

**POLE ATTACHMENT LICENSE AGREEMENT**

Between

**THE BOARD OF PUBLIC WORKS OF THE CITY OF LEWES**

and

**SHENANDOAH CABLE TELEVISION, LLC**

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## POLE ATTACHMENT LICENSE AGREEMENT

THIS LICENSE AGREEMENT (the "Agreement") is effective this \_\_\_ day of \_\_\_\_\_, \_\_\_\_ (the "Effective Date") by and between the Board of Public Works of the City of Lewes, a chartered utilities board of the State of Delaware located in Sussex County (hereinafter called the "Lewes BPW"), and Shenandoah Cable Television, LLC (hereinafter called "Licensee").

WHEREAS, Licensee furnishes services to customers in the State of Delaware, and desires to place and maintain aerial cables, wires and associated facilities and equipment on the poles of the Lewes BPW in the area to be served (the "Service Area"); and

WHEREAS, the Lewes BPW is willing to permit, to the extent it may lawfully and contractually do so, the attachment of said aerial cables or bundle of cables as well as all supporting wires or cables and associated cable equipment and facilities, regardless of purpose or type, attached with a single point of contact and which utilizes no more than one foot of vertical space (the "Attachment(s)") to its poles subject to the terms and conditions of this Agreement in the service area; and

WHEREAS, the aforesaid poles owned by the Lewes BPW are public properties acquired and maintained by the Lewes BPW at significant expense to the ratepayers and the right to use said poles owned by the Lewes BPW is a valuable property right; and

WHEREAS, the Lewes BPW desires to protect and manage the use of the aforesaid poles, ensure public safety within public rights-of-way, and obtain financial compensation for Licensee's use of the Lewes BPW's poles.

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

### ARTICLE 1 SCOPE OF AGREEMENT

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

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

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

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

1.5 Nothing contained in this Agreement shall be construed as a limitation, restriction, or prohibition against the Lewes BPW entering into agreements with other parties regarding the poles covered by this Agreement, provided such agreement shall be on terms no more favorable to the any other service providers having similar licensing agreements and provide services similar to those in this Agreement.

1.6 Nothing contained in this Agreement shall be construed to require the Lewes BPW to grant a Permit where there is insufficient capacity or where access is not possible for reasons of safety, reliability and generally applicable engineering requirements. The Lewes BPW may reserve space on its poles for its core utility service based on a need for the space in the provisions of the Lewes BPW's core business needs, or the use of the Lewes BPW's facilities by other parties, or to avoid a hazardous or unsafe condition. The Lewes BPW shall allow Licensee to attach to such reserved space until the Lewes BPW has a need for that space, at which time, Licensee shall vacate that reserved space and the Lewes BPW shall provide Licensee an opportunity to maintain its Attachment, at Licensee's expense.

1.7 Various provisions in this Agreement may or may not be applicable in all instances as the context warrants such as those provisions that are specific to existing vs. new Attachments.

## **ARTICLE 2 TERM OF AGREEMENT**

2.1 This Agreement shall continue in force and effect for a period of five (5) years commencing on the Effective Date, unless this Agreement is terminated prior to the expiration date in accordance with the terms and conditions contained herein. Furthermore, this Agreement shall continue for four (4) successive five (5) year terms unless either party notifies the other party in writing at least ninety (90) days prior to the expiration date of the then current term of such party's election to not have the Agreement renew automatically.

## **ARTICLE 3 SPECIFICATIONS**

3.1 Licensee's Attachments on the Lewes BPW's poles covered by this Agreement shall be placed and maintained at all times in accordance with the requirements, specifications, rules and regulations of the latest edition of the National Electrical Safety Code, latest edition (the "NESC") and subsequent revisions thereof, any governing authority having jurisdiction, and this Agreement including the Rules and Practices of the Lewes BPW for Attachments (the "Rules") as set forth in Exhibit B attached hereto and made a part hereof by reference and consistent with generally accepted industry standards.

3.2 The Lewes BPW shall require all attachments to be identified at all times by an identifying marker stating the name of Licensee. The marker shall, at a minimum, (a) be reasonably durable under the typical weather conditions in the area and (b) have coloring unique to Licensee. Within thirty (30) days of the Certificate of Compliance Certification Date as set forth in the lower portion of Exhibit B-3, or such additional time as reasonably agreed to by the parties, the Lewes BPW will require tagging by Licensee. Licensee shall tag each cable segment adjacent to each pole (within 6") with facilities attached with a utility grade, color coded, unique identification tag designed and manufactured for the intended purpose. Such tags shall be capable of being read unaided from the ground by a person with normal vision. The required

tag type, color, method of attachment and size shall be submitted to the General Manager of the Lewes BPW for approval prior to installation.

3.3 Licensee acknowledges that this Agreement is not an exclusive contract for pole attachment rights. Licensee's use of the Lewes BPW's poles shall not interfere with the rights or operations of other users. Licensee shall not move, remove, adjust or change the attachments of others without the specific written consent of the other user and of the Lewes BPW.

#### **ARTICLE 4 ATTACHMENT FEES**

4.1 Licensee shall pay an annual, per pole fee in the amount shown in Exhibit A, attached hereto and made a part hereof by reference, for each pole to which Licensee has one or more Attachments (the "Attachment Fee") commencing on the Certificate of Compliance Certification Date as set forth in the lower portion of Exhibit B-3. In addition, Licensee shall pay the Attachment Fee for any pole, for which the Make-Ready Construction Work, as defined in Article 5.3, has been requested and completed unless Licensee notifies the Lewes BPW within forty-five (45) days of completion of the Make-Ready Construction Work that it will not attach. Upon such notification, the Permit Application(s) for the specified Attachment(s) will become void.

4.2 On or about the first day of each January, the Lewes BPW shall invoice Licensee, in advance, for the Attachment Fees and other charges due to the Lewes BPW that have not been previously invoiced. Licensee shall pay any invoice within thirty (30) days of receipt thereof. Any unpaid invoice shall be subject to interest accruing on the unpaid amount at eighteen percent (18%) per annum beginning on the 31st day from the date of invoice until paid. Notwithstanding the foregoing, the Lewes BPW shall send the first invoice within thirty (30) days of the Certificate of Compliance Certification Date with the Attachment Fees and other charges assessed pro-rata. If Licensee believe in good faith that an invoice is incorrect, it may pay the invoice under protest. To protest an invoice, Licensee must give BPW written notice of the nature of its protest not later than the due date for payment of the invoice together with copies of records and other documentation supporting its position.

4.3 Commencing not less than one (1) year following the Effective Date and no more frequently than every five (5) years, an inventory of Attachments may be made by the Lewes BPW or the Lewes BPW's representative at the expense of Licensee. The Lewes BPW agrees that the expense to Licensee shall be the normal market cost for such service and that work done at the same time for the benefit of the Lewes BPW will not be charged to Licensee. The Lewes BPW agrees that the inventory may be performed by a neutral contractor or through a joint field check with Licensee. If the Attachment inventory is made for the benefit of more than one Licensee, then each Licensee shall pay its proportionate share of the Cost, such Cost to be allocated based on the number of Attachments identified in the inventory. Inventory results will be made available to all Licensees included in the inventory.

4.4 The Lewes BPW and Licensee shall promptly seek to resolve any invoice or payment dispute made in good faith and with reasonable basis that might arise from time to time. Any dispute claim must be presented within sixty (60) days of the day the alleged error was found. In the event either party determines that there is an error or erroneous charge in the amount billed in any statement rendered by the Lewes BPW to Licensee, the error or erroneous charge shall be adjusted within sixty (60) days of a final determination of whether an error has occurred and the parties will be made whole accordingly.

**ARTICLE 5**  
**PROCESS FOR PERMITTING NEW ATTACHMENTS**

5.1 Licensee's Attachments existing at the time of the Effective Date of this Agreement shall not be considered new attachments for the purposes of this Article 5. The Rules as set forth in Exhibit B provide procedures for implementing the process for permitting Attachments, except to Secondary Poles that are outlined in Article 6.

5.2 To obtain a Permit, Licensee must submit Exhibit B-1 Permit Application (the "Application") following the procedures in the Rules. Licensee shall at the same time pay the non-refundable Application Fee stated in Exhibit A. Licensee's Application shall be accompanied by Licensee's construction plans and drawings, which will, at a minimum, contain the information specified in the Rules. Application fees will not be refunded if Licensee chooses not to proceed however, such fee paid will be credited toward the Make Ready Engineering Fee, as defined below, in those instances where engineering work continues and/or Licensee proceeds with attached its facilities.

5.3 Within thirty (30) days after the receipt of the Application, the Lewes BPW will notify Licensee of the charges (the "Make Ready Engineering Fee"), specified in the lower portion of Exhibit B-1, for engineering the required modifications to the Lewes BPW's poles necessary to accommodate Licensee's Attachments. To the extent the Make Ready Engineering Fee exceeds the Application Fee, the Lewes BPW shall provide to Licensee a detailed, itemized invoice describing the basis for such costs. The Lewes BPW shall also provide to Licensee a schedule for completing the make ready engineering work. Licensee and the Lewes BPW may agree to complete a joint ride-out to assess the necessary modifications to accommodate Licensee's Attachments. Such joint ride-out shall occur as expeditiously as possible and in any event, Licensee will be notified of the Make Ready Engineering Fee no later than the thirty (30) days following submission of an Application.

5.4 After receipt of the Make Ready Engineering Fee, the Licensee will prepare and submit to the Lewes BPW engineering plans (the "Make Ready Engineering Plans") for the Make Ready Construction Work. The Lewes BPW will review Make Ready Engineering Plans internally or through a contracted engineer noting that the Licensee shall be responsible for all costs associated with such contracted engineer should the Lewes BPW elect to engage the services of the same. The Lewes BPW shall notify Licensee of the Lewes BPW's Cost of any necessary Make Ready Construction Work (the "Make Ready Construction Cost Estimate") and shall provide Licensee a good faith estimate of the timeframe required to complete the Construction Work, as shown in Exhibit B-2 which shall be no later than thirty (30) days after Licensee's payment of the Make Ready Construction Cost Estimate. The Lewes BPW shall provide Licensee with a copy of the Make Ready Engineering Plans, which specify how and where Licensee's Attachments are to be made on the Lewes BPW's poles.

5.5 Licensee shall pay the Lewes BPW the amount specified in the Construction Cost Estimate and after receipt of such payment, the Lewes BPW shall proceed with the Construction Work as a part of its normal work schedule. The Lewes BPW will make reasonable efforts to complete Construction Work within sixty (60) days after payment for such work is received. The Lewes BPW may give consideration to a request by Licensee for an expedited construction schedule. Licensee will be responsible for additional Costs incurred by the Lewes BPW if the work is expedited.

5.6 When the Construction Work is complete, the Lewes BPW shall notify Licensee by way of the Notification of Consent to Attach (upper portion of Exhibit B-3) and Licensee shall then have the right to make the specified Attachments in accordance with the Make Ready Engineering Plans. Licensee shall, at its own expense, make Attachments in such manner as not to interfere with the service of the Lewes BPW

or others who are attached to the Lewes BPW's poles nor shall Licensee make any changes to the attachments of others unless authorized by Make Ready Engineering Plans approved by the Lewes BPW.

5.7 Licensee must make its Attachments to the Lewes BPW's poles within one hundred twenty (120) days of receipt of notification that the Construction Work is complete as set forth in Exhibit B-3, or within such additional time as agreed to by the parties. Such timeframe may be extended by the Lewes BPW provided Licensee makes a written request for such extension and is diligently pursuing its work. If Licensee's work for any Attachment is not complete within the one hundred twenty (120) day period or its extension, then the Lewes BPW may terminate its approval for Licensee's Attachment and Licensee shall have no further right to place that Attachment except by following the procedures specified above for new Attachments.

5.8 No later than thirty (30) days after Licensee adds the last Attachment for the Permit Application, Licensee shall send to the Lewes BPW a Certificate of Compliance signed by an authorized representative of the Licensee that the Attachments are of sound engineering design and fully comply with the Rules in this Agreement and the NESC and were constructed substantially as provided in the Make Ready Engineering Plans. The form of Certificate of Compliance is illustrated as the lower portion of Exhibit B-3 of the Rules. Within thirty (30) days of receipt of said Certificate of Compliance, the Lewes BPW shall issue the Permit that will authorize Licensee's Attachments to the poles that were certified noting that the Lewes BPW may pass along any inspection costs to Licensee regarding vetting of the Certificate of Compliance. The Permit form is illustrated in Exhibit B-4 of the Rules. If the Certificate of Compliance is not received within the thirty-day (30) period, or such additional time agreed to by the parties, the Lewes BPW may in its sole discretion declare the Attachment an Unauthorized Attachment, hereinafter defined.

5.9 Within sixty (60) days of completion of the Construction Work for each Application, the Lewes BPW may on its own, or in response to written request of Licensee, prepare a revised estimate to reflect the actual Lewes BPW's Cost of the Construction Work. If the revised estimate shows the actual Construction Cost is less than the Construction Cost Estimate, then the difference shall be refunded to Licensee. If the revised estimate shows the actual construction Cost is more than the Construction Cost Estimate, the difference will be billed to the Licensee to be paid within thirty (30) days of the date of the billing. Interest at eighteen percent (18%) per annum shall accrue on balances unpaid after thirty (30) days.

## **ARTICLE 6 SECONDARY POLE ATTACHMENTS**

6.1 A Secondary Pole is a pole installed for the express purpose of providing required clearances for a service loop to a customer's location. A Secondary Pole typically services only one customer or building as the case may be, does not have transformers or other electrical equipment on it, is located outside the main line, and supports the Lewes BPW's wires with less than 500 volts. For all purposes and obligations of Licensee arising under this Article 6, a Secondary Pole shall not refer to or include a pole originally installed by the Lewes BPW which otherwise fits the description herein but which is owned and maintained by the individual customer on whose private property the pole is located, as opposed to being continually owned and maintained by the Lewes BPW.

6.2 When in the process of installing service for a single customer, Licensee may attach its drop wire to the Lewes BPW's Secondary Pole without advanced notice to the Lewes BPW or Permit first being issued. Licensee is required to maintain all required road clearances, safety requirements and all other commonly accepted engineering practices as well as compliance with the Rules related to this installation.

6.3 Licensee will disclose all new Secondary Pole Attachment(s) to the Lewes BPW no later than twenty-five (25) days after the end of the month in which the Attachment was placed by submitting a “Disclosure of Secondary Pole Attachments and Request for Permit”, the form of which is illustrated in Exhibit B-5 of the Rules, with the required Application Fee.

6.4 The Lewes BPW will, within thirty (30) days of receipt of the disclosure of Secondary Pole Attachments, issue a Permit as requested, unless prior to issuing the Permit, an inspection reveals that the Attachment does not meet the requirements of the Rules or the Code, then the provisions of Article 11 shall apply.

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

## **ARTICLE 7 OVERLASHING**

7.1 Licensee may overlash its Attachments where such activity will not cause the Attachment to become Non-Compliant. Prior to any overlashing that Licensee can reasonably foresee would cause such facilities to become Non-Compliant, Licensee shall notify the Lewes BPW of the Construction Work, and Licensee and the Lewes BPW shall follow the requirements specified in Article 5 herein. If the Lewes BPW determines that Licensee’s overlashing resulted in the Attachment becoming Non-Compliant, then the requirements specified in Article 11 apply.

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

7.3 Licensee shall disclose the identification of any third party that desires to overlash to its facilities on the Lewes BPW’s poles and obtain the Lewes BPW’s approval in writing. Licensee may not overlash to the facilities of a third party on the Lewes BPW’s poles.

7.4 Licensee agrees to remove existing non-working cables from the Lewes BPW’s poles if requested to do so by the Lewes BPW.

7.5 Licensee will notify the Lewes BPW in writing of all new overlashings no later than twenty-five (25) days after the end of the month in which the Attachment was overlashd.

## **ARTICLE 8 EASEMENTS AND RIGHTS-OF-WAY FOR LICENSEE’S ATTACHMENTS**

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

8.2 Licensee will defend and hold harmless the Lewes BPW against any claims by third parties that the necessary easements were not obtained.

**ARTICLE 9  
MAINTENANCE AND TRANSFERS**

9.1 The Lewes BPW shall, at its own expense, maintain its poles in a serviceable condition in accordance with industry standards and practices and shall replace, reinforce, or repair poles as necessary to keep all poles compliant with such standards, codes and practices, as they become actually known by the Lewes BPW to be unserviceable noting that determination of the disposition of poles shall be solely in the discretion of the Lewes BPW as set forth herein and otherwise as set forth in this Agreement. Should the Lewes BPW in its sole discretion determine that any remedial efforts are needed for whatever reason, the Lewes BPW shall notify Licensee as promptly as is practicable given the nature of the matter prompting the need for such remedial efforts with the Lewes BPW further reserving the right to effect such remedial efforts or to direct Licensee to promptly effect such remedial efforts.

9.2 Licensee shall become a member of the Miss Utility system on or before the execution of this Agreement and installation of facilities. Licensee shall maintain this required membership during the life of this and subsequent agreements with the Lewes BPW.

9.3 Licensee shall insure that all employees, contractors or employees of contractors who work on the Lewes BPW's poles are properly trained in climbing and working on the Lewes BPW's poles safely. Licensee shall specifically and adequately warn, by reasonable means, each and every employee of the inherent dangers of making contact with the Lewes BPW's electrical conductors and/or electrical equipment before employees are permitted to perform work on or near the Lewes BPW's facilities. Licensee shall require, as a part of its process for qualifying contractors, that said contractors notify their employees of the inherent dangers of making contact with electrical facilities.

9.4 The Lewes BPW disclaims any warranty or representation regarding the condition and safety of the Lewes BPW's poles. Licensee expressly assumes responsibility for determining the condition of all poles to be climbed or otherwise worked on by its employees, agents, contractors, or employees of contractors whether for the placement of Attachments, maintaining or rearranging Attachments, or for other reasons. Except for performing transfer work from unserviceable poles to replacement poles, Licensee shall not permit its employees or contractors to work on poles that are unserviceable until the Lewes BPW has corrected the unserviceable condition or has determined that the pole is serviceable. Licensee will notify the Lewes BPW in writing if any of Licensee employees, agents, contractors, or employees of contractors become aware of unserviceable poles or other condition, whether hazardous or otherwise, that requires the attention of the Lewes BPW for evaluation and possible correction. The Lewes BPW agrees with the findings of such notification, it will replace any pole that has become unserviceable in a timeframe determined solely by the Lewes BPW and at the Lewes BPW's Cost.

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

9.6 The Lewes BPW may transfer Licensee's Attachment(s) at the time of the pole replacement or relocation and Licensee shall pay the Lewes BPW's Cost upon invoice. Lewes BPW shall give Licensee thirty (30) days prior written notice of any proposed transfer except in the case of an emergency. In the event the Lewes BPW does such work, except for gross negligence or willful misconduct, the Lewes BPW shall not be liable for any loss or damage to Licensee's facilities, which may result therefrom or for any liability, loss or damage to Licensee or any other party claiming actual damages. The Lewes BPW will not unreasonably withhold consent of a request for extension of time.

9.7 If the Lewes BPW elects not to transfer Licensee's Attachment(s), or should the Licensee notify the Lewes BPW in writing of its preference to transfer its own Attachment(s), then the Lewes BPW shall

notify Licensee of the need to transfer its Attachment(s) and Licensee shall do so within sixty (60) days of such notice. Licensee shall advise the Lewes BPW when the transfer is complete in the manner specified in the Rules. In the event of extraordinary circumstances, the Lewes BPW may elect to grant an extension of the sixty (60) day period to Licensee.

9.8 If the transfer is not completed by the end of the sixty (60) day period or the extended time period granted by the Lewes BPW or such other time period agreed upon in writing by the parties, the Unauthorized Attachment Discovery Fee shall apply and the Unauthorized Attachment Daily Fee shall also apply from the date on which the sixty (60) day period or the extended time period expired and shall continue until the Lewes BPW receives notification that Licensee has transferred its Attachment. These fees are referenced in Exhibit A. In addition, if Licensee does not transfer its Attachments within the sixty (60) day period or the extended time period and the delay forces the Lewes BPW to make a special return trip to the job site to remove the old pole, then the Cost incurred by the Lewes BPW to return to the job site will be paid by the Licensee.

9.9 During the repair and restoration of utility power as a result of a storm event or from other damages to the Lewes BPW's facilities, the Lewes BPW will notify Licensee of the need to re-attach downed cables and/or conductors of the Licensee. If the Lewes BPW is unable to reach Licensee, the Lewes BPW may, in a temporary fashion, re-attach downed cable and/or conductors to the Lewes BPW's poles. The Lewes BPW will notify the Licensee of such instances. Licensee shall provide the Lewes BPW with the appropriate contact information for such notification on an annual basis; or more frequently should the information change. The Licensee is required to take immediate action to permanently restore such cables and/or conductors within sixty (60) days of the Lewes BPW's temporary placement; provided, however, that such period may be extended upon a good faith showing that Licensee has commenced restoration and is diligently pursuing completion of such work. The Lewes BPW may invoice Licensee for each cable or conductor as shown in Exhibit A.

9.10 The Lewes BPW will not be responsible for any line clearance or tree trimming required for any cables in the communication space which are not owned by the Lewes BPW.

## **ARTICLE 10 UNAUTHORIZED ATTACHMENTS**

10.1 An Unauthorized Attachment is an Attachment placed after the Effective Date without a Permit having been issued or that is not part of the work performed pursuant to Article 5 or Article 6 or Article 7. When discovered, the Lewes BPW will notify Licensee of any Unauthorized Attachment, as set forth in Exhibit B-6.

10.2 Following notice of any Unauthorized Attachments per this Article 10, Licensee agrees to pay the Lewes BPW an Unauthorized Attachment Discovery Fee, per pole, in the amount stated in Exhibit A. Licensee shall, within sixty (60) days after being notified, remove such Unauthorized Attachment or will submit Application for a Permit following the provisions of Article 5.

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

10.4 At any time after the thirty (30) day period, the Lewes BPW may remove the Unauthorized Attachment without liability, except for its gross negligence or willful misconduct, and Licensee shall pay

the Lewes BPW's Cost of such removal and the Unauthorized Attachment Daily Fee shall terminate as of the date of the removal.

## **ARTICLE 11 NON-COMPLIANT ATTACHMENTS**

11.1 A Non-Compliant Attachment is an Attachment found to be in violation of the Rules, or the NESC, or is not attached in accordance with the Make Ready Engineering Plans. The Lewes BPW will notify Licensee of the Non-Compliant Attachment as provided in Exhibit B-7. Compliance with the NESC and the Rules will be determined with reference to the date the Attachment(s) was made as documented by available records maintained by the Lewes BPW and/or Licensee. Licensee will not be responsible for the cost of correcting Non-Compliant Attachment(s) resulting from "build downs" or which otherwise were or could have been created by the Lewes BPW.

11.2 Licensee will submit to the Lewes BPW its plans for corrective action, including the schedule for completion of all work (the "Correction Plan) for the Lewes BPW's approval, within forty-five (45) days of notification. The time period may be extended by the Lewes BPW if, in the Lewes BPW's sole discretion, Licensee is diligently pursuing development of a plan and implementation of corrective action. If Licensee does not provide the Correction Plan within the forty-five (45) day period, or such additional time as agreed to by the parties, the Lewes BPW may (1) revoke the Permit and declare the Attachment(s) Unauthorized and the provisions of Article 10 apply, or (2) make the corrections and charge Licensee for all Costs reasonably incurred.

11.3 If the Lewes BPW rejects the Correction Plan, the Lewes BPW and Licensee will work together in good faith so that Licensee can develop a Correction Plan that is satisfactory to the Lewes BPW. If, after ninety (90) days of the Lewes BPW's rejection of the initial Correction Plan, the Lewes BPW and Licensee have not agreed on a Correction Plan, then the Lewes BPW may revoke the Permits for the poles involved and declare the Attachment(s) Unauthorized, invoking the provisions of Article 10 or make the corrections and charge Licensee for all Costs reasonably incurred.

11.4 Rearrangements and changes to Licensee's Attachments required by the approved Correction Plan shall be made by Licensee at Licensee's expense unless the Non-Compliant Attachment results from the attachment of other Licensees or the Lewes BPW.

11.5 All work described in the approved Correction Plan must be completed within ninety (90) days of the schedule, or such longer period as is mutually agreed by the parties, or, in the event of extraordinary circumstances, the time granted by the Lewes BPW. If Licensee fails to complete such work within said timeframe, the Lewes BPW may revoke the Permit(s) and declare the Attachment(s) as Unauthorized Attachment(s), invoking the provisions of Article 10 or make the corrections and charge Licensee for all Costs reasonably incurred.

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

11.7 In the case of an Attachment that is not compliant with the NESC and is in the Lewes BPW's reasonable judgment a safety hazard, then the thirty (30) day period described in Article 10 and Article 11 may be changed to seven (7) days or some other shorter period of time as mutually agreed to by the Parties.

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

## **ARTICLE 12 ATTACHMENTS EXISTING AT EFFECTIVE DATE**

12.1 The Lewes BPW requires a formal written Permit for any and all Attachments. Any Attachment that existed prior to the Effective Date (“Pre-Existing Attachment”) of this Agreement for which a Permit exists will be considered an Authorized Attachment. Licensee will be given an opportunity to produce such Permits and will receive the cooperation of the Lewes BPW with respect to documentation in the Lewes BPW’s possession.

12.2 The Lewes BPW may perform an NESC compliance audit of Licensee’s Attachments at Licensee’s expense.

12.3 Attachments having Permit. Pre-Existing Attachment(s) found to be Non-Compliant with the NESC will require a Correction Plan from the Licensee to correct the compliance problem. Licensee is required to submit such plan within forty-five (45) days of notification of discovery. Licensee shall make all rearrangements, modifications and changes necessary to correct the Non-Compliant Attachment consistent with the provisions of Article 11.

12.4 Attachments without Permit. For each Pre-Existing Attachment without Permit found to have been caused by Licensee to be Non-Compliant with the NESC, Licensee shall make application for Permit and pay the Engineering Fee, as shown in Exhibit A, within sixty (60) days of written notice from the Lewes BPW to Licensee of such non-compliance and the provisions of Article 5 apply. Should Licensee fail to make application within the sixty (60) day period required, then the Lewes BPW may declare the Attachments as Unauthorized Attachments and the provisions of Article 10 apply.

## **ARTICLE 13 ATTACHMENTS NOT REMOVED AT END OF TERM**

13.1 Licensee shall not make additional Attachments to the Lewes BPW’s poles after the Agreement has expired or has been terminated in accordance with the terms and conditions contained herein. Licensee shall remove its existing Attachments from the poles of the Lewes BPW within a mutually agreed upon schedule. Attachments made after the expiration or termination of this Agreement will be considered Unauthorized Attachments provided that the Lewes BPW and Licensee are not engaged in good faith negotiations to extend and/or renew the Agreement.

## **ARTICLE 14 RECOVERY OF SPACE BY OWNER**

14.1 The Lewes BPW may, at any time, reasonably require the space occupied by Licensee’s Attachments on the Lewes BPW’s poles for core business purposes. Licensee shall rearrange its Attachments to other available space on such poles at Licensee’s expense or, at Licensee’s option, remove such Attachments within sixty (60) days after receipt of notification from the Lewes BPW of the Lewes BPW’s need for such space. If the Lewes BPW requires the space in order to provide service to one of its customers, the sixty (60) day period is changed to thirty (30) days. If the work is not completed within the

specified time period, or such longer period as is mutually agreed by the parties, the Lewes BPW may declare the Attachment as an Unauthorized Attachment, invoking the provisions of Article 10 or rearrange or remove the Attachment at Licensee's expense. Costs of replacing existing poles or placing new poles to accommodate the Lewes BPW's business needs shall be borne by the Lewes BPW.

## **ARTICLE 15 ABANDONMENT OF POLES**

15.1 The Lewes BPW may abandon pole(s) upon thirty (30) days' notice to Licensee. Licensee must remove or transfer all Attachments from abandoned poles within the same thirty (30) days unless granted additional time by the Lewes BPW. The Lewes BPW will not unreasonably withhold consent of such request for additional time. If the Lewes BPW has no Attachment(s) on said poles and Licensee has not removed or transferred its Attachment(s) therefrom, the Lewes BPW may (1) revoke Licensee's Permit for that pole and declare the Attachment to be Unauthorized or (2) remove Licensee's Attachment(s) at Licensee's expense, with no liability falling on the Lewes BPW except in the case of gross negligence or willful misconduct.

15.2 Licensee may, at any time, discontinue use of a pole by removing therefrom any and all Attachments it may have thereon. Billing shall cease when the Lewes BPW has been notified in writing in accordance with the form provided as Exhibit B-9 of the Rules.

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

15.4 For the limited purpose of this Article 15, all references to poles and associated items shall be deemed to include underground infrastructure and associated items, as the context warrants, with regard to abandonment, removal, etc.

## **ARTICLE 16 RIGHTS OF OTHER PARTIES**

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

16.2 If Licensee's new Attachment requires rearranging any other user's Attachment on the Lewes BPW's pole(s), Licensee shall give notice thereof to such user prior to making its own Attachment and shall cooperate with the other user in the rearrangement of facilities. Licensee hereby acknowledges that it shall bear the expense of necessary rearrangement of Attachment(s), provided such Costs are reasonable. Licensee does not have the right to rearrange the facilities of other users except with written permission from such user. Any Attachment privileges granted to Licensee hereunder shall be subject to any rights or privileges heretofore granted by the Lewes BPW to any user previously attaching.

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

**ARTICLE 17**  
**ASSIGNMENT OF RIGHTS**

17.1 With the exception of its affiliates, Licensee shall not permit any other user to use its Attachment(s) and may not sublicense any of its rights under this Agreement to any other user without the notice disclosure of such user and prior written approval of the Lewes BPW.

17.2 Licensee shall not assign or otherwise dispose of this Agreement, or of any of its rights or interests hereunder without the prior written approval of the Lewes BPW, which shall not be unreasonably withheld, conditioned, or delayed. The Lewes BPW will inform Licensee of its decision to allow or deny an assignment or transfer within thirty (30) days of receiving a request for consent from Licensee, and such a request will be deemed granted if not denied within such period. Provided, however, Licensee may assign or transfer this Agreement and the rights and obligations hereunder to any entity controlling, controlled by, or under common control with Licensee, or in the event of a merger, acquisition, or consolidation, without the consent of the Lewes BPW, but upon thirty (30) days prior written Notice to the Lewes BPW detailing the assignment including the relationship. No such permitted assignment shall relieve Licensee, the permitted assignee, or any other party liable to the Lewes BPW from any obligations, duties, responsibilities, or liabilities to the Lewes BPW under this Agreement and the use is in strict compliance with Paragraph 1.1. This Agreement shall be binding upon the successors and/or assigns of both parties.

17.3 Nothing contained herein is intended to interfere with Licensee's leasing fibers or capacity in its facilities, if such use is in strict compliance with the provisions of Paragraph 1.1. The renting or leasing of fibers or capacity in its facilities specifically does not give Licensee's customer the right to any kind of access to the Lewes BPW's poles and Licensee's customer is specifically prohibited from climbing or otherwise working on the facilities that are attached to the Lewes BPW's poles unless Licensee's customer is working as a contractor for Licensee under the terms of a written agreement.

**ARTICLE 18**  
**WAIVER OF TERMS OR CONDITIONS**

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

**ARTICLE 19**  
**INSURANCE**

19.1 Licensee and its contractors/subcontractors shall obtain and maintain throughout the period during which this Agreement shall remain in effect the following minimum insurance coverages and limits:

- A. Commercial General Liability Insurance, including premises and operations liability, products and completed operations, independent contractor's liability, broad form property damage liability and contractual liability insuring the indemnity portions of this Agreement in an amount not less than \$1,000,000 per occurrence, and \$2,000,000 aggregate.
- B. Workers' Compensation – Statutory Coverage
- C. Employers' Liability - \$1,000,000 per each accident, \$1,000,000 per disease policy limit; \$1,000,000 per disease, per employee

- D. Commercial Automobile Liability Insurance for any owned, lease, borrowed, or hired vehicles in an amount not less than \$1,000,000 combined single limit. The policy will name the required parties, as stipulated below, as additional insureds.
- E. Property Insurance – insuring against loss or damage to Licensee’s tools, equipment, and any personal property brought onto the premises. Licensee and its subcontractors may self-insure for this exposure; however, such self-insurance program will cover loss in the same manner as if a policy were in force.
- F. Pollution Liability – coverage may be required of any contractor with operations involving potential pollution exposures.
- G. Umbrella – coverage in an amount of \$5,000,000 written on a following form basis over or at least as broad as the Commercial General Liability Insurance, Automobile Liability Insurance, and Employer’s Liability coverage.

19.2 The Licensee’s Commercial General Liability Insurance, Automobile Liability, and Umbrella policies shall include the Lewes BPW as additional insureds, and will provide coverage on a primary and non-contributory basis. All policies, including for Workers’ Compensation, will include a waiver of subrogation in favor of the Lewes BPW.

**ARTICLE 20  
SERVICE OF NOTICES**

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

20.2 Notices shall be sent addressed as follows:

If to Licensee: Dan Meenan  
VP, Operations  
Shenandoah Cable Television, LLC  
500 Shentel Way  
Edinburg, VA 22824

With copy to: Derek Rieger  
VP/General Counsel  
Shenandoah Cable Television, LLC  
500 Shentel Way  
Edinburg, VA 22824

If to the Lewes BPW: Board of Public Works of the City of Lewes  
107 Franklin Avenue  
Lewes, DE 19958  
Attn: General Manager

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

## **ARTICLE 21 SUPPLEMENTAL AGREEMENTS**

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

21.2 Nothing in the foregoing shall preclude the parties to this Agreement from preparing such supplemental operating routines or working practices as they mutually agree to be necessary or desirable to effectively administer the provisions of this Agreement.

## **ARTICLE 22 DEFAULT**

22.1 The following shall be an event of Default:

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

(2) With regard to Licensee in a matter that does not involve safety, and with regard to the Lewes BPW in any matter, if either party shall violate or default in the performance of any obligations contained herein (other than the payment of fees and other sums) for a period of sixty (60) days after Notice of such violation or default has been given by the non-defaulting party to such defaulting party or, in the case of a default not curable within sixty (60) days, if such defaulting party shall fail to commence to cure the same within sixty (60) days and proceed diligently until corrected, or,

(3) In a matter that does involve safety, (i) if Licensee shall violate or default in the performance of any obligations contained herein and fails to commence to cure the same immediately upon Notice and thereafter proceed to pursue diligently until corrected; or (ii) if the correction takes longer than thirty (30) days.

22.2 In the event of Default, after Licensee has an opportunity to cure as provided herein, the Lewes BPW may at any time thereafter for so long as the Default condition exists upon Notice of Default, terminate the Permits covering the pole or poles in respect to which such default or non-compliance shall have occurred.

22.3 Whenever the Lewes BPW finds that Licensee is allegedly in Default of this Agreement, a written notice shall be given to Licensee. The written notice shall describe in reasonable detail the alleged Default so as to afford the Licensee an opportunity to remedy the violation or Default. Licensee shall have sixty (60) days subsequent to receipt of the notice in which to correct the Default before the Lewes BPW may

exercise any of the above-referenced remedies, provided that if such default is not curable within such period, the period may be reasonably extended if Licensee substantially commences to cure such Default and proceeds diligently thereafter to effect such cure.

22.4 If Licensee defaults in the performance of any work, which it is obligated to do under this Agreement, the Lewes BPW may elect to do such work after providing Licensee with notice and a reasonable opportunity to perform the work, and Licensee shall reimburse the Lewes BPW of the Lewes BPW's reasonable Cost. If the Lewes BPW elects to do such work, except for gross negligence or willful misconduct, the Lewes BPW shall not be liable for any loss or damage to Licensee's facilities, which may result therefrom or for any liability, loss or damage to Licensee or any other party claiming actual damages.

22.5 The remedies set forth in this Article are cumulative and in addition to any and all other remedies the Lewes BPW may have at law or in equity.

### **ARTICLE 23 INDEMNIFICATION**

23.1 Licensee shall indemnify, defend and hold harmless the Lewes BPW, its elected and appointed officials, agents and employees against any and all claims for liability, injury, loss, cost, damage, fine or expense arising in whole or in part from, incident to, caused by, or resulting from the installation, presence, operation, use, maintenance or removal of Licensee's Attachments on Poles (each a "Claim"), except where caused by the gross negligence or willful misconduct of the Lewes BPW, its elected and appointed officials and employees. The obligation to indemnify, defend and hold the Lewes BPW harmless shall include, but not be limited to, the obligation to pay judgments, liabilities, damages, penalties, reasonable attorneys' fees, expert fees, courts costs and all other costs and expenses of litigation.

23.2 No provision of this Agreement is intended, or shall be construed, to be a waiver for any purpose by the Lewes BPW of the provisions of the Delaware Tort Claims Act or any other law limiting municipal liability.

### **ARTICLE 24 FORCE MAJEURE**

24.1 Neither Party shall be liable for any delay or failure in performance of any part of this Agreement resulting from Force Majeure, defined herein as acts of God, acts of civil or military authority, epidemics, war, acts of public enemies, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, power blackouts, or unusually severe weather. In the event of any such excused delay in the performance of a party's obligation(s) under this Agreement, the due date for the performance of the original obligation(s) shall be extended by a term equal to the time lost by reason of the delay. In the event of such delay, the delaying party shall perform its obligations at a performance level no less than that which it uses for its own operations.

**ARTICLE 25  
OWNER'S COST**

25.1 "The Lewes BPW's Cost" and "Cost" when used in this Agreement shall include reasonable material and labor costs, the cost of outside contractors and consultants, equipment, engineering, permits, right-of-way, land clearing, insurance, and overhead. The Lewes BPW intends that the costs of outside contractors and consultants shall be at fair market value and that the costs of employees will be charged at the Lewes BPW's standard rates. All invoices issued by the Lewes BPW pursuant to this Agreement shall include sufficient detail to allow Licensee to determine the justification for the charges.

**ARTICLE 26  
MISCELLANEOUS PROVISIONS**

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

26.2 Should any court of law or administrative or governmental entity with jurisdiction declare any provisions of this Agreement to be illegal, void or unenforceable, such provisions shall be deemed to be severed from the remaining provisions of this Agreement and the remaining provisions of the Agreement shall remain in full force and effect.

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

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

26.5 This Agreement is deemed executed in and shall be construed under the laws of the State of Delaware.

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

WITNESS our hands and official seals, this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**BOARD OF PUBLIC WORKS OF THE CITY OF  
LEWES**

By:

\_\_\_\_\_

Print Name:

\_\_\_\_\_

Print Title:

\_\_\_\_\_

Date:

\_\_\_\_\_

**SHENANDOAH CABLE TELEVISION, LLC**

By:

\_\_\_\_\_

Print Name:

\_\_\_\_\_

Print Title:

\_\_\_\_\_

Date:

\_\_\_\_\_

**EXHIBIT A  
SCHEDULE OF FEES**

Application Fee: for new Attachments	\$100	Per Application for the first 50 poles. For each pole after the first 50, there shall be an additional fee of \$4.00, representing an Application Processing Fee (e.g., 56 poles = \$124.00).
NESC Audit/Inspection Fee:	\$60	
Make Ready Engineering Fee:	TBD	To be provided for Each Permit request based on level of effort; the fees for which shall be calculated in accordance with the terms of this Agreement.

**Attachment Fee per Pole Per Year**

<b><u>Date</u></b>	
Year 1	\$21.00
Year 2	\$22.00
Year 3	\$23.00
Year 4	\$24.00
Year 5	\$25.00

In the event this Agreement automatically renews, each year that the Agreement is in effect, the Attachment Fee per Pole shall continue to increase by \$1.00 per year or shall be consistent with the “Prevailing Rate” suggested by the Federal Communications Commission, or other similar agency, whichever is higher.

**Other Fees**

Pole Transfer Fee	Actual Cost plus 20% Per Pole*
Unauthorized Attachment Discovery Fee	\$150.00 Per Pole
Unauthorized Attachment Daily Fee	\$50.00 Per Pole
Storm Restoration Fee	Actual Cost plus 20% Per Pole*

\* The 20% Per Pole charge(s) reflect the associated administrative costs incurred by the BPW for each Other Fee indicated hereinabove.

**EXHIBIT B**  
**RULES AND PRACTICES OF THE BOARD OF PUBLIC WORKS OF THE CITY OF LEWES**  
**FOR ATTACHMENTS**

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

**A. Process for Permitting Attachments (Make Ready)**

1. Application for Permit shall be made on the Permit Application attached as Exhibit B-1. Licensee shall also indicate the poles to which it desires to attach by including a drawing made on system maps of the Lewes BPW which Licensee may purchase from the Lewes BPW at reasonable cost.
2. Licensee's Construction Plans shall contain full specifications of the facilities to be installed including:
  - a) Size and type of messenger including weight/ft and design tension.
  - b) Size and type Attachments including weight/ft and diameter.
  - c) Specification drawings depicting type of bolt Attachments and bolt patterns.
  - d) Specification drawings of the installation rating and type of guy and anchor assemblies proposed to be used by Licensee.
  - e) Proposed minimum clearance dimensions of all cable crossings of all roads, parking lots or similar vehicular throughways.
  - f) Sag and tension tables for all installed cable span segments.
  - g) Locations of proposed storage loops.
3. The Lewes BPW shall respond to Licensee within the timeframe provided in Article 5 by sending Response to Application, attached hereto as the lower portion of Exhibit B-1.
4. The Make Ready Construction Cost Estimate and Invoice will be sent to Licensee using the form attached hereto as Exhibit B-2. When the Lewes BPW receives payment, the Make Ready Construction Schedule will be sent to Licensee using the lower portion of Exhibit B-2.
5. When the Make Ready Construction Work is complete or if an inspection reveals no work is needed, the Lewes BPW shall send Licensee Notification of Consent to Attach and Request for Certification using the form attached hereto as Exhibit B-3.
6. Licensee's Certificate of Compliance shall be the lower portion of the form attached hereto as Exhibit B-3.
7. The Permit for Attachment shall be the form attached hereto as Exhibit B-4.

**B. Secondary Poles**

In connection with Article 6 of the Agreement, Licensee shall use the Disclosure of Secondary Pole Attachments form attached hereto as Exhibit B-5 for the notification.

### **C. Procedures for Notification of Pole Transfers**

The Lewes BPW will notify Licensee in the event of a pole transfer. Licensee shall provide the Lewes BPW with the appropriate contact information for such notification on an annual basis; or more frequently should the information change. Licensee is required to take immediate action to relocate and reattach any cables and/or conductors within sixty (60) days of the Lewes BPW's notification. The Lewes BPW may invoice Licensee a per-pole temporary attachment fee for each cable or conductor re-attached to each pole by the Lewes BPW as shown in Exhibit A.

### **D. Supplemental Rules Regarding Licensee's Attachments**

1. All Licensee's Attachments to poles shall be installed in a manner to ensure compliance with the requirements of the NESC in effect at the time of the installation as clarified or exceeded by the Lewes BPW's specifications below:
  - (a) Attachments (meeting Rule 230E1 of the NESC) shall meet a minimum vertical clearance of 15.5 ft. under the conductor temperature and loading conditions specified in Rule 232A over all areas which are subject to truck traffic. Truck traffic is defined as any mobile unit exceeding a total height of eight feet. These areas would allow and be susceptible to truck traffic under the line because of a lack of any type of physical obstruction, even though truck traffic under the line would not be a normal occurrence. This requirement includes, but is not limited to, roads, streets, driveways, unpaved vehicular passages, parking lots, open areas where it would be possible for a truck to pass under the line, etc.
  - (b) Attachments (meeting Rule 230E1 of the NESC) shall meet a minimum vertical clearance of 13.0 ft. under the conductor temperature and loading conditions specified in Rule 232A over areas that would not normally be susceptible to truck traffic. These areas are areas that are accessible by truck traffic, but the access is not easy or normally anticipated because of some physical obstruction, such as fences, hillsides, ditches, embankments, maintained lawns, wood lines, hedges, etc. These areas do include the ground under lines that would be accessible by the Lewes BPW's equipment for the purpose of line maintenance, restoration work, and right-of-way maintenance.
  - (c) Attachments (meeting Rule 230E1 of the NESC) shall meet a minimum vertical clearance of 9.5 ft. under the conductor temperature and loading conditions specified in Rule 232A over areas that are impossible for a vehicle to travel under the line and only a person on foot can walk under the line. These areas are defined as having permanent impediments that would prohibit the passage of a vehicle, including the Lewes BPW's equipment.
  - (d) All Attachments installed before the Effective Date shall have at least thirty (30) inches vertical clearance under the effectively grounded parts of transformers, transformer platforms, capacitor banks and sectionalizing equipment and at least forty (40) inches clearance under the current carrying parts of such equipment which is energized at 12,470 volts or less from the neutral. Clearances not specified in this rule shall be determined by reference to the NESC. If Licensee has made any Attachments which would otherwise have been in compliance with the requirement above, and after which the Lewes BPW has made any enhancements or improvements to the Lewes BPW's system that have placed such Attachments in non-compliance with this requirement, any steps necessary to bring such Attachments back into compliance shall be the responsibility of the Lewes BPW at

its sole expense.

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

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

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

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

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

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

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

6. The location of all power supplies and connecting wires and cables on the Lewes BPW's poles shall be approved in writing by the Lewes BPW. No Attachments shall be made without prior approval of the Lewes BPW. No power supply service connections shall be made by the Lewes BPW until Licensee has completed installation of an approved fused service disconnect switch or circuit breaker, and, if required, following an electrical inspection from appropriate government officials. An application for service must be made by Licensee to the Lewes BPW before service is connected.

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

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

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

10. All down guys, head guys or messenger dead ends installed by Licensee shall be attached to the pole by the use of “through” bolts. Such bolts placed in a “bucking” position shall have at least three (3) inches vertical clearance. Under no circumstances shall Licensee install down guys, head guys or messenger dead ends by means of encircling poles with such Attachments.
11. The Lewes BPW shall perform all Make Ready Work required for the preparation of the Lewes BPW’s poles for proper attachment by Licensee.
12. All Attachments installed after the Effective Date shall have at least forty (40) inches vertical clearance under the effectively grounded neutral of the Lewes BPW at supports. The Lewes BPW may increase the forty (40) inch clearance if, in the Lewes BPW’s judgment, the Lewes BPW may require additional space on the pole for its future service requirements.
13. The Lewes BPW requires strand maps to be furnished which show all Attachment poles (excluding secondary and service poles for individual service drops except when such poles are depicted on maps prepared by Licensee in the ordinary course of its business.)

**E. Removing Attachments from the Lewes BPW’s Poles**

Prior to Licensee’s removing Attachments from the Lewes BPW’s poles, Licensee shall notify the Lewes BPW by sending the Notice of Discontinuance of Attachment to Poles form attached as Exhibit B-9.

**F. Plant Conditions Requiring Attention:**

If Licensee becomes aware of an unsafe plant condition or other condition that requires the attention of the Lewes BPW, then Licensee shall as soon as possible provide written notice to the Lewes BPW.

**EXHIBIT B-1  
PERMIT APPLICATION**

TO: Board of Public Works of the City of Lewes  
107 Franklin Avenue  
Lewes, DE 19958

ATTN: General Manager  
DATE: [DATE]  
LICENSEE'S TRACKING NUMBER: \_\_\_\_\_

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

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

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

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

Signed: \_\_\_\_\_ Company: \_\_\_\_\_

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

Tel: \_\_\_\_\_ Email: \_\_\_\_\_

✂-----✂

**RESPONSE TO APPLICATION**

TO:

DATE:  
LICENSEE'S TRACKING NUMBER: \_\_\_\_\_

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

The Make Ready Engineering Fee is \$ \_\_\_\_\_. Please remit this amount so that Make Ready Engineering Plans can be prepared. A schedule for completion of the Make Ready Engineering Plans (not to exceed ninety (90) days, or such additional time as reasonably agreed to by the parties, for applications involving 300 or fewer poles) is attached.

Name: \_\_\_\_\_ Signed: \_\_\_\_\_  
Board of Public Works of the City of Lewes



**EXHIBIT B-3  
NOTIFICATION OF CONSENT TO ATTACH  
AND REQUEST FOR CERTIFICATION**

TO:

DATE:

The Make Ready Construction Work for the approved poles is complete. Attachments in connection with Job Number \_\_\_\_\_ may be made within 120 days of the date above. Annual rental for the poles will begin on \_\_\_\_\_ (date).

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

Name: \_\_\_\_\_ Signed: \_\_\_\_\_  
Board of Public Works of the City of Lewes

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

Tel: \_\_\_\_\_

✂-----✂  
**CERTIFICATE OF COMPLIANCE**

TO: Board of Public Works of the City of Lewes      DATE:  
414 High Street  
PO Box 1100  
Seaford, DE 1993

ATTN: Billing Department

JOB NUMBER: \_\_\_\_\_

-OR-

LICENSEE: \_\_\_\_\_

TRACKING NUMBER: \_\_\_\_\_

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

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

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

(Signature)

Print Name: \_\_\_\_\_









**EXHIBIT B-8  
CERTIFICATE OF CORRECTION**

(To be made sixty (60) days after correction of non-compliance)

TO: Board of Public Works of the City of Lewes  
107 Franklin Avenue  
Lewes, DE 19958  
ATTN: [NAME]

DATE: \_\_\_\_\_  
LICENSEE: \_\_\_\_\_

**I HEREBY CERTIFY** that Licensee's Attachments to the poles of the Board of Public Works of the City of Lewes, Circuit No. \_\_\_\_\_ and Section No. \_\_\_\_\_, which were found to be Non-Compliant, have been corrected.

These Attachments were corrected according to sound engineering design principals and fully comply with the NESC.

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

SIGNATURE: \_\_\_\_\_

Name: \_\_\_\_\_

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

Tel: \_\_\_\_\_

