

**Telecommunications System Development  
Agreement**

**Among**

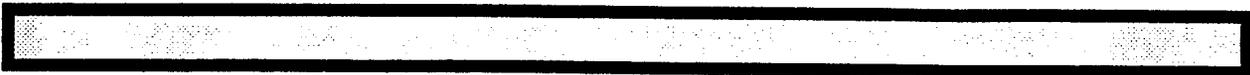
**Oklahoma Office of State Finance**

**Oklahoma Turnpike Authority**

**Oklahoma Department of Transportation**

**and**

**IXC Carrier, Inc.**



# TELECOMMUNICATIONS SYSTEM DEVELOPMENT AGREEMENT

THIS TELECOMMUNICATIONS SYSTEM DEVELOPMENT AGREEMENT (this "Agreement") is made and entered into as of this 3rd day of June 1996 (the "Effective Date"), by and among the Oklahoma Office of State Finance, an agency of the State of Oklahoma ("OSF"), the Oklahoma Turnpike Authority, an instrumentality of the State of Oklahoma ("OTA"), the Oklahoma Department of Transportation, an agency of the State of Oklahoma ("ODOT"), and IXC Carrier, Inc., a Nevada corporation ("IXC"). OSF, ODOT and OTA are sometimes individually referred to herein as an "Agency" and collectively as the "Agencies".

## RECITALS

A. Each Agency is the owner of certain rights-of-way (by fee, license, grant or other interest) within certain real property in the State of Oklahoma upon which it operates its facilities.

B. IXC wishes to acquire from each Agency certain privileges (as hereinafter described, defined and limited) in, on, upon, over, under, across and through a certain portion of each Agency's rights-of-way, to permit IXC to construct, install, operate and maintain the IXC System (as hereinafter described, defined and limited).

C. In consideration of the grant of such privileges by each Agency, IXC has agreed to grant to the Agencies an exclusive indefeasible right to use certain fibers installed concurrently with its installation of the IXC System, all upon the terms and conditions set forth below.

D. In order to effectuate the intent of the foregoing, IXC and the Agencies desire to enter into a relationship, realizing that close cooperation and good faith in the implementation of this Agreement are critical to the success of their respective operations, and each will work diligently to achieve their common objectives.

## AGREEMENT

IN CONSIDERATION OF THE FOREGOING RECITALS AND THE RESPECTIVE COVENANTS, AGREEMENTS, REPRESENTATIONS AND WARRANTIES CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:

## ARTICLE 1

### DEFINITIONS

1.1 **Defined Terms.** Unless otherwise defined, capitalized terms used herein shall have the following meanings:

- a) **“Agency Fibers”** shall mean collectively the OTA Fibers and the ODOT Fibers in the FOC.
- b) **“Agency System”** shall mean collectively the OTA System and the ODOT System.
- c) **“Approved System Segments”** shall mean the portions of the Rights-of-Way identified on Exhibit A attached hereto and incorporated herein by this reference.
- d) **“DS-3”** shall mean a circuit meeting the specifications set forth in AT&T Technical Reference Pub. 54014 Addendum 1, November 1992 and Bellcore TB-NWT-608499, Issue 5 December 1993.
- e) **“FOC”** shall mean the fiber optic cable to be installed by IXC on, upon, over, under, across or through the Approved System Segments, on the terms and subject to the conditions of this Agreement.
- f) **“IXC System”** shall mean the telecommunications transmission system installed by IXC on, upon, over, under, across or through each of the Approved System Segments, including such number of optical fibers and Regenerator Sites and all electronics and other equipment, which, in either case, IXC deems appropriate to create a fiber optic communications transmission system; provided, however, that the IXC System shall not include any of the Agency Systems.
- g) **“Maps”** shall mean maps of the Rights-of-Way and plan, profile and "as-built" drawings, engineering and architectural data regarding bridges, terminals and other obstacles previously and hereafter compiled by an Agency pertaining to its Rights-of-Way.
- h) **“OC-3”** shall mean an optical carrier level line rate of 155.52 Mb/s having a capacity approximately equal to three DS-3s, and meets the specifications set forth in BellCore Synchronous Optical Network Transport Systems: Common Generic Criteria GR-253-CORE, Issue 2, December 1995.
- i) **“OC-12”** shall mean an optical carrier level line rate of 622.08 Mb/s having a capacity approximately equal to 12 DS-3s, and meets the specifications set forth in BellCore Synchronous Optical Network Transport Systems: Common Generic Criteria GR-253-CORE, Issue 2, December 1995.
- j) **“Regenerator Site”** shall mean a facility in which equipment is located which receives, regenerates and retransmits an opti/electronic telecommunications transmission signal, together with all attendant equipment and structures appurtenant thereto, including power sources.
- k) **“Rights-of-Way”** shall mean the real property and rights thereto utilized by the Agencies for their respective highway and turnpike facilities, which are owned, operated,

leased or controlled by the Agencies pursuant to existing grants, easements, leases, franchises, licenses or other agreements or arrangements. The Rights-of-Way are described on Exhibit B attached hereto and incorporated herein by this reference.

l) **“System”** shall mean the IXC System and the Agency Systems.

**1.2 Other Defined Terms.** The following capitalized terms shall have the meanings given to them in the corresponding Articles set forth below:

<u>Terms</u>	<u>Article</u>
Agency	Introduction
Agencies	Introduction
Agreement	Introduction
Approved Plans	Article 5.3
Change	Article 5.4(a)
Effective Date	Introduction
Force Majeure Event	Article 6.3(b)
IXC	Introduction
License	Article 12.2
Liens or Encumbrances	Article 15.1
ODOT	Introduction
ODOT Equipment	Article 3.1(b)
ODOT Fibers	Article 3.1(b)
ODOT Standards	Article 13.1
ODOT System	Article 3.1(b)
OSF	Introduction
OTA	Introduction
OTA Equipment	Article 3.1(a)
OTA Fibers	Article 3.1(a)
OTA System	Article 3.1(a)
Prep Work	Article 6.1(b)
Representative	Article 6.7
System Materials	Article 6.1(a)
U.S. Manual	Article 13.1
Working Drawings	Article 5.3

## ARTICLE 2

### GRANT OF RIGHTS TO IXC

Each Agency hereby grants to IXC during the term hereof and any renewal term, on the terms and subject to the conditions of this Agreement, a nonexclusive right to use the Approved System Segments for the following and no other purposes: (a) the design, construction,

installation, repair, maintenance and operation of the IXC System; (b) the design, construction, installation, repair and maintenance of the Agency Fibers; and (c) the design, construction and installation of the OTA Equipment and the ODOT Equipment. Each Agency acknowledges and agrees that the right granted by the Agencies to IXC under this Article 2 may not be terminated by the Agencies for any reason whatsoever except as specifically provided in Article 16 of this Agreement. IXC hereby accepts such grant to use from the Agencies, on the terms and subject to the conditions of this Agreement.

### ARTICLE 3

#### GRANT OF RIGHTS TO THE AGENCIES

**3.1 Specific Grants.** In consideration for the use of the Approved System Segments, and the performance of all of the Agencies' obligations hereunder, and subject to the terms and conditions of this Agreement, IXC hereby agrees to provide the Agencies with the following fibers and/or equipment, at no cost to the Agencies, for the term hereof and any renewal term:

a) IXC grants to OTA, effective upon IXC's completion of the entire System, an exclusive indefeasible right to use 12 single mode fibers (the "OTA Fibers") in the FOC between the respective IXC access locations identified in Exhibit C attached hereto (the "OTA System"). As part of the OTA System, IXC, at its sole cost and expense, shall install the equipment described in Exhibit D attached hereto and made a part hereof (the "OTA Equipment") at the locations set forth in such Exhibit D. Upon installation of the OTA Equipment, OTA shall have protected transmission capacity on four OTA Fibers in the aggregate amount of three DS-3s. OTA shall be allowed to specify three DS-3s or one OC-3, at its option, prior to its approval of the Working Drawings for the applicable Approved System Segment. The three DS-3s or one OC-3, as selected by OTA, shall be carried on an OC-12. As indicated on Exhibit D, the OTA Fibers shall terminate at the OTA facilities in Stroud, Tulsa, Vinita and Oklahoma City, Oklahoma. The exact termination point within such OTA facilities shall be determined by OTA, and disclosed to IXC, within 45 days after the Effective Date. Additionally, the OTA Fibers shall be terminated at a light distribution frame to be installed by IXC, at IXC's sole cost and expense, in the Regents for Higher Education Building in Oklahoma City, Oklahoma. IXC shall provide OTA with 50 additional fiber break-out points to be determined by OTA, and disclosed to IXC, within 45 days after the Effective Date. Subject to Article 3.1(c), below, IXC shall allow OTA access to the OTA Fibers at such designated break-out points.

b) IXC grants to ODOT, effective upon IXC's completion of the entire System, an exclusive indefeasible right to use 12 single mode fibers (the "ODOT Fibers") in the FOC between the respective IXC access locations identified in Exhibit E attached hereto and made a part hereof (the "ODOT System"). As part of the ODOT System, IXC, at its sole cost and expense, shall install the equipment described in Exhibit F attached hereto and made a part hereof (the "ODOT Equipment") at the locations set forth in such Exhibit F. Upon installation of the ODOT Equipment, ODOT shall have protected transmission capacity on four ODOT Fibers in the aggregate amount of three DS-3s. ODOT shall be allowed to specify three DS-3s or one

OC-3, at its option, prior to its approval of the Working Drawings for the applicable Approved System Segment. The three DS-3s or one OC-3, as selected by ODOT, shall be carried on an OC-12. As indicated on Exhibit F, the ODOT Fibers shall terminate at the ODOT facilities in Ardmore, Oklahoma and Oklahoma City, Oklahoma. The exact termination point within the ODOT facilities shall be determined by ODOT, and disclosed to IXC, within 45 days after the Effective Date. IXC shall provide ODOT with 16 additional fiber break-out points to be determined by ODOT, and disclosed to IXC, within 45 days after the Effective Date. Subject to Article 3.1(c), below, IXC shall allow ODOT access to the ODOT Fibers at such designated break-out points.

c) Except as otherwise expressly set forth in this Agreement or the Exhibits attached hereto, under no circumstances shall IXC be required to provide an Agency with (i) access to any of the fibers in the FOC other than at the designated fiber break-out points along the FOC, as respectively determined by OTA and ODOT pursuant to Articles 3.1(a) and (b), above, and (ii) any equipment or other System Materials at such designated fiber break-out points. Wherever IXC is solely required hereunder to provide access at such fiber designated break-out points, the Agencies acknowledge and agree that they shall each be responsible, at their sole cost and expense, for procuring and providing all necessary materials and labor to enable each of them to access such designated fiber break-out points. Upon the request of an Agency, IXC will use commercially reasonable efforts to provide such materials and labor to such Agency on a time and materials basis. The cost of labor payable by the requesting Agency to IXC shall be at the rates set forth in Exhibit G attached hereto.

**3.2 The Agency Systems.** Each of the Agencies acknowledges and agrees that its System may only be used by it for (a) communications within the Agencies, (b) communications within and among all Oklahoma state agencies, commissions and authorities, (c) communications within and among other city, county, state or federal government entities, (d) communications with private entities for the purpose of access to federal, state, county or city programs and services, and any purpose ancillary or incidental thereto. Except as may otherwise be agreed to in writing by IXC and the appropriate Agency, under no circumstances shall access to any Agency System be provided, donated, traded, bartered, leased, resold, used or otherwise made available to third parties. Notwithstanding anything in this Article 3.2 to the contrary, an Agency may grant access to its Agency System to one or more providers of wireless telecommunications services if, and only if, access is granted to the provider solely from such provider's wireless receivers situated along a highway situated within the Rights-of-Way to, and terminating at, such provider's nearest switching station.

## ARTICLE 4

### NONEXCLUSIVITY

The privileges granted to IXC by the Agencies pursuant to this Agreement shall be nonexclusive and, subject to Article 3.2, above, each Agency may make use of its Approved System Segments of its Rights-of-Way and shall have the right to agree to other occupations of

its Approved System Segments of its Rights-of-Way by one or more other persons, companies or other entities; provided, however, that any such subsequent occupancies or agreements for such occupancies shall not obstruct or interfere with IXC's use and operation of the Approved System Segments for the purpose set forth herein.

## ARTICLE 5

### ROUTE DESIGNATION, INSPECTION, SURVEYS WORKING DRAWINGS, APPROVED PLANS AND SCHEDULES

**5.1 Agency Information.** To facilitate IXC's planning of the route within the Approved System Segments, each Agency shall allow IXC to view, at the Agency's location, all available Maps, charts, engineering rights-of-way, steam tunnels, pipeline documents and other engineering data and documentation pertaining to the Approved System Segments and the physical condition thereof, including the location and nature of all power stations, substations and other improvements, as well as all relevant engineering data and plans relating thereto. Each Agency shall also allow IXC to view, at the Agency's location, all available title documentation with respect to the Approved System Segments and/or restrictions on the right to use and to occupy the same for the purposes intended by this Agreement. Each Agency shall also make available to IXC, as soon as practicable, any relevant available information on any pending highway or turnpike relocation or improvement projects by an Agency along any Approved System Segments. In exercising its rights under this Article 5.1, IXC shall provide the appropriate Agency with at least one business day prior notice of its desire to take the desired action, and such Agency shall (a) permit IXC to take such action on or after the immediately following business day, and (b) designate no later than the second business day thereafter at least one knowledgeable person to assist IXC in its taking of such action. IXC shall be entitled to photocopies of all of the foregoing documentation. Each of the Agencies shall use its best efforts to make sure that the photocopies are made and delivered to IXC by no later than the end of the next business day after IXC's request for such photocopies. IXC shall reimburse the appropriate Agency for the reasonable costs of such Agency's having made such photocopies.

**5.2 Joint Inspection and Surveys by IXC.** Within three business days after its receipt of written notice from IXC, each Agency agrees to participate with IXC or its agents in a joint inspection of the Approved System Segments situated within its Rights-of-Way for the purpose of identifying problem areas and defining the final cable route or alternatives. Agency personnel accompanying IXC on the inspection shall have the knowledge and authority to generally guide the detailed routing in a manner to minimize interference with Agency operations. IXC shall, at its sole cost and expense, submit the preliminary route to the Agency marked on an Agency Map. Following each submission of the preliminary route, the Agency shall, within 15 business days thereafter, or as soon thereafter as practicable, approve the same in whole or in part or raise any objections thereto, which objections shall be stated in writing and in reasonable detail and include a statement of the necessary modifications required to obtain approval. Upon receipt of any Agency objections to the preliminary route, IXC shall immediately

either (a) modify the proposed route with respect to which such objections were noted by making appropriate changes thereto and resubmitting the same to the Agency for its approval or objection as aforesaid, or (b) negotiate with the Agency, and the Agency will negotiate with IXC, in good faith to resolve such Agency's objections to the mutual satisfaction of IXC and such Agency. Approval of the preliminary route shall serve as the basis for IXC to initiate formal engineering to design the detailed route and construction plan.

**5.3 Preparation of Working Drawings.** IXC shall, at its sole cost and expense, prepare and submit to the appropriate Agency construction plans ("Working Drawings") for construction of the System on the Approved System Segment identified therein. Following each submission of Working Drawings, the Agency shall, within 15 business days thereafter, or as soon thereafter as practicable, approve the same in whole or in part or raise any objections thereto, which objections shall be stated in writing and in reasonable detail and include a statement of the necessary modifications required to obtain approval. Upon receipt of any Agency objections to the Working Drawings, IXC shall immediately either (a) correct the Working Drawings with respect to which such objections were noted by making appropriate changes thereto and resubmitting the same to the Agency for its approval or objection as aforesaid, or (b) negotiate with the Agency, and the Agency will negotiate with IXC, in good faith to resolve such Agency's objections to the mutual satisfaction of IXC and such Agency. The approved Working Plans are hereinafter referred to as the "Approved Plans."

**5.4 Changes to Approved Plans.**

a) During the initial construction, IXC may make changes in its work hereunder, without the consent of any of the Agencies, consisting of modifications or other changes within the general scope of this Agreement (a "Change"); provided, however, that (i) any Change in the route of a System which is outside the perimeter of the Approved System Segment, (ii) any relocation of a Regenerator Site which is more than ten feet in any direction, or (iii) any Change in the OTA Equipment or the ODOT Equipment shall, in any such event, be subject to the review and approval of the Agency that approved the Approved Plans, taking into consideration the impact, if any, on such Agency's facilities, which approval shall not be unreasonably withheld, delayed or conditioned.

b) When IXC becomes aware of the necessity or desirability of a Change for which the consent of an Agency is required hereunder, IXC shall, at its sole cost and expense, promptly prepare and submit to the appropriate Agency an explanation of the basis therefor, and shall inform the Agency whether such Change should result in an adjustment to the Approved Plans or any other provision of this Agreement. Following each submission of a Change, the Agency shall, within two business days thereafter, or as soon thereafter as practicable, approve the same in whole or in part or raise any objections thereto, which objections shall be stated in writing and in reasonable detail and include a statement of the necessary modifications required to obtain approval. Upon receipt of any Agency objections to the Change, IXC shall immediately either (a) modify the Change with respect to which such objections were noted by making appropriate changes thereto and resubmitting the same to the Agency for its approval or objection as aforesaid, or (b) negotiate with the Agency, and the Agency will negotiate with IXC, in good

faith to resolve such Agency's objections to the mutual satisfaction of IXC and such Agency. A written change order describing such Change, its effect, if any, on the Approved Plans and any other provision of this Agreement which is affected shall be entered into by the parties in order for such Change to be effective.

**5.5 Construction Schedule.** Upon the approval by the Agencies of the Working Drawings, IXC may enter the Rights-of-Way for the purpose of commencing installation of the portion of the System that is described in such Working Drawings. Prior to such entry, IXC shall provide the affected Agency or Agencies with a schedule for the proposed construction activities, including estimated dates and locations with respect to such installations.

## ARTICLE 6

### CONSTRUCTION OF SYSTEM

#### **6.1 Construction of System.**

a) Upon the approval by the appropriate Agency of the Working Drawings, IXC may commence with the installation of that portion of the applicable System. Except as otherwise provided in this Agreement, IXC, at IXC's sole cost and expense, shall furnish all necessary materials, parts, components, equipment and structures to consummate its obligations under this Agreement. Except for the OTA Equipment and the ODOT Equipment, any and all property constructed and/or installed and subsequently operated or maintained by IXC, or at the directions of IXC, including all fiber optic cable, conduit, carrier pipe, repeaters, power sources and all other attachments and appurtenances thereto (collectively, the "System Materials"), shall be and remain at all times the property of IXC, and shall at no time be deemed to be the property of any Agency, regardless of the manner or method of attachment to or installation in, on, upon, over, under, across and through such facilities.

b) As a condition precedent to IXC's obligation to install the OTA Equipment and the ODOT Equipment under Articles 3.1(a) and (b), above, respectively, OTA and ODOT shall install, at their sole cost and expense, all fixtures, materials, parts, components, equipment and structures, including, without limitation, concrete equipment pads and power sources, which, according to the applicable manufacturer's published specifications, industry standards of the telecommunications industry, or applicable law, must be installed prior to the installation of the OTA Equipment and the ODOT Equipment, respectively (the "Prep Work"). All of the OTA and ODOT Equipment shall be installed by IXC, at its sole cost and expense, in the Agency facilities designated in Exhibits D and F hereto.

c) Each of the parties shall have the right to have any of the construction, installation and maintenance work to be provided by it hereunder performed by one or more subcontractors pursuant to written contracts between the party and such subcontractors. No such contract with any subcontractor shall create a contractual relationship between such subcontractor and the other parties, and the subcontracting party shall be solely responsible for the engagement

and management of such subcontractors, for all work performed by such subcontractors, and for all acts of such subcontractors in providing services to the subcontracting party.

## **6.2 Conditions of Construction.**

**6.2.1 Roadway.** When cable is buried near the edge of pavement, IXC shall take particular care to avoid damaging the pavement. Subject to Article 6.5, below, all crossings under pavement, including, but not limited to, the main roadway, entry ramps and exit ramps are to be bored and conduit installed, as approved by the appropriate Agency, which approval shall not be unreasonably withheld, delayed or conditioned.

**6.2.2 Construction Corridor.** Each Agency shall grant IXC, to the extent legally and physically available, the use of a 25 foot wide construction corridor, which location shall be agreed upon by IXC and the appropriate Agency, along the Approved System Segments. IXC shall use its best efforts to ensure that all construction equipment remains within this corridor.

### **6.2.3 Temporary Installation Facilities.** During the initial construction:

a) IXC shall maintain all temporary facilities, materials and equipment in a safe and adequate manner and remove all such temporary facilities, materials and equipment immediately upon completion of the work requiring their presence.

b) IXC shall erect, at its cost and expense, temporary fencing where, and to the extent, required under applicable law, if any, or reasonably deemed to be necessary by the requesting Agency.

### **6.2.4 Excavating, Trenching and Plowing.**

a) The use of explosives shall not be allowed without the prior authorization of the appropriate Agency.

b) Damage to banks and ditches caused by IXC's equipment shall be promptly repaired to the reasonable satisfaction of the appropriate Agency.

c) Conduit/cable trenching and plowing shall consist of a trench or cut with a minimum depth of forty-two (42) inches. The trench or cut shall be neat and clean cut without disturbing any of the adjacent soil or ground cover. The FOC shall be encased in pipe or conduit designated by IXC and which shall comply with all applicable laws, rules and regulations.

d) IXC shall promptly repair any damage to fences, lawns, shrubbery and any other property damaged during construction.

**6.2.5 Boring.** The pavement shall not be disturbed and the location of boring and pushing pits is subject to the approval of the appropriate Agency, which approval shall not be unreasonably withheld or delayed. Excessive use of water such that pavement might be undermined or subgrade softened shall not be permitted. FOC crossing under roadways shall be at a location and depth as determined by state or local conditions, laws, regulations or orders of public authorities and shall be encased in pipe or conduit as approved by IXC provided that such pipe or conduit complies with all applicable laws, rules and regulations.

**6.2.6 Vaults and Pull Boxes.** The location of vault and pull boxes is subject to the approval of the appropriate Agency, which approval shall not be unreasonably withheld or delayed.

### **6.3 Completion of Work.**

a) Subject to Article 6.3(b), below, IXC shall use commercially reasonable effort to complete all work on the Approved System Segments, including the installation of the OTA Equipment and the ODOT Equipment, within 371 calendar days after the Effective Date.

b) IXC shall not be liable under Article 6.3(a), above, for any failure of performance thereunder due to causes beyond its reasonable control (a "Force Majeure Event"), including, but not limited to: (i) delay attributable to lightning, earthquake, fire, storm, hurricane, tornado, washout, explosion, vandalism, cable cuts, or other similar catastrophes; (ii) any law, order, regulation, direction, action or request of the United States government, or of any other government, including state and local governments having jurisdiction over IXC, or of any department, agency, commission, court, bureau, corporation or other instrumentality of any one or more of said governments, or of any civil or military authority; (iii) civil disturbances, act of a public enemy, war, riot, sabotage, blockade or embargo; (iv) strikes, lock outs, work stoppages or other labor or industrial disturbances; (v) delay attributable to the failure of an Agency or IXC to secure permits and approvals within the same time period that normally prevailed for obtaining such permits at the time this Agreement was negotiated; (vi) delay in completing preliminary routes, Working Drawings or Change documents because of changes in any law, rule or regulation; (vii) delay attributable to an Agency's failure to approve (A) the preliminary route or Working Drawings within 15 business days after IXC's first submission set forth in Articles 5.2 and 5.3, above, or (B) a Change within two business days after IXC's first submission set forth in Article 5.4(b), above; (viii) incorrect Maps; or (ix) unavailability of System Materials.

**6.4 Standards and Warranty.** Any and all work by IXC, its contractors or agents, shall be done in a good and workmanlike manner and so as not to interfere with any of the Agency operations. All installations must meet or exceed applicable standards and specifications of the State of Oklahoma and the United States of America in effect at that time and shall further be in compliance with all existing federal, state or local laws, ordinances and regulations and each of the parties shall further, at its expense, obtain all permits and approvals required to implement the work required to be performed by it under this Agreement. In no case shall any part of the System be located in a manner that will interfere with any operations of an Agency, its existing permits, licenses or lessees.

**6.5 IXC Right to Attach.** With prior written approval from the appropriate Agency, which approval will not be unreasonably withheld, delayed or conditioned based upon any then existing, applicable ODOT standards and requirements, IXC may use an Agency's available cable conduit, bridge attachments and similar facilities in its installation and construction of the Systems, subject to any and all reasonable terms and conditions which may be imposed by the Agency. IXC's right hereunder to make use of such facilities has been, and continues to be, a material factor in IXC's decision to enter into this Agreement and, therefore, in no event shall any of the Agencies request or otherwise attempt to obtain from IXC any additional compensation or consideration hereunder in connection with such Agency's approval of IXC's use of any such facilities.

**6.6 Other Public Utilities.** The FOC crossing over or under other existing public utilities shall be located and installed in accordance with local conditions, laws, orders of public authorities, and such requirements as may be stipulated by the public authority. If in the conduct of such work, any changes or alterations in pipelines, sewers, drains, conduits, fences, power, signal or communication lines or other utilities are necessary (either temporary or permanent), such changes shall be made at IXC's sole cost and expense.

**6.7 Restoration of Rights-of-Way.** Upon completion of the installation or any replacement, repair or relocation of the System, IXC shall promptly return the ground to the same condition to that which existed prior to such work, in a manner satisfactory to the affected Agency's individual or field representative (each, respectively, a "Representative").

**6.8 Delivery of As-Built Drawings.** Within 90 days upon completion of the installation of any Approved System Segment, IXC shall, at its sole cost and expense, prepare and submit to each Agency "as-built" prints showing the location of the System within such Agency's Rights-of-Way.

## ARTICLE 7

### PERMITS

**7.1 General Responsibilities.** Subject to Article 7.2, below, IXC, at its sole cost and expense, shall secure and maintain in effect all federal, state and local permits and licenses required for the design, construction, installation, repair, maintenance and operation of the System, including, without limitation, zoning, building, health, environmental or communication permits or licenses, and IXC shall indemnify and hold harmless the Agencies against any loss, cost or expense therefor and against any fines or penalties that may be levied for failure to procure or to comply with such permits or licenses as well as any remedial cost to cure violations thereof. Each Agency agrees to cooperate with IXC in securing on a timely basis all necessary approvals, permits and licenses from all governmental authorities and/or other parties having jurisdiction or approval rights in respect of the use and occupation of the Rights-of-Way.

**7.2 Special Responsibilities.** Notwithstanding anything in Article 7.1, above, to the contrary, OTA and ODOT shall secure and maintain in effect all federal, state and local permits and licenses required for the design, construction, installation, repair, maintenance and operation of its Prep Work.

## **ARTICLE 8**

### **IXC's RIGHT OF ENTRY**

The privileges granted to IXC in Article 2.1, above, shall include the right for IXC to enter the Rights-of-Way, including, without limitation, the Will Rodgers and Turner Turnpikes and any and all interstate and intrastate highways situated within the Rights-of-Way, with its employees, agents and contractors in order to exercise IXC's rights under this Agreement, subject to the following requirements:

#### **8.1 Notice Required.**

a) IXC shall use its best efforts to give not less than three days' prior notice by telephone to the affected Agency's division engineers before entering for the purpose of surveying and inspecting or making such engineering and other tests as IXC determines may be necessary or advisable to enable IXC to determine the feasibility of jointly utilizing a portion of the Rights-of-Way for the System or to evaluate and approve engineering, design and installation plans and cost estimates for the System.

b) Subject to Article 5.5, above, upon the approval by the Agencies of the Working Drawings, IXC may enter the Rights-of-Way, without the need for any additional notice to an Agency, for the purpose of commencing installation and construction of the portion of the System that is described in the Approved Plans.

c) Whenever IXC or its employees, agents or contractors desire to enter upon the Rights-of-Way in order to dig within or otherwise alter or disturb any portion of the Rights-of-Way in connection with the construction of improvements or additions to the completed System, IXC shall notify the Agency, in writing, five working days in advance and the notice must explain the scope and duration of the anticipated entry. IXC shall receive written approval from the appropriate Agency's Representative prior to entry, which approval shall not be unreasonably withheld, delayed or conditioned. If such scope and duration changes, additional notice shall be given and approval solicited. With respect to any routine inspection, maintenance, repair or exercise of any completed System, IXC, prior to entering the Rights-of-Way, shall use its reasonable best efforts to notify the appropriate Agency of such intended entry verbally or by facsimile.

**8.2 Emergency Situations.** In the event of any emergency impacting upon the IXC System, or any portion thereof, IXC shall use its best efforts to verbally or by facsimile give the appropriate Agency's Representative advance notice prior to entry upon the affected portion of

the Rights-of-Way. If, due to such emergency situation, it is not practicable for IXC to give the appropriate Agency's Representative such advance notice, then, in such case, IXC shall give such appropriate Agency's Representative notice as soon as reasonably practicable after such entry.

**8.3 Entry on the Turnpike.** At all times during the term hereof and any renewal term, OTA shall provide reasonable access to IXC, its employees, agents, contractors and subcontractors, at the then prevailing rates to any of such persons, to all necessary portions of the Will Rogers and Turner Turnpikes; provided, however, that at all times during the engineering, construction and installation of the System, such access shall be without cost or expense to IXC, its employees, agents, contractors and subcontractors so long as such utilization of the Will Rogers and Turner Turnpikes is reasonably required in connection with such engineering, construction and installation.

## ARTICLE 9

### FACILITY LOCATION SIGNS

IXC, at its sole cost and expense, shall furnish, erect and thereafter maintain signs identifying all IXC underground facilities. Such signs shall be placed along the outermost Rights-of-Way lines in accordance with industry standards of the telecommunications industry and as approved by the appropriate Agency's Representative.

## ARTICLE 10

### MAINTENANCE OF SYSTEM

**10.1 General Maintenance.** Upon completion of the IXC System and during the term hereof and any renewal term, IXC shall, at its sole cost and expense, be responsible for the maintenance and repair of the IXC System and the Agency Fibers, including replacement of individual fibers and any maintenance as is reasonably necessary for the normal operation of the IXC System and the Agency Fibers. IXC may, at its option, subcontract for maintenance and restoration services hereunder. Each Agency shall promptly reimburse IXC for all costs and expenses reasonably incurred by IXC with respect to any maintenance or repair that was necessitated by the gross negligence or intentional misconduct of an Agency or any agent, servant or employee of an Agency.

**10.2 OTA and ODOT Equipment.** Subject to the terms and conditions of this Agreement, IXC shall not be responsible for the operation, maintenance or repair of the Prep Work, the OTA Equipment and the ODOT Equipment and shall not perform any work on the Prep Work, the OTA Equipment or the ODOT Equipment unless otherwise agreed to in writing by IXC and either OTA or ODOT, as applicable.

### **10.3 Agency Maintenance.**

a) Each Agency agrees to cooperate with IXC in its restoration of damaged or malfunctioning portion(s) of the IXC System and the Agency Fibers as soon as reasonably possible, including, without limitation, each Agency's restoration of any facility to which the System Materials within its Rights-of-Way are affixed or attached. Each Agency acknowledges the critical importance to IXC of the uninterrupted operation of the IXC System, and to each Agency of the uninterrupted operation of the Agency Systems, and each party agrees to arrive at the site as soon as possible after receiving notice of the existence of a problem.

b) Should IXC's right to utilize, in accordance with the terms and conditions of this Agreement, any portion of the Rights-of-Way then designated as an Approved System Segment be challenged by the holder or alleged holder of a property interest in such portion of the Rights-of-Way, each Agency shall defend IXC's right to so utilize such Rights-of-Way and shall take all actions and execute such additional documents which IXC reasonably determines to be necessary in connection with the establishment or defense of IXC's rights under this Agreement.

c) In no event shall any of the Agencies enter, maintain or otherwise have access to the FOC, or the Agency Fibers contained therein, except at the access locations set forth in, and the break-out points designated pursuant to, Articles 3.1(a) and (b), above.

## **ARTICLE 11**

### **IXC UTILITY REQUIREMENTS**

At each Regenerator Site, IXC may have the requirement for utilities such as auxiliary and primary power sources. If the installation of such utilities was omitted from the Working Drawings, and thereby not approved by the appropriate Agency, the installation of such utilities and route of access shall be subject to the approval of the appropriate Agency's Representative, which approval shall not be unreasonably withheld, delayed or conditioned. Each Agency agrees to expedite the granting of any necessary permits and/or easements to utility companies who may request permission to install underground lines under such Agency's Rights-of-Way to Regenerator Sites.

## **ARTICLE 12**

### **RELOCATION**

#### **12.1 Relocation and Improvements.**

a) If at any time after the initial construction of the System IXC determines that the IXC System, or the location thereof, must be changed or altered within the Approved

System Segments because of safety, security or service related reasons, or if IXC otherwise desires to renew, replace, repair or alter any of its structures, properties, facilities or appurtenances or to construct new ones within the Approved System Segments, all such relocations and any such Changes of the type described in clause (i), (ii) or (iii) of Article 5.4(a), above, must first be approved by the affected Agency. If there are any such Changes, IXC, at its sole cost and expense, shall promptly prepare and submit such plans, in writing, to the appropriate Agency for its review and approval. If such plans are approved by the Agency, IXC, at its sole cost and expense, shall complete such Changes and protect or move the affected System Materials in a manner satisfactory to the appropriate Agency's Representative as soon as reasonably practicable, regardless of the availability of federal, state or local financial assistance for such adjustments or relocations.

b) If an Agency determines that any System, or the location thereof, must be changed or altered because of Agency operations or planned operations, or an Agency otherwise desires to renew, replace, repair or alter any of its bridges, culverts, structures, roads, properties, facilities or appurtenances or to construct new ones, such Agency shall promptly notify IXC of such plans. IXC, at its sole cost and expense, shall thereafter protect or move the affected Approved System Segment in a manner reasonably satisfactory to the appropriate Agency's Representative as soon as reasonably practicable. The responsible Agency shall reasonably cooperate and coordinate with IXC in protecting or moving the affected portion of the IXC System so as to ensure that there will be no material interruption or other diminution in the quality of services offered by IXC from such portion of the IXC System.

**12.2 Relocation of Philips Segment.** Each of the parties acknowledges that a portion of the Approved System Segments includes a certain four-inch pipeline for which the Agencies have obtained a license (the "License") from Philips Petroleum Company to install, maintain and operate a fiber optics communications system inside such pipeline. Pursuant to the License, either party thereto has the right to terminate the License on October 31, 1999, or annually thereafter. In order to provide for the uninterrupted operation of the Systems during the term hereof and any renewal term, the parties hereto have agreed as set forth in the letter from OSF to IXC, a copy of which is attached hereto as Exhibit H.

## ARTICLE 13

### TRAFFIC REGULATIONS

**13.1 Access.** All use of the Rights-of-Way shall be designed, made and maintained in accordance with Chapter IV of the current "Manual on Uniform Traffic Control Devices: U.S. Department of Transportation," and any subsequent revisions (the "U.S. Manual"), and Oklahoma Department of Transportation Standards, Edition of 1988, and any subsequent revisions (the "ODOT Standards"). IXC shall not permit any of its vehicles and personnel to block or obstruct any traffic along a turnpike or any interstate or intrastate highway situated within the Rights-of-Way.

**13.2 Traffic Area.** IXC shall keep traffic areas free of excavated material, installation equipment, conduit and other materials and equipment.

**13.3 Traffic Control.** IXC shall be responsible for the placement and cost of all traffic control devices, reasonably required by the Agency, and, in connection therewith, shall comply with the U.S. Manual and ODOT Standards.

**13.4 Highway Safety.** IXC shall operate to avoid, to the extent practicable, actions which could reasonably be expected to endanger the System or the operation of an Agency. IXC shall use all precautions to not knowingly interfere with Agency operations in the Rights-of-Way. An Agency may, at its option, request that employees, agents and contractors of IXC who are or will be involved in the engineering, construction, installation, operation or maintenance of the System be trained in highway safety matters via courses or materials to be offered or provided by the Agency.

## ARTICLE 14

### INSURANCE

**14.1 Required Coverage.** Throughout the term of this Agreement:

a) IXC shall procure and maintain in force, at its own cost and expense, Commercial General Liability insurance, including Automobile/Vehicle Liability for owned non-owned and hired automobiles, covering liability assumed by IXC under this Agreement, including a contractual liability coverage endorsement referring to this Agreement, coverage for contractors, premises operations, explosion, collapse and underground hazard, products liability, completed operations, personal and bodily injury, and broad form commercial general property damage, with a combined single limit of not less than \$10,000,000 for bodily and personal injury (including death) and property damage per occurrence.

b) IXC shall also procure and maintain in force Worker's Compensation Insurance in compliance with statutory requirements and with statutory limits, including an "All States" endorsement, and Employer's Liability Insurance with limits of not less than \$1,000,000.

**14.2 No Waiver of Liability.** The maintenance of the insurance hereinabove specified shall not limit IXC's liability under this Agreement, but shall be additional security therefor.

**14.3 General Conditions.**

a) The limits of the policies required hereunder may be modified from time to time by agreement of the parties to meet changed circumstances, including, but not limited to, changes in the purchasing power of the dollar and in the magnitude of plaintiffs' verdicts in personal injury actions; provided, however, that such limits shall not be modified more frequently than once every five years.

b) All insurance required hereunder shall be effected by valid and enforceable policies issued by insurers licensed to do business in the State of Oklahoma and having ratings of A-IX or better from the Best's Rating Service (or the equivalent rating from a comparable service should the Best ratings be discontinued).

c) To the extent reasonably obtainable, all the policies required hereunder shall contain agreements by the insurers that (i) no act or omission to act by an additional insured shall impair or affect the rights of the insured to receive and collect the proceeds of such policy, and (ii) except in respect of cancellation for non-payment of premium, such policies shall not be canceled or materially changed upon less than 30 days prior written notice to the Agencies.

d) Prior to commencing work hereunder on any Approved System Segment, and at any other time upon the request of an Agency, IXC shall furnish to the requesting Agency certificates of insurance or other evidence thereof attesting that the insurance required under this Article 14 is in effect.

e) Nothing in this Article 14 shall be construed to prevent IXC from satisfying its insurance obligations pursuant to this Agreement under a blanket policy or policies which meets or exceeds the requirements hereof.

## ARTICLE 15

### LIENS OR ENCUMBRANCES

**15.1 Liens and Encumbrances.** IXC shall not permit the creation of any mortgage, pledge, security, interest, lien or encumbrance, including, without limitation, tax liens or encumbrances and liens or encumbrances (collectively, "Liens or Encumbrances"), with respect to work performed or equipment furnished in connection with the construction, installation, repair, maintenance or operation of the System; provided, however, that the existence of such Liens or Encumbrances shall not constitute a violation of this sentence if payment with respect thereto is not yet due and payable; and provided further that IXC shall, after written notice to the Agencies, contest the same or the validity thereof in good faith by appropriate proceedings which shall operate to prevent the collection of such Lien or Encumbrance so contested and the transfer of IXC's or an Agency's interest in this Agreement or any portion thereof to satisfy the same.

**15.2 Ownership of Systems.** Nothing in this Agreement shall be deemed to give, and each Agency hereby expressly waives any claim of, ownership in any part of the IXC System or Agency Fibers. Each Agency hereby agrees that no portion of the IXC System or Agency Fibers shall be or become subject to any Lien or Encumbrance chargeable to or through an Agency, including, without limitation, any collateral under any mortgages, bonds or other indentures of such Agency.

## ARTICLE 16

### TERM OF AGREEMENT

**16.1 Term of Agreement.** The term of this Agreement shall commence at 12:01 a.m. on the Effective Date and shall terminate at 12:01 a.m. on April 1, 2016, unless renewed pursuant to Article 16.2, below, or sooner terminated pursuant to Article 16.3, below.

**16.2 Renewal.** IXC shall have the option to renew this Agreement for one additional 10 year term, which renewal shall commence at 12:01 a.m. on April 1, 2016; provided, however, that IXC's right to renew this Agreement shall be available only if IXC is not in default under any of the material provisions of this Agreement as of the beginning date of such renewal term. This option shall be exercisable by IXC giving written notice of its election to so renew this Agreement to the Agencies by no later than April 1, 2015. The renewal term shall be on the same terms and subject to the same conditions of this Agreement except that IXC shall have no additional right to renew this Agreement after the expiration of the renewal term.

**16.3 Termination.** This Agreement shall terminate upon the happening of any of the following events:

a) Complete abandonment in place of the System by IXC. At such time, the ownership of the System shall immediately and automatically transfer to the Agencies.

b) Written mutual agreement of the parties hereto. At such time, IXC, at its sole cost and expense, shall have the right to either (i) remove IXC facilities and restore the Rights-of-Way to a condition and in a manner reasonably satisfactory to the Agencies, or (ii) abandon the IXC facilities in place.

c) Upon written notice by a party to the other party if such other party is in breach under this Agreement, after the expiration of any applicable cure periods, as provided in Article 17.1, below.

**16.4 Effect on Obligations.** Termination of this Agreement pursuant to this Article 16 shall terminate all obligations of the parties hereunder and this Agreement shall become void and have no effect without any liability on the part of any party, except for the obligations of the parties under Article 21, below.

## ARTICLE 17

### BREACH; REMEDIES

#### **17.1 Breach.**

a) Upon the occurrence of a breach by a party of any of its obligations under this Agreement, IXC and the Agencies each agree that neither shall proceed against the other by

litigation or otherwise before the breaching party has had written notice of and 30 calendar days to respond to and cure such breach, or, if any such breach is not reasonably capable of being cured within such 30-day period, the breaching party has responded to, and is diligently pursuing cure of, such breach, in which case the 30-day period shall be extended for a reasonable amount of time in which to allow the breaching party to effect such cure. Notwithstanding the foregoing, neither party shall be required to give the other time to respond to and cure if any such delay will cause immediate and irreparable harm to the nonbreaching party.

b) For purposes of Article 17(a), above, only (i) a substantial noncompliance or, (ii) a series of a repeated noncompliance which of itself might be considered minor or singular, shall constitute a breach by a party under this Agreement.

**17.2 Remedies.** Each and every remedy shall be cumulative and shall be in addition to every other remedy now or hereafter existing at law or in equity or by statute or otherwise. Remedies available to each party shall include, but not be limited to, (a) termination under Article 16.3(c), above, (b) specific performance in equity, and (c) an action for damages and costs.

## ARTICLE 18

### REPRESENTATIONS AND WARRANTIES

**18.1 General Authority of IXC.** IXC represents and warrants to the Agencies that (a) it has full right and authority, including any requisite corporate, governmental and third party approvals, to enter into and to perform its respective obligations under this Agreement; (b) the execution of this Agreement does not violate its charter, by-laws or any law, regulation or agreement by which it is bound or to which it is subject; and (c) no litigation or governmental proceeding is pending or, to its knowledge, is threatened which might adversely affect this Agreement, the transactions contemplated by this Agreement, or the rights of the Agencies hereunder.

**18.2 General Authority of Agencies.** Each Agency represents and warrants to IXC that (a) it has full right and authority, including any requisite corporate, governmental and third party approvals, to enter into and to perform its respective obligations under this Agreement; (b) the execution of this Agreement does not violate (i) its charter or by-laws, (ii) any rule, order or regulation applicable to such Agency which has not been waived, or (iii) to its knowledge, without having conducted any independent investigation, any license, permit, property interest conveyance, franchise or right of way which may adversely affect IXC's use of the Rights-of-Way or its right to grant the privileges herein provided for; (c) no litigation or governmental proceeding is pending or, to its knowledge, is threatened which might adversely affect this Agreement, the transactions contemplated by this Agreement, or the rights of the parties hereunder; and (d) to its knowledge, without having conducted any independent investigation, the Agencies collectively own all requisite right, title and interest (by fee, license, grant or other interest) in and to the Rights-of-Way, free and clear of any applicable lien, charge, mortgage,

pledge, security interest, restrictions or other encumbrance of any kind, in order to grant IXC such privileges and to perform all of their other obligations under this Agreement.

## ARTICLE 19

### TAXES AND OTHER CHARGES

IXC agrees that if it is determined by any state or local government authority that the privileges granted herein require the payment of any tax (including sales or use tax) under any state or federal statute, regulation or rule, IXC shall pay the same, plus any penalty or interest thereon, directly to said taxing authority and shall hold the Agencies harmless therefrom. IXC shall pay all annual or periodic taxes levied or assessed upon IXC's System or on account of their existence or use, and shall indemnify the Agencies against the payment thereof.

## ARTICLE 20

### INDEPENDENT CONTRACTOR STATUS

The Agencies and IXC acknowledge and agree that they reserve no control whatsoever over the employment, discharge, compensation of, or services rendered by the employees or contractors of the other party, notwithstanding the ability of the parties under this Agreement to exercise certain rights to enforce the various standards and specifications agreed upon pursuant to this Agreement. Nothing in this Agreement shall be construed as inconsistent with the foregoing independent contractor status or relationship or as creating or implying any partnership or joint venture between IXC and an Agency.

## ARTICLE 21

### INDEMNIFICATION; LIMITATION OF LIABILITY

**21.1 Indemnification by IXC.** Subject to Articles 21.2 and 21.3, below, IXC, as a further consideration and as a condition without which this Agreement would not have been executed and delivered by the Agencies, agrees to indemnify, defend and save harmless the Agencies, and their respective officers, employees and agents, and to assume all responsibility and liability for death of, or injury to any persons, including but not limited to, officers, employees, agents, patrons, invitees or licensees of the parties hereto and for loss, damage or injury to any property, including, but not limited to, that belonging to the Agencies, together with all liability for any expenses, reasonable attorneys' fees and costs incurred or sustained by the Agencies, arising from or growing out of, or in any manner or degree directly or indirectly caused by, attributable to, or resulting from: (a) IXC's design, construction, installation, repair, maintenance and operation of the IXC System; (b) IXC's design, construction, installation, repair and maintenance of the Agency Fibers; (c) IXC's design, construction and installation of the OTA

Equipment and the ODOT Equipment; and (d) IXC's use and/or occupancy of the Approved System Segments. At the election of the Agencies, IXC, upon receipt of notice to that effect, shall assume or join in the defense of any claim based on allegations purporting to bring said claim within the coverage of this Article 21.1.

**21.2 Exception to Indemnification.** Notwithstanding anything to the contrary in Article 21.1, above, IXC shall not be obligated to indemnify, defend and save harmless an Agency for any claim arising from or in connection with any gross negligence or intentional misconduct of the Agency or of any agent, servant or employee of such Agency.

**21.3 Warranty; Limitation of Liability.**

a) OTHER THAN SET FORTH IN ARTICLE 6.4, ABOVE, IXC MAKES NO OTHER WARRANTY TO THE AGENCIES OR ANY OTHER PERSON, WHETHER EXPRESS, IMPLIED OR STATUTORY, AS TO THE QUALITY, MERCHANTABILITY, COMPLETENESS OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE AGENCY FIBERS OR THE AGENCY SYSTEMS PROVIDED HEREUNDER OR DESCRIBED HEREIN, ALL OF WHICH WARRANTIES BY IXC ARE HEREBY EXCLUDED AND DISCLAIMED.

b) IXC'S SOLE LIABILITY TO THE AGENCIES OR ANY THIRD PARTY FOR ALL CLAIMS (WHETHER BASED ON BREACH OF CONTRACT, TORT OR OTHERWISE) ARISING OUT OF A BREACH OF ARTICLE 6.4 SHALL BE LIMITED TO IXC'S CORRECTION OF SUCH ERRORS OR OMISSIONS.

c) IN NO EVENT SHALL ANY PARTY BE RESPONSIBLE FOR SPECIAL, INDIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES, INCLUDING, WITHOUT LIMITATION, INTERRUPTION, DISCONTINUANCE OR INTERFERENCE WITH ANOTHER PARTY'S SERVICE UNDER OR IN CONNECTION WITH THE OTHER PARTY'S SYSTEM, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**ARTICLE 22**

**ENVIRONMENTAL MATTERS**

**22.1 Notice Requirements.** Upon learning of any hazardous or toxic waste areas within an Approved System Segment or any other portion of the Rights-of-Way which would adversely affect or interfere with the exercise of IXC's rights hereunder, each party agrees to promptly inform the other of the existence of such hazardous or toxic waste condition.

**22.2 Alternate Locations.** Upon learning of any such hazardous or toxic waste condition on Rights-of-Way areas within which a System is intended to be or is located, the applicable Agency shall, to the extent available to it, offer IXC, without payment of any

additional consideration therefor, alternate contiguous areas within which the System may be relocated to avoid such hazardous or toxic waste areas.

## ARTICLE 23

### MISCELLANEOUS

**23.1 Entire Agreement.** This Agreement sets forth the entire agreement between the parties with regard to the subject matter of this Agreement. All agreements, covenants, representations and warranties, express or implied, oral and written, of the parties with regard to the subject matter of this Agreement are contained in this Agreement, the Exhibits hereto, and the documents referred to or implementing the provisions of this Agreement. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made by either party to the other with respect to the subject matter of this Agreement. This is an integrated agreement.

**23.2 Governing Law and Choice of Forum.** The validity, construction and performance of this Agreement, and any action arising out of or relating to this Agreement shall be governed by the laws, without regard to the Laws as to choice or conflict of laws, of the State of Oklahoma.

**23.3 Waiver and Amendment.** Any waiver by any party at any time of any of its rights as to anything herein contained shall not be deemed to be a waiver of any breach of covenant or other matter subsequently occurring. This Agreement may be amended, supplemented, modified and/or rescinded only through an express written instrument signed by all parties or their respective successors and permitted assigns

**23.4 Assignment.** Except as provided below, no party shall assign or otherwise transfer this Agreement or its rights or obligations hereunder to any other party without the prior written consent of the other parties; provided, however, that IXC may sell, lease or otherwise transfer all or a portion of its right, title or interest in any of the FOC fibers (other than the Agency Fibers) without the consent of any of the Agencies. Notwithstanding such sale, lease or other transfer, IXC acknowledges and agrees that it shall continue to be responsible for the prompt and faithful performance of all of its duties and obligations under this Agreement. IXC shall have the right, without the Agencies' consent, to assign or otherwise transfer this Agreement as collateral to any lender or to any parent, subsidiary or affiliate of IXC or to any person, firm or corporation which shall control, be under the control of or be under common control with IXC, or any corporation into which IXC may be merged or consolidated or which purchases all or substantially all of the assets of IXC; provided, however, that any such assignment or transfer shall be subject to the Agencies' rights under this Agreement and any assignee or transferee shall continue to perform IXC's obligations to the Agencies under the terms and conditions of this Agreement; provided further, that IXC shall continue to be responsible for the prompt and faithful performance of all of its duties and obligations under this Agreement.

**23.5 Successors and Assigns.** Each of the terms, provisions and obligations of this Agreement shall be binding upon, shall inure to the benefit of, and shall be enforceable by the parties and their respective legal representative, successors and permitted assigns.

**23.6 Notices.** Unless otherwise provided herein, all notices and communications concerning this Agreement shall be addressed to the other party as follows:

If to IXC:

IXC Carrier Inc.  
Attn.: Vice President - Engineering  
5000 Plaza on the Lake  
Suite 200  
Austin, TX 78746  
Facsimile No.: (512) 328-0239

with a copy to:

Carl W. McKinzie, Esq.  
Riordan & McKinzie  
300 S. Grand Avenue  
29<sup>th</sup> Floor  
Los Angeles, CA 92626  
Facsimile No.: (213) 229-8550

If to the Agencies:

Mr. Gary Brown  
Director of Information and  
Communication Services  
Oklahoma Turnpike Authority  
3500 Martin Luther King Avenue  
Oklahoma City, Oklahoma 73111  
Facsimile No.: (405) 427-8246

or at such other address as may be designated in writing to the other party.

Unless otherwise provided herein, notices shall be sent by registered or certified U.S. Mail, postage prepaid, or by commercial overnight delivery service, or by facsimile, and shall be deemed served or delivered to the addressee or its office on the date of return receipt acknowledgment or, if postal claim notices are given, on the date of its return marked "unclaimed," provided, however, that upon receipt of a returned notice marked "unclaimed," the sending party shall make reasonable effort to contact and notify the other party by telephone.

**23.7 Severability.**

a) This Agreement is executed by all parties under current interpretations of applicable federal, state or local statute, ordinance, law or regulations.

b) Each and every separate division (paragraph, clause, item, term, condition, covenant or agreement) herein contained shall have independent and severable status from each other separate division or combination thereof, for the determination of legality, so that if any separate division herein is determined to be unconstitutional, illegal, violative of trade or commerce, in contravention of public policy, void, voidable, invalid or unenforceable for any reason, that separate division shall have no effect upon the validity or enforceability of each and every other separate division herein contained, or any other combination thereof.

**23.8 Further Action.** Each party agrees to perform any further acts and to execute and delivery any other documents which may be reasonably necessary to effect the provisions of this Agreement.

**23.9 Warranty of Authority.** Each of the individuals signing this Agreement on behalf of a party warrants and represents that such individual is duly authorized and empowered to enter into this Agreement and bind such party.

[rest of page intentionally left blank]

23.10 **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute a single agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed.

IXC CARRIER, INC.

By:   
Title: E.V.P.

OKLAHOMA OFFICE OF STATE FINANCE

By:   
Title: Director

OKLAHOMA TURNPIKE AUTHORITY

By:   
Title: Director

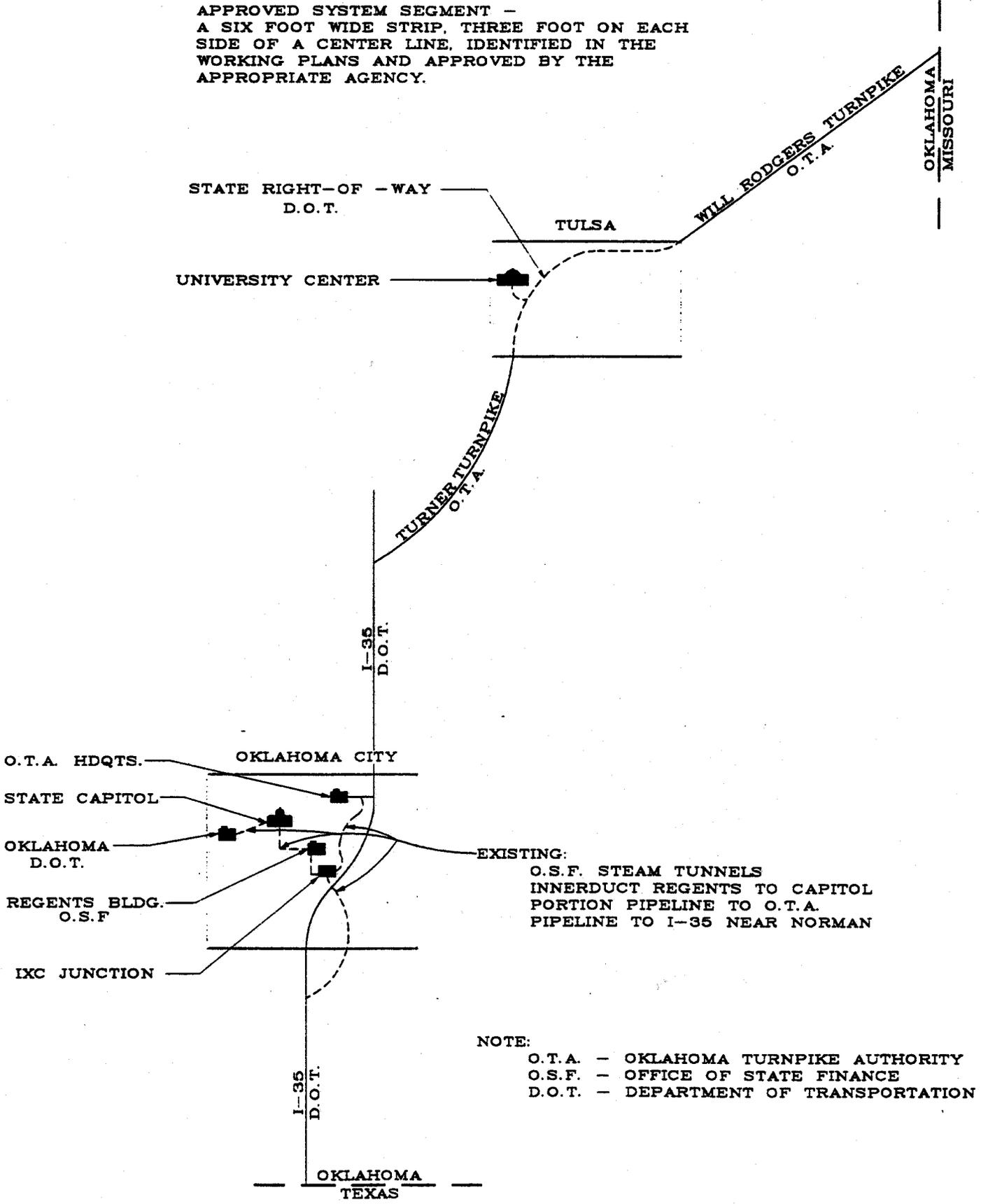
OKLAHOMA DEPARTMENT OF TRANSPORTATION

By:   
Title: Deputy Director

# EXHIBIT "A"

## APPROVED SYSTEM SEGMENTS

APPROVED SYSTEM SEGMENT -  
 A SIX FOOT WIDE STRIP, THREE FOOT ON EACH  
 SIDE OF A CENTER LINE, IDENTIFIED IN THE  
 WORKING PLANS AND APPROVED BY THE  
 APPROPRIATE AGENCY.



**EXHIBIT "B"**  
**RIGHTS OF WAY**

**Oklahoma Turnpike Authority**

1. Turner Turnpike
2. Will Rodgers Turnpike
3. Conduits and innerducts in headquarters complex.
4. Other facilities as available along turnpikes required for the system.

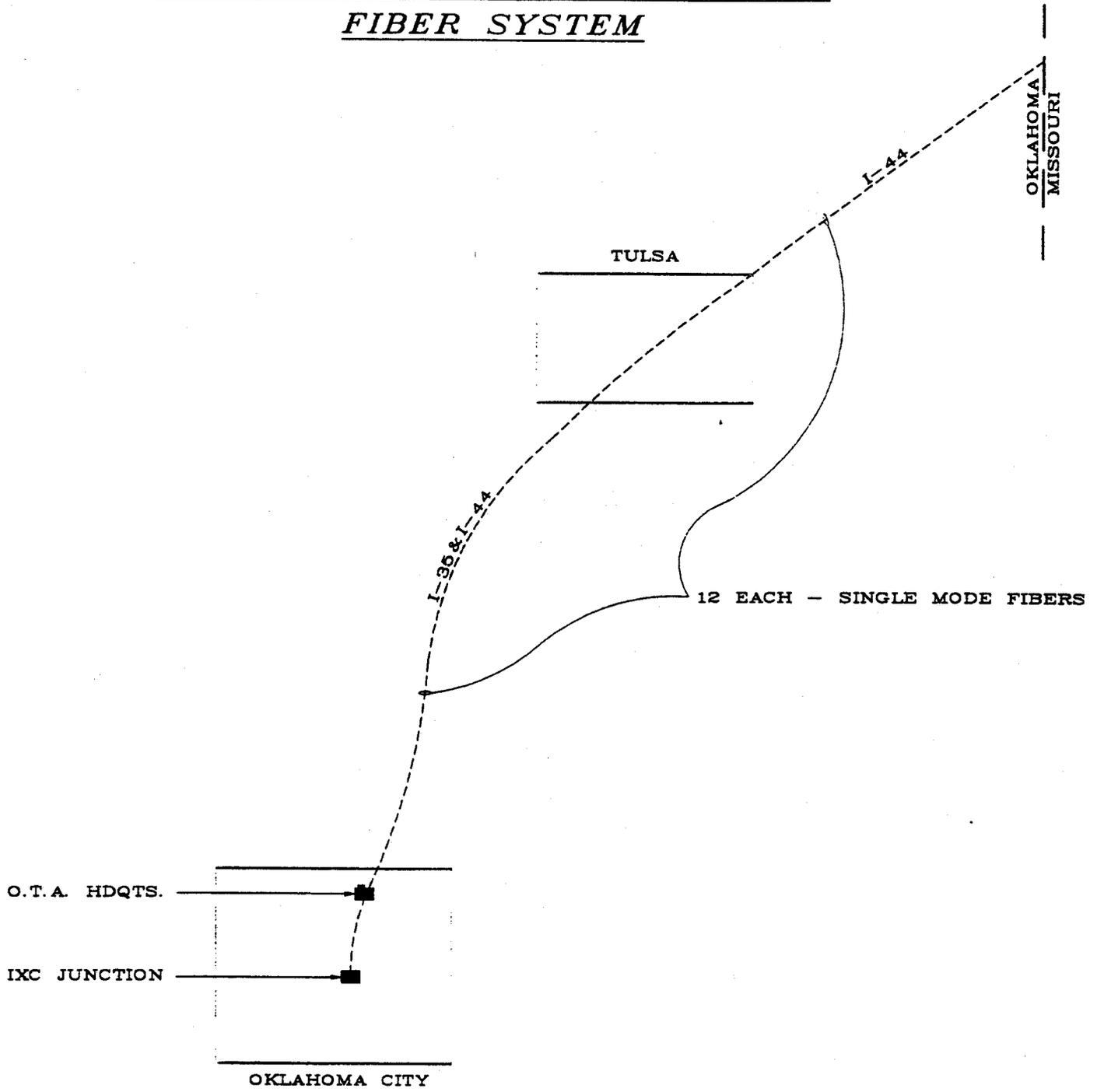
**Office of State Finance**

1. Pipeline and other facilities from O.T.A. complex to downtown Oklahoma City.
2. Pipeline from Oklahoma City to crossing I-35 south near Norman.
3. Innerduct from near Regents building to Capitol complex.
4. Steam Tunnel Systems from Health Department area to Regents area, existing Innerduct system to Capitol Steam Tunnel System from Capitol to Oklahoma D.O.T.
5. Pedestrian tunnel from east Capitol parking into Capitol.
6. Conduit into State building in Tulsa.
7. Other state facilities as available along turnpikes and roadways required for the system.

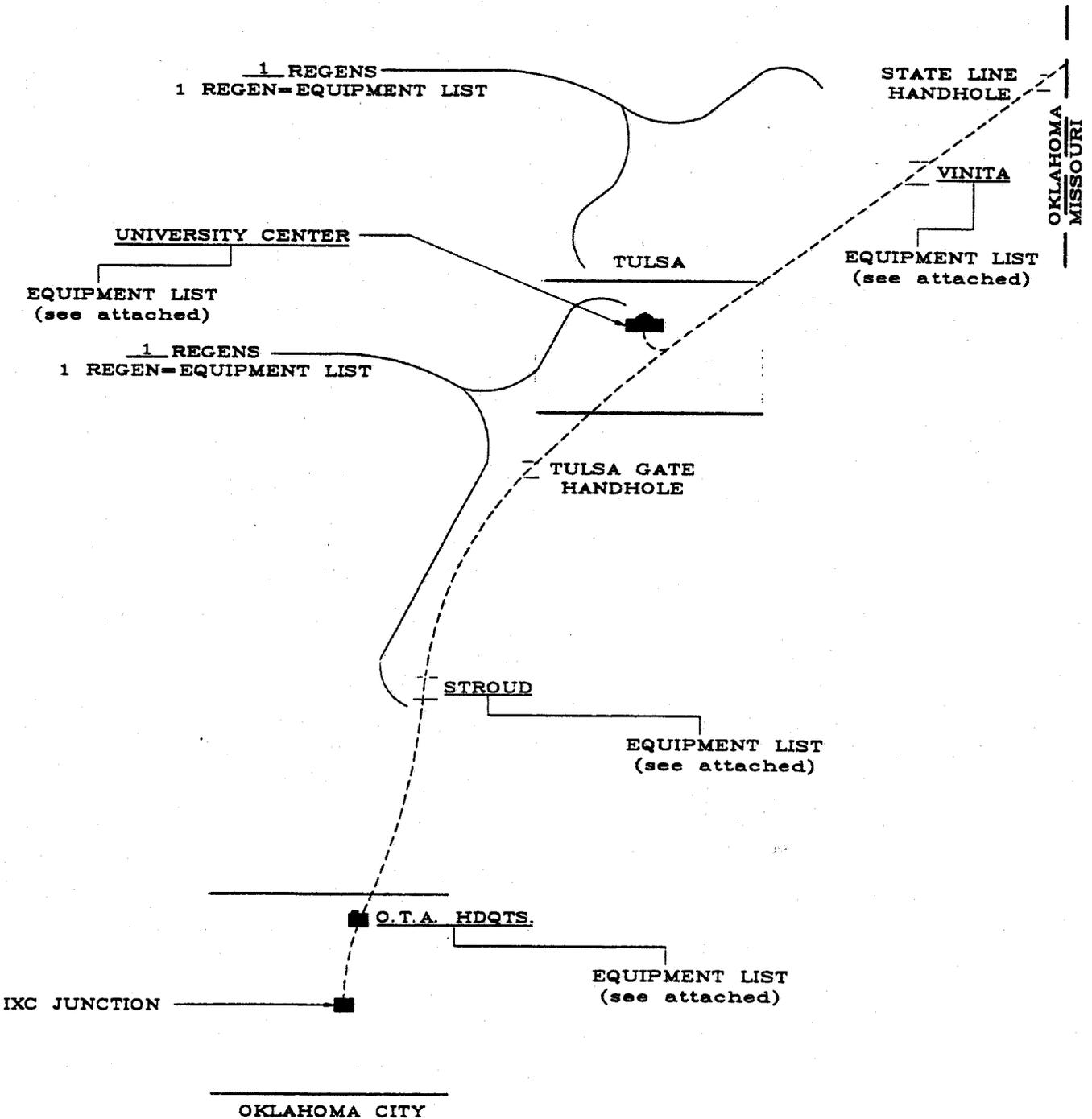
**Oklahoma D.O.T.**

1. State Right-Of-Way as required thru Tulsa.
2. Parts of I-35 Right-Of-Way from Turner Turnpike to O.T.A. continuing into Oklahoma City.
3. I-35 Right-Of-Way from O.S.F. pipeline crossing near Norman to Texas state line.
4. Other facilities as available along turnpikes required for the system.

**EXHIBIT "C"**  
**OKLAHOMA TURNPIKE AUTHORITY**  
**FIBER SYSTEM**



**EXHIBIT "D"**  
**OKLAHOMA TURNPIKE AUTHORITY**  
**EQUIPMENT**



Location

Vinita (OTA)

System #2: 1612 SM e/w 3 DS3 (Protected LS/HS)

<u>Item</u>	<u>Description</u>	<u>Part Number</u>	<u>Quantity</u>
1	Engineered Rack	600001-850-001	1
2	SW, ADM/TERM - R 4.0 ADL 4.0	3AL02261AB	1
3	1603/12 System Library R4.0	650205-823-077	1
4	Power Supply PWRA01	600308-393-001	3
5	4-DS3/STS-1 Cable Expan. 36"	601303-540-036	1
6	Panel, Coax I/O CIOP101	602407-536-001	1
7	Clock, Plug in CLK202 R3.1	3AL00124AB	2
8	Line Driver/Receiver LDR101	3AL00290AA	6
9	Cross Conn - 84VT/STS VSCC301	3AL00262AA	2
10	DS3/STS1 Interface LIF501	3AL00224AA	2
11	Network Element Processor NEP302 R3.1	3AL00250AB	2
12	12V 30 AH BATTERY (RCP CAB)	221-0131-070	4
13	1301NM Core/Openview-R4.03	694-7706-043	1
14	1603/12 System Library R4.0	650205-823-077	1
15	Cable, FC/PC to FC/PC	640101-547-005	2
16	Craft, Orderwire & Alarm COA501	3AL00324AA	1
17	DS-3/4 CH (Telect) 010-0000-1750	6V0000-095-XXX	1
18	DS-3/4 MD (Telect) 010-9201-0411	6V0000-095-XXX	3
19	MZ2A50 Rect. Card	126-3471-060	2
20	RCP-328 INDOOR CABINET	695-0273-300	1
21	Shelf, Shared Power SP101	625640-000-001	1
22	Tx/Rx, 1550 NM IR-FC HIFA01	3AL02056AA	2

Location

Repeater (OTA) Outdoor Cabinet

System #2: 1612 SM Rptr (Protected HS)

<u>Item</u>	<u>Description</u>	<u>Part Number</u>	<u>Quantity</u>
1	Engineered Rack	600001-850-001	1
2	SW, ADM/TERM - R 4.0 ADL 4.0	3AL02261AB	1
3	Power Supply PWRA01	600308-393-001	3
4	1603/12 System Library R4.0	650205-823-077	1
5	ATT IR40C BATTERY (TYPE 30)	221-0131-080	4
6	Cable, FC/PC to FC/PC	640101-547-005	4
7	Clock, Plug in CLK202 R3.1	3AL00124AB	2
8	Craft, Orderwire & Alarm COA501	3AL00324AA	1
9	Cross Conn - 84VT/STS VSCC301	3AL00262AA	2
10	LOR 4272-152-00 FAN MOD (30)	1AF-00581-AAAA	2
11	LOR 4865-236-00 RECT MOD (30)	1AF-00580-AAAA	2
12	LORAIN MX2A50 RECT MOD (30)	126-3471-060	1
13	Network Element Processor NEP302 R3.1	3AL00250AB	2
14	Shelf, Shared Power SP101	625640-000-001	1
15	Tx/Rx, 1550 NM IR-FC HIFA01	3AL02056AA	2
16	TYPE 30 HSG W/COOLER	600006-901-902	1
17	TYPE 30 PAD MTG KIT	600702-706-001	1
18	TYPE 30 PED MTG KIT	600411-700-001	1
19	ADC FIPL-2PISU08	6V0000-095-366	1
20	Fan Assy w/o Filter FAN102	625052-000-002	1

Location

University Center (OTA)

System #2: 1612 SM e/w 3 DS3 (Protected LS/HS)

<u>Item</u>	<u>Description</u>	<u>Part Number</u>	<u>Quantity</u>
1	Engineered Rack	600001-850-001	1
2	SW, ADM/TERM - R 4.0 ADL 4.0	3AL02261AB	1
3	12V 30 AH BATTERY (RCP CAB)	221-0131-070	4
4	1603/12 System Library R4.0	650205-823-077	1
5	4-DS3/STS-1 Cable Expan. 36"	601303-540-036	1
6	Cable, FC/PC to FC/PC	640101-547-005	4
7	Clock, Plug in CLK202 R3.1	3AL00124AB	2
8	Craft, Orderwire & Alarm COA501	3AL00324AA	1
9	Cross Conn - 84VT/STS VSCC301	3AL00262AA	2
10	DS-3/4 CH (Telect) 010-0000-1750	6V0000-095-XXX	1
11	DS-3/4 MD (Telect) 010-9201-0411	6V0000-095-XXX	3
12	DS3/STS1 Interface LIF501	3AL00224AA	2
13	Line Driver/Receiver LDR101	3AL00290AA	6
14	MZ2A50 Rect. Card	126-3471-060	2
15	Network Element Processor NEP302 R3.1	3AL00250AB	2
16	Panel, Coax I/O CIOP101	602407-536-001	1
17	Power Supply PWRA01	600308-393-001	3
18	RCP-328 INDOOR CABINET	695-0273-300	1
19	Shelf, Shared Power SP101	625640-000-001	1
20	Tx/Rx, 1550 NM IR-FC HIFA01	3AL02056AA	4

Location

Repeater (OTA) Outdoor Cabinet

System #2: 1612 SM Rptr (Protected HS)

<u>Item</u>	<u>Description</u>	<u>Part Number</u>	<u>Quantity</u>
1	Engineered Rack	600001-850-001	1
2	SW, ADM/TERM - R 4.0 ADL 4.0	3AL02261AB	1
3	Power Supply PWRA01	600308-393-001	3
4	1603/12 System Library R4.0	650205-823-077	1
5	ATT IR40C BATTERY (TYPE 30)	221-0131-080	4
6	Cable, FC/PC to FC/PC	640101-547-005	4
7	Clock, Plug in CLK202 R3.1	3AL00124AB	2
8	Craft, Orderwire & Alarm COA501	3AL00324AA	1
9	Cross Conn - 84VT/STS VSCC301	3AL00262AA	2
10	LOR 4272-152-00 FAN MOD (30)	1AF-00581-AAAA	2
11	LOR 4865-236-00 RECT MOD (30)	1AF-00580-AAAA	2
12	LORAIN MX2A50 RECT MOD (30)	126-3471-060	1
13	Network Element Processor NEP302 R3.1	3AL00250AB	2
14	Shelf, Shared Power SP101	625640-000-001	1
15	Tx/Rx, 1550 NM IR-FC HIFA01	3AL02056AA	2
16	TYPE 30 HSG W/COOLER	600006-901-902	1
17	TYPE 30 PAD MTG KIT	600702-706-001	1
18	TYPE 30 PED MTG KIT	600411-700-001	1
19	ADC FIPL-2PISU08	6V0000-095-366	1
20	Fan Assy w/o Filter FAN102	625052-000-002	1

## Location

OKC - OTA Headquarters

System #2: 1612 SM e/w 3 DS3 (Protected LS/HS)

<u>Item</u>	<u>Description</u>	<u>Part Number</u>	<u>Quantity</u>
1	Engineered Rack	600001-850-001	1
2	SW, ADM/TERM - R 4.0 ADL 4.0	3AL02261AB	1
3	1603/12 System Library R4.0	650205-823-077	1
4	Power Supply PWRA01	600308-393-001	3
5	4-DS3/STS-1 Cable Expan. 36"	601303-540-036	1
6	Panel, Coax I/O CIOP101	602407-536-001	1
7	Clock, Plug in CLK202 R3.1	3AL00124AB	2
8	Line Driver/Receiver LDR101	3AL00290AA	6
9	Cross Conn - 84VT/STS VSCC301	3AL00262AA	2
10	DS3/STS1 Interface LIF501	3AL00224AA	2
11	Network Element Processor NEP302 R3.1	3AL00250AB	2
12	12V 30 AH BATTERY (RCP CAB)	221-0131-070	4
13	1301NM Core/Openview-R4.03	694-7706-043	1
14	1603/12 System Library R4.0	650205-823-077	1
15	Cable, FC/PC to FC/PC	640101-547-005	4
16	Craft, Orderwire & Alarm COA501	3AL00324AA	1
17	DS-3/4 CH (Telect) 010-0000-1750	6V0000-095-XXX	1
18	DS-3/4 MD (Telect) 010-9201-0411	6V0000-095-XXX	3
19	MZ2A50 Rect. Card	126-3471-060	2
20	RCP-328 INDOOR CABINET	695-0273-300	1
21	Shelf, Shared Power SP101	625640-000-001	1
22	Tx/Rx, 1550 NM IR-FC HIFA01	3AL02056AA	2

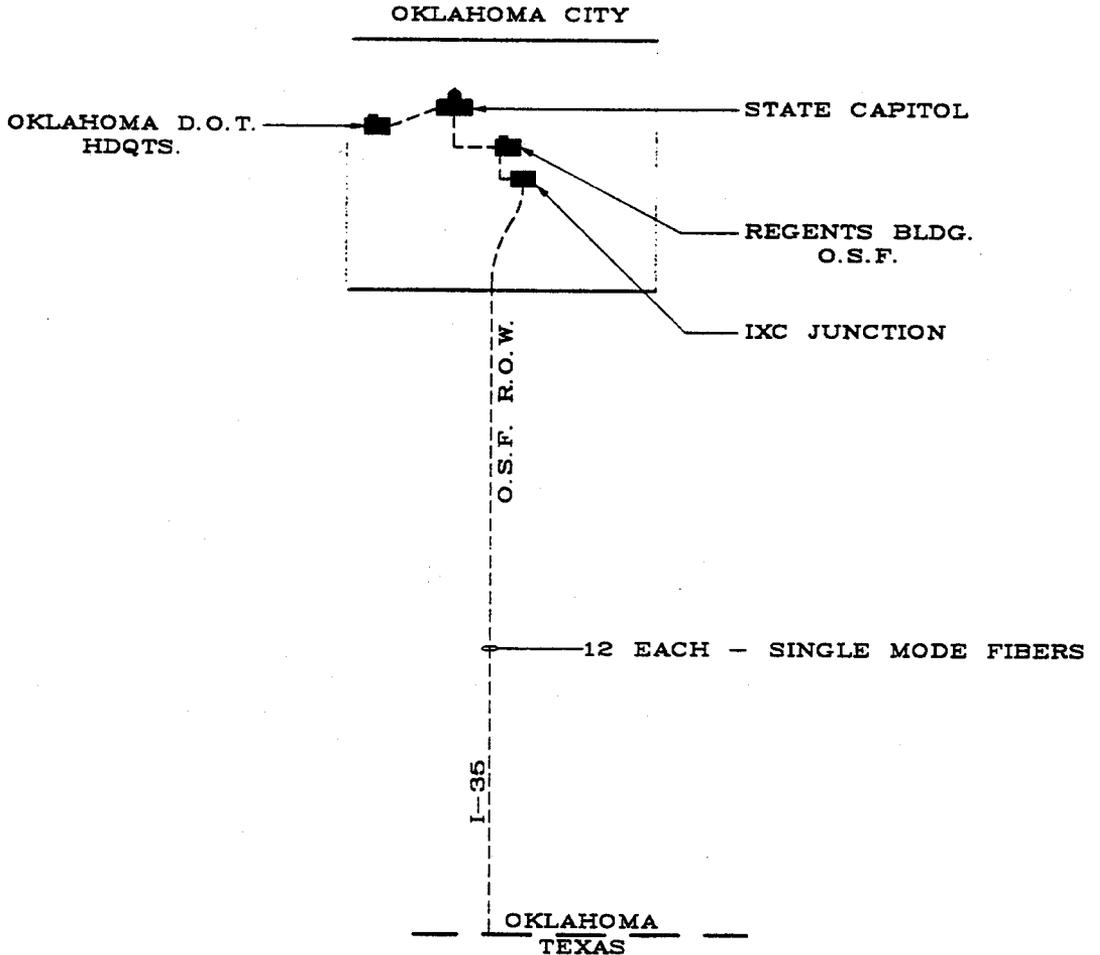
## Location

Stroud (OTA)

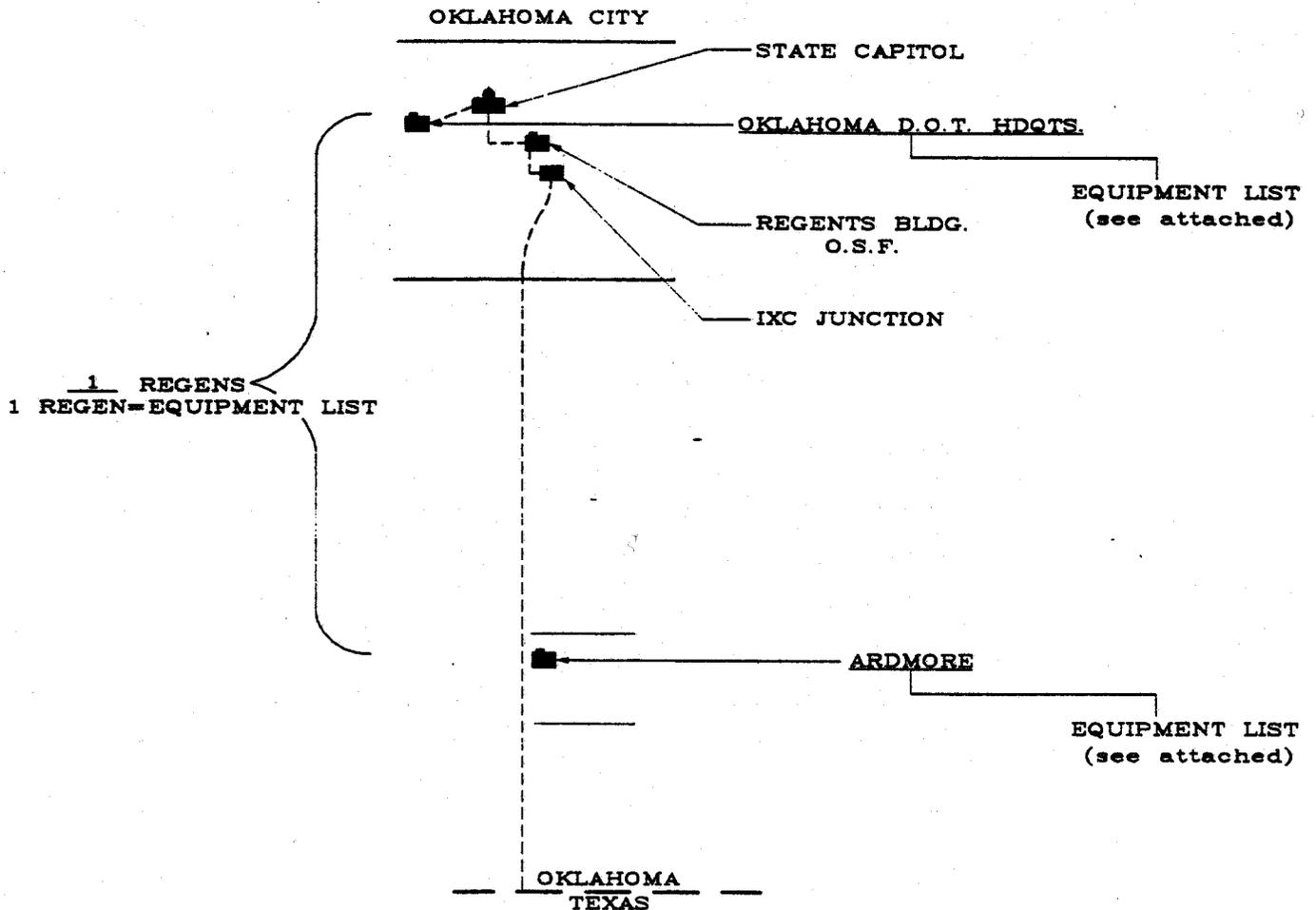
System #2: 1612 SM e/w 3 DS3 (Protected LS/HS)

<u>Item</u>	<u>Description</u>	<u>Part Number</u>	<u>Quantity</u>
1	Engineered Rack	600001-850-001	1
2	SW, ADM/TERM - R 4.0 ADL 4.0	3AL02261AB	1
3	12V 30 AH BATTERY (RCP CAB)	221-0131-070	4
4	1603/12 System Library R4.0	650205-823-077	1
5	4-DS3/STS-1 Cable Expan. 36"	601303-540-036	1
6	Cable, FC/PC to FC/PC	640101-547-005	4
7	Clock, Plug in CLK202 R3.1	3AL00124AB	2
8	Craft, Orderwire & Alarm COA501	3AL00324AA	1
9	Cross Conn - 84VT/STS VSCC301	3AL00262AA	2
10	DS-3/4 CH (Telect) 010-0000-1750	6V0000-095-XXX	1
11	DS-3/4 MD (Telect) 010-9201-0411	6V0000-095-XXX	3
12	DS3/STS1 Interface LIF501	3AL00224AA	2
13	Line Driver/Receiver LDR101	3AL00290AA	6
14	MZ2A50 Rect. Card	126-3471-060	2
15	Network Element Processor NEP302 R3.1	3AL00250AB	2
16	Panel, Coax I/O CIOP101	602407-536-001	1
17	Power Supply PWRA01	600308-393-001	3
18	RCP-328 INDOOR CABINET	695-0273-300	1
19	Shelf, Shared Power SP101	625640-000-001	1
20	Tx/Rx, 1550 NM IR-FC HIFA01	3AL02056AA	4

**EXHIBIT "E"**  
**OKLAHOMA DEPARTMENT OF TRANSPORTATION**  
**FIBER SYSTEM**



**EXHIBIT "F"**  
**OKLAHOMA DEPARTMENT OF TRANSPORTATION**  
**EQUIPMENT**



## ***EXHIBIT "G"***

### ***EQUIPMENT AND LABOR RATES***

- BACKHOE/OPERATOR \$100/HR
- LABORER \$ 30/HR
- SPLICER/EQUIPMENT \$ 80/HR
- OPS. TECH \$ 50/HR



STATE OF OKLAHOMA  
OFFICE OF STATE FINANCE

May 14, 1996

Chester Mallett  
Manager, Facilities and Construction  
IXC Carrier Group, Inc.  
5000 Plaza on the Lake  
Suite 200  
Austin, Texas 78746-1050

Dear Mr. Mallett:

The State of Oklahoma currently owns the Phillips Petroleum Pipeline which houses the state's fiber optic cable plant. In 1989 an agreement was negotiated with Phillips Petroleum Co. which granted the usage of rights-of-way for a period of ten years, and then reverts to a year to year basis which contains the same cancellation clause as the original contract. It is a four (4) inch pipeline located and described as follows:

Line "0-1" from a point in the North half (N 1/2) of Section twenty-four (24), Township 12 North, Range 3 West, to a point in the North half (N 1/2) of the Southwest quarter (SW 1/4) of Section one (1), Township 11 North, Range 3 West, all in Oklahoma County, Oklahoma;

Line "0-3" from a point in the North half (N 1/2) of the Southwest quarter (SW 1/4) of Section one (1), Township 11 North, Range 3 West to a point in the Northwest quarter (NW 1/4) of the Southwest quarter (SW 1/4) of Section thirty-two (32), Township 11 North, Range 2 West, Oklahoma County, Oklahoma;

Line "GRW-50" from a point in the Northwest quarter (NW 1/4) of the Southwest quarter (SW 1/4) of Section thirty-two (32), Township 11 North, Range 2 West, Oklahoma County, Oklahoma, to a point in the Northwest quarter (NW 1/4) of Section nine (9), Township 8 North, Range 3 West, McClain County, Oklahoma.

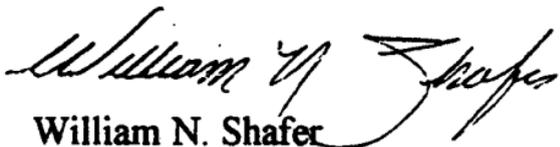
IXC can use the pipeline under the same agreement that has been provided to the State of Oklahoma and it is the intent of the State to work with the Phillips Petroleum Co. to secure a new long term contract for rights-of-way prior to the end of the ten year contract period.

The pipeline currently in use is critical to State operations, in the event of cancellation by either party the State will provide an alternative route which will be made available and any new routing of installed cable will include the IXC installation.

The utilization of the pipeline by IXC is furnished under the same terms and conditions that are defined in the existing Phillips Petroleum Contract, that was previously furnished to you by Fax, therefore, if it is necessary to re-route or move the facilities it will be the responsibility of the State of Oklahoma.

If there are any further questions in reference to this matter, let me know.

Sincerely,

A handwritten signature in cursive script that reads "William N. Shafer". The signature is written in black ink and is positioned above the printed name.

William N. Shafer  
Director, Information Services Division