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  Direct Testimony of Grace Sung

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

DIRECT TESTIMONY

OF

GRACE SURY

On Behalf of

AT&T OHIO

AT&T Ex. ____

Dated: August 31, 2007

CONFIDENTIAL 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 just over 1 foot 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 $7.20 and the lowest rate is $3.50. 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 $10.80 per pole per attachment and that the other party pay DP&L $7.20 per pole per attachment. See GS-6.1 – 6.5, §8.3. After the amount owed by each party is calculated (by multiplying the number of poles to which each is attached by the applicable rate, $10.80 for DP&L and $7.20 for the other party), those amounts are netted out so that only one party sends payment. The sixth agreement similarly requires DP&L to pay $10.80 and the other party to pay $7.20. GS-

6.6, §8.3. However, it requires the deficient party (*i.e.*, the party that owns less poles than it is required to under the agreement) to pay for the number of poles the party is deficient from its required percentage of ownership (in this case, the required percentage of ownership was 60% for DP&L and 40% for the other party). See GS-6.6, § 8.3. So, under the sixth agreement, even though the applicable rates are different, neither party pays unless it is below its required percentage.

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 $2.00 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 the parties allocating specific percentages of pole ownership to the parties – in some instances, AT&T is required to own 35% of the joint use poles and the other party is required to own 65% of the poles. And if the parties meet their percent ownership requirements, no one is required to pay rent. (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 $15.20 and the electric company paid $25.65; and for 2006, on average, AT&T Ohio paid $15.14 and the electric company paid $25.97. 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 24 instead of 25. 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 $18.52 and the electric companies paid $34.40 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 an ownership allocation of 35% to AT&T Ohio and 65% to the electric companies. 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 $40.59 and $37.78 and the electric companies paid $54.92 and $51.12. GS-7.6. The pole ownership objective under this agreement is 42.5% for AT&T Ohio and 57.5% for the electrics. GS-7.2 (§ 12.03(a)). In the second agreement, for 2006, AT&T Ohio paid $17.77 and the electric company paid $19.30. GS-7.6. Those rates were based on the amount of space allocated to the parties under the agreement: 31.4% for AT&T Ohio and 43.9% for the electric company. GS-7.3 (§ 9.40(c)). (This total does not equal 100% because the parties assume in their space allocation one additional attacher per pole.). Under this agreement, AT&T Ohio has the right to collect third party revenue from attachers in AT&T Ohio's allotted space on joint use poles. GS-7.3 (§8.10(d)(2)). Under the third agreement, AT&T and the electric pay $2.00 per pole, on a net billing basis.

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 specify a percentage of ownership. 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 $2.00 to $5.00 per pole, on a net billing basis. 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 specify a percentage of ownership. Finally, there is one agreement negotiated with a city electric in 2004 where AT&T Ohio pays $13.96 and the city pays AT&T Ohio $27.92; these rates are to remain in effect for five years. GS-7.6. Net billing applies to this agreement. Under this agreement, if AT&T Ohio owns 33% of the joint use poles, it will not be required to make any payments under the agreement. Significantly, for the agreements that have percent ownership requirements, if the parties meet their percent ownership requirements, they are not required to make any payment for pole rent.

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 only one foot above the telecommunications attachment. See GS-11 (Confidential) (DP&L Pole Usage Data).

For example, GS-11.1, line 28, shows that AT&T Ohio is at 16.42 feet, and lines 26 and 27 show that there are third party attachments at 17.33 feet and 18.67 feet. GS-11.2, line 27, shows that AT&T Ohio is at 19.42 feet and the CATV attacher is at 20.25 feet. GS-

11.3, line 29, shows that AT&T Ohio is at 17 feet and three CATV companies are at 18 feet, 18.5 feet, and 19.58 feet. GS-11.4, line 27, shows that AT&T Ohio is at 17.42 feet and the CATV company is at 18.42 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 upon one year written notice. GS-7.2 (§ 21.01); GS-7.3 (§ 19.10). Those same agreements limit any new attachments, but grandfather existing attachments – in other words, existing attachments stay in place. *Id.* In agreements that currently are being negotiated, AT&T is proposing a Dispute Resolution process that allows for a

chain of top management to try to resolve disputes before seeking any judicial and/or Commission intervention.

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 allow for 1 year written notice of termination. See GS-6.1 – 6.6, § 19. One of those agreements appears to provide that existing facilities will remain in place notwithstanding the termination. See GS-6.6, § 19. The other five agreements are silent on whether existing attachments remain in place. 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 have harsh default provisions like the one in the DP&L/AT&T Ohio Joint Use Agreement, and AT&T Ohio hopes to revise those provisions. However, AT&T Ohio is a party to several joint use agreements that have default provisions that allow existing attachments to remain in place. For example, under one agreement with an investor owned electric company, if a default continues for 30

days after notice, "the party not in default may suspend the granting of any further joint use." If a default continues for 90 days, the party not in default can terminate the agreement only "as far as it concerns the further granting of joint use" and that party "shall be under no further obligation to permit additions to, changes in, or upgrades to attachments of the defaulting party." The agreement, however, does not require the removal of existing attachments. 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 just over one foot of space on joint use poles. 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 5 cables on 2 poles and 4 cables on 45 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 just over 1 foot of space on poles.

DP&L, on the other hand, uses more than 4 feet of space and, in some instances, nearly 10 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 23.75 feet to 34 feet on the pole – *i.e.*, over 10 feet of space. GS-11.2, lines 14-18, show that DP&L occupies from 24.58 feet to 34 feet on the pole. GS-11.3, lines 14-17, show that DP&L occupies from 21.92 feet to 34 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 5 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 5 feet of space and the other party is allocated 2 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 three feet of space allotted to it and the electric has eight feet of space allotted to it. GS-7.3 (§1.30(a)). Also in this agreement, AT&T Ohio has been permitted to license and collect revenue from third parties attaching in AT&T Ohio's allotted space. Another agreement with a major investor owned electric company allocates three feet of space to AT&T Ohio and eight to nine feet of space to the electric. GS-7.2 (§2.02(a) & (b)). In this agreement, if the electric company leases to a third party space that is allocated to AT&T Ohio, and AT&T Ohio later needs that space, the electric company is required to provide the space at no expense to AT&T. In the agreement AT&T Ohio has with thirteen electrics, neither AT&T Ohio nor the electric companies have exclusive use of space, but the division of ownership is 35% for AT&T Ohio and 65% for the electric companies. 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 just over 1 foot of space) 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 60% to DP&L and 40% 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 60-40 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 35% to AT&T Ohio and 65% to the electric companies. GS-7.1 (§16(b)). And the ownership objective of another agreement is 42.5% to AT&T Ohio and 57.5% 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.

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

* * *

AT&T OHIO,

Complainant,

v. CASE NO. 06-1509-EL-CSS

THE DAYTON POWER AND

LIGHT COMPANY,

Respondent.

* * *

Deposition of GEORGENE DAWSON, Witness herein, called by the Complainant for cross-examination pursuant to the Rules of Civil Procedure, taken before me, Beverly W. Dillman, a Notary Public in and for the State of Ohio, at the offices of Faruki, Ireland & Cox, P.L.L., 500 Courthouse Plaza, S.W., Ten North Ludlow Street, Dayton, Ohio, on Wednesday, July 25, 2007, at 9:39 o'clock a.m.

* * *

the different costs and expenses were in 1995.

Q. (Nodding head up and down.)

A. I would only be guessing that they would be consistent with what we have in 2006, 2005. There are a lot of things that can affect those, and I don't know what those numbers were at that point. So I would really be guessing.

Q. Okay. What is the highest rate that Dayton Power & Light is currently charging a telephone company for annual pole rental?

A. I believe it is $7.20.

Q. And do you know what the lowest annual rental rate that DP&L is charging a telephone company for pole rental?

A. $3.50.

Q. Is Dayton Power & Light involved in any other proceedings, either in state or federal court, or before a utility commission, regarding the annual pole rental rate between it and telephone companies?

A. I think we have a stay on a court in Montgomery County.

Q. In this matter?

A. In this matter. That's all I know of.

I N D E X

JOINT USE POLE AGREEMENT

between

THE DAYTON POWER AND LIGHT COMPANY

and

THIS AGREEMENT, made and entered into as of this 1st day of January, 1970, by and between THE DAYTON POWER AND LIGHT COMPANY, a corporation organized and existing under the law of the State of Ohio, hereinafter sometimes called the "Electric Company", and

a corporation organized and existing under the law of the State of Ohio, hereinafter sometimes called the "Telephone Company".

W I T N E S S E T H:

WHEREAS, the Electric Company and the Telephone Company desire to establish joint use of their respective poles when 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 own 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:

1. OPERATING ROUTINE

1.1 An operating routine shall be jointly prepared by the parties hereto, and shall be approved respectively by the Chief Engineers of the parties hereto. This routine shall be based on this Joint Use Pole Agreement and shall give the detailed methods and procedures which will be followed in establishing, maintaining and discontinuing the joint use of poles. In case of any ambiguity or conflict between the provisions of this Agreement, and those of the "Operating Routine" the provisions of this Agreement shall be controlling. Said Operating Routine may be changed at any time upon the approval of the Chief Engineer, or his designee, of each of the parties hereto, provided such changes do not conflict with the terms of this Joint Use Pole Agreement.

2. SCOPE OF AGREEMENT

2.1 This Agreement defines the rights and obligations of the parties hereto arising out of the arrangements between them governing the joint use of poles.

2.2 This Agreement shall be in effect in all of the territory in the State of Ohio in which both of the parties to this Agreement now or may hereafter operate, and shall cover all poles of each of the parties now existing or hereafter erected or acquired in the above territory when such poles are brought hereunder in accordance with the procedure hereinafter provided.

2.3 If either party acquires by purchase, merger, consolidation or otherwise, another company conducting a business of the same character as that of such party in the territory where each of the parties operate, any contracts and agreements with the acquired company, covering the joint use of poles, shall be cancelled so that all such poles in the newly acquired territory shall be brought under and be governed by the terms and provisions of this Agreement, effective as of the date of acquisition.

2.4 Each party 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.

3. SPECIFICATIONS

3.1 The joint use of poles covered by this Agreement, except where specifically exempted herein, shall be in conformity with the specifications set forth in the Operating Routine.

4. EXPLANATION OF TERMS

4.1 For the purpose of this Agreement, certain terms when used herein shall have the following meaning:

4.2 "JOINT USE" is the simultaneous use of any pole for the attachments of both parties, in conformity with the specifications referred to in Section 3.

4.3 "JOINT POLE" is a pole occupied simultaneously by the attachments of both parties or upon which space is provided under this Agreement for the attachments of both parties, whether or not such space is actually occupied by attachments.

4.4 "STANDARD JOINT POLE" is a wood pole of minimum height which will provide sufficient space and be of adequate strength for the attachments used by the respective parties as specified in Sections 4.5 to 4.5.3 and as provided in Section 3, Specifications. Normally, a standard joint pole under this Agreement shall be a 35' class 5 pole.

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

4.5.1 For the Electric Company: the uppermost 5 feet.

4.5.2 For the Telephone Company: a space of 2 feet, at sufficient distance below the space of the Electric Company to provide at all times the neutral space required by the specifications referred to in Section 3.

4.5.3 In certain instances, as set forth in the specifications referred to in Section 3, either party may occupy the standard space of the other party.

4.5.4 The standard spaces referred to in Sections 4.5 to 4.5.2, inclusive, shall be at the heights above ground, tracks, or buildings described in the specifications referred to in Section 3.

4.5.5 The space below the Telephone Company's space may be used where mutually agreed upon for such attachments of either party that do not conflict with the specifications referred to in Section 3, and providing that this does not make necessary increasing the height of the pole.

4.5.6 The distribution of space on a pole other than a standard pole, as defined in Section 4.4 hereof, shall be governed by the provisions of that section of the Operating Routine relating to "Excess Height".

4.6 "ATTACHMENTS" are any material or apparatus now or hereafter attached to a joint pole by the parties hereto.

4.7 "SERVICE DROP" is that span of the service used exclusively to serve a customer's or subscriber's dwelling or commercial establishment.

4.8 "TRANSFERRING" is the moving of attachments from one pole to another.

4.9 "REARRANGING" is the moving, relocating or otherwise reconstructing of attachments on a joint pole.

4.10 "LICENSOR" is the party owning a pole at the time such pole is brought under the terms of this Agreement.

4.11 "LICENSEE" is the party having the right under this Agreement to make attachments to the Licensor's pole.

4.12 "RESERVED SPACE" as applied to space on a pole is that unoccupied space provided and maintained by the Licensor, either for its own use, or expressly for the Licensee's use at the Licensee's request.

4.13 "INTERMEDIATE POLE" is an additional joint pole required to be placed in a pole line for the purpose of primarily supporting the attachments of one of the parties.

5. ALLOCATION OF OWNERSHIP OF JOINTLY USED POLES

5.1 The objective percentage of ownership of the total number of poles jointly used or reserved for joint use by the parties hereto is 60% for the Electric Company and 40% for the Telephone Company.

5.2 In order to effectuate the joint use of poles in the manner proposed by this Agreement, whenever it is determined that jointly used poles exist as a result of purchase, merger, consolidation or otherwise with other companies, a check shall be made of these poles in order to determine their height, condition and ownership.

5.3 If it is determined under paragraph 5.2 that ownership in the poles involved should be allocated between the parties hereto to accomplish the intent of the parties hereto as expressed in paragraph 5.1 , each party will sell to the other party all of its right, title and interest in the poles allocated to such other party, free and clear from all encumbrances whatsoever.

5.4 The price to be paid by each party to the other for the poles allocated to it, as hereinabove provided, shall be determined in the manner to be set forth in the Operating Routine, it being understood that in the determination of such price the principles pertaining to future construction set forth in paragraphs 8.1 and 8.1.1 of Section 8 hereof shall be followed.

5.5 After such allocation and mutual transfer of ownership such poles shall be brought under this Agreement in the manner prescribed in Section 6.

6. ESTABLISHING JOINT USE OF EXISTING POLES

6.1 Whenever either party desires to place any attachments or reserve space on any pole of the other for any attachments requiring space thereon which is not then specifically reserved hereunder for its use, such party

shall make written proposal therefor in accordance with the Operating Routine. The proposal when accepted in writing, which acceptance shall not be unreasonably withheld, by the other party shall constitute a permit to use jointly the pole or poles covered thereby. The Licensor shall promptly make any re-arrangements of attachments or pole replacements necessary for the contemplated joint use in accordance with the Operating Routine and any costs incurred in connection therewith shall be borne as provided in Section 8.

7. ESTABLISHING JOINT USE OF NEW POLES

7.1 Each party shall keep the other party informed in writing as to plans for the construction of new pole lines or the reconstruction of existing pole lines which may be used jointly and subject to Section 2.4 hereof, shall offer the other party the joint use of such new poles. If the other party desires joint use of such poles, it shall make written proposal therefor as provided in the Operating Routine. The proposal when accepted in writing by the other party shall constitute a permit to use jointly the poles covered thereby. Both parties shall promptly proceed in accordance with the Operating Routine and any costs

incurred in connection with establishing joint use of such poles shall be borne as provided in Section 8.

7.2 In order to promote the sole ownership by each party of its objective share of jointly used poles, the new poles may, if mutually agreed, be erected and/or owned by the party then owning less than its objective share of jointly used poles under this Agreement, subject to Section 2.4, provided, however, the parties shall endeavor to avoid mixed ownership of poles in any given pole line.

8. PAYMENTS AND COSTS

8.1 A standard joint pole shall be erected at the sole expense of the Licensor. Where a pole other than standard is required due solely to the Licensor's requirements, such pole shall be erected at the sole expense of the Licensor.

8.1.1 Where a pole other than standard is required solely for the benefit of the Licensee, the Licensee shall reimburse the Licensor for the excess cost, if any, of such pole over the cost of a standard pole.

8.2 If the Licensor suffers a loss of remaining pole life due to prematurely replacing existing poles with poles suitable for joint use at the Licensee's request,

the Licensor shall be reimbursed for such loss in the manner set forth in the Operating Routine.

8.3 On each anniversary date of this Agreement, the parties shall determine the total number of poles then in joint use, and the number of such poles owned by each party. For each Electric Company pole containing Telephone Company attachments, the Telephone Company shall be charged by the Electric Company a rental of $7.20 per pole per year. For each Telephone Company pole containing Electric Company attachments, the Electric Company shall be charged by the Telephone Company a rental of $10.80 per pole per year. The agreed rental rates shall then be applied to the number of joint use poles owned by each party. The party entitled to receive the greater rental sum shall be paid by the other the net amount due it provided in 8.4 below.

Billing

The rental charges are based on a mutually agreed annual charge for a standard 35 foot, class 5 pole and computed at 40% of such charge for the Telephone Company and 60% of such charge for the Electric Company. The annual charge shall remain in effect until changed as provided in Section 18 hereof.

8.4 Any payments or costs due either party from the other shall be paid within sixty days after bills therefor have been rendered.

9. MAINTENANCE OF POLES AND ATTACHMENTS

9.1 The Licensor shall, at its own expense, maintain and repair its joint use poles at all times in a safe and serviceable condition and in accordance with the Specifications referred to in Section 3 and shall replace or relocate, if and when required, any of its joint use poles with equivalent poles, in accordance with the provisions of Section 8.

9.2 Each party hereto shall at its own expense at all times maintain its attachments on the joint poles in accordance with the specifications referred to in Section 3 and shall keep them in safe condition and in thorough and complete repair.

9.3 Each party agrees to exercise care in the use of any joint poles, and satisfy itself of their safe condition before performing any work thereon.

9.4 Any existing joint use construction or any joint use construction covered by previous agreements and brought under this Agreement in accordance with Section 2.3

and Section 17 which does not conform to the specifications of this Agreement shall be brought into conformity therewith as follows:

9.4.1 Both parties hereto shall exercise due diligence in bringing into conformity with Section 3, as occasion may arise, any existing joint use construction.

9.4.2 When any of the existing joint use construction of either party is generally reconstructed or any changes are made in the arrangement or characteristics of their circuits or attachments, the new or changed parts shall be brought into conformity with Section 3.

9.4.3 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 Sections 9.1 and 9.2 The cost of bringing such existing joint use construction into conformity with said specifications shall be borne by the parties hereto in the manner specified in this Section and in Section 8.

10. RIGHT OF WAY, GUYS, TREE TRIMMING, ETC.

10.1 Each party shall be responsible for securing its own necessary rights of way, anchor privileges, tree trimming and removal rights, and guying privileges from

property owners or from municipal, state or governmental authorities. It is understood, however, that the parties hereto shall cooperate in obtaining any right of way necessary to be used for any jointly used pole or anchor. Each party shall perform at its own expense the necessary tree trimming to properly clear its own attachments. If any tree removal is beneficial to each of the parties hereto, the cost of such removal shall be shared by the parties.

10.2 No guarantee, oral or otherwise, is given by the Licensor to the Licensee of permission from property owners, municipalities, or others, for the joint use of its poles and/or right of way by the Licensee for the placing thereon of the Licensee's attachments or to trim or remove any trees. If objection is made thereto and the Licensee is unable to adjust the matter satisfactorily within a reasonable time, the Licensor may at any time upon ninety (90) days notice in writing to the Licensee require the Licensee to remove its attachments from the poles involved and the Licensee shall, within ninety (90) days after receipt of such notice, remove its attachments, and/or the anchors, guys, stubs, or brace poles at its own expense. Should the Licensee

fail to so remove its attachments and/or the anchors, guys or brace pole within said time, the Licensor 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 Licensor on demand.

10.3 Unless otherwise specifically agreed to in a particular case, all guys, anchors and brace poles shall be placed by and at the expense of the party whose attachments make such work necessary, and such guys, anchors and brace poles shall remain and be maintained as the sole property of the party placing them.

10.4 All ground bracing required by the Licensee shall be installed and maintained by the Licensor at Licensee's cost and expense. If the ground bracing is required by each of the parties hereto, the cost and expense of installing and maintaining such bracing shall be shared by the parties.

11. PROCEDURE WHEN CHARACTER OF CIRCUITS IS CHANGED

11.1 When either party desires to change the character of its circuits on jointly used poles, which will

necessitate changes in the poles or attachments thereto to comply with the specifications referred to in Section 3, or which in the opinion of either party might affect the safety or operation of the other party's facilities, the party desiring to change the character of its circuits shall give sixty (60) days notice in writing to the other party of such contemplated change (shorter notice, including oral notice, subsequently confirmed in writing, may be given in cases of emergency). In the event that the other party agrees in writing to continued joint use notwithstanding such changed character of the circuits, then joint use of such poles shall be continued with such changes as may be agreed upon in the light of the character of circuits involved, including any changes in construction which may be required to meet the specifications referred to in Section 3. The division of expense of any such necessary changes in construction shall be as mutually agreed upon.

11.2 In the event, however, that the other party fails within thirty (30) days from receipt of such notice to agree in writing to continue the joint use of such poles with such changed character of the circuits, then both parties

shall cooperate in accordance with the following plan:

11.2.1 The parties hereto shall determine and agree upon the most practical and economical method of effectively providing for separate lines, either overhead or underground, and the party whose circuits are to be moved shall promptly carry out the necessary work.

11.2.2 The net expense involved in reestablishing such circuits in the new locations as are necessary to furnish the same or equivalent facilities (which existed in the joint use at the time such change was decided upon) for the party which is to vacate the joint pole line, shall be equitably apportioned between the parties hereto. The cost of plant betterments shall not be included in said net expense, but due consideration shall be given - among other items - to the cost of the new pole line and attachments, cost of new right of way, cost of removing old attachments and placing them in the new locations, salvage adjustments, and vacating party's ownership interest, if any, in the original joint use poles.

11.2.3 The ownership of any new pole line, or underground facilities, constructed in accordance with Sections 11.2 - 11.2.2, inclusive, in a new location shall, unless otherwise

agreed upon by the parties hereto, be vested in the party for whose use it is constructed. The ownership of the old line, when vacated by the owner in accordance with the foregoing procedure, shall be transferred to and vested in the party continuing to use said line.

11.3 In the event the parties hereto cannot agree as to which party is to move its circuits or upon the division of costs to be incurred, then the separation of the lines shall be made as specified below.

11.3.1 On any poles which are jointly used and are the property of the Telephone Company, the Electric Company shall remove its attachments at its sole cost and expense.

11.3.2 On any poles which are jointly used and are the property of the Electric Company, the Telephone Company shall remove its attachments at its sole cost and expense.

12. ABANDONMENT OF JOINTLY USED POLES

12.1 If the Licensor desires at any time to abandon any jointly used pole, it shall give the Licensee notice in writing to that effect at least thirty (30) days prior to the date on which it intends to abandon such pole. If, at the expiration of said period, the Licensor shall have

no attachments on such poles, but the Licensee shall not have removed all of its attachments therefrom, such poles shall thereupon become the property of the Licensee, and the Licensee shall save harmless the former Licensor from all obligation, liability, damage, cost, expense, 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 Licensor a sum based on the pole requirements of the Licensee 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.

12.2 All right, title and interest of the Licensor in abandoned poles hereunder shall be transferred by proper records.

12.3 The Licensee may at any time abandon a joint pole by giving notice thereof in writing to the Licensor and removing therefrom all attachments it may have thereon.

12.4 If both parties at the same time abandon any jointly used pole, each party shall at its own expense remove its attachments therefrom and the Licensor shall thereupon remove the pole.

13. DEFAULTS

13.1 If either party shall fail to comply with any of the terms of this Agreement and such default continues for sixty (60) days after notice thereof in writing from the other party, all rights of the party in default thereunder to occupy jointly the poles in question shall be automatically terminated and the party in default shall thereupon remove its attachments from the poles in question. In case of such removal, the provisions of Section 12 shall apply.

13.2 If either party shall make default in the performance of any work which it is obligated to do under the terms of this Agreement, the other party may elect to do such work, and the party in default shall reimburse the other party for the cost thereof. Failure on the part of the defaulting party to make such payment within thirty (30) days upon presentation of bills therefor, shall, at the election of the other party, constitute a default under Section 13.1.

14. WAIVER OF TERMS OR CONDITIONS

14.1 The failure of either party to enforce or insist upon the compliance with any of the terms or provisions of this Agreement shall not constitute a general waiver or

relinquishment of any such terms or provisions, but the same shall be and remain at all times in full force and effect.

15. FRANCHISES AND ASSIGNMENTS OF RIGHTS

15.1 Each party shall act under its own franchise rights, and neither guarantees unto the other any rights as against any person, firm, corporation (public, quasi-public or private), the state or the public.

15.2 Except as otherwise provided in this Agreement, neither party hereto shall assign or otherwise dispose of this Agreement or any of its rights or interest hereunder, or in any of the joint 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, nor shall such written consent be required, to mortgage any or all of its property, rights, privileges and franchises, or lease, transfer or sell any of them to another corporation organized for the purpose of conducting a business of the same general character as that of such party, or to enter into any merger or consolidation and, in case of the foreclosure of such

mortgage, or in case of such lease, transfer, sale, merger, or consolidation, its rights and obligations hereunder shall pass to, and be acquired and assumed by, the purchaser at foreclosure, the transferee, lessee, purchaser, assignee, merging or consolidating company, or trustee under such merger, as the case may be.

15.3 Authority and responsibility for the placing of attachments of any person, firm or private corporation on the poles of the Licensor other than in the space occupied by or reserved for the Licensee, shall rest with the Licensor and the Licensor shall be entitled to any rental received from such individual or private corporation, provided, however, that such attachments are in accordance with the specifications referred to in Section 3.

15.3.1 Authority and responsibility for the placing of attachments in the space occupied by or reserved for the Licensee by any person, firm or private corporation conducting a business of the same general character as the Licensee shall rest solely with the Licensee and the Licensee shall be entitled to any rental received from such person, firm or private corporation, provided, however, that such

attachments are in accordance with the specifications referred to in Section 3.

15.3.2 In the event the attachments of the person, firm or private corporation requires adjustments in the poles or attachments of the parties hereto the arrangements therefor and the costs thereof shall be made with and paid to the authorizing party who shall arrange for and make payments to the other party in the manner and to the extent provided by Sections 6 and 8 hereof.

15.4 Any attachments, except attachments of a municipal corporation or other political subdivision, covered by such assigned rights or privileges on the joint poles covered by this Agreement in accordance with the above paragraphs, shall be treated in all respects, for the purpose of this Agreement, as if they were the property of the party granting the said rights or privileges, 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.

16. EXISTING RIGHTS OF OTHER PARTIES

16.1 If, prior to bringing certain poles under the terms and conditions of this Agreement, either of the

parties hereto has conferred upon any person, firm or corporation, not parties to this Agreement, by contract or otherwise, rights or privileges to use jointly such poles, nothing herein contained shall be construed as affecting said rights or privileges; and said party shall have the right, by contract or otherwise, to continue and extend said existing rights or privileges, and collect and retain such rental fees as it sees fit.

16.2 Any attachments, except attachments of a municipal corporation or other political subdivision, covered by Section 16.1 on any of the joint poles covered by this Agreement shall be treated in all respects, for the purpose of this Agreement, as if they were the property of the party granting these said rights or privileges, 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.

17. EXISTING CONTRACTS

17.1 Any agreements now existing between the parties hereto or their predecessors for the joint use of poles within the territory covered by this Agreement, are hereby cancelled and terminated. The poles and attachments

covered, or intended to be covered, by such agreements as are hereby terminated shall be brought under and covered by all the terms and conditions of this Agreement in all respects and for all purposes; provided, however, that any undischarged liability or any unsatisfied obligations incurred under such agreements shall not be affected by such termination.

18. REVIEW OF AGREEMENT

18.1 At the expiration of three (3) years after the execution of this Agreement, and at two (2) year periods thereafter, either of the parties hereto may request, in writing, a review of the terms of this Agreement and/or the specifications mentioned herein, and such review shall be made within ninety (90) days after the receipt of such request; provided, however, that nothing herein contained shall prevent changes being made in this Agreement at any time by mutual consent of the parties hereto. The terms of this Agreement shall remain in full force until such revisions or changes are approved in writing by both of the parties hereto.

19. TERM OF AGREEMENT

19.1 This Agreement shall remain in full force

and effect for 10 years from the date hereof, and shall continue in effect thereafter until terminated by either party upon one year's notice in writing to the other party; such termination may be complete or partial, should one party decide to terminate as to a certain area or certain areas only.

20. LIABILITY AND DAMAGES

20.1 Whenever any liability is incurred by either or both of the parties hereto for damages for injuries to the employees or for damages to the property of either party, or for injuries to other persons or their property, arising out of the joint use of poles under this Agreement, which joint use is understood to include the wires and fixtures of parties hereto, installed between and attached to the jointly used poles covered by this Agreement, the liability for such damages, between the parties hereto, shall be as follows:

20.2 Each party shall be liable for all damages for such injuries or damages to persons or property caused solely by its negligence or solely by its failure to comply at any time with the specifications referred to in Section 3.

20.3 Each party shall be liable for all damages for such injuries to its own employees or its own property that are caused by the concurrent negligence of both parties hereto or that are due to causes which cannot be traced to the sole negligence of the other party.

20.4 Each party shall be liable for one-half (1/2) of all damages for such injuries to persons other than employees of either party, and for one-half (1/2) of all damages for such injuries to property not belonging to either party that are caused by the concurrent negligence of both parties hereto or that are due to causes which cannot be traced to the sole negligence of either party.

20.5 All claims for damages arising hereunder that are asserted against or affect both parties hereto shall be dealt with by the parties hereto jointly; provided, however, that in case of any such claims which the parties hereto mutually agree come under the provisions of paragraph 20.4 and where the claimant desires to settle any such claim upon terms acceptable to one of the parties hereto but not to the other party to which said terms are acceptable may, at its election, pay to the other party one-half (1/2) of the expense which such settlement would involve, and thereupon said other party shall be bound to protect the party

making such payment from all further liability and expense on account of such claim.

20.6 In the adjustment between the parties hereto of any claim for any damages arising hereunder, the liability assumed hereunder, by the parties shall include, in addition to the amounts paid to the claimant, all expenses incurred by the parties in connection therewith, which shall comprise costs, disbursements, and other proper charges and expenditures, but shall not include attorney's fees.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in duplicate, and their corporate seals to be affixed thereto by their respective officers hereunto duly authorized, as of the 1st day of January, 1970.

THE DAYTON POWER AND LIGHT COMPANY

By _____
Executive Vice President

_____
Vice President and
Secretary

JOINT USE POLE AGREEMENT

Between

THE DAYTON POWER AND LIGHT COMPANY

And

Dated

JANUARY 1, 1973

I N D E X

JOINT USE POLE AGREEMENT

between

THE DAYTON POWER AND LIGHT COMPANY

and

Y

THIS AGREEMENT, made and entered into as of the 1st day of January, 1973 by and between THE DAYTON POWER AND LIGHT COMPANY, a corporation organized and existing under the laws of the State of Ohio, hereinafter sometimes called the "Electric Company", whose address is 25 North Main Street, Dayton, Ohio 45402, and

a corporation organized and existing under the laws of the State of Ohio, hereinafter sometimes called the "Telephone Company", w

W I T N E S S E T H:

WHEREAS, the Electric Company and the Telephone Company desire to establish joint use of their respective poles when 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 own 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:

1. OPERATING ROUTINE

1.1 An operating routine shall be jointly prepared by the parties hereto, and shall be approved respectively by the Chief Engineers of the parties hereto. This routine shall be based on this Joint Use Pole Agreement and shall give the detailed methods and procedures which will be followed in establishing, maintaining and discontinuing the joint use of poles. In case of any ambiguity or conflict between the provisions of this Agreement, and those of the "Operating Routine" the provisions of this Agreement shall be controlling. Said Operating Routine may be changed at any time upon the approval of the Chief Engineer, or his designee, of each of the parties hereto, provided such changes do not conflict with the terms of this Joint Use Pole Agreement.

2. SCOPE OF AGREEMENT

2.1 This Agreement defines the rights and obligations of the parties hereto arising out of the arrangements between them governing the joint use of poles.

2.2 This Agreement shall be in effect in all of the territory in the State of Ohio in which both of the parties to this Agreement now or may hereafter operate, and shall cover all poles of each of the parties now existing or hereafter erected or acquired in the above territory when such poles are brought hereunder in accordance with the procedure hereinafter provided.

2.3 If either party acquires by purchase, merger, consolidation or otherwise, another company conducting a business of the same character as that of such party in the territory where each of the parties operate, any contracts and agreements with the acquired company, covering the joint use of poles, shall be cancelled so that all such poles in the newly acquired territory shall be brought under and be governed by the terms and provisions of this Agreement, effective as of the date of acquisition.

2.4 Each party 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.

3. SPECIFICATIONS

3.1 The joint use of poles covered by this Agreement, except where specifically exempted herein, shall be in conformity with the Specifications set forth in the Operating Routine.

4. EXPLANATION OF TERMS

4.1 For the purpose of this Agreement, certain terms when used herein shall have the following meaning:

4.2 "JOINT USE" is the simultaneous use of any pole for the attachments of both parties, in conformity with the Specifications referred to in Section 3.

4.3 "JOINT POLE" is a pole occupied simultaneously by the attachments of both parties or upon which space is provided under this Agreement for the attachments of both parties, whether or not such space is actually occupied by attachments.

4.4 "STANDARD JOINT POLE" is a wood pole of minimum height which will provide sufficient space and be of adequate strength for the attachments used by the respective parties as specified in Sections 4.5 to 4.5.3 and as provided in Section 3, Specifications. Normally, a standard joint pole under this Agreement shall be a 35' class 5 pole.

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

4.5.1 For the Electric Company: the uppermost 5 feet.

4.5.2 For the Telephone Company: a space of 2 feet, at sufficient distance below the space of the Electric Company to provide at all times the neutral space required by the Specifications referred to in Section 3.

4.5.3 For the Cable TV or other parties, a space of one foot between the Electric Company space and the Telephone Company space.

4.5.4 In certain instances, as set forth in the Specifications referred to in Section 3, either party may occupy the standard space of the other party.

4.5.5 The standard spaces referred to in Sections 4.5 to 4.5.2, inclusive, shall be at the heights above ground, tracks, or buildings described in the Specifications referred to in Section 3.

4.5.6 The space below the Telephone Company's space may be used where mutually agreed upon for such attachments of either party that do not conflict with the Specifications referred to in Section 3, and providing that this does not make necessary increasing the height of the pole.

4.5.7 The distribution of space on a pole other than a standard pole, as defined in Section 4.4 hereof, shall be governed by the provisions of that section of the Operating Routine relating to "Excess Height".

4.6 "ATTACHMENTS" are any material or apparatus now or hereafter attached to a joint pole by the parties hereto.

4.7 "SERVICE DROP" is that span of the service used exclusively to serve a customer's or subscriber's dwelling or commercial establishment.

4.8 "TRANSFERRING" is the moving of attachments from one pole to another.

4.9 "REARRANGING" is the moving, relocating or otherwise reconstructing of attachments on a joint pole.

4.10 "LICENSOR" is the party owning a pole at the time such pole is brought under the terms of this Agreement.

4.11 "LICENSEE" is the party having the right under this Agreement to make attachments to the Licensor's pole.

4.12 "RESERVED SPACE" as applied to space on a pole is that unoccupied space provided and maintained by the Licensor, either for its own use, or expressly for the Licensee's use at the Licensee's request.

4.13 "INTERMEDIATE POLE" is an additional joint pole required to be placed in a pole line for the purpose of primarily supporting the attachments of one of the parties.

5. ALLOCATION OF OWNERSHIP OF JOINTLY USED POLES

5.1 The objective percentage of ownership of the total number of poles jointly used or reserved for joint use by the parties hereto is 60% for the Electric Company and 40% for the Telephone Company.

5.2 In order to effectuate the joint use of poles in the manner proposed by this Agreement, whenever it is determined that jointly used poles exist as a result of purchase, merger, consolidation or otherwise with other companies, a check shall be made of these poles in order to determine their height, condition and ownership.

5.3 If it is determined under paragraph 5.2 that ownership in the poles involved should be allocated between the parties hereto to accomplish the intent of the parties hereto as expressed in paragraph 5.1, each party will sell to the other party all of its right, title and interest in the poles allocated to such other party, free and clear from all encumbrances whatsoever.

5.4 The price to be paid by each party to the other for the poles allocated to it, as hereinabove provided, shall be determined in the manner to be set forth in the Operating Routine, it being understood that in the determination of such price the principles pertaining to future construction set forth in paragraphs 8.1 and 8.1.1 of Section 8 hereof shall be followed.

5.5 After such allocation and mutual transfer of ownership such poles shall be brought under this Agreement in the manner prescribed in Section 6.

6. ESTABLISHING JOINT USE OF EXISTING POLES

6.1 Whenever either party desires to place any attachments or reserve space on any pole of the other for any attachments requiring space thereon which is not then specifically reserved hereunder for its use, such party

shall make written proposal therefor in accordance with the Operating Routine. The proposal when accepted in writing, which acceptance shall not be unreasonably withheld, by the other party shall constitute a permit to use jointly the pole or poles covered thereby. The Licensor shall promptly make any re-arrangements of attachments or pole replacements necessary for the contemplated joint use in accordance with the Operating Routine and any costs incurred in connection therewith shall be borne as provided in Section 8.

7. ESTABLISHING JOINT USE OF NEW POLES

7.1 Each party shall keep the other party informed in writing as to plans for the construction of new pole lines or the reconstruction of existing pole lines which may be used jointly and subject to Section 2.4 hereof, shall offer the other party the joint use of such new poles. If the other party desires joint use of such poles, it shall make written proposal therefor as provided in the Operating Routine. The proposal when accepted in writing by the other party shall constitute a permit to use jointly the poles covered thereby. Both parties shall promptly proceed in accordance with the Operating Routine and any costs

incurred in connection with establishing joint use of such poles shall be borne as provided in Section 8.

7.2 In order to promote the sole ownership by each party of its objective share of jointly used poles, the new poles may, if mutually agreed, be erected and/or owned by the party then owning less than its objective share of jointly used poles under this Agreement, subject to Section 2.4, provided however, the parties shall endeavor to avoid mixed ownership of poles in any given pole line.

8. PAYMENTS AND COSTS

8.1 A standard joint pole shall be erected at the sole expense of the Licensor. Where a pole other than standard is required due solely to the Licensor's requirements, such pole shall be erected at the sole expense of the Licensor.

8.1.1 Where a pole other than standard is required solely for the benefit of the Licensee, the Licensee shall reimburse the Licensor for the excess cost, if any, of such pole over the cost of a standard pole.

8.2 If the Licensor suffers a loss of remaining pole life due to prematurely replacing existing poles with poles suitable for joint use at the Licensee's request,

the Licensor shall be reimbursed for such loss in the manner set forth in the Operating Routine.

8.3 On each anniversary date of this Agreement, the parties shall determine the total number of poles then in joint use, and the number of such poles owned by each party. For each Electric Company pole containing Telephone Company attachments, the Telephone Company shall be charged by the Electric Company a rental of $7.20 per pole per year. For each Telephone Company pole containing Electric Company attachments, the Electric Company shall be charged by the Telephone Company a rental of $10.80 per pole per year. The agreed rental rates shall then be applied to the number of joint use poles owned by each party. The party entitled to receive the greater rental sum shall be paid by the other the net amount due it provided in 8.4 below.

The rental charges are based on a mutually agreed annual charge for a standard 35 foot, class 5 pole and computed at 40% of such charge for the Telephone Company and 60% of such charge for the Electric Company. The annual charge shall remain in effect until changed as provided in Section 18 hereof.

8.4 As to any rental payments due as a result of the occupation of the one foot space reserved for other parties, the party owning said poles shall be entitled to said rental payments.

8.5 Any payments or costs due either party from the other shall be paid within sixty (60) days after bills therefor have been rendered.

9. MAINTENANCE OF POLES AND ATTACHMENTS

9.1 The Licensor shall, at its own expense, maintain and repair its joint use poles at all times in a safe and serviceable condition and in accordance with the Specifications referred to in Section 3 and shall replace or relocate, if and when required, any of its joint use poles with equivalent poles, in accordance with the provisions of Section 8.

9.2 Each party hereto shall at its own expense at all times maintain its attachments on the joint poles in accordance with the Specifications referred to in Section 3 and shall keep them in safe condition and in thorough and complete repair.

9.3 Each party agrees to exercise care in the use of any joint poles, and satisfy itself of their safe condition before performing any work thereon.

9.4 Any existing joint use construction, or any joint use construction brought under this Agreement in

accordance with Section 2.3 which does not conform to the Specifications of this Agreement shall be brought into conformity therewith as follows:

9.4.1 Both parties hereto shall exercise due diligence in bringing into conformity with Section 3, as occasion may arise, any existing joint use construction.

9.4.2 When any of the existing joint use construction of either party is generally reconstructed or any changes are made in the arrangement or characteristics of their circuits or attachments, the new or changed parts shall be brought into conformity with Section 3.

9.4.3 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 Sections 9.1 and 9.2. The cost of bringing such existing joint use construction into conformity with said Specifications shall be borne by the parties hereto in the manner specified in this Section and in Section 8.

10. RIGHT OF WAY, GUYS, TREE TRIMMING, ETC.

10.1 Each party shall be responsible for securing its own necessary rights of way, anchor privileges, tree trimming and removal rights, and guying privileges from

property owners and/or from municipal, state or other governmental authorities. It is understood, however, that the parties hereto shall cooperate in obtaining any right of way necessary to be used for jointly used facilities. Each party shall perform at its own expense the necessary tree trimming to properly clear its own attachments. If any tree removal is beneficial to each of the parties hereto, the cost of such removal shall be shared by the parties.

10.2 No guarantee, oral or otherwise, is given by the Licensor to the Licensee of permission from property owners, municipalities, or others, for the joint use of its poles and/or right of way by the Licensee for the placing thereon of the Licensee's attachments or to trim or remove any trees. If objection is made thereto and the Licensee is unable to adjust the matter satisfactorily within a reasonable time, the Licensor may at any time upon ninety (90) days notice in writing to the Licensee require the Licensee to remove its attachments from the poles involved and the Licensee shall, within ninety (90) days after receipt of such notice, remove its attachments, and/or the anchors, guys, stubs, or brace poles at its own expense.

Should the Licensee fail to so remove its attachments and/or the anchors, guys or brace pole within said time, the Licensor 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 Licensor on demand.

10.3 Unless otherwise specifically agreed to in a particular case, all guys, anchors and brace poles shall be placed by and at the expense of the party whose attachments make such work necessary, and such guys, anchors and brace poles shall remain and be maintained as the sole property of the party placing them.

10.4 All ground bracing required by the Licensee shall be installed and maintained by the Licensor at Licensee's cost and expense. If the ground bracing is required by each of the parties hereto, the cost and expense of installing and maintaining such bracing shall be shared by the parties.

11. PROCEDURE WHEN CHARACTER OF CIRCUITS IS CHANGED

11.1 When either party desires to change the character of its circuits on jointly used poles, which will

necessitate changes in the poles or attachments thereto to comply with the Specifications referred to in Section 3, or which in the opinion of either party might affect the safety or operation of the other party's facilities, the party desiring to change the character of its circuits shall give sixty (60) days notice in writing to the other party of such contemplated change (shorter notice, including oral notice, subsequently confirmed in writing, may be given in cases of emergency). In the event that the other party agrees in writing to continued joint use notwithstanding such changed character of the circuits, then joint use of such poles shall be continued with such changes as may be agreed upon in the light of the character of circuits involved, including any changes in construction which may be required to meet the Specifications referred to in Section 3. The division of expense of any such necessary changes in construction shall be as mutually agreed upon.

11.2 In the event, however, that the other party fails within thirty (30) days from receipt of such notice to agree in writing to continue the joint use of such poles with such changed character of the circuits, then both parties

shall cooperate in accordance with the following plan:

11.2.1 The parties hereto shall determine and agree upon the most practical and economical method of effectively providing for separate lines, either overhead or underground, and the party whose circuits are to be moved shall promptly carry out the necessary work.

11.2.2 The net expense involved in re-establishing such circuits in the new locations as are necessary to furnish the same or equivalent facilities (which existed in the joint use at the time such change was decided upon) for the party which is to vacate the joint pole line, shall be equitably apportioned between the parties hereto. The cost of plant betterments shall not be included in said net expense, but due consideration shall be given - among other items - to the cost of the new pole line and attachments, cost of new right of way, cost of removing old attachments and placing them in the new locations, salvage adjustments, and vacating party's ownership interest, if any, in the original joint use poles.

11.2.3 The ownership of any new pole line, or underground facilities, constructed in accordance with Sections 11.2 - 11.2.2, inclusive, in a new location shall, unless otherwise

agreed upon by the parties hereto, be vested in the party for whose use it is constructed. The ownership of the old line, when vacated by the owner in accordance with the foregoing procedure, shall be transferred to and vested in the party continuing to use said line.

11.3 In the event the parties hereto cannot agree as to which party is to move its circuits or upon the division of costs to be incurred, then the separation of the lines shall be made as specified below.

11.3.1 On any poles which are jointly used and are the property of the Telephone Company, the Electric Company shall remove its attachments at its sole cost and expense.

11.3.2 On any poles which are jointly used and are the property of the Electric Company, the Telephone Company shall remove its attachments at its sole cost and expense.

12. ABANDONMENT OF JOINTLY USED POLES

12.1 If the Licensor desires at any time to abandon any jointly used pole, it shall give the Licensee notice in writing to that effect at least thirty (30) days prior to the date on which it intends to abandon such pole.

of this Agreement shall not constitute a general waiver or relinquishment of any such terms or provisions, but the same shall be and remain at all times in full force and effect.

15. ASSIGNMENT OF RIGHTS

15.1 Except as otherwise provided herein, neither party hereto shall assign or otherwise dispose of this Agreement, or any of its rights or interests hereunder, or any of the joint poles or attachments or rights of way covered by this Agreement, to any third party, without the written consent of the other party; provided, however, that nothing herein contained shall prevent or limit the right of either party, nor shall such written consent be required, to mortgage any or all of its property, rights, privileges and franchises, or lease, transfer or sell any of them to another corporation organized for the purpose of conducting a business of the same general character as that of such party, or to enter into any merger or consolidation and, in case of the foreclosure of such mortgage, or in case of such lease, transfer, sale, merger or consolidation, its rights and obligations hereunder shall pass to, and be acquired and assumed by,

the purchaser at foreclosure, the transferee, lessee, purchaser, assignee, merging or consolidating company, or trustee under such merger, as the case may be.

15.2 Third Party Attachments - Other Than in Licensee's Space

Authority and responsibility for the placing of attachments of any person, firm, private corporation or other party (Third Party Attachments) on the poles of the Licensor other than in the space occupied by or reserved for the Licensee, shall rest with the Licensor, and the Licensor shall be entitled to all rentals or other payments received from any such other parties. Any such Third Party Attachments shall be made and maintained in accordance with the Specifications referred to in Section 3.

15.2.1 Third Party Attachments - In Licensee's Space

Authority and responsibility for the placing of attachments in the space occupied by or reserved for the Licensee by any person, firm or private corporation conducting a business of the same general character as the Licensee shall rest solely with the Licensee, and the Licensee shall be entitled to any rentals or other charges received from any such other parties. Any such attachments shall be made and maintained in accordance with the Specifications referred to in Section 3.

15.2.2 In the event the Third Party Attachments require adjustments in the poles or attachments of the parties hereto the arrangements therefor and the costs thereof shall be made with and paid to the authorizing party who shall arrange for and make payments to the other party in the manner and to the extent provided by Sections 6 and 8 hereof.

15.3 Any attachments, except attachments of a municipal corporation or other political subdivision, covered by such assigned rights or privileges on the joint poles covered by this Agreement in accordance with the above paragraphs, shall be treated in all respects, for the purpose of this Agreement, as if they were the property of the party granting the said rights or privileges, 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.

16. EXISTING RIGHTS OF OTHER PARTIES

16.1 If, prior to bringing certain poles under the terms and conditions of this Agreement, either of the parties hereto has conferred upon any person, firm or

corporation, not parties to this Agreement, by contract or otherwise, rights or privileges to use jointly such poles, nothing herein contained shall be construed as affecting said rights or privileges; and said party shall have the right, by contract or otherwise, to continue and extend said existing rights or privileges, and collect and retain such rental fees as it sees fit.

16.2 Any attachments, except attachments of a municipal corporation or other political subdivision, covered by Section 16.1 on any of the joint poles covered by this Agreement shall be treated in all respects, for the purpose of this Agreement, as if they were the property of the party granting these said rights or privileges, 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.

17. REVIEW OF AGREEMENT

17.1 At the expiration of three (3) years after the execution of this Agreement, and at two (2) year periods thereafter, either of the parties hereto may request, in writing, a review of the terms of this Agreement and/or the

Specifications mentioned herein, and such review shall be made within ninety (90) days after the receipt of such request; provided, however, that nothing herein contained shall prevent changes being made in this Agreement at any time by mutual consent of the parties hereto. The terms of this Agreement shall remain in full force until such revisions or changes are approved in writing by both of the parties hereto.

18. TERM OF AGREEMENT

18.1 This Agreement shall remain in full force and effect for 10 years from the date hereof, and shall continue in effect thereafter until terminated by either party upon one year's notice in writing to the other party; such termination may be complete or partial, should one party decide to terminate as to a certain area or certain areas only.

19. LIABILITY AND DAMAGES

19.1 Whenever any liability is incurred by either or both of the parties hereto for damages for injuries to the employees or for damages to the property of either party, or for injuries to other persons or their property, arising

out of the joint use of poles under this Agreement, which joint use is understood to include the wires and fixtures of parties hereto, installed between and attached to the jointly used poles covered by this Agreement, the liability for such damages, between the parties hereto, shall be as follows:

19.2 Each party shall be liable for all damages for such injuries or damages to persons or property caused solely by its negligence or solely by its failure to comply at any time with the Specifications referred to in Section 3.

19.3 Each party shall be liable for all damages for such injuries to its own employees or its own property that are caused by the concurrent negligence of both parties hereto or that are due to causes which cannot be traced to the sole negligence of the other party.

19.4 Each party shall be liable for one-half (1/2) of all damages for such injuries to persons other than employees of either party, and for one-half (1/2) of all damages for such injuries to property not belonging to either party that are caused by the concurrent negligence of both parties hereto or that are due to causes which cannot be traced to the sole negligence of either party.

19.5 All claims for damages arising hereunder that are asserted against or affect both parties hereto shall be dealt with by the parties hereto jointly; provided, however, that in case of any such claims which the parties hereto mutually agree come under the provisions of Section 19.4 and where the claimant desires to settle any such claim upon terms acceptable to one of the parties hereto but not to the other party to which said terms are acceptable may, at its election, pay to the other party one-half (1/2) of the expense which such settlement would involve, and thereupon said other party shall be bound to protect the party making such payment from all further liability and expense on account of such claim.

19.6 In the adjustment between the parties hereto of any claim for any damages arising hereunder, the liability assumed hereunder, by the parties shall include, in addition to the amounts paid to the claimant, all expenses incurred by the parties in connection therewith, which shall comprise costs, disbursements, and other proper charges and expenditures, but shall not include attorney's fees.

20. JOINT UNDERGROUND CONSTRUCTION

20.1 Whenever either party proposes to make joint use of trenching for underground lines within the area where both companies operate, it shall notify the other party to determine whether it wishes to participate in such joint use. Should the other party so desire, it shall give prompt written notification of that fact, by use of an approved form, to the party proposing the trenching.

20.2 With respect to any joint use trenching the parties using same shall each bear a proportionate part of trenching costs incurred thereby. Such costs shall include not only direct labor and equipment costs, but also all applicable indirect costs, such as overhead charges and administrative expense. The party doing the trenching work, or under whose direction such work is done, shall bill the sharing party for its share of the trenching costs at reasonable intervals and such party shall make prompt payment for its portion of the trenching expense. Nothing herein shall prevent the parties to this Agreement from agreeing that other parties may also use the same trenches.

In such case the total cost for trenching shall be reasonably apportioned between all such parties using the trench. Should The Dayton Power and Light Company desire to install gas lines in the trench in addition to its underground electric lines, it shall contribute a double portion towards said trenching costs.

20.3 All joint use of trenches shall be made in accordance with orders and regulations of The Public Utilities Commission of Ohio, including Administrative Order No. 72, as amended, and with construction standards of The Dayton Power and Light Company then in effect.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in duplicate, and their corporate seals to be affixed thereto by their respective officers hereunto duly authorized, as of the

THE DAYTON POWER AND LIGHT COMPANY

By _____

E. D. Smith, Group Vice President
Construction, Production and Engineering

_____

W. R. Hutchison, Secretary

JOINT USE POLE AGREEMENT

Between

THE DAYTON POWER AND LIGHT COMPANY

And

Dated

JANUARY 1, 1973

I N D E X

JOINT USE POLE AGREEMENT

between

THE DAYTON POWER AND LIGHT COMPANY

and

THIS AGREEMENT, made and entered into as of the 1st day of January, 1973 by and between THE DAYTON POWER AND LIGHT COMPANY, a corporation organized and existing under the laws of the State of Ohio, hereinafter sometimes called the "Electric Company", whose address is 25 North Main Street, Dayton, Ohio 45402, an

a corporation organized and existing under the laws of the State of Ohio, hereinafter sometimes called the "Telephone Company", w

W I T N E S S E T H:

WHEREAS, the Electric Company and the Telephone Company desire to establish joint use of their respective poles when 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 own 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:

1. OPERATING ROUTINE

1.1 An operating routine shall be jointly prepared by the parties hereto, and shall be approved respectively by the Chief Engineers of the parties hereto. This routine shall be based on this Joint Use Pole Agreement and shall give the detailed methods and procedures which will be followed in establishing, maintaining and discontinuing the joint use of poles. In case of any ambiguity or conflict between the provisions of this Agreement, and those of the "Operating Routine" the provisions of this Agreement shall be controlling. Said Operating Routine may be changed at any time upon the approval of the Chief Engineer, or his designee, of each of the parties hereto, provided such changes do not conflict with the terms of this Joint Use Pole Agreement.

2. SCOPE OF AGREEMENT

2.1 This Agreement defines the rights and obligations of the parties hereto arising out of the arrangements between them governing the joint use of poles.

2.2 This Agreement shall be in effect in all of the territory in the State of Ohio in which both of the parties to this Agreement now or may hereafter operate, and shall cover all poles of each of the parties now existing or hereafter erected or acquired in the above territory when such poles are brought hereunder in accordance with the procedure hereinafter provided.

2.3 If either party acquires by purchase, merger, consolidation or otherwise, another company conducting a business of the same character as that of such party in the territory where each of the parties operate, any contracts and agreements with the acquired company, covering the joint use of poles, shall be cancelled so that all such poles in the newly acquired territory shall be brought under and be governed by the terms and provisions of this Agreement, effective as of the date of acquisition.

2.4 Each party 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.

3. SPECIFICATIONS

3.1 The joint use of poles covered by this Agreement, except where specifically exempted herein, shall be in conformity with the Specifications set forth in the Operating Routine.

4. EXPLANATION OF TERMS

4.1 For the purpose of this Agreement, certain terms when used herein shall have the following meaning:

4.2 "JOINT USE" is the simultaneous use of any pole for the attachments of both parties, in conformity with the Specifications referred to in Section 3.

4.3 "JOINT POLE" is a pole occupied simultaneously by the attachments of both parties or upon which space is provided under this Agreement for the attachments of both parties, whether or not such space is actually occupied by attachments.

4.4 "STANDARD JOINT POLE" is a wood pole of minimum height which will provide sufficient space and be of adequate strength for the attachments used by the respective parties as specified in Sections 4.5 to 4.5.3 and as provided in Section 3, Specifications. Normally, a standard joint pole under this Agreement shall be a 35' class 5 pole.

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

4.5.1 For the Electric Company: the uppermost 5 feet.

4.5.2 For the Telephone Company: a space of 2 feet, at sufficient distance below the space of the Electric Company to provide at all times the neutral space required by the Specifications referred to in Section 3.

4.5.3 For the Cable TV or other parties, a space of one foot between the Electric Company space and the Telephone Company space.

4.5.4 In certain instances, as set forth in the Specifications referred to in Section 3, either party may occupy the standard space of the other party.

4.5.5 The standard spaces referred to in Sections 4.5 to 4.5.2, inclusive, shall be at the heights above ground, tracks, or buildings described in the Specifications referred to in Section 3.

4.5.6 The space below the Telephone Company's space may be used where mutually agreed upon for such attachments of either party that do not conflict with the Specifications referred to in Section 3, and providing that this does not make necessary increasing the height of the pole.

4.5.7 The distribution of space on a pole other than a standard pole, as defined in Section 4.4 hereof, shall be governed by the provisions of that section of the Operating Routine relating to "Excess Height".

4.6 "ATTACHMENTS" are any material or apparatus now or hereafter attached to a joint pole by the parties hereto.

4.7 "SERVICE DROP" is that span of the service used exclusively to serve a customer's or subscriber's dwelling or commercial establishment.

4.8 "TRANSFERRING" is the moving of attachments from one pole to another.

4.9 "REARRANGING" is the moving, relocating or otherwise reconstructing of attachments on a joint pole.

4.10 "LICENSOR" is the party owning a pole at the time such pole is brought under the terms of this Agreement.

4.11 "LICENSEE" is the party having the right under this Agreement to make attachments to the Licensor's pole.

4.12 "RESERVED SPACE" as applied to space on a pole is that unoccupied space provided and maintained by the Licensor, either for its own use, or expressly for the Licensee's use at the Licensee's request.

4.13 "INTERMEDIATE POLE" is an additional joint pole required to be placed in a pole line for the purpose of primarily supporting the attachments of one of the parties.

5. ALLOCATION OF OWNERSHIP OF JOINTLY USED POLES

5.1 The objective percentage of ownership of the total number of poles jointly used or reserved for joint use by the parties hereto is 60% for the Electric Company and 40% for the Telephone Company.

5.2 In order to effectuate the joint use of poles in the manner proposed by this Agreement, whenever it is determined that jointly used poles exist as a result of purchase, merger, consolidation or otherwise with other companies, a check shall be made of these poles in order to determine their height, condition and ownership.

5.3 If it is determined under paragraph 5.2 that ownership in the poles involved should be allocated between the parties hereto to accomplish the intent of the parties hereto as expressed in paragraph 5.1, each party will sell to the other party all of its right, title and interest in the poles allocated to such other party, free and clear from all encumbrances whatsoever.

5.4 The price to be paid by each party to the other for the poles allocated to it, as hereinabove provided, shall be determined in the manner to be set forth in the Operating Routine, it being understood that in the determination of such price the principles pertaining to future construction set forth in paragraphs 8.1 and 8.1.1 of Section 8 hereof shall be followed.

5.5 After such allocation and mutual transfer of ownership such poles shall be brought under this Agreement in the manner prescribed in Section 6.

6. ESTABLISHING JOINT USE OF EXISTING POLES

6.1 Whenever either party desires to place any attachments or reserve space on any pole of the other for any attachments requiring space thereon which is not then specifically reserved hereunder for its use, such party

shall make written proposal therefor in accordance with the Operating Routine. The proposal when accepted in writing, which acceptance shall not be unreasonably withheld, by the other party shall constitute a permit to use jointly the pole or poles covered thereby. The Licensor shall promptly make any re-arrangements of attachments or pole replacements necessary for the contemplated joint use in accordance with the Operating Routine and any costs incurred in connection therewith shall be borne as provided in Section 8.

7. ESTABLISHING JOINT USE OF NEW POLES

7.1 Each party shall keep the other party informed in writing as to plans for the construction of new pole lines or the reconstruction of existing pole lines which may be used jointly and subject to Section 2.4 hereof, shall offer the other party the joint use of such new poles. If the other party desires joint use of such poles, it shall make written proposal therefor as provided in the Operating Routine. The proposal when accepted in writing by the other party shall constitute a permit to use jointly the poles covered thereby. Both parties shall promptly proceed in accordance with the Operating Routine and any costs

incurred in connection with establishing joint use of such poles shall be borne as provided in Section 8.

7.2 In order to promote the sole ownership by each party of its objective share of jointly used poles, the new poles may, if mutually agreed, be erected and/or owned by the party then owning less than its objective share of jointly used poles under this Agreement, subject to Section 2.4, provided however, the parties shall endeavor to avoid mixed ownership of poles in any given pole line.

8. PAYMENTS AND COSTS

8.1 A standard joint pole shall be erected at the sole expense of the Licensor. Where a pole other than standard is required due solely to the Licensor's requirements, such pole shall be erected at the sole expense of the Licensor.

8.1.1 Where a pole other than standard is required solely for the benefit of the Licensee, the Licensee shall reimburse the Licensor for the excess cost, if any, of such pole over the cost of a standard pole.

8.2 If the Licensor suffers a loss of remaining pole life due to prematurely replacing existing poles with poles suitable for joint use at the Licensee's request,

the Licensor shall be reimbursed for such loss in the manner set forth in the Operating Routine.

8.3 On each anniversary date of this Agreement, the parties shall determine the total number of poles then in joint use, and the number of such poles owned by each party. For each Electric Company pole containing Telephone Company attachments, the Telephone Company shall be charged by the Electric Company a rental of $7.20 per pole per year. For each Telephone Company pole containing Electric Company attachments, the Electric Company shall be charged by the Telephone Company a rental of $10.80 per pole per year. The agreed rental rates shall then be applied to the number of joint use poles owned by each party. The party entitled to receive the greater rental sum shall be paid by the other the net amount due it provided in 8.4 below.

The rental charges are based on a mutually agreed annual charge for a standard 35 foot, class 5 pole and computed at 40% of such charge for the Telephone Company and 60% of such charge for the Electric Company. The annual charge shall remain in effect until changed as provided in Section 18 hereof.

8.4 As to any rental payments due as a result of the occupation of the one foot space reserved for other parties, the party owning said poles shall be entitled to said rental payments.

8.5 Any payments or costs due either party from the other shall be paid within sixty (60) days after bills therefor have been rendered.

9. MAINTENANCE OF POLES AND ATTACHMENTS

9.1 The Licensor shall, at its own expense, maintain and repair its joint use poles at all times in a safe and serviceable condition and in accordance with the Specifications referred to in Section 3 and shall replace or relocate, if and when required, any of its joint use poles with equivalent poles, in accordance with the provisions of Section 8.

9.2 Each party hereto shall at its own expense at all times maintain its attachments on the joint poles in accordance with the Specifications referred to in Section 3 and shall keep them in safe condition and in thorough and complete repair.

9.3 Each party agrees to exercise care in the use of any joint poles, and satisfy itself of their safe condition before performing any work thereon.

9.4 Any existing joint use construction, or any joint use construction brought under this Agreement in

accordance with Section 2.3 which does not conform to the Specifications of this Agreement shall be brought into conformity therewith as follows:

9.4.1 Both parties hereto shall exercise due diligence in bringing into conformity with Section 3, as occasion may arise, any existing joint use construction.

9.4.2 When any of the existing joint use construction of either party is generally reconstructed or any changes are made in the arrangement or characteristics of their circuits or attachments, the new or changed parts shall be brought into conformity with Section 3.

9.4.3 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 Sections 9.1 and 9.2. The cost of bringing such existing joint use construction into conformity with said Specifications shall be borne by the parties hereto in the manner specified in this Section and in Section 8.

10. RIGHT OF WAY, GUYS, TREE TRIMMING, ETC.

10.1 Each party shall be responsible for securing its own necessary rights of way, anchor privileges, tree trimming and removal rights, and guying privileges from

property owners and/or from municipal, state or other governmental authorities. It is understood, however, that the parties hereto shall cooperate in obtaining any right of way necessary to be used for jointly used facilities. Each party shall perform at its own expense the necessary tree trimming to properly clear its own attachments. If any tree removal is beneficial to each of the parties hereto, the cost of such removal shall be shared by the parties.

10.2 No guarantee, oral or otherwise, is given by the Licensor to the Licensee of permission from property owners, municipalities, or others, for the joint use of its poles and/or right of way by the Licensee for the placing thereon of the Licensee's attachments or to trim or remove any trees. If objection is made thereto and the Licensee is unable to adjust the matter satisfactorily within a reasonable time, the Licensor may at any time upon ninety (90) days notice in writing to the Licensee require the Licensee to remove its attachments from the poles involved and the Licensee shall, within ninety (90) days after receipt of such notice, remove its attachments, and/or the anchors, guys, stubs, or brace poles at its own expense.

Should the Licensee fail to so remove its attachments and/or the anchors, guys or brace pole within said time, the Licensor 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 Licensor on demand.

10.3 Unless otherwise specifically agreed to in a particular case, all guys, anchors and brace poles shall be placed by and at the expense of the party whose attachments make such work necessary, and such guys, anchors and brace poles shall remain and be maintained as the sole property of the party placing them.

10.4 All ground bracing required by the Licensee shall be installed and maintained by the Licensor at Licensee's cost and expense. If the ground bracing is required by each of the parties hereto, the cost and expense of installing and maintaining such bracing shall be shared by the parties.

11. PROCEDURE WHEN CHARACTER OF CIRCUITS IS CHANGED

11.1 When either party desires to change the character of its circuits on jointly used poles, which will

necessitate changes in the poles or attachments thereto to comply with the Specifications referred to in Section 3, or which in the opinion of either party might affect the safety or operation of the other party's facilities, the party desiring to change the character of its circuits shall give sixty (60) days notice in writing to the other party of such contemplated change (shorter notice, including oral notice, subsequently confirmed in writing, may be given in cases of emergency). In the event that the other party agrees in writing to continued joint use notwithstanding such changed character of the circuits, then joint use of such poles shall be continued with such changes as may be agreed upon in the light of the character of circuits involved, including any changes in construction which may be required to meet the Specifications referred to in Section 3. The division of expense of any such necessary changes in construction shall be as mutually agreed upon.

11.2 In the event, however, that the other party fails within thirty (30) days from receipt of such notice to agree in writing to continue the joint use of such poles with such changed character of the circuits, then both parties

shall cooperate in accordance with the following plan:

11.2.1 The parties hereto shall determine and agree upon the most practical and economical method of effectively providing for separate lines, either overhead or underground, and the party whose circuits are to be moved shall promptly carry out the necessary work.

11.2.2 The net expense involved in re-establishing such circuits in the new locations as are necessary to furnish the same or equivalent facilities (which existed in the joint use at the time such change was decided upon) for the party which is to vacate the joint pole line, shall be equitably apportioned between the parties hereto. The cost of plant betterments shall not be included in said net expense, but due consideration shall be given - among other items - to the cost of the new pole line and attachments, cost of new right of way, cost of removing old attachments and placing them in the new locations, salvage adjustments, and vacating party's ownership interest, if any, in the original joint use poles.

11.2.3 The ownership of any new pole line, or underground facilities, constructed in accordance with Sections 11.2 - 11.2.2, inclusive, in a new location shall, unless otherwise

agreed upon by the parties hereto, be vested in the party for whose use it is constructed. The ownership of the old line, when vacated by the owner in accordance with the foregoing procedure, shall be transferred to and vested in the party continuing to use said line.

11.3 In the event the parties hereto cannot agree as to which party is to move its circuits or upon the division of costs to be incurred, then the separation of the lines shall be made as specified below.

11.3.1 On any poles which are jointly used and are the property of the Telephone Company, the Electric Company shall remove its attachments at its sole cost and expense.

11.3.2 On any poles which are jointly used and are the property of the Electric Company, the Telephone Company shall remove its attachments at its sole cost and expense.

12. ABANDONMENT OF JOINTLY USED POLES

12.1 If the Licensor desires at any time to abandon any jointly used pole, it shall give the Licensee notice in writing to that effect at least thirty (30) days prior to the date on which it intends to abandon such pole.

If, at the expiration of said period, the Licensor shall have no attachments on such poles, but the Licensee shall not have removed all of its attachments therefrom, such poles shall thereupon become the property of the Licensee, and the Licensee shall save harmless the former Licensor from all obligation, liability, damage, cost, expense, 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 Licensor a sum based on the pole requirements of the Licensee 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.

12.2 All right, title and interest of the Licensor in abandoned poles hereunder shall be transferred by proper records.

12.3 The Licensee may at any time abandon a joint pole by giving notice thereof in writing to the Licensor and removing therefrom all attachments it may have thereon.

12.4 If both parties at the same time abandon any jointly used pole, each party shall at its own expense remove its attachments therefrom and the Licensor shall thereupon remove the pole.

13. DEFAULTS

13.1 If either party shall fail to comply with any of the terms of this Agreement and such default continues for sixty (60) days after notice thereof in writing from the other party, all rights of the party in default thereunder to occupy jointly the poles in question shall be automatically terminated and the party in default shall thereupon remove its attachments from the poles in quastion. In case of such removal, the provisions of Section 12 shall apply.

13.2 If either party shall make default in the performance of any work which it is obligated to do under the terms of this Agreement, the other party may elect to do such work, and the party in default shall reimburse the other party for the cost thereof. Failure on the part of the defaulting party to make such payment within thirty (30) days upon presentation of bills therefor, shall, at the election of the other party, constitute a default under Section 13.1.

14. WAIVER OF TERMS OR CONDITIONS

14.1 The failure of either party to enforce or insist upon the compliance with any of the terms or provisions

of this Agreement shall not constitute a general waiver or relinquishment of any such terms or provisions, but the same shall be and remain at all times in full force and affect.

15. ASSIGNMENT OF RIGHTS

15.1 Except as otherwise provided herein, neither party hereto shall assign or otherwise dispose of this Agreement, or any of its rights or interests hereunder, or any of the joint poles or attachments or rights of way covered by this Agreement, to any third party, without the written consent of the other party; provided, however, that nothing herein contained shall prevent or limit the right of either party, nor shall such written consent be required, to mortgage any or all of its property, rights, privileges and franchises, or lease, transfer or sell any of them to another corporation organized for the purpose of conducting a business of the same general character as that of such party, or to enter into any merger or consolidation and, in case of the foreclosure of such mortgage, or in case of such lease, transfer, sale, merger or consolidation, its rights and obligations hereunder shall pass to, and be acquired and assumed by,

the purchaser at foreclosure, the transferee, lessee, purchaser, assignee, merging or consolidating company, or trustee under such merger, as the case may be.

15.2 Third Party Attachments - Other Than in Licensee's Space

Authority and responsibility for the placing of attachments of any person, firm, private corporation or other party (Third Party Attachments) on the poles of the Licensor other than in the space occupied by or reserved for the Licensee, shall rest with the Licensor, and the Licensor shall be entitled to all rentals or other payments received from any such other parties. Any such Third Party Attachments shall be made and maintained in accordance with the Specifications referred to in Section 3.

15.2.1 Third Party Attachments - In Licensee's Space

Authority and responsibility for the placing of attachments in the space occupied by or reserved for the Licensee by any person, firm or private corporation conducting a business of the same general character as the Licensee shall rest solely with the Licensee, and the Licensee shall be entitled to any rentals or other charges received from any such other parties. Any such attachments shall be made and maintained in accordance with the Specifications referred to in Section 3.

15.2.2 In the event the Third Party Attachments require adjustments in the poles or attachments of the parties hereto the arrangements therefor and the costs thereof shall be made with and paid to the authorizing party who shall arrange for and make payments to the other party in the manner and to the extent provided by Sections 6 and 8 hereof.

15.3 Any attachments, except attachments of a municipal corporation or other political subdivision, covered by such assigned rights or privileges on the joint poles covered by this Agreement in accordance with the above paragraphs, shall be treated in all respects, for the purpose of this Agreement, as if they were the property of the party granting the said rights or privileges, 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.

16. EXISTING RIGHTS OF OTHER PARTIES

16.1 If, prior to bringing certain poles under the terms and conditions of this Agreement, either of the parties hereto has conferred upon any person, firm or

corporation, not parties to this Agreement, by contract or otherwise, rights or privileges to use jointly such poles, nothing herein contained shall be construed as affecting said rights or privileges; and said party shall have the right, by contract or otherwise, to continue and extend said existing rights or privileges, and collect and retain such rental fees as it sees fit.

16.2 Any attachments, except attachments of a municipal corporation or other political subdivision, covered by Section 16.1 on any of the joint poles covered by this Agreement shall be treated in all respects, for the purpose of this Agreement, as if they were the property of the party granting these said rights or privileges, 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.

17. REVIEW OF AGREEMENT

17.1 At the expiration of three (3) years after the execution of this Agreement, and at two (2) year periods thereafter, either of the parties hereto may request, in writing, a review of the terms of this Agreement and/or the

Specifications mentioned herein, and such review shall be made within ninety (90) days after the receipt of such request; provided, however, that nothing herein contained shall prevent changes being made in this Agreement at any time by mutual consent of the parties hereto. The terms of this Agreement shall remain in full force until such revisions or changes are approved in writing by both of the parties hereto.

18. TERM OF AGREEMENT

18.1 This Agreement shall remain in full force and effect for 10 years from the date hereof, and shall continue in effect thereafter until terminated by either party upon one year's notice in writing to the other party; such termination may be complete or partial, should one party decide to terminate as to a certain area or certain areas only.

19. LIABILITY AND DAMAGES

19.1 Whenever any liability is incurred by either or both of the parties hereto for damages for injuries to the employees or for damages to the property of either party, or for injuries to other persons or their property, arising

out of the joint use of poles under this Agreement, which joint use is understood to include the wires and fixtures of parties hereto, installed between and attached to the jointly used poles covered by this Agreement, the liability for such damages, between the parties hereto, shall be as follows:

19.2 Each party shall be liable for all damages for such injuries or damages to persons or property caused solely by its negligence or solely by its failure to comply at any time with the Specifications referred to in Section 3.

19.3 Each party shall be liable for all damages for such injuries to its own employees or its own property that are caused by the concurrent negligence of both parties hereto or that are due to causes which cannot be traced to the sole negligence of the other party.

19.4 Each party shall be liable for one-half (1/2) of all damages for such injuries to persons other than employees of either party, and for one-half (1/2) of all damages for such injuries to property not belonging to either party that are caused by the concurrent negligence of both parties hereto or that are due to causes which cannot be traced to the sole negligence of either party.

19.5 All claims for damages arising hereunder that are asserted against or affect both parties hereto shall be dealt with by the parties hereto jointly; provided, however, that in case of any such claims which the parties hereto mutually agree come under the provisions of Section 19.4 and where the claimant desires to settle any such claim upon terms acceptable to one of the parties hereto but not to the other party to which said terms are acceptable may, at its election, pay to the other party one-half (1/2) of the expense which such settlement would involve, and thereupon said other party shall be bound to protect the party making such payment from all further liability and expense on account of such claim.

19.6 In the adjustment between the parties hereto of any claim for any damages arising hereunder, the liability assumed hereunder, by the parties shall include, in addition to the amounts paid to the claimant, all expenses incurred by the parties in connection therewith, which shall comprise costs, disbursements, and other proper charges and expenditures, but shall not include attorney's fees.

20. JOINT UNDERGROUND CONSTRUCTION

20.1 Whenever either party proposes to make joint use of trenching for underground lines within the area where both companies operate, it shall notify the other party to determine whether it wishes to participate in such joint use. Should the other party so desire, it shall give prompt written notification of that fact, by use of an approved form, to the party proposing the trenching.

20.2 With respect to any joint use trenching the parties using same shall each bear a proportionate part of trenching costs incurred thereby. Such costs shall include not only direct labor and equipment costs, but also all applicable indirect costs, such as overhead charges and administrative expense. The party doing the trenching work, or under whose direction such work is done, shall bill the sharing party for its share of the trenching costs at reasonable intervals and such party shall make prompt payment for its portion of the trenching expense. Nothing herein shall prevent the parties to this Agreement from agreeing that other parties may also use the same trenches.

In such case the total cost for trenching shall be reasonably apportioned between all such parties using the trench. Should The Dayton Power and Light Company desire to install gas lines in the trench in addition to its underground electric lines, it shall contribute a double portion towards said trenching costs.

20.3 All joint use of trenches shall be made in accordance with orders and regulations of The Public Utilities Commission of Ohio, including Administrative Order No. 72, as amended, and with construction standards of The Dayton Power and Light Company then in effect.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in duplicate, and their corporate seals to be affixed thereto by their respective officers hereunto duly authorized, as of the

THE DAYTON POWER AND LIGHT COMPANY

By _____
E. D. Smith, Group Vice President
Construction, Production and Engineering

_____
W. R. Hutchison, Secretary

JOINT USE POLE AGREEMENT

Between

THE DAYTON POWER AND LIGHT COMPANY

And

Dated

JANUARY 1, 1973

I N D E X

JOINT USE POLE AGREEMENT

between

THE DAYTON POWER AND LIGHT COMPANY

and

THIS AGREEMENT, made and entered into as of the 1st day of January, 1973 by and between THE DAYTON POWER AND LIGHT COMPANY, a corporation organized and existing under the laws of the State of Ohio, hereinafter sometimes called the "Electric Company", whose address is 25 North Main Street, Dayton, Ohio 45402, and

a corporation organized and existing under the laws of the State of Ohio, hereinafter sometimes called the "Telephone Company", whose addres

W I T N E S S E T H:

WHEREAS, the Electric Company and the Telephone Company desire to establish joint use of their respective poles when 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 own 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:

1. OPERATING ROUTINE

1.1 An operating routine shall be jointly prepared by the parties hereto, and shall be approved respectively by the Chief Engineers of the parties hereto. This routine shall be based on this Joint Use Pole Agreement and shall give the detailed methods and procedures which will be followed in establishing, maintaining and discontinuing the joint use of poles. In case of any ambiguity or conflict between the provisions of this Agreement, and those of the "Operating Routine" the provisions of this Agreement shall be controlling. Said Operating Routine may be changed at any time upon the approval of the Chief Engineer, or his designee, of each of the parties hereto, provided such changes do not conflict with the terms of this Joint Use Pole Agreement.

2. SCOPE OF AGREEMENT

2.1 This Agreement defines the rights and obligations of the parties hereto arising out of the arrangements between them governing the joint use of poles.

2.2 This Agreement shall be in effect in all of the territory in the State of Ohio in which both of the parties to this Agreement now or may hereafter operate, and shall cover all poles of each of the parties now existing or hereafter erected or acquired in the above territory when such poles are brought hereunder in accordance with the procedure hereinafter provided.

2.3 If either party acquires by purchase, merger, consolidation or otherwise, another company conducting a business of the same character as that of such party in the territory where each of the parties operate, any contracts and agreements with the acquired company, covering the joint use of poles, shall be cancelled so that all such poles in the newly acquired territory shall be brought under and be governed by the terms and provisions of this Agreement, effective as of the date of acquisition.

2.4 Each party 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.

3. SPECIFICATIONS

3.1 The joint use of poles covered by this Agreement, except where specifically exempted herein, shall be in conformity with the Specifications set forth in the Operating Routine.

4. EXPLANATION OF TERMS

4.1 For the purpose of this Agreement, certain terms when used herein shall have the following meaning:

4.2 "JOINT USE" is the simultaneous use of any pole for the attachments of both parties, in conformity with the Specifications referred to in Section 3.

4.3 "JOINT POLE" is a pole occupied simultaneously by the attachments of both parties or upon which space is provided under this Agreement for the attachments of both parties, whether or not such space is actually occupied by attachments.

4.4 "STANDARD JOINT POLE" is a wood pole of minimum height which will provide sufficient space and be of adequate strength for the attachments used by the respective parties as specified in Sections 4.5 to 4.5.3 and as provided in Section 3, Specifications. Normally, a standard joint pole under this Agreement shall be a 35' class 5 pole.

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

4.5.1 For the Electric Company: the uppermost 5 feet.

4.5.2 For the Telephone Company: a space of 2 feet, at sufficient distance below the space of the Electric Company to provide at all times the neutral space required by the Specifications referred to in Section 3.

4.5.3 For the Cable TV or other parties, a space of one foot between the Electric Company space and the Telephone Company space.

4.5.4 In certain instances, as set forth in the Specifications referred to in Section 3, either party may occupy the standard space of the other party.

4.5.5 The standard spaces referred to in Sections 4.5 to 4.5.2, inclusive, shall be at the heights above ground, tracks, or buildings described in the Specifications referred to in Section 3.

4.5.6 The space below the Telephone Company's space may be used where mutually agreed upon for such attachments of either party that do not conflict with the Specifications referred to in Section 3, and providing that this does not make necessary increasing the height of the pole.

4.5.7 The distribution of space on a pole other than a standard pole, as defined in Section 4.4 hereof, shall be governed by the provisions of that section of the Operating Routine relating to "Excess Height".

4.6 "ATTACHMENTS" are any material or apparatus now or hereafter attached to a joint pole by the parties hereto.

4.7 "SERVICE DROP" is that span of the service used exclusively to serve a customer's or subscriber's dwelling or commercial establishment.

4.8 "TRANSFERRING" is the moving of attachments from one pole to another.

4.9 "REARRANGING" is the moving, relocating or otherwise reconstructing of attachments on a joint pole.

4.10 "LICENSOR" is the party owning a pole at the time such pole is brought under the terms of this Agreement.

4.11 "LICENSEE" is the party having the right under this Agreement to make attachments to the Licensor's pole.

4.12 "RESERVED SPACE" as applied to space on a pole is that unoccupied space provided and maintained by the Licensor, either for its own use, or expressly for the Licensee's use at the Licensee's request.

4.13 "INTERMEDIATE POLE" is an additional joint pole required to be placed in a pole line for the purpose of primarily supporting the attachments of one of the parties.

5. ALLOCATION OF OWNERSHIP OF JOINTLY USED POLES

5.1 The objective percentage of ownership of the total number of poles jointly used or reserved for joint use by the parties hereto is 60% for the Electric Company and 40% for the Telephone Company.

5.2 In order to effectuate the joint use of poles in the manner proposed by this Agreement, whenever it is determined that jointly used poles exist as a result of purchase, merger, consolidation or otherwise with other companies, a check shall be made of these poles in order to determine their height, condition and ownership.

5.3 If it is determined under paragraph 5.2 that ownership in the poles involved should be allocated between the parties hereto to accomplish the intent of the parties hereto as expressed in paragraph 5.1, each party will sell to the other party all of its right, title and interest in the poles allocated to such other party, free and clear from all encumbrances whatsoever.

5.4 The price to be paid by each party to the other for the poles allocated to it, as hereinabove provided, shall be determined in the manner to be set forth in the Operating Routine, it being understood that in the determination of such price the principles pertaining to future construction set forth in paragraphs 8.1 and 8.1.1 of Section 8 hereof shall be followed.

5.5 After such allocation and mutual transfer of ownership such poles shall be brought under this Agreement in the manner prescribed in Section 6.

6. ESTABLISHING JOINT USE OF EXISTING POLES

6.1 Whenever either party desires to place any attachments or reserve space on any pole of the other for any attachments requiring space thereon which is not then specifically reserved hereunder for its use, such party

shall make written proposal therefor in accordance with the Operating Routine. The proposal when accepted in writing, which acceptance shall not be unreasonably withheld, by the other party shall constitute a permit to use jointly the pole or poles covered thereby. The Licensor shall promptly make any re-arrangements of attachments or pole replacements necessary for the contemplated joint use in accordance with the Operating Routine and any costs incurred in connection therewith shall be borne as provided in Section 8.

7. ESTABLISHING JOINT USE OF NEW POLES

7.1 Each party shall keep the other party informed in writing as to plans for the construction of new pole lines or the reconstruction of existing pole lines which may be used jointly and subject to Section 2.4 hereof, shall offer the other party the joint use of such new poles. If the other party desires joint use of such poles, it shall make written proposal therefor as provided in the Operating Routine. The proposal when accepted in writing by the other party shall constitute a permit to use jointly the poles covered thereby. Both parties shall promptly proceed in accordance with the Operating Routine and any costs

incurred in connection with establishing joint use of such poles shall be borne as provided in Section 8.

7.2 In order to promote the sole ownership by each party of its objective share of jointly used poles, the new poles may, if mutually agreed, be erected and/or owned by the party then owning less than its objective share of jointly used poles under this Agreement, subject to Section 2.4, provided however, the parties shall endeavor to avoid mixed ownership of poles in any given pole line.

8. PAYMENTS AND COSTS

8.1 A standard joint pole shall be erected at the sole expense of the Licensor. Where a pole other than standard is required due solely to the Licensor's requirements, such pole shall be erected at the sole expense of the Licensor.

8.1.1 Where a pole other than standard is required solely for the benefit of the Licensee, the Licensee shall reimburse the Licensor for the excess cost, if any, of such pole over the cost of a standard pole.

8.2 If the Licensor suffers a loss of remaining pole life due to prematurely replacing existing poles with poles suitable for joint use at the Licensee's request,

the Licensor shall be reimbursed for such loss in the manner set forth in the Operating Routine.

8.3 On each anniversary date of this Agreement, the parties shall determine the total number of poles then in joint use, and the number of such poles owned by each party. For each Electric Company pole containing Telephone Company attachments, the Telephone Company shall be charged by the Electric Company a rental of $7.20 per pole per year. For each Telephone Company pole containing Electric Company attachments, the Electric Company shall be charged by the Telephone Company a rental of $10.80 per pole per year. The agreed rental rates shall then be applied to the number of joint use poles owned by each party. The party entitled to receive the greater rental sum shall be paid by the other the net amount due it provided in 8.4 below.

The rental charges are based on a mutually agreed annual charge for a standard 35 foot, class 5 pole and computed at 40% of such charge for the Telephone Company and 60% of such charge for the Electric Company. The annual charge shall remain in effect until changed as provided in Section 18 hereof.

8.4 As to any rental payments due as a result of the occupation of the one foot space reserved for other parties, the party owning said poles shall be entitled to said rental payments.

8.5 Any payments or costs due either party from the other shall be paid within sixty (60) days after bills therefor have been rendered.

9. MAINTENANCE OF POLES AND ATTACHMENTS

9.1 The Licensor shall, at its own expense, maintain and repair its joint use poles at all times in a safe and serviceable condition and in accordance with the Specifications referred to in Section 3 and shall replace or relocate, if and when required, any of its joint use poles with equivalent poles, in accordance with the provisions of Section 8.

9.2 Each party hereto shall at its own expense at all times maintain its attachments on the joint poles in accordance with the Specifications referred to in Section 3 and shall keep them in safe condition and in thorough and complete repair.

9.3 Each party agrees to exercise care in the use of any joint poles, and satisfy itself of their safe condition before performing any work thereon.

9.4 Any existing joint use construction, or any joint use construction brought under this Agreement in

accordance with Section 2.3 which does not conform to the Specifications of this Agreement shall be brought into conformity therewith as follows:

9.4.1 Both parties hereto shall exercise due diligence in bringing into conformity with Section 3, as occasion may arise, any existing joint use construction.

9.4.2 When any of the existing joint use construction of either party is generally reconstructed or any changes are made in the arrangement or characteristics of their circuits or attachments, the new or changed parts shall be brought into conformity with Section 3.

9.4.3 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 Sections 9.1 and 9.2. The cost of bringing such existing joint use construction into conformity with said Specifications shall be borne by the parties hereto in the manner specified in this Section and in Section 8.

10. RIGHT OF WAY, GUYS, TREE TRIMMING, ETC.

10.1 Each party shall be responsible for securing its own necessary rights of way, anchor privileges, tree trimming and removal rights, and guying privileges from

property owners and/or from municipal, state or other governmental authorities. It is understood, however, that the parties hereto shall cooperate in obtaining any right of way necessary to be used for jointly used facilities. Each party shall perform at its own expense the necessary tree trimming to properly clear its own attachments. If any tree removal is beneficial to each of the parties hereto, the cost of such removal shall be shared by the parties.

10.2 No guarantee, oral or otherwise, is given by the Licensor to the Licensee of permission from property owners, municipalities, or others, for the joint use of its poles and/or right of way by the Licensee for the placing thereon of the Licensee's attachments or to trim or remove any trees. If objection is made thereto and the Licensee is unable to adjust the matter satisfactorily within a reasonable time, the Licensor may at any time upon ninety (90) days notice in writing to the Licensee require the Licensee to remove its attachments from the poles involved and the Licensee shall, within ninety (90) days after receipt of such notice, remove its attachments, and/or the anchors, guys, stubs, or brace poles at its own expense.

Should the Licensee fail to so remove its attachments and/or the anchors, guys or brace pole within said time, the Licensor 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 Licensor on demand.

10.3 Unless otherwise specifically agreed to in a particular case, all guys, anchors and brace poles shall be placed by and at the expense of the party whose attachments make such work necessary, and such guys, anchors and brace poles shall remain and be maintained as the sole property of the party placing them.

10.4 All ground bracing required by the Licensee shall be installed and maintained by the Licensor at Licensee's cost and expense. If the ground bracing is required by each of the parties hereto, the cost and expense of installing and maintaining such bracing shall be shared by the parties.

11. PROCEDURE WHEN CHARACTER OF CIRCUITS IS CHANGED

11.1 When either party desires to change the character of its circuits on jointly used poles, which will

necessitate changes in the poles or attachments thereto to comply with the Specifications referred to in Section 3, or which in the opinion of either party might affect the safety or operation of the other party's facilities, the party desiring to change the character of its circuits shall give sixty (60) days notice in writing to the other party of such contemplated change (shorter notice, including oral notice, subsequently confirmed in writing, may be given in cases of emergency). In the event that the other party agrees in writing to continued joint use notwithstanding such changed character of the circuits, then joint use of such poles shall be continued with such changes as may be agreed upon in the light of the character of circuits involved, including any changes in construction which may be required to meet the Specifications referred to in Section 3. The division of expense of any such necessary changes in construction shall be as mutually agreed upon.

11.2 In the event, however, that the other party fails within thirty (30) days from receipt of such notice to agree in writing to continue the joint use of such poles with such changed character of the circuits, then both parties

shall cooperate in accordance with the following plan:

11.2.1 The parties hereto shall determine and agree upon the most practical and economical method of effectively providing for separate lines, either overhead or underground, and the party whose circuits are to be moved shall promptly carry out the necessary work.

11.2.2 The net expense involved in re-establishing such circuits in the new locations as are necessary to furnish the same or equivalent facilities (which existed in the joint use at the time such change was decided upon) for the party which is to vacate the joint pole line, shall be equitably apportioned between the parties hereto. The cost of plant betterments shall not be included in said net expense, but due consideration shall be given - among other items - to the cost of the new pole line and attachments, cost of new right of way, cost of removing old attachments and placing them in the new locations, salvage adjustments, and vacating party's ownership interest, if any, in the original joint use poles.

11.2.3 The ownership of any new pole line, or underground facilities, constructed in accordance with Sections 11.2 - 11.2.2, inclusive, in a new location shall, unless otherwise

agreed upon by the parties hereto, be vested in the party for whose use it is constructed. The ownership of the old line, when vacated by the owner in accordance with the foregoing procedure, shall be transferred to and vested in the party continuing to use said line.

11.3 In the event the parties hereto cannot agree as to which party is to move its circuits or upon the division of costs to be incurred, then the separation of the lines shall be made as specified below.

11.3.1 On any poles which are jointly used and are the property of the Telephone Company, the Electric Company shall remove its attachments at its sole cost and expense.

11.3.2 On any poles which are jointly used and are the property of the Electric Company, the Telephone Company shall remove its attachments at its sole cost and expense.

12. ABANDONMENT OF JOINTLY USED POLES

12.1 If the Licensor desires at any time to abandon any jointly used pole, it shall give the Licensee notice in writing to that effect at least thirty (30) days prior to the date on which it intends to abandon such pole.

If, at the expiration of said period, the Licensor shall have no attachments on such poles, but the Licensee shall not have removed all of its attachments therefrom, such poles shall thereupon become the property of the Licensee, and the Licensee shall save harmless the former Licensor from all obligation, liability, damage, cost, expense, 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 Licensor a sum based on the pole requirements of the Licensee 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.

12.2 All right, title and interest of the Licensor in abandoned poles hereunder shall be transferred by proper records.

12.3 The Licensee may at any time abandon a joint pole by giving notice thereof in writing to the Licensor and removing therefrom all attachments it may have thereon.

12.4 If both parties at the same time abandon any jointly used pole, each party shall at its own expense remove its attachments therefrom and the Licensor shall thereupon remove the pole.

13. DEFAULTS

13.1 If either party shall fail to comply with any of the terms of this Agreement and such default continues for sixty (60) days after notice thereof in writing from the other party, all rights of the party in default thereunder to occupy jointly the poles in question shall be automatically terminated and the party in default shall thereupon remove its attachments from the poles in question. In case of such removal, the provisions of Section 12 shall apply.

13.2 If either party shall make default in the performance of any work which it is obligated to do under the terms of this Agreement, the other party may elect to do such work, and the party in default shall reimburse the other party for the cost thereof. Failure on the part of the defaulting party to make such payment within thirty (30) days upon presentation of bills therefor, shall, at the election of the other party, constitute a default under Section 13.1.

14. WAIVER OF TERMS OR CONDITIONS

14.1 The failure of either party to enforce or insist upon the compliance with any of the terms or provisions

of this Agreement shall not constitute a general waiver or relinquishment of any such terms or provisions, but the same shall be and remain at all times in full force and effect.

15. ASSIGNMENT OF RIGHTS

15.1 Except as otherwise provided herein, neither party hereto shall assign or otherwise dispose of this Agreement, or any of its rights or interests hereunder, or any of the joint poles or attachments or rights of way covered by this Agreement, to any third party, without the written consent of the other party; provided, however, that nothing herein contained shall prevent or limit the right of either party, nor shall such written consent be required, to mortgage any or all of its property, rights, privileges and franchises, or lease, transfer or sell any of them to another corporation organized for the purpose of conducting a business of the same general character as that of such party, or to enter into any merger or consolidation and, in case of the foreclosure of such mortgage, or in case of such lease, transfer, sale, merger or consolidation, its rights and obligations hereunder shall pass to, and be acquired and assumed by,

the purchaser at foreclosure, the transferee, lessee, purchaser, assignee, merging or consolidating company, or trustee under such merger, as the case may be.

15.2 Third Party Attachments - Other Than in Licensee's Space

Authority and responsibility for the placing of attachments of any person, firm, private corporation or other party (Third Party Attachments) on the poles of the Licensor other than in the space occupied by or reserved for the Licensee, shall rest with the Licensor, and the Licensor shall be entitled to all rentals or other payments received from any such other parties. Any such Third Party Attachments shall be made and maintained in accordance with the Specifications referred to in Section 3.

15.2.1 Third Party Attachments - In Licensee's Space

Authority and responsibility for the placing of attachments in the space occupied by or reserved for the Licensee by any person, firm or private corporation conducting a business of the same general character as the Licensee shall rest solely with the Licensee, and the Licensee shall be entitled to any rentals or other charges received from any such other parties. Any such attachments shall be made and maintained in accordance with the Specifications referred to in Section 3.

15.2.2 In the event the Third Party Attachments require adjustments in the poles or attachments of the parties hereto the arrangements therefor and the costs thereof shall be made with and paid to the authorizing party who shall arrange for and make payments to the other party in the manner and to the extent provided by Sections 6 and 8 hereof.

15.3 Any attachments, except attachments of a municipal corporation or other political subdivision, covered by such assigned rights or privileges on the joint poles covered by this Agreement in accordance with the above paragraphs, shall be treated in all respects, for the purpose of this Agreement, as if they were the property of the party granting the said rights or privileges, 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.

16. EXISTING RIGHTS OF OTHER PARTIES

16.1 If, prior to bringing certain poles under the terms and conditions of this Agreement, either of the parties hereto has conferred upon any person, firm or

corporation, not parties to this Agreement, by contract or otherwise, rights or privileges to use jointly such poles, nothing herein contained shall be construed as affecting said rights or privileges; and said party shall have the right, by contract or otherwise, to continue and extend said existing rights or privileges, and collect and retain such rental fees as it sees fit.

16.2 Any attachments, except attachments of a municipal corporation or other political subdivision, covered by Section 16.1 on any of the joint poles covered by this Agreement shall be treated in all respects, for the purpose of this Agreement, as if they were the property of the party granting these said rights or privileges, 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.

17. REVIEW OF AGREEMENT

17.1 At the expiration of three (3) years after the execution of this Agreement, and at two (2) year periods thereafter, either of the parties hereto may request, in writing, a review of the terms of this Agreement and/or the

Specifications mentioned herein, and such review shall be made within ninety (90) days after the receipt of such request; provided, however, that nothing herein contained shall prevent changes being made in this Agreement at any time by mutual consent of the parties hereto. The terms of this Agreement shall remain in full force until such revisions or changes are approved in writing by both of the parties hereto.

18. TERM OF AGREEMENT

18.1 This Agreement shall remain in full force and effect for 10 years from the date hereof, and shall continue in effect thereafter until terminated by either party upon one year's notice in writing to the other party; such termination may be complete or partial, should one party decide to terminate as to a certain area or certain areas only.

19. LIABILITY AND DAMAGES

19.1 Whenever any liability is incurred by either or both of the parties hereto for damages for injuries to the employees or for damages to the property of either party, or for injuries to other persons or their property, arising

out of the joint use of poles under this Agreement, which joint use is understood to include the wires and fixtures of parties hereto, installed between and attached to the jointly used poles covered by this Agreement, the liability for such damages, between the parties hereto, shall be as follows:

19.2 Each party shall be liable for all damages for such injuries or damages to persons or property caused solely by its negligence or solely by its failure to comply at any time with the Specifications referred to in Section 3.

19.3 Each party shall be liable for all damages for such injuries to its own employees or its own property that are caused by the concurrent negligence of both parties hereto or that are due to causes which cannot be traced to the sole negligence of the other party.

19.4 Each party shall be liable for one-half (1/2) of all damages for such injuries to persons other than employees of either party, and for one-half (1/2) of all damages for such injuries to property not belonging to either party that are caused by the concurrent negligence of both parties hereto or that are due to causes which cannot be traced to the sole negligence of either party.

19.5 All claims for damages arising hereunder that are asserted against or affect both parties hereto shall be dealt with by the parties hereto jointly; provided, however, that in case of any such claims which the parties hereto mutually agree come under the provisions of Section 19.4 and where the claimant desires to settle any such claim upon terms acceptable to one of the parties hereto but not to the other party to which said terms are acceptable may, at its election, pay to the other party one-half (1/2) of the expense which such settlement would involve, and thereupon said other party shall be bound to protect the party making such payment from all further liability and expense on account of such claim.

19.6 In the adjustment between the parties hereto of any claim for any damages arising hereunder, the liability assumed hereunder, by the parties shall include, in addition to the amounts paid to the claimant, all expenses incurred by the parties in connection therewith, which shall comprise costs, disbursements, and other proper charges and expenditures, but shall not include attorney's fees.

20. JOINT UNDERGROUND CONSTRUCTION

20.1 Whenever either party proposes to make joint use of trenching for underground lines within the area where both companies operate, it shall notify the other party to determine whether it wishes to participate in such joint use. Should the other party so desire, it shall give prompt written notification of that fact, by use of an approved form, to the party proposing the trenching.

20.2 With respect to any joint use trenching the parties using same shall each bear a proportionate part of trenching costs incurred thereby. Such costs shall include not only direct labor and equipment costs, but also all applicable indirect costs, such as overhead charges and administrative expense. The party doing the trenching work, or under whose direction such work is done, shall bill the sharing party for its share of the trenching costs at reasonable intervals and such party shall make prompt payment for its portion of the trenching expense. Nothing herein shall prevent the parties to this Agreement from agreeing that other parties may also use the same trenches.

In such case the total cost for trenching shall be reasonably apportioned between all such parties using the trench. Should The Dayton Power and Light Company desire to install gas lines in the trench in addition to its underground electric lines, it shall contribute a double portion towards said trenching costs.

20.3 All joint use of trenches shall be made in accordance with orders and regulations of The Public Utilities Commission of Ohio, including Administrative Order No. 72, as amended, and with construction standards of The Dayton Power and Light Company then in effect.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in duplicate, and their corporate seals to be affixed thereto by their respective officers hereunto duly authorized, as of the

THE DAYTON POWER AND LIGHT COMPANY

By _____
E. D. Smith, Group Vice President
Construction, Production and Engineering

_____
W. R. Hutchison, Secretary

JOINT USE POLE AGREEMENT

between

THE DAYTON POWER AND LIGHT COMPANY

and

THIS AGREEMENT, made and entered into as of the 1st day of January, 1973 by and between THE DAYTON POWER AND LIGHT COMPANY, a corporation organized and existing under the laws of the State of Ohio, hereinafter sometimes called the "Electric Company", whose address is 25 North Main Street, Dayton, Ohio 45402, and

a corporation organized and existing under the laws of the State of Ohio, hereinafter sometimes called the "Telephone Company", whose address is

W I T N E S S E T H:

WHEREAS, the Electric Company and the Telephone Company desire to establish joint use of their respective poles when 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 own 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:

1. OPERATING ROUTINE

1.1 An operating routine shall be jointly prepared by the parties hereto, and shall be approved respectively by the Chief Engineers of the parties hereto. This routine shall be based on this Joint Use Pole Agreement and shall give the detailed methods and procedures which will be followed in establishing, maintaining and discontinuing the joint use of poles. In case of any ambiguity or conflict between the provisions of this Agreement, and those of the "Operating Routine" the provisions of this Agreement shall be controlling. Said Operating Routine may be changed at any time upon the approval of the Chief Engineer, or his designee, of each of the parties hereto, provided such changes do not conflict with the terms of this Joint Use Pole Agreement.

2. SCOPE OF AGREEMENT

2.1 This Agreement defines the rights and obligations of the parties hereto arising out of the arrangements between them governing the joint use of poles.

2.2 This Agreement shall be in effect in all of the territory in the State of Ohio in which both of the parties to this Agreement now or may hereafter operate, and shall cover all poles of each of the parties now existing or hereafter erected or acquired in the above territory when such poles are brought hereunder in accordance with the procedure hereinafter provided.

2.3 If either party acquires by purchase, merger, consolidation or otherwise, another company conducting a business of the same character as that of such party in the territory where each of the parties operate, any contracts and agreements with the acquired company, covering the joint use of poles, shall be cancelled so that all such poles in the newly acquired territory shall be brought under and be governed by the terms and provisions of this Agreement, effective as of the date of acquisition.

2.4 Each party 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.

3. SPECIFICATIONS

3.1 The joint use of poles covered by this Agreement, except where specifically exempted herein, shall be in conformity with the Specifications set forth in the Operating Routine.

4. EXPLANATION OF TERMS

4.1 For the purpose of this Agreement, certain terms when used herein shall have the following meaning:

4.2 "JOINT USE" is the simultaneous use of any pole for the attachments of both parties, in conformity with the Specifications referred to in Section 3.

4.3 "JOINT POLE" is a pole occupied simultaneously by the attachments of both parties or upon which space is provided under this Agreement for the attachments of both parties, whether or not such space is actually occupied by attachments.

4.4 "STANDARD JOINT POLE" is a wood pole of minimum height which will provide sufficient space and be of adequate strength for the attachments used by the respective parties as specified in Sections 4.5 to 4.5.3 and as provided in Section 3, Specifications. Normally, a standard joint pole under this Agreement shall be a 35' class 5 pole.

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

4.5.1 For the Electric Company: the uppermost 5 feet.

4.5.2 For the Telephone Company: a space of 2 feet, at sufficient distance below the space of the Electric Company to provide at all times the neutral space required by the Specifications referred to in Section 3.

4.5.3 For the Cable TV or other parties, a space of one foot between the Electric Company space and the Telephone Company space.

4.5.4 In certain instances, as set forth in the Specifications referred to in Section 3, either party may occupy the standard space of the other party.

4.5.5 The standard spaces referred to in Sections 4.5 to 4.5.2, inclusive, shall be at the heights above ground, tracks, or buildings described in the Specifications referred to in Section 3.

4.5.6 The space below the Telephone Company's space may be used where mutually agreed upon for such attachments of either party that do not conflict with the Specifications referred to in Section 3, and providing that this does not make necessary increasing the height of the pole.

4.5.7 The distribution of space on a pole other than a standard pole, as defined in Section 4.4 hereof, shall be governed by the provisions of that section of the Operating Routine relating to "Excess Height".

4.6 "ATTACHMENTS" are any material or apparatus now or hereafter attached to a joint pole by the parties hereto.

4.7 "SERVICE DROP" is that span of the service used exclusively to serve a customer's or subscriber's dwelling or commercial establishment.

4.8 "TRANSFERRING" is the moving of attachments from one pole to another.

4.9 "REARRANGING" is the moving, relocating or otherwise reconstructing of attachments on a joint pole.

4.10 "LICENSOR" is the party owning a pole at the time such pole is brought under the terms of this Agreement.

4.11 "LICENSEE" is the party having the right under this Agreement to make attachments to the Licensor's pole.

4.12 "RESERVED SPACE" as applied to space on a pole is that unoccupied space provided and maintained by the Licensor, either for its own use, or expressly for the Licensee's use at the Licensee's request.

4.13 "INTERMEDIATE POLE" is an additional joint pole required to be placed in a pole line for the purpose of primarily supporting the attachments of one of the parties.

5. ALLOCATION OF OWNERSHIP OF JOINTLY USED POLES

5.1 The objective percentage of ownership of the total number of poles jointly used or reserved for joint use by the parties hereto is 60% for the Electric Company and 40% for the Telephone Company.

5.2 In order to effectuate the joint use of poles in the manner proposed by this Agreement, whenever it is determined that jointly used poles exist as a result of purchase, merger, consolidation or otherwise with other companies, a check shall be made of these poles in order to determine their height, condition and ownership.

5.3 If it is determined under paragraph 5.2 that ownership in the poles involved should be allocated between the parties hereto to accomplish the intent of the parties hereto as expressed in paragraph 5.1, each party will sell to the other party all of its right, title and interest in the poles allocated to such other party, free and clear from all encumbrances whatsoever.

5.4 The price to be paid by each party to the other for the poles allocated to it, as hereinabove provided, shall be determined in the manner to be set forth in the Operating Routine, it being understood that in the determination of such price the principles pertaining to future construction set forth in paragraphs 8.1 and 8.1.1 of Section 8 hereof shall be followed.

5.5 After such allocation and mutual transfer of ownership such poles shall be brought under this Agreement in the manner prescribed in Section 6.

6. ESTABLISHING JOINT USE OF EXISTING POLES

6.1 Whenever either party desires to place any attachments or reserve space on any pole of the other for any attachments requiring space thereon which is not then specifically reserved hereunder for its use, such party

shall make written proposal therefor in accordance with the Operating Routine. The proposal when accepted in writing, which acceptance shall not be unreasonably withheld, by the other party shall constitute a permit to use jointly the pole or poles covered thereby. The Licensor shall promptly make any re-arrangements of attachments or pole replacements necessary for the contemplated joint use in accordance with the Operating Routine and any costs incurred in connection therewith shall be borne as provided in Section 8.

7. ESTABLISHING JOINT USE OF NEW POLES

7.1 Each party shall keep the other party informed in writing as to plans for the construction of new pole lines or the reconstruction of existing pole lines which may be used jointly and subject to Section 2.4 hereof, shall offer the other party the joint use of such new poles. If the other party desires joint use of such poles, it shall make written proposal therefor as provided in the Operating Routine. The proposal when accepted in writing by the other party shall constitute a permit to use jointly the poles covered thereby. Both parties shall promptly proceed in accordance with the Operating Routine and any costs

incurred in connection with establishing joint use of such poles shall be borne as provided in Section 8.

7.2 In order to promote the sole ownership by each party of its objective share of jointly used poles, the new poles may, if mutually agreed, be erected and/or owned by the party then owning less than its objective share of jointly used poles under this Agreement, subject to Section 2.4, provided however, the parties shall endeavor to avoid mixed ownership of poles in any given pole line.

8. PAYMENTS AND COSTS

8.1 A standard joint pole shall be erected at the sole expense of the Licensor. Where a pole other than standard is required due solely to the Licensor's requirements, such pole shall be erected at the sole expense of the Licensor.

8.1.1 Where a pole other than standard is required solely for the benefit of the Licensee, the Licensee shall reimburse the Licensor for the excess cost, if any, of such pole over the cost of a standard pole.

8.2 If the Licensor suffers a loss of remaining pole life due to prematurely replacing existing poles with poles suitable for joint use at the Licensee's request.

the Licensor shall be reimbursed for such loss in the manner set forth in the Operating Routine.

8.3 On each anniversary date of this Agreement, the parties shall determine the total number of poles then in joint use, and the number of such poles owned by each party. For each Electric Company pole containing Telephone Company attachments, the Telephone Company shall be charged by the Electric Company a rental of $7.20 per pole per year. For each Telephone Company pole containing Electric Company attachments, the Electric Company shall be charged by the Telephone Company a rental of $10.80 per pole per year. The agreed rental rates shall then be applied to the number of joint use poles owned by each party. The party entitled to receive the greater rental sum shall be paid by the other the net amount due it provided in 8.4 below.

The rental charges are based on a mutually agreed annual charge for a standard 35 foot, class 5 pole and computed at 40% of such charge for the Telephone Company and 60% of such charge for the Electric Company. The annual charge shall remain in effect until changed as provided in Section 18 hereof.

8.4 As to any rental payments due as a result of the occupation of the one foot space reserved for other parties, the party owning said poles shall be entitled to said rental payments.

8.5 Any payments or costs due either party from the other shall be paid within sixty (60) days after bills therefor have been rendered.

9. MAINTENANCE OF POLES AND ATTACHMENTS

9.1 The Licensor shall, at its own expense, maintain and repair its joint use poles at all times in a safe and serviceable condition and in accordance with the Specifications referred to in Section 3 and shall replace or relocate, if and when required, any of its joint use poles with equivalent poles, in accordance with the provisions of Section 8.

9.2 Each party hereto shall at its own expense at all times maintain its attachments on the joint poles in accordance with the Specifications referred to in Section 3 and shall keep them in safe condition and in thorough and complete repair.

9.3 Each party agrees to exercise care in the use of any joint poles, and satisfy itself of their safe condition before performing any work thereon.

9.4 Any existing joint use construction, or any joint use construction brought under this Agreement in

accordance with Section 2.3 which does not conform to the Specifications of this Agreement shall be brought into conformity therewith as follows:

9.4.1 Both parties hereto shall exercise due diligence in bringing into conformity with Section 3, as occasion may arise, any existing joint use construction.

9.4.2 When any of the existing joint use construction of either party is generally reconstructed or any changes are made in the arrangement or characteristics of their circuits or attachments, the new or changed parts shall be brought into conformity with Section 3.

9.4.3 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 Sections 9.1 and 9.2. The cost of bringing such existing joint use construction into conformity with said Specifications shall be borne by the parties hereto in the manner specified in this Section and in Section 8.

10. RIGHT OF WAY, GUYS, TREE TRIMMING, ETC.

10.1 Each party shall be responsible for securing its own necessary rights of way, anchor privileges, tree trimming and removal rights, and guying privileges from

property owners and/or from municipal, state or other governmental authorities. It is understood, however, that the parties hereto shall cooperate in obtaining any right of way necessary to be used for jointly used facilities. Each party shall perform at its own expense the necessary tree trimming to properly clear its own attachments. If any tree removal is beneficial to each of the parties hereto, the cost of such removal shall be shared by the parties.

10.2 No guarantee, oral or otherwise, is given by the Licensor to the Licensee of permission from property owners, municipalities, or others, for the joint use of its poles and/or right of way by the Licensee for the placing thereon of the Licensee's attachments or to trim or remove any trees. If objection is made thereto and the Licensee is unable to adjust the matter satisfactorily within a reasonable time, the Licensor may at any time upon ninety (90) days notice in writing to the Licensee require the Licensee to remove its attachments from the poles involved and the Licensee shall, within ninety (90) days after receipt of such notice, remove its attachments, and/or the anchors, guys, stubs, or brace poles at its own expense.

Should the Licensee fail to so remove its attachments and/or the anchors, guys or brace pole within said time, the Licensor 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 Licensor on demand.

10.3 Unless otherwise specifically agreed to in a particular case, all guys, anchors and brace poles shall be placed by and at the expense of the party whose attachments make such work necessary, and such guys, anchors and brace poles shall remain and be maintained as the sole property of the party placing them.

10.4 All ground bracing required by the Licensee shall be installed and maintained by the Licensor at Licensee's cost and expense. If the ground bracing is required by each of the parties hereto, the cost and expense of installing and maintaining such bracing shall be shared by the parties.

11. PROCEDURE WHEN CHARACTER OF CIRCUITS IS CHANGED

11.1 When either party desires to change the character of its circuits on jointly used poles, which will

necessitate changes in the poles or attachments thereto to comply with the Specifications referred to in Section 3, or which in the opinion of either party might affect the safety or operation of the other party's facilities, the party desiring to change the character of its circuits shall give sixty (60) days notice in writing to the other party of such contemplated change (shorter notice, including oral notice, subsequently confirmed in writing, may be given in cases of emergency). In the event that the other party agrees in writing to continued joint use notwithstanding such changed character of the circuits, then joint use of such poles shall be continued with such changes as may be agreed upon in the light of the character of circuits involved, including any changes in construction which may be required to meet the Specifications referred to in Section 3. The division of expense of any such necessary changes in construction shall be as mutually agreed upon.

11.2 In the event, however, that the other party fails within thirty (30) days from receipt of such notice to agree in writing to continue the joint use of such poles with such changed character of the circuits, then both parties

shall cooperate in accordance with the following plan:

11.2.1 The parties hereto shall determine and agree upon the most practical and economical method of effectively providing for separate lines, either overhead or underground, and the party whose circuits are to be moved shall promptly carry out the necessary work.

11.2.2 The net expense involved in re-establishing such circuits in the new locations as are necessary to furnish the same or equivalent facilities (which existed in the joint use at the time such change was decided upon) for the party which is to vacate the joint pole line, shall be equitably apportioned between the parties hereto. The cost of plant betterments shall not be included in said net expense, but due consideration shall be given - among other items - to the cost of the new pole line and attachments, cost of new right of way, cost of removing old attachments and placing them in the new locations, salvage adjustments, and vacating party's ownership interest, if any, in the original joint use poles.

11.2.3 The ownership of any new pole line, or underground facilities, constructed in accordance with Sections 11.2 - 11.2.2, inclusive, in a new location shall, unless otherwise

agreed upon by the parties hereto, be vested in the party for whose use it is constructed. The ownership of the old line, when vacated by the owner in accordance with the foregoing procedure, shall be transferred to and vested in the party continuing to use said line.

11.3 In the event the parties hereto cannot agree as to which party is to move its circuits or upon the division of costs to be incurred, then the separation of the lines shall be made as specified below.

11.3.1 On any poles which are jointly used and are the property of the Telephone Company, the Electric Company shall remove its attachments at its sole cost and expense.

11.3.2 On any poles which are jointly used and are the property of the Electric Company, the Telephone Company shall remove its attachments at its sole cost and expense.

12. ABANDONMENT OF JOINTLY USED POLES

12.1 If the Licensor desires at any time to abandon any jointly used pole, it shall give the Licensee notice in writing to that effect at least thirty (30) days prior to the date on which it intends to abandon such pole.

If, at the expiration of said period, the Licensor shall have no attachments on such poles, but the Licensee shall not have removed all of its attachments therefrom, such poles shall thereupon become the property of the Licensee, and the Licensee shall save harmless the former Licensor from all obligation, liability, damage, cost, expense, 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 Licensor a sum based on the pole requirements of the Licensee 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.

12.2 All right, title and interest of the Licensor in abandoned poles hereunder shall be transferred by proper records.

12.3 The Licensee may at any time abandon a joint pole by giving notice thereof in writing to the Licensor and removing therefrom all attachments it may have thereon.

12.4 If both parties at the same time abandon any jointly used pole, each party shall at its own expense remove its attachments therefrom and the Licensor shall thereupon remove the pole.

13. DEFAULTS

13.1 If either party shall fail to comply with any of the terms of this Agreement and such default continues for sixty (60) days after notice thereof in writing from the other party, all rights of the party in default thereunder to occupy jointly the poles in question shall be automatically terminated and the party in default shall thereupon remove its attachments from the poles in question. In case of such removal, the provisions of Section 12 shall apply.

13.2 If either party shall make default in the performance of any work which it is obligated to do under the terms of this Agreement, the other party may elect to do such work, and the party in default shall reimburse the other party for the cost thereof. Failure on the part of the defaulting party to make such payment within thirty (30) days upon presentation of bills therefor, shall, at the election of the other party, constitute a default under Section 13.1.

14. WAIVER OF TERMS OR CONDITIONS

14.1 The failure of either party to enforce or insist upon the compliance with any of the terms or provisions

of this Agreement shall not constitute a general waiver or relinquishment of any such terms or provisions, but the same shall be and remain at all times in full force and effect.

15. ASSIGNMENT OF RIGHTS

15.1 Except as otherwise provided herein, neither party hereto shall assign or otherwise dispose of this Agreement, or any of its rights or interests hereunder, or any of the joint poles or attachments or rights of way covered by this Agreement, to any third party, without the written consent of the other party; provided, however, that nothing herein contained shall prevent or limit the right of either party, nor shall such written consent be required, to mortgage any or all of its property, rights, privileges and franchises, or lease, transfer or sell any of them to another corporation organized for the purpose of conducting a business of the same general character as that of such party, or to enter into any merger or consolidation and, in case of the foreclosure of such mortgage, or in case of such lease, transfer, sale, merger or consolidation, its rights and obligations hereunder shall pass to, and be acquired and assumed by,

the purchaser at foreclosure, the transferee, lessee, purchaser, assignee, merging or consolidating company, or trustee under such merger, as the case may be.

15.2 Third Party Attachments - Other Than in Licensee's Space

Authority and responsibility for the placing of attachments of any person, firm, private corporation or other party (Third Party Attachments) on the poles of the Licensor other than in the space occupied by or reserved for the Licensee, shall rest with the Licensor, and the Licensor shall be entitled to all rentals or other payments received from any such other parties. Any such Third Party Attachments shall be made and maintained in accordance with the Specifications referred to in Section 3.

15.2.1 Third Party Attachments - In Licensee's Space

Authority and responsibility for the placing of attachments in the space occupied by or reserved for the Licensee by any person, firm or private corporation conducting a business of the same general character as the Licensee shall rest solely with the Licensee, and the Licensee shall be entitled to any rentals or other charges received from any such other parties. Any such attachments shall be made and maintained in accordance with the Specifications referred to in Section 3.

15.2.2 In the event the Third Party Attachments require adjustments in the poles or attachments of the parties hereto the arrangements therefor and the costs thereof shall be made with and paid to the authorizing party who shall arrange for and make payments to the other party in the manner and to the extent provided by Sections 6 and 8 hereof.

15.3 Any attachments, except attachments of a municipal corporation or other political subdivision, covered by such assigned rights or privileges on the joint poles covered by this Agreement in accordance with the above paragraphs, shall be treated in all respects, for the purpose of this Agreement, as if they were the property of the party granting the said rights or privileges, 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.

16. EXISTING RIGHTS OF OTHER PARTIES

16.1 If, prior to bringing certain poles under the terms and conditions of this Agreement, either of the parties hereto has conferred upon any person, firm or

corporation, not parties to this Agreement, by contract or otherwise, rights or privileges to use jointly such poles, nothing herein contained shall be construed as affecting said rights or privileges; and said party shall have the right, by contract or otherwise, to continue and extend said existing rights or privileges, and collect and retain such rental fees as it sees fit.

16.2 Any attachments, except attachments of a municipal corporation or other political subdivision, covered by Section 16.1 on any of the joint poles covered by this Agreement shall be treated in all respects, for the purpose of this Agreement, as if they were the property of the party granting these said rights or privileges, 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.

17. REVIEW OF AGREEMENT

17.1 At the expiration of three (3) years after the execution of this Agreement, and at two (2) year periods thereafter, either of the parties hereto may request, in writing, a review of the terms of this Agreement and/or the

Specifications mentioned herein, and such review shall be made within ninety (90) days after the receipt of such request; provided, however, that nothing herein contained shall prevent changes being made in this Agreement at any time by mutual consent of the parties hereto. The terms of this Agreement shall remain in full force until such revisions or changes are approved in writing by both of the parties hereto.

18. TERM OF AGREEMENT

18.1 This Agreement shall remain in full force and effect for 10 years from the date hereof, and shall continue in effect thereafter until terminated by either party upon one year's notice in writing to the other party; such termination may be complete or partial, should one party decide to terminate as to a certain area or certain areas only.

19. LIABILITY AND DAMAGES

19.1 Whenever any liability is incurred by either or both of the parties hereto for damages for injuries to the employees or for damages to the property of either party, or for injuries to other persons or their property, arising

out of the joint use of poles under this Agreement, which joint use is understood to include the wires and fixtures of parties hereto, installed between and attached to the jointly used poles covered by this Agreement, the liability for such damages, between the parties hereto, shall be as follows:

19.2 Each party shall be liable for all damages for such injuries or damages to persons or property caused solely by its negligence or solely by its failure to comply at any time with the Specifications referred to in Section 3.

19.3 Each party shall be liable for all damages for such injuries to its own employees or its own property that are caused by the concurrent negligence of both parties hereto or that are due to causes which cannot be traced to the sole negligence of the other party.

19.4 Each party shall be liable for one-half (1/2) of all damages for such injuries to persons other than employees of either party, and for one-half (1/2) of all damages for such injuries to property not belonging to either party that are caused by the concurrent negligence of both parties hereto or that are due to causes which cannot be traced to the sole negligence of either party.

19.5 All claims for damages arising hereunder that are asserted against or affect both parties hereto shall be dealt with by the parties hereto jointly; provided, however, that in case of any such claims which the parties hereto mutually agree come under the provisions of Section 19.4 and where the claimant desires to settle any such claim upon terms acceptable to one of the parties hereto but not to the other party to which said terms are acceptable may, at its election, pay to the other party one-half (1/2) of the expense which such settlement would involve, and thereupon said other party shall be bound to protect the party making such payment from all further liability and expense on account of such claim.

19.6 In the adjustment between the parties hereto of any claim for any damages arising hereunder, the liability assumed hereunder, by the parties shall include, in addition to the amounts paid to the claimant, all expenses incurred by the parties in connection therewith, which shall comprise costs, disbursements, and other proper charges and expenditures, but shall not include attorney's fees.

20. JOINT UNDERGROUND CONSTRUCTION

20.1 Whenever either party proposes to make joint use of trenching for underground lines within the area where both companies operate, it shall notify the other party to determine whether it wishes to participate in such joint use. Should the other party so desire, it shall give prompt written notification of that fact, by use of an approved form, to the party proposing the trenching.

20.2 With respect to any joint use trenching the parties using same shall each bear a proportionate part of trenching costs incurred thereby. Such costs shall include not only direct labor and equipment costs, but also all applicable indirect costs, such as overhead charges and administrative expense. The party doing the trenching work, or under whose direction such work is done, shall bill the sharing party for its share of the trenching costs at reasonable intervals and such party shall make prompt payment for its portion of the trenching expense. Nothing herein shall prevent the parties to this Agreement from agreeing that other parties may also use the same trenches.

In such case the total cost for trenching shall be reasonably apportioned between all such parties using the trench. Should The Dayton Power and Light Company desire to install gas lines in the trench in addition to its underground electric lines, it shall contribute a double portion towards said trenching costs.

20.3 All joint use of trenches shall be made in accordance with orders and regulations of The Public Utilities Commission of Ohio, including Administrative Order No. 72, as amended, and with construction standards of The Dayton Power and Light Company then in effect.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in duplicate, and their corporate seals to be affixed thereto by their respective officers hereunto duly authorized, as of the

THE DAYTON POWER AND LIGHT COMPANY

By _____

E. D. Smith, Group Vice President
Construction, Production and Engineering

_____

W. R. Hutchison, Secretary

9-6-73

23.12 Check of Records

23.121 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 by means of a Proposal, in order that both records may be maintained in agreement.

Approved 9-17-75

THE DAYTON POWER AND LIGHT COMPANY

By _____

R. F. H. Wessel, Chief Engineer

JOINT USE POLE AGREEMENT

Between

THE DAYTON POWER AND LIGHT COMPANY

and

THIS AGREEMENT, made and entered into as of this 1st day of July, 1969, by and between THE DAYTON POWER AND LIGHT COMPANY, a corporation organized and existing under the law of the State of Ohio, hereinafter sometimes called the "Electric Company", an

a corporation organized and existing under the law of the State of Ohio, hereinafter sometimes called the "Telephone Company".

W I T N E S S E T H

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

WHEREAS, the conditions determining the necessity or desirability of joint use depend upon the service require-

ments 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 own 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:

1. OPERATING ROUTINE

1.1 An operating routine shall be jointly prepared by the parties hereto, and shall be approved respectively by the Chief Engineers of the parties hereto. This routine shall be based on this Joint Use Pole Agreement and shall give the detailed methods and procedure which will be followed in establishing, maintaining and discontinuing the joint use of poles. In case of any ambiguity or conflict between the provisions of this Agreement, and those of the "Operating Routine" the provisions of this Agreement shall be controlling. Said Operating Routine may be changed at any time upon the approval of the Chief Engineer of each of the parties hereto, provided such changes do not conflict with the terms of this

Joint Use Pole Agreement.

2. SCOPE OF AGREEMENT

2.1 This Agreement defines the rights and obligations of the parties hereto arising out of the arrangements between them governing the joint use of poles.

2.2 This Agreement shall be in effect in all of the territory in the State of Ohio in which both of the parties to this Agreement now or may hereafter operate, and shall cover all poles of each of the parties now existing or hereafter erected or acquired in the above territory when such poles are brought hereunder in accordance with the procedure hereinafter provided.

2.3 If either party acquires by purchase, merger, consolidation or otherwise, another company conducting a business of the same character as that of such party in the territory where each of the parties operate, any contracts and agreements with the acquired company, covering the joint use of poles, shall be cancelled so that all such poles in the newly acquired territory shall be brought under and be governed by the terms and provisions of this Agreement, effective as of the date of acquisition.

2.4 Each party reserves the right to exclude