

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

Comcast of Nashville I, LLC,

Plaintiff,

v.

Metropolitan Government of Nashville and
Davidson County; Megan Barry, in her official
capacity as Mayor; and Mark Sturtevant, in his
official capacity as Transitional Interim
Director of Public Works,

Defendants.

Case No. _____

COMPLAINT

Plaintiff Comcast of Nashville I, LLC (“Comcast”) makes this Complaint for declaratory judgment and injunctive relief against defendants Metropolitan Government of Nashville and Davidson County (“Metro Nashville”), Megan Barry (in her official capacity as Mayor of Metro Nashville), and Mark Sturtevant (in his official capacity as Transitional Interim Director of Public Works for Metro Nashville), stating as follows:

Nature of the Case

1. Comcast seeks this Court’s protection from Metro Nashville’s attempt to enforce an invalid and unconstitutional ordinance (Ordinance No. BL2016-343, hereinafter the “Ordinance”) that permits third parties to move, alter, or rearrange components of Comcast’s communications network attached to utility poles without Comcast’s consent, authorization, or oversight, and with far less notice than is required by federal law and by an existing Comcast contract with Metro Nashville.

2. Cable and telecommunications service providers such as Comcast commonly attach their equipment and facilities to utility poles—some owned by municipalities and some owned by private utility companies—located in the public rights-of-way. In most cases, several service providers share space on a single pole, and they typically work cooperatively with each other and the pole owner to move or rearrange their equipment, as necessary, in order to make room for any new providers wishing to attach equipment to a pole. This process, commonly referred to as the “make-ready” process, is the subject of contractual obligations and longstanding federal regulations, both of which seek to ensure that all providers can share available pole space cooperatively and safely, without interfering with or damaging any provider’s equipment or services. Comcast itself has adhered to this comprehensive regime as it has attached its own equipment to utility-owned poles in the Nashville area (and throughout the country) to support its communications services.

3. The new Ordinance upsets the existing, carefully designed make-ready process by authorizing new users of utility poles to interfere *unilaterally* with an existing provider’s equipment without that provider’s authorization. Specifically, it allows new, intervening providers seeking to attach their own equipment to poles to move aside Comcast’s equipment on their own, without Comcast’s consent or oversight, with only 15 days’ notice to Comcast in many instances, and using contractors not approved by Comcast or subject to its required standards. Indeed, the Ordinance allows these encroaching attachers to do so even in cases in which the make-ready work is reasonably expected to cause service outages for Comcast’s customers—and still without Comcast’s consent, still without approved contractors or approved standards, and with the only caveat being that the encroaching attacher must give Comcast 30 rather than 15 days’ notice. The procedures authorized by the Ordinance are so intrusive that,

tellingly, Metro Nashville has wholly exempted its *own* utility pole attachments from the Ordinance's coverage.

4. The attachment procedures set forth in Metro Nashville's Ordinance are squarely inconsistent with the comprehensive federal scheme covering private pole attachments, and they unlawfully impair vested rights that Comcast possesses under a contract with Metro Nashville itself. Accordingly, the Ordinance is preempted by federal law and violates the Contract Clauses of the U.S. and Tennessee Constitutions. Metro Nashville's enactment of the Ordinance also exceeds its authority under the Charter of the Metropolitan Government of Nashville and Davidson County, Tennessee ("Metro Nashville Charter").

5. On these grounds, Comcast requests that this Court declare the Ordinance invalid and enjoin its enforcement. Absent such relief, Comcast will suffer significant, irreparable injury to its property, operations, and customer relationships. By departing from the carefully balanced approach to the make-ready process embraced by Comcast's contract with Metro Nashville and the comprehensive Federal Communications Commission ("FCC") regulatory framework, Metro Nashville's Ordinance exposes Comcast's network equipment to serious risk. It permits third parties to encroach upon, move, and potentially damage Comcast's equipment, thereby imposing significant costs on Comcast and threatening interference with customers' services and emergency communications—while offering Comcast no way to protect against these harms or even seek recourse after the fact.

Jurisdiction and Venue

6. This Court has federal question jurisdiction over this action, pursuant to 28 U.S.C. § 1331, because Comcast's claims arise under the laws of the United States, including 47 U.S.C. § 224, 42 U.S.C. § 1983, and the Supremacy and Contract Clauses of the U.S.

Constitution. This Court has equitable jurisdiction to enjoin unconstitutional action. *Armstrong v. Exceptional Child Ctr., Inc.*, 135 S. Ct. 1378, 1384 (2015).

7. This Court also has diversity jurisdiction over this action pursuant to 28 U.S.C. § 1332. Comcast is a citizen of Pennsylvania because all of its members are citizens of Pennsylvania. Defendants are citizens of Tennessee. Complete diversity therefore exists between the parties. The amount in controversy exceeds \$75,000 because, as described below, the economic value of the rights Comcast seeks to enforce is greater than \$75,000; if Comcast does not prevail in this action, it is likely to suffer more than \$75,000 in losses.

8. The Court also has supplemental jurisdiction over Comcast's state law claims, pursuant to 28 U.S.C. § 1367, because the state law claims form part of the same case or controversy as the federal law claims.

9. Because an actual controversy within the Court's jurisdiction exists, this Court may grant declaratory and injunctive relief pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202.

10. Venue is proper in the Middle District of Tennessee, pursuant to 28 U.S.C. § 1391(b), because the events and omissions giving rise to Comcast's claims occurred in Nashville, which is located within the Middle District. The Ordinance was passed by the Metro Nashville Council in Nashville, and it will be enforced by Defendants and cause injury to Comcast in Nashville.

Parties

11. Plaintiff Comcast of Nashville I, LLC is a limited liability company. All of its members are citizens of Pennsylvania. At all relevant times, Comcast has been and is qualified to do business in Tennessee.

12. Defendant Metro Nashville is a public corporation and consolidated local government organized pursuant to Article XI, Section 9 of the Tennessee Constitution and Section 7-1-101 *et seq.* of the Tennessee Code.

13. Defendant Megan Barry is the Mayor of Metro Nashville. Pursuant to the Metro Nashville Charter and Tennessee Code § 7-2-108, Mayor Barry is vested with all executive and administrative power of Metro Nashville and is responsible for law enforcement within its boundaries. Defendant Barry is sued in her official capacity only.

14. Defendant Mark Sturtevant is the Transitional Interim Director of Public Works for Metro Nashville. Pursuant to the Metro Nashville Charter and Chapter 6.26 of the Metro Nashville Code, Defendant Sturtevant and the Department of Public Works are charged with executing and overseeing regulation of the public rights-of-way, including the erection, removal, use, and adjustment of utility facilities located in the public rights-of-way. Defendant Sturtevant is sued in his official capacity only.

Statement of Facts

Comcast's Network

15. Comcast is a provider of communications services—including cable television, broadband Internet access, and telephone services—in Nashville and Davidson County, Tennessee. In the Nashville area, Comcast serves well over 100,000 customers.

16. Comcast provides communications services to its customers through an extensive network of fiber optic and coaxial cable and other communications equipment and facilities. Many components of this network are attached to utility poles located in the public rights-of-way.

17. Comcast has attached components of its network to more than 120,000 utility poles located within Nashville and Davidson County. Approximately 80 percent of these utility poles are owned by the Nashville Electric Service (“NES”)—a municipal public utility managed and controlled by the Electric Power Board of Nashville, which in turn is an organ of Metro Nashville. As discussed below, the Metro Nashville Charter grants the Electric Power Board “full” and “exclusive” authority over the regulation of attachments on NES-owned poles.

18. The remaining poles are owned by BellSouth Telecommunications, LLC, d/b/a AT&T Tennessee (“AT&T”), a private utility, and in many instances Comcast’s equipment is attached to these AT&T poles in Nashville and Davidson County. As explained further below, federal law grants the FCC expansive authority to regulate attachments on such private utility-owned poles. The FCC, in turn, has used that authority to establish a comprehensive regulatory regime for such attachments. Among other things, these federal rules set forth an orderly process through which a pole’s owner and service providers with existing attachments on the pole can coordinate with service providers that wish to install new equipment on that pole. This FCC-mandated process includes detailed “make-ready” procedures whereby service providers with existing attachments may rearrange their equipment to accommodate new service providers. *See* 47 C.F.R. § 1.1420(e). The FCC’s rules strike a careful “balance between encouraging deployment of facilities and safeguarding the network” of existing providers—by providing workable and fair procedures enabling new service providers to add their equipment to poles while minimizing disruption to and protecting the security of existing providers’ networks. *Implementation of Section 224 of the Act*, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240 ¶ 61 (2011) (“2011 Pole Attachment Order”).

19. Comcast does not own any of the utility poles within Nashville and Davidson County to which components of its network are attached.

Comcast's Contract with NES

20. Comcast has attached its network components to utility poles owned by NES pursuant to a contract with NES that remains in effect (the “NES Agreement”). The NES Agreement provides Comcast with the right and authority to move, alter, maintain, and repair all or any part of its equipment located on NES-owned utility poles, while significantly limiting the right or authority of NES or any third party to do so. Such provisions and third-party restrictions are commonplace in the industry in order to minimize service interruptions to existing customers or other harms to the provider’s network. A copy of the NES Agreement is attached to this Complaint as Exhibit A.

21. Article 12.1 of the NES Agreement governs the “rearrangement or transfer” of Comcast’s attachments in order “to accommodate another user’s attachment” to an NES-owned utility pole. Article 12.1 provides that, in such circumstances, Comcast may perform any “make-ready” work on its attachments without penalty “within thirty (30) days after receiving notice” from NES. While Article 24 of the NES Agreement contemplates potential penalties if Comcast does not perform the make-ready work within that initial 30-day period, Article 12.1 makes clear that a third party may not alter, transfer, or rearrange Comcast’s equipment until “sixty (60) days after [Comcast’s] receipt of original notification.” Thus, consistent with the FCC’s regime for private utility-owned poles, in no event may any third party move or interfere with Comcast’s network equipment until at least 60 days after that third party has provided notice to Comcast of its need to do so.

The Metro Nashville Ordinance

22. On September 20, 2016, the Metro Nashville Council enacted Ordinance No. BL2016-343. Defendant Barry, in her official capacity as mayor, signed the Ordinance into law on September 21, 2016, and it took effect immediately. A copy of the Ordinance is attached hereto as Exhibit B.

23. The Ordinance amends Title 13 of the Metro Nashville Code by adding a new chapter regulating the terms and procedures through which parties may attach their communications lines and equipment to other parties' utility poles located in the public rights-of-way. The Ordinance purports to authorize new "[a]ttachers"—that is, intervening third parties that wish to add their lines or equipment to a pole—to alter, relocate, or rearrange preexisting attachments owned by other users of utility poles, including Comcast, with only limited notice to those existing users, without the existing users' consent or authorization, and without advance payment for associated costs.

24. Specifically, the Ordinance provides that preexisting users of utility poles "shall allow" an encroaching attacher to perform "Make Ready" work on the preexisting user's attachments, which the Ordinance defines as the "transfer, relocation, rearrangement, or alteration" of the preexisting user's "communications equipment, antenna, line or facility of any kind necessary to provide space for [the new] Attacher to install an Attachment."

25. In most cases, the Ordinance authorizes the encroaching attacher to perform make-ready work after providing *only 15 days'* notice to the relevant preexisting user. The Ordinance does not expressly indicate that the preexisting user may perform its own make-ready work during that abbreviated period. And even if the Ordinance permitted the preexisting user to do so, the 15-day period would provide insufficient time in most cases for Comcast to perform

the necessary work itself using its own contractors. Indeed, make-ready work is rarely limited to a single pole; rather, Comcast may receive notice of the need for such work to be performed *simultaneously* on a substantial number of the more than 120,000 poles to which its network components are attached in Nashville and Davidson County. That reality will make it impossible in most cases for Comcast to perform all of the requested make-ready work within the abbreviated time period provided by the Ordinance, especially in light of the substantial resources that make-ready work may require in some cases and the difficulties inherent in redirecting Comcast's finite resources to such work (on only a few days' notice) from other projects and obligations.

26. Moreover, in cases where the encroaching attacher's actions are reasonably expected to cause a customer outage (so-called "Complex Make Ready" work), the only nod the Ordinance makes to that concern is to require that the encroaching attacher provide all of 30 days' notice before it can touch and rearrange Comcast's equipment. The Ordinance appears to grant the encroaching attacher—rather than the relevant preexisting user—sole discretion to determine whether any make-ready work is reasonably expected to cause a customer outage in a manner that would trigger the 30-day notice period. While the Ordinance's provision on "Complex Make Ready"—unlike the provision on ordinary "Make Ready"—nominally contemplates that preexisting users could perform the necessary work during the 30-day notice period, that window similarly would provide substantially less time than federal regulations contemplate and than Comcast's NES contract requires.

27. In either case, once the applicable limited notice period has passed, the Ordinance authorizes the encroaching attacher to proceed with the work—without the preexisting user's consent or authorization—using a contractor approved only by the pole owner.

28. Upon completion of the make-ready work, the Ordinance requires that the encroaching attacher notify the affected preexisting user within 30 days and provide a report with basic information about the work conducted. Although the Ordinance purports to grant the affected preexisting user a right to inspect the third-party's work, it requires the encroaching attacher to pay for repairs or corrections related to the work *only if* the work fails to conform to standards or requirements established by the *pole owner*.

29. Thus, as applied to Comcast, the Ordinance permits encroaching attachers to move, rearrange, and alter components of Comcast's network without Comcast's consent or authorization and with only limited notice—even when such work is reasonably expected to cause customer outages on Comcast's network. Moreover, the Ordinance provides that such work may be performed by third-party contractors not approved by Comcast, and without any Comcast oversight. And the Ordinance offers Comcast (which owns no utility poles) essentially no remedy in the event that make-ready work performed by a third party damages or interferes with its equipment or inconveniences or damages Comcast's customers.

30. Meanwhile, Metro Nashville has wholly exempted its own attachments from the Ordinance. Section 2 of the Ordinance provides that it “shall not apply to [Metro Nashville's] Attachments on utility poles or other similar structures that consist of cameras, radios, or any equipment used for emergency communications, and facilities used for traffic signalization.” Through the Ordinance, Metro Nashville has forced Comcast to cede nearly all control over alterations and changes to Comcast's network components attached to utility poles, even though Metro Nashville is apparently unwilling to cede such control over its own attachments—a distinction that underscores the patent unreasonableness of the Ordinance as applied to Comcast.

Federal Law Governing Pole Attachments

31. Metro Nashville enacted the Ordinance despite the fact that federal law already establishes detailed and comprehensive procedures governing the pole “make-ready” process. Federal law grants the FCC broad authority to “regulate the rates, terms, and conditions for pole attachments to provide that such rates, terms, and conditions are just and reasonable.” 47 U.S.C. § 224(b)(1). Pursuant to that authority, the FCC has promulgated a thorough set of regulations that directly govern make-ready work on utility-owned poles.

32. Among other things, those regulations guarantee the owner of existing attachments at least a 60-day (and in some circumstances, up to a 105-day) time period for make-ready work—and allow the *equipment owner itself* to perform any make-ready work necessary to accommodate a new attacher. As long as any required work is performed within those time periods, the regulations would give the new attacher no right whatsoever to disturb the preexisting attacher’s equipment. 47 C.F.R. § 1.1420(e).

33. The FCC adopted this baseline 60-day period based on the voluminous evidence it compiled indicating that such a period is a “workable timeframe that many utilities can meet” and thus “furthers [the FCC’s] interest in dependability.” *2011 Pole Attachment Order* ¶ 32. The FCC pointed in particular to “[t]he successful experiences of several utilities *and* attachers” as support for “the pragmatism of selecting this [60-day] model,” and cited submissions showing that utilities and attachers typically “need 60 days to perform make-ready,” especially in situations where “multiple parties must be sequenced to perform make-ready.” *Id.* The agency also expressly rejected proposals to adopt a shorter 45-day period, finding that such a timeframe often is inadequate for fulfilling larger make-ready requests or requests involving “complicating factors.” *Id.* And the FCC cited its desire to “synchronize make-ready with the Commission’s

existing rules that give entities with existing attachments 60 days to move them before a pole owner modifies a pole.” *Id.* ¶ 31.

34. By imposing significantly curtailed notice periods—which provide no meaningful opportunity for a preexisting attacher like Comcast to perform necessary make-ready work itself—and by directly empowering new, intervening attachers to encroach upon other pole users’ property immediately after that brief period, the Ordinance squarely conflicts with the binding federal regulations and the FCC’s express policy choices. Moreover, by depriving preexisting attachers of significant control over their attachments, the Ordinance upsets the careful “balance between encouraging deployment of facilities and safeguarding the network” that the FCC’s regulations are designed to maintain. *Id.* ¶ 61.

35. While 47 U.S.C. § 224(c) authorizes states to adopt their own pole attachment regulations in lieu of the federal rules governing utility-owned poles, and establishes a process for a state to certify to the FCC that it has asserted authority over attachments on such poles, Tennessee has not made such a certification to the FCC (nor has the city of Nashville, for that matter).

Injury to Comcast

36. The Ordinance upsets Comcast’s settled expectations and conflicts with both federal law and Comcast’s vested rights and benefits under the NES Agreement. Although federal law and the NES Agreement already prescribe detailed procedures for the performance of make-ready work on Comcast’s network, the Ordinance purports to establish significantly different procedures that afford substantially less protection to Comcast and its customers.

37. Enforcement of the Ordinance will also inflict significant economic harm and other injuries on Comcast and its customers. Comcast depends on its network—including

network components attached to utility poles in Nashville and Davidson County—to provide contracted-for services to its customers. To ensure the quality of the services it provides, Comcast has invested tens of millions of dollars in the installation, testing, maintenance, and repair of its network components attached to utility poles within Nashville and Davidson County.

38. Any interruption or outages in Comcast’s services to its customers—including interruptions or outages caused by interference with components of Comcast’s network attached to utility poles—threatens the loss of a significant portion of Comcast’s revenue. Enforcement of the Ordinance will increase the risk of interruptions and outages in Comcast’s services because the Ordinance authorizes third-party contractors to perform make-ready work on Comcast’s network without Comcast’s authorization or oversight. Due to their lack of familiarity with Comcast’s equipment and standards, such third-party contractors are significantly more likely to damage Comcast’s equipment or interfere with its services. But for the Ordinance, Comcast could perform all or substantially all of any necessary make-ready work *itself* (or using its own contractors), thereby preventing any damage to its equipment and limiting any interruptions and outages for its services.

39. To minimize such losses, Comcast will be forced to commit significant resources in an effort to perform as much of the requested make-ready work as possible during the limited notice periods provided by the Ordinance—periods that are far shorter than the federal minimum period for such work established by the FCC. However, at least in the case of ordinary make-ready work, it is not clear whether the Ordinance even permits the existing user to perform such preemptive work in the first place. And even if such work is permitted, marshaling the necessary resources on an extraordinarily expedited basis—including personnel, equipment/supplies, and engineering expertise—will be extremely costly, to the extent it is

feasible at all. Given the number of utility poles within Nashville and Davidson County to which Comcast has attached components of its network (over 120,000), such costs will easily amount to millions of dollars. Absent the Ordinance, much of those costs would be avoided, as the federal regulations and Comcast's agreement with NES explicitly permit Comcast to perform any necessary make-ready work itself, on a much more reasonable timetable.

40. In most cases, however, it simply will not be feasible for Comcast to perform the requested make-ready work itself within the limited time periods provided by the Ordinance. Thus, encroaching attachers will perform the work without Comcast's authorization or oversight, using contractors and standards not approved by Comcast. The Ordinance's provisions allowing third parties to access Comcast's network equipment without authorization also will run afoul of federal cybersecurity guidelines concerning the need to prevent unauthorized access to and tampering with network equipment. *See, e.g.*, White House, Executive Order No. 13636, "Improving Critical Infrastructure Cybersecurity," § 4(c) (Feb. 12, 2013), *available at* <https://www.whitehouse.gov/the-press-office/2013/02/12/executive-order-improving-critical-infrastructure-cybersecurity> (articulating the federal government's interest in ensuring that "owners and operators of critical infrastructure . . . protect[] their systems from unauthorized access, exploitation, or harm"); National Institute of Standards and Technology, "Framework for Improving Critical Infrastructure Cybersecurity," at 23 (Feb. 12, 2014), *available at* <https://www.nist.gov/sites/default/files/documents/cyberframework/cybersecurity-framework-021214.pdf> (indicating that "[a]ccess to assets and associated facilities [must be] limited to authorized users"); Communications Security, Reliability, and Interoperability Council, "Cybersecurity Risk Management and Best Practices Working Group 4: Final Report" (Mar. 2015), at 78, *available at*

https://transition.fcc.gov/pshs/advisory/csric4/CSRIC_IV_WG4_Final_Report_031815.pdf

(stating that “[p]hysical access to [network] assets” must be “managed and protected” by the network operator).

41. Many of the encroaching attachers—to which the Ordinance grants nearly unfettered access to Comcast’s network—will be competitors of Comcast. Thus, the entity supervising the make-ready work will have very little incentive to avoid damaging Comcast’s equipment. It is for precisely this reason that the carefully balanced federal pole attachment regulations provide preexisting users a reasonable opportunity to perform any necessary make-ready work *themselves*. Indeed, such damage is likely to result from work performed even by *well-intentioned* new attachers, given that third-party contractors will not have any familiarity or expertise with Comcast’s network or quality standards.

42. Repairing any damage to Comcast’s equipment will be costly and disruptive to other work, requiring a significant commitment of resources that could be avoided if Comcast were afforded reasonable oversight of work performed on its network. Making repairs to attachments on even a single utility pole can cost tens of thousands of dollars. If enforcement of the Ordinance were enjoined, such repairs would not be necessary, thereby eliminating those costs.

43. Damage caused to Comcast’s equipment by encroaching attachers also likely will lead to a significant number of service outages for Comcast’s customers, and frequent service outages will cause significant damage to customer goodwill and to Comcast’s reputation. Repeated service outages may even lead Comcast customers to cancel their services, threatening additional harm to Comcast’s business and revenues. These risks are only heightened by the fact that damage to Comcast’s attachments *on even a single utility pole* can potentially cause service

outages for *thousands* of Comcast's customers, including customers throughout middle Tennessee.

44. Service outages also may cause interruptions to emergency communications within Nashville and Davidson County—for example, 911 calls—which frequently travel over Comcast's network. In addition, signal leakage caused by damage to Comcast's equipment could interfere with aviation communications. Such interruptions and interference may endanger the public and expose Comcast to millions of dollars in potential liability, as well as FCC penalties. Again, by significantly expanding the authorization of third-party contractors not approved by Comcast to perform make-ready work on its network, the Ordinance substantially increases the likelihood that such problems will occur.

45. The Ordinance offers Comcast little recourse against these potential injuries. Although the Ordinance does provide Comcast with a limited right to inspect make-ready work performed on its network by a third party weeks *after* the work is completed, the Ordinance does not entitle Comcast to reimbursement for any necessary corrections to such work, or any other meaningful remedy, unless the work fails to comply with standards or requirements imposed *by the pole owner*.

46. Because Comcast does not own any utility poles in Nashville or Davidson County, the Ordinance does nothing to ensure that third-party make-ready work on components of Comcast's network will comply with Comcast's *own* robust safety and engineering standards. Comcast thus will bear the often-substantial costs of bringing such work into compliance with its standards after the fact. Such costs, including labor and supply costs among others, likely will far exceed \$75,000. Such failures to adhere to Comcast's standards are likely to occur

frequently, as contractors retained by third parties to perform make-ready work on Comcast's network will not be familiar with Comcast's standards and requirements.

47. In sum, enforcement of the Ordinance with respect to Comcast's network within Nashville and Davidson County will cause immediate and irreparable injury to Comcast, including by causing interference with its property and disruptions to its services, as well as imposing non-reimbursable costs far in excess of \$75,000.

Claims for Relief

Count I: The Ordinance is Preempted by Federal Law

48. The allegations of paragraphs 1 through 47 above are incorporated as though fully set forth herein.

49. As applied to private utility-owned poles (such as the poles in Nashville and Davidson County owned by AT&T to which Comcast has attached its equipment), the Ordinance squarely conflicts with federal law. As noted above, the FCC's pole attachment rules provide that once an entity with existing attachments on a utility-owned pole has received notice that another telecommunications provider wishes to attach equipment to that pole, the existing user has up to 60 days (and in some cases up to 105 days) to relocate its attachments to accommodate the new attacher. 47 C.F.R. § 1.1420(e).

50. The procedures and requirements set out by the Ordinance plainly conflict with those procedures. The Ordinance gives existing users *no* meaningful opportunity in most instances to perform make-ready work on their own equipment after receiving notice. Instead, whenever an encroaching attacher determines that make-ready work would not reasonably be expected to cause a service outage, the Ordinance authorizes the encroaching attacher to perform make-ready work and to relocate any existing user's equipment on 15 days' notice (as opposed

to the federally mandated 60-105 day notice period). Moreover, while the Ordinance nominally gives an existing user a 30-day period to perform its own make-ready work when the encroaching attacher concludes that such work likely *would* cause an outage—in so-called “Complex Make Ready” scenarios—that window also is significantly shorter than the minimum notice period of 60 days set forth in the FCC’s rules (and far shorter than the maximum 105 days).

51. By directly conflicting with FCC regulations and by upsetting the careful balance struck by the FCC between encouraging development of facilities and safeguarding communications, the Ordinance interferes with binding federal policy choices—which reflect an extensive process of deliberation, including the consideration of numerous competing interests and collaboration with a wide range of stakeholders and constituencies.

52. Under the Supremacy Clause of the Constitution (U.S. Const. art. VI, cl. 2), local laws that conflict with validly enacted federal laws are *ultra vires* and void. For that reason, the Ordinance is invalid.

53. Unless the Court declares that the Ordinance is invalid and permanently enjoins Defendants from enforcing it, Comcast will suffer irreparable injury that cannot be redressed by recovery of damages. Among other injuries, Comcast will be forced to comply with and acquiesce to an unconstitutional Ordinance, will suffer reputational injury and a loss of customer goodwill, and will be subjected to extensive potential liability and litigation risk resulting from the effects of the Ordinance’s enforcement. Comcast will also be subjected to improper interference with its business, operations, and property. A permanent injunction will advance the public interest by giving effect to policy choices validly enacted by Congress and implemented by the FCC, and by preventing Metro Nashville from illegally interfering with those choices.

54. Comcast is entitled to a judgment declaring the Ordinance invalid and unenforceable. Comcast also is entitled to a permanent injunction restraining the Defendants from enforcing the Ordinance.

Count II: The Ordinance Violates the Metro Nashville Charter and State Law

55. The allegations of paragraphs 1 through 54 above are incorporated as though fully set forth herein.

56. The Metro Nashville Charter authorizes Metro Nashville to “maintain, improve, operate and regulate . . . an electric system, including distribution system and substations, together with all necessary or appropriate equipment, appliances and appurtenances.” Metro Nashville Charter, Appendix Three (Article 42), § 1. However, the Charter grants the Electric Power Board “*full* control over the erection, construction, maintenance and operation of [electric system] plants and properties, with *full* power to make rules for the control and maintenance of said plants and properties, the manner of operation, and the employment of officials and employees of every kind.” *Id.* § 15 (emphases added).

57. The Metro Nashville Charter provides that the Electric Power Board “shall have *exclusive* management and control of the operation of said electronic power plant and/or distribution system.” *Id.* § 18 (emphasis added). It further provides that “neither the mayor, [nor] the metropolitan council . . . shall have or exercise any authority whatsoever over the electric power board created under the terms and provisions of this Charter, other [than] and except to the extent herein expressly provided.” *Id.* § 24.

58. NES-owned utility poles are components of Metro Nashville’s electric system and electric distribution system, over which the Metro Nashville Charter grants the Electric Power Board full and exclusive authority. Thus, under the terms of the Metro Nashville Charter,

neither the Mayor nor the Metro Nashville Council has any authority to regulate attachments to NES-owned utility poles.

59. Despite this clear prohibition in the Metro Nashville Charter, the Ordinance purports to regulate attachments to NES-owned utility poles. The Ordinance was enacted by the Metro Nashville Council and signed into law by the Mayor, without any involvement by the Electric Power Board. The Ordinance thus is *ultra vires*, as it directly and impermissibly infringes upon the authority granted to the Electric Power Board by the Metro Nashville Charter and constitutes a clear violation of the Metro Nashville Charter.

60. Unless the Court declares that the Ordinance is invalid and permanently enjoins Defendants from enforcing it, Comcast will suffer irreparable injury that cannot be redressed by recovery of damages. Among other injuries, Comcast will be forced to comply with and acquiesce to an invalid and *ultra vires* Ordinance, will suffer reputational injury and a loss of customer goodwill, and will be subjected to extensive potential liability and litigation risk resulting from the effects of the Ordinance's enforcement. Comcast will also be subjected to improper interference with its business, operations, and property. A permanent injunction will advance the public interest by giving effect to the terms of the Metro Nashville Charter and Tennessee law, and by preventing Metro Nashville from illegally interfering with these terms.

61. Comcast is entitled to a judgment declaring the Ordinance invalid and unenforceable. Comcast is also entitled to a permanent injunction restraining the Defendants from enforcing the Ordinance.

Count III: The Ordinance Violates the Contract Clauses of the U.S. and Tennessee Constitutions

62. The allegations of paragraphs 1 through 61 above are incorporated as if fully set forth herein.

63. Comcast has an existing contractual relationship with NES, which governs Comcast's attachments to NES-owned utility poles located within Nashville and Davidson County.

64. Comcast's contract with NES vests Comcast with various rights and benefits, including by specifying procedures through which Comcast's attachments to NES-owned utility poles within Nashville and Davidson County may be altered, moved, relocated, or rearranged to accommodate new attachments.

65. Comcast's contract with NES is protected against impairment by the Contract Clauses of the U.S. and Tennessee Constitutions (U.S. Const. art. I, § 10, cl. 1 and Tenn. Const. art. I, § 20).

66. The Ordinance substantially impairs Comcast's contract with NES by authorizing third parties to perform make-ready work on Comcast's attachments to utility poles and by specifying procedures for such work that are inconsistent with the procedures established by the contract. For example, the NES Agreement authorizes Comcast to perform make-ready work on its own equipment and precludes third parties from rearranging or transferring Comcast's pole attachments until 60 days after notice is provided. Thus, the Ordinance effectively nullifies material terms of the contract, including Comcast's vested rights and benefits, and imposes new and prejudicial conditions and limitations on Comcast's use of NES-owned utility poles, undercutting Comcast's reasonable expectations under the NES Agreement.

67. Defendants have enacted and are enforcing the Ordinance under color of state law. The Ordinance is neither reasonable nor necessary to promote any public purpose, as both federal law and Comcast's contract with NES already provide reasonable and effective methods and procedures for the performance of make-ready work on existing attachments to utility poles.

Moreover, any number of alternative procedures—including various measures proposed by Comcast to streamline the pole attachment process—could have served Metro Nashville’s policy goals equally effectively, while also avoiding the substantial conflict with federal law and impairment of the NES Agreement.

68. Because the Ordinance impairs Comcast’s rights and benefits under Metro Nashville’s *own* contract—specifically, the NES Agreement—it is subject to heightened scrutiny under the Contract Clauses of the U.S. and Tennessee Constitutions.

69. Unless the Court declares that the Ordinance violates the Contract Clauses of the U.S. and Tennessee Constitutions and permanently enjoins Defendants from enforcing it, Comcast will suffer irreparable injury that cannot be redressed by recovery of damages. Among other injuries, Comcast will lose vested rights and benefits under its contract with NES, will suffer reputational injury and a loss of customer goodwill, and will be subjected to extensive potential liability and litigation risk resulting from the effects of the Ordinance’s enforcement. Comcast will also be subjected to improper interference with its business, operations, and property. A permanent injunction will advance the public interest by giving effect to the terms of the valid contract entered by Metro Nashville with Comcast on behalf of the public.

70. Comcast is entitled to a judgment declaring that the Ordinance violates the Contract Clauses of the U.S. and Tennessee Constitutions. Comcast also is entitled to a permanent injunction restraining the Defendants from enforcing the Ordinance.

71. Comcast has incurred and will incur attorneys’ fees and costs in connection with this proceeding, in amounts that cannot yet be ascertained. These fees and costs are recoverable in this action pursuant to 42 U.S.C. § 1988(b).

Prayer for Relief

WHEREFORE, Comcast respectfully requests that this Court provide the following relief:

- a. A declaration and judgment that the Ordinance is invalid because it conflicts with and is preempted by federal law.
- b. A declaration and judgment that the Ordinance is invalid and *ultra vires* because it exceeds Metro Nashville's authority under the Metro Nashville Charter and Tennessee state law.
- c. A declaration and judgment that the Ordinance is invalid because it violates the Contract Clauses of the U.S. and Tennessee Constitutions.
- d. An order permanently enjoining the Defendants from enforcing the Ordinance.
- e. An award of reasonable costs and attorneys' fees pursuant to 42 U.S.C. § 1988(b) and any other applicable law.
- f. Such further relief as the Court deems just and equitable.

Dated: October 25, 2016

Respectfully submitted,

/s/ Robb S. Harvey

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Attorneys for Plaintiff Comcast of Nashville I, LLC

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation - Transfer
- 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE _____ SIGNATURE OF ATTORNEY OF RECORD _____

FOR OFFICE USE ONLY

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EXHIBIT A

**NASHVILLE ELECTRIC SERVICE
INFRASTRUCTURE USE AGREEMENT**

Contract No. 15-31-138

THIS AGREEMENT (hereinafter, "Agreement") made and entered into on _____, 20____ ("Effective Date"), by and between The Metropolitan Government of Nashville and Davidson County, Tennessee, a municipal corporation duly created, organized, and existing under and by virtue of the laws of the State of Tennessee, acting by and through the Electric Power Board of said Government, operating under the service name of Nashville Electric Service (hereinafter, "NES"), and Comcast of Nashville I, LLC, a limited liability company duly created, organized, and existing under and by virtue of the laws of the State of Delaware (hereinafter, "Operator").

RECITALS

WHEREAS, NES is an agency of the Metropolitan Government of Nashville and Davidson County, Tennessee, performing the essential public service of distributing electric power and as a necessary part of its operating as an electric distributor; and

WHEREAS, Operator proposes to furnish communications services in various areas within which NES distributes electric power, and desires to place and maintain facilities and equipment on or in NES's infrastructure and in the rights of way of NES throughout NES's service area; and

WHEREAS, NES's infrastructure has limited capacity for access and use by others for attachments to provide communications services; and

WHEREAS, NES's electric customers have first priority over all other competing uses of NES's infrastructure; and

WHEREAS, NES is responsible for safeguarding the integrity of the electric system, obtaining fair compensation for the use of NES's infrastructure through collection of fees and other charges, insuring the compliance with all applicable federal, state and local laws, rules and regulations, ordinances and standards and policies, and permitting fair and reasonable access to available capacity on NES's infrastructure; and

WHEREAS, Operator wishes to utilize NES's infrastructure to operate its communications system pursuant to the applicable franchise authority; and

WHEREAS, NES is willing to permit the placement of said Operator's facilities and equipment on or in NES's infrastructure where such use will not interfere with NES's service requirements, or the lawful use of NES's facilities by others, and only under the terms and restrictions imposed herein, and upon payment by Operator of the consideration hereinafter set out; and

WHEREAS, the parties intend that this Agreement shall replace and supersede all previous pole attachment and or infrastructure use agreements between the parties upon the Effective Date of this Agreement;

THEREFORE, in consideration of the mutual covenants, terms and conditions set out below, the parties agree as follows:

AGREEMENT

Article 1. Definitions.

For the purpose of this Agreement, the following terms, phrases, words, and their derivations shall have the meaning given below. When not inconsistent with the context, words used in the present tense include the future and past tense, and words in the singular number include the plural number. The words “shall” and “will” are mandatory and “may” is permissive. Words not defined shall be given their common and ordinary meaning.

- 1.1 “Anchor” means an anchor owned by NES which is a device to reinforce the Pole to which it is attached by a guy wire.
- 1.2 “Applicable Standards” means all applicable engineering and safety standards governing the installation, maintenance, and operation of facilities and the performance of all work in or around electric Infrastructure and includes the then-current versions of the National Electrical Safety Code (“NESC”), as adopted by the State of Tennessee, the National Electrical Code (“NEC”), and the regulations of the Occupational Safety and Health Administration (“OSHA”), each as may be amended from time to time, and/or other reasonable construction, safety and engineering requirements of NES (provided such requirements of NES are applied on a non-discriminatory basis to NES, Joint Users, and all other Users and provided further that such requirements of NES are not inconsistent with this Agreement) or other federal, state, or local authority with jurisdiction over NES’s Infrastructure.
- 1.3 “Applicant” means any person who applies to access and make attachment to or otherwise occupy NES Infrastructure.
- 1.4 “Application” means an application by Operator to install an Attachment as described in Article 7 and Article 8.
- 1.5 “Assignee” shall have the meaning ascribed thereto in Article 31.4.
- 1.6 “Attachment” means with respect to Operator, wireline facilities affixed to or placed within NES Infrastructure to provide communications services, and as further designated in the Application and/or this Agreement, and with respect to other Users, any communications or electric facilities or equipment affixed to or placed within NES Infrastructure. An Attachment includes Service Drops and any space clearly tagged and identified pursuant to Article 7.1.2.4.
- 1.7 “Cable” means any communications cable, wire, or strand, including without limitation fiber optic cable, coaxial cable, and twisted pair copper cable.
- 1.8 “Claims” shall have the meaning ascribed thereto in Article 25.1.

- 1.9 “Communications System” or “System” means Operator’s wireline facilities, including but not limited to Cables and electronics, as well as any and all associated equipment and facilities owned or controlled by Operator to provide any communications services, and attached to NES Infrastructure.
- 1.10 “Conduit Attachment” means an Attachment consisting of a single communications Cable or other object occupying one linear foot of a single conduit, duct, Innerduct, or other enclosed structure in NES’s underground Conduit System.
- 1.11 “Conduit System” means all the underground conduits owned by NES.
- 1.12 “Correct” means to perform work to bring an Attachment into compliance with Applicable Standards.
- 1.13 “Defective Pole” shall have the meaning ascribed thereto in Article 13.2.
- 1.14 “Effective Date” shall have the meaning ascribed thereto in the Preamble to this Agreement.
- 1.15 “Electronic Record” means a record created, stored, generated, received, or communicated by electronic means, including but not limited to the use of a computer program, electronic data interchange, electronic mail, facsimile, or scanner.
- 1.16 “Emergency” means a situation exists which, in the reasonable discretion of Operator or NES, if not remedied immediately, will result in a threat to public safety, a hazardous condition, damage to property or a service outage.
- 1.17 “Equipment Attachment” means each power supply, amplifier, pedestal, appliance or other single device or piece of equipment but excluding wireless attachments affixed to or contained in any unit of NES’s Infrastructure.
- 1.18 “Event of Default” shall have the meaning ascribed thereto in Article 29.1.
- 1.19 “Franchise” shall have the meaning ascribed thereto in Article 31.4.1.
- 1.20 “Indemnitees” shall have the meaning ascribed thereto in Article 25.1.
- 1.21 “Infrastructure” means NES distribution Poles, transmission Poles with distribution underbuild, ducts, conduit, vaults, Anchors, fiber optic cable capacity and active communications capacity, facilities and all other utility infrastructure and associated materials and equipment on or connected to these structures which are owned by, or under the control of, NES.
- 1.22 “Innerduct” means a flexible conduit installed inside a larger conduit for the placement of fiber optic cable.
- 1.23 “Joint-Use Agreement” means an agreement whereby each party to an agreement owns poles and has agreed that the other party has the right to attach to and occupy space upon the poles owned by it.

- 1.24 “Joint User” means a joint user which may attach to a Pole or Anchor, or occupy conduit, either solely or partially owned by NES, in return for granting NES equivalent rights of attachment to poles and anchors and/or occupancy of conduit which it owns, either solely or partially.
- 1.25 “License” means the written consent of NES for Operator to make its Attachment.
- 1.26 “Make Ready” means all work that NES reasonably determines to be required to accommodate Operator’s Attachments or those of another User, and/or to comply with all Applicable Standards. Such work includes, but is not limited to, administrative work, engineering work, rearrangement and/or transfer of NES facilities or existing Attachments, inspections, permitting work, tree trimming (other than tree trimming performed for normal maintenance purposes), Pole replacement and construction, or Conduit System clearing, but does not include Operator’s routine maintenance.
- 1.27 “NJUNS” means the National Joint Utility Notification System, an organization that facilitates efficient utility communications through an electronic online system built to communicate and track information regarding joint utility ventures.
- 1.28 “Nonfunctional Attachment” shall have the meaning ascribed thereto in Article 11.
- 1.29 “Other Communications Attacher” shall have the meaning ascribed thereto in Article 5.4.3.
- 1.30 “Overlash Attachment” means each additional Cable owned and operated by Operator placed onto an existing licensed Cable owned and operated by Operator already attached to a Pole. Overlash Attachments shall not be counted as an additional Pole Attachment for Pole Fee purposes. Operator shall not allow third-party overlash or overlash to Unauthorized Attachments without NES’s prior approval.
- 1.31 “Overloaded Pole” shall have the meaning ascribed thereto in Article 13.2.
- 1.32 “Pole” means a utility pole owned by NES.
- 1.33 “Pole Attachment” means each communications wire or line attached to a Pole, including, but not limited to, Cables and Service Drops. A span wire required to support an unbalanced load shall be considered a Pole Attachment if the Operator does not have a Licensed Attachment on that same Pole.
- 1.34 “Pole Attachment Fee” or “Conduit Attachment Fee” shall have the meaning ascribed thereto in Article 5.4.
- 1.35 “Pre-Construction Survey” means all work or operations required by Applicable Standards and/or NES to determine the Make Ready work necessary to accommodate Operator’s Attachments on a Pole or within a span of conduit. Such work includes, but is not limited to, a pole loading analysis by a licensed professional engineer (with respect to Poles), field inspections and administrative processing.

- 1.36 “Rearrangement of Attachment” or “Rearrange” means the moving of Attachments from one position to another on the same Pole or in the same conduit.
- 1.37 “Reserved Capacity” means capacity or space on a Pole or within a portion of conduit that NES has identified and reserved for its own future electric utility requirements pursuant to a *bona fide* development plan existing at the time of the License grant, including the installation of communications circuits for operation of NES’s electric system.
- 1.38 “Riser Attachment” means each metallic or plastic encasement material placed vertically on NES’s Infrastructure to guide and protect wires and cables when transitioning from underground to overhead or overhead to underground. Riser Attachments shall not be counted as an additional Pole Attachment for Rental Fee purposes on Poles where Operator has an existing licensed Pole Attachment.
- 1.39 “Safety Inspection” shall have the meaning ascribed thereto in Article 23.2.
- 1.40 “Service Drop” means (i) a Cable used to connect directly to a customer’s location from one Pole, and attached to no more than one additional Pole where the additional Pole does not support voltage greater than 600V; or (ii) a Cable used to connect a customer’s location through the use of multiple Licensed Poles where Service Drop Make Ready has been performed pursuant to Article 7.1.2.4. Service Drops shall not be counted as an additional Pole Attachment for Pole Fee purposes as long as such Service Drop is within the attachment space of a Licensed Attachment subject to the Pole Fee.
- 1.41 “Tag” means the placement of permanent identifying markers on Attachments to make the nature of the Attachments and their ownership readily identifiable to NES and other Users.
- 1.42 “Transfer of Attachments” or “Transfer” means the removing of Attachments from one Pole and placing these onto another Pole or moving of Attachments from one location in NES’s Conduit System to another location in NES’s Conduit System.
- 1.43 “Triggering Event” shall have the meaning ascribed thereto in Article 5.4.6.
- 1.44 “True-Up Credit” shall have the meaning ascribed thereto in Article 5.4.5.
- 1.45 “Unauthorized Attachment” means any Attachment placed on or within NES Infrastructure without such authorization as is required by this Agreement, provided the Operator’s previously authorized Attachments made pursuant to a prior agreement between the parties shall not be considered Unauthorized Attachments. An Unauthorized Attachment shall not include any Attachment that Operator is permitted to affix to a Pole pursuant to the terms and conditions hereof, even if the installation of such Attachment does not meet Applicable Standards or differs from the design described in the applicable Application.
- 1.46 “User” means any entity that has received approval from NES to place facilities on or within NES Infrastructure.

Article 2. Scope of Agreement.

- 2.1 Subject to the provisions of this Agreement, NES will issue to Operator, for any lawful purpose, a revocable (solely pursuant to the terms and conditions hereof), nonexclusive License authorizing the attachment of Operator's Cables, equipment, and facilities to NES's Infrastructure within NES's service area to operate its Communications System.
- 2.2 This Agreement does not contemplate or authorize the attachment of wireless attachments to NES Infrastructure, and such use will only be allowed pursuant to a separately negotiated wireless pole attachment agreement.
- 2.3 No use, however extended, of NES's Infrastructure or payment of any fees or charges required under this Agreement shall create or vest in Operator any ownership or property rights in said Poles, Anchors, conduit or duct facilities, but Operator's rights therein shall be and remain a mere license. NES is not compelled to construct, retain, extend, place or maintain any Infrastructure not needed for its own service requirements, except as otherwise expressly provided herein.
- 2.4 Operator recognizes that NES has entered into, or may in the future enter into, agreements and arrangements with others not parties to this Agreement regarding the Infrastructure covered by this Agreement. Nothing herein contained shall be construed as a limitation, restriction, or prohibition against NES with respect to such other agreements and arrangements.
- 2.5 The rights of Operator shall at all times be subject to any present or future Joint-Use Agreement between NES and any other party regarding use of the Infrastructure covered herein; provided, however, that nothing in any such present or future Joint-Use Agreement shall restrict, modify, or abridge the rights of Operator set forth in this Agreement.
- 2.6 No license granted under this Agreement shall extend to any Pole(s) where the attachment or placement of Operator's facilities would result in a forfeiture of rights of NES to occupy the property on which such Pole(s) are located. If the existence of Operator's facilities on a Pole(s) or within a portion of conduit would cause a forfeiture of the right of NES to occupy such property, Operator agrees to remove Operator's facilities from the applicable Pole(s) or conduit forthwith upon receipt of written notification by NES in accordance with Article 32. If said facilities are not so removed, NES may perform and/or have performed such removal after the expiration of sixty (60) days from receipt of written notification without liability on the part of NES, and Operator agrees to pay all actual and documented costs associated with such removal. Without limiting Operator's obligations under this Article 2.7, NES agrees to reasonably cooperate, at Operator's cost and assumed liability, with any effort by Operator to cause the existence of Operator's facilities on a Pole or portion of conduit to no longer result in the forfeiture of the right of NES to occupy such property.

Article 3. Reservation and Restrictions.

- 3.1 NES may retain for its own use transmission structures (other than those with distribution underbuild), the electric supply area on Poles, and conduit that is co-resident with electric service or terminates in electric service vaults or manholes.

- 3.2 Specific units of NES Infrastructure may be reasonably determined by NES to be necessary for NES's exclusive use due to legal, mechanical, structural, safety, environmental, service or other requirements, and therefore, will be unavailable for use by others; provided, however, that the foregoing clause will not be applicable to Poles, for which NES's right to deny access to Operator is set forth in Article 7.
- 3.3 Within the electric service area, other entities own some portions of distribution poles, transmission structures, and underground duct and conduit. This Agreement does not address the use of non-NES infrastructure.
- 3.4 Access to space on NES Poles will be made available to Operator with the understanding that certain Poles may be subject to Reserved Capacity for future electric service use. At the time of License issuance, NES shall notify Operator if capacity on particular Poles is being reserved for reasonably foreseeable future electric use pursuant to a *bona fide* development plan. For Attachments made with notice of such a reservation of capacity, on giving Operator at least sixty (60) calendar days prior notice, NES may reclaim such Reserved Capacity at any time following the installation of Operator's Attachment if then-required for NES's core electric utility service. If reclaimed for NES's core electric utility service use, NES may at such time also install associated facilities, including the attachment of communications lines for internal NES operational or governmental communications requirements. NES shall give Operator the option to remove its Attachment(s) from the affected Pole(s) or to pay for the actual and documented cost of any Make Ready needed to expand capacity for core electric utility service requirements, so that Operator can maintain its Attachment on the affected Pole(s). The allocation of the cost of any such Make Ready (including the transfer, rearrangement, or relocation of other User's Attachments) shall be determined in accordance with Article 12.2. Operator shall not be required to bear any of the costs of rearranging or replacing its Attachment(s), if such rearrangement or replacement is required as a result of an additional Attachment or the modification of an existing Attachment by any other User.
- 3.5 NES reserves to itself, its successors and assigns the right to maintain its Poles, manholes and conduit and to operate its facilities thereon in such manner as will best enable it to fulfill its own core electric service requirements, subject in all respects to NES's obligations set forth in this Agreement.
- 3.6 NES makes no representation or warranty of any nature that its existing or future rights-of-way, easements or other property rights, private or public, were, are or will be sufficient to permit the attachment, maintenance, replacement, relocation, repair, modification or removal of Attachments on or between any NES Infrastructure.
- 3.7 NES's service restoration requirements shall take precedence over any and all work operations of Operator on NES's Infrastructure.
- 3.8 To the extent Operator requires electric service for its facilities it shall obtain such power pursuant to the standard application for metered service.

Article 4. Specifications and Standards.

- 4.1 Operator's facilities, in each and every location, shall be erected and maintained in accordance with the requirements and specifications of Applicable Standards. Notwithstanding the foregoing, with respect to an Operator Attachment that was in compliance with the NESC or NES construction standards at the time such Attachment was made but has become noncompliant because of revisions to the NESC or NES construction standards, Operator shall be required to bring such Attachment into compliance with then-current standards only in connection with relocation or rebuild affecting such Attachment or the regular maintenance plan of NES or Operator. Operator's Attachments shall be made in accordance with Operator's customary standards and specifications, which Operator shall furnish to NES. The location of any Attachment may be reasonably redesignated from time to time to accommodate other Users or for reasons of electrical service safety or reliability, with costs allocated in accordance with Article 12.2.
- 4.2 Operator shall be responsible for the installation and maintenance of its Attachments and associated facilities. Operator shall, at its own cost, make and maintain its Attachment(s) in safe condition and good repair, in accordance with all Applicable Standards.
- 4.3 NJUNS. Operator shall become a participating member of the NJUNS or other similar notification system(s) identified and utilized by NES to facilitate required notices, including, but not limited to, any need to Rearrange or Transfer Operator's Attachments. NES will determine the extent to which notifications via NJUNS or other similar notification system will be utilized for Pole Attachments, Transfers, Rearrangements, Pole Attachment abandonment and removal, and substantially similar matters in respect of the Conduit System, as well as the extent to which such use will satisfy the notification requirements of this Agreement, and provide notice thereof to Operator; provided, however, that NES's determinations in respect thereto shall be made applicable to all Other Communications Attachers placing or affixing facilities within or on Infrastructure, and provided further that NES will provide Operator with contact information for any other User which is not an Other Communications Attacher and is not using NJUNS or other similar notification system. To the extent that NES determines to use NJUNS, Operator and NES agree to perform their respective tasks set forth in NJUNS tickets in a commercially reasonable and timely manner, and in accordance with the timeframes specified in this Agreement.
- 4.4 Tagging. Operator shall Tag all its Attachments to NES Infrastructure that will allow for ready identification of the type of Attachment and its owner. Operator shall be responsible for periodically inspecting its Attachments to ensure they are tagged with approved permanent identification markers. Should NES encounter any of Operator's Attachments without approved permanent identification markers, NES may notify Operator, provided that NES can identify the Attachments as belonging to Operator. Subject to the provisions of Article 24, NES will provide written notice to Operator and Operator will have one hundred twenty (120) days from receipt of notice to place such markers.
- 4.4.1 Notwithstanding the foregoing, Operator shall have six months from the Effective Date of this Agreement to Tag Attachments that were authorized prior to the Effective Date of the Agreement.

- 4.5 Interference. Operator shall not allow its Attachments to impair the ability of NES or any third party to use NES Infrastructure, nor shall Operator allow its Attachments to interfere with the operation of any NES facilities or facilities of other Users.
- 4.6 Protective Equipment. Operator and its employees and contractors shall utilize and install adequate protective equipment to ensure the safety of people, property and facilities. Operator shall, at its own cost, install protective devices designed to handle the electric voltage and current carried by NES's facilities in the event of a contact with such facilities.
- 4.7 Violation of Specifications. If Operator's Attachments, or any part of them, are installed, used, or maintained in violation of this Agreement, and Operator has not Corrected the violation(s) within thirty (30) days from receipt of written notice of the violation(s) from NES, the provisions of Article 24 shall apply. When NES believes, however, that such violation(s) pose an immediate threat to the safety of any person, interfere with the performance of NES's service obligations, or present an immediate threat to the physical integrity of NES Infrastructure or facilities, NES may perform such work and/or take such action as it deems necessary without first giving written notice to Operator. As soon as practicable afterward, NES will advise Operator of the work performed or the action taken. Operator shall be responsible for all actual and documented costs incurred by NES in taking action pursuant to this Article 4.7.
- 4.8 At all times while performing work in the field on NES Infrastructure Operator and its authorized contractors shall maintain a copy of all required permits and licenses for inspection by NES and all applicable State and local jurisdictions.

Article 5. Payment of Fees, Charges and Expenses.

- 5.1 Operator shall pay to NES the fees and charges and costs specified herein and/or in Exhibit A and shall comply with the terms and conditions specified in this Agreement.
- 5.2 Payment Period. Unless otherwise expressly provided, Operator shall pay any invoice it receives from NES pursuant to this Agreement within forty-five (45) days of receipt of invoice. Notwithstanding the foregoing, Operator may withhold payment of any invoiced amount that Operator disputes in good faith until resolution of the dispute pursuant to the dispute resolution procedures of this Agreement.
- 5.3 Application Fee. Operator shall be charged an Application Fee for each unit of NES Infrastructure (Pole, section of conduit, etc.) on which new Attachments are proposed under this Agreement. There shall be no Application Fee for Service Drops, Riser Attachments, and Overlashing qualifying for exclusion under article 7.1.1. The current Application Fee is sixty-five dollars (\$65) for each unit of NES Infrastructure. NES reserves the right to adjust the Application Fee from time to time. Failure to pay the Application Fees will cause the Application(s) to be deemed incomplete, and NES will not process such Application(s) until the Application Fees are paid. NES will make timely and reasonable efforts to contact Operator should its Application Fee not be received.
- 5.4 Attachment Fees. Operator shall be charged an annual Pole Attachment Fee or Conduit Attachment Fee per wireline Attachment or per linear foot of conduit, per year.

- 5.4.1 The Pole Attachment Fee shall be calculated annually, on a per Attachment basis, which shall initially be phased-in as set forth in Exhibit A.
- 5.4.2 The Conduit Attachment Fee shall be calculated annually and set out in Exhibit A.
- 5.4.3 Pole and Conduit Fee Rate Equality. Operator's Pole Attachment Fee and Conduit Attachment Fee rates shall be equal to the lowest Pole Attachment or Conduit Attachment rates that NES charges, inclusive of all discounts and rebates except as otherwise provided in this Article 5.4.3 (the "Lowest Charged Rate"), to any other for-profit communications attacher having Attachments on at least one hundred (100) NES Poles (an "Other Communications Attacher"); provided, however, that Operator's Pole Attachment Fee and Conduit Attachment Fee payments shall be subject to Articles 5.4.5 and 5.4.6 whenever NES collects a Pole Attachment Fee or Conduit Attachment Fee from any Other Communications Attacher that is lower than the Lowest Charged Rate; and provided further, however, that (x) fees paid to NES pursuant to a Joint Use Agreement by any Joint User which was a Joint User as of the Effective Date of this Agreement (or their successor in interest) are excluded from this rate equality mandate and (y) Operator shall not be entitled to a lower "phase-in" rate offered to any Other Communications Attacher if Operator received an offer for or receives a substantially similar phase-in of its initial Pole Attachment Fee and Conduit Attachment Fee, as applicable for approximately the same period of time provided that the commencement dates of such phase-in need not be the same. NES represents and warrants to Operator that: (i) as of the Effective Date, the following entities are the only Joint Users: AT&T, Inc.; TDS Telecom; and United Communications; and (ii) each Joint User grants reciprocal rights of access for NES to such Joint User's poles at the same attachment rate that, or a higher attachment rate than, NES collects from such Joint User for placing an attachment on NES Poles.
- 5.4.4 Initial Operator Attachment Fee Payments. NES shall invoice, and Operator shall initially pay, the Pole Attachment Fee per Attachment phased-in as set forth in Exhibit A, provided that the Pole Attachment Fee per Attachment set forth in Exhibit A shall be deemed adjusted to the Lowest Charged Rate (phase-in does not apply to Lowest Charged Rate).
- 5.4.5 True-Ups. NES agrees to credit the account of Operator (or refund to Operator following termination of this Agreement), subject to Article 5.4.6 hereof, for any amount paid by Operator as a Pole Attachment Fee at an attachment rate higher than the lowest Pole attachment rate collected, on or after the Effective Date, from any Other Communications Attacher for the applicable time period during which NES collected a lower rate (each such credit or refund, a "True-Up Credit"). For purposes of the preceding sentence, the Pole Attachment rate collected from any Other Communications Attacher then-subject to bankruptcy or receivership proceedings shall not be considered.
- 5.4.6 True-Up Credit Triggering Events. NES shall provide the True-Up Credit for an applicable time period within forty-five (45) days of the occurrence of any of the following events or circumstances (each, a "Triggering Event"):

- 5.4.6.1 NES (a) collects Pole Attachment Fees from any Other Communications Attacher based on a Pole attachment rate that is lower than the rate paid by Operator during such time period and (b) within two (2) years of collecting such payment from such Other Communications Attacher, NES does not seek (or fails thereafter to continuously diligently pursue), through a suit, claim, petition, or other action in or before a court, administrative agency, or other governmental authority of competent jurisdiction, to collect attachment fees from such Other Communications Attacher based upon the Pole attachment rate paid by Operator for such time period.
- 5.4.6.2 A court or administrative agency enters an order or decision setting the Pole attachment rate for any Other Communications Attacher lower than the rate paid by Operator during such time period and such order or decision is not stayed or enjoined within thirty (30) days. If such order or decision is subsequently vacated, reversed, amended, modified, or overruled, resulting in a different attachment rate for any Other Communications Attacher during such time period, NES and Operator will true-up the True-Up Credit for such time period to account for and incorporate such different Pole attachment rate.
- 5.4.6.3 NES enters into a binding agreement with any Other Communications Attacher establishing a Pole attachment rate for such time period lower than the rate paid by Operator during such time period (not including a phase-in rate that is comparable to what was offered or provided to Operator). If a subsequent binding agreement between NES and any Other Communications Attacher sets forth a different attachment rate for such time period, NES and Operator will true-up the True-Up Credit for such time period to account for and incorporate such lower Pole attachment rate.
- 5.4.6.4 Operator may offset any amounts owed to NES under this Agreement against any True-Up Credit that NES fails to provide within forty-five (45) days of a Triggering Event.
- 5.4.7 Lease of Infrastructure not defined above will be negotiated at NES's discretion.
- 5.4.8 Operator shall be billed semi-annually for Attachment Fees (one-half of the annual attachment fee at each billing period). Operator shall have one hundred eighty (180) days from receipt of invoice to contest the number of Attachments. Failure to contest or otherwise dispute the invoice within one hundred eighty (180) days of receipt shall be deemed to be acceptance by the Operator.
- 5.4.9 Refunds. No fees and charges specified in Exhibit A shall be refunded on account of any surrender of a License granted under this Agreement.
- 5.5 Charges and Expenses. Operator shall reimburse NES and any other Users for those actual, and documented costs in this Agreement for which Operator is responsible.
- 5.5.1 Such costs and reimbursements shall include, but not necessarily be limited to, all design, engineering, administration, supervision, payments, labor, overhead,

materials, equipment and applicable transportation used for work on, or in relation to Operator's Attachments as set out in this Agreement or as requested by Operator in writing.

- 5.5.2 NES shall provide Operator with invoices for such work (in progress or upon completion, as determined by NES) and payment shall be due and payable upon receipt, but shall not draw interest at NES's prevailing rate until forty-five (45) days after its receipt by Operator. Interest shall not exceed the State of Tennessee statutory interest rate as set out in Tenn. Code Ann. § 47-14-103.
- 5.6 Advance Payment. The parties will mutually agree on the extent to which Operator will be required to pay in advance estimated costs, including, but not limited to, administrative, construction, inspections, and Make Ready work costs, in connection with the initial installation or Rearrangement of Operator's Attachments pursuant to the procedures set forth in Articles 7 and 8 below. The above notwithstanding, NES may require the payment of estimated Make Ready work in advance if there are repeated instances of Operator making late payments for such work.
- 5.7 True-Up. Whenever the parties have agreed, or this Agreement otherwise provides, for an advance payment of estimated costs prior to undertaking an activity on behalf of Operator and the actual and documented cost of the activity exceeds the advance payment of estimated costs, Operator agrees to pay NES for the difference in cost, provided that NES documents such costs with sufficient detail to enable Operator to verify the charges. To the extent that NES's actual and documented cost of the activity is less than the estimated cost, NES shall refund to Operator the difference.
- 5.8 Determination of Charges. Wherever this Agreement requires Operator to pay for work done or contracted by NES, the charge for such work shall include all actual and documented material, labor, engineering, administrative, and applicable overhead costs. NES shall bill its services based upon actual and documented costs, and such costs will be determined in accordance with NES's cost accounting systems used for recording capital and expense activities. All such invoices shall include an itemization of dates of work, location of work, labor costs per hour, persons employed, and costs of materials used. Labor costs shall be actual costs based upon NES employee rates. Consistent with Article 24, if Operator was required to perform work and fails to perform such work within the specified timeframe, and NES performs such work, NES may charge Operator an additional twenty-five percent (25%) of its actual and documented costs for completing such work.
- 5.9 Work Performed by NES. Wherever this Agreement requires NES to perform any work, NES, at its sole discretion, may utilize its employees or contractors, or any combination of the two, to perform such work.
- 5.10 Charges for Incomplete Work. In the event that an Application is submitted by Operator and then steps are taken by NES to carry out the review of the Application by performing necessary engineering and administrative work and the Application is subsequently canceled, Operator shall reimburse NES for all of the actual and documented costs incurred

by NES through the date of cancellation, including engineering, clerical and administrative and Make Ready construction costs.

- 5.11 Default for Nonpayment. Nonpayment of any amount due under this Agreement beyond ninety (90) days shall constitute an Event of Default of this Agreement.

Article 6. Private and Regulatory Compliance.

- 6.1 In order to construct, place and maintain the Operator's System on NES's Infrastructure, Operator must obtain from the various federal, state, county and local authorities any required permits, license, and Franchise required to be obtained to make an Attachment before making such Attachment. The cost of such permits, licenses, and Franchise shall be borne by Operator.
- 6.2 Operator shall be solely responsible for obtaining all necessary rights-of-way and easements or approvals, either public or private, which may be necessary prior to the beginning of construction, and Operator's right to make an Attachment shall be contingent upon acquisition, under terms acceptable solely to Operator, of all such permits, consents or approvals as are required to make such Attachment.
- 6.3 Lawful Purpose and Use. Operator's Attachments and associated facilities must at all times serve a lawful purpose, and the use of such Attachments and facilities must comply with all applicable federal, state and local laws.

Article 7. License Application Process.

- 7.1 Application Required. Before making any Attachments (excluding Overlapping qualifying for exclusion under Article 7.1.1, Service Drops, and Riser Attachments where there is an existing licensed Pole Attachment) to any Poles or in the Conduit System, Operator shall first make an Application and must have received a License therefor, with respect to each Pole or conduit.
- 7.1.1 Overlapping. Overlapping shall be allowed without separate Application up to the design capacity of the strand (all Attachments to be guyed for the capacity of the strand) and if the final diameter of the Attachment bundle (to include strand and all attached Cables) does not exceed two inches (2") in diameter. A new Application shall be required if the underlying strand must be replaced or if the final diameter of the Attachment bundle (to include strand and all attached Cables) exceeds two inches (2") in diameter.
- 7.1.1.1 It is Operator's responsibility to verify that the Pole and strand to which it proposes to overlap meets all Applicable Standards before overlapping. If Operator identifies pre-existing violations of Applicable Standards it is the responsibility of the Operator to notify NES of the violations. Operator shall not be allowed to overlap until the pre-existing violations of Applicable Standards are resolved. If it is determined by NES that Operator has overlapped on a Pole with a pre-existing violation of Applicable Standards, Operator shall be required to bring the Overlapped Attachment into

compliance with Applicable Standards to the extent that it is Operator's underlying Attachment that is non-compliant. Subject to the provisions of Article 24, NES will provide written notice to Operator and Operator shall have thirty (30) days from receipt of notice to Correct the existing standards issue(s) and notify NES that the work has been completed.

7.1.1.2 Except in instances of Overlash requiring a separate Application pursuant to Article 7.1.1, Operator shall notify NES of an Overlash Attachment within thirty (30) days of installation. NES shall specify the method of notification and may require the notification be submitted electronically utilizing a system specified by NES.

7.1.1.3 Any Overlash Attachment that NES discovers more than thirty (30) days after installation will be considered an Unauthorized Attachment subject to provisions of Article 20.

7.1.1.4 In the case of Emergency, Operator may make an Overlash Attachment to a Nonfunctional Attachment; provided, however, that Operator's overlash of such Nonfunctional Attachment does not modify or alter Operator's obligation to timely remove the overlashed Nonfunctional Attachment as set forth in Article 11.

7.1.2 Service Drops. Operator may attach a Service Drop, without Application, from one Pole with an existing licensed Operator Attachment to connect directly to Operator's customer's building, premise, or location, and attached to no more than one additional Pole where the additional Pole does not support voltage greater than 600V.

7.1.2.1 It is Operator's responsibility to verify that the Pole on which it proposes to make a Service Drop meets all Applicable Standards before attaching the Service Drop. If existing standards issues are identified it is the responsibility of the Operator to notify NES of the issue. Operator shall not be allowed to attach the Service Drop until the standards issue is resolved.

7.1.2.2 If it is determined by NES that Operator has attached a Service Drop on a Pole with a pre-existing violation of Applicable Standards, Operator shall be required to bring the Service Drop into compliance with Applicable Standards to the extent that it is Operator's existing Attachment that is non-compliant. Subject to the provisions of Article 24, NES will provide written notice to Operator and Operator will have thirty (30) days from receipt of such notice to Correct the existing standards issue, otherwise the provisions of Article 24 shall apply. If the Attachment that is non-compliant belongs to another User, then Operator shall coordinate with NES and the other User concerning any necessary rearrangement of Operator's Service Drop in conjunction with the Correction of the non-compliant Attachment.

- 7.1.2.3 Operator shall notify NES of a Service Drop within thirty (30) days of installation. NES shall specify the method of notification and may require the notification be submitted electronically utilizing a system specified by NES.
- 7.1.2.4 Any Service Drop that NES discovers more than thirty (30) days after installation will be considered an Unauthorized Attachment subject to the provisions of Article 20.
- 7.1.2.5 On any Pole where Operator has applied for an Attachment License, Operator may, in its discretion, perform or have performed such Make Ready, subject to the terms and conditions hereof governing the Application process and Make Ready, as is necessary or advisable for future installation of a Service Drop (“Service Drop Make Ready”) on (i) any Pole at the time Operator performs other Make Ready on such Pole in connection with installation of Operator’s Communications System (a “Mainline Pole”) and (ii) any other Pole that Operator contemplates using for purposes of connecting a Cable directly to a customer’s premises from a Mainline Pole (a “Service/Lift Pole”). Operator shall clearly tag and identify the space on the Mainline Pole or Service/Lift Pole that Operator intends to use for a Service Drop, by placing a bolt in the Pole in the contemplated Attachment space or utilizing another mutually agreed upon means to tag and identify such space. NES may inspect related Service Drop Make Ready at Operator’s cost and expense at the time NES inspects Operator’s Make Ready on such Pole.
- 7.1.2.6 Operator shall not be required to use a messenger strand in connection with connecting any communications cable or wire as part of a Service Drop, provided, however, multiple cables sharing common attachment points on a Pole, including Service Drops, shall be lashed, bound or bundled and satisfy all Applicable Standards.
- 7.1.2.7 Where Operator desires to connect Cable directly to a customer’s premises from a Mainline Pole, and such connection to a customer’s premises requires the use of more than one Service/Lift Pole, Operator’s placement of an Attachment on such Service/Lift Pole(s) for connecting Cable to a customer’s premises shall be treated like any other Attachment under this Agreement. For any Pole where Operator has already performed authorized Service Drop Make Ready pursuant to Article 7.1.2.4, Operator shall only be required to provide notice that it has connected Service Drops to such Poles.
- 7.1.2.8 Operator may attach its Service Drop in its Attachment space, or in a space tagged and identified for use by Operator as a Service Drop (by placing a bolt in the Pole in the contemplated Service Drop Attachment space or utilizing another mutually agreed upon means to tag and identify such space as described in Article 7.1.2.4), more than one hundred twenty (120) days after completing the Service Drop Make Ready for such Service Drop.

7.1.3 Riser Attachments. The installation of a Riser Attachment shall be allowed without separate Application on a Pole with an existing licensed Operator Attachment.

7.1.3.1 It is Operator's responsibility to verify that the Pole and Riser Attachment meets all Applicable Standards before installation. If Operator identifies pre-existing violations of Applicable Standards it is the responsibility of the Operator to notify NES of the violations. Operator shall not be allowed to install the Riser Attachment until the pre-existing violations of Applicable Standards are resolved. If it is determined by NES that Operator has installed a Riser Attachment on a Pole with a pre-existing violation of Applicable Standards, Operator shall be required to bring the Riser Attachment into compliance with Applicable Standards to the extent that it is Operator's Riser Attachment that is non-compliant. Subject to the provisions of Article 24, NES will provide written notice to Operator and Operator shall have thirty (30) days from receipt of notice to Correct the existing standards issue(s) and notify NES that the work has been completed.

7.1.3.2 Operator shall notify NES of an Riser Attachment within thirty (30) days of installation. NES shall specify the method of notification and may require the notification be submitted electronically utilizing a system specified by NES.

7.1.3.3 Any Riser Attachment that NES discovers more than thirty (30) days after installation will be considered an Unauthorized Attachment subject to provisions of Article 20.

7.1.4 If the Pole or conduit is located on public rights-of-way, Operator shall obtain all necessary permits from the city of Nashville, Davidson County, or surrounding counties NES serves, or the State of Tennessee, as applicable, and present evidence thereof to NES at the time the request is made to attach to said Poles or in said conduit (unless such evidence is already on file with NES).

7.2 Standard Pole Attachment Application and Licensing Process.

7.2.1 Submission and Review of License Application. Operator shall submit a properly executed Pole Attachment License Application, which may, at Operator's option, include a Pre-Construction Survey and detailed plans for the proposed Attachments, including a description of any necessary Make Ready to accommodate the Attachments, certified by a professional engineer licensed in the state of Tennessee. Operator shall use the NES Pole Attachment License Application form, which form has been provided to Operator (NES may require that the Application be submitted electronically utilizing a system specified by NES). NES may amend the Pole Attachment License Application form and/or process from time to time, provided that any such changes are not inconsistent with the terms of this Agreement and are applied to all Other Communications Attachers on a non-discriminatory basis. NES's acceptance of the submitted design documents does not relieve Operator of full responsibility for any errors and/or omissions in the engineering analysis. Unless

otherwise agreed, in performing loading, Pre-Construction Survey and other engineering calculations submitted to NES, Licensee shall utilize engineering software specified by NES, and in all instances such software shall be compatible with NES's systems. Unless otherwise agreed, under normal circumstances, the License Application process shall be as follows:

- 7.2.1.1 If Operator's Application includes a Pre-Construction Survey and detailed plans for the proposed Attachments, including a description of any necessary Make Ready to accommodate the Attachments, certified by a professional engineer licensed in the state of Tennessee, NES shall review and respond to such properly executed and complete License Application for routine installations as promptly as is reasonable, with a goal of providing a response during normal circumstances within fourteen (14) days of receipt. NES's response will either: (i) grant permission to undertake such Make Ready as described in Operator's Application and engineering survey (ii) grant permission to undertake such Make Ready as NES reasonably determines is required; or (iii) provide a written explanation as to why the Application is being denied, in whole or in part, for reasons of safety, reliability or insufficient capacity that cannot be resolved consistent with Applicable Standards, including City and County zoning and construction ordinances.
- 7.2.1.2 If Operator's Application does not include a Pre-Construction Survey (including a description of necessary Make Ready), NES shall review the Application and perform a Pre-Construction Survey, and, if the Attachment can be accommodated consistent with Applicable Standards, prepare a description of any necessary Make Ready to accommodate the proposed Pole Attachment. Under normal circumstances, NES will respond to such properly executed and complete Permit Application for routine installations as promptly as is reasonable, with a goal of providing a response within forty-five (45) days of receipt. NES's response will either: (i) provide a description of Make Ready identified by NES and a cost estimate for the NES portion of that Make Ready; or (ii) provide a written explanation as to why the Application is being denied, in whole or in part, for reasons of safety, reliability or insufficient capacity that cannot be resolved consistent with Applicable Standards, including City and County zoning and construction ordinances. Upon receipt of NES's Make Ready cost estimate, Operator shall have fourteen (14) days to approve the estimate, and provide payment, if required under the terms of the Make Ready estimate, if NES is going to perform the Make Ready.
- 7.2.1.3 For License Applications seeking Attachments to one hundred (100) or more Poles NES may require additional time to review. For the purposes of this Article 7.2.1.3 only, all License Applications made by Operator in a thirty (30) day period will be considered as one Application.
- 7.2.1.4 In order to be considered as part of the same License Application, all of the Poles listed must be consecutive or in close proximity to one another.

7.2.2 Make Ready Work.

7.2.2.1 Make Ready work in the electric supply space may be performed only by NES and/or a qualified contractor authorized by NES to perform such work. Under normal circumstances, NES will give Operator the option of either having NES perform any necessary Make Ready work, at Operator's cost, or allowing Operator to complete Make Ready work through the use of qualified contractors authorized by NES.

7.2.2.2 If NES is performing Make Ready work it will use good faith efforts to complete routine Make Ready work within sixty (60) days of receipt of Operator's approval of the Make Ready estimate. If there are extenuating circumstances that make the necessary Make Ready more complicated or time-consuming, including, but not limited to, the Application requesting attachment to more than one hundred (100) Poles, or seasonal weather conditions, NES shall identify those factors in the Make Ready description and cost estimate and the parties shall agree upon a reasonable timeframe for completion. If NES does not complete agreed upon Make Ready work within sixty (60) days or the agreed-upon timeframe it will allow Operator to use an NES approved qualified contractor to complete such Make Ready work and refund any amounts paid by Operator to NES for performing such Make Ready work that is not completed.

7.2.2.2.1 The above notwithstanding, if NES has substantially completed the Make Ready the parties will reasonably determine whether it makes more sense from an operational efficiency perspective to have NES complete the work rather than have Operator's authorized qualified contractors do the work.

7.2.2.3 Payment for Make Ready Work. Upon completion of the Make Ready work performed by NES, NES shall invoice Operator for NES's actual and documented cost of such Make Ready work. The costs of the work shall be itemized in accordance with Article 5.8, and if NES received advance payment, the costs shall be trued up in accordance with Article 5.7. Operator shall be responsible for entering into an agreement with existing other Users to reimburse them for any costs that they incur in Rearranging or Transferring their facilities to accommodate Operator's Attachments.

7.2.2.4 Scheduling of Make Ready Work. In performing all Make Ready work to accommodate Operator's Attachments, NES will endeavor to include such work in its normal work schedule. If Operator requests, and NES agrees, to perform Make Ready work on a priority basis or outside of NES's normal work hours, Operator will pay any resulting increased actual and documented costs. Nothing in this Agreement shall be construed to require NES to perform Operator's work before other scheduled work or service restoration.

7.2.2.5 Notification of Make Ready Work. Before starting Make Ready work, NES shall notify all existing Users of the date and location of the scheduled work and notify them of the need to Rearrange and/or Transfer their facilities at Operator's cost within the specified time period. To the extent that NES has the legal authority, it shall Rearrange and/or Transfer existing facilities of such other Users that have not been moved in a timely manner. Operator shall pay for any such Rearrangement or Transfer.

7.2.2.6 In instances where Operator is performing Make Ready, where an existing User has not relocated or otherwise undertaken work required to complete Make Ready (such as repairing existing Attachments not in compliance with Applicable Standards) within thirty (30) days of notice by NES or Operator to such other User, Operator is authorized, to the extent that NES has such authority, and the legal ability to delegate such authority, to relocate or repair the other User's Attachments on behalf of NES. If NES determines that it does not have the legal ability to delegate authority to Operator to relocate or repair the other User's Attachments on behalf of NES, NES shall diligently enforce all contractual or legal rights of NES to require such other User to relocate or repair its Attachments. Operator shall pay the costs to relocate the other User's Attachments as part of Operator's Make Ready. NES shall provide reasonable assistance to Operator in obtaining reimbursement from any such other User for Operator's costs to repair such other User's Attachments that are not in compliance with Applicable Standards.

7.2.3 Operator's Installation/Removal/Maintenance Work.

7.2.3.1 License as Authorization to Attach. Upon satisfactory completion and inspection of any necessary Make Ready work, NES will issue a License to Operator which shall serve as authorization for Operator to make its Attachment(s).

7.2.3.2 All of Operator's installation, removal, and maintenance work, by either Operator's employees or authorized contractors, shall be performed at Operator's sole cost, in a good and workmanlike manner, and must not adversely affect the structural integrity of NES Infrastructure or other facilities or other Users' facilities or equipment.

7.2.3.3 All of Operator's installation, removal, and maintenance work, either by its employees or authorized contractors, shall comply with all Applicable Standards. Operator shall assure that any person installing, maintaining, or removing its facilities is fully qualified and familiar with all Applicable Standards, including standards for working in the supply space.

Article 8. Conduit Application and Use Requirements.

In addition to the general provisions of this Agreement the following procedures and requirements shall apply to the use of the Conduit System.

- 8.1 Route Investigation/Survey. If Operator seeks to utilize a portion of NES conduit for placement of its Cables, Operator shall first request a Route Investigation/Survey to be completed by NES. The Route Investigation/Survey shall be performed at Operator's cost, such cost to be actual and documented. Upon receipt and review of a Route Investigation/Survey Operator may apply for installation of its Cable within the Conduit System.
- 8.2 Conduit Usage License Application. Operator shall submit a properly executed Conduit Usage License Application, which shall include detailed plans for the proposed Attachments, including a construction drawing indicating the location of and specifying the type of Cable to be installed. Operator shall use the NES Conduit Usage License Application form, which form has been provided to Operator. NES may amend the Conduit Usage License Application form from time to time, provided that any such changes are not inconsistent with the terms of this Agreement, and are applied to all Other Communications Attachments on a non-discriminatory basis.
- 8.3 NES will review the Application and discuss any issues with Operator, including engineering or Make Ready work requirements associated with the Application.
- 8.4 NES shall review and respond to properly executed and complete Applications for routine installations as promptly as is reasonable. NES's response will either provide a written explanation as to why the Application is being denied, in whole or in part, or provide an estimate of the costs of all necessary Make Ready work.
- 8.5 Upon receipt of NES's Make Ready estimate, Operator shall have fourteen (14) days to approve the estimate and provide payment in accordance with this Agreement and the specifications of the estimate.
- 8.6 Upon receipt of payment of estimated Make Ready NES will use best efforts to complete routine Make Ready work within the conduit in a reasonable time frame, and shall advise Operator of any extenuating circumstances that make the necessary Make Ready more complicated or time-consuming.
- 8.7 NES reserves the right to determine routes and conduit to be used where there is insufficient capacity or operational limitations to accommodate Operator's proposed Conduit Attachments, including consistent with Article 3 the ability to exclude the use of Conduit and tunnels containing electric transmission facilities.
- 8.8 Work Rules. While some of the standards and technical requirements for Operator's Cable and use in NES's Conduit System are set forth herein, NES reserves the right to specify the type of construction required with respect to the Conduit System in situations not otherwise covered, provided that such construction requirements are not inconsistent with this Agreement and are imposed by NES on all Users on a non-discriminatory basis. In such cases, NES will furnish to Operator written materials which will specify and explain the required construction. NES and Operator shall negotiate in good faith with respect to any Conduit System construction requirement to which Operator reasonably objects.

- 8.8.1 NES's manholes or transformer vaults shall not be opened or tampered with by an employee, agent or contractor of Operator.
- 8.8.2 No employee, agent or contractor of Operator shall enter or work in any of NES's manholes or transformer vaults without an authorized representative of NES present.
- 8.8.3 NES shall place, remove, change, and maintain all Cable in the Conduit System with materials supplied by Operator, approved by NES and delivered in a timely manner to the location designated by NES.
- 8.8.4 Operator's Cable shall be permanently identified by tags at each manhole or other access opening in the Conduit System. Tags shall be of a type and wording reasonably satisfactory to NES, and consistent with NES guidelines. All cost of this identification shall be at the cost of Operator.
- 8.8.5 Where manholes or transformer vaults must be pumped in order to allow work operations to proceed, pumping shall be done by NES at Operator's cost, such cost to be actual and documented.
- 8.8.6 Any leak detection liquid or device used by Operator or Operator's agents, employees or contractors shall be of a type approved in writing by NES.
- 8.8.7 No equipment or facilities other than cables are permitted within NES underground structures. Slack loop and coils are not allowed within NES underground structures.
- 8.8.8 When Operator, its agents, employees, or contractors are working around any part of NES's Conduit System located in the streets, alleys, highways, or other public rights-of-way or easements granted to NES or the Metropolitan Government of Nashville and Davidson County, the protection of persons and property shall be provided by Operator in an adequate and satisfactory manner. Operator shall be solely responsible for providing adequate barricades, warning lights, traffic cones, danger signs, and other similar devices to protect all traffic, persons, and property around the work area from danger. In areas of the City of Nashville where NES is required to have uniformed police during construction or installation required by Operator, this cost will also be borne by Operator.
- 8.8.9 NES's authorized representative shall have the authority to terminate Operator's work operations around NES's manholes or transformer vaults if, in the reasonable discretion of NES's authorized representative, any hazardous condition arises or any unsafe practice is being followed by Operator's agents, employees or contractors. Said discretion shall not be unreasonably executed.
- 8.8.10 Operator further agrees to comply with all safety laws, regulations, ordinances, and statutes pertaining to the work to be performed hereunder and the tools and equipment used to accomplish such work, and to be and remain solely responsible for the compliance therewith by its employees, agents, servants and/or contractors.

8.9 Conduit Attachment Procedures.

- 8.9.1 All installations in conduits must be approved and performed by NES. Operator shall reimburse NES for all actual and documented costs incurred.
- 8.9.2 Operator's representative shall be present during all NES installation of underground Cable, Innerduct, and accessories on behalf of Operator. Operator's representative shall be knowledgeable and experienced in underground Cable, Innerduct, and accessory installation and shall be authorized by Operator to answer questions and make decisions on Operator's behalf regarding problems and questions that occur during NES installation of underground Cable, Innerduct, and accessories. Operator's representative shall be furnished at Operator's cost.
- 8.9.3 NES may exclude conduit and ducts for its core electric service. NES may pull a cable into any of NES's conduits either occupied by or scheduled to be occupied by Operator's facilities. Should it become necessary for NES to use a conduit occupied by Operator, Operator's Cable may upon notice be removed by NES. In lieu thereof, Operator may request NES to expand conduit or duct capacity, at the cost of Operator.
- 8.9.4 Operator shall compensate NES for the actual and documented cost, including engineering and administrative cost, for the connection of Operator's conduit which connects to NES's manhole or transformer vault. The section of connecting conduit shall not be longer than five (5) feet and shall be maintained by NES at Operator's cost.
- 8.9.5 Operator shall compensate NES for the actual and documented cost, including engineering and administrative cost, for any work required to make a conduit usable for the initial placing of Operator's Cable and/or Innerduct.
- 8.9.6 NES may rearrange Operator's Cable at the cost of Operator when necessary to make maximum use of its Conduit System, such cost to be actual and documented.

8.10 In Cases of Emergency.

- 8.10.1 NES's work shall take precedence over any and all operations of Operator.
- 8.10.2 Operator is responsible for supplying to NES a point(s) of contact for non-Emergency and Emergency twenty-four (24) hour service and for informing NES of any change in point(s) of contact.
- 8.10.3 In the event Operator experiences an Emergency with its Attachments located in NES's Conduit System, it is necessary that a NES representative be at the site before Operator enters a manhole and/or works on the Cable in NES's Conduit System for any reason. NES will respond to an Emergency as arranged between Operator and a NES representative. An Emergency call associated with Operator or NES's customers out of service will be treated on a "priority" basis. NES's response time will be based on the situation existing at the time of the Emergency. All NES labor and material associated with an Operator Emergency that does not arise from faults

in the Conduit System or the acts or omissions of any other User of the Conduit System will be billed to Operator.

Article 9. Post Installation Inspections.

- 9.1 Within thirty (30) days of written notice to NES that the Operator has completed installation of an Attachment (including Overlash, Riser Attachments, and/or Service Drops), NES or its contractors may perform a post-installation inspection for each Attachment made to NES Infrastructure. If such post-installation inspections are performed, Operator shall pay the actual and documented costs for the post-installation inspection.
- 9.2 If NES elects to not perform any post-installation inspection, such non-inspection shall not be grounds for any liability being imposed on NES or a waiver of any liability of Operator.
- 9.3 If the post-installation inspection reveals that Operator's facilities have been installed in violation of Applicable Standards or the approved design described in the Application, NES will notify Operator in writing and Operator shall have thirty (30) days from the date of receipt of such notice to correct such violation(s), or such other period as the parties may agree upon in writing, unless such violation creates an Emergency in which case Operator shall make all reasonable efforts to correct such violation immediately. NES may perform subsequent post-installation inspections within thirty (30) days of receiving notice that the correction has been made as necessary to ensure Operator's Attachments have been brought into compliance.
- 9.4 If Operator's Attachments remain out of compliance with Applicable Standards or approved design after any subsequent inspection, consistent with Article 24, NES will provide notice of the continuing violation and Operator will have thirty (30) days from receipt of such notice to Correct the violation, otherwise the provisions of Article 24 shall apply.

Article 10. Effect of Failure to Exercise Access Rights.

If Operator does not exercise any access right granted pursuant to an applicable License(s) within one hundred twenty (120) calendar days of the grant of a License to make Attachments (unless such time period is extended), NES may, but shall have no obligation to, use the space scheduled for Operator's Attachment(s) for its own needs or make the space available to other Users. In such instances, NES shall endeavor to make other space available to Operator, upon submission of a new Application under Article 7 or Article 8, as soon as reasonably possible and subject to all requirements of this Agreement, including the Make Ready work provisions.

Article 11. Removal of Nonfunctional Attachments.

At its sole cost, Operator shall remove any of its Attachments or any part thereof that becomes nonfunctional and no longer fit for service ("Nonfunctional Attachment"). Except as otherwise provided in this Agreement, Operator shall remove Nonfunctional Attachments within one (1) year of the Attachment becoming Nonfunctional unless Operator receives written notice from NES that removal is necessary to accommodate NES's or another User's use of the affected Pole(s) or portion of the Conduit System, in which case Operator shall remove the Nonfunctional Attachment within thirty (30) days of receiving the notice. Operator shall give NES notice of any removed Attachments, otherwise the provisions of Article 24 shall apply. If NES discovers Nonfunctional Attachments that

have not been reported, consistent with Article 24, NES shall notify Operator, who shall have one year from the date of discovery to remove such Attachments, after which the provisions of Article 24 shall apply.

Article 12. Rearrangements and Transfers.

12.1 Required Transfers of Operator's Attachments. If NES reasonably determines that a Rearrangement or Transfer of Operator's Attachments is necessary, including as part of Make Ready to accommodate another User's Attachment, NES will require Operator to perform such Rearrangement or Transfer within thirty (30) days after receiving notice from NES, including notice via NJUNS or other agreed upon notification system. If Operator fails to Rearrange or Transfer its Attachment within thirty (30) days after receiving such notice from NES, the provisions of Article 24 shall apply, including NES's right to Rearrange or Transfer Operator's Attachments sixty (60) days after Operator's receipt of original notification of the need to Rearrange or Transfer its facilities. The actual and documented costs of such Rearrangements or Transfers shall be apportioned as specified under Article 12.2. NES shall not be liable for damage to Operator's facilities except to the extent provided in Article 26. In Emergency situations, NES may Rearrange or Transfer Operator's Attachments as it determines to be necessary in its reasonable judgment. In Emergency situations NES shall provide such advance notice as is practical, given the urgency of the particular situation. NES shall then provide written notice of any such actions taken within ten (10) days following the occurrence.

12.1.1 If Operator fails to Rearrange and/or Transfer its facilities within the prescribed time period, NES may delegate its authority to Rearrange and/or Transfer Operator's facilities to another User that is authorized by NES to Rearrange and/or Transfer Attachments User or its authorized contractors. In such case such other User may Rearrange or Transfer Operator's Attachments sixty (60) days after Operator's receipt of original notification of the need to Rearrange or Transfer its facilities.

12.2 Allocation of Costs. The costs for any Rearrangement or Transfer of Operator's Attachment or the replacement of a Pole (including any related costs for tree cutting or trimming required to clear the new location) shall be allocated to NES and/or Operator and/or other User on the following basis:

12.2.1 If NES intends to modify or replace Infrastructure solely for its own requirements, it shall be responsible for the costs related to the modification/replacement of the Infrastructure. Operator shall be responsible for costs associated with the Rearrangement or Transfer of Operator's Attachments.

12.2.2 If the modification or replacement of Infrastructure is necessitated by the requirements of Operator, Operator shall be responsible for all costs caused by the modification or replacement of the Infrastructure as well as the costs associated with the Transfer or Rearrangement of NES's facilities and any other User's facilities. NES shall not be obligated in any way to enforce or administer Operator's responsibility for the costs associated with the Transfer or Rearrangement of another User's facilities pursuant to this Article 12.2.

- 12.2.3 If the modification or the replacement of Infrastructure is the result of an additional Attachment or the modification of an existing Attachment sought by a User other than NES or Operator, the User requesting the additional or modified Attachment shall bear the entire cost of the modification or replacement, as well as the costs for Rearranging or Transferring Operator's Attachments. Operator shall cooperate with such third-party User to determine the costs of moving Operator's facilities.
- 12.2.4 If the Infrastructure must be modified or replaced for reasons unrelated to the use of the Infrastructure by Users or NES (*e.g.*, storm, accident, deterioration), NES shall pay the costs of such modification or replacement and Operator shall pay the costs of replacing, Rearranging, or Transferring its Attachments.

Article 13. Pole Replacements.

- 13.1 At Operator's request, NES shall change out an existing Pole for a taller or stronger Pole in order to accommodate an Attachment request by Operator, unless such replacement Pole would be reasonably likely to adversely affect safety or electric reliability, or is otherwise inconsistent with applicable State or local zoning or land use requirements. Subject to Article 14, Operator shall pay the actual and documented cost of changing out the existing Pole.
- 13.2 Where Operator is unable to place an Attachment on a Pole because such Pole is a Defective Pole or Overloaded Pole, provided that the communications space on such Pole could otherwise have been arranged with sufficient spacing to accommodate the Operator's proposed Attachment(s), NES will replace, at NES's sole cost, such Defective Pole or Overloaded Pole. A "Defective Pole" means a Pole that is no longer serviceable due to decay, damage, or deterioration. An "Overloaded Pole" is a Pole that (without consideration of Operator's proposed Attachment) exceeds the applicable loading requirements set forth in the Applicable Standards.
- 13.2.1 In the event that an existing Pole is a Defective Pole or Overloaded Pole but does not pose an imminent threat or danger to safety or the safe functioning or operation of existing Attachments or facilities, NES shall replace said Pole at its sole cost consistent with its routine maintenance schedule.
- 13.2.2 If Operator seeks to expedite the replacement of a Defective Pole or Overloaded Pole, NES will provide Operator with the materials and Operator will pay the labor cost of using approved contractors to replace the Pole.
- 13.2.3 In all instances the replaced Pole will remain the property of NES.

Article 14. Treatment of Multiple Requests for Same Pole.

If NES receives License Applications for the same Pole or conduit from two (2) or more prospective Users within one hundred twenty (120) calendar days of the initial request, and has not yet completed the licensing of the initial applicant, and accommodating their respective requests would require modification of the Pole or replacement of the Pole, NES will make reasonable and good faith efforts to allocate among such Users the applicable costs associated with such modification or replacement.

Article 15. Equipment Attachments.

- 15.1 Operator shall compensate NES for the actual and documented cost, including engineering and administrative cost, for rearranging, transferring, and/or relocating NES Infrastructure to accommodate Operator's Equipment Attachments. There shall be no additional Pole Attachment Fee for Equipment Attachments on a Pole where Operator has a Licensed Attachment, provided that the Equipment Attachment is located below the designated communications space under Applicable Standards. Equipment Attachments within the communications space shall be subject to a separate Pole Attachment Fee to the extent they extend beyond the one foot of space allocated to the Licensed Attachment.
- 15.2 Operator shall reimburse the owner or owners of other facilities attached to NES Infrastructure for any actual and documented cost incurred by them for rearranging or transferring such facilities to accommodate Operator's Equipment Attachments.

Article 16. Authorized Contractors.

Operator shall only use authorized, qualified contractors approved by NES to conduct Make Ready work (or any other work) in or around the electric supply space on a Pole. NES shall not unreasonably withhold, delay, or condition its approval of any contractor proposed by Operator to be authorized by NES to perform Make Ready in the electric supply space on NES's Poles, provided such contractors meet NES's qualified contractor specifications.

Article 17. Guys and Anchor Attachments.

Operator shall at its own cost and to the satisfaction of NES place guys and anchors to sustain any unbalanced loads caused by Operator's Attachments. When, in unusual circumstances, Operator determines that it is necessary or desirable for Operator to attach its guys to Anchors owned by NES, it may make application to do so in a manner similar to that outlined in Article 7 above for application to make Pole Attachments. In such circumstances, all the provisions of this Agreement that are applicable to Poles shall also be separately applicable to Anchors. Operator will be subject to a one-time Anchor Fee as set out in Exhibit A, but shall not be subject to an annual Attachment fee for Operator's use of Anchors owned by NES. In the event that any Anchor or guy to which Operator desires to make Attachments is inadequate to support the additional facilities in accordance with the aforesaid specifications, NES will notify Operator of the changes necessary to provide an adequate Anchor or guy, together with the estimated cost thereof to Operator. Operator will compensate NES for the actual and documented cost including engineering and administrative cost for changing the guy and Anchor, if such change is performed by NES.

Article 18. Installation of Grounds.

When NES is requested by Operator to install grounds or make connections to NES's system neutral, Operator shall within forty-five (45) days of demand reimburse NES for the total actual and documented costs including engineering, clerical and administrative cost thereby incurred on initial installation only. All grounds installed by Operator shall be in accordance with NES's standard grounding practices.

Article 19. Actual Inventory.

NES will at intervals of not more often than once every five (5) years perform an actual inventory of the Attachments of Poles in all or in part of the territory covered by this Agreement, for the purpose of checking and verifying the number of Poles on which Operator has Attachments. Such field check shall be made jointly by both parties and shall be at the cost of Operator, such costs to be actual and documented, unless NES is also performing an inventory of any other User with Attachments on such Poles, and then the actual and documented cost shall be shared proportionately among all such Users based upon the number of Attachments.

Article 20. Unauthorized Attachments.

If during the term of this Agreement, NES discovers Unauthorized Attachments (including Overlapping, Riser Attachments or Service Drops for which timely notification was not provided) attributable to Operator, the following fees may be assessed, and procedures will be followed:

- 20.1 NES shall provide specific written notice, including electronic notification via NJUNS, SPIDAMin or other similar service, of each violation within thirty (30) days of discovering such violation and Operator shall be given thirty (30) days from receipt of notice to contest an allegation that an Attachment is unauthorized (or that Operator failed to timely provide notice).
- 20.2 Operator shall pay back rent for all Unauthorized Attachments (except Overlash Attachments and/or Riser Attachments where an existing licensed Pole Attachment exists) for a period of five (5) years, or since the date of the last inventory of Operator's Attachments (whichever period is shortest), at the rental rates in effect during such periods.
- 20.3 In addition to the back rent, Operator shall be subject to the Unauthorized Attachment Penalty as specified in Exhibit A for each Unauthorized Attachment, including Service Drops, Riser Attachments where an existing licensed Pole Attachment exists and Overlash Attachments, where required post-installation notification was not provided.
 - 20.3.1 If Operator is found to have (i) repeated instances of Unauthorized Attachments demonstrating a deliberate or consistent pattern of making Unauthorized Attachments; or (ii) has a significant number of Unauthorized Attachments (comprising 5% or more of Operator's total Attachments), Operator shall be considered to be in material breach and such Unauthorized Attachments shall constitute an Event of Default.
- 20.4 Operator shall submit a License Application in accordance with Article 7 of this Agreement within thirty (30) days of receipt of notice from NES of any Unauthorized Attachment, or such longer time as mutually agreed to by the parties after an inventory.
 - 20.4.1 No additional notification is required for Service Drops or Riser Attachments where an existing licensed Pole Attachment exists.

- 20.4.2 In the case of Overlash requiring a separate License application under Article 7.1.1 Operator shall be required to submit an application within thirty (30) days of receipt of notice of Unauthorized Attachment.
- 20.5 In the event Operator fails to submit a License Application within thirty (30) days, or such longer time as mutually agreed to by the parties after an inventory, the provisions of Article 24 shall apply.
- 20.6 No Ratification of Unauthorized Use. No act or failure to act by NES with regard to any Unauthorized Attachments shall be deemed as ratification of the unauthorized use. Unless the parties agree otherwise, a License for a previously Unauthorized Attachment shall not operate retroactively or constitute a waiver by NES of any of its rights or privileges under this Agreement or otherwise, and Operator shall remain subject to all obligations and liabilities arising out of or relating to its unauthorized use.

Article 21. Abandonment of Jointly Used Poles.

- 21.1 If NES desires at any time to abandon or sell any Poles on which Operator has an Attachment, it shall give Operator notice in writing to that effect at least thirty (30) days prior to the date on which it intends to abandon or sell such Pole. NES will in its sole discretion determine whether to sell the Pole to Operator, Joint User or other User. If NES sells a Pole the Operator will continue to be able to maintain its existing Attachments on such Poles under the same terms and conditions as it has under this Agreement. If NES sells Operator the Pole, Operator shall pay NES an amount equal to the depreciated value of such abandoned Pole(s) at the time of transfer, or such other reasonable amount as may be agreed upon between the parties.
- 21.2 If Operator shall become owner of said Pole, Operator shall save harmless NES from all obligation, liability, damages, costs, expenses, or charges incurred after transfer of such ownership, because of, or arising out of, the presence or condition of such Pole or any Attachments thereon. To the extent permitted by applicable law, NES shall be responsible for all obligations, liabilities, damages, costs, expenses, or charges that arise from any acts or omissions that occurred prior to transfer of ownership.

Article 22. Removal of Attachments for Overhead to Underground Conversion.

Upon notice from NES to Operator that the NES facilities are to be converted from overhead to underground in a specified area and the Poles will be removed, the License covering the use of said Poles shall immediately terminate and the Attachments of Operator shall be removed from the affected Pole within sixty (60) days of Operator receiving notice from NES. In connection with undergrounding electric service as contemplated by this Article 22, NES shall provide Operator with the reasonable opportunity for Operator to install its own conduit at the time NES digs trenches. NES conduit installed in connection with undergrounding electric service shall be subject to the terms and conditions of this Agreement.

Article 23. Inspection.

- 23.1 General Inspections. NES reserves the right to make periodic inspections, as conditions may warrant, of the entire System of Operator. Such inspections, or the failure to make such inspections, shall not operate to relieve Operator of any responsibility or obligation or liability assumed under this Agreement.
- 23.2 Periodic Safety Inspections. Upon twelve (12) months' advance written notice from NES, and not more frequently than every five (5) years, NES may at its option jointly perform a safety inspection in all or in part of the territory covered by this Agreement with all Users to identify any safety violations of all Attachments and facilities on or within NES Infrastructure ("Safety Inspection"). Such notice shall describe the scope of the inspection and provide Operator and all Users an opportunity to participate. Operator, NES and other Users shall share proportionately in the actual and documented Safety Inspection costs (based on the proportion of Attachments of NES and each other User) irrespective of whether NES elects to perform the Safety Inspection itself or have it performed by a contractor.
- 23.3 Corrections. In the event any of Operator's facilities are found to be in violation of the Applicable Standards and such violation poses a potential Emergency situation, Operator shall use all reasonable efforts to Correct such violation immediately. Should Operator fail or be unable to Correct such Emergency situation immediately, NES may Correct the Emergency and bill Operator for one hundred twenty-five percent (125%) of the actual and documented costs incurred. If any of Operator's facilities are found to be in violation of the Applicable Standards and such violations do not pose potential Emergency conditions, NES shall, consistent with Article 24, give Operator notice, whereupon Operator shall have thirty (30) days from receipt of notice to Correct any such violation, or within a longer, mutually agreed-to time frame if correction of the violation is not possible within thirty (30) days, such extended time to be not more than an additional sixty (60) days. Notwithstanding the foregoing grace periods, in the event NES or another User prevents Operator from correcting a Non-Emergency violation, the timeframe for correcting such violation shall be extended to account for the time during which Operator was unable to Correct the violation due to action (or failure to act) by NES or other User. Operator will not be responsible for the costs associated with violations caused by others that are not affiliated or acting under the direction of Operator. In all circumstances, all of the Users on the Pole and NES will work together to maximize safety while minimizing the cost of correcting any such deficiencies, but the Operator shall be responsible for the actual and documented cost of any necessary or appropriate corrective measures associated with violations caused by Operator, including removal and replacement of the Pole and all Transfers or other work incident thereto. If Operator fails to Correct a non-Emergency violation within the specified timely period, including any agreed upon extensions, the provisions of Article 24 shall apply.
- 23.3.1 If any facilities of NES are found to be in violation of the Applicable Standards and specifications and NES has caused the violation, then the parties will work together to minimize the cost of correcting any such deficiencies, but NES shall be responsible for the full cost of any necessary or appropriate corrective measures, including removal and replacement of the Pole, provided, however, that NES shall not be responsible for Operator's own costs.

- 23.3.2 If one or more other Users' Attachment(s) caused the violation, then such User(s) shall pay the Corrective costs incurred by all who have Attachments on the Pole, including the Operator, and NES will make reasonable effort to cause the User to make such payment.
- 23.3.3 If there exists a violation of Applicable Standards and it cannot be determined which User on the Pole, including Joint User, caused such violation or there is a mixture of Users causing the violation, then the parties will work together to minimize the cost of correcting any such deficiencies, and all Users who may have caused such violation will share equally in such costs to the extent provided for under existing agreements with said Users; provided that Operator shall not be required to pay more than its proportionate share of such costs.

Article 24. Failure to Rearrange, Transfer or Correct.

- 24.1 Unless otherwise agreed, as part of NES's written notice of a need for Operator to Rearrange, Transfer, Remove or Correct Violations (including Tagging), NES will indicate whether or not NES is willing to perform the required work.
- 24.2 If NES indicates in the notice that it is willing to perform the work, Operator shall have fifteen (15) days to notify NES in writing of its election to either have NES perform the work or that the Operator will perform the work itself.
- 24.2.1 If Operator requests that NES perform the work, Operator shall reimburse NES for the actual and documented cost of such work.
- 24.2.2 If Operator either fails to respond or indicates that it will perform the work itself, then until such work is complete and NES receives written notice of the completion of such work, Operator shall be subject to a daily penalty as specified in Exhibit A, per Attachment, per day commencing on the day after expiration of the time period for completion of the work specified in the Agreement and original notification that Operator needs to Rearrange, Transfer, Remove or Correct Violations. Beginning with the ninetieth (90th) calendar day after expiration of the time period for completion of the work specified in the Agreement and original notification, the daily penalty shall escalate as specified in Exhibit A.
- 24.2.3 Notwithstanding Operator's election under Article 24.2.2 to perform the required work itself, commencing on the thirtieth (30th) day after expiration of the time period for completion of the work specified in the Agreement and original notification, NES may perform the required work at Operator's expense, or may delegate such authority to another User utilizing a qualified contractor.
- 24.2.4 If Operator was required to perform work under this Article 24 and fails to perform such work within the specified timeframe, and NES performs such work, NES may charge Operator an additional twenty-five percent (25%) of its actual and documented costs for completing such work.

24.3 If NES indicates in the notice that it is unwilling or unable to perform the work, then until such work is completed and NES receives written notice of the completion of such work, Operator shall be subject to a daily penalty as specified in Exhibit A, per Attachment, per day commencing on the day after expiration of the time period for completion of the work specified in the Agreement and original notification that Operator needs to Rearrange, Transfer, Remove or Correct Violations. Beginning with the ninetieth (90th) calendar day after expiration of the time period for completion of the work specified in the Agreement and original notification, the daily penalty shall escalate as specified in Exhibit A.

24.3.1 If Operator fails to submit a License Application in accordance with Article 7 of this Agreement within thirty (30) days of receipt of notice from NES of any Unauthorized Attachment, or such longer time as mutually agreed to by the parties after an inventory, the daily penalties specified in Exhibit A shall apply.

24.4 Operator shall provide written notification to NES upon completion of any of the required work, daily penalty fees will continue to accrue until NES's receipt of such notice of completion. Notice of completion shall be given by the same means as it was received from NES.

Article 25. Indemnification and Insurance.

25.1 Operator shall indemnify and save harmless the Metropolitan Government of Nashville and Davidson County, the Electric Power Board, and officers and employees of Nashville Electric Service ("Indemnitees"), against all claims, suits or actions, of every kind and description, of all persons whomsoever, including without limitation, claims of employees, agents or servants of Operator and its contractors ("Claims"), for all losses and damages for personal injury, property damage and/or loss of life or property and use thereof, resulting from or in any way connected with Operator's obligations under this Agreement, except to the extent any such losses and damages are caused by the negligence or intentional misconduct of NES or its employees, agents, servants, or contractors. Operator's duty to indemnify and hold harmless shall include, but not be limited to, Claims arising from (i) the performance of Make Ready on existing Attachments by NES, the Operator or their respective contractors; (ii) the alleged deliberate and/or intentional misconduct or negligence of Operator; (iii) NES performing a Rearrangement of Attachment and/or Transfer of Attachment of Operator's or another User's Attachment that have not been moved in a timely manner pursuant to Articles 7.2.2.5 or 24; (iv) Operator's installation, removal, and maintenance work not being performed in a good and workmanlike manner, adversely affecting the structural integrity of NES Infrastructure, or adversely affecting other Users' facilities or equipment, pursuant to Article 7.2.3.2; and (v) Operator's interruption or deenergization of NES's electric system without NES's consent.

25.2 In the event any person or persons that are not a party to this Agreement shall make a claim or file any lawsuit against NES for any reason whatsoever arising out of or in any way based upon this Agreement and/or work performed under it by Operator and for which Operator is obligated to indemnify NES, NES will forthwith notify Operator, and Operator shall within a reasonable time advise NES if it intends to take over management of the claim and, without limitations, to investigate the claim, negotiate a settlement or defend any such legal action,

or otherwise assume responsibility for protecting the interest of NES. If after ten (10) days from the date such notice is delivered or deemed delivered to Operator, NES has not received a response from Operator that it will assume responsibility, NES is then authorized to take such action as it considers in its best interest. NES shall then have sole and exclusive control of the actions to be taken and decisions to be made with respect to such claim including the decision to compromise and settle any such claim or legal action and Operator will be conclusively presumed to consent thereto and concur therein. In the event legal action is not settled, NES will defend by staff or private counsel and hold Operator responsible for all damages, interest, judgments, cost of court and reasonable cost of investigating and settling or attempting to settle such claims and actions, including reasonable attorneys' fees.

- 25.3 Operator shall take out and maintain throughout the agreement period, insurance in the minimum requirements:
- 25.3.1 Workers' compensation insurance covering all employees in statutory limits who perform any of the obligations assumed by Operator under this Agreement.
- 25.3.2 Commercial general liability insurance covering all operations under this Agreement; combined single limit of liability of \$1,000,000 per occurrence for claims of bodily injury, death property damage and \$2,000,000 aggregate for accidents during the policy period. The Metropolitan Government of Nashville and Davidson County acting by and through the Electric Power Board of the said Metropolitan Government and the Metropolitan Government of Nashville and Davidson County in its regular corporate capacity shall be named as additional insureds in this policy or policies.
- 25.3.3 Automobile liability insurance on all self-propelled vehicles used in connection with the Agreement, whether owned, non-owned, hired, or otherwise. This policy shall be comprehensive automobile liability policy as approved by the National Bureau of Casualty Underwriters and the Insurance Department of the State of Tennessee. Per accident liability limits of not less than \$1,000,000 combined single limit of liability for claims of bodily injury, death and property damage. The Metropolitan Government of Nashville and Davidson County acting by and through the Electric Power Board of the said Metropolitan Government and the Metropolitan Government of Nashville and Davidson County in its regular corporate capacity shall be named as an additional insured in this policy or policies.
- 25.4 Operator shall obtain and maintain an umbrella liability policy certificate in addition to the certificates listed above with minimum acceptable limits of liability to be five million dollars (\$5,000,000) per occurrence.
- 25.5 NES and its officers, employees and agents shall all be named as additional insureds in all policies required under this Article 25 of this Agreement.
- 25.6 Operator shall provide NES with a current certificate of insurance evidencing all of the insurance required above in this Article 25 prior to commencing installation of its System on NES's Infrastructure. Each insurance certificate shall state that the issuer of the insurance

certificate shall endeavor to give NES thirty (30) days' prior written notice of any cancellation, modification or expiration of any insurance policy referred to in the certificate. Operator shall make all reasonable efforts to furnish replacement certificates to NES at least thirty (30) days before the expiration of the then-current insurance policies.

- 25.7 All insurance required by this Article 25 to be maintained by Operator shall be pursuant to valid and enforceable policies issued by insurers authorized to conduct business in Tennessee.
- 25.8 Failure of Operator to maintain the proper insurance required under this Article 25 shall result in termination of this Agreement if the breach is not cured in accordance with Article 29.

Article 26. Duties, Responsibilities and Exculpation.

- 26.1 NES makes no representation as to the condition of the premises or equipment at or near which Operator will work, the existing Poles, equipment or installations, and has and assumes no responsibility to Operator, its employees, agents, servants, and subcontractors, except to inform Operator of any hidden defects or dangerous conditions known to NES and not known to or ascertainable by Operator by reasonable inspection.
- 26.2 By executing this Agreement, Operator warrants that it has or will fully acquaint itself with the conditions relating to the work it will undertake under this Agreement, and that it fully understands or will acquaint itself with the facilities, difficulties, and restrictions attending the execution of such work.
- 26.3 It is further understood by and between the parties that in the performance of the work performed under this Agreement, Operator, its agents, servants, employees, and contractors will necessarily be required to work near, about, adjacent to and in the vicinity of energized (hot) lines, transformers, or other equipment of NES, and it is the intention that energy therein will not be interrupted during the continuance of this Agreement, except (i) in an Emergency, (ii) as deenergized by NES at Operator's request, or (iii) as deenergized by Operator with NES's consent. Operator is fully and solely responsible for seeing that its employees, servants, agents or subcontractors shall have the necessary skill, knowledge, training, and experience to protect themselves, their fellow employees, employees of NES, and the general public, from harm or injury while performing under this Agreement, and furnishing them with competent supervision and sufficient and adequate tools and equipment, for their work to be performed in a safe manner while the existing equipment of NES is energized. Except in an Emergency, Operator shall not deenergize any of NES's system without first obtaining permission from NES.
- 26.4 In the event any transformer or line is deenergized at Operator's request and for its purposes, benefit and convenience in performing a particular segment of any work, Operator shall be responsible for seeing that all clearances and arrangements for such cutoff of electric service shall conform with all applicable safety rules and regulations and Operator shall complete the work with all reasonable speed so that service may be restored without unnecessary delay. In the event that Operator shall unintentionally or accidentally cause an interruption of service by damaging or interfering with any equipment or facilities of NES, Operator shall

immediately do all things reasonable to avoid injury or damages, direct and incidental, resulting therefrom and shall notify NES immediately. Operator shall be solely responsible for any injuries or damages or claims for losses growing out of such interruption or deenergization of NES's electric system (except to the extent such interruption or deenergization was performed by NES or with NES's consent), to all persons whomsoever.

- 26.5 Operator further warrants that it is apprised of, conscious of, and understands the imminent dangers inherent in the work necessary to make installations on NES's Poles by its personnel, employees, servants, agents and subcontractors, and accepts it as its duty and sole responsibility to notify and inform its personnel, employees, and subcontractors of such dangers, and to keep them informed.

Article 27. Damages to Facilities.

- 27.1 NES shall exercise reasonable caution to prevent damage to, or interference with the operation of the equipment of Operator, but NES shall not be liable for any such damage or interference which may arise out of the use of NES's Poles, manholes or conduit hereunder, except to the extent caused by the negligence or intentional misconduct of NES or its employees, agents, or contractors.
- 27.2 Operator shall exercise reasonable caution to avoid damage to facilities of NES or of other authorized Users of said Poles or conduit; and Operator hereby assumes all responsibility for any and all damage to facilities of said NES or other authorized Users arising out of or caused by the erection, maintenance, installation, presence, use or removal of Operator's facilities.
- 27.3 Operator shall make an immediate report to the particular owner of the facilities affected by the occurrence of any damage caused by Operator or its agents, and hereby agrees to reimburse such owner for the actual and documented costs incurred in making the necessary repairs and replacement if damage is caused by Operator or its agents.

Article 28. Dispute Resolution Process.

- 28.1 Dispute Resolution. Except for an action seeking a temporary restraining order, an injunction, or an order to compel compliance with this dispute resolution procedure, either party can invoke the dispute resolution procedures in this Article 28 at any time to resolve a controversy, claim, or breach arising under this Agreement. Each party will bear its own costs for dispute resolution activity.
- 28.2 Initial Meeting. At either party's written request, each party will designate knowledgeable, responsible, senior representatives to meet and negotiate in good faith to resolve a dispute. The representatives will have discretion to decide the format, frequency, duration, and conclusion of these discussions. The parties will conduct any meeting in-person or via conference call, as reasonably appropriate.
- 28.3 Executive Meeting. If thirty (30) days after the first in-person meeting of the senior representatives, the parties have not resolved the dispute to their mutual satisfaction, each party will designate executive representatives at the director level or above to meet and

negotiate in good faith to resolve the dispute. To facilitate the negotiations, the parties may agree in writing to use mediation.

- 28.4 Unresolved Dispute. If after thirty (30) days from the first executive-level, in-person meeting, the parties have not resolved the dispute to their mutual satisfaction; either party may invoke any legal means available to resolve the dispute, including enforcement of the default and termination procedures set out in Article 29.
- 28.5 Confidential Settlement. Unless the parties otherwise agree in writing, communication between the parties under this Article 28 will be treated as Confidential Information developed for settlement purposes, exempt from discovery and inadmissible in litigation.
- 28.6 Business as Usual. During any dispute resolution procedure or lawsuit, the parties will continue providing services to each other and performing their obligations under this Agreement.
- 28.7 All fees and penalties will continue to accrue pending dispute resolution procedures unless the dispute specifically involves a dispute over the application of the fee or penalty.

Article 29. Default.

- 29.1 An Event of Default (each of the following being an “Event of Default”) shall be deemed to have occurred hereunder by Operator if:
- 29.1.1 Operator shall breach any material term or condition of this Agreement; or
- 29.1.2 Operator shall fail to perform, observe or meet any material covenant or condition made in this Agreement; or
- 29.1.3 At any time, any representation, warranty or statement made by Operator herein shall be incorrect or misleading in any material respect.
- 29.2 Upon the occurrence of any one or more of the Events of Default set forth in Article 29.1 hereof, NES, at its option, in addition to and not in lieu of any other remedies provided for herein, shall be entitled to proceed to exercise any and all actions it may have in law or at equity, including drawing down upon the bond for any fees, costs, expenses or penalties that Operator has not paid, and, in addition, at its option, may terminate this Agreement upon providing notice to Operator, provided, however, NES may take such action or actions only after first giving Operator written notice of the Event of Default and a reasonable time in which Operator may cure or commence diligent efforts to cure such Event of Default, which period of time shall be not less than thirty (30) calendar days, except that the period of time shall not be less than ten (10) calendar days for monies past due and owing by Operator to NES; for failure to maintain adequate insurance, as provided for herein; and for failure to maintain any bonds required pursuant to this Agreement.
- 29.3 Without limiting the rights granted to NES pursuant to the foregoing Article 29.2, the parties hereto agree to conduct themselves reasonably and in good faith and to use a good faith effort

to meet and to resolve outstanding issues, including but not limited to the Dispute Resolution Process of Article 28.

- 29.4 In the event that NES fails to perform, observe or meet any material covenant or condition made in this Agreement or shall breach any material term of condition of this Agreement, or at any time any representation, warranty or statement made by NES shall be incorrect or misleading in any material respect, then NES shall be in default of this Agreement. Upon being provided notice from Operator of said default, NES shall have thirty (30) days to cure same and if such default is not cured, then Operator shall have any and all remedies at law or in equity available to it, including termination of this Agreement without any liability therefor.
- 29.4.1 The above notwithstanding, Operator's sole remedy if NES is unable to perform a survey or complete Make Ready work within the prescribed timeframes under Article 7 is the authority to perform such survey or Make Ready itself at Operator's expense.
- 29.4.2 Under no circumstances will a failure of NES to meet the survey or Make Ready time periods set out in Article 7 subject NES to damages.
- 29.5 Upon Termination for Default, Operator shall remove its Attachments from all NES Poles and conduits within six (6) months of receiving notice, or at a rate of five thousand (5,000) Attachments per month, whichever period results in the greatest length of time for completing removal. If not so removed within that time period, NES shall have the right to remove Operator's Attachments, and Operator agrees to pay the actual and documented cost thereof within forty-five (45) days after it has received an invoice from NES.

Article 30. Force Majeure.

Notwithstanding any other term or provision in this Agreement, neither party shall be liable to the other party or any other person, firm, or entity for any delay or failure of performance hereunder if such failure is due to any cause or causes beyond its reasonable control and without its fault or negligence, other than the acts or omissions of a party's own contractors, suppliers, representatives, or agents. Such causes shall include without limitation: acts of God or any civil or military authority, governmental regulations (provided, however, that NES may not invoke force majeure due to a government regulation of the Metropolitan Government of Nashville and Davidson County), national emergencies, insurrections, riots or wars.

Article 31. Assignment.

- 31.1 Except as otherwise provided herein, Operator shall not assign or transfer any of its rights or obligations under this Agreement, in whole or in part, by merger, consolidation, reorganization, or change in the ownership or control of Operator's business, or by any other means, without the prior written consent of NES, which consent shall not be unreasonably withheld.
- 31.2 Any assignment or transfer by Operator prohibited by Article 31.1 above, without prior written consent, shall constitute a Default.

- 31.3 Prior to any assignment or transfer, any new owner or operator shall be required to be bound by and to continue under the same terms and conditions as this Agreement and to execute all necessary acknowledgments to this effect.
- 31.4 Notwithstanding Article 31.1 above, Operator may, during the term of this Agreement, assign or transfer this Agreement to (i) any affiliate of Operator or to a partnership of which at least fifty percent (50%) of the units are owned directly or indirectly by Operator or its parent company; or (ii) to any successor to Operator's business, or a substantial part thereof, whether through merger, amalgamation, consolidation or sale of assets (each, an "Assignee"), without the prior consent of NES; provided, however, such assignment or transfer shall be subject to the following conditions:
- 31.4.1 In the case of a sale of assets, (i) the Operator has assigned its state-issued certificate of franchise authority or other authorization issued by a franchising authority (the "Franchise") to such Assignee, and such assignment has been approved (if applicable law requires approval), or the Assignee otherwise holds an applicable and effective Franchise; and (ii) the Assignee has received and accepted an assignment or transfer of the assets comprising the Operator's business, or a substantial part thereof.
- 31.4.2 Notice of the assignment or transfer has been provided to NES, in writing, at the earlier of (a) within sixty (60) days of the date an application for transfer or assignment of the Franchise is filed with the Tennessee Regulatory Authority or other applicable franchising authority, if such application for transfer or assignment is required by applicable law under the circumstances, or (b) in the case of a sale of assets, within seven (7) business days after the assignment or transfer.
- 31.4.3 Assignee has executed documents, reasonably satisfactory to NES, committing Assignee to fulfill and honor all of the terms and conditions of this Agreement, including, but not limited to, all of the representations and warranties of Operator.
- 31.5 Any assignment or transfer of this Agreement by NES shall require the new owner to be bound by and to continue under the same terms and conditions as this Agreement and to execute all necessary acknowledgments to this effect.

Article 32. Notice.

Wherever in this Agreement notice is required to be given by either party to the other, such notice shall be in writing and shall be effective when personally delivered to, or when mailed by certified mail, return receipt requested, with postage prepaid or in the form of an Electronic Record. All such notices shall be directed to the addresses specified below:

If to the Operator:

Comcast of Nashville I, LLC
 Attn: Construction Manager
 660 Mainstream Drive
 Nashville, TN 37228

With copies to Operator at:

Comcast of Nashville I, LLC
Attn: Vice President, Government Affairs
2925 Courtyards Drive
Norcross, GA 30071

and

Comcast Cable Communications, Inc.
Attn: Legal Department
One Comcast Center
Philadelphia, PA 19103

If to NES:

Nashville Electric Service
1214 Church Street
Nashville, TN 37246
Fax No. 615-747-3854
Confirmation No. 615-747-3895
Attention: President and CEO

With a copy to NES at:

Nashville Electric Service
1214 Church Street
Nashville, TN 37246
Fax No.: 615-747-3667
Confirmation No.: 615-747-3701
Attention: General Counsel
RUSH: FORMAL NOTICE OF CONTRACT ACTION

or to such other address as the parties shall designate in writing or in the form of an Electronic Record; provided, however, that notices of interruption and communications may be provided orally, effective immediately and, upon request, confirmed in writing or in the form of an Electronic Record. A notice sent by facsimile transmission shall be deemed received on the day sent (unless such day is not a business day, in which case it shall be deemed received on the next business day), and notice by overnight mail or courier shall be deemed to have been received based upon the mode of delivery, unless it confirms a prior verbal communication in which case any such notice shall be deemed received on the day sent.

Article 33. Term.

This Agreement shall become effective on the Effective Date and, if not terminated in accordance with the provisions hereof, shall continue in effect for a term of ten (10) years. This Agreement shall automatically renew thereafter for five (5) additional one (1) year periods, unless notice is given in writing by either party to terminate this Agreement, which notice must be given no less than six (6) months before the end of the initial ten (10) year period, or given no less than six (6) months before the end of any such one year renewal term. Such termination in no way exempts payment for Pole and conduit attachment rental fees and continued compliance with all obligations and Applicable Standards hereunder pending the actual removal of all facilities. Upon termination of this Agreement in accordance with the provisions here and in Article 29, Operator shall remove its Attachments from all NES Poles and conduits within six (6) months of receiving notice, or at a rate of five thousand (5,000) Attachments per month, whichever period results in the greatest length of time for completing removal. If not so removed within that time period, NES shall have the right to remove Operator's Attachments, and Operator agrees to pay the actual and documented cost thereof within forty-five (45) days after it has received an invoice from NES.

Article 34. Receivership, Foreclosure or Act of Bankruptcy.

- 34.1 The Pole and conduit use granted hereunder to Operator shall, at the option of NES, cease and terminate one hundred twenty (120) days after the filing of bankruptcy or the appointment of a receiver or receivers or trustee or trustees to take over and conduct the business of Operator whether in a receivership, reorganization, bankruptcy or other action or proceeding unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless such receivers or trustees shall have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Agreement granted pursuant hereto, and the receivers or trustees within said one hundred twenty (120) days shall have remedied all Defaults under this Agreement.
- 34.2 In the case of foreclosure or other judicial sale of the plant, property and equipment of Operator, or any part thereof, including or excluding this Agreement, NES may serve notice of termination upon Operator and the successful bidder at such sale, in which event this Agreement herein granted and all rights and privileges of this Agreement hereunder shall cease and terminate thirty (30) days after service of such notice, unless:
- 34.2.1 NES shall have approved the transfer of this Agreement to the successful bidder, as and in the manner in this Agreement provided; and
- 34.2.2 Such successful bidder shall have covenanted and agreed with NES to assume and be bound by all the terms and conditions to this Agreement.

Article 35. Transfer Rights of Attachments.

Operator shall not assign, transfer, sublease or resell the rights of Attachments hereby granted to it, or the rights to use facilities so attached to NES's Poles, without prior consent in writing of NES, except as otherwise set forth herein.

Article 36. Removal of Attachments.

Operator may at any time remove its Attachments from any facility of NES, but shall promptly give NES written notice of such removals as specified in NES's License Application. No refund of any rental fee will be due on account of such removal.

Article 37. Performance Bond.

Operator shall furnish a performance bond executed by a surety company reasonably acceptable to NES which is duly authorized to do business in the state of Tennessee in the amount of fifty thousand dollars (\$50,000.00) for the duration of this Agreement construction period as security for the faithful performance of this Agreement and for the payment of all persons performing labor and furnishing materials in connection with this Agreement.

Article 38. Termination.

In the event of termination not the fault of NES, Operator shall compensate NES as described in this Agreement for all actual and documented costs incurred under this Agreement, including costs incurred after termination.

Article 39. Jurisdiction.

Any and all disputes arising out of this Agreement shall be governed, construed and enforced according to the laws of the State of Tennessee. All actions relating to the validity, construction, interpretation and enforcement of this Agreement shall be instituted and litigated in the courts of Tennessee, in accordance herewith the parties to this Agreement submit to the jurisdiction of the courts of Tennessee, located in Davidson County, Tennessee.

Article 40. Nondiscriminatory Employment Practice/Absence of Conflict of Interest.

- 40.1 Operator makes oath, in a form similar to that set forth in Exhibit B, that its employment standards meet all local, state, and federal laws prohibiting discriminatory employment practices, and that neither the mayor, city councilmen, members of the Electric Power Board, nor any other Metropolitan Government official has direct or indirect interest in this contract as set forth in the Contractor/Vendor Affidavit.
- 40.2 Operator assures that it will comply with pertinent statutes, and such rules as are promulgated, to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap, be excluded from participating in any activity conducted with or benefited from NES or the Metropolitan Government.

Article 41. Authorizations.

NES and Operator each represents that it has the respective necessary corporate and/or legal authority and has obtained any and all regulatory approvals to enter into and perform this Agreement, and that this Agreement, when executed by such party, represents a valid, binding and enforceable legal obligation of that party.

Article 42. Sovereign Immunity.

NES represents and warrants to Operator that the State of Tennessee does not afford to NES as a governmental entity the defense of sovereign immunity for breach of contract.

Article 43. Miscellaneous.

- 43.1 The failure of either party to give notice of default or to enforce or insist upon compliance with any of the terms or conditions of this Agreement, the waiver of any term or conditions of this Agreement or the granting of an extension of time for performance shall not constitute the permanent waiver of any term or condition of this Agreement and this Agreement and each of its provisions shall remain at all times in full force and effect until modified by authorized representatives of the parties in writing.
- 43.2 The provision of services by NES or Operator under this Agreement will not create a partnership or joint venture between the parties nor result in a joint communications service offering to the customers of either Operator or NES.
- 43.3 Operator shall not, without the prior written consent of NES, use any of its facilities attached to NES's Poles, or installed in NES's conduit, for any purpose other than that provided in this Agreement. Whenever, in the reasonable judgment of NES, Operator has used its facilities for any purpose not authorized herein, NES shall forthwith notify Operator. Upon receipt of such notice, Operator shall as promptly as practicable cease such use complained of in the notice. Failure to do so shall constitute an Event of Default under this Agreement.
- 43.4 No subsequent amendment or agreement between NES and Operator regarding this Agreement shall be effective or binding unless it is in writing and made by authorized representatives of the parties hereto.
- 43.5 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors or assigns. Except as otherwise expressly provided in this Agreement, this Agreement shall not inure to the benefit of, or be enforceable by, or create any right or cause of action to, any person or entity other than the parties hereto.
- 43.6 This Agreement sets forth the entire understanding of the parties and supersedes any and all prior agreements, whether written or oral, arrangements or understandings relating to its subject matter. No representation, promise, inducement or statement of intention has been made by either party which is not embodied herein. All existing Licenses or prior authorizations shall be subject to this Agreement.
- 43.7 If any part of any provision of this Agreement or any other agreement, document or writing given pursuant to or in connection with this Agreement shall be invalid or unenforceable under applicable law, said part shall be ineffective to the extent of such invalidity only, without in any way affecting the remaining parts of said provision or the remaining provisions of this Agreement, and the parties hereby agree to negotiate with respect to any such invalid or unenforceable part to the extent necessary to render such part valid and enforceable.

- 43.8 Descriptive headings in this Agreement are for convenience only and shall not affect the construction of this Agreement.
- 43.9 If any legal action is necessary to enforce the terms of this Agreement, the prevailing party shall be entitled to its costs, including reasonable attorney's fees, in addition to any other relief to which that party may be entitled.
- 43.10 NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, LIQUIDATED, OR SPECIAL DAMAGES OR LOST REVENUE OR LOST PROFITS TO ANY PERSON ARISING OUT OF THIS AGREEMENT OR THE PERFORMANCE OR NONPERFORMANCE OF ANY PROVISION OF THIS AGREEMENT, EVEN IF SUCH PARTY HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES.

[SIGNATURES TO FOLLOW ON NEXT PAGE]

Executed in duplicate at Nashville, Tennessee, on the day and date written below, each executed instrument to be considered as the original for all purposes.

**METROPOLITAN GOVERNMENT OF
NASHVILLE AND DAVIDSON COUNTY, ACTING
BY AND THROUGH THE ELECTRIC POWER
BOARD OF SAID GOVERNMENT**

Attest:

Jason Bonfante
Secretary

By: *[Signature]*
Chairman of the Board

Date: 6-24-2015

By: *[Signature]*
President & CEO

Date: 6-24-2015

Approved as to Form & Legality:

By: *[Signature]*
Vice President & General Counsel

Date: 6.24.15

OPERATOR

COMCAST OF NASHVILLE I, LLC

By: *[Signature]*
(Signature)

Douglas R Guthrie
(Print Name)

Title: SUP Big South Region

Date: 6/1/15

EXHIBIT A

FEES AND CHARGES

Attachment Fees and Charges¹

The Pole Attachment Fee: Thirty-two dollars (\$32) per Attachment per year.

Each Attachment shall only occupy twelve (12) inches of vertical space on a Pole, as measured either above or below (but not both) the point of attachment, and any Attachment outside of the twelve inches shall be deemed to constitute a separate Attachment for Pole Attachment Fee calculation purposes.

One-half (1/2) of the Pole Attachment Fee shall be billed and paid on a semi-annual basis (billing periods: January–June and July–December), applied to the total number of licensed Attachments. Changes to the Pole Attachment Fee shall be applied beginning with the July–December billing (typically billed the following January).

The Pole Attachment Fee shall be phased-in over a three (3) year period as follows:

- Year 1 – Rate = sixty-three percent (63%) of the Pole Attachment Fee (for the first two billing periods commencing with the billing period in effect at the time of the Effective Date of this Agreement).
- Year 2 – Rate = eighty-two percent (82%) of the Pole Attachment Fee (for the next two billing periods).
- Year 3 – Rate = one hundred percent (100%) of the Pole Attachment Fee (commencing the fifth billing period from the Effective Date of this Agreement and continuing thereafter).

Annual Conduit Rental Fee: Three dollars and eighty-eight cents (\$3.88) per linear foot per year (one-half (1/2) paid semi-annually) (NES reserves the right to recalculate the Conduit Rental Fee from time to time to cover actual costs).

Non-Recurring Fees

1. License Application Fee: Sixty-five dollars (\$65) per unit of NES Infrastructure.
2. Make Ready Work and Other Charges: See Article 5 of Agreement.
3. Work performed by NES where Operator failed to perform in a timely manner may be subject to a twenty-five percent (25%) additional charge pursuant to Article 24 of Agreement.

¹ Consistent with Article 5 of the Agreement, the Pole Attachment Fee shall be recalculated on an annual basis utilizing the NES Shared-Cost Rate Formula, and the non-recurring fees may be recalculated from time-to-time.

4. Anchor Use Fee: Ninety-eight dollars and forty-six cents (\$98.46) per NES Anchor (NES reserves the right to adjust the Anchor Fee from time to time to cover actual costs, provided any such adjustment is applied on a nondiscriminatory basis to other Users).

Penalties²

1. **Unauthorized Attachment Penalty Fee:**

One hundred dollars (\$100) per Attachment (including Service Drops, Riser Attachments and Overlash that were not reported).

2. **Non-Transfer/Removal Penalty:**

If, consistent with Article 24 of the Agreement, Operator fails to Rearrange, Transfer, Remove or Correct Violations in a timely manner, Operator shall be subject to a daily penalty of five dollars (\$5) per Attachment, per day beginning on the day after expiration of the original time period for completion of the work specified in the Agreement and the original notification that Operator needs to Rearrange, Transfer, Remove or Correct Violations. Beginning with the ninetieth (90th) calendar day after expiration of the time period for completion of the work specified in the Agreement and original notification, the daily penalty shall escalate to ten dollars (\$10) per Attachment per day.

² On or about January 1, 2020, the Penalty Fees will be adjusted from their prior amounts up or down in proportion to any change over time in the Handy-Whitman Index for Electric Utility Construction Cost for the South Atlantic Region of the United States for Federal Energy Regulatory Account No. 364, Poles, Towers and Fixtures, using the July 2014 and July 2019 indices. New Penalty Fees shall be effective January 1, 2020. This process shall be repeated on a five (5) year cycle.

EXHIBIT B



NASHVILLE ELECTRIC SERVICE CONTRACTOR/VENDOR AFFIDAVIT

STATE OF _____)

COUNTY OF _____)

I, _____ (affiant), the _____
(title/office) of _____ (company) ("Contractor/Vendor"),
do hereby swear, affirm and make oath as follows:

1. I am above the age of 18 and am duly authorized to make this affidavit on behalf of Contractor/Vendor.

2. Contractor/Vendor's employment practices meet all local, state, and federal laws prohibiting discriminatory employment practices.

3. As of the date of this affidavit, neither the Mayor, any councilperson, member of the Electric Power Board, employee of the Electric Power Board, nor any other Metropolitan Government official is directly or indirectly interested in any contract with Contractor/Vendor for which compensation will be sought during the period of time covered by this affidavit.

Contractor/Vendor pledges that it will immediately notify NES should any information come to Contractor/Vendor's attention indicating that any Metropolitan Government official has become either directly or indirectly interested in any contract for which compensation will be sought during the aforesaid period. For purposes of this affidavit, "direct" and "indirect" are defined by Tenn. Code Ann. § 12-4-101.

4. As of the date of this affidavit, Contractor/Vendor has not given or donated, or promised to give or donate, directly or indirectly, to any official or employee of the Metropolitan Government or the Electric Power Board, or to anyone else for its benefit, any sum of money or other thing of value for aid or assistance in obtaining any contract under which compensation will be sought during the period covered by this affidavit. Contractor/Vendor pledges that neither it nor any other officer or employee will give or donate, or promise to give or donate, directly or indirectly, to any official or employee of the Metropolitan Government or the Electric Power Board, or anyone else for its benefit, any sum of money or other thing of value for aid or assistance in obtaining any contract for which compensation will be claimed during the aforesaid period.

AFFIANT

Date: _____

Sworn to and subscribed before me this _____ day of _____, 20__.

NOTARY PUBLIC

My Commission Expires: _____

EXHIBIT B

ORDINANCE NO. BL2016-343**An ordinance to amend Title 13 of the Metropolitan Code of Laws by adding a new chapter to facilitate efficient access to and enhance the public safety and convenience for accessing the public rights-of-way to manage communications facilities.**

WHEREAS, communications networks providing advanced broadband, cable, and information services in Nashville and Davidson County provide residents, businesses, and institutions with better telecommunications, cable, and information services at more competitive prices; and

WHEREAS, communications networks providing advanced broadband, cable, and information services in Nashville and Davidson County spur economic growth and business development, citizen engagement, and social interaction; and

WHEREAS, in many cases it is desirable for operational, efficiency, aesthetic, and public safety reasons to place facilities for communications networks providing advanced broadband, cable, or information services in Nashville and Davidson County on existing utility poles that already are located in the public rights-of-way; and

WHEREAS, pursuant to Sections 2.01(23), 2.01(40), and 2.02 of the Metropolitan Charter and Tennessee Code Annotated Sections 7-59-102(k), 7-59-302, and 65-21-103, the Metropolitan Government of Nashville and Davidson County has the right and obligation to manage the public rights-of-way within its boundaries in the public interest and for the public safety and may exercise its police powers to further a public purpose; and

WHEREAS, The Metropolitan Government of Nashville and Davidson County desires to facilitate the efficient construction or upgrade of communications networks on utility poles located in the public rights-of-way while promoting and protecting public safety and reducing inconvenience to Nashville and Davidson County residents and businesses from the construction; and

WHEREAS, The Metropolitan Government of Nashville and Davidson County seeks to act consistent with Communications Act of 1934, as amended (47 U.S.C. §§ 151 et seq.).

NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1. That Title 13 of the Metropolitan Code is hereby amended by adding the following new Chapter 13.18 – Management of Public Rights-of-Way for Make Ready Work:

Chapter 13.18 Management of Public Rights-of-Way for Make Ready Work

13.18.010 Definitions. As used in this chapter, the following terms shall have the meanings ascribed to them in this section:

As-Built Report: means a report indicating any changes to an Attachment caused by Make Ready, including a unique field label identifier, the pole number if available, and the address or coordinates of the Attachment.

Attacher: means any person, corporation, or other entity or its agents or contractors seeking to fasten or affix any Attachment in the public rights-of-way.

Attachment: means communications equipment, antenna, line, or facility of any kind fastened or affixed to a utility pole or similar structure, or its guys and anchors used to support communications attachments.

Attachment Application: means the application made by an Attacher to an Owner for consent to attach such Attacher's Attachments to the Owner's utility pole or similar structure, or its guys and anchors used to support communications Attachments.

Complex Make Ready: means Make Ready that will cause or would reasonably be expected to cause a customer outage.

Make Ready: means the transfer, relocation, rearrangement, or alteration of a Pre-Existing Third Party User's communications equipment, antenna, line or facility of any kind necessary to provide space for

Attacher to install an Attachment.

Owner: means a person, corporation, or other entity owning a utility pole or similar structure in the public rights-of-way on which facilities for the transmission of electricity or communications are or may be located.

Pre-Existing Third Party User: means the owner of any pre-existing Attachment located in the public rights-of-way.

13.18.020 Make Ready Process.

A. Upon approval of an Attachment Application by an Owner, Pre-Existing Third Party Users shall allow an Attacher, using contractors approved by the Owner if required by the Owner, to perform Make Ready by transferring, relocating, rearranging, or altering the Attachments of any Pre-Existing Third Party User to the extent necessary or appropriate to accommodate the Attacher's Attachment; provided, however:

1. The Attacher will not perform Complex Make Ready without first providing thirty (30) days' prior written notice, which includes electronic communication, to the applicable Pre-Existing Third Party User;
2. Nothing in this Chapter authorizes an Attacher to perform any act requiring an electric supply outage; and
3. Nothing in this Chapter authorizes an Attacher to perform any act with respect to Attachments located above the Communication Worker Safety Zone, as such term is defined in the then-current National Electrical Safety Code, or any electric supply facilities wherever located.

B. In the event a Pre-Existing Third Party User fails to transfer, relocate, rearrange or alter any of its Attachments within thirty (30) days of giving the notice required in section 13.18.020(A)(1), the Attacher, using contractors approved by the Owner if required by the Owner, may undertake Make Ready with respect to such Attachments by transferring, relocating, rearranging, or altering the Attachments.

C. Within thirty (30) days of the Attacher's completion of Make Ready that resulted in the transfer, relocation, rearrangement, or alteration of an Attachment of a Pre-Existing Third Party User, the Attacher shall send written notice, which includes electronic communication, of the transfer, relocation, rearrangement, or alteration and As-Built Reports to the applicable Pre-Existing Third Party User and, if requested, the Owner. Upon receipt of the As-Built Reports, the Pre-Existing Third Party User and Owner may conduct a field inspection within thirty (30) days. The Attacher shall pay the actual, reasonable, and documented expenses incurred by the Pre-Existing Third Party User and Owner for performing such field inspection.

D. If a transfer, relocation, rearrangement, or alteration results in an Attachment of a Pre-Existing Third Party User failing to conform with the applicable Owner's clearance, separation, or other standards applicable to utility poles or structures of the type in question, the Pre-Existing Third Party User or Owner shall notify the Attacher in writing, which includes electronic communication, within the thirty (30) day inspection window. In the written notice, the Pre-Existing Third Party User will elect to either (i) perform the correction itself and bill the Attacher for the actual, reasonable, and documented expenses of the correction incurred by the Pre-Existing Third Party User, or (ii) instruct the Attacher to perform the correction at the Attacher's expense using a contractor approved by the Owner if required by the Owner. Any post-inspection corrections performed by the Attacher must be completed within thirty (30) days of written notice to the Attacher from the Pre-Existing Third Party User or Owner. Within thirty (30) days of the Attacher's completion of any post-inspection corrections that resulted in the transfer, relocation, rearrangement, or alteration of an Attachment of a Pre-Existing Third Party User, the Attacher shall send written notice, which includes electronic communication, of the transfer, relocation, rearrangement, or alteration and As-Built Reports to the applicable Pre-Existing Third Party User and, if requested, the Owner.

E. To the extent permitted by applicable law, an Attacher that exercises the right to transfer, relocate, rearrange or alter a Pre-Existing Third Party User's facilities pursuant to this Chapter shall indemnify, defend and hold harmless the Owner of the affected utility pole or similar structure from and against any action, suit, or proceeding by an affected Pre-Existing Third Party User arising from such transfer, relocation, rearrangement or alteration.

Section 2. This Ordinance shall take effect from and after its final passage, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

Sponsored by: Anthony Davis, Jeremy Elrod, Bill Pridemore, Russ Pulley, Mina Johnson, Colby Sledge,

Case 3:16-mc-09999 Document 808-3 Filed 10/25/16 Page 3 of 6 PageID #: 22667

Angie Henderson, Robert Swope, Holly Huezo, Mike Freeman, Brenda Haywood, DeCosta Hastings, Burkley Allen, Mary Carolyn Roberts, Karen Johnson, Jason Potts, Nancy VanReece

**AMENDMENT NO. 1
TO
ORDINANCE NO. BL2016-343**

Mr. President –

I move to amend Ordinance No. BL2016-343 as follows:

I. By amending the first three recitals clauses by adding the word “telecommunications,” after the word “broadband,” as it appears after each “WHEREAS” as set forth below:

WHEREAS, communications networks providing advanced broadband, telecommunications, cable, and information services in Nashville and Davidson County provide residents, businesses, and institutions with better telecommunications, cable, and information services at more competitive prices;

WHEREAS, communications networks providing advanced broadband, telecommunications, cable, and information services in Nashville and Davidson County spur economic growth and business development, citizen engagement, and social interaction;

WHEREAS, in many cases it is desirable for operational, efficiency, aesthetic, and public safety reasons to place facilities for communications networks providing advanced broadband, telecommunications, cable, or information services in Nashville and Davidson County on existing utility poles that already are located in the public rights-of-way;

II. By further amending the recitals clauses by adding the following additional “Whereas” paragraphs:

“WHEREAS, the Federal Communications Commission (FCC) has not addressed one touch make ready in its Pole Attachment Orders, therefore The Metropolitan Government of Nashville and Davidson County has the right to address one touch make ready within its boundaries;”

“WHEREAS, the Ordinance is not intended to preempt the FCC Pole Attachment Orders to the extent those are applicable to pole attachments within the jurisdiction of The Metropolitan Government of Nashville and Davidson County;”

III. By amending Section 1 by adding the following term and definition to proposed section 13.18.010 Definitions:

“Preapproved Contractor – means a contractor approved by the Owner to perform Make Ready.”

IV. By further amending Section 1 by deleting subsection 13.18.020 in its entirety and submitting in lieu thereof the following:

13.18.020 Make Ready Process.

A. Upon approval of an Attachment Application by an Owner, Pre-Existing Third Party Users shall allow an Attacher, using Preapproved Contractors and at the Attacher’s expense, to perform Make Ready by transferring, relocating, rearranging, or altering the Attachments of any Pre-Existing Third Party User to the extent necessary or appropriate to accommodate the Attacher’s Attachment; provided, however:

1. The Attacher will not perform Complex Make Ready without first providing thirty (30) days’ prior written notice, which includes electronic communication, to the applicable Pre-Existing Third Party User so that a field meeting can be scheduled within that time frame with technicians from the Pre-Existing Third Party and the Attacher. The technicians will decide what steps need to be taken to complete the Complex Make Ready;

2. Nothing in this Chapter authorizes an Attacher to perform any act requiring an electric supply outage; and

3. Nothing in this Chapter authorizes an Attacher to perform any act with respect to Attachments located above the Communication Worker Safety Zone, as such term is defined in the then-current National Electrical Safety Code, or any electric supply facilities wherever located.

4. The Attacher will not perform Make Ready without first providing fifteen (15) days' prior written notice, which includes electronic communication, to the applicable Pre-Existing Third Party User.

B. In the event a Pre-Existing Third Party User fails to transfer, relocate, rearrange or alter any of its Attachments within thirty (30) days of giving the written notice required in section 13.18.020(A)(1), the Attacher, using Pre-Approved Contractors, may undertake Complex Make Ready with respect to such Attachments by transferring, relocating, rearranging, or altering the Attachments at the Attacher's expense; provided, however, that the Pre-Existing Third Party User will have sixty (60) days from the date of notice to perform Complex Make Ready if the technicians mutually agree to such extension in the field meeting required in section 13.18.020(A)(1).

C. The Attacher will place its Attachment where instructed by the Owner.

D. At its own expense, Attacher shall ensure that any Make Ready Attachments that are transferred, relocated, rearranged or altered are done in accordance with all applicable federal, state and local laws and regulations; and all applicable engineering and safety standards.

E. Within thirty (30) days of the Attacher's completion of Make Ready that resulted in the transfer, relocation, rearrangement, or alteration of an Attachment of a Pre-Existing Third Party User, the Attacher shall send written notice, which includes electronic communication, of the transfer, relocation, rearrangement, or alteration and As-Built Reports to the applicable Pre-Existing Third Party User and, if requested, the Owner. Upon receipt of the As-Built Reports, the Pre-Existing Third Party User and Owner may conduct a field inspection within sixty (60) days without waiving any rights. The Attacher shall pay the actual, reasonable, and documented expenses incurred by the Pre-Existing Third Party User and Owner for performing such field inspection.

F. If a transfer, relocation, rearrangement, or alteration results in an Attachment of a Pre-Existing Third Party User failing to conform with the applicable Owner's clearance, separation, the standards in 13.18.020(D), or other standards applicable to utility poles or structures of the type in question, the Pre-Existing Third Party User or Owner shall notify the Attacher in writing, which includes electronic communication, within the sixty (60) day inspection window without waiving any rights. In the written notice, the Pre-Existing Third Party User will elect to either (i) perform the correction itself and bill the Attacher for the actual, reasonable, and documented expenses of the correction incurred by the Pre-Existing Third Party User, or (ii) instruct the Attacher to perform the correction at the Attacher's expense using a Pre-Approved Contractor. Any post-inspection corrections performed by the Attacher must be completed within thirty (30) days of written notice to the Attacher from the Pre-Existing Third Party User or Owner. Within thirty (30) days of the Attacher's completion of any post-inspection corrections that resulted in the transfer, relocation, rearrangement, or alteration of an Attachment of a Pre-Existing Third Party User, the Attacher shall send written notice, which includes electronic communication, of the transfer, relocation, rearrangement, or alteration and As-Built Reports to the applicable Pre-Existing Third Party User and, if requested, the Owner.

G. To the extent permitted by applicable law, an Attacher that exercises the right to transfer, relocate, rearrange or alter a Pre-Existing Third Party User's facilities pursuant to this Chapter shall indemnify, defend and hold harmless the Owner of the affected utility pole or similar structure from and against any action, suit, or proceeding by an affected Pre-Existing Third Party User arising from such transfer, relocation, rearrangement or alteration.

H. In the event of a dispute arising out of this Chapter, the parties may exercise any of their legal rights, including the ability to negotiate a resolution in good faith.

Sponsored by: Anthony Davis, Jeremy Elrod, Bill Pridemore

Amendment No. 2
To
Ordinance No. BL2016-343

Mr. President:

I move to amend Ordinance No. BL2016-343 by renumbering the existing Section 2 as Section 3, and by adding the following new Section 2:

"Section 2. The provisions of this ordinance shall not apply to the Metropolitan Government's Attachments

Case 3:16-mc-09999 Document 808-3 Filed 10/25/16 Page 5 of 6 PageID #: 22669

on utility poles or other similar structures that consist of cameras, radios, or any equipment used for emergency communications, and facilities used for traffic signalization, including the following: cameras, detection devices, traffic control boxes, traffic signals, and pedestrian traffic control related appurtenances, such as buttons and wires. The relocation by Attachers of the Metropolitan Government's Attachments consisting of cameras, radios, equipment used for emergency communications or facilities used for traffic signalization shall only be done in accordance with a written agreement negotiated between and executed by the Metropolitan Government and the Attacher(s)."

Sponsored by: Anthony Davis, Jeremy Elrod, Mina Johnson

**AMENDMENT NO. 3
TO
ORDINANCE NO. BL2016-343**


Mr. President –

I move to amend Ordinance No. BL2016-343 as follows:

I. By amending Section 1 by deleting subsection 13.18.020(E) it in its entirety and substituting therefore the following:

E. An Attacher that exercises the right to transfer, relocate, rearrange or alter a Pre-Existing Third Party User's facilities pursuant to this Chapter shall obtain and maintain, at its sole cost and expense, and file with the metropolitan clerk, a corporate surety bond with a surety company authorized to do business in the State of Tennessee and found acceptable by the metropolitan attorney, in the amount of one million dollars, both to safeguard the public right of way and to guarantee the timely performance of Make Ready construction and implementation of the telecommunications system. Additionally, such Attachers, to the extent permitted by applicable law, shall indemnify, defend and hold harmless the Owner of the affected utility pole or similar structure from and against any action, suit, or proceeding by an affected Pre-Existing Third Party User arising from such transfer, relocation, rearrangement or alteration.

Sponsored by: Tanaka Vercher

LEGISLATIVE HISTORY	
Introduced:	August 2, 2016
Passed First Reading:	August 2, 2016
Referred to:	Budget & Finance Committee Public Works Committee
Deferred:	August 16, 2016
Amended:	September 6, 2016
Passed Second Reading:	September 6, 2016 - <u>Roll Call Vote</u>
Passed Third Reading:	September 20, 2016
Approved:	September 21, 2016
By:	

Requests for ADA accommodation should be directed to the Metropolitan Clerk at 615/862-6770.

UNITED STATES DISTRICT COURT

for the

_____ District of _____

_____)	
<i>Plaintiff</i>)	
)	
v.)	Civil Action No.
)	
_____)	
<i>Defendant</i>)	

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT

for the

_____ District of _____

_____)	
<i>Plaintiff</i>)	
)	
v.)	Civil Action No.
)	
_____)	
<i>Defendant</i>)	

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT

for the

_____ District of _____

_____)	
<i>Plaintiff</i>)	
)	
v.)	Civil Action No.
)	
_____)	
<i>Defendant</i>)	

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

Comcast of Nashville I, LLC,

Plaintiff,

v.

Metropolitan Government of Nashville and
Davidson County; Megan Barry, in her official
capacity as Mayor; and Mark Sturtevant, in his
official capacity as Transitional Interim
Director of Public Works,

Defendants.

Case No. _____

CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. Civ. P. 7.1 and Local Rule 7.02, Plaintiff Comcast of Nashville I, LLC submits the following corporate disclosures:

Comcast of Nashville I, LLC is a nongovernmental corporate party owned by Comcast of Levittown, LLC and Comcast of New Mexico/Pennsylvania, LLC, both of which are wholly owned by Comcast Cable Communications, LLC. Comcast Cable Communications, LLC is wholly owned by Comcast Holdings Corporation. Comcast Holdings Corporation is a wholly owned subsidiary of Comcast Corporation. Comcast Corporation is a publicly traded company and the ultimate parent of Comcast of Nashville I, LLC. There is no publicly traded corporation that owns 10% or more of Comcast Corporation's stock.

Dated: October 25, 2016

Respectfully submitted,

/s/ Robb S. Harvey

Robb S. Harvey (TN Bar #011519)

Kevin Elkins (TN Bar #033280)

WALLER LANSDEN DORTCH & DAVIS, LLP

Nashville City Center

511 Union Street, Suite 2700

Nashville, Tennessee 37219-8966

(615) 244-6380

E-mail: robb.harvey@wallerlaw.com

E-mail: kevin.elkins@wallerlaw.com

Matthew A. Brill (*PHV* motion to be filed)

Melissa Arbus Sherry (*PHV* motion to be filed)

Matthew T. Murchison (*PHV* motion to be filed)

Scott D. Gallisdorfer (*PHV* motion to be filed)

LATHAM & WATKINS LLP

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Washington, DC 20004

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