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January 30, 2004

Thomas M. Dorman  
Executive Director  
Public Service Commission  
211 Sower Blvd.  
P. O. Box 615  
Frankfort, KY 40601

RECEIVED  
FEB 02 2004  
PUBLIC SERVICE  
COMMISSION

2004-00036  
**Re: *Formal Complaint of Ballard Rural Telephone Cooperative Corporation, Inc. v.  
Jackson Purchase Rural Electric Cooperative Corporation***

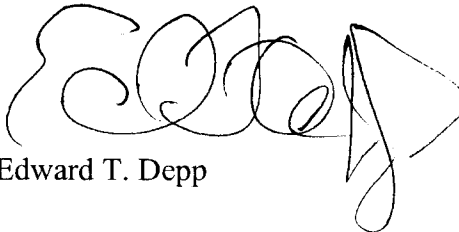
Dear Mr. Dorman:

I have enclosed for filing with the Commission an original and eleven (11) copies of the formal complaint of Ballard Rural Telephone Cooperative Corporation, Inc. against Jackson Purchase Rural Electric Cooperative Corporation. Please file-stamp one of the copies and return it to us in the enclosed, self-addressed, stamped envelope.

Thank you. If you have any questions, please call us.

Sincerely,

DINSMORE & SHOHL LLP

  
Edward T. Depp

ETD/pa  
Enclosures

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

FEB 02 2004

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.

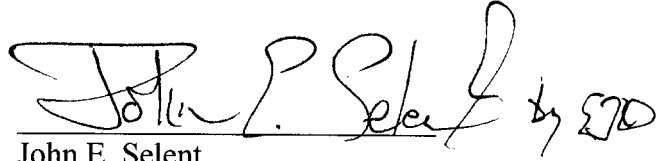
32. Ballard Rural has been damaged by being forced to pay pole attachment rates that are different than JPE's tariffed pole-attachment rates and the pole attachment rates charged to other parties attaching to JPE utility poles.

**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,

A handwritten signature in black ink, appearing to read "John E. Selent by ETD". The signature is written in a cursive style and is positioned above a horizontal line.

John E. Selent

Edward T. Depp

**DINSMORE & SHOHL LLP**

1400 PNC Plaza

500 W. Jefferson Street

Louisville, KY 40202

(502) 540-2300

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





*Woodpole  
Contract  
AT & T*

GENERAL AGREEMENT FOR  
JOINT USE OF WOOD POLES

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

....., a corporation  
organised under the laws of the State of .... Kentucky .....  
(hereinafter called the "Cooperative"), and Ballard Rural Telephone  
Cooperative Corp. Inc., a corporation organised 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 practicable 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 .....<sup>35</sup> foot class .....<sup>6</sup> 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:

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, \$.1,80.. per annum shall be paid by the Cooperative for each jointly used pole owned by the Telephone Company and \$......80 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 them to another corporation organized for the purpose of conducting a business of the same general character as that of such party, or to enter into any merger or consolidation; and, in case of the foreclosure of such mortgage; or in case of lease, transfer, merger, or consolidation, its rights and obligations hereunder shall pass to, and be acquired and assumed by, the purchaser 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 XI

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 XII

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 XIII

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 ..<sup>5th</sup>.. day of ..<sup>JUNE</sup>....., 19..<sup>34</sup>..

JACKSON PURCHASE RURAL ELECTRIC  
COOPERATIVE CORPORATION

By *James J. Hill*

(Seal)

Attest:

*Carroll Myers*

(Seal)

Attest:

*St. A. J. Helack*  
*Sec. Treas.*

Bellard Rural Telephone Co-operative Corporation, Inc.

By *Wilson C. Rudolph*

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					
22'					23.00	18.75	15.50		14.50	
25'				28.00	25.25	21.50	18.50		16.50	13.50
30'			34.00	32.00	30.50	27.50	23.50	21.50	19.50	15.50
35'			38.00	37.00	35.00	33.25	29.60		24.00	22.00
40'			47.00	45.00	40.00	37.60	35.00			
45'			52.50	47.50	45.00	43.00				
50'		70.00	61.00	55.50	52.50	50.00				
55'		80.00	73.00		60.00					
60'										

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			4.00	3.25
30'		12.00		9.70	8.70	8.60	7.90		5.00	4.50
35'		13.90		13.50	12.90	12.50	10.50	7.50	7.50	6.90
40'		16.90		16.60	16.20		13.70			
45'		18.00		17.50	17.00	15.78				
50'		27.00		24.50	23.00	22.00				
55'		50.00		47.00	44.50					
60'		53.00			42.00					

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 are 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:

Licensee's annual rent Equals	Annual charges saved by licensee through not having to build a separate line	Licensee's Less appropriate Of percentage	Total savings in annual charges 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  
410  
470  
530  
590  
650  
710  
770\*\*

\*XXXX \$ .60  
XXXX .70  
XXXX .80  
XXXX .90  
XXXX 1.00  
XXXX 1.10  
XXXX 1.20  
XXXX 1.30

XXXX \$ 1.40 Elec. Coop  
XXXX 1.60  
XXXX 1.80  
XXXX 2.00 Tel. Coop  
XXXX 2.20  
XXXX 2.40  
XXXX 2.60  
XXXX 2.80

Date: 6-2-45

\*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.

APPENDIX C

\_\_\_\_\_  
 (Name of Telephone Company)

\_\_\_\_\_  
 (Location)

Request No. \_\_\_\_\_

\_\_\_\_\_  
 (Date)

To \_\_\_\_\_  
 (Name of Cooperative)

\_\_\_\_\_  
 (Location)

This is to request your permission for this Company to use jointly certain of your poles under the terms and conditions of the General Agreement for Joint Use of Wood Poles which has been executed by your Cooperative and this Company.

The poles for which this permission is requested are located generally within the limits of the extension-of-service project in the territory indicated by the attached map, which also bears the above date and Request Number.

If permission to use these poles is given by you, this Company intends to canvass fully the territory generally within the project limits and if construction of the project by use of your poles for our attachments is begun, will furnish telephone service to all establishments therein desiring service, subject to its tariff rates and regulations. Our present plan is to start the work involved in this project about \_\_\_\_\_ and complete the work about \_\_\_\_\_

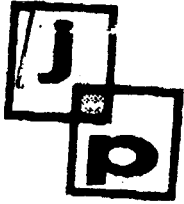
\_\_\_\_\_ (Month-Year)      \_\_\_\_\_ (Month-Year)

If permission to use these poles is given by you, this Company proposes to prepare and furnish to you detailed construction plans and drawings to indicate specifically your poles that we wish to use jointly, in accordance with the procedure provided in Article IV or V of the Agreement, as the case may be, together with a map showing the final project limits as determined after engineering is complete. If the final project limits vary substantially from the project limits shown on the map attached hereto, it is understood that this Company will request your further permission to use poles within the territory indicated on the final map.

If the joint use proposed is agreeable to your Cooperative please signify your approval on the second copy of this request in the space provided and return that copy to this Company.

\_\_\_\_\_  
 (Name and Title of Telephone Company  
 Employee making this request)





**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.

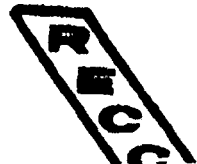
Yours truly,

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 807 KAR 5:011,  
SECTION 2(1)

BY: J. Deane

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.

Name of Officer

TITLE General Manager

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.

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PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE

JUN 23 1984

PURSUANT TO 807 KAR 5:011,  
SECTION 9.11)

BY: *[Signature]*  
PUBLIC SERVICE COMMISSION MANAGER

DATE OF ISSUE October 9, 1987

DATE EFFECTIVE June 28, 1984

ISSUED BY David Stiles, Jr., General Manager, Box 3188, Paducah, KY 42002  
Name of Officer Title Address





**Durwood Whipple**

*875-420-6222*

**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 - 504-7448+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](mailto:kwillard@mail.state.ky.us)

>

>

>

>

10/24/2002



**Durwood Whipple**

---

From: "Rich Sherrill" <rsherrill@jpecenergy.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, whichever 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 consolidate its rights and obligations

hereunder 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 hereunder 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: \_\_\_\_\_



TVPPA

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, 6" Single Helix Anchor

1" or larger ROD - \$66.00 Triple Eye, 6" Double Helix Anchor or Larger

Payment under Article VII, Section F, Paragraph 8, shall be the current cost in place 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.

TVPPA

Based on 2001 TPI (0.805%)  
 Developed 12/10/2001

APPENDIX B

Effective 1/1/2003

The current cost of treated poles for emergency conditions 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	356	343	331
30'	509	537	504	477	451	424	399	366
35'	623	582	547	513	487	460	424	400
40'	722	695	656	617	569	507		
45'	864	806	737	692	651			
50'	921	863	828	757	702			
55'	1140	1050	990	906				
60'	1541	1450	1312	1213				
65'	1719	1597	1454					
70'	2090	1838						

TVPPA

Based on 2001 TPI (0.80%)  
 Developed 12/10/2001

APPENDIX C

Effective 1/1/2002

Payments to the Power Distributor by the Telephone Company

A. 1ø Primary	0 - 60 ø Angle		
	Dead End		53
B. 3ø Primary	0 - 60 ø Angle		79
	Dead End		197
C. Ouy			316
D. 1ø Transformer & Connections			71
	25 KVA and Less		
	Greater than 25 KVA - up to 100 Kva		132
E. Service Conductor			290
	Each Wire		
	Multiples		12
F. 3ø Disconnect Switches			13
G. 3ø Group Operated Switch			263
H. Security Light & Arm			1318
I. Street Light & Arm			82
J. Items not Listed			165
K. Move Pole		Actual Cost	
			385

Payment to the Telephone Company by the Power Company

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

TUPPA

Based on 2001 TPI (0.805%)  
Developed 12/10/2001

APPENDIX A  
PRESENT IN-PLACE VALUES OF POLICY

Effective 1/1/2002

Pole Height and Class	Age of Pole in Years											
	New	1-2	3-4	5-9	10-12	13-15	16-20	20-21	22-24	25-27	28-30	
	In-Place Value of Pole (Dollars)											
25'-0	215	167	159	131	108	79	58	31	23	14	6	
-7	229	195	178	148	120	84	60	30	25	16	6	
-6	238	207	176	148	114	80	60	30	26	17	6	
-5	248	213	181	149	118	81	61	30	27	17	6	
-4	257	224	189	157	124	85	62	30	27	18	6	
-3	268	232	188	148	128	88	63	30	28	18	6	
-2	281	244	200	171	135	94	64	30	29	19	6	
-1	298	267	219	188	143	100	66	30	30	19	6	
30'-0	245	214	181	148	117	81	64	30	26	17	6	
-7	256	222	195	162	128	88	65	30	26	18	6	
-6	265	240	200	170	128	88	65	30	26	18	6	
-5	276	259	228	181	144	94	66	31	27	19	6	
-4	284	273	231	191	150	95	66	31	28	19	6	
-3	299	288	244	208	158	103	68	31	29	20	6	
35'-0	283	248	209	172	134	104	70	40	31	19	6	
-7	296	268	227	187	146	113	70	40	31	20	6	
-6	305	286	241	200	157	121	70	40	32	20	6	
-5	318	308	253	218	168	127	70	40	33	21	6	
-4	330	317	264	219	172	133	70	40	34	21	6	
-3	345	333	276	228	179	139	70	40	35	22	6	
40'-0	327	294	249	205	162	124	80	50	34	20	6	
-7	339	323	276	228	179	139	80	50	35	21	6	
-6	411	388	308	259	197	153	80	50	41	22	6	
-5	437	401	336	287	218	168	80	50	42	23	6	
-4	464	423	348	288	223	171	80	50	43	23	6	
-3	488	436	348	288	223	171	80	50	43	23	6	
45'-0	407	364	308	248	194	150	80	61	45	23	6	
-7	433	377	328	268	208	164	80	61	45	23	6	
-6	461	408	344	283	223	179	80	61	45	23	6	
-5	491	448	364	304	236	181	80	61	45	23	6	
-4	514	456	368	319	241	183	80	61	45	23	6	
-3	534	456	368	319	241	183	80	61	45	23	6	
50'-0	488	437	348	288	224	178	80	61	45	23	6	
-7	504	456	372	308	243	187	80	61	45	23	6	
-6	532	481	408	327	264	200	80	61	45	23	6	
-5	573	508	423	341	276	214	80	61	45	23	6	
-4	614	534	438	353	288	227	80	61	45	23	6	
55'-0	565	491	417	345	271	210	84	62	48	23	6	
-7	604	523	447	368	298	223	84	62	48	23	6	
-6	645	574	488	403	316	244	84	62	48	23	6	
-5	700	628	548	464	334	258	84	62	48	23	6	
-4	742	682	564	483	345	263	84	62	48	23	6	
60'-0	609	544	488	404	309	249	84	62	48	23	6	
-7	673	603	547	454	328	264	84	62	48	23	6	
-6	707	642	588	484	348	277	84	62	48	23	6	
-5	742	684	603	503	361	287	84	62	48	23	6	
65'-0	699	644	588	483	327	257	84	62	48	23	6	
-7	744	687	608	511	348	276	84	62	48	23	6	
-6	784	723	648	539	364	288	84	62	48	23	6	
70'-0	825	768	688	587	404	319	84	62	48	23	6	
-7	888	813	728	648	444	348	84	62	48	23	6	





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*  
Harlon E. Parker

General Manager

**BALLARD RURAL TELEPHONE COOPERATIVE CORPORATION, INC.**  
9 West Second Street • P.O. Box 209 • La Center, Kentucky 42056-0209  
one/270.665.5186 • Fax/270.665.9186 • www.brtc.net





Jackson Purchase Energy  
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February 5, 2003

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

Attn: Mr. Harlon 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

RECEIVED  
2-10-03  
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April 23, 2003

Jackson Purchase Ener  
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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:sml

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



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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:	3292	\$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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March 27, 2003

Billing for 2003

Attn: Chris Denton  
Ballard Rural Telephone Cooperative  
P.O. Box 209  
LaCenter, Ky. 42058

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			\$9,196.00

**PLEASE RETURN THIS SHEET WITH YOUR PAYMENT. THANK YOU.**



Your Touchstone Energy Partner  
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