12.2 When, in the opinion of both Parties, existing anchors are adequate in size and strength to support the equipment of both Parties, the other Party 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 District anchor shall be insulated. When anchors are not of adequate size and strength, the Party requiring additional anchors shall, at its own expense, place additional anchors or replace existing anchors with anchors adequate in size and strength for the use of both Parties.

ARTICLE XIII
SPECIFICATIONS

13.1 The specifications of each Party for the construction, operation, and maintenance of its respective 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 Electrical Safety Code, 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, additions to, or construction practices supplementing the requirements of the National Electrical Safety Code, wholly or in part, will also govern joint use of poles.

13.2 Verizon's attachments on a District-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, circuit arrangements, conductor or cable sags, and service drop arrangements within the provisions of Section 13.1.

13.3 Verizon (including its employees and contractors) shall not enter the electric utility space on District poles for any purpose including making connections to the District neutral. If Verizon requires grounding on an existing District pole where a grounding conductor does not exist, Verizon shall request the District to install grounding at the sole expense of Verizon. If the District is unable to install said grounding within thirty (30) days of the date requested, Verizon has the option of hiring qualified electrical contractors to perform this work. Verizon, its employees and its contractors, shall at all times exercise its rights and responsibilities under the terms of this Agreement in a manner that treats all electric facilities as energized at all times. Verizon shall assume complete responsibility for its employees' conduct and Verizon shall determine and provide the appropriate training and safety precautions to be taken by its employees and contractors. Verizon shall indemnify, defend, and hold the District harmless from any liability of any sort derived from Verizon's employees' or contractors' failure to abide by the terms of this Section except to the extent of the District's negligence or willful misconduct.

ARTICLE XIV
EXISTING CONTRACTS

14.1 This Agreement constitutes the entire Agreement between the Parties and it supersedes all prior negotiations, agreements and representations, whether oral or written, between the Parties relating to the subject matter of this Agreement; provided, however, that (i) Equipment currently attached to poles in accordance with approvals granted by the Owner under prior agreements and applications in progress for permits, shall continue in effect under the terms and conditions of this Agreement; (ii) nothing herein shall relieve either Party from obligations and liabilities that arose or were incurred under prior agreements; and (iii) any rental obligations of the Parties currently in arrears under any prior agreement shall be recalculated according to the terms of this Agreement as of the effective date hereof. This Agreement can only be modified or amended in writing by authorized representatives of the Parties.

ARTICLE XV
BREACH AND REMEDIES

15.1 If either Party 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 defaulting Party, the Party not in default may exercise any of the remedies available to it. The remedies available to each Party shall include, without limitation: (i) refusal to grant any additional joint

use to the other Party 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 15.2; and (vi) litigation to recover sums due.

15.2 If either Party shall default in the performance of any work that it is obligated to do under this Agreement, the other Party may elect to do such work, and the party in default shall reimburse the other Party for the cost thereof within thirty (30) days after receipt of an invoice therefor.

15.3 In the event either Party is required to bring suit for the collection of amounts due or the enforcement of any right hereunder, the prevailing Party shall be entitled to recover its reasonable attorney's fees, including attorney's fees at trial and on appeal.

15.4 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.

ARTICLE XVI
RIGHT TO TERMINATE FURTHER GRANTING OF JOINT USE

16.1 Subject to the provisions of Article XV, this Agreement may be terminated by either Party, so far as concerns further granting of joint use by either Party, upon sixty (60) days' notice to the other Party; provided, however, that notwithstanding such termination, this Agreement shall remain in full force and effect with respect to all poles jointly used under the terms of this Agreement by the Parties at the time of such termination.

ARTICLE XVII
TERMINATION OF AGREEMENT

17.1 This Agreement shall remain in full force and effect unless and until either Party terminates it upon three hundred sixty-five (365) 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 22.1 of this agreement. If this Agreement is terminated, Verizon shall remove all of its Equipment from the District's poles and the District shall remove all of its Equipment from Verizon's poles within two years after termination of this Agreement. 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 either Party remaining upon poles of the other Party until such time as all such Equipment has been removed.

ARTICLE XVIII
PROCEDURE INVOLVING INCREASES IN ELECTRIC SYSTEM NOMINAL CIRCUIT VOLTAGES

18.1 Whenever the District desires to raise the voltage of its primary distribution circuits on its jointly used poles to levels up to and including 34,500 volts nominal, the District shall give Verizon ninety (90) days' notice of the change and shall furnish a sketch showing the circuits involved and the proposed settings of circuit breaker relays and fuse sizes. The District shall make available to Verizon the maximum values of expected fault current.

18.2 All costs for additions to, or modifications of, Verizon's circuits, including reestablishing such circuits in a new location, which are determined to be necessary by Verizon to protect or coordinate the communication circuits at distribution system voltage levels up to and including 34,500 volts nominal, shall be borne by Verizon.

18.3 Where the increase is to more than nominal 34,500 volts but not to exceed nominal 230,000 volts, with or without grounded neutral, and in the opinion of Verizon joint use of poles carrying such voltage is not practicable, the Parties shall determine the most practical and economical method of effectively providing for separate lines, either overhead or underground, and the Party whose circuits are to be moved shall promptly carry out the necessary work.

18.4 The total cost of reestablishing such circuits in the new location shall be equitably apportioned between the Parties hereto. In the event of disagreement as to what constitutes an equitable apportionment of such cost, it shall be borne equally.

18.5 Unless otherwise agreed by the Parties, ownership of any new line or underground facilities constructed under the foregoing provisions in a new location shall vest in the Party for whose use it is constructed.

ARTICLE XIX
OBTAINING NECESSARY CONSENTS FOR ATTACHMENTS

19.1 The Parties will cooperate as far as may be practicable in obtaining rights-of-ways and easements for both Parties on joint poles. However, Verizon shall be responsible for obtaining from public authorities and private owners of real property and maintaining in effect any and all consents, permits, licenses or grants necessary for the lawful exercise of the permission granted under any approved application to locate its Equipment on a District-owned pole. The District shall in no way be liable or responsible in the event Verizon shall at any time be prevented from placing or maintaining its Equipment on the District's poles because Verizon lacks the necessary consents, permits, licenses, or grants.

ARTICLE XX
LIABILITY AND DAMAGES

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

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

20.3 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 to indemnify 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.

ARTICLE XXI
ASSIGNMENT OF RIGHTS

21.1 Neither Party shall assign, transfer, or otherwise dispose of this Agreement or any of its rights, benefits, or interests under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld. No assignment of this Agreement shall operate to discharge the assignor of any duty or obligation hereunder without the written consent of the other Party. Each Party may assign all its rights and obligations under this Agreement to its parent corporation, to its subsidiary corporation, to a subsidiary of its parent corporation, to its survivor in connection with a corporate reorganization, to any corporation acquiring all or substantially all of its property or to any corporation into which it is merged or consolidated.

ARTICLE XXII
NOTICE

22.1 Unless otherwise specified herein, all notices concerning this Agreement shall be addressed to:

The District at:

Central Lincoln People's Utility District
Attn: Joint Use Administrator
2129 North Coast Highway
P.O. Box 1126
Newport, Oregon 97365

For Agreement Administration at Verizon:

Verizon Northwest Incorporated
Joint Use - WA0103NP
P.O. Box 1003
Everett, Washington 98206

or at such other addresses as may be designated in writing to the other party.

22.2 Unless otherwise provided herein, notices to the addressees specified in Section 22.1 shall be sent by United States mail, electronic transmission, or by personal delivery.

ARTICLE XXIII
CHOICE OF LAW

23.1 In the event of any legal action to enforce any of the terms, conditions or covenants of this Agreement, the Parties agree that this Agreement shall be interpreted in accordance with the laws of the State of Oregon.

ARTICLE XXIV
WAIVER

24.1 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 the same shall be and remain, at all times, in full force and effect.

ARTICLE XXV
MISCELLANEOUS

25.1 The provisions of this Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns.

25.2 All obligations of the Parties to indemnify, release or make payments to each other, which have accrued prior to the termination of this Agreement, shall survive such termination.

ARTICLE XXVI
INTERPRETATION

26.1 References to articles and Sections are references to the relevant portions of this Agreement.

26.2 A reference to business or working days shall refer to days other than a Saturday, Sunday or federal holiday when banks are authorized to be closed.

26.3 The headings are inserted for convenience and shall not affect the construction of this Agreement.

26.4 Attachment A is attached hereto and made a part hereof.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized officers as of the date first herein written

VERIZON NORTHWEST INC.	CENTRAL LINCOLN PEOPLE'S UTILITY DISTRICT
By: _____	By: _____
Title: _____	Title: _____
Date: _____	Date: _____

RENTAL RATE WORKSHEET
ANNUAL RATE THE DISTRICT WILL CHARGE VERIZON

Total Value of Poles & Fixtures			$15,233,492
Less Depreciation Reserves			$8,447,413
Net Value of Poles & Fixtures			$6,786,079
Ratio of Bare Pole to Total Pole			85%
Value of all Bare Poles			$5,768,167
Number of Poles			25,623
Average Cost per Pole			**$225**
Annual Carrying Charge			
Operation expense	$1,835,120	2.82%	
Maintenance expense	$1,677,359	2.57%	
Customer expense	$0	0.00%	
Admin. & General expense	$3,572,010	5.48%	
Taxes	$2,228,316	3.42%	
Depreciation	$6,063,335	9.31%	
Bond Debt Interest/Amortization Expense	$802,960	1.23%	
Current net income	$0	0.00%	
Totals	$16,179,100		**24.84%**
Net Book Value		$65,146,078	
Carrying Charge per Total Usable Space ($225 Ave. Cost/Pole x 24.84% Carrying Charge)			**$55.88**
Available Usable Space (in feet) (11.8' from VZ -124 + 1.67' safety (20"))			13.50
Rental Rate PER FOOT			**$4.14**
Space Occupied (in feet)		1.5	
Rental Rate PER POLE			**$6.21**