

ATTACHMENT A

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

<p>COX COMMUNICATIONS LAS VEGAS, INC.,</p> <p style="text-align: center;"><i>Complainant,</i></p> <p>v.</p> <p>NV ENERGY, INC.</p> <p style="text-align: center;"><i>Respondent.</i></p>

File No.

DECLARATION OF MICHAEL BOLOGNINI

I, MICHAEL BOLOGNINI, declare as follows:

1. I am Market Vice President – Las Vegas for Cox Communications Las Vegas, Inc., (“CCI-LV”), with a general office address of 1700 Vegas Drive, Las Vegas, Nevada 89106. I make this Declaration in support of CCI-LV’s Pole Attachment Complaint in the above-captioned case. I know the following of my own personal knowledge, and if called as a witness in this action, I could and would testify competently to these facts under oath.

2. I have been in the cable and telecommunications industries for 34 years and in my current position for 2 years and 4 months. Prior to my current role, I was Vice President for Cox Business-Las Vegas and Hospitality Network with overall responsibility for sales, installations and maintenance of Cox’s product and service offerings. I have been with Cox Communications for 5 years and 3 months and, in my current role, I am the senior most officer for CCI-LV. I

have oversight for Cox's Las Vegas operations including responsibility for state and local government affairs, community relations, licensing, franchise and public affairs.

3. I have reviewed the allegations made in the Pole Attachment Complaint filed in this proceeding as well as the exhibits and verify that they are true and correct to the best of my knowledge, information and belief.

4. CCI-LV is a franchised cable operator offering a variety of advanced digital video, high-speed Internet and telephone services over its cable network.

5. CCI-LV requires access to utility owned and controlled poles, conduits and rights-of-way to construct and deploy its cable network plant, and to provide competitive services to its customers.

6. CCI-LV and NV Energy, Inc. ("NVE"), through their predecessor entities, entered into a Pole Attachment Contract dated June 1, 1997 pursuant to which CCI-LV would attach to NVE owned and controlled poles ("1997 Agreement") in Nevada. Attached hereto as Exhibit 1 is a true and correct copy of the 1997 Agreement.

7. Delaying CCI-LV's deployment until after NVE's Grade C poles are replaced/upgraded to Grade B (as detailed in the Pole Attachment Complaint) will prevent CCI-LV from delivering services to Las Vegas businesses and residents seeking CCI-LV's services, including pending customers to be served by facilities attached to the poles at issue.

8. CCI-LV is not aware of any situations in which CCI-LV's attachments at Grade C construction standards have created engineering, safety or reliability issues.

9. There is no indication that NVE has deployed a system-wide program to upgrade its distribution poles to Grade B outside of the pole attachment application process. Instead, it appears that NVE has chosen to use the pole attachment application process to implement its

Grade B upgrades. It also appears that NVE does not upgrade the pole when it adds its own facilities to the pole.

10. CCI-LV engaged in good faith in executive level discussions with NVE in an attempt to resolve the pole attachment dispute.

11. On September 10, 2013, an executive level meeting was conducted at NVE's West Sahara headquarters to discuss NVE's position that CCI-LV may not overlash its facilities until after NVE replaces any poles that fail Grade B construction standards, notwithstanding that CCI-LV did not cause the Grade B compliance issues. The meeting was attended by Frank Gonzalez (VP Transmission & Distribution, Larry Luna (Director Distribution Design), Tony Sanchez (Sr. VP Government Affairs) and Colin Harlow (Assistant General Counsel) on behalf of NVE, and Michael Bolognini (Market Vice President – Las Vegas), Kristen Weathersby (VP/Chief Litigation Officer), Kami Dempsey (Executive Field Director Public Affairs), Gary Auvil (Director of Residential & Commercial Construction – Las Vegas), Brian Rudolph (VP OSP & Construction SWR), and Bob Sheridan (Executive Field Director Network Operations & Network Service – Las Vegas) on behalf of CCI-LV.

12. On January 28, 2014, an executive level meeting was conducted at NVE's West Sahara headquarters to discuss NVE's position that CCI-LV may not overlash its facilities until after NVE replaces any poles that fail Grade B construction standards, notwithstanding that CCI-LV did not cause the Grade B compliance issues. The meeting was attended by Frank Gonzalez (VP Transmission & Distribution, Larry Luna (Director Distribution Design), Patricia Ortwein (Manager, Rule 9 Contract and Joint Use Administration), Herb Goforth (Executive, Delivery Operations) and Colin Harlow (Assistant General Counsel) on behalf of NVE, and Michael Bolognini (Market Vice President – Las Vegas), Kristen Weathersby (VP/Chief Litigation

Officer, via conference call), Kami Dempsey (Executive Field Director Public Affairs), Gary Auvil (Director of Residential & Commercial Construction – Las Vegas), Brian Rudolph (VP OSP & Construction SWR), and Bob Sheridan (Executive Field Director Network Operations & Network Service – Las Vegas) on behalf of CCI-LV.

13. On June 25, 2014, Patricia Ortwein (NVE's Manager, Rule 9 Contract and Joint Use Administration) sent a letter to Glenda Mills (CCI-LV's Manager, Construction Services – Las Vegas), acknowledging the parties' "several opportunities to meet . . . to discuss ways in which [NVE] and [CCI-LV] can move the pole attachment application process forward and still meet each company's goals and expectations" and reaffirming NVE's Grade B construction standard requirements set forth in the 2012 License Application Requirements. (See Exhibit 4 to Declaration of Glenda Mills dated December 17, 2014.)

14. On July 15, 2014, I sent a letter to Patricia Ortwein (NVE's "Manager, Rule 9 Contract and Joint Use Administration"), detailing CCI-LV's objections to NVE's new Grade B construction standard. Attached hereto as Exhibit 2 is a true and correct copy of the July 15, 2014 letter.

15. CCI-LV's position was reiterated in an October 8, 2014 letter from Maria Browne (outside counsel to CCI-LV) to Ms. Ortwein, which specifically detailed CCI-LV's legal position that "NVE's refusal to allow CCI-LV to overlash its facilities until NVE's currently Grade C complaint poles are upgraded to Grade B is unjust and unreasonable and constitutes a discriminatory denial of access, and thus violates [] federal laws and regulations." Attached hereto as Exhibit 3 is a true and correct copy of the October 8, 2014 letter.

16. On October 21, 2014, Colin Harlow (NVE Assistant General Counsel) responded to Ms. Browne with a letter asserting that NVE "has every right to require pole upgrades to meet

[NESC] Grade B construction standards prior to overlashing” by CCI-LV. Attached hereto as Exhibit 4 is a true and correct copy of the October 21, 2014 letter.

17. As of the date of this Complaint, the parties have been unable to resolve the dispute detailed in the Pole Attachment Complaint.

18. CenturyLink, a joint user and pole owner in Nevada, is not similarly required to wait until Grade C poles are upgraded before it is permitted to deploy plant.

19. CenturyLink is one of CCI-LV’s primary competitors for residential and business class customers. As a result of NVE’s unreasonable requirement that poles be upgraded to Grade B construction prior to CCI-LV’s overlashing, CCI-LV is at a distinct competitive disadvantage *vis a vis* one of its primary competitors for residential and business class customers.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

By: 
Michael Bolognini

Dated: December 18, 2014

MICHAEL BOLOGNINI

EXHIBIT 1

POLE ATTACHMENT CONTRACT

BETWEEN

NEVADA POWER COMPANY

AND

COMMUNITY CABLE TV

DATED:

6/1/97

POLE ATTACHMENT CONTRACT
BETWEEN
NEVADA POWER COMPANY
AND
COMMUNITY CABLE TV

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**POLE ATTACHMENT CONTRACT
BETWEEN
NEVADA POWER COMPANY
AND
COMMUNITY CABLE TV**

In consideration of the mutual obligations and undertakings set forth herein, this Contract is entered into on this first day of June, 1997 between Nevada Power Company (NPC), (hereinafter referred to as "Licensor"), and Community Cable TV (CATV), (hereinafter referred to as "Licensee"), each of which maintain their principal offices in Las Vegas, Nevada.

WITNESSETH

WHEREAS, federal law requires that utilities must accommodate requests for access to their utility poles by telecommunications carriers and cable system operators, and;

WHEREAS, Licensee provides Covered Service and other services to persons and entities located within a geographical franchise area, and;

WHEREAS, Licensor has obtained Governmental Authorizations which govern the construction, operation and maintenance of a pole distribution system for the purpose of providing electric power, and;

WHEREAS, Licensor has entered into a JPA for the purpose of administering the joint use of certain poles with the local area, and;

WHEREAS, Licensee desires to install and maintain Attachments of its equipment to certain of Licensor's Poles, and;

WHEREAS, Licensor is willing to permit such Attachments to be made for the purpose of allowing Licensee to furnish Covered Service;

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

1. AGREEMENT

1.1. Under the terms and conditions of this Contract:

1.1.1. The Licensor agrees to grant revocable non-exclusive Attachment License(s) to Licensee by which Licensee may attach its cables, wires and other components of its system to Licensor's Poles for the exclusive purpose of providing Covered Service subject to the terms of Governmental Authorizations.

1.1.2. Properly authorized Attachments made under any prior pole attachment contract shall be subject to the terms and conditions of this Contract.

1.1.3. The Licensee agrees to compensate Licensor, for each Attachment granted in accordance with Section 8, EXHIBIT A, and EXHIBIT D herein.

1.2. The Parties will negotiate in good faith to amend this Contract to meet the terms of any amendments to Applicable Law.

2. TERM AND TERMINATION

2.1. This Contract shall have an initial term of five (5) years following its Effective Date and shall be automatically renewed for a period of two (2) years after the initial term and periods of one (1) year thereafter unless terminated earlier in accordance with the following:

2.1.1. The Contract may be terminated by either Party by giving written notice at least one (1) year prior to the end of the initial term or any extension thereof.

2.1.2. If Attachments are not allowed under Governmental Authorizations, then any Party to this Contract shall be entitled to terminate this Contract upon written notice to the other Parties without creating an Event of Default.

2.1.3. This Contract shall be subject to termination by any Party with three (3) months written notice to the other Parties if renegotiations in accordance with Section 1.2 are not concluded within one (1) year of the effective date of any such amendment to Applicable Law.

2.1.4. Pursuant to Section 13, in the Event of Default.

2.2. In the event of termination of this Contract or any of Licensee's rights, privileges or authorizations hereunder;

2.2.1. Licensor shall provide no less than sixty (60) days notice to Licensee prior to termination of the Contract.

2.2.2. Licensee shall remove all Attachments from Licensor's Poles within such sixty (60) day period; provided, however, that Licensor may, in its sole discretion, extend the time period permitted for such removal of Attachments.

2.3. The following obligations of Licensee shall survive termination of this Contract.

2.3.1. Payment of any amounts due prior to or resulting from termination.

2.3.2. Licensee's obligations hereunder for the removal of Attachments.....

2.3.3. Licensee shall be liable for and pay all fees and charges pursuant to terms or conditions of this Contract to Licensor until all Attachments are removed from Licensor's Poles.

- 2.3.4. Liability for damages or injuries to persons or property directly or indirectly resulting from the installation and maintenance of an Attachment or the removal thereof.
- 2.3.5. The indemnity obligations contained herein to the extent of the statute of limitations period applicable to any third party claim.

3. DEFINITIONS

The following terms, whether used in the singular or plural, and when initially capitalized, shall have the meanings indicated below.

3.1. Applicable Laws: Any:

3.1.1. Applicable law, rule, regulation, ordinance, order, code, decree, injunction, decision, or interpretation of any federal, state, or local government, authority, agency, court, or other governmental body having jurisdiction over the matter in question, and;

3.2. Applicable Permits: Any approval, permit, consent, waiver, exemption, variance, franchise, order, authorization, right, action, or license required from any federal, state, or local governmental authority, agency, court or other governmental body having jurisdiction over the matter in question which is necessary for Licensee to perform Licensee's obligations under this Contract and under the Applicable Laws.

3.3. Attachment: Any facility or equipment owned, leased or controlled by Licensee which is attached to, or supported by Licensor's Poles and such attachment was permitted by Licensor pursuant to an Attachment License under the terms of this Contract or any prior contract. Such equipment may include but is not limited to the following; aerial wires, drop wires, tap-offs, cables, and assorted appliances such as amplifiers, power supply equipment, and other transmission apparatus used in connection with the operation of Licensee's Covered Service.

3.4. Attachment Application: An application, attached in the form of EXHIBIT B to this Contract, which is required to be submitted by Licensee to Licensor prior to making any attachment to Licensor's Poles.

3.5. Attachment License: Licensor's revocable non-exclusive authorization, permitting Attachment by Licensee to certain of Licensor's Poles for the purpose of providing Covered Service, subject to the terms of this Contract and Governmental Authorizations. Attachment License shall be granted in the form of EXHIBIT B to this Contract.

3.6. Attachment Removal Notice: A form documenting and providing Licensee's notice of removal of an Attachment in the form of EXHIBIT C to this Contract.

3.7. Cable Television Service: The transmission to and from Licensee's customers of any programming signals and other legally authorized service over Licensee's system; provided, however, that this term shall

not apply to any activity not intended to be protected by Congress under the purview of the Pole Attachment Act of 1978, 47 U.S.C. Section 224 as amended by the Telecommunications Act or otherwise.

- 3.8. CIAC Tax: Contributions in aid of construction taxes pursuant to Section 118 of the Internal Revenue Code as it may be amended. CIAC Tax shall be applied at the rate in effect at the time the contribution is made.
- 3.9. Communications Attachment Space: An area designated on Licensor's Poles in which Attachment must be made, generally described in EXHIBIT A.
- 3.10. Contract Representative: The individual or his designee appointed by each Party to ensure effective communication, coordination, and cooperation between the Parties.
- 3.11. Contract Term: The period beginning with the Effective Date continuing until termination of the Contract for whatever reason.
- 3.12. Contract: This document consisting of Sections 1 through 24 and its attached Exhibits, as amended.
- 3.13. Covered Service: Either Telecommunication Service or Cable Television Service.
- 3.14. Distribution Poles: Licensor's Poles which carry only lines with voltages of 35 kV or less.
- 3.15. Effective Date: The date set forth in the introductory paragraph of this Contract, upon which this Contract becomes effective.
- 3.16. Event of Default: As defined in Section 13.
- 3.17. Exhibit: EXHIBIT A through EXHIBIT E attached hereto and incorporated herein by reference. Exhibits are subject to modification at the discretion of Licensor, except as specifically limited under the terms of this Contract.
- 3.18. FCC: The Federal Communications Commission or its successor.
- 3.19. Governmental Authorizations: Agreements entered into by and between the Licensor and the governmental authorities of Clark County, the City of Las Vegas, the City of North Las Vegas and the City of Henderson, or authorizations received from local, state and federal governmental authorities, which govern the construction, operation and maintenance of a pole distribution system for the purpose of providing electric power.
- 3.20. Hazardous Substances: Any hazardous or toxic substance, waste or material or any petroleum or petroleum product as such terms are defined under Applicable Laws or Applicable Permits including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601, et seq., as amended, the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq., as amended, the Toxic Substance Control Act 15 U.S.C. § 2601, et seq., as amended, the

Federal Water Pollution Control Act, 33 U.S.C. § 1251, et seq., as amended, and Nevada Revised Statutes § 459.400, et seq., as amended.

- 3.21. JPA: The joint agreement between Central Telephone Company and Nevada Power Company dated June 1, 1964, as amended or superseded, which governs all matters involving the administration and joint use of Licensor's Poles.
- 3.22. License Administrator: The individual or his designee appointed by the Licensor to process Attachment Applications, Attachment Licenses, and Attachment Removal Notices and administer certain matters related hereto.
- 3.23. Licensee: Community Cable TV and its officers, employees, agents, assignees and successors.
- 3.24. License Fee: That fee paid by Licensee for each Attachment.
- 3.25. Licensor: Nevada Power Company and its officers, employees, agents, assignees and successors.
- 3.26. Licensor's Poles: Those Distribution Poles and Transmission Poles owned and used by Licensor for the purpose of providing electric power. Poles that are installed only for private area lighting (PAL) are specifically excluded from this Contract.
- 3.27. Make Ready: Any changes and work necessary in order to make Licensor's Pole(s) adequate to support an existing or requested Attachment in compliance with the specifications of Section 4. Make Ready shall include, but not be limited to, any relocation, alteration, and/or rearrangement of facilities attached to or supported by Licensor's Poles or strengthening of Licensor's Poles through the use of guys, anchors or other means.
- 3.28. Other Facilities: Any facility or equipment which is owned, leased or controlled by Licensee which is not an Attachment but which may affect Licensor's or Other Users' facilities or operations, or create an unreasonable hazard to Licensor's or Other Users' facilities or employees, or to the public.
- 3.29. Other User: Any governmental body, private entity, telecommunication provider or cable television provider other than Licensee, which has been granted or is hereafter granted the right of attachment to Licensor's Poles.
- 3.30. Party: Licensor or Licensee.
- 3.31. Prudent Utility Practices: The practices generally followed by the utility industry, as changed from time to time, which generally include, but are not limited to, construction, engineering, operating, and maintenance considerations, the use of equipment, practices, methods, and adherence to applicable industry codes, standards, and regulations. Prudent Utility Practices are not intended to be limited to the optimum practice or method

to the exclusion of others, but rather to be a spectrum of commonly used and reasonable practices and methods.

- 3.32. Sprint: Sprint Central Telephone - Nevada and its officers, employees, agents, assignees and successors.
- 3.33. Telecommunication Service: The transmission to and from Licensee's customers of any signals and other legally authorized service over Licensee's system; provided, however, that this term shall not apply to any activity not intended to be protected by Congress under the purview of the Pole Attachment Act of 1978, 47 U.S.C. Section 224 as amended by the Telecommunications Act of 1996 or otherwise.
- 3.34. Telecommunications Act: The Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, to be codified at 47 U.S.C. §§ 151 et seq.
- 3.35. Transmission Poles: Licensor's Poles which carry lines with voltages of greater than 35 kV.

4. SPECIFICATIONS FOR POLE ATTACHMENTS AND REMOVALS

- 4.1. In view of the Parties obligations to maintain safe and adequate service, Attachments, at each and every location, shall be erected, installed, placed, maintained and removed (if applicable) in accordance with the requirements and specifications listed below.
 - 4.1.1. The Bellcore Manual of Construction Standards ("Blue Book"), the National Electrical Code ("NEC"),
 - 4.1.2. The National Electrical Safety Code ("NESC"),
 - 4.1.3. The rules and regulations of the Occupational Safety and Health Act ("OSHA"),
 - 4.1.4. Prudent Utility Practices,
 - 4.1.5. Applicable Laws,
 - 4.1.6. Applicable Permits,
 - 4.1.7. The standards of any government authority having jurisdiction over the subject matter of this Contract.
 - 4.1.8. The JPA
 - 4.1.9. So as not to interfere with the reasonable and safe use of Licensor's Poles by Licensor, Licensee, or Other Users.
 - 4.1.10. Any additional specifications of Licensor, as reasonably required in Licensor's sole judgment as may be required from time to time.
 - 4.1.11. All Attachments shall be permanently identified with tags which shall be legible from the ground, marked with Licensee's name, and which shall be securely attached to the cable within 36 inches

of Licensor's Poles and on the normally accessible side of Licensor's Poles.

- 4.1.12. All Attachments shall be placed within the Communications Attachment Space and at the location designated by Licensor; provided, however, that the same designation does not violate any of the requirements in this Section 4.
- 4.1.13. Licensee shall maintain proper clearances between any Other Facilities and Licensor's Poles and any attachment thereto:
- 4.1.14. Licensee shall not allow its cable to drape vertically along Licensor's Poles, place equipment on or access Licensor's Poles so as to preclude safe access to Licensor's Poles or any attachment thereto, or in any other way interfere with the safe and reasonable use of Licensor's Poles.
- 4.2. The current edition (i.e., incorporating the most recent amendments and revisions, if any) or equivalent of any publication listed above in Sections 4.1.1, 4.1.2, and 4.1.3, shall be applicable throughout the Contract Term.
- 4.3. Where a difference in specifications may exist, the more stringent shall apply.
- 4.4. All Attachments that precede the Effective Date shall be brought into full compliance with every term and provision of this Section 4 no later than the first anniversary after the Effective Date.

5. POLE ATTACHMENTS

- 5.1. Licensor shall permit Attachment to Licensor's Poles, provided such Attachments, in Licensor's sole judgment, will be and will remain in conformance with the specifications stated in Section 4.
- 5.2. Licensee shall be responsible for obtaining from the appropriate public and/or private authorities any required authorization to construct, operate, and/or maintain its facilities on public and/or private property before making Attachments and Licensee shall submit to Licensor such evidence of compliance with the forgoing requirements as Licensor may reasonably require from time to time. Licensee shall maintain the following information current on file with License Administrator:
 - 5.2.1. Evidence of Licensee's legal authority to provide Covered Service.
 - 5.2.2. Evidence of Licensee's Applicable Permits.
 - 5.2.3. Proof of insurance coverage required herein.
- 5.3. Licensee shall make application for Attachment License to License Administrator prior to making any new Attachment, and prior to making any modification, addition or rearrangement of any existing Attachment. Such application shall include the following:

- 5.3.1. A completed Attachment Application in the form attached as EXHIBIT B.
- 5.3.2. Application processing fee specified on EXHIBIT D as it may be amended or revised.
- 5.3.3. Fee specified on EXHIBIT D, as it may be amended or revised, for initial inspection as required in accordance with Section 7.1.1.
- 5.4. The License Administrator shall issue a response to such application for Attachment(s) within ten (10) business days of receipt of such application.
 - ~~5.4.1. NPC may, at its discretion, provide expedited response upon the request of Licensee. If expedited response is requested and provided then the application fee shall be multiplied by the number of days expedited.~~
 - ~~5.4.2. Licensee recognizes the undue burden of holding Licensor to this response time in cases when multiple applications are filed simultaneously. In such case response time is waived and Parties shall cooperate to allow response within a reasonable time period.~~
- 5.5. An Attachment License shall be deemed to be issued as of the date such Attachment License is granted as documented thereon.
- 5.6. Licensee shall be solely responsible for any Make Ready costs.
- 5.7. Written notice shall be provided by Licensor to Licensee's Contract Representative in the event of denial of an Attachment Application
- 5.8. If a government authority or private property owner informs Licensor that the use by Licensee of any of Licensor's Poles is prohibited, the License Administrator shall provide written notification to Licensee's Contract Representative of such prohibition within ten (10) days after receipt of such notification.
 - 5.8.1. Licensee shall have the right to contest, at its sole expense, such prohibition directly to the person or entity prohibiting such attachment, provided written notice of such intent is given to the License Administrator within fifteen (15) days of receipt of Licensee's notification of prohibition.
 - 5.8.1.1. Licensor shall postpone any action on Licensee's Attachment Application or Attachment License until Licensee's contest is resolved. If such contest fails, Licensee's Attachment License shall be denied or revoked.
 - 5.8.1.2. If within fifteen (15) days of receipt of notification of the prohibition, Licensee fails to notify Licensor of its intent to contest such prohibition, Licensor shall have the absolute right to deny Licensee's Attachment Application in question and/or revoke any existing Attachment License(s).

5.9. Any and all maintenance required on account of Attachments including, without limitation, tree trimming, shall be performed by Licensee or its designated agents at its sole risk and expense and in a manner satisfactory to Licensor and any Other User. Licensee shall be responsible for obtaining all Applicable Permits and costs associated with such maintenance. If, in Licensor's sole judgment, maintenance is required from a safety standpoint or to maintain, repair, or preserve the integrity of Licensor's Poles or any attachments affixed thereto by Licensor or any Other User, Licensor may, but shall have no obligation to, assume such responsibility for Licensee's maintenance obligations under this Section 5.9. Should Licensor assume such responsibility, said maintenance shall be performed at the sole discretion of Licensor and the costs and expenses for such maintenance shall be reimbursed by Licensee in accordance with Sections 8 and 9.

5.10. Licensor shall not bear the cost of any Make Ready work which is necessitated, as determined in the sole judgment of the Licensor, by reason of an existing or proposed Attachment(s). Such Make Ready costs for any such alterations shall be borne by the Licensees and Other Users which by reason of an existing attachment necessitate the alterations.

5.10.1. Licensor shall notify Licensee in writing of any necessary Make Ready work, the estimated or required completion date, and the estimated cost of Make Ready work necessitated by reason of such Attachments, if determinable.

5.10.2. Licensee shall be responsible for performing all Make Ready work involving its own Attachments. If Licensee shall fail, within fifteen (15) days of receipt of such notice to provide written acknowledgment of such Make Ready work, and financial responsibility therefore, or if Licensee shall fail to complete the Make Ready work involving its own Attachments before the required completion date, then Licensor shall cause the necessary Make Ready work to be performed and shall bill Licensee for all costs incurred.

5.10.3. Licensee shall reimburse Licensor and any Other User in accordance with Sections 8 and 9 for Make Ready expenses incurred by Licensor and any Other Users necessary in order to accommodate Licensee's Attachment.

5.11. Once an Attachment is properly licensed pursuant to the terms and conditions of this Contract any item, fixture, or piece of equipment subsequently attached shall require an additional separate Attachment License.

5.12. Except for modification of Licensee's facilities for purposes of routine maintenance or in response to emergencies, Licensor shall provide no

less than sixty (60) days written notice to Licensee prior to modification of Licensee's facilities.

- 5.13. Nothing contained herein shall be construed to compel Licensor to maintain any of Licensor's Poles for a period longer than necessitated by Licensor's own operating requirements relative to furnishing safe and efficient utility service. Licensor retains the right to revoke an Attachment License at any time if Licensor's Pole(s) is no longer necessary to Licensor's own operating requirements.
- 5.14. Licensor may abandon any of Licensor's Poles at any time by giving written notice to Licensee. Licensee shall remove its Attachments therefrom, within sixty (60) days after such notice of abandonment, if no other arrangements for disposition of the pole are made. Licensor may upon written request of Licensee or any Other User, sell such pole, at a value of depreciated placement cost.
- 5.15. Licensee shall bear all responsibility for securing and paying all expenses for securing any consents, permits, licenses that may be required of Licensor solely due to or arising solely out of the presence of Attachments.
- 5.16. Licensor and Licensee shall exercise precaution to avoid damaging the facilities and equipment of the other Party and of Other Users attached to Licensor's Poles and shall make an immediate report to the other Party of the occurrence of any damage to Licensor's Poles or to any facilities attached to Licensor's Poles. All repairs and replacement shall be performed by the owner of the equipment which was damaged. Expenses incurred in making repairs and replacement required to return the damaged equipment and facilities to their condition prior to the occurrence of the damage shall be borne by the party causing the damage. Such reimbursements, however, shall not be construed as a limitation upon any Party's liability for damages resulting from intentional or negligent acts or omissions for which any Party or its designated agents is responsible.
- 5.17. Licensee assumes all responsibility for any and all direct and indirect loss from damage by Licensee to the facilities and equipment of Licensor and Other Users attached to Licensor's Poles.

6. REMOVAL OF ATTACHMENTS

- 6.1. Licensee shall remove Attachment(s) from Licensor's Poles within the time specified on written notice requiring such removal, and said period of time shall be no less than sixty (60) days, except in an emergency, after:
 - 6.1.1. Licensee's receipt of written notice of:
 - 6.1.1.1. Revocation of Licensee's Attachment License(s) or;
 - 6.1.1.2. Request to remove, alter or relocate any Attachment.

- 7.3. No use by Licensee, however extended, of Licensor's Poles, nor any payments made by Licensee under this Contract shall create or vest in Licensee any ownership or property right in Licensor's Poles or associated equipment or land. Licensee's right with regard to said Licensor's Poles and equipment shall be and remain, in accordance with the terms and conditions of this Contract, that of a revocable non-exclusive licensee.
- 7.4. Licensor reserves to itself, the right to construct and maintain Licensor's Poles and operate its attached and associated facilities in such a manner as will best enable Licensor, in its sole judgment, to satisfy its obligations to provide safe and efficient utility service.
- 7.5. Licensor shall endeavor not to disrupt Licensee's Covered Service. Licensor shall provide, to the extent reasonably possible, forty-eight (48) hours advance notification to Licensee's Contract Representative of any planned conditions which could reasonably be foreseen to create a disruption in service for Licensee.
- 7.6. Nothing herein contained shall be construed as affecting the rights or privileges previously granted by Licensor by contract or otherwise to Other Users.
- 7.7. Licensor retains the right to extend rights or privileges to Other Users provided such additional attachments do not interfere with Licensee's existing use of Licensor's Poles at such time that rights or privileges are granted to Other Users.
 - 7.7.1. Licensor shall have no liability to Licensee in connection with such additional attachments by Other Users so long as Licensor does not authorize such attachments on standards less stringent than those set forth in this Contract.
- 7.8. Nothing in this Section shall prohibit Licensee from pursuing all appropriate legal remedies against Other Users should such Other Users tamper with, move, harm or endanger Licensee's Attachments. Licensee's remedies against Other Users shall be in addition to Licensor's remedies therefor.

8. FEES AND CHARGES

- 8.1. Licensor warrants and represents that the fees and charges imposed in the Contract meet the standards required by the FCC and any other governmental authority having jurisdiction. Licensor further warrants and represents that it will not levy any fee or charge upon Licensee in excess of what Licensor levies upon Other Users similarly situated.
- 8.2. All fees and charges to be paid by Licensee shall be as set forth on EXHIBIT D.

- 8.2.1. EXHIBIT D may be revised once within any calendar year during the Contract Term, but in no event may EXHIBIT D be revised during the first 12-month period of the Contract Term.
- 8.2.2. Any revisions to EXHIBIT D shall become effective upon no less than thirty (30) days prior written notice to Licensee.
- 8.3. Notwithstanding any term to the contrary contained herein, Licensor shall have the absolute right to revise the fee schedule contained on EXHIBIT D in the event that the laws or regulations which regulate the permissible fees and charges which may be imposed under agreements of this nature are amended, or supplemented, whether through new legislation, rules, regulations or otherwise.
 - 8.3.1. License Fees shall be prorated on a monthly basis for each Attachment licensed on the last day of the each month.
 - 8.3.2. License Fee shall be based on the type of Licensor's Pole Attachment is made to, License Fee shall be revised as appropriate when and if Licensor's Pole is changed-out for any reason following issuance of License.
 - 8.3.3. No adjustment or proration, except as provided above, of any License Fee shall be paid or credited to Licensee.
- 8.4. An application processing fee shall be charged to Licensee for each Attachment Application in the amount stated on EXHIBIT D.
- 8.5. An inspection fee shall be charged to Licensee for each inspection of Attachment(s) permitted under this Contract in the amount stated on EXHIBIT D.
- 8.6. Licensor may charge Licensee such other fees as may be included in EXHIBIT D, as amended from time to time subject to section 8.1.
- 8.7. The amount of all reimbursable costs, expense and capital investments incurred by Licensor in connection with this Contract, including, but not limited to, Sections 2, 5, 6, 8, 9 and 13 and EXHIBIT D shall be determined in accordance with the regular and customary methods used by Licensor for determining and recording these items on the books and records which Licensor maintains as a regulated public utility and may include, but are not limited to the following:
 - 8.7.1. The cost of any larger poles that are needed, and;
 - 8.7.2. The cost of removing existing poles (less the salvage value thereof), and;
 - 8.7.3. The expense of moving Attachments from old poles to new poles less an adjustment for a "betterment" which Licensor enjoys as the result of such changes , and;
 - 8.7.4. Administrative and general costs, and;

8.7.5. Any applicable CIAC Tax.

9. BILLING

- 9.1. The License Administrator shall render invoices, in advance to Licensee. Invoices shall be issued on a basis no more frequently than monthly nor less frequently than quarterly. Such invoices shall include a true up to account for the removal of any Attachments and the addition of new Attachments during the prior billing period.
- 9.2. Licensor payments shall be made to License Administrator.
- 9.3. All invoices and amounts due or chargeable to Licensee under this Contract shall be payable no later than thirty (30) days after receipt by Licensee.
 - 9.3.1. In the event that any payment required by this contract is not paid within ten (10) days following the date upon which it is due, Licensee shall pay a late payment penalty equal to ten percent (10%) of the overdue payment, and Licensor need not accept any such late payment hereunder unless it is accompanied by such ten percent (10%) late payment penalty. The Parties hereby agree that a ten percent (10%) late payment penalty represents a fair and reasonable estimate of the costs Licensor will incur by reasons of the late payment by Licensee. Acceptance of the ten percent (10%) late payment penalty by Licensor shall in no event constitute a waiver by Licensor of Licensee's default regarding any overdue amounts, nor prevent Licensor from exercising any or all of the other rights or remedies granted to Licensor under this Contract.
 - 9.3.2. Any payment required by this Contract not paid by Licensee when due shall bear interest per annum from the date due until paid at the then current prime rate as established by Bank of America - Nevada plus five (5) percentage points; provided, however, that payment of such interest by Licensee to Licensor shall not excuse or cure any default by Licensee under this Contract.
 - 9.3.3. In the event that any payment required by this contract is not paid within sixty (60) days following the date upon which it is due, Licensor shall be entitled to submit a claim for such amount(s) to the issuer of the letter of credit, bond or other financial security in conjunction with Section 10 hereof.
- 9.4. Licensee shall have the right of access during normal business hours and upon at least ten (10) business days advance written notice to Licensor to review Licensor's records that are reasonably required to confirm the accuracy of Licensor's invoices; provided, however, that Licensee shall

not be permitted to exercise this right on more than one (1) occasion during any twelve (12) month period during the Contract Term.

9.4.1. Licensee's right of access shall extend for a period of thirteen (13) months from the date of the invoice being reviewed. Invoices which are more than thirteen (13) months old shall not be subject to review and are deemed final.

9.4.2. If a review determines that an overpayment or under payment has occurred, then notice of such overpayment or underpayment shall be given to the other Parties together with that portion of the audit which supports the determination. If the determination is not disputed in writing within ten (10) business days of receipt, then the payment or refund shall be paid in the same manner as other invoices are paid under this Contract.

9.5. Licensor and Licensee shall keep books, records and supporting data related to invoices under this Contract in conformity with generally accepted accounting principles

10. LETTER OF CREDIT/BOND

10.1. Licensor may require a letter of credit or bond in a form and amount reasonably satisfactory to Licensor and/or other satisfactory evidence of financial security in such amount as Licensor from time to time may require to guarantee the performance of all Licensee obligations hereunder. The amount of such letter of credit, bond or other financial security shall not operate as a limitation upon the obligations of the Licensee hereunder. The letter of credit, bond or other financial security shall be issued by a company satisfactory to Licensor and Licensee shall cause the amount of such letter of credit, bond or other financial security to increase throughout the Contract Term as reasonably requested by Licensor. Licensee expressly acknowledges and agrees to the right of reimbursement provided to Licensor pursuant to Section 9.3.3 hereof.

11. INDEMNIFICATION

11.1. If any person, governmental agency, or other entity which is not a party to this Contract commences any lawsuit or makes any claim against a Party to this Contract (hereafter referred to as the Indemnified Party), which lawsuit or claim is based upon or arises out of this Contract then the other Party (hereafter referred to as the Responsible Party - The term "Responsible Party" shall specifically exclude the officers, employees and agents of the Parties) shall defend, indemnify and hold harmless the Indemnified Party from and against the proceedings or claim to the extent of the Responsible Party's wrongful conduct. This obligation to defend, indemnify and hold harmless includes, but is not limited to the following matters:

- 11.1.1. A loss of right-of-way or property owner consent and/or the cost of defending such rights and/or consents.
- 11.1.2. Damages to property and personal injury or death to persons, including but not limited to payments under any worker's compensation law or under any plan for employee's disability and death benefits, which arise out of or are caused by the construction, maintenance, presence, use or removal of Licensee's facilities or by their proximity to the facilities of all parties attached to a pole or anchor, or by any act of the Licensee's contractors on or in the vicinity of Licensor's Poles.
- 11.1.3. Construction and operation of Licensee's facilities, including but not limited to taxes, special charges by others, claims and demands for damages or loss from infringement of copyright or for libel or slander, for unauthorized use of television or radio broadcast programs and other program material, and from all claims, demands and costs including attorneys' fees for infringement of patents with respect to the manufacture, use and operation of Licensee's facilities in combination with Licensor's Poles.
- 11.1.4. The damage or contamination of, or loss of any real or personal property of Licensor or other parties due to the presence of Hazardous Substances resulting from any Attachment; provided, however, that Licensor was not responsible for the presence of such Hazardous Substances.
- 11.1.5. Citations, fines, taxes, or other assessments from any governmental authority including, but not limited to, OSHA, EPA, and IRS.
- 11.2. The Indemnified Party shall promptly notify the Responsible Party of any lawsuit or claim after receiving notice thereof. The Parties shall take all reasonable actions necessary to assist each other in determining the nature and extent of the issues contained in the lawsuit or claim.
- 11.3. If the Responsible Party hereto confirms in writing its responsibility to indemnify, the Responsible Party will have sole control over, and will assume all expenses with respect to, the defense or settlement of such claim; provided, however, that the Indemnified Party will be entitled to participate in the defense of such claim and to employ counsel at its own expense to assist in the handling of such claim.
- 11.4. The Responsible Party will obtain the prior written approval of the Indemnified Party before entering into any settlement of such claim or ceasing to defend against such claim, if pursuant to or as a result of such settlement or cessation, injunctive or other similar relief would be imposed against the Indemnified Party. If the Responsible Party does not assume sole control over the defense or settlement of such claim as provided in this Section, the Indemnified Party will have the right to defend and settle

the claim in such manner as it may deem appropriate at the cost and expense of the Responsible Party, and the Responsible Party will promptly reimburse the Indemnified Party therefor in accordance with this Section.

- 11.5. The indemnity obligations contained herein shall survive the expiration or earlier termination of this Contract to the extent of the statute of limitations period applicable to any third party claim.
- 11.6. If a lawsuit, arbitration, governmental hearing, or other proceeding is commenced against the Indemnified Party, then the Indemnified Party shall be entitled to make the Responsible Party a party to the lawsuit or proceeding for the purpose of enforcing the terms and condition of this Section.

12. INSURANCE

- 12.1. Licensee shall maintain the following insurance coverages throughout the Contract Term.
 - 12.1.1. Worker's Compensation insurance in the form and manner required by the State of Nevada; and
 - 12.1.2. Comprehensive General Liability for personal injuries/death and property damage with a minimum coverage of \$2,000,000 per occurrence, and;
 - 12.1.3. Comprehensive Automobile Liability with bodily injury and property damage with combined single limits of at least \$2,000,000.
- 12.2. Licensee shall cause its insurers to amend its insurance policies required herein with the following endorsements items:
 - 12.2.1. Nevada Power Company, their directors, officers, and employees are additional insureds under such policy as to liability arising out of operations of Licensee; and,
 - 12.2.2. This insurance is primary with respect to the interest of Nevada Power Company, their directors, officers, and employees and any other insurance maintained by Nevada Power Company is excess and not contributory with this insurance.
- 12.3. Licensee shall provide Licensor with proof of insurance coverage required herein prior to making any Attachments hereunder and annually thereafter.
- 12.4. Licensee shall instruct its insurers in writing to insert a clause or provision in all of Licensee's policies of insurance required hereunder which requires such insurers to provide immediate written notification to Licensor upon cancellation of any insurance coverage required herein.

- from all applicable federal, state and local governmental authorizes and agencies; or,
- 13.2.8. Use or maintenance of any of Licensee's Attachments in violation of any Applicable Laws or Applicable Permit or aid in any unlawful act or undertaking, or
- 13.2.9. Failure by Licensee to make any payment due hereunder within forty-five (45) days of receipt of a statement, or
- 13.2.10. Denial or revocation of any authorization which may be required of the Licensee by any governmental or private authority for the construction, operation and maintenance of the Licensee's communications facility on Licensor's Poles; or,
- 13.2.11. Cancellation at any time of Licensees insurance policy or policies required under Section 12; or
- 13.2.12. Failure by Licensee to meet any of its indemnification obligations as set forth in Section 11 hereunder; or
- 13.2.13. Failure for any reason whatsoever of the issuer of the letter of credit, bond or other financial security referenced in Section 10 hereof to pay or remit any amount(s) submitted or requested for reimbursement by Licensor within thirty (30) days of such submission or request by Licensor.
- 13.3. Remedies. If an Event of Default is declared, then Licensor shall be entitled to any or all of the following remedies, as may be applicable:
- 13.3.1. Immediate and automatic termination of all rights of Licensee hereunder and this Contract in the event that:
- 13.3.1.1. Licensee ceases to provide Covered Service; or,
- 13.3.1.2. Licensee fails to maintain insurance as required in Section 12.
- 13.3.2. Immediate termination of all rights of Licensee hereunder and this Contract upon written notice to Licensee by Licensor.
- 13.3.3. Revocation of any or all of Licensee's Attachment License(s) upon written notice to Licensee by Licensor.
- 13.3.4. Subject to Section 13.4, all other remedies authorized by law or in equity which are not inconsistent with the terms of this Contract.
- 13.3.5. If Licensee makes any attachment to Licensor's Poles without the prior issuance of an Attachment License by Licensor, notwithstanding Licensor's removal and right to demand removal and/or right to remove such Attachment, Licensee shall pay Licensor all fees and charges which could have reasonably been expected to have been incurred had the Licensee not breached the

Contract. License Fees shall be payable back to such time that such unauthorized attachment may have been made.

- 13.4. No Party to this Contract shall be liable to another Party for any consequential, incidental, or punitive damages. Consequential or incidental damages include, but are not limited to interruptions or interference with Covered Service provided by Licensee, lost revenue or profits, or any form of special damages attributable directly or indirectly to any such consequential or incidental damages.

14. ANNUAL CERTIFICATION

- 14.1. At the end of each twelve (12) month period during the term of this Contract, an authorized officer of Licensee shall certify, in writing, to Licensor as follows:

- 14.1.1. Licensee has not made any attachment of facilities, equipment or other device to Licensor's Poles in violation of the terms of this Contract.

- 14.1.2. Except as authorized in writing by Licensor, Licensee has not assigned any of its rights or privileges under this Contract, nor has Licensee granted any rights to any third parties in violation of the terms of this Contract.

- 14.1.3. Attachments are only being used by Licensee to provide the Covered Services described on Attachment A to such certification..

15. MODIFICATION AND WAIVERS

- 15.1. No amendment, waiver of compliance with any provision or condition hereof, or consent pursuant to this Contract shall be effective unless evidenced by an instrument in writing signed by the Parties. The failure of either Party to insist upon strict performance of Contract requirements or provisions or to exercise any Contract right shall not be construed as a waiver of such Contract requirement or provision or a relinquishment of such Contract right unless otherwise stated in writing.

16. FORCE MAJEURE

- 16.1. No Party shall be subject to an Event of Default for the failure to comply with the terms and conditions of this Contract if the failure to comply is directly caused by circumstances beyond the reasonable control of that Party (hereafter "Force Majeure"). Examples of a Force Majeure include, but are not limited to the following:

- 16.1.1. Unusually severe weather conditions.

- 16.1.2. Strikes, lockouts or other major labor disputes.

- 16.1.3. Delays in obtaining permits, authorizations, or approvals from proper governmental authorities, despite due diligence by the applicant.
- 16.1.4. Damages to the property of a Party, except by that Party.
- 16.2. A Force Majeure shall not occur under any of the following circumstances:
 - 16.2.1. The circumstance was proximately caused by the non-performing Party's negligence, willful misconduct, or failure to comply with any Applicable Laws, Applicable Permit, or for any breach or default of this Contract by the non-performing Party.
 - 16.2.2. The circumstance was attributable to contractor or sub-contractor of a Party unless:
 - 16.2.2.1. Such contractor or subcontractor is unable to fulfill any obligation by reason of an event of Force Majeure, and
 - 16.2.2.2. Such contractor or subcontractor affected by the event of Force Majeure is using due diligence to place itself in a position to fulfill its obligations to the Party.
- 16.3. If a Force Majeure is claimed by a Party, then that Party shall:
 - 16.3.1. Give written notice to the other Party's Contract Representative(s) describing the particulars of the occurrence as soon as reasonably practicable after the beginning of said occurrence.
 - 16.3.2. Give adequate assurances that the suspension of performance will be of no greater scope and of no longer duration than is required by the Force Majeure. Such assurances shall include explanation of the remedial action to be taken and the projected time period necessary to correct the Force Majeure.
 - 16.3.3. Give immediate written notice to the other Party's Contract Representative(s) when the Party is able to resume performance of its obligations under this Contract.
- 16.4. All such notices shall be accompanied with complete information sufficient to enable the Party receiving the notice to evaluate the correctness of the matters asserted therein.

17. ENTIRE CONTRACT

- 17.1. This Contract, together with its Exhibits and other documents contemplated hereby or incorporated herein by reference, constitutes the final written expression of all of the agreements, representations and understandings between the Parties. The Parties specifically represent, each to the other, that there are no additional or supplemental agreements between them related in any way to the matters contained herein unless specifically included or referred to herein and that this

Contract supersedes all prior contracts pertaining to matters contained herein.

18. DISPUTE RESOLUTION

18.1. Any dispute or cause of action between the Parties to this Contract relating to matters over which the FCC has jurisdiction may be submitted to the FCC for resolution by either Party. Otherwise any issue, including, but not limited to, contract issues, tort issues, equity issues and the interpretation of laws or regulations, shall be resolved by final and binding arbitration.

18.2. The arbitration shall be held within Clark County, Nevada and administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules in effect at the time of the arbitration. Any award or determination rendered by the arbitrator may be entered as a judgment in any court having jurisdiction thereof.

19. SUCCESSORS AND ASSIGNS

19.1. Licensor may assign or delegate its rights and obligations under this Contract without the express consent of the Licensee. This Contract shall inure to and bind the successors and assigns of the Licensor so long as the assignee assumes all obligations of Licensor hereunder (including the recognition of any prepayments made by and on behalf of Licensee) and agrees to be bound by the terms of this Contract.

19.2. This Contract shall not inure to the successors and assigns of Licensee without prior written consent of Licensor, nor shall Licensee assign, transfer or sublet any or all of the privileges hereby granted without the prior written consent of Licensor.

20. GOVERNING LAW

20.1. This Contract and all questions relating to its validity, interpretation, performance and enforcement (including, without limitation, provisions concerning limitations of action), shall be governed by and construed in accordance with the laws of the State of Nevada (exclusive of the conflict of laws provisions thereof) applicable to agreements made and to be performed entirely within such state.

21. HEADINGS

21.1. The headings or section titles contained in this Contract are used solely for convenience and do not constitute a part of this Contract between the Parties, nor should they be used to aid in any manner in the construction of this Contract.

22. SEVERABILITY

22.1. In the event that any term, provision, covenant, or condition of this Contract or the application of any such term, covenant, or condition shall be held invalid as to any person, entity, or circumstance by any court or regulatory authority having jurisdiction, such term, covenant or condition shall not affect the validity of any other term, provision, condition or covenant and shall remain in force and effect as applied to this Contract to the maximum extent permitted by law, and application shall not be affected thereby, but shall remain in force and effect.

23. COUNTERPARTS

23.1. This Contract may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

24. MISCELLANEOUS PROVISIONS

24.1. Notices.

24.1.1. All written notices or submittals required by this Contract shall be sent either by hand-delivery, registered or certified U.S. mail return receipt requested, overnight delivery, or facsimile and will be effective and deemed to have been received:

24.1.1.1. When presented if hand-delivered; or

24.1.1.2. On the date of receipt as recorded on the return receipt if sent by registered or certified U.S. mail; or

24.1.1.3. On the date of delivery as recorded by the overnight delivery company if sent by overnight courier; or

24.1.1.4. When confirmed by telecopy machine report indicating satisfactory transmission if sent by facsimile.

24.1.2. Notices of an Event of Default, shall require the use of any two (2) of the above means. Such notices shall be effective and deemed to have been delivered when the last such means has been complied with. All other written communications regarding this Contract may be sent by any of the above means or by regular first class U.S. mail.

24.1.3. Written notices and correspondence required in this Contract shall be sent to the Parties at the addresses stated in EXHIBIT E, with copies as so designated.

24.1.4. The Parties shall have the right to change titles and addresses of Contract Representatives and the License Administrator, described in this Section by providing written notice of such changes to the

other Parties. Such change shall be effective upon receipt of such notice.

24.1.5. The Parties License Administrator and Contract Representatives are as designated in EXHIBIT E.

24.2. Further Assurances. From time to time, upon reasonable request from the other Party, each of the Parties agree to execute any and all additional documents or to take such additional action as shall be reasonably necessary or appropriate to carry out the transaction contemplated by this Contract.

24.3. Drafting. Each Party to this Contract represents that he has read and understood each provision of this Contract and has discussed this Contract with legal counsel or has been advised to and has been provided the opportunity to discuss this Contract with legal counsel. The Parties hereto therefore stipulate and agree that the rule of construction to the effect that any ambiguities are to be or may be resolved against the drafting party shall not be employed in the interpretation of this Contract to favor any Party against another.

24.4. Attorneys' Fees. If any legal action, arbitration or other proceeding is brought for the enforcement of this Contract (including any cross-complaint, counterclaims, or third-party claim), or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Contract, the successful or prevailing Party or Parties shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding (including all such costs incurred in appeal or in the enforcement of any judgment or settlement), in addition to any other relief to which it or they may be entitled.

24.5. Time. Time is of the essence of this Contract and of the performance of each and every provision hereof.

24.6. Use of Gender and Number. As used in this Contract, the masculine, feminine or neuter gender, and the singular or plural number, shall each be considered to include the others whenever the context so indicates.

24.7. No Partnership or Joint Venture. Nothing in this Contract is intended to be construed so as to constitute Licensor or Licensee as partners or joint venturers, or any Party hereto as the employee, agent or representative of any other Party. Each Party hereto agrees that it will not hold itself out as an agent, partner, joint venturer, employee or representative of any other Party hereto or claim or represent that it is operating or doing business as or for such other Party, nor shall any Party hereto purport to pledge the credit of or enter into a contract or commitment for or on behalf of any other Party.

24.8. Warranties of Authority. If any Party to this Contract is not a natural person, the person signing this Contract on behalf of such entity warrants and represents to all other Parties that he, she or it has full power and

authority to cause such entity to enter into this Contract and all power and authority to execute this Contract on its behalf and to bind such entity to the terms hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed by their duly authorized representative on the date first written above.

LICENSOR
NEVADA POWER COMPANY

By: David S. Bandy

Title: V.P. Power Delivery

Date: 5-17-97

LICENSEE
COMMUNITY CABLE TV

By: [Signature]

Title: EX-VP-OPERATIONS

Date: 5/14/97

EXHIBIT C - ATTACHMENT REMOVAL

In accordance with the terms and conditions of the Pole Attachment Contract between Nevada Power Company and Community Cable TV, notice is hereby given of removal of the following Attachments:

	Licensor's Pole No.	Last Application Date	Detail Sheet #	Comments	Date Removed
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					

LICENSEE's Removal Application		
By:	Title	Date

LICENSOR'S ACKNOWLEDGMENT (following inspection)		
Comments		
By:	Title	Date

ATTACHMENT COUNT:

	TRANSMISSION			DISTRIBUTION		
	Previous	Removed	Current	Previous	Removed	Current
Wood						
Steel						
Other						

EXHIBIT D - FEES AND CHARGES

License Fees

Type of Pole	Annual License Fee	
	Distribution Poles	Transmission Poles
Wood Poles	\$5.22	\$20.03
Steel Poles	\$87.85	\$327.62
Other	\$59.31	\$232.50

Attachment Application Processing Fee: \$15.00/application (up to 10 attachments)
Fee multiplied by number of days expedited if so requested by Licensee.

Inspection Fee: \$50.00/inspection plus \$10.00/pole

Reimbursable: Actual costs in accordance with Section 8.7

AGREEMENT

The Parties to this Agreement are Nevada Power Company ("Licensor") and Community Cable TV ("Licensee").

BASIS

- MA
5/14/97
- A) Licensor and Licensee are parties to that certain Pole Attachment Contract dated 6-1-97 ("Contract").
- B) Licensee is an affiliate of NextLink of Nevada ("NextLink"). NextLink provides certain telecommunication services through the lease of broadband telecommunications capacity on Licensee's cable television system. Section 19.2 of the Contract provides that Licensee may not assign, transfer or sublet any of Licensee's rights and obligations under the Contract without the consent of the Licensor. A dispute exists between Licensor and Licensee as to whether Licensee may, under the applicable statutory law and/or regulations, lease capacity to NextLink without Licensor's consent.

TERMS

1. To the extent that consent by Licensor is required, and subject to the following limitations, Licensor hereby consents to the lease by Licensee of broadband telecommunications capacity on Licensee's cable television system to NextLink under the terms of the Contract.
 - 1.1. If Licensee and NextLink cease to be affiliates during the term of the Contract, then Licensee shall immediately provide written notification to Licensor of this change in status and Licensor shall be entitled to rescind the consent granted in Section 1.
 - 1.2. If the applicable statutory law and/or regulations are amended or otherwise modified or interpreted by courts of relevant jurisdiction in such a manner as to hold that Licensee's status as an affiliate of NextLink does not require that Licensor allow Licensee to lease broadband capacity on Licensee's cable television system, without Licensor's consent, then Licensor shall be entitled to rescind the consent granted in Section 1.
2. Nothing in this Agreement is intended to or shall be construed to grant NextLink any rights to attach its facilities to poles owned by Licensor
3. This Agreement shall only become effective upon complete execution of the Contract by the parties hereto.

NEVADA POWER COMPANY

By: David G. Barney

Name: DAVID G. BARNEY

Title: VP - POWER DELIVERY

Date: 5-17-97

COMMUNITY CABLE TV

By: Robert M. Burns

Robert M. Burns

Executive Vice-President - Operations

Date: 5/14/97

SETTLEMENT AND RELEASE AGREEMENT

PARTIES

The Parties to this Settlement and Release Agreement are the Nevada division of Central Telephone Company d/b/a Sprint [Sprint/Central Telephone Company – Nevada] (S/CTC-N), Nevada Power Company (NPC), and Community Cable TV (CATV).

BASIS

- A) The Parties to this Settlement Agreement were parties to an Attachment Agreement. The Attachment Agreement has been replaced by separate pole attachment agreements between NPC and CATV executed on June-1, 1997 and between S/CTC-N and CATV executed on May 14, 1997.
- B) Under the Attachment Agreement, CATV has obtained permits to make Attachments to approximately 37,719 of Licensor's poles, of which 29,237 poles are the property of NPC and 8,482 poles are the property of S/CTC-N.
- C) Licensors believe that CATV has made Attachments to Licensors' poles in violation of the Attachment Agreement; including making Attachments to Licensors poles which are not authorized under the Attachment Agreement, making Attachments which do not comply with specifications for Attachments, and leasing capacity of Attachments to a third-party, NextLink, for use in providing a service other than cable television service. The full nature and extent of such violations is unknown.
- D) A dispute exists between NPC and S/CTC-N, and CATV as to whether CATV may, under the applicable statutory law and/or regulations, lease capacity to NextLink without the consent of NPC or S/CTC-N.
- E) This Settlement Agreement is intended to determine the nature and extent of any violations of the Attachment Agreement, to provide a remedy for such violations and/or actions, and to bring all Attachments into compliance with standards and billing under the Replacement Agreements.

TERMS AND CONDITIONS

1. DEFINITIONS

- 1.1. Attachment Agreement: The Pole Attachment License Agreement to which NPC, S/CTC-N and CATV are parties which was executed on December 18, 1979 and which by reference is made a part of this Settlement Agreement.

- 1.2. Attachments: CATV attachment of cables and equipment to Licensors' poles and facilities.
- 1.3. Audit: As defined in Section 2.
- 1.4. CATV: Community Cable TV and its authorized agent, employees and contractors.
- 1.5. Costs: Such costs shall include, but shall be not limited to, labor, materials, handling and storage costs, contractors and subcontractors, applicable administrative and associated overheads, and any applicable taxes and assessments.
- 1.6. Licensors: NPC and S/CTC-N.
- 1.7. NPC: Nevada Power Company and its authorized agents, employees and contractors.
- 1.8. Party: The parties to this Agreement are NPC, S/CTC-N, and CATV
- 1.9. Replacement Agreements: Those pole attachment agreements between NPC and CATV and between S/CTC-N and CATV which replace the Attachment Agreement, and which are incorporated herein by reference.
- 1.10. Settlement Agreement: This Settlement and Release Agreement together with all attachments thereto.
- 1.11. S/CTC-N: The Nevada division of Central Telephone Company d/b/a Sprint/Central Telephone Company - Nevada and its authorized agents, employees and contractors.
- 1.12. Unauthorized Attachments: All CATV Attachments which do not comply with the Attachment Agreement or the Replacement Agreement or were not authorized by the Attachment Agreement, including, but not limited to, those described in Section 3 of this Settlement Agreement.

2. AUDIT

- 2.1. The Licensors shall perform an audit of Licensor's poles to identify the following (hereafter referred to as "Audit"):
 - 2.1.1. All Attachments by CATV to Licensors' poles, and the type of pole to which each Attachment is made.
 - 2.1.2. The nature and extent of any Unauthorized Attachments, including, but not limited to those listed in Section 3 of this Settlement Agreement.
- 2.2. The Parties shall share equally in the Cost of the Audit. Licensors shall prepare an estimate of the Cost of the Audit and provide the estimate together with any supporting information to CATV. It is expected that the Audit will take place over a period of one-year or longer.

- 2.3. Licensors shall invoice CATV for CATV's share of the Cost of the Audit as Costs are incurred and CATV shall pay the invoice within 30 days of the date of the invoice.
- 2.4. CATV shall assist Licensors in the Audit. CATV shall provide Licensors with all information and data requested by Licensors which is necessary to properly perform the Audit.
- 2.5. Licensors' shall keep the records and supporting data concerning the Audit for at least 30 days after the Audit is completed. CATV shall have the right to review the records and supporting data at reasonable times and places. If CATV does not object to any Audit findings within 30 days of receipt of the findings, then those findings shall be final and binding. If CATV does object to any Audit findings within 30 days of receipt of the findings, then the objection shall be subject to Dispute Resolution.

3. UNAUTHORIZED ATTACHMENTS

- 3.1. If the Audit determines that any CATV Attachment is an Unauthorized Attachment because it does not comply with specifications in Section 4 of the applicable Replacement Agreement then the Licensor which owns the pole shall notify CATV in writing of such Unauthorized Attachments and;
 - 3.1.1. CATV shall bring such Unauthorized Attachments into compliance no later than one (1) year after notification of any such Unauthorized Attachments unless the Licensor determines that a shorter time is appropriate for reasons of safety.
 - 3.1.2. If CATV does not make such Unauthorized Attachment comply with the Replacement Agreement within the above period, then Licensor shall have the right to do so and CATV shall reimburse Licensor for all Costs incurred in making such Unauthorized Attachment comply with the Replacement Agreement.
- 3.2. If the Audit determines that any CATV Attachment is an Unauthorized Attachment because it is attached to a NPC pole which carries a voltage of more than 35 kV; and/or it has been made without prior application and approval for license under the Attachment Agreement then the Licensor which owns the pole shall notify CATV in writing of such Unauthorized Attachments and:
 - 3.2.1. CATV shall pay the Licensor which owns the pole for such Unauthorized Attachments based on the Fees and Charges stated in Exhibit D of the applicable Replacement Agreement, subject to modification resulting from any applicable ruling of the Federal Communications Commission, for a period of three (3) years regardless of when the Attachment was actually made, and;

EXAMPLE: (Rates and pole numbers used for example purposes only.)
If the Audit determines that CATV has 300 Unauthorized Attachments of which 50 attachments are to poles in each of the six categories contained in "EXHIBIT D", then the amount due Licensors is $(50 \times \$5.22) + (50 \times \$87.85) + (50 \times \$59.31) + (50 \times \$20.03) + (50 \times \$327.62) + (50 \times \$232.50) = 36,626.50$ for 1 year \times 3 years = \$109,879.50.

- 3.2.2. CATV shall initiate an application for licensing under the applicable Replacement Agreement, and;
- 3.2.3. Billing for such Unauthorized Attachments under the applicable Replacement Agreement shall be started as of the date such Unauthorized Attachment is identified.
- 3.3. CATV shall be charged for all known Attachments to:
 - 3.3.1. NPC poles at the rate for wood distribution poles stated in Exhibit D (Fees and Charges) of the NPC/CATV Replacement Agreement until the type of pole to which Attachments are made has been identified by the Audit thereafter billing under the NPC/CATV Replacement Agreement shall be adjusted to reflect pole type. Additional corrections to the billing shall be made as necessary upon completion of the Audit.
 - 3.3.2. S/CTC-N poles at the annual rate of \$4.52 per pole
- 3.4. Each Licensor shall individually invoice CATV for amounts due based upon the Audit and the above calculations as such violations are identified during the course of the Audit.
- 3.5. Any amounts invoiced and not paid by CATV within thirty (30) days of invoicing shall accrue interest at the rate of 1% per month from the date due until the date paid.

4. SETTLEMENT AND RELEASE

- 4.1. This Settlement Agreement is a final settlement of all rights that the Licensors may have against CATV or all rights that CATV may have against Licensors arising from or related to the Attachment Agreement.
- 4.2. Subject to the terms and conditions of this Settlement Agreement, Licensors hereby waive and release CATV from any liability to Licensors for Unauthorized Attachments under the Attachment Agreement. This Settlement Agreement shall not effect the Parties rights or obligations contained in the applicable Replacement Agreement.
- 4.3. The Parties represent and acknowledge that in executing this Settlement Agreement that they did not rely upon any representation or statement not set forth herein made by the other Party or by any of the other Parties' agents, representatives, or attorneys.

5. DISPUTE RESOLUTION

5.1. Any dispute or cause of action between the Parties to this Settlement Agreement, including, but not limited to, contract issues, tort issues, equity issues and the interpretation of laws or regulations, shall be resolved by final and binding arbitration. The arbitration shall be administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules in effect at the time of the arbitration. Any award or determination rendered by the arbitrator may be entered as a judgment in any court having jurisdiction thereof.

6. MISCELLANEOUS PROVISIONS

6.1. Notices. Notices shall be in writing and shall be deemed received when delivered in person or via facsimile to the following address and facsimile number or three days after deposit in the United States Mail; postage prepaid, to the following address or to such other addresses as the parties may designate to each other in writing:

To NPC: Nevada Power Company
P.O. Box 230
Las Vegas, Nevada 89151-0230
Fax: (702) 227-2455
Attention: Manager IPP and Business Contracts
Ann Casey

To S/CTC-N: Sprint Nevada
330 Valley View
Las Vegas, Nevada 89152
Fax: (702) 244-7561
Attention: Manager – Eng./Const. Administration
Greg Lightenburger

To CATV: Prime Cable
121 South Martin Luther King Blvd.
Las Vegas, Nevada 89106
Fax: (702) 383-0614
Attention: Executive Vice President – Operations

with copy to: Prime Management Group
600 Congress Avenue
Suite 300
Austin, TX 78701
Fax: (512) 476-4869
Attention: Vice President and General Counsel

MICHAEL BOLOGNINI

EXHIBIT 2

MICHAEL F. BOLOGNINI
Market Vice President – Las Vegas



COX COMMUNICATIONS, INC.
1700 Vegas Drive
Las Vegas, NV 89106
702 / 545-1010

July 15, 2014

Ms. Patricia Ortwein
Manager – Rule 9 Contract and Joint Use Administration
NV Energy
6226 West Sahara Ave.
Las Vegas, Nevada 89146

Re: Joint Use Application Requirements
Pole Attachment Agreement # PAC 1001

Dear Ms. Ortwein:

Thank you for your letter to Glenda Mills dated June 25, 2014 and for the opportunity to meet with you and your NV Energy's ("NVE") team to discuss the adverse impact that NVE's new pole attachment engineering standards and application requirements have on Cox's communications operations. Cox appreciates NVE's elimination of the requirement of obtaining a Professional Engineering stamp on Cox's pole attachment applications; however, as Cox personnel have explained, other newly adopted NVE requirements are not only unnecessarily burdensome, they are also inconsistent with the regulations and policies of the Federal Communications Commission ("FCC").

As you know, NVE's adoption and implementation of these new requirements have seriously disrupted Cox's efforts over the last 18 months to provide communications services to the Las Vegas area business community. Prior to 2013 NVE's application process only required Cox's applications to include attachment information about facilities in the communications space on NVE's poles. This was consistent with other utilities' requirements for attachments by Cox in the communications space on their poles. Cox's attachment applications for NVE poles must now include a "complete structural analysis" on each pole covered by an application, which, among other things, "includes field information for facilities in the power space and communications space, alike." In our meetings and correspondence, NVE personnel have told Cox personnel that Cox may not rely on or utilize in any way NVE's existing pole attachment records to help ease this burdensome requirement because NVE's records are incomplete. With the adoption and proposed implementation of this requirement NVE is intentionally shifting the burden and cost of updating its deficient pole attachment records, as well as shifting the responsibility and liability for the accuracy of its records of attachments and facilities in the power space on its poles. Additionally, if NVE also requires Cox to pay for NVE's further review of Cox's applications and engineering analysis that will be performed by NVE approved engineering companies, then NVE will unnecessarily increase the cost of making attachments to NVE's poles. This is inconsistent with the FCC's policies as Cox has pointed out in our meetings and prior correspondence.

As you also know, Cox has expressed similar concerns with NVE's new Grade B construction standard, which neither the National Electric Safety Code ("NESC") nor the regulations of the Nevada Public Utilities Commission require for communications attachments. Prior to 2013 and for over 40 years, Cox and other cable operators have been making attachments in the communications space on utility poles with the assent of pole owners based on the NESC's Grade C construction standard. While there may be some engineering rationale to begin to migrate to the NESC's Grade B construction standard when replacing poles located in

Page 2

July 15, 2014

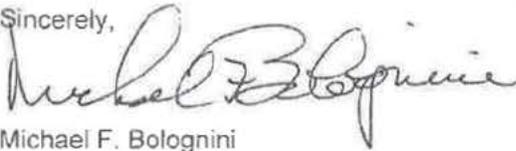
Re: Joint Use Application Requirements

Pole Attachment Agreement # PAC 1001

geographical areas that are more likely to have adverse annual weather events such as hurricanes and tornadoes, such a decision would not be triggered by attachments in the communications space on poles. Pole owners in the Las Vegas area have been following for decades the NESC's Grade C construction standard for permitting cable attachments in the communications space on distribution poles without any material problems caused by cable attachments or adverse weather events. Indeed, it is the collective recollection of Cox's engineering personnel that over the last 25 years there have been no Cox technical compliance or contractual disputes involving NVE poles that would have been avoided if a Grade B construction standard had been in place instead of a Grade C construction standard. Moreover, based on Cox's preliminary review of NVE poles which it may wish to use in the future and statements made by NVE personnel in our meetings and elsewhere, many of NVE's poles (with or without existing Cox attachments) do not currently meet NVE's new Grade B construction standard. As Cox has explained previously, under existing FCC policies NVE may not shift to third party attachers the burden and cost of upgrading NVE's pole plant to meet NVE's unilateral new construction standards.

Prior to 2013 Cox's applications for attachments to NVE poles were routinely approved in a reasonable period of time after submission. If a rare problem was identified on an application or on an existing Cox attachment to an NVE pole, the parties worked cooperatively to resolve it in a timely manner so that services to Cox's new or existing customers would not be unreasonably delayed. NVE's new engineering and construction standards and application process, along with a nebulous NVE commitment to complete any necessary make-ready work in a timely manner, including any required pole replacements, are likely to make the entire process unreasonably time consuming and expensive. Notwithstanding Cox's serious and numerous concerns as outlined in part above, Cox is willing to give NVE the opportunity to implement its new requirements in a manner that will not be unreasonably burdensome, time consuming and costly. Consequently, Cox will submit attachment applications consistent with NVE's new requirements to determine the actual financial and operational impact on Cox's business. Although Cox sincerely hopes that it can work with NVE cooperatively on pole attachment matters going forward as it has in the past, Cox nevertheless reserves all rights it has under applicable law, including FCC regulations and policies, to challenge in an appropriate forum NVE's pole attachment requirements and practices.

Sincerely,



Michael F. Bolognini

cc: Paul Caudill, President & CEO - NV Energy
Douglas Cannon, Senior Vice President & General Counsel - NV Energy
Tony Sanchez, Senior Vice President Government & Community Strategy - NV Energy
Douglas Anderson, EVP, General Counsel & Corporate Secretary - Berkshire Hathaway Energy
Jonathan Weisgall, VP, Legislative and Regulatory Affairs - Berkshire Hathaway Energy
Kristen Weathersby, VP, Litigation - Cox Communications
J. Christopher Redding, Baker Hostetler

MICHAEL BOLOGNINI

EXHIBIT 3

October 8, 2014

Patricia Ortwein
Manager, Rule 9 Contract and
Joint Use Administration
NV Energy
P.O. Box 98910
Las Vegas, NV 89151

Re: NVE Grade B Loading Requirements

Dear Ms. Ortwein:

I am writing on behalf of Cox Communications, Inc. Southwest (“CCI-SW”) concerning Nevada Energy’s (“NVE”) refusal to allow CCI-SW to overlash its facilities that are currently attached to NVE poles unless and until such poles are upgraded to meet National Electrical Safety Code (“NESC”) Grade B construction standards. NVE takes this position despite the fact that (a) CCI-SW’s proposed overlashing would *not* bring NVE poles out of compliance with currently applied, NESC-compliant Grade C construction standards, and (b) delaying CCI-SW’s deployment until after the poles are replaced will prevent CCI-SW from delivering broadband services to Las Vegas businesses and residents seeking CCI-SW’s services.

As I am sure you are aware, federal law requires NVE to provide CCI-SW non-discriminatory access to its poles. 47 U.S.C. § 224(f). In addition, Federal Communications Commission (“FCC”) rules and policies require the rates, terms and conditions governing cable and telecommunications attachments to NVE poles to be just and reasonable. 47 C.F.R. § 76.1401 *et seq.* NVE’s refusal to allow CCI-SW to overlash its facilities until NVE’s currently Grade C compliant poles are upgraded to Grade B is unjust and unreasonable and constitutes a discriminatory denial of access, and thus violates these federal laws and regulations.

(1) It is unreasonable for NVE to deny CCI-SW’s proposed overlashing where such overlashing would not bring poles out of compliance with currently applicable NESC Grade C construction standards.

NVE’s decision to upgrade its plant to Grade B construction standards through the pole attachment application process – precisely when third party attachers are seeking to deploy facilities – is guaranteed to inhibit the same broadband expansion that the FCC, as directed by Congress, is seeking to promote. Indeed, in amending its pole attachment rules in 2011, the FCC sought to address “prolonged, unpredictable, and costly” processes employed by utilities and to

ensure that access to poles is not “more burdensome or expensive than necessary.”¹ The FCC took several steps “to improve access to utility poles,” including the adoption of time frames, the use of utility approved contractors, and a requirement that utilities allow attachers to use the same time-saving construction techniques previously employed by the utility.²

CCI-SW uses the overlashing construction technique to deploy high-capacity fiber for delivery of competitive, cable, voice and advanced services to residential and business class customers promptly and efficiently. The FCC has recognized time and again that overlashing is a competitive and cost-effective way to deploy cable plant.³ As such, the FCC prohibits pole owners from requiring additional approval for overlashing beyond that which was required for the initial attachment.⁴

In this case, NVE not only unreasonably seeks to apply the same permitting requirements to overlashing that it applies to initial attachments— including a complete structural analysis report for each distribution pole in an application – NVE would also delay CCI-SW’s overlashing until *after* NVE replaces any poles that fail Grade B construction standards, with or without CCI-SW’s proposed overlashing. NVE’s insistence on this unreasonable practice is preventing CCI-SW from delivering services to contracted customers and other Las Vegas residents and businesses seeking CCI-SW’s services.

The overwhelming majority of NVE poles do not currently meet NESC Grade B strength and loading requirements because they were built to NESC compliant Grade C construction standards.⁵ Indeed, specific loading studies conducted by NVE’s approved contractor, Par

¹ *Implementation of Section 224 of the Act: A National Broadband Plan for our Future*, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240 ¶ 6 (2011) (“April 2011 Order”).

² *Id.* at ¶ 19.

³ See Consolidated Partial Order on Reconsideration, *Amendment of Rules and Policies Governing Pole Attachments*, 16 FCC Rcd 12103, ¶ 73 (2001) *aff’d Southern Company Serv., Inc. v. FCC*, 313 F.3d 574,582 (D.C. Cir. 2002) (“Consol. Order on Recon.”) (“Cable companies have, through overlashing, been able for decades to replace deteriorated cables or expand capacity of existing communications facilities, by tying communications conductors to existing, supportive strands of cable on poles. The 1996 Act was designed to accelerate rapid deployment of telecommunications and other services, and to increase competition among providers of these services. Overlashing existing cables reduces construction disruption and associated expense.”); *Implementation of Section 703(e) of the Telecommunications Act of 1996, Amendment of the Commission’s Rules and Policies Governing Pole Attachments*, Report and Order, 13 FCC Rcd 6777, ¶ 62 (1998) (“We believe overlashing is important to implementing the 1996 Act as it facilitates and expedites installing infrastructure essential to providing cable and telecommunications services to American communities. Overlashing promotes competition [and helps] provide diversity of services over existing facilities, fostering the availability of telecommunications services to communities, and increasing opportunities for competition in the marketplace.”).

⁴ Consol. Order on Recon. at ¶75 (“neither the host attaching entity nor the third party overlasher must obtain additional approval from or consent of the utility for overlashing other than the approval obtained for the host attachment”); see also *Cable Television Ass’n of Ga. v. Ga. Power Co.*, 18 FCC Rcd. 16,333, ¶ 13 (2003) (rejecting a pole attachment agreement provision that required the utility’s “written consent to overlashing, which the utility may take up to 30 days to grant or deny” as “unjust and unreasonable on its face” and ordering the pole owner “to negotiate in good faith a reasonable provision consistent with FCC precedent.”).

⁵ NVE only recently adopted the Grade B standards in its 2012 License Application Requirements. NVE first notified CCI-SW of its intent to apply Grade B construction standards to pole attachment applicants in December

Electric, using NVE-approved loading software, O-Calc, determined that 11 of the 15 poles included in CCI-SW's August 20, 2014 application currently fail Grade B strength and loading standards. *See* Attachment A.⁶ While NVE's own loading analysis reduced the number of failing poles to nine, NVE could not commit to a timeframe for upgrading the nine failing poles. Your email to CCI-SW dated September 4, 2015 also suggested that the poles may never be replaced due to the need to obtain approval from the City of Las Vegas and its preference for undergrounding utility lines.

To be clear, Grade B construction is not necessary to ensure the safety of NVE distribution poles. Per NESC Table 242-1, Grade C construction is both acceptable and safe. As shown in the loading study attached hereto, while the majority of NVE poles currently fail Grade B loading standards, they do meet NESC-compliant Grade C standards. Significantly, as the loading study summary shows, the incremental load increase of less than one percent added by CCI-SW's proposed overlashing would not cause any of the poles on CCI-SW's application to come out of compliance with Grade C requirements. In other words, CCI-SW could overlash all of its plant attached to NVE poles in its August 20 application without causing the poles to come out of compliance with existing NESC Grade C construction standards.⁷

In sum, given that NVE has opted to maintain its plant at Grade C construction, its refusal to allow CCI-SW to overlash its attached facilities consistent with Grade C construction standards is entirely unjust and unreasonable in violation of FCC rules.

(2) NVE's refusal to allow CCI-SW to overlash its existing facilities where it could do so consistent with currently applied Grade C strength and loading requirements also constitutes a discriminatory denial of access to NVE poles in violation of federal law.

The FCC has clearly stated that "even a policy that is equally applied prospectively is discriminatory in the sense that it disadvantages new attachers."⁸ There is no indication that NVE has deployed a system wide program to upgrade its distribution poles to Grade B outside of the application process, and thus, this practice discriminatorily impacts attaching entities. As recently opined by Mr. Johnny B. Dagenhart, a nationally recognized expert in the application and interpretation of the NESC, in a case involving similar facts and pending before the FCC, a utility pole owner may not claim that it is building to Grade B unless it not only constructs

2012, when it sought to unilaterally replace CCI-SW's valid existing pole attachment agreement with a new pole attachment agreement, including an Exhibit F, which included NVE License Application Requirements dated November 19, 2012 ("Application Requirements"). It subsequently imposed the new Requirements as a unilateral amendment to the parties' existing agreement. The new Application Requirements require each applicant to complete a structural analysis on each pole in the application and to "apply overload and strength reduction factors for Grade B construction." Before these new requirements were imposed, NVE had required all plant to be constructed using NESC-compliant Grade C construction standards.

⁶ Email from Patricia Ortwein to CCI-SW, dated September 4, 2014.

⁷ According to ParElectric's loading analysis, one pole currently fails Grade C and thus should be remediated by NVE immediately. However, CCI-SW's proposed overlash would not *cause* the non-compliance.

⁸ April 2011 Order at ¶ 227.

initially to Grade B, but also *maintains* poles at the Grade B strength and loading standard and itself immediately *rehabilitates* poles that fall below Grade B.⁹ Thus, when a pole falls out of compliance with the utility's chosen grade of construction, the pole must be rehabilitated immediately; otherwise, the utility is not in compliance with the NESC.¹⁰ The utility cannot wait until an attacher seeks to deploy facilities to replace the poles.

NVE's insistence that its poles be upgraded through replacement to Grade B during the attachment application process, as well as the associated delay and possibility that the poles will not be approved for replacement by the City, disparately denies access to new attachers as compared to pole owners and joint users with "superior" rights and is precisely the type of discriminatory access that the FCC sought to prohibit.

Moreover, according to information acquired in the field, CenturyLink, a joint user and pole owner in Nevada, is not similarly required to wait until Grade C poles are upgraded before it is permitted to deploy plant. As such, CCI-SW is at a distinct competitive disadvantage *vis a vis* one of its primary competitors for residential and business class customers.

In sum, NVE's refusal to permit CCI-SW to overlash its existing plant when it can do so consistent with currently applicable, NESC compliant Grade C construction standards violates federal laws governing pole attachments. According, CCI-SW demands that NVE immediately cease and desist its application of unjust, unreasonable and discriminatory Grade B construction requirements to CCI-SW's new plant construction, and allow CCI-SW to proceed with its planned overlashing. Otherwise, CCI-SW intends to take all steps necessary to protect its federal rights and deliver its services promptly to customers and other Nevada businesses and residents seeking its services.

Sincerely,



Maria Browne

Enclosure

⁹ Attachment B, Declaration of Johnny B. Dagenhart, P.E., filed in FCC Docket No. EB-14-MD-006 (June 23, 2014) at ¶¶ 11-18.

¹⁰ *Id.* ¶ 15.

COX, Garces & 8th

Grade B - light	1 - p9542		2 - p9541		3 - p9574		4 - p9572		5 - p9573	
	Existing	Proposed								
Maximum Pole Capacity Utilization Percent	141.2%	141.2%	87.2%	87.2%	135.8%	136.3%	153.8%	155.9%	142.6%	150.8%
Grade C - light	81.1%	81.1%	47.9%	47.9%	79.6%	79.8%	83.4%	83.8%	82.6%	82.5%

Grade B - light	6 - p91046		7 - p9105		8 - p9103		9 - p6106		10 - p9108	
	Existing	Proposed	Existing	Proposed	Existing	Proposed	Existing	Proposed	Existing	Proposed
Maximum Pole Capacity Utilization Percent	81.9%	82.7%	170.0%	170.9%	101.6%	102.5%	327.6%	327.6%	99.3%	100.0%
Grade C - light	46.4%	46.8%	94.5%	95.0%	59.8%	59.9%	195.1%	195.2%	62.5%	62.8%

Grade B - light	11 - p9109		12 - p55814		13 - p57631		14 - p57630		15 - p57629	
	Existing	Proposed	Existing	Proposed	Existing	Proposed	Existing	Proposed	Existing	Proposed
Maximum Pole Capacity Utilization Percent	120.1%	121.8%	141.1%	143.2%	179.5%	179.4%	70.6%	70.6%	114.9%	114.9%
Grade C - light	77.1%	77.2%	86.1%	87.2%	102.9%	103.9%	40.1%	40.9%	73.2%	73.9%

MICHAEL BOLOGNINI

EXHIBIT 4



October 21, 2014

Maria Browne
Davis Wright Tremaine, LLP
1919 Pennsylvania Avenue NW, Suite 800
Washington, D.C. 20006-3401

Re: Letter dated October 8, 2014

Dear Ms. Browne:

In response to your letter dated October 8, 2014, NV Energy has every right to require pole upgrades to meet National Electrical Safety Code ("NESC") Grade B construction standards prior to overlashing by Cox Communications, Inc. Southwest ("CCI-SW"). NV Energy's safety and reliability practice is not discriminatory and is equally applied to all attachment requests. Furthermore, as you know, attachments to NV Energy poles are also subject to local municipal ordinances which affects NV Energy's evaluation of all attacher permit applications for capacity, engineering and safety purposes.

That said, I am pleased to let you know that NV Energy's application to the City of Las Vegas seeking to change-out the subject poles on Garces Avenue between 6th and 8th Streets has recently been approved. As such, the necessary design to upgrade the subject poles to Grade B construction is in the works.

1. NV Energy may require pole attachers to design to Grade B Construction Standards.

The FCC affords utilities discretion with regard to the engineering standards applied to pole attachments, with the caveat that such standards must be just and reasonable. In the specific context of construction standards, the FCC has held that a pole attachment agreement provision charging a licensee for a safety inspection if the licensee was found to be out of compliance with the pole owner's construction standards was not facially unjust or unreasonable. *See In the Matter of Salsgiver Communications, Inv. v. North Pittsburgh Tel. Co.*, 222 FCC Rcd 20536, 20546-47 (FCC Nov. 26, 2007). Further, the Commission stated in its April 2011 Order that utilities may "insist that [an attacher's work] meet utility specifications for safety and reliability, including requirements that may exceed NESC standards." *In the Matter of Implementation of the Act, A National Broadband Plan for Our Future*; WC Docket No. 07-245, GN Docket No. 09-51 (FCC 11-50) (April 7, 2011) (the "April 2011 Order") at ¶ 58. The Commission leaves "the details of specific application criteria and processes to individual utilities," so long as the criteria are reasonable. *Id.* at ¶ 73.

Maria Browne
Davis Wright Tremaine, LLP
Re: Letter dated October 8, 2014
October 21, 2014
Page 2

Here, NV Energy's Grade B construction requirement is based on the NESC and is motivated by practical and experience-based safety and reliability concerns. Under the NESC, Grade B construction is more appropriate to the geographic areas in which NV Energy distribution poles are located. Per NESC Table 242.1, NVE is required to use Grade B construction when crossing over railroad tracks and limited access highways. Many of NV Energy's lines in the urbanized areas of Clark County are in close proximity to heavily traveled arterial roadways and highways where a failed pole can cause a significant disruption to traffic and harm to the public. Therefore, NV Energy made the decision to construct its lines to the NESC Grade B construction standard to provide a higher level of reliability and a greater safety margin against the occasional high wind event that has been known to cause failure of poles into roadways. Grade C construction is more appropriate in rural areas where line failures might pose an inconvenience but would not normally pose a direct threat to human life. This decision, and NV Energy's corresponding requirement that attachers also upgrade their attachments to Grade B construction standards, is safety-based and just and reasonable in light of FCC precedent and the discretion afforded to utilities on matters of safety and reliability.

Even if NV Energy had not made a decision to change out its poles, these Grade B construction upgrades are required by the NESC. Your statement that "Grade C construction is both acceptable and safe" is incorrect. Rule 243A states, "The grade of construction [of the pole] shall be that required for the highest grade of conductors supported..." While attachments in the communications space are normally only required to meet Grade C construction, this only holds true if other attachments on the pole are designed to the same grade of construction. If the attachments in the power space are designed to a higher grade of construction (grade B), then all of the attachments on the pole, including those in the communication space, must meet grade B construction. Because of NV Energy's Grade B construction requirement, all other occupants of the structure must adhere to this same standard.

Your reliance on language from the Consolidated Order¹ is misplaced. As you note in your letter, NV Energy "adopted the Grade B standards in its 2012 License Application Requirements." These standards apply to all applicants, whether for overlying or a host attachment. Thus, NV Energy is not "requiring additional approval for overlying beyond that which was required for the initial attachment" as you claim.

Likewise, the decision in *Cable Television Ass'n of Ga. v. Ga. Power Co.*² is inapplicable. There, the Commission only addressed Georgia Power's ability to require notice and consent prior to overlying. It said nothing about Georgia Power's ability to require attachers to meet certain construction standards. This scenario is the latter – NV Energy does not unnecessarily require notice and consent, instead NV Energy requires all attachers to meet Grade

¹ *Amendment of Rules and Policies Governing Pole Attachments*, 16 FCC Red 12103 (2001).

² 18 FCC Red 16333 (2003)

Maria Browne
Davis Wright Tremaine, LLP
Re: Letter dated October 8, 2014
October 21, 2014
Page 3

B construction standards, which, as explained above, is a requirement well within the discretion afforded to utilities by the FCC.

2. CCI-SW's overlash application is subject to NVE's non-discriminatory Grade B Construction Requirements.

NV Energy's upgrade process does not eliminate Cox's responsibility to ensure the structural integrity and NESC compliance of its company's proposed attachment(s) to NV Energy's infrastructure.

Pursuant to NV Energy's pole attachment application requirements, NV Energy requires all entities seeking to attach to its distribution poles to ensure they have performed a complete structural analysis on each particular pole in compliance with all of the standards set forth in NV Energy's Joint Use Attachment License Application Requirements. This analysis is vital to maintaining a safe and reliable infrastructure.

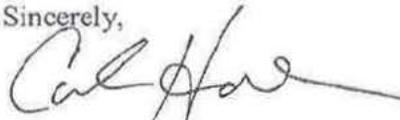
Contrary to your assertions, NV Energy's policy of replacing poles any time it visits a pole in the field is neither discriminatory, nor a cost-shift to CCI-SW (or any other attacher). First, this policy is applied to every pole in geographic areas requiring Grade B construction standards. The policy does not consider the attaching entity in any manner whatsoever. Other attachers are similarly required to wait until poles failing to meet Grade B construction are upgraded before permission to deploy plant is granted. CCI-SW is not at a distinct disadvantage. Second, NV Energy does not require attachers to cover any portion of the cost of a pole change out unless a new pole is required for capacity reasons. Indeed, where the existing pole does not meet Grade B construction standards, NV Energy pays the full cost to replace that pole with a Grade B pole that is strong enough to accommodate existing facilities and, should sufficient strength and capacity allow, additional attachments as well. It is only where the new attachment requires a larger pole that costs to increase capacity are borne by attachers. In light of FCC precedent, NV Energy's policy is just and reasonable because in the make-ready context, costs to increase capacity must be borne by the party directly benefiting from it. *See* Local Competition Order, 11 FCC Rcd at 16075-76, ¶¶ 1161-62.

Additionally, the fact that pole change-outs have not been completed according to CCI-SW's preferred timeline does not render NV Energy's practice discriminatory or contrary to FCC authority. The FCC distinguishes between pole change-outs and make-ready work. "Make-ready" generally refers to the modification of poles or lines or the installation of guys and anchors to accommodate additional facilities...A pole change-out is the replacement of a pole to accommodate additional users." April 2011 Order at n.388. Thus, pole change-outs are not subject to the deadlines applied to make ready work. Neither the "associated delay" nor the "possibility that the poles will not be approved for replacement by the City," disparately denies CCI-SW access, as you claim in your letter.

Maria Browne
Davis Wright Tremaine, LLP
Re: Letter dated October 8, 2014
October 21, 2014
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NV Energy desires to maintain a good working relationship with CCI-SW, but firmly believes its goal of maintaining a safe and reliable infrastructure will always benefit NV Energy, pole attachers and their customers in Southern Nevada. If you have any questions, please contact the undersigned at (702) 402-5796.

Sincerely,

A handwritten signature in black ink, appearing to read "Colin Harlow", with a long horizontal flourish extending to the right.

Colin R. Harlow
Assistant General Counsel

cc: Russ Campbell, Balch & Bingham
Frank Gonzales, NV Energy
Herb Goforth, NV Energy
Larry Luna, NV Energy
Patricia Ortwein, NV Energy
Tania Jarquin, NV Energy