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1 PUBLIC UTILITIES COMMISSION
2 STATE OF OHIO
3 In the Matter of the)
4 Application of Duke)
5 Energy Ohio, Inc. for) Case No. 08-709-EL-AIR
6 an Increase in Electric)
7 Distribution Rates)
8)
9 In the Matter of the)
10 Application of Duke) Case No. 08-710-EL-ATA
11 Energy Ohio, Inc. for)
12 Tariff Approval)
13)
14 In the Matter of the)
15 Application of Duke)
16 Energy Ohio, Inc. for) Case No. 08-711-EL-AAM
17 Approval to Change)
18 Accounting Methods)
19)
20 In the Matter of the)
21 Application of)
22 Cincinnati Gas &) Case No. 06-718-EL-ATA
23 Electric Company for)
24 Approval of its Rider)
25 BDP, Backup Delivery)
Point.)

Deposition of Edward F. Kozelek, a
witness herein, called by the Applicant for
examination under the statute, taken before me,
Linda D. Riffle, Registered Diplomate Reporter,
Certified Realtime Reporter and Notary Public in
and for the State of Ohio, pursuant to notice and
agreement, at the offices of Duke Energy Ohio,
Inc., 155 East Broad Street, 21st Floor, Columbus,
Ohio, on Monday, February 2, 2009, beginning at
1:46 o'clock p.m. and concluding on the same day.

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S T I P U L A T I O N S

- - -

It is stipulated by and among counsel for the respective parties herein that the deposition of Edward F. Kozelek, a witness herein, called by the Applicant for examination under the statute, may be taken at this time and reduced to writing in stenotype by the Notary, whose notes may thereafter be transcribed out of the presence of the witness; that proof of the official character and qualification of the Notary is waived; that the witness may sign the transcript of his deposition before a Notary other than the Notary taking his deposition; said deposition to have the same force and effect as though the witness had signed the transcript of his deposition before the Notary taking it.

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1 EDWARD F. KOZELEK

2 of lawful age, being by me first duly placed under
3 oath, as prescribed by law, was examined and
4 testified as follows:

5 EXAMINATION

6 BY MS. WATTS:

7 Q. State your name and spell it, please.

8 A. Edward, E-d-w-a-r-d, Francis,
9 F-r-a-n-c-i-s, Kozelek, K-o-z-e-l-e-k.

10 Q. Mr. Kozelek, have you ever given a
11 deposition before?

12 A. Yes.

13 Q. And can you tell me where and when?

14 A. It was at the law offices of Calfee,
15 Halter & Griswold; it was two years ago maybe.

16 Q. In connection with anything related to
17 the Public Utilities Commission?

18 A. No.

19 Q. Okay. So you sort of know the drill. If
20 you need to take a break, let me know. I'll ask
21 that you finish your response to the question
22 before you take a break.

23 Please let me know if you don't
24 understand my question, because if you answer
25 otherwise, we'll assume that you do understand.

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1 And that should be about it.

2 A. Okay.

3 Q. Okay. To the extent I say "Time Warner"
4 or "Time Warner Cable", in each instance I'm going
5 to mean Time Warner Cable unless I say otherwise,
6 okay?

7 A. Okay.

8 MS. WATTS: Can we have that
9 understanding, Gardner; is that okay with you?

10 MR. GILLESPIE: Certainly.

11 MS. WATTS: Okay.

12 BY MS. WATTS:

13 Q. Did you prepare for this deposition
14 today?

15 A. No.

16 Q. Not at all?

17 A. No.

18 Q. Okay. Are you taking any medications
19 today that would preclude you from giving accurate
20 answers to the questions?

21 A. No.

22 Q. I'm going to show you --

23 MS. WATTS: We need to mark this one as

24 DE Ohio No. 4.

25

- - -

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1 Thereupon, DE Ohio Exhibit No. 4 was
2 marked for purposes of identification.

3 - - -

4 BY MS. WATTS:

5 Q. Mr. Kozelek, have you seen this document
6 before?

7 A. I don't believe I have.

8 Q. If you would, please, turn to Page 4 of
9 that document, which is entitled "Exhibit A",
10 "Notice of Deposition Duces Tecum".

11 A. Okay.

12 Q. Have you seen that before?

13 A. I may have seen this or a response to
14 this which would have incorporated these items to
15 be produced.

16 Q. Did you undertake a search for documents
17 as a result of receiving this request?

18 A. I did not.

19 Q. Did you undertake a search for documents
20 at the request of your counsel?

21 A. I did not.

22 Q. Did someone under your supervisory --
23 supervision or control produce documents on your
24 behalf?

25 A. You're going to have to define

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1 "supervision or control".

2 Q. Did someone at Time Warner Cable produce
3 documents on your behalf to Mr. Gillespie for
4 production today?

5 A. I believe so.

6 Q. And who would that have been?

7 A. I don't know.

8 Let me -- Can we ask -- Can you ask the
9 question again?

10 Q. Sure.

11 A. I want to make sure I'm answering it
12 accurately.

13 Q. Did someone -- Well, let me step back a
14 couple questions.

15 A. Okay.

16 Q. Someone from Time Warner Cable produced
17 documents, correct?

18 A. I believe that to be the case.

19 Q. And my question is: Who was it that
20 produced those documents?

21 A. I don't know the answer to that.

22 Q. Do you have any idea who it might have
23 been?

24 A. Are you asking me to guess?

25 Q. No. I'm asking -- Well, let me ask you

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1 this. Who would generally have such
2 responsibilities at Time Warner Cable besides
3 yourself?

4 A. You're assuming I would have
5 responsibility, though.

6 Q. Correct.

7 A. Right.

8 It -- It depends who the -- It depends.

9 Q. Okay. Could you please tell me what your
10 education and employment experience has been?

11 A. Yes. How far back would you like to go?

12 Q. Let's start with right after college.

13 A. Okay. After college, after my
14 undergraduate --

15 Q. Right.

16 A. -- I -- I started working in the
17 legislature, in the Ohio House of Representatives.
18 Went to grad school for a quarter. Was offered a
19 full-time position in the legislature, in the Ohio
20 House of Representatives; took that.

21 From there, I was offered a position as a
22 lobbyist for the Ohio Dental Association.

23 Q. What year was that, please?

24 A. I was offered the job in 1988. I started
25 in 1988, January 10th.

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1 Worked there from January 10th, 1988
2 until January 10th, 1990, when I started with the
3 Ohio Cable Telecommunications Association.

4 Q. And what was your position with OCTA?

5 A. Director of Government Affairs first.

6 Q. And subsequent to that?

7 A. Do you want me to do work experience
8 first, then education, or combine them?

9 Q. We were sort of -- Let's stay with the
10 education, then. Let's finish that out.

11 A. Okay. Yeah, I -- I -- While at the OCTA,
12 I went to law school, and graduated in 1995. Took
13 and passed the Ohio Bar in 1996.

14 I got my M.B.A. from The Ohio State
15 University in June of 2006.

16 Back to employment, I was promoted to
17 Vice President of Government Affairs in 1994, and
18 became the Executive Vice President in July of
19 1998. Held that position until July of 2006 --

20 Q. Okay.

21 A. -- when I started at Time Warner Cable.

22 Q. And your position now with Time Warner
23 Cable is exactly what?

24 A. Regional Vice President, Government
25 Affairs, Midwest Region.

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1 Q. How many others -- How many other people
2 work for Time Warner Cable and do exactly what you
3 do?

4 A. You're going to have to narrow that down
5 a little bit.

6 Q. Well, you're -- How many other Regional
7 Vice Presidents of Government Affairs are there?

8 A. Right now, I believe there are three
9 others.

10 Q. And what are their -- How are their
11 territories described? If yours is Midwest, how
12 do they describe them?

13 A. One is the Carolinas; one is Texas; one
14 is East Coast. And I believe there are a couple
15 of positions open.

16 Q. How many states does Time Warner Cable do
17 business in?

18 A. I believe that we are in -- that Time
19 Warner Cable is in between 28 and 30 states.

20 Q. Is that a -- Are you just guessing, or
21 are there two states that are in some sort of
22 interim status or something, or is that just
23 because you're not sure?

24 A. That's an estimate.

25 Q. Okay. Can you tell me what Time Warner

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1 Telecommunications is?

2 A. It's a competitor.

3 Q. In what market does it compete with you?

4 A. I believe Time Warner Telecom is a
5 business telecommunications company.

6 Q. And does Time Warner Cable have --
7 provide service as a business telecommunications
8 company also?

9 A. Does Time Warner Cable?

10 Q. Yes.

11 A. Time Warner Cable provides business
12 telecommunications services, as well.

13 Q. Okay. So they're both -- Do you
14 understand, if I use the term "CLEC" -- can I
15 refer to them both as CLECs?

16 MR. GILLESPIE: Well, objection. I'm
17 sorry, I'm not sure I understand that question.

18 MS. WATTS: I'm wondering if both Time
19 Warner Cable and Time Warner Telecommunications
20 are competitive -- now I've forgotten --

21 MS. SPILLER: Local --

22 MS. WATTS: -- local exchange carriers.

23 MR. GILLESPIE: Are you talking about in
24 Ohio?

25 MS. WATTS: In Ohio.

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1 MR. GILLESPIE: As defined by what? What
2 do you -- How do you define CLEC?

3 BY MS. WATTS:

4 Q. Mr. Kozelek, do you know what a CLEC is?

5 A. Yes.

6 Q. Would you define -- Would you include
7 Time Warner Cable as a CLEC?

8 A. I would not.

9 Q. In Ohio or anywhere outside of Ohio?

10 A. I -- I really can't speak with complete
11 certainty as to outside of the State of Ohio. I
12 believe that we are not considered a CLEC
13 anywhere.

14 Q. Would you consider Time Warner
15 Telecommunications to be a CLEC?

16 A. I -- My guess is they are. I don't
17 represent them.

18 Q. Understood. Just asking what your
19 knowledge is.

20 Can you tell me what is encompassed
21 within "business telecommunications service", that
22 phrase as you -- as you used it?

23 A. Voice, video, data. Digital phone
24 service, high-speed Internet, and a video product.
25 Those are the three primary services.

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1 Q. Okay. And maybe I misunderstood
2 something so I'm going to go back again. You
3 described Time Warner Telecom as providing
4 business telecommunications service, correct?

5 A. Uh-huh.

6 Q. But I thought I also understood you to
7 say that Time Warner Cable provides those
8 services.

9 A. Yes.

10 Q. But not in Ohio or --

11 A. No, we --

12 Q. -- yes in Ohio?

13 A. -- we do in Ohio.

14 Q. Okay. Has Time Warner Telecommunications
15 ever been an affiliate of Time Warner Cable?

16 A. I believe at one time, they were.

17 Q. Okay. And up until what point?

18 A. I couldn't give you the exact date.

19 Q. Can you pinpoint it within a year?

20 A. Probably not.

21 Q. Okay. What is Time Warner Cable's
22 relationship with Adelphia?

23 MR. GILLESPIE: Objection to the form of
24 the question. You can answer.

25 THE WITNESS: I don't -- yeah.

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1 BY MS. WATTS:

2 Q. You don't know?

3 A. Well, I don't -- I mean, Adelphia -- I
4 don't even know what form, if any form, Adelphia
5 even exists anymore.

6 Q. Okay. Do you have any knowledge as to
7 what the history of the company called Adelphia
8 was?

9 A. Yes.

10 Q. What was that?

11 A. The history --

12 Q. Right.

13 A. -- of Adelphia?

14 Q. You're telling me you don't think they
15 exist anymore, so I'm wondering what happened to
16 Adelphia.

17 A. They're -- They're bankrupt.

18 Q. Okay. And did Time Warner Cable or Time
19 Warner Telecom acquire Adelphia or acquire any of
20 the assets of Adelphia?

21 A. Time Warner Cable, to my knowledge -- and
22 I -- what I mean by that is that I don't know
23 what, if anything, Time Warner Telecom did with
24 Adelphia -- but Time Warner Cable acquired a part
25 of Adelphia.

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1 Q. And what part would that be?

2 A. Parts in several states, including Ohio.

3 Q. And did Time Warner Cable acquire the
4 business interests of Adelphia, or just the
5 assets?

6 A. I don't --

7 MR. GILLESPIE: Objection to the form of
8 the question.

9 BY MS. WATTS:

10 Q. You don't know?

11 A. Well, I --

12 MR. GILLESPIE: Could you rephrase --

13 THE WITNESS: Yeah.

14 MR. GILLESPIE: -- what you mean by
15 "business interest"?

16 BY MS. WATTS:

17 Q. The ongoing business of Adelphia or just
18 its assets.

19 A. I still don't understand the question.

20 Q. Okay. How many members of the OCTA are
21 there right now?

22 A. This is a guess, but it's a pretty good
23 one. Eighteen system members and 75 affiliate
24 associate members, I believe they're called.

25 Q. And could you tell me the difference

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1 between system members and affiliate associate
2 members?

3 A. Yes. System members are members that own
4 and operate cable telecommunications systems. And
5 associate members are, for the most part,
6 programmers; ESPN, CNN, or others who have an
7 interest in cable telecommunications.

8 Q. How many of the system members provide
9 service in Duke Ohio's -- Duke Energy Ohio's
10 service territory?

11 A. How many system members do?

12 Q. Uh-huh.

13 A. I believe that is one member.

14 Q. And which member is that?

15 A. That would be Time Warner Cable.

16 Q. Are you familiar with Time -- with Duke
17 Energy Ohio's existing tariff on file with the
18 Commission that allows pole attachments?

19 A. I am -- I have a familiarity with it.

20 Q. Okay. How would you describe your
21 knowledge of field operations with respect to pole
22 attachments? Time Warner Cable's field operations
23 with respect to pole attachments.

24 A. Compared to who?

25 Q. Just -- I'm just trying to understand

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1 what your knowledge is. You don't need to compare
2 it to anyone. I just want to know what you feel
3 you know about what goes on out in the field.

4 A. Right. But that's a tough question. I
5 mean --

6 Q. All right. Well, we'll work on that,
7 then.

8 A. Okay.

9 Q. Okay.

10 MS. WATTS: This one is Duke Energy 5.

11 - - -

12 Thereupon, DE Ohio Exhibit No. 5 was
13 marked for purposes of identification.

14 - - -

15 BY MS. WATTS:

16 Q. Mr. Kozelek, I have handed you a document
17 which we're marking as Duke Energy Exhibit 5. Is
18 this a document that you have ever seen before?

19 A. Yes, I have.

20 Q. Would you turn your attention, please, to
21 Request No. 8 on Page 3 of that document?

22 A. Request No. 8?

23 Q. Yes.

24 A. Okay.

25 Q. Did you have any involvement in the

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1 preparation of this document?

2 A. I did not.

3 Q. Were you asked to search for any
 4 agreements in effect from 2000 to the present
 5 between Time Warner Cable and Time Warner Telecom?

6 MR. GILLESPIE: Are you asking --

7 BY MS. WATTS:

8 Q. Did you perform a search --

9 MR. GILLESPIE: Well, my problem --

10 BY MS. WATTS:

11 Q. -- for that document?

12 MR. GILLESPIE: Well, my problem is that
 13 you have only read a portion of Request No. 8.
 14 And I'm trying to understand whether you're asking
 15 something broader than Request No. 8, or are you
 16 asking whether this witness has made a search for
 17 documents responsive to Request No. 8?

18 MS. WATTS: I am asking whether or not
 19 this witness has made a search for documents
 20 responsive to Request No. 8.

21 MR. GILLESPIE: Okay.

22 THE WITNESS: I did not make a search
 23 pursuant to Request No. 8.

24 BY MS. WATTS:

25 Q. Okay. Thank you.

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1 MS. WATTS: This will be Duke Energy
2 No. 6.

3 - - -

4 Thereupon, DE Ohio Exhibit No. 6 was
5 marked for purposes of identification.

6 - - -

7 BY MS. WATTS:

8 Q. Would you please take a look at a
9 document which I just handed you which we're
10 marking as DE Ohio 6, and tell me, have you ever
11 seen that document before?

12 Have you had a chance to look at that,
13 Mr. Kozelek?

14 A. Pardon me?

15 Q. Have you had a chance to look through
16 that?

17 A. No.

18 Q. Okay. Please take your time.

19 A. The question was again?

20 Q. I'm going to ask you to turn to Page 5.

21 A. Okay.

22 MR. GILLESPIE: The question was whether
23 or not he's seen the document, wasn't it?

24 THE WITNESS: Yeah. And the answer is
25 no.

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1 BY MS. WATTS:

2 Q. Okay. Sorry.

3 Page 5, Paragraph 3, please.

4 MR. GILLESPIE: Are you asking him to
5 read it?

6 MS. WATTS: Yes.

7 THE WITNESS: Oh, out loud or --

8 BY MS. WATTS:

9 Q. No, no. Just to yourself.

10 A. Okay.

11 Okay.

12 Q. Okay. That paragraph, I'm going to --
13 I'm going to read it aloud. "License Subject to
14 Authorizations. Notwithstanding anything herein
15 to the contrary, all rights granted to Licensee or
16 obligations of Licensor hereunder are expressly
17 subject to each of Licensor's authorizations to
18 operate the system, including without limitation
19 governmental or municipal approval, franchise or
20 authorization, and to each right-of-way agreement,
21 pole attachment agreement, conduit agreement,
22 lease, license, consent or other agreement
23 relating to the Capacity."

24 Did I read that correctly?

25 A. Yes.

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1 Q. Do you agree with me that Time Warner
2 Cable is the licensor in this document?

3 MR. GILLESPIE: Objection. The witness
4 said he's not familiar with this document.

5 MS. WATTS: I understand that he said
6 that. I'm asking him a specific question. I
7 think he can answer it.

8 MR. GILLESPIE: Well, I object to
9 questions of this nature. I mean, you have a
10 document, it says what it says. If this witness
11 isn't familiar with the document, I don't know how
12 you can ask him questions about it.

13 MS. WATTS: Your objection is noted.

14 THE WITNESS: If you're asking me to sit
15 here and read this agreement to figure out who the
16 licensee and licensor are -- I mean, is that what
17 you're asking?

18 BY MS. WATTS:

19 Q. No, I don't think you need to read the
20 entire agreement. If you would just refer to the
21 very first paragraph of the agreement.

22 A. Would you like me to read that out loud?

23 Q. If you would like.

24 A. "These Master Terms and Conditions (the
25 'Terms') dated as of July 1st, 1998 shall govern

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1 each Capacity License Agreement (each, an
2 'Agreement') entered into between an affiliated
3 local cable system operator of Time Warner Cable,
4 a division of Time Warner Entertainment Company,
5 L.P., which affiliate is acting as licensor of
6 fiberoptic cable capacity ('Licensor'), and an
7 affiliate of Time Warner Telecom LLC, which
8 affiliate is acting as Licensee of fiberoptic
9 cable capacity...."

10 Q. So I'm asking you to agree with me that
11 with respect to this agreement, Time Warner Cable
12 is the licensor and Time Warner Telecom is the
13 licensee.

14 A. I can only --

15 Q. That's what it appears to say in that
16 paragraph; would you agree?

17 A. That's what it appears to say in this
18 paragraph --

19 Q. Okay.

20 A. -- yes.

21 Q. And would you not agree with me that
22 Paragraph 3 on Page 5 would indicate that the
23 licensor can only grant to the licensee, subject
24 to the various items contained in that paragraph?

25 MR. GILLESPIE: Well, I object to this.

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1 You're asking for this witness, who is appearing
2 as a lay witness, to interpret a document that he
3 has not seen before for some purpose, but I don't
4 think it's appropriate to put that question to
5 him. And I don't think that this line of
6 questions has any conceivable relevance to this
7 proceeding.

8 MS. WATTS: Well, if he's unable to
9 answer the question, that's fine. But I think the
10 paragraph itself is very clear and Mr. Kozelek's
11 capable of reading the paragraph.

12 MR. GILLESPIE: I think it's totally
13 irrelevant.

14 I'll let it go a little further, if you
15 are able to answer the question.

16 THE WITNESS: Can you repeat the
17 question, please?

18 BY MS. WATTS:

19 Q. The licensor in this document, who is, in
20 fact, Time Warner Cable, may only grant to the
21 licensee the rights that the licensor has, which
22 are specified in that paragraph?

23 MR. GILLESPIE: Same objection. I don't
24 think it has any relevance here.

25 THE WITNESS: I would have to read --

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1 MR. GILLESPIE: The case does not involve
2 Time Warner.

3 THE WITNESS: -- this entire document in
4 its entirety to answer the question. I don't know
5 what other rights may or may not be in this entire
6 document.

7 BY MS. WATTS:

8 Q. Okay. We'll move on.

9 A. Okay.

10 Q. Mr. Kozelek, would you turn back to Duke
11 Energy Exhibit 5, please?

12 A. If you can help me with which one is
13 Exhibit 5. Is it labeled?

14 Q. Maybe your counsel can help you with
15 that.

16 MR. GILLESPIE: It's a letter to
17 Ms. Spiller dated January 21st, 2009.

18 THE WITNESS: Thank you.

19 BY MS. WATTS:

20 Q. Turning again to Request No. 8 in that
21 document.

22 A. Okay.

23 Q. Are you aware of any agreements between
24 Time Warner Cable and Time Warner
25 Telecommunications that provide for overlashing?

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1 MR. GILLESPIE: Provide for overlashing
2 by whom?

3 MS. WATTS: Either of the parties.

4 MS. SPILLER: If I could interject. If
5 Mr. Kozelek doesn't understand or needs more
6 information to answer a question, I think it's
7 appropriate for him to so inquire, and not his
8 counsel.

9 MR. GILLESPIE: I think it's appropriate
10 to be sure we have a clear question.

11 MS. SPILLER: But if Mr. Kozelek doesn't
12 understand the question, he can so articulate
13 that.

14 MR. GILLESPIE: Well, if you understand
15 the question, you can answer.

16 THE WITNESS: Will you repeat it, please?

17 MS. WATTS: Would you mind reading back
18 the question?

19 (Question read back as requested.)

20 THE WITNESS: Can you be more specific,
21 please?

22 BY MS. WATTS:

23 Q. Do you understand what overlashing means?

24 A. Yes.

25 Q. Okay. Do you know of any agreements that

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1 Time Warner Cable has with Time Warner
2 Telecommunications that allow Time Warner
3 Telecommunications to overlash Time Warner Cable's
4 lines?

5 A. I am not aware.

6 Q. Thank you.

7 Does Time Warner Cable own any poles?

8 A. I cannot say with 100 percent certainty
9 that we do. I believe, though, we may own a few.

10 Q. And can you put me in a ballpark, when
11 you say "a few", how many that might be?

12 A. I -- I couldn't even venture a guess.

13 Q. Would you be willing to agree that most
14 of the poles to which you attach, you do not own?

15 A. If by "most", the vast majority?

16 Q. Sure.

17 A. Yeah, I -- I believe that mo- -- that
18 the -- a large percentage of poles that we attach
19 to we do not own.

20 Q. And so with respect to those poles that
21 you do not own to which you attach, that
22 attachment would necessarily be part of either a
23 tariff at the Commission or an agreement between
24 the parties, correct?

25 A. That -- Poles that we attach to that we

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1 do not own, the -- would be either part of a
2 tariff or a pole attachment agreement.

3 Q. Right. That's the question.

4 MR. GILLESPIE: Is there a pending
5 question?

6 MS. WATTS: Yes.

7 THE WITNESS: I was just repeating back
8 the question so I made sure I understood.

9 MR. GILLESPIE: Okay.

10 I object to the question because the only
11 conceivable relevance that I can see in this
12 question has to do with the mediation that Time
13 Warner Cable has asked for with the PUCO, not this
14 tariff issue, not this tariff case.

15 MS. WATTS: Gardner, I think you've
16 pretty -- opened this up pretty wide across the
17 board, so it's a little late to be making that
18 argument.

19 MR. GILLESPIE: No, it's not. It's not
20 at all. It's -- I think that -- I have explained
21 this several times, that there are certain issues
22 that have been opened by Duke that -- where Duke
23 has justified various provisions in its tariff
24 based on a need -- on an alleged need based on the
25 audit, for example, in 2005. And we certainly

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1 asked them the questions about that.

2 I don't see how those issues, which I
3 agree are open, have anything to do with
4 agreements and tariffs that Time Warner Cable
5 might have. That's all.

6 MS. WATTS: Well, right now we're just
7 talking about overlashing. And your Motion to
8 Intervene specifically --

9 MR. GILLESPIE: Fine, okay.

10 MS. WATTS: -- mentions overlashing.

11 MR. GILLESPIE: If it has to do with
12 overlashing, I would agree that that's relevant.

13 THE WITNESS: But you're basically asking
14 the poles that we attach to, are they usually
15 under either a pole attachment agreement or a
16 tariff filing at the PUCO?

17 BY MS. WATTS:

18 Q. Correct.

19 A. Okay. And I was just hesitating because
20 there may be some that -- I can't recall any, so
21 my answer is yes, I believe they all are.

22 Q. Okay. And do you know whether or not
23 Time Warner is able to sublet its rights to an
24 attachment to a third party?

25 A. Do I know that for a fact?

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1 Q. Yes. Do you know --

2 MR. GILLESPIE: Objection based on the
3 form of the question.

4 BY MS. WATTS:

5 Q. Do you know the answer to that?

6 A. Can you ask it again?

7 Q. Is Time Warner Cable able to sublet its
8 attachments to a third party?

9 A. And are you -- are you talking about
10 as -- as spelled out in the pole attachment
11 agreement or a tariff, or just generally?

12 Q. Generally or in either case --

13 A. I do not --

14 Q. -- at all.

15 A. I do not know.

16 Q. Okay. Going back to the documents that
17 your counsel produced today, is it -- is it
18 correct to say that you, personally, did not
19 undertake a search for any documents?

20 A. I personally did not take an under- --
21 undertake a search.

22 Q. In addition to your responsibility as an
23 employee of Time Warner Cable, you also serve on
24 the OCTA Board, correct?

25 A. Yes.

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1 Q. And what is your position with the Board?

2 A. I am currently President of the Board.

3 Q. Okay. And have you held other positions
4 with the Board previously?

5 A. I have been a Board member since fall of
6 2006, I believe is when I first came on the Board.

7 Q. What are your responsibilities as
8 President of the Board?

9 A. To lead the Board meetings; to work on a
10 regular basis with OCTA members and staff on any
11 sort of issue where we need -- the industry needs
12 to formulate a policy on or to actively lobby on.

13 Q. And so on -- so if I'm -- Correct me if
14 I'm not understanding this. The Board actually
15 takes policy positions?

16 A. The Board can and has adopted policy
17 decision or directs staff to support a piece of
18 legislation, oppose a piece of legislation, get
19 involved in a legal proceeding or a regulatory
20 proceeding.

21 Q. And with decisions of that nature, is it
22 always a Board decision, or does sometimes -- does
23 the President of the Board sometimes take that
24 responsibility upon himself?

25 A. It is -- It is almost entirely Board

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1 decision -- a Board decision.

2 Q. Are you aware of the fact that the Ohio
3 Cable Television Association is an intervenor in
4 Duke Energy's distribution rate case?

5 A. I don't want to be picky, but the Ohio
6 Cable Television Association --

7 Q. I'm sorry.

8 A. -- is not.

9 Q. OCTA.

10 A. The Ohio Cable Telecommunications
11 Association --

12 Q. Yes, I'm sorry.

13 A. -- yes, is an intervenor.

14 Q. Okay. And was the decision to intervene
15 in that docket made by the Board in this case?

16 A. I believe it was.

17 Q. Would there be minutes of that -- a
18 meeting wherein the Board made that decision?

19 A. There may or may not be.

20 Q. And in order to come to that decision,
21 was there a presentation made to the Board?

22 MR. GILLESPIE: I object. I don't see
23 the relevance of this line of inquiry.

24 You can -- You can answer, if you know
25 the answer.

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1 THE WITNESS: Can you be more specific?

2 BY MS. WATTS:

3 Q. Did anyone make a presentation to the
4 Board in order to assist the Board in reaching a
5 determination to intervene in this case?

6 A. And I am struggling with the word
7 "presentation".

8 Q. An oral presentation or a written
9 presentation.

10 A. To the best of my knowledge, there was --
11 it was either brought up in a Board meeting or via
12 a conference call.

13 Q. And when you say it was brought up, it
14 was brought up by whom?

15 A. The way the Board meetings work, it would
16 be brought up as an agenda item by staff, either
17 as a specific general agenda item or under
18 something called new business.

19 Q. And in this instance, when you say
20 "staff", would you mean Mr. Jonathon McGee?

21 A. In this case, it would most likely be
22 Jonathon.

23 Q. And do you recall any discussion around
24 that subject when the subject was brought to the
25 Board?

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1 A. Yes.

2 Q. And can you tell me what issues were
3 discussed?

4 A. It would -- The discussion would have
5 been on Duke's filing, on the -- and the rates,
6 terms and conditions, and the precedential nature
7 of an ad- -- to the industry of an ad- --
8 disadvantageous decision.

9 Q. Did you review any documents in
10 preparation for today?

11 A. I would have briefly looked at Duke's
12 existing tariff, as well as the OCTA's Motion to
13 Intervene.

14 Q. Time Warner Cable attaches to poles owned
15 by Duke Energy Ohio, correct?

16 A. Time Warner Cable attaches to -- yes, to
17 poles owned by Duke.

18 Q. Okay. And those attachments are made
19 pursuant to agreements, correct?

20 A. To my knowledge, either an agreement or a
21 tariff filing.

22 Q. Okay. Is it possible that it's both?

23 MR. GILLESPIE: Objection on asking this
24 witness to speculate about what's possible.

25 BY MS. WATTS:

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1 Q. Are there agreements that are -- that are
2 consistent with the tariff?

3 MR. GILLESPIE: Objection to the form of
4 the question.

5 I'm just trying -- Are you talking about
6 with Duke, or are you talking about generally? I
7 just --

8 BY MS. WATTS:

9 Q. Are there agreements between Duke Energy
10 Ohio and Time Warner Cable which allow for pole
11 attachments which are consistent with Duke
12 Energy's tariff?

13 MR. GILLESPIE: Objection to the form of
14 the question.

15 BY MS. WATTS:

16 Q. Don't know? No answer?

17 MR. GILLESPIE: You can answer, if you
18 understand the question.

19 MS. SPILLER: Again, I would just note if
20 this witness, who's highly schooled, doesn't --
21 and trained as an attorney doesn't understand a
22 question, he can relay that to Ms. Watts. I don't
23 think it's appropriate for others to interject
24 objections --

25 MR. GILLESPIE: I objected to the form

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1 and I told him he could answer if he understands
2 it. I don't see anything wrong with that.

3 THE WITNESS: That's why we have legal
4 counsel in the room, right?

5 MR. GILLESPIE: That's a phrase that I
6 believe you have used quite consistently in
7 deposition.

8 MS. SPILLER: But I also have attempted
9 to -- I'm not going to go there.

10 MR. GILLESPIE: Let's not go there.

11 BY MS. WATTS:

12 Q. So there is a question outstanding. I
13 would appreciate it if you could answer the
14 question.

15 A. I -- It's not that I can't. I can't
16 answer it in the form that you asked because I
17 don't want to give an incorrect answer.

18 Q. Okay. Well, let's take it apart, then.

19 A. Okay.

20 Q. Duke Energy Ohio and Time Warner Cable
21 have pole attachment agreements between them,
22 correct?

23 A. Does Duke have a pole attachment
24 agreement with Time Warner Cable? My -- My guess
25 is they do. It's also my understanding that the

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1 tariffs are supposed to control now; that that has
2 been the case for quite some time. So, you know,
3 I think that's probably what some of this argument
4 is about.

5 Q. Okay. Well, maybe you were overthinking
6 my question because I wasn't necessarily going
7 down that path.

8 A. I could be.

9 Q. Okay. So all I really wanted to
10 understand was whether you knew that sometimes
11 those agreements can match up with the tariff.

12 A. To the best of my knowledge, without
13 having the agreement in front of me and the
14 tariff, I suppose so.

15 Q. Okay. And you indicated that you
16 reviewed the existing tariff, the existing Duke
17 Energy Ohio tariff in preparation for today,
18 correct?

19 A. Yes.

20 And can we back up, too? Because I want
21 to be crystal clear on one of the very first
22 questions you asked because you asked me if I did
23 prepare for this. So -- And I said no. So if
24 looking at those documents an hour before we were
25 coming over here constitutes preparing, then I

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1 want to -- I want to revise my answer.

2 Q. Okay. So noted.

3 A. Okay. Thank you.

4 Q. We're good.

5 MS. WATTS: Gardner, do you have a copy
6 of DE Ohio 3 for Mr. Kozelek?

7 MR. GILLESPIE: I don't. The Reporter
8 has a copy.

9 THE WITNESS: Thank you.

10 BY MS. WATTS:

11 Q. All right. Would you take a look at
12 that, please?

13 Is that the tariff you reviewed in
14 preparation for today?

15 A. This appears to be a copy of what I
16 looked at earlier today.

17 Q. Okay. Since the beginning of your
18 employment with Time Warner Cable, have you been
19 aware of a dispute between Duke Energy Ohio and
20 Time Warner Cable about pole attachments?

21 A. Yes.

22 Q. Okay. So -- And that was in -- Your
23 employment began with Time Warner Cable in 2006
24 time, correct?

25 A. Yes.

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1 Q. So at least for the last two years, this
2 dispute has been ongoing?

3 A. At least.

4 Q. Okay. And have -- What has been your
5 involvement in that dispute?

6 A. My involvement has been to monitor any
7 sort of progress, to sometimes attend meetings
8 with personnel from Time Warner and Duke, to
9 participate in conference calls, to monitor or at
10 least be on the distribution list for e-mails that
11 are related to the pole attachment dispute, to
12 communicate what's going on in the pole attachment
13 dispute both internally as well as potentially to
14 policymakers or regulatory staff.

15 Q. Okay. Looking at Duke Energy Ohio
16 Exhibit 3 --

17 A. Uh-huh.

18 Q. -- the existing Duke Energy tariff, do
19 you see anywhere in that tariff that provides for
20 overlapping to occur?

21 MR. GILLESPIE: Do you want him to review
22 this document?

23 MS. WATTS: If he -- If he needs to
24 review it, he's certainly welcome to.

25 THE WITNESS: I do not see the word

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1 "overlashing" used in this document.

2 BY MS. WATTS:

3 Q. Okay. Can you tell me anywhere in this
4 document where it provides that a licensee need
5 not obtain approval before attaching to drop
6 poles?

7 MR. GILLESPIE: Objection.

8 You can answer the question, if you --

9 THE WITNESS: Do you have any other
10 questions about this so I can kind of anticipate
11 them as I read through this again?

12 BY MS. WATTS:

13 Q. No, that will -- that's the last one.

14 A. Okay. Thanks.

15 I don't see the words "drop pole" used in
16 this document.

17 Q. Thank you.

18 And would you agree with me that this
19 tariff applies to attachments to any of Duke
20 Energy's poles?

21 MR. GILLESPIE: Objection. You're asking
22 this witness to interpret -- give a legal
23 interpretation of the document, which I think is
24 inappropriate.

25 MS. WATTS: I'm not asking for a legal

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1 interpretation. Mr. Kozelek's been involved
2 closely with this dispute for two years, and I'm
3 trying to understand what he knows as a result of
4 that involvement for the past two years.

5 MR. GILLESPIE: Well, that wasn't what I
6 understood the question to be.

7 THE WITNESS: I can't agree or disagree
8 with you.

9 BY MS. WATTS:

10 Q. Okay. Can you -- Are there any Duke
11 Energy poles that would -- that you know of that
12 would not fall under this tariff?

13 A. I couldn't tell you. How many poles does
14 Duke own?

15 Q. If the pole -- If the pole is owned by
16 Duke Energy Ohio, then by definition it falls
17 under this tariff, correct?

18 A. If -- Not necessarily.

19 MR. GILLESPIE: Objection.

20 THE WITNESS: That is, again, subject to
21 interpretation, subject to FCC decisions on these
22 issues, subject to a myriad of -- of things.

23 BY MS. WATTS:

24 Q. Okay. Would you turn to the Terms and
25 Conditions section on Page 1 of that document,

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1 Paragraph 1?

2 A. Okay.

3 Q. In that paragraph, there is a statement
4 that says, "The Company shall have the sole right
5 to determine the availability for such
6 pole/conduit for joint use and shall be under no
7 obligation to grant permission for its use by
8 licensee".

9 Do you see that? Did I read that
10 correctly?

11 A. "The Company shall have the sole right to
12 determine the availability of such pole/conduit
13 for joint use and shall be under no obligation to
14 grant permission for its use by licensee."

15 Q. Do you see that in that paragraph?

16 A. Uh-huh.

17 Q. Okay. Has Time Warner Cable ever filed a
18 complaint against Duke Energy Ohio, alleging that
19 that requirement is unjust?

20 A. To my knowledge, against Duke Energy Ohio
21 or Cinergy or Cincinnati Gas & Electric, I am not
22 aware of a formal complaint before a regulatory
23 body that has been filed on that one sentence.

24 Q. Has Time Warner Cable filed any
25 complaints against Duke Energy Ohio, alleging that

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1 that requirement is unreasonable or
2 discriminatory?

3 A. Has Time Warner Cable filed any
4 complaints against Duke Energy Ohio that this one
5 sentence is unreasonable or discriminatory?

6 Q. Correct.

7 A. I am not aware of Time Warner Cable
8 filing a complaint against Duke Energy, asserting
9 that that one sentence is unreasonable or
10 discriminatory.

11 Q. Time Warner Cable presently has
12 attachments to Duke Energy Ohio's poles that
13 number in the thousands, correct?

14 A. I believe it is in the thousands.

15 Q. How many customers does Time Warner Cable
16 have in Ohio?

17 MR. GILLESPIE: Objection. I don't see
18 any conceivable relevance to that question.

19 MS. WATTS: Well, I am shifting topics
20 rather quickly, but I'm -- it's a legitimate
21 question.

22 MR. GILLESPIE: Well, I don't think
23 it's -- I don't think it has any conceivable
24 relevance; but go ahead, if you know the answer.

25 THE WITNESS: You have to be more

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1 specific.

2 BY MS. WATTS:

3 Q. How many cable customers does Time Warner
4 Cable have in Ohio?

5 A. We have approximately 2.2 million --

6 Q. And do you know --

7 A. -- cable households that we serve.

8 Q. Do you know how many of those cable
9 households are in Duke Energy Ohio's service
10 territory?

11 A. I do not.

12 Q. Would you turn, again, to Duke Energy
13 Ohio Exhibit 3, which is the existing tariff, and
14 turn to Paragraph 3?

15 Beginning with the very first sentence,
16 it reads, "All attachments/occupancies are to be
17 placed on poles/conduits of the Company in a
18 manner satisfactory to the Company and so as not
19 to interfere with the present or any future use
20 which the Company may desire to make of such
21 poles/conduits, wires or other facilities."

22 Did I read that correctly?

23 A. Yes.

24 Q. Has Time Warner Cable ever filed a
25 complaint against Duke Energy Ohio, alleging that

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1 that provision is unjust, unreasonable, or
2 discriminatory?

3 A. I'm not aware of any complaint that has
4 been filed alleging that.

5 Q. Okay. And, again, in that same Paragraph
6 3, it says, "The Company shall be the sole judge
7 as to the requirements for the present or future
8 use of its poles/conduits and equipment and of any
9 interference therewith." Do you see that?

10 A. Yes.

11 Q. And did I read that correctly?

12 A. Yes.

13 Q. And are you aware of any complaints that
14 Time Warner Cable has brought against Duke Energy
15 Ohio, alleging that that requirement is either
16 unjust, unreasonable, or discriminatory?

17 A. I am not aware of any such complaint.

18 Q. Turning your attention to Page 3 of that
19 tariff, Paragraph 7.

20 A. Can I take a moment to (indicating) --

21 MS. WATTS: Oh, sure.

22 (Recess taken.)

23 MS. WATTS: Could I have the last
24 question and answer read back, please?

25 (Record read back as requested.)

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1 BY MS. WATTS:

2 Q. So Page 3, Paragraph 7. Do you have
3 that, Mr. Kozelek?

4 A. Yes.

5 Q. Paragraph 7 requires licensees to remove
6 or relocate attachments when those attachments
7 interfere with the operation of the facilities of
8 Duke Energy Ohio or any other licensee or
9 permittee; is that correct?

10 MR. GILLESPIE: Could you --

11 THE WITNESS: Yeah, is there a specific
12 part? Because Paragraph 7 does more than that.

13 BY MS. WATTS:

14 Q. Well, does it do that and other things.

15 A. Does it do...?

16 Q. You said it does more than that. I just
17 first want to make sure that we both understand
18 that it does that.

19 A. What is "that"?

20 Q. It requires the licensees to remove or
21 relocate attachments when those attachments
22 interfere with the operation of the facilities of
23 Duke Energy Ohio or any other licensee or
24 permittee.

25 MR. GILLESPIE: Okay, what -- This is

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1 Paragraph 7?

2 MS. WATTS: Uh-huh.

3 THE WITNESS: Would you mind just reading
4 verbatim what you want to ask the question about
5 so --

6 BY MS. WATTS:

7 Q. All right. I can make it more general.
8 It might make it easier for you.

9 Has Time Warner Cable ever filed a
10 complaint against Duke Energy Ohio, alleging that
11 any part of that -- of the tariff requirements set
12 forth in Paragraph 7 are unjust, unreasonable, or
13 discriminatory?

14 A. I'm not aware of Time Warner Cable filing
15 any sort of formal complaint, alleging that
16 anything in Paragraph 7 -- I'm not aware of Time
17 Warner filing a formal complaint about anything in
18 Paragraph 7.

19 Q. One last time.

20 A. Okay.

21 Q. Paragraph 21. Reading verbatim from
22 Paragraph 21, it says, "...but licensee shall" --
23 I'm starting in the middle of the sentence?

24 A. Okay.

25 Q. "...licensee shall not assign, transfer

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1 or sublet any of the rights hereby granted or
2 obligations hereby assumed without the prior
3 written consent of the Company." Do you see that?

4 A. Yes.

5 Q. And did I read that correctly?

6 A. Yes.

7 Q. Time Warner Cable has allowed Time Warner
8 Telecommunications to attach to Duke Energy's
9 lines, isn't that correct?

10 A. I don't -- I do not believe it to be
11 correct.

12 Q. Do you know whether it's correct or not?

13 A. I'm not aware of Time Warner Cable
14 allowing Time Warner Telecom to attach to its
15 lines.

16 Q. Who at Time Warner Cable would know about
17 such an agreement, if it existed?

18 A. The legal department.

19 Q. Who in the legal department?

20 A. Who specifically?

21 Q. Yes.

22 A. I -- I couldn't -- I don't know who
23 specifically may know of it. The chief counsel
24 right now is Julie Lane -- or, let me -- I'm not
25 sure that's her exact title.

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1 Q. Is there anyone else at Time Warner Cable
2 that would have knowledge of such an agreement
3 in -- that would be more in the nature of a
4 field-type person?

5 A. I can't answer that.

6 Q. Okay. Is there anyone at Time Warner
7 Cable that you know of, other than counsel, that
8 would know of such an agreement?

9 A. Do I know of anybody specifically? I do
10 not.

11 Q. Has Time Warner Cable engaged in
12 conversation with anyone at the Public Utilities
13 Commission with regard to Duke Energy Ohio's
14 tariff?

15 A. I would say indirectly, yes.

16 Q. What do you mean by "indirectly"?

17 A. That in the context of the rate case and
18 some of the pole attachment disputes that Time
19 Warner Cable is having with the company, with Duke
20 Energy.

21 Q. So -- And were you involved in those
22 conversations?

23 A. I was at a meeting.

24 Q. Okay. And that meeting would have been
25 at the Commission, correct?

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1 A. Yes.

2 Q. And can you tell me who else was present
3 at the meeting?

4 A. Some of them, yes. David Leland,
5 Gardner, Jonathon McGee, Vic -- Vic Gallina, and
6 then two individuals whose names escapes -- whose
7 names escape me, but I believe one is with the
8 Attorney General's office.

9 Q. Okay. Thank you.

10 And was the substance of those -- In
11 those meetings, did you discuss specific issues
12 with regard to Duke Energy's proposed tariff?

13 A. I believe we did.

14 Q. And did you prepare any documents for
15 that meeting?

16 A. I did not.

17 Q. Did anyone there on behalf of Time Warner
18 Cable prepare any documents for the meeting?

19 A. I do not recall if any documents were
20 prepared for that meeting.

21 Q. Can you tell me when that meeting took
22 place?

23 A. No.

24 Q. Was it within the last month?

25 A. No.

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1 Q. Do you know what the process is that Time
2 Warner Cable follows to make requests to make
3 attachments to Duke Energy Ohio's poles?

4 A. Can you be more specific?

5 Q. I really can't. I'm just wondering what
6 knowledge you have of that process, if any.

7 A. I have a -- a -- maybe I have -- my -- I
8 don't know. It's a tough question to answer asked
9 the way it was asked.

10 Q. Okay. Do you know anyone -- Can you tell
11 me anyone who works for Time Warner Cable that
12 might be able to answer that question?

13 A. It would be somebody in engineering down
14 in the southwest Ohio division.

15 Q. Do you know who somebody in engineering
16 might be? Is there a person in charge of
17 engineering in the southwest division?

18 A. I believe there is a VP. The person I
19 used to work with is no longer with the company
20 and I'm having trouble recalling the individual
21 who took his place.

22 Q. Okay. And that title would be Vice
23 President of what?

24 A. Engineering.

25 Q. Engineering, okay.

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1 Do you know if records are kept with
2 regard to pole attachments by Time Warner Cable?

3 MR. GILLESPIE: Objection. Form of the
4 question.

5 THE WITNESS: What kind of records?

6 BY MS. WATTS:

7 Q. Any records. When Time Warner Cable
8 attaches to a Duke Energy Ohio pole, is there some
9 sort of record maintained as a result of that?

10 A. Written record?

11 Q. Yes. Digital or otherwise.

12 A. My guess is that there is some sort of
13 record kept.

14 Q. But you're not familiar with those
15 records?

16 A. I am not familiar with those records.

17 Q. Okay. And do you know who would be?

18 A. Again, it would be the engineering
19 department.

20 Q. Do you happen to know how long records
21 are maintained by Time Warner Cable?

22 A. I do not know.

23 Q. Does Time Warner Cable have authorization
24 from Duke Energy for every attachment that it's
25 made to a pole owned by Duke Energy Ohio?

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1 MR. GILLESPIE: Objection to form of the
2 question.

3 BY MS. WATTS:

4 Q. I believe you get to answer, but do you
5 need me to restate the question?

6 A. Yes, please.

7 Q. Okay. Does Time Warner Cable have
8 authorization from Duke Energy Ohio for every
9 attachment that it's made to a pole owned by Duke
10 Energy Ohio?

11 A. I don't know the answer to that.

12 Q. Do you know who would know that?

13 A. My guess is the engineering department.

14 Q. Attachments to utility poles, and
15 let's -- in the interest of being specific,
16 attachments to Duke Energy Ohio utility poles are
17 subject to the National Electric Safety Code,
18 correct?

19 A. I believe that to be correct.

20 Q. And do you have any understanding as to
21 why they're subject to that code?

22 A. My guess is for safety.

23 Q. Do you know anything about the process or
24 procedure that Time Warner Cable uses to make sure
25 that its attachments conform to that code, to the

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1 National Electric Safety Code?

2 A. Am I aware of the process or procedure?

3 Q. Uh-huh.

4 A. No, I am not aware.

5 Q. Okay. Do you know who would be?

6 A. My guess is engineering.

7 Q. Okay. Have you formed any opinions
8 regarding Duke Energy Ohio's proposed pole
9 attachment tariff in this case?

10 A. We are in the process of formulating
11 opinions on the pole attachment proposal and that
12 is a work in progress.

13 Now, are you asking me as an individual,
14 or --

15 Q. In your capacity --

16 A. With --

17 Q. -- with Time Warner Cable.

18 A. With Time Warner Cable --

19 Q. Uh-huh.

20 A. -- and not the OCTA?

21 Q. Right now, just Time Warner Cable.

22 A. Okay.

23 Q. So you're in-process; is that correct?

24 A. It's a very fluid process and it's a work
25 in progress.

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1 Q. Okay. And, now, how would your response
2 be different if I asked you with respect to your
3 capacity as an officer of the OCTA?

4 A. The same.

5 Q. Okay.

6 A. I mean, you saw the filing that the OCTA
7 made, so -- and that is the collective view of --
8 of the industry.

9 Q. Okay. Do you intend to be a witness on
10 behalf of the OCTA in this proceeding before the
11 Public Utilities Commission?

12 A. That is being discussed, as well.

13 Q. Okay. How about a witness on behalf of
14 Time Warner Cable?

15 A. That is all being discussed.

16 MS. WATTS: This is Duke Energy Ohio 7.

17 - - -

18 Thereupon, DE Ohio Exhibit No. 7 was
19 marked for purposes of identification.

20 - - -

21 BY MS. WATTS:

22 Q. Mr. Kozelek, if you would, take a look at
23 the document that's just been marked as Duke
24 Energy Ohio 7, which is a Pole Attachment Tariff
25 in Ohio Edison's territory. Take a moment to look

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1 it over.

2 A. Okay.

3 Q. I'm not going to ask you any really
4 detailed questions about it, so you don't have to
5 read it cover to cover, but --

6 A. Okay.

7 Q. -- you're certainly welcome to, if you
8 like.

9 A. I prefer not to, especially since I
10 forgot my glasses.

11 Q. I usually have some extras, but not
12 today.

13 MR. GILLESPIE: So what is the question?

14 MS. WATTS: I haven't put a question to
15 him just yet.

16 MR. GILLESPIE: It might be more useful
17 for him to review the document after you have
18 placed a question before him.

19 MS. WATTS: Okay.

20 BY MS. WATTS:

21 Q. Well, my first question is: Does Time
22 Warner Cable attach to poles in Ohio Edison
23 territory?

24 A. I believe that Time Warner Cable does.

25 Q. Okay. And if so, are those attachments

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1 subject to penalties for unauthorized -- Is an
2 unauthorized attachment subject to penalty in Ohio
3 Edison's territory?

4 A. I'd have to -- I don't know the answer.
5 I -- Do you want me to read the tariff?

6 Q. Well, if you don't know -- Well, let's
7 look. Just a second --

8 A. Okay.

9 Q. -- let me see if I can find it for you
10 quickly.

11 MR. GILLESPIE: The document's going to
12 speak for itself.

13 BY MS. WATTS:

14 Q. On Page 4 of 6 of that document there is
15 a Paragraph M.

16 A. Okay.

17 Q. If you would take a look at that.

18 A. Okay, I have read it.

19 Q. Would you agree with me that that
20 paragraph specifies a penalty for unauthorized
21 attachment?

22 MR. GILLESPIE: Objection. The document
23 speaks for itself.

24 THE WITNESS: Will you repeat the
25 question, please?

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1 BY MS. WATTS:

2 Q. Would you agree with me that that -- that
3 Paragraph M on Page 4 of that Ohio Edison tariff
4 specifies a penalty for unauthorized attachment?

5 A. It -- It appears that the document -- It
6 appears that the document speaks for itself.

7 Q. So you cannot agree with me that it
8 specifies a penalty for unauthorized attachment?

9 A. Can you be a little bit more specific on
10 "specifies a penalty"?

11 Q. I'm trying to make it easy for you.

12 A. I know. I'm sorry, I don't see any --

13 Q. Right.

14 A. -- I don't see the word "penalty".

15 Q. All right. Let's read Paragraph M.

16 "When any unauthorized contact is found,
17 Attachee shall pay to the Company for each
18 unauthorized contact a charge based on two times
19 the normal rental rate per pole per year starting
20 from the date the attachment was made or any
21 higher rate provided for in the Company's filed
22 and approved tariff which is amended from time to
23 time."

24 Do you see that?

25 A. Yes.

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1 Q. Did I read that correctly?

2 A. Yes.

3 Q. Okay. So would you agree with me that
4 that provision specifies a penalty for
5 unauthorized attachment?

6 A. The word "penalty" is not used in that
7 paragraph.

8 Q. How about a -- Would you agree with me
9 that it specifies a charge?

10 A. The language that you read appears to
11 allow for a charge for unauthorized contact.

12 Q. Okay. Has Time Warner Cable or the OCTA
13 ever contested, either before the Commission or
14 elsewhere, that provision?

15 A. I am not aware of Time Warner or the OCTA
16 contesting this exact provision in the Ohio Edison
17 Company pole attachment tariff before any
18 formal -- before the PUCO or any other body.

19 Q. Okay. And in your discussions that we
20 considered earlier with the Public Utilities
21 Commission, was any company other than Duke Energy
22 Ohio discussed?

23 Let me -- Let me be more specific. Did
24 you discuss pole attachment tariffs relative to
25 any other electric company besides Duke Energy

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1 Ohio?

2 A. I did not.

3 Q. Did anyone else in the room?

4 A. I can't recall.

5 Q. Okay. Who is Patricia Kravtin?

6 A. To the best of my knowledge, she is --
7 she's an economist.

8 Q. And what's the basis of your knowledge?

9 A. Just either being involved or over -- in
10 conversations or e-mails.

11 Q. Have you talked with her?

12 A. I have not.

13 Q. Has Time Warner Cable retained her
14 services as an expert witness?

15 A. Time Warner Cable has not.

16 Q. Has the OCTA retained her services as an
17 expert witness?

18 A. I believe the OCTA has.

19 Q. Has Time Warner Cable ever used her in
20 the past as an expert?

21 A. To the best of my -- I am not aware.

22 Q. Would you agree that Duke Energy Ohio is
23 allowed to charge third parties that make
24 attachments to its poles?

25 A. By "third parties", you mean?

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1 Q. Not Duke Energy and not Time Warner
2 Cable.

3 A. Wouldn't we be a third party?

4 Q. You would be -- No. You would be a
5 counterparty.

6 A. I don't -- I don't know.

7 Q. Okay. Have you -- Has Time Warner Cable
8 performed any calculations regarding Duke Energy
9 Ohio's proposed pole attachment rate?

10 A. Can you be a little bit more specific?

11 Q. No, I can't. That's pretty
12 straightforward. Have you performed any
13 calculations?

14 A. Have I personally?

15 Q. Has Time Warner Cable performed any
16 calculations regarding the proposed pole
17 attachment rate?

18 A. Rate. My guess is that we have.

19 Q. And who would have performed those
20 calculations?

21 A. I don't know. I -- I did one on my
22 little calculator here, just taking the estimated
23 number of poles times the current rate versus the
24 estimated number of poles times the proposed rate.

25 Q. Do you know what the estimated number of

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1 poles is?

2 A. I think it was -- Without looking in my
3 Trio, I'm guessing it was 1,800, but I don't know
4 that for a fact.

5 Q. Okay. Has anyone else, that you know of,
6 in Time Warner Cable performed such calculations?

7 A. Not that I know of.

8 Q. Okay. What is your understanding of Time
9 Warner Cable's complaint against Duke Energy Ohio
10 relative to Current Communications' broadband
11 project?

12 MR. GILLESPIE: Objection. Form.
13 There's no foundation for that question.

14 BY MS. WATTS:

15 Q. Are you aware of a complaint against Duke
16 Energy Ohio relative to Current Communications'
17 broadband project?

18 A. In Ohio?

19 Q. Yes.

20 A. A formal complaint against Current?

21 Q. A -- No, not a formal complaint. A
22 complaint -- Well, formal to the extent it's
23 contained in your Motion to Intervene.

24 A. Can you repeat the question, please?

25 Q. What is -- What is your understanding --

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1 Let me start over.

2 A. Okay.

3 Q. What is your understanding of Time
4 Warner -- Time Warner Cable's issue with Duke
5 Energy Ohio regarding Current Communications'
6 broadband project?

7 A. It is -- It's my recollection that -- and
8 this goes back to when I was with the OCTA, and I
9 haven't heard much about Current in a while -- but
10 that when Duke entered into its partnership with
11 Current and started providing high-speed Internet
12 service, that that's when a lot of these pole
13 attachment problems started, is when Duke actually
14 came -- became a competitor for one of our
15 services.

16 Q. And do you have any understanding of the
17 legal relationship between Duke Energy and Current
18 Communications?

19 A. I -- Off the top of my head, and it's
20 been a while since I've heard Current, it was a
21 joint venture.

22 Q. And do you know if it still is?

23 A. I understand that some customers are
24 still receiving broadband over power lines
25 provided through this joint venture in Ohio.

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1 Q. And with respect to your -- your
2 understanding -- and I don't want to
3 mischaracterize what you said, I just want to take
4 you back to that point -- that the dispute between
5 Duke Energy and Time Warner began once Current
6 began operations -- Is that -- Is that a
7 correct --

8 A. No. That's -- I think it's correct to
9 say that we noticed Cinergy's behavior -- Duke,
10 Cinergy, I don't know -- that -- that the
11 relationship was a lot more amicable and -- until
12 Current started providing a competing service.

13 Q. And are there any documents that would
14 substantiate that?

15 A. Substantiate what?

16 Q. Your understanding of those
17 relationships.

18 A. Which relationships?

19 Q. Well, you've just described to me a
20 situation where once there was an alleged joint
21 venture between Duke Energy Ohio and Current
22 Communications, the relationship between then Duke
23 Energy Ohio and Time Warner Cable --

24 A. Or Cinergy or --

25 Q. -- or Cinergy became less amicable --

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1 amicable. I think those were the words you used.

2 Have you seen that borne out in documents
3 anywhere?

4 A. I would -- I can't answer that question
5 at this time.

6 Q. Okay. Did Time Warner Cable pursue any
7 complaints regarding that situation at the
8 Commission?

9 A. To the best of my knowledge, I do not
10 believe that Time Warner Cable pursued any formal
11 complaints.

12 Q. Did they pursue any informal complaints?

13 A. Can you define "informal complaints"?

14 Q. Telephone conversation with Commission
15 Staff to discuss the issue.

16 A. Limited to just telephone conversations
17 or --

18 Q. Or personal sit-down meetings with anyone
19 on the Commission Staff.

20 A. To the best of my recollection, I believe
21 the OCTA, and I was there at that time, along with
22 Time Warner, may have met with PUCO Staff on that
23 issue, on the pole attachment disputes we were
24 having with Duke/Cinergy and its relationship with
25 Current.

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1 Q. Are you aware of a claim by Time Warner
2 Cable that Current Communications created NESC
3 violations with respect to Time Warner Cable's
4 attachments?

5 A. Can you ask the question again, please?

6 MS. WATTS: Can you read it?

7 (Question read back as requested.)

8 THE WITNESS: Of a formal complaint,
9 regulatory complaint?

10 BY MS. WATTS:

11 Q. No, just a complaint, an issue between
12 Time Warner Cable and Duke Energy Ohio.

13 A. Duke Energy Ohio, okay.

14 Q. Or any of its predecessor --

15 A. Okay.

16 Q. -- companies.

17 A. Okay. But you're talking about Ohio
18 only?

19 Q. Right.

20 A. I -- I seem to recollect, and this is
21 vague, that that may have been one of the elements
22 of the concerns that Time Warner Cable Ohio was
23 having with Current and its relationship with
24 Duke/Cinergy Ohio.

25 Q. And have you ever seen any documents

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1 which would substantiate that claim?

2 A. I can't say with a hundred percent
3 specificity.

4 Q. And was that an element of complaint to
5 the Commission formally or informally?

6 A. Don't recall.

7 Q. Do you know in what geographic areas
8 Current has attached to Duke Energy poles?

9 A. Ohio only? Are you referring only to
10 Ohio?

11 Q. Yes.

12 A. Okay. To the best of my knowledge, it
13 would be in the -- in a limited area of the
14 southwest Ohio division.

15 Q. Has Time Warner Cable contested pole
16 attachment rates in any other jurisdiction outside
17 of Ohio?

18 MR. GILLESPIE: Objection. I don't see
19 the conceivable relevance of this.

20 MS. WATTS: I -- So noted.

21 MR. GILLESPIE: Go ahead and answer, if
22 you know.

23 THE WITNESS: Can you repeat the
24 question, please?

25 BY MS. WATTS:

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1 Q. Has Time Warner Cable contested pole
2 attachment rates in any other jurisdiction outside
3 of Ohio?

4 A. Period?

5 Q. Period.

6 A. That would be a guess on my part. I
7 mean --

8 Q. That you know of.

9 A. That I know of. Without -- I would be
10 surprised if we hadn't.

11 Q. Are you aware of a claim that Time Warner
12 Cable makes that the audit of the Milford system
13 was inaccurate?

14 A. I'm not aware of a claim that the audit
15 of the Milford system was inaccurate.

16 Q. Are you aware of an audit of the Milford
17 system?

18 A. By who?

19 Q. By either Duke Energy Ohio or a third
20 party.

21 A. I -- I know there was an audit. There
22 was an a audit. It's a partial audit. I -- I
23 don't recall being -- that it was that specific to
24 Milford.

25 Q. Did the audit relate to pole ownership?

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1 A. Don't know.

2 Q. So you're aware of -- that an audit
3 occurred, correct?

4 Would you agree with me that field
5 conditions today would be different from -- as how
6 they existed when the audit was performed?

7 A. I -- I can't --

8 MR. GILLESPIE: Objection. Vague.

9 BY MS. WATTS:

10 Q. Well, there was an audit done -- When --
11 Do you know when that audit was initiated, what
12 year?

13 A. Which -- By Duke --

14 Q. Yes.

15 A. -- or a third party?

16 Off the top of my head, no.

17 Q. Okay. Was it -- Was it more than two
18 years ago?

19 A. I don't know, either.

20 Q. You're generally aware of an audit,
21 correct? You've already said that.

22 A. Yes.

23 Q. Did the audit occur prior to you coming
24 on to Time Warner Cable?

25 A. As far as I know, the audit could be

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1 taking -- I don't know if it's been even
2 completed, or if it's ongoing, or what.

3 Q. Okay. Then tell me what you do know
4 about the audit.

5 A. That there are some disagreements about
6 the audit findings, and that it was done on a
7 small percentage of poles.

8 Q. Okay. And so it was completed at some
9 time in the past, correct?

10 A. Yes.

11 Q. And, most likely, completed at least
12 sometime before 2007; would you agree with me?

13 MR. GILLESPIE: You're asking him to
14 speculate?

15 MS. WATTS: No. I'm asking him if he
16 knows.

17 THE WITNESS: I saw Amy write down "2005,
18 2006", so my guess is that it happened then.

19 BY MS. WATTS:

20 Q. I don't want you to guess.

21 A. So -- So I don't have -- You know.

22 Q. Well, all I'm trying to get at is an
23 audit was done in the past.

24 A. Yes.

25 Q. The field conditions that were extant at

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1 the time the audit was taken or undertaken would
2 be different than the field conditions today?

3 A. I have no way of answering that.

4 Q. Has Time Warner Cable done any new pole
5 attachments in the last two years?

6 A. You're going to have to be more specific.
7 I don't know that, either.

8 Q. There are -- You don't know whether or
9 not Time Warner Cable has attached to any new
10 poles in the past two years in Duke Energy Ohio's
11 territory?

12 A. In Duke Energy Ohio's -- I -- My guess is
13 they have.

14 Q. And would you also agree that they've
15 probably removed some pole attachments in some
16 instances?

17 A. That's quite possible, as well.

18 Q. So conditions two years ago versus
19 conditions today would be different because
20 they've added some pole attachments and they've
21 removed some pole attachments in Duke Energy
22 Ohio's service territory, correct?

23 MR. GILLESPIE: Objection. He's answered
24 the question as to what he thinks probably
25 happened.

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1 MS. WATTS: He hasn't answered that
2 particular question.

3 THE WITNESS: Well, if you're asking
4 that -- Go ahead. I'm sorry.

5 MR. GILLESPIE: No, go ahead.

6 THE WITNESS: If you're asking that do --
7 would I suspect that Time Warner Cable has removed
8 pole attachments or added pole attachments, and my
9 guess is they -- they probably have.

10 BY MS. WATTS:

11 Q. Does Time Warner Cable allow any other
12 entities, other than Time Warner Telecom, to
13 attach to its facilities or cables, if you know?

14 MR. GILLESPIE: Objection to the
15 foundation of that question. There is no
16 foundation for that question.

17 MS. WATTS: All right. I'll restate the
18 question.

19 BY MS. WATTS:

20 Q. Does Time Warner Cable allow any entities
21 to attach to its facilities or cables?

22 A. And are you being -- I don't know the
23 answer to that.

24 Q. Okay. How many states does Time Warner
25 Cable do business in?

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1 A. We already covered that. I -- It was
2 between 28 and 30.

3 Q. We did. I'm sorry.

4 A. That's all right.

5 Q. Do you have a guess as to how many other
6 utility companies allow Time Warner Cable to
7 attach to its poles?

8 A. No.

9 Q. How about if just -- we say just within
10 Ohio?

11 A. How many other utilities?

12 Q. Uh-huh.

13 A. No.

14 Q. Do you attach -- We've established that
15 you attach to Ohio Edison, correct?

16 A. Yes.

17 Q. And how about to Cleveland Electric?

18 A. My guess is we do.

19 Q. Okay. How about Toledo?

20 A. Toledo?

21 MR. GILLESPIE: Objection.

22 BY MS. WATTS:

23 Q. Toledo Edison Company.

24 MR. GILLESPIE: Thank you.

25 THE WITNESS: I suspect we do, but I'm

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1 not sure how much plant we have up in their
2 territory.

3 BY MS. WATTS:

4 Q. Okay. And does Time Warner Cable attach
5 to Dayton Power & Light's poles?

6 A. Yes.

7 Q. And does Time Warner Cable attach to AEP
8 poles?

9 A. I believe we do.

10 Q. Do you have any knowledge as to what the
11 cost per attachment is this each of those electric
12 utility jurisdictions?

13 A. Without referring to a document, no, only
14 to say that they are all lower than --
15 significantly lower than what Duke has proposed.

16 Q. How do they compare with respect to what
17 the current tariff is for Duke Energy?

18 A. I would -- I would speculate that they
19 are probably comparable.

20 Q. Do you know whether Time Warner Cable
21 field operations personnel received training
22 regarding appropriate protocol for attaching to
23 utility poles?

24 MR. GILLESPIE: Objection to the form of
25 the question.

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1 You can answer it.

2 THE WITNESS: Do I know -- Can you ask
3 the question again, please?

4 BY MS. WATTS:

5 Q. Do Time Warner Cable field operations
6 personnel -- and by that I mean the guys out in
7 the field that are actually attaching the lines to
8 the poles -- do they receive training regarding
9 appropriate protocol for attaching to utility
10 poles?

11 A. My guess is yes.

12 Q. Do you have any knowledge of that
13 training?

14 A. Only that we have a training facility.

15 Q. Okay. Do you know whether or not a field
16 operations person would contact a Duke Energy
17 field operations person or a Duke Energy
18 engineering-type person prior to attaching?

19 MR. GILLESPIE: Objection to the form of
20 the question. Under what circumstances?

21 MS. WATTS: Under the circumstances where
22 they wish to attach and they need to call first.

23 MR. GILLESPIE: I still object.

24 BY MS. WATTS:

25 Q. If you know.

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1 A. I can't answer the question in that form.

2 Q. Okay. If there are safety or logistical
3 problems with an attachment -- with the Time
4 Warner Cable attachment to a Duke Energy Ohio
5 pole, who corrects that safety violation or that
6 logistical problem?

7 MR. GILLESPIE: Objection to form of the
8 question. It's vague and ambiguous.

9 MS. WATTS: What part of that is vague
10 and ambiguous?

11 MR. GILLESPIE: Who you -- What sort of a
12 problem are you talking about?

13 MS. WATTS: Any kind of problem. Either
14 a safety problem or logistical problem. If there
15 is a problem with the attachment, who fixes it?

16 MR. GILLESPIE: Under what circumstances?

17 MS. WATTS: Under any circumstances.

18 MR. GILLESPIE: Well, you have --

19 THE WITNESS: That's --

20 MR. GILLESPIE: The question --

21 THE WITNESS: That's so vague, I couldn't
22 even begin to answer that.

23 BY MS. WATTS:

24 Q. How about if it's just a safety problem,
25 can you answer that?

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1 MR. GILLESPIE: Same objection.

2 THE WITNESS: No, not in that form.

3 BY MS. WATTS:

4 Q. What about the form that makes it
5 difficult for you to answer?

6 A. There are so many potential scenarios
7 that they are almost limit -- well, I can't say
8 they are limitless, but --

9 Q. Well, tell me just one scenario. If
10 there are limitless scenarios, what would one
11 scenario be?

12 A. If a -- there was a storm that knocked
13 down a pole, creating a hazardous condition, and
14 Duke's the first one there.

15 Q. And who fixes the pole in that instance?

16 A. My guess is it would be Duke. You take
17 care of -- Yeah.

18 Q. So is that your guess or do you know?

19 A. No, that's my guess.

20 Q. So you actually don't know the answer to
21 that?

22 A. To what?

23 Q. To who would fix the pole in that
24 specific instance.

25 A. Do I know that with 100 percent

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1 certainty? No. Because in that particular
2 instance, it could be that something happens to
3 the Duke person. I don't know.

4 THE WITNESS: May I have another water,
5 please?

6 MS. WATTS: Sure.

7 (Discussion held off the record.)

8 BY MS. WATTS:

9 Q. Of the states in which Time Warner Cable
10 does business, do you know which of those are
11 regulated states and which are unregulated states
12 with respect to pole attachments?

13 A. I do not.

14 Q. Do you know whether there's a difference
15 in price between regulated and unregulated states?

16 A. I do not.

17 Q. Are you familiar with the FCC pricing
18 formula with respect to pole attachments?

19 A. Only that there is a pricing formula.

20 Q. Do you know how that formula is
21 calculated?

22 A. I do not.

23 MS. WATTS: We can go off the record.

24 (Recess taken.)

25 BY MS. WATTS:

MCGINNIS & ASSOCIATES, INC.
614.431.1344 COLUMBUS, OHIO 800.498.2451

1 Q. Just a couple of brief questions.

2 We talked earlier about a meeting that
3 you had with the Commission Staff and various
4 other -- David Leland and so forth. Do you
5 remember that discussion?

6 A. Yes.

7 Q. Would you tell me what Staff said in that
8 meeting?

9 A. Staff did not say anything.

10 Q. Really?

11 A. They, I mean, just listened.

12 Q. And what was David Leland's role in that
13 meeting?

14 A. He is a -- He is a lawyer --

15 Q. Yes.

16 A. -- slash lobbyist for the OCTA.

17 Q. We also talked about Time Warner Cable, I
18 asked you if you knew whether Time Warner Cable
19 allowed others to attach to its attachments. And
20 I believe -- Correct me if I'm wrong, I believe
21 you indicated you weren't -- you didn't know
22 whether that was the case.

23 A. Yes, that is the case.

24 Q. Do you know who at Time Warner Cable
25 would have that information?

MCGINNIS & ASSOCIATES, INC.
614.431.1344 COLUMBUS, OHIO 800.498.2451

1 A. I would start with the legal department.

2 Q. And not engineering?

3 A. That would have been my second choice.

4 MS. WATTS: Okay. I have no further
5 questions. Thank you, Mr. Kozelek.

6 THE WITNESS: Thank you.

7 (Signature not waived.)

8 - - -

9 (Thereupon, the deposition was
10 concluded at 3:49 o'clock p.m.
11 on Monday, February 2, 2009.)

12 - - -

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MCGINNIS & ASSOCIATES, INC.
614.431.1344 COLUMBUS, OHIO 800.498.2451

A F F I D A V I T

- - -

STATE OF _____,)

) SS:

COUNTY OF _____,)

Edward F. Kozelek, having been duly
placed under oath, deposes and says that:

I have read the transcript of my
deposition taken on Monday, February 2, 2009, and
made all necessary changes and/or corrections as
noted on the attached correction sheet, if any.

Edward F. Kozelek

Placed under oath before me and
subscribed in my presence this _____ day of
_____, _____.

Notary Public

My Commission Expires: _____.

- - -

MCGINNIS & ASSOCIATES, INC.
614.431.1344 COLUMBUS, OHIO 800.498.2451

C E R T I F I C A T E

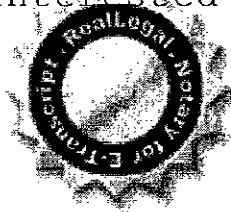
- - -

State of Ohio,)
) SS:
County of Licking,)

- - -

I, Linda D. Riffle, Registered Diplomat
Reporter, Certified Realtime Reporter and Notary
Public in and for the State of Ohio, hereby
certify that the foregoing is a true and accurate
transcript of the deposition testimony, taken
under oath on the date hereinbefore set forth, of
Edward F. Kozelek.

I further certify that I am neither
attorney or counsel for, nor related to or
employed by any of the parties to the action in
which the deposition was taken, and further that I
am not a relative or employee of any attorney or
counsel employed in this case, nor am I
financially interested in the action.



Linda D. Riffle

Linda D. Riffle,
Registered Diplomat
Reporter, Certified
Realtime Reporter and
Notary Public in and for
the State of Ohio

My Commission Expires: July 26, 2011

- - -

Duke Energy Ohio
139 East Fourth Street
Cincinnati, Ohio 45202

P.U.C.O. No. 1
Sheet No. 1.5
Cancels and Supersedes
Sheet No. 1.4
Page 1 of 6

RATE PA

POLE ATTACHMENT/OCCUPANCY TARIFF

APPLICABILITY

Applicable to attachments/occupancies by any person or entity other than a public utility to any pole/conduit of the Company within its entire territory or occupancy by any person or entity of any conduit of the Company by a licensee; i.e., a person who enters into an Agreement with the Company.

ATTACHMENT CHARGES

An annual rental of \$4.25 per pole shall be charged for the use of the Company's poles. The charge will apply if any portion of a pole is occupied or reserved at the licensee's request.

An initial contact fee of \$1.00 per pole, will be charged by the Company.

PAYMENT

Rental payments shall be made on the anniversary of the agreement. When payments are not made, the invoiced amount shall include an additional amount equal to one and one-half percent (1.5%) of the unpaid balance.

As new attachments/occupancies are made after the initial rental year, rentals for such attachments/occupancies shall be paid for the entire year if made within the six-month period after any anniversary date, and for one-half year if made during the following six-month period. For any attachments/occupancies removed by licensee and for which the Company shall have received written notice from licensee, the yearly rental shall be adjusted on the same basis.

TERMS AND CONDITIONS

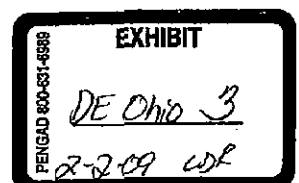
1. Before any attachments/occupancies is made by licensee, it shall make written application for permission to install attachments/occupancies on any pole/conduit of the Company, specifying the location of each pole/conduit in question, the character of its proposed attachments/occupancies and the amount and location of space desired. Within 30 days after receipt of such application, the Company shall notify licensee in writing whether or not it is willing to permit the attachments/occupancies and, if so, under what conditions. The Company shall have the sole right to determine the availability of such pole/conduit for joint use and shall be under no obligation to grant permission for its use by licensee. If such permission is granted, licensee shall have the right to occupy the space allotted by the Company under the conditions specified in such permit and in accordance with the terms of the Agreement but Company shall not be required to set a pole/conduit for the sole use by licensee.

Filed pursuant to an Order dated March 29, 2006 in Case No. 06-407-GE-ATA before the Public Utilities Commission of Ohio.

Issued: March 31, 2006

Effective: April 3, 2006

Issued by Sandra P. Meyer, President



TERM AND CONDITIONS (Contd.)

2. Upon the execution of the Agreement and before any attachments/occupancies are made by licensee, licensee shall send the Company all manufacturer's technical manuals and information, and construction standards and manuals regarding the equipment licensee proposes to use pursuant to the provisions of the Agreement.
3. All attachments/occupancies are to be placed on poles/conduits of the Company in a manner satisfactory to the Company and so as not to interfere with the present or any future use which the Company may desire to make of such poles/conduits, wires or other facilities. All attachments/occupancies shall be installed and maintained by licensee so as to comply at least with the minimum requirements of the National Electrical Safety Code and any other applicable regulations or codes promulgated by federal, state, local or other governmental authority having jurisdiction. Licensee shall take any necessary precautions, by the installation of protective equipment or other means, to protect all persons and property of all kinds against injury or damage occurring by reason of licensee's attachments/occupancies on the Company's poles/conduits. The Company shall be the sole judge as to the requirements for the present or future use of its poles/conduits and equipment and of any interference therewith.
4. In any case where it is necessary for the Company to replace a pole/conduit because of the necessity of providing adequate space or strength to accommodate the attachments/occupancies of licensee thereon, either at the request of licensee or to comply with the above codes and regulations, the licensee shall pay the Company the total cost of this replacement. Such cost shall be the total estimated cost of the new pole/conduit including material, labor, and applicable overheads, plus the cost of transferring existing electric facilities to the new pole/conduit, plus the cost of removal of the existing pole/conduit and any other incremental cost required to provide for the attachments/occupancies of the licensee, including any applicable taxes the Company may be required to pay because of this change in plant, minus salvage value of any facilities removed.

Licensee shall also pay to the Company and other owners thereof the cost of removing all existing attachments/occupancies from the existing pole/conduit and re-establishing the same or like attachments/occupancies on the newly installed pole/conduit. The new pole/conduit shall be the property of the Company regardless of any payments by licensee towards its cost and licensee shall acquire no right, title or interest in such pole/conduit.

Filed pursuant to an Order dated March 29, 2006 in Case No. 06-407-GE-ATA before the Public Utilities Commission of Ohio.

Issued: March 31, 2006

Effective: April 3, 2006

Issued by Sandra P. Meyer, President

TERM AND CONDITIONS (Contd.)

5. If licensee's proposed attachments/occupancies can be accommodated on existing poles/conduits of the Company by rearranging facilities of the Company and of other licensees or permittees thereon and if the Company and other licensees or permittees are willing to make such rearrangement, such rearrangement shall be made by the Company and such other licensees or permittees, and licensee shall on demand reimburse the Company and such other licensees or permittees for any expense incurred by them in transferring or rearranging such facilities. Any additional guying required by reason of the attachments/occupancies of licensee shall be made by licensee at its expense, and to the satisfaction of the Company.
6. The Company reserves the right to inspect each new installation of licensee on its poles/conduits and to make periodic inspections, semi-annually or more often as conditions may warrant, and licensee shall, on demand, reimburse the Company for the expense of such inspections. The Company's right to make such inspections and any inspection made pursuant to such right shall not relieve licensee of any responsibility, obligation, or liability imposed by law or assumed under the Agreement.
7. Whenever the Company notifies licensee in writing that the attachments/occupancies of licensee interfere with the operation of facilities of the Company or other licensee or permittee, or constitute a hazard to the service rendered by the Company or other licensee or permittee, or fail to comply with codes or regulations above-mentioned, licensee shall within 10 days after the date of such notice, remove, rearrange, or change its attachments/occupancies as directed by the Company. In case of emergency, the Company reserves the right to remove or relocate the attachments/occupancies of licensee at licensee's expense and without notice, and no liability therefor shall be incurred by the Company because of such action.
8. Licensee agrees to indemnify and save harmless the Company from and against any and all liability, loss, damage, costs, attorney fees, or expense, of whatsoever nature or character, arising out of or occasioned by any claim or any suit for damages, injunction or other relief, on account of injury to or death of any person, or damage to any property including the loss of use thereof, or on account of interruption of licensee's service to its subscribers or others, or for public charges and penalties for failure to comply with federal, state or local laws or regulations, growing out of or in connection with any act or omission, negligent or otherwise, of licensee or its servants, agents or subcontractors in the attachment/occupancy, operation and maintenance of facilities of licensee on the poles/conduits of the Company, and in the performance of work hereunder, whether or not due in whole or in part to any act, omission or negligence of the Company or any of its representatives or employees (except insofar as such indemnity arising out of such injury or damage caused by the sole negligence of the Company or such representatives or employees may be judicially found to be contrary to law, in which case this Agreement of indemnity shall in all other respects be and remain effective and binding). The Company may require licensee to defend any suits concerning the foregoing, whether such suits are justified or not.

Filed pursuant to an Order dated March 29, 2006 in Case No. 06-407-GE-ATA before the Public Utilities Commission of Ohio.

Issued: March 31, 2006

Effective: April 3, 2006

Issued by Sandra P. Meyer, President

TERM AND CONDITIONS (Contd.)

9. Licensee agrees to obtain and maintain at all times during the period licensee has attachments/occupancies on the Company's pole/conduits, policies of insurance as follows:
 - (a) Public liability and automobile liability insurance for itself in an amount as specified by the Company for bodily injury to or death of any one person, and, subject to the same limit for any one person, in an aggregate amount as specified by the Company for any one occurrence.
 - (b) Property damage liability insurance for itself in an amount as specified by the Company for any one occurrence.
 - (c) Contractual liability insurance in amounts as specified by the Company to cover the liability assumed by the licensee under the agreements of indemnity set forth in the Agreement.
10. Prior to making attachments/occupancies to the Company's poles/conduits, licensee shall furnish to the Company two copies of a certificate, from an insurance carrier acceptable to the Company, stating that policies of insurance have been issued by it to licensee providing for the insurance listed above and that such policies are in force. Such certificate shall state that the insurance carrier will give the Company 30 days prior written notice of any cancellation of or material change in such policies. The certificate shall also quote in full the agreements of indemnity set forth in the Agreement as evidence of the type of contractual liability coverage furnished. If such certificate recites that it is subject to any exceptions or exclusions contained in the policy or policies of insurance, such exceptions or exclusions shall be stated in full in such certificate, and the Company may, at its discretion, require licensee before starting work, to obtain policies of insurance which are not subject to any exceptions or exclusions which the Company finds objectionable.
11. The Company reserves the right, without liability to licensee or its subscribers, to discontinue the use of, remove, replace or change the location of any or all of the Company's poles/conduits, attachments/occupancies or facilities regardless of any occupancy of the Company's poles/conduits by licensee, and licensee shall, at its sole cost and within 10 days after written notice by the Company make such changes in, including removal or transfer of, its attachments/occupancies as shall be required by such action of the Company.
12. Licensee may at any time abandon the use of a jointly used pole/conduit hereunder by removing therefrom all of its attachments/occupancies and by giving written notice thereof to the Company.

Filed pursuant to an Order dated March 29, 2006 in Case No. 06-407-GE-ATA before the Public Utilities Commission of Ohio.

Issued: March 31, 2006

Effective: April 3, 2006

Issued by Sandra P. Meyer, President

TERM AND CONDITIONS (Contd.)

13. Licensee shall secure any right, license or permit from any governmental body, authority, or other person or persons which may be required for the construction or maintenance of attachments/occupancies of licensee, at its expense. The Company does not guarantee any easements, rights-of-way or franchises for the construction and maintenance of such attachments/occupancies. Licensee hereby agrees to indemnify and save harmless the Company from any and all claims, including the expenses incurred by the Company to defend itself against such claims, resulting from or arising out of the failure of licensee to secure such right, license, permit or easement for the construction or maintenance of such attachments/occupancies on the Company's pole/conduits.
14. Electric service for power supplies of a licensee shall be supplied from the lines of the Company in a manner specified by the Company.
15. The Company shall have the right, from time to time during the term of the Agreement, to grant, by contract or otherwise, to others not parties to the Agreement, rights or privileges to use any pole/conduits covered by the Agreement, and the Company shall have the right to continue and extend any such rights or privileges heretofore granted. The attachment/occupancy privileges granted hereunder shall at all times be subject thereto.
16. Licensee shall furnish bond, as specified by the Company, to guarantee the performance of the obligations assumed by licensee under the terms of the Agreement not otherwise covered by the insurance required by paragraph 9. Such bond shall be submitted to the Company prior to licensee's making attachment/occupancy to the Company's poles/conduits.
17. In case one party is obligated to perform certain work at its own expense and the parties mutually agree in writing that it is desirable for the other party to do such work, then such other party shall promptly do the work at the sole expense of the party originally obligated to perform the same. Bills for expense so incurred shall be due and payable within 30 days after presentation.
18. If licensee fails to comply with any of the provisions of the Agreement or defaults in the performance of any of its obligations under the Agreement and fails within 60 days after written notice from the Company to correct such default or non-compliance, the Company may, at its option, forthwith terminate the Agreement, or the specific permit or permits covering the poles/conduits and licensee's attachments/occupancies to which such default or non-compliance is applicable, and remove attachments/occupancies of licensee at licensee's expense, and no liability therefor shall be incurred by the Company because of such action.

Filed pursuant to an Order dated March 29, 2006 in Case No. 06-407-GE-ATA before the Public Utilities Commission of Ohio.

Issued: March 31, 2006

Effective: April 3, 2006

Issued by Sandra P. Meyer, President

Duke Energy Ohio
139 East Fourth Street
Cincinnati, Ohio 45202

P.U.C.O. No. 1
Sheet No. 1.5
Cancels and Supersedes
Sheet No. 1.4
Page 6 of 6

TERM AND CONDITIONS (Contd.)

19. The area covered by the Agreement is set forth on a map, attached to, and made a part of the Agreement. Such area may be extended or otherwise modified by a supplemental agreement mutually agreed upon and signed by the parties to an Agreement with a new map attached thereto showing the changed area to be thereafter covered by the Agreement. Such supplement shall be effective as of the date of final execution thereof and shall be attached to all executed copies of the Agreement.
20. If licensee does not exercise the rights herein granted within six months from the execution date of an agreement, the Agreement shall be void. The Agreement shall start as of the execution date thereof and shall continue for a period of one year and shall be self-renewing from year to year thereafter unless terminated by either party's giving to the other party written notice at least 60 days prior to the end of any yearly term. Licensee shall completely remove its attachments/occupancies from the Company's poles/conduits on or prior to the termination date, unless a new agreement covering such poles/conduits has been executed by the parties hereto.
21. The Agreement shall be binding upon and inure to the benefit of the parties thereto, their respective successors and/or assigns, but licensee shall not assign, transfer or sublet any of the rights hereby granted or obligations hereby assumed without the prior written consent of the Company.
22. The licensee may be required to pay a cash deposit to the Company in order to establish or re-establish credit in an amount not in excess of the total annual rental fees. After the licensee has established a reasonable credit record by paying the rental fees for two consecutive years within the time specified in the Agreement, the Company shall apply the deposit plus an accrued interest to the next annual rental fee amount which is due and payable with the next subsequent anniversary date. The Company shall pay interest thereon in accordance with Rule 4901:1-17-05 of the Ohio Administrative Code.

SERVICE REGULATIONS

The supplying and billing for service, and all conditions applying thereto, are subject to the jurisdiction of the Public Utilities Commission of Ohio, and to Company's Service Regulations currently in effect, as filed with the Public Utilities Commission of Ohio, as provided by law.

Filed pursuant to an Order dated March 29, 2006 in Case No. 06-407-GE-ATA before the Public Utilities Commission of Ohio.

Issued: March 31, 2006

Effective: April 3, 2006

Issued by Sandra P. Meyer, President



FILE

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2009 JAN 26 AM 9:35

PUCO

139 East Fourth Street, R. 25 At II
P.O. Box 960
Cincinnati, Ohio 45201-0960
Tel: 513-419-1837
Fax: 513-419-1846
dianne.kuhnell@duke-energy.com

Dianne B. Kuhnell
Senior Paralegal

VIA OVERNIGHT MAIL DELIVERY

January 23, 2009

Docketing Division
Public Utilities Commission of Ohio
180 East Broad Street
Columbus, Ohio 43215

Re: Case No. 08-709-EL-AIR, *et al.*

Dear Docketing Division:

Enclosed please find for filing an original and twenty-two copies each of the Revised Notice of Deposition of Jonathon McGee and the Revised Notice of Deposition of Edward Kozalek.

Please file-stamp and return two copies of each in the envelope provided.

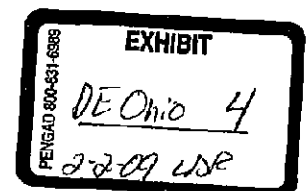
Should you have any questions, please contact me at (513) 419-1837.

Very truly yours,

Dianne Kuhnell
Senior Paralegal

Enclosure ;

cc: Parties of record



This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.
Technician Date Processed

JAN 26 2009

www.duke-energy.com

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

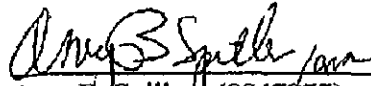
In The Matter of the Application of)	
Duke Energy Ohio, Inc. for an)	Case No. 08-709-EL-AIR
Increase in Electric Distribution Rates)	
)	
In the Matter of the Application of)	
Duke Energy Ohio, Inc. for Tariff)	Case No. 08-710-EL-ATA
Approval)	
)	
In the Matter of the Application of)	
Duke Energy Ohio, Inc. for Approval)	Case No. 08-711-EL-AAM
to Change Accounting Methods)	
)	
In the Matter of the Application of Cincinnati)	
Gas & Electric Company for Approval of its)	Case No. 06-718-EL-ATA
Rider BDP, Backup Delivery Point.)	

REVISED NOTICE OF DEPOSITION DUCES TECUM OF EDWARD KOZELEK

Please take notice that pursuant to Rule 4901-1-2(F) of the Ohio Administrative Code (OAC), and by its counsel, Petitioner, Duke Energy Ohio will take the deposition of Edward Kozelek on February 2, 2009, beginning at 1:30 p.m. and continuing thereafter until completed. The deposition will take place at the offices of Duke Energy Ohio, 155 E. Broad Street, 21st Floor, Columbus, Ohio 43215, and will be recorded by a court stenographer authorized to issue oaths. Said deposition will be taken as if on cross-examination for purposes of discovery, use at the trial and or hearing, and all other uses permitted under the Ohio Rules of Civil Procedure and Evidence.

The deponent is requested to bring to the deposition the documents identified in the attached Exhibit A.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Amy H. Spiller". The signature is fluid and cursive, with a horizontal line drawn underneath it.

Amy H. Spiller (0047277)

Associate General Counsel

Elizabeth Watts (0031092)

Associate General Counsel

Duke Energy Ohio

139 East Fourth Street, Rm. EA025

P.O. Box 960

Cincinnati, Ohio 45201

(513) 419-1810 (Telephone)

(513) 419-1846 (Facsimile)

E-mail: amy.spiller@duke-energy.com

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was delivered on this the 23rd day of January, 2009, via electronic mail or ordinary US mail delivery, postage prepaid, to the following:

Ohio Consumers' Counsel
Ann M. Hotz, Counsel of Record
10 W Broad Street, Suite 1800
Columbus, OH 43215-3420

Boehm, Kurtz & Lowry
David Boehm/ Michael Kurtz
36 East 7th Street
URS Building, Suite 1510
Cincinnati, OH 45202-4454

Chester, Willcox & Saxbe LLP
John W. Bentine/ Mark Yurick
65 E State Street, Suite 1000
Columbus, OH 43215-4216

Bricker & Eckler, LLP
Sally Bloomfield/ Thomas O'Brien
100 S. Third Street
Columbus, OH 43215-4236

Ohio Partners for Affordable Energy
David Rinebolt/ Colleen Mooney
231 West Lima Street
Findaly, OH 45840-3033

Greater Cincinnati Health Council
Douglas E. Hart
441 Vine Street, Suite 4192
Cincinnati, OH 45202-2852

Vorys, Sater, Seymour & Pease
Steven M. Howard/ Gardner F. Gillespie
52 E Gay Street
P.O. Box 1008
Columbus, OH 43215-3108

PUCO
Stephen Reilly
Attorney General's Office
180 East Broad Street, 9th Floor
Columbus, OH 43215-3707

People Working Cooperatively, Inc.
Mary W. Christensen, Esq.
100 E. Campus View Blvd.
Columbus, OH 43235-4679



Amy B. Spiller

EXHIBIT A

NOTICE OF DEPOSITION DUCES TECUM

The term "Documents" means documents as that term is used in Rule 34 of the Federal Rules of Civil Procedure, including without limitation, any written, printed, electronic, recorded or photographic matter or sound reproduction, and specifically including but not limited to contracts, agreement, letters, correspondence, e-mail, memoranda, telegrams, handwritten notes, books, records, reports, orders, security agreements, financing statements, mortgages, checks, drafts, sales records, invoices, bills, working papers, diaries, charts, papers, notes, indices, lists, inventories, computer printouts, accounting records, ledger sheets, statements, analyses, forecasts, instructions, manuals, pamphlets, brochures, flyers, announcements, schedules, written memorials of personal or telephone conversations or meetings or conferences and all other interoffice and intraoffice communications, teletypes, correspondence, worksheets, minutes, data processing cards, photographs, films, or any other writing however produced or reproduced or any computer file, server, tape, computer disk, or electronic sound recording. In the event that the original or non-identical copy of a document is not available, "documents" means an identical copy of an original or a copy of a non-identical copy. Any document bearing notations, markings or writing of any kind differing from the original shall be treated as an original document.

The items to be produced by the deponent at this deposition are as follows:

1. All documents evidencing or confirming payment made by Time Warner Cable ("TWC") to Duke Energy Ohio and its predecessors, for attachments made by TWC to Duke Energy Ohio's poles. For purposes of this request, documents include, but are not limited to, invoices, cancelled checks, and accounts payable ledgers.
2. All documents regarding all audits of TWC's attachments to Duke Energy Ohio's poles from 1999 to the present.
3. All documents concerning the work performed by or on behalf of TWC from 2000 to the present to install anchors for its attachments to Duke Energy Ohio's poles. For purposes of this request, documents include, but are not limited to, work orders, drawings, bills of lading or purchase, time sheets, contracts with third parties, and invoices.
4. All documents concerning the work performed by or on behalf of TWC from 2000 to the present to complete the guying of its attachments to Duke Energy Ohio's poles. For purposes of this request, documents include, but are not limited to, work orders, drawings, bills of lading or purchase, time sheets, contracts with third parties, and invoices.

5. All documents concerning the work performed by or on behalf of TWC from 2000 to the present to reduce the size of TWC's cable bundles attached to Duke Energy Ohio's poles. For purposes of this request, documents include, but are not limited to, work orders, drawings, bills of lading or purchase, time sheets, contracts with third parties, and invoices.
6. All documents concerning the work performed by or on behalf of TWC from 2000 to the present in response to the violations identified in any audit of TWC's attachments to Duke Energy Ohio's poles. For purposes of this request, documents include, but are not limited to, work orders, drawings, bills of lading or purchase, time sheets, contracts with third parties, and invoices.
7. All documents concerning meetings between TWC and Duke Energy Ohio representatives from 2000 to the present; said meetings at which any audit of TWC's attachments to Duke Energy Ohio's poles were discussed.
8. All agreements in effect from 2000 to the present between TWC and Time Warner Telecomm ("TWTC") pursuant to which TWTC attached or overlashed to TWC's attachments to Duke Energy Ohio's poles.
9. All agreements in effect from 2000 to the present between TWC and any Ohio public utility concerning attachments by TWC to each such utility's poles.
10. All documents corroborating any and all written notice provided by TWC to Duke Energy Ohio of safety violations observed by TWC. For purposes of this request, a "safety violation" means a violation of the National Electric Safety Code.
11. All documents concerning the work performed by TWC from 2000 to the present to correct safety violations that TWC representatives observed in the field and in Duke Energy Ohio's service territory. For purposes of this request, a "safety violation" means a violation of the National Electric Safety Code.
12. All internal corporate documents showing how much is allocated by TWC to line maintenance and safety.
13. Documents showing pole attachment agreement disputes between TWC and any other utility to which it attaches.

HOGAN & HARTSON

Hogan & Hartson LLP
Columbia Square
555 Thirteenth Street, NW
Washington, DC 20004
+1.202.637.5600 Tel
+1.202.637.5910 Fax

www.hhlaw.com

January 21, 2009

Gardner F. Gillespie
Partner
+1.202.637.8796
gfgillespie@hhlaw.com

By Electronic Mail Delivery and Regular Mail

Amy B. Spiller
Associate General Counsel
Duke Energy Corporation
139 E. Fourth Street, Room 25, Atrium II
P.O. Box 960
Cincinnati, OH 45201-0960

Re: Your letter of January 15, 2009

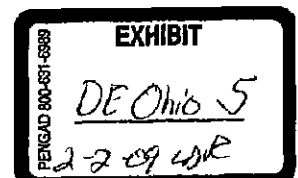
Dear Amy:

This is in response to your letter of January 15, 2009.

Deposition Notices for Ed Kozelek and Jonathon McGee

Request No. 1. *All documents evidencing or confirming payment made by TWC to Duke and its predecessors, for attachments made by TWC to Duke's poles. For purposes of this request, documents include, but are not limited to, invoices, cancelled checks, and accounts payable ledgers.*

OCTA stands on its objections as stated. We cannot see how documents reflecting payment or non-payment of invoices submitted by Duke could be reasonably calculated to the discovery of admissible evidence. Payment of invoices by TWC does not relate to Duke's claims that TWC has made attachments without authorization. I believe we can stipulate to what invoices TWC has or has not paid. Certainly we will stipulate that TWC has not yet reached any agreement with Duke regarding the latter's claims of unauthorized attachments and has not paid those claims. Duke has records of the payments by TWC, and gathering the documents that Duke seeks here would be extremely burdensome.



Request No. 2. *All documents regarding all audits of TWC's attachments to Duke's poles from 1999 to the present.*

We have previously indicated that, without waiving its objections, OCTA will produce documents at Mr. Kozelek's deposition regarding these audits.

Request No. 3. *All documents concerning the work performed by or on behalf of TWC from 2000 to the present to install anchors for its attachments to Duke's poles. For purposes of this request, documents include, but are not limited to, work orders, drawings, bills of lading or purchase, time sheets, contracts with third parties, and invoices.*

Without waiving its objections, OCTA will obtain and produce work orders and invoices that TWC can reasonably locate that have to do with anchor installation, replacement and guying related to the 2004-2006 audit.

Request No. 4. *All documents concerning the work performed by or on behalf of TWC from 2000 to the present to complete the guying of its attachments to Duke's poles. For purposes of this request, documents include, but are not limited to, work orders, drawings, bills of lading or purchase, time sheets, contracts with third parties, and invoices.*

See above re. Request No. 3.

Request No. 5. *All documents concerning the work performed by or on behalf of TWC from 2000 to the present to reduce the size of TWC's cable bundles attached to Duke's poles. For purposes of this request, documents include, but are not limited to, work orders, drawings, bills of lading or purchase, time sheets, contracts with third parties, and invoices.*

Without waiving its objections, OCTA will provide a spreadsheet that shows TWC's relash/delash efforts by job since it started to use its current software in 2005. Note that TWC's relash and delashing project is not generally related to the audit and has been ongoing.

Request No. 6. *All documents concerning the work performed by or on behalf of TWC from 2000 to the present in response to the violations identified in any audit of TWC's attachments to Duke's poles. For purposes of this request, documents include, but are not limited to, work orders, drawings, bills of lading or purchase, time sheets, contracts with third parties, and invoices.*

Without waiving its objections, OCTA will produce the documents as specified above in response to Request Nos. 3-5. In addition, OCTA will obtain and provide a spreadsheet that reflects the work done by TWC to install drip loop guards between its cables and street lights and documentation reasonably available to TWC that shows actions by TWC to cure other claimed violations.

Request No. 7. *All documents concerning meetings between TWC and Duke representatives from 2000 to the present; said meetings at which any audit of TWC's attachments to Duke's poles were discussed.*

Without waiving its objections, OCTA will produce documents which are not privileged concerning meetings between TWC and Duke Representatives related to audits of TWC attachments.

Request No. 8. *All agreements in effect from 2000 to the present between TWC and Time Warner Telecom ("TWTC") pursuant to which TWTC attached or overlashed to TWC's attachments to Duke's poles.*

Without waiving its objections, TWC has no agreements by which TWTC attached or overlashed its facilities to TWC's attachments.

Request No. 9. *All agreements in effect from 2000 to the present between TWC and any Ohio public utility concerning attachments by TWC to each such utility's poles.*

As noted earlier, such agreements will be produced.

Request No. 10. *All documents corroborating any and all written notice provided by TWC to Duke of safety violations observed by TWC. For purposes of this request, a "safety violation" means a violation of the NESC.*

Please read the response in my letter of January 12.

Request No. 11. *All documents concerning the work performed by TWC from 2000 to the present to correct safety violations that TWC representatives observed in the field and in Duke's service territory. For purposes of this request, a "safety violation" means a violation of the NESC.*

See the response in my letter of January 12. See also the documents produced in response to Request Nos. 3-6.

Request No. 12. *All internal corporate documents showing how much is allocated by TWC to line maintenance and safety.*

OCTA stands on its objections as stated.

Request No. 13. *Documents showing pole attachment agreement disputes between TWC and any other utility to which it attaches.*

OCTA stands on its objections as stated.

Depositions of Duke Energy Ohio Personnel

I address here only a matters that are unclear or omitted from your discussion. Please do not interpret my failure to address any request as an agreement with your position not to produce a witness to address it.

Request No. 5. *Makeready charges imposed by Duke on cable operators since 2000 for pole replacements.*

You did not address this request in your letter, but I understood in our phone call that Duke will produce a witness to testify on this subject. Please let me know immediately if my understanding is not correct.

Request No. 6. *Implementation and use of Duke's GIS system for poles, including any pole counts available through the GIS mapping system.*

You state that Duke is willing to produce a witness regarding how the GIS system was implemented and the accuracy of any transfer of information from one system to another. I thought we had an agreement that Duke's witness will also testify regarding the information in the GIS system of the number of distribution poles reflected in that system. Please let me know immediately if my understanding of our agreement on this request is not correct.

Request No. 7. *The number of distribution poles in Account 364 for each of the years 1993 through 2007, and Dukes records of these number of poles.*

Based on our telephone discussion, I understand that Duke will produce a witness to testify about Duke's number of poles going back as far as Duke can reasonably locate records.

Request No. 8. *The conversion of Duke's records of distribution pole investment data and the number of poles from the prior system to the current Power Plant system.*

See the comments on Request No. 6.

Request Nos. 9–14. *(These requests deal with Account 364, costs booked to that account, errors found in that account and revisions made by Duke.)*

We look forward to a deposition on these issues. Considering Mr. Dean's failure to understand the scope of the errors that had been made in booking of costs to Account 364, we do not expect that there will be any reasonable limitation to questions about Account 364, simply due to the prior deposition of Mr. Dean. We can deal with any issues regarding OCTA's right to examine Mr. Dean or another witness regarding Account 364 as they arise.

Request No. 17. *Procedures used by attaching parties, including public utilities, to share information about, or obtain permission for, attaching to Duke's drop poles.*

Since you made clear at the depositions of Mr. Angleton and Ms. Brierly that they were not being produced as representatives of Duke regarding any issue, I do not think you can refuse to produce a witness who is knowledgeable on this issue on the basis that OCTA had an opportunity to ask those questions of Mr. Angleton and Ms. Brierly. Furthermore, on many issues, they were lacking in knowledge.

Request Nos. 19-25. *(These requests deal with audits.)*

We agreed that Duke will produce a witness who is knowledgeable about the audit conducted of TWC's attachments in 2004-2006 and that OCTA would not pursue deposition testimony related to the 2000 audit of TWC or the 2004-2006 audit of Adelphia. I did not agree not to pursue questions about any unauthorized attachment penalties or penalties for safety violations imposed by Duke on other parties. I understand from your response, however, that Duke does not agree to produce a witness on these latter subjects. If my understanding is not correct, please let me know immediately.

Request No. 26. *Duke's records of attachments by third parties to its poles.*

I understand your comment as indicating that Duke will not produce a witness to testify regarding this request. Please let me know immediately if I have misinterpreted your comment.

Request No. 29. *Maintenance expenses booked to Account 593 in 2005-2007 and any unusual overhead plant maintenance expenses in that time period.*

Amy B. Spiller
January 21, 2009
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Although you did not address this request in your letter, you indicated in our telephone conversation that Duke would produce a witness on this subject.

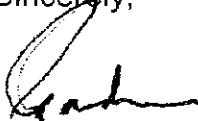
Duke's Objections and Refusals to Provide Information Requested in OCTA's Third Set of Discovery

In our scheduled telephone call tomorrow, I will also want to discuss with you Duke's refusals to provide information requested by OCTA in its Third Interrogatories and Third Requests for the Production of Documents. Please be prepared to discuss these issues pursuant to OAC § 4901-1-23(C).

* * *

It appears that we may need to obtain a decision from the Attorney Examiner on the permissibility of some of Duke's continuing objections. We understand that this process may not be completed by January 28 and 29th. Nevertheless, we intend to go forward with the depositions on those dates on the subjects we have agreed on. If it is necessary to have an additional deposition later on other matters, we will do so.

Sincerely,



Gardner F. Gillespie

GFG/gs

cc: Steve Howard

SOURCE: Time Warner Telecom Form 10-Q for quarter ended July 30, 1998.
<http://www.sec.gov/Archives/edgar/data/1064637/0000950117-98-001601.txt>

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MASTER TERMS AND CONDITIONS
CAPACITY LICENSE AGREEMENT

DATED AS OF JULY 1, 1998

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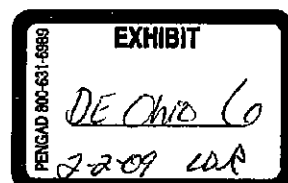
These MASTER TERMS AND CONDITIONS (the "Terms") dated as of July 1 1998 shall govern each CAPACITY LICENSE AGREEMENT (each, an "Agreement") entered into between an affiliated local cable system operator of Time Warner Cable, a division of Time Warner Entertainment Company, L.P., which affiliate is acting as licensor of fiberoptic cable capacity ("Licensor"), and an affiliate of Time Warner Telecom LLC, which affiliate is acting as Licensee of fiberoptic cable capacity ("Licensee"); each of which such Agreements shall expressly incorporate the terms and conditions hereof by reference.

RECITALS

WHEREAS, Licensor owns fiberoptic facilities (the "System") within the geographic area described in the Agreement (the "Service Area"); and

WHEREAS, Licensee desires to provide certain telecommunications services as specified herein (the "Telecommunications Services") within the Service Area; and

WHEREAS, subject to the terms and conditions set forth below, Licensor desires to license the use of certain fiber capacity over the System to



Licensee, and Licensee desires to license the use of such capacity, to enable it to provide such Telecommunications Services in the Service Area;

NOW THEREFORE, in consideration of the foregoing, and of the promises and covenants contained in this Agreement, the parties agree as follows:

1. License of Initial Capacity.

(a) Subject to the terms and conditions of the Agreement, Licensors hereby license to Licensee the exclusive use of all capacity (the "Initial Capacity") of the fiberoptic facilities described on Schedule 1 attached to the Agreement (the "Initial Facilities"). Licensee acknowledges that it has accepted all the Initial Capacity as meeting the Acceptance Criteria set forth herein.

(b) The description of the Initial Facilities set forth on Schedule 1 defines fiber counts and either fiber segment routes or "logical rings". Licensors agree to deliver copies to Licensee of specific network information regarding the Initial Facilities from its own maps or schematic documentation files upon Licensee's request.

2. Licenses of Additional Capacity.

(a) Requests.

(i) At any time during the term of this Agreement, Licensee may request Licensors to construct fiber optic facilities and/or license to Licensee the capacity ("Additional Capacity" and together with the Initial Capacity, the "Capacity") of any of Licensors' fiber optic facilities ("Additional Facilities" and together with the Initial Facilities,

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the "Facilities"), whether then existing or to be constructed. Licensor will not, however, be obligated to fulfill any such request.

(b) Request Submission. Each Request shall contain such information, such as the routes, the location of splice points, network architecture and diversity requirements, and the proposed commencement date, as Licensor may reasonably request to assist it in determining whether it will construct and/or license the capacity of Additional Facilities. If Licensor agrees to fulfill any Request, it shall deliver to Licensee a Cost Estimate Schedule, in the form of Exhibit A, setting forth its good faith estimate of the Allocated Cost (as defined on Annex A) of constructing such Additional Facilities.

(c) Request Procedures. Upon Licensor's agreement to license to Licensee Additional Capacity and Licensee's acceptance of Licensor's estimate of the Allocated Cost thereof (which acceptance shall be evidenced by Licensee's execution of the Cost Estimate Schedule and its return of same to such Licensor, not later than twenty-one (21) days after the date specified on such Cost Estimate Schedule; Licensee's failure to timely return any such Cost Estimate Schedule shall render its Request null and void), Licensor shall seek to obtain any required permits or similar authorizations and thereupon commence construction of such Facilities for Licensee. Upon agreement by Licensor and Licensee as to the license of Additional Capacity, and Licensee's acceptance of Additional Capacity pursuant to Section 2(d) below, the parties shall execute a Final Cost Schedule setting forth the final information regarding such Additional Capacity as is required by the form of Exhibit B. On the effective date or dates set forth in such Final Cost Schedule (or if not specified therein, the date on which the Additional Capacity is accepted by Licensee in accordance with Section 2(d) below or, if earlier, the date Licensee commences use of such Additional Capacity), such facilities shall be deemed to be Additional Facilities and the capacity thereof Additional Capacity, for purposes of this Agreement. Licensee's payments for any Additional Capacity shall be

calculated as set forth in Annex A attached hereto, and the amount of such payments shall be set forth on the Final Cost Schedule relating thereto.

(d) Acceptance Criteria. Upon its determination that any Additional Capacity is ready for acceptance by Licensee, Licensor shall notify Licensee (not less than two business days in advance of the proposed test) that it will conduct a test (the "Acceptance Test") of the Additional Capacity, which Acceptance Test will be conducted in accordance with the procedures set forth on Annex B hereto. Annex B may be amended from time to time by mutual agreement of the parties, provided that any amendments therein shall apply only to Additional Capacity that is agreed to be licensed after implementation of such amendments. The parties acknowledge that the test provided on Annex B is based on current fiber optic telecommunications industry standards for technical and performance specifications, and that any amendments thereto will be designed to reflect changes in such standards from time to time (the "Specifications"). Licensee shall have the right to be present during, and to participate in, the Acceptance Test. Upon completion of the Acceptance Test, Licensor shall provide Licensee with a test completion certificate in the form of Annex C appropriately completed. Licensee shall then have ten days to reject the Additional Capacity but only if test results do not meet Specifications. If Licensee fails to notify Licensor of its rejection of the Additional Capacity within such period, Licensee shall be deemed to have accepted the Additional Capacity as of

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the last day of such ten day period. Licensee shall have the right, by giving written notice to Licensor within such ten day period, to conduct its own test of the Additional Capacity within such period, and Licensor and Licensee shall

cooperate with each other to conduct such tests in a manner that does not unreasonably interfere with Licensor's operations. Such tests shall be conducted at a time that is mutually convenient to Licensor and Licensee, and Licensor shall have the right to be present during and to participate in such test.

Licensee shall have five days after completion of the re-test to reject the Additional Capacity, but only if test results do not meet the Specifications. If Licensee accepts the Additional Capacity or is deemed to have accepted the Additional Capacity, Licensor and Licensee shall execute and deliver a Final Cost Schedule with respect to such Additional Capacity. If Licensee rejects the Additional Capacity, it shall immediately itemize its reasons for the rejection in writing, and Licensor and Licensee shall make commercially reasonable efforts to make the Additional Capacity acceptable (including, if reasonable, partial acceptance). Following any such cure by Licensor to Licensee's reasonable satisfaction, Licensee shall promptly accept such Additional Capacity.

3. License Subject to Authorizations. Notwithstanding anything herein to the contrary, all rights granted to Licensee and obligations of Licensor hereunder are expressly subject to each of Licensor's authorizations to operate the System, including without limitation governmental or municipal approval, franchise or authorization, and to each right-of-way agreement, pole attachment agreement, conduit agreement, lease, license, consent or other agreement relating to the Capacity.

4. Term. This Agreement shall commence on the date hereof and shall terminate, with respect to any Capacity, on the earliest of (a) the date that the legal ability of the Licensor (or its successor or assign) to operate the Facilities on which such Capacity is provided in the Service Area either terminates or is materially impaired, (b) the date this Agreement terminates with respect to such Capacity pursuant to Sections 18, 19, 25 or 26 hereof or (c) the thirtieth anniversary of the effective date of this Agreement.

5. Payments.

(a) Calculation and Timing of Payments.

(i) Initial Capacity. Notwithstanding anything in this Agreement to the contrary, the parties acknowledge and agree that Licensor (or

its parent entity) has made a capital contribution to Licensee in the amount attributable to the payments which would have been due from Licensee pursuant to this Agreement for the construction costs of the Initial Capacity. Accordingly, Licensee shall not be obligated to make any payments to Licensor in respect of the Initial Capacity pursuant to this Section 5(a)(i) or otherwise for the costs of construction of the Initial Capacity. All other payments provided for in this Agreement with respect to the Initial Capacity continue to be due and payable as provided for herein.

(ii) Additional Capacity. For any Additional Capacity, Licensee shall pay Licensor two payments. The first payment with respect to any such Additional Capacity shall be equal to one-half of the Cost Estimate and shall be paid upon Licensor's and Licensee's execution of the Cost Estimate Schedule pursuant to Section 2(c) with respect to such Additional Capacity. The second payment equal to the remaining balance shall be made within forty-five

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(45) days after Licensor and Licensee have executed a Final Cost Schedule in respect of such Additional Capacity pursuant to Section 2(c). After the second payment has been made in respect of any such Additional Capacity, Licensee shall not be obligated to make any additional payments to Licensor, except as may be otherwise specified in Annex D or elsewhere in this Agreement, in respect of such Additional Capacity, notwithstanding that this Agreement may continue in full force and effect thereafter.

(iii) Calculation of Payments. The Parties agree that all payments set forth on any Cost Estimate Schedule or Final Cost Schedule shall be calculated in accordance with the procedures set forth in Annex A attached

hereto.

(b) Inspection of Records. The amount of the payments set forth on the Final Cost Schedule relating to any Additional Capacity shall be based on the good faith calculations of the Licensor of the actual costs of constructing such Additional Capacity. Licensor agrees that it will, for a period of one year after the acceptance by Licensee of any Additional Capacity, maintain reasonably comprehensive records relating to such costs. Licensor will permit Licensee at any time during such period upon reasonable written notice and during normal business hours to examine all of such records, to make copies and extracts therefrom and to discuss such records and other matters relating to such Additional Capacity with the respective officers, employees and independent public accountants and other agents of such Licensor. If any discrepancy is found in such records which leads Licensee to believe in good faith that the actual cost of constructing the Additional Capacity was less than Licensor's calculation of such cost as reflected on any Final Cost Schedule, Licensor and Licensee shall negotiate in good faith to determine whether an overpayment has been made by Licensee, and if so, then Licensor shall promptly pay to Licensee an amount equal to the entire amount of such overpayment. Any records of such Licensor audited by Licensee shall constitute proprietary information under Section 20 of this Agreement, irrespective of the lack of restrictive notices or other express communications to the effect that the information in such records is proprietary.

6. Taxes and Expenses. Licensee shall pay (a) any sales tax, property tax, transfer tax, use tax, gross receipts tax, excise tax, business and occupation tax, or other similar Federal, state and local taxes or charges (excluding taxes imposed on Licensor's net income) imposed by any governmental authority upon Licensor or its facilities or Licensee in connection with any payments due from Licensee to Licensor hereunder, or as a result of Licensee's activities under this Agreement, or imposed upon or with respect to the Capacity or the Facilities, (b) any additional franchise fees imposed upon or collected from Licensor or Licensee by any franchising authority as a result of Licensee's activities under this Agreement (which payment shall be grossed up to make Licensor whole for any additional such fees owed with respect to Licensee's payment), and (c) without duplication of the payments required pursuant to Section 12 and Annex D attached hereto, for its share on an allocated basis of

pole attachment fees, conduit fees and other out-of-pocket rights-of-way expenses incurred by Licensor in connection with the Facilities, as follows. Where Facilities are the only facilities utilizing pole attachment rights, conduit rights or other rights-of-way, Licensee shall bear all the fees relating thereto. Where there are no Facilities included in Licensor's facilities utilizing pole attachments rights, conduit rights or other rights-of-way, Licensor shall bear all the fees relating thereto. Where Facilities and other facilities of Licensor utilize pole attachment rights, conduits or other rights of way, Licensor and Licensee shall each bear 50% of the out-of-pocket fees relating thereto. Further, if and to the

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extent that Licensor is required to pay incremental pole, conduit or other right-of-way out-of-pocket fees solely due to the nature of Licensee's use of the Capacity or Facilities, Licensee shall reimburse Licensor for all such incremental fees. (If at any time Licensor is required to pay such incremental fees due to a use of the Facilities or other facilities that is made by both Licensor and Licensee or any third party exercising rights grants by or through Licensor, the incremental fees shall be allocated to Licensee according to the relative proportion of the number of fibers subject to such use). Licensee shall also pay, or reimburse Licensor for, all fines, penalties, late fees or similar payments or interest charged on late payments to the extent incurred due to Licensee's failure to pay amounts owed by it hereunder promptly.

7. Use of Capacity. (a) Licensee shall not use the Capacity in violation of this Agreement, any law, rule, regulation or order of any governmental authority having jurisdiction, or any franchise, license, agreement or certificate relating to the System or Licensor's franchises, unless the

validity thereof is being contested in good faith and by appropriate proceedings (but only so long as such proceedings and Licensee's use of the Capacity do not, in Licensor's reasonable opinion, involve any risk of the sale, forfeiture, or loss of the System, any Authorizations (as defined in Section 16(a)(i)), or any part thereof or any interest therein). Licensee shall not do or permit anything to be done with respect to the Capacity that would invalidate or conflict with any insurance policies maintained by Licensor or Licensee covering the Capacity or the Facilities.

(b) Licensee shall have exclusive control over the Telecommunications Services it provides over the Capacity, including, without limitation, customer premise and nodal electronics, sales and marketing, electronics maintenance and monitoring, and billing and collection.

(c) Licensee shall not use the Capacity, directly or indirectly (through a subsidiary or affiliate of Licensee), to engage in the business of providing, offering, packaging, marketing, promoting, or branding (alone or jointly with or as an agent for other parties) any Residential Services or to engage in the business of producing, packaging, distributing, marketing, hosting or otherwise providing, offering, promoting or branding Content Services.

(d) (i) "Residential Services" shall mean wireline telecommunications services or other services (including, without limitation, data services) of any nature provided directly or indirectly to third party end-users at address locations other than business locations. "Business locations" shall mean (A) address locations that are used solely for business purposes, including, without limitation, public spaces within business locations and governmental offices; and (B) hotels, hospitals, jails and the business offices of residential facilities within educational institutions and within nursing and assisted living complexes.

(ii) "Content Services" means entertainment, information or other content services, whether fixed or interactive, or any services incidental thereto; provided, however, that Content Services shall not include acting solely as a carrier of video, audio or data of unaffiliated third parties by providing transport services, so long as Licensee has no other direct or

indirect pecuniary interest in the transmitted information or content.

8. Non-Exclusivity. Nothing in this Agreement shall be construed to require

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Licensor to be Licensee's exclusive provider of, or contractor with respect to, fiberoptic facilities or equipment in the Service Area or to limit in any way Licensee's right in its own name to apply for and obtain municipal franchises, authorizations and permits, to construct, maintain and own fiberoptic facilities, and to apply for and obtain pole attachment agreements, conduit licenses or other rights-of-way agreements from other rights-of-way providers. Further, nothing in this Agreement shall imply or require that Licensee be Licensor's exclusive licensee or lessee of network facilities or capacity.

9. Use of Licensee Capacity by Licensor. (a) If Licensee obtains operating authority, rights-of-way, building entrance facilities, pole attachment agreements or conduit rights in the Service Area, constructs and owns fiber optic facilities in the Service Area and determines, in its sole discretion, that it has capacity in such facilities, it will, upon request of Licensor, negotiate in good faith with Licensor for (i) the license of capacity to Licensor for the provision of cable television and any other services, such license to the extent possible to include all the applicable terms and provisions (including, without limitation, Annexes A and D) of this Agreement as if Licensee were Licensor and Licensor were Licensee hereunder or (ii) the provision to Licensor of the kinds of additional facilities services specified in Section 10 hereof.

(b) In furtherance and not in limitation of the foregoing, with regard to building entrance or riser facilities constructed by Licensee after the date hereof (but prior to the fifth anniversary of the date of this Agreement), Licensee shall:

(i) Notify Licensor of buildings in which it obtains rights of entry or access;

(ii) Use reasonable efforts to assist Licensor in obtaining similar rights of entry or access; and

(iii) Upon Licensor's request, construct (with the "Allocated Cost" of such construction, as defined in Annex A, to be paid by Licensor) and install up to a one-half inch diameter of coaxial cable or fiber cable bundle for Licensor's ownership (or, if Licensor cannot obtain the necessary rights of entry or access, Licensee shall license to Licensor the capacity of such fibers, as described above in Section 9(a)(i)).

10. Other Services. To the extent Licensor is unable or unwilling to provide requested Additional Capacity to Licensee pursuant to Section 2 above, Licensor will, upon request of Licensee, provide Licensee with the following alternative services, subject to agreement in advance in writing upon compensation Licensor is to receive with respect thereto, and subject to and in accordance with any applicable legal, contractual, regulatory or technical limitations:

(a) permit Licensee (subject to Section 13) to overlash Licensor owned facilities (which shall become Additional Facilities hereunder) on poles on which Licensor's facilities are located;

(b) make available to Licensee any spare capacity, determined in Licensor's sole discretion, in conduits, ducts, inner ducts, building entry facilities or building riser facilities owned or leased by such Licensor; and

(c) use reasonable efforts to obtain, in Licensor's name, pole attachment agreements or conduit licenses and to sublet or assign such agreements or licenses to Licensee to permit Licensee to construct facilities.

11 Splicing Services. (a) Unless otherwise agreed between the parties or as provided below, Licensor will perform fiber splicing services on any Facilities on which Capacity is licensed hereunder. Any splice request shall be in writing and shall contain information as to the general location of the desired splice point, number of fibers to be spliced and desired completion date. Splicing shall occur only at splice points designated or approved in writing by Licensor.

(b) Where the Facilities to be spliced are in a separate sheath from any other Licensor fibers ("separate sheath Facilities"), Licensor shall use commercially reasonable efforts to mark within six months of the date of this Agreement the separate sheath Facilities' splice containers for ease of identification. After such marking is completed, Licensee shall have 24- hour, 365 days access to each splice point for separate sheath Facilities for the purpose of splicing and maintaining splices of such Facilities.

(c) Licensor and Licensee shall agree upon a set of request and notification procedures, and response times and procedures (to be subject to revision every two years), for splicing and splice maintenance (including in emergency circumstances) where the Facilities are in a sheath shared with other Licensor fibers ("shared sheath Facilities"). Licensee shall request, and Licensor shall provide, splicing and maintenance services in accordance with these procedures; provided that if Licensor fails with regard to any specific project to provide splicing or splice maintenance service in accordance with such procedures, Licensee shall thereupon be entitled (as its sole remedy, in addition to Section 23) to 24-hour, 365 day access to the splice points for

shared sheath Facilities for the purpose of splicing and maintaining splices of such Facilities with regard to such specific project only.

The compensation to Licensor for any splicing work (other than splicing as part of construction of Additional Facilities hereunder, which shall be as set forth in Annex A) shall be as set forth in Annex D. All splicing or maintenance undertaken by Licensee hereunder shall be solely in accordance with Section 13.

12. Performance and Maintenance. Licensor shall use its commercially reasonable efforts to maintain the Facilities so that at all times each portion of such Facilities performs in accordance with the Specifications in effect as of the date the Capacity of such Facilities was added to this Agreement. In consideration of the performance of such maintenance, Licensee shall pay maintenance fees to Licensor in the amounts and at the times set forth in Annex D. Inspection and maintenance will be provided by the Licensor or its subcontractors unless prior arrangements have been made between Licensor and Licensee.

13. Licensee Requirements. Notwithstanding any other provision hereof, for any project of Licensee agreed to by Licensor that requires access to or easements over Licensor's

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headends, facilities, network, conduit, hubsites, splice cans or other property, Licensee shall in each instance comply with all of the following:

(a) Licensee shall only employ and permit access by a

contractor that has been specifically approved in writing by Licensor for work within the Service Area; provided that Licensor shall not unreasonably withhold or delay approval of any proposed contractor.

(b) Licensee shall not rearrange any Licensor facilities (including Facilities) without Licensor's prior written consent.

(c) Licensee shall give Licensor such prior written notice of its activity as is set forth in the Agreement and Licensor shall be entitled to be present, at Licensee's expense, and to supervise Licensee and its agents with respect to its activities regarding the Facilities.

(d) Licensee (or its agents or permittees) shall provide Licensor with a diagram of the exact configuration of any splice or other work completed. Licensor shall have no liability of any nature whatsoever hereunder for maintenance or other work that is improperly performed due to failure of Licensee to provide Licensor with such diagram and information.

Assuming no Facilities splice point is involved, Licensee shall not be required to abide by the restrictions of this Section 13 with regard to its actions on customer premises locations.

14. Title. All right, title and interest in the System and the Facilities provided by Licensor hereunder shall at all times remain exclusively with Licensor. All right, title and interest in all facilities and associated equipment provided by Licensee shall at all times remain exclusively with Licensee. No such Licensee facilities and equipment shall be placed in any public rights-of-way unless Licensee has obtained an independent right to do so from the appropriate public authority. Except as expressly provided elsewhere in this Agreement, Licensor shall retain full operating control and shall continue to hold and be solely responsible for all operating authority with regard to the System. Licensee shall hold and be responsible for all operating authority for its facilities (other than the Facilities or Capacity) and for the provision of any services by it, including its use of the Capacity.

15. Liens and Encumbrances. Neither party, directly or indirectly, shall create, impose or suffer to be imposed any lien on (a) any property

interest of the other, (b) the rights or title relating thereto, or any interest therein, or (c) this Agreement. Each party will promptly, at its own expense, take such action as may be necessary to duly discharge any such lien.

16. Representations and Warranties.

(a) Licensors hereby represents, warrants and covenants to Licensee as follows:

(i) Licensors has made available to Licensee true and correct copies of each governmental or municipal approval, franchise and authorization, right-of-way agreement, pole attachment agreement, conduit agreement and lease, license, consent or other agreement

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relating to the Facilities and/or the Capacity thereof (all of which are hereinafter collectively called the "Authorizations") obtained by it which relate to Licensors's ability to license the Capacity and perform Licensors's obligations under this Agreement.

(ii) Licensors is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization, is duly authorized to do business in the jurisdiction in which the Capacity is made available and has full organizational power and authority to execute, deliver and perform the terms of this Agreement.

(b) Licensee hereby represents, warrants and covenants to Licensors as follows:

(i) Licensee has made available to Licensor true and correct copies of each Authorization obtained by it which relate to Licensee's ability to use the Capacity and perform Licensee's obligations under this Agreement.

(ii) Licensee is duly organized and validly existing under the laws of its jurisdiction of organization, is authorized to do business in the jurisdiction in which the Capacity is made available and has full organizational power and authority to execute, deliver and perform the terms of this Agreement.

17. Compliance with Law. Each party shall perform its respective rights and obligations hereunder in material compliance with the Authorizations obtained by it and all applicable laws, rules and regulations imposed by any governmental authority.

18. Relocation of the Facilities. Licensee recognizes that, from time to time, Licensor may elect or be required to relocate the Facilities. Where such relocation is solely for the convenience of Licensor, Licensor shall be solely responsible for all costs incurred to relocate the Facilities. (Relocations requested by governmental authorities shall not be deemed for the convenience of Licensor.) In all other cases (including street widening or improvement projects), Licensee shall pay (a) 50% of the direct, out-of-pocket costs of the relocation, if the project involves both Facilities and other facilities of Licensor, or (b) 100% of the direct, out-of-pocket costs of the relocation, if the project involves only Facilities; but in either case, only to the extent such costs cannot be recovered from any third party. Licensee will, however, have the option of terminating this Agreement with respect to such Capacity and paying Licensor any as yet unpaid amounts pursuant to Section 5 and any other amounts which are then due and payable under this Agreement (the "Payoff Amount"). Licensor will use commercially reasonable efforts to effect any relocation in a manner that will not cause any material interruption to Licensee's use of the Capacity. Licensor shall use commercially reasonable efforts to give Licensee at least six months prior notice of any relocation or of any governmental proceedings which could reasonably be expected to result in a relocation, or such lesser amount of notice that Licensor receives from such

governmental authority, and Licensee shall have the right to participate in any such proceedings.

19. Condemnation and Casualty.

(a) Condemnation. If all or any portion of the Facilities are taken for any

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public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain, Licensee shall be entitled to terminate the license of the Capacity provided hereunder on such Facilities. In such event, both parties shall be entitled to participate in any condemnation proceedings to seek to obtain compensation by either joint or separate awards for the economic value of their respective interests in the Capacity or the Facilities and will equitably share any awards as their economic interests appear.

(b) Casualty. If all or any portion of the Facilities are made inoperable and beyond feasible repair due to a casualty or other force majeure event (as that term is defined in Section 27 below), Licensee shall be entitled to terminate this Agreement with regard to the Capacity affected by such casualty or other event. In such event, both parties shall be entitled to seek to recover the economic value of their respective interests in the Capacity or the Facilities (i) under any insurance policy carried by either party or their affiliates or any third party, or (ii) in either joint or separate actions, from any third party which may be legally responsible for causing such casualty. The parties will equitably share any recoveries as their economic interests appear.

20. Proprietary Information. Each party acknowledges that, in the course of the performance of this Agreement, it may have access to privileged and proprietary information claimed to be unique, secret and confidential, and which constitutes the exclusive property or trade secrets of the other, and the parties acknowledge that they are in a confidential relationship with each other. This information may be presented in documents marked with a restrictive notice or during oral discussions, at which time representatives of the disclosing party will specify that the information is proprietary. Information that a party receives from the disclosing party that, while not so marked, would be reasonably understood by the recipient as confidential or proprietary (such as customer information) shall also be considered proprietary information hereunder. Such information shall specifically include, but is not limited to, this Agreement and all exhibits, annexes, attachments, schedules and addenda hereto.

Each party agrees to maintain the confidentiality of the proprietary information and to use the same degree of care as it uses with regard to its own proprietary information to prevent the disclosure, publication or unauthorized use of the proprietary information. Neither party may duplicate or copy proprietary information of the other party other than to the extent necessary for legitimate business uses in connection with this Agreement. A party shall be excused from these nondisclosure provisions if (a) the proprietary information has been or is subsequently made public other than through a breach of this Agreement or (b) the proprietary information is independently developed by such party or (c) the other party gives its consent to the disclosure of the proprietary information or (d) the disclosure is required by law, regulation or governmental or judicial authority (provided that the compelled party gives prompt notice of such required disclosure to the original disclosing party to enable it to obtain a protective order or other relief). Notwithstanding anything to the contrary in this Agreement, this provision shall survive the termination or expiration of this Agreement.

21. Indemnification.

(a) Indemnification by Licensee Licensee will indemnify and hold harmless Licensor, its affiliates, and all officers, directors, employees,

stockholders, partners and agents of Licensor and its affiliates from and against any and all claims, demands, costs, damages, losses,

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liabilities, expenses of any nature (including reasonable attorneys', accountants', and experts' fees and disbursements), judgments, fines, settlements and other amounts (collectively, "Damages") arising from any and all claims, demands, actions, suits or proceedings, civil, criminal, administrative or investigative (collectively "Claims") relating to or arising out of:

(i) the installation, maintenance or operation of Licensee's connections to the Facilities or the conduct or management of Licensee's business with regard to the Facilities or the connections thereto or the Capacity thereof, except to the extent such Damages are caused or contributed to by Licensor or its agents;

(ii) any breach by Licensee of any material obligation or covenants under this Agreement;

(iii) any failure of any representation or warranty made by Licensee herein to be true in any material respect as of the date made or deemed made;

(iv) any Claim by any customer of Licensee relating to the provision by Licensee of services to such customer, over the Capacity or otherwise; and

(v) any Claim of any third party (other than as

described in Section 21 (b)(iv) below) resulting from the gross negligence or wilful misconduct of Licensee.

The foregoing indemnification obligations shall not be construed to broaden the representations and warranties of Licensee regarding Authorizations as set forth in Section 16(b)(i).

(b) Indemnification by Licenser. Licenser will indemnify and hold harmless Licensee, its affiliates and all officers, directors, employees, stockholders, partners and agents of Licensee and its affiliates from and against any and all Damages arising from any and all Claims relating to or arising out of:

(i) The installation, maintenance or operation by Licenser of the Facilities or the Capacity thereof or the conduct or management of Licenser's business, except to the extent such Damages are caused or contributed to by Licensee or its agents;

(ii) Any breach on the part of Licenser of any material obligation or covenant under this Agreement;

(iii) Any failure of any representation or warranty made by Licenser herein to be true in any material respect as of the date made or deemed made; and

(iv) Any Claim by any customer of Licenser relating to Licenser's provision of services over any facilities of which the Facilities are a part; and

(v) Any Claim of any third party (other than as described in Section 21 (a)(iv) above) resulting from the gross negligence or wilful misconduct of Licenser.

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The foregoing indemnification obligations shall not be construed to broaden the representations and warranties of Licensor regarding Authorizations as set forth in Section 16(a)(i).

(c) Procedure. No claims for indemnification shall be made by either party against the other unless the aggregate amount of such claim exceeds the amount of \$5,000. A person seeking indemnification hereunder shall promptly notify the indemnifying party in writing of any Claim for which indemnification is sought, provided that any failure to so notify the indemnifying party will not relieve the indemnifying party from any liability or obligation which it may have to any indemnified person except to the extent of any material prejudice to the indemnifying party resulting from such failure.

If the facts giving rise to such indemnification involve any actual or threatened claim or demand by or against a third party, the indemnifying party shall be entitled to control the defense, prosecution and settlement of such claim or demand in the name of the indemnified person, if the indemnifying party notifies the indemnified person in writing of its intention to do so within twenty (20) days of the receipt of such notice by the indemnified person.

The indemnified person shall have the right, however, to participate in such proceeding through counsel of its own choosing, which participation shall be at its sole expense. Whether or not the indemnifying party chooses to defend or prosecute such claim, each indemnified person which is not the indemnifying party, shall, to the extent requested by the indemnifying party and at the indemnifying party's expense, cooperate in the prosecution or defense of such claim and shall furnish such records, information and testimony and attend such conferences, discovery proceedings, hearings, trials and appeals as may reasonably be requested in connection therewith. The indemnifying party shall not settle any claim or assertion, unless the

indemnified party consents in writing to such settlement, which consent shall not be unreasonably withheld and which consent shall not be withheld in connection with any such settlement for money damages to be paid by the indemnifying party only, which does not admit the fault of the indemnified party and which does not impose injunctive or other equitable relief on the indemnified party.

22. Provision of Insurance Coverage. Each Party shall, at its own expense, secure and maintain in force, throughout the term of this Agreement, the following insurance coverage and limits of liability with carriers authorized to conduct business in all states in which any Facilities are located, that have an A.M. Best rating of B+ or better:

(a) Comprehensive General Liability.

(i) Coverages to include: Products and Completed Operations Liability, Hazards of Premises/Operations (including XCU), Blanket Contractual Liability, Independent Contractors Liability, Fire Legal Liability, Personal Injury (including death), and Broad Form Property Damage.

(ii) Limits of Liability: \$2,000,000 per occurrence, combined single limit for bodily injury and property damage.

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(iii) With respect to any Facilities or Capacity, Licensor and Licensee each will name the other as additional insured.

(b) Comprehensive Auto Liability.

(i) Coverage to include: Owned/Leased vehicles, Non-owned vehicles, Hired Vehicles.

(ii) Limits of Liability: \$2,000,000 per accident, combined single limit for bodily injury and property damage.

(iii) With respect to any Facilities or Capacity, Licensor and Licensee will name the other as additional insured.

(c) Workers' Compensation - statutory coverage and limits.

(d) Property Insurance.

(i) Coverage: All Risk to property and includes Business Interruption. With regard to transmission and distribution lines, this coverage may be provided through commercial insurance or a self-insured reserve fund.

(ii) Limits to be sufficient to cover full replacement cost of Leased Facilities.

(iii) With respect to any Facilities or Capacity, Licensor and Licensee will name the other as Loss Payee.

(e) Certificate of Insurance; Additional Conditions. With respect to any Facilities or Capacity, Licensor and Licensee each shall provide to the other a Certificate of Insurance evidencing all coverages outlined in this Section 22. All such insurance obtained by either Licensor or Licensee, as the case may be, shall require that the other be notified, in writing, at least thirty days prior to the cancellation or adverse modification of any such required insurance policy. Any such notification shall be required to be sent by registered certified mail or certified courier service. The fulfillment of a party's obligations regarding insurance coverage shall not relieve such party of any liability hereunder or in any other way modify such party's obligations hereunder.

23. Interruption of Service. Notwithstanding any other provision of

this Agreement, in the event of any interruption of use by Licensee of any portion of the Capacity which causes a customer service outage through no fault of Licensee, which interruption is the responsibility of Licensor or its agents and is not a force majeure event, as that term is defined in Section 27, Licensor's sole obligation shall be to provide a credit to Licensee against Licensee's obligation to pay maintenance fees pursuant to Section 12, which credit shall be calculated on a per occurrence basis at the lesser of (a) an amount equal to the actual damage suffered by Licensee, and (b) the amount set forth in the following chart:

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Length of Outage:	Credit:
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<S>	<C>
2 hours or less:	no credit
over 2 hours to 8 hours:	\$20,000
over 8 hours:	\$50,000;

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provided, however, that in no event shall the amount required to be credited by Licensor under this Section 23 in any calendar year exceed the amount payable by Licensee to Licensor for maintenance fees pursuant to Section 12 in such year. The remedy provided in this Section 23 shall be Licensee's sole and exclusive remedy for outages or interruptions of service, unless such outages or interruptions of service were caused by Licensor's willful misconduct or gross

negligence and except for the termination provisions in Sections 18, 19 and 25.

24. Events of Default. Each of the following events shall constitute an event of default (whether any such event shall be voluntary or involuntary or occur by operation of law or pursuant to any judgment, decree, order, rule or regulation of any court or administrative or governmental body):

(a) the failure of Licensee to make any license payment pursuant to Section 5 hereof within fifteen days of the due date thereof; or any failure of Licensee to make any maintenance payment pursuant to Section 12 hereof or any other payment due hereunder within fifteen days after Licensee's receipt of notice from Licensor of Licensee's failure to make such payment when due;

(b) the failure of either party to perform or observe any material covenant or agreement (including without limitation, any failure of Licensee to comply with the use restrictions under Section 7) to be performed or observed by it hereunder, and such failure shall continue unremedied for a period of thirty days after written notice is given to the defaulting party by the non-defaulting party; or

(c) a court or governmental authority of competent jurisdiction shall enter an order appointing, without consent by the party, a custodian, receiver, trustee, intervener, or other officer with similar powers with respect to it or with respect to any substantial part of its property, or constituting an order for relief or approving a petition in bankruptcy or insolvency law of any jurisdiction, or ordering the dissolution, winding up, or liquidation of either party, or if any such petition shall be filed against either party and shall not be dismissed within sixty days thereafter, or an order shall have been issued granting either party a suspension of payments under applicable law and any such order is not dismissed within sixty days thereafter.

25. Remedies. Upon the occurrence and during the continuance of any event of default, the non-defaulting party may, at its option, declare this Agreement to be in default and may, in addition to any other remedies provided herein, terminate this Agreement. Except as expressly provided herein, no remedy

is intended to be exclusive, but each shall be cumulative and in addition to and may be exercised concurrently with any other remedy available to Licensor or Licensee at law or in equity. If Licensor terminates this Agreement due to a Licensee default,

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Licensee shall pay the Payoff Amount promptly to Licensor. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR INDIRECT, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, WHETHER BASED IN CONTRACT, TORT, OR OTHERWISE.

26. Additional Termination Rights.

(a) Licensee. Upon the payment by Licensee of the Payoff Amount due with respect to such Capacity, and upon one hundred eighty (180) days written notice to Licensor, Licensee may, without further obligation to Licensor, terminate its license of any reasonably defined portion of the Capacity without cause. Licensee shall thereupon remove or cause all of its plant and facilities connected to the related Facilities to be removed at its expense or may, if Licensor agrees, abandon such plant and facilities in place. If Licensee abandons any of such plant and facilities, Licensor may, within eighteen (18) months of its receipt of such notice, remove the abandoned plant and facilities and bill Licensee for the costs incurred by it which are reasonably allocable to the removal of such plant and facilities, which bill shall be payable within thirty (30) days of receipt.

(b) Licensor. If any governmental agency or third party institutes proceedings to impose any public utility or common carrier status or obligations on Licensor or the use of Licensor's capacity or facilities as a

result of its performance of this Agreement, or if any action is brought by any third party challenging the continued validity or seeking to adversely modify, suspend or revoke Licensor's operating authority for all or any part of its services or System as a result of its or Licensee's performance of this Agreement, or if, as a result of any change in applicable law or regulation (or in judicial or other official interpretations thereof), Licensor reasonably deems that such a proceeding is likely and has a significant possibility of success on the merits, Licensor may, without further liability to Licensee, upon one hundred eighty (180) days written notice, terminate this Agreement as a whole without cause; provided, however that Licensor shall not terminate this Agreement or any Capacity provided by it during the pendency of such proceedings or actions if Licensee agrees to indemnify and hold harmless Licensor (pursuant to an indemnification agreement in form and substance reasonably satisfactory to Licensor) against all liability, claims, fines or damages (including reasonable attorneys' fees) incurred by Licensor as a result of Licensee's continued operations and use of the Capacity unless (x) Licensor is required to do so by a valid and final order of a court of competent jurisdiction, or (y) in Licensor's opinion, continued performance or activity by Licensee under the terms of this Agreement would have a present or future material adverse effect on the local cable or other operations of Licensor, its financial condition or operating condition or is reasonably likely to result in the imposition of public utility or common carrier status on Licensor or an adverse modification, suspension or revocation of such Licensor's operating authority for its services or its System or the forfeiture of any portion of the System. Licensor shall control the defense, prosecution and settlement of such claim or demand but shall allow Licensee the opportunity to participate in such defense through counsel of its own choosing, which participation will be at the sole expense of Licensee. If the proceedings or actions would in any event affect only a portion of the Capacity, Licensor will instead terminate only the license of the Capacity that is affected thereby. Upon the effective date of such a termination, Licensee shall terminate its use of the Capacity, remove its plant and equipment (or abandon the same as provided in Section 26(a) above), and cease operations over such Capacity.

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27. Force Majeure Events. Neither party shall be liable to the other for any failure of performance under this Agreement due to causes beyond its control, including but not limited to: acts of God, fire, flood or other catastrophes; any law, order, regulation, direction, action or request of the United States government, or of any other government, including state and local governments having or claiming jurisdiction over such party, or of any department, agency, commission, bureau, corporation or other instrumentality of any one or more of these federal, state or local governments, or of any civil or military authority; national emergencies; unavailability of materials or rights-of-way; insurrections; riots; wars; or strikes, lock-outs, or work stoppages (collectively, "force majeure events"). If a force majeure event continues for more than 60 days in effect, the party who has not been receiving performance shall be entitled to terminate any the License of specific Capacity affected by such force majeure event, upon written notice to the other party.

28. Orderly Termination: Return of Facilities. Upon termination of this Agreement in whole or with respect to any specific Capacity (other than expiration of the term thereof under Section 4(c)), Licensor and Licensee agree to cooperate in good faith to effect an orderly transition of any Telecommunications Services provided over such Capacity. Without limitation, Licensor hereby agrees that notwithstanding such termination it will, to the extent permitted by applicable law and regulation and governmental authority, (i) continue to make available to Licensee any portions of the Capacity at the rates specified herein which Licensee reasonably requires to fulfill its obligations under existing customer agreements for a period up to three months after such termination in the case of a termination for Licensee's default, or twelve (12) months after such termination in all other cases, and (ii) upon termination under Section 4(c), negotiate agreements with Licensee that are reasonable in the independent judgment of Licensor and Licensee, pursuant to which such Licensor may provide fiber optic facilities to Licensee in order for

Licensee to provide telecommunications services in the Service Area. Unless any alternate arrangements are otherwise agreed, upon termination and expiration of the applicable transition period, Licensee shall at its expense remove or cause to be removed all of its plant and facilities connected to the Facilities, or may, if Licensor agrees, abandon such plant and facilities in place in accordance with Section 26(a).

29. Network Architecture and Diversity. The parties shall consult and cooperate with each other with regard to all technical matters relating to network architecture, diversity and related matters. Each party will designate a technical engineering representative and each agrees to inform the other party of all its construction plans as in effect from time to time.

30. Additional Obligations of Licensee. In addition to the obligations of Licensee set forth elsewhere in this Agreement, Licensee shall:

(a) have full and complete control, responsibility and liability for the signals distributed over the Capacity by Licensee or for its benefit;

(b) have full and complete control, responsibility and liability for the purchase, installation, construction and maintenance of the terminals and peripheral equipment connected to the Capacity utilized by Licensee, provided that such equipment shall not be located in public rights of way without Licensee having obtained all necessary rights to utilize such rights of way;

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(c) employ its own employees, agents and/or independent contractors in the handling, storage, retrieval, processing, transmitting, and/or receiving of any electronic signals distributed over the Capacity;

(d) provide all commercial or other power supplies for the operation of the Capacity (or, if agreed by Licensor and Licensee, Licensee shall instead bear its Allocated Cost share of Licensor's costs for power supplies), terminals and peripheral equipment or facilities used with or connected to any System and located on Licensee's, or its customers', premises; and

(e) have full and complete control, responsibility and liability for maintaining any operating authority from any Federal, state or local governmental body or agency that relates to the activities of Licensee under this Agreement, including Lessee's utilization of Capacity.

31. Interest. All payments due from either party to the other under the terms of this Agreement which are not paid when due shall bear interest from the due date until paid at an interest rate equal to the then-current Time Warner intercompany rate, if both Licensee and Licensor are then Time Warner affiliates, or if not, the lesser of 1 1/2% per month or the maximum lawful rate permitted by law.

32. Assignment. Other than as set forth herein, the rights, privileges and obligations of either party hereunder may not be subleased, sublicensed, assigned or delegated or otherwise transferred or extended to another party, in whole or in any part, and any such attempted sublease, sublicense, assignment, delegation or transfer or extension shall be null and void. Licensor or Licensee may, however, assign or transfer this Agreement, in whole or in part, to any affiliate controlling, controlled by or under common control with their respective parent companies, without approval of the other, upon 30 days notice, provided such affiliate continues to be under the common control of Licensor's or Licensee's parent company (as the case may be). Further, Licensor may assign, delegate or otherwise transfer its rights and obligations under this Agreement, or any portion thereof, without Licensee's consent, in connection with a sale, assignment or other transfer of all or substantially all of the System (or any individual cable system within the System), and its business, assets or equity

interests in connection therewith; provided that such transferee agrees in writing to assume all of the obligations of Licensor hereunder with regard to such System (or portion thereof); and provided further that upon such assumption Licensor shall be released from any obligation with regard to the subsequent performance of obligations hereunder regarding Capacity or Facilities included in the transferred System (or portion thereof).

33. Miscellaneous.

(a) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument; and in pleading or proving any provision of this Agreement, it shall not be necessary to produce more than one complete set of such counterparts.

(b) Captions: Gender. Article and section headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. Whenever used herein the singular number shall include the

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plural, the plural shall include the singular, and the use of any gender shall include all genders.

(c) Governing Law and Binding Effect. This Agreement shall be governed by and construed and enforced in accordance with the law (other than the law governing conflicts of law questions) and decisions of the State of New York applicable to contracts made and to be performed entirely therein. This

Agreement shall bind and inure to the benefit of each of the parties and their successors and permitted assigns.

(d) Waivers and Amendments. This Agreement may not be amended nor shall any waiver, change, modification, consent or discharge be effected, except by an instrument in writing adopted, in the case of an amendment, by each party and, in the case of a waiver, consent or discharge, executed by the party against whom enforcement of such instrument is sought. Any consent by either party to, or waiver of, a breach by the other party shall not constitute a waiver or consent to any subsequent or different breach. If either party shall fail to enforce a breach of this Agreement by the other party, such failure to enforce shall not be considered a consent to or a waiver of said breach or any subsequent breach for any purpose whatsoever.

(e) Relationship Not a Partnership or an Agency. Nothing contained in this Agreement shall be deemed to constitute a partnership, joint venture or agency agreement between parties.

(f) DISCLAIMERS. THERE ARE NO AGREEMENTS, WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR USE, EXCEPT THOSE EXPRESSLY SET FORTH HEREIN.

(g) Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule or law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner adverse to either party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the greatest extent possible.

(h) Further Assurances. Each party agrees to execute all such

further instruments and documents and to take all such further actions as the other party may reasonably request in order to effectuate the terms and purposes of this Agreement.

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SCHEDULE OF SIGNATORIES
TO
CAPACITY LICENSE AGREEMENT
MASTER TERMS AND CONDITIONS

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LANDLORD:

TENANT:

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1)Albany Division,
Time Warner Entertainment-
Advance/Newhouse

Time Warner AXS of Albany, L.P.

2)Austin Division
Time Warner Entertainment-
of Austin, L.P.

Time Warner Communications
of Austin, L.P.

3)Binghamton Division,
Time Warner Entertainment-
Advance/Newhouse

Time Warner AXS of Albany, L.P.

4)Charlotte Division,

Time Warner Communications of

Time Warner Entertainment- Advance/Newhouse	North Carolina, L.P.
5) Cincinnati Division of Time Warner Cable, Time Warner Entertainment Company, L.P.	Time Warner AXS of Greater Cincinnati, L.P.
6) Columbus Division of Time Warner Cable, Time Warner Entertainment Company, L.P.	Time Warner AXS of Columbus, L.P.
7) Greensboro Division, Time Warner Entertainment- Advance/Newhouse	Time Warner Communications of North Carolina, L.P.
8) Hawaii Division of Time Warner Cable, Time Warner Entertainment Company, L.P.	Time Warner Communications of Hawaii, L.P.
9) Houston Division, Time Warner Entertainment- Advance/Newhouse	Time Warner Communications of Houston, L.P.
10) Indianapolis Division, Time Warner Entertainment- Advance/Newhouse	Time Warner Communications of Indiana, L.P.
11) Memphis Division of of Time Warner Cable, Time Warner Entertainment Company, L.P.	Time Warner Communications of The Mid-South, L.P.
12) Milwaukee Division of Time Warner Cable, Time Warner	Time Warner Communications of Milwaukee, L.P.

Entertainment Company, L.P.

13)New York Division of Time Warner Cable, Time Warner Entertainment Company, L.P.	Time Warner AXS of New York City
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14)Florida Division, Time Warner Entertainment- Advance/Newhouse	Time Warner AXS of Florida, L.P.
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15)Raleigh/Durham/Chapel Hill Division, Time Warner Entertainment- Advance/Newhouse	Time Warner Communications of North Carolina, L.P.
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16)Rochester Division, Time Warner Entertainment- Advance/Newhouse	Time Warner AXS of Rochester, L.P.
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17)San Antonio Division, KBL Cablesystems of the Southwest, Inc.	Fibrcom, Inc.
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18)San Diego Division, Time Warner Entertainment- Advance/Newhouse	Time Warner AXS of California, L.P.
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19)Tampa Division, Time Warner Entertainment-	Time Warner AXS of Florida, L.P.
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Advance/Newhouse
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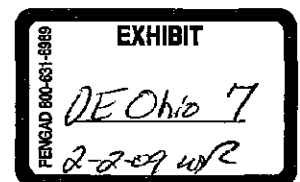
POLE ATTACHMENT TARIFF

The yearly charge of \$4.69 per pole, occupied or reserved at Attachee's request, shall be made for the communications system attachment of any necessary contact on a pole to accommodate a single messenger's strand (support wire) system, with or without communication cable(s) lashed to it, including service drops and multiple contacts where required for construction on this single messenger strand system or a single self supporting wire or cable, to any of the Company's poles by any person or entity other than a public utility that is authorized and has obtained, under law, any necessary public or private authorization and permission to construct and maintain the communications attachment, so long as the attachment does not interfere, obstruct, or delay the service and operation of the Company's electric system, or create a hazard to safety. Attachee shall pay Company on or before January 10 of each year, or within thirty days of an invoice date, whichever is later, the above charge per pole as that rate may by law be modified from time to time, for every pole occupied or reserved at any time during the prior year.

Nothing herein shall be construed as a waiver by the Company of its property rights in its poles or facilities appendant thereto, and the Company reserves complete authority, at its sole option, to decline access, as permitted by law, to its poles or to require removal of any wire, cable, facility or apparatus thereon.

The Company has heretofore entered into, or may in the future enter into, agreements or arrangements with others not covered by this tariff. Nothing herein shall be construed as a limitation, restriction or prohibition against the Company with respect to such other agreements and arrangements. The rights of any Attachee shall at all times be subject to any present or future arrangement between the Company and any other public utility or governmental body.

Terms and conditions for such attachments are as follows:



POLE ATTACHMENT TARIFF

TERMS AND CONDITIONS

The Company may require a formal contractual agreement with Attachee, which will depict the geographical area in which attachments are to be made and must be executed prior to the acceptance by Company of any proposals for specific pole attachments. The agreement required by the Company may include, but is not limited to, the following terms and conditions:

- A. Written Consent of Company: Attachee shall place no attachments on any of the Company's pates without the written consent of Company. The Company is under no obligation to give consent, but such consent shall not be unreasonably withheld.
- B. Location and Nature of Attachments: As specified in the agreement.
- C. Grace Period for Drop Wire Attachments: As specified in the agreement.
- D. Right of Company to Allocate Space: As specified in the agreement.
- E. Attachment Height and Code Compliance: As specified in the agreement.
- F. Time Frame for Application Review: As specified in the agreement.
- G. Charge for Extra Height or Strength: In any case where the Company installs a new pole, initially or as a replacement, to be used by Attachee, and judges it necessary, in order to accommodate the attachments of the Attachee, that such pole be tatter and/or stronger than one which it would install for its own use, or when Attachee requests the installation of a taller and/or stronger pole and the Company accedes to such request, the estimated cost of such extra height and/or strength shall be paid-in advance by the Attachee. Such cost shall be the difference between the estimated cost in place of the new pole and the estimated cost in place of a pole considered by the Company to be adequate for the attachments of the Company and shall be calculated as specified in the agreement.

Such pole shall be the sole property of the Company.

- H. Charge for New Poles or Alteration of Company Facilities: Whenever a new pole is to be installed by the Company as a replacement for an existing pole, and such existing pole is one which in the Company's sole judgment would otherwise not need to be replaced to provide for the requirements of the Company, Attachee agrees to pay in advance to the Company, in addition to the amount provided for in Section G, a sum equal to the then present value in place of the pole which is replaced, plus the estimated cost of its removal, minus the salvage value of the removed pole. Said calculation, where applicable, shall be calculated as specified in the agreement.

Attachee further agrees to pay in advance to the Company the estimated cost to the Company of moving, removing, rearranging or altering the existing facilities of the Company which were necessitated by the pole replacement.

Such pole shall be the sole property of the Company.

- I. Precautions to be Undertaken by Attachee: As specified in the agreement.
- J. Present and Future Use of Company Facilities: As between Attachee and Company, the Company shall be the sole judge of its requirements for present and future use of its poles and attachments, and the present and future use of the attachments to the Company's poles by any other Attachee of the Company, and of any interference with such use or uses.
- K. Charge for Guying and Support Structures: Attachee shall pay in advance to the Company the estimated cost of any new or additional guying or support structures which in the Company's sole judgment are made necessary by the installation and maintenance of Attachee's attachments on new or existing poles of the Company.
- L. Charge for Company Inspection: The Company shall have the right to inspect each new installation of Attachee on the Company's poles and thereafter to make periodic inspections as conditions may warrant.

Upon request, Attachee shall reimburse the Company for the cost of such inspections.

The Company's right to make such inspections and its failure to draw Attachee's attention to any defects, hazards or failure to comply with standards, whether or not observed by the Company on inspection, shall not relieve Attachee of any responsibility, obligation or liability assumed under the agreement.

- M. Charge for Unauthorized Attachment: When any unauthorized contact is found, Attachee shall pay to the Company for each unauthorized contact a charge based on two times the normal rental rate per pole per year starting from the date the attachment was made or any higher rate provided for in the Company's filed and approved tariff which is amended from time to time.

If the Attachee is unable to document the date of attachment, the parties mutually agree that the period shall be fixed at the lesser of five years, or the date of an initial agreement between the parties (including those obtained through assignment). All unauthorized contacts shall carry a minimum one year charge.

- N. Charge for Late Payment: If any payment due under the agreement is not received at the Company's offices on or before the date prescribed, an additional amount equal to a monthly charge of 1.5%, or any higher amount provided for in the Company's filed and approved tariffs which are amended from time to time, shall be charged on any unpaid balance existing after this date.

- O. Interference or Hazards: Whenever the Company notifies Attachee in writing that any attachments of Attachee interfere with the operation of equipment of the Company, or constitute a hazard to the service rendered by the Company, or fail to comply with codes or regulations hereinbefore mentioned, Attachee shall, within thirty (30) days of the date of such written notification, or within such longer period of time as provided for therein, move, remove, rearrange, or alter its attachments so as to meet the requirements or codes and regulations hereinbefore mentioned and the requirements of the Company.

In the event that Attachee fails to move, remove, rearrange or alter its attachments within the time frame herein provided, the Company at its option, shall have the right, without liability to Attachee or any of its subscribers, to move, remove, rearrange or alter said attachments, or make arrangements therefor. The costs of such activities shall be borne by Attachee.

- P. Emergencies: In case of circumstances which in the Company's sole judgment constitute an emergency, the Company reserves the right, without liability to Attachee or any of its subscribers, to move, remove, rearrange or alter said attachments of Attachee, or make arrangements therefor. The cost of such activities shall be borne by Attachee.

- Q. Discontinuance of Attachment: The Company reserves the right, without liability to Attachee, to discontinue the use of, remove, replace, or alter the location of any or all of its poles or facilities, regardless of any occupancy by Attachee on any of the Company's poles.

Attachee shall, at its sole cost and within thirty (30) days of the date of written notification from the Company, or within such longer period of time as provided for therein, move, remove, rearrange, or alter any of its attachments as shall be required by such action of the Company.

In the event that Attachee fails to move, remove, rearrange or alter its attachments within the time frame herein provided, the Company, at its option, shall have the right, without liability to Attachee or any of its subscribers, to move, remove, rearrange or alter said attachments, or make arrangements therefor. The costs of such activities shall be borne by Attachee.

- R. Charge for Removing Attachment: Attachee may at any time abandon the use of a pole to which it has made an attachment under the agreement by removing from such pole all of its attachments and by giving written notice thereof to the Company.

If by reason of removing attachments, Attachee causes the Company to incur any costs, Attachee shall reimburse the Company for all such costs;

- S. Indemnification: Attachee hereby agrees to indemnify, hold harmless, and defend the Company from and against any and all actions or causes of action, claims, demands, liabilities, losses, costs, damages or expenses of any kind whatsoever, including attorney's fees, which the Company may suffer or incur by reason of the failure of Attachee to secure any right, license, permit or easement required for the construction or maintenance of Attachee's attachments to the Company's poles, by reason of interruption of Attachee's service to Attachee's subscribers, by reason of interference with television reception of its subscribers or others, by reason of bodily injury, including death, to any person or persons, or by reason of damage to or destruction of any property, including the loss of use thereof, arising out of or in any manner connected with the facilities of Attachee to be installed hereunder, or the installation, maintenance, removal, rearrangement or alteration of Attachee's facilities by the Company, including removal or relocation of attachments by the Company under the provisions of the agreement, or which the Company may sustain or incur in connection with any litigation, investigation or other expenditures incident thereto, including any suit instituted to enforce the obligations of the agreement, unless caused by the sole negligence of the Company -or any of its representatives or employees.

Attachee, for itself, its successors, and permitted assigns, does hereby waive, as a complying employer, its immunity provided for under the Workers' Compensation Laws, with respect to damages, expenses or costs incurred or sustained by the Company that result from any of the claims, demands, liabilities, losses, costs, damages or expenses that may be asserted by an employee of Attachee against the Company as indicated above.

Approval of the above Tariff language by the Commission does not constitute a determination by the Commission as to whether the foregoing limitation of liability or waiver of immunity under the Workers' Compensation Laws should or should not be upheld in a court of law. Approval by the Commission merely recognizes that since it is a court's responsibility to adjudicate negligence and consequent damage claims, it is also the court's responsibility to determine the validity or invalidity of the foregoing limitation of liability and waiver of immunity clauses.

T. Insurance: Attachee shall obtain and maintain at all times, from and after acting upon the consent of the Company to place attachments on any poles, policies of insurance as required contractually by Company.

U. Filing of Insurance Certificates: As specified in the agreement.

V. Responsibility for any Rights, Easements, Licenses or Permits: Attachee shall obtain any right, license, easement or permit from any governmental body, authority or other person or persons which may be required for the construction and maintenance of attachments of Attachee.

The Company does not represent that it has or will have any easements, rights-of-way or franchises for the construction and maintenance of said attachments or for rights of entry upon premises for construction and maintenance of said attachments.

W. Reimbursements of other Users by Attachee: As specified in the agreement.

X. Charge for Work Performed by Company: Except as otherwise provided in the agreement, when Attachee is obligated hereunder to perform certain work on Attachee's facilities at its own expense and the Company and Attachee agree that it is preferable for the Company to perform the work, then the Company shall perform the work and Attachee shall promptly pay the full cost thereof.

Y. Procedures Upon Noncompliance or Default by Attachee: As specified in the agreement.

Z. Term of Agreement: The Company and Attachee may fix the term of their contractual agreement and may agree that upon notice from or to the Company, Attachee shall proceed to remove its attachments from the Company's poles without undue delay and shall complete such removal prior to the specified termination date.

AA. Assignment: As specified in the agreement.

BB. Miscellaneous, Other: As specified in the agreement.