

IRU AGREEMENT

between

WILLIAMS COMMUNICATIONS, INC. ("WCI")

and

ILLINOIS DEPARTMENT OF CENTRAL MANAGEMENT SERVICES ("CMS")

Dated as of May 1, 2000

*This document was  
called Appendix E  
for Dist 1 permit.*

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## IRU AGREEMENT

THIS IRU AGREEMENT (this "Agreement") is made and entered into as of the 1st day of May, 2000, by and between WILLIAMS COMMUNICATIONS, INC., a Delaware corporation ("WCI"), and the ILLINOIS DEPARTMENT OF CENTRAL MANAGEMENT SERVICES, an agency of the State of Illinois ("CMS").

### WITNESSETH:

WHEREAS, the Illinois Department of Transportation ("IDOT") has issued WCI that certain Interstate Right-of-Way Utility Permit on June 5, 2000, which permit is hereby incorporated herein by reference (the "Permit") pursuant to which IDOT has granted or agrees to grant to WCI (subject to the terms and conditions set forth therein) certain permits for the initial Construction, initial Installation, Operation and emergency Maintenance of a fiber optic Telecommunications system (the "System") along the right-of-way described in the Permit and along such additional routes depicted in Exhibit "A" attached hereto, and WCI is planning to Construct said System;

WHEREAS, the State of Illinois has a need to obtain additional Telecommunications capabilities for the purpose of serving the telecommunications needs of the State of Illinois and others;

WHEREAS, as part of the compensation paid for the Permit, WCI has agreed to allow CMS to utilize part of the System;

WHEREAS, WCI desires to grant to CMS, and CMS desires to accept, an exclusive, indefeasible right to use certain optical Dark Fibers in the System and an associated nonexclusive, indefeasible right to use the System, as hereafter described, upon the terms and conditions hereinafter set forth; and

WHEREAS, the parties desire to establish additional ongoing obligations and rights that will be in effect during the Term of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises set forth below, the parties hereby agree as follows:

### ARTICLE 1. DEFINITIONS.

Capitalized terms and phrases used in this Agreement have the following meanings:

- 1.1 "Acceptance" means as defined in Section 5.4 below.
- 1.2 "Acceptance Date" means as defined in Section 5.4 below.

1.3 "Affiliates" means, with respect to any entity, an entity controlling, controlled by, or under common control with such entity by means of direct or indirect majority equity ownership.

1.4 "Agreement" means as defined in the foregoing recitals and shall include all amendments hereto, Exhibits and Schedules hereto, and instruments and documents appended hereto or incorporated herein by reference. Words such as "herein," "hereinafter," "hereof," "hereto," "hereby" and "hereunder" when used with reference to this Agreement, refer to this Agreement as a whole unless the context otherwise requires.

1.5 "As-Built Drawings" means drawings of the Constructed System as described and in accordance with the Permit.

1.6 "Cable" means fiber optic cable, and the fibers contained therein, which shall include the CMS Fibers, along with fibers of WCI and/or others Constructed or Installed in the System by WCI, and associated splicing connections, patch panels, splice boxes, vaults.

1.7 "Charged Maintenance Commencement Date" means as defined in Section 10.2.

1.8 "Conduit" means a casing or encasement for wires or Cables.

1.9 "Connecting Point" means a point where the network or facilities of CMS will connect to the CMS Fibers.

1.10 "Construct," "Construction" and other capitalized terms of like derivation, mean the activity of digging a Trench along the ROW, laying Conduits and Cables forming the System within such Trench or laying the Cable along the ROW by means of overhead installation, plowing in, drilling, jacking, boring, attaching to bridges or other means, fabricating and positioning associated handholes, manholes, buildings and facilities which support the Operation of the System..

1.11 [Reserved]

1.12 "Cure Period" means as defined in Section 13.5.

1.13 "Customers" mean parties purchasing, either for their own use or for resale, wholesale fiber optic transport capacity and/or telecommunications services from WCI on the System during the Term of this Agreement.

1.14 "Damages" means as defined in Section 14.1.

1.15 "Dark Fibers" means optical fiber provided without electronics or optronics, and which is not "lit" or activated.

1.16 "Event of Default" means as defined in Section 13.5.

1.17 "Facility Owners/Lenders" means any entity (other than WCI or CMS); (A) owning any portion of the System or any property or security interest therein, or (B) that is a lender with respect to WCI or any Affiliates of WCI.

1.18 "Fibers" means any optical fibers contained in the System including the CMS Fibers, the fibers of WCI and the fibers of any third party in the System.

1.19 "Force Majeure" means as defined in Section 21.6.

1.20 "Indefeasible Right of Use" or "IRU" means an exclusive and irrevocable right to use optical fiber(s); provided that the granting of the same does not convey legal title to such fiber(s).

1.21 "Indemnified Persons" means as defined in Section 14.1.

1.22 "Initial Cable" means as defined in Section 2.1.

1.23 "Install," "Installation" and other capitalized terms of like derivation, means the attachment, addition or application of electronics, optronics, software or other devices or technologies to the Constructed Cable in order for data to be transmitted through the Cable and for the System to be Operational.

1.24 "Law" or "Laws" means any statute, law, ordinance, regulation, order, decree, determination, legal interpretation or ruling, formal or informal, of general or specific applicability, and however promulgated, of any Federal, state or local governmental or quasi-governmental: (A) legislature; (B) administrative, regulatory or other agency, authority or instrumentality; (C) court or tribunal; or (D) other legal body of any type or description having legal authority and/or jurisdiction over the subject matter hereof or the activities to be conducted pursuant hereto, currently existing on the date hereof or coming into existence during the term hereof.

1.25 "Maintain," "Maintenance" and other capitalized terms of like derivation, means the activity of assuring continuing Operational status of the System through repair, replacement or otherwise, but excluding Relocation.

1.26 "CMS" is an acronym for the Illinois Department of Central Management Services as defined in the foregoing recitals.

1.27 "CMS Equipment" means optronic (opto-electrical), electronic, or optical equipment, or materials, facilities, or other equipment owned, possessed, or utilized by CMS in connection with the CMS Fibers other than the System.

1.28 "CMS Fibers" means those certain Dark Fibers in which CMS shall be granted an IRU hereunder as defined in Section 2.1.

1.29 "CMS IRU" means as defined in Section 2.1.

1.30 "CMS Transaction Documents" means as defined in Section 8.2.1.

1.31 "Non-Routine Maintenance" means as defined in Section 10.1.

1.32 "Notice of Default" means as defined in Section 13.5.

1.33 "Operate," "Operational" and other capitalized terms of like derivation, mean the activity or status involving the fully-functioning use of the System or CMS Fibers, as applicable, in accordance with the Specifications and includes, without limitation, support and troubleshooting activities.

1.34 "Permit" means as defined in the foregoing recitals.

1.35 [Reserved]

1.36 "Relocate," "Relocation" and other capitalized terms of like derivation, means the future reconstruction or removal of the System after the "project completion date" (as defined in the Permit) through excavations, physical movement, retrenching and reburying of all or part of the Cable and/or Conduits as necessary, in order (A) to accommodate Construction within the ROW, (B) to assure the continuing Operational status of the System or (C) for any other permitted purpose hereunder.

1.37 "Required Rights" means all easements, consents or other rights or interests from owners of fee interests or other interest owners along the Non-fee Portion of the ROW as necessary to allow WCI to Construct, Install, Operate, Maintain, repair, replace and remove the System in the ROW.

1.38 "ROW" means the right-of-way granted IDOT by various landowners to locate, Operate, Construct, reconstruct and Maintain that portion of that Federal interstate highway commonly designated "I-270" or "Route 270" and "I-55" or "Route 55" within the borders of Illinois.

1.39 [Reserved]

1.40 "Routine Maintenance" means as defined in Section 10.1.

1.41 "Scheduled Delivery Date" means the date defined in Section 3.4 below.

1.42 "Segment" means a discrete portion of the System and may refer to a span (a portion of the System between two Transmission Sites or between a Transmission Site and a point of presence or System end point), a portion between two points of presence or a point of presence and a System end point as referenced in Exhibit "A", or a specific portion of the System affected by a -Relocation or other circumstance.

1.43 [Reserved]

1.44 "Specifications" mean those certain specifications for the CMS Fibers as set forth in Exhibits "B" and "C".

1.45 "State" means the State of Illinois and shall include any agency, political subdivision or instrumentality thereof.

1.46 "System" means the fully Constructed and Operational fiber optic Telecommunications System along the right-of-way described in the Permit and along such additional routes depicted in Exhibit "A" attached hereto.

1.47 [Reserved]

1.48 "Telecommunications" means, for purposes of this Agreement, the transmission of voice, video, data or other information, including interactive services.

1.49 "Term" means the term of this Agreement as defined in Section 7.1.

1.50 "Test Documentation" means as defined in Section 5.1.

1.51 "Transmission Sites" means the optical amplifier, regenerator, and junction sites along the ROW associated with the Cable.

1.52 "WCI" means Williams Communications, Inc., a Delaware corporation.

1.53 "WCI Transaction Documents" means as defined in Section 8.1.2.

1.54 "UAP" means those rules of IDOT set forth at 93 Ill.Adm.Code 530.

## ARTICLE 2. CONVEYANCE OF IRU.

2.1 Grant of IRU. WCI represents that it has been granted a permit for the initial Construction, initial Installation, Operation and Non-Routine Maintenance of the

System which is to initially consist of three (3) Conduits of one and one-half inch (1.5") inside diameter or less, one of which shall contain a single Cable consisting of 106 fiber strands including the CMS Fibers, as hereafter defined (the "Initial Cable"). Effective as of the Acceptance Date, WCI hereby grants to CMS (i) an exclusive Indefeasible Right of Use, for the purposes described herein, in eight (8) specific strands of Dark Fibers in the Initial Cable as specifically designated by WCI (the "CMS Fibers"); and (ii) an associated, non-exclusive Indefeasible Right of Use, for the purposes described herein, in the tangible and intangible property needed for the Operation of the CMS Fibers, including, without limitation, cable sheathing, troughing, pedestals, slack containers, and related equipment, but excluding any electronic or optronic equipment, buildings, building structures and/or any space therein (the rights granted in (i) and (ii) are collectively referred to herein as the "CMS IRU").

If WCI, at a future date, installs Cable in the remaining third Conduit, WCI agrees to grant to CMS, at no cost to CMS, 5% of the strands of Dark Fibers in that Cable, with the resulting number of strands granted being rounded to the next highest multiple of four (an "Additional Grant"). An Additional Grant shall substantially comply with the testing and acceptance procedures set forth in ARTICLE 5. Upon acceptance of an Additional Grant by CMS, such additional Dark Fibers shall become part of the CMS Fibers. If at a future date, such additional Cable is installed by an entity other than WCI, WCI shall ensure that additional Dark Fibers are granted to CMS by such entity in accordance with this paragraph, unless such other entity is required to obtain a permit to use the ROW from IDOT, in which event CMS shall negotiate directly with that entity for the granting of any additional Dark Fiber. CMS shall have the right to irrevocably refuse any Additional Grant.

Notwithstanding any other provision hereof to the contrary, the grant of the CMS IRU does not convey any legal title to any real or personal property, including the CMS Fibers, the Cable, or the System, and the CMS IRU does not include the right to use any of WCI's electronic or optronic equipment to transmit capacity over or "light" the CMS Fibers.

### **ARTICLE 3. CONSTRUCTION.**

3.1 In General. WCI shall Construct the System in accordance with the terms and conditions of the Permit and this Agreement and hereby specifically agrees to:

- (A) Construct the System, blow or pull the Cable and splice the CMS Fibers such that the CMS Fibers will Operate in accordance with the Specifications.
- (B) Perform all necessary surveying and mapping for the System, including, without limitation:

- (i) A complete locations survey of the ROW, in accordance with standard telecommunication engineering practices; and
  - (ii) Survey of Transmission Sites.
- (C) Acquire and Construct all Transmission Sites in accordance with the terms hereof.

3.2 Construction Standards. WCI shall comply in all material respects with any and all applicable building, Construction and safety codes for the Construction of the System as well as any and all applicable federal, State and local laws, codes, ordinances, statutes and regulations.

3.3 Scheduled Delivery Date. Subject to extension for delays described in Section 21.6 and to extension or delay as otherwise permitted or provided in this Agreement or the Permit, the "Scheduled Delivery Date" for completion of all Construction, testing and hand-over of the CMS Fibers to CMS, is such time as the System is available for use by WCI.

#### **ARTICLE 4. CMS FIBERS TERMINATION; CONNECTION TO THE SYSTEM.**

4.1 CMS Fibers Termination; Access for CMS Equipment. The CMS Fibers shall terminate and WCI shall hand off the CMS Fibers to CMS in handholes at each location identified in Schedule 4.1. CMS, its agents and subcontractors, shall be allowed access to such handholes at any time.

CMS shall bear all costs associated with connection of the CMS Equipment to the CMS Fibers which may be performed by CMS or by contractors hired by CMS. CMS shall have full and complete control and responsibility for determining any network and service configuration or designs, routing configurations, regrooming, rearrangement or consolidation of channels or circuits and all related functions with regard to the use of the CMS Fibers, so long as such does not materially interfere with or limit the use of or present a material risk of damage to any portion of the System.

4.2 Limitation on Responsibilities. Neither party hereto is supplying or is obligated to supply to the other party any optronics or electronics or optical or electrical equipment or other facilities, including without limitation, generators, batteries and monitoring and testing equipment, nor is either party responsible for performing any work other than as specified in this Agreement.

## ARTICLE 5. ACCEPTANCE AND TESTING OF FIBERS.

5.1 Fiber Acceptance Testing. WCI shall perform Fiber Acceptance testing of the CMS Fibers in accordance with the procedures specified in Schedule 5.1 to ensure that the CMS Fibers are Operating in accordance with the Specifications. After the conclusion of any testing of the CMS Fibers conducted by WCI in any given Segment of the System, WCI shall provide CMS with a copy of the test results and, if the test results so justify, a certification, executed by a responsible officer of WCI, that the CMS Fibers meet the Specifications (collectively, the "Test Documentation").

5.2 Review of Test Results by CMS. If, within fifteen (15) business days after receipt by CMS from WCI of the test results referred to above or of the results of re-testing as set forth below, CMS reasonably determines that such test results show that the CMS Fibers do not meet the Specifications, CMS shall, within such fifteen (15) business day period, notify WCI of such determination.

5.3 Deficiencies. In the event CMS notifies WCI within the time periods set forth in Section 5.2 that the CMS Fibers for any particular Segment of the System are not Operating in accordance with the Specifications, WCI shall expeditiously take such action as shall be reasonably necessary to conform such portion of the CMS Fibers to the Specifications after which the CMS Fibers shall be re-tested in accordance with the provisions of this Article. Additionally, within fifteen (15) business days after receipt of the Test Documentation, CMS may elect to perform its own tests at its sole cost and expense; provided, however, that any such tests shall be subject to the supervision of WCI and shall be performed in accordance with WCI's standard testing procedures or other testing procedures standard in the telecommunications industry. WCI shall not charge CMS for supervision by WCI personnel of CMS's testing as described in the preceding sentence. After taking such actions and re-testing of the CMS Fibers, the testing party shall provide the other party with a copy of the new test results and CMS shall again have all rights provided in this Article with respect to such new test results. The cycle described above of testing, taking corrective action and re-testing shall take place as many times as necessary until Acceptance by CMS in accordance with the terms hereof to ensure that the CMS Fibers Operate within the parameters of the Specifications.

5.4 Acceptance. CMS's notice to WCI accepting the results of any testing of the CMS Fibers or its failure to object to the results of any of WCI's or CMS's own testing of the CMS Fibers within the time period specified in Section 5.2 shall constitute CMS's acceptance ("Acceptance") of the CMS Fibers covered by such test results. The date of CMS's Acceptance of the CMS Fibers under this Section 5.4 for the last Segment of the System to be tested shall be the "Acceptance Date" of the CMS Fibers.

## ARTICLE 6. USE OF THE SYSTEM.

6.1 State's Rights Exclusive. Subject to Article 12 of this Agreement, the State of Illinois and its permitted assignees and users may use the CMS Fibers for any lawful purpose. Neither the State of Illinois nor any permitted assignees or users of the CMS Fibers shall use the CMS Fibers for any unlawful or illicit purpose. The State's right to use the CMS Fibers shall be exclusive, and WCI shall have no right to use the CMS Fibers during the Term of this Agreement.

6.2 Notice of Damage. CMS shall promptly notify WCI upon becoming aware of any damage to the System. WCI shall promptly notify CMS of any matters pertaining to any damage or impending damage to or loss of the CMS Fibers that are known to it.

6.3 Avoiding Adverse Effect on System. CMS shall not, in use of the CMS Fibers, employ equipment, technologies, or methods of Operation that materially interfere in any way with or adversely affect the System or the use of the System by WCI or third parties or their respective Fibers, equipment or facilities associated therewith. WCI shall not, in use of the System, employ equipment, technologies, or methods of Operation that materially interfere in any way with or adversely affect the CMS Fibers or the use of the CMS Fibers by CMS and its equipment or facilities associated therewith.

6.4 Tie-Ins. CMS may tie together fibers from other fiber optics telecommunications systems to the CMS Fibers.

## ARTICLE 7. TERM; CONVEYANCE OF THE SYSTEM.

7.1 Term. The "Term" of this Agreement shall commence upon the issuance of the Permit and shall continue for the duration of the Permit.

CMS shall have the option to terminate this Agreement without penalty or further obligation upon thirty (30) days' written notice to WCI (a "Termination for Convenience"), in which event (i) CMS shall have no further right to use the CMS Fibers, (ii) the right to use the CMS Fibers shall revert to WCI and (iii) WCI shall have no further obligations to CMS under this Agreement. A Termination for Convenience shall not affect WCI's rights under the Permit.

7.2 Conveyance of the System. Upon such time as the Permit is terminated or revoked, WCI shall, if permitted by applicable law and if requested by CMS and IDOT, hand over, transfer, convey and deliver the CMS Fibers to CMS. WCI shall execute and deliver any bill of sale or any other document or documents that may be required by any statute or law applying thereto to convey good title to the CMS Fibers to CMS at the time of delivery thereof.

ARTICLE 8. [RESERVED]

ARTICLE 9. CONDITIONS PRECEDENT.

Execution and delivery by WCI and IDOT of the Permit, and satisfaction of all conditions precedent to WCI's right to enter the ROW shall be conditions precedent to the parties' obligations hereunder.

ARTICLE 10. OPERATION, MAINTENANCE, AND REPAIR OF THE SYSTEM.

10.1 Maintenance. During the Term, WCI shall perform all required Routine Maintenance and Non-Routine Maintenance. "Non-Routine Maintenance" means maintenance and repair work that WCI is obligated to provide under this Agreement and described in Exhibit "C" other than the work specifically identified as Routine Maintenance in Exhibit "C". "Routine Maintenance" means maintenance and repair specifically identified as Routine Maintenance in Exhibit "C". CMS shall have the right to have a representative present at any time Maintenance for repairs are performed which may affect the CMS Fibers.

10.2 Charges for Routine and Non-Routine Maintenance. WCI shall provide all Routine Maintenance and Non-Routine Maintenance at no charge.

10.3 Right to Subcontract. WCI may subcontract for testing, Maintenance, repair, restoration, Relocation, or other Operational and technical services it is obligated to provide hereunder or may have the underlying Facility Owner or its contractor perform such obligations.

10.4 Maintenance of CMS Equipment Excluded. WCI shall have no obligation under this Agreement to Maintain, repair, or replace CMS Equipment.

10.5 No Unauthorized Access to System. Except as provided in Section 4.1, CMS shall not access any part of the System without the prior written consent of WCI, which consent shall not be unreasonably withheld, and then only upon the terms and conditions specified by WCI as reasonably necessary to protect the safety, security and physical integrity of the Constructed System. The parties expressly agree that the preceding sentence shall not be construed to restrict or limit CMS's access to the ROW over and around the System but only to that portion of the System not constituting the CMS Fibers.

ARTICLE 11. RELOCATION.

11.1 CMS's Share of Relocation Costs. In the event WCI is required to Relocate the System under the terms and conditions set forth in the Permit, WCI shall

perform and be solely responsible for such Relocation of the System, including the CMS Fibers, at its sole cost and expense. Services performed by WCI on CMS cable loop from the WCI main cable to the CMS manholes in connection with the Relocation of the CMS Fibers, if needed, shall be billed on a time and materials basis by separate agreement, at WCI's best rate, and in accordance with the Illinois Procurement Code. Any such Relocation shall be performed by WCI in accordance with all applicable terms and conditions of the Permit.

## ARTICLE 12. COMPETITION.

CMS hereby covenants and agrees that CMS shall not itself, nor shall it allow its assignees or other users of the CMS Fibers to, market and/or sell any of the CMS Fibers or any of its fiber optic transport capacity obtained through activation of CMS Fibers for the use of or service to commercial consumers of such capacity. CMS warrants that it shall not enter into any agreement with a third party with the intent of circumventing the preceding restriction and that the use of the CMS Fibers shall be for public purposes. Notwithstanding the foregoing, nothing in this Agreement shall prevent CMS from using the CMS Fibers in accordance with 20 ILCS 405/405-270, as existing on the date of execution of this Agreement and as recited in Exhibit "E" (the "Telecom Statute"). Uses exceeding those permitted by the Telecom Statute as recited in Exhibit "E" shall be permitted only with the written consent of WCI.

## ARTICLE 13. DEFAULT AND REMEDIES.

13.1 Default Under the Permit. Any failure by WCI to follow the terms and conditions of the Permit shall constitute an Event of Default under this Agreement by WCI. Any Event of Default by WCI under this Agreement shall constitute grounds for revocation of the Permit by IDOT, in which event IDOT may elect to revoke the Permit in accordance with the UAP.

13.2 Illegality Determination. If any court or administrative agency having jurisdiction over the parties, their business activities and/or the Design, Construction, Installation, Operation, Maintenance or use of the System or the parties' respective Fibers therein, shall find that any conduct of WCI or CMS pursuant hereto is illegal or unlawful, which finding shall be final and unappealable, and shall have a material adverse impact upon the other party, the System and/or the transactions contemplated herein, such finding shall constitute a default under this Agreement by such violating party.

13.3 Bankruptcy. At any time during the term of this Agreement, the occurrence of any of the following events shall constitute a default hereunder: (A) the appointment of a receiver for any part of WCI's property which is not dismissed within sixty (60) days; (B) the making by WCI of an assignment for the benefit of creditors; (C) the filing by WCI of a voluntary petition in bankruptcy or a petition or an answer seeking reorganization, or an arrangement with creditors; or (D) the entering against WCI of a court order approving a petition filed against it under the Federal bankruptcy laws, which order shall not have been stayed, vacated or set aside or otherwise terminated within sixty (60) days; or (E) the cessation of WCI's business.

13.4 Breach of Terms of Agreement. Any material breach of any of the terms of this Agreement by either party shall constitute a default by such party under this Agreement.

13.5 Notification of Default; Right to Cure. Except with respect to the defaults described in Sections 13.1 or 13.3 above, the non-defaulting party shall promptly notify the defaulting party in writing (the "Notice of Default") of the occurrence of a material default under this Agreement. The defaulting party shall have a period of thirty (30) days from the date of receipt of the Notice of Default in which to effect a cure of any such material default; provided that where such default cannot reasonably be cured within such thirty (30) day period, if the defaulting party proceeds promptly to cure the same and prosecutes such curing with due diligence, the defaulting party shall have such period of time to cure the default as may be necessary to complete such curing (the "Cure Period"). Any such material default other than defaults described in Sections 13.1 or 13.3 which shall not have been cured within the applicable Cure Period, or any default under the terms of Section 13.1 and 13.3, shall constitute an event of default ("Event of Default") under this Agreement.

13.6 Remedies of Both Parties Upon an Event of Default. Upon an Event of Default by either party, then, in addition to any other rights granted under this Agreement, the non-defaulting party may: (A) terminate this Agreement but only if so provided under Article 16; and/or (B) pursue any legal remedies it may have under applicable law or principles of equity relating to such Event of Default. Pursuit of any single remedy by a party shall not preclude such party from pursuing any other remedies provided herein or available at law or in equity and the parties' rights to pursue such remedies shall survive expiration or termination of this Agreement subject to applicable statutory limitations periods.

13.7 Notice to IDOT. Upon an Event of Default by WCI, CMS may give notice of such default to IDOT.

## ARTICLE 14. INDEMNIFICATION; LIMITATION OF LIABILITY.

14.1 In General. WCI shall indemnify, defend and hold harmless CMS, its successors and permitted assigns and its representatives, agents, servants, and employees and the State, its permitted assigns, and its representatives, agents, servants, and employees (collectively, "Indemnified Persons") from and against any and all demands, claims, actions or causes of action, assessments, losses, damages, liabilities, costs and expenses including, without limitation, interest, penalties, court costs and reasonable attorneys', consultants' and experts' fees and expenses and other costs of defense (collectively, "Damages") asserted against, resulting to, imposed upon or incurred by the Indemnified Persons, or any of them, arising from: (A) any contract, arrangement or understanding with any person or firm which may result in the obligation of WCI or CMS to pay any finder's fees, brokerage or agent's commissions or other like payments in connection with the negotiations leading to this Agreement or the consummation of the transactions contemplated herein; (B) the issues identified for WCI indemnification elsewhere in this Agreement; or (C) Damages for which WCI otherwise assumes liability under this Agreement.

14.2 Conditions of Indemnification for Third-Party Claims. The obligations and liabilities of WCI as indemnifying party pursuant to Section 14.1 to the Indemnified Persons with respect to claims for Damages made by third parties shall be subject to the following terms and conditions:

14.2.1 Notice. The Indemnified Persons shall give WCI prompt notice of any such claim for Damages, and WCI shall have the right to undertake the defense thereof by representatives chosen by it to the extent allowed by law.

14.2.2 Failure to Defend. If WCI, within a reasonable time after notice of any such claim for Damages, fails to defend such claim for Damages, the Indemnified Person shall (upon further notice to WCI) have the right to undertake the defense, compromise or settlement of such claim for Damages on behalf of and for the account and risk of WCI subject to the right of WCI to assume the defense of such claim for Damages at any time prior to settlement, compromise or final determination thereof.

14.2.3 Right of Indemnified Persons to Assume Defense. Anything in this Section 14.2 to the contrary notwithstanding, if there is a reasonable probability that a claim for Damages may materially and adversely affect the Indemnified Person other than as a result of money damages or other money payments, the Indemnified Person shall have the right, at its own cost and expense, to defend, compromise or settle such claim for Damages; provided, however, that if such claim for Damages is settled without WCI's consent (which consent shall not be unreasonably withheld), the Indemnified Person shall be

deemed to have waived all rights hereunder against WCI for money damages arising out of such claim for Damages.

14.2.4 No Waiver. Notwithstanding any provision herein to the contrary, failure of the Indemnified Person to give notice required by this Section shall not constitute a waiver of the Indemnified Person's right to indemnification hereunder, except to the extent that such failure has prejudiced the ability of WCI to defend such claim for Damages.

14.3 Limitation of Liability. Notwithstanding any provision hereof to the contrary, except as set forth in ARTICLE 14.4, neither party shall be responsible or liable to the other for special, punitive, exemplary, incidental or consequential losses or damages as a result of the performance or nonperformance of its obligations under this Agreement, or its acts or omissions related to this Agreement, whether or not arising from sole, joint or concurrent negligence, intentional conduct, strict liability, violation of law, breach of contract, breach of warranty or from any other source whatsoever. CMS assumes no liability for actions of WCI and is unable to indemnify or hold WCI harmless for claims based on this Agreement or use of WCI provided supplies or services. Unless provided by law, WCI is not eligible for indemnity under the State Employee Indemnification Act (5 ILCS 350/1 et seq.). Any liability for damages that the State might have is expressly limited by and subject to the provisions of the Illinois Court of Claims Act (705 ILCS 505/1) and to the availability of suitable appropriations.

14.4 Incorporation of UAP Indemnity and Insurance Provisions. Notwithstanding any provision hereof to the contrary, WCI shall provide the indemnity and insurance required by the UAP.

## ARTICLE 15. CREDITORS' RIGHTS.

Notwithstanding any provision of this Agreement to the contrary, WCI may collaterally pledge or assign some or all of its rights hereunder to State Street Bank and Trust Company of Connecticut, N.A. in connection with its construction financing of WCI's national fiber optic network, subject to the rights of CMS hereunder. In addition, State Street Bank and Trust Company of Connecticut, N.A. may further collaterally pledge or assign such rights to other successor or participating lenders; provided that such lenders are also involved in the financing of WCI's national fiber optic network. Notwithstanding any such assignment, WCI shall remain fully responsible for the performance of all obligations hereunder. Nothing in the foregoing shall interfere with or in any way limit CMS's rights hereunder or quiet enjoyment of the CMS IRU; provided that CMS has not incurred an Event of Default hereunder. Any pledge or assignment shall contain clause requiring the assignee to obtain a replacement or amended permit from IDOT.

## ARTICLE 16. TERMINATION.

This Agreement may be terminated at any time:

16.1 Mutual Consent. By mutual consent of WCI and CMS.

16.2 Event of Default. By either party, upon written notice to the other party at any time after the occurrence of an Event of Default by such other party under this Agreement, except for an Event of Default arising from a default described in Section 13.4.

16.3 Termination of Permit. By either party, upon written notice to the other, upon the termination of the Permit.

16.4 Happenings Upon Termination; Title to System. Except as set forth in ARTICLE 7, upon termination of this Agreement, WCI shall have no further obligations to CMS with respect to the CMS Fibers or the System and the parties respective rights with respect to the System shall be governed by the terms of the Permit, the UAP and ARTICLE 7.

16.5 Liability on Termination; Survival. Termination of this Agreement shall not adversely affect the survival of any causes of action accruing prior to the date of, or as a result of, such termination for breach of representations, covenants or agreements hereunder, all of which shall remain enforceable for the applicable limitation periods.

16.6 Availability of Appropriations (30 ILCS 500/20-60). CMS shall use its best efforts to secure sufficient appropriations to fund this Agreement. However, the CMS's obligations hereunder shall cease immediately, without penalty or further payment being required, if the Illinois General Assembly or federal funding source fails to make an appropriation sufficient to pay such obligation. CMS shall determine whether amounts appropriated are sufficient. CMS shall give WCI notice of insufficient funding as soon as practicable after it becomes aware of the insufficiency. WCI's obligation to perform shall cease upon receipt of the notice.

## ARTICLE 17. TAXES.

17.1 In General. It shall be the responsibility of WCI to ascertain the existence of and pay any and all local subdivision tax (sometimes called an occupation tax), sales and use tax, wage tax, income tax, franchise tax or excise tax on the operations of WCI. WCI also agrees to indemnify, defend and hold harmless the Indemnified Persons from all liability for the collection and payment of all taxes assessed and levied by duly constituted authority upon WCI, its agents, employees and/or representatives in

connection with the Design, Construction, Installation, Operation, Maintenance or Relocation of the System, and all Damages related thereto.

17.2 Attempted Taxation of CMS Interests. Notwithstanding the foregoing, in the event that WCI is assessed for any taxes or fees not based on income related to CMS's interest in, or use of, the CMS Fibers, and WCI makes a good faith determination that such taxes or fees are required to be paid and that CMS is not exempt from such taxes or fees, WCI shall, within thirty (30) days after receipt of an invoice therefor, provide information and documentation to CMS sufficient to demonstrate the basis for the tax or fee and the amount and due date for payment of the tax or fee. Upon receipt of such notice, CMS shall either pay the tax or fee, or contest same; provided that CMS shall give WCI notice of such contest. In the event CMS fails to pay or give notice of such contest within forty-five (45) days or, if longer, any other period under applicable Law, after receipt of the above-described notice from WCI, then WCI shall have the right to pay such tax and be reimbursed by CMS, to the extent permitted by law. WCI agrees to provide reasonable assistance to CMS in applying for a refund of any taxes or fees, including filing in the name of WCI, if required, with the applicable government authority, at CMS' cost and expense, along with any request for refund or protest of such tax or any other documentation deemed reasonably necessary by CMS for the refund of such tax. CMS' Illinois tax exemption number is E9989-0046-01.

## ARTICLE 18. PATENTS AND COPYRIGHTS.

If WCI employs any design, device, material or process covered by letters of patent or copyright, it shall provide for such use by suitable legal agreement with the patentee or owner prior to their use. WCI shall indemnify, defend and hold harmless the Indemnified Persons from any and all Damages arising from the use of any such patented design, device, material, process or any trademark or copyright and shall indemnify the Indemnified Persons for any Damages which they may incur by reason of any infringement at any time during this Agreement or after the completion of the work.

## ARTICLE 19. WARRANTIES.

19.1 Conformity with Specifications. Subject to the terms of Articles 10 and 11 above which set forth WCI's obligations with respect to Maintenance, repair and Relocation of the CMS Fibers and CMS's obligations to pay for the same, WCI warrants that during the term hereof the CMS Fibers will conform to the Specifications.

19.2 Title. WCI hereby represents and warrants that it has good and marketable title to the System (excluding any real property interests) free of any restrictions or encumbrances which would prevent or interfere with the use of the CMS IRU pursuant to the terms of this Agreement. In the event title to the System (excluding

any real property interests) is contested, or if any third party or government authority contests CMS's rights to use the CMS IRU for the purposes set forth in this Agreement (excluding any contests relating to real property interests or lack thereof), WCI shall proceed to take all necessary steps to perfect such title at its sole cost and expense including, but not limited to, contesting the claims of any such third party or government authority. Notwithstanding any provision in this Section to the contrary, the parties agree that this Section is not intended to refer to or apply to real property interests and shall be limited to WCI's interests in personal property contained within the System. Permit.

19.3 Good and Workmanlike Performance. WCI hereby represents and warrants that all supplies will be provided and all services will be performed hereunder in a good and workmanlike manner.

19.4 Disclaimer of Warranties. EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, WCI MAKES NO WARRANTY TO CMS OR ANY OTHER PERSON OR ENTITY, WHETHER EXPRESS, IMPLIED OR STATUTORY, AS TO THE CONSTRUCTION, INSTALLATION, DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE CMS FIBERS, THE SYSTEM OR ANY SERVICE PROVIDED HEREUNDER OR DESCRIBED HEREIN, OR AS TO ANY OTHER MATTER, ALL OF WHICH WARRANTIES ARE HEREBY EXPRESSLY EXCLUDED AND DISCLAIMED.

19.5 No Third-party Warranties. No Facility Owners/Lenders have made any representation or warranty of any kind, express or implied, to CMS concerning WCI, the CMS Fibers, the Cable, or the System.

19.6 Manufacturer's Warranties. In the event any necessary Maintenance or repairs to the System or the CMS Fibers are covered by a warranty made by any manufacturer, WCI shall pursue any remedies it may have against such manufacturer and shall reimburse CMS for any Maintenance or repair costs that CMS has incurred as a result of any such breach of warranty to the extent the manufacturer has paid such costs; provided that WCI: (a) shall be entitled to reduce such amount by legal and collection costs incurred; and (b) shall have the right to prorate such payment among itself, CMS and other Facility Owners in the System, based on IRU or fiber ownership.

## ARTICLE 20. CONFIDENTIALITY.

20.1 In General. If either party hereto provides proprietary confidential information to the other in writing which is identified as such or, if during the course of performing under this Agreement, a party learns confidential information regarding the facilities or plans of the other identified in writing by the other party as such, then the receiving party shall protect the confidential information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information;

provided, however, that the parties shall each be entitled to provide such confidential information to their respective directors, officers, members, managers, employees, agents, contractors, consultants, attorneys or affiliates in each case whose access is reasonably necessary. Each such recipient of confidential information shall be informed by the party disclosing confidential information of its confidential nature, and shall be directed to treat such information confidentially and to abide by these provisions. In any event, each party shall be responsible for any breach of this provision by any person to whom that party discloses confidential information. The parties agree that this Agreement does not constitute confidential information under this Article 20.

20.2 Limitation on Confidentiality Obligation. Notwithstanding any other provision herein to the contrary, neither party shall be required to hold confidential any information that: (A) is required to be disclosed by CMS pursuant to applicable Laws including, without limitation, "sunshine," "public records" or "right-to-know" Laws; (B) becomes publicly available other than through the recipient; (C) is required to be disclosed by a governmental, regulatory authority or judicial order, rule or regulation or proceedings; (D) is independently developed by the disclosing party; (E) becomes available to the disclosing party without restriction from a third party; or (F) is required by its lender and is given to such lender on a confidential basis.

20.3 Promotions. Except as required by the Illinois Freedom of Information Act, neither party shall use the name, trade name, servicemark or trademark of the other or the existence of this Agreement in any promotional or advertising material without the prior written consent of the other.

## ARTICLE 21. MISCELLANEOUS.

21.1 Entire Agreement. This Agreement and the Exhibits and Schedules referred to herein (collectively, the "IRU Documents") contain the entire understanding of WCI and CMS with respect to their subject matter and supersede all prior understandings, whether oral or written. The IRU Documents are part of the Permit. The terms and conditions of the IRU Documents are subject to the terms and conditions of the Permit and applicable law. To the extent of any inconsistencies between the IRU Documents, the Permit and applicable law, the order of constructive priority shall be applicable law (including, without limitation, 605 ILCS 5/9-113 and the UAP), the Permit and then this Agreement.

21.2 Notices. All notices and other communications given or made pursuant hereto shall be in writing and shall be deemed to have been duly given on the date delivered, if delivered personally, on the third business day after being mailed by registered or certified mail (postage prepaid, return receipt requested) or on the next business day after being sent by reputable overnight courier (delivery prepaid), in each case, to the parties at the following addresses, or on the date sent and confirmed by facsimile transmission to the telecopier number specified below (or at such other

address or telecopier number for a party as shall be specified by notice given in accordance with this Section):

21.2.1 To WCI. If to WCI:

Williams Communications, Inc.  
One Williams Center  
Tulsa, OK 74172  
Attn: President, Network  
Telecopier No.: (918) 573-3858

with a copy to:

Williams Communications, Inc.  
Attn: General Counsel  
One Williams Center, Suite 4100  
Tulsa, Oklahoma 74172  
Telecopier No.: (918) 573-3005

21.2.2 To CMS. If to CMS:

Illinois Department of Central Management Services  
Bureau of Communications and Computer Services  
Attn: Manager, Division of Telecommunications  
120 West Jefferson, 2nd Floor  
Springfield, Illinois 62702  
Telecopier No. (217) 524-0755

with a copy to:

Illinois Department of Central Management Services  
Office of Legal Counsel  
720 Stratton Building  
Springfield, Illinois 62706  
Telecopier No. (217) 524-6127

## 21.3 Successors/Assignment/Transfer.

21.3.1 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the permitted successors and assigns of the parties hereto. As used herein, a permitted successor or assign to CMS shall mean any successor or assign permitted or directed by applicable law. CMS may not otherwise assign or transfer its rights hereunder without the prior consent of WCI.

21.3.2 By WCI. Notwithstanding any other provision hereof to the contrary, WCI shall have the right, without CMS's consent, to sell, lease, or otherwise transfer interests in or rights to use the System and/or facilities contained therein or associated therewith to third parties so long as WCI retains ownership of the System or any substantial portion thereof. Notwithstanding any such sale, lease or other transfer, WCI shall at all times be primarily liable to CMS for complying with the terms of this Agreement and performing the obligations set forth for it hereunder.

In addition to the rights granted under the preceding paragraph and notwithstanding any other provision of this Agreement to the contrary, WCI shall have the right, without CMS's consent, to assign or otherwise transfer this Agreement to any parent, subsidiary or affiliate of WCI or to any person, firm or corporation that shall control, be under the control of or be under common control with WCI, or any corporation into which WCI may be merged or consolidated or that purchases all or substantially all of the assets of WCI; provided, however, that: (A) any such assignment or transfer shall be subject to CMS's rights under this Agreement and any assignee or transferee shall continue to perform WCI's obligations to CMS under the terms and conditions of this Agreement; (B) such assignee or transferee shall agree in writing with CMS to be bound and abide by this Agreement; and (C) WCI shall remain liable for performance of all of its obligations hereunder.

Any transfer or assignment of this Agreement by WCI not described in the preceding paragraphs in this Section 21.3.2 shall be subject to the prior written consent of CMS which consent shall not be unreasonably withheld, delayed or conditioned so long as the net worth and technical expertise of any such transferee or assignee is substantially similar to or greater than WCI's.

21.4 Waiver. Any failure to exercise or delay in exercising any right, power, privilege or remedy herein contained, or any failure or delay at any time to require the other party's performance of any obligation under this Agreement, shall not affect the right to subsequently exercise that right, power, privilege or remedy or to require performance of that obligation. A waiver of any of the provisions of this Agreement

shall not be deemed, nor shall constitute, a waiver of any other provision, nor shall any waiver constitute a continuing waiver. A waiver shall not be binding unless executed in writing and delivered to the other party.

21.5 Third-Party Beneficiaries. The parties hereto are all the parties to this Agreement, and no third-party beneficiaries hereto, other than the State of Illinois, including IDOT, are intended or should be inferred from the terms hereof.

21.6 Force Majeure. Whenever a period of time is provided for in this Agreement for either party to do or perform any act or obligation, neither party shall be liable for any delays or inability to perform due to causes beyond the reasonable control of said party including, but not limited to, causes such as cable cuts by third parties, war, embargo, terrorist acts, acts of piracy, riot, insurrection, rebellion, strike, lockout, unavoidable casualty, fire, flood, storm, earthquake, tornado or any act of nature or of God, inability to obtain any required governmental consent or approval required to Construct, Install or Maintain the System, any other act of any governmental entity (other than actions by CMS or IDOT, or their respective permitted successors or assigns in lawfully enforcing its or their rights under and in accordance with this Agreement or the Permit), shortage of or inability to obtain materials provided that such materials were timely ordered, or inability to obtain Required Rights provided WCI diligently pursued acquisition thereof in accordance with this Agreement and continue so to pursue during any time extension (collectively, "Force Majeure").

21.7 Severability. If any term, covenant or condition in this Agreement shall, to any extent, be invalid or unenforceable in any respect under the laws governing this Agreement, the remainder of this Agreement shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law and if appropriate such invalid or unenforceable provision shall be modified or replaced to give effect to the underlying intent of the parties hereto and to the intended economic benefits of the parties.

21.8 Headings. The headings contained in this Agreement are included for convenience of reference only and shall in no way affect the construction or interpretation of any of the terms or provisions of this Agreement.

21.9 Governing Law. This Agreement shall be governed by and interpreted in accordance with the substantive laws of the State of Illinois. Any litigation hereunder against WCI shall be filed and pursued only in such courts within the State of Illinois having jurisdiction over Springfield, Illinois. Any litigation hereunder against the State of Illinois shall be filed and pursued only in the Illinois Court of Claims.

21.10 Amendment. This Agreement may not be modified or amended except in a writing signed by both parties.

21.11 Execution in Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original instrument, and all of which taken together shall constitute one and the same agreement.

21.12 Independent Contractors. By granting the rights hereunder to CMS, WCI is not hereby establishing any joint undertaking, joint venture or partnership with CMS, its agents, or subcontractors and nothing contained in this Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including, but not limited to Federal income tax purposes. The relationship between the parties shall not be that of partners, agents or joint ventures for one another, and the parties, in performing any of their obligations hereunder, shall be independent contractors of independent parties and shall discharge their contractual obligations at their own risk.

21.13 Time of the Essence. Time shall be of the essence with respect to each obligation of either WCI or CMS under this Agreement which obligation is required to be performed by a specific date, or within a certain number of days, specified herein.

21.14 Survival of Certain Provisions. Notwithstanding any provision hereof to the contrary, the provisions of ARTICLE 20 shall survive termination of this Agreement for a period of two (2) years.

21.15 CMS Authority; Reliance on Representatives. To the extent that any provision of this Agreement requires any action to be taken by, or any consent, approval or agreement to be obtained from CMS, WCI shall be entitled to rely on such action taken by, or consent, approval or agreement obtained from, each of CMS representatives listed on Schedule 21.15 attached hereto and incorporated herein by reference, but only with respect to the specific provisions listed opposite such representative's name in said Schedule. If no CMS representative is listed with respect to a specific provision hereof requiring any action, consent, approval or agreement of or by CMS, it shall be conclusively presumed that such provision may only be satisfied by official action of CMS. In such circumstances, WCI shall be entitled to rely upon any written communication of such official CMS action signed or executed by the Director of CMS. CMS may change the representatives listed on Schedule 21.15 from time to time by giving written notice of designated replacement representatives to WCI.

21.16 WCI Authority; Reliance on Representatives. To the extent that any provision of this Agreement requires any action to be taken by, or any consent, approval or agreement to be obtained from, WCI, CMS shall be entitled to rely on such action taken by, or consent, approval or agreement obtained from, each of the WCI representatives listed on Schedule 21.16 attached hereto and incorporated herein by reference, but only with respect to the specific provisions listed opposite such representative's name in said Schedule. If no WCI representative is listed with respect to a specific provision hereof requiring any action, consent, approval or agreement of or

by the WCI, it shall be conclusively presumed that such provision may only be satisfied by written communication executed by the President or any Vice-President of WCI. WCI may change the representatives listed on Schedule 21.16 from time to time by giving written notice of designated replacement representatives to CMS.

21.17 Attorney Fees. In any dispute between the parties or action to enforce the provisions hereof, the parties agree that the prevailing party shall be entitled to an award of its reasonable costs and attorneys' fees.

21.18 Conflicts of Interest, WCI covenants that it has disclosed, and agrees it is under a continuing obligation to disclose to CMS, financial or other interests (public or private, direct or indirect) that may be a potential conflict of interest under Article 50 of the Illinois Procurement Code (30 ILCS 500/50), or which may conflict in any manner with WCI's obligations under this Agreement. WCI further covenants that it shall not employ any person with a conflict to perform under this Agreement. WCI further covenants that no person has an interest in WCI or in this Agreement that would violate Illinois law, including 30 ILCS 500/50-13.

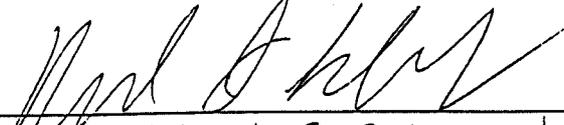
21.19 Audit/Retention of Records (30 ILCS 500/20-65). WCI and its subcontractors shall maintain books and records related to performance of this Agreement or subcontract and necessary to support amounts charged to the State in accordance with applicable law, terms and conditions of this Agreement, and generally accepted accounting practice. WCI shall maintain these books and records for a minimum of three (3) years after the completion of the Agreement, final payment, or completion of any Agreement audit or litigation, whichever is later. All books and records shall be available for review or audit by CMS, its representatives, the Illinois Auditor General, and other governmental entities with monitoring authority upon reasonable notice and during normal business hours. WCI agrees to cooperate fully with any such review or audit. If any audit indicates overpayment to WCI, or subcontractor, CMS shall adjust future or final payments otherwise due. If no payments are due and owing to WCI, or if the overpayment exceeds the amount otherwise due, WCI shall immediately refund all amounts which may be due to CMS. Failure to maintain the books and records required by this Section shall establish a presumption in favor of CMS for the recovery of any funds paid by CMS under this Agreement for which adequate books and records are not available to support the purported disbursement.

21.20 Certifications. WCI makes the certifications set forth in "Exhibit D."

IN WITNESS WHEREOF, CMS and WCI have caused this Agreement to be executed on their behalf as of the date first written above.

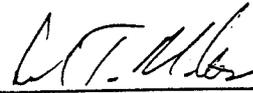
"CMS":

ILLINOIS DEPARTMENT OF CENTRAL  
MANAGEMENT SERVICES

By:   
Print Name: Michael S. Schwartz  
Title: Director  
Date: 5/1/2000

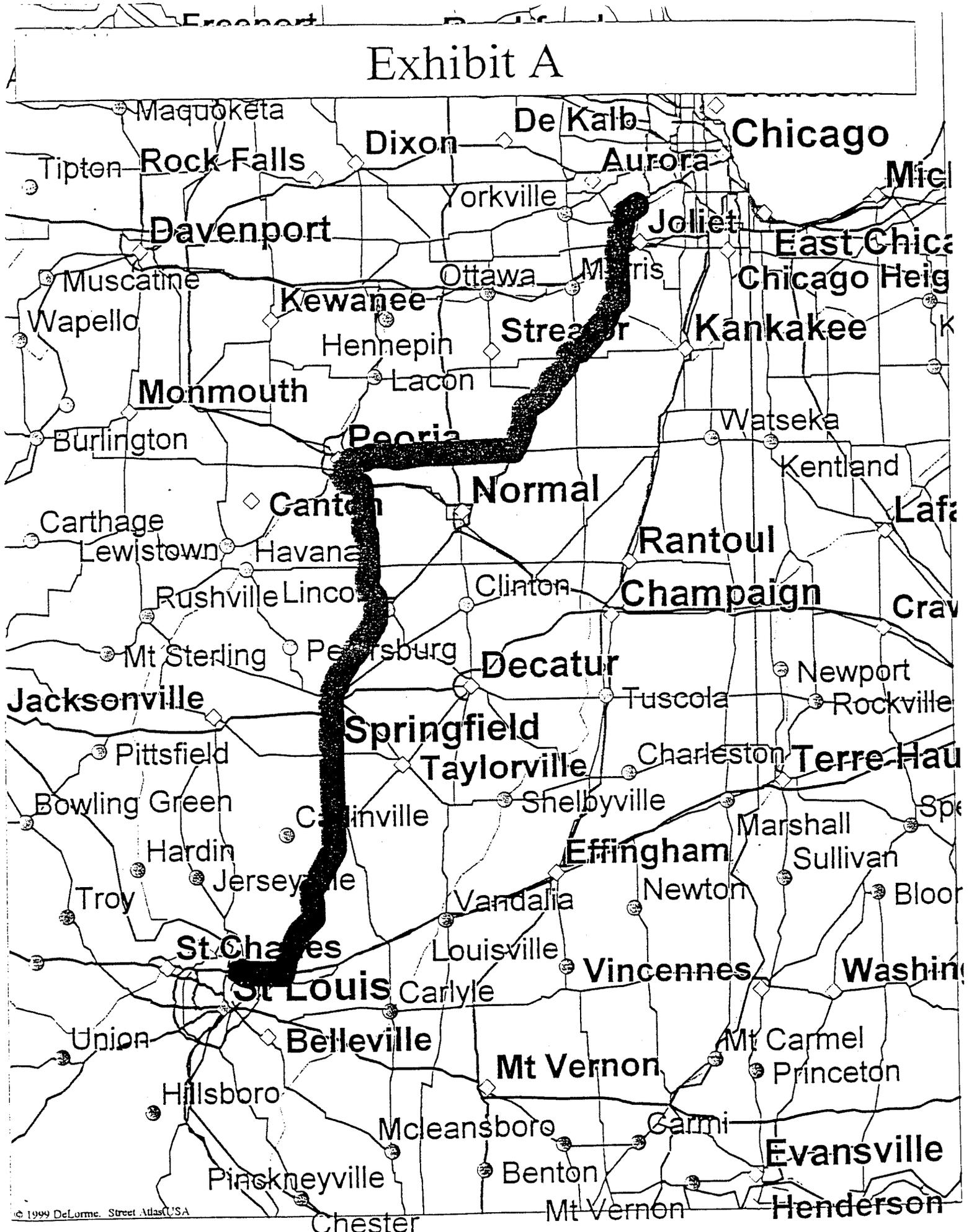
"WCI":

WILLIAMS COMMUNICATIONS, INC.

By:   
Print Name: John T. Miller  
Title: Director, ISP Business & Construction  
Date: 5/9/00



# Exhibit A



## EXHIBIT "B"

### Fiber Specifications

The Fibers shall have a link loss budget which will support OC-3 and OC-12 networks.

The Cable shall be SMFP-28 fiber optic cable (1000 lb. Tensile Rating), single armor cable, ALTOS Loose Cable. It shall be a single mode, depressed cladding optical cable with a waterblock core, with a dielectric central member. The Fibers shall have an inner MDPE Jacket and single steel tape armor.

The Cable shall be suitable for use in fiber optic cable system operation at 0.48/km at a wavelength of 1310 nm and 1550 nm. When selecting the Cable, consideration shall be given to attenuation, bandwidth, and chromatic dispersion, to ensure the Cable will provide optimum transport capability at both 1310 nm and 1550 nm. The Fiber shall have a gigabit ethernet distance guarantee of 5000 meters.

## EXHIBIT "C"

### Operations Specifications: Maintenance

1. Routine Maintenance. WCI shall perform the work and provide the services set forth in the following paragraphs A through D as Routine Maintenance:

A. NCC Functions. WCI shall operate a manner Network Control Center ("NCC") twenty-four (24) hours a day, seven (7) days a week that monitors the System by means of remote surveillance equipment and dispatches maintenance and repair personnel to handle and repair problems detected by the NCC or reported by CMS or other parties. WCI shall provide CMS a toll-free telephone number to report problems to the NCC.

B. Cable Maintenance. WCI shall perform appropriate routine maintenance on the Cable in accordance with WCI then-current preventative maintenance procedures. WCI preventative maintenance procedures shall not substantially deviate from industry practice.

C. ROW Patrol. WCI shall patrol the ROW on a reasonable, routine basis and shall perform all required Cable locates. WCI shall belong to a state or regional one-call (call-before you dig) center when available.

D. Spare Cable. WCI shall Maintain an inventory of spare cable at strategic locations to facilitate timely restoration.

2. Planned Network Maintenance Activity. WCI shall avoid performing maintenance between 0600-2200 local time, Monday through Friday, inclusive, that will have a disruptive impact on the continuity or performance level of the CMS Fibers. However, the preceding sentence does not apply to restoration of continuity to a severed or partially severed fiber optic cable, restoration of dysfunctional power and ancillary support equipment, or correction of any potential jeopardy conditions.

3. Fiber and Cable.

A. Emergency Repair. WCI shall correct or repair Cable discontinuity or damage. WCI shall use commercially reasonable efforts to repair Cable traffic discontinuity within the following times:

- (i) Dispatch of personnel to problem area immediately upon learning of discontinuity.
- (ii) Arrival of first maintenance employee on site within four (4) hours of learning of discontinuity.

B. Splicing Specifications. WCI shall comply with the Cable splicing specifications as provided in Schedule 5.1 for permanent splices or with then-current reasonable industry standards.

C. Demarcation. The demarcation point between the Cable and the facilities of CMS or other parties shall be at the cable loop at CMS manhole or handhole. CMS shall have no right to access any Fibers within the Cable or to enter any splice or WCI's vault.

4. Miscellaneous.

A. Full-Time Dispatch Capability. WCI's maintenance employees shall be available for dispatch twenty-four (24) hours a day, seven (7) days a week. WCI shall use commercially reasonable efforts to have its first maintenance employee at the site requiring an emergency maintenance activity within four (4) hours from the time of alarm identification by WCI's NCC or notification by CMS, whichever occurs first. Emergency maintenance is defined as any service-affecting situation requiring an immediate response.

B. Standard of Care; Cooperation. In performing its services hereunder, WCI shall take workmanlike care to prevent impairment to the signal continuity and performance of the System. In addition, WCI shall reasonably cooperate with CMS in sharing information and analyzing the disturbances regarding the cable and/or fiber facilities. All Maintenance provided to the CMS Fibers shall meet or exceed maintenance provided to other users of the System and the WCI Fibers, and shall meet industry standards.

C. CMS Equipment. Nothing contained herein shall make WCI responsible for CMS Equipment. If, however, WCI agrees to Maintain CMS Equipment, CMS shall provide equipment spares, vendor training and document for each technician along the ROW when CMS uses equipment different from that used by WCI.

D. Escalation List. WCI shall, at CMS's request, provide CMS an operations escalation list for use in reporting and seeking redress of exceptions noted in WCI's performance of Routine Maintenance and Non-Routine Maintenance.

## EXHIBIT "D"

### CERTIFICATIONS

VENDOR certifies its compliance or agreement to comply with the following legal requirements, and that it is not barred from being awarded a contract or subcontract due to violation of, or inability or unwillingness to comply with those requirements.

**Non-discrimination--Federal Requirements.** VENDOR, its employees and subcontractors, agree to comply with applicable provisions of the U.S. Civil Rights Act, Section 504 of the Federal Rehabilitation Act, and rules applicable to each. The Americans with Disabilities Act (42 U.S.C. 12101 et seq.) and rules (28 CFR 35.130) (ADA) prohibit discrimination against persons with disabilities by the State, whether directly or through contractual arrangements, in the provision of any aid, benefit or service. As a condition of receiving this contract, the VENDOR certifies that services, programs and activities provided under this contract are and will continue to be in compliance with the ADA.

**(5 ILCS 385/3) Default on Repayment of Educational Loan.** No State agency shall contract with an individual for goods or services if that individual is in default on an educational loan. [A partnership shall be considered barred if any partner is in default on an educational loan].

**(30 ILCS 105/15a) Early Retirement.** VENDOR certifies he/she has informed the director of the agency in writing if he/she was formerly employed by that agency and has received an early retirement incentive under Section 14-108.3 or 16-133.3 of the Illinois Pension Code. VENDOR acknowledges and agrees that if such early retirement incentive was received, this contract is not valid unless the official executing the contract has made the appropriate filing with the Auditor General prior to execution.

**(30 ILCS 500/50-5) Bribery.**

- a) No person or business entity shall be awarded a contract or sub-contract if that person or business entity: (1) has been convicted under the laws of Illinois or any other state of bribery or attempting to bribe an officer or employee of the State of Illinois or any other state in that officer's or employee's official capacity; or (2) has made an admission of guilt of such conduct that is a matter of record but has not been prosecuted for such conduct.
- b) No business shall be barred from contracting with any unit of State or local government as a result of a conviction under this Section of any employee or agent of the business if the employee or agent is no longer employed by the business and; (1) the business has been finally adjudicated not guilty; or (2) the business demonstrates to the governmental entity with which it seeks to contract, and that entity finds that the commission of the offense was not authorized, requested, commanded, or performed by a director, officer or a high managerial agent on behalf of the business as provided in paragraph (2) of subsection (a) of Section 5-4 of the Criminal Code of 1961.
- c) For purposes of this Section, when an official, agent, or employee of a business committed the bribery or attempted bribery on behalf of the business and pursuant to the direction or authorization of a responsible official of the business, the business shall be chargeable with the conduct.

**(30 ILCS 500/50-10) Felony Conviction.** Unless otherwise provided, no person or business entity convicted of a felony shall do business with the State of Illinois or any State agency from the date of conviction until 5 years after the date of completion of the sentence for such felony, unless no person held responsible by a prosecutorial office for the facts upon which the conviction was based continues to have any involvement with the business.

(30 ILCS 500/50-13) Interest of State Employee, Spouse and Minor Children.

- a) Prohibition. It is unlawful for any person holding an elective office in this State, holding a seat in the General Assembly, or appointed to or employed in any of the offices or agencies of State government and who receives compensation for such employment in excess of 60% of the salary of the Governor of the State of Illinois [\$84,079.09], or who is an officer or employee of the Capital Development Board or the Illinois Toll Highway Authority, or who is the spouse or minor child of any such person to have or acquire any contract, or any direct pecuniary interest in any contract therein, whether for stationery, printing, paper, or any services, materials, or supplies, that will be wholly or partially satisfied by the payment of funds appropriated by the General Assembly of the State of Illinois or in any contract of the Capital Development Board or the Illinois Toll Highway Authority.
- (b) Interests. It is unlawful for any firm, partnership, association, or corporation, in which any person listed in subsection (a) is entitled to receive (i) more than 7 1/2% of the total distributable income or (ii) an amount in excess of the salary of the Governor [\$140,131.82], to have or acquire any such contract or direct pecuniary interest therein.
- (c) Combined interests. It is unlawful for any firm, partnership, association, or corporation, in which any person listed in subsection (a) together with his or her spouse or minor children is entitled to receive (i) more than 15%, in the aggregate, of the total distributable income or (ii) an amount in excess of 2 times the salary of the Governor [\$280,263.64], to have or acquire any such contract or direct pecuniary interest therein.
- (d) Securities. Nothing in this Section invalidates the provisions of any bond or other security previously offered or to be offered for sale or sold by or for the State of Illinois.
- (e) Prior interests. This Section does not affect the validity of any contract made between the State and an officer or employee of the State or member of the General Assembly, his or her spouse, minor child or any combination of those persons if that contract was in existence before his or her election or employment as an officer, member, or employee. The contract is voidable, however, if it cannot be completed within 365 days after the officer, member, or employee takes office or is employed.
- (f) Exceptions.
- (1) Public aid payments. This Section does not apply to payments made for a public aid recipient.
  - (2) Teaching. This Section does not apply to a contract for personal services as a teacher or school administrator between a member of the General Assembly or his or her spouse, or a State officer or employee or his or her spouse, and any school district, public community college district, the University of Illinois, Southern Illinois University, Illinois State University, Eastern Illinois University, Northern Illinois University, Western Illinois University, Chicago State University, Governor State University, or Northeastern Illinois University.
  - (3) Ministerial duties. This Section does not apply to a contract for personal services of a wholly ministerial character, including but not limited to services as a laborer, clerk, typist, stenographer, page, bookkeeper, receptionist, or telephone switchboard operator, made by a spouse or minor child of an elective or appointive State officer or employee or of a member of the General Assembly.
  - (4) Child and family services. This Section does not apply to payments made to a member of the General Assembly, a State officer or employee, his or her spouse or minor child acting as a foster parent, homemaker, advocate, or volunteer for or in behalf of a child or family served by the Department of Children and Family Services.
  - (5) Licensed professionals. Contracts with licensed professionals, provided they are competitively bid or part of a reimbursement program for specific, customary goods and services through the Department of Children and Family Services, the Department of Human Services, the Department of Public Aid, the Department of Public Health, or the Department on Aging.

- (g) Penalty. A person convicted of a violation of this Section is guilty of a business offense and shall be fined not less than \$1,000 nor more than \$5,000.

**(30 ILCS 500/50-25) Inducements.** Any person who offers or pays any money or valuable thing to any person to induce him or her not to bid on a State contract is guilty of a Class 4 felony. Any person who accepts money or other valuable thing for not bidding on a State contract or who withholds a bid in consideration of the promise for the payment of money or other valuable thing is guilty of a Class 4 felony.

**(30 ILCS 500/50-30) Revolving Door Prohibition.** Chief procurement officers, associate procurement officers, State purchasing officers, their designees whose principal duties are directly related to State procurement, and executive officers confirmed by the Senate are expressly prohibited for a period of 2 years after terminating an affected position from engaging in any procurement activity relating to the agency most recently employing them in an affected position for a period of at least 6 months. The prohibition includes but is not limited to: lobbying the procurement process; specifying; bidding; proposing bid, proposal, or contract documents; on their own behalf or on behalf of any firm, partnership, association, or corporation. This Section applies only to those persons who terminate an affected position on or after January 15, 1999.

**(30 ILCS 500/50-40) Reporting Anticompetitive Practices.** When, for any reason, any vendor, bidder, contractor, or designee suspects collusion or other anticompetitive practice among any bidders, offerors, contractors, proposers or employees of the State, a notice of the relevant facts shall be transmitted to the Illinois Attorney General and the chief procurement officer. This includes reporting any chief procurement officer, State purchasing officer, designee, or executive officer who willfully uses or allows the use of specifications, competitive bid documents, proprietary competitive information, proposals, contracts, or selection information to compromise the fairness or integrity of the procurement, bidding, or contract process (30 ILCS 500/50-45), or any current or former elected or appointed State official or State employee to knowingly uses confidential information available only by virtue of that office or employment for actual or anticipated gain for themselves or another person (30 ILCS 500/50-50).

**(30 ILCS 580) Drug-free Workplace.** No grantee or contractor shall receive a grant or be considered for the purposes of being awarded a contract from the State for the procurement of any property or services unless that grantee or contractor will provide a drug free workplace. No individual engaged in the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance may have a contract or grant. False certification or violation of the certification may result in sanctions including, but not limited to, suspension of contract or grant payments, termination of the contract or grant and debarment of contracting or grant opportunities with the State for at least one (1) year but not more than five (5) years. CONTRACTOR/GRANTEE: For the purpose of this certification, "grantee" or "contractor" means a corporation, partnership, or other entity with twenty-five (25) or more employees at the time of issuing the grant, or a department, division, or other unit thereof, directly responsible for the specific performance under a contract or grant of \$5,000 or more from the State.

The contractor/grantee certifies and agrees that it will provide a drug free workplace by:

- (a) Publishing a statement for the purpose of: (1) notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance, including cannabis, is prohibited in the grantee's or contractor's workplace; (2) specifying the actions that will be taken against employees for violations of such prohibition; and (3) notifying the employee that, as a condition of employment on such contract or grant, the employee will abide by the terms of the statement and notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction.
- (b) Establishing a drug free awareness program to inform employees about: (1) the dangers of drug abuse in the workplace; (2) the grantee's or contractor's policy of maintaining a drug free

workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon employees for drug violations.

- (c) Providing a copy of the statement required by subparagraph (a) to each employee engaged in the performance of the contract or grant and to post the statement in a prominent place in the workplace.
- (d) Notifying the contracting or granting agency within ten (10) days after receiving notice under subsection (a)(3) above from an employee or otherwise receiving actual notice of such conviction.
- (e) Imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is so convicted, as required by Section 5 of the Drug Free Workplace Act.
- (f) Assisting employees in selecting a course of action in the event drug counseling, treatment, and rehabilitation is required and indicating that a trained referral team is in place.
- (g) Making a good faith effort to continue to maintain a drug free workplace through implementation of the Drug Free Workplace Act.

INDIVIDUALS: If VENDOR is an individual, or an individual doing business in the form of a sole proprietorship, the individual certifies that the individual will not engage in the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance. This requirement applies to contracts of more than \$5000.

**(30 ILCS 582) International Anti-boycott.** Every contract entered into by the State of Illinois for the manufacture, furnishing, or purchasing of supplies, material, or equipment or for the furnishing of work, labor, or services, in an amount exceeding \$10,000 shall contain certification, as a material condition of the contract, by which the contractor agrees that neither the contractor nor any substantially-owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the U.S. Export Administration Act of 1979 or the regulations of the U.S. Department of Commerce promulgated under that Act.

**(720 ILCS 5/33E-3) Bid-rigging.** A person commits the offense of bid-rigging when he knowingly agrees with any person who is, or but for such agreement would be, a competitor of such person concerning any bid submitted or not submitted by such person or another to a unit of State or local government when with the intent that the bid submitted or not submitted will result in the award of a contract to such person or another and he either (1) provides such person or receives from another information concerning the price or other material term or terms of the bid which would otherwise not be disclosed to a competitor in an independent noncollusive submission of bids or (2) submits a bid that is of such a price or other material term or terms that he does not intend the bid to be accepted.

Bid-rigging is a Class 3 felony. Any person convicted of this offense or any similar offense of any state or the United States which contains the same elements as this offense shall be barred for five years from the date of conviction from contracting with any unit of State or local government. No corporation shall be barred from contracting with any unit of State or local government as a result of a conviction under this Section of any employee or agent of such corporation if the employee so convicted is no longer employed by the corporation and: (1) it has been finally adjudicated not guilty or (2) if it demonstrates to the governmental entity with which it seeks to contract and that entity finds that the commission of the offense was neither authorized, requested, commanded, nor performed by a director, officer or a high managerial agent in behalf of the corporation as provided in paragraph (2) of subsection (a) of Section 5-4 of the Criminal Code.

**(720 ILCS 5/33E-4) Bid-rotating.** A person commits the offense of bid rotating when, pursuant to any collusive scheme or agreement with another, he engages in a pattern over time (which, for the purposes of this Section,

shall include at least 3 contract bids within a period of 10 years, the most recent of which occurs after the effective date of this amendatory Act of 1988) of submitting sealed bids to units of State or local government with the intent that the award of such bids rotates or is distributed among persons or business entities which submit bids on a substantial number of the same contracts. Bid rotating is a Class 2 felony. Any person convicted of this offense or any similar offense of any state or the United States which contains the same elements as this offense shall be permanently barred from contracting with any unit of State or local government. No corporation shall be barred from contracting with any unit of State or local government as a result of a conviction under this Section of any employee or agent of such corporation if the employee so convicted is no longer employed by the corporation and: (1) it has been finally adjudicated not guilty or (2) if it demonstrates to the governmental entity with which it seeks to contract and that entity finds that the commission of the offense was neither authorized, requested, commanded, nor performed by a director, officer or a high managerial agent in behalf of the corporation as provided in paragraph (2) of subsection (a) of Section 5-4 of this Code.

**(775 ILCS 5/2-105) Equal Employment Opportunities -- Affirmative Action/Sexual Harassment.** Every party to a public contract and every eligible bidder shall:

- (1) Refrain from unlawful discrimination and discrimination based on citizenship status in employment and undertake affirmative action to assure equality of employment opportunity and eliminate the effects of past discrimination;
- (2) Comply with the procedures and requirements of the Department's [Illinois Department of Human Rights] regulations concerning equal employment opportunities and affirmative action; [The equal employment opportunity clause of the Department of Human Rights' rules is specifically incorporated herein.]
- (3) Provide such information, with respect to its employees and applicants for employment, and
- (4) Have written sexual harassment policies that shall include, at a minimum, the following information: (i) the illegality of sexual harassment; (ii) the definition of sexual harassment under State law; (iii) a description of sexual harassment, utilizing examples; (iv) the VENDOR's internal complaint process including penalties; (v) the legal recourse, investigative and complaint process available through the Department and the [Illinois Human Rights] Commission; (vi) directions on how to contact the Department and Commission; and (vii) protection against retaliation as provided by Section 6-101 of this Act. A copy of the policies shall be provided to the Department upon request. [Out of state vendors may utilize the VENDOR's state's equivalent of the Department and Commission.]

**(775 ILCS 25/2) Discriminatory Club Dues.** No private organization which sells goods or services to the State pursuant to the Illinois Procurement Code, nor any private organization which receives any award or grant from the State, nor any public body may pay any dues or fees on behalf of its employees or agents or may subsidize or otherwise reimburse them for payments of their dues or fees to any discriminating club. "Discriminatory club" means a membership club, organization, association, or society, or the premises thereof, which practices discrimination in its membership policy or in access to its services and facilities, except any facility, as to discrimination based on sex, which is distinctly private in nature such as restrooms, shower rooms, bath houses, health clubs and other similar facilities for which the Illinois Department of Human Rights, in its rules and regulations, may grant exemptions based on bona fide considerations of public policy.

## EXHIBIT "E"

### 20 ILCS 405/405-270

Sec. 405-270. Telecommunications services. To provide for and co-ordinate telecommunications services for State agencies and, when requested and when in the best interests of the State, for units of federal or local governments and public and not-for-profit institutions of primary, secondary, and higher education. The Department may make use of its satellite uplink available to interested parties not associated with State government provided that State government usage shall have first priority. For this purpose the Department shall have the power and duty to do all of the following:

- (1) Provide for and control the procurement, retention, installation, and maintenance of telecommunications equipment or services used by State agencies in the interest of efficiency and economy.
- (2) Establish standards by January 1, 1989 for communications services for State agencies which shall include a minimum of one telecommunication device for the deaf installed and operational within each State agency, to provide public access to agency information for those persons who are hearing or speech impaired. The Department shall consult the Department of Human Services to develop standards and implementation for this equipment.
- (3) Establish charges (i) for communication services for State agencies and, when requested, for units of federal or local government and public and not-for-profit institutions of primary, secondary, or higher education and (ii) for use of the Department's satellite uplink by parties not associated with State government. Entities charged for these services shall reimburse the Department by vouchers drawn against their respective appropriations for telecommunications services.
- (4) Instruct all State agencies to report their usage of telecommunication services regularly to the Department in the manner the Director may prescribe.
- (5) Analyze the present and future aims and needs of all State agencies in the area of telecommunications services and plan to serve those aims and needs in the most effective and efficient manner.
- (6) Establish the administrative organization within the Department that is required to accomplish the purpose of this Section.

The Department is authorized to conduct a study for the purpose of determining technical, engineering, and management specifications for the networking, compatible connection, or shared use of existing and future public and private owned television broadcast and reception facilities, including but not limited to terrestrial microwave, fiberoptic, and satellite, for broadcast and reception of educational, governmental, and business programs, and to implement those specifications.

However, the Department may not control or interfere with the input of content into the telecommunications systems by the several State agencies or units of federal or local government, or public or not-for-profit institutions of primary, secondary, and higher education, or users of the Department's satellite uplink.

As used in this Section, the term "State agencies" means all departments, officers, commissions, boards, institutions, and bodies politic and corporate of the State except the General Assembly, legislative service agencies, and all officers of the General Assembly.

(Source: P.A. 91-239, eff. 1-1-00.)

## SCHEDULE 4.1

### CMS Connection Points

1. Milepost 9 on the south side of I-270
2. Milepost 52 on the east side of I-55
3. Milepost 60 on the east side of I-55
4. On the southwest corner of the intersection of 6<sup>th</sup> and Vine in Springfield, IL
5. Milepost 126 on east side of I-55
6. On the north side of I-474 at Springfield Road in Peoria, IL
7. Milepost 197 on east side of I-55
8. Milepost 217 on east side of I-55
9. Between Milepost 264 & 265 on the north (west) side of I-55

## SCHEDULE 5.1

### Fiber Splicing, Testing and Acceptance Standards and Procedures

#### 1. Initial Construction Testing.

A. During initial Construction, WCI shall use an optical time domain reflectometer ("OTDR") to test splices and shall use an OTDR and a 1-km launch reel to test pigtail connectors. Such initial Construction tests shall be uni-directional and performed at 1550 nm.

B. If the loss value of two connectors and the associated pigtail splice exceeds 1dB, WCI shall break the splice and re-splice until the loss value is 1.0 dB or less. If WCI is unable to achieve a loss value of 1.0 dB or less after five total splicing attempts, the splice shall be marked as Out-of-Spec (OOS).

C. If the loss value for a splice, when measured in one direction with an OTDR, exceeds 0.15 dB, WCI shall break the splice and re-splice until the loss value is 0.15 dB or less, provided that, if WCI is not able to achieve a loss value of 0.15 dB after three total splicing attempts, then the maximum loss value shall be 0.3 dB. If, after two additional resplicing attempts, WCI is not able to achieve a loss value of 0.3 dB or less, then WCI shall mark the splice as Out-of-Spec (OOS).

#### 2. End to End Testing.

A. After WCI has established end-to-end connectivity on the fibers during initial Construction it shall:

- (i) perform bi-directional end-to-end tests;
- (ii) test continuity to confirm that no fibers have been "frogged" or crossed at any splice points;
- (iii) record loss measurements using a light source and a power meter;  
and
- (iv) take OTDR traces and record splice loss measurements.

B. WCI shall perform the bi-directional end-to-end tests and OTDR traces at both 1310 nm and 1550 nm. WCI shall measure and verify losses for each splice point in both directions and average the loss values. WCI shall mark any splice points as Out-of-Spec (OOS) that have an average loss value, based on bi-directional OTDR testing, in excess of 0.3 dB.

3. Post Construction Testing. After performing permanent resplicing (in conjunction with repair of a cable cut, replacement of a segment of cable, or other work

after initial Construction and splicing of the cable), the test procedures set forth in Section 2 (End-to-End Testing) of this Exhibit shall apply to the relevant fibers and cable segments. The provisions in Sections 4 (OTDR Equipment and Settings) and 5 (Acceptance Test Deliverables) of this Exhibit, that are relevant to such testing shall also apply. WCI may, after the Acceptance Date, adopt any alternative methods of testing that are generally accepted in the industry and that provide sufficient data to fulfill the objectives of the tests set forth in this exhibit.

4. Out-of-Spec splices. Out-of-Spec splices shall be noted, but shall not preclude acceptance of a fiber if the Out-of-Spec condition does not affect transmission capability (based on use of then-prevailing telecommunications industry standards applicable to equipment generally used with the relevant type of fiber) or create a significant possibility of an outage.

5. OTDR Equipment and Settings. WCI shall use OTDR equipment and settings that are, in its reasonable opinion, suitable for performing accurate measurements of the fiber installed. Such equipment and settings shall include, without limitation, the Laser Precision TD3000 and CMA-4000 models and compatible models for OTDR testing.

6. Acceptance Test Deliverables. WCI shall provide data sheets or computer media containing the following information for the relevant fibers and cable segments:

A. Verification of end-to-end fiber continuity with power level readings for each fiber taken with a light source and power meter.

B. Verification that the loss at each splice point is either (i) below 0.3 dB or (ii) in accordance with the requirements of Section 4 of this Exhibit.

C. The final bi-directional OTDR test data, with distances.

D. Cable manufacturer, cable type (buffer/ribbon), fiber type, cable reel number, number of fibers, number of fibers per tube, and distance of each section of cable between splice points.