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May 8, 2014

**By E-Mail and Hand Delivery**

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**RE: Comcast of Massachusetts III, Inc. v. Peabody Municipal Light Plant and  
Peabody Municipal Lighting Commission – D.T.C. 14-2**

Dear Ms. Williams:

Enclosed for filing, please find an original of Ashburnham Municipal Light Plant's Petition to Intervene in the above captioned proceeding.

Sincerely,



Nicholas J. Scobbo, Jr.

Enclosure

cc: Service List for D.T.C. 14-2

**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

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Comcast of Massachusetts III, Inc.	)	
	)	
<i>Complainant,</i>	)	
v.	)	D.T.C 14-2
	)	
Peabody Municipal Light Plant and	)	
Peabody Municipal Lighting	)	
Commission	)	
	)	
<i>Respondents.</i>	)	

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**PETITION TO INTERVENE OF THE ASHBURNHAM MUNICIPAL LIGHT PLANT**

Pursuant to 220 C.M.R. § 1.03, Ashburnham Municipal Light Plant (“AMLP”) hereby moves to intervene in D.T.C. 14-2, Pole Attachment Rate Complaint of Comcast of Massachusetts III, Inc. (“Comcast”) v. Peabody Municipal Light Plant and Peabody Municipal Lighting Commission. AMLP meets all the requirements for full party intervenor status set forth in 220 C.M.R. § 1.03.

In support of its Petition, AMLP states as follows:

**A. Ashburnham Municipal Light Plant**

1. AMLP is a not-for-profit municipal electric utility organized and operating pursuant to G.L. c. 164, § 34, etc. AMLP provides electric energy and related services to residents and businesses in the Town of Ashburnham, Massachusetts.

2. AMLP’s offices are located at 24 Williams Road, Ashburnham, MA 01430.

**B. Relevant Facts**

3. In the provision of its electric service, AMLP operates solely-owned and jointly-owned utility poles on which Comcast has attachments.

4. AMLP and Comcast are parties to a Pole Attachment Agreement dated January 24, 2003 (“Agreement”). A copy is attached as Exhibit A.
5. On April 9, 2014, Comcast asserted that the rates in AMLP’s 2014 Invoice for pole attachment charges were “unjust and unreasonable because they exceed the maximum lawful rates AMLP may charge under Massachusetts General Law, Chapter 166, § 25A.” A copy of Comcast’s April 9, 2014 letter is attached as Exhibit B.
6. Comcast sent the April 9, 2014 letter pursuant to Section 15.10, Dispute Resolution, of the Agreement.
7. AMLP replied to Comcast on April 24, 2014 and specifically addressed all of Comcast’s assertions as required by Section 15.10 of the Agreement. A copy of AMLP’s April 24, 2014 reply letter is attached as Exhibit C.
8. AMLP believes that Comcast’s letter was a prelude to Comcast filing a formal complaint with the Department of Telecommunications and Cable (“Department”). Consequently, in its April 24, 2014 letter, AMLP stated that the relevant legal issues underlying Comcast’s assertions are the same as those in D.T.C. 14-2 and that AMLP and Comcast should discuss joining Comcast’s assertions in this open docket.
9. On May 2, 2014, Comcast responded to AMLP’s April 24, 2014 letter. Comcast stated that it was deferring any action against AMLP because it expects that the resolution of D.T.C. 14-2 will resolve the basis of its assertions against AMLP. A copy of Comcast’s May 2, 2014 letter is attached as Exhibit D.

**C. AMLP is Substantially and Specifically Affected**

10. AMLP is substantially and specifically affected by the deliberations and outcome of this proceeding.
11. Comcast’s letter unambiguously demonstrates that Comcast intends to use the outcome of this proceeding as the basis for resolving its assertions against AMLP.

12. AMLP has a significant interest in this proceeding because the deliberations in this proceeding directly affect its pole attachment rates.

13. AMLP is uniquely and solely qualified to represent its interests in this proceeding and no other party is positioned to represent AMLP.

14. No party would be unduly prejudiced by AMLP's intervention.

15. The Department's adjudication of the issues will be greatly assisted by AMLP's participation in this proceeding.

16. If the Petition is granted, AMLP intends to participate in this docket as a full party intervenor and to provide evidence, including but not limited to affidavits, expert testimony, briefs, and cross-examination.

17. AMLP will present evidence demonstrating that its pole attachment rates are just and reasonable and meet the requirements of G.L. c. 166, § 25A.

**D. Relief Sought**

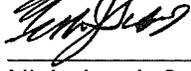
18. Based on the above, AMLP should be granted full party intervenor status in D.T.C. 14-2.

19. AMLP will seek a declaratory determination by the Department, pursuant to its authority under G.L. c. 166, § 25A, that AMLP's pole attachment rates are just and reasonable and meet the requirements of Massachusetts law.

Respectfully submitted by,

Ashburnham Municipal Light Plant  
By its attorneys,

**Ferriter Scobbo & Rodophele, PC**



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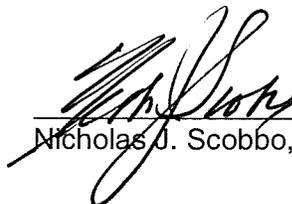
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Dated: May 8, 2014

**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

CERTIFICATE OF SERVICE

I hereby certify that on May 8, 2014, I served the foregoing Petition to Intervene by hand-delivery and first-class mail to the attached Service List in accordance with the requirements of 220 CMR § 1.05.

  
\_\_\_\_\_  
Nicholas J. Scobbo, Jr.



**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

Pole Attachment Rate complaint of Comcast Massachusetts III, Inc. v. Peabody Municipal Light Plant and Peabody Municipal Lighting Commission.  
14-2 Service List

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**A**

POLE ATTACHMENT AGREEMENT

DATED January 24, 2003

BETWEEN

VERIZON NEW ENGLAND INC. (LICENSOR)

AND

TOWN OF ASHBURNHAM, MASSACHUSETTS, ACTING BY AND  
THROUGH ITS MUNICIPAL LIGHT DEPARTMENT, (LICENSOR)

AND

AT&T CSC, INC., (LICENSEE)

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## POLE ATTACHMENT AGREEMENT

THIS AGREEMENT, made as of this 24<sup>th</sup> day of January 2003, between VERIZON NEW ENGLAND INC. organized and existing under the laws of the State of New York, having its principal office at 125 High Street, Boston, MA 02110, and TOWN OF ASHBURNHAM, MASSACHUSETTS, ACTING BY AND THROUGH ITS MUNICIPAL LIGHT DEPARTMENT, organized and existing under the laws of the Commonwealth of Massachusetts, having its principal office in the Town of Ashburnham (either or both hereinafter called "Licensor") and AT&T CSC, INC., organized and existing under the laws of the Commonwealth of Massachusetts, having its principal office in Andover, Massachusetts (hereinafter called "Licensee").

### WITNESSETH

WHEREAS, Licensee for its own use desires to place and maintain cables, equipment, and facilities on poles of Licensor, specifically in the Commonwealth of Massachusetts; and

WHEREAS, Licensor is willing to permit, to the extent it may lawfully do so, the placement of cables, equipment, and facilities by Licensee on Licensor's poles subject to the terms of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the parties agree as follows:

### **ARTICLE I - DEFINITIONS**

- 1.1 Anchor. A facility consisting of an assembly of a rod secured to a fixed object or plate designed to resist the pull of guy strand, or strands.
- 1.2 Anchor Attachment. A guy strand attached to an anchor solely owned or jointly owned by Licensor or for which Licensor is responsible for authorizing attachments.
- 1.3 Attachments. Any of Licensee's facilities in direct contact with or supported by a utility pole, and/or any article of equipment attached to a point on a pole not normally occupied by a strand attachment (e.g., power supplies, equipment, cabinets, terminals, etc.). For billing purposes an

Attachment is counted for each guy strand and cable supported by a through-bolt and for each article of equipment attached to a Utility Pole.

- 1.4 Attachment Fee. A specified amount revised periodically, billed semi-annually or annually to the Licensee.
- 1.5 Guy Strand. A metal cable of high tensile strength which is attached to a pole and anchor or another pole for the purpose of reducing pole stress.
- 1.6 Joint Owner. A person, corporation or other legal entity having an ownership interest in a pole and/or anchor.
- 1.7 Joint User. A party to whom use of the pole or anchor has been extended by the owner of the facility. The term "Joint User" shall not include Licensees.
- 1.8 Licensee's Facilities. The cable and all associated equipment and hardware owned by the Licensee.
- 1.9 Licensee's Maintenance Work. Work performed by Licensee on its facilities and attachments for repair, replacement and daily servicing of its plant, not associated with any significant overlash or rebuild project.
- 1.10 Make-ready Work. All work, including, but not limited to rearrangement and/or transfer of existing facilities, replacement of a pole or any other changes required to accommodate the attachment of licensee's facilities to a pole or anchor.
- 1.11 Overlash – The act of attaching any single strand, hardware, cable, wires and/or apparatus owned by Licensee to same Licensee's existing strand, hardware, cable, wires and/or apparatus.
- 1.12 Periodic Inspection. Licensor's inspection of Licensee's facilities performed to determine that attachments are authorized and are maintained in conformance with the required specifications in Article VI of this Agreement.
- 1.13 Planning Manager's Area. A geographic area assigned to a Verizon New England Engineer representative. The Planning Manager's Areas are set forth in APPENDIX III.
- 1.14 Pre-construction Survey. There are two elements of the Pre-construction Survey: 1.) field inspection of the existing pole and anchor facilities to

determine any necessary Make-ready Work, and 2.) administrative effort required to process the application and to prepare the charges for Make-ready Work, if applicable.

- 1.15 Post-construction Inspection. Inspection performed to measure and/or to visually observe Licensee's Facilities, during or shortly after completion of construction to ensure the attachment and the installation of the Licensee's Facilities conform to the standards required by this Agreement.
- 1.16 Rebuild. Work other than Licensee's Maintenance Work performed by Licensee to replace, add to or alter its existing attachments or facilities attached to Licensor's poles.
- 1.17 Subsequent Inspections. Inspections performed to confirm the correction of non-conforming conditions, which were observed during Periodic or Post-construction Inspections.
- 1.18 Suspension Strand (Messenger). A metal cable of high tensile strength attached to a pole and used to support facilities.
- 1.19 Unit Cost. A dollar amount subject to periodic revision by Licensor, associated with Pre-construction Surveys, Make-ready Work and Inspections applicable to specific work operations and functions.
- 1.20 Utility Pole. A pole solely owned, jointly owned, or jointly used by the Licensor and used to support its facilities and/or the facilities of an authorized Licensee.

## ARTICLE II – SCOPE OF AGREEMENT

- 2.1 Subject to the provisions of this Agreement, Licensor agrees to issue to Licensee for any lawful purpose, revocable, non-exclusive licenses authorizing the attachment of Licensee's Facilities to Licensor's poles. This Agreement governs the fees, charges, terms and conditions under which Licensor issues such licenses to Licensee. Licensee must obtain separate authorization from, and pay all applicable Fees and Charges to, each Licensor and any Joint Owner or Joint User of any Utility Pole. This Agreement is not in and of itself a license, and before making any attachment to any Utility Pole, Licensee must apply for and obtain a license.
- 2.2 This Agreement supersedes all previous aerial agreements between Licensor and Licensee. This Agreement shall govern all existing licenses between Licensee

and Licensor as well as all licenses issued subsequent to execution of this Agreement.

- 2.3 No use, however extended, of Licensor's pole or payment of any fees or charges required under this Agreement shall create or vest in Licensee any ownership or property rights in such poles. Licensee's rights herein shall be and remain a license.
- 2.4 Nothing contained in this Agreement shall be construed to require Licensor to construct, retain, extend, place, or maintain any pole or other facilities not needed for Licensor's own service requirements.
- 2.5 Nothing contained in this Agreement shall be construed as a limitation, restriction, or prohibition against Licensor entering into agreements with other parties regarding the poles covered by this Agreement. The rights of the Licensee shall at all times be subject to any existing agreement(s) or arrangement(s) between Licensor and any Joint Owner(s) or Joint User(s) of Licensor's poles.
- 2.6 Nothing contained in this Agreement shall be construed to require Licensor to grant a license where Licensor believes that placement of Licensee's Facilities would interfere with Licensor's existing service requirements, or the use of Licensor's facilities by other parties, or create a hazardous or unsafe condition.

### **ARTICLE III – FEES AND CHARGES**

#### **3.1 General**

- 3.1.1 Licensee agrees to pay to Licensor the applicable Attachment Fees and Charges as specified in and in accordance with the terms and conditions of subpart 3.2 of this Agreement and of APPENDIX I, attached hereto and made a part hereof.
- 3.1.2 The Licensor may change the amount of Attachment Fees and Charges specified in APPENDIX I by giving the Licensee not less than sixty (60) days written notice prior to the date the change is to become effective. Notwithstanding any other provision of this Agreement, Licensee may terminate this Agreement at the end of such sixty (60) day notice period if the change in Fees and Charges is not acceptable to Licensee.

In order to terminate in this circumstance the Licensee must give Licensor written notice of its election to terminate this Agreement at least sixty (60) days prior to the end of such sixty (60) day notice period or for such other period as the parties may agree in writing. Licensee shall thereafter remove its facilities and attachments in accordance with the process set forth in Article X, subpart 10.3 of this Agreement.

- 3.1.3 Changes in the amount of Attachment Fees and Charges specified in APPENDIX I shall become effective on the date specified by Licensor, subject to the sixty (60) day advance written notice. The changes shall be presumed acceptable unless at least thirty (30) days prior to the end of the sixty (60) day notice period Licensee advises Licensor in writing that the changes are unacceptable and, in addition, submits the issue to the regulatory body asserting jurisdiction over this Agreement for decision. Licensee shall pay the existing Attachment Fees and Charges during the time that the issue is being reviewed by said regulatory body, subject to true-up based on the final determination of rates by said regulatory body plus any interest prescribed by said regulatory body.

Licensor shall provide licensee with an updated APPENDIX I following the effective date of the new Attachment Fees and Charges.

3.2 Attachment Fees

- 3.2.1 Licensees shall pay an Attachment Fee for each attachment made to Licensor's Utility Poles. For the purpose of computing the Attachment Fees due hereunder, the Fee shall be based upon the number of attachments for which licenses have been issued.
- 3.2.2 Attachment Fees are calculated from the first day of the month following the date a license is issued. Fees shall be payable semi-annually or annually in advance, unless otherwise provided. Payment is due within the later of thirty (30) days from the first day of January and the first day of July or thirty (30) days from the date the bill is issued.

3.3 Pre-construction Survey, Make-ready Work and Inspection Charges

- 3.3.1 Licensee shall calculate and pay to Licensor the applicable Pre-construction Survey Charge with its License Application. The License Application forms are set forth in APPENDIX IV, attached hereto and made a part hereof. The Pre-construction Survey Charge shall be calculated based on the rates and formulas set forth in APPENDIX I.

- 3.3.2 Except as provided in Appendix VI, Licensee shall make an advance payment of the applicable Charge to Licensor prior to any performance by Licensor of any Pre-construction Survey, Make-ready Work, Post-construction Inspection or Subsequent Inspection. Where the work to be performed by Licensor is covered by a Unit Cost as described in subpart 3.3.4, the Licensor shall use the Unit Cost for the Charge. Where the work to be performed by Licensor is not covered by a Unit Cost, in whole or in part, the Charge will be based on an estimate of charges. For any charges based on an estimate, the Licensee shall be credited for any amount paid in excess of the Licensor's estimated charges, or shall be billed for any amount in addition to Licensor's estimated charges, as compared to the actual charges as finally computed.
- 3.3.3 Licensee shall make payment to the Licensor within thirty (30) days following the invoice for Periodic Inspections according to subpart 3.3.4 of this Agreement.
- 3.3.4 Pre-construction Survey, Make-ready Work, and Inspection (Post-construction Inspection, Periodic Inspection and Subsequent Inspection) Charges are based upon Unit Costs, where available. Unit Costs are set forth in APPENDIX I of this Agreement and are subject to change from time to time; provided however, the Unit Costs shall not change more frequently than once every twelve (12) months. Any changes in Unit Cost shall not vary by more than five percent (5%) per annum from the existing Unit Cost; provided that in the case of a significant and unforeseen change in circumstances affecting Licensor's costs, Licensor may adjust Unit Cost in excess of 5%. Sixty (60) days prior to any change in Unit Cost in excess of 5%, Licensor shall provide to Licensee a written explanation of the significant and unforeseen change in circumstance for the increase. A significant and unforeseen change in circumstances affecting Licensor's costs include changes in tax laws, accounting changes, and regulatory, judicial or legislative changes that affect the Licensor's costs. A statement of current Unit Costs are set forth in APPENDIX I and changes thereto shall be published at the time of such change.

For work where Unit Costs are not available, such as cable splicing, such costs will be billed on an actual time and material basis plus an amount equal to ten percent (10%) of such costs

#### 3.4 Payment Requirements

- 3.4.1 For any bill rendered by Licensor to Licensee hereunder, except where advance payment is required, payment is due within thirty (30) days from

the date of the bill. Late payment of any bill is subject to a late fee of 1.5% per month applied to the outstanding balance from the due date of the bill. Licensor, at its sole discretion, may change this late fee from time to time during the term of this Agreement to reflect prevailing market conditions.

- 3.4.2 Non payment of any amount due hereunder shall constitute a default of this Agreement, and subject this Agreement to termination under the provisions of Article X.
- 3.4.3 For any bill rendered by Licensor to Licensee for advance payment of Pre-construction Survey Charges or Make-ready Work Charges, hereunder, payment shall be made within thirty (30) days of the bill date. If such advance payment is not received within thirty (30) days, Licensor shall have the right to issue a letter of cancellation no sooner than 15 days thereafter, which will cancel the Licensee's application for the license. Thereafter, if Licensee wishes to proceed, Licensee shall submit a new application for a license, as if it had never submitted the initial application.

### 3.5 Billing Disputes

- 3.5.1 Where Licensee in good faith disputes a bill or invoice rendered by Licensor, Licensee shall make payment of all portions of said bill or invoice not in dispute as provided in Article III. Where the cumulative amount of all of Licensee's bills or portions(s) of bills in dispute are in excess of \$10,000.00, Licensee shall deposit said cumulative disputed amounts in an interest-bearing escrow account until such time as the disputes are resolved. The disputed amount deposited together with the proportional interest, shall be distributed immediately to Licensor and/or Licensee in accordance with and upon resolution of the dispute. Where the cumulative amount of all of Licensee's bills or portions of bills in dispute are less than or equal to \$10,000.00, Licensee shall make payment to Licensor and shall be rebated an appropriate amount (including interest computed at the prime rate at a bank mutually agreed to by the parties based on the resolution of the dispute).
- 3.5.2 Where Licensee fails to pay an amount due and owing under this Agreement (including amounts in dispute that are less than or equal to \$10,000) or fails to establish an escrow account for disputed amounts more than \$10,000, or fails to invoke the dispute-resolution procedures set forth in subpart 15.10 of this Agreement within six months of the establishment of amounts disputed in good faith, in addition to all other remedies available to Licensor including termination under provisions of Article X of this Agreement, Licensor may refuse to perform any Survey, Inspection or Make-ready Work for Licensee and may refuse to issue any

license to Licensee until such time as the amount is paid or is deposited in an escrow account.

#### **ARTICLE IV - APPLICATION FOR AND ISSUANCE OF LICENSES**

- 4.1 Before Licensee makes an Attachment to any pole, Licensee shall make application for and have received a license therefor in the forms attached in APPENDIX IV. Licensor may update these forms from time to time during the term of the Agreement.
- 4.2 Licensee agrees to limit the filing of applications for pole attachment licenses to include not more than 200 poles on any one application. Licensor reserves the right to limit the filing for pole attachments to no more than 2,000 poles on all applications that are pending approval by Licensor at any one time within a single Planning Manager's Area. Licensee further agrees to designate a desired priority of completion of the Pre-construction Survey and Make-ready Work for each application relative to all other of its applications on file with Licensor at the same time.
- 4.3 Properly completed license applications received by Licensor on the same day from two or more licensees for attachment accommodations on the same pole(s), shall be processed together. All Pre-construction Survey or Make-ready Work required to accommodate the applicants will be completed simultaneously for the benefit of all applicants. All applicants will be rebated with the pro rata share of costs based on the number of applicants.

#### **ARTICLE V – PRE-CONSTRUCTION SURVEY and MAKE-READY WORK**

- 5.1 A Pre-construction Survey is required for each pole and anchor for which an attachment is requested to determine the adequacy of the pole and anchor to accommodate Licensee's attachments and facilities. The Pre-construction Survey will be performed jointly by representatives of Licensor, Joint Owner and/or Joint User, and Licensee unless otherwise agreed to by all parties.
- 5.2 Licensor will process all requests for access to poles on a non-discriminatory basis in the order such requests are received.
- 5.3 Within forty-five (45) days of receipt of written notification in the form of a complete license application and the correct Survey Fee payment, Licensor shall perform or have performed a Pre-construction Survey and present the Survey results. The Survey results will contain one of the following statements:

If no Make-ready Work is required, a license shall be issued for the attachment.

If Licensor determines that the pole or anchor to which Licensee desires to make attachments is inadequate or otherwise needs rearrangement of the existing facilities thereon to accommodate the Licensee's Facilities, in accordance with the specifications set forth in Article VI, Licensor will provide Licensee with an itemized invoice for such anticipated Make-ready Work. The Make-ready Work will be performed following receipt by Licensor of advance payment. Upon receipt of the advance payment, Licensor will provide the Licensee with the estimated start and estimated construction completion date of the Make-ready Work.

If Licensor determines that the pole may not reasonably be rearranged or replaced to accommodate Licensee's Facilities for reasons of capacity, safety, reliability or engineering, the Licensor may refuse to grant a license for attachment. Licensor shall provide the specific reason(s) for such denial. Licensor shall not unreasonably exercise the right reserved hereunder.

- 5.4 Licensor shall make every reasonable effort to complete Make-ready Work within six (6) months of receipt of payment for Make-ready Work from Licensee, except for reasons beyond Licensor's control. For applications consisting of six (6) or fewer poles requiring Make-ready Work, and where Verizon is the only party required to perform make-ready work, Verizon will complete the make-ready work within 45 days.
- 5.5 To the extent practicable, Licensor shall provide Licensee, no less than sixty (60) days prior written notice of any modification of poles (such as pole replacement or relocation) other than routine maintenance, or modifications in response to emergencies, or to a request from a governmental authority.

## **ARTICLE VI - SPECIFICATIONS AND LEGAL REQUIREMENTS**

- 6.1 Licensee's Facilities shall be placed and maintained in accordance with the requirements and specifications of the latest editions of the "Blue Book - Manual of Construction Procedures" (Blue Book), published by Telcordia Technologies Inc.; the "National Electrical Code (NEC), published by the National Fire Protection Association, Inc.; the "National Electrical Safety Code" (NESC), published by the Institute of Electrical and Electronics Engineers, Inc.; and rules and regulations of the U.S. Department of Labor issued pursuant to the "Federal Occupational Safety and Health Act of 1970", as amended, (OSHA) or any governing authority having jurisdiction over the subject matter. Where a difference in specifications may exist, the more stringent shall apply.

- 6.2 Licensee shall be responsible for obtaining from the appropriate public and/or private authority any required authorization to construct, operate and/or maintain Licensee's Facilities on public and private property at the location on Licensor's poles. Licensee shall be responsible for obtaining permission from any joint Owner(s) or Joint User(s) of the pole before making any attachment thereto. This permission shall be in the form of a license or other writing.
- 6.3 No license granted under this Agreement shall extend to any of the Licensor's poles where the placement of Licensee's attachments would result in a forfeiture of the rights of licensor, Joint Owner(s), or Joint User(s) to occupy the property on which such poles are located. If placement of Licensee's attachments would result in a forfeiture of the rights of licensor, Joint Owner(s), or Joint User(s) or both, to occupy such property, Licensee agrees to remove its attachments forthwith; and Licensee agrees to pay Licensor, Joint Owner(s) or Joint User(s), or both all losses, damages and costs incurred as a result thereof.

## **ARTICLE VII - CONSTRUCTION AND MAINTENANCE OF ATTACHMENTS**

### **7.1 General Provisions**

- 7.1.1 Licensee shall, at its own expense, construct and maintain its attachments and facilities on Licensor's poles in a safe condition and in a manner acceptable to Licensor. Licensee shall construct and maintain its attachments and facilities so as not to conflict with the use of Licensor's poles by Licensor or by other authorized users of Licensor's poles, nor electrically interfere with Licensor's facilities attached thereto.
- 7.1.2 Licensor shall specify the point of attachment on each of Licensor's poles to be occupied by licensee's attachment. Where multiple Licensees' attachments are involved, Licensor shall attempt, to the extent practical, to designate the same relative position on each pole for each Licensee's attachments.
- 7.1.3 Licensee shall provide written notice to the Licensor of the actual dates of attachment within thirty (30) days of the date of attachment so that Licensor may promptly schedule a Post-construction Inspection.
- 7.1.4 Licensee may attach its guy strand to Licensor's existing anchor rod at no charge where Licensor determines that adequate capacity is available; provided that Licensee agrees to secure any necessary right-of-way therefor from the appropriate property owner. Should Licensor, Joint Owner(s) or Joint User(s), if any, for its own service requirements, need to

increase its load on the anchor rod to which Licensee's guy is attached, Licensee will either arrange its guy strand on the anchor rod or transfer it to a replacement anchor as determined by Licensor.

- 7.1.5 Should Licensor, Joint Owner(s), Joint User(s), or other Licensee need to attach additional facilities to any of Licensor's poles, to which Licensee is attached, Licensee will either rearrange its attachments on the pole or transfer them to a replacement pole as determined by Licensor so that the additional facilities of Licensor, Joint Owner(s) Joint User(s) or other Licensee may be attached.
- 7.1.6 If Licensee does not rearrange or transfer its attachments within fifteen (15) days after receipt of written notice from Licensor requesting such rearrangement or transfer and indicating that such pole is ready for rearrangement or transfer by Licensee, Licensor, Joint Owner(s) or Joint User(s) may perform or have performed such rearrangement or transfer, and, notwithstanding the provisions of subpart 7.1.7, Licensee agrees to pay the cost thereof.
- 7.1.7 Licensee shall not be required to bear any of the costs of rearranging or replacing its attachment if such rearrangement or replacement is necessitated solely as a result of an additional attachment or modification of an existing attachment sought by another party (including the Licensor, Joint Owner(s) or Joint User(s)) and should be paid for any work it performs to accommodate such request. Where multiple parties join in a modification, each party's proportionate share of the total cost will be based on a ratio of the amount of new space occupied by that party to the total amount of new space occupied by all parties joining in the modification. Licensor shall not be required to use revenue that may result from the use of any additional space resulting from such replacement or rearrangement to compensate parties that paid for the modification.
- 7.1.8 Unless otherwise governed by law, all tree trimming made necessary, in the opinion of the Licensor, by reason of the Licensee's proposed attachments at the time of attachment provided the owner(s) of such trees grant permission to the Licensor, shall be performed by contractors approved by and under the direction of Licensor, at the sole expense of the Licensee.
- 7.1.9 Any such tree trimming that may be required on Licensee's customer's premises, to clear Licensee's cable drop, shall be performed by the Licensee at its expense.

- 7.1.10 Tree trimming needed as a result of adverse weather conditions, such as wind, snow or ice storms, shall be performed by Licensor or its approved contractors. Since such tree trimming benefits Licensor, Licensee and other parties that may be lawfully attached to Licensor's poles, Licensee agrees to negotiate in good faith with the Licensor, on a case-by-case basis, to establish an appropriate sharing of costs associated with the tree-trimming projects.
- 7.1.11 For each new facility attached by Licensee to Licensor's poles, on or after the date of execution of this Agreement, Licensee shall place identification tags on cables located on poles and identification apparatus tags on any associated items of Licensee's Facilities. Licensee shall also place these identification tags when engaged in an Overlash or Rebuild project. Overlashed bundles require one tag per bundle, per Licensee. The requirements for identification tags are set forth in the Blue Book.
- 7.1.12 When Licensor deems it an immediate threat to safety and/or an emergency exists, it may rearrange, transfer, or remove Licensee's attachments to Licensor's poles at Licensee's expense. Licensor shall make reasonable efforts to contact Licensee as circumstances permit.

7.2 Licensee's Routine Maintenance, Overlash, Rebuild Work and Placement of Power Supplies

- 7.2.1 Licensee shall work cooperatively with the local Verizon New England Reimbursable Construction Engineer when performing routine Maintenance Work on its facilities and/or attachments. Cooperative practices shall include a system of notification by phone, facsimile, answering system, or otherwise for scheduling purposes. Any work, which involves six or fewer adjacent spans shall be presumed to be routine Maintenance Work. Significant simultaneous maintenance activity within a geographic area may be deemed by Licensor to be Rebuild activity.
- 7.2.2 Licensee shall follow the procedures set forth in APPENDICES V, VI and VII, hereof, in performing Rebuild or Overlash work and placing power supplies.

**ARTICLE VIII - INSPECTION OF LICENSEE'S FACILITIES**

- 8.1 The Licensor reserves the right to make Post-construction, Subsequent, and Periodic Inspections of any part or all of Licensee's facilities attached to Licensor's poles and/or anchors. Licensor shall provide Licensee with a copy of any written report of such inspection within thirty (30) days following the inspection. Charges and billing for Inspections as set forth in Article III shall

apply, provided that Verizon New England commences Post-construction and Subsequent Inspections within 90 days after notification from Licensee that the work is complete.

- 8.2 Except as provided in Appendix VI and VII, Post-construction Inspections shall consist of a 10 percent sample of the poles to which the Licensee has attached facilities after completion of work. If Verizon New England determines that the Licensee is not in compliance at greater than 2 percent of the sampled locations, Verizon New England may inspect and bill Licensee to inspect all poles involved in the project. Within ten (10) days of the completion of a Post-construction Inspection, the Licensor shall notify the Licensee in writing of the date of completion of Post-construction inspection and its findings.
- 8.3 Where Post-construction Inspection by the Licensor has been completed and non-complying conditions have been identified, Licensee shall correct any non-complying conditions within thirty (30) days of the date of the written notice from the Licensor. If after said 30-day period Licensee has not corrected all such non-complying conditions, Licensor may notify Licensee that if all such non-complying conditions are not corrected within an additional 30-day period, no further attachment authorizations shall be issued to Licensee until Licensee's facilities are brought into compliance. If corrections are not made by Licensee within 30 days from the second notification by Licensor, the Licensor may perform or have performed such corrections and Licensee shall pay to the Licensor the cost of performing such work.
- 8.4 Licensor may undertake Subsequent Inspections to determine if appropriate corrective action has been taken by Licensee. If the Subsequent Inspection finds continued non-complying conditions, Licensor may perform or have performed corrective action at the sole expense of the Licensee or Licensor may terminate the license pursuant to Article X.
- 8.5 The making of Post-construction, Subsequent and/or Periodic Inspections or the failure to do so shall not operate to relieve Licensee of any responsibility, obligation, or liability specified in this Agreement.
- 8.6 Licensor reserves the right to make Periodic Inspections of all or any part of the attachments or facilities of Licensee at the expense of Licensee, upon 60 days written notice to the Licensee. Periodic Inspections of the entire plant of the Licensee will not be made more often than once every five years unless, in Licensor's judgment, such inspections are required for reasons involving safety or because of an alleged violation by Licensee of the terms of this Agreement. Licensor shall make a reasonable effort to coordinate its Periodic Inspections with any Joint Owner.

## ARTICLE IX - UNAUTHORIZED ATTACHMENTS

- 9.1 If any of Licensee's facilities are attached to Licensor's poles without being licensed, Licensor, may recover fees as specified in subpart 9.2, without prejudice to its other rights or remedies under this Agreement, including termination, or otherwise, and require Licensee to submit in writing, within thirty (30) days after receipt of written notification from Licensor of the unauthorized attachment, a pole attachment application. If such application is not received within the specified time period, Licensee shall remove its unauthorized attachments within thirty (30) days of the final date for submitting the required application, or Licensor may remove Licensee's attachments or facilities without liability at the Licensee's expense.
- 9.2 Upon discovery of an unauthorized attachment, Licensee agrees to pay an amount equal to five times the current applicable annual Attachment Fee specified in APPENDIX I times the number of unauthorized attachments. The penalty shall be in addition to all other amounts due and owing to Licensor under this Agreement.

## ARTICLE X - TERMINATION

### 10.1 60-Day Termination

In addition to rights of termination provided to the Licensor under other provisions of this Agreement, the Licensor shall have the right to terminate Licensee's license, authorizations and/or rights granted under provisions of this Agreement where:

- (a) the Licensee's Facilities are maintained or used in violation of any law or in aid of an unlawful act or undertaking;
- (b) the Licensee ceases to have authority to construct and operate its facilities on public or private property at the location of the particular pole or anchor covered by the authorization;
- (c) the Licensee fails to comply with any of the terms and conditions of this Agreement or defaults in any of its obligations thereunder;
- (d) the Licensee attaches to a utility pole and/or anchor without having first been issued authorization therefor;
- (e) the Licensee, subject to provisions specified in Article II, ceases to provide its services;

- (f) the Licensee sublets or apports part of the licensed assigned space or otherwise permits its assigned space to be used by an entity or an affiliate not a party to this Agreement.

The Licensor will notify the Licensee in writing of any instances cited in this subpart. The Licensee shall take corrective action as necessary to eliminate the non-compliance and shall confirm in writing to the Licensor within sixty (60) days following such written notice that the non-compliance has ceased or been corrected. If Licensee fails to discontinue or correct non-compliance and fails to give the required written confirmation to the Licensor within the time stated above, the Licensor may terminate the license(s), authorization and/or rights granted hereunder for the poles and/or anchors at which such non-compliance has occurred.

## 10.2 Immediate Termination

Pole attachment license(s), authorization and/or rights are automatically and immediately terminated by the Licensor if:

- (a) except in circumstances in which Licensor has accepted evidence of self-insurance in accordance with Article XIV, the Licensee's insurance carrier shall at any time notify the Licensor that the policy or policies of insurance as required in Article XIV will be or have been cancelled or amended so that those requirements will no longer be satisfied;
- (b) the Licensee shall fail to pay any sum due under Article III or to deposit any sum required under this Agreement, or shall fail to maintain satisfactory surety as required in Article XII;
- (c) any authorization that may be required by any governmental or private authority for the construction, operation and maintenance of the Licensee's facilities on a pole or anchor is denied, revoked or cancelled.

## 10.3 General

10.3.1 In the event of termination of any of the Licensee's licenses, authorization and/or rights hereunder, the Licensee shall remove its facilities from the poles and anchors within sixty (60) days of the effective date of the termination; provided, however, that Licensee shall be liable for and pay all fees and charges pursuant to provisions of this Agreement to the Licensor until Licensee's facilities are actually removed from the utility pole(s) and anchor(s). If the Licensee fails to remove its facilities within

the specified period, the Licensor shall have the right to remove such facilities at the Licensee's expense and without liability on the part of the Licensor for damage or injury to such facilities or interruption of Licensee services.

10.3.2 When Licensee's facilities are removed from a pole or anchor, no attachment to the same pole or anchor shall be made until the Licensee has first complied with all of the provision of this Agreement as though no such pole or anchor attachment had been made previously and all outstanding charges due to the Licensor for such pole or anchor have been paid in full.

10.3.3 Any license issued under this Agreement shall automatically terminate when Licensee ceases to have authority to construct, operate and/or maintain its attachments on the public or private property at the location of the particular pole covered by the license. Such automatic termination shall be stayed if the licensee has sought judicial or regulatory review of the decision that: (1) has acted to terminate such authority or (2) has declared that the licensee lacks such authority.

#### 10.4 Licensee's Removal of Attachments

10.4.1 Licensee may at any time remove its attachments from a pole or anchor after first giving Licensor written notice of such removal. Licensee shall complete and provide to Licensor the Notification of Discontinuance of Use of Poles as contained in APPENDIX IV hereto. Licensor shall verify and execute such form within 30 days of submission. Billing for the attachment shall cease as of the last day of the month in which verification occurs. Licensor may update this form from time to time during the term of this Agreement.

10.4.2 Following such removal, no attachment shall again be made to such pole until Licensee shall have complied first with all of the provisions of this Agreement as though no such attachment had been made previously.

### **ARTICLE XI - ASSIGNMENT OF RIGHTS**

11.1 Licensee shall not assign or transfer this Agreement or any authorization granted hereunder, and this Agreement shall not inure to the benefit of Licensee's affiliates, successors or assigns without the prior written consent of Licensor, which consent shall not be unreasonably withheld; provided, however, no consent of Licensor is required if the Licensee assigns or transfers this Agreement to an affiliate and notifies the Licensor of such assignment or transfer, including any change in the notice address to be provided in accordance with subpart 15.3.

- 11.2 In the event such consent or consents are granted by Licensor, then this Agreement shall extend to and bind the affiliates, successors and assigns of the parties hereto.
- 11.3 Pole space licensed to Licensee hereunder is for the use of the Licensee named in this Agreement only, and Licensee shall not lease, sublicense, share with, convey or resell to any affiliates, subsidiaries, or any others any such space or rights granted hereunder.

## **ARTICLE XII - SURETY REQUIREMENTS**

- 12.1 Upon request of Licensor, a new Licensee, or an existing Licensee that lacks a history of prompt payments shall furnish bond or other satisfactory evidence of financial security in an amount specified as follows in subpart 12.2 to guarantee the payment of any sums which may become due to the Licensor for Attachment Fees due hereunder and any other charges for work performed for Licensee by the Licensor, including the removal of Licensee's facility upon termination of any authorization issued hereunder.
- 12.2 Licensee shall furnish a bond or other security satisfactory to the Licensor in the following amounts: Security in the amount of \$20.00 shall be required for each authorized pole attachment. The total amount of security required hereunder shall not exceed \$300,000 or be less than \$1,000. Security will not be required where Licensee's total attachment authorizations do not exceed ten (10).
- 12.3 If the financial security is in the form of a bond or irrevocable Letter of Credit, such instrument shall be issued by a surety company or bank satisfactory to the Licensor. The instrument shall contain a provision that the surety company or bank will pay Licensor, within the dollar limits of the instrument, any sum demanded by the Licensor as due under the Agreement, whether or not the Licensee contests its liability to pay such sum, and whether or not the Licensor exercises or has exercised any option it may have to terminate. If any such amounts are paid by the surety company or bank, the Licensee shall restore the surety bond or Letter of Credit to the full amount required under this Article, within thirty (30) days after notice of such payment is sent to the Licensee.
- 12.4 The amount of the bond or the financial security shall not operate as a limitation upon the obligations of the Licensee.

## **ARTICLE XIII - LIABILITY AND DAMAGES**

- 13.1 Licensor reserves to itself, its successors and assigns, the right to locate and maintain its poles and to operate its facilities in conjunction therewith in such a

manner as will best enable it to fulfill its own service requirements. Licensor shall not be liable to Licensee for any interruption of Licensee's service or for interference with the operation of Licensee's communications services arising in any manner, except from Licensor's sole negligence, out of the use of Licensor's poles.

- 13.2 Licensee shall exercise precaution to avoid damaging the facilities of Licensor and of others attached to Licensor's poles, and Licensee assumes all responsibility for any and all loss from such damage caused by Licensee's employees, agents or contractors. Licensee shall make an immediate report to Licensor and any other user of the occurrence of any such damage and agrees to reimburse the respective parties for all costs incurred in making repairs.
- 13.3 Licensor shall exercise precaution to avoid damaging the facilities of Licensee. Licensor shall make an immediate report to Licensee of the occurrence of any such damage and agrees to reimburse the respective parties for reasonable, direct costs incurred in making repairs.
- 13.4 Except to the extent as may be caused by the negligence of Licensor, Licensee shall defend, indemnify and save harmless Licensor against and from any and all liabilities, claims, suits, fines, penalties, damages, losses, fees, costs and expenses arising from or in connection with this Agreement (including reasonable attorneys' fees) including, but not limited to, those which may be imposed upon, incurred by or asserted against Licensor, by reason of:
- (a) any work or action done upon the poles licensed hereunder or any part thereof performed by Licensee or any of its agents, contractors, servants, or employees;
  - (b) any use, occupation, condition, operation of said poles or any part thereof by Licensee or any of its agents, contractors, servants, or employees;
  - (c) any act or omission on the part of Licensee or any of its agents, contractors, servants, or employees, for which Licensor may be found liable;
  - (d) any accident, injury (including death) or damage to any person or property occurring upon said poles or any part thereof arising out of any use thereof by Licensee or any of its agents, contractors, servants, or employees;
  - (e) any failure on the part of Licensee to perform or comply with any of the covenants, agreements, terms or conditions contained in this Agreement;

- (f) payments made under any Workers' Compensation Law or under any plan for employees disability and death benefits arising out of any use of the poles by Licensee or any of its agents, contractors, servants, or employees;
  - (g) the erection, maintenance, presence, use, occupancy or removal of Licensee's Facilities by Licensee or any of its agents, contractors, servants, or employees or by their proximity to the facilities of other parties attached to Licensor's poles; provided that Licensee shall defend, indemnify, and save harmless Licensor against and from any and all such liabilities, claims, suits, fines, penalties, damages, losses, fees, costs and expenses brought, made or asserted by any of Licensee's agents, contractors, servants, or employees of any of Licensee's contractors or agents; or by
  - (h) any and all such liabilities, claims, suits, fines, penalties, damages, losses, fees, costs and expenses brought, made or asserted by any of Licensee's agents, contractors, servants, or employees of any of Licensee's contractors or agents.
- 13.5 Licensee shall indemnify, save harmless and defend Licensor from any and all claims and demands of whatever kind which arise directly or indirectly from the operation of Licensee's attachments, including taxes, special charges by others, claims and demands for damages or loss for infringement of copyright, for libel and slander, for unauthorized use of television broadcast programs, and for unauthorized use of other program material, and from and against all claims and demands for infringement of patents with respect to the manufacture, use and operation of Licensee's poles, or otherwise.

The provisions of this Article shall survive the expiration or earlier termination of this Agreement or any license issued thereunder.

#### **ARTICLE XIV - INSURANCE**

- 14.1 Licensee and its subcontractors (if any) agree to purchase and maintain during the term hereof all insurance and/or bonds required by law or this Agreement including without limitation:
- (a) Commercial General Liability Insurance (including, but not limited to, premises-operations, explosion and collapse, underground hazard, broad form property damage, products/completed operations, contractual liability, independent contractors, personal injury) with limits of at least \$2,000,000. combined single limit for each occurrence. (Limits may be satisfied with primary and/or excess coverage.)

- (b) Commercial Automobile Liability with limits of at least \$2,000,000. combined single limit for each occurrence.
  - (c) Workers' Compensation insurance as required by Statute, and Employer's Liability insurance with limits of not less than \$1,000,000. per occurrence.
- 14.2 All insurance must be in effect before Licensor will authorize Licensee to make attachment to Licensor's pole(s) and shall remain in force until such Attachments have been removed from all such poles.
- 14.3 Licensee shall annually submit to Licensor satisfactory evidence of such insurance by an ACORD Form or other satisfactory form in general use by the insurance industry for each company insuring Licensee to the effect that it has insured Licensee for all liabilities of Licensee covered by this Agreement; and that such certificates will name the Licensor as an additional insured under the public liability policy and that it will not cancel or change any such policy of insurance issued to Licensee except after giving of not less than sixty (60) days written notice to Licensor. In the case of a self-insured Licensee, Licensor may elect to accept satisfactory evidence of such self-insurance in lieu of the ACORD Form.

## **ARTICLE XV - GENERAL PROVISIONS**

### 15.1 Authorization Not Exclusive

Nothing herein contained shall be construed as a grant of any exclusive authorization, right or privilege to Licensee. Licensor shall have the right to grant, renew and extend rights and privileges to others not parties to this Agreement, by contract or otherwise, to use any pole covered by this Agreement.

### 15.2 Failure to Enforce

Failure of Licensor to enforce or insist upon compliance with any of the terms or conditions of this Agreement or to give notice or declare this Agreement or any authorization granted hereunder terminated shall not constitute a general waiver or relinquishment of any term or condition of this Agreement, but the same shall be and remain at all times in full force and effect.

### 15.3 Notices

APPENDIX II sets forth where written notices required under this agreement shall be sent to Licensor and Licensee. Notice shall be acceptable in the following forms: first class mail, or if time-sensitive, facsimile followed by first

class mail or overnight mail with receipt. Licensee shall complete APPENDIX II and submit it to Licensor with this Agreement.

#### 15.4 Severability

If any of the provisions of this Agreement shall be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Agreement, but rather the entire Agreement shall be construed as if not containing the particular invalid or unenforceable provision or provisions. If the invalid or unenforceable provision or provisions shall be considered an essential element of this Agreement, the parties shall promptly attempt to negotiate a substitute therefor.

#### 15.5 Choice of Law

The construction, interpretation and performance of this Agreement shall be governed by and construed in accordance with the laws of the State or Commonwealth where the Licensor's poles are located, as set forth in this Agreement, without regard to the principles of conflicts of law. All actions under this Agreement shall be brought in a court of competent subject-matter jurisdiction of the county of the capital of such State or Commonwealth or a regulatory agency with subject-matter jurisdiction, and both parties agree to accept and submit to the personal jurisdiction of such court or regulatory agency. Licensee also agrees to submit to the jurisdiction of any court in the United States wherein an action is commenced against Licensor based on a claim for which Licensee has indemnified Licensor hereunder.

#### 15.6 Compliance with Laws

The parties hereto shall at all times observe and comply with, and the provisions of this Agreement are subject to, all laws, ordinances, and regulations which in any manner affect the rights and obligations of the parties hereto under this Agreement, so long as such laws, ordinances, or regulations remain in effect.

Licensee agrees to indemnify and hold harmless Licensor for, from and against and defend Licensor against, any loss or damage sustained because of Licensee's noncompliance hereunder.

#### 15.7 Survival

All rights and obligations hereunder granted or incurred prior to and which by their nature would continue beyond the cancellation, termination, or expiration of this Agreement shall survive such cancellation, termination, or expiration.

15.8 Use of Information

Licensee may provide to Licensor license applications and business plans of its future needs for pole attachments. Such information will allow Licensor to better forecast personnel and equipment requirements. However, as to business plans, such information shall be deemed for use as advance planning purposes only, and no obligation shall be created that Licensor hire personnel or purchase equipment, or Licensee submit license applications for the pole attachments. Such information shall be used only by such employees or contractors of Licensor who have responsibilities relating to the administration of, or to work to be performed under, this Agreement and said employees shall treat such information as Licensor treats its own confidential information of similar type and value. Licensor's obligations hereunder shall not extend to any information that are now available to the public or become available by reason of acts or omissions not attributable to Licensor.

15.9 Access to Records

Licensor, upon receipt of written request, shall provide access to Licensor's pole records in accordance with "Job Aid For Requests To Records" attached hereto as APPENDIX VIII. Licensor may update this form from time to time during the term of this Agreement.

15.10 Dispute Resolution

In the case where Licensee claims that a term or condition is unjust or unreasonable, Licensee shall submit a complaint to the Manager-License Administration Group, specifying all information and its argument relied on to justify its claim. Licensor shall provide a written response to such complaint within 10 business days after receipt of the complaint. Such response shall specifically address all contentions made by Licensee. If Licensee continues to have issues, it may request a meeting with Manager-License Administration Group to discuss such issues. Such meeting shall be held within five (5) business days. If the Licensee is not satisfied with the results of such meeting, it may file a complaint with the regulatory body of competent jurisdiction.

15.11 Emergency Conditions

All parties shall work cooperatively in the case of an emergency to restore service to their respective customers.

**ARTICLE XVI – TERM OF AGREEMENT**

Except as provided below, this Agreement shall remain in effect; provided, however, that the Licensor may, no less than two years from this date and upon written notice, require Licensee to engage in good-faith negotiations with the Licensor to amend the Agreement to comport with regulatory changes or obligations. If, the parties cannot agree to an amendment, they shall submit the matter to the regulatory agency with jurisdiction to resolve the matter. The Agreement may be terminated by Licensee by written notice of termination no less than 30 days prior to the effective date of such termination; provided, however, that such early termination shall not become effective until the Licensee has discontinued all existing licenses and has removed any and all facilities. The Agreement may be terminated upon written notice by the Licensor if, within one year from this date, the Licensee has placed no facilities on the Licensor’s poles in accordance with the Agreement.

Upon execution, this Agreement cancels and supercedes all previously executed Agreements between the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in multiple originals on the day and year first above written.

VERIZON NEW ENGLAND INC.

By: *Susan Dyer Mercer*

(Print Name) Susan Dyer Mercer

(Title) for Director Outside Plant Engineering

(Date) 1/24/03

Licensor: TOWN OF ASHBURNHAM, MASSACHUSETTS, ACTING BY AND THROUGH ITS MUNICIPAL LIGHT DEPARTMENT

By: *Stanley W. Herrick*

(Print Name) STANLEY W. HERRICK

(Title) General Manager

(Date) 1/31/02

Licensee: AT&T CSC, INC.

By: *Paul D'Arangelis*

(Print Name) Paul D'Arangelis

(Title) V.P. of Engineering

(Date) 12/2/02

## APPENDICES

- I. ATTACHMENT FEES and CHARGES
- II. NOTICE ADDRESSES
- III. PLANNING MANAGER'S AREA
- IV. LICENSE APPLICATIONS FORMS
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  - Authorization for Field Survey Work Form 2
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- V. REBUILD
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# APPENDIX 1

## ATTACHMENT FEES AND CHARGES

POWER COMPANY ASHBURNHAM MUNICIPAL LIGHT PLANT

1. Attachment Fees

Annual Attachment Fees are as follow:

State	JO/JU	Sole Owned
MA	\$4.83*	\$9.67*

**\*Rates are adjusted annually to reflect actual investment.**

Attachment Fees are calculated from the first day of the month following the date the license is issued.

Fees shall be payable **annually** in advance, unless otherwise provided. Payment is due within the later of thirty (30) days from the date the bill is issued.

## APPENDIX I

### ATTACHMENT FEES and CHARGES VERIZON NEW ENGLAND Inc.

1. Attachment Fees

Annual Attachment Fees are as follows:

State	JO/JU	Sole Owned
MA	\$2.40	\$4.80
ME	\$4.80	\$9.60
NH	\$4.84	\$9.67
RI	\$3.32	\$6.64
VT	\$6.04	\$12.07

Attachment Fees are calculated from the first day of the month following the date the license is issued.

Fees shall be payable semi-annually in advance, unless otherwise provided. Payment is due within the later of thirty (30) days from the first day of January and the first day of July or thirty (30) days from the date the bill is issued.

04/05/01

**B**



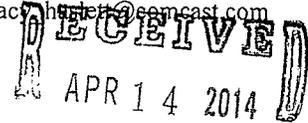
Comcast Cable  
One Comcast Center  
Philadelphia, PA 19103-2838

Tracy L. Haslett  
Counsel

Direct Dial: (215) 286-4685

Direct Fax: (215) 286-5039

Email: [tracy.haslett@comcast.com](mailto:tracy.haslett@comcast.com)



April 9, 2014

*Via UPS Next Day Air*  
*Tracking # 1Z F11 E45 A2 9933 3456*

Stanley W. Herriott, Manager  
Ashburnham Municipal Light Department  
24 Williams Road  
Ashburnham, MA 01430-0823

Re: *Annual Pole Attachment Charges to Comcast for 2014*

Dear Mr. Herriott:

The Town of Ashburnham, acting by and through its Municipal Light Department (“AMLP”), Verizon New England, Inc. and Comcast of Massachusetts III, Inc. (“Comcast”) are parties to a Pole Attachment Agreement dated January 24, 2003 as amended on May 27, 2003 to include Comcast (“Agreement”). On April 2, 2014, AMLP invoiced Comcast for \$55,581.00 for pole attachment charges for January through December 2014. The invoice is based on charges of \$14.55 per pole per year for 3,526 jointly owned (“JO”) poles, and \$29.10 per pole per year for 147 solely owned (“SO”) poles (“2014 AMLP Invoice”).

Pursuant to Section 15.10, Dispute Resolution, of the Agreement, Comcast hereby submits its complaint that the above rates in the 2014 AMLP Invoice are unjust and unreasonable because they exceed the maximum lawful rates AMLP may charge under Massachusetts General Law, Chapter 166, §25A. See, DPU/DTE 97-82, *Cablevision of Boston Company, et al. v. Boston Edison Company*, 1998 WL 35235111 (April 15, 1998), and DTE 98-52, *A-R Cable Services Inc., et al. v. Massachusetts Electric Company* (November 6, 1998). In addition, the 2014 AMLP Invoice bills Comcast for attachments on all of AMLP’s poles, which Comcast does not believe is accurate. In contrast, Verizon’s invoice for the 1<sup>st</sup> half of 2014 bills Comcast for several hundred fewer poles than AMLP.

Stanley W. Herriott, Manager  
Ashburnham Municipal Light Department  
Re: *Annual Pole Attachment Charges to Comcast for 2014*  
April 9, 2014  
Page Two

Comcast has previously advised AMLP that AMLP's pole attachment rate calculations violate Massachusetts law and are unjust and unreasonable. See Attachment 1. In this prior correspondence, Comcast fully explained the lawful rate calculation and calculated AMLP's pole rates under the law. With respect to the 2014 AMLP Invoice, Comcast has calculated the maximum lawful rates AMLP may charge as \$8.50 per SO pole and \$4.25 per JO pole.

As required by Section 15.10 of the pole attachment agreement, Comcast requests that AMLP provide a written response to this complaint within 10 business days and revise the 2014 AMLP Invoice to comply with Massachusetts law.

If you have any questions regarding this or would like to discuss it, please contact me.

Sincerely,



Tracy L. Haslett,  
Senior Counsel

TLH/srp  
Enclosure

cc: Board of Selectmen, Town of Ashburnham (*via regular mail only with encl.*)  
Douglas C. Briggs, Town Administrator (*via regular mail only with encl.*)  
Nicholas J. Scobbo, Jr. Esquire (*via regular mail only with encl.*) ✓  
James G. White, Jr., Comcast (*via e-mail only with encl.*)

Attachment 1



***New England Cable & Telecommunications Association, Inc.***

Ten Forbes Road  
Suite 440W  
Braintree, MA 02184  
Tel: (781) 843-3418  
Fax: (781) 849-6267

April 11, 2013

Stanley W. Herriott  
Manager  
Ashburnham Municipal Light Plant  
24 Williams Road  
P.O. Box 823  
Ashburnham, MA 01430-0823

Re: Ashburnham Municipal Light Plant  
Pole Attachment Invoice – 2013

Dear Mr. Herriott:

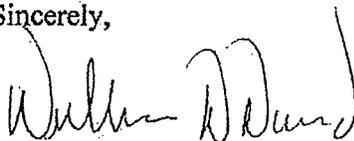
As Executive Vice President and Chief Legal Counsel at the New England Cable & Telecommunications Association, Inc. ("NECTA"), I have been asked by one of our members, Comcast of Massachusetts, III, Inc., to contact you regarding the referenced pole attachment rent invoice. By invoice dated March 25, 2013, Ashburnham Municipal Light Plant ("AMLP") invoiced Comcast new annual pole attachment rates of \$23.82 per solely owned pole and \$11.91 per jointly owned pole.

As you know, the amount of pole attachment rent that can be charged by a utility in Massachusetts (including a municipally owned utility) is governed by Department of Telecommunications and Energy ("DTE") requirements. Chapter 166, Section 25A ("Utility", means any person, firm, corporation or municipal lighting plant that owns or controls or shares ownership or control of poles...). The DTE's formula for calculating the lawful pole attachment rent that a utility can charge is set forth in Table 1 of DPU/DTE 97-82, *Complaint of Cablevision of Boston Co. et al. against Boston Edison Co.* (April 15, 1998).

NECTA has calculated AMLP's permitted attachment rate under the DTE formula and determined that the rate should be no more than approximately \$6.68 per solely owned pole and \$3.34 per jointly owned pole. Attached are our supporting calculations using data from AMLP's 2012 Annual Report to the Department of Public Utilities, which you included with the invoice. We calculated two potential attachments rates, one assumes that AMLP's cost of capital is 5.0% (\$6.68/pole/year) and the other assumes a cost of capital of 11.25% (\$8.08/pole/year). Based on this analysis, NECTA requests that AMLP reduce its 2013 solely owned pole attachment rate to no more than \$8.08 and the jointly owned rate to \$4.04 consistent with applicable law.

Please feel free to give me a call with any questions regarding this or to discuss next steps. You may reach me on my cell at (781) 781-424-5125. I can also be reached by email at [wdurand@necta.info](mailto:wdurand@necta.info).

Sincerely,

A handwritten signature in black ink, appearing to read "William D. Durand". The signature is written in a cursive style with a large, prominent initial "W".

William D. Durand  
Executive Vice President Chief Legal Counsel

C



NICHOLAS J. SCOBBO, JR., ESQ.

125 High Street, Boston MA 02110  
nscobbo@ferriterscobbo.com  
617.737.1800

April 24, 2014

**VIA E-MAIL & U.S. Mail**

Tracy Haslett, Senior Counsel  
Comcast Cable Legal Department  
1701 John F. Kennedy Parkway  
Philadelphia, PA 19102  
tracy\_haslett@comcast.com

**Re: Ashburnham Municipal Light Plant 2014 Pole Attachment Invoice to Comcast**

Dear Tracy:

Ashburnham Municipal Light Plant ("AMLP") has asked me to respond to your April 9, 2014 letter addressed to Stanley Herriott, General Manager of AMLP, regarding pole attachment charges invoiced by AMLP to Comcast of Massachusetts III, Inc. ("Comcast") for 2014.

Your April 9, 2014 letter included a copy of a letter from William Durand to AMLP dated April 11, 2013. The April 11, 2013 Durand letter sets forth Comcast's view regarding the maximum pole attachment rates allowed under Massachusetts law. I understand that Comcast is relying on the April 11, 2013 Durand letter as setting forth Comcast's position. AMLP's position on this issue has not changed. I refer you to our October 4, 2013 letter responding to Mr. Durand for that position. A copy of our October 4, 2013 is enclosed.

Also, in your April 9, 2014 letter, you state that Verizon bills Comcast for several hundred fewer poles than AMLP. You further assert that you do not believe AMLP's billing is accurate as a consequence.

In looking into this matter, we understand that there are several streets in AMLP's service territory where there are both solely-owned AMLP poles and solely-owned Verizon poles on the same street. Also, there are streets with just AMLP poles and no Verizon poles or services. As a result, there will be instances where Comcast's attachments are on AMLP poles only and not Verizon poles. In these instances, Comcast would receive a bill from AMLP and not from Verizon. For example, we understand that along Route 101 there are approximately one-hundred solely-owned Verizon poles that do not have Comcast attachments. Correspondingly, there are approximately 100 AMLP poles on which Comcast has attachments.

We believe that your April 9, 2014 letter is a prelude to filing a formal pole attachment complaint with the Department of Public Utilities ("DPU") and the Department of Telecommunications and Cable ("DTC"). We think the substance of the complaint would be virtually identical to that filed against Peabody Municipal Light Plant ("PMLP") by Comcast on

Tracy Haslet, Esq.  
April 24, 2014  
Page 2

March 19, 2014. (D.T.C. 14-02). Given that the issues and the arguments will largely be the same in both cases, are you amenable to discuss joining the AMLP complaint to the open PMLP docket? There are time and cost efficiencies to gain, for all parties, by handling both complaints in one proceeding.

Sincerely,



Nicholas J. Scobbo, Jr.

Enclosure

cc: Stanley Herriott, General Manager, Ashburnham Municipal Light Plant

Q:\NJS\170113001\Letters\Ltr 4.24.14 NJS to TLH (pole attachment rate complaint).docx



NICHOLAS J. SCOBBO, JR., ESQ.

125 High Street, Boston MA 02110  
nscobbo@ferriterscobbo.com  
617.737.1800

October 4, 2013

**VIA E-MAIL**

[wdurand@necta.info](mailto:wdurand@necta.info)

William D. Durand, Executive Vice President and Chief Legal Counsel  
New England Cable & Telecommunications Association, Inc.  
Ten Forbes Road, Suite 440W  
Braintree, MA 02184

**Re: Ashburnham Municipal Light Plant – Pole Attachment Invoice for 2013**

Dear Mr. Durand:

We represent Ashburnham Municipal Light Plant (“AMLP”). Stanley Herriott, AMLP’s General Manager, asked us to review and respond to your April 18<sup>th</sup>, 2013 letter regarding AMLP’s pole attachment invoice to Comcast for 2013. The invoice is dated March 25, 2013.

You state in your April 18<sup>th</sup> letter that the Department of Telecommunications and Energy established a “formula” for calculating pole attachment rates in *Cablevision of Boston Company v. Boston Edison Company*, D.P.U./D.T.E. 97-82, 1998 WL 35235111 (April 15, 1998) (“*Cablevision Order*”). You further state that this “formula” represents “the lawful pole attachment rent that a utility can charge.” You suggest that, because AMLP is a “utility” as defined in G.L. c. 166, §25A, the formula applies to AMLP.

We disagree.

The *Cablevision Order* is specific to Boston Edison Company (“BECO”). It does not prescribe a general formula for pole attachment rents applicable to all utilities. The formula set forth in the *Cablevision Order* was used merely to calculate rates for BECO in that case. It does not establish “the lawful pole attachment rent a utility can charge”, as you suggest. Contrary to your suggestion, the *Cablevision Order* formula does not apply to AMLP, nor is it a precedent of general applicability.

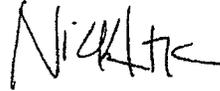
AMLP has been utilizing the same pole attachment billing formula as used in its March 25, 2013 invoice for many years. During those many years, Comcast has never objected to AMLP’s pole attachment rate. The AMLP rate is fair for the service provided. Moreover, the lack of objection from Comcast, prior to NECTA’s involvement, implies that Comcast also viewed the rate as fair, as well.

Finally, Mr. Herriott advises us that Comcast has not paid the March 25, 2013 invoice. The invoice represents pole attachment charges for the entire calendar year 2013. More than nine months of 2013 have now elapsed. Please ask Comcast to remit payment to AMLP forthwith.

William D. Durand  
October 4, 2013  
Page 2

If you have any questions with respect to the above, please contact me.

Sincerely,

A handwritten signature in black ink that reads "Nick" followed by a stylized flourish.

Nicholas J. Scobbo, Jr.

cc: Stanley Herriott, General Manager, Ashburnham Municipal Light Plant

**D**



Comcast Cable  
One Comcast Center  
Philadelphia, PA 19103-2838

Tracey L. Haslett  
Counsel  
Direct Dial: (215)286-4685  
Direct Fax: (215) 286-5039  
Email: tracy\_haslett@comcast.com

May 2, 2014

Nicholas J. Scobbo, Jr.  
Ferriter Scobbo & Rodophele, PC  
125 High Street  
Boston, MA 02110

***Re: Annual Pole Attachment Charges to Comcast for 2014***

Dear Mr. Scobbo:

Thank you for your letter dated April 24, 2014. At this time Comcast of Massachusetts, III, Inc. ("Comcast") has raised the relevant legal issue regarding the "Massachusetts Formula" before the Massachusetts DTC in a proceeding involving the Peabody Municipal Light Plant, and we expect that the resolution of that issue will also resolve the basis of the dispute with Ashburnham Municipal Light Department ("AMLDP"). Accordingly, Comcast is deferring any action regarding AMLDP at this time.

Sincerely,

A handwritten signature in cursive script that reads "Tracy Haslett /LMT".

Tracy Haslett  
Senior Counsel

Cc Stanley W. Herriott, Manager, Ashburnham Municipal Light Department