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September 28, 2006

VIA EMAIL and DHL

Oregon Public Utility Commission
Attention: Filing Center
550 Capitol Street, N.E., Suite 215
Salem, OR 97308-2148

Re: AR 506: In the Matter of Rulemaking to Amend and Adopt Permanent Rules in OAR 860, Division 028 Regarding Pole and Conduit Attachments

Enclosed for filing in the above-captioned docket is Verizon Northwest Inc.'s Opening Comments.

If you have any questions, please contact Renee Willer at 503-645-7909.

Sincerely,

Kim Douglass

c: AR 506 Service List

Enclosure

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

AR 506

In the Matter of a Rulemaking to Amend and Adopt Permanent Rules in OAR 860, Division 028 Regarding Pole and Conduit Attachments (Phase 2)	))))	Opening Comments of Verizon Northwest Inc.

Verizon Northwest Inc. ("Verizon") files these opening comments in Phase 2 of this proceeding addressing the Division 28 rules proposed in this docket. Verizon's comments on the "sanctions rules" included in Division 28 will be filed in Docket No. AR 510.

As explained in more detail below, Verizon recommends specific changes to the new rules proposed by the Staff.[1] Verizon's proposed changes are consistent with Commission orders issued in Docket No. UM 1087, in which the Commission addressed many issues of first impression on the Division 28 rules. There is one global change that Verizon suggests in the revisions below related to terminology. The term "licensee" should be replaced with "occupant" for consistency within the rules, as the term "occupant" is used throughout the relevant rules.

REVISIONS TO STAFF'S PROPOSED RULES

1. Rule Number: 860-028-0020(2)

Verizon proposes that this rule be modified to state:

> (2) "**Authorized attachment space**" means the space specified by the owner and occupant in a pole attachment agreement as the average amount of space for one or more attachments on a pole by the occupant. The

[1] These comments present a clean version of Verizon's proposed provisions; a redlined document comparing the Staff's proposed rules with Verizon's proposed rules will be made available at the next workshop.

authorized attachment space must not be less than 12 inches. Additional attachment space may be authorized in increments of one inch or more.

The authorized attachment space should be stated in the agreement between the pole owner and occupant and should constitute an average of the amount of space used by an occupant, rather than utilizing a pole or attachment-specific approach, as proposed by Staff. Allowing the authorized space to be adjusted on a per attachment or per pole basis is not workable because of the complexity and administrative burdens associated with tracking and enforcing such detail. Utilities encounter significant difficulty even in efforts to simply confirm which company owns the pole and to track the number and identity of all attaching entities. Adding the need for both the owner and the occupant to track not only pole ownership and attaching entities but also the exact measurement of space used by such entities is unrealistic, overwhelmingly burdensome and will significantly increase the costs of field inspections.

To avoid such a burdensome and unrealistic approach, the amount of space stated in the agreement should be an <u>average</u> of the actual amount of space that the occupant will actually expect to use on a pole. Moreover, the use of average space will not adversely affect the cost recovery of owners for attachments on the pole. Owners are entitled to recover for the actual space occupied on the pole. Verizon's proposed minimum occupancy of 12 inches will actually result in overcompensation to owners, as the overwhelming majority of attachments do not use that amount of space.

Any additional attachment space beyond the 12 inch minimum occupancy proposed by Verizon that a party may generally need should be allowed in increments of one inch or more. One inch increments allow the parties the flexibility to set forth more precisely the actual amount of space they will average on a pole. For example, the parties

may negotiate for 13, 14, 15 or 16 inches if that is what they generally actually use. Use of one inch increments beyond one foot does not create any administrative burdens under Verizon's proposal because the parties set the amount of authorized space in the agreement based on an occupant's average usage.

In sum, Verizon's proposed revision to the definition of the phrase "authorized attachment space" appropriately focuses on the relevant pole attachment agreement to determine the amount of authorized attachment space.

2. Rule Number: 860-028-0020(3)

Verizon proposes that this rule be modified to state:

> (3) "Carrying Charge" means the costs incurred by the owner in owning and maintaining distribution poles or conduits regardless of the presence of pole attachments or occupation of any portion of the conduits by licensees. The carrying charge is expressed as a percentage. The carrying charge is the sum of the percentages calculated for the following expense elements, using data from the most recent year:
>
> (a) The administrative and general percentage is total general and administrative expense as a percent of total plant net investment.
>
> (b) The maintenance percentage is maintenance of overhead lines expense or conduit maintenance expense as a percent of net investment in overhead plant facilities or conduit plant facilities.
>
> (c) The depreciation percentage is the depreciation rate for gross pole or conduit investment multiplied by the ratio of gross pole or conduit investment to net investment in poles or conduit.
>
> (d) Taxes are total operating taxes, including, but not limited to, current, deferred, and "in lieu of" taxes, as a percent on net investment in total plant.
>
> (e) The cost of money is calculated as follows:
>
> (A) For a telecommunications utility, the cost of money is equal to the rate of return on investment authorized by the Commission in the pole or conduit owner's most recent rate or cost proceeding;

(B) For a public utility, the cost of money is equal to the rate of return on investment authorized by the Commission in the pole or conduit owner's most recent rate or cost proceeding; or

(C) For a consumer-owned utility, the cost of money is equal to the weighted average of the consumer-owned utility's embedded cost of debt and the most recent cost of equity authorized by the Commission for ratemaking purposes for an electric company as defined in OAR 860-038-0005.

(f) These carrying charge expense elements include administrative costs related to processing new attachments, employee and contractor expenses, routine inspections and other administrative expenses related to operation and maintenance.

(g) The carrying charge must not include net income and customer, advertising, marketing and similar expenses.

(h) The carrying charge must be calculated using the following accounts:

(A) For a utility providing communications service, Appendix E-1 Section 224(e) Telecom Formula for Determining Maximum Rate For Use of LEC Utility Poles Using FCC ARMIS Accounts; or

(B) For utility providing electric or power service, Appendix E-2 Section 224(e) Telecom Formula for Determining Maximum Rate For Use of Electric Utility Poles Using FERC Form 1 Accounts.

As specified in Verizon's proposed addition to the text of 860-028-0020(3), only costs related to *distribution* facilities should be included in the carrying charge; the costs of *transmission* facilities should be excluded. Transmission poles are generally taller (70 feet) and constructed of metal, concrete and other materials, and are, therefore, more expensive. Including transmission pole costs or other types of poles such as street light poles is likely to increase inappropriately the overall average pole cost for occupants. To the extent a potential occupant desires to attach to a transmission pole, that should be arranged through a separate pole attachment agreement unique to transmission poles, and should not be included in these rules.

New subsections (f) and (g) are based on the following language from the Commission's order in Docket No. UM 1087:

> While [the pole owner] 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 reconstruction, make ready, change out, and rearrangement work," application fees may not be recovered, and administrative charges related to processing new attachments should be allocated with the *carrying charge*. Other charges discussed by [the pole owner's witness], 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), [the pole owner] 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.[2] (Emphasis supplied.)

Verizon's proposed section (h) ensures that the definition of "carrying charge" is based upon the definition used by the FCC and the FERC.[3] Use of these accounts will eliminate the numerous disputes between owners and occupants regarding the proper accounts and amounts to include in the rent calculation. This proposal is also consistent with the guidance expressed by the Commission in Docket No. UM 1078 regarding what costs should (and should not) be included in carrying charges.

3. Rule Number: 860-028-0020(11)

Verizon proposes that this rule be modified to state:

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[2] See, Central Lincoln People's Utility District v. Verizon Northwest, Inc., Docket No. UM 1087, Order No. 05-0492, issued January 19, 2005, at pages 15 and 16.

[3] *Amendment of Commission's Rules and Policies Governing Pole Attachments, In the Matter of Implementation of Section 703(e) of The Telecommunications Act of 1996*, Consolidated Partial Order on Reconsideration, CS Docket Nos. 97-98, 97-151, FCC 01-170, 16 FCC Rcd 12103 (2001) and 47 CFR 32.2411 (FCC) and 18 CFR 101.364 (FERC).

> "Make ready work" means rearrangement, change-out or replacement work necessary to prepare a pole, conduit, or other support structure for a new attachment, modified attachment, or additional facilities and may include a field inspection of such structure if such inspection is necessary to determine if the structure is suitable. Make ready work shall not include work performed to conduct a routine inspection, to process an application or permit or to perform any other work for which charges are included in the carrying charge component of the pole attachment rental rate.

In the FCC's Order on Reconsideration on its pole attachment rules, the references to "make-ready" costs concern the costs to replace or change-out a pole with a higher or stronger pole to either: (i) accommodate an attaching entity due to lack of adequate space on the pole for a new attachment or (ii) satisfy NESC strength requirements.[4] That should be focus of the definition of "make-ready" costs here as well. For example, the definition of "make ready work" should not include charges for routine work such as processing applications or permits because they are already included in the carrying charge calculation (as stated in the Commission's order in Docket No. UM 1087, Order No. 05-042 at pages 15 and 16, quoted above.

Verizon proposes to add inspection language to the make-ready definition to clarify the type of inspection costs that can be charged by an owner as a direct cost to an occupant. By adding the inspection language here, rule number 028-0110(3) can be simplified to delete the undefined terms "special inspections" and "preconstruction activity." These revisions, combined with the revisions Verizon has proposed to the definition of "carrying charge," would provide much needed clarity on what owners can directly bill and what must be included in the carrying charge component of the rental rate.

[4] Order at ¶ 24 and footnote 120 and at ¶ 77.

4. Rule Number: 860-028-0020(17)

The Staff's proposed definition of the term "pattern" is too vague and relies heavily on ambiguous terms. Verizon recommends that the rule be modified to focus on contractual breach to establish a pattern of misconduct. A contract basis is appropriately based on what the parties have agreed to constitutes misconduct. The rules also must clarify that any modified definition of "pattern" should apply only prospectively upon the effective date of a new definition; otherwise, parties would not be on proper notice as to what constitutes a "pattern." Based on these two concepts, Verizon proposes the following definition:

> "Pattern" means a course of behavior documented by the Commission that results in a material breach of a contract, or permit, or in flagrant violation of OAR 860-028-120. A course of behavior only constitutes a pattern if all of the events comprising the pattern began after the enactment of this provision.

5. Rule Number: 860-028-0020(20)

Verizon recommends that the rule be modified to state:

> (20) "Pole Cost" means the depreciated original installed cost of an average bare distribution pole of the pole owner, from which is subtracted related accumulated deferred taxes, if any. There is a rebuttable presumption that the average bare distribution pole is 40 feet and the ratio of bare distribution pole to total distribution pole for a public utility or consumer–owned utility is 85 percent, and 95 percent for a telecommunications utility.

This recommendation includes a number of changes from the Staff's proposed rules. As discussed above, definitions must focus on distribution – not transmission – poles; Verizon's proposed definition makes that clear. Also, the Staff's proposed reference to "support equipment" should be deleted entirely from the Division 28 rules.

Items such as guy wires, anchors and grounds are already included in the pole cost under the rules and regulations of the FCC and the FERC. By including this phrase, the Staff appears to be adding something else to the pole costs beyond what is already authorized under the FCC and FERC. In addition, the occupant directly pays the costs of supplying "support equipment" required to make poles attachment-ready as part of the make ready process. Adding this term in additional sections is duplicative and appears to allow owners to exceed the statutory pricing minimum outlined in ORS 757.282 and 759.665. If the Commission were to allow inclusion of support equipment costs as part of the pole cost, the Commission would allow owners to double recover and excessively profit from pole attachments by including same support equipment costs in the pole cost and in make ready work costs. The Commission would also be violating its statutory requirement to protect customers, and the public generally, from unjust and unreasonable exactions and practices."[5] Accordingly, Verizon's proposal does not include the phrase "support equipment."

6. Rule Number 860-028-0020 (21)

Verizon recommends that this rule be modified to state:

> "Post construction inspection" means inspection on new attachments to verify and ensure the construction complies with the permit, the pole attachment agreement, and the Commission safety rules.

Verizon has clarified this definition to ensure that it applies only to new construction for new attachments, and not for existing attachments. The Staff's proposed definition appeared to apply to existing attachments.

[5] ORS § 757.279

7. Rule Numbers: 860-028-0020(26), (27), and (28)

The definitions and use of the terms "special inspection," "support equipment" and "support equipment cost" should be deleted throughout the proposed rules. Special inspections, which are inspections performed by one party at the request and expense of another party, are bilateral activities that should be governed by contract between the requesting and performing parties, not addressed in the Commission's rules. As discussed above, the costs of support equipment are not relevant to the Commission's rules, and thus all references to "support equipment" and "support equipment cost" should be deleted from the proposed rules.

8. Rule Number: 860-028-0020(32)

The phrase "unauthorized attachment" should apply only to attachments made to poles without permission from the pole owner. For example, a permit indicates the owner has given its authorization to the occupant to attach to its poles, and any permitted attachment should not be considered "unauthorized." Looking to the permit for purposes of determining authorization is consistent with treatment in most pole attachment agreements of which Verizon is familiar. Moreover, it is Verizon's experience that there may be instances where a pole owner has approved a permit prior to negotiating a pole attachment agreement with that occupant. In that example, if the pole owner authorized a permit prior to negotiating a pole attachment agreement, the Staff's proposed definition would classify any attachment made pursuant to that permit as "unauthorized." That cannot be the intent of the Staff's proposal. Accordingly, Verizon proposes that this rule be modified to state:

> "Unauthorized attachment" means an attachment made to a pole without a permit.

9. Rule Number: 860-028-0020(33)

Verizon proposes that this rule be modified to state:

> "Usable Space" means all the space on a pole, except the portion below ground level, the 20 feet of safety clearance space above ground level, and the safety clearance space between communications and power circuits. There is a rebuttable presumption that six feet of a pole are buried below ground level, that the pole height is forty (40) feet, and that the clearance space above ground level is twenty (20) feet. The rebuttable presumption is that usable space is fourteen (14) feet.

The additional rebuttable presumptions will provide much-needed clarity on the use of "usable space" in the rules. The rebuttable presumption of a 40 foot pole height is consistent with the definition of "pole cost." And when combined with a rebuttable presumption of 20 feet of safety clearance space above ground, it results in a rebuttable presumption of 14 feet (40'- 6'- 20') in usable space. This presumption of 14 feet of usable space is generally consistent with the FCC rule (§1.1418) presuming usable space of 13.5 feet for a pole height of 37.5 feet.[6] The FCC treats the 40 inches (3.33 ft.) of space between electric and communication space as usable space because this space is in fact used by electric companies for street lights and other equipment such as transformers and grounded, shielded power conductors. The FCC rejected electric company arguments citing safety reasons, and determined that the 40 inch space is indeed usable and is, in fact, used by electric utilities.[7] In the words of the FCC:

> It is the presence of the potentially hazardous electric lines that makes the safety space necessary and but for the presence of those lines, the space could be used by cable and telecommunications attachers.[8] The space is

[6] The FCC uses 37.5 feet as an average between 35' and 40' poles. Verizon concurs with Oregon's current presumption that poles are 40 feet tall because poles in Oregon are increasingly taller and 40 feet is more likely a true average.

[7] Order on Reconsideration at ¶ 51, Report and Order, FCC 00-116, CS Dkt.No. 97-98 at ¶¶ 20-24 (2000).

[8] *See, e.g.,* NCTA Comments at 12; TCI Comments at 14; Time Warner Comments at 15, U S West Comments at 5. *But see*, Sprint Comments at 4 (since all attaching parties are required to comply with the *NESC*, the space should be regarded as unusable).

> usable and is used by the electric utilities. A bare pole, when erected has portions to which attachments cannot be made at any time—the ground clearance and the part of the pole below ground. The rest is available for attachments; it is usable space. A communications attachment, even though it may be a fiber optic cable with a diameter of only one inch, is presumed to occupy one foot of the attachable space because of separation requirements. In a like manner, the electric supply cable on the pole, because of its unique spacing requirements must be 40 inches away from communications attachments. No one questions that the eleven inches of space not physically occupied by a fiber optic cable, but attributed to it, is usable space. Because the electric supply cable precludes other attachments from occupying the safety space, which would otherwise be usable space, the safety space is effectively usable space occupied by the supply cable. So long as their crews make the installation, the electric utilities are not limited by the NESC in what equipment or cables they may attach in the safety space. Accordingly, we reject the electric utilities' arguments to reduce the presumptive usable space of 13.5 feet by 40 inches.[9]

Oregon likewise should include the 40 inches of clearance space in the presumptive usable space.

10. Rule Number: 860-028-0020(XX)

The term "routine inspection" should be added to the definitions. This definition is necessary to support the revisions proposed by Verizon for the definitions of "carrying cost" and "make ready work." The term should be defined as follows:

> "Routine Inspection" means, in order to ensure proper construction, an inspection by an owner of all poles, ducts, conduits or rights-of-way for new line installations and attachments thereto including those of pole occupants and safety inspections to identify violations of the Commission safety and inspections for unauthorized attachments, or other defects or deteriorations. The costs for Routine Inspections can not be passed on to the pole occupants directly. These costs are part of normal maintenance.

Defining the term "routine inspection" is supported by the Commission's order in Docket No. UM 1087 and the need to clarify what constitutes "carrying cost." It is

[9] *Amendment of Rules and Policies Governing Pole Attachments*, Report and Order at ¶22, CS Docket No. 97-98, FCC 00-116, 15 FCC Rcd 6453 (2000). The FCC has rejected subsequent arguments to reduce the presumptive usable space by the 40 inches of safety space. *Amendment of Commission's Rules and Policies Governing Pole Attachments, In the Matter of Implementation of Section 703(e) of The Telecommunications Act of 1996*, Consolidated Partial Order on Reconsideration at ¶ 51, CS Docket Nos. 97-98, 97-151, FCC 01-170, 16 FCC Rcd 12103 (2001).

Verizon's understanding that some pole owners only inspect their *own* facilities during routine inspections, even though there may be occupant attachments on the owner's poles. These owners then conduct separate inspections to determine if there are any occupant attachments that violate the NESC safety rules. These same owners then conduct a third inspection for unauthorized attachments known as a "bootleg" inspection. In the event the owner finds any safety rule violations, it assesses the full cost of the safety inspection upon the occupant whose attachment violates a safety rule and then attempts to add sanctions under the Commission's existing "sanctions rule." Similarly, if an owner discovers any unauthorized attachment in its "bootleg" inspection, it also charges the pole occupants for the entire cost of the unauthorized attachment audit including sanctions allowed under the current rules and/or back rent. This multi-layered inspection process is inefficient, and imposes inappropriate costs on occupants.

To prevent such inefficiency, Verizon proposes that the three inspections described above be included in mandatory routine inspections, the cost of which is included in the carrying cost. Logic and efficient business practices suggest that in one inspection, a pole owner can inspect an entire pole including all attachments on that pole to ascertain whether there are any safety violations or unauthorized "bootleg" attachments. Conducting separate inspections is inefficient and illogical at best, and may instead constitute intentional acts designed to unreasonably increase the purported "direct" costs in order to pass those costs on to occupants. A further concern, is that if more than one occupant is attached to a pole improperly either for safety violations or as an unauthorized attachment, the pole owner may attempt to charge each occupant the full

amount of these additional inspections, rather than allocating the cost among all occupants.

Verizon's recommendation is also consistent with orders entered in Docket No. UM 1087, which require the pole owner to absorb all administrative fees associated with joint use issues into the carrying charges. That method results in the occupant paying a portion of the administrative fees for routine inspections in the pole rent and eliminates an opportunity for abusive behavior by pole owners.

11. Rule Number: 860-028-0050(2) - Owner Correction

This proposed rule should be deleted. It is so vaguely worded as to the situations when a pole owner may take corrective action that it invites abuse as yet another revenue-making opportunity for pole owners. For example, no guidance is provided as to the meaning of the term "reasonable" used throughout the rules, and use of the ambiguous phrase "situation requiring prompt attention" provides pole owners with far too much discretion as to what constitutes a hazardous situation warranting correction. Moreover, these types of self-help remedies are almost uniformly disfavored by courts and lawmakers because of the significant and serious potential for abuse.

12. Rule Number: 860-028-0050(3)

Verizon recommends deletion of this section. Telecommunication providers should not be subject to the same safety requirements as electrical providers. Electrical wires are uninsulated and charged, and pose significant safety concerns. Under Oregon statutes, electric providers receive adequate legal protections from litigation arising from tree-trimming activities necessary to ensure protection of public safety. In particular, ORS § 758.284 indemnifies electricity providers from accidents accruing when they

conduct tree-trimming measures. Telecommunication providers enjoy no such immunity when conducting the same activities. Without the same immunity, telecommunication providers should not be required by the Commission to conduct extensive tree-trimming activities required of electricity providers. To be required to conduct the tree-trimming regime proposed by the Staff without the same immunity protections as electricity providers would cause telecommunications providers to bear significantly higher and disproportionate costs. This outcome would be manifestly unfair. Moreover, public safety would be not be improved through the Staff's proposed rules, as telecommunication lines do not pose appreciable harm to the public. In addition, as mentioned earlier, this tree-trimming requirement stands to substantially alter the urban landscape, which was created with extensive planning and resource investment by local communities.

Another relevant distinction between telecommunications and electricity providers relates to the authority to trim trees and shrubs that are the private property of others; electricity providers are protected in such situations but telecommunications providers are not. Accordingly, telecommunications provides such as Verizon would face higher costs through potential liability than would be incurred by electricity providers.

13. Rule Number: 860-028-0060

Verizon proposes that this rule be modified to state:

Attachment Contracts

(1) Unless otherwise allowed by contract between the parties, owners and operators shall not place poles in or near an existing pole or pole line of another company.

(2) Parties must negotiation pole attachment agreements in good faith.

(3) Unless otherwise provided for by contract, the last effective contract between the parties will continue in effect until a new contract between the parties goes into effect.

Experience suggests that a rule mandating that parties "use poles jointly as much as practicable" is subject to abuse. "Practicable" means "possible, feasible or capable of being used."[10] This rule could be interpreted to require occupants to attach to poles, subjecting them to the rents and other expenses associated with pole occupancy. Occupants, however, should be free to plan, build and engineer their outside plant facilities in the manner they deem most appropriate given their strategic focus, performance objectives and other management plans. For example, an occupant may decide for strategic or other reasons to bury a facility instead of attaching to a pole. The Staff's proposed rule appears to prevent an occupant from doing so.

The likely intent of the proposed language is to encourage the efficiencies believed to be associated with joint use of poles. It ignores, however, the inefficiencies stemming from overbuilding of poles and pole lines by pole owners to force occupants to attach to their newly placed poles. For example, at the insistence of a variety of electric company pole owners, Verizon repeatedly has been directed to transfer its communications lines from Verizon-owned poles in the following situations:

- To a new pole placed inter-span in Verizon's pole line and
- To a new "double" pole placed within feet of Verizon's existing pole

These demands are often coupled with notices that Verizon is allegedly in violation of a contract, permit or NESC rules. Verizon has found, however, that the "violation" was created by the placement of new poles by the pole owners. In general, the contracts between Verizon and the electric company pole owners require pole owners

[10] Webster's Ninth New Collegiate Dictionary.

to contact Verizon regarding the need to replace a Verizon pole with a pole of greater height or strength to accommodate the needs of the electric company occupant. However, it has been Verizon's experience that several electric companies ignore these provisions, and (seemingly motivated by the current sanctions, annual rents and direct cost recoveries) convert themselves from pole occupants to pole owners. These new pole owners then collect annual rents, allege violations of Commission rules and seek to recover sanctions for "violations" of the contract, permit or NESC because of the existence of these now "unattached lines."

It also has been Verizon's experience that certain electric company pole owners will place a new inter span pole or new pole within a few feet of Verizon's pole in Verizon's lead, and perform the transfer of Verizon's lines to these new poles, The pole owner will then send notice to Verizon that it is in "violation" because it does not have a permit for the new pole. Almost uniformly, the transfer of communications lines to a new pole outside of emergency conditions constitutes a violation of contract provisions requiring the electric company to notify Verizon of the need for Verizon to transfer its own facilities. Although such misconduct should also be addressed through agreed-upon contract remedies for material breach, the Staff's proposed rules appear to provide potential pole owners a vehicle with which to impose sanctions for these types of activity under the guise that joint use is practicable in these situations.

In order to address this problem, Verizon proposes the replacement language set forth above for 860-028-0060(1) to prohibit pole placement in or near an existing pole or pole line of another company.

The intent of proposed rule 860-028-0060(2) is unclear. At a workshop, Staff advised that the proposal is intended to encourage occupants to execute contracts before attaching to poles. Yet, existing Rule 860-028-0120(1)(a) already requires occupants to "have a written contract with the pole owner that specifies general conditions for attachments on the poles of the pole owner." Therefore, no new rule on this point is needed.

Verizon supports Staff's proposed rule 860-028-0060(4) (which is 860-028-0060(2) under Verizon's proposal) because it will provide workable terms and conditions for parties to rely on and operate under until such time as a new contract is negotiated and executed. Under the current rules, certain electric utilities bill much higher rents and other fees and charges not allowed under the terminated agreement after they terminate a contract, arguing that they are free to do so without a contract in place. This proposed language will help stop such activities by providing clear terms to be followed in the gap period between contracts and will provide greater certainty for the parties to a pole attachment agreement.

The importance of Staff's proposed rule 860-028-0060(4) would be enhanced further if the Commission maintains the "sanctions rules" under consideration in Docket No. AR 510. In particular, the proposed rule would be necessary to prevent owners from terminating a contract for the purpose of recovering "no contract" sanctions. For example, under the facts detailed in Docket No. UM 1087, the PUD terminated the existing agreement it had with Verizon in order to impose sanctions even before discussions on a replacement agreement had commenced. It merely sent a new agreement to Verizon with a demand that it be signed. In fact, Verizon did not even

receive the new agreement until after the old agreement had purportedly been terminated.[11] Some pole owners have also tried to leverage the possible "no contract" sanctions to force occupants to sign unjust and unreasonable rates, terms and conditions. Similarly, pole occupants are reluctant to terminate an agreement based on the threat that the owner, in pursuit of "no contract" sanctions, will thwart negotiations or demand unreasonable or unjust rates, terms and conditions.

14. Rule Number: 860-028-0070(2) and (4)(e)(C)

Verizon proposes that this proposed rule be modified to state:

> (2) Before a complaint is filed with the Commission, one party must, in writing, request negotiations for a new or amended attachment agreement or for resolution of the disputed issues from the other party.
>
> (C) If the owner does not provide the data and information required by this rule after a request by the occupant, the occupant will include a statement indicating the steps taken to obtain the information from the owner, including the dates of all requests. If the owner has not submitted the data and information in response to the occupant's request, the owner must supply it in its response to the complaint.

The proposed 860-028-0070(2) ignores that a complaint may be filed for reasons other than a dispute regarding negotiations of a new attachment agreement. Verizon's recommended language accounts for other reasons and requires that a written request for resolution be sent prior to a filing at the Commission.

Proposed rule 860-028-0070(4)(e)(C) should be revised to clarify that the occupant need not make multiple requests to obtain information from a pole owner. As drafted by the Staff, the proposed rule suggests that additional steps should be taken to follow up on requests. For example, it would require the complainant to "indicate the *steps* taken to obtain the information from the pole owner, including the dates of all

[11] *Central Lincoln People's Utility District v. Verizon Northwest Inc*., UM 1087, CLPUD Exh. 13.

requests." (emphasis added). The rule should make definitive that an occupant can file a complaint if an owner does not provide the requested information within 30 days of receipt of the first request. It also must make clear that if the owner does not submit the data and information in response to the occupant's requests, the owner must supply it in its response to the complaint.

15. Rule Number: 860-028-0100(2)

This subsection should be modified by adding the following introductory language: "Unless otherwise agreed to by the parties in their joint use agreements or as otherwise directed by the Commission,". Details for applications regarding the information to be included, processing and other matters discussed in (2)(b) should be decided by the contracting parties and not established by rule. A contract is proper place to address these matters, as too many differences exist in the operations and information required or requested by utilities to attempt to standardize these details by rule. The level of detail in these rules does not allow the flexibility necessary for cost efficiencies and individual company's administrative and operational needs.

16. Rule Number: 860-028-100(3)

Verizon, as a pole owner, recommends deleting this rule. Under rule 860-028-0100(4), the owner has to either except or reject application within 30 business days and provide further details to the applicant. Requiring confirmation receipt in 10 business days is unnecessary and could become extremely burdensome for pole owners, many of which receive over 100 notifications a day (including other types of notifications, such as those addressing permitting, transferring, rearrangement requests, and NESC violations). Most pole owners and occupants in Oregon utilize the NJUNS (National Joint Use

Notification System) electronic system. Therefore, it would be rare that the pole owner would not receive the application. With prevalent use of the NJUNS system, this proposed rule appears designed to remedy a non-existent problem. Accordingly, it should be rejected.

17. Rule Number: 860-028-0100(5)

Verizon proposes that this proposed rule be modified as follows:

> If the owner approves an application that requires make ready work, and the applicant approves the estimate of costs for such make ready work, then the owner will perform such work at the applicants' expense. This work will be completed as quickly and inexpensively as is reasonably possible consistent with applicable legal, safety, and reliability requirements. Where this work requires more than 30 business days to complete, the parties will negotiate a mutually satisfactory longer time frame to complete the make ready work.

Verizon supports the Staff's proposed rule on this subject because it places necessary and reasonable controls on what an owner can perform and charge for make ready work. In particular, the proposed requirement on the owner to complete make ready work as quickly and inexpensively as is reasonable possible would prevent unreasonable delays and unnecessary expense. However, Verizon has proposed an addition to the proposed rule to reflect that the applicant needs to approve any proposed make ready costs prior to owner actually performing the work; such a requirement ensures that there is agreement before any such work is performed and, in doing so, will minimize future disputes.

18. Rule Number (or proposed location): 860-028-0110(3)

This proposed subsection should be deleted. This proposed subsection is inappropriate because all costs incurred by the owner are either included in the components of the annual pole attachment rental rate or in the recovery of make ready

work charges. Verizon's recommended revisions to the definition of "make ready work" would include all allowable direct charges. Verizon's position, stated in earlier comment rounds, is supported by the Commission's Order 05-492 entered in Case No. UM 1087.

19. Rule Number: 860-028-0110(4)

Verizon proposes this rule be modified as follows:

> An additional or modified attachment by the occupant that is placed within the occupant's existing authorized attachment space will be considered a component of the existing pole permit for rental rate determination purposes. Such attachment additions or modifications may include, but are not limited to, cabinets, splice boxes, load coil cases, bonding wires and straps, service drops, guy wires, vertical risers, or cable over-lashings.

Verizon recommends deleting the proposed requirement mandating that the addition or modification must "meet the Commission safety rules." That requirement is unnecessary, as it is already required in rule 860-028-0120(1)(d), which requires occupants to install and maintain attachments in compliance with Commission safety rules. Verizon supports the remaining language because additional or modified attachments placed within the existing authorized space should be considered for rental rate determination purposes as a component of the existing pole permits. It is also consistent with the definition of "authorized attachment space," which includes "one or more" attachments. The proposal also appropriately avoids duplicative rents or calculations that would result from applying the rate on a "per attachment" basis.

20. Rule Number: 860-028-0110(6)

Verizon proposes that the following language be inserted at the beginning of this rule and that the reference to subsection "(3)" be deleted since Verizon is recommending that subsection be deleted.

> An owner may not assess a fee or charge to an occupant in addition to the annual pole attachment rate for any cost included in the calculation of its pole attachment rental rate.

This proposed language is appropriate because all costs incurred by the owner that are included annual pole attachment rental rate cannot be included or in the recovery of make ready work charges. This addition is supported by the Commission's Order 05-492 entered in Case No. UM 1087.

21. Rule 860-028-0310(6)

This subsection should be deleted for the same reasons discussed in Verizon's comments on proposed rule 860-028-0110(3). All costs incurred by the owner are either included in the components of the rental rate or in the recovery of make ready work charges. Verizon's recommended revisions to the definition of "make ready work" includes all allowable direct charges. Verizon's position, stated in earlier comment rounds, is supported by the Commission's recent Order in Case No. UM 1087.

Dated: September 28, 2006

VERIZON NORTHWEST INC.

By 

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CERTIFICATE OF SERVICE
AR 506

I certify that on September 28, 2006, I served the Comments of Verizon Northwest Inc. by electronic mail and Overnight Mail to:

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I further certify that I have this day sent the above-referenced document(s) upon all parties of record in this proceeding by mailing a copy properly addressed with the first class postage prepaid, and by electronic mail pursuant to OAR 860-013-0070, to the following parties or attorneys of parties:

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