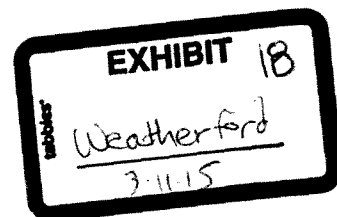


TVPPA/AT&T JOINT USE AGREEMENT

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THIS AGREEMENT, made this 1st day of MARCH, 2010 ("Commencement Date") by and between HICKMAN-FULTON COUNTIES RURAL ELECTRIC COOPERATIVE CORPORATION, a corporation under the laws of the State of Kentucky, hereinafter called the "Power Distributor," party of the first part, and BELLSOUTH TELECOMMUNICATIONS, INC. d/b/a AT&T KENTUCKY, a corporation under the laws of the State of Georgia hereinafter called the "Telephone Company," party of the second part.

#### WITNESSETH

WHEREAS, the Power Distributor and the Telephone Company desire to continue joint use of distribution poles and in the future to establish further joint use of their respective distribution poles when and where joint use shall be of mutual advantage; and

WHEREAS, because of changed conditions and experience gained, and to facilitate administration of joint use, the parties desire to terminate the present contract dated December 9, 1971, as amended November 22, 1988, between the Power Distributor and the Telephone Company and to enter into a new joint use agreement; and

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

#### ARTICLE I

#### DEFINITIONS

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

- A. ATTACHMENTS - are any wires, cables, strands, materials or apparatus affixed to a Joint Use Pole, excluding ground wires, now or hereafter used by either party in the construction, operation or maintenance of its plant. A pedestal that is adjacent to a Joint Use Pole, but not affixed to the pole, shall not be considered an Attachment.
- B. CODE - is the National Electrical Safety Code, as it may be amended from time to time.
- C. COST or COSTS - are the reasonable costs (including loading factors, associated overheads, and overtime as applicable) of a party performing work under this Agreement.
- D. DAYS - as used herein shall mean calendar days.
- E. EMERGENCY - is a situation where a Joint Use Pole is damaged, or subject to failing, and such failure is reasonably believed to create risk of personal injury or damage to property.
- F. INJURIES - include death, personal injury and property damage or destruction.

- G. **JOINT USE** - is the maintaining of Attachments of both parties on the same pole at the same time.
- H. **JOINT USE POLE** – is a pole upon which space is provided under this Agreement for the Attachments of both parties on the same pole at the same time.
- I. **LICENSEE** - is the party having the right under this Agreement to make Attachments to a pole that the other party owns.
- J. **NJUNS** – is the National Joint Utility Notification System.
- K. **NON-COMPLIANT ATTACHMENT** – is an Attachment that requires an increase in the ground clearance or separation on a jointly used pole as required by the National Electrical Safety Code.
- L. **OWNER** - is the party owning the pole to which Attachments are made.
- M. **REARRANGING** - is the moving of Attachments from one position to another on a pole.
- N. **RIGHT OF WAY** - is the legal right to use the property of another.
- O. **SECONDARY POLE** – is a pole installed for the express purpose of providing required clearances for a Service Drop to a customer’s location. A Secondary Pole is a pole that typically services only a few customers or buildings as the case may be, does not have transformers or other electrical equipment on it, is located outside the main line and supports the Power Distributor’s wires with less than 600 volts.
- P. **SERVICE DROP** – is a wire or wires used to connect to a customer’s location that requires no guys under applicable specifications of Article IV. A Service Drop may run directly from a pole used to service many customers to a specific customer’s location, without the use of any other poles, or a Service Drop may itself be supported by more than one pole to carry the Service Drop to the customer’s location.
- Q. **STANDARD JOINT USE POLE** - means a 40 foot Class 4 distribution pole which meets the requirements of the Code for support and clearance of electric supply and communications conductors now or hereafter used by either party in the conduct of its business. The parties may agree to use a pole smaller than the standard class, but under no condition shall the Standard Joint Use Pole be less than the minimum requirements of the Code. The foregoing definition of a "standard joint use pole" is not intended to preclude the use of joint poles shorter or taller or of different strength than the Standard Joint Use Pole in location where it is mutually agreed such poles will meet the requirements of the parties hereto, nor is the foregoing definition of a "standard joint use pole" intended to require the replacement of poles that are currently in service.
- R. **STANDARD SPACE ALLOCATION** - means an allocation of sufficient space on a Joint Use Pole for use of each party, taking into consideration requirements of the current Code, more particularly defined as follows:

1. For Power Distributor, the use of 10 feet of space on a 45 foot pole, 8 feet of space on a 40 foot pole, and 6.5 feet on a 35 foot pole measured downward from the top of the Joint Use Pole; and
  2. For Telephone Company, the use of 2 feet of pole space measured upward from the initial point of attachment on the Joint Use Pole. The initial point of attachment shall be the lowest point on the pole required to provide at all times the Code minimum clearance above ground for the lowest horizontally run line, wire or cable attached in such space except where by mutual agreement of the field representatives of the parties sound engineering practices dictate a higher minimum clearance.
  3. Standard Space Allocation shall in all instances, except as specifically modified elsewhere in this Agreement or if a party pays to have a taller pole placed, be as represented on Exhibit A attached hereto and made a part hereof.
- S. TEMPORARY TRANSFER or TEMPORARY PLACEMENT- is the transferring or placing of the Telephone Company's facilities to another pole by the Power Distributor, and such a transfer or placement shall not be considered permanent by either party.
- T. TRANSFERRING or TRANSFER- is the removing of Attachments from one pole and placing them upon another pole.

## ARTICLE II

### TERRITORY AND SCOPE OF AGREEMENT

This Agreement shall be in effect and shall cover all distribution poles of each of the parties now existing, hereafter erected or acquired within the common operating areas served by the parties hereto when said poles are brought hereunder, excepting;

1. Poles, not yet in Joint Use, which, in the Owner's judgment, should be restricted for reasons of safety.
2. Poles, not yet in Joint Use, which, in the Owner's judgment, should be restricted for reasons related to construction practices or clearances.

## ARTICLE III

### PERMISSION FOR JOINT USE

Subject to the terms and conditions of this Agreement, each party hereby permits joint use of its poles by the other party in accordance with permitting requirements of Article VI and the following:

- A. **Use of Allocated Space.** Either party is permitted, without additional charge, to use the other party's space on a pole for the purpose of installing and maintaining street lighting, traffic signal systems, and vertical attachments (such as but not limited to ground wires,

gang operated switch control rods and underground risers) if by the terms of the Code the proposed use is authorized and such use does not unreasonably interfere with the other party's use. If the allocated space is subsequently needed and the Code provisions cannot be met, then the party to whom the space is not allocated, but who is utilizing the space allocated to the other party, shall be responsible, at its sole expense, for the Cost of Rearrangement or pole replacement necessary in order to accommodate the party having the allocated space.

- B. **Use of Unallocated Space.** As long as the provisions of the Code are met, either party may use, without additional charge, space on Joint Use Poles outside of the Standard Space Allocation that is neither in use by an authorized third party nor reserved by the Owner. If the space is subsequently needed by the Owner and if Code provisions cannot be met, then Licensee shall be responsible, at its sole expense, for the cost of Rearrangement or pole replacement necessary to accommodate the Owner's use of such space. If the space is subsequently needed by a third party having a prior permit or similar contractual right to use the specific space on such pole that predates the Licensee's use of the pole, and if Code provisions cannot be met, then the Licensee shall be responsible, at its sole expense, for the cost of Rearrangement or pole replacement necessary to accommodate the use of such space.
- C. **Use of Space on Existing Poles.** If Attachments were properly made and are in compliance with the prior joint use agreement between the parties as of the effective date of this Agreement, such Attachments shall be deemed to be authorized Attachments under this Agreement, and shall be subject to post-attachment terms and conditions of this Agreement on a going forward basis.
- D. **Unauthorized Uses.** Licensee shall be subject to all of the requirements and obligations under this Agreement, but shall have none of the rights of a Licensee under this Agreement for use of Owner's pole(s) if Licensee's use of the particular pole(s) is not properly authorized in accordance with this Agreement.

#### ARTICLE IV

#### SPECIFICATIONS

- A. **Generally.** Joint Use of poles covered by this Agreement shall at all times be in conformity with applicable terms and provisions of law and with the requirements of the Code in effect at the time the respective attachments are made.
- B. **Existing Joint Use Poles.** As long as the provisions of Code in effect at the time the Attachments were made have been met, any Joint Use Pole in place before the Commencement Date of this Agreement shall be deemed satisfactory to both parties and adequate for their requirements, whether or not the space allocations defined herein have been observed; provided, however that all Attachments on such poles shall be subject to the requirements of this Agreement as referenced in Article III.C.
- C. **New Construction.** Except for Secondary Poles, the minimum height and strength for new poles installed by either party (including replacements of existing poles) shall be a

Standard Joint Use Pole. Either party may install Secondary Poles that have less height and/or strength than the Standard Joint Use Pole, provided that the height and strength of new Secondary Poles are sufficient to permit attachments of each party's Service Drops consistent with the requirements of the Code.

## ARTICLE V

### RIGHT OF WAY AND LINE CLEARING

#### A. Easements.

1. **New Easements.** The Owner and Licensee will reasonably cooperate in obtaining easements for both parties where Owner elects to obtain an easement for its poles, equipment and facilities. In instances where the Owner is obtaining a new easement, Owner will use reasonable efforts to obtain an easement for both parties on Joint Use Poles. Such easements obtained for the benefit of both parties shall be in sufficient detail for identification and recording, and shall be subject to inspection by the other party upon request.
2. **Objections of Property Owners and Others.** No guarantee is given by the Owner of permission of property owners, municipalities or others for Licensee's use of a Joint Use Pole. If objection is made to Licensee's right to maintain facilities on Owner's poles and Licensee is unable to satisfactorily resolve the matter within a reasonable time, including time for appeals, the Owner may at any time, upon notice in writing to the Licensee, require the Licensee to remove its Attachments from the poles involved and the Licensee shall within sixty (60) days after receipt of notice, or within a mutually agreeable time period if additional time is needed, remove its Attachments from said poles at its sole expense. Reasonable extensions of time shall not be denied under this section if the proposed extension of time does not materially prejudice the Owner. Licensee further agrees to indemnify and hold Owner harmless from any and all losses, damages, fines, penalties or costs of any kind (including reasonable attorneys' fees) which may arise from Licensee's failure to obtain all necessary easements, rights and permits to use a Joint Use Pole.
3. **Cost Sharing.** Nothing stated herein shall preclude the parties from mutually sharing the cost of easement acquisition. If the parties share the cost of obtaining an easement, the easement shall name both parties as grantees.

#### B. Line Clearing and Tree Trimming. Line clearing and trimming will be performed as follows:

1. When constructing a new Joint Use Pole line the Owner shall cut, clear and trim a right-of-way sufficient to provide adequate clearance in accordance with the ordinary clearing practices of Power Distributor, if possible.
2. After the initial clearing, each party shall be responsible for its own trimming, clearing and cutting, regardless of who owns the pole.

## ARTICLE VI

### PROCEDURE FOR ESTABLISHING JOINT USE ATTACHMENTS

A. **Attachment Process – No Make Ready Required.** The following rules shall apply to Attachments that may be made to Owner's poles without make-ready or other work to accommodate Licensee's Attachments:

1. Licensee may make an Attachment to Owner's pole within Licensee's Standard Space Allocation without advance notice to Owner if the Attachment otherwise meets the requirements of the Code and if the Attachment does not interfere with the Owner's use of the Pole or with others who are attached to Owner's pole.
2. Licensee may, subject to Article III, make an Attachment to Owner's Pole outside of Licensee's Standard Space Allocation without advance notice to Owner if the Attachment otherwise meets the requirements of the Code and if the Attachment does not interfere with the Owner's use of the pole or with others who are attached to the Owner's pole.
3. Licensee shall notify Owner of the number and location of all Attachments made to Owner's poles under this Section A no less frequently than monthly on the form attached hereto as Exhibit B.

B. **Attachment Process – Make Ready Required.** For Attachments other than Attachments that may be under Section A, the following process shall apply:

1. Licensee shall make application by submitting to Owner the Joint Use Notification/Request Form attached as Exhibit C.
2. Within ten (10) days after the receipt of the application, Owner shall notify Licensee whether any changes and/or modifications to Owner's poles and related facilities are required in order to accommodate Licensee's Attachments, such changes and modifications being the "Make Ready Construction Work." If no changes and/or modifications are required, Owner shall notify Licensee, and Licensee may process with making such Attachments pursuant to Section A.
3. If changes are necessary and Licensee still desires to make Attachments to such pole, Owner, at Licensee's cost, will begin the make ready engineering that includes preparing engineering plans for the Make Ready Construction Work. Licensee and Owner shall work together in good faith to resolve any design and engineering issues and Licensee shall revise its plans as necessary. After the make ready engineering plans are complete, Owner shall provide Licensee a good faith estimate of the Costs and timeframe required to complete the Make Ready Construction Work. Upon Licensee's approval of such estimate of Costs for Make Ready Construction Work, Owner shall thereafter complete the Make Ready Construction Work at Licensee's Cost within sixty (60) days or within a reasonable extended deadline for complex Make Ready Construction Work that takes additional time to complete.

4. When the Make Ready Construction Work is complete, Owner shall notify Licensee and Licensee shall then have the right to make the authorized Attachments pursuant to Section A. Licensee shall complete such Attachments within sixty (60) days of notice from Owner. Reasonable extensions of time shall not be denied under this section if the proposed extension of time does not materially prejudice the Owner.
- C. **Service Drops.** Service Drops are expressly excluded from the requirements of this Article unless Make Ready Construction Work is required in which case Section B shall apply. Subject to Code compliance, Licensee may place Service Drops not requiring Make Ready Construction Work on Owner's pole without submitting an application or notifying Owner. Service Drops shall be considered Attachments for all other purposes under this Agreement.
  - D. **Unauthorized Attachment.** After the Initial Inventory (defined below), if Owner finds that Licensee placed an Attachment without complying with the notification requirements of Sections A and B above, such Attachment shall be considered an Unauthorized Attachment (the "Unauthorized Attachment"). When discovered, Owner will notify Licensee of the Unauthorized Attachment in writing sent via certified mail to the operational and legal addresses referenced in Article XVIII. The notice shall set forth the location of the Unauthorized Attachment and shall specify the amount owed on account of such Unauthorized Attachment. For purposes of determining the amount owed, Licensee shall be responsible for paying an amount equal to the adjustment payment in effect for each of the years since the last inventory (under this Agreement or any predecessor agreements between the parties). If Licensee can demonstrate to the reasonable satisfaction of Owner when such Attachment was made, then the amount owed shall be an amount equal to the adjustment payment in effect for each of the years since the Attachment was made.

## ARTICLE VII

### REPLACING OR RELOCATING POLES; TRANSFERS

- A. **Pole Replacements; Pole Relocation.** Whenever it is necessary to replace or change the location of a jointly used pole, the Owner shall give reasonable notice to Licensee to allow for planning and scheduling thereof in writing (except in cases of Emergency, which shall be handled under Section VII.D., below), specifying in such notice the time of such proposed replacement or relocation. The Licensee shall transfer its Attachments to the new or relocated Joint Use Pole within sixty (60) days of receipt of Owner's written notice (or notice through NJUNS or similar formal electronic notification system mutually agreed to by the parties), which notice shall not be sent until other parties have transferred their attachments, if applicable, and Licensee is "next to go" for transfer work. Licensee must complete the Transfers within a reasonable extended deadline or on a schedule mutually agreeable to the parties in the following circumstances:
  1. For a complex transfer that will take more than sixty (60) days to accomplish;
  2. In instances where transfers are "bulk loaded" into NJUNS upon the parties' initial participation in NJUNS or;



3. In instances where more than five (5) times the transferring party's average monthly transfers during its most recent fiscal year is being requested (except in cases where the number of transfers requested is 50 or less in which case the sixty (60) day deadline set forth in this paragraph A shall apply).

Reasonable extensions of time shall not be denied under this section if the proposed extension of time does not materially prejudice the Owner. In situations where Transfers are required by a lawful demand of a property owner, or governmental or regulatory authority, the parties shall work together in good faith to expedite the transfer work. Licensee further agrees to indemnify and hold Owner harmless from any and all losses, damages, fines, penalties or costs of any kind (including reasonable attorneys' fees) which may arise from Licensee's failure to transfer its Attachments in response to such lawful demand.

**B. Transfers.**

1. Should the Licensee fail to transfer its Attachments within the time period outlined in Section A above (a "Delinquent Transfer"), Owner may escalate the matter in accordance with Article XX, and Owner may also choose to refuse to permit Licensee to make additional Attachments until such time as all Delinquent Transfers are made. Alternatively, Owner may abandon the subject pole(s) to Licensee in accordance with Article XIII or declare a default pursuant to Article XVI.
2. If the Licensee indicates that it has completed a transfer and Owner finds that Licensee has not completed the transfer when Owner goes to pull the pole, Licensee shall pay Owner all Costs associated with such return trip.
3. The Telephone Company represents and warrants that its current collective bargaining agreement covering work in Power Distributor's service area prevents the Telephone Company from entering into an agreement under which Power Distributor or a third party would be permitted to make routine Transfers of Telephone Company's Attachments. The Power Company may inquire from time to time to determine whether the Telephone Company's circumstances have changed such that it is able to allow or retain other parties to perform additional transfer work without violating any applicable collective bargaining agreements, and the Telephone Company shall promptly and fully respond to such inquiries. In the event of such change in circumstances, at the request of either party, the parties shall meet and take all reasonable steps to negotiate in good faith a mutually agreeable amendment to this Agreement under which Power Distributor or a mutually agreeable third party contractor would be authorized to make such Transfers on behalf of Telephone Company.

- C. **Replacement of Other Party's Poles.** Except as provided for in Section D.1., below, a party may only replace poles for the other party with the other party's written concurrence. The Costs associated with such replacement shall be paid by the Owner of

the pole being replaced. The new pole shall remain the property of the original Owner whose pole was replaced.

D. **Emergency Situations.** Both parties recognize and agree that there are inherent dangers involved in the transmission and distribution of electricity. The parties agree that unforeseeable Emergency conditions will exist from time to time.

1. **Pole Replacement - Emergency.** When due to accidents, storm damage, the dangerous condition of a pole, or an Emergency, it is necessary for the Licensee to replace the Owner's pole immediately to restore service to its customer or to eliminate a hazardous condition and the Owner cannot perform the work in time to meet the Licensee's requirements, Licensee may replace the Owner's pole. Licensee shall give the Owner written notice of the Emergency pole replacement within five (5) days of completing the pole replacement. The Costs associated with replacing a pole during such a situation shall be paid by the Owner of the pole requiring replacement. The new pole shall remain the property of the original Owner.
2. **Temporary Placement of Attachments.** During the repair and restoration of utility power as a result of a storm event, accident, or from other damage to the Joint Use Poles in an Emergency situation (including a pole replacement under paragraph 1 of this Section), or in a situation where it is necessary to eliminate a hazardous condition, the Power Distributor may make a Temporary Placement of Attachments of the Telephone Company to the Joint Use Poles. The Power Distributor will send written notice to the Telephone Company of such Temporary Placements within five (5) days of making them. The Telephone Company will take action to permanently attach such attachments within sixty (60) days of receipt of the written notice, or within a reasonable extended deadline mutually agreeable to the parties if more time is needed to complete the work. Reasonable extensions of time shall not be denied under this section if the proposed extension of time does not materially prejudice the Owner. Because of the aforementioned inherent dangers, the Telephone Company is not authorized to replace or temporarily secure the Power Distributor's facilities, wires or conduit.

## ARTICLE VIII

### CORRECTIVE MEASURES AND THIRD PARTY COMPLAINTS

- A. **Licensee Responsibility.** If any Attachment of the Licensee is found to be in violation of the terms of this Agreement (including, without limitation, the provisions relating to compliance with the Code), then the parties will work together to minimize the Cost of correcting any such deficiencies, but the Licensee shall be responsible for the full Cost of any necessary or appropriate corrective measures, including removal and replacement of the pole and all Transfers or other work incident thereto. Licensee shall correct such Non-Compliant Attachment within sixty (60) days of Owner's notification to Licensee (unless Owner reasonably determines that safety, emergency or service restoration efforts require Licensee to take corrective action within a shorter time period.)

- B. **Owner Responsibility.** If any Attachment of the Owner is found to be in violation of the terms of this Agreement (including, without limitation, the provisions relating to compliance with the Code), then the parties will work together to minimize the Cost of correcting any such deficiencies, but the Owner shall be responsible for the full Cost of any necessary or appropriate corrective measures, including removal and replacement of the pole and all Transfers or other work incident thereto. Owner shall correct such Non-Compliant Attachment within sixty (60) days of Owner's notice of such Attachment (unless safety, emergency or service restoration efforts exist in which case Owner shall take corrective action within a shorter time period.)
- C. **Shared Responsibility.** If there exists a violation of the terms of this Agreement (including, without limitation, the provisions relating to compliance with the Code), and it cannot be determined whose Attachment has caused such violation, then the parties will work together to minimize the cost of correcting any such deficiencies. Each party will bear its respective Costs of Transferring its Attachments, and shall share equally in any other Costs associated with correcting the violation; provided, however, that if a party can modify its Attachments so that they no longer are a cause of the violation or deficiency, then such party may elect to make such modification instead of otherwise sharing in such Costs. Such a modification shall not relieve a party from sharing in such Costs if the party making the modification could still have been a cause of any deficiency that remains. The parties shall work together to correct such Non-Compliant Attachments within sixty (60) days of one party's notification to the other (unless Owner reasonably determines that safety, emergency or service restoration efforts require Licensee to take corrective action within a shorter time period.)
- D. **Third Parties.** If one or more third party attachee(s) caused the violation, then the Owner will make reasonable effort, consistent with its attachment agreement(s) with such third party attachee(s), to require such third party attachee(s) to pay the corrective Costs incurred by all who have Attachments on the pole, including the Licensee, Owner and any other attachees.
- E. **Corrective Measures – Dispute Resolution and Enforcement.** If Licensee fails to correct a Non-Compliant Attachment within the time frames specified in this Article, such Attachment shall be immediately subject to the dispute resolution and enforcement provision under Article XX.
- F. **Third Party Complaints.** Licensee shall address, in a commercially reasonable time period, any inquiries or complaints raised by persons other than Licensee or Owner or their employees, contractors, and agents with regard to or concerning Licensee's facilities that are attached to Owner's poles, or Licensee's right and obligations under this Agreement.

## ARTICLE IX

### MAINTENANCE OF POLES AND ATTACHMENTS

- A. **Obligation to Maintain Poles.** Except as herein otherwise expressly provided, each party shall, at its own expense, maintain its poles in a serviceable condition in accordance with the Code and shall reinforce or repair its own poles as they become known to be unserviceable.
- B. **Obligation to Maintain Attachments.** Except as herein otherwise expressly provided, each party at its own cost shall place, maintain, Rearrange, Transfer and remove its own Attachments, and shall at all times perform such work promptly and in such a manner as not to interfere with work or service being performed by the other party. Each party shall, at its own expense, at all times maintain all of its Attachments in safe condition, thorough repair, and in accordance with the requirements of the Code. An Attachment is deemed to comply with Code if it complies with the minimum requirements of the Code in effect at the time the Attachment was placed, and nothing in this provision shall require either party to inspect existing Attachments and proactively bring them up to date with the current Code unless otherwise required by applicable law.
- C. **Obligation to Train and Warn.** The Licensee shall insure that its employees are properly trained in climbing on and working on Owner's poles safely and that they are aware of the dangers inherent in making contact with the electrical conductors or electrical equipment of Power Distributor. Without limitation of the foregoing, the Telephone Company shall prohibit its employees from handling energized lines of the Power Distributor, including lines attached to Secondary Poles.
- D. **No Warranty of Condition.** Notwithstanding the maintenance obligations of Owner under Sections A and B, above, both parties disclaim any warranty or representation regarding the condition and safety of their poles. To the extent permitted by law, each party expressly assumes responsibility for determining the condition of all poles to be climbed or otherwise worked on by its employees whether for the placement of Attachments, maintaining or Rearranging Attachments, or for other reasons. Except for performing Transfer work from unserviceable poles to replacement poles and for replacing poles pursuant to Section VII.C and Section VII.D, a Licensee shall not permit its employees to work on poles that are unserviceable until the Owner has corrected the unserviceable condition or has determined that the pole is serviceable.

## ARTICLE X

### DIVISION OF COSTS

- A. The cost of establishing a new Joint Use Pole line shall be borne by the parties in accordance with the following:
1. A Standard Joint Use Pole, or smaller, shall be erected at the sole Cost of the Owner.

2. In the case of a pole larger than the Standard Joint Use Pole required by either party, the party requiring the extra height and/or class shall pay for the additional Cost of the pole. If Owner adds features or betterments not required by Licensee, Owner shall pay the Costs associated with such features or betterments.
  3. In the case of a pole larger than the Standard Joint Use Pole where the additional height and/or strength required is for the purpose of both parties, the Cost of the pole shall be shared by both parties, with Owner being responsible for the cost of a Standard Joint Use Pole and Licensee being responsible for one half of the Cost of the additional height or strength.
  4. In the case of a pole larger or stronger than the Standard Joint Use Pole, where height or strength in addition to that needed for the purpose of either or both parties hereto is necessary in order to meet the requirements of the Code, a public authority or of property owners, the Cost of the additional height or strength shall be paid by the Owner.
- B. The cost of establishing Joint Use on existing pole lines or modifying existing Joint Use Pole lines shall be borne by the parties in accordance with the following:
1. For placement of intermediate poles for the Licensee, the Licensee shall pay the total Cost of installing the new pole. Each Party shall be responsible for attaching its own facilities.
  2. For replacement of non-defective poles for the Licensee, Costs shall be governed by Articles III, VI and VIII, as applicable.
  3. For replacement of non-defective poles for the Owner, at the mutual request of both parties, or due to the requirements of the Code, a public authority or of property owners, Section A above shall govern unless the situation is otherwise specifically governed by Articles III, VI or VIII.
  4. For replacement of existing defective poles, Costs shall be governed by Section A above.
- C. Except as otherwise specifically provided herein, each party shall bear the costs of placement, Transfer, and Rearrangement of its own Attachments, place guys and anchors to sustain any unbalanced loads caused by its Attachments, and perform any tree trimming or cutting incident thereto.
- D. When less costly Rearrangements can be performed by either party which would defer the cost of replacing a pole, such Rearrangements may be made and the Cost will be borne by the party requesting pole replacement; provided, however, that the final decision of whether or not to replace a pole shall remain with the Owner of the pole.
- E. Any payments made by the Licensee under the foregoing provisions of this Article shall not entitle the Licensee to ownership of any part of said pole.

- F. Each party shall bear the Cost of repairing damages to the other party's facilities occasioned by its improper construction practices or its negligence.
- G. Either party may request documentation supporting any demand for payment.

## ARTICLE XI

### COORDINATION AND PLANNING

- A. **Generally.** At least once per quarter, at the written request of either party, management representatives of each party with responsibility for overseeing the party's overhead plant and related facilities subject to this Agreement shall discuss the status of any operational issues that have arisen between the parties under this Agreement. The intent of these discussions is to encourage greater planning and coordination of operational issues between the parties.
- B. **Annual Planning Meeting.** On or before October 1 of each year that this Agreement is in effect, at the written request of either party, local management representatives of each party with responsibility for overseeing the party's overhead plant and related facilities subject to this Agreement shall meet and confer to exchange information concerning pole relocation and replacement work during the upcoming calendar year. The parties shall exchange estimates (to the extent they are available) of the number of poles that each party reasonably expects to relocate or replace during the next calendar year along with the time frame for such relocations or replacements (as to each party, a "Work Plan"). Additional meetings may be scheduled at the request of either party if necessary to facilitate pole relocation/replacement work and transfers.
- C. **Existing Delinquent Transfers or Non-Compliant Attachments.** Within one-hundred-twenty (120) days after execution of this Agreement, representatives from both parties will meet at a mutually agreeable location to discuss Delinquent Transfers and Non-Compliant Attachments in existence at the time of contract execution. The parties shall then cooperate to establish a reasonable deadline for completion of work required to remedy the Delinquent Transfers and Non-Compliant Attachments. Reasonable extensions of time should not be denied if they would not result in material prejudice to the party requesting the work, and if the other party performing the work is acting with reasonable diligence to complete the work. If a party fails to remedy a Delinquent Transfer or Non-Compliant Attachment by the agreed upon deadline, or if that party disputes that it is responsible for performing the work, the other party may initiate the upper management escalation procedure set forth in Article XX. If any delinquent transfers and/or Non-Compliant Attachments are in existence at the time of contract execution but not addressed within the meeting between the parties described above, then at the election of the Owner, each such delinquent transfer and each such Non-Compliant Attachment may be addressed utilizing the process outlined above or may be resubmitted to Licensee pursuant to the provisions of this Agreement.
- D. **Coordination of Complex Work.** When a party desires to change or upgrade its system which causes it to exceed its Standard Space Allocation and to substantially relocate a

joint use route for its own operational requirements, it shall notify the other party in writing and, within sixty (60) days of receipt of such notice, the parties shall discuss and exchange the information necessary to determine if the desired changes in construction can be conducted in a cost-efficient manner for both parties.

- E. **Cost Sharing for Complex Work.** For any work required pursuant to Section D, the cost of establishing such joint use route shall be mutually agreed upon by the parties hereto; provided, however that nothing in this Section E shall prevent the Owner from relocating its attachments at its own cost and expense if the parties fail to reach agreement on cost sharing pursuant to this Section E. In this situation, the Owner shall abandon the subject poles to the Licensee in accordance with Article XIII.
- F. **Ownership of New Poles.** In any case, ownership of any new poles placed pursuant to this Article shall remain with the owner of the poles that were replaced, unless otherwise agreed to by the parties in writing.
- G. **Applicability to Road Widening and Related Projects.** The provisions of Sections C and D of Article shall not apply to road move projects prompted by a governmental entity or agency.
- H. **Participation in Meetings with TVPPA Joint Use Committee.** At least once annually, at the written request of either party, management representatives of Telephone Company responsibility for overseeing the Telephone Company's overhead plant and related facilities subject to this Agreement shall participate in a meeting with the Joint Use Committee of the Tennessee Valley Public Power Association ("TVPPA"). The purpose of this meeting is to discuss the status of any operational issues that have arisen on a regional basis between the Telephone Company and the members of TVPPA that have adopted an agreement substantially similar to this Agreement.

## ARTICLE XII

### ANCHORS

Anchors required by either party shall be placed by the party requiring the anchor at its own expense. Notwithstanding the forgoing, the parties may by mutual consent install anchors to be used jointly by both parties upon Cost sharing or other arrangements agreed upon by the parties. Guy leads and anchors will possess the strength required by the Code, will be installed and used in accordance with the reasonable requirements of the Owner and will follow the specifications herein:

1. Following the Commencement Date of this Agreement, all anchors and guys shall be installed prior to the installation of Licensee's messenger wires or cables. Licensee's guy lead must be of sufficient length and strength to accommodate loads applied by the Attachments. No anchor installed following the Commencement Date shall be placed within 1 foot of any existing anchor. Guy markers meeting Licensee's specifications shall be installed on every newly placed guy attached to Owner's pole after the Commencement Date.

2. Each party shall install and maintain its own guy wires. Licensee shall not attach any down guy to Owner's anchors or to other attaching parties' anchors without prior written permission from such Owner or other party as the case may be, such permission shall not be unreasonably withheld.
3. All down guys, head guys or messenger dead ends installed by Licensee shall be attached to the pole by the use of "through" bolts. Under no circumstances shall Licensee install down guys, head guys or messenger dead ends by means of encircling wooden poles with such Attachments.

### ARTICLE XIII

#### ABANDONMENT OF JOINT USE POLES

- A. **Abandonment of Poles by Owner to Licensee.** Anytime Owner desires to abandon any Joint Use Pole, it shall give Licensee at least sixty (60) days' written notice. If, at the expiration of such period, Owner and any third parties shall have no Attachments on such pole but Licensee shall not have removed all of its Attachments therefrom, Owner may transfer ownership of such pole to Licensee by sending written notification confirming the transfer in the form attached hereto as Exhibit E. The pole shall thereupon become the property of Licensee, and Licensee shall pay the Owner an amount equal to the original cost of the abandoned pole less depreciation (or, if the original cost of the pole is not available, the cost of the pole being removed shall be determined by the current installed Cost of an equivalent pole depreciated using a thirty (30) year straight line depreciation schedule by the number of years since the Pole was installed). Licensee shall also save harmless the former Owner from all obligations, liabilities, damages, costs, expenses, or charges incurred thereafter because of or arising out of the presence, location or condition of such pole or any of Licensee's Attachments thereon, unless such liabilities or damages arise from the gross negligence or intentional acts or omissions of the former Owner.
- B. **Abandonment by Licensee.** Licensee may, at any time, abandon the use of a Joint Use Pole by removing therefrom any and all Attachments it may have thereon. No refund of adjustment fees shall be due Licensee on account of such abandonment, and following such removal, no Attachment shall again be made to such pole without complying with the requirements of Article VI.

### ARTICLE XIV

#### ADJUSTMENT PAYMENTS

- A. **Adjustment of Payments.** Adjustment payments shall cover rentals accruing during the calendar year and shall be based upon the number of poles that are occupied on the first day of December of the year in which rentals accrue. Within thirty (30) days of both Parties' execution of this Agreement (for calendar year 2009) and on or around December 1, 2010 and December 1st of each year thereafter during the time this Agreement is in effect, the parties shall cooperate in creating a schedule of pole rental showing the number of Joint Use Poles which the other party occupies as Licensee. The



party owning the greater number of Joint Use Poles shall render to the other party a net rental billing. Such billing shall reflect the number of Joint Use Poles owned by each party, multiplied by the then current annual pole rental rate as set forth in Exhibit D, with the net difference being the actual amount billed.

- B. **HWI Adjustment.** The rates set forth in Exhibit D shall be effective as of January 1, 2009, and shall remain in effect through December 31, 2011 (the "Base Rate"). The Base Rate shall be escalated, effective January 1, 2012, and annually thereafter, based upon the percentage change in the Handy-Whitman Index (South Atlantic Region, FERC Account 364, Line 44, Poles, Towers and Fixtures)("HWI") between the two preceding July 1 index numbers.
- C. **Periodic Review of Adjustment Payment.** No sooner than five years from the Commencement Date of this Agreement and in intervals no more frequent than every five years thereafter, the annual pole rental rate set forth in Exhibit D shall be subject to joint review and revision upon the written request of either party sent via certified mail to the operational and legal addresses referenced in Article XVIII. If, within ninety (90) days after the receipt of such request by either party, the parties fail to agree to a revision of such rate, then the adjustment payment per pole shall be established at the then existing Base Rate, escalated by the HWI for one year. The following year, the adjustment payment per pole shall be an amount equal to 40% of the then average in plant cost factors of providing and maintaining the Joint Use Poles covered by this Agreement for the party owning the greater number of Joint Use Poles covered by this Agreement. The new rate shall thereafter be adjusted in accordance with Section B, above, until again revised pursuant to this Section.
- D. **Other Work.** Upon completion of any work done by one party for which payment is due from the other party, the party performing the work shall present to the other party, within ninety (90) days after the completion of such work (or, in the discretion of the Owner, the completion of all related work, including third party work), a bill showing the amount due and a breakdown of the Costs. The parties will cooperate to ensure that both are provided the necessary information to certify that the bills are correct.
- E. **Payment and Disputed Charges.** The adjustment payment herein provided for, or any other bill for payment of work, shall be paid within thirty (30) days after the bill has been received, unless said party disputes the amount billed. In case of such dispute, either party may escalate the matter in accordance with Article XX. Any undisputed amounts shall be paid within the thirty (30) day time period.
- F. **Late Charges.** Payments not paid within the specified time period shall accrue late payment charges of one and one-half percent (1.5%) per month or the maximum amount permitted by applicable law, whichever is less.

## ARTICLE XV

### INVENTORY OF ATTACHMENTS

- A. **Initial Inventory.** Upon request of either party at any time after the execution of this Agreement, an actual inventory of Attachments shall be made jointly by representatives of the parties or by a third party chosen by the parties (the "Initial Inventory"). If there is any difference in (a) the number of Attachments found by the inventory and (b) the number arrived at by tabulating those invoiced and reported under this Agreement and any predecessor agreements between the parties, correction will be made by retroactive billing for any Attachments identified as being responsible for the difference, and any remaining difference will be spread evenly over the years since the last inventory (under this Agreement or any predecessor agreements between the parties) and billing adjusted accordingly using the rate in effect for each of the respective years. At the election of the party owning the greater number of poles and so long as there is not a material and reasonable dispute between the parties concerning the results of such inventory, any inventory conducted within two (2) years prior to the Commencement Date may be used as the initial inventory, and in such event, the initial inventory shall be deemed to have been completed as of the Commencement Date.
- B. **Five Year Pole Inventories.** Five (5) years after the Initial Inventory and at intervals no more frequent than every five (5) years thereafter (unless otherwise mutually agreed by the parties), an actual inventory of Attachments shall be made jointly by representatives of the parties or by a third party chosen by both parties. If there is any difference in the number of Attachments found by subsequent inventories and the number invoiced in the corresponding billing, correction will be made by retroactive billing for any Attachments identified as being responsible for the difference, and any remaining difference will be spread evenly over the years since the last inventory and billing adjusted accordingly using the rate in effect for each of the respective years.
- C. **Inventory Methodologies.** In lieu of the foregoing, the parties may mutually agree to alternative inventory procedures.
- D. **Cost Sharing.** Each party shall equally share the cost of making such inventory of attachments.

## ARTICLE XVI

### DEFAULTS

Notwithstanding any other provision in this Agreement to the contrary, if either party shall fail to discharge any of its obligations under this Agreement and such failure shall continue for thirty (30) days after notice thereof in writing from the other party sent via certified mail to the operational and legal addresses referenced in Article XVIII, all rights of the party in default hereunder, pertaining to making Attachments to additional poles of the other, shall be suspended by sending written notification of the suspension to the defaulting party via certified mail to the Article XVIII addresses. If such default shall continue for a period of ninety (90) days after receipt of the notice of suspension, the non-defaulting party may, by sending written notification

to the defaulting party via certified mail to the Article XVIII addresses, terminate the right of both parties to attach to additional poles of the other party. Any termination of the right of the parties to attach to additional poles of the other party shall not abrogate or terminate the right of either party to attach to existing Joint Use Poles or to maintain and Transfer existing Attachments to replaced or relocated poles. All such Attachments shall continue thereafter to be maintained pursuant to and in accordance with the terms of this Agreement, which Agreement shall, so long as said Attachments are continued, remain in full force and effect solely and only for the purpose of governing and controlling the rights and obligations of the parties with respect to such Attachments.

## ARTICLE XVII

### LIABILITY AND DAMAGES

- A. **General Indemnification.** Licensee shall indemnify, protect, and save Owner harmless from and against any and all liabilities, claims, demands and costs incurred by reason of (a) damage to property, (b) injury to or death of persons, including payments made under any workers' compensation law or under any plan for employees' disability and death benefits, and (c) any slander, defamation, or infringement claim; provided that the foregoing liabilities, claims, demands and costs arise out of or are caused by the Licensee's use of or work on Owner's facilities including, without limitation, the erection, maintenance, presence, use, removal, or abandonment of Licensee's attachments, or by the proximity of the respective cables, wires, apparatus and appliances of the Licensee to any of the facilities belonging to the Owner or to other parties jointly using the Owner's poles, or arise out of or are caused by any act of Licensee or its employees, agents, contractors and their subcontractors on or in the vicinity of Owner's poles. The obligation of indemnity shall include, without limitation, any attorneys' and/or legal fees or costs.
- B. **Survival and Interpretation.** The indemnification provisions of this Agreement (whether contained in this Article or otherwise) shall survive termination of this Agreement and shall be enforced to the fullest extent permitted by applicable law. Nothing in this Agreement shall waive or in any way limit any limitations of liability or privileges or immunities available to governmental utility companies under applicable law.

## ARTICLE XVIII

### SERVICE OF NOTICES

- A. Unless otherwise provided in this Agreement, it is expressly agreed and understood between Owner and Licensee that any Notice required to be given by either party to the other pursuant to this Agreement shall be in writing and sent by US Mail, facsimile or by recognized national overnight delivery service and shall be deemed received upon actual delivery or refusal of delivery as evidenced by the records of the parties, the US Postal Service or delivery service as the case may be.
- B. Notices shall be sent addressed as follows:

**Power Distributor:**  
Operational Notices:

Greg Grissom  
Hickman-Fulton Counties Rural  
Electric Cooperative Corporation  
Post Office Box 190  
Hickman, Kentucky 42050

Official/Legal Notices:

Greg Grissom  
Hickman-Fulton Counties Rural  
Electric Cooperative Corporation  
Post Office Box 190  
Hickman, Kentucky 42050

**Telephone Company:**  
Operational Notices:

AT&T  
Director Construction & Engineering  
402 Franklin Road  
Room 3-574  
Brentwood, TN 37027

Official/Legal Notices:

AT&T Legal Department  
Attn: General Counsel  
601 W. Chestnut Street  
Room 407  
Louisville, KY 40203

or to such other address as either party may designate by Notice to the other party from time to time in accordance with the terms of this Article.

- C. If at any time, and from time to time, both parties are members of NJUNS and maintain the capability of receiving messages from NJUNS, either party may, upon prior written notice to the other, elect to utilize such capability to provide notices under this Agreement for any matter relating to the operation and maintenance of Joint Use Poles; provided that giving notice via NJUNS does not satisfy the obligation to send a notice via certified mail if such notice is required by this Agreement. If the parties are using NJUNS, the parties may use NJUNS messaging formats in lieu of Exhibits B and C.

## **ARTICLE XIX**

### **TERM AND TERMINATION OF AGREEMENT**

Subject to Article XVI, this Agreement shall continue in force and effect for a period of five (5) years from and after the Commencement Date. After the initial five (5) year term, the Agreement

shall automatically extend on the same terms and conditions for successive one year terms until terminated by either party providing written notice at least one hundred eighty (180) days prior to the end of the pending one year term. Termination shall thereafter become effective at the end of the pending one year term. Termination of the Agreement shall mean termination of the right of the parties to place Attachments on additional poles owned by the other party. Termination of the Agreement shall not, however, abrogate or terminate the right of either party to attach to existing Joint Use Poles or to maintain and Transfer existing Attachments to replaced or relocated poles. All such Attachments shall continue thereafter to be maintained pursuant to and in accordance with the terms of this Agreement, which Agreement shall, so long as said Attachments are continued, remain in full force and effect solely and only for the purpose of governing and controlling the rights and obligations of the parties with respect to such Attachments.

## ARTICLE XX

### DISPUTE RESOLUTION

- A. **Good Faith Participation.** Prior to the initiation of any litigation (except litigation arising following default and termination of this Agreement, which litigation may proceed without regard to this Article), the parties shall in good faith attempt to settle any dispute arising out of or relating to this Agreement through the upper management escalation process set forth herein. Good faith participation in these processes shall be a condition precedent to any litigation. All negotiations pursuant to this Article shall be confidential and shall be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and any state's rules of evidence.
- B. **Upper Management Escalation.** To initiate the dispute resolution process, either party shall give the other party written notice, via certified mail to the operational and legal addresses referenced in Article XVII.B., of any dispute not resolved in the normal course of business. The dispute shall be escalated to upper management and, thereafter, representatives of both parties with authority to settle the dispute shall meet at a mutually acceptable time and place within thirty (30) days after receipt of such notice, and thereafter as often as reasonably deemed necessary, to exchange relevant information and attempt to resolve the dispute. If the matter has not been resolved within sixty (60) days of receipt of the disputing party's notice, or if the Parties fail to meet within thirty (30) days, either party may initiate litigation. A dispute regarding Delinquent Transfers shall not be eligible for upper management escalation as set forth in this provision unless the transfer request has been processed in the ordinary course through methods as required by Article VII.
- C. **Enforcement.** The parties regard the aforesaid obligation to escalate to upper management as an essential and material provision of this Agreement and one that is legally binding upon them. In case of a violation of such obligation by either party, the other may seek specific enforcement of such obligation in the courts having jurisdiction hereunder. Notwithstanding the foregoing, in no event shall the obligations under this Article XX operate to prevent the initiation of litigation within ninety (90) days prior to the running of the applicable statute of limitation or statute of repose or the timely prosecution or defense (as applicable) of such litigation.

D. **Renegotiation – Failure of Transfer and Code Compliance Processes.** In the event that the upper management escalation procedure (exclusive of litigation) fails to resolve, to the reasonable satisfaction of both parties, three (3) or more disputes concerning Delinquent Transfers or Non-Compliant Attachments within a calendar year, then the “Transfer and Code Compliance Provision” under Section E, immediately below, shall become effective, and either party may request (via certified mail to the operational and legal addresses referenced in Article XVIII.B.) that the parties meet to discuss an amendment to this Agreement setting forth an alternative method for addressing and resolving Delinquent Transfers and/or Non-Compliant Attachments. In the event that the dispute resolution process is initiated in one calendar year but the time at which parties have failed to reach resolution falls in the next calendar year, such dispute shall be counted in the earlier calendar year.

1. For purposes of this Section D, the parties intend that a dispute will encompass, at a minimum, all related Transfers and Non-Compliant Attachments. A party may not circumvent the spirit of this provision by initiating separate disputes for related items (e.g., initiating separate disputes for each pole in a line where a Transfer is pending, or for individual Non-Complaint Attachments placed in a line). Additionally, disputes that are not resolved because an outside party and/or other attacher is the cause, in whole or in part, of the alleged problem, shall not be included in calculating the number of unresolved disputes pursuant to this Section D.

2. If the parties are unable to agree upon the terms of an amendment within one-hundred-twenty (120) days of receipt of the written request, or within a reasonable extended time period agreed to by the parties, either party may, in addition to pursuing any legal remedies it may have, terminate this Agreement by sending written notice to the other party via certified mail to the operational and legal addresses referenced in Article XVIII.B. Termination shall become effective one-hundred-eighty (180) days from receipt of the termination notice, and the rights and obligations of the parties following termination shall be governed by Article XIX.

E. **Transfer and Code Compliance Provision.** Upon this provision becoming effective in accordance with the requirements of Section D, immediately above, as an additional remedy to ensure timely handling of Delinquent Transfers and Non-Compliant Attachments, each party may bill the other party an additional amount equal to the then annual Base Rate per pole for each Delinquent Transfer and Non-Compliant Attachment older than ninety (90) days in existence on June 30 and December 31 of each year. Bills issued pursuant to this Section shall be separate and apart from annual rental invoices, and shall be issued within thirty (30) days of the aforementioned dates. Before a party can take advantage of the billing provision set forth in this Section, the parties must have been using NJUNS (or a similar formal electronic notification system agreed to by the parties) for one year and must have participated in quarterly meetings for one year in accordance with Article XI.A. (provided, however, that such meetings may be cancelled by mutual agreement of the parties and provided further, that if one party fails to meet with the other party upon the other party’s reasonable request, such failure to meet shall

not prevent this Section from become effective). Participation in NJUNS (or similar system) and in quarterly meetings that occur prior to this provision becoming effective shall be counted in determining the effective date of the bill provision set forth in this Section.

## **ARTICLE XXI**

### **RIGHTS OF OTHER PARTIES**

- A. If either party hereto has, prior to the execution of this Agreement, conferred upon others not parties to this Agreement (outside parties), by contract or otherwise, rights or privileges to attach to any of its poles covered by this Agreement, nothing herein contained shall be construed as affecting said rights or privileges with respect to existing attachments of such outside parties, which Attachments shall continue in accordance with the present practice; all future Attachments of such outside parties shall be in accordance with the requirements of Section B, below, except where such outside parties have by agreements entered into prior to the execution of this Agreement acquired enforceable rights or privileges to make attachments which do not conform to the requirements of this Agreement. Owner shall derive all of the revenue accruing from such outside parties. Any contractual rights or privileges of outside parties recognized in this paragraph shall include renewals of or extensions of the term (period) of such contracts.
- B. If either party hereto desires to confer upon others not parties to this Agreement (outside parties), by contract or otherwise, rights or privileges to attach to any of its poles covered by this Agreement, it shall have the right to do so, provided all such Attachments of such outside parties are made in accordance with the following: (1) such Attachments shall be maintained in conformity with the requirements of the Code, and (2) to the extent allowed by law, such Attachments shall not be located within space where Licensee holds a prior right to make or maintain its Attachments. Owner shall derive all of the revenue accruing from such outside parties.
- C. With respect to any rights and privileges granted under this Article to outside parties, Licensee shall not be required to transfer or rearrange its Attachments to accommodate an outside party until Licensee receives payment for the costs associated with such changes, unless Licensee is otherwise required to transfer or rearrange its facilities at its own expense pursuant to the terms of this Agreement.

## **ARTICLE XXII**

### **ASSIGNMENT OF RIGHTS**

Neither party hereto shall assign or otherwise transfer this Agreement, in whole or in part, without the written consent of the other party; provided that either party shall have the right without such consent to:

1. Mortgage any or all of its property, rights, privileges and franchises.

2. To lease or transfer any of them to another corporation organized for the purpose of conducting a business of the same general character as that of such party; or
3. To enter into any merger or consolidation or other reorganization: and, in case of the foreclosure of such mortgage, as in case of such lease, transfer, merger or consolidation its rights and obligations hereunder shall pass to such successors and assigns; and provided, further that subject to all of the terms and conditions of this Agreement, either party may without such consent permit any corporation conducting a business of the same general character as that of such party, with which it is affiliated or physically connected, the rights and privileges of this Agreement in the conduct of its said business.

### **ARTICLE XXIII**

#### **SUPPLEMENTAL ROUTINES AND PRACTICES**

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

The parties expressly agree to develop such coordination agreements as they mutually agree are necessary and feasible to assist both parties in effectuating this Agreement.

### **ARTICLE XXIV**

#### **WAIVER OF TERMS OR CONDITIONS**

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

### **ARTICLE XXV**

#### **EXISTING AGREEMENTS**

Any existing agreement between the parties hereto for the joint use of poles upon a rental basis within the territory covered by this Agreement is, by mutual consent, hereby abrogated and annulled; provided that undischarged obligations of the parties arising under such agreement prior to the Commencement Date (such as claims for indemnification), unless expressly waived, shall survive termination of the prior agreement.

### **ARTICLE XXVI**

#### **PAYMENT OF TAXES**

Each party shall pay all taxes and assessments lawfully levied on its own property attached to licensed poles. Taxes and the assessments, which are levied on its poles, shall be paid by Owner



thereof, but the portion of any tax (except income taxes), fee, or charge levied on Owner's poles solely because of their use by Licensee shall be paid by Licensee.

## **ARTICLE XXVII**

### **FORCE MAJEURE**

Neither party shall be liable for any delay or failure in performance of any part of this Agreement resulting from acts of God, acts of civil or military authority, embargoes, epidemics, war, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, power blackouts, or unusually severe weather. In the event of any such excused delay in the performance of a party's obligations under this Agreement, the due date for the performance of the original obligation(s) shall be extended by a term equal to the time lost by reason of the delay or by an extended time period mutually agreed to by the parties if more time is needed to complete the work.

## **ARTICLE XXVIII**

### **NO WARRANTY OF RECORD INFORMATION**

From time to time, one party may obtain from the other party records and other information relating to outside plant facilities. Each party acknowledges that such records and information provided may not reflect field conditions and that physical inspection is necessary to verify presence and condition of outside plant facilities and right-of-way.

## **ARTICLE XXIX**

### **NO EFFECT ON FRANCHISE RIGHTS**

Notwithstanding anything elsewhere herein provided, nothing contained in this Agreement shall abrogate, limit or affect any obligation of either party under any franchise granted to either party by any city or other local governmental unit that owns, operates or is in any way affiliated with Power Distributor, or by any predecessor of any such governmental unit or franchising authority.

## **ARTICLE XXX**

### **SOURCE OF PAYMENTS**

The obligations of the Power Distributor hereunder shall be payable solely from the funds of the electric system of the Power Distributor.

## **ARTICLE XXXI**

### **MISCELLANEOUS PROVISIONS**

- A. The Licensee of a Joint Use Pole shall acquire no ownership of or interest in such a pole, the Licensee's rights therein being limited to the right of compliance with terms and condition contained in this Agreement.

- B. Except only insofar as the express terms of this Agreement make the rights hereunder available to the successors or assigns of the parties hereto, the provisions of this Agreement shall not be interpreted to confer any right of action at law or in equity upon any parties except the parties hereto.
- C. Neither party shall, by mere lapse of time, be deemed to have waived any breach by the other party of any terms or provisions of this Agreement. The waiver by either party of any such breach shall not be construed as a waiver of subsequent breaches or as a continuing waiver of such breach.
- D. Nothing contained in this Agreement, or in any amendment or supplement thereto, or inferable herefrom shall be deemed or constructed to (i) make either party the agent, servant, employee, joint venture, associate, or partner of the other party, or (ii) create any partnership, joint venture or other affiliation or association between the parties. The parties hereto are and shall remain independent contractors. Nothing herein shall be deemed to establish a partnership, joint venture, or agency relationship between the parties. Neither party shall have the right to obligate or bind the other party in any manner to any third party.
- E. Each party represents that it has the full power and authority to enter into this Agreement and to convey the rights herein conveyed.
- F. This Agreement is deemed executed in and shall be construed under the laws of the State of Kentucky.
- G. Within this Agreement, words in the singular number shall be held and construed to include the plural, unless the context otherwise requires. Titles appearing at the beginning of any subdivisions hereof are for convenience only, do not constitute any part of such subdivisions, and shall be disregarded in construing the language contained in such subdivisions. The use of the words "herein", "hereof", "hereunder" and other similar compounds of the word "here" shall, unless the context dictates otherwise, refer to this entire agreement and not to any particular paragraph or provision. The term "person" and words importing persons as used in this Agreement shall include firms, associations, partnerships (including limited partnerships), limited liability companies, joint ventures, trusts, corporations and other legal entities, including public or governmental bodies, agencies or instrumentalities, as well as natural persons.

IN WITNESS WHEREOF, the parties hereto, have caused these presents to be executed in duplicate, and their corporate seals to be affixed thereto by the respective officers thereunto duly authorized, as of the Commencement Date.

ATTEST

HICKMAN-FULTON COUNTIES RURAL  
ELECTRIC COOPERATIVE  
CORPORATION

*Doris L. Woodruff*

*[Signature]*

Title *Business Manager*

Title *Pres.*

ATTEST

BELLSOUTH TELECOMMUNICATIONS,  
INC. D/B/A AT&T KENTUCKY

\_\_\_\_\_

*[Signature]*

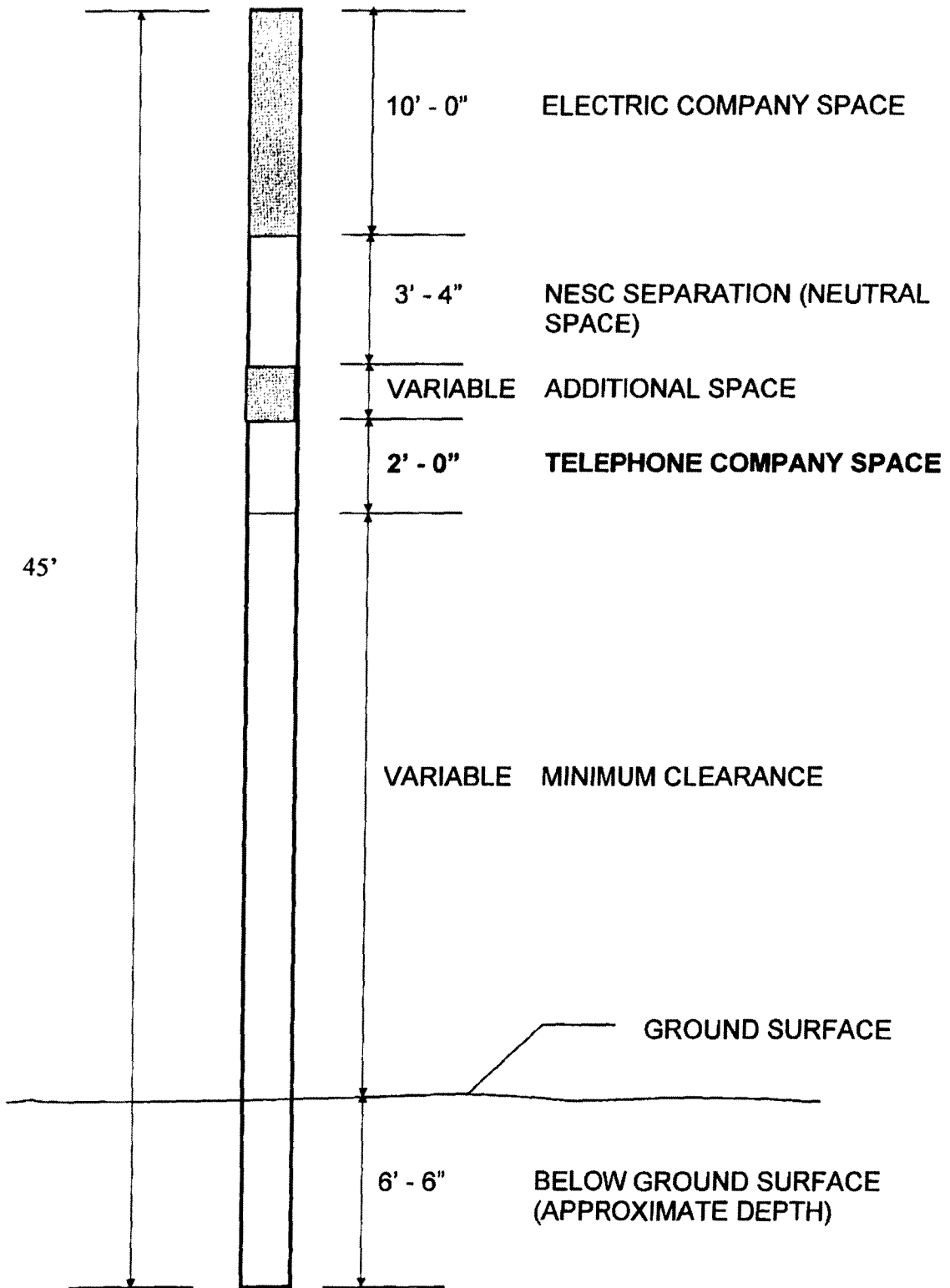
Title \_\_\_\_\_

Title: Vice President-Construction & Engineering

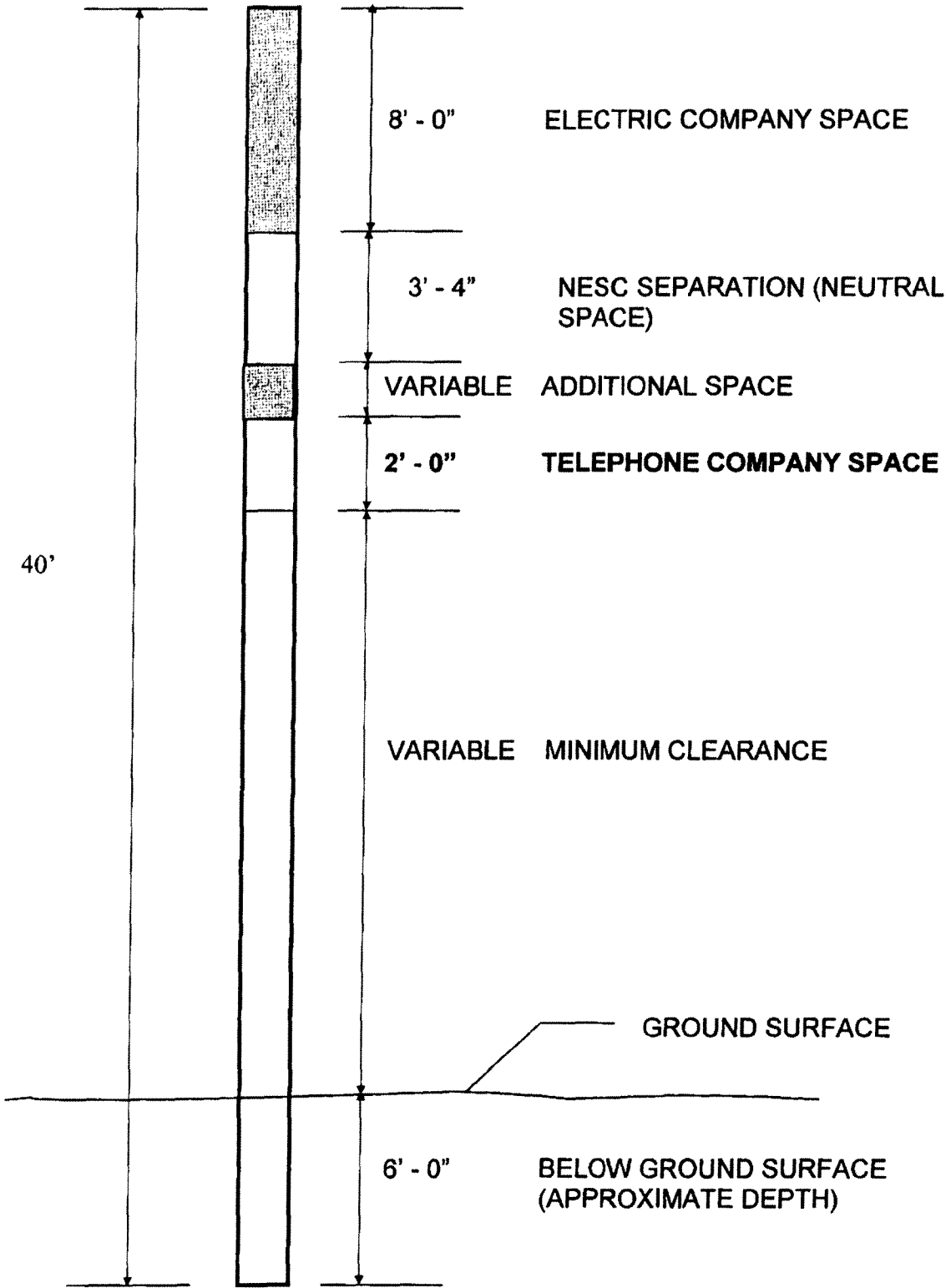


**EXHIBIT A**  
**STANDARD SPACE ALLOCATION**

**SPACE ALLOCATION ON 45'- CLASS 4 STANDARD JOINT USE POLE**  
(Not to scale)



**SPACE ALLOCATION ON 40'- CLASS 4 STANDARD JOINT USE POLE**  
(Not to scale)



**EXHIBIT B**

**JOINT USE NOTIFICATION FORM**

**(Poles Owned by Power Distributor)**

BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky  
(address)

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

<b>To:</b> Hickman-Fulton Counties Rural Electric Cooperative Corporation Post Office Box 190 Hickman, Kentucky 42050
---

**Attention:** \_\_\_\_\_

Attached is an AT&T work print(s) with the following indicated in **Red**:

A notification that AT&T has attached to \_\_\_\_\_ of \_\_\_\_\_ Power's pole(s) along  
\_\_\_\_\_ in \_\_\_\_\_ County, \_\_\_\_\_.  
*(Street, Road or SR No.)* *(State)*

Please adjust your pole Attachment count records accordingly.

Sincerely,

\_\_\_\_\_  
BellSouth Telecommunications, Inc.  
d/b/a AT&T Kentucky

**EXHIBIT B  
JOINT USE NOTIFICATION FORM**

**(Poles Owned by AT&T)**

Hickman-Fulton Counties Rural  
Electric Cooperative Corporation  
Post Office Box 190  
Hickman, Kentucky 42050

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

<b>To:</b> BellSouth Telecommunications d/b/a AT&T Kentucky (address)
--

**Attention:** \_\_\_\_\_

Attached is a \_\_\_\_\_ Power work print(s) with the following indicated in **Red:**

A notification that \_\_\_\_\_ Power has attached to \_\_\_\_\_ of AT&T's pole(s)  
along \_\_\_\_\_ in \_\_\_\_\_ County, \_\_\_\_\_.  
*(Street, Road or SR No.)* *(State)*

Please adjust your pole Attachment count records accordingly.

Sincerely,

---

Hickman-Fulton Counties Rural Electric  
Cooperative Corporation



**EXHIBIT C**

**JOINT USE NOTIFICATION/REQUEST FORM**

**(Poles Owned by Power Distributor)**

BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky  
(address)

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

<b>To:</b> Hickman-Fulton Counties Rural Electric Cooperative Corporation Post Office Box 190 Hickman, Kentucky 42050
---

**Attention:** \_\_\_\_\_

Attached is an AT&T work print(s) with the following indicated in **Red**:

\_\_\_ 1. A request for AT&T to attach to \_\_\_\_\_ of \_\_\_\_\_ Power's pole(s) along  
\_\_\_\_\_ in \_\_\_\_\_ County, \_\_\_\_\_.  
*(Street, Road or SR No.)* *(State)*

\_\_\_ 2. This is to notify you that AT&T has removed all Attachments from \_\_\_\_\_  
of \_\_\_\_\_ Power's pole(s) along \_\_\_\_\_  
*(Street, Road or SR No.)*  
in \_\_\_\_\_ County, \_\_\_\_\_.

Upon acceptance/approval of this form please adjust your pole Attachment count records accordingly.

Sincerely,

Accepted/Approved

\_\_\_\_\_  
BellSouth Telecommunications, Inc.  
d/b/a AT&T Kentucky

\_\_\_\_\_  
Hickman-Fulton Counties Rural Electric  
Cooperative Corporation

**EXHIBIT C  
JOINT USE NOTIFICATION/REQUEST FORM**

**(Poles Owned by AT&T)**

Hickman-Fulton Counties Rural  
Electric Cooperative Corporation  
Post Office Box 190  
Hickman, Kentucky 42050

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

<b>To:</b> BellSouth Telecommunications d/b/a AT&T Kentucky (address)
--

**Attention:** \_\_\_\_\_

Attached is a \_\_\_\_\_ Power work print(s) with the following indicated in **Red**:

\_\_\_ 1. A request for \_\_\_\_\_ Power to attach to \_\_\_\_\_ of AT&T's pole(s)  
along \_\_\_\_\_ in \_\_\_\_\_ County, \_\_\_\_\_.  
*(Street, Road or SR No.)* *(State)*

\_\_\_ 2. This is to notify you that \_\_\_\_\_ Power has removed all Attachments from  
\_\_\_\_\_ of AT&T's pole(s) along \_\_\_\_\_  
*(Street, Road or SR No.)*  
in \_\_\_\_\_ County, \_\_\_\_\_.

Upon acceptance/approval of this form please adjust your pole Attachment count records accordingly.

Sincerely,

Accepted/Approved

\_\_\_\_\_  
Hickman-Fulton Counties Rural Electric  
Cooperative Corporation

\_\_\_\_\_  
BellSouth Telecommunications, Inc.  
d/b/a AT&T Kentucky

**EXHIBIT D**  
**ADJUSTMENT PAYMENTS**

For 2009, rental rates shall be \$25 per pole.

For 2010, rental rates shall be \$27 per pole.

For 2011, rental rates shall be \$29 per pole.

For 2012 and thereafter, unless revisited in accordance with Article XIV.D., the rental rate shall be adjusted annually by the HWI pursuant to Article XIV.C.

**EXHIBIT E  
NOTIFICATION OF ABANDONMENT AND TRANSFER  
OF OWNERSHIP**

To Licensee, \_\_\_\_\_ :  
                  [insert name of Licensee]

This confirms that Owner has previously given Licensee the requisite 60 days' written notice required by Article XIII of the Joint Use Agreement that Owner wishes to abandon the pole(s) described below, that such time period has expired, that Owner has removed its attachments from the pole(s) (and if Owner is the Power Distributor, any third parties on the subject pole(s) have removed their attachments as well), and that Licensee has not removed its attachments from the subject pole(s). Accordingly, Owner hereby gives written notice of its transfer of ownership of the pole(s) described below to Licensee. Upon receipt of this notice, Licensee shall become the owner of the subject pole(s) and the indemnification and payment provisions set forth in Article XIII of the Joint Use Agreement shall apply.

**Pole Number**

**Pole Location**

Owner (insert name of Owner)

\_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

# HFRECC and WINDSTREAM KENTUCKY EAST, LLC JOINT USE AGREEMENT

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THIS AGREEMENT, made this \_\_\_ day of \_\_\_\_\_, 20\_\_ (“Commencement Date”) by and between HICKMAN-FULTON COUNTIES RURAL ELECTRIC COOPERATIVE CORPORATION, a corporation under the laws of the State of Kentucky, hereinafter called the “Power Distributor,” party of the first part, and Windstream Kentucky East, LLC a corporation under the laws of the State of Delaware, hereinafter called the “Telephone Company,” party of the second part.

### WITNESSETH

WHEREAS, the Power Distributor and the Telephone Company desire to continue joint use of distribution poles and in the future to establish further joint use of their respective distribution poles when and where joint use shall be of mutual advantage; and

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

### ARTICLE I

#### DEFINITIONS

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

- A. ATTACHMENTS - are any wires, cables, strands, materials or apparatus affixed to a Joint Use Pole, excluding ground wires, now or hereafter used by either party in the construction, operation or maintenance of its plant. A pedestal that is adjacent to a Joint Use Pole, but not affixed to the pole, shall not be considered an Attachment.
- B. CODE - is the National Electrical Safety Code, as it may be amended from time to time.
- C. COST or COSTS - are the reasonable costs (including loading factors, associated overheads, and overtime as applicable) of a party performing work under this Agreement.
- D. DAYS - as used herein shall mean calendar days.
- E. EMERGENCY – is a situation where a Joint Use Pole is damaged, or subject to failing, and such failure is reasonably believed to create risk of personal injury or damage to property.
- F. INJURIES - include death, personal injury and property damage or destruction.
- G. JOINT USE - is the maintaining of Attachments of both parties on the same pole at the same time.
- H. JOINT USE POLE – is a pole upon which space is provided under this Agreement for the Attachments of both parties on the same pole at the same time.

- I. LICENSEE - is the party having the right under this Agreement to make Attachments to a pole that the other party owns.
- J. NJUNS – is the National Joint Utility Notification System.
- K. NON-COMPLIANT ATTACHMENT – is an Attachment that requires an increase in the ground clearance or separation on a jointly used pole as required by the National Electrical Safety Code.
- L. OWNER - is the party owning the pole to which Attachments are made.
- M. REARRANGING - is the moving of Attachments from one position to another on a pole.
- N. RIGHT OF WAY - is the legal right to use the property of another.
- O. SECONDARY POLE – is a pole installed for the express purpose of providing required clearances for a Service Drop to a customer’s location. A Secondary Pole is a pole that typically services only a few customers or buildings as the case may be, does not have transformers or other electrical equipment on it, is located outside the main line and supports the Power Distributor’s wires with less than 600 volts.
- P. SERVICE DROP – is a wire or wires used to connect to a customer’s location that requires no guys under applicable specifications of Article IV. A Service Drop may run directly from a pole used to service many customers to a specific customer’s location, without the use of any other poles, or a Service Drop may itself be supported by more than one pole to carry the Service Drop to the customer’s location.
- Q. STANDARD JOINT USE POLE - means a 40 foot Class 4 distribution pole which meets the requirements of the Code for support and clearance of electric supply and communications conductors now or hereafter used by either party in the conduct of its business. The parties may agree to use a pole smaller than the standard class, but under no condition shall the Standard Joint Use Pole be less than the minimum requirements of the Code. The foregoing definition of a "standard joint use pole" is not intended to preclude the use of joint poles shorter or taller or of different strength than the Standard Joint Use Pole in location where it is mutually agreed such poles will meet the requirements of the parties hereto, nor is the foregoing definition of a “standard joint use pole” intended to require the replacement of poles that are currently in service.
- R. STANDARD SPACE ALLOCATION - means an allocation of sufficient space on a Joint Use Pole for use of each party, taking into consideration requirements of the current Code, more particularly defined as follows:
  - 1. For Power Distributor, the use of 10 feet of space on a 45 foot pole, 8 feet of space on a 40 foot pole, and 6.5 feet on a 35 foot pole measured downward from the top of the Joint Use Pole; and
  - 2. For Telephone Company, the use of 2 feet of pole space measured upward from the initial point of attachment on the Joint Use Pole. The initial point of

attachment shall be the lowest point on the pole required to provide at all times the Code minimum clearance above ground for the lowest horizontally run line, wire or cable attached in such space except where by mutual agreement of the field representatives of the parties sound engineering practices dictate a higher minimum clearance. This attachment shall also be at a sufficient distance below the space of the Electrical Distributor to provide at all times the minimum clearance required by the NESC.

3. Standard Space Allocation shall in all instances, except as specifically modified elsewhere in this Agreement or if a party pays to have a taller pole placed, be as represented on Exhibit A attached hereto and made a part hereof.

S. TEMPORARY TRANSFER or TEMPORARY PLACEMENT— is the transferring or placing of the Telephone Company's facilities to another pole by the Power Distributor, and such a transfer or placement shall not be considered permanent by either party. Power Distributor will obtain permission either verbally or in writing prior to performing the transfer.

T. TRANSFERRING or TRANSFER- is the removing of Attachments from one pole and placing them upon another pole.

## ARTICLE II

### TERRITORY AND SCOPE OF AGREEMENT

This Agreement shall be in effect and shall cover all distribution poles of each of the parties now existing, hereafter erected or acquired within the common operating areas served by the parties hereto when said poles are brought hereunder, excepting;

1. Poles, not yet in Joint Use, which, in the Owner's judgment, should be restricted for reasons of safety.
2. Poles, not yet in Joint Use, which, in the Owner's judgment, should be restricted for reasons related to construction practices or clearances.

## ARTICLE III

### PERMISSION FOR JOINT USE

Subject to the terms and conditions of this Agreement, each party hereby permits joint use of its poles by the other party in accordance with permitting requirements of Article VI and the following:

A. **Use of Allocated Space.** Either party is permitted, without additional charge, to use the other party's space on a pole for the purpose of installing and maintaining street lighting, traffic signal systems, and vertical attachments (such as but not limited to ground wires, gang operated switch control rods and underground risers) if by the terms of the Code the proposed use is authorized and such use does not unreasonably interfere with the other party's use. If the allocated space is subsequently needed and the Code provisions cannot



be met, then the party to whom the space is not allocated, but who is utilizing the space allocated to the other party, shall be responsible, at its sole expense, for the Cost of Rearrangement or pole replacement necessary in order to accommodate the party having the allocated space.

- B. **Use of Unallocated Space.** As long as the provisions of the Code are met, either party may use, without additional charge, space on Joint Use Poles outside of the Standard Space Allocation that is neither in use by an authorized third party nor reserved by the Owner. If the space is subsequently needed by the Owner and if Code provisions cannot be met, then Licensee shall be responsible, at its sole expense, for the cost of Rearrangement or pole replacement necessary to accommodate the Owner's use of such space. If the space is subsequently needed by a third party having a prior permit or similar contractual right to use the specific space on such pole that predates the Licensee's use of the pole, and if Code provisions cannot be met, then the Licensee shall be responsible, at its sole expense, for the cost of Rearrangement or pole replacement necessary to accommodate the use of such space.
- C. **Use of Space on Existing Poles.** If Attachments were properly made and are in compliance with the prior joint use agreement between the parties as of the effective date of this Agreement, such Attachments shall be deemed to be authorized Attachments under this Agreement, and shall be subject to post-attachment terms and conditions of this Agreement on a going forward basis.
- D. **Unauthorized Uses.** Licensee shall be subject to all of the requirements and obligations under this Agreement, but shall have none of the rights of a Licensee under this Agreement for use of Owner's pole(s) if Licensee's use of the particular pole(s) is not properly authorized in accordance with this Agreement.

#### ARTICLE IV

#### SPECIFICATIONS

- A. **Generally.** Joint Use of poles covered by this Agreement shall at all times be in conformity with applicable terms and provisions of law and with the requirements of the Code in effect at the time the respective attachments are made.
- B. **Existing Joint Use Poles.** As long as the provisions of Code in effect at the time the Attachments were made have been met, any Joint Use Pole in place before the Commencement Date of this Agreement shall be deemed satisfactory to both parties and adequate for their requirements, whether or not the space allocations defined herein have been observed; provided, however that all Attachments on such poles shall be subject to the requirements of this Agreement as referenced in Article III.C.
- C. **New Construction.** Except for Secondary Poles, the minimum height and strength for new poles installed by either party (including replacements of existing poles) shall be a Standard Joint Use Pole. Either party may install Secondary Poles that have less height and/or strength than the Standard Joint Use Pole, provided that the height and strength of

new Secondary Poles are sufficient to permit attachments of each party's Service Drops consistent with the requirements of the Code.

## ARTICLE V

### RIGHT OF WAY AND LINE CLEARING

#### A. Easements.

1. **New Easements.** The Owner and Licensee will reasonably cooperate in obtaining easements for both parties where Owner elects to obtain an easement for its poles, equipment and facilities. In instances where the Owner is obtaining a new easement, Owner will use reasonable efforts to obtain an easement for both parties on Joint Use Poles. Such easements obtained for the benefit of both parties shall be in sufficient detail for identification and recording, and shall be subject to inspection by the other party upon request.
2. **Objections of Property Owners and Others.** No guarantee is given by the Owner of permission of property owners, municipalities or others for Licensee's use of a Joint Use Pole. If objection is made to Licensee's right to maintain facilities on Owner's poles and Licensee is unable to satisfactorily resolve the matter within a reasonable time, including time for appeals, the Owner may at any time, upon notice in writing to the Licensee, require the Licensee to remove its Attachments from the poles involved and the Licensee shall within sixty (60) days after receipt of notice, or within a mutually agreeable time period if additional time is needed, remove its Attachments from said poles at its sole expense. Reasonable extensions of time shall not be denied under this section if the proposed extension of time does not materially prejudice the Owner. Licensee further agrees to indemnify and hold Owner harmless from any and all losses, damages, fines, penalties or costs of any kind (including reasonable attorneys' fees) which may arise from Licensee's failure to obtain all necessary easements, rights and permits to use a Joint Use Pole.
3. **Cost Sharing.** Nothing stated herein shall preclude the parties from mutually sharing the cost of easement acquisition. If the parties mutually share the cost of obtaining an easement, the easement shall name both parties as grantees.

#### B. Line Clearing and Tree Trimming. Line clearing and trimming will be performed as follows:

1. When constructing a new Joint Use Pole line the Owner shall cut, clear and trim a right-of-way sufficient to provide adequate clearance in accordance with the ordinary clearing practices of Power Distributor, if possible.
2. After the initial clearing, each party shall be responsible for its own trimming, clearing and cutting, regardless of who owns the pole.

## ARTICLE VI

### PROCEDURE FOR ESTABLISHING JOINT USE ATTACHMENTS

- A. **Attachment Process – No Make Ready Required.** The following rules shall apply to Attachments that may be made to Owner's poles without make-ready or other work to accommodate Licensee's Attachments:
1. Licensee may make an Attachment to Owner's pole within Licensee's Standard Space Allocation without advance notice to Owner if the Attachment otherwise meets the requirements of the Code and if the Attachment does not interfere with the Owner's use of the Pole or with others who are attached to Owner's pole.
  2. Licensee may, subject to Article III, make an Attachment to Owner's Pole outside of Licensee's Standard Space Allocation without advance notice to Owner if the Attachment otherwise meets the requirements of the Code and if the Attachment does not interfere with the Owner's use of the pole or with others who are attached to the Owner's pole.
  3. Licensee shall notify Owner of the number and location of all Attachments made to Owner's poles under this Section A no less frequently than monthly on the form attached hereto as Exhibit B.
- B. **Attachment Process – Make Ready Required.** For Attachments other than Attachments that may be under Section A, the following process shall apply:
1. Licensee shall make application by submitting to Owner the Joint Use Notification/Request Form attached as Exhibit C.
  2. Within thirty (30) days after the receipt of the application, Owner shall notify Licensee whether any changes and/or modifications to Owner's poles and related facilities are required in order to accommodate Licensee's Attachments, such changes and modifications being the "Make Ready Construction Work." If no changes and/or modifications are required, Owner shall notify Licensee, and Licensee may proceed with making such Attachments pursuant to Section A.
  3. If changes are necessary and the Licensee still desires to make Attachments to such pole, Owner, at Licensee's cost, will begin the make ready engineering that includes preparing engineering plans for the Make Ready Construction Work. Licensee and Owner shall work together in good faith to resolve any design and engineering issues and Licensee shall revise its plans as necessary. After the make ready engineering plans are complete, Owner shall provide Licensee a good faith estimate of the Costs and timeframe required to complete the Make Ready Construction Work. Upon Licensee's approval of such estimate of Costs for Make Ready Construction Work, Owner shall thereafter complete the Make Ready Construction Work at Licensee's Cost within sixty (60) days or within a reasonable extended deadline for complex Make Ready Construction Work that takes additional time to complete.

4. When the Make Ready Construction Work is complete, Owner shall notify Licensee and Licensee shall then have the right to make the authorized Attachments pursuant to Section A. Licensee shall complete such Attachments within sixty (60) days of notice from Owner. Reasonable extensions of time shall not be denied under this section if the proposed extension of time does not materially prejudice the Owner.
- C. **Service Drops.** Service Drops are expressly excluded from the requirements of this Article unless Make Ready Construction Work is required in which case Section B shall apply. Subject to Code compliance, Licensee may place Service Drops not requiring Make Ready Construction Work on Owner's pole without submitting an application or notifying Owner. Service Drops shall be considered Attachments for all other purposes under this Agreement. Licensee shall notify Owner of the number and location of Service Drops made to Owner's poles no less frequently than monthly on the form attached hereto as Exhibit B.
- D. **Unauthorized Attachment.** After the Initial Inventory (defined below), if Owner finds that Licensee placed an Attachment without complying with the notification requirements of Sections A and B above, such Attachment shall be considered an Unauthorized Attachment (the "Unauthorized Attachment"). When discovered, Owner will notify Licensee of the Unauthorized Attachment in writing sent via certified mail to the operational and legal addresses referenced in Article XVIII. The notice shall set forth the location of the Unauthorized Attachment and shall specify the amount owed on account of such Unauthorized Attachment. For purposes of determining the amount owed, Licensee shall be responsible for paying an amount equal to the adjustment payment in effect for each of the years since the last inventory or five years whichever is shorter. (under this Agreement or any predecessor agreements between the parties). If Licensee can demonstrate to the reasonable satisfaction of Owner when such Attachment was made, then the amount owed shall be an amount equal to the adjustment payment in effect for each of the years since the Attachment was made.

## ARTICLE VII

### REPLACING OR RELOCATING POLES; TRANSFERS

- A. **Pole Replacements; Pole Relocation.** Whenever it is necessary to replace or change the location of a jointly used pole, the Owner shall give reasonable notice to Licensee to allow for planning and scheduling thereof in writing (except in cases of Emergency, which shall be handled under Section VII.D., below), specifying in such notice the time of such proposed replacement or relocation. The Licensee shall transfer its Attachments to the new or relocated Joint Use Pole within sixty (60) days of receipt of Owner's written notice (or notice through NJUNS or similar formal electronic notification system mutually agreed to by the parties), which notice shall not be sent until other parties have transferred their attachments, if applicable, and Licensee is "next to go" for transfer work. Licensee must complete the Transfers within a reasonable extended deadline or on a schedule mutually agreeable to the parties in the following circumstances:
1. For a complex transfer that will take more than sixty (60) days to accomplish;

2. In instances where transfers are "bulk loaded" into NJUNS upon the parties' initial participation in NJUNS or;

3. In instances where more than five (5) times the transferring party's average monthly transfers during its most recent fiscal year is being requested (except in cases where the number of transfers requested is 50 or less in which case the sixty (60) day deadline set forth in this paragraph A shall apply).

Reasonable extensions of time shall not be denied under this section if the proposed extension of time does not materially prejudice the Owner. In situations where Transfers are required by a lawful demand of a property owner, or governmental or regulatory authority, the parties shall work together in good faith to expedite the transfer work. Licensee further agrees to indemnify and hold Owner harmless from any and all losses, damages, fines, penalties or costs of any kind (including reasonable attorneys' fees) which may arise from Licensee's failure to transfer its Attachments in response to such lawful demand.

**B. Transfers.**

1. Should the Licensee fail to transfer its Attachments within the time period outlined in Section A above (a "Delinquent Transfer"), Owner may escalate the matter in accordance with Article XX, and Owner may also choose to refuse to permit Licensee to make additional Attachments until such time as all Delinquent Transfers are made. Alternatively, Owner may abandon the subject pole(s) to Licensee in accordance with Article XIII or declare a default pursuant to Article XVI.

2. If the Licensee indicates that it has completed a transfer and Owner finds that Licensee has not completed the transfer when Owner goes to pull the pole, Licensee shall pay Owner all actual and documented Costs associated with such return trip.

3.

**C. Replacement of Other Party's Poles.** Except as provided for in Section D.1., below, a party may only replace poles for the other party with the other party's written concurrence. The actual and documented Costs associated with such replacement shall be paid by the Owner of the pole being replaced. The new pole shall remain the property of the original Owner whose pole was replaced.

**D. Emergency Situations.** Both parties recognize and agree that there are inherent dangers involved in the transmission and distribution of electricity. The parties agree that unforeseeable Emergency conditions will exist from time to time.

1. **Pole Replacement - Emergency.** When due to an accident or storm damage, the dangerous condition of a pole, or an Emergency, it is necessary for the Licensee to replace the Owner's pole immediately to restore service to its customer or to eliminate a hazardous condition and the Owner cannot perform the work in time to meet the Licensee's requirements, Licensee may replace the Owner's pole.

Licensee shall give the Owner written notice of the Emergency pole replacement within five (5) days of completing the pole replacement. The actual and documented Costs associated with replacing a pole during such a situation shall be paid by the Owner of the pole requiring replacement. The new pole shall remain the property of the original Owner.

2. **Temporary Placement of Attachments.** During the repair and restoration of utility power as a result of a storm event, accident, or from other damage to the Joint Use Poles in an Emergency situation (including a pole replacement under paragraph 1 of this Section), or in a situation where it is necessary to eliminate a hazardous condition, the Power Distributor may make a Temporary Placement of Attachments of the Telephone Company to the Joint Use Poles. The Power Distributor will send written notice to the Telephone Company of such Temporary Placements within five (5) days of making them. The Telephone Company will take action to permanently attach such attachments within sixty (60) days of receipt of the written notice, or within a reasonable extended deadline mutually agreeable to the parties if more time is needed to complete the work. Reasonable extensions of time shall not be denied under this section if the proposed extension of time does not materially prejudice the Owner. Because of the aforementioned inherent dangers, the Telephone Company is not authorized to replace or temporarily secure the Power Distributor's facilities, wires or conduit.

## ARTICLE VIII

### CORRECTIVE MEASURES AND THIRD PARTY COMPLAINTS

- A. **Licensee Responsibility.** If any Attachment of the Licensee is found to be in violation of the terms of this Agreement (including, without limitation, the provisions relating to compliance with the Code), then the parties will work together to minimize the Cost of correcting any such deficiencies, but the Licensee shall be responsible for the full actual and documented Cost of any necessary or appropriate corrective measures, including removal and replacement of the pole and all Transfers or other work incident thereto. Licensee shall correct such Non-Compliant Attachment within ninety (90) days of Owner's notification to Licensee (unless Owner reasonably determines that safety, emergency or service restoration efforts require Licensee to take corrective action within a shorter time period.)
- B. **Owner Responsibility.** If any Attachment of the Owner is found to be in violation of the terms of this Agreement (including, without limitation, the provisions relating to compliance with the Code), then the parties will work together to minimize the Cost of correcting any such deficiencies, but the Owner shall be responsible for the full actual and documented Cost of any necessary or appropriate corrective measures, including removal and replacement of the pole and all Transfers or other work incident thereto. Owner shall correct such Non-Compliant Attachment within ninety (90) days of Owner's notice of such Attachment (unless safety, emergency or service restoration efforts exist in which case Owner shall take corrective action within a shorter time period.)

- C. **Shared Responsibility.** If there exists a violation of the terms of this Agreement (including, without limitation, the provisions relating to compliance with the Code), and it cannot be determined whose Attachment has caused such violation, then the parties will work together to minimize the cost of correcting any such deficiencies. Each party will bear its respective Costs of Transferring its Attachments, and shall share equally in any other actual and documented Costs associated with correcting the violation; provided, however, that if a party can modify its Attachments so that they no longer are a cause of the violation or deficiency, then such party may elect to make such modification instead of otherwise sharing in such Costs. Such a modification shall not relieve a party from sharing in such actual and documented Costs if the party making the modification could still have been a cause of any deficiency that remains. The parties shall work together to correct such Non-Compliant Attachments within ninety (90) days of one party's notification to the other (unless Owner reasonably determines that safety, emergency or service restoration efforts require Licensee to take corrective action within a shorter time period.)
- D. **Third Parties.** If one or more third party attachee(s) caused the violation, then the Owner will make reasonable effort, consistent with its attachment agreement(s) with such third party attachee(s), to require such third party attachee(s) to pay the actual and documented corrective Costs incurred by all who have Attachments on the pole, including the Licensee, Owner and any other attachees.
- E. **Corrective Measures – Dispute Resolution and Enforcement.** If Licensee fails to correct a Non-Compliant Attachment within the time frames specified in this Article, such Attachment shall be immediately subject to the dispute resolution and enforcement provision under Article XX.
- F. **Third Party Complaints.** Licensee shall address, in a commercially reasonable time period, any inquiries or complaints raised by persons other than Licensee or Owner or their employees, contractors, and agents with regard to or concerning Licensee's facilities that are attached to Owner's poles, or Licensee's right and obligations under this Agreement.

## ARTICLE IX

### MAINTENANCE OF POLES AND ATTACHMENTS

- A. **Obligation to Maintain Poles.** Except as herein otherwise expressly provided, each party shall, at its own expense, maintain its poles in a serviceable condition in accordance with the Code and shall reinforce or repair its own poles as they become known to be unserviceable.
- B. **Obligation to Maintain Attachments.** Except as herein otherwise expressly provided, each party at its own cost shall place, maintain, rearrange, transfer and remove its own Attachments, and shall at all times perform such work promptly and in such a manner as not to interfere with work or service being performed by the other party. Each party shall, at its own expense, at all times maintain all of its Attachments in safe condition,

thorough repair, and in accordance with the requirements of the Code. An Attachment is deemed to comply with Code if it complies with the minimum requirements of the Code in effect at the time the Attachment was placed, and nothing in this provision shall require either party to inspect existing Attachments and proactively bring them up to date with the current Code unless otherwise required by applicable law.

- C. **Obligation to Train and Warn.** The Licensee shall insure that its employees are properly trained in climbing on and working on Owner's poles safely and that they are aware of the dangers inherent in making contact with the electrical conductors or electrical equipment of Power Distributor. Without limitation of the foregoing, the Telephone Company shall prohibit its employees from handling energized lines of the Power Distributor, including lines attached to Secondary Poles.
- D. **No Warranty of Condition.** Notwithstanding the maintenance obligations of Owner under Sections A and B, above, both parties disclaim any warranty or representation regarding the condition and safety of their poles. To the extent permitted by law, each party expressly assumes responsibility for determining the condition of all poles to be climbed or otherwise worked on by its employees whether for the placement of Attachments, maintaining or Rearranging Attachments, or for other reasons. Except for performing Transfer work from unserviceable poles to replacement poles and for replacing poles pursuant to Section VII.C and Section VII.D, a Licensee shall not permit its employees to work on poles that are unserviceable until the Owner has corrected the unserviceable condition or has determined that the pole is serviceable.

## ARTICLE X DIVISION OF COSTS

- A. The cost of establishing a new Joint Use Pole line shall be borne by the parties in accordance with the following:
1. A Standard Joint Use Pole, or smaller, shall be erected at the sole Cost of the Owner.
  2. In the case of a pole larger than the Standard Joint Use Pole required by either party, the party requiring the extra height and/or class shall pay for the additional Cost of the pole. If Owner adds features or betterments not required by Licensee, Owner shall pay the Costs associated with such features or betterments.
  3. In the case of a pole larger than the Standard Joint Use Pole where the additional height and/or strength required is for the purpose of both parties, the Cost of the pole shall be shared by both parties, with Owner being responsible for the cost of a Standard Joint Use Pole and Licensee being responsible for one half of the Cost of the additional height or strength.
  4. In the case of a pole larger or stronger than the Standard Joint Use Pole, where height or strength in addition to that needed for the purpose of either or both parties hereto is necessary in order to meet the requirements of the Code, a public



authority or of property owners, the Cost of the additional height or strength shall be paid by the Owner.

- B. The cost of establishing Joint Use on existing pole lines or modifying existing Joint Use Pole lines shall be borne by the parties in accordance with the following:
1. For placement of intermediate poles for the Licensee, the Licensee shall pay the actual and documented total Cost of installing the new pole. Each Party shall be responsible for attaching its own facilities.
  2. For replacement of non-defective poles for the Licensee, Costs shall be governed by Articles III, VI and VIII, as applicable.
  3. For replacement of non-defective poles for the Owner, at the mutual request of both parties, or due to the requirements of the Code, a public authority or of property owners, Section A above shall govern unless the situation is otherwise specifically governed by Articles III, VI or VIII.
  4. For replacement of existing defective poles, Costs shall be governed by Section A above.
- C. Except as otherwise specifically provided herein, each party shall bear the costs of placement, transfer, and rearrangement of its own Attachments, place guys and anchors to sustain any unbalanced loads caused by its Attachments, and perform any tree trimming or cutting incident thereto.
- D. When less costly Rearrangements can be performed by either party which would defer the cost of replacing a pole, such Rearrangements may be made and the Cost will be borne by the party requesting pole replacement; provided, however, that the final decision of whether or not to replace a pole shall remain with the Owner of the pole.
- E. Any payments made by the Licensee under the foregoing provisions of this Article shall not entitle the Licensee to ownership of any part of said pole.
- F. Each party shall bear the Cost of repairing damages to the other party's facilities occasioned by its improper construction practices or its negligence.
- G. Either party may request documentation supporting any demand for payment.

## ARTICLE XI

### COORDINATION AND PLANNING

- A. **Generally.** At least once per quarter, at the written request of either party and mutually agreed upon, management representatives of each party with responsibility for overseeing the party's overhead plant and related facilities subject to this Agreement shall discuss the status of any operational issues that have arisen between the parties under this

Agreement. The intent of these discussions is to encourage greater planning and coordination of operational issues between the parties.

- B. **Annual Planning Meeting.** On or before October 1 of each year that this Agreement is in effect, at the written request of either party, local management representatives of each party with responsibility for overseeing the party's overhead plant and related facilities subject to this Agreement shall mutually agree to meet or correspond via electronic mail, U.S. Mail or any other means mutually agreed upon and confer to exchange information concerning pole relocation and replacement work during the upcoming calendar year. The parties shall exchange estimates (to the extent they are available) of the number of poles that each party reasonably expects to relocate or replace during the next calendar year along with the time frame for such relocations or replacements (as to each party, a "Work Plan"). Additional meetings, correspondence via electronic mail, U.S. Mail or any other means mutually agreed upon may be scheduled at the request of either party if necessary to facilitate pole relocation/replacement work and transfers.
- C. **Existing Delinquent Transfers or Non-Compliant Attachments.** Within one-hundred-twenty (120) days after execution of this Agreement, representatives from both parties will meet at a mutually agreeable location or correspond via electronic mail, U.S. Mail or other means mutually agreed upon to discuss Delinquent Transfers and Non-Compliant Attachments in existence at the time of contract execution. The parties shall then cooperate to establish a reasonable deadline for completion of work required to remedy the Delinquent Transfers and Non-Compliant Attachments. Reasonable extensions of time should not be denied if they would not result in material prejudice to the party requesting the work, and if the other party performing the work is acting with reasonable diligence to complete the work. If a party fails to remedy a Delinquent Transfer or Non-Compliant Attachment by the agreed upon deadline, or if that party disputes that it is responsible for performing the work, the other party may initiate the upper management escalation procedure set forth in Article XX. If any delinquent transfers and/or Non-Compliant Attachments are in existence at the time of contract execution but not addressed within the meeting, or thru correspondence via electronic mail, U.S. Mail or other means mutually agreed upon between the parties described above, then at the election of the Owner, each such delinquent transfer and each such Non-Compliant Attachment may be addressed utilizing the process outlined above or may be resubmitted to Licensee pursuant to the provisions of this Agreement.
- D. **Coordination of Complex Work.** When a party desires to change or upgrade its system which causes it to exceed its Standard Space Allocation and to substantially relocate a joint use route for its own operational requirements, it shall notify the other party in writing and, within sixty (60) days of receipt of such notice, the parties shall discuss and exchange the information necessary to determine if the desired changes in construction can be conducted in a cost-efficient manner for both parties.
- E. **Cost Sharing for Complex Work.** For any work required pursuant to Section D, the cost of establishing such joint use route shall be mutually agreed upon by the parties hereto; provided, however that nothing in this Section E shall prevent the Owner from relocating its attachments at its own cost and expense if the parties fail to reach

agreement on cost sharing pursuant to this Section E. In this situation, the Owner shall abandon the subject poles to the Licensee in accordance with Article XIII.

- F. **Ownership of New Poles.** In any case, ownership of any new poles placed pursuant to this Article shall remain with the owner of the poles that were replaced, unless otherwise agreed to by the parties in writing.
- G. **Applicability to Road Widening and Related Projects.** The provisions of Sections C and D of Article shall not apply to road move projects prompted by a governmental entity or agency.

## ARTICLE XII

### ANCHORS

Anchors required by either party shall be placed by the party requiring the anchor at its own expense. Notwithstanding the forgoing, the parties may mutually consent to install anchors to be used jointly by both parties upon Cost sharing or other arrangements agreed upon by the parties. Guy leads and anchors will possess the strength required by the Code, will be installed and used in accordance with the reasonable requirements of the Owner and will follow the specifications herein:

1. Following the Commencement Date of this Agreement, all anchors and guys shall be installed prior to the installation of Licensee's messenger wires or cables. Licensee's guy lead must be of sufficient length and strength to accommodate loads applied by the Attachments. No anchor installed following the Commencement Date shall be placed within 1 foot of any existing anchor. Guy markers meeting Licensee's specifications shall be installed on every newly placed guy attached to Owner's pole after the Commencement Date.
2. Each party shall install and maintain its own guy wires. Licensee shall not attach any down guy to Owner's anchors or to other attaching parties' anchors without prior written permission from such Owner or other party as the case may be, such permission shall not be unreasonably withheld.
3. All down guys, head guys or messenger dead ends installed by Licensee shall be attached to the pole by the use of "through" bolts. Under no circumstances shall Licensee install down guys, head guys or messenger dead ends by means of encircling wooden poles with such Attachments.

## ARTICLE XIII

### ABANDONMENT OF JOINT USE POLES

- A. **Abandonment of Poles by Owner to Licensee.** Anytime Owner desires to abandon any Joint Use Pole, it shall give Licensee at least sixty (60) days' written notice. If, at the expiration of such period, Owner and any third parties shall have no Attachments on such pole but Licensee shall not have removed all of its Attachments therefrom, Owner may

transfer ownership of such pole to Licensee by sending written notification confirming the transfer in the form attached hereto as Exhibit E. The pole shall thereupon become the property of Licensee, and Licensee shall pay the Owner an amount equal to the original cost of the abandoned pole less depreciation (or, if the original cost of the pole is not available, the cost of the pole being removed shall be determined by the current installed Cost of an equivalent pole depreciated using a thirty (30) year straight line depreciation schedule by the number of years since the Pole was installed). Licensee shall also save harmless the former Owner from all obligations, liabilities, damages, costs, expenses, or charges incurred thereafter because of or arising out of the presence, location or condition of such pole or any of Licensee's Attachments thereon, unless such liabilities or damages arise from the gross negligence or intentional acts or omissions of the former Owner.

- B. **Abandonment by Licensee.** Licensee may, at any time, abandon the use of a Joint Use Pole by removing any and all Attachments it may have on said pole. No refund of adjustment fees shall be due Licensee on account of such abandonment, and following such removal, no Attachment shall again be made to such pole without complying with the requirements of Article VI.

#### ARTICLE XIV

##### ADJUSTMENT PAYMENTS

- A. **Payments.** Payments shall cover rentals for the calendar year and shall be based upon the number of poles that are occupied on the first day of December of the preceeding year. On or around December 1, 2011 and December 1st of each year thereafter during the time this Agreement is in effect, the parties shall cooperate in creating a schedule of pole rental showing the number of Joint Use Poles which the other party occupies as Licensee. The party owning the greater number of Joint Use Poles shall render to the other party a net rental billing. Such billing shall reflect the number of Joint Use Poles owned by each party, multiplied by the then current annual pole rental rate as set forth in Exhibit D, with the net difference being the actual amount billed.
- B. **HWI Adjustment.** The rates set forth in Exhibit D shall be effective as of January 1, 2011, and shall remain in effect through December 31, 2011 (the "Base Rate"). The Base Rate shall be escalated, effective January 1, 2013, and annually thereafter, based upon the percentage change in the Handy-Whitman Index (South Atlantic Region, FERC Account 364, Line 44, Poles, Towers and Fixtures)("HWI") between the two preceding July 1 index numbers.
- C. **Periodic Review of Payment Rate.** No sooner than five years from the Commencement Date of this Agreement and in intervals no more frequent than every five years thereafter, the annual pole rental rate and calculation methodology set forth in Exhibit D shall be subject to joint review and revision upon the written request of either party sent via certified mail to the operational and legal addresses referenced in Article XVIII. If, within ninety (90) days after the receipt of such request by either party, the parties fail to agree to a revision of such rate and calculation methodology, then the payment per pole shall be established at the

then existing Base Rate, escalated by the HWI for one year. The following year, the payment per pole shall be an amount equal to 40% of the then average in plant cost factors of providing and maintaining the Joint Use Poles covered by this Agreement for the party owning the greater number of Joint Use Poles covered by this Agreement. The new rate shall thereafter be adjusted in accordance with Section B, above, until again revised pursuant to this Section.

- D. **Other Work.** Upon completion of any work done by one party for which payment is due from the other party, the party performing the work shall present to the other party, within ninety (90) days after the completion of such work (or, in the discretion of the Owner, the completion of all related work, including third party work), a bill showing the amount due and a breakdown of the Costs. The parties will cooperate to ensure that both are provided the necessary information to certify that the bills are correct.
- E. **Payment and Disputed Charges.** The adjustment payment herein provided for, or any other bill for payment of work, shall be paid within forty-five (45) days after the bill has been received, unless said party disputes the amount billed. In case of such dispute, either party may escalate the matter in accordance with Article XX. Any undisputed amounts shall be paid within the forty-five (45) day time period.
- F. **Late Charges.** Payments not paid within the specified time period shall accrue late payment charges of one and one-half percent (1.5%) per month or the maximum amount permitted by applicable law, whichever is less.

## ARTICLE XV

### INVENTORY OF ATTACHMENTS

- A. **Initial Inventory.** Upon request of either party at any time after the execution of this Agreement, an actual inventory of Attachments shall be made jointly by representatives of the parties or by a third party chosen by the parties (the "Initial Inventory"). If there is any difference in (a) the number of Attachments found by the inventory and (b) the number arrived at by tabulating those invoiced and reported under this Agreement and any predecessor agreements between the parties, correction will be made by retroactive billing for any Attachments identified as being responsible for the difference. The remaining difference will be billed based on the presumption that the attachment rate to poles was constant from year to year. The total unauthorized count will be divided by the number of years since the last inventory, or five years, whichever is shorter and then each year's presumed unauthorized attachment pole count will be added to the prior year's presumed unauthorized pole attachment count and backbilled at the rate in effect for that year. At the election of the party owning the greater number of poles and so long as there is not a material and reasonable dispute between the parties concerning the results of such inventory, any inventory conducted within two (2) years prior to the Commencement Date may be used as the initial inventory, and in such event, the initial inventory shall be deemed to have been completed as of the Commencement Date.

- B. **Five Year Pole Inventories.** Five (5) years after the Initial Inventory and at intervals no more frequent than every five (5) years thereafter (unless otherwise mutually agreed by the parties), an actual inventory of Attachments shall be made jointly by representatives of the parties or by a third party chosen by both parties. If there is any difference in the number of Attachments found by subsequent inventories and the number invoiced in the corresponding billing, correction will be made by retroactive billing for any Attachments identified as being responsible for the difference, and any remaining difference will be spread evenly over the years since the last inventory and billing adjusted accordingly using the rate in effect for each of the respective years. Back-billing of unauthorized attachments shall not exceed five years.
- C. **Inventory Methodologies.** In lieu of the foregoing, the parties may mutually agree to alternative inventory procedures.
- D. **Cost Sharing.** Each party shall equally share the cost of making such inventory of attachments.

## ARTICLE XVI

### DEFAULTS

Notwithstanding any other provision in this Agreement to the contrary, if either party shall fail to discharge any of its obligations under this Agreement and such failure shall continue for sixty (60) days after notice thereof in writing from the other party sent via certified mail or Overnight Mail, signature required to the operational and legal addresses referenced in Article XVIII, all rights of the party in default hereunder, pertaining to making Attachments to additional poles of the other, shall be suspended by sending written notification of the suspension to the defaulting party via certified mail or Overnight Mail, signature required to the Article XVIII addresses. If such default shall continue for a period of ninety (90) days after receipt of the notice of suspension, the non-defaulting party may, by sending written notification to the defaulting party via certified mail to the Article XVIII addresses, terminate the right of both parties to attach to additional poles of the other party. Any termination of the right of the parties to attach to additional poles of the other party shall not abrogate or terminate the right of either party to attach to existing Joint Use Poles or to maintain and Transfer existing Attachments to replaced or relocated poles. All such Attachments shall continue thereafter to be maintained pursuant to and in accordance with the terms of this Agreement, which Agreement shall, so long as said Attachments are continued, remain in full force and effect solely and only for the purpose of governing and controlling the rights and obligations of the parties with respect to such Attachments.

## ARTICLE XVII

### LIABILITY AND DAMAGES

- A. **General Indemnification.** Licensee shall indemnify, protect, and save Owner harmless from and against any and all liabilities, claims, demands and costs incurred by reason of (a) damage to property, (b) injury to or death of persons, including payments made under any workers' compensation law or under any plan for employees' disability and death benefits, and

(c) any slander, defamation, or infringement claim; provided that the foregoing liabilities, claims, demands and costs arise out of or are caused by the Licensee's use of or work on Owner's facilities including, without limitation, the erection, maintenance, presence, use, removal, or abandonment of Licensee's attachments, or by the proximity of the respective cables, wires, apparatus and appliances of the Licensee to any of the facilities belonging to the Owner or to other parties jointly using the Owner's poles, or arise out of or are caused by any act of Licensee or its employees, agents, contractors and their subcontractors on or in the vicinity of Owner's poles. The obligation of indemnity shall include, without limitation, any attorneys' and/or legal fees or costs. , but under no circumstances shall the licensee be liable to Licensor for any incidental, special or consequential damages (such as lost profits or lost business opportunities), punitive or exemplary damages.

- B. **Survival and Interpretation.** The indemnification provisions of this Agreement (whether contained in this Article or otherwise) shall survive termination of this Agreement and shall be enforced to the fullest extent permitted by applicable law. Nothing in this Agreement shall waive or in any way limit any limitations of liability or privileges or immunities available to governmental utility companies under applicable law.

## ARTICLE XVIII

### SERVICE OF NOTICES

- A. Unless otherwise provided in this Agreement, it is expressly agreed and understood between Owner and Licensee that any Notice required to be given by either party to the other pursuant to this Agreement shall be in writing and sent by US Mail, facsimile or by recognized national overnight delivery service and shall be deemed received upon actual delivery or refusal of delivery as evidenced by the records of the parties, the US Postal Service or delivery service as the case may be.
- B. Notices shall be sent addressed as follows:

**Power Distributor:**

Operational Notices:

Greg Grissom  
Hickman-Fulton Counties Rural  
Electric Cooperative Corporation  
Post Office Box 190  
Hickman, Kentucky 42050

Official/Legal Notices:

Greg Grissom  
Hickman-Fulton Counties Rural  
Electric Cooperative Corporation  
Post Office Box 190  
Hickman, Kentucky 42050

**Telephone Company:**

Contractual Notices:

Windstream Corporation  
Attn: Thomas A. Hudock, Jr., Manager Contracts  
50 Executive Parkway  
Hudson, OH 44236

Invoices for Rentals / Joint Use Work

Windstream Corporation  
Attn: Brenda Wilfong  
50 Executive Parkway  
Hudson, OH 44236

Joint Work Request Notices:

Windstream Corporation  
Attn: Rasool Shakoor  
50 Executive Parkway  
Hudson, OH 44236

Operational Notices:

Windstream Kentucky East, LLC  
Attn: Barry Roberts, OSP Manager  
111 S Main  
Elizabethtown, KY 42701-1418

Legal Notices:

Windstream Kentucky East, LLC  
Attn: Corporate Legal  
4001 N Rodney Parham Rd  
Little Rock, AR 72212

With a copy to:

Windstream Kentucky East, LLC  
Attn: Thomas A. Hudock, Jr., Manager Contracts  
50 Executive Parkway  
Hudson, Ohio 44236

or to such other address as either party may designate by Notice to the other party from time to time in accordance with the terms of this Article.

- C. If at any time, and from time to time, both parties are members of NJUNS and maintain the capability of receiving messages from NJUNS, either party may, upon prior written notice to the other, elect to utilize such capability to provide notices under this Agreement for any matter relating to the operation and maintenance of Joint Use Poles; provided that giving notice via NJUNS does not satisfy the obligation to send a notice via certified mail if such notice is required by this Agreement. If the parties are using NJUNS, the parties may use NJUNS messaging formats in lieu of Exhibits B and C.



## ARTICLE XIX

### TERM AND TERMINATION OF AGREEMENT

Subject to Article XVI, this Agreement shall continue in force and effect for a period of five (5) years from and after the Commencement Date. After the initial five (5) year term, the Agreement shall automatically extend on the same terms and conditions for successive five year terms until terminated by either party providing written notice at least one hundred eighty (180) days prior to the end of the pending term. Termination shall thereafter become effective at the end of the pending term. Termination of the Agreement shall mean termination of the right of the parties to place Attachments on additional poles owned by the other party. Termination of the Agreement shall not, however, abrogate or terminate the right of either party to attach to existing Joint Use Poles or to maintain and Transfer existing Attachments to replaced or relocated poles. All such Attachments shall continue thereafter to be maintained pursuant to and in accordance with the terms of this Agreement, which Agreement shall, so long as said Attachments are continued, remain in full force and effect solely and only for the purpose of governing and controlling the rights and obligations of the parties with respect to such Attachments.

## ARTICLE XX

### DISPUTE RESOLUTION

- A. **Good Faith Participation.** Prior to the initiation of any litigation (except litigation arising following default and termination of this Agreement, which litigation may proceed without regard to this Article), the parties shall in good faith attempt to settle any dispute arising out of or relating to this Agreement through the upper management escalation process set forth herein. Good faith participation in these processes shall be a condition precedent to any litigation. All negotiations pursuant to this Article shall be confidential and shall be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and any state's rules of evidence.
- B. **Upper Management Escalation.** To initiate the dispute resolution process, either party shall give the other party written notice, via certified mail or overnight mail with signature required to the operational and legal addresses referenced in Article XVII.B., of any dispute not resolved in the normal course of business. The dispute shall be escalated to upper management and, thereafter, representatives of both parties with authority to settle the dispute shall meet at a mutually acceptable time and place or hold a conference call within sixty (60) days after receipt of such notice, and thereafter as often as reasonably deemed necessary, to exchange relevant information and attempt to resolve the dispute. If the matter has not been resolved within ninety (90) days of receipt of the disputing party's notice, or if the Parties fail to meet within sixty (60) days, either party may initiate litigation. A dispute regarding Delinquent Transfers shall not be eligible for upper management escalation as set forth in this provision unless the transfer request has been processed in the ordinary course through methods as required by Article VII.
- C. **Enforcement.** The parties regard the aforesaid obligation to escalate to upper management as an essential and material provision of this Agreement and one that is legally binding upon them. In case of a violation of such obligation by either party, the

other may seek specific enforcement of such obligation in the courts having jurisdiction hereunder. Notwithstanding the foregoing, in no event shall the obligations under this Article XX operate to prevent the initiation of litigation within ninety (90) days prior to the running of the applicable statute of limitation or statute of repose or the timely prosecution or defense (as applicable) of such litigation.

D. **Renegotiation – Failure of Transfer and Code Compliance Processes.** In the event that the upper management escalation procedure (exclusive of litigation) fails to resolve, to the reasonable satisfaction of both parties, ten (10) or more disputes concerning Delinquent Transfers or Non-Compliant Attachments within a calendar year, then the “Transfer and Code Compliance Provision” under Section E, immediately below, shall become effective, and either party may request (via certified mail or overnight mail with signature required to the operational and legal addresses referenced in Article XVIII.B.) that the parties meet to discuss an amendment to this Agreement setting forth an alternative method for addressing and resolving Delinquent Transfers and/or Non-Compliant Attachments. In the event that the dispute resolution process is initiated in one calendar year but the time at which parties have failed to reach resolution falls in the next calendar year, such dispute shall be counted in the earlier calendar year.

1. For purposes of this Section D, the parties intend that a dispute will encompass, at a minimum, all related Transfers and Non-Compliant Attachments. A party may not circumvent the spirit of this provision by initiating separate disputes for related items (e.g., initiating separate disputes for each pole in a line where a Transfer is pending, or for individual Non-Complaint Attachments placed in a line). Additionally, disputes that are not resolved because an outside party and/or other attacher is the cause, in whole or in part, of the alleged problem, shall not be included in calculating the number of unresolved disputes pursuant to this Section D.
2. If the parties are unable to agree upon the terms of an amendment within one-hundred-twenty (120) days of receipt of the written request, or within a reasonable extended time period agreed to by the parties, either party may, in addition to pursuing any legal remedies it may have, terminate this Agreement by sending written notice to the other party via certified mail or overnight mail with signature required to the operational and legal addresses referenced in Article XVIII.B. Termination shall become effective one-hundred-eighty (180) days from receipt of the termination notice, and the rights and obligations of the parties following termination shall be governed by Article XIX.

E. **Transfer and Code Compliance Provision.** Upon this provision becoming effective in accordance with the requirements of Section D, immediately above, as an additional remedy to ensure timely handling of Delinquent Transfers and Non-Compliant Attachments, each party may bill the other party an additional amount equal to the then annual Base Rate per pole for each Delinquent Transfer and Non-Compliant Attachment older than ninety (90) days in existence on June 30 and December 31 of each year. Bills issued pursuant to this Section shall be separate and apart from annual rental invoices, and shall be issued within thirty (30) days of the aforementioned dates. Before a party

can take advantage of the billing provision set forth in this Section, the parties must have been using NJUNS (or a similar formal electronic notification system agreed to by the parties) for one year and must have participated in quarterly meetings for one year in accordance with Article XI.A. (provided, however, that such meetings may be cancelled by mutual agreement of the parties and provided further, that if one party fails to meet with the other party upon the other party's reasonable request, such failure to meet shall not prevent this Section from become effective). Participation in NJUNS (or similar system) and in quarterly meetings that occur prior to this provision becoming effective shall be counted in determining the effective date of the bill provision set forth in this Section.

## ARTICLE XXI

### RIGHTS OF OTHER PARTIES

- A. If either party hereto has, prior to the execution of this Agreement, conferred upon others not parties to this Agreement (outside parties), by contract or otherwise, rights or privileges to attach to any of its poles covered by this Agreement, nothing herein contained shall be construed as affecting said rights or privileges with respect to existing attachments of such outside parties, which Attachments shall continue in accordance with the present practice; all future Attachments of such outside parties shall be in accordance with the requirements of Section B, below, except where such outside parties have by agreements entered into prior to the execution of this Agreement acquired enforceable rights or privileges to make attachments which do not conform to the requirements of this Agreement. Owner shall derive all of the revenue accruing from such outside parties. Any contractual rights or privileges of outside parties recognized in this paragraph shall include renewals of or extensions of the term (period) of such contracts.
- B. If either party hereto desires to confer upon others not parties to this Agreement (outside parties), by contract or otherwise, rights or privileges to attach to any of its poles covered by this Agreement, it shall have the right to do so, provided all such Attachments of such outside parties are made in accordance with the following: (1) such Attachments shall be maintained in conformity with the requirements of the Code, and (2) to the extent allowed by law, such Attachments shall not be located within space where Licensee holds a prior right to make or maintain its Attachments. Owner shall derive all of the revenue accruing from such outside parties.
- C. With respect to any rights and privileges granted under this Article to outside parties, Licensee shall not be required to transfer or rearrange its Attachments to accommodate an outside party until Licensee receives payment for the costs associated with such changes, unless Licensee is otherwise required to transfer or rearrange its facilities at its own expense pursuant to the terms of this Agreement.

## **ARTICLE XXII**

### **ASSIGNMENT OF RIGHTS**

Neither party hereto shall assign or otherwise transfer this Agreement, in whole or in part, without the written consent of the other party, which shall not be unreasonably withheld; provided that either party shall have the right without such consent to:

1. Mortgage any or all of its property, rights, privileges and franchises.
2. To lease or transfer any of them to another corporation organized for the purpose of conducting a business of the same general character as that of such party; or
3. To enter into any merger or consolidation or other reorganization: and, in case of the foreclosure of such mortgage, as in case of such lease, transfer, merger or consolidation its rights and obligations hereunder shall pass to such successors and assigns; and provided, further that subject to all of the terms and conditions of this Agreement, either party may without such consent permit any corporation conducting a business of the same general character as that of such party, with which it is affiliated or physically connected, the rights and privileges of this Agreement in the conduct of its said business.

## **ARTICLE XXIII**

### **SUPPLEMENTAL ROUTINES AND PRACTICES**

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

The parties expressly agree to develop such coordination agreements as they mutually agree are necessary and feasible to assist both parties in effectuating this Agreement.

## **ARTICLE XXIV**

### **WAIVER OF TERMS OR CONDITIONS**

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

## **ARTICLE XXV**

### **EXISTING AGREEMENTS**

Any existing agreement between the parties hereto for the joint use of poles upon a rental basis within the territory covered by this Agreement is, by mutual consent, hereby abrogated and annulled; provided that unfulfilled obligations of the parties arising under such agreement prior to

the Commencement Date (such as claims for indemnification), unless expressly waived, shall survive termination of the prior agreement.

## **ARTICLE XXVI**

### **PAYMENT OF TAXES**

Each party shall pay all taxes and assessments lawfully levied on its own property upon said jointly used poles. Taxes and the assessments, which are levied on upon its jointly used poles, shall be paid by Owner thereof, but any tax (except income taxes), fee, or charge levied on Owner's jointly used poles solely because of their use by Licensee shall be paid by Licensee.

## **ARTICLE XXVII**

### **FORCE MAJEURE**

Neither party shall be liable for any delay or failure in performance of any part of this Agreement resulting from acts of God, acts of civil or military authority, embargoes, epidemics, war, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, power blackouts, or unusually severe weather. In the event of any such excused delay in the performance of a party's obligations under this Agreement, the due date for the performance of the original obligation(s) shall be extended by a term equal to the time lost by reason of the delay or by an extended time period mutually agreed to by the parties if more time is needed to complete the work.

## **ARTICLE XXVIII**

### **NO WARRANTY OF RECORD INFORMATION**

From time to time, one party may obtain from the other party records and other information relating to outside plant facilities. Each party acknowledges that such records and information provided may not reflect field conditions and that physical inspection is necessary to verify presence and condition of outside plant facilities and right-of-way.

## **ARTICLE XXIX**

### **NO EFFECT ON FRANCHISE RIGHTS**

Notwithstanding anything elsewhere herein provided, nothing contained in this Agreement shall abrogate, limit or affect any obligation of either party under any franchise granted to either party by any city or other local governmental unit that owns, operates or is in any way affiliated with Power Distributor, or by any predecessor of any such governmental unit or franchising authority.

## ARTICLE XXX

### SOURCE OF PAYMENTS

The obligations of the Power Distributor hereunder shall be payable solely from the funds of the electric system of the Power Distributor.

## ARTICLE XXXI

### MISCELLANEOUS PROVISIONS

- A. The Licensee of a Joint Use Pole shall acquire no ownership of or interest in such a pole, the Licensee's rights therein being limited to the right of compliance with terms and condition contained in this Agreement.
- B. Except only insofar as the express terms of this Agreement make the rights hereunder available to the successors or assigns of the parties hereto, the provisions of this Agreement shall not be interpreted to confer any right of action at law or in equity upon any parties except the parties hereto.
- C. Neither party shall, by mere lapse of time, be deemed to have waived any breach by the other party of any terms or provisions of this Agreement. The waiver by either party of any such breach shall not be construed as a waiver of subsequent breaches or as a continuing waiver of such breach.
- D. Nothing contained in this Agreement, or in any amendment or supplement thereto, or inferable here from shall be deemed or constructed to (i) make either party the agent, servant, employee, joint venture, associate, or partner of the other party, or (ii) create any partnership, joint venture or other affiliation or association between the parties. The parties hereto are and shall remain independent contractors. Nothing herein shall be deemed to establish a partnership, joint venture, or agency relationship between the parties. Neither party shall have the right to obligate or bind the other party in any manner to any third party.
- E. Each party represents that it has the full power and authority to enter into this Agreement and to convey the rights herein conveyed.
- F. This Agreement is deemed executed in and shall be construed under the laws of the State of Kentucky.
- G. Within this Agreement, words in the singular number shall be held and construed to include the plural, unless the context otherwise requires. Titles appearing at the beginning of any subdivisions hereof are for convenience only, do not constitute any part of such subdivisions, and shall be disregarded in construing the language contained in such subdivisions. The use of the words "herein", "hereof", "hereunder" and other similar compounds of the word "here" shall, unless the context dictates otherwise, refer to this entire agreement and not to any particular paragraph or provision. The term "person" and words importing persons as used in this Agreement shall include firms,

associations, partnerships (including limited partnerships), limited liability companies, joint ventures, trusts, corporations and other legal entities, including public or governmental bodies, agencies or instrumentalities, as well as natural persons.

IN WITNESS WHEREOF, the parties hereto, have caused these presents to be executed in duplicate, and signatures notarized thereto by the respective officers thereunto duly authorized, as of the Commencement Date.

ATTEST

HICKMAN-FULTON COUNTIES RURAL  
ELECTRIC COOPERATIVE  
CORPORATION

*Sasha L. Wauloff*  
Title *Business Manager*

*[Signature]*  
Title *President*

ATTEST

WINDSTREAM Kentucky East, LLC

*Janet Rhodes*  
Title *Analyst*

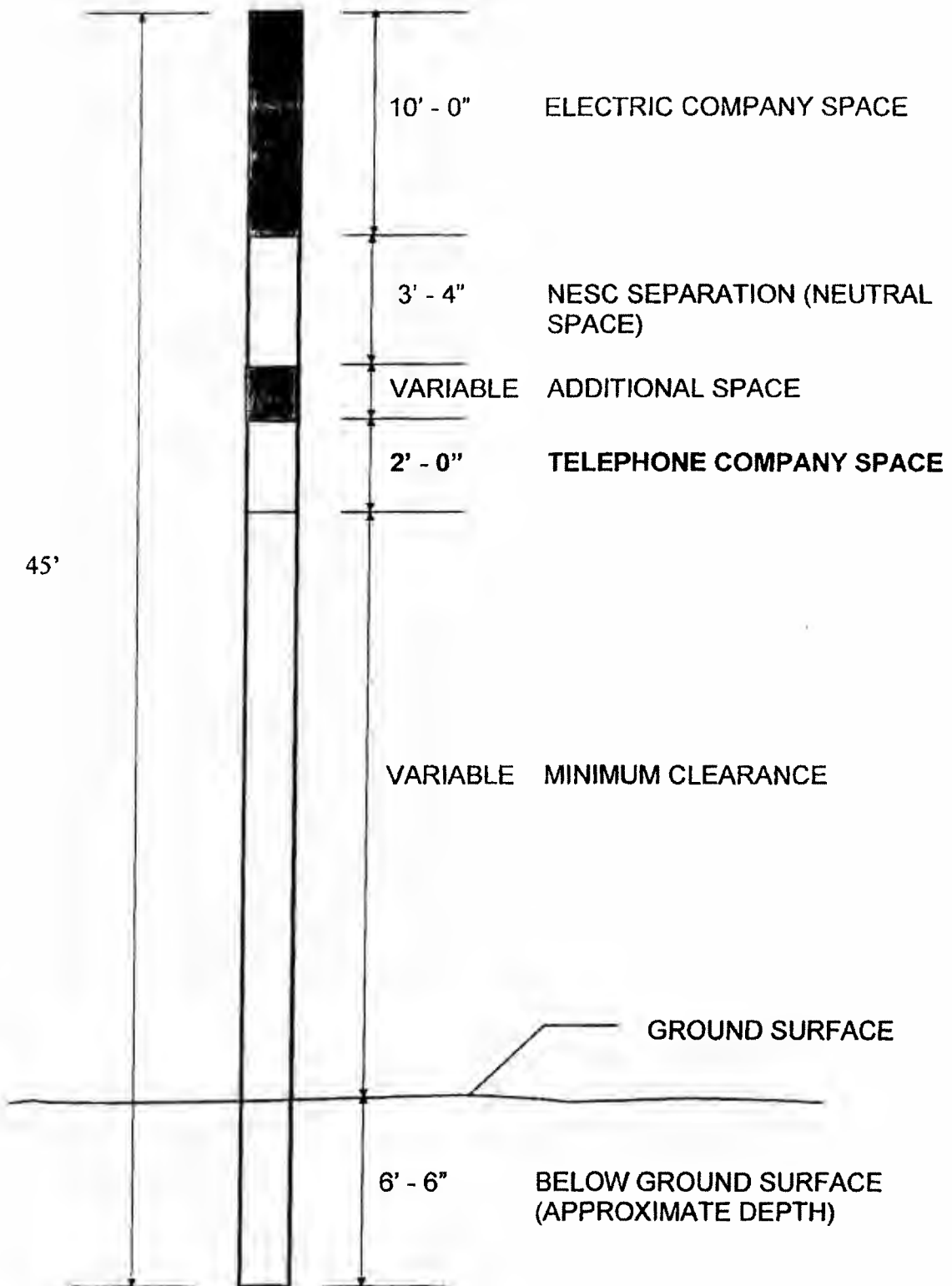
*[Signature]*  
Title *VICE PRESIDENT - TRANSPORT*



**EXHIBIT A**

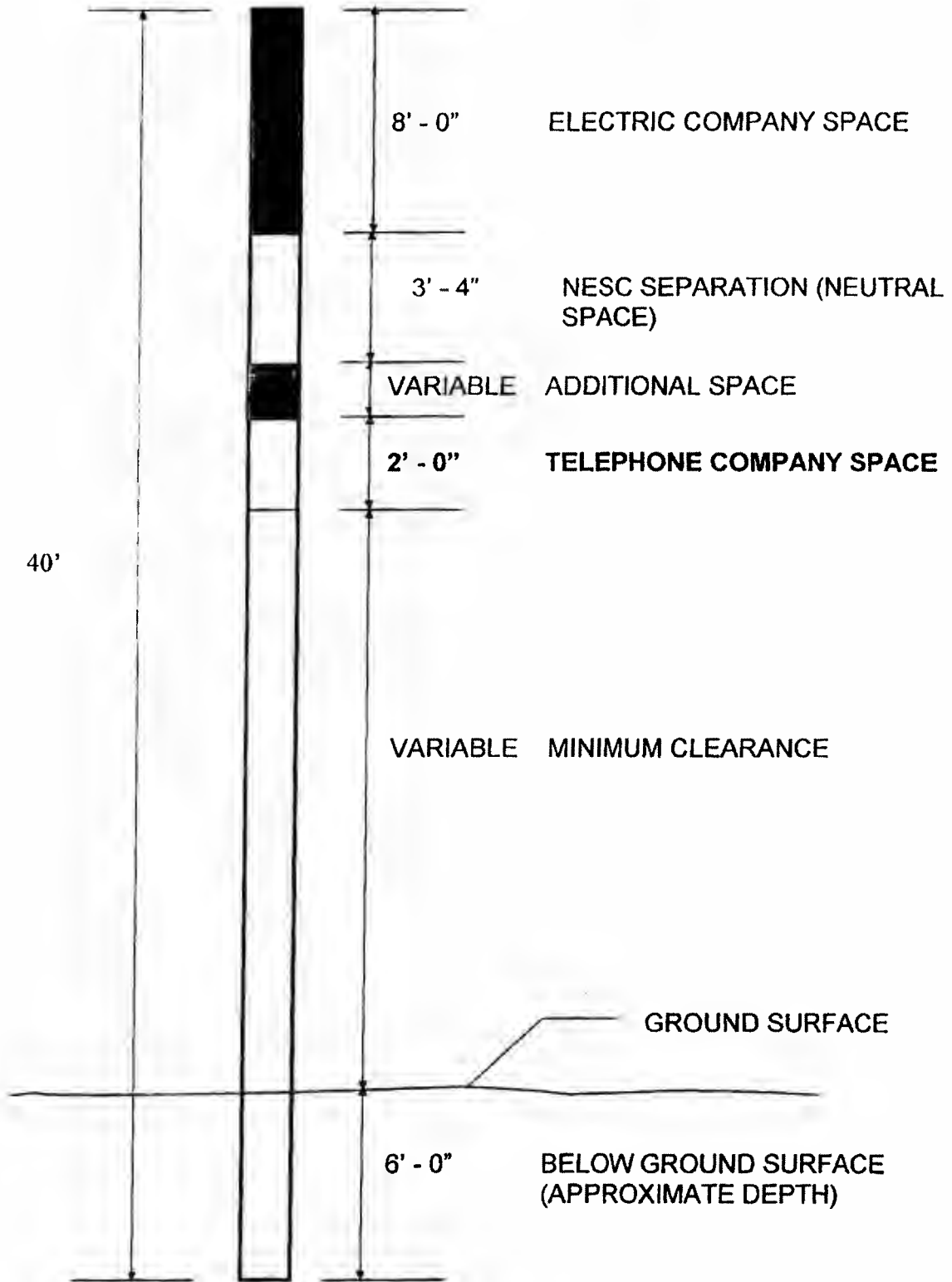
**STANDARD SPACE ALLOCATION**

**SPACE ALLOCATION ON 45°- CLASS 4 STANDARD JOINT USE POLE**  
(Not to scale)





**SPACE ALLOCATION ON 40'- CLASS 4 STANDARD JOINT USE POLE**  
(Not to scale)



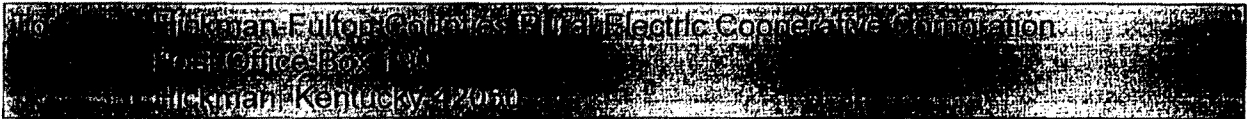
**EXHIBIT B**

**JOINT USE NOTIFICATION FORM**

**(Poles Owned by Power Distributor)**

Windstream Kentucky East, LLC  
(address)

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



**Attention:** \_\_\_\_\_

Attached is a Windstream work print(s) with the following indicated in **Red**:

A notification that Windstream has attached to \_\_\_\_\_ of \_\_\_\_\_ Power Distributor's pole(s)  
along \_\_\_\_\_ in \_\_\_\_\_ County, \_\_\_\_\_.  
*(Street, Road or SR No.)* *(State)*

Please adjust your pole Attachment count records accordingly.

Sincerely,

\_\_\_\_\_  
Windstream Kentucky East, LLC

**EXHIBIT B  
JOINT USE NOTIFICATION FORM**

**(Poles Owned by Windstream Kentucky East, LLC)**

Hickman-Fulton Counties Rural  
Electric Cooperative Corporation  
Post Office Box 190  
Hickman, Kentucky 42050

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

Windstream Kentucky East, LLC (address)

**Attention:** \_\_\_\_\_

Attached is a HFRECC work print(s) with the following indicated in **Red**:

A notification that HFRECC has attached to \_\_\_\_\_ of Windstream's pole(s)  
along \_\_\_\_\_ in \_\_\_\_\_ County, \_\_\_\_\_.  
*(Street, Road or SR No.)* *(State)*

Please adjust your pole Attachment count records accordingly.

Sincerely,

\_\_\_\_\_  
Hickman-Fulton Counties Rural Electric  
Cooperative Corporation

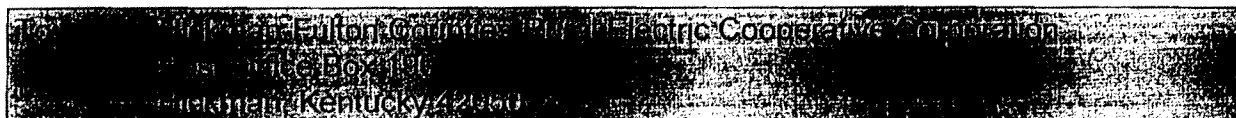
**EXHIBIT C**

**JOINT USE NOTIFICATION/REQUEST FORM**

**(Poles Owned by Power Distributor)**

WINDSTREAM KENTUCKY EAST, LLC  
(address)

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



Attention: \_\_\_\_\_

Attached is a WINDSTREAM work print(s) with the following indicated in **Red**:

\_\_\_ 1. A request for WINDSTREAM to attach to \_\_\_\_\_ of \_\_\_\_\_ Power Distributor's pole(s) along \_\_\_\_\_ in \_\_\_\_\_ County, \_\_\_\_\_.  
*(Street, Road or SR No.)* *(State)*

\_\_\_ 2. This is to notify you that WINDSTREAM has removed all Attachments from \_\_\_\_\_ of \_\_\_\_\_ Power Distributor's pole(s) along \_\_\_\_\_  
*(Street, Road or SR No.)*  
in \_\_\_\_\_ County, \_\_\_\_\_.

Upon acceptance/approval of this form please adjust your pole Attachment count records accordingly.

Sincerely,

Accepted/Approved

\_\_\_\_\_  
WINDSTREAM KENTUCKY EAST, LLC

\_\_\_\_\_  
Hickman-Fulton Counties Rural Electric  
Cooperative Corporation

**EXHIBIT C  
JOINT USE NOTIFICATION/REQUEST FORM**

**(Poles Owned by WINDSTREAM KENTUCKY EAST, LLC)**

Hickman-Fulton Counties Rural  
Electric Cooperative Corporation  
Post Office Box 190  
Hickman, Kentucky 42050

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

**TO:** WINDSTREAM KENTUCKY EAST, LLC

**Attention:** \_\_\_\_\_

Attached is a HFRECC work print(s) with the following indicated in **Red**:

\_\_\_ 1. A request for HFRECC to attach to \_\_\_\_\_ of WINDSTREAM'S pole(s)  
along \_\_\_\_\_ in \_\_\_\_\_ County, \_\_\_\_\_.  
*(Street, Road or SR No.)* *(State)*

\_\_\_ 2. This is to notify you that HFRECC has removed all Attachments from  
\_\_\_\_\_ of WINDSTREAM's pole(s) along \_\_\_\_\_  
*(Street, Road or SR No.)*  
in \_\_\_\_\_ County, \_\_\_\_\_.

Upon acceptance/approval of this form please adjust your pole Attachment count records accordingly.

Sincerely,

Accepted/Approved

\_\_\_\_\_  
Hickman-Fulton Counties Rural Electric  
Cooperative Corporation

\_\_\_\_\_  
WINDSTREAM KENTUCKY EAST, LLC

**EXHIBIT D  
PAYMENTS**

For 2011, rental rates shall be \$29 per pole.

For 2012 rental rates shall be \$29.50 per pole

For 2013 and thereafter, unless revisited in accordance with Article XIV.D., the rental rate shall be adjusted annually by the HWI pursuant to Article XIV.C.

**EXHIBIT E  
NOTIFICATION OF ABANDONMENT AND TRANSFER  
OF OWNERSHIP**

To Licensee, \_\_\_\_\_:  
                  [insert name of Licensee]

This confirms that Owner has previously given Licensee the requisite 60 days' written notice required by Article XIII of the Joint Use Agreement that Owner wishes to abandon the pole(s) described below, that such time period has expired, that Owner has removed its attachments from the pole(s) (and if Owner is the Power Distributor, any third parties on the subject pole(s) have removed their attachments as well), and that Licensee has not removed its attachments from the subject pole(s). Accordingly, Owner hereby gives written notice of its transfer of ownership of the pole(s) described below to Licensee. Upon receipt of this notice, Licensee shall become the owner of the subject pole(s) and the indemnification and payment provisions set forth in Article XIII of the Joint Use Agreement shall apply.

**Pole Number**

**Pole Location**

Owner (insert name of Owner)

\_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

6/10  
6/6  
1/12/05

## LICENSE AGREEMENT

This LICENSE AGREEMENT ("Agreement") is made and entered into this 2nd day of March, 2005 ("Effective Date") by and between Hickman-Fulton Co. Rural Electric Cooperative Corp., a rural electric cooperative ("Licensor"), and Galaxy Cable, Inc. ("Licensee"). Licensor and Licensee may be referred to hereafter individually as a "Party" and collectively as the "Parties." The attached Terms and Conditions and all associated Exhibits are incorporated herein and made a part hereof by this reference.

**Notices.** The addresses, facsimile numbers and electronic mail addresses of the Parties to which any notice, request, consent, demand, designation, approval or statement required to be made to either Party by the other are as follows:

- (a) **Licensor/RECC:**  
Hickman-Fulton Co. Rural Electric Cooperative Corp.  
1702 Moscow Avenue  
P.O. Box 190  
Hickman, Kentucky 42050
  
- (b) **Licensee/Cable Company:**  
Galaxy Cable, Inc.  
1 First National Plaza  
Sikeston, MO

**Term of Agreement.** The term of this Agreement is from the Effective Date January 1, 2005 until January 1, 2019 (if not lawfully terminated sooner), and thereafter from year to year, unless terminated by either Party by giving notice of its intention to terminate at least six months prior to the end of any period.

**Applicable Law.** This Agreement is deemed executed in the State of Kentucky and shall be construed under the laws of the State of Kentucky without regard to its conflict of laws principles. Any legal action regarding enforcement of this Agreement shall be commenced and heard in the Circuit Court of Fulton County, Kentucky ("Court"), and the Parties consent and submit to the jurisdiction and venue of the Court.

### **Fees**

**Application Processing Fee.** \$ 200.00 per Application.

**Pole Attachment Rental Fee.** \$20.14 for the year of 2005 to be adjusted per section 7.3 for the year 2006 and thereafter per Attachment per year.

**Safety Violation Fee.** \$200.00 per safety violation.

**Unauthorized Attachment Fee.** \$500.00 per Unauthorized Attachment.



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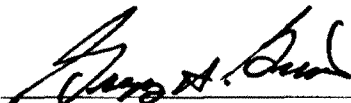
**IN WITNESS WHEREOF**, the Parties, each in consideration of the mutual covenants contained herein, and for other good and valuable consideration, intending to be legally bound, have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date first above-written; *provided, however*, that this Agreement shall not become effective as to either Party until executed by both Parties.


**LICENSOR**

Hickman-Fulton Co. Rural Electric  
Cooperative Corp.

**LICENSEE**

Galaxy Cable, Inc.

By:   
(Signature)  
Title: PRESIDENT  
Print Name: GREGORY H. GRISSOM  
Date: 11-30-04

By:   
(Signature)  
Title: VICE PRESIDENT ENGINEERING  
Print Name: WARD P. WEBB  
Date: 3-2-05

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# TERMS AND CONDITIONS

## **1. DEFINITIONS**

The following definitions shall apply to this Agreement. Capitalized terms not defined herein shall have the meaning otherwise set forth in the Agreement.

1.1. **Application** The Pole Attachment Application Form attached hereto at Exhibit 1.1 that must be completed by Licensee and approved by Licensor in writing before Licensee may attach to or make use of any of Licensor's Distribution Poles under this Agreement.

1.2. **Application Processing Fee** The fee that Licensee must pay to reimburse Licensor for the administrative and other costs incurred by Licensor in processing Licensee's Application.

1.3. **Attached Pole** A Distribution Pole owned or maintained by Licensor that contains at least one attachment by an entity other than Licensor.

1.4. **Attachment** Each affixation of Licensee's cables, strands, wires and associated apparatus to Licensor's Distribution Poles.

1.5. **Authorization** Licensor's grant of authority to Licensee to affix Attachments to Licensor's Distribution Poles in accordance with the terms of this Agreement.

1.6. **Business Day** All days except Saturday, Sunday and officially recognized Federal legal holidays.

1.7. **Control** With respect to any entity, the possession, directly or indirectly, of: (a) 50% or more of its ownership interests; or (b) the power to direct or cause the direction of management and policy, whether through the ownership of voting securities, partnership interests, by contract or otherwise."

1.8. **Default** When either Party: (i) fails to perform any of its covenants or obligations set forth in this Agreement, (ii) makes any representation or warranty in this Agreement that is untrue or incorrect, (iii) files a bankruptcy petition in any bankruptcy court proceeding, or (iv) admits in writing its inability to pay its debts when due or its intention not to comply with any requirement of this Agreement.

1.9. **Distribution Pole** A pole bearing electric distribution lines and having a voltage rating of or below 34.5 kV.

1.10. **Drop/Lift Pole** An ancillary pole necessary to extend service from a Distribution Pole to an individual customer(s).

1.11. **Licensee's Service Area** The area in which Licensee does or plans to provide its Services, as shown on Exhibit 1.11 attached hereto.

1.12. **Licensor Practices** Licensor's rules and practices for Attachments as set forth in Exhibit 1.11 attached hereto.

**1.13. Make Ready Costs** All costs necessary for Licensor to prepare its Distribution Poles for Licensee's Attachments, including the costs of materials, labor, engineering, supervision, overhead, and a share of Tree Trimming costs (as calculated in Section 6.54). Engineering includes design, proper conductor spacing and bonding, calculations to determine proper ground clearances and pole down guy and anchor strength requirements for horizontal and transverse loading, and compliance with all applicable requirements in Section 4.4 hereto. Also included among "Make Ready Costs" are the costs of installing or changing out primary poles, secondary poles and Drop/Lift Poles, including the cost of installation and/or removal of guys, anchors, stub poles, materials and equipment, temporary construction and all other construction in accordance with the technical requirements and specifications of Section 4.4.

**1.14. Make Ready Estimate** The estimate prepared by Licensor for all Make Ready Work that may be required by Licensor to accommodate Licensor's Distribution Poles for attachment by Licensee, in the form set forth in Exhibit 1.13.

**1.15. Make Ready Work** All work required by Licensor to accommodate Licensor's Distribution Poles for attachment by Licensee.

**1.16. Overlashing** The practice whereby a service provider physically ties or otherwise attaches new wiring to wiring that already has been affixed to a Distribution Pole.

**1.17. Pole Attachment Rental Fee** The annual amount per Attachment [**per Attached Pole**] that Licensee must pay to Licensor pursuant to this Agreement in order to affix each Attachment to Licensor's Distribution Poles.

**1.18. Required Authorizations** All legally required authorizations that Licensee must obtain from federal, state, county or municipal authorities, public or private landowners, or other third parties, to erect, operate and maintain its Attachments, and to provide the Services, including all required franchises, consents, easements, and certificates of convenience and necessity.

**1.19. Security Instrument** A performance bond or its equivalent (e.g., irrevocable letter of credit) to be used by Licensee to guarantee Licensee's payment in full of all Pole Attachment Rental Fees and other amounts payable to Licensor under this Agreement.

**1.20. Services** Cable television, telecommunications, Internet, data transmission or other similar services or combination of services provided by Licensee.

**1.21. Term** The period during which this Agreement remains in effect.

**1.22. Tree Trimming** Any clearing or reclearing of existing rights-of-way or easements and any tree or brush trimming necessary for the establishment and maintenance of Attachments, as determined by Licensor in its sole judgment.

**1.23. Unauthorized Attachment** Any affixation of any Licensee facility of any nature to any property of Licensor, including Distribution Poles, that has not been authorized by Licensor as required by this Agreement. Unauthorized Attachments may include facilities affixed to Licensor's property poles prior to the Effective Date of this Agreement.

**1.24. Unauthorized Attachment Fee** The fee to be paid by Licensee for each Unauthorized Attachment.



## **2. PURPOSE**

The purpose of this Agreement is to allow Licensee to install and maintain Attachments on Licensor's electric Distribution Poles in Licensee's Service Area for the limited purpose of providing Licensee's Services.

## **3. LICENSOR OBLIGATIONS**

3.1. Quiet Enjoyment Subject to the terms and conditions of this Agreement, and throughout the Term of this Agreement, Licensor shall not intentionally disturb Licensee's authorized Attachments, except as such disturbance may be necessary in an emergency or natural disaster situation, provided that Licensee is performing in accordance with all terms and conditions of this Agreement.

3.2. Diligence and Good Faith Licensor shall comply with all federal, state and local rules, regulations and ordinances and all technical rules and specifications applicable to Licensee's affixation of Attachments to Licensor's Distribution Poles as authorized herein. Consistent with this requirement and the other terms and conditions of this Agreement, Licensor shall in good faith diligently pursue all reasonable measures to accommodate Licensee's authorized Attachments.

3.3. Access to Distribution Poles; Easements Each Party shall be responsible for obtaining its own rights-of-way and easements. LICENSOR DOES NOT REPRESENT OR WARRANT THAT ANY OF ITS RIGHTS-OF-WAY OR EASEMENTS ENTITLE LICENSEE TO ACCESS THE PROPERTY UNDERLYING LICENSOR'S DISTRIBUTION POLES. Licensor shall not be liable should Licensee at any time be prevented from placing or maintaining its Attachments on Licensor's Distribution Poles because Licensee failed to obtain appropriate rights-of-way or easements. Licensor may require Licensee to demonstrate that it has secured its own rights-of-way or easements prior to authorizing any Attachments. If such a requirement is imposed, the time for Licensor to respond to Licensee's Application shall be tolled pending Licensee's response. Consistent with the terms and conditions of this Agreement, Licensor shall permit Licensee access to Licensor's Distribution Poles and related overhead and other easements. Further, Licensee's use of the overhead or other easements is contingent on, and may be prevented or otherwise constrained by, the extent to which such use is permissible under applicable contracts and instruments between Licensor and other entities, and under federal, state and local laws and regulations. THIS AGREEMENT APPLIES ONLY TO DISTRIBUTION POLES, AND DOES NOT PERMIT ACCESS OR AFFIXING OF ATTACHMENTS TO TRANSMISSION TOWERS OR OTHER PROPERTY OF LICENSOR.

3.4. Maintenance of Attached Poles At its own expense, Licensor shall maintain the Attached Poles, and replace, reinforce or repair such poles as Licensor becomes aware that they are defective, in Licensor's sole judgment.

## **4. LICENSEE OBLIGATIONS**

4.1. Use of Attachments Licensee shall use the Attachments solely to provide the Services.

4.2. Licensee Service Area Licensee shall identify the Licensee Service Area using Exhibit 1.10.

4.3. Compliance with Applicable Rules Licensee shall comply with all federal, state, and local rules, regulations and ordinances and all technical rules and specifications applicable to Licensee's affixation of Attachments to Licensor's Distribution Poles as authorized herein.

#### 4.4. Technical Requirements and Specifications

- (a) At its own expense, Licensee shall erect, install, and maintain its Attachments in safe condition and good repair in accordance with all applicable technical requirements and specifications, including, but not limited to:
- (i) requirements and specifications of the National Electrical Safety Code (“NESC”), the National Electrical Code (“NEC”), the Occupational Safety and Health Act (“OSHA”) and Rural Utilities Service (“RUS”), and to the extent such requirements or specifications may conflict, then the most stringent of the NESC, NEC, OSHA or RUS requirements and specifications;
  - (ii) any amendments or revisions of, or successor(s) to, the requirements and specifications of the NESC, NEC, OSHA, and RUS;
  - (iii) the Licensor Practices set forth in Exhibit 1.11; and
  - (iv) any current or future rules or orders of any federal, state or local authority having jurisdiction.
- (b) Licensee shall bring into conformity as soon as practical following notice by Licensor, and no later than any reasonable date set by Licensor, any existing Attachments of Licensee that do not conform to the technical requirements and specifications listed in this section. [Licensor may notify Licensee of any nonconformity which Licensor discovers from which time of notification Licensee shall bring into conformity no later than 3 days or any reasonable date set by Licensor.] In the event that Licensee fails to take all reasonable steps necessary to comply with this requirement, Licensor in its sole discretion may elect to bring such Attachments into compliance and Licensee shall reimburse Licensor for all costs related thereto. Failure by Licensor to inspect Licensee’s conformance to the technical requirements and specifications listed in this section or to take action on its own to bring such Attachments into compliance shall not cause Licensor to be liable for any loss or injury resulting from such failure of conformance and shall not relieve Licensee of its obligations of indemnification hereunder.
- (c) The Licensor Practices may be amended from time to time by Licensor as necessary in its sole discretion to promote the safe and efficient operation of its electric distribution system, including the Distribution Poles, without resort to the provisions of Section 20 (Modifications), and Licensee agrees to be bound by any such amendment. In the event that Licensor amends the Licensor Practices set forth in Exhibit 1.11, Licensee shall make all required modifications within thirty (30) days after receipt of notice thereof from Licensor.

4.5. Assumption of Risk Licensee expressly assumes responsibility for determining the condition of all poles to be climbed by its employees, agents, contractors or subcontractors. Licensee assumes all risks related to the construction, operation and maintenance of its Attachments, except as to those that may be caused by the gross negligence or willful misconduct of Licensor.

4.6. Safety Precautions Licensee shall take all steps necessary to protect persons and property against injury or damage that may result from the presence, installation, use, maintenance or operation of Licensee’s Attachments, and to avoid interference to Licensor’s safe and efficient operation of its electric distribution system. Should any such injury, damage or interference occur despite such steps, Licensee shall promptly notify Licensor [within 1 day] of such injury, damage or interference. At Licensor’s option, Licensee shall promptly [within 3 days or within 15 days of invoice] either (i) repair such damage and/or resolve such interference, or (ii) compensate Licensor for the cost of repairing any such

damage and/or resolving such interference, and shall indemnify Licensor with respect to such injury as provided in Section 14.1.

4.7. Qualifications of Employees, Agents and Contractors Licensee shall ensure that all employees, agents and contractors of Licensee used to install or maintain the Attachments [either (i)] have been certified or trained by an entity acceptable to Licensor to work in the vicinity of electric Distribution Poles [or (ii) **have received training with respect to work on electric Distribution Poles that is in Licensor's sole judgment at least as extensive as the training received by Licensor's employees performing similar work.**] Licensee shall produce proof of such certification or training upon Licensor's request.

#### 4.8. Identification Markers

- (a) Licensee shall place and maintain permanent identification markers on each of its Attachments prior to affixing it to Licensor's Distribution Poles. All identification markers must be located at or near the point where such Attachments are affixed to each Distribution Pole, and must:
- (i) be non-metallic;
  - (ii) be of a distinctive and uniform design;
  - (iii) include an alphanumeric code as specified by Licensor;
  - (iv) be legible, clearly visible and recognizable from the ground by a person having normal vision; and
  - (v) not show Licensee's name or insignia, unless prior consent of Licensor is obtained and it is made clear that Licensee is not the owner of the pole.
- (b) Licensee shall be responsible for periodically inspecting its Attachments to ensure they have permanent identification markers. Should Licensor encounter any of Licensee's Attachments without permanent identification markers, Licensor may notify Licensee provided that Licensor can identify the Attachments as belonging to Licensee. Licensee shall have thirty (30) days from the date of notice to place such permanent identification markers on those Attachments. If the markers are not placed within thirty (30) days, then Licensor may remove such Attachments without incurring any liability to Licensee, and Licensee shall reimburse Licensor for the cost of such removal.

4.9. Notification of Attachments Licensee shall notify Licensor on an ongoing basis [upon Licensor's request] of the precise location and total number of Licensee's Attachments.

### 5. MUTUAL OBLIGATIONS

Each Party shall take all precautions as are reasonably necessary to avoid damaging the facilities of the other.

### 6. ESTABLISHING ATTACHMENT TO POLES

6.1. Pole Attachment Application To cover costs incurred by Licensor in processing Licensee's Application, including but not limited to the cost of performing all engineering, administrative and other activities necessary to prepare the Make Ready Estimate, Licensee shall pay to Licensor the Application Processing Fee. Before Licensee may affix any attachments to or make use of any of Licensor's Distribution Poles under this Agreement, Licensee shall (a) submit to Licensor an Application requesting

Licensors permission to attach to or make use of each such poles; (b) receive written approval from Licensor authorizing the attachment to or use of each such pole; and (c) comply with all procedures set forth in this section. Licensee's failure to request and receive Licensor's permission as described herein will subject each Unauthorized Attachment to an Unauthorized Attachment Fee.

**6.2. Application Processing Fee** To cover costs incurred by Licensor in processing Licensee's Application, including but not limited to the cost of performing all engineering, administrative and other activities necessary to prepare the Make Ready Estimate, Licensee shall pay to Licensor the Application Processing Fee.

**6.3. Decision Regarding Application** If in the sole judgment of Licensor attachment to Licensor's Distribution Poles as proposed in the Application under the circumstances is undesirable or impracticable based on the technical requirements and specifications of Section 4.4, or because of other capacity, safety, reliability or engineering concerns, Licensor may reject all or part of the Application or limit the number and character of Attachments on any Distribution Pole. Within forty-five (45) days after the receipt of such Application, Licensor shall notify Licensee in writing whether the Application is approved, approved with necessary modifications, or rejected.

**6.4. Make Ready Estimate**

- (a) Licensor shall, on the basis of the Application and associated construction plans and drawings, submit to Licensee within forty-five (45) days of receipt of Licensee's Application a Make Ready Estimate (based on Licensor's method of computing costs, which shall follow generally accepted accounting principles) for all Make Ready Work which may be required for each Distribution Pole, including an estimated completion date for such Make Ready Work.
- (b) Upon notice pursuant to Exhibit 1.13 attached hereto that the Make Ready Estimate has been accepted by Licensee, Licensor shall proceed with the Make Ready Work covered by the Make Ready Estimate. Licensor shall undertake commercially reasonable efforts to complete this work by the estimated completion date but does not guarantee completion by such date. Nothing shall preclude the Parties from making other mutually agreeable arrangements for contracting for or otherwise accomplishing the necessary Make Ready Work. Upon completion of all Make Ready Work, Licensor shall send to Licensee an itemized statement for the actual, full costs of the Make Ready Work. Licensor's invoice, however, may not exceed 125% of the Make Ready Estimate, and Licensee will not be required to pay more than 125% of such estimate.
- (c) Licensor may, in its sole discretion, require Licensee to submit a deposit up to the amount identified in the Make Ready Estimate prior to performing any Make Ready Work.
- (d) Upon completion of the Make Ready Work and payment of the Make Ready Costs, Licensee shall obtain Authorization to use the Distribution Poles jointly and to make Attachments in accordance with the terms of this Agreement.

**6.5. Tree Trimming** Tree Trimming shall be performed by Licensor in its sole judgment. The cost, including associated administrative costs, of any Tree Trimming shall be paid in equal percentages by Licensor and all other entities attaching to the poles who are contractually obligated to pay for such Tree Trimming.

## 6.6. Overlapping

(a) Licensee may Overlap its own existing Attachments. Each Any proposed Overlapping by Licensee shall constitute a separate Attachment subject to the Application process and all other provisions of this Agreement.

(b) Licensee shall not allow third party Overlapping without Licensor's prior approval.

## 7. PAYMENT PROVISIONS

7.1. Pole Attachment Rental Fee The annual rental period covered by this Agreement shall be the twelve-month period beginning on the Effective Date and continuing for each twelve-month period thereafter. Licensor shall invoice Licensee for the Pole Attachment Rental Fee at the beginning of the annual rental period. The Pole Attachment Rental Fee for each period shall be based on the number of Attachments on Licensor's Distribution Poles as of the day preceding the annual rental period. For Attachments that are authorized during any part of the first six (6) months of the annual rental period, the Pole Attachment Rental Fee will be assessed for the entire annual rental period. For Attachments authorized during any part of the second six (6) months of the annual rental period, the Pole Attachment Rental Fee shall be reduced by fifty percent (50%) for that first annual rental period. Licensor may invoice Licensee for Attachments authorized during the annual rental period at any time after the Application for such Attachments is approved.

7.2. Payment Period All amounts payable under this Agreement shall be due within thirty (30) days of the date of invoice. Interest shall be charged at the rate of 1.5% or the maximum amount allowed by law on the unpaid balance of delinquent bills for each month or part thereof that any bill remains unpaid.

7.3. Licensor in its sole discretion may increase all fees that are due and payable under this Agreement effective on each annual anniversary date of the Effective Date to reflect increases that reflect TVPPA pole use rate schedule pole attachment fees, since the Effective Date. Licensor shall provide at least thirty (15) days notice to Licensee before the effective date of any such increase in fees.

## 8. INSPECTIONS

8.1. Right to Conduct To help ensure the safety and reliability of Licensor's electric distribution system, Licensor reserves the right to conduct inspections of Licensee's Attachments from time to time as necessary in Licensor's sole judgment to determine whether Licensee's Attachments meet the technical requirements and specifications listed in Section 4.4. If practicable, as determined in Licensor's sole judgment, Licensor shall provide ten (10) business days notice of such inspections to Licensee, and Licensee shall have the right to be present at and observe any such inspections. Such inspections may be conducted no more frequently than once every year, unless Licensor determines that more frequent inspections are necessary for reasons involving safety of persons or protection of property. Licensee shall reimburse Licensor for all costs and expenses of conducting inspections to the extent such expenses are attributable to Licensee's Attachments.

8.2. Safety Violations If during inspection or otherwise Licensor determines that any of Licensee's Attachments do not conform with the technical requirements and specifications listed in Section 4.4, Licensee shall, upon notice by Licensor, pay a Safety Violation Fee for each such violation, and shall correct such nonconformance within thirty (30) days of notification of such nonconformance, unless in Licensor's sole judgment safety considerations require Licensee to take corrective action within a shorter

period. Should Licensee fail to take all steps necessary to comply with this requirement, or if safety considerations so require, Licensor may elect to do such work itself, and Licensee shall reimburse Licensor for all costs incurred by Licensor. Licensor shall not be liable for any loss or damage to Licensee's facilities which may result, and Licensee shall be responsible for any additional damages resulting from its failure to act in a timely manner in accordance with these requirements.

## **9. AUDITS**

9.1. Right to Conduct Audits Licensor may conduct an audit of Licensee's Attachments, at Licensee's expense, to verify the number of Licensee's Attachments. Any such audit may be conducted no more frequently than once every year, unless Licensor in good faith believes that Licensee's reported number of Attachments is inaccurate, in which case Licensor may audit as frequently as is necessary in its sole discretion. Licensor must provide thirty (30) days notice of any such audit so that Licensee may be present and observe such audit. Licensee shall reimburse Licensor for all costs and expenses of conducting audits.

9.2. Review of Records in Lieu of Audit Licensor and Licensee may mutually agree that in lieu of audits, the number of Attachments maintained by Licensee shall be determined from existing maps and attachment records. If both Parties agree to use this method, each Party shall make all relevant maps and records available to the other Party, and the number of Attachments maintained by Licensee shall be cooperatively determined. The accuracy of such maps and records must be verified by the Party proposing to use them.

## **10. UNAUTHORIZED ATTACHMENTS**

10.1. Unauthorized Attachment Fee Licensee shall pay to Licensor an Unauthorized Attachment Fee within thirty (30) days of notification of each Unauthorized Attachment. Licensor may require that such Unauthorized Attachment be removed by Licensee, or Licensor itself may remove the Unauthorized Attachment without liability, at Licensee's expense. The Unauthorized Attachment Fee shall be in addition to any and all other applicable fees, including without limitation, Pole Attachment Rental Fees due and payable for the current year and all prior years in which the Unauthorized Attachment existed. Nothing herein shall act to limit any other remedies, including a remedy for trespass, that may be available to Licensor as a result of any Unauthorized Attachment.

10.2. Licensor Failure to Act No act or failure to act by Licensor with regard to any Unauthorized Attachment shall be deemed to ratify or license the Unauthorized Attachment. If an Application for such attachment is subsequently approved, such approval shall not operate retroactively to constitute a waiver by Licensor of any of its rights under this Agreement regarding the Unauthorized Attachment, and Licensee shall be subject to all liabilities, obligations and responsibilities of this Agreement from its inception with regard to any such Unauthorized Attachment.

## **11. REPLACEMENT AND RELOCATION OF POLES; REARRANGEMENT OF FACILITIES**

11.1. Replacement or Relocation of Poles Except in an emergency involving safety of persons or protection of property, as determined by Licensor in its sole judgment, Licensor shall provide twenty (20) days notice to Licensee whenever Licensor intends to replace or relocate an Attached Pole, or remove an Attached Pole in order to relocate facilities underground, specifying the poles involved and the time of such proposed replacement, relocation or removal. Licensee may, at the time so specified, transfer its Attachments to the new or relocated Attached Pole or the underground facilities, provided

that Licensee has entered into a contract with Licensor authorizing the use of such underground facilities. Should Licensee fail to transfer its Attachments at the time specified for such transfer, Licensor may elect to transfer Licensee's Attachments, and Licensee shall reimburse Licensor for all costs of such transfer, and Licensor shall not be liable for any loss or damage to Licensee's facilities which may result. Licensee shall be responsible for any additional damages resulting from its failure to transfer its Attachments. If Licensor has removed its attachments and Licensee's Attachment(s) remain on the original pole, Licensee shall become liable for the original pole, if it still exists, as provided in Section 12.1.

11.2. Replacement and Relocation Costs Licensor shall replace or relocate Distribution Poles at its own expense. Notwithstanding the foregoing, if Licensor in good faith determines that a Distribution Pole needs replacement in order to accommodate Licensee's proposed Attachments, then Licensor may do so with Licensee's consent and Licensee will bear the expense of such replacement.

11.3. Vacating Pole Space In the event it becomes necessary for Licensor, Licensor's subsidiary or affiliate or any other entity in which Licensor holds an interest, or another utility with whom Licensor has a prior agreement for pole attachments, to use the space on a Distribution Pole occupied or to be occupied by Licensee's Attachments, Licensee shall, upon receipt of sixty (60) days notice, either (a) vacate the space by removing its Attachments at its own expense, or (b) if Licensor decides to replace the pole with a larger pole that can accommodate Licensee's Attachments, bear the expense of pay the charge assessed by Licensor for such replacement and transfer its Attachments to the new pole.

11.4. Costs for Installation, Removal and Transfer of Licensee's Attachments Licensee shall be solely responsible for all costs of installation, removal or transfer of its Attachments on, from or to Licensor's Distribution Poles.

11.5. Costs for Rearrangement of Other Facilities In any case where the facilities of Licensor or another attacher(s) are required to be rearranged on the poles of Licensor in order to accommodate Licensee's Attachments, Licensee shall reimburse Licensor and the other attacher(s) the total reasonable costs incurred by Licensor or the other attacher(s) in rearranging such facilities to accommodate Licensee's Attachments.

## **12. ABANDONMENT OR REMOVAL OF ATTACHED POLES; COMPLIANCE WITH GOVERNMENT DIRECTIVES**

12.1. Right to Abandon or Remove; Licensee Obligations Upon sixty (60) days notice to Licensee, Licensor may in its sole discretion abandon or remove any Attached Pole. Within this 60-day period, Licensee shall remove its Attachments and may place its facilities underground if authorized to place its facilities underground, transfer its facilities to the nearest facilities owned by Licensor if authorized by Licensor, or take other action not inconsistent with this Agreement. If, at the expiration of the 60-day period, Licensor shall have no attachments on such pole but Licensee shall not have removed all of its Attachments, such pole may be sold to and become the property of Licensee at the sole option of Licensor. If Licensor elects to sell such pole, Licensor shall provide Licensee with a properly authorized bill of sale reflecting the fair market value of the pole in place. Licensee shall receive the pole "as is," and shall indemnify, defend and hold harmless Licensor from all obligation, liability, cost, claim, damage, expense or charge related thereto or raised thereafter. Should Licensor elect to sell such pole, Licensee shall take title to the pole for all purposes. Because poles and related items may contain various hazardous chemicals or properties, Licensee shall comply become familiar with the terms and directions of the appropriate material safety data sheet and comply with such terms and all directions contained

therein or otherwise required by state and federal law regarding the maintenance, replacement, and/or disposal of the pole. Licensor does not warrant, guarantee, or imply that such pole possesses sufficient mechanical strength as required by or for any use of Licensee. Licensor makes no representations or guarantees concerning any right to occupy the premises where the pole is currently located upon the removal of Licensor's facilities.

12.2. **Governmental Requirement to Remove** In the event that the use of any Distribution Pole is or becomes lawfully forbidden by federal, state, county or municipal authorities or by owners of private property, Licensor shall provide sixty (60) days notice to Licensee that the Authorization covering the use of such pole will be terminated, and that the Attachment(s) of Licensee must be removed from the affected pole at Licensee's expense. Notwithstanding the foregoing, if the federal, state, county or municipal authority, or private landowner requires discontinuance of the pole in less than sixty (60) days, the notice provided by Licensor shall be reduced accordingly.

12.3. **Governmental Requirement to Shorten Pole** If a governmental authority requires Licensor to reduce the height of a Distribution Pole such that the continued presence of Licensee's Attachments would not comply with the requirements of this Agreement, then the Authorization covering Licensee's Attachments to the pole shall immediately terminate upon notice from Licensor, and Licensee shall remove its Attachments from the affected pole at its own expense by the date specified by Licensor.

12.4. **Removal of Attachments** Licensee may at any time and in its sole discretion remove any of its Attachments from Licensor's Distribution Poles, but shall provide seven (7) business days notice of such removal to Licensor. Such notice shall fully identify, by pole number and location, the poles from which such Attachments are being removed. Licensee's obligations to make Pole Attachment Rental Fee payments shall continue until (i) Licensor receives such notice, and (ii) Licensee actually removes its Attachments. No refund of any rental fee will be due on account of such removal unless that removal is triggered by a Default of this Agreement by Licensor.

### **13. REPRESENTATIONS, WARRANTIES AND COVENANTS**

13.1. **Common Representations** Each Party represents and warrants that: (a) it has full authority to enter into and perform this Agreement; (b) this Agreement does not conflict with any other document or agreement to which it is a party or is bound, and this Agreement is fully enforceable in accordance with its terms; (c) it is a legal entity duly organized, validly existing and in good standing under the laws of the jurisdiction in which it was formed; (d) the execution and delivery of this Agreement and performance hereunder will not conflict with or violate or constitute a breach or default under its formation documents and will not violate any law, rule or regulation applicable to it; and (e) no consents need be obtained from any governmental agency or regulatory authority to allow it to execute, deliver and perform its obligations under this Agreement

13.2. **Required Authorizations** Licensee represents and warrants that it has obtained all Required Authorizations, and covenants and that it will maintain and comply with the Required Authorizations throughout the Term.

13.3. **LIMITATIONS ON WARRANTIES** THERE ARE NO WARRANTIES UNDER THIS AGREEMENT EXCEPT TO THE EXTENT EXPRESSLY AND UNAMBIGUOUSLY SET FORTH HEREIN. THE PARTIES SPECIFICALLY DISCLAIM AND EXCLUDE ALL IMPLIED WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. LICENSOR SPECIFICALLY DISCLAIMS ANY



**WARRANTY OR REPRESENTATION REGARDING THE CONDITION AND SAFETY OF LICENSOR'S DISTRIBUTION POLES.**

**14. INDEMNIFICATION**

14.1. Licensee Indemnification Licensee shall indemnify, protect, save harmless and insure Licensor, its officers, directors, employees and members, from and against any and all claims and demands for, or litigation with respect to, service interruptions, damages to property and for injury or death to persons, including payments made under any Worker's Compensation Law or under any plan for employee disability and death benefits and including all expenses incurred in defending against any such claims or demands, or other damages which may arise out of or be caused by Licensee or its agents, employees, contractors or subcontractors with respect to the erection, operation, maintenance, presence, use, repair, rearrangement or removal of Licensee's Attachments or Unauthorized Attachments or the proximity of Licensee, its agents and employees on or in the vicinity of Licensor's Distribution Poles.

14.2. Notice In the event of any claim, demand or litigation specified in this section, 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.

**15. LIMITATIONS ON DAMAGES**

UNLESS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, LICENSOR SHALL NOT BE LIABLE TO LICENSEE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES SUFFERED BY LICENSEE OR BY ANY SUBSCRIBER, CUSTOMER OR PURCHASER OF LICENSEE 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.

**16. INSURANCE**

16.1. Insurance Requirement Licensee shall carry insurance in such form and amount and issued by such companies as are reasonably satisfactory to Licensor to protect the Parties from and against any and all claims, demands, actions, judgments, costs, expenses and liabilities of every name and nature which may arise or result directly or indirectly from or by reason of any loss, injury, death or damage involving any Attachment or Attached Pole. Throughout the Term of this Agreement, Licensee shall take out and maintain, and shall ensure that its agents, contractors and subcontractors take out and maintain, insurance that, at a minimum, conforms with the RUS insurance requirements of 7 CFR §1788.11, as it may be amended, which currently requires:

- (a) Workers' compensation and employer's liability insurance, as required by law, covering all employees who perform any of Licensee's obligations under this Agreement. If

workers' compensation or employer's liability insurance is not required by law in the state in which the poles subject to this Agreement are located, then insurance shall be obtained by Licensee that is equivalent to what would be applicable if workers' compensation and employer's liability laws were in effect.

- (b) Public liability insurance covering all of Licensee's operations under the Agreement with limits for bodily injury or death of not less than \$1 million each occurrence, limits for property damage of not less than \$1 million each occurrence, and \$1 million aggregate for accidents during the policy period. A single limit of \$1 million of bodily injury and property damage is acceptable. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.
- (c) Automobile liability insurance on all motor vehicles used in connection with the Agreement, whether owned, non-owned, or hired, with limits for bodily injury or death of not less than \$1 million per person and \$1 million per occurrence, and property damage limits of \$1 million for each occurrence. This required insurance may also be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

16.2. **Certificate of Insurance** Within thirty (30) days of the Execution Date, Licensee shall furnish to Licensor a certificate evidencing compliance with the above insurance requirements. This certificate shall list Licensor as additional insured and shall note specific cancellation language, as follows: "In the event of cancellation or material change of said policies, the insuring company shall give the Party to whom this certificate is issued thirty (30) days prior notice of such cancellation or material change." If Licensee fails to renew adequate insurance, Licensor may terminate this Agreement pursuant to Section 17 (Defaults).

16.3. **Responsibility for Contractors.** Licensee shall bear full responsibility for ensuring that its agents, contractors and subcontractors are in full compliance with the requirements of this section before they perform any work for Licensee in connection with this Agreement.

16.4. **No Limitation on Indemnities.** The purchase of the insurance required by this section shall not relieve Licensee of its liability or obligations under this Agreement or otherwise limit Licensee's liability under Sections 14.1 and 14.3.

## **17. DEFAULTS**

17.1. **Licensee Default** If Licensee is in Default under this Agreement and fails to correct such Default within the cure period specified below, Licensor may, at its option, and without further notice:

- (a) declare this Agreement to be terminated in its entirety;
- (b) terminate the Authorization covering the Distribution Pole(s) with respect to which such Default shall have occurred;
- (c) decline to authorize additional Attachments under this Agreement until such Defaults are cured;
- (d) suspend Licensee's access to or work on any or all of Licensor's Distribution Poles;
- (e) correct such Default and charge Licensee as provided in this Agreement; and/or
- (f) seek specific performance of the terms of this Agreement through a court of competent jurisdiction.

17.2. Licensee Cure Period For a period of thirty (30) days following receipt of notice from Licensor, Licensee shall be entitled to take all steps necessary to cure any Defaults. The 30-day notice and cure period does not apply to any Default by Licensee of its payment obligations under this Agreement.

17.3. Termination Because of Licensee Default If Licensor terminates this Agreement because of Licensee's Default, Licensee shall not be entitled to any refund of any Pole Attachment Rental Fee.

17.4. Reimbursement for Licensor Work If Licensee fails to cure a Default with respect to the performance of any work that Licensee is obligated to perform under this Agreement, Licensor may elect to perform such work, and Licensee shall reimburse Licensor for all costs related thereto.

17.5. Licensor Default If Licensor is in Default under this Agreement, Licensor shall have thirty (30) days following notice from Licensee within which to correct such Default. If Licensor does not cure its Default within the allotted time period, Licensee may, at its sole discretion, either terminate this Agreement or seek specific performance of the terms of this Agreement through a court of competent jurisdiction. If Licensee elects to terminate the Agreement, Licensor shall within thirty (30) days refund to Licensee on a pro rata basis any Pole Attachment Rental Fee paid for the current annual rental period.

17.6. Attorney Fees and Court Costs If either Party fails to cure a Default with respect to any of its obligations under this Agreement and it becomes necessary for the other Party to obtain the services of an attorney, who is not a salaried employee of that Party, to enforce its rights under this Agreement such obligations, the defaulting Party agrees to pay all reasonable attorney fees and court costs of litigation associated with the enforcement of such enforcement obligations, if the other Party is successful.

## **18. TERMINATION OF AGREEMENT**

Upon termination of this Agreement, Licensee shall remove all of its Attachments from all of Licensor's Distribution Poles within sixty (60) days. If any Attachments are not so removed within sixty (60) days following such termination, Licensor shall have the right to remove such Attachments, and to use, dispose of or sell same, at Licensee's sole expense and without any liability to Licensee. Notwithstanding any other provision of this Agreement to the contrary, 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.

## **19. WAIVER OF TERMS OR CONDITIONS**

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

## **20. MODIFICATIONS**

Except as otherwise specified in this Agreement, this Agreement may be amended or supplemented at any time only upon written agreement by the Parties hereto. Notwithstanding the foregoing, all Exhibits may be modified by Licensor upon thirty (30) days notice to Licensee. The names, addresses, facsimile

numbers and electronic mail addresses to which notices must be sent may be modified by either Party upon notice to the other.

## **21. PAYMENT OF TAXES**

Each Party shall pay all taxes and assessments lawfully levied on its own property and services located on the Distribution Poles subject to this Agreement. The taxes and assessments which are levied on such poles themselves shall be paid by Licensor, but any tax, fee or charge levied on Licensor's poles related to their use by Licensee shall, to such extent, be paid by Licensee with the exception of income taxes, if any, related to income derived by Licensor as a result of Licensee's Attachments.

## **22. NOTICES**

Any notice, request, consent, demand, designation, approval or statement required to be made to either Party by the other shall be in writing and shall be delivered via personal delivery, Federal Express (or other equivalent, generally recognized overnight delivery service), facsimile or electronic mail transmission, or certified U.S. mail return receipt requested. Notice given by facsimile shall be deemed to have been received when transmitted, provided that the sender shall have received a transmission report indicating that all pages of the notice have been transmitted with the correct facsimile number. Notice given by electronic mail shall be deemed given when directed to an electronic mail address at which the recipient has consented to receive such notice. Notice given by personal delivery, overnight delivery, or certified U.S. mail shall be effective upon receipt.

## **23. 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, except and only after obtaining the 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.

## **24. FORCE MAJEURE**

Except as may be expressly provided otherwise, neither Party shall be liable to the other for any failure of performance hereunder due to causes beyond its reasonable control, including but not limited to: (a) acts of God, fire, explosion, vandalism, storm, or other similar occurrences; (b) national emergencies, insurrections, riots, acts of terrorism, or wars; or (c) strikes, lockouts, work stoppage, or other labor difficulties. To the extent practicable, the Parties shall be prompt in restoring normal conditions, establishing new schedules and resuming operations as soon as the force majeure event causing the failure or delay has ceased. Each Party shall promptly notify the other Party of any delay in performance under this section and its effect on performance required under this Agreement.

## **25. CONSTRUCTION OF AGREEMENT**

This Agreement was reached by each Party after arms' length negotiations and upon the opportunity for advice of counsel, and shall not in any way be construed against either Party on the basis of having drafted all or any part of this document. All words used in this Agreement will be construed to be of such gender or number as the circumstances require. Unless otherwise expressly provided, the words "including" or "includes" does not limit the preceding words or terms.

## **26. OWNERSHIP RIGHTS**

All Attached Poles under this Agreement shall remain the property of Licensor, and Licensee's rights in Licensor's Distribution Poles shall be and remain a mere license for as long as authorized under the terms and conditions of this Agreement. Nothing herein shall be construed to compel Licensor to maintain any of its poles for a longer period than is required by Licensor's own service requirements.

## **27. 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.

## **28. SEVERABILITY**

Nothing contained in this Agreement shall be construed to require the commission of any act contrary to law, and wherever there is any conflict between any provision of this Agreement and any law, such law shall prevail. In such event, however, the provisions of this Agreement so affected shall be curtailed and limited only to the extent necessary to permit compliance with the minimum legal requirement, and no other provisions of this Agreement shall be affected thereby and all such other provisions shall continue in full force and effect.

## **29. PRIOR AGREEMENTS SUPERSEDED**

This Agreement embodies the entire agreement between Licensor and Licensee with respect to the subject matter of this Agreement, and supersedes and replaces any and all previous agreements entered into by and between Licensor and Licensee, written or unwritten, with respect to that subject matter.

## **30. ASSIGNMENT AND TRANSFER**

Licensee shall not assign or otherwise transfer this Agreement or any of its rights and interests to any firm, corporation or individual, without the prior consent of Licensor, which consent shall not be unreasonably withheld. Licensor may condition such consent upon the assignee'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. FACSIMILE AND ELECTRONIC SIGNATURES; COUNTERPARTS**

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.

**32. SURVIVAL; LIMITATIONS ON ACTIONS**

Notwithstanding the termination of this Agreement for any reason, sections Sections 14, 15, 19, 22, 23, and 25 through 29 shall survive termination for the applicable statute of limitations. 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.

Witness the signatures of the Hickman-Fulton Co. Rural Electric Cooperative Corp. and Galaxy Cable, Inc. affixed hereto on the \_\_\_\_\_ day of \_\_\_\_\_, 2004.

*Hickman-Fulton Co. Rural Electric Cooperative Corp.*

*Galaxy Cable, Inc.*

By: \_\_\_\_\_  
Gregory Grissom

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

STATE OF KENTUCKY  
COUNTY OF FULTON

Subscribed and sworn to before me by Gregory Grissom as Manger of the Hickman-Fulton Co. Rural Electric Cooperative Corp. to be his free act and deed on this the \_\_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
NOTARY PUBLIC

)SEAL(

My Commission Expires: \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

Subscribed and sworn to before me by \_\_\_\_\_ as \_\_\_\_\_ of Galaxy Cable, Inc. to be his/her free act and deed on this the \_\_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
NOTARY PUBLIC

)SEAL(

My Commission Expires: \_\_\_\_\_

**Exhibit 1.1**

**Application No.** \_\_\_\_\_  
**Contract No.** \_\_\_\_\_  
**Galaxy Cable Inc.**

**POLE ATTACHMENT APPLICATION**

In accordance with the above referenced Agreement, application is hereby made for Licensee to make attachments to Hickman-Fulton Co. Rural Electric Cooperative Corp. Distribution Poles located in or near \_\_\_\_\_, in the County of \_\_\_\_\_ and the State of \_\_\_\_\_.

The poles for which Authorization to attach is requested are listed by pole number below and further identified on the attached map.

The following information is attached here as part of this Application:

- (a) construction plans and drawings detailing Licensee's build out plan;
- (b) maps indicating specifically the Distribution Poles of Licensor that Licensee proposes to use;
- (c) the number and character of the Attachments to be placed on each Distribution Pole;
- (d) all equipment to be included in Licensee's attachments;
- (e) Drop/Lift Poles that Licensee intends to install;
- (f) the total tension, weight, and transverse loading data for the wires, including multiplication by the applicable overload factors of the NESC;
- (g) the size and type of messenger wire including weight/feet and design tension;
- (h) the size and type of cable including weight/feet, design tension, and diameter;
- (i) a drawing showing the type and manner of bolted Attachments;
- (j) a drawing showing installation specifications, rating, and guy and anchor requirements proposed to be used by Licensee;
- (k) any pedestal attachments; and
- (l) any other information necessary, in Licensor's sole judgment, for Licensor to determine if the requirements of Section 4.4 are met.

**LICENSEE:**

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

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

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

**List of Poles**  
(use additional sheets as necessary)

**Exhibit 1.10**

**Application No.** \_\_\_\_\_  
**Contract No.** \_\_\_\_\_  
**Galaxy Cable Inc.**

**LOCATION OF LICENSEE SERVICE AREA**

Attached hereto is a map or sketch graphically depicting Licensee's Service Area. The map or sketch shall be:

- (i) no larger than 30" x 30";
- (ii) properly folded to a size of no greater than 8 1/2" x 11" for inclusion in this Agreement;  
and
- (iii) stapled to the Agreement in the upper left corner.

This map need not show the precise location of each of Licensor's poles to which attachment is sought, but should identify the general area in which Attachments currently exist or are planned.

**LICENSEE:**

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

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

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



**Exhibit 1.11**

**Application No.** \_\_\_\_\_

**Contract No.** \_\_\_\_\_

**Galaxy Cable Inc.**

**LICENSOR RULES AND PRACTICES FOR**  
**ATTACHMENTS**

As provided in the above referenced Agreement:

1. Licensee shall install and maintain its Attachments at its own expense.
2. Any unbalanced loading of Licensor's Distribution Poles caused by the placement of Licensee's facilities/circuits shall be properly guyed and anchored by Licensee with a guy and anchor provided by Licensee, at no expense to Licensor. Licensee may not place new guy attachments on Licensor's anchors without Licensor's prior consent.
3. A preliminary "ride through" of the proposed route of Licensee's facilities shall be made by representatives of Licensor and Licensee when necessary upon request by Licensor.
4. Licensee shall check and verify the condition of any pole prior to climbing or performing work on it. If a pole is deemed unsafe, Licensee must immediately notify Licensor by telephone and in writing as soon as practicable.
5. All Attachments shall be located on the same side of each pole as any existing telephone or communications cable, or as otherwise designated by Licensor.
6. On Attached Poles where Licensor has secondary conductors, all Attachments shall be located on the same side of the pole as the secondary conductors, or as otherwise designated by Licensor.
7. Licensee shall cause all cabinets, enclosures, and messengers to be grounded by bonding to the existing pole ground with #6 solid, bare, soft drawn copper wire.
8. Licensee shall install no power supply on any of Licensor's poles on which underground electric services, capacitor banks, sectionalizing equipment or voltage regulators are already installed.
9. No electrical service connection to a communications power supply shall be made or installed by Licensee until after Licensor shall have completed inspection of an approved fused service disconnect switch or circuit breaker.
10. No bolt used by Licensee to attach its facilities shall extend or project more than one (1) inch beyond its nut.
11. All Attachments of Licensee shall have at least two inches clearance from unbonded hardware such as pedestals and any other enclosures containing equipment.
12. All of Licensee's Attachments shall comply with NESC clearance requirements and shall be

located a minimum of forty (40) inches below Licensor's lowest attached facilities. All mid-span clearances between Licensee's facilities and Licensor's lowest conductors shall comply with NESC clearance requirements.

13. Licensee may, with prior approval of Licensor, install cross arms, alley arms, or cable extension arms for the support of any of its facilities. However, Licensee shall not use any cross arm or alley arm brace above the arm that it supports.
14. Licensee shall install and maintain any and all of its facilities in a neat and workmanlike manner consistent with the maintenance of the overall appearance of the jointly used pole, subject to the approval of Licensor in its sole discretion.
15. In the event that any of Licensee's proposed attachments are to be installed upon poles already jointly used by Licensor and another party(ies), Licensee shall negotiate with such other party(ies) to determine clearances between its facilities and those of Licensor and such other party(ies), except that Licensee may not in any way modify the clearance requirements set forth in this Agreement.
16. Licensee shall provide to Licensor a statement summarizing the standards used by Licensee for its standard pole attachment installations. Such standards shall be signed and approved by a Professional Engineer representing Licensee, confirming that Licensee's standard installations conform with the NESC and good engineering design. With respect to non-standard Attachments, Licensee's Professional Engineer shall prepare or review plans for such non-standard Attachments, and submit such plans to Licensor with a statement that such non-standard Attachments comply with the NESC and good engineering design.

\* \* \*

Exhibit 1.13

Application No. \_\_\_\_\_  
Contract No. \_\_\_\_\_  
Galaxy Cable Inc.

**MAKE READY ESTIMATE**  
**AND ACCEPTANCE OF MAKE READY ESTIMATE**

**Make Ready Estimate**

As provided by the above referenced Agreement, Licensor must perform the following Make Ready Work at an estimated cost to Licensee of \$ \_\_\_\_\_ and an estimated completion date of \_\_\_\_\_:

[SEE ATTACHED]

**LICENSOR:**

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

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

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

\* \* \*

**Acceptance of Make Ready Estimate**

The above Make Ready Estimate is accepted by Licensee.

Licensee shall complete installation of its Attachment(s) within \_\_\_\_ days following Licensor's notice of completion of Make Ready Work.

**LICENSEE**

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

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

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

