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Associate General Counsel

November 10, 2021

VIA ELECTRONIC FILING

Adam Teitzman, Director
Office of Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

**Re: Docket No. 20210138-PU – Proposed adoption of Rule 25-18.020, F.A.C,
Pole Inspection and Maintenance;
Responses to Staff Data Requests – REDACTED Version**

Dear Mr. Teitzman:

On behalf of Lumen and its Florida operating companies, transmitted herewith for filing in the above-referenced docket are redacted responses to Staff data requests issued October 21, 2021. These responses contain competitively-sensitive information regarding Lumen's pole ownership, which constitutes proprietary confidential business information under Section 364.183, Florida statutes. This information has been redacted from public view and the confidential version of these responses will be provided under separate cover to the Commission.

1. Please provide the total number of poles owned by your company that have public utility attachments.

**LUMEN RESPONSE: [BEGIN LUMEN CONFIDENTIAL: [REDACTED]
[REDACTED] END LUMEN CONFIDENTIAL]**

2. Please provide the current maintenance inspection cycle or schedule for poles with public utility attachments.

LUMEN RESPONSE: 10% of total poles per year, in 10-year cycles

3. Please provide the current maintenance techniques used for poles with public utility attachments.

LUMEN RESPONSE: Our maintenance techniques include repair as needed (e.g.,

by trussing or other support), parts replacement as needed, and replacement of the entire pole, as needed. Other remediation techniques include treating poles with preventative pastes where indicated and performing excavation in the vicinity of poles to facilitate inspection and repair. Pole maintenance is performed when needed to respond to customer complaints or notifications from utilities or other sources and the remediation method is based on severity of pole maintenance required.

4. For your most recent maintenance inspection cycle/schedule for poles identified in question 1, please provide the following information:
 - a. The number of poles that were scheduled for inspection; **LUMEN RESPONSE: 3,484**
 - b. The number of poles actually inspected; **LUMEN RESPONSE: 3,484**
 - c. The number of poles that failed inspection; **LUMEN RESPONSE: 234**
 - d. The number of poles strength tested; **LUMEN RESPONSE: 3,484**
 - e. The number of poles that failed strength testing; **LUMEN RESPONSE: 35**
 - f. The number of poles repaired and a summary of the repairs; **LUMEN RESPONSE: 175 poles were trussed and uniquely trussed (with either taller trusses or double trusses) based on inspection criteria.**
 - g. The number of poles replaced and reason for replacement; **LUMEN RESPONSE: 59 poles were replaced due to groundline deterioration.**
 - h. The number of poles relocated and reason for relocation; **LUMEN RESPONSE: Approximately 100 poles were relocated due to road moves and/or network requirements.**
 - i. The total miles of vegetation management conducted: **LUMEN RESPONSE: Vegetation management is typically done by our power partners, as our attachments are not typically service-affected when vegetation touches telecommunications lines; and**
 - j. The total miles of vegetation management conducted for each technique used. **LUMEN RESPONSE: See response to 4.i., above.**
5. Please provide the criteria/standards used for replacement of existing poles with public utility attachments.

LUMEN RESPONSE: Poles are replaced for various reasons such as: in response to inspections or testing (e.g., prodding, sound and bore, and excavation to facilitate inspection), deterioration, storm damage, road moves, or maintenance requirements.

6. Please provide the criteria/standards used for construction of new poles with public utility attachments.

LUMEN RESPONSE: If poles are newly placed, each pole is designed and installed utilizing the current year edition of the NESC.

7. Please provide the criteria/standards used for repair of existing poles with public utility attachments.

LUMEN RESPONSE: Poles found with our inspection process are determined to be trussing candidates based on the remaining heart wood strength of the pole. Poles with insect or bird holes at the top of the poles are replaced with no remediation taking place.

8. Please explain how the company ensures its poles with public utility attachments meet National Electrical Safety Code (NESC) strength and clearance requirements.

LUMEN RESPONSE: Depending on the NESC requirements for wind/ ice loading for the specific geographic region, poles are determined to have a certain class (width), between 1 and 6, with the widest being 1. With respect to clearance requirements, poles come in heights from 25 feet to 70 feet (which are usually metal), in 5-foot increments. When an engineer builds or designs poles, he or she knows the loading, and has taken notes on the field locations to determine the height requirements for the lowest attacher. Once the engineer determines what the lowest height needs to be (typically 15'6" over secondary highways), the pole size is determined. Per NESC guidelines, all poles must be in compliance with the version of the NESC of the same year the attachments or pole was placed. At such time that the pole needs to have new construction completed or a violation is identified, that pole is brought up to the standard of the current NESC version.

9. Please provide the vegetation management schedules for poles with public utility attachments. As part of your response, please also identify and explain the type of vegetation management techniques utilized.

LUMEN RESPONSE: Vegetation management is typically done by our power partners as our attachments are not typically service-affected when vegetation touches telecommunications lines.

10. Please provide a description of your company's emergency response and storm restoration procedures and protocols with respect to poles with public utility attachments.

LUMEN RESPONSE: Lumen maintains a 24/7, 800 number for response to storm damages that take place. In the event of a large natural disaster, a team is gathered to monitor the conditions of the plant, and it works in conjunction with local authorities/ other utilities in order to restore service or adverse safety conditions caused by storms.

11. Please file at least two of your company's attachment agreements that demonstrate the standard or general terms that are contained in these types of agreements.

LUMEN RESPONSE: Our agreements are consistent and compliant with state regulatory requirements. We have attached as Exhibit A two of our standard templates—one for state use, one for multistate use—for the Commission's information.

12. Do your company's attachment agreements with public utilities reference any standards, codes, or requirements in regard to pole maintenance or inspection? If yes, please provide an example of the standards, codes, or requirements included in the agreement.

LUMEN RESPONSE: Yes. All agreements are made to be compliance with standard utility practices, NESC requirements, FCC, State, local, & municipality regulatory rules and regulations. Please see the templates provided in response to Question 11.

* * * * *

If you have any questions on this matter, please contact me at 984-237-1330.

Sincerely,

/s/ Jeanne W. Stockman

Jeanne W. Stockman

JWS/sc
Enclosure(s)

EXHIBIT A

WIRELINE

POLE ATTACHMENT LICENSE AGREEMENT

BY AND BETWEEN

[INSERT PROPER CENTURYLINK ENTITY] d/b/a CenturyLink

AND

[INSERT PROPER LICENSEE]

CONVERSATION:
CONTRACT:

EXHIBIT A

WIRELINE POLE ATTACHMENT LICENSE AGREEMENT

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ATTACHED EXHIBITS

- EXHIBIT A – NOTICE OF PROPOSED WORK FORM B
- EXHIBIT B – GROUNDING SPECIFICATIONS
- EXHIBIT C - ABANDONMENT NOTICE
- EXHIBIT D - POLE ATTACHMENT BOND
- EXHIBIT E – LOCATION OF LICENSEE SERVICE AREA
- EXHIBIT F – PRIOR WRITTEN AGREEMENTS

CONVERSATION:
CONTRACT:

EXHIBIT A

WIRELINE POLE ATTACHMENT LICENSE AGREEMENT

This Wireline Pole Attachment License Agreement (“Agreement”) is entered into as of the Effective Date by and between [INSERT PROPER CENTURYLINK ENTITY] d/b/a CenturyLink, a [INSERT CENTURYLINK ENTITY TYPE, e.g. corporation, limited liability company, etc.] (“Licensor”), and [INSERT PROPER LICENSEE ENTITY], a [INSERT LICENSEE ENTITY TYPE, e.g. corporation, limited liability company, etc.] (“Licensee”). Licensor and Licensee may sometimes be referred to in this Agreement individually as a “party” and collectively as the “parties.” Any reference to “CenturyLink” in this Agreement or attached exhibits will mean Licensor.

BACKGROUND:

- A. Licensee is a certificated cable operator, BIAS or telecommunications carrier or any combination and authorized to furnish lawful cable services and/or telecommunications service (“Licensee Service”) in areas in the State of [REDACTED] where Licensor is an Incumbent Local Exchange Carrier (“ILEC”).
- B. For the purpose of Licensee furnishing Licensee Service, Licensee desires to place and maintain Licensee Equipment on Licensor Facilities (as those terms are hereinafter defined) located in areas in the State of [REDACTED] where Licensor is an ILEC.
- C. In accordance with the terms and conditions of this Agreement, and to the extent required by federal, state and local law, Licensor agrees to permit Licensee to place and maintain certain Licensee Equipment on Licensor Facilities in strict accordance with the terms and conditions of this Agreement and for the sole purpose of Licensee furnishing Licensee Service.
- D. Neither this Agreement nor any License is applicable to placement of wireless Licensee Equipment on Licensor Facilities. Any matters related to the placement of wireless Licensee Equipment on Licensor Facilities must be covered under a separate written agreement between the parties or ordered from an applicable tariff.

For good and valuable consideration, the receipt and sufficiency of which are acknowledged by Licensor and Licensee, Licensor and Licensee agree as follows:

ARTICLE 1: DEFINITIONS

1.1. **Definitions.** Certain terms used in this Agreement are defined and explained below:

Act - The Communications Act of 1934 as amended, including as amended by the Telecommunications Act of 1996.

Anchor - An assembly that stabilizes a Pole and holds it in place. An Anchor assembly may consist of a rod and fixed object or plate, typically embedded in the ground, which is attached to a guy strand or Guy Wire, which in turn is attached to the Pole. The definition of “Anchor” does not include the guy strand that connects the Anchor to the Pole.

Annual License Fee - The annual fee Licensee pays in consideration for the License granted to it under Section 2.2. The Annual License Fee is calculated using a rate formula adopted by the FCC.

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Application - The completed application that is in form either the same as that attached to this Agreement as Exhibit A or in ENS format designated by Licensor pursuant to Section 3.3, and that is submitted by Licensee to Licensor as part of the process under this Agreement by which Licensee seeks Licensor's approval to make an Attachment.

Applicable Law – Applicable Law is defined in Section 20.2.1.

Approved Contractor - A contractor authorized by Licensor to perform Surveys, Make Ready Work (including but not limited to: engineering, pole loading analysis & construction) in the Communications Space or other work Licensee is authorized to perform under this Agreement.

Attachment – The physical attachment and placement by Licensee of wireline Licensee Equipment on or to Licensor Facilities. This definition does not permit attachment of equipment or facilities that are designed or intended to release radio frequency emissions or signals (RF), including antennas and radios, which are considered wireless equipment and require a separate wireless agreement for attachment. This definition of Attachment is in no way intended to limit Licensee's rights under Applicable Law.

Audit – A test, inspection, investigation, inventory, audit or similar undertaking for the purpose of determining the number and location of Attachments and checking for Unauthorized Attachments and/or Non-Compliant Attachments of Licensee.

Authorization – As defined in Section 4.1.

BIAS - Broadband Internet Access Service Provider – As defined by the FCC, “A mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all Internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up Internet access service. This term also encompasses any service that the Commission finds to be providing a functional equivalent of the service described in the previous sentence.”

Cost(s) - All reasonable and actual costs, to the extent such costs are not recovered in the Annual License Fee, paid or payable, which include: (a) external contractor or subcontractor labor costs and professional fees; (b) other costs and out-of-pocket expenses on a pass-through basis (e.g., equipment, materials, supplies or contract services); (c) internal labor costs directly related to the completion of Make Ready Work; and (d) reasonable allocations of administrative overhead. Cost will not include any profit or markup. Any calculation of Cost involving a charge to replace a Pole or Anchor will exclude the salvage value realized, if any, by Licensor for the removed Pole or Anchor.

Communications Space – The space on a Pole underneath the Communication Worker Safety Zone to the limit of allowable NESC clearance codes in which communications cables for telephone, cable television and other communications circuits are attached.

Communication Worker Safety Zone – As defined by the NESC, generally that space between the facilities located in the electric supply space and facilities located in the Communications Space. No Licensee Attachments shall be located in the Communication Worker Safety Zone.

Days or days – Calendar days, unless specifically noted otherwise in this Agreement.

Effective Date - The date this Agreement is last signed by all of the parties.

Electronic Notification System (“ENS”) – The electronic notification system or systems designated by Licensor that Licensor may, in Licensor's sole discretion, require Licensee to use in

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submitting an Application or any information, notice, consent, approval, request, document, demand or authorization and the like required or permitted under this Agreement.

Existing Attacher(s) - A public utility, person, governmental body or other entity that is not Licensee and that has an actual physical attachment of its facilities or equipment on or to a Licensor Facility.

FCC – The Federal Communications Commission.

Guy Wire - A metal cable of high tensile strength that is attached to a Pole and Anchor rod (or another Pole) for the purpose of reducing Pole stress or stabilizing a Pole.

Joint Owner(s) - A person, corporation, governmental body or other entity other than Licensor having an ownership interest in a Pole.

Large Attachment Order – Applications to make Attachments to at least 301 Poles up to the lesser of 3000 poles or 5.0% of Licensor’s Poles located in the State of [REDACTED].

Licensee Equipment - The wireline equipment and facilities owned, maintained and used by Licensee in furnishing Licensee Service, including aerial wires, drop wires, tap-offs, above or underground cables, amplifiers, signal transmission apparatus and any other associated hardware, equipment and facilities. Any piece of equipment or facility designed or intended to release RF emissions or signals, including but not limited to antennas and radios, is not considered Licensee Equipment permitted under this Agreement.

Licensor Facility or Licensor Facilities – Any Pole and associated Right-of-Way held by Licensor that is apportionable to third party use. Licensor makes no representation that its Right-of-Way is apportionable to Licensee; Licensee is required to obtain all necessary Right-of-Way for its structures, equipment and access thereto.

Licensor Indemnatee – as defined in Section 4.2

Licensee Service – authorized telecommunications or cable services lawfully furnished by certificated telecommunications carriers, cable operator, BIAS or any combination thereof.

Licensee’s Service Area - The area in which Licensee does or plans to provide its Services.

Make Ready Work - All work performed or to be performed as is necessary, in Licensor’s sole but reasonable discretion, to prepare Licensor Facilities for an Attachment where such work is required solely to accommodate such an Attachment.

Modification – Licensee’s Rearrangement or Transfer of its Attachment, non-routine replacement or repair of its Attachment, or other alteration of its Attachment. Overlapping is not a Modification.

NESC – The current edition of the National Electrical Safety Code, as amended, including all retroactive provisions, if any.

Noncompliant Attachment - An Attachment which does not meet the Specifications listed in Article 7, or does not comply with Licensor’s permitting requirements and construction specifications.

Non-Periodic Inspection - A test, inspection, investigation or similar undertaking for the purpose of checking the physical condition of Licensor Facilities or Licensee Equipment and identifying Non-Compliant Attachments. Non-Periodic Inspections will not include any regularly scheduled inspections or inspections of entire service areas.

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Overlashing – Licensee placing its equipment or facilities upon an existing Attachment, or Licensee placing or allowing the placement of the equipment or facilities of a third party on an existing Attachment without making any additional contact with a Pole. Neither Licensee nor any third party may place equipment which is designed or intended to release RF emissions or signals.

Pole(s) - A Licensor-owned or controlled pole or a pole jointly owned by Licensor and any Joint Owner, and any Anchors, Guy Wires, hardware, wires, cables, strands, apparatus, enclosures, structures or other items attached to the pole or any hardware affixed to or associated with the pole. The definition of “Pole” does not include poles for which Licensor has no legal authority to permit upon them the placement of the facilities or equipment of others. Only the attachment of authorized Licensee Attachments to Poles is contemplated by this Agreement.

Rearrange or Rearranging - Relocating or reconfiguring an Attachment upon the Licensor Facilities to which the Attachment is made.

Right-of-Way - The right to use the land or other property of another to place structures and equipment upon it, or to provide access to the structures and equipment. A Right-of-Way may run under, on or above public or private property (including air space above public or private property).

Service Drop – The wire connecting the distribution component of Licensee Equipment to Licensee’s individual customer.

Survey – All work necessary to determine the Make Ready Work required to accommodate an Attachment while meeting NESC and CenturyLink requirements, including field inspections, engineering and administrative processes, provided that Licensee will not be charged for any administrative processes associated with processing the Licensee’s Application that are recovered as part of the Annual License Fee.

Transfer or Transferring - Moving an Attachment from one Licensor Facility to another.

Unauthorized Attachment – An Attachment installed on Poles by Licensee without a lawful agreement with or License from the Licensor.

ARTICLE 2: **SCOPE OF AGREEMENT**

2.1 **Representation and Warranty.** Licensee represents and warrants to Licensor that it provides Licensee Service in the areas in the State of [REDACTED] where Licensor is an ILEC, and that therefore, pursuant to Applicable Law, it is entitled to pole attachment rights and protections given to it under Applicable Law. If at any time during the Term of this Agreement Licensee is no longer entitled to pole attachment rights and protections for Licensee Services under Applicable law, Licensee must immediately notify Licensor of the change.

2.2 **Grant of License.** Subject to the terms of this Agreement and consistent with Applicable Law, Licensor will grant a revocable, non-exclusive license to Licensee authorizing Licensee to make each specific Attachment approved in accordance with this Agreement to Licensor Facilities located in areas in the State of [REDACTED] where Licensor is an ILEC, and to allow Licensee to use and maintain each specific Attachment for the purpose of Licensee providing Licensee Service (“License”). This License will be evidenced in each instance by a Licensor-approved Application for the relevant Attachment. A Licensor-approved Application is required for every Attachment. No Attachment may be made to any Licensor

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Facility identified in an Application until Licensor has approved the Application in writing, except as otherwise provided herein or by Applicable Law.

2.3 **Licensee Third Party Agreements.** If Licensee contracts or otherwise agrees with a third party for a lease of or similar arrangement for any Attachment, and as a result it is necessary for the third party to attach its own equipment to Licensor Facilities, then unless the third party has entered into a license agreement with Licensor and has received a Licensor-approved Application for the attachment, the third party attachment will be deemed Licensee's Unauthorized Attachment subject to the Unauthorized Attachment provisions of Article 12. If the third party enters into a license agreement with Licensor for the purpose stated in this Section 2.3, the contract between the third party and Licensee will be expressly subject and subordinate to this Agreement and will not relieve Licensee of any obligations under this Agreement.

2.4 **Installation and Maintenance Standards.** Licensee's Attachments shall be erected and maintained in good and safe condition and repair (and replaced if necessary) in accordance with the NESC and the "Specifications" (as defined and set forth in Article 7 and other pertinent requirements of this Agreement. If Licensee refuses or neglects to fulfill its maintenance obligations under this Agreement, including this Section 2.4 in accordance with the Specifications, Licensor may undertake such obligations itself, and Licensee will reimburse Licensor for the Costs that Licensor incurs in fulfilling such obligations within 45 days of the invoice date for an invoice from Licensor for the Cost. Licensor will provide Licensee with 45 days' written notice prior to performing Licensee's maintenance obligations under this Agreement except in emergencies which could result in harm to persons or property, in which case no prior notice will be given.

2.5 **Entrance Facilities and Interconnection Agreements.**

2.5.1 Neither this Agreement nor any License is applicable to Licensor's Entrance Facilities. For the purpose of this Agreement, "Entrance Facilities" is defined as the communications path between a customer's premises and Licensor's serving wire center for that premises. Entrance Facilities are wholly within the ILEC's local serving area, and are used for carrying telecommunications to and from the customer's premises, including any telecommunications resale, interconnection or UNE traffic or access traffic under § 251 of the Act.

2.5.2 This Agreement and any License are not intended and shall not be deemed to constitute an agreement nor an offer by either party to interconnect any Entrance Facility or other network facilities owned by such party or by its affiliates, with any network facilities owned by the other party or its affiliates, or which are owned by any other person or entity, and any such interconnection arrangements, must be established pursuant to a separate written contract reflecting terms and conditions which shall be mutually bargained for, negotiated and memorialized separate and apart from this Agreement, whether pursuant to §251 of the Telecommunications Act of 1996, or otherwise. Any interconnection arrangements between Licensee and any other user or occupant of a Pole (other than Licensor) must be approved in advance by Licensor, such approval to be at Licensor's sole discretion to the extent such interconnection arrangements are accomplished using Attachments.

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ARTICLE 3: POINTS OF CONTACT, NOTICE, BILLING AND ELECTRONIC INFORMATION

3.1 Points of Contact and Notice.

3.1.1 The points of contact listed in this Section 3.1.1 (“Points of Contract”) will serve as the respective Licensor and Licensee representatives responsible for addressing and handling all operational issues regarding this Agreement. Whenever any notice, consent, approval, request, document, demand, authorization and the like or notice of default is required or permitted under this Agreement (collectively, “Notice”), the Notice must be in writing (except for oral notice specifically allowed under this Agreement, if any). Subject to Section 3.1.2 and Section 3.3, all Notice must be delivered in person, by United States certified mail, return receipt-requested, postage prepaid or by a nationally recognized overnight courier service to the Points of Contact at the following addresses:

Points of Contact

<u>Licensee</u>	<u>Licensor</u>
Name:	Name:
Title:	Title:
Address :	Address:
Telephone:	Telephone:
E-Mail:	E-Mail:
Name:	Name: Pole Team
Title:	Title: National Contracts
Address :	Address: 600 New Century Parkway Mailstop: 2C970 New Century, KS 66031
Telephone :	Telephone: N/A
E-Mail:	E-Mail: Poles@CenturyLink.com

3.1.2 **Copies of All Legal Notices.** In addition to delivering default Notice to the Points of Contact, copies of all legal Notices must be delivered to the parties at the following addresses. Legal Notices will not be sent using ENS.

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If legal Notice to Licensee:

[Redacted]

Attention: [Redacted]

If legal Notice to Licensor:

CenturyLink
1025 Eldorado Blvd, ROW
Broomfield, CO 80021
Attn: National Infrastructure Services - Director

and (which alone does not constitute notice)

CenturyLink Law Department
931 14th Street
Denver, CO 80202
Attn: Network Legal Group

3.2 **Notice Effective Date and Change of Address.** If Notice is given by personal delivery, a receipt indicating that personal delivery was made must be obtained. Notice will be deemed effective on the date of receipt by the addressee as shown on the receipt if given by personal delivery, on the return receipt if Notice is given by certified mail or the confirmation of delivery form if Notice is given by overnight courier service. Oral Notice will be deemed effective upon its receipt. Rejection or refusal to accept Notice or the inability to deliver Notice because of a changed address (or, in the case of oral notice, a changed phone number) of which no prior Notice was given will be deemed to be receipt of the Notice as of the date of rejection, refusal or inability to deliver. Either party may change its address and contact information in Sections 3.1.1, 3.1.2 or 3.4.1 by giving Notice of such change to the other party in the manner for giving Notice prescribed in Section 3.1.1.

3.3 **Electronic Notification System.** Licensor may, in its sole discretion, require Licensee to provide any information, notice, consent, approval, request, document, demand or authorization and the like required or permitted under this Agreement, including Applications, using ENS, and any such matters given by a party using ENS will be deemed to be given in writing for purposes of this Agreement. If Licensee fails to comply with this requirement, Licensee will be responsible for Licensor’s Costs incurred to process the information, including Costs for manual data entry, developing an electronic interface and ensuring the integrity of the information provided.

3.4 **Billing, Payment, Non-Sufficient Funds, Costs of Collection and Partial Payment.**

3.4.1 All invoiced payments and other payments due and payable under this Agreement, including payments for Annual License Fees, must be paid by paper check or electronically via wire transfer. Payment in cash or by credit card is not allowed. Licensor may ignore and refuse to accept any payment by cash or credit card made by Licensee, and ignore or refuse to accept any effort by Licensee to pay by cash or credit card. If payment is made by paper check, such check must be delivered by United States certified

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mail, return receipt-requested, postage prepaid, by a nationally recognized overnight courier service or by regular United States first class mail, postage prepaid, to the parties at the following respective addresses (each a party’s “Billing Address”):

If to Licensee:



If to Licensor:

Payment:
CenturyLink
P.O. Box 2348
Seattle, WA 98111-2348

Invoices:
CenturyLink
700 W. Mineral Ave
Mailstop: NM M30.13
Littleton, CO 80120

3.4.2 In addition to any other rights or remedies to which Licensor is entitled under this Agreement, at law or in equity, Licensor may: (a) charge Licensee the Cost of any reasonable fee charged to Licensor for any Licensee payment checks returned for non-sufficient funds; and (b) recover from Licensee all out of pocket costs, including attorney fees, incurred by Licensor in collecting any outstanding payments from Licensee not otherwise included in the Annual License Fee.

3.4.3 Licensee’s partial payment of any monetary obligation owed to Licensor under this Agreement will not constitute payment in full of such monetary obligation, and is therefore subject to being a “Licensee Default” under Section 17.1 (a). If Licensor elects, in its sole discretion, to accept any partial payment, such acceptance will not constitute: (a) Licensor’s waiver of or release of any amount owed, or of any rights or remedies to which Licensor is entitled under this Agreement, at law or in equity; or (b) an accord and satisfaction.

ARTICLE 4: LICENSEE AUTHORIZATION

4.1 **Authorization.** Licensee is solely responsible for obtaining and maintaining all necessary licenses, authorizations, permits, franchise agreements, certificates of convenience and necessity, Rights-of-Way, easements, rights, underlying rights, permissions and consents from any governmental or public authority or any private individual or entity, and if applicable from any Joint Owner or Existing Attachers, as may be required so that Licensee can place, use or maintain its Attachments whether on Licensor’s Poles or on the ground (collectively, “Authorization”). Authorization includes Licensee obtaining the necessary real property interest for any Attachment that is to be used on, placed within or requires the entering onto of private property or a public street, alley, highway or other public thoroughfare. Each necessary Authorization must be in writing, and if an Application is submitted that requires an Authorization, Licensee must submit copies of the Authorization along with its Application. Submitting copies of an Authorization to Licensor will constitute Licensee’s representation and warranty that it has the proper Authorization to place, use or maintain its Attachment. It will be a Licensee Default if Licensee obtains a License for an Attachment that required an Authorization, and Licensee failed to obtain the necessary Authorization. Licensor will, at no out of pocket expense to Licensor, reasonably cooperate with Licensee in Licensee’s

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efforts to obtain an Authorization. Provided further, Licensee shall bear sole responsibility for outreach related to complaints or concerns arising from any governmental or public authority or any private individual or entity, related to its Attachments, including timely responding to complaints regarding Attachments, their size, placement, condition, or their effects on health, safety and the environment, or otherwise (a "Complaint").

4.2 **Indemnification.** Licensor will not be liable to Licensee if Licensee is prevented from placing, maintaining or continuing an Attachment due to Licensee's failure to obtain an Authorization, or due to revocation or termination of an Authorization. Licensee will indemnify, hold harmless and defend Licensor, Licensor's parent, subsidiaries and affiliates and their respective directors, officers, employees and agents (Licensor and the foregoing, each a "Licensor Indemnitee") from and against any and all claims, suits, judgments, liens, actions, damages, demands, settlements, penalties, assessments, fines, obligations, losses, liabilities, costs, interest, expenses, disbursements and fees, including, but not limited to , attorneys' fees and litigation expenses (collectively, "Damages"), for a claim by a third party against a Licensor Indemnitee arising from or related to a Complaint or Licensee's failure to obtain or comply with an Authorization, or the revocation or termination of an Authorization. For the purpose of this Section 4.2, "Damages" will include Licensor's Cost of relocating Licensor Facilities and of defending Licensor's rights to and in any Right-of-Way granted to Licensor.

4.3 **Revocation of Authorization.** If an Authorization is revoked, expires or terminates for any reason after Licensee makes an Attachment for which an Authorization is required and for which Licensor granted a License, the License will be automatically revoked, effective the day the Authorization is revoked, expires or terminates, provided that if Licensee is in the process of challenging any revocation, expiration or termination, the Licensee may maintain its Attachments throughout such challenge, if legally permitted by order of the court before which Licensee's challenge is pending, and thereafter, if such challenge is successful. Otherwise, Licensee will remove the Attachments covered under the revoked License in accordance with Article 10. In any event, Licensee will indemnify, defend and hold each Licensor Indemnitee harmless from and against any Damages arising from or related to Licensee's actions or failure to act under this Section 4.3.

4.4 **Denial of Application.** If an Authorization is revoked, expires or terminates for any reason after an Application is made for which the Authorization is required, but before Licensor approves the Application, Licensor may hold the Application in abeyance, and any approval by Licensor of such Application will be deemed to be conditional and provisional pending the outcome of any challenge by Licensee of any such revocation, expiration or termination, and Licensee shall not make any Attachments following such revocation, expiration or termination unless it first obtains a court order legally permitting the Attachments, as provided in Article 4.3.

ARTICLE 5: APPLICATION AND ATTACHMENT PROCESS

5.1 **Application.** Only Applications for Attachments placed in the Communications Space are contemplated by this Agreement. Before making an Attachment, Licensee must submit to Licensor a completed Application for the desired Attachment. Licensor may treat multiple Applications from Licensee as a single Application when the Applications are made within 30 days of each other.

5.2 **Stage I-Response to Application and Survey.** For an Application to make Attachments up to the lesser of 300 Poles or 0.5% of Licensor's Poles located in the State of , Licensor will

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provide a written response to each completed Application within 45 days of Licensor's receipt of the Application ("Stage I Timeline"). Licensor may extend the Stage I Timeline, by 15 days for a Large Attachment Order, which consists of orders up to the lesser of 5% of Poles within the state or 3,000 Poles. For orders greater than 3,000 Poles, the parties will negotiate in good faith regarding the timeframe for completing a response to the Application. If Licensor denies the Application, it will do so within the applicable timeframes and describe in reasonable detail how the denial relates to insufficient capacity, or safety, reliability and generally applicable engineering standards. If a request for access is denied, Licensee will nonetheless pay Licensor for the Survey Cost.

5.3 **Stage II - Estimate.** Where a request for access is conditionally approved and Licensor determines that Make Ready Work is required, Licensor will, within 14 days of the expiration of the Stage I Timeline (this 14 Day period, hereinafter referred to as, "Stage II Timeline") give notice to Licensee containing an estimate of Make Ready Work Costs ("Make Ready Notice"). If Licensee's own contractor has performed a Survey pursuant to Article 5.7.2, and the same is provided to Licensor before Licensor has provided Make Ready Notice, Licensor will provide Make Ready Notice to Licensee within 14 days of its receipt of Licensee's Survey. Licensor may actively withdraw any Make Ready Notice beginning 14 days after it has provided Licensee with the Make Ready Notice.

5.3.1 **Capacity Determination.** Licensee agrees to pay Licensor's contractor's actual costs for performing a per pole space and loading analysis and to abide by the contractor's determinations regarding whether a Pole must be replaced to accommodate the attachment.

5.4 **Stages III - Licensee Acceptance.** If Licensee accepts the estimate in the Make Ready Notice and elects to proceed with making the Attachment after receipt of the Make Ready Notice, then at any time thereafter (but in no event longer than 14 days after its receipt of the Make Ready Notice), Licensee will give notice to Licensor that it has accepted the Make Ready Notice and that it is agreeable to the Make Ready Work and contemporaneously with such notice of acceptance Licensee will remit payment for the estimated Make Ready Work Cost ("Make Ready Acceptance"), and by doing so, Licensee is obligated to pay for all final actual Make Ready Work Cost (which will include any Survey Cost) if the final Make Ready Work Cost is more than the amount of the estimated Make Ready Work Cost or Licensee will be reimbursed for any over-charge if the final Make Ready Work Cost is less than the amount of the estimated Make Ready Work Cost. If Licensee fails to timely deliver the Make Ready Acceptance, Licensor may deny the Application, and Licensee will pay for any Survey Cost within 45 days of the invoice date for an invoice sent to Licensee for the Survey Cost.

5.5 **Stage IV - Make Ready Work Timeline.**

5.5.1 For an Application to make Attachments to up to the lesser of 300 Poles or 0.5% of Licensor's Poles located in the State of [REDACTED] and that will be placed in the Communications Space, Licensor will complete Make Ready Work no later than 60 days from the date it sends the "Communications Space Notice" (as defined in Section 5.6). Licensor may add 45 days to the Make Ready Work completion periods set forth in this Section 5.5.1 for any Large Attachment Order. The foregoing timelines are also subject to Licensor's rights under Sections 5.5.2 and 5.5.3.

5.5.2 Licensor may deviate from the timelines for Make Ready Work performance if during the performance of Make Ready Work good and sufficient cause exists that renders it infeasible for Licensor to complete the Make Ready Work with the proscribed timeline. If Licensor so deviates, it will immediately give notice to Licensee and any affected Existing Attachers and Joint Owners, stating the reason for, date and duration of the deviation. Licensor will deviate from the prescribed timelines for a period of no longer

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than necessary, and will resume Make Ready Work performance without discrimination when Licensor returns to routine operations.

5.5.3 If Make Ready Work is not completed by Existing Attachers as contemplated in Section 5.6 below, by the dates specified in the Communications Space Notice, Licensor, prior to the expiration of the period in which Make Ready Work was to be completed, may notify Licensee that it intends to exercise its right to complete all remaining Make Ready Work itself within an additional 15 days, and if the Make Ready Work remains unfinished at the end of the 15 day extension, Licensee may assume control of the Make Ready Work, using Approved Contractors pursuant to Section 5.7.3.

5.6 **Make Ready Work Notice to Existing Attachers and Joint Owners.** Upon receipt of payment from Licensee for the estimated Make Ready Work Cost for Attachments to be placed in the Communications Space, Licensor will immediately give notice to all known Existing Attachers and Joint Owners, if any, that contains the following information (“Communications Space Notice”): (a) where and what Make Ready Work will be performed; (b) a date for completion of Make Ready Work that is no later than 60 days after such notice is sent (or 105 days in the case of a Large Attachment Order); (c) advise that any Existing Attacher may undertake the work to modify its attachment consistent with the specified Make Ready Work before the date set for completion; (d) advise that Licensor may assert a right to 15 additional days to complete Make Ready Work in the event such work is not completed; (e) advise that if any Make Ready Work is not completed by the completion date set by Licensor (or 15 days later if Licensor has asserted its 15 day right to complete Make Ready Work, as set forth in Section 5.5.3), Licensee may itself complete the specified Make Ready Work; and (f) the name, telephone number and email address of a person to contact for more information about the Make Ready Work procedure.

5.7 **Approved Contractors for Survey, and Make Ready Work.**

5.7.1 Licensor will create and keep up-to-date a reasonably sufficient list of Approved Contractors, and will make the list available to Licensee.

5.7.2 For any Application requesting Attachments to the Communications Space for which Licensor did not timely respond as required in Section 5.2, Licensee may hire an Approved Contractor to complete the Survey.

5.7.3 For any Application requesting Attachments in the Communications Space for which Make Ready Work is required, and such Make Ready Work is not completed by the timelines set forth in Sections 5.5 and 5.6, Licensee may hire an Approved Contractor to complete the Make Ready Work: (a) immediately, if Licensor has not notified Licensee that it is asserting its right to perform the remaining Make Ready Work; or (b) after 15 days has passed from if Licensor has asserted its right to perform Make Ready Work by the date specific in the Communications Space Notice, and has failed to complete such Make Ready Work .

5.7.4 If Licensee hires an Approved Contractor pursuant to Sections 5.7.2 and 5.7.3, Licensee will provide Licensor with a reasonable opportunity for Licensor to accompany Approved Contractor while it performs the work, and to consult with both the Approved Contractor and Licensee regarding the work.

5.7.5 Licensee is liable for the work, acts or omissions of the Approved Contractors it hires and for all payment owed to such Approved Contractors. Licensor may order the immediate suspension of construction or installation activities by Licensee or its Contractor if Licensor, in its sole discretion and judgment, deems such action necessary for reasons of safety, engineering, service reliability, or property owner complaint. Licensee will indemnify, hold harmless and defend each Licensor Indemnitee from and against any Damages for a claim by an Approved Contractor hired by Licensee against a Licensor

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Indemnitee arising from or related to the Approved Contractor performing work on Licensee's behalf, the work itself or Licensee's failure to pay money it owes to the Approved Contractor.

5.7.6 For all other work Licensee is to perform under this Agreement, Licensee may enter into an agreement with an Approved Contractor to perform such work on Licensee's behalf, including work relating to Attachments, Transferring, Rearranging and removing Attachments. Licensee is liable for the work, acts or omissions of the Approved Contractors it hires, and for all payment owed to such Approved Contractors. Licensee will indemnify, hold harmless and defend each Licensor Indemnitee from and against any Damages for a claim by an Approved Contractor hired by Licensee against a Licensor Indemnitee arising from or related to the Approved Contractor performing work on Licensee's behalf, the work itself or Licensee's failure to pay money it owes to the Approved Contractor.

5.8 **Completion of Make Ready Work.** Once all required Make Ready Work has been completed, the party completing the same will notify the other party of the completion. If Licensor performed the Make Ready Work, its notice of completion will be accompanied by an invoice for all final Make Ready Work Cost to include the actual charges for the calculations associated with the capacity determination, the same being due and payable within 45 days of the date of the invoice. Licensor will issue the approved Application for the Attachment upon receipt of payment for the Make Ready Work Costs or, if applicable, upon receipt of completion notice from Licensee. Licensee will neither make an Attachment nor begin work at Licensor Facilities in furtherance of an Attachment until it has paid the Make Ready Work Cost, been notified by Licensor that all Make Ready Work has been completed or, if applicable, notified Licensor that it has completed all Make Ready Work, and has received approval of the relevant Application.

5.9 **Attachment Completion and Identification of Attachment.**

5.9.1 Licensee must complete its Attachment within 120 days of its receipt of a Licensor-approved Application. Licensor may in its sole discretion, grant a longer period of time upon request of Licensee. Within 15 days after completion of the Attachment, Licensee will give written notice to Licensor that it has completed its Attachment. If Licensee does not complete its Attachment within the 120 day period or any extension thereof, the License granted for the Attachment will be automatically revoked upon the expiration of the applicable period. Licensee is not entitled to a refund of any Make Ready Survey Charge or Make Ready Work Costs it previously paid for the incomplete Attachment.

5.9.2 Each Attachment must have a tag or similar item affixed to it that clearly and conspicuously identifies Licensee as the owner of the Attachment with a telephone number, and be done in a manner that allows Licensor or its agents to readily identify from the ground that the Attachment belongs to Licensee.

5.9.3 Licensee shall maintain accurate, up-to-date location maps and records of all its Licensee Attachments on Licensor's Poles. Licensor shall have the right to inspect, and upon request, obtain a copy of said location maps and records at any time during regular business hours with reasonable notice and at no cost to Licensor.

5.10 **Initial Post-Attachment Inspection.** Licensor may, in its sole discretion, perform an inspection of each Attachment after its initial completion to see if it is in compliance with the Specifications listed in Article 7 ("Initial Post-Attachment Inspection"). Licensor must perform any Initial Post-Attachment Inspection within 90 days of receipt of Licensee's Completion Notice for the Attachment. If Licensor decides to conduct an Initial Post-Attachment Inspection, Licensor will: (a) notify Licensee of that decision; (b) give Licensee or its representative the opportunity to be present for the Initial Post-Attachment Inspection; and (c) invoice Licensee for an inspection fee equal to the Cost incurred by Licensor ("Initial

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Post-Attachment Inspection Fee”). Licensee will pay the Initial Post-Attachment Inspection Fee within 45 days of the invoice date. If the Initial Post-Attachment Inspection reveals that an initial Attachment is a Noncompliant Attachment, the Noncompliant Attachment will then be subject to the Noncompliant Attachment provisions of Article 12. Licensee’s non-compliance with NESC or the Specifications or with applicable federal, state and/or local law shall not be excused or waived by virtue of any Initial Post-Attachment Inspection performed by Licensor irrespective of whether or not such non-compliance is noted on such inspection, nor by any decision by Licensor to not perform such an Initial Post-Attachment Inspection.

5.11 **Overlashing.**

5.11.1 When Licensee intends to engage in Overlashing or to allow third party Overlashing, Licensee must give Licensor written notice (“Overlashing Notice”) within ten days after engaging in or allowing the Overlashing using the form attached to this Agreement as Exhibit A.

5.11.2 Each instance of Overlashing and the equipment or facilities that are themselves overlashed to the Attachment must meet the Specifications listed in Article 7, and must otherwise be used in accordance with the applicable requirements of this Agreement.

5.11.3 If Licensee does not comply with any of the requirements of Section 5.11.2 or fails to give Overlashing Notice, Licensor may treat the associated Attachments as Noncompliant Attachments subject to the provisions of Article 12.3.

5.12 **Work Danger.** The parties acknowledge that in exercising its rights under this Agreement, including making Attachments, Licensee, its employees, agents, Approved Contractors, contractors and subcontractors will necessarily be required to work near, adjacent to and in the vicinity of electrically energized lines, transformers or equipment of Licensor or others located on or around Licensor Facilities, and it is the parties’ intention that the energy from the same will not be interrupted, except in an emergency situation that poses the risk of death or serious injury to people or property. Licensee is fully and solely responsible for ensuring that its employees, agents, Approved Contractors, contractors and subcontractors have the necessary skill, knowledge, training and experience in order to protect themselves, their fellow employees, agents, Approved Contractors, contractors and subcontractors, as well as Licensor’s employees, agents and contractors as well as the general public from harm or injury while exercising Licensee’s rights under this Agreement, including making Attachments. Licensee represents and warrants to Licensor that it is apprised of, conscious of and understands the imminent dangers inherent in the work necessary to exercise its rights under this Agreement, including making Attachments, and Licensee will as its sole duty and responsibility notify and inform and continue to notify and inform its employees, agents, Approved Contractors, contractors and subcontractors of such dangers. Furthermore, Licensee acknowledges that it is ultimately responsible for the actions of its employees, agents, Approved contractors, contractors and subcontractors, and as such will ensure that the same maintain insurance coverage in the manner required of Licensee under Article 18.

5.13 **Non-interference.** Licensee will place and maintain its Attachments at its own expense and in such a manner so as to not interfere with work being performed by or service being provided by Licensor, Joint Owners or Existing Attachments.

5.14 **Service Drops.** Licensee may attach a Service Drop to a Pole prior to submitting an Application for the Service Drop, provided the attachment of the Service Drop is made in accordance with

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the Specifications, and that Licensee submits an Application for the Service Drop within 30 days after its attachment.

5.15 **Power Supply Cabinets.** Licensee is prohibited from attaching any power supply equipment or cabinets with battery back-ups on a Pole. Provided Licensee has Right-of-Way for same, and Licensor's approval pursuant to this Agreement, Licensee may place any allowed power supply cabinets adjacent to a Pole at a minimum distance of 5 feet.

ARTICLE 6: **MATTERS AFFECTING LICENSE OR APPROVAL**

6.1 **Safety, Reliability and General Engineering Principles.** Licensor may deny access because of insufficient Licensor Facility capacity or for reasons of safety, reliability or general engineering principles.

6.2 **Licensor Service Obligations and No Duty to Construct.**

6.2.1 Licensor's right to locate, maintain and operate Licensor Facilities to fulfill its own service obligations is in no manner limited by this Agreement.

6.2.2 Nothing in this Agreement will compel or be construed as compelling Licensor to construct, retain, extend, place, replace, restore or maintain any Licensor Facilities that Licensor needs or does not need for its own service requirements, business or operations, or to approve an Application that would require Licensor to construct, retain, extend, place, replace, restore or maintain any Licensor Facilities, except as otherwise required by Applicable Law.

6.3 **Other Agreements.** Nothing in this Agreement limits, restricts or prohibits Licensor from continuing or entering into any other agreement or arrangement regarding the use of Licensor Facilities.

6.4 **Joint Owners and Existing Attachers.** The rights of Licensee under this Agreement are at all times subject to existing agreements or arrangements between Licensor and any Joint Owners or Existing Attachers.

6.5 **Licensee Only.** Except as otherwise permitted by Applicable Law, only Licensee is allowed to make Attachments under this Agreement. Nothing in this Agreement will permit or be construed as permitting any person or entity other than Licensee to make Attachments, including any Licensee parent, affiliate or subsidiary, except as otherwise required by Applicable Law.

6.6 **Specific Parts of Licensor Facilities.** Except as may be required by Applicable Law: (a) nothing in this Agreement grants Licensee the right to attach to or occupy any specific part of Licensor Facilities, including any specific part of a Pole, Anchor or Right-of-Way, or compels Licensor to grant Licensee the right to attach to or occupy any specific part of Licensor Facilities; and (b) Licensor may determine and assign the location on a Licensor Facility where Licensee's Attachments are to be made. Once Licensee's Attachment is assigned a location, Licensee cannot relocate its Attachment unless a change is first sought and approved in accordance with the Application and Attachment process of Article 5, except as provided for in Article 8.1.

6.7 **No Ownership or Property Rights.** Licensee's use of Licensor Facilities under this Agreement, however extended, or payment of fees or charges required under this Agreement, does not create or vest in Licensee any ownership or property rights in Licensor Facilities, or any of Licensor's other real or personal property. Licensee's rights are limited to a License for the Attachment in strict compliance with the terms and conditions of this Agreement.

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6.8 **Loss of Property Rights.** Licensors may deny an Application if, in Licensors' sole but reasonable discretion, a proposed Attachment could result in Licensors' forfeiture of a Right-of-Way or other right to occupy property on which Licensors Facilities are located. Prior to denying the Application, the Licensors may provide assistance to Licensee to resolve the issue relating to such forfeiture for up to 60 days and the Stage I Timeline set forth in Section 5.2 will be extended accordingly, but no Attachment will be allowed unless and until the matter is resolved, if possible, to Licensors' sole but reasonable discretion. If the issue is not resolved within the 60 day timeframe, the Application may be denied and Licensee will be required to reapply when and if the matter is resolved at some future date.

6.9 **Unpaid Monetary Obligations.** Licensors may refuse to consider or may deny an Application as long as any of Licensee's monetary obligations due and payable to Licensors under this Agreement remain unpaid. However, Licensors may not refuse to consider or deny an Application because of such unpaid monetary obligation if Licensee has invoked and is in compliance with Section 13.5 regarding the unpaid monetary obligation.

6.10 **Pole Attachment Bond and Evidence of Insurance.** Licensors may refuse to consider an Application for which the bond requirements of Section 14.1 have not been met or if Licensee has not delivered the Evidence of Insurance required under Section 18.5.

6.11 **Noncompliant and Unauthorized Attachments.** Licensors may refuse to consider any Application until Licensee has, in accordance with Article 12, brought any Noncompliant Attachment into compliance or removed it, or has removed any Unauthorized Attachment or made Application for it.

ARTICLE 7: **SPECIFICATIONS**

7.1 **Specifications.** Each Attachment must be placed, maintained and operated throughout the Term in accordance with the following, all of which are incorporated by reference into this Agreement (collectively, "Specifications"): (a) the requirements and specifications of the most current edition of the NESC and any formal interpretations of it, including a determination of the strength of the Licensors Facilities to ensure sufficiency for transverse and vertical loads ; (b) the most current rules and regulations of the Occupational Safety and Health Act ("OSHA"); (c) the most current standards of the American National Standards Institute; (d) the rules, regulations and codes of any applicable governing authority; (e) any Applicable Law; (f) generally accepted industry standards, including those standards applicable to wind movement and ice load on aerial facilities; (g) Licensors' written specifications that are set forth in this Agreement, an Application, drawing, text or other writing, including any requirements for the location of an Attachment; and (h) the grounding specifications as set forth on Exhibit B attached to this Agreement ("Grounding Specifications"). If a conflict exists between any of the Specifications, the more stringent Specification will apply and control.

7.2 No Licensee Attachment or Licensee Equipment shall conflict with the primary use or operation of Licensors' Poles by Licensors, and may not limit or prohibit Licensors' access to its attachments and thru-bolts, or by any third party with authorized attachments made to Licensors' Poles, including, but not limited to, Licensors' ability to provide a safe work environment for its employees and to provide a high quality communications service to its customers.

7.3 In the event Licensee fails to abate an issue of interference within five (5) business days of notice for same, Licensors shall have the right to turn the Licensee Attachment off or remove the Attachment(s) in accordance with Article 10.

ARTICLE 8: MODIFICATIONS

8.1 **Licensee-Requested Modification.** If Licensee desires a Modification, Licensee must adhere to the Application and Attachment process of Article 5 for each desired Modification. Each Modification requested by Licensee and approved by Licensor will be performed at Licensee's own expense and be done in a manner that does not interfere with work being performed by or service being provided by Licensor, Joint Owners or Existing Attachers. Notwithstanding anything else to the contrary in this Agreement, Licensee does not need to make an Application or obtain a modified License for the following types of matters, and such matters will not be within the definition of "Modification": (a) changes incident to routine or emergency maintenance, repair and replacement of Licensee Attachments, provided that any replacement involves replacing existing Licensee Equipment with the same or substantially similar Licensee Equipment; (b) replacement of Service Drops not attached to Poles; or (c) removal of Licensee's Attachments, provided the removal is performed in compliance with Applicable Law and Article 10. In addition to any reimbursement of Costs required under Article 5, Licensee will pay any additional Costs incurred by Licensor that are solely related to a Licensee-requested Modification.

8.2 **Licensor-Required Modification.**

8.2.1 Licensor may at any time and for any reason require Licensee to conduct a Modification. Except as otherwise required in this Agreement or by Applicable Law, Licensee will perform any Licensor-Required Modification for and on the account of Licensor within 60 days of its receipt of Licensor's notice regarding the Modification (including any required Transfer notice). Upon completion of the Modification, Licensee will notify Licensor of the same. Licensee will not be required to submit an Application under Article 5 for the Licensor-Required Modification.- If Licensee cannot conduct a Modification to meet any applicable timing requirements of Licensor, to the extent consistent with Applicable Law, Licensor may perform Licensee's Modification at Licensee's sole Cost. If the Modification required by Licensor can reasonably be expected to take more than 60 days to implement, then Licensor and Licensee will agree upon a reasonable extension of the initial 60 day time period.

8.2.2 When Licensor requires Licensee to conduct a Modification or Attachment removal due to, in Licensor's sole discretion, an immediate safety threat or emergency, Licensor will make a reasonable effort to notify Licensee of the need for an emergency Modification or Attachment removal so that Licensee can complete the required work. Such notification may be given orally by Licensor to Licensee's Point of Contact. If the safety threat or emergency arose because of Licensee's actions or Attachment, Licensee will conduct the Modification or Attachment removal at its sole Cost. If Licensor's reasonable efforts to give Licensee notice are not successful, or if Licensee, after receipt of such notice, does not immediately dispatch personnel and conduct the Modification or Attachment removal, then Licensor may conduct the Modification or Attachment removal itself and will, within a reasonable period of time after completion, give Licensee notice of the Modification or Attachment removal and Licensee will reimburse Licensor for the Cost of the Modification or Attachment removal within 45 days of the invoice date for an invoice from Licensor for the Cost. Except as otherwise provided above, Licensor will conduct the Modification or Attachment removal at its own Cost.

ARTICLE 9: PROPERTY SUBJECT TO FORFEITURE

9.1 **Forfeiture.** If a License is granted and subsequently Licensor, in Licensor's sole discretion, believes that the Attachment made under that License could result in or actually results in a forfeiture of Licensor's rights to occupy the property on which Licensor Facilities are located, Licensor may revoke the

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License for the relevant Attachment. Licensor will send notice of revocation to Licensee and upon receipt of notice, Licensee will immediately remove its Attachment at its own cost and expense. If the Attachment is not immediately removed, Licensor may remove the Attachment without liability to Licensee. In that case, Licensee will reimburse Licensor for the removal Cost within 45 days of the invoice date for an invoice from Licensor for the Cost. Notwithstanding the foregoing, Licensee has 15 days to provide evidence of a legal challenge and to the extent Licensee is challenging the revocation and is legally entitled to maintain its Attachments during such challenge by order of the court before which Licensee's challenge is pending, Licensee shall not be forced to remove its Attachment unless Licensee's challenge is ultimately unsuccessful. In any event, Licensee will indemnify, defend and hold each Licensor Indemnitee harmless from and against any Damages arising from or related to Licensee's actions or failure to act under this Section 9.1. Any such legal action brought pursuant to this Section 9.1 shall be strictly limited in scope to a determination of the reasonableness of Licensor's belief or determination that the Attachment made under the License could result in or actually results in a forfeiture of Licensor's rights to occupy the property on which Licensor Facilities are located.

ARTICLE 10: REMOVAL OF ATTACHMENTS

10.1 **Removal**. In addition to and subject to other provisions in this Agreement requiring Licensee to remove Attachments, Licensee will, unless notified otherwise by Licensor, remove Attachments at its own expense within 60 days of: (a) Licensee's receipt from Licensor of any allowed notice to remove the Attachments; (b) the date the License covering the Attachment is revoked; or (c) the date this Agreement expires or terminates.

10.2 **Removal Notice**. When Licensee desires to remove an Attachment, be it permanently or as part of a Modification, or if Licensee is required under this Agreement to remove an Attachment, Licensee must provide ten days advance notice to Licensor of when the removal is to occur using the form attached to this Agreement as Exhibit A. If this Agreement requires immediate removal of Attachments, Licensee may give oral notification to Licensor's Point of Contact of when the removal will occur as far in advance of the removal as is reasonably possible. Licensee must give notice to Licensor that an Attachment has been removed using the form attached to this Agreement as Exhibit A. Licensee's obligations under this Agreement to remove Attachments will survive the expiration or termination of this Agreement and any License revocation.

10.3 **Failure to Remove**. If Licensee fails to remove an Attachment as required under this Agreement and such failure continues for a period of more than ten days following Licensee's receipt of written notice from Licensor, Licensor may remove and dispose of the Attachment without any liability on Licensor's part for damage to Attachments or the real or personal property of Licensee or any other person, or for any interruption of Licensee's services; provided, however, Licensor will be liable for any physical injuries to persons (other than employees of either party or of a contractor or subcontractor if covered under Section 18.5) to the extent such injuries are caused by its negligence or intentional misconduct in removing an Attachment. Licensee will reimburse Licensor for Licensor's Cost to remove and dispose of the Attachments and to repair any damage to any Licensor Facility caused by such removal within 45 days of the invoice date for an invoice from Licensor for the Cost. Any Attachment which is not timely removed as and when required by this Agreement will be deemed conclusively to have been abandoned and may be appropriated, sold, stored, destroyed or otherwise disposed of by Licensor without notice to Licensee or any other person and without obligation to account for it. Licensee's obligation to observe and perform this covenant will survive the expiration or other termination of this Agreement.

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10.4 **No Adjustment.** Licensee is not entitled to any abatement, adjustment, pro-ration, apportionment or refund, in whole or in part, of Annual License Fees or other payments made to Licensor under this Agreement for Attachment removals after payment for the then current calendar year has been made.

10.5 **Reattachment.** When an Attachment is removed, Licensee must adhere to the Application and Attachment process of Article 5 for any desired reattachment or new Attachment to the same Licensor Facility.

10.6 **Indemnification.** Licensee will indemnify, hold harmless and defend each Licensor Indemnitee from and against any and all Damages for a claim by a third party against a Licensor Indemnitee arising from or related to any removal of or failure to remove Attachments except to the extent such Damages are caused by the negligence or intentional misconduct of Licensor. Third party claims for Damages arising from interruptions in services provided by Licensee do not constitute claims caused by the negligence or intentional misconduct of Licensor and will be included in the foregoing indemnification of Licensor by Licensee.

10.7 **Return of Licensee Equipment.** If Licensor removes Licensee Equipment from Licensor Facilities under this Agreement, Licensor will return the Licensee Equipment to Licensee only upon Licensee's payment of the Cost of removal, storage and delivery, and all other amounts due and owing to Licensor under this Agreement. This paragraph shall not apply to any Attachments that are deemed to have been abandoned and which have been disposed of pursuant to Section 10.3.

ARTICLE 11: POLE ABANDONMENT AND PURCHASE

11.1 **Pole Abandonment and Purchase.** If Licensor intends to abandon a Pole on which Licensee has an Attachment and for which Licensee is the sole remaining user, Licensor will give notice to Licensee of its intention at least 60 days prior to the date it intends to abandon the Pole using the form attached to this Agreement as Exhibit C ("Abandonment Notice"). Licensee may elect to purchase the Pole in the amount set forth ("Purchase Price") in the Bill of Sale portion ("Bill of Sale") of the Abandonment Notice. If Licensee elects to purchase the Pole, Licensee must sign and date the Abandonment Notice where appropriate, including the Bill of Sale, and deliver it and payment of the Purchase Price to Licensor within ten days of Licensee's receipt of the Abandonment Notice. Ownership of the Pole will transfer from Licensor to Licensee upon the terms and conditions as set forth in the Bill of Sale. For purposes of this paragraph, the definitions of "Pole" does not include poles for which Licensor has no legal right or authority to convey ownership or a continued right of occupancy to others.

11.2 **No Purchase.** If Licensee does not elect to purchase the Pole, any License previously issued for Attachments to the relevant Pole will automatically revoke upon the expiration of the 60 day period set forth in Section 11.1, and Licensee will then immediately remove its Attachments from the relevant Pole in accordance with Article 10.

ARTICLE 12: UNAUTHORIZED AND NONCOMPLIANT ATTACHMENTS

12.1 **Unauthorized Attachment Application and Removal.** If Licensor discovers an Unauthorized Attachment, Licensor shall give notice of the Unauthorized Attachment to Licensee. Licensee will have 15 days from receipt of the notice to make an Application for the Unauthorized Attachment unless

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Licensor and Licensee mutually agreed in writing to a different timeframe. If no Application is received by Licensor within the 15 day time period or such other time period that is mutually agreed upon, Licensee must immediately remove its Unauthorized Attachment in accordance with Article 10.

12.2 **Unauthorized Attachment Fee.** In addition to any other rights and remedies to which Licensor may be entitled at law, in equity or under this Agreement for an Unauthorized Attachment, Licensor may charge Licensee (a) an unauthorized attachment fee of \$500 per Pole for Attachments made without a pole attachment agreement; and, including Attachments made prior to the Effective Date of this Agreement, except as prohibited by Applicable Law; or (b) if Licensee is a party to a valid pole attachment agreement which was entered into prior to the date such Attachments were made, an unauthorized attachment fee of five times the current Annual License Fee per Attachment if the violation is self-reported or discovered by Licensor: (i) in the ordinary course of business, including during a pole inspection or other work or (ii) through a joint Audit where Licensee had a reasonable opportunity to participate (a fee charged under clause (a) or clause (b) being an “Unauthorized Attachment Fee”). In addition to the Unauthorized Attachment Fee under clause (b), Licensor will be entitled to \$100 per Unauthorized Attachment if the violation is found by Licensor in an Audit in which the Licensee declined to participate provided that Licensee was given an opportunity to participate. All fees owed by Licensee under this Section 12.2 are due and payable in arrears and may be modified by Applicable Law.

12.3 **Noncompliant Attachment.** In addition to any other rights and remedies to which Licensor may be entitled at law, in equity or under this Agreement for a Noncompliant Attachment, if Licensor discovers a Noncompliant Attachment and Licensor determines in its sole but reasonable discretion that such noncompliance is caused by Licensee, Licensor shall give notice of the Noncompliant Attachment to Licensee. Such notice must set forth in detail the specific violations of any Specifications. Licensee must, at its own expense, either: (a) submit plans of correction within 60 days of receipt of notification of a Noncompliant Attachment or bring the Noncompliant Attachment into compliance and provide notice of the correction to the Licensor within 180 days of Licensee’s receipt of the Noncompliant Attachment notice; or (b) remove the Noncompliant Attachment in accordance with Article 10. Licensee’s failure to do either will be deemed an immediate revocation of any License granted for the Noncompliant Attachment and subject to removal in accordance with Article 10 or at Licensor’s option be deemed an Unauthorized Attachment, in accordance with Section 12.2.

12.4 **Fees Due and Payable.** All fees and charges Licensee owes to Licensor under this Article remain due and payable regardless of whether the Unauthorized Attachment subsequently receives a License or is removed or the Noncompliant Attachment subsequently is cured or removed, and regardless of whether Licensor exercises any other right or remedy provided in this Agreement with respect to such Unauthorized Attachment or Noncompliant Attachment.

12.5 **No Effect of Delay or Failure of Notice.** Licensor’s delay in giving or failing to give notice of an Unauthorized Attachment or a Noncompliant Attachment neither constitutes Licensor’s acceptance of the Unauthorized Attachment or the Noncompliant Attachment, nor constitutes Licensor’s waiver of any rights relative to the Unauthorized Attachment or the Noncompliant Attachment.

12.6 **No Retroactive Effect.** If a License is subsequently issued for an Unauthorized Attachment or a Noncompliant Attachment, the License will not operate retroactively or constitute a waiver of any of Licensor’s rights relative to the Unauthorized Attachment or the Noncompliant Attachment. Licensee will be subject to all liabilities, obligations and responsibilities of this Agreement regarding an Unauthorized Attachment or a Noncompliant Attachment from their inception.

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ARTICLE 13: ANNUAL LICENSE FEE

13.1 **Annual License Fee.** Licensee will pay Licensor an Annual License Fee of \$ [REDACTED] per Licensor Pole upon which Licensee has at least one Attachment and/or approved Application.

13.2 **Payment.**

13.2.1 Licensee's obligation to pay an Annual License Fee will commence upon the date the Application for the Attachment subject to an Annual License Fee is approved ("Fee Commencement Date"). Subject to Sections 13.2.2 and 13.2.3, Annual License Fees are payable by Licensee annually in advance without any set-off, deduction, pro-ratoning, or apportionment. Licensor will invoice Licensee for Annual License Fees in January of each calendar year during the Term, and Licensee will pay the invoice within 45 days of the invoice date.

13.2.2 Subject to Section 13.2.3, an Attachment approved at any time during a calendar year will be subject to the Annual License Fee for that entire calendar year and the Annual License Fee applicable to the calendar year in which the Attachment is approved will initially be invoiced on the annual January invoice for the succeeding year. This amount is due and payable in arrears and is in addition to the Annual License Fee described in Section 13.2.1 that is paid in advance for the subsequent year.

As an example of how invoicing would work under Sections 13.2.1 and 13.2.2, assume the Fee Commencement Date for a particular Attachment is August 1, 2017. The first Annual License Fee for that Attachment would appear in the January 2018 invoice. That invoice would reflect an Annual License Fee for that Attachment owed in arrears for the year 2017, as well as the Annual License Fee for that Attachment payable in advance for the year 2018. Subsequently, the Annual License Fee for that Attachment would be payable in advance each January at the then current Annual License Fee.

13.2.3 An Attachment approved after January 1 of the final calendar year of the Term will be subject to the Annual License Fee for that entire calendar year, and the Annual License Fee for that Attachment will be invoiced within 90 days of the day the Term expires or terminates. This amount is due and payable in arrears. Licensee's obligation to pay this amount will survive the expiration or termination of this Agreement.

13.3 **Fee Adjustment.** Recurring and nonrecurring charges for Attachments are in accordance with Section 224 of the Act and FCC orders, rules, and regulations promulgated under the Act. Licensor may adjust the Annual License Fee once per year by re-calculating recurring rates for pole attachments using the FCC rules and formulae found at 47 C.F.R. § 1, Subpart J and A.R.M.I.S data filed with the FCC. Licensor will implement and bill the re-calculated rates without amending this Agreement. The adjusted Annual License Fee will become effective as of the next invoicing cycle. If Licensee objects to the fee adjustment and the parties cannot resolve the dispute between them, either party may seek resolution of such rate dispute at the FCC.

13.4 **Invoice Dispute.** Notwithstanding any other dispute resolution procedures that may be set forth in this Agreement, Licensee may dispute any amount for which it was invoiced by Licensor if: (a) Licensee has a reasonable good faith basis for the dispute; (b) Licensee has first paid the entire amount indicated in the relevant invoice, including the disputed amount, in full by the payment due date; and (c) prior to the payment due date, Licensee has given notice to Licensor at its Billing Address describing in detail the dispute and its good faith basis for the dispute. If the preceding conditions are met, the parties will attempt to resolve the invoice dispute within 60 days of the payment due date. In accordance with 47 C.F.R. § 1.1404(k), within the 60 day period, the parties shall hold executive level discussions. The executives must have authority to make binding decisions on behalf of the respective party. If, after the executive level

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discussions, the parties are unable to resolve the invoice dispute within such 60 day time period, a party may resort to any other right or remedy to which it is entitled under this Agreement, at law or in equity.

13.5 **Inaccuracies.** If Licensor discovers an inaccuracy or mistake in the factors used to calculate charges owed by Licensee to Licensor under this Agreement, including Annual License Fees, and that due to this inaccuracy or mistake Licensee owes additional money to Licensor, then whether or not an invoice was paid that purportedly included or should have included these additional charges, Licensee will owe these additional charges to Licensor. Licensor may invoice Licensee for the additional charges, and the additional charges are due and payable in arrears. The additional charges can encompass amounts owed as far back as the Effective Date of this Agreement as well as amounts owed under Section 12.2 for Unauthorized Attachments made prior to the Effective Date. Licensee will pay the additional charges within 30 days of the invoice date.

13.6 **Procedures.** Licensor may periodically revise its invoicing and collection procedures. Licensor will provide reasonable advance notice to Licensee of the revisions.

13.7 **Inclusion in Annual Invoice.** Licensor may include in the Annual License Fees annual invoice any other charges then due and payable to Licensor from Licensee under this Agreement.

ARTICLE 14: POLE ATTACHMENT BOND

14.1 **Pole Attachment Bond.** Licensee will provide to Licensor a bond guaranteeing Licensee's performance of its obligations under this Agreement in the form attached to this Agreement as Exhibit D ("Pole Attachment Bond"). The amount of the Pole Attachment Bond will be based on the schedule attached to this Agreement as Exhibit D-1 ("Pole Bond Schedule"). The Pole Attachment Bond must be provided upon the Effective Date of this Agreement. Licensor may, in its sole discretion, change the Pole Attachment Bond requirements from time to time upon at least 30 days prior notice to Licensee. The amount of the Pole Attachment Bond will not operate as a limitation upon or satisfaction of any of Licensee's other obligations under this Agreement.

ARTICLE 15: RECORDS AND AUDIT

15.1 **Licensee Service Area.** Licensee will identify the Licensee Service Area using Exhibit E, or other mutually agreeable method to convey the boundary of the Licensees Service Area, which will include a listing of exchanges served.

15.2 **Maintenance of Records.** Licensee must compile and maintain current and accurate records consisting of the number of Attachments, the type and size of Licensee Equipment attached, when each Attachment was made, the location of each Attachment and all Licensor-approved Applications. Licensee will, at its sole expense and within 14 days after receipt of a request from Licensor, deliver to Licensor complete, accurate, current and legible copies of all such records. Licensee's obligations under this Section 15.2 will survive for a period of 10 years from the expiration or termination of this Agreement.

15.3 **Audit.** Annually during the Term, Licensor may, in Licensor's sole discretion, conduct an Audit. Licensor may, but is not required to, give advance notice to Licensee of its intent to conduct an Audit. An Audit may include the following matters: (a) checking for Unauthorized Attachments and Noncompliant Attachments of Licensee (and, in Licensor's sole discretion, those of Existing Attachers); or (b) checking the number of Attachments, when an Attachment was made, the type and size of Licensee Equipment attached and the location of Attachments (and, in Licensor's sole discretion, those of Existing Attachers). Licensee will reimburse Licensor for one-half of Licensor's total Audit Cost if the Audit does

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not include any Existing Attachments or for one-third of Licensor's total Audit Cost if the Audit includes any Existing Attachments. However, if the Audit shows either that the actual number of Attachments exceeds the number of Licensor-approved Attachments by more than 1%, or that the actual number of Noncompliant Attachments exceeds the number of Licensor-approved Attachments by more than 1%, Licensee will pay for Licensor's entire total Audit Cost. Licensee will reimburse Licensor for its share of Licensor's total Audit Cost within 45 days of the invoice date for an Audit Cost invoice.

15.4 **Records Adjustment.** If Licensor determines as a result of an Audit that the actual number of Attachments is not the same as the number reflected in Licensor's then current records, Licensor will share those figures with Licensee, the parties' records will be revised to reflect the actual number of Attachments and the revised records will be used by the parties for determining any amounts owed pursuant to Article 12 and for future invoicing and other matters related to those records.

15.5 **Non-Periodic Inspections.** Licensor also will have the right at any time to conduct a Non-Periodic Inspection of Licensor Facilities or Licensee Equipment if Licensor has notice that one or more of Licensee's Attachments may be a Noncompliant Attachment or an Unauthorized Attachment. If the Non-Periodic Inspection shows any Noncompliant Attachments or Unauthorized Attachments, Licensee will reimburse Licensor for Licensor's total Non-Periodic Inspection Cost within 45 days of the invoice date for a Non-Periodic Inspection Cost invoice.

ARTICLE 16: TERM, TERMINATION AND SALE OR TRADE.

16.1 **Term.** This Agreement is effective on the Effective Date. The term of this Agreement will begin on the Effective Date and continue for a period of five (5) years from the Effective Date ("Initial Term") and will automatically renew for five (5) successive terms of five (5) years each (each a "Renewal Term"). Licensor or Licensee may terminate this Agreement at the end of the Initial Term or any Renewal Term by providing notice of termination at least six (6) months prior to the end of the Initial Term or relevant Renewal Term. The use of the word "Term" in this Agreement means the Initial Term as extended by any Renewal Term. Following the expiration or termination of the Agreement under this Section 16.1, if Licensee desires to maintain its Attachments on some or all of the Poles, the parties will negotiate in good faith to enter into a new agreement and the terms of this Agreement will continue in effect on a day to day basis until (i) the new agreement is signed or (ii) 18 months following the date of expiration or termination of this Agreement or other mutually agreed upon time period, whichever first occurs (the "Grace Period"). Any Attachments that are made during the Grace Period would not be Unauthorized Attachments or be subject to Unauthorized Attachment Fees so long as Licensee submits, and Licensor approves, Applications for such Attachments.

16.2 **Licensor Facilities Sale or Trade.** If Licensor sells or trades Licensor Facilities upon which Licensee has Attachments, this Agreement may be assigned to the purchaser or transferee, in whole or in part as to those particular Licensor Facilities and Licensee will look to the new owner of the Licensor Facilities for access to those facilities.

ARTICLE 17: DEFAULT AND REMEDIES

17.1 **Licensee Default.** In addition to any Licensee Defaults specifically provided for elsewhere in this Agreement, and subject to any requirements for those same Licensee Defaults, a "Licensee Default" occurs if: (a) Licensee fails to pay a monetary obligation contained in this Agreement when due and payable, and the delinquency continues for a period of 30 days after Licensee's receipt of notice of delinquency from Licensor; (b) Licensee fails to perform any non-monetary obligation contained in this Agreement, and the non-performance continues for a period of 30 days after Licensee's receipt of notice of

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non-performance from Licensor, or when the non-performance cannot reasonably be cured within the 30 day period, if Licensee, within that 30 day period, has not commenced the cure of the non-performance or thereafter fails to continuously and diligently prosecute or complete the cure of the non-performance. Licensee will not have more than 60 days from Licensee's receipt of notice to cure non-performance of a non-monetary obligation, despite its due diligence; (c) any representation or warranty of Licensee in this Agreement proves untrue or incorrect; or (d) Licensee becomes insolvent, or bankruptcy or receivership proceedings are initiated by or against Licensee.

17.2 **Licensor Remedies.** If a Licensee Default occurs, Licensor will have the immediate right, in addition to any other rights and remedies to which it is entitled under this Agreement, at law or in equity, including the right to seek specific performance, to terminate this Agreement. In the event of termination, Licensee must remove all of its Attachments in accordance with Article 10. Licensor's termination of this Agreement does not release Licensee from any liability which exists at the time of termination or which may accrue after termination. If the Licensee Default falls under Section 17.1(a), Licensor may assess as a late fee interest at the rate of 1.5% per month, compounded annually, provided that any interest assessed by Licensor shall be reduced, if necessary, so that it does not exceed the highest interest rate allowed by Applicable Law against any outstanding amount from the due date of that amount until the date of payment.

17.3 **Licensor Default.** A "Licensor Default" occurs if: (a) Licensor fails to pay an undisputed monetary obligation contained in this Agreement when due and payable, and the delinquency continues for a period of 30 days after Licensor's receipt of notice of delinquency from Licensee; and (b) Licensor fails to perform a non-monetary obligation contained in this Agreement, and the non-performance continues for a period of 30 days after Licensor's receipt of notice of the non-performance from Licensee, or where the default cannot reasonably be cured within the 30-day period, if Licensor, within that 30 day period, has not commenced the cure of the non-performance and thereafter fails or neglects to continuously and diligently prosecute or complete the cure of the non-performance. Licensor will not have more than 60 days from Licensor's receipt of written notice to cure non-performance of a non-monetary obligation, despite its due diligence.

17.4 **Licensee Remedies.** If a Licensor Default occurs, Licensee may resort to any rights and remedies to which it is entitled under this Agreement, at law or in equity, including the right to seek specific performance

17.5 **Remedies Cumulative.** All remedies described in this Agreement are cumulative and are not exclusive of other remedies to which a party may be entitled under this Agreement, at law or in equity. Use of one or more remedies does not bar the use of any other remedy.

ARTICLE 18: RISK OF LOSS, INDEMNITY AND INSURANCE

18.1 **Risk of Loss.** Licensee assumes all risk and responsibility for all loss and expense whatsoever incurred by Licensor, Joint Owners or Existing Attachers resulting from damages to Licensor Facilities or the associated equipment of Licensor, Joint Owners or Existing Attachers, or the premises surrounding any Licensor Facilities, caused by Licensee's use of Licensor Facilities or otherwise arising in connection with the exercise of the rights of Licensee under this Agreement. Licensee must immediately report to Licensor the occurrence of any damage or loss.

18.2 **Indemnification.**

18.2.1 Each party will indemnify, defend and hold harmless the other party, its agents, officers, employees and assigns, from any and all losses, damages, costs, expenses (including, without limitation,

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reasonable attorneys' fees), statutory fines or penalties, actions, damage to property, or other damage to the extent caused by any act or omission by the indemnifying party's employees, agents, or contractors (including, without limitation, the installation, construction, operation or maintenance of each party's facilities). Licensee will further indemnify Licensor from taxes and fees that may be levied by municipalities or other governmental entities and related to or arising from the presence of Licensee's Attachments on Licensor's Poles, including but not limited to taxes or fees related to use of public rights-of-way, in association with this Agreement.

The indemnification, hold harmless and defense obligations set forth below in this Section 18.2: (a) are in addition to any other such obligations set forth elsewhere in this Agreement; and (b) will survive the expiration or termination of this Agreement, or the revocation of any applicable License.

18.2.2 Any and all liability for injury to or death of any person (including employees of the parties hereto) and for loss or destruction of or damage to any property (including property of the parties hereto) arising out of or in any way connected with the installation, maintenance, use, relocation, dismantling, abandonment, or removal of any Pole or the Attachments hereto, or the failure of either party hereto to observe and perform any obligation hereunder shall be borne by the parties hereto as follows:

- a. Notwithstanding any provision to the contrary contained in this Agreement, if an employee of either party to this Agreement is injured or killed due, in whole or in any part, to the fault of the employer or the injured or deceased employee, or both, the party that is the employer will be solely liable for any and all Damages arising out of, or in any way relating to, such injury or death.
- b. Notwithstanding any provision to the contrary contained in the Agreement, if an employee of a contractor of either party to this Agreement is injured or killed due, in whole or in any part, to the fault of the contractor or the injured or deceased employee of the contractor, or both, the party that engaged the contractor will be solely liable for any and all Damages resulting from any claims arising out of, or in any way relating to, such injury or death. Further, the party that engaged the contractor will indemnify the other party for 100% of the Damages resulting from any claim arising out of, or in any way relating to, such injury or death which is due, in whole or in any part, to the fault of the contractor or the injured or deceased employee, or both.
- c. Notwithstanding any provision to the contrary contained in the Agreement, if an employee of a subcontractor of either party to this Agreement is injured or killed due, in whole or in any part, to the fault of the subcontractor or the injured or deceased employee of the subcontractor, or both, the party on behalf of which the subcontractor was engaged will be solely liable for any and all Damages resulting from any claims arising out of, or in any way relating to, such injury or death. Further, the party on behalf of which the subcontractor was engaged will indemnify the other party for 100% of the Damages resulting from any claim arising out of, or in any way relating to, such injury or death which is due, in whole or in any part, to the fault of the subcontractor or the injured or deceased employee, or both.
- d. Subject to 18.2.2a, 18.2.2b and 18.2.2c, above, any such liability caused by the sole negligence of one of the parties hereto, or caused solely by the failure of one of the parties hereto to observe and perform any obligation hereunder, shall be borne by such party; and such party shall defend, indemnify and hold harmless the other party hereto against such liability.

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- e. Subject to 18.2.2a through 18.2.2d, above, any such liability caused by the joint or concurrent negligence of both parties hereto or by the joint or concurrent failure of both parties hereto to observe or perform any obligation hereunder, shall be borne equally by such parties to the extent their negligence or failure contributed to any Damages incurred, except that each such party shall assume all risk of loss or destruction or damage to its property.
- f. Any other such liability shall be borne equally by the parties involved in the event or occurrence creating such liability, to the extent their respective fault contributed to the liability, except that each such party shall assume all risk of loss or destruction or damage to its property.

18.2.3 In the adjustment of any such claim of liability, the liability assumed by such parties under paragraph 18.2.2a through 18.2.2f of this Article shall include, in addition to the amounts paid to the claimant, all expenses incurred by such parties in connection therewith, which shall comprise costs, attorney's fees, disbursements and other proper charges and expenditures.

18.2.4 If either party hereto, as the result of any such claim of liability, should be compelled to pay damages in consequence thereof to a greater extent than specified in this Article, such party shall have, to the extent of the excess paid by it, the right of reimbursement from the other party.

18.3 **Claims Notification.** When a party becomes aware of a claim, demand or suit that is subject to the provisions of Section 18.2, or any other claim, demand or suit related to indemnity, duty to defend or hold harmless provisions stated elsewhere in this Agreement (each a "Claim"), the party to be indemnified, defended or held harmless ("Indemnified Party") must promptly give notice of the Claim to the other party ("Indemnifying Party"), accompanied by a copy of any written documentation regarding the matter, including copies of accident reports, petitions, summons, complaints, demands and statements. The Indemnifying Party will defend such Claim with its own counsel and at its own expense, and has the right to control the settlement or defense, except that the Indemnifying Party will not enter into any settlement that imposes any liability or obligation on the Indemnified Party without the Indemnified Party's prior consent, which consent will not be unreasonably withheld, conditioned or delayed. The parties will reasonably cooperate in the settlement or defense of any such Claim, and to the extent legally possible, give each other full access to all relevant information. The Indemnified Party's own counsel may, at the Indemnified Party's own cost and expense, participate with the Indemnifying Party and its counsel in the defense or settlement of any such Claim.

18.4 **Damages Limitation.** Notwithstanding any provision to the contrary contained in this Agreement, neither party is liable to the other for any special, punitive or exemplary damages, or for indirect or consequential damages, such as damages for loss of anticipated profits or revenue or other economic loss, for any claim or cause of action arising out of or related to this Agreement, whether arising in contract, tort or otherwise, except those arising from any grossly negligent, willful or fraudulent act or omission.

18.5 **Licensee-Required Insurance Policies and Minimum Coverage Limits.**

18.5.1 Without limiting the liabilities or indemnification obligations of Licensee, Licensee will, at its own cost and expense, maintain during the Term of this Agreement, such insurance as required hereunder. The insurance coverage will be from a company, or companies, with an A.M. Best's rating of A-VII or better and authorized to do business in each state where Licensee will perform work under this Agreement. Licensee may obtain all insurance limits through any combination of primary and excess or

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umbrella liability insurance. Licensee will require its subcontractors to maintain proper insurance applicable to the type and scope of work to be performed under this Agreement.

- (a) Workers' Compensation insurance with statutory limits applicable in each state where the work is to be performed including Employer's Liability or "Stop Gap" insurance with limits not less than \$1,000,000 each accident.
- (b) Commercial General Liability with limits not less than \$1,000,000 per occurrence and \$2,000,000 aggregate covering personal injury, bodily injury, death, property damage, products/completed operations, and contractual liability.
- (c) Commercial Automobile Liability with limits not less than \$1,000,000 combined single limit per occurrence covering bodily injury and property damage for all owned, non-owned and hired vehicles used in connection with the performance of this Agreement.
- (d) Excess/Umbrella Liability Insurance with limits of not less than \$5,000,000 each occurrence.

18.5.2 Licensee's compliance with its obligations under this Article 18 will not relieve Licensor of any liability under this Agreement or in any way modify Licensee's obligations under this Agreement to indemnify, defend and hold Licensor harmless.

18.5.3 The Licensor, its affiliates, subsidiaries, and parent, as well as the officers, directors, employees and agents of all such entities will be included as additional insureds on the policies described in subsections (b), (c) and (d) above. The coverage described in subsection (b) will be primary and not contributory to insurance which may be maintained by Licensor, subject to the indemnification provisions of this Agreement. Prior to commencement of work under this Agreement and upon any renewal of insurance during the Term of this Agreement, Licensee will make available to Licensor evidence of the insurance required herein.

18.5.4 Licensor may, at its discretion and upon prior notice to Licensee, require at any time during the Term additional coverage and insurance limits greater than those required in Section 18.5.1. Licensee's liability to Licensor is not limited to the insurance coverage certified or required to be carried under Section 18.5.1

ARTICLE 19: DISCLAIMER OF WARRANTIES

19.1 **Disclaimer of Warranties. LICENSEE ACKNOWLEDGES THAT LICENSOR (OR ANYONE ON LICENSOR'S BEHALF) HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS, TO, CONCERNING OR WITH RESPECT TO: (a) THE VALUE, NATURE, QUALITY, PHYSICAL OR OTHER CONDITION OF LICENSOR FACILITIES; (b) THE SUITABILITY OF LICENSOR FACILITIES FOR ANY ACTIVITIES AND USES WHICH LICENSEE MAY OR PLANS TO CONDUCT ON LICENSOR FACILITIES; (c) THE COMPLIANCE OF OR BY LICENSOR FACILITIES OR THEIR OPERATION WITH ANY LAWS, RULES, ORDINANCES, APPLICABLE LAW, ORDERS, DECISIONS OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY; (d) THE HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF LICENSOR FACILITIES; (e) THE MANNER OR QUALITY OF THE CONSTRUCTION OR**

MATERIALS INCORPORATED INTO LICENSOR FACILITIES; (f) THE MANNER, QUALITY, STATE OF REPAIR OR LACK OF REPAIR OF LICENSOR FACILITIES; (g) THE SAFETY OF LICENSOR FACILITIES OR THE PREMISES SURROUNDING LICENSOR FACILITIES; OR (h) ANY OTHER MATTER WITH RESPECT TO LICENSOR FACILITIES AND, SPECIFICALLY, THAT LICENSOR HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS REGARDING COMPLIANCE WITH ANY ENVIRONMENTAL PROTECTION, POLLUTION, LAND USE, ZONING, DEVELOPMENT OR IMPACT LAWS, RULES, REGULATIONS, ORDERS, DECISIONS OR REQUIREMENTS.

ARTICLE 20: MISCELLANEOUS

20.1 **Assignment and Sublicense.** Licensee may assign, sublicense or transfer its rights under this Agreement, in whole or in part, only with the prior consent of Licensor, which consent will be at Licensor's sole discretion, but will not be unreasonably withheld, delayed or denied.

20.2 **Applicable Law, Forum Selection, Waiver of Jury Trial and Dispute Resolution.**

20.2.1 This Agreement is governed by and construed in accordance with the Act and the FCC's Rules and Regulations promulgated under the Act, and where applicable, in accordance with the law of the State of [REDACTED] (without regard to its conflict of laws principles) and all other applicable laws, ordinances, requirements, codes, orders, decisions, rules and regulations of applicable state, municipal, county, federal or other governmental authorities (collectively, "Applicable Law"). In the event of an amendment to any Applicable Law, including any effective legislative or regulatory action, or judicial order, rule, regulation, award or other legal action purporting to apply the provisions of any Applicable Law to the parties, or in which the FCC or, if applicable, the appropriate state public service commission, public utilities commission, administrative body or court, makes a determination during the Term that revises, modifies or reverses Applicable Law that affects this Agreement, Licensor may, by providing notice to Licensee, require that the affected provisions of this Agreement be renegotiated in good faith. This Agreement will then be amended accordingly to reflect the changes to Applicable Law. Notwithstanding the foregoing in this Section 20.2.1, if the change to Applicable Law requires an adjustment to the Annual License Fee, the adjustment will be subject to the process for fee adjustments set forth in Section 13.3.

20.2.2 Notwithstanding anything else to the contrary set forth in this Agreement, any court proceeding brought by either party against the other under this Agreement or otherwise must be brought, as appropriate, in the United States District Court located in Colorado, or in the absence of federal jurisdiction, in a state court of competent jurisdiction located in the Denver, CO metropolitan area. Each party agrees to personal jurisdiction in either court.

20.3 **No Third Party Beneficiaries.** This Agreement is for the benefit of the parties and not for any other person or entity, including Joint Owners or Existing Attachers. This Agreement does not provide any other person or entity with any obligation, remedy, claim, liability, reimbursement or right of action.

20.4 **Waiver.** No term or condition of this Agreement will be deemed to have been waived by a party unless the waiver is made in writing and is signed by the party against whom the waiver is claimed. No waiver of default or breach of this Agreement or consent to the default or breach will be deemed to have been waived or consented to unless the waiver or consent is made in writing and signed by the party against whom the waiver or consent is claimed. The waiver of or consent to a breach or default of this Agreement will not be deemed to be a waiver of or consent to any other breach or default of this Agreement, or to or any subsequent breach or default of the same term, or condition of this Agreement. No course of dealing or

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conduct or failure of a party to strictly enforce any term, right or condition of this Agreement constitutes a general waiver or relinquishment of the term, right or condition.

20.5 **Survival of Obligations.** The parties' respective indemnification, hold harmless and defense obligations set forth in this Agreement will survive the expiration or termination of this Agreement or the revocation of any applicable License, whether or not it was specifically stated elsewhere in this Agreement that these obligations would survive, except to the extent of any applicable statutes of limitations.

20.6 **Force Majeure.** If either party is delayed from performing an obligation because of strikes, lockouts, labor troubles, the inability to procure materials, power failure, restrictive governmental laws or regulations, riots, insurrection, storms, hurricanes, earthquakes or other natural disasters, war or other reason which is not the fault of or is beyond the reasonable control of the party delayed, then performance of the obligation will be excused for the period of the delay. However, the foregoing in this Section 20.6 will neither relieve Licensee from the obligation to make monetary payments to Licensor nor apply to delays resulting from the inability of Licensee to obtain financing, or to proceed with its obligations under this Agreement because of a lack of funds.

20.7 **Tree Trimming and Clearing.** Unless otherwise governed by Applicable Law, Licensor will, in its sole discretion, determine from time to time if, solely by reason of Licensee's Attachments, tree trimming or other clearing in any Right-of-Way or land is necessary, including upon initial Attachment. Provided the grantor of the Right-of-Way or owner of the land gives permission, tree trimming and clearing will be performed by either the Licensee, under Licensor's direction, or a contractor hired by Licensor. If tree trimming and clearing is performed by Licensor's contractor, Licensee will reimburse Licensor for the Cost of trimming and clearing within 45 days of the invoice date for an invoice from Licensor for the Cost. Tree trimming and clearing needed, in Licensor's sole discretion, solely as a result of adverse weather conditions such as wind, snow or ice storms may be performed by Licensor or its agents, and Licensee will pay, along with any other allowed users of the Licensor Facility, its pro rata share of the Cost for the trimming and clearing within 45 days of the invoice date for an invoice for the Cost. Otherwise, Licensee will be responsible for trimming and clearing that is a result of such adverse weather conditions at its sole expense.

20.8 **Taxes.** Any federal, state or local excise, license, sales, use or other taxes or tax-like charges (excluding any taxes levied on income) resulting from the performance of this Agreement (collectively, "Taxes") are borne by the party upon which Applicable Law imposes the payment obligation, even if the obligation to collect and remit the Taxes is placed upon the other party. Taxes must be shown as separate items on applicable invoices. The party obligated to collect and remit Taxes will do so unless the other party provides evidence of exemption. The party obligated to pay Taxes may contest the Taxes in good faith at its own expense, and is entitled to the benefit of any refund or recovery. This provision does not permit a party to allow a lien to be placed on an asset of the other party by reason of a tax contest. The party obligated to collect and remit Taxes will cooperate in any tax contest by the other party by, to the extent legally possible, providing records or other information reasonably necessary to pursue the contest.

20.9 **Amendment and Modification.** No provision of this Agreement is deemed amended or modified unless amended or modified in a writing dated and signed by both parties.

20.10 **Severability.** If any part of this Agreement becomes or is held to be invalid for any reason, the determination will affect only the invalid portion of this Agreement. In all other respects this Agreement will stand and remain in full force and effect as if the invalid provision had not been a part of this Agreement.

EXHIBIT A

20.11 **Headings Not Controlling.** The headings and numbering of the Articles and Sections in this Agreement are for convenience only and do not define or limit any of the terms or affect the meaning or interpretation of this Agreement. Whenever herein the singular number is used, the same shall include the plural. Unless expressly provided otherwise, (i) use of the word “and” means both “and” and “or”, (ii) use of the word “including” does not exclude items not listed and (iii) use of the word “will” connotes a mandatory action.

20.12 **Entire Agreement.** This Agreement constitutes the parties’ entire agreement and understanding concerning its subject matter, and supersedes all prior oral or written agreements (including those written agreements listed on Exhibit F ("Prior Written Agreements") attached to this Agreement, representations, statements, negotiations, understandings, proposals and undertakings with respect to the subject matter of this Agreement. This Agreement consists of the body of this Agreement and the following exhibits, each of which is attached to and incorporated by reference into this Agreement:

Exhibit A – Notice of Proposed Work Form B

Exhibit B – Grounding Specifications

Exhibit C – Abandonment Notice

Exhibit D – Pole Attachment Bond

Exhibit E – Location of Licensee Service Area

Exhibit F - Prior Written Agreements

Licensor may update an exhibit from time to time during the Term, and will give Licensee 30 day’s prior notice of an update. Unless specified otherwise in an exhibit, capitalized terms used in an exhibit have the same meanings the capitalized terms have in the body of this Agreement.

20.13 **Confidentiality.** This Agreement and its substance, any information given to a party under this Agreement, any information generated as a result of a party exercising its rights under this Agreement and the substance, terms and conditions of this Agreement will not be disclosed by either party to any person or entity, except: (a) to a party’s legal counsel involved with this Agreement; (b) to those responsible for fulfilling a party’s respective obligations under this Agreement; (c) as disclosure may be required by Applicable Law; and (d) to a prospective purchaser of a party that has entered into a letter of intent or purchase agreement with the disclosing party regarding the purchase transaction, provided that such prospective purchaser first agrees in writing to observe the confidentiality provisions of this paragraph. The parties will not make any public announcement or statement concerning this Agreement or its substance, terms and conditions, unless the parties agree in writing on the form and substance of the public announcement or statement.

[Remainder of page intentionally left blank]

EXHIBIT A

20.14 **Counterparts, Facsimile and Electronic Mail Signatures.** This Agreement may be signed in several counterparts, each of which will be fully effective as an original and all of which together will constitute one and the same instrument. Signatures to this Agreement transmitted by facsimile or electronic mail will be deemed the equivalent of delivery of an original signature, provided that the party delivering its signature by facsimile or electronic mail promptly thereafter delivers this Agreement with the original signature to the other party.

“LICENSOR”

[**INSERT PROPER CENTURLINK ENTITY**]

By: _____
Name: _____
Title: _____
Date: _____

“LICENSEE”

[**INSERT PROPER LICENSEE ENTITY**]

By: _____
Name: _____
Title: _____
Date: _____

CTL CONTRACT: _____

[Remainder of page intentionally left blank]

EXHIBIT A



NOTICE FOR PROPOSED WORK FORM (FORM B)

Modification # _____
Notify Conversation # _____

Section One (To be completed by Licensee)

Application is hereby made for attachments to the following poles and anchors in accordance with the terms and conditions of the agreement. Licensee's space allocation is one foot. A copy of Licensee's franchise agreement or similar authority to erect and maintain the facilities is attached. NOTE: A Joint Use Engineering and Construction Form ("JUEC Form") is required for each Application. The Joint Use Manager will provide the JUEC Form to Licensee upon receipt of the Form B. The Application cannot be reviewed until the JUEC Form is received from Licensee. (Example of information needed JUEC Form following Form B)

Date of application: _____
Applicant name: _____

Classification Type: [] Power [] Attachment Type: []
[] Cable/Broadband [] Wireless
[] Telco [] Wireline
[] Other (specify): _____

Address: _____
City, State, Zip: _____
Contact Name: _____ Telephone Number: _____
Contact Email: _____

TYPE OF PROPOSED WORK:

New Attachment [] Overlash []
Modification [] Removal []
Completion [] Transfer []
Number of poles proposed: [] Anchors proposed: []

LOCATION: _____

PURPOSE: _____

By: _____ (Mail application to Licensor)
Previous Total: _____
Added This Request: _____
TOTAL: _____

Section Two (To be completed by Licensor and Licensee)

Estimated make Ready Work costs, in the amount of
\$ _____ are approved by Licensee:

By: _____
Title: _____
Date: _____
Licensee Work Order # _____
Licensor Make Ready Work Order # _____

Return Application to:
CenturyLink Joint Use Manager

Section Three (To be completed by Licensor)

Permission is hereby granted to attach to poles described in the above application, subject to the terms and conditions referred to or set forth in the agreement.

Licensor Affiliate Company: _____
By: _____ Title: _____
Date: _____

CONVERSATION:
CONTRACT:

EXHIBIT A



NOTICE FOR PROPOSED WORK FORM
(FORM B – LICENSOR REQUEST FOR MODIFICATION)

Application # _____
Notify Conversation # _____

Section One (To be completed by Licensor)

Notice is hereby given for modification / transfer of Licensee attachments to the following poles and anchors in accordance with the conditions of the agreement. Licensee's space allocation is one foot. Unless specified otherwise below, Licensee will complete all modifications / transfers within 60 days of receipt of this notice per the applicable Agreement. Licensee will be provided with JUEC appropriate.

Date of Notice: _____
Licensee name: _____

Classification Type: [] Power [] Attachment Type: []
[] Cable/Broadband [] Wireless
[] Telco [] Wireline
[] Other (specify): _____

Address: _____
City, State, Zip: _____
Contact Name: _____ Telephone Number: _____
Contact Email: _____

TYPE OF WORK REQUIRED:
Modification [] Overlash []
Unauthorized / Non-compliance [] Removal []
Completion [] Transfer []
Number of poles effected: _____ Anchors effected: _____

Previous Total: _____
Added This Request: _____
TOTAL: _____

By: _____ (Mail Notice to Licensee)

Section Two (To be completed by Licensor and Licensee)

Licensee acknowledges that if work is not completed as required, Licensor may complete the work and invoice Licensee for actual costs:

By: _____
Title: _____
Date: _____

Licensee Work Order # _____
Licensor Make Ready Work Order # _____

Return Application to:
CenturyLink Joint Use Manager

Section Three (To be completed by Licensor or Licensee)

The undersigned hereby acknowledges that modification to poles described in the above notice, has been completed, subject to the terms and conditions referred to or set forth in the agreement.

Company name: _____
By: _____ Title: _____
Date: _____

CONVERSATION:
CONTRACT:

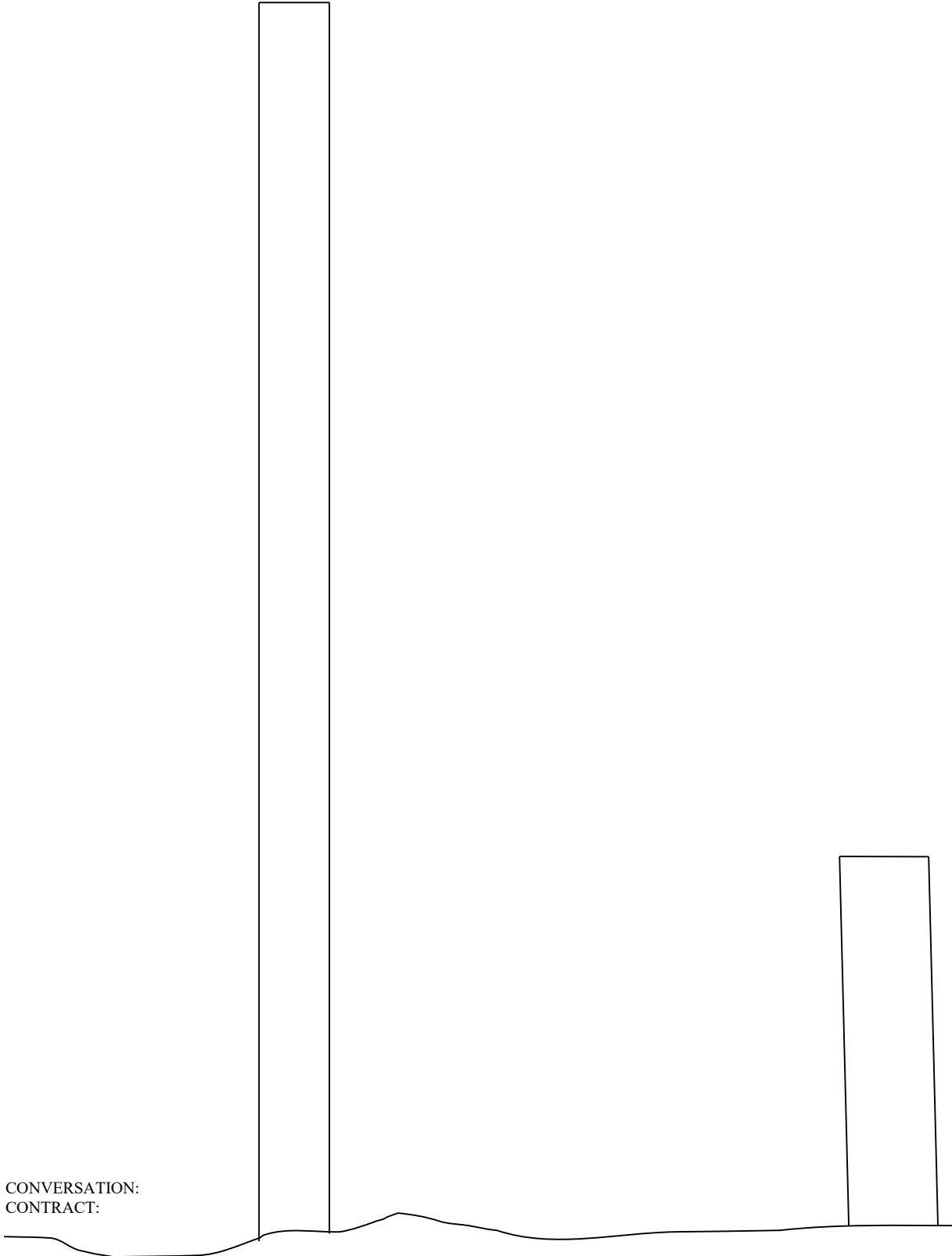
EXHIBIT A



NOTICE FOR PROPOSED WORK FORM
POLE DETAIL SHEET DIAGRAM

Application # _____
Notify Conversation # _____

Add all existing attachments; indicate proposed attachments and conduit risers.



CONVERSATION:
CONTRACT:

EXHIBIT A

EXHIBIT B

GROUNDING SPECIFICATIONS

1. BOND / GROUND WIRE INSTALLATION GUIDELINES

1.1. Routing

Installation of grounding and bonding wires must follow specific guidelines in order to provide and maintain low resistance, low impedance paths for electrical current to flow. Improper placement may cause surge currents to seek alternate ground sources and will not provide adequate electrical paths to properly protect technicians and or equipment from damage.

In addition to the various grounding and bonding applications outlined within this document, installations of wires in all situations must not contain:

- Sharp bends
 - Sweeping bends of 45 degrees or less recommended
- Splicing not recommended
 - Exothermically welded or other type permanent splices only
- Pass through metallic pipes
- All ground connections point towards earth

1.2. Connections

- CenturyLink approved grounding hardware for aerial / buried applications
 - Flip-Tap on galvanized messenger to connect AWG #6 copper
 - CATV/CLEC messenger strand must be bonded to the Telephone Messenger Strand on the same supporting structure (Telephone pole)
 - Telephone, CATV and CLEC messenger strand must be common bonded to the MGNV on electric utility poles. These connections should be separate connections which serve as the common bond link between messenger strands on the same supporting structure (pole)

1.3. Sizing / Type

Each grounding / bonding situation requires different size / type of approved wire to be used. These various applications, and the appropriate wire to be utilized, are American Wire Gauge (AWG) including:

- #6 Solid Bare Copper
- #6 Solid Insulated Copper

2. AERIAL CABLE / PLANT PROTECTION AND JOINT FACILITY BONDING

2.1. Effective Grounds

All exposed plant must be effectively grounded utilizing CenturyLink approved copper clad 5/8 inch diameter, 8 ft. long ground rods for the following reasons:

EXHIBIT A

- Reduce shock hazards to technicians
- Reduce electrical damage to telephone plant and Third Party Equipment
- Provide rapid de-energizing of power lines contacting Telephone or Third Party plant
- Provide a path to ground for lightning

NOTE: Down guys and anchor rods are not considered grounds and will not be used as such in the CenturyLink plant protection scheme.

2.2. Grounding and Bonding Applications

Aerial strands (messenger) shall be continuous, bonded together and grounded at a minimum of 1,350 foot intervals so that no point is more than 1,350 feet from an effective ground source. The 1350 foot rule is the minimum grounding requirements, applicable on all aerial cable leads that are in a continuous run without laterals, risers, primary power crossings, MGNV or protected terminals. Licensee must ground their attachments to the MGNV independently.

Additional grounds must be installed at:

- Laterals
- Risers (including aerial inserts in buried facilities)
- Primary power crossings
- Protected terminals
- First and last pole of an aerial lead, regardless of lead length
- At all aerial, buried or underground building entrance cable locations
- Repeater / Doubler/Power Supply locations

2.3. Ground and Bonding Material / Requirements

Use only AWG #6 bare solid copper ground wire for connecting aerial strand (messenger) to a ground electrode. Each ground electrode shall consist of a driven 5/8 inch diameter 8 foot copper clad ground rod(s) driven approximately 12 inches away from the pole and approximately 4 inches below ground grade in undisturbed earth.

NOTE: Ground rods installed at pole line locations need not be measured as noted below in excerpts from the 2012 National Electrical Safety Code NESC and RUS Bulletin 1751F-815:

NESC Rule 94B – Driven rods shall be not less than 8 feet in length: Longer or multiple rods may be used to reduce ground resistance

NESC Rule 96C – No specific resistance readings need be taken at individual electrodes due to distributed cable route multiple ground locations.

RUS Section 11.1 – Low impedance to ground is achieved by multiple ground locations

NOTE: Ground electrodes (rods) and their resistance MUST be *correctly* measured at CO and Remote Electronic Sites!

NOTE: Prior to driving a ground rod as outlined above, a request for locate of all facilities must be made and completed in the area where the rod(s) is to be driven to prevent damage to water, gas, drain or sewer facilities.

EXHIBIT A

NOTE: When connecting the AWG #6 solid copper wires to the strand (messenger), only use the “*Tap Clamp – Flip On*” type clamp. This clamp is designed to eliminate corrosion caused by contact of two dissimilar metals (copper to galvanized). This clamp is available in CART.

NOTE: All Third Party messenger strands must be common bonded to the Licensor messenger strand and/or vertical ground wire at all of the locations mentioned in this document to ensure the same potential exists on all aerial joint use pole structures.

2.4. MGNV Bonding and Grounding

Telephone and Third Party facilities **must** be bonded / grounded to the power company Multi Grounded Neutral Vertical (MGNV) wire where present on **all** joint use facilities. **The MGNV is considered an effective ground and a separate Telephone ground rod is not to be installed at these locations.**

NOTE: THIS APPLIES TO AERIAL CABLE FACILITIES ONLY. The use of an MGNV is allowed in aerial plant due to the strand (messenger) in aerial cable being exceptionally strong and continuous. It is the main surge / current carrying component of an aerial lead and use of the MGNV duplicates the protection and grounding effects of the power company neutral and associated earth grounds.

NOTE: DO NOT remove or cut the Power Company “U” guard or covering on the MGNV wire when making a connection!

2.5. Joint Use Poles

The proper selection of ground locations on **joint use pole lines** with electrical power must result in a distance of no more than 1,350 feet between any portion of exposed cable plant and the nearest ground. Additional grounds must be placed if an MGNV is not present at:

- All Telephone or power company lateral / riser poles.
- First and last pole of an aerial lead, regardless of lead length
- Junction point between solely-owned and joint aerial plant.
- Joint pole at which a cable continues buried or underground.
- At all building entrance cable locations
- Intervals exceeding 1350 feet without an MGNV

NOTE: Bond connections to the MGNV/MGN from the Telephone or Third Party facility should always point towards earth/ground rod, not up towards the power company neutral.

EXHIBIT A

EXHIBIT C

ABANDONMENT NOTICE

Section 1 (to be completed by Licensor):

Licensor gives notice to Licensee that it intends to abandon the Poles at the locations as shown on the map attached to this Abandonment Notice (collectively, "Abandoned Poles").

Licensor _____

Date _____

Section 2 (to be completed by Licensee):

Licensee elects to purchase the Abandoned Poles for the Purchase Price as set forth in the Bill of Sale.

Licensee _____

By _____

Date _____

Section 3 (to be completed by both Licensor and Licensee):

Both parties are to complete, sign and date the Bill of Sale.

EXHIBIT A

BILL OF SALE

This Bill of Sale is entered into as of the “Effective Date” (as defined in Section 8) by and between [REDACTED], a [REDACTED] (“Licensor”), and [REDACTED], a [REDACTED] (“Licensee”).

BACKGROUND:

A. Licensor and Licensee entered into that certain Pole License Agreement dated [REDACTED] (“Agreement”), whereby Licensee could purchase Licensor’s abandoned poles under certain circumstances.

B. Licensee desires to purchase from Licensor the poles described in Exhibit A attached to this Bill of Sale (collectively, the “Abandoned Poles”) for the price of \$ [REDACTED] (“Purchase Price”).

C. Capitalized terms used in this Bill of Sale which are not defined in this Bill of Sale will have the meanings ascribed to them in the Agreement.

For good and valuable consideration (which includes the releases and indemnities set forth below), the receipt and sufficiency of which are acknowledged by Licensor and Licensee, Licensor and Licensee agree as follows:

1. Licensor acknowledges receipt of the Purchase Price from Licensee. In addition to paying the Purchase Price, Licensee is responsible for paying all sales and use taxes applicable to this transaction.

2. Pursuant to the terms and conditions of this Bill of Sale, Licensor quitclaims and conveys to Licensee the Abandoned Poles effective as of the Effective Date. Ownership and risk of loss of the Abandoned Poles will transfer to Licensee on the Effective Date.

3. Licensee represents and warrants to Licensor that Licensee has made a thorough physical inspection of the Abandoned Poles and has determined that the Abandoned Poles are capable of being put into service or used as is appropriate for Licensee’s purposes. From and after the Effective Date, Licensee (i) will provide safety devices and equipment, (ii) will perform maintenance and inspection services, and (iii) will provide employee and contractor training, as necessary in order to cause the Abandoned Poles, any Licensee Equipment and equipment of Existing Attachers placed on the Abandoned Poles, and any work performed by Licensee and others in connection with such poles and equipment, to comply with (A) the laws, rules, ordinances, orders, decisions and regulations of any applicable governmental authority or body, and (B) the National Electrical Safety Code and any other generally accepted industry safety standards.

4. Licensor does not warrant or assure to Licensee any Right of Way, or other right of access to the Abandoned Poles, and if Licensee and its agents, contractors, customers and attachers are prevented from maintaining, possessing or using the Abandoned Poles, Licensor will have no liability on account of such denial of access.

5. LICENSEE AGREES THAT NEITHER LICENSOR NOR ANYONE ON LICENSOR’S BEHALF HAS MADE, AND LICENSOR SPECIFICALLY DISCLAIMS MAKING, ANY REPRESENTATIONS, WARRANTIES OR AGREEMENTS OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, OR ORAL OR WRITTEN, WITH RESPECT TO: (a) THE VALUE, NATURE OR QUALITY OF THE ABANDONED POLES; (b) THE SUITABILITY OF THE ABANDONED POLES FOR ANY AND ALL ACTIVITIES AND USES WHICH LICENSEE MAY CONDUCT WITH OR ON THE ABANDONED POLES; (c) THE COMPLIANCE OF OR BY THE ABANDONED POLES OR THEIR OPERATION WITH ANY LAWS, RULES, ORDINANCES, ORDERS, DECISIONS OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY, OR WITH THE NATIONAL ELECTRICAL SAFETY CODE AND ANY OTHER GENERALLY ACCEPTED INDUSTRY SAFETY STANDARDS; (d) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE ABANDONED POLES; (e) THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS INCORPORATED INTO THE ABANDONED POLES; (f) THE PHYSICAL CONDITION OR STATE OF REPAIR OR LACK OF REPAIR OF THE ABANDONED POLES; (g) THE SAFETY OF THE ABANDONED POLES OR THE PREMISES SURROUNDING THE ABANDONED POLES; (h) THE STATUS OF TITLE TO THE ABANDONED

EXHIBIT A

POLES; AND (i) ANY OTHER MATTER WITH RESPECT TO THE ABANDONED POLES AND, SPECIFICALLY, THAT LICENSOR HAS NOT MADE, AND SPECIFICALLY DISCLAIMS MAKING, ANY REPRESENTATIONS REGARDING COMPLIANCE WITH ANY ENVIRONMENTAL LAW OR PROTECTION, POLLUTION OR LAND USE, ZONING OR DEVELOPMENT OR REGIONAL IMPACT LAWS, RULES, REGULATIONS, ORDERS, DECISIONS OR REQUIREMENTS. LICENSEE FURTHER AGREES THAT THE SALE OF THE ABANDONED POLES IS MADE ON AN “AS IS”, “WHERE IS” AND “WITH ALL FAULTS” CONDITION AND BASIS, AND THAT LICENSEE ACCEPTS THE ABANDONED POLES IN THEIR “AS IS,” “WHERE IS” AND “WITH ALL FAULTS” CONDITION AND BASIS. NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH IN THIS BILL OF SALE OR THE AGREEMENT, THE AGREEMENTS, DISCLAIMERS AND WAIVERS CONTAINED IN THIS SECTION 5 WILL SURVIVE THE EXPIRATION OR TERMINATION OF THE AGREEMENT.

6. LICENSEE, FOR ITSELF, ITS SUCCESSORS AND ASSIGNS, WAIVES, RELEASES, AND FOREVER DISCHARGES LICENSOR, ITS OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AGENTS, ATTORNEYS, AFFILIATES, PARENT COMPANIES, REPRESENTATIVES AND ANY OTHER PERSONS ACTING ON BEHALF OF LICENSOR AND THE SUCCESSORS AND ASSIGNS OF ANY OF THE PRECEDING (COLLECTIVELY, “LICENSOR PARTIES”), OF AND FROM ANY AND ALL CLAIMS, ACTIONS, CAUSES OF ACTION, DEMANDS, RIGHTS, DAMAGES, COSTS, EXPENSES AND COMPENSATION WHATSOEVER, DIRECT OR INDIRECT, HOWEVER CAUSED AND REGARDLESS OF LEGAL THEORY OR FORESEEABILITY, WHICH LICENSEE OR ITS SUCCESSORS OR ASSIGNS NOW HAS OR WHICH MAY ARISE IN THE FUTURE, IN ANY WAY RELATED TO THE ABANDONED POLES. NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH IN THIS BILL OF SALE OR THE AGREEMENT, THE WAIVER, RELEASE AND DISCHARGE CONTAINED IN THIS SECTION 6 WILL SURVIVE THE EXPIRATION OR TERMINATION OF THE AGREEMENT. Licensee will include in any bill of sale or other instrument of transfer by which Licensee conveys any of the Abandoned Poles to a third party (including any affiliate of Licensee) the foregoing waiver, release and discharge in order to cause the third party transferee also to waive such claims and to release and discharge Licensor.

7. LICENSEE WILL INDEMNIFY AND HOLD HARMLESS THE LICENSOR PARTIES FROM AND AGAINST ANY CLAIMS, LIABILITIES, SUITS, FINES, PENALTIES, COSTS, JUDGMENTS AND DAMAGES WHATSOEVER (INCLUDING THIRD PARTY CLAIMS AND INCLUDING COSTS OF SETTLEMENT, COSTS OF DEFENSE AND REASONABLE ATTORNEYS’ FEES), WHETHER GENERAL, COMPENSATORY OR PUNITIVE (COLLECTIVELY, “CLAIMS”), THAT RELATE IN ANY WAY TO: (a) ANY NEGLIGENT ACT OR OMISSION OF LICENSEE OR ANY OF ITS EMPLOYEES, AGENTS OR CONTRACTORS; (b) ANY BREACH OF THIS AGREEMENT BY LICENSEE; (c) ANY SUBSEQUENT SALE OF ANY OF THE ABANDONED POLES BY LICENSEE; (d) POSSESSION, USE, MODIFICATION, REPAIR OR REPLACEMENT OF THE ABANDONED POLES BY LICENSEE OR ANY AGENT, CONTRACTOR, CUSTOMER OR ATTACHER OF LICENSEE; (E) PHYSICAL DAMAGE OR INJURY TO PERSONS OR PROPERTY INVOLVING THE ABANDONED POLES AND OCCURRING AFTER THE EFFECTIVE DATE; AND (e) ENVIRONMENTAL CLAIMS (AS DEFINED BELOW). “ENVIRONMENTAL CLAIMS” MEANS CLAIMS (INCLUDING ENVIRONMENTAL CLEAN-UP COSTS, RESPONSE COSTS, COSTS OF CORRECTIVE ACTION, COSTS OF FINANCIAL ASSURANCE, AND NATURAL RESOURCE DAMAGES) ASSERTED AGAINST A LICENSOR PARTY UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE COMPENSATION AND LIABILITY ACT (“CERCLA”), 42 U.S.C. § 9601 ET SEQ., THE RESOURCE CONSERVATION AND RECOVERY ACT (“RCRA”), 42 U.S.C. § 6901 ET SEQ., THE FEDERAL WATER POLLUTION CONTROL ACT (“FWPCA”), 33 U.S.C. §1251 ET SEQ., THE CLEAN AIR ACT (“CAA”), 42 U.S.C. § 7401 ET SEQ., THE HAZARDOUS MATERIALS TRANSPORTATION ACT (“HMTA”), 49 U.S.C. § 1801 ET SEQ., AND OTHER COMPARABLE LAWS, RULES, ORDINANCES, ORDERS, DECISIONS AND REGULATIONS OF ANY

EXHIBIT A

APPLICABLE GOVERNMENTAL AUTHORITY OR BODY RELATING TO THE HANDLING, SCRAP, DESTRUCTION, USE, MAINTENANCE OR DISPOSITION OF THE ABANDONED POLES.

8. On the Effective Date, Licensee will remove any of Licensor's ownership tags and structure numbers identifying the Abandoned Poles as being owned by Licensor, and replace them with Licensee's ownership tags, structure numbers and other items that clearly and conspicuously identify the Abandoned Poles as being owned by Licensee.

9. In this Bill of sale, unless the context otherwise requires, (i) singular includes the plural and plural the singular, and masculine, feminine and neuter genders are interchangeable, (ii) use of the word "and" means both "and" and "or", (iii) use of the word "including" does not exclude items not listed and (iv) use of the word "will" connotes a mandatory action. This Bill of Sale may be signed in several counterparts, each of which will be fully effective as an original and all of which together will constitute one and the same instrument.

10. The "Effective Date" of this Bill of Sale is the earlier to occur of (i) the date this Bill of Sale is last signed by both Licensor and Licensee where indicated below, or (ii) the date Licensee first asserted control over the Abandoned Poles.

LICENSOR:

LICENSEE:

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

CONVERSATION:
CONTRACT:

EXHIBIT A

EXHIBIT A TO BILL OF SALE
ABANDONED POLES

CONVERSATION:
CONTRACT:

EXHIBIT A

EXHIBIT D

WIRELINEPOLE ATTACHMENT BOND

WIRELINE POLE ATTACHMENT BOND

Bond No. _____

KNOW ALL MEN BY THESE PRESENTS, that we, **Principal Name**, as Principal, and **Surety Company Name**, a corporation duly organized under the laws of the State of _____, as Surety, are held and firmly bound unto _____ **d/b/a CenturyLink** as Obligee in the State of _____, in the sum of _____ **Dollars, (\$000)** lawful money of the United States of America, to be paid to said Obligee, its successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the above bound Principal has entered into a written agreement with the said Obligee for the use of its poles in connection with the furnishing of Telecommunications Service and/or Cable Service. The above mentioned agreement sets forth the terms and conditions which govern the use of such poles and said agreement is hereby specifically referred to and made part of this bond, with like force and effect as if herein at length set forth.

NOW, THEREFORE, THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that if the above named Principal, its successors or assigns, does and shall well and truly observe, perform, fulfill and keep its obligations as set forth in the above mentioned agreement, for which a bond must be posted, then the above obligation to be void; otherwise to remain in full force and effect.

The bond is subject, however, to the following express conditions:

FIRST: That in the event of a default on the part of the Principal, its successors or assigns, a written statement of such default with full details thereof shall be given to Surety promptly, and in any event, within 30 days after the Obligee shall learn of such default, such notice to be delivered personally or by registered mail to Surety at its Home Office at _____.

SECOND: That no claim, suit or action under this bond by reason of any such default shall be brought against Surety unless asserted or commenced within 12 months after the effective date of any termination or cancellation of this bond.

THIRD: That this bond may be terminated or cancelled by Surety by 30 days prior notice in writing from Surety to Principal and to Obligee. Such termination or cancellation shall not affect any liability incurred or accrued under this bond prior to the effective date of such termination or cancellation. The liability of the Surety shall be limited to the amount set forth and is not cumulative.

FOURTH: That no right of action shall accrue under this bond to or for the use of any person other than the Obligee, its successors and assigns.

IN WITNESS WHEREOF, the above bound Principal and the above Surety have hereunto set their hands and seals, on the _____ day of _____. This bond is to be effective the _____ day of _____.

Principal
By: _____
Principal

Surety Company
By: _____
XXXXXXXXXXXX, Attorney-in-Fact

CONVERSATION:
CONTRACT:



EXHIBIT D-1

POLE BOND SCHEDULE

<u>Bond Amount</u>	<u>Number of Total Pole Attachments</u>
\$ 5,000	0-100
\$ 10,000	101-250
\$ 20,000	251-500
\$ 30,000	501-1,000
\$ 50,000	1,001-2,500
\$ 75,000	2,501-5,000
\$100,000	5,001-7,500
\$150,000	7,501-10,000
\$200,000	10,001-20,000
\$300,000	20,001-30,000
\$400,000	30,001-40,000
\$500,000	40,001 and above

EXHIBIT A

EXHIBIT E

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.

Additionally, if not easily discernible from the map, a listing of exchanges served should be provided.

LICENSEE:

By: _____

Title: _____

Date: _____

EXHIBIT A

EXHIBIT F

PRIOR WRITTEN AGREEMENTS

CONVERSATION:
CONTRACT:

EXHIBIT A

**MULTI STATE MASTER
POLE AND CONDUIT ATTACHMENT
LICENSE AGREEMENT**

BY AND BETWEEN

[INSERT PROPER CENTURYLINK ENTITY] d/b/a CenturyLink

AND

[INSERT PROPER LICENSEE ENTITY]

4-30-2019v1 7-15-2019

EXHIBIT A

MULTI STATE MASTER POLE AND CONDUIT ATTACHMENT LICENSE AGREEMENT

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- EXHIBIT G – CONFIGURATION OF LICENSEE ATTACHMENTS
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- EXHIBIT I – 47 C.F.R. § 1.1411
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- EXHIBIT K – POINTS OF CONTACT BY STATE

CONVERSATION:
CONTRACT:

EXHIBIT A

MULTI STATE POLE AND CONDUIT ATTACHMENT LICENSE AGREEMENT

This Pole and Conduit Attachment License Agreement (“Agreement”) is entered into as of the Effective Date by and between the CenturyLink Inc. owned Incumbent Local Exchange Carrier(s) (“ILEC”) shown on the Schedule of CenturyLink Legal Entities, attached hereto, and authorized to operate in the states listed below, hereinafter collectively referred to as (“Licensor”), (only to the extent that the agent for each such Centurylink Inc. owned ILEC executes this Agreement for such CenturyLink Inc. owned ILEC and only to the extent that such Centurylink Inc. owned ILEC provides Telephone Exchange Services as an ILEC in each of the State(s) listed below), and [**INSERT PROPER LICENSEE ENTITY**], a [**INSERT LICENSEE ENTITY TYPE, e.g. corporation, limited liability company, etc.**] (“Licensee”). Licensor and Licensee may sometimes be referred to in this Agreement individually as a “party” and collectively as the “parties.” Any reference to “CenturyLink” in this Agreement or attached exhibits will mean Licensor.

This Agreement will apply to the State(s) of: [**SELECT THE STATES THAT APPLY FROM THE FOLLOWING: Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, Wisconsin & Wyoming**], hereinafter referred to as (“Applicable State(s)”).

BACKGROUND:

- A. “CenturyLink Inc.” means the holding company which directly or indirectly owns the ILECs listed above. As used in this Agreement, CenturyLink Inc. refers to the CenturyLink ILECs only. CenturyLink Inc. is not itself a party to this Agreement.
- B. Licensee is a certificated cable operator, BIAS or telecommunications carrier or any combination and authorized to furnish lawful cable services, telecommunications service and/or wireless communication services (“Licensee Service”) in areas in the Applicable State(s), where Licensor is an Incumbent Local Exchange Carrier.
- C. For the purpose of Licensee furnishing Licensee Service, Licensee desires to place and maintain Licensee Attachments and/or Equipment on Poles and/or in Conduit or Conduit Systems (as those terms are hereinafter defined) located in areas in the Applicable State(s), where Licensor is an ILEC.
- D. In accordance with the terms and conditions of this Agreement, and to the extent required by federal, state and local law, Licensor agrees to permit Licensee to place and maintain certain Licensee Attachments and/or Equipment on Poles and/or in Conduit or Conduit Systems in strict accordance with the terms and conditions of this Agreement and for the sole purpose of Licensee furnishing Licensee Service.

For good and valuable consideration, the receipt and sufficiency of which are acknowledged by Licensor and Licensee, Licensor and Licensee agree as follows:

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ARTICLE 1: DEFINITIONS

1.1. **Definitions.** Certain terms used in this Agreement are defined and explained below:

Act - The Communications Act of 1934 as amended, including as amended by the Telecommunications Act of 1996.

Anchor - An assembly that stabilizes a Pole and holds it in place. An Anchor assembly may consist of a rod and fixed object or plate, typically embedded in the ground, which is attached to a guy strand or Guy Wire, which in turn is attached to the Pole. The definition of “Anchor” does not include the guy strand that connects the Anchor to the Pole.

Annual License Fee - The annual fee Licensee pays in consideration for the License granted to it under Section 2.2. The Annual License Fee is calculated using a rate formula adopted by the FCC and applied as described in Article 18.

Application - The completed application that is in form either the same as that attached to this Agreement as Exhibit A or in ENS format designated by Licensor pursuant to Section 20.3, and that is submitted by Licensee to Licensor as part of the process under this Agreement by which Licensee seeks Licensor’s approval to make an Attachment.

Applicable Law – Applicable Law is defined in Section 3.2.1.

Approved Contractor - A contractor authorized by Licensor to perform Surveys, Make Ready Work (including but not limited to: engineering, pole loading analysis & construction) in the Communications Space or other work Licensee is authorized to perform under this Agreement.

Attachment – All Licensee cable(s), wire(s), antenna(s), transmitter(s), receiver(s), meter(s), boxe(s), terminal(s), enclosure(s), power supply equipment, and all associated hardware and equipment reasonably necessary to such attachment, owned and/or utilized by Licensee that are supported by attachment to a Pole. Additionally, Attachment includes any physical attachment or placement by Licensee of equipment and facilities owned, maintained and used by Licensee in furnishing Licensee Services on, in or to any Conduit, Conduit System and associated Right-of-Way. Any reference in this Agreement to an Attachment being made “to” or “on” Licensor Conduit or Conduit System will also mean “in” or “occupying” any Licensor Conduit or Conduit System.

Audit – A test, inspection, investigation, inventory, audit or similar undertaking for the purpose of determining the number and location of Attachments, checking for Unauthorized Attachments and/or Non-Compliant Attachments of Licensee.

Authorization – As defined in Section 8.1.

BIAS - Broadband Internet Access Service Provider –A mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all Internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up Internet access service. This term also encompasses any service that the Commission finds to be providing a functional equivalent of the service described in the previous sentence.

Conduit - A Licensor-owned or controlled structure containing one or more Ducts, usually placed in the ground, in which cable or wires may be installed, together with its supporting infrastructure. The definition of Conduit also includes any other Licensor-owned or controlled equipment or hardware attached to or within Conduit, including but not limited to Ducts or Inner Ducts.

EXHIBIT A

Conduit System – A Licensor-owned or controlled collection of one or more Conduits, together with their supporting infrastructure, including but not limited to Manholes and Handholes. The definition of Conduit System also includes any other Licensor-owned or controlled equipment or hardware attached to or within a Conduit System.

Cost(s) - All reasonable and actual costs, to the extent such costs are not recovered in the Annual License Fee, paid or payable, which include: (a) external contractor or subcontractor labor costs and professional fees; (b) other costs and out-of-pocket expenses on a pass-through basis (e.g., equipment, materials, supplies or contract services); (c) internal labor costs directly related to the completion of Make Ready Work or required work due to no-performance by Licensee; and (d) reasonable allocations of administrative overhead. Cost will not include any profit or markup.

Communications Space – The space on a Pole underneath the Communication Worker Safety Zone to the limit of allowable NESC clearance codes in which communications cables for telephone, cable television and other communications circuits are attached.

Communication Worker Safety Zone – As defined by the NESC, generally that space between the facilities located in the electric supply space and facilities located in the Communications Space where Licensee Attachments are prohibited.

Days or days – Calendar days, unless specifically noted otherwise in this Agreement.

Duct - A Licensor-owned or controlled single enclosed raceway for conductors, cable and wire.

End User - Licensee's customer.

End User Housing – Licensee's equipment cabinet associated with End User's equipment such as a node inside a Licensee cabinet or an additional antenna on a pole top extension.

Effective Date - The date this Agreement is last signed by all of the parties.

Electronic Notification System ("ENS") – The electronic notification system or systems designated by Licensor that Licensor may, in Licensor's sole discretion, require Licensee and Licensee's vendors to use in submitting an Application or any information, notice, consent, approval, request, document, demand or authorization and the like required or permitted under this Agreement.

Existing Attaching Entity – An entity, other than Licensee to whom Licensor has extended or may hereafter extend the privilege of utilizing Licensor's Facilities, including entities furnishing electricity, cable television, telecommunications and other services.

FCC – The Federal Communications Commission.

Guy Wire - A metal cable of high tensile strength that is attached to a Pole and Anchor rod (or another Pole) for the purpose of reducing Pole stress or stabilizing a Pole.

Handhole(s) - A Licensor-owned or controlled subsurface enclosure that is too small for personnel to enter that Licensor uses for installing, operating, maintaining and repairing Licensor Conduit, Conduit Systems and associated Right-of-Way.

Inner Duct – A Licensor-owned or controlled Duct-like raceway smaller than a Duct that is inserted into a Duct so that the Duct may contain multiple wires or cables.

Joint Owner(s) - A person, corporation, governmental body or other entity other than Licensor having an ownership interest with Licensor in a Pole.

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Licensor Indemnitee - as defined in Section 8.2

Licensee Service – The authorized telecommunications, cable services, or wireless communications furnished by Licensee pursuant to federal, state and local law.

Licensee's Service Area - The area in which Licensee does or plans to provide its Services.

Make Ready Work - All work performed or to be performed as is necessary, in Licensor's sole but reasonable discretion, to prepare Poles for an Attachment where such work is required solely to accommodate such an Attachment, including, but not limited to, rearrangement and/or transfer of existing facilities required to accommodate the Attachment and to meet the obligations of the NESC, the Specifications, or this Agreement. Such work includes, but is not limited to, inspections, surveys, engineering, permitting and construction. Make Ready Work shall be further divided into two subcategories as follows:

Simple Make-Ready – Make Ready Work where existing attachments of all parties in the Communications Space can be transferred without any reasonable expectation of a service outage or facility damage and that does not require splicing of any existing communication attachment or installation of a wireless device or modification or relocation of an existing wireless device.

Complex Make-Ready – Make Ready Work that is not Simple Make Ready Work, including transfers and work within the Communications Space that would be reasonably likely to cause a service outage or facility damage, including work such as splicing of any communication attachment, installation of a wireless device, or modification or relocation of an existing wireless device. Any make-ready requiring pole replacements and all wireless activities, including those involving mobile, fixed, point-to-point wireless communications and wireless internet service providers, are considered complex.

Manhole(s) - A Licensor-owned or controlled subsurface enclosure that personnel may enter that Licensor uses for installing, operating, maintaining and repairing Licensor Conduit, Conduit Systems and associated Right-of-Way.

Modification – Licensee's Rearrangement or Transfer of its Attachment, non-routine replacement or repair of its Attachment, or other alteration of its Attachment. "Overlashing" is not defined as a Modification.

NESC – The current edition of the National Electrical Safety Code (NESC), as amended, including all retroactive provisions, if any.

Noncompliant Attachment - An Attachment which does not meet the Specifications listed in Article 10 or does not comply with Licensor's permitting requirements and construction specifications.

Non-Periodic Inspection - A test, inspection, investigation or similar undertaking for the purpose of checking the physical condition of Poles, Conduit, Conduit Systems or Licensee Attachments and/or Equipment and identifying Non-Compliant Attachments. Non-Periodic Inspections will not include any regularly scheduled inspections or inspections of entire service areas.

Overlashing - The process by which Licensee physically ties wiring to its existing Attachment so as to accommodate additional strands of fiber or coaxial cable by Licensee or a third-party service provider, including splice enclosures necessary thereto. Any equipment that receives or emits an RF signal of any kind is not considered an overlash and must be applied for as an Attachment.

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Pole(s) - A Licensor-owned or controlled pole or a pole jointly owned by Licensor and any Joint Owner, and any Anchors, and any Guy Wires, hardware, wires, cables, strands, apparatus, enclosures, structures or other items attached to the pole or any hardware affixed to or associated with the pole. The definition of “Pole” does not include poles for which Licensor has no legal authority to permit upon them the placement of the facilities or equipment of others.

Rearrange or Rearranging - Relocating or reconfiguring an Attachment.

Right-of-Way - The right to use the land or other property of another to place structures and equipment upon it, or to provide access to the structures and equipment. A Right-of-Way may run under, on or above public or private property (including air space above public or private property).

Service Drop – The wire connecting the Licensee Service directly to Licensee’s customer premises.

Strand – A wire strung between two Poles.

Survey – All work necessary to determine the Make Ready Work required for an Attachment to meet capacity, safety, reliability, and engineering concerns, including compliance with NESC and CenturyLink requirements, that may include: field inspections, engineering and administrative processes.

Transfer or Transferring - Moving an Attachment from one Pole, Conduit or Conduit System to another.

Unauthorized Attachment – An Attachment installed on Poles and/or in Conduit or Conduit Systems by Licensee without a lawful agreement with, or License from, the Licensor.

ARTICLE 2: **SCOPE OF AGREEMENT**

2.1 **Representation and Warranty.** Licensee represents and warrants to Licensor that (i) it is authorized by federal, state and/or local laws to provide the Licensee Services and that it has full authority without further consent from any other party to enter into this Agreement; (ii) it provides Licensee Service in the areas in the Applicable State(s) where Licensor is an ILEC, and that therefore, pursuant to Applicable Law, it is entitled to pole attachment and/or conduit occupancy rights and protections given to it under Applicable Law. If at any time during the Term of this Agreement Licensee is no longer entitled to pole attachment and/or conduit occupancy rights and protections for Licensee Services under Applicable law, Licensee must immediately notify Licensor of the change and Licensor shall have the right to terminate this Agreement.

2.2 **Grant of License.** Subject to the terms of this Agreement and consistent with Applicable Law, Licensor will grant a revocable, non-exclusive license to Licensee authorizing Licensee to make each specific Attachment approved in accordance with this Agreement to Poles and/or in Conduit located in areas in the Applicable State(s) where Licensor is an ILEC, and to allow Licensee to use and maintain each specific Attachment for the purpose of Licensee providing Licensee Service (“License”). This License will be evidenced in each instance by a Licensor-approved Application for the relevant Attachment. A Licensor-approved Application is required for every Attachment. No Attachment may be made to any Pole or in any Conduit identified in an Application until Licensor has approved the Application in writing, except as otherwise provided herein.

2.3 **Licensee Third Party Agreements.** If Licensee contracts or otherwise agrees with a third party for a lease of or similar arrangement for any Attachment, and as a result it is necessary for the third party to attach its own equipment to Licensor Poles and/or Conduit, then unless the third party has entered

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into a license agreement with Licensor and has received a Licensor-approved Application for the attachment, the third party attachment will be deemed Licensee's Unauthorized Attachment subject to the Unauthorized Attachment provisions of Article 19. If the third party enters into a license agreement with Licensor for the purpose stated in this Section 2.3, the contract between the third party and Licensee will be expressly subject and subordinate to this Agreement and will not relieve Licensee of any obligations under this Agreement.

2.4 **Installation and Maintenance Standards.**

2.4.1 Licensee's Attachments shall be erected and maintained in good and safe condition and repair (and replaced if necessary) in accordance with the NESC and the "Specifications" (as defined and set forth in Article 10 and Exhibit F) and other pertinent requirements of this Agreement.

2.4.2 For wireless Attachments, the drawings, diagrams, and schematics, attached hereto as Exhibit G, and incorporated herein, depicting Licensee attachments and their configurations shall be representative of Licensee's Attachments. Inclusion of Exhibit G shall not be understood as acceptance or approval by Licensor of any such installation in any particular circumstance.

2.4.3 Except for any properly authorized pole top equipment or installation, Licensee Attachment shall be installed and maintained only below the Communications Worker Safety Zone on Licensor's Poles.

2.4.4 Licensee shall have the sole obligation to arrange for electric service to its Attachments, the sole costs of which shall be borne by Licensee.

2.4.5 If Licensee refuses or neglects to fulfill its maintenance obligations under this Agreement, including this Section 2.4 in accordance with the Specifications, Licensor may undertake such obligations itself, and Licensee will reimburse Licensor for the Costs that Licensor incurs in fulfilling such obligations within 45 days of the invoice date for an invoice from Licensor for the Cost. Licensor will provide Licensee with 45 days' written notice prior to performing Licensee's maintenance obligations under this Agreement except in emergencies which could result in harm to persons or property, in which case no prior notice will be given.

2.5 **Entrance Facilities and Interconnection Agreements.**

2.5.1 Neither this Agreement nor any License is applicable to Licensor's Entrance Facilities. For the purpose of this Agreement, "Entrance Facilities" is defined as the communications path between a customer's premises and Licensor's serving wire center for that premises. Entrance Facilities are wholly within the ILEC's local serving area and are used for carrying telecommunications to and from the customer's premises, including any telecommunications resale, interconnection or UNE traffic or access traffic under § 251 of the Act.

2.5.2 This Agreement and any License are not intended and shall not be deemed to constitute an agreement nor an offer by either party to interconnect any Entrance Facility or other network facilities owned by such party or by its affiliates, with any network facilities owned by the other party or its affiliates, or which are owned by any other person or entity, and any such interconnection arrangements, must be established pursuant to a separate written contract reflecting terms and conditions which shall be mutually bargained for, negotiated and memorialized separate and apart from this Agreement, whether pursuant to §251 of the Telecommunications Act of 1996, or otherwise. Any interconnection arrangements between Licensee and any other user or occupant of a Pole (other than Licensor) must be approved in advance by Licensor, such approval to be at Licensor's sole discretion to the extent such interconnection arrangements are accomplished using Attachments.

ARTICLE 3: GENERAL PROVISIONS

3.1 **Assignment.** Licensee may assign or transfer its rights under this Agreement, in whole or in part, only with the prior written consent of Licensor, which consent will be at Licensor's sole discretion, but will not be unreasonably withheld, delayed or denied. Any assignment by Licensee without such consent is void.

3.2 **Applicable Law, Forum Selection, Waiver of Jury Trial and Dispute Resolution.**

3.2.1 This Agreement is governed by and construed in accordance with the Act and the FCC's Rules and Regulations promulgated under the Act, and where applicable, in accordance with the law of the Applicable State(s) (without regard to its conflict of laws principles) and all other applicable laws, ordinances, requirements, codes, orders, decisions, rules and regulations of applicable state, municipal, county, federal or other governmental authorities (collectively, "Applicable Law"). In the event of an amendment to any Applicable Law, including any effective legislative or regulatory action, or judicial order, rule, regulation, award or other legal action purporting to apply the provisions of any Applicable Law to the parties, or in which the FCC or, if applicable, the appropriate state public service commission, public utilities commission, administrative body or court, makes a determination during the Term that revises, modifies or reverses Applicable Law that affects this Agreement, Licensor may, by providing notice to Licensee, require that the affected provisions of this Agreement be renegotiated in good faith. This Agreement will then be amended accordingly to reflect the changes to Applicable Law. Notwithstanding the foregoing in this Section 3.2.1, if the change to Applicable Law requires an adjustment to the Annual License Fee, the adjustment will be subject to the process for fee adjustments set forth in Section 18.3. Please refer to Exhibit J, which is incorporated herein, for state-specific provisions governing this Agreement where applicable.

3.2.2 Notwithstanding anything else to the contrary set forth in this Agreement, any court proceeding brought by either party against the other under this Agreement or otherwise must be brought, as appropriate, in the United States District Court located in Colorado, or in the absence of federal jurisdiction, in a state court of competent jurisdiction located in the Denver, CO metropolitan area. Each party agrees to personal jurisdiction in either court.

3.3 **No Third Party Beneficiaries.** Except with respect to Licensor Indemnitees, this Agreement is intended to benefit only the Parties. It is not intended to, and shall not, create rights, remedies or benefits of any character whatsoever in favor of any person or entity other than the Parties. The rights and obligations of each of the Parties under this Agreement are solely for the use and benefit of, and may be enforced solely by, the Parties, their successors in interest or permitted assigns. For the avoidance of doubt, and not by way of limitation, (i) no third party Overlapping its facilities to those of Licensee, and (ii) no third party operating, controlling, subleasing or otherwise using a transmitting or receiving antenna contained within an Attachment of Licensee, shall have any rights, remedies, or benefits of any character whatsoever under this Agreement. No third party Attachments are contemplated by this Agreement and the sublease or other similar grant by Licensee to any third party shall constitute a breach of this Agreement.

3.4 **Waiver.** No term or condition of this Agreement will be deemed to have been waived by a party unless the waiver is made in writing and is signed by the party against whom the waiver is claimed. No waiver of default or breach of this Agreement or consent to the default or breach will be deemed to have been waived or consented to unless the waiver or consent is made in writing and signed by the party against whom the waiver or consent is claimed. The waiver of or consent to a breach or default of this Agreement

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will not be deemed to be a waiver of or consent to any other breach or default of this Agreement, or to any subsequent breach or default of the same term, or condition of this Agreement. No course of dealing or conduct or failure of a party to strictly enforce any term, right or condition of this Agreement constitutes a general waiver or relinquishment of the term, right or condition.

3.5 **Survival of Obligations.** The parties' respective indemnification, hold harmless and defense obligations set forth in this Agreement will survive the expiration or termination of this Agreement or the revocation of any applicable License, whether or not it was specifically stated elsewhere in this Agreement that these obligations would survive, except to the extent of any applicable statutes of limitations.

3.6 **Force Majeure.** If either party is delayed from performing an obligation because of strikes, lockouts, labor troubles, the inability to procure materials, power failure, restrictive governmental laws or regulations, riots, insurrection, storms, hurricanes, earthquakes or other natural disasters, war or other reason which is not the fault of or is beyond the reasonable control of the party delayed, then performance of the obligation will be excused for the period of the delay. However, the foregoing in this Section 3.6 will neither relieve Licensee from the obligation to make monetary payments to Licensor nor apply to delays resulting from the inability of Licensee to obtain financing, or to proceed with its obligations under this Agreement because of a lack of funds.

3.7 **Tree Trimming and Clearing.** Unless otherwise governed by Applicable Law, Licensor will, in its sole discretion, determine from time to time if, solely by reason of Licensee's Attachments, tree trimming or other clearing in any Right-of-Way or land is necessary, including upon initial Attachment. Provided the grantor of the Right-of-Way or owner of the land gives permission, tree trimming, and clearing will be performed by either the Licensee, under Licensor's direction, or a contractor hired by Licensor. If tree trimming and clearing is performed by Licensor's contractor, Licensee will reimburse Licensor for the Cost of trimming and clearing within 45 days of the invoice date for an invoice from Licensor for the Cost. Tree trimming and clearing needed, in Licensor's sole discretion, solely as a result of adverse weather conditions such as wind, snow or ice storms may be performed by Licensor or its agents, and Licensee will pay, along with any other allowed users of the Pole and/or Conduit, its pro rata share of the Cost for the trimming and clearing within 45 days of the invoice date for an invoice for the Cost. Otherwise, Licensee will be responsible for trimming and clearing that is a result of such adverse weather conditions at its sole expense.

3.8 **Taxes.** Any federal, state or local excise, license, sales, use or other taxes or tax-like charges (excluding any taxes levied on income) resulting from the performance of this Agreement (collectively, "Taxes") are borne by the party upon which Applicable Law imposes the payment obligation, even if the obligation to collect and remit the Taxes is placed upon the other party. Taxes must be shown as separate items on applicable invoices. The party obligated to collect, and remit Taxes will do so unless the other party provides evidence of exemption. The party obligated to pay Taxes may contest the Taxes in good faith at its own expense and is entitled to the benefit of any refund or recovery. This provision does not permit a party to allow a lien to be placed on an asset of the other party by reason of a tax contest. The party obligated to collect, and remit Taxes will cooperate in any tax contest by the other party by, to the extent legally possible, providing records or other information reasonably necessary to pursue the contest.

3.9 **Amendment and Modification.** No provision of this Agreement is deemed amended or modified unless amended or modified in a writing dated and signed by both parties.

3.10 **Severability.** If any part of this Agreement becomes or is held to be invalid for any reason, the determination will affect only the invalid portion of this Agreement. In all other respects, this

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Agreement will stand and remain in full force and effect as if the invalid provision had not been a part of this Agreement.

3.11 **Headings Not Controlling**. The headings and numbering of the Articles and Sections in this Agreement are for convenience only and do not define or limit any of the terms or affect the meaning or interpretation of this Agreement. Whenever herein the singular number is used, the same shall include the plural. Unless expressly provided otherwise, (i) use of the word “and” means both “and” and “or”, (ii) use of the word “including” does not exclude items not listed and (iii) use of the word “will” or “shall” connotes a mandatory action.

3.12 **Entire Agreement**. This Agreement constitutes the parties’ entire agreement and understanding concerning its subject matter and supersedes all prior verbal or written agreements (including those written agreements listed on Exhibit H ("Prior Written Agreements") to this Agreement), representations, statements, negotiations, understandings, proposals and undertakings with respect to the subject matter of this Agreement. This Agreement consists of the body of this Agreement and the following exhibits, each of which is attached to and incorporated by reference into this Agreement:

- Schedule of CenturyLink Legal Entities
- Exhibit A – Notice of Proposed Work Form B
- Exhibit A1 to A5 – Conduit Forms
- Exhibit B – Grounding Specifications
- Exhibit C – Abandonment Notice
- Exhibit D – Attachment Bond
- Exhibit E – Location of Licensee Service Area
- Exhibit F – Wireless Construction Specifications
- Exhibit G – Configuration of Licensee Attachments
- Exhibit H – Prior Written Agreements
- Exhibit I – 47 C.F.R. § 1.1411
- Exhibit J – State Specific Provisions
- Exhibit K – Points of Contact by State

Licensor may update an exhibit from time to time during the Term and will give Licensee 30 day’s prior notice of an update. Unless specified otherwise in an exhibit, capitalized terms used in an exhibit have the same meanings the capitalized terms have in the body of this Agreement.

3.13 **Confidentiality**. This Agreement and its substance, any information given to a party under this Agreement, any information generated as a result of a party exercising its rights under this Agreement and the substance, terms and conditions of this Agreement will not be disclosed by either party to any person or entity, except: (a) to a party’s legal counsel involved with this Agreement; (b) to those responsible for fulfilling a party’s respective obligations under this Agreement; (c) as disclosure may be required by Applicable Law; and (d) to a prospective purchaser of a party that has entered into a letter of intent or purchase agreement with the disclosing party regarding the purchase transaction, provided that

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such prospective purchaser first agrees in writing to observe the confidentiality provisions of this paragraph. The parties will not make any public announcement or statement concerning this Agreement or its substance, terms and conditions, unless the parties agree in writing on the form and substance of the public announcement or statement.

ARTICLE 4: DISCLAIMER OF WARRANTIES

4.1 **Disclaimer of Warranties.** LICENSEE ACKNOWLEDGES THAT LICENSOR (OR ANYONE ON LICENSOR'S BEHALF) HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, VERBAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS, TO, CONCERNING OR WITH RESPECT TO: (a) THE VALUE, NATURE, QUALITY, PHYSICAL OR OTHER CONDITION OF POLES, CONDUIT OR CONDUIT SYSTEM; (b) THE SUITABILITY OF POLES, CONDUIT OR CONDUIT SYSTEM FOR ANY ACTIVITIES AND USES WHICH LICENSEE MAY OR PLANS TO CONDUCT ON POLES OR IN CONDUIT OR CONDUIT SYSTEM; (c) THE COMPLIANCE OF OR BY POLES, CONDUIT OR CONDUIT SYSTEM OR THEIR OPERATION WITH ANY LAWS, RULES, ORDINANCES, APPLICABLE LAW, ORDERS, DECISIONS OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY; (d) THE HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF POLES, CONDUIT OR CONDUIT SYSTEM; (e) THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS INCORPORATED INTO POLES, CONDUIT OR CONDUIT SYSTEM; (f) THE MANNER, QUALITY, STATE OF REPAIR OR LACK OF REPAIR OF POLES, CONDUIT OR CONDUIT SYSTEM; (g) THE SAFETY OF POLES, CONDUIT OR CONDUIT SYSTEM OR THE PREMISES SURROUNDING POLES, CONDUIT OR CONDUIT SYSTEM; OR (h) ANY OTHER MATTER WITH RESPECT TO POLES, CONDUIT OR CONDUIT SYSTEM AND, SPECIFICALLY, THAT LICENSOR HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS REGARDING COMPLIANCE WITH ANY ENVIRONMENTAL PROTECTION, POLLUTION, LAND USE, ZONING, DEVELOPMENT OR IMPACT LAWS, RULES, REGULATIONS, ORDERS, DECISIONS OR REQUIREMENTS.

ARTICLE 5: RISK OF LOSS, INDEMNITY AND INSURANCE

5.1 **Risk of Loss.** Licensee assumes all risk and responsibility for all loss and expense whatsoever incurred by Licensor, Joint Owners or Existing Attaching Entities resulting from damages to Poles, Conduit, Conduit System or the associated equipment of Licensor, Joint Owners or Existing Attaching Entities, or the premises surrounding any Poles, Conduit or Conduit System, caused by Licensee's use of Poles, Conduit, Conduit System, or otherwise arising in connection with the exercise of the rights of Licensee under this Agreement, including claims resulting from Licensee's use of OTMR. Licensee must immediately report to Licensor the occurrence of any damage or loss.

5.2 Indemnification.

5.2.1 Each party will indemnify, defend and hold harmless the other party, its agents, officers, employees and assigns, from any and all losses, damages, costs, expenses (including, without limitation, reasonable attorneys' fees), statutory fines or penalties, actions, damage to property, or other damage to the

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extent caused by any act or omission by the indemnifying party's employees, agents, or contractors (including, without limitation, the installation, construction, operation or maintenance of each party's facilities). Licensee will further indemnify Licensor from taxes and fees that may be levied by municipalities or other governmental entities and related to or arising from the presence of Licensee's Attachments on Licensor's Poles or in Licensor's Conduit or Conduit System, including but not limited to taxes or fees related to use of public rights-of-way, in association with this Agreement.

The indemnification, hold harmless and defense obligations set forth below in this Section 5.2: (a) are in addition to any other such obligations set forth elsewhere in this Agreement; and (b) will survive the expiration or termination of this Agreement, or the revocation of any applicable License.

5.2.2 Any and all liability for injury to or death of any person (including employees of the parties hereto) and for loss or destruction of or damage to any property (including property of the parties hereto) arising out of or in any way connected with the installation, maintenance, use, relocation, dismantling, abandonment, or removal of any Pole, Conduit or the Attachments hereto, or the failure of either party hereto to observe and perform any obligation hereunder shall be borne by the parties hereto as follows:

- a. Notwithstanding any provision to the contrary contained in this Agreement, if an employee of either party to this Agreement is injured or killed due, in whole or in any part, to the fault of the employer or the injured or deceased employee, or both, the party that is the employer will be solely liable for any and all Damages arising out of, or in any way relating to, such injury or death.
- b. Notwithstanding any provision to the contrary contained in the Agreement, if an employee of a contractor of either party to this Agreement is injured or killed due, in whole or in any part, to the fault of the contractor or the injured or deceased employee of the contractor, or both, the party that engaged the contractor will be solely liable for any and all Damages resulting from any claims arising out of, or in any way relating to, such injury or death. Further, the party that engaged the contractor will indemnify the other party for 100% of the Damages resulting from any claim arising out of, or in any way relating to, such injury or death which is due, in whole or in any part, to the fault of the contractor or the injured or deceased employee, or both.
- c. Notwithstanding any provision to the contrary contained in the Agreement, if an employee of a subcontractor of either party to this Agreement is injured or killed due, in whole or in any part, to the fault of the subcontractor or the injured or deceased employee of the subcontractor, or both, the party on behalf of which the subcontractor was engaged will be solely liable for any and all Damages resulting from any claims arising out of, or in any way relating to, such injury or death. Further, the party on behalf of which the subcontractor was engaged will indemnify the other party for 100% of the Damages resulting from any claim arising out of, or in any way relating to, such injury or death which is due, in whole or in any part, to the fault of the subcontractor or the injured or deceased employee, or both.
- d. Subject to 5.2.2a, 5.2.2b and 5.2.2c, above, any such liability caused by the sole negligence of one of the parties hereto, or caused solely by the failure of one of the parties hereto to observe and perform any obligation hereunder, shall be borne by such party; and such party shall defend, indemnify and hold harmless the other party hereto against such liability.
- e. Subject to 5.2.2a through 5.2.2d, above, any such liability caused by the joint or concurrent negligence of both parties hereto or by the joint or concurrent failure of both parties hereto to

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observe or perform any obligation hereunder, shall be borne equally by such parties to the extent their negligence or failure contributed to any Damages incurred, except that each such party shall assume all risk of loss or destruction or damage to its property.

- f. Any other such liability shall be borne equally by the parties involved in the event or occurrence creating such liability, to the extent their respective fault contributed to the liability, except that each such party shall assume all risk of loss or destruction or damage to its property.

5.2.3 In the adjustment of any such claim of liability, the liability assumed by such parties under paragraph 5.2.2a through 5.2.2f of this Article shall include, in addition to the amounts paid to the claimant, all expenses incurred by such parties in connection therewith, which shall comprise costs, attorney's fees, disbursements and other proper charges and expenditures.

5.2.4 If either party hereto, as the result of any such claim of liability, should be compelled to pay damages in consequence thereof to a greater extent than specified in this Article, such party shall have, to the extent of the excess paid by it, the right of reimbursement from the other party.

5.2.5 In addition to the other indemnification, hold harmless and defense obligations set forth above in this Section 5.2, and any other such obligations set forth elsewhere in this Agreement; Licensee shall indemnify, defend and hold harmless Licensor, its affiliates, employees directors, officers, agents and contractors, from and against all third party actions, claims, demands, causes of actions, damages, liens, liabilities, losses, and expenses (including reasonable attorneys' fees) to the extent arising from or relating to a claim by an End User or the customer of the End User relating to provision by Licensee of End User Housing or otherwise arising from or relating to this Agreement.

5.3 **Claims Notification.** When a party becomes aware of a claim, demand or suit that is subject to the provisions of Section 5.2, or any other claim, demand or suit related to indemnity, duty to defend or hold harmless provisions stated elsewhere in this Agreement (each a "Claim"), the party to be indemnified, defended or held harmless ("Indemnified Party") must promptly give notice of the Claim to the other party ("Indemnifying Party"), accompanied by a copy of any written documentation regarding the matter, including copies of accident reports, petitions, summons, complaints, demands and statements. The Indemnifying Party will defend such Claim with its own counsel and at its own expense and has the right to control the settlement or defense, except that the Indemnifying Party will not enter into any settlement that imposes any liability or obligation on the Indemnified Party without the Indemnified Party's prior consent, which consent will not be unreasonably withheld, conditioned or delayed. The parties will reasonably cooperate in the settlement or defense of any such Claim, and to the extent legally possible, give each other full access to all relevant information. The Indemnified Party's own counsel may, at the Indemnified Party's own cost and expense, participate with the Indemnifying Party and its counsel in the defense or settlement of any such Claim.

5.4 **Damages Limitation.** Notwithstanding any provision to the contrary contained in this Agreement, neither party is liable to the other for any special, punitive or exemplary damages, or for indirect or consequential damages, such as damages for loss of anticipated profits or revenue or other economic loss, for any claim or cause of action arising out of or related to this Agreement, whether arising in contract, tort or otherwise, except those arising from any grossly negligent, willful or fraudulent act or omission.

5.5 **Licensee-Required Insurance Policies and Minimum Coverage Limits.**

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5.5.1 Without limiting the liabilities or indemnification obligations of Licensee, Licensee will, at its own cost and expense, maintain during the Term of this Agreement, such insurance as required hereunder. The insurance coverage will be from a company, or companies, with an A.M. Best's rating of A-VII or better and authorized to do business in each state where Licensee will perform work under this Agreement. Licensee may obtain all insurance limits through any combination of primary and excess or umbrella liability insurance. Licensee will require its subcontractors to maintain proper insurance applicable to the type and scope of work to be performed under this Agreement.

- (a) Workers' Compensation insurance with statutory limits applicable in each state where the work is to be performed including Employer's Liability or "Stop Gap" insurance with limits not less than \$1,000,000 each accident.
- (b) Commercial General Liability with limits not less than \$1,000,000 per occurrence and \$2,000,000 aggregate covering personal injury, bodily injury, death, property damage, products/completed operations, and contractual liability.
- (c) Commercial Automobile Liability with limits not less than \$1,000,000 combined single limit per occurrence covering bodily injury and property damage for all owned, non-owned and hired vehicles used in connection with the performance of this Agreement.
- (d) Excess/Umbrella Liability Insurance with limits of not less than \$5,000,000 each occurrence.

5.5.2 Licensee's compliance with its obligations under this Article 18 will not relieve Licensee of any liability under this Agreement or in any way modify Licensee's obligations under this Agreement to indemnify, defend and hold Licensor harmless.

5.5.3 The Licensor, its affiliates, subsidiaries, and parent, as well as the officers, directors, employees and agents of all such entities will be included as additional insureds on the policies described in subsections (b), (c) and (d) above. The coverage described in subsection (b) will be primary and not contributory to insurance which may be maintained by Licensor, subject to the indemnification provisions of this Agreement. Prior to commencement of work under this Agreement and upon any renewal of insurance during the Term of this Agreement, Licensee will make available to Licensor evidence of the insurance required herein.

5.5.4 Licensor may, at its discretion and upon prior notice to Licensee, require at any time during the Term additional coverage and insurance limits greater than those required in Section 5.5.1. Licensee's liability to Licensor is not limited to the insurance coverage certified or required to be carried under Section 5.5.1.

ARTICLE 6: TERM, TERMINATION AND SALE OR TRADE.

6.1 **Term.** This Agreement is effective on the Effective Date. The term of this Agreement will begin on the Effective Date and continue for a period of five (5) years from the Effective Date ("Initial Term) and will automatically renew for five (5) successive terms of five (5) years each (each a "Renewal Term"). Licensor or Licensee may terminate this Agreement at the end of the Initial Term or any Renewal Term by providing notice of termination at least six (6) months prior to the end of the Initial Term or relevant Renewal Term. The use of the word "Term" in this Agreement means the Initial Term as extended by any Renewal Term. Following the expiration or termination of the Agreement under this Section 6.1, if Licensee desires to maintain its Attachments on some or all of the Poles and/or Conduit, the parties will

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negotiate in good faith to enter into a new agreement and the terms of this Agreement will continue in effect on a day to day basis until (i) the new agreement is signed or (ii) 18 months following the date of expiration or termination of this Agreement or other mutually agreed upon time period, whichever first occurs (the "Grace Period"). Any Attachments that are made during the Grace Period would not be Unauthorized Attachments or be subject to Unauthorized Attachment Fees so long as Licensee submits, and Licensor approves, Applications for such Attachments.

6.2 **Pole and/or Conduit Sale or Trade.** If Licensor sells or trades Poles and/or Conduit upon which Licensee has Attachments, this Agreement may be assigned to the purchaser or transferee, in whole or in part as to those particular Poles and/or Conduit and Licensee will look to the new owner of the Poles and/or Conduit for access to those facilities.

ARTICLE 7: **DEFAULT AND REMEDIES**

7.1 **Licensee Default.** In addition to any Licensee Defaults specifically provided for elsewhere in this Agreement, and subject to any requirements for those same Licensee Defaults, a "Licensee Default" occurs if: (a) Licensee fails to pay a undisputed monetary obligation contained in this Agreement when due and payable, and the delinquency continues for a period of 30 days after Licensee's receipt of notice of delinquency from Licensor; (b) Licensee fails to perform any non-monetary obligation contained in this Agreement, and the non-performance continues for a period of 30 days after Licensee's receipt of notice of non-performance from Licensor, or when the non-monetary obligation cannot reasonably be cured within the 30 day period, if Licensee, within that 30 day period, has not commenced the cure of the non-performance or thereafter fails to continuously and diligently prosecute or complete the cure of the non-performance; in the event Licensee will not have more than 60 days from Licensee's receipt of notice to cure non-performance of a non-monetary obligation, despite its due diligence; (c) any representation or warranty of Licensee in this Agreement proves untrue or incorrect; or (d) Licensee becomes insolvent, or bankruptcy or receivership proceedings are initiated by or against Licensee.

7.2 **Licensor Remedies.** If a Licensee Default occurs, Licensor will have the immediate right, in addition to any other rights and remedies to which it is entitled under this Agreement, at law or in equity, including the right to seek specific performance, to terminate this Agreement. In the event of termination, Licensee must remove all of its Attachments in accordance with Article 17. Licensor's termination of this Agreement does not release Licensee from any liability which exists at the time of termination or which may accrue after termination. If the Licensee Default falls under Section 7.1(a), Licensor may assess as a late fee interest at the rate of 1.5% per month, compounded annually, provided that any interest assessed by Licensor shall be reduced, if necessary, so that it does not exceed the highest interest rate allowed by Applicable Law against any outstanding amount from the due date of that amount until the date of payment.

7.3 **Licensor Default.** A "Licensor Default" occurs if: (a) Licensor fails to pay an undisputed monetary obligation contained in this Agreement when due and payable, and the delinquency continues for a period of 30 days after Licensor's receipt of notice of delinquency from Licensee; and (b) Licensor fails to perform a non-monetary obligation contained in this Agreement, and the non-performance continues for a period of 30 days after Licensor's receipt of notice of the non-performance from Licensee, or where the default cannot reasonably be cured within the 30-day period, if Licensor, within that 30 day period, has not commenced the cure of the non-performance and thereafter fails or neglects to continuously and diligently prosecute or complete the cure of the non-performance. Licensor will not have more than 60 days from Licensor's receipt of written notice to cure non-performance of a non-monetary obligation, despite its due diligence.

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7.4 **Licensee Remedies.** If a Licensor Default occurs, Licensee may resort to any rights and remedies to which it is entitled under this Agreement, at law or in equity, including the right to seek specific performance.

7.5 **Remedies Cumulative.** All remedies described in this Agreement are cumulative and are not exclusive of other remedies to which a party may be entitled under this Agreement, at law or in equity. Use of one or more remedies does not bar the use of any other remedy.

ARTICLE 8: LICENSEE AUTHORIZATION

8.1 **Authorization.** Licensor makes no representation that its Right-of-Way is apportionable to Licensee. Licensee is solely responsible for obtaining and maintaining all necessary licenses, authorizations, permits, franchise agreements, certificates of convenience and necessity, Rights-of-Way, easements, rights, underlying rights, permissions and consents from any governmental or public authority or any private individual or entity, and if applicable from any Joint Owner or Existing Attaching Entities, as may be required so that Licensee can place, use or maintain its Attachments whether on Licensor's Poles, between Poles, in Licensor's Conduit or in the vicinity near Poles or Conduit (collectively, "Authorization"). Authorization includes Licensee obtaining the necessary FCC radio spectrum licenses and authorizations, real property interest for any Attachment that is to be used on, placed within or requires the entering onto of private property or a public street, alley, highway or other public thoroughfare. Each necessary Authorization must be in writing, and if an Application is submitted that requires an Authorization, Licensee may be required by Licensor to provide copies of the Authorization in support of its Application. Submitting copies of an Authorization to Licensor will constitute Licensee's representation and warranty that it has the proper Authorization to place, use or maintain its Attachment. It will be a Licensee Default if Licensee obtains a License for an Attachment that required an Authorization, and Licensee failed to obtain the necessary Authorization. Licensor will, at no out of pocket expense to Licensor, reasonably cooperate with Licensee in Licensee's efforts to obtain an Authorization. Provided further, Licensee shall bear sole responsibility for outreach related to complaints or concerns arising from any governmental or public authority or any third party private individual or entity, to the extent related to its Attachments, including timely responding to complaints regarding Attachments, their size, placement, condition, or their effects on health, safety and the environment, or otherwise (a "Complaint").

8.2 **Indemnification.** Licensor will not be liable to Licensee if Licensee is prevented from placing, maintaining or continuing an Attachment due to Licensee's failure to obtain an Authorization, or due to revocation or termination of an Authorization. Licensee will indemnify, hold harmless and defend Licensor, Licensor's parent, subsidiaries and affiliates and their respective directors, officers, employees and agents (Licensor and the foregoing, each a "Licensor Indemnitee") from and against any and all claims, suits, judgments, liens, actions, damages, demands, settlements, penalties, assessments, fines, obligations, losses, liabilities, costs, interest, expenses, disbursements and fees, including, but not limited to attorneys' fees and litigation expenses (collectively, "Damages"), for a claim by a third party against a Licensor Indemnitee arising from or related to a Complaint or Licensee's failure to obtain or comply with an Authorization, or the revocation or termination of an Authorization. For the purpose of this Section 8.2, "Damages" will include Licensor's Cost of relocating Poles and/or Conduit or Conduit Systems and of defending Licensor's rights to and in any Right-of-Way granted to Licensor.

8.3 **Revocation of Authorization.** If an Authorization is revoked, expires or terminates for any reason after Licensee makes an Attachment for which an Authorization is required and for which Licensor

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granted a License, the License will be automatically revoked, effective the day the Authorization is revoked, expires or terminates, provided that if Licensee is in the process of challenging any revocation, expiration or termination, the Licensee may maintain its Attachments throughout such challenge, if legally permitted by order of the court before which Licensee's challenge is pending, and thereafter, if such challenge is successful. Otherwise, Licensee will remove the Attachments covered under the revoked License in accordance with Article 17. In any event, Licensee will indemnify, defend and hold each Licensor Indemnitee harmless from and against any Damages arising from or related to Licensee's actions or failure to act under this Section 8.3.

8.4 **Denial of Application**. If an Authorization is revoked, expires or terminates for any reason after an Application is made for which the Authorization is required, but before Licensor approves the Application, Licensor may hold the Application in abeyance, and any approval by Licensor of such Application will be deemed to be conditional and provisional pending the outcome of any challenge by Licensee of any such revocation, expiration or termination, and Licensee shall not make any Attachments following such revocation, expiration or termination unless it first obtains a court order legally permitting the Attachment(s), as provided in Article 8.3.

ARTICLE 9: MATTERS AFFECTING LICENSE OR APPROVAL

9.1 **Safety, Reliability and General Engineering Principles**. Licensor may deny access because of insufficient capacity or for reasons of safety, reliability or general engineering principles.

9.2 **Licensor Service Obligations and No Duty to Construct**.

9.2.1 Licensor's right to locate, maintain and operate Poles, Conduit and Conduit Systems to fulfill its own service obligations is in no manner limited by this Agreement.

9.2.2 Nothing in this Agreement will compel or be construed as compelling Licensor to construct, retain, extend, place, replace, restore or maintain any Pole, Conduit or Conduit System that Licensor needs or does not need for its own service requirements, business or operations, or to approve an Application that would require Licensor to construct, retain, extend, place, replace, restore or maintain any Poles, Conduit or Conduit System, except as otherwise required by Applicable Law.

9.3 **Other Agreements**. Nothing in this Agreement limits, restricts or prohibits Licensor from continuing or entering into any other agreement or arrangement regarding the use of Poles, Conduit or Conduit Systems.

9.4 **Joint Owners and Existing Attaching Entities**. Licensee acknowledges that the rights received under this Agreement may be subject to existing agreements or arrangements between Licensor and any Joint Owners or Existing Attaching Entities.

9.5 **Licensee Only**. Except as otherwise permitted by Applicable Law, only Licensee is allowed to make Attachments under this Agreement. Nothing in this Agreement will permit or be construed as permitting any person or entity other than Licensee to make Attachments, including any Licensee parent, affiliate or subsidiary.

9.6 **Specific Parts of Poles, Conduit or Conduit Systems**. Nothing in this Agreement grants Licensee the right to attach to or occupy any specific part of Poles, Conduit or Conduit Systems, including any specific part of a Pole, Anchor, Conduit, Conduit System or Right-of-Way, or compels Licensor to grant Licensee the right to attach to or occupy any specific part of Poles, Conduit or Conduit System; and

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Licensor may determine and assign the location on a Pole or in Conduit where Licensee's Attachments are to be made. Once Licensee's Attachment is assigned a location, any change in that location shall be considered a Modification unless it is relocated by an Existing Attaching Entity exercising rights pursuant to OTMR.

9.7 **No Ownership or Property Rights.** Licensee's use of Poles and /or Conduit under this Agreement, however extended, or payment of fees or charges required under this Agreement, does not create or vest in Licensee any ownership or property rights in Poles or Conduit, or any of Licensor's other authorizations, real or personal property. Licensee's rights are limited to a License for the Attachment in strict compliance with the terms and conditions of this Agreement.

9.8 **Loss of Property Rights.** Licensor may deny an Application, or rescind grant of a License if, in Licensor's sole but reasonable discretion, a proposed Attachment or the operation of Licensee pursuant to a License could result in Licensor's forfeiture of a Right-of-Way or other right to occupy property on which Poles and/or Conduit are located.

9.9 **Unpaid Monetary Obligations.** Licensor may refuse to consider or may deny an Application as long as any of Licensee's monetary obligations due and payable under this Agreement remain unpaid. However, Licensor may not refuse to consider or deny an Application because of such unpaid monetary obligation if Licensee has invoked and is in compliance with Section 20.5 regarding the unpaid monetary obligation.

9.10 **Attachment Bond and Evidence of Insurance.** Licensor may refuse to consider an Application for which the bond requirements of Section 21.1 have not been met or if Licensee has not delivered the Evidence of Insurance required under Section 5.5.

9.11 **Noncompliant and Unauthorized Attachments.** Licensor may refuse to consider any Application until Licensee has, in accordance with Article 19, brought any Noncompliant Attachment into compliance or removed it, or has removed any Unauthorized Attachment or made Application for it.

9.12 **Duct Reservation.** Licensor reserves one Duct in each Conduit for emergency and maintenance purposes. The reserved Duct will be equally accessible by and available to any person or entity with Licensor-approved equipment in the Conduit, in order to use and maintain such equipment or to restore such equipment in an emergency. If Application is made for an Attachment that, in Licensor's sole discretion, calls this Duct reservation into question, Licensor may deny the Application.

ARTICLE 10: **SPECIFICATIONS**

10.1 Each Attachment must be placed, maintained and operated throughout the Term in accordance with the following, all of which are incorporated by reference into this Agreement (collectively, "Specifications"): (a) the requirements and specifications of the most current edition of the NESC and any formal interpretations of it, including a determination of the strength of the Poles to ensure sufficiency for transverse and vertical loads; (b) the most current rules and regulations of the Occupational Safety and Health Act ("OSHA"), including any formal interpretations of it, including determinations related to radio frequency emissions; (c) the most current standards of the American National Standards Institute; (d) the rules, regulations and codes of any applicable governing authority; (e) any Applicable Law; (f) generally accepted industry standards, including those standards applicable to wind movement and ice load on aerial facilities; (g) Licensor's written specifications, Exhibit F, an Application, drawing, text or other writing, including any requirements for the location of an Attachment; and (h) the grounding specifications

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as set forth on Exhibit B attached to this Agreement (“Grounding Specifications”). If a conflict exists between any of the Specifications, the more stringent Specification will apply and control.

10.2 Each Pole location containing an Attachment that receives or emits RF shall have a power ON/OFF switch readily accessible by Licensor in a place approved by Licensor that will terminate the transmission of radio frequency when turned to the OFF position. The position of the ON/OFF switch shall be accessible to Licensor and clearly marked by Licensee. Licensee shall maintain in a conspicuous location on the Pole signage including a 24-hour toll-free telephone number to allow for immediate cessation of transmission of radio frequency. Except in the case of emergency, Licensor will provide reasonable advance notice of the need to power down a Licensee Attachment.

10.3 All approved equipment attached to a Pole pursuant to this Agreement shall be confined to the same one-quarter vertical section of a pole (*i.e.*, a quad), with all cables connecting Licensee’s equipment enclosed and the enclosures attached to the Pole in the same quad.

10.4 No Licensee Attachment shall conflict with the primary use or operation of Licensor’s Poles, Conduit or Conduit System by Licensor, which is to provide a safe work environment for its employees and to provide a high quality communications service to its customers.

10.5 Licensee shall not use any Licensee Attachment in a manner that would create any physical or radio frequency interference with the Licensor’s Poles, Conduit, Conduit Systems, Licensor’s other facilities or operations or the facilities of Existing Attaching Entities on Poles and/or in Conduit. If Licensor or a third party believes the use by Licensee of Licensor’s Poles and/or Conduit creates any physical or radio frequency interference with the use or operation of its existing facilities, Licensee shall immediately repair, correct or abate the cause of said interference to the reasonable satisfaction of Licensor. The parties acknowledge and agree that compliance with FCC spectrum and interference rules by Licensee, alone, shall not alleviate or remove the obligations to avoid causing interference under this section.

10.6 In the event Licensee fails to abate an issue of interference within forty-eight (48) hours of notice for same, unless interference is affecting the quality of Licensor service, then immediately, Licensor shall have the right to turn the Licensee Attachment off or remove the Attachment(s) in accordance with Article 17.

ARTICLE 11: RECORDS AND AUDIT

11.1 **Licensee Service Area.** Licensee will identify the Licensee Service Area using Exhibit E, or other mutually agreeable method to convey the boundary of the Licensees Service Area, which will include a listing of exchanges served.

11.2 **Maintenance of Records.** Licensee must compile and maintain current and accurate records consisting of the number of Attachments, including the type and size of same, when each Attachment was made, the location of each Attachment and all Licensor-approved Applications. Licensee will, at its sole expense and within 14 days after receipt of a request from Licensor, deliver to Licensor complete, accurate, current and legible copies of all such records. Licensee’s obligations under this Section 11.2 will survive for a period of 10 years from the expiration or termination of this Agreement.

11.3 **Audit.** Annually during the Term, Licensor may, in Licensor’s sole discretion, conduct an Audit. Licensor may, but is not required to, give advance notice to Licensee of its intent to conduct an Audit. An Audit may include the following matters: (a) checking for Unauthorized Attachments and

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Noncompliant Attachments of Licensee (and, in Licensor's sole discretion, those of Existing Attaching Entities); or (b) checking the number of Attachments, when an Attachment was made, the type and size of same and the location of Attachments (and, in Licensor's sole discretion, those of Existing Attaching Entities). Licensee will reimburse Licensor for one-half of Licensor's total Audit Cost if the Audit does not include any Existing Attaching Entities or for its pro rata share of the Licensor's total Audit Cost if the Audit includes any Existing Attaching Entities. However, if the Audit shows either that the actual number of Attachments exceeds the number of Licensor-approved Attachments by more than 1%, or that the actual number of Noncompliant Attachments exceeds the number of Licensor-approved Attachments by more than 1%, Licensee will pay for Licensor's entire total Audit Cost. Licensee will reimburse Licensor for its share of Licensor's total Audit Cost within 45 days of the invoice date for an Audit Cost invoice.

11.4 **Records Adjustment.** If Licensor determines as a result of an Audit that the actual number of Attachments is not the same as the number reflected in Licensor's then current records, Licensor will share those figures with Licensee, the parties' records will be revised to reflect the actual number of Attachments and the revised records will be used by the parties for determining any amounts owed pursuant to Article 20 and for future invoicing and other matters related to those records.

11.5 **Non-Periodic Inspections.** Licensor also will have the right at any time to conduct a Non-Periodic Inspection of Poles or Licensee Attachments if Licensor has notice that one or more of Licensee's Attachments may be a Noncompliant Attachment or an Unauthorized Attachment. If the Non-Periodic Inspection shows any Noncompliant Attachments or Unauthorized Attachments, Licensee will reimburse Licensor for Licensor's total Non-Periodic Inspection Cost within 45 days of the invoice date for a Non-Periodic Inspection Cost invoice.

ARTICLE 12: POLE APPLICATION AND ATTACHMENT PROCESS

12.1 **Pole Application.** Except as otherwise set forth in this Agreement, Licensee shall not make or begin making an Attachment to a Pole without first submitting a complete Application to Licensor. Licensee shall submit its Application on Licensor's form, currently Exhibit A hereto, which may be modified from time-to-time by Licensor. Licensor may treat multiple Applications from Licensee as a single Application when the Applications are made within thirty (30) days of each other.

12.2. OTMR or non-OTMR Election and Determination.

12.2.1 Licensee may elect to have an Approved Contractor (as hereinafter defined) perform Simple Make Ready Work via the process referred to by the FCC as "One Touch Make Ready" (OTMR). Alternately, Licensee may request Licensor review Licensee's Application pursuant to the FCC's non-OTMR regime, and Licensee is required to follow the non-OTMR regime for all Complex Make Ready Work.

12.2.2 To proceed with Application via OTMR, Licensee's Application shall be accompanied by a clear, concise statement from an Approved Contractor as to whether the proposed Application requires Simple Make Ready Work, Complex Make Ready Work, or a combination thereof. If Licensee provides no such statement, Licensor will treat the Application as Complex Make Ready Work.

12.2.3 For Applications requiring only Simple Make Ready Work, the parties agree to abide the FCC's Rules related to OTMR Make Ready Work, generally codified at 47 C.F.R. § 1.1411(j).

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12.2.4 For Applications involving Complex Make Ready Work, as determined either by Licensee's Approved Contractor or by Licensor as further set forth in the FCC's Rules, the parties agree to abide by the FCC's Rules related to non-OTMR Make Ready Work, generally codified at 47 C.F.R. § 1.1411(c) – (i).

12.2.5 For Applications involving Simple and Complex Make-Ready Work, such Applications will be separated by Licensee or its Approved Contractor accordingly, with Simple Make Ready Work following the process set forth in Section 12.2.3, and Complex Make Ready Work following the process set forth in Section 12.2.4.

12.2.6 A copy of 47 C.F.R. §1.1411 is attached to the Agreement as Exhibit I for ease of reference by the Parties; provided, however, that the currently enacted version of section 1.1411 (or its equivalent if renumbered) shall at all times control.

12.2.7 **OTMR Regulatory Fine Strict Liability and Indemnification.** The parties acknowledge that OTMR involves Licensee's Approved Contractor adjusting the facilities of Licensor and/or other Existing Attaching Entities having facilities attached to Licensor Poles within the Communications Space. Licensee further acknowledges that the Poles, and those of other Existing Attaching Entities, are or may be used to provide regulated 911, electricity and similar critical infrastructure services and that outages related thereto may subject Licensor or other Existing Attaching Entities to regulatory fines and/or process. Accordingly, Licensee shall be strictly liable for all regulatory fines and penalties incurred by Licensor or other Existing Attaching Entities caused by Licensee's OTMR work. Further, Licensee will indemnify, hold harmless and defend Licensor Indemnitees from and against any and all Damages for a claim by a third party against Licensor Indemnitees arising from or related to any claim for damage to property or personal injury, including death, arising from or caused by Licensee's election to use OTMR to make attachment under this Agreement.

12.3 **Approved Contractors.**

12.3.1 Licensor will create and keep up-to-date a reasonably sufficient list of Approved Contractors and will make the list available to Licensee. The terminology "Approved Contractor" is one created by the FCC and does not indicate an endorsement by Licensor of any entity on such list. Licensor reserves the right to revise the list to add or delete Approved Contractors at any time. Licensor also will consider, and will not unreasonably withhold its consent to, the addition of any contractor to its list upon showing by Licensee or another Existing Attaching Entity that such contractor meets Licensor's Contractor minimum requirements including those set forth in 47 C.F.R. § 1.1412(c). Notwithstanding the foregoing, if Licensor fails to create or keep up-to-date such list, or if no utility-approved contractor is available within a reasonable time period, then Licensee may use its own Qualified Contractor that is not on Licensor's list of Approved Contractors if after providing Licensor with Licensee's certification that said Qualified Contractor is qualified as set forth in 47 C.F.R. § 1.1412(c) Licensor has not disqualified the Qualified Contractor, then Licensee's Qualified Contractor may perform the work under this Agreement that the Approved Contractor was unavailable to perform.

12.3.2 If Licensee performs Make Ready Work as permitted herein, Licensee will provide Licensor and existing attachers with a reasonable opportunity for Licensor and existing attachers to accompany such Approved or Qualified Contractor and/or Licensee's employees while they perform the work. Licensor and/or existing attachers, will have the opportunity to consult with the Approved or Qualified Contractor and/or Licensee's employees and Licensee regarding the work being performed.

12.3.3 Licensee is liable for the work, acts or omissions of the Approved Contractors or Qualified Contractors it hires and for all payment owed to such contractors. Licensor may, upon sufficient notice and

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documentation in accordance with FCC rule 1.1412, disqualify any contractor chosen by Licensee, order the immediate suspension of construction or installation activities by Licensee or its contractor if Licensor, in its sole discretion and judgment, deems such action necessary for reasons of safety, engineering, service reliability or property owner complaint. Licensee will indemnify, hold harmless and defend each Licensor Indemnatee from and against any Damages for a claim by an Approved Contractor hired by Licensee against a Licensor Indemnatee arising from or related to the Approved Contractor performing work on Licensee's behalf, the work itself or Licensee's failure to pay money it owes to the Approved Contractor.

12.3.4 For all other work Licensee is to perform under this Agreement, Licensee may enter into an agreement with an Approved Contractor to perform such work on Licensee's behalf, including work relating to Attachments, Transferring, Rearranging and removing Attachments. Licensee is liable for the work, acts or omissions of the Approved Contractors it hires, and for all payment owed to such Approved Contractors. Licensee will indemnify, hold harmless and defend each Licensor Indemnatee from and against any Damages for a claim by an Approved Contractor hired by Licensee against a Licensor Indemnatee arising from or related to the Approved Contractor performing work on Licensee's behalf, the work itself or Licensee's failure to pay money it owes to the Approved Contractor.

12.4 **Completion of Make Ready Work.** Once all required Make Ready Work has been completed, the party completing the same will notify the other party of the completion. If Licensor performed the Make Ready Work, its notice of completion will be accompanied by an invoice for all final Make Ready Work Cost, the same being due and payable within 45 days of the date of the invoice. Licensor will issue the approved Application for the Attachment upon receipt of payment for the Make Ready Work Costs or, if applicable, upon receipt of completion notice from Licensee and Licensee will neither make an Attachment nor begin work at Poles in furtherance of an Attachment until it has paid the Make Ready Work Cost, been notified by Licensor that all Make Ready Work has been completed or, if applicable, notified Licensor that it has completed all Make Ready Work, and has received approval of the relevant Application.

12.5 **Attachment Completion and Identification of Attachment.**

12.5.1 Licensee must complete its Attachment within 120 days of its receipt of a Licensor-approved Application. Licensor may in its sole discretion, grant a longer period of time upon request of Licensee. Within 15 days after completion of the Attachment, Licensee will give written notice to Licensor that it has completed its Attachment. If Licensee does not complete its Attachment within the 120 day period or any extension thereof, the License granted for the Attachment will be automatically revoked upon the expiration of the applicable period. Licensee is not entitled to a refund of any Make Ready Survey Charge or Make Ready Work Costs it previously paid for the incomplete Attachment.

12.5.2 Each Attachment must have a tag or similar item affixed to it that clearly and conspicuously identifies Licensee as the owner of the Attachment with a telephone number and be done in a manner that allows Licensor or its agents to readily identify from the ground that the Attachment belongs to Licensee.

12.5.3 Licensee shall maintain accurate, up-to-date location maps and records of all its Licensee Attachments on Licensor's Poles. Licensee shall provide a copy of the same to Licensor upon request, at no cost to Licensor.

12.6 **Initial Post-Attachment Inspection.** Licensor may, in its sole discretion, perform an inspection of each Attachment after its initial completion to see if it is in compliance with the Specifications listed in Article 10 ("Initial Post-Attachment Inspection"). Licensor must perform any Initial Post-Attachment Inspection within ninety (90) days of receipt of Licensee's Completion Notice for the

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Attachment. If Licensor decides to conduct an Initial Post-Attachment Inspection, Licensor will: (a) notify Licensee of that decision; (b) give Licensee or its representative the opportunity to be present for the Initial Post-Attachment Inspection; and (c) invoice Licensee for an inspection fee equal to the Cost incurred by Licensor (“Initial Post-Attachment Inspection Fee”). Licensee will pay the Initial Post-Attachment Inspection Fee within 45 days of the invoice date. If the Initial Post-Attachment Inspection reveals that an initial Attachment is a Noncompliant Attachment, the Noncompliant Attachment will then be subject to the Noncompliant Attachment provisions of Article 17. Licensee’s non-compliance with NESC or the Specifications or with applicable federal, state and/or local law shall not be excused or waived by virtue of any Initial Post-Attachment Inspection performed by Licensor irrespective of whether or not such non-compliance is noted on such inspection, nor by any decision by Licensor to not perform such an Initial Post-Attachment Inspection.

12.7 **Overlapping.**

12.7.1 When Licensee intends to engage in Overlapping or to allow third party Overlapping, Licensee must give Licensor advance written notice (“Overlapping Notice”) fifteen (15) days prior to engaging in or allowing the Overlapping using the form attached to this Agreement as Exhibit A. Licensor may provide within such time written notice, including sufficient documentation, indicating that the proposed Overlapping would create capacity, safety, reliability, or engineering issues, and Licensee will be required to address such issues before engaging in the Overlapping set forth in the Overlapping Notice. Licensor will not charge a fee for such review and preexisting violations by Licensor or an Existing Attacher may not be the sole grounds for Licensor objecting to a proposed Overlapping by Licensee. If Licensor does not provide a response within such time, the Overlapping may commence as otherwise set forth in this Agreement; provided, however, that a lack of response from Licensor does not obviate the need for any corrective work that may be required pursuant to section 12.7.3.

12.7.2 Each instance of Overlapping must meet the Specifications listed in Article 10 and must otherwise be used in accordance with the applicable requirements of this Agreement.

12.7.3 Licensee shall provide Licensor subsequent notice within fifteen (15) days of completion of Overlapping (“Overlapping Completion Notice”). Licensor shall have ninety (90) days to inspect the overlap and shall provide Licensee written notice of any damage, code or Specifications violation, violation of this Agreement, or other corrective measure, including Make Ready Work, required of Licensee related thereto, within fourteen (14) days thereof; provided, however, that if Licensor makes any such corrections on Licensee’s behalf, except for corrections arising from the preexisting violations of Licensor or an Existing Attaching Entity, Licensee shall be solely responsible for reimbursing Licensor for such Costs. Notwithstanding the foregoing, nothing in this Section 12.7.3 removes the obligations of the Licensee under this Agreement to abide the Specifications, this Agreement, and Applicable Law.

12.7.4 If Licensee does not comply with the requirements of this section, the Specifications, this Agreement, and/or Applicable Law, including attaching equipment such as RF emitting or receiving devices not permitted as an overlap or by failing to give Overlapping Notice or Overlapping Completion Notice, Licensor may treat the associated Attachments as Noncompliant Attachments subject to the provisions of Article 17.3.

12.8 **Work Danger.** **The parties acknowledge that in exercising its rights under this Agreement, including making Attachments, Licensee, its employees, agents, Approved Contractors, contractors and subcontractors will necessarily be required to work near, adjacent to and in the vicinity of electrically energized lines, transformers or equipment of Licensor or others located on or**

around Poles, and it is the parties' intention that the energy from the same will not be interrupted, except in an emergency situation that poses the risk of death or serious injury to people or property. Licensee is fully and solely responsible for ensuring that its employees, agents, Approved Contractors, contractors and subcontractors have the necessary skill, knowledge, training and experience in order to protect themselves, their fellow employees, agents, Approved Contractors, contractors and subcontractors, as well as Licensor's employees, agents and contractors as well as the general public from harm or injury while exercising Licensee's rights under this Agreement, including making Attachments. Licensee represents and warrants to Licensor that it is apprised of, conscious of and understands the imminent dangers inherent in the work necessary to exercise its rights under this Agreement, including making Attachments, and Licensee will as its sole duty and responsibility notify and inform and continue to notify and inform its employees, agents, Approved Contractors, contractors and subcontractors of such dangers. Furthermore, Licensee acknowledges that it is ultimately responsible for the actions of its employees, agents, Approved contractors, contractors and subcontractors, and as such will ensure that the same have and maintain insurance coverage in the manner required of Licensee under Article 5 prior to and while performing work on Licensor Poles.

12.9 **Non-interference.** Licensee will place and maintain its Attachments at its own expense and in such a manner so as to not interfere with work being performed by or service being provided by Licensor, Joint Owners or Existing Attaching Entities. To the extent required by FCC rules, Licensee will install appropriate signage to notify workers and third parties of the potential exposure to RF emissions. Such signage will be placed at eye level.

12.10 **Service Drops.** Licensee may attach a Service Drop to a Pole prior to submitting an Application for the Service Drop, provided the attachment of the Service Drop is made in accordance with the Specifications and that Licensee submits an Application for the Service Drop within 30 days after its attachment.

12.11 **Power Supply Cabinets.** Licensee is prohibited from attaching any power supply equipment or cabinets with battery back-ups on a Pole that cannot be lawfully and safely reached by Licensee's bucket truck. As an alternative, provided Licensee has Right-of-Way for same, and Licensor's approval pursuant to this Agreement, Licensee may place any allowed power supply cabinets adjacent to a Pole as specified in Exhibit F.

ARTICLE 13: CONDUIT APPLICATION AND ATTACHMENT PROCESS

13.1 **Conduit Application Submission.** Before making an Attachment, Licensee must submit a completed Application for the desired Attachment to Licensor. Licensor will provide a written response to each Application within 45 days of Licensor's receipt of the Application. Licensee will make no more than 1 Attachment request per Application, and that request is limited to occupying no more than 5000 linear feet of Conduit that comprises the relevant Conduit System. Licensee will not submit more than 3 Applications at any one time. Upon the submission of 3 Applications at one time, Licensee will not submit another Application for a minimum of 14 days.

13.2 **Competing Applications.** Licensor will process applications for attachments received from two or more applicants for the same Conduit and/or Conduit System according to the order in which Licensor receives the applications.

13.3 **Make Ready Survey.**

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13.3.1 When Licensor receives an Application, Licensor may determine, in its sole discretion, if a Make Ready Survey is required. If Licensor determines that a Make Ready Survey is required, Licensor will give notice to Licensee of this requirement accompanied by the estimated Cost to conduct the Make Ready Survey. Within 10 days of receipt of the notice and estimate, Licensee must notify Licensor that it is agreeable to Licensor conducting the Make Ready Survey and that it will pay the full Cost for the Make Ready Survey (“Make Ready Survey Charge”). If Licensee fails to give the notice within the 10 day time period, Licensor may deny the Application.

13.3.2 Upon completion of the Make Ready Survey, Licensor will provide Licensee with an invoice for the Make Ready Survey Charge. Licensee will pay the Make Ready Survey Charge within 45 days of the invoice date. Licensee must pay the Make Ready Survey Charge whether or not Licensor approves the relevant Application. Licensor may postpone any decision on an Application or deny an Application if Licensee fails to timely pay the Make Ready Survey Charge. Licensor or its agent will perform any field inspection portion of the Make Ready Survey and, if needed, may contact any Existing Attachers and allow them to participate in the field inspection. Licensee or its agent may be present for the field inspection. Licensee is responsible for any Costs invoiced to Licensor by an Existing Attacher related to the Make Ready Survey.

13.3.3 The creation of a Make Ready Survey or payment of a Make Ready Survey Charge does not obligate Licensor to perform Make Ready Work.

13.4 **Make Ready Work.**

13.4.1 Licensor may determine, in its sole discretion, if any Make Ready Work is required. If no Make Ready Work is required, Licensor will consider the Application. If Make Ready work is required, Licensor will prepare a description of Make Ready Work to be performed, an estimate of Make Ready Work Costs and an anticipated completion date for the Make Ready Work (collectively, “Make Ready Information”). All of this Make Ready Information will be sent to Licensee along with the Application Licensee submitted. Licensee will be obligated to pay for all Make Ready Work Costs. Thereafter, if Licensee elects to proceed with the proposed Attachment, Licensee must sign and return the Application to Licensor within 30 days of the date Licensee receives the Make Ready Information. By signing and returning the Application, Licensee is agreeing to pay for all Make Ready Work Costs. Licensor will commence Make Ready Work upon receipt of the returned Application.

13.4.2 Once all required Make Ready Work has been completed, Licensor will notify Licensee of the completion. This notice will be accompanied by an invoice for all Make Ready Work Costs, the same being due and payable within 45 days of the date of the invoice. Licensor will issue the approved Application for the Attachment upon receipt of payment for the Make Ready Work Costs. Licensee will neither make an Attachment nor begin work at Conduit and/or Conduit System in furtherance of an Attachment until it has paid the Make Ready Work Costs, been notified by Licensor that all Make Ready Work has been completed and has received a Licensor-approved Application.

13.5 **Attachment Completion and Identification of Attachment.**

13.5.1 Licensee must complete its Attachment within 120 days of its receipt of a Licensor-approved Application. Within 15 days after completion of the Attachment, Licensee will give written notice to Licensor that it has completed its Attachment using the form attached to this Agreement as Exhibit A-2 (“Completion Notice”). If Licensee does not complete its Attachment within the 120 day period, the License granted for the Attachment will be automatically revoked upon the expiration of the 120 day period.

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Licensee is not entitled to a refund of any Make Ready Survey Charge or Make Ready Work Costs it previously paid for the incomplete Attachment.

13.5.2 Each Attachment must have a tag or similar item affixed to it that clearly and conspicuously identifies Licensee as the owner of the Attachment and be done in a manner that allows Licensor or its agents to easily and readily identify that the Attachment belongs to Licensee.

13.6 **Initial Post-Attachment Inspection.** Licensor may, in its sole discretion, perform an inspection of each Attachment after its initial completion to see if it is in compliance with the Specifications listed in Article 10 (“Initial Post-Attachment Inspection”). Licensor must perform any Initial Post-Attachment Inspection within 90 days of receipt of Licensee’s Completion Notice for the Attachment. If Licensor decides to conduct an Initial Post-Attachment Inspection, Licensor will: (a) notify Licensee of that decision; (b) give Licensee or its representative the opportunity to be present for the Initial Post-Attachment Inspection; and (c) invoice Licensee for an inspection fee equal to the Cost incurred by Licensor (“Initial Post-Attachment Inspection Fee”). Licensee will pay the Initial Post-Attachment Inspection Fee within 45 days of the invoice date. If the Initial Post-Attachment Inspection reveals that an initial Attachment is a Noncompliant Attachment, the Noncompliant Attachment will then be subject to the Noncompliant Attachment provisions of Article 19. Licensee’s non-compliance with NESC or the Specifications or with applicable federal, state and/or local law shall not be excused or waived by virtue of any Initial Post-Attachment Inspection performed by Licensor irrespective of whether or not such non-compliance is noted on such inspection, nor by any decision by Licensor to not perform such an Initial Post-Attachment Inspection.

13.7 **Non-interference.** Licensee will place and maintain its Attachments at its own expense and in such a manner so as to not interfere with work being performed by or service being provided by Licensor or any Existing Attachers.

13.8 **Contractor.** Licensee may enter into an agreement allowing a contractor or subcontractor (collectively, “Contractor”) to perform work on Licensee’s behalf that Licensee is to perform under this Agreement, including work relating to making Attachments, Transferring, Rearranging and removing Attachments. However, Licensee will not enter into any such Contractor agreement without first obtaining Licensor’s approval of the Contractor, which approval will be based upon the same criteria Licensor uses when approving a Contractor for its own purposes. Licensee is liable for the work, acts or omissions of the Contractor. Licensee is liable for all payment owed to the Contractor. Licensee will indemnify, hold harmless and defend each Licensor Indemnitee from and against any Damages for a claim by a Contractor against a Licensor Indemnitee arising from or related to Contractor performing work on Licensee’s behalf, the work itself, or Licensee’s failure to pay money it owes to Contractor.

ARTICLE 14: MANHOLES AND HANDHOLES

14.1 **Access and Entry.**

14.1.1 Upon Licensee’s request and at Licensee’s sole expense, Licensor may take measures to allow Licensee access to and from Conduit and/or Conduit Systems in order for Licensee to perform work on its Attachments. This access will be limited to access and entry via Manholes or Handholes.

14.1.2 For performing non-emergency work to its Attachment, Licensee must provide Licensor with its written request for access at least 14 days prior to the date it desires to enter Conduit or Conduit Systems via Manholes or Handholes (“Access Notice”). Access Notice must contain a detailed description of the nature of the work to be performed, the Attachments affected by the work, the estimated time required to

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fully perform the work and any applicable permits or maintenance of traffic drawings. Licensee's entry and work will be conducted during normal business hours, except as may be otherwise agreed to by the parties or mandated by any applicable permitting authority or Applicable Law.

14.1.3 For performing emergency work to its Attachments, Licensee may give oral notice to Licensor's Point of Contact of when entry into Conduit or Conduit Systems will take place as far in advance of the entry as is reasonably possible.

14.1.4 Licensor must approve any request for Licensee's entry and work. Licensee reserves the right to have an employee or representative present during Licensee's entry into Conduit or Conduit Systems. Licensee will reimburse Licensor for the Cost associated with the presence of Licensor's employee or representative.

14.1.5 Any opening or entry by Licensee or its representatives of or into Licensor Manholes, Handholes, Conduit or Conduit Systems without prior notification and Licensor approval as required under this Section 14.1 constitutes a default of this Agreement by Licensee.

14.2 **Unauthorized Entry.** Any opening or entry by Licensee or its representatives of or into Licensor Manholes, Handholes, Conduit or Conduit Systems without prior notification and Licensor approval as required in Section 14.1 will be considered an unauthorized entry. In addition to any other rights and remedies to which Licensor may be entitled for an unauthorized entry at law, in equity or under this Agreement, Licensor may charge Licensee \$500.00 per unauthorized entry.

14.3 **Indemnification.** Licensee will indemnify, hold harmless and defend each Licensor Indemnitee from and against any and all Damages for a claim by a third party against a Licensor Indemnitee arising from or related to any opening or entry by Licensee or its representatives of or into Manholes, Handholes, Conduit or Conduit Systems, or any work performed by Licensee or its agents in exercising its rights under Section 14.1.

ARTICLE 15: MODIFICATIONS

15.1 **Licensee-Requested Modification.** If Licensee desires a Modification, Licensee must adhere to the Application and Attachment process of Article 5 for each desired Modification. Each Modification requested by Licensee and approved by Licensor will be performed at Licensee's own expense and will be done in a manner that does not interfere with work being performed by or service being provided by Licensor, Joint Owners or Existing Attaching Entities. Notwithstanding anything else to the contrary in this Agreement, Licensee does not need to make an Application or obtain a modified License for the following types of matters, and such matters will not be within the definition of "Modification": (a) changes incident to routine or emergency maintenance, repair and replacement of Licensee Attachments, provided that any replacement involves replacing existing Licensee Attachment with the same or substantially similar Licensee Attachment; (b) replacement of Service Drops not attached to Poles; or (c) removal of Licensee's Attachments, provided the removal is performed in compliance with Applicable Law and Article 17. In addition to any reimbursement of Costs required under Article 12 & 13, Licensee will pay any additional Costs incurred by Licensor that are solely related to a Licensee-requested Modification.

15.2 Licensor-Required Modification.

15.2.1 Notice of Planned Modifications. Licensor shall notify Licensee in writing at least sixty (60) days prior to the commencement of any relocation, rearrangement or other modification of its poles, innerducts, conduits or rights-of-way affecting Licensee's facilities.

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15.2.2 Rearrangement of Licensee's Facilities at Licensor's Request. Licensee acknowledges that, from time to time, it may be necessary or desirable for Licensor to rearrange facilities on or within its poles or conduit systems, change out poles, add poles to a pole line, relocate or reconstruct poles, pole lines, conduit segments, or conduit runs, enlarge manholes, reinforce conduit, or otherwise modify poles, pole lines, or portions of its conduit system and that such changes may be necessitated by Licensor's own business needs or by the decision by another person or entity to seek access to Licensor's poles, innerducts, conduits or rights-of-way .

- (a) Licensee agrees that Licensee will cooperate with Licensor and joint users in making such rearrangements as may be necessary to enable such changes to be made and that costs incurred by Licensee in making such rearrangements shall, in the absence of a specific agreement to the contrary, be borne by the parties in accordance with then applicable statutes, regulations, and agency orders, including the Pole Attachment Act and regulations thereunder. In the event that such costs are appropriately chargeable to Licensor, Licensor shall reimburse Licensee directly. In the event such costs are chargeable to a joint user, Licensor will collect such charges from the joint user and reimburse Licensee for its costs. In the event Licensor performs the work and the costs are chargeable to a third party, Licensor shall collect such costs from the third party.
- (b) Licensee shall make all rearrangements of its facilities within 60 days after receiving written notification by Licensor of the required rearrangements.
- (c) Nothing contained in this Section shall preclude Licensee from advising Licensor, within sixty (60) days from the date of the notice, of its desire to add to or modify its existing attachment.

15.2.3 Non-reimbursable Rearrangement of Facilities at the Request of Third Parties. Licensee acknowledges that, from time to time, it may be necessary for Licensor to rearrange facilities on or within its poles or conduit systems, change out poles, add poles to a pole line, relocate or reconstruct poles, pole lines, conduit segments, or conduit runs, enlarge manholes, reinforce conduit, or otherwise modify poles, pole lines, or portions of its conduit system and that such changes may be necessitated by factors outside of Licensor's control. Examples are: (i) the decision by a municipality, county or state to widen streets; (ii) railroad projects when the facilities are in railroad right-of-way; or (iii) undergrounding ordinances or statutes. In all such cases, Licensor, Licensee and other joint users shall share the cost of acquisition of new or additional right-of-way and construction, engineering and administrative costs. Licensor and each joint user (including Licensee) shall pay for the reinstallation of its facilities in or on Licensor poles, innerducts, or conduits.

15.3 Emergency Repairs including Pole Replacements.

15.3.1 Applicability. The parties acknowledge that in the event of an emergency, services provided by the parties and joint users to their respective customers may be interrupted, that it may not be possible for all service providers with facilities attached to Licensor's poles to restore service to all customers at the same time, that disputes may arise between the parties concerning the manner in which emergency repairs shall be made, that it is essential that decisions be made quickly, and that it is highly desirable that all service providers utilizing Licensor's poles, innerducts, and conduits enter into appropriate arrangements relating to emergency repairs and service restoration. In the absence of prearranged agreements, it is expected that disputes will be immediately resolved at the site among the affected parties based upon the criteria set forth in Subsection 15.3.5 of this Agreement. The parties further agree that the provisions of this Section shall apply in the absence of more comprehensive agreements relating to emergency repairs.

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15.3.2 Licensee Responsible for Emergency Repairs to Its Own Facilities; Access to Reserved Duct. In general, Licensee shall be responsible for making emergency repairs to its own facilities and for formulating appropriate plans and practices enabling Licensee to make such repairs.

- (a) Nothing contained in this Agreement shall be construed as requiring Licensor to perform any repair or service restoration work of any kind with respect to Licensee's facilities.
- (b) Reserved maintenance Ducts shall be available, on a nondiscriminatory basis, for emergency repair activities by Licensor, Licensee, and other joint users with facilities in the conduit section in which the reserved Duct, as described in Section 9.12, is located; provided, however, that a party using the reserved Duct for emergency repair activities shall immediately notify Licensor of such use and must either vacate the reserved Duct within thirty (30) days or, with Licensor's consent, which consent shall not be unreasonably withheld, rearrange its facilities to ensure that at least one full-sized replacement reserved Duct is available for use by all occupants in the conduit section within thirty (30) days after such party occupies the reserved Duct. The parties agree not to exceed thirty (30) days' use except in unusual emergencies that may require longer than thirty (30) days to rectify.
- (c) If necessary, other unoccupied innerducts may be used on a short-term basis when the reserved Duct is unavailable. Any such use shall be subject to the same rules applicable to the reserved Duct and shall be subject to the rights of any party or joint user to whom such innerduct has been assigned.

15.3.3 Designation of Emergency Repair Coordinators and Other Information. Promptly after the issuance of a license permitting Licensee to attach facilities to Licensor's poles or place facilities within Licensor's conduit system, Licensee shall provide Licensor with the emergency contact number of Licensee's designated point of contact for coordinating the handling of emergency repairs of Licensee's facilities and shall thereafter notify Licensor of changes to such information.

15.3.4 Reporting of Conditions Requiring Emergency Repairs. Licensee shall notify Licensor at the earliest practicable opportunity after discovering any condition on or in any of Licensor's poles, innerducts, conduits, or rights-of-way requiring emergency repairs to Licensor's facilities and Licensor shall notify Licensee at the earliest practicable opportunity after discovering any condition on or in any of Licensor's poles, innerducts, conduits, or rights-of-way requiring emergency repairs to Licensee's facilities.

15.3.5 Order of Precedence of Work Operations; Access to Reserved Duct and Other Unoccupied Innerducts in Emergency Situations. When notice and coordination are practicable, Licensor, Licensee, and other affected parties shall coordinate repair and other work operations in emergency situations involving service disruptions. Disputes will be immediately resolved at the site by the affected parties in accordance with the following principles.

- (a) Emergency service restoration work requirements shall take precedence over other work operations.
- (b) Except as otherwise agreed upon by the parties, restoration of lines for emergency services providers (e.g., 911, fire, police, and hospital lines) shall be given the highest priority and temporary occupancy of the reserved Duct (and, if necessary, other

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unoccupied innerducts shall be assigned in a manner consistent with this priority. The parties shall exercise good faith in assigning priorities.

- (c) Licensor shall determine the order of precedence of work operations and assignment of innerduct space in the reserved Duct (and other unoccupied innerducts only if the affected parties are unable to reach prompt agreement; provided, however, that these decisions shall be made by Licensor on a nondiscriminatory basis in accordance with the principles set forth in this Section.

15.3.6 Emergency Corrective Action. When Licensor reasonably believes that, due to the condition of the Licensee's facilities placed on, within, or in the vicinity of Licensor's poles, innerducts, conduits, or rights-of-way, there is an immediate or imminent threat to the safety or health of employees or any other person, to the physical integrity or functioning of Licensor's facilities, or Licensor's ability to meet its service obligations, Licensor may unilaterally perform such limited corrective work as may be necessary to prevent or mitigate against the injury threatened. For example, if facilities have become detached or partially detached from a pole or detached or partially detached from supporting racks or wall supports within a manhole, Licensor may reattach them as provided in this Section but shall not be obligated to do so.

- (a) Before performing any corrective work involving facilities of Licensee, Licensor shall attempt to notify Licensee. Licensor and Licensee shall attempt to coordinate corrective work.
- (b) When an emergency situation exists such that advance notice and coordination are not practicable, Licensor may perform corrective work without first giving notice to licensee and shall promptly notify Licensee of the corrective work performed.

15.3.7 Emergency Pole Replacements. Licensee will cooperate fully with Licensor when emergency pole replacements are required.

- (a) When emergency pole replacements are required, Licensor shall promptly make a good faith effort to contact Licensee to notify Licensee of the emergency and to determine whether Licensee will respond to the emergency in a timely manner.
- (b) If notified by Licensor that an emergency exists which will require the replacement of a pole, Licensee shall transfer its facilities immediately, provided such transfer is necessary to rectify the emergency. If the transfer is to a Licensor replacement pole, the transfer shall be in accordance with Licensor's placement instructions.
- (c) If Licensee is unable to respond to the emergency situation immediately, Licensee hereby authorizes Licensor (or any joint user sharing the pole with Licensor) to perform such emergency-necessitated transfers (and associated facilities rearrangements) on Licensee's behalf.

15.38 Licensee to Bear Expenses. Licensee shall bear all expenses arising out of or in connection with emergency repairs of its facilities and transfers or rearrangements of its facilities associated with emergency pole replacements under this Section.

- (a) Licensee shall be solely responsible for paying all persons and entities who provide materials, labor, access to real or personal property, or other goods or services in connection with any such repair, transfer, or rearrangement of Licensee's facilities.

EXHIBIT A

- (b) Licensee will reimburse Licensor for the cost incurred by Licensor for any work performed by Licensor for Licensee under this Section.

ARTICLE 16: PROPERTY SUBJECT TO FORFEITURE

16.1 **Forfeiture.** If a License is granted and subsequently Licensor, in Licensor's sole discretion, believes that the Attachment made under that License could result in or actually results in a forfeiture of Licensor's rights to occupy the property on which Poles are located, Licensor may revoke the License for the relevant Attachment. Licensor will send notice of revocation to Licensee and upon receipt of notice, Licensee has fifteen (15) days to provide evidence of a legal challenge and to the extent Licensee is challenging the revocation and is legally entitled to maintain its Attachments during such challenge by order of the court before which Licensee's challenge is pending, Licensee shall not be forced to remove its Attachment unless Licensee's challenge is ultimately unsuccessful. If Licensee cannot provide evidence as stated afore, Licensee will immediately remove its Attachment at its own cost and expense. If the Attachment is not immediately removed, Licensor may remove the Attachment without liability to Licensee. In that case, Licensee will reimburse Licensor for the removal Cost within 45 days of the invoice date for an invoice from Licensor for the Cost. In any event, Licensee will indemnify, defend and hold each Licensor Indemnitee harmless from and against any Damages arising from or related to Licensee's actions or failure to act under this Section 16.1. Any such legal action brought pursuant to this Section 16.1 shall be strictly limited in scope to a determination of the reasonableness of Licensor's belief or determination that the Attachment made under the License could result in or actually results in a forfeiture of Licensor's rights to occupy the property on which Poles are located.

ARTICLE 17: REMOVAL OF ATTACHMENTS

17.1 **Removal.** In addition to and subject to other provisions in this Agreement requiring Licensee to remove Attachments, Licensee will, unless notified otherwise by Licensor, remove Attachments at its own expense within 60 days of: (a) Licensee's receipt from Licensor of any notice to remove the Attachments; (b) the date the License covering the Attachment is revoked; or (c) the date this Agreement expires or terminates.

17.2 **Removal Notice.** When Licensee desires to remove an Attachment, be it permanently or as part of a Modification, or if Licensee is required under this Agreement to remove an Attachment, Licensee must provide ten (10) days advance notice to Licensor of when the removal is to occur using the form attached to this Agreement as Exhibit A for Poles and A-1 for Conduit. Where immediate removal of Attachments is required by this Agreement, Licensee may give verbal notification to Licensor's Point of Contact of when the removal will occur as far in advance of the removal as is reasonably possible, however verbal notification is not considered formal notice under the terms of this Agreement and must be followed with written notification. Licensee must give notice to Licensor that an Attachment has been removed using the form attached to this Agreement in Exhibit A. Licensee's obligations under this Agreement to remove Attachments will survive the expiration or termination of this Agreement and any License revocation. In the event an Attachment is removed without completion and acceptance of an Exhibit A, Licensee will continue to incur the Annual License Fee

17.3 **Failure to Remove.** If Licensee fails to remove an Attachment as required under this Agreement and such failure continues for a period of more than ten days following Licensee's receipt of written notice from Licensor, Licensor may remove and dispose of the Attachment without any liability on

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Licensor's part for damage to Attachments or the real or personal property of Licensee or any other person, or for any interruption of Licensee's services; provided, however, Licensor will be liable for any physical injuries to persons (other than employees of either party or of a contractor or subcontractor if covered under Section 5.5) to the extent such injuries are caused by its negligence or intentional misconduct in removing an Attachment. Licensee will reimburse Licensor for Licensor's Cost to remove and dispose of the Attachments and to repair any damage to any Pole or Conduit caused by such removal within 45 days of the invoice date for an invoice from Licensor for the Cost. Any Attachment which is not timely removed as and when required by this Agreement will be deemed conclusively to have been abandoned and may be appropriated, sold, stored, destroyed or otherwise disposed of by Licensor without notice to Licensee or any other person and without obligation to account for it. Licensee's obligation to observe and perform this covenant will survive the expiration or other termination of this Agreement.

17.4 **No Adjustment.** Licensee is not entitled to any abatement, adjustment, pro-ration, apportionment or refund, in whole or in part, of Annual License Fees or other payments made to Licensor under this Agreement for Attachment removals after payment for the then current calendar year has been made.

17.5 **Reattachment.** When an Attachment is removed, Licensee must adhere to the Application and Attachment process of Article 12 and Article 13 for any desired reattachment or new Attachment to the same Pole or Conduit respectively.

17.6 **Indemnification.** Licensee will indemnify, hold harmless and defend each Licensor Indemnitee from and against any and all Damages for a claim by a third party against a Licensor Indemnitee arising from or related to any removal of or failure to remove Attachments except to the extent such Damages are caused by the gross negligence or intentional misconduct of Licensor. Third party claims for Damages arising from interruptions in services provided by Licensee do not constitute claims caused by the negligence or intentional misconduct of Licensor and will be included in the foregoing indemnification of Licensor by Licensee.

17.7 **Return of Licensee Attachment.** If Licensor removes Licensee Attachments from Poles and/or Conduit under this Agreement, Licensor will return the Licensee Attachments to Licensee only upon Licensee's payment of the Cost of removal, storage and delivery, and all other amounts due and owing to Licensor under this Agreement. This paragraph shall not apply to any Attachments that are deemed to have been abandoned and which have been disposed of pursuant to Section 18.3.

ARTICLE 18: POLE ABANDONMENT AND PURCHASE

18.1 **Pole Abandonment and Purchase.** If Licensor intends to abandon a Pole on which Licensee has an Attachment and for which Licensee is the sole remaining user, Licensor will give notice to Licensee of its intention at least 60 days prior to the date it intends to abandon the Pole using the form attached to this Agreement as Exhibit A3 ("Abandonment Notice"). Licensee may elect to purchase the Pole in the amount set forth ("Purchase Price") in the Bill of Sale portion ("Bill of Sale") of the Abandonment Notice. If Licensee elects to purchase the Pole, Licensee must sign and date the Abandonment Notice where appropriate, including the Bill of Sale, and deliver it and payment of the Purchase Price to Licensor within ten days of Licensee's receipt of the Abandonment Notice. Ownership of the Pole will transfer from Licensor to Licensee upon the terms and conditions as set forth in the Bill of Sale. For purposes of this paragraph, the definitions of "Pole" does not include poles for which Licensor has no legal right or authority to convey ownership or a continued right of occupancy to others.

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18.2 **No Purchase.** If Licensee does not elect to purchase the Pole, any License previously issued for Attachments to the relevant Pole will automatically revoke upon the expiration of the sixty (60) day period set forth in Section 18.1, and Licensee will then immediately remove its Attachments from the relevant Pole in accordance with Article 17.

ARTICLE 19: **UNAUTHORIZED AND NONCOMPLIANT ATTACHMENTS**

19.1 **Unauthorized Attachment Application and Removal.** If Licensor discovers an Unauthorized Attachment, Licensor shall give notice of the Unauthorized Attachment to Licensee. Licensee will have 15 days from receipt of the notice to make an Application for the Unauthorized Attachment unless Licensor and Licensee mutually agreed in writing to a different timeframe. If no Application is received by Licensor within the fifteen (15) day time period or such other time period that is mutually agreed upon, Licensee must immediately remove its Unauthorized Attachment in accordance with Article 17.

19.2 **Pole Unauthorized Attachment Fee.** In addition to any other rights and remedies to which Licensor may be entitled at law, in equity or under this Agreement for an Unauthorized Attachment, Licensor may charge Licensee (a) an unauthorized attachment fee of \$500 per Pole for Attachments made without a pole attachment agreement; and, including Attachments made prior to the Effective Date of this Agreement, except as prohibited by Applicable Law; or (b) if Licensee is a party to a valid pole attachment agreement which was entered into prior to the date such Attachments were made, an unauthorized attachment fee of five times the current Annual License Fee per Attachment if the violation is self-reported or discovered by Licensor: (i) in the ordinary course of business, including during a pole inspection or other work or (ii) through a joint Audit where Licensee had a reasonable opportunity to participate (a fee charged under clause (a) or clause (b) being an "Unauthorized Attachment Fee"). In addition to the Unauthorized Attachment Fee under clause (b), Licensor will be entitled to \$100 per Unauthorized Attachment if the violation is found by Licensor in an Audit in which the Licensee declined to participate provided that Licensee was given an opportunity to participate. All fees owed by Licensee under this Section 19.2 are due and payable in arrears and may be modified by Applicable Law.

19.3 **Conduit Unauthorized Attachment Fee.** In addition to any other rights and remedies to which Licensor may be entitled for an Unauthorized Attachment at law, in equity or under this Agreement, Licensor may charge Licensee \$25.00 per Unauthorized Attachment ("Unauthorized Attachment Fee"). In addition to the Unauthorized Attachment Charge, Licensor will be entitled to an amount per Unauthorized Attachment equal to the lesser of Annual License Fees: (a) calculated from the date of the last Audit through the date that would bring the Annual License Fees current, or (b) calculated for the 5 years preceding the date that would bring the Annual License Fees current. Such amount will include interest on the amount at the highest interest rate allowed by law. All fees owed by Licensee under this Section 19.3 are due and payable in arrears.

19.4 **Noncompliant Attachment.** In addition to any other rights and remedies to which Licensor may be entitled at law, in equity or under this Agreement for a Noncompliant Attachment, if Licensor discovers a Noncompliant Attachment and Licensor determines in its sole but reasonable discretion that such noncompliance is caused by Licensee, Licensor shall give notice of the Noncompliant Attachment to Licensee. Such notice must set forth in detail the specific violations of any Specifications. Licensee must, at its own expense, either: (a) submit plans of correction within 60 days of receipt of notification of a Noncompliant Attachment or bring the Noncompliant Attachment into compliance and provide notice of the correction to the Licensor within 180 days of Licensee's receipt of the Noncompliant Attachment notice; or

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(b) remove the Noncompliant Attachment in accordance with Article 17. Licensee's failure to do either will be deemed an immediate revocation of any License granted for the Noncompliant Attachment and subject to removal in accordance with Article 17 or at Licensor's option be deemed an Unauthorized Attachment, in accordance with Section 19.2.

19.5 **Fees Due and Payable.** All fees and charges Licensee owes to Licensor under this Article remain due and payable regardless of whether the Unauthorized Attachment subsequently receives a License or is removed, or the Noncompliant Attachment subsequently is cured or removed, and regardless of whether Licensor exercises any other right or remedy provided in this Agreement with respect to such Unauthorized Attachment or Noncompliant Attachment.

19.6 **No Effect of Delay or Failure of Notice.** Licensor's delay in giving or failing to give notice of an Unauthorized Attachment or a Noncompliant Attachment neither constitutes Licensor's acceptance of the Unauthorized Attachment or the Noncompliant Attachment, nor constitutes Licensor's waiver of any rights relative to the Unauthorized Attachment or the Noncompliant Attachment.

19.7 **No Retroactive Effect.** If a License is subsequently issued for an Unauthorized Attachment or a Noncompliant Attachment, the License will not operate retroactively or constitute a waiver of any of Licensor's rights relative to the Unauthorized Attachment or the Noncompliant Attachment. Licensee will be subject to all liabilities, obligations and responsibilities of this Agreement regarding an Unauthorized Attachment or a Noncompliant Attachment from their inception.

ARTICLE 20: ANNUAL LICENSE FEE

20.1 **Annual License Fee.** Licensee will pay Licensor an Annual License Fee determined by the amount of space (in total feet and rounded up to the nearest foot) occupied by Licensee's Attachments and multiplied by Licensor's then-current annual rate of attachment for communications providers as calculated under Applicable Law. RF devices such as receivers and transmitters, will incur an Annual License Fee equivalent to one foot for each attachment.

20.2 **Payment.**

20.2.1 Licensee's obligation to pay an Annual License Fee will commence upon the date the Application for the Attachment subject to an Annual License Fee is approved ("Fee Commencement Date"). Subject to Sections 20.2.2 and 20.2.3, Annual License Fees are payable by Licensee annually in advance without any set-off, deduction, pro-rationing, or apportionment. Licensor will invoice Licensee for Annual License Fees each calendar year during the Term, and Licensee will pay the invoice within forty-five (45) days of the invoice date.

20.2.2 Subject to Section 20.2.3, an Attachment approved at any time during a calendar year will be subject to the Annual License Fee for that entire calendar year and the Annual License Fee applicable to the calendar year in which the Attachment is approved will initially be invoiced on the annual invoice for the succeeding year. This amount is due and payable in arrears and is in addition to the Annual License Fee described in Section 20.2.1 that is paid in advance for the subsequent year.

As an example of how invoicing would work under Sections 20.2.1 and 20.2.2, assume the Fee Commencement Date for a particular Attachment is August 1, 2018. The first Annual License Fee for that Attachment would appear in the January 2019 invoice. That invoice would reflect an Annual License Fee for that Attachment owed in arrears for the year 2018, as well as the Annual License Fee for that

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Attachment payable in advance for the year 2019. Subsequently, the Annual License Fee for that Attachment would be payable in advance at the then current Annual License Fee.

20.2.3 An Attachment approved after January 1 of the final calendar year of the Term will be subject to the Annual License Fee for that entire calendar year, and the Annual License Fee for that Attachment will be invoiced within 90 days of the day the Term expires or terminates. This amount is due and payable in arrears. Licensee's obligation to pay this amount will survive the expiration or termination of this Agreement.

20.3 **Fee Adjustment.** Recurring and nonrecurring charges for Attachments are in accordance with Section 224 of the Act and FCC orders, rules, and regulations promulgated under the Act. Licensor may adjust the Annual License Fee once per year by re-calculating recurring rates for pole attachments using the FCC rules and formulae found at 47 C.F.R. § 1, Subpart J and A.R.M.I.S data filed with the FCC. Licensor will implement and bill the re-calculated rates without amending this Agreement. The adjusted Annual License Fee will become effective as of the next invoicing cycle. If Licensee objects to the fee adjustment and the parties cannot resolve the dispute between them Licensee shall pay the Annual License Fee at the invoiced rate and, either party may seek resolution of the dispute by requesting executive level discussion as outlined in Section 18.4 prior to, either party seeking resolution of such rate dispute at the FCC.

20.4 **Invoice Dispute.** Notwithstanding any other dispute resolution procedures that may be set forth in this Agreement, Licensee may dispute any amount for which it was invoiced by Licensor if: (a) Licensee has a reasonable good faith basis for the dispute; (b) Licensee has first paid the entire amount indicated in the relevant invoice, including the disputed amount, in full by the payment due date; and (c) prior to the payment due date, Licensee has given notice to Licensor at its Billing Address describing in detail the dispute and its good faith basis for the dispute. If the preceding conditions are met, the parties will attempt to resolve the invoice dispute within 60 days of the payment due date. In accordance with 47 C.F.R. § 1.1404(k), within the 60 day period, the parties shall hold executive level discussions. The executives must have authority to make binding decisions on behalf of the respective party. If, after the executive level discussions, the parties are unable to resolve the invoice dispute within such 60 day time period, a party may resort to any other right or remedy to which it is entitled under this Agreement, at law or in equity.

20.5 **Inaccuracies.** If Licensor discovers an inaccuracy or mistake in the factors used to calculate charges owed by Licensee to Licensor under this Agreement, including Annual License Fees, and that due to this inaccuracy or mistake Licensee owes additional money to Licensor, then whether or not an invoice was paid that purportedly included or should have included these additional charges, Licensee will owe these additional charges to Licensor. Licensor may invoice Licensee for the additional charges, and the additional charges are due and payable in arrears. The additional charges can encompass amounts owed as far back as the Effective Date of this Agreement as well as amounts owed under Section 19.2 for Unauthorized Attachments made prior to the Effective Date. Licensee will pay the additional charges within 30 days of the invoice date. Any credit due to Licensee discovered under Section 20.5 will be paid to Licensee as a credit on a future invoice or by check, a Licensor's sole discretion. For inaccuracies or mistakes in the factors used to calculate charges owed by Licensee to Licensor under this Agreement discovered by Licensee, refer to Section 20.4 of this Agreement.

20.6 **Procedures.** Licensor may periodically revise its invoicing and collection procedures. Licensor will provide reasonable advance notice to Licensee of the revisions.

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20.7 **Inclusion in Annual Invoice.** Licensor may include in the Annual License Fees annual invoice any other charges then due and payable to Licensor from Licensee under this Agreement.

ARTICLE 21: ATTACHMENT BOND

21.1 **Attachment Bond.** Licensee will provide to Licensor a bond guaranteeing Licensee’s performance of its obligations under this Agreement in the form attached to this Agreement as Exhibit D (“Attachment Bond”). The amount of the Attachment Bond will be based on the schedule attached to this Agreement as Exhibit D-1 (“Attachment Bond Calculation”). The Attachment Bond must be provided upon the Effective Date of this Agreement. Licensor may, in its sole discretion, change the Attachment Bond requirements from time to time upon at least 30 days prior notice to Licensee. The amount of the Attachment Bond will not operate as a limitation upon or satisfaction of any of Licensee’s other obligations under this Agreement.

ARTICLE 22: POINTS OF CONTACT, NOTICE, BILLING AND ELECTRONIC INFORMATION

22.1 **Points of Contact and Notice.**

22.1.1 The points of contact listed in this Section 20.1.1 (“Points of Contract”) will serve as the respective Licensor and Licensee primary representatives responsible for addressing and handling all operational issues regarding this Agreement. Whenever any notice, consent, approval, request, document, demand, authorization and the like or notice of default is required or permitted under this Agreement (collectively, “Notice”), the Notice must be in writing, (except for verbal notice specifically allowed under this Agreement, if any). State specific representatives should be listed on Exhibit K. Subject to Section 22.1.2 and Section 22.3, all Notice must be delivered in person, by United States certified mail, return receipt-requested, postage prepaid or by a nationally recognized overnight courier service to the Points of Contact at the following addresses:

Points of Contact

<u>Licensee</u>	<u>Licensor</u>
Name:	Name:
Title:	Title:
Address:	Address:
Telephone:	Telephone:
E-Mail:	E-Mail:
Name:	Name: Pole Team

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Title:	Title: NIS Contracts
Address:	Address: 1025 Eldorado Blvd – ROW Broomfield, CO 80021
Telephone:	Telephone: N/A
E-Mail:	E-Mail: Poles@CenturyLink.com

22.1.2 **Copies of All Legal Notices.** In addition to delivering default Notice to the Points of Contact, copies of all legal Notices must be delivered to the parties at the following addresses. Legal Notices will not be sent using ENS.

If legal Notice to Licensee:

[Redacted]
[Redacted]
[Redacted]
Attention: [Redacted]

If legal Notice to Licensor:

CenturyLink
1025 Eldorado Blvd, ROW
Broomfield, CO 80021
Attn: National Infrastructure Services - Director

and (which alone does not constitute notice)

CenturyLink Law Department
931 14th Street
Denver, CO 80202
Attn: Network Vice President

22.2 **Notice Effective Date and Change of Address.** If Notice is given by personal delivery, a receipt indicating that personal delivery was made must be obtained. Notice will be deemed effective on the date of receipt by the addressee as shown on the receipt if given by personal delivery, on the return receipt if Notice is given by certified mail or the confirmation of delivery form if Notice is given by overnight courier service. Verbal Notice will be deemed effective upon its receipt, if confirmed promptly in writing. Rejection or refusal to accept Notice or the inability to deliver Notice because of a changed address (or, in the case of verbal notice, a changed phone number) of which no prior Notice was given will be deemed to be receipt of the Notice as of the date of rejection, refusal or inability to deliver. Either party may change its address and contact information in Sections 20.1.1, 20.1.2 or 20.4.1 by giving Notice of such change to the other party in the manner for giving Notice prescribed in Section 20.1.1.

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22.3 **Electronic Notification System (ENS).** Licensor may, in its sole discretion, require Licensee to provide any information, notice, consent, approval, request, document, demand or authorization and the like required or permitted under this Agreement, including Applications, using ENS, and any such matters given by a party using ENS will be deemed to be given in writing for purposes of this Agreement. If Licensee fails to comply with this requirement, Licensee will be responsible for Licensor’s Costs incurred to process the information, including Costs for manual data entry, developing an electronic interface and ensuring the integrity of the information provided.

22.4 **Billing, Payment, Non-Sufficient Funds, Costs of Collection and Partial Payment.**

22.4.1 Upon request, a detailed invoice for non-recurring charges for goods and services governed by this Agreement to include sufficient details, on a per pole basis, and/or fixed costs on a per job basis, for the billed party to reasonably verify the accuracy of the charges. Invoices may be sent electronically, if agreed to by the parties, or by nationally recognized overnight courier service or by regular United States first class mail, postage prepaid, to the parties at the following respective addresses (each a party’s “Invoice Address”):

If to Licensee:

[Redacted]

Attention: [Redacted]

If mutually agreed via email to: [Redacted]

CenturyLink
700 W. Mineral Ave
Mailstop: NM M30.13
Littleton, CO 80120

If mutually agreed via email to: PoleAll@centurylink.com

22.4.2 All invoiced payments and other payments due and payable under this Agreement, including payments for Annual License Fees, must be paid by paper check or electronically via wire transfer. Payment in cash or by credit card is not allowed. Licensor may ignore and refuse to accept any payment by cash or credit card made by Licensee and ignore or refuse to accept any effort by Licensee to pay by cash or credit card. If payment is made by paper check, such check must be delivered by United States certified mail, return receipt-requested, postage prepaid, by a nationally recognized overnight courier service or by regular United States first class mail, postage prepaid, to the parties at the following respective addresses (each a party’s “Billing Address”):

If to Licensee:

[Redacted]

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If to Licensor:

Payment:

CenturyLink
P.O. Box 2348
Seattle, WA 98111-2348

Invoices:

CenturyLink
700 W. Mineral Ave
Mailstop: NM M30.13
Littleton, CO 80120

22.4.3 In addition to any other rights or remedies to which Licensor is entitled under this Agreement, at law or in equity, Licensor may: (a) charge Licensee the Cost of any reasonable fee charged to Licensor for any Licensee payment checks returned for non-sufficient funds; and (b) recover from Licensee all out of pocket costs, including attorney fees, incurred by Licensor in collecting any outstanding payments from Licensee not otherwise included in the Annual License Fee.

22.4.4 Licensee's partial payment of any monetary obligation owed to Licensor under this Agreement will not constitute payment in full of such monetary obligation and is therefore subject to being a "Licensee Default" under Section 7.1 (a). If Licensor elects, in its sole discretion, to accept any partial payment, such acceptance will not constitute: (a) Licensor's waiver of or release of any amount owed, or of any rights or remedies to which Licensor is entitled under this Agreement, at law or in equity; or (b) an accord and satisfaction.

[Remainder of page intentionally left blank]

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22.4.5 **Counterparts, Facsimile and Electronic Mail Signatures.** This Agreement may be signed in several counterparts, each of which will be fully effective as an original and all of which together will constitute one and the same instrument. Signatures to this Agreement transmitted by facsimile or electronic mail will be deemed the equivalent of delivery of an original signature, provided that the party delivering its signature by facsimile or electronic mail promptly thereafter delivers this Agreement with the original signature to the other party.

“LICENSOR”

“LICENSEE”

[INSERT PROPER CENTURLINK ENTITIES]

[INSERT PROPER LICENSEE ENTITY]

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

CTL CONTRACT: _____

[Remainder of page intentionally left blank]

EXHIBIT A

SCHEDULE OF CENTURYLINK LEGAL ENTITIES BY STATE

Source: CenturyLink Tariff Library

Checked boxes represent the states and CenturyLink legal entities covered by this Agreement.

The obligations and liabilities of any of CenturyLink's legal entities are several, not joint, even if executed by one legal entity on behalf of another.

Alabama

CenturyTel of Northern Alabama
CenturyTel of Southern Alabama
Gulf Telephone Company

Arizona

Qwest Corporation

Arkansas

CenturyLink of Louisiana
CenturyTel of Arkansas
CenturyTel of Central Arkansas
CenturyTel of Missouri
CenturyTel of Mountain Home
CenturyTel of Northwest Arkansas
CenturyTel of Redfield
CenturyTel of South Arkansas

California

CenturyTel of Eastern Oregon

Colorado

CenturyTel of Colorado
CenturyTel of Eagle
El Paso County Telephone Company
Qwest Corporation

Florida

Embarq Florida

Georgia

Coastal Utilities

CONVERSATION:
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Idaho

CenturyTel of Idaho
CenturyTel of the Gem State
Qwest Corporation

Illinois

Gallatin River Communications

Indiana

CenturyTel of Central Indiana
CenturyTel of Odon
United Telephone Company of Indiana

Iowa

CenturyTel of Chester
CenturyTel of Postville
Embarq Missouri
Qwest Corporation

Kansas

United Telephone of Kansas d/b/a CenturyLink
United Telephone of Eastern Kansas d/b/a CenturyLink
Embarq Missouri, Inc. d/b/a CenturyLink
United Telephone of South Central Kansas d/b/a
CenturyLink

Louisiana

CenturyLink of Louisiana
CenturyTel of South Arkansas

Michigan

CenturyTel of Michigan
CenturyTel of Midwest-Michigan
CenturyTel of Northern Michigan
CenturyTel of Upper Michigan

Minnesota

CenturyTel of Chester
CenturyTel of Minnesota
CenturyTel of Northwest Wisconsin
Embarq Minnesota

CONVERSATION:
CONTRACT:

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Qwest Corporation

Mississippi

CenturyTel of North Mississippi

Missouri

CenturyTel of Missouri
CenturyTel of Northwest Arkansas
Embarq Missouri
Spectra Communications Group

Montana

CenturyTel of Montana
Qwest Corporation

Nebraska

Qwest Corporation
United Telephone Company of the West

Nevada

Central Telephone Company
CenturyTel of the Gem State

New Jersey

United Telephone Company of New Jersey

New Mexico

CenturyTel of the Southwest
Qwest Corporation

North Carolina

Carolina Telephone & Telegraph Company
Central Telephone Company
Mehtel

North Dakota

Qwest Corporation

Ohio

CenturyTel of Ohio
United Telephone Company of Ohio

CONVERSATION:
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Oklahoma

CenturyTel of Northwest Arkansas

Oregon

CenturyTel of Eastern Oregon
CenturyTel of Oregon
Qwest Corporation
United Telephone Company of the Northwest

Pennsylvania

United Telephone Company of Pennsylvania

South Carolina

United Telephone Company of the Carolinas

South Dakota

Qwest Corporation

Tennessee

CenturyTel of Adamsville
CenturyTel of Claiborne
CenturyTel of Ooltewah-Collegedale
United Telephone Southeast

Texas

Central Telephone Company of Texas
CenturyLink of Louisiana
CenturyTel of Lake Dallas
CenturyTel of Northwest Louisiana
CenturyTel of Port Aransas
CenturyTel of San Marcos
United Telephone Company of Texas

Utah

Qwest Corporation

Virginia

Central Telephone Company of Virginia
United Telephone Southeast

CONVERSATION:
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Washington

CenturyTel of Cowiche
CenturyTel of Inter Island
CenturyTel of Washington
Qwest Corporation
United Telephone Company of the Northwest

Wisconsin

CenturyTel of Central Wisconsin
CenturyTel of Fairwater-Brandon-Alto
CenturyTel of Forestville
CenturyTel of Larsen-Readfield
CenturyTel of Monroe County
CenturyTel of Northern Wisconsin
CenturyTel of Southern Wisconsin
CenturyTel of Wisconsin
CenturyTel of the Midwest-Kendall
Telephone USA of Wisconsin

Wyoming

CenturyTel of Wyoming
Qwest Corporation
United Telephone Company of the West

EXHIBIT A



CenturyLink™

EXHIBIT A - NOTICE FOR PROPOSED WORK FORM
FORM B – LICENSEE **REQUEST FORM**

Application # _____
Notify Conversation # _____

Section One (To be completed by Licensee)

Application is hereby made for attachments to the following poles and anchors in accordance with the terms and conditions of the agreement. Licensee's space allocation is one foot. A copy of Licensee's franchise agreement or similar authority to erect and maintain the facilities is attached. NOTE: A Joint Use Engineering and Construction Form ("JUEC Form") is required for each Application. The Joint Use Manager will provide the JUEC Form to Licensee upon receipt of the Form B. The Application cannot be reviewed until the JUEC Form is received from Licensee. (Example of information needed JUEC Form following Form B)

Date of application: _____
Applicant name: _____

Classification Type:	<input type="checkbox"/>	Power	Attachment Type:	
	<input type="checkbox"/>	Cable/Broadband		<input type="checkbox"/> Wireless
	<input type="checkbox"/>	Telco		<input type="checkbox"/> Wireline
	<input type="checkbox"/>	Other (specify):		

Address: _____
City, State, Zip: _____
Contact Name: _____ Telephone Number: _____
Contact Email: _____

TYPE OF PROPOSED WORK:

<input type="checkbox"/> New Attachment	<input type="checkbox"/> Overlash	<input type="checkbox"/>
<input type="checkbox"/> Modification	<input type="checkbox"/> Removal	<input type="checkbox"/>
<input type="checkbox"/> Completion	<input type="checkbox"/> Transfer	<input type="checkbox"/>
Number of poles proposed: <input type="text"/>	Number of anchors proposed: <input type="text"/>	

LOCATION: _____

PURPOSE: _____

Previous Total: _____
Added This Request: _____
TOTAL: _____

By: _____ (Mail application to Licensor)

Section Two (To be completed by Licensor and Licensee)

Estimated make Ready Work costs, in the amount of \$ _____ are approved by Licensee:

By: _____
Title: _____
Date: _____
Licensee Work Order # _____
Licensor Make Ready Work Order # _____

<p>Return Application to:</p> <p>_____</p> <p><i>CenturyLink Joint Use Manager</i></p> <p>_____</p> <p>_____</p>

Section Three (To be completed by Licensor)

Permission is hereby granted to attach to poles described in the above application, subject to the terms and conditions referred to or set forth in the agreement.

Licensor Affiliate Company: _____
By: _____ Title: _____
Date: _____

CONVERSATION:
CONTRACT:

EXHIBIT A



EXHIBIT A - NOTICE FOR PROPOSED WORK FORM
(FORM B - LICENSOR REQUEST FOR MODIFICATION)

Application #
Notify Conversation #

Section One (To be completed by Licensor)

Notice is hereby given for modification / transfer of Licensee attachments to the following poles and anchors in accordance with the conditions of the agreement. Licensee's space allocation is one foot. Unless specified otherwise below, Licensee will complete all modifications / transfers within 60 days of receipt of this notice per the applicable Agreement. Licensee will be provided with JUEC appropriate.

Date of Notice:
Licensee name:
Contract Number:

Classification Type: Power, Cable/Broadband, Telco, Other (specify): Attachment Type: Wireless, Wireline

Address:
City, State, Zip:
Contact Name: Telephone Number:
Contact Email:

TYPE OF WORK REQUIRED:

Modification, Unauthorized / Non-compliance, Completion, Number of poles effected: Overlash, Removal, Transfer, Anchors effected:

Previous Total:
Added This Request:
TOTAL:

By: (Mail Notice to Licensee)

Section Two (To be completed by Licensor and Licensee)

Licensee acknowledges that if work is not completed as required, Licensor may complete the work and invoice Licensee for actual costs:

By:
Title:
Date:

Licensee Work Order #
Licensor Make Ready Work Order #

Return Application to:
CenturyLink Joint Use Manager

Section Three (To be completed by Licensor or Licensee)

The undersigned hereby acknowledges that modification to poles described in the above notice, has been completed, subject to the terms and conditions referred to or set forth in the agreement.

Company name:
By: Title:
Date:

CONVERSATION:
CONTRACT:

EXHIBIT A



CenturyLink™

EXHIBIT A - NOTICE FOR PROPOSED WORK FORM JUEC FORM INFORMATION EXAMPLE

Application # _____
Notify Conversation # _____

NOTE: Pole detail is required for each pole.

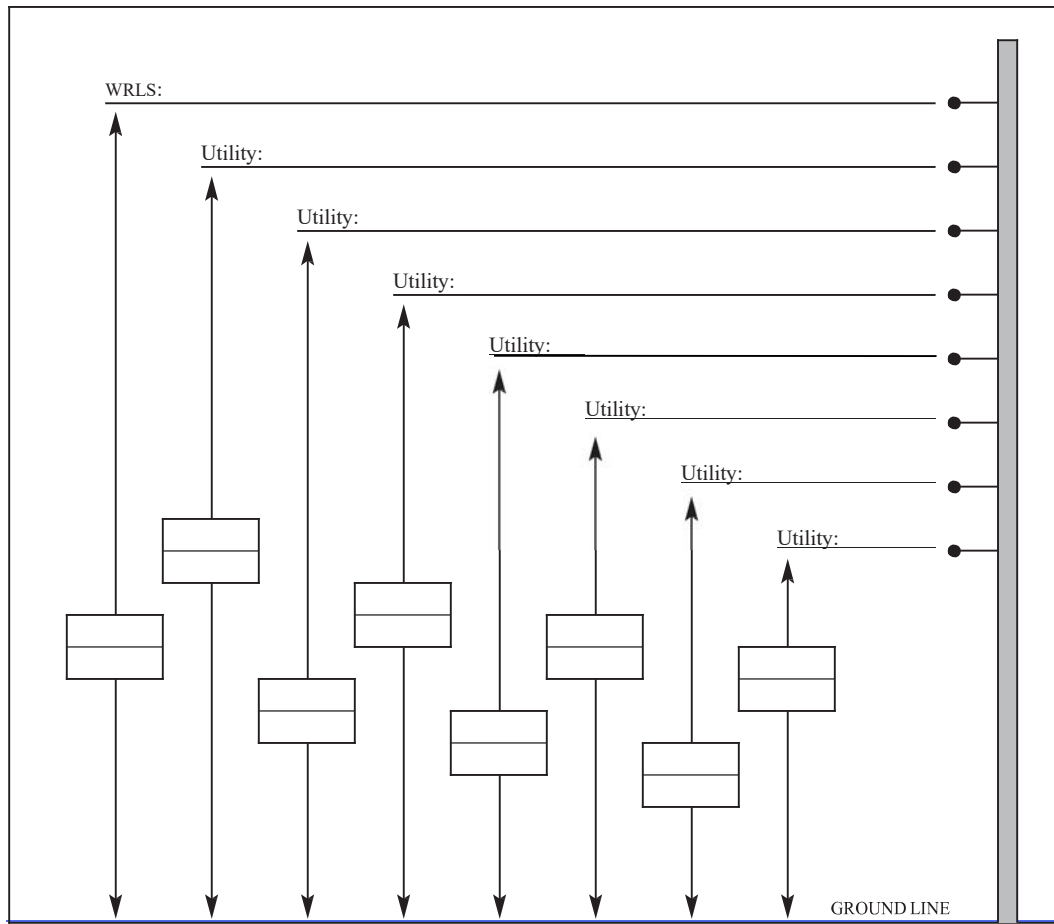
City: _____ County: _____
Street: _____
Date: _____

Pole: Telco Power
Pole No: _____
Licensee WO: _____

Detail Sheet Number _____ Of _____
Drawing No: _____
Class/Height/Year: _____

Pole Type	
Wood	Trans.
Steel	Distrib.
Laminate	
Concrete	

Clearance Above Grade			Midspan	Street Crossing
Utility	Type	Clearance	Direction from Pole	Street



Existing Riser Details		
Utility	ID No.	Position
Proposed Risers		

Make Ready Proposed by Licensee

Resulting Additional Make Ready

Make Ready performed by Licensor

NOTE: WRLS: if pole top exists indicate company attached. Power: indicating lowest power utility on pole.

Description of Equipment, Facilities and Attachment	
Equipment:	
Facilities:	
Attachment:	

Comments

CONVERSATION: _____
CONTRACT: _____

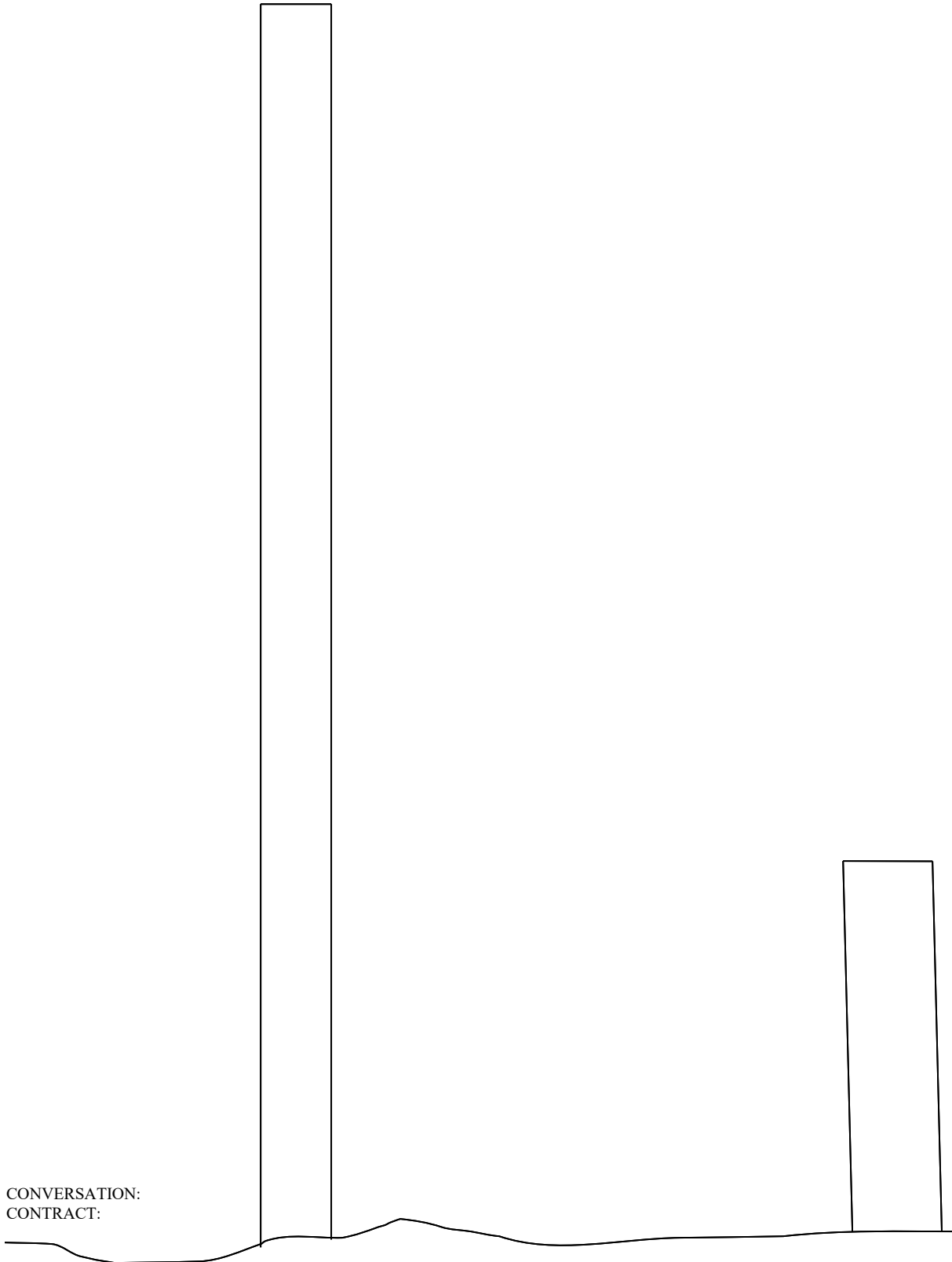
EXHIBIT A



EXHIBIT A - NOTICE FOR PROPOSED WORK FORM
JUEC FORM POLE DETAIL SHEET DIAGRAM - EXAMPLE

Application # _____
Notify Conversation # _____

Add all existing attachments; indicate proposed attachments and conduit risers.



CONVERSATION:
CONTRACT:



EXHIBIT A

CONDUIT WORK FORM
JUEC FORM – EXAMPLE

Application # _____
Notify Conversation # _____

EXHIBIT A-1
APPLICATION

<u>ORIGINATING PARTY INFORMATION:</u>		<u>WORK REQUESTED BY:</u>		<u>REASON FOR ACTIVITY:</u>			
<input type="checkbox"/> Owner	<input type="checkbox"/> Non-Owner			<input type="checkbox"/> New Facilities		MUNICIPALITY	_____
NAME	_____	JOINT USER	_____	<input type="checkbox"/> Removal of Facilities		COUNTY	_____
PHONE	_____	OTHER	_____	<input type="checkbox"/> Relocation of Facilities		STREET/HWY	_____
FAX	_____	DEPOSIT AMT	_____			Desired Construction Completion	_____
						DATE	_____

PRESURVEY RESULTS AND MAKE READY REQUIREMENTS

CONDUIT							
Location	Entrance *Point*	Manhole No. Start	Manhole No. End	Exit *Point*	Subduct Feet	Subducts Rqd.	Comments
** If other than a riser pole, please give description.							

Received By _____	Application Accepted ___ Application Denied ___	Estimated Make Ready Costs are Calculated on Form B-1
Work Order _____	Name _____	Or
Exchange _____	Date _____	_____ Make Ready Charges Not Applicable

CONVERSATION:
CONTRACT:

EXHIBIT A



CONDUIT WORK FORM
JUEC FORM – EXAMPLE

Application # _____
Notify Conversation # _____

Licensee _____

CABLE TO OCCUPY CONDUIT

Cable Designation (a)	Outside Diameter Inches (b)	Wt. Lbs. Per Foot (c)	Metallic Sheath or Shield Yes or No (d)	Type of Cable (e)	Maximum Voltage to Ground		Maximum Current in any Conductor (g)	Type of Jacket (h)
					AC (f)	DC (f)		

(a) Cable Designation = Assign letter, alphabetically, to each different type of cable to be installed.
 (b) Outside Diameter Inches = Self explanatory
 (c) Wt. Lbs. per foot = Self explanatory
 (d) Metallic Sheath or Shield = Self explanatory
 (e) Type of Cable = If fiber cable, shown number of tubes
 If pair cable, show pair size and gauge
 Maximum Voltage to Ground = Self explanatory
 Maximum Current in any Conductor: Indicate voltage and amperage
 Type of Jacket = Enter the type of material of the outer jacket or sheath
 (polyethylene, PVC, lead, etc.)

EQUIPMENT HOUSINGS TO BE PLACED IN MANHOLES

Manhole Location	Type	Height	Width	Depth	Weight

CONVERSATION:
CONTRACT:

EXHIBIT A



CONDUIT WORK FORM
JUEC FORM – EXAMPLE

Application # _____
Notify Conversation # _____

Non-Owner _____

CONDUIT SYSTEM DIAGRAM

- Letters (A, B & C) = Cable designation by type from form D-3
- Numbers (1, 2, etc.) = Number of cable(s) by section
- _____ = Represents all cables in conduit Section
- O = Pole

CONVERSATION:
CONTRACT:



EXHIBIT A

CONDUIT WORK FORM
JUEC FORM – EXAMPLE

Application # _____
Notify Conversation # _____

EXHIBIT A-2

COMPLETION NOTICE

Licensee hereby gives notice to Licensor that the following Attachments have been made to the Licensor Conduit/Conduit System indicated.

Licensee
: _____

Title _____

Date: _____

<u>Licensor</u> <u>Conduit/Conduit</u> <u>System</u>	<u>Location</u>	Date Attached	<u>Type of Attachment</u>
--	-----------------	------------------	---------------------------

CONVERSATION:
CONTRACT:



EXHIBIT A

CONDUIT WORK FORM
JUEC FORM – EXAMPLE

Application #
Notify Conversation #

EXHIBIT A-3

TRANSFER NOTICE

Date:

Licensor

1. Licensor hereby requests that Licensee Transfer or have Transferred Licensee's Attachments from the following location(s):

Conduit Number Location Type and Number of Attachments Total Number of Attachments

2. Statement of Work. The work to be completed by Licensee to accomplish the Transfer will be as follows:

[BE SURE TO INDICATE THE FACILITY TO WHICH THE ATTACHMENT IS TO BE TRANSFERRED]

Actual Transfer Cost \$

3. Licensee will Transfer the above listed Attachments in accordance with the Statement of Work and in accordance with the terms and conditions of the Agreement.

Licensee

Approved By

Title

Date



EXHIBIT A

CONDUIT WORK FORM
JUEC FORM – EXAMPLE

Application # _____
Notify Conversation # _____

EXHIBIT A-4

REMOVAL NOTICE

Licensee hereby gives notice to Licensor of its intention to remove the following Attachments at the date and time noted for each.

Licensee _____

Title _____

Date: _____

Conduit Numbers

Location

Date and
Time of
Removal

Type of Attachment

CONVERSATION:
CONTRACT:



EXHIBIT A

CONDUIT WORK FORM
JUEC FORM – EXAMPLE

Application # _____
Notify Conversation # _____

EXHIBIT A-5

REMOVAL COMPLETION NOTICE

Licensee hereby gives notice to Licensor that the following Attachments have been removed from the Licensor Conduit / Conduit System indicated. Please remove these Attachments from your database for invoicing purposes.

Licensee: _____

Title _____

Date: _____

Conduit Numbers

Location

Date
Removed

Type of Attachment

CONVERSATION:
CONTRACT:



EXHIBIT A
EXHIBIT B
GROUNDING SPECIFICATIONS

1. BOND / GROUND WIRE INSTALLATION GUIDLINES

1.1. Routing

Installation of grounding and bonding wires must follow specific guidelines in order to provide and maintain low resistance, low impedance paths for electrical current to flow. Improper placement may cause surge currents to seek alternate ground sources and will not provide adequate electrical paths to properly protect technicians and or equipment from damage.

In addition to the various grounding and bonding applications outlined within this document, installations of wires in all situations must not contain:

- Sharp bends
 - Sweeping bends of 45 degrees or less recommended
- Splicing not recommended
 - Exothermically welded or other type permanent splices only
- Pass through metallic pipes
- All ground connections point towards earth

1.2. Connections

- CenturyLink approved grounding hardware for aerial / buried applications
 - Flip-Tap on galvanized messenger to connect AWG #6 copper
 - CATV/CLEC messenger strand must be bonded to the Telephone Messenger Strand on the same supporting structure (Telephone pole)
 - Telephone, CATV and CLEC messenger strand must be common bonded to the MGNV on electric utility poles. These connections should be separate connections which serve as the common bond link between messenger strands on the same supporting structure (pole)

1.3. Sizing / Type

Each grounding / bonding situation requires different size / type of approved wire to be used. These various applications, and the appropriate wire to be utilized, are American Wire Gauge (AWG) including:

- #6 Solid Bare Copper
- #6 Solid Insulated Copper

2. AERIAL CABLE / PLANT PROTECTION AND JOINT FACILITY BONDING

2.1. Effective Grounds

All exposed plant must be effectively grounded utilizing CenturyLink approved copper clad 5/8 inch diameter, 8 ft. long ground rods for the following reasons:

EXHIBIT A

EXHIBIT B

GROUNDING SPECIFICATIONS



CenturyLink™

- Reduce shock hazards to technicians
- Reduce electrical damage to telephone plant and Third Party Equipment
- Provide rapid de-energizing of power lines contacting Telephone or Third Party plant
- Provide a path to ground for lightning

NOTE: Down guys and anchor rods are not considered grounds and will not be used as such in the CenturyLink plant protection scheme.

2.2. Grounding and Bonding Applications

Aerial strands (messenger) shall be continuous, bonded together and grounded at a minimum of 1,350 foot intervals so that no point is more than 1,350 feet from an effective ground source. The 1350 foot rule is the minimum grounding requirements, applicable on all aerial cable leads that are in a continuous run without laterals, risers, primary power crossings, MGNV or protected terminals. Licensee must ground their attachments to the MGNV independently.

Additional grounds must be installed at:

- Laterals
- Risers (including aerial inserts in buried facilities)
- Primary power crossings
- Protected terminals
- First and last pole of an aerial lead, regardless of lead length
- At all aerial, buried or underground building entrance cable locations
- Repeater / Doubler / Power Supply locations

2.3. Ground and Bonding Material / Requirements

Use only AWG #6 bare solid copper ground wire for connecting aerial strand (messenger) to a ground electrode. Each ground electrode shall consist of a driven 5/8 inch diameter 8 foot copper clad ground rod(s) driven approximately 12 inches away from the pole and approximately 4 inches below ground grade in undisturbed earth.

NOTE: Ground rods installed at pole line locations need not be measured as noted below in excerpts from the 2012 National Electrical Safety Code NESC and RUS Bulletin 1751F-815:

NESC Rule 94B – Driven rods shall be not less than 8 feet in length: Longer or multiple rods may be used to reduce ground resistance

NESC Rule 96C – No specific resistance readings need be taken at individual electrodes due to distributed cable route multiple ground locations.

RUS Section 11.1 – Low impedance to ground is achieved by multiple ground locations



EXHIBIT A
EXHIBIT B
GROUNDING SPECIFICATIONS

NOTE: Ground electrodes (rods) and their resistance MUST be *correctly* measured at CO and Remote Electronic Sites!

NOTE: Prior to driving a ground rod as outlined above, a request for locate of all facilities must be made and completed in the area where the rod(s) is to be driven to prevent damage to water, gas, drain or sewer facilities.

NOTE: When connecting the AWG #6 solid copper wires to the strand (messenger), only use the "Tap Clamp – Flip On" type clamp. This clamp is designed to eliminate corrosion caused by contact of two dissimilar metals (copper to galvanize). This clamp is available in CART.

NOTE: All Third Party messenger strands must be common bonded to the Licensor messenger strand and/or vertical ground wire at all of the locations mentioned in this document to ensure the same potential exists on all aerial joint use pole structures.

2.4. **MGNV Bonding and Grounding**

Telephone and Third Party facilities **must** be bonded / grounded to the power company Multi Grounded Neutral Vertical (MGNV) wire where present on **all** joint use facilities. **The MGNV is considered an effective ground and a separate Telephone ground rod is not to be installed at these locations.**

NOTE: THIS APPLIES TO AERIAL CABLE FACILITIES ONLY. The use of an MGNV is allowed in aerial plant due to the strand (messenger) in aerial cable being exceptionally strong and continuous. It is the main surge / current carrying component of an aerial lead and use of the MGNV duplicates the protection and grounding effects of the power company neutral and associated earth grounds.

NOTE: DO NOT remove or cut the Power Company "U" guard or covering on the MGNV wire when making a connection!

2.5. **Joint Use Poles**

The proper selection of ground locations on **joint use pole lines** with electrical power must result in a distance of no more than 1,350 feet between any portion of exposed cable plant and the nearest ground. Additional grounds must be placed if an MGNV is not present at:

- All Telephone or power company lateral / riser poles.
- First and last pole of an aerial lead, regardless of lead length
- Junction point between solely-owned and joint aerial plant.
- Joint pole at which a cable continues buried or underground.
- At all building entrance cable locations
- Intervals exceeding 1350 feet without an MGNV

NOTE: Bond connections to the MGNV/MGN from the Telephone or Third Party facility should always point towards earth/ground rod, not up towards the power company neutral.



EXHIBIT A
EXHIBIT C
ABANDONMENT NOTICE

Section 1 (to be completed by Licensor):

Licensor gives notice to Licensee that it intends to abandon the Poles at the locations as shown on the map attached to this Abandonment Notice (collectively, "Abandoned Poles").

Licensor _____

Date _____

Section 2 (to be completed by Licensee):

Licensee elects to purchase the Abandoned Poles for the Purchase Price as set forth in the Bill of Sale.

Licensee _____

By _____

Date _____

Section 3 (to be completed by both Licensor and Licensee):

Both parties are to complete, sign and date the Bill of Sale.

EXHIBIT A



POLE BILL OF SALE

This Bill of Sale is entered into as of the “Effective Date” (as defined in Section 8) by and between [REDACTED], a [REDACTED] (“Licensor”), and [REDACTED], a [REDACTED] (“Licensee”).

BACKGROUND:

A. Licensor and Licensee entered into that certain Pole License Agreement dated [REDACTED] (“Agreement”), whereby Licensee could purchase Licensor’s abandoned poles under certain circumstances.

B. Licensee desires to purchase from Licensor the poles described in Exhibit A attached to this Bill of Sale (collectively, the “Abandoned Poles”) for the price of \$ [REDACTED] (“Purchase Price”).

C. Capitalized terms used in this Bill of Sale which are not defined in this Bill of Sale will have the meanings ascribed to them in the Agreement.

For good and valuable consideration (which includes the releases and indemnities set forth below), the receipt and sufficiency of which are acknowledged by Licensor and Licensee, Licensor and Licensee agree as follows:

1. Licensor acknowledges receipt of the Purchase Price from Licensee. In addition to paying the Purchase Price, Licensee is responsible for paying all sales and use taxes applicable to this transaction.

2. Pursuant to the terms and conditions of this Bill of Sale, Licensor quitclaims and conveys to Licensee the Abandoned Poles effective as of the Effective Date. Ownership and risk of loss of the Abandoned Poles will transfer to Licensee on the Effective Date.

3. Licensee represents and warrants to Licensor that Licensee has made a thorough physical inspection of the Abandoned Poles and has determined that the Abandoned Poles are capable of being put into service or used as is appropriate for Licensee’s purposes. From and after the Effective Date, Licensee (i) will provide safety devices and equipment, (ii) will perform maintenance and inspection services, and (iii) will provide employee and contractor training, as necessary in order to cause the Abandoned Poles, any Licensee Attachments and equipment of Existing Attaching Entities placed on the Abandoned Poles, and any work performed by Licensee and others in connection with such poles and equipment, to comply with (A) the laws, rules, ordinances, orders, decisions and regulations of any applicable governmental authority or body, and (B) the National Electrical Safety Code and any other generally accepted industry safety standards.

4. Licensor does not warrant or assure to Licensee any Right of Way, or other right of access to the Abandoned Poles, and if Licensee and its agents, contractors, customers and attaching entities are prevented from maintaining, possessing or using the Abandoned Poles, Licensor will have no liability on account of such denial of access.

5. LICENSEE AGREES THAT NEITHER LICENSOR NOR ANYONE ON LICENSOR’S BEHALF HAS MADE, AND LICENSOR SPECIFICALLY DISCLAIMS MAKING, ANY REPRESENTATIONS, WARRANTIES OR AGREEMENTS OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, OR VERBAL OR WRITTEN, WITH RESPECT TO: (a) THE VALUE, NATURE OR QUALITY OF THE ABANDONED POLES; (b) THE SUITABILITY OF THE ABANDONED POLES FOR ANY AND ALL ACTIVITIES AND USES WHICH LICENSEE MAY CONDUCT WITH OR ON THE ABANDONED POLES; (c) THE COMPLIANCE OF OR BY THE ABANDONED POLES OR THEIR OPERATION WITH ANY LAWS, RULES, ORDINANCES, ORDERS, DECISIONS OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY, OR WITH



POLE BILL OF SALE

THE NATIONAL ELECTRICAL SAFETY CODE AND ANY OTHER GENERALLY ACCEPTED INDUSTRY SAFETY STANDARDS; (d) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE ABANDONED POLES; (e) THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS INCORPORATED INTO THE ABANDONED POLES; (f) THE PHYSICAL CONDITION OR STATE OF REPAIR OR LACK OF REPAIR OF THE ABANDONED POLES; (g) THE SAFETY OF THE ABANDONED POLES OR THE PREMISES SURROUNDING THE ABANDONED POLES; (h) THE STATUS OF TITLE TO THE ABANDONED POLES; AND (i) ANY OTHER MATTER WITH RESPECT TO THE ABANDONED POLES AND, SPECIFICALLY, THAT LICENSOR HAS NOT MADE, AND SPECIFICALLY DISCLAIMS MAKING, ANY REPRESENTATIONS REGARDING COMPLIANCE WITH ANY ENVIRONMENTAL LAW OR PROTECTION, POLLUTION OR LAND USE, ZONING OR DEVELOPMENT OR REGIONAL IMPACT LAWS, RULES, REGULATIONS, ORDERS, DECISIONS OR REQUIREMENTS. LICENSEE FURTHER AGREES THAT THE SALE OF THE ABANDONED POLES IS MADE ON AN “AS IS”, “WHERE IS” AND “WITH ALL FAULTS” CONDITION AND BASIS, AND THAT LICENSEE ACCEPTS THE ABANDONED POLES IN THEIR “AS IS,” “WHERE IS” AND “WITH ALL FAULTS” CONDITION AND BASIS. NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH IN THIS BILL OF SALE OR THE AGREEMENT, THE AGREEMENTS, DISCLAIMERS AND WAIVERS CONTAINED IN THIS SECTION 5 WILL SURVIVE THE EXPIRATION OR TERMINATION OF THE AGREEMENT.

6. LICENSEE, FOR ITSELF, ITS SUCCESSORS AND ASSIGNS, WAIVES, RELEASES, AND FOREVER DISCHARGES LICENSOR, ITS OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AGENTS, ATTORNEYS, AFFILIATES, PARENT COMPANIES, REPRESENTATIVES AND ANY OTHER PERSONS ACTING ON BEHALF OF LICENSOR AND THE SUCCESSORS AND ASSIGNS OF ANY OF THE PRECEDING (COLLECTIVELY, “LICENSOR PARTIES”), OF AND FROM ANY AND ALL CLAIMS, ACTIONS, CAUSES OF ACTION, DEMANDS, RIGHTS, DAMAGES, COSTS, EXPENSES AND COMPENSATION WHATSOEVER, DIRECT OR INDIRECT, HOWEVER CAUSED AND REGARDLESS OF LEGAL THEORY OR FORESEEABILITY, WHICH LICENSEE OR ITS SUCCESSORS OR ASSIGNS NOW HAS OR WHICH MAY ARISE IN THE FUTURE, IN ANY WAY RELATED TO THE ABANDONED POLES. NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH IN THIS BILL OF SALE OR THE AGREEMENT, THE WAIVER, RELEASE AND DISCHARGE CONTAINED IN THIS SECTION 6 WILL SURVIVE THE EXPIRATION OR TERMINATION OF THE AGREEMENT. Licensee will include in any bill of sale or other instrument of transfer by which Licensee conveys any of the Abandoned Poles to a third party (including any affiliate of Licensee) the foregoing waiver, release and discharge in order to cause the third party transferee also to waive such claims and to release and discharge Licensor.

7. LICENSEE WILL INDEMNIFY AND HOLD HARMLESS THE LICENSOR PARTIES FROM AND AGAINST ANY CLAIMS, LIABILITIES, SUITS, FINES, PENALTIES, COSTS, JUDGMENTS AND DAMAGES WHATSOEVER (INCLUDING THIRD PARTY CLAIMS AND INCLUDING COSTS OF SETTLEMENT, COSTS OF DEFENSE AND REASONABLE ATTORNEYS’ FEES), WHETHER GENERAL, COMPENSATORY OR PUNITIVE (COLLECTIVELY, “CLAIMS”), THAT RELATE IN ANY WAY TO: (a) ANY NEGLIGENT ACT OR OMISSION OF LICENSEE OR ANY OF ITS EMPLOYEES, AGENTS OR CONTRACTORS;

EXHIBIT A



CenturyLink™

POLE BILL OF SALE

(b) ANY BREACH OF THIS AGREEMENT BY LICENSEE; (c) ANY SUBSEQUENT SALE OF ANY OF THE ABANDONED POLES BY LICENSEE; (d) POSSESSION, USE, MODIFICATION, REPAIR OR REPLACEMENT OF THE ABANDONED POLES BY LICENSEE OR ANY AGENT, CONTRACTOR, CUSTOMER OR ATTACHER OF LICENSEE; (E) PHYSICAL DAMAGE OR INJURY TO PERSONS OR PROPERTY INVOLVING THE ABANDONED POLES AND OCCURRING AFTER THE EFFECTIVE DATE; AND (e) ENVIRONMENTAL CLAIMS (AS DEFINED BELOW). “ENVIRONMENTAL CLAIMS” MEANS CLAIMS (INCLUDING ENVIRONMENTAL CLEAN-UP COSTS, RESPONSE COSTS, COSTS OF CORRECTIVE ACTION, COSTS OF FINANCIAL ASSURANCE, AND NATURAL RESOURCE DAMAGES) ASSERTED AGAINST A LICENSOR PARTY UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE COMPENSATION AND LIABILITY ACT (“CERCLA”), 42 U.S.C. § 9601 ET SEQ., THE RESOURCE CONSERVATION AND RECOVERY ACT (“RCRA”), 42 U.S.C. § 6901 ET SEQ., THE FEDERAL WATER POLLUTION CONTROL ACT (“FWPCA”), 33 U.S.C. §1251 ET SEQ., THE CLEAN AIR ACT (“CAA”), 42 U.S.C. § 7401 ET SEQ., THE HAZARDOUS MATERIALS TRANSPORTATION ACT (“HMTA”), 49 U.S.C. § 1801 ET SEQ., AND OTHER COMPARABLE LAWS, RULES, ORDINANCES, ORDERS, DECISIONS AND REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY RELATING TO THE HANDLING, SCRAP, DESTRUCTION, USE, MAINTENANCE OR DISPOSITION OF THE ABANDONED POLES.

8. On the Effective Date, Licensee will remove any of Licensor’s ownership tags and structure numbers identifying the Abandoned Poles as being owned by Licensor, and replace them with Licensee’s ownership tags, structure numbers and other items that clearly and conspicuously identify the Abandoned Poles as being owned by Licensee.

9. In this Bill of sale, unless the context otherwise requires, (i) singular includes the plural and plural the singular, and masculine, feminine and neuter genders are interchangeable, (ii) use of the word “and” means both “and” and “or”, (iii) use of the word “including” does not exclude items not listed and (iv) use of the word “will” connotes a mandatory action. This Bill of Sale may be signed in several counterparts, each of which will be fully effective as an original and all of which together will constitute one and the same instrument.

10. The “Effective Date” of this Bill of Sale is the earlier to occur of (i) the date this Bill of Sale is last signed by both Licensor and Licensee where indicated below, or (ii) the date Licensee first asserted control over the Abandoned Poles.

LICENSOR:

LICENSEE:

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

CONVERSATION:
CONTRACT:



EXHIBIT A
EXHIBIT A TO BILL OF SALE
ABANDONED POLES



EXHIBIT A
EXHIBIT D
ATTACHMENT BOND

ATTACHMENT BOND
Bond No. _____

KNOW ALL MEN BY THESE PRESENTS, that we, Principal Name, as Principal, and Surety Company Name, a corporation duly organized under the laws of the State of _____, as Surety, are held and firmly bound unto _____ d/b/a CenturyLink as Oblige in the State of _____, in the sum of _____ Dollars, (\$00) lawful money of the United States of America, to be paid to said Oblige, its successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the above bound Principal has entered into a written agreement with the said Oblige for the use of its poles and/or conduit in connection with the furnishing of certificated telecommunications service and/or cable service. The above mentioned agreement sets forth the terms and conditions which govern the use of such poles and said agreement is hereby specifically referred to and made part of this bond, with like force and effect as if herein at length set forth.

NOW, THEREFORE, THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that if the above named Principal, its successors or assigns, does and shall well and truly observe, perform, fulfill and keep its obligations as set forth in the above mentioned agreement, for which a bond must be posted, then the above obligation to be void; otherwise to remain in full force and effect.

The bond is subject, however, to the following express conditions:

FIRST: That in the event of a default on the part of the Principal, its successors or assigns, a written statement of such default with full details thereof shall be given to Surety promptly, and in any event, within 30 days after the Oblige shall learn of such default, such notice to be delivered personally or by registered mail to Surety at its Home Office at _____.

SECOND: That no claim, suit or action under this bond by reason of any such default shall be brought against Surety unless asserted or commenced within 12 months after the effective date of any termination or cancellation of this bond.

THIRD: That this bond may be terminated or cancelled by Surety by 30 days prior notice in writing from Surety to Principal and to Oblige. Such termination or cancellation shall not affect any liability incurred or accrued under this bond prior to the effective date of such termination or cancellation. The liability of the Surety shall be limited to the amount set forth and is not cumulative.

FOURTH: That no right of action shall accrue under this bond to or for the use of any person other than the Oblige, its successors and assigns.

IN WITNESS WHEREOF, the above bound Principal and the above Surety have hereunto set their hands and seals, on the _____ day of _____. This bond is to be effective the _____ day of _____.

Principal
By: _____ Principal
Surety Company
By: _____
XXXXXXXXXX, Attorney-in-Fact

CONVERSATION:
CONTRACT:



EXHIBIT A

EXHIBIT D-1

ATTACHMENT BOND CALCULATION

ATTACHMENT BOND CALCULATION

AMOUNT OF POLE BOND (from Pole Schedule below)	\$ _____
AMOUNT OF CONDUIT BOND (from Conduit Bond Calculation below)	\$ _____
AMOUNT OF WIRELESS BOND (from Wireless Bond Calculation below)	\$ _____
TOTAL ATTACHMENT BOND	\$ _____

POLE BOND SCHEDULE

<u>Bond Amount</u>	<u>Number of Total Pole Attachments</u>
\$ 30,000	0-250
\$ 50,000	251-500
\$ 70,000	501-1,000
\$ 125,000	1,001-2,500
\$ 175,000	2,501-5,000
\$ 250,000	5,001-7,500
\$ 350,000	7,501-10,000
\$ 450,000	10,001-20,000
\$ 650,000	20,001-30,000
\$ 800,000	30,001-40,000
\$1,000,000	40,001 and above

CONDUIT BOND CALCULATION

The amount of the Conduit Attachment Bond will be \$500 for the first 200 linear duct feet and \$2.00 per each linear duct foot thereafter.

WIRELESS BOND CALCULATION

The amount of the Wireless Attachment Bond will be \$3,000 per each Wireless attachment.

The Attachment Bond must be provided upon the Effective Date of this Agreement. Licensor may, in its sole discretion, change the Attachment Bond requirements from time to time upon at least 30 days prior notice to Licensee. The amount of the Attachment Bond will not operate as a limitation upon any of Licensee's obligations under this Agreement.



EXHIBIT A

EXHIBIT D-1

ATTACHMENT BOND CALCULATION

CONVERSATION:
CONTRACT:



EXHIBIT A

EXHIBIT E

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.

Additionally, if not easily discernible from the map, a listing of service areas (eg franchise areas by city, county, etc.) or exchanges served should be provided.

LICENSEE:

By: _____

Title: _____

Date: _____



EXHIBIT A

EXHIBIT F

CENTURYLINK WIRELESS CONSTRUCTION
SPECIFICATIONS

1. Only one Antenna per Pole allowed.
2. Antenna owner must install a RF warning sign on the Pole at the level where the safe approach distance ends for general population/uncontrolled environments. **Antenna owner must also provide a RF emissions report or other appropriate documentation that defines these approach distances.** WARNING-ANTENNA RADIATION MINIMUM APPROACH DISTANCE IS ___ FT. It must also include the Licensee name and 24-hour contact phone number. The approach distance shall be based upon the Uncontrolled Exposure limits in the FCC OET-65 bulletin Appendix A. The sign shall be 60 mil. lexan with U.V. inhibitors and comply with IEEE C95.2 standards.
3. Antenna Attachment to the Pole must meet all NESC clearance specifications.
4. ONLY the antenna and cables/risers necessary for antenna operations are allowed on CenturyLink Poles which cannot be accessed by bucket truck. ALL power equipment, on/off switches and cabinets are only permitted on CenturyLink Poles with a height above ground no greater than forty-five feet, which can lawfully and safely be reached by bucket truck. Cabinets/stub poles must meet NESC clearance, space/measurements requirements from CenturyLink Poles.
5. All risers must be placed in conduit with fasteners/straps not less than 24". Maximum 2-2" conduits per Pole.
6. All antenna Attachments must be approved by CenturyLink prior to construction. Antenna may be attached above the top Attachment in the designated Communications Space or below the lowest Attachment in the Communication Space, if an electric utility is attached to the Pole. If no electric utility is attached to the Pole (or has an approved Application to attach) the Attachment may alternatively be located on the Pole top with no bolts or screws in the top 12 inches of the Pole. All Attachments must meet NESC, FCC, State and Local requirements.
7. All electrical power equipment must be bonded to MGNV where available or grounded to the commercial power source, meeting all codes applicable.
8. All Antenna attachments will have a power on/off switch accessible by CenturyLink installed on the cabinet/stub pole that will terminate the transmission of radio frequency when turned to the off position. The on/off switch must be shown on the application and any deviation from the approved permitted location must be approved by CenturyLink prior to installation.
9. CAUTION: Disconnect power to antenna before working on any Pole in the area above the RF warning sign or closer than the stated safe distance indicated on the warning sign.

See example drawing on Exhibit "F" which depicts a CenturyLink Pole WITH an electric utility attached.

Note: Exhibit "F" may be revised and/or updated as necessary to maintain a safe working environment and as regulations require.

EXHIBIT A

EXHIBIT F - diagram

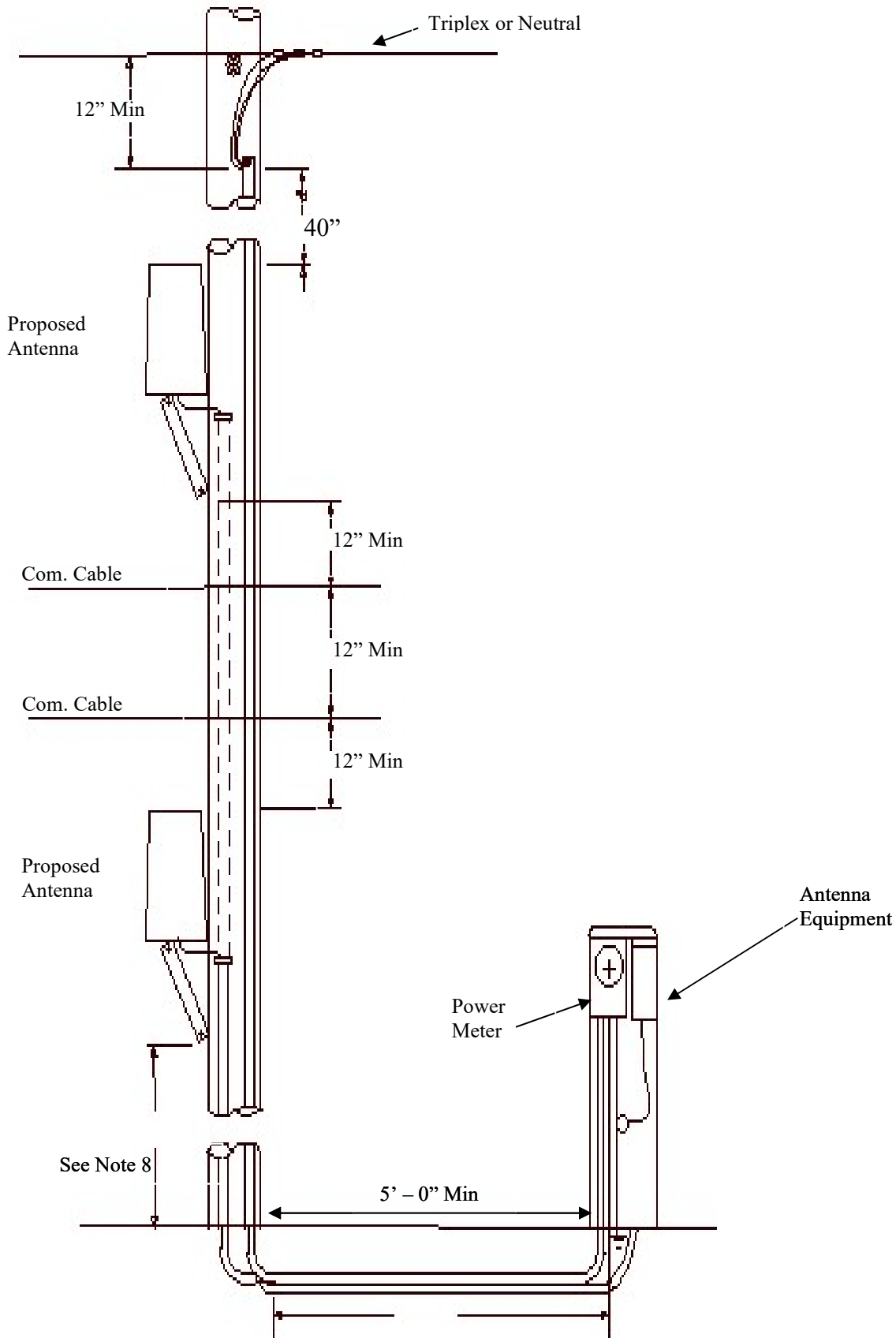




EXHIBIT A

EXHIBIT G

CONFIGURATION OF LICENSEE ATTACHMENTS

Licensee Diagram



EXHIBIT A

EXHIBIT G

CONFIGURATION OF LICENSEE ATTACHMENTS

Licensee Equipment Detail



EXHIBIT A
EXHIBIT H
PRIOR WRITTEN AGREEMENTS

none



EXHIBIT A

EXHIBIT I

47 C.F.R. § 1.1411

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Title 47: Telecommunication
PART 1—PRACTICE AND PROCEDURE
Subpart J—Pole Attachment Complaint Procedures

§1.1411 Timeline for access to utility poles.

(a) *Definitions.*

(1) The term “attachment” means any attachment by a cable television system or provider of telecommunications service to a pole owned or controlled by a utility.

(2) The term “new attacher” means a cable television system or telecommunications carrier requesting to attach new or upgraded facilities to a pole owned or controlled by a utility.

(3) The term “existing attacher” means any entity with equipment on a utility pole.

(b) All time limits in this subsection are to be calculated according to §1.4.

(c) *Application review and survey*—(1) *Application completeness.* A utility shall review a new attacher's attachment application for completeness before reviewing the application on its merits. A new attacher's attachment application is considered complete if it provides the utility with the information necessary under its procedures, as specified in a master service agreement or in requirements that are available in writing publicly at the time of submission of the application, to begin to survey the affected poles.

(i) A utility shall determine within 10 business days after receipt of a new attacher's attachment application whether the application is complete and notify the attacher of that decision. If the utility does not respond within 10 business days after receipt of the application, or if the utility rejects the application as incomplete but fails to specify any reasons in its response, then the application is deemed complete. If the utility timely notifies the new attacher that its attachment application is not complete, then it must specify all reasons for finding it incomplete.

(ii) Any resubmitted application need only address the utility's reasons for finding the application incomplete and shall be deemed complete within 5 business days after its resubmission, unless the utility specifies to the new attacher which reasons were not addressed and how the resubmitted application did not sufficiently address the reasons. The new attacher may follow the resubmission procedure in this paragraph as many times as it chooses so long as in each case it makes a bona fide attempt to correct the reasons identified by the utility, and in each case the deadline set forth in this paragraph shall apply to the utility's review.

(2) *Application review on the merits.* A utility shall respond to the new attacher either by granting access or, consistent with §1.1403(b), denying access within 45 days of receipt of a complete application to attach facilities to its utility poles (or within 60 days in the case of larger orders as described in paragraph (g) of this section). A utility may not deny the new attacher pole access based on a preexisting violation not caused by any prior attachments of the new attacher.

(3) *Survey.* (i) A utility shall complete a survey of poles for which access has been requested within 45 days of receipt of a complete application to attach facilities to its utility poles (or within 60 days in the case of larger orders as described in paragraph (g) of this section).

(ii) A utility shall permit the new attacher and any existing attachers on the affected poles to be present for any field inspection conducted as part of the utility's survey. A utility shall use commercially reasonable efforts to provide



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the affected attachers with advance notice of not less than 3 business days of any field inspection as part of the survey and shall provide the date, time, and location of the survey, and name of the contractor performing the survey.

(iii) Where a new attacher has conducted a survey pursuant to paragraph (j)(3) of this section, a utility can elect to satisfy its survey obligations in this paragraph by notifying affected attachers of its intent to use the survey conducted by the new attacher pursuant to paragraph (j)(3) of this section and by providing a copy of the survey to the affected attachers within the time period set forth in paragraph (c)(3)(i) of this section. A utility relying on a survey conducted pursuant to paragraph (j)(3) of this section to satisfy all of its obligations under paragraph (c)(3)(i) of this section shall have 15 days to make such a notification to affected attachers rather than a 45 day survey period.

(d) *Estimate*. Where a new attacher's request for access is not denied, a utility shall present to a new attacher a detailed, itemized estimate, on a pole-by-pole basis where requested, of charges to perform all necessary make-ready within 14 days of providing the response required by paragraph (c) of this section, or in the case where a new attacher has performed a survey, within 14 days of receipt by the utility of such survey. Where a pole-by-pole estimate is requested and the utility incurs fixed costs that are not reasonably calculable on a pole-by-pole basis, the utility present charges on a per-job basis rather than present a pole-by-pole estimate for those fixed cost charges. The utility shall provide documentation that is sufficient to determine the basis of all estimated charges, including any projected material, labor, and other related costs that form the basis of its estimate.

(1) A utility may withdraw an outstanding estimate of charges to perform make-ready work beginning 14 days after the estimate is presented.

(2) A new attacher may accept a valid estimate and make payment any time after receipt of an estimate, except it may not accept after the estimate is withdrawn.

(3) *Final invoice*: After the utility completes make-ready, if the final cost of the work differs from the estimate, it shall provide the new attacher with a detailed, itemized final invoice of the actual make-ready charges incurred, on a pole-by-pole basis where requested, to accommodate the new attacher's attachment. Where a pole-by-pole estimate is requested and the utility incurs fixed costs that are not reasonably calculable on a pole-by-pole basis, the utility may present charges on a per-job basis rather than present a pole-by-pole invoice for those fixed cost charges. The utility shall provide documentation that is sufficient to determine the basis of all estimated charges, including any projected material, labor, and other related costs that form the basis of its estimate.

(4) A utility may not charge a new attacher to bring poles, attachments, or third-party equipment into compliance with current published safety, reliability, and pole owner construction standards guidelines if such poles, attachments, or third-party equipment were out of compliance because of work performed by a party other than the new attacher prior to the new attachment.

(e) *Make-ready*. Upon receipt of payment specified in paragraph (d)(2) of this section, a utility shall notify immediately and in writing all known entities with existing attachments that may be affected by the make-ready.

(1) For attachments in the communications space, the notice shall:

(i) Specify where and what make-ready will be performed.

(ii) Set a date for completion of make-ready in the communications space that is no later than 30 days after notification is sent (or up to 75 days in the case of larger orders as described in paragraph (g) of this section).

(iii) State that any entity with an existing attachment may modify the attachment consistent with the specified make-ready before the date set for completion.



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(iv) State that if make-ready is not completed by the completion date set by the utility in paragraph (e)(1)(ii) in this section, the new attacher may complete the make-ready specified pursuant to paragraph (e)(1)(i) in this section.

(v) State the name, telephone number, and email address of a person to contact for more information about the make-ready procedure.

(2) For attachments above the communications space, the notice shall:

(i) Specify where and what make-ready will be performed.

(ii) Set a date for completion of make-ready that is no later than 90 days after notification is sent (or 135 days in the case of larger orders, as described in paragraph (g) of this section).

(iii) State that any entity with an existing attachment may modify the attachment consistent with the specified make-ready before the date set for completion.

(iv) State that the utility may assert its right to 15 additional days to complete make-ready.

(v) State that if make-ready is not completed by the completion date set by the utility in paragraph (e)(2)(ii) in this section (or, if the utility has asserted its 15-day right of control, 15 days later), the new attacher may complete the make-ready specified pursuant to paragraph (e)(1)(i) of this section.

(vi) State the name, telephone number, and email address of a person to contact for more information about the make-ready procedure.

(3) Once a utility provides the notices described in this section, it then must provide the new attacher with a copy of the notices and the existing attachers' contact information and address where the utility sent the notices. The new attacher shall be responsible for coordinating with existing attachers to encourage their completion of make-ready by the dates set forth by the utility in paragraph (e)(1)(ii) of this section for communications space attachments or paragraph (e)(2)(ii) of this section for attachments above the communications space.

(f) A utility shall complete its make-ready in the communications space by the same dates set for existing attachers in paragraph (e)(1)(ii) of this section or its make-ready above the communications space by the same dates for existing attachers in paragraph (e)(2)(ii) of this section (or if the utility has asserted its 15-day right of control, 15 days later).

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

(1) A utility shall apply the timeline described in paragraphs (c) through (e) of this section to all requests for attachment up to the lesser of 300 poles or 0.5 percent of the utility's poles in a state.

(2) A utility may add 15 days to the survey period described in paragraph (c) of this section to larger orders up to the lesser of 3000 poles or 5 percent of the utility's poles in a state.

(3) A utility may add 45 days to the make-ready periods described in paragraph (e) of this section to larger orders up to the lesser of 3000 poles or 5 percent of the utility's poles in a state.

(4) A utility shall negotiate in good faith the timing of all requests for attachment larger than the lesser of 3000 poles or 5 percent of the utility's poles in a state.

CONVERSATION:
CONTRACT:



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(5) A utility may treat multiple requests from a single new attacher as one request when the requests are filed within 30 days of one another.

(h) *Deviation from the time limits specified in this section.* (1) A utility may deviate from the time limits specified in this section before offering an estimate of charges if the parties have no agreement specifying the rates, terms, and conditions of attachment.

(2) A utility may deviate from the time limits specified in this section during performance of make-ready for good and sufficient cause that renders it infeasible for the utility to complete make-ready within the time limits specified in this section. A utility that so deviates shall immediately notify, in writing, the new attacher and affected existing attachers and shall identify the affected poles and include a detailed explanation of the reason for the deviation and a new completion date. The utility shall deviate from the time limits specified in this section for a period no longer than necessary to complete make-ready on the affected poles and shall resume make-ready without discrimination when it returns to routine operations. A utility cannot delay completion of make-ready because of a preexisting violation on an affected pole not caused by the new attacher.

(3) An existing attacher may deviate from the time limits specified in this section during performance of complex make-ready for reasons of safety or service interruption that renders it infeasible for the existing attacher to complete complex make-ready within the time limits specified in this section. An existing attacher that so deviates shall immediately notify, in writing, the new attacher and other affected existing attachers and shall identify the affected poles and include a detailed explanation of the basis for the deviation and a new completion date, which in no event shall extend beyond 60 days from the date the notice described in paragraph (e)(1) of this section is sent by the utility (or up to 105 days in the case of larger orders described in paragraph (g) of this section). The existing attacher shall deviate from the time limits specified in this section for a period no longer than necessary to complete make-ready on the affected poles.

(i) *Self-help remedy—* (1) *Surveys.* If a utility fails to complete a survey as specified in paragraph (c)(3)(i) of this section, then a new attacher may conduct the survey in place of the utility and, as specified in §1.1412, hire a contractor to complete a survey.

(i) A new attacher shall permit the affected utility and existing attachers to be present for any field inspection conducted as part of the new attacher's survey.

(ii) A new attacher shall use commercially reasonable efforts to provide the affected utility and existing attachers with advance notice of not less than 3 business days of a field inspection as part of any survey it conducts. The notice shall include the date and time of the survey, a description of the work involved, and the name of the contractor being used by the new attacher.

(2) *Make-ready.* If make-ready is not complete by the date specified in paragraph (e) of this section, then a new attacher may conduct the make-ready in place of the utility and existing attachers, and, as specified in §1.1412, hire a contractor to complete the make-ready.

(i) A new attacher shall permit the affected utility and existing attachers to be present for any make-ready. A new attacher shall use commercially reasonable efforts to provide the affected utility and existing attachers with advance notice of not less than 5 days of the impending make-ready. The notice shall include the date and time of the make-ready, a description of the work involved, and the name of the contractor being used by the new attacher.

(ii) The new attacher shall notify an affected utility or existing attacher immediately if make-ready damages the equipment of a utility or an existing attacher or causes an outage that is reasonably likely to interrupt the service of a utility or existing attacher. Upon receiving notice from the new attacher, the utility or existing attacher may either:



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(A) Complete any necessary remedial work and bill the new attacher for the reasonable costs related to fixing the damage; or

(B) Require the new attacher to fix the damage at its expense immediately following notice from the utility or existing attacher.

(iii) A new attacher shall notify the affected utility and existing attachers within 15 days after completion of make-ready on a particular pole. The notice shall provide the affected utility and existing attachers at least 90 days from receipt in which to inspect the make-ready. The affected utility and existing attachers have 14 days after completion of their inspection to notify the new attacher of any damage or code violations caused by make-ready conducted by the new attacher on their equipment. If the utility or an existing attacher notifies the new attacher of such damage or code violations, then the utility or existing attacher shall provide adequate documentation of the damage or the code violations. The utility or existing attacher may either complete any necessary remedial work and bill the new attacher for the reasonable costs related to fixing the damage or code violations or require the new attacher to fix the damage or code violations at its expense within 14 days following notice from the utility or existing attacher.

(3) *Pole replacements.* Self-help shall not be available for pole replacements.

(j) *One-touch make-ready option.* For attachments involving simple make-ready, new attachers may elect to proceed with the process described in this paragraph in lieu of the attachment process described in paragraphs (c) through (f) and (i) of this section.

(1) *Attachment application.* (i) A new attacher electing the one-touch make-ready process must elect the one-touch make-ready process in writing in its attachment application and must identify the simple make-ready that it will perform. It is the responsibility of the new attacher to ensure that its contractor determines whether the make-ready requested in an attachment application is simple.

(ii) The utility shall review the new attacher's attachment application for completeness before reviewing the application on its merits. An attachment application is considered complete if it provides the utility with the information necessary under its procedures, as specified in a master service agreement or in publicly-released requirements at the time of submission of the application, to make an informed decision on the application.

(A) A utility has 10 business days after receipt of a new attacher's attachment application in which to determine whether the application is complete and notify the attacher of that decision. If the utility does not respond within 10 business days after receipt of the application, or if the utility rejects the application as incomplete but fails to specify any reasons in the application, then the application is deemed complete.

(B) If the utility timely notifies the new attacher that its attachment application is not complete, then the utility must specify all reasons for finding it incomplete. Any resubmitted application need only address the utility's reasons for finding the application incomplete and shall be deemed complete within 5 business days after its resubmission, unless the utility specifies to the new attacher which reasons were not addressed and how the resubmitted application did not sufficiently address the reasons. The applicant may follow the resubmission procedure in this paragraph as many times as it chooses so long as in each case it makes a bona fide attempt to correct the reasons identified by the utility, and in each case the deadline set forth in this paragraph shall apply to the utility's review.

(2) *Application review on the merits.* The utility shall review on the merits a complete application requesting one-touch make-ready and respond to the new attacher either granting or denying an application within 15 days of the utility's receipt of a complete application (or within 30 days in the case of larger orders as described in paragraph (g) of this section).



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(i) If the utility denies the application on its merits, then its decision shall be specific, shall include all relevant evidence and information supporting its decision, and shall explain how such evidence and information relate to a denial of access for reasons of lack of capacity, safety, reliability, or engineering standards.

(ii) Within the 15-day application review period (or within 30 days in the case of larger orders as described in paragraph (g) of this section), a utility may object to the designation by the new attachers contractor that certain make-ready is simple. If the utility objects to the contractor's determination that make-ready is simple, then it is deemed complex. The utility's objection is final and determinative so long as it is specific and in writing, includes all relevant evidence and information supporting its decision, made in good faith, and explains how such evidence and information relate to a determination that the make-ready is not simple.

(3) *Surveys*. The new attacher is responsible for all surveys required as part of the one-touch make-ready process and shall use a contractor as specified in §1.1412(b).

(i) The new attacher shall permit the utility and any existing attachers on the affected poles to be present for any field inspection conducted as part of the new attacher's surveys. The new attacher shall use commercially reasonable efforts to provide the utility and affected existing attachers with advance notice of not less than 3 business days of a field inspection as part of any survey and shall provide the date, time, and location of the surveys, and name of the contractor performing the surveys.

(ii) [Reserved].

(4) *Make-ready*. If the new attacher's attachment application is approved and if it has provided 15 days prior written notice of the make-ready to the affected utility and existing attachers, the new attacher may proceed with make-ready using a contractor in the manner specified for simple make-ready in §1.1412(b).

(i) The prior written notice shall include the date and time of the make-ready, a description of the work involved, the name of the contractor being used by the new attacher, and provide the affected utility and existing attachers a reasonable opportunity to be present for any make-ready.

(ii) The new attacher shall notify an affected utility or existing attacher immediately if make-ready damages the equipment of a utility or an existing attacher or causes an outage that is reasonably likely to interrupt the service of a utility or existing attacher. Upon receiving notice from the new attacher, the utility or existing attacher may either:

(A) Complete any necessary remedial work and bill the new attacher for the reasonable costs related to fixing the damage; or

(B) Require the new attacher to fix the damage at its expense immediately following notice from the utility or existing attacher.

(iii) In performing make-ready, if the new attacher or the utility determines that make-ready classified as simple is complex, then that specific make-ready must be halted and the determining party must provide immediate notice to the other party of its determination and the impacted poles. The affected make-ready shall then be governed by paragraphs (d) through (i) of this section and the utility shall provide the notice required by paragraph (e) of this section as soon as reasonably practicable.

(5) *Post-make-ready timeline*. A new attacher shall notify the affected utility and existing attachers within 15 days after completion of make-ready on a particular pole. The notice shall provide the affected utility and existing attachers at least 90 days from receipt in which to inspect the make-ready. The affected utility and existing attachers have 14 days after completion of their inspection to notify the new attacher of any damage or code violations caused by make-ready conducted by the new attacher on their equipment. If the utility or an existing attacher notifies the new attacher



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of such damage or code violations, then the utility or existing attacher shall provide adequate documentation of the damage or the code violations. The utility or existing attacher may either complete any necessary remedial work and bill the new attacher for the reasonable costs related to fixing the damage or code violations or require the new attacher to fix the damage or code violations at its expense within 14 days following notice from the utility or existing attacher.

[76 FR 26640, May 9, 2011. Redesignated and amended at 83 FR 44841, Sept. 4, 2018; 83 FR 46836, Sept. 14, 2018]

EFFECTIVE DATE NOTE: At 83 FR 46836, Sept. 14, 2018, §1.1411 was amended by revising paragraphs (a), (c), (d) introductory text, and (d)(2); adding paragraphs (d)(3) and (4); revising paragraphs (e)(1) and (2); adding paragraph (e)(3); revising paragraphs (f), (g)(1), (g)(4) and (5), (h), and (i); and adding paragraph (j). Paragraphs (c)(1) and (3), (d) introductory text, (d)(3), (e)(3), (h)(2) and (3), (i)(1) and (2), and (j) (1) through (5) contain information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

EXHIBIT A

EXHIBIT J **STATE-SPECIFIC PROVISIONS**

Applicable in Illinois: To the extent required under 83 Ill. Adm. Code 315.40, if Licensee is a cable television company, after the Initial Post-Attachment Inspection, further inspection of Licensee's Attachments at Licensee's cost is prohibited except when Licensor submits to the Licensee a statistically reliable survey evidencing the fact that the Licensee has failed to report more than 5% of its attachments or is in noncompliance on 5% or more of the poles to which it is attached. The Licensee shall be allowed 30 days to rebut said survey. If the surveys are in conflict, the Illinois Commerce Commission shall decide any dispute on petition of either party. Thereafter, if a survey is conducted, the Licensee shall be required to pay the cost of same if the survey is borne out (more than 5% failure to report rate is shown or more than 5% non-compliance is found), provided that any non-compliance is not caused by the Licensor. Additionally, to the extent required under 83 Ill. Adm. Code 315.50, and if Licensee is a cable television company, the invoice issued to Licensee under Section 12.4 for Make Ready Work shall contain an itemization for each pole containing the dates of work, location of work, labor cost per hour and persons employed, materials used, and the cost of materials.

Applicable in Oregon: To the extent required under OAR 860-028-0115, in the event Licensor fails to correct a violation that poses imminent danger to life or property and Licensee performs such correction, Licensor will reimburse the Licensee for the actual cost of corrections. Licensor must respond to a licensee's request for assistance in making a correction within 45 days. Additionally, to the extent required under OAR 860-028-0120(3)(b), Licensee may attach a Service Drop to a Pole prior to submitting an Application for the Service Drop, provided the attachment of the Service Drop is made in accordance with the Specifications and provided further that Licensee submits an Application for the Service Drop within 7 days after its attachment.

Applicable in Utah: Licensor shall process Applications and provide estimates of the costs of Make-ready Work in accordance with R746-345-3(C) of the Utah Administrative Rules. Licensor and Licensee shall conform to Administrative Rule R746-345-4 pertaining to pole and attachment labeling. Any dispute arising out of, or relating to, this Agreement shall be settled in accordance with Administrative Rule R746-345-6.

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EXHIBIT K

POINTS OF CONTACT

BY STATE