

APPENDIX E

MASTER OPTICAL FIBER AND FACILITIES LEASE

PORT OF BELLINGHAM

THIS LEASE AND AGREEMENT, EFFECTIVE as of the date it is fully executed (the "Effective Date") by and between the PORT OF BELLINGHAM (hereinafter referred to as the "PORT" or "OWNER"), and _____, a _____ corporation, organized under the laws of the State of Washington, (hereinafter referred to as the "COMPANY").

RECITALS:

The PORT owns and maintains an optical fiber system and facilities, (herein the "System") within and without the PORT district for the purposes of providing wholesale telecommunication services within the district.

The COMPANY is authorized to provide telecommunication services to the general public and internet service providers and will not be the end user of the PORT's optical fiber and facilities leased to it.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements set forth in this Lease, the Parties hereto do hereby covenant and agree as follows:

1. OVERVIEW:

This Lease states the general terms, covenants and conditions by which the PORT will lease to the COMPANY optic fiber and facilities and provide services, identified and detailed in the associated Service Order Summary. This Lease is intended to cover any and all

facilities and services to be provided by the PORT to the COMPANY. COMPANY may use the PORT's fiber and facilities only for authorized and lawful purposes.

2. PAYMENT AND USE (SERVICE ORDER SUMMARY):

The COMPANY covenants and agrees to accept and pay for, and the PORT agrees to provide the facilities and fiber and services specified in each Service Order Summary, for the term specified therein. The COMPANY'S use of the System shall include the sale of telecommunication services within the PORT district. The PORT reserves the right to limit the manner in which any portion of its System and facilities are used to protect the technical integrity of the System.

3. FIBER SYSTEM SPECIFICATIONS:

3.1 Optical Fiber Specifications: Optical fiber within the System will meet the specifications set forth below and measurable by optical time domain reflectometer ("OTDR"):

<u>Parameter</u>	<u>Specifications</u>	<u>Units</u>
Maximum attenuation,	1310nm (A1)	.50 dB/km
Maximum attenuation,	1550nm (A2)	.40 db/km
Cladding diameter	125 +-3	nm
Cutoff Wavelength	1250 +-100	nm
Zero dispersion wavelength	1310 +-12	nm
Maximum dispersion	(1285-1330nm) 3.5 ps/nm km	

Reference: EIA RS-455 test method

3.2 The COMPANY shall have the right at its expense to test the leased fiber any time three (3) days prior to the commencement of use for compliance with the technical specifications set forth above. Upon completion of testing, the COMPANY shall either send an acceptance notice to the PORT acknowledging the acceptance of the Leased Fibers as tested or notify the PORT that the Leased Fibers do not comply with the technical specifications. By sending an acceptance notice, the COMPANY acknowledges that the Leased Fibers listed in the notice comply with the applicable technical specifications. If the COMPANY fails to provide any notice within the three (3) days provided, then the COMPANY shall be deemed to have accepted the fibers.

3.3 In the event the result of any test performed in accordance with Section 3.2 herein shows that the fiber(s) are not operating in accordance with the technical specifications, the PORT shall promptly take action that is reasonable to bring the fiber(s) into compliance and shall notify the COMPANY when the PORT believes that the fiber(s) comply with the technical specifications. The COMPANY shall have ten (10) days following such notice to retest the fiber(s) and again notify the PORT that the fiber(s) are accepted or do not comply in accordance with the procedures set forth in section 3.2. If following said notice, the PORT is unable or chooses not to bring the fiber(s) into compliance, this Lease shall then terminate as to such fiber(s).

3.4 In no event shall the unavailability, incompatibility, delay in installation, or other impairment of any of the COMPANY's interconnection facilities, including

COMPANY's suppliers (e.g., a local access telephone service provider) be used as a basis for rejecting any fiber(s).

4. FIBER SYSTEM MAINTENANCE:

4.1 All maintenance and repair to the Leased Fiber and system facilities (other than equipment or facilities installed by the COMPANY), but not limited to, conduit, inner-duct, poles and equipment, shall be the responsibility of the PORT; provided the PORT shall retain the right to subcontract for maintenance and repair. Maintenance shall be performed in accordance with standard industry practices.

4.2 For routine and scheduled work affecting service on the System, the PORT will make reasonable efforts to schedule maintenance that will result in as little disruption of service as reasonably possible, during off peak hours, and at such times and dates that will provide the COMPANY with ten (10) business days notice. The PORT will provide notice to the COMPANY by the method provided in the most recent Service Order Summary, or by the method requested by the COMPANY in writing superseding the method provided in the most recent Service Order Summary.

4.3 Emergency work arising from unscheduled disruption of service or from the eminent threat of disruption of service may be conducted at any time without prior notice.

4.4 In the event of unscheduled disruption of service, or emergency, the COMPANY may utilize the emergency contact information to be provided to the COMPANY by the PORT. The PORT's contact information may be revised and updated from time-to-time by notice in writing to the COMPANY by letter, facsimile, or electronic transmission.

4.5 Each Party shall maintain the capability to accept process and dispatch personnel on trouble reports, without delay after the performance of appropriate tests and attempts to isolate the trouble remotely. If testing and remote trouble isolation procedures are ineffective, each Party will assist the other in efforts to isolate the trouble. If the trouble is isolated to a Party's facilities, equipment or switching equipment, such Party shall take all necessary steps to clear the trouble and restore the services as quickly as possible.

5. TERM:

5.1 Initial Term: The initial term for this Lease will commence with the execution of this Lease and Agreement, and terminate as to the fiber and facilities and on the dates specified in each Service Order Summary unless automatically renewed as hereinafter set forth; provided, in the event, a Service Order Summary has not been signed and delivered to the PORT within ninety (90) days from the execution hereof, this Lease and Agreement shall automatically terminate.

5.2 Renewal: This Lease shall automatically renew for successive terms of one (1) year each as to the fiber and facilities specified in each Service Order Summary unless terminated earlier, by notice in writing delivered by either party to the other thirty (30) days prior to the end of the term specified, including any renewal term.

5.3 The same terms, covenants and conditions as specified in this Lease shall apply to all renewal terms, unless otherwise specifically modified by the parties in writing. Upon termination of this Lease for any reason, the COMPANY's rights for use of the PORT's fiber and facilities, and the obligation of the PORT to provide services to the COMPANY, shall cease.

6. FEES AND PAYMENT TERMS:

6.1 All applicable fees and charges, including without limitation, power usage fees, rack fees, early disconnect charges, and other non-recurring charges, shall be based on and commenced as specified in each Service Order Summary.

6.2 Invoicing: The PORT shall bill the COMPANY monthly, in advance, for all fees and charges, provided power charges shall be added to each invoice as usage occurs. All amounts shall be due within thirty (30) days of invoice.

6.3 Fee Adjustment: Rates, fees and charges may be adjusted or modified from time-to-time as specified in each Service Order Summary.

6.4 Taxes: In addition to all of the charges the COMPANY shall be pay all applicable taxes, franchise, license and permit fees (hereinafter collectively referred to as "Taxes") assessed against it for the conduct of its business as a telecommunications service provider arising out of the use of the Leased Fibers during the Term of this Lease. The COMPANY shall indemnify and hold the PORT harmless from any such taxes, including all penalties, interest and costs and reasonable attorney's fees, resulting from the failure to pay any such taxes or resulting from any proceeding contesting the imposition of any such taxes. In the event of any refund, rebate, reduction or abatement to the COMPANY of any such Taxes, the COMPANY shall be entitled to receive the entire benefit of such refund, rebate, reduction or abatement.

The COMPANY shall pay all applicable leasehold excise taxes or taxes imposed in lieu of leasehold excise tax. In the event the PORT is any way prohibited by law from requiring the COMPANY to pay any such tax and by reason thereof the PORT does pay any such tax, then, and in that event, the PORT shall be entitled to increase without regard to the limit on any Index increases allowed hereunder, the amount of the rate payable by the COMPANY to the PORT by the amount of any tax so paid and by the amount of any increased tax required to be paid because of any increase in the rate which may arise pursuant to this paragraph.

6.5 Past Due Amounts: All past due amounts due pursuant to the provisions of this Lease shall bear interest at the rate of twelve percent (12%) per annum.

7. LIMITATION OF LIABILITY/IDEMNIFICATION:

Each Party undertakes and agrees to indemnify and hold harmless the other Party and all of its officers and employees, and, at the option of the indemnified Party, defend the indemnified Party, and any and all of its Boards, officers, agents, representatives, employees, affiliates, assigns and successors in interest from and against any and all suits and causes of action, claims, charges, damages, demands, judgments, civil fines and penalties, or losses of any kind or nature whatsoever, for death, bodily injury or personal injury to any person, including the indemnifying Party's employees and agents, or damage or destruction to any property of either Party hereto, or third persons in any manner arising from the negligent acts, errors, omissions or willful misconduct incident to the performance of this contract on the part of the indemnifying Party, or the indemnifying Party's officers, agents, employees, or subcontractors of any tier.

Except to the extent each Party has agreed to indemnify and hold harmless the other for its acts or failure to act as specified herein, neither Party shall be liable for any indirect, special, punitive or consequential damages arising under this Lease or from any breach or partial breach of the provisions of this Lease or arising out of any act or omission hereto, its employees, servants, contractors and/or agent.

8. FORCE MAJEURE:

Neither Party shall be liable to the other for any failure of performance under this Lease due to causes beyond its control (except for the fulfillment of payment obligations as

set forth herein), including, but not limited to: acts of God, fire, flood, earthquake or other catastrophes; material or facility shortages or unavailability not resulting from such Party's failure to timely place orders therefore; lack of transportation; the imposition of any governmental codes, ordinances, laws, rules, regulations or restrictions; national emergencies; insurrections; riots, wars; or third party strikes, lockouts, work stoppages or other labor difficulties (collectively, "Force Majeure Events"). The COMPANY shall not pay for services not rendered during a Force Majeure Event.

9. EVENTS OF TERMINATION

9.1 Condemnation: If at any time during the Term of this Lease, all or any significant portion of the System shall be taken for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain, either Party may elect to terminate this Lease upon giving the other Party sixty (60) days prior written notice. In the event this Lease is terminated in accordance with this section, both Parties shall be entitled to participate in any condemnation proceedings to seek to obtain compensation via separate awards for the economic value of their respective interest in the System.

9.2 Damage or Destruction of System: If at any time during the Term of this Lease, all or any significant portion of the System shall be damaged or destroyed beyond feasible repair, both Parties shall be entitled to seek to recover the economic value of their respective interest in the System (i) under any insurance policy carried by either

Party or any third Party, or (ii) seek recovery from any third party which may be legally responsible for causing such damage or destruction.

9.3 Catastrophic Outage: If at any time during the Term of this Lease the ability of the Leased Fibers to transmit telephone, telecommunications and video services shall be interrupted or degraded below a minimum of .25 DBM (Decibels per Millivolt) attenuation per splice as established by OTDR (Optical Time Domain Reflectometer): (i) in the case of a Force Majeure Event, for thirty (30) consecutive days, or (ii) in the case of a non-Force Majeure Event, for five (5) consecutive days, then either Party may elect to terminate this Lease without liability upon giving thirty (30) days written notice to the other Party.

9.4 Default: Either Party may terminate this Lease upon the failure of the other Party to cure an Event of Default before the expiration of the applicable cure period, if any, as required in Section 16. In the event either Party fails to cure an Event of Default within the applicable cure period, the aggrieved party may pursue any legal or equitable remedy available to it under applicable law.

10. ASSIGNMENT:

No assignment hereof or sublease, assignment or licensing (hereinafter collectively referred to as a "Transfer") of any rights or obligations hereunder shall be valid for any purpose without the prior written consent of the PORT of which consent shall not be unreasonably withheld; provided, nothing herein shall prohibit the PORT from selling or

offering telecommunication services over the Leased Fibers to customers in the ordinary course of business. Notwithstanding the foregoing, the COMPANY may assign this Lease without prior written consent (a) to any affiliate, successor through merger, or acquirer of substantially all of its assets which has the capacity to fulfill the requirements set forth in this Lease, or (b) if necessary to be in compliance with the rules and/or regulations of any regulatory agency, governmental agency, legislative body or court of competent jurisdiction.

The COMPANY shall remain liable for all obligations of this Lease in the event of any assignment or transfer without the PORT's written consent. unless: (a) the PORT consents to release the COMPANY, by written instrument from such obligations, and (b) the assignee or transferee shall have affirmatively assumed in writing all of the obligations of the COMPANY.

11. WAIVER OF TERMS OR CONSENT TO BREACH:

No term or provision of this Lease shall be waived and no breach excused, unless such waiver or consent shall be in writing and signed by a duly authorized officer of the Party claimed to have waived or consented to such breach. Any consent by either Party to, or waiver of, a breach by the other Party shall not constitute a waiver of or consent to any subsequent or different breach. If either Party shall fail to enforce a breach of this Lease by the other Party, such failure to enforce shall not be considered consent to or a waiver of said breach or any subsequent breach for any purpose whatsoever.

12. FREEDOM OF ACTON:

Nothing in this Lease shall restrict the PORT in the conduct of its business, and the PORT may use the remainder of the System, without limitation, for any purpose whatsoever;

provided, no such use unreasonably interferes with the use of the Leased Fibers by the COMPANY as granted.

13. COMPLIANCE WITH LAW:

Each Party agrees that it will perform its respective rights and obligations hereunder in accordance with all applicable local, state and federal laws, rules and regulations.

14. RELOCATION OF THE FACILITIES:

The COMPANY recognizes that, from time to time, the PORT may elect or be required to relocate the System or a portion thereof. The PORT shall be solely responsible for all costs incurred in relocating the System and shall use reasonable efforts to do so in a manner that will not cause any material interruption in the COMPANY's use thereof. The PORT agrees to give the COMPANY at least three (3) weeks prior written notice of any elected relocation. The COMPANY shall have no claims for direct damages against the PORT for disruption of service arising out of relocation.

The PORT shall deliver to the COMPANY updated drawings with respect to the relocated Fibers, including Route Miles specified in the drawings, within ninety (90) days following the completion of such relocation.

Relocation pursuant to this section shall not affect the Term of the lease of the fiber and facilities affected by such relocation, provided the COMPANY may elect to terminate this lease as to the fiber and facilities affected, by notice in writing provided to the PORT no later than ten (10) days following the receipt by the COMPANY of the notice from the PORT regarding the planned relocation.

15. INSURANCE:

The COMPANY shall at all times during the Term of this Lease, at its own cost and expense, carry and maintain the insurance coverage listed below with insurers authorized to do business in the state(s) of operation. The COMPANY shall require its subcontractors and agents to maintain the same insurance:

(a) Commercial General Liability Insurance covering claims for bodily injury, death, personal injury or property damage (including loss of use) occurring or arising out of the license, use or occupancy of any premises in connection with this Lease by the COMPANY, including coverage for premises-operation, products/completed operations and contractual liability with respect to the liability assumed by the COMPANY hereunder. The limits of insurance shall not be less than:

Each Occurrence	\$ 2,000,000
General Aggregate	\$ 3,000,000
Products/Completed Operations	\$ 2,000,000
Personal & Advertising Injury	\$ 2,000,000

(b) Workers' Compensation Insurance with statutory limits as required in the state(s) of operation; and providing coverage for any employee entering onto any premises in connection with this Lease, even if not required by statute. Employer's Liability or "Stop Gap" insurance with limits of not less than \$100,000 each accident.

(c) Comprehensive Automobile Liability Insurance covering the ownership, operation and maintenance of all owned, non-owned and hired motor vehicles used

in connection with this Lease, with limits of at least \$1,000,000 per occurrence for bodily injury and property damage.

(d) Any other insurance coverages specifically required of the COMPANY pursuant to the PORT's right-of-way Leases with railroads or other third parties.

During the term hereof, or during any renewal term, the PORT may increase the required limits of coverage otherwise specified herein, to amounts consistent with the limits of coverage required by the PORT in subsequent or pending fiber optic leases. Said increase shall take effect following written notice by the PORT to the COMPANY, on the termination or renewal date of the policies then in effect.

16. DEFAULT:

If (a) the COMPANY fails to make a timely payment of the Lease Fees or any other amount it is obligated to pay, including interest due on all past due amounts, within thirty (30) days after written notice from the PORT, or (b) if either Party ("Defaulting Party") fails to perform a nonmonetary obligation and such failure shall continue for a period of thirty (30) days after the other Party shall have delivered written notice of such failure, (unless in the case of nonmonetary default such failure cannot be reasonably cured within such thirty (30) day period, and the Defaulting Party is diligently pursuing such cure), then the Defaulting Party shall be in default hereunder and the other Party at its sole option may (a) terminate this Lease upon written notice, in which event the other Party shall have no further duties or obligations hereunder or, (b) pursue all legal remedies it may have relating to such default.

If either Party shall file a petition in bankruptcy or for reorganization or for an arrangement pursuant to any present or future federal or state bankruptcy law or under any similar federal or state law, or shall be adjudicated as bankrupt or insolvent, or shall make a general assignment for the benefit of its creditors, or shall admit in writing its inability to pay its debts generally as they become due, or if any involuntary petition proposing the adjudication of either Party as a bankrupt or its reorganization under any present or future federal or state bankruptcy law or any similar federal or state law shall be filed in any court and such petition shall not be discharged or denied within ninety (90) days after the filing thereof, or if a receiver, trustee or liquidator of either Party of all or substantially all of the assets of either Party shall be appointed in any proceeding brought by either Party, and shall consent to or acquiesce in such appointment, then the other Party, its sole option, may immediately terminate this Lease upon written notice.

17. RELATIONSHIP NOT A PARTNERSHIP OR AN AGENCY:

The relationship between the COMPANY and the PORT shall not be that of partners or agents for one another and nothing contained in this Lease shall be deemed to constitute a partnership, joint venture or agency agreement between the Parties hereto. The COMPANY and the PORT in performing any of their obligations hereunder shall be independent contractors or independent parties and shall discharge their contractual obligations as such and at their own risk.

18. NO THIRD-PARTY BENEFICIARIES:

This Lease is for the sole benefit of the Parties hereto and their respective permitted successors and assigns, and shall not be construed as granting rights to any person or entity,

other than the Parties, including, but not limited to, any customer of the COMPANY, or imposing on either Party obligations to any person or entity other than a Party.

19. SEVERABILITY:

In the event any term, covenant or condition of this Lease, or the application of such term, covenant or condition, shall be held invalid as to any person or circumstances by any court having jurisdiction, all other terms, covenants and conditions of this Lease and their application shall not be affected thereby, but shall remain in force and effect unless a court holds that the invalid term, covenant or condition is not separable from all other terms, covenants and conditions of this Lease.

20. GOVERNING LAW/VENUE:

This Lease shall be interpreted in accordance with the laws of the State of Washington and venue for any action brought hereunder shall be in Whatcom County, Washington.

21. USE OF THE SYSTEM:

21.1 The COMPANY shall have exclusive control over its provisioning of telephone, telecommunications, or other services including, without limitation, sales and marketing, electronics maintenance and monitoring, and billing and collection.

21.2 The COMPANY hereby certifies that it will not be the "end user" of the fiber and facilities leased hereby, but is in the business of providing telecommunication services and that it is authorized to provide telecommunication services within the territory covered by the Service Order Summary and that such services can be provided on fiber optic cable systems such as that owned by the PORT.

22. PLURALS:

In construction of this Lease, words used in the singular shall include the plural and the plural the singular, and or is used in the inclusive sense, in all cases where such meanings would be appropriate.

23. COUNTERPARTS:

This Lease may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument, and any of the Parties hereto may execute this Lease by signing any such counterparts.

24. TITLE:

The COMPANY agrees that all right, title, and interest in the System provided by the PORT hereunder shall at all times remain exclusively with the PORT.

25. ENTIRE AGREEMENT:

This Lease constitutes the entire Agreement between the COMPANY and the PORT with respect to the subject matter hereof; all prior agreements, representations, statements, negotiations and undertaking are hereby superseded.

26. PUBLIC RECORDS AND CONFIDENTIALITY:

26.1 The COMPANY acknowledges that information submitted to the PORT is subject to the Washington Public Records Act (RCW 42.56.001 *et seq.*) and is open to public inspection to the extent required by the law.

26.2 The COMPANY may identify information that the COMPANY believes is non-disclosable by the PORT, including, but not limited to, trade secrets and financial

information, submitted to the PORT as confidential. The COMPANY shall prominently mark any information for which it claims confidentiality with the mark "Confidential," prior to submitting such information to the PORT. The PORT shall treat any information so marked as confidential except as provided below.

26.3 If the PORT receives a request for disclosure of confidential information so marked, or otherwise intends to disclose said information, the PORT shall provide the COMPANY with written notice of the request or intent, including a copy of the request or other basis for the intent to disclose. The COMPANY shall have five (5) working days within which to provide a written response to the PORT, by statutory or other legal authority identifying the information it claims as exempt, and specify by citation to the statutory or other legal authority which is the basis for the claimed exemption. The PORT shall retain the right to determine whether it is required to release or disclose the confidential information under applicable law. If, after considering the COMPANY's written response, the PORT determines that it is required to release or disclose all or some portion of the information, the PORT shall provide the COMPANY written notice to that effect a minimum of five (5) business days prior to releasing or disclosing the information; thereafter the PORT may release or disclose said information unless prohibited by court order. The COMPANY agrees that the PORT shall not be liable for any loss or damage from disclosure of information arising out of a good faith effort to comply with the Public Records Act (RCW

42.56.060) and agrees nothing herein shall be considered a waiver of the PORT's immunity thereunder.

27. NO PERSONAL LIABILITY:

27.1 Each action or claim against any Party arising under or relating to this Lease shall be made only against such Party as a corporation, and any liability relating thereto shall be enforceable only against the corporate or limited liability company assets of such Party. No Party shall seek to pierce the corporate or limited liability company veil or otherwise seek to impose any liability relating to, or arising from, this Lease against any official, shareholder, employee, affiliate, officer or director of the other Party.

28. NOTICES:

Any written notice under this Lease shall be deemed properly given if sent by registered or certified mail, postage prepared, or by nationally recognized overnight delivery service or by facsimile to the address specified below, unless otherwise provided for in this Lease, (notice relating to service and operation shall be governed as provided in section 4, herein):

If to the COMPANY:

ATTN: _____
PHONE: _____
FAX: _____

If to PORT:

PORT OF BELLINGHAM

ATTN: _____
PHONE: _____
FAX: _____

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed by their respective duly authorized representatives as of the day and year first above written.

PORT OF BELLINGHAM, a Washington public port district

By _____

THE COMPANY

By _____
President

ATTEST:

By _____
Secretary