

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE  
COMMISSION

In the Matter of :

BALLARD RURAL TELEPHONE )  
COOPERATIVE CORPORATION, INC.)  
Complainant )  
v. )  
JACKSON PURCHASE RURAL )  
ELECTRIC COOPERATIVE )  
CORPORATION )  
Defendant )

Case No. 2004-00036

FORMAL COMPLAINT

Ballard Rural Telephone Cooperative Corporation, Inc. ("Ballard Rural"), by counsel, for its formal complaint against Jackson Purchase Rural Electric Cooperative Corporation ("JPE"), pursuant to KRS 278.260, hereby states as follows.

1. The full name and address of Ballard Rural is Ballard Rural Telephone Cooperative Corporation, Inc., P.O. Box 209, 159 West Second Street, LaCenter, Kentucky 42056. Ballard Rural is a rural incumbent local exchange carrier ("ILEC") which provides local exchange services to residents of its approved service territory.

2. The full name and address of JPE is Jackson Purchase Rural Electric Cooperative Corporation, P.O. Box 4030, 2900 Irvin Cobb Drive, Paducah, Kentucky 42002. JPE is an electric utility providing electric service to residents within the Ballard Rural approved service territory. JPE owns utility poles to which Ballard Rural has, historically, attached its own local exchange facilities.

3. The facts supporting this complaint are set forth more fully below; but briefly, this complaint concerns JPE's refusal to permit Ballard Rural to attach facilities to its utility poles at fair, just, reasonable, and nondiscriminatory rates.

#### APPLICABLE LAW

4. Pursuant to KRS 278.030(2), JPE must "furnish adequate, efficient and reasonable service...." *Id.* It may not demand unfair, unjust, and unreasonable rates for the services it renders. *Id.* at subsection (1) (providing, "Every utility may demand, collect and receive *fair, just and reasonable rates* for the services rendered or to be rendered by it to any person." (emphasis added)). And, it may not discriminate in the rates charged for providing "a like and contemporaneous service under the same or substantially the same conditions." KRS 278.170.

5. Pursuant to KRS 278.040, the Commission has jurisdiction "over the regulation of rates and service of utilities" within the Commonwealth. *Id.*

6. KRS 278.260, the Commission is vested with the express authority to investigate and remedy "complaint as to rates or service of any utility." *Id.*

7. This jurisdiction extends to the regulation of pole attachment rates. *See Kentucky CATV Association v. Volz*, Ky. App., 675 S.W.2d 393, 396 (1983) (holding, "We must agree with the finding by the Commission that the rates charged for pole attachments are 'rates' within the meaning of KRS 278.040, and that the pole attachment itself is a 'service' within the meaning of the statute.").

#### STATEMENT OF THE FACTS

8. On June 5, 1954, Ballard Rural and JPE entered into an agreement entitled, General Agreement for Joint Use of Wood Poles (the "1954 Agreement"). (A copy of the 1954 Agreement is attached as Exhibit 1).

9. ~~The 1954 Agreement set forth the terms and rates pursuant to which each party thereto would make pole attachments available to the other party. See id.~~

10. Pursuant to Article XX of the 1954 Agreement, the Agreement was to "remain in effect until terminated at the end of 25 years from the [effective date] or thereafter upon the giving of written notice to the other party not less than three years prior to the date of termination." *Id.*

11. Appendix B of the 1954 Agreement set initial pole attachment rates to be paid by Ballard Rural, when applicable, at a range of \$0.60 to \$1.30. *Id.*

12. Upon information and belief, the 1954 Agreement was never filed with the Commission. Accordingly, the Commission never approved the pole attachment rates set forth in the 1954 Agreement.

13. By 1974, pursuant to rate adjustment mechanisms set forth in the 1954 Agreement, Ballard Rural's pole attachment rates rose to a maximum of \$3.00 per pole. (See January 21, 1974 letter from Mr. Stiles to Mr. Moss, attached as Exhibit 2).

14. Ten years later, the Commission approved JPE's Cable Television Attachment Tariff ("CTAT"), which set forth pole attachment rates ranging from \$1.75 to \$3.10. (See JPE CTAT, P.S.C. No 7, first revised sheet no. 10.0, canceling P.S.C. No. 6, original sheet no. 10, attached as Exhibit 3).

15. JPE did not apply these tariffed pole attachment rates to Ballard Rural. Instead, during the meantime, Ballard Rural and JPE continued to operate pursuant to the 1954 Agreement.

16. Then, in September of 2002, JPE proposed a pole attachment rate increase of more than 400%. JPE proposed to raise its pole attachment rates for Ballard Rural from \$1.75

~~\$3.10 per pole to either \$13.79 or \$17.75 per pole, depending upon the height of the pole.~~ (See September 26, 2002 e-mail from Mr. Sherrill to Mr. Whipple, attached as Exhibit 4).

17. Concerned about the legality of this unprecedented inflation in pole attachment rates, Ballard Rural contacted a member of the Commission staff, who informed Ballard Rural that "I reviewed Jackson Purchase ECC's tariff and... only found pole attachment rates for CATV companies. Since the rates on file with the Commission for CATV attachments are 'cost-based,' it would seem reasonable to expect rates for attachments by other types of carriers to be similar if not the same." (See October 23, 2002 e-mail from Mr. Willard to Manager@brtc.net, included in October 24, 2002 email from Mr. Parker to Ms. Chittenden, attached as Exhibit 5).

18. On December 9, 2002 JPE sent Ballard Rural a "draft of the proposed [new] joint use contract" for the two companies' pole attachments. (See December 9, 2002 e-mail from Mr. Sherrill to Mr. Whipple, attached as Exhibit 6). In that same communication, JPE proposed "to bill all poles at the \$13.79 (JPEC) and \$17.42 (BRTC) [*sic*] until completion of our field inventory associated with our new mapping system." *Id.*

19. Ballard Rural responded that both the proposed joint-use pole attachment agreement and the proposed new pole attachment rates were unacceptable. (See January 10, 2003 letter from Mr. Parker to Mr. Sherrill, attached as Exhibit 7). Ballard Rural also requested that JPE provide it with a "formula of justification for the proposed pole cost." *Id.*

20. JPE replied by stating that "[w]e agree that the stated rates represent a significant increase. However, we believe they are fair and reasonable considering the length of time since the last adjustment and their equivalence to rates charged by so many other utilities in our area." (See February 5, 2003 letter from Mr. Sherrill to Mr. Parker, attached as Exhibit 8). JPE made no attempt to provide its own cost-based support for the proposed rates. *See id.*

~~21. Then, on April 23, 2003, JPE informed Ballard that it was terminating the 1954~~  
Agreement, effective April 24, 2006. (See April 23, 2003 letter from Mr. Nuckols to Mr.  
Parker, attached as Exhibit 9). Furthermore, JPE instructed Ballard Rural to:

begin removal of your attachments from our poles no later than six months from the date of your receipt of this letter. All attachments should be removed from JPEC's poles prior to the expiration of the three-year period. We will, of course, do the same. Further, as of this date, JPEC requests that your company make no new pole attachments without the prior, written consent of JPEC.

*Id.*

22. In an effort to prevent JPE from unilaterally revoking Ballard Rural's right to attach facilities to JPE's poles for reasonable, cost-based rates, Ballard Rural initiated further discussions to resolve the parties' differences. Those discussions ended in failure.

23. Now, JPE continues to maintain its position that unless Ballard Rural agrees to the steep rate hikes being imposed by JPE, it will prohibit Ballard Rural from attaching to its poles.

### COUNT I

#### **(Refusal to Provide Fair, Just, Reasonable, and Nondiscriminatory Pole Attachment Rates)**

24. Ballard Rural restates and incorporates by reference each of the preceding allegations, as if fully set forth herein.

25. JPE refuses to provide Ballard Rural with pole attachment rights at fair, just, reasonable, and nondiscriminatory rates.

26. This refusal is in violation of KRS 278.030(1)-(2).

27. If the Commission does not act to remedy JPE's violation of KRS 278.030(1)-(2), Ballard Rural will be unable to provide adequate services to its end-user subscribers of local exchange service.

**COUNT II**  
**(Unauthorized Collection of Unapproved Pole Attachment Rates)**

28. Ballard Rural restates and incorporates by reference each of the preceding allegations, as if fully set forth herein.

29. JPE has collected pole attachment rates from Ballard Rural.

30. The pole attachment rates collected by JPE from Ballard Rural are not contained in any tariff or agreement filed with and approved by the Commission. Accordingly, the Commission cannot have approved the pole attachment rates JPE has collected from Ballard Rural since 1954.

31. JPE's collection of these pole attachment rates from Ballard Rural constitutes a violation of the filed-rate doctrine and KRS 278.170.

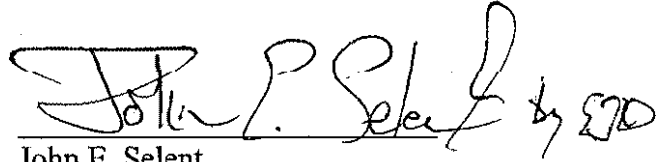
32. Ballard Rural has been damaged by being forced to pay pole attachment rates that are different than JPE's tariffed pole-attachment rates and the pole attachment rates charged to other parties attaching to JPE utility poles.

**WHEREFORE**, Ballard Rural respectfully requests that the Commission take the following actions.

1. Order JPE to permit Ballard Rural to attach facilities to JPE's utility poles at fair, just, reasonable, and nondiscriminatory rates (as conclusively established by JPE's filed and approved CTAT);
2. Order JPE to immediately refund all pole attachment charges collected from Ballard Rural since June 5, 1954; and

3. ~~Grant Ballard Rural any and all other legal and equitable relief to which it is entitled.~~

Respectfully submitted,



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**COUNSEL TO BALLARD RURAL  
TELEPHONE COOPERATIVE, INC.**

*Working  
Contract  
AT / Ledy*

GENERAL AGREEMENT FOR  
JOINT USE OF WOOD POLES

**PREAMBLE**  
Jackson Purchase Rural Electric  
Cooperative Corporation,

..... a corporation  
organized under the laws of the State of .... Kentucky.....  
(hereinafter called the "Cooperative"), and Ballard Rural Telephone  
Cooperative Corp. Inc, a corporation organized under the laws of  
the State ... Kentucky..... (hereinafter called the "Telephone  
Company"), desiring to cooperate in the joint use of their re-  
spective poles, erected or to be erected within the areas in  
which both parties render service in the State(s) of Kentucky..  
....., whenever and wherever such use shall, in  
the estimation of both parties, be compatible with their respec-  
tive needs, do hereby, in consideration of the premises and the  
mutual covenants herein contained, covenant and agree for them-  
selves and their respective successors and assigns as follows:

**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(s) of  
....., and shall cover all wood poles of  
the parties now existing or hereafter erected in the above  
territory when said poles are brought under this Agreement in  
accordance with the procedure hereinafter provided.

(b) Each party reserves the right to exclude any of its  
facilities from joint use.

(c) It is the intention of the parties that adequate  
telephone service shall be made available to the widest prac-  
ticable number of rural users in the above territory.

**ARTICLE II**

**EXPLANATION OF TERMS**

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

1. A JOINT POLE is a pole jointly used by both parties.
2. A NORMAL JOINT POLE is a pole which is just tall  
enough to provide normal spaces, as normal space is hereinafter  
defined, for the 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 ..... foot class ..... wood pole as classified by the pole classification tables of the American Standards Association.

3. 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 by 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).

4. NORMAL SPACE is the following described space:

a. For the Cooperative the uppermost ....<sup>7</sup>... feet, measured from top of pole.

b. For the Telephone Company a space of .....<sup>2</sup>... feet, at a sufficient distance below the space of the Cooperative 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.

The foregoing definition of "a normal joint pole" is not intended to preclude the use of joint poles shorter or of less strength than the normal joint pole in locations where such poles will meet the requirements of the parties hereto.

The above assignment of space is not intended to preclude the use of vertical runs or the mounting of such equipment as terminals or meters on the lower portions of the pole when mutually agreeable.

#### ARTICLE III

#### SPECIFICATIONS

Except as otherwise provided in Section (e) of Article VII, referring to construction temporarily exempt from the application of the specifications mentioned herein, the joint use of the poles covered by this Agreement shall at all times be in conformity with accepted modern methods such as those suggested in Edison Electric Institute Publication No. M12 and shall at all times conform to the requirements of the National Electrical Safety Code, Fifth Edition, and subsequent revisions thereof, except where the lawful requirements of public authorities may be more stringent, in which case the latter will govern.

In establishing joint use of wood poles whether installed new for joint use or installed initially for electric circuits alone, the total transverse and vertical loads for all conductors attached to a pole covered by this agreement shall not, under the assumed storm loadings of the National Electrical Safety Code for the area in which the pole is located, exceed fifty (50) percent of the ultimate fiber stress of the supporting pole. In the case of existing pole lines, the strength of the pole shall be assumed to be the same as when new.

Modifications of, additions to, or construction practices supplementing wholly or in part the requirements of the National Electrical Safety Code, shall, when accepted in writing by both parties hereto through their agents authorized to approve such changes, likewise govern the joint use of poles.

#### ARTICLE IV

##### ESTABLISHING JOINT USE OF EXISTING POLES

(a) Before the Telephone Company shall make use of the poles of the Cooperative under this Agreement, it shall request permission therefor in writing on the form attached hereto and identified as Appendix C, and shall comply with the procedure set forth in said Appendix C.

(b) Whenever either party desires to reserve space for its attachments on any pole owned by the other party, either as initial space or additional space on such pole, it shall make written application therefor, specifying the location of the poles in question, the amount of space desired on each pole, and the number and character of the circuits to be placed thereon. If, in the judgment of the owner, the poles are necessary for its own sole use, or joint use under the circumstances is undesirable, the owner shall have the right to reject the application. In any event, within a reasonable period after the receipt of such application the owner shall notify the applicant in writing whether the application is approved or rejected. Upon receipt of notice from the owner that the application has been approved, and after the completion of any transferring or rearranging which is required to permit the attaching of the applicant's circuits on such poles, including any necessary pole replacements, the applicant shall have the right as licensee hereunder to use such space in accordance with the terms of the application and of this Agreement.

(c) Whenever any jointly used pole or any pole about to be so used under the provisions of this Agreement is insufficient in height or strength for the existing attachments and for the proposed additional attachments thereon, the owner shall promptly replace such pole with a new pole of the necessary height and strength and shall make such other changes in the existing pole line in which such pole is included as the conditions may then require.

(d) Each party shall place, transfer and rearrange its own attachments, place guys to sustain any unbalanced loads caused by its attachments, and perform any tree trimming or cutting incidental thereto. Each party shall at all times execute such work promptly and in such manner as not to interfere with the service of the other party.

(e) The cost of establishing the joint use of existing poles, 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.

#### ARTICLE V

#### ESTABLISHING JOINT USE OF NEW POLES

(a) Whenever either party hereto requires new pole facilities for an additional pole line, an extension of an existing pole line, or in connection with the reconstruction of an existing pole line, it shall 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, susceptible of joint use. Within a reasonable period after the receipt of such notice, the other party shall reply in writing, stating whether it does, or does not, desire space on the said poles and, if it does desire space thereon, the character of the circuits it desires to use and the amount of space it wishes to reserve. If such other party requests space on the proposed new poles and if the character and number of its circuits and attachments are such that the party proposing to construct the new pole facilities does not consider joint use undesirable; then it shall erect poles suitable for such joint use, subject, however, to the provisions of Section (b) of this Article, and subject further to the condition that requests by the Telephone Company for space on proposed new poles of the Cooperative under this Agreement shall be made in writing on the form attached hereto and identified as Appendix C, and shall comply with the procedure set forth in said Appendix C. The applicant for space on the poles shall be promptly notified in writing of the action taken on the application.

(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 rentals because of their respective use of joint poles owned by the other.

(c) Each party shall place its own attachments on the new joint poles and place guys to sustain any unbalanced loads caused by its attachments. The owner shall, however, provide the initial clearing of the right-of-way, and tree trimming, which shall at least meet the requirements of the other party. Each party shall execute its work promptly and in such manner as not to interfere with the service of the other party.

(d) The cost of establishing the joint use of new poles including costs incurred in the retirement of existing poles shall be borne by the parties hereto in the manner provided in Article VIII -- Division of Costs.

#### 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 its 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.

(b) When replacing a jointly used 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 unless special conditions make it necessary or mutually desirable to set it in a different location.

(c) Whenever it is necessary to replace or relocate a jointly used pole, the owner shall, before making such replacement or relocation, give 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.

(d) Except as otherwise provided in Section (e) of this Article, each party shall at all times maintain all of its attachments, and perform any necessary tree trimming or cutting incidental thereto, in accordance with the specifications mentioned

~~in Article III and shall keep them in safe condition and in thorough repair. Nothing in the foregoing shall preclude the parties hereto from making any mutually agreeable arrangement for jointly contracting for or otherwise providing for maintenance trimming.~~

(e) 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.

(f) 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 Article VIII - Division of Costs.

#### ARTICLE VIII

##### DIVISION OF COSTS

(a) The cost of erecting new joint poles coming under this Agreement, to construct new pole lines, to make extensions to existing pole lines, or to replace existing poles, shall be borne by the parties as follows:

35'-6"

1. A normal joint pole, or joint pole smaller than normal, shall be erected at the sole expense of the owner.

2. A pole larger than the normal, the extra height or strength of which is due wholly to the owner's requirements, including 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, the extra height or strength of which is due wholly to the licensee's requirements, including requirements as to keeping the licensee's wires clear of trees, the licensee shall pay to the owner a sum equal to the difference between the cost in place of such pole and the cost in place of a normal joint pole, the rest of the cost of erecting such pole to be borne by the owner, except in so far as otherwise provided in Section (c) of this Article.

4. In the case of a pole larger than the normal, the extra height or strength which is due to the requirements of both parties or the requirements of public authorities or of property owners, (other than requirements with regard to keeping the wires of one party

only clear of trees), the difference between the cost in place of such pole and the cost in place of a normal joint pole shall be shared in the ratio of fifty-five percent by the Cooperative and forty-five percent by the Telephone Company, the rest of the cost of erecting such pole to be borne by the owner.

5. A pole erected between existing poles to provide sufficient clearance and furnish adequate strength to support the circuits of both the owner and 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) Any payments for poles made by the licensee under any foregoing 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) Where an existing jointly used pole or a non-joint pole is prematurely replaced by a new one solely for the benefit of the licensee, the cost of the new pole shall be divided as specified in Section (a) of this Article and the licensee shall also pay the owner the value in place of the replaced pole, plus the cost of removal less the salvage value of such pole. The replaced pole shall be removed and retained by its owner.

(d) Each party shall place, maintain, rearrange, transfer and remove its own attachments at its own expense except as otherwise expressly provided.

(e) 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 in Sections (a) and (c) of this Article.

(f) Where service drops of one party crossing over or under lines of the other party are attached to 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 with a taller one to provide the necessary clearance the party owning the service drop shall pay to the party owning the pole a sum equal to the difference in cost in place between the new pole and a new pole of the same size as the replaced pole, together with a sum representing the value in place of the replaced pole plus the cost of removal less the salvage value of such pole, the owner of the pole to remove and retain such pole.

(g) When, in order to improve an existing condition considered undesirable by both parties, existing poles of one of the parties are abandoned in favor of combining lines on poles of the other party, the then value in place of the abandoned poles plus the cost of removal less the salvage value of such poles shall be shared in the ratio of fifty-five percent by the Cooperative and forty-five percent by the Telephone Company.

(h) Payments made by either party to the other under the provisions of this Article shall be based on the table of values listed in Appendix A.

## ARTICLE IX

### PROCEDURE WHEN CHARACTER OF CIRCUITS IS CHANGED

When either party desires to change the character of its circuits on jointly used poles, such party shall give .5.... In emergency days notice to the other party of such contemplated change and notice will be given by telephone. In the event that the party agrees in writing to joint use with such changed circuits, then the joint use of such poles shall be continued with such changes in construction as may be required to meet the terms of the specifications mentioned in Article III for the character of circuits involved and such other changes as may be agreed upon. The parties shall cooperate to determine the equitable apportionment of the net expense of such changes. In the event, however, that the other party fails within ...5.... days from receipt of such notice to agree in writing to such change in character of circuits, then both parties shall cooperate in accordance with the following plan:

Signed Coop.  
Signed Tel. Co.  
Date 4-2-4

1. The parties hereto shall determine the most practical and economical method of effectively providing for separate lines, either overhead or underground, and the party whose circuits are to be moved shall promptly carry out the necessary work.

2. The net cost of re-establishing such circuits in the new location as are necessary to furnish the same business facilities that existed in the joint use section at the time such change was decided upon, shall be borne by the licensee; provided, however, that the owner shall bear an equitable share of such cost wherever the change was occasioned by the necessities of the owner and the licensee would suffer a hardship in having to assume the entire burden of the cost of re-establishing the circuits.

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

ARTICLE X

ABANDONMENT OF JOINTLY USED POLES

(a) If the owner desires at any time to abandon any jointly used pole, it shall give the licensee notice in writing to that effect at least ..... 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 on such pole but the licensee shall not have removed all of the attachments therefrom, such pole shall thereupon become the property of the licensee, 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 value in place of the pole to the licensee but in no case an amount less than the net salvage value of the pole to the owner as provided in Appendix A attached hereto. The former owner shall further evidence transfer of title to the pole by means of a bill of sale. 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.

(b) The licensee may at any time abandon the use of a joint pole by giving due notice thereof in writing to the owner and by removing therefrom any and all attachments it may have thereon. The licensee shall in such case pay to the owner the full rental for said pole for the then current year.

ARTICLE XI

RENTALS

(a) On or about ..... of each year the parties acting in cooperation shall, subject to the provisions of Section (b) of this Article, tabulate the total number of joint poles in use as of the preceding day, and the number of poles on which either party as licensee removed all of its attachments during the twelve preceding months, which tabulation shall indicate the number of poles which each party owns on which rentals are to be paid by the other party.

(b) For the purpose of such tabulation, 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.

(c) If there is provision under a separate agreement between the Telephone Company and the Cooperative for facilities associated with power line carrier systems, the rental 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 rentals shall apply. The rental provisions of this Agreement shall not apply, however, where only those facilities directly associated with the power line carrier systems are involved.~~

(d) The rentals per pole due from either party as licensee to the other party as owner shall be based on the equitable sharing of the economies of joint use as provided for in Appendix B. Subject to the provisions of Article XII, \$3.80.. per annum shall be paid by the Cooperative for each jointly used pole owned by the Telephone Company and \$.....50 per annum shall be paid by the Telephone Company for each jointly used pole owned by the Cooperative. The smaller total sum shall be deducted from the larger and the Cooperative or the Telephone Company, as the case may be, shall pay to the other the difference between such amounts. The rental herein provided for shall be paid within 10 days after the bill has been submitted.

#### ARTICLE XII

##### PERIODICAL ADJUSTMENT OF RENTALS

(a) At any time after 5 years from the date of this Agreement and at intervals of not less than 5 years thereafter, the rentals applicable under this Agreement shall be subject to joint review and adjustment as provided for under Section (b) of this Article upon the written request of either party. In case of adjustment of rentals as herein provided, the new rentals agreed upon shall apply starting with the annual bill next rendered and continuing until again adjusted.

(b) All adjustments of rental shall be in accord with the provisions of Appendix B, and any changes shall take into account the cost factors originally involved in all joint use existing at that time under this Agreement.

#### ARTICLE XIII

##### 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 in so far as concerns the granting of future joint use and if such default shall continue for a period of .....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 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 payment within ..... days upon presentation of bills therefor shall,

~~at the election of the other party, constitute a default under Section (a) of this Article.~~

#### ARTICLE XIV

##### EXISTING RIGHTS OF OTHER PARTIES

(a) If either of the parties hereto has, prior to the execution of this Agreement, conferred upon others, not parties to this Agreement, by contract or otherwise, rights or privileges to use any poles covered by this Agreement, nothing herein contained shall be construed as affecting such rights or privileges, and either party hereto shall have the right, by contract or otherwise, to continue and extend such existing rights or privileges, it being expressly understood, however, that for the purpose of this Agreement, the attachments of any such outside party, except those of a municipality or other public authority, shall be treated as attachments belonging to the grantor, and the rights, obligations, and liabilities hereunder of the grantor in respect to such attachments shall be the same as if it were the actual owner thereof.

(b) Where municipal regulations require either party to allow the use of its poles for fire alarm, police, or other like signal systems, such use shall be permitted under the terms of this Article, provided attachments of such parties are placed and maintained in accordance with the specifications mentioned in Article III.

#### ARTICLE XV

##### ASSIGNMENT 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 jointly used 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 these 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 on 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 hereto 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 XVI

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 XVII

PAYMENT OF TAXES

Each party shall pay all taxes and assessments lawfully levied on its own property upon said jointly used 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 XVIII

BILLS AND PAYMENT FOR WORK

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

ARTICLE XIX

SERVICE OF NOTICES

Whenever in this Agreement notice is provided to be given by either party hereto to the other, such notice shall be in writing and given by letter mailed, or by personal delivery, to the Co-operative at its office at Paducah, Kentucky.....  
.....

or to the Telephone Company at its office at LaCenter, Kentucky  
....., as the case may be,  
or to such other address as either party may from time to time  
designate in writing for that purpose.

ARTICLE XX

TERM OF AGREEMENT

Subject to the provisions of Article XIII, Defaults, herein,  
this Agreement shall remain in effect until terminated at the end  
of 25 years from the date hereof or thereafter upon the giving of  
written notice to the other party not less than three years prior  
to the date of termination.

ARTICLE XXI

EXISTING CONTRACTS

All existing agreements between the parties hereto for the  
joint use of poles are by mutual consent hereby abrogated and  
superseded by this Agreement.

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

ARTICLE XXII

APPROVAL OF ADMINISTRATOR

This Agreement, and any amendment thereof, shall be effective  
subject to the condition that, during any period in which the Co-  
operative is a borrower from the Rural Electrification Administration,  
the Agreement and any amendment thereof shall have the approval in  
writing of the Administrator of the Rural Electrification Administration.

In witness whereof, the parties hereto, have caused these  
presents to be executed in triplicate, and their corporate seals to  
be affixed thereto by their respective officers thereunto duly au-  
thorized, on the ..5th.. day of ..JUN.., 19..54..

JACKSON PURCHASE RURAL ELECTRIC  
COOPERATIVE CORPORATION

*John J. Hill*  
By .....

(Seal)

Attest:

*Carroll W. Myers*  
.....

(Seal)

Attest:

*W. A. G. ...*  
*Sec. Pres.*

Ballard Rural Telephone Co-operative Corporation, Inc.

*Wilson E. Rudolph*  
By .....

APPENDIX A

This Appendix contains tables of pole values to be used in dividing costs as provided under Article VIII. It also outlines the steps for adjusting such values to determine any payments that the licensee must make to the owner to defray costs of premature replacement of poles to accommodate the licensee

A. Tabulation of New Pole Costs.

The following tabulation shall list mutually agreed upon average costs in place of new poles of all kinds of timber, including only such cost items as are repetitive when poles are replaced.

Table 1

HEIGHT	CLASS									
	1	2	3	4	5	6	7	8	9	10
20'					20.00		15.50		14.50	
22'					23.00	18.75	18.50			13.50
25'				28.05	25.25	23.50	21.50		16.50	15.50
30'			34.00		30.50	27.50	25.00			22.00
35'			38.00	32.00	35.00		29.60			
40'			47.00	37.00	40.00	33.25	35.00			
45'			52.50	45.00	45.00	37.60				
50'		70.00		47.50	45.00	43.00				
55'		80.00	61.00	55.50	52.50	50.00				
60'			73.00		60.00					

B. Age Factor for Modifying Values of Poles.

1. The following table of age factors shall be used in adjusting pole costs in Table 1 to arrive at current values in place of existing poles coming under the provisions of this Agreement.

Table 2

AGE OF POLE	0-3 YEARS	4-9 YEARS	10-15 YEARS	16-21 YEARS	22-27 YEARS	OVER 27 YEARS
FACTOR	1.0	.8	.6	.4	.2	0

C. Cost Level Factor.

1. The values obtained from B are to be modified further by the following factors to allow for periodic variation in pole cost levels.

Table 3

FOR POLES SET PRIOR TO JAN. 1, 1937		.5
FOR POLES SET BETWEEN JAN. 1, 1937	and JAN. 1, 1945	.7
FOR POLES SET BETWEEN JAN. 1, 1945	and	1.0
FOR POLES SET BETWEEN	and	

2. It is intended that additional factors will be added to cover future long term changes in costs.

D. Salvage Value of Poles.

1. A figure of 70% of current material costs shall be used for computing salvage values of poles which have been installed not exceeding 10 years. Average values for all kinds of timber shall be used. The following table sets forth mutually agreed upon salvage values.

Table 4

HEIGHT	CLASS									
	1	2	3	4	5	6	7	8	9	10
20'					5.50		5.00			
22'					6.00	5.25	5.40		3.00	2.50
25'				8.00	7.30	6.50	5.60		4.00	4.50
30'		12.00		9.70	8.70	8.60	7.90		5.00	6.90
35'		13.90		13.50	12.90	12.50	10.50	7.50	7.50	6.90
40'		16.90		16.60	16.20	15.60	13.70			
45'		18.00		17.50	17.00	15.70				
50'	27.00			24.50	23.00	22.00				
55'	30.00	26.00		44.50						
60'		37.00			42.00					
		53.00								

2. For poles installed longer than 10 years it shall be assumed that the salvage value is equal to the cost of removal.\*

E. Cost of Removal.

1. The following table sets forth mutually agreed upon total costs of removing poles.

Table 5

HEIGHT	COST OF REMOVAL**
25' or less	5.00
30'	6.25
35'	6.75
40'	7.10
45'	8.00
50'	10.00
55'	15.00

F. Anchors.

1. The cost in place of all anchors regardless of size, type or number of thimbles shall be deemed to be ~~7.50~~ for use in applying the provisions of this Agreement.

\* Based on assumption that owner should bear an increasing portion of cost of removal as poles age.

\*\* Annual variations in costs of removal neglected.

## APPENDIX B

This Appendix describes the basic principles and guides which have been used under this Agreement in setting the rents specified in Article XI and which are to be used in making periodical adjustments of rentals as provided for in Article XII.

Under these principles the rentals are intended, in so far as it is practicable, to result in a sharing of the economies realized by the joint use of pole plant in proportion to the relative costs of separate pole line construction.

The procedures outlined herein take into account the following objectives:

1. An equitable division of savings regardless of the number of jointly used poles owned by each party.
2. Rental rates applicable universally in the area covered by the Agreement regardless of whether the pole lines involved are initially constructed with joint use in view or are existing lines modified for joint use.
3. Appropriate allowance in the rental rates for additional costs incurred by each party in supplying 'normal joint poles', as defined in the Agreement, and the costs of other items required in the joint use of poles which would not be incurred in separate line construction.
4. Rentals based on the costs of "typical miles" of separate lines, of newly constructed joint lines and of existing lines modified to make them suitable for joint use. The 'per mile' values of rentals are then reduced to 'per pole' values for purposes of simplifying tabulations and to provide for the joint use of scattered poles.

The rentals and the dollar values resulting from the licensee paying to the owner, as annual rental, an amount representing the annual charge on a separate line for the licensee less the sum of (a) the annual charges on the additional costs incurred by the licensee in establishing joint use and (b) the licensee's share of the total annual savings. This share is the ratio of the licensee's typical separate line costs to the sum of the typical separate line costs of each of the parties.

The annual rent payable can also be stated as follows:

Licenses's annual rent Equals	Annual charges saved by licensee through not having to build a separate line	Licenses's Less appropriate percentage	Total savings in annual charges Of realized through joint use
----------------------------------	--	--	--

The cost in place of a line of poles is made up of a number of factors including such items as right-of-way solicitation, clearing, staking, direct labor and material costs of bare poles in place and pro rata shares of construction supervision and overhead. These costs, for a specific area, may differ considerably from corresponding costs in other parts of the country. These variations in pole line costs will, however, affect both power and telephone lines to about the same degree.

The parties to this contract will mutually agree on the average cost of a typical mile of 35 foot, class 6 poles in place in their common area. Below are tabulated appropriate rentals over a range of typical mile costs. From this tabulation the parties shall use the rental payments associated with the value nearest to the agreed upon average cost.

**RENTAL PAYMENTS**

Where the mutually agreed upon average cost per mile of 35 foot class 6 poles in place approximates

The Telephone Company's annual rental payment per pole to the Cooperative will be

The Cooperative's annual rental payment per pole to the Telephone Company will be This change approved

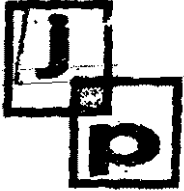
\$350	\$1.60	\$1.40	Also. Coop
410	.70	1.60	<i>Approved</i>
470	.80	1.80	
530	.90	2.00	Tel. Coop
590	1.00	2.20	
650	1.10	2.40	Date
710	1.20	2.60	<i>2-2-5</i>
770**	1.30	2.80	

\*Rentals associated with this amount are minimum and applicable for all lower costs.

\*\*If average costs are substantially higher than this value, appropriate rentals should be determined by agreement.







**Jackson Purchase Rural Electric  
Cooperative Corporation**

2900 S. Bellline Paducah, Kentucky Telephone 442-7321  
42001

January 21, 1974

Mr. Ronnie Moss  
Ballard Rural Telephone Cooperative  
LaCenter, Kentucky 42056

Dear Mr. Moss:

Enclosed you will find the invoice for 1973 pole attachments.

From our letter agreement of February 2, 1973, the 1973 rates were to be \$1.90 vs \$2.90 per pole attachment. The 1974 rates will become the maximum charge of \$3.00 vs \$4.00.

Should you have any questions on this statement, please call me at 442-7321.

Yours truly,

JACKSON PURCHASE R.E.C.C.

David Stiles, Jr.  
Director of Office Services

DS/sg  
Enclosure

CC: James E. Campbell, General Manager



Form for filing Rate Schedules

Jackson Purchase ECC  
For: Entire Territory Served  
Community, Town or City

P.S.C. NO. 7

First Revised SHEET NO. 10.0

CANCELLING P.S.C. NO. 6

Original SHEET NO. 10.0

JACKSON PURCHASE E.C.C.

Name of Issuing Corporation

CLASSIFICATION OF SERVICE

CTAT (Cable Television Attachment Tariff)

RATE PER UNIT

APPLICABILITY:

In all territory served by the company on poles owned and used by the company for their electric plant.

AVAILABILITY:

To all qualified CATV operators having the right to receive service.

RENTAL CHARGE:

The yearly rental charges shall be as follows:

Two-party pole attachment \$2.27  
Three-party pole attachment \$1.75

Two-party anchor attachment \$3.10  
Three-party anchor attachment \$2.07

Grounding Attachment -0-  
Pedestal Attachment -0-

PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE

JUN 04 1984

PURSUANT TO 607 KAR 5:011,  
SECTION 9 (1)

BY: *J. Deag...*

BILLING:

Rental charges shall be billed yearly based on the number of pole attachments. The rental charges are net, the gross rate being five percent (5%) higher. In the event the current bill is not paid on or before the date shown on the bill, the gross rates shall apply. Failure of the CATV operator to receive a bill or a correctly calculated bill shall not relieve the CATV operator of its obligation to pay for the service it has received.

SPECIFICATIONS:

A. The attachment to poles covered by this tariff shall at all times conform to the requirements of the National Electrical Safety Code, 1981 Edition, and subsequent

DATE OF ISSUE April 9, 1987 DATE EFFECTIVE June 4, 1984

ISSUED BY David Stiles, Jr. TITLE General Manager  
Name of Officer

Issued by authority of an Order of the PUBLIC SERVICE COMMISSION OF KENTUCKY IN

Case No. 251-41 dated \_\_\_\_\_

Jackson Purchase ECC  
FOR Entire Territory Served

P.S.C. KY. NO. 7

Third Revised SHEET NO. 0.0

CANCELLING P.S.C. KY. NO. 6

Second Revised SHEET NO. 0.0

JACKSON PURCHASE E.C.C.

RULES AND REGULATIONS

INDEX

	<u>Sheet No.</u>
Rate Schedule "R" - Residential, Single Phase	1.0
Rate Schedule "OL" - Outdoor Lighting	2.0(T)
Rate Schedule "CSL" - Combined with Schedule OL	3.0(T)
Rate Schedule "C" - Small Commercial, Single Phase	4.0
Rate Schedule "D" - Commercial & industrial & all Three Phase Consumers, Over 25 KVA	5.0
Fuel Adjustment	6.0
Rate Schedule "SP" - Seasonal Power Service	7.0
Rate Schedule "I" - Industrial Service	8.0
Rate Schedule "ND" - Commercial & Industrial & all other Three Phase, Under 25 KVA	9.0
CTAT - (Cable Television Attachment Tarriff)	10.0
Rate Schedule "SPC-A"	10.0A
Rate Schedule "SPC-B"	10.1A
Rules & Regulations Index	11.
Scope, Revisions & Right of Access	11.0
Service Definitions - Extensions	12.0
Permanent Service - 1,000 feet	12.1
Permanent Service over 1,000 feet	12.2
Mobile Homes	12.3
Underground Service	12.4
Indeterminate Service	12.5
Temporary Service	12.6
Transmission Service	12.7
General Rules and Regulations	13.0
Meter Reading, Billing and Collecting	14.0
Energy Emergency Control Program	15.0

PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE

JUN 23 1984

PURSUANT TO 207 KAR 5:011,  
SECTION 9(1)

BY: *[Signature]*  
PUBLIC SERVICE COMMISSION MANAGER

DATE OF ISSUE October 9, 1987 DATE EFFECTIVE June 28, 1984  
*Month Day Year* *Month Day Year*  
ISSUED BY David Stiles, Jr., General Manager, Box 3188, Paducah, KY 42002  
Name of Officer Title Address

870-441-0856

Durwood Whipple

From: "Rich Sherrill" <rsherrill@jpeenergy.com>  
To: <dwhipple@brtc.net>  
Sent: Thursday, September 26, 2002 4:01 PM  
Subject: New Joint Use Contract

Durwood:

I will be forwarding to you shortly a new joint use contract document for your review and execution. To give you a heads up for next years budgets, I felt I should advise you of the revised rates proposed therein. They are:

JPEC owned poles, 35' and below, BRTC payment will be \$13.79 per pole  
BRTC owned poles, 35' and below, JPEC payment will be \$17.42 per pole  
For all poles 40' and above, the licensee will pay the owner \$17.75 per pole

These rates are the same as our new contract with Bell South and are also equal to those paid throughout the TVA system.

Please call (270-441-0856) or email if you wish to discuss prior to receiving the revised agreement.

Rich Sherrill  
Jackson Purchase Energy

Bill Sherrill Kyle WILLARD - 504-7468-418

**Janice Chittenden**

---

From: "Harlon E. Parker" <manager@brtc.net>  
To: "Janice Chittenden" <secretary@brtc.net>  
Sent: Thursday, October 24, 2002 8:22 AM  
Subject: Fw: Pole Attachments - Jackson Purchase ECC

\*\*\*\*\*  
Harlon E. Parker  
General Manager  
Ballard Telephone Cooperative Corp.  
P.O. Box 209  
159 West 2nd Street  
LaCenter, KY 42056-0209  
Phone: (270) 665-5186; Fax: (270) 665-9186  
E-mail Address: manager@brtc.net  
Business Hours : Mon - Fri; 8 a.m. - 4:30 p.m. CST  
Web Site : www.brtc.net  
\*\*\*\*\*

----- Original Message -----

From: <kwillard@mail.state.ky.us>  
To: <manager@brtc.net>  
Sent: Wednesday, October 23, 2002 4:52 PM  
Subject: Pole Attachments - Jackson Purchase ECC

- > Mr. Parker,
- >
- > After a couple of attempts to contact you by phone, I thought I
- > might try e-mail instead. I have talked with several others here at the
- > Commission regarding your inquiry on pole attachment rates and have found
- > that most, if not all, electric utility tariffs have pole attachment rates
- > on file that are restricted to CATV. It's not entirely clear why pole
- > attachment rates for telecommunications carriers have not been required to
- > be filed but based on conversations I have had with other Commission staff
- > there does not appear to be a reason such rates should not be tariffed.
- The
- > electric utility tariffs on file with the Commission are available for
- > review and download from the Commission's web site at
- > <http://www.psc.state.ky.us/tariffs/Electric/>. I reviewed Jackson Purchase
- > ECC's tariff and, as I mentioned, only found pole attachment rates for
- CATV
- > companies. Since the rates on file with the Commission for CATV
- attachments
- > are "cost-based", it would seem reasonable to expect rates for attachments
- > by other types of carriers to be similar if not the same.
- >
- > For Jackson Purchase, the base rates for pole attachments are as follows:
- >

10/24/2002

> RENTAL CHARGE:

> The yearly rental charges shall be as follows:

> Two-party pole attachment \$2.27

> Three-party pole attachment \$1.75

> Two-party anchor attachment \$3.10

> Three-party anchor attachment \$2.07

> Grounding Attachment \$0

> Pedestal Attachment \$0

>

> Keep in mind that, according to the tariff, these rates are only for CATV

> attachments and have been on file without any changes since 1984.

Clearly,

> the annual report information used to calculate the "carrying charge factor"

> has changed even though the tariffed rates have not been updated.

>

> I hope this information is helpful and please don't hesitate to

> contact me if you have any further questions. Also, I will be discussing

> pole attachment issues in general during the KTA - KY/TN RUS Engineering

> Meeting next Friday. Hope to see you there.

>

> Kyle B. Willard

> Kentucky Public Service Commission

> Division of Engineering

> Communications Branch

> PH: (502) 564-3940 ext. 418

> kwillard@mail.state.ky.us

>

>

>

>

10/24/2002

**Durwood Whipple**

---

**From:** "Rich Sherrill" <rsherrill@jpenenergy.com>  
**To:** "Durwood Whipple" <dwhipple@brtc.net>  
**Sent:** Monday, December 09, 2002 10:53 AM  
**Attach:** JU Agreement\_BRTC.doc  
**Subject:** New Joint Use Contract

Attached is a draft of the proposed joint use contract between JPEC and BRTC. Please advise if you have any questions or wish to discuss any provision.

We propose to bill all poles at the \$13.79 (JPEC) and \$17.42 (BRTC) until completion of our field inventory associated with our new mapping system. At that time we will advise you of the quantities of 35' and below and 40' and above so that the billing based on height can begin.

I will forward the referenced appendices via separate email shortly.

Thanks  
Rich Sherrill

12/10/02



# JPEC

## JOINT USER ATTACHMENTS STANDARD

In the absence of contract definitions to the contrary, JACKSON PURCHASE ENERGY CORPORATION considers each of the following to constitute one (1) pole attachment. It is possible and, in fact, expected that each joint using company will have 2 or 3 attachments on many of our poles.

- A cable or service drop running parallel with our facilities
- A cable dead-ended on our pole.
- Overhead or down guys if they attach to the pole at an elevation different from the cable being supported.
- Service drops if they attach to the pole or the joint user cable within 15" of the pole or otherwise pass into the climbing space.
- Underground risers.
- Equipment enclosures

The only exception to the above would be a service drop from an underground system that rises up our pole and proceeds overhead to a single customer. We will count the riser and overhead service drop together as one attachment. However, if the riser serves more than one customer, it will be counted separately.

In those areas where the joint users system is underground and it uses our poles primarily for road crossings, all UG pedestals within 6 feet of one of our poles shall be counted as a "ground point" connection. We do not have a tariff for these at present but expect to request one during our next rate case.

### Examples:

- A main cable dead ends and goes underground. 2 attachments if guying is at same elevation, 3 if not.
- A main cable 90 degree corner due to our line doing same (e.g. a C-4) will be 1 attachment if guys are at same elevation. A 90 degree turn by the joint user alone will be 2 attachments minimum, perhaps as many as 4 if guying is not at same elevations.
- A service drop attached to a JPEC provided meter pole: 1 attachment.
- Multiple service drops attached to a lift pole: Attachment count equals number of service drops.
- A main cable attaches to our pole with an underground riser to serve an underground subdivision: 2 attachments.

# JOINT USE AGREEMENT

THIS AGREEMENT, made as of the \_\_\_\_ day of \_\_\_\_\_, by and between Jackson Purchase Energy Corporation, a Kentucky corporation, hereinafter referred to as JPEC and Ballard Rural Telephone Corporation, a Kentucky corporation, hereinafter referred to as BRTC.

## WITNESSETH:

WHEREAS, in the areas in the Commonwealth of Kentucky served by both parties certain utility poles are presently used jointly by JPEC and BRTC, and

WHEREAS, the parties desire to continue such joint use and to use other poles jointly in the future, when and where such joint use will be of mutual advantage in meeting their respective service requirements; and

WHEREAS, because of changed conditions and experience gained, and to facilitate administration of joint use, the parties desire enter into a Joint Use Agreement giving due recognition to the fact that the comparative numbers of joint use poles owned by the parties, the respective space allocated to or used by the parties, the concern for the ability to provide reliable service, the relative positions of the parties on the poles all have a bearing on the contribution to be made by the parties both as to ownership and maintenance of joint use poles.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties hereto for themselves, their successors and assigns do hereby covenant and agree as follows:

## ARTICLE I

### DEFINITIONS

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

- A. ATTACHMENTS are wires, cables, strands, materials or apparatuses affixed to a joint use pole now or hereafter used by either party in the construction, operation or maintenance of its plant.
- B. CHANGE IN CHARACTER OF CIRCUITS shall mean any change in either party's facilities that affects either loading on the pole or clearance between the facilities of the parties hereto.
- C. CODE means the National Electrical Safety Code, as it may be amended from time to time.
- D. DAYS shall mean calendar days.
- E. INJURIES include death, personal injury and property damage or destruction.
- F. JOINT USE is maintaining or specifically reserving space for the attachments of both parties on the same pole at the same time.

- G. **JOINT USE POLE** is a pole upon which space is provided under this Agreement for the attachments of both parties, whether such space is actually occupied by attachments or reserved therefore upon specific request.
- H. **LICENSEE** is the party having the right under this Agreement to make attachments to a joint use pole that the other party owns.
- I. **OWNER** is the party owning the joint use pole.
- J. **POLE OR POLES** includes the singular and plural.
- K. **REARRANGING OF ATTACHMENTS** is the moving of attachments from one position to another on a joint use pole.
- L. **RESERVED**, as applied to space on a pole, means unoccupied space provided and maintained by Owner, either for its own use or expressly for Licensee's exclusive use at Licensee's request.
- M. **RIGHT OF WAY** is the legal right to use the property of another.
- N. **STANDARD JOINT USE POLE** means a 40-foot, Class 4 treated pole that meets the requirements of the Code. The parties may agree to use a smaller than Class Four pole, but under no condition shall the standard joint use pole be less than the minimum requirements of the Code.
- O. **STANDARD SPACE ALLOCATION** means an allocation of sufficient space on a joint use pole for the use of each party taking into consideration requirements of the Code, and is more particularly defined as follows:
1. For JPEC, the use of 10 feet of space on 45-foot poles, 8 feet of space on 40 foot poles, and 6 1/2 feet on 35-foot poles measured downward from the top of the pole
  2. For BRTC, the use of 2 feet of space on joint use poles, below the space of JPEC starting at the point that gives adequate Code separation on the pole. If, under the terms of this Agreement, BRTC uses a portion of JPEC's allocated space as measured from the top of the pole, BRTC agrees that its use is permissive and that JPEC shall have the undisputed use of its allocated space. BRTC agrees to move any such attachments within this allocated space at its own cost upon demand of JPEC. Similarly, if JPEC uses a portion of the BRTC 2-foot space, JPEC agrees that such use shall be permissive and agrees to move any such attachment within the 2-foot space upon request.
  3. The foregoing definition of a "normal joint use pole" is not intended to preclude the use of joint poles shorter or taller or of different strength than the normal joint use pole in location where it is mutually agreed such poles will meet the requirements of the parties hereto.
- P. **TRANSFERRING OF ATTACHMENTS** is the removing of attachments from one pole and placing the attachments upon another pole.

ARTICLE II  
TERRITORY AND SCOPE OF AGREEMENT

This Agreement shall cover all poles of each of the parties now existing in joint use and those hereafter erected or acquired within the common operating areas served by the parties excepting poles which in the owner's judgment are necessary for its own sole use.

ARTICLE III  
PERMISSION FOR JOINT USE

Subject to the terms and conditions of this Agreement, each party hereby permits joint use by the other party of any of its poles in accordance with the standard space allocation defined in Article I and the following:

- A. Allocated pole space may, without additional charge, be used by the party to which it is not allocated for the purpose of installing and maintaining street lighting, traffic signal systems, and vertical attachments (such as but not limited to ground wires, gang operated switch control rods and underground risers) if by the terms of the Code the proposed use is authorized and such use does not unreasonably interfere with the use being made by the party to which such space is allocated (such determination will be made solely by the party to which the space is allocated). If Code provisions cannot subsequently be met then billing for the required modifications will be as set forth in Appendix A.
- B. As long as the provisions of the Code are met, unallocated space may be used without additional charge by either party. If Code provisions cannot subsequently be met then billing for the required modifications will be as set forth in Appendix A.
- C. As long as the provisions of the Code in effect at the time the attachments were installed have been met, any joint use pole now in place shall be deemed satisfactory to both parties and adequate for its requirements whether or not the space allocations made herein have been observed.
- D. As long as the provisions of the Code are met, any pole hereafter made joint use shall thereupon be deemed satisfactory to Licensee and space allocations made herein have been observed.

ARTICLE IV  
SPECIFICATIONS

The joint use of poles covered by this Agreement shall at all times be in conformity with all applicable provisions of law and with the minimum requirements of the Code in effect at the time the respective attachments are made, and with such additional requirements as may be mutually approved in writing by the parties.

ARTICLE V  
RIGHT-OF-WAY AND LINE CLEARING

- A. The Owner and Licensee will cooperate as far as may be practicable in obtaining right-of-way for both parties. When a written easement is secured it shall be in sufficient detail for identification and recording, and shall be

subject to inspection by the other party upon request. However, no guarantee is given by the Owner of permission from property owners, municipalities or others for the use of poles by the Licensee, and if objection is made thereto and the Licensee is unable to satisfactorily adjust the matter within a reasonable time, the Owner may at any time, upon notice in writing to the Licensee, require the Licensee to remove its attachments from the poles involved, and the Licensee shall, within ninety (90) days after receipt of said notice, remove its attachments from such poles at its sole expense. Should the Licensee fail to remove its attachments as herein provided, the Owner may remove them at the Licensee's expense, without any liability whatever for such removal or the manner of making it, for which expense the Licensee shall reimburse the Owner on demand. The Owner shall provide a 20' right-of-way whenever possible. Nothing stated herein shall preclude the parties from mutually sharing the cost of right-of-way acquisition

B. Line clearing and trimming will be performed as follows:

1. When constructing a new joint use pole line the Owner shall cut, clear and trim a 20' right-of-way, if possible.
2. In all other instances each party shall be responsible for its own initial and recurring trimming, clearing and cutting.

#### ARTICLE VI

##### PLACING, TRANSFERRING OR REARRANGING ATTACHMENTS

- A. Either party desiring to reserve space on any pole of the other not then designated as a joint use pole shall make written application therefore, specifying the pole involved, the number and kind of its attachments to be placed thereon and the character of the circuits to be used. Within the (10) days after the receipt of such application, the Owner shall notify the applicant in writing whether or not it is excluding said pole from joint use under the provisions of Article II. Upon receipt of notice from Owner that said pole is not excluded, and after completion of any required transferring or rearranging of attachments on said pole or any pole replacement as provided in Article VII, the applicant shall have the right to use said pole as Licensee in accordance with the terms and conditions of this Agreement. Notwithstanding the foregoing, attachments placed by either party on the other's pole without such application and approval shall subject said pole to the terms of this Agreement. In such case, Owner shall have the right to require Licensee to remove within ninety (90) days at its sole expense any such attachments on poles coming within the exceptions described in Article V. Should Licensee fail to remove such attachments, such failure shall constitute default according to Article XIV
- B. Except as herein otherwise expressly provided, each party at its own expense shall place, maintain, rearrange, transfer and remove its own attachments, and shall at all times perform such work promptly and in such a manner as not to interfere with work or service being performed by the other party. Upon completion of work by the Owner that will necessitate transfer of the Licensee's attachments, the Owner shall provide written notice to the Licensee that such transfer must be completed within sixty (60) days. If such transfer of attachments is not completed within sixty (60) days, the old pole shall become the property of the Licensee, and the Licensee

shall save harmless the former Owner of such pole from all obligations, liabilities, damages, costs, expenses, or charges incurred thereafter because of or arising out of the presence, location or condition of such pole or any attachment thereon, whether or not it is alleged that the former Owner was negligent or otherwise. Licensee shall pay the former Owner the present in-place value, as set forth in Appendix A, for said pole.

ARTICLE VII

ERECTING, REPLACING OR RELOCATING POLES

- A. Whenever any jointly used pole, or any pole about to be so used under the provisions of this Agreement, is insufficient in size or strength for the existing attachments and for the proposed immediate additional attachments thereon, the Owner shall, within sixty (60) days, replace such pole with a new pole of the necessary size and strength, and make such other changes in the existing pole line in which such pole is included, as may be made necessary by the replacement of such pole and the placing of the Licensee's circuits as proposed. By mutual Agreement, the time period may be shortened or extended.
- B. The parties recognize and agree that there are inherent dangers involved in the transmission and distribution of electricity. The parties agree that unforeseeable emergency conditions will exist from time to time. When due to accidents, storm damage, etc., it is necessary for the Licensee to replace the Owner's pole immediately to restore service to its customers or to eliminate a hazardous condition and the Owner cannot perform the work in time to meet the Licensee's requirements, Licensee may replace the Owner's pole. Licensee will make all of its required facility changes or transfers and will secure the old pole to the new pole so the Owner may make its transfers when feasible. Licensee shall bill the Owner the total cost of the new pole in accordance with Appendix B. Owner shall continue to own the old pole and shall be responsible for its removal, and the new pole will become the property of the original owner.
- C. Whenever it is necessary to change the location of a jointly used pole, by reason of any state, municipal or other governmental requirement, or the requirements of a property owner, the Owner shall, before making such change in location, give notice thereof in writing (except in cases of emergency) to the Licensee, specifying in such notice the time of such proposed relocation, and the Licensee shall within sixty (60) days, transfer its attachment to the pole at the new location.
- D. In any case where the parties hereto shall conclude arrangements for the joint use of any new poles to be erected, the ownership of such poles shall be determined by mutual agreement. The party then owning the lesser number of joint poles under this Agreement should be allowed the opportunity to promptly erect the new joint poles and be the owner thereof or if the party owning the lesser number of poles cannot install the poles in time to meet the service requirements of the party owning the greater number of poles, the party owning the greater number of poles may set the poles and may bill the other party the total cost of setting said poles in accordance with Appendix A. The party owning the lesser number of poles, if billed, becomes the owner of the new joint use poles.
- E. Whenever either party hereto is about to erect new poles, either as an additional pole line, as an extension of an existing pole line, or as the reconstruction of an existing pole line, it shall notify the other in writing at least thirty (30) days before beginning the work (short notice, including verbal notice subsequently confirmed in writing, may be given in cases of emergency) and shall submit with such notice its plan showing the proposed location and size of the new poles, and circuits it will use thereon. The other party shall, within fifteen (15) days after the receipt of such notice, reply in writing to the party erecting the new poles, stating whether such other

party does, or does not, desire space on the said poles, and if it does desire space thereon, the character of the circuits it desires to use and the amount of space it wishes to reserve. This notice of desire to establish joint use shall include detail plans of any changes in the plans of the other party that are desired in order to permit the establishment of joint use. If such other party and number of circuits and attachments are such that the owner does not wish to exclude the poles from poles suitable for the said joint use shall be erected in accordance with the provisions and the payment of costs as provided in this Agreement.

F. The costs of erecting joint poles coming under this Agreement, either as new pole lines, as extensions of existing pole lines, or to replace existing poles, either existing jointly used poles or poles not previously involved in joint use, shall be borne by the parties as follows:

1. Whenever operating and safety conditions prohibit Owner from replacing an existing pole that needs to be replaced, Licensee shall replace the pole and bill Owner in accordance with Appendix A times 1.25.
2. A normal joint pole, or a joint pole shorter and/or smaller than the normal pole, shall be erected at the sole expense of the Owner, except as provided in Section G of this Article.
3. In the case of a pole taller and/or stronger than the normal pole, the extra height and/or strength of which is due wholly to the Owner's requirements, shall be erected at the sole expense of the Owner.
4. In the case of a new pole taller and/or stronger than the normal pole, the extra height and/or strength of which is due wholly to the Licensee's requirements, the Licensee shall pay to the Owner the extra costs for the additional height and/or strength as set forth in Appendix A.
5. Where an existing jointly used pole is prematurely replaced by a new one solely for the benefit of the Licensee, the Licensee shall pay the Owner the present in-place value of the existing pole and costs of replacing or transferring all attachments in accordance with Appendix A and Appendix C, and the replaced pole shall be removed and retained by the Owner.
6. In the case of a new pole taller and/or stronger than the normal pole, the extra height and/or strength of which is due, to the requirements of both parties, the Licensee shall pay to the Owner a sum equal to one-half the excess height and/or strength as set forth in Appendix A, the rest of the cost of erecting such pole to be borne by the Owner.
7. In the case of a new pole taller and/or stronger than the normal pole, where height and/or strength in addition to that needed for the purpose of either or both of the parties hereto is necessary in order to meet the requirements of the code, public authority or of property owners, the excess cost of such pole due to such requirements shall be borne by the Owner.
8. If Licensee only requires the addition of a pole in an existing line because of span length or terrain, the Owner will furnish and erect said pole at the sole expense of the Licensee, and pole shall remain property of Owner. The charges shall be as set forth in Appendix A.
9. Where JPEC has a line that crosses an BRTC line and the provisions of the code are met and BRTC desires to set a pole in its line and requests JPEC to attach to said pole, BRTC shall bear all initial and



recurring costs of placing and maintaining said pole, except the cost of making and transferring JPEC attachments.

- G. In any case where a pole is erected hereunder to replace another pole solely because such other pole is not tall enough, or of the required strength, to provide adequately for the Licensee's requirements, or where such pole, whether it has space reserved for the Licensee's use or not, had at the time of its erection been pronounced by the Licensee as satisfactory and adequate for its requirements, the Licensee shall, upon erection of the new pole, pay to the Owner, in addition to any amounts payable by the Licensee under paragraphs 3, 4, or 5 of Section F of this Article, a sum equal to the present in-place value as set forth in Appendix A, for the pole which is replaced and the pole removed shall remain the property of the Owner.
- H. In any case where by mutual consent it is desirable to change the ownership of a pole and Licensee erects and owns a joint pole to replace an existing pole of the Owner (instead of the Owner doing so as it is contemplated by Section A of this Article) such Licensee shall pay to the Owner of the replaced pole a sum equal to the present in-place value, as set forth in Appendix A, for the pole which is replaced and the pole removed shall remain the property of the Owner and shall be removed by the Owner.

#### ARTICLE VIII

##### MAINTENANCE OF FACILITIES

- A. The Owner shall, at its own expense, maintain its joint use poles in a safe and serviceable condition and shall undertake any appropriate safety measures, including without limitation reasonable pole inspections. The Owner's responsibility for maintaining a safe and serviceable condition of its poles shall be in accordance with the requirements of the Code, and shall replace poles that become defective, in accordance with the provisions of Article VII.
- B. Each party shall, at its own expense, at all times maintain all of its attachments in safe condition, thorough repair, and in accordance with the requirements of the Code.
- C. The parties hereby agree that a cooperative approach will be taken in solving noise or inductance problems that may occur.

#### ARTICLE IX

##### ABANDONMENT OF JOINT USE POLES

- A. Anytime Owner desires to abandon any joint use pole, it shall give Licensee at least sixty (60) days written notice. If, at the expiration of such period, Owner shall have no attachments on such pole but Licensee shall not have removed all of its attachments therefrom, such pole shall thereupon become the property of Licensee, Licensee shall save harmless the former Owner from all obligations, liabilities, damages, costs, expenses, or charges incurred thereafter because of or arising out of the presence, location or condition of such pole or any attachment thereon, whether or not it is alleged that the former Owner was negligent or otherwise.

- B. Licensee may at any time abandon a joint use pole by removing therefrom all of its attachments, and giving due notice thereof in writing to Owner.

## ARTICLE X

### ADJUSTMENT PAYMENTS

- A. The following adjustment payments are applicable for all poles jointly used under this Agreement.
1. For BRTC owned joint poles 35' and shorter, JPEC shall pay \$17.42 per year each
  2. For JPEC owned joint poles 35' and shorter, BRTC shall pay \$13.79 per year each.
  3. For all poles, 40' and taller, regardless of ownership, the licensee shall pay the owner \$17.75 per year each.
- B. Adjustment payments hereunder shall cover rentals accruing during the calendar year and shall be based on the number of poles on which space is occupied or reserved on the first day of December of the year in which the rentals accrue. Within thirty (30) days following such date, or as soon as practical thereafter, each party shall submit a written statement to the other party giving the number of poles on which space was occupied by or reserved for the party as of such date.
- C. The total adjustment payment due each party shall be determined by multiplying the poles owned and licensed by each party, by the adjustment payment.
1. The smaller total amount covered above shall be deducted from the larger amount and JPEC or BRTC, which ever shall owe the larger amount, shall pay to the other the difference between said two amounts as the net adjustment payment due for the year involved. Within thirty (30) days after the first day of January next, or as soon as practical thereafter, ensuing after the date of this Agreement, and within thirty (30) days after the first day of each January, or as soon as practical thereafter, during the time this Agreement shall be in effect, the party to which said adjustment payment is owed as of said first day of January, shall submit a written statement (the "Schedule of Pole Rentals") to the other party giving the correct amount owed by the other party.
  2. The adjustment payment herein provided for shall be paid within thirty (30) days after the bill has been submitted, unless said party disputes the amount of such bill within ten (10) days from receipt thereof. In case of such dispute, payment shall be made within thirty (30) days after the bill has been submitted of the amount that is admitted to be due; an agreement concerning the disputed amount shall be attempted with all reasonable dispatch by negotiation. Failing to reach any such agreement by negotiation, either party may make formal written demand on the other for the amount claimed to be due; and if payment thereof is not made within thirty (30) days, suit may be brought for the amount claimed.
- D. The rates set forth in Paragraph A above shall be effective as of January 1, 2003 and shall remain in effect through December 31, 2003 (the "Base Rate"). The Base Rate shall be escalated, effective January 1, 2004, and

annually thereafter, based upon the previous annual Cable Plant Index ("TPI") for poles for the region. If requested, JPEC shall provide BRTC with the documentation referred to in Paragraph C (1) above.

#### ARTICLE XI

##### INVENTORY OF ATTACHMENTS

At intervals not exceeding five (5) years, the parties shall conduct a field inventory of all attachments. If there is any difference in the number of attachments found by the inventory and the number arrived at by tabulating those reported, correction will be made by retroactive billing for any attachments identified as being responsible for the difference, and any remaining difference will be spread evenly over the years since the last inventory and billing adjusted accordingly. Each party shall share equally the cost of making such inventory of attachments.

#### ARTICLE XII

##### JOINT ANCHORS

The Owner where practicable shall, upon request from Licensee, place anchors suitable for joint use upon consideration of the joint load and guy lead requirements. The cost of the anchor shall be shared, and will be billed, as set forth in Appendix A. Each party shall install its own guy wires.

#### ARTICLE XIII

##### GROUNDING AND BONDING

Grounding and bonding will at all times meet the requirements of the Code.

#### ARTICLE XIV

##### DEFAULTS

- A. If either party shall fail to discharge any of its obligations under this Agreement and such failure shall continue for thirty (30) days after notice thereof in writing from the other party, all rights of the party in default hereunder, pertaining to making attachments to additional poles of the other, shall be suspended. If such default shall continue for a period of ninety (90) days after such suspension, the other party may forthwith terminate the right of the defaulting party to attach to additional poles of the other party. Any such termination of the right to attach to such additional poles of the other by reason of any such default shall not abrogate or terminate the right of either party to attach to existing joint use poles or to maintain existing attachments, 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 such 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 such attachments.
- B. In the event either party should fail to perform its obligations either during the term of this Agreement or after termination made in accordance with the terms of this Article or Article XIX or fail to properly maintain or

promptly replace joint use poles thereto after sixty (60) days written notice from the other, the other party shall have the right, but not the obligation, to maintain such poles or to replace the same at the expense of the party so failing, and shall be fully indemnified for all expenses, costs and damages whatever in taking such action or the manner of taking it.

#### ARTICLE XV

##### LIABILITY AND DAMAGES

Either party hereto, to the fullest extent permitted by law, agrees to and shall indemnify and hold harmless the other Party from and against any and all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the joint use of the poles, and or any acts or omissions under this Agreement. The laws of the Commonwealth of Kentucky shall govern any interpretations regarding this Agreement or any activities arising hereunder. Any suit or cause of action brought to enforce the terms of regarding this Agreement which may arise between the parties shall be brought in a court of competent jurisdiction in McCracken Circuit Court of the United States District Court for the Western District of Kentucky.

#### ARTICLE XVI

##### RIGHTS OF OTHER PARTIES

- A. If either party has, prior to the execution of this Agreement, conferred 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, 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 Paragraph B below, except where such outside parties have by this Agreement acquired enforceable rights or privileges to make attachments which do not meet such 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: (a) such attachments shall not be located within the space allocation of Licensee, unless Licensee concurs in such occupancy. Such concurrence shall in no way waive Licensee's right to occupy its allocated space in the future. Owner shall derive all of the revenue accruing from such outside parties.

#### ARTICLE XVII

##### NOTIFICATION PROCEDURES

Wherever in this Agreement notice is required to be given by either party hereto to the other, such notice shall be in writing mailed or delivered to the of JPEC at its office at 2900 Irvin Cobb Dr., Paducah, KY 42001 or BRTC at its office at \_\_\_\_\_, as the case may be, or to such other addressee as either party may from time to time designate in writing for that purpose.

#### ARTICLE XVIII

##### TERM OF AGREEMENT

- A. This Agreement shall continue in full force and effect until the 31st day of December, 2010. This Agreement shall continue from year to year thereafter until terminated by either party, giving to the other six months notice in writing of intention to terminate this Agreement. At any time thereafter, adjustment payment rates applicable under this Agreement shall be subject to joint review and revision upon the written request of either party. In case of revision of the adjustment payment rates as herein provided, the new adjustment payment rates agreed upon shall apply, starting with the annual bill next rendered and continue until again adjusted.
- B. Revisions of the adjustment payments shall be based on experience resulting from previous administration of this Agreement. Any changes shall take into account the original cost factors pertinent to the establishment of the pole facilities involved in all joint use existing under this Agreement at the time of the review. If, within 90 days after the receipt of the request set forth in Article XVIII A above, by either party from the other, the parties hereto fail to agree upon a revision of such rate, then the adjustment payment per pole shall be established at the then existing Base Rate, as escalated by the TPI for a period of two years. The adjustment payment per pole for those systems on the reciprocal rate shall be an amount equal to one-half of the then average annual total cost per pole of the party owning the greater number of poles, based on averaging plant cost factors of providing and maintaining the joint poles covered by this Agreement. For those systems not on the reciprocal rate, the adjustment payment per pole shall be an amount equal to 56 percent (for JPEC) of the then average annual total cost per pole based on the average in-plant poles covered by this Agreement, and the adjustment payment per pole shall be an amount equal to 44 percent (for BRTC) of the then average annual total cost per pole based on the average in-plant cost factors of providing and maintaining the joint poles covered by this Agreement.

#### ARTICLE XIX

##### ASSIGNMENT OF RIGHTS

- A. Except as otherwise provided in this Agreement, neither party hereto shall assign or otherwise transfer this Agreement, in whole or in part, without the written consent of the other party, provided that either party shall have the right without such consent to mortgage any or all of its property, rights, privileges and franchises, or to 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 such lease, transfer, merger or consolidation its rights and obligations

herunder shall pass to such successors and assigns; and provided, further, that subject to all of the terms and conditions of this Agreement, either party may without such consent permit any corporation conducting a business of the same general character as that of such party, with which it is affiliated by corporate structure, to exercise the rights and privileges of this agreement in the conduct of its said business.

- B. For the purposes of this Agreement, all attachments maintained on any joint use pole by the permission of either party hereto, as provided in Paragraph A above, shall be considered the attachments of the party granting such permission, and the rights, obligations and liabilities of such party under this Agreement, in respect to such attachments, shall be the same as if it were the actual owner thereof.
- C. The attachments of each party hereto or of others permitted by this Agreement shall at all times be and remain its or their property, with the full right of removal, and shall not become subject to any liens against the other party.

#### ARTICLE XX

##### WAIVER OF TERMS OF 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 or any such terms or conditions, but the same shall be and remain at all times in full force and effect.

#### ARTICLE XXI

##### EXISTING AGREEMENTS

Any existing agreement between the parties hereto for the joint use of wood poles upon a rental basis within the territory covered by this Agreement is, by mutual consent, hereby abrogated and annulled.

#### ARTICLE XXII

##### NO EFFECT ON FRANCHISE RIGHTS

Notwithstanding anything elsewhere herein provided, nothing contained in this Agreement shall abrogate, limit or affect any obligation of either party under any franchise granted to either party by any municipal corporations or its predecessors.

#### ARTICLE XXIII

##### SOURCE OF PAYMENTS

The obligations of JPEC herunder shall be payable solely from the funds of Jackson Purchase Energy Corporation.

#### ARTICLE XXIV

##### SUPPLEMENTAL ROUTINES AND PRACTICES

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

provisions of this Agreement. Any such supplemental operating routines or working practice must be authorized and approved by the management level officer or employee executing or authorized to execute this contract.

**ARTICLE XXV**

**NO JOINT OWNERSHIP**

The Licensee of a joint use pole shall acquire no ownership of or interest in such a pole, the Licensee's rights therein being limited to the right to compliance with the terms and conditions contained in this Agreement.

**ARTICLE XXVI**

**AGREEMENT AFFECTS ONLY PARTIES HERETO**

Except only insofar as the express terms of this Agreement make the rights hereunder available to the successors or assigns of the parties hereto, the provisions of this Agreement shall not be interpreted to confer any right of action at law or in equity upon any parties except the parties hereto.

IN WITNESS WHEREOF, the parties here to have caused these presents to be executed in duplicate, and their corporate seals to be affixed thereto by the respective officers thereunto duly authorized, on the day and year first above written.

**JACKSON PURCHASE ENERGY CORPORATION**

By: \_\_\_\_\_  
Title: **President & CEO**

Witness: \_\_\_\_\_

**BALLARD RURAL TELEPHONE COOPERATIVE, INC.**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Witness: \_\_\_\_\_

**APPENDICES A, B & C**

These Appendices, effective as of consisting of four pages, will be used to determine the cost responsibility and amounts to be billed for modifications in accordance with this joint use agreement. Notification forms required to carry out the provisions of this Agreement will be furnished as needed. Annually after the execution of this Agreement, all Appendices shall be escalated in accordance with Article X, Subparagraph E set forth above.

Approved

\_\_\_\_\_  
Jackson Purchase Energy Corporation

By: \_\_\_\_\_

Title: **President & CEO**



Date: \_\_\_\_\_

**BRTC COMMUNICATIONS, INC.**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Appendix A (continued)

Effective 1/1/2000

Additional payments to be made by either the Telephone or Power Company

Payment for one half cost of anchor and rod shall be as follows

3/4" ROD - \$47.00 Double Eye, 8" Single Helix Anchor

1" or larger ROD - \$66.00 Triple Eye, 8" Double Helix Anchor or Larger

Payment under Article VII, Section F, Paragraph 8, shall be the current cost to plant plus an attachment cost of \$25.00 for each cable, conductor, or neutral wire.

If Licensee is not present at any time that Owner removes an old pole and installs a new pole, and the Owner is required to make a second trip to the site, Licensee hereby agrees to pay \$30.00 to Owner.

IVPPA

Based on 2001 TPI (0.815%)  
 Developed 12/10/2001

APPENDIX B

Effective 1/1/2003

The correct cost of treated poles for emergency condition as discussed in Article VII, paragraph B is as follows:

Height of Pole	Class 1	Class 2	Class 3	Class 4	Class 5	Class 6	Class 7	Class 9
25'	443	421	402	386	373	354	343	321
30'	509	537	504	477	451	424	399	368
35'	603	582	547	511	487	459	424	400
40'	722	685	636	617	560	507		
45'	864	806	737	682	651			
50'	921	863	828	757	702			
55'	1140	1030	990	906				
60'	1541	1430	1312	1213				
65'	1719	1597	1454					
70'	2090	1838						

Based on 2001 TPI (0.815%)  
 Developed 12/10/2001

APPENDIX C

Effective 1/1/2002

Payments to the Power Distributor by the Telephone Company

A. 1a Primary	0 - 60' Angle		53
	Dead End		79
B. 3a Primary	0 - 60' Angle		197
	Dead End		314
C. Guy			71
D. 1a Transformer & Connections			
	25 KVA and Less		132
Greater than	25 KVA - up to 100 Kva		290
E. Service Conductors			
	Both Wire		13
	Multiwire		13
F. 3a Disconnect Switches			263
G. 3a Group Operated Switch			1318
H. Security Light & Arm			82
I. Street Light & Arm			163
J. Items not Listed			
K. Move Pole		Actual Cost	385

Payment to the Telephone Company by the Power Company

A. Move Pole		385
B. Move Guy		65
C. Transfer Drop		12
D. Transfer Multiple Drop		25
E. Transfer Wire Terminal		12
F. Transfer Cable Attachment		48
G. Transfer Cable Dip		73
H. Transfer Pole Mounted Apparatus or Load Coil Case		84
I. Transfer Cross Box or Dryer		109
J. Transfer Terminal less than 100 Pairs		12
K. Move or Attach Cable		23
L. Retrace Cable		121
M. Transfer Guy		45
N. Items not Listed		
		Actual Cost

Based on 1958 TPI @ 2000  
 Developed 12/19/58

APPENDIX A  
 PRESENT IN-PLACE VALUES OF POLAR

Through 1/1/2001

Age of Pole in Years

Pole Height and Class	New	In-Place Values of Pole (Dollars)										
		1-3	4-6	7-9	10-12	13-15	16-18	19-21	22-24	25-27	28-30	
27-4	215	167	139	121	108	99	90	81	73	64	56	48
2	226	188	159	140	126	114	103	93	84	75	66	57
3	237	200	171	152	138	125	114	103	93	84	75	66
4	248	212	181	160	145	131	119	108	97	87	77	68
5	259	224	193	171	155	140	127	115	104	93	83	73
6	270	235	204	182	165	149	135	122	110	98	87	77
7	281	246	215	193	175	158	143	129	116	104	92	81
8	292	257	226	204	185	167	151	136	123	110	98	86
9	303	268	237	215	195	177	160	144	130	116	103	91
10	314	279	248	226	205	187	169	152	137	123	109	96
11	325	290	259	237	215	197	179	161	144	130	115	102
12	336	301	270	248	225	206	188	169	151	135	120	106
13	347	312	281	259	235	215	197	178	159	142	126	111
14	358	323	292	270	245	224	205	187	167	149	132	116
15	369	334	303	281	255	233	212	192	172	153	135	118
16	380	345	314	292	265	242	219	198	177	157	138	120
17	391	356	325	303	275	251	227	205	184	164	145	125
18	402	367	336	314	285	260	235	212	191	170	148	128
19	413	378	347	325	295	269	243	219	197	175	152	131
20	424	389	358	336	305	278	251	226	203	180	155	134
21	435	400	369	347	315	287	259	233	210	185	158	137
22	446	411	380	358	325	296	267	240	216	190	161	140
23	457	422	391	369	335	305	275	247	222	195	164	143
24	468	433	402	380	345	314	283	254	228	200	167	146
25	479	444	413	391	355	323	291	261	234	205	170	149
26	490	455	424	402	365	332	300	268	240	210	173	152
27	501	466	435	413	375	341	308	275	246	215	176	155
28	512	477	446	424	385	350	316	282	252	220	179	158
29	523	488	457	435	395	359	324	289	258	225	182	161
30	534	499	468	446	405	368	332	296	264	230	185	164
31	545	510	479	457	415	377	340	303	270	235	188	167
32	556	521	490	468	425	386	348	310	276	240	191	170
33	567	532	501	479	435	395	356	317	282	245	194	173
34	578	543	512	490	445	404	364	324	288	250	197	176
35	589	554	523	501	455	413	372	331	294	255	200	179
36	600	565	534	512	465	422	380	338	300	260	203	182
37	611	576	545	523	475	431	388	345	306	265	206	185
38	622	587	556	534	485	440	396	352	312	270	209	188
39	633	598	567	545	495	449	404	359	318	275	212	191
40	644	609	578	556	505	458	412	366	324	280	215	194
41	655	620	589	567	515	467	420	373	330	285	218	197
42	666	631	600	578	525	476	428	380	336	290	221	200
43	677	642	611	589	535	485	436	387	342	295	224	203
44	688	653	622	600	545	494	444	394	348	300	227	206
45	699	664	633	611	555	503	452	401	354	305	230	209
46	710	675	644	622	565	512	460	408	360	310	233	212
47	721	686	655	633	575	521	468	415	366	315	236	215
48	732	697	666	644	585	530	476	422	372	320	239	218
49	743	708	677	655	595	539	484	429	378	325	242	221
50	754	719	688	666	605	548	492	436	384	330	245	224
51	765	730	699	677	615	557	500	443	390	335	248	227
52	776	741	710	688	625	566	508	450	396	340	251	230
53	787	752	721	699	635	575	516	457	402	345	254	233
54	798	763	732	710	645	584	524	464	408	350	257	236
55	809	774	743	721	655	593	532	471	414	355	260	239
56	820	785	754	732	665	602	540	478	420	360	263	242
57	831	796	765	743	675	611	548	485	426	365	266	245
58	842	807	776	754	685	620	556	492	432	370	269	248
59	853	818	787	765	695	629	564	500	438	375	272	251
60	864	829	798	776	705	638	572	507	444	380	275	254
61	875	840	809	787	715	647	580	515	450	385	278	257
62	886	851	820	798	725	656	588	522	456	390	281	260
63	897	862	831	809	735	665	596	530	462	395	284	263
64	908	873	842	820	745	674	604	537	468	400	287	266
65	919	884	853	831	755	683	612	545	474	405	290	269
66	930	895	864	842	765	692	620	552	480	410	293	272
67	941	906	875	853	775	701	628	560	486	415	296	275
68	952	917	886	864	785	710	636	567	492	420	299	278
69	963	928	897	875	795	719	644	575	498	425	302	281
70	974	939	908	886	805	728	652	582	504	430	305	284
71	985	950	919	897	815	737	660	590	510	435	308	287
72	996	961	930	908	825	746	668	598	516	440	311	290
73	1007	972	941	919	835	755	676	606	522	445	314	293
74	1018	983	952	930	845	764	684	614	528	450	317	296
75	1029	994	963	941	855	773	692	622	534	455	320	299
76	1040	1005	974	952	865	782	700	630	540	460	323	302
77	1051	1016	985	963	875	791	708	638	546	465	326	305
78	1062	1027	996	974	885	800	716	646	552	470	329	308
79	1073	1038	1007	985	895	809	724	654	558	475	332	311
80	1084	1049	1018	996	905	818	732	662	564	480	335	314
81	1095	1060	1029	1007	915	827	740	670	570	485	338	317
82	1106	1071	1040	1018	925	836	748	678	576	490	341	320
83	1117	1082	1051	1029	935	845	756	686	582	495	344	323
84	1128	1093	1062	1040	945	854	764	694	588	500	347	326
85	1139	1104	1073	1051	955	863	772	702	594	505	350	329
86	1150	1115	1084	1062	965	872	780	710	600	510	353	332
87	1161	1126	1095	1073	975	881	788	718	606	515	356	335
88	1172	1137	1106	1084	985	890	796	726	612	520	359	338
89	1183	1148	1117	1095	995	899	804	734	618	525	362	341
90	1194	1159	1128	1106	1005	908	812	742	624	530	365	344
91	1205	1170	1139	1117	1015	917	820	750	630	535	368	347
92	1216	1181	1150	1128	1025	926	828	758	636	540	371	350
93	1227	1192	1161	1139	1035	935	836	766	642	545	374	353
94	1238	1203	1172	1150	1045	944	844	774	648	550	377	356
95	1249	1214	1183	1161	1055	953	852	782	654	555	380	359
96	1260	1225	1194	1172	1065	962	860	790	660	560	383	362
97	1271	1236	1205	1183	1075	971	868	798	666	565	386	365
98	1282	1247	1216	1194	1085	980	876	806	672	570	389	368
99	1293	1258	1227	1205	1095	989	884	814	678	575	392	371
100	1304	1269	1238	1216	1105	998	892	822	684	580	395	374



January 10, 2003

Rich Sherrill  
Jackson Purchase Energy Corporation  
2900 Irvin Cobb Drive  
Paducah, KY 42022-4030

Dear Mr. Sherrill:

After reviewing your proposal on the Joint Use Pole Agreement, Ballard Telephone Cooperative can not agree with the pricing that you have proposed. We also have an issue with some of the language in this Agreement.

We have been in contact with Kyle Willard, Public Service Commission staff, regarding this issue. Mr. Willard stated to us that JPEC does not have a tariff filed with the Utilities Companies at this time and also that a tariff is not required. He and the Commission staff have decided that each utility should be required to file a tariff much like the tariff you have filed for C.A.T.V. for their attachments to utility poles. Mr. Willard also stated that the average cost per pole attachment is between \$6.00 to \$7.00 per pole. If this is the average across the nation, I think your price is completely out of line with this average.

I agree that the existing pole attachment prices are low in cost. Could you show us a formula of justification for the proposed pole cost?

Ballard Telephone will be willing to negotiate a Joint Use Agreement for pole attachments. If we should fail to reach an agreement, Ballard Telephone's Attorney will then issue a formal complaint with the Public Service Commission to settle this dispute.

Please advise if you have any questions.

Sincerely,

**BALLARD RURAL TELEPHONE COOPERATIVE CORPORATION, INC.**

  
Harlon E. Parker  
General Manager

**BALLARD RURAL TELEPHONE COOPERATIVE CORPORATION, INC.**

9 West Second Street • P.O. Box 209 • La Center, Kentucky 42056-0209  
Phone/270.865.5186 • Fax/270.665.9186 • www.brtc.net



Jackson Purchase Energy  
P.O. Box 4030 • 2900 Irvin Cobb Drive  
Paducah, KY 42002-4034  
270/442-7321 • 800/633-4044  
Your Cooperative Partner by Choice  
Visit Our Web Site [www.JPEnergy.com](http://www.JPEnergy.com)

February 5, 2003

Ballard Rural Telephone Cooperative Corporation, Inc.  
P.O. Box 209  
La Center, KY 42056-0209

Attn: Mr. Hurlon E. Parker, General Manager

RE: Joint Use Contract

Dear Sir:

I apologize for taking so long to respond to your January 10, 2003 letter regarding our proposed Joint Use Agreement. We would be happy to meet with you to discuss this document and are willing to negotiate any of the terms and conditions therein. Please be advised, however, that our Board has decided that all joint users should pay the same rates and any deviation from those stated in the Agreement would require their approval.

For your information, the rates stated in the Agreement are identical to those charged by the majority, if not all, of the TVA distributors in 2002. Bell South has agreed to these rates and we expect that Alltel will also. I would also like to note that the referenced rates were indexed upward for 2003 by slightly over 2% subsequent to our preparation of the proposed document. While we do not intend to implement this adjustment for 2003 for BRTC, we will do so in all future years as provided for in the Agreement.

We agree that the stated rates represent a significant increase. However, we believe they are fair and reasonable considering the length of time since the last adjustment and their equivalence to rates charged by so many other utilities in our area.

If you would like to propose rates and/or a rate structure different from those indicated in the document, please do so at your earliest convenience. Also, please advise which of the contract provisions that you wish to discuss.

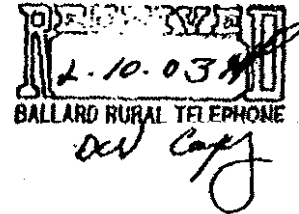
Please call or email to set a mutually convenient time to meet to discuss all issues of concern. In the interim, we will be forwarding the 2003 joint use billing utilizing the rates included in the proposed Agreement.

Very truly yours,

JACKSON PURCHASE ENERGY CORPORATION

Richard T. Sherrill, PE  
Vice President - Distribution Operations and Engineering

Cc: Mr. Kelly Nuckols, President and CEO  
Ms. Melissa D. Yates



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April 23, 2003

Jackson Purchase Energy  
P.O. Box 4030 • 2900 Irvin Cobb Dr  
Paducah, KY 42002-40  
270/442-7321 • 800/633-44

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Ballard Rural Telephone Cooperative Corporation, Inc.  
P.O. Box 209  
La Center, KY 42056-0209

Attn: Mr. Harlon E. Parker, General Manager

Re: Termination of Joint Use Agreement

Dear Sir:

Unfortunately, it appears that we are unable to reach an agreement on a schedule of rentals for pole attachments in order to amend the Joint-Use of Wood Poles Agreement ("Joint Use Agreement"). Accordingly, please allow this to serve as notice, pursuant to Article XX of the current joint-use agreement between our companies, of Jackson Purchase Energy Corporation's ("JPEC") intent to terminate this Agreement.

As per the terms of the joint use agreement, the current agreement will terminate effective three years from the date of your receipt of this letter. You should begin removal of your attachments from our poles no later than six months from the date of your receipt of this letter. All attachments should be removed from JPEC's poles prior to the expiration of the three-year period. We will, of course, do the same. Further, as of this date, JPEC requests that your company make no new pole attachments without the prior, written consent of JPEC.

We have enclosed the billing for 2003 using the rates set out in the existing contract. Payment is due immediately.

Of course, we remain available to discuss these issues at any time.

Sincerely,

G. Kelly Nuckols, President/CEO

GKN:RTS:smf

C: Mr. Kelly Nuckols, President/CEO  
Ms. Melissa D. Yates, Denton & Keuler



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Jackson Purchase Energy  
P.O. Box 4030 • 2900 Irwin Cobb Drive  
Paducah, KY 42002-4030  
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Visit Our Web Site [www.jpenergy.com](http://www.jpenergy.com)

March 27, 2003

Billing for 2003

Attn: Chris Denton  
Ballard Rural Telephone Cooperative  
P.O. Box 209  
LaCenter, Ky. 42056

270-462-3611

JPEC	Description	Number	Cost	Total Cost
143.000	2003 Ballard Rural attachments to JPEC:	3282	\$3.00	\$9,876.00
	2003 JPEC attachments to Ballard Rural:	170	\$4.00	\$680.00
	Total Amount Due			\$9,196.00

PLEASE KEEP THIS SHEET FOR YOUR RECORDS. THANK YOU.



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Jackson Purchase Energy  
P.O. Box 4030 • 2900 Irvin Cobb Drive  
Paducah, KY 42002-4030  
70442-7321 • 800/615-2044

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March 27, 2003

Billing for 2003

Attn: Chris Denton  
Ballard Rural Telephone Cooperative  
P.O. Box 209  
LaCenter, Ky. 42050

270-462-3611

JPEC	Description	Number	Cost	Total Cost
143.000	2003 Ballard Rural attachments to JPEC:	3292	\$3.00	\$9,876.00
	2003 JPEC attachments to Ballard Rural:	170	\$4.00	\$680.00
	Total Amount Due			\$10,556.00

PLEASE RETURN THIS SHEET WITH YOUR PAYMENT. THANK YOU.



Your Touchstone Energy Partner  
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