

JOINT POLE USE AGREEMENT

between

KENTUCKY UTILITIES COMPANY

and

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Dated

January 1, 1990

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## JOINT POLE USE AGREEMENT

This Agreement, made this 1st day of January, 1990, by and between KENTUCKY UTILITIES COMPANY, a Kentucky corporation, hereinafter called "Electric Company," party of the first part, and \_\_\_\_\_, a \_\_\_\_\_ corporation, hereinafter called "Telephone Company," party of the second part, both of said parties being duly qualified to do business in the Commonwealth of Kentucky:

### W I T N E S S E T H:

WHEREAS, Electric Company is engaged in the business of constructing, maintaining and operating pole lines, in the Commonwealth of Kentucky; and

WHEREAS, Telephone Company is engaged in the business of constructing, maintaining and operating pole lines, in the same territory as Electric Company; and

WHEREAS, in many instances the same streets, roads, alleys, highways, public and private places are used by the Parties hereto for the erection and maintenance of poles and for the placing thereon of the attachments used in respective businesses, and it is often desirable that certain of such poles be used jointly by said Parties; and

WHEREAS, neither Party can legally attach to the poles of the other without consent first being obtained;

NOW, THEREFORE, in consideration of the premises and the agreements 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:

"Attachments" means wires, cables, service drops, light fixtures, crossarms, transformers, terminal or fuse boxes, lightning arresters, switches, guy wires, and all other apparatus, fixtures or appurtenances now attached or hereafter attached to said poles by either Party.

"Joint Use" means placing or reserving space for attachments of each Party upon the same pole or poles.

"Licensee" means the Party which uses or applies to use poles of the Owner.

"Objective Percentage Ownership" means the proportional part of Joint Use poles to be owned by each Party, as determined in Exhibit A, attached hereto and made a part hereof.

"Owner" means the Party having sole ownership of the pole.

"Party" means Electric Company or Telephone Company.

"Rearrange" means the reconstruction or relocation of attachments on the same pole.

"Standard Pole" means a wood pole with butt ground which shall be no less than [REDACTED] feet tall, and shall comply with the American Standards Association Specifications, Class [REDACTED]

"Standard Space" means the following described space on a Joint Use pole for the exclusive use of the Parties. For Electric Company, the uppermost [REDACTED] feet of usable space measured from the top of the pole. For Telephone Company, [REDACTED]

"Transfer" means the moving of Attachments from one pole to another.

#### ARTICLE II: SCOPE OF AGREEMENT

A. This Agreement shall be in effect in those portions of the Commonwealth of Kentucky in which Electric Company and Telephone Company operate or may operate and where Joint Use of poles under the terms hereof may become mutually agreeable to the Parties, and shall cover all existing poles or any later erected poles or structures which are made a part of this Agreement in accordance with the procedure hereinafter specified.

B. Each Party reserves the right to exclude from Joint Use any poles which it owns and which, in Owner's sole judgment, are necessary or desirable for Owner's exclusive use.

C. Transmission (34.5 KV or greater) structures are not generally subject to Joint Use. However, in special cases they may be considered when a written application is made to Electric Company's Division Engineer.

#### ARTICLE III: SPECIFICATIONS

A. Minimum requirements for Joint Use pole construction shall conform to the then-current edition of the National Electrical Safety Code (NESC) in effect at the time the respective Attachments were placed, and as may be modified by appropriate governmental authority. Other written specifications as may be agreed upon from time to time by both Parties will become a part of this Agreement so long as such

specifications do not conflict with the terms and provisions of said Safety Code and subsequent revisions thereof.

B. No permanent steps shall be installed on any future Joint Use pole or structure.

C. Nothing herein shall prevent the modification of these specifications from time to time by mutual agreement of the Parties hereto when the progress of the art makes such modification necessary or desirable.

ARTICLE IV: PLACING, TRANSFERRING OR REARRANGING ATTACHMENTS ON EXISTING POLES

A. Whenever either Party desires to reserve space on any pole of the other, it shall make written application therefor using the Joint Use Pole Change Request form (Exhibit C), specifying the location of the pole in question, the amount of space which it desires to reserve, the number and kind of attachments which it desires to place thereon, and the character of the circuits to be used. Within twenty (20) working days after receiving such application, Owner shall notify the applicant in writing utilizing same said form, whether said pole is excluded from Joint Use under the provisions of Article II. Upon receipt of notice from Owner that said pole is not excluded and after any Transferring or Rearranging which is required in respect to Attachments on said pole, including any necessary pole replacements as provided in Article V, Section A, the applicant shall have the right as Licensee hereunder to use said space for Attachments and circuits of the character specified in the application in accordance with the terms of this Agreement.

B. Except as herein otherwise expressly provided, each Party shall, at its own expense, place, maintain, Rearrange, Transfer and remove its own poles and Attachments, and do any tree trimming or right-of-way clearing incidental thereto. Each Party shall place such guys and anchors as may be necessary to sustain any unbalanced strain caused by its Attachments. Each Party shall perform all work promptly and in such a manner as not to interfere with the service of the other Party.

ARTICLE V: ERECTING, REPLACING OR RELOCATING POLES

Any new or replacement pole intended for Joint Use shall be, at minimum, a Standard Pole.

A. Planned Replacement of Poles

1. Whenever any Joint Use pole is of insufficient size or strength for the existing Attachments and for any proposed Attachments thereto, Owner shall promptly replace such pole with a new pole of the necessary size and strength, and make such other changes in the existing pole line in which such pole is included, as conditions may then require. When Owner has completed its work, it shall so notify Licensee utilizing the Joint Use Pole Change Request form (Exhibit C).

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2. When a Joint Use pole is replaced, each Party shall place, maintain, Rearrange, Transfer and remove its own Attachments, and shall at all times perform such work promptly and in such manner as not to interfere with work or service being performed by the other Party. Upon completion of work by Owner which necessitates Transfer of Licensee's Attachments, Owner shall provide written notice to Licensee, utilizing Exhibit C, such Transfer must be completed in sixty (60) days. If such Transfer is not completed within the sixty (60) days, the old pole will become the property of Licensee. Licensee shall save harmless the former Owner of said pole from all obligations, liabilities, damages, costs, expenses, or charges incurred thereafter because of or arising out of the presence, location, or condition of such pole or any Attachment thereon, whether or not it is alleged that the former Owner was negligent or otherwise.

#### B. Emergency Replacement of Poles

1. When due to accidents, storm damage, etc., it is necessary for Owner to replace a pole immediately to restore service to customers or eliminate a hazardous condition, Owner will replace the pole and make all of its required facility changes or Transfers and will secure the old pole to the new pole. Owner shall notify Licensee by telephone of the need to Transfer within forty-eight (48) hours of the emergency work, and will follow with written notice within five (5) working days so that Licensee may make its changes or Transfers as soon as practicable. Owner shall provide the written notice to Licensee, utilizing Exhibit C. Such Transfer must be completed within sixty (60) days of receipt of said Exhibit C. If such Transfer is not completed within the sixty (60) days, the old pole will become the property of Licensee. Licensee shall save harmless the former Owner of said pole from all obligations, liabilities, damages, costs, expenses, or charges incurred thereafter because of or arising out of the presence, location, or condition of such pole or any Attachment thereon, whether or not it is alleged that the former Owner was negligent or otherwise.

2. When due to accidents, storm damage, etc., it is necessary for Licensee to replace Owner's pole immediately to restore service to customers or to eliminate a hazardous condition and Owner cannot perform the work in time to meet Licensee's requirements, Licensee may replace Owner's pole. Licensee will make all of its required facility changes or Transfers and will secure the old pole to the new pole so Owner may make its changes or Transfers when feasible.

Owner will continue to own the old pole and be responsible for its disposal, and will immediately take ownership of the new pole. Owner will as soon as possible take Licensee's name off the new pole and will place its name on the new pole.

#### C. Coordination of Pole Replacement

Whenever it is necessary to replace or change out a Joint Use pole, Owner shall, before making such change, give notice thereof in writing using Exhibit C (except in cases of emergency when oral notice

may be given and subsequently confirmed in writing) to Licensee, specifying in such notice the time, pole height (if changed), and specifics of such proposed relocation; and Licensee shall, when mutually agreed upon, at the time so specified, Transfer its Attachments to the new pole. Owner shall set replacement pole in such a manner as to allow Licensee to Transfer its facilities with minimal Transfer costs. Otherwise, Owner will reset said pole at no cost to Licensee.

D. Notification of Proposed Design and New Construction

1. Whenever a Party hereto intends to erect new poles within the territory covered by this Agreement, either as an additional pole line, as an extension of an existing pole line, or as the reconstruction of an existing pole line, it shall notify the other Party in writing using Exhibit C, at least ten (10) working days before beginning the work if two (2) poles or less are to be placed, and at least twenty (20) working days written notice if three (3) poles or more are to be placed. Shorter notice, including oral notice subsequently confirmed in writing using Exhibit C, may be given in cases of emergency and such notice shall include information as to the proposed location and the character of the new poles and the character of circuits to be used thereon.

2. The other Party shall, within ten (10) working days after the receipt of such notice, reply in writing using Exhibit C to the Party proposing to erect the new poles, stating whether such other Party desires to place said poles or to reserve space on the said poles, and if so, the character of the circuits it desires to use and the amount of space it wishes to reserve.

3. If such other Party makes the decision to not place said new poles and requests space on the new poles, and if the character and number of circuits and Attachments are such that Owner does not wish to exclude the poles from Joint Use under the provisions of Article II, the following shall apply. When the other Party completes arrangements for Joint Use with Owner in accordance with the time frames set out in Sections D.1. and/or D.2. above, the poles suitable for the said Joint Use shall be erected in accordance with the provisions of Sections E. and F. below.

4. Each Party shall provide its own guys and anchors, or Licensee may request in writing, using Exhibit C, permission to attach its guy(s) to Owner's anchor(s) at a specific pole. Such permission, if given, shall be for only that specific pole.

E. Determination of Owner of New Poles

1. In any case where the Parties hereto shall conclude arrangements for Joint Use hereunder of any new poles to be erected, the Party to install such poles shall be determined by mutual agreement.

2. In the event the Parties are unable to agree which Party shall install the poles, if either Party is deficient by [REDACTED] in its Objective Percentage Ownership of Joint Use poles under this Agreement, it shall install the new poles and be

the owner thereof, except that in unusual circumstances, if the deficient Party cannot meet the other Party's customer service requirements in a timely manner, then the non-deficient Party may install the poles for the deficient Party and bill that Party the total installed cost including overheads, of the poles only, and the poles installed will become the property of the deficient Party.

F. Sale of Poles Between Parties

*Tele needs  
30 foot Pole  
NOT 40*

1. If at the conclusion of any jointly conducted inspection, it is determined that either of the Parties is deficient by [REDACTED] in its Objective Percentage Ownership of Joint Use poles, that Party shall purchase poles to correct its deficiency. The Party with such deficiency shall, with the concurrence of Owner, purchase approximately [REDACTED] of that deficiency per year until the deficiency is [REDACTED]. All activities pertaining to such purchase of poles shall be completed within the calendar year immediately following the year in which the deficiency occurs. Following determination of an obligation to purchase and concurrence in principle by Owner to sell, the Parties shall identify and agree within six (6) months or less on the specific poles to be purchased. An invoice shall then be rendered by Owner, and payment shall be made by the deficient Party within thirty (30) days of receipt of the invoice.

2. The location, route, pole height, pole age, and number of poles to be purchased and sold shall be determined by mutual agreement. When the purchase of poles is required due to a deficiency as noted in Paragraph 1 of this Section or is proposed for any other reason, the Party selling the poles shall determine the sale price per pole using its system average in-service cost of each size of pole, depreciated at Owner's rate for actual years of service plus an administrative fee of [REDACTED] per pole if aggregated on the invoice, or [REDACTED] per pole if each pole is uniquely identified.

3. Each Party shall obtain, at its expense, the approval of any governmental agency having jurisdiction over such Party's part of the transaction, and the selling Party shall give to the purchasing Party a bill of sale and to the extent possible shall assign any easement rights available for such poles and obtain, at selling Party's expense, release from any liens or encumbrances. Continuity of route ownership shall be considered in all such transactions.

G. Assignment of Costs

The costs of erecting new Joint Use poles or the replacement of Joint Use poles under this Agreement shall be borne by the Parties hereto as follows:

1. For new pole lines or extensions of existing lines, Owner shall pay the cost of facilities to meet its requirements, with a Standard Pole minimum, and Licensee shall pay all additional pole costs incurred for its Attachment needs.

*They should have to pay for top 10' of pole  
Tele. Standard would be 50'*



2. For the replacement of an existing pole by Owner for its own benefit, Owner shall pay the entire installed cost of the pole and the costs incurred in Transferring its own facilities.

3. For the replacement of an existing pole by Owner for the benefit of and/or at the request of Licensee, Licensee shall pay the entire installed cost of the pole and the costs incurred in Transferring the facilities of both Parties. Such payment shall not affect ownership of the pole.

#### ARTICLE VI: ACQUIRING RIGHTS-OF-WAY

A. When acquiring initial rights-of-way, Owner shall [REDACTED]

B. Each Party shall, to the extent feasible, [REDACTED]

C. No warranty is made by the Party owning a right-of-way regarding the use of its poles by Licensee, and if objection is made thereto and Licensee is unable to satisfactorily adjust the matter within a reasonable time, Owner may at any time, upon thirty (30) days' notice in writing using the Joint Use Pole Change Request form (Exhibit C) to Licensee, require Licensee to remove its Attachments from the poles involved, and Licensee shall, within thirty (30) days after receipt of said notice, remove its Attachments from such poles at its sole expense. Should Licensee fail to remove its Attachments as herein provided, Owner may remove them at Licensee's expense without any liability whatever for such removal or the manner of making it, for which expense Licensee shall reimburse Owner on demand.

#### ARTICLE VII: MAINTENANCE OF RIGHTS-OF-WAY

A. Initial Right-of-Way Clearing

It shall be the responsibility of the pole Owner to perform initial uniform clearing to accommodate the requirements of both Parties. Licensee shall advise Owner of Licensee's right-of-way clearing requirements. The work shall include cutting undergrowth, clearing of trees from ground to tree tops, and disposing of the residue.

B. Initial Clearing When Only Trimming is Involved

Each Party shall, at its own cost and expense, do such trimming and disposing of residue as it deems necessary to provide clearance when uniform clearing is not feasible.

C. Maintenance Right-of-Way Clearing

1. It shall be the responsibility of Owner to maintain uniform clearing at least to the level of its facilities, and the remainder shall be the responsibility of Licensee.

2. If maintenance right-of-way clearing is not performed by Owner as required by Subsection C.1. above, Licensee may upon mutual agreement clear said right-of-way, or after sixty (60) days' notice in writing, clear said right-of-way.

D. Maintenance Trimming

Each Party shall, at its own cost and expense, do such trimming as it deems necessary to protect its facilities.

E. Occasional Maintenance Tree Removals

The Parties shall cooperate in the removal of a tree which is considered by either Party to be endangering Joint Use facilities. Either Party may remove such tree and bill the other Party as provided in Subsection G.4. below.

F. Widening Right-of-Way on Existing Joint Use Lines

1. When the cleared width of right-of-way for an existing Joint Use line is increased beyond its established width to satisfy the requirements of one Party to the Agreement, that Party will be responsible for performing the work and will bear all of the cost.

2. Owner shall perform uniform clearing up to the level of its facilities.

G. Assignment of Cost of Right-of-Way Clearing

1. The cost of work covered in Subsections A. and C.1. above shall be borne by Owner.

2. The Party performing right-of-way maintenance as covered in Subsection C.2. above shall be fully reimbursed by Owner.

3. The cost of work covered in Subsections B. and D. above shall be borne by the Party requiring and performing the work.

4. The cost of work covered in Subsection E. above shall be shared by the Parties in accordance with their respective Objective Percentage Ownership.

ARTICLE VIII: MAINTENANCE OF POLES AND ATTACHMENTS

A. Owner shall, at its own expense and in accordance with its own practices and procedures, maintain its Joint Use poles in a safe and serviceable condition, which may include periodic pole testing and treatment at ground line and inspection above ground line. This maintenance shall be in accordance with the specifications set forth in

Article III and shall replace, subject to the provisions of Article V, any poles which become defective. Except as otherwise provided in Section B. below, each Party shall, at its own expense and at all times, maintain all of its Attachments in accordance with the specifications in Article III and keep them in safe condition and in thorough repair; provided, however, that neither Party shall be required to Rearrange or replace poles or any facilities installed prior to the date of this Agreement solely by virtue of the adoption of this Agreement. Instead, any required Rearrangement or replacement shall occur during the ordinary course of business within a reasonable period of time.

B. Existing Joint Use facilities of the Parties which do not comply with Article III specifications, upon mutual agreement shall be brought into conformity with such specifications as rapidly as feasible.

C. When such existing Joint Use construction shall have been brought into conformity with said specifications, it shall at all times thereafter be maintained as provided in Section A. above.

D. The cost of bringing such existing Joint Use construction into conformity with said specifications shall be borne by the Parties hereto in the manner provided in Section B. of Article IV and Section G. of Article V.

#### ARTICLE IX: ABANDONMENT OF JOINT USE POLES

A. If Owner should desire at any time to abandon a Joint Use pole, it shall give Licensee notice in writing using the Joint Use Pole Change Request form (Exhibit C) to that effect at least sixty (60) days prior to the date on which it intends to abandon such pole. If, at the expiration of said period, Owner shall have no Attachments on such pole, but Licensee shall not have removed all of its Attachments therefrom, such pole shall thereupon become the property of Licensee, and Licensee shall save harmless the former Owner of such pole from all obligations, liability, damages, cost, expense or charges incurred thereafter, and not theretofore occurring, because of, or arising out of such pole or of any Attachments thereon, and shall pay the former Owner a sum of [REDACTED] per pole, and the former Owner shall give to Licensee a bill of sale covering the pole or poles involved in such transactions.

B. Whenever a pole is abandoned as provided in Section A. above, the former Owner shall remove its identification of ownership and Licensee shall attach its identification of ownership as soon as feasible.

C. Licensee may at any time discontinue its use of a Joint Use pole by giving due notice thereof in writing, using Exhibit C, to Owner and by removing therefrom any and all Attachments it may have thereon.

ARTICLE X: ADJUSTMENT OF POLE OWNERSHIP

A. The Objective Percentage Ownership of the total number of Joint Use poles hereunder shall be computed for each Party as set forth in Exhibit A, attached hereto and made a part hereof.

B. The total area served jointly shall be inspected in the initial year of this Agreement, and every [REDACTED] years thereafter to count the Joint Use poles owned by each Party. As an alternative, [REDACTED] of the area may be inspected each year. The standard area for inspection shall be one or more counties.

C. The Parties will cooperate to plan their respective construction projects so as to achieve and maintain as nearly as practicable the Objective Percentage Ownership of the Parties.

D. Each Party shall report to the other promptly upon completion of a project, using the Joint Use Pole Change Request form (Exhibit C), the change in ownership of Joint Use poles by each Party caused by the project.

E. By mutual agreement, one Party may buy existing Joint Use poles from the other to achieve more nearly the Objective Percentage Ownership, as specified in Section F of Article V.

ARTICLE XI: COMPENSATION FOR DEFICIENCY IN OWNERSHIP

A. When one Party is providing a lesser quantity of poles for Joint Use than its Objective Percentage Ownership, it shall pay annually to the other Party an amount computed as in Exhibit B, attached hereto and made a part hereof.

B. Annually, following the joint inspection of all or a one-fifth part of the jointly served area, the pole ownership count obtained therein will be added to pole counts obtained in the other four areas in prior years and subsequently adjusted per Sections D. and E. of Article X, to obtain a current overall pole count for each of the Parties for use in pole billing.

C. Any discrepancy between current pole count and prior pole count as modified in the interim per Sections D. and E. of Article X will be deemed to have been incurred in equal amounts in each of the intervening years not to exceed five (5) years. A retroactive charge will be made for such discrepancy for each of the intervening years prior to the current billing year, to compensate Owner for its fixed charge of ownership as indicated by the total of  $P \times R$  per Exhibit B times the quantity by year of the discrepancy plus interest at the rate of six percent (6%) per annum. The retroactive charge thus computed will be added to the current year pole billing in Section A. above.

D. Prior to April 1 of each year, the Party owning more than its Objective Percentage Ownership of Joint Use poles, shall submit to the other Party a statement of the required payment as determined in Section

A. above. The paying Party shall make the payment by May 1 of that year, for [REDACTED]

#### ARTICLE XII: BILLS IN PAYMENT FOR WORK

Upon completion of any work project performed hereunder by either Party, the expense of which is to be borne wholly or in part by the other, the Party performing the work shall present to the other Party within sixty (60) days after the completion of such work an itemized statement, showing to the extent available all labor, material, supervision, and appropriate overhead charges; and such other Party shall, within sixty (60) days after such statement is presented, pay to the Party doing the work such other Party's proportion of the cost of such work.

#### ARTICLE XIII: DEFAULTS

A. If either Party should default in the payment of compensation under Article XII, or in the performance of any of its obligations under this Agreement and such default continues thirty (30) days after notice thereof in writing from the other party, all further granting of Joint Use to the Party in default hereunder shall be suspended; and if such default shall continue for a period of thirty (30) days after such suspension, the other Party hereunder may forthwith terminate this Agreement [REDACTED]

B. If either Party should default in the performance of any work which it is obligated to do under this Agreement at its sole expense, the other Party may elect to do such work, and the Party in default shall reimburse the other Party for the cost thereof. Failure on the part of the defaulting Party to make such payment within sixty (60) days upon presentation of bills therefor shall, at the election of the other Party, constitute a default under Section A. above.

C. The provisions of this Article shall not be construed to prevent either Party from exercising any other rights at law or in equity arising out of the other Party's default.

#### ARTICLE XIV: AUDIT RIGHTS

Each Party's books, records, correspondence, accounting procedures and practices and any other supporting evidence relating to material, labor and appropriate overhead charges involved in each Party's cost as a basis for bills submitted, shall be open to inspection and subject to audit, during normal working hours, by the other Party or its authorized representative. This provision shall survive the termination of this Agreement for a period of one year.

ARTICLE XV: EXISTING RIGHTS OF OTHERS

A. If either of the Parties has, prior to the execution of this Agreement, granted to others not Parties to this Agreement, by contract or otherwise, rights or privileges to use any poles covered by this Agreement, nothing herein contained shall be construed as affecting said rights or privileges, and either Party hereto shall have the right, by contract or otherwise, to continue and extend such existing rights or privileges.

B. The Attachments of any non-Party to this Agreement shall be treated as Attachments belonging to the Owner. The rights, obligations and liabilities hereunder of Owner in respect to such Attachments shall be the same as if it were the actual owner thereof.

C. Notwithstanding any other provisions of this Agreement, whenever the rights, obligations, or liabilities with respect to the attachments of any non-party are covered by tariffs, rules, or regulations promulgated by the Kentucky Public Service Commission or any other regulatory or governmental authority, in the event of a conflict between this Agreement and said tariffs, rules, or regulations, said tariffs, rules, or regulations shall in all cases govern.

D. Where municipal regulations require either Party to allow the use of its poles for fire alarm, police signal or other municipally owned systems, such use shall be permitted under the terms of this Article.

ARTICLE XVI: SERVICE OF NOTICES

Wherever in this Agreement notice is provided to be given by either Party to the other, such notice shall be in writing and given by letter mailed, or by person delivery, to Electric Company, at its office at One Quality Street, Lexington, Kentucky, 40507, or to Telephone Company, at its office at \_\_\_\_\_, as the case may be, or to such other address as either Party may, from time to time designate in writing for that purpose.

ARTICLE XVII: TERM AND TERMINATION OF AGREEMENT

Subject to the provisions of Article XIII herein, this Agreement shall continue in full force and effect through January 1, 1999, and shall continue thereafter until terminated \_\_\_\_\_ by either Party giving to the other Party a one (1) year notice in writing of intention to terminate the right of both Parties to attach to additional Joint Use poles. \_\_\_\_\_

ARTICLE XVIII: MODIFICATIONS

Nothing herein contained shall be construed to prevent the modification of the terms of this Agreement by the written mutual consent of officers of the Parties.

ARTICLE XIX: ASSIGNMENT OF RIGHTS

A. Except as otherwise provided in this Agreement, neither Party shall assign or otherwise dispose of this Agreement or any of its rights or interest hereunder, or in any of the Joint Use poles, or the Attachments or rights-of-way covered by this Agreement, to any firm, corporation or individual, without the written consent of the other Party; provided, however, either Party may mortgage any or all of its property, rights, privileges and franchises, or lease or transfer any of them to another corporation organized for the purpose of conducting a business of the same general character as that of such Party, or to enter into any merger or consolidations; and, in case of the foreclosure of such mortgage, or in case of such lease, transfer, merger, or consolidation its rights and obligations hereunder shall pass to, and be acquired and assumed by the purchaser on foreclosure, the transferee, lessee, assignee, merging or consolidating company, as the case may be.

B. Subject to all of the terms and conditions of this Agreement, either Party may permit any corporation conducting a business of the same general character as that of such Party, and owned, operated, leased and controlled by it, or associated or affiliated with it in interest, or connecting with it, the use of all or any part of the space reserved hereunder on any pole covered by this Agreement for the Attachments used by such Party in the conduct of its said business; and all such Attachments maintained on any such pole by the permission as aforesaid of either Party hereto shall be considered as the Attachments of the Party granting such permission, and the rights, obligations and liabilities of such grantor Party under this Agreement, in respect to such Attachments, shall be the same as if it were the actual owner thereof.

ARTICLE XX: 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 XXI: EXISTING AGREEMENTS

All existing agreements, written or oral, between the Parties hereto for the Joint Use of poles within the territory where both Parties hereto now, or in the future, have the right to operate are by mutual consent hereby terminated.

ARTICLE XXII: INDEMNIFICATION

Either Party hereto, [REDACTED] agrees to and shall indemnify and hold harmless the other from and against any and all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the joint use of the poles, or any acts or omissions under this Agreement.

ARTICLE XXIII: KENTUCKY LAW

Any interpretations regarding this Agreement or any activities arising hereunder shall be governed by Kentucky law.

IN WITNESS WHEREOF, the Party of the first part has caused its name to be signed hereto by its Vice President and attested by its Secretary, thereunto duly authorized, and the Party of the second part has caused this instrument to be duly executed, by its Vice President and attested by its Secretary, thereunto duly authorized, as of the day and year first above written.

Attest:

KENTUCKY UTILITIES COMPANY

\_\_\_\_\_  
Secretary

By \_\_\_\_\_  
Vice President

Attest:

\_\_\_\_\_  
Secretary

By \_\_\_\_\_  
Vice President



EXHIBIT A  
OBJECTIVE PERCENTAGE OWNERSHIP

The pole Objective Percentage Ownership ratio shall be established based on an allocation of the pole space on a Standard Pole used by each Party. Responsibility for the NESC Separation, ground clearance, any unallocated space, and in-ground portions of the pole will be equally shared by the Parties.

Allocation of Pole Space on a Standard Pole

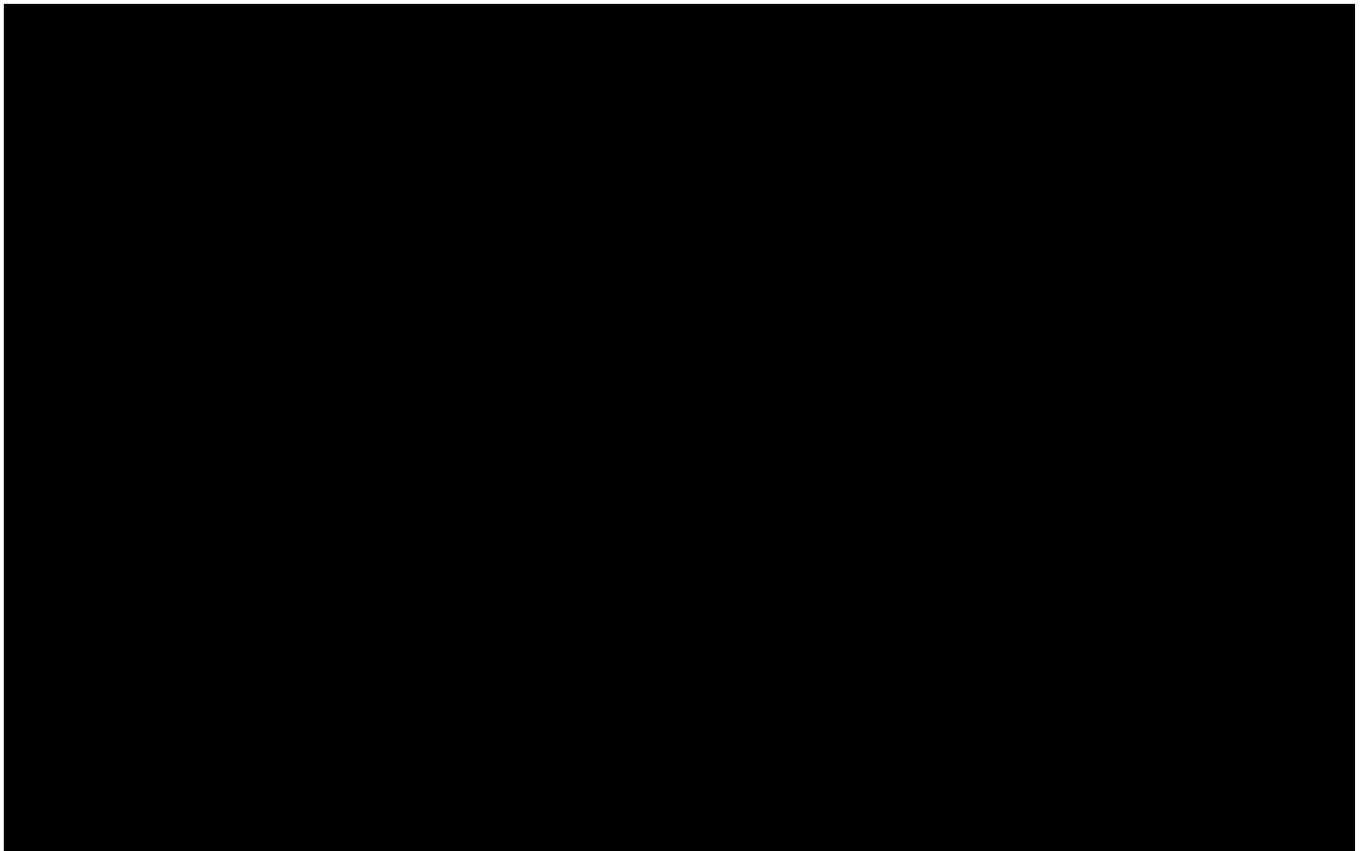


EXHIBIT B  
COMPENSATION FOR DEFICIENCY IN OWNERSHIP

