



CARLA M. BUTLER

November 2, 2017

Via Electronic Fling Only

Gary Widerburg  
Commission Administrator  
Utah Public Service Commission  
Heber M. Wells Building, 4<sup>th</sup> Floor  
160 East 300 South  
Salt Lake City, UT 84111  
[psc@utah.gov](mailto:psc@utah.gov)

Re: Docket No. 17-049-15

Dear Mr. Widerburg:

Attached for filing please find Motion of Qwest Corporation for Approval of Pole Attachment Agreement, along with a Certificate of Service.

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

Sincerely,

Carla Butler  
Lead Paralegal

Attachment  
cc: Service List

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Attorney for Qwest Corporation d/b/a CenturyLink QC

**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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In the Matter of the Approval of the  
Small Cell Wireless Pole Attachment  
Agreement between Mobilitie, LLC and  
Qwest Corporation d/b/a CenturyLink

Docket No. 17-049-15

**MOTION OF QWEST CORPORATION  
FOR APPROVAL OF POLE  
ATTACHMENT AGREEMENT**

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Qwest Corporation d/b/a CenturyLink QC (“CenturyLink”) respectfully seeks the Public Service Commission of Utah’s (“Commission”) approval of the Utah Small Cell Wireless Pole Attachment Agreement (“Agreement”) between CenturyLink and Mobilitie, LLC (“Mobilitie”). The Commission should approve this Agreement in accordance with Utah Admin. Code R746-345-3.

A copy of the signed Agreement between CenturyLink and Mobilitie is attached as Attachment A. This negotiated Agreement governs the small cell wireless attachments by Mobilitie on CenturyLink’s poles.

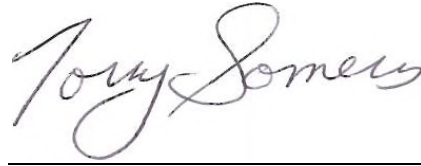
Recently the Commission approved a small cell wireless pole attachment agreement between CenturyLink and Crown Castle and the Commission should also approve this

agreement.<sup>1</sup> Attachment B provides a summary of the noteworthy differences between this Agreement and the Commission approved small cell agreement between CenturyLink and Crown Castle.

CenturyLink respectfully requests the Commission approve the attached Agreement.

RESPECTFULLY SUBMITTED this 2<sup>nd</sup> day of November 2017.

CENTURYLINK

A handwritten signature in cursive script, reading "Torry Somers", positioned above a horizontal line.

Torry R. Somers  
CENTURYLINK  
6700 Via Austi Pkwy.  
Las Vegas, NV 89119  
Ph: (702) 244-8100  
Fax: (702) 244-7775  
[torry.r.somers@centurylink.com](mailto:torry.r.somers@centurylink.com)

Attorney for CenturyLink

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<sup>1</sup> On September 13, 2017, the Commission approved a small cell wireless pole attachment agreement between CenturyLink and Crown Castle in Docket No. 17-049-12.

PSC website link to Docket No. 17 -049-12: <https://psc.utah.gov/2017/08/11/docket-no-17-049-12/>

**LICENSE AGREEMENT FOR WIRELESS ATTACHMENT TO POLES**

**BY AND BETWEEN**

**Qwest Corporation d/b/a/ CenturyLink QC**

**AND**

**MOBILITIE, LLC**

**WIRELESS ATTACHMENT LICENSE AGREEMENT**

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**ATTACHED EXHIBITS**

EXHIBIT A - WIRELESS POLE APPLICATION	
EXHIBIT B - GROUNDING SPECIFICATIONS	
EXHIBIT C ABANDONMENT NOTICE	
EXHIBIT D - POLE ATTACHMENT BOND	
EXHIBIT E LICENSE SERVICE AREA	
EXHIBIT F WIRELESS CONSTRUCTION SPECIFICATIONS	
EXHIBIT G - CONFIGURATION OF LICENSEE ATTACHMENTS	

## **WIRELESS ATTACHMENT LICENSE AGREEMENT**

This Wireless License Agreement for the Attachment to Poles ("Agreement") is entered into as of the Effective Date by and between Qwest Corporation d/b/a/ CenturyLink QC, a corporation ("Licensor"), and Mobilitie, LLC, a limited liability company ("Licensee"). Licensor and Licensee may sometimes be referred to in this Agreement individually as a "party" and collectively as the "parties." Any reference to "CenturyLink" in this Agreement or attached exhibits will mean Licensor.

### **BACKGROUND:**

Licensee (or its End User) is a cable operator, BIAS or telecommunications carrier or any combination and desires to furnish public telecommunications services pursuant to Utah Code Ann. § 54-8b-2.1, in areas in the State of Utah where Licensor is an Incumbent Local Exchange Carrier ("ILEC") ("Licensee Service").

- A. For the purpose of Licensee furnishing Licensee Service, Licensee desires to place and maintain Licensee Attachments on Licensor Facilities (as those terms are hereinafter defined) located in areas in the State of Utah where Licensor is an ILEC.
- B. In accordance with the terms and conditions of this Agreement, and to the extent required by federal, state and local law, Licensor agrees to permit Licensee to place and maintain certain Licensee Attachments on Licensor Facilities in strict accordance with the terms and conditions of this Agreement and for the sole purpose of Licensee furnishing Licensee Service.

For good and valuable consideration, the receipt and sufficiency of which are acknowledged by Licensor and Licensee, Licensor and Licensee agree as follows:

### **ARTICLE 1: DEFINITIONS**

- 1.1. **Definitions.** Certain terms used in this Agreement are defined and explained below:

**Act** - The Communications Act of 1934 as amended, including as amended by the Telecommunications Act of 1996.

**Anchor** - An assembly that stabilizes a Pole and holds it in place. An Anchor assembly may consist of a rod and fixed object or plate, typically embedded in the ground, which is attached to a guy strand or Guy Wire, which in turn is attached to the Pole. The definition of "Anchor" does not include the guy strand that connects the Anchor to the Pole.

**Annual License Fee** - The annual fee Licensee pays in consideration for the License granted to it under Section 2.2. The Annual License Fee is calculated using a rate formula adopted by the FCC, multiplied by the combined amount of space occupied by the Attachments and total height of the Licensee Attachments.

**Application** - The completed application that is in form either the same as that attached to this Agreement as Exhibit A or in ENS format designated by Licensor pursuant to Section 3.3, and that is

submitted by Licensee to Licensor as part of the process under this Agreement by which Licensee seeks Licensor's approval to make an Attachment.

**Applicable Law** — Applicable Law is defined in Section 20.2.1.

**Approved Contractor** - A contractor authorized by Licensor to perform Surveys, Make Ready Work in the Communications Space or other work Licensee is authorized to perform under this Agreement.

**Attachment** — The physical attachment and placement by Licensee of a single piece of authorized wireless data or communications equipment (e.g., radio, antenna) to a Pole, and approved appurtenant facilities (e.g., communications cables, mounting hardware, power supplies, meters, and power service wires used to accommodate a single wireless facility) located on or to Licensor Facilities. Attachments include any End User equipment and all such equipment shall be deemed Licensee's Attachments for purposes of this Agreement. This definition of Attachment does not include attachments made between Poles, which are governed by separate agreement. Power supply and meter attachments are only permitted on poles with a maximum above-ground height of no more than forty-five feet and that can lawfully and safely be reached by bucket truck. NOTE: Any equipment that emits an RF signal of any kind must have an approved application as set forth herein.

**Audit** — A test, inspection, investigation, inventory, audit or similar undertaking for the purpose of determining the number and location of Attachments and checking for Unauthorized Attachments of Licensee.

**BIAS - Broadband Internet Access Service Provider** — As defined by the FCC, "A mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all Internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up Internet access service. This term also encompasses any service that the Commission finds to be providing a functional equivalent of the service described in the previous sentence."

**Cost(s)** - All reasonable and actual costs, to the extent such costs are not recovered in the Annual License Fee, paid or payable, which include: (a) external contractor or subcontractor labor costs and professional fees; (b) other costs and out-of-pocket expenses on a pass-through basis (e.g., equipment, materials, supplies or contract services); (c) internal labor costs directly related to the completion of Make Ready Work; and (d) reasonable allocations of administrative overhead. Cost will not include any profit or markup. Any calculation of Cost involving a charge to replace a Pole or Anchor will exclude the salvage value realized, if any, by Licensor for the removed Pole or Anchor.

**Communications Space** — The space on a Pole underneath the Communication Worker Safety Zone to the limit of allowable NESC clearance codes in which communications cables for telephone, cable and other communications circuits are attached.

**Communication Worker Safety Zone** — As defined by the NESC, generally that space between the facilities located in the electric supply space and facilities located in the Communications Space. No Licensee Attachments shall be located in the Communication Worker Safety Zone.

**Days** — Calendar days, unless specifically noted otherwise in this Agreement.

**Effective Date** - The date this Agreement is last signed by all of the parties.

**Electronic Notification System ("ENS")** — The electronic notification system or systems designated by Licensor that Licensor may, in Licensor's sole discretion, require Licensee to use in

submitting an Application or any information, notice, consent, approval, request, document, demand or authorization and the like required or permitted under this Agreement.

**End User** - Licensee's customer.

**Existing Attacher(s)** - A public utility, person, governmental body or other entity that is not Licensee and that has an actual physical attachment of its wireless facilities or equipment on or to a Licensor Facility.

**FCC** — The Federal Communications Commission.

**Guy Wire** - A metal cable of high tensile strength that is attached to a Pole and Anchor rod (or another Pole) for the purpose of reducing Pole stress.

**Joint Owner(s)** - A person, corporation, governmental body or other entity other than Licensor having an ownership interest in a Pole.

**Large Attachment Order** — Applications to make Attachments to 301 Poles up to the lesser of 3000 poles or 5.0% of Licensor's Poles located in the State of Utah.

**Licensor Facility or Licensor Facilities** — Any Pole and associated Right-of-Way held by Licensor that is apportionable to third party use. Licensor makes no representation that its Right-of-Way is apportionable to Licensee; Licensee is required to obtain all necessary Right-of-Way.

**Make Ready Work** - All work performed or to be performed as is necessary, in Licensor's sole but reasonable discretion, to prepare Licensor Facilities for an Attachment where such work is required solely to accommodate such an Attachment.

**Modification** — Licensee's Rearrangement or Transfer of its Attachment, non-routine replacement or repair of its Attachment, or other alteration of its Attachment.

**NESC** — The current edition of the National Electrical Safety Code, as amended, including all retroactive provisions, if any.

**Noncompliant Attachment** - An Attachment which does not meet the Specifications listed in Article 7, or does not comply with Licensor's permitting requirements and construction specifications.

**Non-Periodic Inspection** - A test, inspection, investigation or similar undertaking for the purpose of checking the physical condition of Licensor Facilities or Licensee Attachments and identifying Non-Compliant Attachments. Non-Periodic Inspections will not include any regularly scheduled inspections or inspections of entire service areas.

**Pole(s)** - A Licensor-owned or controlled wooden pole or a pole jointly owned by Licensor and any Joint Owner with a height above ground no greater than forty-five feet, and any Anchors, Guy Wires, hardware, wires, cables, strands, apparatus, enclosures, structures or other items attached to the pole or any hardware affixed to or associated with the pole. The definition of "Pole" does not include poles for which Licensor has no legal authority to permit upon them the placement of the facilities or equipment of others. Only the attachment of Licensee Attachments to Poles is contemplated by this Agreement.

**Rearrange or Rearranging** - Relocating or reconfiguring an Attachment upon the Licensor Facilities to which the Attachment is made.

**Right-of-Way** - The right to use the land or other property of another to place structures and equipment upon it, or to provide access to the structures and equipment. A Right-of-Way may run under, on or above public or private property (including air space above public or private property).



**Survey** — All work necessary to determine the Make Ready Work required to accommodate an Attachment, including field inspections, engineering and administrative processes, provided that Licensee will not be charged for any administrative processes associated with processing the Licensee's Application that are recovered as part of the Annual License Fee.

**Transfer or Transferring** - Moving an Attachment from one Licensor Facility to another.

**Unauthorized Attachment** — An Attachment installed on Poles by Licensee without a lawful agreement with, or License from, the Licensor.

## **ARTICLE 2: SCOPE OF AGREEMENT**

**2.1 Representation and Warranty.** Licensee represents and warrants to Licensor that it provides Licensee Service in certain areas in the State of Utah where Licensor is an ILEC, and that therefore, pursuant to Applicable Law, it is entitled to pole attachment rights and protections given to it under Applicable Law. If at any time during the Term of this Agreement Licensee is no longer entitled to pole attachment rights and protections given to it under Applicable law, Licensee must immediately notify Licensor of the change.

**2.2 Grant of License.** Subject to the terms of this Agreement and consistent with Applicable Law, Licensor will grant a revocable, non-exclusive license to Licensee authorizing Licensee to make each specific Attachment to Licensor Facilities located in areas in the State of Utah where Licensor is an ILEC, and to allow Licensee to use and maintain each specific Attachment for the purpose of providing Licensee Service ("License"). This License will be evidenced in each instance by a Licensor-approved Application for the relevant Attachment. A Licensor-approved Application is required for every Attachment. No Attachment may be made to any Licensor Facility identified in an Application until Licensor has approved the Application in writing, except as otherwise provided herein or by Applicable Law.

### **2.3 Installation and Maintenance Standards.**

**2.3.1** Licensee's Attachments shall be erected and maintained in good and safe condition and repair (and replace if necessary) and in accordance with the NESC and the "Specifications" (as defined and set forth in Article 7 and Exhibit F).

**2.3.2** The drawing configurations attached hereto as Exhibit G, and incorporated herein, shall be representative of Licensee's attachment of its Licensee Attachments. Inclusion of Exhibit G is for informational purposes only, and shall not be understood as acceptance or approval by Licensor of any such installation in any particular circumstance. No attachment will be allowed of Attachments not materially included in Exhibit G without prior approval from Licensor.

**2.3.4** Licensee shall have the sole obligation to arrange for unmetered electric service to its Attachments, the sole costs of which shall be borne by Licensee.

**2.3.5** If Licensee refuses or neglects to fulfill its maintenance obligations under this Section 2.3 in accordance with the Specifications, Licensor may undertake such obligations itself, and Licensee will reimburse Licensor for the Cost Licensor incurred in fulfilling such obligations within 45 days of the invoice date for an invoice from Licensor for the Cost. Licensor will provide Licensee with 45 days' written notice prior to performing Licensee's maintenance obligations under this Agreement except in emergencies which could result in harm to persons or property, in which case no prior notice will be given.

**2.4 Entrance Facilities and Interconnection Agreements.**

**2.4.1** Neither this Agreement nor any License is applicable to Licensor's Entrance Facilities. For the purpose of this Agreement, "Entrance Facilities" is defined as the communications path between a customer's premises and Licensor's serving wire center for that premises. Entrance Facilities are wholly within the ILEC's local serving area, and are used for carrying interconnection or UNE traffic or access traffic under § 251 of the Act. Any matters related to Entrance Facilities must be covered under a separate written interconnection agreement between the parties or ordered from an applicable tariff.

**2.4.2** Neither this Agreement nor any License allows or will be deemed to allow Licensee to interconnect Licensee Attachments with the equipment, facilities or network of Licensor or of any other user or occupant of the Pole. Any interconnection arrangements between Licensor and Licensee must be authorized pursuant to a separate written interconnection agreement under § 251 of the Act. Any interconnection arrangements between Licensee and any other user or occupant of a Pole (other than Licensor and End Users) must be approved in advance by Licensor, such approval to be at Licensor's sole discretion.

**ARTICLE 3: POINTS OF CONTACT, NOTICE, BILLING AND ELECTRONIC INFORMATION**

**3.1 Points of Contact and Notice.**

**3.1.1** The points of contact listed in this Section 3.1.1 ("Points of Contact") will serve as the respective Licensor and Licensee representatives responsible for addressing and handling all operational issues regarding this Agreement. Whenever any notice, consent, approval, request, document, demand, authorization and the like or notice of default is required or permitted under this Agreement (collectively, "Notice"), the Notice must be in writing (except for oral notice specifically allowed under this Agreement, if any). Subject to Section 3.1.2 and Section 3.3, all Notice must be delivered in person, by United States certified mail, return receipt-requested, postage prepaid or by a nationally recognized overnight courier service to the Points of Contact at the following addresses:

**Points of Contact**

<b>Licensee</b>	<b>Licensor</b>
1. Jim Grass Vice President and Corporate Counsel 877-990-7070 <a href="mailto:legal@mobilitie.com">legal@mobilitie.com</a>	Donald Peat Joint Use Manager 702-244-4816 <a href="mailto:Donald.P.Peat@centurylink.com">Donald.P.Peat@centurylink.com</a>
2. Victoria Cardona Operations Manager 949-999-5767 <a href="mailto:assetmgmt@mobilitie.com">assetmgmt@mobilitie.com</a>	
Address : 2220 University Drive Newport Beach, CA 92660	Address: 120 S Animas Street Trinidad, CO 81082

If applicable, the parties will give oral Notice to each other's respective Points of Contact using the above listed phone numbers, to be followed up as soon as is reasonably possible with written Notice.

**3.1.2 Copies of All Legal Notices.** In addition to delivering default Notice to the Points of Contact, copies of all legal Notices must be delivered to the parties at the following addresses. Legal Notices will not be sent using ENS.

If legal Notice to Licensee:

Mobilitie, LLC  
660 Newport Center Drive  
Suite 200  
Newport Beach, CA 92660  
Attention: Legal Department

and

Mobilitie, LLC  
660 Newport Center Drive  
Suite 200  
Newport Beach, CA 92660  
Attention: Asset Department

If legal Notice to Licensor:

Qwest Corporation d/b/a/ CenturyLink QC  
Real Estate Transactions and Analysis (RETA)  
600 New Century Parkway  
RETA 2C CORE  
New Century, KS 66031  
Attn: Real Estate Manager

**3.2 Notice Effective Date and Change of Address.** If Notice is given by personal delivery, a receipt indicating that personal delivery was made must be obtained. Notice will be deemed effective on the date of receipt by the addressee as shown on the receipt if given by personal delivery, on the return receipt if Notice is given by certified mail or the confirmation of delivery form if Notice is given by overnight courier service. Oral Notice will be deemed effective upon its receipt. Rejection or refusal to accept Notice or the inability to deliver Notice because of a changed address (or, in the case of oral notice, a changed phone number) of which no Notice was given will be deemed to be receipt of the Notice as of the date of rejection, refusal or inability to deliver. Either party may change its address and contact information in Sections 3.1.1, 3.1.2 or 3.4.1 by giving Notice of such change to the other party in the manner for giving Notice prescribed in Section 3.1.1.

**3.3 Electronic Notification System.** Licensor may, in its sole discretion, require Licensee to provide any information, notice, consent, approval, request, document, demand or authorization and the like required or permitted under this Agreement, including Applications, using ENS, and any such matters given by a party using ENS will be deemed to be given in writing for purposes of this Agreement. If Licensee fails to comply with this requirement, Licensee will be responsible for Licensor's Costs incurred to process the information, including Costs for manual data entry, developing an electronic interface and ensuring the integrity of the information provided.

**3.4 Billing, Payment, Non-Sufficient Funds, Costs of Collection and Partial Payment.**

**3.4.1** All invoiced payments and other payments due and payable under this Agreement, including payments for Annual License Fees, must be paid by paper check or electronically via wire transfer. Payment in cash or by credit card is not allowed. Licensor may ignore and refuse to accept any payment by cash or credit card made by Licensee, and ignore or refuse to accept any effort by Licensee to pay by cash or credit card. If payment is made by paper check, such check must be delivered by United States certified mail, return receipt-requested, postage prepaid, by a nationally recognized overnight courier service or by regular United States first class mail, postage prepaid, to the parties at the following respective addresses (each a party's "Billing Address"):

If to Licensee:

Mobilitie, LLC  
660 Newport Center Drive  
Suite 200  
Newport Beach, CA 92660  
Attn: Accounts Payable

If to Licensor:

CenturyLink  
P.O. Box 2348  
Seattle, WA 98111 2348

**3.4.2** In addition to any other rights or remedies to which Licensor is entitled under this Agreement, at law or in equity, Licensor may: (a) charge Licensee the Cost of any reasonable fee charged to Licensor for any Licensee payment checks returned for non-sufficient funds; and (b) recover from Licensee all out of pocket costs incurred by Licensor in collecting any outstanding payments from Licensee not otherwise included in the Annual License Fee.

**3.4.3** Licensee's partial payment of any monetary obligation owed to Licensor under this Agreement will not constitute payment in full of such monetary obligation, and is therefore subject to being a "Licensee Default" under Section 17.1 (a). If Licensor elects, in its sole discretion, to accept any partial payment, such acceptance will not constitute: (a) Licensor's waiver of or release of any amount owed, or of any rights or remedies to which Licensor is entitled under this Agreement, at law or in equity; or (b) an accord and satisfaction.

**ARTICLE 4: LICENSEE AUTHORIZATION**

**4.1 Authorization.** Licensee is solely responsible for obtaining and maintaining all necessary licenses, authorizations, permits, franchise agreements, Rights-of-Way, easements, rights, underlying rights, permissions and consents from any governmental or public authority or any private individual or entity, and if applicable from any Joint Owner or Existing Attachers, as may be required so that Licensee can place, use



or maintain its Attachments whether on Licensor's Poles or on the ground (collectively, "Authorization"). Authorization includes Licensee obtaining the necessary real property interest for any Attachment that is to be used on, placed within or requires the entering onto of private property or a public street, highway or other public thoroughfare. Each necessary Authorization must be in writing, and if an Application is submitted that requires an Authorization, Licensee must submit copies of the Authorization along with its Application. Submitting copies of an Authorization to Licensor will constitute Licensee's representation and warranty that it has the proper Authorization to place, use or maintain its Attachment. It will be a Licensee Default if Licensee obtains a License for an Attachment that required an Authorization, and Licensee failed to obtain the Authorization. Licensor will reasonably cooperate with Licensee in Licensee's efforts to obtain an Authorization. Provided further, Licensee shall bear sole responsibility for outreach related to complaints or concerns arising from any governmental or public authority or any private individual or entity, related to its Attachments, including timely responding to complaints regarding Attachments, their size, placement, condition or otherwise (a "Complaint").

**4.2 Indemnification.** Licensor will not be liable to Licensee if Licensee is prevented from placing, maintaining or continuing an Attachment due to Licensee's failure to obtain an Authorization, or due to revocation or termination of an Authorization. Licensee will indemnify, hold harmless and defend Licensor, Licensor's parent, subsidiaries and affiliates and their respective directors, officers, employees and agents (Licensor and the foregoing, each a "Licensor Indemnitee") from and against any and all claims, suits, judgments, liens, actions, damages, demands, settlements, penalties, assessments, fines, obligations, losses, liabilities, costs, interest, expenses, disbursements and fees, including, but not limited to, attorneys' fees and litigation expenses (collectively, "Damages"), for a claim by a third party against a Licensor Indemnitee arising from or related to Licensee's failure to obtain or comply with an Authorization, or the revocation or termination of an Authorization. For the purpose of this Section 4.2, "Damages" will include Licensor's Cost of relocating Licensor Facilities and of defending Licensor's rights to and in any Right-of-Way granted to Licensor.

**4.3 Revocation of Authorization.** If an Authorization is revoked, expires or terminates for any reason after an Attachment for which an Authorization is required is made and for which Licensor granted a License, the License will be automatically revoked, effective the day the Authorization is revoked, expires or terminates, provided that if Licensee is in the process of challenging any revocation, expiration or termination, the Licensee may maintain its Attachments throughout such challenge, if legally permitted by order of the court before which Licensee's challenge is pending, and thereafter, if such challenge is successful. Otherwise, Licensee will remove the Attachments covered under the revoked License in accordance with Article 10. In any event, Licensee will indemnify, defend and hold each Licensor Indemnitee harmless from and against any Damages arising from or related to Licensee's actions or failure to act under this Section 4.3.

**4.4 Denial of Application.** If an Authorization is revoked, expires or terminates for any reason after an Application is made for which the Authorization is required, but before Licensor approves the Application, Licensor may deny the Application, unless the Licensee is challenging such revocation, expiration or termination and has obtained a court order legally permitting the Attachments, as provided in Article 4.3.

## **ARTICLE 5: APPLICATION AND ATTACHMENT PROCESS**

**5.1 Application.** Before making an Attachment, Licensee must submit to Licensor a completed Application for the desired Attachment. Licensor may treat multiple Applications from Licensee as a single

Application when the Applications are made within 30 days of each other. Note that power supply cabinets can only be attached to Poles no taller than forty-five feet above ground, and only to Poles that can lawfully and safely be reached by bucket truck.

**5.2 Stage I-Response to Application and Survey.** For an Application to make Attachments up to the lesser of 300 Poles or 0.5% of Licensor's Poles located in the State of Utah, Licensor will provide a written response to each completed Application within 45 days of Licensor's receipt of the Application ("Stage I Timeline"). Licensor may extend the Stage I Timeline in its reasonable discretion by 15 days for a Large Attachment Order, which consists of orders up to the lesser of 5% of Poles within the state or 3,000 Poles. For orders greater than 3,000 Poles, the parties will negotiate in good faith regarding the timeframe for completing the Application. If Licensor denies the Application, it will do so within the applicable timeframes and describe in detail how the denial relates to insufficient capacity, or safety, reliability and generally applicable engineering standards. If a request for access is denied, Licensee will nonetheless pay Licensor for the Survey Cost.

**5.3 Stage II - Estimate.** Where a request for access is conditionally approved and Licensor determines that Make Ready Work is required, Licensor will, within 14 days of the expiration of the Stage I Timeline (this 14 Day period, "Stage II Timeline") give notice to Licensee containing an estimate of Make Ready Work Costs ("Make Ready Notice"). If Licensee's own contractor has performed a Survey pursuant to Article 5.7.2, and the same is provided to Licensor before Licensor has provided Make Ready Notice, Licensor will provide Make Ready Notice to Licensee within 14 days of its receipt of Licensee's Survey. Licensor may actively withdraw any Make Ready Notice beginning 14 days after it has provided Licensee with the Make Ready Notice.

**5.3.1 Capacity Determination.** Licensee agrees to pay Licensor's contractor's Costs for performing a per pole space and loading analysis and to abide by the contractor's reasonable determinations regarding whether a Pole must be replaced to accommodate the Attachment.

**5.4 Stages III - Licensee Acceptance.** If Licensee accepts the estimate in the Make Ready Notice and elects to proceed with making the Attachment after receipt of the Make Ready Notice, then at any time thereafter (but in no event longer than 14 days after its receipt of the Make Ready Notice), Licensee will give notice to Licensor that it has accepted the Make Ready Notice and that it is agreeable to the Make Ready Work and will include in the notice payment for the estimated Make Ready Work Cost ("Make Ready Acceptance"), and by doing so, Licensee is obligated to pay for all final Make Ready Work Cost (which will include any Survey Cost) or will be reimbursed for any over-charge, if the final Make Ready Work Cost is less than the amount of the estimated Make Ready Work Cost. If Licensee fails to timely deliver the Make Ready Acceptance, Licensor may deny the Application, and Licensee will pay for any Survey Cost within 45 days of the invoice date for an invoice sent to Licensee for the Survey Cost.

**5.5 Stage IV - Make Ready Work Timeline.**

**5.5.1** For an Application to make Attachments to up to the lesser of 300 Poles or 0.5% of Licensor's Poles located in the State of Utah and that will be placed in the Communications Space and does not include pole top antennas, Licensor will complete Make Ready Work no later than 60 days from the date it sends the "Communications Space Notice" (as defined in Section 5.6). For an Application to make Attachments in which the proposed configuration includes pole top antennas and which covers up to the lesser of 300 Poles or 0.5% of Licensor's Poles located in the State of Utah and that will be placed above the Communications Space, Licensor will complete Make Ready Work no later than 90 days from the date it sends the "Above Communications Space Notice" (as defined in Section 5.6). Licensor may add 45

days to the Make Ready Work completion periods set forth in this Section 5.5.1 for any Large Attachment Order. The foregoing timelines are also subject to Licensor's rights under Sections 5.5.2 and 5.5.3.

**5.5.2** Licensor may deviate from the timelines for Make Ready Work performance if during the performance of Make Ready Work good and sufficient cause exists that renders it infeasible for Licensor to complete the Make Ready Work with the proscribed timeline. If Licensor so deviates, it will immediately give notice to Licensee and any affected Existing Attachers and Joint Owners, stating the reason for, date and duration of the deviation. Licensor will deviate from the proscribed timelines for a period of no longer than necessary, and will resume Make Ready Work performance without discrimination when Licensor returns to routine operations.

**5.5.3** If Make Ready Work is not completed by Existing Attachers by the dates specified in the Communications Space Notice, Licensor, prior to the expiration of the period in which Make Ready Work was to be completed, may notify Licensee that it intends to exercise its right to complete all remaining Make Ready Work itself within an additional 15 days, and if the Make Ready Work remains unfinished at the end of the 15 day extension, Licensee may assume control of the Make Ready Work, using Approved Contractors pursuant to Section 5.7.3.

**5.6 Make Ready Work Notice to Existing Attachers and Joint Owners.** Upon receipt of payment from Licensee for the estimated Make Ready Work Cost: (1) for Attachments to be placed in the Communications Space, Licensor will immediately give notice to all known Existing Attachers and Joint Owners, if any, that contains the following information ("Communications Space Notice"): (a) where and what Make Ready Work will be performed; (b) a date for completion of Make Ready Work that is no later than 60 days after such notice is sent (or 105 days in the case of a Large Attachment Order); (c) advise that any Existing Attacher may modify its attachment consistent with the specified Make Ready Work before the date set for completion; (d) advise that Licensor may assert a right to 15 additional days to complete Make Ready Work; (e) advise that if any Make Ready Work is not completed by the completion date set by Licensor (or 15 days later if Licensor has asserted its 15 day right to complete Make Ready Work, as set forth in Section 5.5.3), Licensee may itself complete the specified Make Ready Work; and (f) the name, telephone number and email address of a person to contact for more information about the Make Ready Work procedure; and (2) for Attachments to be placed above the Communications Space, Licensor will immediately give notice to all known Existing Attachers and Joint Owners, if any, that contains the following information ("Above Communications Space Notice "): (a) where and what Make Ready Work will be performed; (b) a date for completion of Make Ready Work that is no later than 90 days after such notice is sent (or 135 days in the case of any Larger Attachment Order); (c) advise that any Existing Attachers may modify its attachment consistent with the specified Make Ready Work before the date set for completion; (d) advise that Licensor may assert a right to 15 additional days to complete Make Ready Work, as set forth in Section 5.5.3; and (e) the name, telephone number and email address of a person to contact for more information about the Make Ready Work procedure.

**5.7 Approved Contractors for Survey and Make Ready Work.**

**5.7.1** Licensor will create and keep up-to-date a reasonably sufficient list of Approved Contractors, and will make the list available to Licensee.

**5.7.2** For any Application requesting Attachments to the Communications Space for which Licensor did not timely respond as required in Section 5.2, Licensee may hire an Approved Contractor to complete the Survey.



**5.7.3** For any Application requesting Attachments in the Communications Space for which Make Ready Work is required, and such Make Ready Work is not completed by the timelines set forth in Sections 5.5 and 5.6, Licensee may hire an Approved Contractor to complete the Make Ready Work: (a) immediately, if Licensor has not notified Licensee that it is asserting its right to perform the remaining Make Ready Work and that it will do so; or (b) after 15 days has passed from if Licensor has asserted its right to perform Make Ready Work by the date specific in the Communications Space Notice, and has failed to complete such Make Ready Work .

**5.7.4** If Licensee hires an Approved Contractor pursuant to Sections 5.7.2 and 5.7.3, Licensee will provide Licensor with a reasonable opportunity for Licensor to accompany Approved Contractor while it performs the work, and to consult with both the Approved Contractor and Licensee regarding the work.

**5.7.5** Licensee is liable for the work, acts or omissions of the Approved Contractors it hires and for all payment owed to such Approved Contractors. Licensor may order the immediate suspension of construction or installation activities by Licensee or its Contractor if Licensor, in its sole discretion and judgment, deems such action necessary for reasons of safety, engineering, service reliability, or property owner complaint. Licensee will indemnify, hold harmless and defend each Licensor Indemnitee from and against any Damages for a claim by an Approved Contractor hired by Licensee against a Licensor Indemnitee arising from or related to the Approved Contractor performing work on Licensee's behalf, the work itself or Licensee's failure to pay money it owes to the Approved Contractor.

**5.7.6** For all other work Licensee is to perform under this Agreement, Licensee may enter into an agreement with an Approved Contractor to perform such work on Licensee's behalf, including work relating to Attachments, Transferring, Rearranging and removing Attachments. Licensee is liable for the work, acts or omissions of the Approved Contractors it hires, and for all payment owed to such Approved Contractors. Licensee will indemnify, hold harmless and defend each Licensor Indemnitee from and against any Damages for a claim by an Approved Contractor hired by Licensee against a Licensor Indemnitee arising from or related to the Approved Contractor performing work on Licensee's behalf, the work itself or Licensee's failure to pay money it owes to the Approved Contractor.

**5.8     Completion of Make Ready Work.** Once all required Make Ready Work has been completed, the party completing the same will notify the other party of the completion. If Licensor performed the Make Ready Work, its notice of completion will be accompanied by an invoice for all final Make Ready Work Cost (including the Costs for the calculations associated with the capacity determination), the same being due and payable within 45 days of the date of the invoice. Licensor will issue the approved Application for the Attachment upon receipt of payment for the Make Ready Work Costs or, if applicable, upon receipt of completion notice from Licensee. Licensee will neither make an Attachment nor begin work at Licensor Facilities in furtherance of an Attachment until it has paid the Make Ready Work Cost, been notified by Licensor that all Make Ready Work has been completed or, if applicable, notified Licensor that it has completed all Make Ready Work, and has received approval of the relevant Application.

**5.9     Attachment Completion and Identification of Attachment.**

**5.9.1** Licensee must complete its Attachment within 120 days of its receipt of a Licensor-approved Application. Licensor may in its sole discretion, grant a longer period of time upon request of Licensee. Within 15 days after completion of the Attachment, Licensee will give written notice to Licensor that it has completed its Attachment using the form attached to this Agreement as Exhibit A ("Wireless Pole Application"). If Licensee does not complete its Attachment within the 120 day period or any extension thereof, the License granted for the Attachment will be automatically revoked upon the expiration of the



applicable period. Licensee is not entitled to a refund of any Make Ready Survey Charge or Make Ready Work Costs it previously paid for the incomplete Attachment.

**5.9.2** Each Attachment must have a tag or similar item affixed to it that clearly and conspicuously identifies Licensee as the owner of the Attachment with a telephone number, and be done in a manner that allows Licensor or its agents to readily identify from the ground that the Attachment belongs to Licensee.

**5.9.3** Licensee shall maintain accurate, up-to-date location maps and records of all its Licensee Attachments on Licensor's Poles. Licensor shall have the right to inspect, and upon request, obtain a copy of said location maps and records at any time during regular business hours with reasonable notice and at no cost to Licensor.

**5.10 Initial Post-Attachment Inspection.** Licensor may, in its sole discretion, perform an inspection of each Attachment after its initial completion to see if it is in compliance with the Specifications listed in Article 7 ("Initial Post-Attachment Inspection"). Licensor must perform any Initial Post-Attachment Inspection within 90 days of receipt of Licensee's Completion Notice for the Attachment. If Licensor decides to conduct an Initial Post-Attachment Inspection, Licensor will: (a) notify Licensee of that decision; (b) give Licensee or its representative the opportunity to be present for the Initial Post-Attachment Inspection; and (c) invoice Licensee for the actual costs of the inspection ("Initial Post-Attachment Inspection Fee"). Licensee will pay the Initial Post-Attachment Inspection Fee within 45 days of the invoice date. If the Initial Post-Attachment Inspection reveals that an initial Attachment is a Noncompliant Attachment, the Noncompliant Attachment will then be subject to the Noncompliant Attachment provisions of Article 12. Licensor's Initial Post-Attachment inspection shall not excuse Licensee's non-compliance with NESC or the Specifications, or with applicable federal, state and/or local law.

**5.11 No Overlapping.** No overlapping of Licensee Attachments is contemplated or permitted under this Agreement.

**5.12 Work Danger.** The parties acknowledge that in exercising its rights under this Agreement, including making Attachments, Licensee, its employees, agents, Approved Contractors, contractors and subcontractors will necessarily be required to work near, adjacent to and in the vicinity of electrically energized lines, transformers or equipment of Licensor or others located on or around Licensor Facilities, and it is the parties' intention that the energy from the same will not be interrupted, except in an emergency situation that poses the risk of death or serious injury to people or property. Licensee is fully and solely responsible for ensuring that its employees, agents, Approved Contractors, contractors and subcontractors have the necessary skill, knowledge, training and experience in order to protect themselves, their fellow employees, Licensor's employees, agents and contractors as well as the general public from harm or injury while exercising Licensee's rights under this Agreement, including making Attachments. Licensee represents and warrants to Licensor that it is apprised of, conscious of and understands the imminent dangers inherent in the work necessary to exercise its rights under this Agreement, including making Attachments, and Licensee will as its sole duty and responsibility notify and inform and continue to notify and inform its employees, agents, Approved Contractors, contractors and subcontractors of such dangers. Furthermore, Licensee acknowledges that it is ultimately responsible for the actions of its employees, agents, Approved contractors, contractors and subcontractors, and as such will ensure that the same maintain insurance coverage in the manner required of Licensee under Article 18.

**5.13 Non-interference.** Licensee will place and maintain its Attachments at its own expense and in such a manner so as to not interfere with work being performed by or service being provided by Licensor, Joint Owners or Existing Attachers. To the extent required by FCC rules, Licensee will install appropriate

signage to notify workers and third parties of the potential exposure to RF emissions. Such signage will be placed at eye level.

**5.14 Power Supply Cabinets.** Licensee is prohibited from attaching any power supply equipment or battery back-ups on a Pole that cannot be lawfully and safely reached by bucket truck. As an alternative, provided Licensee has Right-of-Way for same, and Licensor's approval pursuant to this Agreement, Licensee may place any allowed power supply cabinets adjacent to a Pole as specified in Exhibit F.

**ARTICLE 6: MATTERS AFFECTING LICENSE OR APPROVAL**

**6.1 Safety, Reliability and General Engineering Principles.** Licensor may deny access because of insufficient Licensor Facility capacity or for reasons of safety, reliability or general engineering principles.

**6.2 Licensor Service Obligations and No Duty to Construct.**

**6.2.1** Licensor's right to locate, maintain and operate Licensor Facilities to fulfill its own service obligations is in no manner limited by this Agreement.

**6.2.2** Nothing in this Agreement will compel or be construed as compelling Licensor to construct, retain, extend, place, replace, restore or maintain any Licensor Facilities that Licensor needs or does not need for its own service requirements, business or operations, or to approve an Application that would require Licensor to construct, retain, extend, place, replace, restore or maintain any Licensor Facilities, except as otherwise required by Applicable Law.

**6.3 Other Agreements.** Nothing in this Agreement limits, restricts or prohibits Licensor from continuing or entering into any other agreement or arrangement regarding the use of Licensor Facilities.

**6.4 Joint Owners and Existing Attachments.** The rights of Licensee under this Agreement are at all times subject to existing agreements or arrangements between Licensor and any Joint Owners or Existing Attachments.

**6.5 Licensee Only.** Except as otherwise permitted by Applicable Law, only Licensee is allowed to make Attachments under this Agreement. Nothing in this Agreement will permit or be construed as permitting any person or entity other than Licensee to make Attachments, including any Licensee parent, affiliate or subsidiary, except as otherwise permitted by Applicable Law. For purposes of clarity and the avoidance of doubt, the Attachments made by Licensee under this Agreement may include equipment owned by Licensee's parent, affiliate, subsidiary, or End User.

**6.6 Specific Parts of Licensor Facilities.** Except as may be required by Applicable Law: (a) nothing in this Agreement grants Licensee the right to attach to or occupy any specific part of Licensor Facilities, including any specific part of a Pole, Anchor or Right-of-Way, or compels Licensor to grant Licensee the right to attach to or occupy any specific part of Licensor Facilities; and (b) Licensor may determine and assign the location on a Licensor Facility where Licensee's Attachments are to be made. Once Licensee's Attachment is assigned a location, Licensee cannot relocate its Attachment unless a change is first sought and approved in accordance with the Application and Attachment process of Article 5, except as provided for in Article 8.1.

**6.7 No Ownership or Property Rights.** Licensee's use of Licensor Facilities under this Agreement, however extended, or payment of fees or charges required under this Agreement, does not create or vest in Licensee any ownership or property rights in Licensor Facilities, or any of Licensor's other

real or personal property. Licensee's rights are limited to a License for the Attachment in strict compliance with the terms and conditions of this Agreement.

**6.8 Loss of Property Rights.** Licensors may deny an Application if, in Licensors' sole but reasonable discretion, a proposed Attachment could result in Licensors' forfeiture of a Right-of-Way or other right to occupy property on which Licensors Facilities are located. Prior to denying the Application, the parties will work together in good faith to resolve the issue relating to such forfeiture for up to 60 days and the Stage I Timeline set forth in Section 5.2 will be extended accordingly, but no Attachment will be allowed unless and until the matter is resolved to Licensors' sole but reasonable discretion.

**6.9 Unpaid Monetary Obligations.** Licensors may refuse to consider or may deny an Application as long as any of Licensee's monetary obligations due and payable to Licensors under this Agreement remain unpaid. However, Licensors may not refuse to consider or deny an Application because of such unpaid monetary obligation if Licensee has invoked and is in compliance with Section 13.5 regarding the unpaid monetary obligation.

**6.10 Pole Attachment Bond and Evidence of Insurance.** Licensors may refuse to consider an Application for which the bond requirements of Section 14.1 have not been met or if Licensee has not delivered the Evidence of Insurance required under Section 18.5.

**6.11 Noncompliant and Unauthorized Attachments.** Licensors may refuse to consider any Application until Licensee has, in accordance with Article 12, brought any Noncompliant Attachment into compliance or removed it, or has removed any Unauthorized Attachment or made Application for it.

## **ARTICLE 7: SPECIFICATIONS**

**7.1** Each Attachment must be placed, maintained and operated throughout the Term in accordance with the following, all of which are incorporated by reference into this Agreement (collectively, "Specifications"): (a) the requirements and specifications of the most current edition of the NESC and any formal interpretations of it, including a determination of the strength of the Licensors Facilities to ensure sufficiency for transverse and vertical loads; (b) the most current rules and regulations of the Occupational Safety and Health Act ("OSHA"), including any formal interpretations of it, including determinations related to radio frequency omissions; (c) the most current standards of the American National Standards Institute; (d) the rules, regulations and codes of any applicable governing authority; (e) any Applicable Law; (f) generally accepted industry standards, including those standards applicable to wind movement and ice load on aerial facilities; (g) Licensors' reasonable written specifications, Exhibit F, an Application, drawing, text or other writing, including any requirements for the location of an Attachment; and (h) the grounding specifications as set forth on Exhibit B attached to this Agreement ("Grounding Specifications"). If a conflict exists between any of the Specifications, the more stringent Specification will apply and control.

**7.2** Each Pole location containing a Licensee Attachment shall have a power ON/OFF switch accessible by Licensors installed on the Cabinet/stub pole that will terminate the transmission of radio frequency when turned to the OFF position. The position of the ON/OFF switch shall be accessible to Licensors and clearly marked by Licensee. Licensee shall provide a 24-hour toll-free telephone number to allow for immediate cessation of transmission of radio frequency. Except in the case of emergency, Licensors will provide reasonable advance notice of the need to power down a Licensee Attachment.

**7.3** All approved equipment attached pursuant to this Agreement shall be confined to the same one-quarter vertical section of a pole (*i.e.*, a quad), with all cables connecting equipment enclosed and the enclosures attached to the Pole in the same quad. Notwithstanding the foregoing, if required by Licensee

and as approved by Licensor, Licensee shall be permitted to install antennas and other approved equipment at the top location (upper 2 feet) of a Pole as illustrated in Exhibit G. In such event the installation shall be above any other third party installations, a minimum of 12 inches above the highest attachment and not restricted to the aforementioned same one-quarter vertical section of the pole requirement. No Licensee Attachment shall conflict with the primary use or operation of Licensor's Poles by Licensor, and may not limit or prohibit Licensor's access to its attachments and thru-bolts, or by any third party with authorized attachments made to Licensor's Poles, including, but not limited to, Licensor's ability to provide a safe work environment for its employees and to provide a high quality communications service to its customers.

**7.4** Licensee shall not use any Licensee Attachment in a manner that would create any physical interference or radio frequency interference with the use or operation of Licensor Facilities or the facilities of third parties authorized by Licensor to occupy Licensor's Poles. If Licensor or a third party reasonably believes the use by Licensee of Licensor's Poles creates any such physical or radio frequency interference with the use or operation of its existing facilities, Licensee shall immediately repair, correct or abate the cause of said interference to the reasonable satisfaction of Licensor.

**7.5** In the event Licensee fails to abate an issue of interference within five (5) business days of notice for same, Licensor shall have the right to turn the Licensee Attachment off or, if necessary to alleviate the interference, remove the Attachment(s) in accordance with Article 10.

## **ARTICLE 8: MODIFICATIONS**

**8.1 Licensee-Requested Modification.** If Licensee desires a Modification, Licensee must adhere to the Application and Attachment process of Article 5 for each desired Modification. Each Modification requested by Licensee and approved by Licensor will be performed at Licensee's own expense and be done in a manner that does not interfere with work being performed by or service being provided by Licensor, Joint Owners or Existing Attachments. Notwithstanding anything else to the contrary in this Agreement, Licensee does not need to make an Application or obtain a modified License for the following types of matters, and such matters will not be within the definition of "Modification": (a) changes incident to routine or emergency maintenance, repair and replacement of Licensee Attachments, provided that any replacement involves replacing an existing Licensee Attachment with an Attachment that is the same as, substantially similar to, or smaller in weight and dimensions than the Licensee Attachment that is the original approved equipment design; (b) substituting internal components of a Licensee Attachment in a manner that does not result in any change to the external appearance, dimensions, or weight of the Licensee Attachment; or (c) removal of Licensee's Attachments, provided the removal is performed in compliance with Applicable Law and Article 10. In addition to any reimbursement of Costs required under Article 5, Licensee will pay any additional Costs incurred by Licensor that are solely related to a Licensee-requested Modification.

### **8.2 Licensor-Required Modification.**

**8.2.1** Licensor may at any time and for any reason require Licensee to conduct a Modification. Except as otherwise required in this Agreement or by Applicable Law, Licensee will perform any Licensor-requested Modification for and on the account of Licensor within 60 days of its receipt of Licensor's notice regarding the Modification (including any required Transfer notice using the form attached as Exhibit A). Upon completion of the Modification, Licensee will notify Licensor of the same. Licensee will not be required to submit an Application under Article 5 for the Licensor-requested Modification. If Licensee cannot conduct a Modification to meet any applicable timing requirements of Licensor, to the extent



consistent with Applicable Law, Licensor may perform Licensee's Modification at Licensee's sole Cost. Licensee will not be required to conduct any Make Ready Survey or Make Ready Work in connection with a Licensor-requested Modification. If the Modification required by Licensor can reasonably be expected to take more than 60 days to implement, then Licensor and Licensee will agree upon a reasonable extension of the initial 60-day time period.

**8.2.2** When Licensor requires Licensee to conduct a Modification or Attachment removal due to, in Licensor's sole discretion, an immediate safety threat or emergency, Licensor will make a reasonable effort to notify Licensee of the need for an emergency Modification or Attachment removal so that Licensee can complete the required work. Such notification may be given orally by Licensor to Licensee's Point of Contact. If the safety threat or emergency arose because of Licensee's actions or Attachment, Licensee will conduct the Modification or Attachment removal at its sole Cost. If Licensor's reasonable efforts to give Licensee notice are not successful, or if Licensee, after receipt of such notice, does not immediately dispatch personnel and conduct the Modification or Attachment removal, then Licensor may conduct the Modification or Attachment removal itself and will, within a reasonable period of time after completion, give Licensee notice of the Modification or Attachment removal. Licensor will conduct the Modification or Attachment removal at its own Cost, unless the safety threat or emergency arose because of Licensee's actions or Attachment, in which case Licensee will reimburse Licensor for the Cost of the Modification or Attachment removal within 45 days of the invoice date for an invoice from Licensor for the Cost.

#### **ARTICLE 9: PROPERTY SUBJECT TO FORFEITURE**

**9.1 Forfeiture.** If a License is granted and subsequently Licensor, in Licensor's sole discretion, believes that the Attachment made under that License could result in or actually results in a forfeiture of Licensor's rights to occupy the property on which Licensor Facilities are located, Licensor may revoke the License for the relevant Attachment. Licensor will send notice of revocation to Licensee and upon receipt of notice, Licensee will immediately remove its Attachment at its own cost and expense. If the Attachment is not immediately removed, Licensor may remove the Attachment without liability to Licensee. In that case, Licensee will reimburse Licensor for the removal Cost within 45 days of the invoice date for an invoice from Licensor for the Cost. Notwithstanding the foregoing, to the extent Licensee or Licensor is challenging the revocation and Licensee is legally entitled to maintain its Attachments during such challenge by order of the court before which such challenge is pending, Licensee shall not be forced to remove its Attachment unless such challenge is ultimately unsuccessful. In any event, Licensee will indemnify, defend and hold each Licensor Indemnitee harmless from and against any Damages arising from or related to Licensee's actions or failure to act under this Section 9.1.

#### **ARTICLE 10: REMOVAL OF ATTACHMENTS**

**10.1 Removal.** In addition to and subject to other provisions in this Agreement requiring Licensee to remove Attachments, Licensee will, unless notified otherwise by Licensor, remove Attachments at its own expense within 60 days of: (a) Licensee's receipt from Licensor of any notice to remove under authority granted to Licensor under this Agreement; (b) the date the License covering the Attachment is revoked; or (c) the date this Agreement expires or terminates.

**10.2 Removal Notice.** When Licensee desires to remove an Attachment, which Licensee may do at its sole discretion, be it permanently or as part of a Modification, or if Licensee is required under this Agreement to remove an Attachment, Licensee must provide ten days advance notice to Licensor of when the removal is to occur using the form attached to this Agreement as Exhibit A. If this Agreement requires

immediate removal of Attachments, Licensee may give oral notification to Licensor's Point of Contact of when the removal will occur as far in advance of the removal as is reasonably possible. Licensee must give notice to Licensor that an Attachment has been removed using the form attached to this Agreement as Exhibit A. Licensee's obligations under this Agreement to remove Attachments will survive the expiration or termination of this Agreement and any License revocation.

**10.3 Failure to Remove.** If Licensee fails to remove an Attachment as required under this Agreement and such failure continues for a period of more than ten days following Licensee's receipt of written notice from Licensor, Licensor may remove and dispose of the Attachment without any liability on Licensor's part for damage to Attachments or the real or personal property of Licensee or any other person, or for any interruption of Licensee's services; provided, however, Licensor will be liable for any physical injuries to persons (other than employees of either party or of a contractor or subcontractor if covered under Section 18.5) to the extent such injuries are caused by its negligence or intentional misconduct in removing an Attachment. Licensee will reimburse Licensor for Licensor's Cost to remove and dispose of the Attachments and to repair any damage to any Licensor Facility caused by such removal within 45 days of the invoice date for an invoice from Licensor for the Cost. Any Attachment which is not timely removed as and when required by this Agreement will be deemed conclusively to have been abandoned and may be appropriated, sold, stored, destroyed or otherwise disposed of by Licensor without notice to Licensee or any other person and without obligation to account for it. Licensee's obligation to observe and perform this covenant will survive the expiration or other termination of this Agreement.

**10.4 No Adjustment.** Licensee is not entitled to any adjustment, pro-ration or refund of Annual License Fees or other payments made to Licensor under this Agreement for Attachment removals after payment for the then current calendar year has been made. No Annual License Fee shall be owed by Licensee to Licensor with respect to a removed Attachment for any calendar year following the calendar year in which the Attachment is removed.

**10.5 Reattachment.** When an Attachment is removed, Licensee must adhere to the Application and Attachment process of Article 5 for any desired reattachment or new Attachment to the same Licensor Facility.

**10.6 Indemnification.** Licensee will indemnify, hold harmless and defend each Licensor Indemnitee from and against any and all Damages for a claim by a third party against a Licensor Indemnitee arising from or related to any removal of or failure to remove Attachments except to the extent such Damages are caused by the negligence or intentional misconduct of Licensor. Third party claims for Damages arising from interruptions in services provided by Licensee do not constitute claims caused by the negligence or intentional misconduct of Licensor and will be included in the foregoing indemnification of Licensor by Licensee.

**10.7 Return of Licensee Equipment.** If Licensor removes Licensee Attachments from Licensor Facilities under this Agreement, Licensor will return the Licensee Attachments to Licensee only upon Licensee's payment of the Cost of removal, storage and delivery, and all other amounts due and owing to Licensor under this Agreement.

## **ARTICLE 11: POLE ABANDONMENT AND PURCHASE**

**11.1 Pole Abandonment and Purchase.** If Licensor intends to abandon a Pole on which Licensee has an Attachment and for which Licensee is the sole remaining user, Licensor will give notice to Licensee of its intention at least 60 days prior to the date it intends to abandon the Pole using the form

attached to this Agreement as Exhibit C ("Abandonment Notice"). Licensors may offer to sell to Licensee any poles set forth in such Abandonment Notice, and if Licensee agrees to purchase such poles then the transaction shall be memorialized in a bill of sale.

**11.2 No Purchase.** If Licensee does not elect to purchase the Pole, any License previously issued for Attachments to the relevant Pole will automatically revoke upon the expiration of the 60 day period set forth in Section 11.1, and Licensee will then remove its Attachments from the relevant Pole in accordance with Article 10.

## **ARTICLE 12: UNAUTHORIZED AND NONCOMPLIANT ATTACHMENTS**

**12.1 Unauthorized Attachment Application and Removal.** If Licensors discover an Unauthorized Attachment, Licensors shall give notice of the Unauthorized Attachment to Licensee. Licensee will have 15 days from receipt of the notice to make an Application for the Unauthorized Attachment unless Licensors and Licensee mutually agreed in writing to a different timeframe. If no Application is received by Licensors within the 15 day time period or such other time period that is mutually agreed upon, Licensee must remove its Unauthorized Attachment in accordance with Article 10.

**12.2 Unauthorized Attachment Fee.** In addition to any other rights and remedies to which Licensors may be entitled for an Unauthorized Attachment at law, in equity or under this Agreement, Licensors may charge Licensee (a) an unauthorized attachment fee of \$500 per Pole for Attachments made without a pole attachment agreement, including Attachments made prior to the Effective Date of this Agreement, except as prohibited by Applicable Law; or (b) if Licensee is a party to a valid pole attachment agreement which was entered into prior to the date such Attachments were made, an unauthorized attachment fee of five times the current Annual License Fee per Attachment if the violation is self-reported or discovered through a joint Audit where Licensee had a reasonable opportunity to participate (a fee charged under clause (a) or clause (b) being an "Unauthorized Attachment Fee"). In addition to the Unauthorized Attachment Fee under clause (b), Licensors will be entitled to \$100 per Unauthorized Attachment if the violation is found by Licensors in an Audit in which the Licensee declined to participate provided that Licensee was given an opportunity to participate. All fees owed by Licensee under this Section 12.2 are due and payable in arrears.

**12.3 Noncompliant Attachment.** In addition to any other rights and remedies to which Licensors may be entitled for a Noncompliant Attachment at law, in equity or under this Agreement, if Licensors discover a Noncompliant Attachment and Licensors determines in its sole but reasonable discretion that such noncompliance is caused by Licensee, Licensors shall give notice of the Noncompliant Attachment to Licensee. Such notice must set forth in detail the specific violations of any Specifications. If the Noncompliant Attachment is a Licensee Attachment, Licensee must, at its own expense, either: (a) submit plans of correction within 60 days of receipt of notification of a Noncompliant Attachment or bring the Noncompliant Attachment into compliance and provide notice of the correction to the Licensors within 180 days of Licensee's receipt of the Noncompliant Attachment notice; or (b) remove the Noncompliant Attachment in accordance with Article 10. Licensee's failure to do either will be deemed an immediate revocation of any License granted for the Noncompliant Attachment and subject to removal in accordance with Article 10.

**12.4 Fees Due and Payable.** All fees and charges Licensee owes to Licensors under this Article remain due and payable regardless of whether the Unauthorized Attachment subsequently receives a License or is removed or the Noncompliant Attachment subsequently is cured or removed, and regardless of whether Licensors exercises any other right or remedy provided in this Agreement with respect to such Unauthorized Attachment or Noncompliant Attachment.

**12.5 No Effect of Delay or Failure of Notice.** Licensor's delay in giving or failing to give notice of an Unauthorized Attachment or a Noncompliant Attachment neither constitutes Licensor's acceptance of the Unauthorized Attachment or the Noncompliant Attachment, nor constitutes Licensor's waiver of any rights relative to the Unauthorized Attachment or the Noncompliant Attachment.

**12.6 No Retroactive Effect.** If a License is subsequently issued for an Unauthorized Attachment or a Noncompliant Attachment, the License will not operate retroactively or constitute a waiver of any of Licensor's rights relative to the Unauthorized Attachment or the Noncompliant Attachment. Licensee will be subject to all liabilities, obligations and responsibilities of this Agreement regarding an Unauthorized Attachment or a Noncompliant Attachment from their inception.

#### **ARTICLE 13: ANNUAL LICENSE FEE**

**13.1 Annual License Fee.** Licensee will pay Licensor an Annual License Fee determined by the amount of space (in total feet) occupied by Licensee's Attachments and multiplied by Licensor's then-current annual rate of attachment for communications providers as calculated under Applicable Law. For the representative attachment shown in Exhibit G hereto, for example, the parties agree the amount of space occupied is six (6) feet. To the extent that a Pole is jointly owned by Licensor and a Joint Owner, then the Annual License Fee paid by Licensee to Licensor for Attachments to such jointly owned Poles shall be reduced in a manner reflecting the agreement between the Licensor and the Joint Owner governing such jointly owned Poles and taking into account any fees paid by Licensee to the Joint Owner for attachments to such jointly owned Poles pursuant to an agreement between Licensee and the Joint Owner.

##### **13.2 Payment.**

**13.2.1** Licensee's obligation to pay an Annual License Fee will commence upon the date the Application for the Attachment subject to an Annual License Fee is approved ("Fee Commencement Date"). Subject to Sections 13.2.2 and 13.2.3, Annual License Fees are payable by Licensee annually in advance without any set-off or deduction. Licensor will invoice Licensee for Annual License Fees in January of each calendar year during the Term, and Licensee will pay the invoice within 45 days of the invoice date.

**13.2.2** Subject to Section 13.2.3, an Attachment approved at any time during a calendar year will be subject to the Annual License Fee for that entire calendar year and the Annual License Fee for that Attachment will initially be invoiced on the annual January invoice for the succeeding year. This amount is due and payable in arrears and is in addition to the Annual License Fee described in Section 13.2.1 that is paid in advance.

*As an example of how invoicing would work under Sections 13.2.1 and 13.2.2, assume the Fee Commencement Date for a particular Attachment is August 1, 2014. The first Annual License Fee for that Attachment would appear in the January, 2015 invoice. That invoice would reflect an Annual License Fee for that Attachment owed in arrears for the year 2014, as well as the Annual License Fee for that Attachment payable in advance for the year 2015. Subsequently, the Annual License Fee for that Attachment would be payable in advance each January at the then current Annual License Fee.*

**13.2.3** An Attachment approved after January 1 of the final calendar year of the Term will be subject to the Annual License Fee for that entire calendar year, and the Annual License Fee for that Attachment will be invoiced within 90 days of the day the Term expires or terminates. This amount is due and payable in arrears. Licensee's obligation to pay this amount will survive the expiration or termination of this Agreement.



**13.3 Fee Adjustment.** Recurring and nonrecurring charges for Attachments are in accordance with Section 224 of the Act and FCC orders, rules, and regulations promulgated under the Act. Licensor may adjust the Annual License Fee once per year by re-calculating recurring rates for pole attachments using the FCC rules and formulae found at 47 C.F.R. § 1, Subpart J and A.R.M.I.S data filed with the FCC, and shall adjust and recalculate the Annual License Fee as required by Section 20.2.1. Licensor will implement and bill the re-calculated rates without amending this Agreement. The adjusted Annual License Fee will become effective as of the next invoicing cycle. If Licensee objects to the fee adjustment and the parties cannot resolve the dispute between them, either party may seek resolution of such rate dispute at the FCC.

**13.4 Invoice Dispute.** Notwithstanding any other dispute resolution procedures that may be set forth in this Agreement, Licensee may dispute any amount for which it was invoiced by Licensor if: (a) Licensee has a reasonable good faith basis for the dispute; (b) Licensee has first paid the entire amount indicated in the relevant invoice, including the disputed amount, in full by the payment due date; and (c) within 120 days of its receipt of the invoice, Licensee has given notice to Licensor at its Billing Address describing in detail the dispute and its good faith basis for the dispute. If the preceding conditions are met, the parties will attempt to resolve the invoice dispute as set forth in this Section 13.4 below ("Invoice Dispute Resolution Process"). In accordance with 47 C.F.R. § 1.1404(k), within the 60 days after Licensee provides notice of the dispute (or Licensee or Licensor provides notice of a mistake or inaccuracy pursuant to Section 13.5), the parties shall hold executive level discussions. The executives must have authority to make binding decisions on behalf of the respective party. If, after the executive level discussions, the parties are unable to resolve the invoice dispute within such 60-day time period, a party may resort to any other right or remedy to which it is entitled under this Agreement, at law or in equity. Nothing in this Agreement shall, or shall be interpreted to, contractually waive or limit any rights provided to Licensee under Applicable Law.

**13.5 Inaccuracies.** If Licensor or Licensee discovers an inaccuracy or mistake in the factors used to calculate charges owed by Licensee to Licensor under this Agreement, including Annual License Fees, and that due to this inaccuracy or mistake Licensee owes or is owed additional money to or by Licensor, then (i) if the mistake or inaccuracy is in Licensee's favor and Licensee does not dispute the mistake or inaccuracy, whether or not an invoice was paid that purportedly included or should have included these additional charges, Licensee will owe these additional charges to Licensor and (ii) if the mistake or inaccuracy is in Licensor's favor and Licensor does not dispute the mistake or inaccuracy and Licensee has paid the inaccurate or mistaken invoice, Licensor will owe these additional charges to Licensee. Licensor may invoice Licensee for the additional charges, and the additional charges are due and payable in arrears. Licensee will pay the additional charges, within 30 days of the invoice date. Licensor may credit or offset amounts owed to Licensee or Licensor pursuant to this Section against future Licensee invoices. If Licensee and Licensor disagree regarding whether an invoice contains a mistake or inaccuracy, then either may pursue the Invoice Dispute Resolution Process set forth in Section 13.4.

**13.6 Procedures.** Licensor may periodically revise its invoicing and collection procedures, provided that any such revisions apply in a nondiscriminatory manner to all similarly situated attachers to Licensor's Poles. Licensor will provide reasonable advance notice to Licensee of the revisions.

**13.7 Inclusion in Annual Invoice.** Licensor may include in the Annual License Fees annual invoice any other charges then due and payable to Licensor from Licensee under this Agreement.

**ARTICLE 14: POLE ATTACHMENT BOND**

**14.1 Pole Attachment Bond.** Licensee will provide to Licensor a bond guaranteeing Licensee's performance of its obligations under this Agreement in the form attached to this Agreement as Exhibit D ("Pole Attachment Bond"). The amount of the Pole Attachment Bond will be \$3,000.00 per Pole. A cap on the amount of the Pole Attachment Bond may be set by Licensor in its sole discretion. The Pole Attachment Bond must be provided upon the Effective Date of this Agreement. Licensor may, in its reasonable discretion, change the Pole Attachment Bond requirements no more than once per calendar year upon at least 30 days prior notice to Licensee. The amount of the Pole Attachment Bond will not operate as a limitation upon any of Licensee's obligations under this Agreement.

**ARTICLE 15: RECORDS AND AUDIT**

**15.1 Licensee Service Area.** Licensee will identify the licensee service area using Exhibit E, or other mutually agreeable method to convey the boundary of the licensee's service area, which will include a listing of exchanges served to the extent applicable. Licensee may amend the licensee service area from time to time by providing Licensor with a revised version of Exhibit E, which revised version shall be incorporated herein.

**15.2 Maintenance of Records.** Licensee must compile and maintain current and accurate records consisting of the number of Attachments, the type and size of Licensee Attachment attached, when each Attachment was made, the location of each Attachment and all Licensor-approved Applications. Licensee will, at its sole expense and within 14 days after receipt of a request from Licensor, deliver to Licensor complete, accurate, current and legible copies of all such records. Licensee's obligations under this Section 15.1 will survive for a period of 7 years from the expiration or termination of this Agreement.

**15.3 Audit.** Annually during the Term, Licensor may, in Licensor's sole discretion, conduct an Audit. Licensor may, but is not required to, give advance notice to Licensee of its intent to conduct an Audit. An Audit may include the following matters: (a) checking for Unauthorized Attachments and Noncompliant Attachments of Licensee (and, in Licensor's sole discretion, those of Existing Attachments); or (b) checking the number of Attachments, when an Attachment was made, the type and size of Licensee Attachment attached and the location of Attachments (and, in Licensor's sole discretion, those of Existing Attachments). Licensee will reimburse Licensor for one-half of Licensor's total Audit Cost if the Audit does not include any Existing Attachments or for one-third of Licensor's total Audit Cost if the Audit includes any Existing Attachments.

**15.4 Records Adjustment.** If Licensor determines as a result of an Audit that the actual number of Attachments is not the same as the number reflected in Licensor's then current records, Licensor will share those figures with Licensee, the parties' records will be revised to reflect the actual number of Attachments and the revised records will be used by the parties for future invoicing and other matters related to those records.

**15.5 Non-Periodic Inspections.** Licensor also will have the right at any time to conduct a Non-Periodic Inspection of specific Licensor Facilities or Licensee Attachments that Licensor has notice are Noncompliant Attachments. If the Non-Periodic Inspection shows that the specific Licensee Attachments are Noncompliant Attachments, Licensee will reimburse Licensor for Licensor's total Non-Periodic Inspection Cost within 45 days of the invoice date for a Non-Periodic Inspection Cost invoice.

**ARTICLE 16: TERM, TERMINATION AND SALE OR TRADE.**

**16.1 Term.** This Agreement is effective on the Effective Date. The term of this Agreement will begin on the Effective Date and continue for a period of ten (10) years from the Effective Date ("Initial Term") and will automatically renew for five (5) successive terms of 5 years each (each a "Renewal Term"). Licensor or Licensee may terminate this Agreement at the end of the Initial Term or any Renewal Term by providing notice of termination at least one hundred eighty (180) days prior to the end of the Initial Term or relevant Renewal Term. The use of the word "Term" in this Agreement means the Initial Term as extended by any Renewal Term. Following a termination of the Agreement under this Section 16.1, if Licensee desires to maintain its Attachments on some or all of the Poles, the parties will negotiate in good faith to enter into a new agreement and the terms of this Agreement will continue in effect until (i) the new agreement is signed or (ii) 18 months following the date of termination of this Agreement or other mutually agreed upon time period, whichever first occurs (the "Grace Period"). Any Attachments that are made during the Grace Period would not be Unauthorized Attachments or be subject to Unauthorized Attachment Fees so long as Licensee submits, and Licensor approves, Applications for such Attachments.

**16.2 Licensor Facilities Sale or Trade.** If Licensor sells or trades Licensor Facilities upon which Licensee has Attachments, Licensor will use commercially reasonable efforts to assign this Agreement to the purchaser or transferee, in whole or in part as to those particular Licensor Facilities and Licensee will look to the new owner of the Licensor Facilities for access to those facilities.

**ARTICLE 17: DEFAULT AND REMEDIES**

**17.1 Licensee Default.** In addition to any Licensee Defaults specifically provided for elsewhere in this Agreement, and subject to any requirements for those same Licensee Defaults, a "Licensee Default" occurs if: (a) Licensee fails to pay a monetary obligation contained in this Agreement when due and payable, and the delinquency continues for a period of 30 days after Licensee's receipt of notice of delinquency from Licensor; (b) Licensee fails to perform any non-monetary obligation contained in this Agreement, and the non-performance continues for a period of 30 days after Licensee's receipt of notice of non-performance from Licensor, or when the non-performance cannot reasonably be cured within the 30 day period, if Licensee, within that 30 day period, has not commenced with due diligence the cure of the non-performance and thereafter fails to prosecute or complete with due diligence the cure of the non-performance. Licensee will not have more than 60 days from Licensee's receipt of notice to cure non-performance of a non-monetary obligation, despite its due diligence; (c) any representation or warranty of Licensee in this Agreement proves untrue or incorrect; or (d) Licensee becomes insolvent, or bankruptcy or receivership proceedings are initiated by or against Licensee.

**17.2 Licensor Remedies.** If a Licensee Default occurs, Licensor will have the immediate right, in addition to any other rights and remedies to which it is entitled under this Agreement, at law or in equity, including the right to seek specific performance, to terminate this Agreement. In the event of termination, Licensee must remove all of its Attachments in accordance with Article 10. Licensor's termination of this Agreement does not release Licensee from any liability which exists at the time of termination or which may accrue after termination. If the Licensee Default falls under Section 17.1(a), Licensor may assess as a late fee interest at the highest interest rate allowed by Applicable Law against any outstanding amount from the due date of that amount until the date of payment.

**17.3 Licensor Default.** A "Licensor Default" occurs if: (a) Licensor fails to pay an undisputed monetary obligation contained in this Agreement when due and payable, and the delinquency continues for

a period of 30 days after Licensor's receipt of notice of delinquency from Licensee; and (b) Licensor fails to perform a non-monetary obligation contained in this Agreement, and the non-performance continues for a period of 30 days after Licensor's receipt of notice of the non-performance from Licensee, or where the default cannot reasonably be cured within the 30-day period, if Licensor, within that 30 day period, has not commenced with due diligence the cure of the non-performance and thereafter fails or neglects to prosecute or complete with due diligence the cure of the non-performance. Licensor will not have more than 60 days from Licensor's receipt of written notice to cure non-performance of a non-monetary obligation, despite its due diligence.

**17.4 Licensee Remedies.** If a Licensor Default occurs, Licensee may resort to any rights and remedies to which it is entitled under this Agreement, at law or in equity, including the right to terminate this Agreement or seek specific performance.

**17.5 Remedies Cumulative.** All remedies described in this Agreement are cumulative and are not exclusive of other remedies to which a party may be entitled under this Agreement, at law or in equity. Use of one or more remedies does not bar the use of any other remedy.

## **ARTICLE 18: RISK OF LOSS, INDEMNITY AND INSURANCE**

**18.1 Risk of Loss.** Licensee assumes all risk and responsibility for all loss and expense whatsoever incurred by Licensor, Joint Owners or Existing Attachers resulting from damages to Licensor Facilities or the associated equipment of Licensor, Joint Owners or Existing Attachers, or the premises surrounding any Licensor Facilities, caused by Licensee's use of Licensor Facilities or otherwise arising in connection with the exercise of the rights of Licensee under this Agreement. Licensee must immediately report to Licensor the occurrence of any damage or loss.

### **18.2 Indemnification.**

**18.2.1** Each party will indemnify, defend and hold harmless the other party, its agents, officers, employees and assigns, from any and all losses, damages, costs, expenses (including, without limitation, reasonable attorneys' fees), statutory fines or penalties, actions, damage to property, or other damage to the extent caused by any act or omission by the indemnifying party's employees, agents, or contractors (including, without limitation, the installation, construction, operation or maintenance of each party's facilities). Licensee will further indemnify Licensor from taxes and fees that may be levied by municipalities or other governmental entities as a result of the presence of Licensee's Attachments on Licensor's Poles, including but not limited to taxes or fees related to use of public rights-of-way, in association with this Agreement. The indemnification, hold harmless and defense obligations set forth below in this Section 18.2: (a) are in addition to any other such obligations set forth elsewhere in this Agreement; and (b) will survive the expiration or termination of this Agreement, or the revocation of any applicable License.

**18.2.2** Any and all liability for injury to or death of any person (including employees of the parties hereto) and for loss or destruction of or damage to any property (including property of the parties hereto) arising out of or in any way connected with the installation, maintenance, use, relocation, dismantling, abandonment, or removal of any Pole or the Attachments hereto, or the failure of either party hereto to observe and perform any obligation hereunder shall be borne by the parties hereto as follows:



- a. Notwithstanding any provision to the contrary contained in this Agreement, if an employee of either party to this Agreement is injured or killed due, in whole or in any part, to the fault of the employer or the injured or deceased employee, or both, the party that is the employer will be solely liable for any and all Damages arising out of, or in any way relating to, such injury or death.
- b. Notwithstanding any provision to the contrary contained in the Agreement, if an employee of a contractor of either party to this Agreement is injured or killed due, in whole or in any part, to the fault of the contractor or the injured or deceased employee of the contractor, or both, the party that engaged the contractor will be solely liable for any and all Damages resulting from any claims arising out of, or in any way relating to, such injury or death. Further, the party that engaged the contractor will indemnify the other party for 100% of the Damages resulting from any claim arising out of, or in any way relating to, such injury or death which is due, in whole or in any part, to the fault of the contractor or the injured or deceased employee, or both.
- c. Notwithstanding any provision to the contrary contained in the Agreement, if an employee of a subcontractor of either party to this Agreement is injured or killed due, in whole or in any part, to the fault of the subcontractor or the injured or deceased employee of the subcontractor, or both, the party on behalf of which the subcontractor was engaged will be solely liable for any and all Damages resulting from any claims arising out of, or in any way relating to, such injury or death. Further, the party on behalf of which the subcontractor was engaged will indemnify the other party for 100% of the Damages resulting from any claim arising out of, or in any way relating to, such injury or death which is due, in whole or in any part, to the fault of the subcontractor or the injured or deceased employee, or both.
- d. Subject to 18.2.2a- 18.2.2c, above, any such liability caused by the sole negligence of one of the parties hereto, or caused solely by the failure of one of the parties hereto to observe and perform any obligation hereunder, shall be borne by such party; and such party shall defend, indemnify and hold harmless the other party hereto against such liability.
- e. Subject to 18.2.2a-18.2.2d, above, any such liability caused by the joint or concurrent negligence of both parties hereto or by the joint or concurrent failure of both parties hereto to observe or perform any obligation hereunder, shall be borne equally by such parties, except that each such party shall assume all risk of loss or destruction or damage to its property.
- f. Any other such liability shall be borne equally by the parties involved in the event or occurrence creating such liability, except that each such party shall assume all risk of loss or destruction or damage to its property.

**18.2.3** In the adjustment of any such claim of liability, the liability assumed by such parties under paragraph 18.2.2a-18.2.2f of this Article shall include, in addition to the amounts paid to the claimant, all Costs incurred by such parties in connection therewith, which shall comprise costs, attorney's fees, disbursements and other proper charges and expenditures.

**18.2.4** If either party hereto, as the result of any such claim of liability, should be compelled to pay damages in consequence thereof to a greater extent than specified in this Article, such party shall have, to the extent of the excess as paid by it, the right of reimbursement from the other party affected by such claim.

**18.2.5** In addition to the other indemnification, hold harmless and defense obligations set forth above in this Section 18.2 and any other such obligations set forth elsewhere in this Agreement; Licensee shall indemnify, defend and hold harmless Licensor, its affiliates, employees directors, officers, agents and contractors, from and against all third party actions, claims, demands, causes of actions, damages, liens, liabilities, losses, and expenses (including reasonable attorneys' fees) to the extent arising from or relating to a claim by an End User or the customer of the End User arising from or relating to this Agreement.

**18.3 Claims Notification.** When a party becomes aware of a claim, demand or suit that is subject to the provisions of Section 18.2 , or any other claim, demand or suit related to indemnity, duty to defend or hold harmless provisions stated elsewhere in this Agreement (each a "Claim"), the party to be indemnified, defended or held harmless ("Indemnified Party") must promptly give notice of the Claim to the other party ("Indemnifying Party"), accompanied by a copy of any written documentation regarding the matter, including copies of accident reports, petitions, summons, complaints and statements. The Indemnifying Party will defend such Claim with its own counsel and at its own expense, and has the right to control the settlement or defense, except that the Indemnifying Party will not enter into any settlement that imposes any liability or obligation on the Indemnified Party without the Indemnified Party's prior consent, which consent will not be unreasonably withheld, conditioned or delayed. The parties will reasonably cooperate in the settlement or defense of any such Claim, and to the extent legally possible, give each other full access to all relevant information. The Indemnified Party's own counsel may, at the Indemnified Party's own cost and expense, participate with the Indemnifying Party and its counsel in the defense or settlement of any such Claim.

**18.4 Damages Limitation.** Notwithstanding any provision to the contrary contained in this Agreement, neither party is liable to the other for any indirect, special, consequential, punitive or exemplary damages, such as damages for loss of anticipated profits or revenue or other economic loss, for any claim or cause of action arising out of or related to this Agreement, whether arising in contract, tort or otherwise, or whether arising from any grossly negligent, willful or fraudulent act or omission.

**18.5 Licensee-Required Insurance Policies and Minimum Coverage Limits.**

**18.5.1** Without limiting the liabilities or indemnification obligations of Licensee, Licensee will, at its own cost and expense, maintain during the Term of this Agreement, such insurance as required hereunder. The insurance coverage will be from a company, or companies, with an A.M. Best's rating of A-VII or better and authorized to do business in each state where Licensee will perform work under this Agreement. Licensee may obtain all insurance limits through any combination of primary and excess or umbrella liability insurance. Licensee will require its subcontractors to maintain proper insurance applicable to the type and scope of work to be performed under this Agreement.

- (a) Workers' Compensation insurance with statutory limits applicable in each state where the work is to be performed including Employer's Liability or "Stop Gap" insurance with limits not less than \$1,000,000 each accident.
- (b) Commercial General Liability with limits not less than \$1,000,000 per occurrence and \$2,000,000 aggregate covering personal injury, bodily injury, death, property damage, products/completed operations, and contractual liability.
- (c) Commercial Automobile Liability with limits not less than \$1,000,000 combined single limit per occurrence covering bodily injury and property damage for all owned, non-owned and hired vehicles used in connection with the performance of this Agreement.2 5

(d) Excess/Umbrella Liability Insurance with limits of not less than \$5,000,000 each occurrence.

**18.5.2** Licensee's compliance with its obligations under this Article 18 will not relieve Licensor of any liability under this Agreement or in any way modify Licensee's obligations under this Agreement to indemnify, defend and hold Licensor harmless.

**18.5.3** The Licensor, its affiliates, subsidiaries, and parent, as well as the officers, directors, employees and agents of all such entities will be included as additional insureds on the policies described in subsections (b), (c) and (d) above. The coverage described in subsection (b) will be primary and not contributory to insurance which may be maintained by Licensor, subject to the indemnification provisions of this Agreement. Prior to commencement of work under this Agreement and upon any renewal of insurance during the Term of this Agreement, Licensee will make available to Licensor evidence of the insurance required herein.

**18.5.4** Licensor may, at its discretion and upon prior notice to Licensee, require at any time during the Term additional coverage and insurance limits greater than those required in Section 18.5.1. Licensee's liability to Licensor is not limited to the insurance coverage certified or required to be carried under Section 18.5.1

#### **ARTICLE 19: DISCLAIMER OF WARRANTIES**

**19.1 Disclaimer of Warranties. LICENSEE ACKNOWLEDGES THAT LICENSOR (OR ANYONE ON LICENSOR'S BEHALF) HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS, TO, CONCERNING OR WITH RESPECT TO: (a) THE VALUE, NATURE, QUALITY, PHYSICAL OR OTHER CONDITION OF LICENSOR FACILITIES; (b) THE SUITABILITY OF LICENSOR FACILITIES FOR ANY ACTIVITIES AND USES WHICH LICENSEE MAY OR PLANS TO CONDUCT ON LICENSOR FACILITIES; (c) THE COMPLIANCE OF OR BY LICENSOR FACILITIES OR THEIR OPERATION WITH ANY LAWS, RULES, ORDINANCES, APPLICABLE LAW, ORDERS, DECISIONS OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY; (d) THE HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF LICENSOR FACILITIES; (e) THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS INCORPORATED INTO LICENSOR FACILITIES; (f) THE MANNER, QUALITY, STATE OF REPAIR OR LACK OF REPAIR OF LICENSOR FACILITIES; (g) THE SAFETY OF LICENSOR FACILITIES OR THE PREMISES SURROUNDING LICENSOR FACILITIES; OR (h) ANY OTHER MATTER WITH RESPECT TO LICENSOR FACILITIES AND, SPECIFICALLY, THAT LICENSOR HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS REGARDING COMPLIANCE WITH ANY ENVIRONMENTAL, PROTECTION, POLLUTION, LAND USE, ZONING, DEVELOPMENT OR IMPACT LAWS, RULES, REGULATIONS, ORDERS, DECISIONS OR REQUIREMENTS.**

**ARTICLE 20: MISCELLANEOUS**

**20.1 Assignment and Sublicense.** Licensee may assign, sublicense or transfer its rights under this Agreement, in whole or in part, only with the prior consent of Licensor, which consent will not be unreasonably withheld, delayed or denied. The parties agree and acknowledge that Licensee may provide capacity across Licensee Facilities to a third party without the consent and/or notification required in this Section provided that Licensee retains control over and remains solely responsible for, such Facilities, and that such provision of capacity does not qualify as sublicensing.

**20.2 Applicable Law, Forum Selection, Waiver of Jury Trial and Dispute Resolution.**

**20.2.1** This Agreement is governed by and construed in accordance with the Act and the FCC's Rules and Regulations promulgated under the Act, and where applicable, in accordance with the law of the State of Utah (without regard to its conflict of laws principles) and all other applicable laws, ordinances, requirements, codes, orders, decisions, rules and regulations of applicable state, municipal, county, federal or other governmental authorities (collectively, "Applicable Law"). In the event of an amendment to any Applicable Law, any effective legislative or regulatory action, or judicial order, rule, regulation, award or other legal action purporting to apply the provisions of any Applicable Law to the parties, or in which the FCC or, if applicable, the appropriate state public service commission, public utilities commission, administrative body or court, makes a determination during the Term that revises, modifies or reverses Applicable Law that affects this Agreement, either party may, by providing notice to the other party, require that the affected provisions of this Agreement be renegotiated in good faith. This Agreement will then be amended accordingly to reflect the changes to Applicable Law. Notwithstanding the foregoing in this Section 20.2.1, if the change to Applicable Law requires an adjustment to the Annual License Fee, the adjustment will be subject to the process for fee adjustments set forth in Section 13.3.

**20.2.2** Notwithstanding anything else to the contrary set forth in this Agreement, any court proceeding brought by either party against the other under this Agreement or otherwise must be brought, as appropriate, in the United States District Court located in Colorado, or in the absence of federal jurisdiction, in a state court of competent jurisdiction located in the Denver, CO metropolitan area. Each party agrees to personal jurisdiction in either court.

**20.3 No Third Party Beneficiaries.** This Agreement is for the benefit of the parties and not for any other person or entity, including Joint Owners or Existing Attachers. This Agreement does not provide any other person or entity with any obligation, remedy, claim, liability, reimbursement or right of action.

**20.4 Waiver.** No term or condition of this Agreement will be deemed to have been waived by a party unless the waiver is made in writing and is signed by the party against whom the waiver is claimed. No waiver of default or breach of this Agreement or consent to the default or breach will be deemed to have been waived or consented to unless the waiver or consent is made in writing and signed by the party against whom the waiver or consent is claimed. The waiver of or consent to a breach or default of this Agreement will not be deemed to be a waiver of or consent to any other breach or default of this Agreement, or to or any subsequent breach or default of the same term, or condition of this Agreement. No course of dealing or conduct or failure of a party to strictly enforce any term, right or condition of this Agreement constitutes a general waiver or relinquishment of the term, right or condition.

**20.5 Survival of Obligations.** The parties' respective indemnification, hold harmless and defense obligations set forth in this Agreement will survive the expiration or termination of this Agreement or the



revocation of any applicable License, whether or not it was specifically stated elsewhere in this Agreement that these obligations would survive, except to the extent of any applicable statutes of limitations.

**20.6 Force Majeure.** If either party is delayed from performing an obligation because of strikes, lockouts, labor troubles, the inability to procure materials, power failure, restrictive governmental laws or regulations, riots, insurrection, storms, hurricanes, earthquakes or other natural disasters, war or other reason which is not the fault of or is beyond the reasonable control of the party delayed, then performance of the obligation will be excused for the period of the delay. However, the foregoing in this Section 20.6 will neither relieve Licensee from the obligation to make monetary payments to Licensor nor apply to delays resulting from the inability of Licensee to obtain financing, or to proceed with its obligations under this Agreement because of a lack of funds.

**20.7 Tree Trimming and Clearing.** Unless otherwise governed by Applicable Law, Licensor will, in its sole discretion, determine from time to time if, solely by reason of Licensee's Attachments, tree trimming or other clearing in any Right-of-Way or land is necessary, including upon initial Attachment. Provided the grantor of the Right-of-Way or owner of the land gives permission, tree trimming and clearing will be performed by either the Licensee, under Licensor's direction, or a contractor hired by Licensor. If tree trimming and clearing is performed by Licensor's contractor, Licensee will reimburse Licensor for the Cost of trimming and clearing within 45 days of the invoice date for an invoice from Licensor for the Cost. Tree trimming and clearing needed, in Licensor's sole discretion, solely as a result of adverse weather conditions such as wind, snow or ice storms may be performed by Licensor or its agents, and Licensee will pay, along with any other allowed users of the Licensor Facility, its pro rata share of the Cost for the trimming and clearing within 45 days of the invoice date for an invoice for the Cost. Otherwise, Licensee will be responsible for trimming and clearing that is a result of such adverse weather conditions at its sole expense.

**20.8 Taxes.** Any federal, state or local excise, license, sales, use or other taxes or tax-like charges (excluding any taxes levied on income) resulting from the performance of this Agreement (collectively, "Taxes") are borne by the party upon which Applicable Law imposes the payment obligation, even if the obligation to collect and remit the Taxes is placed upon the other party. Taxes must be shown as separate items on applicable invoices. The party obligated to collect and remit Taxes will do so unless the other party provides evidence of exemption. The party obligated to pay Taxes may contest the Taxes in good faith at its own expense, and is entitled to the benefit of any refund or recovery. This provision does not permit a party to allow a lien to be placed on an asset of the other party by reason of a tax contest. The party obligated to collect and remit Taxes will cooperate in any tax contest by the other party by, to the extent legally possible, providing records or other information reasonably necessary to pursue the contest.

**20.9 Amendment and Modification.** No provision of this Agreement is deemed amended or modified unless amended or modified in a writing dated and signed by both parties.

**20.10 Severability.** If any part of this Agreement becomes or is held to be invalid for any reason, the determination will affect only the invalid portion of this Agreement. In all other respects this Agreement will stand and remain in full force and effect as if the invalid provision had not been a part of this Agreement.

**20.11 Headings Not Controlling.** The headings and numbering of the Articles and Sections in this Agreement are for convenience only and do not define or limit any of the terms or affect the meaning or interpretation of this Agreement. Whenever herein the singular number is used, the same shall include the plural. Unless expressly provided otherwise, (i) use of the word "and" means both "and" and "or", (ii) use

of the word "including" does not exclude items not listed and (iii) use of the word "will" connotes a mandatory action.

**20.12 Entire Agreement.** This Agreement constitutes the parties' entire agreement and understanding concerning its subject matter, and supersedes all prior oral or written agreements, representations, statements, negotiations, understandings, proposals and undertakings with respect to the subject matter of this Agreement. This Agreement consists of the body of this Agreement and the following exhibits, each of which is attached to and incorporated by reference into this Agreement:

Exhibit A — Wireless Pole Application

Exhibit B — Grounding Specifications

Exhibit C — Abandonment Notice

Exhibit D — Pole Attachment Bond

Exhibit E — License Service Area

Exhibit F — Wireless Construction Specifications

Exhibit G — Configuration of Licensee Attachments

Licensor may update an exhibit from time to time during the Term, and will give Licensee 30 day's prior notice of an update. Such update shall be reasonable, shall be required in order to comply with Section 7 of this Agreement, and shall apply in a nondiscriminatory manner to all similarly situated attachers to Licensor's Poles. Unless specified otherwise in an exhibit, capitalized terms used in an exhibit have the same meanings the capitalized terms have in the body of this Agreement.

**20.13 Counterparts, Facsimile and Electronic Mail Signatures.** This Agreement may be signed in several counterparts, each of which will be fully effective as an original and all of which together will constitute one and the same instrument. Signatures to this Agreement transmitted by facsimile or electronic mail will be deemed the equivalent of delivery of an original signature, provided that the party delivering its signature by facsimile or electronic mail promptly thereafter delivers this Agreement with the original signature to the other party.

*[Signatures on next page.]*

*[Signature page for Wireless Attachment License Agreement.]*

“LICENSOR”

Qwest Corporation d/b/a CenturyLink QC

By: 

Name: Dalaine R. Brooks

Title: Manager, National Contracts

Date: 10/11/17

“LICENSEE”

MOBILITIE LLC

By: 

Name: CHRISTOPHER ELACS

Title: VP, GENERAL COUNSEL

Date: 10/11/17



**EXHIBIT A**  
**NOTICE FOR PROPOSED WORK FORM**  
(FORM B)

Application # \_\_\_\_\_  
Notify Conversation # \_\_\_\_\_

**Section One (To be completed by Licensee)**

Application is hereby made for attachments to the following poles and anchors in accordance with the terms and conditions of the License Agreement for Wireless Attachment to Poles between Mobilitie, LLC and CENTURYTEL OF MINNESOTA, INC. d/b/a CenturyLink, dated as of \_\_\_\_\_ ("Agreement"). Licensee's space allocation is one foot. A copy of licensee's franchise agreement or similar authority to erect and maintain the facilities is attached.

Date of application: \_\_\_\_\_  
Applicant name: \_\_\_\_\_

Classification Type:	<input type="checkbox"/> Power	Attachment Type:	<input type="checkbox"/> Wireless
	<input type="checkbox"/> Cable/Broadband		<input type="checkbox"/> Wireline
	<input type="checkbox"/> Telco		
	<input type="checkbox"/> Other (specify): _____		

Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_  
Contact Name: \_\_\_\_\_ Telephone Number: \_\_\_\_\_  
Contact Email: \_\_\_\_\_

**TYPE OF PROPOSED WORK:**

New Attachment ☐ Overlash ☐  
Modification ☐ Removal ☐

Number of poles proposed: ☐ Anchors proposed: ☐

Pole Number and specific Location  
(Please list on attached Pole Detail Sheet  
and provide route map)  
NOTE: A Pole Detail Sheet is required for  
each pole.

(Including diameter of  
attachment, weight  
and height per foot)

By: \_\_\_\_\_ (Mail application to Licensor)  
Previous Total: \_\_\_\_\_  
Added This Request: \_\_\_\_\_  
TOTAL: \_\_\_\_\_

**Section Two (To be completed by Licensor and Licensee)**

Estimated Make Ready Work Costs, in the amount of  
\$ \_\_\_\_\_ are approved by licensee:

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_  
Licensee Work Order # \_\_\_\_\_  
Licensor Make Ready Work Order # \_\_\_\_\_

**Return Application to:**

CenturyLink Joint Use Manager

**Section Three (To be completed by Licensor)**

Permission is hereby granted to attach to poles described in the above application, subject to the terms and conditions referred to or set forth in the Agreement.

Licensor Affiliate Company: \_\_\_\_\_



Application #  
Notify Conversation #

[illegible]



**NOTICE FOR PROPOSED WORK FORM**  
POLE DETAIL SHEET

Application # \_\_\_\_\_  
Notify Conversation # \_\_\_\_\_  
**NOTE: A Pole Detail Sheet is required to be completed for each pole.**

City: \_\_\_\_\_ County: \_\_\_\_\_ Pole: Telco ☐ Power ☐ Detail Sheet Number: \_\_\_\_\_ or \_\_\_\_\_  
Street: \_\_\_\_\_ Pole No: \_\_\_\_\_ Drawing No: \_\_\_\_\_  
Date: \_\_\_\_\_ Licensee WO: \_\_\_\_\_ Class/Height/Year: \_\_\_\_\_

Pole Type	
Wood	Trans.
Steel	Distrib.
Laminate	
Concrete	

Clearance Above Grade			Midspan	Street Crossing
Utility	Type	Clearance	Direction from Pole	Street

**Description of Equipment, Facilities and Attachment**

Equipment:	
Facilities:	
Attachment:	

**Comments**


Existing Riser Details		
Utility	ID No.	Position
Proposed Risers		

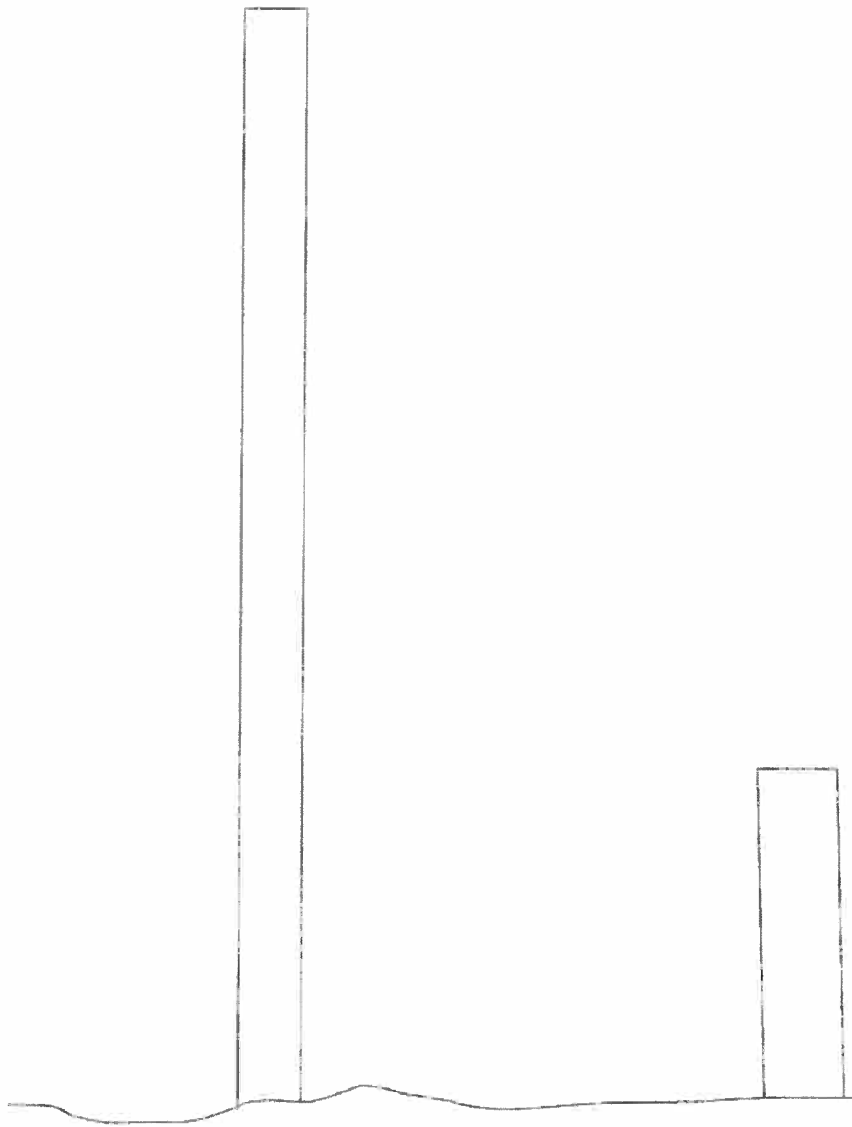
**Make Ready Proposed by Licensee**


**Resulting Additional Make Ready**


**Make Ready performed by Licensor**


CONVERSATION:  
CONTRACT:

Add all existing attachments; indicate proposed wireless attachment including conduit risers.



CONVERSATION:  
CONTRACT:

**EXHIBIT B**  
**GROUNDING SPECIFICATIONS**

## **1. BOND / GROUND WIRE INSTALLATION GUIDELINES**

### **1.1. Routing**

Installation of grounding and bonding wires must follow specific guidelines in order to provide and maintain low resistance, low impedance paths for electrical current to flow. Improper placement may cause surge currents to seek alternate ground sources and will not provide adequate electrical paths to properly protect technicians and or equipment from damage.

In addition to the various grounding and bonding applications outlined within this document, installations of wires in all situations must not contain:

- Sharp bends
  - Sweeping bends of 45 degrees or less recommended
- Splicing not recommended
  - Exothermically welded or other type permanent splices only
- Pass through metallic pipes
- All ground connections point towards earth

### **1.2. Connections**

- CenturyLink approved grounding hardware for aerial / buried applications
  - Flip-Tap on galvanized messenger to connect AWG #6 copper
  - CATV/CLEC messenger strand must be bonded to the Telephone Messenger Strand on the same supporting structure (Telephone pole)
  - Telephone, CATV and CLEC messenger strand must be common bonded to the MGNV on electric utility poles. These connections should be separate connections which serve as the common bond link between messenger strands on the same supporting structure (pole)

### **1.3. Sizing/Type**

Each grounding / bonding situation requires different size / type of approved wire to be used. These various applications, and the appropriate wire to be utilized, are American Wire Gauge (AWG) including:

- #6 Solid Bare Copper
- #6 Solid Insulated Copper

## **2. AERIAL CABLE / PLANT PROTECTION AND JOINT FACILITY BONDING**

### **2.1. Effective Grounds**

All exposed plant must be effectively grounded utilizing CenturyLink approved copper clad 5/8 inch diameter, 8 ft. long ground rods for the following reasons:

CONVERSATION:  
CONTRACT:



- Reduce shock hazards to technicians
- Reduce electrical damage to telephone plant and Third Party Equipment
- Provide rapid de-energizing of power lines contacting Telephone or Third Party plant
- Provide a path to ground for lightning

**NOTE: Down guys and anchor rods are not considered grounds and will not be used as such in the CenturyLink plant protection scheme.**

## **2.2. Grounding and Bonding Applications**

Aerial strands (messenger) shall be continuous, bonded together and grounded at a minimum of 1,350 foot intervals so that no point is more than 1,350 feet from an effective ground source. The 1350 foot rule is the minimum grounding requirements, applicable on all aerial cable leads that are in a continuous run without laterals, risers, primary power crossings, MGNV or protected terminals. Licensee must ground their attachments to the MGNV independently.

Additional grounds must be installed at:

- Laterals
- Risers (including aerial inserts in buried facilities)
- Primary power crossings
- Protected terminals
- First and last pole of an aerial lead, regardless of lead length
- At all aerial, buried or underground building entrance cable locations
- Repeater / Doubler/Power Supply locations

## **2.3. Ground and Bonding Material / Requirements**

Use only AWG #6 bare solid copper ground wire for connecting aerial strand (messenger) to a ground electrode. Each ground electrode shall consist of a driven 5/8 inch diameter 8 foot copper clad ground rod(s) driven approximately 12 inches away from the pole and approximately 4 inches below ground grade in undisturbed earth.

**NOTE: Ground rods installed at pole line locations need not be measured as noted below in excerpts from the 2012 National Electrical Safety Code NESC and RUS Bulletin 1751F-815:**

NESC Rule 94B — Driven rods shall be not less than 8 feet in length: Longer or multiple rods may be used to reduce ground resistance

NESC Rule 96C — No specific resistance readings need be taken at individual electrodes due to distributed cable route multiple ground locations.

RUS Section 11.1 — Low impedance to ground is achieved by multiple ground locations

**NOTE: Ground electrodes (rods) and their resistance MUST be correctly measured at CO and Remote Electronic Sites!**

**NOTE:** Prior to driving a ground rod as outlined above, a request for locate of all facilities must be made and completed in the area where the rod(s) is to be driven to prevent damage to water, gas, drain or sewer facilities.

**NOTE:** When connecting the AWG #6 solid copper wires to the strand (messenger), only use the "Tap Clamp — Flip On" type clamp. This clamp is designed to eliminate corrosion caused by contact of two dissimilar metals (copper to galvanize). This clamp is available in CART.

**NOTE:** All Third Party messenger strands must be common bonded to the Licensor messenger strand and/or vertical ground wire at all of the locations mentioned in this document to ensure the same potential exists on all aerial joint use pole structures.

#### 2.4. MGNV Bonding and Grounding

Telephone and Third Party facilities **must** be bonded / grounded to the power company Multi Grounded Neutral Vertical (MGNV) wire where present on **all** joint use facilities. **The MGNV is considered an effective ground and a separate Telephone ground rod is not to be installed at these locations.**

**NOTE: THIS APPLIES TO AERIAL CABLE FACILITIES ONLY.** The use of an MGNV is allowed in aerial plant due to the strand (messenger) in aerial cable being **exceptionally strong and continuous**. It is the main surge / current carrying component of an aerial lead and use of the MGNV duplicates the protection and grounding effects of the power company neutral and associated earth grounds.

**NOTE: DO NOT** remove or cut the Power Company "U" guard or covering on the MGNV wire when making a connection!

#### 2.5. Joint Use Poles

The proper selection of ground locations on **joint use pole lines** with electrical power must result in a distance of no more than 1,350 feet between any portion of exposed cable plant and the nearest ground. Additional grounds must be placed if an MGNV is not present at:

- All Telephone or power company lateral / riser poles.
- First and last pole of an aerial lead, regardless of lead length
- Junction point between solely-owned and joint aerial plant.
- Joint pole at which a cable continues buried or underground.
- At all building entrance cable locations
- Intervals exceeding 1350 feet without an MGNV

**NOTE:** Bond connections to the MGNV/MGN from the Telephone or Third Party facility should always point towards earth/ground rod, not up towards the power company neutral.

**EXHIBIT C**

**ABANDONMENT NOTICE**

**Section 1 (to be completed by Licensor):**

Licensor gives notice to Licensee that it intends to abandon the Poles at the locations as shown on the map attached to this Abandonment Notice (collectively, "Abandoned Poles").

Licensor \_\_\_\_\_

Date \_\_\_\_\_

**Section 2 (to be completed by Licensee):**

Licensee elects to purchase the Abandoned Poles for the Purchase Price as set forth in a bill of sale.

Licensee \_\_\_\_\_

By

Date

**Section 3 (to be completed by both Licensor and Licensee):**

Both parties are to complete, sign and date a bill of sale.

CONVERSATION:  
CONTRACT:

**EXHIBIT D****WIRELESS POLE ATTACHMENT BOND****WIRELESS POLE ATTACHMENT BOND**

Bond No. \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS, that we, Principal Name, Principal, and Surety Company Name, a corporation duly organized under the laws of the State of \_\_\_\_\_ as Surety, are held and firmly bound unto \_\_\_\_\_ d/b/a CenturyLink as Oblige in the State of \_\_\_\_\_, in the sum of \_\_\_\_\_ **Dollars, (\$00)** lawful money of the United States of America, to be paid to said Oblige, its successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the above bound Principal has entered into a written agreement with the said Oblige for the use of its poles in connection with the furnishing of certificated telecommunications service. The above mentioned agreement sets forth the terms and conditions which govern the use of such poles and said agreement is hereby specifically referred to and made part of this bond, with like force and effect as if herein at length set forth.

NOW, THEREFORE, THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that if the above named Principal, its successors or assigns, does and shall well and truly observe, perform, fulfill and keep its obligations as set forth in the above mentioned agreement, for which a bond must be posted, then the above obligation to be void; otherwise to remain in full force and effect.

The bond is subject, however, to the following express conditions:

FIRST: That in the event of a default on the part of the Principal, its successors or assigns, a written statement of such default with full details thereof shall be given to Surety promptly, and in any event, within 30 days after the Oblige shall learn of such default, such notice to be delivered personally or by registered mail to Surety at its Home Office at

SECOND: That no claim, suit or action under this bond by reason of any such default shall be brought against Surety unless asserted or commenced within 12 months after the effective date of any termination or cancellation of this bond.

THIRD: That this bond may be terminated or cancelled by Surety by 30 days prior notice in writing from Surety to Principal and to Oblige. Such termination or cancellation shall not affect any liability incurred or accrued under this bond prior to the effective date of such termination or cancellation. The liability of the Surety shall be limited to the amount set forth and is not cumulative.

FOURTH: That no right of action shall accrue under this bond to or for the use of any person other than the Oblige, its successors and assigns.

IN WITNESS WHEREOF, the above bound Principal and the above Surety have hereunto set their hands and seals, on the \_\_\_\_ day of \_\_\_\_\_. This bond is to be effective the \_\_\_\_ day of \_\_\_\_\_

Principal

By: \_\_\_\_\_

Principal

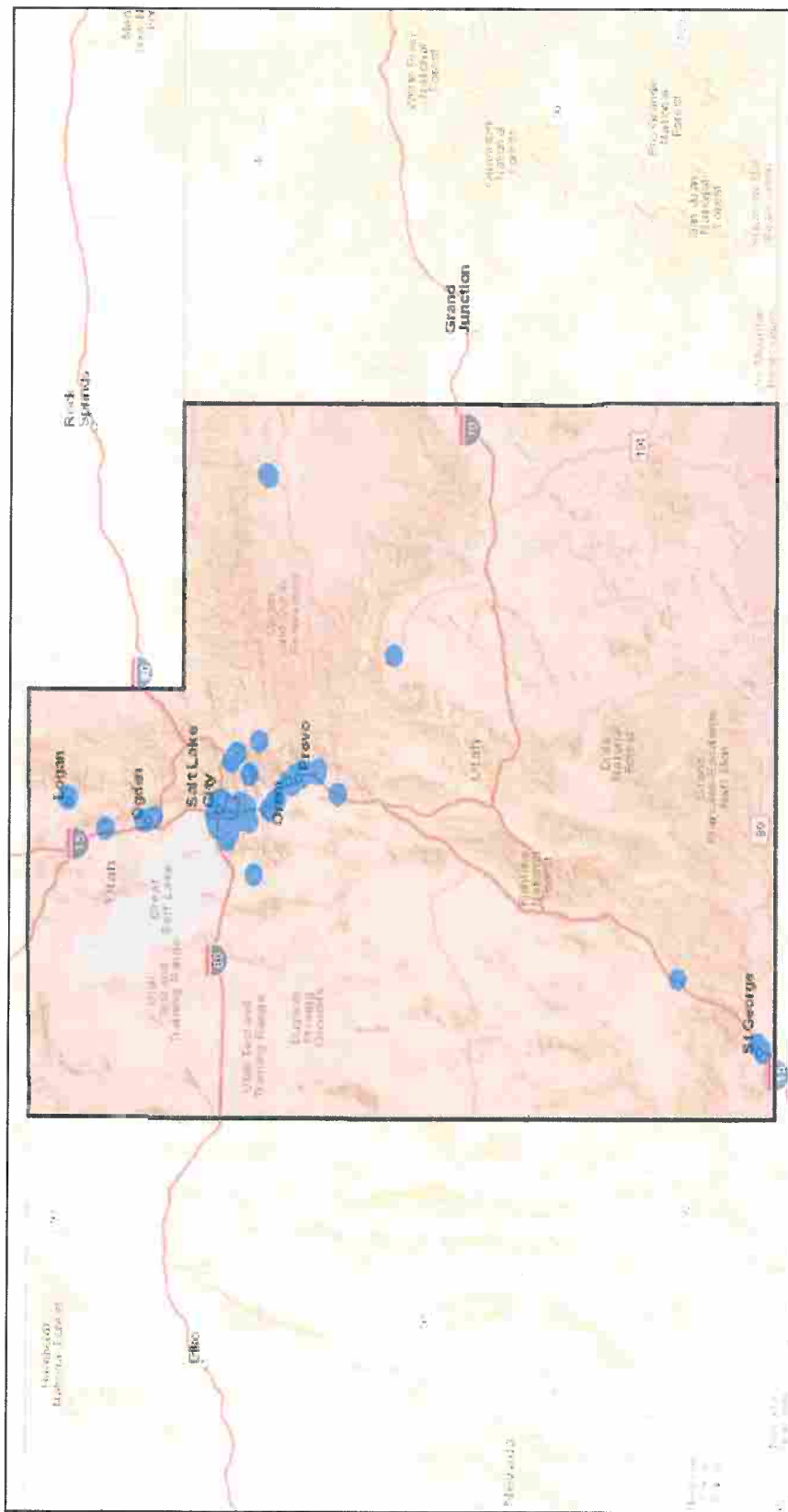
Surety Company

By: \_\_\_\_\_

XXXXXXXXXX, Attorney-in-Fact

CONVERSATION:  
CONTRACT:

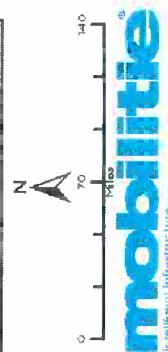
**EXHIBIT E**  
**LICENSE SERVICE AREA**



Service Layer Credits: Sources: Esri, HERE, DeLorme, USGS,

**Small Cell Target Areas**  
**Utah**

**Legend**  
 Target Area  
 Non-Target Area  
 State Boundary



Date Created: 6/26/2017 3:41:54 PM  
 Target areas are representative of candidate locations as of the date created



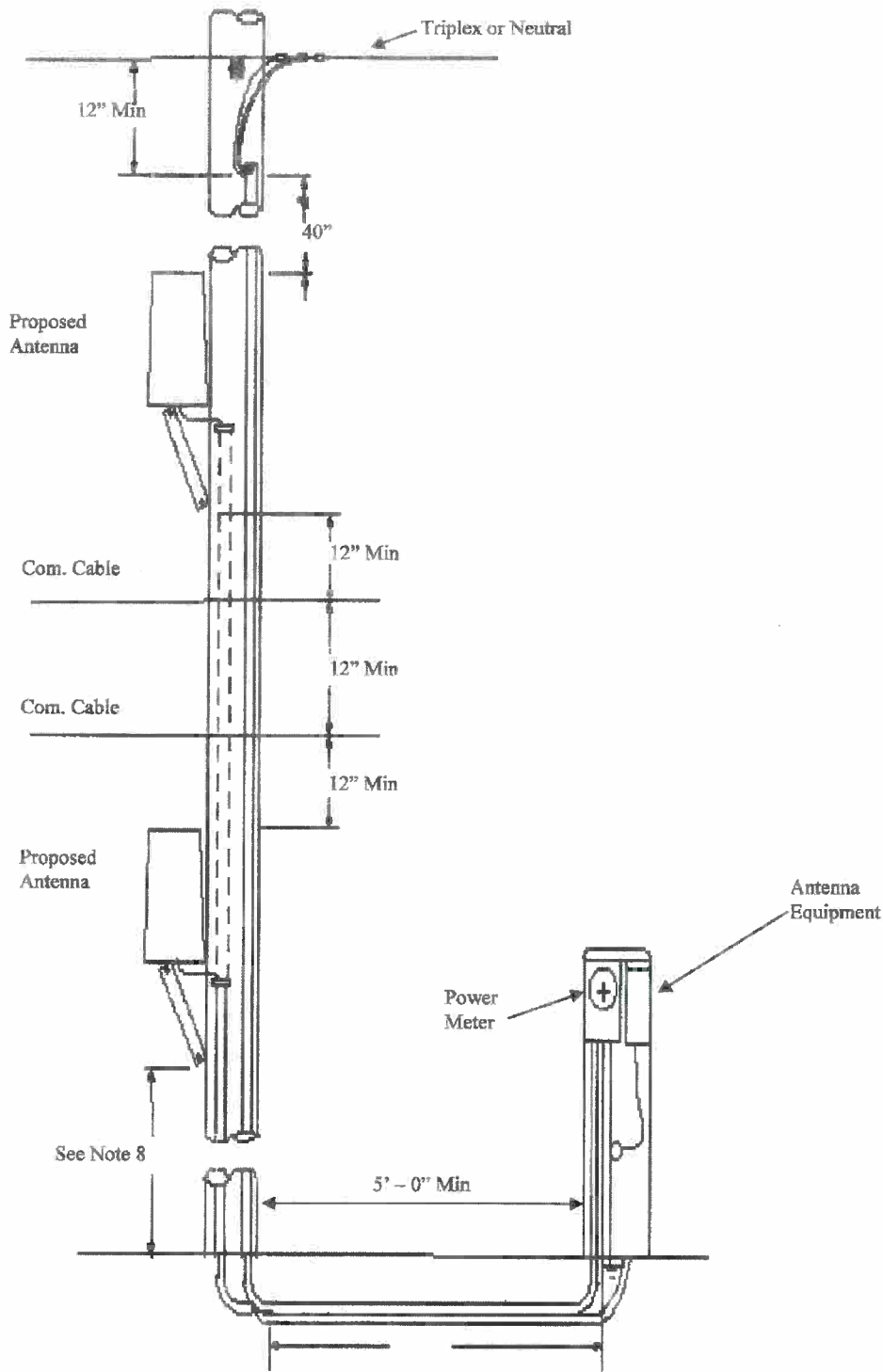
EXHIBIT FCENTURYLINK WIRELESS CONSTRUCTION SPECIFICATIONS

1. Only one Antenna system per Pole allowed, which Antenna system may be composed of multiple antennas (*e.g.*, one antenna for end user communications and a separate antenna for backhaul communications).
2. Antenna owner must install a RF warning sign on the Pole at the level where the safe approach distance ends for general population/uncontrolled environments. WARNING-ANTENNA  
RADIATION MINIMUM APPROACH DISTANCE IS \_\_\_\_ FT. It must also include the Licensee name and 24 hour contact phone number. The approach distance shall be based upon the Uncontrolled Exposure limits in the FCC OET-65 bulletin Appendix A. The sign shall be 60 mil. lexan with U.V. inhibitors and comply with IEEE C95.2 standards.
3. Antenna Attachment to the Pole must meet all NESC clearance specifications.
4. ONLY the antenna and cables/risers necessary for antenna operations are allowed on CenturyLink Poles in locations that cannot be accessed by bucket trucks. ALL other equipment, including power equipment, on/off switches, and cabinets, are only permitted on CenturyLink Poles at heights that can be lawfully and safely reached by bucket trucks. Cabinets/stub poles must meet NESC clearance, space/measurements requirements from CenturyLink Poles.
5. All risers must be placed in conduit with fasteners/straps not less than 24". Maximum 2-2" conduits per Pole.
6. All antenna Attachments must be approved by CenturyLink prior to construction. Antenna may be attached above the top Attachment in the designated Communications Space or below the lowest Attachment in the Communication Space, if an electric utility is attached to the Pole. If no electric utility is attached to the Pole (or has an approved Application to attach) the Attachment may alternatively be located on the Pole top with no bolts or screws in the top 12 inches of the Pole. All Attachments must meet NESC, FCC, State and Local requirements.
7. All electrical power equipment must be bonded to MGNV where available or grounded to the commercial power source, meeting all codes applicable.
8. All Antenna attachments will have a power on/off switch accessible by CenturyLink installed on the cabinet/stub pole that will terminate the transmission of radio frequency when turned to the off position. The on/off switch must be shown on the application and any deviation from the approved permitted location must be approved by CenturyLink prior to installation.
9. CAUTION: Disconnect power to antenna before working on any Pole in the area above the RF warning sign or closer than the stated safe distance indicated on the warning sign.

See example drawing on Exhibit "F" which depicts a CenturyLink Pole WITH an electric utility attached.

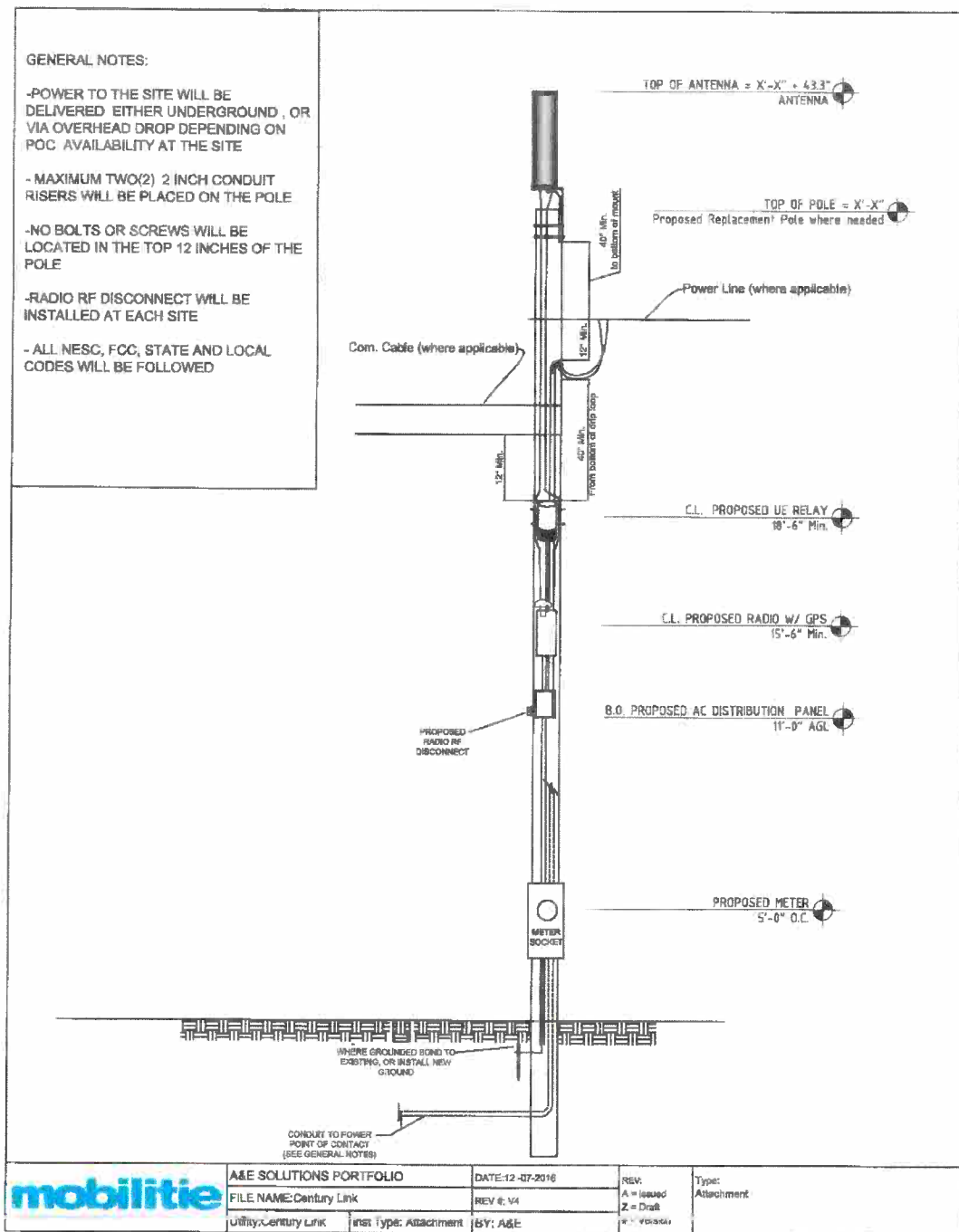
Note: Exhibit "F" may be revised and/or updated as necessary to maintain a safe working environment and as regulations require.

**EXHIBIT F - diagram**



**EXHIBIT G**

**CONFIGURATION OF LICENSEE ATTACHMENTS**



**ATTACHMENT B**  
**CENTURYLINK Motion for Approval**  
**DOCKET NO. 17-049-15**  
**November 02, 2017**

**Mobilitie – Crown Castle Wireless Agreement Comparison**

**Pole Top Antennas**

One major distinction between the two contracts is pole top antenna language. Unlike Crown Castle, Mobilitie’s wireless deployment will not utilize pole top antennas in its network, therefore this language is not included in the agreement as it was for Crown Castle. Below are the sections impacted by these design differences:

- **Section 2.3.3 appears in the Crown Castle agreement but is deleted in its entirety in the Mobilitie agreement** - ~~Except for any properly authorized pole top equipment or installation, Licensee Attachment shall be installed and maintained only below the Communications Worker Safety Zone on Licensor's Poles.~~
  - **Section 5.1 of Mobilitie agreement deletes first sentence- Application.** ~~Except for properly authorized pole top antennas, only Applications for Attachments placed in the Communications Space are contemplated by this Agreement.~~ Before making an Attachment, Licensee must submit to Licensor a completed Application for the desired Attachment. Licensor may treat multiple Applications from Licensee as a single Application when the Applications are made within 30 days of each other. Note that power supply cabinets can only be attached to Poles no taller than forty-five feet above ground, and only to Poles that can lawfully and safely be reached by bucket truck.
  - **Section 5.5.1 of Crown Castle agreement reads** - 5.5.1 For an Application to make Attachments to up to the lesser of 300 Poles or 0.5% of Licensor’s Poles located in the State of Utah Licensor will complete Make Ready work no later than: a) 60 days from the date it sends the “Communications Space Notice” (as defined in Section 5.6) for attachments that will be placed in the Communications Space and/or b) 90 days from the date it sends the “Above Communications Space Notice” (as defined in Section 5.6) for attachments that will be placed *above* the Communications Space (i.e. pole top antennas)....
- versus
- **Section 5.5.1 of Mobilitie agreement reads** - 5.5.1 For an Application to make Attachments to up to the lesser of 300 Poles or 0.5% of Licensor's Poles located in the State of Utah and that will be placed in the Communications Space and does not include pole top antennas, Licensor will complete Make Ready Work no later than 60 days from the date it sends the "Communications Space Notice" (as defined in Section 5.6)....

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**ATTACHMENT B**  
**CENTURYLINK Motion for Approval**  
**DOCKET NO. 17-049-15**  
**November 02, 2017**

**Other differences between the Crown Castle and Mobilitie agreements:**

- **Section 5.10 – Initial Post Attachment Inspection** – The Crown Castle agreement contains an inspection fee of \$70/hour. The Mobilitie agreement states the inspection fee will be “actual costs of the inspection”.
- **Section 7.4 of the Specifications section** – The last sentence of this section is deleted from the Mobilitie agreement but is included in the Crown Castle agreement.  
7.4 Licensee shall not use any Licensee Attachment in a manner that would create any physical or radio frequency interference with the use or operation of Licensors Facilities or the facilities of third parties authorized by Licensor to occupy Licensor’s Poles. If Licensor or a third party believes the use by Licensee of Licensor’s Poles creates any physical or radio frequency interference with the use or operation of its existing facilities, Licensee shall immediately repair, correct or abate the cause of said interference to the reasonable satisfaction of Licensor. ~~The parties acknowledge and agree that compliance with FCC spectrum and interference rules by Licensee, alone, shall not alleviate or remove the obligations to avoid causing interference under this section.~~
- **Section 11.1 Pole Abandonment and Purchase** – The language in the Mobilitie agreement was revised because neither CenturyLink nor Mobilitie could agree to the the bill of sale form. The Bill of Sale exhibit was also deleted from the Mobilitie agreement.  
11.1 **Pole Abandonment and Purchase.** If Licensor intends to abandon a Pole on which Licensee has an Attachment and for which Licensee is the sole remaining user, Licensor will give notice to Licensee of its intention at least 60 days prior to the date it intends to abandon the Pole using the form ~~attached to this Agreement as Exhibit C (“Abandonment Notice”).~~ Licensee may elect to purchase the Pole in the amount set forth (“Purchase Price”) in the Bill of Sale portion (“Bill of Sale”) of the Abandonment Notice. ~~If Licensee elects to purchase the Pole, Licensee must sign and date the Abandonment Notice where appropriate, including the Bill of Sale, and deliver it and payment of the Purchase Price to Licensor within ten days of Licensee’s receipt of the Abandonment Notice. Ownership of the Pole will transfer from Licensor to Licensee upon the terms and conditions as set forth in the Bill of Sale. For purposes of this paragraph, the definitions of “Pole” does not include poles for which Licensor has no legal right or authority to convey ownership or a continued right of occupancy to others. attached to this Agreement as Exhibit C (“Abandonment Notice”). Licensor may offer to sell to Licensee any poles set forth in such Abandonment Notice, and if Licensee agrees to purchase such poles then the transaction shall be memorialized in a bill of sale.~~



**ATTACHMENT B**  
**CENTURYLINK Motion for Approval**  
**DOCKET NO. 17-049-15**  
**November 02, 2017**

- **Section 13.1 Annual License Fee** – Language was added to address jointly owned poles.

13.1 Licensee will pay Licensor an Annual License Fee determined by the amount of space (in total feet) occupied by Licensee's Attachments and multiplied by Licensor's then-current annual rate of attachment for communications providers as calculated under Applicable Law. For the representative attachment shown in Exhibit G hereto, for example, the parties agree the amount of space occupied is six (6) feet. To the extent that a Pole is jointly owned by Licensor and a Joint Owner, then the Annual License Fee paid by Licensee to Licensor for Attachments to such jointly owned Poles shall be reduced in a manner reflecting the agreement between the Licensor and the Joint Owner governing such jointly owned Poles and taking into account any fees paid by Licensee to the Joint Owner for attachments to such jointly owned Poles pursuant to an agreement between Licensee and the Joint Owner.

- **Section 15.3 Audit** – Language regarding payment of audits if 1% violation was removed from the Mobilitie agreement.

15.3 Annually during the Term, Licensor may, in Licensor's sole discretion, conduct an Audit. Licensor may, but is not required to, give advance notice to Licensee of its intent to conduct an Audit. An Audit may include the following matters: (a) checking for Unauthorized Attachments and Noncompliant Attachments of Licensee (and, in Licensor's sole discretion, those of Existing Attachments); or (b) checking the number of Attachments, when an Attachment was made, the type and size of Licensee Attachment attached and the location of Attachments (and, in Licensor's sole discretion, those of Existing Attachments). Licensee will reimburse Licensor for one-half of Licensor's total Audit Cost if the Audit does not include any Existing Attachments or for one-third of Licensor's total Audit Cost if the Audit includes any Existing Attachments. ~~However, if the Audit shows either that the actual number of Attachments exceeds the number of Licensor approved Attachments by more than 1%, or that the actual number of Noncompliant Attachments exceeds the number of Licensor approved Attachments by more than 1%, Licensee will pay for Licensor's entire total Audit Cost. Licensee will reimburse Licensor for its share of Licensor's total Audit Cost within 45 days of the invoice date for an Audit Cost invoice.~~

**CERTIFICATE OF SERVICE**  
**VIA EMAIL TRANSMISSION**  
Docket No. 17-049-15

I hereby certify that on the 2<sup>nd</sup> day of November 2017, I caused a true and correct copy of the foregoing MOTION OF QWEST CORPORATION FOR APPROVAL OF POLE ATTACHMENT AGREEMENT to be served upon the following persons via electronic mail at the e-mail addresses shown below.

**Public Service Commission:**

[psc@utah.gov](mailto:psc@utah.gov)

**Utah Division of Public Utilities:**

Justin Jetter – [jjetter@utah.gov](mailto:jjetter@utah.gov)

Bill Duncan – [wduncan@utah.gov](mailto:wduncan@utah.gov)

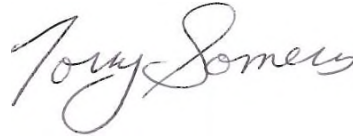
Erika Tedder – [etedder@utah.gov](mailto:etedder@utah.gov)

**Mobilitie**

Matthew R. Tuchman

[matthew.tuchman@mobilitie.com](mailto:matthew.tuchman@mobilitie.com)

CENTURYLINK



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Torry R. Somers

6700 Via Austi Pkwy.

Las Vegas, NV 89119

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[torry.r.somers@centurylink.com](mailto:torry.r.somers@centurylink.com)

Attorney for CenturyLink