

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

CMN-RUS, INC.)	
COMPLAINANT)	
V.)	
WINDSTREAM KENTUCKY EAST, LLC)	CASE NO.
DEFENDANT)	2018-00157

ORDER

Windstream Kentucky East, LLC (“Windstream East”) is hereby notified that it has been named as defendant in a formal complaint filed on May 15, 2018, a copy of which is attached as the Appendix to this Order.

Pursuant to 807 KAR 5:001, Section 20, Windstream East is HEREBY ORDERED to satisfy the matters complained of or file a written answer to the complaint within ten days from the date of service of this Order.

Should documents of any kind be filed with the Commission in the course of this proceeding, the documents shall also be served on all parties of record. A party filing a paper containing personal information shall, in accordance with 807 KAR 5:001, Section 4(10), encrypt or redact the paper so that personal information cannot be read.

By the Commission



ATTEST:


Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2018-00157 DATED **MAY 22 2018**

KATHERINE K. YUNKER
kyunker@mmlk.com
www.mmlk.com



201 E. MAIN ST., STE. 900
LEXINGTON, KY 40507
859.231.8780 EXT. 103

May 15, 2018
via hand-delivery

RECEIVED

MAY 15 2018

PUBLIC SERVICE
COMMISSION

Gwen R. Pinson, Executive Director
Public Service Commission
211 Sower Boulevard
Frankfort, KY 40602

Re: Formal complaint against Windstream Kentucky East, LLC;
expedited consideration requested

Dear Ms. Pinson:

Enclosed please find for filing on behalf of CMN-RUS, Inc. ("CMN") the unbound original and 12 copies of a formal Complaint against Windstream Kentucky East, LLC ("Windstream") about a pole attachment matter. The copies include the two (2) more copies that are required by 807 KAR 5:001, Section 2(3). Also enclosed is a copy of the Complaint and this cover letter to be stamped with the date of receipt and returned to the person delivering this filing.

Please note that the Complaint contains a request for expedited consideration and relief. The expedition requested includes the 807 KAR 5:001, Section 20(4)(a) determination that the Complaint establishes a *prima facie* case and conforms to the administrative regulation, the time allowed Windstream to satisfy or answer, and final action in the proceeding. Windstream has already had notice of the complaints expressed and a full opportunity to resolve them. For months, CMN has attempted (unsuccessfully) to work with Windstream on the pole-attachment issues described in the Complaint. It has also provided Windstream with an advance version of this Complaint, and (as noted by the "cc" below) is concurrently mailing this Complaint and cover letter to Windstream at its post office address shown in the caption of the Complaint.

Thank you for your attention to this matter

Sincerely,

Katherine K. Yunker

Enclosures

cc (w/encl): Windstream Kentucky East, LLC

MAY 15 2018

PUBLIC SERVICE COMMISSION

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of

CMN-RUS, Inc.

3701 Communications Way
Evansville, IN 47715

Complainant

v.

Windstream Kentucky East, LLC

4001 Rodney Parham Road
Little Rock, AR 72212

Respondent

No. Case No. 2018-00157

COMPLAINT

CMN-RUS, Inc. ("CMN"), pursuant to 807 KAR 5:001 §12, submits this Complaint requesting that the Commission find Windstream Kentucky East, LLC ("Windstream") in violation of (i) KRS 278.160 and 807 KAR 5:011 for unlawfully unilaterally imposing material conditions not set forth in its tariff; (ii) KRS 278.260 for offering CMN services that are unreasonable, insufficient and inadequate; and, (iii) KRS 278.170 for subjecting CMN to an unreasonable prejudice or disadvantage. CMN also requests expedited consideration and relief from the Commission because Windstream's actions are having a significant material adverse effect on CMN. The Commission has jurisdiction over this matter under KRS 278.040 and 278.160.

BACKGROUND

1. CMN is a competitive local exchange carrier ("CLEC") and a "telecommunications carrier" as are defined in the Communications Act of 1934. The Commission recognizes CMN as both a CLEC (Utility ID # 5055160) and a long-distance carrier (# 22205516). CMN is also a cable television service provider.

2. Since 2005, CMN and its affiliates have constructed and operated fiber-to-the-premise (FTTP) networks offering high quality voice, cable television and gigabit data/Internet services to residential and business consumers. CMN and its affiliates deliver services to approximately 250,000 homes and businesses. CMN's high speed broadband services help communities compete on the national and international stage and foster innovation, job creation and economic growth.

3. CMN has a Franchise Agreement with the Lexington-Fayette Urban County Government (the "LFUCG") to offer cable television services to residential and business customers within the confines of Lexington and Fayette County (the "LFUCG Franchise"). For obvious business reasons, CMN wishes to build out its network in the LFUCG service area as quickly as possible. Furthermore, the LFUCG Franchise imposes a deadline by which CMN's network must be constructed. This deadline will be challenging for CMN to meet if Windstream's unlawful conduct described below is allowed to persist.

4. Once CMN's network is constructed, Windstream and CMN will be direct competitors in the LFUCG service area. To enter the LFUCG service area as an over builder, CMN needs access to utility poles on reasonable and just terms. CMN has successfully worked with utilities over the years to gain access to poles. For example, Kentucky Utilities Company ("KU") has been willing to negotiate a High Volume Pole Attachment Application Plan with prospective pole attachers. KU's high volume plan allows a CMN affiliate to submit applications for up 2,500 poles in a 30-day period and provides for reasonable pole attachment procedures and timeframes.

5. In preparation to enter the LFUCG service area, during the fall of 2017, CMN contacted Windstream to obtain Windstream's pole attachment agreement for review and

consideration. In November of 2017, Windstream provided a copy of a Pole Attachment License Agreement. See Pole Attachment License Agreement (the "License Agreement") attached as Appendix A. Upon review of the License Agreement, CMN identified several provisions that were unreasonable and unlawful. The primary areas of concern are provisions in Section 8 of the License Agreement. Specifically, Windstream limits the number of poles for which CMN may apply for access to 300 poles in a rolling 30-day period (the "300 Pole Restriction") and Windstream makes no commitments to time frames for application, survey and make-ready processing.

6. The 300 Pole Restriction in Section 8.A of the License Agreement reads as follows (*emphasis added*):

Before Licensee shall have a right to place Attachments to any Poles of Licensor, Licensee shall make application for and receive a revocable, nonexclusive License which shall be in the form of a Licensor countersigned Application for Pole License (Exhibit B). *Each Exhibit B Application for Pole License shall contain no more than twenty-five (25) Poles and Licensee may submit up to twelve (12) Exhibit B, Application for Pole License within a rolling thirty (30) day period.* Licensor will process Applications for Pole Licenses in the order in which they are received; provided, however, that when Licensee has multiple Applications for Pole Licenses on file with Licensor, Licensee may designate its desired priority of completion with respect to all such Application for Pole Licenses. Licensee shall not under any circumstances attach any equipment to any guy wires or anchors owned by Licensor.

7. To deliver its gigabit broadband services in the LFUCG service area, CMN will need to access approximately 12,500 Windstream poles. CMN is not seeking to attach to all 12,500 poles at once. CMN wants to obtain approval to attach its facilities to these poles over a reasonable period of time, optimally over the next eight (8) to twelve (12) months. Unfortunately, if applications for attachment are restricted in number as set forth in Section 8.A, it will take CMN until the end of 2021 to obtain approval to attach CMN's facilities to Windstream's poles.

8. This 300 Pole Restriction presents a serious economic and regulatory challenge for CMN. Any delay in attaching to poles delays CMN's ability to realize a return on its investment, which will total close to \$100 million in the LFUCG and surrounding service areas. Also, CMN committed to the LFUCG to have its cable system technically capable of providing cable services as described in the Franchise Agreement by the close of 2021. Windstream's 300 Pole Restriction and total absence of processing time frames puts in jeopardy CMN's ability to meet LFUCG's expectations. Competitive necessity requires exceeding these expectations, not merely meeting them.

9. Knowing that the terms of Windstream's License Agreement, particularly Section 8, would have a material adverse impact on CMN's business, CMN requested a conference call with Windstream to discuss the terms of the agreement. On December 12, 2017, representatives of CMN and Windstream participated in a conference call. During this call, CMN requested that Windstream amend the License Agreement to contain substantially the same terms and conditions as it entered into in connection with the Kentucky Information Highway project (the "KIH Amendment"¹). Accordingly, CMN asked Windstream to increase the number of applications Windstream would process from 300 poles per rolling 30 days to 1,500 per rolling 30 days and to give CMN non-discriminatory application, survey, estimate and make-ready process time lines. CMN acknowledged that under the terms and conditions of the KIH Amendment, Windstream charges for the additional resources necessary for Windstream to process the higher volume of

¹ The KIH Amendment is the First Amendment to Pole Attachment License Agreement dated July 7, 2016, by and between Windstream Kentucky East, LLC and the Commonwealth of Kentucky, Kentucky Communications Network Authority, and the Finance and Administration Cabinet in connection with the Kentucky Information Highway project (the "KIH"). See KIH Amendment attached as Appendix C. The favorable terms of the KIH Amendment were not provided to the Kentucky Communications Network Authority ("Licensee") because of any governmental status. To the contrary, the agreement which the KIH Amendment amends was conditioned upon the Licensee being a competitive local exchange carrier ("CLEC") or a "telecommunications carrier" as defined in the Communications Act of 1934. See FN 12.

applications. CMN made it abundantly clear that it was willing to pay for such resources as well. During this call, Windstream stated that it would consider CMN's request and the parties agreed to reconvene in one week.

10. On December 19, 2017, representatives of CMN and Windstream reconvened in another conference call. During this call, Windstream reported that it was not willing to negotiate any provisions with CMN. As explained in more detail in paragraphs 22 and 23 of this Complaint, Windstream stated that CMN has two invoices outstanding to a Windstream affiliate and that while the invoices remain outstanding, Windstream would not negotiate with CMN. CMN reminded Windstream that the invoices were disputed in good faith, but Windstream's position remained firm.

11. Because Windstream refused to negotiate terms and conditions, CMN determined the only course of action available to it would be to attach to Windstream's poles under Windstream's CATV Pole Attachment Tariff. See CATV Pole Attachment Tariff P.S.C. KY NO. 11 attached as Appendix B (the "Tariff"). The Tariff does not contain the 300 Pole Restriction. Windstream agreed that CMN, as a cable television provider, could attach under the Tariff.

12. On January 12, 2018, CMN requested that Windstream provide the process under which it could apply to attach to Windstream poles pursuant to its Tariff. Despite the Tariff containing no 300 Pole Restriction, on January 18, 2018, Windstream informed CMN that it would limit the number of poles per application to 25 and the number of applications to 12 per rolling 30-day period. Thereafter, CMN submitted applications to attach to Windstream poles. Not only has Windstream refused to accept applications totaling more than 300 poles in a rolling 30-day period, but also, Windstream has processed the applications it has accepted in an unreasonably slow time frame.

CLAIMS

Windstream has imposed material conditions not in its tariff.

13. Windstream's imposition of additional, material restrictions not in its Tariff violates KRS 278.160 and 807 KAR 5:011. Specifically, KRS 278.160(1) requires Windstream to show "all rates and conditions for service established by it and collected or enforced" in its tariff schedules on file with the Commission.

14. Because Windstream has failed to satisfy the requirements in KRS 278.160 and 807 KAR 5:011, prior to imposing the 300 Pole Restriction, imposition of the restriction is illegal and unenforceable.

15. If the 300 Pole Restriction is important to Windstream, it should seek approval from the Commission to amend the Tariff. However, in the event that Windstream seeks the Commission's approval, for the reasons CMN describes below, approval should be denied. As more fully described below, Windstream's 300 Pole Restriction is vastly out of pace with industry norms and in violation of existing federal and state laws and regulations. While the Federal Communications Commission ("FCC") is moving toward more streamlined and expedited pole attachment processes, Windstream should not be allowed to move in the opposite direction.

Windstream's pole processing procedures are unreasonably slow.

16. Over the years, Congress has passed laws and the FCC has promulgated regulations to reduce barriers to broadband deployment. Understanding the importance of timely access to poles, the FCC has imposed specific timelines to which pole owners must adhere.

Most notable are the timelines set forth in the FCC's 2011 Order.² Generally, a pole owner has 45 days from receipt of a complete application to respond to an applicant's request to attach to the owner's poles.³ Unless the application is denied for one of four specified legitimate reasons,⁴ the pole owner must provide an estimate of charges for necessary make-ready work within 14 days.⁵ The prospective attacher has at least 14 days to respond to this estimate and pay the estimated charges. Upon receipt of the payment for the estimated charges, generally the pole owner and existing attachers have 60 days (with the owner able to request an additional 15 days in certain circumstances) to conduct the necessary make-ready.⁶

17. During the FCC's rule making process, pole owners commented that larger orders will take additional time to process. The FCC agreed and gave pole owners additional time for "larger orders." Specifically, 47 CFR 1.1420(g) provides as follows:

For the purposes of compliance with the time periods in this section:

- (1) A utility shall apply the timeline described in paragraphs (c) through (e) of this section to all requests for pole attachment up to the lesser of 300 poles or 0.5 percent of the utility's poles in a state.
- (2) A utility may add 15 days to the survey period described in paragraph (c) of this section to larger orders up to the lesser of 3000 poles or 5 percent of the utility's poles in a state.
- (3) A utility may add 45 days to the make-ready periods described in paragraph (e) of this section to larger orders up to the lesser of 3000 poles or 5 percent of the utility's poles in a state.
- (4) A utility shall negotiate in good faith the timing of all requests for pole attachment larger than the lesser of 3000 poles or 5 percent of the utility's poles in a state.

² Report and Order and Order on Reconsideration adopted April 7, 2011, WC Docket No. 07-245; GN Docket No. 09-51 (the "2011 Order").

³ 47 CFR 1.1420(c)

⁴ Access may be denied if there is insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes. 47 U.S.C. §224(f).

⁵ 47 CFR 1.1420(d)

⁶ 47 CFR 1.1420(e)

(5) A utility may treat multiple requests from a single cable operator or telecommunications carrier as one request when the requests are filed within 30 days of one another.

The federal regulations do not allow the utility to reject applications using the process Windstream has unilaterally adopted. In the 2011 Order, the FCC noted that, if there is a failure to have and adhere to timelines, pole attachments may become subject to excessive delays. The 2011 Order specifically refers to a record showing “pervasive and widespread problems of delays in survey work, delays in make ready performance ... and other issues.”⁷

18. Under federal regulation, if a pole owner fails to comply with the survey and make-ready deadlines, the entity seeking to attach can exercise statutorily prescribed self-help remedies. Again, under no circumstances do federal regulations grant a pole owner the right to simply reject “larger orders.” Windstream has simply refused to negotiate at all concerning the processing of all of CMN’s orders, which by definition constitutes bad faith in accordance with FCC rules. In short, Windstream’s refusal to process more than 300 poles in a rolling 30-day period would be deemed unreasonable and unlawful under federal regulations.

19. Windstream’s pole attachment processes are also unlawful under Kentucky law. Although the Commonwealth of Kentucky has exercised its right to reverse-preempt federal pole attachment regulations and the jurisdiction of the FCC, the standard for accessing poles under Kentucky law is basically the same as the standard established by federal law, *i.e.*, access to poles must be on reasonable terms. FCC rules and orders provide a logical benchmark for what is and is not considered to be reasonable. Terms that have been found to be unreasonable in other jurisdictions do not become reasonable simply because the poles are in Kentucky.

⁷ 2011 Order at ¶21.

20. As noted in paragraph 4, KU has been willing to negotiate a High Volume Pole Attachment Application Plan with prospective pole attachers that contains more reasonable time frames.

Windstream refuses to give CMN pole attachment terms it gives to others.

21. Windstream's refusal to process CMN's "larger orders" and abide by reasonable survey and make-ready time frames violates KRS 278.170(1) which provides:

No utility shall, as to rates or service, give any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage, or establish or maintain any unreasonable difference between localities or between classes of service for doing a like and contemporaneous service under the same or substantially the same conditions.

In light of the favorable terms given by Windstream to KIH, Windstream's refusal to allow CMN substantially the same terms subjects CMN to an unreasonable prejudice and disadvantage.

22. As noted above, Windstream's stated reason for refusing to give CMN terms substantially similar to the terms set forth in the KIH Amendment is that CMN owes Windstream money and until such money is paid Windstream should not be required to process CMN poles under the more favorable terms and conditions offered to KIH. However, Windstream and CMN will be direct competitors for cable and other broadband service customers in the LFUCG service area. Regardless of Windstream's apparent motives, its actions have the effect of substantially reducing competition, and CMN submits that Windstream is aware of such adverse consequences. Slowing CMN's entry into the LFUCG market limits consumer choice.

23. In March of 2017, Windstream KDL, LLC ("KDL"), an affiliate of Windstream, submitted an invoice to CMN for reimbursement of costs for make-ready work performed in Indiana. The invoices are not owed to Windstream and are entirely unrelated to CMN's request

under the Tariff to attach to any poles owned by Windstream.⁸ In addition, the make-ready charges for which KDL has invoiced CMN are not for charges actually paid by KDL or any other affiliate of Windstream. Rather, KDL's invoices are passing through a request for reimbursement from a unrelated third party utility for service performed by such unrelated third party. Although there may be an accounts payable book entry on KDL's financials (which should be offset by a corresponding receivable), neither Windstream nor any of its affiliates (including KDL) need ever be out of pocket for one dime of the invoiced amounts.

24. Even if CMN owed money directly to Windstream Kentucky East, LLC and the invoices were directly related to CMN's attachments under the Tariff, Windstream cannot use the invoices as an excuse to deny CMN attachment terms offered to others because the invoices are disputed in good faith and CMN has continued to pay undisputed invoices. CMN is actively engaged in good faith negotiations to resolve such outstanding invoices. 807 KAR 5:006, Section 11(6) provides:

A customer account shall be considered to be current while a dispute is pending pursuant to this section, if the customer:

- (a) Continues to make payments for the disputed period in accordance with historic usage, or if that data is not available, the average usage of similar customer loads; and
- (b) Stays current on subsequent bills.

807 KAR 5:006 Section 12 provides:

Status of Customer Accounts During Billing Dispute. With respect to a billing dispute to which Section 11 of this administrative regulation does not apply, a customer account shall be considered to be current while the dispute is pending if the customer continues to make undisputed payments and stays current on subsequent bills.

⁸ The invoices disputed by CMN in good faith were issued pursuant to the Pole Attachment Rights/Dark Fiber Rights Exchange agreement between CMN and KDL, dated February 7, 2005.

25. If Kentucky had not exercised its right to reverse-preempt federal pole attachment regulations and the jurisdiction of the FCC, Windstream's denial of reasonable terms of access based upon the unpaid invoices would also be a violation of federal law. Under federal law, access may be denied if there is insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes.⁹ Non-payment of an invoice disputed in good faith has been determined by the FCC to be unreasonable and unlawful.¹⁰

26. The invoices that Windstream's justification relies upon are clearly disputed in good faith. CMN disputed the invoices because the invoices were not accompanied by any supporting documentation, were for services provided by a third party years before the date of invoice, and are for patently unreasonable amounts. A utility has an obligation to provide a reasonable amount of information sufficient to substantiate its make-ready charges.¹¹ CMN understands, however, that KDL is in the middle. In order to avoid any adverse effect on KDL, CMN disputed the invoice directly to the third party utility and gained that third party utility's assurance that until the dispute is settled, KDL would not suffer adverse consequences. CMN also requested that this third party withdraw the invoice issued to KDL and allow CMN and the third party to resolve the issue without KDL as an intermediary. To our knowledge, this third party utility has not taken any adverse action against Windstream or any of its affiliates (including KDL) as a result of the disputed, unpaid invoices.

⁹ 47 U.S.C. §224(f).

¹⁰ Kansas City Cable Partners d/b/a Time Warner Cable of Kansas City v. Kansas City Power & Light Co., Consolidated Order, 14 FCC Rcd 11599 at ¶18. The FCC determined that KCPL could not condition access on payment of a disputed claim and that debt collection is not permissible grounds for denial of access.

¹¹ Knology v. Georgia Power Company, FCC 03-292, File No. PA 01-006 at ¶59 through ¶62 interpreting 47 U.S.C. §224.

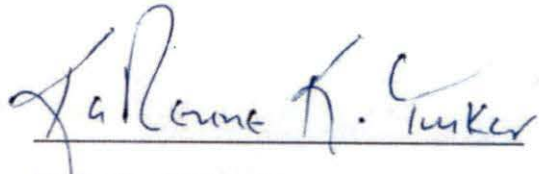
27. CMN's pole attachment needs are substantially similar to KIH's needs addressed by the terms of the KIH Amendment. Windstream was willing to enter into an agreement with the KIH only as long as KIH is a CLEC or a "telecommunications carrier" as defined in the Communications Act of 1934, just like CMN. Even if KIH and CMN were not both CLECs or "telecommunications carriers," CMN and KIH pole attachment requirements place the same burdens and obligations on Windstream in that both (i) are prospective attachers to Windstream's poles, (ii) seek to deploy high speed broadband in the Commonwealth of Kentucky, and (iii) need to attach to Windstream's poles more quickly than the 300 Pole Restriction allows.

PRAYER FOR EXPEDITED CONSIDERATION AND RELIEF

WHEREFORE, CMN requests that the Commission grant expedited consideration and relief as follows:

- (1) Find Windstream's imposition of a 300 Pole Restriction not set forth in its Tariff in violation of KRS 278.160 and 807 KAR 5:011;
- (2) Find Windstream's offering of services to CMN subject to the 300 Pole Restriction and without reasonable application, survey and make-ready processing time frames is unreasonable, insufficient and inadequate;
- (3) Find Windstream's refusal to process CMN pole applications under the terms and conditions granted to KIH as unreasonably prejudicial and disadvantageous;
- (4) Order Windstream to (i) process pole applications in accordance with standards established by the FCC and grant CMN the remedies afforded by federal regulation, (ii) process pole applications in accordance with procedures similar to ones set forth in the KU High Volume Pole Attachment Application Plan, or (iii) allow CMN to utilize the process granted by Windstream to KIH.

Respectfully submitted,

A handwritten signature in black ink that reads "Katherine K. Yunker". The signature is written in a cursive style and is positioned above a horizontal line.

Katherine K. Yunker

kyunker@mmlk.com

MCBRAYER, MCGINNIS, LESLIE &

KIRKLAND PLLC

201 East Main Street; Suite 900

Lexington, KY 40507-1310

859-231-8780, ext. 137

Attorney for CMN-RUS, Inc.

APPENDIX A
LICENSE AGREEMENT



POLE ATTACHMENT LICENSE AGREEMENT

BY AND BETWEEN

WINDSTREAM KENTUCKY EAST, LLC

AND

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ATTACHED AND INCORPORATED EXHIBITS

EXHIBIT A – DEFINITIONS

EXHIBIT B – FORM APPLICATION FOR POLE LICENSE

EXHIBIT C – NOTIFICATION OF SURRENDER OF LICENSE

EXHIBIT D – SCHEDULE OF RATES, FEES AND CHARGES

EXHIBIT E – NOTICE CONTACTS AND ADDRESSES

1. PARTIES.

This Pole Attachment License Agreement ("Agreement") is entered into as of the date last signed by all the parties ("Effective Date") by and between Windstream Kentucky East, LLC, a Windstream company organized and existing under the State of Delaware ("Licensor"), and _____, a company organized and existing under the State of _____ ("Licensee"). Licensor and Licensee may sometimes be referred to in this Agreement individually as a "party" and collectively as the "parties".

2. SCOPE.

A. The purpose of this Agreement is to set forth the rates, terms, conditions, and procedures under which the Licensor will provide Licensee access to Licensor's Poles (as defined herein) in the State of Kentucky for the purpose of Licensee attaching wireline facilities.

B. The parties acknowledge that Licensor is entering into this Agreement because Licensee has represented it is a regulated "telecommunications carrier" or "cable television system" provider as such terms are defined in the Communications Act of 1934, as amended (hereinafter the "Communications Act") and desires to provide telecommunications service or cable service ("Services"), as defined in the Communications Act; and that Licensee is authorized to provide these Services under its franchise or other lawful authority within its service area where Licensor owns Poles. In the event Licensee no longer has the status as a "telecommunications carrier" or "cable television system" provider or the authority to offer these Services in the state where the Poles are located, Licensor shall have the right to immediately terminate this Agreement and require Licensee to remove all of its facilities from Licensor's Poles. **As a condition precedent to entering into this Agreement, Licensee shall submit to Licensor a copy of its certification evidencing its status as either a regulated telecommunication carrier or cable television system provider, and until such documentation is provided to Licensor, Licensor shall not be obligated to enter into this Agreement.**

C. Subject to the provisions of this Agreement, Licensor will issue to Licensee for any lawful communications purpose, revocable, nonexclusive Licenses authorizing the placement of Licensee's Attachment to Licensor's Poles.

D. No use, however extended, of Licensor's Poles nor payment of any fees or charges required under this Agreement or License issued under this Agreement shall create or vest in Licensee any ownership or property rights in said Poles, but Licensee's rights therein shall be and remain a mere license. Nothing herein contained shall be construed to compel Licensor to construct, retain, extend, place, or maintain any facilities not needed for its own service requirements, unless otherwise required by law. Nothing contained in this Agreement or in any License issued hereunder shall in any way affect, restrict or impair the right of Licensor to convey, transfer, mortgage, or assign to any other person or entity any interest in real or personal property, including any Poles in which Licensee has attached or placed Licensee's Attachments pursuant to Licenses issued under this or other license agreements.

E. Licensee recognizes that Licensor has entered into, or may in the future enter into, agreements and arrangements with others which are not a party to this Agreement regarding the Poles covered by this Agreement. Nothing herein contained shall be construed as a limitation, restriction or prohibition against Licensor with respect to such other agreements or arrangements. The rights of Licensee shall at all times be subject to any present or future joint use or joint ownership arrangement between Licensor and any other party.

F. This Agreement does NOT create any right for Licensee to access or place facilities in Licensor central offices, conduit or to place wireless communication equipment on Poles. A separate agreement is required for any access to Licensor facilities other than those outlined in this Agreement.

3. DEFINITIONS.

Certain capitalized terms used in this Agreement are listed in and have the meaning as set forth in Exhibit A. Exhibit A is incorporated and made a part of this Agreement by reference.

4. TERM AND TERMINATION OF AGREEMENT

A. This Agreement shall become effective upon the Effective Date and if not terminated in accordance with the provisions of this Agreement, shall continue in effect for a term of one (1) year ("Initial Term") and shall continue on a year-to-year basis. Notwithstanding the foregoing, any time after the Initial Term and anytime thereafter the rates, fees and charges set forth may be increased or decreased by written notice from Licensor to Licensee.

B. Either Party may terminate this Agreement for any reason after the Initial Term with at least thirty (30) day written notice to the other party. Licensor may terminate this Agreement in the event of default as set forth under Article 20 of this Agreement.

C. Upon termination of the Agreement in accordance with any of its terms, all outstanding Licenses in connection therewith shall terminate and shall be surrendered and Licensee shall immediately, and at its sole expense remove all Attachments located on Poles within sixty (60) days of date of termination.

5. TERMINATION OF LICENSES

A. In addition to other termination rights set forth in this Agreement, upon notice from Licensor to Licensee that Licensor has been advised by a governmental authority or private property owners that the use of any Poles is not authorized and is objected to by such governmental authority or private property owner, as the case may be or that any Poles is to be removed, sold or otherwise disposed of, Licensee shall, immediately remove its cables, equipment, and facilities at once from the affected Poles or shall make arrangements for the removal of its cable, equipment, and facilities from the affected portion of Licensor's Poles at Licensee's sole expense. If not so removed within sixty (60) days or such timeframe as stated on the Notice, Licensor shall have the right to remove Licensee's Attachments from Licensor's Poles at the cost and expense of Licensee and without any liability thereto.

B. Licensee may at any time remove its Attachments from any Poles of Licensor, but shall immediately give Licensor written notice of such removal and surrender of License in the form of a Notification of Surrender attached hereto as Exhibit C and incorporated by reference and made a part of this Agreement. If Licensee surrenders its License but fails to remove its Attachments from Licensor's Poles, Licensor shall have the right but not the obligation to remove Licensee's Attachments at Licensee's expense without any liability on the part of Licensor for damage or injury to Licensee's Attachments or interruption to Services. Licensee's obligations with regard to maintenance and fees continue until Attachments are removed from the Poles. In the event that Licensee's Attachments shall be removed from any Poles as provided by this Agreement, no Attachment shall again be made to such Poles unless

Licensee shall have first complied with all of the provisions of this Agreement as though no Attachment had previously been made.

6. RATES, FEES AND CHARGES.

A. All rates, charges and fees set forth in this Agreement and those shown in Exhibit D (Schedule of Rates, Fees, and Charges) shall be subject to and calculated in accordance with applicable law, and Licensor may in its sole discretion revise the rates, charges and fees as set forth in Exhibit D upon 30 day notice to Licensee. Exhibit D is incorporated and made a part of this Agreement by reference. The fees, rates and charges set forth in Exhibit D or elsewhere in this Agreement are effective during the term of this Agreement and subject to change as set forth herein.

B. **Pole Attachment Fee.** For the purpose of computing the annual Pole Attachment Fee due under this Agreement the Pole Attachment Fee shall be based each year upon the number of Poles where Licensor has issued a License as of the date of annual billing multiplied by the Attachment Rate set forth on Exhibit D, as may be modified by Licensor from time to time. If Licensee is a regulated cable system provider which begins to offer telecommunication Services, Licensee must notify Licensor within thirty (30) days of the change in use if it shall begin to use any attachment for telecommunication Services and Licensor may adjust the Attachment Rate and Pole Attachment Fee as appropriate consistent with the applicable FCC formula for telecommunication providers.

C. All charges for inspections, engineering, replacement or rearrangements of Licensee's Attachments from Licensor's Poles and, without limitation, any other work performed for Licensee shall be based upon the full cost and expense, including reasonable overhead, incurred by Licensor or its representative for performing such work for Licensee to include without limitation costs to transfer or moving of Licensor facilities and removal of old Poles. The cost to Licensee shall be determined in accordance with the regular and customary methods used by Licensor in determining such costs.

D. All other Attachment related inquiry, verification, application, administrative and miscellaneous rates, fees and charges shall be calculated and paid in accordance with Exhibit D and the terms of this Agreement.

E. Upon termination or surrender of a License granted hereunder, no refund of any Pole Attachment Fees shall be made and Licensee shall remain liable for all fees and charges set forth in this Agreement until Licensee has removed its Attachments.

7. PAYMENT, SECURITY BOND AND LIEN.

A. All bills for such other charges for work performed by Licensor and the fees set forth in the Agreement shall be payable upon presentment to Licensee, and shall be deemed delinquent if not paid within thirty (30) days after the date of the invoice.

B. **Bond.** Licensee shall furnish a bond or other security, and keep in place during the term of this Agreement, satisfactory to Licensor, the amount of \$5,000 or an amount equal to two (2) years of Pole Attachment Fees, whichever is greater, to guarantee the performance of Licensee obligations including payment of any such sums (including Unauthorized Attachment charges and liquidated damages) which may become due to Licensor arising out of this Agreement including, but not limited to rent, fees due hereunder or charges for work performed for the benefit of Licensee under this Agreement, including the

removal of Licensee's facilities upon termination of this Agreement by any of its provisions or upon termination of any License issued hereunder. Such bond shall include that Licensor received 30 days prior notice of cancellation. Cancellation of a bond shall be an event of default by Licensee. Upon signing this Agreement and prior to issuance of a License, Licensee shall furnish the bond to be sent to person identified in Exhibit E. Licensor may in its sole discretion change the bond amount or cancellation notice requirement from time to time upon at least thirty (30) day notice to Licensee. Licensor shall not be obligated to issue any License hereunder until Licensee has provided the bond as set forth herein.

C. **Lien.** Should Licensor under the terms and conditions of this Agreement remove Licensee's Attachments from Licensor's Poles, Licensor will deliver to Licensee the cable, equipment or facilities so removed upon payment by Licensee of the cost of removal, storage and delivery, and all other amounts due Licensor hereunder. Licensor is hereby given a lien on Licensee's cable, equipment or facilities attached to Licensor's Poles or removed therefrom, with power of public or private sale, to cover any amounts due Licensor under the provisions of this Agreement. Such liens shall not operate to prevent Licensor from pursuing, at its option, any other remedy in law, equity or otherwise, including any other remedy provided for in this Agreement.

8. ATTACHMENT REQUEST AND LICENSE PROCESS

A. Before Licensee shall have a right to place Attachments to any Poles of Licensor, Licensee shall make application for and receive a revocable, nonexclusive License which shall be in the form of a Licensor countersigned Application for Pole License (Exhibit B). Each Exhibit B Application for Pole License shall contain no more than twenty-five (25) Poles and Licensee may submit up to twelve (12) Exhibit B, Application for Pole License within a rolling thirty (30) day period. Licensor will process Applications for Pole Licenses in the order in which they are received; provided, however, that when Licensee has multiple Applications for Pole Licenses on file with Licensor, Licensee may designate its desired priority of completion with respect to all such Application for Pole Licenses. **Licensee shall not under any circumstances attach any equipment to any guy wires or anchors owned by Licensor.**

B. **Application For Pole License and Engineering Survey.** Licensee shall submit an Application for Pole License in the form of Exhibit B and shall include a drawing of the proposed route, the pole detail and contact information (name, telephone, facsimile, and email information). Upon receipt of a complete Application for Pole License, Licensor will conduct an engineering survey to determine whether and where Licensee's Attachment is feasible, and what Make Ready Work is required by Licensor or other existing attachers to accommodate Licensee's Attachment. Upon completion of the engineering survey, Licensor shall inform Licensee of its estimated make-ready charges for Licensor Make Ready Work ("Make Ready Estimate"). If during this process, Licensor determines the request is denied based on insufficient capacity or for reasons of safety, reliability and generally applicable engineering purpose Licensor shall inform Licensee that the Application for Pole License is denied together with the reason. All expenses incurred by Licensor in reviewing Licensee's Application for Pole License shall be borne by Licensee even if such request is denied by Licensor.

C. **Advance Payment of Make Ready Work Estimate and Expedited Charges.** If Licensee upon review of the Make Ready Estimate desires to proceed with the process to obtain a License from Licensor, Licensee shall submit payment in the amount of the Make Ready Estimate together with the Application Fee and engineering survey costs to Licensor within fourteen (14) days of receipt of the Make Ready Estimate and invoice for such amounts. Licensee shall be solely responsible for negotiating with existing attachers for Make-Ready Work relating to such other existing attacher facilities located on,

within or in Licensor's Poles and shall be responsible for paying all charges incurred in transferring or rearranging existing attacher facilities to accommodate the placement of Licensee's Attachment on, within or in Licensor's Poles. In the event, Licensee declines to proceed with the project Licensee shall reimburse Licensor any costs and expenses incurred by Licensor to date including but not limited to Application Fee, engineering and administrative expenses and costs.

D. Completion of Make Ready Work and Issuance of License. Licensor shall undertake to complete any Make Ready Work of its owned facilities upon receipt of Licensee's payment of the Make Ready Estimate. Upon completion of all Make Ready Work and receipt of all fees and charges due from Licensee to Licensor, Licensor shall issue Licensee an approved License which shall be in the form of a Licensor countersigned Application for Pole License. At that time Licensee will be considered to have been granted a License with respect to the Poles approved in the License and may attach to Licensor's Poles in accordance with the terms and conditions of this Agreement.

E. Licensee shall maintain a copy of all Application for Pole Licenses and approved Licenses. Licensor may provide upon request copies of the same to the extent available and Licensee shall reimburse Licensor for its costs in preparing and sending requested copies.

9. AUTHORITY FOR PLACEMENT OF ATTACHMENT

A. Before any placement of Attachments by Licensee, regardless of whether a License may have been issued, Licensee represents and warrants that it has the authority to maintain Attachments within public rights-of-way, or on private rights-of-way or on private property, and shall upon request provide a copy of documentation evidencing such right to Licensor. Licensee shall be solely responsible for obtaining all licenses, easements, authorizations, permits and consents from federal, state and local authorities or private land owners that may be required to place and maintain Attachments on Licensor's Poles.

B. Licensor and Licensee agree that neither party has the right to restrict or interfere with the other party's lawful access to and use of public right-of-way, including public right-of-way, which pass over property owned by either party. Except as otherwise specifically provided in this Agreement, Licensor and Licensee shall each be responsible for obtaining their own right-of-way and permission to use real or personal property owned or controlled by any governmental body or private entity or person.

C. Licensor may, without incurring any liability, remove Attachments of Licensee from Licensor's Poles, at Licensee's sole expense where in Licensor's sole judgment such removal is required in connection with the performance of Licensor's service obligation or the safety of Licensor's employees. Whenever such removal has been made, Licensee will be notified.

10. CONSTRUCTION AND MAINTENANCE

A. Licensee's Attachments shall be placed and maintained in accordance with the following:

1. any and all Licensor requirements and specifications of Licensor, and
2. the terms and conditions of this Agreement, and
3. the National Electric Safety Code (most recent edition), and
4. the National Electric Code (most recent edition), and

5. in compliance with any other rules or orders now in effect or that may hereafter be issued by any state utility commission or other authority (state, federal, local) having jurisdiction over including but not limited to Poles, rights-of-way, and Hazardous Materials.

Each of Section 10(A)(1-5) is incorporated by reference and made a part of this Agreement, and in the event of a conflict or difference between any of these specifications and requirements, the more stringent will apply. Licensee agrees to rearrange its Attachments, within a commercially reasonable timeframe, in accordance with changes in the standards referenced herein in this Section 10(A) of this Agreement, or if required by law.

B. Licensee shall, at its own expense, make and maintain its Attachments and use Licensor Poles in a safe condition and in thorough repair, and in a manner acceptable to Licensor, and so as not to conflict with the use of said Poles by Licensor or by other authorized users of said Poles, or interfere with other facilities thereon or which may from time to time be placed thereon. Licensee shall, at its sole expense, upon written notice from Licensor, relocate or replace its Attachments placed on said Poles or transfer them to substituted Poles that may be authorized by Licensor, or perform any other work in connection with said Attachments that may be required. Licensor shall give such written notice as is reasonable in the circumstances, provided, however, that in cases of emergency, as determined by Licensor in its sole discretion, Licensor may arrange to relocate, remove or replace Licensee Attachments placed on said Poles, transfer such Attachments to substituted Poles or perform any other work in connection with said Attachments that may be required in the maintenance, replacement, removal or relocation of said Poles or Licensor or existing attacher facilities thereon or which may be placed thereon, or for the service needs of Licensor, and Licensee shall reimburse Licensor for the expense thereby incurred. For the purpose of this Section, Licensee Attachments shall be understood to include Attachments of Licensee in space reserved for Licensor, or space which Licensor has the right to use, on poles of other companies with which Licensor now has or may hereafter have agreements for joint use and occupancy; and the use of such space by Licensee shall be subject to the terms and conditions of the agreements between Licensor and said other companies.

C. Licensee shall be responsible at all times for the condition of Licensee's Attachments and its compliance with the requirements, specifications, rules, regulations, ordinances and laws specified in this Agreement. Licensor shall have no duty to Licensee to inspect, monitor or maintain the condition of Licensee's Attachments (including, but not limited to, splices and other facilities connections) located on, within or in Licensor's Poles. Licensor may make periodic or spot inspections at any time of any part of Licensee's Attachments as Licensor determines reasonable or necessary in its sole judgment, pursuant to Section 16 of this Agreement.

D. Licensee shall not authorize any person or entity acting on Licensee's behalf ("Licensee Contractor") to perform any work on, within or in Licensor's Poles without first verifying, to the extent practicable, on each date when such work is to be performed and, that the condition of the Poles is suitable for the work to be performed. If Licensee or Licensee Contractor determines that the condition of the Poles is not suitable for the work to be performed, Licensee shall notify Licensor of the condition of the Poles in question and shall not proceed with construction activities until Licensee is satisfied that the work can be safely performed.

E. Licensee shall be solely responsible for paying all persons and entities that provide materials, labor, access to real or personal property, or other goods or services in connection with the construction and placement of Licensee's Attachments and for directing the activities of all Licensee Contractors while

they are physically present on, within or in the vicinity of Licensor's Poles. Licensee shall not permit any mechanic's lien, material man's lien, or any other lien, claim or security interest to attach to or encumber any of Licensor's real or personal property at any time.

F. Licensee's main line Attachments shall be tagged at maximum intervals of 300 feet so as to identify Licensee as the owner of the Attachment. Licensee shall place fiber wrap/ID at the specific Licensor Poles attaching point and at any aerial span splice location and/or slack loop. The tags shall be of sufficient size and lettering so as to be easily read from ground level.

11. OVERLASHING

A. Licensee may, upon notice to Licensor, overlash its own existing authorized Attachment and this does not constitute a separate Attachment, as it relates to the billing of Pole Attachment Fees, unless multiple/separate Attachment points are physically made at the Poles itself outside of the scope of a single Attachment. Such notice shall be in the form of an Exhibit B Application for Pole License, and any additional Attachments being installed on Poles, regardless of it being an overlash of existing Attachment or as a new Attachment, will require an engineering analysis to determine if the additional loading negatively impacts the Poles capacity. Any additional load which causes the Pole to exceed its rated capacity or no longer provides for ample ground clearance of the Attachments or other facilities will necessitate the need for the Licensee to pay any and all Make Ready Work necessary. Each overlashed strand shall not exceed a 2" maximum diameter.

B. In no event shall Licensee allow a third party to overlash to Licensee's Attachments without prior notice to and consent from Licensor. Any third party must execute a License Agreement with Licensor and obtain a license thereunder.

12. MODIFICATIONS, ADDITIONS, REPLACEMENTS OR REARRANGEMENTS

A. Licensee shall not modify, overlash, add to, or replace Attachments on any Poles without first notifying Licensor in writing of the intended modification, addition or replacement at least thirty (30) days prior to the date the activity is scheduled to begin. The required notification shall include:

1. the date the activity is scheduled to begin including the Pole location and Pole number,
2. a description of the planned modification, addition, or replacement,
3. a representation that the modification, addition, or replacement will not require any space other than the space previously designated for Licensee's Attachments, and
4. a representation that the modification, addition, or replacement will not impair the structural integrity of the Poles involved.

B. Upon Licensor's receipt of a complete Exhibit B Application for Pole License, Licensor will perform, at Licensee's sole expense, a field check and if Licensor determine that the modification, addition, or replacement specified by Licensee in its notice will require more space than that allocated to Licensee or will require the rearrangements of, reinforcement of, replacement of, or an addition of support equipment to the Poles involved in order to accommodate Licensee's modification, addition, or replacement, Licensor will so notify Licensee and the parties will follow the Make Ready Work process

as set forth in Section 8 of this Agreement in order to obtain authorization for the modification, addition, or replacement of its Attachments.

C. Should Licensee request Licensor to expand capacity or purchase additional plant and should Licensor so agree, Licensee agrees to pay all cost and expenses thereby incurred by Licensor. If another party that has been granted a license joins in the request and will benefit from the expansion or purchase, Licensee agrees to pay a percentage of all costs proportionate to Licensee's share of the benefit received from the expansion or purchase, but Licensee shall be responsible for all costs and expenses not paid by the other party.

D. When multiple applications, including those of Licensee, are received by Licensor with respect to any Poles which must be replaced or rearranged to provide additional space prior to commencement of the work on such Poles, Licensor's facilities may need to be transferred in which case Licensee shall pay for all costs for such transfers.

E. In the event Licensor plans to modify or alter any Poles upon which Licensee has placed Attachments, Licensor, except in emergency situations, shall provide Licensee written notice of the proposed modification or alteration at least sixty (60) days prior to the time the proposed modification or alteration is scheduled to take place. Should Licensee decide to modify or alter Licensee's Attachments on Poles, Licensee shall so notify Licensor in writing at least thirty (30) days prior to the day the work is to begin. In such event, Licensee shall bear a proportionate share of the total costs incurred by Licensor to make Licensor Poles accessible.

F. In the event Licensor is required to move the location of, or replace, any Licensor Poles for reasons beyond its control, Licensee concurrently shall relocate Licensee's Attachments. Licensee shall be solely responsible for the costs of the relocation of Licensee's Attachments. When it is mutually agreed that it is in the best interest of Licensor and Licensee, Licensor may, after proper notification has been provided, transfer Licensee's Attachments at the same time that Licensor transfers its facilities and shall invoice Licensee for the actual costs incurred in performing the transfer of Licensee's Attachments.

13. EMERGENCY RESTORATION

A. In the event of an emergency, restoration procedures may be affected by the presence of Licensee's Attachments. While Licensor shall not be responsible for the repair of damaged Attachments, Licensor shall nonetheless control access to its Poles if the restoration is to be achieved in an orderly fashion.

B. Where Licensor and Licensee are involved in emergency restorations, access to Licensor's Poles will be controlled by Licensor according to the following guidelines.

1. Service Disruptions/Outages

- a) While exercising its right to first access, Licensor shall make all reasonable efforts to grant access to as many other entities with attachments as is reasonably safe.
- b) Where simultaneous access is not possible, Licensor will grant access on first come, first served basis.

2. Service Affecting Emergencies

- a) While exercising its right to first access, Licensor shall make all reasonable efforts to grant access to as many other entities with attachments as is reasonably safe.
- b) Where Licensor is unable to grant simultaneous access to all other entities with attachments, access will be granted according to the level of damage to the attachments of each entity and the likelihood that a given level of damage will result in service disruption. Where the likelihood that a service disruption will result is not clearly discernible, access will be on a first come, first served basis.

C. Without limiting any other indemnification or hold harmless provisions of this Agreement, Licensee agrees that any decision by Licensor regarding access to its Attachments, or any action or failure to act by Licensor, under this section shall not be the basis for any claim by Licensee against Licensor for any damage to Licensee's Attachments or disruption of Licensee's Services, or any other direct or indirect damages of any kind whatsoever incurred by Licensee.

14. FAILURE TO PLACE ATTACHMENTS

Once Licensee has been issued a License, Licensee shall have ninety (90) calendar days from the date of the License was issued to begin the placement of its Attachments on the Licensor Poles covered by the License. If Licensee has not begun placing its Attachments within the ninety (90) day period, Licensee shall so advise Licensor with a written explanation and notice for the delay. If Licensee fails to advise Licensor of its delay by notice thereof or if Licensee fails to act in good faith by not making a bona fide effort to begin placing its Attachments within the ninety (90) calendar days prescribed by this section, the License shall be automatically rescinded by Licensor and deemed null and void, and Licensee shall have no further right to place the Attachments pursuant to such voided License.

15. ABANDONMENT

Nothing in this Agreement shall prevent or be construed to prevent Licensor from abandoning, selling, assigning, or otherwise disposing of any Poles. Licensor shall notify Licensee of any sale, assignment, or other disposition of any Poles or other Licensor property used for Licensee's Attachments.

16. INSPECTIONS AND INVENTORIES

A. Post construction and/or periodic inspection of Licensee Attachments. Licensor shall have the right, but not the obligation, to make a post construction inspection and periodic inspections at any time of any part of Licensee's Attachments on Poles and any other associated facilities for the limited purpose of determining whether Licensee's Attachments are in compliance with the terms of this Agreement and any Licenses issued hereunder. Such inspections shall be conducted at Licensor's expense with the exception of (1) a post construction inspection, (2) follow-up inspection to confirm remedial action after an observed Licensee violation of the requirements of this Agreement; and (3) inspection of Licensee Facilities in compliance with a specific mandate of appropriate governmental authority, for which inspections the cost shall be borne solely by Licensee.

B. Inventories. Upon written notice to Licensee, the total number and location of Licensee's Attachments on Licensor's Poles may be determined, at Licensor's discretion, through a survey which may be made not more than once per calendar year by Licensor. If so requested, Licensee and /or any other entity owning or jointly using the Poles with Licensor may participate in the survey. The costs incurred by Licensor to conduct the survey shall be reimbursed to Licensor by Licensee upon demand by Licensor regardless of whether or not Licensee participates in the survey. If the Attachments of more than one licensee are surveyed, each such licensee shall contribute a proportionate share of the costs reimbursed to Licensor.

C. No Duty to Licensee. Neither the act of inspection or survey by Licensor of Licensee's Attachments nor any failure to inspect such Attachments shall operate to impose on Licensor any liability of any kind whatsoever or to relieve Licensee of any responsibility, obligations or liability under this Agreement, any License issued hereunder, or applicable law, or to any third party contractor, Licensee Contractor, or otherwise.

17. UNAUTHORIZED ATTACHMENTS

A. If any Licensee Attachment shall be found on Poles for which no License has been granted by Licensor pursuant to the terms of this Agreement ("Unauthorized Attachment"), Licensor, without prejudice to its other rights or remedies under this Agreement or otherwise, may:

1. impose charges as set forth herein, and
2. require Licensee to remove such Unauthorized Attachment or Licensor may remove such Unauthorized Attachment without liability and the expense of removal shall be borne by Licensee.

B. For the purpose of determining the charges, Licensee shall pay an amount per Unauthorized Attachment equal to the Pole Attachment Fee that would have applied if Licensee had properly obtained a License based upon the then current Attachment Rate for the number of years the Unauthorized Attachment have existed (or, if that cannot be determined, the number of years since the most recent inventory or five (5) years, whichever is less), plus interest at a rate the greater of 1.5% per month or the maximum allowed by law. In addition, if the Unauthorized Attachment is discovered during a survey where Licensee declined to participate an additional fee of \$100 per Unauthorized Attachment shall be charged to Licensee. Licensee agrees and acknowledges in the event of an Unauthorized Attachment actual damages would be difficult to determine and the charges described herein are liquidated damages, not penalties, and represent a fair and reasonable estimate of the damages which may be incurred by Licensor for Unauthorized Attachments on Licensor's Poles including wear and tear, lost revenue, increased maintenance and repair costs for having to work on a Pole where the owner of a facility is unknown, and the risk of liability for safety violations that may be the result of an Unauthorized Attachment.

C. Any such charge as set forth in Section 17(B) imposed by Licensor shall be in addition to its rights to any other sums due and payable, including without limitation Make Ready Work costs, the actual costs of any audit or survey which established the existence of the Unauthorized Attachment and to any claims to said fees.

D. No act by Licensor with regard to any unauthorized use shall be deemed as a ratification or the licensing of the unauthorized use, and if any License should subsequently be issued, after application and payment of all applicable fees therefore, said License shall not operate retroactively or constitute a waiver by Licensor of any of its rights or privileges under this Agreement or otherwise, and Licensee shall be subject to all liabilities, obligations and responsibilities of this Agreement in regard to said unauthorized use from its inception.

E. An Unauthorized Attachment shall include, but not limited to:

1. an Attachment to Poles which is not identified in any License issued in accordance with this Agreement;
2. an Attachment that occupies more space than that allocated to Licensee by Licensor in a License;
3. an Attachment that is not placed in accordance with the provisions of this Agreement or the appropriate License issued pursuant to this Agreement, unless Licensee can demonstrate to Licensor's reasonable satisfaction that said misplacement is not due to any act or omission of Licensee or Licensee's agents;
4. an addition or modification by Licensee to its pre-existing Attachment(s) that impairs the structural integrity of the involved Licensor Poles.
5. an Attachment that consists of facilities owned or controlled by, and for the use of a party other than Licensee that is overlashed to Licensee Attachments without approval by Licensor as required under this Agreement.

F. Once Licensor has notified Licensee of an Unauthorized Attachment. Licensee shall submit an Exhibit B Application for Pole License to request an authorization for the Attachment. An Exhibit B Application for Pole License submitted per this provision will be treated like any other Exhibit B Application for Pole License subject to this Agreement. Licensee will be responsible for all fees associated with an Exhibit B Application for Pole License (as identified in this Agreement). If an Exhibit B Application for Pole License is not received by Licensor within ten (10) days of Licensor's notice of an Unauthorized Attachment, Licensee has sixty (60) days from the date of the Unauthorized Attachment notification to vacate the Pole. If Licensee fails to remove Licensee's facilities within such sixty (60) day period, Licensor shall have the right to remove Licensee's facilities at Licensee's expense and without any liability on the part of Licensor for damage or injury to Licensee's facilities or disruption of Licensee's Services.

18. COMPLIANCE WITH LAW, ASSUMPTION OF RISK, AND DISCLAIMER OF WARRANTIES

A. Notwithstanding anything to the contrary in this Agreement, Licensee shall ensure that any and all activities it undertakes pursuant to this Agreement shall comply with all applicable laws, including, without limitation, all applicable provisions of:

1. Workers' compensation laws

2. Unemployment compensation laws
3. The Federal Social Security Law
4. The Fair Labor Standards Act, and
5. All laws, regulations, rules, guidelines, policies, orders, permits and approvals or any governmental authority relating to environmental matters including but not limited to Hazardous Materials and/or Occupational Safety and Health Act ("OSHA").

B. LICENSEE ACKNOWLEDGES AND AGREES THAT LICENSOR DOES NOT MAKE ANY REPRESENTATION OR WARRANTIES AS TO THE CONDITION OR SAFETY OF LICENSOR'S POLES ANY ASSOCIATED FACILITIES AND EQUIPMENT ON, WITHIN OR SURROUNDING THE SAME, OR THE PREMISES SURROUNDING THE SAME, LICENSEE HEREBY ASSUMES ALL RISKS OF ANY DAMAGE. INJURY OR LOSS OF ANY NATURE WHATSOEVER CAUSED BY OR IN CONNECTION WITH THE USE OF POLES AND ASSOCIATED FACILITIES AND EQUIPMENT ON, WITHIN OR SURROUNDING THE SAME, AND THE PREMISES SURROUNDING THE SAME AND LICENSEE IS SOLELY RESPONSIBLE FOR ALL ALLEGED DAMAGES CLAIMED BY THIRD PARTIES ACCESSING OR WORKING ON OR NEAR LICENSOR'S POLES.

C. EXCEPT AS OTHERWISE PROVIDED HEREIN, LICENSOR MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH ARE HEREBY EXPRESSLY DISCLAIMED, WITH REGARD TO THIS AGREEMENT AND ANY LICENSE ISSUED HEREUNDER INCLUDING, WITHOUT LIMITATION, ACCESS TO LICENSOR'S POLES OR OTHER FACILITIES.

19. LICENSEE CONTRACTOR QUALIFICATIONS

A. The parties acknowledge that from time to time Licensee may use a Licensee Contractor to perform work for Licensee on, within or in Licensor's Poles.

B. Licensee represents and warrants that any of its employees or Licensee Contractors shall not climb or work on any of Licensor's Poles, or work within Licensor's Right-Of-Way unless such person has the training, skill, and experience required to recognize potentially dangerous conditions relating to Poles and to perform the work safely.

C. Licensee assumes all risk of Licensee Contractors and agrees to indemnify, defend and hold harmless Licensor from all claims, losses, damages and liabilities, costs and expenses (including, but not limited to, reasonable attorney's fees) associated thereto in accordance with the indemnification provision of this License Agreement.

D. When Licensee Contractors are working on, within or in the vicinity of any part of Licensor's Poles or Right-Of-Way, all such Licensee Contractors shall follow procedures which Licensee deems appropriate for the protection of persons and property. Licensee shall be responsible at all times for determining and implementing the specific steps required to protect persons and property at the site. Licensee will provide all traffic control and warning devices required to protect pedestrian and vehicular

traffic, workers and property from danger. Licensee has sole responsibility for the safety of all its employees and Licensee Contractors, for the safety of bystanders, and for insuring that all operations conform to terms and conditions set forth in this Agreement. Licensor reserves the right to suspend Licensee's activities on, within or in the vicinity of Licensor's Poles or Right-Of-Way if, in Licensor's sole judgment, any hazardous condition arises due to the activity (including both acts and omissions) of any Licensee Contractor or Licensee employee, which suspension shall cease when the condition has been rectified.

E. Licensee represents and warrants that all Licensee Contractors shall maintain the same insurance coverage and limits as are required of Licensee under this Agreement, and if not Licensee's insurance will provide such coverage.

F. Licensee acknowledges that all Licensee Contractors are not Licensor's employees or agents and Licensee assumes full responsibility for their actions or omissions to act. Licensee shall be solely responsible for the payment of compensation of Licensee's employees, contractors or agents assigned to perform work hereunder and such employees, contractors and agents shall be informed that they are not entitled to the provision of any Licensor benefits. Licensor shall not be responsible for payment of workman's compensation, disability benefits, and unemployment insurance or for withholding or paying employment related taxes for any employee of Licensee, but such responsibility shall be solely that of Licensee. In the event that any federal, state or local government agency, any court or any other applicable entity determines that the personnel provided by Licensee or any permitted Licensee Contractor are employees of Licensor for any purpose, Licensee agrees to indemnify, defend and save harmless Licensor from all liabilities, costs, and expenses (including, but not limited to, reasonable attorney fees) associated with such determination in accordance with the indemnification provision of this License Agreement.

G. Any work by Licensee Contractors on, within or in Licensor's Poles or Right-Of-Way shall be done only when specific authorization for such work has been obtained in writing in advance from Licensor pursuant to the terms and conditions of this Agreement. The parties agree that all work shall be performed according to existing industry standards and practices and the requirements and specifications set forth in this Agreement and any License issued hereunder.

20. DEFAULT

A. In addition to other events of defaults defined anywhere else in this Agreement, any one of the following shall be deemed the occurrence of a default under this Agreement:

1. failure by Licensee to pay when due any fee or other sum required to be paid under the terms of this Agreement.
2. failure by either party to perform or observe any other term, condition, covenant, obligation, or provision of this Agreement and such default continues for a period of thirty (30) days after written notice thereof from the other party (provided that if such default is not curable within a thirty (30) day period, the period may be extended if the party substantially commences to cure such default and proceeds diligently thereafter to effect such cure).

3. the filing of any tax or lien against Poles because of any act or omission by Licensee which is not bonded or discharged within thirty (30) days of the date of notice to Licensee that such lien has been filed;
4. Licensee's voluntary or involuntary bankruptcy;
5. Licensee's use or maintenance of its Attachments in violation of any law or regulation, or in aid of any unlawful act or undertaking;
6. if any authorization which may be required of Licensee by any governmental or private authority for the placement, operation, or maintenance of Licensee's Attachments is denied or revoked.

B. In the event of a default and subject to any other applicable provision of this Agreement, the non-defaulting party, without any further notice to the defaulting party (except where expressly provided for below or required by applicable law), may do any one or more of the following:

1. perform on behalf and at the expense of the defaulting party, any obligation of the defaulting party under this Agreement which the defaulting party has failed to perform and of which the non-defaulting party shall have given the defaulting party notice, the cost of which performance shall be paid by the defaulting party to the non-defaulting party upon demand;
2. terminate this Agreement by giving sixty (60) days written notice of such termination to Licensee and remove Licensee's Attachments and store Licensee's facilities in a public warehouse or elsewhere at the expense of and for the account of Licensee without Licensor being deemed guilty of trespass or conversion, and without Licensor becoming liable for any loss or damages to Licensee occasioned thereby; or
3. exercise any other legal or equitable right or remedy that the non-defaulting party may have.

C. The defaulting party shall repay to the non-defaulting party upon demand any costs and expenses incurred by the non-defaulting party (including, without limitation, reasonable attorneys' fees) in successfully enforcing this Agreement.

D. Upon termination of this Agreement by the non-defaulting party, the defaulting party shall remain liable to the non-defaulting party for any and all fees, other payments and damages which may be due or sustained in accord with this Agreement prior to such termination, all reasonable costs, fees and expenses, including, without limitation, reasonable attorney' fees incurred by the non-defaulting party in pursuit of its remedies hereunder.

E. All rights and remedies of the non-defaulting party set forth in this Agreement shall be cumulative and none shall exclude any other right or remedy, now or hereafter allowed by or available under any statute, ordinance, rule of court, or the common law, either at law or in equity, or both.

21. INDEMNIFICATION AND LIMITATION OF LIABILITY

A. Licensee shall compensate Licensor for the full actual loss, damage or destruction of Licensor's property that in any way arises from or is related to this Agreement or activities undertaken pursuant to this Agreement (including, without limitation, the installation, construction, operation, or maintenance of Licensee's Attachments).

B. Licensee agrees to defend, indemnify, protect and hold harmless Licensor and its officers, directors, employees, shareholders, successors, assigns, agents, affiliates, representatives, partners, and contractors from and against any and all claims, actions, administrative proceedings (including, without limitation, informal proceedings), judgments, damages, penalties, fines, cost, liabilities, interests, or loss, including, without limitation, reasonable attorneys' fees and expenses, consultant fees, and expert fees, together with all other costs and expenses of any kind or nature suffered by or asserted against Licensor in any way arising out of or connected with this Agreement or activities undertaken pursuant to this Agreement (including, without limitation, the installation, construction, operation or maintenance of Licensee's Attachments, unless caused solely by the negligence or willful misconduct of Licensor or Licensor's affiliates, agents, officers, employees and assigns). Licensee expressly assumes all liability for actions by its affiliates, agents, officers, employees, or Licensee Contractors and expressly waives any immunity from the enforcement of this indemnification provision that might otherwise be provided by workers' compensation law or by other state or federal laws.

C. Without limiting any of the foregoing, Licensee assumes all risk of, and agrees to relieve Licensor of any and all liability for, loss or damage (and the consequences of loss or damage) to any facilities placed on Licensor's property and any other financial loss sustained by Licensee, except to the extent caused by the sole negligence or willful misconduct on the part of Licensor or Licensor's agents, officers, employees, and assigns.

D. Without limiting the foregoing, Licensee expressly agrees to indemnify, defend, and hold harmless Licensor and Licensor's agents, officers, employees and assigns from any and all claims asserted by end users/customers of Licensee in any way arising out of or in connection with this Agreement or Licensee's Attachments, except to the extent caused solely by the negligence or willful misconduct of Licensor or Licensor's agents, officers, employees, and assigns, or its contractors.

E. Notwithstanding anything to the contrary in this Agreement, Licensee further shall indemnify and hold harmless Licensor, its agents, officers, employees, and assigns from and against any claims, liabilities, losses, damages, fines, penalties, and costs (including, without limitation, reasonable attorneys' fees) whether foreseen or unforeseen, which the Licensor suffers or incurs because of:

1. any discharge of Hazardous Materials resulting from acts or omissions of Licensee, Licensee Contractors or Licensee's predecessor in interest;
2. acts or omissions of Licensee, its agents, employees, Licensees, or representatives in connection with any cleanup required by law, or
3. failure of Licensee or Licensee Contractors to comply with Environmental, Safety and Health Laws.

F. Licensee shall indemnify, protect, and hold harmless Licensor from and against any and all claims for libel and slander, copyright and/or patent infringement arising directly or indirectly by reason of installation of Licensee's Attachments pursuant to this Agreement.

G. In the event of any claim, demand or litigation specified the indemnity provision, the party to be indemnified (the "Indemnified Party") shall give prompt notice to the other party (the "Indemnifying Party") of such claim, demand or litigation. The Indemnifying Party shall have sole control of the defense of any action or litigation on such a claim or demand (including the selection of appropriate counsel) and all negotiations for the settlement or compromise of the same, except that the Indemnifying Party may not make any non-monetary settlement or compromise without the Indemnified Party's consent, which consent shall not be unreasonably withheld. The Indemnified Party shall cooperate with the Indemnifying Party in the defense and/or settlement of any claim, demand or litigation. Nothing herein shall be deemed to prevent the Indemnified Party from participating in the defense and/or settlement of any claim, demand or litigation by the Indemnified Party's own counsel at the Indemnified Party's own expense.

H. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THE AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES SUFFERED BY SUCH PARTY OR BY ANY SUBSCRIBER, CUSTOMER OR PURCHASER OF SUCH PARTY FOR LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, WHETHER BY VIRTUE OF ANY STATUTE, IN TORT OR IN CONTRACT, UNDER ANY PROVISION OF INDEMNITY, OR OTHERWISE, REGARDLESS OF THE THEORY OF LIABILITY UPON WHICH ANY SUCH CLAIM MAY BE BASED OR WHETHER IT (a) HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES OR (b) IS NEGLIGENT.

22. INSURANCE

A. Licensee shall obtain and maintain, in full force and effect at all times, during operations covered by this Agreement, such minimum insurance as will cover the obligations and liabilities of Licensee, its agents, and its employees which may arise from the operations under this Agreement. Insurance shall have limits of not less than Commercial General Liability policy of minimum limits of:

General Aggregate	\$ 2,000,000 per policy period
Products/Completed Operations Aggregate	\$ 2,000,000 per policy period
Personal Injury/Advertising	\$ 2,000,000 per occurrence
Each Occurrence	\$ 2,000,000 per occurrence
Fire Legal Liability	\$ 50,000 any one fire

B. The policy will be endorsed to show the above aggregate limits applying to "each" job site or, as an alternative, the General Aggregate will be increased to \$4,000,000 per policy period. Policy will also specifically state the coverage applies to all operations conducted by the Licensee, its employees, or agents on behalf of Licensee or subsidiary.

C. Where the performance of the work involves structural property, underground property, or blasting, Licensee's Commercial General Liability insurance policy shall provide coverage to the insured for legal liability arising from operations under this Agreement for property damage:

1. arising out of blasting,
2. arising out of collapse of, or structural injury to, any building or structure or
3. To underground facilities and utilities.

D. Other general liability forms are acceptable in lieu of the Commercial General Liability Form however they are not to be used without written approval from Licensor.

1. Business Automobile Liability policy with minimum limits of:

Bodily Injury	\$2,000,000 per accident
Property Damage	\$ 2,000,000 per accident
OR	
Combined Single Limit	\$ 2,000,000 per accident

The policy will be issued using symbol "1 - any auto" coverage.

2. Workers Compensation:

Part 1 - Medical Benefits Statutory

Part 2 - Employer's Liability as indicated:

Bodily Injury by Accident	\$ 1,000,000 each accident
Bodily Injury by Disease	\$ 1,000,000 each employee
Bodily Injury by Disease	\$ 1,000,000 policy limit

E. The policy will show the state in which operation on behalf of the Licensee and/or subsidiary is being conducted. For operations conducted within monopolistic (state fund) states, Licensee will furnish a certificate of compliance from the appropriate state fund administrator.

F. In each and every policy except workers' compensation, Licensor and its subsidiaries shall be named an "additional insured" with respect to activities performed on behalf of the Licensee and its subsidiaries.

G. Coverage provided by the policies listed in this paragraph will be issued by an insurance company, licensed in the state in which operations on behalf of the Licensee are to be conducted. It is acceptable to use both primary and excess/umbrella policies to obtain necessary limits. The worker's compensation policy must contain a waiver of subrogation clause.

H. Licensee will furnish to Licensor, a certificate evidencing insurance coverage under sub-paragraphs 22(A) and (D). Such certificate or Licensee shall provide for a thirty (30) day prior notice to the Licensor of any cancellation or material changes in coverage and shall be signed by a legal representative of the issuing insurance company. The certificate of insurance shall be sent to Licensor's contact identified in Exhibit E.

I. The provisions of sub-paragraphs 22 (A) and (D) shall also apply to all Licensee Contractors and Licensee shall be responsible for their compliance herewith.

23. NOTICES

Any and all notices to a party required or permitted under this Agreement shall be in writing and shall be: (a) delivered personally; (b) delivered by express overnight delivery service; (c) mailed, via certified mail or first class U.S. Postal Service, with postage prepaid, and a return receipt requested; or (d) delivered by electronic mail; provided that a paper copy is also sent via methods (a), (b), or (c) of this Section. Notices will be deemed given as of the earliest of: the date of actual receipt; the next business day when sent via express overnight delivery service; five (5) calendar days after mailing in the case of first class or certified U.S. Postal Service, or on the date set forth on the confirmation produced by the sent confirmation when sent prior to 5:00 p.m. in the recipient's time zone, but the next business day when delivered at 5:00 p.m. or later in the recipient's time zone. Notices will be addressed to the parties as set forth in Exhibit E as may be updated in writing by the parties from time to time in accordance with method set forth under this Section 23.

24. CONFIDENTIALITY

Neither party shall at any time disclose, provide, demonstrate or otherwise make available to any third party any of the terms or conditions of this Agreement or any materials provided by either party specifically marked as confidential, except upon written consent of the other party, or as may be required by applicable law or governmental authorities. Notwithstanding the foregoing, nothing in this Section shall prevent disclosure to a party's authorized legal counsel who shall be subject to this confidentiality section, nor shall it preclude the use of this Agreement by the parties to obtain financing, to make or report matters related to this Agreement in any securities statements, or to respond to any requests by governmental or judicial authorities; provided, however, that any such disclosure shall be limited to the extent necessary, and shall be made only after attempting to obtain confidentiality assurances. Notwithstanding the foregoing, prior to making any disclosure in response to a request of a governmental authority or legal process, the party called upon to make such disclosure shall provide notice to the other party of such proposed disclosure sufficient to provide the other with an opportunity to timely object to such disclosure. Notwithstanding the foregoing, Licensor may, without notice to Licensee: (i) negotiate or enter into any agreement with any other person(s) or entity(ies) that is identical or similar to this Agreement; and (ii) provide the text of all or part of this Agreement to any other party, so long as Licensor shall redact therefrom all references to Licensee and shall not associate such text with Licensee or identify Licensee as having agreed to such text or terms.

25. DISPUTE RESOLUTION

A. Except in the case of:

1. a suit, action, or proceeding by one party to compel the other party to comply with its obligation to indemnify the other party pursuant to this Agreement, or
2. a suit, action or proceeding to compel either party to comply with the dispute resolution procedures set forth in this section, the parties agree to use the following procedure to resolve any dispute, controversy, or claim arising out of or relating to this Agreement or its breach.

B. At the written request of a party, each party shall designate a knowledgeable, responsible representative to meet and negotiate in good faith to resolve any dispute, controversy, or claim arising

under this Agreement. The parties intend that these negotiations be conducted by non-lawyer, business representatives. The substance of the negotiations shall be left to the discretion of the representatives. Upon mutual agreement, the representatives may utilize other alternative nonbinding dispute resolution procedures such as mediation to assist in the negotiations. Discussions and correspondence between the representatives for the purposes of these negotiations shall be treated as confidential, undertaken for purposes of settlement, shall be exempt from discovery and production, and shall not be admissible in any subsequent proceeding without the concurrence of all parties. Documents identified in or provided during such negotiations, which are not prepared for purposes of the negotiations, shall not be so exempt and may, if otherwise admissible, be admitted as evidence in any subsequent proceeding.

C. If a resolution of the dispute, controversy or claim is not reached within ninety (90) days of the initial written request referred to in this Section 25, the dispute, controversy, or claim may be filed with the State utility commission or the Federal Communication Commission, if applicable, for review and determination, provided the party invoking the commission's intervention process has in good faith negotiated, or attempted to negotiate, with the other party pursuant to this Section 25.

D. Except as otherwise provided in this Agreement under the Indemnification or Default provision or elsewhere, each party shall bear its own costs, including attorneys' fee, incurred in connection with any of the foregoing procedures. A party seeking discovery shall reimburse the responding party the cost of reproducing documents (to include search time and reproduction time costs).

26. TAXES

Each party shall pay all taxes and assessments lawfully levied on its own property and services subject to this Agreement.

27. WAIVER

Failure by 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.

28. NO THIRD PARTY BENEFICIARIES

Except as otherwise provided in this Agreement, this Agreement is intended to benefit only the parties and may be enforced solely by the parties, their successors in interest or permitted assigns. It is not intended to, and shall not, create rights, remedies or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the parties, except as provided herein.

29. FORCE MAJEURE

Neither party shall be liable for any delay or failure in performance of any part of this License Agreement or License issued hereunder from any cause beyond its reasonable control and without its fault, omission or negligence, such as acts of God, acts of civil or military authority, embargoes, epidemics, war, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, power blackouts, labor strikes, lockouts or work stoppages or severe weather ("Force Majeure Event"). In the event of a Force Majeure Event, upon giving prompt notice to the other party, the due date for performance by the affected party of its original obligation(s) shall be extended by a term equal to the

time lost by reason of the Force Majeure Event. In the event that the affected party is able to partially perform its obligations, it shall perform its obligations at a performance level no less than that which it uses for its own operations.

30. ASSIGNMENT

Licensee shall not assign; transfer or sublet the privileges hereby granted, or sell, lease or otherwise permit the use of its facilities on or any part thereof (all of the foregoing being "Transfers"), without prior consent in writing of Licensor. No such consent granted by Licensor shall be effective until Licensee's assignee, sublessee or other transferee has agreed, on an enforceable separate document signed and delivered to Licensor, to assume all obligations and liabilities of Licensee under this Agreement. Licensor may condition such consent upon the assignee's sublessee's or transferee's agreement to reasonable additional or modified terms or conditions. If there is a change of control of Licensee, then Licensor shall have the right, in its reasonable discretion, immediately to terminate this Agreement in its entirety without further liability. Licensor may assign or otherwise transfer this Agreement or any of its rights and interests to any firm, corporation or individual, without the prior consent of Licensee.

31. APPLICABLE LAW

This Agreement, and the rights and obligations contained in it, shall be governed and construed under the laws of the state in which the Attachments hereunder are to be located. The terms and conditions of this Agreement shall be subject to any and all applicable laws, rules, regulations or guidelines now in effect and that subsequently may be prescribed by any federal, state or local governmental authority. To the extent required by any such prescribed law, rule, regulation or guideline, the Parties agree to modify, in writing, the affected term(s) and condition(s) of this Agreement to bring them into compliance with such law, rule, regulation or guideline. Should any term of this Agreement be determined by a court or agency with competent jurisdiction to be unenforceable, all other terms of this Agreement shall remain in full force and effect.

32. WAIVER OF JURY TRIAL

Licensor and Licensee each expressly waive its right to a jury trial.

33. ENTIRE AGREEMENT, MODIFICATIONS, SURVIVAL AND CONFLICTS AND TARIFFS

A. This Agreement cancels and supersedes all previous agreements whether written or oral, except for any sums due thereunder, between Licensor and Licensee with respect to the Licensee's Attachments to Licensor's Poles; and there are no other provisions, terms or conditions to this Agreement except as expressed herein. All currently effective Licenses and authorizations for Attachments granted pursuant to such previous agreements shall continue in effect subject to the terms and conditions of this Agreement.

B. This Agreement may be amended or supplemented at any time only upon written agreement by the parties hereto. Notwithstanding the foregoing, all Exhibits, fees, Licensor procedures and specifications may be modified by Licensor upon thirty (30) day notice to Licensee.

C. Notwithstanding the termination of this Agreement for any reason, Section 18 Compliance with Laws, Assumption of Risk and Disclaimer of Warranties, Section 21 Indemnification and Limitation of

Liability, Section 22 Insurance, Section 24 Confidentiality and any other provision intended to survive, shall survive termination to the maximum extent permitted under applicable law. Notwithstanding any provisions to the contrary, all rights, remedies, or obligations which arose or accrued prior to the termination or expiration of the terms hereof shall survive and be fully enforceable for the applicable statute of limitations period.

D. It is the intent of the parties that the terms and conditions of this Agreement and any applicable Licensor's state tariffs be construed as being consistent where possible. However, in the event of a conflict or difference between the terms and conditions of this Agreement and Licensor's state tariff, the terms of the applicable state tariff shall control.

34. AUTHORITY AND COUNTERPARTS AND ELECTRONIC SIGNATURES

A. Each party represents and warrants that it is a corporation duly organized, validly existing and in good standing under the laws of the state in which the obligations under this License Agreement are to be performed. Each party warrants that it has full power and authority to execute and deliver this License Agreement and to perform its obligations hereunder.

B. This Agreement may be executed using facsimile or electronic signatures and such facsimile or electronic version of the Agreement shall have the same legally binding effect as an original paper version. This Agreement may be executed in counterparts, each of which shall be deemed an original.

LICENSOR

LICENSEE

Windstream Kentucky East, LLC

(INSERT CATV/CLEC ENTITY)

BY: _____

BY: _____

NAME: _____

NAME: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

EXHIBIT A
DEFINITIONS

“Application for Pole License” - A written request submitted in the form of Exhibit B from Licensee to Licensor requesting authorization to attach Licensee owned facilities to Poles in accordance with this Agreement.

“Attachment(s)” – any facilities, cables or equipment attached to Poles or any other property owned or controlled by Licensor.

“Effective Date” - is the date this Agreement is last signed by the parties.

“Force Majeure Event” – shall have the meaning set forth in Section 29 of the Agreement.

“Hazardous Materials” -

Any substance, material or waste now or hereafter defined or characterized as hazardous, toxic or dangerous as defined by the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”) of 1980, as amended, and other federal, state, and local health, safety, and environmental laws, ordinances, statutes, and rules, including but not limited to the Occupational Safety and Health Act (“OSHA”).

Any substance, material or waste now or hereafter classified as a contaminant or pollutant under any law, rules, ordinance, or authority.

Any other substance, material or waste, the manufacture, processing, distribution, use, treatment, storage, placement, disposal, removal or transportation of which is now or hereafter subject to regulation under any law, ordinance, statute, rule or regulation of any governmental body or authority.

“License” – is the specific nonexclusive and revocable permission from Licensor, in the form of a Licensor countersigned and returned Application for License, to Licensee authorizing Licensee to attach its facilities as applied for to Licensor Poles in accordance with this Agreement.

“Licensee Contractors” - shall have the meaning set forth in Section 10(D) of the Agreement.

“Make Ready Estimate” – is Licensor’s estimated cost to perform Make Ready Work on Licensor’s facilities on Poles to accommodate Licensee’s Attachment as requested in an Application for Pole License.

“Make Ready Work” - all Licensor, joint owner or other existing attacher work to prepare Licensor’s Poles and related facilities for the requested Attachment of Licensee’s facilities but not the actual placement of Attachments or administrative activities related to inquiries, verifications, requests or applications.

“Overlashing or overlashed” – lashing of an additional Licensee owned cable to Licensee’s own existing cable and/or strand attached to a Pole as set forth in Section 11 of this Agreement.

"Pole(s)" - a pole owned solely or jointly by Licensor or Poles owned by others to the extent that and for so long as Licensor has the right to permit others to be attached in the communications space.

"Pole Attachment Fee" - the fee paid annually per Attachment on a Pole. For billing purposes, a single Attachment includes the point of Attachment and all facilities located in the usable space on the Poles in the space assigned to Licensee (typically six inches above and six inches below the point of Attachment). If Licensee occupies more than one foot of usable space on Poles, separate Pole Attachment Fees shall apply to each one foot of space occupied.

"Right-of-Way" - right-of-way owned or controlled by Licensor.

"Unauthorized Attachment" - shall have the meaning set forth in Section 17(A) and 17(E) of the Agreement.

EXHIBIT B

FORM APPLICATION FOR POLE LICENSE

NOTE TO LICENSEE IF LICENSEE CHOOSES NOT TO PROCEED WITH THE APPLICATION - LICENSEE WILL BE BILLED FOR LICENSOR/WINDSTREAM'S ENGINEERING AND ADMINISTRATIVE TIME.

**EXHIBIT B
Windstream CORPORATION
APPLICATION FOR POLE LICENSE**

PROPOSAL #:

Submit in Dupli

Name of Firm/Licensee Applying: _____

Contact Name, Phone # _____

windstream

EMAIL ADDRESS _____

Street Address, City, ST, ZIP of Firm Applying _____

Licensee Authorized Signature & Date: _____

By this application & signature, Licensee agrees to pay all engineering and administrative fees associated with this application even if Licensee chooses NOT to proceed with the project. **ALL ESTIMATED fees, including engineering & materials, MUST BE PAID IN FULL UP FRONT**
NON PAYMENT OF FEES WILL RESULT IN THIS APPLICATION AND ALL FUTURE APPLICATIONS BEING PLACED ON HOLD
NOTE: Final costs will be determined by actual time & material required to do the make-ready work. Any difference in charges will be billed according

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11
Licensee to complete	Licensee to complete	Licensee to complete	Licensee to Complete	Licensee to Complete	Licensee to Complete	Licensee to Complete	Licensee to Complete	Licensee to Complete	Licensee to Complete	Windstream to Complete
Windstream Lead & Structure No (Pole No.)	Power Pole No.	Location: Street, City, Town, Zip Code	Height, Class, Ownership of highest Pole	Hgt of Tel Cable	Hgt of highest Tel Drop	Hgt of lowest Power Cable	Hgt of other attachments on pole	# & type of Attachment	Height to attach	Licensee Work Descr
1										
2										
3										
4										
5										
6										
7										
8										
9										
10										
11										
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17										
18										
19										
20										
21										
22										
23										
24										
25										
ESTIMATED TOTAL COSTS										

EXHIBIT B CONTINUED

PLEASE ATTACH DRAWINGS TO THIS APPLICATION - IT WILL NOT BE PROCESSED WITHOUT THEM

Submit to: Windstream.jointuse@windstream.com

Acknowledged and Agreed to by Licensor: _____
 Name Title Date

Windstream Pole Attachment Data Sheet
EXHIBIT B - PART II

WINDSTREAM POLE NUMBER		POWER POLE NUMBER		
STREET LOCATION		NAME OF ATTACHER		
CITY/BORO/TOWNSHIP		DATE	FIELD PERSONNEL NAME	
ATTACHMENT TYPE <input type="checkbox"/> Cable <input type="checkbox"/> Power Supply <input type="checkbox"/> Service Drop <input type="checkbox"/> Overhead Guy				
POLE SIZE	TRANSFORMER/DEVICE ON POLE <input type="checkbox"/> Yes <input type="checkbox"/> No	STREET LIGHT <input type="checkbox"/> Yes <input type="checkbox"/> No	STREET LIGHT BRACKET HEIGHT TOP OF CONDUIT RISER HEIGHT	
GUYING REQUIRED FOR ANGLE, CORNER, OR TAP POLE CONSTRUCTION <input type="checkbox"/> Yes <input type="checkbox"/> No		CONDUIT RISER <input type="checkbox"/> Yes <input type="checkbox"/> No; If yes → <input type="checkbox"/> Primary <input type="checkbox"/> Secondary		
MAKE READY WORK	REQUIRED <input type="checkbox"/> Yes <input type="checkbox"/> No	IF YES, PROVIDE ADDITIONAL DETAIL		
	POLE NO. →		BEFORE AFTER	
*TYPE OF POWER ATTACHMENT →		<input type="checkbox"/> Neutral <input type="checkbox"/> Secondary		
POLE DRAWING	<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <p>Company Name</p> <p>1. _____</p> <p>2. _____</p> <p>3. _____</p> <p>4. _____</p> </div> <div style="width: 50%; border-left: 1px solid black; padding-left: 10px;"> <p style="text-align: center;">Pole Side</p> <p>Lowest Power Attachment <input type="checkbox"/> ← Attach. Ht. _____</p> <p><input type="checkbox"/> Front <input type="checkbox"/> Back</p> <hr/> <p><input type="checkbox"/> ← Proposed Attach. Ht. _____</p> <p><input type="checkbox"/> Front <input type="checkbox"/> Back</p> <hr/> <p><input type="checkbox"/> ← Attach. Ht. _____</p> <p><input type="checkbox"/> Front <input type="checkbox"/> Back</p> <hr/> <p><input type="checkbox"/> ← Attach. Ht. _____</p> <p><input type="checkbox"/> Front <input type="checkbox"/> Back</p> <hr/> <p><input type="checkbox"/> ← Attach. Ht. _____</p> <p><input type="checkbox"/> Front <input type="checkbox"/> Back</p> <hr/> <p style="text-align: right;">..... Ground Line</p> </div> </div>			
	SPAN	MID-SPAN HEIGHT Fl.	SPAN CROSSES OVER (Check all that apply)	
	<input type="checkbox"/> Body of Water <input type="checkbox"/> Street <input type="checkbox"/> Driveway <input type="checkbox"/> Field <input type="checkbox"/> Interstate <input type="checkbox"/> Swimming Pool <input type="checkbox"/> Building <input type="checkbox"/> Railroad <input type="checkbox"/> Yard <input type="checkbox"/> Parking Lot			
	NOTE			

EXHIBIT C

REMOVAL NOTICE AND LICENSE SURRENDER FORM

NOTIFICATION OF SURRENDER

Notification No. _____

Date: _____

City & State: _____

In accordance with the terms and conditions of the license agreement between us, dated _____, notice is hereby given that the License covering Attachments to the outside plant structures, as shown on the attached sketch, is surrendered.

Licensee: _____

Signature: _____

By (Print/Type): _____

Title: _____

Date: _____

Date Surrender Notice Received: _____

Licensor: _____

Signature: _____

By (Print/Type): _____

Title: _____

Date: _____

EXHIBIT D

SCHEDULE OF RATES, FEES AND CHARGES

Annual Attachment Rate (per Attachment)**	\$ <u>\$12.12 2-User, \$5.64 3-User</u>
Agreement Fee	\$ <u>400.00</u>
Application for Pole License Fee	\$ <u>75.00 per application</u>
Unauthorized Attachment fee	\$ <u>Per Section 17 of the Agreement</u>

**** If Attachments are in a non-tariffed state, the rental rate is subject to annual adjustment based on FCC Calculation.**

EXHIBIT E

NOTICES CONTACT INFORMATION

IF TO LICENSOR

Email: windstream.poles@windstream.com

Windstream Kentucky East, LLC

PO Box 25410

Little Rock, AR 72221

IF TO LICENSEE:

ENGINEERING CONTACT FOR LICENSEE

Company Name	
Name of Responsible Party	
Address	
Phone	
Fax	
Email	

INVOICING / BILLING CONTACT FOR LICENSEE

Name	
Address	
Phone	
Fax	
Email	

APPENDIX B

TARIFF

CATV POLE ATTACHMENT TARIFF

P.S.C. KY NO. 11

WINDSTREAM KENTUCKY EAST, LLC

Original Title Page 1

REGULATIONS, RATES AND CHARGES

Applying to CATV Pole Attachments within the operating territory of Windstream Kentucky East, LLC in the State of Kentucky.

Date of Issue: July 7, 2016

Date Effective: July 17, 2016

Issued By: Chris Cranford

Title: Product Manager – Pricing & Tariffs

By Authority of Order of the Public Service Commission

In Case No. _____ Dated: _____



CATV POLE ATTACHMENT TARIFF

WINDSTREAM KENTUCKY EAST, LLC

P.S.C. KY No. 11
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S1. CATV POLE ATTACHMENT AND CABLE DUCT ARRANGEMENT

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By Authority of Order of the Public Service Commission

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SI. CATV POLE ATTACHMENT AND CABLE DUCT ARRANGEMENT

S1.1 Application of Tariff

This tariff contains regulations and charges applicable to the provision of attachment space for cable television facilities on poles of the Telephone Company, and the provision of cable duct space for such facilities in underground conduits of the Company.

The terms and conditions contained herein apply where the CATV operator, as a customer of the Company, proposes to install coaxial or other types of television distribution cables, amplifiers and drop wires, wires and appliances together with associated cable messengers, anchors and other appurtenances (hereinafter sometimes collectively called the "equipment") and desires to attach such equipment to poles of the Company, and/or install such equipment in cable ducts of the Company.

S1.2 Definitions

Poles - All references to "poles" of the Company shall mean poles which are either solely owned by the Company, are jointly owned by the Company and another, or are owned by another who has granted the Company exclusive use and control of space upon its poles.

Pole Attachment - This term means any attachment by a CATV firm to a pole owned or controlled by the Company.

Cable Duct Space - This term shall mean individual cable ducts within a multiple-duct conduit system owned by the Company.

Equipment - The "equipment" referred to herein consist of coaxial or other types of television cables, amplifiers and drop wires, wires and appliances together with associated cable messengers, anchors and other appurtenances used in the provision of CATV service.

Joint User - All references herein to "joint user" shall mean a utility company or municipality which, together with the Company, jointly provides poles for common use in the provision of service of the respective entities, and shall also include a utility company or municipality which, together with the Company, owns a percentage of a pole, or which owns a pole upon which the Company has obtained exclusive use and control of specified space.

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Date Effective: July 17, 2016

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SI. CATV POLE ATTACHMENT AND CABLE DUCT ARRANGEMENT

S1.2 Definitions (Continued)

Cable Television Company or Operator (CATV) - All references herein to "CATV Company and/or Operator" shall mean a company which provides CATV service.

CATV Service - All references herein to "CATV service" shall mean the transmission, by means of coaxial or other types of distribution cables, of television audio and video signals from a central point within an exchange of the Company to subscribers of a CATV company within such exchange.

S1.3 Scope

Subject to the terms and conditions contained in this tariff, the Company will provide CATV pole attachment and cable duct space and permit a CATV operator, for the purpose of furnishing CATV service, to install its equipment upon or within such of the Company's poles and conduits as are available or can be made available, except for safety reasons.

References herein to CATV equipment placed in the Company's cable ducts shall mean only cables and wires. No right to place amplifiers, power supplies or other related equipment in manholes or cable ducts of the Company is conferred by this tariff.

The CATV company shall secure from the proper franchising authority, a franchise to erect and maintain its equipment within public streets, highways and other thoroughfare, provided such franchising authority exists, and shall secure any and all consents, permits, licenses, easements or rights-of-way that may be legally required for its operation hereunder. The CATV company shall provide to the Company documentation evidencing that all such franchises, consents, permits, licenses, easements and rights-of-way have been obtained. The CATV company shall additionally provide the Company a map depicting the franchised area in which pole attachments and cable duct arrangements may be applied for by the CATV company.

The CATV company shall assist in, and bear the expense of securing any additional consents, permits, or licenses that may be required by the Company because of CATV pole attachments or cable duct usage.

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S1. CATV POLE ATTACHMENT AND CABLE DUCT ARRANGEMENT

S1.3 Scope (Continued)

The franchises, consents, permits, licenses, easements and rights-of-way of the Company are for its own facilities and the provision of its other services. No rights in such franchises, consents, permits, licenses, easements or rights-of-way are conferred upon any CATV company hereunder.

S1.4 Application for Permission to Install

At least forty-five (45) days prior to the time the CATV company desires to attach its equipment to any of the Company's poles, or to install any such equipment within a cable duct of the Company, the CATV operator shall make written application on the form prescribed to the Company. The Company shall in turn, notify the CATV company in writing of its permission to allow the installation.

Where the application for attachment involves joint-use poles, the CATV operator shall so indicate in its application, and provide a copy thereof to the joint user. Permission to attach to joint-use poles shall be subject to the Company obtaining approval from such joint user when necessary.

Upon notification by the Company of its permission for pole or cable duct space to be used by the CATV company, the CATV company shall have the right, subject to the SPECIFICATIONS contained herein, to install, maintain and use its equipment described in its application, upon the poles or in the cable ducts identified in its application. The CATV company shall complete each installation within a reasonable and mutually agreeable time frame; provided, however, that before commencing any such installation, the CATV company shall notify the Company of the time when it proposes to do such work sufficiently in advance so that the Company may arrange to have any necessary representative present when such work is performed. In the event the presence of a Company representative is required, the CATV company shall reimburse the Company for the cost and expense of such.

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S1. CATV POLE ATTACHMENT AND CABLE DUCT ARRANGEMENT

S1.4 Application for Permission to Install (Continued)

Where costs are involved in the rearrangement of the Company's facilities to accommodate the CATV company's equipment, the Company shall notify the CATV company, in writing, of the changes and rearrangements required and the cost for performing such. Approval of the application by the Company is subject to receiving authorization from the CATV company to make changes and rearrangements detailed by the Company, at the CATV company's expense.

The CATV company shall not have the right to place, nor shall it place, any additional equipment upon any pole or in any cable duct without first making application to do so, as provided for in this tariff; nor shall the CATV company change the position of any equipment attached to any such pole or installed in any cable duct without the Company's prior written approval. The Company will not refuse a CATV company permission to install or rearrange CATV equipment if pole attachment or conduit space is available or can be made available, except for safety reasons. The provisions of this paragraph shall not restrict the attachment of television drops to television crossarms or television cable messenger. Unauthorized attachments or installation in cable duct shall be subject to penalty and/or special "make-ready" charges set forth in this tariff.

S1.5 Attachment Specifications

The CATV company, at its own cost and expense, shall construct, maintain and replace its attachments on the Company's poles in accordance with (1) such requirements and specifications as the Company shall prescribe and have on file with the Commission, (2) EEI Publication M12 entitled "Specifications for the Construction and Maintenance of Jointly-Used Wood Pole Lines Carrying Supply and Communication Circuits", (3) the requirements and specifications of the National Electrical Safety Code, 1981 Edition, and any amendments or revisions of said specifications or code, and (4) in compliance with any rules or orders now in effect or that hereafter may be issued by the Public Service Commission of Kentucky or other authority having jurisdiction. The CATV company shall comply, at its sole risk and expense, with changes and revisions in the above specifications and requirements.

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S1. CATV POLE ATTACHMENT AND CABLE DUCT ARRANGEMENT

S1.6 Installation and Maintenance of CATV Equipment

The exact location of the CATV company's attachments on poles and installation in cable ducts shall be determined by the Company in its sole discretion after a joint survey to be made, at such times as shall be mutually agreed upon, by representatives of the telephone company and the CATV company. The Company may make periodic inspections as conditions may warrant. Such inspections shall not operate to relieve the CATV company of any responsibility, obligation, or liability assumed under this tariff. When substandard installations are found which are created by the CATV operator, the Company shall give notice of such to the CATV company, and the CATV company shall remedy such conditions within a reasonable time. In the event the CATV company fails to remedy the condition within the agreed upon time, the Company may act to remedy it with the cost of such to be paid by the CATV company.

Whenever CATV equipment is to be installed, rearranged or removed on or from Company poles, such work will normally be performed by the CATV company at its expense. In such cases a Company representative may be required to observe the work, at the expense of the CATV company. Where consented to by the Company, the CATV company may elect to have such installation, rearrangement or removal performed by the Company; however, the CATV company will furnish all materials and equipment and will reimburse the Company for its costs in performing the work activity.

Whenever CATV equipment is to be installed, rearranged or removed in cable ducts, such work will usually be performed by the Company, at the CATV company's expense. If the CATV elects to perform the work activity, a Company representative may be required to observe the work at the expense of the CATV company. Work performed by the Company or the CATV firm, shall be performed in accordance with the Company's established practices, and all materials and equipment shall be supplied by the CATV company.

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Date Effective: July 17, 2016

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S1. CATV POLE ATTACHMENT AND CABLE DUCT ARRANGEMENT

S1.6 Installation and Maintenance of CATV Equipment (Continued)

Where the CATV company's equipment can be accommodated on Company poles or in Company cable ducts by rearranging or changing the Company's facilities, the CATV company shall pay the Company in advance the cost of making such rearrangements or changes. Strengthening of poles (guying) required to accommodate the attachments of the CATV company and the bonding of the CATV's strand to that of the Company shall be performed by the CATV company at its sole risk and expense. Such work may be performed by the Company when reasonable cause therefore exists, and the CATV company shall pay the Company in advance the cost of all such work.

After initial attachment, when the Company subsequently requires a change in its poles, attachments thereto or its conduit system for reasons unrelated to CATV operations, the CATV company shall be given reasonable notice of the changes required and sufficient time to accomplish the CATV related change. If the CATV operator is unable or unwilling to meet the Company's time schedule for changes in attachments, the Company may do the work and charge the CATV company its reasonable costs for performing the change of CATV equipment. In cases of emergency, the Company may, at the CATV company's expense, arrange to relocate or replace the facilities attached to Company poles by the CATV operator, transfer them to substituted poles or perform any other work in connection with said facilities that may be required in the maintenance, replacement, removal, or relocation of said poles, the facilities thereon or the equipment which may be placed thereon.

All required maintenance of CATV equipment shall be performed by the CATV operator. No entry shall be made into any facility housing or cable ducts without the prior written permission of the Company. The Company reserves the right to require the presence of its representative at the time of any such entry, with the cost thereof to be reimbursed by the CATV company. An estimate of such cost shall be furnished at the time the Company gives its written permission for entry.

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S1.6 Installation and Maintenance of CATV Equipment (Continued)

All tree trimming required on account of CATV company equipment shall be done by the CATV operator at its sole risk and expense and in a manner satisfactory to the Company.

The CATV company shall, at its sole risk and expense, maintain all of its equipment on Company poles or in Company cable ducts in safe condition and in thorough repair.

Nothing herein contained shall give to the CATV company the right to place a crossarm on any Company pole. If a crossarm is required to accommodate the facilities of the CATV company, the CATV company shall state the reasons in its application for attachment.

Written consent of the Company must be obtained by the CATV company prior to any additions to, or changes in the location of its attachments on poles or equipment in cable ducts, except in cases of emergency when oral permission has been obtained from the Company and subsequently confirmed in writing.

If the CATV company should require the location of its equipment upon any public thoroughfare or other public or private property in the conduct of its business and the Company does not have pole facilities so located to fulfill CATV requirements and has no immediate need for such for the Company's own use, the Company will notify the CATV operator whether the Company is willing to place such pole facilities. Special rates shall be agreed to by the CATV company prior to the Company's placement of such pole facilities, and the rates specified herein shall not apply. The special rates shall be based upon the total use of the pole facilities by the CATV company. In the event such pole facilities are subsequently used by the Company for the provision of its other services, the special rates shall no longer apply, and the rates specified in this tariff shall apply.

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Date Effective: July 17, 2016

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S1. CATV POLE ATTACHMENT AND CABLE DUCT ARRANGEMENT

S1.6 Installation and Maintenance of CATV Equipment (Continued)

Whenever, pursuant to this tariff, the CATV company shall be required to remove its equipment from any pole, such removal shall be made within a reasonable time unless safety considerations require immediate action. Upon failure of the CATV company to remove such equipment, the Company may make the removal and charge the CATV company all associated costs.

Whenever, pursuant to the tariff, CATV equipment in cable ducts shall be required to be removed, relocated or replaced, such work will usually be performed by the Company, after written notice to the CATV company, at the CATV company's expense. If the CATV company elects to perform the work, a Company representative may be required to observe the work at the expense of the CATV company. Any CATV equipment required for such work performed by the Company or the CATV firm, shall be supplied by the CATV company.

The CATV company shall not interset poles or locate guys or other facilities in pole lines of the Company, except where the CATV company has appropriate right-of-way and such will not inhibit access to poles and facilities of the Company or cause a safety hazard.

S1.7 Cost of Pole Replacements

Whenever the CATV company applies for permission to attach to a pole that is considered by the telephone company to be insufficient in height or strength for accommodation of CATV attachments, the Company shall notify the CATV operator of such fact and of the estimated cost to the CATV company of replacing such pole with a pole which will accommodate the attachments of the CATV company and the telephone company. Within thirty (30) days of such notification, the CATV company shall either notify the Company (1) of its approval of such replacement or (2) of its cancellation of the application with respect to such pole.

In the event of CATV's approval of such replacement, the Company shall replace the pole and the CATV operator shall pay to the Company in advance the charges computed as follows:

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S1. CATV POLE ATTACHMENT AND CABLE DUCT ARRANGEMENT

S1.7 Cost of Pole Replacements (Continued)

- (1) The total cost of the new pole, the removal of the old pole, the transferring of the Company's attachments from the old to the new pole and such other costs, if any, necessitated by CATV requirements, less the total of the following: accrued depreciation on the old pole, salvage, if any, and the cost of such portion of the new pole, if any, which represents space reserved for the use of the Company greater than that provided for them on the old pole and appropriate contribution by any other company attached thereto.

S1.8 Rights of Way and Legal Authority

Upon application for attachment or use of cable ducts, the CATV company shall submit evidence satisfactory to the Company of its authority to erect and maintain its equipment within public streets, highways, and other thoroughfares and shall secure any necessary franchise, license, permit, consent, easement or rights-of-way from Federal, State or municipal authorities or owners of property now or hereafter required to construct and maintain such equipment at the location of facilities of the Company which it desires to use. In the event any such franchise, license, permit, consent, easement or rights-of-way is revoked or is thereafter denied to the CATV company for any reason, permission to attach to Company poles or to use Company cable ducts so affected shall immediately terminate, the CATV company shall forthwith remove its equipment from Company facilities.

Upon notice from the telephone company to the CATV company that the removal or cessation of the use of any pole or cable duct has been requested or directed by Federal, State or municipal authorities, or property owners, permission to attach to such pole or to use such cable duct shall immediately terminate and the CATV company shall forthwith remove its equipment therefrom.

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S1. CATV POLE ATTACHMENT AND CABLE DUCT ARRANGEMENT

S1.9 Protection Against Claims for Libel and Slander, Copyright, and Patent Infringement

The CATV company shall indemnify, protect, and hold harmless the Company from and against any and all claims for libel and slander, copyright and/or patent infringement arising by reason of attachment of CATV equipment to Company poles or installation of CATV equipment in Company cable ducts, pursuant to this tariff.

S1.10 Limitations

No use, however extended, of the Company's poles or cable ducts under this tariff shall create or vest in the CATV company any ownership or property right in said poles or ducts. Nothing herein contained shall be construed to compel the Company to maintain any of its facilities for a period longer than that demanded by its other service requirements.

The Company reserves to itself, its successors and assigns the right to maintain its poles and conduit and to locate and operate its facilities in such manner as will best enable it to fulfill its other public service requirements. Except where caused by its own negligence the Company shall not be liable for any interruption to the service of the CATV company or for any interference with the operation of the equipment of the CATV company.

The Company reserves the right to provide pole attachment and cable duct space to more than one CATV company and to make such space available to other entities. This tariff shall not limit the rights and privileges previously granted to others to use any poles or cable ducts covered by this tariff, and the privileges provided by this tariff shall at all times be subject to such previously granted rights.

Failure to enforce or insist upon compliance with any of the terms or conditions of this tariff shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain in effect at all times.

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S1. CATV POLE ATTACHMENT AND CABLE DUCT ARRANGEMENT

S1.10 Limitations (Continued)

The CATV company shall not assign, transfer or sublet any rights to make pole attachments or utilize cable ducts hereunder without the prior written consent of the Company; except that nothing contained herein shall be construed as depriving a CATV company of its property or the ability to dispose of its property in any manner it deems reasonable.

S1.11 Indemnity and Insurance

The CATV company shall indemnify, protect, and hold harmless the Company and other joint-users of said poles and conduit system from and against any and all loss, costs, claims, demands, damage and/or expense arising out of any demand, claim, suit or judgment for damages to property and injury to or death of persons, including the officers, agents, and employees of the CATV company, the Company and any joint user, including payment made under any Workmen's Compensation Law or under any plan for employees' disability and death benefits, which may arise out of or be caused by the installation, maintenance, presence, use or removal of said equipment or by the proximity of CATV equipment to the cables, wires, apparatus and appliances of the Company or any joint user, or arising out of any act, omission or negligence or alleged act, omission or negligence of the CATV operator or the joint negligence of the CATV operator and the Company and/or any joint users; provided, that the obligation of the CATV company under this paragraph does not include the indemnification of the Company or any joint user from or against the sole or joint negligence of the Company or any joint user.

The CATV company shall maintain in full force and effect the following insurance policies or bond in lieu thereof providing an equivalent protection: (1) Workers' Compensation and Occupational Disease covering the CATV company's full liability under the Workers' Compensation Laws of the Commonwealth of Kentucky. This shall include Employer's Liability insurance in the amount of \$100,000. (2) Comprehensive General Liability insurance, in the amounts of \$1,000,000 Combined Single Limits or \$1,000,000 each occurrence, and \$1,000,000 aggregate for any accident resulting in

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SI. CATV POLE ATTACHMENT AND CABLE DUCT ARRANGEMENT

SI.11 Indemnity and Insurance

bodily injuries to or the death of one or more persons and the consequential damages arising therefrom together with Property Damage Liability in the amount of \$500,000 each occurrence, with an aggregate total limit of \$500,000.

All policies of insurance shall contain written endorsements to the effect that the amount of coverage of the insurance provided thereby will not be reduced or terminated without thirty (30) days written notice first being given to the Company. Certificates of insurance, incorporating the above described endorsement, shall be delivered to a designated officer of the Company and shall be approved by the Company before the CATV firm is permitted to perform any work authorized pursuant to this tariff. Failure of the CATV company to provide notice of renewals, changes in carrier, or a reduction in or termination of insurance coverage will be just cause for the Company to terminate the CATV company's right to continue its pole attachments and/or use of cable ducts. If renewal premiums are not paid by the CATV company prior to said 30-day notice, the Company shall have the right to pay said premiums and be reimbursed by the CATV company upon demand.

The CATV operator shall promptly notify the Company of all claims and potential claims relating to damage to property or injury to or death of persons arising or alleged to have arisen in any manner by or associated with, directly or indirectly, the presence or use of the CATV company's equipment upon or within any facility of the Company.

The CATV company shall exercise special precautions to avoid damage to facilities of the Company on said poles and conduit and hereby assumes all responsibility for any and all loss for such damage. The CATV company shall make an immediate report to the telephone company of the occurrence of any such damage and shall reimburse the Company for the expense incurred in making repairs necessitated thereby.

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SI. CATV POLE ATTACHMENT AND CABLE DUCT ARRANGEMENT

S1.12 Surety

The CATV company shall furnish a bond for each individual CATV system utilizing pole attachments or cable ducts under this tariff to guarantee the payment of any sum which may become due to the Company for rental, penalty, and make-ready charges and work performed by the Company, pursuant to this tariff, for the benefit of the CATV company or as a result of default or forfeiture by the CATV company. The amount of such bond shall be based upon the following:

- (1) For attachments to 500 poles or less, a bond of \$5,000 shall be furnished, except as provided in (4) below.
- (2) For attachments to poles in excess of 500, further surety in the amount of \$5,000 for each additional 500 poles, or any increment thereof, shall be furnished except as provided in (4) below.
- (3) Where cable ducts are provided, further surety in the amount of \$10,000 shall be furnished, except as provided in (4) below.
- (4) After one year following the completion of construction of an individual CATV system and its placement into operation, the CATV operator may request that the required amount of bond be reduced. Upon the Company's receipt of satisfactory evidence that all mechanics, workmen and material men who furnished services, labor or materials in the construction of such CATV system, and all taxing authorities, have been paid all amounts due them, the Company will reduce the amount of bond required to the following:
 - (a) For attachments to 500 poles or less, a bond of \$2,000 shall be furnished.
 - (b) For attachments to poles in excess of 500, further surety in the amount of \$2,000 for each 500 poles, or any increment thereof, shall be furnished.
 - (c) Where cable ducts are provided, further surety in the amount of \$5,000 shall be furnished.

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S1. CATV POLE ATTACHMENT AND CABLE DUCT ARRANGEMENT

S1.13 Payment of Bills

All amounts payable by the CATV company to the Company under the provision of this tariff shall, unless otherwise specified, be payable within thirty (30) days after presentation of bills. Non-payment of any such amounts when due shall constitute grounds for termination of the pole attachment and cable duct usage rights under this tariff.

S1.14 Termination of Attachments and Cable Duct Usage

If the CATV company shall fail to comply with any of the provisions of this tariff, including compliance with the specifications previously referred to, the maintenance of required insurance coverage and surety bond requirements, and the timely payment of any amounts due, and shall fail for thirty (30) days after written notice from the Company to correct such non-compliance, the Company, at its option, may terminate the CATV company's right to continue any or all use of poles or cable ducts provided under this tariff and may act to remove the CATV equipment at the CATV company's expense.

Upon valid objection being made by or on behalf of any governmental authority properly asserting jurisdiction, the Company may without notice, or where circumstances permit, upon five (5) days written notice to the CATV company, terminate the provision of pole attachment and/or cable duct space as provided in this tariff.

The CATV company may at any time remove its equipment attached to any pole or poles of the Company and shall immediately give the Company written notice of such removal. The CATV company may at any time request the removal of its equipment in the cable duct of the Company. Removal of CATV equipment in cable ducts will usually be performed by the Company, at the CATV company's expense. If the CATV company elects to perform the work, a Company representative may be required to observe the removal at the expense of the CATV company. Removal work performed by the CATV company is to be made within a reasonable time, unless safety conditions require immediate action.

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SI. CATV POLE ATTACHMENT AND CABLE DUCT ARRANGEMENT

S1.15 Notices

Any notice required or authorized by this tariff to be given by the Company or the CATV company to the other party shall be deemed to have been fully given when made in writing and deposited in the United States mail, postage prepaid, and addressed to such other party's principal business address last furnished by such party.

S1.16 Rates

The CATV Company shall pay to the Company in advance the rates specified below. The Company shall render billing to the CATV Company on at least a quarterly basis. The Company will bill for CATV pole attachments or conduit usage from the date of CATV installation or from the date that space is reserved for CATV installation at an unspecified future time.

	<u>Monthly Rate</u>
Per 2-User Pole	\$ 1.01
Per 3-User Pole	.47
Per linear foot of cable duct space occupied	.07

S1.17 Penalty Charges

Where pole attachments have been made without respect of authorization from the Company, a penalty charge of twice the amount of the annual rate shall apply, in lieu of the annual rate, from the date of the last previous physical inventory of pole attachments or inspection required pursuant to the rules of the Kentucky Public Service Commission, whichever is most recent. Additionally, a special "make-ready" charge, equal to twice the amounts which would have been due and applicable if the attachment had been properly authorized, shall apply.

Date of Issue: July 7, 2016

Date Effective: July 17, 2016

Issued By: Chris Cranford

Title: Product Manager -- Pricing & Tariffs

By Authority of Order of the Public Service Commission

In Case No. _____ Dated: _____



APPENDIX C
KIH AMENDMENT

**FIRST AMENDMENT
TO POLE ATTACHMENT LICENSE AGREEMENT**

THIS FIRST AMENDMENT TO POLE ATTACHMENT LICENSE AGREEMENT (the "First Amendment") is made and entered into as of July 7, 2016, to the Pole Attachment License Agreement by and between the Commonwealth of Kentucky, Kentucky Communications Network Authority and the Finance and Administration Cabinet, hereinafter referred to as "Licensee", and Windstream Kentucky East, LLC, hereinafter referred to as "Licensor", dated the 7th day of July, 2016 (the "PAA"). Licensee and Licensor may be referred to hereinafter, individually, as a "Party" or, collectively, as the "Parties".

WHEREAS, Licensee desires for Licensor to process pole attachment applications and perform make-ready work for a larger than usual number of attachments Licensee will be submitting in connection with the Kentucky Information Highway project (the "KIH Project");

WHEREAS, Licensee and Licensor would like to amend Licensor's normal pole application and make-ready process to address the larger than usual number of attachments Licensee will be submitting in connection with the KIH Project.

THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Licensee and Licensor do hereby agree to the following terms and conditions.

1. The Parties agree that for purposes of the KIH Project only, Section 8 of the PAA will be replaced with the following Section 8:

8. ATTACHMENT REQUEST AND LICENSE PROCESS

A. Before Licensee shall have a right to place Attachments to any Poles of Licensor, Licensee shall apply in writing for, and receive, a revocable, non-exclusive License, which shall be in the form of a Licensor countersigned Application for Pole License (Exhibit B), before attaching its facilities to specified Licensor Poles. To apply for a License under this Agreement, Licensee shall submit to Licensor the appropriate Licensor Application. Licensee shall provide sufficient information on the Application to enable Licensor to locate the proposed Pole and to identify the physical characteristics of Licensee's facilities to be attached to Licensor's Poles so that Licensor can perform the make-ready survey. Licensor will process Applications for Pole Licenses in the order in which they are received; provided, however, that when Licensee has multiple Applications for Pole Licenses on file with Licensor, Licensee may designate its desired priority of completion with respect to all such Application for Pole Licenses. Licensee shall not under any circumstances attach any equipment to any guy wires or anchors owned by Licensor.

B. Make-Ready Survey. Licensee shall submit an Application for Pole License in the form of Exhibit B and shall include a drawing of the proposed route, the pole detail and contact information (name, telephone, facsimile, and email information). Licensee is responsible for determining, in accordance with requirements of the National Electric Safety Code, if the existing Licensor's facilities will support the additional loading imposed by the Licensee's attachments. Upon receipt of a complete Application, Licensor shall schedule the survey to determine whether and where Licensee's Attachment is feasible, and what Make Ready Work is required by Licensor or other existing attachers to accommodate Licensee's Attachment. If during this process, Licensor determines the request is denied based on insufficient capacity or for reasons of

safety, reliability and generally applicable engineering purpose Licensor shall inform Licensee that the Application for Pole License is denied together with the reason to the extent that such issues cannot be worked out by the Parties short of denying the Application. All expenses incurred by Licensor in reviewing Licensee's Application for Pole License shall be borne by Licensee even if such request is denied by Licensor.

C. Estimate and Acceptance of Estimate. Licensor shall present to Licensee, within 60 days of receiving a complete Application, an estimate of charges associated with performing the necessary make-ready work identified during the survey. Additionally, Licensor shall provide a description of make-ready work required of third parties to accommodate Licensee's proposed attachments. Licensor may withdraw an outstanding estimate of charges to perform make-ready work beginning 14 days after the estimate is presented. Licensee may accept an estimate and make payment any time after receipt of an estimate but before the estimate is withdrawn. Within 14 days of receipt of payment of such an invoice and completion of the Make-Ready Work, Licensor shall issue the associated License. At that time Licensee will be considered to have been granted a License with respect to the Poles approved in the License and may attach to Licensor's Poles in accordance with the terms and conditions of this Agreement.

The Parties agree that the Licensor may charge \$80,800.00 (the "Engineering Administration Charge") per month for the additional personnel necessary for Licensor to process Applications for 1,500 Pole Licenses per month. The Engineering Administration Charge represents the amount Licensor requires to retain 8 additional joint use application processors and 5 additional survey engineers each month (the "Additional Personnel"). The Parties agree further that the Engineering Administration Charge is in addition to the rates, charges and fees (including but not limited to make-ready costs that Licensee may be charged in connection with its Attachments) to be paid by Licensee pursuant to this Agreement. Licensor will have the Additional Personnel in place within 60 days of the Effective Date of the First Amendment to Pole Attachment License Agreement (the "First Amendment"). The Engineering Administration Charge will be due and payable to Licensor on or before the first day of each month. Licensor shall have no obligation to process Applications for more than 300 Pole Licenses in connection with the Kentucky Information Highway project in a given month until Licensee has paid the Engineering Administration Charge for such month. If Licensee desires for Licensor to process Applications for more than 300 Poles per month but less than 1,500 Poles per month, Licensee may request that Licensor reduce the number of Poles per month that it is staffed to process in increments of 300 Poles, and the number of Additional Personnel and the Engineering Administration Charge will be reduced accordingly at the beginning of the following month. Licensee understands, though, that the reduction of the Additional Personnel and the Engineering Administration Charge may be delayed by Licensor in order to allow it to process the Applications for Pole Licenses already submitted to it in accordance with the time frames provided for in this Agreement. Licensee shall provide Licensor with written notice when it will no longer be submitting Applications for more than 300 Pole Licenses per month in connection with the Kentucky Information Highway project (the "Amendment Termination Notice"). Beginning upon the first day of the month following receipt of the Amendment Termination Notice, the First Amendment shall terminate, Licensor shall no longer retain the Additional Personnel, and Licensor shall have no obligation to process Applications for more than 300 Pole Licenses in a given month. If necessary, Licensor will refund to Licensee a pro-rated portion of the Engineering Administration Charge for the month during which Licensor receives the Amendment Termination Notice, with such pro-ration based upon the extent to which Licensor utilizes the Additional Personnel during that month.

D. Make-Ready. Upon receipt of the make-ready estimate payment specified in Section 8(C), Licensor shall notify immediately and in writing Licensee and all known other users that

may be affected by the make-ready required for Licensee's attachments. The notice shall: (i) specify the location and type of make-ready to be performed; (ii) set a date for completion of make-ready no later than 120 days after Licensor's receipt of the make-ready estimate payment; (iii) state that any entity with an existing attachment may modify the attachment consistent with the specified make-ready before the date set for completion; and (iv) state that Licensor may assert its right to 15 additional days to complete make-ready should any other users fail to complete within the prescribed timeframe; (v) state that if make-ready is not completed by the completion dates set by Licensor, Licensee may utilize an authorized contractor to complete the specified make-ready after providing Licensor with 30 days' written notice of Licensee's intent to perform such work if not completed by Licensor prior to the expiration of the 30 day notice period. Make-ready work performed by an authorized contractor selected by Licensee, shall be performed in accordance with Licensor's specifications and in accordance with the same standards and practices followed by Licensor or Licensor's contractors. Authorized contractors selected by Licensee shall not conduct such work in any manner which degrades the integrity of Licensor's structures or interferes with any existing use of Licensor's facilities or the facilities of any other user. In the event that make-ready work is completed by an authorized contractor selected by Licensee, Licensee shall notify Licensor upon completion. While Licensor is responsible for notifying other users pursuant to this section, Licensee shall make arrangements with other users regarding reimbursement for any expenses incurred by other users in transferring or rearranging other users' facilities to accommodate the attachment or placement of Licensee's facilities to or in Licensor's poles. Licensee shall be solely responsible for negotiating with existing attachers for Make-Ready Work relating to such other existing attacher facilities located on, within or in Licensor's Poles and shall be responsible for paying all charges incurred in transferring or rearranging existing attacher facilities to accommodate the placement of Licensee's Attachment on, within or in Licensor's Poles. Upon completion of make-ready, Licensor shall invoice Licensee for additional costs incurred over and above the make-ready estimate or refund Licensee any overpayment. If there are additional costs owed to Licensor by Licensee upon completion of the Make Ready Work, Licensee shall pay such costs to Licensor within 30 days of the date an invoice for such costs is sent to Licensee. If Licensee fails to pay such invoice within 30 days of the date it is sent, then Licensor may cease any Make Ready Work until payment for such invoice is received. In the event Licensee declines to proceed with the project, Licensee shall reimburse Licensor any costs and expenses incurred by Licensor to date including but not limited to Application Fee(s), engineering and administrative expenses and costs.

E. Applications for more than 1,500 Pole Licenses. Licensor shall use commercially reasonable efforts to process Applications within the time frames agreed upon in this Section 8 if the requests for pole attachments inadvertently exceed 1,500 poles in a given month. Licensor may aggregate the number of poles on multiple requests from Licensee as if all are part of a single request for the purposes of establishing the proper timeline for all active requests within a given month.

F. Licensee shall maintain a copy of all Application for Pole Licenses and approved Licenses. Licensor may provide upon request copies of the same to the extent available and Licensee shall reimburse Licensor for its costs in preparing and sending requested copies.

2. The Parties agree that for purposes of the KIH Project only, the ninety (90) day time frame provided for in Section 14 of the PAA will be extended to one hundred eighty (180) days.

3. This First Amendment shall serve to expressly modify the PAA. All other clauses, conditions, terms and covenants contained in the PAA, to the extent not amended by this First Amendment, shall continue in full force and effect and be legally binding.

AGREED TO effective as of July 7, 2016.

**COMMONWEALTH OF KENTUCKY, KENTUCKY COMMUNICATIONS NETWORK
AUTHORITY AND THE FINANCE AND ADMINISTRATION CABINET**

By: William M. Landrum III

Printed Name: WILLIAM M. LANDRUM

Title: Secretary, FAC

Date: 11 July 2016

WINDSTREAM KENTUCKY EAST, LLC

By: Barry Bishop

Printed Name: Barry Bishop

Title: VP- OPERATIONS

Date: 7-7-16

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