

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

Fiber Technologies Networks, L.L.C.,)	
)	
Complainant,)	
)	
v.)	Case No. 14-564-AU-CSS
)	
Ohio Power Company,)	
)	
Respondent.)	

MEMORANDUM IN OPPOSITION OF OHIO POWER COMPANY

Pursuant to Rule 4901-1-12(C), Ohio Administrative Code, Ohio Power Company (“AEP Ohio” or the “Company”) hereby responds to Fiber Technologies Networks, L.L.C.’s (“Fibertech”) Motion for Assistance. Because service cannot be terminated if it was never established to begin with, Fibertech’s allegations of termination of service can logically only relate to its prior pole attachment proposals that are the subject of its Complaint. In that regard, AEP Ohio will respond to Fibertech’s allegations of termination of service through its answer to the Complaint. As Fibertech’s Motion for Assistance relates to future pole attachment proposals, termination of service concerns are not at issue.

On April 15, 2014, Fibertech filed a Motion for Assistance requesting the Commission direct AEP Ohio to “resume processing, during the pendency of the Complaint, Fibertech’s pole attachment applications on a timely basis, and to grant Fibertech access to its poles in a nondiscriminatory manner.” Motion for Assistance at 6. Fibertech argues that an expedited ruling on its motion is particularly important because the refusal to process Fibertech’s pole

attachment applications allegedly “jeopardizes Fibertech’s contractual and business relationships.” *Id.* at 6-7. AEP Ohio submits that Fibertech’s Motion for Assistance is moot given that AEP Ohio continues to process all Fibertech attachment proposals in a nondiscriminatory manner. Moreover, AEP Ohio submits that Fibertech’s request for expedited ruling is unwarranted and premature.

AEP Ohio continues to process all Fibertech pole attachment applications pursuant to the pole attachment license agreements in effect between AEP Ohio and Fibertech (“Pole Agreements” attached as Exhibit A¹) and this Commission’s rules governing pole attachments. *See* Rule 4901:1-7-23(B) (“Rates, terms, and conditions for nondiscriminatory access to public utility poles . . . shall be established through negotiated arrangements or tariffs. Such access shall be established pursuant to 47 U.S.C. 224 ; 47 C.F.R 1.1401 to 47 C.F.R 1.1403 ; 47 C.F.R 1.1416 to 47 C.F.R 1.1418 ; and the formulas in 47 C.F.R 1.1409(e) , as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code.”). Although Federal Communications Commission (“FCC”) regulations concerning access and make ready work are not applicable in Ohio, AEP Ohio’s access practices are conducted in alignment with American Electric Power’s overall pole access procedures utilized in FCC jurisdictional states. As such, AEP Ohio’s access practices are also in compliance with FCC regulations as well. In accordance with the foregoing, all attachments and any associated equipment permitted by AEP Ohio shall be installed in a manner which does not interfere with the present or any future use which AEP Ohio or other

¹ As Fibertech notes in paragraphs 10 and 11 of the Complaint, there are two pole attachment license agreements in effect between AEP Ohio and Fibertech – one relating to the former Columbus Southern Power service territory and one related to the Ohio Power service territory. For completeness, both agreements are attached in Exhibit A. References herein to Pole Agreements apply to both agreements. Confidential pricing information has been redacted.

users of such equipment may desire to make of the Company's poles. AEP Ohio does not permit additional attachments on poles where there is insufficient capacity or for reasons of safety, reliability and generally applicable engineering purposes, or where the proposed attachment would exacerbate existing problems with the pole or result in a new violation. *See* Ohio Revised Code section 4905.51; 47 U.S.C. 224. During the review process of an attachment proposal, if existing pole issues are found, the party seeking to attach can either alter its line route or undertake make ready work to accommodate the proposed attachment. If the attaching party believes that incumbent attaching parties are partially responsible for certain problems, the proposing party should seek recovery from the responsible incumbent party. All issues identified that relate to a Company defect are remedied by AEP Ohio at AEP Ohio's expense. If no existing or anticipated pole issues are discovered, the proposed attachment will be permitted pending any necessary rearrangements and/or pole replacements.

Consistent with the above-described practices, AEP Ohio requires Fibertech to pay for the total cost of all work initiated as a result of a Fibertech attachment proposal. *See* Pole Agreements at ¶3, ¶5(D), and ¶15(A). Generally, if make ready work is necessary to prepare Company poles for Fibertech's proposed attachment, then AEP Ohio requires that the make ready work be completed prior to approving a permanent attachment. *Id.* at ¶3. AEP Ohio continues to permit Fibertech's attachments so long as any necessary make ready work is completed in advance of installation. In an effort to accommodate Fibertech's expansion plans and for a limited trial period, AEP Ohio allowed Fibertech to make attachments on a temporary basis to a small subset of non-compliant poles with the understanding that Fibertech would diligently replace the temporary attachments with permanent attachments. However, because Fibertech failed to diligently replace the temporary attachments with permanent compliant

attachments on several occasions, AEP Ohio no longer permits Fibertech's temporary attachments, requiring instead – as usual – that all necessary make ready work be completed prior to installation.

Because AEP Ohio continues to allow Fibertech nondiscriminatory access to its poles and continues to process Fibertech's pole attachment applications pursuant to the Pole Agreements, relevant FCC regulations, and this Commission's rules governing pole attachments, AEP Ohio submits that Fibertech's Motion for Assistance is moot and should be denied. Importantly, if its motion is granted and Fibertech is permitted to bypass the established pole attachment process, the Company, other users of the Company's poles, and the public could potentially be harmed. The attachment process described above is in place to ensure safe and compliant attachments to AEP Ohio's poles. If Fibertech were permitted to attach its facilities to the Company's poles *carte blanche* in the interim, safety and compliance could very likely be threatened.

To the extent Fibertech's contractual and business relationships are jeopardized by its failure to get its pole attachment applications approved, Fibertech could alleviate any such jeopardy by altering its line routes or by performing and paying for the necessary make ready work to accommodate its proposed attachments. Interim assistance from the Commission is unwarranted. Compliance with these requirements is part of the cost of doing business. Relieving Fibertech of the obligations while enforcing them for others would give Fibertech an undue competitive advantage – in addition to creating the potential for unsafe conditions. Furthermore, because resolution of the issues raised by the Complaint may clarify the responsibility for make ready work in situations in which there is a dispute as to cost responsibility, Fibertech's Motion for Assistance is premature to the extent it seeks to allow

Fibertech to attach to the Company's poles under those circumstances. For the foregoing reasons, Fibertech's Motion for Assistance should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was served via electronic mail upon the below-listed individuals this 22nd day of April, 2014.

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EXHIBIT A

POLE ATTACHMENT LICENSE AGREEMENT

BETWEEN

COLUMBUS SOUTHERN POWER COMPANY

AND

FIBER SYSTEMS L.L.C.

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POLE ATTACHMENT LICENSE AGREEMENT

This Agreement is entered into as of September 15, 2000 between Columbus Southern Power Company, an Ohio corporation, (herein called "Owner") and Fiber Systems L.L.C., a New York corporation, (herein called "Licensee"),

Background Information.

- A. Licensee is a "telecommunications carrier" as defined in 47 U.S.C. 224(a)(5), which desires to attach aerial wireline (hereinafter referred to as "Attachments") to certain poles of Owner to provide "telecommunication services" as defined in 47 U.S.C. 224.
- B. Owner is willing to permit Licensee on a non-exclusive basis to place and maintain the Attachments on said poles pursuant to the terms and conditions of this Agreement.

Statement of Agreement.

The parties acknowledge the accuracy of the above background information and in consideration of the promises and mutual covenants set forth herein agree as follows:

1. Scope of License

Owner shall grant to Licensee a revocable, non-exclusive and limited license to make future Attachments to Owner's distribution poles in accordance with the terms of this Agreement. In addition, Owner hereby grants Licensee a revocable, non-exclusive and limited license to continue to maintain those Attachments located on Owner's poles, which are now owned by Licensee and which were permitted and approved pursuant to earlier pole attachment agreements. Upon compliance with the permitting requirements hereunder, Licensee shall only use the Attachments for the purpose of providing "telecommunication service" as defined in 47 U.S.C. 224. An Attachment shall be a single point of wireline contact utilizing no more than one foot of vertical space on each pole. Nothing in this Agreement shall be construed as a grant by Owner of an exclusive license, right or privilege to Licensee, nor as a limitation, restriction, or prohibition upon Owner's right to grant interests to third parties to the poles licensed hereunder.

All poles covered by this Agreement remain the property of Owner regardless of any payment by Licensee toward their cost. No use, however extended, of Owner's poles or payment of any fee or charge required hereunder shall create or vest in Licensee any claim of right, possession, title, interest or ownership in such poles. Nothing in this Agreement shall be construed to compel Owner to construct, reconstruct, retain, extend, repair, place, replace or maintain any pole which, in Owner's sole discretion, is not needed for its own purposes. Owner and its successors and assigns shall have the right to operate, relocate and maintain its

poles and attendant facilities in such a manner as will best enable it, in its sole discretion, to fulfill its service requirements.

2. Explanation of Terms

For the purpose of this Agreement, certain terms shall have the meanings given in this Article.

Adjustment Date – July 1 of each year

Annual Attachment Fee – The annual charge per attachment, assessed by Owner, in accordance with the Charges and Fees Article of this Agreement.

CPI-U Adjustment – The figure determined by dividing the CPI-U indicator, published in the December prior to the current Adjustment Date, by the CPI-U indicator published in the December prior to the previous Adjustment Date.

CPI-U Indicator – The indicator produced and provided by the U.S. Department of Labor, Bureau of Labor Statistic's Consumer Price Index for Urban Consumers, U.S. City Average. In the event that the CPI-U is converted to a different standard reference base, or is otherwise revised, the determination of the adjustment shall be made with use of such conversion factor, formula or table for converting the CPI-U as may be published by the Bureau of Labor Statistics, or if the Bureau shall fail to publish the same, then with the use of such conversion factor, formula or table as may be published by Prentice Hall Inc. or any other nationally recognized publisher of similar statistical information.

Contract Year – The annual rental period of July 1 to the succeeding June 30 of each year.

Design Standards – All applicable regulations or codes promulgated by any federal, state, local or other governmental authority having jurisdiction, including, but not limited to, the National Electrical Safety Code and Owner's design or attachment requirements.

Incremental Cost – The difference between the Total Cost of installing a pole to accommodate both Owner and Licensee(s) on a new pole (either as new construction or replacement of an existing pole at Owner's initiation) and the Total Cost of installing a pole that meets Owner's needs.

Interest Rate – The interest rate at the then current Bank One, N.A. (or its successor) prime rate, plus four percentage points.

Proposal – A pole attachment construction proposal, in a format acceptable to Owner.

Total Cost – When Owner is initiating the installation of a new pole, in a location where none currently exists (new construction), Total Cost shall include all applicable materials, labor and overheads. When replacing an existing pole due solely to the Licensee's requirements, Total Cost shall also include the cost of transferring/installing Owner's facilities and removal of the old pole, with book value credit for any material actually salvaged by Owner.

3. Permitting of Attachments

Licensee shall submit a Proposal prior to installing or modifying (including but not limited to overloading of existing Attachments) any Attachments on any pole of Owner. Within forty five (45) days after receipt of a completed Proposal, Owner shall review the design, strength and loading characteristics of the pole and notify Licensee whether Owner will permit the proposed use by Licensee of such pole pending any necessary rearrangements and/or pole replacements. If such permission is granted (via return, by Owner, of an approved Proposal), Licensee shall have the right to use such pole in accordance with the terms of this Agreement and any further direction by Owner concerning the location and design of the Attachment. Licensee shall reimburse Owner for all of Owner's actual expenses incurred in reviewing such Proposal(s).

If make ready work is necessary to prepare any poles for the proposed Attachments, then Licensee shall not contact such poles until Licensee receives notice from Owner that the make ready work is completed.

4. Installation Standards

All Attachments and any associated equipment permitted by Owner shall be installed in a manner which does not interfere with the present or any future use which Owner may desire to make of its poles. Owner shall determine, in its sole discretion, whether the Attachments interfere with Owner's present or future pole use plans. All Attachments made hereunder shall be installed and maintained by Licensee in compliance with the Design Standards. Licensee shall identify all Attachments at each pole location using a tagging system approved by Owner.

Licensee acknowledges that the poles licensed hereunder have energized facilities installed upon them and that working in the vicinity of energized facilities poses potential dangers. At all times during the term of this Agreement, and particularly during the time of any construction, repair, or maintenance of Attachments covered by this Agreement, Licensee shall consider the electric wires of Owner to be energized. Licensee shall warn all of its employees, agents, contractors and subcontractors, or any other parties who may be working on behalf of the undersigned, of the potential dangers. Licensee shall take any necessary precautions by the installation of protective equipment, or other means, to protect all persons and property of all kinds against injury or damage occurring by reason of Licensee's Attachments on Owner's poles.

5. Pole Installation

- A. *Poles installed in new locations:* Where Owner desires to install a new pole in a location where facilities have not been previously placed, and Licensee desires to attach to such pole, Owner and Licensee shall follow the procedures set forth in this Article. Licensee shall submit a Proposal setting forth a description of the

facilities which Licensee intends to install. Owner shall make a determination of the size and height of the pole necessary to accommodate its facilities alone and shall calculate the Total Cost necessary to procure and install such pole. Owner shall then make a determination of the size and height of the pole necessary to accommodate both Owner's and Licensee's facilities. Licensee shall pay Owner the Incremental Cost, if such applies. If other parties desire to attach to the same pole, then Licensee shall only be responsible for the Incremental Cost of the pole necessary to accommodate all parties, divided by the total number of attaching parties (exclusive of Owner).

- B. *Replacement of Existing Poles Caused by the Installation of a Licensee's Proposed Attachment:* Where, in Owner's sole judgment, an existing pole must be replaced solely to adequately provide for Licensee's proposed attachment, Licensee shall pay Owner the Total Cost of the replacement.

Owner and other attaching parties may set aside space on poles for future development needs. Such space may, in the sole discretion of the lender, be loaned to Licensee for attachment of Licensee's Attachments. In the event the lending party desires to reclaim such loaned space, Owner shall provide notice to Licensee of the space reclamation. Upon such notice, Licensee shall either remove its facilities from the loaned space within thirty (30) days of Owner's notice, or pay the Total Cost of replacing the pole with a pole which will accommodate all of the existing and planned attachments on the pole, including the cost of removing the old pole, and transferring the facilities of Owner and any other attaching party to the new pole. If Licensee is sharing such reclaimed loaned space with another attaching party, then Licensee and the other attaching party shall share the Total Cost of the project.

- C. *Pole Replacements:* Where Owner must replace or relocate a pole and such replacement or relocation is not caused by the addition of a new Licensee Attachment, Owner shall provide Licensee reasonable advance notice before undertaking such replacement or relocation. Licensee shall transfer its Attachments within ten (10) days of receiving notice that the new pole is in place. If Licensee does not transfer its Attachments within such ten (10) days, then Owner may transfer the Attachments at Licensee's expense. If Owner or another party is required to make a return trip to remove a pole as a result of Licensee failing to transfer its Attachments within the time set forth herein, then Licensee shall reimburse Owner or such third party for the Total Cost incurred by such return trip.

- D. *General Issues:* Licensee shall remain responsible for the Total Cost of all projects initiated by Owner (exclusive of pole attachment fees) as the result of a Licensee Proposal, regardless of whether Licensee elects to install the Attachments. Licensee shall be responsible for all engineering, inspection, and construction work undertaken by Owner on all third party owned poles where

such work is initiated as a result of the proposed attachment of Licensee's facilities.

6. Rearrangement of Attachments

If Licensee's desired Attachments can be accommodated on existing poles of Owner by rearranging facilities of Owner or existing attachments thereon of any other person, or if because of Licensee's proposed Attachments it is necessary for Owner to rearrange its facilities on any pole not owned by it, then in any such case Licensee shall reimburse Owner and any such other person for the respective Total Cost incurred in making such rearrangement.

7. Guying

Any guying required pursuant to the Design Standards shall be installed by and at the expense of Licensee. Licensee shall not use any of Owner's guys or anchors.

8. Riser Installation

Licensee shall not install any risers upon Owner's poles without the consent of Owner, which consent may be withheld in Owner's sole and absolute discretion. If Licensee desires to install a riser to a new or existing pole, Licensee shall submit in writing the installation design, including the size of the proposed riser and adequate loading data to assess the impact on the existing pole. Owner may require a riser bracket be installed on any pole where a new riser of the Licensee is approved and where one or more risers currently exist. Licensee shall pay the Total Cost of the riser bracket, including all costs associated with the transfer of existing risers to the riser bracket. All risers shall be installed in accordance with Owner's instructions.

9. Post Construction Inspection

Owner may conduct at Licensee's expense a post-construction inspection of all new Attachment installations or modifications of existing Attachments. In addition, Owner may make additional inspections at Licensee's expense, if Owner has reasonable cause to believe that Licensee is not maintaining its Attachments in accordance with the Design Standards and the terms of this Agreement. Owner's right to make any inspections and any inspection made pursuant to such right shall not relieve Licensee of any responsibility, obligation or liability assumed under this Agreement to maintain its Attachments in accordance with the Design Standards and other prudent practices.

10. Attachment Inventory

Using the inception year of this Agreement (or the inception year of a previously assigned or prior Agreement covering the same area and facilities, if applicable), as the starting year, Owner may conduct a complete field inventory of its poles for the purpose of verifying the number and location of all Attachments of Licensee in the area covered by this Agreement. Such inventory may be conducted anytime after the beginning of the fifth year and not more often than every fifth year thereafter. Owner shall give to Licensee at least thirty (30) days' prior notice of such inventory and not less than fifteen (15) days prior to the scheduled date of such inventory Licensee shall advise Owner if Licensee desires to make a joint inventory with Owner. Licensee shall reimburse Owner for Owner's expenses incurred in making such inventory, whether or not Licensee elects to participate. Upon request, Owner shall furnish a summary report of such inventory within a reasonable time after its completion.

11. Unauthorized Attachments

Any Attachment made without the approval of Owner pursuant to the terms of this Agreement, or any prior agreement governing such facilities, shall be considered an unauthorized Attachment. The unauthorized overloading of additional cable by Licensee upon a third party's cable installed upon Owner's poles shall also be considered an unauthorized Attachment.

Upon discovery of an unauthorized Attachment, Owner may elect either of the following options: (i) order Licensee to remove the Attachment within thirty (30) days, or (ii) review such Attachment, at Licensee's expense, to determine if the Attachment is in compliance with the Design Standards and, if necessary, order Licensee to comply with the Design Standards either through rearrangement pursuant to Rearrangement Of Attachments Article above or pole replacement pursuant to the Pole Installation Article above.

For each unauthorized Attachment, Licensee shall also pay Owner the applicable attachment fee hereunder for a period of time equal to the greater of: (i) five years, or (ii) the number of years since the last Attachments inventory (including inventories conducted pursuant to earlier pole license agreements governing such facilities), plus the current Interest Rate. In addition, a one time unauthorized attachment initial contact fee of \$10.00 per unauthorized attachment will be charged to cover nonrecurring administrative expenses associated with processing and documenting such attachments.

12. Interference or Hazard

Whenever Owner notifies Licensee in writing or orally, with written confirmation, that any Attachment made hereunder does not comply with the Design Standards, Licensee shall within thirty (30) days of receiving such notice, either remove such non-complying attachment, or bring such Attachment within compliance with the Design Standards. If non-compliance of such Design Standards is causing interference with Owner's use or maintenance of the pole,

or is causing a hazard, then Licensee shall undertake the remedial efforts set forth above in this Article within ten (10) days of receiving notice from Owner.

In the case of an emergency, which in Owner's reasonable judgment requires Owner to immediately remove or relocate the Licensee's Attachments, Owner may remove or relocate such Attachments as required, at Licensee's expense, without prior notice or responsibility for any damage to Licensee caused by such removal or rearrangement.

13. Third Party Overlashing

Licensee shall not overlash any Attachments upon a third party's facilities which are attached to Owner's poles, or permit third parties to overlash Licensee's facilities, without the consent of Owner. Owner shall not unreasonably withhold its consent, provided such third party overlash facilities are reviewed by Owner pursuant the Proposal procedure set forth in the Permitting Of Attachments Article above, and both overlashing parties consent to such overlashing in a written format acceptable to Owner.

14. Attachment Removal

Licensee may, at any time, abandon the use of a pole hereunder by giving written notice to Owner and removing, from the pole, all of its Attachments.

15. Charges and Fees

- A. *Non-Recurring Expenses.* Except as otherwise set forth herein, Licensee shall reimburse Owner for the Total Cost of all non-recurring expenses incurred by Owner, which are caused by or attributable to Licensee's Attachments.
- B. *Annual Attachment Fee.* Licensee agrees to pay Owner an Annual Attachment Fee of [REDACTED] for each Attachment existing during the initial Contract Year. For future Contract Years, the Annual Attachment Fee shall be adjusted annually, on the Adjustment Date, by multiplying the CPI-U Adjustment and the previous Contract Year's Annual Attachment Fee. Billing of annual charges shall be rendered, in advance, annually on or about July 1 of each year for the current Contract Year.
- C. *Third Party Overlash Annual Attachment Fee.* Licensee shall pay an overlash annual contact fee for each pole where Licensee has overlash Attachments to a third party's facilities, which are attached to Owner's poles equal to half the applicable Annual Attachment Fee. Such third party overlash fee shall be paid in the manner set forth in this Article.

- D. *General.* Licensee shall pay the applicable Annual Attachment Fee, in arrears upon the next annual billing, for each new Attachment or third party overlashed Attachment made during the Contract Year. There shall be no proration of fees hereunder, including adjustments in billing for those Attachments made or removed during the Contract Year.

16. Time of Payment

Unless otherwise set forth herein, payments due hereunder shall be made within thirty (30) days from the date of the invoice therefor. On all amounts not so paid, an additional charge for interest at the Interest Rate, compounded daily, will be assessed. Where the provisions of this Agreement require any payment by Licensee to Owner other than for the Annual Attachment Fee, Owner may, at its option, require that the estimated amount thereof be paid in advance of permission to use any pole or the performance by Owner of any work.

17. Indemnity

To the extent permitted by law, Licensee for itself and its contractors and subcontractors hereby releases Owner, its affiliates, and their respective directors, officers, employees and agents (collectively, "Indemnitees"), from any and all liability for loss of or damage to the Licensee's Attachments and for any interruption to, or failure of, the service rendered by Licensee or others in which such Attachments are used, except that Licensee's obligation to indemnify Indemnitees shall not apply to any liabilities to the extent arising from Indemnitees' negligence or willful misconduct. Licensee further hereby agrees to indemnify, hold harmless, and defend Indemnitees from and against any and all losses, liabilities, costs, expenses, suits, actions, claims and all other obligations and proceedings whatsoever, including, without limitation, all judgments rendered against, and all fines and penalties imposed upon Indemnitees, and any reasonable attorneys' fees and any other costs of litigation (hereinafter collectively referred to as "liabilities") arising, directly or indirectly, out of the interruption or loss of Licensee's, its subscribers, affiliates, or sub licensees' services or because of any interference with communication reception of such services, or out of injuries to persons, including disease or death, or damage to property, or in any other way attributable to or arising either directly or indirectly out of, the attachment, installation, operation, presence, use, maintenance, or removal of Licensee's facilities to Owner's poles, or by the proximity of Licensee's facilities to all other parties, including the Owner, occupying space on Owner's poles, except that Licensee's obligation to indemnify Indemnitees shall not apply to any liabilities to the extent arising from Indemnitees' negligence or willful misconduct. Indemnitees shall be free to select counsel of their choice for their defense hereunder.

Because Licensee may utilize contractors in the construction of its facilities, Licensee hereto agrees to require its contractors and subcontractors to provide a release and indemnification of all claims for the benefit of the Indemnitees in the form attached hereto as Exhibit I. If Licensee fails to obtain the appropriate release and indemnification from its

contractor/subcontractor, Licensee hereby agrees to provide the same release and indemnification to Indemnitees by Licensee's contractor or subcontractor on their behalf.

It is further agreed between the parties hereto, that to the extent any of the provisions of this Article are determined to be contrary to law or held to be invalid by any court of competent jurisdiction, this Article shall be construed and applied as if such invalid provisions were not contained herein, attempting at all times to conform, to the extent possible, to the intent of the parties as herein stated, and provide the maximum indemnity allowed by law. With respect to claims against one party by the other party's employees, the latter party agrees to expressly waive its immunity, if any, as a complying employer under the workers' compensation law but only to the extent that such immunity would bar or affect recovery under or enforcement of the indemnification obligations set forth in this Article. With respect to the State of Ohio, this waiver applies to Article 35, Section II of the Ohio Constitution and Ohio Revised Code Section 4123.74.

The terms of this indemnity and any other indemnities set forth in this Agreement shall survive the termination of this Agreement. In the event that Owner becomes aware of a claim affecting Licensee under the terms of this indemnification clause, Owner shall endeavor to put Licensee on timely notice of such claim.

18. Insurance

Licensee shall furnish and require its subcontractors to furnish the insurance described below. Licensee shall maintain and cause its subcontractors to maintain this insurance at all times during the performance of this Agreement.

- A. Coverage for the legal liability of Licensee and its subcontractors under the workers' compensation and occupational disease law of the state in which the Attachments are made. In states with a workers' compensation fund, Licensee and its subcontractors shall be contributors to the state workers' compensation fund and shall furnish a certificate to that effect. In states without a workers' compensation fund, Licensee and its subcontractors shall maintain an insurance policy for workers' compensation from an insurance carrier approved for transacting workers' compensation business in the state in which the Attachments are made. If Licensee or a subcontractor is a legally permitted and qualified workers compensation self-insurer in the state in which Attachments are made, it may furnish proof that it is such a self-insurer in lieu of submitting proof of insurance.
- B. Commercial general liability insurance with limits of not less than \$1,000,000 each occurrence and aggregate.
- C. Commercial automobile liability insurance with a limit for bodily injury and property damage of not less than \$1,000,000 each accident.

Licensee will not be permitted to access owner's poles until Owner receives from Licensee a copy of an acceptable certificate of insurance covering the terms of Subsections A-C above. Such certificate shall state that the insurance carrier has issued the policies providing for the insurance specified above, that such policies are in force, and that the insurance carrier will give Owner thirty (30) days prior written notice of any change in the insurance limits, or cancellation of, such policies. If such insurance policies are subject to any exceptions to the terms specified herein, such exceptions shall be explained in full in such certificates. Owner may, at its discretion, require Licensee to obtain insurance policies that are not subject to any exceptions. Licensee and its subcontractors shall obtain waivers of subrogation on all of their insurance. Such waivers shall be for the benefit of Owner. Policies written on a "claims-made" basis shall be maintained for a period of five years after completion of the Agreement. Licensee acknowledges that continued maintenance of the insurance requirements under this Agreement is a substantial and important part of this Agreement and that any lapse in insurance coverage shall be corrected so that coverage will be in place during the period required hereunder, with no gaps or lapses in coverage.

The amounts of insurance required under this Agreement shall be increased as Owner may reasonably require from time to time to account for inflation, generally increased insurance settlements, court verdicts or any other business purposes upon sixty (60) days written notice to Licensee. If Licensee does not timely deliver to Owner certificates showing all of the required insurance to be in full force and effect as required by this Agreement, Owner may either: (i) declare Licensee to be in substantial default under the terms of this Agreement upon which event this Agreement shall automatically terminate within sixty (60) days without the need for any further notice, or (ii) obtain the insurance to fulfill any and all of the insurance obligations under this Agreement. On Owner's demand, Licensee shall reimburse Owner the full amount of any insurance premiums paid by Owner, a fee of \$250.00 Dollars to cover applicable expenses and overheads incurred by Owner, and interest at the Interest Rate, compounded daily, from the date of Owner's demand, until reimbursement by Licensee.

19. Easements

Licensee shall secure any right, license or permit from any governmental body, authority or other person or persons which may be required for the construction or maintenance of Licensee Attachments. Owner does not grant, convey nor guarantee any easements, rights-of-way or franchises for the construction and maintenance of the Attachments. Licensee hereby agrees to indemnify and save Owner harmless (on a pro rata basis with all other users of Owner's poles who failed to secure such right, license, permit or easement, based on their respective proportionate use of space on such poles and to the extent the other users are part of such claim) from any and all claims, including the expenses incurred by Owner to defend itself against such claims, resulting from or arising out of the failure of Licensee to secure such right, license, permit or easement for the construction or maintenance of the Attachments on Owner's poles, the loss of right-of-way or property owner consent, of the costs of relocating any of Owner's facilities or other attachments on Owner's poles. In the event that Owner becomes aware of a claim affecting Licensee under the terms of this provision, Owner shall

endeavor to put Licensee on timely notice of such claim. However, such notice obligation of Owner does not extend to permits or franchises required by governmental entities. As applicable, all of the terms of the indemnity set forth in this Agreement are incorporated herein and shall apply with equal force to the indemnity set forth in this Article.

20. Performance Bond

Owner may require Licensee, on demand, to furnish a bond or irrevocable letter of credit in an amount equal to one (1) year's Annual Contact Fees for all Attachments, or \$10,000 dollars, whichever is greater, as a payment and/or performance guaranty. If required by Owner, such bond shall be identical in terms to the form of bond marked Exhibit II, attached hereto and made a part hereof.

21. Default or Non-Compliance

If Licensee fails to comply with any of the provisions of this Agreement, or defaults in the performance of any of its obligations under this Agreement, and fails within thirty (30) days, after written notice from Owner to correct such default or noncompliance, Owner may, at its option, take any one or more of the following actions: (i) suspend Licensee's access to climb or work on it's Attachments on all of Owner's poles; (ii) terminate the specific permit or permits covering the poles to which such default or noncompliance is applicable; (iii) remove, relocate, or rearrange Attachments of Licensee to which such default or noncompliance relates, all at Licensee's expense; (iv) decline to permit additional Attachments hereunder until such default is cured; or (v) in the event of any failure to pay any of the charges, fees or amounts provided in this Agreement or any other substantial default, or of repeated defaults, terminate this Agreement. Notwithstanding the foregoing, Licensee shall have up to an additional thirty (30) days to correct such default or noncompliance if Licensee promptly commences its corrective efforts within the thirty day period described above and diligently continues such corrective actions thereafter. No liability shall be incurred by Owner because of any or all such actions. The remedies provided herein are cumulative and in addition to any other remedies available to Owner under this Agreement or otherwise. No such termination, however, shall reduce or eliminate the obligation of the Licensee to make payments of any amounts due to Owner for any services covered, shall not waive charges for any Attachment until said Attachment is removed from the pole to which it is attached and shall not affect Licensee's Indemnification of Owner or the Insurance requirements contained in this Agreement.

22. Regulation

Both parties acknowledge that, prior to negotiation of this Agreement, the parties carefully reviewed all relevant provisions of state and federal statutes and regulations relating to the regulation of Owner's facilities, and that the negotiations freely conducted herein were undertaken without duress and with full knowledge of any rights either party may have

pursuant to such state or federal law. Both parties believe the fees charged herein to be in compliance with any applicable state or federal law. Each and every provision of this Agreement is considered an essential exchange of consideration hereto. Any deviation in the rate charged herein from the calculation of such rate pursuant to any applicable state or federal law imposed formula is a result of other negotiated concessions made herein by the Owner or Licensee. To the extent that either party may challenge any provision of this Agreement as a violation of state or federal law and is successful, then upon the sole option of the party to which such determination adversely affects, this Agreement shall terminate effective as of such determination. Upon such termination both parties shall enter into negotiations for a new agreement in compliance with such determination. It is the intent of both parties that any adjustments made pursuant to any such judicial or regulatory determination allow Owner to recover the maximum amount available in accordance with the applicable regulated rate.

Execution and performance of this Agreement are without prejudice to, and do not constitute a waiver of any positions taken or claims asserted respecting the validity, enforceability or effect of any or all such regulations or orders in any appeal, litigation or administrative proceeding pending at the date hereof or later begun, or any rights arising out of any judgment, opinion or order therein.

23. Term

Except as provided in the Default or Non-Compliance Article, this Agreement shall continue for a period of five (5) years from the date hereof, and shall thereafter automatically renew for successive five year periods unless one party gives the other party written notice of termination at least one hundred twenty (120) days in advance of the next renewal date. Should Licensee not place Attachments or reserve space on Owner's poles in any portion of the area covered by this Agreement within six (6) months of its effective date, Owner may, at its option, terminate this Agreement. Licensee shall completely remove its Attachments from Owner's poles within one hundred twenty (120) days of the termination date, unless an extension of the existing Agreement is negotiated or a new agreement covering such poles has been executed by the parties hereto. If Licensee fails to remove its facilities, Owner may and is hereby given the clear and incontestable right to remove Licensee's facilities, at Licensee's expense, from Owner's poles and without any liability to Owner.

24. Prior Agreements

This Agreement terminates and supersedes any prior agreement, license or joint use affecting Owner's poles and Licensee's attachments covered hereby as of the date hereof, but such termination shall not reduce or eliminate the obligation of Licensee to make payment of any amounts due to Owner under any prior agreement.

25. Transfers of Ownership

This Agreement shall be binding upon and inure to the benefit of the parties hereto, and Licensee shall not assign, transfer, sublet or sublicense any of the rights hereby granted without the prior written consent of Owner, which shall not be unreasonably withheld, conditioned, delayed or denied. If Licensee wishes to sell, or otherwise transfer, all or part of its facilities covered by this Agreement to a third party, said third party shall submit an application to enter into an agreement with Owner for the installation and/or maintenance of wireline attachments on Owner's poles, and reimburse Owner for any non-recurring expenses associated with Owner's review of the third party. Any outstanding liabilities of Licensee, including, without limitation, charges for inventories and inspections, charges and penalties for unauthorized attachments, or other outstanding costs or expenses shall be paid to Owner, in full, prior to the transfer of any rights and privileges of the Licensee, either with a new agreement or assignment of the existing agreement (at Owner's option), to said third party. Owner reserves the right, at its option, to consent to the transfer of the existing agreement to a new third party, or to require the execution of a new agreement in lieu of granting its consent to the assignment or transfer of any right, license or privilege under this Agreement.

Notwithstanding the above, Owner shall not unreasonably withhold its consent to Licensee to assign this agreement to any entity controlled by, controlling or under common control of Licensee, or any entity into which Licensee may be merged or consolidated or which purchases all or substantially all of the assets of Licensee, provided such entity has, in Owner's sole discretion, the financial means and technical expertise to perform its duties herein, and reimburses Owner for any non-recurring expenses associated with Owner's review of such proposed assignment.

26. Governing Law

Except insofar as governed by federal law, this Agreement shall be construed in accordance with, and its performance shall be governed by, applicable laws in effect of the state where the poles are located.

27. Third Party

This Agreement shall not create for, nor give to, any third party any claim or right of action against either party to this Agreement that would not arise in the absence of this Agreement.

28. Execution

This Agreement may be executed in two counterparts each of which so executed shall be deemed to be an original.

29. Agreement Modifications

This Agreement and its Exhibits constitute the entire agreement between the parties respecting pole attachments, and shall only be modified in a writing signed by both parties hereto.

30. Preservation of Remedies

No delay or omission in the exercise of any power or remedy herein provided or otherwise available to Owner shall impair or affect Owner's right thereafter to exercise the same.

31. Headings

Headings used in this Agreement are inserted only for the convenience of the parties and shall not affect the interpretation or construction of this Agreement.

32. Survival of Obligations

All payment, performance and indemnity obligations of Licensee under this Agreement shall survive the termination of this Agreement, until said obligations are satisfied.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

FIBER SYSTEMS L.L.C.

By: 

Title: Vice President

**COLUMBUS SOUTHERN POWER
COMPANY**

By: 

Title: Asset Utilization Manager

EXHIBIT I

INDEMNIFICATION OF ALL CLAIMS

In consideration of Columbus Southern Power Company ("Owner") granting and providing Fiber Systems L.L.C. ("Licensee") and its contractors and subcontractors with access and/or permission to work on or in the vicinity of Owner's facilities under the terms of that certain Pole Attachment License Agreement between Licensee and Owner effective 09/15/00, the undersigned, its employees, contractors, subcontractors or agents, agrees to release, indemnify, save harmless, and defend Owner, its affiliates, and their respective directors, officers, employees and agents (collectively, "Indemnitees"), from and against any and all losses, liabilities, costs, expenses, suits, actions, claims and all other obligations and proceedings whatsoever, including, without limitation, all judgments rendered against, and all fines and penalties imposed upon the Indemnitees, and any reasonable attorneys' fees and any other costs of litigation (hereinafter collectively referred to as "liabilities") arising, directly or indirectly, out of the interruption of the Licensee, its subscribers, or sub licensees service or because of any interference with communication reception of such services, or out of injuries to persons, including disease or death, or damage to property, or in any other way attributable to or arising either directly or indirectly out of, the attachment, installation, operation, presence, use, maintenance, or removal of Licensee's facilities to Owner's poles, including the loss of use thereof, or by the proximity of Licensee facilities to all other parties, including Owner, occupying space on Owner's poles, except that the undersigned's obligation to indemnify Indemnitees shall not apply to any liabilities arising from Indemnitees' sole negligence or willful misconduct. The undersigned shall be liable for reasonable attorneys' fees and all costs of litigation associated with enforcement of the obligations set forth in this obligation of indemnification and Indemnitees shall be free to select counsel of their choice.

The undersigned agrees to expressly waive the undersigned's immunity as a complying employer under the workers' compensation law of the jurisdictional state from indemnification. With respect to the contractors based in the State of Ohio, this waiver applies to Article 35, Section II of the Ohio Constitution and Ohio Revised Code Section 4123.74. The undersigned shall also hold Indemnitees harmless from any workers compensation claims by the undersigned's employees, agents, and contractors in accordance with the indemnity set forth in the first paragraph.

The undersigned hereby acknowledges that it has been warned that working in the vicinity of Owner's facilities poses potential dangers and that the undersigned is aware of said dangers and will furthermore warn all employees, agents, subcontractors, or any other parties who may be working on behalf of the undersigned, of the potential dangers.

Notwithstanding any other provision of this Agreement, neither Indemnitees nor their agents, representatives, contractors or subcontractors shall be liable to the undersigned in contract or tort, including negligence, for the Licensee or the undersigned's losses, expenses, loss of profits or revenues, costs of additional or replacement facilities, or claims of customers for such damages or for any other indirect, incidental or consequential loss or damage whatsoever in connection herewith.

It is further agreed between the parties hereto, that to the extent any of the provisions of this Release and Indemnification of all Claims are determined to be contrary to law or held to be invalid by any court of competent jurisdiction, this Release and Indemnification of all Claims shall be construed and applied as if such invalid provisions were not contained herein, attempting at all times to conform, to the extent possible, to the intent of the parties as stated herein and in the Pole Attachment License Agreement, and provide the maximum indemnity allowed by law.

The terms of this release and indemnity shall survive the termination of the Pole Attachment License Agreement.

The undersigned also agrees to fully comply with and maintain the insurance coverage and requirements set forth in the Pole Attachment License Agreement.

I have fully read this release and understand and consent to it in its entirety.

By: _____

Title: _____

Date: _____

EXHIBIT II

PERFORMANCE BOND

BOND NO. _____

We, Fiber Systems L.L.C. (hereinafter called the "Principal"), a New York corporation, with its principal place of business at 140 Allens Creek Road, Rochester, NY 14618 as Principal, and _____ [Name of Surety Company] (hereinafter referred to as the "Surety"), a corporation organized under the laws of the State of _____, with its principal place of business at _____ [Address], City of _____, County of _____, State of _____, and licensed to transact a surety business in the State of _____, as Surety, are indebted to Columbus Southern Power Company, (hereinafter called the "Power Company"), a corporation organized under the laws of the State of Ohio, in the sum of _____ Thousand Dollars, to be paid to the Power Company, its legal representatives, successors and assigns, for which payment we bind ourselves and our legal representatives and successors, jointly and severally.

The condition of the above obligation is that Principal has entered into a written Pole Attachment License Agreement ("Agreement"), with the Power Company, dated 09/15/00. The Agreement sets forth the terms and conditions which shall govern the use by Principal of Power Company's property and utility poles, located within the State of Ohio, and owned by Power Company, as Power Company may, on application, permit Principal to use in the Principal's business of furnishing cable television or other telecommunication service. The Agreement is specifically referred to and made a part of this Performance Bond by this reference as though fully set forth in this Performance Bond.

If Principal, its legal representatives, successors and assigns, shall faithfully perform the Agreement, and comply with all the terms and conditions of such Agreement, then this obligation shall be void; otherwise it shall remain in full force and effect.

This bond shall take effect as of _____, and unless terminated or canceled in the manner provided below shall remain in full force and effect during the life of the Agreement.

This bond is subject further to the following express conditions:

1. In the event of default on the part of Principal, its legal representatives or successors, in observing, performing, fulfilling and keeping its obligations under the Agreement, a written statement of such default, with full details, shall be delivered to Surety promptly and in any event within sixty (60) days after the Power Company learns of such default.

2. No claim, suit, or action under this bond by reason of any such default shall be brought against Surety unless asserted or commenced within two years after the effective date of any termination or cancellation of this Performance Bond, and Principal shall be made a party to any such action or suit.

3. This Performance Bond may be terminated or canceled by Surety by one hundred eighty (180) days notice in writing from Surety to Principal and Power Company. Such notice shall be given by registered mail and addressed to Columbus Southern Power Company, P.O. Box 24400, Canton, Ohio 44701-4400, Attn: Joint Use Administrator. Such termination or cancellation shall not affect any liability incurred or accrued under this Performance Bond prior to the effective date of such termination or cancellation.

4. No right of action shall accrue under this Performance Bond to, or for, the use of any person other than the obligee under this Performance Bond, namely the Power Company, and its legal representatives, successors and assigns.

5. In no event shall the Surety be liable to the obligee for more than the penal sum of this bond, namely _____ Thousand Dollars.

In witness to the above, the parties have executed this agreement at _____
_____ [Designate Place of Execution].

PRINCIPAL:

SURETY:

By: _____

By: _____

Title: _____

Title: _____

POLE ATTACHMENT LICENSE AGREEMENT

BETWEEN

OHIO POWER COMPANY

AND

FIBER TECHNOLOGIES NETWORKS, L.L.C.

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Exhibits

Attachments Fee Schedule	Exhibit A
Non-Standard Attachments	Exhibit B
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POLE ATTACHMENT LICENSE AGREEMENT

This Agreement is entered into as of April 1, 2006 between Ohio Power Company, an Ohio corporation (herein called "Owner"), and Fiber Technologies Networks, L.L.C., INC., (herein called "Licensee"),

Background Information.

- A. Licensee desires to attach fiber (hereinafter referred to as "Attachments") to certain poles of Owner pursuant to 47 U.S.C. 224.
- B. Owner is willing to permit Licensee on a non-exclusive basis to place and maintain the Attachments on said poles pursuant to the terms and conditions of this Agreement, and any applicable state tariffs relating to pole attachments.

Statement of Agreement.

The parties acknowledge the accuracy of the above background information and in consideration of the promises and mutual covenants set forth herein agree as follows:

1. Scope of License

Owner shall grant to Licensee a revocable, non-exclusive and limited license to make future Attachments to Owner's distribution poles in accordance with the terms of this Agreement. In addition, Owner hereby grants Licensee a revocable, non-exclusive and limited license to continue to maintain those Attachments located on Owner's poles, which are now owned by Licensee and which were permitted and approved pursuant to earlier pole attachment agreements. Upon compliance with the permitting requirements hereunder, Licensee shall only use the Attachments for the purpose set forth within the attached Exhibit A. An Attachment shall be a single point of wireline contact utilizing no more than one foot of vertical space on each pole and no more than twenty percent (20%) of each pole's loading capacity. Nothing in this Agreement shall be construed as a grant by Owner of an exclusive license, right or privilege to Licensee, nor as a limitation, restriction, or prohibition upon Owner's right to grant interests to third parties to the poles licensed hereunder.

All poles covered by this Agreement remain the property of Owner regardless of any payment by Licensee toward their cost. No use, however extended, of Owner's poles or payment of any fee or charge required hereunder shall create or vest in Licensee any claim of right, possession, title, interest or ownership in such poles. Nothing in this Agreement shall be construed to compel Owner to construct, reconstruct, retain, extend, repair, place, replace or maintain any pole which, in Owner's sole discretion, is not needed for its own purposes. Owner and its successors and assigns shall have the right to operate, relocate and maintain its poles and attendant facilities in such a manner as will best enable it, in its sole discretion, to fulfill its service requirements.

2. Explanation of Terms

For the purpose of this Agreement, certain terms shall have the meanings given in this Section.

Annual Attachment Fee – The annual charge per attachment assessed by Owner in accordance with the terms and conditions of this Agreement.

Attachment – A single point of wireline contact utilizing no more than one foot of vertical space on each pole and no more than twenty percent (20%) of each pole's loading capacity.

Contract Year – The annual rental period of July 1 to the succeeding June 30 of each year.

Design Standards – All applicable regulations or codes promulgated by any federal, state, local or other governmental authority having jurisdiction, including, but not limited to, the National Electrical Safety Code and Owner's design or attachment requirements.

Incremental Cost – The difference between the Total Cost of installing a pole to accommodate both Owner and Licensee(s) on a new pole (either as new construction or replacement of an existing pole at Owner's initiation) and the Total Cost of installing a pole that meets Owner's needs.

Interest Rate – Twelve percent (12%), compounded daily or as mandated by state tariff.

Non-Standard Attachment – Attachments described on Exhibit B which are permitted to be attached by Owner in accordance with Owner's sole and absolute discretion.

Proposal – A pole attachment construction proposal, in a format acceptable to Owner.

Total Cost – The total cost of a project or transaction, including all applicable materials, labor and overheads. Owner may use a contractor for any and all work required hereunder. Where Owner uses a contractor to perform work hereunder, Licensee shall reimburse Owner all expenses paid, plus a reasonable overhead fee to compensate Owner for the time and expense associated with the supervision of such contractor. When replacing an existing pole due solely to the Licensee's requirements, Total Cost shall also include the cost of transferring/installing Owner's facilities and removal of the old pole, with book value credit for any material actually salvaged by Owner.

3. Permitting of Attachments

Licensee shall submit a Proposal prior to installing or modifying (including but not limited to overloading of existing Attachments) any Attachments on any pole of Owner. Within forty five (45) days after receipt of a completed Proposal, Owner shall review the design, strength and loading characteristics of the pole and notify Licensee whether Owner will permit the proposed use by Licensee of such pole pending any necessary rearrangements and/or pole replacements. If such permission is granted (via return, by Owner, of an approved Proposal), Licensee shall have the right to use such pole in accordance with the terms of this Agreement and any further direction by Owner concerning the location and design of the Attachment. Licensee shall reimburse Owner for all of Owner's expenses incurred in reviewing such proposal(s).

If make ready work is necessary to prepare any poles for the proposed Attachments, then Licensee shall not contact such poles until Licensee receives notice from Owner that the make ready work is completed.

4. Installation Standards

All Attachments and any associated equipment permitted by Owner shall be installed in a manner which does not interfere with the present or any future use which Owner may desire to make of its poles. Owner shall determine, in its sole discretion, whether the Attachments interfere with Owner's present or future pole use plans. All Attachments made hereunder shall be installed and maintained by Licensee in compliance with the Design Standards. Licensee shall identify all Attachments at each pole location using a tagging system approved by Owner.

Licensee acknowledges that the poles licensed hereunder have energized facilities installed upon them and that working in the vicinity of energized facilities poses potential dangers. At all times during the term of this Agreement, and particularly during the time of any construction, repair, or maintenance of Attachments covered by this Agreement, Licensee shall consider the electric wires of Owner to be energized. Licensee shall warn all of its employees, agents, contractors and subcontractors, or any other parties who may be working on behalf of the undersigned, of the potential dangers. Licensee shall take any necessary precautions by the installation of protective equipment, or other means, to protect all persons and property of all kinds against injury or damage occurring by reason of Licensee's Attachments on Owner's poles.

5. Pole Installations

- A. Poles installed in new locations: Where Owner desires to install a new pole in a location where facilities have not been previously placed, and Licensee desires to attach to such pole, Owner and Licensee shall follow the procedures set forth in this Section. Licensee shall submit a Proposal setting forth a description of the facilities, which Licensee intends to install. Owner shall make a determination of the size and height of the pole necessary to accommodate its facilities alone and shall calculate the Total Cost necessary to procure and install such pole. Owner shall then make a determination of the size and height of the pole necessary to accommodate both Owner's and Licensee's facilities. Licensee shall pay Owner the Incremental Cost, if such applies. If other parties desire to attach to the same pole, then Licensee shall only be responsible for the Incremental Cost of the pole necessary to accommodate all parties, divided by the total number of attaching parties (exclusive of Owner).
- B. Replacement of Existing Poles Caused by the Installation of a Licensee's Proposed Attachment: Where, in Owner's sole judgment, an existing pole must be replaced solely to adequately provide for Licensee's proposed attachment, Licensee shall pay Owner the Total Cost of the engineering and replacement of the pole.

Owner and other attaching parties may set aside space on poles for future development needs. Such space may, in the sole discretion of the lender, be loaned to Licensee for attachment of Licensee's Attachments. In the event the lending party desires to reclaim such loaned space, Owner shall provide notice

to Licensee of the space reclamation. Upon such notice, Licensee shall either remove its facilities from the loaned space within thirty (30) days of Owner's notice, or pay the Total Cost of replacing the pole with a pole which will accommodate all of the existing and planned attachments on the pole, including the cost of removing the old pole, and transferring the facilities of Owner and any other attaching party to the new pole. If Licensee is sharing such reclaimed loaned space with another attaching party, then Licensee and the other attaching party shall share the Total Cost of the project.

- C. Pole Replacements: Where Owner must replace or relocate a pole and such replacement or relocation is not caused by the addition of a new Licensee Attachment, Owner shall provide Licensee reasonable advance notice before undertaking such replacement or relocation. Licensee shall transfer its Attachments within ten (10) days of receiving notice that the new pole is in place. If Licensee does not transfer its Attachments within such ten (10) days, then Owner may transfer the Attachments at Licensee's expense. If Owner or another party is required to make a return trip to remove a pole as a result of Licensee failing to transfer its Attachments within the time set forth herein, then Licensee shall reimburse Owner or such third party for the Total Cost incurred by such return trip.
- D. General Issues: Licensee shall remain responsible for the Total Cost of all projects initiated by Owner (exclusive of pole attachment fees) as the result of a Licensee Proposal, regardless of whether Licensee elects to install the Attachments. Licensee shall be responsible for all engineering, inspection, and construction work undertaken by Owner on Owner's poles and on all third party owned poles where such work is initiated as a result of the proposed attachment of Licensee's facilities.

6. Rearrangement of Attachments

If Licensee's desired Attachments can be accommodated on existing poles of Owner in accordance with the Design Standards by rearranging facilities of Owner or existing attachments thereon of any other person, or if because of Licensee's proposed Attachments it is necessary for Owner to rearrange its facilities on any pole not owned by it, then in any such case Licensee shall reimburse Owner and any such other person for the respective Total Cost incurred in making such rearrangement.

7. Guying

Any guying required pursuant to the Design Standards shall be installed by and at the expense of Licensee. Licensee shall not use any of Owner's guys or anchors.

8. Non-Standard Attachments

Licensee shall not install any equipment other than Attachments upon Owner's poles without the consent of Owner, which consent may be withheld in Owner's sole and absolute discretion. Licensee shall submit in writing the design and installation specifications of any proposed Non-Standard Attachment equipment and such other data required by Owner to assess the impact of such equipment on the existing pole. Except as otherwise set forth herein, all Non-Standard

Attachments approved hereunder shall be treated as an Attachment and shall be billed an annual attachment fee in accordance with Exhibit B attached hereto and incorporated herein. Owner may revise the fees set forth on Exhibit B by providing prior written notice.

9. Post Construction Inspection

Owner may conduct at Licensee's expense a post-construction inspection of all new Attachment installations or modifications of existing Attachments. In addition, Owner may make additional inspections at Licensee's expense, if Owner has reasonable cause to believe that Licensee is not maintaining its Attachments in accordance with the Design Standards and the terms of this Agreement. Owner's right to make any inspections and any inspection made pursuant to such right shall not relieve Licensee of any responsibility, obligation or liability assumed under this Agreement to maintain its Attachments in accordance with the Design Standards and other prudent practices.

10. Attachment Inventory

Using the inception year of this Agreement (or the inception year of a previously assigned or prior Agreement covering the same area and facilities, if applicable), as the starting year, Owner may conduct a complete field inventory of its poles for the purpose of verifying the number and location of all Attachments of Licensee in the area covered by this Agreement. Such inventory may be conducted anytime after the beginning of the fifth year and not more often than every fifth year thereafter. Owner shall give to Licensee at least thirty (30) days' prior notice of such inventory and not less than fifteen (15) days prior to the scheduled date of such inventory Licensee shall advise Owner if Licensee desires to make a joint inventory with Owner. Licensee shall reimburse Owner for Owner's expenses incurred in making such inventory, whether or not Licensee elects to participate. Upon request, Owner shall furnish a summary report of such inventory within a reasonable time after its completion.

Licensee shall at all times make and keep in full and complete form plats, maps and records showing the exact location of all Licensee facilities and equipment attached to Owner's poles.

11. Unauthorized Attachments

Any Attachment made without the written approval of Owner pursuant to the terms of this Agreement, or any prior agreement governing such facilities, shall be considered an unauthorized Attachment. The unauthorized overloading of additional cable by Licensee upon a third party's cable installed upon Owner's poles shall also be considered an unauthorized Attachment.

Upon discovery of an unauthorized Attachment, Owner may elect either of the following options: (i) order Licensee to remove the Attachment within thirty (30) days, or (ii) review such Attachment, at Licensee's expense, to determine if the Attachment is in compliance with the Design Standards and, if necessary, order Licensee to comply with the Design Standards either through rearrangement pursuant to Rearrangement Of Attachments Section above or pole replacement pursuant to the Pole Installation Section above.

For each unauthorized Attachment, Licensee shall also pay Owner the applicable attachment fee hereunder for a period of time equal to the greater of (i) five years, or (ii) the number of years since the last Attachment inventory (including inventories conducted pursuant to earlier

pole license agreements governing such facilities). Owner shall further be entitled to interest at the current Interest Rate on such fees accruing for the period of time identified under (i) or (ii) above.

12. Interference or Hazard

Whenever Owner notifies Licensee in writing or orally, with written confirmation, that any Attachment made hereunder does not comply with the Design Standards, Licensee shall within thirty (30) days of receiving such notice, either remove such non-complying attachment, or bring such Attachment within compliance with the Design Standards. If non-compliance of such Design Standards is causing interference with Owner's use or maintenance of the pole, or is causing a hazard, then Licensee shall undertake the remedial efforts set forth above in this Section within ten (10) days of receiving notice from Owner.

All tree trimming required, on account of Licensee's equipment, shall be done by Licensee at its sole risk and expense and in a manner satisfactory to Owner.

In the case of an emergency, which in Owner's reasonable judgment requires Owner to immediately remove or relocate the Licensee's Attachments, Owner may remove or relocate such Attachments as required, at Licensee's expense, without prior notice or responsibility for any damage to Licensee caused by such removal or rearrangement.

13. Third Party Overlashing

Licensee shall not overlash any Attachments upon a third party's facilities which are attached to Owner's poles, or permit third parties to overlash Licensee's facilities, without the consent of Owner. Owner shall not unreasonably withhold its consent, provided such third party overlash facilities are reviewed by Owner pursuant the Proposal procedure set forth in the Permitting Of Attachments Section above, and both overlash parties consent to such overlash in a written format acceptable to Owner.

14. Attachment Removal

Licensee may, at any time, abandon the use of a pole hereunder by giving written notice in a format acceptable to Owner and removing from the pole all of its Attachments.

15. Charges and Fees

- A. Non-Recurring Expenses: Except as otherwise set forth herein, Licensee shall reimburse Owner for the Total Cost of all non-recurring expenses incurred by Owner, which are caused by or attributable to Licensee's Attachments.
- B. Annual Attachment Fee: Licensee agrees to pay Owner an Annual Attachment Fee per attachment as set forth on Exhibits A & B, attached hereto and incorporated herein. Owner may revise or adjust rates on Exhibits A & B by providing Licensee written notice prior to the effective date of such revision or rate adjustment. Billing of annual charges shall be rendered, in advance, annually on or about July 1 of each year for the current Contract Year.

- C. General. Licensee shall pay the applicable Annual Attachment Fee, in arrears upon the next annual billing, for each new Attachment or third party overlashed Attachment made during the Contract Year. There shall be no proration of fees hereunder, including adjustments in billing for those Attachments made or removed during the Contract Year.

16. Represented Use of Attachments

Licensee represents and warrants that it shall only use the Attachments for the purpose set forth within Exhibit A (the "Represented Use"). Upon discovery of the use of an Attachment for any purpose other than the Represented Use (a "Non-Represented Use"), Owner may terminate this Agreement and/or require Licensee to pay Owner additional attachment fees according to the formula set forth in the following paragraph, in addition to any other remedies, which may be available to Owner under applicable law.

Upon discovery of a Non-Represented Use, Licensee shall pay Owner an additional attachment fee for each Attachment contained within the geographic area within which Licensee operates its interconnected system where the Non-Represented Use is discovered. Such additional fee shall be equal to the attachment fee charged by Owner to third parties with pole attachments used in a manner similar to the Non-Represented Use (as determined by Owner), less the Attachment Fee already paid by Licensee, plus interest at the Interest Rate accrued since the assumed Non-Represented Use commenced. Unless Licensee can prove otherwise, it shall be assumed for purposes of making the above calculation that Licensee has engaged in such Non-Represented Use since the commencement of this Agreement. Licensee shall also pay Owner any and all non-recurring administrative expenses Owner incurs as a result of processing and documenting such Non-Represented Use Attachments.

17. Time of Payment

Unless otherwise set forth herein, payments due hereunder shall be made within thirty (30) days from the date of the invoice therefor. On all amounts not so paid, an additional charge for interest at the Interest Rate, compounded daily will be assessed. Licensee may dispute the amount of any bill, but shall not withhold payment of any amount in dispute, such payment shall not be a waiver of Licensee's rights. In the event a refund of any amount paid by Licensee is determined to be due (or in the event of the discovery of any other billing error) an adjustment to correct the billing error shall be made and applied to the Licensee's following years pole attachment invoice. Non-payment by Licensee of any such amounts due Owner, when due, shall constitute a default under this Agreement and may cause forfeiture of the bond or security required by Section 21, to the extent of the nonpayment. Where the provisions of this Agreement require any payment by Licensee to Owner other than for the Annual Attachment Fee, Owner may, at its option, require that the estimated amount thereof be paid in advance of permission to use any pole or the performance by Owner of any work.

18. Indemnity

To the extent permitted by law, Licensee for itself and its contractors and subcontractors hereby releases Owner, its affiliates, and their respective directors, officers, employees and agents (collectively, "Indemnitees"), from any and all liability for loss of or damage to the Licensee's Attachments and for any interruption to, or failure of, the service rendered by Licensee or others in which such Attachments are used. Licensee further hereby agrees to indemnify, hold

harmless, and defend Indemnites from and against any and all losses, liabilities, costs, expenses, suits, actions, claims and all other obligations and proceedings whatsoever, including, without limitation, all judgments rendered against, and all fines and penalties imposed upon Indemnites, and any reasonable attorneys' fees and any other costs of litigation (hereinafter collectively referred to as "liabilities") arising, directly or indirectly, out of the interruption or loss of Licensee's, its subscribers, affiliates, or sub licensees' services or because of any interference with communication reception of such services, or out of injuries to persons, including disease or death, or damage to property, or in any other way attributable to or arising either directly or indirectly out of, the attachment, installation, operation, presence, use, maintenance, or removal of Licensee's facilities to Owner's poles, or by the proximity of Licensee's facilities to all other parties, including the Owner, occupying space on Owner's poles, except that Licensee's obligation to indemnify Indemnites shall not apply to any liabilities to the extent arising from Indemnites' sole negligence or willful misconduct. Indemnites shall be free to select counsel of their choice for their defense hereunder.

Because Licensee may utilize contractors in the construction of its facilities, Licensee hereto agrees to require its contractors and subcontractors to provide a release and indemnification of all claims for the benefit of the Indemnites in the form attached hereto as Exhibit C. If Licensee fails to obtain the appropriate release and indemnification from its contractor/subcontractor, Licensee hereby agrees to provide the same release and indemnification to Indemnites by Licensee's contractor or subcontractor on their behalf.

It is further agreed between the parties hereto, that to the extent any of the provisions of this Section are determined to be contrary to law or held to be invalid by any court of competent jurisdiction, this Section shall be construed and applied as if such invalid provisions were not contained herein, attempting at all times to conform, to the extent possible, to the intent of the parties as herein stated, and provide the maximum indemnity allowed by law. With respect to claims against one party by the other party's employees, the latter party agrees to expressly waive its immunity, if any, as a complying employer under the workers' compensation law but only to the extent that such immunity would bar or affect recovery under or enforcement of the indemnification obligations set forth in this Section. With respect to the State of Ohio, this waiver applies to Article 35, Section II of the Ohio Constitution and Ohio Revised Code Section 4123.74.

The terms of this indemnity and any other indemnities set forth in this Agreement shall survive the termination of this Agreement. In the event that Owner becomes aware of a claim affecting Licensee under the terms of this indemnification clause, Owner shall endeavor to put Licensee on timely notice of such claim.

19. Insurance

Licensee shall obtain and furnish the insurance described below. Licensee shall maintain and cause its subcontractors to maintain this insurance at all times during the performance of this Agreement.

- A. Coverage for the legal liability of Licensee and its subcontractors under the workers' compensation and occupational disease law of the state in which the Attachments are made. In states with a workers' compensation fund, Licensee and its subcontractors shall be contributors to the state workers' compensation fund and shall furnish a certificate to that effect. In states without a workers' compensation fund, Licensee and its subcontractors shall maintain an insurance policy for workers' compensation from an insurance carrier approved for

transacting workers' compensation business in the state in which the Attachments are made. If Licensee or a subcontractor is a legally permitted and qualified workers compensation self-insurer in the state in which Attachments are made, it may furnish proof that it is such a self-insurer in lieu of submitting proof of insurance.

- B. Commercial general liability insurance with limits of not less than \$1,000,000 each occurrence and aggregate.
- C. Commercial automobile liability insurance with a limit for bodily injury and property damage of not less than \$1,000,000 each accident.

Licensee will not be permitted to access owner's poles until Owner receives from Licensee one copy of an acceptable certificate of insurance covering the terms of Subsections A-C above. Such certificate shall state that the insurance carrier has issued the policies providing for the insurance specified above, that such policies are in force, and that the insurance carrier will give Owner thirty (30) days prior written notice of any material change in, or cancellation of, such policies. If such insurance policies are subject to any exceptions to the terms specified herein, such exceptions should be explained in full in such certificates. Owner may, at its discretion, require Licensee to obtain insurance policies that are not subject to any exceptions. Licensee and its subcontractors shall obtain waivers of subrogation on all of their insurance. Such waivers shall be for the benefit of Owner and its affiliated companies. Policies written on a "claims-made" basis shall be maintained for a period of five years after completion of the Agreement. Licensee acknowledges that continued maintenance of the insurance requirements under this Agreement is a substantial and important part of this Agreement and that any lapse in insurance coverage shall be corrected so that coverage will be in place during the period required hereunder, with no gaps or lapses in coverage.

The amounts of insurance required under this Agreement shall be increased as Owner may reasonably require from time to time to account for inflation, generally increased insurance settlements, court verdicts or any other business purposes. If Licensee does not timely deliver to Owner a certificate showing all of the required insurance to be in full force and effect as required by this Agreement, Owner may either: (i) declare Licensee to be in substantial default under the terms of this Agreement upon which event this Agreement shall automatically terminate within sixty (60) days without the need for any further notice, or (ii) obtain the insurance to fulfill any and all of the insurance obligations under this Agreement. On Owner's demand, Licensee shall reimburse Owner the full amount of any insurance premiums paid by Owner, a fee of \$250.00 Dollars to cover applicable expenses and overheads incurred by Owner, and interest at the Interest Rate, compounded daily, from the date of Owner's demand, until reimbursement by Licensee.

20. Easements

Licensee shall secure any right, license or permit from any governmental body, authority or other person or persons, which may be required for the construction or maintenance of Licensee's Attachments. Owner does not grant, convey nor guarantee any easements, rights-of-way or franchises for the construction and maintenance of the Attachments. Licensee hereby agrees to indemnify and save Owner harmless (on a pro rata basis with all other users of Owner's poles who failed to secure such right, license, permit or easement, based on their respective proportionate use of space on such poles and to the extent the other users are part of such claim) from any and all claims, including the expenses incurred by Owner to defend itself against such claims, resulting from or arising out of the failure of Licensee to secure such

right, license, permit or easement for the construction or maintenance of the Attachments on Owner's poles, the loss of right-of-way or property owner consent, of the costs of relocating any of Owner's facilities or other attachments on Owner's poles. In the event that Owner becomes aware of a claim affecting Licensee under the terms of this provision, Owner shall endeavor to put Licensee on timely notice of such claim. However, such notice obligation of Owner does not extend to permits or franchises required by governmental entities. As applicable, all of the terms of the indemnity set forth in this Agreement are incorporated herein and shall apply with equal force to the indemnity set forth in this Section.

21. Performance Bond

Owner shall require Licensee, to furnish a bond or irrevocable letter of credit in an amount equal to two (2) year's Annual Attachment Fees for all Attachments, or \$10,000 dollars, whichever is greater, as a payment and/or performance guaranty for any sums which may become due to Owner for rentals, inspections, or work performed for the benefit of Licensee under this Agreement, including the removal of attachments upon termination of this agreement. Such bond or security shall include an unqualified provision that the bond or security will not be cancelled or changed except after one hundred and eighty – (180) days written notice to Owner. The amount of such bond or security is subject to adjustment, at any time, by Owner for such amount as Owner may reasonably determine to be necessary. Such performance bond shall include terms substantially similar to the terms set forth in Exhibit D, attached hereto and made a part hereof.

22. Default or Non-Compliance

If Licensee fails to comply with any of the provisions of this Agreement, or defaults in the performance of any of its obligations under this Agreement, and fails within thirty (30) days, after written notice from Owner to correct such default or noncompliance, Owner may, at its option, take any one or more of the following actions: (i) suspend Licensee's access to climb or work on it's Attachments on all of Owner's poles; (ii) terminate the specific permit or permits covering the poles to which such default or noncompliance is applicable; (iii) remove, relocate, or rearrange Attachments of Licensee to which such default or noncompliance relates, all at Licensee's expense; (iv) decline to permit additional Attachments hereunder until such default is cured; or (v) in the event of any failure to pay any of the charges, fees or amounts provided in this Agreement or any other substantial default, or of repeated defaults, terminate this Agreement. Notwithstanding the foregoing, Licensee shall have up to an additional thirty - (30) days to correct such default or noncompliance if Licensee promptly commences its corrective efforts within the thirty-day period described above and diligently continues such corrective actions thereafter. No liability shall be incurred by Owner because of any or all such actions. The remedies provided herein are cumulative and in addition to any other remedies available to Owner under this Agreement or otherwise. No such termination, however, shall reduce or eliminate the obligation of the Licensee to make payments of any amounts due to Owner for any services covered, shall not waive charges for any Attachment until said Attachment is removed from the pole to which it is attached and shall not affect Licensee's Indemnification of Owner or the Insurance requirements contained in this Agreement. Owner shall be entitled to recover any and all attorney fees, costs and expenses incurred in successfully pursuing any of the remedies set forth above.

23. Regulation

Both parties acknowledge that, prior to negotiation of this Agreement, the parties carefully reviewed all relevant provisions of state and federal statutes and regulations relating to the regulation of Owner's facilities, and that the negotiations freely conducted herein were undertaken without duress and with full knowledge of any rights either party may have pursuant to such state or federal law. Both parties believe the fees charged herein to be in compliance with any applicable state or federal law. Each and every provision of this Agreement is considered an essential exchange of consideration hereto. Any deviation in the rate charged herein from the calculation of such rate pursuant to any applicable state or federal law imposed formula is a result of other negotiated concessions made herein by the Owner or Licensee. To the extent that either party may challenge any provision of this Agreement as a violation of state or federal law and is successful, then upon the sole option of the party to which such determination adversely affects, this Agreement shall terminate effective as of such determination. Upon such termination both parties shall enter into negotiations for a new agreement in compliance with such determination. It is the intent of both parties that any adjustments made pursuant to any such judicial or regulatory determination allow Owner to recover the maximum amount available in accordance with the applicable regulated rate.

Execution and performance of this Agreement are without prejudice to, and do not constitute a waiver of any positions taken or claims asserted respecting the validity, enforceability or effect of any or all such regulations or orders in any appeal, litigation or administrative proceeding pending at the date hereof or later begun, or any rights arising out of any judgment, opinion or order therein.

24. Term

Except as provided in the Default Or Noncompliance Section, this Agreement shall continue for a period of one year from the date hereof, and shall thereafter automatically renew for successive one year periods unless one party gives the other party written notice of termination at least sixty - (60) days in advance of the next renewal date. Should Licensee not place Attachments or reserve space on Owner's poles in any portion of the area covered by this Agreement within six - (6) months of its effective date, Owner may, at its option, terminate this Agreement. Licensee shall completely remove its Attachments from Owner's poles within one hundred twenty - (120) days of the termination date, unless an extension of the existing Agreement is negotiated or a new agreement covering such poles has been executed by the parties hereto. If Licensee fails to remove its facilities, Owner may and is hereby given the clear and incontestable right to remove Licensee's facilities, at Licensee's expense, from Owner's poles and without any liability to Owner. If 47 U.S.C. 224 is invalidated, repealed, reinterpreted, or amended in a manner that no longer sets a maximum attachment fee, then at either party's option this Agreement may be terminated upon one-hundred eighty (180) days notice. During such termination notice period both parties shall in good faith negotiate terms and conditions of a new pole attachment license agreement.

25. Prior Agreements

This Agreement terminates and supersedes any prior agreement, license or joint use affecting Owner's poles and Licensee's attachments covered hereby as of the date hereof, but such termination shall not reduce or eliminate the obligation of Licensee to make payment of any amounts due to Owner under any prior agreement.

26. Transfers of Ownership

This Agreement shall be binding upon and inure to the benefit of the parties hereto, and Licensee shall not assign, transfer, sublet or sublicense any of the rights hereby granted without the prior written consent of Owner. If Licensee wishes to sell, or otherwise transfer, all or part of its facilities covered by this Agreement to a third party, said third party shall submit an application to enter into an agreement with Owner for the installation and/or maintenance of wireline attachments on Owner's poles, and reimburse Owner for any non-recurring expenses associated with Owner's review of the third party. Any outstanding liabilities of Licensee, including, without limitation, charges for inventories and inspections, charges and penalties for unauthorized attachments, or other outstanding costs or expenses shall be paid to Owner, in full, prior to the transfer of any rights and privileges of the Licensee, either with a new agreement or assignment of the existing agreement (at Owner's option), to said third party. Owner reserves the right, at its option, to consent to the transfer of the existing agreement to a new third party, or to require the execution of a new agreement in lieu of granting its consent to the assignment or transfer of any right, license or privilege under this Agreement.

Notwithstanding the above, Owner shall not unreasonably withhold its consent to Licensee to assign this agreement to an affiliate of Licensee provided such affiliate has, in Owner's sole discretion, the financial means and technical expertise to perform its duties herein, and reimburses Owner for any non-recurring expenses associated with Owner's review of such proposed assignment.

27. Governing Law

Except insofar as governed by federal law, this Agreement shall be construed in accordance with, and its performance shall be governed by, applicable laws in effect of the state where the poles are located.

28. Transmission Poles

Owner may permit Licensee to make Attachments to Owner's transmission poles pursuant to the terms of this Agreement. Permission to attach shall be at Owner's sole discretion. If Owner determines in its sole discretion that it no longer desires to permit Attachments to transmission poles pursuant to the terms of this Agreement, then it shall provide Licensee sixty days prior written notice of Owner's intent to terminate the licensing of transmission pole space.

29. State Tariffs

It is the intent of the parties hereto that all terms and conditions of this Agreement and any applicable state tariffs be construed as being consistent where possible; however, in the event of a conflict or inconsistency between their respective terms and conditions, the terms of the applicable state tariff shall control.

30. Third Party

This Agreement shall not create for, nor give to, any third party any claim or right of action against either party to this Agreement that would not arise in the absence of this Agreement.

31. **Execution**

This Agreement may be executed in two counterparts each of which so executed shall be deemed to be an original.

32. **Agreement Modifications**

This Agreement and its Exhibits constitute the entire agreement between the parties respecting pole attachments, and shall only be modified in a writing signed by both parties hereto.

33. **Preservation of Remedies**

No delay or omission in the exercise of any power or remedy herein provided or otherwise available to Owner shall impair or affect Owner's right thereafter to exercise the same.

34. **Headings**

Headings used in this Agreement are inserted only for the convenience of the parties and shall not affect the interpretation or construction of this Agreement.

35. **Survival of Obligations**

All payment, performance and indemnity obligations of Licensee under this Agreement shall survive the termination of this Agreement, until said obligations are satisfied.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

FIBERTECHNOLOGIES NETWORKS, L.L.C.
By: Fibertech Networks, LLC it's Sole member

By: *Gary Muisus*

Gary Muisus
(Print Name)

Title: VP CONST.

Date: 4-12-06

OHIO POWER COMPANY

By: *Pam Ellis*

Pam Ellis
(Print Name)

Title: Manager - Attachment Services

Date: 5/5/06

**EXHIBIT A
ATTACHMENT FEES SCHEDULE
- TELECOMMUNICATIONS -**

Purpose of Attachment:

Licensee shall only be permitted hereunder to use the Attachments as a "telecommunications carrier" providing "telecommunications services" in accordance with 47 U.S.C. § 224. The pricing set forth herein shall only be applicable to distribution poles located within the State of Ohio.

***Annual Fee Per Attachment:**



* Section 15, item B: Owner may adjust rates by providing Licensee written notice prior to the effective date of such revision or rate adjustment.

EXHIBIT B
NON-STANDARD ATTACHMENTS

Equipment:

***Annual Fee Per Attachment :**

Riser Installations



Licensee shall not install any risers upon Owner's poles without the consent of Owner, which consent may be withheld in Owner's sole and absolute discretion. If Licensee desires to install a riser to a new or existing pole, Licensee shall submit in writing, the installation design, including the size of the proposed riser and adequate loading data to assess the impact on the existing pole. Owner may require a riser bracket be installed on any pole where a new riser of the Licensee is approved and where one or more risers currently exist. Licensee shall pay the Total Cost of the riser bracket, including all costs associated with the transfer of existing risers to the riser bracket. All risers shall be installed in accordance with Owner's instructions.

* Section 15, item B: Owner may adjust rates by providing Licensee written notice prior to the effective date of such revision or rate adjustment.

EXHIBIT C INDEMNIFICATION OF ALL CLAIMS

In consideration of Ohio Power Company, ("Owner"), granting and providing Fiber Technologies Networks, L.L.C. ("Licensee"), and its contractors and subcontractors with access and/or permission to work on or in the vicinity of Owner's facilities under the terms of that certain Pole Attachment License Agreement between Licensee and Owner effective April 1, 2006, the undersigned, its employees, contractors, subcontractors or agents, agrees to release, indemnify, save harmless, and defend Owner, its affiliates, and their respective directors, officers, employees and agents (collectively, "Indemnitees"), from and against any and all losses, liabilities, costs, expenses, suits, actions, claims and all other obligations and proceedings whatsoever, including, without limitation, all judgments rendered against, and all fines and penalties imposed upon the Indemnitees, and any reasonable attorneys' fees and any other costs of litigation (hereinafter collectively referred to as "liabilities") arising, directly or indirectly, out of the interruption of the Licensee, its subscribers, or sub licensees service or because of any interference with communication reception of such services, or out of injuries to persons, including disease or death, or damage to property, or in any other way attributable to or arising either directly or indirectly out of, the attachment, installation, operation, presence, use, maintenance, or removal of Licensee's facilities to Owner's poles, including the loss of use thereof, or by the proximity of Licensee facilities to all other parties, including Owner, occupying space on Owner's poles, except that the undersigned's obligation to indemnify Indemnitees shall not apply to any liabilities arising from Indemnitees' sole negligence or willful misconduct. The undersigned shall be liable for reasonable attorneys' fees and all costs of litigation associated with enforcement of the obligations set forth in this obligation of indemnification and Indemnitees shall be free to select counsel of their choice.

The undersigned agrees to expressly waive the undersigned's immunity as a complying employer under the workers' compensation law of the jurisdictional state from indemnification. With respect to the contractors based in the State of Ohio, this waiver applies to Article 35, Section II of the Ohio Constitution and Ohio Revised Code Section 4123.74. The undersigned shall also hold Indemnitees harmless from any workers compensation claims by the undersigned's employees, agents, and contractors in accordance with the indemnity set forth in the first paragraph.

The undersigned hereby acknowledges that it has been warned that working in the vicinity of Owner's facilities poses potential dangers and that the undersigned is aware of said dangers and will furthermore warn all employees, agents, subcontractors, or any other parties who may be working on behalf of the undersigned, of the potential dangers.

Notwithstanding any other provision of this Agreement, neither Indemnitees nor their agents, representatives, contractors or subcontractors shall be liable to the undersigned in contract or tort, including negligence, for the Licensee or the undersigned's losses, expenses, loss of profits or revenues, costs of additional or replacement facilities, or claims of customers for such damages or for any other indirect, incidental or consequential loss or damage whatsoever in connection herewith.

It is further agreed between the parties hereto, that to the extent any of the provisions of this Release and Indemnification of all Claims are determined to be contrary to law or held to be invalid by any court of competent jurisdiction, this Release and Indemnification of all Claims shall be construed and applied as if such invalid provisions were not contained herein, attempting at all times to conform, to the extent possible, to the intent of the parties as stated herein and in the Pole Attachment License Agreement, and provide the maximum indemnity allowed by law.

The terms of this release and indemnity shall survive the termination of the Pole Attachment License Agreement.

The undersigned also agrees to fully comply with and maintain the insurance coverage and requirements set forth in the Pole Attachment License Agreement.

I have fully read this release and understand and consent to it in its entirety.

By: _____

(Print Name)

Title: _____

Date: _____

**EXHIBIT D
PERFORMANCE BOND**

BOND NO.

We, Name of Attaching Party, (hereinafter called the "Principal"), a(n) _____ Corporation, with its principal place of business at _____, as _____ Principal, and _____ [Name of Surety Company] (hereinafter referred to as the "Surety"), a corporation organized under the laws of the State of _____, with its principal place of business at _____ [Address], City of _____, County of _____, State of _____, and licensed to transact a surety business in the State of _____, as Surety, are indebted to Utility Company, (hereinafter called the "Power Company"), a corporation organized under the laws of the State of _____, in the sum of _____ (\$ _____), to be paid to the Power Company, its legal representatives, successors and assigns, for which payment we bind ourselves and our legal representatives and successors, jointly and severally.

The condition of the above obligation is that Principal has entered into a written Pole Attachment License Agreement ("Agreement"), with the Power Company, dated XXXXX. The Agreement sets forth the terms and conditions which shall govern the use by Principal of Power Company's property and utility poles, located within the State of XXXX, and owned by Power Company, as Power Company may, on application, permit Principal to use in the Principal's business of furnishing cable television or other telecommunication service. The Agreement is specifically referred to and made a part of this Performance Bond by this reference as though fully set forth in this Performance Bond.

If Principal, its legal representatives, successors and assigns, shall faithfully perform the Agreement, and comply with all the terms and conditions of such Agreement, then this obligation shall be void; otherwise, it shall remain in full force and effect.

This bond shall take effect as of _____, and unless terminated or canceled in the manner provided below shall remain in full force and effect during the life of the Agreement.

This bond is subject further to the following express conditions:

1. In the event of default on the part of Principal, its legal representatives or successors, in observing, performing, fulfilling and keeping its obligations under the Agreement, a written statement of such default, with full details, shall be delivered to Surety promptly and in any event within sixty (60) days after the Power Company learns of such default.
2. No claim, suit, or action under this bond by reason of any such default shall be brought against Surety unless asserted or commenced within two years after the effective date of any termination or cancellation of this Performance Bond, and Principal shall be made a party to any such action or suit.
3. This Performance Bond may be terminated or canceled by Surety by one hundred eighty (180) days notice in writing from Surety to Principal and Power Company. Such notice shall be given by registered mail and addressed to Ohio Power Company, Attn: Joint Use Administrator. Such termination or cancellation shall not affect any liability incurred or accrued under this Performance Bond prior to the effective date of such termination or cancellation.
4. No right of action shall accrue under this Performance Bond to, or for, the use of any person other than the obligee under this Performance Bond, namely the Power Company, and its legal representatives, successors and assigns.
5. In no event shall the Surety be liable to the obligee for more than the penal sum of this bond, namely _____ Thousand Dollars.

In witness to the above, the parties have executed this agreement at _____ [Designate Place of Execution]

PRINCIPAL:

SURETY:

By: _____

By: _____

(Print Name)

(Print Name)

Title: _____

Title: _____

Date: _____

Date: _____

This foregoing document was electronically filed with the Public Utilities

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in

Case No(s). 14-0564-AU-CSS

Summary: Memorandum Contra of Ohio Power Company electronically filed by Mr. Yazen Alami on behalf of Ohio Power Company