

**DARK FIBER
INDEFEASIBLE RIGHT OF USE (“IRU”) AGREEMENT**

Between

Cincinnati Bell Telephone Company LLC

And

Commonwealth of Kentucky

Dated: May 26, 2016

EXHIBITS

Exhibit A	[REDACTED]
	Exhibit A-1 [REDACTED]
	Exhibit A-2 [REDACTED]
Exhibit B	Maintenance Agreement
Exhibit C	Interconnection Procedures

DARK FIBER IRU AGREEMENT

THIS DARK FIBER IRU AGREEMENT (this "Agreement") is made as of the 26th day of May, 2016 (the "Effective Date") by and between Cincinnati Bell Telephone Company LLC ("Cincinnati Bell"), an Ohio limited liability company, having its principal office at 221 E 4th Street, Cincinnati, Ohio 45202 and Commonwealth of Kentucky ("Commonwealth"), having its principal office at 702 Capital Avenue, Frankfort, Kentucky 40601.

BACKGROUND:

Whereas:

- A. Pursuant to RFP 758 1500000003-5 issued July 11, 2014 (as amended from time to time, the "RFP"), the Commonwealth selected Macquarie Infrastructure Developments LLC ("Macquarie") to design, build, finance, operate and maintain a statewide fiber optic network, known generally as the NG-KIH System, to provide broadband services to the citizens of the Commonwealth;
- B. On December 22, 2014, the Commonwealth and Macquarie entered into a master agreement (as amended from time to time, the "Master Agreement") in respect of the Project;
- C. In 2015, Macquarie assigned its rights and obligations under the Master Agreement to KentuckyWired Infrastructure Company, Inc. ("Project Co.");
- D. On September 3, 2015, the Commonwealth and Project Co. entered into a project agreement (as amended from time to time, the "Project Agreement") in respect of the Project and to facilitate the financing of the Project. As part of this Project Agreement, Operations Co. and its subcontractors have specifically designed and tailored the NG-KIH System to the geographic area of the Commonwealth in a series of "rings." Project Co. then entered into a Project Implementation Agreement with KentuckyWired Operations Company, LLC ("Operations Co.");
- E. A component of the NG-KIH System is located in northern Kentucky;
- F. Cincinnati Bell can provide fiber facilities in the "ring" located in northern Kentucky that fits the design of the NG-KIH System;
- G. Pursuant to and prior to the assignment of the Master Agreement, Macquarie negotiated an IRU Term Sheet with Cincinnati Bell (attached as part of Schedule 20 to the Project Agreement and designated a "Third Party Infrastructure Agreement"), the cost of which was included within the scope of the Project Agreement. To further facilitate the financing of the Project, the Commonwealth wishes to contract directly with Cincinnati Bell for the IRU, so on October 20, 2015, it entered into the present Third Party Infrastructure

Agreement ("Third Party Agreement") between the Commonwealth and Cincinnati Bell and for the Commonwealth to assume certain obligations under the Third Party Infrastructure Agreement;

- H. Cincinnati Bell, through ownership or other arrangements, has the rights to use a fiber optic communication system (the "System") along the route depicted in Exhibit A-1;
- I. The Commonwealth desires to acquire from Cincinnati Bell, and Cincinnati Bell desires to provide to Commonwealth, an exclusive, indefeasible right to use certain optical fibers in the System upon the terms and conditions set forth below; and
- J. The parties intend that Commonwealth shall have substantially all benefits and risks associated with ownership of such optical fibers, subject to the provisions of this Agreement;

NOW, THEREFORE, in consideration of the mutual promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

ARTICLE I DEFINITIONS

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

"Acceptance Date" shall have the definition set forth in Exhibit B to the Installation Agreement.

"Acceptance Standards" means the standards set forth in Exhibit B to the Installation Agreement with respect to the testing and condition of the Commonwealth Fibers.

"Accommodation Space" means space in a Cincinnati Bell CO and to be used by the Commonwealth to access and connect to Commonwealth Fibers as provided in the Accommodation Space Agreements.

"Accommodation Space Agreement" means a contractual agreement governing the lease of Accommodation Space by the Commonwealth.

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

"Agreement" shall have the definition set forth in the introductory paragraph, above.

"Cable" means the fiber optic cable included in the System and fibers contained therein that includes the Commonwealth Fibers and associated splicing connections, splice boxes and vaults, and conduit.

"Central Office (CO)" means a place where telephone companies terminate customer lines and locate switching equipment to interconnect those lines with networks.

"Claim" means any claim, action, dispute, or proceeding of any kind between Commonwealth (or any of its Affiliates, successors or assigns) and Cincinnati Bell (or any of its Affiliates, successors, or assigns) and any other claim, transaction, occurrence, loss, liability, expense or other matter arising out of, in connection with, or in any way related to, the Commonwealth IRU, the Cable, the System, this Agreement or any other instrument, arrangement or understanding related to the Commonwealth IRU.

"Commonwealth" shall have the definition as defined in the introductory paragraph of this Agreement.

"Commonwealth Equipment" means optronic (opto-electrical), electronic, or optical equipment or materials, facilities or other equipment owned, possessed or utilized (other than the System), by Commonwealth.

"Commonwealth Fibers" means those certain Fibers in which Commonwealth shall be granted an IRU hereunder as set forth in Section 2.1.

"Commonwealth IRU" shall have the definition set forth in Section 2.1.

"Connecting Point" means a point where the network or facilities of Commonwealth will connect to the System as specified in Exhibit C of this Agreement.

"Contract Price" shall have the definition set forth in Section 3.1.

"Costs" means actual costs incurred and computed in accordance with the established accounting procedures used by Cincinnati Bell to bill third parties for reimbursable projects and generally accepted accounting principles. Such costs include the following:

- (a) Labor costs include wages, salaries, benefits and payroll taxes. The Overhead allocable to such labor costs shall be charged at a rate of 38% of wages and salaries; and
- (b) Other direct costs and out-of-pocket expenses on a pass-through basis (such as equipment, materials, supplies, contract services, costs of capital, Required Rights, sales, use or similar taxes, etc.) plus twenty percent (20%) of such expenses.

"Effective Date" shall have the definition set forth in the introductory paragraph of this Agreement.

"Facility Owners" means any entity (other than Cincinnati Bell) owning any portion of the System, or any property or security interest therein, or leasing to Cincinnati Bell, or providing an IRU to Cincinnati Bell in, any portion of the System.

"Fiber Acceptance Testing" means the fiber acceptance testing described in Exhibit B to the Installation Agreement.

"Fibers" means any optical fibers contained in the System, including the Commonwealth Fibers, the fibers of Cincinnati Bell and the fibers of any third party in the System excluding, however, any fibers granted (whether through ownership, IRU, lease, or otherwise) to Government Authorities in exchange for use of streets, rights of way, or other property under the jurisdiction of such entity.

"Force Majeure Event" shall have the definition set forth in Section 20.1.

"Government Authority" means any federal, state, regional, county, town, municipal, territorial, or tribal government, whether domestic or foreign, or any department, agency, bureau, or other administrative, regulatory or judicial body of any such government, including, without limitation, any multinational body obtaining authority from any of the foregoing.

"Indefeasible Right of Use" or "IRU" is an exclusive, indefeasible right to use the specified property, but does not convey title, ownership, or rights of possession in any real or personal property.

"Indemnitee" shall have the definition set forth in Section 13.1.

"Indemnitor" shall have the definition set forth in Section 13.1.

"Initial Term" shall have the definition set forth in Section 8.1.

"Installation Agreement" shall mean the Dark Fiber Installation Agreement between the Parties entered into on May 26, 2016.

"Lateral Segments" means the individual portions of the Route in the Cincinnati Bell Incumbent Local Exchange Carrier territory identified in Exhibit A-2 and as depicted in Exhibit A-1.

"Lenders" means one or more financial institutions, vendors, suppliers or other financing sources utilized by Cincinnati Bell or Commonwealth, as the case may be.

"Maintenance Agreement" means that certain Maintenance Agreement attached and incorporated herein as Exhibit B, between Cincinnati Bell and Commonwealth whereby Cincinnati Bell provides maintenance and repair services to Commonwealth in connection with the Commonwealth Fibers.

"Major Segment" means the individual identified portions of the Route between each of the city pairs listed in bold in Exhibit A-2 and as depicted in Exhibit A-1.

"NG-KIH" means the Next Generation Kentucky Information Highway Project (AKA KentuckyWired).

"Network Center" means a telecommunications point of presence and, unless the context indicates otherwise, refers to a Cincinnati Bell-designated point of presence along the route listed in Exhibit A-2.

"Pro-Rata Share" means a proportion equal to a fraction, the numerator of which is the number of Commonwealth Fibers and the denominator of which is all Fibers in the Cable. If this fraction varies over a Segment, then the Pro-Rata Share shall be equal to the weighted average (weighted by length as set forth in Cincinnati Bell's as-built drawings) of the relevant portions. For example, if the fraction for 100 feet of the affected Segment is 0.1 and the fraction for the remaining 50 feet of the affected Segment is 0.07, the weighted average for the entire Segment would be 0.09.

"Released Party" means each of the following:

- (a) Any Affiliates of the other party, Facility Owners, and any Lenders, except to the extent such Lender has assumed a party's position under this Agreement by reason of default by such party and/or foreclosure by a Lender;
- (b) Any employee, officer, director, stockholder, partner, member, or trustee of the other party or of its Affiliates or Lenders; or
- (c) Assignees of the entities included in the above subparagraphs (a) or (b) and any employee, officer, director, stockholder, partner, member, or trustee of such assignees.

"Representatives" shall have the definition set forth in Section 18.1.

"Required Rights" shall have the definition set forth in Section 4.1.

"Route" shall mean the route, including spurs, upon which the System is or will be constructed and installed consisting of the Major Segments.

"Segment" means a discrete portion of the System and may refer to a Span, a portion between two points of presence or a point of presence and a System end point, or a portion of the System affected by a re-location or other circumstance.

"Span" means a portion of the System between two Transmission Sites or between a Transmission Site and a point of presence or System end point.

"Taking" shall have the definition set forth in Section 20.2.

"Term" means the term of the IRU in a Major Segment as defined in Section 8.1, including the Initial Term and any effective extension of the Initial Term.

"Third Party Agreement" means the early works agreement signed by Cincinnati Bell and the Commonwealth on or about October 20, 2015.

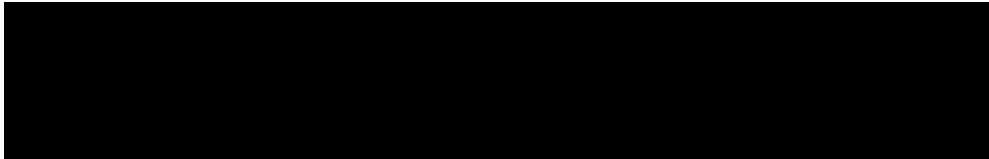
"Transmission Sites" means the Cincinnati Bell designated optical amplifier, regenerator, or junction sites along the System Route as specified in Exhibit A-2.

"Cincinnati Bell" means Cincinnati Bell Telephone Company LLC, an Ohio limited liability company, as defined in the introductory paragraph of this Agreement.

ARTICLE II CONVEYANCE OF IRU

2.1. Conveyance upon Acceptance. Effective as of the Acceptance Date for each Segment and upon Commonwealth's timely payment of the Contract Price, Cincinnati Bell hereby grants to Commonwealth an exclusive IRU (the "Commonwealth IRU"), for the purposes described herein, in the Commonwealth Fibers as described in Exhibit A-2, which Commonwealth Fibers shall include, but shall not be limited to, the following items within Cincinnati Bell's operating territory:

- (a) [REDACTED] specific strands of Fibers designated by Cincinnati Bell in the Cable in the Major Segment from Highland Heights Northern Kentucky University ("NKU") Campus to the Lexington Meet Point in the [REDACTED]
- (b) [REDACTED] specific strands of Fibers designated by Cincinnati Bell in the Cable in the Major Segment from the [REDACTED] to the Louisville Meet Point in the [REDACTED];
- (c) [REDACTED] specific strands of Fibers designated by Cincinnati Bell in the Cable in the Major Segment from Highland Heights NKU Campus to the Maysville Meet Point in the [REDACTED];
- (d) [REDACTED] specific strands of Fibers designated by Cincinnati Bell in the Cable in the major segment from the [REDACTED] to the Highland Heights NKU Campus via the [REDACTED]; and
- (e) Sufficient strands of dark Fibers to meet the requirements for the Service Level 1 Sites and Service Level 3 Sites, as noted in Exhibit A-3 and designated by Cincinnati Bell in the Cable in the Lateral Segments included in Cincinnati Bell's Incumbent Local Exchange Carrier territory.
- (f) Pole attachment rights on Cincinnati Bell owned poles, including necessary make-ready work to be performed by Cincinnati Bell, for the Commonwealth to attach its own fiber optic cables (of the same sizes as specified in (a), (b) and (c) above) at its own installation and maintenance expense, along the following three routes: i) [REDACTED]



Such IRU grant does not convey any legal title to any real or personal property, including the Fibers, the Cable, or the System. Commonwealth's IRU does not include any equipment used to transmit capacity over or "light" the Fibers.

2.2. 


2.3. Substitution of Fibers. Commonwealth acknowledges and agrees that notwithstanding the above conveyance, upon not less than one hundred twenty (120) days' written notice from Cincinnati Bell to Commonwealth, Cincinnati Bell may substitute for the Commonwealth Fibers, or any Segment or Segments comprising a portion of the Commonwealth IRU, an equal number of alternative fibers along the same Route; provided that in any such event, such substitution (a) shall be without unreasonable interruption of service and use by Commonwealth, (b) shall be effected at the sole cost of Cincinnati Bell, (c) shall be constructed and tested in accordance with the specifications set forth in this Agreement, and (d) shall not adversely affect the use, operation or performance of Commonwealth's network or business or change any Connecting Points or endpoints of Commonwealth.

2.4. Additional Fibers. Commonwealth shall have the right to request the grant of an IRU in additional fibers from Cincinnati Bell and shall be subject to the availability of fibers in the routes requested. Any such grant shall be based upon the mutually agreeable pricing, terms and conditions.

2.5. Right to Access Limited. Notwithstanding the foregoing grant of the Commonwealth IRU from Cincinnati Bell to Commonwealth, Commonwealth shall have no right to activate or connect to the Commonwealth Fibers pursuant to this Agreement unless and until Accommodation Space Agreements have been fully executed and delivered by and between the parties.

ARTICLE III CONSIDERATION

3.1. Contract Price. Commonwealth shall pay Cincinnati Bell the sum of Three Million, Six Hundred Seventy Two Thousand, Eight Hundred and Eighty Dollars \$3,672,880. ("Contract Price") as provided in Sections 3.2 and 3.3.

3.2. Method and Time of Payment. Commonwealth shall pay the Contract Price and any other payments pursuant to this Agreement to account or accounts designated by Cincinnati Bell in United States currency.

3.3. Time of Payment. The Contract Price to be paid by Commonwealth shall be payable as follows:

- (a) the sum of \$567,895 shall be paid within 30 days of the Effective Date, subject to provisions of this Section 3.3;
- (b) the sum of \$1,500,000 shall be paid within 30 days of the day the Commonwealth Fibers in the Major Segments meet the Acceptance Standards;
- (c) the sum of \$604,985 shall be paid within 30 days of the day the Lateral Segments, in their entirety, subject to Section 4.3 of the Installation Agreement, meet the Acceptance Standards; and
- (d) the sum of \$1,000,000 shall be paid within 45 days of the day the balance of all Commonwealth Fibers, subject to Section 4.3 of the Installation Agreement, meet the Acceptance Standards.

The Commonwealth shall not be obligated to make any payments to Cincinnati Bell until each of this Agreement, the Installation Agreement and all applicable Accommodation Space Agreements have been executed, subject to neither party unreasonably withholding or delaying execution of such agreements.

3.4 Power Costs. The Parties agree that baseline power capacity costs over the Term will be included as a fixed price cost in the Accommodation Space Agreements. The initial aggregate power capacity available to Commonwealth in the Cincinnati Bell [REDACTED] is [60] bidirectional fused amperes and a redundant [70] bidirectional fused amperes ("Baseline Power Capacity"). The initial aggregate power capacity available to Commonwealth in the Cincinnati Bell [REDACTED] is one single, non-redundant [10] fused amperes ("Baseline Power Capacity"). The initial aggregate power capacity available to Commonwealth in the Cincinnati Bell [REDACTED] is one single, non-redundant [10] fused amperes ("Baseline Power Capacity").

3.5 Changes to the Route. The Contract Price stated in Section 3.1 is based upon the Fiber Routes and design specifications in place as of the date of execution of this Agreement. In the event a Fiber Route or design specification is, at the Commonwealth's request, changed subsequent to the execution of this Agreement, at the request of the Commonwealth, the Commonwealth shall pay Cincinnati Bell any incremental Costs of such change in addition to the stated Contract Price, as agreed in a written Change Order. Cincinnati Bell shall not be bound by any change to a Fiber Route or design specification unless and until the Parties have agreed upon and executed a Change Order.

ARTICLE IV CONSTRUCTION

4.1. Acceptance Date Obligations. As of the Acceptance Date of the Commonwealth Fibers in any Segment, Cincinnati Bell hereby represents and warrants on an ongoing basis throughout the Term that:

- (a) Cincinnati Bell shall have obtained all rights, licenses, authorizations, easements, leases, fee interests, or agreements necessary to provide for the occupancy by such Segment of real property or fixtures (such as conduit, bridges, river crossings, or transmission towers);
- (b) Cincinnati Bell is the legal owner of the Commonwealth Fibers or shall have obtained by IRU agreement, lease, or otherwise the right to use any portion of the System along the Segment it does not own; and
- (c) such Segment and the Commonwealth Fiber in such Segment shall be free of defects in materials and workmanship and is designed, engineered, installed, and constructed, at a minimum, in accordance with prevailing industry standards and the specifications set forth in Exhibits B and C to the Installation Agreement.

The rights Cincinnati Bell is required to obtain pursuant to Subsections (a) and (b) above are referred to as "Required Rights." Subject to the terms of Section 8.2, Cincinnati Bell shall renew or replace existing Required Rights through at least the Initial Term.

4.2. Provision of Revised As-Built Drawings. If there is a material change in the Commonwealth Fibers as a result of maintenance or relocation, Cincinnati Bell shall deliver updated as-built drawings to Commonwealth with respect to the relevant Segment within the later of one-hundred eighty (180) calendar days following the completion of such change or thirty (30) calendar days after receipt of Commonwealth's request.

ARTICLE V CONNECTION AND ACCESS TO THE SYSTEM

5.1. Connections. Subject to the provisions herein, Commonwealth shall pay for and arrange all connections of its facilities with the Commonwealth Fibers at the points of demarcation set forth in Exhibit C.

5.2. No Unauthorized Access to System. Commonwealth shall not access any part of the System (other than pursuant to the Accommodation Space Agreements) without the prior written consent of Cincinnati Bell, and then only upon the terms and conditions specified by Cincinnati Bell.

ARTICLE VI ACCOMMODATION SPACE

6.1. The terms and conditions for use and occupancy of Accommodation Space shall be defined in Accommodation Space Agreements. The Parties agree that the cost over the Term for the initial Accommodation Space and Baseline Power Capacity requirements, effective as of the Effective Date, will be One Million, One Hundred Ninety Four Thousand, Nine Hundred Sixty Three Dollars and Sixty Eight Cents (\$1,194,963.68), payable to Cincinnati Bell by the Commonwealth in accordance with the terms and conditions of the Accommodation Space Agreement.

6.2. Commonwealth shall have the right to request additional Accommodation Space from Cincinnati Bell. If requested and available Cincinnati Bell will provide Commonwealth the additional Accommodation Space in accordance with the provisions of an Accommodation Space Agreement and at Cincinnati Bell's then market rates unless a discounted rate is otherwise agreed to by the Parties.

ARTICLE VII USE OF THE SYSTEM

7.1. **Notice of Damage.** Commonwealth shall notify Cincinnati Bell and Cincinnati Bell shall notify Commonwealth of any matters pertaining to any damage or impending damage to or loss of the Commonwealth Fibers that are known to it or that could reasonably be expected to adversely affect the Commonwealth Fibers as provided in the Maintenance Agreement.

7.2. **Preventing Interference with Other Fibers.** Neither Commonwealth nor Cincinnati Bell shall use equipment, technologies, or methods of operation that interfere in any way with or adversely affect the System or the use of the System by the other party or third parties or their respective fibers, equipment, or facilities associated therewith. Each party shall take all reasonable precautions to prevent damage to the System or to fibers used or owned by the other party or third parties. Notwithstanding the above, the provisions of this Section shall not prevent a party from using commercially reasonable equipment, technologies, or methods of operation if the interference or adverse effect on the other party or a third party results primarily from such other party or third party's use of equipment, technologies, or methods of operation that are not commercially reasonable or that are not standard in the telecommunications industry.

7.3. **Liens.** Commonwealth shall not cause or permit any part of the System to become subject to any mechanic's, materialmen's, or vendor's lien, or any similar lien. Cincinnati Bell shall not cause or permit any of Commonwealth's rights under this Agreement to become subject to any mechanic's, materialmen's, or vendor's lien, or any similar lien. If a party breaches its obligations under this Section, it shall immediately notify the other party in writing, shall promptly cause such lien to be discharged and released of record without cost to the other party.

ARTICLE VIII TERM

8.1. Term. Subject to the Commonwealth's rights to terminate this IRU for default or convenience in accordance with 200 KAR 5:312, the Term of the IRU in Commonwealth Fibers shall end on the thirtieth (30th) anniversary of the Acceptance Date for each such Commonwealth Fibers (the "Initial Term"). Subject to the conditions set forth below, Commonwealth may, by written notice, request to extend the Term with respect to a Major Segment, provided that the grant of such extension is in Cincinnati Bell's sole discretion. Commonwealth shall provide the written extension notice at least one (1) year in advance of the date the Term would expire absent such notice. This Agreement shall remain in effect until the Terms of the IRUs in all Major Segments have ended.

8.2. Condition on Renewal; Termination after Initial Term. During any extension period, Cincinnati Bell may terminate the Agreement with respect to a Segment on at least six (6) months' notice. Cincinnati Bell may provide notice terminating the extension option or terminating the Agreement pursuant to this Section only if Cincinnati Bell or the Facility Owner has made a bona fide determination to decommission the Cable in the Segment within six (6) months of the date for which Cincinnati Bell gives notice of termination of the Agreement.

8.3. Effect of Termination. No termination of this Agreement shall affect the rights or obligations of any party hereto:

- (a) with respect to any payment hereunder for services rendered prior to the date of termination;
- (b) pursuant to Articles X (Audit Rights), XIII (Indemnification), XIV (Limitation of Liability), XV (Insurance), XVI (Taxes and Governmental Fees), XVIII (Confidentiality), XIX (Prohibition on Improper Payments), XXI (Dispute Resolution), or XXII (Rules of Construction) or Sections 11.2 (Exclusion of Warranties) or 11.3 (No Third-Party Warranties); or
- (c) pursuant to other provisions of this Agreement that, by their sense and context, are intended to survive termination of this Agreement.

8.4. Termination for Convenience. In the event of a termination for convenience by the Commonwealth pursuant to 200 KAR 5:312 as to any Commonwealth Fiber, Cincinnati Bell may submit to the Commonwealth a claim for any amounts it may be due, including amounts due for an executed Change Order for which the Commonwealth has not made payment at the time of termination for convenience and for any other billable services provided under this Agreement for which it has not been paid as of the date of termination for convenience. Any outstanding performance deductions payable to the Commonwealth in accordance with Exhibit B will be offset against any and all amounts payable to Cincinnati Bell.

**ARTICLE IX
MAINTENANCE AND RELOCATION**

9.1. Maintenance. Cincinnati Bell will provide maintenance of the Commonwealth Fibers during the Term and pursuant to the Maintenance Agreement attached hereto and incorporated herein as Exhibit B.

9.2. Cincinnati Bell Relocation Procedures. If Cincinnati Bell is required by a third party with legal authority to do so, to relocate all or any portion of the System or any of the facilities used or required in providing Commonwealth with the Commonwealth IRU, Cincinnati Bell shall provide Commonwealth thirty (30) calendar days' prior notice of any such relocation, if possible, and shall proceed with such relocation. Cincinnati Bell shall have the right to direct such relocation, including the right to determine the extent of, the timing of, and methods to be used for such relocation, provided that any such relocation:

- (a) shall be constructed and tested in accordance with the specifications and requirements set forth in this Agreement and applicable Exhibits;
- (b) shall not adversely affect the use, operation or performance of Commonwealth's network or business, or change any Connect Points or end points of the Major Segment; and
- (c) shall not unreasonably interrupt service to Commonwealth.

9.3. Maintenance of Commonwealth Equipment Excluded. Cincinnati Bell shall have no obligation under this Agreement to maintain, repair, or replace Commonwealth Equipment.

9.4. Payment of Relocation Costs. Commonwealth shall pay its Pro-Rata Share of Cincinnati Bell's Costs of performing relocations after applying any compensation received from a third-party that requires a relocation. Such Costs shall be invoiced to Commonwealth and shall be payable by Commonwealth within sixty (60) days of Commonwealth's receipt of such invoice. Notwithstanding the foregoing, Commonwealth's obligation to pay its Pro-Rata Share of Cincinnati Bell's Costs shall apply to the extent Cincinnati Bell relocates the System (i) under legal compulsion, (ii) under bona fide threat of legal compulsion, or (iii) pursuant to Commonwealth's consent, which consent agrees to payment of Commonwealth's Pro-Rata Share of Cincinnati Bell's Costs; and such relocation is not made necessary because of negligence or misconduct on the part of Cincinnati Bell.

**ARTICLE X
AUDIT RIGHTS**

10.1. Subject to the Commonwealth's obligations under the Kentucky Open Records Act, each party shall keep such books and records (which shall be maintained on a consistent basis and substantially in accordance with generally accepted accounting principles) and shall readily disclose the basis for any charges (except charges fixed in advance by this Agreement or by

separate agreement of the parties) or credits, ordinary or extraordinary, billed or due to the other party under this Agreement and shall make them available for examination, audit, and reproduction by the other party and its duly authorized agents or representatives for a period of one (1) year after such charge or credit is billed or due.

ARTICLE XI WARRANTIES

11.1. Warranties Relating to Agreement Validity. In addition to any other representations and warranties contained in this Agreement, each party hereto represents and warrants to the other that:

- (a) it has the full right and authority to enter into, execute, deliver, and perform its obligations under this Agreement; and
- (b) it has taken all requisite corporate action to approve the execution, delivery, and performance of this Agreement; and
- (c) this Agreement constitutes a legal, valid and binding obligation enforceable against such party in accordance with its terms; and
- (d) its execution of and performance under this Agreement shall not violate any applicable existing regulations, rules, statutes, or court orders of any local, state, or federal government agency, court, or body.

11.2. EXCLUSION OF WARRANTIES. EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT AND THE EXHIBITS HERETO, CINCINNATI BELL MAKES NO WARRANTY TO GRANTEE OR ANY OTHER ENTITY, WHETHER EXPRESS, IMPLIED OR STATUTORY, AS TO THE INSTALLATION, DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS, USEFUL LIFE, FUTURE ECONOMIC VIABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE OF ANY FIBERS, THE SYSTEM, OR ANY SERVICE PROVIDED HEREUNDER, OR DESCRIBED HEREIN, OR AS TO ANY OTHER MATTER, ALL OF WHICH WARRANTIES ARE HEREBY EXPRESSLY EXCLUDED AND DISCLAIMED.

11.3. No Third-Party Warranties. No Facility Owners/Lenders have made any representation or warranty of any kind, express or implied, to Commonwealth concerning Cincinnati Bell, the Commonwealth Fibers, the Cable, or the System or as to any of the matters set forth in Sections 11.1 or 11.2. No Commonwealth Lenders have made any representation or warranty of any kind, express or implied, to Cincinnati Bell concerning Commonwealth, the Commonwealth Fibers, the Cable, or the System or as to any of the matters set forth in Sections 11.1 or 11.2.

ARTICLE XII DEFAULT

12.1. Default and Cure. The Commonwealth may terminate this IRU for either default or convenience in accordance with 200 KAR 5:312. Except as set forth in Section 12.2, a party shall not be in default under this Agreement until one of the following events occurs: (i) either party fails to make a payment of any undisputed amount required under this Agreement and such failure continues for more than thirty (30) days after such party receives written notice of such failure from the non-defaulting party; (ii) either party fails to perform or comply with any other obligation, agreement, term, or provision of this Agreement, the Installation Agreement, or an Accommodation Space Agreement applicable to it and such failure continues for more than thirty (30) days after such party receives written notice of such failure from the non-defaulting party, provided, however, that if such default cannot be reasonably cured within such thirty (30) day period, and if the defaulting party is proceeding promptly and with due diligence in curing the same, the time for curing such default shall be extended for a period of time, not to exceed ninety (90) days, as may be necessary to complete such curing. Any event of default may be waived at the non-defaulting party's option. Upon the failure of a party to timely cure any such default after notice thereof from the other party and expiration of the above cure periods, then the non-defaulting party may, subject to the terms of Articles XIV (Limitation of Liability) and XXI (Dispute Resolution), pursue any legal remedies it may have under applicable law or principles of equity relating to such breach.

12.2. Disputed Amounts. Notwithstanding any provision to the contrary in Sections 12.1 or 12.3, either party shall have the right to dispute any amount due under this Agreement, provided that (i) the disputing party provides written notice of such dispute to the other party by the date that any such amount is due; (ii) the disputing party presents a written statement of any billing discrepancies to the other party in reasonable detail together with supporting documentation and evidence within thirty (30) days after the date that any such amount is due; and (iii) the disputing party negotiates in good faith with the other party to resolve any such dispute within sixty (60) calendar days of the date any such amount is due. Commonwealth shall pay disputed amounts mutually agreed upon and in favor of Cincinnati Bell within thirty (30) days of the resolution of such dispute. Cincinnati Bell shall credit disputed amounts mutually agreed upon and in favor of Commonwealth on Commonwealth's next invoice. In the event the parties fail to mutually resolve or settle the dispute within sixty (60) days of the date any such disputed amount is due, the parties will pursue resolution of the dispute in accordance with Article XXI of this Agreement.

12.3. Failure to Pay. If Commonwealth fails to pay any undisputed amounts owed under this Agreement, and fails to pay all of such amount within thirty (30) days of Cincinnati Bell's notice that it will disconnect the Commonwealth Fibers, Cincinnati Bell may, in addition to the remedies set forth in Section 12.1, disconnect the Commonwealth Fibers from all Connecting Points and from all Commonwealth Equipment on Cincinnati Bell's premises and cease providing power and other services pursuant to the Accommodation Space Agreements. Cincinnati Bell shall restore such Connecting Points and Commonwealth Equipment connections and resume providing services under the Accommodation Space Agreements, only if Commonwealth (a) pays Cincinnati Bell's bona fide estimate of the Costs incurred or to be incurred pursuant to the

preceding sentence and this sentence, and (b) pays all past-due amounts with applicable interest. In the event that, upon a failure to pay all Contract Price payments under Section 3.1 above, Commonwealth does not take the actions described in clauses (a) and (b) above in this Section 12.3 within thirty (30) days after Cincinnati Bell's disconnection of the Commonwealth Fibers or cessation of services as described above in this Section, then, in addition to all other remedies described in this Section 12.3, this Article XII or otherwise in this Agreement, Cincinnati Bell shall have the right to terminate the Commonwealth IRU with respect to the Commonwealth Fibers if Commonwealth fails to pay all amounts in arrears, together with applicable interest, within thirty (30) days of receipt of further notice from Cincinnati Bell.

12.4. Interest. If Commonwealth fails to make any payment under this Agreement when due, such amounts shall accrue interest, from the date such payment is due until paid, including accrued interest, at a rate (unless specifically described elsewhere in this Agreement) equal to one percent (1%) per annum or, if lower, the highest percentage allowed by law.

ARTICLE XIII INDEMNIFICATION

13.1. Indemnification. To the extent permitted by law, including but not limited to Section 177 of the Kentucky Constitution, the Commonwealth and Cincinnati Bell (each party known individually as the "Indemnitor") hereby agrees to indemnify, defend, protect and hold harmless the other party and its employees, officers, directors, members, managers and Facility Owners (with respect to Cincinnati Bell), Lenders and Affiliates (the "Indemnitee"), from and against, and assumes liability for: (i) claims made by a third party for any injury, loss or damage to any person, tangible property or facilities of any person to the extent arising out of or resulting from the negligent or intentional acts or omissions, of the Indemnitor, its officers, employees, servants, Affiliates, agents, contractors, licensees, invitees and vendors, or any entity for whom it is in law responsible, arising out of or in connection with the performance by Indemnitor of its obligations under this Agreement; (ii) any claims, liabilities or damages arising out of any violation by Indemnitor of any regulation, rule, statute or court order of any Governmental Authority in connection with the performance by Indemnitor of its obligations under this Agreement; and (iii) any liability to a third party arising directly or through one or more intermediaries from an action or claim brought by the Indemnitor against such third party, but only to the extent such third party has a right of indemnification, impleader, cross claim, contribution or other right of recovery against the Indemnitee for any indirect, special or consequential damages awarded against such third party in favor of the Indemnitor.

13.2. Material and Continuing Obligation. Each Party's obligation to indemnify, defend, protect, and save the other Party harmless is a material obligation to the continuing performance of the other Party's obligations hereunder.

ARTICLE XIV LIMITATION OF LIABILITY

14.1. EXCLUSION OF INDIRECT DAMAGES. SUBJECT TO THE COMMONWEALTH'S AUTHORITY TO SEEK APPLICABLE DAMAGES FOR

CINCINNATI BELL'S DEFAULT AS PROVIDED FOR IN 200 KAR 5:312, IF ANY, AND NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR ITS EMPLOYEES, OFFICERS, DIRECTORS, MEMBERS, MANAGERS, FACILITY OWNERS, LENDERS AND AFFILIATES FOR ANY SPECIAL, INDIRECT, OR PUNITIVE DAMAGES, OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF OR IN CONNECTION WITH SUCH PARTY'S PERFORMANCE OR FAILURE TO PERFORM ITS RESPECTIVE OBLIGATIONS HEREUNDER, INCLUDING, BUT NOT LIMITED TO LOSS OF PROFITS OR REVENUE (WHETHER ARISING OUT OF TRANSMISSION INTERRUPTIONS OR PROBLEMS, ANY INTERRUPTION OR DEGRADATION OF SERVICE OR OTHERWISE), OR CLAIMS OF CUSTOMERS WHETHER OCCASIONED BY ANY OBLIGATIONS PERFORMED BY, OR FAILED TO BE PERFORMED BY, THE OTHER PARTY OR ANY OTHER CAUSE WHATSOEVER, INCLUDING BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, OR STRICT LIABILITY, ALL CLAIMS FOR WHICH DAMAGES ARE HEREBY SPECIFICALLY WAIVED.

NOTWITHSTANDING THE FOREGOING, THE LIQUIDATED DAMAGES PROVISIONS SET OUT IN EXHIBIT B HERETO ARE EXCEPTED FROM THIS EXCLUSION HEREIN. NOTHING CONTAINED IN SECTION 14.1 SHALL BE DEEMED TO LIMIT AN INDEMNITOR'S OBLIGATIONS UNDER SECTION 13.1.

14.2. No Recourse Against Released Parties. Neither party shall have any recourse of any kind against any Released Party or any assets of a Released Party in respect of any Claim except in the case of such Released Party's gross negligence or willful misconduct, it being expressly agreed and understood that no liability whatever shall attach to or be incurred by any Released Party in respect of any other claims under or by reason of this Agreement or any other instrument, arrangement or understanding related to the Commonwealth IRU. Each party waives all such recourse to the extent set forth in this Section on behalf of its successors, assigns, and any entity claiming by, through, or under such party.

14.3. Pursuit of Actions Against Facility Owners. Notwithstanding the foregoing provisions of this Article, and only to the extent Cincinnati Bell is required under the terms and provisions of any Required Right to indemnify a Facility Owner from and against any and all claims arising out of service interruption, cessation, unreliability of or damage to the System, regardless of whether such claims arise from the sole or partial negligence, willful misconduct or other action or inaction of such Facility Owner, Commonwealth hereby releases such Facility Owner, and hereby waives, all claims arising out of service interruption, cessation, unreliability of or damage to the Commonwealth Fibers regardless of whether such claims arise from the sole or partial negligence, willful misconduct or other action or inaction of such Facility Owner. Commonwealth shall notify Cincinnati Bell in writing before pursuing any such Claim against a Facility Owner and such notification shall make specific reference to this provision of the Agreement, and Cincinnati Bell shall respond in writing within sixty (60) days after receipt of such notification as to whether or not the terms of such Required Right require Commonwealth to release and waive such Claim against the Facility Owner in question. Nothing in this Section 14.3 shall be construed as a release or waiver by Commonwealth of any Claim against Cincinnati Bell.

14.4. Pursuit of Actions Against Third Parties. Except as provided in Sections 13.1, 14.2 and 14.3, nothing contained in this Agreement shall operate as a limitation on the right of either Cincinnati Bell or Commonwealth to bring an action or claim for damages against any third party. Each of Cincinnati Bell and Commonwealth shall assign such rights of claims, execute such documents, and do whatever else may be reasonably necessary to enable the other (at such other party's sole expense) to pursue any such action or claim against such third party.

14.5. Commonwealth Contracts. To the extent Commonwealth is permitted to allow other parties to use the Commonwealth Fibers for any purpose, Commonwealth, in any contract or tariff offering of service, capacity, or rights of use that in any of the preceding instances involves use of the System, shall include in such contract or tariff a written limitation of liability that is binding on Commonwealth's customers and in all material respects is at least as restrictive as the limitations set forth in Sections 14.1, 14.2 and 14.3.

ARTICLE XV INSURANCE

15.1. Obligation to Obtain. During the term of the Agreement, the parties, or the Commonwealth's Contractors, shall obtain and maintain not less than the following insurance:

- (a) Commercial General Liability insurance on an occurrence form with a combined single limit of \$1,000,000 per occurrence and annual aggregates of \$1,000,000, for bodily injury and property damage including coverage for premises-operations, blanket contractual liability, broad form property damage, personal injury liability, independent contractors, products/completed operations and explosion, collapse and underground. The limit requirements stated above may be met through a combination of primary and excess policies.
- (b) Worker's Compensation insurance complying with the laws of the State or States having jurisdiction over each employee of the respective parties and Employer's Liability Insurance with limits not less than \$1,000,000 each accident, \$1,000,000 disease each employee, and \$1,000,000 disease policy limit.
- (c) Automobile Liability Insurance with a combined single limit of \$2,000,000 each occurrence for bodily injury and property damage, to include coverage for all owned, non-owned, and hired vehicles.

The limits set forth above are minimum limits and shall not be construed to limit the liability of either party.

15.2. Policy Requirements. Each party shall obtain and maintain the insurance policies required above with companies rated A- or better by Best's Key Rating Guide or with a similar rating by another generally recognized rating agency. Each party shall provide the other with an

insurance certificate evidencing the insurance requirements of this Article. Each party warrants that they shall notify the other party not less than thirty (30) calendar days prior to any cancellation or non-renewal of the insurance. If either party provides any of the foregoing coverages through a claims-made policy basis, that party shall cause such policy or policies to be maintained for at least three (3) years beyond the expiration of this Agreement.

15.3. Waiver of Subrogation. The parties shall each obtain from the insurance companies providing the coverages required by this Agreement a waiver of all rights of subrogation or recovery in favor of the other party and, as applicable, its members, managers, shareholders, Affiliates, assignees, officers, directors, and employees or any other party entitled to indemnity under this Agreement to the extent of such indemnity.

15.4. Blanket Policies. Nothing in this Agreement shall be construed to prevent either party from satisfying its insurance obligations pursuant to this Agreement under a blanket policy or policies of insurance that meet or exceed the requirements of this Article.

15.5. Self-Insurance. A self-insured program providing for of up to a maximum retention or deductible of five million dollars (\$5,000,000) shall satisfy the requirements of this Article 15.

ARTICLE XVI TAXES AND GOVERNMENTAL FEES

16.1. Taxation of Commonwealth. Cincinnati Bell understands that as of the date of this contract, Commonwealth is a tax-exempt entity. Accordingly, and notwithstanding the remainder of this Article, Cincinnati Bell shall not, directly or indirectly, seek reimbursement or contribution from the Commonwealth for any tax for which an exemption applies. For any taxes or fees, including but not limited to universal service funding, that may be assessed against Cincinnati Bell for which the Commonwealth is not exempt, or if the Commonwealth Fibers are assigned to a non-tax exempt entity, Cincinnati Bell will collect and remit such taxes and fees to the appropriate governmental agency.

16.2. Cincinnati Bell Obligations. Subject to Sections 16.2 above, Cincinnati Bell shall timely report and pay any and all sales, use, income, gross receipts, excise, transfer, ad valorem or other taxes, and any and all franchise fees or similar fees properly assessed against it due to its construction, ownership, physical location or use of the System.

**ARTICLE XVII
NOTICE**

17.1. Notice Addresses. Unless otherwise provided in this Agreement, all notices and communications concerning this Agreement shall be in writing and addressed to the other party as follows:

If to Commonwealth: Commonwealth of Kentucky
 Attention: Secretary
 Finance and Administration Cabinet
 702 Capital Avenue
 Room 383
 Frankfort, KY 40601
 Facsimile No. 502-564-6785

If to Cincinnati Bell: Cincinnati Bell Telephone Company LLC
 Attn: Carrier Services Contract Management
 221 E 4th Street, 103-920
 Cincinnati, OH 45202
 Facsimile No. 513-381-2910

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

17.2. Notice and Invoice Delivery. Unless otherwise provided herein, notices and invoices shall be hand delivered, sent by registered or certified U.S. Mail, postage prepaid, or by commercial overnight delivery service, or transmitted by facsimile, and shall be deemed served or delivered to the addressee or its office when received at the address for notice specified above when hand delivered, upon confirmation of sending when sent by facsimile, on the day after being sent when sent by overnight delivery service, or three (3) United States Postal Service business days after deposit in the mail when sent by U.S. mail.

**ARTICLE XVIII
CONFIDENTIALITY**

18.1. Confidentiality Obligation. To the extent permitted by the Kentucky Open Records Act, if either party provides confidential information to the other or, if in the course of performing under this Agreement or negotiating this Agreement a party learns confidential information regarding the facilities or plans of the other, the receiving party shall (a) protect the confidential information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, but in any case with at least reasonable care and (b) refrain from using such confidential information except in negotiating or performing under this Agreement. Notwithstanding the above, a party may provide such confidential information to its directors, officers, members, managers, employees, agents, and contractors, consultants ("Representatives"), Affiliates, financial institutions, underlying facility owners, potential assignees (who are bound by a written agreement restricting use and disclosure of confidential information), and Representatives of Affiliates, in each case whose access is reasonably necessary.

Each such recipient of confidential information shall be informed by the party disclosing confidential information of its confidential nature in writing, and shall be directed to treat such information confidentially and shall agree to abide by these provisions. In any event, each party shall be liable (with respect to the other party) for any breach of this provision by any entity to which that party discloses confidential information. The terms of this Agreement (but not its execution or existence) shall be considered confidential information for purposes of this Article, except as set forth in Section 18.3. The obligations set forth in this Section shall survive expiration or termination of this Agreement for a period of two (2) years, except that, with respect to any confidential information designated by the disclosing party as a trade secret, and entitled to protection as such, the obligations set forth in this Section shall survive such expiration or termination indefinitely.

18.2. Permitted Disclosures. Notwithstanding any other provision herein, neither Cincinnati Bell nor Commonwealth shall be required to hold confidential any information that:

- (a) becomes publicly available other than through the recipient;
- (b) is required to be disclosed by a governmental, regulatory authority, or judicial order, rule, or regulation or proceedings with respect to this Agreement or a party's obligations as a publicly held company, provided that a party subject to such requirement shall promptly notify the other party of such requirement;
- (c) is independently developed by the disclosing party;
- (d) becomes available to the disclosing party without restriction from a third party;
- (e) is required by its lender and is given to such lender on a confidential basis; or
- (f) to the extent disclosure by the receiving party is required by applicable law or regulation.

18.3. Goodwill and Publicity. Neither party shall use the name, trade name, service mark, or trademark of the other in any promotional or advertising material without the prior written consent of the other. The parties shall coordinate and cooperate with each other when making public announcements related to the terms of this Agreement and each party shall have the right to promptly review, comment upon, and approve any publicity materials, press releases, or other public statements by the other party that refer to, or that describe any aspect of, this Agreement. Notwithstanding the above, either party may, without the other party's approval but after allowing the other party a reasonable opportunity to comment on a proposed press release, issue a press release announcing execution of this Agreement. Such release may disclose the estimated revenues/payments under this Agreement, and the identity of the other party as long as such release does not disclose the nature of the Agreement and any per-Fiber Mile or other per-unit pricing under this Agreement.

**ARTICLE XIX
PROHIBITION ON IMPROPER PAYMENTS**

19.1. Neither party shall use any funds received under this Agreement for illegal or otherwise "improper" purposes. Neither party shall pay any commission, fees or rebates to any employee of the other party. If either party has reasonable cause to believe that one of the provisions in this Article has been violated, it, or its representative, may audit the books and records of the other party for the sole purpose of establishing compliance with such provisions.

19.2. **Change in Control Not an Assignment.** Notwithstanding any presumptions under applicable state law that a change in control of a party constitutes an assignment of an agreement, a change in control of a party, not made for purposes of circumventing restrictions on assignment or of depriving the other party of rights under this Agreement, shall not be deemed an assignment for purposes of this Agreement.

**ARTICLE XX
FORCE MAJEURE; EMINENT DOMAIN**

20.1. **Excused Performance.** Neither Cincinnati Bell nor Commonwealth shall be in default under this Agreement with respect to any delay in its performance (other than a failure to make payments when due) caused by any of the following conditions (each a "Force Majeure Event"): (a) act of God; (b) fire; (c) flood; (d) material shortage or unavailability not resulting from the responsible Party's failure to timely place orders or take other necessary actions therefor; (e) government codes, ordinances, laws, rules, regulations, or restrictions; (f) war, acts of terrorism or civil disorder; (g) power outages and cable cuts not due to Cincinnati Bell's negligence; or (h) any other cause beyond the reasonable control of such party. The party claiming relief under this Article shall promptly notify the other in writing of the existence of the Force Majeure Event relied on, the expected duration of the Force Majeure Event, and the cessation or termination of the Force Majeure Event. The party claiming relief under this Article shall exercise commercially reasonable efforts to minimize the time for any such delay. Notwithstanding the foregoing, such Force Majeure Event shall not excuse Cincinnati Bell's timely performance pursuant to the Maintenance Agreement, except to the extent timely performance is beyond the reasonable control of Cincinnati Bell.

20.2. **Eminent Domain.** Should any portion of the Commonwealth Fibers belonging to Cincinnati Bell or the underlying Facility Owner be acquired by eminent domain, nationalization, or expropriation (each of which, a "Taking") by any authority or entity possessing such power, then in that event each party shall be excused from performance of its obligations to the extent provided in Section 20.1. In the event the Commonwealth wishes to restore the affected Route, Cincinnati Bell shall relocate all or any portion of the Commonwealth Fibers which is the subject of the Taking in accordance with the provisions of Section 9.2 and 9.4.

ARTICLE XXI DISPUTE RESOLUTION

21.1. It is the intent of Cincinnati Bell and Commonwealth that any disputes which may arise between them, or between the employees of each of them, be resolved as quickly as possible. Quick resolution may, in certain circumstances, involve immediate decisions made by the parties' representatives. When such resolution is not possible, and depending upon the nature of the dispute, the parties hereto agree to resolve such disputes in accordance with the provisions of this Article. Any election herein to arbitrate shall not be binding upon any party and is in addition to any other remedies available under the Agreement or law.

21.2. Commonwealth and Cincinnati Bell shall each designate, by separate letter, representatives as points of contact and decision making with respect to the obligations and rights of the parties, said letters to be furnished by each party to the other within thirty (30) days from the date of this Agreement. Any disputed issues arising during the term of this Agreement shall in all instances be initially referred to the parties' designated representatives. The parties' designated representatives shall render a mutually agreeable resolution of the disputed issue, in writing, within seventy-two (72) hours of such referral. Either party may modify the designated representative upon written notice to the other party.

21.3. Any claims or disputes arising under the terms and provisions of this Agreement, or any claims or disputes which the parties' representatives are unable to resolve within the seventy-two (72) hour time period, shall continue to be resolved between the parties' representatives if mutually agreeable, or may be presented by the claimant in writing to the other party within thirty (30) days after the circumstances which gave rise to the claim or dispute took place or become known to the claimant, or within thirty (30) days after the parties' representatives fail to achieve resolution, whichever is later. The written notice shall contain a concise statement of the claim or issue in dispute, together with relevant facts and data to support the claim.

21.4. Any controversies or disputes arising out of or relating to this Agreement that are not resolved in accordance with the preceding procedure may upon agreement of both Cincinnati Bell and Commonwealth be referred to nonbinding arbitration under the then current Commercial Arbitration Rules of the American Arbitration Association. When so referred, the parties shall endeavor to select a mutually acceptable arbitrator knowledgeable about issues relating to the subject matter of this Agreement. In the event the parties are unable to agree to such a selection, each party will select an arbitrator and the arbitrators in turn shall select a third arbitrator. The arbitrator(s) shall not have the authority, power or right to alter, change, amend, modify, add or subtract from any provision of this Agreement or to award punitive damages.

21.5. During the continuance of any arbitration proceeding, each party shall continue to perform their respective obligations under this Agreement.

21.6. Should any controversy or dispute not be resolved through dispute resolution, the provisions of KRS 45A.230-245 shall apply to this IRU.

ARTICLE XXII RULES OF CONSTRUCTION

22.1. Interpretation. The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement or as amplifying or limiting any of its content. Words in this Agreement that import the singular connotation shall be interpreted as plural, and words that import the plural connotation shall be interpreted as singular, as the identity of the parties or objects referred to may require. References to "person" or "entity" each include natural persons and legal entities, including corporations, limited liability companies, partnerships, sole proprietorships, business divisions, unincorporated associations, governmental entities, and any entities entitled to bring an action in, or that are subject to suit in an action before, any state or federal court of the United States. The word "including" means "including, but not limited to." "Days" refers to calendar days and references to "business days" exclude Saturdays, Sundays and holidays. Unless expressly defined herein, words having well-known technical or trade meanings shall be so construed.

22.2. Cumulative Remedies; Insurance. Except as set forth to the contrary herein, any right or remedy of Cincinnati Bell or Commonwealth shall be cumulative and without prejudice to any other right or remedy, whether contained herein or not. The provisions of Article XV (Insurance) shall not be construed as limiting the Indemnitor's obligations pursuant to Article XIII (Indemnification) or other provisions of this Agreement.

22.3. No Third-Party Rights. Nothing in this Agreement is intended to provide any legal rights to anyone not an executing party of this Agreement except under the indemnification and insurance provisions and except that (a) the Released Parties shall have the benefit of Sections 14.2, 23.1 and 24.2; and (b) the Facility Owners or Lenders shall be entitled to rely on and have the benefit of Sections 11.2 and 24.2.

22.4. Agreement Fully Negotiated. This Agreement has been fully negotiated between and jointly drafted by Cincinnati Bell and Commonwealth.

22.5. Industry Standards. Except as otherwise set forth herein, for the purpose of this Agreement, the generally accepted standards of performance within the telecommunications industry in the relevant market shall be the measure of whether a party's performance is reasonable and timely.

22.6. Cross References. Except as the context otherwise indicates, all references to Exhibits, Articles, Sections, Subsections, Clauses, and Paragraphs refer to provisions of this Agreement.

22.7. Limited Effect of Waiver. The failure of either Cincinnati Bell or Commonwealth to enforce any of the provisions of this Agreement, or the waiver thereof in any instance, shall not be construed as a general waiver or relinquishment on its part of any such provision, but the same shall nevertheless be and remain in full force and effect.

22.8. Severability. If any term, covenant or condition in this Agreement shall, to any extent, be invalid or unenforceable in any respect under the laws governing this Agreement, the

remainder of this Agreement shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

22.9. No Partnership Created. The relationship between Cincinnati Bell and Commonwealth shall not be that of partners, agents, or joint venturers for one another, and nothing contained in this Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including federal income tax purposes. Cincinnati Bell and Commonwealth, in performing any of their obligations hereunder, shall be independent contractors or independent parties and shall discharge their contractual obligations at their own risk.

ARTICLE XXIII ASSIGNMENT

23.1. Conditions to Effective Assignment. An assignment (or other transfer) of this Agreement or a party's rights or obligation hereunder in whole or in part to any other party shall be effective without (a) the non-assigning party's prior written consent, which consent shall not be unreasonably withheld as provided in Section 23.2, (b) the written agreement of the assignee to be bound by all terms and conditions of this Agreement including, without limitation, the indemnification provisions and limitations on liability and recourse set forth in this Agreement, including Sections 14.2 and 14.3, and (c) such assignee's agreement to cure all prior defaults of the assigning party under this Agreement. If assignment is permitted under this Article without the non-assigning party's consent, then the assignor shall give prior written notice of the assignment to the non-assigning party.

23.2. Consent not to be Unreasonably Withheld. The non-assigning party shall not unreasonably withhold its consent required hereunder to an assignment if neither the assigning party nor the proposed assignee is in material default under this Agreement or any other agreement with the non-assigning party. For purposes of this Section, Cincinnati Bell's consent to a requested assignment or transfer shall not be considered unreasonably withheld if such requested assignment or transfer is to a party which Cincinnati Bell determines does not have the technical ability or financial capability to perform Commonwealth's obligations under this Agreement. It is the express understanding of the Parties that the Commonwealth may sublicense the use of the Commonwealth Fibers to third parties, including but not limited to KentuckyWired Operations Company, LLC, NG-KIH Design Build, LLC, LTS Kentucky Managed Technical Services, LLC, and OpenFiber Kentucky Company, LLC, for commercial use or economic development reasons, which shall not be considered an assignment of this Agreement.

23.3. Assignments to Particular Classes of Entities. The provisions of Section 23.1 notwithstanding:

- (a) Cincinnati Bell may grant a security interest in some or all of its rights and obligations under this Agreement or in the System to any Lender to Cincinnati Bell. If Commonwealth so requests, Cincinnati Bell shall obtain from any such Lender a written non-disturbance agreement substantially to the effect that such Lender acknowledges Commonwealth's rights and interests under this Agreement and agrees not to disturb such rights and

interests so long as Commonwealth is in compliance with the terms and provisions of this Agreement, including, without limitation, the payment in full when due of all amounts payable by Commonwealth hereunder.

- (b) Commonwealth may grant a security interest in some or all of its rights and obligations under this Agreement in all or any part of the Commonwealth Fibers, to a Lender to Commonwealth. If Cincinnati Bell so requests, Commonwealth shall obtain from any such Lender a written agreement substantially to the effect that (i) such Lender is subject to all of the terms and conditions of this Agreement that are binding on Commonwealth, and (ii) to the extent such Lender exercises its rights as a secured party, (A) it does not acquire any greater rights or assume any lesser obligations than were available to or imposed upon Commonwealth prior to such exercise and (B) it would be subject to any rights and remedies available to Cincinnati Bell under this Agreement at such time.
- (c) Cincinnati Bell may assign all of its rights and obligations to the underlying Facility Owners with respect to portions of the System with the prior written consent of Commonwealth, which consent shall not be unreasonably withheld if (a) neither Cincinnati Bell nor the proposed assignee is in material default under this Agreement or any other agreement with the Commonwealth and (b) the assignee agrees in writing to be bound by all the terms and conditions of this Agreement and the exhibits hereto.
- (d) Either party may assign its interest in this Agreement without the prior consent of the other party (i) to any corporation or other entity which is a successor to such party either by merger or consolidation, (ii) to a purchaser of all or substantially all of such party's assets, (iii) to any entity that acquires all of the System containing the Major Segments, or (iv) to a corporation or other entity which is an Affiliate of such party, so long as, in the case of an assignment to an Affiliate, the assignor remains fully and jointly and severally liable for all its obligations hereunder.

23.4. Agreement Binds Successors. This Agreement and the rights and obligations under this Agreement (including the limitations on liability and recourse set forth in this Agreement benefiting the other party and the Released Parties) shall be binding upon and shall inure to the benefit of Cincinnati Bell and Commonwealth and their respective permitted successors and assigns.

23.5. Change in Control Not an Assignment. Notwithstanding any presumptions under applicable state law that a change in control of a party constitutes an assignment of an agreement, a change in control of a party, not made for purposes of circumventing restrictions on assignment or depriving the other party of rights under this Agreement, shall not be deemed an assignment for purposes of this Agreement.

23.6. Right to Subcontract. Cincinnati Bell may subcontract for testing, maintenance, repair, restoration, relocation, or other operational and technical services it is obligated to provide hereunder or may have the underlying facility owner or its contractor perform such obligations, but Cincinnati Bell in any event shall remain fully and directly responsible to Commonwealth for the performance of such services and obligations.

**ARTICLE XXIV
ENTIRE AGREEMENT; AMENDMENT; EXECUTION**

24.1. Integration; Exhibits. This Agreement constitutes the entire and final agreement and understanding between Cincinnati Bell and Commonwealth with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits referred to herein are integral parts hereof and are made a part of this Agreement by reference. Where the terms of the Agreement and an Exhibit conflict, the Exhibit will control.


24.2. No Parole Amendment. This Agreement may only be amended, modified, or supplemented by an instrument in writing executed by duly authorized representatives of Cincinnati Bell and Commonwealth.

24.3. Counterparts. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument.

24.4. Facsimile Delivery. This Agreement may be duly executed and delivered by a party by execution and facsimile delivery of the signature page of a counterpart to the other party, provided that, if delivery is made by facsimile, the executing party shall promptly deliver a complete counterpart that it has executed to the other party.

IN WITNESS WHEREOF and in confirmation of their consent to the terms and conditions contained in this Agreement and intending to be legally bound hereby, Cincinnati Bell and Commonwealth have executed this Agreement as of the dates set forth below.

**CINCINNATI BELL TELEPHONE
COMPANY LLC**

By: 
Print Name: Gary Peddicord
Title: General Manager, Carrier Sales
Date: May 26, 2016

COMMONWEALTH OF KENTUCKY


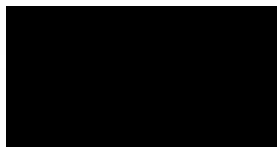
By: 
Print Name: William M. Landrum III
Title: Secretary, Finance and Administration Cabinet
Date: May 26, 2016

EXHIBIT A



EXHIBIT A-1



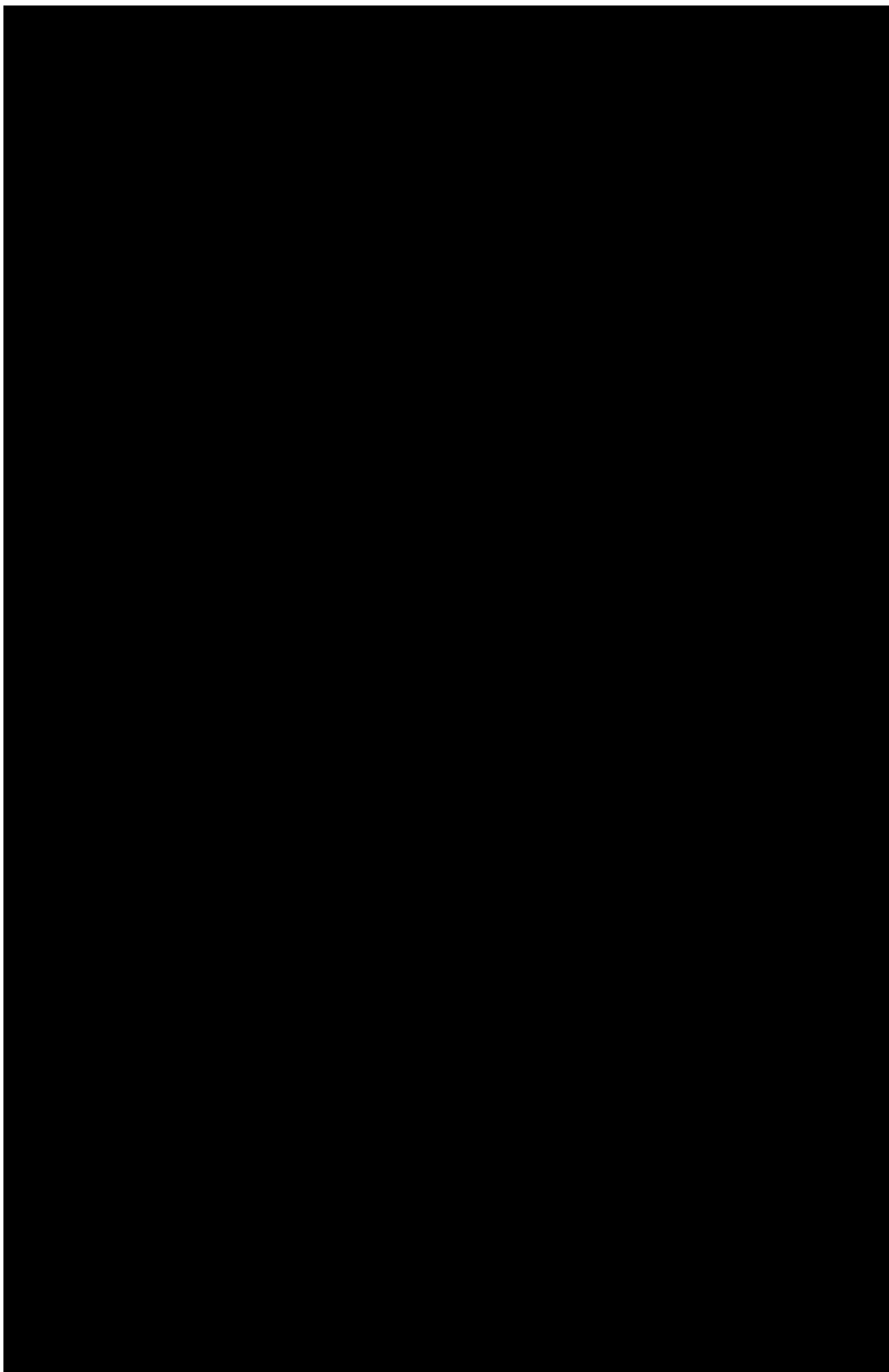


EXHIBIT A-2

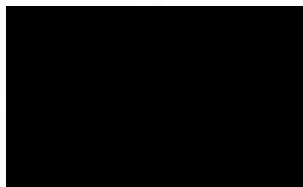


EXHIBIT B
Maintenance Agreement

Throughout the Term, Cincinnati Bell shall have the obligation to maintain and repair the System, at its costs, including the Commonwealth Fibers and Leased Space, in accordance with the following requirements and procedures:

1. Maintenance.

(a) Scheduled Maintenance. Routine maintenance and repair of the System ("Scheduled Maintenance") shall be performed by or under the direction of Cincinnati Bell and shall include at a minimum the following activities:

(i) Patrol of the System on a regularly scheduled basis, in accordance with Cincinnati Bell's then current procedures for maintenance;

(ii) Cincinnati Bell will subscribe to each and all One-Call Agencies that affect one or more of the Commonwealth Fiber Routes or the Leased Space;

(b) Unscheduled Maintenance. Non-routine maintenance and repair of the System, which is not included as Scheduled Maintenance ("Unscheduled Maintenance"), shall be performed by or under the direction of Cincinnati Bell and shall consist of:

(i) "Emergency Unscheduled Maintenance" in response to (i) an identification of a failure, interruption or impairment in the operation of Commonwealth Fibers or the Leased Space by Cincinnati Bell's Operations Center; (ii) notification by any third party of any failure, interruption or impairment in the operation of Commonwealth's Fibers or the Leased Space; or (iii) any event imminently likely to cause the failure, interruption or impairment in the operation of Commonwealth Fibers or the Leased Space.

(ii) "Non-Emergency Unscheduled Maintenance" in response to any potential service-affecting situation to prevent any failure, interruption or impairment in the operation of Commonwealth Fibers or the Leased Space.

Cincinnati Bell shall report the need for Emergency Unscheduled Maintenance to Commonwealth within [30] minutes of learning of same, and within 24 hours for Non-Emergency Unscheduled Maintenance. Cincinnati Bell will log the time of the report to Commonwealth, verify the problem, and dispatch personnel to assess and commence corrective action within four hours of notification to Cincinnati Bell of the service-affecting situation or any potential service-affecting situation.

2. Operations Center.

Cincinnati Bell shall operate and maintain an Operations Center ("OC") which is staffed twenty-four (24) hours a day, seven (7) days a week by trained and qualified personnel whose responsibility it is to receive notification of and assess and respond to service-affecting or potential service-affecting situations. Cincinnati Bell's maintenance employees shall be available for dispatch twenty-four (24) hours a day, seven (7) days a week. Cincinnati Bell shall have its first maintenance employee at the site requiring Emergency or Non-Emergency Unscheduled Maintenance activity within four (4) hours after the time Cincinnati Bell becomes aware of an event requiring Unscheduled Maintenance, unless delayed by circumstances beyond the reasonable control of Cincinnati Bell. Cincinnati Bell shall maintain a toll-free telephone number to contact personnel at the OC. Cincinnati Bell's OC personnel shall dispatch maintenance and repair personnel along the System to handle and repair problems detected in the System (i) through Cincinnati Bell's remote surveillance equipment or (ii) upon notification by a third party.

3. Cooperation and Coordination.

(a) In performing its services hereunder, Cincinnati Bell shall take workmanlike care to ensure signal continuity and performance of the Commonwealth Fibers, at a minimum, in accordance with prevailing industry standards.

(b) Cincinnati Bell shall notify Commonwealth at least ten (10) business days prior to the commencement date of any Planned Service Work Period (PSWP) and, with respect to any unscheduled Maintenance within 30 minutes after receiving notice of the need for Unscheduled Maintenance. Commonwealth shall have the right to be present during the performance of any Maintenance so long as Commonwealth's presence does not interfere with Cincinnati Bell's ability to perform its obligations under this Agreement. In the event that Scheduled Maintenance is canceled or delayed for any reason, Cincinnati Bell shall notify Commonwealth within 24 hours of the cancellation of such Scheduled Maintenance. Cincinnati Bell will comply with the provisions of this subsection in rescheduling any cancelled Scheduled Maintenance.

4. Facilities.

(a) Cincinnati Bell shall maintain the System in a manner which will permit Commonwealth's full use of the Commonwealth Fibers and the Leased Space and in accordance with the terms and conditions of the Agreement,

(b) Except to the extent otherwise expressly provided in the Agreement, Commonwealth will be solely responsible for providing and paying for any and all maintenance of all electronic, optronic and other equipment, materials and facilities owned and used by Commonwealth in connection with the operation of Commonwealth Fibers, none of which is included in the maintenance services to be provided hereunder.

5. Cable/Fibers.

(a) Cincinnati Bell shall perform appropriate Scheduled Maintenance on the Cable in accordance with Cincinnati Bell's then current preventative maintenance procedures, which procedures shall meet or exceed standard industry practice.

(b) Cincinnati Bell shall have qualified representatives on site at any time it has advance notice that another person or entity is engaging in construction activities or otherwise digging within five (5) feet of the Cable.

(c) Cincinnati Bell shall maintain sufficient capability to teleconference with Commonwealth during Emergency and Non-Emergency Unscheduled Maintenance during the repair process. When correcting or repairing discontinuity or damage to the Cable, including but not limited to in the event of Emergency and Non-Emergency Unscheduled Maintenance, Cincinnati Bell shall repair traffic-affecting discontinuity within twelve (12) hours of notification to Cincinnati Bell of the service-affecting situation or the potential service-affecting situation. The repairs so affected may be temporary in nature. In such event, within twenty-four (24) hours after completion of any such Emergency and Non-Emergency Unscheduled Maintenance, Cincinnati Bell shall commence its permanent repair and shall notify Commonwealth of such plans. Notwithstanding the foregoing, restoration of open fibers on fiber strands not immediately required for service shall be completed on a mutually agreed-upon schedule.

(d) Cincinnati Bell's maintenance employees shall carry on their vehicles the typically appropriate equipment and testing devices that would enable a temporary splice to restore a cut Cable so that operating capability is restored within four hours after Cincinnati Bell maintenance employees' arrival at the problem site.

6. Planned Service Work Period (PSWP).

Scheduled Maintenance which is reasonably expected to produce any signal discontinuity must be coordinated between the parties. Generally, this work should be scheduled after midnight and before 6:00 a.m. local time. Major system work, such as fiber rolls and hot cuts, will be scheduled for PSWP weekends. A calendar showing approved PSWP will be agreed upon by Cincinnati Bell and Commonwealth in the last quarter of every year for the following year and shall be scheduled to avoid work on the first and last weekends of the month and high-traffic holidays.

7. Restoration.

When restoring a cut cable in the System, Cincinnati Bell, upon promptly upon arriving on the site of the cut, shall determine the course of action to be taken to restore the cable and shall begin restoration efforts. Cincinnati Bell shall splice fibers tube by tube or ribbon by ribbon or fiber bundle by fiber bundle, first splicing the Commonwealth fibers and then splicing the fibers of other interest holders in the System; provided that, lit fibers in all buffer tubes or ribbons or fiber bundles shall have priority over any dark fibers in order to allow transmission systems to come back on line; and provided further that, Cincinnati Bell will continue such restoration efforts until all lit fibers in all buffer tubes or ribbons are spliced and all traffic restored. Commonwealth shall be given priority among all interest holders affected by a cut.

8. Contracting.

Cincinnati Bell may subcontract any of the maintenance services hereunder, provided that Cincinnati Bell shall require the subcontractor(s) to perform in accordance with the requirements, standards and procedures set forth herein.

9. Performance Reporting.

During the Term, the Commonwealth Fibers and the Leased Space shall be fully operational and shall continue to meet the prevailing industry standards and the Acceptance Standards as described in Exhibit B to the Installation Agreement. Cincinnati Bell will, on or before the fifteenth of each month during the Term, provide Commonwealth with a written report of each Commonwealth Fiber outage or maintenance request by Commonwealth for the previous calendar month, which report shall include at a minimum (a) the Cincinnati Bell response and restoration times, rounded up to the nearest minute; (b) the location of the Commonwealth Fiber outage by Major Segment or Lateral Segment; and (c) the mean

response and restoration times for the subject month.

The Parties acknowledge that Cincinnati Bell's failure to respond and restore outages will cause Commonwealth substantial damages and losses of a type and degree which is impossible to compute and ascertain with any certainty as a basis for recovery by Commonwealth of actual damages, and that the following liquidated damages represent a fair, reasonable and appropriate estimate thereof:

Mean Time to First Maintenance Responder to Site

Up to 4 hour and 15 minutes:	-\$0-
4 hours 16 minutes to 4 hours 30 minutes	\$500 for each event
4 hours 31 minutes to 5 hours:	\$750 for each event
Over 5 hours	\$1,000 for each event

Mean Time to Restore each Major Segment (Per Average Number of Sites Impacted)

Up to 12 hours:	-\$0-
12 hours 1 minute to 16 hours:	\$232
16 hours 1 minute to 20 hours	\$579
20 hours 1 minute to 24 hours	\$1,159
24 hours 1 minute to 36 hours	\$1,738
Over 36 hours	\$2,317

The Mean Time to Restore penalties will be calculated on an average number of sites impacted by the outage. For example, if there are 10 outages in a given month, 5 of which impact 5 sites and 5 of which impact 3 sites, and the Mean Time to Restore is 14 hours, the total penalty will be
 $\$232 \times 4 = \928 .

EXHIBIT C
Interconnection Procedures

1. Interconnection Points

A. Permitted Connecting Points. Commonwealth may request that Cincinnati Bell establish Connecting Points with other telecommunications facilities ("Interconnect Facilities") at Commonwealth's sole expense at Cincinnati Bell's Costs, at (i) points where the Cable is spliced along the System, (ii) fiber distribution panels at the Cable end points, or (iii) fiber distribution panels at Transmission Sites ((i) (ii) and (iii) collectively, "Connecting Points"). Commonwealth shall have no right to establish any connection to the System other than at such locations. A Connecting Point shall not include an optical cross connection at Network Centers. Commonwealth may request the right to establish connections to the System at other locations. Subject to any underlying agreements, Cincinnati Bell shall not unreasonably withhold permission for such additional connections. A determination by Cincinnati Bell of the existence of any of the conditions described in Subsection 2.B of this Exhibit C shall not be deemed an unreasonable denial of permission for additional connections.

B. No Commonwealth Access to Cable. Except as explicitly defined in this Agreement, Commonwealth shall have no right to access any Fibers within the Cable or to enter any splice or Cincinnati Bell vault.

2. Requests for Interconnections

A. Connection Requests. Commonwealth shall provide Cincinnati Bell at least sixty (60) days' notice (the "Interconnect Notice") of the date it requests that a connection be completed or sixty (60) days' notice if the connection requires installation of Commonwealth Equipment at a Transmission Site or Network Center. The Interconnect Notice shall set forth a description of the work required to be performed including:

- (i) the connection location (which shall be at a permitted Connecting Point as set forth in Subsection 1.A of this Exhibit);
- (ii) a copy of Commonwealth's construction design drawings including a diagram of the desired location of the Interconnect Facilities and Commonwealth Equipment;
- (iii) identification of all Interconnect Facilities and Commonwealth Equipment to be installed;
- (iv) Commonwealth's requested installation schedule;
- (v) any excess cable storage requirements;
- (vi) the space, power, environmental and other requirements for the Interconnect Facilities and Commonwealth Equipment;
- (vii) the estimated in-service and termination dates for the interconnection; and
- (viii) all other information reasonably required by Cincinnati Bell.

B. Response to Requests. Within twenty-one (21) days of receiving the Interconnect Notice, Cincinnati Bell shall respond with its acceptance or objections to the proposed interconnection. Cincinnati Bell shall use commercially reasonable efforts to accommodate the request, but may restrict such work to the planned system work periods set forth in Exhibit B. Cincinnati Bell may decline to make a requested connection if Cincinnati Bell determines, in its reasonable discretion, that there is a significant likelihood that (i) Commonwealth's use of a proposed connection would cause a material and adverse effect on the System or the use thereof; (ii) use of a particular location will cause a significant technical impediment; (iii) the making or existence of the connection presents an unreasonable risk of creating an interruption of transmission; (iv) Cincinnati Bell has no rights to interconnect to the Cable at such point due to restrictions existing in the Underlying Rights or an inability to obtain other required permits, authorizations or approvals; or (v) there are unreasonable costs and/or logistics required to make such interconnection.

3. Demarcation and Ownership

A. Demarcation Points. Cincinnati Bell shall designate an installation demarcation point and a maintenance demarcation point (which may be a different point) for each interconnection in order to safeguard and maintain sole control over the System. Cincinnati Bell shall perform all installation work on facilities on its side of the installation demarcation point and shall perform all post-installation work on facilities on its side of the maintenance demarcation point. Commonwealth shall pay the Costs of such installation and post-installation work as set forth in this Exhibit. Installation by Cincinnati Bell of the Interconnect Facility shall extend no further than the boundary of Cincinnati Bell's right of way or other property unless otherwise mutually agreed to by the parties.

B. Ownership. Commonwealth shall retain ownership of Interconnect Facilities during the Term. At the end of the Term, title to any portion of an Interconnect Facility located on Transmission Sites or other Cincinnati Bell premises or right of way not removed by Commonwealth within ninety (90) days shall pass to Cincinnati Bell.

4. Installation of Interconnect Facilities

A. Spur Cable. Commonwealth or its Contractors shall, prior to the requested connection date, provide a spur cable adequate to reach the Connecting Point with an additional length (minimum 100 feet) sufficient for Cincinnati Bell to perform splicing.

B. Rights of Way and Equipment. Commonwealth shall provide, at its sole cost and expense, any and all necessary rights of way, permits, access rights and/or any required consents or authorizations, and Cincinnati Bell-approved materials and equipment (including cables and conduit) necessary for the construction, use, operation, maintenance and repair of each Interconnect Facility. At Commonwealth's request, to the extent permitted under Cincinnati Bell's lease or other agreements relating to a Leased Space Agreement facility, and if Footprints are available, Cincinnati Bell shall at its sole discretion provide to Commonwealth access to building entrances, conduits and risers at the Accommodation Space Agreement facility or use of Cincinnati Bell's rights to install such building entrances, conduits or risers necessary in connection with constructing an Interconnect Facility. Such access or use of rights shall be at such additional charges to which Cincinnati Bell and Commonwealth may agree. Commonwealth shall be subject to all limitations and restrictions for conduits, risers and building entrances imposed by the

applicable underlying owner. Commonwealth shall be solely responsible for placement, construction and installation of all Commonwealth facilities required to interconnect at the Connecting Point designated by Cincinnati Bell.

If necessary, and where applicable, Cincinnati Bell shall assist Commonwealth, at Commonwealth's expense, in obtaining from any third-party building owner or Cincinnati Bell lessor access to existing building entrance facilities, if available, to access and exit Transmission Sites. Otherwise, Commonwealth shall be solely responsible for obtaining all necessary rights for the Interconnect Facility, as described in the first sentence of this Subsection, and Cincinnati Bell does not make and hereby disclaims any warranties or representations that such rights are available at any particular location or regarding the cost or availability of such rights.

5. Maintenance of Interconnect Facilities

A. Maintenance and Changes. Commonwealth shall provide all maintenance and repair of the Interconnect Facility on Commonwealth's side of the maintenance demarcation point. Any improvement, modification, addition to, relocation, or removal of, the Interconnect Facility by Commonwealth at Transmission Sites or other Cincinnati Bell premises shall be subject to Cincinnati Bell's prior review and written approval. Commonwealth shall pay the Cost of such improvement, modification, addition to, relocation, or removal of, the Interconnect Facility and of the Cost of repairing any damage due to Commonwealth's actions. Cincinnati Bell's maintenance responsibility shall be limited to the Interconnect Facilities on its side of the maintenance demarcation point and the associated cross connect or other connection at that point.

B. Unusual Costs. Cincinnati Bell may require Commonwealth to pay additional Costs incurred in maintaining any connection that requires Cincinnati Bell to obtain additional Required Rights.

C. Standards. Commonwealth shall (except to the extent Cincinnati Bell has installation or maintenance responsibility) ensure that any Interconnect Facilities are installed, operated, and maintained to meet or exceed any reasonable requirements of Cincinnati Bell, any requirements of Cincinnati Bell's building management or insurance underwriters, and any applicable local, state and federal codes and public health and safety laws and regulations (including fire regulations and the National Electric Code).

6. Additional Provisions Applicable to Transmission Sites and Network Centers

A. Limitations on Transmission Site Interconnections. Transmission Sites are established and designed to support network transmission equipment and, therefore, no interconnections may be made at such sites for other purposes, such as directly or indirectly connecting to local exchange carrier facilities or other local access facilities or for purposes of providing local exchange carrier or local access services.

B. Prohibition on Dark Fiber Cross-Connects with Other Colocation Commonwealth's. Unless as permitted by this Agreement or as otherwise agreed by the Parties, Commonwealth shall not establish Dark Fiber cross-connects between Commonwealth's collocated facilities or the Commonwealth Equipment and the collocated facilities of other parties who are using a Transmission Site or Network Center. Unless otherwise agreed, Commonwealth shall not use any Interconnect Facility to allow third parties collocated in any Transmission Site

or Network Center to interconnect with each other at that Transmission Site or Network Center.

C. Additional Colocation Requirements. If any Interconnect Facility requires installation or storage of Commonwealth Equipment (other than the spur cable) at Cincinnati Bell premises, Commonwealth must arrange for colocation of such Commonwealth Equipment through the Leased Space Agreement Provisions (as an Additional Service) or pursuant to a separate written agreement.

7. Additional Requirements for Connections at Splice Points

A. At any time there is cable activity (including without limitation, initial installation of the splice, repair of cable cuts or other cable damage, and relocation of the cable) on the Span where the splice is located (the "Spliced Span"), Commonwealth or its Contractors shall (a) at Cincinnati Bell's request (written, oral or electronic) promptly provide a trained and qualified technician with an optical time-domain reflectometer ("OTDR") at its fiber distribution panel ("FDP") to aid in the cable activity, or (b) if Commonwealth cannot provide the technician and an OTDR, then Commonwealth shall provide Cincinnati Bell access to Commonwealth's FDP for the duration of the cable activity.

B. Cincinnati Bell's Network Control Center ("NCC") shall remain the central point of contact, and shall control all cable activity. Cincinnati Bell's NCC will maintain an open line to Commonwealth's Network Control Center during cable activity.

C. The restoral times stated in the Operations and Maintenance Specifications appearing in Exhibit B of this Agreement, for the services Cincinnati Bell is providing, does not apply to the mid-span interconnection splice(s).

D. During a cable emergency situation, Cincinnati Bell shall proceed with "blind" fiber splicing of the Commonwealth Fibers along the Spliced Span (i.e. splicing without the ability to test the Spliced Span) in order to make initial temporary repairs. Cincinnati Bell may defer blind splicing until all other fibers in the damaged cable are spliced. Commonwealth shall make reasonable efforts to coordinate with a Cincinnati Bell technician in the performance of permanent repairs to the Commonwealth Fibers along the Spliced Span.

E. The Operation and Maintenance Specifications set forth in the Leased Space Agreement and Maintenance Agreement do not provide for fiber rolls to dark fiber to restore Commonwealth's service. However, if Cincinnati Bell does elect to provide fiber rolls, it may elect not to allow fiber rolls on the Spliced Span.

F. If Commonwealth reports a damaged fiber on the Spliced Span and Cincinnati Bell is not aware of any continuity problems on its System, Commonwealth shall have the burden of demonstrating that the problem is a result of damage to a Commonwealth Fiber. Commonwealth must use an OTDR to demonstrate that the problem is not a result of conditions off the System and beyond the Splice.

G. The provisions of Paragraphs (C), (D), (E) and (F) shall apply (a) only to the Commonwealth Fibers having a mid-span interconnection splice and (b) only to the extent such Commonwealth Fibers are on a Spliced Span.

H. Commonwealth may only have Cincinnati Bell perform a mid-span interconnection splice at existing Cincinnati Bell splice points and then only with Cincinnati Bell's prior written consent.

I. Cincinnati Bell is not obligated to perform any maintenance, repair, or restoration on the Commonwealth interconnection beyond the splice point.