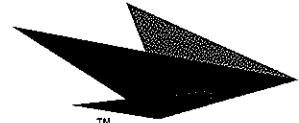


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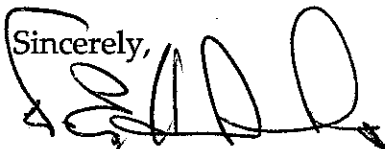
September 28, 2006

Vikie Bailey-Goggins, Administrator
Oregon Public Utility Commission
550 Capitol Street NE, Suite 215
Salem, OR 97301-2551

Re: AR 506; In the Matter of Rulemaking to Amend and Adopt
Permanent Rules in OAR 860, Division 24 and 28 Regarding Pole
Attachment Use and Safety

Dear Ms. Bailey-Goggins:

Pursuant to the procedural schedule established in this docket, United Telephone Company of the Northwest, d/b/a Sprint, submits these comments. If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,


William E. Hendricks

Enclosure

**BEFORE THE PUBLIC UTILITY COMMISSION OF
OREGON
AR 506**

In the Matter of)
) Phase II Comments of United
Rulemaking to Amend and Adopt Permanent) Telephone Company of the
Rules in OAR 860, Division 24 and 28) Northwest d/b/a Embarq
Regarding Pole Attachment Use and Safety)
)
_____)

COMMENTS OF EMBARQ

United Telephone Company of the Northwest, d/b/a Embarq (“Embarq”) respectfully submits the following comments in response to the Commission’s September 5, 2006 Ruling and proposed rules.

1. 860-028-0020 Definitions for Pole and Conduit Attachment Rules

Embarq recommends the addition of a definition of Applicant:

“Applicant” means any entity requesting permission to attach to poles, conduits or ducts owned or controlled by an electric utility or telecommunications company.

a. Subsection (6)

Embarq recommends the following changes to subsection (6), because the definition included in the draft rules is more suited to the term “conduit system”.

(6) “Conduit System” means any structure, or section thereof, containing one or more ducts, conduits,, manholes, or handholes, bolts, or other facilities used for any telegraph, telephone, cable television, electrical, or communications conductors, or cables rights-of-way, owned or controlled, in whole or in part, by one or more public, telecommunications, or consumer-owned utilities.

If the Commission believes it is necessary to include a definition for “conduit” as well, Embarq recommends the following:

“Conduit” means a single pipe or specially designed and fabricated series of pipes used to protect electrical, cable television or communications cables from fire. Conduit may be used between the floors of buildings or underground between manholes or hand-holes. When more than one pipe is used the opening in which the facility is placed is referred to as ducts

b. Subsection (11)

With respect to the definition of “make ready work,” in subsection (11), Embarq urges the Commission to ensure that any activity by the pole owner to determine if a pole is available for an attachment be deemed preconstruction activity and activities conducted following this determination be deemed make ready work. Otherwise, the cost components included in the make ready work definition could also be included in charges for preconstruction activity, which is defined in subsection 22. Thus, Embarq recommends deleting the words “administrative, engineering” as those elements are already included in the definition of “preconstruction activity.” Without this change, it would be possible to recover these costs twice. Embarq believes the following changes to subsection 11 addresses these concerns:

(11) “Make ready work” means ~~administrative, engineering, or~~ construction activities necessary to make a pole, conduit, or other support equipment available for a new attachment, attachment modifications, or additional facilities. Make ready work costs are nonrecurring costs, and are not contained in carrying charges.

c. Subsections (14) and (19)

With respect to subsections (14) and (19), Embarq believes that the use of traditional mail services, i.e. US Postal Service, UPS, FedEx, is not a reliable way to provide notices under these rules. Electronic transmission is quicker, more widely distributed, and now ubiquitous within the industry. In addition, it would create confusion if a party chose to use electronic mail in some cases and traditional mail in others. Embarq therefore recommends that the Commission adopt electronic mail as the preferred method for providing notice under these rules.

(14) "Notice" means written notification sent by ~~mail, electronic mail, telephonic facsimile, or telefax~~ or other electronic, systematic ~~other such means~~, unless otherwise agreed to by the parties.

(19) "Permit" means ~~the written or~~ electronic record, or by other medium as agreed to by the parties, by which an owner authorizes an occupant to attach one or more attachments on a pole or poles, in a conduit, or on support equipment.

d. Subsection (21)

Embarq recommends the following changes to subsection (21) to explicitly recognize the National Electric Safety Code ("NESC"), because it is one of the compliance standards. In addition, Embarq recommends clarifying that it is the occupant's construction that is subject to the compliance standards.

(21) "Post construction inspection" means work performed to verify and ensure the occupant's construction complies with the permit, governing agreement, NESC and Commission safety rules.

e. Subsection (22)

Similar to the definition of make ready work, in subsection (11), Embarq requests that the Commission clarify what work functions are associated with each activity so that costs are not duplicated in both the make ready work and the preconstruction activity. Embarq recommends the following change:

(22) "Preconstruction activity" means engineering, records and/or field survey and estimating work required to prepare cost estimates for an attachment application.

f. Subsection (26)

It is not clear to Embarq under what circumstances a special inspection would be necessary. Inspection issues should be resolved during the pre- and post-construction inspections. Thus, Embarq seeks clarification regarding the inclusion of this definition. Should the Commission deem this section to be necessary, Embarq suggests the following revisions:

(26) "Special inspection" means ~~a~~ pole owner's field visit made at the request of the licensee for all non-periodic, non-contractual, and jointly scheduled

inspections. A special inspection does not include preconstruction activity or post construction inspection.

g. Subsection (27)

Because it is not technically sound to attach to guy wires, Embarq recommends removing those term from the proposed rule:

(27) "Support equipment" means ~~guy wires~~, anchors, anchor rods, and other accessories of the pole owner used by the licensee to support or stabilize pole attachments.

h. Subsection (32)

Including in this definition the terms "a governing agreement" is redundant because attachment permits will not be allowed in the absence of an agreement. Moreover, if an agreement is expired and the parties continue to operate under it during good faith negotiations for a new agreement, attachments granted as such should not be deemed unauthorized.

(32) "Unauthorized attachment" means an attachment that does not have an owner approved permit ~~and a governing agreement~~.

i. Subsection (33)

Embarq believes that the appropriate safety clearance is 18 feet, as defined by the NESC, not 20 feet. If 20 feet is used, it reduces the amount of usable space and there is no reason to deviate from the NESC standards.

(33) "Usable space" means all the space on a pole, except: the portion below ground level, the ~~20~~18 feet of safety clearance space above ground level, and the safety clearance space between the communications and power circuits. There is a rebuttable presumption that six feet of a pole is buried below ground.

2. 860-028-0050(2)

Embarq recommends clarifying that only actual costs, as opposed to conjectural or speculated costs, are appropriately recovered. In addition, Embarq recommends specifying what documentation is required to support "other costs."

(2) Owner correction: After the owner provides reasonable notice to a licensee of a hazard or situation requiring prompt attention, and after allowing the licensee a reasonable opportunity to repair or correct the hazard or situation, and if the hazard or situation remains uncorrected, the owner may correct the attachment deficiencies and charge the licensee for its actual costs. An Owner may charge a licensee for any fines, fees, damages, or other costs the licensee's attachments cause the pole owner to incur, but must include a detailed explanation of such costs on an invoice.

3. 860-028-0060 Attachment Contracts

Embarq recommends clarifying the cost effectiveness to recognize it as a legitimate consideration in making the decision to use poles jointly.

(1) Any entity requiring pole attachments to serve customers should use poles jointly as much as practicable and cost effective.

4. 860-028-0080 Costs of Hearing in Attachment Contract Disputes

Embarq questions whether the Commission is authorized to award costs in contested case proceedings. However, if it is determined that costs may be awarded, Embarq recommends the following change to remove the overly broad term "other factors."

(4) The Commission will allocate costs in a manner that it considers equitable.

The following factors will be considered in determining payment:

(a) Whether the party was a complainant, respondent, or intervenor;

(b) Merits of the party's positions throughout the course of the proceeding; and

(c) Other factors, including "patterns of behavior", that the Commission deems relevant.

5. 860-028-0100 New or Modified Attachments

a. Subsection (2)

As stated previously, Embarq recommends the Commission adopt electronic notification because it is more reliable, readily accessible, and ubiquitous.

(2) An applicant requesting a new or modified attachment will submit an application providing the following information ~~in writing or~~ electronically to the owner:

b. Subsection (2)(E)

Embarq recommends removing this requirement, because it is the pole owner's responsibility to determine where the attachment should be located.

~~(E) Attachment location on pole~~

c. Subsection (3)

As stated previously, Embarq recommends the Commission adopt electronic notification because it is more reliable, readily accessible, and ubiquitous.

(3) The owner will provide ~~written or~~ electronic notification to the applicant within ten business days of the application receipt date confirming receipt and listing any deficiencies with the application, including missing information. If required information is missing, the owner may suspend processing the application until the missing information is provided.

d. Subsection (4)

The following recommendation clarifies the time period under which the application must provide notice to the owner.

(4) An owner will reply in writing or electronically to the applicant as quickly as possible, but no later than 30 business days from the date the application is received. The owner's reply must state whether the application is approved, approved with modifications or conditions, or denied.

(a) If the owner approves an application without requiring make ready work, the applicant may begin construction and will notify the owner of the anticipated construction completion date within at least 30 business days prior to completing construction of completion of construction.

(b) If the owner approves an application that requires make ready work, the owner will provide a detailed list of the make ready work needed to

accommodate the applicant's facilities, an estimate for the time required for the make ready work, and the cost for such make ready work.

(c) If the owner denies the application, the owner will state in detail the reasons for its denial.

(d) If the owner does not provide the applicant with notice that the application is approved or denied within 30 business days from its receipt, the application is deemed approved and the applicant may begin construction and will notify the owner ~~within~~ at least 30 business days prior to ~~of~~ completion of construction.

6. **860-028-0110**

Embarq recommends the following change to the title of this section:

860-028-0110 Rental Rates and Charges for Attachments by Licensees to Poles Owned by Public Utilities, Telecommunications Utilities, and Consumer-Owned Utilities

7. **860-028-0115 Duties of Structure Owners**

Embarq makes the following grammatical suggestions for this section:

(3) An owner must maintain its facilities in compliance with Commission Safety Rules for occupants.

(a) An owner must promptly respond with a reasonable plan of correction for any violation of the Commission Safety Rules if notified in writing by an occupant of a violation ~~requested by an occupant~~.

8. **860-028-0310**

Embarq recommends the following change to the title of this section:

Rental Rates and Charges for Attachments by Licensees to Conduits Owned by Public Utilities, Telecommunications Utilities, and Consumer-Owned Utilities

a. **Subsection (6)**

The changes proposed below ensure that detailed information regarding the nature of costs is provided to the applicant:

(6) The rental rates referenced in section (2) of this rule do not include the costs of permit application processing, special inspections, preconstruction activity, post construction inspection, make ready work, and the costs related to unauthorized attachments. Charges for activities not included in the rental rates will be based on actual costs, including administrative costs, and will be charged in addition to the rental rate. The pole owner will provide, in an invoice, a description of actual costs for each component of administrative and operational activities that the owner performs.

Embarq respectfully submits these comments this 28th day of September, 2006.

By: _____
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