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March 28, 2016

FILED
MAR 28 2016
Clerk's Office
N.C. Utilities Commission

VIA HAND DELIVERY

Ms. Gail Mount
Chief Clerk
North Carolina Utilities Commission
Dobbs Building, 5th Floor
Raleigh, North Carolina 27601

RECEIVED FILING FEE 10.00

Re: Time Warner Cable Southeast LLC's Verified Complaint and Petition for Relief Against Jones-Onslow Electric Membership Corporation
Docket No. EC-43, Sub 88

Transmitted herewith for filing on behalf of Time Warner Cable Southeast LLC pursuant to N.C. Gen. Stat. § 62-350 is the Verified Complaint and Petition for Relief against Jones-Onslow Electric Membership Corporation for filing in the above-referenced proceeding.

Should any questions arise in connection with this matter, please contact the undersigned.

Very truly yours,

Marcus W. Trathen

Enclosure

323119

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. EC-43, Sub 88

TIME WARNER CABLE SOUTHEAST LLC, Complainant/Petitioner, v. JONES-ONSLOW ELECTRIC MEMBERSHIP CORPORATION, Respondent.	**TIME WARNER CABLE SOUTHEAST LLC'S VERIFIED COMPLAINT AND PETITION FOR RELIEF**

I. INTRODUCTION

Time Warner Cable Southeast LLC ("TWC") files this complaint with the North Carolina Utilities Commission ("NCUC" or "Commission") against Jones-Onslow Electric Membership Corporation ("Jones-Onslow" or "the Cooperative") to resolve a dispute over whether the rate that Jones-Onslow charges for TWC's attachments to Jones-Onslow's utility poles is just and reasonable pursuant to N.C.G.S. § 62-350 and Commission Rule R1-9.

Jones-Onslow currently charges TWC a pole attachment rate of $20.93 per pole. TWC has long disputed the reasonableness of that and other similarly high rates, including by triggering in 2011 its right to negotiate a fair and reasonable rate under N.C.G.S. § 62-350(b). But the Cooperative has refused to negotiate a mutually-acceptable rate, to justify the current rates it is charging, or to explain or provide any information about the methodology underlying its rate calculation, despite TWC's multiple requests over the years. Whatever methodology used by Jones-Onslow, if any, it yields a manifestly

unreasonable rate. The Cooperative's rate is multiples higher than the pole attachment rates charged by investor-owned utilities ("IOUs") and telephone companies in the state, even though the Cooperative's cost of owning poles should be lower than that of investor-owned companies.

Jones-Onslow has countered TWC's requests to negotiate with pretext, delays, coercion, and demands for even more money. For years the Cooperative stonewalled TWC by proposing that the parties defer negotiations until the resolution of several TWC cases arising under Section 62-350, with no intent of following those decisions if they were decided in TWC's favor—as they were. When TWC proposed an interim rate pending the resolution of those cases, Jones-Onslow retaliated by refusing to process TWC's new pole attachment permit applications and by threatening to treat all of TWC's attachments as "unauthorized," effectively halting its business. The Cooperative even threatened to cut off the electric service necessary to power TWC's network by rolling TWC's alleged past-due pole attachment payments into TWC's unrelated, and paid-in-full, electric service bill (a practice now prohibited by Section 62-350). Jones-Onslow has ignored all of TWC's requests for the cost data needed to calculate a reasonable rate. The Cooperative instead recently responded with the results of a unilaterally conducted "audit" of TWC's attachments, coupled with a demand for almost $1.5 million in trumped-up unauthorized attachment penalties—all in direct violation of the parties' pole attachment agreement.

Despite TWC's good-faith efforts to negotiate a just and reasonable rate, Jones-Onslow has not negotiated in good faith and the parties have reached an impasse. Accordingly, TWC seeks a determination by the Commission that Jones-Onslow has not negotiated in good faith and that the pole attachment rate imposed and billed by the

Cooperative is unjust and unreasonable, inconsistent with the public interest, and in violation of N.C.G.S. § 62-350. TWC further seeks a determination of the just and reasonable rate the Cooperative may charge, based on its actual costs. TWC requests that the Commission set such a rate with reference to the prevailing pole attachment rates charged by IOUs and telephone companies in the state – the well-settled federal rate methodology—and the public interest in promoting broadband infrastructure deployment, particularly in rural areas. TWC requests that any over-payments made since 90 days after it triggered its rights under Section 62-350 be returned, with statutory interest. Finally, TWC seeks a determination that Jones-Onslow's imposition of trumped up unauthorized attachment penalties is unjust, unreasonable and in violation of the pole agreement between the parties.[1]

II. IDENTIFICATION OF PARTIES

1. Complainant TWC is a Delaware limited liability company and its principal place of business is located at 60 Columbus Circle, New York, New York 10023. TWC is a cable operator under federal law, 47 U.S.C. § 522(5), and a communications service provider under state law, N.C.G.S. § 62-350(e). TWC provides cable television, video-on-demand, Internet, voice-over-Internet-protocol, and other communications services to residents throughout North Carolina. In order to provide its services, TWC has attachments on poles of numerous membership corporations across the state, including poles owed by the Cooperative.

[1] Except as specifically stated in the Requested Relief section infra, TWC does not seek at this time any Commission decision on the non-rate terms and conditions of attachment, which TWC continues its attempt to negotiate with Jones-Onslow and the North Carolina Association of Electric Cooperatives.

2. The names and addresses of the authorized representatives for TWC in this proceeding, and the persons to whom communications on behalf of TWC should be sent, are:

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Brooks, Pierce, McLendon, Humphrey & Leonard, LLP
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150 Fayetteville Street
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ageorge@sheppardmullin.com
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3. Respondent Jones-Onslow is an electric membership corporation organized and operating under the provisions of Article 2 of Chapter 117 of the North Carolina General Statutes. On information and belief, Jones-Onslow has its principal place of business at 259 Western Boulevard, Jacksonville, North Carolina. The Cooperative owns or controls poles in the areas where it provides service in North Carolina. On information and belief the counsel and regulatory contact for the Cooperative are as follows:

Thomas B. Magee
Keller and Heckman LLP
1001 G Street, NW
Suite 500 West
Washington, DC 20001

(202) 434-4128 (phone)
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259 Western Boulevard
Jacksonville, NC 28546
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jclark@joemc.com

III. JURISDICTION

4. The Commission has jurisdiction over this matter pursuant to N.C.G.S. § 62-350.

5. Section 62-350 gives the Commission "exclusive jurisdiction over proceedings arising under this section" to "adjudicate disputes arising under this section on a case-by-case basis." N.C.G.S. § 62-350(c).

6. TWC brings this action pursuant to Section 62-350 to resolve disputes concerning the rate for attachments to utility poles owned by Jones-Onslow and the Cooperative's claims for more than a million dollars of unauthorized attachment penalties. TWC has paid all undisputed fees for the use of the Cooperative's poles.

IV. BACKGROUND

A. Utility Poles Are Critical Infrastructure for Cable Operators

7. Owing to economic, environmental, aesthetic, local zoning and rights-of-way restrictions, cable operators do not have a practical alternative to relying on existing utility pole networks owned and maintained by electric power and telephone utilities in

order to construct their networks. This reality has long been recognized by courts, legislative bodies, and administrative agencies. *See, e.g., Georgia Power Co. v. Teleport Commc'ns Atlanta, Inc.*, 346 F.3d 1033, 1036 (11th Cir. 2003) (noting "lack of alternatives to these existing poles"); *Alabama Power Co. v. FCC*, 311 F.3d 1357, 1362 (11th Cir. 2002), cert. denied, 540 U.S. 937 (2003) (utilities are "the owner of . . . 'essential' facilities" for cable operators); *Southern Co. v. FCC*, 293 F.3d 1338, 1341 (11th Cir. 2002) ("As a practical matter, cable companies have had little choice but to" attach "their distribution cables to utility poles owned and maintained by power and telephone companies."); *Southern Co. Servs., Inc. v. FCC*, 313 F.3d 574, 576-77 (D.C. Cir. 2002) ("Since building new poles was prohibitively expensive, cable operators instead leased existing space from utilities . . . .").

8. The United States Supreme Court has observed that "[c]able television operators, in order to deliver television signals to their subscribers, must have a physical carrier for the cable; in most instances, underground installation of the necessary cables is impossible and impractical. Utility company[ies'] poles provide, under such circumstances, virtually the only practical medium for the installation of television cables." *FCC v. Florida Power Corp.*, 480 U.S. 245, 247 (1987).

9. Once cable operators have constructed their aerial networks on existing pole infrastructure, they are essentially captive because it would be prohibitively expensive and impractical (or impossible) to rebuild those networks underground or to install their own poles. That is the case with TWC here.

B. Regulation of Pole Attachment Rates

10. The United States Supreme Court has found that cable operators' dependence on the use of existing pole infrastructure has led to abuses by utilities. Specifically, while cable operators have found it "essential" to lease pole space from utilities, "[u]tilities, in turn, have found it convenient to charge monopoly rents." *Nat'l Cable & Telecomms. Ass'n, Inc. v. Gulf Power Co.*, 534 U.S. 327, 330 (2002).

11. Cable operators' dependence on existing poles and utilities' corresponding abuses of their "superior bargaining power" to impose monopolistic rates, terms and conditions led to federal regulation of pole attachments nearly 40 years ago. *See Alabama Power*, 311 F.3d at 1362; Pub. L. No. 95-234, 92 Stat. 33 (1978) (47 U.S.C. § 224). Section 224 of the federal Pole Attachment Act vests the Federal Communications Commission ("FCC") with regulatory oversight over pole attachment relationships between cable operators and IOUs and telephone companies, including the IOUs and telephone companies that own poles in North Carolina. *See* 47 U.S.C. § 224. Congress directed the FCC to "regulate the rates, terms, and conditions for pole attachments to provide that such rates, terms, and conditions are just and reasonable." *Id.* § 224(b)(1).

12. Congress did not place poles owned or maintained by cooperatively-organized or municipal utilities within the ambit of Section 224's protections. *See id.* § 224(a)(1) (exempting "any person who is cooperatively organized, or any person owned by . . . any State"). These utilities were excluded because their pole attachment rates historically were reasonable—among the lowest of all utilities at the time—and Congress believed that their rates would remain so. S. Rep. No. 95-580, at 16-18 (1977).

13. Congress' prediction remained true for a time. But, in the absence of a regulatory check on the rates, terms, and conditions of pole attachments, cooperatively-organized and municipal utilities have increasingly engaged in the same abusive practices that IOUs once engaged in, including attempts to extract the monopoly pole attachment rates that were ultimately remedied by Congress through Section 224.

14. To stem the potential for abuses by municipal utilities and membership cooperatives in this state, the General Assembly enacted N.C.G.S. § 62-350 in 2009.

15. Effective July 10, 2009, Section 62-350 requires municipal utilities and membership cooperatives to allow communications service providers access to critical infrastructure such as pole, ducts, and conduits, at just, reasonable, and nondiscriminatory rates, terms, and conditions adopted pursuant to negotiated or adjudicated agreements. N.C.G.S. § 62-350(a).

16. Section 62-350 further provides a mechanism for resolving disputes between communications services providers and municipal utilities and membership cooperatives over access to this critical infrastructure. The law requires municipalities and membership cooperatives that own poles to negotiate reasonable rates, terms, and conditions for the use of such poles upon request by a communications service provider. *Id.* § 62-350(b). In the event that the parties are unable to reach an agreement within 90 days of a request to negotiate, or if either party believes in good faith that an impasse has been reached, either party may seek resolution of unresolved issues by filing an action subject to the exclusive jurisdiction of the Commission. *Id.* § 63-350(c).[2] To perfect its

[2] The General Assembly amended Section 62-350 in June 2015 to reassign exclusive jurisdiction from the North Carolina Business Court, which had raised concerns about its

right to seek resolution of a dispute, the communications service provider must pay any undisputed fees related to the use of poles, ducts, or conduits which are due and owing under a preexisting agreement with the municipality or membership cooperative.

17. The statute, as amended in 2015, directs the Commission to resolve disputes arising under Section 62-350 on a case-by-case basis, consistent with the public interest and necessity to derive just and reasonable rates, terms, and conditions. *Id.* In so doing, the Commission may consider any evidence or ratemaking methodologies offered or proposed by the parties. *Id.* Although the 2015 amendments to Section 62-350 deleted an express reference to the federal pole attachment rate methodology applicable to IOUs in the state, the General Assembly emphasized that "the Commission may consider any evidence presented by a party, including any methodologies previously applied." S.B. 88, N.C. Session Law 2015-119 § 7 (2015).

18. Upon resolution of a dispute, the Commission shall apply any new rate adopted retroactively to the date immediately following the expiration of the 90-day negotiation period. N.C.G.S. § 62-350(c). If the dispute and new rate arises in the context of a negotiation for the continuation of an existing agreement, the Commission shall apply the new rate retroactively to the date immediately following the end of the existing agreement. *Id.*

C. North Carolina Business Court Decisions Under Section 62-350

19. The Business Court resolved two cases arising under Section 62-350 prior to its amendment in June 2015. One case addressed the reasonableness of pole attachment

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rate-setting authority, to the Commission. *See An Act to Assign Pole Attachment Disputes to the North Carolina Utilities Commission*, S.B. 88, N.C. Session Law 2015-119 (2015).

rates imposed by a membership cooperative. *See Rutherford Elec. Membership Corp. v. Time Warner Entertainment-Advance/Newhouse P'ship*, No. 13-CVS-231, 2014 WL 2159382 (N.C. Super. Ct. May 22, 2014), aff'd 771 S.E.2d 768 (N.C. Ct. App. 2015). The other addressed pole attachment rates, terms, and conditions imposed by a municipal utility. *See Time Warner Entertainment/Advance-Newhouse P'ship v. Town of Landis*, No. 10-CVS-1172, 2014 WL 2921723 (N.C. Sup. Ct. June 24, 2014).

20. In *Rutherford*, after extensive discovery and a four day trial, the Business Court rejected the methodologies proposed by the membership cooperative and its experts, concluding that the methodologies were not supported by competent evidence. *See Rutherford*, 2014 WL 2159382, at *12-16. In so doing, the court rejected the cooperative's desired rates—ranging from $15.50 to $19.65—as unjust and unreasonable. *Id.* The court also found that the FCC's Section 224 "Cable Rate" provided just and reasonable compensation to the membership cooperative. *Id.* at *9. The court reasoned that the Cable Rate offers "an analytical structure that is well-understood, widely used, and judicially sanctioned," and that the state's reliance on established FCC precedent would "provide helpful guidance to parties involved in future negotiations over just and reasonable pole attachment rates, terms, and conditions." *Id.* at *10. The North Carolina Court of Appeals affirmed the Business Court's decision across the board. *See* 771 S.E.2d 768.

21. Similarly, in *Landis*, following a separate trial, the Business Court rejected the methodologies proposed by the Town and its expert as irrational and unsupported, concluding that the Town's proposed $18.00 rate was unjust and unreasonable. *See Landis*, 2014 WL 2921723, at *12-13. The court again found that the Cable Rate provided just and reasonable compensation to municipally owned utilities in North Carolina. *See id.* at *10.

Referencing the reasoning of its *Rutherford* decision, the court explained that the Cable Rate "provides a reasonable means of allocating costs without creating a subsidy from the pole owner to the attacher." *Id.*

22. The Business Court's holdings were well-founded. The rate methodologies proposed by the membership corporation and the municipal utility were irrational, and not supported by the evidence. By contrast, the Cable Rate is straightforward, fair, well-settled, time-tested, judicially approved, and the basis of most pole attachment rates across the country, including for the more than one hundred thousand attachments to poles owned by IOUs in North Carolina. Regulatory agencies, federal and state courts (including the Business Court) and the United States Supreme Court have all concluded that the Cable Rate is fully compensatory to pole owners and does not cause electric companies to subsidize cable companies, repeatedly rejecting pole owner arguments to the contrary. *See, e.g.*, *Florida Power Corp.*, 480 U.S. at 247; *Alabama Power*, 311 F.3d at 1358; *Gulf Power Co. v. United States*, 998 F. Supp. 1386 (N.D. Fla. 1998), *aff'd*, 187 F.3d 1324 (11th Cir. 1999); *Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, 26 FCC Rcd 5240, 5322 (2011), *aff'd sub nom. Am. Elec. Power Serv. Corp. v. FCC*, 708 F.3d 183 (D.C. Cir. 2013) ("2011 Pole Rate Order"); *Rutherford*, 2014 WL 2159382, at *9 (rejecting the cooperative's subsidy arguments and concluding that "the FCC Cable Rate formula actually leaves the utility and its customers better off than they would be if no attachments were made to their poles."); *Landis*, 2014 WL 2921723, at *10. The Cable Rate also provides a uniform and consistent methodology for all manner of utilities because it utilizes costs specific to each utility, including by relying on virtually

the same system of accounts used by membership cooperatives. *See Rutherford*, 2014 WL 2159382, at *10.

D. Low and Uniform Rates Serve the Public Interest

23. Access to utility poles on just, reasonable and nondiscriminatory rates, terms and conditions is essential to the expansion of broadband and other advanced services throughout North Carolina, particularly in rural areas.

24. In its 2010 National Broadband Plan, the FCC found that "[t]he cost of deploying a broadband network depends significantly on the costs that service providers incur to access conduits, ducts, poles and rights-of-way on public and lands." National Broadband Plan (2010) at 109, *available at* https://transition.fcc.gov/national-broadband-plan/national-broadband-plan.pdf (last visited Mar. 24, 2016) (finding that "the expense of obtaining permits and leasing pole attachments and rights-of-way can amount to 20% of the cost of fiber optic deployment"). The Plan concluded that the impact of higher pole attachment rates "can be particularly acute in rural areas, where there often are more poles per mile than households." *Id.* at 110. To promote broadband deployment, the National Broadband Plan thus recommended that the FCC establish rates for pole attachments "that are as low and close to uniform as possible." *Id.* at 110. Since that time, the FCC has taken meaningful steps to implement that recommendation, ensuring low and uniform pole attachment rates charged by IOUs in the North Carolina. *See 2011 Pole Rate Order*, 26 FCC Rcd 5240; *Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, Order on Reconsideration, WC Docket No. 07-245, 2015 WL 7589371 (rel. Nov. 24, 2015).

25. At the legislature's direction, North Carolina's Broadband Infrastructure Office is developing the state's own broadband plan. Consistent with the National Broadband Plant, the state's progress report released in December 2015 found that communities "in sparsely populated or economically distressed areas . . . continue to find themselves on the wrong side of the digital divide." *See* North Carolina Department of Information Technology, State Broadband Plan Progress Report (Dec. 1, 2015) at 5, *available at* https://ncbroadband.gov/wp-content//uploads/2016/02/Broadband-Plan-Progress-Report-12-1-2015.pdf (last visited Mar. 24, 2016). The report further identified "infrastructure cost" as one of the key challenges to broadband deployment in the state, particularly given the "significant infrastructure upgrades" necessary to keep pace with evolving technologies and demands for data. *See id.* at 4-5.

26. Consistent with the recommendations of the National Broadband Plan and the state's broadband objectives, low and uniform pole attachment rates throughout North Carolina (regardless whether the poles are owned by IOUs, telephone companies, municipal utilities, or membership cooperatives) will promote the expansion of broadband in rural areas and facilitate the infrastructure upgrades needed in the coming years.

V. THE PARTIES' DISPUTE

27. TWC depends on the use of poles owned by Jones-Onslow to deliver its services to its customers. TWC is attached to approximately 8,749 poles owned by the Cooperative.

28. ***The Parties' Pole Attachment Agreement.*** Prior to the enactment of Section 62-350, TWC attached its cables and other facilities to Jones-Onslow's poles pursuant to a pole attachment agreement executed by the Cooperative and TWC's

predecessor in interest, Time Warner Entertainment-Advance/Newhouse Partnership in July 2007. Ex. 1 ("2007 Agreement"). The 2007 Agreement was for a five-year term and stipulated that it would automatically extend on the same terms and conditions for successive one-year terms. Either party could terminate the agreement after the end of the initial five-year term on 180 days' written notice. *Id.* § 2.1.

29. The 2007 Agreement provided for a per-pole annual attachment fee of $15.00. *Id.* § 4.1, Ex. A. At that time, Jones-Onslow's rates were not subject to regulation under Section 62-350 or any other federal or state authority. Indeed, a decision by the United States Court of Appeals for the Fourth Circuit had recently ruled that it did not have sufficient basis to assert jurisdiction over pole rates charged by North Carolina electric cooperatives, having determined that the state legislature or courts should resolve the issues presented. *Time Warner Entertainment-Advance/ Newhouse P'ship v. Carteret-Craven Elec. Membership Corp.*, 506 F.3d 304, 315 (4th Cir. 2007) ("[I]f any regulation or compulsion is to be applied to pole-attachment agreements, it should be done by the North Carolina legislature, the North Carolina Utilities Commission, [or] the North Carolina state courts."). The rate that TWC had little choice but to accept from Jones-Onslow in 2007 did not reflect a market rate, as there was no functioning market for attaching to cooperatives' essential and monopoly facilities in North Carolina.

30. The 2007 Agreement allowed TWC to attach only to "excess" space. TWC was required to create space if there was no room for TWC's attachments on the poles, or if Jones-Onslow decided that it needed the space TWC occupied on a pole. For example, Section 1.6 authorized Jones-Onslow to "reject any application for an attachment" if there was insufficient space on the pole, unless TWC paid to create that capacity through the

"make-ready" process. Ex. 1, §§ 1.6, 5.3. The make-ready process required TWC to pay for the work necessary to accommodate TWC's requested attachments, including the costs of rearranging existing facilities, adding to the pole, or replacing the existing pole with a taller or stronger pole. *Id.* § 5.3. Jones-Onslow also reserved the right to reclaim the space occupied by TWC, and to force TWC to rearrange its facilities, purchase a new, taller or stronger pole, or remove its facilities. *Id.* § 14.1. Indeed, even where TWC paid for a brand new pole as part of the make-ready process, that pole continued to belong to Jones-Onslow, Jones-Onslow could reclaim space on it, and TWC was required to pay an annual fee for its attachment to it. *See id.* §§ 1.3, 4.1.

31. The 2007 Agreement further established a procedure for confirming and tracking the number of TWC attachments to Jones-Onslow poles. Jones-Onslow was required to commence an actual inventory of TWC's attachments, at TWC's reasonable expense, "not less than one (1) year following" the commencement date of the contract. *Id.* § 4.3. Thereafter, the 2007 Agreement allowed Jones-Onslow to conduct an actual inventory "no more frequently than every five (5) years." *Id.* The 2007 Agreement required that Jones-Onslow provide "reasonable notice" to TWC prior to initiating any inventory so that TWC would have "an opportunity to participate" in it. *Id.*

32. The parties intended that the initial inventory contemplated in Section 4.3 would serve as a baseline audit. *Id.* § 12.1. The baseline audit would fix the number of TWC attachments at the outset of the 2007 Agreement to ensure that both parties were going forward with a clear understanding of the number of attachments subject to the 2007 Agreement. *Id.* Specifically, the 2007 Agreement stated that "[a]ny Attachment that existed prior to the Commencement Date . . . of this Agreement and which is counted in

the first actual inventory conducted under this Agreement pursuant to Article 4 will be considered an Authorized Attachment." *Id.* It further provided that "[t]he attachments counted in such first actual inventory, plus all new attachments permitted following the Commencement Date, shall be the base line of authorized attachments for any later attachment inventories." *Id.*

33. The 2007 Agreement also provided a schedule of penalties for "unauthorized" attachments. *Id.* § 10.1-10.4, Ex. A. The Agreement defined an "unauthorized attachment" as an attachment made after the Commencement Date of the 2007 Agreement without a permit obtained pursuant to the terms of the agreement. *Id.* § 10.1. Exhibit A set a steep penalty for "unauthorized attachments" at $112.50 per pole, specifying that the penalty would apply only to those "attachments made after initial inventory after the Commencement Date without Permit." *Id.* at Ex A.

34. The 2007 Agreement further required Jones-Onslow to notify TWC "of any Unauthorized Attachment when discovered," using a form set forth as an Exhibit to the agreement. *Id.* § 10.1, Ex. B-6. The form included columns requiring Jones-Onslow to identify the "Attachment Location" and the "Problem" associated with each attachment. *Id.* at Ex. B-6. TWC had 30 days from Jones-Onslow's notice to remove the unauthorized attachment or to submit an application for it, or else it would be required to pay the "Unauthorized Attachment Daily Fee" of $5.00 until removing the attachment or obtaining a permit for it. *Id.* § 10.2, Ex. A. Jones-Onslow was permitted to remove the unauthorized attachment only if TWC did not take the specified corrective action 30 days after receiving notice of the unauthorized attachment. *Id.* § 10.4.

35. The 2007 Agreement's tying of the unauthorized attachment provisions to the baseline audit was in recognition of the fact that there are legitimate reasons why an inventory might show that TWC is attached to more poles that it was being billed for, including: (i) the parties' prior practice of not counting drop poles for billing purposes; (ii) poor record-keeping on the part of the Cooperative; (iii) counting attachments as TWC's that in fact belong to others; and (iv) counting a pole that used to be owned by the local telephone company but that Jones-Onslow replaced without notice to TWC. The parties intended the baseline inventory to level-set their attachment and billing records so that penalties could be fairly applied, if appropriate, after subsequent audits.

36. ***The Parties' Negotiations and Dispute.*** On December 14, 2011, TWC notified Jones-Onslow of its decision to terminate the 2007 Agreement. TWC also formally requested to negotiate rates, terms, and conditions of a new pole attachment agreement pursuant to N.C.G.S. § 62-350. *See* Ex. 2.

37. After TWC terminated the 2007 Agreement and requested to negotiate a new one under Section 62-350, Jones-Onslow has consistently increased its pole attachment rate. The Cooperative charged the following rates from 2012-2016, and TWC paid those rates for the following numbers of poles:

- 2012: $20.04 for 8,306 poles = $166,452.24
- 2013: $20.42 for 8,616 poles = $175,938.72
- 2014: $20.64 for 8,717 poles = $179,918.88
- 2015: $20.91 for 8,747 poles = $182,941.59
- 2016: $20.93 for 12,564 poles = $262,964.52

38. TWC attempted over several years to negotiate an appropriate the pole attachment rate using a reliable and reasonable cost-based methodology. But rather than negotiate with TWC for a reasonable rate, Jones-Onslow has refused to provide any of the cost information needed to evaluate its rates. Instead, the Cooperative has attempted to force TWC to knuckle under by threatening to halt its business and, recently, by breaching the parties' agreement with trumped-up demands for purported unauthorized attachment penalties.

39. TWC's December 2011 letter requesting to negotiate rates also requested sufficient "pole-related" cost data for 2011 to calculate a just and reasonable cost-based rate for the Cooperative. Ex. 2. Jones-Onslow responded in March 2012 with basic information from its 2010 RUS report, but not the information requested and in insufficient detail to calculate a cost-based pole attachment rate. Ex. 3; *see* Ex. 4. Jones-Onslow further proposed that the parties defer discussions about Jones-Onslow's rate methodology "until the decision in the Landis case is issued to avoid needless distractions and disputes." Ex. 3.

40. TWC responded in April 2012, agreeing that it was unlikely the parties would agree to rates until after the resolution of the *Landis* case. Ex. 4. (The *Rutherford* case had not yet been filed). TWC noted, however, that the rate-setting methodologies advanced by the parties in *Landis* relied on the same general cost information, and again requested Jones-Onslow's 2011 pole-related cost data so that it could calculate rates using whatever methodology the *Landis* court approved as just and reasonable. *Id.* TWC also identified the necessary information that was missing from Jones-Onslow's March 2012 response, including information about the number of poles in Jones-Onslow's property

records, its depreciation rate for poles, and its cost of debt. *Id* Jones-Onslow did not provide any additional cost data or the information missing from its prior correspondence.

41. In or around November 2012, TWC began negotiating with representatives from the North Carolina Association of Electric Cooperatives ("NCAEC") in an attempt to develop a new template pole attachment agreement and rate methodology for North Carolina electric cooperatives. Ex. 5. TWC proposed at that time to suspend further discussions with Jones-Onslow pending the negotiations with NCAEC. *Id.*

42. When Jones-Onslow again increased its rate to $20.42 per pole in 2013, TWC objected, explaining that the parties' 2007 Agreement was no longer in effect and that TWC was no longer required to pay that rate. Ex. 6. TWC proposed to pay Jones-Onslow an annual rate of $7.50 per pole, or the rate calculated pursuant to the FCC's Cable Rate methodology, whichever was higher, as an interim measure pending the resolution of the Landis case or TWC's negotiations with the NCAEC. *Id.* TWC again requested Jones-Onslow's pole-related cost data to allow for the calculation of the FCC rate. *Id.*

43. Rather than negotiate a reasonable interim rate with TWC or provide any of the requested data, Jones-Onslow retaliated by sending a letter to TWC's construction coordinator purporting to disallow any new TWC attachments to any of Jones-Onslow's main line poles or drop poles until the parties entered into a new agreement. Ex. 7. The effect was a freeze on TWC's ability to compete for and connect new customers in Jones-Onslow's service area.

44. Jones-Onslow doubled down on its attachment freeze in April 2013, reiterating its threat to treat any new TWC attachments to Jones-Onslow poles "as trespasses and take appropriate action to enforce [its] rights in this regard." Ex. 8.

45. Ignoring TWC's invocation of Section 62-350 and its rights under that statute, the Cooperative further asserted that TWC's attempts to negotiate a lower rate were fruitless because "there [was] no reasonable possibility that Jones-Onslow [would] agree to the FCC rates or methods of setting rates at much lower levels" than its $20.42 rate. *Id.* Jones-Onslow thus insisted that TWC accept the proposed rates, terms and conditions unilaterally adopted by the Cooperative's Board of Directors. *Id.*

46. Jones-Onslow warned of dire consequences if TWC continued to rely on its statutory rights. The Cooperative purported to deem "all existing attachments to be unauthorized" until TWC caved to its $20.42 rate. *Id.* Jones-Onslow also threatened to transfer TWC's outstanding pole-attachment invoices to TWC's metered electric service accounts, and to disconnect the electric service necessary to power TWC's entire communications network, if TWC did not pay the rate it demanded—despite the fact that TWC's metered accounts were otherwise paid-in-full. *Id.* Threats like this one led the North Carolina General Assembly expressly to forbid this practice in its 2015 revisions to Section 62-350. *See* N.C.G.S. § 62-350(a) (2015).

47. In May 2013, Jones-Onslow delivered on its threats when one of its employees intercepted a TWC technician performing repair work for a customer who had lost service due to a faulty service drop. The Jones-Onslow employee threatened to call the Sheriff's department if the TWC technician did not immediately cease work. As a result, TWC's technician was forced to stop work and was not able to restore the customer's service at that time.

48. Faced with Jones-Onslow's serious and critical threats to TWC's operations and ability to compete, TWC paid the Cooperative's excessive rate under protest, reserving

its rights to a true-up pursuant to Section 62-350. Ex. 9. TWC proposed to enter into an agreement to continue operating on an interim basis under the 2007 Agreement until a new negotiated or adjudicated agreement was put in place. *Id.* The parties entered into the interim agreement to that effect in June 2013. *See* Ex. 10.

49. In July 2014, after the North Carolina Business Court endorsed the FCC Cable Rate methodology as reasonable in the *Rutherford* case, and rejected rates lower than Jones-Onslow's as unreasonable, TWC again requested the necessary pole-related cost information to calculate a reasonable rate for Jones-Onslow. Ex. 11. TWC's request was again met with silence.

50. In December 2014, TWC reiterated its request for Jones-Onslow's pole-related cost data. Ex. 12. As an alternative to calculating a rate under the FCC's methodology, TWC proposed to pay the Cooperative an annual per-pole rate of $6.06 from July 2012 through the end of 2014. *Id.* TWC explained that the evidence in the *Rutherford* case established that the highest average IOU rate in North Carolina from 2010-2013 was $6.06, based on IOUs' costs. *Id.*

51. But Jones-Onslow's response once again ignored TWC's request for pole-related cost data. Ex. 13. And the Cooperative rejected TWC's proposed $6.06 rate on the ground that the Cooperative is not regulated by the FCC, refusing to acknowledge that it is regulated under Section 62-350, that the Business Court held that the FCC methodology was reasonable, and that the Business Court rejected rates lower than those imposed by the Cooperative. *Id.* The Cooperative stated that it could provide "a more meaningful response" to TWC's proposals "after the Appellate decision in *Rutherford* is released." *Id.*

52. Jones-Onslow did not provide any response, let alone a "more meaningful" one, after the North Carolina Court of Appeals affirmed the *Rutherford* decision in its entirety in April 2015. *See Rutherford*, 771 S.E.2d 768. Despite repeatedly proposing that the parties wait for the resolution of the *Landis* and *Rutherford* cases before engaging in substantive rate negotiations, the Cooperative remained intransigent when it became clear that it could not support its excessive rates under those precedents. And the Cooperative continued to ignore TWC's long-standing and oft-repeated requests for its pole-related cost data.

53. Instead of negotiating a reasonable rate, Jones-Onslow set about conducting a unilateral and surreptitious inventory of TWC's attachments, in violation of any definition of good faith negotiations, not to mention Sections 4.3, 10.1-10.4, 12.1, Exhibit A, and Exhibit B-6 of the 2007 Agreement. In August and November 2015, the Cooperative sent letters to TWC's former Division President demanding the payment of more than one-million dollars for over 3,000 alleged unauthorized attachments, purportedly pursuant to Sections 4.2 and Exhibit A of the parties' 2007 Agreement. Exs. 14-16. Jones-Onslow asserted a claim for pole fees going back 17 years, for 12% interest and an additional penalty of $112 per attachment. As if Jones-Onslow's claim for unauthorized attachments were not sufficiently outrageous, in response to TWC's letter disputing the claims, in February 2016, Jones-Onslow's counsel increased the Cooperative's claim to almost $1.5 million in unauthorized attachment fees, penalties and interest, before offering to "settle" its unauthorized attachment fee claims for $834,122.65. Ex. 17.

54. Jones-Onslow's inventory and demands for penalties represented nothing less than a bald retaliation against TWC for its efforts to rely on Section 62-350 and an attempt to force TWC to back off its effort to negotiate a reasonable pole rate. Despite the fact that the Cooperative had failed to conduct the baseline audit required by the 2007 Agreement to be performed within a year, despite the 2007 Agreement's clear recognition that all attachments as of 2007 are to be considered "authorized" under the agreement, despite the Cooperative's failure to have conducted any audits for 17 years, and despite its failure to identify any specific poles alleged to have been attached to without permission, Jones-Onslow demanded enormous unauthorized attachment penalties for the difference between the number of poles for which it had been billing TWC and the number of attachments counted in its audit. Despite the fact that the 2007 Agreement did not provide for any unauthorized attachment charge, beyond the very high penalty of $112.50 per pole, Jones-Onslow claimed hundreds of thousands of dollars in additional charges for up to 17 years of attachment fees and interest at 12% percent per year, in addition to the penalty claimed. And despite the requirement in the 2007 Agreement that TWC be consulted about the audit, Jones-Onslow conducted its audit without any notice to TWC whatsoever, depriving TWC of any opportunity to participate, as required under Section 4.3. TWC thus has no way of knowing how Jones-Onslow conducted the audit, and whether it accurately identified TWC attachments.

55. The 2015 inventory was the "first actual inventory" under the 2007 Agreement, and at most under the 2007 Agreement, "[a]ny attachment" counted in that inventory must be considered an "Authorized Attachment" pursuant to Section 12.1. Ex.

1. A subsequent inventory would be required to identify unauthorized attachments made after the 2015 inventory.

56. Jones-Onslow's penalty calculations not only defy the 2007 Agreement, the Cooperative's attempt to recoup penalties going back 17 years would violate the North Carolina statute of limitations. *See* N.C.G.S. § 1-52. Further, by reaching back 17 years – all the way to 1998 – Jones-Onslow's penalty calculation would include payments of fees under the 2007 Agreement for periods that predated that agreement by nearly a decade, and that were specifically excluded from the agreement. *See* Ex. 1 § 10.1 & Ex. A, Ex. 16. And Jones-Onslow has never specified the "location" or "problem" for any particular unauthorized attachments using the Exhibit B-6 form, making it impossible for TWC to submit an application for those attachments or otherwise cure the problem, and failing to satisfy a condition precedent to imposing penalties. *See id.* §§ 10.1-10.2, Ex. B.

57. Jones-Onslow's actions related to its audit and its claims of unauthorized attachment fees are subject to the Commission's jurisdiction under Section 62-350. Not only was the audit – the first one conducted in 17 years – conducted in retaliation for TWC's efforts to negotiate a reasonable rate under Section 62-350, but the parties have reached an impasse on the issue. With respect to Jones-Onslow's pole attachment rates, it has demonstrated an abiding refusal to negotiate or even to provide information about its pole-related costs and rate methodology (or to respond to TWC's requests for that information). The parties are clearly at an impasse on the rate issues as well. *See* N.C.G.S. § 62-350(c). That impasse, as well as the expiration of the 90-day period following TWC's request to negotiate, gives the Commission jurisdiction to resolve the parties' dispute regarding a just and reasonable pole attachment rate.

VI. JUST AND REASONABLE RATES

58. TWC requests that the Commission find the rates charged by Jones-Onslow to be unjust and unreasonable, and adopt a just and reasonable rate that aligns with the rates charged by IOUs in North Carolina.

59. IOUs in North Carolina follow the FCC's Cable Rate methodology. That methodology determines the maximum just and reasonable per-pole rate that an IOU may charge a cable operator for pole attachments. *See* 47 U.S.C. § 224(d); 47 C.F.R. § 1.1409(e)(1).

60. Section 224 directs the FCC to regulate pole attachment rates based on the costs of the pole owner to make attachment space available to cable operators. Under Section 224(d), therefore, a rate is just and reasonable if it falls within a zone of reasonableness between the incremental and the fully allocated costs of providing attachments: "[A] rate is just and reasonable if it assures a utility the recovery of not less than the additional costs of providing pole attachments, nor more than an amount determined by multiplying the percentage of the total usable space . . . which is occupied by the pole attachment by the sum of the operating expenses and actual capital costs of the utility attributable to the entire pole, duct, conduit, or right-of-way." *Id.* § 224(d)(l).

61. On the low end of the range of reasonable rates is a rate based only on a utility's incremental costs owing to pole attachments. Incremental costs are those costs incurred by the utility due to the presence of attachments, consisting primarily of the make-ready charges that attachers typically pay when they first make an attachment to a pole, as TWC does here. *See* Ex. 1, §§ 1.6, 5.3.

62. On the high end of the range of reasonable rates is a fully allocated rate that allows the pole owner to recover the cable operator's fair share of the total costs of owning and maintaining a pole. The FCC decades ago established its Cable Rate formula at this upper bound of the statutory zone of reasonableness.

63. The Cable Rate derives the maximum allowable pole attachment rate by determining the annual cost of owning and maintaining a bare utility pole and then multiplying this pole cost by a space allocation factor based on the amount of usable pole space the attacher uses. The FCC Cable Rate formula can be expressed as follows:

$$\text{Maximum Rate} = \frac{\text{Space Occupied by Attachment}}{\text{Total Usable Space}} \times \text{Annual Cost of Pole}$$

64. Under this formula, the cable operator pays for the costs of the entire pole in the proportion that it uses the space on the pole which is usable for attachments. Assuming that an average pole has 13.5 feet of usable space, and assuming that TWC's attachment uses one foot of that space, the FCC method assigns 1/13.5 or 7.4 percent, of the annual costs of the entire pole to the attacher. *Amendment of Rules and Policies Governing Pole Attachments*, 15 FCC Rcd 6453, 6529, Appendix C-2 (2000) ("*Fee Order*"); *Implementation of Section 703(e) of the Telecommunications Act of 1996*, 16 FCC Rcd 12103, 12108, 12174, & Appendix D-2 (2001) ("*Reconsideration Order*") (affirming use of rebuttable presumptions of 1 foot of occupied space and 13.5 feet of total usable space).

65. The Cable Rate formula requires that the attaching entity pay for the space it actually uses on the pole, while fairly allocating the "unusable" space that benefits all of the parties attached to the pole. This unusable space includes the portion of the pole buried

in the ground, and the portion extending from the ground to the lowest attachment to ensure adequate clearances.

66. The Cable Rate formula's allocation of costs based on the cable operator's direct occupancy of space and its proportionate use of common space follows cost causation principles in a manner analogous to the common and widely-accepted practice in the leasing of property and other facilities throughout the private and public sectors of the economy. For example, in enacting the Act, Congress explained the reasonableness of this allocation using the example of an apartment house with 10 floors and common areas, such as the lobby, elevators and a garage. *See* 123 Cong. Rec. 5080 (1977) (Statement of Rep. Wirth). A family renting one of the floors would expect to pay one tenth of the costs of the common areas, even if the landlord had reserved use of the other nine floors. *Id.* The renter would not be asked to pay one-third or one-half the cost of those common areas.

67. In part because it is based on sound economic principles, the Cable Rate methodology is widely accepted and applied. Nearly every state that has "reverse preempted" the FCC to exercise its own pole attachment regulation, including the District of Columbia, uses either the Cable Rate or a state-equivalent that follows the Cable Rate to determine maximum just and reasonable pole attachment rates.[3] The nearby states of Kentucky and Ohio, for example, either have adopted a rate methodology based largely on the FCC method (Kentucky), or have adopted the FCC rate methodology across the board (Ohio). *See Adoption of a Standard Methodology for Establishing Rates for Cable*

[3] Twenty-one states have displaced FCC jurisdiction with their own pole attachment regulation. *See* 47 U.S.C. § 224(c); *States That Have Certified That They Regulate Pole Attachments,* Public Notice, WC Docket No. 10-101, 25 FCC Rcd 5541, 5541-42 (2010).

Television Pole Attachments, 49 P.U.R. 4th 128, No. 251 (Ky. PSC 1982); *Re: Columbus & Southern Electric Co.*, 50 PUR 4th 37 (Pub. Util. Comm. Oh. 1982).

68. Aligning the Cooperative's rates with the prevailing rates charged in North Carolina (and elsewhere in the United States) would promote consistency, uniformity, and predictability in rates across the state. Consistent, uniform, and predictable rates, in turn, would serve the public interest and necessity by reducing competitive incongruities, market distortions, and market disputes that negatively affect communications service providers' investment decisions to expand their networks and services, while promoting broadband investment, particularly in rural areas. *See Rutherford*, 2014 WL 2159382, at *10; *see also 2011 Pole Rate Order*, 26 FCC Rcd at 5244 ¶ 157; National Broadband Plan at *110.

VII. REQUESTED RELIEF

WHEREFORE, the Complainant TWC requests that the Commission issue an order granting the following relief:

1. Finding the Respondent Jones-Onslow's pole attachment rate of $20.04 for 2012 unjust and unreasonable;

2. Finding the Respondent Jones-Onslow's pole attachment rate of $20.42 for 2013 unjust and unreasonable;

3. Finding the Respondent Jones-Onslow's pole attachment rate of $20.64 for 2014 unjust and unreasonable;

4. Finding the Respondent Jones-Onslow's pole attachment rate of $20.91 for 2015 unjust and unreasonable;

5. Finding the Respondent Jones-Onslow's pole attachment rate of $20.93 for 2016 unjust and unreasonable;

6. Finding that, consistent with the public interest and precedent, Respondent Jones-Onslow's pole attachment rate should be based on its pole-related costs in the same manner as IOUs in the state and in the manner previously determined to be just and reasonable by the North Carolina Business Court;

7. Adopting a just and reasonable rate for TWC's attachment to Respondent Jones-Onslow's utility poles based on its pole related costs and the rates paid by IOUs in North Carolina;

8. Applying the new rate adopted as a result of this proceeding retroactively to the date immediately following the expiration of the 90-day negotiating period triggered by TWC's December 16, 2011 invocation of negotiations under Section 62-350;

9. Providing for statutory interest under North Carolina law for all overpayments made by TWC to Jones-Onslow starting 90 days after TWC's triggering its rights under Section 62-350 on December 16, 2011;

10. Requiring Respondent Jones-Onslow to pay the total sum of the overpayments plus statutory interest to TWC or allow TWC to take a credit against future pole attachment fees in those amounts;

11. Finding that Respondent Jones-Onslow's claims for unauthorized attachment fees, interest and penalties are in violation of the parties pole attachment agreement and are unjust and unreasonable;

12. Finding that Respondent Jones-Onslow has failed to negotiate in good faith as required by N.C.G.S. § 62-350;

13. Assessing the costs of this proceeding to the Respondent Jones-Onslow; and

14. Awarding Complainant such other relief as the Commission deems just, reasonable and proper.

Respectfully submitted, this 28th day of March, 2016.

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Attorneys for Complainant Time Warner Cable Southeast LLC

VERIFICATION

STATE OF New York
COUNTY OF Onondaga

Noel Dempsey, first being duly sworn, deposes and says that he is the Group Vice President, Network Exp. & OSP Design, Technology Operations/Enginering for Time Warner Cable, that he has read the foregoing Complaint and Petition for Relief and the same is true of his personal knowledge, except as to any matters and things therein stated on information and belief, and as to those, believes them to be true; and that he is authorized to sign this verification on behalf of Time Warner Cable Southeast LLC.

Noel Dempsey

NOEL DEMPSEY

Printed Name

WITNESS my hand and notarial seal, this 28th day of March, 2016.

My Commission Expires: 1/5/2019

Signature of Notary Public

Joyce E. Goodman

Name of Notary Public – Typed or Printed

Notary Seal

JOYCE E. GOODMAN
Notary Public, State of New York
Registration #01GO6317342
Qualified In Onondaga County
Commission Expires Jan 5, 2019

EXHIBIT 1

POLE ATTACHMENT LICENSE AGREEMENT

Between

JONES-ONSLOW ELECTRIC MEMBERSHIP CORPORATION
("Owner")

and

TIME WARNER ENTERTAINMENT-ADVANCE/NEWHOUSE PARTNERSHIP, A NEW YORK GENERAL PARTNERSHIP
("Licensee") NEWPORT

Edits made 6/7/2007 JOEMC

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POLE ATTACHMENT LICENSE AGREEMENT

THIS LICENSE AGREEMENT (the "Agreement") is effective this _____ day of July 2007 (the "Commencement Date") by and between Jones-Onslow Electric Membership Corporation, having its principal offices at 259 Western Boulevard, Jacksonville, North Carolina 28546 (hereinafter called "Owner") and Time Warner Cable of Newport, a Time Warner Entertainment-Advance/Newhouse Partnership, a New York General Partnership with its principal offices at 500 Time Warner Drive, Newport, NC 28570 (hereinafter called "Licensee").

WHEREAS, Licensee furnishes services to residents in the state of North Carolina and has franchise agreements in the counties of Onslow and Jones, Town of Swansboro (the "Service Area"), and desires to place and maintain aerial cables, wires and associated facilities and equipment on the poles of Owner in the area to be served, and

WHEREAS, Owner is willing to permit, to the extent it may lawfully and contractually do so, the attachment of said aerial cables, wires, and facilities (the "Attachment(s)") to its poles subject to the terms and conditions of this Agreement in the Service Area.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions herein contained the parties hereto do hereby mutually covenant and agree as follows:

ARTICLE 1
SCOPE OF AGREEMENT

1.1 Subject to the provisions of this Agreement, Owner agrees to issue to Licensee, for the Attachment(s) of Licensee's facilities to Owner's poles for the purpose of providing any and all lawful communications services, a revocable, non-exclusive license hereinafter referred to as a "Permit" authorizing the attachment of Licensee's Facilities to Owner's poles. This Agreement governs the fees, charges, terms and conditions under which Owner issues such Permit(s) to Licensee. This Agreement is not in and of itself a license, and before making any Attachment to any utility pole other than as specified in Article 6 herein, Licensee must apply for and obtain a Permit for each Attachment it desires to make to any pole.

1.2 This Agreement supersedes all previous agreements between Owner and Licensee for the attachment of Licensee's facilities to the poles of Owner in the Service Area. This Agreement shall govern all existing Licenses, Permits, and other forms of permission for pole attachments of Licensee's facilities to Owner's Poles in the Service Area as well as all Permits issued subsequent to execution of this Agreement.

1.3 No use, however extended, of Owner's pole or payment of any fees or charges required under this Agreement shall create or vest in Licensee any ownership or property rights in such poles except as expressly provided by this Agreement.

1.4 Nothing contained in this Agreement shall be construed to require Owner to construct, retain, extend, place, or maintain any pole or other facilities not needed for Owner's own service requirements.

1.5 Nothing contained in this Agreement shall be construed as a limitation, restriction, or prohibition against Owner entering into agreements with other parties regarding the poles covered by this Agreement, provided such future agreements have terms no more favorable to the other licensee, it being understood

that joint owners owning more than 20 percent of poles shared with Owner may have different terms and conditions.

1.6 The Licensee shall not install facilities on the Owners' poles if such installation will violate the National Electric Safety Code (the "NESC"). Furthermore, if, an attachment by Licensee cannot be accommodated because of documented insufficient capacity, Owner shall have the right to reject any application for an attachment, subject to Licensee's request for increased capacity or access to be made available at Licensee's reasonable expense. Notwithstanding the foregoing, Owner shall not arbitrarily deny or condition any Permit based upon Licensee's status as a provider of cable service, broadband cable communications services or other lawful communications services.

1.7 Should Owner acquire ownership of poles through purchase or by relinquishment of ownership from another system or source and Licensee's facilities are already attached to said poles, the Owner shall notify Licensee of such acquisition to preclude said poles from questions of authorization during the next inventory. Should Licensee acquire ownership of pole attachments through a system purchase, the provisions of this contract will not take full force and effect upon those newly acquired facilities until ninety (90) days after the closing date of the sale.

ARTICLE 2
TERM OF AGREEMENT

2.1 This Agreement shall continue in force and effect for a period of five (5) years from and after the Commencement Date. The Agreement shall automatically extend on the same terms and conditions for successive one-year terms. Either party may terminate this Agreement after the initial five (5) year term by giving no less than one hundred-eighty (180) days written notice to the other party All days referenced herein are calendar days. The Licensee is subject to rental rates set forth in Exhibit A attached hereto throughout the first five years this Agreement remains in effect. Thereafter, the rental rates shall be adjusted by an amount equal to the annual percentage change in the Consumer Price Index for All Customers, South Urban Non-metropolitan (less than 50,000) for the duration of this Agreement.

ARTICLE 3
SPECIFICATIONS

3.1 Any of Licensee's Attachments constructed on Owner's poles after the Commencement Date shall be placed and maintained at all times in accordance with the requirements, specifications, rules and regulations of the latest edition of the NESC and subsequent revisions thereof, with any governing authority having jurisdiction and with the terms of this Agreement including the Rules and Practices of Owner for Attachments (the "Rules") as set forth in Exhibit "B" attached hereto and made a part hereof by reference. In the event that Owner should wish to amend its Rules as set forth in Exhibit "B" in ways not inconsistent with the terms of this agreement," Owner shall give Licensee thirty (30) days advance written notice of such proposed amendment and may adopt such proposed amendment, following good faith negotiations of the proposed amendment. Licensee agrees to make such changes or alterations in its installation or maintenance of Licensee's facilities as may be required in order to fully comply with the proposed amendment and as long as such proposed amendment is not discriminatory with respect to the Rules applicable to other users. In the absence of a contrary provision in the written notice specified above, Licensee agrees to make all required changes or alterations to its procedures and standards to comply with such amendment within thirty (30) days after receipt of notice, which will be given to all service providers.

3.2 Owner may specify in the Rules procedures consistent with industry standards for Licensee to place identification tags on Licensee's facilities, on a going forward basis, to identify the property of Licensee.

3.3 Licensee acknowledges that other users, having similar licensing agreements and services, have been granted and may hereafter be granted rights similar to those granted in this Agreement, and that this Agreement is not an exclusive contract for the grant of such rights to Licensee. Owner will maintain such Agreements without favor to any particular party, service, or Licensee except Owner's core utility service. Licensee's use of Owner's poles shall not interfere with the rights or operations of other users. No party shall move, remove, adjust or change the attachments of others without the specific written consent of all affected users and of Owner.

ARTICLE 4
ATTACHMENT FEES

4.1 Licensee shall pay a fee in the amount shown in Exhibit A, attached hereto and made a part hereof by reference, for each pole to which Licensee has one or more Attachments (the "Attachment Fee"). In addition, Licensee shall pay the Attachment Fee for any pole, other than drop/lift poles or overlashing, for which the Make-Ready Construction Work, as defined in Article 5.3, has been completed, unless Licensee notifies Owner within 45 days that it will not attach. Upon such notification, the Permit Application(s) for the specified Attachment(s) will become void.

4.2 On or about the first day of each January, Owner shall invoice Licensee, in advance, for the annual Attachment Fees and other charges due Owner that have not been previously invoiced. The rental period shall cover the following twelve-month period between January 1 and December 31. Licensee shall pay any invoice within thirty (30) days of receipt thereof. Any unpaid invoice shall be subject to interest accruing on any undisputed unpaid amount at twelve percent (12%) per annum.

4.3 Commencing not less than one (1) year following the Commencement Date, and no more frequently than every five (5) years, an actual inventory of Attachments may be made by Owner or Owner's representative at the expense of Licensee. Owner shall provide reasonable notice to Licensee of such inventory so that Licensee has an opportunity to participate in the inventory. Owner agrees that the expense to Licensee shall be the normal market cost for such service, to Owner or Owner's representative, for a joint field check conducted with Licensee, and that work done at the same time for the benefit of Owner will not be charged to Licensee. If the Attachment inventory is made for the benefit of more than one Licensee, then each Licensee shall pay its proportionate share of the cost, such cost to be allocated based on the number of Attachments identified in the inventory.

4.4 Owner and Licensee shall promptly seek to resolve any invoice or payment dispute made in good faith and with reasonable basis that might arise from time to time. Any dispute claim must be presented within sixty (60) days of the day the alleged error was found. In the event either party determines that there is an error or erroneous charge in the amount billed in any statement rendered by Owner to Licensee, the error or erroneous charge shall be adjusted within thirty (30) days of a final determination of whether an error has occurred and the parties will be made whole accordingly. Notwithstanding the above, neither party shall be liable to the other party for errors or erroneous charges in any bill or statement originally issued more than two years prior to the day on which the error is subsequently determined to have occurred.

ARTICLE 5
PROCESS FOR PERMITTING ATTACHMENTS

5.1 The Rules as set forth in Exhibit B provide procedures for implementing the process for permitting Attachments, not including the procedures applicable to Secondary Poles that are outlined in Article 6.

5.2 To obtain a Permit, Licensee must submit Exhibit B-1 Permit Application (the "Application") following the procedures in the Rules. Licensee shall at the same time pay the non-refundable Application Fee stated in Exhibit A. Licensee's Application shall be accompanied by Licensee's construction plans and drawings, which will, at a minimum, contain the information specified in the Rules.

5.3 Within thirty (30) days after the receipt of the Application, Owner will notify Licensee of the make ready charges (the "Make Ready Engineering Fee"), specified in the lower portion of Exhibit B-1, for engineering the required modifications to Owner's poles necessary to accommodate Licensee's Attachments. The Make Ready Engineering Fee shall be determined from the make ready survey conducted as part of a ride through by the parties. Licensee and Owner shall agree upon the appropriate analysis reasonably necessary to determine whether the proposed attachment may be made. Owner shall also provide to Licensee a schedule for completing the make ready engineering work. The term "Make Ready Construction Work" is any addition to a pole, pole replacement, or rearrangement of existing facilities that is done to prepare an existing pole line or pole for use by Licensee or other joint use attachments, or to maintain a pole in compliance with this Agreement.

5.4 After receipt of the Make Ready Engineering Fee, Owner will begin preparing engineering plans (the "Engineering Plans") for the Make Ready Construction Work. Owner shall notify Licensee of Owner's Cost of any necessary Make Ready Construction Work (the "Make Ready Construction Cost Estimate") and shall provide Licensee a good faith estimate of the timeframe required to complete the Make Ready Construction Work, as shown in Exhibit B-2. Owner shall provide Licensee with a copy of the Engineering Plans, which specify how and where Licensee's Attachments are to be made on Owner's poles.

5.5 Licensee shall pay Owner the amount specified in the Make Ready Construction Cost Estimate and after receipt of such payment, Owner shall proceed with the Make Ready Construction Work as a part of its normal work schedule. For make ready projects consisting of thirty (30) or fewer poles, Owner will make reasonable efforts to complete Construction Work within forty-five (45) days after payment for such work is received. For make ready projects consisting of more than thirty (30) poles, Owner will make all reasonable efforts to complete construction as expeditiously as possible, and in any event within ninety (90) days. Owner may give consideration to a request by Licensee for an expedited construction schedule. Licensee will be responsible for additional costs reasonably incurred by Owner if the work is expedited.

5.6 When the Make Ready Construction Work is complete, Owner shall notify Licensee and Licensee shall then have the right to make the specified Attachments in accordance with the Engineering Plans. Licensee shall, at its own expense, make Attachments in such manner as not to interfere with the core utility service of Owner or others who are attached to Owner's poles nor shall Licensee make any changes to the attachments of others unless authorized by Engineering Plans and by Owner or Licensee obtaining written authority from others who have attachments.

5.7 Licensee must make its Attachments to Owner's poles within one hundred twenty (120) days of receipt of notification that the Make Ready Construction Work is complete as set forth in Exhibit B-3. Such timeframe may be extended by Owner provided Licensee makes a written request for such extension and is diligently pursuing its work. If Licensee's work for any Attachment is not complete within the one hundred twenty (120) day period or its extension, then Owner may terminate its approval for Licensee's

Attachment and Licensee shall have no further right to place that Attachment on those poles except by following the procedures specified above for new Attachments.

5.8 No later than thirty (30) days after Licensee adds the last Attachment permitted under an Application, Licensee shall send to Owner a Certification (the "Certification") by a Registered Professional Engineer in the State of North Carolina or by an authorized representative of the Licensee stating that the Attachments are of sound engineering design and fully comply with the Rules in this Agreement and the latest edition of the NESC and were constructed substantially as provided in the Engineering Plans. The form of Certification is illustrated as the lower portion of Exhibit B-3 of the Rules. Within thirty (30) days of receipt of said Certification, Owner shall issue the Permit that will authorize Licensee's Attachments to the poles that were certified. The Permit form is illustrated in Exhibit B-4 of the Rules. If the Certification is not received within the thirty-day (30) period, Owner may declare the Attachment an Unauthorized Attachment, hereinafter defined.

5.9 Within sixty (60) days of completion of the Make Ready Construction Work for each Application, Owner may on its own, or in response to written request of Licensee, prepare a revised estimate to reflect the actual Owner's Cost of the Make Ready Construction Work. If the revised estimate shows the actual cost is less than the Make Ready Construction Cost Estimate, then the difference shall be refunded to Licensee. If the revised estimate shows the actual construction cost is more than the Make Ready Construction Cost Estimate, the difference will be billed to the Licensee to be paid within thirty (30) days of the date of the billing. Interest at twelve (12%) per centum per annum shall accrue on undisputed balances unpaid after thirty (30) days.

ARTICLE 6
SECONDARY POLE ATTACHMENTS

6.1 A Secondary Pole is a pole installed for the express purpose of providing required clearances for a service loop to a customer's location. Without exclusion or limitation of other poles that serve or qualify as Secondary Poles, a Secondary Pole typically services only one customer or building as the case may be, does not have transformers or other electrical equipment on it, is located outside the main line, and supports Owner's wires with less than 500 volts.

6.2 When in the process of installing service for a single customer or customers served from a single Secondary Pole, Licensee may attach its drop wire to Owner's Secondary Pole without advance notice to Owner and without a Permit first being issued.

6.3 Licensee will disclose all new Secondary Pole Attachment(s) to Owner no later than twenty-five (25) days after the end of the month in which the Attachment was placed by completing an Application the form of which is illustrated in Exhibit B-1 of the Rules, with the required Application Fee.

6.4 Owner will, within thirty (30) days of receipt of the Application, issue a Permit as requested

6.5 Owner will not be responsible for any line clearance or tree trimming for the sole benefit of Licensee required for drop wires connected to Secondary Poles.

ARTICLE 7
OVERLASHING

7.1 Licensee may overlash its Attachments where such activity will not cause the Attachment to become Non-Compliant with the NESC and the Rules. Licensee must provide upon Owner's request a certification from a Registered Professional Engineer in the State of North Carolina or an authorized

representative of Licensee stating that the new attachments are compliant and that the overlashing did not cause such facilities to become Non-Compliant. If the Licensee's Engineer or representative or Owner determines that overlashing resulted in the Attachment becoming Non-Compliant, then the requirements specified in Article 11 apply.

7.2 There shall be no additional annual Attachment Fee for overlashing of Licensee's existing facilities.

7.3 Licensee shall disclose the identification of any third party that desires to overlash to its facilities on Owner's poles. Licensee may not overlash to the facilities of a third party on Owner's poles.

7.4 Excepting disconnected service drops, Licensee agrees to remove non-working cables from Owner's poles.

7.5 Licensee will notify Owner in writing of all new overlashings no later than thirty(30) days after the end of the month in which the Attachment was overlashed. The notice shall contain the pole number, location, type of overlash, any of the facilities overlashed, and date of overlash.

ARTICLE 8
EASEMENTS AND RIGHTS-OF-WAY FOR LICENSEE'S ATTACHMENTS

8.1 Owner does not warrant or assure to Licensee any right-of-way privileges, uses or easements. Licensee shall be responsible, as required by law, for obtaining its own governmental permits and lawful easements from any third party property owner(s), lien holder(s), and other necessary and appropriate parties. Under no circumstances shall Owner be liable to Licensee or any other party in the event Licensee is prevented by a third party from placing and/or maintaining its Attachments on Owner's poles. Accordingly, Owner's acceptance of Licensee's Application and issuance of a Permit shall never be construed otherwise.

8.2 Licensee will defend and hold harmless Owner against any claims by third parties that the necessary easements were not obtained, any third party claims for trespass, or any other third party-instituted cause of action. Should a final order be entered by a court of competent jurisdiction requiring Licensee to remove its Attachments, Licensee shall do so forthwith, and upon its failure to do so within seven (7) days of such final order, Owner may remove Licensee's facilities without incurring any obligation to Licensee for loss or damage to Licensee's facilities.

ARTICLE 9
MAINTENANCE AND TRANSFERS

9.1 Owner shall, at its own expense, maintain its poles in accordance with industry standards, codes, and practices including the NESC and the Owner's Rules, and shall replace, reinforce, or repair poles as necessary to keep all poles compliant with such standards, codes and practices.

9.2 Licensee shall require that all employees, contractors, or employees of contractors who work on Owner's poles are properly qualified and trained in climbing and working on Owner's poles safely, and that such individuals will abide by the clearance requirements and safe work practices as outlined in the NESC and OSHA regulations. Licensee shall specifically and adequately warn, by reasonable means, each and every employee and contractor of the inherent dangers of making contact with Owner's electrical conductors and/or electrical equipment before such employees or contractors are permitted to perform work on or near Owner's facilities. Licensee shall require, as a part of its process for qualifying

contractors, that said contractors notify their employees of the inherent dangers of making contact with electrical facilities.

9.3 Licensee expressly assumes responsibility for determining the condition of all poles to be used by Licensee, whether for the placement of Attachments, maintaining or rearranging Attachments, or for any other reasons. Except for performing transfer work from unserviceable poles to replacement poles, Licensee shall not permit its employees or contractors to work on poles that are known to be unserviceable until Owner has corrected the unserviceable condition or has determined that the pole is serviceable. Licensee will notify Owner if any of Licensee's employees, agents, contractors, or employees of contractors become aware of unserviceable poles or other conditions, whether hazardous or otherwise, that require the attention of Owner for evaluation and possible correction. Such notification will be provided to Owner in the manner specified in Exhibit B-5 of the Rules or by any other reasonable means in the circumstances. Owner agrees that, upon written notification, it will replace any pole that has become unserviceable at Owner's Cost when Owner has actually determined that the pole in question actually is unserviceable for its intended purpose unless the pole has been damaged by Licensee or its agents, servants, employees or contractors, in which case the cost of replacement of the pole will be borne by Licensee.

9.4 Existing Permit(s) shall remain valid for any Attachment transfers to new poles when replacement or relocation is necessary.

9.5 Owner may transfer Licensee's Attachment(s) at the time of the pole replacement or relocation and Licensee shall pay Owner's cost upon invoice. In the event Owner does such work, except for gross negligence or willful misconduct, Owner shall not be liable for any loss or damage to Licensee's facilities which may result therefrom or for any liability, loss or damage to Licensee or any other party claiming damages. If Owner elects not to transfer Licensee's Attachment(s), Owner shall notify Licensee of the need to transfer its Attachment(s) and Licensee shall do so within sixty (60) days of such notice. Licensee shall advise Owner when the transfer is complete in the manner specified in the Rules. In the event of extraordinary circumstances, Owner may elect to grant an extension of the sixty (60) day period to Licensee.

9.6 If a transfer to be completed by Licensee is not completed by the end of the 60 day period or the extended time period granted by Owner, the Unauthorized Attachment Fee and the Unauthorized Attachment Daily Fee specified in Exhibit "A" shall also apply from the date on which the 60 day period or the extended time period expired, and shall continue until Owner transfers Licensee's Attachments or Owner receives notification that Licensee has transferred its Attachment. In addition, if Licensee does not transfer its Attachments within the 60 day period or the extended time period and the delay forces Owner to make a special return trip to the job site to remove the old pole, then the cost incurred by the Owner to return to the job site and remove the old pole will be paid by the Licensee.

ARTICLE 10
UNAUTHORIZED ATTACHMENTS

10.1 An Unauthorized Attachment is an Attachment placed after the Commencement Date without a Permit obtained pursuant to the Rules and pursuant to Article 5 or Article 6 herein or that is not part of the work performed pursuant to Article 5 or Article 6 or Article 7 herein. Owner will notify Licensee of any Unauthorized Attachment when discovered, as set forth in Exhibit B-6.

10.2 Licensee agrees to pay Owner an Unauthorized Attachment Fee, per pole, in the amount stated in Exhibit A. Licensee shall, within thirty (30) days after being notified, remove such Unauthorized Attachment or will submit an Application following the provisions of Article 5.

10.3 If Licensee fails to remove the Unauthorized Attachment or to submit an Application within the thirty (30) day period, then Licensee shall also pay to Owner an Unauthorized Attachment Daily Fee as specified in Exhibit A, which shall continue until a Permit is issued or until the Unauthorized Attachment is removed and Owner has been notified in writing of such removal.

10.4 At any time after the thirty (30) day period, Owner may remove the Unauthorized Attachment without liability and Licensee shall pay Owner's reasonable cost of such removal and the Unauthorized Attachment Daily Fee shall terminate as of the date of the removal.

ARTICLE 11
NON-COMPLIANT ATTACHMENTS

11.1 A Non-Compliant Attachment is a Permitted Attachment found to be in violation of the Rules or in violation of the NESC in effect on the date of the Attachment, or is not attached in accordance with the Make Ready Engineering Plans. Owner will notify Licensee of the Non-Compliant Attachment as provided in Exhibit B-7. Compliance with the NESC and the Rules will be determined with reference to the date the Attachment(s) was made as documented by available records maintained by Owner and/or Licensee. Attachments made prior to the date of this Agreement will be considered compliant if they were NESC compliant when installed.. Licensee will not be responsible for the cost of correcting Non-Compliant Attachment(s) resulting from "build downs" or which otherwise were or could have been created by Owner.

11.2 Licensee will submit to Owner its plans for corrective action, including the schedule for completion of all work (the "Correction Plan) for Owner's approval, within forty-five (45) days of notification. The time period may be extended by Owner if Licensee is diligently pursuing development of a plan and implementation of corrective action. If Licensee does not provide the Correction Plan within the forty-five (45) day period, Owner may revoke the Permit and declare the Attachment(s) Unauthorized and the provisions of Article 10 apply.

11.3 If Owner rejects the Correction Plan in its reasonable judgment, Owner and Licensee will work together in good faith so that Licensee can develop a Correction Plan that is satisfactory to Owner. If ninety (90) days after Owner's rejection of the initial Correction Plan, Owner and Licensee have not agreed on a Correction Plan, then Owner may revoke the Permits for the poles involved and declare the Attachment(s) Unauthorized, invoking the provisions of Article 10.

11.4 Rearrangements and changes to Licensee's Attachments required by the approved Correction Plan shall be made by Licensee, and shall be made at Licensee's expense unless the Non-Compliant Attachment results from attachments or use of poles by other licensees or Owner.

11.5 All work described in the approved Correction Plan must be completed within ninety (90) days of the schedule specified in such Correction Plan or, in the event of extraordinary circumstances, within the additional time granted by Owner. If Licensee fails to complete such work within said timeframe, Owner may revoke the Permit(s) and declare the Attachment(s) as Unauthorized Attachment(s), invoking the provisions of Article 10.

11.6 Licensee shall notify Owner of completion of such corrections using the form of Exhibit B-8 attached hereto and Owner will issue a Permit for such corrected Pre-Existing Attachment(s) without Licensee making further application.

11.7 In the case of an Attachment that is not compliant with the NESC and that is in Owner's reasonable judgment a safety hazard, then the thirty (30) day period described in Article 10 and Article 11 may be changed to seven (7) days.

11.8 No act or failure to act by Owner with regard to any Attachment that does not conform to the NESC or other requirements of this Agreement shall be deemed as ratification of the Non-Compliant Attachment.

ARTICLE 12
ATTACHMENTS EXISTING AT COMMENCEMENT DATE

12.1 Owner requires a formal written Permit for any and all Attachments excepting overlashing as specified in Article 7. Any Attachment that existed prior to the Commencement Date ("Pre-Existing Attachment") of this Agreement and which is counted in the first actual inventory conducted under this Agreement pursuant to Article 4 will be considered an Authorized Attachment. The attachments counted in such first actual inventory, plus all new attachments permitted following the Commencement Date, shall be the base line of authorized attachments for any later attachment inventories.

12.2 Owner may complete one (1) NESC compliance audit of Licensee's Attachments at Licensee's expense, as shown in Exhibit A. Without Licensee submitting any additional Applications, Owner shall issue a Permit for each pole found to be compliant during said audit. .

12.3 Attachments having Permit. Pre-Existing Attachment(s) found to be non-compliant with the NESC as in effect as of the date of the initial Attachment will require the Licensee to correct the compliance problem, unless the non-compliance resulted from use or attachment by other licensees or by Owner. Licensee shall make all arrangements, modifications and changes necessary to correct the Non-Compliant Attachment within forty-five (45) days of notification by Owner. If such correction is not completed within the given timeframe for any reason, Licensee shall be required to submit a Correction Plan to Owner consistent with the provisions in Article 11 herein. Upon correction of any such Non-Compliant Attachment, Owner will provide or re-issue a Permit.

12.4 Attachments without Permit. Owner shall issue a Permit for each pole found to be compliant during said audit without Licensee making application. For each Pre-Existing Attachment without Permit found to be non-compliant with the NESC, Licensee shall make application for Permit and pay the Engineering Fee, as shown in Exhibit A, within sixty (60) days of written notice from Owner to Licensee of such non-compliance and the provisions of Article 5 apply. Should Licensee fail to make application within the sixty (60) day period required then Owner may declare the Attachments as Unauthorized Attachments and the provisions of Article 10 apply.

ARTICLE 13
ATTACHMENTS REMAINING AT END OF TERM

13.1 Licensee may make additional Attachments to Owner's poles after the Agreement has been terminated provided that Owner and Licensee are engaged in good faith negotiations to enter into a new Agreement

13.2 If either party terminates this Agreement with no intent to negotiate a new Agreement or if good faith negotiations fail to produce a new Agreement within 180 days following termination, Licensee shall remove its Attachments from the poles of Owner within a mutually agreed upon schedule. If the parties are unable to agree upon a schedule for removal after seven (7) consecutive days following the termination of this Agreement, Owner shall specify the schedule for removal.

ARTICLE 14
RECOVERY OF SPACE BY OWNER

14.1 Owner may, at any time, pursuant to a bona fide development plan that reasonably and specifically demonstrates a need for the space in the provision of Owner's core electric utility service, reasonably require the space occupied by Licensee's Attachments on Owner's poles for core electric utility purposes. Licensee shall rearrange its Attachments to other available space on such poles at Licensee's expense or, at Licensee's option, remove such Attachments within forty-five (45) days after receipt of notification from Owner of Owner's need for such space. If Owner requires the space in order to provide electric utility service to one of its customers, the forty-five (45) day period is changed to fifteen (15) days. If the work is not completed within the specified time period, Owner may declare the Attachment as an Unauthorized Attachment, invoking the provisions of Article 10. Costs of replacing existing poles or placing new poles to accommodate Owner's business needs shall be borne by Owner.

ARTICLE 15
ABANDONMENT OF POLES

15.1 Owner may abandon pole(s) upon thirty (30) days notice to Licensee using the form provided as Exhibit B-9. Licensee must remove or transfer all Attachments from abandoned poles within the same thirty (30) days unless granted additional time by Owner. Owner will not unreasonably withhold consent of such request for additional time. If Owner has no Attachment(s) on said poles and Licensee has not removed or transferred its Attachment(s) therefrom, Owner may (1) revoke Licensee's Permit for that pole and declare the Attachment to be Unauthorized or (2) remove Licensee's Attachment(s) at Licensee's expense, with no liability except in the case of gross negligence or willful misconduct by Owner or Owner's employees, agents, or contractors. Neither rebate nor apportionment of fees shall be precipitated by Owner's abandonment of a pole or poles.

15.2 Licensee may, at any time, discontinue use of a pole by removing therefrom any and all Attachments it may have thereon. Billing shall cease when Owner has been notified in writing in accordance with the form provided as Exhibit B-10 of the Rules.

15.3 Following such removal, no Attachment shall again be made to such pole until Licensee submits a Permit Application and receives a new Permit as provided in Article 5 of this Agreement and the Rules or until Licensee installs facilities pursuant to Article 6 or Article 7 of this Agreement.

ARTICLE 16
RIGHTS OF OTHER PARTIES

16.1 Nothing herein shall be construed to limit the right of Owner, by contract or otherwise, to confer upon others, not parties to this Agreement, nondiscriminatory rights or privileges to use the poles covered by this Agreement. Rights granted to third parties shall not infringe upon the rights of the Licensee in this Agreement.

16.2 If Licensee's new Attachment requires rearranging any other user's Attachment on Owner's pole(s), Licensee shall give notice thereof to such user prior to making its own Attachment and shall

cooperate with the other user in the rearrangement of facilities. Licensee hereby acknowledges that it shall bear the expense of necessary rearrangement of other user's Attachment(s), provided such costs are reasonable and are no more than the actual cost of doing the work. Licensee does not have the right to rearrange the facilities of other users except with written permission from such user. Any Attachment privileges granted to Licensee hereunder shall be subject to any nondiscriminatory rights or privileges heretofore granted by Owner.

16.3 If other users require the rearrangement of Licensee's Attachments in order to attach their facilities under the authority of Make Ready Construction plans approved by Owner for such other user's work, Licensee agrees to reasonably cooperate with such user in scheduling and performing the work and the other user shall bear the expense of such rearrangement, provided that any cost charged to the other user shall be reasonable and shall be no more than Licensee's actual cost of doing the work.

ARTICLE 17
ASSIGNMENT OF RIGHTS

17.1 Subject to the terms of Article 7 in this Agreement, Licensee shall not permit any other user to use its Attachment(s) and may not sublicense any of its rights under this Agreement to any other user without the disclosure of such user to Owner.

17.2 Licensee shall not assign or otherwise dispose of this Agreement, or of any of its rights or interests hereunder without the prior written consent of Owner, such consent not to be unreasonably withheld. Provided, however, Licensee may assign or transfer this Agreement and the rights and obligations hereunder to any entity controlling, controlled by, or under common control with Licensee without the consent of Owner, but upon thirty (30) days prior written Notice to Owner detailing the assignment and the relationship between Licensee and such entity. No such permitted assignment shall relieve Licensee, the permitted assignee, or any other party liable to Owner from any obligations, duties, responsibilities, or liabilities to Owner under this Agreement and the use is in strict compliance with Agreement. This Agreement shall be binding upon the successors and/or assigns of both parties.

17.3 Nothing contained herein is intended to interfere with Licensee's leasing fibers or capacity in its facilities, if such use is in strict compliance with the provisions of this Agreement. The renting or leasing of fibers or capacity in its facilities specifically does not give Licensee's customer the right to any kind of access to Owner's poles and Licensee's customer is specifically prohibited from climbing Owner's poles or otherwise working on the facilities that are attached to Owner's poles unless Licensee's customer is working as a contractor for Licensee under the terms of a written agreement.

ARTICLE 18
WAIVER OF TERMS OR CONDITIONS

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

ARTICLE 19
PAYMENT OF TAXES

19.1 Each party shall pay all taxes and assessments lawfully levied on its own poles or property attached to poles. Taxes and the assessments which are levied on its poles shall be paid by Owner thereof, but the portion of any tax (except income taxes), fee, or charge levied on Owner's poles solely because of their use by Licensee shall be paid by Licensee.

ARTICLE 20
INSURANCE

20.1 Licensee shall take out and maintain throughout the period during which this Agreement shall remain in effect the following minimum insurance:

A. Workers' compensation insurance covering all employees of Licensee pursuant to North Carolina law. Contractors, employees of contractors, subcontractors and employees of subcontractors who shall perform any of the obligations of Licensee hereunder, shall be required by Licensee to take out and maintain such insurance, whether or not such insurance is required by the laws of the state governing the employment of any such employee. If any employee is not subject to the workers' compensation laws of such state, such insurance shall extend to such employee voluntary coverage to the same extent as though such employee were subject to such laws.

B. Public liability and property damage liability insurance covering all operations under this Agreement with limits for bodily injury or death in any one event not less than $2,000,000.00 and limits for property damage not less than $1,000,000.00.

C. Automobile liability insurance for owned and hired automobiles with limits of not less than $2,000,000.00 for injury or death in any one event and limits for property damage not less than $1,000,000.00.

20.2 The policies of insurance shall be in such form and issued by such insurer as shall be consistent with industry practices.

20.3 Licensee shall furnish to Owner, at the beginning of this Agreement and at least annually thereafter (and more frequently upon the reasonable request of owner) a certificate evidencing compliance with the requirements of this Article 20. This certificate will list Owner as an additional insured and will provide that in the event of cancellation of any of the said policies of insurance, the insuring company shall give all parties named as insureds thirty (30) days prior notice of such cancellation.

20.4 To the extent allowed by applicable law, Licensee shall not be prohibited from self-insuring and will provide Owner with proof of adequacy and reliability self-insurance.

ARTICLE 21
SERVICE OF NOTICES

21.1 It is expressly agreed and understood between Owner and Licensee that any Notice required to be given to either Owner or Licensee pursuant to this Agreement shall be in writing and sent by US Mail, or by recognized national overnight delivery service, and shall be deemed received upon actual delivery or refusal of delivery as evidenced by the records of the US Postal Service or delivery service as the case may be.

21.2 Notices shall be sent addressed as follows:

If to Licensee: **Time Warner Cable of Newport**
500 Time Warner Drive
Newport, NC 28570

If to Owner: **Jones-Onslow EMC**
259 Western Blvd.
Jacksonville, NC 28786
Attention: Joint Use Coordinator

or to such other address as either party may designate by Notice to the other party from time to time in accordance with the terms of this Article.

ARTICLE 22
SUPPLEMENTAL AGREEMENTS

22.1 Neither Owner nor Licensee is under any obligation, express or implied, to amend, supplement or otherwise change or modify any of the provisions of this Agreement. However, if the parties agree to amend, supplement or otherwise change or modify any of the provisions of this Agreement, then any such amendment, supplement, change or modification, to be enforceable, must be evidenced by written documentation duly executed by both parties. Without any such duly executed, written documentation of any amendment, supplement, change or modification, any oral discussions relating thereto shall not be binding upon Owner or Licensee.

22.2 Nothing in the foregoing shall preclude the parties to this Agreement from preparing in writing such supplemental operating routines or working practices as they mutually agree to be necessary or desirable to effectively administer the provisions of this Agreement so long as each party has at least one copy of such operating routines and/or working procedures.

ARTICLE 23
DEFAULT

23.1 The following shall be an event of Default:

(1) If Licensee defaults in the payment of any fees or other undisputed sums due and payable to Owner under this Agreement and such default continues for a period of thirty (30) days after Notice of such default has been given by Owner to Licensee or,

(2) With regard to Licensee in a matter that does not involve safety, and with regard to Owner in any matter, if either party shall violate or default in the performance of any covenants, agreements, stipulations or other conditions contained herein (other than the payment of fees and other sums) for a period of thirty (30) days after Notice of such violation or default has been given by the non-defaulting party to such defaulting party or, in the case of a default not curable within thirty (30) days, if such defaulting party shall fail to commence to cure the same within thirty (30) days and proceed diligently until corrected, or,

(3) If in a matter that does under the NESC or the Rules involve safety, (i) Licensee violates or defaults in the performance of any covenants, agreements, stipulations or other conditions contained herein and fails to commence to cure the same immediately upon Notice and thereafter proceed to pursue diligently until corrected or (ii) if the correction takes longer than thirty (30) days or, in the case of a default that is not curable within thirty (30) days, if Licensee shall fail to commence to cure the same within thirty (30) days and proceed diligently until corrected.

23.2 In the event of Default, Owner may at any time thereafter for so long as the default condition exists do any one or all of the following: (1) Declare this Agreement to be terminated in its entirety; (2) Terminate the Permits covering the pole or poles in respect to which such default or non-compliance shall have occurred; (3) Refuse to issue any more Permits; or, (4) Stop all Make Ready Construction Work and retain any monies that have been paid, or any combination of these remedies or those set out herein and in Section 23.3.

23.3 Whenever Owner finds that Licensee is allegedly in Default of this Agreement, a written notice shall be given to Licensee. The written notice shall describe in reasonable detail the alleged Default so as to afford the Licensee an opportunity to remedy the violation. Licensee shall have 30 days subsequent to receipt of the notice in which to correct the Default before Owner may exercise any of the above-referenced remedies. Licensee may, within 10 days of receipt of notice, notify Owner that there is a dispute as to whether a Default has, in fact, occurred. Such notice by Licensee shall specify with particularity the matters disputed by Licensee and shall stay the running of the above-described time.

Owner and Licensee shall then schedule a meeting to resolve the issues within 10 days of Owner's receipt of the notice of dispute. If resolution cannot be met, default will be declared and Owner may enforce any options available under this article. The time for Licensee to correct any alleged violation may be extended by Owner if the necessary action to correct the alleged violation is of such a nature or character as to require more than thirty (30) days within which to perform provided Licensee commences corrective action within the same thirty (30) days and thereafter exercises due diligence to correct the violation.

23.3 If Licensee defaults in the performance of any work that it is obligated to do under this Agreement, Owner may elect to do such work, and Licensee shall reimburse Owner for Owner's reasonable costs in completing such work. If Owner elects to do such work, Owner shall not be liable for any loss or damage to Licensee's facilities which may result therefrom or for any liability, loss or damage to Licensee or any other party claiming actual damages, except when caused by Owner's gross negligence or willful misconduct.

23.4 The remedies set forth in this Article are cumulative and in addition to any and all other remedies Owner may have at law or in equity.

23.5 The existence of a Default shall not relieve Licensee of the requirements in Article 10 or Article 11 unless the Agreement is terminated in its entirety.

23.6 Where Owner's reasonable approval or consent is required, it shall be reasonable for Owner to withhold consent if Licensee is in default of this Agreement and has not cured same within the timeframe provided in the Agreement (or is not diligently pursuing such cure).

ARTICLE 24
INDEMNIFICATION

24.1 Licensee agrees to indemnify Owner against and to defend and hold Owner harmless from any and all claims, demands, damages, penalties, costs, liabilities, expenses and losses arising from or based upon any act, omission or negligence of Licensee or Licensee's agents or employees or arising from or based upon any breach of Licensee's covenants under this Agreement.

24.2 Owner agrees to indemnify and hold Licensee harmless from any and all claims, demands, damages, penalties, costs, liabilities, expenses and losses arising from or based upon any act, omission or negligence of Owner or Owner's agents or employees or arising from or based upon any breach of Owner's covenants under this Agreement.

ARTICLE 25
CONSEQUENTIAL LOSS OR DAMAGE

25.1 Notwithstanding any provision contained herein to the contrary, neither party shall be liable to the other in any way for indirect or consequential losses or damages, however caused or contributed to, in connection with this Agreement or with any equipment or service governed hereby.

ARTICLE 26
FORCE MAJEURE

26.1 Neither Party shall be liable for any delay or failure in performance of any part of this Agreement resulting from acts of God, acts of civil or military authority, embargoes, epidemics, war, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, power blackouts, or unusually severe weather. In the event of any such excused delay in the performance of a party's obligation(s) under this Agreement, the due date for the performance of the original obligation(s) shall be extended by a term equal to the time lost by reason of the delay.

ARTICLE 27
OWNER'S COST

27.1 "Owner's Cost" and "Cost" when used in this Agreement shall include reasonable material and labor costs, equipment, engineering, permits, right-of-way, land clearing, insurance and reasonable overhead.

ARTICLE 28
NO WARRANTY OF RECORD INFORMATION

28.1 From time to time, Licensee may purchase or otherwise obtain from Owner records and other information relating to Owner's outside plant facilities. Licensee acknowledges that such records and information provided by Owner may not reflect field conditions and that physical inspection is necessary to verify presence and condition of outside plant facilities and Right-of-Way. In providing such records and information, Owner does so as a convenience to Licensee and Owner assumes no liability or responsibility to Licensee or any Third Party for errors and omissions contained therein.

ARTICLE 29
MISCELLANEOUS PROVISIONS

29.1 If Owner requests, Licensee shall become a member of the National Joint Use Notification System (the "NJUNS") and maintain the capability of receiving messages from NJUNS and shall utilize such capability.

29.2 Neither party, by mere lapse of time, shall be deemed to have waived any breach by the other party of any terms or provisions of this Agreement. The waiver by either party of any such breach shall not be construed as a waiver of subsequent or different breaches or as a continuing waiver of such breach.

29.3 Should any court of law or administrative or governmental entity with jurisdiction declare any provisions of this Agreement to be void or unenforceable, the remaining provisions of the Agreement shall to the extent practicable remain in full force and effect.

29.4 Nothing contained in this document, or in any amendment or supplement thereto, or inferable herefrom, shall be deemed or constructed to (1) make Licensee the agent, servant, employee, joint venturer, associate, or partner of Owner, or (2) create or establish any partnership, joint venture, agency relationship or other affiliation or association between Owner and Licensee. The parties hereto are and shall remain independent contractors. Neither party shall have the right to obligate or bind the other party in any manner to any third party. It is understood that this document enables only a license in favor of Licensee strictly in accordance with its written provisions.

29.5 Each party represents that it has the full power and authority to enter into this Agreement and to convey the rights herein conveyed.

29.6 This Agreement is deemed executed in and shall be construed under the laws of the State of North Carolina.

29.7 The terms "notify," "notification" and "advise" as used in this Agreement reflect communications between Owner and Licensee in administering the Agreement's terms. Such communication shall be in writing, which may include NJUNS, email, facsimile or other method as specified in the Rules. These terms are not to be confused with the term "Notice" in Article 21, Service of Notices.

29.8 Within this Agreement, words in the singular number shall be held and construed to include the plural, and words in the plural number to include the singular, and the use of any gender shall be applicable to all genders unless the context otherwise requires. Titles appearing at the beginning of any subdivisions hereof are for convenience only. They do not constitute any part of such subdivisions, and shall be disregarded in construing the language contained in such subdivisions. The use of the words "herein," "hereof," "hereunder" and other similar compounds of the word "here" shall, unless the context dictates otherwise, refer to this entire Agreement and not to any particular paragraph or provision. The term "person" and words importing persons as used in this Agreement shall include firms, associations, partnerships (including limited partnerships), limited liability companies, joint ventures, trusts, corporations and other legal entities, including public or governmental bodies, agencies or instrumentalities, as well as natural persons.

29.9 Unless the context clearly indicates otherwise, as used in this Agreement, the term "Licensee" means the party or parties named on the first page hereof or any of them. The obligations of Licensee hereunder shall be joint and several. If any Licensee, or any signatory who signs on behalf of any Licensee, is a corporation, partnership, limited liability company, trust, or other legal entity, Licensee and

any such signatory, and the person or persons signing for Licensee, represent and warrant to Owner that this instrument is executed by Licensee's duly authorized representatives.

ARTICLE 30
CONFIDENTIALITY

30.1 In the absence of a separate Confidentiality Agreement between the parties, if either party provides confidential information to the other in writing and identified as such, the receiving party shall protect the confidential information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information. The parties agree to use their best efforts to avoid disclosing to each other confidential information that is not reasonably required for the administration of this Agreement. Neither party shall be required to hold confidential any information which (1) becomes publicly available other than through the recipient, (2) is required to be disclosed by a government or judicial order, rule or regulation, (3) is independently developed by the recipient, or (4) becomes available to the recipient without restriction from a third party.

30.2 The obligations set forth in Article 30 shall survive the expiration or termination of this Agreement for a period of two (2) years.

IN WITNESS WHEREOF, JONES-ONSLOW Electric Membership Corporation and Time Warner Entertainment-Advance/Newhouse Partnership, a New York General Partnership by their duly authorized representatives have executed this Pole Attachment License Agreement as of the Day and year first written above.

JONES-ONSLOW ELECTRIC MEMBERSHIP CORPORATION

Attest: Norma Bass

By: J. Randall McElroy

Title: Chief Executive Officer

Date: July 18, 2007

TIME WARNER ENTERTAINMENT-ADVANCE/NEWHOUSE PARTNERSHIP, A NEW YORK PARTNERSHIP

Attest: BJ Stephens

By: Thomas E. Adams

Title: Division President

Date: 07/09/2007

EXHIBIT A
SCHEDULE OF FEES

Application Fee.		
- for new attachments	$15.00	Per pole
- for notification of secondary attachments	$25.00	Per submission *(Exhibit B-7)*
NESC Compliance Audit Fee (with one-year advance notice):	$15.00	Per pole
Make Ready Engineering Fee:	$	To be provided for Each Permit request based on level of effort.

TWC will pay the following amounts of annual rental per pole, pursuant to Section 4.1, subject to credit, depending on the final result in *Time Warner Entertainment-Advance/Newhouse Partnership v. Carteret-Craven Electric Corp.*, Case No. 4:05-CV-146-D2 (4th Cir.):

2006 -- $15.00
2007 -- $16.00
2008 -- $17.00
2009 -- $18.00
2010 -- $19.00
2011 and thereafter -- $19.00 increased by Consumer Price Index for All Customers, South Urban Non-metropolitan (less than 50,000).

If the District Court's decision in *Time Warner Entertainment-Advance/Newhouse Partnership v. Carteret-Craven Electric Corp.* is affirmed in all respects, then the rates shown above shall not be subject to further challenge by TWC. If the decision is not affirmed in all respects, the rate will be calculated according to the final results of further proceedings in said case, and any difference between the rate so calculated and the amounts already paid will be credited to Licensee's future annual pole attachment fee obligations.

Other Fees

Unauthorized Attachment Fee (for attachments made after initial inventory after the Commencement Date without Permit)	$112.50	Per pole.
Unauthorized Attachment Daily Fee:	$5.00	Per pole

Attachment fees shall not be adjusted for any attachments added or removed during a billing period and fees shall be paid for the entire billing period if the Attachment occupied a pole for any part thereof. Failure of Licensee to give written notice to Owner of the removal of any Attachment will result in charges being continued until such notice is given.

EXHIBIT B

RULES AND PRACTICES OF OWNER FOR ATTACHMENTS

This Exhibit provides implementation details in connection with the process for Licensee's applying for and ultimately receiving a Permit to attach to Owner's pole(s). These procedures are subject to modification by owner from time to time.

For purposes of administering this agreement, notification and/or advice shall be sent by email followed by U.S. Mail. Following is contact information for the parties:

If to Owner: **Jones-Onslow EMC**
259 Western Blvd.
Jacksonville, NC 28786
Attention: Joint Use Coordinator
Tel: 910-353-1940
Fax: 910-353-8000

and for Licensee shall be directed to:
Time Warner Cable of Newport
500 Time Warner Drive
Newport, NC 28570
Attention: Joint Use Coordinator
Tel: 252-223-6411
Fax: 252-223-6459

The above addresses are for administrative matters only and do not modify the addresses for Notice pursuant to Article 21.

A. Process for Permitting Attachments (Make Ready)

1. Application for Permit shall be made on the Application attached as Exhibit B-1. Licensee shall also indicate the poles to which it desires to attach by including a drawing or maps showing such poles.

2. Licensee's Construction Plans shall contain full specifications of the facilities to be installed including:

   a) Size and type of messenger.
   b) Size and type Attachments.
   c) Specification of the installation rating and type of guy and anchor assemblies proposed to be used by Licensee.

3. Owner shall respond to Licensee within the timeframe provided Article 5 by sending Response to Application, attached hereto as part of Exhibit B-1.

4. The Make Ready Construction Cost Estimate and Schedule will be sent to Licensee using the form attached hereto as Exhibit B-2.

5. When the Make Ready Construction Work is complete Owner shall notify Licensee that any Make Ready Construction Work has been completed and request Certification by Licensee using the form attached hereto as Exhibit B-3.

6. Licensee's Certificate of Compliance shall be the lower portion of the form attached hereto as Exhibit B-3.

7. Owner shall provided a Permit to Licensee for Attachments using the form attached hereto as Exhibit B-4.

B. Secondary Poles

In connection with Article 6 of the Agreement, Licensee shall use the Permit Application form attached hereto as Exhibit B-1 for the notification.

C. Procedures for Notification of Pole Transfers

Unless both parties agree to use NJUNS, it is expressly agreed and understood between Owner and Licensee that any Notice required to be given to either Owner or Licensee pursuant to this Agreement shall be in writing and sent by US Mail, or by recognized national overnight delivery service, and shall be deemed received upon actual delivery or refusal of delivery as evidenced by the records of the US Postal Service or delivery service, as the case may be.

D. Supplemental Rules Regarding Licensee's Attachments

1. All Licensee's Attachments to poles shall be installed in a manner to ensure compliance with the requirements of the NESC in effect at the time of the installation as clarified or exceeded by Owner's specifications shown in these Rules and in the Exhibits thereto.

(a) Attachments shall meet a minimum vertical clearance of 15.5 ft. under the conductor temperature and loading conditions specified in Rule 232A over all areas which are subject to truck traffic. Truck traffic is defined as any mobile unit exceeding a total height of eight feet. These areas would allow and be susceptible to truck traffic under the line because of a lack of any type of physical obstruction, even though truck traffic under the line would not be a normal occurrence. This requirement includes, but is not limited to, roads, streets, driveways, unpaved vehicular passages, parking lots, open areas where it would be possible for a truck to pass under the line, etc.

(b) Attachments shall meet a minimum vertical clearance of 13.0 ft. under the conductor temperature and loading conditions specified in Rule 232A over areas that would not normally be susceptible to truck traffic. These areas are areas that are accessible by truck traffic, but the access is not easy or normally anticipated because of some physical obstruction, such as fences, hillsides, ditches, embankments, maintained lawns, wood lines, hedges, etc. These areas do include the ground under lines that would be accessible by Owner's equipment for the purpose of line maintenance, restoration work, and right-of-way maintenance.

(c) Attachments shall meet a minimum vertical clearance of 9.5 ft. under the conductor temperature and loading conditions specified in Rule 232A over areas that are impossible for a vehicle to travel under the line and only a person on foot can walk under the line. These areas are defined as having permanent impediments that would prohibit the passage of a vehicle, including Owner's equipment.

(d) All Attachments installed before the effective date of this contract shall have at least thirty (30) inches vertical clearance under the effectively grounded parts of transformers, transformer platforms, capacitor banks and sectionalizing equipment and at least forty (40) inches clearance under the current carrying parts of such equipment which is energized at 14,400 volts or less between phase and ground Clearances not specified in this rule shall be determined by reference to the National Electrical Safety Code. If Licensee has made any Attachments which would otherwise have been in compliance with the requirement above, and after which Owner has made any enhancements or improvements to Owner's system that have placed such Attachments in non-compliance with this requirement, any steps necessary to bring such Attachments back into compliance shall be the responsibility of Owner at its sole expense.

(e) All new Secondary Pole Attachments (less than 600 volts) shall have at least forty (40) inches vertical clearance to the top of all conduit or underground riser guard coverings.

(f) All new Primary Pole Attachments shall have at least twelve (12) inches vertical clearance to the top of all conduit or underground riser guard coverings.

2. It shall be the responsibility of Licensee to attach at proper height, to achieve proper clearance, and to construct its facilities in accordance with the Agreement. If Licensee finds that it cannot make an Attachment on a pole and be in compliance with the NESC and the Agreement then Licensee shall notify Owner in writing so that the pole can be re-surveyed and appropriate measures taken to make it ready for attachment.

3. All Attachments, cabinets and enclosures that are separated by a distance of six (6) feet or less must be grounded by bonding to the existing pole ground with #6 solid, bare, soft drawn copper wire.

   Bonding must be provided between all above ground metallic power and communications apparatus (pedestals, terminals, apparatus cases, transformer cases, etc.) that are separated by a distance of six (6) feet or less.

4. No bolt used by Licensee to attach its facilities shall extend or project more than two (2) inches beyond its nut.

5. All Attachments or facilities of Licensee shall have at least two (2) inches clearance from unbonded hardware.

6. The location of all power supplies and connecting wires and cables on Owner's poles shall be approved in writing by Owner. Subject to the provisions of Article 6 and Article 7 in the Agreement, no Attachments shall be made without prior approval of Owner No power supply service connections shall be made by Owner until Licensee has completed installation of an approved fused service disconnect switch or circuit breaker, and, if

required, following an electrical inspection from appropriate government officials. An application for power supply service must be made by Licensee to Owner before service is connected

7. All communications protective devices will be designed and installed with operating limits sufficient for the voltage and current which maybe impressed on the communications plant in the event of a contact with the supply conductors.

8. All anchors and guys shall be installed and in effect prior to the installation of any of Licensee's messenger wires or cables. Licensee's guylead must be of sufficient length and strength to accommodate loads applied by the Attachments. No anchor shall be placed within five (5) feet of any existing anchor unless approved in writing by the Owner. Guy markers shall be installed on every guy attached to owner's pole.

9. Licensee shall not attach any down guy to Owner's anchors or to other attaching user's anchors without prior written permission from Owner or such other user as the case may be.

10. All down guys, head guys or messenger dead ends installed by Licensee shall be attached to the pole by the use of "through" bolts. Such bolts placed in a "bucking" position shall have at least three (3) inches vertical clearance. Under no circumstances shall Licensee install down guys, head guys or messenger dead ends by means of encircling poles with such attachments.

11. Owner shall perform all Make Ready Work required for the preparation of Owner's poles for proper attachment by Licensee

12. All Attachments installed after the effective date of the Agreement shall have at least forty (40) inches and, preferably seventy-two (72) inches vertical clearance under the effectively grounded neutral of Owner at supports. Owner may increase the required clearance on a case-by-case basis if, in Owner's reasonable judgment pursuant to Article 14 in the Agreement, Owner may require additional space on the pole for its future utility service requirements.

13. Owner requires strand maps to be furnished showing all poles to which Licensee attaches (excluding secondary and service poles for individual service drops except when such poles are depicted on maps prepared by Licensee in the ordinary course of its business.)

E. Removing Attachments from Owner's Poles

After Licensee removes Attachments from Owner's Poles, Licensee shall notify Owner by sending the Notice of Discontinuance of Attachment to Poles form attached as Exhibit B-11.

F. Plant Conditions Requiring Attention:

If Licensee becomes aware of an unsafe plant condition or other condition that requires the attention of Owner, then Licensee shall notify owner by completing the Notification of Plant Condition form attached hereto as Exhibit B-6 or by any other reasonable means in the circumstances.

EXHIBIT B-1

PERMIT APPLICATION

TO: Jones-Onslow EMC
ATTN: Joint Use Coordinator
259 Western Blvd.
Jacksonville, NC 28546-5736

DATE:

LICENSEE'S TRACKING NUMBER: TWC #2

This is to request a Permit to attach to certain of your poles under the terms and conditions of our License Agreement dated JULY, 2007.

The poles, including proposed construction by Owner, if necessary, for which permission is requested are listed by pole number on the attached and further identified on the attached map, which also bears the above date and Tracking Number.

(For identification of attachments to be installed, please include on your list Owner's pole number, size and type of strand, size and type of cable, and the number of existing cables and strands)

Licensee understands the need to obtain all authorizations, permits, and approvals from all Municipal, State, and Federal authorities to the extent required by law for Licensee's proposed service and to obtain all easements, licenses, rights-of-way and permits necessary for the proposed use of these poles and will do so prior to providing any service that involves your poles.

Signed: _____ Company: _____

Name: _____ Title: _____

Tel: _____ Email: _____

✂----------✂

RESPONSE TO APPLICATION

TO: DATE:

LICENSEE'S TRACKING NUMBER: _____

This is to advise you that the above request for Permitting Attachments to certain poles of this system is approved for the poles shown on the attached, subject to the terms of the Agreement.

The Make Ready Engineering Fee is $_____. Please remit this amount so that Make Ready Engineering Plans can be prepared. A detailed schedule for completion of the Make Ready Engineering Plans (not to exceed forty-five (45) days for applications involving 30 or fewer poles) is attached.

Name: _____ Signed: _____
Jones-Onslow EMC

EXHIBIT B-2

MAKE READY CONSTRUCTION COST ESTIMATE AND SCHEDULE FOR MAKE READY CONSTRUCTION WORK

TO: DATE:

JOB NUMBER (Tracking Number): _____

In connection with the above referenced work request, attached is the Make Ready Construction Cost Estimate for attaching Licensee's facilities to Owner's poles pursuant to the plans submitted by Licensee and approved by Owner.

Please remit payment for the cost estimate in the amount of $_____ so that the Make Ready Construction Work can be scheduled for the poles requiring make ready work.

No. of poles: _____ *Location:* _____

It is estimated that the completion of the Make Ready Construction Work will require _____ weeks following receipt of payment of the Make Ready Construction Cost Estimate provided that payment is received by _____. If it is received afterward, this schedule is subject to revision.

Name: _____ Signed: _____
Jones-Onslow EMC

Title: _____

Tel: _____

EXHIBIT B-3

NOTIFICATION OF CONSENT TO ATTACH AND REQUEST FOR CERTIFICATION

TO: DATE:

The Make Ready Construction Work for the approved poles is complete. Attachments in connection with Job Number _____ must be made within 120 days of the date above.

A Permit for these attachments will be issued upon receipt of the Certification below.

Name: _____ Signed: _____
Jones-Onslow EMC

Title: _____

Tel: _____

✂----------✂

CERTIFICATE OF COMPLIANCE

TO: Jones-Onslow EMC
Attn: Joint Use Coordinator
259 Western Blvd.
Jacksonville, NC 28546-5736

DATE:

JOB NUMBER: _____
-OR-
TRACKING NUMBER: _____

LICENSEE: _____

I HEREBY CERTIFY that the Attachments made under the above Job/Tracking Number are of sound engineering design and fully comply with the National Electrical Safety Code (NESC), latest edition, Article 3 of the Agreement and the Rules and were constructed substantially as provided in the Make Ready Engineering Plans.

Note. If this Certifies only a portion of the poles under this Request Number, please include a list of the poles to which this Certificate applies and the number of Attachments on each pole being certified.

BY: _____ Title: _____
(Signature)

Print Name: _____

EXHIBIT B-4

PERMIT FOR ATTACHMENT

TO: DATE:

JOB NUMBER: _____

The primary poles designated below are hereby Permitted for Attachment:

Pole Identification	Number of Attachments Licensed on this Pole as of the Above Date

Note: Attachments permitted automatically as a result of an NESC audit are indicated with an asterisk (*).

Name: _____ Signed: _____
Jones-Onslow EMC

Title: _____

EXHIBIT B-5

NOTIFICATION OF PLANT CONDITION

TO: Jones-Onslow EMC
Attn: Joint Use Coordinator
259 Western Blvd.
Jacksonville, NC 28546-5736

DATE:

This is to notify you that the following plant condition has been observed and requires Owner's attention:

Please contact for additional information:

Name: _____ Signed: _____

Company: _____

Title: _____

Tel: _____

Email: _____

EXHIBIT B-6

NOTIFICATION OF UNAUTHORIZED ATTACHMENT

TO: DATE:

This is to notify you that the following Attachments to Owner's poles are Unauthorized and require Licensee's immediate attention. Licensee has thirty (30) days from the date of this notice to submit Application for a Permit. An invoice is attached for the Unauthorized Attachment Fee and an additional charge, the Unauthorized Attachment Daily Fee, will be incurred until the issue in question is resolved, pursuant to Article 10 of the Agreement.

Attachment Location	**Problem**

Name: _____

Title: _____

Tel: _____

Signed: _____
Jones - Onslow EMC

EXHIBIT B-7

NOTIFICATION OF NON-COMPLIANT ATTACHMENT

TO: DATE:

THE FOLLOWING ATTACHMENTS TO OWNER'S POLES ARE NON-COMPLIANT AND REQUIRE LICENSEE'S IMMEDIATE ATTENTION.

☐ **The Attachments listed were found on Permitted poles.**
Licensee has forty-five (45) days from the date of this notice to submit a Correction Plan pursuant to Article 11 of the Agreement.

☐ **The Attachments listed were found as a result of a National Electric Safety Code Audit.**
Licensee has sixty (60) days from the date of this notice to apply for a Permit pursuant to Article 12 of the Agreement.

Attachment Location	Problem

Name: _____ Signed: _____
Jones – Onslow EMC

Title: _____

Tel: _____

CERTIFICATE OF CORRECTION

(To be made within thirty (30) days after correction of non-compliance)

TO: Jones-Onslow EMC
Attn: Joint Use Coordinator
259 Western Blvd.
Jacksonville, NC 28546-5736

DATE:

LICENSEE: _____

I HEREBY CERTIFY that Licensee's attachments to the poles of Jones-Onslow EMC, Circuit No. _____ and Section No. _____, which were found to be non-compliant, have been corrected.

These attachments were corrected according to sound engineering design principals and fully comply with the National Electrical Safety Code (NESC), latest edition.

All corrections were constructed substantially as provided in the proposed correction plan presented by Licensee.

SIGNATURE: _____

Name: _____

Title: _____

Tel _____

EXHIBIT B-9

NOTICE OF ABANDONMENT OF POLES

TO: DATE.

This is to notify you that Owner's Attachments have been removed from the following poles and that Licensee has thirty (30) days from the date of this notice to remove its Attachments pursuant to Article 15 of the Agreement.

Pole Identification	Date Abandon

Name: _____ Signed: _____
Jones-Onslow EMC

Title: _____

Tel: _____

EXHIBIT B-10

NOTICE OF DISCONTINUANCE OF ATTACHMENT TO POLES

TO: Jones-Onslow EMC
Attn: Joint Use Coordinator
259 Western Blvd.
Jacksonville, NC 28546-5736

DATE:

LICENSEE: _____

This is to notify you that Licensee's Attachments have been removed from the following poles and that billing for those Attachments should cease as of the indicated date.

Pole Identification	Date Attachment was Removed	Date Billing Ceases

Name: _____ Signed: _____

Title: _____

Tel: _____

Email: _____

EXHIBIT 2

Hogan Lovells

December 14, 2011

Gardner F. Gillespie
Partner
+1.202.637.8796
gfgillespie@hhlaw.com

By Federal Express

Jones-Onslow EMC
259 Western Blvd.
Jacksonville, NC 28786
Attention: Joint Use Coordinator

Re: Notice of Termination of Pole Attachment License Agreement

Dear Sir or Madam:

Time Warner Entertainment – Advance/Newhouse Partnership ("Time Warner") hereby gives its notice to terminate the Pole Attachment License Agreement currently in effect between Time Warner and Jones-Onslow EMC ("Jones-Onslow"), in accordance with Articles 2 and 21 of the agreement.

North Carolina's pole attachment statute (N.C.G.S. 62-350) provides for a period of 90 days (from the date of request) for a cable operator and membership corporation to negotiate rates, terms and conditions of a pole attachment agreement, and for review by a Business Court if either party believes that an impasse has been reached prior to the expiration of this period. Time Warner Cable hopes to be able to come to agreement that is acceptable to both parties and hereby requests an opportunity to negotiate subject to the provisions of the statute.

In order for us to negotiate what we believe is a fair pole attachment rate under the statute, we would like to have a better idea of Jones-Onslow's pole-related costs. While the statute may not mandate application of the "FCC formula," it does provide for "consideration . . . [of] the rules and regulations applicable to attachments by each type of communications service provider under Section 224 of the Communications Act of 1934, as amended . . . ." One cannot take those rules and regulations properly into consideration without knowing the pole owner's pole-related costs. I have attached a form listing the information that we

will need. Please provide us with that information as soon as possible, along with any other information you may have relating to the cost of providing pole attachments.

Please let me know if you have any questions about what we need. We look forward to working with you to come to a mutually beneficial agreement.

Sincerely,

Gardner F. Gillespie
Ray Rutngamlug

GFG/gs

Attachment

BASIC POLE ATTACHMENT QUESTIONNAIRE – ELECTRIC DISTRIBUTION

Please provide all information, calculations and backup data supporting the rental rate for poles as calculated by you.

In addition, please provide the following as of year-end 2011:

- Total Number of all Distribution Poles owned* _____
- Gross (original) Investment in all distribution poles owned _____
- Gross Investment in utility plant _____
- Accumulated Depreciation in utility plant _____
- Gross Distribution Plant Investment _____
- Accumulated Depreciation Distribution Plant _____
- Total General and Administrative Expenses _____
- Maintenance Expense for Poles and Overhead Plant _____
- Gross investment in Overhead Conductors _____
- Gross investment in Service Drops _____
- Accumulated Depreciation related to Distribution Pole Investment _____
- Accumulated Depreciation related to Overhead Conductors _____
- Accumulated Depreciation related to Investment in Service Drops _____
- Depreciation Rate for Poles ** _____
- Cost of Money*** _____

---

* If you use any kind of "equivalent pole" number, provide full details and back up regarding how the number is derived. If jointly-owned poles are owned in percentages other than 50/50, please indicate the percentage owned by you and the percentage owned by other owners.

** Please specify how this rate was determined.

*** Please explain in detail how this number was determined

Please also provide a copy your annual report reflecting your costs and expenses for the last year, as of year end 2011.

EXHIBIT 3

Law Offices of John Drew Warlick, P.A.
Attorneys at Law
313 New Bridge Street
Jacksonville, North Carolina 28540

John Drew Warlick, Jr.
Robert A. Warlick
Deke S. Owens
John P. Swart
Davidson S. Myers

Mailing Address
P.O. Drawer 1006
Jacksonville, NC 28541-1006

March 16, 2012

Mr. Gardner F. Gillespie
Hogan Lovells US LLP
Columbia Square
555 Thirteenth Street, NW
Washington, District of Columbia 20004

Dear Mr. Gillespie:

Jones-Onslow Electric Membership Corporation ("Jones-Onslow") has asked me to confirm receipt of your letter dated December 14, 2011, terminating the Pole Attachment License Agreement between Jones-Onslow and Time Warner Entertainment – Advance/Newhouse Partnership ("Time Warner").

Jones-Onslow understands that Time Warner continues to insist that attachment rates for electric cooperatives in North Carolina be set using the rate-setting method that the Federal Communications Commission (the "FCC") applies to investor-owned utilities, at least while the lawsuit commenced by Time Warner against the Town of Landis remains pending. Jones-Onslow has not been required to use the FCC method before and does not believe that using that method results in appropriate pole rental rates, nor does it believe that any law requires it to use a method that was never intended to apply to electric cooperatives. Perhaps disagreements associated with the method used by Jones-Onslow to calculate proposed rental rates should be deferred until the decision in the Landis case is issued to avoid needless distractions and disputes.

For example, even though your letter acknowledges that the applicable state statute does not mandate the use of the current FCC method, your letter also requests that Jones-Onslow complete a form for calculating a pole rental rate based on what appears to be the FCC method. Jones-Onslow proposes that the parties pursue their negotiations without preconditions. Toward that end, Jones-Onslow notes that your letter requests the annual report for the year ending as of December, 2011. Enclosed is a copy of the annual report of Jones-Onslow for the year ending December, 2010. The comparable report for the year-ending December, 2011, has not yet been finalized, but a copy of that report will be provided once filed with Rural Utilities Services ("RUS"). If after reviewing these annual reports you believe Time Warner lacks sufficient information exists to determine a just and reasonable rental rate, please advise what if any information you believe is lacking from those reports that you deem necessary based on the assumption that the FCC method does not apply.

Your letter also references the 90-day period referenced in N.C.G.S. § 62-350. As you know, Time Warner has proposed the development of a "template" for electric cooperatives to use to avoid disputes over non-rate terms and conditions and is working with the North Carolina Association of Electric Cooperatives ("NCAEC") to develop a mutually agreeable draft. Jones-Onslow is a member of NCAEC and anticipates using a NCAEC template to develop its final agreement for Time Warner and other parties attaching to its poles. NCAEC is expected to circulate a draft to its members in the next few weeks, and anticipates providing Time Warner with a mark-up as soon thereafter as practicable. We trust these out-of-court efforts will make it possible for Time Warner and Jones-Onslow to reach agreement without litigation.

With kind regards, I am

Very truly yours,

Robert A. Warlick

RAW/sj
enclosure

Jones-Onslow EMC • • • Form 7

Line	Description	December Actual	December Budget	YTD A	YTD Budget B	2010 Budget
1	Operating Revenue	8,241,350	10,046,906	120,159,233	115,786,008	115,786,008
3	Cost of Power	10,417,555	6,811,332	81,662,749	74,765,908	74,765,908
5	Distribution Expense - Operations	181,047	146,648	1,649,554	1,759,777	1,759,777
6	Distribution Expense - Maintenance	472,075	289,017	3,952,699	3,578,200	3,578,200
7	Consumer Accounts Expense	521,107	311,567	4,068,608	3,738,808	3,738,808
8	Customer Service & Informational Expense	87,003	60,004	786,685	720,052	720,052
9	Sales Expense	0	0	0	0	0
10	Administrative and General Expense	656,722	566,875	6,646,779	6,364,199	6,364,199
11	Total Operation & Maintenance Expense	12,335,508	8,185,443	98,767,074	90,926,944	90,926,944
12	Depreciation Expense	665,137	651,497	7,810,365	7,817,966	7,817,966
13	Tax Expense - Property	77,517	85,833	1,021,684	1,030,000	1,030,000
14	Tax Expense - Other	260,719	310,692	3,856,496	3,728,309	3,728,309
15	Interest on Long-Term Debt	281,770	415,131	3,567,178	4,981,572	4,981,572
17	Interest Expense - Other	27,298	41,412	383,790	496,943	496,943
18	Other Deductions	19,366	13,033	183,559	184,400	184,400
19	Total Cost of Electric Service	13,667,316	9,703,042	115,590,147	109,166,134	109,166,134
20	Income from Electric Business	-5,425,966	343,864	4,569,086	6,619,874	6,619,874
21	Non Operating Margins - Interest	7,742	7,444	97,969	89,330	89,330
23	Non Operating Margins - Other	-11,342	-5,409	247,812	215,091	215,091
24	G & T Capital Credits	1,510,726	0	1,510,726	0	0
25	Other Capital Credits	85,651	152,000	641,493	517,000	517,000
	Net Income Not Assigned to Members	1,592,777	154,035	2,498,000	821,421	821,421
27	Total Retained Income	-3,833,189	497,899	7,067,086	7,441,295	7,441,295
	TOTAL TIER	-16.56	1.75	2.16	2.21	2.21

EXHIBIT 4

Hogan Lovells

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F +1 202 637 5910
www.hoganlovells.com

Gardner F. Gillespie
Partner
gardner.gillespie@hoganlovells.com
D +1 202 637 8796

April 12, 2012

Robert A. Warlick, Esq.
Law Offices of John Drew Warlick, P.A.
P.O. Drawer 1006
Jacksonville, NC 28541-1006

Re. Jones Onslow

Dear Mr. Warlick:

Thank you for your letter of March 16, 2012.

Time Warner Cable is willing to attempt to negotiate a template agreement with the NCAEC and to have such a template, once agreed to, apply to Jones Onslow. We had hoped to have a response to our draft agreement from NCAEC long before this, but we do recognize that it is unlikely that any rates will be agreed to until after the court issues a decision in the *Landis* case. Both of the parties in the *Landis* case relied on rate-setting methodologies based on the same general cost information, although the cost allocation methods were quite different. We think it makes sense at least to gather that information now, and we would request that Jones Onslow provide us its RUS Report for 2011, as soon as it is filed with the RUS. In addition to the information submitted with that Report, we will need to know the number of distribution poles in Jones Onslow's property records and its deprecation rate for poles. We will also need to know Jones Onslow's cost of debt. When we have all of that information, we should be in a position to calculate a pole rate, however the *Landis* court rules.

Thank you for your prompt cooperation. Please do not hesitate to call or email me if you have any questions about the information we require.

Sincerely,

Gardner F. Gillespie

Partner
gardner.gillespie@hoganlovells.com
D +1 202 637 8796

EXHIBIT 5

Hogan Lovells

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gardner gillespie@hoganlovells com

November 29, 2012

By Certified Mail

Robert A. Warlick
Law Offices of John Drew Warlick, P.A.
313 New Bridge Street
Post Office Drawer 1006
Jacksonville, NC 28541-1006

Re: Time Warner Cable – Negotiation of Template Agreement and Rates with North Carolina Municipalities and Electric Cooperatives

Dear Mr. Warlick:

We write to notify you that Time Warner Cable will be commencing discussions in the next few weeks with representatives from the North Carolina Association of Electric Cooperatives and ElectriCities of North Carolina to develop a new template pole attachment agreement and rate methodology for use with North Carolina electric cooperatives and municipally-owned and operated electric utilities. The purpose of these discussions is to provide cable companies, cooperatives, and municipalities with the ability to quickly reach agreement on the rates, terms, and conditions applicable to the attachment of cable facilities on cooperative and municipal poles in North Carolina pursuant to the North Carolina pole attachment statute (N.C.G.S. 62-350).

We believe that the use of a template agreement and rate methodology negotiated and mutually agreed upon by cable, cooperative, and municipal representatives in North Carolina will prove to be advantageous in comparison to the current negotiating environment characterized by numerous versions of pole contract documents and a lack of consensus on rate calculations.

Although we have triggered our right to negotiate a new agreement and rates with Jones-Onslow Electric Membership Corporation pursuant to the North Carolina pole attachment statute, we propose that we suspend such discussions

pending completion of the template agreement, which we believe will serve as a suitable basis on which to recommence negotiations, particularly since you have also indicated support of this effort to develop a template agreement.

We will provide additional details as well as a copy of the template agreement as soon as they are available. We look forward to working with you to come to a mutually beneficial agreement.

Sincerely,

Gardner F. Gillespie
Ray Rutnganlug

GFG/gs

EXHIBIT 6

Hogan Lovells

Hogan Lovells US LLP
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February 21, 2013

By Certified Mail

Jones-Onslow Electric Membership Corporation
259 Western Boulevard
Jacksonville, NC 28546
Attention: Joint Use Coordinator

Re: Jones-Onslow EMC Invoices ENG-1205, ENG-1206, and ENG-1207

Dear Sir or Madam:

Time Warner Cable has received Invoices ENG-1205, ENG-1206, and ENG-1207 for attachment to Jones-Onslow's poles for 2013 at the rate of $20.42 per attachment. As you know, Time Warner Cable terminated its pole attachment agreement with Jones-Onslow effective July 18, 2012 and triggered its right to negotiate a new agreement and rate pursuant to the North Carolina pole attachment statute (N.C.G.S 62-350) on December 4, 2011.

As a result, there is no contract currently in place obligating Time Warner Cable to pay a $20.42 rate. In addition, as we proposed in our letter dated November 29, 2012, we have suspended discussions on a new agreement pending our negotiating of a template pole attachment agreement and rate methodology with the North Carolina Association of Electric Cooperatives.

However, Time Warner Cable recognizes that it is appropriate for Jones-Onslow to receive payment for Time Warner Cable's attachments to its poles pending completion of a new agreement and also pending the ongoing appeal in the Landis litigation at the North Carolina Business Court.

In particular, Time Warner Cable proposes to pay Jones-Onslow the annual rate of $7.50 per pole, or the rate calculated pursuant to the FCC's formula for cable attachments, whichever is higher. As you know, the North Carolina statute provides for consideration of the rules and regulations applicable to pole attachments under Section 224 of the Communications Act in evaluating an agreement's rates, terms and conditions. Thus, it is our position that use of the FCC's cable formula will generate a reasonable rate under the North Carolina statute.

In the event that Jones-Onslow believes that the FCC formula would yield a higher rate, we request that Jones-Onslow provide the pole-related cost data requested in the attached questionnaire. Otherwise, if Jones-Onslow will prepare a revised invoice reflecting the proposed $7.50 rate, Time Warner Cable will promptly process the invoice for payment.

Please let us know if you have any questions. We look forward to reaching a mutually beneficial agreement with Jones-Onslow.

Sincerely,

Gardner F. Gillespie
Ray Rutngamlug

GFG/gs

Enc.

cc: Robert A. Warlick, Law Offices of John Drew Warlick, P.A.

BASIC POLE ATTACHMENT QUESTIONNAIRE – ELECTRIC DISTRIBUTION

Please provide all information, calculations and backup data supporting the rental rate for poles as calculated by you.

In addition, please provide the following as of year-end 2012:

- Total Number of all Distribution Poles owned* _____
- Gross (original) Investment in all distribution poles owned _____
- Gross Investment in utility plant _____
- Accumulated Depreciation in utility plant _____
- Gross Distribution Plant Investment _____
- Accumulated Depreciation Distribution Plant _____
- Total General and Administrative Expenses _____
- Maintenance Expense for Poles and Overhead Plant _____
- Gross investment in Overhead Conductors _____
- Gross investment in Service Drops _____
- Accumulated Depreciation related to Distribution Pole Investment _____
- Accumulated Depreciation related to Overhead Conductors _____
- Accumulated Depreciation related to Investment in Service Drops _____
- Depreciation Rate for Poles ** _____
- Cost of Money*** _____

---

* If you use any kind of "equivalent pole" number, provide full details and back up regarding how the number is derived. If jointly-owned poles are owned in percentages other than 50/50, please indicate the percentage owned by you and the percentage owned by other owners.

** Please specify how this rate was determined.

*** Please explain in detail how this number was determined

Please also provide a copy your annual report reflecting your costs and expenses for the last year, as of year end 2012.

EXHIBIT 7

Jones-Onslow
259 Western Boulevard • Jacksonville, North Carolina 28546-5736
www.joemc.com • 910-353-1940 • 800-682-1515
Electric Membership Corporation

March 6, 2013

Mr. Mark Swindell
Construction Coordinator
Time Warner Cable
265 Center Street
Jacksonville, NC 28546

RE: Time Warner Cable Pole Attachments

Dear Mr. Swindell:

We are in receipt of your recent request for new pole attachments. The agreement governing these attachments was terminated by Time Warner Cable effective July 18, 2012. Therefore, Time Warner shall not attach any new cables and/or facilities to our main poles, lift poles or any other property owned by Jones-Onslow until a new agreement has been executed. We will treat any such attachments as trespasses and take appropriate action to enforce our rights in that regard.

Sincerely,

J. Ronald McElheney
Chief Executive Officer

JRM:dj

EXHIBIT 8

Jones-Onslow
Electric Membership Corporation
259 Western Boulevard • Jacksonville, North Carolina 28546-5736
www.joemc.com • 910-353-1940 • 800-682-1515

April 24, 2013

Mr. Gardner F. Gillespie
Hogan Lovells US LLP
Columbia Square
555 Thirteenth Street, NW
Washington, District of Columbia 20004

Dear Mr. Gillespie:

I am writing in response to your letter dated February 21, 2013 which addresses 2013 invoices sent to Time Warner Cable for pole attachments. It is my understanding from NCAEC that attempts to develop a template for guidance for member cooperatives with Time Warner has been unsuccessful and those efforts have been ceased.

The proposed Agreement that you were forwarded on January 2, 2013 was adopted by our Board of Directors on October 23, 2012. This Agreement set forth proposed rates, terms and conditions and has been executed by all other attaching entities and those bills have been paid in full for 2013.

In your letter of February 21, 2103 you adopted a rate of $7.50 per pole or the rate calculated pursuant to the FCC formula, whichever is higher. Jones-Onslow objects to the use of any FCC method or rates for purposes of attachments made to Jones-Onslow poles because rates derived from such methods do not adequately cover costs to Jones-Onslow. Moreover, because we currently have existing agreements with the other attaching entities in place and have charged and collected amounts based on just, reasonable and lawful rates in excess of $7.50 there is no reasonable possibility that Jones-Onslow will agree to FCC rates or methods of setting rates at much lower levels. It is our position that the rate of $20.42 is a just, reasonable and lawful rate.

Until a new adjudicated or negotiated agreement is in place, Time Warner Cable is not authorized to make any new attachments on any poles owned by Jones-Onslow. We will treat any new attachments as trespasses and take appropriate action to enforce our rights in this regard. In the event that Jones-Onslow discovers any new unauthorized attachments, they will be removed immediately. With respect to the existing attachments, Jones-Onslow will take all available steps to collect the outstanding balance currently owed by Time Warner and considers all existing attachments to be unauthorized. This includes transferring those attachment invoices to Time Warner's metered accounts which are subject to Jones-Onslow collection procedures and includes disconnection for non-payment.

Sincerely,

J. Ronald McElheney
Chief Executive Officer

JRM:dj

CERTIFIED MAIL™

Jones-Ons

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04/24/2013
US POSTAGE $06.11º

ZIP 28546
011D11628376

Mr. Gardner F. Gillespie
Hogan Lovells US LLP
Columbia Square
555 Thirteenth Street, NW
Washington, District of Columbia 20004

A Touchstone Energy® Partner

20004$1109

EXHIBIT 9

SheppardMullin

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1300 I Street, NW, 11th Floor East
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202.218.0000 main
202.218.0020 main fax
www.sheppardmullin.com

Gardner F. Gillespie
202.469.4916 direct
202.312.9453 fax
ggillespie@sheppardmullin.com

File Number: 0100-922952

May 24, 2013

VIA E-MAIL AND U.S. MAIL

Mr. J. Ronald McElheney
Chief Executive Officer
Jones-Onslow Electric Membership
Corporation
259 Western Boulevard
Jacksonville, NC 28546-5736

Re: Jones-Onslow-Time Warner Cable Pole Agreement

Dear Mr. McElheney:

Thank you for speaking with me on the phone Wednesday. This is in response to your letter dated April 24, 2013 in which you advised us that until a new pole attachment agreement is in place with Time Warner Cable ("TWC"), Jones-Onslow will not authorize any new TWC attachments to Jones-Onslow poles, will consider existing attachments to be unauthorized, and will transfer TWC's remaining pole attachment invoices to metered accounts subject to disconnection for nonpayment. Furthermore, it is our understanding that Jones-Onslow personnel have barred TWC personnel from performing any work on its attachments to Jones-Onslow poles. Your letter indicates that Jones-Onslow's basis for its actions is that the $20.42 rate set forth in the pole agreement unilaterally adopted by your Board of Directors is just and reasonable, and that efforts to develop a template cooperative agreement with the NCAEC have ceased.

These actions by Jones-Onslow have damaged TWC's ability to carry on its business, and threaten further disruption and significant injury to TWC.

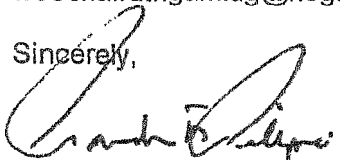
TWC disagrees with Jones-Onslow's basis for the actions described above. Although our discussions with the NCAEC have not yet produced a template contract, such discussions have not ceased. In addition, the North Carolina pole attachment statute (N.C.G.S 62-350) does not permit a pole owner to unilaterally impose terms, conditions, and rates for attachment to its poles, but provides for consideration of the rules and regulations applicable to pole attachments under Section 224 of the Communications Act in evaluating an agreement's rates, terms and conditions. We expect that the North Carolina courts will provide guidance on these issues in the pending Landis and Rutherford litigation.

In the meantime, in order to avoid further disruption to Time Warner Cable's operations and to avoid the need to seek immediate judicial relief, TWC will pay the remaining balance of pole attachment charges at the $20.42 rate specified in Jones-Onslow's Invoices Nos. ENG-1205, ENG-1206, and ENG-1207. We expect that a check in the amounts that Jones Onslow claims are due will be sent next week. Please note, however, that TWC will make this payment under protest and subject to true up, and will keep an accounting to permit TWC to make any appropriate future adjustments in the accordance with applicable court rulings regarding the determination of pole attachment rates under the North Carolina statute. In addition, we propose to continue operating on an interim basis under the previous pole attachment agreement with Jones-Onslow until a new adjudicated or negotiated agreement is in place. A temporary agreement to this effect is attached.

You indicated on the phone that your Board would be meeting next Tuesday and that you would discuss this matter. Please confirm to us by May 31, 2013 that Jones-Onslow will resume the processing of TWC's permit applications and otherwise permit TWC to access its attachments to Jones-Onslow's poles in recognition of the payment mentioned above and the attached temporary agreement. These arrangements, while far from ideal from our perspective, will allow us to avoid seeking judicial relief and will preserve the positions of the parties for later resolution – hopefully by agreement.

We look forward to resolving this matter. I will be out of the country next week, but if you have any questions, please feel free to contact my co-counsel, Ray Rutngamlug, at weecha.rutngamlug@hoganlovells.com or by phone at 202-637-6430.

Sincerely,



Gardner F. Gillespie
for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

GFG/gs

cc: Ray Rutgnamlug

INTERIM AGREEMENT FOR ATTACHMENT TO POLES

THIS INTERIM AGREEMENT FOR ATTACHMENT TO POLES ("Interim Agreement") is made and entered into on the last date executed below (the "Effective Date") by and between Jones-Onslow Electric Membership Corporation ("Licensor") and Time Warner Cable ("TWC") (Licensor and TWC collectively the "Parties").

WHEREAS, TWC has attached its equipment to utility poles owned by Licensor; and

WHEREAS, the previous agreement setting forth the terms and conditions applicable to TWC's attachment of its equipment to Licensor's utility poles (the Pole Attachment License Agreement of July 2007, or the "Previous Pole Attachment Agreement") was terminated by TWC in a letter dated December 14, 2011;

WHEREAS, TWC has requested and the Parties intend to negotiate a new agreement pursuant to N.C.G.S 62-350 setting forth the terms, conditions, and rates applicable to TWC's attachment of equipment to Licensor's utility poles (the "New Pole Attachment Agreement"); and

WHEREAS, the Parties wish to ensure that interim terms and conditions for the attachment of equipment to Licensor's poles by TWC are in effect while the Parties negotiate the New Pole Attachment Agreement;

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the Parties do hereby mutually covenant and agree as follows:

1. Notwithstanding the termination described above, the terms and conditions of the Previous Pole Attachment Agreement shall be extended on an interim month-to-month basis until the execution of the New Pole Attachment Agreement. During this period, the attachment of TWC's equipment to Licensor's poles shall be permitted and governed by the terms and conditions of the Previous Pole Attachment Agreement.

2. For attachments made and/or maintained during the term of this Interim Agreement, TWC shall pay Licensor the annual rate specified by the Previous Pole Attachment Agreement. Such payment shall be made under protest, without waiver of TWC's rights, with a reservation of TWC's rights to recover any overcharges, and subject to true-up to the rate mutually agreed upon by the parties in the New Pole Attachment Agreement or set by a court. To the extent that Jones Onslow Invoice Nos. ENG-1205, ENG-1206, and ENG-1207 for pole attachment charges are outstanding as of the effective date of this Interim Agreement, TWC shall submit payment at the rate of $20.42 as specified on those invoices, subject to true-up to the rate mutually agreed upon by the parties in the New Pole Attachment Agreement or set by a court. Such payment shall be made under protest, without waiver of TWC's rights, with a reservation of TWC's rights to recover any overcharges, and subject to true-up to the rate mutually agreed upon by the parties in the New Pole Attachment Agreement.

3. This Interim Agreement shall expire upon the effective date of the New Pole Attachment Agreement.

4. This Interim Agreement represents the complete and exclusive statement of the mutual understanding of the Parties with regard to the subject matter hereof and supersedes all previous written and oral agreements and communications relating to any of the subject matter of this Interim Agreement.

IN WITNESS WHEREOF, the parties hereto have their respective officers who are duly authorized to execute this Interim Agreement below.

LICENSOR:
Jones-Onslow EMC

Date: _____ By _____

Name _____

Title _____

LICENSEE:
Time Warner Cable

Date: _____ By: _____

Name _____

Title _____

EXHIBIT 10

AGREEMENT FOR ATTACHMENT TO POLES

THIS AGREEMENT FOR ATTACHMENT TO POLES ("Agreement") is made and entered into on the last date executed below (the "Effective Date") by and between Jones-Onslow Electric Membership Corporation ("Licensor") and Time Warner Cable Southeast LLC ("TWC") (Licensor and TWC collectively the "Parties").

WHEREAS, TWC has attached its equipment to utility poles owned by Licensor; and

WHEREAS, the previous agreement setting forth the terms and conditions applicable to TWC's attachment of its equipment to Licensor's utility poles (the Pole Attachment License Agreement of July 2007, or the "Previous Pole Attachment Agreement") was terminated by TWC in a letter dated December 14, 2011; and

WHEREAS, the parties wish to continue to operate under the terms of the "Previous Pole Attachment Agreement";

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the Parties do hereby mutually covenant and agree as follows:

1. Notwithstanding the termination described above, the terms and conditions of the Previous Pole Attachment Agreement shall be extended until terminated by either party as provided in the "Previous Pole Attachment Agreement". During the extended period, the attachment of TWC's equipment to Licensor's poles shall be permitted and governed by the terms and conditions of the Previous Pole Attachment Agreement.

2. For attachments made and/or maintained during the term of this Agreement, TWC shall pay licensor the annual rate specified by the Previous Pole Attachment Agreement. TWC reserves its rights to pay under protest.

IN WITNESS WHEREOF, the parties hereto have their respective officers who are duly authorized to execute this Agreement below.

LICENSOR:
Jones-Onslow EMC

Date: June 14, 2013

By J. Ronald McElheney

Name J. Ronald McElheney

Title Chief Executive Officer

LICENSEE:
Time Warner Cable Southeast LLC

Date:_____

By Susan L. Reinhold

Name Susan L. Reinhold

Title Vice President - Engineering

EXHIBIT 11

SheppardMullin

Sheppard Mullin Richter & Hampton LLP
1300 I Street, NW, 11th Floor East
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Ray Rutngamlug
Special Counsel
202.772.5305 direct
202.312.9436 fax
rrutngamlug@sheppardmullin.com

File Number: 0XNT-179245

July 25, 2014

By Certified Mail

Robert A. Warlick
Law Office of John Drew Warlick, P.A.
313 New Bridge Street
P.O. Box 1006
Jacksonville, NC 28541-1006

Re: Time Warner Cable – Jones-Onslow Electric Membership Corporation Pole Attachment Agreement

Dear Mr. Warlick:

Because of recent legal developments that clarify certain aspects of the North Carolina pole attachment statute (N.C.G.S. § 62-350), TWC is reviewing the pole attachment rates that it pays to North Carolina cooperative and municipal utilities. In particular, the North Carolina Business Court has ruled that application of the FCC's formula for calculating pole attachment rates under Section 224 of the Communications Act results in just and reasonable rates under the North Carolina statute.[1] As you know, TWC requested negotiation of a new agreement with Jones-Onslow Electric Membership Corporation pursuant to § 62-350 on December 16, 2011.

In order to ascertain whether Jones-Onslow Electric Membership Corporation's rates are consistent with North Carolina law as clarified by the North Carolina Business Court, TWC requests that Jones-Onslow Electric Membership Corporation provide the cost data specified in the attached questionnaire. We also ask that you provide copies of the primary materials from

[1] *See Rutherford Elec. Mem. Corp. v. Time Warner Entertainment/Advance-Newhouse P'ship*, 13-CVS-231, Order & Opinion (N.C. Sup. Ct. May 22, 2014); *Time Warner Entertainment/Advance-Newhouse P'ship v. Town of Landis*, 10-CVS-1172, Order & Opinion (N.C. Sup. Ct. June 24, 2014).

which the source data was taken. We ask, furthermore, that you provide your response within 20 days from the date of this letter in order to enable us to process your invoices for payment in a timely manner and at the appropriate rate.

Please let us know if you have any questions. Thank you for your attention to this matter.

Sincerely,

Gardner F. Gillespie
Ray Rutngamlug
for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

GFG/gs

cc: Trish McCausland, Time Warner Cable

Enclosure

SMRH:202266260.1

BASIC POLE ATTACHMENT QUESTIONNAIRE – RUS ELECTRIC DISTRIBUTION

Please provide your most recent year-end figures for the following RUS Accounts:

- Total Number of Poles in RUS Account 364 _____
- Gross Pole Investment in RUS Account 364 _____
- Gross Plant Investment (Total Plant In Service Year End) in RUS Account 101 _____
- Accumulated Depreciation in RUS Account 108 for Plant _____
- Gross Distribution Plant Investment (Distribution Plant Year End) _____
- Accumulated Depreciation Distribution Plant (RUS Account 108.6) _____
- Accumulated Deferred Income Taxes (Company) in RUS Account 190 _____
- Accumulated Deferred Income Taxes (Company) in RUS Accounts 281-283 _____
- Total General and Administrative Expenses (RUS Accounts 920-931 and 935) _____
- Maintenance Expense in RUS Account 593 _____
- Gross investment in RUS Account 365 _____
- Gross investment in RUS Account 369 _____
- Accumulated Depreciation related to RUS Account 364 _____
- Accumulated Depreciation related to RUS Account 365 _____
- Accumulated Depreciation related to RUS Account 369 _____
- Depreciation Rate for Poles in RUS Account 364[2] _____
- RUS Account 408.1 _____
- RUS Account 409.1 _____
- RUS Account 410.1 _____
- RUS Account 411.4 _____
- RUS Account 411.1 _____
- Overall Rate of Return or Cost of Money[3] _____
- Please also provide a copy of your annual year-end RUS operation and financial report.

[2] Please specify how this rate was determined.

[3] Please explain in detail how this number was determined.

EXHIBIT 12

SheppardMullin

Sheppard Mullin Richter & Hampton LLP
2099 Pennsylvania Avenue, NW, Suite 100
Washington, D.C. 20006-6801
202.747.1900 main
202.747.1901 main fax
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202.747.1905 direct
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ggillespie@sheppardmullin.com

Ray Rutngamlug
Special Counsel
202.747.1934 direct
202.747.3845 fax
rrutngamlug@sheppardmullin.com

File Number: 0XNT-179245

December 11, 2014

By FedEx

Robert A. Warlick
Law Office of John Drew Warlick, P.A.
313 New Bridge Street
P.O. Box 1006
Jacksonville, NC 28541-1006

Re: **Time Warner Cable – Jones-Onslow EMC Pole Attachment Agreement**

Dear Mr. Warlick:

We write to follow up on our letter to you dated July 25, 2014, in which we requested cost data and calculations to support Jones-Onslow's pole attachment rates. We have yet to receive the requested information or any other response to our letter.

In the interest of resolving this matter quickly, and as an alternative to calculating a rate under the FCC's formula under Section 224 of the Communications Act as we proposed in our July 25 letter, Time Warner Cable would be willing to accept an annual per-pole rate from Jones-Onslow at $6.06 for the period commencing July 18, 2012-present. As you know, the North Carolina Business Court found in its *Rutherford* decision that it was "appropriate" to consider the FCC's formula in calculating rates under the North Carolina pole attachment statute.[1] Further, evidence in the case established that the highest average investor-owned electric utility ("IOU") rate in North Carolina for the years 2010-2013 was $6.06, based on the costs of these utilities. This rate is substantially higher than

[1] *See Rutherford Elec. Mem. Corp. v. Time Warner Entertainment/Advance-Newhouse P'ship*, 2014 WL 2159382 (N.C. Super. Ct. May 22, 2014).

the $2.56-$2.68 rates that were calculated under the FCC's formula based on Rutherford's actual costs. While, as you know, we are not privy to Jones-Onslow's costs, we would propose to apply this $6.06 rate for each of the years at issue in order to determine whether Time Warner Cable is entitled to any credit from Jones-Onslow for overpayments made during that period. Application of this IOU rate would avoid the need for all parties to determine the actual cost-based rate for Jones-Onslow, which would in all likelihood be substantially lower.

We also suggest that the parties agree to a $6.06 rate for a five year period going forward in a new agreement. We propose to use the enclosed template pole agreement as the basis for a new agreement with Jones-Onslow and look forward to your feedback on this agreement.

Time Warner Cable's offer of a $6.06 rate expires within sixty (60) days. Please let us know whether this proposal is acceptable. If so, we will prepare an agreement memorializing this settlement for your review and execution. Otherwise, please provide the cost data and calculations we previously requested on July 25 within sixty (60) days. In either case, we look forward to your feedback on our proposed template pole agreement.

Sincerely,

Gardner F. Gillespie
Ray Rutngamlug
for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

GFG/gs

cc: Trish McCausland, Time Warner Cable

Enclosure

SMRH:203354156.1

From: (202) 747-1900
Gardner F. Gillespie
Sheppard Mullin
2099 Pennsylvania Ave, NW
Suite 100
WASHINGTON, DC 20006

Origin ID: BZSA

FedEx Express

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SHIP TO: (910) 378-0556 BILL SENDER
Robert A. Warlick
Law Office of John Drew Warlick
313 New Bridge Street

JACKSONVILLE, NC 28541

Ref # 0XNT-179245
Invoice #
PO #
Dept #

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EXHIBIT 13

Law Offices of John Drew Warlick, P.A.
Attorneys at Law
313 New Bridge Street
Jacksonville, North Carolina 28540

John Drew Warlick, Jr.
Robert A. Warlick
Deke S. Owens
John P. Swart
Davidson S. Myers
James W. Bateman, III

Mailing Address
P.O. Drawer 1006
Jacksonville, NC 28541-1006

February 12, 2015

Via First Class Mail & E-mail:
Ggillespie@sheppardmullin.com

Mr. Gardner Gillespie
Sheppard, Mullin, Richer & Hampton, LLP
2099 Pennsylvania Avenue, NW, Suite 100
Washington, DC 20006-6801

Re: Time Warner Cable- Jones-Onslow EMC Pole Attachment Agreement

Dear Mr. Gillespie:

I am writing on behalf of our client, Jones-Onslow EMC, and in response to your letter dated December 11, 2014. I have not responded earlier because I feel that a more meaningful response could be made after the Appellate decision in *Rutherford* is released.

I have discussed your offer of $6.06 per pole as well as the other terms which were modified and my client has asked me to decline this offer. The rate is calculated under the FCC's formula and JOEMC, as an electric cooperative, is not subject to the FCC requirements.

As you are aware we have an existing agreement under which Time Warner has reserved it rights to pay under protest. Our client feels that it would be mutually beneficial to continue operating under the existing Agreement until such time as a new agreement can be reached. We are certainly willing to discuss this matter further and hope that we can reach a mutually satisfactory pole attachment agreement.

With kind regards, I am

Very truly yours,

Robert A. Warlick

RAW/sj

EXHIBIT 14

Jones-Onslow
259 Western Boulevard • Jacksonville, North Carolina 28546-5736
www.joemc.com • 910-353-1940 • 800-682-1515
Electric Membership Corporation

August 12, 2015

Mr. Thomas E. Adams, Division President
Time Warner Cable of Newport
500 Time Warner Drive
Newport, NC 28570

Dear Mr. Adams,

As your records reflect, there is an existing pole attachment license agreement, dated July 9, 2007, between our two companies. This agreement was reinstated on June 14, 2013, after termination by Time Warner Cable on December 14, 2011, with the same terms and conditions.

Recently, we undertook an inventory of pole attachments by Time Warner Cable of Newport in certain areas of Jones-Onslow's system. These areas include the following: counties of Onslow, Jones and Town of Swansboro.

Based on information Time Warner Cable of Newport has previously provided to Jones-Onslow, Time Warner Cable of Newport is supposed to have 2,339 attachments to our poles; however, our inventory reflects that there are, in fact, 3,042 attachments. Accordingly, we calculate that there are 703 unauthorized pole attachments to Jones-Onslow's poles.

I bring this matter to your attention for immediate and corrective action. I look forward to your response as to how best to resolve this situation.

Please feel free to communicate directly with me or with Tommy Pritchard, Chief Utility Engineering Officer.

Sincerely,

J. Ronald McElheney
Chief Executive Officer

EXHIBIT 15

Jones-Onslow
Electric Membership Corporation
259 Western Boulevard • Jacksonville, North Carolina 28546-5736
www.joemc.com • 910-353-1940 • 800-682-1515

August 12, 2015

Mr. Thomas E. Adams, Division President
Time Warner Cable of Jacksonville
265 Center Street
Jacksonville, NC 28546

Dear Mr. Adams,

As your records reflect, there is an existing pole attachment license agreement, dated July 9, 2007, between our two companies. This agreement was reinstated on June 14, 2013, after termination by Time Warner Cable on December 14, 2011, with the same terms and conditions.

Recently, we undertook an inventory of pole attachments by Time Warner Cable of Jacksonville in certain areas of Jones-Onslow's system. These areas include the following: counties of Onslow, Jones, Duplin, Pender; cities of Jacksonville, Richlands, Holly Ridge; and Towns of North Topsail Beach, Surf City, and Topsail Beach.

Based on information Time Warner Cable of Jacksonville has previously provided to Jones-Onslow, Time Warner Cable of Jacksonville is supposed to have 6,063 attachments to our poles; however, our inventory reflects that there are, in fact, 9,243 attachments. Accordingly, we calculate that there are 3,180 unauthorized pole attachments to Jones-Onslow's poles.

I bring this matter to your attention for immediate and corrective action. I look forward to your response as to how best to resolve this situation.

Please feel free to communicate directly with me or with Tommy Pritchard, Chief Utility Engineering Officer.

Sincerely,

J. Ronald McElheney
Chief Executive Officer

EXHIBIT 16

Jones-Onslow Electric Membership Corporation

259

E

CERTIFIED MAIL

7014 3490 0000 8172 5047

Mr Thomas E. Adams Division President
Time Warner Cable of Newport
500 Time Warner Drive
Newport, NC 28546

A Touchstone Energy® Partner

28570-5162 RC6

Jones-Onslow
Electric Membership Corporation
259 Western Boulevard • Jacksonville, North Carolina 28546-5736
www.joemc.com • 910-353-1940 • 800-682-1515

November 10, 2015

Mr. Thomas E. Adams, Division President
Time Warner Cable of Jacksonville
265 Center Street
Jacksonville, NC 28546

Mr. Thomas E. Adams, Division President
Time Warner Cable of Newport
500 Time Warner Drive
Newport, NC 28546

Dear Mr. Adams,

On August 12, 2015, I sent you two letters at the two Time Warner Cable ("TWC") addresses above explaining that our inventory showed TWC Jacksonville is attached to 9,243 Jones-Onslow poles instead of the 6,063 poles for which TWC Jacksonville is being invoiced, and that TWC Newport is attached to 3,042 Jones-Onslow poles instead of the 2,339 poles for which TWC Newport is being invoiced. We verified the inventory, added the 347 authorized TWC Duplin poles to TWC Jacksonville, and confirmed that:

- *TWC Jacksonville/TWC Duplin are attached to 9,236 of our poles, meaning that TWC Jacksonville/TWC Duplin have been attaching to 2,826 poles (44%) more than the 6,410 poles for which it has been paying attachment rentals;*

- *TWC Newport is attached to 3,042 of our poles, meaning that TWC Newport has been attaching to 703 poles (30%) more than the 2,339 poles for which it has been paying attachment rentals; and*

- *Collectively, these TWC entities are attached to 12,278 of our poles, meaning that TWC has been attaching to 3,529 poles (40%) more than the 8,749 poles for which it has been paying attachment rentals.*

My August 12 letters three months ago asked for your response about how best to resolve this situation.

On August 21, 2015, Tommy Pritchard of Jones-Onslow provided George Courey of TWC the inventory results by map pole number, and on August 24, 2015 provided him the map access software. TWC has yet to respond.

To assist in resolving this matter, the attached spreadsheet calculates TWC's liability for these attachments to be $1,049,579.19 This liability assumes TWC installed its attachments to our 3,529 poles in equal numbers each year after the 1998 date of our last inventory (3,529/17 per year for 17 years). It includes $530,871.74 in under-billed attachment fees, $68,759.95 in interest at 12%/year (see Agreement Section 4.2), $52,935.00 in Application Fees (Agreement Exhibit A), and $397,012.50 in Unauthorized Attachment Discovery Fees (Agreement Exhibit A).

We look forward to resolving this matter amicably and in a timely manner. Please feel free to communicate directly with me or with Tommy Pritchard, Chief Utility Engineering Officer.

Sincerely,

J. Ronald McElheney
Chief Executive Officer

cc: Thomas B. Magee
Keller and Heckman, LLP

JONES-ONSLOW - TWC

TRUE - UP FROM INVENTORY 1998 THRU 2015

PREVIOUS INVENTORY YEAR	1998

INVENTORY ADJUSTMENT YEAR	2015

# OF YEARS TO BE ADJUSTED	17

TWC -Jacksonville & Duplin
ATTACHED TO
Jones-Onslow

RECORD # POLES ATTACHED	6 410
# ATTACHED POLES COUNTED	9 236
INCREASE IN ATTACHED POLES	2,826

AVERAGE YEARLY INCREASE	166 235

	YEAR	RATE	PRORATED INCREASE	UNDER BILLED AMOUNT
1	1999	$6 22	166	$1 032 52
2	2000	$6 22	332	$2,065 04
3	2001	$6 22	499	$3 103 78
4	2002	$6 22	665	$4 136 30
5	2003	$6 22	831	$5 168 82
6	2004	$6 22	997	$6,201 34
7	2005	$6 22	1164	$7,240 08
8	2006	$15 00	1330	$19,950 00
9	2007	$16 00	1496	$23 936 00
10	2008	$17 00	1662	$28 254 00
11	2009	$18 00	1829	$32 922 00
12	2010	$19 00	1995	$37,905 00
13	2011	$19 27	2161	$41,642 47
14	2012	$20 04	2327	$46 633 08
15	2013	$20 42	2494	$50,927 48
16	2014	$20 64	2660	$54,902 40
17	2015	$20 91	2826	$59,091 66

TOTAL AMOUNT UNDERBILLED BY JONES-ONSLOW FOR PREVIOUS YEARS	*$425,111 97*

TWC - Newport
ATTACHED TO
Jones-Onslow

RECORD # POLES ATTACHED	2,339
# ATTACHED POLES COUNTED	3 042
INCREASE IN ATTACHED POLES	703

AVERAGE YEARLY INCREASE	41 353

	YEAR	RATE	PRORATED INCREASE	UNDER BILLED AMOUNT
1	1999	$6 22	41	$255 02
2	2000	$6 22	83	$516 26
3	2001	$6 22	124	$771 28
4	2002	$6 22	165	$1,026 30
5	2003	$6 22	207	$1,287 54
6	2004	$6 22	248	$1 542 56
7	2005	$6 22	289	$1 797 58
8	2006	$15 00	331	$4 965 00
9	2007	$16 00	372	$5,952 00
10	2008	$17 00	414	$7,038 00
11	2009	$18 00	455	$8 190 00
12	2010	$19 00	496	$9 424 00
13	2011	$19 27	538	$10,367 26
14	2012	$20 04	579	$11,603 16
15	2013	$20 42	620	$12,660 40
16	2014	$20 64	662	$13,663 68
17	2015	$20 91	703	$14,699 73

TOTAL AMOUNT UNDERBILLED BY JONES-ONSLOW FOR PREVIOUS YEARS	*$105,759 77*

TWC UNDERBILLED TOTAL PREVIOUS YEARS (BEFORE INTEREST & FEES)	$530,871.74

YEAR	TOTAL UNDER-BILLED TO TWC BY YEAR	TOTAL UNDER BILLED AMOUNT BY YEAR	INTEREST RATE	INTEREST CHARGE	CUMM BAL W/ INTEREST
1999	$1,287.54	$1,418 16	12 00%	$170 18	$1,457.72
2000	$2,581 30	$2,581 30	12 00%	$309 76	$2 891 06
2001	$3,875 06	$4,260 70	12 00%	$511 28	$4,386 34
2002	$5,162 60	$5,678 86	12 00%	$681 46	$5,844 06
2003	$6,456 36	$7,103 24	12 00%	$852 39	$7,308 75
2004	$7,743.90	$8,521 40	12 00%	$1,022 57	$8,766 47
2005	$9,037 66	$9,037 66	12 00%	$1,084 52	$10,122 18
2006	$24,915 00	$27,405 00	12 00%	$3,288 60	$28,703 60
2007	$29,888 00	$32,896 00	12 00%	$3,947 52	$33,835 52
2008	$35,292 00	$38,845 00	12 00%	$4,661 40	$39,953 40
2009	$41,112 00	$45 234 00	12 00%	$5,428 08	$46,540 08
2010	$47,329 00	$47 329 00	12 00%	$5 679 48	$53,008 48
2011	$52,009.73	$52,009 73	12 00%	$6,241 17	$58,250 90
2012	$58,236 24	$64,087 92	12 00%	$7,690 55	$65,926.79
2013	$63,587 88	$69,958 92	12 00%	$8,395 07	$71,982.95
2014	$68,566 08	$75,439 20	12 00%	$9 052 70	$77,618.78
2015	$73,791 39	$81,193 53	12 00%	$9,743 22	$83,534 61

TWC UNDERBILLED TOTAL 1999-2015 (WITH INTEREST)	$599,681.69

	Add l Poles	$15/Pole	
TWC Jacksonville & Duplin Pole Application Fee	2 826	$	42 390 00
TWC Newport Pole Application Fee	703	$	10 545 00

POLE APPL CATION FEE TOTAL	$52,935 00

	Add l Poles	$112 50/Pole	
TWC Jacksonville & Duplin Unauthorized Attachment Fee	2 826	$	317 925 00
TWC Newport Unauthorized Attachment Fee	703	$	79 087 50

Unauthorized Attachment Fee Total	$397,012.50

TWC UNDERBILLED TOTAL 1999-2015 (WITH INTEREST AND FEES)	$1,049,579.19

EXHIBIT 17

KELLER AND HECKMAN LLP
Serving Business through Law and Science

1001 G Street, N.W.
Suite 500 West
Washington, D.C. 20001
tel. 202.434.4100
fax 202.434.4646

Writer's Direct Access
Thomas B. Magee
(202) 434-4128
magee@khlaw.com

February 9, 2016

Via Email and U.S. Mail

Gardner Gillespie
Sheppard Mullin Richter & Hampton LLP
2099 Pennsylvania Avenue, NW, Suite 100
Washington, D.C. 20006-6801

Re: Jones-Onslow and Time Warner Cable

Dear Gardner:

We have been retained by Jones-Onslow Electric Membership Corporation ("Jones-Onslow") to assist the cooperative in its pole attachment dispute with Time Warner Cable ("TWC"). This letter responds to your December 7, 2015 letter to Ron McElheney, who has retired as CEO. His replacement as CEO is Jeffery Clark, who is copied on this correspondence along with Jones Onslow's outside counsel Robert Warlick.

Your letter accurately reports the results of Jones-Onslow's recent inventory which revealed TWC was attached to 12,278 Jones-Onslow poles instead of the 8,749 poles to which TWC has been paying attachment rentals. Despite this discrepancy, your letter claims TWC is not liable for any back rent, interest, application fees or unauthorized attachment discovery fees.

Article 4.1 of the parties' 2007 Pole Attachment License Agreement requires that "Licensee shall pay a fee in the amount shown in Exhibit A ... for each pole to which Licensee has one or more Attachments." TWC has been attached to 3,529 more poles than it has been paying attachment fees for. Accordingly, any TWC refusal to pay for attachment rental fees violates the Agreement.

Your letter claims that "items like drop poles and other attachments may not have previously appeared as authorized attachments (subject to attachment fees) in JOEMC's records." This of course is the problem; had Jones-Onslow any record of TWC attaching to these 3,529 poles, Jones-Onslow would have billed TWC for them. Regarding drop poles, called "Secondary Poles" in the Agreement, Jones-Onslow has no record of TWC ever disclosing any of its Attachments to Secondary Poles in the entire nine years since the Agreement was entered into, as Article 6 requires ("6.3 Licensee will disclose all new Secondary Pole Attachments(s) to Owner no later than twenty-five (25) days after the end of the month in which the Attachment was placed by completing an Application in the form of which is illustrated in Exhibit B-1 of the Rules, with the required Application Fee.").

Your letter claims Jones-Onslow's request for attachment fees going back 17 years would violate North Carolina's statute of limitations. For good reasons, North Carolina legal principles enable Jones-Onslow full recovery of these unpaid fees. First, TWC is equitably estopped from asserting a statute of limitations defense. In North Carolina, "Equitable estoppel arises when an individual by his acts, representations, admissions or silence, when he has a duty to speak, intentionally or through culpable negligence, induces another to believe that certain facts exist and that other person rightfully relies on those facts to his detriment." *Miller v. Talton*, 112 N.C. App. 484, 488, 435 S.E. 2d 793, 797 (1993). Second, any limitations period is tolled by application of the "continuing wrong" doctrine, whereby a continuing violation results from continual unlawful acts. The statute of limitations does not begin to run until the recurring violations cease, and TWC's continuing failure to report drop pole and other attachments is a continuing wrong. *Williams v. Blue Cross Blue Shield of N.C.*, 357 N.C. 170, 179, 581 S.E. 2d 415, 423 (2003). Third, the three-year statute of limitations for a claim of fraud does not begin to run until discovery of the facts constituting the fraud or mistake, which only just occurred with Jones-Onslow's inventory. N.C. Gen. Stat. §1-52(9). Fourth, TWC's failure to report its attachments violates the North Carolina Unfair and Deceptive Trade Practices Act as (1) an unfair or deceptive act or practice, (2) in or affecting commerce, (3) that has injured Jones-Onslow. N.C. Gen. Stat. §§75-1.1(a), 75-16. The statute calls for treble damages and attorney fees. N.C. Gen. Stat. §§75-16, 75-16.1. Fifth, all of the elements satisfying relief in North Carolina based on the doctrine of unjust enrichment apply to this set of facts. *Butler v. Butler*, 768 S.E. 2d 332 (N.C. App. 2015). All of these legal principles are separate from any claim of trespass Jones-Onslow might make.

Article 4.3 of the Agreement allows Owner to conduct an inventory at Licensee's expense, as long as Owner gives Licensee reasonable notice and a chance to participate. You cite Article 12.1 and claim that all attachments identified during "the first actual inventory conducted under this Agreement ... will be considered an Authorized Attachment." The language you left out in your ellipse (...) specifies that only inventories conducted "pursuant to Article 4" have that effect. Jones-Onslow's inventory was not conducted pursuant to Article 4, but instead was conducted outside of Article 4 by Jones-Onslow alone at its sole expense.

Jones-Onslow disagrees with your letter's other mischaracterizations of the Agreement and the parties' relationship.

As for "Unauthorized Attachments," Article 10 defines them to entitle penalties for the numerous attachments TWC has made since the Commencement Date without following the Article 5 and Article 6 permitting process.

Your letter accuses Jones-Onslow of "an attempt to retaliate against TWC for exercising its rights under North Carolina Gen. Stat. § 62-350." Quite the contrary, Jones-Onslow believes the North Carolina Utilities Commission or a court of law may need to resolve this matter if the parties cannot resolve these issues on their own.

As you suggest, this dispute could easily become complicated and Jones-Onslow would prefer to move forward amicably. To that end, Jones-Onslow offers a compromise settlement as described below.

The inventory discovered TWC was attached to 3,529 more poles than it was paying for. The spreadsheet attached to Mr. McElheney's November 10, 2015 letter calculated TWC's liability for these under-billed attachments with interest and fees to be $1,049,579.19, which included $530,871.74 in under-billed attachment fees, $68,759.95 in interest at 12%/year (see Agreement Section 4.2), $52,935.00 in Application Fees (Agreement Exhibit A), and $397,012.50 in Unauthorized Attachment Discovery Fees (Agreement Exhibit A).

My review of this spreadsheet reveals that the interest calculation was wrong. Jones-Onslow accordingly has revised its figure for the under-billed total 1999-2015 (with interest) to be $1,034,122.65, instead of $599,631.69, which raises TWC's total liability for these under-billed attachments with interest and fees to $1,484,070.15, instead of $1,049,579.19. A revised spreadsheet containing the corrected calculation is enclosed.

With this corrected liability in mind, Jones-Onslow proposes to settle this matter with TWC as follows:

1. Eliminate TWC's $52,935.00 liability for the Pole Application Fees.

2. Eliminate TWC's $397,012.50 liability for the Unauthorized Attachment Discovery Fees.

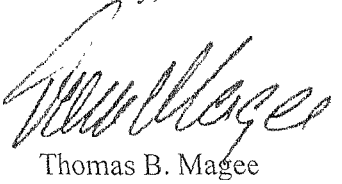
3. Reduce TWC's liability for under-billed attachment fees (with interest) by $200,000 from $1,034,122.65 to $834,122.65.

In short, Jones-Onslow proposes to settle this matter by reducing TWC's liability from $1,484,070.15 to $834,122.65.

Jones-Onslow supports the concept of establishing a clean slate moving forward and is amenable to treating its inventory as a baseline. The August letters you requested are attached, along with the results of the inventory.

Please let me know if you have any questions and we look forward to receiving TWC's response.

Sincerely,



Thomas B. Magee

Encs.
cc: J. Clark
R. Warlick, Esq.