

February 1, 2005

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Re: UM 1191 – QWEST CORPORATION vs. CENTRAL ELECTRIC
COOPERATIVE, INC.

The Commission has assigned Docket No. UM 1191 to the above-referenced complaint against Central Electric Cooperative (Central). You should use this number whenever you refer to this case.

Pursuant to ORS 756.512(1), the Commission has served a copy of your client's Complaint on Central.

Central has until February 22, 2005, to file their Answer pursuant to OAR 860-013-0050(a). After the filing of the answer, the matter will be set for hearing and you will be notified of the time and place.

PUBLIC UTILITY COMMISSION OF OREGON

Cheryl Walker
Administrative Specialist 2
Administrative Hearings Division
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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1191

Martin Hansen
Frances Hansen & Martin LLP
1148 NW Hill Street
Bend, Oregon 97701

QWEST CORPORATION,

Complainant,

vs.

CENTRAL ELECTRIC COOPERATIVE, INC.,

Defendant.

A copy of a complaint filed against Central Electric Cooperative, Inc. is enclosed pursuant to ORS 756.512(1).

The Public Utility Commission must receive an Answer from the defendant or its attorneys by February 22, 2005, pursuant to OAR 860-013-0050(a). A copy should also be served on the complainant.

After the filing of the answer, the matter will be set for hearing and you will be notified of the time and place.

PUBLIC UTILITY COMMISSION OF OREGON

Cheryl Walker
Administrative Specialist 2
Administrative Hearings Division

Electronically served and mailed at Salem, Oregon, February 1, 2005.

1
2
3 **BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON**

4 **DOCKET NO. _____**

5 QWEST CORPORATION

6 Complainant,

7 v.

8 CENTRAL ELECTRIC COOPERATIVE, INC.,

9 Defendant.

COMPLAINT

(Unjust, Unfair, and Unreasonable Pole Attachment Contract Terms Under ORS 756.500 and 757.279)

EXPEDITED CONSIDERATION REQUESTED

10
11 Complainant, Qwest Corporation ("Qwest"), hereby alleges as follows:

12 **PARTIES**

13 **1.**

14 At all material times, Qwest was and is a corporation organized under the laws of the
15 State of Colorado. Qwest provides telecommunications and other services throughout much of
16 the state of Oregon, including Central Oregon.

17 **2.**

18 At all material times, Defendant was and is an electric cooperative organized under
19 ORS Chapter 62. Defendant's headquarters is in Redmond, Oregon. Defendant provides electric
20 service in Central Oregon and, on information and belief, owns poles in Deschutes, Crook,
21 Jefferson, Grant, Lake, Wasco, and Linn Counties in Oregon.

22 **3.**

23 On information and belief, Quantum Communications LLC is a subsidiary, affiliate,
24 division of Defendant, or another related entity. Like Defendant, Quantum Communications
25 LLC's headquarters is in Redmond, and its registered agent is Martin E. Hansen, counsel of
26

1 record for Central Electric. On information and belief, Quantum Communications LLC provides
2 services in competition with Qwest in Central Oregon.

3 **4.**

4 The contact information for the parties to be served is as follows:

5 **Qwest**

6 **Central Electric**

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12 Leslie Kelly
13 Leslie.Kelly@qwest.com
14 Qwest Communications International Inc.
15 1801 California Street
16 Denver, CO 80202
17 Phone: (303) 896-9206

18 **JURISDICTION**

19 **5.**

20 Defendant is a "consumer-owned utility" as that term is defined in ORS 757.270(2).
21 Therefore, Defendant's activities relating to pole attachment rates, terms, and conditions are
22 regulated under ORS 757.276, jurisdiction for the enforcement or regulation of which is
23 conferred upon the Commission.

24 **6.**

25 Qwest is a telecommunications utility in Oregon.

26 **7.**

The Commission has jurisdiction to hear this Complaint under ORS 757.279.

1 **CLAIM FOR RELIEF**

2 **8.**

3 On or about July 20, 2004, Defendant sent to Qwest a document titled "Standard Joint
4 Use Agreement." Defendant wrote that the proposed agreement was based on the "template"
5 developed by members of the Oregon Rural Electric Cooperative Association. Although
6 Defendant claimed to welcome revisions or comments, it also stated that "we do not anticipate
7 any major revisions to the document," indicating that it was not, in fact, receptive to any
8 significant changes. A true and correct copy is attached hereto as Exhibit 2.¹

9 **9.**

10 Certain terms, conditions, and rates in the "Standard Joint Use Agreement" are unjust,
11 unfair, and unreasonable and therefore violate state law governing pole attachments. Qwest
12 revised the proposed agreement and returned it to Defendant on or about December 6, 2004.
13 Qwest indicated that it would be willing to execute the revised agreement after some provisions
14 were clarified as requested in Qwest's revisions. A copy of the agreement as revised by Qwest
15 and sent to Defendant is attached hereto as Exhibit 3.

16 **10.**

17 For more than five weeks, Defendant did not respond to Qwest's revisions despite
18 repeated requests. Qwest was forced to give Defendant a deadline of January 14, 2005 to
19 respond or Qwest would file a complaint with the Commission to set the terms, conditions, and
20 rates of the joint use agreement between the parties.

21 **11.**

22 On January 13, 2005, Defendant sent Qwest a joint use agreement that was substantially
23 different from Defendant's first version. Defendant stated:
24

25 _____
26 ¹ Exhibit 1 is the agreement that Qwest believes is just, fair, and reasonable and that the
Commission should adopt. *See* Paragraph 17, *infra*.

1 My client has been negotiating with other companies who have
2 attachments to CEC's poles. As a result, we have found a few changes to
3 our proposed agreement that we are willing to accept. While the first
4 agreement proposed to Qwest is still acceptable to CEC, I am enclosing
with this letter the final version of CEC's Joint Pole Agreement.
(Emphasis in original.)

5 A copy of the second agreement that Defendant sent Qwest is attached hereto as Exhibit 4. Thus,
6 Defendant demanded that Qwest sign either the first version or the new second version.

7 **12.**

8 The second agreement that Defendant sent Qwest includes terms, conditions, and rates
9 that are unjust, unfair, and unreasonable; therefore, it violates state law governing pole
10 attachments.

11 **13.**

12 Despite Defendant's refusal to negotiate in good faith, Qwest revised the second
13 agreement in a manner that was acceptable to Qwest and consistent with state law, including
14 Commission precedent in Docket UM 1087, and returned it to Defendant. A copy of the second
15 agreement as revised by Qwest is attached hereto as Exhibit 5.

16 **14.**

17 Defendant has not responded to Qwest's revised proposed agreement.

18 **15.**

19 Defendant has demanded rates, terms, or conditions in connection with attachments or
20 availability of surplus space for such attachments that are unjust and unreasonable in violation of
21 ORS 757.279.

22 **16.**

23 Qwest is entitled to a determination by the Commission after a full evidentiary hearing of
24 just, fair, and reasonable rates, terms, and conditions to govern the parties' joint pole use.

25 **17.**

1 For the Commission's convenience, Qwest attaches as Appendix A a matrix that sets forth
2 the disputed language of the substantial provisions at issue and explains why Qwest's proposed
3 language is just, fair, and reasonable. Some of the contract provisions underlying the matrix are
4 slightly modified from the version Qwest sent to Defendant on January 26, 2005 and are a result
5 of further analysis by Qwest. The contract that Qwest believes is just, fair, and reasonable is
6 attached hereto as Exhibit 1.

7 **18.**

8 Qwest files this Complaint to preserve and protect its rights under current Oregon statutes
9 and Commission regulations governing pole attachments. As it was before the filing of this
10 Complaint, Qwest is willing to negotiate rates, terms, and conditions with Defendant during this
11 proceeding, to the extent that Defendant will cooperate, in an effort to eliminate and narrow the
12 issues to be decided by the Commission at hearing.

13 **JUSTIFICATION FOR EXPEDITED CONSIDERATION**

14 **19.**

15 Defendant has claimed that Qwest does not have a contract with Defendant that governs
16 joint use of Defendant's poles and, therefore, Qwest is in violation of Commission regulations
17 and is subject to sanctions as set forth in OAR 860-028-0130. On December 23, 2004, after
18 Qwest had sent Defendant its revisions to the first agreement but before Defendant responded,
19 Defendant sued Qwest in Deschutes County Circuit Court for sanctions. Qwest removed that
20 case, which is now before the United States District Court for the District of Oregon and is titled
21 *Central Electric Cooperative v. US WEST, Inc.*, Case No. 05-CV-6017-AA. Qwest disputes
22 Defendant's claims and asserts that the parties have a joint use contract and that sanctions are not
23 justified. That dispute is pending before the District Court and is not at issue here, and Qwest
24 does not ask the Commission to decide any issue relating to that dispute.

25 **20.**

26 Qwest is required to continue to place attachments on Defendant's poles so that it may

1 satisfy its obligations as the incumbent local exchange carrier in Central Electric's territory.
2 Defendant is using its status as the predominant pole owner in the area to demand and exact
3 unjust, unfair, and unreasonable contract terms and conditions, and its actions are contrary to and
4 harmful of the public interest.

5 **21.**

6 The Commission should expedite consideration of this Complaint to set the terms,
7 conditions, and rates governing the parties' joint use of poles as soon as possible to avoid any
8 continuing harm to Qwest and its customers from Defendant's refusal to negotiate in good faith
9 and its demand for unjust, unfair, and unreasonable terms, conditions, and rates.

10 WHEREFORE, Qwest requests relief as follows:

- 11 1. For an Order granting expedited consideration of this Complaint;
12 2. For an Order from the Commission determining the just and reasonable rates,
13 terms, and conditions for joint pole use between Qwest and Defendant and fixing the same, as set
14 forth in Exhibit 1 hereto; and
15 3. Any other and further relief the Commission deems appropriate.

16 DATED: January 28, 2005.

17 **PERKINS COIE LLP**

18
19 By 

20 Lawrence H. Reichman, OSB No. 86083
21 John P. (Jay) Nusbaum, OSB No. 96378
22 Tel: 503-727-2000
23 Fax: 503-727-2222

24 Leslie Kelly (to be admitted pro hac vice)
25 Qwest Communications International Inc.
26 1801 California Street
Denver, CO 80202

Attorneys for Complainant Qwest Corporation

Disputed Language ¹	Explanation ²
<p><u>(1)(a) Applicable law:</u> All valid and effective applicable federal, state, and local laws, rules, regulations, as may be amended and all orders of courts and governmental agencies with jurisdiction over the matters set forth in this Agreement. <u>Nothing contained herein shall substitute for or be deemed a waiver of the parties' respective rights and obligations under applicable federal, state and local laws, regulations and guidelines, including (without limitation) Section 224 of the Communications Act of 1934, as amended (47 U.S.C. 224).</u></p>	<p>As with other agreements, the law governing the parties' relationship should be defined to avoid ambiguity.</p>
<p><u>(b) (b) Application:</u> A written and/or electronic request by a Licensee for a permit to attach to <u>Licensors</u> a pole <u>accompanied with the required fees.</u></p>	<p>In some cases, there may be no need for an application to be accompanied by a fee. Moreover, the industry standard is to pay as invoiced, as Qwest has done throughout its relationship with CEC.</p>
<p><u>(c) (c) Basic Pole:</u> A 40' pole, or as otherwise <u>determined</u> agreed to by the <u>Licensors</u>, parties. This definition is used solely for the purpose of computing pole rental rates.</p>	<p>Discretion to unilaterally change the dimensions of the pole upon which the rental rate is based renders the provision illusory. The PUC disapproved of such discretionary provisions in <i>Central Lincoln PUD v. Verizon</i>, Docket UM 1087, Order No. 05-042.</p>

¹ Because CEC will not negotiate with Qwest, Qwest assumes, but does not know, that the terms are disputed. If CEC does not dispute such language, Qwest will remove the provision from the Commission's consideration before hearing. Moreover, this matrix is intended as an aid to the Commission and is not intended to be a comprehensive list of every revised provision. Because of the length of the contract, Qwest sets forth herein only the terms that it considers to be significant and does not set forth minor revised provisions. That does not mean, however, that such terms will not be submitted for consideration. Qwest reserves the right to submit any and all provisions in Exhibit 1 for consideration by the Commission. Finally, this matrix does not reflect CEC's terms that Qwest accepted with little or no substantive revisions.

Qwest provides explanations where the provisions are significant and the changes are not necessarily self-explanatory. To the extent explanations for other terms would be helpful, Qwest is willing to provide them.

² CEC's original language, whether from the first or second version of its pole attachment agreement, is shown as struck, except where Qwest accepts such language. Qwest's proposed language is underlined.

Disputed Language ¹	Explanation ²
<p>(d) Inspection. The examination by Licensor of Licensor's pole or poles occupied by Licensee and any of Licensee's Attachments or equipment situated upon or in the vicinity of such poles for the purpose of: i) verifying the number and location of all Attachments and any other pole-mounted equipment of Licensee, or ii) determining whether Licensee is in compliance with the requirements and specifications of Section 3 or any other obligations of Licensee under the terms of this Agreement.</p>	<p>Inspections are addressed later in the agreement.</p>
<p>(h) Pole-Joint Use Pole: (h) Joint Use Pole: A utility pole owned and maintained by Licensor and shared with another utility entity not Licensee, or a utility pole owned by an entity other than Licensor but used jointly by Licensor. A utility pole owned and maintained solely by Licensor and used jointly by Licensee.</p>	<p>The definition of joint use pole should include joint use between the parties.</p>
<p>(e) National Joint Utility Notification System ("NJUNS"): NJUNS is the electronic system used by Licensor that Licensee will utilize to submit applications for permission to attach, relocate, or remove equipment or attachments under the terms of this Agreement, and to respond to Licensor upon a request for work to be performed by Licensee. It is also the system that Licensor will utilize to initiate pole transfers, and to respond to Licensee's applications. (f) National Joint Utility Notification System. NJUNS is the electronic system used by Licensor that Licensee will utilize to submit applications for permission to attach, relocate, or remove equipment or attachments under the terms of this Agreement, and to respond to Licensor upon a request for work to be performed by Licensee.</p>	<p>For uniformity and ease, both parties should be required to use NJUNS to communicate with each other regarding pole transfers and applications.</p>
<p>(e) Pole Contact: (f) Pole Attachment: An Attachment attachment by the Licensee to the pole, falling into one of the following categories: Licensor's pole.</p>	
<p>1. The type of Attachments requiring permits and rental fees. Includes the following: an application, permit, and associated fees include but are not limited to the following:</p>	
<ul style="list-style-type: none"> • Initial bolt Attachment attachment inside the Telecommunications sSpace 	
<ul style="list-style-type: none"> • Additional bolt Attachments or other facilities attachment attached to the pole inside the Telecommunications Space 	<p>Because the agreement is reciprocal, it should address CEC's attachments to Qwest's poles.</p>
<p>Support Equipment (i.e., guy wires attached to owner Licensor anchor) Attachments inside the Power Space</p>	
<p>2. Attachments requiring permits but no additional rental fee. Includes the following:</p>	
<ul style="list-style-type: none"> • Overlashing on own equipment • Reconductoring 	

Disputed Language ¹	Explanation ²
<p>3.* Attachments requiring notification of the pole owner, but not requiring a permit or fee. Includes the following:</p> <ul style="list-style-type: none"> • —New Licensee down guy attached to Licensee's or other's anchors • —Other large load items greater than 50 lbs or more than 1 cubic foot that licensee may hang on their communication lines • —New Licensee anchors 	
<p>4.* <u>Attachments not requiring notification, permits or fees.</u> Includes the following:</p> <ul style="list-style-type: none"> • <u>Off-pole installations such as Any modification of Licensee's equipment that increases the load on a pole as</u> <ul style="list-style-type: none"> ○ <u>Mid-span drops</u> ○ <u>Terminals</u> ○ <u>Taps</u> ○ <u>Amplifiers</u> ○ <u>Snow shoes</u> ○ <u>Splice enclosures</u> ○ <u>Wind Dampeners</u> ○ <u>Mid-span crossovers</u> 	
<p>* Licensee may charge rental fee and/or require permit if attachments are not in compliance.* If Licensor believes that a Pole Attachment by Licensee does not fall within either of these two categories, it may notify Licensee promptly and the parties shall endeavor in good faith to resolve any disagreement about the Pole Attachment at issue. Once the parties have resolved any such disagreement and determined which of the above categories the Pole Attachment at issue belongs in, Licensee shall follow the requirements that relate to that Attachment as set forth above.</p>	<p>The original provision was ambiguous and appeared to give CEC discretion to unilaterally decide whether to charge a fee.</p>

Disputed Language ¹	Explanation ²
<p>(e) (1) Sanctions: A financial penalty as specified in OAR 860-028-0120 through 0190 set forth by the then-existing PUC regulations.</p>	<p>Because the referenced sanctions are set forth in the PUC rules and are applicable unless they are amended or deemed invalid, there is no need for this provision in the contract. This is especially true in light of Qwest's current challenge to the PUC's pole attachment penalty rules.</p>
<p>(g) Power Space: Any portion of a basic pole above the communications worker safety zone.</p>	<p>Because the agreement is reciprocal, it should address CEC's attachments to Qwest poles.</p>
<p>2. <u>Term of Agreement</u></p> <p>This Agreement shall continue in force and effect for a period of one (1) year from and after the date of this Agreement, and thereafter from year to year unless terminated by either party by giving written notice of its intention to do so not less than thirty (30) days prior to the end of any period. <u>3. Specifications:</u></p>	<p>Term and termination are addressed later in the agreement.</p>
<p>(a) <u>(a)</u> The joint use poles covered by this Agreement (a) The specifications of each party for the construction, operation, and maintenance of its respective poles and other facilities that are jointly used, or involved in joint use, shall be placed and maintained in accordance with the most accepted modern practices and shall be no less stringent than the requirements, specifications and rules as incorporated under applicable Oregon law and regulations of the latest addition of the National Electrical Safety Code (NESC), the Occupational Safety and Health Act (OSHA), the Oregon Public Utility Commission (OPUC), any governing authority having jurisdiction and the rules and practices of Licensee as set forth in Exhibit "B" attached hereto and made a part hereof; provided that in the event a lawful requirement of any governmental authority or agency having jurisdiction may be more stringent, the latter will govern, modification of, additions to, or construction practices supplementing the requirements of the NESC, wholly or in part, will also govern joint use of poles.</p>	<p>Language in this provision was taken from the pole attachment agreement tentatively approved by the PUC in <i>Central Lincoln PUD v. Verizon</i>, Docket UM 1087, Order No. 05-042, App. A (the "Verizon Agreement").</p>
<p>(b) <u>(b)</u> It is understood and agreed between the parties that the rules and practices set out in Exhibit "B" may be changed by Licensee, or new rules and practices may be adopted by Licensee, without resort to the provisions of Section 192, relating to supplementing or amending this Agreement, and Licensee agrees to be bound by any such change or adoption.</p>	<p>The pole owner should not have discretion to unilaterally change standards and practices; such discretion renders the provision illusory, and the PUC</p>

Disputed Language ¹	Explanation ²
<p>(b) (e) In the event that Licensor should change or adopt a rule or practice, or rules and practices, for the joint use of poles by Licensee, Licensor shall give Licensee written notice of such change or adoption in the manner contemplated by Section 222 and in the event that the above-referenced specifications should change, Licensee agrees to make such changes or alterations in its new facility installations or during maintenance of its existing facilities as may be required in order to fully comply with the provisions of such notice. In the absence of a contrary provision in said notice, Licensee agrees to make all required changes or alterations within thirty (30) days after receipt of the time specified by Licensor on new installations, and existing attachments shall be brought into conformity at the time of their normal replacement, rearrangement, rebuilding, or reconstruction, and whenever practicable.</p>	<p>It would be impractical and infeasible to require Qwest to change the 14,000 plus existing attachments to CEC poles when a standard changes. It is reasonable to require new attachments to conform to the new standards and for existing attachments to be brought into conformity as they are maintained.</p>
<p>(c) Licensee's attachments on a Licensor-owned pole shall be made and maintained in accordance with a reasonable aesthetic criteria mutually agreed to by both Parties. Such aesthetic criteria shall apply without being limited to the type and design of the attachment, circuit arrangements, conductor or cable sags, and service drop arrangements within the provisions of Section 4(b)(1).</p>	<p>This provision is taken from the Verizon Agreement and is an addition.</p>
<p>(d) (f) No tag, brand or other device showing Licensee's name or insignia shall be placed on, or attached to, any pole of Licensor, except such tag or insignia which shows Licensee to be the Licensee or lessee of such pole and not the owner thereof, and then only after obtaining the written consent of Licensor. Where required by the Licensee/Oregon Joint Use Association ("OJUA"), the Licensee agrees to attach information identifying its facilities on the pole, in a format specified by the Licensee/OJUA.</p>	<p>The OJUA is establishing tagging standards and, for uniformity, consistency, and efficiency, those standards should govern rather than potentially disparate standards set by pole owners.</p>
<p>(f) (f) Any unbalanced loading of Licensor's pole caused by the placement of Licensee's circuits shall be properly guyed and anchored by Licensee, to its own anchors at no expense to Licensor. When, in the opinion of both parties, existing anchors are adequate to support the equipment of both parties, Licensee may attach its guys thereto at no additional expense.</p>	<p>This provision reflects the provision addressing anchors in the Verizon Agreement and is reasonable.</p>
<p>34. Application for Attachment</p>	
<p>(a) Permit Application</p>	
<p>(a) When Required</p>	

Disputed Language ¹	Explanation ²
<p>Licensor shall not attach or modify any of its pole contacts <u>Pole Attachments</u> described in Section 1(e)(1) and (2) (except for service drops) to Licensor's poles or joint use poles on which Licensor has its pole contacts without first having made written and/or electronic application to Licensor together with payment of the required fees and having received written and/or electronic permission from Licensor. Permission to make pole contact Attachments described in the application may be granted or denied by Licensor in whole or in part at Licensor's sole discretion. A copy of the approved permit must be in the possession of the persons installing the Licensee's pole contact. Licensor's sole discretion limited only by the Telecommunications Act of 1996. However, if Licensee is required by Applicable Law to attach or modify such Pole Attachments within a certain time period, and it has applied for, but has not received permission from the Licensor before the expiration of this time period, then Licensee may attach or modify such Pole Attachments before receiving permission. Licensee must apply for a permit within seven (7) days of the Attachment attachment of a service drop and install the service drop in compliance with the Oregon Public Utility Commission Safety Rules; NES.</p>	<p>Qwest's revisions reflect industry standards and protect the public interest by permitting Qwest to fulfill its service obligations. CEC should not have the unfettered discretion to deny attachments. Moreover, throughout the parties' longstanding relationship, Qwest has not pre-paid its fees.</p>
<p>Attachments requiring permits and a rental fee (see definition) are subject to initial inspections at the discretion of the Licensor for as long as the Licensee demonstrates a pattern of non-compliance. All attachments are subject to periodic system inspections.</p>	<p>Inspection provisions are addressed in a later provision.</p>
<p>Attachments requiring permits but no additional rental fee (see definition) are subject to inspections based on a sample of not more than 25% of these installations so long as the Licensee demonstrates a pattern of compliance.</p>	
<p>All applications for Attachments shall be accompanied with the required application processing fee and pre and post inspection fees. Licensee shall be charged a fee for such application and inspections as set forth on Exhibit C, the Fee Schedule. No application shall be processed until all applicable fees are received.</p>	<p>Such fees should be incorporated in the annual rent.</p>
<p>(b) Application Procedure for Pole Attachments Described in Section 1(e)(1) and (2)</p>	
<p>1. Whenever Licensee desires to make a Pole Attachment described in Section 1(e)(1) and (2) to any Licensor pole, Licensee shall submit to Licensor a "Pole Attachment Ticket" electronically via NJUNS and/or written permit application and shall specify the location of the pole(s) on which attachment is requested and the number of contacts requested for each pole.</p>	
<p>2. Licensor reserves the right to reject or modify such application(s) where there is insufficient capacity or for reasons of safety, reliability, and generally applicable engineering purposes. Notwithstanding the foregoing, Licensor may reserve space on its poles if it projects a need for that space in the provision of its core utility service. Licensor shall permit use of its reserved space until such time as it has an actual need for that space. At that time, Licensor may recover the reserved space for its own use. Licensor shall give Licensee the opportunity to pay for any reasonable modifications needed to accommodate its displaced attachments.</p>	<p>Language in this provision is taken from the Verizon Agreement and strikes the appropriate balance between protecting the pole owner's right to reserve space and the</p>

Disputed Language ¹	Explanation ²
<p>2. Whenever until further notice, whenever Licensee desires to attach its pole contact to any Licensor pole, Licensee shall submit to Licensor a "Pole Attachment Ticket" electronically via The National Joint Utility Notification System (NJUNS) and/or written permit application and shall specify the location of and identifying number for the pole(s) on which a Attachment is requested and the number of contacts. Attachments for each pole. If in Licensor's judgment, the poles are necessary for Licensor's own use, or if joint use under the circumstances is undesirable, Licensor shall have the right to reject or modify the application. Licensor shall endeavor to respond to Licensee's application within thirty (30) forty-five (45) days of receipt. If the application is approved, Licensor shall notify the Licensee in writing and/or electronically via NJUNS's NJUNS of said approval and the Licensee shall have the right as a Licensee hereunder to affix such Attachments in accordance with the application, as approved, and in compliance with the specifications, terms and conditions of this Agreement. Any denial of an application shall identify the specific reasons for denial. If notice is not received from Licensor within thirty (30) days, the application shall be deemed approved and Licensee may proceed with the attachment. Any denial of an application by Licensor must be in writing and describe with specificity all relevant evidence and information supporting the denial and how such evidence and information relates to the lack of capacity, safety, reliability, or generally applicable engineering standards.</p>	<p>occupant's right to joint use.</p> <p>Language regarding denial and failure to respond to an application is taken from the Verizon Agreement and protects the public interest by furthering joint use.</p>
<p>4. With the exception of service drops or where elsewhere required by Applicable Law, Licensee shall not have the right to place, nor shall it place, any attachments in addition to that initially authorized without first making application and receiving permission to do so, nor shall Licensee change the position of any attachments to any pole without Licensor's prior written approval.</p>	<p>This language is taken from the Verizon Agreement.</p>
<p>(c) Application Planning</p> <p>Each application shall involve sufficient engineering and planning by the Licensee to ensure compliance with standards identified in Section 2.2(a) of this Agreement during construction and upon completion. The Licensee is responsible for conducting engineering studies of Licensee's facilities to ensure proper spacing, equipment bonding and clearances. The Licensee shall be responsible for ensuring engineering studies of pole and down guy strength requirements for horizontal and vertical loading. The Licensee will charge the Licensee a fee based on the actual costs of conducting pole, down guy and strength studies. pre and post inspection fee as set forth in Exhibit C, the Fee Schedule. The Licensee may elect in writing to allow the Licensee to conduct pole, down guy and strength studies.</p>	<p>CEC's proposed language is inconsistent with the Verizon Agreement.</p>
<p>The application shall include sufficient design drawings and specifications so that qualified personnel can safely make the attachments in compliance with the National Electrical Safety Code and joint pole attachment agreements. It is the responsibility of the Licensee to ensure that only trained, qualified persons work on Licensor's facilities. Qualified persons shall be knowledgeable in applicable National Electrical Safety Code/NESC rules and must be able</p>	<p>It would be unduly burdensome to require Qwest to give notice to Licensor of its compliance with NESC after every</p>

Disputed Language ¹	Explanation ²
<p>to demonstrate competence as required by the National Electrical Safety Code (NESC). They shall also be trained to recognize and prevent National Electrical Safety Code (NESC) violations and conflicts, and to maintain safe working clearances from energized lines and equipment. Upon completion of the installation, the Licensee shall give written certification of electronic notification to the Licensor that the facilities are complete and comply with the National Electrical Safety Code.</p>	<p>attachment.</p>
<p>(d) Installation Time Limits</p> <p>Licensor shall complete the installation of its aAttachment(s) attachments upon the pole(s) covered by each approved individual application within ninety (90) days of such approval. approval by Licensor. Licensor may request, in writing, an extension of time for installation of large projects subject to written approval by Licensor. Licensor shall approve such requests for extension of time unless Licensor identifies a reasonable justification for denial of such request. In the event Licensor should fail to complete the installation of the aAttachment(s) Pole Attachment(s) within the prescribed time limit, the permission granted by Licensor to place the aAttachment(s) Pole Attachment(s) upon the pole(s) poles shall thereupon be automatically revoked and Licensor shall not have the right to place the aAttachment(s) Pole Attachment(s) upon the pole(s) poles without first reapplying for and receiving written and/or electronic permission to do so.</p>	<p>The language regarding extensions for large jobs is taken from the Verizon Agreement and is reasonable because it limits the number of required applications.</p>
<p>(e) Make-ready Pole Replacements</p> <p>Whenever any pole to which Licensor seeks aAttachment attachment must be modified or replaced to accommodate Licensor's facilities and Licensor's existing aAttachments attachments necessary for its core function, as well as the aAttachments existing attachments of other occupants, Licensor will provide Licensor with a detailed <u>written</u> cost estimate of make-ready work it believes to be necessary to prepare the pole for Licensor's facilities. Licensor will provide Licensor with such estimate within sixty <u>sixty</u> (60) days of receiving Licensor's application for aAttachment attachment. After receiving this estimate, if Licensor still desires to make such aAttachments attachments, Licensor shall notify Licensor within fifteen <u>thirty</u> (30) days of receiving such estimate of such continuing desire to attach, and shall pay to Licensor <u>approve</u> any required advance <u>advance</u> payment to Licensor for such make-ready work, which may include engineering, materials (including poles and associated hardware), cost of removal (less any salvage value), and the expense of transferring Licensor's facilities from the old to the new pole(s). Where the advance <u>To the extent that actual costs to Licensor of make-ready work are anticipated to be greater than 110% of Licensor's estimate, these costs must be approved in writing by Licensor prior to the completion of the make-ready work.</u> Where any payment of estimated expenses made to Licensor by Licensor for both non-replacement make-ready or pole replacements is less than the <u>actual</u> cost of work described above, Licensor agrees to pay Licensor within forty-five <u>forty-five</u> (45) days of receipt of an invoice, all sums due in excess of the amount of the advanced payment within thirty <u>sixty</u> (60) days of receipt from the date of the invoice. Where the advance <u>up to the amount of the actual cost of the work, less any amount in excess of 110% of the cost estimate if that amount was not previously approved as provided above.</u> Where the payment of estimated expenses made to Licensor by Licensor exceeds such costs, Licensor agrees to refund the difference to Licensor within sixty <u>sixty-five</u> (60.5) days of</p>	<p>Qwest's revisions would require any make-ready work caused by CEC's modifications to its attachments to be related to CEC's core business and would not permit CEC to cause such make-ready work for modifications to non-utility attachments, such as attachments of any telecommunications provider affiliated with CEC. In addition, language in this provision is taken from the Verizon Agreement. Finally, Qwest believes that having the opportunity to approve any costs that go over 110% of the estimate is reasonable.</p>

Explanation ²	Disputed Language ¹
<p>Equipment associated with CEC's non-utility operations, such as the operations of an affiliated telecommunications provider, should not take priority over joint use.</p>	<p>completion of the make-ready work. The Licensee shall also make satisfactory arrangements with the owner or owners of other facilities attached to said poles for the transfer or rearrangement of such other facilities.</p> <p>(#)5. Non-Interference with Licensor Facilities</p> <p>Licensee at all times shall insure that its agents, servants, employees, and contractors or contractors' employees neither take, nor attempt to take any action whatsoever to Licensor's wires, as attachments attachments, and other facilities attached to or supported by poles covered by this Agreement. Each party shall exercise reasonable precautions to avoid damage to the facilities of the other. Licensee at all times reserves the right to maintain and operate its own equipment in such a manner as will best enable it to fulfill its own core utility service requirements and such requirements shall have priority over all pole occupants.</p>
	<p>47. Safety</p>

Disputed Language ¹	Explanation ²
<p><u>5. Inspections and Pole Attachment Survey</u></p> <p>(a) Inspections</p> <p>Licensor shall have the right to inspect each installation of Licensee's facilities upon and in the vicinity of such poles and to make periodic inspections of Licensee's facilities, as it deems necessary. Licensor reserves the right to perform an inspection of Licensee's Pole Attachments on Licensor's poles at any time. Licensor may charge Licensee for the expense of any field inspections. Licensee shall pay in advance to Licensor for all pre and post inspections including inspections for make-ready work, inspections during installation of Licensee's facilities and any further periodic inspections deemed necessary by Licensor, ready work pro-rata expense of any non-routine inspections during or after installation, in connection with Pole Attachments that do not comply with the terms of this Agreement. Licensor shall notify Licensee of any performance concerns that trigger Inspections at least two (2) business days prior to activating such inspection during installation and thirty (30) days after completion and provide Licensor an opportunity to participate in such inspections. Such inspections, whether made or not, shall in no manner relieve the Licensee of any responsibility, obligation, or liability assumed under this Agreement or arising otherwise. The frequency of periodic inspections is dependent on the performance of the Licensee in conforming to the terms of this Agreement.</p>	<p>Language in Qwest's revisions is taken from the Verizon Agreement and is reasonable.</p>
<p><u>(b) Pole Attachment Survey</u></p> <p>Licensor may conduct a Pole Attachment Survey at any time after the effective date of this Agreement and not more often than every third year subsequent to each such Pole Attachment Survey. Licensor shall give Licensee at least thirty (30) days prior written notice of such Pole Attachment Survey. Licensee shall advise Licensor if Licensee desires to be present during the survey. Licensee shall reimburse Licensor for expenses Licensor incurred in making such Pole Attachment Survey, whether or not Licensee elects to be present. Licensor shall provide Licensor with a report of such Pole Attachment Survey within a reasonable time after its completion. The survey data from Licensor's Pole Attachment Survey shall be used to update Licensor's Attachment billing records where applicable.</p>	<p>Occupancy surveys are addressed later in the agreement.</p>
<p>Where other licensees have Attachments authorized by Licensor and situated upon Licensor's poles subject to a Pole Attachment Survey, Licensee shall pay a share of the costs of such Pole Attachment Survey calculated as follows: the total costs of the Pole Attachment Survey, multiplied by the ratio of (a) the number of Licensor poles subject to the Pole Attachment Survey that are occupied by Licensee, to (b) the summation of the number of Licensees occupying each pole subject to the Pole Attachment Survey. The Licensee shall pay its pro-rata share of the Pole Attachment Survey within sixty (60) days from the date of the invoice.</p>	
<p><u>6. Safety</u></p>	<p>Language in this provision is taken from the Verizon</p>

Disputed Language ¹	Explanation ²
<p><u>(b) Entry into Power Space</u></p> <p><u>Licenses (including its employees and contractors) shall not enter the Power Space on Licensor poles for any purpose including making connections to the Licensor neutral. If Licensee requires grounding on an existing Licensor pole where a grounding conductor does not exist, Licensee shall request the Licensor to install grounding at the sole expense of Licensee. If the Licensor is unable to install said grounding within thirty (30) days of the date requested, Licensee has the option of hiring qualified electrical contractors to perform this work. Licensee, its employees and its contractors, shall at all times exercise its rights and responsibilities under the terms of this Agreement in a manner that treats all electric facilities as energized at all times. Licensee shall assume complete responsibility for its employees' conduct and Licensee shall determine and provide the appropriate training and safety precautions to be taken by its employees and contractors. Licensee shall indemnify, defend, and hold the Licensor harmless from any liability of any sort derived from Licensee's employees' or contractors' failure to abide by the terms of this Section except to the extent of the Licensor's negligence or willful misconduct.</u></p>	<p>Agreement. The provision includes reasonable restrictions while protecting Qwest's right to obtain grounding.</p>
<p><u>(b)(4) Licensee Practices</u></p> <p><u>Licensor shall have written standard practices that address construction standards to be followed in attaching facilities to Licensor's poles. The standards should specify any obligations that exceed NESC regulations. These standards should also address communication methods and contacts for notifications, project plans, authorizations, and compliance certifications. These standards shall be made readily available to requesting entities. Licensor: (b)</u> <u>Conflicts with Electric Lines</u></p>	<p>The agreement elsewhere requires Qwest's standards to comply with NESC standards.</p>
<p>Licensor shall provide Licensee notice of any NESC violations it discovers. NESC violations and conflicts to electric lines shall be corrected in a prompt manner within sixty (60) days accordance with OJUA standards and the time frames described therein (including but not limited to the time frame for submitting a plan of correction), as may be amended by the Licensee if Licensee created the violation. In some instances, the National Electrical Safety Code NESC requires that qualified electrical workers perform the work. In that event, Licensee shall either have qualified contractors or pay Licensor to perform the work. Licensee shall also be subject to Oregon Public Utility Commission sanctions for failure to comply with Oregon Public Utility Commission safety rules. Failure by Licensee to act in a prompt and responsible manner may result in the Licensor taking appropriate measures to correct the safety violations involved and Licensee shall be responsible for the cost thereof. In such cases, the inspection, design, repair, and coordination charges shall be borne by Licensee if it failed to perform necessary duties required by Oregon law.</p>	<p>For uniformity and consistency, JUA standards should govern.</p>

Disputed Language ¹	Explanation ²
<p><u>(e) Right-of-way Clearing and Tree Trimming</u></p> <p><u>Licensor shall bear the cost of the original tree trimming, brushing and clearing required for the placement of a new pole line. All tree trimming and brush cutting in connection with the initial placement of wires or equipment on an existing pole line shall be borne entirely by the party placing the wires or equipment. Unless the parties otherwise agree, each party shall be responsible for any and all additional tree trimming and brush cutting related to its wires or equipment.</u> (h) <u>Right-of-way Clearing and Tree Trimming</u></p> <p>Licensor has established a regular and routine procedure for trimming trees or removing trees with inadequate clearance to high voltage conductors, poles and equipment. Licensee shall be responsible for tree trimming, right-of-way clearing and debris removal necessary for installation and safe clearance from communication conductors as mandated by the NESC and OPUC. In the event that Licensee is unable or fails to perform the necessary clearing and free trimming in the communication space and Licensee has obtained all necessary easements, permits and rights-of-way to attach to Licensor's poles, Licensor will perform the necessary right-of-way clearing and tree trimming. In such case, Licensee agrees to pay Licensor 100% of the tree trimming and debris removal costs necessary in the communication space for each pole and the wire in its backspan on which Licensee attaches its facilities plus administrative costs. The costs for tree trimming, debris removal and administrative costs conducted on behalf of Licensee by Licensor shall be paid by Licensee within 30/sixty (60) days of receipt from the date of the invoice. In the event there is more than one Licensee attaching to a specific pole, then the tree trimming costs for that pole shall be divided equally among the number of Licensees attaching to that pole.</p>	<p>This provision is taken from the Verizon Agreement and is a reasonable allocation of the responsibility for tree trimming.</p>
<p><u>8. Occupancy Survey:</u></p> <p><u>The Licensor may conduct an Occupancy Survey not more often than every third year/fifth year from the date of this Agreement, and subsequent to each such Pole Attachment Survey/Occupancy Survey. The Licensor shall give Licensee at least thirty (30) days prior notice of its desire to conduct such Occupancy Survey. Licensee shall advise the Licensor if Licensee desires to participate in the inventory within sixty (60) days of such notice. The parties shall jointly select an independent contractor for conducting the inventory and agree on the scope and extent of the Occupancy Survey that is reimbursable by Licensee. The cost of the Occupancy Survey shall be recovered in the annual rent. The Contractor shall provide the Parties with a detailed report of such Occupancy Survey including both the Licensor's and Licensee's pole numbers (to the extent that Licensee's pole numbers are on the pole and clearly identified as Licensee's pole tag at the time of the survey) and other information required to update each party's inventory databases within a reasonable time after its completion. The inventory data from the Licensor's Occupancy Survey shall be used to update the Licensee's attachment billing records where applicable. Licensee shall make any objections to the inventory data within sixty (60) days of receipt of the Occupancy Survey report or such objections shall be waived. Objections raised to inventory data from an Occupancy Survey shall not relieve Licensee of the obligation to pay undisputed amounts when due, as set forth in Article V above. The Parties agree to cooperate in good faith to resolve any disputed amounts.</u></p>	<p>Language in this provision is taken from the Verizon Agreement and is a reasonable and practical provision for periodic surveys.</p>

Disputed Language ¹	Explanation ²
<p>6810. Maintenance of Poles, Attachments and Right-of-Way:</p> <p><u>(a)(e) (a) The expense of maintaining jointly used poles shall be borne by Licensor shall, at its own expense, inspect, and Licensor shall maintain the poles in accordance with industry practices and the specifications mentioned in Section 2.3, and shall jointly used poles in a safe and serviceable condition, and shall, under the other provisions of this Agreement, replace, reinforce, or repair such poles as are determined to be defective become defective. Licensor shall be solely responsible for collection for damages for poles broken or damaged. The party with equipment attached to the pole shall be responsible for collecting damages to its own equipment. If a pole owned by Licensor is replaced by Licensor because of auto damage or storm damage, Licensor shall pay Licensee for the actual costs of such pole replacement.</u></p>	<p>Language in the revisions are taken from the Verizon Agreement and constitute reasonable terms.</p>
<p><u>(c)(e) (c) Whenever it is necessary to replace, move, reset or relocate a jointly used pole, the Licensor shall, consult with Licensee on the location of the new pole before making such replacement or relocation, give twenty (20) days give notice in writing and/or electronic means (except in the and at least thirty (30) days prior to such replacement, move, resetting or relocation, shall give Licensee notice via NJUNS (except in case of an emergency, when verbal notice will be given and subsequently confirmed in writing) to the Licensee via NJUNS within five (5) days of verbal notice), specifying in such notice the work to be performed and the time of such proposed replacement or relocation. no prior notice shall be given. Licensee shall, at the time so specified by the Licensor, transfer its attachments to the new or relocated joint pole. move, resetting or relocation. Licensor shall inform Licensee that it has completed its work within thirty (30) days of such completion. Licensee shall then transfer its attachments to the new or relocated joint pole and notify Licensor when such transfer is complete. Should the Licensee fail to transfer its attachments to the new or relocated joint pole at the time specified for such transfer of attachments attachments to the new or relocated joint pole within thirty (30) days after receiving notice from Licensor that its work is completed, the Licensor may elect to do such work, and the Licensee shall pay the Licensor the cost within sixty (60) days from the date of the invoice of such work. In the event that third parties, not subject to this agreement, have equipment attached to the Licensor's pole, such thirty (30) day period shall commence upon removal of third party attachments. In the event the Licensee fails to transfer its attachments attachments and the Licensor does such work, the Licensor shall not be liable for any loss or damage to the Licensee's facilities that may result, except in the case of gross negligence or willful misconduct.</u></p>	<p>Qwest's revisions require cooperation and provide for a more reasonable timeframe.</p>
<p>7911. Recovery, Rearranging or Relocation of Facilities:</p> <p><u>(a) In the event it is necessary for Licensor, or for another regulated utility with whom Licensor has an Agreement for the joint use of wood poles, or for another Licensee with whom Licensor has a prior Agreement for the joint use of wood poles, to use the space on poles occupied, or contracted for, by the Licensee, the Licensee shall, upon receipt of the thirty (30) day written and/or electronic notice, either vacate the space by the removal of its attachments or shall authorize Licensor to replace the poles at the expense of Licensee and Licensee shall pay for said replacements as provided for in (b) of this Section, provided, however, that Licensee has not paid for the replacement of such poles.</u></p>	

Disputed Language ¹	Explanation ²
<p>(a) (a) Once a Licensee has an approved permit to attach to Licensor's pole, any pole replacement due to additional space requirements will be borne by the requesting party, not the Licensee.</p>	
<p>(b) (b) In any case where facilities of Licensee are required to be rearranged on the poles of the Licensor or of others to accommodate the Attachments of Licensee, Licensee shall pay to Licensor the total costs incurred by Licensor in rearranging such facilities in advance of construction. The Licensee shall also reimburse other users of the poles of Licensor for their costs of rearrangement to provide space or clearance for the facilities of Licensee.</p>	
<p>(b) If in the sole judgment of the Licensor, the accommodation of any new Pole Attachments of Licensor to Licensor's poles necessitates the rearrangement or addition of any existing facilities on an existing pole, or the replacement of any existing pole, Licensor shall specify on the Application the changes necessary to accommodate the Pole Attachments and the estimated cost thereof and return it to Licensee. If Licensee still desires to use the pole and returns the application marked to so indicate, Licensor shall make such rearrangements, transfers and replacements of existing facilities, and additions of new facilities, as may be required, and Licensor shall reimburse Licensor for any additional expenses thereby actually incurred by Licensor not otherwise prescribed in this Agreement.</p>	<p>Language in this provision was taken from the Verizon Agreement.</p>
<p>819. — 2. Indemnification and Insurance:</p>	
<p>(a) (a) Licensee shall defend, indemnify, protect, save harmless and insure Licensor from and against any and all claims and demands for damages to property, and for injury or death to persons, including payments made under any Workers' Compensation Law or under any plan for employees disability and death benefits, and including all expenses incurred in defending against any such claims or demands, which may arise out of or be caused by the erection, maintenance, presence, use, rearrangement or removal of the Attachments of Licensee's wires, equipment, apparatus and appliances to those of Licensor or by any act of Licensee, its agents, contractors and employees on or in the vicinity of Licensor's poles. Licensee Licensee agrees to indemnify and hold harmless Licensor, its directors, officers, employees, and agents against and from any and all claims, demands, suits, losses, costs, and damages, including attorneys' fees, for or on account of bodily or personal injury to, or death of, any person(s), including without limitation Licensee's employees, agents, representatives and subcontractors of any tier, or loss of or damage to any property of Licensee, or any third party, to the extent resulting from any negligent act, omission, or fault of Licensee, its employees, agents, representatives, or subcontractors of any tier, their employees, agents, or representatives, in the exercise, performance or nonperformance of Licensee's rights or obligations under this Agreement. Except for liability caused by the sole negligence of Licensor or its employees, agents, representatives and subcontractors of any tier, Licensee shall also indemnify and hold harmless Licensor from and against any and all claims, demands, suits, losses, costs, and damages, including attorney's fees, arising from any interruption, discontinuance, or interference with Licensee's service to its customers which may be caused, or which may be claimed to have been caused, by any action of Licensor pursuant to or consistent with this Agreement.</p>	<p>This provision is taken from the Verizon Agreement; it is reasonable and consistent with industry standards.</p>
<p>(b) Licensee agrees to indemnify and hold harmless Licensee, its directors, officers, employees and agents</p>	

Explanation ²	Disputed Language ¹
	<p>against, and from any and all claims, demands, suits, losses, costs, and damages, including attorneys' fees, for or on account of bodily or personal injury to, or death of, any person(s), including without limitation Licensor's employees, agents, representatives and subcontractors of any tier, or loss of or damage to any property of Licensor, or any third party, to the extent resulting from any negligent act, omission, or fault of Licensor, its employees, agents, representatives, or subcontractors of any tier, their employees, agents, or representatives, in the exercise, performance or non performance, of Licensor's rights or obligations under this Agreement. Except for liability caused by the sole negligence of Licensee or its employees, agents, representatives and subcontractors of any tier, Licensor shall also indemnify and hold harmless Licensee from and against any and all claims, demands, suits, losses, costs, and damages, including attorney's fees, arising from any interruption, discontinuance, or interference with Licensor's service to its customers which may be caused, or which may be claimed to have been caused, by any action of Licensee pursuant to or consistent with this Agreement.</p>
	<p>(c) <u>The indemnifying party shall have the right, but not the obligation, to defend the other regarding any claims, demands or causes of action indemnified against. Each party shall give the other prompt notice of any claims, demands or causes of actions for which the other may be required to indemnify under this Agreement. Each party shall fully cooperate with the other in the defense of any such claim, demand or cause of action. Neither shall settle any claim, demand or cause of action relating to a matter for which such party is indemnified without the written consent of the indemnitor.</u></p>
<p>Qwest's revisions reflect standard insurance provisions and are reasonable.</p>	<p>(d) <u>Each party shall carry insurance in such form and in such companies as are satisfactory to Licensee the other party to protect the parties from and against any and all claims, demands, actions, judgments, costs, expenses and liabilities of every name and nature which may arise or result directly or indirectly from or by reason of such loss, injury or damage subject to the terms and conditions of the policies. Such To the extent permitted, such insurance policies shall name Licensee the other party as an additional insured. Notwithstanding the above, neither party shall be liable to the other for any incidental, indirect, special or consequential damages of any kind, including but not limited to, any loss of use, loss of business or loss of profit; provided, however, there shall be no limitation on a party's liability to the other for any fines or penalties imposed on the other party by any court of competent jurisdiction or federal, state or local administrative agency resulting from the failure of the party to comply with any term or condition of this agreement or any valid and applicable law, rule or regulation.</u></p>
	<p>(b) (b) Licensee Each party shall carry and keep in force, while this Agreement is in effect, insurance contracts, policies and protection in reliable company or companies satisfactory to Licensee that maintain at least a "Best's" rating of A-VII in amounts and for coverage deemed necessary for its protection by Licensee the other party, but in no event for amounts or coverage less than the following minimum requirements: contractual liability coverage for liability assumed by Qwest under this agreement provided the bodily injury or property damage is caused in whole or in part by Qwest.</p>
	<p>1. <u>Comprehensive general liability insurance and ISO Form CG 0001 10 01 or equivalent, including independent contractors insurance coverage, with minimum limits of \$10,000,000 combined single limit each</u></p>

Disputed Language ¹	Explanation ²
<p>occurrence and aggregate for bodily injury and \$10,000,000 each occurrence for property damage, including coverage for damage caused by blasting, collapse or structural injury, and/or damage to underground facilities, protecting Licensee the insured party against and in respect to all matters, liabilities, contingencies, and responsibilities created, referred to or touched upon arising under the Agreement and subject to the policy's terms and conditions, including without limiting the foregoing, contractual liability insurance covering Licensee the insured party's obligations under this Agreement with included in the above minimum limits of \$10,000,000 combined single limit each occurrence and aggregate for bodily injury and \$10,000,000 each occurrence for property damage to indemnify and to hold Licensee harmless; the other party harmless for bodily injury or property damage caused in whole or in part by Qwest; the insured party.</p>	
<p>2. 1. Licensee Each party shall also carry and keep in force, while the Agreement is in effect, workers' compensation insurance in compliance with the laws of the state of Oregon and employers' liability insurance with minimum limits of \$1,000,000,000 per accident.</p>	
<p>3. 2. Licensee Upon request, each party shall furnish Licensee the other with certificates of insurance showing that such insurance is in force and will not be canceled or materially modified without thirty (30) days prior written notice to the Licensee² other party's President/CEO. Neither acceptance nor knowledge (by and of Licensee the other party) or the procurement of Licensee the insured party of insurance protection of lesser scope than that required to be procured by them under this Agreement shall in any manner or for any purpose constitute or be deemed a waiver by Licensee the other party of the requirements imposed respecting insurance protection, nor shall any such acceptance or knowledge of insurance protection of lesser scope in any manner or for any purpose lessen or modify or constitute a limiting interpretation of the scope of the matters covered by and obligations of Licensee the other party under this Agreement.</p>	
<p>913. Security Breach and Remedies in Default</p> <p>(a) Security Requirement</p> <p>The Licensee shall furnish security to the Licensor for the performance of the Licensee's obligations under this Agreement to make any and all payments demanded by the Licensor as due under this Agreement, including without limiting the generality of the foregoing, any pole attachment fees in respect of licenses, Licensor's costs of modifying or removing Licensee's facilities, and Licensor's costs of enforcement.</p> <p>(b) Amount of Security</p> <p>The amount of the security required shall be determined annually and shall be equal to three (3) times the reasonably anticipated annual billing for pole attachment charges plus a reasonable amount for attorney's fees and costs.</p>	<p>The security provisions are unnecessary, unduly burdensome, and harm the public interest by increasing the costs associated with joint use.</p>

Disputed Language ¹	Explanation ²
<p>(e) Form of Security</p> <p>The form of security to be provided by the Licensee may be one, or a combination, of the following: A cash deposit of money with Licensor; a performance bond from an acceptable surety; a letter of credit; a personal guaranty; a corporate guaranty; or such other reasonably adequate security as the Licensee may propose.</p>	
<p>(e) Licensor's Approval Required</p> <p>In any event, the form and sufficiency of the security proposed by Licensee must be approved by Licensor provided, further, that Licensor may require financial statements or other appropriate evidence as to the solvency and financial capability of the surety, guarantor, or financial institution.</p>	
<p>(e) Cash Deposits</p> <p>If Licensee elects to provide a cash deposit, such deposit or deposits shall be held during the continuance of this Agreement as security for any and all amounts which are or may become due to the Licensor under this Agreement. Said cash deposit shall be placed in an interest-bearing account and Licensee shall be entitled to a credit for the interest income on said cash deposit. If Licensee fails to pay any sum demanded by Licensor as due under this Agreement, Licensor shall have the right, without prior notice to Licensee, to apply immediately any or all amounts on deposit with Licensor towards payment of the sums due Licensor, whether or not Licensee contests the amount due or its liability to pay, and whether or not Licensor exercises or has exercised any option it may have to terminate this Agreement. If Licensee contests its liability to pay any sum claimed by Licensor, Licensee's sole remedy shall be an action at law to recover the amounts in dispute. In the event Licensor shall apply some or all of the cash deposit towards payment of an amount claimed due by Licensor, Licensee must restore to its deposit the amount so applied within thirty (30) days after notice of such application, irrespective of whether or not Licensee contests its liability or commences any legal proceedings to determine its liability. Failure to restore its cash deposit shall constitute a default under this Agreement.</p>	
<p>(f) Performance Bond</p> <p>If the Licensee elects to provide a performance bond, such bond shall be issued by a surety satisfactory to Licensor and in a form satisfactory to Licensor. The initial bond shall be for a term of one (1) year; renewal bonds shall be provided by Licensee to Licensor at least two (2) months before expiration of an existing bond. A bond must contain a provision that the surety will pay to Licensor subject to the dollar limits of the bond any sum demanded by the Licensor as due under this Agreement, whether or not Licensee contests its liability to pay such sum, and whether or not Licensor exercises or has exercised any option it may have to terminate this Agreement. If any such amounts are paid by the surety, Licensee within thirty (30) days after notice of such payment shall provide to Licensor security in</p>	

Disputed Language ¹	Explanation ²
<p>the full amount, irrespective of whether or not Licensee contests its liability to Licensor or brings or has brought any legal proceedings or appeals to local, state, or federal regulatory agencies to determine its liability. Failure to restore the security shall constitute a default under this Agreement.</p>	
<p>(g) — Defenses Waived</p> <p>The security provided by Licensee must include a provision in which the surety, guarantor, or other party providing the security specifically agrees that it will not assert defenses against the claims of the Licensor upon such security. The security provided by Licensee shall be absolute, irrespective of whether or not Licensee contests its liability to Licensor or brings or has brought any legal proceedings or appeals to local, state or federal regulatory agencies to determine its liability.</p>	
<p>(h) — Licensor's Termination Rights</p>	
<p>11. — Termination Rights</p>	<p>Termination is addressed elsewhere in the agreement.</p>

Disputed Language ¹	Explanation ²
<p><u>(a) Licensors Termination Rights</u></p> <p>If Licensee fails to pay any sum due Licensor under this Agreement, or to provide and to maintain the security required in this Agreement, Licensor shall have the right to terminate this Agreement, provided, however, that Licensor shall give Licensee written notice of such default and Licensor's intent to terminate, and Licensee shall have thirty (30) days in which to cure such default. In addition to Licensor's right of termination set forth above, Licensor, in its sole discretion, shall have the further right to terminate this Agreement or to cancel a particular permit or permits for specific pole Attachments if the Licensee shall default in any manner in performing any action required under this Agreement, provided, however, that the Licensor shall give Licensee written notice of such default and Licensor's intent to terminate, and Licensee shall fail. <u>Should Licensee, within thirty (30) days of notice to cure or undertake to correct such default, and proceed with reasonable diligence and in good faith to correct such noncompliance or fail to cure such default, Licensor may, at its option, and without further notice, declare this Agreement to be terminated in its entirety, or may terminate the license covering this Attachment or Attachments in respect to which such default or noncompliance shall have occurred. In case of such termination, no refund of unused rental shall be made. Any termination pursuant to this paragraph shall be effective immediately upon the Licensor's mailing the notice of termination to the Licensee following the expiration of the thirty (30) day period to cure the default. Termination of this Agreement or any specific permit shall not release Licensee from any liability or obligations under this Agreement, including, without limiting the generality of the foregoing, the obligation to continue to pay pole Attachment charges as provided in Section 112 of this Agreement for such time as Licensee's Attachments remain on Licensor's poles and Licensee's obligation to pay any costs of removal.</u></p>	
<p><u>(i) Licensee's Duty to Remove Attachments</u></p> <p>Upon termination of this Agreement, or cancellation of any permit or permits issued pursuant to this Agreement, Licensee agrees to remove its Attachments from any poles affected within ninety (90) days after the effective date of such termination or cancellation, except as otherwise provided herein.</p>	
<p><u>(j) Licensee's Pole Attachment Removal</u></p> <p>Licensee may at any time remove its Attachments from any of the Licensor's poles and, in each case, Licensee shall immediately notify Licensor through electronic notification via NFUNS of such removal and submit payment of all applicable fees. Removal of the Attachments from any pole shall constitute a termination of Licensee's right to use such pole. Licensee will not be entitled to a refund of any rental on account of any such removal. When Licensee performs maintenance to or removes or replaces its equipment on Licensor's pole, Licensee must chemically treat all field drilled holes and plug any unused holes, including those resulting from removal of equipment. If Licensee fails to adequately plug and treat such holes, Licensor may do so at Licensee's sole risk and expense and Licensee shall pay the cost to Licensor within sixty (60) days from the date of the invoice.</p>	

Disputed Language ¹	Explanation ²
<p>(j) Licensee's Failure to Remove or Make Changes</p> <p>In the event that Licensee shall fail to make any change in its plant required by Licensor or shall fail to remove any Attachments upon cancellation of any specific permit or upon termination of this Agreement, Licensor shall have the right to make such changes or effect such removals and shall pay the cost to Licensor within sixty (60) days from the date of the invoice.</p>	
<p>(k) Emergency</p> <p>In case of emergency or immediate service needs of Licensor, Licensor may perform such removal or change work without notice to Licensee or upon such notice as may be reasonable under the circumstances.</p>	
<p>(l) Costs of Licensee's Work</p> <p>Licensee shall pay all costs of any removal or changes performed by Licensor. Said costs shall be determined in accordance with the provisions of this Agreement. Licensee shall pay such costs within thirty sixty (30) days off from the date of Licensor's billing for such costs the invoice.</p>	
<p>(m) Licensee's Facilities as Additional Security</p>	
<p>(a) If either party shall default in any of its material obligations under this Agreement, then the non-defaulting party shall have the right to terminate this Agreement as to future joint use; provided, however, that (i) the non-defaulting party shall first give the defaulting party written notice, in the manner described in Section 25, of such default and the non-defaulting party's intent to terminate, and (ii) upon receiving such notice, (A) the defaulting party shall have thirty (30) days in which to cure such default; or (B) if within five (5) days of receiving such notice, the defaulting party notifies the non-defaulting party why it cannot reasonably cure within thirty (30) days of notice and submits a plan of correction describing how it shall cure or undertake to correct such default and by when such correction will be completed, the defaulting party shall and proceed with reasonable diligence and in good faith to correct such noncompliance or default as set forth in the plan of correction. Nothing herein shall affect any obligation to provide notice as described in Section 25 for termination that does not involve default of a material obligation. Any termination will be subject to the survival provisions of Section 19 herein.</p>	<p>A notice and cure provision is reasonable and protects the public interest by allowing continued joint use and provision of service where default can be promptly cured.</p>
<p>(b) In case of default and subject to the provisions of subsection (a) above and Section 19 of this Agreement, the non-defaulting party may, at its option, terminate the Agreement as to future joint use or may terminate the license covering the new Pole Attachment(s) in respect to which such default shall have occurred. In case of such termination, no refund of unused rental shall be made.</p>	<p>Language in these provisions is taken from the Verizon Agreement and outlines reasonable rights upon termination.</p>

Disputed Language ¹	Explanation ²
<p>(c) If either party shall default in the performance of any work that it is obligated to do under this Agreement, the other party may elect to do such work, and the party in default shall reimburse the other party for the cost thereof within thirty (30) days after receipt of an invoice therefor.</p>	
<p>(d) Notwithstanding the aforementioned remedies, appropriate representatives of the parties shall meet promptly upon request and attempt in good faith to resolve disputes that arise concerning this Agreement. If the parties are unable to reach a resolution themselves, a party may, by written notice, request the other party to agree to an alternative dispute resolution procedure (e.g. non-binding mediation, binding arbitration) for the dispute, and the other party shall respond in writing within ten (10) working days. Any deadline or timeframe described in Section 13 herein shall be tolled while the parties attempt in good faith to resolve disputes as described in this subsection (d).</p>	
<p>14. Abandonment of Joint Use Poles:</p>	
<p>If Licensor removes any of Licensee's facilities on Licensor's poles pursuant to this section, Licensor may hold such facilities as additional security for the payment of any sums due under this Agreement, Licensor may sell such facilities at a public or private sale without notice to Licensee, or may turn such facilities over to Licensee, or may utilize any combination thereof. In the event Licensee sells any of Licensee's facilities, Licensor shall apply the proceeds to the payment of sums due under this Agreement and shall turn over the balances, if any, to Licensee. (n) Corrective Work by Licensor</p>	
<p>If Licensee shall make default in the performance of any work which it is obligated to do under this Agreement, Licensor may elect to do such work, and Licensee shall reimburse Licensor for the reasonable actual cost thereof within sixty (60) days from the date of the invoice.</p>	
<p>102. Abandonment of Joint Use Poles:</p>	
<p>(d) If Licensor desires at any time to abandon any joint use pole, it shall give Licensee notice in writing via NJUNS to that effect at least sixty (60) days prior to the date on which it intends to abandon such pole. If, at the expiration of said period, Licensor shall have no attachments on such pole but Licensee shall not have removed all of its attachments, such pole may, at the Licensor's discretion, shall immediately become the property of Licensee, and Licensee shall hold harmless the Licensor from every obligation, liability, or cost, and from all damages, expenses or charges incurred thereafter, arising out of, or because of, the presence of or the condition of such pole or any attachments, and shall pay to the Licensor a sum equal to the present value in place of such abandoned pole or poles, less cost of removal, but in no event less than zero even should such value fall below zero or such other equitable sum as may then be agreed upon between the parties, and Licensor shall provide Licensee with a properly authorized bill of sale for such pole. If Licensor abandons any joint-use pole, the last remaining attached Licensee shall be responsible for removal of said poles per Exhibit item 10 Attachments (S).</p>	<p>The revisions provide a more reasonable timeframe for notice and cost allocation and come from the Verizon Agreement.</p>

Disputed Language ¹	Explanation ²
<p><u>145-13- Rental Charges and Rates and Division of Costs:</u></p>	<p>Language in this provision is taken from the Verizon Agreement and reflects legal requirements for rental rates and division of costs.</p>
<p><u>(a) (e) On or about December 31 of each year, the parties, acting in cooperation, shall tabulate the total number of pole contacts January 1 of each year. The Licensee shall pay to Licensor, in advance, on an annual basis, a rental amount equal to the number of authorized pole attachments contacts in use as of the preceding day times the annual rental rate per attachment. This tabulation shall indicate the number of poles on which rentals are to be paid. Annual rental charges shall be calculated as per Exhibit "C" to this Agreement.</u></p>	
<p><u>(b) (b) The yearly rental period covered by this Agreement shall be the preceding twelve month calendar year period between January 1 and December 31. Rental payable for each such rental period during the continuance of this Agreement shall be due and payable on February 1 following the end of the rental period, within sixty (60) from the date. Within thirty (30) days after the completion of the tabulation referred to above, Licensor shall invoice Licensee for the rental amount owing, as calculated in accordance with Exhibit B and Applicable Law, which is attached hereto and incorporated herein by this reference, specifying on such invoice the rental period covered. Payment of the invoiced amount shall be made within forty-five (45) days of receipt of the invoice. The annual rental rate per pole shall apply to any pole contacts Attachments Pole Attachments made or removed during the preceding year and rents shall not be prorated; provided however, that if this Agreement is executed between July 1 and December 31 of the same calendar year, Licensee shall pay to Licensor only one-half (1/2) of the annual rental due for attachments made during that period. Consistent with the terms of this provision, the components of the rental rates, and the methodology employed to determine the rental rates specified in Exhibit B of this Agreement (which are subject to the valid and effective provisions of the OAR and OPUC rules and regulations, as may be amended, and Applicable Law) may be modified or replaced by an agreement by the parties. Such modifications or replacements (which also are subject to the valid and effective provisions of the OAR and OPUC rules and regulations, as may be amended, and Applicable Law) shall become effective on the first day of the year following the agreement of the parties. Thus, for example, if such changes were to be agreed upon in December of 2006, they would become effective as of January 1, 2007.</u></p>	
<p><u>(d) (d) All other Unless otherwise provided, all undisputed amounts payable under this Agreement, such as for erection, rearrangement, relocation or abandonment upon completion of work performed hereunder by either party, the expense of which is to be borne wholly or in part by the other party, shall be due and payable within thirty-sixty (360) forty-five (45) days of billing by Licensor from the date of the receipt of an appropriate invoice.</u></p>	
<p><u>(e) (e) Licensor and Licensee shall define the guidelines and definition for compliance as it pertains to this Agreement, and Licensee shall receive a rent reduction as provided in Exhibit B if the Licensee is in compliance with</u></p>	

Explanation ²	Disputed Language ¹
	<p>rules adopted by the Public Utility Commission for certifying compliance with the laws regulating pole attachments. Attachments. A Licensee is eligible for the rental reduction unless the Licensor notifies the Licensee in writing that the Licensee has failed to comply with either the Public Utility Commission's rules or the terms of this Agreement, as provided for in ORS 757.282(3) and OAR 860-028-0230, as may be amended. Nothing herein shall be construed as a waiver of Licensee's right to request a settlement conference, contest the denied rental reduction, or otherwise avail itself of the rights and procedures set forth in OAR 860-028-0230, as may be amended.</p>
	<p>(D) (f) Other equipment attached to poles outside the telecommunication space will be subject to charges as reflected in Exhibit "C" to this Agreement.</p>

Disputed Language ¹	Explanation ²
<p>12. 14. Defaults:</p>	<p>Default is addressed elsewhere in the agreement.</p>
<p>(a) (a) If Licensee shall fail to comply with any of the provisions of this Agreement or should default in any of its obligations under this Agreement, and shall fail within thirty (30) days after written notice from Licensor to correct such noncompliance or default, Licensor may, at its option, and without further notice, declare this Agreement to be terminated in its entirety, or may terminate the permit covering the pole or poles in respect to which such default or noncompliance shall have occurred. In case of such termination, no refund of accrued rental shall be made.</p>	
<p>(b) (b) If Licensee shall make default in the performance of any work which it is obligated to do under this Agreement, the Licensor may elect to do such work, and the Licensee shall reimburse pay to the Licensor for the cost within sixty (60) days from the date of the invoice.</p>	
<p>13. 15. Sanctions:</p>	
<p>The Licensor may levy sanctions against the Licensee for unauthorized attachments or for other violations of the duties of pole occupants as specified in Oregon Public Utility Commission Administrative Rules OAR 860-028-0120 through 860-028-0190 including but not limited to those then existing PUC regulations.</p>	<p>Because the referenced sanctions are set forth in the PUC rules and are applicable unless they are amended or deemed invalid, there is no need for this provision in the contract. This is especially true in light of Qwest's current challenge to the PUC's pole attachment penalty rules.</p>
<p>(g) Subject to the other provisions of this Agreement, the cost of erecting new joint poles, constructing new pole lines, making extensions to existing pole lines, or replacing existing poles, pursuant to this Agreement shall be borne by the Parties as follows:</p>	<p>This provision is taken from the Verizon Agreement and is a reasonable expression of the industry standard regarding cost allocation.</p>
<p>1. Poles should be erected at the sole expense of Licensor.</p>	
<p>2. If a pole larger than that which is already installed is necessary, due wholly to the Licensee's requirements, including requirements as to keeping Licensee's wires clear of trees, Licensee shall pay to Licensor a sum equal to the difference between the cost, in place, of such pole and the cost, in place, of the existing pole. Licensor shall bear the</p>	

Disputed Language ¹	Explanation ²
rest of the cost of erecting such pole, except as otherwise provided in subsection (h) below.	
<p>3. If a pole larger than that which is already installed is necessary, due to the requirements of both parties, or the requirements of public authorities or of property owners (other than requirements with regard to keeping the wires of one party only clear of trees), Licensee shall pay to Licensor a sum equal to one-half the difference between the cost, in place, of such pole and the cost, in place, of the existing pole; Licensor shall bear the rest of the cost of erecting such pole. Where there are more than the two Parties to this agreement attached to a pole, the cost of such pole replacements will be divided equally among all parties attached to the pole.</p>	
<p>4. In the case of an interset pole required solely by Licensee in Licensor's alignment, Licensor shall erect and own such pole and retain ownership, and Licensee shall pay to Licensor a sum equal to the cost in place of the interset or midspan pole.</p>	
<p>(h) Any payments for poles made by Licensee shall not entitle Licensee to the ownership of any part of said poles.</p>	
<p>(i) Where an existing pole is prematurely replaced (for reasons other than normal or abnormal decay) by a new pole solely for the benefit of Licensee, or in order to permit joint use, the cost of the new pole shall be borne by the parties as specified in subsection (f) above, and Licensee shall also pay Licensor the remaining life value of the old pole in place, plus the cost of removal, less the salvage value of such pole. Licensor shall remove and may retain or dispose of such pole as sole owner thereof.</p>	
<p>(j) Each party shall place, maintain, rearrange, transfer, and remove its own attachments at its own expense except as otherwise expressly provided.</p>	
<p>(k) The expense of the poles shall be borne by Licensor except that the cost of replacing poles shall be borne by the Parties hereto in the manner provided in subsections (f) and (h) above.</p>	
<p>(l) Where Licensee's service drops cross over Licensor's lines and are attached to Licensor's poles, either directly or by means of a pole top extension fixture, the cost shall be borne as follows:</p>	
<p>1. Pole top extension fixtures shall be provided and installed at the sole expense of the party using them.</p>	
<p>2. Where an existing pole is replaced with a taller pole to provide the necessary clearance for Licensee's benefit, Licensee shall pay to Licensor a sum as determined under subsection (h) above.</p>	
<p>(m) In the event that Licensor requires Licensee to transfer equipment, or set, lower, haul and/or dispose of Licensor's poles, Licensor shall reimburse Licensee for the cost of such services with forty-five (45) days of receipt of an</p>	

Disputed Language ¹	Explanation ²
<p><u>appropriate invoice.</u></p>	
<p>(n) Nothing herein shall preclude the establishment of other arrangements for the division of costs of joint poles as the Parties may agree to in writing.</p>	
<p>14-16- Rights of Other Parties:</p> <p>Nothing herein contained shall be construed to limit the right of Licensor as affecting any rights or privileges previously conferred by either party, by contract or otherwise, to confer upon others; not parties to this Agreement; rights or privileges to use the joint-use poles covered by this Agreement. <u>not party to this Agreement to use any poles owned by such party. Further, nothing herein contained shall be construed to affect either party's right to continue, modify, extend or amend such existing rights or privileges, or to grant others the right or privilege to use poles owned by the Party.</u></p>	<p>The revisions are taken from the Verizon Agreement and are reasonable.</p>
<p><u>Licensor shall not enter into any agreement with third parties for attachment to a pole owned by Licensor within Licensor's allocated space or otherwise. Licensor may enter into attachment agreements with third parties and will administer all third party attachments for space outside Licensor's allocated space. As to any such agreements between Licensor and third parties that predate this Agreement, Licensor will, by appropriate means, transfer the administration of such attachments to Licensor.</u></p>	
<p>157. Term and Termination of Agreement:</p>	
<p>This Agreement shall continue in force and effect for a period of one (1) year from and after the date of this Agreement, and thereafter from year to year unless terminated by either party by giving written notice of its intention to do so not less than thirty (30) days prior to the end of any period, provided, however, if the Licensee shall fail to commence construction on the poles of Licensor within the period of one hundred eighty (180) days after the date of execution of this License Agreement, then this License Agreement shall be null and void, and of no further force and effect. Upon termination of this Agreement, Licensor shall remove its attachments from the poles of Licensor within one hundred eighty (180) days after the effective date of such termination. Should the Licensee fail to comply, the Licensor may elect to do such work and the Licensee shall pay the Licensor the cost. 167- Survival of Obligations: <u>three hundred sixty-five (365) days' notice to the other party. Notice shall be in writing and mailed by certified mail, return receipt requested, postage prepaid, or delivered by a reputable overnight courier with tracking capabilities, addressed to the parties as indicated in Section 26 of this Agreement. If the parties begin negotiating a new agreement at any time after either party gives written notice of its intention to terminate and before the expiration of the three hundred sixty-five (365) days, then the 365-day termination period shall be tolled until such time as either party notifies the other in writing that continued negotiation is no longer desired.</u></p>	<p>The revisions are taken from the Verizon Agreement and include a tolling provision to preserve and protect rights if the parties are unable to negotiate an agreement in the specified timeframe.</p>
<p>If this Agreement is terminated, the parties shall remove all of their respective equipment and Pole Attachments from</p>	

Disputed Language ¹	Explanation ²
<p><u>the other party's poles within two years after termination of this Agreement. All of the applicable provisions of this Agreement, specifically including but not limited to the payment of rent for joint use poles, shall remain in full force and effect with respect to any and all equipment or Pole Attachments of either party remaining upon poles of the other party until such time as all such equipment and Pole Attachments have been removed, or unless otherwise agreed to by the parties.</u></p>	
<p><u>18. Licensee's Failure to Remove or Make Changes and Cases of Emergency</u></p> <p><u>In the event that Licensee shall fail to remove any attachments as required in this Agreement, Licensor shall have the right to effect such removals.</u></p> <p><u>In case of emergency or immediate service needs of Licensor, Licensor may perform such removal or change work without prior notice to Licensee or upon such notice as may be reasonable under the circumstances.</u></p>	
<p><u>19. Survival of Obligations:</u></p> <p><u>Any termination of this Agreement in whole or in part shall not release Licensee from any be effective as to those provisions of the Agreement governing the liability or obligations hereunder, whether of indemnity or otherwise, which may have accrued or which may be accruing or which arises out of any claim that may have accrued or be accruing at the time of or prior to termination of Licensee, including, without limiting the generality of the foregoing, the obligation to continue to pay pole attachment charges as provided in Section 15 of this Agreement, for such time as Licensee's attachments remain on Licensor's poles. Any such provisions shall survive termination of the remainder of the Agreement.</u></p>	<p>This provision is taken from the Verizon Agreement. It is reasonable and in the public interest to require such obligations to survive termination.</p>
<p><u>2189. Supplemental Agreements:</u></p> <p><u>(b) The attached Exhibits may be amended or supplemented as deemed necessary by Licensor.</u></p>	<p>CEC should not have the discretion to unilaterally change the terms and conditions of the agreement.</p>
<p><u>203. 21. Interest and Payments:</u></p> <p><u>All undisputed amounts to be paid by Licensee to Licensor under this Agreement shall be due and payable within thirty (30) days after an itemized statement is presented to invoice is received by the Licensee. Any payment of undisputed amounts not made within thirty (30) days from the due date shall bear interest at the rate of <u>prime plus Two Percent (2%)</u> per annum from the date due until paid, prime rate plus 2 percent, but in no event greater than that allowed by Applicable Law.</u></p>	

Disputed Language ¹	Explanation ²
<p>225.23. Notices:</p> <p>(i) (i) If notice is to Licensor,</p> <p style="padding-left: 40px;">Mr. Al Gonzalez, President/CEO</p> <p>(i) If notice is to Licensor,</p> <p>Chief Operating Officer</p> <p>Central Electric Cooperative, Inc.</p> <p>P.O. PQ Box 846 or 2098 N. Hwy 97</p> <p>Redmond, Oregon 97756</p>	
<p>(ii) (ii) (ii) If notice is to Licensee,</p> <p>Qwest Corporation</p> <p>Joint Use</p> <p>700 W. Mineral Ave. MT G28.24</p> <p>Littleton, CO 80120</p>	
<p><u>Or at such other address as may be designated in writing by the other party.</u></p>	<p>Addresses occasionally change, and the parties should have the opportunity to have notices sent to a new address.</p>
<p>236. Supplying Information:</p> <p>(a) (e) It is understood and agreed to between the parties that, upon Licensor's request, Licensee shall furnish on a one-time basis to Licensor within thirty (30) days after the execution of this Agreement a detailed sketch or map upon which will be shown the precise locations by streets or roads of database information regarding the joint use poles to be initially covered by this Agreement, showing the facilities installed or to be installed upon the joint use poles and the pole numbers upon which these facilities are to be attached. Such sketch or map shall be reviewed by, and approved, commented upon, or rejected by the engineers of Licensor, and Licensee agrees to make any and all such changes in said sketch or map as are suggested by said engineers. Licensee shall not begin the installation of any facilities covered by this Agreement until engineering approval by Licensor is granted. Alternatively, information from the most recent audit survey may be used to provide such information. Licensee shall have thirty (30) days from receiving Licensor's request to provide such information. This information shall be subject to a confidentiality agreement ensuring that only Licensor, and none of its subsidiaries, affiliates, divisions, parents, or related entities, or</p>	<p>Qwest does not believe that this provision is necessary or appropriate for the parties based on their lengthy history, but Qwest is willing to provide pole attachment information on a one-time basis. Qwest's revisions clarify the parties' rights and obligations and reflect the fact that Qwest's pole database may not include information that is compatible</p>

Disputed Language ¹	Explanation ²
<p><u>any other entity or person, including but not limited to Quantum Communications LLC, shall have access to this information. Such information shall be used solely for the purposes of implementing and performing this Agreement.</u></p>	<p>with CEC's database. It also reflects the fact that the parties recently completed a cooperative audit and should not be required to provide unnecessary or redundant information.</p> <p>Finally, CEC should not be permitted to share any pole attachment information that Qwest provides to any other entity. Qwest believes that CEC owns or is affiliated with Quantum Communications LLC, which Qwest has been informed provides telecommunications and other services in competition with Qwest. As discovery proceeds in this case, Qwest reserves the right to suggest a confidentiality provision that is broader and more restrictive to ensure that such information is used appropriately and kept confidential, or to refuse to agree to such a provision.</p>
<p><u>(b) (b) Within thirty(30) days after the completion of the initial installation of the Licensee's facilities, as set forth in the above mentioned sketch or map information, Licensee shall furnish to Licensor a revised copy, if necessary, of said sketch or map showing the precise location of each power supply, pole contact, and other attachment information showing poles attached by Licensee which is actually installed on poles of the Licensor. Such revised sketch or map information shall be verified by the Licensor and shall be the basis for determining the number of pole contacts made initially. As a substitute to this provision, the most recent audit survey information may be used. This information shall be subject to a confidentiality agreement ensuring that only Licensor, and none of its subsidiaries, affiliates, divisions, parents, or related entities, or any other entity or person, including but not limited to Quantum Communications LLC, shall have access to this information. Such information shall be used solely for the purposes of implementing and performing this Agreement.</u></p>	
<p><u>(c) (e) Upon Licensor's request, Licensee shall promptly report to Licensor any changes made in the number of poles</u></p>	

Disputed Language ¹	Explanation ²
of the Licensor contacted by Licensee.	
24. <u>Construction of Agreement:</u>	
27. <u>Choice of Law:</u>	
This Agreement is deemed executed in the state of Oregon and shall be construed under the laws of the state of Oregon. In the event that a suit or action is instituted to enforce or interpret any of the terms of this Agreement, the parties agree that the proper venue for said suit or action shall be in the Circuit Court for Deschutes County, Oregon, and all Applicable Law.	The parties should be allowed to enforce the agreement in any appropriate forum with jurisdiction, including federal court.
258. <u>Prior Agreements Superseded:</u>	
This Agreement supersedes and replaces any and all previous Agreements entered into by and between Licensor and Licensee with respect to the subject matter of the Agreement.	
This Agreement constitutes the entire Agreement between the parties and it supersedes all prior negotiations, agreements and representations, whether oral or written, between the parties relating to the subject matter of this Agreement, provided, however, that (i) existing Pole Attachments made prior to the date of this Agreement and approved by Licensor, and applications in progress for permits, shall continue in effect under the terms and conditions of this Agreement; (ii) nothing herein shall relieve either party from obligations and liabilities, or deprive either party of any rights or privileges, that arose or were incurred under prior agreements; and (iii) any rental obligations of the parties currently in arrears under any prior agreement shall be recalculated according to the terms of this Agreement as of the effective date hereof. This Agreement can only be modified or amended in writing by authorized representatives of the parties.	This provision is taken from the Verizon Agreement. It is reasonable and protects the public interest by providing certainty in the continuity of obligations.
269. <u>Assignment of Agreement:</u>	
Neither party shall assign, transfer, or otherwise transfer, dispose of this Agreement or any of its rights and benefits, or interests to any firm, corporation or individual, under this Agreement without the prior written consent of the other party, except to an affiliate, which consent shall not be unreasonably withheld. No assignment of this Agreement shall operate to discharge the assignor of any duty or obligation hereunder without the written consent of the other party. Each party may assign all its rights and obligations under this Agreement to its parent corporation, to its subsidiary corporation, to a subsidiary of its parent corporation, to its survivor in connection with a corporate reorganization, to any corporation acquiring all or substantially all of its property or to any corporation into which it is merged or consolidated.	This provision is taken from the Verizon Agreement and clarifies the assignment rights and obligations and provides more certainty than the original language.

Disputed Language ¹	Explanation ²
<p>27. <u>Attorneys Fees/Costs/Attorney Fees</u></p>	<p>The parties should bear their own costs.</p>
<p><u>In the event of suit or The prevailing party in any action by either of the parties brought to enforce the terms any portion of this License Agreement, the prevailing party shall be entitled to recover from the other reasonable attorneys fees, and any appeals therefrom, in addition to costs and disbursements allowed by law. Agreement shall be awarded their attorney fees at trial, arbitration, or on appeal.</u></p>	
<p>31. <u>Miscellaneous:</u></p>	<p>These provisions were taken from the Verizon Agreement and are standard contract provisions.</p>
<p><u>The provisions of this Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns.</u></p>	
<p><u>References to articles and Sections are references to the relevant portions of this Agreement.</u></p>	
<p><u>The headings are inserted for convenience and shall not affect the construction of this Agreement.</u></p>	

POLE ATTACHMENT LICENSE AGREEMENT

This pole attachment license agreement (the "Agreement") made and entered into the ____ day of _____, 20__, by and between Central Electric Cooperative, Inc. an Oregon Cooperative Corporation (hereinafter called "Licensor"), with its principal place of business at _____, and Qwest Corporation, a Colorado Corporation, with its principal place of business at Denver, Colorado (hereinafter called "Licensee").

Witnesseth

Whereas, Licensor owns, operates and maintains lines of poles extending in the State of Oregon, including but not limited to Deschutes, Crook, Jefferson, Grant, Lake, Wasco and Linn Counties, in the state of Oregon; and

Whereas, Licensee desires to place certain lines, attachments and apparatus on certain poles of Licensor, for the limited purpose of furnishing lawful telecommunications or electrical services in compliance with any and all local, state or federal regulations; provided, that such transmission of signals or power does not interfere with the furnishing of utility service to consumers of Licensor and others using said poles, and where safety will not be adversely affected;

Whereas, Licensor is willing to permit Licensee, to the extent it may lawfully do so, to place said lines, attachments and apparatus on said poles, on a non-exclusive basis, in the area shown on Exhibit "A" attached hereto and made a part hereof, as may be amended by the parties;

Now, therefore, in consideration of the mutual covenants, terms and conditions herein contained the parties hereto, for themselves, their successors and assigns, do hereby covenant and agree as follows:

1. **Definitions:**

- (a) **Applicable law:** All valid and effective applicable federal, state, and local laws, rules, regulations, as may be amended and all orders of courts and governmental agencies with jurisdiction over the matters set forth in this Agreement. Nothing contained herein shall substitute for or be deemed a waiver of the parties' respective rights and obligations under applicable federal, state and local laws, regulations and guidelines, including (without limitation) Section 224 of the Communications Act of 1934, as amended (47 U.S.C. 224).
- (b) **Application:** A written and/or electronic request by a Licensee for a permit to attach to a pole.

- (c) **Basic Pole:** A 40' pole, or as otherwise agreed to by the parties. This definition is used solely for the purpose of computing pole rental rates.
- (d) **Joint Use Pole:** A utility pole owned and maintained by Licensor and used jointly by Licensee.
- (e) **National Joint Utility Notification System ("NJUNS"):** NJUNS is the electronic system used by Licensor that Licensee will utilize to submit applications for permission to attach, relocate, or remove equipment or attachments under the terms of this Agreement, and to respond to Licensor upon a request for work to be performed by Licensee. It is also the system that Licensor will utilize to initiate pole transfers, and to respond to Licensee's applications.
- (e) **Pole Attachment:** An attachment by the Licensee to the pole, falling into one of the following categories:
1. Attachments requiring permits and rental fees. Includes the following:
 - Initial bolt attachment inside the Telecommunications Space
 - Additional bolt attachment attached to the pole inside the Telecommunications Space
 - Attachments inside the Power Space
 2. Attachments requiring permits but no additional rental fee. Includes the following:
 - Overlapping on own equipment
 - Reconductoring
 - 3.* Attachments requiring notification of the pole owner, but not requiring a permit or fee. Includes the following:
 - New Licensee down guy attached to Licensee's or other's anchors
 - New Licensee anchors
 - 4.* Attachments not requiring notification, permits or fees. Includes the following:
 - Off-pole installations such as
 - Mid-span drops
 - Terminals
 - Taps
 - Amplifiers
 - Snow shoes
 - Splice enclosures

- Wind Dampeners
- Mid-span crossovers

* If Licensor believes that a Pole Attachment by Licensee does not fall within either of these two categories, it may notify Licensee promptly and the parties shall endeavor in good faith to resolve any disagreement about the Pole Attachment at issue. Once the parties have resolved any such disagreement and determined which of the above categories the Pole Attachment at issue belongs in, Licensee shall follow the requirements that relate to that Attachment as set forth above.

- (f) **Permit:** Licensor's written and/or electronic approval of a pole attachment.
- (g) **Power Space:** Any portion of a basic pole above the communications worker safety zone.
- (h) **Telecommunications Space:** Space on Licensor's basic pole between 20 and 23 feet on the pole unless otherwise specified.

2. **Specifications:**

- (a) The specifications of each party for the construction, operation, and maintenance of its respective poles and other facilities that are jointly used, or involved in joint use, shall be in accordance with accepted modern practices and shall be no less stringent than the requirements of the National Electrical Safety Code (NESC), provided that in the event a lawful requirement of any governmental authority or agency having jurisdiction may be more stringent, the latter will govern. Modification of, additions to, or construction practices supplementing the requirements of the NESC, wholly or in part, will also govern joint use of poles.
- (b) In the event that the above-referenced specifications should change, Licensee agrees to make such changes or alterations in its new facility installations or during maintenance of its existing facilities as may be required in order to fully comply with the provisions of such notice. Licensee agrees to make all required changes or alterations on new installations, and existing attachments shall be brought into conformity at the time of their normal replacement, rearrangement, rebuilding, or reconstruction, and whenever practicable.
- (c) Licensee's attachments on a Licensor-owned pole shall be made and maintained in accordance with a reasonable aesthetic criteria mutually agreed to by both Parties. Such aesthetic criteria shall apply without being limited to the type and design of the attachment, circuit arrangements, conductor or cable sags, and service drop arrangements within the provisions of Section 4(b)(1).
- (d) No tag, brand or other device showing Licensee's name or insignia shall be placed on, or attached to, any pole of Licensor, except such tag or insignia which shows

Licensee to be the Licensee or lessee of such pole and not the owner thereof, and then only after obtaining the written consent of Licensor. Where required by the Oregon Joint Use Association (“OJUA”), the Licensee agrees to attach information identifying its facilities on the pole, in a format specified by the OJUA.

- (e) The strength of the poles covered by this Agreement shall be sufficient to withstand the transverse, vertical and longitudinal loads imposed upon them under the storm loading of the NESC assumed for the area in which they are located.
- (f) Any unbalanced loading of Licensor’s pole caused by the placement of Licensee’s circuits shall be properly guyed and anchored by Licensee to its own anchors at its own expense. When, in the opinion of both parties, existing anchors are adequate to support the equipment of both parties, Licensee may attach its guys thereto at no additional expense.

3. Application for Attachment

(a) When Required

Licensee shall not attach or modify any of its Pole Attachments described in Section 1(e)(1) and (2) (except for service drops) to Licensor’s poles or joint use poles on which Licensor has its pole contacts without first having made written and/or electronic application to Licensor and having received written and/or electronic permission from Licensor. However, if Licensee is required by Applicable Law to attach or modify such Pole Attachments within a certain time period, and it has applied for, but has not received permission from the Licensor before the expiration of this time period, then Licensee may attach or modify such Pole Attachments before receiving permission. Licensee must apply for a permit within seven (7) days of the attachment of a service drop and install the service drop in compliance with the NESC.

(b) Application Procedure for Pole Attachments Described in Section 1(e)(1) and (2)

1. Whenever Licensee desires to make a Pole Attachment described in Section 1(e)(1) and (2) to any Licensor pole, Licensee shall submit to Licensor a “Pole Attachment Ticket” electronically via NJUNS and/or written permit application and shall specify the location of the pole(s) on which attachment is requested and the number of contacts requested for each pole.

2. Licensor reserves the right to reject or modify such application(s) where there is insufficient capacity or for reasons of safety, reliability, and generally applicable engineering purposes. Notwithstanding the foregoing, Licensor may reserve space on its poles if it projects a need for that space in the provision of its core utility service. Licensor shall permit use of its reserved space until such time as it has an actual need for that space. At that time, Licensor may recover the reserved space for its own use. Licensor shall give Licensee the opportunity to pay for any reasonable modifications needed to accommodate its displaced attachments.
3. Licensor shall respond to Licensee's application within thirty (30) days of receipt. If the application is approved, Licensor shall notify the Licensee electronically via NJUNS of said approval and the Licensee shall have the right as a Licensee hereunder to affix such attachments in accordance with the application, as approved, and in compliance with the specifications, terms and conditions of this Agreement. Any denial of an application shall identify the specific reasons for denial. If notice is not received from Licensor within thirty (30) days, the application shall be deemed approved and Licensee may proceed with the attachment. Any denial of an application by Licensor must be in writing and describe with specificity all relevant evidence and information supporting the denial and how such evidence and information relates to the lack of capacity, safety, reliability, or generally applicable engineering standards.
4. With the exception of service drops or where elsewhere required by Applicable Law, Licensee shall not have the right to place, nor shall it place, any attachments in addition to that initially authorized without first making application and receiving permission to do so, nor shall Licensee change the position of any attachments to any pole without Licensor's prior written approval.

(c) **Application Planning**

Each application shall involve sufficient engineering and planning by the Licensee to ensure compliance with standards identified in Section 2(a) of this Agreement during construction and upon completion. The Licensee is responsible for conducting engineering studies of Licensee's facilities to ensure proper spacing, equipment bonding and clearances.

It is the responsibility of the Licensee to ensure that only trained, qualified persons work on Licensor's facilities. Qualified persons shall be knowledgeable in applicable NESC rules and must be able to demonstrate competence as required

by the NESC. They shall also be trained to recognize and prevent NESC violations and conflicts, and to maintain safe working clearances from energized lines and equipment.

(d) **Installation Time Limits**

Licensee shall complete the installation of its attachments upon the pole(s) covered by each approved application within ninety (90) days of approval by Licensor. Licensee may request, in writing, an extension of time for installation of large projects subject to written approval by Licensor. Licensor shall approve such requests for extension of time unless Licensor identifies a reasonable justification for denial of such request. In the event Licensee should fail to complete the installation within the prescribed time limit, the permission granted by Licensor to place the Pole Attachments upon the poles shall thereupon be revoked and Licensee shall not have the right to place the Pole Attachments upon the poles without first reapplying for and receiving written permission to do so.

(e) **Make-ready Pole Replacements**

Whenever any pole to which Licensee seeks attachment must be modified or replaced to accommodate Licensee's facilities and Licensor's existing attachments necessary for its core function, as well as the existing attachments of other occupants, Licensor will provide Licensee with a detailed written cost estimate of make-ready work it believes to be necessary to prepare the pole for Licensee's facilities. Licensor will provide Licensee with such estimate within thirty (30) days of receiving Licensee's application for attachment. After receiving this estimate, if Licensee still desires to make such attachments, Licensee shall notify Licensor within thirty (30) days of receiving such estimate of its continuing desire to attach, and shall approve any required payment to Licensor for such make-ready work, which may include engineering, materials (including poles and associated hardware), cost of removal (less any salvage value), and the expense of transferring Licensor's facilities from the old to the new pole(s). To the extent that actual costs to Licensor of make-ready work are anticipated to be greater than 110% of Licensor's estimate, these costs must be approved in writing by Licensee prior to the completion of the make-ready work. Where any payment of estimated expenses made to Licensor by Licensee for both non-replacement make-ready or pole replacements is less than the actual cost of work described above, Licensee agrees to pay Licensor, within forty-five (45) days of receipt of an invoice, all sums in excess of the amount of the advanced payment up to the amount of the actual cost of the work, less any amount in excess of 110% of the cost estimate if that amount was not previously approved as provided above. Where the payment of estimated expenses made to Licensor by Licensee exceeds such costs, Licensor agrees to refund the difference to Licensee within forty-five (45) days of completion of the make-ready work. The Licensor shall also make satisfactory

arrangements with the owner or owners of other facilities attached to said poles for the transfer or rearrangement of such other facilities.

(f) **Cost Allocation Among Multiple Users**

When applications to occupy the same pole have been received from two or more prospective occupants, including Licensee, before any of them is given a license, and, if to accommodate their respective attachments on the pole it would be necessary to rearrange existing attachments or replace the pole, the applicable costs of rearrangement or replacement incurred in conjunction with such simultaneous applications shall be pro-rated equitably among such simultaneously attaching parties. In this context, "simultaneous" refers to all pending applications.

5. **Non-Interference with Licensor Facilities**

Licensee at all times shall insure that its agents, servants, employees, and contractors or contractors' employees neither take, nor attempt to take any action whatsoever to Licensor's wires, attachments, and other facilities attached to or supported by poles covered by this Agreement. Each party shall exercise reasonable precautions to avoid damage to the facilities of the other. Licensor at all times reserves the right to maintain and operate its own equipment in such a manner as will best enable it to fulfill its own core utility service requirements and such requirements shall have priority over all pole occupants.

6. **Pole Ownership**

All poles on which attachments are made under this Agreement shall remain the property of the pole owner, and any payments made by the occupant for changes in pole lines under this Agreement shall not entitle the occupant to ownership of any of said poles.

7. **Safety**

(a) **Inspections**

Licensor shall have the right to perform an Inspection of Licensee's Pole Attachments on Licensor's poles at any time. Licensor may charge Licensee for the pro-rata expense of any non-routine inspections during or after installation, in connection with Pole Attachments that do not comply with the terms of this Agreement. Licensor shall notify Licensee of any performance concerns that trigger Inspections at least two (2) business days prior to activating such inspection during installation and thirty (30) days after completion and provide Licensee an opportunity to participate in such inspections. Such inspections, whether made or not, shall in no manner relieve Licensee of any responsibility, obligation, or liability assumed under this Agreement or arising otherwise.

(b) Entry into Power Space

Licensee (including its employees and contractors) shall not enter the Power Space on Licensor poles for any purpose including making connections to the Licensor neutral. If Licensee requires grounding on an existing Licensor pole where a grounding conductor does not exist, Licensee shall request the Licensor to install grounding at the sole expense of Licensee. If the Licensor is unable to install said grounding within thirty (30) days of the date requested, Licensee has the option of hiring qualified electrical contractors to perform this work. Licensee, its employees and its contractors, shall at all times exercise its rights and responsibilities under the terms of this Agreement in a manner that treats all electric facilities as energized at all times. Licensee shall assume complete responsibility for its employees' conduct and Licensee shall determine and provide the appropriate training and safety precautions to be taken by its employees and contractors. Licensee shall indemnify, defend, and hold the Licensor harmless from any liability of any sort derived from Licensee's employees' or contractors' failure to abide by the terms of this Section except to the extent of the Licensor's negligence or willful misconduct.

(c) Conflicts with Electric Lines

Licensor shall provide Licensee notice of any NESC violations it discovers. NESC violations and conflicts to electric lines shall be corrected in accordance with OJUA standards and the time frames described therein (including but not limited to the time frame for submitting a plan of correction), as amended, by the Licensee if Licensee created the violation. In some instances, the NESC requires that qualified electrical workers perform the work. In that event, Licensee shall either have qualified contractors or pay Licensor to perform the work. Failure by Licensee to act in a prompt and responsible manner may result in the Licensor taking appropriate measures to correct the safety violations involved and Licensee shall be responsible for the cost thereof. In such cases, the inspection, design, repair, and coordination charges shall be borne by Licensee if it failed to perform necessary duties required by Oregon law.

(d) Licensee's Contractor List

Upon Licensor's request, Licensee shall provide to the Licensor a current list of the names of all of Licensee's contractors who will have occasion to perform work on or about the facilities.

(e) Right-of-way Clearing and Tree Trimming

Licensor shall bear the cost of the original tree trimming, brushing and clearing required for the placement of a new pole line. All tree trimming and brush cutting in connection with the initial placement of wires or equipment on an existing pole line shall be borne entirely by the party placing the wires or equipment. Unless the parties otherwise agree, each party shall be responsible for any and all additional tree trimming and brush cutting related to its wires or equipment.

8. Occupancy Survey:

The Licensor may conduct an Occupancy Survey not more often than every fifth year from the date of this Agreement, and subsequent to each such Occupancy Survey. The Licensor shall give Licensee at least thirty (30) days prior notice of its desire to conduct such Occupancy Survey. Licensee shall advise the Licensor if Licensee desires to participate in the inventory within sixty (60) days of such notice. The parties shall jointly select an independent contractor for conducting the inventory and agree on the scope and extent of the Occupancy Survey that is reimbursable by Licensee. The cost of the Occupancy Survey shall be recovered in the annual rent. The Contractor shall provide the Parties with a detailed report of such Occupancy Survey including both the Licensor's and Licensee's pole numbers (to the extent that Licensee's pole numbers are on the pole and clearly identified as Licensee's pole tag at the time of the survey) and other information required to update each party's inventory databases within a reasonable time after its completion. The inventory data from the Licensor's Occupancy Survey shall be used to update the Licensee's attachment billing records where applicable. Licensee shall make any objections to the inventory data within sixty (60) days of receipt of the Occupancy Survey report or such objections shall be waived. Objections raised to inventory data from an Occupancy Survey shall not relieve Licensee of the obligation to pay undisputed amounts when due, as set forth in Article V above. The Parties agree to cooperate in good faith to resolve any disputed amounts.

9. No Warranty:

The Licensor does not warrant or assure to Licensee any right-of-way privilege or easements or that Licensor owns a property right that permits attachment, and if the Licensee shall at any time be prevented from placing or maintaining its attachment on Licensor's poles or joint poles, no liability shall attach to Licensor. The parties will cooperate as far as may be practicable in obtaining rights-of-way and easements for both parties on joint poles. Each party shall otherwise be responsible for obtaining its own easements and rights-of-way. The attaching Licensee shall solely be responsible to acquire the property right to attach from the property owner.

10. Maintenance of Poles, Attachments and Right-of-Way:

- (a) The expense of maintaining jointly used poles shall be borne by Licensor, and Licensor shall maintain its jointly used poles in a safe and serviceable condition, and shall, under the other provisions of this Agreement, replace, reinforce, or repair such poles as become defective. Licensor shall be solely responsible for collection for damages for poles broken or damaged. The party with equipment attached to the pole shall be responsible for collecting damages to its own equipment. If a pole owned by Licensor is replaced by Licensee because of auto damage or storm damage, Licensor shall pay Licensee for the actual costs of such pole replacement.
- (b) Whenever right-of-way considerations or public regulations make relocation of a pole necessary, such relocation shall be made by the Licensor at its own expense, except each party shall bear the cost of transferring its own attachments.
- (c) Whenever it is necessary to replace, move, reset or relocate a jointly used pole, the Licensor shall consult with Licensee on the location of the new pole before making such replacement or relocation, and at least thirty (30) days prior to such replacement, move, resetting or relocation, shall give Licensee notice via NJUNS (except in case of emergency, when verbal notice will be given and subsequently confirmed via NJUNS within five (5) days of verbal notice), specifying in such notice the work to be performed and the time of such proposed replacement, move, resetting or relocation. Licensor shall inform Licensee that it has completed its work within thirty (30) days of such completion. Licensee shall then transfer its attachments to the new or relocated joint pole and notify Licensor when such transfer is complete. Should the Licensee fail to transfer its attachments to the new or relocated joint pole within thirty (30) days after receiving notice from Licensor that its work is completed, the Licensor may elect to do such work, and the Licensee shall pay the Licensor the cost of such work. In the event that third parties, not subject to this agreement, have equipment attached to the Licensor's pole, such thirty (30) day period shall commence upon removal of third party attachments. In the event the Licensee fails to transfer its attachments and the Licensor does such work, the Licensor shall not be liable for any loss or damage to the Licensee's facilities that may result, except in the case of gross negligence or willful misconduct.
- (d) Except as otherwise provided in subparagraph (c) of this Section, each party shall at all times maintain all of its attachments in accordance with the specifications mentioned in Section 2 and shall keep them in good repair. All necessary right-of-way maintenance, including tree trimming or cutting, shall be borne by the parties as provided in Section 7(e).
- (e) Any existing joint use construction that does not conform to the specifications mentioned in Section 2 shall be brought into conformity as soon as practicable. When such existing construction shall have been brought into conformity with said specifications, it shall at all times thereafter be maintained as provided in (a)

and (d) of this Section. Should the Licensee fail to comply, the Licensor may elect to do such work and the Licensee shall pay the Licensor the cost.

- (f) Licensee expressly assumes responsibility for determining the condition of all poles to be climbed by its employees, contractors, or employees of contractors. Licensor disclaims any warranty or representation regarding the condition and safety of the poles of the Licensor. Licensor agrees that, upon written notification, it will replace any pole that is unserviceable.

11. Recovery, Rearranging or Relocation of Facilities:

- (a) Once Licensee has an approved permit to attach to Licensor's pole, any pole replacement due to additional space requirements will be borne by the requesting party, not Licensee.
- (b) If in the sole judgment of the Licensor, the accommodation of any new Pole Attachments of Licensor to Licensor's poles necessitates the rearrangement or addition of any existing facilities on an existing pole, or the replacement of any existing pole, Licensor shall specify on the Application the changes necessary to accommodate the Pole Attachments and the estimated cost thereof and return it to Licensee. If Licensee still desires to use the pole and returns the application marked to so indicate, Licensor shall make such rearrangements, transfers and replacements of existing facilities, and additions of new facilities, as may be required, and Licensor shall reimburse Licensor for any additional expenses thereby actually incurred by Licensor not otherwise prescribed in this Agreement.
- (c) Whenever it is necessary to replace or change the location of a joint use pole, for reasons other than those set out in Section 10 (a) and (b), and over which Licensee and Licensor have no control, Licensor shall, before making such change, give prompt notice to the Licensee via NJUNS, specifying in such notice the time of such proposed change, and the Licensee shall promptly begin to transfer or remove its attachments. In case of any such pole replacement or change where Licensor has transferred or removed its attachments and Licensee has not transferred or removed its attachments within sixty (60) days after receipt of such notice, Licensee shall become liable for such old pole as provided in Section 14.

12. Indemnification and Insurance:

- (a) Licensee agrees to indemnify and hold harmless Licensor, its directors, officers, employees, and agents against and from any and all claims, demands, suits, losses, costs, and damages, including attorneys' fees, for or on account of bodily or personal injury to, or death of, any person(s), including without limitation Licensee's employees, agents, representatives and subcontractors of any tier, or loss of or damage to any property of Licensee, or any third party, to the extent resulting from any negligent act, omission, or fault of Licensee, its employees, agents, representatives, or subcontractors

of any tier, their employees, agents, or representatives, in the exercise, performance or nonperformance of Licensee's rights or obligations under this Agreement. Except for liability caused by the sole negligence of Licensor or its employees, agents, representatives, or subcontractors of any tier, Licensee shall also indemnify and hold harmless Licensor from and against any and all claims, demands, suits, losses, costs, and damages, including attorney's fees, arising from any interruption, discontinuance, or interference with Licensee's service to its customers which may be caused, or which may be claimed to have been caused, by any action of Licensor pursuant to or consistent with this Agreement.

- (b) Licensor agrees to indemnify and hold harmless Licensee, its directors, officers, employees and agents against, and from any and all claims, demands, suits, losses, costs, and damages, including attorneys' fees, for or on account of bodily or personal injury to, or death of, any person(s), including without limitation Licensor's employees, agents, representatives and subcontractors of any tier, or loss of or damage to any property of Licensor, or any third party, to the extent resulting from any negligent act, omission, or fault of Licensor, its employees, agents, representatives, or subcontractors of any tier, their employees, agents, or representatives, in the exercise, performance or non performance, of Licensor's rights or obligations under this Agreement. Except for liability caused by the sole negligence of Licensee or its employees, agents, representatives, or subcontractors of any tier, Licensor shall also indemnify and hold harmless Licensee from and against any and all claims, demands, suits, losses, costs, and damages, including attorney's fees, arising from any interruption, discontinuance, or interference with Licensor's service to its customers which may be caused, or which may be claimed to have been caused, by any action of Licensee pursuant to or consistent with this Agreement.
- (c) The indemnifying party shall have the right, but not the obligation, to defend the other regarding any claims, demands or causes of action indemnified against. Each party shall give the other prompt notice of any claims, demands or causes of actions for which the other may be required to indemnify under this Agreement. Each party shall fully cooperate with the other in the defense of any such claim, demand or cause of action. Neither shall settle any claim, demand or cause of action relating to a matter for which such party is indemnified without the written consent of the indemnitor.
- (d) Each party shall carry insurance in such form and in such companies as are satisfactory to the other party to protect the parties from and against any and all claims, demands, actions, judgments, costs, expenses and liabilities of every name and nature which may arise or result directly or indirectly from or by reason of such loss, injury or damage subject to the terms and conditions of the policies. To the extent permitted, such insurance policies shall name the other party as an additional insured. Notwithstanding the above, neither party shall be liable to the other for any incidental, indirect, special or consequential damages of any kind, including but not limited to, any loss of use, loss of business or loss of profit; provided, however, there shall be no limitation on a party's liability to the other for any fines or penalties imposed on the other party by any court

of competent jurisdiction or federal, state or local administrative agency resulting from the failure of the party to comply with any term or condition of this agreement or any valid and applicable law, rule or regulation.

- (e) Each party shall carry and keep in force, while this Agreement is in effect, insurance contracts, policies and protection in company or companies that maintain at least a “Best’s” rating of A- VII in amounts and for coverage deemed necessary for its protection by the other party, but in no event for amounts or coverage less than the following minimum requirements:
1. Comprehensive general liability insurance, ISO Form CG 0001 10 01 or equivalent, including independent contractors insurance coverage, with minimum limits of \$10,000,000 combined single limit each occurrence and aggregate for bodily injury and property damage, including coverage for damage caused by blasting, collapse or structural injury, and/or damage to underground facilities, protecting the insured party against and in respect to all matters, liabilities, contingencies, and responsibilities arising under the Agreement and subject to the policy’s terms and conditions, including without limiting the foregoing, contractual liability insurance covering the insured party’s obligations under this Agreement included in the above minimum limits of \$10,000,000 combined single limit each occurrence and aggregate for bodily injury and property damage to indemnify and to hold the other party harmless for bodily injury or property damage caused in whole or in part by the insured party.
 2. Each party shall also carry and keep in force, while the Agreement is in effect, workers’ compensation insurance in compliance with the laws of the state of Oregon and employers’ liability insurance with minimum limits of \$1,000,000 per accident.
 3. Upon request, each party shall furnish the other with certificates of insurance showing that such insurance is in force and will not be canceled or materially modified without thirty (30) days prior written notice to the other party’s President/CEO. Neither acceptance nor knowledge (by and of the other party) or the procurement of the insured party of insurance protection of lesser scope than that required to be procured by them under this Agreement shall in any manner or for any purpose constitute or be deemed a waiver by either party of the requirements imposed respecting insurance protection, nor shall any such acceptance or knowledge of insurance protection of lesser scope in any manner or for any purpose lessen or modify or constitute a limiting interpretation of the scope of the matters covered by and obligations of either party under this Agreement.

13. Breach and Remedies

(a) If either party shall default in any of its material obligations under this Agreement, then the non-defaulting party shall have the right to terminate this Agreement as to future joint use; provided, however, that (i) the non-defaulting party shall first give the defaulting party written notice, in the manner described in Section 25, of such default and the non-defaulting party's intent to terminate, and (ii) upon receiving such notice, (A) the defaulting party shall have thirty (30) days in which to cure such default; or (B) if within five (5) days of receiving such notice, the defaulting party notifies the non-defaulting party why it cannot reasonably cure within thirty (30) days and submits a plan of correction describing how it shall undertake to correct such default and by when such correction will be completed, the defaulting party shall proceed with reasonable diligence and in good faith to correct such noncompliance or default as set forth in the plan of correction. Nothing herein shall affect any obligation to provide notice as described in Section 25 for termination that does not involve default of a material obligation. Any termination will be subject to the survival provisions of Section 19 herein.

(b) In case of default and subject to the provisions of subsection (a) above and Section 19 of this Agreement, the non-defaulting party may, at its option, terminate the Agreement as to future joint use or may terminate the license covering the new Pole Attachment(s) in respect to which such default shall have occurred. In case of such termination, no refund of unused rental shall be made.

(c) If either party shall default in the performance of any work that it is obligated to do under this Agreement, the other party may elect to do such work, and the party in default shall reimburse the other party for the cost thereof within thirty (30) days after receipt of an invoice therefor.

(d) Notwithstanding the aforementioned remedies, appropriate representatives of the parties shall meet promptly upon request and attempt in good faith to resolve disputes that arise concerning this Agreement. If the parties are unable to reach a resolution themselves, a party may, by written notice, request the other party to agree to an alternative dispute resolution procedure (e.g. non-binding mediation, binding arbitration) for the dispute, and the other party shall respond in writing within ten (10) working days. Any deadline or timeframe described in Section 13 herein shall be tolled while the parties attempt in good faith to resolve disputes as described in this subsection (d).

14. Abandonment of Joint Use Poles:

- (a) If Licensor desires at any time to abandon any joint use pole, it shall give Licensee notice in writing via NJUNS to that effect at least thirty (30) days prior to the date on which it intends to abandon such pole. If, at the expiration of said period Licensor shall have no attachments on such pole but Licensee shall not have removed all of its attachments, such pole may, at the Licensor's discretion, become the property of Licensee, and Licensee shall hold harmless the Licensor

from every obligation, liability, or cost, and from all damages, expenses or charges incurred thereafter, arising out of, or because of, the presence of or the condition of such pole or any attachments, and shall pay the Licensor a sum equal to the present value of such abandoned pole or poles, less cost of removal, but in no event less than zero even should such value fall below zero, or such other equitable sum as may then be agreed upon between the parties, and Licensor shall provide Licensee with properly authorized bill of sale for such pole(s).

- (b) If the Licensor abandons the pole and relocates facilities underground, the Licensor shall abandon the vacated pole to the Licensee.
- (c) Licensee may at any time abandon the use of a joint use pole by giving Licensor due notice in writing via NJUNS of such abandonment, as provided in (a) of this Section, and removing from such pole all attachments that Licensee may have. In case of such abandonment of the use of any such pole, Licensee shall pay to Licensor the full rental for the current year for the space on said pole set aside for the use of Licensee.

15. Rental Charges and Rates and Division of Costs:

- (a) On or about December 31 of each year, the parties, acting in cooperation, shall tabulate the total number of pole contacts in use as of the preceding day. This tabulation shall indicate the number of poles on which rentals are to be paid.
- (b) The yearly rental period covered by this Agreement shall be the twelve month calendar year period between January 1 and December 31. Within thirty (30) days after the completion of the tabulation referred to above, Licensor shall invoice Licensee for the rental amount owing, as calculated in accordance with Exhibit B and Applicable Law, which is attached hereto and incorporated herein by this reference, specifying on such invoice the rental period covered. Payment of the invoiced amount shall be made within forty-five (45) days of receipt of the invoice. The annual rental rate per pole shall apply to any Pole Attachments made or removed during the year and rents shall not be prorated; provided however, that if this Agreement is executed between July 1 and December 31 of the same calendar year, Licensee shall pay to Licensor only one-half (1/2) of the annual rental due for attachments made during that period. Consistent with the terms of this provision, the components of the rental rates, and the methodology employed to determine the rental rates specified in Exhibit B of this Agreement (which are subject to the valid and effective provisions of the OAR and OPUC rules and regulations, as may be amended, and Applicable Law) may be modified or replaced by an agreement by the parties. Such modifications or replacements (which also are subject to the valid and effective provisions of the OAR and OPUC rules and regulations, as may be amended, and Applicable Law) shall become effective on the first day of the year following the agreement of the

parties. Thus, for example, if such changes were to be agreed upon in December of 2006, they would become effective as of January 1, 2007.

- (c) In the event that Licensee requires a source of electrical energy for power supply to the cable system which constitutes a part of the licensed pole contacts and apparatus, such energy will be supplied by Licensor in accordance with the provisions of its standard service extension policies and approved rates and tariffs.
- (d) Unless otherwise provided, all undisputed amounts payable under this Agreement upon completion of work performed hereunder by either party, the expense of which is to be borne wholly or in part by the other party, shall be due and payable within forty-five (45) days of receipt of an appropriate invoice.
- (e) Licensor and Licensee shall define the guidelines and definition for compliance as it pertains to this Agreement, and Licensee shall receive a rent reduction as provided in Exhibit B if the Licensee is in compliance as provided for in ORS 757.282(3) and OAR 860-028-0230, as may be amended. Nothing herein shall be construed as a waiver of Licensee's right to request a settlement conference, contest the denied rental reduction, or otherwise avail itself of the rights and procedures set forth in OAR 860-028-0230, as may be amended.
- (f) Subject to the other provisions of this Agreement, the cost of erecting new joint poles, constructing new pole lines, making extensions to existing pole lines, or replacing existing poles, pursuant to this Agreement shall be borne by the Parties as follows:
 - 1. Poles should be erected at the sole expense of Licensor.
 - 2. If a pole larger than that which is already installed is necessary, due wholly to the Licensee's requirements, including requirements as to keeping Licensee's wires clear of trees, Licensee shall pay to Licensor a sum equal to the difference between the cost, in place, of such pole and the cost, in place, of the existing pole. Licensor shall bear the rest of the cost of erecting such pole, except as otherwise provided in subsection (h) below.
 - 3. If a pole larger than that which is already installed is necessary, due to the requirements of both parties, or the requirements of public authorities or of property owners (other than requirements with regard to keeping the wires of one party only clear of trees), Licensee shall pay to Licensor a sum equal to one-half the difference between the cost, in place, of such pole and the cost, in place, of the existing pole; Licensor shall bear the rest of the cost of erecting such pole. Where there are more than the two Parties to this agreement attached to a pole, the cost of such pole replacements will be divided equally among all parties attached to the pole.

4. In the case of an interset pole required solely by Licensee in Licensor's alignment, Licensor shall erect and own such pole and retain ownership, and Licensee shall pay to Licensor a sum equal to the cost in place of the interset or midspan pole.
- (g) Any payments for poles made by Licensee shall not entitle Licensee to the ownership of any part of said poles.
 - (h) Where an existing pole is prematurely replaced (for reasons other than normal or abnormal decay) by a new pole solely for the benefit of Licensee, or in order to permit joint use, the cost of the new pole shall be borne by the parties as specified in subsection (f) above, and Licensee shall also pay Licensor the remaining life value of the old pole in place, plus the cost of removal, less the salvage value of such pole. Licensor shall remove and may retain or dispose of such pole as sole owner thereof.
 - (i) Each party shall place, maintain, rearrange, transfer, and remove its own attachments at its own expense except as otherwise expressly provided.
 - (j) The expense of the poles shall be borne by Licensor except that the cost of replacing poles shall be borne by the Parties hereto in the manner provided in subsections (f) and (h) above.
 - (k) Where Licensee's service drops cross over Licensor's lines and are attached to Licensor's poles, either directly or by means of a pole top extension fixture, the cost shall be borne as follows:
 - 1. Pole top extension fixtures shall be provided and installed at the sole expense of the party using them.
 - 2. Where an existing pole is replaced with a taller pole to provide the necessary clearance for Licensee's benefit, Licensee shall pay to Licensor a sum as determined under subsection (h) above.
 - (l) In the event that Licensor requires Licensee to transfer equipment, or set, lower, haul and/or dispose of Licensor's poles, Licensor shall reimburse Licensee for the cost of such services with forty-five (45) days of receipt of an appropriate invoice.
 - (m) Nothing herein shall preclude the establishment of other arrangements for the division of costs of joint poles as the Parties may agree to in writing.

16. Rights of Other Parties:

Nothing herein contained shall be construed as affecting any rights or privileges previously conferred by either party, by contract or otherwise, to others not party to this Agreement to use any poles owned by such party. Further, nothing herein contained shall be construed to affect either party's right to continue, modify, extend or amend such existing rights or privileges, or to grant others the right or privilege to use poles owned by the Party.

Licensee shall not enter into any agreement with third parties for attachment to a pole owned by Licensor within Licensee's allocated space or otherwise. Licensor may enter into attachment agreements with third parties and will administer all third party attachments for space outside Licensee's allocated space. As to any such agreements between Licensee and third parties that predate this Agreement, Licensee will, by appropriate means, transfer the administration of such attachments to Licensor.

17. Term and Termination of Agreement:

This Agreement shall continue in force and effect for a period of one (1) year from and after the date of this Agreement, and thereafter from year to year unless terminated by either party by giving written notice of its intention to do so not less than three hundred sixty-five (365) days' notice to the other party. Notice shall be in writing and mailed by certified mail, return receipt requested, postage prepaid, or delivered by a reputable overnight courier with tracking capabilities, addressed to the parties as indicated in Section 26 of this Agreement. If the parties begin negotiating a new agreement at any time after either party gives written notice of its intention to terminate and before the expiration of the three hundred sixty-five (365) days, then the 365-day termination period shall be tolled until such time as either party notifies the other in writing that continued negotiation is no longer desired.

If this Agreement is terminated, the parties shall remove all of their respective equipment and Pole Attachments from the other party's poles within two years after termination of this Agreement. All of the applicable provisions of this Agreement, specifically including but not limited to the payment of rent for joint use poles, shall remain in full force and effect with respect to any and all equipment or Pole Attachments of either party remaining upon poles of the other party until such time as all such equipment and Pole Attachments have been removed, or unless otherwise agreed to by the parties.

18. Licensee's Failure to Remove or Make Changes and Cases of Emergency

In the event that Licensee shall fail to remove any attachments as required in this Agreement, Licensor shall have the right to effect such removals.

In case of emergency or immediate service needs of Licensor, Licensor may perform such removal or change work without prior notice to Licensee or upon such notice as may be reasonable under the circumstances.

19. Survival of Obligations:

Any termination of this Agreement in whole or in part shall not be effective as to those provisions of the Agreement governing the liability or obligations of Licensee, including, without limiting the generality of the foregoing, the obligation to continue to pay pole attachment charges as provided in Section 15 of this Agreement, for such time as Licensee's attachments remain on Licensor's poles. Any such provisions shall survive termination of the remainder of the Agreement.

20. Waiver of Terms or Conditions:

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

21. Supplemental Agreements:

- (a) This Agreement may be amended or supplemented at any time upon written Agreement of the parties hereto. Should either an amendment or supplement become necessary, the party desiring such amendment or supplement shall give thirty (30) days written notice to the other party setting out in detail the changes or additions desired.
- (b) In the event that Licensee desires to add or reduce the number of Pole Attachments, Section 21(a) shall not apply, but in each case a sketch, map, or other mutually acceptable notice shall be submitted to Licensor, setting out in detail the pole numbers and locations of the poles, and the quantity of poles involved in the addition or subtraction.

22. Payment of Taxes:

Each party shall pay all taxes and assessments lawfully levied on its own property upon said jointly used poles, and the taxes and the assessments which are levied on said joint use poles shall be paid by the Licensor thereof, but any tax, fee or charge levied on Licensor's poles solely because of their use by the Licensee shall be paid by Licensee.

23. Interest and Payments:

All undisputed amounts to be paid by Licensee to Licensor under this Agreement shall be due and payable within forty-five (45) days after an invoice is received by the Licensee. Any payment of undisputed amounts not made within forty-five (45) days from the due date shall bear interest at the prime rate plus 2 percent, but in no event greater than that allowed by Applicable Law.

24. License Only:

No use, however extended, of any of the facilities under the Agreement shall create or vest in Licensee any ownership or property rights in Licensor's poles or facilities, but Licensee's rights therein shall be and remain a mere license.

25. Notices:

Any notice, request, consent, demand or statement which is contemplated to be made upon either party by the other party under any of the provisions of this Agreement, other than where made via NJUNS, shall be in writing and shall be treated as duly delivered when it is deposited in the United States certified mail, postage prepaid and properly addressed to the party to be served as follows:

- (i) If notice is to Licensor,
Mr. Al Gonzalez, President/CEO
Central Electric Cooperative, Inc.
P.O. Box 846 or 2098 N. Hwy 97
Redmond, Oregon 97756

- (ii) If notice is to Licensee,
Qwest Corporation
Joint Use
700 W. Mineral Ave. MT G28.24
Littleton, CO 80120

or at such other address as may be designated in writing by the other party.

26. Supplying Information:

- (a) It is understood and agreed to between the parties that, upon Licensor's request, Licensee shall furnish on a one-time basis to Licensor within thirty (30) days after execution of this Agreement, database information regarding the joint use poles to be initially covered by this Agreement, showing the facilities installed. Alternatively, information from the most recent audit survey may be used to provide such information. Licensee shall have thirty (30) days from receiving Licensor's request to provide such information. This information shall be subject to a confidentiality agreement ensuring that only Licensor, and none of its subsidiaries, affiliates, divisions, parents, or related entities, or any other entity or person, including but not limited to Quantum Communications LLC, shall have access to this information. Such information shall be used solely for the purposes of implementing and performing this Agreement.

- (b) Within ninety (90) days after the completion of the initial installation of the Licensee's facilities, as set forth in the above mentioned information, Licensee

shall furnish to Licensor a revised copy, if necessary, of said information showing poles attached by Licensee which is actually installed on poles of the Licensor. Such revised information shall be verified by the Licensor and shall be the basis for determining the number of pole contacts made initially. As a substitute to this provision, the most recent audit survey information may be used. This information shall be subject to a confidentiality agreement ensuring that only Licensor, and none of its subsidiaries, affiliates, divisions, parents, or related entities, or any other entity or person, including but not limited to Quantum Communications LLC, shall have access to this information. Such information shall be used solely for the purposes of implementing and performing this Agreement.

- (c) Upon Licensor's request, Licensee shall promptly report to Licensor any changes made in the number of poles of the Licensor contacted by Licensee.

27. Choice of Law:

This Agreement is deemed executed in the state of Oregon and shall be construed under the laws of the state of Oregon and all Applicable Law.

28. Prior Agreements Superseded:

This Agreement constitutes the entire Agreement between the parties and it supersedes all prior negotiations, agreements and representations, whether oral or written, between the parties relating to the subject matter of this Agreement; provided, however, that (i) existing Pole Attachments made prior to the date of this Agreement and approved by Licensor, and applications in progress for permits, shall continue in effect under the terms and conditions of this Agreement; (ii) nothing herein shall relieve either party from obligations and liabilities, or deprive either party of any rights or privileges, that arose or were incurred under prior agreements; and (iii) any rental obligations of the parties currently in arrears under any prior agreement shall be recalculated according to the terms of this Agreement as of the effective date hereof. This Agreement can only be modified or amended in writing by authorized representatives of the parties.

29. Assignment of Agreement:

Neither party shall assign, transfer, or otherwise dispose of this Agreement or any of its rights, benefits, or interests under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld. No assignment of this Agreement shall operate to discharge the assignor of any duty or obligation hereunder without the written consent of the other party. Each party may assign all its rights and obligations under this Agreement to its parent corporation, to its subsidiary corporation, to a subsidiary of its parent corporation, to its survivor in connection with a corporate reorganization, to any corporation acquiring all or substantially all of its property or to any corporation into which it is merged or consolidated.

30. Reciprocal Agreement

Any occupancy by the Cooperative on the facilities of Qwest Corporation shall be governed by the terms and conditions of this Agreement as though the Cooperative was the Licensee and Qwest Corporation was the Licensor.

31. Miscellaneous:

The provisions of this Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns.

References to articles and Sections are references to the relevant portions of this Agreement.

The headings are inserted for convenience and shall not affect the construction of this Agreement.

In witness whereof, the parties have caused this Agreement to be duly executed.

DATED this _____ day of _____, 20__.

(Licensor) _____,
Central Electric Cooperative, Inc.,
an Oregon cooperative corporation

(Licensee) _____

By _____
Al Gonzalez

By _____

Its President/CEO

Its _____

EXHIBIT B: RENTAL RATE WORKSHEET (to be filled in by the parties)

Total Value of Poles & Fixtures
Less Depreciation Reserves
Net Value of Poles and Fixtures

Ratio of Bare Pole to Total Pole

Value of all Bare Poles

Number of Poles

Average Cost per Pole

Annual Carrying Charge

Operation expense
Maintenance expense
Customer expense
Admin. & General expense
Taxes
Depreciation
Bond Debt Interest/Amortization Expense
Current net income

Net Book Value

Carrying Charge per Total Usable Space

Available Usable Space (in feet)

Rental Rate per foot
Space occupied (in feet)

RENTAL RATE PER POLE

RENTAL REDUCTION PER ORS 757.282(3) AND OAR 860-028-0230



**CENTRAL ELECTRIC
COOPERATIVE, INC.**

July 20, 2004

Mr Curt Dickman
Qwest
700 West Mineral Ave
Room MT.G28.24
Littleton CO 80120

Re: Joint Pole Agreement

Dear Mr Dickman:

Please find enclosed one (1) draft copy of our proposed Standard Joint Use Agreement for your review and comments. This proposed agreement is based upon the template developed at the statewide level by all the members of the Oregon Rural Electric Cooperative Association. We plan to implement this agreement by January 1, 2005. We welcome your comments and suggestions but do not anticipate any major revisions to the document. Please let me know if you have any questions or if you need any additional information.

Sincerely,

Jeff Spencer
Operations Manager

cc: Jeff Kent

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POLE ATTACHMENT LICENSE AGREEMENT

This pole license Agreement made and entered into the ____ day of _____, 20__, by and between _____ an Oregon Cooperative Corporation, with its principal place of business at _____ (hereinafter called "Licensor"), and _____, a(n) _____ Corporation, with its principal place of business at _____ (hereinafter called "Licensee").

Witnesseth

Whereas, Licensor owns, operates and maintains lines of poles extending in Deschutes, Crook, Jefferson, Grant, Lake, Wasco and Linn Counties, in the state of Oregon; and

Whereas, Licensee desires to place certain lines, attachments and apparatus, hereinafter called "pole contacts" on certain poles of Licensor, for the limited purpose of furnishing lawful telecommunications or electrical services in compliance with any and all local, state or federal regulations; provided, that such transmission of signals or power does not interfere with the furnishing of electrical service to consumers of Licensor and others using said poles, and where in Licensor's judgment, safety will not be adversely affected.

Whereas, Licensor is willing to permit Licensee, to the extent it may lawfully do so, to place said lines, attachments and apparatus on said poles, on a non-exclusive basis, in the area shown on Exhibit "A" attached hereto and made a part hereof;

Now, therefore, in consideration of the mutual covenants, terms and conditions herein contained the parties hereto, for themselves, their successors and assigns, do hereby covenant and agree as follows:

1. Definitions:

- (a) **Pole**: A utility pole owned and maintained solely by Licensor.
- (b) **Joint Use Pole**: A utility pole owned and maintained by Licensor and shared with another utility entity not Licensee, or a utility pole owned by an entity other than Licensor but used jointly by Licensor.
- (c) **Pole Contact**: An attachment by the Licensee to the pole, falling into one of the following categories:
 1. **Attachments requiring permits and rental fees**. Includes the following:
 - Initial bolt attachment inside the telecommunication space
 - Additional bolt attachment or other facility attached to the pole

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- Support Equipment (i.e., guy wires attached to owner anchor)
2. Attachments requiring permits but no additional rental fee. Includes the following:
- Overlashing on own equipment
 - Reconductoring
- 3.* Attachments requiring notification of the pole owner, but not requiring a permit or fee. Includes the following:
- New Licensee down guy attached to Licensee's or other's anchors
 - Other large load items greater than 50 lbs or more than 1 cubic foot that licensee may hang on their communication lines
 - New Licensee anchors
- 4.* Attachments not requiring notification, permits or fees. Includes the following:
- Off-pole installations such as
 - Mid-span drops
 - Terminals
 - Taps
 - Amplifiers
 - Snow shoes
 - Splice enclosures
 - Wind Dampeners
 - Mid-span crossovers

* Licensor may charge rental fee and/or require permit if attachments are not in compliance.

- (a) Basic Pole: A 40' pole, or as otherwise determined by the Licensor. This definition is used solely for the purpose of computing pole rental rates.
- (b) Notification: A written and/or electronic communication between the Licensor and Licensee, in a format agreed upon by the parties to this contract.
- (c) Application: A written and/or electronic request by a Licensee to attach to a pole.
- (d) Permit: Licensor's written and/or electronic approval of a pole attachment.
- (e) Sanction: A financial penalty as specified in OAR 860-028-0120 through 0190.

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- (f) **Telecommunication Space:** Space on the pole between 20 and 23 feet on the pole unless otherwise specified.

2. **Specifications:**

- (a) The joint use poles covered by this Agreement shall be placed and maintained in accordance with the most stringent requirements, specifications and rules as incorporated under applicable Oregon law and regulations of the latest addition of the National Electrical Safety Code (NESC), the Occupational Safety and Health Act (OSHA), the Oregon Public Utility Commission (OPUC), any governing authority having jurisdiction and the rules and practices of Licensor as set forth in Exhibit "B" attached hereto and made a part hereof.
- (b) It is understood and agreed between the parties that the rules and practices set out in Exhibit "B" may be changed by Licensor, or new rules and practices may be adopted by Licensor, without resort to the provisions of Section 18, relating to supplementing or amending this Agreement, and Licensee agrees to be bound by any such change or adoption.
- (c) In the event that Licensor should change or adopt a rule or practice, or rules and practices, for the joint use of poles by Licensee, Licensor shall give Licensee written notice of such change or adoption in the manner contemplated by Section 22 and Licensee agrees to make such changes or alterations in its installations or maintenance of its facilities as may be required in order to fully comply with the provisions of such notice. In the absence of a contrary provision in said notice, Licensee agrees to make all required changes or alterations within thirty (30) days after receipt.
- (d) No tag, brand or other device showing Licensee's name or insignia shall be placed on, or attached to, any pole of Licensor, except such tag or insignia which shows Licensee to be the Licensee or lessee of such pole and not the owner thereof, and then only after obtaining the written consent of Licensor. Where required by the Licensor, the Licensee agrees to attach information identifying its facilities on the pole, in a format specified by the Licensor.
- (e) The strength of poles covered by this Agreement shall be sufficient to withstand the transverse, vertical and longitudinal loads imposed upon them under the storm loading of the National Electrical Safety Code assumed for the area in which they are located.
- (f) Any unbalanced loading of Licensor's pole caused by the placement of Licensee's circuits shall be properly guyed and anchored by Licensee, at no expense to Licensor.

3. **Application for Attachment**

(a) **Permit Application**

Licensee shall not attach or modify any of its pole contacts (except for service drops) to Licensor's poles or joint use poles on which Licensor has its pole contacts without first having made written and/or electronic application to Licensor and having received written and/or electronic permission from Licensor. Permission to make pole contact described in the application may be granted or denied by Licensor in whole or in part at Licensor's sole discretion. A copy of the approved permit must be in the possession of the persons installing the Licensee's pole contact. Licensee must apply for a permit within seven (7) days of the attachment of a service drop and install the service drop in compliance with the Oregon Public Utility Commission Safety Rules.

Attachments requiring permits and a rental fee (see definition) are subject to initial inspections at the discretion of the Licensor for as long as the Licensee demonstrates a pattern of non-compliance. All attachments are subject to periodic system inspections.

Attachments requiring permits but no additional rental fee (see definition) are subject to inspections based on a sample of not more than 25% of these installations so long as the Licensee demonstrates a pattern of compliance.

(b) **Application Procedure**

Whenever Licensee desires to attach its pole contact to any Licensor pole, Licensee shall submit to Licensor a "Pole Attachment Ticket" electronically via The National Joint Utility Notification System (NJUNS) and/or written permit application and shall specify the location of the pole(s) on which attachment is requested and the number of contacts for each pole. If in Licensor's judgment, the poles are necessary for Licensor's own use, or if joint use under the circumstances is undesirable, Licensor shall have the right to reject or modify the application. Licensor shall endeavor to respond to Licensee's application within thirty (30) days of receipt. If the application is approved, Licensor shall notify the Licensee in writing and/or electronically via NJUN's of said approval and the Licensee shall have the right as a Licensee hereunder to affix such attachments in accordance with the application, as approved, and in compliance with the specifications, terms and conditions of this Agreement.

(c) **Application Planning**

Each application shall involve sufficient engineering and planning by the Licensee to ensure compliance with standards identified in section 2(a) of this Agreement during construction and upon completion. The Licensee is responsible for conducting engineering studies of Licensee's facilities to ensure proper spacing, equipment bonding and clearances. The Licensor shall be responsible for ensuring engineering studies of pole and down guy strength requirements for horizontal and vertical loading. The Licensor will charge the Licensee a fee based on the actual costs of conducting pole, down guy and strength studies. The Licensor may elect in writing to allow the Licensee to conduct pole, down guy and strength studies.

The application shall include sufficient design drawings and specifications so that qualified personnel can safely make the attachments in compliance with the National Electrical Safety Code and joint pole attachment agreements. It is the responsibility of the Licensee to ensure that only trained, qualified persons work on Licensor's facilities. Qualified persons shall be knowledgeable in applicable National Electrical Safety Code rules and must be able to demonstrate competence as required by the National Electrical Safety Code. They shall also be trained to recognize and prevent National Electrical Safety Code violations and conflicts, and to maintain safe working clearances from energized lines and equipment. Upon completion of the installation, the Licensee shall give written certification to the Licensor that the facilities are complete and comply with the National Electrical Safety Code.

(d) **Installation Time Limits**

Licensee shall complete the installation of its attachment(s) upon the pole(s) covered by each approved individual application within ninety (90) days of such approval. In the event Licensee should fail to complete the installation of the attachment(s) within the prescribed time limit, the permission granted by Licensor to place the attachment(s) upon the pole(s) shall thereupon be automatically revoked and Licensee shall not have the right to place the attachment(s) upon the pole(s) without first reapplying for and receiving written and/or electronic permission to do so.

(e) **Make-ready Pole Replacements**

Whenever any pole to which Licensee seeks attachment must be modified or replaced to accommodate Licensee's facilities and Licensor's existing attachments, as well as the attachments of other occupants, Licensor will provide Licensee with a detailed cost estimate of make-ready work it believes to be necessary to prepare the pole for Licensee's facilities. Licensor will provide Licensee with such estimate within sixty (60) days of receiving Licensee's application for attachment. After receiving this estimate, if Licensee still desires

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to make such attachments, Licensee shall notify Licensor within fifteen (15) days of receiving such estimate of such continuing desire to attach, and shall pay to Licensor any required advance payment for such make-ready work, which may include engineering, materials (including poles and associated hardware), cost of removal (less any salvage value), and the expense of transferring Licensor's facilities from the old to the new pole(s). Where the advance payment of estimated expenses made to Licensor by Licensee for both non-replacement make-ready or pole replacements is less than the cost of work described above, Licensee agrees to pay Licensor all sums due in excess of the amount of the advanced payment within 30 days of receipt of the invoice. Where the advanced payment of estimated expenses made to Licensor by Licensee exceeds such costs, Licensor agrees to refund the difference to Licensee within 60 days of completion of the make ready work. The Licensee shall also make satisfactory arrangements with the owner or owners of other facilities attached to said poles for the transfer or rearrangement of such other facilities.

(f) **Cost Allocation Among Multiple Users**

When applications to occupy the same pole have been received from two or more prospective occupants, including Licensee, before any of them is given a license, and, if to accommodate their respective attachments on the pole it would be necessary to rearrange existing attachments or replace the pole, the applicable costs of rearrangement or replacement incurred in conjunction with such simultaneous applications shall be pro-rated equitably among such simultaneously attaching parties. In this context, "simultaneous" refers to all pending applications.

(g) **Non-Interference with Licensor Facilities**

Licensee at all times shall insure that its agents, servants, employees, and contractors or contractors' employees neither take, nor attempt to take any action whatsoever to Licensor's wires, attachments, and other facilities attached to or supported by poles covered by this Agreement. Each party shall exercise reasonable precautions to avoid damage to the facilities of the other. Licensor at all times reserves the right to maintain and operate its own equipment in such a manner as will best enable it to fulfill its own service requirements and such requirements shall have priority over all pole occupants.

(h) **Right-of-way Clearing and Tree Trimming**

Licensor has established a regular and routine procedure for trimming trees or removing trees with inadequate clearance to high voltage conductors, poles and equipment. Licensee shall be responsible for tree trimming, right-of-way clearing and debris removal necessary for installation and safe clearance from communication conductors as mandated by the NESC and OPUC. In the event that Licensee is unable to perform the necessary clearing and tree trimming in the

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communication space and Licensee has obtained all necessary easements, permits and rights-of-way to attach to Licensor's poles, Licensor will perform the necessary right-of-way clearing and tree trimming. In such case, Licensee agrees to pay Licensor 100% of the tree trimming and debris removal costs necessary in the communication space for each pole and the wire in its backspan on which Licensee attaches its facilities. The costs for tree trimming conducted on behalf of Licensee by Licensor shall be paid by Licensee within 30 days of receipt of the invoice. In the event there is more than one Licensee attaching to a specific pole, then the tree trimming costs for that pole shall be divided equally among the number of Licensees attaching to that pole.

(i) **Pole Ownership**

All poles on which attachments are made under this Agreement shall remain the property of the Licensor, and any payments made by the Licensee for changes in pole lines under this Agreement shall not entitle the Licensee to ownership of any of said poles.

4. **Safety**

(a) **Inspections**

Licensor shall have the right to inspect each installation of Licensee's facilities upon and in the vicinity of such poles and to make periodic inspections of Licensee's facilities, as it deems necessary. Licensor reserves the right to charge Licensee for the expense of any field inspections, including inspections for make-ready work, inspections during installation of Licensee's facilities and any further periodic inspections deemed necessary by Licensor. Such inspections, whether made or not, shall in no manner relieve the Licensee of any responsibility, obligation, or liability assumed under this Agreement. The frequency of periodic inspections is dependent on the performance of the Licensee in conforming to the terms of this Agreement.

(b) **Licensee Practices**

Licensee shall have written standard practices that address construction standards to be followed in attaching facilities to Licensor's poles. The standards should specify any obligations that exceed NESC regulations. These standards should also address communication methods and contacts for notifications, project plans, authorizations, and compliance certifications. These standards shall be made readily available to requesting entities.

(c) **Conflicts with Electric Lines**

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Licensors shall provide Licensee notice of any NESC violations it discovers. NESC violations and conflicts to electric lines shall be corrected in a prompt manner by the Licensee if Licensee created the violation. In some instances, the National Electrical Safety Code requires that qualified electrical workers perform the work. In that event, Licensee shall either have qualified contractors or pay Licensor to perform the work. Licensee shall also be subject to Oregon Public Utility Commission sanctions for failure to comply with Oregon Public Utility Commission safety rules. Failure by Licensee to act in a prompt and responsible manner may result in the Licensor taking appropriate measures to correct the safety violations involved and Licensee shall be responsible for the cost thereof. In such cases, the inspection, design, repair, and coordination charges shall be borne by Licensee if it failed to perform necessary duties required by Oregon law.

(d) **Licensee's Contractor List**

The Licensee shall provide to the Licensor a current list of the names of all of Licensee's contractors who will have occasion to perform work on or about the facilities.

5. **No Warranty:**

The Licensor does not warrant or assure to Licensee any right-of-way privilege or easements or that Licensor owns a property right that permits attachment, and if the Licensee shall at any time be prevented from placing or maintaining its attachment on Licensor's poles or joint poles, no liability shall attach to Licensor. Each party shall be responsible for obtaining its own easements and right-of-way. The attaching Licensee shall solely be responsible to acquire the property right to attach from the property owner.

6. **Maintenance of Poles, Attachments and Right-of-Way:**

- (a) The Licensor shall, at its own expense, inspect and maintain the poles in accordance with industry practices and the specifications mentioned in Section 2, and shall replace, reinforce or repair such poles as are determined to be defective.
- (b) Whenever right-of-way considerations or public regulations make relocation of a pole necessary, such relocation shall be made by the Licensor at its own expense, except each party shall bear the cost of transferring its own attachments and shall be responsible for a pro rata share of any applicable permit cost.
- (c) Whenever it is necessary to replace or relocate a jointly used pole, the Licensor shall, before making such replacement or relocation, give twenty (20) days notice in writing and/or electronic means (except in case of emergency, when verbal notice will be given and subsequently confirmed in writing) to the Licensee, specifying in such notice the time of such proposed replacement or relocation. Licensee shall, at the time so specified, transfer its attachments to the new or

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relocated joint pole. Should the Licensee fail to transfer its attachments to the new or relocated joint pole at the time specified for such transfer of attachments, the Licensor may elect to do such work, and the Licensee shall pay the Licensor the cost. In the event the Licensee fails to transfer its attachments and the Licensor does such work, the Licensor shall not be liable for any loss or damage to the Licensee's facilities that may result.

- (d) Except as otherwise provided in subparagraph (c) of this Section, each party shall at all times maintain all of its attachments in accordance with the specifications mentioned in Section 2 and shall keep them in good repair. All necessary right-of-way maintenance, including tree trimming or cutting, shall be borne by the parties as provided in Section 3(h).
- (e) Any existing joint use construction that does not conform to the specifications mentioned in Section 2 shall be brought into conformity as soon as practicable. When such existing construction shall have been brought into conformity with said specifications, it shall at all times thereafter be maintained as provided in (a) and (d) of this Section. Should the Licensee fail to comply, the Licensor may elect to do such work and the Licensee shall pay the Licensor the cost.
- (f) Licensee expressly assumes responsibility for determining the condition of all poles to be climbed by its employees, contractors, or employees of contractors. Licensor disclaims any warranty or representation regarding the condition and safety of the poles of the Licensor. Licensor agrees that, upon written notification, it will replace any pole that it deems to be unserviceable.

7. Recovery, Rearranging or Relocation of Facilities:

- (a) In the event it is necessary for Licensor, or for another regulated utility with whom Licensor has an Agreement for the joint use of wood poles, or for another Licensee with whom Licensor has a prior Agreement for the joint use of wood poles, to use the space on poles occupied, or contracted for, by the Licensee, the Licensee shall, upon receipt of the thirty (30) day written and/or electronic notice, either vacate the space by the removal of its attachments or shall authorize Licensor to replace the poles at the expense of Licensee and Licensee shall pay for said replacements as provided for in (b) of this Section, provided, however, that Licensee has not paid for the replacement of such poles.
- (b) In any case where facilities of Licensor are required to be rearranged on the poles of the Licensor or of others to accommodate the attachments of Licensee, Licensee shall pay to Licensor the total costs incurred by Licensor in rearranging such facilities. The Licensee shall also reimburse other users of the poles of Licensor for their costs of rearrangement to provide space or clearance for the facilities of Licensee.

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- (c) Whenever it is necessary to replace or change the location of a joint use pole, for reasons other than those set out in 6 (a) and (b), and over which Licensee has no control, Licensor shall, before making such change, give due notice to the Licensee, specifying in such notice the time of such proposed change, and the Licensee shall promptly begin to transfer or remove its attachments. In case of any such pole replacement or relocation where Licensor has transferred or removed its attachments and Licensee has not transferred or removed its attachments within sixty (60) days after receipt of such written and/or electronic notice, Licensee shall become liable for such old pole as provided in Section 10.
- (d) In the event of any changes contemplated under 6 (a), (b) or (c), Licensee shall pay the entire cost of any removal, transfer or installation of its own attachments.

8. Indemnification and Insurance:

- (a) Licensee shall defend, indemnify, protect, save harmless and insure Licensor from and against any and all claims and demands for damages to property, and for injury or death to persons, including payments made under any Workers' Compensation Law or under any plan for employees disability and death benefits, and including all expenses incurred in defending against any such claims or demands, which may arise out of or be caused by the erection, maintenance, presence, use, rearrangement or removal of the attachments of Licensee's wires, equipment, apparatus and appliances to those of Licensor or by any act of Licensee, its agents, contractors and employees on or in the vicinity of Licensor's poles. Licensee shall carry insurance in such form and in such companies as are satisfactory to Licensor to protect the parties from and against any and all claims, demands, actions, judgments, costs, expenses and liabilities of every name and nature which may arise or result directly or indirectly from or by reason of such loss, injury or damage. Such insurance policies shall name Licensor as an additional insured.
- (b) Licensee shall carry and keep in force, while this Agreement is in effect, insurance contracts, policies and protection in reliable company or companies satisfactory to Licensor in amounts and for coverage deemed necessary for its protection by Licensee, but in no event for amounts or coverage less than the following minimum requirements:
 1. Comprehensive general liability insurance and independent contractors insurance, with minimum limits of \$10,000,000 each occurrence for bodily injury and \$10,000,000 each occurrence for property damage, including coverage for damage caused by blasting, collapse or structural injury, and/or damage to underground facilities, protecting Licensee against and in respect to all matters, liabilities, contingencies, and responsibilities created, referred to or touched upon in the Agreement, including without limiting the foregoing, contractual liability insurance covering Licensee's obligations under this Agreement with minimum limits of \$10,000,000 each occurrence for bodily

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injury and \$10,000,000 each occurrence for property damage to indemnify and to hold Licensor harmless.

2. Licensee shall also carry and keep in force, while the Agreement is in effect, workers' compensation insurance in compliance with the laws of the state of Oregon and employers' liability insurance with minimum limits of \$10,000,000.
3. Licensee shall furnish Licensor with certificates of insurance showing that such insurance is in force and will not be canceled or modified without thirty (30) days prior written notice to the Licensor's President/CEO. Neither acceptance nor knowledge (by and of Licensor) or the procurement of Licensee of insurance protection of lesser scope than that required to be procured by them under this Agreement shall in any manner or for any purpose constitute or be deemed a waiver by Licensor of the requirements imposed respecting insurance protection, nor shall any such acceptance or knowledge of insurance protection of lesser scope in any manner or for any purpose lessen or modify or constitute a limiting interpretation of the scope of the matters covered by and obligations of Licensee under this Agreement.

9. Security and Remedies in Default

(a) Security Requirement

The Licensee shall furnish security to the Licensor for the performance of the Licensee's obligations under this Agreement to make any and all payments demanded by the Licensor as due under this Agreement, including without limiting the generality of the foregoing, any pole attachment fees in respect of licenses, Licensor's costs of modifying or removing Licensee's facilities, and Licensor's costs of enforcement.

(b) Amount of Security

The amount of the security required shall be determined annually and shall be equal to three (3) times the reasonably anticipated annual billing for pole attachment charges plus a reasonable amount for attorney's fees and costs.

(c) Form of Security

The form of security to be provided by the Licensee may be one, or a combination, of the following: A cash deposit of money with Licensor; a performance bond from an acceptable surety; a letter of credit; a personal

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guaranty; a corporate guaranty; or such other reasonably adequate security as the Licensee may propose.

(d) Licensor's Approval Required

In any event, the form and sufficiency of the security proposed by Licensee must be approved by Licensor provided, further, that Licensor may require financial statements or other appropriate evidence as to the solvency and financial capability of the surety, guarantor, or financial institution.

(e) Cash Deposits

If Licensee elects to provide a cash deposit, such deposit or deposits shall be held during the continuance of this Agreement as security for any and all amounts which are or may become due to the Licensor under this Agreement. Said cash deposit shall be placed in an interest-bearing account and Licensee shall be entitled to a credit for the interest income on said cash deposit. If Licensee fails to pay any sum demanded by Licensor as due under this Agreement, Licensor shall have the right, without prior notice to Licensee, to apply immediately any or all amounts on deposit with Licensor towards payment of the sums due Licensor, whether or not Licensee contests the amount due or its liability to pay, and whether or not Licensor exercises or has exercised any option it may have to terminate this Agreement. If Licensee contests its liability to pay any sum claimed by Licensor, Licensee's sole remedy shall be an action at law to recover the amounts in dispute. In the event Licensor shall apply some or all of the cash deposit towards payment of an amount claimed due by Licensor, Licensee must restore to its deposit the amount so applied within thirty (30) days after notice of such application irrespective of whether or not Licensee contests its liability or commences any legal proceedings to determine its liability. Failure to restore its cash deposit shall constitute a default under this Agreement.

(f) Performance Bond

If the Licensee elects to provide a performance bond, such bond shall be issued by a surety satisfactory to Licensor and in a form satisfactory to Licensor. The initial bond shall be for a term of one (1) year; renewal bonds shall be provided by Licensee to Licensor at least two (2) months before expiration of an existing bond. A bond must contain a provision that the surety will pay to Licensor subject to the dollar limits of the bond any sum demanded by the Licensor as due under this Agreement, whether or not Licensee contests its liability to pay such sum, and whether or not Licensor exercises or has exercised any option it may have to terminate this Agreement. If any such amounts are paid by the surety, Licensee within thirty (30) days after notice of such payment shall provide to Licensor security in the full amount, irrespective of whether or not Licensee contests its liability to Licensor or brings or has brought any legal proceedings or

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appeals to local, state, or federal regulatory agencies to determine its liability. Failure to restore the security shall constitute a default under this Agreement.

(g) **Defenses Waived**

The security provided by Licensee must include a provision in which the surety, guarantor, or other party providing the security specifically agrees that it will not assert defenses against the claims of the Licensor upon such security. The security provided by Licensee shall be absolute, irrespective of whether or not Licensee contests its liability to Licensor or brings or has brought any legal proceedings or appeals to local, state or federal regulatory agencies to determine its liability.

(h) **Licensor's Termination Rights**

If Licensee fails to pay any sum due Licensor under this Agreement, or to provide and to maintain the security required in this Agreement, Licensor shall have the right to terminate this Agreement; provided, however, that Licensor shall give Licensee written notice of such default and Licensor's intent to terminate, and Licensee shall have thirty (30) days in which to cure such default. In addition to Licensor's right of termination set forth above, Licensor shall have the further right to terminate this Agreement or to cancel a particular permit or permits for specific pole attachments if the Licensee shall default in any manner in performing any action required under this Agreement; provided, however, that the Licensor shall give Licensee written notice of such default and Licensor's intent to terminate, and Licensee shall fail within thirty (30) days of notice to cure or undertake to correct such default, and proceed with reasonable diligence and in good faith to correct such noncompliance or default, Licensor may, at its option, and without further notice, declare this Agreement to be terminated in its entirety, or may terminate the license covering this attachment or attachments in respect to which such default or noncompliance shall have occurred. In case of such termination, no refund of unused rental shall be made. Any termination pursuant to this paragraph shall be effective immediately upon the Licensor's mailing the notice of termination to the Licensee following the expiration of the thirty (30) day period to cure the default. Termination of this Agreement or any specific permit shall not release Licensee from any liability or obligations under this Agreement, including, without limiting the generality of the foregoing, the obligation to continue to pay pole attachment charges as provided in Section 11 of this Agreement for such time as Licensee's attachments remain on Licensor's poles and Licensee's obligation to pay any costs of removal.

(i) **Licensee's Duty to Remove Attachments**

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Upon termination of this Agreement, or cancellation of any permit or permits issued pursuant to this Agreement, Licensee agrees to remove its attachments from any poles affected within ninety (90) days after the effective date of such termination or cancellation, except as otherwise provided herein.

(j) **Licensee's Failure to Remove or Make Changes**

In the event that Licensee shall fail to make any change in its plant required by Licensor or shall fail to remove any attachments upon cancellation of any specific permit or upon termination of this Agreement, Licensor shall have the right to make such changes or effect such removals.

(k) **Emergency**

In case of emergency or immediate service needs of Licensor, Licensor may perform such removal or change work without notice to Licensee or upon such notice as may be reasonable under the circumstances.

(l) **Costs of Licensee's Work**

Licensee shall pay all costs of any removal or changes performed by Licensor. Said costs shall be determined in accordance with the provisions of this Agreement. Licensee shall pay such costs within thirty (30) days of the date of Licensor's billing for such costs.

(m) **Licensee's Facilities as Additional Security**

If Licensor removes any of Licensee's facilities on Licensor's poles pursuant to this section, Licensor may hold such facilities as additional security for the payment of any sums due under this Agreement, Licensor may sell such facilities at a public or private sale without notice to Licensee, or may turn such facilities over to Licensee, or may utilize any combination thereof. In the event Licensor sells any of Licensee's facilities, Licensor shall apply the proceeds to the payment of sums due under this Agreement and shall turn over the balances, if any, to Licensee.

(n) **Corrective Work by Licensor**

If Licensee shall make default in the performance of any work which it is obligated to do under this Agreement, Licensor may elect to do such work, and Licensee shall reimburse Licensor for the reasonable cost thereof.

10. Abandonment of Joint Use Poles:

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

Draft

at the expiration of said period Licensor shall have no attachments on such pole but Licensee shall not have removed all of its attachments, such pole may, at the Licensor's discretion, become the property of Licensee, and Licensee shall hold harmless the Licensor from every obligation, liability, or cost, and from all damages, expenses or charges incurred thereafter, arising out of, or because of, the presence of or the condition of such pole or any attachments; and shall pay to Licensor a sum equal to the present value in place of such abandoned pole or poles, or such other equitable sum as may then be agreed upon between the parties, and Licensor shall provide Licensee with a properly authorized bill of sale for such pole. If Licensor abandons any joint use pole, the last remaining attached Licensee shall be responsible for removal of said poles per Exhibit "B", item 10.

(a)

If the Licensor abandons the pole and relocates facilities underground, the Licensor shall request that the Licensee also relocate facilities underground or shall abandon the vacated pole to the Licensee. This Agreement would be negotiated on a case-by-case basis.

(b)

Licensee may at any time abandon the use of a joint use pole by giving Licensor due notice in writing of such abandonment, as provided in (a) of this Section, and removing from such pole all attachments that Licensee may have, and in case of such abandonment of the use of any such pole, Licensee shall pay to Licensor the full rental for the current year for the space on said pole set aside for the use of Licensee.

11. Rental Charges and Rates:

- (a) On or about December 31 of each year, the parties, acting in cooperation, shall tabulate the total number of pole contacts in use as of the preceding day. This tabulation shall indicate the number of poles on which rentals are to be paid. Annual rental charges shall be calculated as per Exhibit "C" to this Agreement.
- (b) The yearly rental period covered by this Agreement shall be the twelve month calendar year period between January 1 and December 31. Rental payable for each such rental period during the continuance of this Agreement shall be due and payable on February 1 following the end of the rental period. The annual rental per pole shall apply to any pole contacts made or removed during the year and rents shall not be prorated; provided however, that if this Agreement is executed between July 1 and December 31 of the same calendar year, Licensee shall pay to Licensor only one-half (1/2) of the annual rental due for attachments made during that period.
- (c) In the event that Licensee requires a source of electrical energy for power supply to the cable system which constitutes a part of the licensed pole contacts and apparatus, such energy will be supplied by Licensor in accordance with the provisions of its standard service extension policies and approved rates and tariffs.

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- (d) All other amounts payable under this Agreement, such as for erection, rearrangement, relocation or abandonment, shall be due and payable within thirty (30) days of billing by Licensor.
- (e) Licensee shall receive a rent reduction if the Licensee is in compliance with rules adopted by the Public Utility Commission for certifying compliance with the laws regulating pole attachments. A Licensee is eligible for the rental reduction unless the Licensor notifies the Licensee in writing that the Licensee has failed to comply with either the Public Utility Commission's rules or the terms of this Agreement.
- (f) Other equipment attached to poles outside the telecommunication space will be subject to charges as reflected in Exhibit "C" to this Agreement.

12. Defaults:

- (a) If Licensee shall fail to comply with any of the provisions of this Agreement or should default in any of its obligations under this Agreement, and shall fail within thirty (30) days after written notice from Licensor to correct such noncompliance or default, Licensor may, at its option, and without further notice, declare this Agreement to be terminated in its entirety, or may terminate the permit covering the pole or poles in respect to which such default or noncompliance shall have occurred. In case of such termination, no refund of accrued rental shall be made.
- (b) If Licensee shall make default in the performance of any work which it is obligated to do under this Agreement, the Licensor may elect to do such work, and the Licensee shall reimburse the Licensor for the cost.

13. Sanctions:

The Licensor may levy sanctions against the Licensee for unauthorized attachments or for other violations of the duties of pole occupants as specified in Oregon Public Utility Commission Administrative Rules OAR 860-028-0120 through 860-028-0190.

14. Rights of Other Parties:

Nothing herein shall be construed to limit the right of Licensor, by contract or otherwise, to confer upon others, not parties to this Agreement, rights or privileges to use the joint use poles covered by this Agreement.

15. Term of Agreement:

This Agreement shall continue in force and effect for a period of one (1) year from and after the date of this Agreement, and thereafter from year to year unless terminated by

Draft

either party by giving written notice of its intention to do so not less than thirty (30) days prior to the end of any period, provided, however, if the Licensee shall fail to commence construction on the poles of Licensor within the period of one hundred eighty (180) days after the date of execution of this License Agreement, than this License Agreement shall be null and void, and of no further force and effect. Upon termination of this Agreement, Licensee shall remove its attachments from the poles of Licensor within one hundred eighty (180) days after the effective date of such termination. Should the Licensee fail to comply, the Licensor may elect to do such work and the Licensee shall pay the Licensor the cost.

16. Survival of Obligations:

Any termination of this Agreement in whole or in part shall not release Licensee from any liability or obligations hereunder, whether of indemnity or otherwise, which may have accrued or which may be accruing or which arises out of any claim that may have accrued or be accruing at the time of or prior to termination.

17. Waiver of Terms or Conditions:

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

18. Supplemental Agreements:

- (a) This Agreement may be amended or supplemented at any time upon written Agreement by the parties hereto. Should either an amendment or supplement become necessary, the party desiring such amendment or supplement shall give thirty (30) days written notice to the other party setting out in detail the changes or additions desired.
- (b) In the event that Licensee desires to add or reduce the number of pole contacts, Section 18(a) shall not apply, but in each case a sketch, map, or other mutually acceptable notice shall be submitted to Licensor, setting out in detail the pole numbers and exact locations of the poles, and the quantity of poles involved in the addition or subtraction.

19. Payment of Taxes:

Each party shall pay all taxes and assessments lawfully levied on its own property upon said jointly used poles, and the taxes and the assessments which are levied on said joint use poles shall be paid by the Licensor thereof, but any tax, fee or charge levied on Licensor's poles solely because of their use by the Licensee shall be paid by Licensee.

20. Interest and Payments:

All amounts to be paid by Licensee to Licensor under this Agreement shall be due and payable within thirty (30) days after an itemized statement is presented to the Licensee. Any payment not made within thirty (30) days from the due date shall bear interest at the rate of _____ Percent (___%) per annum until paid.

21. License Only:

No use, however extended, of any of the facilities under the Agreement shall create or vest in Licensee any ownership or property rights therein, but Licensee's rights therein shall be and remain a mere license.

22. Notices:

Any notice, request, consent, demand or statement which is contemplated to be made upon either party by the other party under any of the provisions of this Agreement, shall be in writing and shall be treated as duly delivered when it is either (a) personally delivered to the office of Licensor in the case of a notice to be given to Licensor, or personally delivered to the office of Licensee in the case of a notice to be given to Licensee, or (b) deposited in the United States mail, postage prepaid and properly addressed to the party to be served as follows:

(i) If notice is to Licensor,
Mr. Al Gonzalez, President/CEO
Central Electric Cooperative, Inc.
P.O. Box 846 or 2098 N. Hwy 97
Redmond, Oregon 97756

(ii) If notice is to Licensee,

23. Supplying Information:

- (a) It is understood and agreed to between the parties that Licensee shall furnish to Licensor within thirty (30) days after the execution of this Agreement a detailed sketch or map upon which will be shown the precise locations by streets or roads of the joint use poles covered by this Agreement, showing the facilities installed or to be installed upon the joint use poles and the pole numbers upon which these facilities are to be attached. Such sketch or map shall be reviewed by, and approved, commented upon, or rejected by the engineers of Licensor, and Licensee agrees to make any and all such changes in said sketch or map as are suggested by said engineers. Licensee shall not begin the installation of any facilities covered by this Agreement until engineering approval by Licensor is granted.
- (b) Within thirty(30) days after the completion of the initial installation of the facilities, as set forth on the above mentioned sketch or map, Licensee shall furnish to Licensor a revised copy of said sketch or map showing the precise location of each power supply, pole contact, and other attachment of Licensee which is actually installed on poles of the Licensor. Such revised sketch or map shall be verified by the Licensor and shall be the basis for determining the number of pole contacts made initially.
- (c) Licensee shall promptly report to Licensor any changes made in the number of poles of the Licensor contacted by Licensee.

24. Construction of Agreement:

This Agreement is deemed executed in the state of Oregon and shall be construed under the laws of the state of Oregon. In the event that a suit or action is instituted to enforce or interpret any of the terms of this Agreement, the parties agree that the proper venue for said suit or action shall be in Deschutes County, Oregon.

25. Prior Agreements Superseded:

This Agreement supersedes and replaces any and all previous Agreements entered into by and between Licensor and Licensee with respect to the subject matter of the Agreement.

26. Assignment of Agreement:

Neither party shall assign or otherwise transfer this Agreement or any of its rights and interests to any firm, corporation or individual, without the prior written consent of the other party.

27. Attorneys Fees/Costs:

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In the event of suit or action by either of the parties to enforce the terms of this License Agreement, the prevailing party shall be entitled to recover from the other reasonable attorneys fees, and any appeals therefrom, in addition to costs and disbursements allowed by law.

In witness whereof, the parties have caused this Agreement to be duly executed.

DATED this _____ day of _____, 20____.

(Licensor) _____,
Central Electric Cooperative, Inc.,
an Oregon cooperative corporation

(Licensee) _____

By _____
Al Gonzalez

By _____

Its President/CEO

Its _____

Exhibit A: Map of Licensor service area
(supplied by Licensor)

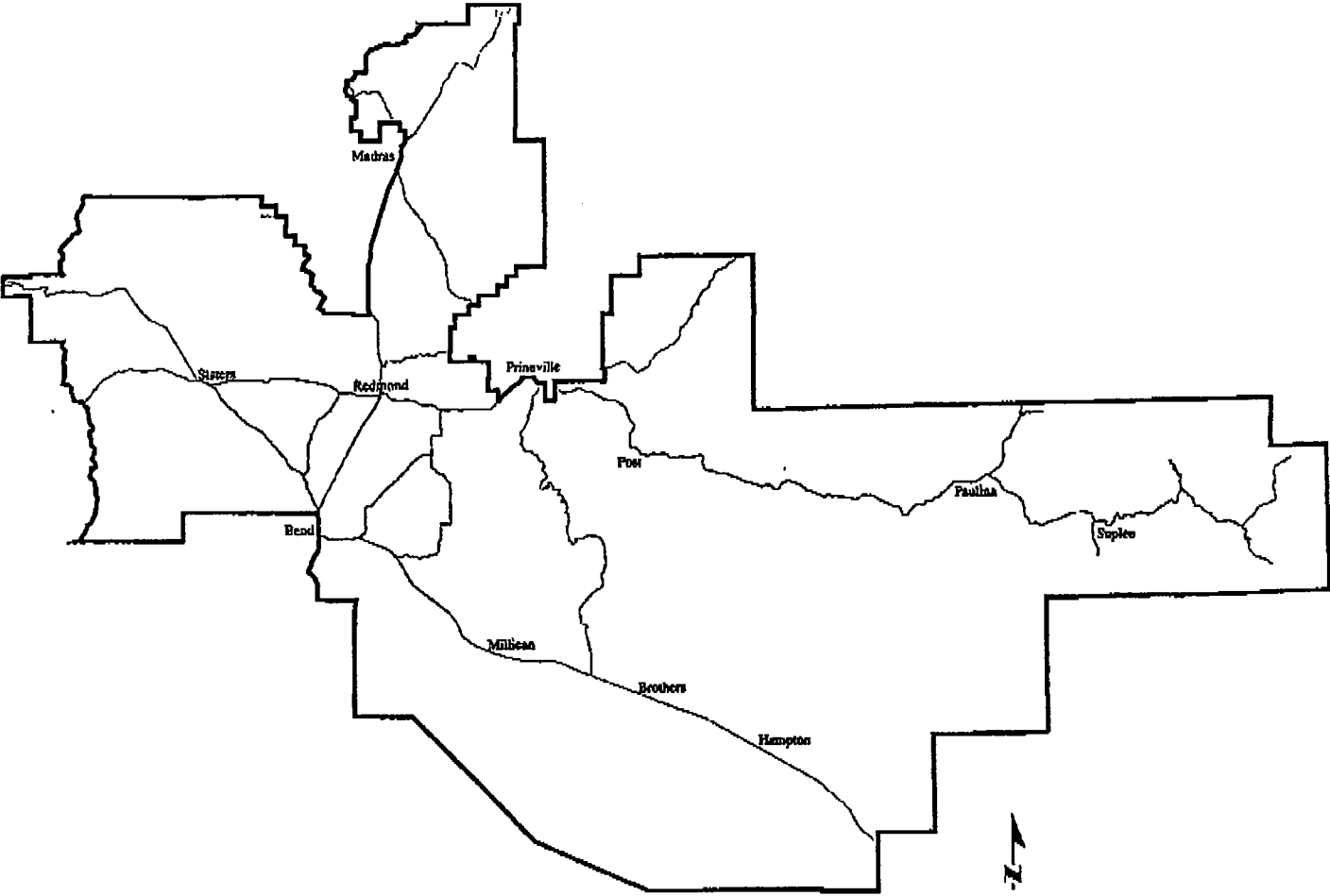


Exhibit A1: Map of Licensee service area
(Supplied by Licensee)

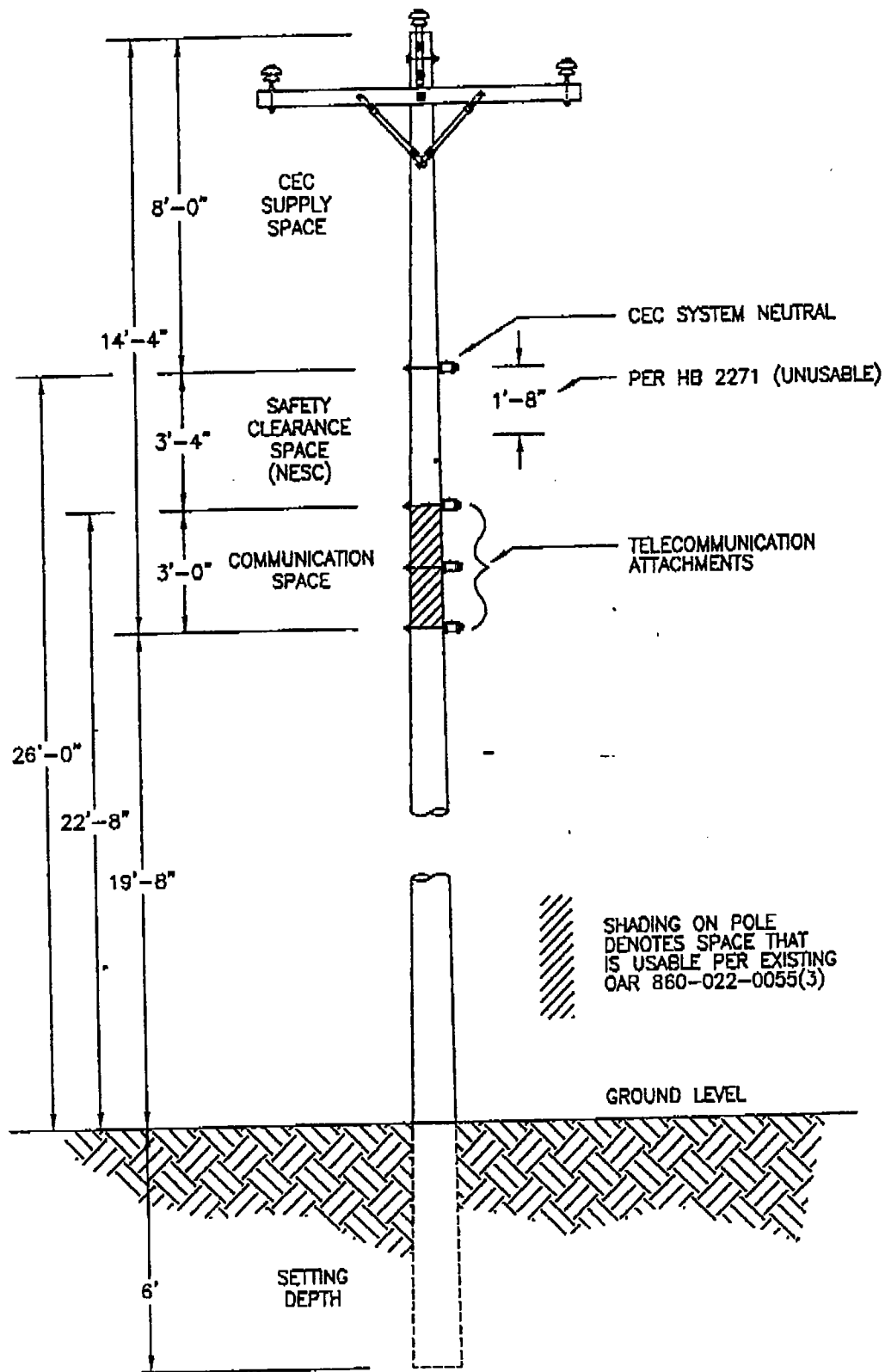
EXHIBIT "B"

RULES AND PRACTICES FOR TELECOMMUNICATION ATTACHMENTS

1. All telecommunication facilities attached to Licensor's poles shall be installed in a manner to ensure compliance with the requirements of the National Electrical Safety Code (NESC) in effect at the time of installation.
2. The location of attachments on Licensor's poles shall be approved in writing by the Licensor. Except for services, no attachments shall be made without prior approval of Licensor.
3. All attachments shall be located on the same side of each pole as any existing attachment, or as designated by the Licensor.
4. On jointly used poles where Licensor has secondary conductors, all attachments shall be located on the side of the pole opposite the secondary conductors, or as designated by the Licensor.
5. Licensee's attachments shall be installed and maintained so as to provide adequate climbing space as per the NESC.
6. No bolt used by Licensee to attach its facilities shall extend or project more than one (1) inch beyond its nut.
7. Licensee shall install and maintain any and all of its facilities in a neat and workmanlike manner consistent with the overall appearance of the jointly used pole, and all subject to the approval of Licensor, provided that licensee shall be solely responsible for compliance with the specifications referred to in Section 6 of this License Agreement.
8. All down guys, head guys or messenger dead ends installed by Licensee shall be attached to jointly used poles by the use of "thru" bolts. Such bolts placed in a "bucking" position shall have at least three inches vertical clearance. Under no circumstances shall Licensee install down guys, head guys or messenger dead ends by means of encircling jointly used poles with such attachments. All guys and anchors shall be installed prior to installation of any messenger wire or cables.
9. For those attachments requiring inspections, the Licensee shall provide a written statement, signed by a qualified representative of the Licensee, that its facilities, including protection devices, as installed are fully in compliance with the applicable rules of the NESC, other codes and requirements, and approved engineering design standards. This inspection shall be made within thirty (30) days after installation has been completed. Failure to comply will result in termination of this Agreement as outlined in Sections 12(a) and 12(b).

10. The following steps and conditions shall be followed when removing old poles from the field. The entire butt of the old pole shall be removed. DO NOT partially pull the butt, cut it off and/or leave a remaining portion in the ground. Fully remove all associated hardware, including anchors and ground rods, with the old pole. Fill and compact the pole hole to eliminate future settling. Restore landscaping, ditches, streets and sidewalks to the specifications required by the governing authority having jurisdiction over said infrastructure.

Exhibit B1: Standard Clearance Drawings



APPROVALS:
ENGINEER:



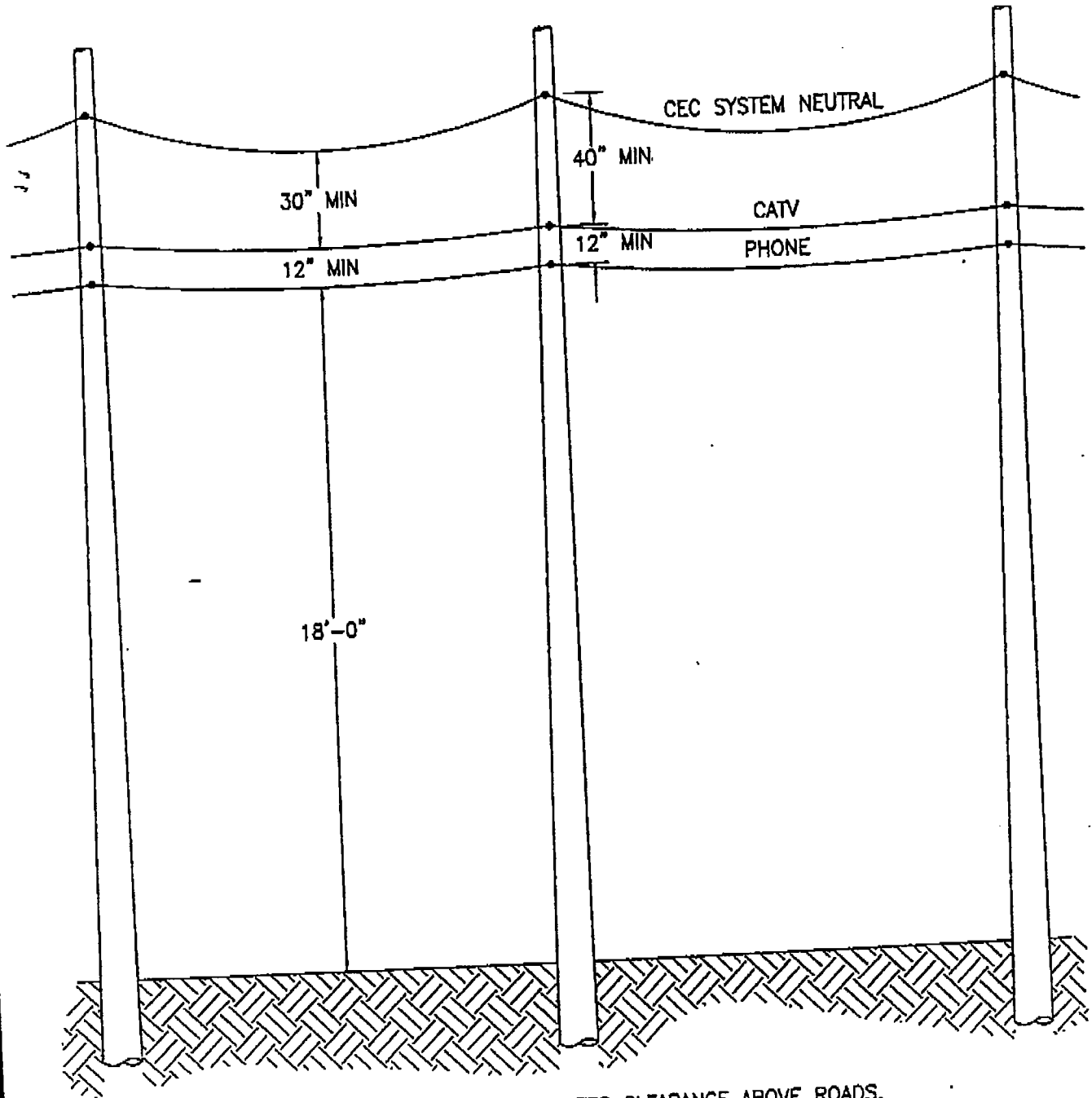
CENTRAL ELECTRIC

40 FT POLE

REV. DATE: 04/20/04

SHEET 1 OF 1

CLEARANCE BETWEEN
CEC SYSTEM NEUTRAL AND
CATV OR PHONE ATTACHMENTS



18' CLEARANCE, SHOWN ABOVE, DESIGNATES CLEARANCE ABOVE ROADS.
PHONE AND CATV COMPANIES MUST ENSURE THAT 18' IS ADEQUATE CLEARANCE
TO MEET THE NESC REQUIREMENT OF 15.5' AT MAXIMUM SAG CONDITIONS

APPROVALS:



CENTRAL ELECTRIC

STANDARD CLEARANCES
FOR CATV OR PHONE

REV. DATE: 04/20/04

SHEET 1 OF 1

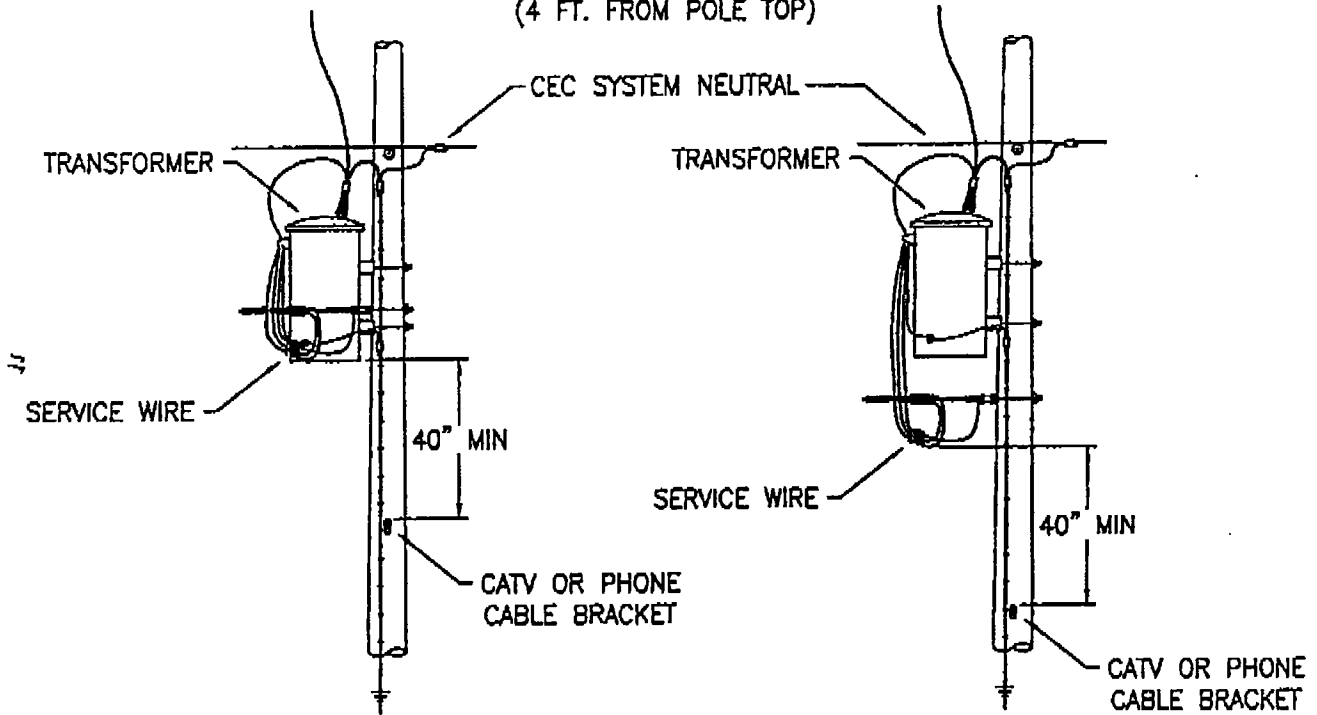
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Exhibit 2

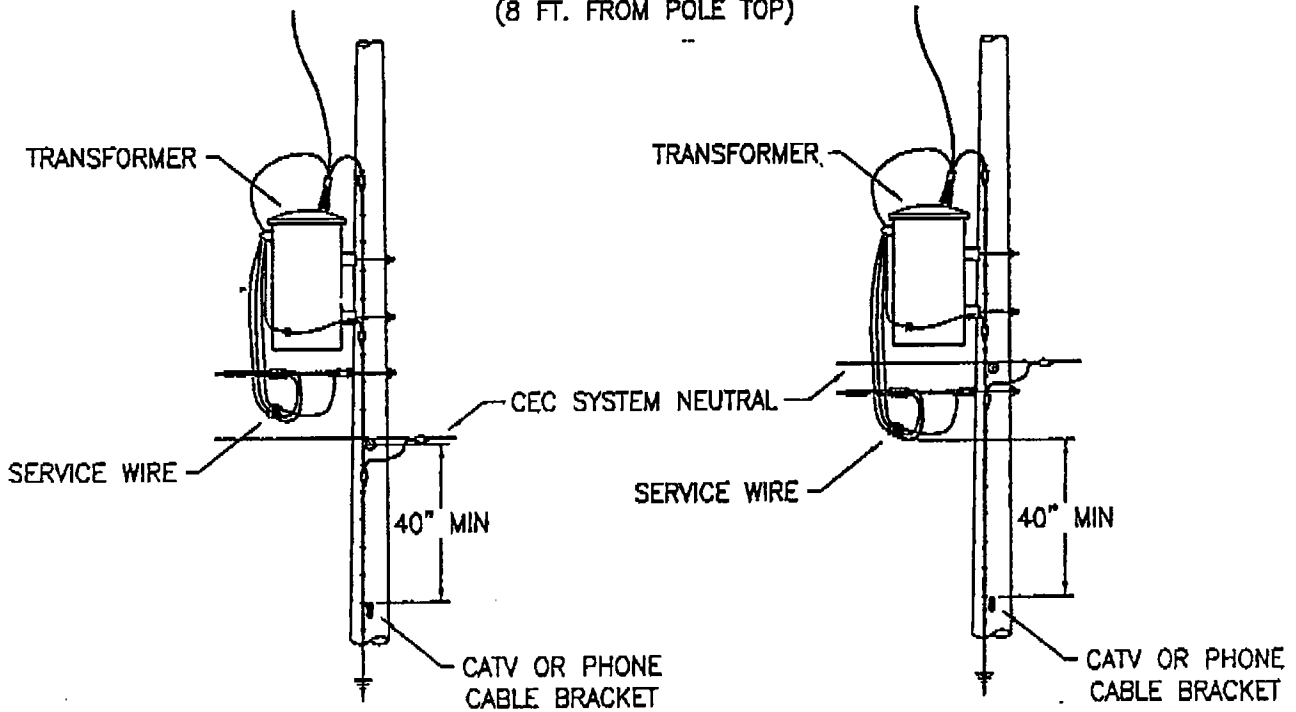
Page 28 of 34

CLEARANCE FROM TRANSFORMERS, SERVICE WIRE,
AND SYSTEM NEUTRAL TO CATV AND PHONE CABLE

HIGH NEUTRAL
(4 FT. FROM POLE TOP)



LOW NEUTRAL
(8 FT. FROM POLE TOP)



APPROVALS:
ENGINEER:
PURCHASING:



CENTRAL ELECTRIC
COOPERATIVE INC.

STANDARD CLEARANCES
FOR CATV OR PHONE

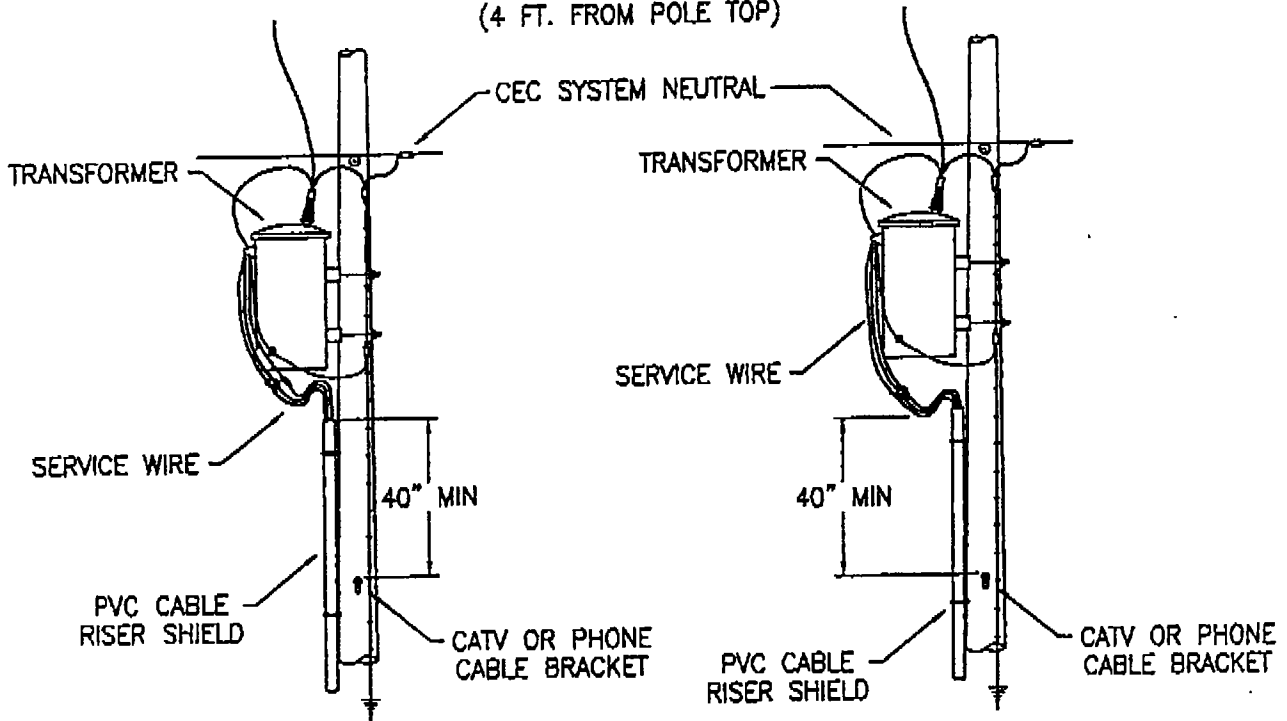
REV. DATE: 04/20/04

SHEET 1 OF 1

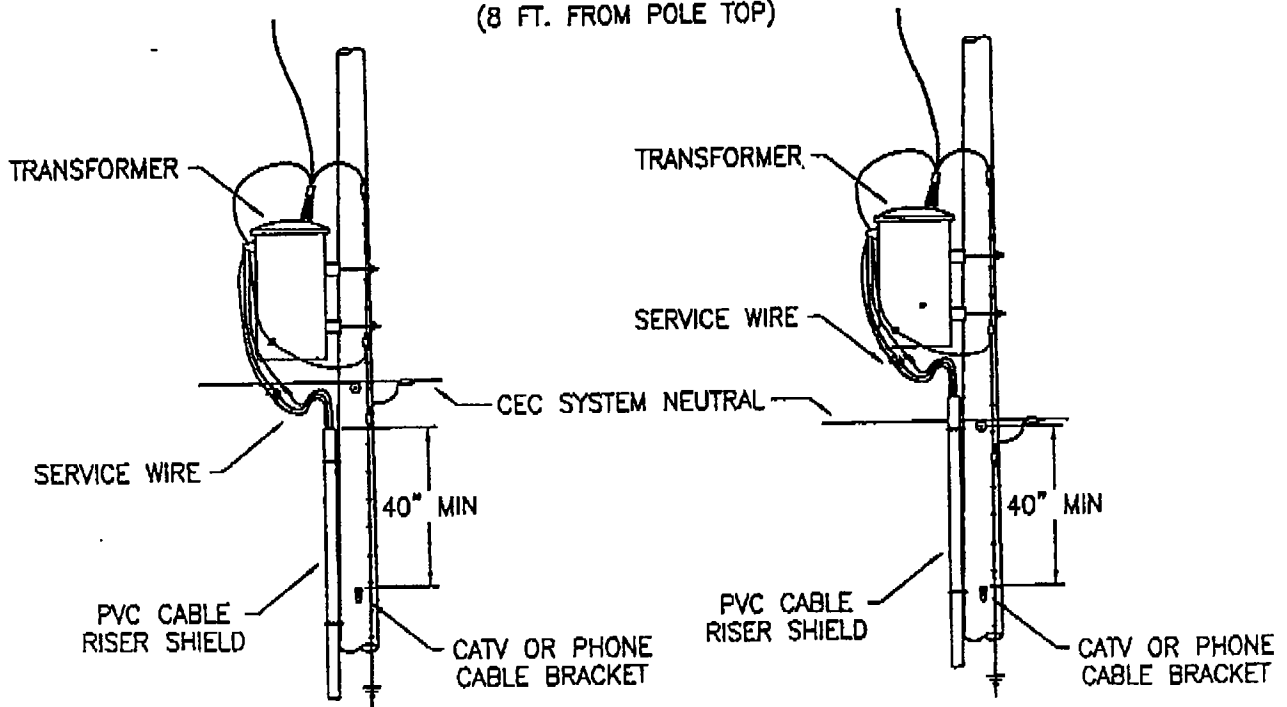
DRAWING NUMBER:

CLEARANCE FROM UNDERGROUND SERVICE RISER, SERVICE WIRE, AND SYSTEM NEUTRAL TO CATV AND PHONE CABLE

HIGH NEUTRAL
(4 FT. FROM POLE TOP)



LOW NEUTRAL
(8 FT. FROM POLE TOP)



APPROVALS:
ENGINEER:



CENTRAL ELECTRIC
COOPERATIVE INC.

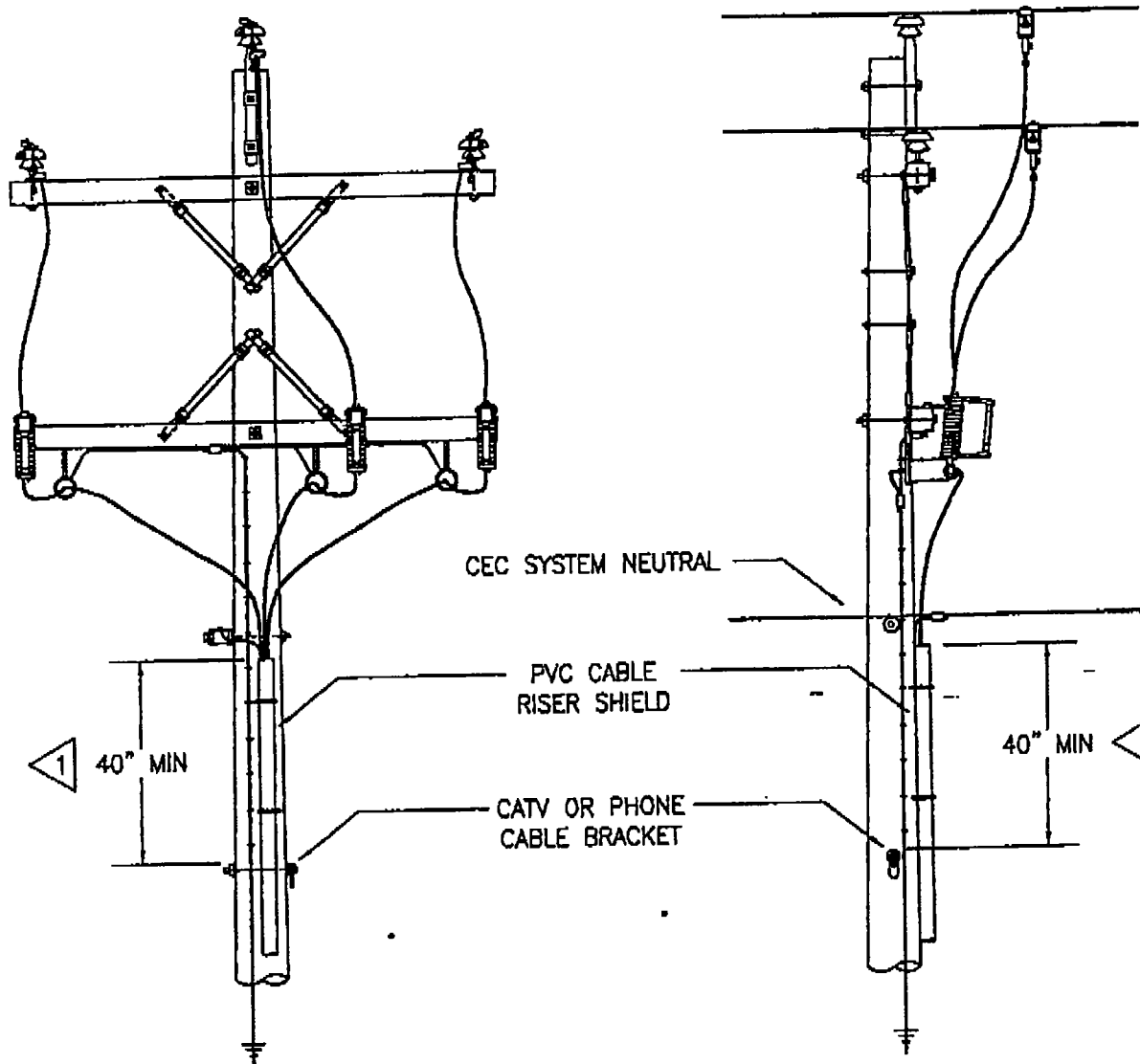
STANDARD CLEARANCES
FOR CATV OR PHONE

REV. DATE: 04/20/04

SHEET 1 OF 1

DRAWING NUMBER:

CLEARANCE FROM 7.2/12.5 KV RISER
TO CATV AND PHONE CABLE



1 THIS CLEARANCE INCREASES TO 43" ON 14.4/24.9 KV CIRCUITS
PER 2002 NESC, TABLE 238-1.

APPROVALS:
ENGINEER:



CENTRAL ELECTRIC
COOPERATIVE, INC.

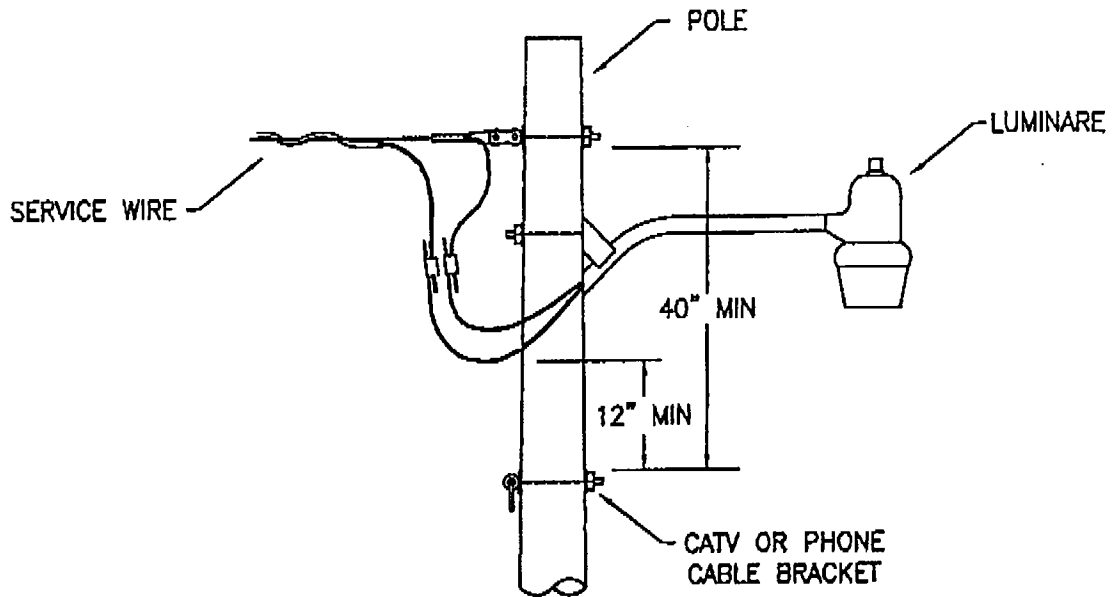
STANDARD CLEARANCES
FOR CATV OR PHONE

REV. DATE: 04/20/04

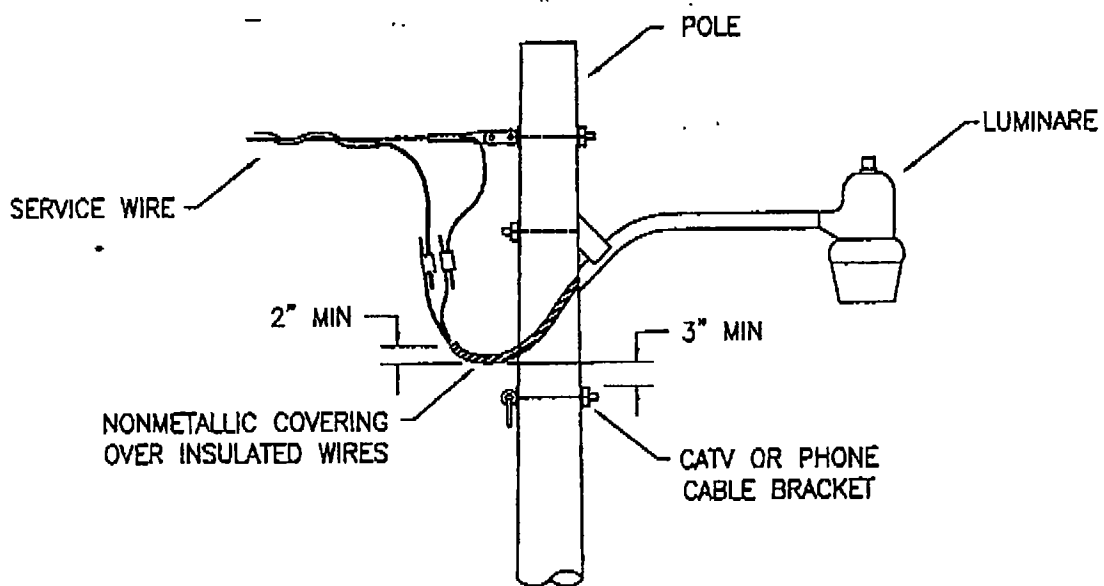
SHEET 1 OF 1

DRAWING NUMBER:

CLEARANCE FROM LIGHTS
TO CATV AND PHONE CABLE



NOTE: BOTH THE 40" AND 12" CLEARANCES MUST BE MAINTAINED



NOTE: PER 2002 NESC, RULE 238 SECTION D.

APPROVALS:
ENGINEER:
PURCHASING:



STANDARD CLEARANCES
FOR CATV OR PHONE

REV. DATE: 04/20/04
SHEET 1 OF 1
DRAWING NUMBER:

POLE ATTACHMENT LICENSE AGREEMENT EXHIBITS

Exhibit A: Map of Licensor service area

Exhibit A1: Map of Licensee service area

Exhibit B: Rules and Practices for Telecommunication Attachments

Exhibit B1: Standard Clearance Drawings

- **40 Foot Pole – Space Allocation, Dwg. #JU1**
- **Clearance between Power Neutral and CATV or Phone Attachment, Dwg. #JU2**
- **Clearance from Overhead Service Wire to CATV or Phone Attachment, Dwg. #JU3**
- **Clearance from Transformer and Overhead or Underground Service Wire to CATV or Phone Attachment, Dwg. #JU4**
- **Clearance from 7.2/12.5 kV Primary Underground Riser to CATV or Phone Attachment, Dwg. #JU5**
- **Clearance from Lights to CATV or Phone Attachments, Dwg. #JU6**

Exhibit C: Licensor Rental Rate Calculation

Exhibit C: Licensor Rental Rates

FEE SCHEDULE

1. ANNUAL CHARGES

$$ARr = \frac{(ADPe)(CCe)(PUv)}{US} \quad \text{Non-Compliant charge}$$

$$= \frac{(ADPe)(CCe)(PUv)}{USc} \quad \text{Compliant charge}$$

ARr = Attachment rental rate

ADPe = Average depreciated cost of pole owned by electric company

CCe = Carrying charge for electric company

PUv = Pole use factor (allocated space 1 foot)

US = Usable space 480" - (72" below ground - 240" above ground - 40" separation space) = 128" or 10.67'

USc = Usable space compliant attachment 480" - (72" below ground - 240" above ground - 20" separation space) = 148" or 12.33'

2. ONE-TIME CHARGES

Support equipment fee \$75.00

Riser fee \$25.00

Power supply fee \$75.00

-----Original Message-----

From: Langston, Jay

Sent: Monday, December 06, 2004 11:20 AM

To: 'Spencer, Jeff'

Subject: Qwest License Agreement

Jeff,

I sent you a redlined version of your proposed contract last Thursday for your review. However, an issue came up this morning and I could not find my message to you. Therefore I am resending Qwest's redline agreement.

I left you a voice message this morning and would like to discuss a couple of issues with you.

Thanks for your assistance.

Jay Langston
303-707-5117

POLE ATTACHMENT LICENSE AGREEMENT

This pole license Agreement made and entered into the ____ day of _____, 20____, by and between _____ an Oregon Cooperative Corporation, with its principal place of business at _____ (hereinafter called "Licensor"), and Qwest Corporation, a(n) Colorado Corporation, with its principal place of business at Denver, Colorado (hereinafter called "Licensee").

RECIPROCAL AGREEMENT

Any occupancy by the Cooperative on the facilities of the Licensee shall be governed by the terms and conditions of this Agreement as though the Cooperative was the Licensee and the Licensee was the Cooperative

Witnesseth

Whereas, Licensor owns, operates and maintains lines of poles extending in Deschutes, Crook, Jefferson, Grant, Lake, Wasco and Linn Counties, in the state of Oregon; and

Whereas, Licensee desires to place certain lines, attachments and apparatus, hereinafter called "pole contacts" on certain poles of Licensor, for the limited purpose of furnishing lawful telecommunications or electrical services in compliance with any and all local, state or federal regulations; provided, that such transmission of signals or power does not interfere with the furnishing of electrical service to consumers of Licensor and others using said poles, and where in Licensor's judgment, safety will not be adversely affected.

Whereas, Licensor is willing to permit Licensee, to the extent it may lawfully do so, to place said lines, attachments and apparatus on said poles, on a non-exclusive basis, in the area shown on Exhibit "A" attached hereto and made a part hereof;

Now, therefore, in consideration of the mutual covenants, terms and conditions herein contained the parties hereto, for themselves, their successors and assigns, do hereby covenant and agree as follows:

1. **Definitions:**

- (a) **Pole**: A utility pole owned and maintained solely by Licensor.
- (b) **Joint Use Pole**: A utility pole owned and maintained by Licensor and shared with another utility entity not Licensee, or a utility pole owned by an entity other than Licensor but used jointly by Licensor.
- (c) **Pole Contact**: An attachment by the Licensee to the pole, falling into one of the following categories:

1. Attachments requiring permits and rental fees. Includes the following:
 - Initial bolt attachment inside the telecommunication space
 - Additional bolt attachment or other facility attached to the pole
 - Support Equipment (i.e., guy wires attached to owner anchor)

2. Attachments requiring permits but no additional rental fee. Includes the following:
 - Overlapping on own equipment
 - Reconductoring

- 3.* Attachments requiring notification of the pole owner, but not requiring a permit or fee. Includes the following:
 - New Licensee down guy attached to Licensee's or other's anchors
 - Other large load items greater than 50 lbs or more than 1 cubic foot that licensee may hang on their communication lines
 - New Licensee anchors

- 4.* Attachments not requiring notification, permits or fees. Includes the following:
 - Off-pole installations such as
 - Mid-span drops
 - Terminals
 - Taps
 - Amplifiers
 - Snow shoes
 - Splice enclosures
 - Wind Dampeners
 - Mid-span crossovers

* Licensor may send notification to Licensee of non-compliant attachments per OAR's.

(a) **Basic Pole:** A 40' pole, or as otherwise determined by the Licensor. This definition is used solely for the purpose of computing pole rental rates.

Deleted: charge rental fee and/or require permit if attachments are not in compliance

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- (b) **Notification:** A written and/or electronic communication between the Licensor and Licensee, in a format agreed upon by the parties to this contract.
- (c) **Application:** A written and/or electronic request by a Licensee to attach to a pole.
- (d) **Permit:** Licensor's written and/or electronic approval of a pole attachment.
- (e) **Sanction:** A financial penalty as specified in OAR 860-028-0120 through 0190, as may be amended.
- (f) **Telecommunication Space:** Space on the Basic pole between 20 and 23 feet on the pole unless otherwise specified.

2. **Specifications:**

- (a) The joint use poles covered by this Agreement shall be placed and maintained in accordance with the most stringent requirements, specifications and rules as incorporated under applicable Oregon law and regulations of the latest addition of the National Electrical Safety Code (NESC), the Occupational Safety and Health Act (OSHA), the Oregon Public Utility Commission (OPUC), any governing authority having jurisdiction and the rules and practices of Licensor as set forth in Exhibit "B" attached hereto and made a part hereof.
- (b) It is understood and agreed between the parties that the rules and practices set out in Exhibit "B" may be changed by Licensor, or new rules and practices may be adopted by Licensor, without resort to the provisions of Section 18, relating to supplementing or amending this Agreement, and Licensee agrees to be bound by any such change or adoption.
- (c) In the event that Licensor should change or adopt a rule or practice, or rules and practices, for the joint use of poles by Licensee, Licensor shall give Licensee written notice of such change or adoption in the manner contemplated by Section 22 and Licensee agrees to make such changes or alterations in its installations or maintenance of its facilities as may be required in order to fully comply with the provisions of such notice. In the absence of a contrary provision in said notice, Licensee agrees to make all required changes or alterations on new installations within thirty (30) days after receipt. Existing attachments shall be brought into conformity at the time of their normal replacement, rearrangement, rebuilding, or reconstruction, and whenever practicable

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(d) No tag, brand or other device showing Licensee's name or insignia shall be placed on, or attached to, any pole of Licensor, except such tag or insignia which shows Licensee to be the Licensee or lessee of such pole and not the owner thereof, and then only after obtaining the written consent of Licensor. Where required by the OJUA, the Licensee agrees to attach information identifying its facilities on the pole, in a format specified by the OJUA.

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(e) The strength of poles covered by this Agreement shall be sufficient to withstand the transverse, vertical and longitudinal loads imposed upon them under the storm loading of the National Electrical Safety Code assumed for the area in which they are located.

(f) Any unbalanced loading of Licensor's pole caused by the placement of Licensee's circuits shall be properly guyed and anchored by Licensee, at no expense to Licensor.

3. Application for Attachment

(a) Permit Application

Licensee shall not attach or modify any of its pole contacts (except for service drops) to Licensor's poles or joint use poles on which Licensor has its pole contacts without first having made written and/or electronic application to Licensor and having received written and/or electronic permission from Licensor. Permission to make pole contact described in the application may be granted or denied by Licensor in whole or in part at Licensor's sole discretion. Licensee must apply for a permit within seven (7) days of the attachment of a service drop and install the service drop in compliance with the Oregon Public Utility Commission Safety Rules.

Deleted: A copy of the approved permit must be in the possession of the persons installing the Licensee's pole contact

Attachments requiring permits and a rental fee (see definition) are subject to initial inspections at the discretion of the Licensor for as long as the Licensee demonstrates a pattern of non-compliance. All attachments are subject to periodic system inspections. Comment: We would like to discuss your definition of pattern of non-compliance.

Attachments requiring permits but no additional rental fee (see definition) are subject to inspections based on a sample of not more than 25% of these installations so long as the Licensee demonstrates a pattern of compliance.

(b) **Application Procedure**

Whenever Licensee desires to attach its pole contact to any Licensor pole, Licensee shall submit to Licensor a "Pole Attachment Ticket" electronically via The National Joint Utility Notification System (NJUNS) and/or written permit application and shall specify the location of the pole(s) on which attachment is requested and the number of contacts for each pole. If in Licensor's judgment, the poles are necessary for Licensor's own immediate core business use, or if joint use under the circumstances is undesirable due to safety or lack of capacity reasons, Licensor shall have the right to reject or modify the application. Licensor shall respond to Licensee's application within thirty (30) days of receipt. If the application is approved, Licensor shall notify the Licensee in writing and/or electronically via NJUN's of said approval and the Licensee shall have the right as a Licensee hereunder to affix such attachments in accordance with the application, as approved, and in compliance with the specifications, terms and conditions of this Agreement. Any denial of an application shall identify the specific reasons for denial. If an application is neither approved nor denied within the 30 days, it shall be deemed approved.

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(c) **Application Planning**

Each application shall involve sufficient engineering and planning by the Licensee to ensure compliance with standards identified in section 2(a) of this Agreement during construction and upon completion. The Licensee is responsible for conducting engineering studies of Licensee's facilities to ensure proper spacing, equipment bonding and clearances. The Licensor shall be responsible for ensuring engineering studies of pole and down guy strength requirements for horizontal and vertical loading. The Licensor will charge the Licensee a fee based on the actual costs of conducting pole, down guy and strength studies. The Licensor may elect in writing to allow the Licensee to conduct pole, down guy and strength studies. (Licensor costs in exhibit?)

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The application shall include sufficient design drawings and specifications so that qualified personnel can safely make the attachments in compliance with the National Electrical Safety Code and joint pole attachment agreements. It is the responsibility of the Licensee to ensure that only trained, qualified persons work on Licensor's facilities. Qualified persons shall be knowledgeable in applicable National Electrical Safety Code rules and must be able to demonstrate competence as required by the National Electrical Safety Code. They shall also be trained to recognize and prevent National Electrical Safety Code violations and conflicts, and to maintain safe working clearances from energized lines and equipment.

Deleted: Upon completion of the installation, the Licensee shall give written certification to the Licensor that the facilities are complete and comply with the National Electrical Safety Code

(d) **Installation Time Limits**

Licensee shall complete the installation of its attachment(s) upon the pole(s) covered by each approved individual application within ninety (120) days of such approval. In the event Licensee should fail to complete the installation of the attachment(s) within the prescribed time limit, the permission granted by Licensor to place the attachment(s) upon the pole(s) shall thereupon be automatically revoked and Licensee shall not have the right to place the attachment(s) upon the pole(s) without first reapplying for and receiving written and/or electronic permission to do so, unless otherwise agreed to by Licensor.

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(e) **Make-ready Pole Replacements**

Whenever any pole to which Licensee seeks attachment must be modified or replaced to accommodate Licensee's facilities and Licensor's existing attachments, as well as the attachments of other occupants, Licensor will provide Licensee with a detailed cost estimate of make-ready work it believes to be necessary to prepare the pole for Licensee's facilities. Licensor will provide Licensee with such estimate within sixty (30) days

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of receiving Licensee's application for attachment. After receiving this estimate, if Licensee still desires to make such attachments, Licensee shall notify Licensor within fifteen (30) days of receiving such estimate of such continuing desire to attach, and shall approve any required payment for such make-ready work, which may include engineering, materials (including poles and associated hardware), cost of removal (less any salvage value), and the expense of transferring Licensor's facilities from the old to the new pole(s). Where the advance payment of estimated expenses made to Licensor by Licensee for both non-replacement make-ready or pole replacements is less than the cost of work described above, Licensee agrees to pay Licensor all sums due in excess of the amount of the advanced payment within 45 days of receipt of the invoice. Where the advanced payment of estimated expenses made to Licensor by Licensee exceeds such costs, Licensor agrees to refund the difference to Licensee within 45 days of completion of the make ready work. The Licensor shall also make satisfactory arrangements with the owner or owners of other facilities attached to said poles for the transfer or rearrangement of such other facilities.

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(f) **Cost Allocation Among Multiple Users**

When applications to occupy the same pole have been received from two or more prospective occupants, including Licensee, before any of them is given a license, and, if to accommodate their respective attachments on the pole it would be necessary to rearrange existing attachments or replace the pole, the applicable costs of rearrangement or replacement incurred in conjunction with such simultaneous applications shall be pro-rated equitably among such simultaneously attaching parties. In this context, "simultaneous" refers to all pending applications.

(g) **Non-Interference with Licensor Facilities**

Licensee at all times shall insure that its agents, servants, employees, and contractors or contractors' employees neither take, nor attempt to take any action whatsoever to Licensor's wires, attachments, and other facilities attached to or supported by poles covered by this Agreement. Each party shall exercise reasonable precautions to avoid damage to the facilities of the other. Licensor at all times reserves the right to maintain and operate its own equipment in such a manner as will best enable it to fulfill its own current core service requirements and such requirements shall have priority over all pole occupants.

(h) **Right-of-way Clearing and Tree Trimming**

Licensors has established a regular and routine procedure for trimming trees or removing trees with inadequate clearance to high voltage conductors, poles and equipment. Licensee shall be responsible for tree trimming, right-of-way clearing and debris removal necessary for installation and safe clearance from communication conductors as mandated by the NESC and OPUC. In the event that Licensee is unable to perform the necessary clearing and tree trimming in the communication space and Licensee has obtained all necessary easements, permits and rights-of-way to attach to Licensor's poles, Licensor will perform the necessary right-of-way clearing and tree trimming. In such case, Licensee agrees to pay Licensor 100% of the tree trimming and debris removal costs necessary in the communication space for each pole and the wire in its backspan on which Licensee attaches its facilities. The costs for tree trimming conducted on behalf of Licensee by Licensor shall be paid by Licensee within 45 days of receipt of the invoice. In the event there is more than one Licensee attaching to a specific pole, then the tree trimming costs for that pole shall be divided equally among the number of Licensees attaching to that pole.

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(i) **Pole Ownership**

All poles on which attachments are made under this Agreement shall remain the property of the Licensor, and any payments made by the Licensee for changes in pole lines under this Agreement shall not entitle the Licensee to ownership of any of said poles.

4. **Safety**

(a) **Inspections**

Licensor shall have the right to inspect each installation of Licensee's facilities upon and in the vicinity of such poles and to make periodic inspections of Licensee's facilities, as it deems necessary. Licensor reserves the right to charge Licensee for the expense of any field inspections, including inspections for make-ready work, inspections during installation of Licensee's facilities and any further periodic inspections deemed necessary by Licensor providing such costs are not included in annual rental costs. Such inspections, whether made or not, shall in no manner relieve the Licensee of any responsibility, obligation, or liability assumed under this Agreement. The frequency of periodic inspections is dependent on the performance of the Licensee in conforming to the terms of this Agreement.

(b) **Licensee Practices**

Licensee shall have written standard practices that address construction standards to be followed in attaching facilities to Licensor's poles. The standards should specify any obligations that exceed NESC regulations. These standards should also address communication methods and contacts for notifications, project plans, authorizations, and compliance certifications. These standards shall be made readily available to requesting entities.

(c) **Conflicts with Electric Lines**

Licensor shall provide Licensee notice of any NESC violations it discovers. NESC violations and conflicts to electric lines shall be corrected in a prompt manner by OJUA standards by the Licensee if Licensee created the violation. In some instances, the National Electrical Safety Code requires that qualified electrical workers perform the work. In that event, Licensee shall either have qualified contractors or pay Licensor to perform the work. Licensee shall also be subject to Oregon Public Utility Commission sanctions for failure to comply with Oregon Public Utility Commission safety rules. Failure by Licensee to act in a prompt and responsible manner may result in the Licensor taking appropriate measures to correct the safety violations involved and Licensee shall be responsible for the cost thereof. In such cases, the inspection, design, repair, and coordination charges shall be borne by Licensee if it failed to perform necessary duties required by Oregon law. Comment: The term "prompt" is not defined here. The rules in Oregon set up timelines and allow for the violating party to submit a plan of correction. The NESC says that if a violation cannot be promptly corrected, then it must be recorded and the records maintained until corrected.

(d) **Licensee's Contractor List**

The Licensee shall provide to the Licensor a current list of the names of all of Licensee's contractors who will have occasion to perform work on or about the facilities.

5. **No Warranty:**

The Licensor does not warrant or assure to Licensee any right-of-way privilege or easements or that Licensor owns a property right that permits attachment, and if the Licensee shall at any time be prevented from placing or maintaining its

attachment on Licensor's poles or joint poles, no liability shall attach to Licensor. Each party shall be responsible for obtaining its own easements and right-of-way. The attaching Licensee shall solely be responsible to acquire the property right to attach from the property owner.

6. **Maintenance of Poles, Attachments and Right-of-Way:**

- (a) The Licensor shall, at its own expense, inspect and maintain the poles in accordance with industry practices and the specifications mentioned in Section 2, and shall replace, reinforce or repair such poles as are determined to be defective.
- (b) Whenever right-of-way considerations or public regulations make relocation of a pole necessary, such relocation shall be made by the Licensor at its own expense, except each party shall bear the cost of transferring its own attachments.
- (c) Whenever it is necessary to replace or relocate a jointly used pole, the Licensor shall, before making such replacement or relocation, give ~~thirty~~ (30) days notice in writing and/or electronic means (except in case of emergency, when verbal notice will be given and subsequently confirmed in writing) to the Licensee, specifying in such notice the time of such proposed replacement or relocation. Licensee shall, ~~when it is their turn??~~, transfer its attachments to the new or relocated joint pole. Should the Licensee fail to transfer its attachments to the new or relocated joint pole at the time specified for such transfer of attachments, the Licensor may elect to do such work, and the Licensee shall pay the Licensor the cost. In the event the Licensee fails to transfer its attachments and the Licensor does such work, the Licensor shall not be liable for any loss or damage to the Licensee's facilities that may result, except in the case of gross negligence or willful misconduct.
- (d) Except as otherwise provided in subparagraph (c) of this Section, each party shall at all times maintain all of its attachments in accordance with the specifications mentioned in Section 2 and shall keep them in good repair. All necessary right-of-way maintenance, including tree trimming or cutting, shall be borne by the parties as provided in Section 3(h).
- (e) Any existing joint use construction that does not conform to the specifications mentioned in Section 2 shall be brought into conformity as soon as practicable. When such existing construction shall have been brought into conformity with said specifications, it shall at all times thereafter be maintained as provided in (a) and (d) of this Section. Should the Licensee fail to comply, the Licensor may elect to do such work and the Licensee shall pay the Licensor the cost.

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- (f) Licensee expressly assumes responsibility for determining the condition of all poles to be climbed by its employees, contractors, or employees of contractors. Licensor disclaims any warranty or representation regarding the condition and safety of the poles of the Licensor. Licensor agrees that, upon written notification, it will replace any pole that it deems to be unserviceable.

7. Recovery, Rearranging or Relocation of Facilities:

- (a) In the event it is necessary for Licensor, or for another regulated utility with whom Licensor has an Agreement for the joint use of wood poles, or for another Licensee with whom Licensor has a prior Agreement for the joint use of wood poles, to use the space on poles occupied, or contracted for, by the Licensee, the Licensee shall, upon receipt of the thirty (30) day written and/or electronic notice, either vacate the space by the removal of its attachments or shall authorize Licensor to replace the poles at the expense of Licensee and Licensee shall pay a pro-rata share for said replacements as provided for in (b) of this Section, provided, however, that Licensee has not paid for the replacement of such poles.???. [this should be limited to cases where required by the commission or other regulatory body; we can't just be asked to move for no reason]
- (b) In any case where facilities of Licensor are required to be rearranged on the poles of the Licensor or of others to accommodate the attachments of Licensee, Licensee shall pay to Licensor the total costs incurred by Licensor in rearranging such facilities. The Licensee shall also reimburse other users of the poles of Licensor for their costs of rearrangement to provide space or clearance for the facilities of Licensee.
- (c) Whenever it is necessary to replace or change the location of a joint use pole, for reasons other than those set out in 6 (a) and (b), and over which Licensee [OR LICENSOR?] has no control, Licensor shall, before making such change, give due notice to the Licensee, specifying in such notice the time of such proposed change, and the Licensee shall promptly begin to transfer or remove its attachments. In case of any such pole replacement or relocation where Licensor has transferred or removed its attachments and Licensee has not transferred or removed its attachments within sixty (60) days after receipt of such written and/or electronic notice, Licensee shall become liable for such old pole as provided in Section 10.
- (d)

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8. Indemnification and Insurance:

Deleted: In the event of any changes contemplated under 6 (a), (b) or (c), Licensee shall pay the entire cost of any removal, transfer or installation of its own attachments.

(a) Licensee shall defend, indemnify, protect and save harmless Licensor from and against any and all claims and demands for damages to property, and for injury or death to persons, including payments made under any Workers' Compensation Law to Licensee's employees or under any plan for Licensee's employees disability and death benefits, and including all expenses incurred in defending against any such claims or demands, which may arise out of or be caused by Licensee's or its agents', contractors' or employees' erection, maintenance, presence, use, rearrangement or removal of the attachments of Licensee's wires, equipment, apparatus and appliances to those of Licensor or by any act of Licensee, its agents, contractors and employees on or in the vicinity of Licensor's poles. Licensee shall carry insurance in such form and in such companies as are satisfactory to Licensor to protect the parties from and against any and all claims, demands, actions, judgments, costs, expenses and liabilities of every name and nature which may arise or result directly or indirectly from or by reason of such loss, injury or damage subject to the terms and conditions of the policies. To the extent permitted, such insurance policies shall name Licensor as an additional insured.

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(b) Licensee shall carry and keep in force, while this Agreement is in effect, insurance contracts, policies and protection in company or companies that maintain at least a "Best's" rating of A- VII in amounts and for coverage deemed necessary for its protection by Licensee, but in no event for amounts or coverage less than the following minimum requirements: contractual liability coverage for liability assumed by Qwest under this agreement provided the bodily injury or property damage is caused in whole or in part by Qwest.

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1. Comprehensive general liability insurance, ISO Form CG 0001 10 01 or equivalent, including independent contractors insurance coverage, with minimum limits of \$10,000,000 combined single limit each occurrence and aggregate for bodily injury and property damage, including coverage for damage caused by blasting, collapse or structural injury, and/or damage to underground facilities, protecting Licensee against and in respect to all matters, liabilities, contingencies, and responsibilities arising under the Agreement and subject to the policy's terms and conditions, including without limiting the foregoing, contractual liability insurance covering Licensee's obligations under this Agreement included in the above minimum limits of \$10,000,000 combined single limit each occurrence and aggregate for bodily injury and property damage to indemnify and to hold Licensor harmless for bodily injury or property damage caused in whole or in part by Licensee.

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2. Licensee shall also carry and keep in force, while the Agreement is in effect, workers' compensation insurance in compliance with the laws of the state of Oregon and employers' liability insurance with minimum limits of \$1,000,000 per accident.

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3. Licensee shall furnish Licensor with certificates of insurance showing that such insurance is in force and will not be canceled or materially modified without thirty (30) days prior written notice to the Licensor's President/CEO. Neither acceptance nor knowledge (by and of Licensor) or the procurement of Licensee of insurance protection of lesser scope than that required to be procured by them under this Agreement shall in any manner or for any purpose constitute or be deemed a waiver by Licensor of the requirements imposed respecting insurance protection, nor shall any such acceptance or knowledge of insurance protection of lesser scope in any manner or for any purpose lessen or modify or constitute a limiting interpretation of the scope of the matters covered by and obligations of Licensee under this Agreement.

9. Security and Remedies in Default

(a) **Security Requirement** ~~The security provisions are too broad and open ended. We pay make-ready up front and annual rentals on a prospective basis. If we don't pay, CEC's remedy is outlined in the contract provisions.~~

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(b) **Amount of Security**

The amount of the security required shall be determined annually and shall be equal to three (3) times the reasonably anticipated annual billing for pole attachment charges plus a reasonable amount for attorney's fees and costs.

Deleted: The Licensee shall furnish security to the Licensor for the performance of the Licensee's obligations under this Agreement to make any and all payments demanded by the Licensor as due under this Agreement, including without limiting the generality of the foregoing, any pole attachment fees in respect of licenses, Licensor's costs of modifying or removing Licensee's facilities, and Licensor's costs of enforcement

(c) **Form of Security**

The form of security to be provided by the Licensee may be one, or a combination, of the following: A cash deposit of money with Licensor; a performance bond from an acceptable surety; a letter of credit; a personal guaranty; a corporate guaranty; or such other reasonably adequate security as the Licensee may propose.

(d) **Licensors Approval Required**

In any event, the form and sufficiency of the security proposed by Licensee must be approved by Licensor provided, further, that Licensor may require financial statements or other appropriate evidence as to the solvency and financial capability of the surety, guarantor, or financial institution.

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(e) **Cash Deposits**

If Licensee elects to provide a cash deposit, such deposit or deposits shall be held during the continuance of this Agreement as security for any and all amounts which are or may become due to the Licensor under this Agreement. Said cash deposit shall be placed in an interest-bearing account and Licensee shall be entitled to a credit for the interest income on said cash deposit. If Licensee fails to pay any sum demanded by Licensor as due under this Agreement, Licensor shall, after Licensor has identified the reason for the calling which reason may be questioned and contested and provided Licensee with 30 days to remedy the default, have the right, without prior notice to Licensee, to apply immediately any or all amounts on deposit with Licensor towards payment of the sums due Licensor, and whether or not Licensor exercises or has exercised any option it may have to terminate this Agreement.

Deleted: If Licensee contests its liability to pay any sum claimed by Licensor, Licensee's sole remedy shall be an action at law to recover the amounts in dispute. In the event Licensor shall apply some or all of the cash deposit towards payment of an amount claimed due by Licensor, Licensee must restore to its deposit the amount so applied within thirty (30) days after notice of such application irrespective of whether or not Licensee contests its liability or commences any legal proceedings to determine its liability. Failure to restore its cash deposit shall constitute a default under this Agreement.

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(f) **Performance Bond**

If the Licensee elects to provide a performance bond, such bond shall be issued by a surety satisfactory to Licensor and in a form satisfactory to Licensor. The initial bond shall be for a term of one (1) year; renewal bonds shall be provided by Licensee to Licensor at least two (2) months before expiration of an existing bond. A bond must contain a provision that the surety will pay to Licensor subject to the dollar limits of the bond any sum demanded by the Licensor as due under this Agreement after Licensor has identified the reason for the calling which reason may be questioned and contested and provided Licensee with 30 days to remedy the default, whether or not Licensor exercises or has exercised any option it may have to terminate this Agreement.

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Deleted: If any such amounts are paid by the surety, Licensee within thirty (30) days after notice of such payment shall provide to Licensor security in the full amount, irrespective of whether or not Licensee contests its liability to Licensor or brings or has brought any legal proceedings or appeals to local, state, or federal regulatory agencies to determine its liability. Failure to restore the security shall constitute a default under this Agreement.

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¶ The security provided by Licensee must include a provision in which the surety, guarantor, or other party providing the security specifically agrees that it will not assert defenses against the claims of the Licensor upon such security. The security provided by Licensee shall be absolute, irrespective of whether or not Licensee contests its liability to Licensor or brings or has brought any legal proceedings or appeals to local, state or federal regulatory agencies to determine its liability

(g)

(h) **Licensors Termination Rights**

If Licensee fails to pay any sum due Licensor under this Agreement, or to provide and to maintain the security required in this Agreement, Licensor shall have the right to terminate this Agreement; provided, however, that

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Licensor shall give Licensee written notice of such default and Licensor's intent to terminate, and Licensee shall have thirty (30) days in which to cure such default. In addition to Licensor's right of termination set forth above, Licensor shall have the further right to terminate this Agreement or to cancel a particular permit or permits for specific pole attachments if the Licensee shall default in any manner in performing any action required under this Agreement; provided, however, that the Licensor shall give Licensee written notice of such default and Licensor's intent to terminate, and Licensee shall fail within thirty (30) days of notice to cure or undertake to correct such default, and proceed with reasonable diligence and in good faith to correct such noncompliance or default, Licensor may, at its option, and without further notice, declare this Agreement to be terminated in its entirety, or may terminate the license covering this attachment or attachments in respect to which such default or noncompliance shall have occurred. In case of such termination, no refund of unused rental shall be made. Any termination pursuant to this paragraph shall be effective immediately upon the Licensor's mailing the notice of termination to the Licensee following the expiration of the thirty (30) day period to cure the default. Termination of this Agreement or any specific permit shall not release Licensee from any liability or obligations under this Agreement, including, without limiting the generality of the foregoing, the obligation to continue to pay pole attachment charges as provided in Section 11 of this Agreement for such time as Licensee's attachments remain on Licensor's poles and Licensee's obligation to pay any costs of removal.

(i) **Licensee's Duty to Remove Attachments**

Upon termination of this Agreement, or cancellation of any permit or permits issued pursuant to this Agreement, Licensee agrees to remove its attachments from any poles affected within ~~three hundred and sixty (360)~~ days after the effective date of such termination or cancellation, except as otherwise provided herein.

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(j) **Licensee's Failure to Remove or Make Changes**

In the event that Licensee shall fail to make any change in its plant required by Licensor or shall fail to remove any attachments upon cancellation of any specific permit or upon termination of this Agreement, Licensor shall have the right to make such changes or effect such removals.

(k) **Emergency**

In case of emergency or immediate service needs of Licensor, Licensor may perform such removal or change work without prior notice to Licensee or upon such notice as may be reasonable under the circumstances.

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(l) **Costs of Licensee's Work**

Licensee shall pay all costs of any removal or changes performed by Licensor. Said costs shall be determined in accordance with the provisions of this Agreement. Licensee shall pay such costs within thirty (45) days of the date of Licensor's billing for such costs.

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(n) **Corrective Work by Licensor**

If Licensee shall make default in the performance of any work which it is obligated to do under this Agreement, Licensor may elect to do such work, and Licensee shall reimburse Licensor for the reasonable cost thereof.

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10. Abandonment of Joint Use Poles:

If Licensor desires at any time to abandon any joint use pole, it shall give Licensee notice in writing to that effect at least sixty (60) days prior to the date on which it intends to abandon such pole. If, at the expiration of said period Licensor shall have no attachments on such pole but Licensee shall not have removed all of its attachments, such pole may, at the Licensor's discretion, become the property of Licensee, and Licensee shall hold harmless the Licensor from every obligation, liability, or cost, and from all damages, expenses or charges incurred thereafter, arising out of, or because of, the presence of or the condition of such pole or any attachments; and shall pay to Licensor a sum equal to the present value in place of such abandoned pole or poles, or such other equitable sum as may then be agreed upon between the parties, and Licensor shall provide Licensee with a properly authorized bill of sale for such pole. pro-rata expense??

Deleted: If Licensor abandons any joint use pole, the last remaining attached Licensee shall be responsible for removal of said poles per Exhibit "B", item 10.

(a)

If the Licensor abandons the pole and relocates facilities underground, the Licensor shall request that the Licensee also relocate facilities underground or shall abandon the vacated pole to the Licensee. This Agreement would be negotiated on a case-by-case basis.

(b) Licensee may at any time abandon the use of a joint use pole by giving Licensor due notice in writing of such abandonment, as provided in (a) of this Section, and removing from such pole all attachments that Licensee

may have, and in case of such abandonment of the use of any such pole, Licensee shall pay to Licensor the full rental for the current year for the space on said pole set aside for the use of Licensee.

11. Rental Charges and Rates:

- (a) On or about December 31 of each year, the parties, acting in cooperation, shall tabulate the total number of pole contacts in use as of the preceding day. This tabulation shall indicate the number of poles on which rentals are to be paid. Annual rental charges shall be calculated as per Exhibit "C" to this Agreement.
- (b) The yearly rental period covered by this Agreement shall be the twelve month calendar year period between January 1 and December 31. Rental payable for each such rental period during the continuance of this Agreement shall be due and payable on February 1 following the end of the rental period. The annual rental per pole shall apply to any pole contacts made or removed during the year and rents shall not be prorated; provided however, that if this Agreement is executed between July 1 and December 31 of the same calendar year, Licensee shall pay to Licensor only one-half (1/2) of the annual rental due for attachments made during that period.
- (c) In the event that Licensee requires a source of electrical energy for power supply to the cable system which constitutes a part of the licensed pole contacts and apparatus, such energy will be supplied by Licensor in accordance with the provisions of its standard service extension policies and approved rates and tariffs.
- (d) All other amounts payable under this Agreement, such as for erection, rearrangement, relocation or abandonment, shall be due and payable within thirty (45) days of billing by Licensor.
- (e) Licensee shall receive a rent reduction if the Licensee is in compliance(please define the determining factors for compliance) with rules adopted by the Public Utility Commission for certifying compliance with the laws regulating pole attachments. A Licensee is eligible for the rental reduction unless the Licensor notifies the Licensee in writing that the Licensee has failed to comply with either the Public Utility Commission's rules or the terms of this Agreement.
- (f) Other equipment attached to poles outside the telecommunication space will be subject to charges as reflected in Exhibit "C" to this Agreement.

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12. Defaults:

- (a) If Licensee shall fail to comply with any of the provisions of this Agreement or should default in any of its obligations under this Agreement, and shall fail within sixty (60) days after written notice from Licensor to correct such noncompliance or default or undertake to correct such default, and proceed with reasonable diligence and in good faith to correct such noncompliance or default, Licensor may, at its option, and without further notice, declare this Agreement to be terminated in its entirety, or may terminate the permit covering the pole or poles in respect to which such default or noncompliance shall have occurred. In case of such termination, no refund of accrued rental shall be made.
- (b) If Licensee shall make default in the performance of any work which it is obligated to do under this Agreement, the Licensor may elect to do such work, and the Licensee shall reimburse the Licensor for the cost.

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13. Sanctions:

The Licensor may levy sanctions against the Licensee for unauthorized attachments or for other violations of the duties of pole occupants as specified in Oregon Public Utility Commission Administrative Rules OAR 860-028-0120 through 860-028-0190, as amended. Notwithstanding, nothing in this Agreement is intended to limit either party's right to challenge the above Rules or any other rule, regulation or law governing pole attachments or this Agreement before any regulatory, judicial, legislative or other forum with jurisdiction.

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14. Rights of Other Parties:

Nothing herein shall be construed to limit the right of Licensor, by contract or otherwise, to confer upon others, not parties to this Agreement, rights or privileges to use the joint use poles covered by this Agreement, provided the rights conferred upon Licensee under this Agreement are not diminished or compromised and does not discriminate against Licensee in any manner.

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15. Term of Agreement:

This Agreement shall continue in force and effect for a period of one (1) year from and after the date of this Agreement, and thereafter from year to year unless terminated by either party by giving written notice of its intention to do so not less than thirty (30) days prior to the end of any period, provided, however, if the Licensee shall fail to commence construction on the poles of Licensor within the period of one hundred eighty (180) days after the date of execution of this License Agreement, than this License Agreement shall be null and void, and of no further force and effect. Upon termination of this Agreement, Licensee shall remove its

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attachments from the poles of Licensor within one hundred eighty (180) [360?] days after the effective date of such termination. Should the Licensee fail to comply, the Licensor may elect to do such work and the Licensee shall pay the Licensor the cost.

16. Survival of Obligations:

Any termination of this Agreement in whole or in part shall not release Licensee nor Licensor from any liability or obligations hereunder, whether of indemnity or otherwise, which may have accrued or which may be accruing or which arises out of any claim that may have accrued or be accruing at the time of or prior to termination.

17. Waiver of Terms or Conditions:

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

18. Supplemental Agreements:

- (a) This Agreement may be amended or supplemented at any time upon written Agreement by the parties hereto. Should either an amendment or supplement become necessary, the party desiring such amendment or supplement shall give thirty (30) days written notice to the other party setting out in detail the changes or additions desired.
- (b) In the event that Licensee desires to add or reduce the number of pole contacts, Section 18(a) shall not apply, but in each case a sketch, map, or other mutually acceptable notice shall be submitted to Licensor, setting out in detail the pole numbers and exact locations of the poles, and the quantity of poles involved in the addition or subtraction.

19. Payment of Taxes:

Each party shall pay all taxes and assessments lawfully levied on its own property upon said jointly used poles, and the taxes and the assessments which are levied on said joint use poles shall be paid by the Licensor thereof, but any tax, fee or charge levied on Licensor's poles solely because of their use by the Licensee shall be paid by Licensee.

20. Interest and Payments:

All amounts to be paid by Licensee to Licensor under this Agreement shall be due and payable within (45?) days after an itemized statement is presented to the Licensee. Any payment not made within (45?) days from the due date shall bear interest at the rate of eighteen Percent (18 %) per annum until paid.

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21. License Only:

No use, however extended, of any of the facilities under the Agreement shall create or vest in Licensee any ownership or property rights in Licensor's poles or facilities, but Licensee's rights therein shall be and remain a mere license.

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22. Notices:

Any notice, request, consent, demand or statement which is contemplated to be made upon either party by the other party under any of the provisions of this Agreement, shall be in writing and shall be treated as duly delivered when it is either (a) personally delivered to the office of Licensor in the case of a notice to be given to Licensor, or personally delivered to the office of Licensee in the case of a notice to be given to Licensee, or (b) deposited in the United States certified mail, postage prepaid and properly addressed to the party to be served as follows:

(i) If notice is to Licensor,
Mr. Al Gonzalez, President/CEO
Central Electric Cooperative, Inc.
P.O. Box 846 or 2098 N. Hwy 97
Redmond, Oregon 97756

(ii) If notice is to Licensee,
Qwest Corporation
Joint Use
700 W. Mineral Ave. MT G28.24
Littleton, CO 80120

23. **Supplying Information:**

- (a) It is understood and agreed to between the parties that Licensee shall furnish to Licensor within thirty (30) days after the execution of this Agreement a detailed sketch or map or database upon which will be shown the precise locations by streets or roads of the joint use poles to be initially covered by this Agreement, showing the facilities installed or to be installed upon the joint use poles and the pole numbers upon which these facilities are to be attached.
- (b) Within ninety (90) days after the completion of the initial installation of the Licensee's facilities, as set forth on the above mentioned sketch or map or database, Licensee shall furnish to Licensor a revised copy of said sketch or map showing the precise location of each power supply, pole contact, and other attachment of Licensee which is actually installed on poles of the Licensor. Such revised sketch or map shall be verified by the Licensor and shall be the basis for determining the number of pole contacts made initially.
- (c) Licensee shall promptly report to Licensor any changes made in the number of poles of the Licensor contacted by Licensee. [DOES THIS MEAN THAT IN ADDITION TO OBTAINING A PERMIT, WE NEED TO UPDATE OUR MAP AFTER EACH NEW BUILD?]

Deleted: Such sketch or map shall be reviewed by, and approved, commented upon, or rejected by the engineers of Licensor, and Licensee agrees to make any and all such changes in said sketch or map as are suggested by said engineers

Deleted: Licensee shall not begin the installation of any facilities covered by this Agreement until engineering approval by Licensor is granted

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24. **Construction of Agreement:**

This Agreement is deemed executed in the state of Oregon and shall be construed under the laws of the state of Oregon and applicable Federal and local laws, rules and regulations. In the event that a suit or action is instituted to enforce or interpret any of the terms of this Agreement, the parties agree that the proper venue for said suit or action shall be in the State of Oregon.

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25. **Prior Agreements Superseded:**

This Agreement supersedes and replaces any and all previous Agreements entered into by and between Licensor and Licensee with respect to the subject matter of the Agreement. Notwithstanding, any Licensee attachments existing prior to this Agreement shall be considered authorized under the applicable prior contract or course of business but shall be governed by the terms of this Agreement upon the effective date.

26 **Assignment of Agreement:**

Neither party shall assign or otherwise transfer this Agreement or any of its rights and interests to any firm, corporation or individual, without the prior written consent of the other party, except to an affiliate.

27. **Dispute Resolution**

Other than those claims over which a federal or state regulatory agency has exclusive jurisdiction, all claims, regardless of legal theory, whenever brought and whether between the parties or between one of the parties to this Agreement and the employees, agents or affiliated businesses of the other party, shall be resolved by arbitration to be conducted in accordance with the Judicial Arbitration and Mediation Services ("JAMS") Comprehensive Arbitration Rules. Other than the determination of those claims over which a regulatory agency has exclusive jurisdiction, the Federal Arbitration Act, 9 U.S.C. Sections 1-16, not state law, shall govern the arbitrability of the dispute. Washington law, without regard to choice of law principles, will otherwise govern and apply to any and all claims. The costs of the arbitration, including the arbitrator's fees, shall be shared equally by the parties; provided, however, that each party shall bear the cost of preparing and presenting its own claims and/or defenses (including its own attorneys' fees).

The arbitration will be held in a mutually agreed location. A single arbitrator engaged in the practice of law, who is knowledgeable about the subject matter of the contract, shall conduct the arbitration. The arbitrator is bound to apply and enforce the terms of this contract. The arbitrator's decision shall be final, binding, and enforceable in a court of competent jurisdiction. If a party is required to enforce compliance with this Section (including non-payment of an award), then the non-complying party shall reimburse all of the costs and expenses incurred by the party seeking such enforcement (including reasonable attorneys' fees).

In witness whereof, the parties have caused this Agreement to be duly executed.

DATED this _____ day of _____, 20__.

(Licensor) _____,
Central Electric Cooperative, Inc.,
an Oregon cooperative corporation

(Licensee) _____

By _____
By _____
Al Gonzalez

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Its President/CEO

Its

EXHIBIT "B"

RULES AND PRACTICES FOR TELECOMMUNICATION ATTACHMENTS

1. All telecommunication facilities attached to Licensor's poles shall be installed in a manner to ensure compliance with the requirements of the National Electrical Safety Code (NESC) in effect at the time of installation.
2. The location of attachments on Licensor's poles shall be approved in writing by the Licensor. Except for services, no attachments shall be made without prior approval of Licensor.
3. All attachments shall be located on the same side of each pole as any existing attachment, or as designated by the Licensor.
4. On jointly used poles where Licensor has secondary conductors, all attachments shall be located on the side of the pole opposite the secondary conductors, or as designated by the Licensor. Comment: This is likely to cause climbing space violations. Comment: This is likely to cause climbing space violations. Item 5 below requires that climbing space be maintained. Item 5 below requires that climbing space be maintained.
5. Licensee's attachments shall be installed and maintained so as to provide adequate climbing space as per the NESC.
6. No bolt used by Licensee to attach its facilities shall extend or project more than one (1) inch beyond its nut.

7. Licensee shall install and maintain any and all of its facilities in a neat and workmanlike manner consistent with industry standards and the overall appearance of the jointly used pole, and all subject to the approval of Licensor, provided that licensee shall be solely responsible for compliance with the specifications referred to in Section 6 of this License Agreement.
8. All down guys, head guys or messenger dead ends installed by Licensee shall be attached to jointly used poles by the use of "thru" bolts. Such bolts placed in a "bucking" position shall have at least three inches vertical clearance. Under no circumstances shall Licensee install down guys, head guys or messenger dead ends by means of encircling jointly used poles with such attachments. All guys and anchors shall be installed prior to installation of any messenger wire or cables.
9. Qwest Engineers and Technicians are trained in NESC standards and this contract obligates Qwest and CEC to construct within the standards.

Deleted: For those attachments requiring inspections, the Licensee shall provide a written statement, signed by a qualified representative of the Licensee, that its facilities, including protection devices, as installed are fully in compliance with the applicable rules of the NESC, other codes and requirements, and approved engineering design standards. This inspection shall be made within thirty (30) days after installation has been completed. Failure to comply will result in termination of this Agreement as outlined in Sections 12(a) and 12(b)

10. The following steps and conditions shall be followed when removing old poles from the field. The entire butt of the old pole shall be removed. DO NOT partially pull the butt, cut it off and/or leave a remaining portion in the ground. Fully remove all associated hardware, including anchors and ground rods, with the old pole. Fill and compact the pole hole to eliminate future settling. Restore landscaping, ditches, streets and sidewalks to the specifications required by the governing authority having jurisdiction over said infrastructure.

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FRANCIS HANSEN & MARTIN, LLP

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**Admitted in Oregon and California

(541) 389-5010

francishansenmartin.com

January 13, 2005

VIA FACSIMILE & REGULAR MAIL

Jay Nusbaum
Perkins Coie LLP
1120 NW Couch 10th Floor
Portland, OR 97209

Re: CEC vs. Qwest – 2004 Unauthorized Contacts

Dear Jay:

Your letter of January 7, 2005 further demonstrates how really "out-of-touch" Qwest is with regards to its legal responsibilities in this matter.

It is your client Qwest who is in need of the legal right to utilize the property owned by the members of Central Electric Cooperative. Most companies would not think of occupying the commercial property of another company without having a lease agreement firmly in place from the outset. That has not been the case with Qwest.

Your letter ignores the fact that Qwest took no steps, as it was required to take, prior to January 1, 2004 to put into place a rental agreement between our two clients. Let's remember that your client should have commenced negotiations for a rental agreement immediately upon the execution of the settlement agreement in May of 2001. When your client waited over three years without proposing a rental agreement while still making attachments to CEC's system, CEC took it upon itself to propose a rental agreement for your client's occupancy of our system. Qwest then totally ignored that proposed rental agreement. It was not until CEC began to impose the penalties due under the settlement agreement that Qwest, over five months after receiving the rental agreement, even acknowledged the obligation Qwest had to respond to the proposed rental agreement. Qwest has absolutely no grounds to complain about any actions of CEC. Only when CEC determined that Qwest intended to continue its unlawful trespass on CEC's property without a rental agreement in place, did CEC decide to see if Qwest would step up to the plate and sign a rental agreement proposed by CEC. To no surprise of ours, Qwest once again failed to honor the most simple obligation of a tenant, to sign a rental agreement.

Jay Nusbaum
Re: CEC vs. Qwest – 2004 Unauthorized Contacts
January 13, 2005
Page Two

I enjoyed your attempts to breath life into the long ago terminated settlement agreement. I always find it amusing when a party that has no legal defense attempts to blatantly misquote and miscite a document it signed in an effort to totally change the meaning of a document. The settlement agreement between our two parties could not be clearer that it is fully terminated as of December 31, 2003. That point is made more than once in the same paragraph that you so crudely bludgeoned in order to make your argument that, as a result of the magnitude of Qwest's breach of its obligation to propose a rental agreement, that somehow the settlement agreement would rise from the dead.

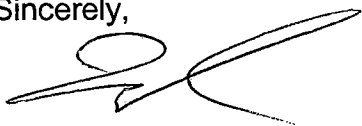
Let me review some facts that are obvious to us but have obviously have been overlooked by Qwest. Qwest has had since May of 2001 to propose and enter into a Joint Pole Agreement with CEC. Qwest did not lift a finger in all of those years to propose or even request a Joint Pole Agreement.

Qwest has had a Joint Pole Agreement in its hands since July of 2004. Qwest could have signed that Joint Pole Agreement back in July and it would not now be in violation of the PUC rules and regulations. Again, Qwest did absolutely nothing to sign that Joint Pole Agreement. Qwest now faces even more sanctions for its failure to have a pole agreement in place while still making attachments to CEC's property.

My client has been negotiating with other companies who have attachments to CEC's poles. As a result, we have found a few changes to our proposed agreement that we are willing to accept. While the first agreement proposed to Qwest is still acceptable to CEC, I am enclosing with this letter the final version of CEC's Joint Pole Agreement. As Qwest now enters its second year without a Joint Pole Agreement in place, and now that Qwest is facing CEC's claim for sanctions and penalties for its past trespass, I would strongly suggest you advise your client to execute this agreement to mitigate the damages that are already subject to our claim.

Call me if you have any questions.

Sincerely,



MARTIN E. HANSEN

MEH/lko
Enclosure
cc: Al Gonzalez
Dave Markham

POLE ATTACHMENT LICENSE AGREEMENT

This pole license Agreement made and entered into the ___ day of _____, 20___, by and between Central Electric Cooperative, an Oregon Cooperative Corporation, with its principal place of business at _____ (hereinafter called "Licensor"), and _____, with its principal place of business at _____ (hereinafter called "Licensee").

RECIPROCAL AGREEMENT

Any occupancy by the Cooperative on the facilities of the Licensee shall be governed by the terms and conditions of this Agreement as though the Cooperative was the Licensee and the Licensee was the Cooperative.

Witnesseth

Whereas, Licensor owns, operates and maintains lines of poles extending in Deschutes, Crook, Jefferson, Grant, Lake, Wasco and Linn Counties, in the state of Oregon; and

Whereas, Licensee desires to place certain lines, Attachments and apparatus, hereinafter called "pole Attachments" on certain poles of Licensor, for the limited purpose of furnishing lawful telecommunications or electrical services in compliance with any and all local, state or federal regulations; provided, that such transmission of signals or power does not interfere with the furnishing of electrical service to consumers of Licensor and others using said poles, and where in Licensor's judgment, safety will not be adversely affected.

Whereas, Licensor is willing to permit Licensee, to the extent it may lawfully do so, to place said lines, Attachments and apparatus on said poles, on a non-exclusive basis, in the area shown on Exhibit "A" attached hereto and made a part hereof;

Now, therefore, in consideration of the mutual covenants, terms and conditions herein contained the parties hereto, for themselves, their successors and assigns, do hereby covenant and agree as follows:

1. Definitions:

- (a) **Agreement:** This Pole Attachment License Agreement entered into between Licensor and Licensee is for the area specified in Exhibit A1 and in any area where Licensee attaches its equipment to poles owned by Licensor.
- (b) **Application:** A written and/or electronic request by Licensee to attach to Licensor's pole accompanied with the required fees.
- (c) **Basic Pole:** A 40' pole, or as otherwise determined by the Licensor. This definition is used solely for the purpose of computing pole rental rates.

- (e) **Inspection:** The examination by Licensor of Licensor's pole or poles occupied by Licensee and any of Licensee's Attachments or equipment situated upon or in the vicinity of such poles for the purpose of i) verifying the number and location of all Attachments and any other pole-mounted equipment of Licensee, or ii) determining whether Licensee is in compliance with the requirements and specifications of Section 3 or any other obligations of Licensee under the terms of this Agreement.
- (f) **Joint Use Pole:** A utility pole owned and maintained by Licensor and shared with another utility entity not Licensee, or a utility pole owned by an entity other than Licensor but used jointly by Licensor.
- (g) **National Joint Utility Notification System:** NJUNS is the electronic system used by Licensor that Licensee will utilize to submit applications for permission to attach, relocate, or remove equipment or attachments under the terms of this Agreement, and to respond to Licensor upon a request for work to be performed by Licensee
- (h) **Permit:** Licensor's written and/or electronic approval of a pole Attachment as set forth in Section 4.
- (i) **Pole:** A utility pole owned and maintained solely by Licensor.
- (j) **Pole Attachment:** An Attachment by the Licensee to Licensor's pole.

The type of Attachments requiring an application, permit, and associated fees include but are not limited to the following:

- Initial bolt Attachment inside the telecommunication space
 - Additional bolt Attachments or other facilities attached to the pole
 - Support Equipment (i.e., guy wires attached to Licensor anchor)
 - Any modification of Licensee's equipment that increases the load on a pole
- (k) **Pole Attachment Survey:** The Inspection by Licensor of all or any number of Licensor's poles in the area covered by this Agreement.
 - (l) **Notification:** A written and/or electronic communication between the Licensor and Licensee, in a format agreed upon by the parties to this contract.
 - (m) **Sanction:** A financial penalty as set forth by the then existing PUC regulations.
 - (n) **Telecommunication Space:** Space on the pole between 20 and 23 feet on the pole unless otherwise specified.

2. Term of Agreement:

This Agreement shall continue in force and effect for a period of one (1) year from and after the date of this Agreement, and thereafter from year to year unless terminated by either party by giving written notice of its intention to do so not less than thirty (30) days prior to the end of any period.

3. Specifications:

- (a) The joint use poles covered by this Agreement shall be placed and maintained in accordance with the most stringent requirements, specifications and rules as incorporated under applicable Oregon law and regulations of the latest addition of the National Electrical Safety Code (NESC), the Occupational Safety and Health Act (OSHA), the Oregon Public Utility Commission (OPUC), any governing authority having jurisdiction and the rules and practices of Licensor as set forth in Exhibit "B" attached hereto and made a part hereof.
- (b) It is understood and agreed between the parties that the rules and practices set out in Exhibit "B" may be changed by Licensor, or new rules and practices may be adopted by Licensor, without resort to the provisions of Section 19, relating to supplementing or amending this Agreement, and Licensee agrees to be bound by any such change or adoption.
- (c) In the event that Licensor should change or adopt a rule or practice, or rules and practices, for the joint use of poles by Licensee, Licensor shall give Licensee written notice of such change or adoption in the manner contemplated by Section 23 and Licensee agrees to make such changes or alterations in its installations or maintenance of its facilities as may be required in order to fully comply with the provisions of such notice. In the absence of a contrary provision in said notice, Licensee agrees to make all required changes or alterations within the time specified by licensor.
- (d) No tag, brand or other device showing Licensee's name or insignia shall be placed on, or attached to, any pole of Licensor, except such tag or insignia which shows Licensee to be the Licensee or lessee of such pole and not the owner thereof, and then only after obtaining the written consent of Licensor. Where required by the Licensor, the Licensee agrees to attach information identifying its facilities on the pole, in a format specified by the Licensor.
- (e) The strength of poles covered by this Agreement shall be sufficient to withstand the transverse, vertical and longitudinal loads imposed upon them under the storm loading of the National Electrical Safety Code assumed for the area in which they are located.
- (f) Any unbalanced loading of Licensor's pole caused by the placement of Licensee's circuits shall be properly guyed and anchored by Licensee, at no expense to Licensor.

4. Application for Attachment

(a) **Permit Application**

Licensee shall not attach or modify any of its pole Attachments (except for service drops) to Licensor's poles or joint use poles without first having made written and/or electronic application to Licensor together with payment of the required fees and having received written and/or electronic permission from Licensor. Permission to make pole Attachments described in the application may be granted or denied by Licensor in whole or in part at Licensor's sole discretion limited only by the Telecommunications Act of 1996. Licensee must apply for a permit within seven (7) days of the Attachment of a service drop and install the service drop in compliance with the Oregon Public Utility Commission Safety Rules.

All applications for Attachments shall be accompanied with the required application processing fee and pre and post inspection fees. Licensee shall be charged a fee for such application and inspections as set forth on Exhibit C, the Fee Schedule. No application shall be processed until all applicable fees are received.

(b) **Application Procedure**

Until further notice, whenever Licensee desires to attach to any Licensor pole, Licensee shall submit to Licensor a "Pole Attachment Ticket" electronically via the National Joint Utility Notification System (NJUNS) and/or written permit application and shall specify the location and identifying number for the pole(s) on which Attachment is requested and the number of Attachments for each pole. If in Licensor's judgment, the poles are necessary for Licensor's own use, or if joint use under the circumstances is undesirable, Licensor shall have the right to reject or modify the application. Licensor shall respond to Licensee's application within forty-five (45) days of receipt. If the application is approved, Licensor shall notify the Licensee in writing and/or electronically via NJUN's of said approval and the Licensee shall have the right as a Licensee hereunder to affix such Attachments in accordance with the application, as approved, and in compliance with the specifications, terms and conditions of this Agreement.

(c) **Application Planning**

Each application shall involve sufficient engineering and planning by the Licensee to ensure compliance with standards identified in Section 3(a) of this Agreement during construction and upon completion. The Licensee is responsible for conducting engineering studies of Licensee's facilities to ensure proper spacing, equipment bonding and clearances. The Licensor shall be responsible for ensuring engineering studies of pole and down guy strength requirements for horizontal and vertical loading. The Licensor will charge the Licensee a pre and post inspection fee as set forth in Exhibit C, the Fee Schedule. The Licensor may

elect in writing to allow the Licensee to conduct pole, down guy and strength studies.

The application shall include sufficient design drawings and specifications so that qualified personnel can safely make the Attachments in compliance with the National Electrical Safety Code and joint pole Attachment agreements. It is the responsibility of the Licensee to ensure that only trained, qualified persons work on Licensor's facilities. Qualified persons shall be knowledgeable in applicable National Electrical Safety Code rules and must be able to demonstrate competence as required by the National Electrical Safety Code. They shall also be trained to recognize and prevent National Electrical Safety Code violations and conflicts, and to maintain safe working clearances from energized lines and equipment. Upon completion of the installation, the Licensee shall give written or electronic notification to the Licensor that the facilities are complete.

(d) Installation Time Limits

Licensee shall complete the installation of its Attachment(s) upon the pole(s) covered by each approved individual application within ninety (90) days of such approval. In the event Licensee should fail to complete the installation of the Attachment(s) within the prescribed time limit, the permission granted by Licensor to place the Attachment(s) upon the pole(s) shall thereupon be automatically revoked and Licensee shall not have the right to place the Attachment(s) upon the pole(s) without first reapplying for and receiving written and/or electronic permission to do so.

(e) Make-ready Pole Replacements

Whenever any pole to which Licensee seeks Attachment must be modified or replaced to accommodate Licensee's facilities and Licensor's existing Attachments, as well as the Attachments of other occupants, Licensor will provide Licensee with a detailed cost estimate of make-ready work it believes to be necessary to prepare the pole for Licensee's facilities. Licensor will provide Licensee with such estimate within sixty (60) days of receiving Licensee's application for Attachment. After receiving this estimate, if Licensee still desires to make such Attachments, Licensee shall notify Licensor within ninety (90) days of receiving such estimate of such continuing desire to attach, and shall pay to Licensor any required advance payment for such make-ready work, which may include engineering, materials (including poles and associated hardware), cost of removal (less any salvage value), and the expense of transferring Licensor's facilities from the old to the new pole(s). Where the advance payment of estimated expenses made to Licensor by Licensee for both non-replacement make-ready or pole replacements is less than the cost of work described above, Licensee agrees to pay Licensor all sums due in excess of the amount of the advanced payment within sixty (60) days from the date of the invoice. Where the advanced payment of estimated expenses made to Licensor by Licensee exceeds such costs, Licensor agrees to refund the difference to Licensee within sixty (60) days of completion of the make ready work. The Licensee shall also make

satisfactory arrangements with the owner or owners of other facilities attached to said poles for the transfer or rearrangement of such other facilities.

(f) **Cost Allocation Among Multiple Users**

When applications to occupy the same pole have been received from two or more prospective occupants, including Licensee, before any of them is given a license, and, if to accommodate their respective Attachments on the pole it would be necessary to rearrange existing Attachments or replace the pole, the applicable costs of rearrangement or replacement incurred in conjunction with such simultaneous applications shall be pro-rated equitably among such simultaneously attaching parties. In this context, "simultaneous" refers to all pending applications.

(g) **Non-Interference with Licensor Facilities**

Licensee at all times shall insure that its agents, servants, employees, and contractors or contractors' employees neither take, nor attempt to take any action whatsoever to Licensor's wires, Attachments, and other facilities attached to or supported by poles covered by this Agreement. Each party shall exercise reasonable precautions to avoid damage to the facilities of the other. Licensor at all times reserves the right to maintain and operate its own equipment in such a manner as will best enable it to fulfill its own service requirements and such requirements shall have priority over all pole occupants.

(h) **Right-of-way Clearing and Tree Trimming**

Licensor has established a regular and routine procedure for trimming trees or removing trees with inadequate clearance to high voltage conductors, poles and equipment. Licensee shall be responsible for tree trimming, right-of-way clearing and debris removal necessary for installation and safe clearance from communication conductors as mandated by the NESC and OPUC. In the event that Licensee is unable or fails to perform the necessary clearing and tree trimming in the communication space and Licensee has obtained all necessary easements, permits and rights-of-way to attach to Licensor's poles, Licensor will perform the necessary right-of-way clearing and tree trimming. In such case, Licensee agrees to pay Licensor 100% of the tree trimming and debris removal costs necessary in the communication space for each pole and the wire in its backspan on which Licensee attaches its facilities plus administrative costs. The costs for tree trimming, debris removal and administrative costs conducted on behalf of Licensee by Licensor shall be paid by Licensee within sixty (60) days from the date of the invoice. In the event there is more than one Licensee attaching to a specific pole, then the tree trimming costs for that pole shall be divided equally among the number of Licensees attaching to that pole.

(i) **Pole Ownership**

All poles on which Attachments are made under this Agreement shall remain the property of the Licensor, and any payments made by the Licensee for changes in pole lines under this Agreement shall not entitle the Licensee to ownership of any of said poles.

5. Inspections and Pole Attachment Survey

(a) Inspections

Licensor shall have the right to inspect each installation of Licensee's facilities upon and in the vicinity of such poles and to make periodic inspections of Licensee's facilities as it deems necessary. Licensee shall pay in advance to Licensor for all pre and post inspections including inspections for make ready work. Such inspections, whether made or not, shall in no manner relieve the Licensee of any responsibility, obligation, or liability assumed under this Agreement.

(b) Pole Attachment Survey

Licensor may conduct a Pole Attachment Survey at any time after the effective date of this Agreement and not more often than every third year subsequent to each such Pole Attachment Survey. Licensor shall give Licensee at least thirty (30) days prior written notice of such Pole Attachment Survey. Licensee shall advise Licensor if Licensee desires to be present during the survey.

Licensee shall reimburse Licensor for expenses Licensor incurred in making such Pole Attachment Survey, whether or not Licensee elects to be present. Licensor shall provide Licensor with a report of such Pole Attachment Survey within a reasonable time after its completion. The survey data from Licensor's Pole Attachment Survey shall be used to update Licensor's Attachment billing records where applicable.

Where other licensees have Attachments authorized by Licensor and situated upon Licensor's poles subject to a Pole Attachment Survey, Licensee shall pay a share of the costs of such Pole Attachment Survey calculated as follows: the total costs of the Pole Attachment Survey, multiplied by the ratio of (a) the number of Licensor poles subject to the Pole Attachment Survey that are occupied by Licensee, to (b) the summation of the number of Licensees occupying each

pole

subject to the Pole Attachment Survey. The Licensee shall pay its pro-rata share of the Pole Attachment Survey within sixty (60) days from the date of the invoice.

6. Safety

(a) **Licensee Practices**

Licensee shall have written practices that address construction standards to be followed in attaching facilities to Licensor's poles. The standards should specify any obligations that exceed NESC regulations. These standards should also address communication methods and contacts for notifications, project plans, authorizations, and compliance certifications. These standards shall be made readily available to Licensor.

(b) **Conflicts with Electric Lines**

Licensor shall provide Licensee notice of any NESC violations it discovers. NESC violations and conflicts to electric lines shall be corrected within sixty (60) days by the Licensee if Licensee created the violation. In some instances, the National Electrical Safety Code requires that qualified electrical workers perform the work. In that event, Licensee shall either have qualified contractors or pay Licensor to perform the work. Licensee shall also be subject to Oregon Public Utility Commission sanctions for failure to comply with Oregon Public Utility Commission safety rules. Failure by Licensee to act in a prompt and responsible manner may result in the Licensor taking appropriate measures to correct the safety violations involved and Licensee shall be responsible for the cost thereof. In such cases, the inspection, design, repair, and coordination charges shall be borne by Licensee if it failed to perform necessary duties required by Oregon law and shall pay the cost within sixty (60) days from the date of the invoice.

7. **No Warranty:**

The Licensor does not warrant or assure to Licensee any right-of-way privilege or easements or that Licensor owns a property right that permits Attachment, and if the Licensee shall at any time be prevented from placing or maintaining its Attachment on Licensor's poles or joint poles, no liability shall attach to Licensor. Each party shall be responsible for obtaining its own permits, easements and right-of-way.

8. **Maintenance of Poles, Attachments and Right-of-Way:**

- (a) The Licensor shall, at its own expense, inspect and maintain the poles in accordance with industry practices and the specifications mentioned in Section 3, and shall replace, reinforce or repair such poles as are determined to be defective.
- (b) Whenever right-of-way considerations or public regulations make relocation of a pole necessary, such relocation shall be made by the Licensor at its own expense, except each party shall bear the cost of transferring its own Attachments.
- (c) Whenever it is necessary to replace or relocate a jointly used pole, the Licensor shall give notice in writing and/or electronic means except in the case of an emergency, when no prior notice shall be given. Licensee shall, at the time so specified by the Licensor, transfer its Attachments to the new or relocated joint pole. Should the Licensee fail to transfer its Attachments to the new or relocated joint pole at the time specified for such transfer of Attachments, the Licensor may

elect to do such work, and the Licensee shall pay the Licensor the cost within sixty (60) days from the date of the invoice. In the event the Licensee fails to transfer its Attachments and the Licensor does such work, the Licensor shall not be liable for any loss or damage to the Licensee's facilities that may result.

- (d) Except as otherwise provided in subparagraph (c) of this Section, each party shall at all times maintain all of its Attachments in accordance with the specifications mentioned in Section 3 and shall keep them in good repair. All necessary right-of-way maintenance, including tree trimming or cutting, shall be borne by the parties as provided in Section 4(h).
- (e) Any existing joint use construction that does not conform to the specifications mentioned in Section 3 shall be brought into conformity within sixty (60) days of notice. When such existing construction shall have been brought into conformity with said specifications, it shall at all times thereafter be maintained as provided in (a) and (d) of this Section. Should the Licensee fail to comply, the Licensor may elect to do such work and the Licensee shall pay the Licensor the cost within sixty (60) days from the date of the invoice.
- (f) Licensee expressly assumes responsibility for determining the condition of all poles to be climbed by its employees, contractors, or employees of contractors. Licensor disclaims any warranty or representation regarding the condition and safety of the poles of the Licensor. Licensor agrees that, upon written notification, it will replace any pole that it deems to be unserviceable.

9. Recovery, Rearranging or Relocation of Facilities:

- (a) Once a Licensee has an approved permit to attach to Licensor's pole, any pole replacement due to additional space requirements will be born by the requesting party, not the Licensee.
- (b) In any case where facilities of Licensor are required to be rearranged on the poles of the Licensor to accommodate the Attachments of Licensee, Licensee shall pay to Licensor the total costs incurred by Licensor in rearranging such facilities in advance of construction. The Licensee shall also reimburse other users of the poles of Licensor for their costs of rearrangement to provide space or clearance for the facilities of Licensee.
- (c) Whenever it is necessary to replace or change the location of a joint use pole, for reasons other than those set out in Section 8 (a) and (b), and over which Licensee has no control, Licensor shall, before making such change, give notice to the Licensee, and the Licensee shall promptly transfer or remove its Attachments. In case of any such pole replacement or relocation where Licensor has transferred or removed its Attachments and Licensee has not transferred or removed its Attachments, Licensee shall become liable for such old pole as provided in Section 12.

10. Indemnification and Insurance:

- (a) Licensee shall defend, indemnify, protect, save harmless Licensor from and against any and all claims and demands for damages to property, and for injury or death to persons, including payments made under any Workers' Compensation Law or under any plan for employees disability and death benefits, and including all expenses incurred in defending against any such claims or demands, which may arise out of or be caused by the erection, maintenance, presence, use, rearrangement or removal of the Attachments of Licensee's wires, equipment, apparatus and appliances to those of Licensor or by any act of Licensee, its agents, contractors and employees on or in the vicinity of Licensor's poles. Licensee shall carry insurance in such form and in such companies as are satisfactory to Licensor to protect the parties from and against any and all claims, demands, actions, judgments, costs, expenses and liabilities of every name and nature which may arise or result directly or indirectly from or by reason of such loss, injury or damage subject to the terms and conditions of the policies. Such insurance policies shall name Licensor as an additional insured.
- (b) Licensee shall carry and keep in force, while this Agreement is in effect, insurance contracts, policies and protection in company or companies satisfactory to Licensor in amounts and for coverage deemed necessary for its protection by Licensee, but in no event for amounts or coverage less than the following minimum requirements:
 - 1. Licensee shall also carry and keep in force, while the Agreement is in effect, workers' compensation insurance in compliance with the laws of the state of Oregon and employers' liability insurance with minimum limits of \$10,000,000 per accident.
 - 2. Licensee shall furnish Licensor with certificates of insurance showing that such insurance is in force and will not be canceled or materially modified without thirty (30) days prior written notice to the Licensor's President/CEO. Neither acceptance nor knowledge (by and of Licensor) or the procurement of Licensee of insurance protection of lesser scope than that required to be procured by them under this Agreement shall in any manner or for any purpose constitute or be deemed a waiver by Licensor of the requirements imposed respecting insurance protection, nor shall any such acceptance or knowledge of insurance protection of lesser scope in any manner or for any purpose lessen or modify or constitute a limiting interpretation of the scope of the matters covered by and obligations of Licensee under this Agreement.

11. Termination Rights

(a) Licensor's Termination Rights

If Licensee fails to pay any sum due Licensor under this Agreement, or to provide and to maintain the security required in this Agreement, Licensor shall have the

right to terminate this Agreement; provided, however, that Licensor shall give Licensee written notice of such default and Licensor's intent to terminate, and Licensee shall have thirty (30) days in which to cure such default. In addition to Licensor's right of termination set forth above, Licensor, in its sole discretion, shall have the further right to terminate this Agreement or to cancel a particular permit or permits for specific pole Attachments if the Licensee shall default in any manner in performing any action required under this Agreement. Should Licensee, within thirty (30) days of notice fail to cure such default, Licensor may, at its option, and without further notice, declare this Agreement to be terminated in its entirety, or may terminate the license covering this Attachment or Attachments in respect to which such default or noncompliance shall have occurred. In case of such termination, no refund of unused rental shall be made. Termination of this Agreement or any specific permit shall not release Licensee from any liability or obligations under this Agreement, including, without limiting the generality of the foregoing, the obligation to continue to pay pole Attachment charges as provided in Section 13 of this Agreement for such time as Licensee's Attachments remain on Licensor's poles and Licensee's obligation to pay any costs of removal.

Upon termination of this Agreement, or cancellation of any permit or permits issued pursuant to this Agreement, Licensee agrees to remove its Attachments from any poles affected within one hundred eighty (180) days after the effective date of such termination or cancellation, except as otherwise provided herein.

(i) Licensee's Pole Attachment Removal

Licensee may at any time remove its Attachments from any of the Licensor's poles and, in each case, Licensee shall immediately notify Licensor through electronic notification via NJUNS of such removal and submit payment of all applicable fees. Removal of the Attachments from any pole shall constitute a termination of Licensee's right to use such pole. Licensee will not be entitled to a refund of any rental on account of any such removal. When Licensee performs maintenance to or removes or replaces its equipment on Licensor's pole, Licensee must chemically treat all field drilled holes and plug any unused holes, including those resulting from removal of equipment. If Licensee fails to adequately plug and treat such holes, Licensor may do so at Licensee's sole risk and expense and Licensee shall pay the cost to Licensor within sixty (60) days from the date of the invoice.

(j) Licensee's Failure to Remove or Make Changes

In the event that Licensee shall fail to make any change in its plant required by Licensor or shall fail to remove any Attachments upon cancellation of any specific permit or upon termination of this Agreement, Licensor shall have the right to make such changes or effect such removals and shall pay the cost to Licensor within sixty (60) days from the date of the invoice.

(k) Emergency

In case of emergency or immediate service needs of Licensor, Licensor may perform such removal or change work without notice to Licensee or upon such notice as may be reasonable under the circumstances.

(l) Costs of Licensee's Work

Licensee shall pay all costs of any removal or changes performed by Licensor. Said costs shall be determined in accordance with the provisions of this Agreement. Licensee shall pay such costs within sixty (60) days from the date of the invoice.

(m) Corrective Work by Licensor

If Licensee shall make default in the performance of any work which it is obligated to do under this Agreement, Licensor may elect to do such work, and Licensee shall reimburse Licensor for the actual cost thereof within sixty (60) days from the date of the invoice.

12. Abandonment of Joint Use Poles:

If Licensor desires at any time to abandon any joint use pole, it shall give Licensee notice to that effect. If, after said notice, Licensor shall have no Attachments on such pole but Licensee shall not have removed all of its Attachments, such pole shall immediately become the property of Licensee, and Licensee shall hold harmless the Licensor from every obligation, liability, or cost, and from all damages, expenses or charges incurred thereafter, arising out of, or because of, the presence of or the condition of such pole or any Attachments.

- (a) If the Licensor abandons the pole and relocates facilities underground, the Licensor shall request that the Licensee also relocate facilities underground or shall abandon the vacated pole to the Licensee. This Agreement would be negotiated on a case-by-case basis.
- (b) Licensee may at any time abandon the use of a joint use pole by giving Licensor electronic or written notice of such abandonment, and removing from such pole all Attachments that Licensee may have, and in case of such abandonment of the use of any such pole, Licensee shall pay to Licensor the full rental for the current year for the Attachment on said pole.

13. Rental Charges and Rates:

- (a) On or about January 1 of each year, the Licensee shall pay to Licensor, in advance, on an annual basis, a rental amount equal to the number of authorized pole attachments in use as of the preceding day times the annual rental rate per attachment. Annual rental charges shall be calculated as per Exhibit "C" to this Agreement.

- (b) The yearly rental period covered by this Agreement shall be the preceding twelve month calendar year period between January 1 and December 31. Rental payable for each such rental period during the continuance of this Agreement shall be due and payable within sixty (60) from the date of the invoice. The annual rental shall apply to pole Attachments made or removed during the preceding year and rents shall not be prorated.
- (c) In the event that Licensee requires a source of electrical energy for power supply to its equipment which constitutes a part of the licensed pole Attachment and apparatus, such energy will be supplied by Licensor in accordance with the provisions of its standard service extension policies and approved rates and tariffs.
- (d) All other amounts payable under this Agreement, such as for erection, rearrangement, relocation or abandonment, shall be due and payable within sixty (60) days from the date of the invoice.
- (e) Licensee shall receive a rent reduction if the Licensee is in compliance with rules adopted by the Public Utility Commission for certifying compliance with the laws regulating pole Attachments. A Licensee is eligible for the rental reduction unless the Licensor notifies the Licensee in writing that the Licensee has failed to comply with either the Public Utility Commission's rules or the terms of this Agreement.
- (f) Other equipment attached to poles outside the telecommunication space will be subject to charges as reflected in Exhibit "C" to this Agreement.

14. Defaults:

- (a) If Licensee shall fail to comply with any of the provisions of this Agreement or should default in any of its obligations under this Agreement, and shall fail within thirty (30) days after written notice from Licensor to correct such noncompliance or default, Licensor may, at its option, and without further notice, declare this Agreement to be terminated in its entirety, or may terminate the permit covering the pole or poles in respect to which such default or noncompliance shall have occurred. In case of such termination, no refund of accrued rental shall be made.
- (b) If Licensee shall make default in the performance of any work which it is obligated to do under this Agreement, the Licensor may elect to do such work, and the Licensee shall pay to the Licensor for the cost within sixty (60) days from the date of the invoice.

15. Sanctions:

The Licensor may levy sanctions against the Licensee for unauthorized Attachments or for other violations of the duties of pole occupants as specified in Oregon Public Utility Commission Administrative Rules including but not limited to those then existing PUC regulations.

16. Rights of Other Parties:

Nothing herein shall be construed to limit the right of Licensor, by contract or otherwise, to confer upon others, not parties to this Agreement, rights or privileges to use the joint use poles covered by this Agreement.

17. Survival of Obligations:

Any termination of this Agreement in whole or in part shall not release Licensee from any liability or obligations hereunder, whether of indemnity or otherwise, which may have accrued or which may be accruing or which arises out of any claim that may have accrued or be accruing at the time of or prior to termination.

18. Waiver of Terms or Conditions:

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

19. Supplemental Agreements:

- (a) This Agreement may be amended or supplemented at any time upon written Agreement by the parties hereto. Should either an amendment or supplement become necessary, the party desiring such amendment or supplement shall give thirty (30) days written notice to the other party setting out in detail the changes or additions desired.
- (b) The attached Exhibits may be amended or supplemented as deemed necessary by Licensor.
- (c) In the event that Licensee desires to add or reduce the number of pole Attachments, Section 19(a) shall not apply, but in each case a sketch, map, or other mutually acceptable notice shall be submitted to Licensor, setting out in detail the pole numbers and exact locations of the poles, and the quantity of Attachments involved in the addition or subtraction.

20. Payment of Taxes:

Each party shall pay all taxes and assessments lawfully levied on its own property upon said jointly used poles, and the taxes and the assessments which are levied on said joint use poles shall be paid by the Licensor thereof, but any tax, fee or charge levied on Licensor's poles solely because of their use by the Licensee shall be paid by Licensee.

21. Interest and Payments:

All amounts due under this Agreement shall bear interest at the rate of prime plus Two Percent (2%) per annum from the date due until paid.

22. License Only:

No use, however extended, of any of the facilities under the Agreement shall create or vest in Licensee any ownership or property rights therein, but Licensee's rights therein shall be and remain a mere license.

23. Notices:

Any notice, request, consent, demand or statement which is contemplated to be made upon either party by the other party under any of the provisions of this Agreement, shall be in writing and shall be treated as duly delivered when it is either (a) personally delivered to the office of Licensor in the case of a notice to be given to Licensor, or personally delivered to the office of Licensee in the case of a notice to be given to Licensee, or (b) deposited in the United States mail, postage prepaid and properly addressed to the party to be served as follows:

(i) If notice is to Licensor,
Chief Operating Officer
Central Electric Cooperative, Inc.
P.O. Box 846 or 2098 N. Hwy 97
Redmond, Oregon 97756

(ii) If notice is to Licensee,

24. Construction of Agreement:

This Agreement is deemed executed in the state of Oregon and shall be construed under the laws of the state of Oregon. In the event that a suit or action is instituted to enforce or interpret any of the terms of this Agreement, the parties agree that the proper venue for said suit or action shall be in the Circuit Court for Deschutes County, Oregon.

25. Prior Agreements Superseded:

This Agreement supersedes and replaces any and all previous Agreements entered into by and between Licensor and Licensee with respect to the subject matter of the Agreement.

26. Assignment of Agreement:

Neither party shall assign or otherwise transfer this Agreement or any of its rights and interests to any firm, corporation or individual, without the prior written consent of the other party, except to an affiliate.

27. Attorney Fees

The prevailing party in any action brought to enforce any portion of this Agreement shall be awarded their attorney fees at trial, arbitration, or on appeal.

In witness whereof, the parties have caused this Agreement to be duly executed.

DATED this _____ day of _____, 20__.

(Licensor) _____,
Central Electric Cooperative, Inc.,
an Oregon cooperative corporation

(Licensee) _____

By _____
Al Gonzalez

By _____

Date _____

Date _____

Its President/CEO

Its _____

POLE ATTACHMENT LICENSE AGREEMENT EXHIBITS

Exhibit A: Map of Licensor service area

Exhibit A1: Map of Licensee service area

Exhibit B: Rules and Practices for Telecommunication Attachments

Exhibit B1: Standard Clearance Drawings

- **40 Foot Pole – Space Allocation, Dwg. #JU1**
- **Clearance between Power Neutral and CATV or Phone Attachment, Dwg. #JU2**
- **Clearance from Overhead Service Wire to CATV or Phone Attachment, Dwg. #JU3**
- **Clearance from Transformer and Overhead or Underground Service Wire to CATV or Phone Attachment, Dwg. #JU4**
- **Clearance from 7.2/12.5 kV Primary Underground Riser to CATV or Phone Attachment, Dwg. #JU5**
- **Clearance from Lights to CATV or Phone Attachments, Dwg. #JU6**

Exhibit C: Licensor Fee Schedule

Exhibit A: Map of Licensor service area

Exhibit A1: Map of Licensee service area

(Supplied by Licensee)

EXHIBIT "B"

RULES AND PRACTICES FOR TELECOMMUNICATION ATTACHMENTS

1. All telecommunication facilities attached to Licensor's poles shall be installed in a manner to ensure compliance with the requirements of the National Electrical Safety Code (NESC) in effect at the time of installation.
2. The location of Attachments on Licensor's poles shall be approved in writing by the Licensor. Except for services, no Attachments shall be made without prior approval of Licensor.
3. All Attachments shall be located on the same side of each pole as any existing Attachment, or as designated by the Licensor.
4. On jointly used poles where Licensor has secondary conductors, all Attachments shall be located on the side of the pole opposite the secondary conductors, or as designated by the Licensor.
5. Licensee's Attachments shall be installed and maintained so as to provide adequate climbing space as per the NESC.
6. No bolt used by Licensee to attach its facilities shall extend or project more than one (1) inch beyond its nut.
7. Licensee shall install and maintain any and all of its facilities in a neat and workmanlike manner consistent with the overall appearance of the jointly used pole, and all subject to the approval of Licensor, provided that licensee shall be solely responsible for compliance with the specifications referred to in Section 8 of this License Agreement.
8. All down guys, head guys or messenger dead ends installed by Licensee shall be attached to jointly used poles by the use of "thru" bolts. Such bolts placed in a "bucking" position shall have at least three inches vertical clearance. Under no circumstances shall Licensee install down guys, head guys or messenger dead ends by means of encircling jointly used poles with such Attachments. All guys and anchors shall be installed prior to installation of any messenger wire or cables.
9. For those Attachments requiring inspections, the Licensee shall provide a written statement, signed by a qualified representative of the Licensee, that its facilities, including protection devices, as installed are fully in compliance with the applicable rules of the NESC, other codes and requirements, and approved engineering design standards. This inspection shall be made within thirty (30) days after installation has been completed. Failure to comply will result in termination of this Agreement as outlined in Sections 14(a) and 14(b).
10. The following steps and conditions shall be followed when removing old poles from the field. The entire butt of the old pole shall be removed. DO NOT partially pull the butt, cut it off and/or leave a remaining portion in the ground. Fully remove all associated hardware, including anchors and ground rods, with the old pole. Fill and compact the pole hole to

eliminate future settling. Restore landscaping, ditches, streets and sidewalks to the specifications required by the governing authority having jurisdiction over said infrastructure.

Exhibit B1: Standard Clearance Drawings

Exhibit C: FEE SCHEDULE

ATTACHMENT RENTAL RATES AND FEES

1. ANNUAL CHARGES

$$ARr = \frac{(ADPe)(CCe)(PUv)}{US} \quad \text{Non-Compliant charge}$$

$$= \frac{(ADPe)(CCe)(PUv)}{USc} \quad \text{Compliant charge}$$

ARr = Attachment rental rate

ADPe = Average depreciated cost of pole owned by electric company

CCe = Carrying charge for electric company

PUv = Pole use factor (allocated space 1 foot)

US = Usable space 480" - (72" below ground - 240" above ground - 40" separation space) = 128" or 10.67'

USc = Usable space compliant Attachment 480" - (72" below ground - 240" above ground - 20" separation space) = 148" or 12.33'

2. ONE-TIME CHARGES

Support equipment fee \$75.00

Riser fee \$25.00

Power supply fee \$75.00

3. APPLICATION AND INSPECTIONS

Application Processing Fee
 Electronic Notification System \$22.00 per pole
 Written Application \$26.00 per pole

Pre-Inspection Fees \$60.00 per pole

Post-Inspection Fees \$25.00 per pole

* CEC may at its discretion perform other necessary inspections. The Licensor reserves the right to charge the Licensee for the expense of any field inspections deemed necessary that do not fall under the scope of work performed in the above schedule.

Jay Nusbaum
PHONE: 503.727.2025
Fax: 503.727.2222
EMAIL: JNUSBAUM@perkinscoie.com



1120 N.W. Couch Street, Tenth Floor
Portland, OR 97209-4128
PHONE: 503.727.2000
FAX: 503.727.2222
www.perkinscoie.com

January 26, 2005

By Fax (541.382.7068) and U.S. Mail

Martin Hansen
Frances Hansen & Martin LLP
1148 NW Hill Street
Bend, OR 97701

Re: Qwest/Central Electric Cooperative Joint Use Agreement

Dear Martin:

You have not responded to my letter dated January 24, 2005. Because Central Electric continues to refuse to negotiate and has demanded unjust, unfair, and unreasonable contract terms, Qwest must protect its rights and will file a complaint with the OPUC this Friday asking it to adopt the terms and conditions in the attached proposed new joint use contract between Qwest and Central Electric. This proposed contract incorporates provisions from Appendix A to OPUC Order No. 05-042 in Docket UM 1087, provisions from the first and second drafts you sent with changes, and some provisions proposed by Qwest.

Sincerely yours,

A handwritten signature in black ink, appearing to be "JN", followed by a horizontal line extending to the right.

Jay Nusbaum

JN:hmr
Enclosures
c: Leslie Kelly
Lawrence Reichman

[13141-0273-000000/PA050260.063]

POLE ATTACHMENT LICENSE AGREEMENT

This pole attachment license agreement (the "Agreement") made and entered into the ____ day of _____, 20__, by and between Central Electric Cooperative, Inc. an Oregon Cooperative Corporation (hereinafter called "Licensee"), with its principal place of business at _____, and Qwest Corporation, a Colorado Corporation, with its principal place of business at Denver, Colorado (hereinafter called "Licensor").

Witnesseth

Whereas, Licensor owns, operates and maintains lines of poles extending in the State of Oregon, including but not limited to Deschutes, Crook, Jefferson, Grant, Lake, Wasco and Linn Counties, in the state of Oregon; and

Whereas, Licensee desires to place certain lines, attachments and apparatus on certain poles of Licensor, for the limited purpose of furnishing lawful telecommunications or electrical services in compliance with any and all local, state or federal regulations; provided, that such transmission of signals or power does not interfere with the furnishing of utility service to consumers of Licensor and others using said poles, and where in Licensor's judgment, safety will not be adversely affected.

Whereas, Licensor is willing to permit Licensee, to the extent it may lawfully do so, to place said lines, attachments and apparatus on said poles, on a non-exclusive basis, in the area shown on Exhibit "A" attached hereto and made a part hereof, as may be amended by the parties;

Now, therefore, in consideration of the mutual covenants, terms and conditions herein contained the parties hereto, for themselves, their successors and assigns, do hereby covenant and agree as follows:

1. Definitions:

- (a) **Applicable law:** All valid and effective applicable federal, state, and local laws, rules, regulations, as may be amended and all orders of courts and governmental agencies with jurisdiction over the matters set forth in this Agreement. Nothing contained herein shall substitute for or be deemed a waiver of the parties' respective rights and obligations under applicable federal, state and local laws, regulations and guidelines, including (without limitation) Section 224 of the Communications Act of 1934, as amended (47 U.S.C. 224).
- (b) **Application:** A written and/or electronic request by a Licensee for a permit to attach to a pole.

- (c) **Basic Pole:** A 40' pole, or as otherwise agreed to by the parties. This definition is used solely for the purpose of computing pole rental rates.
- (d) **Joint Use Pole:** A utility pole owned and maintained by Licensor and used jointly by Licensee.
- (e) **National Joint Utility Notification System ("NJUNS"):** NJUNS is the electronic system used by Licensor that Licensee will utilize to submit applications for permission to attach, relocate, or remove equipment or attachments under the terms of this Agreement, and to respond to Licensor upon a request for work to be performed by Licensee. It is also the system that Licensor will utilize to initiate pole transfers, and to respond to Licensee's applications.
- (e) **Pole Attachment:** An attachment by the Licensee to the pole, falling into one of the following categories:
1. **Attachments requiring permits and rental fees.** Includes the following:
 - Initial bolt attachment inside the Telecommunications Space
 - Additional bolt attachment attached to the pole inside the Telecommunications Space
 - Attachments inside the Power Space
 2. **Attachments requiring permits but no additional rental fee.** Includes the following:
 - Overlapping on own equipment
 - Reconductoring
 - 3.* **Attachments requiring notification of the pole owner, but not requiring a permit or fee.** Includes the following:
 - New Licensee down guy attached to Licensee's or other's anchors
 - New Licensee anchors
 - 4.* **Attachments not requiring notification, permits or fees.** Includes the following:
 - Off-pole installations such as
 - Mid-span drops
 - Terminals
 - Taps
 - Amplifiers
 - Snow shoes
 - Splice enclosures

- Wind Dampeners
- Mid-span crossovers

* If Licensor believes that a Pole Attachment by Licensee does not fall within either of these two categories, it may notify Licensee promptly and the parties shall endeavor in good faith to resolve any disagreement about the Pole Attachment at issue. Once the parties have resolved any such disagreement and determined which of the above categories the Pole Attachment at issue belongs in, Licensee shall follow the requirements that relate to that Attachment as set forth above.

- (f) **Permit:** Licensor's written and/or electronic approval of a pole attachment.
- (g) **Power Space:** Any portion of a basic pole above the communications worker safety zone.
- (h) **Telecommunications Space:** Space on Licensor's basic pole between 20 and 23 feet on the pole unless otherwise specified.

2. Specifications:

- (a) The specifications of each party for the construction, operation, and maintenance of its respective poles and other facilities that are jointly used, or involved in joint use, shall be in accordance with accepted modern practices and shall be no less stringent than the requirements of the National Electrical Safety Code (NESC), provided that in the event a lawful requirement of any governmental authority or agency having jurisdiction may be more stringent, the latter will govern. modification of, additions to, or construction practices supplementing the requirements of the NESC, wholly or in part, will also govern joint use of poles.
- (b) In the event that the above-referenced specifications should change, Licensee agrees to make such changes or alterations in its new facility installations or during maintenance of its existing facilities as may be required in order to fully comply with the provisions of such notice. Licensee agrees to make all required changes or alterations on new installations, and existing attachments shall be brought into conformity at the time of their normal replacement, rearrangement, rebuilding, or reconstruction, and whenever practicable.
- (c) Licensee's attachments on a Licensor-owned pole shall be made and maintained in accordance with a reasonable aesthetic criteria mutually agreed to by both Parties. Such aesthetic criteria shall apply without being limited to the type and design of the attachment, circuit arrangements, conductor or cable sags, and service drop arrangements within the provisions of Section 4(b)(1).
- (d) No tag, brand or other device showing Licensee's name or insignia shall be placed on, or attached to, any pole of Licensor, except such tag or insignia which shows

Licensee to be the Licensee or lessee of such pole and not the owner thereof, and then only after obtaining the written consent of Licensor. Where required by the Oregon Joint Use Association (“OJUA”), the Licensee agrees to attach information identifying its facilities on the pole, in a format specified by the OJUA.

- (e) The strength of the poles covered by this Agreement shall be sufficient to withstand the transverse, vertical and longitudinal loads imposed upon them under the storm loading of the NESC assumed for the area in which they are located.
- (f) Any unbalanced loading of Licensor’s pole caused by the placement of Licensee’s circuits shall be properly guyed and anchored by Licensee to its own anchors at its own expense. When, in the opinion of both parties, existing anchors are adequate to support the equipment of both parties, Licensee may attach its guys thereto at no additional expense.

3. Application for Attachment

(a) When Required

Licensee shall not attach or modify any of its Pole Attachments described in Section 1(e)(1) and (2) (except for service drops) to Licensor’s poles or joint use poles on which Licensor has its pole contacts without first having made written and/or electronic application to Licensor and having received written and/or electronic permission from Licensor. However, if Licensee is required by Applicable Law to attach or modify such Pole Attachments within a certain time period, and it has applied for, but has not received permission from the Licensor before the expiration of this time period, then Licensee may attach or modify such Pole Attachments before receiving permission. Licensee must apply for a permit within seven (7) days of the attachment of a service drop and install the service drop in compliance with the NESC.

(b) Application Procedure for Pole Attachments Described in Section 1(e)(1) and (2)

1. Whenever Licensee desires to make a Pole Attachment described in Section 1(e)(1) and (2) to any Licensor pole, Licensee shall submit to Licensor a “Pole Attachment Ticket” electronically via NJUNS and/or written permit application and shall specify the location of the pole(s) on which attachment is requested and the number of contacts requested for each pole.

2. Licensor reserves the right to reject or modify such application(s) where there is insufficient capacity or for reasons of safety, reliability, and generally applicable engineering purposes. Notwithstanding the foregoing, Licensor may reserve space on its poles if it projects a need for that space in the provision of its core utility service. Licensor shall permit use of its reserved space until such time as it has an actual need for that space. At that time, Licensor may recover the reserved space for its own use. Licensor shall give Licensee the opportunity to pay for any reasonable modifications needed to accommodate its displaced attachments.
3. Licensor shall respond to Licensee's application within thirty (30) days of receipt. If the application is approved, Licensor shall notify the Licensee electronically via NJUNS of said approval and the Licensee shall have the right as a Licensee hereunder to affix such attachments in accordance with the application, as approved, and in compliance with the specifications, terms and conditions of this Agreement. Any denial of an application shall identify the specific reasons for denial. If notice is not received from Licensor within thirty (30) days, the application shall be deemed approved and Licensee may proceed with the attachment. Any denial of an application by Licensor must be in writing and describe with specificity all relevant evidence and information supporting the denial and how such evidence and information relates to the lack of capacity, safety, reliability, or generally applicable engineering standards.
4. With the exception of service drops or where elsewhere required by Applicable Law, Licensee shall not have the right to place, nor shall it place, any attachments in addition to that initially authorized without first making application and receiving permission to do so, nor shall Licensee change the position of any attachments to any pole without Licensor's prior written approval.

(c) **Application Planning**

Each application shall involve sufficient engineering and planning by the Licensee to ensure compliance with standards identified in Section 2(a) of this Agreement during construction and upon completion. The Licensee is responsible for conducting engineering studies of Licensee's facilities to ensure proper spacing, equipment bonding and clearances.

It is the responsibility of the Licensee to ensure that only trained, qualified persons work on Licensor's facilities. Qualified persons shall be knowledgeable in applicable NESC rules and must be able to demonstrate competence as required

by the NESC. They shall also be trained to recognize and prevent NESC violations and conflicts, and to maintain safe working clearances from energized lines and equipment.

(d) Installation Time Limits

Licensee shall complete the installation of its attachments upon the pole(s) covered by each approved application within ninety (90) days of approval by Licensor. Licensee may request, in writing, an extension of time for installation of large projects subject to written approval by Licensor. Licensor shall approve such requests for extension of time unless Licensor identifies a reasonable justification for denial of such request. In the event Licensee should fail to complete the installation within the prescribed time limit, the permission granted by Licensor to place the Pole Attachments upon the poles shall thereupon be revoked and Licensee shall not have the right to place the Pole Attachments upon the poles without first reapplying for and receiving written permission to do so.

(e) Make-ready Pole Replacements

Whenever any pole to which Licensee seeks attachment must be modified or replaced to accommodate Licensee's facilities and Licensor's existing attachments necessary for its core function, as well as the existing attachments of other occupants, Licensor will provide Licensee with a detailed written cost estimate of make-ready work it believes to be necessary to prepare the pole for Licensee's facilities. Licensor will provide Licensee with such estimate within thirty (30) days of receiving Licensee's application for attachment. After receiving this estimate, if Licensee still desires to make such attachments, Licensee shall notify Licensor within thirty (30) days of receiving such estimate of its continuing desire to attach, and shall approve any required payment to Licensor for such make-ready work, which may include engineering, materials (including poles and associated hardware), cost of removal (less any salvage value), and the expense of transferring Licensor's facilities from the old to the new pole(s). To the extent that actual costs to Licensor of make-ready work are anticipated to be greater than 110% of Licensor's estimate, these costs must be approved in writing by Licensee prior to the completion of the make-ready work. Where any payment of estimated expenses made to Licensor by Licensee for both non-replacement make-ready or pole replacements is less than the actual cost of work described above, Licensee agrees to pay Licensor, within forty-five (45) days of receipt of an invoice, all sums in excess of the amount of the advanced payment up to the amount of the actual cost of the work, less any amount in excess of 110% of the cost estimate if that amount was not previously approved as provided above. Where the payment of estimated expenses made to Licensor by Licensee exceeds such costs, Licensor agrees to refund the difference to Licensee within forty-five (45) days of completion of the make-ready work. The Licensor shall also make satisfactory

arrangements with the owner or owners of other facilities attached to said poles for the transfer or rearrangement of such other facilities.

(f) **Cost Allocation Among Multiple Users**

When applications to occupy the same pole have been received from two or more prospective occupants, including Licensee, before any of them is given a license, and, if to accommodate their respective attachments on the pole it would be necessary to rearrange existing attachments or replace the pole, the applicable costs of rearrangement or replacement incurred in conjunction with such simultaneous applications shall be pro-rated equitably among such simultaneously attaching parties. In this context, "simultaneous" refers to all pending applications.

5. **Non-Interference with Licensor Facilities**

Licensee at all times shall insure that its agents, servants, employees, and contractors or contractors' employees neither take, nor attempt to take any action whatsoever to Licensor's wires, attachments, and other facilities attached to or supported by poles covered by this Agreement. Each party shall exercise reasonable precautions to avoid damage to the facilities of the other. Licensor at all times reserves the right to maintain and operate its own equipment in such a manner as will best enable it to fulfill its own core utility service requirements and such requirements shall have priority over all pole occupants.

6. **Pole Ownership**

All poles on which attachments are made under this Agreement shall remain the property of the Licensor, and any payments made by the Licensee for changes in pole lines under this Agreement shall not entitle the Licensee to ownership of any of said poles.

7. **Safety**

(a) **Inspections**

Licensor shall have the right to perform an Inspection of Licensee's Pole Attachments on Licensor's poles at any time. Licensor may charge Licensee for the pro-rata expense of any non-routine inspections during or after installation, in connection with Pole Attachments that do not comply with the terms of this Agreement. Licensor shall notify Licensee of any performance concerns that trigger Inspections at least two (2) business days prior to activating such inspection during installation and thirty (30) days after completion and provide Licensee an opportunity to participate in such inspections. Such inspections, whether made or not, shall in no manner relieve Licensee of any responsibility, obligation, or liability assumed under this Agreement or arising otherwise.

(b) Entry into Power Space

Licensee (including its employees and contractors) shall not enter the Power Space on Licensor poles for any purpose including making connections to the Licensor neutral. If Licensee requires grounding on an existing Licensor pole where a grounding conductor does not exist, Licensee shall request the Licensor to install grounding at the sole expense of Licensee. If the Licensor is unable to install said grounding within thirty (30) days of the date requested, Licensee has the option of hiring qualified electrical contractors to perform this work. Licensee, its employees and its contractors, shall at all times exercise its rights and responsibilities under the terms of this Agreement in a manner that treats all electric facilities as energized at all times. Licensee shall assume complete responsibility for its employees' conduct and Licensee shall determine and provide the appropriate training and safety precautions to be taken by its employees and contractors. Licensee shall indemnify, defend, and hold the Licensor harmless from any liability of any sort derived from Licensee's employees' or contractors' failure to abide by the terms of this Section except to the extent of the Licensor's negligence or willful misconduct.

(c) Conflicts with Electric Lines

Licensor shall provide Licensee notice of any NESC violations it discovers. NESC violations and conflicts to electric lines shall be corrected in accordance with OJUA standards and the time frames described therein (including but not limited to the time frame for submitting a plan of correction) by the Licensee if Licensee created the violation. In some instances, the NESC requires that qualified electrical workers perform the work. In that event, Licensee shall either have qualified contractors or pay Licensor to perform the work. Failure by Licensee to act in a prompt and responsible manner may result in the Licensor taking appropriate measures to correct the safety violations involved and Licensee shall be responsible for the cost thereof. In such cases, the inspection, design, repair, and coordination charges shall be borne by Licensee if it failed to perform necessary duties required by Oregon law.

(d) Licensee's Contractor List

Upon Licensor's request, Licensee shall provide to the Licensor a current list of the names of all of Licensee's contractors who will have occasion to perform work on or about the facilities.

(e) Right-of-way Clearing and Tree Trimming

Licensor shall bear the cost of the original tree trimming, brushing and clearing required for the placement of a new pole line. All tree trimming and brush cutting in connection with the initial placement of wires or equipment on an existing pole line shall be borne entirely by the party placing the wires or equipment. Unless the parties otherwise agree, each party shall be responsible for any and all additional tree trimming and brush cutting related to its wires or equipment.

8. Occupancy Survey:

The Licensor may conduct an Occupancy Survey not more often than every fifth year from the date of this Agreement, and subsequent to each such Occupancy Survey. The Licensor shall give Licensee at least thirty (30) days prior notice of its desire to conduct such Occupancy Survey. Licensee shall advise the Licensor if Licensee desires to participate in the inventory within sixty (60) days of such notice. The parties shall jointly select an independent contractor for conducting the inventory and agree on the scope and extent of the Occupancy Survey that is reimbursable by Licensee. The cost of the Occupancy Survey shall be recovered in the annual rent. The Contractor shall provide the Parties with a detailed report of such Occupancy Survey including both the Licensor's and Licensee's pole numbers (to the extent that Licensee's pole numbers are on the pole and clearly identified as Licensee's pole tag at the time of the survey) and other information required to update each party's inventory databases within a reasonable time after its completion. The inventory data from the Licensor's Occupancy Survey shall be used to update the Licensee's attachment billing records where applicable. Licensee shall make any objections to the inventory data within sixty (60) days of receipt of the Occupancy Survey report or such objections shall be waived. Objections raised to inventory data from an Occupancy Survey shall not relieve Licensee of the obligation to pay undisputed amounts when due, as set forth in Article V above. The Parties agree to cooperate in good faith to resolve any disputed amounts.

9. No Warranty:

The Licensor does not warrant or assure to Licensee any right-of-way privilege or easements or that Licensor owns a property right that permits attachment, and if the Licensee shall at any time be prevented from placing or maintaining its attachment on Licensor's poles or joint poles, no liability shall attach to Licensor. The parties will cooperate as far as may be practicable in obtaining rights-of-way and easements for both parties on joint poles. Each party shall otherwise be responsible for obtaining its own easements and rights-of-way. The attaching Licensee shall solely be responsible to acquire the property right to attach from the property owner.

10. Maintenance of Poles, Attachments and Right-of-Way:

- (a) The expense of maintaining jointly used poles shall be borne by Licensor, and Licensor shall maintain its jointly used poles in a safe and serviceable condition, and shall, under the other provisions of this Agreement, replace, reinforce, or repair such poles as become defective. Licensor shall be solely responsible for collection for damages for poles broken or damaged. The party with equipment attached to the pole shall be responsible for collecting damages to its own equipment. If a pole owned by Licensor is replaced by Licensee because of auto damage or storm damage, Licensor shall pay Licensee for the actual costs of such pole replacement
- (b) Whenever right-of-way considerations or public regulations make relocation of a pole necessary, such relocation shall be made by the Licensor at its own expense, except each party shall bear the cost of transferring its own attachments.
- (c) Whenever it is necessary to replace, move, reset or relocate a jointly used pole, the Licensor shall consult with Licensee on the location of the new pole before making such replacement or relocation, and at least thirty (30) days prior to such replacement, move, resetting or relocation, shall give Licensee notice via NJUNS (except in case of emergency, when verbal notice will be given and subsequently confirmed via NJUNS within five (5) days of verbal notice), specifying in such notice the work to be performed and the time of such proposed replacement, move, resetting or relocation. Licensor shall inform Licensee that it has completed its work within thirty (30) days of such completion. Licensee shall then transfer its attachments to the new or relocated joint pole and notify Licensor when such transfer is complete. Should the Licensee fail to transfer its attachments to the new or relocated joint pole within thirty (30) days after receiving notice from Licensor that its work is completed, the Licensor may elect to do such work, and the Licensee shall pay the Licensor the cost of such work. In the event that third parties, not subject to this agreement, have equipment attached to the Licensor's pole, such thirty (30) day period shall commence upon removal of third party attachments. In the event the Licensee fails to transfer its attachments and the Licensor does such work, the Licensor shall not be liable for any loss or damage to the Licensee's facilities that may result, except in the case of gross negligence or willful misconduct.
- (d) Except as otherwise provided in subparagraph (c) of this Section, each party shall at all times maintain all of its attachments in accordance with the specifications mentioned in Section 2 and shall keep them in good repair. All necessary right-of-way maintenance, including tree trimming or cutting, shall be borne by the parties as provided in Section 7(e).
- (e) Any existing joint use construction that does not conform to the specifications mentioned in Section 2 shall be brought into conformity as soon as practicable. When such existing construction shall have been brought into conformity with said specifications, it shall at all times thereafter be maintained as provided in (a)

and (d) of this Section. Should the Licensee fail to comply, the Licensor may elect to do such work and the Licensee shall pay the Licensor the cost.

- (f) Licensee expressly assumes responsibility for determining the condition of all poles to be climbed by its employees, contractors, or employees of contractors. Licensor disclaims any warranty or representation regarding the condition and safety of the poles of the Licensor. Licensor agrees that, upon written notification, it will replace any pole that is unserviceable.

11. Recovery, Rearranging or Relocation of Facilities:

- (a) Once Licensee has an approved permit to attach to Licensor's pole, any pole replacement due to additional space requirements will be born by the requesting party, not Licensee.
- (b) If in the sole judgment of the Licensor, the accommodation of any new Pole Attachments of Licensor to Licensor's poles necessitates the rearrangement or addition of any existing facilities on an existing pole, or the replacement of any existing pole, Licensor shall specify on the Application the changes necessary to accommodate the Pole Attachments and the estimated cost thereof and return it to Licensee. If Licensee still desires to use the pole and returns the application marked to so indicate, Licensor shall make such rearrangements, transfers and replacements of existing facilities, and additions of new facilities, as may be required, and Licensor shall reimburse Licensor for any additional expenses thereby actually incurred by Licensor not otherwise prescribed in this Agreement.
- (c) Whenever it is necessary to replace or change the location of a joint use pole, for reasons other than those set out in Section 10 (a) and (b), and over which Licensee and Licensor have no control, Licensor shall, before making such change, give prompt notice to the Licensee via NJUNS, specifying in such notice the time of such proposed change, and the Licensee shall promptly begin to transfer or remove its attachments. In case of any such pole replacement or change where Licensor has transferred or removed its attachments and Licensee has not transferred or removed its attachments within sixty (60) days after receipt of such notice, Licensee shall become liable for such old pole as provided in Section 14.

12. Indemnification and Insurance:

- (a) Licensee agrees to indemnify and hold harmless Licensor, its directors, officers, employees, and agents against and from any and all claims, demands, suits, losses, costs, and damages, including attorneys' fees, for or on account of bodily or personal injury to, or death of, any person(s), including without limitation Licensee's employees, agents, representatives and subcontractors of any tier, or loss of or damage to any property of Licensee, or any third party, to the extent resulting from any negligent act, omission, or fault of Licensee, its employees, agents, representatives, or subcontractors

of any tier, their employees, agents, or representatives, in the exercise, performance or nonperformance of Licensee's rights or obligations under this Agreement. Except for liability caused by the sole negligence of Licensor, Licensee shall also indemnify and hold harmless Licensor from and against any and all claims, demands, suits, losses, costs, and damages, including attorney's fees, arising from any interruption, discontinuance, or interference with Licensee's service to its customers which may be caused, or which may be claimed to have been caused, by any action of Licensor pursuant to or consistent with this Agreement.

- (b) Licensor agrees to indemnify and hold harmless Licensee, its directors, officers, employees and agents against, and from any and all claims, demands, suits, losses, costs, and damages, including attorneys' fees, for or on account of bodily or personal injury to, or death of, any person(s), including without limitation Licensor's employees, agents, representatives and subcontractors of any tier, or loss of or damage to any property of Licensor, or any third party, to the extent resulting from any negligent act, omission, or fault of Licensor, its employees, agents, representatives, or subcontractors of any tier, their employees, agents, or representatives, in the exercise, performance or non performance, of Licensor's rights or obligations under this Agreement. Except for liability caused by the sole negligence of Licensee, Licensor shall also indemnify and hold harmless Licensee from and against any and all claims, demands, suits, losses, costs, and damages, including attorney's fees, arising from any interruption, discontinuance, or interference with Licensor's service to its customers which may be caused, or which may be claimed to have been caused, by any action of Licensee pursuant to or consistent with this Agreement.
- (c) The indemnifying party shall have the right, but not the obligation, to defend the other regarding any claims, demands or causes of action indemnified against. Each party shall give the other prompt notice of any claims, demands or causes of actions for which the other may be required to indemnify under this Agreement. Each party shall fully cooperate with the other in the defense of any such claim, demand or cause of action. Neither shall settle any claim, demand or cause of action relating to a matter for which such party is indemnified without the written consent of the indemnitor.
- (d) Each party shall carry insurance in such form and in such companies as are satisfactory to the other party to protect the parties from and against any and all claims, demands, actions, judgments, costs, expenses and liabilities of every name and nature which may arise or result directly or indirectly from or by reason of such loss, injury or damage subject to the terms and conditions of the policies. To the extent permitted, such insurance policies shall name the other party as an additional insured. Notwithstanding the above, neither party shall be liable to the other for any incidental, indirect, special or consequential damages of any kind, including but not limited to, any loss of use, loss of business or loss of profit; provided, however, there shall be no limitation on a party's liability to the other for any fines or penalties imposed on the other party by any court of competent jurisdiction or federal, state or local administrative agency resulting from

the failure of the party to comply with any term or condition of this agreement or any valid and applicable law, rule or regulation.

- (e) Each party shall carry and keep in force, while this Agreement is in effect, insurance contracts, policies and protection in company or companies that maintain at least a "Best's" rating of A- VII in amounts and for coverage deemed necessary for its protection by the other party, but in no event for amounts or coverage less than the following minimum requirements:
1. Comprehensive general liability insurance, ISO Form CG 0001 10 01 or equivalent, including independent contractors insurance coverage, with minimum limits of \$10,000,000 combined single limit each occurrence and aggregate for bodily injury and property damage, including coverage for damage caused by blasting, collapse or structural injury, and/or damage to underground facilities, protecting the insured party against and in respect to all matters, liabilities, contingencies, and responsibilities arising under the Agreement and subject to the policy's terms and conditions, including without limiting the foregoing, contractual liability insurance covering the insured party's obligations under this Agreement included in the above minimum limits of \$10,000,000 combined single limit each occurrence and aggregate for bodily injury and property damage to indemnify and to hold the other party harmless for bodily injury or property damage caused in whole or in part by the insured party.
 2. Each party shall also carry and keep in force, while the Agreement is in effect, workers' compensation insurance in compliance with the laws of the state of Oregon and employers' liability insurance with minimum limits of \$1,000,000 per accident.
 3. Upon request, each party shall furnish the other with certificates of insurance showing that such insurance is in force and will not be canceled or materially modified without thirty (30) days prior written notice to the other party's President/CEO. Neither acceptance nor knowledge (by and of the other party) or the procurement of the insured party of insurance protection of lesser scope than that required to be procured by them under this Agreement shall in any manner or for any purpose constitute or be deemed a waiver by either party of the requirements imposed respecting insurance protection, nor shall any such acceptance or knowledge of insurance protection of lesser scope in any manner or for any purpose lessen or modify or constitute a limiting interpretation of the scope of the matters covered by and obligations of either party under this Agreement.

13. Breach and Remedies

- (a) If either party shall default in any of its obligations under this Agreement, then the non-defaulting party shall have the right to terminate this Agreement; provided, however, that (i) the non-defaulting party shall first give the defaulting party written notice, in the manner described in Section 26, of such default and the non-defaulting party's intent to terminate, and (ii) upon receiving such notice, (A) the defaulting party shall have thirty (30) days in which to cure such default; or (B) if within five (5) days of receiving such notice, the defaulting party notifies the non-defaulting party why it cannot reasonably cure within thirty (30) days and submits a plan of correction describing how it shall undertake to correct such default and by when such correction will be completed, the defaulting party shall proceed with reasonable diligence and in good faith to correct such noncompliance or default as set forth in the plan of correction. Termination will be effective as set forth above and in Sections 18 and 20 of this Agreement.
- (b) In case of default and subject to the provisions of subsection (a) above and Sections 18 and 20 of this Agreement, the non-defaulting party may, at its option, terminate the Agreement in its entirety or may terminate the license covering the Pole Attachment(s) in respect to which such default shall have occurred. In case of such termination, no refund of unused rental shall be made.
- (c) If either party shall default in the performance of any work that it is obligated to do under this Agreement, the other party may elect to do such work, and the party in default shall reimburse the other party for the cost thereof within thirty (30) days after receipt of an invoice therefor.
- (d) Notwithstanding the aforementioned remedies, appropriate representatives of the parties shall meet promptly upon request and attempt in good faith to resolve disputes that arise concerning this Agreement. If the parties are unable to reach a resolution themselves, a party may, by written notice, request the other party to agree to an alternative dispute resolution procedure (e.g. non-binding mediation, binding arbitration) for the dispute, and the other party shall respond in writing within ten (10) working days.

14. Abandonment of Joint Use Poles:

- (a) If Licensor desires at any time to abandon any joint use pole, it shall give Licensee notice in writing via NJUNS to that effect at least thirty (30) days prior to the date on which it intends to abandon such pole. If, at the expiration of said period Licensor shall have no attachments on such pole but Licensee shall not have removed all of its attachments, such pole may, at the Licensor's discretion, become the property of Licensee, and Licensee shall hold harmless the Licensor from every obligation, liability, or cost, and from all damages, expenses or charges incurred thereafter, arising out of, or because of, the presence of or the condition of such pole or any attachments, and shall pay the Licensor a sum equal to the present value of such abandoned pole or poles, less cost of removal, but in no

event less than zero even should such value fall below zero, or such other equitable sum as may then be agreed upon between the parties, and Licensor shall provide Licensee with properly authorized bill of sale for such pole(s).

- (b) If the Licensor abandons the pole and relocates facilities underground, the Licensor shall abandon the vacated pole to the Licensee.
- (c) Licensee may at any time abandon the use of a joint use pole by giving Licensor due notice in writing via NJUNS of such abandonment, as provided in (a) of this Section, and removing from such pole all attachments that Licensee may have. In case of such abandonment of the use of any such pole, Licensee shall pay to Licensor the full rental for the current year for the space on said pole set aside for the use of Licensee.

15. Rental Charges and Rates and Division of Costs:

- (a) On or about December 31 of each year, the parties, acting in cooperation, shall tabulate the total number of pole contacts in use as of the preceding day. This tabulation shall indicate the number of poles on which rentals are to be paid.
- (b) The yearly rental period covered by this Agreement shall be the twelve month calendar year period between January 1 and December 31. Within thirty (30) days after the completion of the tabulation referred to above, Licensor shall invoice Licensee for the rental amount owing, as calculated in accordance with Exhibit B and Applicable Law, which is attached hereto and incorporated herein by this reference, specifying on such invoice the rental period covered. Payment of the invoiced amount shall be made within forty-five (45) days of receipt of the invoice. The annual rental rate per pole shall apply to any Pole Attachments made or removed during the year and rents shall not be prorated; provided however, that if this Agreement is executed between July 1 and December 31 of the same calendar year, Licensee shall pay to Licensor only one-half (1/2) of the annual rental due for attachments made during that period. Consistent with the terms of this provision, the components of the rental rates, and the methodology employed to determine the rental rates specified in Exhibit B of this Agreement (which are subject to the valid and effective provisions of the OAR and OPUC rules and regulations, as may be amended, and Applicable Law) may be modified or replaced by an agreement by the parties. Such modifications or replacements (which also are subject to the valid and effective provisions of the OAR and OPUC rules and regulations, as may be amended, and Applicable Law) shall become effective on the first day of the year following the agreement of the parties. Thus, for example, if such changes were to be agreed upon in December of 2006, they would become effective as of January 1, 2007.
- (c) In the event that Licensee requires a source of electrical energy for power supply to the cable system which constitutes a part of the licensed pole contacts and

apparatus, such energy will be supplied by Licensor in accordance with the provisions of its standard service extension policies and approved rates and tariffs.

- (d) Unless otherwise provided, all undisputed amounts payable under this Agreement upon completion of work performed hereunder by either party, the expense of which is to be borne wholly or in part by the other party, shall be due and payable within forty-five (45) days of receipt of an appropriate invoice.
- (e) Licensor and Licensee shall define the guidelines and definition for compliance as it pertains to this Agreement, and Licensee shall receive a rent reduction if the Licensee is in compliance as provided for in ORS 757.282(3) and OAR 860-028-0230, as may be amended. Nothing herein shall be construed as a waiver of Licensee's right to request a settlement conference, contest the denied rental reduction, or otherwise avail itself of the rights and procedures set forth in OAR 860-028-0230, as may be amended.
- (f) Subject to the other provisions of this Agreement, the cost of erecting new joint poles, constructing new pole lines, making extensions to existing pole lines, or replacing existing poles, pursuant to this Agreement shall be borne by the Parties as follows:
 - 1. Poles should be erected at the sole expense of Licensor.
 - 2. If a pole larger than that which is already installed is necessary, due wholly to the Licensee's requirements, including requirements as to keeping Licensee's wires clear of trees, Licensee shall pay to Licensor a sum equal to the difference between the cost, in place, of such pole and the cost, in place, of the existing pole. Licensor shall bear the rest of the cost of erecting such pole, except as otherwise provided in subsection (h) below.
 - 3. If a pole larger than that which is already installed is necessary, due to the requirements of both parties, or the requirements of public authorities or of property owners (other than requirements with regard to keeping the wires of one party only clear of trees), Licensee shall pay to Licensor a sum equal to one-half the difference between the cost, in place, of such pole and the cost, in place, of the existing pole; Licensor shall bear the rest of the cost of erecting such pole. Where there are more than the two Parties to this agreement attached to a pole, the cost of such pole replacements will be divided equally among all parties attached to the pole.
 - 4. In the case of an interset pole required solely by Licensee in Licensor's alignment, Licensor shall erect and own such pole and retain ownership, and Licensee shall pay to Licensor a sum equal to the cost in place of the interset or midspan pole.

- (g) Any payments for poles made by Licensee shall not entitle Licensee to the ownership of any part of said poles.
- (h) Where an existing pole is prematurely replaced (for reasons other than normal or abnormal decay) by a new pole solely for the benefit of Licensee, or in order to permit joint use, the cost of the new pole shall be borne by the parties as specified in subsection (f) above, and Licensee shall also pay Licensor the remaining life value of the old pole in place, plus the cost of removal, less the salvage value of such pole. Licensor shall remove and may retain or dispose of such pole as sole owner thereof.
- (i) Each party shall place, maintain, rearrange, transfer, and remove its own attachments at its own expense except as otherwise expressly provided.
- (j) The expense of the poles shall be borne by Licensor except that the cost of replacing poles shall be borne by the Parties hereto in the manner provided in subsections (f) and (h) above.
- (k) Where Licensee's service drops cross over Licensor's lines and are attached to Licensor's poles, either directly or by means of a pole top extension fixture, the cost shall be borne as follows:
 - 1. Pole top extension fixtures shall be provided and installed at the sole expense of the party using them.
 - 2. Where an existing pole is replaced with a taller pole to provide the necessary clearance for Licensee's benefit, Licensee shall pay to Licensor a sum as determined under subsection (h) above.
- (l) In the event that Licensor requires Licensee to transfer equipment, or set, lower, haul and/or dispose of Licensor's poles, Licensor shall reimburse Licensee for the cost of such services with forty-five (45) days of receipt of an appropriate invoice.
- (m) Nothing herein shall preclude the establishment of other arrangements for the division of costs of joint poles as the Parties may agree to in writing.

16. Rights of Other Parties:

Nothing herein contained shall be construed as affecting any rights or privileges previously conferred by either party, by contract or otherwise, to others not party to this Agreement to use any poles owned by such party. Further, nothing herein contained shall be construed to affect either party's right to continue, modify, extend or amend such existing rights or privileges, or to grant others the right or privilege to use poles owned by the Party.

Licensee shall not enter into any agreement with third parties for attachment to a pole owned by Licensor within Licensee's allocated space or otherwise. Licensor may enter into attachment agreements with third parties and will administer all third party attachments for space outside Licensee's allocated space. As to any such agreements between Licensee and third parties that predate this Agreement, Licensee will, by appropriate means, transfer the administration of such attachments to Licensor.

17. Term and Termination of Agreement:

This Agreement shall continue in force and effect for a period of one (1) year from and after the date of this Agreement, and thereafter from year to year unless terminated by either party by giving written notice of its intention to do so not less than three hundred sixty-five (365) days' notice to the other party. Notice shall be in writing and mailed by certified mail, return receipt requested, postage prepaid, or delivered by a reputable overnight courier with tracking capabilities, addressed to the parties as indicated in Section 26 of this Agreement. If the parties begin negotiating a new agreement at any time after either party gives written notice of its intention to terminate and before the expiration of the three hundred sixty-five (365) days, then the 365-day termination period shall be tolled until such time as either party notifies the other in writing that continued negotiation is no longer desired.

If this Agreement is terminated, the parties shall remove all of their respective equipment and Pole Attachments from the other party's poles within two years after termination of this Agreement. All of the applicable provisions of this Agreement, specifically including but not limited to the payment of rent for joint use poles, shall remain in full force and effect with respect to any and all equipment or Pole Attachments of either party remaining upon poles of the other party until such time as all such equipment and Pole Attachments have been removed, or unless otherwise agreed to by the parties.

18. Licensee's Failure to Remove or Make Changes and Cases of Emergency

In the event that Licensee shall fail to remove any attachments as required in this Agreement, Licensor shall have the right to effect such removals.

In case of emergency or immediate service needs of Licensor, Licensor may perform such removal or change work without prior notice to Licensee or upon such notice as may be reasonable under the circumstances.

19. Survival of Obligations:

Any termination of this Agreement in whole or in part shall not be effective as to those provisions of the Agreement governing the liability or obligations of Licensee, including, without limiting the generality of the foregoing, the obligation to continue to pay pole attachment charges as provided in Section 15 of this Agreement, for such time as

Licensee's attachments remain on Licensor's poles. Any such provisions shall survive termination of the remainder of the Agreement.

20. Waiver of Terms or Conditions:

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

21. Supplemental Agreements:

- (a) This Agreement may be amended or supplemented at any time upon written Agreement of the parties hereto. Should either an amendment or supplement become necessary, the party desiring such amendment or supplement shall give thirty (30) days written notice to the other party setting out in detail the changes or additions desired.
- (b) In the event that Licensee desires to add or reduce the number of Pole Attachments, Section 21(a) shall not apply, but in each case a sketch, map, or other mutually acceptable notice shall be submitted to Licensor, setting out in detail the pole numbers and locations of the poles, and the quantity of poles involved in the addition or subtraction.

22. Payment of Taxes:

Each party shall pay all taxes and assessments lawfully levied on its own property upon said jointly used poles, and the taxes and the assessments which are levied on said joint use poles shall be paid by the Licensor thereof, but any tax, fee or charge levied on Licensor's poles solely because of their use by the Licensee shall be paid by Licensee.

23. Interest and Payments:

All undisputed amounts to be paid by Licensee to Licensor under this Agreement shall be due and payable within forty-five (45) days after an invoice is received by the Licensee. Any payment of undisputed amounts not made within forty-five (45) days from the due date shall bear interest at the prime rate plus 2 percent, but in no event greater than that allowed by Applicable Law.

24. License Only:

No use, however extended, of any of the facilities under the Agreement shall create or vest in Licensee any ownership or property rights in Licensor's poles or facilities, but Licensee's rights therein shall be and remain a mere license.

25. Notices:

Any notice, request, consent, demand or statement which is contemplated to be made upon either party by the other party under any of the provisions of this Agreement, other than where made via NJUNS, shall be in writing and shall be treated as duly delivered when it is either (a) personally delivered to the office of Licensor in the case of a notice to be given to Licensor, or personally delivered to the office of Licensee in the case of a notice to be given to Licensee, or (b) deposited in the United States certified mail, postage prepaid and properly addressed to the party to be served as follows:

- (i) If notice is to Licensor,
Mr. Al Gonzalez, President/CEO
Central Electric Cooperative, Inc.
P.O. Box 846 or 2098 N. Hwy 97
Redmond, Oregon 97756
- (ii) If notice is to Licensee,
Qwest Corporation
Joint Use
700 W. Mineral Ave. MT G28.24
Littleton, CO 80120

Or at such other address as may be designated in writing by the other party.

26. Supplying Information:

- (a) It is understood and agreed to between the parties that, upon Licensor's request, Licensee shall furnish on a one-time basis to Licensor within thirty (30) days after execution of this Agreement, database information regarding the joint use poles to be initially covered by this Agreement, showing the facilities installed, Alternatively, information from the most recent audit survey may be used to provide such information. Licensee shall have thirty (30) days from receiving Licensor's request to provide such information. This information shall be subject to a confidentiality agreement ensuring that only Licensor, and none of its subsidiaries or affiliates, or any other entity or person, shall have access to this information.
- (b) Within ninety (90) days after the completion of the initial installation of the Licensee's facilities, as set forth in the above mentioned information, Licensee shall furnish to Licensor a revised copy, if necessary, of said information showing, poles attached by Licensee which is actually installed on poles of the Licensor. Such revised information shall be verified by the Licensor and shall be the basis for determining the number of pole contacts made initially. As a substitute to this provision, the most recent audit survey information may be used. This information shall be subject to a confidentiality agreement ensuring that only

Licensor, and none of its subsidiaries or affiliates, or any other entity or person, shall have access to this information.

- (c) Upon Licensor's request, Licensee shall promptly report to Licensor any changes made in the number of poles of the Licensor contacted by Licensee.

27. Choice of Law:

This Agreement is deemed executed in the state of Oregon and shall be construed under the laws of the state of Oregon and all Applicable Law.

28. Prior Agreements Superseded:

This Agreement constitutes the entire Agreement between the parties and it supersedes all prior negotiations, agreements and representations, whether oral or written, between the parties relating to the subject matter of this Agreement; provided, however, that (i) existing Pole Attachments made prior to the date of this Agreement and approved by Licensor, and applications in progress for permits, shall continue in effect under the terms and conditions of this Agreement; (ii) nothing herein shall relieve either party from obligations and liabilities, or deprive either party of any rights or privileges, that arose or were incurred under prior agreements; and (iii) any rental obligations of the parties currently in arrears under any prior agreement shall be recalculated according to the terms of this Agreement as of the effective date hereof. This Agreement can only be modified or amended in writing by authorized representatives of the parties.

29. Assignment of Agreement:

Neither party shall assign, transfer, or otherwise dispose of this Agreement or any of its rights, benefits, or interests under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld. No assignment of this Agreement shall operate to discharge the assignor of any duty or obligation hereunder without the written consent of the other party. Each party may assign all its rights and obligations under this Agreement to its parent corporation, to its subsidiary corporation, to a subsidiary of its parent corporation, to its survivor in connection with a corporate reorganization, to any corporation acquiring all or substantially all of its property or to any corporation into which it is merged or consolidated.

30. Reciprocal Agreement

Any occupancy by the Cooperative on the facilities of Qwest Corporation shall be governed by the terms and conditions of this Agreement as though the Cooperative was the Licensee and Qwest Corporation was the Licensor.

31. Miscellaneous:

The provisions of this Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns.

References to articles and Sections are references to the relevant portions of this Agreement.

The headings are inserted for convenience and shall not affect the construction of this Agreement.

In witness whereof, the parties have caused this Agreement to be duly executed.

DATED this _____ day of _____, 20____.

(Licensor) _____,
Central Electric Cooperative, Inc.,
an Oregon cooperative corporation

(Licensee) _____

By _____
Al Gonzalez

By _____

Its President/CEO

Its _____

EXHIBIT B: RENTAL RATE WORKSHEET (to be filled in by the parties)

Total Value of Poles & Fixtures
Less Depreciation Reserves
Net Value of Poles and Fixtures

Ratio of Bare Pole to Total Pole

Value of all Bare Poles

Number of Poles

Average Cost per Pole

Annual Carrying Charge

Operation expense
Maintenance expense
Customer expense
Admin. & General expense
Taxes
Depreciation
Bond Debt Interest/Amortization Expense
Current net income

Net Book Value

Carrying Charge per Total Usable Space

Available Usable Space (in feet)

Rental Rate per foot
Space occupied (in feet)

RENTAL RATE PER POLE