

**POLE ATTACHMENT LICENSE AGREEMENT**

**BY AND BETWEEN**

**East Kentucky Network, LLC**

**Foothills Rural Telephone Cooperative Corporation, Inc.**

**Gearheart Communications Company, Inc.**

**Mountain Rural Telephone Cooperative Corporation, Inc.**

**Peoples Rural Telephone Cooperative Corporation, Inc.**

**Thacker-Grigsby Telephone Company, Incorporated**

**(“Licensors”)**

**AND**

**Commonwealth of Kentucky, Finance and Administration Cabinet**

**(“Licensee”)**

This Pole Attachment License Agreement (this “Agreement”) is made and entered into as of the date last signed by all the parties, with an effective date of August 25, 2016, by and between: **EAST KENTUCKY NETWORK, LLC (“EKN”)**, a Kentucky limited liability company, with an address of 101 Technology Trail, Ivel, Kentucky 41642; **FOOTHILLS RURAL TELEPHONE COOPERATIVE CORPORATION, INC.**, a Kentucky corporation, with a physical address of 1621 KY Highway Route 40 W., Staffordsville, Kentucky 41256, and a mailing address of P.O. Box 240, Staffordsville, Kentucky 41256; **GEARHEART COMMUNICATIONS COMPANY, INC.**, a Kentucky corporation, with a physical and mailing address of 20 Laynesville Road, Harold, Kentucky 41635; **MOUNTAIN RURAL TELEPHONE COOPERATIVE CORPORATION, INC.**, a Kentucky corporation, with a physical address of 425 Main Street, Suite A, West Liberty, Kentucky 41472, and a mailing address of P.O. Box 399, West Liberty, Kentucky 41472; **PEOPLES RURAL TELEPHONE COOPERATIVE CORPORATION, INC.**, a Kentucky corporation, with a physical address of Highway 421 South, McKee, Kentucky 40447, and a mailing address of P.O. Box 159, McKee, Kentucky 40447; and **THACKER-GRIGSBY TELEPHONE COMPANY, INCORPORATED**, a Kentucky corporation, with a physical address of 60 Communications Lane, Hindman, Kentucky 41822, and a mailing address of P.O. Box 789, Hindman, Kentucky 41822, parties of the first part, hereinafter referred to collectively as “**Licensors**,” and individually as a “**Licensor**”; and the **COMMONWEALTH OF KENTUCKY, FINANCE AND ADMINISTRATION CABINET**, with an address of 702 Capitol Avenue, Room 383, Capitol Annex, Frankfort, Kentucky 40601, party of the second part, hereinafter referred to as “**Licensee**.” Licensor(s) and Licensee may sometimes be referred to in this Agreement individually as a “**party**” and collectively as the “**parties**”.

1. **DEFINITIONS**

A. “Affiliate”

With respect to any entity, any other entity controlling, controlled by or under common control with such entity. For purposes of this definition, “control” means direct or indirect ownership of at least 50% of the interest of such entity.

B. “Application”

A written request submitted in the form of Exhibit A from Licensee to Licensor requesting authorization to attach Licensee-owned facilities to Poles in accordance with this Agreement.

C. “Attachment(s)”

Any facilities, cables or equipment attached to Poles or any other property owned or controlled by a Licensor.

D. “Duct”

A pipe, tube, conduit or other structure made for supporting and protecting wires or cables and in which wires, cables, or conduits may be placed for support or protection, including any vault, manhole, hand-hole and/or pit owned or controlled by Licensor.

E. “License”

The specific, nonexclusive, and revocable permission from a Licensor, in the form of a countersigned and returned Application, to Licensee authorizing Licensee to attach its facilities as applied for to a Licensor’s Poles in accordance with this Agreement.

F. “Make Ready Estimate”

The Licensor estimated cost to perform Make Ready Work on a Licensor’s facilities on Poles to accommodate Licensee’s Attachment as requested in an Application for Pole License.

G. “Make Ready Work”

All Licensor, joint owner, or other existing attacher work to prepare a Licensor’s Poles and related facilities for the requested Attachment of Licensee’s facilities but not the actual placement of Attachments or administrative activities related to inquiries, verifications, requests or applications.

H. “Overlashing or overlashed”

Lashing of an additional Licensee-owned cable to Licensee’s own existing cable and/or strand attached to a Pole as set forth in Section 11 of this Agreement.

I. “Pole(s)”

A pole owned solely or jointly by one or more of the Licensors or Poles owned by others, such as a Licensor’s Affiliate, to the extent that and for so long as Licensor has the right to permit others to be attached to the Pole.

J. “Pole Attachment Fee”

The fee paid annually per Attachment on a Pole. For billing purposes, a single Attachment includes the point of Attachment and all facilities located in the usable space on the Poles in the space assigned to Licensee (typically six inches above and six inches below the point of Attachment). If Licensee occupies more than one foot of usable space on Poles, separate Pole Attachment Fees shall apply to each one foot of space occupied.

2. **PURPOSE AND SCOPE OF AGREEMENT; RELATIONSHIP BETWEEN LICENSORS AND LICENSEE**

A. The purpose of this Agreement is to set forth the rates, terms, conditions, and procedures under which a Licensor will provide Licensee access to Licensor's Poles in the Commonwealth of Kentucky.

B. Subject to the provisions of this Agreement, Licensor will issue to Licensee for any lawful communications purpose, revocable, nonexclusive Licenses authorizing the placement of Licensee's Attachment to Licensor's Poles.

C. No use, however extended, of Licensor's Poles nor payment of any fees or charges required under this Agreement nor any License issued under this Agreement shall create or vest in Licensee any ownership or property rights in said Poles, but Licensee's rights therein shall be and remain a mere license. Nothing herein contained shall be construed to compel Licensor to construct, retain, extend, place, or maintain any facilities not needed for its own service requirements, unless otherwise required by law. Nothing contained in this Agreement or in any License issued hereunder shall in any way affect, restrict or impair the right of Licensor to convey, transfer, mortgage, or assign to any other person or entity any interest in real or personal property, including any Poles in which Licensee has attached or placed Licensee's Attachments pursuant to Licenses issued under this or other license agreements.

D. Licensee recognizes that Licensor has entered into, or may in the future enter into, agreements and arrangements with others that are not parties to this Agreement regarding the Poles covered by this Agreement. Nothing herein contained shall be construed as a limitation, restriction or prohibition against Licensor with respect to such other agreements or arrangements. The rights of Licensee shall at all times be subject to any present or future joint use or joint ownership arrangement between Licensor and any other party.

E. Licensee shall not be deemed a partner, agent, principal, or joint venturer with or of any of the Licensors, and vice versa.

### **3. AUTHORITY OF EKN**

A. Each Licensor, on behalf of itself and on behalf of its Affiliates as authorized, does hereby designate EKN as its agent to act on its behalf in all respects in the management and performance of this Agreement. Without limiting the generality of the foregoing, any act permitted or required to be done by a Licensor or Licensor Affiliate under this Agreement may be done by EKN on behalf of such Licensor or Licensor Affiliate, and all notices, instructions, determinations, representations, communications, and other matters of any kind or nature from EKN to Licensee or others shall be deemed to be as effective as a notice, instruction, determination, representation, communication, or other matter directly from the Licensor or Licensor Affiliate.

B. Licensee shall recognize the authority of EKN to act on behalf of each Licensor and Licensor Affiliate, and Licensee shall be permitted to rely upon the signature, representation, or action of EKN to the same extent as if such signature, representation or action were that of the respective Licensor or Licensor Affiliate. All notices, applications, requests, or other matters of any kind or nature from Licensee with respect to this Agreement shall be directed to EKN.

C. With respect to any payments due under this Agreement, subject to Ky. Rev. Stats. 45.453, Licensee shall make funds payable to the entity designated by EKN and shall address delivery of payment in the manner directed by EKN. So long as Licensee complies with the direction of EKN with respect to issuance and delivery of payment, Licensee shall not be liable for any payments that are misdirected, and such matters shall be resolved solely between EKN and the respective Licensors or Licensor Affiliates.

D. The provisions of this Section 3 shall supersede any provision to the contrary that may be contained elsewhere in this Agreement. Wherever this Agreement provides for any act to be done by or establishes any right of a Licensor or Licensor Affiliate, such act may be done by and such right may be exercised by EKN as an authorized agent. It is understood and agreed by all parties that EKN is acting solely in a representative capacity and not in its own capacity with respect to the Poles and other property and facilities owned by another Licensor or Licensor Affiliate.

#### **4. TERM AND TERMINATION OF AGREEMENT**

A. Subject to any party's right to terminate this Agreement for default and subject to the Licensee's right to terminate this Agreement for default or convenience in accordance with 200 KAR 5:312, the initial term shall end on the thirtieth (30<sup>th</sup>) anniversary of the Effective Date (the "Initial Term"). Thereafter, the Agreement shall continue in full force and effect for subsequent terms of one (1) year (each, a "Renewal Term"); provided, however, that either party may terminate this Agreement after the Initial Term for any reason or for no reason, without liability to any other parties for such termination, by giving to the other parties notice of termination at least six (6) months prior to the end of the then-current Renewal Term. Notwithstanding the foregoing, at any time(s) after the end of the Initial Term, the rates, fees and charges may be increased or decreased by written notice from Licensors to Licensee.

B. Upon termination of the Agreement in accordance with any of its terms, all outstanding Licenses in connection therewith shall terminate and shall be surrendered, and Licensee shall immediately, and at its sole expense, remove all Attachments located on Poles within sixty (60) days of the date of termination.

#### **5. TERMINATION OF LICENSES**

A. In addition to other termination rights set forth in this Agreement, upon notice from Licensor to Licensee that Licensor has been advised by a governmental authority or private property owners that the use of any Pole is not authorized and is objected to by such governmental authority or private property owner, as the case may be or that any Pole is to be removed, Licensee shall immediately remove its cables, equipment, and facilities at once from the affected Pole(s) or shall make arrangements for the removal of its cable, equipment, and facilities from the affected portion of the Pole(s) at Licensee's sole expense. If not so removed within the timeframe stated on the Notice, Licensor shall have the right to remove Licensee's Attachments from Licensor's Poles at the cost and expense of Licensee and without any liability for such removal.

B. Licensee may at any time remove its Attachments from any Poles, but shall immediately give Licensor written notice of such removal and surrender of License in the form of a Notification of Surrender attached hereto as Exhibit B and incorporated by reference and made a part of this Agreement. If Licensee surrenders its License but fails to remove its Attachments from Licensor's Poles, Licensor shall have the right but not the obligation to remove Licensee's Attachments at Licensee's expense without any liability on the part of Licensor for damage or injury to Licensee's Attachments or interruption of Licensee's services. Licensee's obligations with regard to maintenance and fees continue until Attachments are removed from the Poles. In the event that Licensee's Attachments shall be removed from any Poles as provided by this Agreement, no Attachment shall again be made to such Poles unless Licensee shall have first complied with all of the provisions of this Agreement as though no Attachment had previously been made.

## **6. RATES, FEES AND CHARGES**

A. All rates, charges and fees set forth in this Agreement and those shown in Exhibit C (Schedule of Rates, Fees, and Charges) shall be subject to and calculated in accordance with applicable law. Pursuant to Ky. Rev. Stats. 45.454, if Licensee fails to make any payments within thirty (30) days of receipt of invoice, such amounts shall accrue interest at the rate of one percent (1%) per month or at the maximum percentage allowed by applicable law, whichever is less.

B. For the purpose of computing the annual Pole Attachment Fee due under this Agreement, the Pole Attachment Fee shall be based each year upon the number of Poles where Licensee was issued or maintained a License during the calendar year (without proration) multiplied by the Attachment Rate set forth on Exhibit C. The invoice(s) for the annual Pole Attachment Fee shall be sent to Licensee in the first quarter of each year for the preceding calendar year.

C. All charges for inspections, engineering, replacement or rearrangements of Licensee's Attachments from Licensor's Poles and, without limitation, any other work performed for Licensee shall be based upon the full cost and expense, including reasonable overhead, incurred by Licensor or its representative for performing such work. The cost to Licensee shall be determined in accordance with the regular and customary methods used by Licensor in determining such costs.

D. Upon termination or surrender of a License granted hereunder, no refund of any Pole Attachment Fees shall be made and Licensee shall remain liable for all fees and charges set forth in this Agreement until Licensee has removed its Attachments.

## **7. PAYMENT**

A. All bills for work performed by Licensor or its representative, other sums payable under this agreement, and the fees set forth in the Agreement shall be payable upon presentment to Licensee, and shall be deemed delinquent if not paid within thirty (30) days after the date of receipt of the invoice. Attachment fees shall be invoiced annually as set forth in Paragraph 6.B., and all other charges may be invoiced in the time frames specified elsewhere in this Agreement or, if no time frame is specifically provided, at the discretion of Licensor.

B. Should Licensor, under the terms and conditions of this Agreement, remove Licensee's Attachments from Poles, Licensor will deliver to Licensee the cable, equipment or facilities so removed upon payment by Licensee of the cost of removal, storage and delivery, and all other amounts due hereunder. Licensor is hereby given a lien on Licensee's cable, equipment or facilities attached to Licensor's Poles or removed therefrom, with power of public or private sale, to cover any amounts due Licensor under the provisions of this Agreement. Such liens shall not operate to prevent Licensor from pursuing, at its option, any other remedy in law, equity or otherwise, including any other remedy provided for in this Agreement.

## 8. ATTACHMENT REQUEST AND LICENSE PROCESS

A. Before Licensee shall have a right to place Attachments to any Poles, Licensee shall make application for and receive a revocable, nonexclusive License which shall be in the form of a countersigned Application for Pole License (Exhibit A). As provided in Section 3, all Applications for Pole License shall be submitted to EKN, regardless of which Licensor owns or controls the Pole(s) on which Licensee wishes to place Licensee's Attachments.

B. Each Application for Pole License (Exhibit A) shall contain no more than twenty-five (25) Poles, and Licensee may submit up to twelve (12) Applications for Pole License (Exhibit A), within any rolling thirty (30) day period. EKN will process Applications for Pole Licenses (Exhibit A) in the order in which they are received; provided, however, that when Licensee has multiple Applications for Pole Licenses on file with EKN, Licensee may designate its desired priority of completion with respect to all such Applications for Pole Licenses. **Licensee shall not under any circumstances attach any equipment to any guy wires, anchors, or strands owned by Licensor.**

C. Whenever Licensee submits an Application for Pole License in the form of Exhibit A, Licensee shall include a drawing of the proposed route, the pole detail and contact information (name, telephone, facsimile, and email information). Upon receipt of a complete Application for Pole License, Licensor will conduct an engineering survey to determine whether and where Licensee's Attachment is feasible, and what Make Ready Work is required to accommodate Licensee's Attachment. Upon completion of the engineering survey, Licensor shall inform Licensee of its estimated make-ready charges for Licensor Make Ready Work ("Make Ready Estimate"). If during this process, Licensor determines the request is denied based on reasons of safety, reliability and generally applicable engineering purpose or any other reason, Licensor shall inform Licensee that the Application for Pole License is denied together with the reason. All expenses incurred by Licensor in reviewing Licensee's Application for Pole License shall be borne by Licensee even if such request is denied by Licensor.

D. If Licensee upon review of the Make Ready Estimate desires to proceed with the process to obtain a License from Licensor, Licensee shall submit payment in the amount of the Make Ready Estimate together with the Application Fee and engineering survey costs to Licensor within fourteen (14) days of receipt of the Make Ready Estimate and invoice for such amounts. Licensee shall be solely responsible for negotiating with existing attachers for Make-Ready Work relating to such other existing attacher facilities located on, within or in Licensor's Poles and shall

be responsible for paying all charges incurred in transferring or rearranging existing attacher facilities to accommodate the placement of Licensee's Attachment on, within or in Licensor's Poles. Licensor shall provide Licensee with existing attacher(s) contact information upon request. In the event Licensee declines to proceed with the project, Licensee shall reimburse Licensor any costs and expenses incurred by Licensor to date including but not limited to the Application Fee, engineering and administrative expenses and costs.

E. Licensor shall undertake to complete any Make Ready Work of its owned facilities upon receipt of Licensee's payment of the Make Ready Estimate. Upon completion of all Make Ready Work and receipt of all fees and charges due from Licensee, Licensor shall issue Licensee an approved License which shall be in the form of a Licensor countersigned Application for Pole License. At that time, Licensee will be considered to have been granted a License with respect to the Poles approved in the License and may attach to Licensor's Poles in accordance with the terms and conditions of this Agreement.

F. Licensee shall maintain a copy of all Applications for Pole Licenses and all approved Licenses. Licensor may provide upon request copies of the same to the extent available and Licensee shall reimburse Licensor for its costs in preparing and sending requested copies.

## **9. AUTHORITY FOR PLACEMENT OF ATTACHMENT**

A. Before any placement of Attachments by Licensee, regardless of whether a License may have been issued, Licensee represents and warrants that it has the authority to maintain Attachments within public rights-of-way, or on private rights-of-way or on private property, and shall upon request provide a copy of documentation evidencing such right to Licensor. Licensee shall be solely responsible for obtaining all licenses, easements, authorizations, permits and consents from federal, state and local authorities or private land owners that may be required to place and maintain Attachments on Licensor's Poles.

B. As may be necessary, Licensor and Licensee shall each be responsible for obtaining its own right-of-way and permission to use real or personal property owned or controlled by any governmental body or private entity or person.

C. Licensor may, without incurring any liability to Licensee, remove Attachments of Licensee from Licensor's Poles, at Licensee's sole expense where in Licensor's sole judgment such removal is required in connection with the performance of Licensor's service obligation or the safety of Licensor's employees. Whenever such removal has been made, Licensee will be notified.

## **10. CONSTRUCTION AND MAINTENANCE**

A. Licensee's Attachments shall be placed and maintained in accordance with the following:

- I. any and all Licensor requirements and specifications of Licensor;



2. the terms and conditions of this Agreement;
3. the National Electric Safety Code (most recent edition);
4. the National Electric Code (most recent edition); and
5. in compliance with any other rules or orders now in effect or that may hereafter be issued by any state utility commission or other authority (state, federal, local) having jurisdiction over including but not limited to Poles, rights-of-way, and hazardous materials.

In the event of a conflict or difference between any of these specifications and requirements, the most stringent will apply. Licensee agrees to rearrange its Attachments, within a commercially reasonable timeframe, in accordance with changes in the standards referenced herein or if required by law.

B. Licensee shall, at its own expense, make and maintain its Attachments in a safe condition and in good repair and shall make use of the Poles in a safe manner, in a manner acceptable to Licensor, and in a manner that does not conflict with the use of said Poles by Licensor or by other authorized users of said Poles. Licensee shall not interfere with other facilities on the Poles or which may from time to time be placed thereon. Licensee shall, at its sole expense, upon written notice from Licensor, relocate or replace its Attachments placed on said Poles or transfer them to substituted Poles that may be authorized by Licensor, or perform any other work in connection with said Attachments that may be required. Licensor shall give such written notice as is reasonable in the circumstances, provided, however, that in cases of emergency, as determined by Licensor in its sole discretion, Licensor may arrange to relocate, remove or replace Licensee Attachments placed on said Poles, transfer such Attachments to substituted Poles or perform any other work in connection with said Attachments that may be required in the maintenance, replacement, removal or relocation of said Poles or facilities located thereon or which may be placed thereon, or for the service needs of Licensor, and Licensee shall reimburse Licensor for the expense thereby incurred.

C. Licensee shall be responsible at all times for the condition of Licensee's Attachments and for Licensee's compliance with the requirements, specifications, rules, regulations, ordinances and laws specified in this Agreement. Licensor shall have no duty to Licensee to inspect, monitor or maintain the condition of Licensee's Attachments (including, but not limited to, splices and other facilities connections) located on, within or in Licensor's Poles. Licensor may, but is not required to, make periodic or spot inspections at any time of any part of Licensee's Attachments as Licensor determines reasonable or necessary in its sole judgment.

D. Licensee shall not authorize any person or entity acting on Licensee's behalf ("**Licensee Contractor**") to perform any work on, within or in Licensor's Poles without first verifying, to the extent practicable, on each date when such work is to be performed and, that the condition of the Poles is suitable for the work to be performed. If Licensee or Licensee Contractor determines that the condition of the Poles is not suitable for the work to be performed, Licensee

shall notify Licensor of the condition of the Poles in question and shall not proceed with construction activities until Licensee is satisfied that the work can be safely performed.

E. Licensee shall be solely responsible for paying all persons and entities that provide materials, labor, access to real or personal property, or other goods or services in connection with the construction and placement of Licensee's Attachments and for directing the activities of all Licensee Contractors while they are physically present on, within or in the vicinity of Licensor's Poles. Licensee shall not permit any mechanic's lien, material man's lien, or any other lien, claim or security interest to attach to or encumber any of Licensor's real or personal property at any time.

F. Licensee's main line Attachments shall be tagged so as to identify Licensee as the owner of the Attachment. Licensee shall place fiber wrap/ID at the specific Licensor Poles attaching point and at any aerial span splice location and/or slack loop. The tags shall be of sufficient size and lettering so as to be easily read from ground level.

G. Any cable placed by Licensee in a Duct shall be enclosed within Licensee-furnished inner-duct and shall be clearly tagged and identified as belonging to Licensee at all access points. Licensee shall reimburse Licensor all actual costs and expenses incurred by Licensor in determining availability of a Duct within thirty (30) days of receipt of an itemized invoice.

H. Licensee shall make immediate report to Licensor of any damage caused to persons or to property of Licensor or others in the course of installation or maintenance of Licensee's Attachments.

## **11. OVERLASHING**

A. Any proposed Overlashing by Licensee shall constitute a separate Attachment subject to: the Application process; if the Application is approved, an additional Pole Attachment Fee; and all other provisions of this Agreement. Any additional Attachments being installed on Poles, regardless of it being an overlash of existing Attachment or as a new Attachment, will require an engineering analysis to determine if the additional loading negatively impacts the Poles' capacity.

B. In no event shall Licensee allow a third party to overlash to Licensee's Attachments without Licensor's prior written consent. Any third party must execute a License Agreement with Licensor and obtain a license thereunder.

## **12. MODIFICATIONS, ADDITIONS, REPLACEMENTS OR REARRANGEMENTS**

A. Licensee shall not modify, overlash, add to, or replace Attachments on any Poles without first notifying Licensor in writing of the intended modification, addition or replacement at least thirty (30) days prior to the date the activity is scheduled to begin. The required notification shall include:

1. The date the activity is scheduled to begin including the Pole location and Pole number;

2. A description of the planned modification, addition, or replacement;
3. A representation that the modification, addition, or replacement will not require any space other than the space previously designated for Licensee's Attachments; and
4. A representation that the modification, addition, or replacement will not impair the structural integrity of the Poles involved.

B. Upon Licensor's receipt of a complete Exhibit A (Application for Pole License), Licensor will perform a field check at Licensee's sole expense, and if Licensor determines that the modification, addition, or replacement specified by Licensee in its notice will require more space than that allocated to Licensee or will require the rearrangement of, reinforcement of, replacement of, or an addition of support equipment to the Poles involved in order to accommodate Licensee's modification, addition, or replacement, Licensor will so notify Licensee and the parties will follow the Make Ready Work process as set forth in Section 8 of this Agreement in order to obtain authorization for the modification, addition, or replacement of its Attachments.

C. Should Licensee request Licensor to expand capacity and should Licensor so agree, Licensee agrees to pay all cost and expenses thereby incurred by Licensor. If another party that has been granted a license joins in the request and will benefit from the expansion, Licensee agrees to pay a percentage of all costs proportionate to Licensee's share of the benefit received from the expansion or purchase, but Licensee shall be responsible for all costs and expenses not paid by the other party.

D. When multiple applications, including those of Licensee, are received by Licensor with respect to any Poles which must be replaced or rearranged to provide additional space prior to commencement of the work on such Poles, Licensor's facilities may need to be transferred in which case Licensee shall pay for all costs for such transfers.

E. In the event Licensor plans to modify or alter any Poles upon which Licensee has placed Attachments, Licensor, except in emergency situations, shall provide Licensee written notice of the proposed modification or alteration at least sixty (60) days prior to the time the proposed modification or alteration is scheduled to take place. Should Licensee decide to modify or alter Licensee's Attachments on Poles, Licensee shall so notify Licensor in writing at least thirty (30) days prior to the day the work is to begin. In such event, Licensee shall bear a proportionate share of the total costs incurred by Licensor to make Licensor Poles accessible.

F. In the event Licensor is required to move the location of, or replace, any Licensor Poles for reasons beyond its control, Licensee concurrently shall relocate Licensee's Attachments. Licensee shall be solely responsible for the costs of the relocation of Licensee's Attachments. When it is mutually agreed that it is in the best interest of Licensor and Licensee, Licensor may, after proper notification has been provided, transfer Licensee's Attachments at the same time that Licensor transfers its facilities and shall invoice Licensee for the actual costs incurred in performing the transfer of Licensee's Attachments.

### **13. EMERGENCY RESTORATION**

A. In the event of an emergency, restoration procedures may be affected by the presence of Licensee's Attachments. While Licensor shall not be responsible for the repair of damaged Attachments, Licensor shall nonetheless control access to its Poles if the restoration is to be achieved in an orderly fashion.

B. Where Licensor and Licensee are involved in emergency restorations, access to Licensor's Poles will be controlled by Licensor according to the following guidelines.

#### **1. Service Disruptions/Outages**

- a) While exercising its right to first access, Licensor shall make all reasonable efforts to grant access to as many other entities with attachments as is reasonably safe.
- b) Where simultaneous access is not possible, Licensor will grant access on first come, first served basis.

#### **2. Emergencies Affecting Services**

- a) While exercising its right to first access, Licensor shall make all reasonable efforts to grant access to as many other entities with attachments as is reasonably safe.
- b) Where Licensor is unable to grant simultaneous access to all other entities with attachments, access will be granted according to the level of damage to the attachments of each entity and the likelihood that a given level of damage will result in service disruption. Where the likelihood that a service disruption will result is not clearly discernible, access will be on a first come, first served basis.

C. Without limiting any other indemnification or hold harmless provisions of this Agreement, Licensee agrees that any decision by Licensor regarding access to its Attachments, or any action or failure to act by Licensor, under this section shall not be the basis for any claim by Licensee against any Licensor or Affiliate for any damage to Licensee's Attachments or disruption of Licensee's Services, or any other direct or indirect damages of any kind whatsoever incurred by Licensee.

### **14. FAILURE TO PLACE ATTACHMENTS**

Once Licensee has been issued a License, Licensee shall have 180 calendar days from the date the License was issued to begin the placement of its Attachments on the Licensor Poles covered by the License. If Licensee has not begun placing its Attachments within the 180 day period, Licensee shall so advise Licensor with a written explanation and notice for the delay. If Licensee fails to advise Licensor of its delay by notice thereof or if Licensee fails to act in good

faith by not making a bona fide effort to begin placing its Attachments within the 180 calendar days prescribed by this section, the License shall be automatically rescinded by Licensor and deemed null and void, and Licensee shall have no further right to place the Attachments pursuant to such voided License.

**15. ABANDONMENT**

Nothing in this Agreement shall prevent or be construed to prevent Licensor from abandoning, selling, assigning, or otherwise disposing of any Poles. Licensor shall notify Licensee of any sale, assignment, or other disposition of any Poles or other Licensor property used for Licensee's Attachments.

**16. INSPECTIONS AND INVENTORIES**

A. Licensor shall have the right, but not the obligation, to make a post construction inspection and periodic inspections at any time of any part of Licensee's Attachments on Poles and any other associated facilities for the limited purpose of determining whether Licensee's Attachments are in compliance with the terms of this Agreement and any Licenses issued hereunder. Such inspections shall be conducted at Licensor's expense with the exception of: (1) a post construction inspection; (2) follow-up inspection to confirm remedial action after an observed Licensee violation of the requirements of this Agreement; and (3) inspection of Licensee Facilities in compliance with a specific mandate of appropriate governmental authority, for which inspections the cost shall be borne solely by Licensee.

B. Upon written notice to Licensee, the total number and location of Licensee's Attachments on Licensor's Poles may be determined, at Licensor's discretion, through a survey which may be made not more than once per calendar year by Licensor. If so requested, Licensee and/or any other entity owning or jointly using the Poles with Licensor may participate in the survey. The costs incurred by Licensor to conduct the survey shall be reimbursed to Licensor by Licensee upon demand by Licensor regardless of whether or not Licensee participates in the survey. If the Attachments of more than one licensee are surveyed, each such licensee shall contribute a proportionate share of the costs reimbursed to Licensor.

C. Neither the act of inspection or survey by Licensor of Licensee's Attachments nor any failure to inspect such Attachments shall operate to impose on Licensor any liability of any kind whatsoever or to relieve Licensee of any responsibility, obligations or liability under this Agreement, any License issued hereunder, or applicable law, or to any third party contractor, Licensee Contractor, or otherwise.

**17. UNAUTHORIZED ATTACHMENTS**

A. If any Licensee Attachment shall be found on Poles for which no License has been granted by Licensor pursuant to the terms of this Agreement ("Unauthorized Attachment"), Licensor, without prejudice to its other rights or remedies under this Agreement or otherwise, may:

1. Impose charges as set forth herein or in Exhibit C; and

2. Require Licensee to remove such Unauthorized Attachment, or Licensor may remove such Unauthorized Attachment without liability, and the expense of removal shall be borne by Licensee.

B. Any such charge as set forth in Section 17(A) imposed by Licensor for an Unauthorized Attachment shall be in addition to Licensor's rights to any other sums due and payable, including without limitation Make Ready Work costs, the actual costs of any audit or survey which established the existence of the Unauthorized Attachment and to any claims to said fees.

C. No act by Licensor with regard to any unauthorized use shall be deemed as a ratification or the licensing of the unauthorized use, and if any License should subsequently be issued, after application and payment of all applicable fees therefore, said License shall not operate retroactively or constitute a waiver by Licensor of any of its rights or privileges under this Agreement or otherwise, and Licensee shall be subject to all liabilities, obligations and responsibilities of this Agreement in regard to said unauthorized use from its inception.

D. An Unauthorized Attachment shall include, but not limited to:

1. An Attachment to Poles which is not identified in any License issued in accordance with this Agreement;
2. An Attachment that occupies more space than that allocated to Licensee by Licensor in a License;
3. An Attachment that is not placed in accordance with the provisions of this Agreement or the appropriate License issued pursuant to this Agreement, unless Licensee can demonstrate to Licensor's reasonable satisfaction that said misplacement is not due to any act or omission of Licensee or Licensee's agents;
4. An addition or modification by Licensee to its pre-existing Attachment(s) that impairs the structural integrity of the involved Licensor Poles.
5. An Attachment that consists of facilities owned or controlled by, and for the use of a party other than Licensee that is overlashed to Licensee Attachments without approval by Licensor as required under this Agreement.

E. Once Licensor has notified Licensee of an Unauthorized Attachment. Licensee shall submit an Exhibit A, Application for Pole License, to request an authorization for the Attachment. An Exhibit A, Application for Pole License, submitted per this provision will be treated like any other Exhibit A, Application for Pole License, subject to this Agreement. Licensee will be responsible for all fees associated with an Exhibit A, Application for Pole License (as identified in this Agreement). If an Exhibit A, Application for Pole License, is not received by Licensor within ten (10) days of Licensor's notice of an Unauthorized Attachment, Licensee has sixty (60) days from the date of the Unauthorized Attachment notification to vacate the Pole. If

Licensee fails to remove Licensee's facilities within such sixty (60) day period, Licensor shall have the right to remove Licensee's facilities at Licensee's expense and without any liability on the part of Licensor for damage or injury to Licensee's facilities or disruption of Licensee's Services.

**18. COMPLIANCE WITH LAW, ASSUMPTION OF RISK, AND DISCLAIMER OF WARRANTIES**

A. Notwithstanding anything to the contrary in this Agreement, Licensee shall ensure that any and all activities it undertakes pursuant to this Agreement shall comply with all applicable federal, state, local, and other laws.

B. **LICENSEE ACKNOWLEDGES AND AGREES THAT LICENSOR DOES NOT MAKE ANY REPRESENTATION OR WARRANTIES AS TO THE CONDITION OR SAFETY OF LICENSOR'S POLES ANY ASSOCIATED FACILITIES AND EQUIPMENT ON, WITHIN OR SURROUNDING THE SAME, OR THE PREMISES SURROUNDING THE SAME, LICENSEE HEREBY ASSUMES ALL RISKS OF ANY DAMAGE, INJURY, OR LOSS OF ANY NATURE WHATSOEVER CAUSED BY OR IN CONNECTION WITH THE USE OF POLES AND ASSOCIATED FACILITIES AND EQUIPMENT ON, WITHIN OR SURROUNDING THE SAME, AND THE PREMISES SURROUNDING THE SAME AND LICENSEE IS SOLELY RESPONSIBLE FOR ALL ALLEGED DAMAGES CLAIMED BY THIRD PARTIES ACCESSING OR WORKING ON OR NEAR LICENSOR'S POLES.**

C. **EXCEPT AS OTHERWISE PROVIDED HEREIN, LICENSOR MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH ARE HEREBY EXPRESSLY DISCLAIMED, WITH REGARD TO THIS AGREEMENT AND ANY LICENSE ISSUED HEREUNDER INCLUDING, WITHOUT LIMITATION, ACCESS TO LICENSOR'S POLES OR OTHER FACILITIES.**

**19. LICENSEE CONTRACTOR QUALIFICATIONS**

A. The parties acknowledge that from time to time Licensee may use a Licensee Contractor to perform work for Licensee on, within or in Licensor's Poles.

B. Licensee represents and warrants that any of its employees or Licensee Contractors shall not climb or work on any of Licensor's Poles, or work within Licensor's Right-Of-Way unless such person has the training, skill, and experience required to recognize potentially dangerous conditions relating to Poles and to perform the work safely.

C. Licensee assumes all risk of Licensee Contractors' acts or omissions and to the extent permitted by law, including without limitation Section 177 of the Kentucky Constitution, agrees to be responsible to the full extent allowed by law, to defend and to hold harmless Licensor

from all claims, losses, damages and liabilities, costs and expenses (including, but not limited to, reasonable attorney's fees) associated therewith.

D. When Licensee Contractors are working on, within or in the vicinity of any part of Licensor's Poles or Right-Of-Way, all such Licensee Contractors shall follow procedures which Licensee deems appropriate for the protection of persons and property. Licensee shall be responsible at all times for determining and implementing the specific steps required to protect persons and property at the site. Licensee will provide all traffic control and warning devices required to protect pedestrian and vehicular traffic, workers and property from danger. Licensee has sole responsibility for the safety of all its employees and Licensee Contractors, for the safety of bystanders, and for insuring that all operations conform to terms and conditions set forth in this Agreement. Licensor reserves the right to suspend Licensee's activities on, within or in the vicinity of Licensor's Poles or Right-Of-Way if, in Licensor's sole judgment, any hazardous condition arises due to the activity (including both acts and omissions) of any Licensee Contractor or Licensee employee, which suspension shall cease when the condition has been rectified.

E. Licensee represents and warrants that all Licensee Contractors shall maintain the same insurance coverage and limits as are required of Licensee under this Agreement, and if not Licensee's insurance will provide such coverage.

F. Licensee acknowledges that all Licensee Contractors are not Licensor's employees or agents and to the extent permitted by law, including without limitation Section 177 of the Kentucky Constitution, Licensee assumes full responsibility for their actions or omissions to act. Licensee shall be solely responsible for the payment of compensation of Licensee's employees, contractors or agents assigned to perform work hereunder and such employees, contractors and agents shall be informed that they are not entitled to the provision of any Licensor benefits. Licensor shall not be responsible for payment of workman's compensation, disability benefits, and unemployment insurance or for withholding or paying employment related taxes for any employee of Licensee, but such responsibility shall be solely that of Licensee. In the event that any federal, state or local government agency, any court or any other applicable entity determines that the personnel provided by Licensee or any permitted Licensee Contractor are employees of Licensor for any purpose, to the extent permitted by law, including without limitation Section 177 of the Kentucky Constitution, Licensee agrees to indemnify, defend and save harmless Licensor from all liabilities, costs, and expenses (including, but not limited to, reasonable attorney fees) associated with such determination in accordance with the indemnification provision of this License Agreement.

G. Any work by Licensee Contractors on, within, or in Licensor's Poles or Right-Of-Way shall be done only when specific authorization for such work has been obtained in writing in advance from Licensor pursuant to the terms and conditions of this Agreement. The parties agree that all work shall be performed according to industry standards and practices, the requirements and specifications set forth in this Agreement, and any License issued hereunder.



## **20. DEFAULT**

A. Subject to the Licensee's authority to terminate this contract for convenience under 200 KAR 5:312 and the grounds for termination for default contained therein, in addition to other events of defaults defined anywhere else in this Agreement, any one of the following shall be deemed the occurrence of a default under this Agreement:

1. Failure by Licensee to pay when due any fee or other sum required to be paid under the terms of this Agreement;
2. Failure by either party to perform or observe any other term, condition, covenant, obligation, or provision of this Agreement and such default continues for a period of thirty (30) days after written notice thereof from the other party (provided that if such default is not curable within a thirty (30) day period, the period may be extended if the party substantially commences to cure such default and proceeds diligently thereafter to effect such cure);
3. The filing of any tax or lien against Poles because of any act or omission by Licensee which is not bonded or discharged within thirty (30) days of the date of notice to Licensee that such lien has been filed;
4. Licensee's use or maintenance of its Attachments in violation of any law or regulation, or in aid of any unlawful act or undertaking; and
5. If any authorization which may be required of Licensee by any governmental or private authority for the placement, operation, or maintenance of Licensee's Attachments is denied or revoked.

B. In the event of a default and subject to any other applicable provision of this Agreement, the non-defaulting party, without any further notice to the defaulting party (except where expressly provided for below or required by applicable law), may do any one or more of the following:

1. Perform on behalf and at the expense of the defaulting party, any obligation of the defaulting party under this Agreement which the defaulting party has failed to perform and of which the non-defaulting party shall have given the defaulting party notice, the cost of which performance shall be paid by the defaulting party to the non-defaulting party upon demand;
2. Terminate this Agreement by giving sixty (60) days written notice of such termination to Licensee and remove Licensee's Attachments and store Licensee's facilities in a public warehouse or elsewhere at the expense of and for the account of Licensee without Licensor being deemed guilty of trespass or conversion or otherwise liable in any respect, and without Licensor becoming liable for any loss or damages to Licensee occasioned thereby; or

3. Exercise any other legal or equitable right or remedy that the non-defaulting party may have.

C. Subject to 200 KAR 5:312, the defaulting party shall repay to the non-defaulting party upon demand any costs and expenses incurred by the non-defaulting party in successfully enforcing this Agreement.

D. Subject to 200 KAR 5:312, upon termination of this Agreement by the non-defaulting party, the defaulting party shall remain liable to the non-defaulting party for any and all fees, other payments and damages which may be due or sustained in accord with this Agreement prior to such termination, all reasonable costs, fees and expenses.

E. All rights and remedies of the non-defaulting party set forth in this Agreement shall be cumulative and none shall exclude any other right or remedy, now or hereafter allowed by or available under any statute, ordinance, rule of court, or the common law, either at law or in equity, or both.

## **21. INDEMNIFICATION AND LIMITATION OF LIABILITY**

A. To the extent permitted by law, including but not limited to Section 177 of the Kentucky Constitution, Licensee shall compensate Licensor for the full actual loss, damage or destruction of Licensor's property that in any way arises from or is related to this Agreement or activities undertaken pursuant to this Agreement (including, without limitation, the installation, construction, operation, or maintenance of Licensee's Attachments).

B. To the extent permitted by law, including but not limited to Section 177 of the Kentucky Constitution, Licensee agrees to defend, indemnify, protect and hold harmless each respective Licensor and its officers, directors, employees, shareholders, successors, assigns, agents, affiliates, representatives, partners, and contractors from and against any and all claims, actions, administrative proceedings (including, without limitation, informal proceedings), judgments, damages, penalties, fines, cost, liabilities, interests, or loss together with all other costs and expenses of any kind or nature suffered by or asserted against Licensor in any way arising out of or connected with this Agreement or activities undertaken pursuant to this Agreement (including, without limitation, the installation, construction, operation or maintenance of Licensee's Attachments, unless caused solely by the negligence or willful misconduct of Licensor or Licensor's affiliates, agents, officers, employees and assigns). Licensee expressly assumes full responsibility and liability for acts or omissions by its agents, officers, employees, or Licensee Contractors.

C. Without limiting any of the foregoing, to the extent permitted by law, including but not limited to Section 177 of the Kentucky Constitution, Licensee assumes all risk of, and agrees to relieve Licensors of any and all liability for, loss or damage (and the consequences of loss or damage) to any of Licensee's facilities placed on Licensor's property and any other financial loss sustained by Licensee, except to the extent caused by the sole negligence or willful misconduct on the part of Licensor or Licensor's agents, officers, employees, and assigns.

D. Without limiting the foregoing, Licensee, to the extent permitted by law, including but not limited to Section 177 of the Kentucky Constitution, expressly agrees to indemnify, defend, and hold harmless Licensor and Licensor's agents, officers, employees and assigns from any and all claims asserted by end users/customers of Licensee in any way arising out of or in connection with this Agreement or Licensee's Attachments, except to the extent caused solely by the negligence or willful misconduct of Licensor or Licensor's agents, officers, employees, and assigns, or its contractors.

E. In the event of any claim, demand or litigation specified in any indemnity provision, the party to be indemnified (the "Indemnified Party") shall give prompt notice to the other party (the "Indemnifying Party") of such claim, demand or litigation. The Indemnifying Party shall have sole control of the defense of any action or litigation on such a claim or demand (including the selection of appropriate counsel) and all negotiations for the settlement or compromise of the same, except that the Indemnifying Party may not make any non-monetary settlement or compromise without the Indemnified Party's consent, which consent shall not be unreasonably withheld. The Indemnified Party shall cooperate with the Indemnifying Party in the defense and/or settlement of any claim, demand or litigation. Nothing herein shall be deemed to prevent the Indemnified Party from participating in the defense and/or settlement of any claim, demand or litigation by the Indemnified Party's own counsel at the Indemnified Party's own expense.

F. SUBJECT TO 200 KAR 5:312 AND NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT TO THE CONTRARY, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INDIRECT, OR PUNITIVE DAMAGES, OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR UNFORESEEABLE, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT; PROVIDED HOWEVER THAT THE LIMITATION OF LIABILITY SET FORTH IN THIS SECTION 21(F) SHALL NOT ACT TO LIMIT ANY INDEMNITY OBLIGATION FOR CLAIMS BY A THIRD PARTY. FOR PURPOSES OF CLARITY, LICENSEE SHALL ONLY BE ENTITLED TO SEEK DAMAGES THAT WOULD OTHERWISE BE EXCLUDED PURSUANT TO THIS SECTION OF AND TO THE EXTENT THE LICENSEE WOULD BE PROHIBITED FROM WAIVING SUCH DAMAGES BY 200 KAR 5:312; AND IF THE COMMONWEALTH IS ENTITLED TO SEEK SUCH DAMAGES DUE TO A PROHIBITION AGAINST WAIVING THE SAME, THEN LICENSORS SHALL BE ENTITLED TO SEEK LIKE DAMAGES AGAINST LICENSEE TO SETOFF DAMAGES CLAIMED BY LICENSEE.

G. All notices or communications relating to indemnity obligations or claims shall be sent by either: (i) certified mail, return receipt requested; (ii) facsimile transmission (sender to retain confirmation of delivery to be effective in the event of disputed receipt); or (iii) electronic mail (sender to retain confirmation of delivery to be effective in the event of disputed receipt) to:

East Kentucky Network, LLC  
Attn.: Regulatory Compliance Department  
101 Technology Trail  
Ivel, Kentucky 41642  
Fax: (606) 339-1363

Email: compliance@ekn.com

H. This section shall survive termination of the Agreement.

**22. INSURANCE**

A. For the entire duration of this Agreement (and thereafter until the completion of this Agreement) on a per occurrence basis with respect to this Agreement, Licensee and Licensee Contractors shall provide and maintain, and shall require any of its or their subcontractors to provide and maintain the following insurance (and except with regard to workers' compensation, employers liability, and professional liability, naming Licensors and their Affiliates as additional insureds and waiving rights of subrogation against Licensors and their Affiliates) in the minimum amounts and on the terms set forth herein:

1. Commercial General Liability Insurance

General Aggregate (other than Prod/Comp Ops Liability)	\$2,000,000
Products/Completed Operations Aggregate	\$1,000,000
Personal & Advertising Injury Liability	\$1,000,000
Each Occurrence	\$1,000,000

2. Workers' Compensation and Employers Liability

Workers' Compensation	Statutory Requirements
Employer's Liability	
Bodily Injury by Accident	\$1,000,000 each accident
Bodily Injury by Disease	\$1,000,000 each employee

3. Automobile Liability \$1,000,000 each accident

4. Umbrella/Excess Liability \$3,000,000 per occurrence and in the aggregate

5. Professional Liability \$3,000,000 per occurrence and in the aggregate

The Professional Liability policy shall be required to the extent that engineering or other professional services are provided by Licensee Contractor(s).

B. The policies required hereunder shall not be canceled or reduced except upon thirty (30) days written notice to Licensors. Licensors have the right, but not the obligation, to review certificates of insurance for deficiency. Licensors' receipt and/or review of such certificates shall not relieve Licensee of Licensee Contractors from any of their duties or obligations under this Agreement and shall not be deemed a waiver of any matter under this Agreement. Neither the minimum policy limits required hereunder nor the actual policy limits shall be deemed to limit the liability of Licensee or Licensee Contractors.

C. Licensee or Licensee Contractor shall promptly notify Licensors of any accidents or claims relating to this Agreement, the rights granted under this Agreement, or the work related to this Agreement.

D. Evidence of coverage, notification of cancellation, notice of accident or claim, and/or any other notifications or communications under this Section 22 shall be sent by either: (i) certified mail, return receipt requested; (ii) facsimile transmission (sender to retain confirmation of delivery to be effective in the event of disputed receipt); or (iii) electronic mail (sender to retain confirmation of delivery to be effective in the event of disputed receipt) to:

East Kentucky Network, LLC  
Attn.: Regulatory Compliance Department  
101 Technology Trail  
Ivel, Kentucky 41642  
Fax: (606) 339-1363  
Email: [compliance@ekn.com](mailto:compliance@ekn.com)

**23. NOTICES**

Any notice or request required by this Agreement shall be deemed properly given if sent by either (i) certified mail, return receipt requested; (ii) facsimile transmission (sender to retain confirmation of delivery to be effective in the event of disputed receipt); or (iii) electronic mail (sender to retain confirmation of delivery to be effective in the event of disputed receipt) to the addresses set forth below.

If to Licensors or any of them:

For notices, requests, and communications under Section 21 and Section 22 or other notices that would reasonably be understood to warrant legal department review:

East Kentucky Network, LLC  
Attn.: Regulatory Compliance Department  
101 Technology Trail  
Ivel, Kentucky 41642  
Fax: (606) 339-1363  
Email: [compliance@ekn.com](mailto:compliance@ekn.com)

For all other notices, requests, and communications (i.e. technical and operational matters):

East Kentucky Network, LLC  
Attn.: Technical Operations Department  
101 Technology Trail  
Ivel, Kentucky 41642  
Fax: (606) 794-4836  
Email: [jathacker@ekn.com](mailto:jathacker@ekn.com) AND [mjohnson@ekn.com](mailto:mjohnson@ekn.com)

Payments shall be addressed as specified on invoices.

If to Licensee:

Commonwealth of Kentucky  
Finance and Administration Cabinet  
Office of the Secretary  
702 Capitol Street  
Room 383, Capitol Annex  
Frankfort, Kentucky 40601  
Fax: 502-564-6785  
Email: Patrick.McGee@ky.gov

with copy to:

Ledcor Technical Services  
Attn: Tom Lofaro Senior Vice President & General Counsel  
6405 Mira Mesa Blvd., Suite 100,  
San Diego, CA 92121  
Fax: 858-527-6464  
Email: Tom.Lofaro@ledcor.com

Ledcor Technical Services  
Attn.: John Colder  
2008 Mercer Road  
Suite 200  
Lexington, Kentucky 40511  
Email: john.colder@ledcor.com

Kentucky Communications Network Authority  
Attn: Executive Director  
209 St. Clair St.  
4<sup>th</sup> Floor  
Frankfort, KY 40601  
Fax: (502) 564-0883  
Email: Chris.Moore@ky.gov and KentuckyWired@ky.gov

**24. CONFIDENTIALITY**

Each party acknowledges that, in the course of the performance of this Agreement, it may have access to privileged or proprietary information claimed to be unique, secret and confidential and which constitutes the exclusive property or trade secrets of another party. This information may be presented in documents marked with a restrictive notice or otherwise tangibly designated as proprietary, or disclosed during oral discussions, at which time the disclosing party will specify that the information is proprietary. Unless jointly agreed to in writing, a receiving party shall not

knowingly disclose to third parties any proprietary information received from another party in connection with this Agreement, nor shall they disclose the terms of this Agreement to any other person or entity (other than to their respective Affiliates, directors, officers, employees, agents and contractors who have a need to know the same), unless required in order to prosecute or defend any claim in an action involving the parties hereto, or unless required by the Kentucky Open Records Act (K.R.S. 61.770 to 61.884) or upon the order of any court, governmental agency, or regulatory body having competent jurisdiction. In the case of disclosure for such prosecution or defense or as required by any such judicial or quasi-judicial body, the non-disclosing party shall be given sufficient notice so as to allow it to seek a protective order with respect to such disclosure. The parties shall each protect proprietary information received from another party with the same degree of care it would take to protect its own proprietary information. Each party shall be responsible for ensuring that its Affiliates, directors, officers, employees, agents, and contractors who have access to the confidential or proprietary information maintain the confidentiality of such information in accordance with this Agreement. However, the parties shall have no obligation to keep confidential any information that is in or becomes part of the public domain through no fault of their own.

## **25. DISPUTE RESOLUTION**

Subject to Chapter 45A of the Kentucky Revised Statutes, in the event any dispute arises between Licensee and any other party under this Agreement, the party seeking resolution of the dispute must submit written notice to the other describing the dispute and such party's desire to resolve the dispute in accordance with the provisions of this Section, unless the parties at any time mutually agree in writing to dispense with these procedures for a particular dispute. Each party shall designate one or more knowledgeable, responsible representative(s) to meet and negotiate in good faith to resolve any dispute, controversy, or claim arising under this Agreement. Discussions and correspondence between the representatives for the purposes of these negotiations shall be treated as confidential, undertaken for purposes of settlement, shall be exempt from discovery and production, and shall not be admissible in any subsequent proceeding without the concurrence of all parties. Documents identified in or provided during such negotiations, which are not prepared for purposes of the negotiations, shall not be so exempt and may, if otherwise admissible, be admitted as evidence in any subsequent proceeding. If a resolution of the dispute, controversy or claim is not reached within fifteen (15) days of the initial written request referred to in this Section, the dispute, controversy, or claim may be filed with the State utility commission (i.e. the Kentucky Public Service Commission) or the Federal Communication Commission, if such commissions have jurisdiction over the matter, for review and determination. Each party shall bear its own costs and expenses in seeking resolution of any dispute under this Agreement. Neither party shall pursue its rights and remedies in a court of law until that party has first exhausted the procedures required under this Section and any administrative remedies.

## **26. WAIVER**

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

**27. NO THIRD PARTY BENEFICIARIES**

Except as otherwise provided in this Agreement, this Agreement is intended to benefit only the parties and may be enforced solely by the parties, their successors in interest or permitted assigns. It is not intended to, and shall not, create rights, remedies or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the parties, except as provided herein.

**28. FORCE MAJEURE**

Neither party shall be liable for any delay or failure in performance of any part of this License Agreement or License issued hereunder from any cause beyond its reasonable control and without its fault, omission or negligence, including but not limited to acts of God, acts of civil or military authority, embargoes, epidemics, war, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, power blackouts, cable or other material failures, delay in delivery or transportation, labor strikes, lockouts or work stoppages or severe weather (“Force Majeure Event”). In the event of a Force Majeure Event, upon giving prompt notice to the other party, the due date for performance by the affected party of its original obligation(s) shall be extended by a term equal to the time lost by reason of the Force Majeure Event. In the event that the affected party is able to partially perform its obligations, it shall perform its obligations at a performance level no less than that which it uses for its own operations.

**29. ASSIGNMENT**

Licensor and Licensee shall not assign, transfer or sublet the privileges hereby granted, without prior consent in writing of Licensor, which will not be unreasonably withheld.

**30. APPLICABLE LAW**

The laws of the Commonwealth of Kentucky, without regard to the conflict of laws provisions thereof, shall apply to the Agreement and its interpretation, except to the extent that federal law controls. All legal proceedings related to this Agreement shall be brought only in the Franklin Circuit Court or federal court sitting in the Commonwealth of Kentucky or before the Kentucky Public Service Commission to the extent that said Commission has jurisdiction over rates, conditions, or other matters concerning this Agreement.

**31. ENTIRE AGREEMENT, MODIFICATIONS, AND SURVIVAL**

A. This Agreement contains the entire agreement between the parties hereto concerning the subject matters covered herein, and there are no other provisions, terms or conditions to this Agreement except as expressly set forth herein.

B. This Agreement may be amended or supplemented at any time only upon written agreement by executed by the parties.



C. Notwithstanding the termination of this Agreement for any reason, Section 18 Compliance with Laws, Assumption of Risk and Disclaimer of Warranties, Section 21 Indemnification and Limitation of Liability, Section 22 Insurance, Section 24 Confidentiality, and any other provision intended to survive, shall survive termination to the maximum extent permitted under applicable law. Notwithstanding any provisions to the contrary, all rights, remedies, or obligations which arose or accrued prior to the termination or expiration of the terms hereof shall survive and be fully enforceable for the applicable statute of limitations period.

**32. AUTHORITY AND COUNTERPARTS AND ELECTRONIC SIGNATURES**


A. Each party warrants that it has full power and authority to execute and deliver this License Agreement and to perform its obligations hereunder.

B. This Agreement may be executed using facsimile or electronic signatures and such facsimile or electronic version of the Agreement shall have the same legally binding effect as an original paper version. This Agreement may be executed in counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly-authorized representatives on the dates indicated below.

LICENSOR:

**EAST KENTUCKY NETWORK, LLC**

  
\_\_\_\_\_  
By: W. A. Gillum  
Its: CEO / General Manager  
Date: 1-17-2017

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LICENSOR:

**FOOTHILLS RURAL TELEPHONE COOPERATIVE  
CORPORATION, INC.**

*Ruth Conley*

By: Ruth Conley

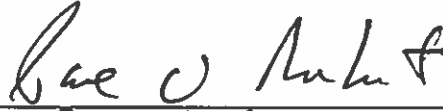
Its: CEO

Date: 1-12-17

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LICENSOR:

**GEARHEART COMMUNICATIONS COMPANY,  
INC.**



By: Paul D. Gearheart


Its: President

Date: 1-9-17

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LICENSOR:

**MOUNTAIN RURAL TELEPHONE COOPERATIVE  
CORPORATION, INC.**

  
By: Shayne Ison  
Its: General Manager  
Date: 1/6/2017

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LICENSOR:

**PEOPLES RURAL TELEPHONE COOPERATIVE  
CORPORATION, INC.**

By: Keith Allen  
Its: CEO  
Date: 1-12-17

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LICENSOR:

**THACKER-GRIGSBY TELEPHONE COMPANY,  
INCORPORATED**

By: William R. Grigsby  
Its: President/GM  
Date: 1/6/2017

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LICENSEE:

**COMMONWEALTH OF KENTUCKY  
FINANCE AND ADMINISTRATION CABINET**

*William M. Landrum III*

By: Secretary, Fin. Admin

Its: \_\_\_\_\_

Date: 26 Jan 2017

Approved as to form and legality:

*Steven R. Purson*

Counsel for Finance and Administration Cabinet

EXHIBIT A

**APPLICATION FOR POLE LICENSE**

**(Form is on next page)**







EXHIBIT B

**REMOVAL NOTICE AND LICENSE SURRENDER FORM**

**NOTIFICATION OF SURRENDER**

In accordance with the terms and conditions of the Pole Attachment License Agreement dated \_\_\_\_\_, Licensee hereby gives notice that the License is surrendered for the Attachments to the Poles and facilities shown on the attached drawing. Licensee must remove all of its equipment and attachments no later than twenty (20) days after

Licensee: \_\_\_\_\_

Signature: \_\_\_\_\_

By (Print): \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date Surrender Notice Received: \_\_\_\_\_

Licensor: \_\_\_\_\_

Signature: \_\_\_\_\_

By (Print): \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

EXHIBIT C

SCHEDULE OF RATES

1.	Pole Attachment Fee for Authorized Attachments	\$23.13 per pole per year <sup>1</sup>
2.	Pole Attachment Fee for Unauthorized Attachments	Five (5) times the Pole Attachment Fee for Authorized Attachments if self-reported or discovered through a joint inspection between Licensor and Licensee; plus an additional \$100.00 per pole if unilaterally discovered by Licensor.
3.	Fee for Segments in Ducts	\$1.47 per linear foot per year <sup>2</sup>
4.	Application Fee	\$75.00 per application
5.	Charges for inspections, engineering, replacement, or any other charges permitted to be assessed to Licensee under the terms of the Agreement	To be invoiced on a case-by-case basis

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<sup>1</sup> This Pole Attachment Fee for authorized Attachments shall be increased on each anniversary of the Effective Date by the percentage rate increase in the Consumer Price Index for the immediately preceding 12-month period.

<sup>2</sup> The Fee for Segments in Ducts shall be subject to a 3% annual escalation beginning on the tenth (10<sup>th</sup>) anniversary of the Effective Date.