

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**ANSWER OF FIBER TECHNOLOGIES NETWORKS, LLC TO
COUNTERCLAIM OF OHIO POWER COMPANY**

On April 7, 2014, Fiber Technologies Networks, L.L.C. (Fibertech) filed a complaint (Complaint) with the Public Utilities Commission of Ohio (Commission) regarding certain practices utilized by Ohio Power Company (AEP) related to pole access and the processing of pole attachment applications. In its Complaint, Fibertech requested that the Commission direct AEP to discontinue its unreasonable, unjust, and discriminatory practices, namely, its refusal to allow Fibertech nondiscriminatory access to poles that AEP's own contractors have deemed ready for attachments, and its refusal to process Fibertech's pole applications until and unless Fibertech pays to correct safety violations caused by AEP or other attachers. Following up on its Complaint filing, on April 15, 2014, Fibertech filed a motion for assistance to prevent termination of service and a request for expedited ruling on the same (Motion), petitioning the Commission to prevent AEP's termination of Fibertech's service, as related to pole attachments, during the pendency of the Complaint. Subsequently, AEP filed a memorandum opposing Fibertech's Motion. As of the date of this filing, the Motion has not yet been ruled upon.

On April 28, 2014, in reply to Fibertech's Complaint, AEP filed an answer and counterclaim (Counterclaim). Fibertech hereby files its answer to the Counterclaim, and states the following:

Answer to Allegations

1. In response to Paragraph 1 of the Counterclaim, Fibertech admits the allegations contained therein.
2. In response to Paragraph 2 of the Counterclaim, Fibertech admits to being subject to the Commission's jurisdiction for certain services that it may provide. Fibertech denies the remaining allegations set forth therein.
3. In response to Paragraph 3 of the Counterclaim, Fibertech denies that the Commission has jurisdiction over the entire subject matter of this Counterclaim and denies the allegations as set forth therein.
4. In response to Paragraph 4 of the Counterclaim, Fibertech states that the language of Rule 4901:1-7-23(B), Ohio Administrative Code (O.A.C.), speaks for itself and, thus, no response is required.
5. In response to Paragraph 5 of the Counterclaim, Fibertech states that the language of Section 4905.48, Revised Code, speaks for itself and, thus, no response is required.
6. In response to Paragraph 6 of the Counterclaim, Fibertech asserts that its attachments to AEP poles are now governed by the terms of the April 1, 2006 Pole Attachment License Agreement.
7. In response to Paragraph 7 of the Counterclaim, Fibertech asserts that the language of Section 1 of the April 1, 2006 Pole Attachment License Agreement Between Ohio Power Company and Fiber Technologies Networks, L.L.C. (April 1, 2006 Agreement

attached as Exhibit A), labeled "Scope of License," stands for itself and, thus, no response is required.

8. In response to Paragraph 8 of the Counterclaim, Fibertech asserts that pursuant to Section 11 of the April 1, 2006 Agreement, labeled "Unauthorized Attachments" (language included in Exhibit A, attached), that any attachment made without the written approval of AEP pursuant to the terms of the April 1, 2006 Agreement shall be considered an unauthorized attachment. Answering further, Fibertech states that Section 11 of the April 1, 2006 Agreement additionally provides, in pertinent part:

Upon discovery of an unauthorized Attachment, [AEP] may elect either of the following options: (i) order [Fibertech] to remove the Attachment within thirty (30) days, or (ii) review such Attachment, at [Fibertech]'s expense, to determine if the Attachment is in compliance with the Design Standards and, if necessary, order [Fibertech] 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.

9. Fibertech denies the allegations contained in Paragraph 9 of the Counterclaim.
10. Fibertech denies the allegations contained in Paragraph 10 of the Counterclaim.
11. Fibertech denies the allegations contained in Paragraph 11 of the Counterclaim.
12. Fibertech denies the allegations contained in Paragraph 12 of the Counterclaim.
13. Fibertech denies each and every allegation contained in the Counterclaim not specifically denied herein.
14. Fibertech denies that the Commission has jurisdiction to provide the relief requested in this Counterclaim.

Affirmative Defenses

For its affirmative defenses, Fibertech asserts the following:

1. AEP has failed to set forth reasonable grounds for its Counterclaim.
2. At all times relevant to the Counterclaim, Fibertech has complied with the April 1, 2006 Agreement in effect between the parties, applicable regulations governing pole attachments, and applicable provisions of the Revised Code and the O.A.C.
3. Fibertech was not apprised at any point prior to AEP's assertion thereof in its Counterclaim that AEP had recently performed an audit of its distribution poles on which Fibertech facilities were attached.
4. Fibertech was not apprised at any point prior to AEP's inclusion thereof in its Counterclaim regarding the data contained in Exhibit 1 of AEP's Answer and Counterclaim.
5. Fibertech was not apprised by AEP at any point prior to AEP's inclusion thereof in its Counterclaim about the non-compliant attachments contained in Exhibit 2 of AEP's Answer and Counterclaim.
6. Immediately upon notification of the non-compliant attachments, Fibertech has corrected all attachments referenced in Exhibit A.

Prayer for Relief

WHEREFORE, Fibertech respectfully requests that the Commission take the following actions:

1. Find that AEP has failed to set forth reasonable grounds for its Counterclaim;
2. Deny AEP the relief it has requested in its Counterclaim;

3. Find that AEP is in violation of Section 11 of the parties' April 1, 2006 Agreement;
4. Grant Fibertech the relief sought in its Complaint, including:
 - a. Finding that AEP engaged in practices relating to pole access and attachment that are unreasonable, unjustly discriminatory, and that render access for the installation of lawful pole attachments unavailable in violation of Sections 4905.51, 4905.71, and 4927.02, Revised Code, by taking adverse action despite previous approval of certain attachments, and/or failing to take action, or impermissibly delaying taking action on Fibertech applications;
 - b. Finding that AEP is unlawfully denying Fibertech access to its poles by unreasonably delaying the processing of Fibertech's applications for pole access and unlawfully requiring Fibertech to compensate AEP under unreasonable and unjust conditions;
 - c. Ordering AEP to take all actions necessary to timely facilitate the evaluation, processing, and licensing of Fibertech's applications previously submitted to AEP that are presently pending;
 - d. Ordering AEP to take all actions necessary to timely facilitate the evaluation, processing, and licensing of Fibertech's future applications for pole attachments;
 - e. Ordering AEP to cease any additional action or refrain from any inaction amounting to unlawful behavior, including stopping work on previously-approved attachments;
 - f. Ordering AEP to discontinue its practices which violate the state policy of ensuring the availability of competitive telecommunications services and

encouraging innovation in the telecommunications industry and the deployment of advanced telecommunications services as set forth in Section 4927.02, Revised Code;

5. Assess upon AEP the maximum civil forfeitures permitted by law; and
6. Order any other relief that the Commission deems appropriate, just, and reasonable.

Respectfully submitted,



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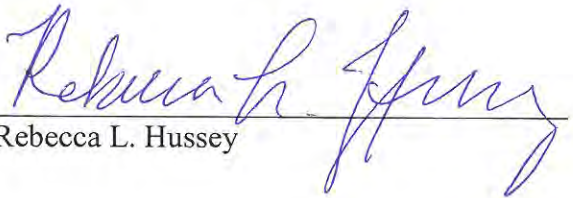
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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served upon the following parties via electronic mail on May 19, 2014.


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1252-001.394081v1

EXHIBIT A

POLE ATTACHMENT LICENSE AGREEMENT

BETWEEN

OHIO POWER COMPANY

AND

FIBER TECHNOLOGIES NETWORKS, L.L.C.

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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 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' sole 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 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 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 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 C&ST.

Date: 4-12-06

OHIO POWER COMPANY

By: *Pamela J. 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:**

\$14.43

* 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

\$ N/A at this time

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: _____

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in

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

Summary: Answer to Counterclaim electronically filed by Ms. Rebecca L Hussey on behalf of
Fiber Technologies Networks, LLC