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BEFORE THE GEORGIA PUBLIC SERVICE COMMISSION

STATE OF GEORGIA

In Re: Generic Proceeding to Implement : Docket No. 43453
House Bill 244 :
:

REBUTTAL TESTIMONY

AND EXHIBITS

OF

CHRISTOPHER STEPHENS

**ON BEHALF OF GEMC
AND ITS 38 EMC MEMBERS**

NOVEMBER 9, 2020

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**BEFORE THE
GEORGIA PUBLIC SERVICE COMMISSION**

**PRE-FILED REBUTTAL TESTIMONY OF
CHRISTOPHER STEPHENS
ON BEHALF OF
GEORGIA ELECTRIC MEMBERSHIP CORPORATION**

DOCKET NO. 43453

I. INTRODUCTION

Q. Please state your name, title and business address.

A. My name is Christopher Stephens. I am the President and Chief Executive Officer of Coweta-Fayette Electric Membership Corporation (“Coweta-Fayette EMC”) and have served in that capacity since 2014. I also serve as an Officer on the Board of Directors of Georgia Electric Membership Corporation (“GEMC”). My business address is 807 Collinsworth Road, Palmetto, Georgia 30268-9442.

Q. Have you previously submitted testimony and exhibits in this proceeding?

A. Yes. I submitted pre-filed direct testimony and exhibits in this matter on October 23, 2020 on behalf of Georgia Electric Membership Corporation (“GEMC”) and its 38 not-for-profit cooperative members (“Georgia EMCs”) that are subject to the Georgia Broadband Opportunity Act.

Q. What is the purpose of your rebuttal testimony?

A. I would like to respond to some of the assertions made by the Georgia Cable Association (“GCA”), the Georgia Telecommunications Association (“GTA”), and AT&T. In addition, on November 3, 2020, the Commission directed all Intervenors to submit, as part of rebuttal testimony, specific rates, terms, conditions, and specifications that would govern pole

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1 attachments made under joint use agreements and specific rates, terms, conditions, and
2 specifications that would govern pole attachments made under pole attachment
3 agreements. The Commission has not made a determination on whether joint use
4 agreements are within the scope of the Georgia Broadband Opportunity Act, and my
5 rebuttal testimony also addresses the differences between joint use agreements and pole
6 attachment agreements. It is GEMC and the Georgia EMCs' position that joint use
7 agreements are not within the Commission's jurisdiction under the Act. In addition, any
8 recommendation made by GCA, GTA, and/or AT&T in their direct not specifically
9 addressed in this rebuttal testimony should not be construed as support for such position.

10 **II. THE GEORGIA SOLUTION FOR POLE ATTACHMENTS MADE PURSUANT**
11 **TO A POLE ATTACHMENT AGREEMENT**

12 **Q. Does the Georgia Solution apply to pole attachments made pursuant to pole**
13 **attachment agreements or joint use agreements?**

14 A. The Georgia Solution discussed in my direct written testimony applies only to pole
15 attachment agreements – not joint use agreements. The Georgia Solution includes: (1) the
16 Georgia Rate, (2) the One Buck Deal, and (3) the Pole Attachment Regulations For the
17 Georgia Public Service Commission, Proposed by the Georgia EMCs, which are attached
18 as **GEMC Ex. 140 (GB-10)** to the Pre-Filed Direct Testimony of Gregory Booth (hereafter
19 **“Georgia EMCs Proposed Pole Attachment Regulations”**). All aspects of the Georgia
20 Solution apply to pole attachments made pursuant to a pole attachment agreement between
21 one of the Georgia EMCs and a third-party communications attacher, typically a cable
22 company or competitive local exchange carrier (“CLEC”).

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1 **Q. How does the Georgia Solution, as opposed to the proposals made by GCA, GTA, and**
2 **AT&T, comply with the statutory mandates contained in the Georgia Broadband**
3 **Opportunity Act?**

4 A. The Georgia Broadband Opportunity Act requires: (1) that rates, terms, and conditions set
5 by the Commission be just, reasonable, nondiscriminatory, and commercially reasonable;
6 and (2) that rates, terms, and conditions set by the Commission encourage the promotion
7 of deployment of broadband in Georgia. The components of the Georgia Solution meet
8 both of these charges— (1) the Georgia Rate, (2) the One Buck Deal, and (3) terms and
9 conditions that include the Georgia One Touch Make Ready proposal, as set forth in the
10 Pole Attachment Regulations proposed by the Georgia EMCs.¹ When coupled with the
11 Georgia Rate - \$37.95 per attachment, the One Buck Deal and the Georgia One Touch
12 Make Ready result in a package that is reasonable, nondiscriminatory, and commercially
13 reasonable.

14 **Q. GCA has proposed the FCC Cable Rate, do you believe the Commission has a binary**
15 **choice between the Georgia Rate and the FCC Cable Rate?**

16 A. No. The Commission is charged with setting a rate that meets the statutory requirements
17 contained in the Georgia Broadband Opportunity Act, as outlined above.

18 **Q. Are there any suggestions you would make if the Commission wanted to adjust the**
19 **proposed Georgia Rate?**

¹ See Pole Attachment Regulations For The Georgia Public Service Commission (Proposed by the Georgia EMCs), GEMC Ex. 140 (GB-10).

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1 A. Yes. The Georgia Formula produces a space allocation of 31.42%. To calculate this fair
2 allocation, the Georgia Formula uses the actual weighted average for number of attachers—
3 2.72 attachers—and the actual attachment height of 20 feet above ground to determine the
4 space allocation percentage. The Georgia EMCs believe the Georgia Rate remains the most
5 accurate formula to reflect actual conditions for EMCs in Georgia. However, because the
6 One Buck Deal and Georgia One Touch Make Ready will promote broadband in Georgia’s
7 unserved areas, the Commission could adjust the Georgia Formula to use 3 attachers rather
8 than the 2.72 attachers as the average number of attaching entities (the “**Modified Georgia**
9 **Formula**”). In other words, the Commission could use the number of attachers that the
10 Georgia EMCs will have instead of the number of attachers we have today. The Modified
11 Georgia Formula produces a space allocation of 28.74% for pole attachment agreements
12 (not joint use agreements). With this space allocation, the rate for pole attachments made
13 pursuant to pole attachment agreements (not joint use agreements) would be \$34.72 (the
14 “**Modified Georgia Rate**”). Like the original Georgia Rate, the Modified Georgia Rate is
15 a just, reasonable, nondiscriminatory, and commercially reasonable rate for pole
16 attachments.

17 Again, the Georgia Rate or the Modified Georgia Rate would be part of the Georgia
18 Solution, which is the only proposal before the Commission that meets the unambiguous
19 directive of the Georgia Broadband Opportunity Act - to promote the deployment of
20 broadband in Georgia.

21 **Q. Is the Georgia Formula or the Modified Georgia Formula similar to any other pole**
22 **attachment formula used in Georgia?**

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1 Yes. The Georgia Formula and the Modified Georgia Formula produce space
2 allocations nearly identical to the TVA Formula, which is depicted below:

$$\frac{1' + (3.33' / 2) + (24' / 3)}{37.50'} = 28.44\%$$

3
4 The TVA Formula produces a space allocation of 28.44%. The TVA Formula is already
5 used by the three Georgia EMCs with service territories in North Georgia and that are part
6 of the TVA distribution system.

7 **Q. What other pole attachment formulas could the Commission consider?**

8 A. While no other formula meets the charge of the Georgia Broadband Opportunity Act, the
9 Arkansas Public Service Commission adopted a formula (hereafter the “**Arkansas**
10 **Formula**”) for its pole attachment agreements that produces a space allocation of 18.86%.
11 The Arkansas Formula is depicted below.

$$\frac{1' + (2/3 \times ((24' + 3.33') / 3))}{37.50'} = 18.86\%$$

12
13 Of course, when the Arkansas Public Service Commission adopted the Arkansas
14 Formula it was not acting pursuant to a statute that requires that pole attachment rates be
15 commercially reasonable and promote the deployment of broadband in the State. The
16 Arkansas Formula is also designed to apply to poles owned by investor owned utilities
17 (“IOUs”) and telephone companies, in addition to those owned by electric cooperatives.
18 Further, the Arkansas Formula reflects conditions unique to Arkansas, including: (1) a
19 shorter attachment height with only 18 feet of above ground support space (rather than the
20 20 feet of above ground support space that reflects the real conditions in Georgia), (2)

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1 presumed average number of attaching entities of 3, and (3) a 2/3 space allocation
2 compromise that is not based on actual pole usage.

3 If the Arkansas Formula was modified to use the Georgia EMCs' actual attachment
4 height that provides 20 feet of above ground support space, and the Georgia EMCs' actual
5 weighted average for number of attachers, which is 2.72, it would look like:

$$\frac{1' + (2/3 \times ((26' + 3.33') / 2.72))}{37.50'} = 21.84\%$$

6
7 It would produce a space allocation of 21.84%. If the Arkansas Formula was modified to
8 use Georgia's actual attachment height that provides 20 feet of above ground support space
9 and the 2/3 Arkansas state-specific space allocation compromise was removed the formula
10 would look like this:

$$\frac{1' + ((26' + 3.33') / 3)}{37.50'} = 28.74\%$$

11
12 It would produce a space allocation of 28.74%, which is virtually identical to the space
13 allocation produced by the Modified Georgia Formula and very close to the space
14 allocation produced by the original Georgia Formula.

15 **Q. Does the FCC Cable Rate proposed by GCA meet the statutory directives contained**
16 **in the Georgia Broadband Opportunity Act?**

17 **A.** No. The FCC Cable Rate does not meet the two statutory directives contained in the
18 Georgia Broadband Opportunity Act.

19 First, the FCC Cable Rate is not a fair, reasonable, or commercially reasonable pole
20 attachment rate. This is partially a result of the fact the FCC Cable Rate Formula produces

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1 a space allocation of only 7.41%. Such a small space allocation is improper given the
2 attaching entities' actual use and dependence on EMC poles. Moreover, the space
3 allocation produced by the FCC Cable Rate Formula does not properly account for actual
4 burdens imposed on the Georgia EMCs when communications attachments are made to
5 EMC poles. These burdens include things like premature pole failure from improper
6 attachments.

7 Second, the FCC Cable Rate will not promote broadband deployment in Georgia.
8 As is discussed in the Pre-filed Direct Testimony of Allen Bell, Georgia Power has been
9 charging communications companies the FCC Cable Rate for decades, yet the low
10 population density parts of Georgia Power's service territory remain unserved.

11 GCA's and GTA's proposal of the FCC Cable Rate (and AT&T's proposal of the
12 FCC's "New" Telecom Rate that now approximates the Cable Rate) is largely based on the
13 fact that the FCC Cable Rate has been adopted in other states, which regulate attachments
14 to poles that are also owned by IOUs and telephone companies, is lower than what is
15 currently charged under the CTAG agreement, and is what IOUs, such as Georgia Power,
16 charge for pole attachments in Georgia. While these facts may be true, the Georgia
17 Broadband Opportunity Act does not charge the Commission with adopting a pole
18 attachment rate because it has been adopted in other states, because it is less than the CTAG
19 rate, or because it is the rate used by IOUs, rather, the Georgia Broadband Opportunity
20 Act, charges the Commission with setting pole attachment rates, terms, conditions, and
21 specifications that: (1) are just, reasonable, non-discriminatory, and commercially
22 reasonable; and, (2) promote the deployment of broadband in Georgia.

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1 **III. JOINT USE AGREEMENTS AND THE GEORGIA EMCS' PROPOSED JOINT**
2 **USE RATE AND JOINT USE REGULATIONS**

3 **Q. Can you explain, at a high level, the differences between joint use agreements and**
4 **pole attachment agreements?**

5 A. Yes. First and foremost, the purpose of a joint use agreement is to allow each joint use
6 partner access to the poles owned by the other. Consequently, joint use agreements can
7 **only** be made between two parties that both own poles that are suited to and will hold the
8 facilities of the other party.

9 The Georgia EMCs typically enter joint use agreements with Incumbent Local
10 Exchange Carriers (“ILECs”), which are the big, legacy telephone companies that held a
11 regional monopoly on telephone service prior to the 1996 Telecommunications Act. When
12 an EMC and ILEC enter into a joint use agreement they are agreeing to jointly own, share,
13 and use a pole network that is being built for the mutual benefit of both the EMCs
14 distribution system and the ILECs distribution system. As joint use partners, both the EMC
15 and the ILEC are responsible for building and maintaining the pole network that is within
16 the scope of the joint use agreement. GCA, AT&T, and GTA argue that joint use
17 agreements are just two-way attachment agreements where each party agrees to allow the
18 other to attach to their poles. However, in reality, they are much more than that. In fact,
19 and as explained in detail below, each party to a joint use agreement is afforded certain
20 benefits related to the other parties pole, including the exclusive right to certain pole space,
21 easier and quicker access rights, and decreased or no costs to attach.

22 In contrast, pole attachment agreements are true licensor-licensee agreements. The
23 EMC, acting as the licensor, simply grants the attaching entity a license to use certain space

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1 on the EMC pole. The attaching entity as the licensee, has nothing more than a basic license
2 to attach to the licensor's poles. A pole attachment agreement looks and functions like a
3 one-way attachment agreement.

4 **Q. Why do the Georgia EMCs have both types of agreements with seemingly similar**
5 **service providers, including ILECs, cable companies and CLECs?**

6 A. First, it's a common misconception to assume that, just because those categories of
7 providers offer similar services to end users, the entities themselves are similar or that their
8 relationships with the Georgia EMCs are similar. The reality is that ILECs, cable
9 companies, and CLECs are very different and have very different relationships with the
10 Georgia EMCs. In practice ILECs, including AT&T, do not attach in the one foot cable
11 space (the one foot space shown in red in the sample pole attached as **GEMC Ex. 8 (DN-**
12 **1))** that cable companies and CLECs typically attach in.

13 Joint use agreements are a function of the historical network build-outs of EMCs
14 and ILECs. The pole networks of EMCs and ILECs were built-out contemporaneously
15 during the middle and end of the 20th century, when there were no pole networks at all. To
16 reduce the cost associated with these initial build-outs and avoid redundant pole networks,
17 EMCs and ILECs entered into joint use agreements, which reduced costs for both the
18 EMCs and ILECs. When EMCs and ILECs entered these agreements, both parties
19 accounted for the other in their build-out plans, meaning both parties installed taller and
20 stronger poles that could accommodate the facilities of the joint use partner. Had EMCs
21 and ILECs not entered these joint use agreements, it is likely that both would not have
22 installed the same caliber poles. Incidentally, EMCs installed and continue to install and

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1 maintain significantly more poles than ILECs. As a result, EMCs have incurred
2 significantly more pole costs than ILECs.

3 Cable companies and CLECs typically do not have poles that EMCs and/or ILECs
4 can attach to; thus, cable companies and CLECs are not positioned to enter cost-sharing
5 joint use agreements. As a result, cable companies and CLECs enter one-way pole
6 attachment agreements. Under one-way pole attachment agreements, the cable companies
7 and CLECs have much less maintenance and cost responsibility.

8 The rate, fees, terms, conditions, and specifications of pole attachment and joint use
9 agreements remain necessarily different today because the risks and responsibilities of a
10 pole-owning joint user are significantly different from a non-pole owning attacher. Put
11 differently, the joint use agreement is a reciprocal and mutually beneficial agreement that
12 invokes rights and responsibilities that simply do not apply in the pole-license relationship
13 created by pole attachment agreements.

14 **Q. In your review of AT&T and GTA's written testimony, have you been able to glean**
15 **what AT&T and GTA are proposing as it relates to rate, terms, conditions, and**
16 **specifications for pole attachments made pursuant to joint use agreements?**

17 **A.** No. The Pre-filed Direct Testimony filed on behalf of AT&T and GTA proposes rates,
18 terms, conditions, and specifications that could only apply to attachments made in the one-
19 foot cable space that is used by third-party attachers pursuant to pole license agreements,
20 not the two-foot space, shown in yellow on the sample pole attached as **GEMC Ex. 8 (DN-**
21 **1)**, used most frequently by ILECs pursuant to joint use agreements. Specifically, in the
22 Pre-filed Direct Testimony filed on behalf of GTA, GTA proposed the "FCC Cable Rate,"
23 which is the rate some pole owners charge third-party attachers that attach in the one-foot

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1 cable space. In addition, attached as Exhibit MAP-1 to the Direct Testimony of Mark A
2 Peters, which was filed on behalf of AT&T, is a pole license agreement, not a joint use
3 agreement. These proposals would be clearly inappropriate to apply to joint use
4 agreements.

5 I understand the Commission has ordered AT&T and GTA to file written testimony,
6 simultaneous with rebuttal testimony, proposing joint use rates, terms, and conditions.

7 **Q. If the Commission adopted a single regulation for all pole attachment would such a**
8 **regulation have the same impact on joint use agreements as it would on pole**
9 **attachment agreements?**

10 A. No. If the Commission adopts a blanket regulation for all pole attachments that would have
11 a very different impact on joint use agreements compared to pole attachment agreements.

12 First, most joint use agreements in Georgia, including joint use agreements between
13 AT&T and a Georgia EMC, contain evergreen provisions, which prevent either party from
14 terminating the joint use rate, terms, conditions, fees, and specifications outlined in the
15 joint use agreement for poles to which either party is already attached. Thus, any
16 determination by the Commission on rates, terms, conditions, fees, and specifications, even
17 if such determination includes joint use agreements, will not impact existing or future ILEC
18 attachments on EMC poles to which the ILEC is already attached. Currently, many EMC
19 poles already have an ILEC attachment. Any regulation adopted by the Commission will
20 not impact these ILEC attachments. Frankly, it is not clear from ATT's and GTA's
21 testimony whether they want the Commission to regulate the relationship between EMCs
22 and ILECs in the context of joint use agreements or in the context of pole attachment
23 agreements. Moreover, AT&T essentially admits that the Commission does not have

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1 jurisdiction over it but that it would voluntarily agree to “reciprocate” by giving Georgia
2 EMCs the same rate on its poles as the Commission orders for the Georgia EMCs’ poles.

3 Second, even if you assume pole attachment rates are a barrier to broadband
4 deployment, which they are not, most joint use agreements in Georgia, including joint use
5 agreements between AT&T and Georgia EMCs, are charged on a per pole basis. This
6 means today AT&T can already attach fiber and deploy broadband on any of the 566,064
7 EMC poles it is currently attached to in Georgia with no additional cost, including in
8 unserved areas of Georgia. In other words, on these poles, for ILEC’s there is no barrier to
9 broadband deployment that could rationally be connected to the pole attachment rate
10 charged under joint use agreements. Thus, any determination by the Commission on rates,
11 terms, conditions, and specifications, even if such determination includes joint use
12 agreements, will not actively promote broadband deployment in Georgia.

13 Third, regulation of joint use agreements between ILECs and EMCs, as opposed to
14 pole attachment agreements, would create a regulatory gap that would be clearly and
15 deeply harmful to rural Georgians. The Georgia Broadband Opportunity Act only provides
16 the Commission with the authority to enforce compliance with the Act as to EMCs. ILEC
17 attachments to EMC poles are only half of the joint use relationship. It makes no regulatory
18 sense for the Commission to have jurisdiction over, and regulate, ILEC attachments to
19 EMC poles under the terms of a joint use agreement, but not have jurisdiction over, and
20 thus not regulate, EMC attachments to ILEC poles under the terms of that same joint use
21 agreement. In such a scenario, the very purpose of the joint use agreement is completely
22 undermined. Thus, it makes sense that joint use agreements are not within the scope of the
23 Georgia Broadband Opportunity Act.

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1 **Q. What are some of the benefits ILECs receive, or do not receive, as joint use partners?**

2 A. Both joint use partners, EMCs and ILECs alike, enjoy similar or identical benefits in
3 exchange for the Adjustment Rate, which is explained in detail in the Pre-filed Rebuttal
4 Testimony of Wilfred Arnett. The specifics sometimes vary between agreements, but most
5 joint use partners enjoy: (1) reserved space on the other party's poles; (2) some exemptions
6 from the permitting process on joint use poles; (3) reduced or minimal make-ready costs
7 (arguably a function of the reserved space); (4) no pre-attachment or post-attachment
8 inspection costs (arguably a part of make-ready costs); (5) no insurance requirements; (6)
9 no security requirements; and (7) no, or relaxed, indemnity obligations.

10 **Q. Why do the benefits you identified above matter?**

11 A. If AT&T and GTA propose rates, terms, conditions, and specifications for joint use
12 agreements to this Commission based on their view that the Georgia Broadband
13 Opportunity Act granted the Commission authority over joint use agreements, then the
14 terms and conditions that currently exist in joint use agreements between EMCs and ILECs
15 would need to be significantly revised, at least with respect to attachments to new poles
16 not subject to existing evergreen provisions, to be consistent with terms and conditions in
17 pole attachment agreements. This must be done because the Georgia Broadband
18 Opportunity Act requires that rates, terms, and conditions be non-discriminatory. Thus, the
19 Commission cannot allow joint use agreements to contain terms and conditions that give
20 ILECs a competitive advantage over cable companies and CLECs.

21 In their current state, based on how they were historically developed and without
22 any intent to discriminate, joint use agreements contain terms and conditions that place
23 ILECs at a clear competitive advantage. Specifically, cable companies and CLECs,

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1 different from ILECs acting pursuant to joint use agreements, do not have reserved space
2 on EMC or ILEC poles, are subject to a more extensive permit application process, pay
3 more make-ready costs, pay, in certain situations, for pre- and post-attachment inspections,
4 purchase and provide proof of insurance and security instruments, and assume more
5 stringent indemnification responsibilities. Thus, to comply with the Act's requirement that
6 the Commission determine fair, reasonable, nondiscriminatory, and commercially
7 reasonable rates, terms, conditions, and specifications, substantial revisions to the terms
8 and conditions that currently exist in joint use agreements will have to occur.

9 Most of the current joint use agreements contain the evergreen provisions I
10 discussed earlier and thus the current joint use agreements will continue to govern existing
11 and future attachments made on any pole (or replacement pole) that had an ILEC
12 attachment at the time of termination. The proposed **Regulations for the Georgia Public**
13 **Commission for Future Reciprocal Wireline Attachments by Incumbent Local**
14 **Exchange Carriers and Electric Membership Corporations** attached to Mr. Greg
15 Booth's testimony are set up to recognize the legacy joint use agreements and the terms
16 and conditions for future attachments that fall outside the scope of the legacy joint use
17 agreements.

18 The proposed joint use rules and regulations would apply to reciprocal wireline
19 pole attachments made by ILECS and electric membership corporations to poles belonging
20 to the other party on or after July 1, 2021. These rules and regulations would only apply to
21 attachments made to poles that are not already subject to a legacy joint use agreement and
22 if one party certifies in writing to the other, that it wishes to invoke these rules and
23 regulations for future attachments. Within six months of such written certification the

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1 parties would be required to negotiate, in good faith, a new Regulated Joint Use Agreement
2 that is consistent with these proposed rules and regulations. In the event the parties are
3 unable to agree upon a new Regulated Joint Use Agreement with terms and conditions that
4 are consistent with the rules and regulations for future reciprocal wirelines attachments by
5 ILECS and electric membership corporations that are adopted by this Commission, the
6 ILEC can seek to attach to any pole owned by an electric membership corporation under a
7 Pole Attachment Agreement that would be governed by the same terms and conditions
8 applicable to all other attachers subject to the Commission's jurisdiction pursuant to the
9 Georgia Broadband Opportunity Act.

10 Two primary differences contained in the proposed joint use regulations that are
11 different from the proposed pole attachment regulations are: (1) the reciprocity provision
12 which ensures that the Georgia EMCs are subject to the same terms and conditions with
13 respect to its rights on poles owned by the ILECS; and (2) the pole attachment rental rate
14 charged by the joint use pole owner to the other which I describe in more detail below.

15 **Q. Do the Georgia EMCs have a proposed joint use rate if the Commission determines**
16 **joint use agreements are within the scope of the Georgia Broadband Opportunity**
17 **Act?**

18 **A. Yes, the Georgia Joint Use Rate, which it is calculated using the Georgia Joint Use**
19 **Formula.** The entire concept, however, is difficult and, as outlined above, markedly
20 different than the Georgia Rate and the Georgia Formula that apply to pole attachments
21 made pursuant to pole attachment agreements. This is in part because joint use partners are
22 given **exclusive use** of the 2-foot space (the yellow space in **GEMC EX. 8 (DN-1)**) located
23 below the 1-foot cable space.

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1 The Georgia Joint Use Formula is:

$$\frac{2' + ((26' + 3.33') / 2.72)}{37.50'} = 34.09\%$$

2
3 The Georgia Joint Use Formula produces a space allocation of 34.09%. The Georgia Joint
4 Use Rate is \$41.20. If the Commission determines that joint use agreements are within the
5 scope of the Georgia Broadband Opportunity Act, the Commission should adopt the
6 Georgia Joint Use Rate because it is just, reasonable, and commercially reasonable.

7 While the Georgia Joint Use Formula most accurately represents the conditions in
8 Georgia and is just, reasonable, and commercially reasonable, if the Commission adopts
9 the Modified Georgia Formula for pole attachment agreements, the Commission could also
10 adopt the Modified Georgia Joint Use Formula, which changes the number of attachers
11 from 2.72 to 3. The Modified Joint Use Formula is:

$$\frac{(2' + ((26' + 3.33') / 3))}{37.50'} = 31.40\%$$

12
13 The Modified Joint Use Formula produces a space allocation of 31.40% and the Modified
14 Joint Use Rate of \$37.92.

15 **Q. If the Commission finds that joint use agreements are within the scope of the Georgia**
16 **Broadband Opportunity Act and adopts a joint use rate, would that rate apply to**
17 **existing attachments made pursuant to joint use agreements?**

18 A. No. Most, if not all, of the joint use agreements between the Georgia EMCs and ILECs,
19 including AT&T, contain evergreen provisions. Consequently, any joint use rate adopted
20 by the Commission would only apply to new ILEC attachments that are made to new EMC

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1 poles in new locations (i.e., any joint use rate adopted by the Commission would not apply
2 where an EMC replaces an existing pole and that existing pole had existing ILEC
3 attachments).

4 **Q. Does Coweta-Fayette EMC have joint use agreements with any ILEC?**

5 A. Yes. Coweta-Fayette EMC has a joint use relationship with AT&T pursuant to the form
6 Georgia EMC and AT&T joint use agreement. I have attached a true and accurate copy of
7 an AT&T form joint use agreement, which AT&T produced as part of this proceeding, as
8 **GEMC Ex. 144 (CS-4)**. While it is not part of this proceeding, for informational purposes,
9 Coweta-Fayette EMC received approximately [REDACTED] in joint use revenue from AT&T
10 in 2019.

11 **IV. COMPETITION FROM EMC BROADBAND COMPETITORS**

12 **Q. Many GCA witnesses, particularly Ms. Kravtin, argue that because EMCs have the**
13 **ability to enter the “broadband market themselves ... the high pole cost ‘taxes’ on**
14 **attachers in some cases may be levied by a potential competitor.”² Do you agree?**

15 A. No. First, there is no pole “tax” as suggested by Ms. Kravtin throughout her testimony. If
16 anything, the CTAG rate, which is applicable to all GCA members, and is a negotiated rate,
17 does not fully compensate EMCs for a cable company’s attachment on an EMC pole. Thus,
18 the negotiated pole attachment rate currently being charged under the CTAG agreement
19 does not cause inefficient tax-like effects, as alleged by Ms. Kravtin.

20 Second, the picture Ms. Kravtin paints would not be possible given the restrictions
21 imposed on EMCs related to broadband expansion and the cost allocation manual process

² See Pre-Filed Direct Testimony of Patricia Kravtin, 23:7-10.

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1 administered by the Commission. Specifically, Senate Bill 2 (2019-2020) which modified
2 several statutory provisions authorizes EMCs to provide broadband services so long as the
3 EMC prohibits cross-subsidization between the provision of broadband services and the
4 EMC's other electricity or gas services activities. Senate Bill 2 requires an EMC, among
5 other things, to: (1) form an affiliate: (2) within 14 days of forming the affiliate, file a notice
6 with the Commission; (3) develop a cost allocation manual that ensures no cross-
7 subsidization; (4) implement a policy to ensure the EMC complies with the obligations of
8 the EMC under Senate Bill 2 (which includes maintaining confidentiality of
9 communications provider information and notifying customers of availability of
10 competitor's services); (5) submit the cost allocation manual for the Commission's
11 approval; and (6) obtain Commission approval of the cost allocation manual (which can
12 involve a contested proceeding at the Commission). Ms. Kravtin's testimony is at odds
13 with these requirements. Last, and what is clear from both Ms. Kravtin and other GCA
14 testimony that consistently complain about broadband opportunities for potential EMC
15 broadband providers, is that GCA members are more worried about competition in the
16 existing broadband market they serve than deployment of broadband services to unserved
17 Georgians.

18 **V. GCA, GTA, AND AT&T'S INVALID ASSERTIONS REGARDING POLE**
19 **ATTACHMENT RATES AND BROADBAND DEPLOYMENT IN GEORGIA**

20 **Q. GTA and GCA's witnesses contend that a high pole attachment rate acts as a barrier**
21 **to broadband deployment in Georgia.³ Do you agree?**

³ See Pre-Filed Direct Testimony of Douglas Meredith; Pre-Filed Direct Testimony of Patricia Kravtin.

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1 A. No. The direct written testimony filed on behalf of GEMC and the Georgia EMCs makes
2 clear this is not the case. And, clearly, in Coweta-Fayette EMC's service territory, pole
3 attachment rates have not acted as a barrier to the deployment of broadband as my territory,
4 a suburban area near Atlanta, has widespread broadband service available. Nevertheless,
5 the Georgia EMCs have done everything they can to incentivize cable and telephone
6 companies to deploy into rural areas, including offering the One Buck Deal, which permits
7 a one dollar pole attachment rate on poles in unserved areas for five years.

8 **Q. AT&T's witnesses also contend that the high pole attachment rate charged by the**
9 **Georgia EMCs acts as a barrier to broadband deployment.⁴ Do you agree?**

10 A. Absolutely not. AT&T's claim that its current attachment rate is a barrier to its broadband
11 deployment is factually inaccurate. Under its joint use agreement, AT&T can add
12 broadband facilities to any pole it is currently attached to for no additional rate charge. In
13 fact, it would cost AT&T \$0 per year to attach broadband facilities to any pole it is currently
14 attached to, and AT&T still does not do so.

15 The Georgia Broadband Opportunity Act requires the Commission make a
16 determination that encourages the deployment of broadband. Georgians need, and deserve,
17 a solution that has accountability built-in, and the Georgia Solution is the only option
18 presented to the Commission that does that. The Act does not give the Commission
19 authority to enforce compliance against cable companies, CLECs, or ILECs.

⁴ See Pre-Filed Direct Testimony of Daniel Rhinehart.

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1 **Q. Another argument raised by GCA is that the current CTAG rate is unstable and**
2 **subject to change at any time.⁵ Is this accurate?**

3 A. No. The Georgia EMC members and GCA members have pole attachment agreements
4 containing the negotiated CTAG rate. The form CTAG Agreement is attached hereto as
5 **GEMC Ex. 145 (CS-5)**. Under the CTAG Agreement, the CTAG rate remains in effect
6 for 10 years with clearly established contractually agreed upon adjustments based on the
7 Handy-Whitman index as the years progress. The CTAG rate can be continued on a year-
8 by-year basis after the 10 year initial time period. As such, I would characterize the CTAG
9 rate as incredibly stable. Moreover, the only entity that has attempted to suddenly abandon
10 the CTAG rate is Comcast, who sent termination letters to me, and 12 other EMCs, just
11 days after the Georgia Broadband Opportunity Act was passed.

12 **Q. In your review of GCA's testimony, have the GCA members guaranteed any**
13 **deployment of broadband in Georgia if GCA obtains the FCC rate?**

14 A. No. While GCA witnesses state multiple times the FCC rate would reduce its annual pole
15 attachment rental rate payments by \$8,334,317.00 there are no guarantees to the Georgia
16 EMC member-owners that GCA members will spend this money on broadband
17 deployment in unserved areas of Georgia, particularly unserved areas within Georgia's
18 EMC service territory. And, we know from the Pre-filed Direct Testimony of Allen Bell
19 and the review of Georgia Power's served and unserved areas the FCC Cable Rate will not
20 lead to broadband deployment. As Mr. Bell explains, despite being in effect for decades,

⁵ See Pre-Filed Direct Testimony of Michelle P. Connolly, 10-11.

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1 the FCC Cable Rate has not encouraged GCA members to deploy broadband in unserved,
2 low populated, and low density areas in Georgia Power's service territory.

3 **Q. Several GCA witnesses contend a separate fee for unserved areas and served areas is**
4 **complex, expensive, and difficult to administer.⁶ This appears to be responding to the**
5 **One Buck Deal. Based on your experience as the CEO of Coweta-Fayette EMC, would**
6 **the One Buck Deal be difficult to administer?**

7 A. No. And, honestly, the Georgia EMCs are not proposing two rates. We are proposing the
8 Georgia Rate and a promotional nominal rate designed to encourage broadband providers
9 to actually deploy in unserved area of Georgia is part of that Georgia Rate. This is not
10 unlike promotions offered by cable and telephone companies. For example, Mediacom uses
11 promotional rates for new customers, and then a higher rate later on with that same
12 customer. It is not complex or difficult. In addition, Coweta-Fayette EMC administers
13 different pole attachment rates with different partners currently. The AT&T Joint Use
14 Agreement contains a different negotiated rate than the CTAG Agreement with Comcast.
15 Administering these different rates is not complex or difficult.

16 **VI. CONCLUSION**

17 **Q. Does this concluded your rebuttal testimony?**

18 A. Yes. I thank the Commission and the Staff for considering our rebuttal testimony.

⁶ See Pre-Filed Direct Testimony of Douglas Frank, 19-21; Pre-Filed Direct Testimony of Patricia Kravtin, 26-17; Pre-Filed Direct Testimony of Douglas Meredith, 26-28.

GEMC EX. 144 (CS-4)

AGREEMENT FOR JOINT USE OF WOOD POLES

BETWEEN



AND

BELLSOUTH TELECOMMUNICATIONS, INC.

DATED MAY 6, A small black square redacting the year of the agreement.

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JOINT USE OF WOOD POLES

PREAMBLE

████████████████████, a corporation organized under the laws of the State of Georgia, (hereinafter called the "Electrical Distributor"), and BellSouth Telecommunications Inc., a corporation organized under the laws of the State of Georgia (hereinafter called the "Telephone Company"), desiring to cooperate in the joint use of their respective poles, erected or to be erected within the areas in which both parties render service in the State of Georgia, whenever and wherever such use shall, in the estimation of both parties, be compatible with their respective needs and consistent with the terms of this Agreement, do hereby, in consideration of the premises and the mutual covenants herein contained, covenant and agree for themselves and their respective successors and assigns as follows, effective MAY 6 , ██████ ("Effective Date"):

ARTICLE I

SCOPE OF AGREEMENT

- A. This Agreement shall be in effect in the areas in which both of the parties render service in the State of Georgia, and shall cover all wood poles now existing or hereafter erected in the above territories when said poles are brought under this Agreement in accordance with the procedure hereinafter provided.
- B. Each party reserves the right for good cause to exclude from joint use any of its facilities.
- C. The use or reservation of space on poles by each party, as Licensee of the other under this Agreement, shall be based on the equitable sharing of the economics of joint use, which the parties agree is effectuated pursuant to the terms of this Agreement.

ARTICLE II

EXPLANATION OF TERMS

For the purpose of this Agreement, the following terms shall have the following meanings:

- A. "Actual Inventory" is defined in Section XI.A.
- B. "Attachment" is any cable, wire, strand, circuit, service drop, overlashing, appurtenance, equipment, pedestal or apparatus of any type attached to the pole.
- C. "Contact Person" is defined in Section XIX.B.
- D. "Cost in Place" is the cost of the bare pole, labor to install the pole and associated overheads, including engineering.

E. "Joint Pole" is a pole for which joint use is established or continued pursuant to the terms of this Agreement.

F. "Licensee" is the party having the right under this Agreement to make and maintain Attachments on a Joint Pole that the other party owns.

G. "Licensee Transfer Date" is defined in Section VII.C.2.

H. "Make-ready" is all work necessary or appropriate to make space for or otherwise accommodate new or changed Attachments, including, if necessary or appropriate, Rearrangements, removal and replacement of the pole, Transfers and other work incident thereto.

I. "NESC" is defined in Article III.

J. A "Non-guyed Service Drop" is a Service Drop that requires no guys under the Licensee's design standards or the applicable specifications of Article III. (If, atypically, a wire used to connect to a customer's location were to require guying under the Licensee's design standards or the applicable specifications of Article III, then it would not be treated as a Non-guyed Service Drop under this Agreement but would be treated as a cable.)

K. "Normal Pole" is a pole which is just tall enough to provide Normal Space, as Normal Space is hereinafter defined, for the respective parties and just strong enough to meet the requirements of the specifications mentioned in Article III for the Attachments ordinarily placed by the parties in their respective Normal Spaces. Such pole for the purpose of this Agreement shall be a 40 foot class 5 wood pole as classified by the pole classification tables of the American National Standards Institute. The foregoing definition of "Normal Pole" is not intended to preclude the use of Joint Poles shorter or of less strength than the Normal Pole in locations where such poles will meet the requirements of the parties hereto.

L. "Normal Space" is the following described space:

1. For the Electrical Distributor the uppermost 6-1/2 feet, measured from top of pole on 35 foot poles and 9 feet from top of pole on 40 foot poles.

2. For the Telephone Company a space of 2 feet on both 35 foot and 40 foot poles at a sufficient distance below the space of the Electrical Distributor to provide at all times the minimum clearance required by the specifications mentioned in Article III and at a sufficient height above ground to provide the proper vertical clearance above ground or track rails for the lowest horizontally run line wires or cables attached in such space. When practicable, the Telephone Company will, after the Effective Date, make its initial Attachments one foot above the lowest possible point that provides such ground clearance, which is the midpoint of its Normal Space.

3. In the event the pole owner installs a pole larger than the Normal Pole solely in anticipation of owner's future requirements or additions, the Normal Space for the owner, as defined above, for that pole shall be increased to include the additional above ground space provided by the owner.

- M. "Rearrangement" is the moving of Attachments from one position to another on a pole.
- N. "Referee" is defined in Section XIX.B.
- O. "Service Drop" means a wire used to connect to a customer's location. A Service Drop may run directly from a pole used to service many customers to a specific customer's location, without the use of any other poles, or a Service Drop may itself be supported by more than one pole to carry the Service Drop to the customer's location.
- P. "Space" is the linear portion of a joint pole parallel to its axis reserved for the exclusive use of one of the parties (subject only to the exceptions provided for in this Article and the specifications mentioned in Article III which in certain instances permit the making of certain Attachments by one party in the space reserved for the other party).
- Q. "Specified Percentage" is defined in Article XI.B.
- R. "Transfer" is the removal of Attachments from one pole and the placement of them or substantially identical Attachments upon another.
- S. "Unauthorized Attachment" is defined in Article IX.
- T. "Effective Date" is defined in the Preamble.
- U. "Electrical Distributor" is defined in the Preamble.
- V. "Old Joint Use Agreement" is defined in Article XXI.
- W. "Outside Party" is defined in Section XIII.A.
- X. "Telephone Company" is defined in the Preamble.

ARTICLE III

SPECIFICATIONS

Except as otherwise provided in Section F of Article VII, referring to construction that has not yet been brought into conformity with the specifications mentioned herein, the joint use of the poles covered by this Agreement shall at all times be in conformity with all applicable (1) accepted published modern methods; (2) requirements of the National Electrical Safety Code and subsequent revisions thereof ("NESC"); and (3) lawful requirements of public authorities. It is understood by both parties that the requirements of the NESC are minimum requirements and that additional requirements for height and strength may be required for good practice for the given local conditions.

Modifications of, additions to, or construction practices supplementing wholly or in part the requirements of the NESC, shall, when accepted in writing by both parties hereto through their agents authorized to approve such changes, likewise govern the joint use of poles, which acceptance shall not be unreasonably withheld.

ARTICLE IV

ESTABLISHING JOINT USE OF POLES AND PERMISSION FOR JOINT USE

A. Before either party shall make use of the poles of the other party under this Agreement, it shall comply with the requirements set forth herein. Appendix A or B shall be sent either (i) by electronic mail with electronic mail "read" receipt obtained, or (ii) by certified mail with return receipt obtained, or (iii) by delivery with signature of recipient obtained.

B. APPENDIX A PROCEDURE. Except in connection with (i) the placement of Non-Guyed Service Drops; (ii) the placement of distribution terminals; (iii) the placement of power secondary wires; (iv) the placement of street lighting fixtures; or (v) Transfers required by the pole owner, whenever either party desires to place an Attachment on any pole of the other that is not then in joint use (including road improvement projects and reconstruction of pole lines) or where existing joint use consists solely of one or more Non-guyed Service Drops, it shall submit a completed written application therefor on the form attached hereto and identified as Appendix A or such other form as may be mutually agreed upon, specifying fully, to the extent applicable, the information shown on Appendix A. Within fifteen (15) business days after the receipt of such completed application the owner shall notify the applicant in writing whether the application is approved or rejected. If so approved or if not rejected within the fifteen day period, the pole will become a Joint Pole, and the Licensee shall have the right to place Attachments on such pole as provided in this Agreement. If the owner rejects the application in whole or in part, the owner will specify the reason(s). The application shall be rejected only for good cause. Upon receipt of notice from the owner that the application has been approved or in the absence of rejection of the application within fifteen (15) business days from the receipt of the completed application, and after the completion of any transferring or rearranging which is required to permit the attaching of the applicant's Attachments on such poles, including any necessary pole replacements, the applicant shall have the right as Licensee hereunder to place such Attachments on such poles in accordance with the terms of the application and of this Agreement (including Article III).

C. APPENDIX B PROCEDURE. Except in connection with (i) the placement of Non-Guyed Service Drops; (ii) the placement of distribution terminals; (iii) the placement of power secondary wires; (iv) the placement of street lighting fixtures; (v) the vertical use of the unused space on a pole as provided in Section IV.E below; (vi) Rearrangements; or (vii) Transfers required by the pole owner, whenever the Licensee desires to modify its existing Attachments or place one or more additional Attachments on a Joint Pole, the Licensee shall submit a completed written application therefor on the form attached hereto and identified as Appendix B or such other form as may be mutually agreed upon, specifying fully, to the extent applicable, the information shown on Appendix B. However, if the existing joint use consists solely of one or more Non-guyed Service Drops, then the Licensee must follow the Appendix A procedure set forth in Article IV.B above before making any additional Attachments other than Non-guyed Service Drops. Unless the owner rejects the completed Appendix B form within ten (10) business days from the date of receipt, the Licensee may proceed with making such Attachments or changes as are identified in the Appendix B form in accordance with the terms of the application and this Agreement (including Article III). If the owner rejects the application in whole or in part, the owner will specify the reason(s). The application shall be rejected only for

good cause. If the owner determines that any such Attachments do not comply with the terms of this Agreement (including the provisions of Article III), then the parties will work together to minimize the cost of correcting any such deficiencies, but the Licensee shall be responsible for the full cost of any necessary or appropriate corrective measures, including removal and replacement of the pole and all Transfers or other work incident thereto.

D. Any Non-guyed Service Drop that is placed by one party on the other party's pole shall be subject to all the terms and provisions of this Agreement, except as expressly provided in this Agreement. The placement of one or more Non-Guyed Service Drops shall not alone and without more create Normal Space.

E. Either party, without following the Appendix A or Appendix B procedure, may utilize vertical unused space below its Normal Space as defined in Article II for street lighting, terminals, risers or other vertical Attachments if the existing joint use of such pole is authorized, such use does not interfere with the other party's operations, and such use complies with the terms of this Agreement (including the provisions of Article III). Any such Attachment and pole will be subject to all other provisions of this Agreement, including the adjustment payment provisions of Article XI.

F. Each party shall place, transfer and rearrange its own Attachments, and shall place guys and anchors to sustain any unbalanced loads caused by its Attachments. On existing poles, each party will perform any tree trimming or cutting necessary for their initial or additional Attachments. Anchors and guys shall be in place and in effect prior to the installation of Attachments and cables. Each party shall, with due diligence, attempt at all times to execute such work promptly and in such manner as not to interfere with the service of the other party.

G. Wherever practicable, double thimble anchor rods and anchors of sufficient holding power to sustain any unbalanced loads of the two parties shall be installed and used jointly. The ownership of the double thimble anchor rods and anchors will be vested in the owner of the pole. In any case, where one party provides at the request of the other party double thimble anchor rods and anchors for the use of both parties the party requesting the double thimble anchor rods and anchors shall pay to the party placing the double thimble anchor rods and anchors a sum equal to half of the cost of the anchors and anchor rods in place. In cases where the existing anchors are adequate for the needs of both parties, and where mutually acceptable to both parties, the party desiring additional guys may, where necessary, install an adapter at its own expense. In cases where existing anchor rods and anchors are adequate for the needs of only one party the party desiring additional guys and anchors may install anchors and anchor rods at no expense to the other party or in case of right-of-way restrictions may provide a double thimble anchor rod and anchor in place of the existing anchor rod and anchor to which the other party can attach its existing guy at its own expense.

H. The cost of establishing the joint use of existing poles as provided herein, including the making of any necessary pole replacements, shall be borne by the parties hereto in the manner provided in Article VIII - Division of Costs.

I. Joint use of a pole shall automatically be continued under the terms of this Agreement if any one of the following circumstances applies:

1. The pole was a Joint Pole under the Old Joint Use Agreement as of the Effective Date.
2. Both parties had Attachments on the pole the pole was actually in joint use as of the Effective Date.

J. Both before and after any termination of the right to place Attachments on additional poles, the Licensee shall have the right to Transfer its Attachments from an existing pole to a new pole installed as part of a road widening project and to continue joint use on such pole. If the Licensee is materially breaching this Agreement or acting in bad faith or failing to cooperate or communicate as provided in this Agreement, the owner may terminate the Licensee's rights under this Section IV.J. Furthermore, after any termination of the right to make Attachments to additional poles, the owner may terminate the Licensee's rights under this Section IV.J if three or more Unauthorized Attachments (as defined in Article IX) are found within any 12 month period. The owner may reinstate the Licensee's rights under this Section IV.J if the owner deems it appropriate.

K. To facilitate the implementation of this Agreement, each party will share with the other party information about its future pole line projects, as appropriate to facilitate the other party's planning and budgeting. To facilitate any preparation of Appendix A or Appendix B, the parties' representatives will, as reasonably necessary and appropriate and if requested by a party, discuss with one another the matters that are the subject of Appendix A or Appendix B.

ARTICLE V

PLACEMENT OF NEW POLES

A. Whenever either party hereto requires new pole facilities for any reason, including an additional pole line, an extension of an existing pole line, or in connection with the reconstruction of an existing pole line, it may promptly notify the other party to that effect in writing (verbal notice subsequently confirmed in writing may be given in cases of emergency) stating the proposed location and character of the new poles and the character of circuits it intends to use thereon and indicating whether or not such pole facilities will be, in the estimation of the party proposing to construct the new pole facilities, suitable for joint use. In case of emergency verbal notice, the other party will preliminarily respond verbally on an expedited basis that it does or does not want to seek initial joint use of the new poles and will generally describe its planned initial Attachments. Within a reasonable period (not to exceed fifteen (15) business days) after the receipt of such written notice, the other party will submit an Appendix A if required by Article IV above, and the provisions of Article IV will govern. Initial joint use of the poles will not be established and, if the other party subsequently desires joint use of the poles, the provisions of Article IV and of Article VIII.I will apply anew to such poles, if either of the following occurs: (1) the other party does not, if required, submit an Appendix A as provided above; or (2) the other party does not, within one year after the later of the receipt of

such written notice or construction of the pole, commence the placement of Attachments on such pole.

B. In any case where the parties hereto shall conclude arrangements for the joint use of any new poles to be erected, and the party proposing to construct the new pole facilities already owns more than its proportionate share of Joint Poles, the parties shall take into consideration the desirability of having the new pole facilities owned by the party owning less than its proportionate share of Joint Poles so as to work towards such a division of ownership of the Joint Poles that neither party shall be obligated to pay to the other any adjustment payments because of their respective use of Joint Poles owned by the other, due regard being given to the desirability of avoiding mixed ownership of poles in a section of line. The parties agree to negotiate in good faith to attempt to enter into a pole setting agreement, if requested by either party, but the terms and enforceability of this Agreement are not conditioned on the entry of such an agreement. Except as might be provided in any such pole setting agreement, there is no requirement that the parties will own an equal number of poles.

C. Each party shall place its own Attachments on the new Joint Poles and place guys and anchors to sustain any unbalanced loads caused by its Attachments except as otherwise provided under Article IV, Section G. The party owning the pole line shall provide initial right-of-way clearance 15 feet on each side of the center line to the extent practicable, all right-of-way in excess of this 30 foot swath to be borne by the party requiring the additional width. Each party shall, with due diligence, attempt to execute its work promptly and in such manner as not to interfere with the service of the other party.

ARTICLE VI

RIGHT OF WAY FOR LICENSEE'S ATTACHMENTS

While the owner and Licensee will cooperate as far as may be practicable in obtaining rights-of-way for both parties on Joint Poles, the owner does not warrant or assure to the Licensee any right-of-way privileges or easements on, over or across streets, alleys and public thoroughfares, and private or publicly owned property, and if the Licensee shall at any time be prevented from placing or maintaining its Attachments on the owner's poles, no liability on account thereof shall attach to the owner of the poles.

ARTICLE VII

MAINTENANCE OF POLES AND ATTACHMENTS

A. The owner shall maintain all Joint Poles in a safe and serviceable condition and in accordance with the specifications mentioned in Article III and shall replace, reinforce or repair such of these poles as become defective. In case of emergency, with the giving of verbal notice, Licensee may replace Joint Poles, anchors and guys as may be considered necessary for public safety or the restoration of Licensee's service, in which case the Licensee shall be reimbursed by the owner in the full amount of the cost of labor and materials plus any applicable overhead expenses.

B. When replacing a Joint Pole carrying terminals of aerial cable, underground connection, or transformer equipment, the new pole shall be set in the same hole which the replaced pole occupied, or immediately adjacent, and in a manner to facilitate Transfer of Attachments, unless special conditions make it desirable to set it in a different location. Replacement poles where risers (dips) are installed should be set as close as possible to the existing pole. The Owner will make reasonable effort to conduct a joint field review or otherwise coordinate with Licensee to determine the location of the proposed pole. Reasonable effort will be made to coordinate locations of risers and Non-Guyed Service Drops with the locations of the power facilities serving the customer.

C. Whenever it is necessary to replace or relocate a Joint Pole, the owner shall, before making such replacement or relocation give reasonable notice thereof in writing (except in case of emergency, when verbal notice will be given and subsequently confirmed in writing) to the Licensee, specifying in such notice the time of such proposed replacement or relocation and the Licensee shall at the time so specified Transfer its Attachments to the new or relocated Joint Pole.

An alternate method of notification (as opposed to the above described written method of notification) may be used when mutually agreed upon by both parties. The electronic notification system of pole transfer request, provided by the National Joint Utilities Notification System ("NJUNS"), may be used as the notification required by this article. As a prerequisite for use of this system, both parties shall have and utilize the necessary electronic equipment required by NJUNS for this system.

1. Should the Licensee fail to Transfer its Attachments to the new Joint Pole on the date specified for such Transfer of Attachments (after all owner responsible Transfers have been accomplished), the owner may elect to relinquish the ownership of the old pole from which it has removed its Attachments, with the giving of verbal notice to be subsequently followed in writing. If the owner so elects, such old pole shall thereupon, at no cost to the Licensee, become the property of the Licensee, as is, and the Licensee shall save harmless the former owner of such pole from all obligation, liability, damages, cost, expenses or charges incurred thereafter, and not arising out of anything theretofore occurring because of, or arising out of, the presence or condition of such pole or of any Attachments thereon. In instances where the Electrical Distributor is the owner of such pole, the unused portion of the pole above the Licensee's Attachments shall be cut off and removed by the owner before relinquishing ownership, if the pole remains in structural conflict with the power route.

2. Should the Licensee fail to Transfer its Attachments to the new Joint Pole after the date specified for such Transfer of Attachments and after all third party and owner responsible Transfers have been accomplished, whichever is later ("Licensee Transfer Date"), and if the owner does not elect to relinquish the ownership of the old pole from which it has removed its Attachments, the parties will have the following rights, in addition to any other rights and remedies available under this Agreement: The Licensee shall pay the owner the following amounts until the Licensee has Transferred its Attachments and notified the owner in writing or through NJUNS that the Transfer has been accomplished: (a) █████ per pole per month beginning with the 61st day after the Licensee Transfer Date and through and including the 240th day after the Licensee

Transfer Date, (b) [REDACTED] per pole per month (instead of [REDACTED]) beginning with the 241st day after the Licensee Transfer Date. In addition, the cost incurred by the owner to return to the job site and remove the old pole will be paid by the Licensee. In the event the Licensee notifies the owner that the Transfer has been accomplished, and the owner returns to the job site to remove the old pole and discovers that the Transfer has not been made, then the Licensee will pay the owner's cost of the trip to and from the job site. The intent of this paragraph is to ensure timely Transfers and minimize situations of two or more poles needlessly remaining at the same location for extended periods of time. The aforementioned provisions of this paragraph will only apply when poles are installed in a manner consistent with Section VII.B.

D. Each party shall at all times maintain all of its Attachments in accordance with the specifications mentioned in Article III and shall keep them in safe condition and in thorough repair.

E. Each party shall be responsible for right-of-way maintenance for its own circuits at its own expense.

F. Any existing joint use construction of the parties hereto which does not conform to the specifications mentioned in Article III shall be brought into conformity therewith as soon as practicable. When such existing construction shall have been brought into conformity with said specification, it shall at all times thereafter be maintained as provided in Sections A and D of this Article.

G. The cost of maintaining poles and Attachments and of bringing existing joint use construction into conformity with said specifications shall be borne by the parties hereto in the manner provided in this Agreement.

H. Where one party owns existing poles, and different, new or replacement poles are needed in substantially the same place to accommodate the other party's desired additional Attachments or desired new joint use, then, if joint use is established or to be established as provided in this Agreement, the party owning the existing poles will construct and own the new poles, and the costs will be paid as provided in Article VIII. If the party owning the poles does not commit to build and build the poles within the time reasonably needed by the other party, then the other party may build the poles and the costs will be paid as provided in Article VIII, with the party owning the existing poles owning the new poles. This section addresses overbuilding of existing poles by the party not owning such poles.

I. The owner of a Joint Pole shall have the right to require the Licensee, within 120 days after the Licensee Transfer Date (as defined in Article VII), either (a) to Transfer its Attachments from an existing pole to a new pole that is erected to carry the same or a similar service or Attachments that are on the existing pole, or (b) to remove its Attachments from the existing pole and terminate joint use as to the existing pole, and the choice of option (a) or (b) will be the Licensee's. Or, if neither the owner nor the Licensee desires a Transfer, the owner may elect to abandon the existing pole to the Licensee as provided in Section VII.C.1. In the case of any such Transfer, the costs of transferring the Licensee's Attachments will be paid by the Licensee.

ARTICLE VIII

DIVISION OF COSTS

A. NEW POLES INSTALLED WHERE NONE CURRENTLY EXIST: If joint use is established pursuant to Section V.A above, the cost of erecting new Joint Poles coming under this Agreement, to construct new pole lines, or to make extensions to existing pole lines shall be borne by the parties as set forth in this Section VIII.A. If joint use is not established pursuant to Section V.A above, the provisions of Section VIII.I below will control.

1. A Normal Pole, or if adequate a Joint Pole smaller than the Normal Pole, shall be erected at the sole expense of the owner.

2. A pole larger than the Normal Pole, the extra height or strength of which is due wholly to the owner's requirements including owner's requirements for pole space in excess of that set forth in Article II, Section L and requirements as to keeping the owner's wires clear of trees shall be erected at the sole expense of the owner.

3. In the case of a pole larger than the Normal Pole, the extra height or strength of which is due wholly to the Licensee's requirements including Licensee requirement for pole space in excess of that set forth in Article II, Section L and requirements as to keeping the Licensee's wires clear of trees, the Owner shall pay all costs associated with the construction of a Normal Pole and the Licensee shall pay to the Owner the remaining costs of erecting the larger than Normal Pole. If in connection with the construction of a pole the Licensee makes the payment required by this paragraph, then the Licensee shall in the future be entitled to its Space on such pole even if the pole does not at that time become a Joint Pole; provided, however, if the Licensee does not attach to the pole within three years from the date the pole was set, then the Licensee shall no longer be entitled to its Space on such pole.

4. In the case of a pole larger than the Normal Pole, the extra height or strength of which is due to the requirements of both parties for greater than Normal Space or the requirements for proper ground clearance or of public authorities or of property owners, (other than requirements with regard to keeping the wires of one party only clear of trees), the difference between the Cost in Place of such pole and the Cost in Place of a Normal Pole shall be shared equally by the Licensee and the owner, the rest of the cost of erecting such pole to be borne by the owner.

5. A pole, including all appurtenances or fixtures, erected between existing poles to provide sufficient clearance and furnish adequate strength to support the circuits of both the owner and the Licensee, which it would have been unnecessary to erect if joint use had not been undertaken, shall be erected at the sole expense of the Licensee.

B. PAYMENTS DO NOT AFFECT OWNERSHIP. Any payments for poles made by the Licensee under any provisions of this Article shall not entitle the Licensee to the ownership of any part of said poles for which it has contributed in whole or in part.

C. REPLACEMENT OF EXISTING JOINT POLES: Where an existing Joint Pole is replaced for reasons other than maintenance by a new one, the cost shall be divided as specified below. The replaced pole shall be removed and retained by its owner.

1. A Normal Pole, or if adequate a Joint Pole smaller than the Normal Pole, shall be erected at the sole expense of the owner; provided, however, that the owner's obligation to pay such expenses shall apply only if the Licensee notifies the owner in a timely manner prior to installation of Licensee's Attachments that such pole is insufficient for joint use. If without giving such advance notice the Licensee places one or more Attachments on a pole and thereby creates a violation of Article III or otherwise renders the pole unsuitable for joint use, then the Licensee must pay the full cost of removing and replacing the pole with a pole of sufficient size to remedy the violation or render the pole suitable for joint use, plus the cost of all Transfers and other work incident thereto.

2. A pole larger than the Normal Pole, which is installed to replace an existing pole, the extra height or strength of which is due wholly to the owner's requirements including owner's requirement for pole space in excess of that set forth in Article II, Section L and requirements as to keeping the owner's wires clear of trees shall be erected at the sole expense of the owner. The owner shall bear the full expense of replacing or transferring all the owner's Attachments and the Licensee shall bear the full expense of replacing or transferring all the Licensee's Attachments.

3. In the case of a pole larger than the Normal Pole, which is installed to replace an existing pole, the extra height or strength of which is due wholly to the Licensee's requirements including Licensee's requirement for pole space in excess of that set forth in Article II, Section L and requirements as to keeping the Licensee's wires clear of trees, the Licensee shall pay to the owner the Make-ready cost of the new pole.

4. In the case of a pole larger than the Normal Pole, which is installed to replace an existing pole, the extra height or strength which is due to the requirements of both parties for greater than Normal Space or the requirements for proper ground clearance or of public authorities or of property owners, (other than requirements with regard to keeping the wires of one party only clear of trees), the difference between the Cost in Place of such pole and the Cost in Place of a Normal Pole shall be shared equally by the Licensee and the owner, the rest of the cost of erecting such pole to be borne by the owner. The owner and Licensee shall replace or Transfer all Attachments at their own expense.

5. For purposes of this Section C, any pole on which the Licensee has placed or places an Attachment shall be deemed satisfactory to the Licensee and deemed a Normal Pole whether or not the terms of this Agreement, including the space provisions of Article II, have been satisfied.

D. RESPONSIBILITY FOR OWN ATTACHMENTS. Each party shall place, maintain, rearrange, Transfer and remove its own Attachments at its own expense except as otherwise expressly provided herein.

E. MAINTENANCE AND REPLACEMENT COSTS. The expense of maintaining Joint Poles shall be borne by the owner thereof except that the cost of replacing poles shall be borne by the parties hereto in the manner provided elsewhere in this Agreement.

F. SERVICE DROPS. Where Service Drops of one party crossing over or under lines of the other party are attached in the other party's poles, either directly or by means of a pole top extension fixture, the cost shall be borne as follows:

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

2. Where an existing pole is replaced by a taller one to provide the necessary clearance the party owning the Service Drop shall pay to the party owning the pole the cost of the new pole plus the labor costs of replacing or transferring of the Attachments on the existing pole, the owner of the existing pole to remove and retain such pole at his own expense.

G. PAYMENT BASIS. Payments made by either party to the other under the provisions of this Article may be based on the estimated or actual cost as mutually agreed upon (including overhead) of making such changes but in no event, however, shall either party be required to pay for such changes more than ██████ of the estimated cost supplied by the other if such cost estimate shall have been requested and furnished before the changes were made.

H. CORRECTIVE MEASURES

1. If any Attachment of the Licensee is found to be in violation of the terms of this Agreement (including the provisions of Articles II.L and III), then the parties will work together to minimize the cost of correcting any such deficiencies, but the Licensee shall be responsible for the full cost of any necessary or appropriate corrective measures, including removal and replacement of the pole and all Transfers or other work incident thereto.

2. If any Attachment of the owner is found to be in violation of the terms of this Agreement (including the provisions of Articles II.L and III), then the parties will work together to minimize the cost of correcting any such deficiencies, but the owner shall be responsible for the full cost of any necessary or appropriate corrective measures, including removal and replacement of the pole and all Transfers or other work incident thereto.

3. If there exists a violation of the terms of this Agreement (including the provisions of Articles II.L and III), and it cannot be determined whose Attachment has caused such violation or there is a mixture of the parties causing the violation, then the parties will work together to minimize the cost of correcting any such deficiencies, and all parties and Outside Parties whose Attachment may have caused such violation will share equally in such costs; provided, however, that if a party can modify its Attachments so that they no longer may be a cause of the violation or deficiency, then such party may elect to make such modification instead of otherwise sharing in such costs. Such a modification shall

not relieve a party from sharing in such costs if the party making the modification could still have been a cause of any deficiency that remains.

4. If one or more Outside Party attachees caused the violation, then such Outside Party attachee(s) will pay the corrective costs incurred by all who have Attachments on the pole, including for the Licensee, owner and any other attachees; and the pole Owner will make reasonable effort to cause the Outside Party to make such payment.

I. WHEN EXISTING POLES NOT IN JOINT USE BECOME JOINT POLES.

1. If an existing pole not in joint use was constructed before the Effective Date and becomes a Joint Pole, the Licensee shall pay all Make-ready costs associated with the Licensee attaching to the pole.

2. If an existing pole not in joint use was constructed after the Effective Date and becomes a Joint Pole, then –

a. The Licensee shall pay all Make-ready costs associated with the Licensee attaching to the pole if (i) the owner gave notice pursuant to Section V.A but (a) the Licensee did not, if required, submit an Appendix A as provided in Article IV and, if applicable, Section V.A or (b) did not, within one year after the later of the receipt of the written notice provided for in Article V or construction of the pole, commence placement of Attachments on such pole; or (ii) both (a) the pole is a Normal Pole or larger and (b) was constructed in connection with a project involving three or fewer poles.

b. If (i) the owner did not give notice pursuant to Section V.A. with respect to the pole and (ii) either (a) the pole is smaller than a Normal Pole or (b) the pole was constructed in connection with a project involving four or more poles, then the owner shall pay all Make-ready costs associated with the Licensee attaching to the pole.

J. BUILDING DOWN. If one party installs Attachments that encroach or needs to install Attachments that would encroach upon the other party's use of its own Normal Space (sometimes known as "building down"), the party installing or needing to install such Attachments must pay the Make-ready costs necessary to permit the other party to use its own Normal Space.

K. MAKE-READY WHEN APPENDIX A OR APPENDIX B NOT REQUIRED. Except as provided in Section VIII.J above, the Owner shall not be obligated to pay Make-ready costs for any initial or additional Licensee Attachment for which an Appendix A or Appendix B is not required.

ARTICLE IX

UNAUTHORIZED ATTACHMENTS

If any Attachment made after the Effective Date of this Agreement is identified for which the Appendix A or Appendix B requirements (as set forth herein) have not been satisfied (“Unauthorized Attachment”), then the Licensee shall pay to the owner a one-time fee of [REDACTED] per pole plus a sum equal to the adjustment payments that would have been payable from and after the date the Attachment was first placed on the owner’s pole as determined from Licensee’s records or other evidence; provided, however, that if the date on which the Attachment was made cannot be determined, then the Licensee will pay a sum equal to the adjustment payments that would have been payable from and after the date the last Actual Inventory of Joint Poles was conducted. In addition, the owner may, without prejudice to its other rights or remedies under this Agreement, require the Licensee to submit within fifteen (15) business days of written notice from the owner an Appendix A or Appendix B, as appropriate, along with supporting engineering design data for each such Attachment, and upon review of such information, owner may require the Licensee to (1) make or pay for such modifications as may be specified by mutual consent of the parties or, if the parties in good faith cannot agree, as determined by a Referee pursuant to Article XIX to comply with applicable safety codes and the terms of this Agreement or (2) if the Licensee has placed during the past twelve (12) months Unauthorized Attachments at three or more different pole line locations or if non-approval of Appendix A or Appendix B is justified, remove the Unauthorized Attachment at Licensee’s expense within 180 days after receipt of written notice from the owner; provided, however, that if the Licensee has failed to remove such Unauthorized Attachments within 180 days after receipt of written notice from the owner, with a receipt obtained, then the owner may remove such Attachments at the Licensee’s expense and with no liability to owner. Nothing herein shall relieve the Licensee of its obligation to maintain Attachments at all times in conformity with Article III.

ARTICLE X

ABANDONMENT OF JOINT USE POLES

A. If the owner desires at any time to abandon any Joint Pole, it shall, except as provided in Article VII, Section C.1, give the Licensee notice in writing to that effect at least 60 days prior to the date on which it intends to abandon such pole. If at the expiration of said period the owner shall have no Attachments thereon, but Licensee has not removed its Attachments, such pole shall thereupon become the property of the Licensee, as is, and the Licensee shall save harmless the former owner of such pole from all obligation, liability, damages, cost, expenses or charges incurred thereafter, and not arising out of anything theretofore occurring because of or arising out of the presence or condition of such pole or of any Attachments thereon; and shall pay the owner the then depreciated value in place of the pole to the owner. The former owner shall further evidence transfer of title to the pole by appropriate means. Credit shall be allowed for any payments which the Licensee may have made under the provisions of Article VIII - Division of Costs, when the pole was originally set, provided the Licensee furnished proof of such payment.

B. The Licensee may at any time abandon the use of a joint pole by removing therefrom any and all Attachments it may have thereon and by giving written notice thereof.

ARTICLE XI

ADJUSTMENT PAYMENTS

A. At intervals of five (5) years, unless otherwise mutually agreed by the parties, an actual inventory of Joint Poles shall be made by representatives of the parties (the "Actual Inventory"). At the request of either party, an Actual Inventory shall be initiated within a year of the Effective Date and be promptly completed as the parties may more particularly agree. For the purpose of such Actual Inventory, any pole used by the Licensee for the sole purpose of attaching wires or cables thereto, either directly or by means of a pole top extension fixture, in order to provide clearance between the facilities of the two parties as distinguished from providing support for such wires or cables, shall not be considered as a Joint Pole, but all other poles of the owner on which the Licensee has an Attachment shall be considered Joint Poles. Each party shall share equally the net cost of making the Actual Inventory.

B. For a year in which there is no Actual Inventory, the number of Joint Poles used in calculating the adjustment payments provided for herein shall be the "Specified Percentage" of the number of Joint Poles used in calculating the adjustment payment in the previous year. The Specified Percentage shall be [REDACTED] until the next Actual Inventory. After each Actual Inventory beginning with the next Actual Inventory, the Specified Percentage shall be the average yearly percentage increase during the years since the previous Actual Inventory.

C. For a year for which there is an Actual Inventory, the adjustment payments provided for herein shall be based on the Actual Inventory; but there shall also be the adjustment provided for in the next section.

D. For a year for which there is an Actual Inventory, the following adjustment shall be made:

1. The difference between the number of Joint Poles found by the Actual Inventory for the year in question and the number of Joint Poles found by the previous Actual Inventory, whenever conducted, including any Actual Inventory conducted prior to the Effective Date of this Agreement, shall be prorated evenly based on the assumption that such poles were added evenly over the years between the Actual Inventories in order to calculate, on the basis of such proration, a prorated number of poles for each year between the year of the previous Actual Inventory and the year of the present Actual Inventory.

2. The adjustment payment applicable to such prorated number of poles will be calculated as follows: For the years 2003 and beyond, Section F below shall apply on such prorated number of poles. However, for each year prior to 2003, the annual adjustment payment per pole for purposes of this calculation will be the yearly rate set forth in the parties' previous agreement for Joint Use of Wood Poles in Rural Areas, with the 1997 rates [REDACTED] for the Telephone Company and [REDACTED] for the Electrical Distributor) being applicable in each of the years 1998 through 2002.

3. If the adjustment payment so calculated pursuant to this section is greater than the adjustment payment that was actually made, the difference shall constitute an additional amount

owed by the Licensee to the owner; if less, the difference shall constitute an amount owed by the owner or a credit to the Licensee.

Two examples follow. The first is for a time period totally covered by this Agreement, and the second is for a time period only partially covered by this Agreement.

First Example

An Actual Inventory conducted in 2004 reports 1000 Joint Poles. For each of the years 2005 through 2008, the actual amounts paid were based on the [REDACTED] basis as provided in Section B above. An Actual Inventory in 2009 reports 1150 Joint Poles.

Actual inventory 2004 = [REDACTED]
 Actual inventory 2009 = [REDACTED]
 Difference [REDACTED]
 Difference per year [REDACTED]

Actually paid each year:

<u>Year</u>	<u>Assumed poles</u>	<u>Annual adjustment payment per pole for year (example)</u>	<u>Amount paid for each year</u>
2005	[REDACTED]	[REDACTED]	[REDACTED]
2006	[REDACTED]	[REDACTED]	[REDACTED]
2007	[REDACTED]	[REDACTED]	[REDACTED]
2008	[REDACTED]	[REDACTED]	[REDACTED]
Total paid during interim years			[REDACTED]

True-up with 2009 actual inventory:

	<u>Prorated poles</u>		<u>Amount should have paid for each year</u>
2005	[REDACTED]	[REDACTED]	[REDACTED]
2006	[REDACTED]	[REDACTED]	[REDACTED]
2007	[REDACTED]	[REDACTED]	[REDACTED]
2008	[REDACTED]	[REDACTED]	[REDACTED]
Amount of true up payment			[REDACTED] ([REDACTED])

Second Example

An Actual Inventory conducted in 1995 reported 1000 Joint Poles. An Actual Inventory in 2004 reports 1270 Joint Poles.

Actual inventory 1995 = [REDACTED]
 Actual inventory 2004 = [REDACTED]
 Difference [REDACTED]
 Difference per year [REDACTED]

Actually paid each year:

<u>Year</u>	<u>Poles per 1995 Inventory</u>	<u>Annual adjustment payment per pole for year</u>	<u>Amount paid for each year</u>
1996	[REDACTED]	[REDACTED]	[REDACTED]
1997	[REDACTED]	[REDACTED]	[REDACTED]
1998	[REDACTED]	[REDACTED]	[REDACTED]
1999	[REDACTED]	[REDACTED]	[REDACTED]
2000	[REDACTED]	[REDACTED]	[REDACTED]
2001	[REDACTED]	[REDACTED]	[REDACTED]
2002	[REDACTED]	[REDACTED]	[REDACTED]
2003	[REDACTED]	[REDACTED]	[REDACTED]
Total paid during interim years			[REDACTED]

True-up with 2004 actual inventory:

	<u>Prorated poles</u>		<u>Amount should have paid for each year</u>
1996	[REDACTED]	[REDACTED]	[REDACTED]
1997	[REDACTED]	[REDACTED]	[REDACTED]
1998	[REDACTED]	[REDACTED]	[REDACTED]
1999	[REDACTED]	[REDACTED]	[REDACTED]
2000	[REDACTED]	[REDACTED]	[REDACTED]
2001	[REDACTED]	[REDACTED]	[REDACTED]
2002	[REDACTED]	[REDACTED]	[REDACTED]
2003	[REDACTED]	[REDACTED]	[REDACTED]
			[REDACTED]

Amount of true up payment [REDACTED])

E. The applicable computation of payments and calculations as above provided shall be made on or about December 1st of each year, each party acting in cooperation with the other.

F. Adjustment payments per pole due from one party as Licensee to the other party as owner shall be as indicated in the table below. The Electrical Distributor shall pay the amounts

in Column "A" for each Joint Pole owned by the Telephone Company and the Telephone Company shall pay the amounts in Column "B" for each Joint Pole owned by the Electrical Distributor. The smaller total sum shall be deducted from the larger and the Electrical Distributor or the Telephone Company, as the case may be, shall pay to the other the difference between such amounts. The adjustment payment herein provided shall be paid within thirty (30) days after the bill has been submitted.

ANNUAL ADJUSTMENT PAYMENT PER POLE (or "RATE")

Duration	A Amount Payable by Electrical Distributor	B Amount Payable by Telephone Co.
Jan. 1, 2003 - Dec. 31, 2003	██████████	██████████

For years after 2003, the annual adjustment payment shall be determined by applying the most recent 12 months' percentage change in the Handy Whitman Index (HWI) for the South Atlantic Region Account 364, Poles Towers and Fixtures, to the previous year's rate. In the event the HWI is no longer usable for this purpose, the parties shall use the Consumer Price Index All Urban Consumers Not Seasonally Adjusted for the South Urban Area, or such other index as is the closest equivalent thereof. The rate for each such year shall be calculated as follows:

For 2004, the adjusted rate will be the Percentage of Change (PC) in the HWI 2004 and the HWI 2003 multiplied times ██████████ for the Amount Payable by Telephone Company (in 2003) and times ██████████ for the Amount Payable by Electric Distributor (in 2003) and added to the 2003 rates.

OR: $AC = AP + IC$ where

$AC =$ Adjusted Rate Current Year (for 2004)

$AP =$ Adjusted Rate Previous Year (██████████ and ██████████ for the Telephone Company and Electric Distributor, respectively for 2003)

$IC =$ Incremental Change = $PC \times AP$

$PC = (HWI\ 2004 - HWI\ 2003) / HWI\ 2003$

The adjusted rates for subsequent years would be calculated in like manner.

G. The parties acknowledge and agree that the above rates, and some of the terms and conditions of this Agreement, are the result of a settlement between the parties. These rates are not necessarily a reflection of the actual costs of joint use to the parties.

H. If there is provision under a separate agreement between the Telephone Company and the Electrical Distributor for facilities associated with power line carrier systems, the adjustment payment provisions of the Agreement of which this Article forms a part shall apply for poles on which both types of facilities are present and no other adjustment payments shall apply. The adjustment payment provisions of this Agreement shall not apply, however, where only those facilities directly associated with the power line carrier systems are involved.

ARTICLE XII

DEFAULTS

A. If either party shall default in any of its obligations under this Agreement and such default continues thirty (30) days after due notice thereof in writing by the other party, the party not in default may suspend the rights of the party in default insofar as concerns the granting of future joint use and if such default shall continue for a period of 90 days after such suspension, the party not in default may forthwith terminate this Agreement as far as concerns the future granting of joint use.

B. If after reasonable notice either party shall make default in the performance of any work it is obligated to do under this Agreement at its sole expense, the other party may elect to do such work, and the party in default shall reimburse the other party for the cost thereof. Failure on the part of the defaulting party to make such a payment within 30 days upon presentation of bills therefor shall, at the election of the other party, constitute a default under Section A of this Article.

ARTICLE XIII

RIGHTS OF OTHER PARTIES

A. If either of the parties hereto has, prior to the execution of this Agreement, conferred upon others, not parties of this Agreement ("Outside Parties"), by contract or otherwise, rights or privileges to attach to any of its poles covered by this Agreement, nothing herein contained shall be construed as affecting said rights or privileges with respect to existing Attachments of such Outside Parties, which Attachments shall continue in accordance with the present practice; all future Attachments of such Outside Parties shall be in accordance with the requirements of Section B below, except where such Outside Parties have by agreements entered into prior to the execution of this agreement acquired enforceable rights or privileges to make Attachments which do not meet such space allocations. Owner shall derive all of the revenue accruing from such Outside Parties. Any contractual rights or privileges of Outside Parties recognized in this paragraph shall include renewals of or extensions of the term (period) of such contracts.

B. If either party hereto desires to confer upon others not parties to this agreement (Outside Parties), by contract or otherwise, rights or privileges to attach to any of its poles covered by this Agreement, it shall have the right to do so, provided all such Attachments of such Outside Parties are made in accordance with the following: (1) such Attachments shall be maintained in conformity with the requirements of Article III, and (2) such Attachments shall not be located within the space allocation of Licensee. Owner shall derive all of the revenue accruing from such Outside Parties.

C. For purposes of this Agreement, all Attachments of any such Outside Party shall be treated as attachments belonging to the owner, and the rights, obligations and liabilities hereunder of owner in respect to such Attachments shall be the same as if it were the actual owner thereof.

D. With respect to any rights and privileges granted under this Article to others not parties hereto, owner shall reimburse Licensee's cost for transferring and rearranging Licensee's Attachments to provide space for initial Attachments for such Outside Parties.

E. If the Licensee is not the incumbent provider of its services in an area, then the Licensee shall not have a right to use Normal Space in a manner that is inconsistent with any contract between the Owner and an incumbent provider of the Licensee's services in the area. However, the Licensee shall otherwise have rights to joint use consistent with the terms of this Agreement; but, if the pole is not suitable for joint use with the Licensee's Attachments, then the Licensee must pay the full cost of rendering the pole suitable for Licensee's Attachments, including as necessary rearrangements or removing and replacing the pole with a pole of sufficient size and strength to accommodate Licensee's Attachments, plus the cost of all Transfers and other work incident thereto.

F. The Owner will make good faith efforts to have the Licensee paid by an Outside Party in connection with Outside Party Make-ready.

ARTICLE XIV

ASSIGNMENTS OF RIGHTS

Except as otherwise provided in this Agreement, neither party hereto shall assign or otherwise dispose of this Agreement or any of its rights or interests hereunder, or in any of the Joint Poles, or the Attachments or rights-of-way covered by this Agreement, to any firm, corporation or individual, without the written consent of the other party, except to the United States of America or any agency thereof; provided, however, that nothing herein contained shall prevent or limit the right of either party to mortgage any or all of its property, rights, privileges, and franchises, or lease or transfer any of them to another corporation organized for the purpose of conducting a business of the same general character as that of such party, or to enter into any merger or consolidation; and, in case of the foreclosure of such mortgage or in case of lease, transfer, merger, or consolidation, its rights and obligations hereunder shall pass to, and be acquired and assumed by, the purchaser at foreclosure, the transferee, lessee, assignee, merging or consolidating company, as the case may be; and provided further that, subject to all of the terms and conditions of this Agreement, either party may permit any corporation conducting a business of the same general character as that of such party, and owned, operated, leased and controlled by it or associated or affiliated with it, the use of all or any part of the space reserved hereunder on any pole covered by this Agreement for the Attachments used by such party in the conduct of its said business; and for the purpose of this Agreement, all such Attachments maintained on any such pole by the permission as aforesaid of either party herein shall be considered as the Attachments of the party granting such permission, and the rights, obligations and liabilities of such party under this Agreement, with respect to such Attachments, shall be the same as if it were the actual owner thereof.

ARTICLE XV

WAIVER OF TERMS OR CONDITIONS

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

ARTICLE XVI

PAYMENT OF TAXES

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

ARTICLE XVII

BILLS AND PAYMENT FOR WORK

A. 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 within 90 days after the completion of such work an itemized statement of the costs and such other party shall within 30 days after such statement is presented pay to the party doing the work such other party's proportion of the cost of said work.

B. All amounts to be paid by either party under this Agreement shall be due and payable within thirty (30) days after the invoice date. Except as provided in Section XVII.C below, any payment not made within thirty (30) days from the due date shall bear interest at the rate of [REDACTED] per month until paid, or if [REDACTED] exceeds the maximum rate allowed by law, then at the maximum rate allowed by law. If a party bills the interest provided for in this paragraph but then receives a payment showing that the payment was timely made, the billing party will write off and cancel the interest.

C. A party receiving a bill may, in good faith and for good cause, dispute the amount or adequacy of substantiation for the bill. In the event that a party so disputes only a portion of a bill, then such party shall promptly pay the undisputed amount. Upon resolution of the dispute, if the amount and substantiation were correct and sufficient, interest will be paid on the unpaid balance from the date of the initial bill at the rate of [REDACTED] per month until paid, or if [REDACTED] exceeds the maximum rate allowed by law, then at the maximum rate allowed by law; but, if the amount was not correct or substantiation was not sufficient, no interest will be payable unless the amount determined to be correct is not paid within 30 days of receipt of substantiation and determination of the correct amount.

ARTICLE XVIII

NOTICES

A. Except as otherwise provided in this Agreement, all notices and writings shall be made to the following people, who from time to time may be changed by written notice:

Telephone Company:

Joint Use Manager
Room 22G62
BellSouth Center
675 West Peachtree Street
Atlanta, GA 30375

Electrical Distributor:



B. By written notice pursuant hereto a party may from time to time specify a person in lieu of the person designated in Section A above to receive notices or writings with respect to specified matter(s) and/or geographic area(s), in which case such notices or writings shall be sent to that person as to such matter(s) and area(s).

C. Response to any notice or Appendix A or Appendix B shall be made to the sender rather than to the person designated in Section A or B above.

D. Unless otherwise provided in this Agreement, any notice shall be in writing, which may, when mutually agreeable, include preservable electronic means, such as email or facsimile.

E. A second copy of any notice given under Article XII or Article XX shall be given to the following persons, who may from time to time be changed by written notice:

Telephone Company:

General Counsel - Georgia
Suite 6C01
1025 Lennox Park Boulevard NE
Atlanta, GA 30319- 5309

Electrical Distributor:



F. The parties will develop and maintain a joint form designating the people to whom notices shall be given pursuant to the foregoing.

ARTICLE XIX

RESOLUTION OF CERTAIN DISPUTES

A. In the event of a dispute regarding any compliance or non-compliance with the provisions of Articles II.L and III or a dispute under the last paragraph of Article III of this Agreement, including which party is responsible for any non-compliance and what corrective action, if any, is necessary or appropriate to remedy any such non-compliance, then the parties shall each arrange for a representative to make a joint field visit to the pole location to investigate whether a violation exists and if so, any corrective action needed and the party or parties responsible. The parties will make a diligent and good faith effort to resolve such disputes at the local level by the parties' respective local engineers and local managers.

B. If the parties are unable to resolve any such dispute at the local level, then either party may submit the matter for resolution to a "Referee" for binding resolution. A matter will be submitted to the Referee by sending a letter (by mail, hand-delivery or facsimile) to the Referee, with a copy provided to the other party's representative who was involved in the attempt to resolve the dispute and the other party's representative designated pursuant to Section XVIII.A or B before or concurrently with the transmission of the letter to the Referee. The letter will include a summary of the dispute and will designate the party's "Contact Person" for the dispute. The other party will promptly respond with a letter similarly sent and copied that provides such party's summary of the dispute and designates such party's Contact Person for the dispute.

C. If the parties mutually agree to do so, instead of proceeding under Section B above, the parties may submit any dispute to the Referee by jointly sending the Referee a letter that includes a summary of the dispute and designates each party's Contact Person for the dispute.

D. The Referee will make such investigation as deemed appropriate in his or her discretion, which will include hearing from each party's Contact Person. The Referee may, but is not required to, engage in such other procedures or hearing as the Referee deems appropriate. The parties will cooperate with the Referee.

E. The Referee will promptly issue a binding decision in writing to the parties, from which there will be no appeal. The party whose position is not upheld by the Referee (which determination may be made by the Referee if requested to do so) will be required to pay for the Referee's fees and expenses. If both parties' positions are upheld in part, they will share the Referee's fees and expenses equally. The parties agree to be bound to pay the Referee's fees and expenses as provided herein.

F. The Referee will be appointed as follows:

1. Each party will appoint an outside engineer and these two engineers will appoint a third outside engineer or other qualified person to serve as the Referee.

2. In the event that the two engineers so appointed are unable within 14 days to agree upon a third outside engineer or other qualified person who is willing and able to serve as the Referee, then the Referee will be appointed as follows: Three names will be blindly drawn from the list of persons then comprising the NESC committee whose work is most closely related to the dispute (e.g., Clearances Committee or Strength and Loading Committee), or such other group as may be mutually agreed upon. Each party will strike one such name and the remaining person will serve as the Referee. If the parties strike the same name, then the Referee will be selected from the remaining two names by coin toss. If the NESC committee member so selected is unwilling or unable to serve as Referee, then this procedure will be repeated (starting with the blind drawing of three different names as provided above) as necessary until a Referee is selected who is willing and able to serve as Referee. If all committee member names of the NESC committee first selected are exhausted without a Referee being appointed who is willing and able to serve as Referee, then the parties will repeat the above-described procedure with the next NESC committee whose work is most closely related to the dispute, and so on until a Referee is selected who is willing and able to serve as Referee.

G. Nothing herein shall preclude the parties from entering into any other mutually agreeable dispute resolution procedure or from changing by mutual written agreement any aspect of the foregoing procedure. Without limiting the generality of the foregoing, the parties may by mutual written agreement remove, replace or appoint a Referee at any time.

H. The parties agree, that if any dispute or problem in connection with the administration of this Agreement cannot be resolved at lower levels, communications between the following will be permitted and engaged in, in good faith on an expedited basis: Between a district manager or person who reports to the President/CEO/General Manager of an EMC and a district general manager for BellSouth; and, if not resolved by them, between the President/CEO/General Manger of an EMC and the Network Vice President for BellSouth. If either an EMC or BellSouth reorganizes or changes titles, the equivalent person for such party shall perform the above functions.

I. There shall be a “Joint Operations Committee” composed of three representatives from BellSouth and three representatives from the EMCs in Georgia who have joint use agreements with BellSouth, which committee shall meet at least annually and as requested by the representatives of either BellSouth or the EMCs.

ARTICLE XX

TERM OF AGREEMENT

This Agreement shall continue in full force and effect until terminated, insofar as the making of Attachments to additional poles is concerned, by either party giving to the other six months’ notice in writing of intention to terminate the right of making Attachments to additional poles. Such six-month notice may not be given earlier than three years after the Effective Date. Any such termination of the right to make Attachments to additional poles shall not, however, abrogate or terminate the right of either party to maintain the Attachments theretofore made on the poles of the other or additional Attachments to such poles, and all such Attachments shall continue thereafter to be maintained, pursuant to and in accordance with the terms of this Agreement, which Agreement shall, so long as said Attachments are continued, remain in full force and effect solely and only for the purpose of governing and controlling the rights and obligations of the parties with respect to said Attachments.

ARTICLE XXI

EXISTING CONTRACTS

All existing agreements for Joint Use of Wood Poles in Rural Areas between the parties, and all amendments thereto (hereinafter “Old Joint Use Agreement”) are by mutual consent hereby abrogated and superseded by this Agreement. Certain aspects of the transition from the Old Joint Use Agreement to this Agreement are covered by a separate Settlement Agreement entered concurrently by the parties, which is fully effective according to its terms.

Nothing in the foregoing shall preclude the parties to this agreement from entering such supplemental operating routines or working practices as they mutually agree to be necessary or desirable to effectively administer the provisions of this Agreement.

ARTICLE XXII

APPROVAL OF THE ADMINISTRATOR

This Agreement and any amendment thereof, shall be effective subject to the condition that, during any period in which the Electrical Distributor is a borrower from the Rural Utilities Service (“RUS”) and RUS approval of this Agreement and any amendment thereof is required, the Agreement and any amendment thereof shall have the approval in writing of the RUS Administrator.

ARTICLE XXIII

LIABILITY

Whenever any liability is incurred by either or both of the parties hereto for damages for injuries to the employees or to the property of either party, or for injuries to other persons or their property arising out of the joint use of poles under this Agreement, or due to the proximity of the parties' wires and fixtures attached to such Joint Poles, the liability for such damages as between the parties hereto shall be as follows:

- A. Each party shall be solely responsible for all injuries to persons or damage to property caused solely by said party's negligence, or solely by its failure to comply at any time with the applicable edition of the NESC.
- B. Each party shall be solely responsible for all injuries to its own employees or damage to its own property that is caused by the concurrent negligence of both parties hereto, or that is due to causes which cannot be traced to the sole negligence of either party.
- C. Each party shall be responsible for not more than one-half of all injuries to persons other than employees of any party hereto and for not more than one-half of all damage to property not belonging to either party that is caused by the concurrent negligence of both parties hereto or that is due to causes which cannot be traced to the sole negligence of either party.
- D. Where, on account of injuries of the character described in the preceding paragraphs of this Article, either party hereto shall make any payments to its injured employee or to his relatives or representatives in conformity with (a) the provision of any Workers' Compensation Act or any act creating a liability in the employer to pay compensation for personal injury to an employee by accident arising out of and in the course of the employment, whether based on negligence on the part of the employer or not, or (b) any plan for employees' disability benefits or employees' death benefits now established or hereafter adopted by the parties hereto, or either of them, such payments shall be construed to be damages or injuries within the terms of the preceding paragraphs numbered A and B and shall be paid by the parties hereto accordingly.
- E. Each party's processing and defense of claims and lawsuits which are asserted against or affect the parties hereto jointly shall be coordinated by the parties. If, however, a claimant desires to settle upon terms acceptable to one party (the "Settling Party") hereto, but not the other party, the Settling Party may, without waiver of, or prejudice to its rights under this Article, pay to the other party (the "Non-Settling Party"), one-half (1/2) of the amount for which such settlement could be effected (the total amount for which settlement could be effected being called the "Settlement Amount"). The Non-Settling Party shall thereupon be bound to protect and indemnify the Settling Party from all further liability and expense on account of such claim. PROVIDED, however, that should a final resolution or adjudication of the matter result in the Non-Settling Party incurring liability and expenses less than the Settlement Amount, an adjustment shall be made between the parties. The Non-Settling Party shall refund a portion of the aforesaid payment made to it by the Settling Party equal to one-half of the aforesaid Settlement Amount previously paid, less one-half of the total claims cost (exclusive of attorney's fees) incurred by the Non-Settling Party in the defense and/or final settlement of the claim. One-half of the total claims cost shall equal the gross amount actually paid by the Non-Settling Party

to claimant upon final disposition of the claim, plus the direct out of pocket expenses incurred by the Non-Settling Party in the defense of the claim, exclusive of attorney's fees divided by two.

ARTICLE XXIV

CONSTRUCTION

This Agreement was drafted by all parties to it and is not to be construed against any party. Neither the negotiations of the language of this Agreement nor prior drafts of this Agreement nor the inclusion or exclusion of any language from prior drafts shall be admissible or probative as to the meaning of this Agreement.

ARTICLE XXV

REMEDIES CUMULATIVE

Unless otherwise provided in this Agreement, all remedies set forth in this Agreement are cumulative and in addition to any other remedies that may be available herein or at law or in equity, if any.

In witness whereof the parties hereto, have caused these presents to be executed in two counterparts, each of which shall be deemed an original and their corporate seals to be affixed thereto by their respective officers thereunto duly authorized, as of the Effective Date.

(SEAL)



Title: President/CEO

(SEAL)

BELLSOUTH TELECOMMUNICATIONS, INC.



Title: State President - Georgia

*** APPENDIX B ***

BellSouth Job Number _____ (to be completed by BellSouth)

EMC Job Number _____ (to be completed by EMC)

APPLICATION TO ADD OR MODIFY ATTACHMENTS ON AN EXISTING JOINT USE POLE: (To be completed by the Licensee)

Make-ready work required: Yes ___ No ___

Number of poles affected: _____

To: _____

POLE OWNER

DATE OF REQUEST

ADDRESS

This is to apply to add or modify attachments on existing joint use poles under the terms and conditions of our agreement for Joint Use of Wood Poles ("Agreement").

Our present plan is to start this work about _____, 20____, and complete the work about _____, 20____.

Attached are copies, which contain the above job number, of detailed construction plans and drawings, together with necessary maps, to indicate specifically the attachments we intend to add or modify, the point of attachment on each pole, the number and character of the attachments currently installed and those to be placed, replaced, or removed on such poles (including messenger type, cable type, guy type, anchor type, and anchor distance from poles), any rearrangements of fixtures and equipment necessary, as well as any relocations or replacements of existing poles, and any additional poles that may be required, in accordance with the procedure provided in Articles IV and V of the Agreement.

The included technical information represents our existing and proposed facilities, and any changes in cables, messengers, guys, anchors, or points of attachment above ground other than those listed will be submitted to the Pole Owner for verification of compliance prior to construction. Should additional information be required by the Pole Owner for verification of compliance with the NESC or other applicable standards, the Licensee will provide such information.

The Licensee will obtain all authorizations, permits, and approvals from all Municipal, State, and Federal authorities to the extent required by law for the Licensee's proposed service and all easements, licenses, rights-of-way and permits necessary for the proposed use of these poles.

If the additions or modifications proposed are agreeable, please signify your approval of this request in the spaces provided and return a copy to the Applicant.

LICENSEE (COMPANY NAME)

CONTACT NUMBER

NAME OF APPLICANT

SIGNATURE OF APPLICANT

ADDRESS

TITLE

APPROVAL TO PROCEED WITH ADDITION OR MODIFICATION: (To be completed by the Pole Owner and returned to the Applicant)

DATE

This is to advise you that the above application is approved. You may proceed with such additions or modifications on the terms and conditions of the Agreement referred to above, under the conditions outlined in your request, and subject to the changes and rearrangements at a cost to you of \$_____.

TITLE OF POLE OWNER'S REPRESENTATIVE

SIGNATURE OF POLE OWNER'S REPRESENTATIVE

CS 4 000031

GEMC EX. 145 (CS-5)

**POLE ATTACHMENT LICENSE AGREEMENT
FOR DISTRIBUTION POLES**

BETWEEN

[EMC name to be typed in here]

AND

[Licensee name to be typed in here]

DATED _____, 2008

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POLE ATTACHMENT LICENSE AGREEMENT FOR DISTRIBUTION POLES

PREAMBLE

[***EMC name to be typed in here***], a corporation organized under the laws of the State of Georgia, (hereinafter called the "EMC"), and [***Licensee name to be typed in here***] , a corporation organized under the laws of the State of _____ (hereinafter called the "Licensee"), desiring to cooperate in the joint use of EMC's poles, erected or to be erected within the areas in which both parties render service in the State of Georgia, whenever and wherever such use shall, in the estimation of both parties, be compatible with their respective needs and consistent with the terms of this Agreement, do hereby, in consideration of the premises and the mutual covenants herein contained, covenant and agree for themselves and their respective successors and assigns as follows, effective _____, 2008 ("Effective Date"):

ARTICLE 1 - SCOPE OF AGREEMENT

A. This Agreement shall be in effect in the areas in which both of the parties render service in the State of Georgia, and shall cover all distribution poles now existing or hereafter erected in the above territories when said poles are brought under this Agreement in accordance with the procedure hereinafter provided.

B. EMC reserves the right for good cause to exclude from joint use any of its facilities for reasons of safety, reliability, capacity, generally applicable engineering standards, or any uncured Licensee Default for which the Licensee has been noticed as provided for in Article 12, Defaults. EMC may also exclude from joint use any of its facilities that occupy rights-of-way or easements for which Licensee is unable to obtain easements, rights of way or other necessary privileges.

ARTICLE 2 – EXPLANATION OF TERMS

For the purpose of this Agreement, the following terms shall have the following meanings:

1. "Actual Inventory" is defined in Article 11.A, Adjustment Payments.
2. "Adjustment Payment" is the annual rental rate paid by the Licensee to the EMC for Attachments to Poles as provided for in Article 11, Adjustment Payments, of this Agreement.
3. "Application" is the process used by the Licensee to receive EMC's permission to install initial facilities to EMC's poles and to add additional facilities, including Over-lashing of existing facilities, to modify mechanical loading of EMC's poles, or to otherwise alter the clearances of and/or separation between facilities attached to or in between EMC's poles.

The form used for the Application process is identified as Appendix A and is included as a part of this Agreement.

4. "Attachment" is any wire, line or apparatus attached to a Pole owned by EMC, including, but not limited to, cables, service drops, power supplies, amplifiers, pedestals, bonding wires, Over-Lashings (defined below), guy wires and anchors required to support unbalanced loads. A single Attachment includes the vertical space consisting of a total of twelve inches (12") either above or below (but not both) the bolted Attachment. Any apparatus or facilities, except cable risers and power supplies associated with other aerial Attachments, located fully or partly outside this vertical space shall constitute an additional Attachment or Attachments. Each thru-bolt type Attachment where the Pole is drilled and bolted to support cable and messenger will count as a separate Attachment without respect to separation from an additional Attachment. Where only one bolted Attachment is affixed to the EMC's Pole, and Service Wires installed on "J-hooks" are located within a space consisting of a total of twelve inches (12") either above or below (but not both) of the bolted Attachment, such locations shall be counted as a single Attachment.
5. "Contact Person" is defined in Article 18.A and 18B, Notices.
6. "Cost in Place" is the cost of the bare pole, labor to install the pole and associated overheads, including engineering.
7. "EMC Rules and Practices for Attachments" means the general plan established for the orderly use of Poles by EMC and multiple parties and is attached to this Agreement as Appendix R.
8. "Initial Inventory" is an inventory of Licensee's Attachments completed within one (1) year of the Effective Date of this Agreement, which will confirm the total number of Licensee's Attachments, a summary of obvious non-conforming Attachments and any pending Licensee Transfers to EMC poles.
9. "Initial Safety Inspection" is a survey of the Licensees Attachments to EMC poles to identify and remediate non-conforming Attachments (*e.g.* NESC violations) on EMC poles.
10. "Joint Pole" is a pole for which joint use is established or continued pursuant to the terms of this Agreement.
11. "Joint User" is a person or entity that is currently occupying or reserving space on EMC's Poles, and may attach to a Pole or anchor owned by EMC in return for granting EMC equivalent rights of Attachment or occupancy to poles and/or anchors, which the Joint User owns.
12. "Licensee" is the party having the right under this Agreement to make and maintain Attachments on an EMC Joint Pole and defined in the Preamble.

13. "Licensee Transfer Date" is defined in Article 7.F, Maintenance of Poles and Attachments.
14. "Make-ready" is all work necessary or appropriate to make space for or otherwise accommodate new, additional or changed Attachments, including, but not limited to, necessary or appropriate Rearrangements, removal and replacement of the pole, Transfers and other work incident thereto.
15. "Make Ready Costs" means all costs necessary for EMC, and other existing parties on the pole, to prepare its Poles for Licensee's new, additional or modified Attachments, including, but not limited to, the costs of materials, labor, engineering, supervision, overheads, and tree trimming costs. Engineering includes design, proper conductor spacing and bonding, calculations to determine proper ground clearances and pole down guy and anchor strength requirements for horizontal and transverse loading, and compliance with all applicable requirements. Also included among Make Ready Costs are the costs of installing or changing out primary Poles, secondary Poles and Drop/Lift Poles, including the cost of installation and/or removal of guys, anchors, stub poles, materials and equipment, temporary construction and all other construction in accordance with the technical requirements and specifications as outlined in this Agreement. EMC Make Ready Costs shall be verifiably comparable to the cost EMC pays for similar Make-ready work to its own facilities. Make Ready Costs do not include any costs associated with correcting existing violations of the EMC, or others attached to EMC's Pole, at the time Licensee submits an Application.
16. "Make Ready Estimate" means the estimate prepared by EMC for all Make Ready Work that may be required by EMC to accommodate Attachment/Attachments by Licensee.
17. "Make Ready Work" means all work required by EMC to accommodate Attachment/Attachments by Licensee.
18. "NESC" is defined in Article 3, Specifications.
19. "Non-guyed Service Drop" is a Service Drop that requires no guys under standard industry design practices or the applicable specifications of Article 3, Specifications. (If, atypically, a wire used to connect to a customer's location were to require guying under the Licensee's design standards or the applicable specifications of Article 3, Specifications, then it would not be treated as a Non-guyed Service Drop under this Agreement but would be treated as a cable.) Non-guyed Service Drops are subject to all provisions of this Agreement, including rental and the provisions of Article 3, Specifications, except Appendix A (the Application process) which is provided for in Article 4.B, Establishing Attachments to Poles. Licensee must provide a summary, at least quarterly, of all Non-guyed Service Drops added or removed to/from EMC's poles so that EMC may adjust the billing records for Licensee's joint use Attachments. As an alternative to quarterly reporting, Licensee may use a "Specified Percentage" to annually increase the number of service wire Attachments.
20. "Over-Lashing" means affixing an additional cable or wire owned and operated by Licensee to a cable or wire owned and operated by Licensee already attached to a Pole.

Any proposed Over-Lashing by Licensee is subject to the Application process as well as other applicable provisions of this Agreement. Notwithstanding the above, Licensee's Over-Lashing shall not be subject to a separate annual Attachment rental fee. Licensee shall not allow third party Over-Lashing without EMC's prior approval.

21. "Pole" or "Distribution Pole" is a wooden, concrete or steel structure owned by EMC, and normally used by EMC, to support distribution lines and related facilities of EMC, including drop and lift Poles. In the event the EMC installs a Pole larger than is initially required for EMC's and Licensee's use in anticipation of EMC's future requirements or additions, the additional space provided by EMC shall be reserved for EMC's sole use.
22. "Pole Attachment Rental Fee" means the annual amount per Attachment that Licensee must pay to EMC pursuant to this Agreement in order to affix each Attachment to EMC's Poles.
23. "Rearrangement" is the moving of Attachments from one position to another on the same Pole.
24. "Referee" is defined in Article 19.B, Resolution of Certain Disputes.
25. "Specified Percentage" is defined in Article 11.B, Adjustment Payments.
26. "Transfer" is the removal of Attachments from one Pole and the placement of them or substantially identical Attachments upon another.
27. "Unauthorized Attachment" means any affixation of any Licensee Attachment of any nature to any property of EMC, including Distribution Poles, which has not been previously authorized by EMC or authorized as required by this Agreement. Unauthorized Attachment may include, without limitation, any Attachment affixed to EMC's Poles without permission from EMC as provided for in Article 9, Unauthorized Attachments, of this Agreement. Over-lashing of existing facilities without an approved Appendix A from the EMC shall also be considered an Unauthorized Attachment.
28. "Unauthorized Attachment Fee" means the fee to be paid by Licensee for each Unauthorized Attachment.
29. "Effective Date" is defined in the Preamble.
30. "EMC" is defined in the Preamble.
31. "Old Attachment Agreement" is defined in Article 21, Existing Contracts.
32. "Outside Party" is defined in Article 13.A, Rights of Other Parties.
33. "EMC Actual Costs" is defined as all costs, including, but not limited to, the costs of materials, labor, engineering, supervision, overheads, transportation, contractors fees when used in lieu of EMC labor, and tree trimming costs. EMC Actual Costs shall be verifiably comparable to the cost EMC pays for similar work to its own facilities. Engineering includes design, proper conductor spacing and bonding, calculations to

determine proper ground clearances and pole down guy and anchor strength requirements for horizontal and transverse loading, and compliance with all applicable requirements.

ARTICLE 3 - SPECIFICATIONS

Except as otherwise provided in Article 7.I, Maintenance of Poles and Attachments, referring to construction that has not yet been brought into conformity with the specifications mentioned herein, the use of the Poles covered by this Agreement shall at all times be in conformity with all applicable (1) RUS Standards as they apply to Licensee's Attachments; and subsequent revisions thereof (2) requirements of the National Electrical Safety Code and subsequent revisions thereof ("NESC"); (3) the Specifications found in Appendix R which is incorporated into and made a part of this Agreement and subsequent revisions thereof, (4) The Bellcore Manual of Construction Procedures (Blue Book) and subsequent revisions thereof, (5) the Society of Cable Television Engineer's (SCTE) Recommended Practices for Coaxial Cable Construction and Testing and subsequent revisions thereof, (6) the SCTE Recommended Practices for Optical Fiber Cable Construction and subsequent revisions thereof, and (7) the lawful requirements of public authorities. Where there is a disagreement between the above referenced Specifications, the more stringent shall apply. It is understood by both parties that the requirements of the NESC are minimum requirements. Certain requirements of the EMC that exceed or supplement the NESC are identified in Appendix R to this Agreement. Modifications of, additions to, or construction practices supplementing wholly or in part the requirements of the NESC and Appendix R, shall, when accepted in writing by both parties hereto through their agents authorized to approve such changes, likewise govern the joint use of Poles, which acceptance shall not be unreasonably withheld.

ARTICLE 4 - ESTABLISHING ATTACHMENTS TO POLES

A. Before Licensee shall make use of the EMC Poles under this Agreement, including Over-lashing, it shall comply with the requirements set forth herein. Appendix A shall be sent either (i) by electronic mail with electronic mail "read" receipt obtained, or (ii) by being deposited in the United States mail with proper postage and properly addressed to the person receiving the Appendix A. When transmittal is by US mail, the Licensee will also send an electronic mail message, return receipt requested, to EMC as notice that the permit information is being carried by the US mail, and to notify the EMC of the impending fifteen (15) business day interval to respond to Licensee's permit. This is to prevent disputes regarding the fulfillment of the fifteen (15) business day interval below, and to avoid imposition of the "Unauthorized Attachment Fee."

B. APPENDIX A PROCEDURE

1. Except in connection with (i) the placement of Non-Guyed Service Drops; (ii) Pole Transfers; (iii) or power supplies, amplifiers or risers; Licensee must submit to EMC an Appendix A for any Licensee construction on EMC Poles (including reconstruction of existing Pole lines, road improvement projects and the Over-lashing of Licensee's cables) in association with the placement of new Licensee Attachments, Over-lashing existing Attachments, or removal of existing Licensee Attachment on EMC Poles. *(The intent of this procedure is for Licensee to provide notice to EMC for any Licensee construction*

resulting in a change in mechanical pole loading on EMC Poles due to Licensee's Attachments and also notice for the addition or removal of Licensee Attachments for tracking of the total number of Licensee Attachments.)

2. Licensee shall submit a completed Application on the form, attached hereto and identified as Appendix A or such other form as may be mutually agreed upon, specifying fully, to the extent applicable, the information shown on Appendix A.
 - a. *Application Fee* – Except as to (1) installation of new EMC Poles where none currently exist, as provided for in Article 5. A., Placement of New Poles, and (2) road widening projects, each “Appendix A” submitted by Licensee, shall be accompanied with a check in the amount of fifty dollars (\$50) for EMC to process and log the Application. Failure to include payment of the fees when submitting the Appendix A will result, at the EMC’s option, in the returning of the Appendix A to Licensee unapproved or holding the Appendix A until payment is received. Appendix A’s solely for the removal of Licensee’s Attachments are not subject to the Application fee. With respect to (1) road widening projects and (2) installation of new EMC Poles where none currently exist, Licensee shall be required to submit an Appendix A, as provided for in other sections of this Agreement, but Application fees shall not apply. Licensee shall be allowed to establish an “escrow account” with EMC for the Application fees provided for herein. Licensee shall maintain the “escrow account” at a level that is mutually agreed to by both Parties, but not to exceed an amount equivalent to six (6) months forecasted permit activity.
 - b. *Inspection Fee* – Licensee shall reimburse EMC the Actual Costs, except in the case of Transfers for road improvement projects and EMC’s installation of new Poles where none currently exist, including all labor, materials, transportation, normal overheads, and appropriate and reasonable other costs incurred by EMC in performing necessary field inspections and preparation of an estimate of the Make Ready Costs of each Pole covered in the Appendix A. The EMC will provide, as a deliverable for the above inspection fees, a Pole inspection report with appropriate data as the Parties may agree upon. Licensee shall reimburse EMC for such costs within forty-five (45) days of receipt of the invoice from EMC.

Within fifteen (15) business days after the receipt of such completed Application (or ten (10) business days if the only work being done by Licensee on the Appendix A is Over-lashing and no EMC Make-ready is required) the EMC shall notify the Licensee in writing whether the Application is approved or rejected, and if Make-Ready construction by the EMC is required, an estimate for such costs. If so approved or if not rejected within the fifteen (15) business day period the Application will be considered approved and the Licensee shall have the right to place Attachments on such Pole(s) as provided in this Agreement. If the EMC rejects the Application in whole or in part, the EMC will specify the reason(s). The Application shall be rejected only for good cause, as provided for in Article 1, Scope of Agreement. No submitted Appendix A form shall include more than fifty (50) Poles unless prior permission is obtained from EMC.

3. The Make Ready Estimate shall offer sufficient detail so that Licensee can readily identify the components of the proposed Make Ready Work and shall reflect costs that are verifiably comparable with EMC Actual Costs. The Licensee shall request clarification on the Make Ready Cost before requesting the EMC to commence Make Ready Work. The EMC's total charges shall be consistent with Article 8.G, Division of Costs, (will not exceed 120% of the estimate), unless such additional costs are caused by changes in Licensee's plans from the original permit.
4. EMC shall normally commence Make Ready Work within twenty (20) business days of receipt of Licensee's written acceptance of the Make Ready Estimate for such Make Ready Work and shall complete the Make Ready Work consistent with its standard work order process. Licensee may request expedited handling of EMC's work, and Licensee shall be responsible for the additional Actual Costs incurred by EMC for such expedited processing. To the extent it has the authority to do so, EMC shall cause all other Licensees or Joint Users to similarly expedite the completion of all Make Ready Work. EMC shall use its best efforts to complete all Make Ready Work within sixty (60) business days of receipt of Licensee's written acceptance of the Make Ready Estimate for the Make Ready Work. Licensee shall make payment for EMC's Make Ready Work within forty-five (45) days of the written acceptance.
5. Upon receipt of notice by Licensee from EMC that the Application has been approved or in the absence of rejection of the Application within fifteen (15) business days from the receipt of the completed Application, and after the completion of any Transferring or rearranging which is required to permit the attaching of the Licensee's Attachments on such Poles, including any necessary Pole replacements, the Licensee shall have the right hereunder to place such Attachments on such Poles in accordance with the terms of the application and of this Agreement (including Article 3, Specifications). The EMC's approval of an Appendix A Application shall be valid for one-hundred twenty (120) days. If the Licensee fails to (1) accept and make payment of Make Ready Costs (if any) within one-hundred twenty (120) days of the EMC's acceptance or (2) initiate construction within one (1) calendar year, the EMC may, in its sole discretion, deem the terms and conditions outlined in the Appendix A null and void, and require the submission of another Appendix A on the part of the Licensee, along with engineering fees necessary to reimburse the EMC for revised engineering and cost estimates. The Licensee must insure that its new facilities can be constructed and maintained in accordance with Article 3, Specifications, of this Agreement. Where field conditions preclude such compliance, Licensee shall notify the EMC prior to construction.

C. An Appendix A that contains only removal of Attachments is not subject to any fees. Any Non-guyed Service Drop that is placed by the Licensee on an EMC Pole shall be subject to all the terms and provisions of this Agreement, except as expressly provided in this Agreement. The placement of Non-Guyed Service Drops shall not alone create an absolute right to the space occupied by the Licensee.

D. Licensee, without following the Appendix A procedure, may utilize vertical unused space below its Attachment as defined in Article 2, Explanation of Terms, for terminals, risers, power supplies or other vertical Attachments if the existing Attachment on such Pole is authorized, such use does not interfere with the EMC's operations or the operations of other Licensees or Joint

Users presently attached to the Pole, and such use complies with the terms of this Agreement (including the provisions of Article 3, Specifications). Any such Attachment and Pole will be subject to all other provisions of this Agreement.

E. Both Licensee and EMC shall place, Transfer and rearrange its own Attachments, and shall place guys and anchors to sustain any unbalanced loads caused by its Attachments. On existing Poles, each party will perform any tree trimming or cutting necessary for their initial or additional Attachments. Anchors and guys shall be in place and in effect prior to the installation of Attachments and cables. Each party shall, with due diligence, attempt at all times to execute such work promptly and in such manner as not to interfere with the service of the other party.

F. The cost of making Attachments on existing Poles as provided herein, including the making of any necessary Pole replacements, shall be borne by the parties hereto in the manner provided in Article 8, Division of Costs.

G. Licensee's Attachment shall automatically be continued under the terms of this Agreement if any one of the following circumstances applies:

1. Licensee's Attachment was licensed under the terms of a prior Pole Attachment agreement; or
2. Licensee had Attachments on the Pole—either licensed or unlicensed—as of the Effective Date.

H. This Agreement may be used by the Licensee to install “wireless” equipment facilities to EMC Poles, so long as the equipment does not exceed Licensee's one-foot of space and does not interfere with the facilities of EMC or other Licensees attached to EMC's Poles.

I. Except as provided for in Articles 12, Defaults, and 20, Term of Agreement, the Licensee shall have the right to Transfer its Attachments from an existing Pole to a new Pole installed as part of a road widening project and to continue joint use on such Pole. If the Licensee is materially breaching this Agreement or acting in bad faith or failing to cooperate or communicate as provided in this Agreement, the EMC may terminate the Licensee's rights under this Article 4.I, consistent with Article 12, Defaults. Furthermore, after any termination of the right to make Attachments to additional Poles, the EMC may terminate the Licensee's rights under this Article 4.I if three (3) or more Unauthorized Attachments (as defined in Article 9, Unauthorized Attachments) are found within any twelve (12) month period. The EMC may reinstate the Licensee's rights under this Article 4.I if the EMC deems it appropriate.

ARTICLE 5 - PLACEMENT OF NEW POLES

A. Whenever EMC requires new Pole facilities within the Licensee's service territory for any reason, including an additional Pole line, an extension of an existing Pole line, or in connection with the reconstruction of an existing Pole line, it will normally notify Licensee to that effect in writing (verbal notice subsequently confirmed in writing may be given in cases of emergency) stating the proposed location and character of the new Poles and the character of circuits it intends to use thereon and indicating whether or not such Pole facilities will be, in the estimation

of the EMC, suitable for Licensee's Attachment. In case of emergency, the Licensee will preliminarily respond verbally on an expedited basis that it does or does not want to seek to attach facilities to the new Poles and will generally describe its planned initial Attachments. Within a reasonable period (not to exceed fifteen (15) business days) after the receipt of such written notice, the Licensee will submit an Appendix A, as such may be required by Article 4, Establishing Attachments to Poles, above; however, Licensee shall not be subject to Application or inspection fees for such Appendix A. Should the Licensee fail to submit an Appendix A within fifteen (15) business days, and subsequently wishes to attach to new Pole facilities, Licensee must submit an Appendix A in accordance with Article 4, Establishing Attachments to Poles, including the payment of all applicable Application fees, inspection fees and Make Ready Costs.

B. Each party shall place its own Attachments on the new Joint Poles and place guys and anchors prior to tensioning strand to sustain any unbalanced loads caused by its Attachments. EMC shall provide its normal initial right-of-way clearance on each side of the center line to the extent practicable, all right-of-way in excess of the normal swath to be borne by the party requiring the additional width. Each party shall, with due diligence, attempt to execute its work promptly and in such manner as not to interfere with the service of the other party.

ARTICLE 6 - RIGHT OF WAY FOR LICENSEE'S ATTACHMENTS

While the EMC and Licensee will cooperate as far as may be practicable in obtaining rights-of-way for both parties on Joint Poles, the EMC does not warrant or assure to the Licensee any right-of-way privileges or easements on, over or across streets, alleys and public thoroughfares, and private or publicly owned property, and if the Licensee shall at any time be prevented from placing or maintaining its Attachments on the EMC's Poles, no liability on account thereof shall attach to the owner of the Poles.

ARTICLE 7 - MAINTENANCE OF POLES AND ATTACHMENTS

A. The EMC shall maintain all Joint Poles in a safe and serviceable condition and in accordance with the Specifications mentioned in Article 3, Specifications, and shall replace, reinforce or repair such of these Poles as become defective. Licensee acknowledges that Poles and related items carry hazardous voltages, deteriorate over time, and may contain various hazardous chemicals or properties. Licensee shall instruct and equip its personnel, including its employees, contractors and other agents, of the hazards associated with working on EMC's Poles and Licensee will provide necessary training and equipment for its representatives to safely execute their work on EMC's Poles. Licensee shall, prior to working on a Pole that contains non-compliant or unsafe conditions, promptly notify EMC of any existing substandard condition (either physical, mechanical or electrical, etc.), that jeopardizes either the general public or workman safety and EMC will cause the existing condition to be promptly corrected. Licensee's workmen will not subject themselves or others to an unsafe condition. Licensee shall become familiar with the terms of the appropriate material safety data sheet and comply with such terms and all directions contained therein or otherwise required by state and federal law regarding the maintenance, replacement, and/or disposal of the Pole. EMC does not warrant, guarantee, or

imply that any Pole abandoned by EMC possesses sufficient mechanical strength as required by or for any use of Licensee.

B. When replacing a Pole carrying terminals of aerial cable, underground connection, or transformer equipment, the new Pole shall be set in the same hole which the replaced Pole occupied, or immediately adjacent, and in a manner to facilitate Transfer of Attachments, unless special conditions make it desirable to set it in a different location. Replacement Poles where risers (dips) are installed should be set as close as possible to the existing Pole. The EMC will make reasonable effort to conduct a joint field review or otherwise coordinate with Licensee to determine the location of the proposed Pole. Reasonable effort will be made to coordinate locations of risers and Non-Guyed Service Drops with the locations of the power facilities serving the customer.

C. Except during restoration efforts after natural disasters, such as hurricanes, ice storms, etc., whenever it is necessary to replace or relocate a Joint Pole, the EMC shall, before making such replacement or relocation give reasonable notice thereof in writing (except in case of emergency, when verbal notice will be given and subsequently confirmed in writing) to the Licensee, specifying in such notice the time of such proposed replacement or relocation and the Licensee shall at the time so specified Transfer its Attachments to the new or relocated Pole. On highway relocation projects, the schedule for Transfers shall be consistent with the “utility adjustment schedule” and any subsequent revisions.

1. An alternate method of notification (as opposed to the above described written method of notification) may be used when mutually agreed upon by both parties. The electronic notification system of Pole Transfer request, provided by the National Joint Utilities Notification System (“NJUNS”), may be used as the notification required by this article. As a prerequisite for use of this system, both parties shall have and properly utilize the necessary electronic equipment and correct NJUNS member codes as provided by each party to the other and as required by NJUNS for this system and mutually agree to its use as a substitute for the written notice of Transfers required under this Article 7, Section C.

D. Transfer of Licensee’s Attachments by the EMC - In any case where it is mutually beneficial and agreeable by both parties, the EMC or its Contractors may Transfer the Attachments of the Licensee and the Licensee will reimburse the EMC such costs the EMC incurs in making such Transfers on behalf of the Licensee. When the Transfer can be accomplished concurrently with other work that the EMC is undertaking on the same Pole, the charges for such Transfers will be in accordance with pricing detailed in Article 7.D.4, or such other amounts as may be agreed to by the parties. The EMC will use due diligence and care in making such Transfers so as not to damage or cause a disruption in the services provided by the Licensee. However, except in cases of gross negligence or willful misconduct, the EMC shall not be liable for any damages or disruptions in service that may occur as a result of Transfers made in behalf of the Licensee.

1. **Normally Scheduled Construction** - Approval for such Transfers made by the EMC on behalf of the Licensee during normally scheduled construction shall be obtained prior to making such Transfers and will be made on a project by project basis unless otherwise agreed upon.

2. **Emergency Construction** - In such cases, in the judgment of EMC, a Pole requires immediate replacement due to a dangerous condition or conditions, the EMC or its contractors will replace the Pole and may Transfer the Licensee's Attachments without prior permission. The EMC shall use reasonable care to avoid damage to Licensee's facilities and shall notify the Licensee of such Transfer after work is completed.
3. **Facility Types To Be Transferred** - The EMC or its contractors will only Transfer Attachments which require a bolt, clamp, or "J" hook either installed through the Pole or otherwise attached. All service wire Attachments to a single "J" hook shall be Transferred at the rate stated below. The hardware on the old Pole will be used to attach to the new Pole. The EMC or its contractors shall not supply any additional material in making Transfers of Licensee's Attachments.
4. **Pricing for Transfers** - When the EMC Transfers the Attachments of the Licensee in accordance with the above provisions, the price per Attachment Transferred will be as detailed below. The pricing for Transfers shall be effective with the execution of this Agreement and will continue for 2008. The costs in subsequent years shall be adjusted in accordance with the Handy Whitman Index, South Atlantic Region, Account 364. Multiple Attachment Transfers on a Pole will be billed on a per Attachment basis, not on a per Pole basis.

Costs to Transfer Licensee's Attachments Concurrently with Other Work by EMC

Duration	Cable Attachments	Service Drop
Contract start date to December 31, 2008	\$50.00	\$30.00

E. Should (i) the EMC elect not to Transfer Licensee's facilities under the above terms, and; (ii) Licensee fails to Transfer its Attachments to the new Joint Pole on the date specified for such Transfer of Attachments ("Licensee Transfer Date") and after all necessary third party and EMC responsible Transfers have been accomplished, the EMC may elect to relinquish the ownership of the old Pole from which it has removed its Attachments and all other Licensees and Joint Users, with the giving of verbal notice to be subsequently followed in writing. If the EMC so elects, such old Pole shall, with the giving of ten (10) business days notice as provided for above, at no cost to the Licensee, become the property of the Licensee, as is, and the Licensee shall save harmless the EMC from all obligations, liabilities, damages, costs, expenses or charges incurred thereafter, and not arising out of anything theretofore occurring because of, or arising out of, the presence or condition of such Pole or of any Attachments thereon. In instances where the EMC is the owner of such Pole, the unused portion of the Pole above the Licensee's Attachments shall be cut off and removed by the EMC before relinquishing ownership, if the Pole remains in structural conflict with the power route.

F. Should the EMC elect not to Transfer Licensee's facilities under the above terms, and should the Licensee fail to Transfer its Attachments to the new Joint Pole after the date specified for such Transfer of Attachments and after all third party and EMC responsible Transfers have been accomplished, whichever is later ("Licensee Transfer Date"), and if the EMC does not elect to relinquish the ownership of the old Pole from which it has removed its Attachments, the parties will have the following rights, in addition to any other rights and remedies available under this

Agreement: The Licensee shall pay the EMC the following amounts until the Licensee has Transferred its Attachments and notified the EMC in writing or through NJUNS that the Transfer has been accomplished: (a) \$5.00 per Pole per month beginning with the 61st day after the Licensee Transfer Date and through and including the 240th day after the Licensee Transfer Date, (b) \$10.00 per Pole per month (instead of \$5.00) beginning with the 241st day after the Licensee Transfer Date. In addition, the cost incurred by the EMC to return to the job site and remove the old Pole will be paid by the Licensee. Notwithstanding the above, Licensee shall not be subject to penalties where EMC has not used the correct NJUNS member code, as provided by the Licensee to notify Licensee of the clearance to Transfer Attachments. In cases of Transfer requests with incorrect NJUNS member codes, the Licensee shall make reasonable efforts to route to the appropriate party. In the event the Licensee notifies the EMC that the Transfer has been accomplished and the EMC returns to the job site to remove the old Pole and discovers that the Transfer has not been made, then the Licensee will pay the EMC's cost of the trip to and from the job site. *The intent of this paragraph is to ensure timely Transfers and minimize situations of two (2) or more Poles needlessly remaining at the same location for extended periods of time.* The aforementioned provisions of this paragraph will only apply when Poles are installed in a manner consistent with Article 7.B.

1. Transfer penalties shall not apply during the first six (6) months after the Effective Date of this agreement for outstanding Transfers for which Licensee has received appropriate notice prior to the Effective Date. Transfers identified during the Initial Inventory shall not be subject to the penalties above for the first six (6) months after notice to the Licensee.

Each party shall at all times maintain all of its Attachments in accordance with the Specifications mentioned in Article 3, Specifications, and shall keep them in safe condition and in thorough repair. Licensee's Attachments shall be identified consistent with the Georgia Overhead Marking Standards as adopted by the Georgia Utility Coordination Council. Attachments previously in place on EMC's Poles shall be so identified by Licensee as regular or emergency work occurs or at the next system rebuild opportunity, but not later than five (5) years from the Effective Date of this Agreement. Licensee shall be responsible for periodically inspecting its Attachments to ensure they have permanent identification markers. After the fifth year should EMC encounter any of Licensee's Attachments without permanent identification markers, EMC may notify Licensee provided that EMC can identify the Attachments as belonging to Licensee. If the markers are not placed within sixty (60) days of such notice, then EMC may install the necessary markers, and Licensee shall reimburse EMC for the cost of such work.

G. Each party shall be responsible for right-of-way maintenance for its own circuits at its own expense.

H. Any existing joint use construction of the parties hereto which does not conform to the Specifications mentioned in Article 3, Specifications, shall be brought into conformity therewith as soon as practicable. When such existing construction shall have been brought into conformity with said Specification, it shall at all times thereafter be maintained as provided in Sections A and G of this Article.

I. The cost of maintaining Poles and Attachments and of bringing existing joint use construction into conformity with said Specifications shall be borne by the parties hereto in the manner provided in this Agreement.

J. EMC shall have the right to require the Licensee, within one hundred twenty (120) days after the Licensee Transfer Date (as defined in Article 7.E), either (a) to Transfer its Attachments from an existing Pole to a new Pole that is erected to carry the same or a similar service or Attachments that are on the existing Pole, or (b) to remove its Attachments from the existing Pole and terminate joint use as to the existing Pole, and the choice of option (a) or (b) will be the Licensee's. Or, if neither the EMC nor the Licensee desires a Transfer, the EMC may elect to abandon the existing Pole to the Licensee as provided in Article 10, Abandonment of Joint Use Poles. In the case of any such Transfer, the costs of transferring the Licensee's Attachments will be paid by the Licensee.

ARTICLE 8 - DIVISION OF COSTS

A. NEW POLES INSTALLED WHERE NONE CURRENTLY EXIST. If joint use is established pursuant to Article 5.A, Placement of New Poles, above, the cost of erecting new Joint Poles coming under this Agreement, to construct new Pole lines, or to make extensions to existing Pole lines shall be borne by the parties as set forth in this Article 8.A. Poles installed to accommodate a road improvement project shall be administered in a manner consistent with this Article 8, Section A. If joint use is not established pursuant to Article 5.A, Placement of New Poles, above, the provisions of Article 8.J below will control.

1. In the case of a Pole larger than that required by the EMC, Licensee and the Joint User, the extra height or strength of which is due solely to the Licensee's requirements (such Poles in excess of 40', Poles carrying primary voltages, or 30' Poles carrying only "secondary" voltages or span guys), the EMC shall pay all costs associated with the construction of a Pole satisfactory for the EMC and Joint User's needs (and the Licensee shall pay to the EMC the remaining costs of erecting the Pole larger than that required by the EMC and the Joint User. If in connection with the construction of a Pole the Licensee makes the payment required by this paragraph, then the Licensee shall in the future be entitled to attach on such Pole even if the Pole does not at that time become a Joint Pole; provided, however, if the Licensee does not attach to the Pole within one (1) year from the date the Pole was set, then the Licensee shall no longer be entitled to attach on such Pole.
2. In the case of a larger Pole, the extra height or strength of which is due to the requirements of both parties for additional space or the requirements for proper ground clearance or of public authorities or of property owners, (other than requirements with regard to keeping the wires of one party only clear of trees), the difference between the Cost in Place of such Pole and the Cost in Place of a Pole solely satisfactory for the EMC shall be shared equally by the Licensee and the EMC, the rest of the cost of erecting such Pole to be borne by the EMC.
3. A Pole, including all appurtenances or fixtures, erected between Poles to provide sufficient clearance and furnish adequate strength to support the circuits of both the EMC

and the Licensee, which it would have been unnecessary to erect if joint use had not been undertaken, shall be erected at the sole expense of the Licensee, or in the case on multiple Licensees on the Joint Pole, the cost shall be equally divided among all Licensees or Joint Users requiring the midspan Pole.

B. PAYMENTS DO NOT AFFECT OWNERSHIP. Any payments for Poles made by the Licensee under any provisions of this Article shall not entitle the Licensee to the ownership of any part of said Poles for which it has contributed in whole or in part.

C. REPLACEMENT OF EXISTING JOINT POLES. Where an existing Joint Pole is replaced for reasons other than maintenance by a new one, the cost shall be divided as specified below. The replaced Pole shall be removed and retained by EMC.

1. A Pole satisfactory for the EMC's needs which can also accommodate the facilities of the Licensee shall be erected at the sole expense of the EMC. If without giving such advance notice, the Licensee places one or more Attachments on a Pole and thereby creates a violation of Article 3, Specifications, or otherwise renders the Pole unsuitable for joint use, or interferes with or causes violations of Article 3, Specifications, for the other attachers to the Pole, then the Licensee must pay the full cost of removing and replacing the Pole with a Pole of sufficient size to remedy the violation or render the Pole suitable for joint use, plus the cost of all Transfers and other work incident thereto.
2. A Pole larger than the existing Pole, which is installed to replace an existing Pole, the extra height or strength of which is due wholly to the EMC's requirements and requirements as to keeping the EMC's wires clear of trees shall be erected at the sole expense of the EMC. The EMC shall bear the full expense of replacing or Transferring all the EMC's Attachments and the Licensee shall bear the full expense of replacing or Transferring all the Licensee's Attachments.
3. In the case of a Pole larger than the existing Pole, the extra height or strength of which is due wholly to the Licensee's requirements including Licensee's requirements as to keeping the Licensee's wires clear of trees, the Licensee shall pay to the EMC the Make-ready cost of the new Pole.
4. Except as to existing contracts, in the case of a Pole larger than the existing Pole, which is installed to replace an existing Pole, the extra height or strength which is due to the requirements of both parties for additional space or the requirements for proper ground clearance or of public authorities or of property owners, (other than requirements with regard to keeping the wires of one party only clear of trees), the difference between the Cost in Place of such Pole and the Cost in Place of the existing Pole shall be shared equally by the Licensee and the EMC, the rest of the cost of erecting such Pole to be borne by the EMC. The EMC and Licensee shall replace or Transfer all Attachments at their own expense.
5. For purposes of this Article 8.C, any Pole on which the Licensee has placed or places an Attachment shall be deemed satisfactory to the Licensee whether or not the terms of this Agreement have been satisfied.

D. RESPONSIBILITY FOR OWN ATTACHMENTS. Each party shall place, maintain, rearrange, Transfer and remove its own Attachments at its own expense except as otherwise expressly provided herein.

E. MAINTENANCE AND REPLACEMENT COSTS. The expense of maintaining Joint Poles shall be borne by the EMC thereof except that the cost of replacing Poles shall be borne by the parties hereto in the manner provided elsewhere in this Agreement.

F. SERVICE DROPS. Where an existing Pole is replaced by a taller one to provide the necessary clearance for the Licensee's Service Drop, the Licensee shall pay to the EMC the installed cost of the new Pole plus the labor costs of replacing or Transferring of the Attachments on the existing Pole and the cost to remove the existing Pole, minus any salvage value to the EMC.

G. PAYMENT BASIS. Payments made under the provisions of this Article may be based on the estimated or actual cost as mutually agreed upon (including overhead) of making such changes but in no event, however, shall either party be required to pay for such changes more than 120% of the estimated cost supplied by the other if such cost estimate shall have been requested and furnished before the changes were made.

H. CORRECTIVE MEASURES. Subsequent to the Initial Inventory as specified in Article 11, Adjustment Payments, of this Agreement, within a reasonable time, not to exceed two (2) years after the Effective Date of this Agreement, the parties shall jointly perform a safety inspection to determine any Licensee-caused safety violations ("Initial Safety Inspection"). In the event a violation that poses an imminent danger to persons or property is discovered ("Imminent Danger Violation"), Licensee shall correct such violation immediately. Should Licensee fail to correct such violation after notice, the EMC may correct the violation and bill Licensee for the actual costs incurred. Licensee and EMC shall share equally in the Initial Safety Inspection cost. Licensee shall not be subject to any safety violation penalties pursuant to the Initial Safety Inspection provided that Licensee corrects any Non-Imminent Danger Violation discovered during the Initial Safety Inspection within eighteen (18) months of the documentation and reporting of the unsafe conditions. Notwithstanding the foregoing grace period, in the event EMC or an Outside Party prevents Licensee from correcting a Non-Imminent Danger Violation, the timeframe for correcting such violation shall be extended to account for the time during which Licensee was unable to correct the violation due to such EMC or Outside Party's action. Licensee will not be responsible for the costs associated with violations caused by others. In all circumstances, the parties will work together to maximize safety while minimizing the cost of correcting any such deficiencies, but the Licensee shall be responsible for the full cost of any necessary or appropriate corrective measures associated with violations caused by Licensee's Attachments, including removal and replacement of the Pole and all Transfers or other work incident thereto. Licensee shall insure that its employees, agents, contractors or other Outside Parties, which Licensee causes to work on EMC Poles, will be notified of pending, un-resolved Poles requiring corrective actions, prior to activities on such Poles, and Licensee shall not allow unqualified, or improperly equipped personnel to work on such Poles.

I. Where the Licensee has less than 2,500 customers, consideration shall be given to the scope of work identified in the Initial Safety Inspection and additional time beyond eighteen (18) months, as may be mutually agreed upon by the Licensee and the EMC, may be granted to the

Licensee to address Non-Imminent Danger Violations. During any extended time period the Licensee shall demonstrate good faith efforts to continue to correct safety violations. Following the Initial Safety Inspection, and not more than once every five (5) years, EMC may perform periodic system-wide safety inspections of Licensee Attachments upon six (6) months advance written notice. Such notice shall describe the scope of the inspection and provide Licensee with an opportunity to participate. Licensee will pay a pro-rata share of the EMC's inspections costs and will incur its own costs to participate in such periodic safety inspections. The Licensee's pro-rata share of EMC's cost will be equal to the percentage of the total violations related to Licensee's Attachments as identified during the Safety Inspection unless Licensee can clearly demonstrate that they did not cause the violation. If any Attachment of the Licensee is found to be a non-Imminent Danger Violation of Article 3, Specifications, and Licensee has caused the violation, Licensee shall have sixty (60) days to correct any such violation upon written notice from EMC, or within a longer, mutually agreed-to time frame if correction of the violation is not possible within sixty (60) days, such extended time to be not more than an additional sixty (60) days. EMC may impose a penalty in the amount of one hundred (\$100) dollars for any violation caused by the Licensee that is not corrected within sixty (60) days of written notice from the EMC or within the alternative time-frame agreed to by the parties. In the event an Imminent Danger Violation is discovered, Licensee shall correct such violation immediately, and in no case in more than twenty-four (24) hours. Should Licensee fail to correct such Imminent Danger Violation within twenty-four (24) hours after notice, the EMC may correct the violation and bill Licensee for the actual costs incurred. In all circumstances, the parties will work together to maximize safety while minimizing the cost of correcting any such deficiencies, but the Licensee shall be responsible for the full cost of any necessary or appropriate corrective measures associated with violations caused by Licensee's Attachment, including removal and replacement of the Pole and all Transfers or other work incident thereto. Licensee will not be responsible for the costs associated with violations caused by others. Licensee shall insure that its employees, agents, contractors or other Outside Parties, which Licensee causes to work on EMC Poles, will be notified of pending, un-resolved Poles requiring corrective actions, prior to activities on such Poles, and Licensee shall not allow unqualified, or improperly equipped personnel to work on such Poles.

1. If any Attachment of the EMC is found to be in violation of Article 3, Specifications, and EMC has caused the violation, then the parties will work together to minimize the cost of correcting any such deficiencies, but the EMC shall be responsible for the full cost of any necessary or appropriate corrective measures, including removal and replacement of the Pole and all Transfers or other work incident thereto.
2. If there exists a violation of Article 3, Specifications, and it cannot be determined whose Attachment has caused such violation or there is a mixture of the parties causing the violation, then the parties will work together to minimize the cost of correcting any such deficiencies, and all parties and Outside Parties whose Attachment may have caused such violation will share equally in such costs; provided, however, that if a party can modify its Attachments so that they no longer may be a cause of the violation or deficiency, then such party may elect to make such modification instead of otherwise sharing in such costs. Such a modification shall not relieve a party from sharing in such costs if the party making the modification could still have been a cause of any deficiency that remains.

3. If one or more Outside Party's Attachment caused the violation, then such Outside Party shall pay the corrective costs incurred by all who have Attachments on the Pole, including for the Licensee, EMC and any other attachees; and the EMC will make reasonable effort to cause the Outside Party to make such payment.

J. WHEN EXISTING POLES NOT IN JOINT USE BECOME JOINT POLES. When an existing Pole not in joint use becomes a Joint Pole, the Licensee shall pay all Make-Ready Costs associated with the Licensee attaching to the Pole.

K. MAKE-READY WHEN APPENDIX A IS NOT REQUIRED. The EMC shall not be obligated to pay Make-Ready Costs for any initial or additional Licensee Attachment for which an Appendix A is not required.

ARTICLE 9 - UNAUTHORIZED ATTACHMENTS

If any Attachment made after the Initial Inventory is identified for which the Appendix A requirements (as set forth herein) have not been satisfied ("Unauthorized Attachment"), or if Licensee is found making Attachments for which an Appendix A is required after the Effective Date but prior to the Initial Inventory, then the Licensee shall pay to the EMC a one-time fee of one hundred dollars (\$100) per Attachment plus a sum equal to the Adjustment Payments that would have been payable from and after the date the Attachment was first placed on the EMC's Pole as determined from Licensee's records or other evidence; provided, however, that if the date on which the Attachment was made cannot be determined, then the Licensee will pay a sum equal to the Adjustment Payments that would have been payable from and after the date the last Actual Inventory was conducted. In addition, the EMC may, without prejudice to its other rights or remedies under this Agreement, require the Licensee to submit within fifteen (15) business days of written notice from the EMC an Appendix A along with supporting engineering design data for each such Attachment, and upon review of such information, EMC may require the Licensee to (1) make or pay for such modifications as may be specified by mutual consent of the parties or, if the parties in good faith cannot agree, as determined by a Referee pursuant to Article 19, Resolution of Certain Disputes, to comply with applicable safety codes and the terms of this Agreement or (2) if the Licensee has placed during the past twelve (12) months Unauthorized Attachments at three (3) or more different Pole line locations or if non-approval of Appendix A is justified, EMC may declare the Licensee in Default of this Agreement and the provisions of Article 12, Defaults, shall apply. Nothing herein shall relieve the Licensee of its obligation to maintain Attachments at all times in conformity with Article 3, Specifications.

ARTICLE 10 - ABANDONMENT OF JOINT USE POLES

A. If the EMC desires at any time to abandon any Joint Pole, it shall, except as provided in Article 7.C, Maintenance of Poles and Attachments, give the Licensee notice in writing to that effect at least sixty (60) days prior to the date on which it intends to abandon such Pole. If at the expiration of sixty (60) days from the date of the Licensee having all necessary clearances to Transfer its Attachments and the EMC shall have no Attachments thereon, but Licensee has not removed its Attachments, such Pole shall thereupon become the property of the Licensee, as is, and the Licensee shall save harmless the EMC from all obligation, liability, damages, cost, expenses or charges incurred thereafter, and not arising out of anything theretofore occurring

because of or arising out of the presence or condition of such Pole or of any Attachments thereon; and shall pay the EMC the then depreciated value in place of the Pole to the EMC. EMC shall further evidence transfer of title to the Pole by appropriate means. Credit shall be allowed for any payments which the Licensee may have made under the provisions of Article 8, Division of Costs, when the Pole was originally set, provided the Licensee furnished proof of such payment.

B. The Licensee may at any time abandon the use of a Joint Pole by removing any and all Attachments it may have thereon and by giving written notice thereof.

ARTICLE 11- ADJUSTMENT PAYMENTS

A. The Initial Inventory shall commence within one year of the Effective Date of the Agreement. Additionally, not more often than five (5) years, unless otherwise mutually agreed by the parties, subsequent inventories of Attachments shall be made by representatives of the parties to determine the number of Licensee's Attachments to EMC Poles. EMC shall provide six (6) months advance written notice of any such inventory describing the scope of the Actual Inventory so that Licensee may plan and budget for such Actual Inventory.

B. Unless prevented by the provisions of a third party agreement, Actual Inventories shall include all Outside Parties attached to EMC's Poles. Where multiple Outside Parties are included in the inventory, all participating Outside Parties shall incur a prorated share of the cost of making the Actual Inventory. For a year in which there is no Actual Inventory, the number of Licensee's Attachments used in calculating the Adjustment Payments shall be based on the number of new Licensee Attachments which Licensee has placed during the year, in addition to the number of Licensee Attachments for which Licensee was charged Adjustment Payments in the previous year, less any removals reported by Licensee. Licensee shall also be invoiced for the rent due for the prior year's "initial Attachments" under an Appendix A as a one-time charge. In addition to Appendix A Attachments, the Licensee will either report on a quarterly basis the number of Attachments installed that are not subject to Appendix A, or the Licensee and EMC may agree to use a Specified Percentage adjustment in the number of Licensee's Attachments. The "Specified Percentage" shall be 102% annually until the next Actual Inventory. After each Actual Inventory, beginning with the next Actual Inventory, the Specified Percentage shall be the average yearly percentage increase during the years since the previous Actual Inventory. The Specified Percentage will be used solely to adjust for "service" type Attachments where Appendix A is not required by the terms of this contract.

C. For a year for which there is an Actual Inventory, the Adjustment Payments provided for herein shall be based on the Actual Inventory; but there shall also be the adjustment provided for in the next section.

D. For a year for which there is an Actual Inventory, the following adjustment shall be made:

1. The difference between the number of Licensee Attachments found by the Actual Inventory for the year in question and the number of Attachments for which Licensee was most recently invoiced for Adjustment Payments, shall be prorated evenly based on the assumption that such Licensee Attachments were added evenly over the period since the last Actual Inventory, as provided in the Adjustment Chart below.

2. If the number of Licensee Attachments in the previous annual rental invoice is greater than the number of Joint Poles found by the Actual Inventory, then Licensee shall be entitled to a pro-rata refund from the EMC or a credit to the Licensee.

E. The applicable computation of payments and calculations as above provided shall be made on or about December 1st of each year for the next year’s Adjustment Payments, each party acting in cooperation with the other.

F. Adjustment Payments per Licensee Attachment due from Licensee to EMC shall be as indicated in the table below. The undisputed Adjustment Payment herein provided shall be paid within forty five (45) days after Licensee’s receipt of the invoice.

ANNUAL ADJUSTMENT PAYMENT PER ATTACHMENT (or “RATE”)

Duration	Adjustment Payment Amount Paid in Advance	Payment Invoice Date
Jan. 1, 2008 – Dec. 31, 2008	\$15.00	Jan. 1, 2008
Jan. 1, 2009 – Dec. 31, 2009	\$15.00	Jan. 1, 2009
Jan. 1, 2010 – Dec. 31, 2010	\$18.00	Jan. 1, 2010

For years after 2010, the annual Adjustment Payment per Attachment shall be increased by applying the annual change for account 364 for the South Atlantic Region from the latest version of the Handy Whitman Index.

G. The parties acknowledge and agree that the above rates, and some of the terms and conditions of this Agreement, are the result of a settlement between the parties. These rates are not necessarily a reflection of the actual costs of joint use to the parties.

ARTICLE 12 – DEFAULTS

A. In the event either party deems an event of default has taken place and prior to engaging in the formal default provisions in this Agreement, the system General Manager of the cable system and the President/CEO/General Manager of the EMC shall meet in person or on the telephone to attempt to resolve the matter in good faith within ten (10) business days of the initial request of either party to meet.

B. In the absence of resolution of the matter in accordance with Article 12, Section A, the aggrieved party may provide a notice of default to the other party in writing. Should such default continue for thirty (30) days after due notice thereof in writing describing the nature of the default, the rights under this contract may be suspended insofar as concerns the granting of future joint use. Upon receipt of such notice of default, the Licensee shall either work diligently and cooperatively with the EMC to correct such default or present sufficient evidence that a default does not exist or is not the fault of the Licensee. If such default shall continue for a period of ninety (90) days after such suspension, EMC may, at its sole discretion and option, terminate this Agreement, deny future Attachments and/or remove the Attachments of Licensee at Licensee's expense, and no liability therefore shall be incurred by the EMC because of any or all such actions. Notwithstanding the foregoing, the cure periods may be extended upon mutual agreement of the parties if a cure is not reasonably possible within the time frames specified above.

C. Without limiting the effect of the provision of the immediately preceding paragraph, if after reasonable notice Licensee shall default in the performance of any work it is obligated to do under this Agreement, the EMC may elect to do such work, and the Licensee shall reimburse the EMC for the cost thereof. EMC shall notify the Licensee in advance of its intent to do the work and the approximate cost of doing such work. Failure on the part of the Licensee to make such a payment, as set forth in Article 17, Bills and Payment for Work, shall, at the election of the EMC, constitute a default under Section B of this Article 12.

ARTICLE 13 - RIGHTS OF OTHER PARTIES

A. If EMC, prior to the execution of this Agreement, conferred upon others, not parties of this Agreement (“Outside Parties”), by contract or otherwise, rights or privileges to attach to, and/or reserve space on any of its Poles covered by this Agreement, nothing herein contained shall be construed as affecting said rights or privileges with respect to existing Attachments of such Outside Parties, which Attachments shall continue in accordance with the present practice; all future Attachments of such Outside Parties shall be in accordance with the requirements of Section B below, except where such Outside Parties have by agreements entered into prior to the execution of this agreement acquired enforceable rights or privileges to make Attachments which do not meet such space allocations. EMC shall derive all of the revenue accruing from such Outside Parties. Any contractual rights or privileges of Outside Parties recognized in this paragraph shall include renewals of or extensions of the term (period) of such contracts.

B. In the event any Pole or Poles of EMC to which Licensee has made its Attachments would, but for the Attachments of Licensee, be adequate to support additional facilities desired by EMC, EMC's subsidiary or affiliate, or by a Joint User with whom EMC has a prior agreement and which Joint User is either occupying space or has requested to attach or reserve space on such Pole(s) prior to the placement of Licensee's Attachment on such Pole(s), then EMC shall notify Licensee of any changes necessary to provide an adequate Pole or Poles and the estimated costs thereof. Upon receipt of such notice, Licensee shall remove its Attachments at its sole expense or reimburse EMC, on demand, for all reasonable costs incurred by EMC in making such changes. Should Licensee submit a request to make a new Attachment on a Pole that a Joint User is not already attached to but on which the Joint User has reserved space, EMC will provide

notice of such space reservation to Licensee, provided that EMC has such knowledge on or prior to the date of Licensee's Attachment request.

C. If EMC desires to confer upon others not parties to this agreement (Outside Parties), by contract or otherwise, rights or privileges to attach to any of its Poles covered by this Agreement, it shall have the right to do so, provided all such Attachments of such Outside Parties are made in accordance with the following: (1) such Attachments shall be maintained in conformity with the requirements of Article 3, Specifications, and (2) such Attachments shall not be located within the space allocation of Licensee. EMC shall derive all of the revenue accruing from such Outside Parties.

D. Except as to Joint Users already attached to EMC's Poles, any rights and privileges granted under this Article to others not parties hereto, EMC shall make good faith efforts to have the Licensee paid by an Outside Party in connection with Outside Party Make-ready.

E. Except as to Joint Users already attached to, or reserving space on, EMC's Poles, in no event will Licensee be responsible for any Make-ready or other costs incurred for the benefit of an Outside Party and such costs shall immediately be reimbursed to Licensee from such Outside Party.

F. The EMC will make good faith efforts to have the Licensee paid by an Outside Party in connection with Outside Party Make-ready.

ARTICLE 14 - ASSIGNMENTS OF RIGHTS

Except as otherwise provided in this Agreement, Licensee shall not assign or otherwise dispose of this Agreement or any of its rights or interests hereunder, or in any of the Joint Poles, or the Attachments or rights-of-way covered by this Agreement, to any firm, corporation or individual, without the written consent of the EMC, which consent shall not be unreasonably withheld or delayed, except to the United States of America or any agency thereof; provided, however, that nothing herein contained shall prevent or limit the Licensee's right to mortgage any or all of its property, rights, privileges, and franchises, or lease or transfer any of them to another corporation organized for the purpose of conducting a business of the same general character, or to enter into any merger or consolidation; and, in case of the foreclosure of such mortgage or in case of lease, transfer, merger, or consolidation, its rights and obligations hereunder shall pass to, and be acquired and assumed by, the purchaser at foreclosure, the transferee, lessee, assignee, merging or consolidating company, as the case may be; and provided further that, subject to all of the terms and conditions of this Agreement, Licensee may permit any corporation conducting a business of the same general character as that of such party, and owned, operated, leased and controlled by it, the use of all or any part of the space reserved hereunder on any Pole covered by this Agreement for the Attachments used by such party in the conduct of its said business; and for the purpose of this Agreement, all such Attachments maintained on any such Pole by the permission as aforesaid of Licensee shall be considered as the Attachments of Licensee and the rights, obligations and liabilities of such party under this Agreement, with respect to such Attachments, shall be the same as if it were the actual owner thereof.

ARTICLE 15 - WAIVER OF TERMS OR CONDITIONS

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

ARTICLE 16 - PAYMENT OF TAXES

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

ARTICLE 17 - BILLS AND PAYMENT FOR WORK

A. 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 within ninety (90) days after the completion of such work an itemized statement of the costs and such other party shall within forty-five (45) days after such statement is presented pay to the party doing the work such other party's proportion of the cost of said work.

B. All amounts to be paid by either party under this Agreement shall be due and payable within forty-five (45) days after receipt of an itemized invoice. Except as provided in Article 17.C below, any payment not made within forty-five (45) days from the due date shall bear interest at the rate of 1.5% per month until paid, or if 1.5% exceeds the maximum rate allowed by law, then at the maximum rate allowed by law. If a party bills the interest provided for in this paragraph but then receives a payment showing that the payment was timely made, the billing party will write off and cancel the interest.

C. A party receiving a bill may, in good faith and for good cause, dispute the amount or adequacy of substantiation for the bill. In the event that a party so disputes only a portion of a bill, then such party shall promptly pay the undisputed amount. In the event of such dispute, the parties shall meet, by telephone or in person, within ten (10) business days of a dispute being raised to discuss the disputed item and establish a procedure for addressing the disputed amount in accordance with this Agreement. Upon resolution of the dispute, if the amount and substantiation were correct and sufficient, interest will be paid on the unpaid balance from the date of the initial bill at the rate of 1.5% per month until paid, or if 1.5% exceeds the maximum rate allowed by law, then at the maximum rate allowed by law; but, if the amount was not correct or substantiation was not sufficient, no interest will be payable unless the amount determined to be correct is not paid within forty-five (45) days of receipt of substantiation and determination of the correct amount.

D. The fees specified in this Agreement shall be subject to an annual escalator equal to the change in the most recent 12 month's Handy Whitman Index for the South Atlantic Region, Account 364, Poles, Towers and Fixtures.

ARTICLE 18 - NOTICES

A. Except as otherwise provided in this Agreement, all notices and writings shall be made to the following people, who from time to time may be changed by written notice:

Licensee Contact Information:

EMC Contact Information:

B. By written notice pursuant hereto a party may from time to time specify a person in lieu of the person designated in Section A above to receive notices or writings with respect to specified matter(s) and/or geographic area(s), in which case such notices or writings shall be sent to that person as to such matter(s) and area(s).

C. Response to any notice or Appendix A shall be made to the sender rather than to the person designated in Section A or B above.

D. Unless otherwise provided in this Agreement, any notice shall be in writing, which may, when mutually agreeable, include preservable and traceable electronic means, such as email or facsimile.

E. A second copy of any notice given under Article 12, Defaults, or Article 20, Term of Agreement, shall be given to the following persons, who may from time to time be changed by written notice:

Licensee:

EMC:

F. The parties will develop and maintain a joint form designating the people to whom notices shall be given pursuant to the foregoing.

ARTICLE 19 - RESOLUTION OF CERTAIN DISPUTES

A. In the event of a dispute regarding any compliance or non-compliance with the provisions of Article 3, Specifications, of this Agreement, including which party is responsible for any non-compliance and what corrective action, if any, is necessary or appropriate to remedy any such non-compliance, then the parties shall each arrange for a representative to make a joint field visit

to the Pole location to investigate whether a violation exists and if so, any corrective action needed and the party or parties responsible. The parties will make a diligent and good faith effort to resolve such disputes at the local level by the parties' respective local engineers and local managers.

B. If the parties are unable to resolve any such dispute at the local level, then either party may submit the matter for resolution to a "Referee" for binding resolution. A matter will be submitted to the Referee by sending a letter (by mail, hand-delivery or facsimile) to the Referee, with a copy provided to the other party's representative who was involved in the attempt to resolve the dispute and the other party's representative designated pursuant to Article 18.A or Article 18.B, Notices, before or concurrently with the transmission of the letter to the Referee. The letter will include a summary of the dispute and will designate the party's "Contact Person" for the dispute. The other party will promptly respond with a letter similarly sent and copied that provides such party's summary of the dispute and designates such party's Contact Person for the dispute.

C. If the parties mutually agree to do so, instead of proceeding under Section B above, the parties may submit any dispute to the Referee by jointly sending the Referee a letter that includes a summary of the dispute and designates each party's Contact Person for the dispute.

D. The Referee will make such investigation as deemed appropriate in his or her discretion, which will include hearing from each party's Contact Person. The Referee may, but is not required to, engage in such other procedures or hearing as the Referee deems appropriate. The parties will cooperate with the Referee.

E. The Referee will promptly issue a binding decision in writing to the parties, from which there will be no appeal. The party whose position is not upheld by the Referee (which determination may be made by the Referee if requested to do so) will be required to pay for the Referee's fees and expenses. If both parties' positions are upheld in part, they will share the Referee's fees and expenses equally. The parties agree to be bound to pay the Referee's fees and expenses as provided herein.

F. The Referee will be appointed as follows:

1. Each party will appoint an outside engineer and these two (2) engineers will appoint a third outside engineer or other qualified person to serve as the Referee.
2. In the event that the two (2) engineers so appointed are unable within fourteen (14) days to agree upon a third outside engineer or other qualified person who is willing and able to serve as the Referee, then the Referee will be appointed as follows: Three (3) names will be blindly drawn from the list of persons then comprising the NESC committee whose work is most closely related to the dispute (e.g., Clearances Committee or Strength and Loading Committee), or such other group as may be mutually agreed upon. Each party will strike one such name and the remaining person will serve as the Referee. If the parties strike the same name, then the Referee will be selected from the remaining two (2) names by coin toss. If the NESC committee member so selected is unwilling or unable to serve as Referee, then this procedure will be repeated (starting with the blind drawing of

three different names as provided above) as necessary until a Referee is selected who is willing and able to serve as Referee. If all committee member names of the NESC committee first selected are exhausted without a Referee being appointed who is willing and able to serve as Referee, then the parties will repeat the above-described procedure with the next NESC committee whose work is most closely related to the dispute, and so on until a Referee is selected who is willing and able to serve as Referee.

G. Nothing herein shall preclude the parties from entering into any other mutually agreeable dispute resolution procedure or from changing by mutual written agreement any aspect of the foregoing procedure. Without limiting the generality of the foregoing, the parties may by mutual written agreement remove, replace or appoint a Referee at any time.

H. The parties agree, that if any dispute or problem in connection with the administration of this Agreement cannot be resolved at lower levels, communications between the following will be permitted and engaged in, in good faith on an expedited basis: Between a district manager or person who reports to the President/CEO/General Manager of an EMC and a district general manager for Licensee; and, if not resolved by them, between the President/CEO/General Manager of an EMC and the [General Manager] for the Licensee. If either EMC or Licensee reorganizes or changes titles, the equivalent person for such party shall perform the above functions. Notwithstanding the foregoing, neither party shall be precluded from seeking any other available legal remedy at any time.

ARTICLE 20 - TERM OF AGREEMENT

A. This Agreement shall continue in full force and effect for ten (10) years from the Effective Date (Initial Term), and shall automatically renew thereafter for successive one (1) year terms (Renewal Term). Either party may terminate the Agreement by giving to the other party six (6) months' notice in writing of intention to terminate the Agreement six (6) months prior to the end of the Initial term or any Renewal term. Notwithstanding the foregoing, this Agreement shall continue in full force and effect for all existing Attachments during any negotiations of the parties for a subsequent agreement.

B. Upon termination of this Agreement in accordance with any of its terms, Licensee shall within 180 days remove all its Attachments owned by Licensee from all Poles of EMC. If not so removed, EMC shall have the right to remove and dispose of all of Licensee's Attachments without any liability or accounting therefore. Licensee shall reimburse EMC for any and all costs incurred by EMC in the removal of Licensee's Attachments as detailed above. In the event that Licensee has not reimbursed EMC within forty-five (45) days of invoicing following EMC's removal of said Attachments, then EMC may pursue, without notice or demand to Licensee, one or more of the remedies contained in Article 12, Defaults, including making demand on the Security Instrument described in Article 23.E, Liability and Indemnification.

C. Termination of this Agreement shall not relieve either Party from fulfilling any and all of its obligations that accrued while the Agreement was in effect.

D. During the term of this Agreement or upon termination of this Agreement, each Party shall have reasonable access to those portions of the other Party's books, construction standards, and

records, as may be necessary to resolve a material issue or concern regarding the other Party's compliance with its obligations under this Agreement. Such access will be granted upon reasonable notice and only during regular business hours.

ARTICLE 21 - EXISTING CONTRACTS

All existing joint use or Pole Attachment license agreements between the parties, and all amendments thereto (hereinafter "Old Attachment Agreement") are by mutual consent hereby abrogated and superseded by this Agreement.

Nothing in the foregoing shall preclude the parties to this agreement from entering such supplemental operating routines or working practices as they mutually agree to be necessary or desirable to effectively administer the provisions of this Agreement.

ARTICLE 22 - APPROVAL OF THE ADMINISTRATOR

This Agreement and any amendment thereof shall be effective subject to the condition that, during any period in which the EMC is a borrower from the Rural Utilities Service ("RUS") and RUS approval of this Agreement and any amendment thereof is required, the Agreement and any amendment thereof shall have the approval in writing of the RUS Administrator.

ARTICLE 23 – LIABILITY AND INDEMNIFICATION

A. Licensee's use of the EMC's distribution Poles as provided for in this Agreement is not for the benefit of the EMC; rather, it is solely for the benefit of Licensee in carrying on its business of supplying the services authorized herein; and this Agreement is entered into with the explicit understanding that, except as set forth below, Licensee assumes sole responsibility for all injuries and damages arising, or claimed to have arisen, by, through or as a result of any of its cables, wires, appliances, equipment or facilities (or of a third-party overlasher to Licensee's cables, wires, appliances, equipment or facilities or any assignee of Licensee's rights) attached to the EMC's Poles, equipment, or facilities, it being understood, however, that Licensee shall have no liability to the EMC for injuries and damages (a) caused by, through or as a result of the sole negligence of the EMC; or (b) caused solely by, through or as a result of the wanton misconduct of the EMC; or (c) caused solely by, through or as a result of the facilities or activities of any third party (or parties) attachers whose cables, wires, appliances, equipment or facilities are attached to the same Poles as Licensee's cables, wires, appliances, equipment or facilities.

B. Accordingly, without limiting the effect of the provision of the immediately preceding paragraph, and except as set forth below, Licensee expressly agrees to indemnify, defend and save harmless the EMC from all claims, demands, actions, judgments, loss, costs and expenses (collectively, "Claims") arising or claimed to have arisen by, through or as a result of Licensee's cables, wires, appliances, equipment or facilities attached to the EMC's Poles, equipment, or facilities, or as a result of the negligent acts or omissions, or the intentional or wanton

misconduct of the Licensee or any of its contractors, agents, overlashers or assignees, in respect to (a) damage to or loss of property (including but not limited to property of the EMC or Licensee) (b) injuries or death to persons (including but not limited to injury to or death of any Licensee employees, contractors or agents, or members of the public); (c) any interference with the television or radio reception of, or with the transmission or receipt of telecommunications by, any person which may be occasioned by the installation or operation of Licensee's cables, wires, appliances, equipment or facilities; (d) the proximity of Licensee's cables, wires, appliances, equipment or facilities to the wires and other facilities of the EMC; (e) any claims upon the EMC for additional compensation for use of its distribution rights-of-way for an additional use of the Licensee; and (f) any injuries sustained and/or occupational diseases contracted by any of the Licensee's employees, contractors or agents of such nature and arising under such circumstances as to create liability therefore by Licensee or the EMC under any applicable Worker's Compensation law, including also all claims and causes of actions of any character which any such contractors, employees, the employers of such employees or contractors, and all persons or concerns claiming by, under or through them or either of them may have or claim to have against the EMC resulting from or in any manner growing out of any such injuries sustained or occupational diseases contracted; it being understood, however, that Licensee shall have no liability to the EMC for injuries and damages (a) caused by, through or as a result of the sole negligence of the EMC; or (b) caused solely by, through or as a result of the wanton misconduct of the EMC; or (c) caused solely by, through or as a result of the facilities or activities of any third party (or parties) whose cables, wires, appliances, equipment or facilities are attached to the same Poles as Licensee's cables, wires, appliances, equipment or facilities. In any matter in which Licensee shall be required to indemnify the EMC hereunder, Licensee shall control the defense of such matter in all respects, and the EMC may participate, at its sole cost, in such defense. The EMC shall not settle or compromise any matter in which Licensee is required to indemnify the EMC without the prior consent of Licensee.

C. The EMC expressly agrees to indemnify, defend and save harmless Licensee from all Claims arising or claimed to have arisen solely by, through or as a result of the EMC's negligent acts or omissions or the EMC's intentional or wanton misconduct. EMC shall have no liability to the Licensee for injuries and damages (a) caused by, through or as a result of the negligence of the Licensee or its contractors or agents; or (b) caused through or as a result of the wanton misconduct of the Licensee or any of its contractors, agents, representatives or assignees. In any matter in which the EMC shall be required to indemnify Licensee hereunder, the EMC shall control the defense of such matter in all respects, and Licensee may participate, at its sole cost, in such defense. Licensee shall not settle or compromise any matter in which the EMC is required to indemnify Licensee without the prior written consent of the EMC.

D. Insurance

Licensee, and any contractors of Licensee, shall contract for and maintain in effect throughout the period during which Licensee maintains Attachments on any Poles owned by EMC, insurance which meets or exceeds the amounts set forth in subsections (1) through (3) below. Failure to provide and maintain the required insurance coverage shall constitute a Default under this Agreement, in which event EMC shall have the right to pursue any and all of remedies set forth in this Agreement.

1. Worker's compensation insurance, with minimum limits of \$1,000,000, covering all employees of Licensee who shall perform any work on Poles or property owned or controlled by EMC, including easements and rights-of-way, whether or not such insurance is required by law. If any employee is not subject to the workman's compensation laws of the state wherein work is performed, Licensee shall extend said insurance to such employee as though said employee were subject to such laws.
2. Commercial general liability insurance covering all operations under this Agreement, including erection, installation, maintenance, Rearrangement and removal of Licensee's Attachments, in an amount for bodily injury of not less than \$2,000,000.00 for one person and \$2,000,000.00 for each accident or occurrence and for property damage of not less than \$2,000,000.00 for each accident or occurrence.
3. Automobile liability insurance on all self-propelled vehicles which may be used in connection with this Agreement, whether owned, non-owned, or hired, in an amount for bodily injury of not less than \$1,000,000.00 for one person and \$1,000,000.00 for each accident or occurrence and for property damage of not less than \$1,000,000.00 for each accident or occurrence.
4. The policies required hereunder shall be in such form and issued by such carrier as shall be reasonably acceptable to EMC.
 - a. EMC, its board of directors, officers, employees, and agents shall be shown as additional insured on each policy only with respect to liability arising from Licensee's operation in conjunction with this Agreement; and
 - b. Licensee agrees to release and will require its insurers (by policy endorsement) to waive their rights of subrogation against EMC, its board of directors, officers, employees, and agents for loss under the policies of insurance described herein; and
 - c. Each policy shall state that EMC will be given notice at least thirty (30) days before any such insurance shall lapse; and
 - d. Licensee shall furnish EMC certificates evidencing such insurance within thirty (30) days of the Effective Date of this Agreement and shall provide EMC with copies of any renewal certificates promptly after they become available.
5. Notwithstanding the above, if Licensee is authorized to operate as a self-insured entity under the laws of the State of Georgia, Licensee may provide self-insurance to meet the requirements of this Article 23.F, upon terms and conditions satisfactory to EMC.

E. Security Instrument

Licensee shall furnish and maintain throughout the term of this Agreement, and thereafter until all of the obligations of Licensee have been fully performed, a bond, or other Security Instrument satisfactory in form and content to EMC in substitution therefore, to guarantee the payment of any sums which may become due to EMC or an EMC Agent for Pole Attachment Rental Fees, inspections, inventories, Make Ready Costs, Unauthorized Attachment Fees, for work performed

for the benefit of Licensee under this Agreement, including the removal of Attachments upon termination of this Agreement, for any expense that may be incurred by EMC or an EMC Agent because of any Default of Licensee, or for any other expense that is to be borne by Licensee under this Agreement. The amount of said Security Instrument, which amount shall be maintained throughout the term of the Agreement and thereafter until all of the obligations of Licensee have been fully performed, shall be equal to ten thousand US dollars (\$10,000), or twenty-five dollars (\$25) per Attachment, whichever is larger. The amount of the Security Instrument may, in EMC'S discretion, be adjusted if Licensee purchases, acquires, or obtains a controlling interest in additional broadband or other facilities within EMC's service territory not currently covered by this Agreement which results in a significant increase in the number of Attachments. Any such adjustment shall not exceed twenty-five dollars (\$25.00) per new Attachment. Failure to provide and maintain the aforementioned Security Instrument shall be deemed a Default under this Agreement, in which event EMC shall have the right to pursue any and all remedies set forth in this Agreement and at law or equity. The furnishing of such Security Instrument shall not affect, limit, diminish or otherwise reduce any obligations of Licensee under this Agreement.

Following the completion of the Initial Safety Inspection, the correction of the identified violations, and if the Licensee is in material compliance with all other terms and conditions of the Agreement, the amount of the Security Instrument shall be adjusted annually to an amount not to exceed the last annual Pole rental invoice received by the Licensee.

ARTICLE 24 - CONSTRUCTION

This Agreement was drafted by all parties to it and is not to be construed against any party. Neither the negotiations of the language of this Agreement nor any prior drafts of this Agreement or the inclusion or exclusion of any language from prior drafts shall be admissible or probative as to the meaning of this Agreement.

ARTICLE 25 - REMEDIES CUMULATIVE

Unless otherwise provided in this Agreement, all remedies set forth in this Agreement are cumulative and in addition to any other remedies that may be available herein or at law or in equity, if any.

In witness whereof the parties hereto have caused these presents to be executed in two counterparts, each of which shall be deemed an original and their corporate seals to be affixed thereto by their respective officers thereunto duly authorized, as of the Effective Date.

EMC

LICENSEE

Signed: _____

Signed: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

APPENDIX A - ATTACHMENT REQUEST FORM

Licensee hereby requests permission pursuant to its Pole Attachment License Agreement to make new Attachment(s) to poles, remove Attachment(s) to poles and/or Overlash cables affixed to poles, all as shown on the attached construction plans and drawings. The attached plans and drawings show the Poles Licensee desires to attach to or Overlash, the number and character of Attachments proposed, any Rearrangements requested with respect to existing wires, fixtures or apparatus, any relocations or replacements of existing Poles requested, the heights of all points of attachment, all mid-span clearances, and any new Pole placement requested. Should additional information be required by the EMC for verification of compliance with the NESC or other applicable standards, the Licensee will provide such information. Licensee certifies that all rights-of-way, easements, permits, and consents have been obtained from the owner(s) of the property(ies) on which the Poles being attached to are currently located or will be located. Payment for the fees is included with this request. The table below provides detailed information regarding this request.

LICENSEE				
Company		Poles with Attachments	Added	
Project			Removed	
Request #			Overlashed	
Request Date		Estimated Construction Dates	Start	
Name		Fees	Completion	
Signature			Application	\$
Phone			Inspection	\$
Fax			Design	\$
Email			Total	\$

Please advise Licensee as to whether or not these Attachments will be permitted and if necessary provide an estimate for any additional costs that Licensee may be required to pay as Make Ready Work. If Make Ready Work is required, upon receipt of EMC supplied Make Ready Estimate the Licensee shall provide notice to EMC of either approval of the cost estimate or that Licensee will not undertake to make these Attachments. Upon receipt by EMC of Licensee's notice of estimate approval of Make Ready Costs, the EMC will proceed with Make Ready Work.

EMC				
Response Date		EMC Make Ready Construction Required?	Yes	
Name			No	
Signature			EMC Make Ready Construction Estimate	\$
Phone		Permit #		
Fax				
Email				
Request Response	Approved	Reason for denial		
	Denied			

APPENDIX R - EMC RULES AND PRACTICES FOR ATTACHMENTS

1. Licensee shall install and maintain its Attachments at its own expense.
2. Any unbalanced loading of EMC's Distribution Poles caused by the placement of Licensee's circuits shall be properly guyed and anchored by Licensee with a guy and anchor provided by Licensee, at no expense to EMC. Licensee may not place new guy attachments on EMC's anchors without EMC's prior consent. If mutually agreed between the Licensee and the EMC, EMC may install anchors and anchor rods, at Licensee's expense, with sufficient capacity for the EMC's and Licensee's guying attachments. When the parties agree to use a common anchor, Licensee shall re-install EMC's anchor rod bonding clamps on EMC anchors after installing guy attachments to the anchor.
3. A preliminary "ride through" of the proposed route of Licensee's communications facility shall be made by representatives of EMC and Licensee when necessary.
4. Licensee shall check and verify the condition of any Pole prior to climbing or performing work on it. If a Pole is deemed unsafe, Licensee must immediately cease all work on said Pole and notify EMC by telephone and in writing as soon as practicable.
5. All Attachments shall be located on the same side of each Pole as any existing telephone or communications cable, or as otherwise designated by EMC.
6. On Attached Poles where EMC has secondary conductors, all Attachments shall be located on the same side of the Pole as the secondary conductors, or as otherwise designated by EMC.
7. Licensee shall cause all cabinets, enclosures, and messengers to be effectively grounded in accordance with the NESC and all revisions thereof. Licensee shall instruct its employees, contractors, and other representatives working on EMC's poles of the dangers associated with bonding its facilities to the EMC "vertical ground wire" and associated dangers thereof, and shall provide adequate training and protective equipment so as to protect its employees, contractors, and other representatives from bodily harm. The EMC assumes no responsibility either for instructing Licensee's personnel or furnishing equipment to Licensee's personnel, or for any liability for Licensee's personnel working on EMC poles, except as provided for in the indemnity provisions of the Agreement.
8. Licensee shall install no power supply on any of EMC's Poles on which underground electric services, capacitor banks, sectionalizing equipment or voltage regulators are already installed.
9. No electrical service connection to a communications power supply shall be made or installed by Licensee until after EMC shall have completed inspection of an approved fused service disconnect switch or circuit breaker.
10. No bolt used by Licensee to attach its facilities shall extend or project more than one (1) inch beyond its nut.
11. All Attachments of Licensee shall have at least two (2) inches clearance from unbonded hardware such as pedestals and any other enclosures containing equipment.
12. All of Licensee's Attachments shall comply with the more stringent of either EMC's or NESC clearance and separation requirements and shall be located on all new or transferred attachments a minimum of forty (40) inches below EMC's lowest attached

- facilities. On EMC Poles supporting streetlights, Licensee's Attachments may be installed to comply with the NESC clearance requirements for the street light "drip loop", as long as Licensee's Attachment also maintains forty (40) inches from other EMC facilities on the Pole. All mid-span clearances between Licensee's facilities and EMC's lowest conductors shall comply with NESC clearance requirements.
13. Licensee may, with prior approval of EMC, install cross arms, alley arms, or cable extension arms for the support of any of its facilities. However, Licensee shall not use any cross arm or alley arm brace above the arm that it supports.
 14. Licensee shall install and maintain any and all of its facilities in a neat and workmanlike manner consistent with the maintenance of the overall appearance of the jointly used Pole and subject to the standards set forth in Article 3. Where a disparity exists between EMC's standards, Governmental requirements, the NESC, this Appendix R, or other written requirements in this Agreement, the most stringent shall apply.
 15. In the event that any of Licensee's proposed Attachments are to be installed upon Poles already jointly used by EMC and another party(ies), Licensee shall negotiate with such other party/parties to determine clearances between its facilities and those of EMC and such other party/parties, except that Licensee may not in any way modify the clearance requirements set forth in this Agreement
 16. Guy markers shall be installed and maintained on all guys.
 17. Where, at the sole discretion of the EMC, the future installation of a transformer, underground cable riser, or other similar EMC equipment is likely, all new attachments will be made at least seventy-two (72) inches under the primary neutral. Clearances not specified in this rule shall be determined by reference to the National Electrical Safety Code. Licensee shall be notified of this possibility in the Appendix A application process.
 18. All anchors and guys shall be installed and in effect prior to the installation of any of the Licensee's messenger wires or cables. All anchors and rods shall be in line with the strain and shall be installed so that approximately six (6) inches of the rod remains out of the ground. Cutting of anchor rods to reduce anchor rod extension above the ground line is not permitted. The entire length of the anchor rod should be set in a straight line between the Pole attachment and the point where the rod attaches to the anchor. In cultivated fields or other locations the projection of the anchor rod above earth may be increased to a maximum of twelve (12) inches to prevent burial of the rod eye. The backfill of all anchor holes must be thoroughly tamped the full depth.
 19. Sidewalk guys shall be permitted by special exception only.
 20. No Licensee guys may be attached to EMC guys (except grounding connections). Attachment of Licensee guys to EMC anchors shall be permitted only with approval by the EMC.
 21. With respect to all communications-protective devices, Licensee agrees that EMC may construct all its facilities in accordance with "Grade C" construction as applicable under NESC Rule 242, Table 242-1, Footnote 7.