

POLE ATTACHMENT AND CONDUIT OCCUPANCY TARIFF  
P.U.C.O. NO. 1  
INCLUDING RATES, RULES AND REGULATIONS  
FOR ALL EXCHANGE AREAS SERVED BY  
UNITED TELEPHONE COMPANY OF OHIO d/b/a CENTURYLINK  
IN THE  
STATE OF OHIO

This tariff applies to any attachment by a cable television company or other entity (excluding power companies) to a pole, pedestal, conduit, duct, or right-of-way owned or controlled by United Telephone Company of Ohio d/b/a CenturyLink (hereinafter "Telephone Company") within Telephone Company's operating territory in the State of Ohio.

This tariff will not apply, however, to attachments by cable television companies or other entities pursuant to agreements with the Telephone Company in effect prior to the effective date of this tariff. Upon expiration of such agreements, pole attachments will be provided in accordance with the rates and regulations stated herein.

This tariff may be revised from time to time at Telephone Company's sole discretion and upon approval of the Public Utilities Commission of Ohio.

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Issued: February 7, 2011

Effective:

United Telephone Company Of Ohio  
By Duane Ring, Vice President  
LaCrosse, Wisconsin

In accordance with Case No.: 11-0602-TP-UNC  
Issued by the Public Utilities Commission of Ohio

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## 1. GENERAL

## 1.1 Definitions. Certain terms used in this tariff are defined and explained below.

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 this tariff and the associated License Agreement. Annual License Fees are calculated using the FCC rate formulas adopted by the PUCO and differ based upon whether the Attachment is used to provide "CATV Service" as defined herein, "Telecommunications Service" or "Interconnected Voice Over Internet Protocol ("VoIP") service, as those terms are defined under Ohio Law. CATV company providing Telecommunications Service or VoIP will be charged the telecommunications rate ("CLEC rate").

Application - The form attached to the associated License Agreement that is submitted by Licensee to Telephone Company as part of the process under this tariff and associated License Agreement by which Licensee seeks the Telephone Company's approval to make an Attachment.

Applicable Law -The law of the State of Ohio (without regard to its conflict of laws principles) and all other applicable laws, ordinances, requirements, codes, orders, decisions, rules and regulation of applicable state, municipal, county, federal or other governmental authorities and as further defined in the associated License Agreement.

Attachment - Any placement of Licensee Equipment on or to Telephone Company Facilities. The definition of Attachment also includes the Licensee Equipment itself that is physically attached and/or placed on or to Telephone Company Facilities. Any reference in this tariff to an Attachment being made "to" or "on" Telephone Company Facilities will also mean "in" or "occupying" any Telephone Company Facilities.

CATV - Community Antenna Television, more commonly know as cable TV as defined by Applicable Law.

CLEC - Competitive Local Exchange Carrier

Community Antenna Television Service ("CATV Service") - Any service which consists of the distribution of broadcast television programs obtained off-the-air by Licensee's antenna or by means of an antenna tower or towers at distant locations and from which such broadcast program is transmitted to Licensee's Community Antenna Television System by relay facilities pursuant to appropriate Federal Communications Commission authorization. Such Community Antenna Service may also include, but is not limited to, music received off-the-air, "fill-in" music originating in Licensee's control house, news and weather announcements, occasional local television programs, occasional closed circuit television programs, and pay television programs.

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## 1. GENERAL (Cont'd)

## 1.1 Definitions (Cont'd)

Conduit – A Telephone Company-owned or controlled structure containing one or more Ducts, usually placed in the ground, in which cable or wires may be installed, together with its supporting infrastructure. The definition of Conduit also includes any other Telephone Company-owned or controlled equipment or hardware attached to or within Conduit, including but not limited to Ducts or Inner Ducts.

Conduit Systems - A Telephone Company-owned or controlled collection of one or more Conduits, together with their supporting infrastructure, including but not limited to Manholes and Handholes. The definition of Conduit System also includes any other Telephone Company-owned or controlled equipment or hardware attached to or within a Conduit System.

Cost(s) - All reasonable and actual costs 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, Anchor or Conduit will exclude the salvage value realized, if any, by Telephone Company for the removed Pole, Anchor or Conduit.

Duct – A Telephone Company-owned or controlled single enclosed raceway for conductors, cable and/or wire.

Existing Attacher(s) - A public utility, person, governmental body or other entity that has an actual physical attachment of its facilities or equipment on or to a Telephone Company 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.

Handhole – A Telephone Company-owned or controlled subsurface enclosure that is too small for personnel to enter that Telephone Company uses for installing, operating, maintaining and repairing Telephone Company Facilities.

Inner Duct – A Telephone Company-owned or controlled Duct-like raceway smaller than a Duct that is inserted into a Duct so that the Duct may carry multiple wires or cables.

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

License - A revocable, non-exclusive license granted by Telephone Company to Licensee authorizing Licensee to make each specific Attachment to Telephone Company Facilities.

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1. GENERAL (Cont'd)

1.1 Definitions (Cont'd)

License Agreement - The signed and dated agreement entered into between Telephone Company and Licensee that provides further detail and additional terms and conditions regarding the making of Attachments and the provisions provided for in this tariff. A License Agreement is required in each instance where Licensee wants to lease Poles or Conduit Space.

Licensee – The cable television company or other entity authorized by Telephone Company to attach its facilities to Telephone Company Facilities.

Licensee Equipment - The equipment and facilities owned, maintained and used by Licensee in furnishing CATV Service and/or Telecommunication Service including aerial wires, drop wires, tap-offs, above or underground cables, amplifiers, signal transmission apparatus and any other associated hardware, equipment and facilities.

Make Ready Survey – All work necessary, in Telephone Company's sole discretion, to determine the Make Ready Work required to accommodate an Attachment, including field inspections, engineering and administrative processes.

Make Ready Work - All work performed or to be performed as is necessary, in Telephone Company's sole discretion, to prepare Telephone Company Facilities for an Attachment where such work is required solely to accommodate such an Attachment, including surveying, clearing obstructions, repairing or modifying Telephone Company Facilities, or Rearranging, Transferring, replacing or removing any items on Telephone Company Facilities.

Manhole – A Telephone Company-owned or controlled subsurface enclosure that personnel may enter that Telephone Company uses for installing, operating, maintaining and repairing Telephone Company Facilities.

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

Noncompliant Attachment - An Attachment not meeting the "Specifications" listed in Section 3.1 of this tariff or in the associated License Agreement, not being used by Licensee to provide Telecommunications Services or CATV Service, being used for any unlicensed use or otherwise not being used in accordance with the requirements of this tariff or the associated License Agreement.

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1. GENERAL (Cont'd)

1.1 Definitions (Cont'd)

Pole - A Telephone Company-owned or controlled pole or a pole jointly owned by Telephone Company and any Joint Owner, 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 Telephone Company has no legal authority to permit upon them the placement of the facilities or equipment of others.

Rearrange or Rearranging - Relocating, reconfiguring or reconstructing an Attachment upon the Telephone Company 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) and may include the right to use space in buildings, building complexes or other locations.

Service Drop – The wire connecting the distribution component of Licensee Equipment to Licensee's individual customer.

Telephone Company Facility or Telephone Company Facilities – Any Pole, Conduit or Conduit System and associated Right-of-Way.

Telecommunications Service – as defined by Ohio Law.

Transfer or Transferring - Moving an Attachment from one Telephone Company Facility to another.

Unauthorized Attachment – An Attachment for which Telephone Company never granted Licensee a License.

VoIP – Voice Over Internet Protocol as defined by Ohio Law.

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1. GENERAL (Cont'd)

1.2 Conditions

Poles and Conduit owned by Telephone Company are designed and engineered to distribute telephone service using contemporary materials and are not intended for lease to the general public. When Telephone Company is contacted by a party requesting permission to lease Telephone Company's Pole or Conduit space for Attachments, and the requesting party determines that Telephone Company Facilities are adequate for the requesting party's intended and allowed use, Telephone Company may lease such space to the requesting party, subject to this tariff and subject to the associated License Agreement.

The leasing party (hereinafter "Licensee") may not sublease pole or conduit space.

1.3 License Agreement and Application Required

Prior to Licensee submitting the required Application for use of Telephone Company Facilities, Licensee must have obtained a signed and dated License Agreement with Telephone Company. Subject to the terms of this tariff and the associated License Agreement, and consistent with Applicable Law, Telephone Company will grant a revocable, non-exclusive License to Licensee authorizing Licensee to make each specific Attachment to Telephone Company Facilities located in areas in the State of Ohio where Telephone Company is an Incumbent Local Exchange Carrier (ILEC), and to allow Licensee to use and maintain each specific Attachment for the purpose of Licensee providing certain services as allowed under the associated License Agreement. The License will be evidenced in each instance by a Telephone Company-approved Application for the relevant Attachment. A Telephone Company-approved Application is required for every Attachment. No Attachment may be made to any Telephone Company Facility identified in an Application until Telephone Company has approved the Application in writing. The Licensee will be required to post bond and evidence of insurance.

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## 1. GENERAL (Cont'd)

## 1.4 Use of Space

Licensee's Attachments must be used only for the providing of certain services as allowed under the associated License Agreement, and any use for other purposes or any use of Pole or Conduit space that causes interference to telephone service or to other Licensees may constitute a breach of the contract and may result in termination of the License. The associated License Agreement will require Licensee to complete an affidavit in which Licensee represents and warrants as to the type or types of service provider it is and what services it provides.

## 1.5 Delays or Loss of Service

Licensee must hold Telephone Company harmless from any loss of service or delay in service attributable to the lease of or delay in providing Pole or Conduit space.

## 1.6 Licensee Maintenance

Licensee will maintain Attachments in good and safe condition and repair (and replace if necessary) and in accordance with the "Specifications" (as defined in Section 3.1 of this tariff and in the associated License Agreement). If Licensee refuses or neglects to fulfill its maintenance obligations under this tariff and the associated License Agreement in a manner reasonably satisfactory to Telephone Company, Telephone Company may undertake such obligations itself, and Licensee will reimburse Telephone Company for the Cost Telephone Company incurred in fulfilling such obligations within 30 days of the invoice date for an invoice from Telephone Company for the Cost.

Unless otherwise governed by Applicable Law, Telephone Company 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 contractors under Telephone Company's direction. Licensee will reimburse Telephone Company for the Cost of trimming and clearing within 30 days of the invoice date for an invoice from Telephone Company for the Cost. Tree trimming and clearing needed, in Telephone Company's sole discretion, solely as a result of adverse weather conditions such as wind, snow or ice storms may be performed by Telephone Company or its agents, and Licensee will pay, along with any other allowed users of the Telephone Company Facility, its pro rata share of the Cost for the trimming and clearing within 30 days of the invoice date for an invoice for the Cost.

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## 1. GENERAL (Cont'd)

## 1.7 Entrance Facilities and Interconnection Agreements.

Neither this tariff, the associated License Agreement nor any License is applicable to Telephone Company's Entrance Facilities. For the purpose of this tariff and the associated License Agreement, "Entrance Facilities" is defined as the communications path between a customer's premises and Telephone Company'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. Any matters related to Entrance Facilities must be covered under a separate written interconnection agreement between the parties or ordered from an applicable tariff.

Neither this tariff, the associated License Agreement nor any License allows or will be deemed to allow Licensee to interconnect Licensee Equipment with the equipment, facilities or network of Telephone Company or of any other user or occupant of the Pole or Conduit. Any interconnection arrangements between Telephone Company and Licensee must be authorized pursuant to a separate written interconnection agreement. Any interconnection arrangements between Licensee and any other user or occupant of a Pole or Conduit (other than Telephone Company) must be approved in advance by Telephone Company, such approval to be at Telephone Company's sole discretion.

## 1.8 Electronic Information

Telephone Company may require Licensee to provide information submitted to Licensee under this tariff or the associated License Agreement, including notice, to also be submitted in an electronic form compatible with Telephone Company's systems. If Licensee fails to comply with this requirement, Licensee will be responsible for Telephone Company'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.

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## 2. ATTACHMENT LICENSE AND CHARGES

## 2.1 Licensee Authorization

- (a) Prior to making any Application for an Attachment, Licensee must possess the necessary authority to construct, install, erect and maintain its equipment within the public streets, highways, alleys and other thoroughfares of the service areas. Licensee is solely responsible for obtaining and maintaining all necessary licenses, authorizations, permits, franchise agreements, Rights-of-Way, easements, rights and consents from any governmental 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 (collectively, "Authorization"). Authorization includes Licensee obtaining the appropriate 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 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. Telephone Company will not be obligated to consider an Application requiring an Authorization that is not submitted with a copy of the Authorization. Submitting copies of an Authorization to Telephone Company 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. Telephone Company will reasonably cooperate with Licensee in Licensee's efforts to obtain an Authorization. Telephone Company 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 Telephone Company, Telephone Company's parent, subsidiaries and affiliates and their respective directors, officers, employees and agents (Telephone Company and the foregoing, each a "Telephone Company Indemnitee") from and against any and all claims, suits, liens, actions, damages, penalties, assessments, fines, losses, liabilities, costs, expenses, fees (including reasonable attorneys' fees through appeal) (collectively, "Damages") for a claim by a third party against a Telephone Company 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 paragraph, "Damages" will include Telephone Company's Cost of relocating Telephone Company Facilities and of defending Telephone Company's rights to and in any Right-of-Way granted to Telephone Company.

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2. ATTACHMENT LICENSE AND CHARGES (Cont'd)

2.1 Licensee Authorization (Cont'd)

- (b) Licensee will assist in and bear all expense of securing any consents, permits or licenses that may be required of the Telephone Company by reason of this tariff filing or the associated License Agreement. If an Authorization is revoked, expires or terminates for any reason after an Attachment for which an Authorization is required and for which Licensor granted a License, the License will be automatically revoked, effective the day the Authorization is revoked, expires or terminates. Licensee will, unless otherwise notified by Telephone Company, remove the Attachments covered under the revoked License within 60 days of the date the License covering the Attachment is revoked. If Licensee fails to remove an Attachment as required under this tariff and the associated License Agreement, Telephone Company may remove the Attachment without any liability on Telephone Company'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. Licensee will reimburse Telephone Company for Telephone Company's Cost to remove the Attachments within 30 days of the invoice date for an invoice from Telephone Company for the Cost.

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2. ATTACHMENT LICENSE AND CHARGES (Cont'd)

2.2 Application (Cont'd)

Before making an Attachment, Licensee must submit a completed Application for the desired Attachment to Telephone Company. Every Application must be accompanied by a fee of \$150.00 ("Application Fee"). Telephone Company will provide a written response to each Application within 45 days of Telephone Company's receipt of the Application. Telephone Company may refuse to consider any Application which is not accompanied by an Application Fee. Licensee will not make a request for more than 50 Pole Attachments or for occupying more than 5000 linear feet of Conduit in any one Application, and will not submit more than one Application for Pole Attachments or three Applications for Conduit at any one time. Upon the submission of one Pole Application or three Conduit Applications, Licensee will not submit another Application for a minimum of 14 days. Telephone Company will process applications for attachments received from two or more applicants for the same Telephone Company Facility according to the order in which Telephone Company receives the applications. Telephone Company, at Telephone Company's sole discretion, may determine that a Make Ready Survey and/or Make Ready Work are required. Telephone Company will provide an estimate of the Cost of the Make Ready Survey and/or Make Ready Work. If Licensee agrees to the estimated Cost, Licensee will be obligated to pay for all Make Ready Costs associated with the Application. If Licensee does not agree, then Telephone Company may deny the Application. Detailed provisions from Application submission to completion will be set forth in the associated License Agreement.

2.3 Safety, Reliability and General Engineering Principles.

For reasons of safety, reliability or general engineering principles, including insufficient Telephone Company Facility capacity and technical interference problems with Telephone Company Facilities or the equipment of Joint Owners or Existing Attachers, Telephone Company may, in its sole discretion, at any time revoke a License granted under this tariff or the associated License Agreement or deny an Application.

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2. ATTACHMENT LICENSE AND CHARGES (Cont'd)

2.4 Unauthorized Attachment Charge

- (a) If Telephone Company discovers an Unauthorized Attachment, Telephone Company may 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. If no Application is received by Telephone Company within the 15 day time period, Licensee must, unless notified otherwise by Telephone Company, remove its Unauthorized Attachment, at its own expense, within 60 days of notice to remove.
- (b) In addition to any other rights and remedies to which Telephone Company may be entitled for an Unauthorized Attachment at law, in equity, under this tariff and/or under the associated License Agreement, Telephone Company may charge Licensee \$25.00 per Unauthorized Attachment ("Unauthorized Attachment Charge"). In addition to the Unauthorized Attachment Charge, Telephone Company will be entitled to an amount per Unauthorized Attachment equal to the lesser of Annual License Fees: (a) calculated from the date of the last Audit through the date that would bring the Annual Licensee Fees current; or (b) calculated for the 5 years preceding the date that would bring the Annual License Fees current. Such amount will include interest on the amount at the highest interest rate allowed by law. All fees owed by Licensee under this paragraph 2.4 (b) are due and payable in arrears.

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## 3. SPECIFICATIONS

## 3.1 Specifications

Each Attachment must be placed, maintained and operated throughout the Term as defined in the associated License Agreement, in accordance with the following, all of which are incorporated by reference into this tariff and which will be set forth in the associated License Agreement (collectively, "Specifications"): (a) the requirements and specifications of the most current edition of the National Electrical Safety Code and any formal interpretations of it, including a determination of the strength of the Telephone Company Facilities to ensure sufficiency for transverse and vertical loads; (b) the most current rules and regulations of the Occupational Safety and Health Act; (c) the most current standards of the American National Standards Institute; (d) the rules, regulations or codes of any applicable governing authority; (e) any Applicable Law; (f) generally accepted industry standards; and (g) Telephone Company's written specifications that are set forth in the associated License Agreement, an Application, drawing, text or other writing, including any requirements for the location of an Attachment. If a conflict exists between any of the Specifications, the more stringent Specification will apply and control.

## 3.2 Noncompliant Attachment

In addition to any other rights and remedies to which Telephone Company may be entitled for a Noncompliant Attachment at law, in equity, under this tariff or under the associated License Agreement, if Telephone Company discovers a Noncompliant Attachment, Telephone Company may give notice of the Noncompliant Attachment to Licensee. Such notice must set forth in reasonable detail the circumstances that render the relevant Attachment a Noncompliant Attachment, including, if appropriate, detailing specific violations of any Specifications. Licensee must, at its own expense, either: (a) bring the Noncompliant Attachment into compliance to Telephone Company's reasonable satisfaction within 60 days of Licensee's receipt of the Noncompliant Attachment notice, and Licensee's failure to timely do so will be deemed an immediate revocation of any License granted for the Noncompliant Attachment; or (b) remove the Noncompliant Attachment within 60 days of the date the License covering the Attachment is revoked. If Licensee fails to remove an Attachment as required under this tariff or the associated License Agreement, Telephone Company may remove the Attachment without any liability on Telephone Company'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. Licensee will reimburse Telephone Company for Telephone Company's Cost to remove the Attachments within 30 days of the invoice date for an invoice from Telephone Company for the Cost.

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## 4. ATTACHMENT REMOVAL AND MODIFICATION

## 4.1 Attachment Removal.

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

When Licensee desires to remove an Attachment, be it permanently or as part of a Modification, or if Licensee is required under this tariff or the associated License Agreement to remove an Attachment, Licensee must provide 10 days advance notice to Telephone Company of when the removal is to occur. Licensee must give notice to Telephone Company that an Attachment has been removed. Licensee's obligations under this tariff and the associated License Agreement to remove Attachments will survive the expiration or termination of this tariff and the Associated License Agreement and any License revocation.

## 4.2 Licensee-Requested Modification.

If Licensee desires a Modification, Licensee must adhere to the Application and Attachment process of this Tariff and the associated License Agreement for each desired Modification. Each Modification requested by Licensee and approved by Telephone Company 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 Telephone Company, Joint Owners or Existing Attachers. If Licensee cannot conduct a Modification to meet any applicable Telephone Company timing requirements, Telephone Company may perform Licensee's Modification at Licensee's sole Cost, and will invoice Licensee for that Cost. Licensee will pay the invoice within 30 days of the invoice date. In addition to any reimbursement of Costs required of Licensee under this tariff or the associated License Agreement, Licensee will pay any additional Cost incurred by Telephone Company that are solely related to a Licensee-requested Modification.

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Effective:

United Telephone Company Of Ohio  
By Duane Ring, Vice President  
LaCrosse, Wisconsin

In accordance with Case No.: 11-0602-TP-UNC  
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POLE ATTACHMENT AND CONDUIT OCCUPANCY TARIFF  
P.U.C.O. No. 1

## 4. ATTACHMENT REMOVAL AND MODIFICATION (Cont'd)

## 4.3 Licensor-Required Modification.

Telephone Company may at any time and for any reason require Licensee to conduct a Modification. Except as otherwise required in this tariff, the associated License 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. Upon completion of the Modification, Licensor will provide to Licensee a writing reflecting the Licensor-required Modification. Licensee will be reimbursed for its Costs incurred in conducting the Licensor-required Modification. Licensee will not be required to submit an Application under this tariff or the associated License Agreement for the Modification done under this paragraph 4.3. If Licensee cannot conduct a Modification to meet any applicable timing requirements of Licensor, Licensor may perform Licensee's Modification at Licensor'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.

If 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 will be given under the terms of the associated License Agreement. 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 30 days of the invoice date for an invoice from Licensor for the Cost.

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## 5. RESERVATION OF RIGHTS, INSPECTIONS AND AUDIT

## 5.1 Ownership of Facilities

No use, however extended, of Telephone Company Facilities and no payments made under this tariff and the associated License Agreement or other action of Telephone Company will create or vest in Licensee any ownership or property rights in the Telephone Company Facilities, and Licensee's rights to the same will be a mere license. Nothing in this tariff or the associated License Agreement will be construed to compel Telephone Company to maintain any Telephone Company Facilities for a period longer than necessitated by its own service requirements.

## 5.2 Right to Operate

Telephone Company reserves to itself, its successors and assigns and Joint Owners, the right to construct, install, operate and maintain Telephone Company Facilities in such a manner that, in Telephone Company's judgment, will best enable it to fulfill its service or operating requirements, including considerations of economy and safety.

Nothing in this tariff or the associated License Agreement will compel or be construed as compelling Telephone Company to construct, retain, extend, place, replace, restore or maintain any Telephone Company Facilities that Telephone Company needs or does not need for its own service requirements, business or operations, or to approve an Application that would require Telephone Company to construct, retain, extend, place, replace, restore or maintain any Telephone Company Facility.

## 5.3 Other Rights Not Affected

Nothing in this tariff or the associated License Agreement will be construed as affecting the rights and privileges previously granted by Telephone Company, by contract or otherwise, to others to use any Poles or Conduit. Nothing contained in this tariff or the associated License Agreement will be construed as affecting or limiting the right of the Telephone Company to make additional contracts or agreements with other persons, firms, corporations or associations for the joint use of its poles.

## 5.4 Inspections

Telephone Company reserves the right to inspect at any time each new Attachment and to make such inspections pursuant to the terms of the associated License Agreement. Licensee shall reimburse the Telephone Company for the expense of such inspections pursuant to the associated License Agreement.

Such inspections or lack thereof will not operate in any way to relieve Licensee or its insurer of any responsibility, obligation or liability.

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## 5. RESERVATION OF RIGHTS, INSPECTIONS AND AUDIT (Cont'd)

## 5.5 Maintenance of Records.

Licensee must compile and maintain current and accurate records consisting of the number of Attachments, the type and size of Licensee Equipment attached, when each Attachment was made, the location of each Attachment and all Telephone Company-approved Applications. Licensee will, at its sole expense and within 14 days after receipt of a request from Telephone Company, deliver to Telephone Company complete, accurate, current and legible copies of all such records. Licensee's obligations under this section of the tariff and the associated License Agreement will survive for a period of 10 years from the expiration or termination of this tariff and the associated License Agreement.

## 5.6 Audit

Annually during the Term, pursuant to the associated License Agreement, Telephone Company may, in Telephone Company's sole discretion, conduct any test, inspection, investigation, inventory, audit or similar undertaking in order to gather information regarding Attachments and Telephone Company Facilities (collectively, "Audit"). Telephone Company may, but is not required to, give advance notice to Licensee of its intent to conduct an Audit. Licensee will reimburse Telephone Company for one-half of Telephone Company's total Audit Cost if the Audit does not include any Existing Attachers matters or for one-third of Telephone Company's total Audit Cost if the Audit includes any Existing Attachers matters. However, if the Audit shows either that the actual number of Attachments exceeds the number of Telephone Company-approved Attachments by more than 1%, or that the actual number of Noncompliant Attachments exceeds the number of Telephone Company-approved Attachments by more than 1%, Licensee will pay for all of Telephone Company's total Audit Cost. Licensee will reimburse Telephone Company for its share of the Telephone Company's total Audit Cost within 30 days of the invoice date for an Audit Cost invoice

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6. RISK OF LOSS, LIABILITY AND INSURANCE

6.1 Damage to Telephone Company Property

In the event Licensee, its contractors, agents or employees cause damage to the property of Telephone Company or any other Joint Owner or Existing Attacher and damage is caused by the Licensee's Attachment, Licensee will assume all responsibility for, and will promptly reimburse in full Telephone Company and through Telephone Company any other Joint Owner or Existing Attacher, all loss and expense occasioned by such damage. Licensee will make immediate report to Telephone Company of the occurrence of any such damage.

6.2 Indemnification

Licensee will indemnify, protect, save harmless, defend and insure each Telephone Company Indemnitee and any Joint Owner or Existing Attacher from and against all claims or demands for Damages as a result of injury or destruction of property, or as a result of injury to or death of a person or persons (including payments made under Workmen's Compensation law or under any plan for employee's disability and death benefits) and including all expenses incurred in defending against any such claims or demands, which may arise out of or be caused by the creation, installation, maintenance, presence, Modification, use, rearrangements, or removal or withdrawal, or abandonment of Licensee's Attachments or by the proximity of Licensee Equipment, Attachments, apparatus and appliances or by an act of Licensee, its contractors, agents and employees on or in the vicinity of Telephone Company Facilities.

6.3 Certificate of Insurance

Prior to submitting any Application, Licensee will provide to Telephone Company evidence of Licensee's insurance coverage in such form and with such companies as is satisfactory to Telephone Company, for such types of insurance and in such amounts as requested by Telephone Company and as required by the associated License Agreement. All insurance will be furnished by Licensee at its own expense and will remain in force for the entire period that Licensee's Attachments occupy space on the Telephone Company Facilities.

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## 6. RISK OF LOSS, LIABILITY AND INSURANCE (Cont'd)

## 6.4 Other Liability

In addition, Licensee will indemnify, protect, hold harmless, defend and insure Telephone Company and any Joint Owner or Existing Attacher;

- a. with respect to all communications transmitted over Licensee's system, from and against claims and demands for infringement of copyright, libel, slander, business disparagement, unauthorized use or treatment of television broadcast programs or other programs of other program material, infringement of patents with respect to the manufacture, use or operation of Licensee Equipment arising from the use of Licensee Equipment in combination with the Telephone Company Facilities and;
- b. from and against any and all claims and demands which may arise out of or be caused by electrical voltages and currents being conducted over Licensee Equipment, including drop wires, whether resulting from lightning, electrical power line current or other wise and regardless of whether such electrical voltages and currents were also conducted along and through the Telephone Company Facilities.

## 6.5 Interruptions of Service

Telephone Company will not be liable to Licensee, its customers or any others, for any interruptions to service of Licensee or for any interference with the operation of Licensee Equipment arising in any manner out of the use of the Telephone Company's poles hereunder unless due solely to the Telephone Company's gross negligence and in any event, the extent of the Telephone Company's liability shall be limited to the actual damage, if any, caused to Licensee Equipment.

## 6.6 Attachment Bond

Licensee will provide to Telephone Company a bond guaranteeing Licensee's performance of its obligations under this tariff and the associated License Agreement in a form agreeable to Telephone Company attached to the associated License Agreement ("Attachment Bond"). The amount of the Attachment Bond will be equal to five times the cumulative amount of the Annual License Fees or five hundred dollars (\$500.00), whichever is greater. The Attachment Bond must be provided upon the effective date of the associated License Agreement. Telephone Company may, in its sole discretion, change the Attachment Bond requirements from time to time upon at least 30 days prior notice to Licensee. The amount of the Attachment Bond will not operate as a limitation upon any of Licensee's obligations under this tariff or the associated License Agreement.

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## 7. RATES AND BILLING

## 7.1 Annual License Fee

Per Pole	<u>Per Year</u>
CLEC or an entity providing Telecommunications Service or VoIP	\$4.62
An entity providing only CATV Service	\$2.03
Per Conduit Duct Foot	
CLEC or an entity providing Telecommunications Service or VoIP	\$0.42
An entity providing only CATV Service	\$0.42

## 7.2 Payments

- (a) Licensee's obligation to pay an Annual License Fee will commence upon the date the Attachment subject to an Annual License Fee is made ("Fee Commencement Date"). Subject to paragraph 7.2 (b) and 7.2 (c), Annual License Fees are payable by Licensee annually in advance without any set-off or deduction. Telephone Company will invoice Licensee for Annual License Fees in January of each calendar year during the Term as defined in the associated License Agreement, and Licensee will pay the invoice within 30 days of the invoice date.
- (b) Subject to paragraph 7.2 (c), an Attachment placed at any time during a calendar year will be considered in use 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 paragraph 7.2 (a) that is paid in advance.

*As an example of how invoicing would work under paragraph 7.2 (a) and 7.2 (b), assume the Fee Commencement Date for a particular Attachment is August 1, 2011. The first Annual License Fee for that Attachment would appear in the January, 2012 invoice. That invoice would reflect an Annual License Fee for that Attachment owed in arrears for the year 2011, as well as the Annual License Fee for that Attachment payable in advance for the year 2012. Subsequently, the Annual License Fee for that Attachment would be payable in advance each January at the then current Annual License Fee.*

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7. RATES AND BILLING (Cont'd)

7.2 Payments (Cont'd)

- (c) An Attachment placed after January 1 of the final calendar year of the Term as defined in the associated License Agreement, will be considered in use 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 tariff and/or the associated License Agreement.

7.3 Adjustments in Annual License Fee

The Annual License Fee in existence at the time of the advance billing will apply to additional Attachments made during the billing.

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## 8. DEFAULT AND REMEDIES

## 8.1 Licensee Default.

In addition to any Licensee Default specifically provided for elsewhere in this tariff and/or the associated License 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 15 days after Licensee's receipt of notice of delinquency from Telephone Company; (b) Licensee fails to perform a non-monetary obligation contained in this tariff and/or the associated License Agreement, and the non-performance continues for a period of 30 days after Licensee's receipt of notice of non-performance from Telephone Company, 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 the associated License Agreement proves untrue or incorrect; or (d) Licensee becomes insolvent, or bankruptcy or receivership proceedings are initiated by or against Licensee.

## 8.2 Telephone Company Remedies.

If a Licensee Default occurs, Telephone Company will have the immediate right, in addition to any other rights and remedies to which it is entitled under this tariff and/or the associated License Agreement, at law or in equity (including the right to seek specific performance), to terminate the associated License Agreement. In the event of termination, Licensee must remove all of its Attachments at its own expense within 60 days of termination, unless notified otherwise by Telephone Company. Telephone Company'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 8.1(a), Telephone Company 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.

## 8.3 Remedies Cumulative.

All remedies described in this tariff and the associated License Agreement are cumulative and are not exclusive of other remedies to which Telephone Company may be entitled under this tariff, the associated License Agreement, at law or in equity. Use of one or more remedies does not bar the use of any other remedy

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