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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

In the Matter of an Investigation into Pole Attachments	<p style="text-align: center;"><u>Docket No. 04-999-03</u></p> <p style="text-align: center;">Utah Rural Telecom Association ("URTA") Brief on Proposed Pole Attachment Standard Contract</p>
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In compliance with the schedule established in this matter by order of the Public Service Commission dated March 25, 2005, the URTA submits this brief on the proposed pole attachment standard contract. The contract that the Division of Public Utilities will submit as an exhibit in this proceeding is the foundation from which URTA makes its changes. Only the parts of the sections URTA proposes to change or delete are addressed in this brief.

**Disputed Issues**

**1. Fees**

URTA members are both pole owners and licensees under the terms of the proposed standard contract. Nevertheless, URTA takes the position that pole owners generally should recover their costs through the rental rate calculated under UAR R746-345-5. A modest application fee may be warranted to cover the costs of processing an application to that degree those costs are not recovered in the rental rate formula. A charge for unauthorized attachments may be justified to discourage unauthorized attachments. Charges for Make-ready Work are justifiable, but pre-construction survey charges, post-construction inspection fees, fees for audits, and fees for removal or verification of removal should not be separately charged. Instead, they

should be treated as costs incurred in the course of doing business. URTA members do not have pole attachment divisions whose sole responsibility is to process and monitor attachments and conduct inspections. When a technician is in an area where attachment work is proposed, or where attachment or removal work has already occurred, the technician will inspect the poles and the work in addition to performing other assignments while in the area. Imposing separate charges for each of the other possible inspections is impractical. It would be much simpler for the URTA to ensure that costs are recovered through the rental rate charged. In pursuit of that objective, URTA suggests the following language and deletions in Sections 3.01, 3.19, 3.20, 3.25, and 5.05:

Section 3.01

With the exception of customer service drops, before Licensee places an Attachment upon any of Pole Owner's poles, Licensee shall request permission from Pole Owner in writing and submit payment for ~~all applicable fees, pursuant to the Fee Schedule (attached as Exhibit —)~~ the application fee approved by the Commission and the annual Rental Rate Schedule (attached as Exhibit —) calculated under UAR R746-345-5 upon receipt of an invoice from Pole Owner. Rental Fees shall not apply until the attachment identified on the application is physically in place.

Section 3.20

Licensee may at any time remove its Attachments from any of the poles and, in each case, Licensee shall immediately give Pole Owner notice of such removal. ~~and submit payment of all applicable fees upon receipt of an invoice from Pole Owner.~~ Removal of all 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 voluntary removal. When Licensee removes Attachments, rental charges payable by Licensee will be prospectively reduced in the annual billing cycle following Licensee's proper notice to Pole Owner of the removal.

Section 3.25

In addition to audits described in Section 3.24, Pole Owner, at Pole Owner's expense, shall have the right to inspect each of Licensee's Attachments and other Equipment attached to Pole Owner's poles at any time.

Section 5.02

Licensee shall not make Attachments to Pole Owner's poles without obtaining the Pole Owner's written permission as provided for in this Agreement. ~~Consistent with Utah laws, UARs and case precedent,~~ Pole Owner may charge Licensee a fee approved by the

~~Commission the amounts contained in the Fee Schedule attached hereto as Exhibit~~ upon the discovery of unauthorized Attachments belonging to Licensee. The imposition of such charges shall be without prejudice to Pole Owner's right to utilize additional other remedies, including, but not limited, to the remedies available for default under Article VI of this Agreement and any remedies available under Commission rules.

## 2. Timeframes

In comments filed in this proceeding October 29, 2004, the URTA argued for a shorter application approval period than 45 days. The concern the URTA expressed in those comments was the impact a 45 day period could have on service delivery timeframes. The URTA makes the following proposed changes to Sections 3.02 and 3.09:

### Section 3.02

Pole Owner will either approve or deny applications or give notice if Make-ready Work is required within ~~thirtyfourty five (4530)~~ days of receipt of the application. If notice is not received from Pole Owner within ~~thirtyfourty five (4530)~~ days, Licensee may proceed with installing the Attachment, and such Attachment shall be deemed authorized, subject to all other terms and conditions of this Agreement.

~~The Parties acknowledge that, from time to time, the forty five (45) day processing standard may not be feasible for various reasons including, but not limited to: a requirement of the Licensee for more expeditious handling to accommodate a small but urgent project; a requirement of the Pole Owner for additional handling time to accommodate a Licensee's large project or an unusually high volume of applications from several different licensees. When such circumstances arise, the Parties agree to provide each other with reasonable advance notice of the circumstances and to work together in good faith to develop suitable and reasonable timelines and special handling procedures.~~

### Section 3.09

If in the reasonable judgment of Pole Owner the accommodation of any of Licensee's Attachments necessitates Make-ready Work, in the response to Licensee's application Pole Owner will indicate the Make-ready Work that will be necessary to accommodate the Attachments requested and the estimated cost thereof within the application processing time period identified in Section 3.02. If Licensee is willing to bear the cost of all Make-ready Work required as a result of Licensee's application necessary, as determined by Pole Owner, Licensee shall so indicate via ENS or in writing within thirty (30) days of the date of Pole Owner's response to Licensee's initial application. Pole Owner will provide Licensee an estimated completion date for any Make-ready Work, taking into account the overall scope of the Licensee's project, the volume of applications received from other licensees, as well as the availability of crews to perform the work. In

~~no event will the completion date be more than thirty (30) days from the date Pole Owner notifies Licensee that Make-ready Work is necessary unless both parties mutually agree to a longer period. The Licensee and the Pole Owner shall negotiate solutions in good faith when the estimated time to perform the Make-ready Work does not meet the Licensee's project requirements. At Licensee's option, Licensee may perform the Make-ready Work itself or request either assistance with the work by Licensee or by hiring a qualified contractor, if Pole Owner is unable to complete the work during the thirty (30) day period and the parties have not mutually agreed to a longer period. hired by the Licensee, payment of premium rates for Pole Owner's employees to be dedicated to perform work solely on Licensee's project, or similar measures designed to augment the Pole Owner's capabilities.~~

During the thirty (30) day period to complete Make-ready Work, Pole Owner will perform such Make-ready Work as may be required and Licensee will reimburse, upon demand, Pole Owner for the entire expense thereby actually and reasonably incurred. Licensee shall pay the costs of all Make-ready Work undertaken by Pole Owner where such work is initiated as a result of the proposed installation of Attachments on any poles without regard to whether Licensee elects not to use the pole or poles after Make-ready Work has commenced. An itemized statement detailing the actual material, hours, equipment costs, and any other associated costs will be provided to Licensee for payment of Make-ready Work.

### 3. Service Drops

Generally, there is no need for additional service drops to be subjected to the application process as long as Licensee periodically notifies Pole Owner of the drop placements. Quarterly notice currently included in the contract should be adequate. The only change the URITA recommends to Section 3.02, therefore, is the deletion of the second to the last sentence. This will ensure that Pole Owner is aware of all service drop attachments every quarter.

#### Section 3.02

Licensee shall have the right to install service drops without prior approval by Pole Owner unless the service drop is the first Attachment on a pole or is placed outside the space used by an another Attachment of Licensee. However, when Licensee installs service drops, Licensee must follow all procedures applicable to Attachments generally, except for filing applications and payment of fees, and shall submit notification to Pole Owner on a quarterly basis. ~~Notwithstanding the above, no notification shall be required for service drops that are self-supporting wire or wires that do not require the use of messenger strand and a lashed cable.~~ Required nNotifications of service drop installations shall contain information identifying the pole to which the service drop was added

#### 4. **Overlashing**

URTA takes the position that it is unnecessary to impose prior notice, application, or fee requirements on overlashing as long as the overlashing does not overburden a pole.

URTA recommends the following language as a third paragraph in Section 3.01:

##### Section 3.01

Licensee is not required to make written application to the Pole Owner prior to overlashing equipment to any existing Attachments or other equipment already attached to Pole Owner's poles. Licensee shall ensure that all overlashes conform with the construction and other standards and terms set forth in the Agreement and Licensee shall be responsible for any nonconformance whether made by Licensee or a third party.

#### 5. **Audit Costs**

As stated in the Fees section above, URTA believes that Pole Owners should recover virtually all of their pole attachment costs through the rental rate calculated pursuant to UAR R746-345-5. If a party other than the Pole Owner requests an audit then they should bear its cost. Accordingly, URTA would make the following amendments to Section 3.24, the Audit Cost section:

##### Section 3.24

Pole Owner may conduct an Audit of Attachments made to its poles no more frequently than once every five (5) years. Pole Owner shall give Licensee at least ninety (90) days prior notice of an initial meeting to plan the next Audit. At such meeting, Pole Owner, Licensee and all other pole attachers in attendance in person or by representative shall participate in, among other things, the selection of an independent contractor for conducting the Audit, as well as the scheduling, scope, extent and reporting of the Audit results. Regardless of whether Licensee attends the Audit planning meeting or expresses an intention to participate in the Audit, Pole Owner shall notify Licensee at least sixty (60) days prior to the commencement of the Audit. Licensee shall advise Pole Owner if Licensee desires to participate in the Audit with Pole Owner not less than thirty (30) days prior to the scheduled date of such Audit. The cost of the Audit shall be borne by the Party requesting it and all other participants shall be responsible for their own costs caused by their participation in the Audit.~~jointly by Licensee and all other parties having Attachments on poles in the audited territory in proportion to the number of poles attached to by each pole attacher in relation to the total number of poles bearing Attachments in the audited territory.~~ The data from the Audit shall be made available to Licensee and all other attachers on the poles and used to update the Parties' records. Any Party shall make any objections to the Audit results within ninety (90) days of receipt of

the Audit report or such objections are waived. The Parties shall diligently attempt in good faith to resolve any objections within ninety (90) days after any objection, during which time Licensee shall not be obligated to pay any disputed amounts. In the event objections remain unresolved after such 90– day period, either Party may commence dispute resolution pursuant to Section 7.01 below. ~~However, Licensee’s obligation to pay the disputed amounts resulting from the Audit shall resume upon expiration of such 90– day period consistent with Section 5.03 below. Refunds of disputed amounts that are resolved in favor of the disputing Party shall be made within 30 days of such resolution.~~

## 6. Easements

Requiring proof of easements as a condition to approve an Attachment application is onerous and unnecessary, particularly if Licensee indemnifies Pole Owner for failure to have the requisite authority. The URTA proposes the following language:

### Section 3.11

Licensee’s Application is Licensee’s representation to Pole Owner that Licensee has, for the poles specified in its application, obtained easements or licenses from public authorities and private owners of real property affected by the Application to place and maintain its Attachments at the location of the poles. ~~The right of access to Pole Owner’s poles granted by this Agreement does not include any right of access to the land upon which the pole is situated nor does it include any right to cross the land from pole to pole with Licensee’s Equipment and such access rights are specifically disclaimed.~~ Licensee is solely responsible for ~~obtaining from public authorities and private owners of real property and~~ maintaining in effect any and all consents, permits, licenses, easements, rights-of-way or grants that are necessary for the lawful exercise by Licensee of the permission granted by Pole Owner in response to any application approved hereunder. Licensee agrees to indemnify, defend and hold harmless Pole Owner against and from any and all third party claims, demands, law-suits, losses, costs and damages, including attorneys fees, to the extent arising from Licensee failure, or alleged failure to have the requisite authority.

This language ensures that Licensee can attach without having the burden of showing or proving they have easements and yet it protects the Pole Owner through Licensee’s indemnification.

## 7. Relocation Costs

With respect to relocation costs, the URTA recommends that the Commission generally follow the regulatory principle of “cost causer pays.” That principle guides the

changes URTA proposes in Sections 3.12 through 3.18. URTA's other proposed changes reflect an effort to eliminate language for which there would be no standard for conduct.

### Section 3.12

If, in Pole Owner's reasonable judgment, Licensee's existing Attachments on any pole ~~interfere with Pole Owner's or other pole attachers' existing Equipment or~~ prevent the placing of any additional Equipment by Pole Owner required for its core utility service and included in Pole Owner's bona fide development plan as described in Section 2.03, Pole Owner will notify Licensee of the rearrangements or transfers of Equipment or pole replacements or other changes required in order to continue to accommodate Licensee's Attachments. If Licensee desires to continue to maintain its Attachments on the pole and so notifies Pole Owner in writing within thirty (30) days, Licensee may perform the necessary work (subject to Pole Owner's approval based on safety issues, which approval Pole Owner will not unreasonably withhold), or Licensee shall authorize Pole Owner to perform the work. Should Licensee authorize Pole Owner to perform the work, Pole Owner shall make such changes as may be required, and Licensee, upon demand, will reimburse Pole Owner for the entire expense thereby actually and reasonably incurred. If Licensee does not so notify Pole Owner of its intent to perform the necessary work or authorize Pole Owner to perform the work, Licensee shall remove its Attachments from the affected pole or poles within an additional ten (10) days from such original notification by Pole Owner for a total of forty (40) days; provided, however, that Pole Owner in any emergency may require Licensee to remove its Attachments within the time required by the emergency. If Licensee has not removed its Attachments at the end of the forty (40) day period, or in the case of emergencies, within the period specified by Pole Owner, Pole Owner may remove Licensee's Equipment at Licensee's sole risk and expense, and Licensee will pay Pole Owner, upon demand, for all costs thereby incurred by Pole Owner.

URTA comment: Emergency is not a defined term in the contract. Without a definition there will be disputes between the parties. Emergency could be defined as "an imminent threat of danger to life or an imminent threat of substantial damage to property requiring immediate action."

### Section 3.13

Where an existing pole is changed out solely for the Pole Owner's benefit, the Pole Owner will bear the total cost of the pole replacement including the labor for the lower and haul of the old pole ~~and but not including~~ the cost to transfer Licensee's attachments to the new pole. After Pole Owner has completed its work it shall notify Licensee, ~~and Licensee shall, at its own expense, that it transferred its~~ Licensee's attachments to the new pole, ~~within thirty (30) days after the time specified in the notice given by the Pole Owner indicating that the pole is ready Licensee to transfer its equipment (which time~~

~~shall not begin until after the parties located above the Licensee on the pole have removed or moved their facilities).~~—

#### Section 3.14

Where an existing pole is prematurely replaced (for reasons other than normal or abnormal decay) by a new pole at the request of and for the sole benefit of the Licensee, the Licensee shall reimburse the Pole Owner for all costs, including, but not limited to the cost in replacing the new pole, the remaining life value of the existing pole, lower and haul of the existing pole (to the extent that this is performed by the Pole Owner), and topping of the existing pole when performed either as an accommodation to Licensee or as required by NESC. Pole Owner shall credit the Licensee for salvage value of the existing pole if it is not topped and it is less than ten years old. Pole Owner shall remove and may retain or dispose of such pole as the sole owner thereof. Any payments for poles made or work performed by the Licensee shall not entitle Licensee to ownership of any part of said poles. If pole replacement under this Section 3.14 benefits both Licensee and other pole attachers, the costs shall be pro-rated among all benefiting attachers.

#### Section 3.15

Where Pole Owner requires a new pole and Licensee requires extra height or strength exceeding a basic 40 foot Class 5 pole to accommodate its new or existing attachments, Licensee shall pay a sum equal to the difference between the total cost of installing a new pole adequate to accommodate Licensee's new and existing attachments and the total cost of a basic 40 foot Class 5 pole. The balance of the cost of installing the pole actually installed shall be borne by Pole Owner.

URTA comment: The URTA accepts Section 3.15 as it appears in the proposed contract.

#### Section 3.16

Except as otherwise expressly provided in this contract, Licensee shall place, maintain, rearrange, transfer, and remove its own Attachments at its own expense. ~~except as otherwise expressly provided hereunder.~~

#### Section 3.17

~~Licensee shall at any time, at its own sole reasonable risk and expense, upon reasonable notice from Pole Owner, relocate, replace or repair Licensee's Attachments or transfer them to substituted poles. Provided, however, that i~~In cases of emergency ~~or if Licensee fails to relocate required by a Pole Owner's notice,~~ Pole Owner may, without incurring any liability except for negligence, relocate or replace Licensee's Attachments or Equipment, transfer them to substituted poles, or perform any other work in connection with the Licensee's Attachments or Equipment that may be required, or authorize a third party to perform such tasks, and Licensee will, upon demand, reimburse Pole Owner or such third party for the entire expense thereby incurred.

~~When~~If the Licensee is required to relocate its facilities to accommodate a third party attaching to the pole, Pole Owner shall disclose the third party's name and contact information to the Licensee at the time the relocation or rearrangement is requested.

Licensee shall be entitled to seek reimbursement from the third party attacher prior to relocating its facilities.

URTA comment: The language the URTA deleted in Section 3.17 is too open ended and ill-defined. If that language is left in the contract, there will be no standard for when attachments must be moved.

Section 3.18

Where a jointly used pole is required to be replaced, moved or relocated due to a landowner request, Pole Owner shall provide notice to Licensee upon receipt of the landowner request and coordinate with Licensee and all other pole attachers to provide a coordinated response with respect to timelines and costs to landowner.

The Licensee shall promptly arrange to transfer its Equipment to the new pole and shall notify the Pole Owner when such transfer has been completed. In the event such transfer is not completed within thirty (30) days after the time specified in the notice given by the Pole Owner indicating that the pole is ready for Licensee to transfer its Equipment (which time shall not begin until after the parties located above the Licensee on the pole have removed or moved their facilities), Pole Owner may transfer Licensee's Equipment from the replaced pole to the replacement pole in a reasonable manner consistent with industry practices upon Licensee's failure to transfer its Equipment within the above mentioned thirty (30) days notice, and Licensee will reimburse Pole Owner for all actual costs incurred.

If the Licensee performs any work for the Pole Owner to facilitate Pole Owner's responsibilities in completion of the above work or in cases of emergency work, including without limitation transferring other equipment, setting or lowering poles, digging holes, or hauling poles, the Pole Owner shall pay to Licensee, upon receipt of an invoice, the cost of such work. When setting a pole requires entering the electric utility space, the setting of the pole must be performed by a qualified electric contractor approved by the electric utility pursuant to Section 3.05, or may be performed by a licensed electrical engineer employed by Licensee upon prior approval of the electric utility.

URTA comment: The URTA accepts Section 3.18 as it appears in the proposed contract.

## 8. Disputed Bills

The URTA believes that disputed bills should not be paid until the dispute is resolved. Given URTA's position on fees other than rental charges, charges for Make-ready work, and a charge for processing applications and for unauthorized attachments, URTA proposes the following changes to Section 5.03.

### Section 5.03

Pole Owner shall send invoices to Licensee via regular U.S. Mail at the address specified below, or at such other address as Licensee may designate from time to time. Invoices for rental charges will be sent annually or semi-annually. Invoices for ~~all Non-recurring Charges, Unauthorized Attachment Charges, and other obligations amounts~~ due under this Agreement ~~other than rental charges~~ will be sent at Pole Owner's discretion within a reasonable time. Invoices for ~~Non-recurring Unauthorized Attachment~~ Charges will provide specific identifying information pertaining to each charge. Invoices for rental charges will provide summary information only. Invoices will conform generally to the invoice template attached hereto as Exhibit \_\_, subject to change by Pole Owner, in Pole Owner's reasonable discretion and Commission approval. Licensee may obtain additional information pertaining to charges upon written request to Pole Owner.

Except as otherwise provided in this Agreement or agreed to by the Parties, Licensee shall pay all charges within thirty (30) days of the invoice date, ~~including any disputed amounts. If there is a dispute over any charge, Licensee is not required to pay the charge until the dispute is resolved if Licensee notifies Pole Owner of the dispute during the thirty (30) day payment period. If the dispute is resolved in Pole Owner's favor, Licensee Upon resolution of any such dispute, Pole Owner will refund pay~~ any amounts owed, with interest accruing at the rate specified in Section 8.03 ~~from the later of the date Licensee paid the disputed portion, or from~~ the date ~~that upon which~~ Licensee provided Pole Owner notice of the amount in dispute. Late charges and interest ~~shall~~ may be imposed on any delinquent amounts. All bills shall be paid to the address designated from time to time in writing by Pole Owner.

## 9. Liability and Damages; Indemnification; Warranties

As Pole Owners and Licensees, URTA takes the position that indemnification should be reciprocal. Both parties could be subjected to lawsuits and liability as a result of the actions or negligence of the other. Reciprocal indemnification, therefore, makes sense and is fair. The existing language in the proposed contract is overdone and complex and should be made simpler.

Below is URTA's initial attempt to simplify the language and conform the section to reflect the URTA's position.

#### Section 9.01

Except for liability caused by the gross negligence or intentional misconduct of Pole Owner ~~or Licensee~~, each Party shall indemnify, protect and hold harmless ~~the Pole Owner~~ other Party, ~~its~~ successors and assigns, from and against any and all claims, demands, causes of action, costs (including attorney's fees) or other liabilities for damages to property and injury or death to persons which may arise out of, or be connected with: (a) the erection, maintenance, presence, use or removal of a Licensee's Party's Equipment; or (b) any act of Pole Owner or Licensee on or in the vicinity of Pole Owner's poles. ~~Except for liability caused by the gross negligence or intentional misconduct of Pole Owner, Licensee shall also indemnify, protect and hold harmless Pole Owner, its successors and assigns from and against any and all claims, demands, causes of action, costs (including attorney's fees), or other liabilities 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 Pole Owner undertaken in furtherance of the purposes of this Agreement.~~ In addition, each Licensee Party shall, upon demand, and at ~~its~~ own sole risk and expense, defend any and all suits, actions, or other legal proceedings which may be brought against ~~the other Party Pole Owner~~, or its successors and assigns, on any claim, demand, or cause of action arising from ~~the indemnifying Party's acts or negligence under (a) or (b). any interruption, discontinuance, or interference with Pole Owner's service to Pole Owner's customers to the extent caused, or which may be claimed to have been caused, by any action of Licensee.~~ To the extent Licensee shall be found to have caused such ~~interruption, discontinuance, or interference, Licensee shall pay and satisfy any judgment or decree which may be rendered against Pole Owner, or its successors or assigns, in any such suit, action, or other legal proceeding; and further, Licensee shall reimburse Pole Owner for any and all legal expenses, including attorneys fees, incurred in connection therewith, including appeals thereof.~~ Notwithstanding the above, under no circumstances shall either Party be liable to the other Party for special, indirect, incidental, punitive, exemplary or consequential damages.

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 indemnifying Party.

#### New Section # on Warranties

Each Party Pole Owner warrants that its work in constructing and maintaining the poles covered by this Agreement shall be consistent with prudent utility practices. **POLE OWNERS EACH PARTY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTY OF**

**MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, AND SIMILAR WARRANTIES.** ~~Pole Owner's liability to Licensee for any action arising out of its activities relating to this Agreement shall be limited to repair or replacement of any defective poles.~~

~~Notwithstanding the above, under no circumstances shall either Party be liable to the other Party for economic losses, costs or damages, including but not limited to special, indirect, incidental, punitive, exemplary or consequential damages.~~

~~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.~~

~~Licensee warrants to Pole Owner that its exercise of its rights and performance of its obligations under this Agreement shall be consistent with prudent utility practices.~~

## 10. Insurance and Bonds

Requiring insurance in a pole attachment agreement is common. To the extent possible, the Commission must strike a balance between protecting the Parties by having Licensees acquire appropriate insurance and imposing unnecessary burdens on Licensees. Below is URTA's initial attempt to modify the language in the proposed contract to strike that balance. The insurance coverage may be subject to debate and change:

### Section 10.1

Licensee shall comply with all applicable worker's compensation and employer's liability acts, ~~and shall furnish proof thereof satisfactory to Pole Owner prior to placing Equipment on Pole Owner's poles.~~

Without limiting any liabilities or any other obligations of Licensee, Licensee shall, at its sole expense and prior to placing Equipment on Pole Owner's poles, secure and continuously carry with insurers acceptable to Pole Owner the following insurance coverage:

*Commercial General Liability insurance* with a minimum single limit of \$1,000,000 to protect against and from all loss by reason of injury to persons, including Licensee's employees, Pole Owner's employees and all other third persons, or damage to property, including Pole Owner's property, Licensee's property and the property of all other third

parties, based upon or arising out of Licensee's operations hereunder, including the operations of its contractors of any tier.

*Business Automobile Liability insurance* with a minimum single limit of \$1,000,000 for bodily injury and property damage with respect to Licensee's vehicles whether owned, hired or non-owned, assigned to or used in Licensee's operations hereunder.

The policies required herein shall include (a) provisions or endorsements naming Pole Owner, its directors, officers and employees as additional insured, and (b) a cross-liability and severability of interest clause.

The policies required herein shall include provisions that such insurance is primary insurance with respect to the interests of Pole Owner and that any other insurance maintained by Pole Owner is excess and not contributory insurance with the insurance required under this Section ~~10.02~~ and provisions that such policies shall not be cancelled or their limits of liability reduced without thirty (30) days prior written notice to Pole Owner. A certificate ~~in a form satisfactory to Pole Owner~~ certifying the issuance of such insurance, shall be furnished to Pole Owner by Licensee. Commercial general liability coverage written on a "claims-made" basis, if any, shall be specifically identified on the certificate. ~~If requested by Pole Owner, a copy of each insurance policy, certified as a true copy by an authorized representative of the issuing insurance company, shall be furnished to Pole Owner by Licensee.~~

Pole Owner shall be notified by Licensee of any commercial general liability policies maintained hereunder and written on a "claims-made" form. Such insurance policies written on a "claims-made" basis shall be maintained by Licensee for a minimum period of five (5) years after the termination of this Agreement. ~~and Pole Owner may, at its discretion, require Licensee, at Licensee's sole expense, to institute other measures to guarantee future coverage for claims related to Licensee's obligations under this Agreement.~~

### Section 10.2

Pole Owner may require Licensee to furnish a bond in an amount designed to reasonably cover the ~~faithful~~ performance by Licensee of its obligations hereunder. Any such bond shall be issued by a commercial bonding company selected by Licensee and satisfactory to Pole Owner; shall not be subject to termination or cancellation except upon one hundred twenty (120) days prior notice to Pole Owner; shall be in such form and in such amount as Pole Owner shall specify from time to time; and, subject to termination or cancellation as aforesaid, shall be maintained in full force and effect throughout the term of this Agreement, including any renewals thereof. Such bond shall be furnished within ~~the shorter of (a)~~ ninety (90) days written notice to Licensee by Pole Owner. The guarantee shall include, but shall not be limited to, the payment of any sums that may become due to Pole Owner for rental fees, ~~legal costs and fees~~, or work performed by Pole Owner for the benefit of Licensee under the Agreement, including strengthening, anchoring, relocating, replacing or renewing Licensee's Equipment or removing, storing, selling or disposing of the Equipment on termination of this Agreement for any reason.

~~At any time during the term of this Agreement, Licensee shall, upon Pole Owner's request, furnish Pole Owner with a certificate evidencing that the bond is in full force and effect.~~ In the event of cancellation, termination or alteration of the Bond, Pole Owner may, at its option, terminate this Agreement unless Licensee makes other arrangements satisfactory to Pole Owner to guarantee the performance of its obligations under this Agreement.

The furnishing of a bond shall not relieve Licensee of any of its obligations under this Agreement, and the bond shall not be released until all of Licensee's obligations under this Agreement have been discharged.

Thus far, the process in this case has been protracted and difficult. It is important that this contract, combined with proposed rule R746-345, settle as many issues as possible as equitably as possible to avoid future disputes between parties. URTA intends to thoroughly review and respond to proposals and recommendations of the other parties in this proceeding in its reply brief due May 13, 2005.

Respectfully submitted this 15<sup>th</sup> day of April, 2005

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Certificate of Service

I hereby certify that the 15<sup>th</sup> day of April, 2005, I electronically mailed a true and correct copy of the foregoing URTA Brief on the Proposed Pole Attachment Standard Contract to the following:

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