

**COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:

ELECTRONIC INVESTIGATION OF THE	)	CASE NO.
PROPOSED POLE ATTACHMENT TARIFFS OF	)	2022-00108
INCUMBENT LOCAL EXCHANGE CARRIERS	)	

**RESPONSES OF CINCINNATI BELL TELEPHONE COMPANY LLC d/b/a/  
ALTA FIBER TO COMMISSION STAFF'S SECOND REQUEST FOR INFORMATION**

1. Refer to Cincinnati Bell's response to Commission Staff's First Request for Information, Item 4, (Staff's First Request) regarding the costs to perform a survey.

a. Provide a copy of the pathways application form.

**RESPONSE:** See attached.

**RESPONDENT:** Tom Laswell  
Senior Manager – Mobility & Wireless Real Estate

b. Provide detailed cost support for the \$25 per pole and \$50 per manhole application fee and explain why Cincinnati Bell has established a minimum application fee of \$250.

**RESPONSE:** Based upon requests for attachments worked between 2020 and 2022, the average administrative cost to process and respond to a pole attachment request, not including a field survey, was \$354.94. The average number of poles per request was 13.44, resulting in an administrative cost of \$26.41 per pole. The average administrative cost to respond to a conduit occupancy request, not including a field survey, was \$1,104. The average number of manholes per request was 9.44, resulting in an administrative cost of \$117.45 per manhole.

The engineering time spent looking up pole records and to perform pole field surveys ranged from 0.4 to 4.0 hours per pole, with an average of 0.7 hours per pole. The fully loaded labor rate for engineering employees performing pole surveys is \$89.34 per hour resulting in an average field survey cost of \$62.54 per pole. In addition, an Engineer spends approximately 0.5 to 1.0 hours per pole attachment application preparing make ready estimates at a rate of \$135.65 per hour.

For conduit occupancy, the field survey work is performed by a contractor who bills altafiber.

**RESPONDENT:** Tom Laswell  
Senior Manager – Mobility & Wireless Real Estate

2. Refer to Cincinnati Bell's response to Staff's First Request, Item 5. Explain whether Cincinnati Bell would charge new attachers for the cost to replace "red tagged pole[s]" as that term is used in 807 KAR 5:015. If not, explain why the tariff should not be amended to specifically include that exception to avoid confusion.

**RESPONSE:** No, unless the new attachment would require a replacement pole of a different type or height. It is unnecessary to state in the tariff that altafiber would not charge to replace a pole of the same type and height because that would be prohibited by 807 KAR 5:015 Section 4(6)(b)(2).

**RESPONDENT:** Tom Laswell  
Senior Manager – Mobility & Wireless Real Estate

3. Refer to Cincinnati Bell's response to Staff's First Request, Item 6. Explain whether Account 2411 includes only the capitalized costs for poles owned or controlled by Cincinnati Bell or whether it includes costs related to poles owned by others, e.g. costs for Cincinnati Bell's fixtures to poles owned by others.

**RESPONSE:** Account 2411 includes the capital cost of fixtures, such as anchoring and guying, for cables placed on poles owned by others. Any repairs or replacements after initial cable placement are expensed.

**RESPONDENT:** Tom Paolucci  
Controller – E&C

4. Refer to Cincinnati Bell's response to Staff's First Request, Items 6 and 7. Explain why Cincinnati Bell's accumulated depreciation dropped significantly in 2021 but the plant in service did not reflect a similar change.

**RESPONSE:** On September 7, 2021, Red Fiber Parent, LLC completed its acquisition of Cincinnati Bell. As part of the purchasing accounting adjustments, Accumulated Depreciation was reset to zero and offset to Goodwill.

**RESPONDENT:** Tom Paolucci  
Controller – E&C

5. Refer to Cincinnati Bell's response to Staff's First Request, Items 8 and 9. Explain whether Cincinnati Bell contends that the useful life of 29 years for poles used to calculate the depreciation rate reflects the actual average service lives of its poles given the age of many of its poles reflected in Item 9.

**RESPONSE:** No. The 29-year useful life represents an economic service life estimate not the physical service life.

**RESPONDENT:** Tom Paolucci  
Controller – E&C

6. Refer to Cincinnati Bell's response to Staff's First Request, Item 10.

a. Describe any defects that would cause a pole to be identified as red tagged

for replacement.

**RESPONSE:** Defects include excessive lean (rot or unbalanced load); insufficient depth setting; collision damage; fungus growth; termites or carpenter ants; large cracks or split poles; woodpecker holes; debris around the base of poles; power hazards; lightning or fire damage; shell rot and flaking; poles which fail pike pole test, hand line test, prod and sounding test, or boring test.

**RESPONDENT:** Tamika Green  
Senior Director – OSP Planning and Engineering

b. If a pole is red tagged for replacement, explain the process for replacing the

pole and how long it typically would take.

**RESPONSE:** Red tagged poles identified by a field technician are submitted by a Field Manager via the Maintenance Request SharePoint site and flagged with a disposition of "Defective Pole." Once the record is saved, an e-mail is auto-generated to the Engineer responsible for maintaining the facilities in that geographic area. The Engineer will prepare a package for the field survey team to visit the pole to confirm the presence of the defect, to stake the new pole location and to confirm details regarding the existing attachments on the pole. The Engineer will prepare a work order package that is submitted to the Drafting team. The Drafting team prepares the CAD-based work order drawings for construction, a permit drawing for the municipal authority, and a pole notification request to alert all attachers of the defective pole resulting in the need for their attachments to be transferred.

Once the work order is submitted to Construction and the permit is approved by the municipal authority, the process for the physical replacement varies based on whether there is an existing electric attachment on the pole. For poles without an existing electric attachment (communications work only), the work order is assigned to the altafiber construction contractor who will replace the pole once approval for the permit is granted by the municipality. For poles with an existing electric attachment, if the electric company does not perform the pole replacement, the work order is assigned to an agreed-upon altafiber construction contractor who has been previously certified by the electric company to work in the electric space. The electric company will prepare a work order to transfer their facilities to the new pole based on the pole notification request. Once the contractor has the work order from the electric company and approval from the municipality, the pole is replaced and the attachments are transferred.

The timeline for pole replacement varies based on external factors such as municipal permit approvals and the timeline for the electric provider to generate its work order, but typically ranges from 45 to 120 days.

**RESPONDENT:** Tamika Green  
Senior Director – OSP Planning and Engineering

c. Explain the process and any documentation if a technician identifies an issue with the pole but determines that it does not require replacement.

**RESPONSE:** To date, all altafiber-owned poles submitted by a technician as defective have been replaced as requested. If the pole is not owned by altafiber, the request is referred to the pole owner.

**RESPONDENT:** Tamika Green  
Senior Director – OSP Planning and Engineering

d. State whether Cincinnati Bell performs any systematic, periodic inspections of its poles beyond inspecting poles when a technician is on sight for another reason. If so, explain that inspection process in detail. If not, explain why Cincinnati Bell does perform such inspections.

**RESPONSE:** altafiber uses a contractor to perform visual inspections of its aerial plant to identify electrical hazards and to ensure proper clearance of attachments. These inspections of aerial plant also include inspecting poles. The contractor uses the same criteria as the field technicians to determine if a pole is unsafe and/or defective. If an unsafe or defective pole is found, an e-mail is sent to the Engineer to issue a work order. If an unsafe condition is found that does not require the pole to be replaced, the contractor will remedy the condition and notify the altafiber Construction inspector of the corrective action.

**RESPONDENT:** Tamika Green  
Senior Director – OSP Planning and Engineering

e. Explain whether and, if so, how Cincinnati Bell tracks the age and condition of its poles and makes determinations regarding when poles need to be replaced.

**RESPONSE:** altafiber tracks the installed year for poles in an Oracle database. Poles are not replaced based solely on age, but are replaced as necessary



to accommodate third-party attachment requests, safety conditions reported by technicians, periodic inspections performed by the construction contractor and/or business needs.

**RESPONDENT:** Tamika Green  
Senior Director – OSP Planning and Engineering

7. Refer to Cincinnati Bell's response to Kentucky Broadband and Cable Association's First Request for Information, Item 4.

a. Provide an itemized breakdown of the annual administrative costs associated with tasks related to managing third-party attachments.

**RESPONSE:** altafiber has not specifically tracked these costs.

**RESPONDENT:** Tom Laswell  
Senior Manager – Mobility & Wireless Real Estate

b. Explain each basis for Cincinnati Bell's contention that the 10 percent mark-up is consistent with 807 KAR 5:015, which allows for the payment of estimated make-ready costs and then a true-up of make ready costs.

**RESPONSE:** altafiber incurs administrative costs to process and manage third party attachment requests that are not included in the amount billed by the contractors who perform the physical work. The mark-up is necessary to recover these administrative costs.

**RESPONDENT:** Tom Laswell  
Senior Manager – Mobility & Wireless Real Estate

8. Identify the total number of poles Cincinnati Bell has replaced in Kentucky in each of the last ten years.

**RESPONSE:**

YEAR_PLACED	Total
2012	202
2013	122
2014	115
2015	232
2016	173
2017	151
2018	268
2019	188
2020	50
2021	4
Grand Total	1505

**RESPONDENT:**

Tamika Green  
Senior Director – OSP Planning and Engineering

9. Provide an estimate of the average cost to perform a make-ready pole replacement, and explain each basis for your response.

**RESPONSE:** If the pole contains an electric attachment, the electric provider or a contractor certified by it will complete the pole replacement. In that case, the pole replacement cost is governed by the particular joint use agreement.

For poles without an electric attachment, altafiber uses its internal cost estimation tool to generate the estimated costs for replacing the pole. The estimation tool uses internal labor rates and the number of hours to replace a pole based on its height. The internal labor cost for replacing a pole ranges from \$419 for a 30' pole to \$466 for a 45' pole and the pole cost ranges from \$165 to \$449, so the total replacement cost ranges from \$584 to \$915.

In addition to the pole replacement costs, make ready costs will include the labor required to transfer attachments from the old pole to the new pole, which varies based on the number and type of attachments to be transferred. These costs are also generated using the internal cost estimation tool.

**RESPONDENT:** Tamika Green  
Senior Director – OSP Planning and Engineering

10. Other than identifying specific defective poles through inspections that require replacement, state whether you have a policy or practice of replacing poles in a circuit on a periodic basis or as they reach the end of their useful lives and, if so, describe that policy or practice in detail, including how and when (e.g. how far in advance) such replacements such replacements are identified or included in your projected capital spending budget.

**RESPONSE:** No.

**RESPONDENT:** Tamika L. Green  
Senior Director – OSP Planning and Engineering

11. Describe your recent efforts, if any, to reduce the number of above ground transmission and distribution lines, and identify the number of poles that have been eliminated in your system in each of the last ten years because the electric lines previously attached to those poles were placed underground.

**RESPONSE:** altafiber's preferred method of construction is overhead and it does not have a program to reduce above ground lines. Duke Energy has a program called TUG (Targeted Underground) where it initiates the process to reroute overhead lines to underground based on repeated maintenance issues. altafiber found no such requests initiated in Kentucky in the last ten years where altafiber had facilities attached to poles that were being removed.

**RESPONDENT:** Tamika L. Green  
Senior Director – OSP Planning and Engineering

12. Provide any current joint use agreements.

**RESPONSE:** Joint use agreements are considered confidential and will be submitted to pursuant to a request for confidentiality.

**RESPONDENT:** Tamika L. Green  
Senior Director – OSP Planning and Engineering





**CERTIFICATE OF SERVICE**

I hereby certify that on June 2, 2022, I electronically filed the foregoing document using the Kentucky Public Service Commission's electronic system for filing, which sent notice of filing to counsel of record.

/s/ Douglas E. Hart



**Part One**

**Pathway Services Application**

**Section 1: CUSTOMER INFORMATION**

**Owner Contact:**

**Name:**  
**Street Address:**  
**City, State and ZIP:**  
**Telephone:**  
**Email Address:**

**Authorized Owner Representative:**

**Name:**  
**Street Address:**  
**City, State and ZIP:**  
**Telephone:**  
**Email Address:**

**Section 2: ROUTE DETAILS – Choose any option to describe your needs**

**Describe Pathway:**

**Beginning at:**  
**Ending at:**

**Sketch Attached:**

**List CBT Structures Involved: Complete as much as possible.**

	Manhole Number	Cable to Enter	Cable to Exit	Cable Through
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				

	Pole Number (Field Tag)	Height to Top Tel Cable	Height to CATV Cable	Height to Bottom Power Cable	Anchor and Guying?
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					

**Section 3: REQUIRED CUSTOMER INFORMATION**

**Authorized Payment of Application Fee:**      \$50/Manhole       \$25/Pole \*

**Copy of Local Permit (As Required):**      Attached       To be Provided

Certificate of Insurance: (\*See Section 5)

Attached

To be Provided

\* Note: Minimum of \$250.

### Section 4: FIBER CABLE INFORMATION

Outside Diameter	Cable Strand Count	Weight (lb/1000')	Sheath Type Metallic or Dielectric	Cable Tensile Strength (lb/ft.)

### Section 5: CUSTOMER ACKNOWLEDGEMENTS

#### \*Certificate of Insurance:

Prior to any installation by the Customer, a Certificate of Insurance is to be issued to Cincinnati Bell/altafiber ("CBT") by the fiber owner, any contracting company performing work on its behalf and any sub-contractor. This Certificate should confirm minimum liability coverage in the amount of \$1,000,000 for any damages to CBT/altafiber property resulting from this accommodation; and \$1,000,000 per person and \$1,000,000 per occurrence for any injury or death of individuals resulting from this accommodation. This requirement may be waived if the Applicant already has a Service Agreement with CBT/altafiber.

#### Conduit Accommodations:

1. Permits are limited to the specific facility requested. A new Permit is required for any changes.
2. Permits do not convey a right to occupy any service laterals to a customer building.
3. Foreign facilities are to be identified in every manhole and located on racking as directed by CBT.
4. Cables are to be installed in CBT provided innerduct, and CBT will retain ownership.
5. Drilling of CBT manholes or breaking of CBT duct will be planned and performed under the supervision of CBT as a make ready function.

#### Pole Accommodations:

1. Strand and 'through-bolt' construction required. Downguys and anchors are required at all end poles to offset the weight caused by the attached cable in all weather conditions.
2. Cable identification is to be installed at every pole, indicating that the cable is a 'non-CBT' facility.
3. Customer work and installation activities are to comply with all applicable OSHA and National Electrical Safety Code requirements. Field construction standards are to be as represented in the publication: Bellcore Blue Book - Manual of Construction Procedures.
4. The strand supporting the cable is to be electrically bonded to the vertical ground wire installed at the first, last and every fifth Cincinnati Bell pole occupied.

Continued on next page

**Project Management:**

1. The Customer's installation contractor, and any subcontractor performing fieldwork, must: provide required performance/claim information, obtain 'CBT Certification,' provide CBT/altafiber with a Certificate of Insurance and provide a minimum of 5 days notice before attempting to begin any field work involving CBT/altafiber structures or ROW. The completed application form, drawings, COI and receipt of the application fee by CBT constitute a completed Pathway application.
2. Construction is subject to an 'as built' inspection. Written notice of any defects identified will be provided. Any engineering or construction 'follow-up' work by CBT/altafiber to correct deficiencies is subject to additional charges.
3. At CBT/altafiber's discretion, a Confidentiality Agreement or Indemnification Agreement may be required prior to your final installation.

**Customer Billing Information:**

**Project Billing - Please designate your contact for project billing:**

Contact: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Phone: \_\_\_\_\_ FAX: \_\_\_\_\_ Email: \_\_\_\_\_

**Annual Billing for Rent - Please designate your contact for annual rental invoicing:**

Contact: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Phone: \_\_\_\_\_ FAX: \_\_\_\_\_ Email: \_\_\_\_\_

---

---

**Customer Signature – Owner of fiber cable to be accommodated:**

**Signature:** \_\_\_\_\_

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

**Mail to: 221 East 4<sup>th</sup> Street, Building 103-920; Cincinnati, OH 45202**  
**Contact Information > Email: Pathways@cinbell.com, Fax - CBT at 513-381-9210**  
**or Phone at 513-565-1430**

**NOTE:**

**This application only involves provisioning services for OSP Accommodations. Collocation inside the CO is administered as a separate and distinct CBT service.**

**If you require collocation inside the CO, altafiber will pull coiled fiber into the CO vault and make necessary transition splice(s), as part of your Collocation Request.**

**Parties involved with collocation must coordinate directly with Hollie Burke, CBT /altafiber Collocation Coordinator, (513-397-1383) for all arrangements inside the CO.**



## PART TWO

### Customer Acknowledgement of CBT/altafiber Terms and Conditions for Pathway Services

#### **Customer understands that Cincinnati Bell/altafiber will perform the custom work requested under the following conditions:**

1. These Terms and Conditions shall be part of the functional Agreement between Cincinnati Bell Telephone/altafiber ("CBT") and the Applicant Licensee ("CUSTOMER" or "Buyer") created by the Customer's initial Pathway Services Application, CBT's subsequent response and subsequent written agreements. CBT's agreement to perform Services (Work) covered by this Agreement is expressly conditioned upon Customer's acceptance of these Terms and Conditions. Any Purchase Order for or any statement of intent to proceed with the Work proposed by CBT shall constitute assent to these Terms and Conditions.
2. Subject to the provisions of the Agreement, CBT shall use reasonable efforts to deliver the Work within the schedule and at the unit price that is agreed upon in writing by the Parties.
3. **Buyer may request changes within the general scope of the Agreement. In the event that any requested change affects the anticipated schedule for delivery and/or charges for the Work, such change must be mutually agreed upon by the Parties in writing and there shall be an equitable adjustment of the payment to be made under the Agreement, and the time of performance to the extent affected by such change.**
4. **Upon delivery of the Work and upon delivery of any independently identifiable portions of the Work, CBT shall notify Buyer and invoice the amounts relating to any delivered Work. Any Work included in CBT's notice to Buyer and not listed by Buyer as incomplete in a listing delivered to CBT within 30 days of Buyer's receipt of such notice shall be deemed delivered and accepted. With respect to Work listed by Buyer as incomplete, and if CBT agrees such Work is incomplete, CBT shall complete delivery of such Work and the above acceptance procedure shall be repeated. If CBT does not agree that such Work is incomplete, the dispute is resolved pursuant to Article 27 herein.**
5. Buyer shall pay the full amount invoiced within 30 days of receipt of invoice. If there is a dispute in the amount invoiced or the Work performed, Buyer shall not be required to make full payment until the dispute is resolved pursuant to Article 27 herein.
6. CBT shall have the right at any time to assign its rights and delegate its duties, which may include by way of illustration and not limitation, the warranty of quality.
7. CBT warrants to Buyer that the Work provided hereunder will be free from defects in title, material, and workmanship. In the event the Work does not conform to this standard, CBT shall correct the deficiency and redeliver such Work at its own expense or, if determines such effort is not feasible, CBT shall provide a refund or otherwise waive the charge to the extent of such nonconformance. **SUCH REPERFORMANCE, REFUND, OR WAIVER OF CHARGES SHALL BE BUYER'S SOLE AND EXCLUSIVE REMEDY AND CBT'S SOLE LIABILITY RELATING TO PERFORMANCE AND REPERFORMANCE OF THE WORK.** Buyer must report any such nonconformance to CBT in writing and within 90 days of the completion of the Work. Except as expressly provided in the Agreement, CBT provides **NO WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTY OF MERCHANTABILITY AND**

FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL CBT BE LIABLE FOR ANY INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF USE, REGULATORY FINES AND PENALTIES, LOST PROFITS OR REVENUES, COST OF CAPITAL, LOSS OF GOODWILL, OR COSTS OF REPLACEMENT POWER.

8. CBT shall have no liability for or arising out of services, materials, or equipment furnished by any party other than CBT or its assigns or subcontractors.
9. CBT shall have no liability for any preexisting conditions. Buyer shall defend, indemnify, and hold harmless CBT for any release or threatened release of any pollutant, contaminant, or hazardous substance on the premises of Buyer, unless such pollutant, contaminant, or hazardous substance is brought onto the premises by CBT.
10. CBT's TOTAL LIABILITY TO BUYER UNDER THE AGREEMENT, WHETHER IN CONTRACT, TORT, OR OTHERWISE, SHALL IN NO EVENT EXCEED, IN THE CUMULATIVE AGGREGATE, THE TOTAL AMOUNT PAID OR TO BE PAID CBT BY BUYER UNDER THE AGREEMENT.
11. The performance of CBT under the Agreement shall be excused by conditions and circumstances beyond its reasonable control, including but not limited to acts or omissions of Buyer or third parties, acts of God, labor difficulties, governmental orders, civil disorders, and the unavailability of supplies and materials.
12. CBT shall provide the Work based upon information furnished to CBT by Buyer. Buyer shall provide to CBT, in a timely manner, all information that is within the control of or is available to Buyer, which is requested by CBT as necessary for the performance of the Agreement.
13. The provisions of the Agreement relating to waivers and disclaimers of liability, releases from liability, limitations of liability, exclusive remedy, and indemnity and hold harmless obligations shall apply regardless of fault, negligence (in whole or in part), strict liability, breach of contract or otherwise of CBT and such provisions shall extend to the directors, officers, employees, agents, subcontractors, and representatives of CBT.
14. Either Party may terminate the Agreement for cause if the other Party has materially breached the Agreement and has failed to remedy such material breach within 30 days of the receipt of written notice to the breaching Party from the non breaching Party or, in the event it is not reasonable that such material breach can be remedied in such 30 day period, has failed to take reasonable steps to remedy such material breach within such 30 day period.
15. CBT may subcontract portions of this Work to subcontractors. Such subcontractor shall have the same obligations and rights under the Agreement as CBT.
16. The parent and affiliated companies of CBT shall have no liability under the Agreement, Terms and Conditions or any portion thereof, and Buyer shall look only to CBT for the performance of the Agreement and for any liability under the Agreement, and shall not name any parent or affiliate in any lawsuit, legal claim or cause of action.
17. In furnishing the Work to Buyer, CBT shall be and shall remain at all times an independent contractor and not an employee, agent, or representative of Buyer.
18. All drawings, plans, specifications, computer data and reports developed by or for CBT relating to the Agreement shall be shared with Buyer upon its request.
19. Buyer shall keep confidential to the extent permitted by Ohio law, until 2 years after completion of the Work all information relating to the Work and to the Agreement that by the nature of such information is confidential, including but not limited to the charges for the Work and the provisions of the Agreement.
20. In addition to the agreed upon price, Buyer shall also pay any applicable -- use, excise, or other taxes, including any other applicable fees relating to the Work, to the extent permitted to do so under the laws of the State of Ohio. Work.
21. Should the Agreement be terminated for convenience by Buyer, Buyer shall pay CBT for any and all costs and expenses incurred and commitments made in connection with the delivery of the Work, and any collection costs incurred for the recovery of such costs and expenses, including but not limited to attorneys' fees and court costs.
22. The Agreement shall be interpreted and construed under the laws of the State of Ohio.

23. If any provision of the Agreement shall for any reason be held invalid or unenforceable, the remaining provisions of the Agreement shall remain unaffected.
24. The Agreement shall be the entire understanding and agreement between the Parties relating to the Work provided in accordance with this Agreement. No purchase order or other document provided by Buyer shall be part of the Agreement. No amendment, modification, or waiver of any provision of the Agreement shall be effective unless in writing and signed by both Parties.
25. CBT will not approve or accept cost adjustments or backcharges unless written authorization has been issued by CBT.
26. Buyer shall indemnify and save CBT harmless from and against any and all claims, losses, damages, injuries, and liability, and all costs and expenses attributable thereto, including attorneys' fees resulting from or arising out of the negligence of Buyer, its employees, agents or subcontractors in the performance of these terms and conditions. This indemnification shall survive the termination of this Agreement.
27. If a dispute arises between the Parties relating to this Agreement, the Parties agree to use the following Alternative Dispute Resolution ("ADR") procedure prior to either Party pursuing other available remedies:
28. A meeting shall be held promptly between the Parties attended by individuals with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute.
29. If, within thirty (30) days after such meeting, the Parties have not succeeded in negotiating a resolution of the dispute, they will jointly appoint a mutually acceptable neutral person not affiliated with either of the Parties (the "Neutral") to act as a mediator. If the Parties are unable to agree on the Neutral within twenty (20) days, they shall seek assistance in such regard from CPR Institute for Dispute Resolution, Inc. ("CPR"). The fees of the neutral and all other common fees and expenses shall be shared equally by the Parties.
30. The mediation may proceed in accordance with CPR's Model Procedure for Mediation of Business Disputes, or the Parties may mutually establish their own procedure.
31. The Parties shall pursue mediation in good faith and in a timely manner. In the event the mediation does not result in resolution of the dispute within sixty (60) days, then, upon seven (7) days' written notice to the other Party either Party may suggest another form of ADR, e.g., arbitration, a mini-trial or a summary jury trial, or may pursue other available remedies.
32. All ADR proceedings shall be strictly confidential and used solely for the purposes of settlement. Any materials prepared by one Party for the ADR proceedings shall not be used as evidence by the other Party in any subsequent litigation; provided, however, the underlying facts supporting such materials may be subject to discovery.
33. Each Party fully understands its specific obligations under the ADR provisions of the Agreement. Neither Party considers such obligations to be vague or in any way unenforceable, and neither Party will contend to the contrary at any future time or in any future proceedings.
34. The failure of either Party to insist on strict performance of any provision under this Agreement or to take advantage of any right hereunder shall not be construed as a waiver of such provision or right.

**Fiber Owner:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Date:**