

shall submit to Licensor such evidence of compliance with the foregoing requirements, as Licensor may require.

10. *RISK OF LOSS*

10.1 Licensee shall exercise reasonable care to avoid damaging the facilities of Licensor, and of other licensees, utilities or municipalities attached to Licensor's poles. Licensee assumes all responsibility for any and all loss or damage caused by Licensee's employees, agents or contractors. Licensee shall make an immediate report to Licensor and to other licensees, utilities or municipalities, as appropriate, of the occurrence of any such damage and shall reimburse the respective parties for all costs incurred in making repairs.

10.2 Licensee expressly assumes responsibility for determining the condition of all poles to be climbed by its employees, contractors or employees of contractors. Licensor disclaims any warranty or representation regarding the condition and safety of the poles covered by this Agreement. Licensee acknowledges that poles of the Licensor will from time to time become unserviceable and unsafe for climbing prior to Licensor's discovery of such condition. Licensor agrees that upon notification it will replace any pole that has become unserviceable.

11. *LIMITATION OF LIABILITY*

Licensor reserves to itself, its successors and assigns, the right to locate and maintain its corridors and poles and to operate its facilities in such a manner as in its sole judgment will best enable it to fulfill its service requirements. Licensor shall not be liable to Licensee or its subscribers for any special, indirect or consequential loss or damage, arising in any manner out of the use of Licensor's poles or Licensor's actions or omissions in regard thereto, and Licensee shall indemnify and save harmless Licensor from and against any and all claims, demands, causes of action, cost and fees or expenses of whatever kind resulting from any such loss or damage.

12. *INDEMNITY*

Licensee shall indemnify, defend and save harmless Licensor from and against any and all liability, claims, demands, loss, costs and expenses, to include attorney's fees, and any judgment for actual or punitive damages because of: (1) damages to property, (2) injury or death to persons [whether such injury or death is to Licensee's or Licensor's employees or agents, or employees of others, or the public], (3) any and all such interference with the service rendered by Licensee over its cable or to patrons of Licensee, (4) payments made under any Worker's Compensation Law or under any plan for employees' disability and death benefits, specifically including employees of Licensee or its agent; which may arise out of or be caused by the erection, maintenance, presence, operation or removal of Licensee's cable or the proximity of Licensee's cable to the wires and facilities of Licensor, or any act of

Licensee, its agents or employees, on or in the vicinity of Licensor's poles, excepting, however, that due to the sole negligence of Licensor or any claims upon Licensor for additional compensation for use of its distribution rights of way for any additional use by the Licensee. Licensee shall carry contractual liability insurance to insure the foregoing indemnity agreement and such other insurance as may be necessary to protect the Licensor from and against any and all claims, demands, actions, judgments, costs, expenses and liabilities of every name and nature which may arise or result, directly or indirectly, from or by reason of this agreement and any injury, loss or death that may result from this license agreement. The amounts of such insurance for property damage shall be Two Hundred Thousand Dollars (\$200,000) as to any one accident, and for injury to, or death of persons, shall be One Million Dollars (\$1,000,000) as to any one accident. Licensee shall also carry such insurance as will protect it from all claims under any Workers' Compensation Laws in effect that may be applicable to it. All insurance required shall remain in force for the entire life of this Agreement or any continuation or extension hereof and until Licensee's cable is removed from the poles of Licensor. The company or companies issuing such insurance shall be approved by Licensor. Licensee shall submit to Licensor a certificate by each insurance carrier showing effectiveness of insurance in accordance with this Agreement and containing a provision that it will not cancel or change any policy of insurance issued except upon thirty (30) days' notice to Licensor.

13. *TERM AND TERMINATION*

13.1 *Term* - This Agreement shall continue in effect for a term of one year from the effective date hereof, and thereafter until terminated by either party or as otherwise provided in this Agreement.

13.2 *General Termination* - At any time following the expiration of the initial one-year term of this Agreement, either party may terminate this Agreement or terminate or modify any license issued hereunder by giving the other party at least sixty (60) day's prior written notice thereof. All notices of termination or modification of a license by Licensee shall utilize the form as set forth in Exhibit B, attached hereto, as it may be revised from time to time.

13.3 *Termination for Default*

13.3.1 If Licensee fails to comply with any of the terms and conditions of this Agreement or default in any of its obligations under this Agreement, and fails within thirty (30) days after the date of written notice from Licensor to correct such noncompliance or default, Licensor may, at its option and in addition to any other rights or remedies it may have, immediately terminate this Agreement and all licenses issued pursuant hereto, under which such noncompliance or default has occurred.

13.3.2 Notwithstanding the provisions of Section 13.3.1, Licensor may immediately terminate this Agreement, or any license issued hereunder, without prior notice to Licensee, for any defaults by

Licensee of the following sections of this Agreement: Section 5, SURETY BOND, Section 9, LEGAL REQUIREMENTS and insurance requirements of Section 12, INDEMNITY.

13.3.3 In the event of such termination for default, Licensor may take possession of all of Licensee's facilities affected thereby and subject to the rights of prior lien holders, may sell or otherwise dispose of such facilities for the purpose of securing payment of all fees, charges and expenses of such termination and collections, including but not limited to, attorney's fees and/or litigation expenses. Nothing contained herein, however, shall be construed to preclude Licensor from pursuing any other remedy provided by law for the collection of any indebtedness or enforcement of any obligation or covenants under this Agreement.

13.4 *Removal of Licensee's Facilities*

13.4.1 In the event of termination of this Agreement, Licensee shall remove its facilities from Licensor's poles within sixty (60) days from the date of termination; provided, however, that Licensee shall be liable for and pay all applicable fees and charges to Licensor until Licensee's facilities are actually removed from Licensor's poles. Licensee shall advise Licensor in writing as to the date on which the removal of Licensee's facilities from each pole has been completed.

13.4.2 If Licensee fails to remove its facilities in compliance with Section 13.4.1, Licensor shall have the right to remove such facilities at Licensee's expense and without any liability on the part of Licensor.

13.5 *Licensee's Liabilities and Obligations* - Termination of this Agreement or any license issued hereunder or the removal of Licensee's facilities, either in whole or in part, for any reason shall not affect Licensee's liabilities and obligations under this Agreement prior to the effective date of such termination or removal of Licensee's facilities.

14. *REMOVAL*

14.1 Licensee may at any time remove its cable from any pole or poles of Licensor, but shall immediately give written notice of such removal to Licensor, pursuant to Article 13.2.

14.2 Licensor reserves to itself and its successors and assigns the right to abandon a pole or poles to which the Licensee's facilities are attached. The Licensee will be given thirty (30) days' notice of each proposed abandonment and shall have the option of removing its facilities or of purchasing the abandoned pole or poles in place from the Licensor. The purchase price will be the estimated current installed cost of the pole or poles, depreciated at a rate of 3.4% per year, less the estimated cost to the Licensor of removing the pole or poles. If the Licensee does not remove its facilities and does not exercise its option to buy the abandoned pole or poles, the Licensee's facilities thereon shall be

deemed worthless, and may be caused by the Licensor to be removed from the pole or poles, and be disposed of at any suitable place, all at the expense of Licensee, and Licensor shall be free from any liability therefor to anyone.

15. *WAIVER*

The failure of Licensor to enforce or insist upon strict compliance with any of the terms and conditions of this Agreement or to exercise or delay the exercise of any rights or remedies provided by this Agreement or by law shall not release Licensee from any of its duties or obligations imposed by law or by this Agreement and shall not be deemed a general waiver or relinquishment of any rights or remedies provided Licensor by this Agreement or by law, but the same shall be and remain at all times in full force and effect.

16. *ASSIGNMENT*

Licensee shall not assign or transfer the rights, or delegate the duties, or otherwise dispose of any right, title or interest in all or any part of this Agreement without the prior written consent of Licensor. No such consent granted by Licensor shall be effective until Licensee's successor or assignee has agreed to assume all obligations and liabilities of Licensee under this Agreement. However, no such consent by Licensor shall release Licensee from any obligation or liability under this Agreement.

17. *SERVICE OF NOTICE*

Any notice required or provided for hereunder shall be in writing and shall be delivered personally to the corporate representatives of Licensor and Licensee designated below, or shall be mailed thereto by certified mail, postage prepaid, return receipt requested. Notice shall be effective on the date delivered.

To Licensor: Duke Power Company
Distribution Department
P. O. Box 33189
Charlotte, NC 28242
ATTN: Manager, Distribution Support
Tel. 704/373-2580

To Licensee:

18. SEVERABILITY

Should any provision of this Agreement be determined to be unenforceable or illegal, then said provisions shall be severed from this Agreement and the remainder shall remain in full force and effect.

19. GOVERNING LAW AND VENUE

This Agreement shall be interpreted in accordance with the substantive and procedural laws of the state in which the poles the subject of this Agreement are located. Any action at law or judicial proceeding shall be instituted only in the state or federal courts of the state in which said poles are located.

20. CONSTRUCTION OF TERMS

Nothing herein shall be construed more strongly against or more favorably toward either party by reason on either party having drafted this Agreement or any portion hereof.

21. EXECUTION AND EFFECTIVE DATE

This Agreement has been executed by the duly authorized officers of the parties and shall be effective as of the 13th day of Oct., 1990.

Witnesses as to Licensor

H. Rowe Ham
Gauehl C. Beam

DUKE POWER COMPANY (Licensor)

By John P. Holland
Vice President

ATTEST: Carolyn J. Lusca
Assistant Secretary

Witnesses as to Licensee

Joseph M. Rock
Diana L. LeBeau

Cencom Cable Television, Inc. (Licensee)

By Charles M. ...
~~President~~ Senior Vice President

ATTEST: Theodore W. ...
Ant Secretary

EXHIBIT A

Application and Permit

Location _____ N.C. _____ 19 _____

Licensee _____

Duke Power Company

In accordance with the terms of Agreement dated _____ application is hereby made for license to make attachments to the following poles located in:

_____ (City or Town - County and State)

_____ Proposed Attachments to be made to Duke Poles

_____ Amplifiers to be Attached to Duke Poles

Location of Attachments _____

By _____

Title _____ Licensee

License granted _____ 19 __, subject to your approval of the following changes and rearrangements at an estimated cost to you of \$ _____

DUKE POWER COMPANY

By _____ Title _____

The above charges for the changes and arrangements approved.

By _____ Permit No. _____

Title _____ Licensee Total Poles Attached This Request _____

Total Poles Attached To Date _____

EXHIBIT B

Notification of Removal By Licensee

_____ N.C., _____ 19____
Location

Licensee

Duke Power Company

In accordance with the terms of Agreement dated _____,
please cancel from your records _____ attachments of Licensee's
facilities from Duke poles located in:

(City or Town - County and State)

_____ Attachments to be Removed

_____ Amplifiers to be Removed

Location of Attachments to be Removed _____

By _____

Title _____
Licensee

Notice Acknowledged

_____ 19____

DUKE POWER COMPANY

By _____

Title _____

Notice No. _____

Total Attachments Discontinued _____

Total Attachments Removed to Date _____

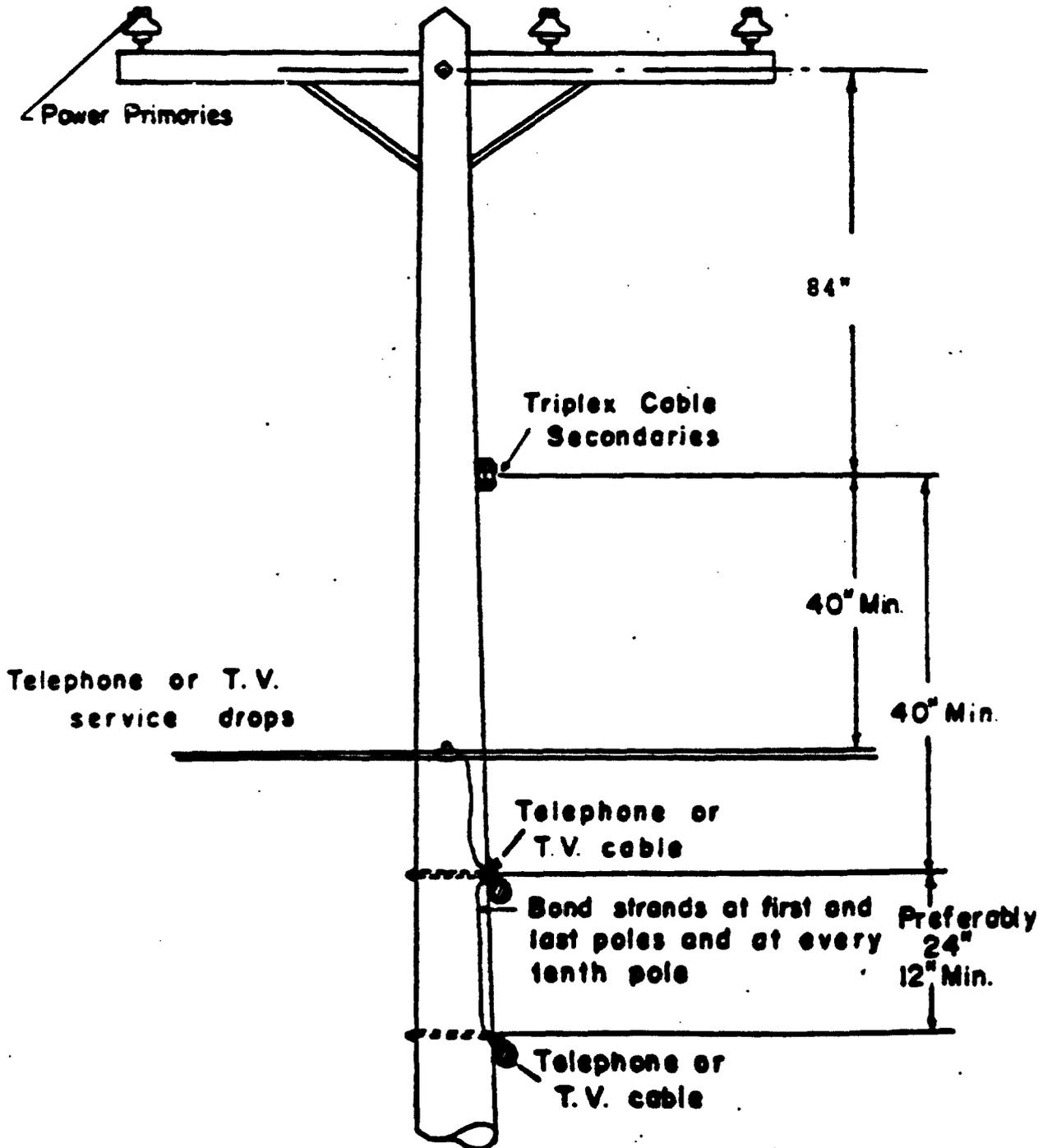
Total Attachments Remaining to Date _____

EXHIBIT C

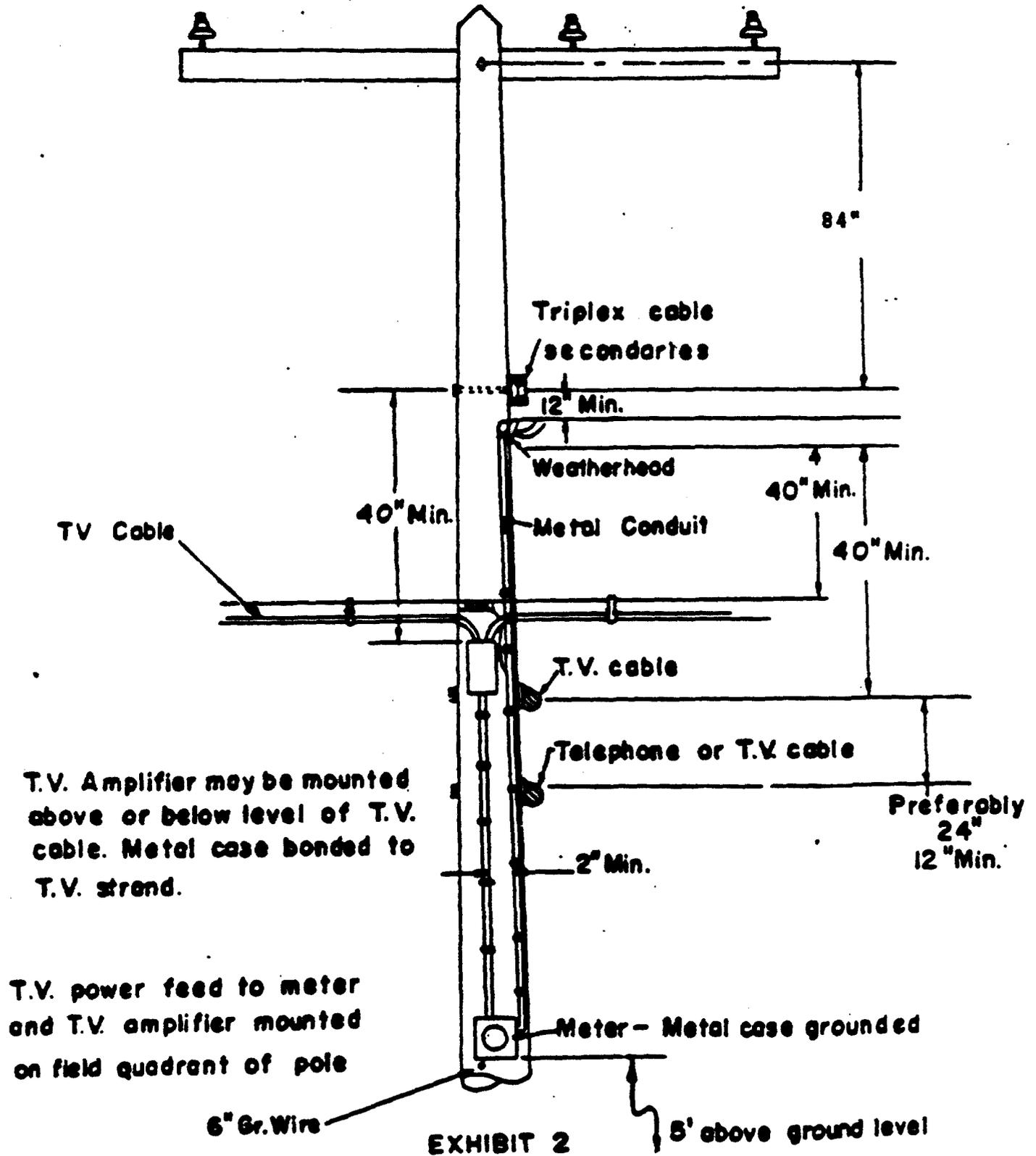
Schedule of Required Bond or Letter of Credit

<u>NUMBER OF ATTACHMENTS</u>	<u>AMOUNT OF COVERAGE</u>
0 through 200	800
201 through 400	1,600
401 through 600	2,400
601 through 1000	4,000
1001 through 1500	6,000
1501 through 2500	10,000
over 2500	10,000

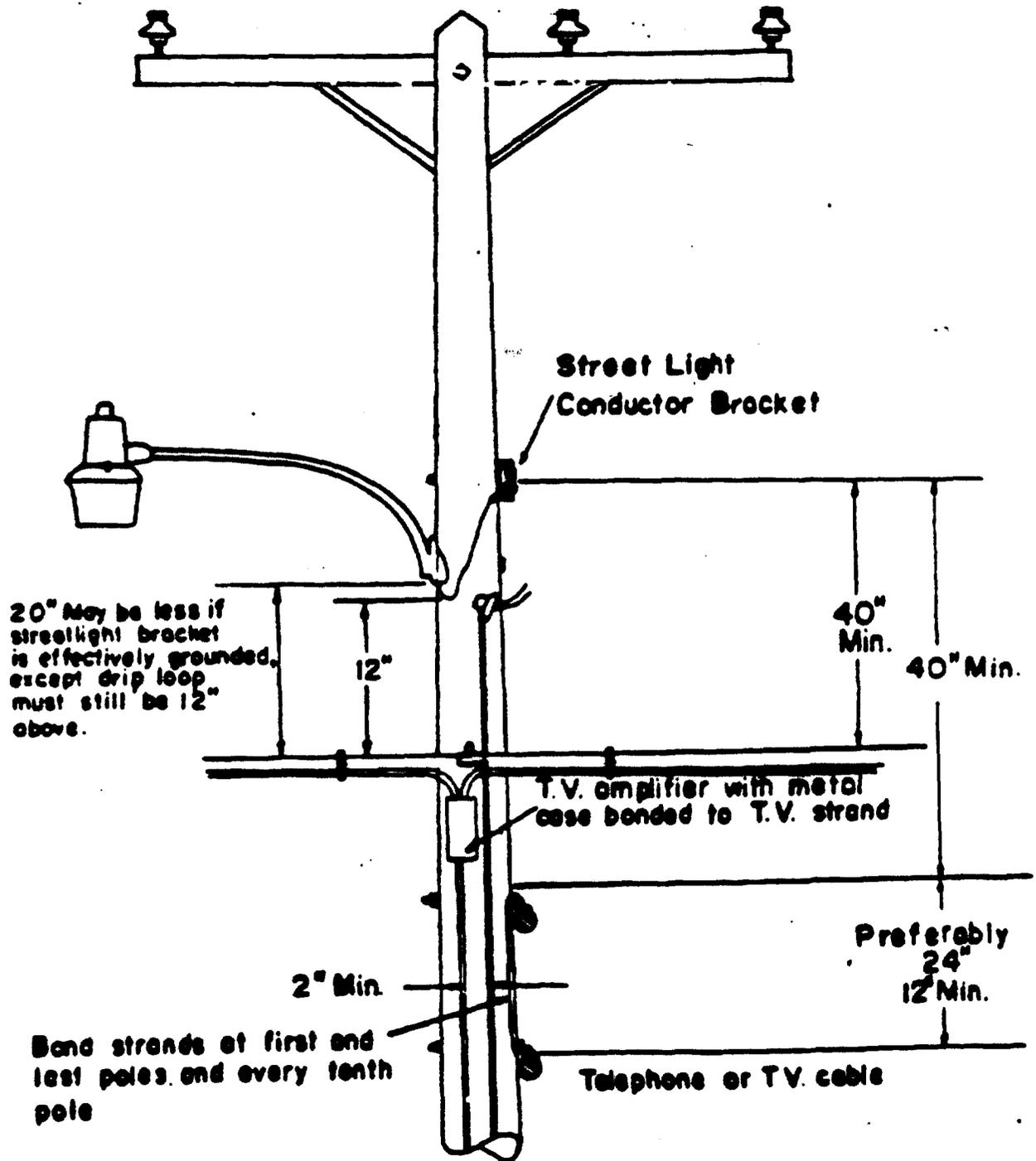
ATTACHMENTS OF T.V. DISTRIBUTION SYSTEM TO POLES



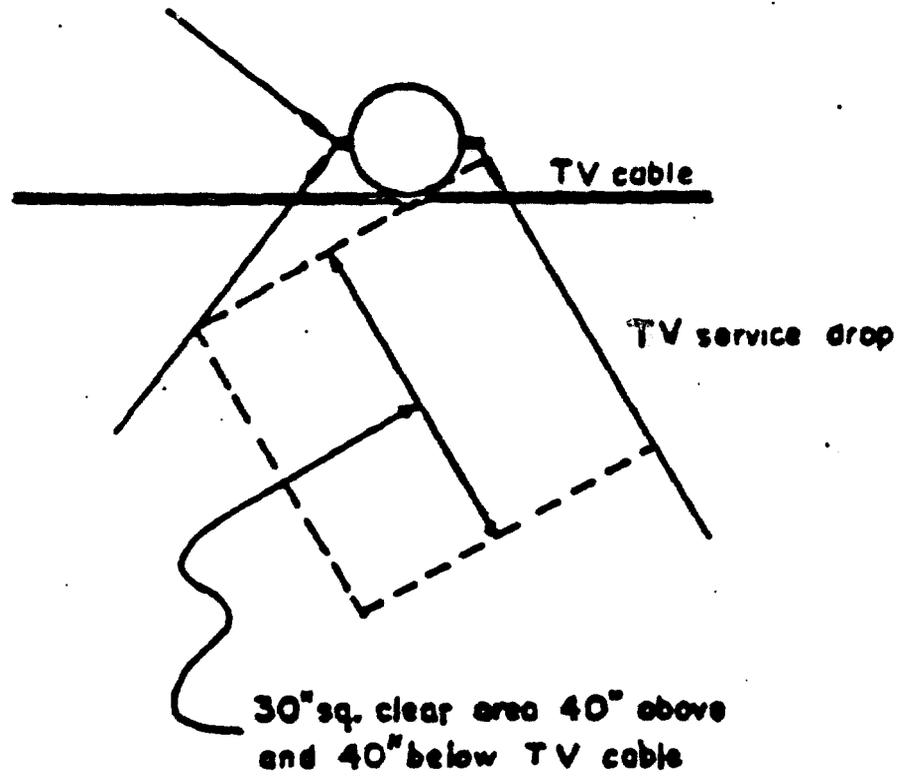
ATTACHMENTS OF T.V. DISTRIBUTION SYSTEM TO POLES



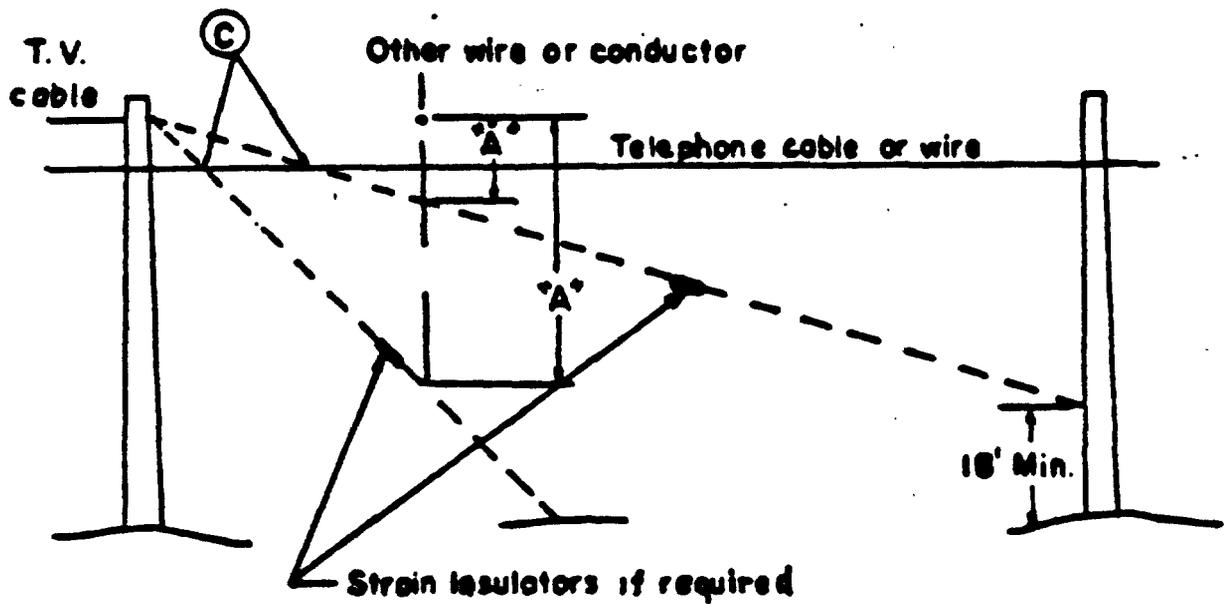
ATTACHMENTS OF T.V. DISTRIBUTION SYSTEM TO POLES



CLIMBING SPACE



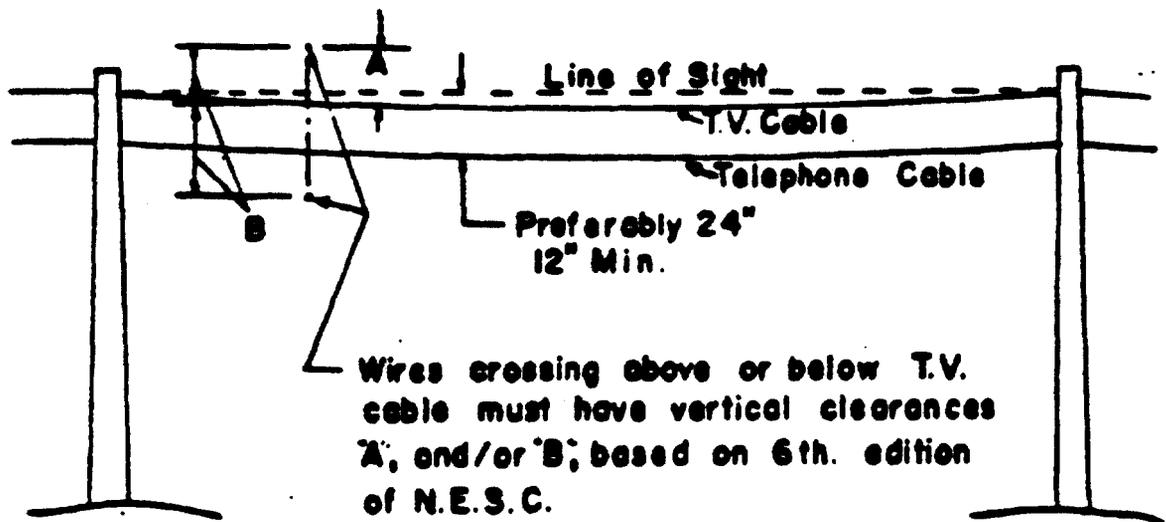
GUYING



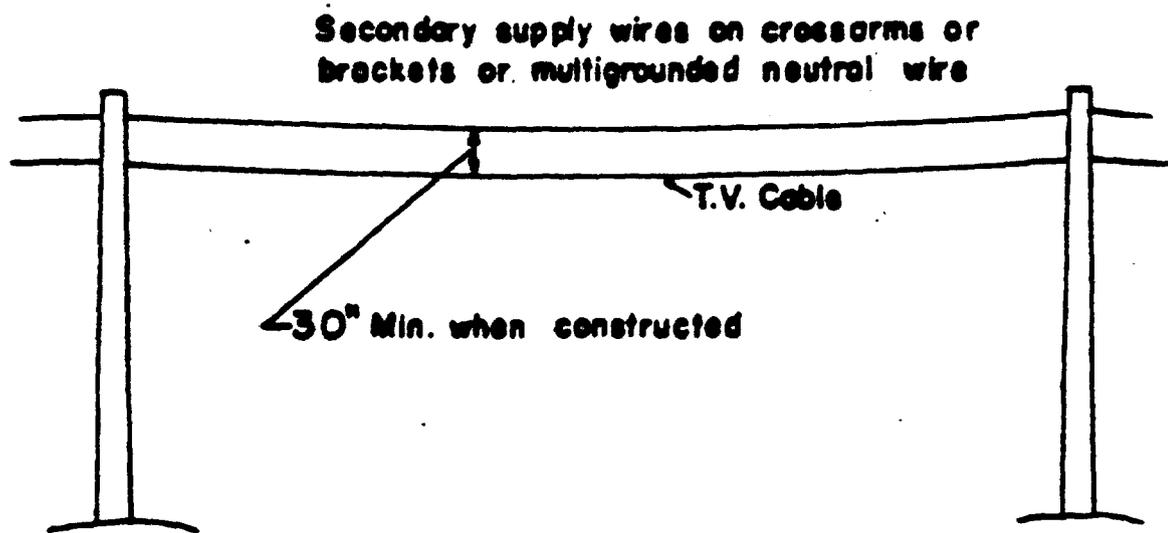
Guy crossing above or below other wires must have vertical clearance "A" based on 6th. edition of N.E.S.C.

Guy at point "C" must clear telephone cable or wires by 3" minimum

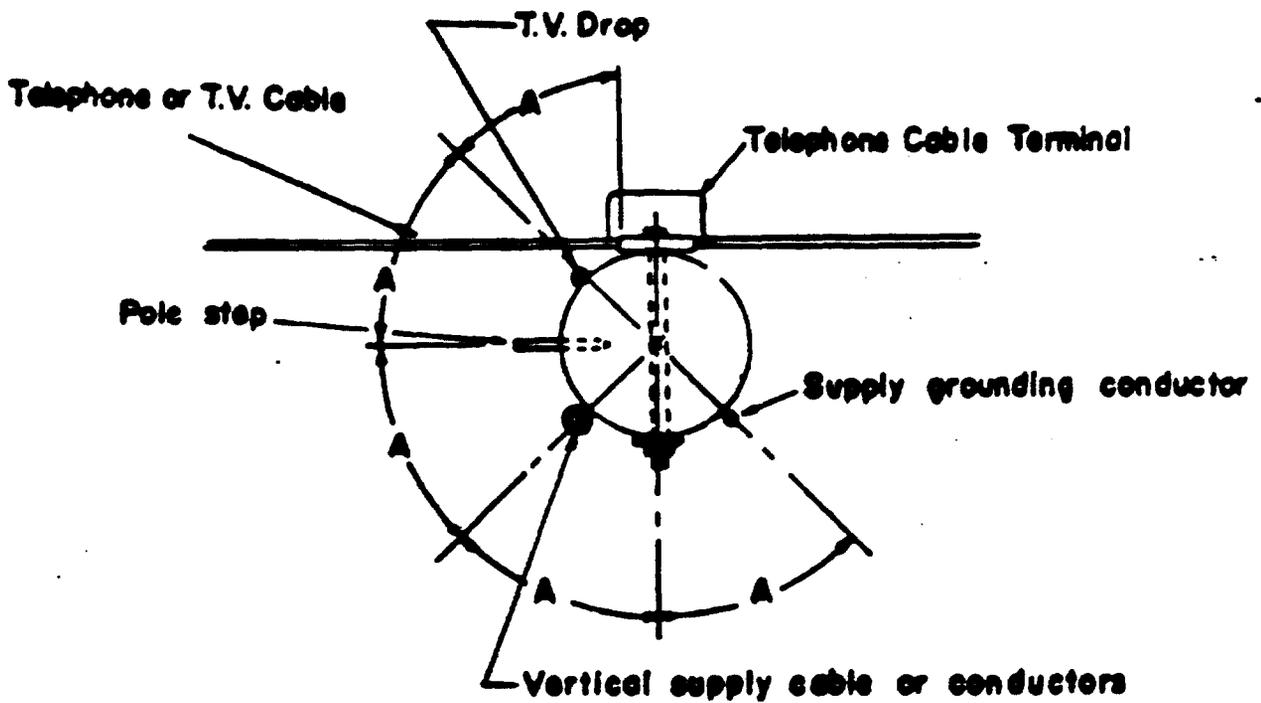
SPAN CLEARANCE



SPAN CLEARANCE



HORIZONTAL CLEARANCE



Dimension 'A' to be 45° where practicable but in no case shall vertical runs have a clearance of less than 2" from the nearest metal part of the equipment of another

ARTICLE 1

RECITALS

ARTICLE 2

ENTIRE AGREEMENT

ARTICLE 3

SCOPE OF AGREEMENT

ARTICLE 4

FEEES AND CHARGES

ARTICLE 5

SURETY BOND

ARTICLE 6

MAKE-READY WORK

ARTICLE 7

STANDARDS AND SPECIFICATIONS

ARTICLE 8

UNAUTHORIZED ATTACHMENT

ARTICLE 9

LEGAL REQUIREMENTS

ARTICLE 10
RISK OF LOSS

ARTICLE 11
LIMITATION OF LIABILITY

ARTICLE 12
INDEMNITY

ARTICLE 13
TERM AND TERMINATION

ARTICLE 14
REMOVAL

ARTICLE 15
WAIVER

ARTICLE 16
ASSIGNMENT

ARTICLE 17
SERVICE OF NOTICE

ARTICLE 18
SEVERABILITY

ARTICLE 19

GOVERNING LAW AND VENUE

ARTICLE 20

CONSTRUCTION OF TERMS

ARTICLE 21

EXECUTION AND EFFECTIVE DATE

made to Licensor's poles. Each license shall describe in sufficient detail the location of the extension and the poles on which the Licensee proposes to attach. Licensor does hereby license attachments to the poles of Licensor made prior to the date of this Agreement by Licensee or by Licensee's predecessor under a prior attachment agreement and which were made in strict compliance with the terms and conditions of the prior attachment agreement. All licenses issued under any such prior agreement shall be incorporated as made under this Agreement.

3.1.2 Joint use of underground trenches or rights of way is not included within the scope of this Agreement.

3.1.3 No license shall be granted for the use of rights of way, easements, corridors, lines, poles or towers classified by Licensor either in whole or in part for transmission use.

3.2 *Services of Licensee* - The facilities attached or to be attached by Licensee shall be used solely and exclusively by Licensee for the operation by Licensee of a cable television system engaged only in activities or services which Congress intended (within constitutional limits) to be protected under the purview of the Pole Attachment Act of 1978, 47 U.S.C., as amended. This Agreement shall be construed to prohibit use of Licensee's attachments for transmission of any signal or for providing any service that may lawfully be excluded as being outside the intended congressional protection of the Pole Attachment Act.

If by final administrative or judicial determination in a proceeding to which Licensee is a party or by final decision of any Federal appellate court, whether or not Licensee is a party, the congressional intent of the term "cable television" as applied to the Pole Attachment Act shall be determined so as to permit Licensor to limit the services or signals Licensee may provide or transmit through its attached facilities while enjoying the benefits and protection of FCC regulation of pole attachment contracts under the Pole Attachment Act, then any service or signal outside the protection of the Pole Attachment Act shall be deemed an unauthorized use under this Agreement and Licensee shall pay to Licensor an attachment fee for the period during which such unauthorized use occurred, for those poles on which Licensee's facilities were used in any way in connection with such unauthorized use in an amount equal to the lowest annual pole attachment fees per pole paid to Licensor by any long distance carrier or any unregulated communications carrier or system, excluding any communication user or system paying a one-time long term attachment fee and any carrier or system claiming to be a cable television system, for the like time period in which such unauthorized use occurred, less credit for pole attachment fees paid, plus interest determined according to the FCC formula for calculating interest on pole attachment payments. Such attachment fee shall remain in effect as an interim rate for a period of six (6) months from the date of said administrative or court order. Licensor reserves the right thereafter to charge a market rate determined by Licensor which may exceed said interim rate.

Licensee shall have the burden of proof in demonstrating which of Licensor's poles were not at any time used for such unauthorized uses. For the purpose of this Section 3.2 all poles to which Licensee is attached shall be deemed to have been used for unauthorized uses, except those poles which Licensee demonstrates were never in any way involved with such unauthorized use.

Licensor and Licensee agree that any past or present use by Licensee of its facilities shall not be deemed to be an accepted use under the scope of "cable television." Failure of Licensor to prohibit Licensee from unauthorized uses shall not prejudice Licensor's right to additional compensation for any such unauthorized use.

3.3 *Attachments* - Upon issuance of a license, Licensee shall have the nonexclusive right to attach its transmission cable consisting of one or more cables lashed together or to a single support wire together with other necessary appurtenances, riser cable, guys, service drops, power supplies and other appurtenances, to the poles described in such license.

3.4 *Rights Reserved*

3.4.1 No use, however extended, of poles or payment of any fees or charges required under this Agreement shall create or vest in Licensee any ownership of property rights in such poles. Licensee's right herein shall be and remain a license. Neither this Agreement nor any license granted hereunder shall constitute an assignment of any of Duke's rights to use the public or private property at the location of such poles.

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

3.4.3 Nothing contained in this Agreement shall be construed as a limitation, restriction or prohibition against Duke with respect to any agreement and/or arrangement which Duke has heretofore entered into with others not a party to this Agreement, or may in the future enter into with any electric utility, regulated local service telephone utility or municipality regarding the poles covered by this Agreement. The rights of Licensee shall at all times be subordinate to any such existing or future agreement and/or arrangement with electric utilities, regulated local service telephone utilities and municipalities, except the rights of Licensee shall not be subordinate to a municipality engaging in the business of providing cable television service.

3.4.4 In the event either Licensor, another electric utility, a local service telephone utility or a municipality desires to attach facilities to a pole to which Licensee has previously attached its cable and by reason of the presence of Licensee's cable said pole cannot support or accommodate the proposed facilities of Licensor, other electric utility, telephone utility or municipality, then Licensee shall either remove its cable or

pay make-ready costs in those cases where in the sole opinion of Licensor the pole would have accommodated or supported the facilities of the Licensor, other electric utility, telephone utility or municipality but for the presence of Licensee's cable. Make-ready cost shall be determined in accordance with Article 6 *infra*.

3.4.5 If Licensee does not rearrange, transfer or remove its cable or guy wire within thirty (30) days following the date of written notice from Licensor regarding such requirements, Licensor, other electric utility, local service telephone utilities or municipalities may perform the work involved and Licensee shall pay the full costs thereof.

3.4.6 Licensor reserves to itself, its successors and assigns, and to the owners of other facilities attached to said poles, the right to maintain, replace and enlarge its facilities and to operate the same from time to time in such manner as will best enable it, in its sole judgment, to meet the needs of its customers and fulfill its own service requirements. Licensor shall not be liable to Licensee or to Licensee's customers for any interruption to service of Licensee or for interference with the operation of Licensee's cable arising in any manner out of the use of Licensor's poles hereunder, or arising in any manner out of the condition or character of Licensor's facilities or the manner of the operation thereof.

3.4.7 Licensor reserves the right and option, exercisable in its sole discretion, upon written notice thereof to Licensee, to withdraw from any obligation to issue licenses for additional attachments. In the event Licensor shall withdraw the right to additional licenses, this Agreement shall remain in force as to all licenses then in existence unless terminated by either party pursuant to Article 13.

4. FEES AND CHARGES

4.1 *Application Fee* - Licensee shall pay to Licensor, for the processing and handling of a request for a pole attachment agreement, an Application Fee of Two Hundred Fifty Dollars (\$250.00) for each pole attachment agreement. A separate pole attachment agreement and an additional Application Fee shall be required for each district of Licensor in which Licensee requests to make attachments.

4.2 *Attachment Fee* - Licensee shall pay to Licensor, for attachments of its cable to poles under this Agreement, rental in an amount to be determined by multiplying the number of poles to which Licensee is attached by the maximum Annual Pole Attachment Fee allowable under the rules and regulations issued by the Federal Communications Commission pursuant to the Federal Pole Attachment Act or as may be determined by the appropriate state regulatory commission, as the case may be. The Annual Pole Attachment Fee shall be based upon data from Licensor's most recent Federal Energy Regulatory Commission (FERC) Form 1. The Annual Pole Attachment Fee for the calendar year of 1990 is \$ 4.87. The

Annual Pole Attachment Fee for any future year shall be retroactively adjusted to January 1 and shall be based upon data from Licensor's FERC Form 1 for the prior year.

4.3 *Assessment of Attachment Fee*

4.3.1 The Attachment Fee shall be assessed semiannually based upon the number of poles of Licensor for which licenses have been issued, less those for which the license has been terminated, as of December 1 or June 1 and multiplied by one half the Annual Pole Attachment Fee.

4.3.2 The Attachment Fee shall be assessed as of the effective date of the License and shall not be refundable due to early termination of such License.

4.4 *Additional Fee* - The fee imposed upon Licensee specified in Article 4.2 is for the right to attach Licensee's cable to Licensor's poles under §224 of the Communications Act of 1934 and regulations pursuant thereto. Licensee shall pay an Additional Fee for the following services:

4.4.1 *Power Supplies* - For the privilege of attaching power supply apparatus or similar devices, hereinafter termed "power supplies," to any pole of Licensor, Licensee shall pay an annual fee equal to two times the Annual Pole Attachment Fee then in effect. Licensee shall report on December 1 and June 1 of each year the number of power supplies attached to Licensor's poles. The Additional Fee for power supplies shall be assessed semiannually based upon the number of power supplies attached to Licensor's poles as of December 1 or June 1 and multiplied by the Annual Pole Attachment Fee. No charge shall be made for in-line amplifiers attached to Licensee's cable and not directly attached to Licensor's poles.

4.5 *Fees Cumulative* - The fees herein charged for additional attachments are cumulative. Licensee agrees to pay cumulative rental for all attachments upon any single pole.

4.6 *Adjustment of Additional Fees* - When the basic Annual Pole Attachment Fee is retroactively adjusted pursuant to Article 4.2, then the Additional Fee in Article 4.4 shall be adjusted proportionally to any increase or decrease in the Annual Pole Attachment Fee.

4.7 *Terms of Payment* - The Attachment Fee and all Additional fees shall be payable in advance in semiannual payments as of the first day of January, based upon the number of poles to which Licensee is attached and the number of power supplies attached to Licensor's poles as of the preceding first day of December, and the first day of July, based upon the number of poles to which Licensee is attached and the number of power supplies attached to Licensor's poles as of the preceding first day of June of each year. Nonpayment may be considered a default of this Agreement.

4.8 *Payment* - All payments for Attachment Fees, Additional Fees and bills for costs and expenses reimbursable under this Agreement, shall be payable within thirty (30) days after presentation. Nonpayment of bills may be considered a default of this Agreement.

4.9 *Late Payment Penalty* - If Licensee shall fail to pay when due any sum due Licensor hereunder, Licensee shall pay in addition to the sum due a late payment penalty of 1.5% for each 30-day interval or portion thereof. Partial payment shall be applied first to payment of accrued penalties.

5. *SURETY BOND*

Licensee shall furnish bond or an irrevocable, standby letter of credit issued by a federally chartered commercial bank of good standing and acceptable to Licensor, in such amount as Licensor from time to time may require, and in an initial amount in accordance with Exhibit C hereto attached, to guarantee the payment of any sums which may become due Licensor for fees due hereunder or charges for inspections or for work performed for the benefit of Licensee under the Agreement, including the removal of Licensee's facilities upon termination of this Agreement by any of its provisions. If Licensee shall fail to pay any sums demanded by Licensor as due under this Agreement, Licensor may, at its option, receive payment from Licensee's surety or sureties, whether or not Licensee contests its liabilities to pay such sum, and whether or not Licensor exercises any other rights or remedies it may have at law or under this Agreement. Failure of Licensee to continually comply with this Article 5 shall be an event of default.

6. *MAKE-READY WORK*

6.1 *Field Survey*

6.1.1 When an application for a license is submitted by Licensee, a field survey shall be required, at Licensee's expense.

6.1.2 The field survey shall be performed jointly by representatives of Licensor and Licensee. Licensee shall furnish to Licensor data necessary to perform the field survey, in a format specified by Licensor and according to standards of accuracy and completeness satisfactory to Licensor.

6.2 *Poles*

6.2.1 In the event Licensor determines that a pole to which Licensee desires to attach is inadequate or otherwise needs modification to the existing facilities of Licensor to accommodate the Licensee's facilities, Licensor shall notify Licensee in writing of the estimated charges for the Make-Ready Work that will apply. Licensee shall have fifteen (15) days from the date of the notice to indicate its authorization for required Make-Ready Work and to submit payment for all Make-Ready charges. The estimated charges for Make-Ready Work shall be determined by Licensor in its