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**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

## COMPLAINT AND REQUEST FOR EMERGENCY RELIEF

Complainant AT&T Ohio[1], by its undersigned attorneys, files this Complaint and Request for Emergency Relief against Respondent The Dayton Power & Light Company ("DP&L") pursuant to R.C. §§ 4905.26, 4905.51, and 4905.71, and in support thereof states as follows:

### THE PARTIES

1. AT&T Ohio is an Ohio corporation with its principal place of business in Ohio. AT&T Ohio provides telephone exchange service, exchange access, and other telecommunications and information services within the State of Ohio.

2. DP&L is an Ohio corporation with its principal place of business in Ohio.

### JURISDICTION AND VENUE

3. This Commission has jurisdiction over this Complaint pursuant to R.C. §§ 4905.26, 4905.51, and 4905.71.

[1] The Ohio Bell Telephone Company uses the name AT&T Ohio.

## GENERAL ALLEGATIONS

4. On March 17, 1930, AT&T Ohio and DP&L entered into a Joint Pole Line Agreement ("Joint Agreement") (Ex. A), providing terms and conditions by which each party can use space on the other party's poles to attach equipment used to provide service to customers. For example, where DP&L owns poles for the purpose of providing electric service to customers, the Joint Agreement sets forth terms and conditions allowing AT&T Ohio to use space on those poles to attach equipment used to provide telecommunications services to customers. Conversely, the agreement allows DP&L to use space on poles owned by AT&T Ohio. In this way, the Joint Agreement seeks to obviate the need for duplicative poles. The Joint Agreement has been amended from time to time.

5. The Joint Agreement expressly allocates AT&T Ohio the exclusive use of an identified and identifiable 3 feet of space on every pole it shares with DP&L. The Joint Agreement provides at Article 1.10:

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

6. The Joint Agreement does not permit DP&L to assign AT&T Ohio's rights under the contract or to lease AT&T Ohio's space to third parties. Rather, pursuant to Article 1.308 of the 1953 Operating Routine (attached as Ex. B):

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

> the nature of Signal or Communication Circuits shall be provided and licensed by and at the cost and expense of the Telephone Company.

7. Despite AT&T Ohio's right to exclusive use of a portion of the poles it shares with DP&L, DP&L has leased AT&T Ohio's space to third parties and collected the associated revenue, with neither the concurrence of nor compensation to AT&T Ohio.

8. Article 11.10 of the Joint Agreement established a rate of $2.00 per pole payable by each party: "The Licensee shall pay to the Owner as rental for the use of each and every pole any portion of which is occupied by or reserved for the attachments of the Licensee, Two Dollars ($2.00) per pole per annum." This provision was revised in a 1947 Supplemental Agreement ("1947 Supplemental Agreement") (Ex. C) to restructure the formulation for calculating the number of poles to which the rate applied – the $2.00 rate, however, remained unchanged. Specifically, the 1947 Supplemental Agreement provided that if one party owned more than one-half the poles, the other party would pay the rate of $2.00 for the number of poles in excess of one-half the joint poles. Revised Article 11.10 states:

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

9. Instead of billing for the number of poles it owns in excess of one-half of the joint poles, as explicitly provided for in the 1947 Supplemental Agreement, DP&L has been billing for the difference in the total number of poles owned by each party.

10. Article 13.10 of the Joint Agreement sets forth procedures for adjusting the pole attachment annual rental. It states:

> At the expiration of five (5) years from the date of this agreement, and at the end of every five (5) year period thereafter, the rental per pole per annum thereafter payable hereunder shall be subject to readjustment at the

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

11. Historically, the parties rarely have adjusted the rental rate under this provision. In fact, the rate under the agreement remained unchanged at $2.00 until it was revised in November 1995 to increase the rent to $3.50.

12. On or around November 12, 2004, DP&L notified AT&T Ohio of its desire to adjust the pole attachment rental amount pursuant to Article 13.10. Though the rental rate has always been low ($2.00 from 1930 until 1995, and $3.50 from 1995 to the present), DP&L sought to increase the rate by 1185%, from $3.50 to $45.00 per year, effective March 17, 2005. Over the course of the next year, AT&T Ohio and DP&L engaged in a series of informal and formal communications in the hopes of reaching agreement on an adjusted rate as well as other issues that are not the subject of this motion. The parties' attempts were unsuccessful. As noted above, Article 13.10 states that, if the parties are unable to agree on a readjustment of the rent, the rent will be "one-half of the then average total annual cost per pole of providing and maintaining the standard joint poles covered by this agreement." Article 13.10 does not explain specifically how to calculate the total annual cost per pole. It is clear, however, that the calculation must include the cost of all poles covered by the agreement – both DP&L's poles and AT&T Ohio's poles covered by the agreement – and should not include the cost of either party's poles that are not covered by the agreement.

13. DP&L's proposed $45.00 rate indisputably does not include the cost of AT&T Ohio's poles. And it includes DP&L poles that are not covered by the agreement. Its calculation

therefore does not conform to the agreement and cannot be used as the rate under the Joint Agreement.

14. DP&L purports to have calculated its proposed $45.00 rate by using a cost methodology approved by the Federal Communications Commission ("FCC") for pole attachments by cable and certain telecommunications carriers. The FCC's methodology was set forth in its May 25, 2001 Consolidated Partial Order on Reconsideration,[2] and codified at 47 C.F.R. § 1.1409. The Joint Agreement, however, does not specify that the parties use the FCC's methodology; in fact, the FCC's methodology did not even exist when the parties entered this contract in 1930.

15. Although its proposed $45.00 rate does not comply with the Joint Agreement, and AT&T Ohio did not agree to pay that rate, DP&L unilaterally applied it effective March 17, 2005. DP&L submitted bills to AT&T Ohio in the amount of $396,665.78[3] for the period October 2, 2004 through September 30, 2005 ("2005 Invoice"), and in the amount of $690,660.00 for the period October 1, 2005 through September 30, 2006 ("2006 Invoice") (Exs. D and E). AT&T Ohio paid DP&L $53,459.00 for the 2005 Invoice and $26,859.00 for the 2006 Invoice, the amounts not in dispute at the time of the payments.

16. On December 6, 2006, DP&L notified AT&T Ohio of its intent to suspend AT&T Ohio's rights under the Joint Agreement because of its purported default of the Agreement for its failure to pay the 2005 and 2006 invoices in full. Article 14.10 of the Joint Agreement, relating to procedures in the event of default by either party, provides:

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

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

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

17. AT&T Ohio is not in default of the Joint Agreement because it has paid the applicable contractual rate. AT&T Ohio has performed all of its obligations under its contract with DP&L.

**COUNT I**

**Breach of Contract**
**(Rental Overpayment by AT&T Ohio)**

18. AT&T Ohio repeats the allegations of paragraphs 1 though 17 above as if fully set forth herein.

19. The Supplemental Agreement executed in 1942 amended the rental payments under the agreement. Article 11 of the original Joint Agreement executed in 1930 established a rate of $2.00 per pole payable by each party. In 1942, the parties amended Article 11 to change the method of calculating the number of poles to which the rate applies. The 1942 amendment provided that if one party owned "more than one-half of the total number of joint poles," the other party would pay the rate of $2.00 for "such excess number." That is, it would pay for the number of poles in excess of one-half the joint poles. The rate itself to which this reformulation of the pole-counting methodology was applied remained unchanged at $2.00. The rate was later increased to $3.50 in 1995.

20. Instead of billing for the number of poles it owns in excess of 50% of joint poles, DP&L has been billing for the difference in the total number of poles owned by each party. DP&L has therefore breached the contract with AT&T Ohio.

21. Article 20 of the Agreement provides that the agreement's terms remain at all times in full force and effect, notwithstanding any prior failure to enforce or insist upon its terms.

22. As a result of DP&L's breach of the Joint Agreement, AT&T Ohio has been injured in an amount equal to or exceeding $287,544.25, plus interest as permitted by law.

**COUNT II**

**Unjust Enrichment**
**(Rental Overpayment by AT&T Ohio)**

23. AT&T Ohio repeats the allegations of paragraphs 1 though 22 above as if fully set forth herein.

24. DP&L has been unjustly enriched by overcharging rental payments to AT&T Ohio. The Ohio Supreme Court has held that "unjust enrichment of a person occurs when he has and retains money or benefits which in justice and equity belong to another." *Hummer v. Hummel,* 14 N.E.2d 923, 927 (Ohio 1938). The elements establishing unjust enrichments are: (1) a benefit conferred upon defendant by plaintiff, (2) knowledge by defendant of the benefit, and (3) the acceptance or retention by defendant of the benefit under circumstances that make it inequitable for defendant to retain the benefit without payment of its value. *Hambleton v. R.G. Barry Corp.,* 465 N.E.2d 1298, 1302 (Ohio 1984).

25. These elements have been met. DP&L has received benefits (money) as a result of it overcharging AT&T Ohio for pole rental. DP&L was aware of the benefits it was receiving. And it is inequitable under the circumstances for DP&L to retain the benefits.

## COUNT III

### Breach of Contract
### (Unauthorized Sublease of AT&T Ohio's Exclusive Pole Space)

26. AT&T Ohio repeats the allegations of paragraphs 1 though 25 above as if fully set forth herein.

27. The Joint Agreement expressly allocates AT&T Ohio the exclusive use of an identified and identifiable 3 feet of space on every pole it shares with DP&L. It does not grant DP&L, the right to assign or sublease AT&T Ohio's space to other carriers.

28. DP&L has been systematically subleasing AT&T Ohio's pole space to third parties and collecting the associated revenue, with neither the concurrence of nor compensation to AT&T Ohio.

29. Since the exclusive, guaranteed allocation and utilization of pole space by each party is the fundamental purpose of the Joint Agreement, DP&L's reallocation of AT&T Ohio's space to third parties contravenes the Joint Agreement. Thus, DP&L has breached the contract with AT&T Ohio.

30. As a result of DP&L's breach of the Joint Agreement, AT&T Ohio has been injured in an amount equal to or exceeding $1,594,127.36, plus interest as permitted by law.

## COUNT IV

### Unjust Enrichment
### (Unauthorized Sublease of AT&T Ohio's Exclusive Pole Space)

31. AT&T Ohio repeats the allegations of paragraphs 1 though 30 above as if fully set forth herein.

32. DP&L has been unjustly enriched by subleasing AT&T Ohio's pole space to third parties and collecting the associated revenue.

33. DP&L has received benefits (money) as a result of it unauthorized use of AT&T Ohio's allocated pole space. DP&L was aware of the benefits it was receiving. And it is inequitable under the circumstances for DP&L to retain the benefits without paying AT&T Ohio its value.

**COUNT V**

**Declaratory Judgment**
**(DP&L's Unilateral Rate Increase Violates the Parties' Contract)**

34. AT&T Ohio repeats the allegations of paragraphs 1 though 33 above as if fully set forth herein.

35. A "contract may be construed by a declaratory judgment or decree either before or after there has been a breach of contract." Ohio Revised Code § 2721.04. The three elements necessary to obtain a declaratory judgment are: (1) that a real controversy between adverse parties exists; (2) which is justiciable in character; and (3) that speedy relief is necessary to the preservation of rights which may be otherwise impaired or lost. *Herrick v. Kosydar,* 339 N.E.2d 626, 627 (Ohio. 1975).

36. These elements have been met. There is a real, justiciable controversy between AT&T Ohio and DP&L over the proper annual fee for pole rental. DP&L claims the rental fee is $45.00 per pole, and has already submitted bills to AT&T Ohio based on that amount and suspended AT&T Ohio's rights under the contract for AT&T Ohio's failure to pay those bills in full. Moreover, speedy relief is necessary to the preservation of AT&T Ohio's rights under the contract.

37. The Commission should declare that the $45.00 per year rental charged by DP&L violates the contract. The rental rate provided for under the contract is $3.50. The only way that rate can be changed is if the parties come to agreement on a readjustment under Article 13.10 of

the contract, or if the parties cannot agree to a readjustment, the contract provides that the rental amount will be "equal to one-half of the then average total annual cost per pole of providing and maintaining the standard joint poles covered by this agreement." This provision requires consideration of all the poles covered by the agreement – including AT&T Ohio's poles covered by the agreement.

38. DP&L's $45.00 rental rate does not meet this standard. First, DP&L's $45.00 figure does not include the cost of AT&T Ohio's poles – it indisputably includes only DP&L's poles. DP&L's rental rate also improperly includes the cost of DP&L poles that are not covered by the agreement.

39. For these reasons, the Commission should declare that DP&L's unilaterally imposed rental rate of $45.00 violates the parties' contract, and that the rate to be charged shall be $3.50, until changed in a manner consistent with the Joint Agreement.

**COUNT VI**

**Emergency Relief**
**(Suspension of AT&T Ohio's Rights Under the Contract)**

40. AT&T Ohio repeats the allegations of paragraphs 1 though 39 above as if fully set forth herein.

41. Emergency relief is necessary here to prevent irreparable harm and AT&T Ohio does not have an adequate remedy at law. Such relief is also necessary to ensure that citizens of Ohio, including end users, have access to vital telecommunications services. Moreover, absent temporary relief, the public interest purposes of R.C. §§ 4905.51 and 4905.71, efficient sharing of wireline support structures and the concomitant avoidance of added burden on the public rights of way caused by duplicative poles lines, will be frustrated.

42. Emergency relief is justified here. AT&T Ohio is likely to succeed on the merits of its claims that DP&L's unilateral increase in the rental rate violates the Joint Agreement and that DP&L was not permitted by the Joint Agreement to suspend AT&T Ohio's rights thereunder. Absent emergency relief, AT&T Ohio will be irreparably harmed. Neither DP&L nor any third parties will be harmed by the granting of emergency relief. The public interest will be served by entry of emergency relief.

43. Emergency relief is appropriate under Ohio Admin. Code § 4901-9-01(D) because of the threatened suspension by DP&L of AT&T Ohio's rights under the Joint Agreement. AT&T Ohio agrees to pay all amounts that are not in dispute pursuant to that provision.

44. Emergency relief is also appropriate under R.C. § 4909.16, under which the Commission may temporarily alter the rates charged by DP&L to prevent injury to the interests of the public and the interests of AT&T Ohio.

45. For these reasons, the Commission should temporarily, preliminarily and permanently enjoin DP&L, its affiliates, subsidiaries, employees, officers, directors, servants, attorneys and agents, and those persons in active concert with them who receive actual notice of the injunction order from suspending AT&T Ohio's contractual rights to use DP&L's poles.

**RELIEF REQUESTED**

46. AT&T Ohio is entitled to the relief sought in this complaint, including:

a. A determination by the Commission that DP&L violated the parties' agreement by overcharging AT&T Ohio for pole attachments and that DP&L was unjustly enriched by so overcharging, and directing DP&L to immediately reimburse AT&T Ohio for its overpayment, with interest as permitted by law;

b. A determination by the Commission that DP&L violated the parties' agreement by subleasing AT&T Ohio's exclusive pole space and that DP&L was unjustly enriched by its sublease of AT&T Ohio's exclusive pole space, and directing DP&L to compensate AT&T Ohio for such unauthorized use of its pole space, with interest as permitted by law;

c. A determination by the Commission that the $45.00 per year rental fee charged by DP&L violates the parties' agreement, and directing that the rate to be charged shall be $3.50, until changed in a manner consistent with the Joint Agreement;

d. An Order by the Commission temporarily, preliminary and permanently enjoining DP&L, its affiliates, subsidiaries, employees, officers, directors, servants, attorneys and agents, and those persons in active concert with them who receive actual notice of the injunction from suspending AT&T Ohio's contractual right to use DP&L's poles to attach telecommunications equipment used to provide service to customers.

e. Any and all such other such relief as the Commission deems appropriate.

Dated: December 28, 2006

Respectfully submitted,

AT&T Ohio

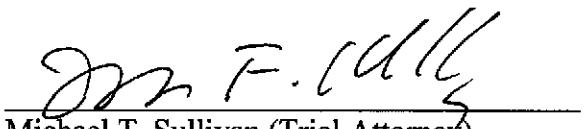
By: 

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EXHIBIT A

BELL SYSTEM PRACTICES

SECTION ~~Appendix A~~

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*See Supplemental Agreement.

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BELL SYSTEM PRACTICE

~~APPENDIX A~~
SECTION ~~A24.54~~

JOINT POLE LINE

AGREEMENT

POLE RENTAL CONTRACT

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

W I T N E S S E T H:

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

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

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties hereto, for themselves, their successors and assigns, do hereby covenant and agree as follows:

1. DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

## 2. LIABILITY CLAUSE

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

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

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

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

(d) In the event an employee of the Electric Company should be injured or killed while in the course of his employ upon or in connection with the poles or any of them jointly used hereunder or the lines upon any such poles, and he or his dependents should claim such injury or death was due to negligence of the Telephone Company in connection with such pole or lines or their operation and should sue the Telephone Company for damages based upon such alleged negligence and such suit should result in a judgment and be paid or satisfied by it or such claim should be settled by the Telephone Company with the consent of the Electric Company either before or after suit, then notwithstanding such judgment or settlement, the question of whether such injury was due to negligence of the Telephone Company, or the Electric Company, or both, shall within 30 days from payment or satisfaction of the judgment or settlement be considered jointly by three persons in the organization of each party hereto to be designated by their respective officers. If the conclusion is reached by the designated representatives of the parties hereto that such injury or death was not due nor proximately contributed to by negligence of the Telephone Company, or was due to negligence of the Electric Company or of both companies, or if a majority of such representatives should fail to agree in regard to the matter, then, if the sum paid by the Telephone Company to satisfy such judgment or in settlement, including interest thereon and costs of suit, should be in excess of the sum paid by the Electric Company under the Workmen's Compensation Law of Ohio because of such casualty, one-half of such excess shall be paid by the Electric Company to the Telephone Company.

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

(e) In the event an employee of the Telephone Company should be injured or killed while in the course of his employment upon or in connection with the poles or any of them jointly used hereunder or the lines upon any such poles, and he or his dependents should claim such injury or death was due to negligence of The Electric Company in connection with any such poles or lines or their operation and should sue the Electric Company for damages based on such alleged negligence and such suit should result in a judgment and be paid or satisfied by it or such claim should be settled by the Electric Company with the consent of the Telephone Company either before or after suit, then notwithstanding such judgment or settlement, the question of whether such injury was due to negligence of the Electric Company, or the Telephone Company, or both, shall within 30 days from payment or satisfaction of the judgment or settlement be considered jointly by three persons in the organization of each party hereto to be designated by their respective officers. If the conclusion is reached by the designated representatives of the parties hereto that such injury or death was not due nor proximately contributed to by negligence of the Electric Company, or was due to negligence of the Telephone Company or of both companies, or if a majority of such representatives should fail to agree in regard to the matter, then, if the sum paid by the Electric Company to satisfy such judgment or in settlement, including interest thereon and costs of suit, should be in excess of the sum paid by the Telephone Company under the Workmen's Compensation Law of Ohio because of such casualty, one-half of such excess shall be paid by the Telephone Company to the Electric Company.

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

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

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

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

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

(j) The Telephone Company shall assume and bear all damage to its own property resulting from the joint use of poles under this contract, due to any

cause whatsoever, and shall make no claim against the Electric Company therefore, except when due solely to negligence of the Electric Company.

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

3. *TERRITORY COVERED {*Includes all territory in which both parties operate

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

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

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

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

4. RIGHT OF JOINT USE GRANTED

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

5. PROCEDURE WHEN CHARACTER OF CIRCUITS IS CHANGED

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

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

*See Operating Routine, Paragraph 1.30, for territorial revision.

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

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

## 6. SPECIFICATIONS

6.10 Except as otherwise provided in Sections (a) and (b) of Article IX, the joint use of poles covered by this agreement shall at all times be in conformity with specifications mutually agreed upon by the parties hereto; which specifications shall, as nearly as practicable, be in conformity with, or based upon the provisions of Administrative Order No. 72 of The Public Utilities Commission of Ohio, or any revision or modification thereof. Said specifications are to be appended to and become a part of this contract, and may be changed or modified upon mutual agreement.

## 7. PLACING, TRANSFERRING OR REARRANGING ATTACHMENTS

7.10 (a) Whenever the Licensee desires to place on any pole of the Owner within the territory covered by this agreement, any attachments requiring space thereon not then specifically reserved hereunder for the use of the Licensee, the Licensee shall, before placing its attachments on said pole, give to the Owner written notice thereof, specifying in such notice the location of the pole in question and the number and kind of attachments which the Licensee desires to place thereon and the character of the circuits to be used. Within ten (10) days after the receipt of such notice the Owner shall notify the Licensee in writing, whether or not said pole is of those excepted under the provisions of Article III. Upon receipt by the Licensee of notice from the Owner that said pole is not of those excepted and after the completion of any transferring or rearranging which is then required in respect to said pole, it may proceed to place its attachments thereon. No guarantee is given by the Owner of permission from property owners, municipalities or others for the use of its pole by the Licensee, and if objection is made thereto and the Licensee is unable to satisfactorily adjust the matter within a reasonable time, the Owner may at any time upon ten (10) days notice in writing to the Licensee require the Licensee to remove its attachments from the poles involved, and the Licensee shall, within ten (10) days after receipt of said notice, remove its attachments from such poles at its sole expense. Should the Licensee fail to remove its attachments as herein provided the Owner may remove them at the Licensee's expense without any liability whatever

for such removal or the manner of making it, for which expense the Licensee shall reimburse the Owner on demand.

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

8. ERECTING, REPLACING OR RELOCATING POLES

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

(b) Whenever it is necessary to change the location of a jointly used pole, by reason of any state, municipal or other governmental requirements, or the requirement of a property owner, the Owner shall, before making such change in location, give notice thereof in writing to the Licensee, specifying in such notice the time of such proposed relocation, and the Licensee shall at its own expense, at the time so specified, transfer its attachments to the pole at the new location.

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

(d) In any case where the parties hereto shall conclude arrangements for the joint use hereunder of any new poles to be erected, the ownership of such poles shall be determined by mutual agreement, due regard being given to the desirability of avoiding mixing ownership in any given line. In the event of disagreement as to ownership, the party then owning the smaller number of joint poles under this agreement shall erect the new joint poles and be the owner thereof.

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

(i) When replacing a jointly used pole carrying terminals or aerial cable, underground connections or transformer equipment, the new pole shall be set in the same hole which the replaced pole occupied, unless in order to meet special preponderating conditions it is necessary, or desirable, to set it in a different location, agreeable to both parties hereto.

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

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

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

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

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

## 10. TERMINATION OF JOINT USE

10.10 (a) If the Owner desires at any time to abandon any joint pole, it shall give the Licensee notice in writing to that effect at least sixty (60) days prior to the date on which it intends to abandon such pole.

If, at the expiration of said period, the Owner shall have no attachments on such pole but the Licensee shall not have removed all of its attachment therefrom, such pole shall thereupon become the property of the Licensee, and the Licensee shall save harmless the former Owner of such pole from all obligation, liability, damages, cost, expenses or charges incurred thereafter, because of, or arising out of, the presence or condition of such pole or of any attachments thereon the property of the Licensee; and shall pay the Owner a sum equal to the then value in place of such abandoned pole or poles or such other equitable sum as may be agreed upon between the parties.

(b) The Licensee may at any time abandon the use of a joint pole by removing therefrom all of its attachments, and giving ten (10) days notice in writing thereof to the Owner. The Licensee shall in such cases pay to the Owner the full rental for said pole for the then current year.

## 11. *RENTALS

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

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

## 12. *RENTAL PAYMENTS

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

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

Every such statement, including the statement first above provided for, shall be deemed to be correct unless written notice of errors claimed to exist therein shall be given within sixty (60) days from the receipt of such statement to the party submitting the statement by the party to which

*See Supplemental Agreement - Appendix B

the statement was submitted. In case of dispute concerning the correctness of any such statement, a joint inspection of the pole or poles in dispute shall thereupon be made; such inspection to be begun within ten days (10) after notice of errors claimed to exist therein shall have been given as aforesaid, and to be completed within a reasonable time thereafter. A written report of such inspection, signed by the inspectors of both parties, shall be made, and, upon the approval of such report by the officers of both parties such statement shall, if shown to be incorrect, be corrected accordingly.

## 13. PERIODICAL READJUSTMENT OF RENTALS

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

## 14. DEFAULTS

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

## 15. BILLS AND PAYMENT FOR WORK

15.10 Upon the completion of work performed hereunder by either party, the expense of which is to be borne wholly or in part by the other, the party performing the work shall present to the other party, within ninety (90) days after the completion of such work, an itemized statement showing the entire cost of the labor and material employed therein, supervision and all overhead charges, and such other party shall, within thirty (30) days after such statement is presented, pay to the party doing the work such other party's proportion of the cost of said work.

## 16. PRE-EXISTING OBLIGATIONS

16.10 If either of the parties hereto has, prior to the execution of this agreement conferred upon others, not parties to this agreement, by

contract or otherwise, rights and privileges to use any pole covered by this agreement, nothing herein contained shall be construed as affecting said rights and privileges, and either party hereto shall have the right, by contract or otherwise, to continue and extend such existing rights and privileges; it being expressly understood, however, that for the purpose of this agreement, the attachments of any outside party shall be treated as attachments belonging to the grantor, and the rights, obligations, and liabilities hereunder of the grantor, in respect to such attachments, shall be the same as if it were the actual owner thereof, excepting, however, such wires and attachments as are erected on the pole of either party by order of municipal authority or in compliance with ordinances or franchises.

## 17. SERVICE OF NOTICES

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

## 18. *TERM OF AGREEMENT

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

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

*See Supplemental Agreement, Appendix B.

## 19. ASSIGNMENT OF RIGHTS

19.10 Except as otherwise provided in this agreement, neither party hereto shall assign or otherwise dispose of this agreement, or any of its rights or interests hereunder, or in any of the jointly used poles, or the attachments or rights-of-way covered by this agreement, to any firm, corporation or individual, without the written consent of the other party; provided, however, that nothing herein contained shall prevent or limit the right of either party to make a general mortgage in the usual form on any or all of its property, rights, privileges, and franchises, or a lease or transfer of any of them to another corporation organized for the purpose of conducting business of the same character as that of such party, or to enter into any merger or consolidation; and in case of the foreclosure of such mortgage, or in the case of such lease, transfer, merger or consolidation, its rights and obligations hereunder shall pass to and be acquired and assumed by the purchaser on foreclosure the transferee, lessee, assignee, merging or consolidating company, as the case may be; and provided, further, that subject to all the terms and conditions of this agreement, either party may permit any corporation conducting a business of the same general character as that of such party, and owned, operated, leased or controlled by it, or associated or affiliated with it in interest, or connected with it, the use of all or part of the space reserved hereunder on any pole covered by this agreement for the attachments used by such party, in the conducting of its said business; and for the purpose of this agreement, all such attachments maintained on any such pole by the permission as aforesaid of either party hereto shall be considered as the attachments of the party granting such permission and the rights, obligations, and liabilities of such party under this agreement, in respect to such attachments shall be the same as if it were the actual owner thereof.

## 20. WAIVER OF TERMS OR CONDITIONS

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

## 21. EXISTING CONTRACTS

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

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

THE DAYTON POWER AND LIGHT COMPANY

| | | | |
|---|---|---|---|
| Witness: | By | (signed) | O.H. Hutchings,<br>Vice President |
| (signed) F.T. Griost | | | |
| (signed) Editho M. Carpenter | and | (signed) | O.H. Howland,<br>Secretary |

THE OHIO BELL TELEPHONE COMPANY

By (signed) F.M. Stephens,
Vice President

and (signed) C.S. Maltby,
Secretary

(signed) Geo. J. O'Hara

(signed) J. M. Defenbaugh

EXHIBIT B

FILE # ~~6866~~ 6813

# OPERATING ROUTINE

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INSTRUCTIONS FOR ADMINISTERING

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

and

THE SUPPLEMENTAL AGREEMENT DATED SEPTEMBER 30, 1942

BETWEEN

THE DAYTON POWER AND LIGHT COMPANY

and

THE OHIO BELL TELEPHONE COMPANY

Prepared Jointly by

THE DAYTON POWER AND LIGHT COMPANY
and
THE OHIO BELL TELEPHONE COMPANY

December, 1952

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


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# OPERATING ROUTINE

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

## 0. GENERAL

### 0.10 Purpose of Operating Routine

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

### 0.20 Effective Dates

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

### 0.30 Points of Contact

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

(a) For The Dayton Power and Light Company

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

(b) For The Ohio Bell Telephone Company

The District Plant Engineer - Dayton, Ohio

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

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

0.303 If any matters arise which cannot be adjusted by the contact men in accordance with the terms of the Joint Use Pole Agreement or this Operating Routine; or if they desire changes in the specifications or these instructions; or if it is desired to revise Schedules A, A-1, B, and C, described herein under Section 11; such matters shall be referred to the Chief Electrical Engineer of the Electrical Engineering Division of the Electric Company and the Plant Engineer (Division) of the Telephone Company for final decision. The intent is to make the agreement simple to operate by the men in the field and to have all controversial matters handled through the above-mentioned offices.

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

### 0.40 Revision of Operating Routine

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

### 0.50 Dealing with the Public

0.501 In dealing with the public, the representatives of each company shall avoid making any statements that may create an embarrassing situation for the other company.

## 1. EXPLANATION OF TERMS

### 1.10 Standard Joint Poles

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

### 1.20 Standard Space

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

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

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

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

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

## 1.30 Excess Height and Excess Strength

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

1.302 When both companies are using standard space allocations, the uppermost telephone attachment will generally be not higher than 20 ft. 10 in. above ground on a standard 35 ft. joint pole. Where a standard joint pole would be a 35 ft. pole, it will be assumed in general that, if telephone attachments are at an elevation of no more than 20 ft. 10 in., any excess height will be for the sole benefit of the Electric Company.

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

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

NOTE:

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

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

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

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

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

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

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

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

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

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

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

1.309 The cost of excess height and/or excess strength shall be determined from the current Standard Billing Table, identified as Schedules A and A-1 attached hereto and made a part hereof. (See Section 11).

## 1.40 Sacrificed Life

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

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

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

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

## 1.50 Services

1.501 A "SERVICE" for the Electric Company consists of two or more conductors carrying less than 500 volts between conductors supplying electric service to a customer; and for the Telephone Company, two or more conductor twist or parallel paired conductors supplying telephone service to a subscriber.

## 1.60 Service Drop

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

# 2. NON-RENTAL AND MISCELLANEOUS ATTACHMENTS

## 2.10 Ownership of Miscellaneous Pole Attachments

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

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

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

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

## 2.20 Clearance Attachments

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

2.202 Such attachments shall be considered as "Clearance Attachments" as defined in Paragraph 2.201 and Section 2.30 only when it would be unnecessary for the party making such attachments to place poles in lieu of the poles contacted by such "Clearance Attachments" if the Owner's plant did not exist at those locations.

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

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

2.204 No rental charge shall be made for clearance attachments.

## 2.30 Establishing Clearance Attachments

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

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

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

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

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

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

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

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

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

### 2.40 Guy Attachments

2.401 No rental charge shall be made for guy attachments.

## 3. SCOPE OF OPERATING ROUTINE

### 3.10 Owner to be Sole Judge of Its Own Requirements

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

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

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

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

## 4. SPECIFICATIONS

### 4.10 General

4.101 ADMINISTRATIVE ORDER NO. 72 OF THE STATE OF OHIO and the "SPECIFICATIONS FOR THE CONSTRUCTION AND MAINTENANCE OF JOINTLY-USED WOOD POLE LINES CARRYING SUPPLY AND COMMUNICATION CIRCUITS", known as E.E.I. Publication No. M-12, and identified as the attachment to AP4.25 of Bell System Practices, shall be followed in the joint use construction under the Joint Pole Agreement.

### 4.20 Exceptions

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

(a) Permanent Metal Steps

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

## 5. EXCHANGE OF INFORMATION

### 5.10 Advance Notice - General

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

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

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

## 6. FORMS - PREPARATION AND USE

### 6.10 Joint Use and Construction Proposals

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

6.101 These forms shall be used by each company to:

(1) Indicate the proposed work of the originating company.

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

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

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

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

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

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

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

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

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

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

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

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

(b) Each Proposal issued by the Telephone Company shall carry a number running consecutively beginning with #1 on January 1st of each year and shall be prefixed by the letter "D" and the last two digits of the year in which the proposal is prepared, as: D51-1, D51-2, etc.

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

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

6.109 Symbols to be used on Proposals are as follows:

"RP" Followed by height of pole denotes replacement of pole
"RM" Remove pole
"RL" Relocate pole
"PL" Place pole
"CC" Clearance contact
"RS" Reserved space
"PL RC" Denotes placing a Rental Contact

"RM RC" Denotes removing A Rental Contact
"RS RC" Change "Reserved Space" to Rental Contact
"RM RS" Discontinue "Reserved Space"
"PL CC" Place Clearance Contact
"RM CC" Remove Clearance Contact
"LT" Space loaned to the Telephone Company
"LE" Space loaned to the Electric Company

6.20 Monthly Recapitulation

Exhibit 3 (Electric Company's Form #255), and
Exhibit 4 (Telephone Company's Form #2826)

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

6.202 Each company shall post to the Monthly Recapitulation form which it prepares, all Joint Use and Construction Proposals on which it has indicated that its work has been completed during the month for which the Monthly Recapitulation form is prepared. (See Paragraphs 6.101 to 6.103, inclusive.)

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

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

### 6.30 Monthly Billing Summary

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

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

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

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

## 7. ESTABLISHING JOINT USE OF EXISTING POLES

### 7.10 Reservation of Space on Existing Poles Suitable for Joint Use

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

### 7.20 Replacement of Existing Poles Unsuitable for Joint Use

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

7.202 Where the Owner desires the Licensee to make the necessary pole replacements and the Licensee agrees, this note shall be placed on the three copies of the Joint Use and Construction Proposal which have been received from the Licensee. The removal and disposition

of the old pole shall be in accordance with Paragraph 1.401. The new Owner's completion date shall be the date on which such poles are brought under the Joint Pole Agreement.

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

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

## 8. MAINTENANCE OF POLES AND ATTACHMENTS

### 8.10 General

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

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

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

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

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

## 8.20 Replacing Joint Poles

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

8.202 If a condition arises where the Owner is obligated to replace certain joint poles and is unable to release a crew for such work, thus holding up some contemplated work of the Licensee, the Owner may delegate the authority to the Licensee to set the new poles and bill the Owner for the pole cost as shown on the current Standard Billing Table. (See Paragraphs 11.305 and 11.401). The Owner shall remove the old poles.

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

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

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

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

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

### 8.30 Temporary Relocation or Respacing of Joint Poles

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

### 8.40 Removing Joint Poles

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

## 9. ABANDONMENTS

### 9.10 Abandonment by Owner

9.101 If the Owner at any time desires to abandon any joint pole, it shall give the Licensee notice in proposal form to that effect prior to the date on which it intends to abandon such pole. After the Owner has removed all of its attachments from such pole, it shall so advise the Licensee by means of a proposal completion notice. (See Paragraph 6.101).

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

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

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

9.105 A running summary of the poles involved in Paragraphs 8.206, 9.102 and 9.104 shall be maintained and verified by both companies. Twice a year, i.e. on May 1st and November 1st, the formal transfer of the titles to such poles shall be made by means of proper Bills of Sale to be prepared by the Companies abandoning the ownership of the poles. Such Bills of Sale shall be executed and delivered within thirty (30) days from the above dates.

### 9.20 Abandonment by Licensee

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

9.202 Exception to Paragraph 9.201:

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

### 9.30 Abandonment by Both Companies

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

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

## 10. REDUCING UNBALANCE OF POLE UNITS

### 10.10 Three Methods for Reduction

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

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

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

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

(1) Existing joint poles.

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

(2) Existing non-joint poles.

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

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

## 11. PAYMENTS AND COSTS

### 11.10 General

#### 11.101 Net Bills

(a) For Deficiency in Joint Pole Units. The net amount to be paid for the total number of joint poles, as specified in Paragraph 11.202, shall be combined at the end of each rental year and the company to which a net payment is to be made shall issue one bill for this net amount. Such bill shall be rendered on or before November 1st.

(b) For Miscellaneous Charges on Monthly Billing Summary. At the end of each month, the sum of the cumulative totals of the amounts to be paid by each company for sacrificed life, excess height, abandonments, etc., as shown on the Monthly Billing Summary shall be determined. The difference

between the total amounts to be paid by each company shall be billed by the company to which the net payment is to be made. Billing shall be rendered by the 25th of the following month.

## 11.20 Payment for Deficiency in Number of Pole Units

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

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

## 11.30 Payments for Miscellaneous Charges

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

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

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

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

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

## 11.40 Standard Billing Tables

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

(a) Schedule A

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

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

(1) Height and strength for poles having 100% value.

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

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

(b) Schedule A-1

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

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

(1) Height and strength for poles having 100% value.

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

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

(c) Schedule B

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

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

(d) Schedule C

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

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

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

### 11.50 Payment When Character of Circuits is Changed

Reference - Article V of Joint Use Pole Agreement

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

## 12. TAGGING AND NUMBERING POLES

### 12.10 General

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

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

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

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

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

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

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

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

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

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

## 13. POLE RECORDS

### 13.10 Pole Symbols to be Used by Each Company

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

| | Symbols Used By DPL | OBT |
|---|---|---|
| Non-joint D.P.L. pole | X | X |
| Non-joint O.B.T. pole | O | O |
| D.P.L. pole jointly used by O.B.T. | | $\overline{X}$ |
| O.B.T. pole jointly used by D.P.L. | | $\overline{O}$ |
| Higher tension D.P.L. pole (over 5000 V) | | * |
| Higher tension O.B.T. pole (over 5000 V) | | $\overline{*}$ |
| No charge contacts on D.P.L. poles | | $\underline{X}$ |
| No charge contacts on O.B.T. poles | | $\underline{O}$ |

### 13.20 Check of Records

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

## 14. LIST OF ATTACHMENTS

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

Exhibit 2 - Joint Use and Construction Proposal.
Telephone Company's Form #3759 - Yellow Color.

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

Exhibit 4 - Monthly Recapitulation.
Telephone Company's Form #2826 - Yellow Color.

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

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

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

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

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

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

## 15. EXISTING OPERATING ROUTINES

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

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

Approved 6-30 19 53

THE DAYTON POWER AND LIGHT COMPANY

By H. E. Deardorff
Vice President and Chief Engineer

Approved 7-17 19 53

THE OHIO BELL TELEPHONE COMPANY

By C. M. Rankin
General Plant Manager

SUPPLEMENTAL AGREEMENT

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

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

NOW, THEREFORE;

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

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

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

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

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

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

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

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

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

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

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

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

NESSES:

ar D. Bube

iola Franzer

THE DAYTON POWER AND LIGHT COMPANY

by K. C. Long
Vice President

And F. T. Griest
Assistant Secretary

THE OHIO BELL TELEPHONE COMPANY

leanor Cottor

ernadine Sherman

By Ralph E. Marburger
Vice President & General Manager

And F. J. Rickey
Secretary

EXHIBIT D

DP&L

1900 Dryden Road
Dayton, Ohio 45439

# INVOICE

**Billing Address:**
SBC
N 17 W 24300 Riverside Dr. - 3rd Floor
Waukesha, WI 53188
Att.: Sharon Rosiak

**Mailing Date:** 12/22/2005
**Due Date:** Upon Reciept
**Invoice Number:** 05-00322
**Amount Due:** $343,344.25

Service Address:
Various

Description:

**Amended Invoice for 2004 Pole Contact Rental (October 1, 2004-September 30, 2005)**

Negotiations begun in November, 2004 to set a new rental rate did not result in an agreed upon rental rate. Per contract, a default rate went into effect on March 17, 2005. This new rate is $45 per pole per year.

Annual rate = 5.5 months @ $3.50 + 6.5 months @ $45.00
Annual rate = $1.60 + $24.37
Annual rate = $25.97

| | | | |
|---|---|---|---|
| SBC Pole Attachments on DP&L Poles: | 38,739 | | |
| DP&L Pole Attachments on SBC Poles: | 23,465 | | |
| Net Attachment Total: | 15,274 | @ $25.97 per attachment = | $396,665.78 |
| | | Credit for Payment of Invoice 05-00288 = | -$53,459.00 |
| | | **Balance Due =** | $343,206.78 |

**PLEASE RETURN COPY OF INVOICE WITH YOUR REMITTANCE**
**MAKE CHECK PAYABLE AND REMIT TO:**

**THE DAYTON POWER & LIGHT COMPANY**
**ATTN: Joint Use/Proposal Desk**
**1900 Dryden Road**
**Dayton, Ohio 45439**

| DR/CR | ACCOUNT PRIME | SUB | CE NE | CENTER BUD CTR | SPEC ID | AMOUNT | DESCRIPTION 2 WORK ORDER | SU PO | DESCRIPTION 3 VEH1 / VEH2 |
|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | |
| | | | | | | | | | |
| | | | | | | | | | |
| | | | | | | | | | |
| | | | | | | | | | |

EXHIBIT E

DP&L

1900 Dryden Road
Dayton, Ohio 45439

# INVOICE

**Billing Address:**
AT&T
N 17 W 24300 Riverside Dr. - 3rd Floor
Waukesha, WI 53188
Attn: Sharon Rosiak

**Mailing Date:** 10/26/2006
**Due Date:** Upon Reciept
**Invoice Number:** 06-00471
**Amount Due:** $690,660.00

**Service Address:**
Various

**Description:**

| | | | |
|---|---|---|---|
| **2005 Pole Contact Rental (October 1, 2005-September 30, 2006)** | | | |
| AT&T Pole Attachments on DP&L Poles: | 38,804 | | |
| DP&L Pole Attachments on AT&T Poles: | 23,456 | | |
| Net Attachment Total: | 15,348 | @ $45.00 per attachment = | $690,660.00 |

RECEIVED
OCT 27 2006

**PLEASE RETURN COPY OF INVOICE WITH YOUR REMITTANCE**
**MAKE CHECK PAYABLE AND REMIT TO:**

**THE DAYTON POWER & LIGHT COMPANY**
**ATTN: Joint Use/Proposal Desk**
**1900 Dryden Rd**
**Dayton, Ohio 45439**

| DR/CR | ACCOUNT PRIME | SUB | CE NE | CENTER BUD CTR | SPEC ID | AMOUNT | DESCRIPTION 2 WORK ORDER | SU PO | DESCRIPTION 3 VEH1 / VEH2 |
|---|---|---|---|---|---|---|---|---|---|
| | 118 | 1118 | | 451 | | 690,660.00 | | | |

Certificate of Service

I hereby certify that a copy of the foregoing has been served this 28th day of December, 2006, by UPS overnight courier and e-mail, where noted, on the parties listed below.

Jon F. Kelly

**THE DAYTON POWER & LIGHT COMPANY**

Jack Richards
Douglas J. Behr
Thomas B. Magee
Keller and Heckman, LLP
Suite 500 West
1001 G St., N.W.
Washington, DC 20001

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behr@khlaw.com
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cfaruki@ficlaw.com
jsharkey@ficlaw.com

Miggie E. Cramblit
The Dayton Power & Light Company
1065 Woodman Drive
Dayton, OH 45432