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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

AT&T OHIO, Complainant, v. THE DAYTON POWER & LIGHT COMPANY, Respondent.	)	Case No. 06-1509-EL-CSS

DIRECT TESTIMONY

OF

GRACE SURY

On Behalf of

AT&T OHIO

AT&T Ex. ____

Dated: August 31, 2007

PUBLIC VERSION

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I. INTRODUCTION

Q1. PLEASE STATE YOUR NAME, BY WHOM YOU ARE EMPLOYED, YOUR TITLE, AND YOUR BUSINESS ADDRESS.

A1. My name is Grace E. Sury, and I am employed by AT&T Ohio as a Joint Use Manager. My business address is 150 E. Gay Street 6H, Columbus, Ohio 43215.

Q2. WHAT ARE YOUR JOB RESPONSIBILITIES AS JOINT USE MANAGER?

A2. My current job responsibilities include negotiating Joint Use Agreements for the AT&T Midwest. My past duties have included managing pole surveys, providing support to Engineering, Construction and Installation and Maintenance, and managing pole rental budgets for Ohio and Indiana.

Q3. WHAT IS YOUR EDUCATIONAL BACKGROUND?

A3. I received an associates degree in Applied Business Management from Cuyahoga Community College in 1998.

Q4. PLEASE OUTLINE YOUR WORK EXPERIENCE.

A4. I have been employed by AT&T for the past 28 years. I worked for 10 years in the fields of Treasury, Operator Services, Service Orders, Accounts Payable and Receivable. From 1996 to 2000, I worked as a Make Ready Engineer and Power Coordinator for Ameritech New Media. My responsibilities there included drafting, pole permits, billing, field work (identifying available space on poles and/or determining make ready work needed to make space available) and identifying placement of aerial and buried facilities. Over the next 18 months, I was a Manager in the Billing Accuracy Center. Beginning in 2001 until present, I have worked as a Joint Use Manager responsible for negotiating Joint Use, Joint Ownership and License Agreements for poles with Electric Companies, managing pole surveys, forecasting budgets and providing support to Engineering, Construction and

Installation and Repair. I have also testified before the Indiana Utility Regulatory Commission in a matter regarding pole rental rates (Cause No. 42755).

II. BACKGROUND

Q5. WHAT IS JOINT USE?

A5. Joint Use is an arrangement whereby two parties (typically an electric company and a telephone company) agree to use space on each other's utility poles to attach equipment used to provide service to customers. Sharing poles is economically efficient for both companies because it obviates the need for setting duplicative poles and/or unnecessarily burying cable. Sharing poles lessens the burden on public rights of way, again, because there is no need to set duplicative poles. It also reduces safety hazards to motorists.

Q6. DESCRIBE THE JOINT USE AGREEMENT AT ISSUE HERE.

A6. On March 17, 1930, AT&T Ohio and DP&L entered into a Joint Use Agreement, providing terms and conditions by which each party could use space on the other party's poles to attach equipment used to provide service to customers. I have attached a copy of this agreement as GS-1 (1930 Joint Use Agreement). Where DP&L owns poles for the purpose of providing electric service to customers and where AT&T Ohio owns poles for the purpose of providing telecommunication services, the Joint Agreement sets forth terms and conditions allowing each party to use space on the other party's poles to attach equipment used to provide service to customers.

Q7. HAS THE AGREEMENT BEEN AMENDED OVER THE YEARS?

A7. Yes. The parties entered into a Supplemental Agreement in 1942. I have attached a copy of this agreement as GS-2 (1942 Supplement).

Q8. ARE THERE ANY OTHER DOCUMENTS RELEVANT TO THIS DISPUTE?

A8. Yes. The parties developed an Operating Routine, dated December 1952. I have attached a copy of it as GS-3 (1953 Operating Routine).

Q9. WHAT ARE THE ISSUES IN DISPUTE BETWEEN THE PARTIES?

A9. AT&T Ohio's Amended Complaint seeks resolution of five issues. The first issue is the applicable rate for pole attachments. In addition to my testimony on this issue, AT&T Ohio will be submitting the testimony of Timothy Zeldenrust (who will testify with respect to DP&L's calculation of its annual pole costs), Veronica M. Mahanger (who will testify on the joint use of poles, including space allocation issues and costs incurred), and Timothy Dominak (who will testify about the inputs AT&T Ohio would use if the FCC's methodology for calculating pole costs were to be used by the parties).

The next three issues are: whether DP&L overcharged (and AT&T Ohio overpaid) for pole rental; whether DP&L unlawfully subleased space on its poles to third parties; and whether certain provisions (specifically, the termination clause and the default provision) of the Joint Agreement are unlawful, unjust and unreasonable, against the public interest, and therefore unenforceable. These issues are in part legal issues that will be discussed in AT&T Ohio's briefs; however, my testimony provides factual background relevant to these issues.

The fifth issue is what percentage of pole ownership each party is required to have under the agreement. In addition to my testimony on this issue, AT&T Ohio will be submitting the testimony of Veronica M. Mahanger.

III. PURPOSE OF TESTIMONY

Q10. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A10. In my testimony, I provide factual background regarding the nature of the parties' dispute and how it arose. On the rate issue, I explain the history leading to DP&L charging AT&T Ohio $45.00 for joint use, AT&T Ohio's reaction to those charges, and the resulting suspension. I also compare the joint use rate DP&L proposes to rates in AT&T Ohio's and DP&L's other joint use agreements. I also explain, in part, how DP&L's cost calculation is inconsistent with the FCC's methodology for determining pole costs.

On the issue of whether AT&T Ohio has been overcharged for pole rental, I explain that the Joint Use Agreement was amended in 1942 to require rent to be paid for the number of poles used in excess of one-half of the total joint use poles; however, DP&L has continued to charge AT&T Ohio for the difference between the number of poles DP&L owns and the number of poles AT&T Ohio owns (which is what the 1930 agreement provided prior to the 1942 Supplement). I also provide a calculation showing the amount AT&T Ohio has been overcharged for pole rental.

On the issue of licensing third party attachments, I explain that the joint use agreement gives AT&T Ohio the right to license and collect the associated revenues from third party communications attachments to DP&L poles; however, DP&L has been licensing those attachments (and, even further, has allowed those attachments to be placed in space allocated to AT&T Ohio under the Joint Use Agreement) and keeping the associated revenue. I provide a calculation showing the amount of AT&T Ohio's lost revenues.

Regarding the termination clause and default provision of the Joint Use Agreement, I explain that those provision are unworkable, unjust, and against the public interest. They are also, in many respects, inconsistent with the termination and default provisions in other AT&T Ohio and DP&L joint use agreements.

Finally, on the pole ownership issue, I explain that the parties' percent of pole ownership should be based on the amount of space each uses on the poles. Here, AT&T Ohio uses an average of ********** of space on joint use poles and DP&L uses far in excess of 4 feet.

IV. DISCUSSION OF ISSUES

A. APPLICABLE RATE FOR POLE ATTACHMENTS

Q11. HOW DID THE RATE DISPUTE COME ABOUT?

A11. Article XI of the Joint Agreement established an annual rate of $2.00 per pole, payable by each party. In other words, each party paid $2.00 for each pole to which it was attached. This provision was revised in a 1942 Supplemental Agreement to redefine the number of poles to which the rate applied and to require net billing. The $2.00 rate remained nominally unchanged, but the redefinition of the number of poles to which the rate applied reduced the effective rate by 50%. Specifically, the 1942 Supplemental Agreement provided that if one party owned more than one-half the poles, the other party would pay the rate of $2.00 for the number of poles in excess of one-half the number of joint poles. The $2.00 rate remained unchanged from 1930 until the Joint Agreement was revised in November 1995 to increase the rent to $3.50.

On or around November 12, 2004, DP&L notified AT&T Ohio of its desire to adjust the pole attachment rental rate pursuant to Article XIII. Although the rental rate was $2.00 from 1930 until 1995, and $3.50 from 1995 to the present, DP&L sought to increase the nominal rate by 1186%, from $3.50 to $45.00 per year. (As alluded to above and discussed further below, DP&L has been applying the annual rate to more poles than the agreement allows. When that is taken into account, the proposed rate increase is 2471%.) Of course, AT&T Ohio did not agree to that rate increase. Over the course of the next year, AT&T Ohio and DP&L engaged in a series of informal and formal communications in the hopes of reaching agreement on an adjusted rate, but those efforts were unsuccessful.

Q12. WHAT DOES THE AGREEMENT PROVIDE WITH RESPECT TO RATE CHANGES?

A12. Article XIII of the Joint Agreement sets forth procedures for adjusting the pole attachment annual rental. It states:

> At the expiration of five (5) years from the date of this agreement, and at the end of every five (5) year period thereafter, the rental per pole per annum thereafter payable hereunder shall be subject to readjustment at the request of either party made in writing to the other not later than sixty (60) days before the end of any such five (5) year period. If within sixty (60) days after the receipt of such a request by either party from the other, the parties hereto shall fail to agree upon a readjustment of such rental, then the rental per pole per annum so to be paid shall be an amount equal to one-half of the then average total annual cost per pole of providing and maintaining the standard joint poles covered by this agreement. In case of a readjustment of rentals as herein provided, the new rentals shall be payable until again readjusted.

The key to the parties' dispute about rental rate is the language requiring the rental rate to be set at "one-half of the then average total annual cost per pole of providing and maintaining the standard joint poles covered by this agreement."

Q13. HAVE THE PARTIES AGREED ON HOW TO CALCULATE "ONE-HALF OF THE THEN AVERAGE TOTAL ANNUAL COST PER POLE OF PROVIDING AND MAINTAINING THE STANDARD JOINT POLES COVERED" BY THE AGREEMENT?

A13. No. The parties have not been able to agree on what formula should be used to calculate "one-half of the then average total annual cost per pole of providing and maintaining the standard joint poles covered by this agreement," much less what the result of that calculation should be. DP&L claims to have made its $45.00 calculation of the pole rate by applying the FCC's methodology set forth in its May 25, 2001 Consolidated Partial Order on Reconsideration,[1] and codified at 47 C.F.R. § 1.1409. The Joint Agreement does not specify that the parties use the FCC's methodology; in fact, the FCC's methodology did not even exist when the parties executed the agreement in 1930. Moreover, in its Consolidated Partial Order on Reconsideration, the FCC explained that it was adopting pole attachment rate calculation formulas for cable attachers and *non-ILEC* telecom attachers – pole attachments by ILECs (such as AT&T Ohio) were explicitly exempted.[2] Thus, the first question for the Commission to resolve is whether pole costs should be calculated using the FCC's methodology, a variation of the FCC's methodology, or some other methodology. That issue is discussed in the testimony of Veronica Mahanger

[1] *Consolidated Partial Order on Reconsideration*, In the Matter of Amendment of Commission's Rules and Policies Governing Pole Attachments. In the Matter of Implementation of Section 703(e) of the Telecommunications Act of 1996, CS Docket Nos. 97-98, 97-151. FCC 01-170 (rel. May 25, 2001) ("Consolidated Partial Order on Reconsideration").

[2] Consolidated Partial Order on Reconsideration, n.12.

Q14. DID DP&L BEGIN BILLING AT&T OHIO AT THE $45.00 RATE?

A14. Yes. DP&L submitted bills to AT&T Ohio in the amount of $396,665.78[3] for the period October 2, 2004 through September 30, 2005 ("2005 Invoice"), and in the amount of $690,660.00 for the period October 1, 2005 through September 30, 2006 ("2006 Invoice"). AT&T Ohio sent payment to DP&L in the amount of $53,459.00 for the 2005 Invoice and $26,859.00 for the 2006 Invoice, the amounts not in dispute at the time of the payments. DP&L did not cash AT&T Ohio's second check for $26,859.00.

Q15. WHAT HAPPENED WHEN AT&T OHIO DID NOT PAY THE FULL AMOUNT OF THE INVOICES?

A15. On December 6, 2006, DP&L notified AT&T Ohio of its intent to suspend AT&T Ohio's rights under the Joint Agreement to make new attachments because of AT&T Ohio's purported default of the Joint Agreement for its failure to pay the 2005 and 2006 invoices in full. See GS-4 (Suspension Notice). DP&L also suggested that, if it chose, it could require AT&T Ohio to remove its existing attachments. Respondent's Motion to Dismiss the Complaint and Request for Emergency Relief, filed Jan. 4, 2007 at n.4. Later in my testimony I will explain the effect that DP&L's suspension had on AT&T Ohio.

Q16. HAS THE SUSPENSION BEEN LIFTED?

A16. Yes. In response to DP&L's suspension, AT&T Ohio sought emergency relief from the Commission requesting that it temporarily and preliminarily enjoin DP&L from suspending AT&T Ohio's contractual right to attach to DP&L's poles. In a March 28, 2007 Entry, the Commission denied AT&T Ohio's request for temporary and preliminary emergency relief. The Commission stated that AT&T "has within its control the ability

[3] This amount was the result of a blended rate. DP&L claims that the $45.00 rate became effective March 17, 2005. Therefore, it charged AT&T Ohio the $3.50 rate for 5.5 months of this billing cycle and the $45.00 rate for the remaining 6.5 months.

to continue attaching to DP&L's poles by paying DP&L's charges subject to true-up pending Commission resolution of this complaint." Entry at p. 12. The Commission added that upon payment of the invoices, "DP&L shall permit AT&T Ohio to once again attach to its poles pursuant to the Joint Agreement." *Id.* Pursuant to the Commission's Entry, AT&T Ohio sent payment covering the remaining balance of the invoices, while still disputing the amounts billed (and now paid). AT&T Ohio's payment was received by DP&L on May 8, 2007. DP&L cashed AT&T Ohio's check and lifted the suspension.

Q17. IS THE $45.00 RATE PROPOSED BY DP&L CONSISTENT WITH THE RATE PROVIDED FOR IN OTHER JOINT USE AGREEMENTS TO WHICH DP&L IS A PARTY?

A17. No.

Q18. PLEASE EXPLAIN.

A18. According to DP&L's own witness, the highest rate DP&L is paid by any carrier for the use of joint poles is $**** and the lowest rate is $****. GS-5 (Confidential Dep) (Deposition of Georgene Dawson, July 18, 2007, at p. 121).

This is consistent with my review of six joint use agreements DP&L has with other companies which were produced in discovery (relevant portions are attached hereto as GS-6.1 through 6.6 (Confidential) (DP&L Joint Use Agreements). Five of those agreements require that DP&L pay the other party $***** per pole per attachment and that the other party pay DP&L $***** per pole per attachment. See GS-6.1 – 6.5, §8.3. ********** ********** **********. The sixth agreement similarly requires DP&L to pay $**** and the other party to pay $***. GS-

6.6, §8.3. However, it requires ********** ********** ********** **********). See GS-6.6, § 8.3. So, under the sixth agreement, ********** **********.

Q19. IS THE RATE PROPOSED BY DP&L CONSISTENT WITH THE RATE PROVIDED FOR IN OTHER JOINT USE AGREEMENTS TO WHICH AT&T OHIO IS A PARTY?

A19. No. AT&T Ohio's joint use agreements with other carriers have lower rates than the $45.00 proposed by DP&L here (in some instances as low as $**** per pole). Although none of AT&T Ohio's joint use agreements have a rate as high as $45.00, some have rates higher than the $3.50 rate provided for in the DP&L/AT&T Joint Use Agreement. Those higher rates are, in part, a result of ********** ********** **********And ********** **********. (I discuss space and ownership allocation issues later in my testimony).

Under AT&T Ohio's joint use agreements, for 2005, on average, AT&T Ohio paid $**** and the electric company paid $****; and for 2006, on average, AT&T Ohio paid $**** and the electric company paid $****. GS-7.6 (Confidential) (Rate Summary Spreadsheet). (GS-7.6 is a summary of the rates AT&T Ohio and electric companies paid in 2005 and 2006 under joint use agreements. The 2005 rates were produced in discovery; I have updated the document to contain 2006 data. While updating the

document, I realized that the averages for 2005 were wrong because the total was not divided by the correct number of agreements – it was divided by ** instead of **. Thus, the average rate for 2005 increased from the document produced in discovery.)

Q20. PLEASE EXPLAIN AT&T OHIO'S JOINT USE AGREEMENTS IN MORE DETAIL.

A20. AT&T Ohio has several joint use agreements. GS-7.1 through 7.5d (Confidential). AT&T Ohio has a joint use agreement that covers thirteen electric companies. GS-7.1. Under that agreement, for year 2006, AT&T Ohio paid $**** and the electric companies paid $**** for the use of poles. GS-7.6. Although this rate is higher in comparison to the current rate in the AT&T/DP&L Joint Use Agreement, the higher rate is, in part, a result of ********** **********. GS-7.1 (§ 16(b)). In addition, AT&T Ohio has joint use agreements with three other major investor owned electric companies in Ohio. Under the first agreement (which covers two affiliated electric companies), for year 2006, AT&T Ohio paid $**** and $**** and the electric companies paid $**** and $****. GS-7.6. The **** ********** **********. GS-7.2 (§ 12.03(a)). In the second agreement, for 2006, AT&T Ohio paid $**** and the electric company paid $****. GS-7.6. Those rates were based on the ********** **********. GS-7.3 (§ 9.40(c)). (This total does not ********** **********.). Under this agreement, AT&T Ohio has the right to ********** **********. GS-7.3 (§8.10(d)(2)). Under the third agreement, AT&T and the electric pay $**** per pole, **********.

GS-7.4 (§ 5(h)); GS-7.6. This agreement is similar to the DP&L/AT&T Ohio Joint Use Agreement in that it does not **********. AT&T Ohio is also in partnership with city electrics throughout Ohio. Some operate under the AT&T Ohio Tariff and some have separate agreements. Under these agreements, the parties pay anywhere from $**** to $**** per pole, **********. GS-7.5a (§10), 5b (§11(c) & 5c (§7.2); GS-7.6 Again, these agreements are similar to the DP&L/AT&T Ohio Joint Use Agreement in that they do not **********. Finally, there is one agreement negotiated with a city electric in **** where AT&T Ohio pays $**** and the city pays AT&T Ohio $****; these rates are to remain in effect for **** years. GS-7.6. **********. Under this agreement, if **********

****

*********. Significantly, for the agreements that **********

****

*******.

Q21. DOES THE RATE PROPOSED BY DP&L COMPLY WITH THE FCC'S METHODOLOGY FOR CALCULATING POLE COSTS, AS DP&L CONTENDS?

A21. No. As previously stated, the issue of whether the FCC's methodology is proper to use in calculating the pole rental rate here will be covered in the testimony of Veronica Mahanger. And Timothy Zeldenrust provides a thorough analysis of DP&L's cost calculation. I will note, however, that DP&L's cost calculation is inconsistent with the FCC's methodology for calculating pole costs because, among other reasons, it fails to consider the space used by all parties on the poles and considers poles taller than 37.5 feet. DP&L's cost calculation also violates the Joint Use Agreement, which requires the

cost calculation to consider only 35 and 40 foot poles. See GS-1 (Article XIII, § 10, Article I. § 10).

Q22. PLEASE EXPLAIN.

A22. Under the FCC's methodology, non-ILEC telecom attachers are required to pay for the portion of the pole that they use, plus a portion of the non-usable space, all divided by the number of attachers and then by pole height. The FCC's Telecom formula is as follows:

$$\left[\frac{\left(\frac{Space}{Occupied}\right) + \left(\frac{2}{3} x \frac{Unusable\ Space}{No.\ of\ Attaching\ Entities}\right)}{Pole\ Height}\right]$$

The FCC set a rebuttal presumption that the pole height to use in this calculation is 37.5 feet.[4] This number represents the average between 35 feet poles and 40 feet poles – the size of poles needed by most attachers. DP&L's methodology, in contrast, considered poles taller than 37.5 feet. DP&L so admitted in its Response to Request to Admit No. 3 of AT&T Ohio's Second Set of Data Requests and First Set of Requests to Admit. GS-8 (Confidential) (Discovery). Including poles taller than 37.5 feet is a significant and inappropriate deviation from the FCC's methodology, and increases the amount of pole costs allocated to AT&T Ohio. AT&T Ohio and other attachers do not need or use poles of the height used in DP&L's calculation. Indeed, the space above the communications space is used solely for DP&L's purposes, and therefore should not be included in the cost calculation.

[4] *Id.*, ¶¶ 48, 56, n.169; 47 C.F.R. § 1.1418.

In addition, for 37.5 foot poles, the FCC's telecom formula assumes 24 feet of non-usable space and 13.5 feet of usable space. Of the 24 feet of non-usable space, six feet is set in the ground and the next 18 feet is the above ground clearance requirement, as set forth in the NESC (National Electrical Safety Code), Part 2: Safety Rules for Overhead Lines Table 232-1. The FCC's formula provides that the cost of the non-usable space on a pole is to be allocated 1/3 to the owner (here DP&L) and 2/3 to all attaching parties, including the pole owner (again, DP&L).[5] The FCC set several rebuttal presumptions for the number of attachers based on the population of the area served.[6] DP&L's cost calculation, however, does not allocate *any* costs to other attachers – even though DP&L admittedly collects rent from other telecommunications companies. As a result, AT&T Ohio pays more toward the cost of poles than it should, and DP&L receives an additional subsidy in the form of rent from third parties. In order to consider third party attachers in the cost calculation, the parties would either have to use the FCC's rebuttable presumption by population or conduct a joint pole survey, which would identify all parties on the poles.

B. NUMBER OF POLES TO WHICH THE RATE APPLIES

Q23. WHAT DOES THE 1930 AGREEMENT STATE WITH RESPECT TO THE NUMBER OF POLES TO WHICH THE RENTAL RATE WILL APPLY?

A23. Article XI of the Joint Agreement established a rate of $2.00 per pole payable by each party: "The Licensee shall pay to the Owner as rental for the use of each and every pole any portion of which is occupied by or reserved for the attachments of the Licensee, Two

[5] Consolidated Partial Order on Reconsideration, ¶¶ 55-59; 47 C.F.R. § 1.1409(e)(2), § 1.1417(a) & (b).

[6] Consolidated Partial Order on Reconsideration, ¶¶ 69-71; 47 C.F.R. § 1.1417(c).

Dollars ($2.00) per pole per annum." In other words, each party paid the other for the number of poles to which it was attached.

Q24. HAS THAT PROVISION BEEN AMENDED?

A24. Yes. Article XI was revised in a 1942 Supplemental Agreement to redefine the number of poles to which the rate applied (the $2.00 rate remained unchanged) and to require net billing. Revised Article XI states:

> The use by one party of the other party's poles is in consideration of the use by such other party of an equal number of poles of the first-mentioned party. In the event that as of October 1 in any year either party owns more than one-half of the total number of joint poles, the other party shall pay to it a rental of two dollars ($2.00) per joint pole for such excess number of poles.

Q25. WHAT IS THE EFFECT OF THIS CHANGED LANGUAGE?

A25. The Supplemental Agreement makes two fundamental changes to the 1930 agreement. First, the parties agreed to use net billing, rather than each party submitting a check to the other for using poles. Second, the parties redefined the number of poles to which the rate applies so that, if one party owned more than one-half the poles, the other party would pay the rate of $2.00 for the number of poles in excess of one-half of the total joint poles.

Q26. HAVE THE PARTIES FOLLOWED THE AMENDMENT?

A26. Yes and no. It is my understanding that the parties have used net billing since they entered the 1942 Supplemental Agreement; however, they have not changed the way they calculate the number of poles to which the rate applies. DP&L has continued to bill AT&T Ohio for the difference between the number of poles DP&L owns and the number of poles AT&T Ohio owns, rather than the number in excess of one-half of the total joint poles.

Q27. HOW MUCH HAS AT&T OHIO BEEN OVERCHARGED?

A27. As of the time the original Complaint was filed, AT&T Ohio had been overcharged a total of $287,544.25 since 1995. Since that time, AT&T Ohio has been overcharged an additional $26,859.00, for a total of $314,403.25, based on the $3.50 agree-to rate. (This does not include any overcharges resulting from AT&T Ohio paying the $45.00 rate rather than a more reasonable rate.)

Attachment GS-9 (Overpayment) shows how this amount was calculated. The first row of the sheet shows the rental period. Below that is the quantity of joint use poles which are owned by DP&L and also by AT&T Ohio. The rent paid was $3.50 per joint use pole. Lines 16, 17, and 18 show the amount DP&L charged and AT&T paid for the use of poles for each period. These amounts are based on charging AT&T Ohio for the difference between the number of poles DP&L owns and the number of poles AT&T Ohio owns. Below that are the calculations according to the Supplemental Agreement between DP&L and AT&T Ohio dated September 1942, which requires AT&T Ohio to pay for the number of poles in excess of one-half the total joint use poles. Line 23 shows the number of poles AT&T Ohio was short of one-half of the total joint use poles. Line 24 multiplies that number by $3.50 to show the amount AT&T Ohio should have paid DP&L. Line 25 then shows the amount of AT&T Ohio's overpayment, a grand total of $314,403.25 over the last 12 years.

Q28. HAD AT&T OHIO EVER COMPLAINED ABOUT THE OVERCHARGE PRIOR TO THE PRESENT DISPUTE?

A28. Not to my knowledge.

Q29. WHY NOT?

A29. I believe it was an oversight. The rental rate was $2.00 from 1930 until 1995, and $3.50 from 1995, until this dispute arose. With little money at issue, I suspect no one noticed that DP&L was overcharging AT&T Ohio. When DP&L attempted to change the rate to $45.00, a lot more money was at stake, and it came to light that DP&L had been charging AT&T Ohio in a manner that was inconsistent with the agreement. Responsibility over AT&T's Ohio joint use agreements was assigned to me in March of 2004. I reviewed the DP&L contract and discovered that the Supplemental Agreement of 1942 revised the billing method to require net billing and to require payment for only the number of poles in excess of one-half the joint poles. I noticed by our payments made to DP&L that we had been over paying for quite awhile. I then brought this to the attention of Georgene Dawson from DP&L and explained we would revise the next invoice which I did.

C. LICENSING THIRD PARTY TELECOMMUNICATIONS ATTACHERS

Q30. WHAT IS THE PARTIES' DISPUTE HERE?

A30. Contrary to the Joint Use Agreement, DP&L has leased space on its poles to third party communications attachers and collected the associated revenue, without providing notice to AT&T Ohio and without compensating AT&T Ohio.

Q31. WHAT DOES THE JOINT AGREEMENT PROVIDE WITH RESPECT TO THIRD PARTY ATTACHERS?

A31. Article I of the December 1952 Operating Routine provides:

> Any space required for attachments of third parties, except those parties provided for in Paragraph 1.307, which are in the nature of Supply Circuits, shall be provided and licensed by and at the cost and expense of the Electric Company. Similarly, space for those attachments which are in the nature of Signal or Communication Circuits shall be provided and licensed by and at the cost and expense of the Telephone Company.

In short, this language states that AT&T Ohio is to license communications circuits and DP&L is to license supply circuits, regardless of whose pole they are on.

Q32. WHEN DID YOU FIRST BECOME AWARE THAT AT&T OHIO WAS SUPPOSED TO BE LICENSING THIRD PARTY TELECOMMUNICATIONS ATTACHMENTS ON DP&L POLES?

A32. When DP&L approached AT&T Ohio with the $45 default rate, I reviewed the agreement closely and noticed that the language of the agreement provided that AT&T should be licensing Signal or Communication Circuits on DP&L's poles. I brought this up to Georgene Dawson who simply dismissed this because the parties had not practiced this in the past.

Q33. DID DP&L EVER NOTIFY AT&T OHIO THAT IT WAS LICENSING THIRD PARTY TELECOMMUNICATIONS ATTACHMENTS?

A33. There was one instance years ago when AT&T was notified of a Time Warner build-out and its associated attachments to DP&L poles. At the time, the local office did not know that the joint use agreement required AT&T Ohio to license third party telecommunications attachments. AT&T Ohio had to perform make ready work to make room for Time Warner on DP&L's poles, incurred the associated costs, and requested that DP&L pay for the make-ready work. DP&L refused. Since AT&T Ohio had no practice in place to collect the Make Ready fees, AT&T Ohio decided to absorb the costs it incurred to make room for Time Warner on DP&L poles. After this refusal from DP&L to charge Time Warner on our behalf, DP&L stopped putting the reason for the work on the work proposals to AT&T. As a result, AT&T generally has no way of knowing when DP&L is licensing third party communications attachers.

Q34. HAS DP&L MADE REPRESENTATIONS REGARDING THE NUMBER OF ATTACHMENTS TO JOINT USE POLES?

A34. In discussions with DP&L's representative, Georgene Dawson, she informed me that there were 1.5 attachments on average on each of DP&L's joint use poles. Since there are no other electric utilities in direct competition with DP&L that I am aware of, these attachments presumably are communications attachments.

Q35. WHAT OTHER EVIDENCE SUPPORTS AT&T OHIO'S CLAIM THAT DP&L HAS LICENSED THIRD PARTY TELECOMMUNICATIONS ATTACHERS?

A35. In addition to Ms. Dawson's representation that DP&L has 1.5 attachers to its joint use poles, DP&L admitted in response to discovery that it licenses third party communications attachers. For example, in response to Request to Admit No. 5 of AT&T Ohio's Second Set of Data Requests and First Set of Requests to Admit, DP&L admitted that it collected revenue from third party attachers (see GS-8); in response to Data Request 1 of AT&T Ohio's Second Set of Data Requests and First Set of Requests to Admit, DP&L provided a spreadsheet (labeled DPL-04181) showing the number of attachments to its poles (see GS-8); and in response to Data Request 3 of AT&T Ohio's Fourth Set of Data Requests, DP&L provided a spreadsheet showing the amount of money it received from third party attachers (excluding money collected for make-ready work) (see GS-10 (Confidential) (Discovery)). Again, I am not aware of any other electric company in direct competition with DP&L, so it is safe to assume that these are communications attachments.

Beyond violating the Joint Use Agreement's provision allowing AT&T Ohio to license communications attachers, it appears that DP&L has further violated the contract by placing such attachers in AT&T Ohio's three feet of allocated space. As explained later

in my testimony, the Joint Agreement allocates AT&T Ohio three feet of space on every joint use pole. Historically, AT&T Ohio is generally the lowest attacher on poles. In order to meet the NESC ground clearance requirement of 15 feet 6 inches above streets and drives (accounting for cable sag and storm loadings, *i.e.*, ice), AT&T Ohio's communications attachments generally begin at 18 feet above ground at the pole, depending on their cable weight. Regardless, AT&T Ohio's attachment is the first communication attachment on the pole, and that attachment will be located at the lowest point on the pole that it can be while still meeting NESC ground clearance requirements. This means that AT&T Ohio's allocated space will generally begin at the point of the attachment and go three feet above that point (because, obviously, AT&T Ohio cannot use the space below the point of attachment due to the ground clearance requirements). Generally, AT&T Ohio's allotted space will be no higher than 20 feet 11 inches (*i.e.*, the three feet from 18 feet to 20 feet, 11 inches). In its supplement to AT&T Ohio's 4th Set of Data Requests, Nos. 5-6, DP&L provided information and pictures of a random sampling of its poles, which show space allotted to AT&T Ohio, DP&L, and attachers. This sampling shows that CATV companies and other communications companies are attaching within AT&T Ohio's three feet of space. In most instances, the CATV attachments are **********. See GS-11 (Confidential) (DP&L Pole Usage Data).

For example, GS-11.1, line 28, shows that AT&T Ohio is at **** feet, and lines 26 and 27 show that there are third party attachments at **** feet and **** feet. GS-11.2, line 27, shows that AT&T Ohio is at **** feet and the CATV attacher is at **** feet. GS-

11.3, line 29, shows that AT&T Ohio is at ** feet and three CATV companies are at ** feet, **** feet, and **** feet. GS-11.4, line 27, shows that AT&T Ohio is at **** feet and the CATV company is at **** feet.

Q36. ARE THERE ANY REASONS WHY OTHER PARTIES SHOULD NOT BE ALLOWED TO OCCUPY SPACE WHICH HAS BEEN ALLOCATED TO AT&T OHIO?

A36. Yes. First and foremost, to the extent other carriers are permitted to occupy AT&T Ohio's allocated three feet of space on DP&L poles, it should be AT&T who licenses the attachment because the 1930 Joint Use Agreement states that three feet is for AT&T Ohio's "exclusive" use.

Moreover, under the agreement, AT&T Ohio is required to pay a portion of DP&L's purported annual pole cost. If others are using AT&T Ohio's space, they should share in the costs. DP&L should not be entitled to collect twice or three times for the same space. DP&L wants to have its cake and eat it too; it wants AT&T Ohio to pay for half of DP&L's annual pole cost and then it wants to collect additional revenue from third party attachers – thus further reducing the amount it pays for poles. Essentially, what DP&L is doing is the same as if a landlord rented you a 3 room apartment, and then, without regard to you, went ahead and rented 2 of the rooms to other people.

Q37. HAS AT&T OHIO LICENSED THIRD PARTY ELECTRIC ATTACHERS TO AT&T OHIO POLES?

A37. No. As of today, I am not aware of any other electric company in direct competition with DP&L. If other Electric competitors begin to use AT&T Ohio poles for their circuits, AT&T would refer them to DP&L according to the terms of the current Joint Use Agreement.

Q38. WHY DO YOU THINK THIRD PARTY TELECOMMUNICATIONS ATTACHERS HAVE GONE TO DP&L INSTEAD OF AT&T OHIO TO MAKE THEIR ATTACHMENTS?

A38. I do not know for sure, but I think that the attachers usually go to the electric company because their experience is that the electric company typically owns more poles and so is the logical place to start. Attachers would have no reason to know about DP&L's and AT&T Ohio's agreement that AT&T Ohio license communications attachments to DP&L poles and that DP&L license electric attachments to AT&T Ohio poles.

Q39. HOW HAS AT&T BEEN DAMAGED BY DP&L'S CONDUCT?

A39. At the time AT&T Ohio filed its Complaint, AT&T Ohio calculated its lost revenues as being equal to or exceeding $1,594,127.36. Of course, there has been additional lost revenue for subleases since that time, which AT&T calculates as being $146,097.06, for a new total of $1,740,224.42. These figures are based on DP&L's representation that there are 1.5 attachments to its joint use poles. I took the number of attachments (1.5) multiplied by the number of DP&L poles to which AT&T is attached for each year multiplied by AT&T Ohio's tariff rate of $2.51. See GS-12 (3rd Party Rent).

While DP&L has indicated that it no longer believes there are 1.5 attachers to its joint use poles, that claim is questionable given that the FCC's formula assumes 3 attachers for areas with a population under 50,000 and five attachers for areas (such as the Dayton area) with a population of 50,000 or higher. 47 C.F.R. 1.1417(c). Based on the FCC's statements, DP&L's original representation that there are 1.5 attachers to its joint use poles seems conservative. The only way to determine how many attachers actually are on joint use poles is to perform a joint survey.

Q40. HOW DOES AT&T OHIO PROPOSE THAT THE COMMISSION RESOLVE THIS DISPUTE?

A40. The Commission should find that DP&L licensed third party communications attachments in violation of the Joint Use Agreement, and it should order that AT&T Ohio receive the revenue from those attachments. In addition, provided that space allocations and ownership ratios are adjusted to reflect current actual use, the Commission should order the parties to modify the Joint Use Agreement so that the pole owner is responsible for licensing all third party attachments and receives the associated revenue. The Commission should further order that the Joint Use Agreement be modified to provide that, in calculating pole costs, the parties should take into consideration the revenue received from third party attachers.

D. TERMINATION CLAUSE

Q41. WHAT DOES THE TERMINATION CLAUSE OF THE JOINT USE AGREEMENT STATE?

A41. The termination clause of Article XVIII provides:

> This agreement shall continue in full force and effect for five (5) years from date hereof, and thereafter until terminated as follows: either party may, by giving five (5) years previous notice in writing to the other party, and by removing within five (5) years from date of said notice its attachments from the poles of the other party, terminate this agreement. Thereupon and after the expiration of said five (5) year period, such other party shall have no further rights hereunder with respect to the poles of the party so cancelling this agreement, and shall within the five (5) year period so provided for remove its attachments from the poles of the other party. In case of its failure to do so, the Owner of the poles in question may, at the expense and risk of the delinquent party and without incurring any liability, remove the delinquent party's attachments therefrom, and in the meantime, and until such removal, such other party shall continue and remain liable for all obligations hereunder with respect to its attachments remaining on the poles of the party so cancelling this agreement, for the rentals therefore, and for damages due to accidents, in the same manner and to the same extent as if this agreement had not been terminated as aforesaid.

> Upon the termination of this agreement, as herein provided, the rental charges for the then current year, payable hereunder by either party to the other and then unsettled, shall be adjusted to the respective dates of the removal of the attachments of each party from the poles of the other, as herein above provided, and the amount then payable by each party to the other party shall be paid within three (3) months after the date of the termination of this agreement and after receipt of proper bills therefore.

Q42. EXPLAIN THE COMPONENTS OF THE TERMINATION CLAUSE THAT RAISE CONCERNS.

A42. The termination clause (1) requires 5 years notice to terminate and (2) requires each party to remove existing attachments from the other party's poles before the end of the notice period.

Q43. WHAT IS THE PRACTICAL EFFECT OF THE TERMINATION CLAUSE?

A43. For all practical purposes, the clause makes it impossible for a party to terminate the agreement.

Q44. PLEASE EXPLAIN.

A44. The current agreement makes it impossible to terminate because it requires both companies to remove existing attachments from each other's poles. If AT&T Ohio were forced to remove existing attachments, AT&T Ohio would have to either (a) set its own poles, which is costly, inefficient (in that it results in two sets of poles, DP&L's and AT&T Ohio's, at the same location) and time-consuming (insofar as it requires approval from local governmental entities prior to beginning construction); or (b) bury cable, which suffers from the same problems. Either way AT&T Ohio will not be able to fulfill service requests in a timely and efficient manner, if at all, and existing customers would be out of service until and unless AT&T Ohio were able to set is own poles or bury cable.

Joint use promotes economies for both utilities by reducing the cost of deploying plant. Joint use therefore plays an important role in keeping the cost of service to end-users down – which, in turn, keeps consumer rates down. If one party to a joint use contract could require the other to remove existing attachments, the impact on rates would be significant as the other carrier would incur significant costs to set new poles or bury cable.

Q45. HOW DID THIS PROVISION AFFECT AT&T OHIO IN THIS CASE?

A45. AT&T Ohio considered terminating the Joint Use Agreement with DP&L because the parties could not agree on revisions to the 1930 Agreement, including rental payments; however, because of the advance notice required to terminate (5 years) and because AT&T Ohio might have been required to remove its existing attachments pending the negotiation of a new agreement, AT&T Ohio felt that it could not terminate the agreement without grave consequences. DP&L was unwilling to negotiate a new agreement and rental rate, and instead asserted that AT&T Ohio was in default and unilaterally set a rental rate of $45.00. Instead of implementing the termination clause or suspending DP&L's right to attach to any AT&T poles, AT&T was forced to litigate the dispute.

Q46. HOW DOES THE TERMINATION CLAUSE COMPARE WITH THOSE IN OTHER JOINT USE AGREEMENTS TO WHICH AT&T OHIO IS A PARTY?

A46. The termination clauses of several other AT&T Joint Use Agreements allow for termination **********. GS-7.2 (§ 21.01); GS-7.3 (§ 19.10). Those same agreements ********** – in other words, **********. *Id.* In agreements that currently are being negotiated, AT&T is proposing **********

********** ********** **********.

Q47. HOW DOES THE TERMINATION CLAUSE COMPARE WITH THOSE IN OTHER JOINT USE AGREEMENTS TO WHICH DP&L IS A PARTY?

A47. As previously noted, AT&T Ohio received from DP&L through discovery six joint use agreements to which DP&L is a party with other carriers (attached as GS-6.1 – GS-6.6). All six of those agreements **********. See GS-6.1 – 6.6, § 19. One of those agreements ********** **********. See GS-6.6, § 19. The other five agreements **********. See GS-6.1 – 6.5, § 19.

Q48. HOW DOES AT&T OHIO PROPOSE THAT THE COMMISSION RESOLVE THIS DISPUTE?

A48. The Commission should find that the termination clause of Article XVIII is unjust, unreasonable, and unlawful. It should order the parties to modify that provision so that it requires one year notice of termination, and allows existing attachments to remain in place while a new joint use agreement is negotiated. The termination clause should provide for a dispute resolution process that allows for a chain of top management to try to resolve disputes before seeking any Commission intervention.

E. DEFAULT PROVISION

Q49. WHAT DOES THE DEFAULT PROVISION OF THE JOINT USE AGREEMENT STATE?

A49. Article XIV of the Joint Agreement, relating to procedures in the event of default by either party, provides:

> If either party shall make default in any of its obligations under this contract and such default continue thirty (30) days after notice thereof in writing from the other party, all rights to the party in default hereunder shall be suspended including its right to occupy jointly used poles, until

such default has been made good, and in addition and without affecting such suspensions, if the Owner shall fail to perform its obligations hereunder to properly maintain and to promptly renew joint poles after thirty days notice from the Licensee, the Licensee shall have the right to *maintain such poles or to renew the same at the expense of the Owner* and it shall be the duty of the Owner to immediately reimburse the Licensee for such expense upon the rendition of bills therefore.

Q50. EXPLAIN THE COMPONENTS OF THE DEFAULT PROVISION THAT RAISE CONCERNS.

A50. The default provision could be read to allow one party to bar new attachments by the other and to force that party to remove all existing attachments merely by unilaterally declaring that party to be in default of the contract, regardless of whether that party is, in fact, in default. For example, there is no provision requiring the parties to maintain the status quo in the event there is a bona-fide dispute. In fact, there are no parameters whatsoever around the parties' ability to engage in self-help remedies – one could simply assert that the other is in default without any reasonable basis.

Q51. WHAT IS THE PRACTICAL EFFECT OF THIS INTERPRETATION?

A51. There are several problems with allowing one party to arbitrarily suspend the rights of the other party to attach or, even worse, to require the other party to remove its existing attachments. First, it puts the allegedly defaulting party in the impossible position of immediately setting duplicative poles or immediately burying all of its cable, both of which create problems. That, in turn, places customer service at risk. Moreover, even if it were possible to immediately set new poles or bury cable, doing so would be economically inefficient, would place an added burden on the public rights of way, and would be contrary to the interests of the citizens of Ohio. The additional costs of adding more poles or burying cable would negatively affect consumers.

Q52. HOW DID DP&L APPLY THE DEFAULT PROVISION IN THIS CASE?

A52. As I explained earlier in my testimony, the parties were operating for over 70 years under a contract that had a deficiency payment of $3.50 or less per excess pole. DP&L attempted to raise that rate to $45.00. When AT&T Ohio refused to pay the increased rate, DP&L treated AT&T Ohio as if it were in default – even though AT&T Ohio continued to pay the rate set forth in the agreement. At worst, AT&T Ohio's refusal to pay could be characterized as a bona-fide dispute; but it certainly was not a default of the agreement. Nevertheless, DP&L treated AT&T Ohio as if it were in default and suspended its right to make new attachments. DP&L also suggested that it had the right (although it did not exercise it) to require AT&T Ohio to remove all existing attachments. Respondent's Motion to Dismiss the Complaint and Request for Emergency Relief, filed Jan. 4, 2007 at n.4.

Q53. WHAT EFFECT DID THAT HAVE ON AT&T OHIO?

A53. DP&L's suspension of AT&T Ohio's rights under the Joint Use Agreement put a hold on all new construction already designed and sent to the field, not to mention future plans to build and provide our services. The suspension caused confusion by both AT&T and DP&L's field employees, contractors for both companies and administrative personnel.

Q54. HOW DOES THE DEFAULT PROVISION IN THE DP&L/AT&T OHIO AGREEMENT COMPARE WITH THOSE IN OTHER JOINT USE AGREEMENTS TO WHICH AT&T OHIO IS A PARTY?

A54. AT&T Ohio has some existing agreements that ********** ********** **********. However, AT&T Ohio is a party to several joint use agreements that have **********. For example, under one agreement with an investor owned electric company, if **********

********** *****. If ********** ********** ********** ********** **********. The agreement, however, does not ********** **********. GS-7.2 (§§ 15.01, 15.02, & 21.01). Another agreement with an investor owned electric company contains similar provisions. GS-7.3 (§§ 14.10, 14.20, & 19.10).

Q55. HOW DOES AT&T OHIO PROPOSE THAT THE COMMISSION RESOLVE THIS DISPUTE?

A55. The Commission should find that the default provision of Article XIV is unjust, unreasonable, and unlawful. It should order the parties to modify the agreement so that a defaulting or allegedly defaulting party does not have to immediately remove existing attachment or be barred from placing new attachments. The default provision should provide for a dispute resolution process that allows for a chain of top management to try to resolve disputes before seeking any Commission intervention.

F. POLE OWNERSHIP

Q56. WHAT IS THE ISSUE HERE?

A56. The parties disagree over what percentage of the total pole ownership each should have. It appears that DP&L's position is that the parties should each own 50% of the poles. AT&T Ohio disagrees and believes that pole ownership should be based on the amount of space each party uses on the pole. As explained in the testimony of Veronica Mahanger, it is AT&T Ohio's position that ownership should be 83% for DP&L and 17% for AT&T Ohio.

Q57. WHAT DOES THE JOINT AGREEMENT SAY ABOUT POLE OWNERSHIP?

A57. The Joint Agreement requires the party owning fewer poles to pay the other for the number of poles it owns in excess of one-half of the joint poles, but it does not require the parties to own a certain percentage of joint poles. Article X of the December 1952 Operating Routine provides "methods of keeping the number of joint poles owned by each company within reasonable balance." The Agreement does not define "reasonable balance." However, it is logical to determine that balance based on the space used by the parties.

Q58. HOW DOES THE JOINT AGREEMENT ALLOCATE SPACE ON POLES?

A58. The Joint Agreement expressly grants AT&T Ohio the exclusive use of an identified and identifiable 3 feet of space on every pole it shares with DP&L, and gives DP&L 4 feet of space. The Joint Agreement provides at Article I:

> STANDARD SPACE is the following described space on a joint pole for the exclusive use of each party respectively . . . (1) for the Electric Company, the uppermost four (4) feet; (2) for the Telephone Company, a space of three (3) feet at a sufficient distance below the space of the Electric Company . . .
>
> RESERVED, As applied to space on a pole, means that such space is occupied space provided and maintained by the Owner either for its own exclusive use, or expressly for the Licensee's exclusive use at the *Licensee's request.*

Q59. DO AT&T OHIO AND DP&L USE ALL OF THE SPACE THEY ARE ALLOCATED ON JOINT USE POLES?

A59. AT&T uses less than 3 feet of space and DP&L uses more than 4 feet of space on joint use poles. Specifically, AT&T recently participated in a joint use survey with a major investor owned electric company. Osmose Engineering performed the survey and it was completed in 2007. The results of the survey show that AT&T uses an average of **** **********. GS-13 (Confidential) (AT&T Ohio Pole

Space). The summary sheet tab of Attachment GS-13 shows the weighted average of the space that AT&T is using on the electric company poles. The remaining tabs are back up data for the summary sheets; they contain data on wire centers in the territory. The first and second columns of those tabs show the number of cables AT&T has on poles. For example, in the first tab, AT&T has ** cables on ** poles and ** cables on ** poles. The third and fourth column show the amount of space used by the cables. The last column is the weighed average of total space used divided by the quantity of total poles. This shows that AT&T Ohio uses an average of **********.

DP&L, on the other hand, uses more than 4 feet of space and, in some instances, nearly ** feet of space. For example, GS-11.1 – 11.3 (Confidential) (DP&L Pole Usage Data) is part of a random sampling of DP&L poles that DP&L produced in discovery. GS-11.1, lines 14-17, show that DP&L occupies from **** feet to **** feet on the pole – *i.e.*, over *** feet of space. GS-11.2, lines 14-18, show that DP&L occupies from *** feet to *** feet on the pole. GS-11.3, lines 14-17, show that DP&L occupies from **** feet to **** feet.

In addition, DPL's supplement to AT&T Ohio's 4th Set of Data Requests, Nos. 5-6, contains DP&L's standards for construction. These documents show spacing requirements for different combinations of DP&L's facilities. They show DP&L's engineering standards require over 4 feet of space on poles. See GS-14.1 through 14.4 (Confidential) (Construction Standards). See also GS-6.1 – 6.6, §4.5 (DP&L joint use agreements showing that DP&L has ** feet of allotted space on joint use poles).

Q60. HOW IS SPACE ALLOCATED IN DP&L'S JOINT USE AGREEMENTS WITH OTHER CARRIERS?

A60. In the six joint use agreements between DP&L and other parties, DP&L is allocated ** feet of space and the other party is allocated ** feet of space. See GS-6.1 – 6.6, §4.5.

Q61. HOW IS SPACE ALLOCATED IN AT&T'S JOINT USE AGREEMENTS WITH OTHER CARRIERS?

A61. In one of the agreements with an investor owned electric company, AT&T Ohio has ** feet of space allotted to it and the electric has ** feet of space allotted to it. GS-7.3 (§1.30(a)). Also in this agreement, AT&T Ohio has been permitted to ********** **********. Another agreement with a major investor owned electric company allocates **** feet of space to AT&T Ohio and **** to **** feet of space to the electric. GS-7.2 (§2.02(a) & (b)). In this agreement, if the electric company ********** ********** **********. In the agreement AT&T Ohio has with thirteen electrics,********** **********.

GS-7.1 (§16(b))

Q62. WHAT IS A REASONABLE BALANCE OF OWNERSHIP?

A62. As previously stated, a reasonable balance of ownership should be determined based on space used by the parties. Under the Joint Use Agreement, DP&L is allotted 4 feet of space and AT&T Ohio is allotted 3 feet, which standing alone suggests that the percentage of ownership should be no greater than 42.9% for AT&T Ohio and 57.1% for DP&L. Then, when one considers that AT&T Ohio uses much less than 3 feet of space (AT&T uses an average of **********) and that DP&L uses much more than

4 feet of space (as explained above) (streetlights are in the safety space), the percentage of ownership should be much less than 42.9% for AT&T Ohio and much more than 57.1% for DP&L. Veronica Mahanger testifies in more detail on this issue.

Q63. WHAT OWNERSHIP DIVISION HAS DP&L AGREED TO WITH OTHER CARRIERS?

A63. The six joint use agreements between DP&L and other parties provide for an ownership division of **% to DP&L and **% to the other party. See GS-6.1 – 6.6, § 5.1. As compared to DP&L's proposal that the division of ownership should be 50/50, its agreements with other carriers more accurately reflect the amount of space used by the parties and costs caused by each party. However, based on current usage, a ***** split is still too favorable to the electric company.

Q64. WHAT OWNERSHIP DIVISION HAS AT&T OHIO AGREED TO WITH OTHER CARRIERS?

A64. As previously explained, pursuant to the joint use agreement AT&T entered with thirteen electric companies, the division of ownership is **% to AT&T Ohio and **% to the electric companies. GS-7.1 (§16(b)). And the ownership objective of another agreement is **% to AT&T Ohio and **% to the electric company. GS-7.2 (§12.03(a)).

Q65. DOES THE FCC FORMULA FOR CALCULATING POLE COSTS CONSIDER THE SPACE USED BY THE PARTIES ATTACHED TO THE POLE?

A65. Yes. As previously explained, under the FCC's methodology, non-ILEC telecom attachers are required to pay for the portion of the pole that they use, plus a portion of the non-usable space, all divided by pole height. The FCC set a rebuttal presumption that the pole height to use in this calculation is 37.5 feet,[7] and assumes 24 feet of non-usable space and 13.5 feet of usable space. If the parties are going to follow the FCC formula, a

[7] *Id.*, ¶¶ 48, 56, n.169; 47 C.F.R. § 1.1418.

joint pole survey should be completed which would identify all parties on the pole and the amount of space they use on the poles. The results of the survey could be used to determine the accurate division of ownership. For example, if the survey shows that DP&L uses 60% of the usable space and AT&T Ohio uses 30% of the usable space and third party attachers use 10% of the usable space, ownership should be allocated 66.7% to DP&L (60 divided by 90) and 33.3% to AT&T Ohio (30 divided by 90). In this way, third party attachers would be taken into consideration, but "ownership" would not be allocated to them.

Q66. WHAT IS THE CURRENT DIVISION OF POLE OWNERSHIP?

A66. AT&T Ohio owns 23,456 poles by last invoice, approximately 38%, and DP&L owns 38,804 poles, approximately 62%.

Q67. WHAT ARE SOME OF THE REASONS FOR THIS DIVISION?

A67. First and foremost, historically, I do not believe there has been a dispute over whether the existing 38%/62% ownership split was a "reasonable balance." The parties have been around those amounts for some time and DP&L has never complained until now. Moreover, AT&T Ohio has lost many assets during emergency conditions. During the last five years that I have been a Joint Use Manager, I have found that due to the electric companies' time frames for getting electricity back on, they do not notify or wait for AT&T Ohio to replace its poles. At times, the electric company personnel in the field replace a pole not knowing who the owner is and they assume that DP&L owns the pole, they then place DP&L's ownership tag on it and AT&T Ohio loses an asset. In addition, electric service is generally needed first in new build areas; so the electric companies tend to set new poles in those areas.

V. CONCLUSION

Q68. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?

A68. Yes.

JOINT POLE LINE

AGREEMENT

POLE RENTAL CONTRACT

DOCUMENT FILE

No. 1396

THE DAYTON POWER
& LIGHT COMPANY

Entered into between The Dayton
Power and Light Co.
of
Dayton, Ohio
and
The Ohio Bell Telephone Company
of
Columbus, Ohio

1011

This copy for The Dayton Power
and Light Company

JOINT POLE LINE

AGREEMENT

POLE RENTAL CONTRACT

This agreement, made this 17th day of March, 1930, by and between The Dayton Power and Light Company, a corporation organized and existing under the laws of the State of Ohio, hereinafter referred to as the "Electric Company", party of the first part, and The Ohio Bell Telephone Company, a corporation organized and existing under the laws of the State of Ohio, hereinafter referred to as the "Telephone Company", party of the second part.

WITNESSETH:

WHEREAS, The Electric Company and the Telephone Company desire to establish joint use of their respective poles where and where joint use shall be of mutual advantage; and

WHEREAS, the conditions determining the necessity or desirability of joint use depend upon the service requirements to be met by both parties, including considerations of safety and economy, and each of them should be the judge of what the character of its circuits should be to meet its service requirements and as to whether or not these service requirements can be properly met by the joint use of poles.

NOW, THEREFORE, in consideration of the premises and

the mutual covenants herein contained, the parties hereto, for themselves, their successors and assigns, do hereby covenant and agree as follows:

ARTICLE I

DEFINITIONS

For the purpose of this agreement, the following terms when used herein, unless the context indicates otherwise, shall have the following meaning:

ATTACHMENTS are any material or apparatus now or hereafter used by either party in the construction, operation or maintenance of its plant carried on poles.

JOINT USE is maintaining the attachments of both parties on the same pole at the same time.

JOINT POLE is a jointly used pole or a pole upon which specific space is provided under this agreement for the attachments of both parties, whether such space is actually occupied by attachments or not.

LICENSEE AND OWNER: Licensee is the party having the right under this agreement to make attachments to and use a pole, the property of the other party to this contract.

TRANSFERRING is the moving of attachments from one pole and placing them upon another.

REARRANGING is the moving of attachments from one position to another on a joint pole.

TRANSFERRING AND REARRANGING include any tree cutting or trimming incidental thereto and the obtaining of all necessary rights or permits therefor.

POLE AND POLES include, respectively, the singular and plural.

STANDARD SPACE is the following described space on a joint pole for the exclusive use of each party, respectively, (except only as to the portion of its said space which, by the terms of the specifications provided for in Article VI hereof may be occupied by certain attachments therein described of the other party;) (1) for the Electric Company, the uppermost four (4) feet; (2) for the Telephone Company, a space of three (3) feet at a sufficient distance below the space of the Electric Company to provide at all times the minimum clearance required by the specifications referred to in Article VI, and at a sufficient height above the ground to provide the proper vertical clearance for the lowest horizontally run line wires or cables attached in such space.

RESERVED, As applied to space on a pole, means that such space is occupied space provided and maintained by the Owner either for its own exclusive use, or expressly for the Licensee's exclusive use at the Licensee's request.

STANDARD JOINT POLE is a 35 foot wood pole for rear lot construction and a 40 foot wood pole for street construction. All poles to be Class "C" poles.

ARTICLE II

LIABILITY CLAUSE

Whenever any liability, hereinafter designated as "such liability", shall be incurred by or arise against either or both of the parties hereto for damages, for injuries or accident to and/or death of an employee or employees of either party hereto, or for injury to the property of either party hereto, or for

injuries to the person and/or property or on account of the death of any person or persons not parties to this contract, nor employees of either party hereto, arising out of or connected with the joint use of poles hereunder or due to the proximity to each other of the wires and/or fixtures of the parties to this contract attached to poles covered hereby, or due to negligence of either or both parties hereto or to any other cause, any and all "such liability", which term shall include all expenses and attorney fees incurred by the parties hereto, or either of them in connection therewith, shall as between the parties hereto be assumed and borne by them as follows, and either party hereto which by the terms hereof is to assume and bear all such liability in any particular case or cases shall save and hold the other party free and harmless therefrom. The term "line" or "lines" in this Article includes wires, cables, fixtures, and appliances forming part of a line or lines and used, designed to be used, or useful in, the operation thereof.

(a) All such liability to persons not parties to this contract nor employees of either party hereto for either personal or property damage or both, and/or for the death of a person not an employee of either of the parties hereto due wholly to the failure of the Electric Company to erect, construct, and/or maintain its lines in accordance with the provisions hereof, or to any negligence on its part, shall be assumed and borne by it.

(b) All such liability to persons not parties to this contract nor employees of either party hereto for either personal or property damage or both and/or for the death of a person not an employee of either of the parties hereto due wholly to the failure of the Telephone Company to erect, construct, and/or maintain its

lines in accordance with the provisions hereof or to any negligence on its part, shall be assumed and borne by it.

(c) All such liability to persons not parties to this contract nor employees of either party hereto for either personal or property damages and/or for the death of a person not an employee of either party hereto due to negligence of both parties hereto or due to causes which cannot be traced to the negligence of either party hereto, shall be borne by them equally, that is, each shall assume and bear one-half thereof; provided, however, that in any case under this paragraph where the claimant desires to settle any such claim upon terms acceptable to one of the parties hereto but not to the other, the party to which such terms are acceptable, may at its election, pay to the other party one-half of the expense which such settlement would involve, and thereupon the other party shall be bound to protect the party making such payment from all further liability and expenses on account of such claim.

(d) In the event an employee of the Electric Company should be injured or killed while in the course of his employment upon or in connection with the poles or any of them jointly used hereunder or the lines upon any such poles, and he or his dependents should claim such injury or death was due to negligence of the Telephone Company in connection with such pole or lines or their operation and should sue the Telephone Company for damages based upon such alleged negligence and such suit should result in a judgment and be paid or satisfied by it or such claim should be settled by the Telephone Company with the consent of the Electric Company either before or after suit, then notwithstanding such judgment or settlement, the question of whether such injury was due to

negligence of the Telephone Company, or the Electric Company, or both, shall within 30 days from payment or satisfaction of the judgment or settlement be considered jointly by three persons in the organization of each party hereto to be designated by their respective officers. If the conclusion is reached by the designated representatives of the parties hereto that such injury or death was not due nor proximately contributed to by negligence of the Telephone Company, or was due to negligence of the Electric Company or of both companies, or if a majority of such representatives should fail to agree in regard to the matter, then, if the sum paid by the Telephone Company to satisfy such judgment or in settlement, including interest thereon and costs of suit, should be in excess of the sum paid by the Electric Company under the Workmens' Compensation Law of Ohio because of such casualty, one-half of such excess shall be paid by the Electric Company to the Telephone Company.

At the request of the Telephone Company, the Electric Company shall assist in the defense of any such suit.

(e) In the event an employee of the Telephone Company should be injured or killed while in the course of his employment upon or in connection with the poles or any of them jointly used hereunder or the lines upon any such poles, and he or his dependents should claim such injury or death was due to negligence of The Electric Company in connection with any such pole or lines or their operation and should sue the Electric Company for damages based on such alleged negligence and such suit should result in a judgment and be paid or satisfied by it or such claim should be settled by the Electric Company with the consent of the Telephone Company either before or after suit, then notwithstanding such judgment or settlement, the question of whether such injury was due to negligence

of the Electric Company, or the Telephone Company, or both, shall within 30 days from payment or satisfaction of the judgment or settlement be considered jointly by three persons in the organization of each party hereto to be designated by their respective officers. If the conclusion is reached by the designated representatives of the parties hereto that such injury or death was not due nor proximately contributed to by negligence of the Electric Company, or was due to negligence of the Telephone Company or of both companies, or if a majority of such representatives should fail to agree in regard to the matter, then, if the sum paid by the Electric Company to satisfy such judgment or in settlement, including interest thereon and costs of suit, should be in excess of the sum paid by the Telephone Company under the Workmen's Compensation Law of Ohio because of such casualty, one-half of such excess shall be paid by the Telephone Company to the Electric Company.

At the request of the Electric Company, the Telephone Company shall assist in the defense of any such suit.

(f) The designated representatives provided for in paragraphs (d) and (e) of this Article shall determine whether or not the employee so injured was himself negligent in such a manner as to contribute to his injury or death. If such an employee was negligent in such a manner as to contribute to his injury or death, his negligence shall be deemed the negligence of the party by which he was employed.

(g) Each party hereto shall pay one-half the costs and expenses of each investigation under paragraphs (d), (e), and (f) of this Article.

(h) All such liability to persons not parties to this contract, nor employees of either party hereto, for personal injuries or for the death of a person or persons not employees of either party, due to the use of pole steps by such a person or persons on any of the poles contemplated by this agreement shall be borne by the party for whose use the pole steps were installed or permitted on the pole, and it shall hold the other party free and harmless from any and all damages resultant from such injury.

(i) The Electric Company shall assume and bear all damage to its own property resulting from the joint use of poles under this contract, and shall make no claim against the Telephone Company therefor, except when due solely to negligence of the Telephone Company.

(j) The Telephone Company shall assume and bear all damage to its own property resulting from the joint use of poles under this contract, due to any cause whatsoever, and shall make no claim against the Electric Company therefor, except when due solely to negligence of the Electric Company.

(k) The term "injuries" in this Article as applied to persons shall include death due to injury as well as injuries not resulting in death; and the terms "employee", "employees", "person", "persons", "pole", "poles", "line", "lines", shall include both the singular and plural.

ARTICLE III

TERRITORY COVERED

This agreement shall cover all existing poles of each of the parties and any other poles hereafter erected or acquired by either of them within the following territory:

The City of Dayton and contiguous territory;

The City of Piqua and contiguous territory;

The City of Xenia and contiguous territory;

The City of Washington Court House and contiguous territory; and such other cities or villages as may be mutually agreed upon by the parties hereto; all in the State of Ohio excepting therefrom, however, -

(1) poles which, in the Owner's judgment are necessary for its own sole use; and

(2) poles which carry, or are intended by the Owner to carry, circuits of such a character that in the Owner's judgment the proper rendering of its service now or in the future makes joint use of such poles undesirable.

ARTICLE IV

RIGHT OF JOINT USE GRANTED

Each party hereto grants to the other the right to use its poles subject to the terms and conditions herein stated.

ARTICLE V

PROCEDURE WHEN CHARACTER OF CIRCUITS IS CHANGED

When either party desires to change the character of its circuits on jointly used poles, such party shall give reasonable notice to the other party of such contemplated change and in the event that the other party agrees to joint use with such

changed circuits, then the joint use of such poles shall be continued with such changes in construction as may be required to meet the terms of the Administrative Order No. 72 of The Public Utilities Commission of Ohio or any revision or modification thereof for the character of circuits involved. In event, however, that the other party fails within ten days from receipt of such notice to agree in writing to such change then both parties shall cooperate in accordance with the following plan.

(1) The parties hereto shall determine what circuits shall be removed from the joint poles involved, and the net cost of establishing in a new location such circuits or lines as may be necessary to furnish same business facilities that existed in the joint use referred to at the time such change was decided upon.

(2) The cost of moving such circuits to the new location shall be equitably apportioned between the parties hereto. In event of disagreement as to what constitutes an equitable apportionment of such cost, each of the parties hereto shall bear one-half thereof.

Unless otherwise agreed by the parties, ownership of any new line constructed under the foregoing provision in a new location shall vest in the party for whose use it is constructed. The net cost of establishing service in the new location shall be exclusive of any increased cost due to the substitution for the existing facilities of other facilities of a substantially new or improved type or of increased capacity, but shall include the cost of the new pole line, including rights-of-way, the cost of removing attachments from the old poles and the cost of placing the attachments on the poles in the new location.

ARTICLE VI

SPECIFICATIONS

Except as otherwise provided in Sections (a) and (b) of Article IX, the joint use of poles covered by this agreement

shall at all times be in conformity with specifications mutually agreed upon by the parties hereto; which specifications shall, as nearly as practicable, be in conformity with, or based upon, the provisions of Administrative Order No. 72 of The Public Utilities Commission of Ohio, or any revision or modification thereof. Said specifications are to be appended to and become a part of this contract, and may be changed or modified upon mutual agreement.

ARTICLE VII

PLACING, TRANSFERRING OR REARRANGING ATTACHMENTS

(a) Whenever the Licensee desires to place on any pole of the Owner within the territory covered by this agreement, any attachments requiring space thereon not then specifically reserved hereunder for the use of the Licensee, the Licensee shall, before placing its attachments on said pole, give to the Owner written notice thereof, specifying in such notice the location of the pole in question and the number and kind of attachments which the Licensee desires to place thereon and the character of the circuits to be used. Within ten (10) days after the receipt of such notice the Owner shall notify the Licensee in writing, whether or not said pole is of those excepted under the provisions of article III. Upon receipt by the Licensee of notice from the Owner that said pole is not of those excepted and after the completion of any transferring or rearranging which is then required in respect to said pole, it may proceed to place its attachments thereon. No guarantee is given by the Owner of permission from property owners, municipalities or others for the use of its pole by the Licensee, and if objection is made thereto and the Licensee is unable to satisfactorily adjust the matter within a reasonable time,

the Owner may at any time upon ten (10) days notice in writing to the Licensee require the Licensee to remove its attachments from the poles involved, and the Licensee shall, within ten (10) days after receipt of said notice, remove its attachments from such poles at its sole expense. Should the Licensee fail to remove its attachments as herein provided the Owner may remove them at the Licensee's expense without any liability whatever for such removal or the manner of making it, for which expense the Licensee shall reimburse the Owner on demand.

(b) Except as herein otherwise expressly provided, each party shall, at its own expense, place, maintain, rearrange, transfer and remove its own attachments and shall at all times perform such work promptly and in such a manner as not to interfere with the service of the other party.

ARTICLE VIII

ERECTING, REPLACING OR RELOCATING POLES

(a) Whenever any jointly used pole, or any pole about to be so used under the provisions of this agreement, is insufficient in size or strength for the existing attachments and for the proposed immediate additional attachments thereon, the Owner shall promptly replace such pole with a new pole of the necessary size and strength, and make such other changes in the existing pole line in which such pole is included as the conditions may require.

(b) Whenever it is necessary to change the location of a jointly used pole, by reason of any state, municipal or other governmental requirements, or the requirement of a property owner, the Owner shall, before making such change in location, give notice thereof in writing to the Licensee, specifying in such notice

the time of such proposed relocation, and the Licensee shall at its own expense, at the time so specified, transfer its attachments to the pole at the new location.

(c) Whenever either party hereto is about to erect a new pole line within the territory covered by this agreement, either as an additional pole line, as an extension of an existing pole line, or as the reconstruction of an existing pole line, and if the poles of such new line so to be erected are not those to be excepted from joint use, such party shall give written notice to that effect to the other party at least sixty (60) days before beginning the work of erecting such new poles (shorter notice may be given in cases of emergency) and shall submit with such notice its plans showing the proposed location and character of the new poles, the character of the circuits to be used, and the amount of space thereon that it requires for its own use together with standard space for the use of the other party. The other party shall, within ten (10) days after the receipt of such notice, reply in writing to the party erecting the new poles, stating whether such other party does, or does not, desire space on the said poles, and if it does desire space thereon, whether the plans submitted satisfactorily provide for the requirements of such other party; and if not, such other party shall then specify in writing what its requirements are. If such other party requests space on the new poles, and if the space so requested is greater than standard space, said plans shall be so modified as to provide the additional space so requested, and the pole line shall thereupon be erected in accordance with said modified plans.

(d) In any case where the parties hereto shall conclude arrangements for the joint use hereunder of any new poles to be

erected, the ownership of such poles shall be determined by mutual agreement, due regard being given to the desirability of avoiding mixing ownership in any given line. In the event of disagreement as to ownership, the party then owning the smaller number of joint poles under this agreement shall erect the new joint poles and be the owner thereof.

(e) The party which is to own the new poles shall obtain if possible, rights-of-way which will not permit property owners to object to the use of the poles by the Licensee. In obtaining rights-of-way, each party shall insofar as practicable use similar right-of-way forms.

(f) The costs of erecting new joint poles coming under this agreement, either as new pole lines, as extensions of existing pole lines or to replace existing poles, shall be borne by the parties as follows:

1. A standard joint pole, or a joint pole shorter than the standard, shall be erected at the sole expense of the Owner.

2. A pole taller and/or stronger than the standard, the extra height and/or strength of which is due wholly to the Owner's requirements, shall be erected at the sole expense of the Owner.

3. In the case of a pole taller and/or stronger than the standard, the extra height and/or strength of which is due wholly to the Licensee's requirements, the Licensee shall pay to the Owner a sum equal to the difference between the cost in place of such pole and the cost in place of a standard joint pole; the remaining cost of erecting such pole to be borne by the Owner.

4. In the case of a pole taller and/or stronger than the standard, the extra height and/or strength of which is due to the requirements of both parties, the Licensee shall pay to

the Owner a sum equal to one-half the difference between the cost in place of such pole and the cost in place of a standard joint pole, the remaining cost of erecting such pole to be borne by the Owner.

5. In the case of a pole taller and/or stronger than the standard, where a height and/or strength in addition to that needed for the purpose of either or both of the parties hereto is necessary in order to meet the requirements of public authority or of property owners, one-half of the excess cost of such pole due to such requirements shall be borne by the Licensee; the remaining cost of such pole to be borne as provided in that one of the preceding paragraphs, 1, 2, 3, 4, within which it would otherwise properly fall.

(g) In any case where a pole is erected hereunder to replace another pole solely because such other pole is not tall and/or strong enough to provide adequately for the Licensee's requirements, the Licensee, upon erection of the new pole, shall pay to the Owner, in addition to any amount payable by the Licensee under Paragraphs 3, 4, or 5 of Section (e) of this Article a sum equal to the then net value in place of the pole which is replaced.

(h) Any payment made by the Licensee under the foregoing provisions of this Article for poles taller than standard are in lieu of increased rentals and do not in any way affect the ownership of said poles.

(i) When replacing a jointly used pole carrying terminals or aerial cable, underground connections or transformer equipment, the new pole shall be set in the same hole which the replaced pole occupied, unless in order to meet special preponderating conditions

it is necessary, or desirable, to set it in a different location, agreeable to both parties hereto.

ARTICLE IX

(a) The Owner shall, at its own expense, maintain its joint poles in a safe and serviceable condition, and in accordance with the Administrative Order No. 72 of The Public Utilities Commission of Ohio or any revision or modification thereof, and/or any orders of a similar nature which may be issued by the said body, or in accordance with specifications mutually agreed upon by the parties hereto and in conformity with the provisions of Article VI of this contract, and shall replace such of said poles as become defective. Except as otherwise provided in Section (b) of this Article, each party shall, at its own expense, at all times maintain all of its attachments in accordance with said Administrative Order No. 72, and keep them in a safe condition and in thorough repair; provided, however, that neither party shall be required to rearrange any cable installed prior to the date of this agreement, and carried on the street side of any pole, so as to occupy the field side thereof.

(b) Any existing joint use construction of the parties hereto which does not conform to the said specifications shall be brought into conformity therewith as follows:

Within one year from the date of this agreement, ten (10) percent of the poles involved in such existing joint use construction, and the attachments on said poles, and thereafter ten (10) percent per annum shall be brought into conformity with said specifications; provided, however, that this provision shall not be so applied as to require any then existing cables carried on

the street side of any such poles to be rearranged to occupy the field side thereof.

When such existing joint use construction shall have been brought into conformity with said specifications, it shall at all times thereafter be maintained as provided in Section (a) of this Article.

The cost of bringing such existing joint use construction into conformity with said specifications shall be borne by the parties hereto in the manner provided in Section (b) of Article VII and section (f) of Article VIII.

ARTICLE X

TERMINATION OF JOINT USE

(a) If the Owner desires at any time to abandon any joint pole, it shall give the Licensee notice in writing to that effect at least sixty (60) days prior to the date on which it intends to abandon such pole. If, at the expiration of said period, the Owner shall have no attachments on such pole but the Licensee shall not have removed all of its attachments therefrom, such pole shall thereupon become the property of the Licensee, and the Licensee shall save harmless the former Owner of such pole from all obligation, liability, damages, cost, expenses or charges incurred thereafter, because of, or arising out of, the presence or condition of such pole or of any attachments thereon the property of the Licensee; and shall pay the Owner a sum equal to the then value in place of such abandoned pole or poles or such other equitable sum as may be agreed upon between the parties.

(b) The Licensee may at any time abandon the use of a joint pole by removing therefrom all of its attachments, and

giving ten (10) days notice in writing thereof to the Owner. The Licensee shall in such cases pay to the Owner the full rental for said pole for the then current year.

ARTICLE XI

RENTALS

The Licensee shall pay to the Owner as rental for the use of each and every pole any portion of which is occupied by or reserved for the attachments of the Licensee, Two Dollars ($2.00) per pole per annum.

No rental shall be paid by the Licensee for the use of any pole of the Owner where such use consists only in attaching guys thereto, or in attaching thereto wires or cable of the Licensee for the purpose of providing clearance between the pole and such wires or cables, and not for the purpose of supporting the said wires or cables.

ARTICLE XII

RENTAL PAYMENTS

Payments of all rentals under this agreement shall be made on the first day of February in each year during the continuance of this agreement; the first payment to be made on the first day of February, 1931, for the period beginning with the date of this agreement and ending on the first day of October, 1930. The rentals payable for said period shall be based upon a written statement to be submitted by each party hereto to the other on or before the first day of December, 1930, giving the number of poles of each party on which space was occupied by, or reserved for, the attachments of the other party on the first day of October, 1930.

Thereafter each party shall submit to the other party

on or before the first day of December in each succeeding year, a written statement, as of the first day of October, in each such year, giving the number of the poles of each party on which space was occupied by, or reserved for, the attachments of the other party, and each such statement shall be used as the basis of the rental charge for the year for which such statement is submitted, as hereinafter provided.

Every such statement, including the statement first above provided for, shall be deemed to be correct unless written notice of errors claimed to exist therein shall be given within sixty (60) days from the receipt of such statement, to the party submitting the statement by the party to which the statement was submitted. In case of dispute concerning the correctness of any such statement, a joint inspection of the pole or poles in dispute shall thereupon be made: such inspection to be begun within ten days (10) after notice of errors claimed to exist therein shall have been given as aforesaid, and to be completed within a reasonable time thereafter. A written report of such inspection, signed by the inspectors of both parties, shall be made, and, upon the approval of such report by the officers of both parties such statement shall, if shown to be incorrect, be corrected accordingly.

ARTICLE XIII

PERIODICAL READJUSTMENT OF RENTALS

At the expiration of five (5) years from the date of this agreement, and at the end of every five (5) year period thereafter, the rental per pole per annum thereafter payable hereunder shall be subject to readjustment at the request of either party made in writing to the other not later than sixty

(60) days before the end of any such five (5) year period. If within sixty (60) days after the receipt of such a request by either party from the other, the parties hereto shall fail to agree upon a readjustment of such rental, then the rental per pole per annum so to be paid shall be an amount equal to one-half of the then average total annual cost per pole of providing and maintaining the standard joint poles covered by this agreement. In case of a readjustment of rentals as herein provided, the new rentals shall be payable until again readjusted.

ARTICLE XIV

DEFAULTS

If either party shall make default in any of its obligations under this contract and such default continue thirty (30) days after notice thereof in writing from the other party, all rights of the party in default hereunder shall be suspended, including its right to occupy jointly used poles, until such default has been made good, and in addition and without affecting such suspensions, if the Owner shall fail to perform its obligations hereunder to properly maintain and to promptly renew joint poles after thirty days notice from the Licensee, the Licensee shall have the right to maintain such poles or to renew the same at the expense of the Owner and it shall be the duty of the Owner to immediately reimburse the Licensee for such expense upon the rendition of bills therefor.

ARTICLE XV

BILLS AND PAYMENT FOR WORK

Upon the completion of work performed hereunder by either party, the expense of which is to be borne wholly or in

part by the other, the party performing the work shall present to the other party, within ninety (90) days after the completion of such work, an itemized statement showing the entire cost of the labor and material employed therein, supervision and all overhead charges, and such other party shall, within thirty (30) days after such statement is presented, pay to the party doing the work such other party's proportion of the cost of said work.

ARTICLE XVI

PRE-EXISTING OBLIGATIONS

If either of the parties hereto has, prior to the execution of this agreement conferred upon others, not parties to this agreement, by contract or otherwise, rights and privileges to use any pole covered by this agreement, nothing herein contained shall be construed as affecting said rights and privileges, and either party hereto shall have the right, by contract or otherwise, to continue and extend such existing rights and privileges; it being expressly understood, however, that for the purposes of this agreement, the attachments of any outside party shall be treated as attachments belonging to the grantor, and the rights, obligations, and liabilities hereunder of the grantor, in respect to such attachments, shall be the same as if it were the actual owner thereof, excepting, however, such wires and attachments as are erected on the pole of either party by order of municipal authority or in compliance with ordinances or franchises.

ARTICLE XVII

SERVICE OF NOTICES

Wherever in this agreement notice is provided to be given by either party hereto to the other, such notice shall be in writing and given by letter mailed, or by personal delivery, to the Electric Company at its office at 205 East First Street, Dayton, Ohio, or its principal office in said city, or to the Telephone Company at its office at Dayton, Ohio, or as the case may be, to such other address as either party may from time to time designate in writing for that purpose.

ARTICLE XVIII

TERM OF AGREEMENT

This agreement shall continue in full force and effect for five (5) years from date hereof, and thereafter until terminated as follows: either party may, by giving five (5) years previous notice in writing to the other party, and by removing within five (5) years from date of said notice its attachments from the poles of the other party, terminate this agreement. Thereupon and after the expiration of said five (5) year period, such other party shall have no further rights hereunder with respect to the poles of the party so cancelling this agreement, and shall within the five (5) year period so provided for remove its attachments from the poles of the other party. In case of its failure to do so, the Owner of the poles in question may, at the expense and risk of the delinquent party and without incurring any liability, remove the delinquent party's attachments therefrom, and in the meantime, and until such removal, such other party shall continue and remain liable for all obligations hereunder with respect to its attachments remaining on the poles.

of the party so cancelling this agreement, for the rentals therefor, and for damages due to accidents, in the same manner and to the same extent as if this agreement had not been terminated as aforesaid.

Upon the termination of this agreement, as herein provided, the rental charges for the then current year, payable hereunder by either party to the other and then unsettled, shall be adjusted to the respective dates of the removal of the attachments of each party from the poles of the other, as hereinabove provided, and the amount then payable by each party to the other party shall be paid within three (3) months after the date of the termination of this agreement and after receipt of proper bills therefor.

ARTICLE XIX

ASSIGNMENT OF RIGHTS

Except as otherwise provided in this agreement, neither party hereto shall assign or otherwise dispose of this agreement, or any of its rights or interests hereunder, or in any of the jointly used poles, or the attachments or rights-of-way covered by this agreement, to any firm, corporation or individual, without the written consent of the other party; provided, however, that nothing herein contained shall prevent or limit the right of either party to make a general mortgage in the usual form on any or all of its property, rights, privileges, and franchises, or a lease or transfer of any of them to another corporation organized for the purpose of conducting business of the same general character as that of such party, or to enter into any merger or consolidation; and in case of the foreclosure of such mortgage, or in the case of such lease, transfer, merger

or consolidation, its rights and obligations hereunder shall pass to, and be acquired and assumed by the purchaser on foreclosure, the transferee, lessee, assignee, merging or consolidating company, as the case may be; and provided, further, that subject to all the terms and conditions of this agreement, either party may permit any corporation conducting a business of the same general character as that of such party, and owned, operated, leased or controlled by it, or associated or affiliated with it in interest, or connected with it, the use of all or any part of the space reserved hereunder on any pole covered by this agreement for the attachments used by such party, in the conducting of its said business; and for the purpose of this agreement, all such attachments maintained on any such pole by the permission as aforesaid of either party hereto shall be considered as the attachments of the party granting such permission and the rights, obligations, and liabilities of such party under this agreement, in respect to such attachments, shall be the same as if it were the actual owner thereof.

ARTICLE XX

WAIVER OF TERMS OR CONDITIONS

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

ARTICLE XXI

EXISTING CONTRACTS

All existing agreements between the parties hereto for the joint use of poles upon a rental basis within the territory covered by this agreement are, by mutual consent, hereby abrogated and annulled.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in duplicate, and their corporate seals to be affixed thereto by their respective officers thereunto duly authorized, on the day and year first above written.

THE DAYTON POWER AND LIGHT COMPANY

By _____ Vice President

and _____ Secretary

Witness:

_____

_____

_____

APPROVED LAW DEPARTMENT

THE OHIO BELL TELEPHONE COMPANY

By _____ Vice President

and _____ Secretary

_____

_____

DOCUMENT FILE
1936 NO. 1396
THE DAYTON POWER & LIGHT CO.
TICKLER O. K. AS TO
CONSIDERATION EXPIRATION DATE - indeterminate
By _____ By _____

EXHIBIT B

SUPPLEMENTAL AGREEMENT

WHEREAS, The Dayton Power and Light Company, an Ohio corporation, of Dayton, Ohio, and The Ohio Bell Telephone Company, an Ohio corporation, of Cleveland, Ohio, under date of March 17, 1930, entered into a "Joint Pole Line Agreement - Pole Rental Contract"; and,

WHEREAS, it is the desire and intent of the parties that said agreement be amended as hereinafter provided.

NOW, THEREFORE;

It is agreed by and between said The Dayton Power and Light Company and The Ohio Bell Telephone Company that ARTICLES XI, XII and XVIII of the agreement of March 17, 1930, be and the same are hereby amended so that as amended they shall read as follows:

"ARTICLE XI - RENTALS: The use by one party of the other party's poles is in consideration of the use by such other party of an equal number of poles of the first-mentioned party. In the event that as of October 1 in any year either party owns more than one-half of the total number of joint poles, the other party shall pay to it a rental of two dollars ($2.00) per joint pole for such excess number of poles.

"No rental shall be paid by the Licensee for the use of any pole of the owner where such use consists only in attaching guys thereto, or in attaching thereto wires or cables of the Licensee for the purpose of providing clearance between the pole and such wires or cables, and not for the purpose of supporting the said wires or cables.

"Poles exempted from rental under the previous paragraph shall not be taken into consideration in determining whether or not each party uses an equal number of the other party's poles under the provisions of this Article.

"ARTICLE XII - RENTAL PAYMENTS: Payments of rentals under this agreement shall be made on the first day of February in each year during the continuance of this agreement; the first payment to be made on the first day of February, 1931, for the period beginning with the date of this agreement and ending on the first day of October, 1930. The rentals payable for said period shall be based upon a written statement to be submitted by each party hereto to the other on or before the first day of December, 1930, giving the number

of poles of each party on which space was occupied by, or reserved for, the attachments of the other party, on the first day of October, 1930.

"Thereafter each party shall submit to the other party on or before the first day of December in each succeeding year, a written statement, as of the first day of October, in each such year, giving the number of the poles of each party on which space was occupied by, or reserved for, the attachments of the other party, and each such statement shall be used as the basis of the rental charge for the year for which such statement is submitted, as hereinafter provided.

"Every such statement, including the statement first above provided for, shall be deemed to be correct unless written notice of errors claimed to exist therein shall be given within sixty (60) days from the receipt of such statement, to the party submitting the statement by the party to which the statement was submitted. In case of dispute concerning the correctness of any such statement, a joint inspection of the pole or poles in dispute shall thereupon be made; such inspection to be begun within ten (10) days after notice of errors claimed to exist therein shall have been given as aforesaid, and to be completed within a reasonable time thereafter. A written report of such inspection, signed by the inspectors of both parties, shall be made and, upon the approval of such report by the officers of both parties such statement shall, if shown to be incorrect, be corrected accordingly.

"ARTICLE XVIII - TERM OF AGREEMENT: This agreement shall continue in full force and effect for five (5) years from date hereof, and thereafter until terminated as follows: either party may, by giving five (5) years previous notice in writing to the other party, and by removing within five (5) years from date of said notice its attachments from the poles of the other party, terminate this agreement. Thereupon and after the expiration of said five (5) year period, such other party shall have no further rights hereunder with respect to the poles of the party so cancelling this agreement, and shall within the five (5) year period so provided for remove its attachments from the poles of the other party. In case of its failure to do so, the Owner of the poles in question may, at the expense and risk of the delinquent party and without incurring any liability, remove the delinquent party's attachments therefrom and in the meantime, and until such removal, such other party shall continue and remain liable for all obligations hereunder with respect to its attachments remaining on the poles of the party so cancelling this agreement, for the rentals therefor, and for damages due to accidents, in the same manner and to the same extent as if this agreement had not been terminated as aforesaid.

"Upon the termination of this agreement, as herein provided, the rental charges for the then current year, payable hereunder by either party to the other and then unsettled, shall be adjusted to the respective dates of the removal of the attachments of each party from the poles of the other, as hereinabove provided, and the amount then payable by either party to the other party shall be paid within three (3) months after the date of the termination of this agreement and after receipt of proper bills therefor."

It is further agreed that the amendments hereby provided shall be effective as of October 1, 1941. Except as amended hereby said agreement of March 17, 1930, be and the same hereby is, in all other respects, ratified and approved.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed, in duplicate, and their corporate seals to be affixed thereto by their respective officers thereunto duly authorized on the 30th day of September, 1942.

WITNESSES:

Ann D. Burke

Viola Stanger

Eleanor Cotter 10-5-42

Breandina Sherman

THE DAYTON POWER AND LIGHT COMPANY

By K. C. Carey
Vice President

And R. J. Baker
Assistant Secretary

APPROVED LAW DEPARTMENT

THE OHIO BELL TELEPHONE COMPANY

By Sarah S. Marburger
VICE PRESIDENT AND GENERAL MANAGER

And J. Whitney
SECRETARY

Indeterminate
after 3/16/1935

1091

OPERATING ROUTINE

INSTRUCTIONS FOR ADMINISTERING

THE GENERAL JOINT USE POLE AGREEMENT, DATED MARCH 17, 1930

and

THE SUPPLEMENTAL AGREEMENT DATED SEPTEMBER 30, 1942

BETWEEN

THE DAYTON POWER AND LIGHT COMPANY

and

THE OHIO BELL TELEPHONE COMPANY

Prepared Jointly by
THE DAYTON POWER AND LIGHT COMPANY
and
THE OHIO BELL TELEPHONE COMPANY
December, 1950

1950

INDEX TO OPERATING ROUTINE

(Between The Dayton Power and Light Company and The Ohio Bell Telephone Company)

OPERATING ROUTINE

INSTRUCTIONS FOR ADMINISTERING
THE GENERAL JOINT USE POLE AGREEMENT DATED MARCH 17, 1930
and
SUPPLEMENTAL AGREEMENT DATED SEPTEMBER 30, 1942
between
THE DAYTON POWER AND LIGHT COMPANY And THE OHIO BELL TELEPHONE COMPANY

0. GENERAL

0.1 Purpose of Operating Routine

0.101 The purpose of the instructions contained in this Operating Routine is to adapt the principles of the Joint Use Pole Agreement dated March 17, 1930 and the Supplemental Agreement dated September 30, 1942 to the day-by-day joint pole operations, to convey to the operating forces the essential information necessary for a uniform application of such principles, and to interpret the intent of certain sections of the agreement.

0.2 Effective Date

0.201 This Operating Routine shall become effective as of the date of its approval by the General Plant Manager of The Ohio Bell Telephone Company (hereinafter referred to as the Telephone Company) and the Vice President and Chief Engineer of The Dayton Power and Light Company (hereinafter referred to as the Electric Company).

0.3 Points of Contact

0.301 Points of Contact and those responsible for the exchange of all information, proposals, summaries, and bills are as follows:

(a) For The Dayton Power and Light Company

Supervisor of T. and D. Section of Electrical Engineering Department - Dayton, Ohio

(b) For The Ohio Bell Telephone Company

The District Plant Manager - Dayton, Ohio

Information concerning the area over which the contact men have jurisdiction will be furnished by each company to the other.

0.302 The interchange of information in connection with the operation of the Joint Use Pole Agreement as provided in this Operating Routine shall be the responsibility of those designated in 0.301. All transactions involving Toll as well as Exchange telephone poles shall be handled by the District Plant Engineer of the Telephone Company.

0.303 If any matters arise which cannot be adjusted by the contact men in accordance with the terms of the Joint Use Pole Agreement or this Operating Routine; or if they desire changes in the specifications or these instructions; or if it is desired to revise Schedules A, A-1, B, and C, described herein under Section 1.1; such matters shall be referred to the Chief Electrical Engineer of the Electrical Engineering Division of the Electric Company and the Plant Engineer (Division) of the Telephone Company for final decision. The intent is to make the agreement simple to operate by the men in the field and to have all controversial matters handled through the above-mentioned offices.

0.304 All matters involving general policy shall be referred to the Chief Electrical Engineer of the Electrical Engineering Division of the Electric Company and the Plant Engineer (Division) of the Telephone Company.

0.40 Revision of Operating Routine

0.401 These instructions, including the specifications, may be revised in whole or in part at any time by mutual agreement between the two companies. A letter of instructions, when approved by the Vice President and Chief Engineer of the Electric Company and the General Plant Manager of the Telephone Company, shall constitute a revision or supplement to these instructions. Such letter shall be plainly headed "REVISIONS" or "SUPPLEMENT", as the case may be, and shall be attached to and become a part of this Operating Routine.

0.50 Dealing with the Public

0.501 In dealing with the public, the representatives of each company shall avoid making any statements that may operate to embarrassing situations for the other company.

1. DEFINITION OF TERMS

1.10 Standard Joint Poles

1.101 A "STANDARD JOINT POLE" is a 35 ft., Class 5, wood pole for rear lot or alley construction and a 40 ft., Class 3, pole for street construction. However, every effort shall be made to use a shorter and/or lighter class pole where it will suffice because of the reduced requirements of either or both parties, and such shorter and/or lighter pole shall be considered as a standard pole under this agreement at that specific location.

1.20 Standard Space

1.201 "STANDARD SPACE" is the following described space on a standard joint pole for the exclusive use of each company, respectively:

(a) For the Electric Company, the uppermost four (4) feet and ten (10) inches.

(b) For the Telephone Company, a space of three (3) feet at a sufficient distance below the space of the Electric Company to provide at all times the minimum clearance required by the Specifications referred to in Section 4.

1.202 It shall be permissible for either company to use the space below the space allocated to the Telephone Company if mutually agreeable and in accordance with the Specifications of Section 4.

1.203 "RESERVED", as applied to space on a pole, means that such space is provided and maintained by the Owner either for its own exclusive use or expressly for the Licensee's exclusive use at the Licensee's request.

1.3 Excess Height and Excess Strength

1.301 Excess height refers to the height of pole over and above the standard height as specified in Paragraph 1.101. Excess strength refers to the class of pole over and above the standard strength as specified in Paragraph 1.101.

1.302 When both companies are using standard space allocations, the uppermost telephone attachment will generally be not higher than 29 ft. 10 in. above ground on a standard 35 ft. joint pole. Where a standard joint pole would be a 35 ft. pole, it will be assumed in general that, if telephone attachments are at an elevation of no more than 29 ft. 10 in., any excess height will be for the sole benefit of the Electric Company.

However, where practicable and mutually agreeable, the companies shall cooperate in relocating the available space on new or existing poles in accordance with the requirements of each party in order to avoid the use of excess height poles or the premature replacement of existing poles.

The company receiving additional space on existing poles should pay to the other company the expense incurred by that other company in relocating or rearranging its attachments on the poles involved.

NOTE:

"If the pole is subsequently replaced, the Amortized Life of the pole, to be established as of the date the pole is replaced, shall be paid by:

A. The party to whom the additional space was originally reallocated, if at that later date a request for normal space by the other party is the sole reason for the pole replacement.

B. The party to whom the additional space was originally reallocated, if that party at that later date requires additional space.

C. Both parties, if both require excess height at that later date.

The Proposal, and the pole records of both companies, should be suitably identified to indicate such loaned space. See Paragraph 6.202 for the symbols to be used for such identification."

1.303 A standard joint pole, or a pole to be used jointly that is shorter and/or lighter than the standard, shall be erected at the sole expense of the Owner.

1.304 A pole taller and/or stronger than the standard, the extra height and/or strength of which is due wholly to the Owner's requirements, shall be erected at the sole expense of the Owner.

1.305 In the case of a pole taller and/or stronger than the standard, the extra height and/or strength of which is due wholly to the Licensee's requirements, the Licensee shall pay to the Owner a sum equal to the difference between the cost in place of such pole and the cost in place of a standard joint pole, the remaining cost of erecting such pole to be borne by the Owner.

1.306 If both parties require excess height and/or strength for their own use in the same pole, in addition to the standard space and/or strength provided for under the Joint Use Pole Agreement, the cost of such additional height and/or strength shall be borne by each party in accordance with Paragraphs 1.304 and 1.305.

1.307 In the case of a pole taller and/or stronger than the standard, where the height and/or strength, in addition to that needed by either or both parties, is necessary to provide sufficient space to clear a common obstacle (such as a railroad, etc.) or to meet the legal space or clearance requirements of public authority or of property owners (other than requirements with regard to keeping the wires of one party clear of trees), one-half (1/2) of the excess cost of such pole due to such requirements shall be borne by the Licensee. Any remaining cost of such pole shall be borne as provided in one of the preceding paragraphs, viz., 1.303, 1.304 or 1.305, within which it would otherwise properly fall.

1.308 Any space required for attachments of third parties, except those parties provided for in Paragraph 1.309, which are in the nature of Supply Circuits, shall be provided and licensed by and at the cost and expense of the Electric Company. Similarly, space for those attachments which are in the nature of Signal or Communication Circuits shall be provided and licensed by and at the cost and expense of the Telephone Company.

1.309 The cost of excess height and/or excess strength shall be determined from the current Standard Billing Table, identified as Schedules A and A-1 attached hereto and made a part hereof. (See Section II).

Land Sacrificed Life

1.401 When the Licensee requests the Owner of a pole, either joint or non-joint, to replace it with another pole suitable for joint use, the Owner, subject to the provision of Section 3, shall promptly make the replacement, and the Licensee shall pay to the Owner a sum equal to the then value in place (Sacrificed Life) of the original pole.

Normally, the removal of the existing pole and its disposition shall be the responsibility of its owner, it being understood that in general the last party to transfer its attachments shall remove and dispose of the existing pole. However, other arrangements as to the removal and disposition of the existing pole may be made if mutually agreeable, and if so indicated on the proposal and on the detailed construction prints.

1.402 No sacrificed life shall be allowed when the Engineers of both companies agree that a pole is damaged or has deteriorated to an extent where it is unsafe for the facilities of both companies.

1.403 The value of the sacrificed life shall be determined from the current Standard Billing Table, identified as Schedules A and A-1 attached hereto and made a part hereof. (See Section 11).

1.50 Services

1.501 A "SERVICE" for the Electric Company consists of two or more conductors carrying less than 300 volts between conductors supplying electric service to a customer; and for the Telephone Company, two or more conductor twist or parallel paired conductors supplying telephone service to a subscriber.

1.60 Service Drop

1.601 "SERVICE DROP" is the last span of the service extending from the last pole to the customer's or subscriber's dwelling or place of business. (See Paragraph 2.201 to 2.206 for special conditions involving service drops.)

2. [illegible] AND MISCELLANEOUS ATTACHMENTS

2.10 Ownership of Miscellaneous Pole Attachments

2.101 Unless jointly used as provided for in Paragraph 2.102, all guys, anchors, push braces and pole keying (or ground bracing) shall be placed by and/or at the expense of the party whose attachments made such work necessary. Such guys, anchors, and push braces shall remain the sole property of the party for whose sole benefit they were placed and shall not be considered a part of the supporting structure.

2.102 Anchors, push braces and/or pole keying are jointly used when the same are necessary to meet the requirements of both companies and in the case of anchors where it is impossible or impracticable, because of right-of-way conditions, to follow the normal procedure of installing separate anchors. The cost of the installation of such jointly used anchors, push brace and/or pole keying shall be borne equally by the two companies. Such costs of installation shall be determined from Schedules B and C which are attached hereto and made a part hereof. Such jointly used facilities shall remain the property of the owner of the pole structure of which they are a part.

2.103 Ground wires and ground rods shall be installed by or at the expense of and shall be the property of the Company requiring the same.

The expense of connecting the Telephone Company's ground wires to the common neutral or to grounded down guys of the Electric Company when such connections are required by the Telephone Company shall be billed to the latter, except in those cases where such ground wire connections are required for the proper use of the Telephone Company's #99-A protectors or their equivalent.

2.20 Clearance Attachments

2.201 Clearance attachments are attachments, usually at crossings, placed by one party on the other party's poles primarily for the purpose of obtaining standard clearance between the plant instrumentalities of the two companies, such as wires, guys, transformers, cables, suspension strands, etc.

2.202 Such attachments shall be considered as "Clearance Attachments" as defined in Paragraph 2.201 and Section 2.20 only when it would be unnecessary for the party making such attachments to place poles in lieu of the poles contacted by such "Clearance Attachments" if the Owner's plant did not exist at those locations.

2.203 If the requirements of one party only make it necessary to install an additional pole in an existing joint pole lead, such pole may be installed by that party, but shall be of a height not less than the standard pole. If a pole taller than the standard height is requested by the other party, the other party shall be billed for the cost of such excess height. The other party shall be permitted to attach its facilities to such pole on a clearance contact basis.

Should the installation of the additional pole result in unfavorable public relations or a right of way complaint so as to make it desirable or necessary to remove the nearest adjacent pole, the expense incurred by the removal of that pole shall be shared on an equitable basis to be determined by mutual agreement. If the parties cannot agree to an equitable division of such expense, the cost shall be equally divided. Such expense, however, shall not include the cost of rearranging the service drops.

2.204 No rental charge shall be made for clearance attachments.

2.30 Establishing Clearance Attachments

2.301 If the Electric Company could normally reach its customer with its service drop without setting a riser or lift pole but if such service drop could not be carried either over or under the telephone conductors in the span with adequate clearance, an attachment will be made to the Telephone Company pole either directly or through the use of extension fixtures as a clearance attachment. (See Paragraph 2.306 for limitations.)

2.302 If the Telephone Company could normally reach its subscriber with its service drop without setting a riser or lift pole, but if such service drop could not be carried under the electric conductors in the span with adequate clearance, an attachment will be made to the Electric Company pole as a clearance attachment.

2.303 Where space for necessary service drop attachments can be provided on existing poles by simple rearrangements, the company making the attachment will pay for the cost of such rearrangements. However, in the case of Electric Company service drops, if the rearrangement cost is substantially higher than the cost of using a pole top extension, then a pole top extension fixture may be used. Billing for such rearrangements shall be determined as provided for in Section 11.

2.304 During the construction of a new pole line, the party constructing such a line shall place poles of sufficient height to permit clearance for attachments (as defined in Section 2.20 of this Operating Routine) of the other party in order to avoid conflicts with the existing facilities. The other party will not be required to pay any portion of the cost of the initial pole.

During the reconstruction of an existing non-joint pole line, the party reconstructing such a pole line shall place poles of sufficient height to permit clearance for attachments (as defined in Section 2.20 of this Operating Routine) of the other party to avoid conflicts with the existing facilities of that other party. The other party will not be required to pay any portion of the initial cost of the new pole.

When such joint poles are replaced, the Licensee shall be billed for the excess height, as provided in the Standard Billing Tables identified as Schedules A and A-1 attached hereto and made a part hereof, to accommodate such clearance attachments. (See Section 11).

2.305 When, at the request of the contacting company, the Owner prematurely replaces one of its poles to permit the contacting company to secure space for a clearance attachment on said pole, the contacting company shall pay the Owner for the cost of any extra height provided for this purpose, as provided in the Standard Billing Table, Schedules A and A-1 attached hereto and made a part hereof, and shall also pay for the unrecovered life of the old pole. (See Section 11).

2.306 It is expressly understood that any Electric Company wires over 300 volts shall not be carried under the telephone conductors without permission having first been obtained from the Telephone Company in each specific case.

2.307 Clearance Attachments shall be made at no cost to the Owner of the pole, except as may be mutually agreed by the contact men of the two companies.

2.40 Guy Attachments

2.401 No rental charge shall be made for guy attachments.

3. SCOPE OF OPERATING ROUTINE

3.10 Owner to be Sole Judge of Its Own Requirements

3.101 Each company shall be the sole judge of what the character of its circuits shall be to meet its own service requirements and as to whether or not these service requirements can be properly met by the joint use of poles.

3.102 Each company reserves the right to exclude from joint use:

(1) Poles which, in the Owner's judgment, are necessary for its own sole use, and

(2) Poles which carry, or are intended by the Owner to carry, circuits of such character that in the Owner's judgment the proper rendering of its service now or in the future makes joint use of such poles undesirable.

4. SPECIFICATIONS

4.10 General

4.101 ADMINISTRATIVE ORDER NO. 72 OF THE STATE OF OHIO and the "SPECIFICATIONS FOR THE CONSTRUCTION AND MAINTENANCE OF JOINTLY-USED WOOD POLE LINES SERVING SUPPLY AND COMMUNICATION CIRCUITS", known as E.S.Z. Publication No. E-12, and identified as the attachment to AT&T Bell System Practices, shall be followed in the joint use construction under the Joint Pole Agreement.

4.20 Exceptions

4.201 Pole Steps. Part I, Section 7, Page 4 of the Specifications referred to in 4.101 shall be revised to read as follows:

(a) Permanent Metal Steps

Permanent metal pole steps shall not be placed or maintained on any joint pole closer than 6 ft. 6 in. to the ground or other readily accessible place. However, mutually approved detachable pole steps may be used at points less than 6 ft. 6 in. from the ground or other readily accessible place.

5. EXCHANGE OF INFORMATION

5.10 Advance Notice - General

5.101 Each company shall give advance notice to the other company of all proposed work in the urban areas and in the rural areas insofar as platted areas and subdivisions and/or private entrance facilities of the following nature:

(1) New pole line constructions
(2) Replacing, relocating, or removing existing poles (either joint or non-joint)
(3) Major additions or rearrangements of attachments
(4) Changes in character of circuits or any other information affecting the joint use of poles.

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5.102 This notification shall be made, if possible, sufficiently far enough in advance of construction to permit the company receiving it to make any necessary field inspections and discuss any suggested changes with the other company.

6. FORMS - PREPARATION AND USE

6.10 Joint Use and Construction Proposals

Exhibit 1 (Electric Company's Form #253) and
Exhibit 2 (Telephone Company's Form #3759)

6.101 These forms shall be used by each company to:

1) Indicate the proposed work of the originating company

2) Initiate a request for work to be performed by the recipient company.

3) Provide a detailed record of the operations of each company which involve the records of one or both companies.

4) Indicate the cost of all billable items (See Section 11).

6.102 These forms may also be used by each company to give advance notice to the other company as set forth in Section 5.

6.103 Proposals shall be prepared in quadruplicate and signed by the Originating company. The original, second and third copies, together with two sets of drawings, where necessary, shall be forwarded to the other company. The recipient company shall indicate on the Proposal its acceptance, requirements, or rejection of the proposed work and within ten (2) weeks, unless additional time is requested for joint consideration, shall sign and return the original copy of the Proposal, together with one set of drawings, which may be marked, if necessary, to provide additional information or information to clarify the answer of the recipient company to the originator of the Proposal.

While preparing the detailed work prints, it shall be the responsibility of the Engineers of both companies to indicate on that the other company's work order number which authorized the related work on the part of the other company.

Should the other company's work order number be unavailable while the detailed work prints are in the process of preparation, such number shall be added to the prints prior to their release to the field forces.

6.104 After the physical work has been completed, the originator shall note the completion date on the original and fourth copies and return the fourth copy to the other company. (See Exhibit 7).

When the recipient company has completed its physical work, as mutually agreed to in writing on the first copy previously returned to the originating company, the recipient company shall note its completion date on the second and third copies and return the third copy to the originating company. (See Exhibit 7).

6.105 The Owner's completion date on the Proposal shall be the date on which the poles are brought under the Joint Pole Agreement.

6.106 The Joint Use and Construction Proposal shall be identified as follows:

(a) Each Proposal issued by the Electric Company shall carry the project number for which it is prepared. This number also identifies the work order number.

(b) Each Proposal issued by the Telephone Company shall carry a number running consecutively beginning with #1 on January 1st of each year and shall be prefixed by the letter "P" and the last two digits of the year in which the proposal is prepared, as P53-1, P53-2, etc.

6.107 Each company shall carry both companies' file numbers on the Proposals for ready reference.

6.108 When either company obtains oral consent from the other company to perform urgent work, a suitable confirming Proposal shall be prepared and approved by both companies as soon as possible and not more than two weeks after oral consent is obtained.

6.109 Symbols to be used on Proposals are as follows:

"R" Followed by height of pole denotes replacement of pole
"RM" Remove pole
"RL" Relocate pole
"P" Place pole
"CC" Clearance contact
"RS" Reserved space
"P RC" Denotes placing a Rental Contact
"RM RC" Denotes removing a Rental Contact
"RS RC" Change "Reserved Space" to Rental Contact
"RM RS" Discontinue "Reserved Space"
"P CC" Place Clearance Contact
"RM CC" Remove Clearance Contact
"L.T" Space loaned to the Telephone Company
"L.E" Space loaned to the Electric Company

6.20 Monthly Recapitulation

Exhibit B (Electric Company's Form #395), and
Exhibit A (Telephone Company's Form #2826)

6.201 This form shall be used by each company to maintain a record of the number of its own poles which are jointly used by the other company, excluding non-rental poles. The Monthly Recapitulation shall be so prepared as to permit summarizing under the operating areas as required by each company. All jointly used Toll telephone poles shall be included in the Monthly Recapitulation form prepared by the District Plant Engineer of the Telephone Company. Electric Company forms shall be printed on white paper and the Telephone Company forms on yellow paper.

6.202 Each company shall post to the Monthly Recapitulation form which it prepares, all Joint Use and Construction Proposals on which it has indicated that its work has been completed during the month for which the Monthly Recapitulation form is prepared. (See Paragraphs 6.101 to 6.109, inclusive.)

6.203 The Monthly Recapitulations shall be prepared in quadruplicate. At the end of the month, a total for Columns (d) and (e) will be shown at the bottom of these columns on each form, and the Net Total will be indicated at the bottom of Column (f). The first, second and third copies of this form shall be signed by the Owner and forwarded to the Licensee for approval. Within fifteen (15) days, the Licensee shall sign and return the original copy to the Owner, retaining the second and third copies for its file. Upon return of the approved copy, the Owner will carry forward the totals of Columns (d) and (e) to the corresponding columns at the top of the form for the succeeding month, opposite the caption "Carried Forward". The same procedure shall be followed for all subsequent months of the current rental year. (See Section 11.20).

6.204 The totals at the bottom of Column (d), "Gross Poles Added", for the month of September shall be used as the basic figures for determining the net number of pole units for which a deficiency payment is to be made. In preparing the September Monthly Recapitulations only, the totals of Column (e), "Gross Poles Discontinued", shall be deducted from the totals of Column (d), "Gross Poles Added", and the Net Total shown at the bottom of Column (f) on the last sheet. Upon return of the approved September Monthly Recapitulations, the total shown in Column (f) shall be carried forward to the October Recapitulations for the succeeding rental year in Column (d), opposite the caption "Carried Forward".

6.3 Monthly Billing Summary

Exhibit 5 (Electric Company's Form #M 456)
Exhibit 6 (Telephone Company's Form #3479)

6.301 These forms shall be used by each company to maintain a running record of all miscellaneous costs, which are to be billed monthly, as provided in Section 11. These forms shall be kept in a manner similar to the Monthly Recapitulation forms, as provided in Section 6.20.

6.302 The billing data on all Joint Use and Construction Proposals, which provide for miscellaneous billing from one company to the other, shall be posted to these Monthly Billing Summaries upon receipt of the completed Proposals. Each company shall post the billing data from both Summarized Proposals on its form. This will result in identical running records being kept by each company.

6.303 Each company shall keep a working pencil copy of its summary. Within one week after the end of each month, the pencil copies of the two companies shall be compared and discrepancies corrected. Four copies of the corrected summary shall then be prepared by the company to which a deficiency payment is due. These copies should then be properly approved and forwarded to the other company. The other company shall then approve all copies and return the original and third copies to the originating company.

7. ESTABLISHING JOINT USE OF EXISTING POLES

7.10 Reservation of Space on Existing Poles Suitable for Joint Use

7.101 Whenever either company desires to place any attachments or reserve space on any pole of the other company which is not then jointly used but which is suitable for joint use, such company shall make written application to the Owner requesting joint use, using the Joint Use and Construction Proposal, Exhibits 1 or 2, which shall be prepared as provided in Section 6.10.

7.20 Replacement of Existing Poles Unsuitable for Joint Use

7.201 Whenever either company desires to place any attachments on any pole of the other company, which is not then jointly used and which is unsuitable for joint use, such company shall make written application to the Owner to make the necessary rearrangements of existing attachments or to replace the pole with another suitable for joint use. This application shall be made on the Joint Use and Construction Proposal, Exhibits 1 or 2, which shall be prepared as provided in Section 6.10.

7.202 Where the Owner desires the Licensee to make the necessary pole replacements and the Licensee agrees, this note shall be placed on the three copies of the Joint Use and Construction Proposal which have been received from the Licensee. The removal and disposition of the old pole shall be in accordance with Paragraph 1.401. The new Owner's completion date shall be the date on which such poles are brought under the Joint Pole Agreement.

7.203 If a party fails to erect a pole or poles in accordance with a plan agreed to in writing, it will be the responsibility of that party, at its own expense, to rectify the error either to the satisfaction of both parties or in accordance with the plan originally agreed to in writing.

7.204 If a party erects a pole or poles and fails to notify the other party in advance of such action in accordance with Sections 5 and/or 6, it will be the responsibility of that party, at its own expense, to rectify any hardship caused to the other party by such failure to properly notify the other party.

8. MAINTENANCE OF POLES AND ATTACHMENTS

8.10 General

8.101 Due diligence shall be exercised by both companies to bring into conformity with the Specifications (see Section 4), as occasion may arise, any existing joint use construction. When any joint use construction of either company is generally reconstructed or any changes are made in the arrangement or characteristics of its circuits or attachments, the new or changed parts shall be brought into conformity with the Specifications.

6.102 Before performing any work of replacing, relocating, or abandoning any joint pole due to Owner's requirements or the legal requirements of a property owner, the state, municipal, or other governmental authority, the Owner of such pole shall give proper notice thereof to the Licensee by using the Joint Use and Construction Proposal, Exhibits 1 or 2, which shall be prepared in accordance with Section 6.10. In relocating existing poles, it is important that consideration be given to the requirements of both companies.

6.103 When the Licensee desires the replacement or relocation of a joint pole, it shall give proper notice to the Owner by using the Joint Use and Construction Proposal, Exhibits 1 or 2, which shall be prepared in accordance with Section 6.10.

6.104 When any work other than that of an emergency nature is to be performed on a joint pole and the work cannot be performed without the assistance of the other party, the construction forces of said other party shall be notified and a mutually agreeable time shall be arranged when the work is to be done, so that the other party may have a crew on the job at the time to handle its wire and attachments.

6.105 Except as herein otherwise expressly provided, each party shall, at its own expense, place, maintain, repair, rearrange, transfer and remove its own attachments and shall at all times perform such work promptly and in such a manner as not to interfere with the service of the other party.

6.2 Replacing Joint Poles

6.201 The Owner is normally expected to replace its own poles, whether for its own benefit or for that of the Licensee. When replacing joint poles carrying aerial cable terminals or underground connections, the new poles shall be set in the same location which the replaced poles occupied unless special conditions make it necessary to set them in different locations.

6.202 If a condition arises where the Owner is obligated to replace certain joint poles and is unable to release a crew for such work, thus holding up some contemplated work of the Licensee, the Owner may delegate the authority to the Licensee to set the new poles and bill the Owner for the pole cost as shown on the current Standard Billing Table. (See Paragraphs 11.205 and 11.401). The Owner shall remove the old poles.

6.203 If a joint pole is broken off or is in a dangerous condition and either company is notified of such condition by a property owner or other individual, oral arrangements shall be made immediately for taking care of the situation. The Owner, if he so chooses, may delegate authority to the Licensee to set the new pole and to bill the Owner for the standard pole cost as shown in the Standard Billing Table. Such work shall take precedence over normal construction activities.

6.204 If the Licensee should request the Owner to replace a joint pole, said Licensee shall reimburse Owner for the unamortized life of the old pole. (Exception - see Paragraph 1.402). If Licensee desires a major replacement of Owner's poles because of revamping of the Licensee's lines, rerouting of circuits, or for any other reason, the Owner may request a joint inspection to determine their adequacy before proceeding with the work.

8.205 Whenever a pole is replaced, the cost of any excess height or excess strength in the new pole shall be borne by the company or companies requiring it, as provided in Section 1.30.

8.206 When the Owner replaces joint poles, the Licensee shall promptly transfer its equipment to the new poles so that the old poles may be removed promptly. At the end of sixty (60) days after the Owner has set the new poles and transferred its equipment, if the Licensee has not transferred its equipment, the Owner may abandon the old poles in accordance with Paragraphs 9.101 and 9.102 of this Operating Routine. Such old poles will then become the responsibility of the Licensee without further action on the part of the two companies, in the same manner as described in Paragraph 9.102.

8.207 The titles to such old poles referred to in Paragraph 8.206 shall be transferred in a manner similar to the procedure described in Paragraph 9.105.

8.30 Temporary Relocation or Remarking of Joint Poles

8.301 If a temporary relocation of a joint pole line is necessary because of highway improvements, construction of sewer lines, etc., and the pole line is to be restored to its permanent location as soon as the construction work is completed, the Owner shall perform the necessary pole work and no allowance shall be made for sacrificed life of either pole line. The cost of the temporary pole line shall be divided on an equitable basis, by mutual agreement of the contact men, using the Standard Billing Schedules A, A-1, B and C but modified to exclude the material cost of the poles.

8.40 Removing Joint Poles

8.401 Where no sacrificed life of existing joint poles is involved, the Owner of the pole should remove and dispose of it when both companies have abandoned the use of such pole. To this end, the Licensee shall promptly remove its wires and attachments from the pole to be removed, so that the Owner may remove it without having to make an extra trip. In individual cases, however, if the Licensee finds it inconvenient to remove its attachments when the Owner desires to remove the old pole, the Owner may leave the pole in place and the Licensee shall finally remove it and deliver it to the pole yard of the Owner, or otherwise dispose of it at the Licensee's expense at the option of the Owner. Should the Licensee fail to remove the old pole within sixty (60) days, the Owner shall have the right to abandon the old pole as outlined under Paragraph 8.206 above.

9. ABANDONMENTS

9.10 Abandonment by Owner

9.101 If the Owner at any time desires to abandon any joint pole, it shall give the Licensee notice in proposal form to that effect prior to the date on which it intends to abandon such pole. After the Owner has

removed all of its attachments from such pole, it shall so advise the Licensee by means of a proposal completion notice. (See Paragraph 6.101).

9.102 Unless the Licensee shall have returned a signed copy of the proposal notifying the Owner, on or before the expiration of sixty (60) days after such notice of the removal of the Owner's attachments referred to above, to the effect that it has removed its attachments from the Owner's poles, such poles shall thereupon become the responsibility of the Licensee without further action on the part of the two companies and the Licensee shall save harmless the former Owner of such poles from all obligations, liability, damage, cost, expenses or charges incurred thereafter, because of, or arising out of the presence or condition of such pole or of any attachments thereon, and shall pay the Owner a sum based on the requirements of the Licensee and in proportion to the then value in place of such abandoned pole or poles or such other equitable sum as may be agreed upon between the parties.

9.103 The Owner's completion date on the Joint Use and Construction Proposal shall be the official date of abandonment of responsibility and shall be the date used in posting the transaction to the Monthly Recapitulation and Monthly Billing Summary forms.

9.104 In any case where the Owner has notified the Licensee by a mutually approved Proposal that the Owner proposes to abandon the use of a joint pole and the Licensee has agreed to purchase the same and continue using it, such old pole shall become the responsibility of the Licensee without further action on the part of the two companies, in a manner similar to that described in Paragraphs 9.102 and 9.103.

9.105 A running summary of the poles involved in Paragraphs 9.206, 9.102 and 9.104 shall be maintained and verified by both companies. Twice a year, i.e., on May 1st and November 1st, the formal transfer of the titles to such poles shall be made by means of proper Bills of Sale to be prepared by the Companies abandoning the ownership of the poles. Such Bills of Sale shall be executed and delivered within thirty (30) days from the above dates.

9.20 Abandonment by Licensee

9.201 The Licensee may at any time abandon the use of a joint pole by removing therefrom all of its attachments and giving ten (10) days' notice in proposal form thereof to the Owner. The official date of abandonment shall be the date on which the Proposal is submitted by the Licensee, provided all of the attachments of the Licensee shall have been removed on or before that date.

9.202 Exception to Paragraph 9.201:

Where a pole has been placed or replaced to permit joint use, either on a Rental Contract or on a Reserved Space basis at the request of the Licensee, the Minimum rental period shall be four (4) years.

9.30 Abandonment by Both Companies

9.301 If both parties at the same time abandon any joint pole, each party shall, at its own expense, remove its attachments therefrom and the Owner shall thereupon remove the pole.

9.302 The official date of abandonment insofar as the Licensee is concerned shall be the Licensee's completion date (closing notice) shown on the Joint Use and Construction Proposal.

10. REDUCING UNBALANCE OF POLE UNITS

10.10 Three Methods for Reduction

10.101 There are three methods of keeping the number of joint poles owned by each company within reasonable balance, as follows:

(a) By having the company owning the smaller number of joint poles set the majority of new poles.

(b) By permitting the company owning the smaller number of joint poles to make an outright purchase of a sufficient number of poles owned by the other company. The purchase price shall be based on Standard Billing Tables values. A separate Bill shall be rendered and the necessary Bills of Sale and Proposals prepared by the original owner to cover the transaction. This type of equalization shall be made on a company-wide basis, thereby restricting the number of these transactions to a minimum.

(c) By permitting the company owning the smaller number of joint poles to replace poles of the other company when such replacements are in order. After agreement by both companies to determine which poles shall receive such treatment, the following procedure will apply:

(1) Existing joint poles.

The new owner prepares the Proposal to set new joint poles and abandon contact on the existing poles, paying unsatisfied life in the existing poles where applicable. Original owner accepts joint use on the new pole and bills unsatisfied life, if involved.

(2) Existing non-joint poles.

The new owner prepares the Proposal to set the new joint poles, paying unsatisfied life in existing poles where applicable. Original owner accepts joint use on the new pole and bills unsatisfied life, if involved.

(3) In (1) and (2) above, the removal and disposition of the old pole shall be in accordance with Paragraph 1.401.

11. PAYMENTS AND COSTS

11.10 General

11.101 Net Bills

(a) For Deficiency in Joint Pole Units. The net amount to be paid for the total number of joint poles, as specified in Paragraph 11.102, shall be combined at the end of each rental year and the company

to which a net payment is to be made shall issue one bill for this net amount. Such bill shall be rendered on or before November 1st.

(b) For Miscellaneous Charges on Monthly Billing Summary. At the end of each month, the sum of the cumulative totals of the amounts to be paid by each company for sacrificed life, excess height, abandonments, etc., as shown on the Monthly Billing Summary shall be determined. The difference between the total amounts to be paid by each company shall be billed by the company to which the net payment is to be made. Billing shall be rendered by the 25th of the following month.

11.30 Payment for Deficiency in Number of Pole Units

11.301 The 30th day of September of each year shall be the date for determining the number of poles jointly used or on which space is reserved. One full year shall be the minimum period for which payment is charged.

11.302 On the 1st day of October of each year, the difference between the total number of joint poles owned by each company shall be determined from the last entry on the September Monthly Recapitualtion of each company in the columns headed "Gross Poles Added". The company owning the lesser number of joint poles shall pay to the company owning the greater number of joint poles an amount of $3.00 per pole for each pole of the above difference.

11.40 Payments for Miscellaneous Charges

11.401 The pole costs and the cost of miscellaneous items which are billable shall be determined from the Standard Billing Tables, wherever possible, and which are identified as Schedules A, A-1, B and C, attached hereto and made a part hereof. (See Paragraph 11.401).

11.402 The cost of such miscellaneous items that are not provided for in Schedules B and C, and which are billable, shall be determined by mutual agreement between the contact men (see Paragraph 0.301) of the two companies.

11.403 When any contacts are found and no authorizations are available concerning them, the company responsible for the placing of such contacts shall pay the Owner of the poles the sum of $4.00 per pole in lieu of the payment of back rental.

11.404 Billing for the cost of rearranging the plant facilities of one company, when the joint use of poles is not involved, to provide the proper clearances for the other company's facilities (whether existing or proposed) shall be determined by mutual agreement between the contact men (see Paragraph 0.301) of the two companies.

11.305 All miscellaneous billable items (including payments for unauthorized contacts - see Paragraph 11.303) shall be entered on Proposals, (See Paragraph 6.101), and after the work is completed shall be transferred from the Completion Notices (see Paragraphs 6.104 and 6.302) to the Monthly Billing Summary.

11.40 Standard Billing Tables

11.401 A set of standard billing tables attached hereto and made a part hereof shall be maintained and designated as follows:

(a) Schedule A

This schedule applies to full length treatment poles ranging in height from 20 ft., to 60 ft., inclusive, and in strength from Class 1 to Class 7, inclusive, (as applicable) for each height. It is to be used for billing of the values of pole costs such as, sacrifice life, excess height and/or strength as compared to the standard pole, etc.

The table indicates the in place (or sacrifice life) values of poles by -

1. Height and strength for poles having 100% value.
2. Height irrespective of strength for poles having various amounts of depreciation. (Under each pole height, one 100% class value is underscored to establish the value of the representative pole class used for that particular height in determining the various depreciated values.)

This table is based on a 33-year pole life depreciated on a straight line basis. The value of the pole for the current year and the immediately preceding year shall be considered at 100%, with each preceding year showing a 3% depreciation until for the 33rd year and all consecutive preceding years a 4% value shall be used.

(b) Schedule A-1

This schedule applies to butt treated poles ranging in height from 20 ft., to 60 ft., inclusive, and in strength from Class 1 to Class 7, inclusive, (as applicable) for each height. It is to be used for billing of the values of pole costs such as, sacrifice life, excess height and/or strength as compared to the standard pole, etc.

The table indicates the in place (or sacrifice life) values of poles by -

1. Height and strength for poles having 100% value.
2. Height irrespective of strength for poles having various amounts of depreciation. (Under each pole height, one 100% class value is underscored to establish the value of the representative pole class used for that particular height in determining the various depreciated values.)

This table is based on a 25-year pole life depreciated on a straight line basis. The value of the pole for the current year and the immediately preceding year shall be considered as 100%, with each preceding year showing a 4% depreciation until for the 25th year and all successive preceding years a 4% value shall be used.

(c) Schedule B
Cost of miscellaneous repetitive items performed by the Electric Company for the benefit of and at the expense of the Telephone Company.

In this table shall be included the cost of various commonly recurring billable work operations performed by the Electric Company at the Telephone Company's expense.

(d) Schedule C
Cost of miscellaneous repetitive items performed by the Telephone Company for the benefit of and at the expense of the Electric Company.

In this table shall be included the cost of various commonly recurring billable work operations performed by the Telephone Company at the Electric Company's expense.

11.402 The billing tables shall be reviewed during the month of December of each year and revised as necessary and issued on or before the end of the month. Both companies shall cooperate in preparing Schedules A and A-1. Each company shall prepare its own Schedule B or C as applicable and secure approval for its use from the other company before placing it in use.

11.5 Payment When Character of Circuits is Changed
Reference - Article V of Joint Use Pole Agreement

11.501 Any payments to be made when the character of either company's circuits is changed, either for changes in construction to permit continuation of joint use or for the cost of providing separate lines, shall be treated as a special case in each instance. Special bills for such work shall be rendered upon completion of such work.

12. TAGGING AND NUMBERING POLES

12.10 General

12.101 Each company shall be responsible for placing and maintaining all number and identification tags on its own poles which are joint. This does not prevent either company from placing additional tags on the poles for its own use so long as the additional tags do not carry information which might cause the identity of the owner to be in question.

The owner's number shall be carried on both companies' records as the joint pole number.

12.102 It is understood that the pole number applies to the pole location and that this location is to retain the same number unless the ownership of the pole involved is changed.

This is not intended to preclude the possibility of changing the pole location numbering system to conform to future mutually accepted standards.

12.103 The Telephone Company may place its rural route numbers on any rural poles owned by the Electric Company.

12.104 If, for any reason, the Owner changes the number tag with one carrying a new number, the Owner shall promptly notify the Licensee by means of a proposal of such change, giving the old and new number and the location of the joint pole.

12.105 In case the Owner abandons a pole or for any other reason transfers the title to the Licensee, the Licensee upon assuming ownership shall immediately remove the original owner's identification and number tags and place its own tags on the pole.

12.106 Each company shall use its own type of number or identification tag which will indicate that the pole is owned 100% by that company.

12.107 All number and identification tags shall be placed on the street side of the pole and approximately 6 ft. above ground.

12.108 All pole numbers shall be pre-assigned by all parties at the time the Joint Use and Construction Proposals are issued.

13. POLE RECORDS

13.10 Pole Symbols to be Used by Each Company

13.101 The following pole symbols will be used by each company on its records and drawings:

	Symbols Used By B.P.I.	Symbols Used By O.B.T.
Non-joint B.P.I. pole	I	I
Non-joint O.B.T. pole	O	O
B.P.I. pole jointly used by O.B.T.		I
O.B.T. pole jointly used by B.P.I.		O
Higher tension B.P.I. pole (over 5000 V)		#
Higher tension O.B.T. pole (over 5000 V)		∅
No charge contacts on B.P.I. poles		I
No charge contacts on O.B.T. poles		O

13.20 Check of Records

13.201 It is advisable for the local offices of each company to check their pole records against each other from time to time in order to hold to a minimum any errors in posting or any omissions. This can be done at the time of any major reconstruction of lines or when joint inspections are being made. Whenever any errors are found by either company, the other company should be notified immediately. A Construction Proposal shall be initiated in order that the records of both companies may be maintained in agreement.

14. LIST OF ATTACHMENTS

Exhibit 1 - Joint Use and Construction Proposal.
Electric Company's Form #253 - Buff Color.

Exhibit 2 - Joint Use and Construction Proposal.
Telephone Company's Form #3779 - Yellow Color.

Exhibit 3 - Monthly Recapitulation.
Electric Company's Form #255 - White Color.

Exhibit 4 - Monthly Recapitulation.
Telephone Company's Form #2626 - Yellow Color.

Exhibit 5 - Monthly Billing Summary.
Electric Company's Form E-456 - White Color.

Exhibit 6 - Monthly Billing Summary.
Telephone Company's Form #3479 - Yellow Color.

Exhibit 7 - Flow chart indicating the movement of Joint Use and Construction Proposals

Schedules A, A-1 - Sacrificed Life and Excess Height Costs
(Full length treatment and butt treated poles)

Schedule B - Cost of miscellaneous repetitive items performed by the Electric Company for the benefit of and at the expense of the Telephone Company.

Schedule C - Cost of miscellaneous repetitive items performed by the Telephone Company for the benefit of and at the expense of the Electric Company.

15. EXISTING OPERATING ROUTINES

15.101 All existing operating routines and memoranda between parties hereto pertaining to joint use of poles are hereby abrogated and annulled.

15.102 As stated in Paragraph 0.101, the purpose of this Operating Routine is to interpret the intent of certain sections of the Joint Use Pole Agreement and the Supplemental Agreement. In case of any conflict between this Operating Routine and the said Agreement and Supplemental Agreement, the latter shall control.

Approved 6-30 1953

THE DAYTON POWER AND LIGHT COMPANY

By _____
Vice President and Chief Engineer

Approved 7-17 1953

THE OHIO BELL TELEPHONE COMPANY

By _____
General Plant Manager

[illegible] FILES

THE [illegible] LIGHT CO.

CONSTRUCTION [illegible] DATE

By _____ By _____

M.D. Thomas 6-31-53

GS-4

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December 6, 2006

Via Electronic and Overnight Delivery

Grace Sury
Joint Use Manager - Ohio
AT&T Midwest
150 E. Gay St., 6 H
Columbus, Ohio 43215

Re: Joint Use Operations

NOTICE OF SUSPENSION
FURTHER NOTICE OF DEFAULT

Dear Ms. Sury:

Our firm has been retained by The Dayton Power and Light Company ("DP&L") in connection with AT&T's failure to pay DP&L's invoices for Pole Contact Rentals from October 1, 2004 through September 30, 2005 ("2005 Invoice"), and October 1, 2005 through September 30, 2006 ("2006 Invoice"), in accordance with the terms of the Joint Pole Line Agreement, Pole Rental Contract, between The Dayton Power and Light Company and The Ohio Bell Telephone Company (predecessor-in-interest to AT&T), dated March 17, 1930 (the "1930 Agreement"), as amended by the September 30, 1942 Supplemental Agreement between the parties ("1942 Supplemental Agreement"), and in conjunction with the interpretative guidance provided by the December 1952 Operating Routine.[1]

We have analyzed AT&T's correspondence relating to this issue, including the November 21, 2006 letter ("November 21 Letter") from you to Ms. Patricia Swanke, DP&L's Vice President of Transmission and Distribution,[2] and find no legitimate basis for AT&T to refuse payment of these invoices. Accordingly, you are hereby notified pursuant to Article XIV of the Agreement that effective immediately AT&T's rights in the granting of further Joint Use are SUSPENDED until AT&T corrects its Default by paying the 2005 Invoice. In addition,

[1] The 1930 Agreement and 1942 Supplemental Agreement will be referred to collectively as the "Agreement."

[2] The November 21 Letter responds to letters dated October 26, 2006 and October 27, 2006, from Mr. Randall Griffin of DP&L's Legal Department to Ms. Sharon Rosiak of AT&T.

please be advised that AT&T is in FURTHER DEFAULT of the Agreement for its failure to pay the 2006 Invoice in full within 30 days of the October 26, 2006 invoice date. AT&T's failure to cure its nonpayment of the 2006 Invoice within 30 days of this letter will constitute further grounds to suspend AT&T's Joint Use rights.[3] DP&L reserves the right to impose additional sanctions as provided in the Agreement.

As explained below, AT&T's claims regarding these invoices are at odds with the plain language of the Agreement and with more than 50 years of dealings between the parties.

Calculation of Annual Rental

Pursuant to Article XIII of the Agreement, DP&L proposed to revise the annual rental rate in November 2004. The parties failed to agree on a new rate, triggering the requirement to establish a rate equal to "one-half of the then average total annual cost per pole of providing and maintaining the standard joint poles covered by this agreement."

DP&L performed the required cost calculation in accordance with the cost methodology specified in Federal Communications Commission ("FCC") regulations, which is the most commonly-accepted methodology for calculating such costs. The FCC's methodology produced a rate of $45 per pole, which DP&L fully substantiated in March 2005.

At no time since that date has AT&T provided any documentation to refute DP&L's calculation. The November 21 Letter itself provides no such documentation. The letter's bare conclusion that DP&L's $45 figure is "inconsistent with the method of calculation set forth in the Agreement and is otherwise incorrect" is completely unsubstantiated. AT&T's inability to address let alone rebut DP&L's rate calculation highlights the unreasonableness of AT&T's position.

The number of poles to which this $45 annual rate must apply is specified in the Agreement. That number is clarified by the parties' December 1952 Operating Routine, which has been well established by more than 50 years of standard practice and is consistent with the clear intent of the Agreement itself.

As originally specified in 1930, Article XI of the Agreement required each party to pay an annual pole rental to the other for every one of the other party's poles to which it was attached. That 1930 provision required that each party write a check to the other for all of its

[3] The November 21 Letter erroneously claims that DP&L is in default of the Agreement. DP&L will respond to that claim in a timely manner under separate cover.

attachments to the other's poles. Twelve years later this process was changed by the 1942 Supplemental Agreement, which modified Article XI to require only the party owning fewer joint use poles to reimburse the party owning more poles for the difference between the number of poles owned by each party:

> ARTICLE XI – RENTALS: The use by one party of the other party's poles is in consideration of the use by such other party of an *equal number of poles* of the first-mentioned party. In the event that as of October 1 in any year either party owns more than one-half of the total number of joint poles, the other party shall pay to it a rental of two dollars ($2.00) per joint pole for such excess number of poles.[4]

The "excess number of poles" specified above refers to the disparity between the poles owned by each party, not, as you claim, the number of poles exceeding the 50% benchmark. By requiring payment to the party owning the excess number of poles, Article XI returns the parties to the equivalent of owning an "equal number of poles," which is the equilibrium point envisioned by this section. In this manner, Article XI compensates the parties for each other's pole use in the same manner as the 1930 requirement, except that only one check is exchanged by the party owning fewer poles.

The intent of the Article XI annual rental payment provision is to evenly distribute the costs of joint use as if each party owned an "equal number of poles." Article XI achieves this equitable distribution by requiring each party to pay for one-half of the costs of owning and maintaining the poles, regardless of whether one of the parties owns fewer or more than 50% of the poles. In that way, the burden of owning and maintaining 50% of the poles essentially remains the same for both parties despite the number of poles that each party owns. Article XI accomplishes this goal by "splitting" in half the "total annual cost per pole" that is associated with the difference in the number of poles owned by each party.

AT&T's approach would be to require "splitting" in half the costs associated with only the number of poles needed for the deficient party (AT&T) to reach the 50% level. By splitting only this lower, arbitrary number of poles, the party owning the greater number of poles (DP&L) would be required to pay for 75% of the costs associated with the difference in the number of poles owned by each party (*i.e.*, one-half of the costs associated with the poles needed by AT&T to reach the 50% level and 100% of the costs associated with the poles above the 50% level needed to reach DP&L's level). Requiring DP&L to pay for 75% of the costs of these poles

[4] 1942 Supplemental Agreement, modification of Article XI (emphasis added).

while AT&T pays only 25% would be inconsistent with the "equal number of poles" requirement expressed in Article XI. AT&T's approach would violate the plain language of the Agreement, as well as the longstanding Operating Routine, and is plainly inequitable. It would reward the underperforming party (AT&T) at the expense of the performing party (DP&L).

Any uncertainty as to the meaning of this language in the Agreement is resolved unambiguously by the December 1952 Operating Routine, which clarifies that the "excess number of poles" refers to the difference between the number of poles owned by each party:

> On the 1st day of October of each year, *the difference between the total number of joint poles owned by each company* shall be determined from the last entry on the September Monthly Recapitulation of each company in the columns headed "Gross Poles Added." *The company owning the lesser number of joint poles shall pay to the company owning the greater number of joint poles an amount of $2.00 per pole for each pole of the above difference.*[5]

DP&L is unaware of any instance during the entire 64-year history of the 1942 Supplemental Agreement in which AT&T or any of its predecessors has made a similar claim that pole costs should be "split" only until the deficient party reaches the 50% level. For 64 years, it appears that the party owning fewer poles paid annual rentals based on the difference between the number of poles owned by each party, as required by the Agreement and the Operating Routine, and as specified by DP&L in its invoices.

Third Party Rentals

For as long as the parties have engaged in joint use, it appears that all attachments by third parties to DP&L's poles have been administered by DP&L, and that none was administered by AT&T. DP&L, not AT&T, received and processed applications, performed design and engineering work, performed necessary make ready, changed out poles when appropriate, performed inspections and audits, and otherwise bore the entire expense of administering third party attachments.

[5] December 1952 Operating Routine at Section 11.202 (emphasis added).

More than 75 years after the establishment of the DP&L/AT&T joint use relationship, and despite having incurred none of the cost and expense of administering third party attachments, AT&T for the first time has asserted that third party revenues from attachments to DP&L's poles should belong to AT&T. That claim is preposterous.

The Agreement itself contains no provision authorizing AT&T to collect revenue from third party attachments or even to license those attachments. The Operating Routine, for its part, states that attachments which are "in the nature of Signal or Communication Circuits" must be "provided and licensed" by AT&T at AT&T's own "cost and expense,"[6] but it does not mention revenues or otherwise authorize AT&T to collect revenues.

Having failed to take any part in the licensing of third party attachments on DP&L's poles, it is with apparent bad faith that AT&T now claims some undefined contract right to receive third party revenues stemming from the attachments. If AT&T ever had any such right, which DP&L contests, it was waived long ago by AT&T's failure to undertake any licensing responsibility or to assert any claim to revenues.

Finally, we emphasize that the poles at issue are owned by DP&L, not AT&T. Even absent a waiver, AT&T's licensing of third party attachments today would violate Ohio Revised Code Section 4905.71 and DP&L's pole attachment tariff, both of which require attachments to be licensed by DP&L. ORC § 4905.71(A) specifies, in relevant part: "Every telephone, telegraph, or electric light company ... shall permit ... the attachment of any wire, cable, facility, or apparatus to its poles," and that "every telephone, telegraph or electric light company shall file tariffs with the public utilities commission containing the charges, terms and conditions established for such use."[7] Any Operating Routine provision to the contrary would violate both the statute and DP&L's PUCO-approved tariff.

AT&T's claim that it is entitled to three feet of space on the pole and that DP&L somehow has been depriving AT&T of its three feet of space is simply erroneous. To our knowledge, DP&L never has denied AT&T the use of its three feet of space required by the Agreement, and AT&T has suffered no prejudice whatsoever from DP&L's licensing of third party entities.

---

[6] December 1952 Operating Routine at Section 1.308. The capitalized terms "Signal and Communication Circuits" are undefined.

[7] ORC § 4905.71(A).

* * *

DP&L takes this suspension action reluctantly and with considerable disappointment, but AT&T's refusal to comply with the Agreement leaves DP&L with no choice. Over the course of many months, DP&L has negotiated in good faith in an attempt to resolve differences without taking this step. DP&L will entertain a request from AT&T to attach to DP&L's poles in particular cases involving safety or life, protection of property or other exigencies. Under these limited circumstances, DP&L will lift the suspension in specific instances to accommodate AT&T's identified requirements. We emphasize, however, that the suspension will not be lifted across-the-board until AT&T complies with the requirements of the Agreement and makes payments accordingly. Furthermore, as noted above, DP&L reserves its right to take additional action consistent with Article XIV should AT&T continue to violate the Agreement.

DP&L will entertain any meaningful offer by AT&T to settle these matters, and DP&L would be willing to reassess the suspension at such time. In the event that AT&T insists on prosecuting its claims, DP&L hereby proposes the use of binding arbitration through the American Arbitration Association. If binding arbitration is acceptable to AT&T, we look forward to establishing appropriate parameters within the next 30 days.

Your response by December 15, 2006, including whether binding arbitration is acceptable to AT&T, would be appreciated. Should you wish to discuss this matter further, please feel free to contact us.

Sincerely,

Jack Richards

Jack Richards
Thomas B. Magee

cc: P. Swanke (via e-mail only)
P. Guglielmetti (via e-mail only)
G. Dawson (via e-mail only)
R. Griffin, Esq. (via e-mail only)
A. Kendall
M. Sullivan, Esq.

	10-1-05 to 9-30-06	10-1-04 to 9-30-05	10-1-03 to 9-30-04	10-1-02 to 9-30-03	10-1-01 to 9-30-02	10-1-00 to 9-30-01	10-1-99 to 9-30-00	10-1-98 to 9-30-99	10-1-97 to 9-30-98	no summary sheets for 1997, 1996 and 1995 - using 1998			
DP&L	38,804	38,739	38,711	38,705	38,716	38,716	38,875	36,585	38,095	38,095	38,095	38,095	
AT&T	23,456	23,465	23,468	23,473	23,474	23,474	23,546	23,582	23,653	23,653	23,653	23,653	
	10-1-05 to 9-30-06	10-1-04 to 9-30-05	10-1-03 to 9-30-04	10-1-02 to 9-30-03	10-1-01 to 9-30-02	10-1-00 to 9-30-01	10-1-99 to 9-30-00	10-1-98 to 9-30-99	10-1-97 to 9-30-98	10-1-97 to 9-30-98	10-1-97 to 9-30-98	10-1-97 to 9-30-98	
rent	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	
	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	$3.50	
rental yr	2006	2005	2004	2003	2002	2001	2000	1999	1998	1997	1996	1995	
invoice #		05-00288		04-00071	02-04454	O20201	O93000	O93099	O93098	O93098	O93098	O93098	
coverage	10-01-05 to 9-30-06	10-1-04 to 9-30-05	10-1-03 to 9-30-04	10-1-02 to 9-30-03	10-1-01 to 9-30-02	10-1-00 to 9-30-01	10-1-99 to 9-30-00	10-1-98 to 9-30-99	10-1-97 to 9-30-98	10-1-97 to 9-30-98	10-1-97 to 9-30-98	10-1-97 to 9-30-98	
invoice date		9/20/05	9/28/04	9/25/03	10/21/02	6/5/02	10/27/00	10/14/99	11/1/98	11/1/98	11/1/98	11/1/98	
DP&L net	$135,814.00	$135,586.50	$135,488.50	$135,467.50	$135,506.00	$135,506.00	$135,062.50	$134,977.50	$133,332.50	$133,332.50	$133,332.50	$133,332.50	
AT&T net	$82,096.00	$82,127.50	$82,138.00	$82,155.50	$82,159.00	$82,159.00	$82,418.00	$82,537.00	$82,785.50	$82,785.50	$82,785.50	$82,755.50	
pmt to DP&L	$53,718.00	$53,459.00	$53,350.50	$53,312.00	$53,347.00	$53,347.00	$53,644.50	$52,440.50	$50,547.00	$50,547.00	$50,547.00	$50,547.00	
Total JU poles	62,260	62,204	62,179	62,178	62,190	62,190	62,423	62,147	61,748	61,748	61,748	61,748	
1/2 JU poles	31,130	31,102	31,090	31,089	31,095	31,095	31,212	31,074	30,874	30,874	30,874	30,874	
AT&T short	7,674	7,637	7,622	7,616	7,621	7,621	7,664	7,492	7,221	7,221	7,221	7,221	
shld have pd	$ 26,859.00	$ 26,729.50	$ 26,675.25	$ 26,656.00	$ 26,673.50	$ 26,673.50	$ 26,822.25	$ 26,220.25	$ 25,273.50	$ 25,273.50	$ 25,273.50	$ 25,273.50	
over payment	$26,859.00	$26,729.50	$26,675.25	$26,656.00	$26,673.50	$26,673.50	$26,822.25	$26,220.25	$25,273.50	$25,273.50	$25,273.50	$25,273.50	$314,403.25

	10-4-05 to 9-30-06	10-1-04 to 9-30-05	10-1-03 to 9-30-04	10-1-02 to 9-30-03	10-1-01 to 9-30-02	10-1-00 to 9-30-01	10-1-99 to 9-30-00	10-1-98 to 9-30-99	10-1-97 to 9-30-98	no summary sheets for 1997, 1996 and 1995 - using 1998			
DP&L	38,804	38,739	38,711	38,705	38,716	38,716	38,675	38,565	38,095	38,095	38,095	38,095	
1.5 - third parties per pole	58,206	58,109	58,067	58,058	58,074	58,074	58,313	57,848	57,143	57,143	57,143	57,143	
AT&T revenue	$ 146,097.06	$145,852.34	$145,746.92	$145,724.33	$145,765.74	$145,765.74	$146,364.38	$145,197.23	$143,427.68	$143,427.68	$143,427.68	$143,427.68	$ 1,740,224.42
$2.51													