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August 18, 2011

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
PO Box 2319, 27th Floor
Toronto, ON
M4P 1E4

Dear Ms. Walli:

RE: Application by Canadian Distributed Antenna Systems Coalition ("CANDAS");
Board File No.: EB-2011-0120

We represent CANDAS in connection with its application to the Board regarding access to the power poles of licensed electricity distributors for the purpose of attaching wireless telecommunications equipment ("**Application**").

In accordance with Procedural Order No. 1, CANDAS is filing the Responses to Interrogatories of Consumers Council of Canada.

CANDAS will file two paper copies of the above-noted evidence as soon as possible.

Yours very truly,

(signed) H.T. Newland

HTN/ko

cc: Mr. George Vinyard
ExteNet Systems, Inc.
Mr. Mark Rodger
Borden Ladner Gervais
All Intervenors

EB-2011-0120

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B);

AND IN THE MATTER OF an Application by the **Canadian Distributed Antenna Systems Coalition** for certain orders under the *Ontario Energy Board Act*, 1998.

RESPONSES TO INTERROGATORIES OF

CONSUMERS COUNCIL OF CANADA

(on the evidence of the Applicant, CANDAS)

August 18, 2011

.

I Background to the Application

Questions:

1. Sections 3.5 and following refer to the CCTA proceeding.

   (a) Were the members of CANDAS members of the CCTA at the time of the CCTA proceeding?

   (b) Did the members of CANDAS, or anyone else, give evidence in the CCTA proceeding with respect to wireless connections?

   (c) If so, please provide a copy of that evidence.

Responses:

(a) No.

(b)&(c) No CANDAS member gave evidence in the CCTA Proceeding. Wireless connections did come up during the testimony of parties who gave evidence in the proceeding. During the cross examination of MTS Allstream witnesses, there was a discussion about the competitiveness of internet and television markets and the corresponding need for satellite, cable and wireless service providers to be cost effective. The transcript excerpt of this discussion is attached as Schedule CCC 1-1.

During the testimony of the CCTA witnesses, the Chair of the Board panel asked about market convergence, with the affiliates of electricity distributors competing with telecommunication and cable companies. The Chair noted that there were as many as 22 such affiliates operating in the telecommunications and cable space in Ontario. In responses to questions from the Chair, the CCTA witnesses agreed that the pole access rate would apply to "teleco" affiliates of electricity distributors who wanted access to the distributors' poles. The Chair then asked if all of the affiliates of the distributors who were party to the Settlement Agreement had agreed in this regard, making specific reference to Toronto Hydro's (as it then was) telecom affiliate, Toronto Hydro Telecom. A Ms. Djurdjevic, speaking for Toronto Hydro, confirmed that "we're all well aware, the affiliate, the parent company and the regulated company, everybody's aware of the settlement agreement and takes no issue". The transcript excerpt of this discussion is attached as Schedule CCC 1-2.

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CANDAS understands that around this time, Toronto Hydro Telecom was on the verge of entering the wireless market. On March 7, 2006, Toronto Hydro Corp. announced that it would be installing Canada's largest wireless internet network across downtown Toronto. That network – later called "One Zone" and sold in 2008 to Cogeco – utilized the tops of hydro poles. Schedule CEA 9-1 (provided in response to CEA 9) is Toronto Hydro's news release dated March 7, 2006 and schematic diagram that shows that Toronto Hydro contemplated poletops to accommodate its wireless equipment. See also response to Staff 12.1 and CCC 1-2.

Finally, when cross-examining Dr. Mitchell (the expert witness for the EDA) Mr. Engelhart (General Counsel of Rogers) asked if antennas should also be allocated a share of the common costs. Dr. Mitchell replied "under the principle, yes". The transcript excerpt of this discussion is attached as Schedule CCC 1-3.

The Settlement Agreement that was filed on October 19, 2004, prior to the commencement of the oral phase of the CCTA Proceeding, also included references to wireless. In Article 1 of Appendix B of the Agreement ("Definitions"), the definition of "Attachment" in Article 1, provides as follows:

1.5 "**Attachment**" means any material, apparatus, equipment or facility owned by the Licensee which the Owner has Approved for Affixing to poles or other equipment of the Owner or In-span, including, but without limiting the general of the foregoing:

- Licensee-owned cable not directly attached to a pole, but Over Lashed to a cable or Support Strand not owned by the Licensee;
- Service Drops Affixed directly to the Owner's poles;
- Service Drops Affixed In-span to a Support Strand supported by poles of the Owner; and
- Attachments owned by the Licensee but emanating from a cable not owned by the Licensee.

[Attachment excludes wireless transmitters and power line carriers.]
NOT AGREED.

There was, in other words, no agreement on the proposal (on Issue No. 3) that the definition of "Attachment" exclude "wireless transmitters and power line carriers". There was, however, complete agreement in the main body of the Settlement Agreement, of Issue No. 2 of the Board's List of Issues: "**If the Board does set conditions of access, to what types of cable or telecommunications service providers should these conditions apply to?**" It is significant that the

.

Board decided to add this issue in a procedural order prior to the hearing. This was the only contested issue arising from the Issues Conference that was held on June 29, 2004 where the CCTA and intervenors considered a draft list of issues. See RP-2003-0249 Procedure Order No. 3 included in the CANDAS Application at Tab 4.

The parties to the Settlement Agreement agreed that Issue 2 should be settled as follows:

> "If the Board does set conditions of access, these conditions should apply to access to the communications space on an LDC's poles by Canadian Carriers as defined in the *Telecommunications Act* and cable companies; provided, however, that these conditions shall not apply to joint-use arrangements between incumbent local exchange carriers and hydro distributors that grant reciprocal access to each other's poles."

In his presentation of the Settlement Agreement to the Board, counsel for the CCTA made the following submissions in respect of the complete settlement of Issue 2:

> "On the second issue, though, we did reach agreement, <u>after some considerable discussion</u>. And in general, I think it would be fair to say that the parties reached more agreement than they thought they would. There was a genuine effort made, I believe, by both side, and I believe, Gail Morrison, the facilitator, assisted the process very ably. So we did reach agreement on certain issues, and we were able to provide a framework, or a sort of a summary framework for issues that we didn't agree on, to some degree.
>
> Number 2 is an example of an issue that we did agree on. Number 2 is:
>
> "If the Board does set conditions of access, to what types of cable or telecommunications service providers should these conditions apply?"

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> And you can see the answer there is that they should apply to – "These conditions should apply to access to the communication space on an LDC's poles by Canadian carriers as defined in the *Telecommunications Act* and cable companies, provided however" – and this is an important exception – "that these conditions shall not apply to joint-use arrangements between incumbent local exchange carriers and hydro distributors that grant reciprocal access to each other's poles."
>
> And you will recall that this is really – that exception is crafted to exempt arrangements between Bell Canada and hydro companies in Ontario where they have, effectively, an arrangement where they use each other's poles. [emphasis added]"

It is clear from counsel's submissions that the parties to the Settlement Agreement had agreed on only **one** exception to the general rule that all Canadian carriers should have access to power poles, namely, that the general rule should not apply to joint-use agreements between incumbent local exchange carriers and hydro distributors that grant reciprocal access to each other's pole. **The agreed-upon exception did not include, explicitly or by implication, wireless carriers.**

The Board accepted the proposed general rule and the one exception, stating as follows:

> "On this issue, the parties are in agreement. In the Settlement Agreement of October 19, 2004, all parties agreed that if the Board does set access conditions, these conditions should apply to access…by all Canadian Carriers as defined in the Telecommunications Act and cable companies. The only exception is that these conditions would not apply to the current joint use agreements between telephone companies and electricity companies that grant reciprocal access to each others poles.
>
> This Board has accepted the settlement agreement in this regard. In addition, the Board has heard submissions to the effect that the LDCs agree that their own telecommunications affiliates would access poles on the

> same conditions as other users of the communications space. The LDCs also confirmed that all users of the communications space should pay the same charge.
>
> This is an important clarification. This market is changing rapidly and industries are converging. Cable companies are now providing the telecommunication services just as the electricity distributors enter this industry. The fact that two groups that have been warring over the past decade are fast becoming competitors is an additional reason for the Board to intervene and establish clear guidelines. From this Board's perspective, it is equally important that costs be properly allocated and that the electricity distributor (and ultimately, the electricity ratepayer) receives its fair share of revenue. [emphasis added] (Application, Tab 6, p. 4)

Under the Settlement Agreement, the parties agreed to negotiate the terms and conditions of a standard form of attachment agreement, once the Board had made its determination as to an attachment rate. The parties also agreed to report back to the Board within four months as to the progress of the negotiations. The Board accepted this approach.

On May 30, 2005, the Board's Chief Compliance Officer in response to a CCTA letter of April 14, 2005 issued Compliance Bulletin 2005 which stated that the obligation to provide pole access was in effect, that distributors were required to process attachment requests in a timely manner and that the access obligation applied, regardless of whether an agreement had been negotiated.

On August 5, 2005, four months after the issuance of the CCTA Order, the Mearie Group (representing 60 electricity distributors) filed an agreed-upon form of access agreement with the Board (the "Model Agreement"). Notwithstanding the CCTA Order that mandated access to **all** Canadian carriers as defined in the Telecommunications Act, the Model Agreement's definition of "Attachment" expressly excluded Wireless Transmitters and Power Line Carriers "unless otherwise agreed by the parties." This provision contravenes the CCTA Order. In any event, the Board never reviewed or approved the Model Agreement and, to CANDAS' knowledge, did not respond to the filing.

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Doc: 13BFK
Rev: 0

ONTARIO ENERGY BOARD

Volume: 1

26 OCTOBER 2004

BEFORE:

G. KAISER
PRESIDING MEMBER AND VICE
CHAIR

P. SOMMERVILLE
MEMBER

C. CHAPLIN
MEMBER

1

RP-2003-0249

2

IN THE MATTER OF a hearing held on Tuesday, 26 October 2004, in Toronto, Ontario; IN THE MATTER OF the Ontario Energy Board Act, 1998, S.O. 1998, c.15 (Schedule B); AND IN THE MATTER OF an Application pursuant to section 74 of the Ontario Energy Board Act, 1998 by the Canadian Cable Television Association for an Order or Orders to amend the licences of electricity distributors.

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RP-2003-0249

4

26 OCTOBER 2004

5

HEARING HELD AT TORONTO, ONTARIO

6

APPEARANCES

7

MIKE LYLE
Board Counsel

TOM BRETT
Canadian Cable Television Association

PETER RUBY
Canadian Electricity Association

KELLY FRIEDMAN
The Electricity Distributors Association

1505

MS. ASSHETON-SMITH: The ability of cable companies to increase their rates to subscribers is constrained by the competitive market in which they operate, yes.

1506

MR. RUBY: Is it fair to say heavily constrained?

1507

MS. ASSHETON-SMITH: It's a highly competitive market, yes.

1508

MR. RUBY: And that's the same for the satellite providers you just mentioned?

1509

MS. ASSHETON-SMITH: They operate in the same market, yes.

1510

MR. RUBY: And the same for, I think it's called, wireless cable? The only example I can think of is Look TV.

1511

MS. ASSHETON-SMITH: Yes.

1512

MR. RUBY: And that's the same for Internet access?

1513

MS. ASSHETON-SMITH: Yes, Internet access is also a very highly competitive retail market.

1514

MR. RUBY: And I take it that means there's a lot of pressure on cable companies to be efficient --

1515

MS. ASSHETON-SMITH: Absolutely.

1516

MR. RUBY: -- and lower their costs?

1517

MS. ASSHETON-SMITH: That would be correct of any enterprise operating in a competitive market, yes.

1518

MR. RUBY: So a reduction in the cost input, if the cost input is not one that its competitors have, would be a competitive advantage. Try this again, because I don't mean to put it as theoretically as it came out.

1519

Satellite and wireless cable companies don't hang wires on power poles; is that right?

1520

MS. ASSHETON-SMITH: That's correct.

1521

MR. RUBY: If you reduce the cost of that input to cable company service, that doesn't reduce the cost of satellite providers, for example? If the Board lowered rates to a dollar for power pole access, that wouldn't reduce the costs of satellite companies?

1522

MS. ASSHETON-SMITH: Satellite companies aren't faced with the monopoly supply of an essential facility, except to the extent that they need transponder space, which correspondingly wouldn't impact us if the cost of transponder space was decreased as well, if that's --

1523

MR. RUBY: They have some cost inputs that you don't share.

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MS. ASSHETON-SMITH: And they have some that we don't share.

1525

MR. RUBY: Right. And one of those is power poles.

1526

MS. ASSHETON-SMITH: Right.

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Doc: 13BFL
Rev: 0

ONTARIO ENERGY BOARD

Volume: 2

27 OCTOBER 2004

BEFORE:

G. KAISER
PRESIDING MEMBER AND VICE CHAIR

P. SOMMERVILLE
MEMBER

C. CHAPLIN
MEMBER

1

RP-2003-0249

2

IN THE MATTER OF a hearing held on Wednesday, 27 October 2004, in Toronto, Ontario; IN THE MATTER OF the Ontario Energy Board Act, 1998, S.O. 1998, c.15 (Schedule B); AND IN THE MATTER OF an Application pursuant to section 74 of the Ontario Energy Board Act, 1998 by the Canadian Cable Television Association for an Order or Orders to amend the licences of electricity distributors.

3

RP-2003-0249

4

27 OCTOBER 2004

5

HEARING HELD AT TORONTO, ONTARIO

6

APPEARANCES

7

MIKE LYLE
Board Counsel

TOM BRETT
Canadian Cable Television Association

KEN ENGELHART
Canadian Cable Television Association

PETER RUBY
Canadian Electricity Association

785

MR. KAISER: And one final question on that point. It's, I think, a matter of public record that some of these companies, Toronto Hydro's one, they have a subsidiary, Toronto Hydro telecom, that's substantially involved in the commercial side of the telecommunication business, particularly in downtown Toronto. Let's suppose they want attachment, should they pay? Should they pay the same rate as you pay?

786

MS. KRAVTIN: Yes, they should.

787

MR. KAISER: I'm talking about a telecom subsidiary of the hydro company.

788

MS. ASSHETON-SMITH: Yes. Under our settlement agreement, we agreed that it would apply to telecommunications carriers, as defined under the Telecommunications Act, and the telecom affiliates of the hydro companies are actually regulated telecommunications carriers under the CRTC.

789

MR. KAISER: So the affiliates have agreed to that?

790

MS. ASSHETON-SMITH: I don't remember them being in the room, but their parent companies were in the room for the settlement agreement.

791

MR. KAISER: Right, and do they understand that concept that they're somehow bound by your settlement agreement that they're going to be required to pay if they seek a separate attachment?

792

MS. ASSHETON-SMITH: I can't speak for them on that point.

793

MR. KAISER: Can you speak to that, Mr. Brett?

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MR. BRETT: I don't think I can speak for them either, Mr. Chairman. I mean Toronto Hydro and Hydro One were in the room but not everybody was in the room.

795

MS. DJURDJEVIC: Mr. Chair, speaking for Toronto Hydro, I was present, and we're all well aware, the affiliate, the parent company, and the regulated company, everybody's aware of the settlement agreement, and takes no issue.

796

MR. KAISER: So I take it that you agree that Toronto Hydro Telecom should pay the same as the cable companies would pay.

797

MS. DJURDJEVIC: If that's the course the Board chooses to pursue, then yes, we would all be bound.

798

MR. KAISER: What I'm trying to understand is whether you already agreed to that as part of the settlement agreement.

799

MR. BRETT: I don't think we've agreed to a rate but we have agreed to the principle.

800

MR. KAISER: You have agreed to the principle. Right.

801

MS. KRAVTIN: Mr. Chair, if I may. I think the point you make is very important that certainly, at a minimum, the affiliate should agree to pay the same rate. But I also want to raise the point that it doesn't justify an abusive or high rate just because the affiliate also is bound by that rate, because obviously it's the same company. It's going from one division to the other. And we've seen this as a pattern through monopoly companies where they set a high rate and say, Well, our affiliate is paying it. But it's going into their profits of the larger corporation.

802

So if anything, that's an additional reason why the rate must be set at reasonable cost-based levels, because it will affect the different corporate entities differently.

803

MR. KAISER: Thank you very much. Thank you, panel.

Rep: OEB
Doc: 13BFM
Rev: 0

ONTARIO ENERGY BOARD

Volume: 3

28 OCTOBER 2004

BEFORE:

G. KAISER
PRESIDING MEMBER AND VICE CHAIR

P. SOMMERVILLE
MEMBER

C. CHAPLIN
MEMBER

1

RP-2003-0249

2

IN THE MATTER OF a hearing held on Thursday, 28 October 2004, in Toronto, Ontario; IN THE MATTER OF the Ontario Energy Board Act, 1998, S.O. 1998, c.15 (Schedule B); AND IN THE MATTER OF an Application pursuant to section 74 of the Ontario Energy Board Act, 1998 by the Canadian Cable Television Association for an Order or Orders to amend the licences of electricity distributors.

3

RP-2003-0249

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28 OCTOBER 2004

5

HEARING HELD AT TORONTO, ONTARIO

6

APPEARANCES

7

MIKE LYLE
Board Counsel

TOM BRETT
Canadian Cable Television Association

KEN ENGELHART
Canadian Cable Television Association

PETER RUBY

DR. MITCHELL: You could make a case for that.

436
MR. ENGELHART: At least in the case where they are separate entities, then, I take it that this Board would need to do an inventory of the number of light standards on the poles, and reduce cable's share of the common costs, accordingly? Would you agree with that?

437
DR. MITCHELL: Well, I think the implementation of any standards set by the Board will depend on what procedures they find appropriate. Whether the Board needs to do it, whether companies can report their own statistics, whether some average can be adopted, there would be many ways to actually go into the facts of the matter.

438
MR. ENGELHART: I'd like to direct you, please, to the CEA response to Energy Probe Interrogatory 10.

439
DR. MITCHELL: Energy Probe Interrogatory 10?

440
MR. ENGELHART: Yes, sir.

441
DR. MITCHELL: I have that.

442
MR. ENGELHART: If you look at number B: "Other current uses of which the CEA is aware include: Municipal streetlights, environmental measurement equipment, air ambulance landing lights, hazard signals, and antennae are attached to power poles, alleviating the need to construct support structures to support only those facilities."

443
Would you agree that under your principle the environmental measuring equipment, the air ambulance landing lights, the hazard signals and the antennae should also be allocated a share of the common costs?

444
DR. MITCHELL: Under the principle, yes.

445
MR. ENGELHART: Now, on page 11 of your evidence, you state that you are not sure that there are advantages to pole ownership, and you said the same thing this morning. I wonder if I could take you, sir, to the EDA model agreement, which was filed as part of this proceeding by the EDA.

446
DR. MITCHELL: Do I have that counsel?

447
MR. ENGELHART: Yes, it's appendix 2 to the EDA evidence.

448
If you have a look, sir, at "Article 7, approval of permits," which is at page 8, you will see that a cable operator has to apply -- Article 7, page 8. A cable operator has to apply to use the pole, has to pay for permit approval and inspections, and cannot install its facilities until the permits are approved. Would you consider that to be a disadvantage of tenancy?

449
DR. MITCHELL: Just a moment, Mr. Engelhart. I'm on page 8 but I haven't found you, yet.

450
MR. ENGELHART: You see the heading "Article 7, approval of permits?"

451
DR. MITCHELL: Yes. What paragraph is it?

452
MR. ENGELHART: Well, take a look at the first paragraph: "The licensee has to inform the owner that they intend to seek permission to affix and maintain their attachments. The licensee will provide to the owner such preliminary information as is requested by the owner. At the owner's sole discretion the owner may then arrange for a joint field visit by both."

453
If you look at 7.3: "Subsequent to the joint field visit the owner shall form a preliminary, non-binding opinion and will communicate the opinion to the licensee within a reasonable period of time."

454
Under 7.4: "If the preliminary opinion is in favour of the proposed affixing of the attachments, the owner will prepare a preliminary estimate of any costs of make-ready work and deliver the estimate to the licensee."

455
Under 7.5: "After the estimate has been received and accepted by the licensee, the permit in duplicate will be prepared, signed, delivered by the licensee to the owner. Each permit shall be accompanied by drawings, a purchase order, other items that the owner may reasonably require, such as a security

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Questions:

2. Section 3.13 refers to the order of the Ontario Energy Board (Board) resulting from the CCTA proceeding. The Board ordered that, among other things, "the licence conditions of the electricity distributors licenced by this Board shall as of the date of this Order be amended to provide that all Canadian carriers as defined by the Telecommunications Act and all cable companies that operate in the province of Ontario shall have access to the power poles of the electricity distributors at the rate of $22.35 per pole per year."

   Section 3.16 refers to a Compliance Bulletin issued by the Board on May 30, 2005 providing, among other things, that "distributors are required to process attachment requests in a timely manner, and that the axis obligation applied, regardless of whether an agreement had been negotiated".

   (a) Has CANDAS sought to enforce the terms of the CCTA order by, for example, seeking a compliance order? If not, why not?

   (b) Would a compliance order, requiring THESL and other electricity distributors to comply with the CCTA order, satisfy the requirements of CANDAS? If not, why not?

Responses:

   (a) No member of CANDAS has sought to enforce the terms of the CCTA Order by seeking a compliance order. Given that at least two other distributors have adopted a "no antenna" position (Veridian and Power Stream; see response to Board Staff 7) and other distributors have refused to provide DAScom with copies of their form of attachment agreement (Oshawa, Oakville and Newmarket; see response to Board Staff 7), CANDAS is seeking to enforce the terms of the CCTA Order in a more generic fashion.

   (b) No it would not. A compliance order can issue only against distributors who are the subject of a specific complaint. Strictly speaking, it could not prevent distributors who were not subject to the order, from denying access to their poles although, obviously, it would have persuasive value. Moreover, because the CCTA Order did not address the issue of the terms and conditions of access that were included in the form of agreement that was filed as part of CCTA's original application, a compliance order would not be a complete solution to the problems encountered by CANDAS members. Accordingly, CANDAS has chosen to commence a proceeding that would result in a generic decision, applicable to

.

each utility licensed by the Board, regardless of whether or not DAScom, or any other wireless carrier, has sought and been denied pole access by such utility.

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Questions:

3. Section 3.17 of the application states an "agreed-upon standard form of access agreement" was filed with the Board, on August 3, 2005, by the CCTA, and a representative of some 60 electricity distributors.

   (a) Please provide a copy of the "agreed-upon standard form of access agreement".

   (b) In filing the "agreed-upon standard form of access agreement", what relief was sought from the Board?

   (c) Was there any follow-up, by the CCTA, or anyone else, when the Board apparently failed to act on the filing of the "agreed-upon standard form of access agreement".

   (d) How do the contents of that "agreed-upon standard form of access agreement" differ from what CANDAS is seeking in this application?

Responses:

(a) Please see attached letter dated August 3, 2005 from the CCTA to the Board, together with a copy of the Model Agreement (collectively, Schedule CCC 3(a)-1). Please note that although the Model Agreement was filed on behalf of 60 distributors, some licensed distributors (including Hydro One) were not part of this group.

(b) From the covering letter (see response to CCC 3(a) above), it does not appear that any relief was sought.

(c) CANDAS has no information as to whether anyone followed up when, following the filing of the "Model Agreement", there was no response from the Board.

(d) To the extent the Model Agreement excludes wireless attachments, such a term is contrary to the CCTA Order. In all other respects, CANDAS believes that the Model Agreement is a useful starting point from which an acceptable agreement could be developed, having regard to the specific terms and conditions of access sought by CANDAS. The terms and conditions proposed by CANDAS are described in the Application (s. 10.34-10.38) and in the Written Evidence of George Vinyard (Q. 15).

August 3, 2005

Mr. John Zych
Board Secretary
Ontario Energy Board
26th Floor
2300 Yonge Street
Toronto, Ontario
M4P 1E4

Dear Mr. Zych:

Re: RP-2003-0249- Report to the Board on Negotiations Regarding a Model Joint Use Agreement

Further to our joint letter to you dated July 6, 2005, we are pleased to report to the Board that the Canadian Cable Telecommunication Association (CCTA) and The MEARIE Group have completed the establishment of a model joint use agreement. The document is attached. The model agreement is now being used by the LDCs and CCTA members to put together local agreements.

In the negotiation, the CCTA represented all its members while The MEARIE Group represented sixty LDCs. A revised list of the participating LDCs and a list of all CCTA members are attached.

Yours truly,

Roy O'Brien
Executive Director, Ontario Region
CCTA

John Wong
Director, Financial & Business Solutions
The MEARIE Group

MODEL AGREEMENT
FOR

LICENSED ATTACHMENT

To
[Electricity Distribution Utility's NAME]

By
[Cable Company Name or Telecommunications Company Name]

DATE OF ISSUE: _____

TABLE OF CONTENTS

ARTICLE

AGREEMENT FOR LICENSED ATTACHMENT

THIS AGREEMENT made in duplicate on the ____ day of_____ is effective as of _____(the "Effective Date") through until _____ (the "End of Term Date").

BETWEEN:

[Electricity Distribution Utility Name]

(hereinafter the "Owner")

OF THE FIRST PART

AND:

[Cable Company Name /Telecommunications Company Name (other than Bell)]

(hereinafter the "Licensee")

OF THE SECOND PART

WHEREAS the Licensee wishes to affix and maintain its material, apparatus, equipment or facilities to poles or equipment of the Owner;

AND WHEREAS all attachments by a cable company or a telecommunications company to poles or other equipment owned by the Owner require an approved permit;

AND WHEREAS the Owner consents to grant access to its poles and other equipment by the Licensee in accordance with the terms and conditions hereof;

AND WHEREAS the Ontario Energy Board released Decision No. RP 2003-0249, in the matter of access to poles;

NOW THEREFORE, THIS AGREEMENT WITNESSES that, in consideration of the premises and the agreements and other considerations herein contained, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1 – DEFINITIONS

The terms defined in this Article for the purposes of this Agreement shall have the following meanings unless the context expressly or by necessary implication otherwise requires.

1.1 **"Affix", "Affixed" and "Affixing" means to fasten, by the Licensee or its contractors, the material, apparatus, equipment or facilities of the Licensee to poles or other equipment of the Owner or In-span.**

1.2 **"Annual Licence Fee" means the annual payment by the Licensee to the Owner determined in accordance with Article 11.**

1.3 **"Approval" or "Approved" means the permission granted by the Owner to the Licensee for the Licensee to Affix its Attachments, as specified in the Permit, to poles or other equipment of the Owner or In-span.**

1.4 **"Attachment" means any material, apparatus, equipment or facility owned by the Licensee which the Owner has Approved for Affixing to poles or other equipment of the Owner or In-span, including, but without limiting the generality of the foregoing:**

- **Licensee-owned cable not directly attached to a pole, but Over Lashed to a cable or Support Strand not owned by the Licensee;**
- **Service Drops Affixed directly to the Owner's poles;**
- **Service Drops Affixed In-span to a Support Strand supported by poles of the Owner; and**

Unless otherwise agreed by the parties, Attachment excludes Wireless Transmitters and Power Line Carriers.

1.5 **"Attachment Licence Fee" means the licence fee payable in respect of an Attachment.**

1.6 **"Cable Riser/Dip" means a cable attached along a vertical portion of a pole to allow the cable to change its position from/to an underground route to/from an overhead route.**

1.7 **"Clearance Pole" means a single pole, owned by the Owner and used by the Licensee solely to establish and maintain vertical clearance for its Service Drops.**

1.8 **"Communications Space" means a vertical space on the pole, usually 600 mm in length, within which Telecommunications Attachments are made.**

1.9 **"Construction Verification Program" means the standards and requirements for conducting inspections and the qualifications of persons conducting inspections.**

1.10 **"Dispute Resolution" means the dispute escalation and referral mechanism, described in Article 21.**

1.11 **"Emergency Situation" means a situation that poses an imminent danger or threat to public safety or public welfare.**

1.12 **"Good Utility Practice" means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry in North America during the relevant time period, or any of the practices, methods and acts which in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition.**

1.13 **"Guy Pole" means a separate pole, used to carry the strain of dead-ending or line deflection to ground.**

1.14 **"In-span" means a position between poles, at least one of which is owned by the Owner.**

1.15 **I.R.U. means Indefeasible Right of Use, which is the effective long-term lease (temporary ownership) of a portion of the capacity of a cable. IRU is granted by the company that owns the cable (usually optical fibre).**

1.16 **"Joint Use Pole" means a pole in respect of which its Owner has granted the Licensee Approval to Affix its Attachments.**

1.17 **"Joint Anchorage" means a common anchor system, including the anchor rod, to which two or more guy wires are attached, each guy wire providing guying for one party's conductors and related equipment on a Joint Use Pole.**

1.18 **"Make-ready Work" means any necessary and required work by the Owner and/or an existing third party pole user solely to accommodate the Attachment and includes but is not limited to:**

- **initial Line Clearing,**
- **any changes or additions to or Rearrangement of the Owner's poles or the Owner's Attachments; and**

Without restricting the generality of the foregoing, Make-ready Work does not include the costs of repairing any pole in order to ensure that it meets the Standard prior to permitting the Licensee to place its Attachments on the said Joint Use Pole.

1.19 **"Minor Relocation" means the relocation of a Support Strand up to one metre (1.0 m) in a vertical and/or horizontal direction and includes relocation associated with pole changes.**

1.20 **"Over Lash" means to place an additional wire or cable communications facility onto an existing cable or Support Strand.**

1.21 **"Permit," means the formal written request for the adding, materially changing or removal of a Licensee's Attachments to the Owner's pole(s). The Permit form is**

entitled "Request for Licensed Occupancy of Poles", in the form of Schedule "A" attached hereto, the form of which may be revised from time to time by the Owner.

1.22 **"Power Line Carrier" means the use of existing electricity wire infrastructure to carry voice and data signals simultaneously by transmitting high frequency data signals through the electric power lines.**

1.23 **"Power Space" means a vertical space at the top of the pole within which electrical power attachments are made.**

1.24 **"Rearranging" or "Rearrangement" means the removal of Attachments from one position on a pole and the placing of the same Attachments in another position on the same pole.**

1.25 **"Service Drops" means Telecommunications cables or wires, whether Affixed In-span or to a Clearance Pole, owned by the Licensee and connected to a Telecommunications cable, whether owned or not owned by the Licensee, and leading to customers of the Licensee.**

1.26 **"Standard or Standards" means Canadian Standards Association Standard C22.3 No.1-M87 "Overhead Lines"; Occupational Health and Safety Act; Part II of Canadian Labour Code; the Ontario Electrical Safety Code; Electrical & Utilities Safety Association Rules and Safe Practices; Ontario Regulation 22-04 or any other applicable regulation administered by the Electric Safety Authority; and the Owner's Standards, together with any amendments thereto from time to time, it being understood that changes to the Owner's Standards are to be made at the sole discretion of the Owner.**

1.27 **"Support Strand" means a bare support strand whose main purpose is to support Telecommunications or low voltage wires or cables.**

1.28 **"Telecommunications" or "Communications" means the transmission of voice, data, video or information of any kind by electromagnetic or optical signals.**

1.29 **"Total Direct Cost" means the costs included in the annual pole access rate pertaining to administration and loss in productivity.**

1.30 **"Transferring," means the removal of Attachments from one pole and the placing of the same Attachments on another pole.**

1.31 **"Wireless Transmitters" means stand-alone transmitters and/or receivers which use electromagnetic waves (rather than some form of wire or fibre optic cable) to carry voice, data, video or signals over part or all of the communication path.**

ARTICLE 2 – TERRITORY

2.1 **This Agreement shall cover the Affixing and maintaining of the Attachments to the poles or other equipment of the Owner, or In-span, within the area of Ontario where the respective service territories of the Owner and the Licensee overlap.**

ARTICLE 3 – AUTHORIZATION, PERMISSION AND RIGHT-OF-WAY

3.1 **The Licensee shall be responsible for obtaining any and all easements, rights of way, authorizations or permissions from others, including authorization or permission to locate on private property, municipal or provincial road allowances, or any other applicable authorization or permission required for private property or from any municipal, provincial or federal government or any agency, body or board thereof having jurisdiction with respect to the Affixing and maintaining of the Attachments provided for in a Permit.**

3.2 **Where permitted to do so, the Owner may assign benefits of easements or rights of way to the Licensee, on mutually agreeable terms.**

ARTICLE 4 – TAXES

4.1 **The Licensee shall pay, and indemnify and save harmless the Owner against, all taxes, rates, assessments or fees of every nature and kind lawfully assessed, which are directly applicable to or related to the Attachments designated in an Approved Permit or directly resulting from the privileges granted to the Licensee by this Agreement.**

4.2 **The Licensee agrees to remit payment for its portion of such taxes, rates, assessments or fees to the Owner, within 30 days of request for same by the Owner. At the Licensee's request and expense, the Owner shall remit any such taxes under protest. The Licensee shall be free to negotiate with the taxing authority or institute legal proceedings against the taxing authority to have such taxes cancelled or reduced. Any refund of the Licensee's remittance received by the Owner in connection with such taxes shall be paid over to the Licensee with such interest as the Owner will have received from the taxing authority in respect thereof.**

ARTICLE 5 – PERFORMANCE GUARANTEE

5.1 **If the Licensee has not demonstrated satisfactory financial performance such as prompt payment of accounts and no collection action and is not deemed credit-worthy by an external rating agency, the Owner may require that the Licensee deposit with the Owner security in an amount of $100/per pole to a maximum of $100,000, or as otherwise agreed by the Parties, securing the due performance of the obligations of the Licensee as provided for in this Agreement. The security shall be in favour of the**

Owner and shall be in a form satisfactory to the Owner, which may include a performance bond issued by a surety acceptable to the Owner, cash deposited with the Owner, negotiable bonds issued by an entity satisfactory to the Owner or an irrevocable bank letter of credit.

5.2 **If the security is in the form of negotiable bonds or cash, then, provided that the Licensee is not in default of any of its obligations under this Agreement, the Licensee shall be entitled to receive any and all income therefrom.**

5.3 **The Licensee, when not in default of any of its obligations under this Agreement, shall have the right to substitute the security being held by the Owner with other security authorized by this Article.**

5.4 **The Owner shall be entitled to exercise upon the security in the event that the Licensee defaults on any of its obligations under this Agreement including, without limitation, for the purpose of covering the costs of any of the following:**

- **removal of Attachments from the Owner's poles or In-span;**
- **damage to the Owner's equipment attributed to the joint use activity of the Licensee;**
- **payment of any of the Licensee's accounts.**

5.5 **The security payable by the Licensee may be increased or decreased from time to time at the sole discretion of the Owner, who may take into consideration such factors as increases or decreases in the number of Attachments Approved by Permit, an increase or decrease in the estimated cost to remove Attachments, or any other factors that the Owner considers relevant.**

5.6 **If, for a period of 3 years, the Licensee has demonstrated satisfactory financial performance such as prompt payment of accounts and no collection action, and is deemed credit-worthy by an external rating agency, the security paid by the Licensee shall be reduced by 50% after 3 years and fully returned after 5 years. The Owner may reactivate the security payable by the Licensee at any time, in accordance with Article 5.1**

ARTICLE 6 – COMPLIANCE WITH STATUTES

6.1 **This Agreement is subject to all applicable laws, regulations and Standards.**

6.2 **The Licensee and its contractors shall comply with the requirements of all relevant statutes, regulations, directions, guidelines, policies and governmental and regulatory agencies and with the Standards, both at the time of Affixing and thereafter, including, but not limited to:**

- **the safety qualifications of the Licensee's employees to carry out the work,**
- **the use of safe working practices in carrying out the work,**
- **training in safety awareness,**
- **Good Utility Practice, and**
- **good and workmanlike fashion.**

The Owner reserves the right to have the Licensee's employees or contractors removed from the jobsite for non-compliance with the above.

6.3 **Any accident reportable by law to the Workplace Safety and Insurance Board or to the Ministry of Labour or to Human Resources and Development Canada or any notice or fine received from any of these authorities by the Licensee or the Licensee's contractor while working on the Owner's poles or In-span must be reported to the Owner within five (5) working days of the accident or notice or fine.**

6.4 **The higher requirements of the *Canada Labour Code*, R.S. 1985, C. L-2 and the *Occupational Health and Safety Act* (Ontario), R.S.O. 1990, Chapter O.1 govern safety regarding the Affixing, Rearranging, Relocating, Transferring, maintenance or other work relating to Attachments. If there is any uncertainty about which Standards are applicable, the Licensee shall ensure that the Licensee or its contractor ceases all work immediately and contacts the Owner.**

ARTICLE 7 – APPROVAL OF PERMITS

7.1 **Prior to submitting a Permit to the Owner, and for the purpose of initiating discussions as to the parties' requirements, the Licensee shall inform the Owner that the Licensee intends to seek permission to Affix and maintain its Attachments to a pole or other equipment belonging to the Owner or In-span. The Licensee shall provide to the Owner such preliminary information as may be requested by the Owner.**

7.2 **At the Owner's sole discretion, the Owner may arrange for a joint field visit by both the Owner and the Licensee to inspect the site of the proposed Affixing of Attachments by the Licensee. The Licensee shall also be entitled to request from the Owner a joint visit, and the Owner shall have the obligation to consider the request, acting reasonably.**

7.3 **Subsequent to the joint field visit, if any, the Owner shall form a preliminary, non-binding opinion as to the feasibility and desirability of the proposed Affixing of the Attachments by the Licensee, which opinion shall be communicated to the Licensee within a reasonable period of time.**

7.4 **If the Owner forms a preliminary opinion in favour of the proposed Affixing of the Attachments, the Owner will prepare a preliminary estimate of any costs of Make-ready Work and deliver such estimate to the Licensee with the preliminary opinion.**

7.5 **After the estimate has been received and accepted by the Licensee, the Permit, in duplicate, shall be prepared, signed and delivered by the Licensee to the Owner.**

7.6 **Each Permit shall be accompanied by:**

- **drawings, plans or designs in a format approved by the Owner (see Schedule C) and signed and sealed by a Professional Engineer registered in Ontario, or signed by a Certified Engineering Technologist, or other competent person, who is qualified by knowledge, training and experience, and approved by the Owner, to indicate compliance with all Standards including the Licensee's standard design drawings and standard specifications, which shall have been prepared, signed, and sealed by a Professional Engineer; or drawings, plans or designs, together with a Certificate of Approval of the drawings by the Electrical Safety Authority;**
- **a purchase order authorizing the Owner to complete the Make-ready Work on the Owner's facilities pertaining to the applicable Permit; and**
- **other items that the Owner may reasonably require and shall have requested from the Licensee pursuant to the terms of this Agreement.**

7.7 **If the Owner is satisfied that the Permit documentation is in accordance with this Article and is compliant with all Standards, the Owner will make best efforts to process the Permit within 30 days from receipt of completed Permit documentation and shall, if deemed necessary to further process the Permit, commence Make-ready Work where a signed purchase order has been received. If, while carrying out the Make-ready Work, the Owner determines that the proposed Attachments are no longer feasible because of previously unknown conditions or constraints or because of the intervention of a third party with jurisdiction, such as a government authority or landowner, the Make-ready Work will be suspended and the Licensee notified of the suspension. If the cause of such suspension cannot be resolved to the satisfaction of the Owner, the Licensee will be invoiced pursuant to Article 8 for all charges to the time of suspension. If the Permit is Approved, the Owner will sign both copies of the Permit and return a copy to the Licensee's representative, thus Approving the proposed Affixing of the Attachments by the Licensee.**

7.8 **Each Approved Permit shall be deemed to have been issued pursuant to this Agreement, and shall be read and construed in accordance with this Agreement. Subject to Article 9.8, Permits approved prior to the Effective Date shall be deemed to have been approved in accordance with the then current Standards.**

7.9 **The Licensee shall retain its copy of the Approved Permit as part of the Licensee's project file and may be required to produce the Approved Permit at any time when requested by the Owner.**

7.10 **Permits for additional Attachments, except Service Drops, to an existing pole or In-span must be submitted and Approved using the same procedure set out in this Agreement for obtaining Approval to Affix new Attachments.**

7.11 **When exercising its discretion as to whether to grant Approval to a Permit, the Owner shall exercise its discretion reasonably where the Licensee has complied with all terms this Agreement.**

7.12 **When exercising the foregoing discretion, the Owner will consider its requirements with respect to, but not limited to, the following:**

- **safety;**
- **operation of the Owner's electricity distribution network;**
- **planning;**
- **aesthetics;**
- **road authority and property owner requirements; and**
- **any other matters which the Owner, acting reasonably, may deem relevant and communicate to the Licensee by notice in writing in accordance with Article 19.**

7.13 **It is expressly understood and agreed that Permit Approval, or use under a Permit, will be denied if, in the sole discretion of the Owner, the Attachments, or use derived therefrom could be:**

- **damaging to the Owner's existing plant and/or electrical distribution services; or**
- **unreasonably constraining on the Owner's use of plant; or**
- **damaging to existing plant and /or service of a third party on the Owner's poles; or**
- **non-compliant with the obligations of the Owner.**

Any such denial shall be communicated to the Licensee by notice in writing in accordance with Article 19.

7.14 **If a proposed installation which has been Approved by Permit is cancelled by the Licensee, the Licensee shall reimburse the Owner for the cost of any Make-ready Work completed on the Licensee's behalf upon receiving the invoice for same, and Article 13 shall apply.**

ARTICLE 8 – GRANT

8.1 **For each Permit Approved pursuant to Article 7, the Owner hereby grants to the Licensee the permission to Affix and maintain such of its Attachments to such poles or other equipment of the Owner, or In-span, as may be designated on each Approved Permit in accordance with the terms of this Agreement and any terms specified in said Permit.**

8.2 **The permission to Affix and maintain Attachments as described in an Approved Permit shall be deemed to be effective as of the date of the Approval of such Permit by the Owner. The Licensee must exercise this permission within 180 days of the date of Approval of the Permit or 180 days of the date of the completion of the Make-ready Work or within some other time period as mutually agreed to by the parties, whichever is later, failing which the Approval is of no force and effect and the Licensee may be required to submit a new Permit requesting permission to Affix its Attachments.**

8.3 **If the Owner determines that the Attachments Affixed pursuant to the Permit could be:**

- **damaging to the Owner's existing plant and/or electrical distribution services; or**
- **unreasonably constraining on the Owner's use of plant; or**
- **damaging to existing plant and /or service of a third party on the Owner's poles; or**
- **non-compliant with the obligations of the Owner,**

the Licensee agrees that any Approval to Affix and maintain its Attachments previously granted by the Owner in any Permit may be revoked whether before or after the Affixing of Attachments, at the sole discretion of the Owner, if the Licensee has not carried out such work as required to rectify the situation to the satisfaction of the Owner within 30 days of notice by the Owner.

Any such revocation as it relates to existing Attachments shall be communicated to the Licensee in accordance with Articles 16 and 19, and the Licensee shall pay the cost of removal of the Attachments in accordance with Article 13.

8.4 **To the extent that other agreements do not prejudice the Licensee rights, granted hereunder, the Licensee agrees that this Agreement does not restrict the Owner in entering into agreements with other parties respecting the use of the Owner's poles.**

8.5 **At all times:**

- **the Attachments shall remain the property of the Licensee; and**
- **the pole shall remain the property of the Owner, subject to 16.2 and 16.3.**

ARTICLE 9 – INSTALLATION AND MAINTENANCE

9.1 **The Licensee agrees that it will not Affix any of its Attachments, except Service Drops, to a pole of the Owner until the Owner approves the Permit designating such Attachment. The Licensee agrees that it is solely responsible for Affixing and maintaining its Attachments to the poles or other equipment of the Owner or In-span.**

9.2 **Service Drops may be added to or altered, without reporting the addition or alteration to the Owner, when Affixed to a pole for which a Permit has been Approved, or Affixed In-span where a Permit has been Approved for the nearest pole. If the pole, or the nearest pole to the Service Drop, is not included in an existing Permit, the Service Drop**

must be reported to the Owner and a Permit applied for within thirty (30) days. If the Permit application is subsequently refused, the Licensee must revise the Permit application to the satisfaction of the Owner, or the Licensee must remove the Service Drop within thirty (30) days of the Owner notifying the Licensee of the refusal. If such plant is not removed within the specified period, the Licensee shall pay all associated costs of the Owner and third parties for the removal of its Service Drops. Any disputes relating to Service Drops shall be addressed in accordance with the Dispute Resolution process set out in Section 21.

9.3 **In conjunction with the Licensee's system rebuild plans, the Licensee shall make best efforts to consolidate its multiple parallel strands on a pole into one strand during the Initial Term of this Agreement. If a third party seeks access to the Communications Space where the Licensee has parallel Attachments, the Licensee shall, at the Licensee's option, either consolidate its parallel Attachments or transfer title of one of the Licensee's Strands to the Owner at no charge to the Owner, or to the third party. The Owner shall be given the first opportunity to obtain title in the Licensee's parallel strand, should the Licensee opt to transfer title of the strand. Any such transfer of the Licensee's Strands to a third party shall be subject to the conditions in Articles 20.01 and 20.02. The Licensee shall consolidate its multiple parallel support strands on a pole into one support strand within 90 days' notice, or other timing as mutually agreed upon, on a case by case basis, when reasonably requested by the Owner for requirements such as:**

- **safety;**
- **operation of the Owner's electricity distribution network;**
- **planning;**
- **aesthetics; and**
- **road authority and property owner requirements**

9.4 **If the Licensee needs to carry out any work within safe electrical limits of approach, as specified by applicable regulation and legislation, in conformance with Article 6, the Licensee must use the Owner or an Owner-approved contractor. The Owner shall consider contractors for Approval requested by the Licensee according to the Owner's approval process.**

9.5 **The Licensee covenants and agrees with the Owner to Affix and maintain its Attachments in a safe and serviceable manner satisfactory to the Owner, acting reasonably, and in accordance with the Standards and Good Utility Practice, and in such a way as not to**

- **interfere with the lines, works or equipment of the Owner; or**
- **interfere with the electrical supply carried by the Owner's equipment; or**
- **be damaging to existing plant or service of a third party.**

9.6 **Without limiting the generality of the foregoing, the Licensee is responsible for the installation of all guys, anchors and other equipment required for, or related to, the Affixing and maintaining of Attachments in accordance with the Standards.**

9.7 **The Owner and Licensee recognize that, from time to time, existing Standards may be amended or new standards may be enacted and that these amendments or enactments may affect both of the parties to this Agreement. The Owner specifically reserves the right to require the Licensee's compliance with the new standards or amended Standards. Any new standards or changes to the Standards shall be applied in a reasonable manner: - e.g. safety related concerns may have to be resolved by changes to existing plant, whereas other changes may apply only to new installations. Where either party feels it has been substantially prejudiced by any such amendment or enactment, it will advise the other party. The parties agree to engage in discussions with a view to addressing the alleged prejudice and may engage the Dispute Resolution process where necessary. During these discussions or Dispute Resolution, the Agreement and/or Approved Permits will continue in full force and effect.**

9.8 **The Licensee agrees that, upon the Attachments being made in accordance with the provisions of this Agreement, it will not make any alterations to its Attachments, (Service Drops and Emergency Situations excluded), so as to effect technical considerations or safety, unless:**

- **such alteration is approved by the Owner using the same procedure as for a new Attachment, if required, as described in this Agreement; and**
- **such alteration is carried out in accordance with the Standards and in such a way as not to interfere with the lines, works or equipment of the Owner or of other permitted users of the pole.**

9.9 **If the Licensee applying for a Permit requires third party Make-ready Work or the use of a third party Support Strand or Attachment, the Licensee shall coordinate the aforementioned with the third party.**

9.10 **The Owner shall use its agreements with Support Strand owners whose Support Strands are attached to its poles to encourage and facilitate Re-arrangement or Over Lash arrangements between the Licensee and third parties for Communication Space management.**

9.11 **The Owner may, at its discretion, require that an employee of the Owner be present when the Licensee is Affixing, Rearranging, or removing its Attachments so as to ensure that the work is carried out in accordance with the terms of this Agreement. The Licensee agrees to provide two (2) working days notice prior to the start of any such work and agrees to pay to the Owner the costs of such employee that may be reasonably necessary for the carrying out of the provisions of this clause in accordance with Article 13.**

9.12 **The Licensee shall ensure that its installations are inspected and approved in accordance with any applicable regulation, including, but not limited to, the Electricity Act 1998, Regulation 22-04, Section 8, and the Distribution System Code-Appendix C.**

9.13 **The Licensee shall notify the Owner when the Affixing, Rearranging or removing of its Attachments to a pole of the Owner is complete so that the Owner may verify the accuracy and completion of the work, including applicable review under the Owner's Construction Verification Program.**

9.14 **In order to ensure the accuracy and completeness of existing Approved Permits, a field inspection shall be made jointly at intervals mutually agreed upon, but generally, once every five years. Any discrepancies between the field conditions found and the Approved Permits will be corrected and a new Permit to reflect the actual field conditions will be submitted by the Licensee for Approval in accordance with this Agreement. If the new Permit is not Approved, the Licensee will be notified in writing of the reason why Approval was denied and, within thirty (30) days, the Licensee must either remedy the deficiency and reapply for a new Permit or remove the Attachments, and the provisions of Articles 11 through 13 shall apply. Every effort will be made to include all pole users in the field inspection. Participating parties will come to a negotiated agreement regarding the allocation of costs.**

9.15 **The Licensee agrees to place markers on its cables and Support Strands in a manner acceptable to the Owner to assist in field identification of ownership of Attachments made by various permitted users of the pole. As a minimum, these markers shall be placed at all Cable Risers/Dips and at every second pole, in a manner acceptable to the Owner. Within five (5) years of the Effective Date, the Licensee shall have placed identifying markers on all Affixed cables and Support Strands existing on the Effective Date.**

9.16 **Except where approved by the Owner, Joint Anchorage will not be permitted on all new or reconstructed pole lines. Each party shall be responsible to install and maintain its own separate anchoring system, as may be required.**

9.17 **On any existing pole line which has Joint Anchorage, each party will be responsible to satisfy themselves that the existing anchorage is adequate to sustain its plant.**

9.18 **At the end of each calendar year, the Licensee shall notify the Owner in writing of the Licensee's Attachments, excluding Service Drops, that are no longer required for or are no longer being used to provide services, or are being reserved for future capacity. The parties, acting reasonably, shall determine the actions to be taken, which may require the Licensee to remove, reactivate or sell such Attachments. If so required, the Licensee shall remove, sell or reactivate such Attachments within one (1) year, or within such other time period as agreed to by the parties. The Licensee shall pay all associated costs with respect to such Attachments. The Owner reserves the right to carry out periodic audits of the Licensee's Attachments. In the event of false declaration or non-declaration, the Licensee shall pay the full cost of the audit and any associated damages.**

Any disputes arising from Article 9.18 shall be addressed in accordance with the Dispute Resolution process set out in Section 21.

9.19 **The Licensee shall, at all times and in accordance with the terms and conditions of this Agreement, maintain and operate its Attachments in a safe and serviceable condition, and replace Attachments as they deteriorate, become defective or unsafe. A public safety audit should be carried out at an interval mutually agreed upon by the Owner and Licensee.**

9.20 **The Licensee agrees that the Owner may change the nature or configuration of its equipment or change the characteristics, such as voltage, frequency or power levels of the electrical supply carried by its equipment at any time.**

9.20 **As stated in the Distribution System Code, issued by the OEB, only persons qualified under the Occupation of Health and Safety Act may be involved in inspection activities.**

9.21 **From time to time, the Owner or Licensee may have safety hazards and significant conditions with its plant, requiring prompt response. Each party will make best efforts to inform the other of safety hazards.**

9.22 **For all poles that have a Power Space, the Owner shall, wherever possible, use the highest position within the Communication Space for the Owner to place the Owner's telecommunications attachments. At the sole discretion of the Owner, the Licensee may use this location to place the Licensee's Strand if insufficient space capacity is available in the other two parallel strand locations. If the Licensee uses this location, the Licensee shall ensure that there is sufficient spare capacity for the Owner to Over Lash to the Licensee's Strand. Nothing in this agreement shall restrict the ability of the Licensee to reasonably charge the Owner to Over Lash Attachments to the Licensee's strand. The Owner shall provide thirty (30) days' prior written notice to the Licensee where the Owner plans to Over Lash to the Licensee's Strand.**

9.23 **Subject to Article 14, the Licensee agrees that the Owner is not responsible for any damage, harm or problems of any kind caused to the Attachments or the signals or supply carried by the Attachments which may arise from the Owner's equipment or the electrical supply carried by its equipment, except for such damages, harm or losses caused by gross negligence or wilful misconduct of the Owner.**

ARTICLE 10 – LINE CLEARING

10.1 **The Owner and the Licensee agree that vegetation management is required for the ongoing reliable provision of electricity and telecommunication services. The trimming or removing of trees, underbrush or any other items as required to establish clearance for the Licensee's Attachments shall be the sole responsibility of the Licensee. The Licensee, or its contractor as approved by the Owner, shall undertake the trimming or**

removing of trees, underbrush or any other items as required by the Licensee for the Licensee's purposes in the Communications Space, having regard for all safety, technical and engineering concerns of the Owner. If in the sole but reasonable discretion of the Owner, the vegetation on or around the Licensee's plant is or may be damaging to the Owner's existing plant or electrical distribution system or aesthetics, the Licensee shall correct the situation to the satisfaction of the Owner upon notification by the Owner. Nothing in this clause excuses the Licensee of liability in the event of damage to the Owner's plant because of such vegetation. If the Licensee fails to engage in the requisite trimming or removal within seven (7) days of notification from the Owner, the Owner may undertake such work or arrange for it to be completed, all at the risk and expense of the Licensee, and the Owner shall submit an invoice to the Licensee for the reasonable cost of such work, which invoice shall be paid by the Licensee in accordance with Article 13.

10.2 **The Licensee and Owner may, by mutual agreement, make arrangements regarding provision of tree trimming or line clearing services. If such arrangements are made between the Licensee and Owner, the Owner shall inform the Licensee of the timing, location, cost, and extent of the tree trimming or line clearing services to be undertaken on their behalf in advance of the commencement of the tree trimming or line clearing services.**

10.3 **Should any extraordinary services, such as but not limited to tree trimming or line clearing services after storms, be required in order to establish clearances for the Licensee's Attachments for operations, maintenance and safety, the cost of such services shall be the sole responsibility of the Licensee. In the event that such extraordinary services are required, in the sole but reasonable discretion of the Owner, the cost of such extraordinary services undertaken by the Owner shall be charged to the Licensee in accordance with the provisions of Article 13.**

ARTICLE 11 – FEES

11.1 **The Licensee shall pay to the Owner for 2005, and in advance, for each year hereafter, commencing on March 7, 2005, an Annual Licence Fee determined by multiplying the number of poles of the Owner to which the Licensee had Attachments on December 31 in the year prior times the Attachment License Fee as determined in accordance with clause 11.2.**

11.2 **The Attachment License Fee for each year during the term of this Agreement shall be $22.35, or as otherwise amended by the Ontario Energy Board from time to time.**

11.3 **If the Licensee has an Approved Permit for a pole and is thus paying an Attachment License Fee, there is no charge for additional attachments made in the Communications Space, or in-span, if such attachments are approved by the Owner. See also Schedule B, Interpretive Sketches.**

11.4 **The Licensee shall pay 50% of the full Attachment License Fee to the Owner in respect of each Clearance Pole of the Owner directly supporting one or more Service Drops of the Licensee, which Attachment License Fee shall be effective from March 7, 2005.**

11.5 **The Licensee shall pay the full Attachment License Fee to the Owner in respect of each Guy Pole of the Owner directly supporting one or more Attachments of the Licensee, which Attachment License Fee shall be effective from March 7, 2005.**

11.6 **If the Licensee has an Approved Permit for a pole and is thus paying an Attachment License Fee, the Licensee shall pay the Total Direct Cost of $1.92, or as otherwise amended by the Ontario Energy Board, from time to time, for Attachments outside the Communications Space, such as amplifiers, or power supplies. If the Licensee is not paying an Attachment License Fee for said pole, the full Attachment License Fee shall apply to such Attachments outside the Communications Space.**

11.7 **Licensee-owned cables not directly Attached to the Owner's pole but Over Lashed to a cable or Support Strand not owned by the Licensee shall be charged 25% of the full Attachment License Fee, provided said cables were Approved by the Owner and were Over Lashed prior to March 7, 2005. Licensee-owned cables not directly Attached to the Owner's pole but Over Lashed to a cable or Support Strand not owned by the Licensee on or after March 7, 2005 shall be charged the full Attachment License Fee, for which the Licensee shall require an Approved Permit from the Owner pursuant to the terms of this agreement. The Licensee shall inform the Owner of details, including quantity, location, and characteristics of existing, prior to March 7, 2005, Over Lashes within two (2) months of the Effective Date of this Agreement, or as otherwise agreed by the parties.**

11.8 **In addition to the fees payable pursuant to clause 11.1, in each year the Licensee shall pay to the Owner, fees for the year, for poles to which Attachments have been made during the year. Any Attachments which are Affixed during the year shall be charged the Attachment License Fee for the full year.**

11.9 **There will only be one Attachment License Fee referable to the Communications Space of any pole regardless of the number of Attachments made by the Licensee thereto or in-span. In assessing the Attachment License Fee to be applied to a pole supporting multiple Attachments, which may have different fees, the highest fee shall apply.**

11.10 **The Attachment License Fee determined in accordance with Article 11 shall be invoiced by the Owner to the Licensee in one instalment to be paid on or before the first day of January in each year of this Agreement or any renewal hereof.**

11.11 **If at anytime during the term of this Agreement or of any renewals thereof an Attachment is Affixed to a pole of the Owner without a Permit being Approved by the Owner for such Attachment, then the Licensee shall pay to the Owner the Attachment License Fee for each year that the Attachment existed without a Permit, plus a penalty of five [5] times the Attachment License Fee, or as otherwise agreed by the Parties.**

11.12 **In addition to the Annual License Fee and any other payments required under this Agreement, the Licensee is solely responsible for all of the costs associated with Affixing and maintaining the Attachments to the poles of the Owner or In-span. The Owner's cost during regular workday business hours of correspondence, site meetings, preparing cost estimates, joint field visits, reviewing and Approving the Permit, and verifying completed work will be the responsibility of the Licensee. Without limiting the generality of the foregoing, the Licensee shall be responsible for the cost of:**

- **effecting changes, alterations or rearrangements, other than Minor Relocations, to the Owner's poles;**
- **Affixing the Attachments;**
- **cleaning up the site around each pole where the Licensee has Affixed Attachments and thereafter ensuring safe disposition of all materials;**
- **conducting a field inventory or audit program in accordance with the cost sharing arrangements as mutually agreed between the parties;**
- **any other reasonable expenses associated with the Licensee's obligations under this Agreement.**

11.13 **As of December 31st of each year for which the Owner has the Licensee's Attachments Affixed to its poles, the Owner will provide to the Licensee an "Annual Statement of Fees" which will itemize the number of Attachments involved and a breakdown of the calculation of the Annual License Fee. Every effort shall be made by the Owner to ensure that the content of the Annual Statement of Fees is accurate. The Licensee shall remit forthwith to the Owner the difference between the Annual License Fee as set out in the Annual Statement of Fees and the amount remitted to the Owner at the beginning of the year in advance. Any overpayment shall be remitted forthwith by the Owner to the Licensee. The Licensee is obligated to track any requested Attachment changes by Permits during a given year to confirm the Owner's annual Attachment count contained in the Annual Statement of Fees. Any dispute on the numbers shall be settled between the engineering staff of the Licensee and the Owner, and failing resolution, Dispute Resolution shall be applied, with all adjustments (if any) reflected on the following year's Annual Statement of Fees.**

11.14 **All invoices rendered by the Owner pursuant to this Article that are outstanding for longer than forty five (45) days will be subject to interest charged at a rate of one and one-quarter percent (1.25%) per month. The interest shall run from the due date of payment of the invoice until the date the payment should be received by the Owner in the ordinary course of post, following mailing of the payment. If the Licensee fails to**

pay any invoice within forty five (45) days, the provisions of Article 13 apply and the Owner may invoke any or all of the measures detailed in Article 13.

ARTICLE 12 – REMOVAL, REPLACEMENT OR RELOCATION OF POLES OR ATTACHMENTS

12.1 **The Licensee agrees that, if at any time the Owner deems it necessary or is required to remove, replace or change the location of any pole designated by a Permit to which Attachments are Affixed, whether the change or removal be on a temporary or permanent basis, the Owner shall notify the Licensee of the requirement to remove or relocate its Attachments, whereupon the Licensee, at the time specified in the notice shall, at the cost and expense of the Licensee, remove its Attachments from that pole and, except when the notice specifies to the contrary, the Licensee may transfer the Attachments to the pole in the new location or to the new pole, as the case may be, and in either case this Agreement and the associated Permits shall continue to apply to the Attachments so transferred. The Licensee acknowledges that in certain situations the Owner may remove a pole and not replace it, so that there would no longer be a pole upon which to Affix the Attachments. In such a situation, the Approval associated with the applicable Permit would cease. The Owner will endeavour to give the Licensee at least sixty (60) days prior written notice of any such removal, replacement or change in location of a pole, but in case of emergency, as reasonably defined by the Owner, the Owner may give no notice or such shorter notice as the Owner deems expedient or the notice may be given verbally. In Emergency Situations, where no notice is given by the Owner or where the Licensee fails to remove or relocate its Attachment after being notified by the Owner, the Owner, or its designate, may remove or relocate the Attachments and the Licensee is responsible for the reasonable costs of the Owner in so removing or relocating the Attachments.**

12.2 **To expedite its own work, the Owner may carry out a Minor Relocation, at no cost to the Licensee, of the Licensee's Support Strand provided that:**

- **it does not interfere with other Attachments;**
- **it does not affect a Cable Riser/Dip pole for the Licensee;**
- **Standards and safety are maintained;**
- **the Licensee does not require an easement or third party permission; and**
- **the Support Strand is attached to the pole in a manner equivalent, in the Owner's view, to that formerly used by the Licensee.**

If the Owner relocates the Licensee's Support Strand, the Owner will provide written notification to the Licensee of the Minor Relocation.

12.3 **If the Licensee fails to comply with a notice given pursuant to this Article, then the Owner, unless notified by the Licensee with regard to an alternative method of compliance acceptable to the Owner, shall be entitled to a delayed removal charge of**

$100.00 per pole, or as otherwise determined by the Parties. Alternatively, the Owner may remove or relocate the Attachments, at the Licensee's cost, and if unpaid by the Licensee, the Owner has the right to recover its costs from the Licensee's security deposit established in Article 5, until such time as the Licensee has fully complied with the Owner's notice. In addition, the Owner may carry out the work with respect to the Attachments, as specified in the notice, at the risk of damage to the Licensee's plant and at the expense of the Licensee.

12.4 **Where, at the time an Approval is granted, the presence of the existing Attachments causes the Owner to perform Make-ready Work to accommodate the new Attachment, the Licensee shall pay to the Owner the cost of such relocation or modification.**

12.5 **In instances where plant adjustments are initiated as a result of work being done by a municipality or a federal, provincial or municipal governing body or authority in Ontario, all conditions of notification and scheduling of work indicated may be null and void. These arrangements may be dictated by the requirements of the Municipality or said governing authority in Ontario.**

12.6 **Subject to Article 12.5, in the event that the Owner is subject to any penalty by the Municipality or said governing authority in Ontario, due to the late removal by the Licensee of its Attachments, then in addition to the delayed removal charges as stipulated in this Article, the Licensee shall pay to the Owner, a sum equal to any penalty incurred by the Owner, and any costs related to the payment of the penalty.**

12.7 **All charges to the Licensee for carrying out work referenced in this Article shall be reasonably determined by the Owner and payable by the Licensee in accordance with Article 13.**

ARTICLE 13 – PAYMENT FOR WORK

13.1 **The Licensee shall issue a purchase order to the Owner for each project such as Make-ready Work required to meet the terms and conditions of this Agreement, and which is not covered by the Annual License Fee. The Owner will invoice against the applicable purchase order, as work by the Owner for the Licensee is performed.**

13.2 **Upon completion of any work performed by the Owner on the Licensee's behalf as contemplated by this Agreement, the Owner will render an invoice or invoices to the Licensee for the actual cost (including financial overheads) of performing such work and the Licensee shall pay the amount of the invoice within forty-five (45) days of the date of the invoice.**

13.3 **All invoices that are outstanding for longer than forty-five (45) days will be subject to interest at the rate of one and one-quarter percent (1.25 %) per month. The interest shall run from the due date for payment of the invoice until the date payment is received by the Owner.**

13.4 **If an invoice is outstanding for more than sixty (60) days, the Licensee shall forthwith, upon receipt of written notice from the Owner, but at the expense of the Licensee, remove from the poles of the Owner its Attachments covered by the invoice.**

If the Licensee fails to remove the subject Attachments within thirty (30) days of receipt of the notice and the invoice is still unpaid, the Owner may remove such Attachments, at the risk and expense of the Licensee. Upon the removal of such Attachments by the Owner, the Owner shall have the right to retain the Attachments so removed until the Licensee pays the cost of removal. If the Licensee fails to pay to the Owner the cost of removing such Attachments within sixty (60) days of receipt of the invoice for same, the Owner shall have the further right to sell the Attachments so removed and apply the proceeds against the cost of removing the Attachments. The Owner may also pursue any and all remedies it deems appropriate, including the exercise of any security posted by the Licensee with the Owner, to recover the outstanding amounts owed to it by the Licensee.

13.5 **The Licensee shall notify the Owner in writing of any dispute with respect to an invoice. If the dispute cannot be resolved within thirty days through normal business operations, the Dispute Resolution process, as described in Article 21 will be initiated. Article 13.4 will not take effect during the Dispute Resolution process.**

ARTICLE 14 – LIABILITY, INDEMNITY AND INSURANCE

14.1 **The Licensee agrees that the Owner is not responsible for any damage, harm or problems of any kind caused to the Attachments or the signals or supply carried by the Attachments which may arise from the Owner's equipment or the supply carried by its equipment, except for such damages, harm or losses caused by gross negligence or wilful misconduct of the Owner.**

14.2 **The Licensee assumes all risk of loss or damage, including damage to or loss of its Attachments or of its service or its equipment, or to the plant or service of the Owner arising from any act or omission of the Licensee or its agents and contractors under this Agreement, save and except for such portion of losses or damages caused by the gross negligence or wilful misconduct of the Owner, and does hereby release the Owner from all claims and demands with respect thereto.**

14.3 **The Licensee does hereby indemnify and save harmless the Owner from all claims and demands for or in respect to any loss, damage or injury to property or persons (including loss of life), including those of third parties, arising out of, or attributable to, the exercise by the Licensee or its agents or contractors of the Approvals herein granted, save and except for such portion of loss or damage caused by the gross negligence or wilful misconduct of the Owner. Such indemnification shall include, but**

not be limited to, compensation to the Owner for time required to prepare for and attend hearings, for all reasonable legal fees and costs, for fees and costs of expert witnesses reasonably incurred and for the payment of any judgment, including costs, made by a Court, tribunal or decision maker and any and all appeals with respect thereto.

14.4 **The Licensee shall, during the term of this Agreement and any renewals thereof, maintain a policy or policies of insurance in which the Owner is named as additional insured in the amount of $5,000,000 per occurrence and the policy or policies shall contain a cross liability clause, or as otherwise may be agreed between the Licensee and the Owner, against liability due to damage to the property of the Owner or any other person or persons including third parties, and against liability due to injury to, or death of, any person or persons, including third parties, in any one instance. The Owner shall not be responsible for the payment of any premium with respect to any such insurance, which is the sole responsibility of the Licensee.**

14.5 **Prior to the Approval of any Permit and as a condition of any Permit Approval or renewal, the Licensee shall furnish to the Owner annually a certificate of such insurance and for the renewal thereof, so long as this Agreement remains in force.**

14.6 **The Licensee agrees that the insurance described herein does in no way limit the Licensee's liability pursuant to the indemnity provisions of this Agreement.**

14.7 **During the term of the Agreement, the Licensee will immediately notify the Owner of any damage whatsoever to the equipment of the Owner or a third party or to persons arising as a result of the Licensee Affixing, inspecting, maintaining, changing, repairing or removing any of its Attachments to the Owner's poles. The Licensee will also immediately notify the Owner of any claims or notices of claims received by the Licensee related in any way to its Attachments.**

14.8 **During the term of the Agreement, the Owner will immediately notify the Licensee, but not any third party having rights to the Licensee's equipment (whether by Irrevocable Right of Use, sublicense or otherwise) of any damage whatsoever to the Licensee's equipment arising as a result of the Owner Affixing any Attachments to the Owner's poles. The Owner will also immediately notify the Licensee of any claims or notices of claim received by the Owner related in any way to the Licensee's Attachments, or to any claims or notices of claim received by the Owner related in any way to any act or omission of the Licensee pursuant to this Agreement.**

14.9 **The Owner will provide to the Licensee reasonable written notice of its intention to significantly change the nature or configuration of its equipment or change the characteristics, such as voltage, frequency or power levels of the electrical supply carried by its equipment when the Owner has reason to believe that such change might have adverse effects on the Attachments, or the product carried by such Attachments, or place the Licensee in non-compliance with any of the provisions of this Agreement. The Owner is not responsible for any adverse effects on the Attachments, or the product carried by such Attachments, as a result of any changes made by the Owner.**

14.10 **Notwithstanding anything to the contrary in this Agreement, neither the Owner nor the Licensee shall be liable to the other for, and the indemnities set out herein shall be deemed not to include, indirect or consequential damages or damages for economic loss however caused, arising out of this Agreement.**

ARTICLE 15 – TERM AND TERMINATION OF AGREEMENT

15.1 **The Term of this Agreement is five (5) years.**

15.2 **Prior to six (6) months before the End of Term Date, either party may request the other to extend the Term of the Agreement for a further term of five years on the same or amended terms and conditions, as the parties may agree and in such case the Agreement, as amended, shall continue until the new End of Term Date.**

15.3 **If, within 12 months after any End of Term Date, the parties have not agreed on terms and conditions for a renewed Agreement, either party may invoke the Dispute Resolution process as per Article 21.**

15.4 **Subject to Article 15.3 and 15.6, the Licensee shall, upon the termination of this Agreement, as mutually agreed upon by the parties, remove from the poles of the Owner its Attachments covered by this Agreement or the terminated Permit and ensure that the site where the removal occurred is left in a safe and equal or better condition then prior to the removal, at the expense of the Licensee.**

15.5 **In accordance with Articles 15.4 and 15.6, if the Licensee fails to remove the subject Attachments, within one hundred and eighty (180) days of receipt of notice, or otherwise mutually agreed upon, the Owner may, at the Licensee's sole risk and expense, remove such Attachments. Upon the removal of such Attachments by the Owner, the Owner shall have the right to retain the Attachments so removed until the Licensee pays the cost of removal, and if the Licensee fails to pay to the Owner the cost of removing such Attachments within sixty (60) days, then the Owner will have the further right to sell the Attachments so removed and apply the proceeds against the costs of removing the Attachments. The Owner may also pursue any and all remedies it deems appropriate, including the execution of any security posted with it, to recover the outstanding amounts owed to it by the Licensee.**

15.6 **The Agreement shall be deemed to remain in effect during the Dispute Resolution process under Article 21. All of the Owner's and Licensee's remedies to enforce outstanding obligations under this Agreement and Article 15.3 and Article 21 shall survive termination of this Agreement.**

ARTICLE 16 – TERMINATION OF APPROVAL

16.1 **The Approval granted by each Permit Approved by the Owner pursuant to the provisions of this Agreement shall remain in full force from the date of the Approval until the earliest of:**

- **the End of Term Date; or**
- **the date upon which the Attachment associated with the Approved Permit is removed by the Licensee or the Owner; or**
- **subject to 16.5, the date upon which the Licensee defaults on any of its obligations under this Agreement; or**
- **the pole designated by such Permit is abandoned by the Owner.**

16.2 **If the Owner intends to sell a pole designated by an Approved Permit to a third party, the Owner will attempt, on a best efforts basis, to secure the agreement of the purchaser that the Attachments be allowed to continue to be Affixed to the pole and the purchaser be bound to assume all of the Owner's obligations hereunder.**

16.3 **The Owner and Licensee may negotiate terms of sale, from the Owner to the Licensee, of a pole vacated by the Owner and located on public and/or private property. Such sale will be subject to any existing obligations of the Owner to third parties, and subject to the consent of the property owner or any municipal, regional, provincial or federal government or agency having jurisdiction over said lands.**

16.4 **If the condition of sale of any pole pursuant to Article 16.2 or 16.3 cannot be satisfactorily arranged, the Owner may, by notice in writing at any time, require the Licensee to remove its Attachments from the poles involved, and the Licensee shall, within one hundred and eighty (180) days after receipt of said notice, remove its Attachments from such poles.**

16.5 **If the Licensee fails or neglects at any time to fully perform and observe all the covenants, terms and conditions herein contained, including a default at any time in the payment of fees or removal of Attachments, the Owner will notify the Licensee in writing of such default and the Licensee shall correct such default within thirty (30) days or such longer period as agreed to by the Owner. If the Licensee fails to cure such default within thirty (30) days of notice by the Owner or such longer period as agreed to by the Owner, the Owner may forthwith terminate the Approvals accompanying each Approved Permit.**

16.6 **The termination of an Approval pursuant to this Agreement shall not be deemed a termination of this Agreement unless the Permit containing such Approval is the last remaining or only Permit Approved pursuant to this Agreement, in which case the termination of such Permit will be deemed to be a termination of this Agreement, subject to the Licensee fulfilling all of its outstanding obligations and the right of the Owner to enforce any such outstanding obligations.**

16.7 **The Parties agree that obligations flowing from this Agreement, or a Permit Approved pursuant to this Agreement, will continue beyond the date of termination of the Agreement or Approved Permit, until the obligations are satisfied in full. All of the remedies to enforce outstanding obligations under this Agreement, including Article 21 regarding Dispute Resolution, shall survive termination of this Agreement or an Approved Permit.**

16.8 **The Licensee shall, upon the termination of a Permit Approved pursuant to this Agreement, forthwith at the request of the Owner, but at the expense of the Licensee, remove from the poles of the Owner its Attachments covered by this Agreement or the terminated Permit and ensure that the site where the removal occurred is left in a safe and equal or better condition then prior to the removal.**

16.9 **If the Licensee fails to remove the subject Attachments, as per Article 16.8, within thirty (30) days of receipt of notice, or such longer period as agreed to by the Owner, the Owner may, at the Licensee's sole risk and expense, remove such Attachments. Upon the removal of such Attachments by the Owner, the Owner shall have the right to retain the Attachments so removed until the Licensee pays the cost of removal, and if the Licensee fails to pay to the Owner the cost of removing such Attachments within sixty (60) days, then the Owner will have the further right to sell the Attachments so removed and apply the proceeds against the costs of removing the Attachments. The Owner may also pursue any and all remedies it deems appropriate, including the execution of any security posted with it, to recover the outstanding amounts owed to it by the Licensee.**

16.10 **When an Attachment on a pole subject to Joint Use is discontinued, the Licensee shall return its copy of the related Permit to the Owner and the Owner shall mark the Permit "cancelled".**

ARTICLE 17 – EXISTING RIGHTS OF OTHER PARTIES

17.1 **Nothing herein contained shall prevent or limit the right of the Owner from granting to others, not party to this Agreement, the right to occupy its poles.**

17.2 **If the Owner has granted permission to others, not parties to this Agreement, to use any poles owned by the Owner, whether said poles are covered by this Agreement or not, then nothing herein contained shall be construed as affecting such permission. The Owner shall have the right to continue and extend such existing permission. The Licensee agrees that existing rights of third parties are in no way diminished by this Agreement. The Licensee shall treat third party Attachments to the pole with the same duty of care as is required by the Agreement between the Licensee and Owner, and will respect the rights and privileges of third parties.**

17.3 **The Owner shall not grant to any third party which includes, but is not limited to, any Affiliate or any other entity related to it, by contract or otherwise, rights or privileges to use any Joint Use Poles used by the Licensee or any poles for which it has given**

permission for such Joint Use by the Licensee, unless the Owner includes a requirement substantially the same as Section 17.2 above in Owners' agreement with the third party.

ARTICLE 18 – VESTED RIGHTS

18.1 **It is understood and agreed that neither this Agreement, nor any Approval granted by the Owner, shall confer upon the Licensee any vested right or franchise, by implication or otherwise. Any rights or privileges that are expressly provided for in this Agreement shall come to an end if and when the Agreement has been terminated in accordance with its terms. However, any outstanding obligations of the Parties existing upon termination will survive termination.**

18.2 **It is further understood and agreed that this Agreement shall not confer upon the Owner any vested rights, or franchises, by implication or otherwise, to the Attachments, other than as provided for in this Agreement.**

ARTICLE 19 – NOTICES

19.1 **Unless otherwise provided herein, any notice or other communication to a party under this Agreement shall be given or served by hand, by registered mail, postage prepaid, email, by same day or overnight courier, or by facsimile transmission (fax) addressed as follows:**

TO: OWNER
Attn:
Address
Tel. no.
Fax no.

TO: LICENSEE
Attn:
Address
Tel. no.
Fax no.

19.2 **Any notice sent by ordinary mail shall be deemed to have been given or served on the fifth day after it is deposited in any post office in Canada. In the event that mail delivery is impeded for any reason, notice shall be given by email or by fax, and any notice so given shall be deemed to have been given on the day following the day it is sent. Any notice or other communication to a party may also be served in person by**

delivering same to a responsible person in the offices of the party at the above address. Either party may change its address for service at any time by notice in writing to the other.

ARTICLE 20 – ASSIGNMENT

20.1 **The Licensee agrees that it will not assign its interest, in whole or in part, in this Agreement, the privileges herein granted or any Approved Permit, without the prior written consent of the Owner, which consent shall not be unreasonably withheld. Subject to the foregoing, this Agreement shall extend to, be binding upon, and enure to the benefit of the Owner, its successors and assigns, and the Licensee, its successors or permitted assigns. The Licensee shall have the right to assign its interest in this Agreement in its entirety to one of its affiliates with prior written consent of the Owner which consent shall not be unreasonably withheld, provided that the Licensee shall remain liable for the fulfilment of all of the Licensee's obligations hereunder. Such consent may be requested more than once.**

20.2 **The Licensee may provide to a third party an irrevocable right of use (IRU) to any part of the Licensee's equipment that is Affixed to the Owner's equipment. All work shall be done solely by the Licensee or its contractors and the IRU third party shall not have direct access to the Owner's poles or work within close proximity to energized electrical equipment, unless the Licensee has obtained the prior written consent of the Owner and the IRU third party enters into a separate Licensed Attachment Agreement with the Owner. The Licensee shall not confer any vested right, or franchise, by implication or otherwise, to use the Owner's poles or equipment or any privileges under this Agreement to an IRU third party.**

20.3 **The Owner agrees that it will notify the Licensee of assignment of any of the Owner's interest in this Agreement.**

ARTICLE 21 – DISPUTE RESOLUTION

21.1 **If any Approval is refused or terminations invoked, the Licensee may appeal that decision to the Owner's Chief Executive Officer. The Owner has the mutual right to bring a complaint to the attention of the Licensee's Chief Executive Officer. The appeal or complaint shall be heard and decided within thirty (30) days of receiving written notice of the appeal or complaint.**

21.2 **The Owner and the Licensee agree to attempt to resolve any disputes arising under this Agreement in an expedient manner. Where possible, the Owner and the Licensee shall endeavour to resolve any disputes between themselves, at the level at which the dispute arose. If the dispute cannot be so resolved, the Owner and the Licensee agree that either party may refer the matter to higher management ("Dispute Resolution"). For both parties, this shall be the Vice President level or designate.**

21.3 **Any dispute, controversy or claim arising out of or in connection with this Agreement, including any question regarding its negotiation, existence, validity, breach or termination, or the negotiation of a new Agreement may be referred to the Ontario Energy Board for decision.**

21.4 **Alternatively, disputes arising under this Agreement may be resolved by a mutually agreed upon body of competent jurisdiction or arbitration in accordance with the *Arbitration Act* (Ontario), 1991, S.O. 1991, Chapter 17 (the "Act"), as amended from time to time. Arbitration may be initiated by either party by notice in writing. Within twenty (20) days after the written request of either of the parties hereto for arbitration, the parties shall agree upon a single arbitrator, failing which, each of them shall appoint one arbitrator, and the two so appointed shall, within twenty (20) days after the initial twenty (20) day period, jointly select a third, who shall act as the Chair of the tribunal. In case either of the parties hereto fails to name an arbitrator within twenty (20) days after the written request for arbitration, the arbitrator appointed shall be the only arbitrator. In case the two arbitrators appointed are unable to agree on a third arbitrator within twenty (20) days after the expiration of the first twenty (20) day period, application shall be made as soon as reasonably possible to any Judge of the Ontario Superior Court of Justice for the appointment of a third arbitrator. The arbitrator or arbitrators so appointed shall have all the powers accorded arbitrators by the *Arbitration Act*, as from time to time amended, or any Act in substitution therefor. The decision of the said arbitrator or arbitrators (or of a majority of such arbitrators) shall be final and binding on the parties hereto.**

ARTICLE 22 – SCHEDULES

22.1 **The following schedules are hereby incorporated into and constitute part of this Agreement:**

- **Schedule A - Permit Form**
- **Schedule B - Interpretive Sketches**
- **Schedule C - Minimum Permit Drawing Requirements**

ARTICLE 23 – INTERPRETATION

23.1 **The terms of this Agreement shall be governed by the laws of the Province of Ontario and Canada, as applicable. In the event that any court or arbitration tribunal declares any portion of this Agreement invalid, the remainder of this Agreement shall remain in full force and effect.**

23.2 **Nothing in this Agreement or its performance shall create a partnership, tenancy or agency relationship between the parties, each of which is the independent operator of its facilities.**

ARTICLE 24 – ENTIRE AGREEMENT

24.1 **This Agreement, as of its Effective Date, is the entire Agreement between the parties and supersedes and replaces any prior verbal or written agreement between the Owner and Licensee relating to the Attachments on the Owner's poles or In-span, but any Permit granted Approval and outstanding under any prior agreement shall, notwithstanding anything contained in such prior agreement, remain in force and effect as if such Permit had been Approved pursuant to this Agreement, in accordance with Article 7.8 on the express condition that the Licensee satisfies all of the terms of this Agreement.**

ARTICLE 25 – HEADINGS

25.1 **The division of this Agreement into Articles and sections, and the headings of those Articles, are for convenience of reference only and shall not affect the interpretation of this Agreement.**

ARTICLE 26 – LEGISLATIVE REFERENCES

26.1 **Any references in this Agreement to any statute, by-law, rule, regulation, order or act of any government, governmental body or other regulatory body shall be construed as a reference thereto as amended or re-enacted from time to time or as a reference to any successor thereto.**

ARTICLE 27 – WAIVER

26.1 The failure of any party to this Agreement to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any rights under this Agreement, and the party shall be at liberty to

enforce such terms and conditions at any time thereafter.

ARTICLE 28 – ENVIRONMENTAL OBLIGATIONS

28.1 **The Owner makes no representation or warranty with respect to condition, defects, nature, composition, use (past, present or future) of land or plant. The Licensee hereby accepts land and plant of the Owner on an "as is" basis.**

28.2 **The Licensee shall comply with the provisions of any federal, provincial or municipal environmental laws which, during the continuance of this Agreement shall become applicable to the land, plant or Attachments pertaining to Approved Permits. If any governmental authority exercising jurisdiction with respect to environmental protection requires, in respect of any Attachments, the installation of equipment or apparatus, or requires that any other action be taken, then the Licensee shall promptly notify the Owner and install such equipment or apparatus or take such measures as may be required by such governmental authority. The Licensee shall be solely responsible for the cost of all work carried out to comply therewith.**

28.3 **Upon the termination of this Agreement, the Licensee shall leave the pole, plant and land upon which the pole is situated free of any environmental contamination resulting from the Licensee's Attachments. If and when challenged in the future, the Licensee shall have the burden of proving that any environmental contamination has not resulted from its Attachments.**

28.4 **In the event the Licensee fails to comply with its obligations in this Article to the satisfaction of the Owner, the Owner may undertake any such work that it considers necessary to correct any environmental contamination which may have resulted from the Attachment or conduct of the Licensee, and all expenses incurred by the Owner, either directly or indirectly, shall be payable by the Licensee upon receipt of the Owner's invoice.**

28.5 **The responsibility of the Licensee to the Owner with respect to the environmental obligations contained herein shall continue to be enforceable by the Owner notwithstanding termination of this Agreement.**

ARTICLE 29 – FORCE MAJEURE

29.1 **If as a result of force majeure a party is delayed in or prevented from performing or observing any of its obligations (except any obligation to pay a sum of money) under this Agreement: (i) the said party shall, for a period of time equal to the duration of the force majeure, be relieved from the performance of the said obligation and shall not be deemed to be in default hereunder during such period, and (ii) the other party shall not be entitled to any compensation for losses, damages, costs or expenses caused by such non-performance or delay.**

ARTICLE 30 – REASONABLENESS

30.1 **Each party agrees that it shall at all times act reasonably in the performance of its obligations and the exercise of its rights under this License.**

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed on the day and year first above written.

For Owner (signature and seal):
I have the authority to bind the corporation

_____
Signature

_____
Name, Title

_____
Date

For Licensee (signature and seal):

I have the authority to bind the corporation

_____
Signature
.

_____
Name, Title

_____
Date

SCHEDULE 'A' - PERMIT - CABLE/TELECOM CO./OWNER

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SCHEDULE 'B' INTERPRETIVE SKETCHES

LEGEND

Trunk line and/or fibre cable on support strand

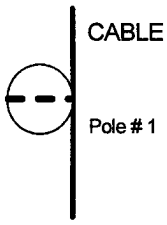
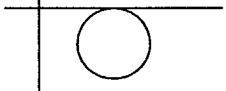
Service cable

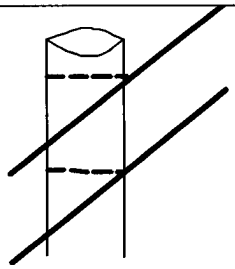
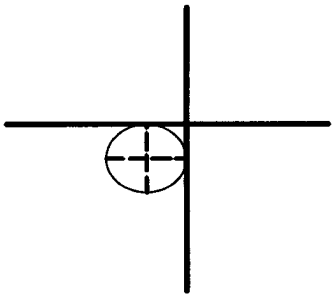
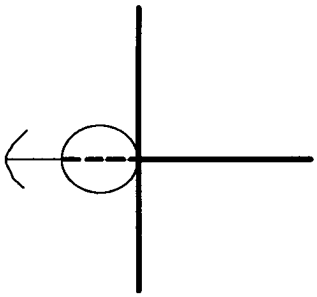
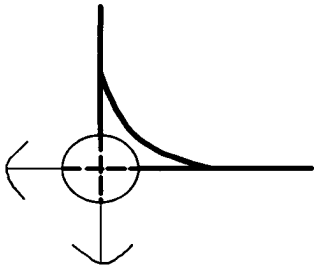
Owner's pole

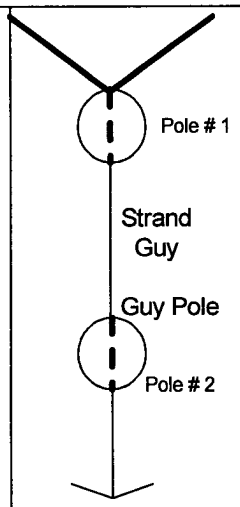
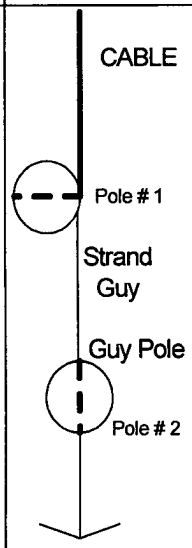
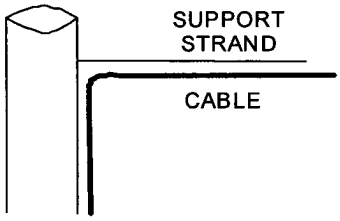
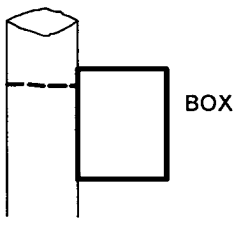
Attachment bolt through Owner's pole

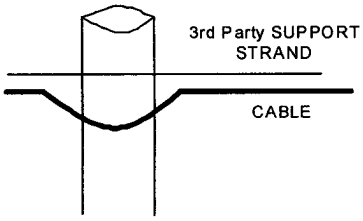
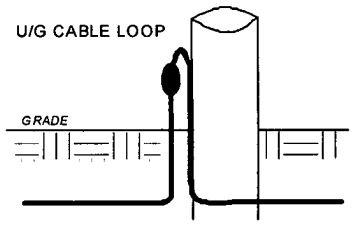
Down guy and anchor

Note: All sketches include any overhead or underground services, and service clearance attached to the pole.

ITEM	SKETCH	DESCRIPTION	ATTACHMENT $
# 1		Attachment at Pole	One FULL
#2		Service Drop on Clearance Pole	50% of One FULL

# 3		Two separate support strands	One FULL(subject to consolidation requirements)
# 4		Two intersecting support strands	One FULL
# 5		"T" tap support strands	One FULL
# 6		Dead end & change direction	One FULL

# 7		Angle pole attachment At Pole # 1 Guy Pole to support Pole #1	One FULL One FULL
# 8		Cable on support strand at Pole # 1 Guy Pole- Dead end support strand at Pole # 2	One FULL One FULL
# 9		Cable dip/riser	One FULL
# 10		Amplifier or power supply	Total Direct Cost, if existing permit or One FULL, if no existing permit

# 11		Over Lashed to a 3rd Party support strand	No Charge if Licensee is paying for an Attachment; Otherwise One FULL (after March 7, 2005) or 25% (prior to March 7, 2005)
# 12		Underground cable loop pole	Total Direct Cost, if existing permit or One FULL, if no existing permit

SCHEDULE 'C' - MINIMUM PERMIT DRAWING REQUIREMENTS (AS PER OWNER'S SPECIFICATIONS)

1. Basic Drawing Requirements (applies to all drawings)

a. Title block (name & address of Licensee, date, north point, drawing/project number, location of project)
b. Name & phone number of the Project Manager for the specific application
c. Language: English/French as appropriate
d. Scale & Dimensions: Metric
e. Scale Size: Larger than or equal to 1:1000 (e.g. 1:1000, 1: 500, 1: 250)
f. Legend of symbols
g. Key Map
h. Street names: clearly indicated

2. Project Specific Drawing Requirements

a. Sidewalks, driveways, trees, buildings, bridges, rivers, railroads, other utilities if they add clarity to specific issues
b. Clearly indicated poles and their ownership
c. Proposed cable and Support Strands clearly indicated with heavier line style
d. Proposed cable to be Over-lashed to existing Support Strand and indicate owner of that Support Strand
e. Which side of the pole to be contacted
f. Slack storage & splice can locations
g. Electrical bonding locations
h. Proposed ground rods
i. Dips and/or risers
j. Ducts, guards, and/or concrete work on poles for dips and/or risers
k. Cable dip/riser details
l. Proposed and existing Licensee anchoring
m. Make ready work anticipated by the Licensee with the Owner's poles or third party Attachments
n Existing & proposed pedestal locations along route
o Railroad, major highway, & river crossing engineering details & associated profiles
p. Pole height contact detail (by drawing or table) indicating dimensions above grade for all existing Telecommunications / CATV contacts by name, streetlight contacts, lowest Hydro contacts (neutral, secondary, primary, transformers, unprotected Hydro riser/dips) for both new and existing Support Strands.
q. Horizontal offset measurements for proposed pole contact close construction to buildings, other non-Owner overhead systems (ex. traffic, street lighting, signs), and/or bridges.
r. Wiring, wire routing, and Attachment methods to the pole.
s. Curbs
t. **Lot lines and/or buildings, and house numbers in front of poles**

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Question:

4. Section 8.1 of the application refers to a letter from THESL, filed with the Board on August 13, 2010. A copy of that letter is included as tab 3 to the application. THESL's letter states, among other things, that wireless attachments impair operational efficiency and prevent incremental safety hazards to electricity distributors.

   (a) What is CANDAS's response to the alleged impairment of operational efficiency and incremental safety hazards?

Response:

(a) Please refer to CANDAS' response to Staff 6.1 for a detailed rebuttal to all the objections set out in THESL's August 13, 2010 letter, including the allegations that wireless attachments compromise safety. CANDAS believes that THESL's past conduct belies THESL's claims that wireless attachments pose unique safety hazards. It is significant that at no time prior to August 13, 2010 did THESL raise its "safety concerns" with any member of CANDAS.

Notwithstanding the many issues THESL raised in the August 13th letter, THESL was content to enter into the Distribution Pole Access Agreement (August 1, 2009) in the first place and then approve numerous applications for permit attachments over the course of many months. Moreover, THESL has provided pole access to other wireless attachers including, it appears, Toronto Hydro Telecom (see response to CCC 1(b) & (c) and CEA 9). When viewed through this lens, THESL's letter is nothing more than a justification of its unilateral and unsanctioned decision to ban the attachments of DAS equipment on THESL poles.

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Questions:

5. Section 2.7 of the application states that "at least one other large electricity distributor in Ontario appears to be following THESL's lead, adopting a "no wireless policy". [Emphasis added]

   (a) Who is the other large electricity distributor referred to?

   (b) What is the basis for the allegation that that electricity distributor appears to be following THESL's lead?

Responses:

   (a) See response to Board Staff 7.

   (b) See response to Board Staff 7.

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Question:

6. Section 2.7 states that "certain other distributors appear to be considering whether or not to permit wireless attachments and, if so, on what terms and conditions?" Who are those "other distributors", and what is the basis for the allegation that they are considering whether or not to permit wireless attachments?

Response:

See response to Board Staff 7.

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Question:

7. Section 2.8 of the application states that "investments in wireless networks that were made in reliance on the CCTA Order have become stranded".

   (a) What are those investments and what is the current value of them?

Response:

   (a) Collectively, ExteNet, DAScom and Public Mobile have invested more than $10 million in developing the Toronto DAS Network (Application, s. 8.4). However, for the reasons described in the Application, including the change in THESL's "policy" with respect to wireless attachments as set out in the THESL Letter (i.e., the letter of August 13, 2010), the Toronto DAS Network is only partially constructed and is not operating.

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Questions:

8. Section 2.8 of the application states that in some cases the terms and conditions of pole access are "completely indeterminate" or "subject to such uncertainties as to preclude the requisite capital investments".

   (a) What are the terms and conditions being referred to?

   (b) What conditions would preclude the requisite capital investments?

Responses:

(a),(b) As explained in response to Board Staff 7, of the six Ontario distributors that DAScom contacted, two refused to provide DAScom with copies of their standard form attachment agreements. It is in this context, *inter alia,* that CANDAS used the term "completely indeterminate."

The statement that some terms and conditions were subject to such uncertainties as to preclude capital investment refers, *inter alia*, to the fact that the forms of access agreements that were provided to DAScom by Power Stream, Veridian and Newmarket were all for terms of 5 years. A five-year term, with no automatic renewal provision, is not sufficient to support the large capital investment required to develop a DAS network, especially if the agreement requires that attachments be removed at the end of the term. Uncertainties about the time it will take to obtain attachment permits also affect the ability of a wireless carrier to predict, with any degree of reliability, when its network will be available for use. This category of uncertainty also has an adverse effect on investment decisions.

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Question:

9. Section 6.8 of the application refers to THESL's "standard pole attachment agreement".

(a) Please provide a copy of that "standard pole attachment agreement".

Response:

(a) DAScom is bound by the confidentiality provisions of the pole access agreements. It is waiting for a response to a letter to THESL and THESI dated August 11, 2011, notifying them of the Board Staff's request that the agreements be produced. Please refer to Board Staff 8, Schedule 8.1-1.

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Question:

10. In section 8.4 of the application, reference is made to the more than $10 million investment made in developing the Toronto DAS Network.

    (a) Did ExteNet DAScom or Public Mobile seek compensation from THESL for that investment? If not, why not? If so, please provide details as to what compensation was sought?

Response:

    (a) No CANDAS member has made a decision in this regard.

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Questions:

11. Section 10.31 of the application asserts that, because the Board refrained from imposing any other terms and conditions of access, has "allowed distributors to impose on attachers what, in some cases, are onerous requirements".

    (a) Please provide the identity of the distributors referred to.

    (b) Please describe what those "onerous requirements" are.

Responses:

(a),(b) CANDAS will provide a complete response in respect of terms and conditions in the Distribution Pole Access Agreement when it receives THESL's response to its August 11, 2011 letter to THESL and THESI (see Response to CCC 9(a).

With respect to forms of access agreements provided by other Ontario distributors in the context of negotiations for fibre attachments (but not for antenna attachments), "onerous" terms include:

- limitation of the term to five years without clear renewal rights;
- presumptive exclusion of wireless attachments;
- unilateral limitation of damages and release of claims against the distributor except for gross negligence or wilful misconduct;
- distributor right to determine, in its sole discretion, standards that limit attachments and are not justified on the basis of any objective external standard, regulation or code, including (but not limited to) matters having to do with aesthetics and arbitrary limitations on the number of permitted attachments regardless of available capacity.

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Question:

12. Sections 3.18 and 3.19 of the application refer to a decision of the New Brunswick Board of Commissioners of Public Utilities.

    (a) Please describe the arrangements that are in place in New Brunswick regarding pole access.

Response:

    (a) If the information is available, CANDAS will endeavour to provide it as soon as possible.

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II The Application

Question:

13. The application seeks, among other things, an order amending the licences of all licenced electricity distributors to include, in their Conditions of Service, a "standard form of licenced occupancy agreement".

    (a) Does CANDAS expect that agreement to be established by the Board as a result of this proceeding? If not, how will the agreement be developed and approved?

Response:

    (a) Yes. As stated in Response to CCC 3(d), the Model Agreement could serve as a useful starting point in the development of an appropriate standard form of attachment agreement.

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Questions:

14. In section 10.38 of the application, the applicant "requests that the Board establish well-defined and equitable terms and conditions of access, similar to those adopted by the FCC."

    (a) Does CANDAS propose that the terms and conditions be identical to those adopted by the FCC? If not, how would the terms and conditions differ?

    (b) Does CANDAS propose that the terms and conditions be identical for all licenced electricity distributors? If not, how will the terms and conditions be developed for individual distributors?

    (c) Will those terms and conditions be incorporated into the distribution system code, or dealt with through another regulatory mechanism. If the latter, what regulatory mechanism?

    (d) Will individual electricity distributors be permitted to develop their own terms and conditions to the extent that they could justify individual utility-specific issues? If so, would those terms and conditions have to be approved by the Board?

    (e) Should the terms and conditions requested be established in this application or through some generic process which would allow input from all relevant stakeholders?

Responses:

    (a) Yes or at least substantially similar, as set out in s. 10.38 of the Application.

    (b) CANDAS submits that to the extent there are any special circumstances that would warrant a departure from a Board-approved form of attachment agreement or Board-prescribed terms and conditions, the party seeking such departure should be required to seek approval from the Board.

    (c) The Application requests an order of the Board amending the licences of all licensed electricity distributors requiring them to include, in their Conditions of Service, the terms and conditions of access to power poles by Canadian carriers, including the terms and conditions of access for the purpose of deploying the wireless and wireline components of DAS, such terms and conditions to provide for, without limitation: commercially reasonable procedures for the timely processing of applications for attachments and the performance of the work

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required to prepare poles for attachments; technical requirements that are consistent with applicable safety regulations and standards; and a standard form of licensed occupancy agreement, such agreement to provide for attachment permits with terms of at least 15 years from the date of attachment and for commercially reasonable renewal rights.

The Board could also approve a standard form of attachment agreement that could be incorporated into the *Distribution System Code*. A third option would entail the Board prescribing the parameters of terms and conditions governing access and include these in the Code and require that a utility's form of attachment agreement conform to these parameters.

Notwithstanding the Application, CANDAS' preferred option would be the approval of a standard form of attachment agreement incorporated into the *Distribution System Code*.

(d) No. See also response to CCC 14(b).

(e) CANDAS expects standard terms and conditions of access to be established in this proceeding. The Application includes CANDAS' request for prescribed terms and conditions of access. CANDAS served a copy of its Application on all licensed distributors. In addition, the Board directed CANDAS to serve its Notice of Application on all of the original participants in the CCTA Proceeding and publish the notice in national newspapers. This was done. In other words, all parties with an interest in this issue have already received notice of this proceeding.

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Questions:

15. The terms and conditions adopted by the FCC appear to be those set out in a "Report and Order on Reconsideration" adopted April 7, 2011 (the "FCC Report"). At section 59 of the FCC Report it states that "if the pole owner is an electric utility, it retains the statutory right to deny access where there is insufficient capacity or for reasons of safety, reliability, or generally applicable engineering purposes. [Emphasis added]

    (a) Please identify circumstances in the United States where an electric utility has denied access for reasons of "safety, reliability, or generally applicable engineering purposes", and where that denial has been subject to regulatory review.

    (b) Does CANDAS support reserving a right in licenced electricity distributors to deny access for reasons of "safety, reliability, or generally applicable engineering purposes"? If not, why not?

Responses:

    (a) If the information can be obtained, CANDAS will provide it as soon as possible.

    (b) Yes, provided that: descriptions of the "reasons" as *per* the quote above are clearly articulated; additional reasons are sufficiently and specifically documented as contemplated in the FCC Order; and there is a commercially reasonable process by which the attacher who has been denied access can appeal or grieve the utility's decision in this regard.

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III Written Evidence of George A. Vinyard

Question:

16. (p. 5) The evidence sets out minimum terms and conditions that should govern attachments to utility infrastructure. Please provide examples of arrangements currently in place in other jurisdictions that meet these terms and conditions. Please include examples of what Mr. Vinyard sees as "best practices".

Response:

Please see response to Board Staff 10.

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Question:

17. (p. 6) The evidence states that "confidentiality or non-disclosure provisions in attachment agreements should be strictly limited to the need to protect truly confidential customer or utility technical information and maintain the security of facilities". Please indicate how confidential concerns have been addressed in other jurisdictions.

Response:

As a general rule, the terms and conditions governing the provision of regulated services are not confidential. Accordingly, in circumstances where regulators approve standard forms of attachment agreements, there should be little or no need for such provisions.

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Questions:

18. (p. 6) The evidence states that attachments to electricity distribution poles should be accommodated and carried out in a manner that: (i) is fully compliant with all applicable safety regulations; (ii) does not interfere with the primary function of the pole owner, i.e. the reliable delivery of power to electricity consumers; and (iii) does not impose incremental costs or burdens on ratepayers that are not recovered in rates.

    (a) Given these requirements, who should be responsible for determining whether the attachments could interfere with the primary function of the pole owner?

    (b) How can the arrangements be structured to ensure that incremental costs or burdens are not imposed on utility ratepayers?

Responses:

    (a) The utility, at first instance, provided there is a commercially reasonable process by which the attacher can appeal or grieve the utility's decision in this regard to the Board.

    (b) The Board-approved access rate should recover all of the utility's costs in connection with telecommunication attachments to power poles, with the exception of reasonable charges for the utility's performance of: (i) "make-ready" work; and (ii) any work that the utility undertakes in connection with the installation, maintenance or removal of the attached equipment, e.g., placement of pole top antennas. Attachment agreements generally include mechanisms for the estimation and payment of such charges.

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Question:

19. (p. 9) With respect to cost recovery, how should the Board go about determining an appropriate rate? Is it appropriate for the same rate to be applied across Ontario even if the geography or operating characteristics differ among various jurisdictions? How can utility ratepayers be ensured that they are not subsidizing pole attachments? How is the development of rates for attachments typically dealt with in other jurisdictions?

Response:

The questions posed are important ones but outside the scope of the relief that CANDAS seeks in its Application. Such issues are best debated in a rate proceeding, where all parties have an opportunity to make reasoned and considered proposals in this regard.

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Question:

20. (P. 12) Do CANDAS members have arrangements with other LDCs in Ontario for pole attachments? If so, please list all of those arrangements. If not, why not?

Response:

No. See response to Board Staff 7.

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IV Written Evidence of Bob Boron (Filed July 26, 2011)

Question:

21. (p. 4) Please comment on the discussion provided in the August 13, 2010, letter provided to the Board from Toronto Hydro regarding pole attachment space. Specifically what are Mr. Boron's views regarding THESL's assertion that on many THESL poles there is limited space available.

Response:

Public Mobile is advised by ExteNet and DASCom and believes it to be true that, generally speaking, there is sufficient space on THESL poles for purposes of the wire line and wireless attachments required for the installation and operation of the Toronto DAS Network, as proposed. See also response to THESL 45.

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V Written Evidence of Brian O'Shaughnessy

Questions:

22. (p. 9) Mr. O'Shaughnessy states that "if pole access is affirmed on commercially reasonable terms and conditions, Public Mobile will be in a position to consider restoring its network build planning process in partnership with ExteNet". [Emphasis added]

    (a) What are the "commercially reasonable terms and conditions" referred to?

    (b) Does Mr. O'Shaughnessy expect the Board to set "commercially reasonable terms and conditions" in this application?

    (c) May Public Mobile not proceed with its network build planning process even if the Board approves commercially reasonable terms and conditions?

Responses:

(a) Public Mobile agrees with and adopts the Written Evidence of George Vinyard in this regard.

(b) Yes.

(c) It is possible that even if the Board does approve commercially reasonable terms and conditions of access, Public Mobile may, nevertheless, decide against resuming its network build planning process in partnership with ExteNet in respect of DAS network development in Toronto.