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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

AT&T OHIO, Complainant, v. THE DAYTON POWER AND LIGHT COMPANY, Respondent.	:	CASE NO. 06-1509-EL-CSS

THE DAYTON POWER AND LIGHT COMPANY'S MEMORANDUM IN OPPOSITION TO AT&T OHIO'S MOTION FOR EMERGENCY RELIEF

Charles J. Faruki (0010417)
Jeffrey S. Sharkey (0067892)
FARUKI IRELAND & COX P.L.L.
500 Courthouse Plaza, S.W.
10 North Ludlow Street
Dayton, OH 45402
Telephone: (937) 227-3705
Telecopier: (937) 227-3717
E-Mail: cfaruki@ficlaw.com

Jack Richards (to be admitted pro hac vice)
Douglas J. Behr (to be admitted pro hac vice)
Thomas B. Magee (to be admitted pro hac vice)
KELLER AND HECKMAN LLP
1001 G Street, NW, Suite 500 West
Washington, DC 20001
Telephone: (202) 434-4100
Telecopier: (202) 434-4646
E-Mail: richards@khlaw.com

Attorneys for Respondent
The Dayton Power And Light Company

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Respondent The Dayton Power and Light Company ("DP&L") opposes the Motion for Emergency Relief ("Motion") filed by AT&T Ohio on or about December 28, 2006. As a threshold matter, this Commission should not consider AT&T Ohio's Motion until it has first resolved DP&L's Motion to Dismiss for lack of jurisdiction, filed concurrently herewith, which explains that this is a matter for the courts, not the Commission.[1] As for the merits of AT&T Ohio's Motion, AT&T Ohio has fabricated a claim for emergency injunctive relief where none exists. AT&T Ohio, whose parent company has agreed to pay $85 billion to buy another telephone company, makes the incredible claim that it will be irreparably harmed if it is required to fulfill its contractual obligation to pay DP&L $45 per Joint Use Pole. Any so-called "emergency" in this matter is financial only; it has been caused solely by AT&T Ohio's refusal to pay a Deficiency Payment due under its Agreement with DP&L.

I. INTRODUCTION

This is a contract dispute between two public utilities. In 1930, DP&L entered into a Joint Pole Line Agreement Pole Rental Contract ("1930 Agreement") with AT&T Ohio, under which DP&L and AT&T Ohio agreed to share the use of their respective utility poles in overlapping service territories ("Joint Use Poles"), thereby minimizing the costs and operational burdens of building completely independent utility pole systems. On September 30, 1942, the 1930 Agreement was amended by a Supplemental Agreement between the parties ("1942

[1] In DP&L's Motion to Dismiss ("Motion to Dismiss") AT&T Ohio's Complaint, DP&L explains that the dispute at issue in this proceeding is a contract dispute that falls outside of the Commission's jurisdiction, and that the Commission lacks authority to order the requested injunctive relief. This contract dispute is already before the Montgomery County Common Pleas Court (The Dayton Power and Light Company v. The Ohio Bell Telephone Company, d/b/a AT&T Ohio, Case No. 06-10306), and that court is fully capable of resolving AT&T Ohio's contract claims. A copy of DP&L's Complaint is attached to DP&L's Motion to Dismiss.

Supplemental Agreement"). The 1930 Agreement, as amended by the 1942 Supplemental Agreement, is referred to herein as the "Joint Pole Line Agreement" or "Agreement." In December 1952, the parties entered into an Operating Routine ("Operating Routine") which provided instructions for administering the Joint Pole Line Agreement and is itself a binding contract that, by its terms, is to be given full force and effect unless an unresolved conflict exists with the Joint Pole Line Agreement. Based on information and belief, accurate copies of the 1930 Agreement, 1942 Supplemental Agreement and Operating Routine are attached hereto at Exhibits A, B and C, respectively.

First and foremost, the Joint Pole Line Agreement is a construction and maintenance agreement that was established by two utilities in order to develop and maintain the infrastructure of Joint Use Poles that can be used by both utilities to extend and provide service in overlapping service territories. It is not merely an agreement for one utility to rent space on its poles to another utility.

To create a fair sharing arrangement, the Joint Pole Line Agreement and Operating Routine require that DP&L and AT&T Ohio each install and maintain an approximately equal number of the Joint Use Poles.[2] To the extent that one utility owns more than 50% of the Joint Use Poles, contract mechanisms exist to bring the ownership interests back to parity. While the imbalance exists, the party that owns the fewer Joint Use Poles is to pay a joint use rental fee

[2] Article XI of the Joint Pole Line Agreement specifies that "[t]he 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." Joint Pole Line Agreement, Exhibit A, at Article XI. Article VIII(d) specifies that if the ownership of new poles cannot be agreed upon, "the party then owning the smaller number of joint poles under this agreement shall erect the new joint poles and be the owner thereof." Joint Pole Line Agreement, Exhibit A, at Article VIII(d).

("Deficiency Payment"), which the Operating Routine explains is "For Deficiency in Joint Pole Units."[3]

The Deficiency Payment is applied in order to make whole the party with more poles for the additional costs of installing and maintaining the excess poles. The Agreement established an initial Deficiency Payment per pole and permits the parties to propose a new Deficiency Payment per pole every five years. If the parties are unable to agree upon an adjusted Deficiency Payment, the Agreement provides for a default Deficiency Payment equal to one-half of the annual pole costs attributable to the difference in the number of poles owned by each party.[4] The Joint Pole Line Agreement also established certain mechanisms that the party with the lower number of poles can use to restore parity.[5] These provisions were designed to ensure that each party to the Joint Pole Line Agreement ultimately would carry 50% of the burden of installing and maintaining the Joint Use Poles, despite the actual number owned by each.

Over the years, AT&T Ohio has failed to install and maintain the same number of Joint Use Poles as DP&L. DP&L currently owns approximately 38,700 Joint Use Poles, and AT&T Ohio owns only approximately 23,500. From 1930-1995, the party owning the greater number

[3] Operating Routine, Exhibit C, at § 11.101.

[4] The default Deficiency Payment specified in Article XIII of the Joint Pole Line Agreement is 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." Joint Pole Line Agreement, Exhibit A, at Article XI. That Deficiency Payment per pole is applied to the difference between the number of poles owned by each party, so that the party owning the greater number of poles will continue to incur no more than one-half of the Joint Use Pole cost burden. *See* Operating Routine, Exhibit C, at 11.202, interpreting Article XI of the Joint Pole Line Agreement.

[5] Article VIII(d) specifies that if the ownership of new poles cannot be agreed upon, "the party then owning the smaller number of joint poles under this agreement shall erect the new joint poles and be the owner thereof." Joint Pole Line Agreement, Exhibit A, at Article VIII(d). Section 10.101 of the Operating Routine specifies three methods by which the parties can keep the number of Joint Use Poles within "reasonable balance." The party owning the smaller number of poles can: (i) set new Joint Use Poles; (ii) purchase Joint Use Poles from the other party; or (iii) replace the other party's Joint Use Poles with its own poles when replacement becomes necessary. Operating Routine, Exhibit C, at § 10.101.

of Joint Use Poles charged the other a Deficiency Payment of $2.00 per pole. From 1995-2005, the Deficiency Payment was increased to $3.50 per pole. The $3.50 Deficiency Payment is far below one-half of the actual costs of installing and maintaining a Joint Use Pole annually.

In November 2004, having tolerated the imbalance in pole ownership for many years, as well as AT&T Ohio's continued exploitation of the below-cost $3.50 Deficiency Payment, DP&L proposed an increase in the Deficiency Payment to $45. When an agreement to that or any other Deficiency Payment was not reached, the default Deficiency Payment provisions of the Joint Pole Line Agreement were triggered. Under these provisions, the Deficiency Payment is set at "one-half of the then average total cost per pole of providing and maintaining the standard joint poles."[6] In this way, DP&L sought to restore the 50/50 equilibrium contemplated by the Joint Pole Line Agreement. The default Deficiency Payment amount was calculated at $45 per pole.

Rather than engage in any meaningful computation of the default Deficiency Payment calculation specified in the Joint Pole Line Agreement, AT&T Ohio opted instead to stonewall DP&L for 22 months in the apparent hope that DP&L would (1) continue to install and maintain 15,000 more poles than AT&T Ohio, and (2) continue to allow AT&T Ohio to pay a Deficiency Payment for the differential in the number of poles that was far below one-half the actual costs of installing and maintaining the poles.

On or about December 22, 2005, DP&L submitted an invoice to AT&T Ohio covering the annual Deficiency Payment period from October 1, 2004 – September 30, 2005 ("2005

[6] Joint Pole Line Agreement, Exhibit A, at Article XIII.

Invoice"). The 2005 Invoice was calculated using a blended charge of $3.50 for the period October 1, 2004 to March 17, 2005, and a $45 per pole per year default Deficiency Payment that became effective on March 17, 2005. On October 26, 2006, DP&L submitted an invoice to AT&T Ohio covering the annual period from October 1, 2005 – September 30, 2006 ("2006 Invoice"), which was calculated using a $45 per pole Deficiency Payment.

On October 27, 2006, DP&L sent a Notice of Default to AT&T Ohio for its failure to pay the 2005 Invoice. After AT&T Ohio failed to cure its Default, DP&L, on December 6, 2006, suspended AT&T Ohio's right to attach to additional DP&L poles while permitting AT&T Ohio to remain on existing Joint Use Poles.[7] DP&L made clear in the suspension notice that it would entertain a request from AT&T Ohio to attach to DP&L's poles in particular cases involving safety of life, protection of property or other exigencies. DP&L also offered to engage in binding arbitration to resolve the dispute and stated that it would entertain any meaningful offer by AT&T Ohio to settle the matter.[8]

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[7] DP&L's suspension of AT&T Ohio's right to make new attachments was far less than the sanctions authorized in the contract. Article XIV of the Joint Pole Line Agreement specifies the procedures to be followed in the event that one party defaults in its obligations under the Agreement:

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

Joint Pole Line Agreement, Exhibit A, at Article XIV (emphasis added).

[8] AT&T Ohio rejected DP&L's offer of arbitration and proposed instead nonbinding mediation. DP&L agreed to nonbinding mediation for a two-month period to be followed by binding arbitration, but AT&T Ohio would not agree unless the suspension was lifted across the board. *See* Letter from Jack Richards and Thomas B. Magee, Keller and Heckman LLP, to Grace Sury of AT&T Midwest (Dec. 6, 2006) (issuing Notice of Suspension and proposing arbitration), Exhibit D, at 6; Letter from Jack Richards, Keller and Heckman LLP, to Michael Sullivan, Mayer, Brown, Rowe and Maw LLP (Dec. 13, 2006) (proposing mediation/arbitration), Exhibit E; Letter from Michael Sullivan, Mayer, Brown, Rowe and Maw LLP to Jack Richards, Keller and Heckman LLP, (Dec. 21, 2006) (rejecting DP&L mediation/arbitration proposal), Exhibit F.

In accordance with Article XIV of the Joint Pole Line Agreement, AT&T Ohio's suspension applies only until AT&T Ohio's default "is made good;" that is, until AT&T Ohio pays the valid invoices submitted by DP&L. AT&T Ohio's failure to install 50% of the Joint Use Poles and its refusal to pay the new, cost-based Deficiency Payment for the differential is the sole cause of its claimed "emergency" affecting the public interest.

II. AT&T OHIO HAS NOT SATISFIED THE HIGH STANDARD FOR GRANTING INJUNCTIVE RELIEF

"An injunction is an extraordinary remedy in equity where there is no adequate remedy available at law. It is not available as a right but may be granted *by a court* if it is necessary to prevent a future wrong that the law cannot." *Garono v. State*, 37 Ohio St.3d 171, 173, 524 N.E.2d 496, 498 (Ohio 1988) (emphasis added). The right to relief must be clearly demonstrated. *Langley v. Fetterolf*, 89 Ohio App. 3d 14, 17, 623 N.E.2d 577, 579 (Ohio Ct. App. 1993).[9]

AT&T Ohio is not entitled to the extraordinary remedy of injunctive relief, because it cannot demonstrate the requirements necessary for such relief. It is well accepted that in determining whether to grant injunctive relief courts consider whether:

> "(1) the movant has shown a strong or substantial likelihood or probability of success on the merits; (2) the movant has shown irreparable injury; (3) the preliminary injunction could harm third

[9] *Accord: Bond v. Bond*, 2002-Ohio-3843, ¶15, 2002 Ohio App. LEXIS 3934, at *15 (Ohio Ct. App. 2002). ("The Supreme Court of Ohio has indicated that a mandatory injunction is an extraordinary remedy, and the right to such remedy exists only when there is some fundamental organic right already vested that has been abridged, infringed upon or eliminated.") (citing *State ex rel Presley v. Industrial Comm'n of Ohio*, 11 Ohio St.2d 141, 153, 228 N.E.2d 631, 642 (Ohio 1967)); *Buzzard v. Public Emples. Retirement Sys.*, 139 Ohio App. 3d 632, 638, 745 N.E.2d 442, 446 (Ohio Ct. App. 2000). ("To be entitled to the extraordinary equitable remedy of a mandatory injunction, the moving party must establish that a vested right has been abridged, infringed upon, or eliminated") (citing *Presley*).

parties; and (4) the public interest would be served by issuing the preliminary injunction."

Johnson v. Morris, 108 Ohio App. 3d 343, 352, 670 N.E.2d 1023, 1029 (Ohio Ct. App. 1995).

In addition, under court decisions, AT&T Ohio must establish its entitlement to injunctive relief by clear and convincing evidence. *Westco Group, Inc. v. City Mattress*, 1991 Ohio App. LEXIS 3878, at *8 (Ohio Ct. App. 1991).[10] Proof of entitlement to relief by a preponderance of the evidence is insufficient to receive such injunctive relief. *Mead Corp. v. Lane*, 54 Ohio App. 3d 59, 63, 560 N.E.2d 1319, 1324 (Ohio Ct. App. 1988). Here, AT&T Ohio has provided *no evidence at all* that it is entitled to injunctive relief.[11] Rather than submit affidavits demonstrating the facts it asserts, AT&T Ohio relies only on the arguments of counsel which are not competent evidence.

A. AT&T Ohio Is Not Likely To Succeed On The Merits Of Its Claim

In order to obtain injunctive relief prohibiting DP&L from enforcing its suspension of AT&T Ohio's future joint use rights, AT&T Ohio first must establish by clear and convincing evidence that it likely will prevail on the merits of his case. *Scott v. OHSAA*, 2000 Ohio App. LEXIS 3193, at *32 (Ohio Ct. App. 2000). It has not come close to meeting that burden.

1. AT&T Ohio Will Not Prevail Because PUCO Does Not Have Jurisdiction

Since this is a contract dispute between public utilities involving a request for money damages, the action properly rests with the courts and not the Commission. DP&L already has

[10] *Rite Aid of Ohio, Inc. v. Marc's Variety Store, Inc.*, 93 Ohio App. 3d 407, 412, 638 N.E.2d 1056, 1059 (Ohio Ct. App. 1994).; *Mead Corp.*, 93 Ohio App. 3d at 64, 560 N.E.2d at 1324.

[11] Ohio Rev. Code § 2727.03, which grants authority to the courts to issue injunctions and provides that injunctive relief is permissible "when it appears to the court or judge by affidavit of the plaintiff, or his agent, that the plaintiff is entitled to an injunction." (Emphasis added.)

filed a complaint in the Court of Common Pleas for Montgomery County to resolve this matter. AT&T Ohio will not succeed on the merits before the PUCO, because the Commission lacks jurisdiction over this matter, as explained in DP&L's concurrent Motion to Dismiss.

AT&T's Motion makes plain that the relief it seeks from this Commission is the type of relief that is within the jurisdiction of the Common Pleas Court. Section 2727.03 of the Revised Code ("Courts authorized to grant injunctions") provides statutory authority to courts to issue injunctions and the Common Pleas Courts are vested with jurisdiction to issue them.[12] AT&T's Memorandum in Support even reads as if it were filed in a court and seeks injunctive relief of the sort typically considered by courts.

According to AT&T Ohio, the "purpose" of its emergency relief request is "to preserve the status quo of the parties pending final adjudication of the case on the merits."[13] That "purpose" is precisely the purpose of a temporary restraining order or preliminary injunction from a court. AT&T Ohio continues by noting what a court would look at "[i]n deciding whether to issue a preliminary injunction," and explains the four-part test that courts will use to

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[12] *Section 2727.03 of the Revised Code reads as follows:*

> § 2727.03. Courts authorized to grant injunctions.
>
> "At the beginning of an action, or any time before judgment, an injunction may be granted by the supreme court or a judge thereof, the court of appeals or a judge thereof in his district, the court of common pleas or a judge thereof in his county, or the probate court, in causes pending therein, when it appears to the court or judge by affidavit of the plaintiff, or his agent, that the plaintiff is entitled to an injunction. On like grounds and proof, the probate judge may grant injunctions in actions pending in either the court of common pleas or court of appeals of his county, in the absence therefrom of the judges of such courts."

[13] Memorandum in Support, at 5.

decide upon injunctions.[14] But its motion is not brought in a court. AT&T Ohio then discusses the four-part test used by a court in deciding upon injunctions, as well as the standards for "preliminary injunctive relief."[15]

As if these excerpts were not sufficient to demonstrate the essence of the judicial relief sought by AT&T Ohio, AT&T Ohio actually admits that it is seeking a judicial remedy by concluding its Memorandum in Support with the request that "emergency relief should be granted enjoining DP&L ...."[16]

2. DP&L's Default Deficiency Payment Calculation Was Performed In Accordance With The Joint Pole Line Agreement And Is Consistent With The Agreement's Requirement That Joint Use Costs Be Distributed Equally

AT&T Ohio's sole contention appears to be that DP&L's calculation of the default rental payable specified in the Joint Pole Line Agreement was incorrect. AT&T Ohio, however, has provided no evidence to support its claim nor has it offered its own cost-based charge.

The Joint Pole Line Agreement sets the default Deficiency Payment at "one-half of the then average total annual cost per pole of providing and maintaining the standard joint poles covered by this agreement."[17] Neither the Joint Pole Line Agreement nor the Operating Routine further explains the calculation. DP&L employed the most widely accepted calculation of annual pole costs, which is the calculation employed by the Federal Communications

[14] *Id.*

[15] *Id.*

[16] *Id.* at 10.

[17] Joint Pole Line Agreement, Exhibit A, at Article XIII.

Commission ("FCC") to determine the annual cost of providing and maintaining poles in the 32 states subject to FCC pole attachment jurisdiction.[18]

DP&L calculated the annual cost of providing and maintaining poles in accordance with the FCC's cost methodology.[19] Because DP&L was the party owning the higher number of poles, DP&L used its own poles to calculate the Deficiency Payment. DP&L employed FERC Form 1 figures to calculate the Deficiency Payment, which are kept on a system-wide basis. All of these procedures are fully consistent with the FCC's methodology.[20] DP&L's calculation produced a rental of $45 per pole per year.[21] DP&L fully substantiated that amount in November 2004 and provided a copy of that substantiation to AT&T Ohio, which is attached hereto as Exhibit G.

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[18] 47 U.S.C. § 224(c) (establishing ability of states to preempt FCC jurisdiction over pole attachments with certification that the state itself regulates pole attachments); States That Have Certified That They Regulate Pole Attachments, Public Notice, 7 FCC Rcd 1498 (1992).

[19] Following well-established cost of service ratemaking principles, the FCC's cost formula calculates the annual cost of providing and maintaining poles by multiplying the "net cost of a bare pole," which is the depreciated current value of a bare pole, times the pole's annual "carrying charges," which represent (in percentage form) the costs of providing and maintaining the pole during the year. These carrying charges include five familiar elements: administrative, maintenance, depreciation, taxes and return. *Amendment of Commission's Rules and Policies Governing Pole Attachments*, "Consolidated Partial Order on Reconsideration," 16 FCC Rcd 12103, at Appendixes D-2 and E-2 (2001), *aff'd Southern Co. Services, Inc. v. FCC*, 313 F.3d 574 (D.C. Cir. 2002) ("*Partial Reconsideration Order*"). *Accord:* 47 C.F.R. § 1.1409.

[20] *Partial Reconsideration Order* at Appendixes D-2 and E-2; 47 C.F.R. § 1.1404(g)(1)(v).

[21] The fact that the default Deficiency Payment amounts to $45 per pole per year is not surprising, considering that it is based on one-half of the annual cost per pole of providing and maintaining Joint Use Poles. For comparison's sake, the FCC's cable-only rate uses the same annual cost of providing and maintaining Joint Use Poles but is based on a 7.4% allocation factor. *Partial Reconsideration Order* at Appendix D-2. Thus, the $45 Deficiency Payment calculated by DP&L would amount to a cable-only rate of $6.61 per pole per year, which, on information and belief, is fully consistent with FCC regulated cable rates charged by other electric utility pole owners. The 50% allocation factor used for the default Deficiency Payment under the Joint Pole Line Agreement is easily understood in the context of the purpose underlying the Agreement. This Agreement is not merely renting some small percentage of pole space by one utility to the other – this Agreement is a pole line construction and maintenance agreement under which each utility has agreed to incur 50% of the costs of installing and maintaining a Joint Use Pole line system across the overlapping service territories.

AT&T Ohio claims that the DP&L's calculation of the default Deficiency Payment "does not pass the straight face test," because the $45 default Deficiency Payment is so much higher than the historical $2.00 and $3.50 Deficiency Payments.[22] The fact that AT&T Ohio was the beneficiary of below-cost Deficiency Payments for decades, however, hardly proves that the new Deficiency Payment is not cost-based as required by the contract. AT&T Ohio may not like the result of the default Deficiency Payment and may not like the Joint Pole Line Agreement's requirement that the parties share joint use costs, but its objections do not make the new Deficiency Payment unfair, inappropriate or inconsistent with the contract.

3. DP&L Fully Substantiated Its Deficiency Payment Calculation While AT&T Ohio Stonewalled

During the entire 22-month negotiation period from March 2005 to December 2006, AT&T Ohio offered no alternative calculation under the contractual terms and provided no explanation of why it believed DP&L's Deficiency Payment calculation was incorrect. In fact, several of the claims raised by AT&T Ohio in its Complaint were never presented to DP&L. Absent any competing calculation by AT&T Ohio, DP&L's default Deficiency Payment calculation is entitled to substantial deference by the Commission.

4. AT&T Ohio Incorrectly Asserts That It Has Paid the Deficiency Payments That Are Not In Dispute

AT&T Ohio claims that it has paid the total amounts of the 2005 Invoice and 2006 Invoice that are not in dispute.[23] That statement is incorrect. The $3.50 Deficiency Payment

[22] Memorandum in Support of Motion at 7.

[23] *Id.* at 8.

amount that AT&T Ohio has paid is not the undisputed amount; it is the old Deficiency Payment that has been replaced by the default Deficiency Payment.

B. AT&T Ohio Will Not Suffer Irreparable Harm If Its Request Is Denied

This is a dispute about money. There is no "emergency." AT&T Ohio has not and will not suffer any irreparable injury if its request for injunctive relief is denied. Injury is irreparable only if it cannot be adequately measured by payment of damages or otherwise compensated as a matter of law. *Hovis v. East Ohio Gas Co.*, 1980 Ohio App. LEXIS 13103, at *3-4 (Ohio App. Ct. 1980). If AT&T Ohio possesses an adequate remedy at law, then it is not entitled to injunctive relief. *Haig v. Ohio State Bd. of Educ.*, 62 Ohio St. 3d 507, 510-11, 584 N.E.2d 704, 707-08 (Ohio 1992) (injunctive relief unavailable when adequate remedy at law would have given plaintiff "everything they asked for"). *Accord: Zavakos v. Zavakos Enters., Inc.*, 63 Ohio App. 3d 100, 103, 577 N.E.2d 1170, 1172 (Ohio App. Ct. 1989)(per curiam).

The Joint Pole Line Agreement requires DP&L to lift its suspension if AT&T Ohio pays the 2005 Invoice based on the $45 default Deficiency Payment.[24] AT&T Ohio, therefore, could simply pay the 2005 Invoice under protest – a payment AT&T Ohio surely can make having recently agreed to pay $85 billion for another company. Upon payment, DP&L would be required to lift its suspension. Should AT&T Ohio believe that its Deficiency Payment was excessive, it can seek damages for its overpayments from a court of law. If AT&T Ohio prevails in such an action for contract damages, it will be fully compensated. AT&T Ohio itself,

[24] Article XIV of the Joint Pole Line Agreement entitles either party to suspend the other's rights to joint use only "until such default has been made good." Joint Pole Line Agreement, Exhibit A, at Article XIV.

therefore, has complete control over whether DP&L may impose this suspension, and it has an adequate remedy at law for any damages that it may suffer as a result.

Even as matters now stand, AT&T Ohio has offered no credible evidence of how the suspension is causing irreparable damage or how it could not be fully compensated by an award of monetary damages. AT&T Ohio's Motion contends only that it is "costly, inefficient, ... and time-consuming" to set new poles or bury its cables underground,[25] but it has provided no evidence whatsoever of these alleged costs, inefficiencies and time consuming practices. AT&T Ohio further offered no evidence to support its contentions that it will be unable to serve its customers in a timely manner,[26] and that its business relationships will be harmed for that period. To the extent that AT&T Ohio can identify any customer that it may have lost as a result of DP&L's suspension, its losses seemingly would be easy to calculate based on lost monthly revenues or some other measure.

Whatever harm may befall AT&T Ohio if it opts to keep the suspension in place, it certainly does not include any inability to reach its customers. AT&T Ohio admits that it can erect its own poles and/or place its cables underground. In fact, during 2006, AT&T Ohio sought to make attachments in Clark County, Ohio to additional poles owned by DP&L. When DP&L suggested that AT&T Ohio purchase the poles so as to reduce, rather than increase, the ownership imbalance, AT&T Ohio chose to install its lines underground. Furthermore, AT&T Ohio presumably could make available the wireless telephone service offered by its affiliate Cingular Wireless as required to serve customers temporarily during this dispute. To the extent

[25] Memorandum in Support of Motion at 9.

[26] *Id.*

that AT&T Ohio can demonstrate that any customer is being denied basic telephone service as a result of the suspension, DP&L will, consistent with provisions in the Operating Routine, permit AT&T Ohio to buy the Joint Use Poles needed to serve such a customer. In fact, AT&T Ohio recently approached DP&L requesting to purchase 11 of DP&L's poles, and DP&L agreed to the sale. Any such purchases will ensure that customer needs are met while also providing some slight reduction to the current imbalance in ownership of Joint Use Poles.

There is no reason to suspect that a company the size of AT&T Ohio, whose parent company intends to purchase BellSouth for $85 billion,[27] cannot find sufficient funds and other resources to serve its customers by going underground, constructing new poles of its own, offering wireless service, or purchasing Joint Use Poles.

C. DP&L Will Be Harmed by AT&T Ohio's Requested Injunction

"When granting an injunction, the trial court must give due consideration to the rights of all parties in interest, not just that party seeking the injunction." *Cullen v. Milligan*, 79 Ohio App. 3d 138, 141, 606 N.E.2d 1061, 1063 (Ohio App. Ct. 1992). If AT&T Ohio's requested relief is granted, DP&L will be harmed, while denial of its requested relief will not harm third parties.

The order that AT&T Ohio seeks would make the existing 15,000 pole ownership imbalance worse and simply add to the unfair burden already placed on DP&L to own and maintain more than its fair share of Joint Use Poles.[28]

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[27] Amy Schatz and Peter Grant, *AT&T Yields to Seal BellSouth Deal*, Wall St. J., Dec. 29, 2006, at A3.

[28] In addition, over the last several months, AT&T Ohio has actively sought to worsen the imbalance in ownership of Joint Use Poles rather than reduce it. The poles for which AT&T Ohio seeks an order requiring DP&L to allow
(footnote cont'd...)

D. The Public Interest Supports Denial of AT&T Ohio's Request

The default remedy specified in the Joint Pole Line Agreement was created to address the failure by one party to comply with its requirements under the Agreement and in that respect are no different than similar remedies provided in countless other agreements.

Permitting contracting parties to use default remedies to enforce their agreements benefits the public by preserving the integrity of contracts. In this proceeding, for example, AT&T Ohio apparently had no intention of negotiating in good faith in accordance with the Joint Use Pole Agreement until DP&L suspended its rights to future joint use.

For the same reasons that AT&T Ohio will not be harmed by denying AT&T Ohio's request for injunctive relief, third parties also will not be harmed. As explained above, AT&T Ohio very easily can take action leading DP&L to lift the suspension, simply by paying the $45 default Deficiency Payment specified in the Joint Use Pole Agreement and seeking whatever redress in court it believes is appropriate. AT&T Ohio, therefore, can achieve full access to DP&L's poles without Commission involvement, and AT&T Ohio's customers can continue to be served in the usual manner. Additionally, AT&T Ohio could service its customers by constructing its facilities underground or attaching them to its own poles

AT&T Ohio has not explained which services it allegedly is prevented from offering during the suspension or which types of customers it allegedly is prevented from serving, but the evidence would not support such a claim. Even if AT&T Ohio did not have the power to lift the

(...cont'd)
joint use are owned by DP&L and would worsen the ownership imbalance. AT&T Ohio has been and appears to be unwilling to purchase those poles and some 7,000 others that would be necessary to bring ownership levels back to a *50/50 split.*

suspension itself by paying the disputed Deficiency Payment, third parties still would be able to receive the type of services provided by AT&T Ohio.

A plethora of other service providers exists to satisfy the communications needs of third parties. Traditional wireline telephone service is available in DP&L's service territory from numerous competitive local exchange carriers, and similar Voice over Internet Protocol telephone service is offered by Time Warner Cable and Vonage.[29] Wireline telephone service often can be replaced by wireless telephone service, such as the Cingular service that AT&T Ohio's parent company will soon control completely following its $85 billion takeover of BellSouth. High-speed and dialup Internet services are available from cable television providers and other Internet Service Providers, and video service is available from cable companies and direct broadcast satellite providers like DIRECTV.[30]

E. AT&T Ohio's Request Is Barred by Principles of Equity

It is a well-settled principle of law in Ohio that for equity to be granted, the party seeking equity must do so with clean hands. *Ohio Vending Machs., Inc. v. C&J Games & Music, Inc.*, 1991 Ohio App. LEXIS 2589, at *14 (Ohio App. Ct. 1991).

As explained above, AT&T Ohio has repeatedly stonewalled DP&L and failed to negotiate in good faith a new Deficiency Payment amount. Over the 22-month course of

[29] A search of both the Time Warner home page and Vonage home page revealed that both companies offer telephone service in and around Dayton, Ohio. Time Warner Cable home page, http://www.timewarnercable.com/ (last visited January 3, 2007). Vonage home page, http://www.vonage.com/avail.php?lid=nav_avail (last visited January 3, 2007).

[30] A search of the DIRECTV website and local TV listings, revealed that DIRECTV provides video services to Dayton and surrounding areas. DIRECTV website, http://www.directtv.com/, (last visited January 3, 2007); local stations for DIRECTV available in Dayton, Ohio http://www.expertsatellite.com/exp_page.php?pg=direct-tv-dayton-oh.htm (last visited January 3, 2007).

negotiations, AT&T Ohio: (i) failed to substantiate any objections to DP&L's default Deficiency Payment calculation; (ii) failed to provide any alternative Deficiency Payment calculation of its own; (iii) offered an unreasonably low Deficiency Payment that was not based on the default calculation specified in the Joint Pole Line Agreement; and (iv) made false claims that DP&L was charging for too many poles and -- as a last minute diversionary tactic defying 76 years of conduct between the parties -- that AT&T Ohio should be entitled to revenues collected by DP&L for third party attachments to DP&L poles.

Beyond any question, AT&T Ohio has not lived up to its obligation to install and maintain one-half of the Joint Use Poles, as required by the Joint Pole Line Agreement. In fact, over the last six months prior to suspension, AT&T Ohio made requests that would worsen the imbalance, by asking that additional existing DP&L poles that are not Joint Use Poles be designated as Joint Use Poles so that AT&T could attach to them. When DP&L proposed that AT&T Ohio purchase some of these poles to help reduce rather than increase the imbalance, AT&T Ohio refused to do so.

AT&T Ohio's own stonewalling and apparent bad faith led DP&L to impose the suspension that AT&T Ohio now seeks to undo with its unsupported request for injunctive relief. Under these circumstances alone, AT&T Ohio's conduct should not be rewarded. AT&T Ohio's unclean hands preclude the Commission's grant of equitable relief.

III. CONCLUSION

This is a dispute regarding money damages related to a contract between two public utilities. AT&T Ohio asks the Commission to grant injunctive relief to correct an "emergency" that AT&T Ohio itself has created by refusing to pay a Deficiency Payment calculated by DP&L

in good faith under the existing contract. AT&T Ohio comes nowhere near satisfying the four-prong test for injunctive relief, even if applicable to Commission action, and its unclean hands bar the utility from seeking such relief in any event. DP&L therefore respectfully requests that the Commission deny AT&T Ohio's Motion with prejudice.

Respectfully submitted,

Charles J. Faruki (0010417)
Jeffrey S. Sharkey (0067892)
FARUKI IRELAND & COX P.L.L.
500 Courthouse Plaza, S.W.
10 North Ludlow Street
Dayton, OH 45402
Telephone: (937) 227-3705
Telecopier: (937) 227-3717
E-Mail: cfaruki@ficlaw.com

Jack Richards (to be admitted *pro hac vice*)
Douglas J. Behr (to be admitted *pro hac vice*)
Thomas B. Magee (to be admitted *pro hac vice*)
KELLER AND HECKMAN LLP
1001 G Street, NW, Suite 500 West
Washington, DC 20001
Telephone: (202) 434-4100
Telecopier: (202) 434-4646
E-Mail: richards@khlaw.com

Attorneys for Respondent
The Dayton Power And Light Company

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing The Dayton Power and Light Company's Memorandum in Opposition to AT&T Ohio's Motion for Emergency Relief has been served via electronic mail and regular U.S. mail, postage prepaid, upon the following counsel of record, this 4th day of January, 2007:

Michael T. Sullivan, Esq.
Kara K. Gibney, Esq.
MAYER, BROWN, ROWE & MAW LLP
71 South Wacker Drive
Chicago, IL 60606

Jon F. Kelly, Esq.
Mary Ryan Fenlon, Esq.
AT&T OHIO
150 East Gay Street, Rm. 4-A
Columbus, OH 43215

Attorneys for Complainant
AT&T OHIO

Jeffrey S. Sharkey

177840.1

JOINT POLE LINE

AGREEMENT

POLE RENTAL CONTRACT

DOCUMENT FILE

No. 1396

THE DAYTON POWER & LIGHT COMPANY

Entered into between The Dayton Power and Light Co.

of

Dayton, Ohio

and

The Ohio Bell Telephone Company

of

Columbus, Ohio

This copy for The Dayton Power and Light Company

JOINT POLE LINE

AGREEMENT

POLE RENTAL CONTRACT

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

WITNESSETH:

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

ARTICLE I

DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE II

LIABILITY CLAUSE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE III

TERRITORY COVERED

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

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

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

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

ARTICLE IV

RIGHT OF JOINT USE GRANTED

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

ARTICLE V

PROCEDURE WHEN CHARACTER OF CIRCUITS IS CHANGED

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

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

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

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

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

ARTICLE VI

SPECIFICATIONS

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

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

ARTICLE VII

PLACING, TRANSFERRING OR REARRANGING ATTACHMENTS

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

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

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

ARTICLE VIII

ERECTING, REPLACING OR RELOCATING POLES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE IX

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

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

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

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

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

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

ARTICLE X

TERMINATION OF JOINT USE

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

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

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

ARTICLE XI

RENTALS

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

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

ARTICLE XII

RENTAL PAYMENTS

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

Thereafter each party shall submit to the other party

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

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

ARTICLE XIII

PERIODICAL READJUSTMENT OF RENTALS

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

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

ARTICLE XIV

DEFAULTS

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

ARTICLE XV

BILLS AND PAYMENT FOR WORK

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

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

ARTICLE XVI

PRE-EXISTING OBLIGATIONS

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

ARTICLE XVII

SERVICE OF NOTICES

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

ARTICLE XVIII

TERM OF AGREEMENT

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

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

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

ARTICLE XIX

ASSIGNMENT OF RIGHTS

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

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

ARTICLE XX

WAIVER OF TERMS OR CONDITIONS

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

ARTICLE XXI

EXISTING CONTRACTS

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

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

THE DAYTON POWER AND LIGHT COMPANY

By _____ Vice President

and _____ Secretary

Witness:

_____

_____

_____

APPROVED LAW DEPARTMENT The Dayton Power & Light Co. 3-31-30

_____

THE OHIO BELL TELEPHONE COMPANY

By _____ Vice President

and _____ Secretary

_____

_____

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

SUPPLEMENTAL AGREEMENT

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

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

NOW, THEREFORE;

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

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

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

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

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

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

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

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

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

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

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

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

WITNESSES:

Lou D. Berbe

Viola Stanger

Eleanor Cotter 10-5-42

Bernedine Sherman

THE DAYTON POWER AND LIGHT COMPANY

By K. C. Lewis
Vice President

And F. J. Bidert
Assistant Secretary

APPROVED LAW DEPARTMENT
The Dayton Power & Light Co. 9-26-42

Indeterminate after 3/16/1945

THE OHIO BELL TELEPHONE COMPANY

By Jacob E. Markbreiter
VICE PRESIDENT AND GENERAL MANAGER

And J. Whitney
SECRETARY

Indeterminate after 3/16/1935

1091

OPERATING ROUTINE

INSTRUCTIONS FOR ADMINISTERING

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

and

THE SUPPLEMENTAL AGREEMENT DATED SEPTEMBER 30, 1942

BETWEEN

THE DAYTON POWER AND LIGHT COMPANY

and

THE OHIO BELL TELEPHONE COMPANY

Prepared Jointly by
THE DAYTON POWER AND LIGHT COMPANY
and
THE OHIO BELL TELEPHONE COMPANY
December, 1952

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INDEX TO OPERATING ROUTINE

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

OPERATING ROUTINE

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

0. GENERAL

0.10 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" of "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 Milling Table, identified as Schedules A and A-1 attached hereto and made a part hereof. (See Section 11).

1.50 Services

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

1.60 Service Drop

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

2. 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 AF4.25 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 #3739)

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:

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

9.20 Abandonment by Licensee

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

9.202 Exception to Paragraph 9.201:

Where a pole has been placed or replaced to permit joint use, either on a Rental 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 therefrom and the Owner shall thereupon remove the pole.

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

10. REDUCING UNBALANCE OF POLE UNITS

10.10 Three Methods for Reduction

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

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

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

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

(1) Existing joint poles.

The new owner prepares the Proposal to set new joint poles and abandon contact on the existing poles, paying 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 Recapitualtion of each company in the columns headed "Gross Poles Added". The company owning the lesser number of joint poles shall pay to the company owning the greater number of joint poles an amount of $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 sacrifice life) values of poles by -

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

This table is based on a 33-year pole life depreciated on a straight line basis. The value of the pole for the current year and the immediately preceding year shall be considered 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 D.P.L.	Symbols Used By O.B.T.
Non-joint D.P.L. pole	X	X
Non-joint O.B.T. pole	0	0
D.P.L. pole jointly used by O.B.T.		X
O.B.T. pole jointly used by D.P.L.		0
Higher tension D.P.L. pole (over 5000 V)		*
Higher tension O.B.T. pole (over 5000 V)		0
No charge contacts on D.P.L. poles		X
No charge contacts on O.B.T. poles		0

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 1953

THE DAYTON POWER AND LIGHT COMPANY

By _____
Vice President and Chief Engineer

Approved 7-17 1953

THE OHIO BELL TELEPHONE COMPANY

By _____
General Plant Manager

DOCUMENT FILE
DATE
THE DAYTON POWER & LIGHT CO.
CONSIDERATION
DATE
By _____ By _____

M.D. Thomas 8-31-53

FORM 253—4-15-51

THE DAYTON POWER AND LIGHT COMPANY

CONSTRUCTION AND JOINT USE PROPOSAL

D. P. & L. PROJ._____

D. P. & L. ORDER_____

EXCHANGE_____ DISTRICT_____ DIVISION_____ YOUR ORDER_____

To_____ at_____ In Conjunction With_____ YOUR FILE_____

The Dayton Power and Light Company proposes the pole work detailed as follows and shown on attached sketch, subject to the provisions of Agreement with

The _____ Work will start about_____ and be completed about_____

Existing Pole Number	LOCATION	Size and Kind	Used now by	Proposed Work	_____Co. REPLY	Billing to D. P. L. Co.	Billing to _____ Co.	New Pole Number	Section and Block
	EXHIBIT #1								

Description of wires, circuits, and other contacts to be placed on the poles:_____

ENGINEER _____

THE DAYTON POWER AND LIGHT COMPANY

BY _____

DATE _____

TITLE _____

The Dayton Power and Light Company is hereby authorized to proceed with the work provided for above and to render billing or pay billing in the amounts stipulated.

ENGINEER _____

THE _____

BY _____

TITLE _____

DATE _____

ALL_____ WORK COMPLETED

BY _____

TITLE _____

DATE _____

Form 3759 (1-53)

THE OHIO BELL TELEPHONE COMPANY

JOINT USE AND CONSTRUCTION PROPOSAL

O. B. T. Exch. Area_____ Other Co. File_____

City or Twp._____ To_____ At_____ Ohio. Other Co. Div._____

Other Company Other Co. Dist._____

The O. B. T. Co. proposes the pole work detailed below and shown in the sketch attached or on the reverse side of this form.

SEC.-BLK. OR RUR. SEC.	POLE NUMBER		LOCATION (GIVE PRINT NUMBER)	POLES						Feet Ex. Ht.	AMOUNT			OTHER CO. REPLY	RENTALS	
				EXISTING				PROPOSED								
	EXISTING	PROPOSED		HT.	CLASS & KIND	DATE SET	NOW JOINT	WORK	MAX. VOLTG.		EX. HT. OR EX. STR.	SAG. LIFE	MISC.		+	—
TELEPHONE COMPANY POLES										Other Co.	BILLING TO OTHER CO.					
OTHER COMPANY POLES										O. B.	BILLING TO O. B. T. CO.			TOTAL TO RECAP		

EXHIBIT #2

SUBMITTED BY THE OHIO BELL TELEPHONE COMPANY.

ORIG. ENG'R_____ AT_____

APPROVED BY_____ DATE_____

O. B. T. CO. WORK COMP. ON_____ PER_____

CONCURRED IN BY_____ COMPANY.

OTHER CO. ENG'R_____ AT_____

APPROVED BY_____ DATE_____

OTHER CO. ORDER NO._____

OTHER CO. WORK COMP. ON_____ PER_____

TOTAL TO RECAP

RECAPPED_____ MONTH _____ YR.

ORDER NO._____

PROPOSAL NO._____

SHEET NO._____ OF_____

FORM 998 8-19-36 C & O

THE DAYTON POWER AND LIGHT COMPANY

RENTAL BILLING ARRANGEMENT WITH _____

Recapitulation for the month of _____ 19____, of The Dayton Power and Light Company poles jointly used by _____ on a rental basis.

District _____ Date _____

D. P. & L. Co. File (a)	Accounting Area (b)	Completion Date (c)	Gross Poles Added (d)	Gross Poles Discontinued (e)	Net Total (f)
Carried Forward					
TOTAL					

EXHIBIT #3

Submitted by

The Dayton Power and Light Company

Per _____

Title _____

Date _____

Concurred in by

_____

Per _____

Title _____

Date _____

Form 2826 (9-36)

THE OHIO BELL TELEPHONE COMPANY

RENTAL BILLING ARRANGEMENT WITH _____

Recapitulation for the month of _____ 19____, of The Ohio Bell Telephone Company poles jointly used by _____

District _____ Date _____

O. B. T. Co. File (a)	Accounting Area (b)	Completion Date (c)	Gross Poles Added (d)	Gross Poles Discontinued (e)	Net Total (f)
Carried Forward					
TOTAL					

Submitted by
The Ohio Bell Telephone Company

Per _____

Title _____

Date _____

Concurred in by

_____

Per _____

Title _____

Date _____

EXHIBIT #4

FORM M-456

THE DAYTON POWER AND LIGHT COMPANY

MONTHLY BILLING SUMMARY

D.P.& L. CO. DISTRICT _____

O.B.T. CO. DISTRICT _____

MONTH & YEAR _____

SHEET NO. _____ OF _____

INVOICE NO. _____

D.P.&L. CO. PROPOSAL	O.B.T. CO. PROPOSAL	D.P.&L. CO. WORK ORDER NUMBER	COST OF EXCESS HEIGHT TO BE PAID BY		COST OF SACRIFICE LIFE TO BE PAID BY		COST OF EXTRA STRENGTH TO BE PAID BY		MISCELLANEOUS CHARGES TO BE PAID BY		REMARKS
			DP&L	OBT	DP&L	OBT	DP&L	OBT	DP&L	OBT	
EXHIBIT #5											
CUMULATIVE TOTAL											

TOTAL CHARGES		NET BILLING	
D.P.& L.	O.B.T.	D.P.& L.	O.B.T.

SUBMITTED:

THE DAYTON POWER AND LIGHT COMPANY

BY _____ DATE _____

THE OHIO BELL TELEPHONE COMPANY

BY _____ DATE _____

Form 3479 (4-52)

THE OHIO BELL TELEPHONE COMPANY

MONTHLY BILLING SUMMARY

Month & Year _____ 19___

Ohio Bell Tel. Co's District _____

Dayton Power and Light Co., Dayton, Ohio

Sheet No. _____ of _____

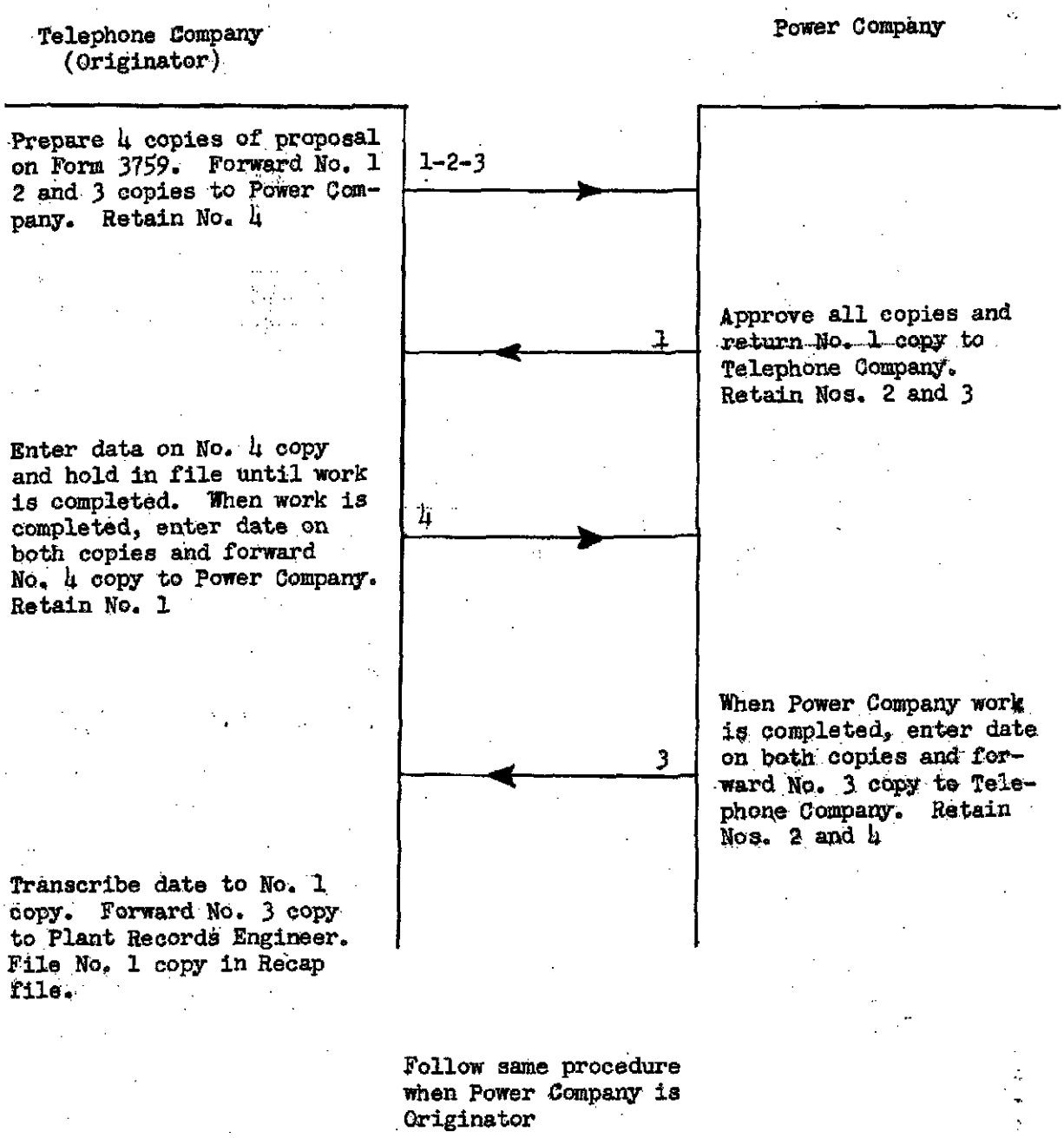
D.P.&L. Project Number	O.B.T. Proposal Number	O.B.T. Order Number	O.B.T. Co. EXCHANGE AREA (name & acct. area no.)	Cost of Ex.Ht. to be paid by		Cost of Sac-Life to be paid by		Cost of Ex.St. to be paid by		Misc. Charges to be paid by		REMARKS
				E	B	E	B	E	B	E	B	
			CUMULATIVE TOTAL									

EXHIBIT #6

Submitted:
THE OHIO BELL TELEPHONE CO.
By _____ Date _____
Title _____

Approved:
THE DAYTON POWER AND LIGHT CO.
By _____ Date _____
Title _____

FLOW CHART OF FORMS 3759



Follow same procedure when Power Company is Originator

EXHIBIT #7

BILLING SCHEDULE FOR JOINTLY USED FULL TREATED POLES

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

Schedule A

Effective January 19, 1953

Use for sacrifice value, excess height and/or strength, sale, etc.

Year Set	Percent Condition	Class	25	30	35	40	45	50	55	60
52-53	100	1	52.80	64.90	77.00	93.50	112.20	133.10	160.60	191.40
52-53	100	2	49.50	60.50	71.50	86.90	104.50	124.30	148.50	178.20
52-53	100	3	46.20	56.10	66.00	80.30	96.80	115.50	136.40	165.00
52-53	100	4	42.90	51.70	60.50	73.70	89.10	106.70	124.30	151.80
52-53	100	5	39.60	47.30	55.00	67.10	81.40	97.90		
52-53	100	6	36.30	42.90	49.50					
52-53	100	7	33.00	38.50	44.00					
1951	97	All	32.01	41.61	53.35	65.09	78.96	94.96	120.57	147.25
1950	94	All	31.02	40.33	51.70	63.07	76.52	92.03	116.84	142.69
1949	91	All	30.03	39.04	50.05	61.06	74.07	89.09	113.11	138.14
1948	88	All	29.04	37.75	48.40	59.05	71.63	86.15	109.38	133.58
1947	85	All	28.05	36.47	46.75	57.04	69.19	83.22	105.66	129.03
1946	82	All	27.06	35.18	45.10	55.02	66.75	80.28	101.93	124.48
1945	79	All	26.07	33.89	43.45	53.01	64.31	77.34	98.20	119.92
1944	76	All	25.08	32.60	41.80	51.00	61.86	74.40	94.47	115.37
1943	73	All	24.09	31.32	40.15	48.98	59.42	71.47	90.74	110.81
1942	70	All	23.10	30.03	38.50	46.97	56.98	68.53	87.01	106.26
1941	67	All	22.11	28.74	36.85	44.96	54.54	65.59	83.28	101.71
1940	64	All	21.12	27.46	35.20	42.94	52.10	62.66	79.55	97.15
1939	61	All	20.13	26.17	33.55	40.93	49.65	59.72	75.82	92.60
1938	58	All	19.14	24.88	31.90	38.92	47.21	57.76	72.09	88.04
1937	55	All	18.15	23.60	30.25	36.91	44.77	53.85	68.37	83.49
1936	52	All	17.16	22.31	28.60	34.89	42.33	50.91	64.64	78.94
1935	49	All	16.17	21.02	26.95	32.88	39.89	47.97	60.91	74.38
1934	46	All	15.18	19.73	25.30	30.87	37.44	45.03	57.18	69.83
1933	43	All	14.19	18.45	23.65	28.85	35.00	42.10	53.45	65.27
1932	40	All	13.20	17.16	22.00	26.84	32.56	39.16	49.72	60.72
1931	37	All	12.21	15.87	20.35	24.83	30.12	36.22	45.99	56.17
1930	34	All	11.22	14.59	18.70	22.81	27.68	33.29	42.26	51.61
1929	31	All	10.23	13.30	17.05	20.80	25.21	30.35	38.53	47.06
1928	28	All	9.24	12.01	15.40	18.79	22.79	27.41	34.80	42.50
1927	25	All	8.25	10.73	13.75	16.78	20.35	24.48	31.08	37.95
1926	22	All	7.26	9.44	12.10	14.76	17.91	21.54	27.35	33.40
1925	19	All	6.27	8.15	10.45	12.75	15.47	18.60	23.62	28.84
1924	16	All	5.28	6.86	8.80	10.74	13.02	15.66	19.89	24.29
1923	13	All	4.29	5.58	7.15	8.72	10.58	12.73	16.16	19.73
1922	10	All	3.30	4.29	5.50	6.71	8.14	9.79	12.43	15.18
1921	7	All	2.31	3.00	3.85	4.70	5.70	6.85	8.70	10.63
(1920 and earlier)	4	All	1.32	1.72	2.20	2.68	3.26	3.92	4.97	6.07

Note: Sacrifice Life Values are determined on the basis of the pole values underscored.

Approved W. J. McLain 2-6-53
Supv. of T. & D. Section of
Electrical Engineering Department
The Dayton Power and Light Company

Approved H. F. Gear 2-6-53
District Plant Engineer
The Ohio Bell Telephone Co.

BILLING SCHEDULE FOR JOINTLY USED BUTT TREATED CEDAR POLES

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

Schedule A-1

Effective January 19, 1953

Use for sacrifice value, excess height and/or strength, sale, etc.

Year Set	Percent Condition	Class	25	30	35	40	45	50	55	60
52-53	100	1	48.00	59.00	70.00	85.00	102.00	121.00	146.00	174.00
52-53	100	2	45.00	55.00	65.00	79.00	95.00	113.00	135.00	162.00
52-53	100	3	42.00	51.00	60.00	73.00	88.00	105.00	124.00	150.00
52-53	100	4	39.00	47.00	55.00	67.00	81.00	97.00	113.00	138.00
52-53	100	5	36.00	43.00	50.00	61.00	74.00	89.00		
52-53	100	6	33.00	39.00	45.00					
52-53	100	7	30.00	35.00	40.00					
1951	96	All	28.80	37.44	48.00	58.56	71.04	85.44	108.48	132.48
1950	92	All	27.60	35.88	46.00	56.12	68.08	81.88	103.46	126.96
1949	88	All	26.40	34.32	44.00	53.68	65.12	78.32	99.44	121.44
1948	84	All	25.20	32.76	42.00	51.24	62.16	74.76	94.92	115.92
1947	80	All	24.00	31.20	40.00	48.80	59.20	71.20	90.40	110.40
1946	76	All	22.80	29.64	38.00	46.36	56.24	67.64	85.88	104.88
1945	72	All	21.60	28.08	36.00	43.92	53.28	64.08	81.36	99.36
1944	68	All	20.40	26.52	34.00	41.48	50.32	60.52	76.84	93.84
1943	64	All	19.20	24.96	32.00	39.04	47.36	56.96	72.32	88.32
1942	60	All	18.00	23.40	30.00	36.60	44.40	53.40	67.80	82.80
1941	56	All	16.80	21.84	28.00	34.16	41.44	49.84	63.28	77.28
1940	52	All	15.60	20.28	26.00	31.72	38.48	46.28	58.76	71.76
1939	48	All	14.40	18.72	24.00	29.28	35.52	42.72	54.24	66.24
1938	44	All	13.20	17.16	22.00	26.84	32.56	39.16	49.72	60.72
1937	40	All	12.00	15.60	20.00	24.40	29.60	35.60	45.20	55.20
1936	36	All	10.80	14.04	18.00	21.96	26.64	32.04	40.68	49.68
1935	32	All	9.60	12.48	16.00	19.52	23.68	28.48	36.16	44.16
1934	28	All	8.40	10.92	14.00	17.08	20.72	24.92	31.64	38.64
1933	24	All	7.20	9.36	12.00	14.64	17.76	21.36	27.12	33.12
1932	20	All	6.00	7.80	10.00	12.20	14.80	17.80	22.60	27.60
1931	16	All	4.80	6.24	8.00	9.76	11.84	14.24	18.08	22.08
1930	12	All	3.60	4.68	6.00	7.32	8.88	10.68	13.56	16.56
1929	8	All	2.40	3.12	4.00	4.88	5.92	7.12	9.04	11.04
(1928 and earlier)	4	All	1.20	1.56	2.00	2.44	2.96	3.56	4.52	5.52

Note: Sacrifice Life Values are determined on the basis of the pole values underscored.

Approved W. J. McLain 2-6-53
Supv. of T. & D. Section of
Electrical Engineering Department
The Dayton Power and Light Company

Approved H. F. Gear 2-6-53
District Plant Engineer
The Ohio Bell Telephone Co.

SCHEDULE B

AN ATTACHMENT TO THE OPERATING ROUTINE DATED 6-30-53 BETWEEN THE DAYTON POWER AND LIGHT COMPANY and THE OHIO BELL TELEPHONE COMPANY

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

See Sections 11.30 and 11.40 of the Operating Routine dated 6-30-53.

A. When the work is performed at the request of and for the sole benefit of the Telephone Company, the full amount of the following charges shall apply.

B. When the work is performed by the Electric Company and is for the mutual benefit of both companies, billing will be on a basis of 50% or such other percentage as is mutually agreed.

Item	Description of Work Operation	Flat Billing Charges
* 1.	5/8"x6'0" double-eye rod and 8" anchor plate Total maximum load 8000#	$ 25.00
* 2.	3/4"x8'0" double-eye rod and 10" anchor plate Total maximum load 14,000#	33.00
* 3.	1"x10'0" double-eye rod and 4' anchor log Total maximum load 25,000#	50.00
* 4.	2 - 3/4"x10' double-eye rod and 6' anchor log Total maximum load 32,000#	60.00
	* If an existing anchor is to be removed, then add to the above amount	8.00
5.	Ground brace new pole - block at top and bottom	24.00
6.	Ground brace existing pole - block at top only	27.00
7.	Move 30' and shorter pole	25.00
8.	Move 35' and taller pole	40.00
	(Items 7 and 8 apply only where the existing pole can be physically moved.)	
9.	Straighten pole	20.00
10.	Transfer guy	10.00
11.	Move ground wire on existing pole	7.00
12.	Install guy insulator in existing guy	17.00
13.	Connect Telephone Company ground wire to Electric Company neutral	5.00
14.	T (transfer) or R (relocate) secondary rack	6.00
15.	T or R secondary crossarm - including pins and insulators	10.00
16.	T or R primary crossarm - 4 kv or 12 kv crossarm and brace only - pins and insulators not included	13.00
17.	T or R primary pole top pin - insulator not included	3.00
18.	T or R secondary conductor - aluminum - per conductor	7.00

SCHEDULE B

Item	Description of Work Operation	Flat Billing Charges
19.	T or R secondary conductor - other than aluminum - per conductor	$ 5.00
20.	T or R secondary dead end - all conductor types - per conductor	5.00
21.	T or R primary conductor, insulator and pin - straight line - 4 kv - aluminum - per conductor	13.00
22.	Same as 21 but other types of conductor	9.00
23.	T or R primary conductor insulator and pin - straight line - 12 kv - aluminum - per conductor	19.00
24.	Same as 23 but other types of conductor	12.00
25.	T or R primary conductor dead ends including insulators - 4 kv or 12 kv on crossarms - per conductor	13.00
26.	Same as 25 but dead ends made on pole in vertical arrangement	12.00
27.	T or R service - 2 or 3 wire - one end only - #2 conductors or smaller conductor length adequate	5.00
28.	Same as 27 but conductors have to be lengthened	14.00
29.	T or R street light fixture - bracket and connections	25.00
30.	T or R crossarm supporting street lighting circuits only - insulators and pins not included	7.00
31.	T or R street lighting conductor - aluminum - straight line - including insulator and pin - per conductor	13.00
32.	Same as 31 but conductors other than aluminum	9.00
33.	T or R street lighting conductor dead ends - any type conductor - per conductor	13.00
34.	T or R single phase transformer installation including protective equipment and mounting - protective equipment built as part of transformer - 15 kva size and smaller	44.00
35.	T or R single phase transformer installation including protective equipment and mounting - fused cutouts and arrester mounted on crossarms - 15 kva size and smaller	68.00
36.	Same as 34 but 25 kva size and larger	78.00
37.	Same as 35 but 25 kva size and larger	112.00
38.	Estimated cost will be computed when necessary on items not listed above such as, transformer bank structures, primary or secondary cable risers and other special or unusual installations. The estimated cost will be based on the total current labor and truck costs plus 20% for engineering and administrative expenses.	

Note: Items 1 through 6 have the cost of materials included
Items 7 through 38 do not include the cost of materials

SCHEDULE B

Submitted 10-15 19 52
THE DAYTON POWER AND LIGHT COMPANY

By W. J. McLain
Supervisor of T. and D. Section of
Electrical Engineering Department

Approved 10-15 19 52
THE OHIO BELL TELEPHONE COMPANY

By H. F. Gear
District Plant Engineer

SCHEDULE C

AN ATTACHMENT TO THE OPERATING ROUTINE DATED 6-30-53 BETWEEN THE DAYTON POWER AND LIGHT COMPANY and THE OHIO BELL TELEPHONE COMPANY

Schedule of Flat Rate Prices for Repetitive Work Operations performed by the Telephone Company to be billed to The Dayton Power and Light Company on the Monthly Billing Summary.

See Sections 11.30 and 11.40 of the Operating Routine dated 6-30-53 .

A. When the work is performed at the request of and for the sole benefit of the Electric Company, the full amount of the following charges shall apply.

B. When the work is performed by the Telephone Company at the request of the Electric Company and is for the mutual benefit of both companies, billing will be on a basis of 50% or such other percentage as is mutually agreed.

Item	Description of Work Operation	Flat Billing Charges
*(a)	Install 5/8" anchor	$ 25.00
*(b)	Install double-eye anchor (3/4" rod)	33.00
*(c)	Install double-eye anchor (1" rod)	50.00
*(d)	Install double-eye anchor (1-1/4" rod)	60.00
	* If existing anchor is replaced, add $8.00 to these prices	
(e)	Ground brace - new pole	24.00
(f)	Ground brace - existing pole (top only)	27.00
#(g)	Move 30' and shorter poles	25.00
#(h)	Move 35' and taller poles	40.00
	# Applies only when existing pole can be physically moved	
(i)	Straighten poles (each)	20.00
(j)	Transfer anchor guy or pole to pole guy (one end only)	10.00
(k)	Move ground wire on existing pole	7.00
(l)	Remove cable terminal	20.00
(m)	Place 10 pair cable terminal	30.47
(n)	Place 16 pair cable terminal	36.06
(o)	Place 26 pair cable terminal	41.66
(p)	Reconcentrate service wire to new terminal location	5.00
(q)	Transfer or move crossarms (each)	5.00
(r)	Transfer or move cable (all sizes) per attach.	3.00
(s)	Transfer or move one (1) open wire (all sizes)	.30
(t)	Transfer or move covered wire	.40
(u)	Move drop wire attach. on subscriber's house	5.00
(v)	Transfer or move drive hook	.35
(w)	Transfer or move terminal (pole distribution type)	5.00
(x)	Transfer or move terminal (cross-connecting type)	25.00
(y)	Transfer U.G. lateral to new pole	Estimated Cost to be furnished

SCHEDULE C

Note: Rearrangements on existing poles which would permit continued joint use of an existing pole are billable. Refers primarily to paragraphs 1.302 and 2.303 of the Operating Routine.

Submitted 10-15 19 52
THE OHIO BELL TELEPHONE COMPANY

By H. F. Gear
District Plant Engineer

Approved 10-15 19 52
THE DAYTON POWER AND LIGHT COMPANY

By W. J. McLain
Supervisor of T. and D. Section of
Electrical Engineering Department

KELLER AND HECKMAN LLP
Serving Business through Law and Science®

1001 G Street, N.W.
Suite 500 West
Washington, D.C. 20001
tel. 202.434.4100
fax 202.434.4646

Writer's Direct Access
Jack Richards
(202) 434-4210
richards@khlaw.com

December 6, 2006

Via Electronic and Overnight Delivery

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

Re: Joint Use Operations

NOTICE OF SUSPENSION
FURTHER NOTICE OF DEFAULT

Dear Ms. Sury:

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

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

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

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

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

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

Calculation of Annual Rental

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Third Party Rentals

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

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

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

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

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

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

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

---

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

[7] ORC § 4905.71(A).

* * *

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

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

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

Sincerely,

Jack Richards

Jack Richards
Thomas B. Magee

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

KELLER AND HECKMAN LLP
Serving Business through Law and Science®

1001 G Street, N.W.
Suite 500 West
Washington, D.C. 20001
tel. 202.434.4100
fax 202.434.4646

Writer's Direct Access
Jack Richards
(202) 434-4210
richards@khlaw.com

December 13, 2006

Via Electronic and Overnight Delivery

Michael Sullivan
Mayer, Brown, Rowe and Maw LLP
71 S. Wacker Drive
Chicago, Illinois 60606

Re: Dayton Power and Light/AT&T

Dear Mr. Sullivan:

This letter follows up on our telephone conversation Monday afternoon. During the call, you noted that our December 6, 2006 letter to your client, AT&T, proposed binding arbitration to resolve the differences between AT&T and our client, The Dayton Power and Light Company ("DP&L"). Prior to any arbitration or litigation, you proposed that AT&T and DP&L attempt to resolve our dispute through nonbinding mediation.

As we discussed, nonbinding mediation can be effective in situations where both parties are willing to resolve their disagreements on reasonable terms. To date, however, DP&L believes that AT&T's position has been at odds with the plain meaning of the Joint Use Agreements, the intent of the parties and 50 years of dealings. With that in mind, we are reluctant to proceed with "nonbinding" mediation, which is why we proposed binding arbitration. Nevertheless, in an effort to move this along, DP&L is willing to engage in mediation with AT&T under the following conditions:

(1) Mediation will be conducted in accordance with the Commercial Mediation Procedures of the American Arbitration Association ("AAA"). If mediation does not resolve this dispute in full within 60 days of the date of this letter, either party may terminate the mediation.

(2) Upon termination of the mediation, either party may initiate binding arbitration within 30 days in accordance with the Commercial Arbitration Rules of the AAA by serving a demand for arbitration on the other party and filing the demand with the AAA. The parties agree to participate in and be bound by such arbitration.

(3) AT&T must accept this mediation/arbitration offer by Friday, December 15, 2006, which is the date established by DP&L for AT&T's response to the December 6, 2006 letter. If you require an extra day or two to consider the matter, please let me know.

(4) A written agreement must be executed by the parties by December 22, 2006, which appoints a mediator and an arbitrator (or specifies the method to be used to appoint a mediator and an arbitrator), fixes the locale of mediation and arbitration, determines the extent of discovery for arbitration, apportions the cost of the mediator, arbitrator and AAA fees equally among the parties, and establishes other basic parameters.

(5) Any mediator or arbitrator selected must be an attorney well versed in contract law.

You suggested during our telephone conference that the parties establish a 30-day "cooling off" period, during which DP&L would lift its suspension and return the parties to business as usual. While we appreciate your offer, DP&L does not accept it. This dispute has been pending since November 2004, during which time the parties have tried and failed repeatedly to resolve their differences. DP&L believes that additional measures must be undertaken at this stage to resolve this matter.

Finally, please be advised that DP&L has retained local counsel to assist with any judicial resolution of this matter. Keller and Heckman LLP will remain primary counsel on this matter, but please provide copies of all correspondence and notices to the following attorneys:

Faruki, Ireland & Cox P.L.L.
500 Courthouse Plaza, S.W.
10 North Ludlow Street
Dayton, OH 45402

ATTN: Charles J. Faruki Esq.
(937) 227-3705 (phone)
(937) 227-3717 (fax)
cfaruki@ficlaw.com (e-mail)

ATTN: Jeffrey S. Sharkey, Esq.
937-227-3747 (phone)
(937) 227-3717 (fax)
jsharkey@ficlaw.com (e-mail)

Additionally, it would be appreciated if you would copy my Partner, Douglas J. Behr (202-434-4213; behr@khlaw.com), and my Senior Associate, Thomas B. Magee (202-434-4128; magee@khlaw.com), on any emails, letters or other communications regarding this matter.

If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

Jack Richards

cc: Randall Griffin, Esq.*
Charles J. Faruki, Esq.*
Jeffrey S. Sharkey, Esq.*
Thomas B. Magee, Esq.*
Douglas J. Behr, Esq.*

* via electronic delivery

MAYER BROWN ROWE & MAW

Mayer, Brown, Rowe & Maw LLP
71 South Wacker Drive
Chicago, Illinois 60606-4637

Main Tel (312) 782-0600
Main Fax (312) 701-7711
www.mayerbrownrowe.com

Michael T. Sullivan
Direct Tel (312) 701-7251
Direct Fax (312) 706-8689
msullivan@mayerbrownrowe.com

December 21, 2006

VIA ELECTRONIC MAIL AND U.S. MAIL

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

Re: Dayton Power and Light / AT&T

Gentlemen:

Confirming our telephone conversation yesterday, AT&T Ohio is not prepared to engage in mediation/arbitration under the terms set forth in your December 13 letter. As I explained, as a necessary condition of mediating or arbitrating, DP&L must withdraw its purported suspension of AT&T Ohio's rights under the Joint Use Pole Agreement, as such suspension is not authorized by the parties' agreement and irreparably harms AT&T Ohio and its customers. You have indicated to me that DP&L is not willing to withdraw its suspension.

Sincerely,

Michael T. Sullivan

MTS/ds

cc: Charles J. Faruki, Esq. (via email)
Jeffrey S. Sharkey, Esq. (via email)
Jon Kelly (via email)
Gerald Friederichs (via email)

Dayton Power and Light
FCC Attachment Rate and Pole Ownership Cost Calculations

				Annual cost of Ownership
Carrying Charge	= Administrative + Maintenance + Depreciation + Taxes + Return 0.06343 + 0.08449 + 0.08629 + 0.12908 + 0.11250		0.47578	
Per Pole Net Investment	= Net Pole Investment/ Number Poles $ 60,776,060.26/ 321,252 poles	$	189.19	$ 90.01
Standard Pole Height	37.5			
Standard Rate of Return	0.1125			
C # Attaching Entities High	3			
Space Occupied	1			
Unusable Space	24			
Usable Space	13.5			
FCC Allowed ROR	11.25%			
FCC Allowed Telecom Attachment Rate		$	15.20	
Default Rate per OB/DPL Contract		$	45.01	
DP&L Requested Rate @ an AVG Inflation Rate of 3% over 5 years		$	47.82	

Dayton Power and Light
FCC Attachment Rate and Pole Ownership Cost Calculations

Administrative

		2003	Ferc Form 1 Reference *Work Sheet Reference*
1	Total A&G	$ 95,736,143	**Page 323, Line168, Col.(b)**
2			
3	Electric Gross Plant less intangible plant	$ 3,639,078,225	**Page 207, Line 91, Col.(g) minus Page 205, Line 5, Col.(g)**
4			
5	Accumulated Depreciation	$ 1,745,558,547	**Page 219, Line 19, Col. (c)**
6			
7	Accumulated Def Taxes		
8	Account 190	$ (74,804,244)	**Page 234, Line 18, Col. (c)**
9	Account 281	$ 527,985	**Page 273, Line 19, Col. (k)**
10	Account 282	$ 413,226,460	**Page 275, Line 5, Col. (k)**
11	Account 283	$ 45,338,451	**Page 277, Line 9, Col. (k)**
12		$ 384,288,652	*Sum of Lines 8 Thru 11*
13			
			Page 323, Line168, Col.(b)
2003	Total General and Admin	$ 95,736,143	
	Gross plant less Acc Dep less Acc Def Taxes	$ 1,509,231,026	*Line 3 - Line 5 - Line 12*
		0.06343	

Dayton Power and Light
FCC Attachment Rate and Pole Ownership Cost Calculations

Maintenance

		2003	Ferc Form 1 Reference *Work Sheet Reference*
1	Account 593	$ 11,507,040	**Page 322, col.(b), Line 119**
2			
3	Pole Investment		
4	Account 364	$ 146,544,057	**Page 207, col.(g), Line 64**
5	Account 365	$ 85,032,138	**Page 207, col.(g), Line 65**
6	Account 369	$ 96,835,644	**Page 207, col.(g), Line 69**
7		$ 328,411,839	*Sum of Lines 4 Thru 6*
8	Depreciation on Poles		
9	Pole Investment	$ 328,411,839	*Line 7*
10	Total Electric Plant less intangible plant	$ 3,639,078,225	**Page 207, Line 91, Col.(g) minus Page 205, Line 5, Col.(g)**
11	Pole Percentage of Total Elec Plant	9.02%	*Line 7 ÷ Line 10*
12	Total Acc Depreciation on Elec Plant	$ 1,745,558,547	**Page 219, Line 19, Col. (c)**
13	Pole Acc Dep	$ 157,529,478	*Line 11 X Line 12*
14			
15	Acc Def Tax on Poles		
16	Total Acc Def Tax	$ 384,288,652	*Page 2, Line 12*
17	Total Electric Plant less intangible plant	$ 3,639,078,225	*Line 10*
18	Percentage of Acc Def Tax	10.56%	*Line 16 ÷ Line 17*
19	Pole Investment	$ 328,411,839	*Line 7*
20	Acc Def Tax on Poles	$ 34,680,470	*Line 18 X Line 19*
	Account 593	$ 11,507,040	**Page 322, col.(b), Line 119**
	Pole Investment-(Pole Acc Dep- Acc Def Tax on Poles)	$ 136,201,891	*Line 7 - Line 13 - Line 20*
		0.08449	

Dayton Power and Light
FCC Attachment Rate and Pole Ownership Cost Calculations

Taxes

		2003	Ferc Form 1 Reference *Work Sheet Reference*
1	Account 408.1	$ 106,834,582	**Page 115, Col.(e), Line 14**
2	Account 409.1	$ 83,321,616	**Page 115, Col.(e), Line 15 + Line 16**
3	Account 410.1	$ 7,546,127	**Page 115, Col.(e), Line 17**
4	Account 411.1	$ -	**Page 115, Col.(e), Line 18**
5	Account 411.4	$ (2,892,624)	**Page 115, Col.(e), Line 19**
6	*Sum of Taxes*	$ 194,809,701	*Sum Lines 1 Thru 5*
7			
8	Gross Plant Investment less intangible	$ 3,639,078,225	**Page 207, Line 91, Col.(g) minus Page 205, Line 5, Col.(g)**
9			
10	Accumulated Depreciation	$ 1,745,558,547	**Page 219, Line 19, Col. (c)**
11			
12	Accumulated Def Taxes	$ 384,288,652	*Page 2, Line 12*
13			
14			

$$\frac{\text{Accounts 408.1+409.1+410.1+411.4-411.1}}{\text{Gross Plant Investment - Acc Depreciation - Acc Def Taxes}} = \frac{\$\ 194,809,701\ \textit{Line 6}}{\$\ 1,509,231,026\ \textit{Line 8 - Line 10 - Line 12}}$$

0.12908

Dayton Power and Light
FCC Attachment Rate and Pole Ownership Cost Calculations

Net Pole Investment

		2003	Ferc Form 1 Reference / Work Sheet Reference
1	Gross Pole Investment (Account 364)	$ 146,544,057	**Page 207, col.(g), Line 64**
2			
3	Depreciation on Poles (Account364)		
4	Pole Investment	$ 146,544,057	**Page 207, col.(g), Line 64**
5	Total Electric Plant	$ 3,639,078,225	**Page 207, Line 91, Col.(g) minus Page 205, Line 5, Col.(g)**
6	Pole Percentage of Total Electric Plant	4.03%	*Line 4 ÷ Line 5*
7	Total Acc Depreciation on Elec Plant	$ 1,745,558,547	**Page 219, Line 19, Col. (c)**
8	Pole Acc Dep	$ 70,292,864	*Line 6 X Line 7*
9			
10	Acc Def Tax on Poles (Acc 364)		
11	Total Acc Def Tax	$ 384,288,652	*Page 2, Line 12*
12	Total Electric Plant	$ 3,639,078,225	*Line 5*
13	Percentage of Acc Def Tax	10.56%	*Line 11 ÷ Line 12*
14	Pole Investment	$ 146,544,057	*Line 4*
15	Acc Def Tax on Poles	$ 15,475,133	*Line 13 X Line 14*
16			
17	Net Pole Investment	$ 60,776,060	*Line 1 - Line 8 - Line 15*
18			

Dayton Power and Light
FCC Attachment Rate and Pole Ownership Cost Calculations

Depreciation

			2003	Ferc Form 1 Reference *Work Sheet Reference*
1	Account 364	$	146,544,057	**Page 207, col.(g), Line 64**
2				
3	Net Pole Investment	$	60,776,060	*Page 5, Line 17*
4				
5	Distribution Depreciation Expense	$	32,350,031	**Page 336, Col.(f), Line 8**
6				
7	Distribution Plant	$	903,995,106	**Page 207, col.(g), Line 75**
8				
9	Distribution Depreciation Rate		3.58%	*Line 5 ÷ Line 7*
10				
11	*Gross Pole Investment (Acct 364)* X *Depreciation* Net Pole Investment Rate		***0.08629***	