

**DARK FIBER  
INDEFEASIBLE RIGHT OF USE ("IRU") AGREEMENT**

**Between**

**East Kentucky Network LLC**

**And**

**Commonwealth of Kentucky**

**Dated: August 25, 2016**

## **EXHIBITS**

- Exhibit A**      **Route Descriptions**
  - Exhibit A-1**    **Map of Major Segments**
  - Exhibit A-2**    **Description of Major Segments and Commonwealth Fibers**
- Exhibit B**      **Maintenance Agreement**
- Exhibit C**      **Interconnection Procedures**
- Exhibit D**      **Fiber Splicing, Testing, and Acceptance Standards and Procedures**
- Exhibit E**      **Cable Installation Specification**
- Exhibit F**      **As-Built Drawing Specifications**

## **DARK FIBER IRU AGREEMENT**

THIS DARK FIBER IRU AGREEMENT (this "Agreement") is made as of the \_\_\_\_ day of August, 2016 (the "Effective Date") by and between East Kentucky Network LLC ("EKN"), a Kentucky limited liability company having its principal office at 101 Technology Trail, Ivel, Kentucky 41642, and Commonwealth of Kentucky ("Commonwealth"), having its principal office at 702 Capital Avenue, Frankfort, Kentucky 40601. For purposes of this Agreement, EKN and Commonwealth are sometimes referred to herein individually as a "Party" and collectively as the "Parties".

### **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."). Project Co. then entered into a Project Implementation Agreement with KentuckyWired Operations Company, LLC ("Operations 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";

E. A component of the NG-KIH System is located in eastern Kentucky;

F. EKN can provide fiber facilities located in eastern Kentucky that fit the design of the NG-KIH System;

G. EKN, through ownership or other arrangements, has the rights to use the System;

H. Commonwealth desires to acquire from EKN, and EKN desires to provide to Commonwealth, an indefeasible right to use certain optical fibers in the System upon the terms and conditions set forth below; and

I. 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 and not otherwise defined herein shall have the following meanings:

"**Acceptance Date**" shall have the definition set forth in Exhibit D (Fiber Splicing, Testing, and Acceptance Standards and Procedures) to this Agreement.

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

"**Actual Pole Attachment Rate**" shall mean (i) the Negotiated Rate *plus* (ii) the Fiber Value *multiplied by* the number of additional single fibers allocated to the Target Pole Owner pursuant to Section 10.3(b).

"**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 equity ownership.

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

"**Anchor Sites**" means those Sites identified in Exhibit A-2 as "Anchor" under Segment Type.

"**Available**" means that the Commonwealth Fibers meet the standards set forth in Sections 2, 3 and 4 of Exhibit D attached hereto.

"**CAI Sites**" means those Sites identified in Exhibit A-2 as "CAI" under Segment Type.

"**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.

"**Change Order**" means an order setting forth an agreed-upon change to a fiber route or design specification.

"**Claim**" means any claim, action, dispute, or proceeding of any kind between Commonwealth (or any of its Affiliates, successors or assigns) and EKN (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 set forth 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 mean the IRU granted to Commonwealth pursuant to the terms and conditions set forth in this Agreement.

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

**"Consumer Price Index"** means the Consumer Price Index, All Urban Consumers, United States, All Items (1982-1984 = 100), as published by the Bureau of Labor Statistics of the United States Department of Labor, or if such index is not available, such other index as the parties may agree, while acting in good faith, most closely resembles such index.

**"Contract Price"** means Five Million Three Hundred Eighteen Thousand Six Hundred and Twenty-Six Dollars (\$5,318,626.00).

**"Core Fiber"** means the fiber backbone which makes up part of the NG-KIH System.

**"Designated Parties"** means each and all of the following parties: KentuckyWired Operations Company, LLC; NG-KIH Design Build, LLC; LTS Kentucky Managed Technical Services, LLC; and OpenFiber Kentucky Company, LLC. One or more of the Designated Parties, as the context requires, may act as the Commonwealth's agent during the Term.

**"Electric Utilities"** means Jackson Energy, Kentucky Power/American Electric Power, Clark Energy, Licking Valley RECC, and LGE/KU collectively.

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

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

**"EKN Pole Attachment Rate"** shall be \$23.13 per pole.

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

**"Fiber Acceptance Testing"** means the fiber acceptance testing described in Exhibit D to this Agreement.

**"Fiber Value"** shall mean \$4.55 per single fiber per pole.

**"Fibers"** means any optical fibers contained in the System, including the Commonwealth Fibers, the fibers of EKN and the fibers of any third party in the System, but 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 21.1.

**"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 14.1.

**"Indemnitor"** shall have the definition set forth in Section 14.1.

**"Initial Term"** shall have the definition set forth in Section 9.1.

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

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

**"Maintenance Fee"** shall mean the annual fee of \$89,376 payable by Commonwealth to EKN.

**"Make Ready Cycle"** means the submission of engineering packages by EKN to Pole Owners, payment of approved make ready costs and completion of make ready activities by the Pole Owners.

**"Negotiated Rate"** shall mean (a) the aggregate payments made to Targeted Pole Owners for purposes of this Agreement *divided by* (b) the number of poles owned or managed by the relevant Targeted Pole Owner that are incorporated into the NG-KIH System and include Commonwealth Fibers

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

**"Off-Net Sites"** means publicly-owned Sites that are within the geographical area in which EKN will provide IRU services to Commonwealth which are not directly connected to the Commonwealth Fibers.

**"Open Access"** means that all providers, including the Wholesaler, seeking to gain access to bandwidth on either the spare Commonwealth Fibers or local loops extending from County POPs or Commonwealth Fibers to user endpoints will pay the same transport cost to provide the same service over the same time period on the same terms and that no reasonable party seeking access to such bandwidth can be denied access.

**"Outage"** means that the Commonwealth Fibers are not Available; *provided, however*, in the event that the Commonwealth Fibers that were subject to an Outage meet the requirements set forth in Section 2(D) of Exhibit D after the occurrence of such Outage, regardless of whether EKN's repair of such Commonwealth Fibers is temporary or permanent, such Outage shall be deemed to have been corrected and the Commonwealth Fibers shall be deemed to be Available as of the date and time when the Commonwealth Fibers meet the requirements set forth in Section 2(D) of Exhibit D after the Outage occurred for purposes of calculating the Mean Time to Restore and any amounts due and payable by EKN under Exhibit B. The duration of an Outage will be calculated in accordance with Section 9 of Exhibit B.

**"Point of Presence" or "POP"** means a carrier neutral location identified by the Commonwealth in each county in EKN's operating territory.

**"Pole Attachment Fee"** means \$130,000 per annum.

**"Pole Owners"** means any entity that owns or manages poles to which EKN must attach the Commonwealth Fibers.

**"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 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 or foreclosure by the Lender;
- (b) Any employee, officer, director, stockholder, partner, member, or trustee of the other party or 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.

**"Remaining Cost"** means (a) all costs or expenses incurred by EKN in connection with any relocation *minus* (b) any compensation received by EKN from a third party that requires a relocation.

**"Representatives"** shall have the definition set forth in Section 19.1.

**"Required Rights"** means the rights EKN is required to obtain pursuant to Sections 4.4(a) and 4.4(b).

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

**"ROFR"** means EKN's right of first refusal described in Article VIII of this Agreement.

**"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 relocation or other circumstance.

**"Sites"** shall mean all of the sites listed in Exhibit A-2, collectively, including the Anchor Sites and CAI Sites.

**"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.

**"System"** means EKN's rights to use a fiber optic communication system along the route depicted in Exhibit A-1.

**"Taking"** shall have the definition set forth in Section 21.2.

"Targeted Pole Owner" means each of the following and "Targeted Pole Owners" shall mean all of the following: Jackson Energy, Kentucky Power/American Electric Power, Clark Energy, Licking Valley RECC, and LGE/KU.

"Term" means the term as defined in Section 8.1.

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

"Wholesaler" means OpenFiber Kentucky Company LLC.

## **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 as set forth in Section 3.3, EKN hereby grants to Commonwealth 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 EKN's operating territory:

- (a) Sufficient fiber strands to meet the minimum strand requirements for the endpoints listed as Anchor Sites and/or CAI Sites in Exhibit A-2;
- (b) Sufficient fiber strands to meet the minimum strand requirements for the Commonwealth Fibers as noted in Exhibit A-2; and
- (c) A maximum of [REDACTED] fibers to an Anchor Site, designated by the Commonwealth as a County POP, in each county in which Commonwealth Fibers exist.

Nothing in this Agreement, including the grant of the Commonwealth IRU, shall be construed to convey any legal title to any real or personal property, including the Fibers, the Cable, or the System, to the Commonwealth or any other party. The Commonwealth IRU does not include any equipment used to transmit capacity over or "light" the Fibers. Notwithstanding anything to the contrary contained herein, neither the Commonwealth Fibers leased nor Segments constructed by EKN pursuant to this Agreement shall be construed as permanently integrated into, or otherwise as forming a permanent part of, the NG-KIH System's Core Fiber.

2.2. **Use of Commonwealth Fibers.** Commonwealth will use the Commonwealth Fibers solely for purposes of servicing the Sites. Subject to the ROFR, Commonwealth will have full discretion on the use of the Commonwealth Fibers, including the ability to lease capacity to commercial users that have requested such access and negotiated an access agreement with Commonwealth or the Designated Parties. In the event that EKN desires to exercise its ROFR to expand its network footprint beyond the Commonwealth Fibers, the Wholesaler will provide EKN access to bandwidth on the spare fibers in accordance with Article VIII.

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 EKN to Commonwealth, EKN 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 EKN, (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. Fibers Provided to Electric Utilities.** The fiber strands conveyed to the Commonwealth for the Term exclude the strands to be provided to the Electric Utilities pursuant to Article X.

### **ARTICLE III** **CONSIDERATION**

**3.1. Contract Price.** Commonwealth shall pay EKN the Contract Price in accordance with Sections 3.2 and 3.3.

**3.2. Method of Payment.** Commonwealth shall pay the Contract Price and any other payments pursuant to this Agreement by wire transfer of United States currency to an account or accounts designated by EKN in writing.

**3.3. Time of Payment.** The Contract Price shall be due and payable by Commonwealth to EKN as follows:

- (a) 30% of the Contract Price, or \$1,595,588, within 30 days of execution of this Agreement;
- (b) 30% of the Contract Price, or \$1,595,588, within 30 days of satisfaction of the Acceptance Standards at 50% of the Sites;
- (c) 30% of the Contract Price, or \$1,595,588, upon satisfaction of the Acceptance Standards at 100% of the Sites; and
- (d) 10% of the Contract Price, or \$531,863, upon the successful operation of fiber connections servicing the Sites, including confirmed interoperability with the NG-KIH System, for 90 days following satisfaction of the Acceptance Standards to 100% of the Sites. The 90 days of interoperability with the NG-KIH system will commence when EKN has provided fiber characterization test results to Commonwealth which achieve the Acceptance Standards.

**3.4. Changes to the Route.** The Contract Price is a fixed price for a fixed construction scope for the Commonwealth Fibers of up to [REDACTED] miles, inclusive of building entry costs equal to \$3,500 per Site. The mileage estimate is based on the fiber routes and design specifications as of the Effective Date. In the event a fiber route or design specification is changed at the request of Commonwealth, resulting either in a construction scope in excess of [REDACTED] miles or an increase in the number of Sites, Commonwealth shall pay EKN the incremental costs of such changes on the basis of the following agreed charges, as the context requires:

- (a) Incremental mileage above [REDACTED] miles: \$1,800 per fiber pair per each additional mile; and
- (b) Incremental building entry cables: \$3,500 per Site.

EKN shall not be bound by any change to a fiber route or design specification unless and until each Party has signed a Change Order. If Commonwealth requests a decrease in the number of Sites for which Commonwealth previously paid EKN pursuant to this Agreement, EKN shall pay Commonwealth \$3,500 per Site within thirty (30) days of EKN's receipt of written notice from Commonwealth decreasing the number of Sites.

#### **ARTICLE IV CONSTRUCTION**

**4.1. Construction Obligations.** EKN will be responsible for all costs associated with construction of the Commonwealth Fibers, including, but not limited to, walkouts, staking, engineering, permitting, pole attachments, make ready, fiber and all required equipment and fiber installation, building entrance cables and termination on fiber panels within Sites.

**4.2. Fiber Acceptance Testing.** Exhibit D sets forth Fiber Acceptance Testing procedures and test deliverables that EKN shall provide to Commonwealth and procedures for determining the Acceptance Date of the Commonwealth Fibers. Notwithstanding the foregoing, all Commonwealth Fibers shall, subject to Section 4.3, meet the Acceptance Standards as described in Exhibit D on or before the following dates:

- (a) for the 19 counties in Ring 1B, ten (10) months from execution of the Agreement;
- (b) for the Sites located in Letcher County, three (3) months from the completion of Ring 1B; and
- (c) for the Sites located in Pike County, three (3) months from the completion of Ring 1B.

**4.3. Make Ready Adjustments.** The Acceptance Dates are based on a 90 day Make Ready Cycle. Each day reduced from the Make Ready Cycle will bring forward the Acceptance Dates by one day, while each day added to the Make Ready Cycle will extend the Acceptance Dates by one day. The Parties agree to use commercially reasonable efforts to work with the Pole Owners to minimize the Make Ready Cycle in the interest of minimizing the construction schedule to the greatest extent possible; however, to the extent the Make Ready Cycle is greater or less than 90 days, EKN will be responsible for providing reasonable information for purposes of verifying such timelines.

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

- (a) EKN shall have obtained all rights, licenses, authorizations, easements, leases, fee interests, or agreements necessary to provide for the occupancy by such Segments of real property or fixtures (such as conduit, bridges, river crossings, or transmission towers);
- (b) EKN 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 D and E to this Agreement.

Subject to the terms of Section 8.2, EKN shall renew or replace existing Required Rights through at least the Initial Term.

**4.5. Provision of Revised As-Built Drawings.** If there is a material change in the Commonwealth Fibers as a result of maintenance or relocation, EKN shall deliver updated as-built drawings to Commonwealth with respect to the relevant Segment within the later of (i) one-hundred eighty (180) calendar days following the completion of such change or (ii) 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 without the prior written consent of EKN and shall only access any part of the System upon the terms and conditions specified by EKN.

#### **ARTICLE VI** **CO-LOCATION SPACE**

**6.1. Request for Co-Location Space.** Commonwealth shall have the right to request co-location space from EKN. If requested and available, EKN will provide Commonwealth the co-location space at EKN's then-market rates, terms, and conditions.

#### **ARTICLE VII** **USE OF THE SYSTEM**

**7.1. Notice of Damage.** Each Party shall notify the other Party in writing 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 EKN 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. EKN 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; *provided, however*, that nothing herein shall prohibit EKN from granting any lien, encumbrance, or security interest to a Lender in connection with any financing. If a party breaches its obligations under this Section, it shall immediately notify the other party in writing and shall promptly cause such lien to be discharged and released of record without cost to the other party.

#### **ARTICLE VIII** **RIGHT OF FIRST REFUSAL**

**8.1. Right of First Refusal for Commercial Customers.** Commonwealth agrees that EKN will have a right of first refusal to provide managed and dark fiber services and construction of middle mile lateral or last mile spurs to any commercial user seeking to use capacity of the spare fibers delivered to the County POP throughout the Term.

**8.2. Right to Match Third Party Proposals.** In the event Commonwealth or one of the Designated Parties receives a proposal from a third party to provide managed or dark fiber services or construct middle mile lateral or last mile spurs in any of the counties listed in Exhibit A-1 from a County POP to a commercial user and Commonwealth desires or decides to accept such proposal, EKN will have the right of first refusal to provide those services or construct those laterals and/or spurs, as applicable, on the same terms and conditions between the third party and Commonwealth or the relevant Designated Party. Commonwealth or the relevant Designated Party receiving such third party proposal must notify EKN in writing of the commercial terms of such proposal within 5 business days of receiving such proposal completing the negotiation of said contract, and EKN will have 15 business days after its receipt of all of such materials to exercise its right of first refusal pursuant to this Article VIII. If EKN wishes to provide those services or construct those laterals and/or spurs on such terms and conditions, then EKN shall provide Commonwealth with written notice confirming that it is exercising its right of first refusal pursuant to this Article VIII, and Commonwealth or the Designated Parties, as applicable, shall prepare a written agreement with EKN containing the same terms and conditions set forth in the contract with such third party for the provision of such services or the construction of those laterals and/or spurs. If EKN declines to exercise its right of first refusal, it will keep confidential the commercial terms disclosed to it for purposes of this Article.

**8.3. Open Access Provisions.** Any and all laterals and/or last mile spurs constructed by EKN under this ROFR must be Open Access such that access to the spur is granted to any reasonable party seeking it, and EKN pays the same cost as any other party to transport bandwidth along its spur.

#### **ARTICLE IX** **TERM**

**9.1. Term.** Subject to Commonwealth's rights to terminate this Agreement for default or convenience in accordance with 200 KAR 5:312, the initial term shall end on the thirtieth (30<sup>th</sup>) anniversary of the Effective Date (the "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, however*, that the granting of such extension is in EKN's sole discretion. In the event that Commonwealth desires to extend the Term, Commonwealth shall provide EKN with written notice at least one (1) year in advance of the date the Term would expire specifying that Commonwealth wishes to negotiate an extension to the Term.

**9.2. Intentionally Left Blank**

**9.3. 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 XI (Audit Rights), XIV (Indemnification), XV (Limitation of Liability), XVII (Taxes and Governmental Fees), XIX (Confidentiality), XX (Prohibition on Illegal Payments), XXII (Dispute Resolution), or XXIII (Rules of Construction) or Sections 12.2 (Exclusion of Warranties) or 12.3 (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.

**9.4. Termination for Convenience.** In the event of a termination for convenience by Commonwealth pursuant to 200 KAR 5:312, EKN shall submit to 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 undisputed outstanding performance deductions payable to the Commonwealth in accordance with Exhibit B will be offset against any and all amounts payable to EKN.

## **ARTICLE X** **MAINTENANCE AND RELOCATION**

**10.1. Maintenance.** EKN will provide maintenance of the Commonwealth Fibers during the Term pursuant to the terms and conditions set forth in the Maintenance Agreement. Commonwealth will pay EKN the Maintenance Fee for the maintenance of up to [REDACTED] route miles of Commonwealth Fibers; *provided, however,* that the Maintenance Fee shall be subject to an increase on each anniversary of the Effective Date by any percentage rate increase in the Consumer Price Index for the immediately preceding 12-month period. Final mileage for the Commonwealth Fibers will be determined with reference to the final engineering plans. In the event that the Commonwealth Fibers, due to a change in fiber routes or design specifications requested by Commonwealth, extend beyond [REDACTED] route miles, Commonwealth will increase the Maintenance Fee by an additional annual cost of \$336 per route mile; *provided, however,* that the additional annual cost per mile shall be subject to an increase on each anniversary of the Effective Date by the percentage rate increase in the Consumer Price Index for the immediately preceding 12-month period. The Maintenance Fee shall be paid by Commonwealth to EKN (i) on the Effective Date for the first twelve (12) months of the Term, and (ii) on or before the anniversary of the Effective Date for each twelve (12) month period thereafter for the duration of the Term. No less than thirty (30) days prior to each anniversary of the Effective Date, EKN shall provide written notice to Commonwealth of any increase in the Maintenance Fee as a result of this Section 10.1.

**10.2. Pole Attachment Fees.** Subject to reductions in pole attachment fees negotiated in accordance with Section 10.4, Commonwealth will pay to EKN the Pole Attachment Fee; *provided, however,* that the Pole Attachment Fee shall be subject to an increase on each anniversary of the Effective Date by the percentage rate increase in the Consumer Price Index for the immediately preceding 12-month period. The Pole Attachment Fee shall be paid by Commonwealth to EKN (i) on the Effective Date for the first twelve (12) months of the Term, and (ii) on or before the anniversary of the Effective Date for each twelve (12) month period thereafter for the duration of the Term.

**10.3. Fiber Trades with Targeted Pole Owners to Reduce Pole Attachment Fees.** Commonwealth may negotiate fiber trades with Targeted Pole Owners to obtain favorable pole attachment fees, such that the net benefits of any reductions in pole attachment fees can be shared equally between the Parties as further set forth in Sections 10.3(b) and 10.4. The Parties agree to pursue the following options:

- (a) seek an extension of more favorable rates negotiated by Commonwealth as part of the NG-KIH System to apply to the Commonwealth Fibers. To the extent Commonwealth is able to negotiate more favorable rates with the Targeted Pole Owners pursuant to this Section 10.3(a), the Pole Attachment Fee will be reduced by an amount equal to the following: (i) fifty percent (50.00%), *multiplied by* (ii) the EKN Pole Attachment Rate *minus* the actual rate negotiated by Commonwealth with the Targeted Pole Owners pursuant to this Section 10.3(a), *multiplied by* (iii) the number of poles owned or managed by the relevant Targeted Pole Owner that are incorporated into the NG-KIH System and include Commonwealth Fibers;
- (b) allocation by EKN of excess single fibers to the Targeted Pole Owners as an in-kind payment that will reduce the relevant pole attachment fee owed to such Targeted Pole Owners as calculated pursuant to Section 10.4. EKN and Commonwealth may offer each Targeted Pole Owner up to four (4) single fibers in excess of the fiber strands listed in Exhibit A-2 throughout the relevant Targeted Pole Owner's service region. The Target Pole Owners will only be allowed to utilize these single fibers for internal purposes and, for the avoidance of doubt, cannot sell or lease the single fibers to third parties for commercial benefit. The cost to maintain these single fibers will be included in the Maintenance Fee; or
- (c) using all reasonable efforts to negotiate a payment structure that brings forward payment of all attachment fees due and payable to the Targeted Pole Owners over the Term into a single upfront payment that will be discounted by 10%.

**10.4. Calculating the Benefit of Fiber Trades.** In the event a Targeted Pole Owner enters into a written agreement with EKN pursuant to which the Targeted Pole Owner accepts excess single fibers as an in-kind payment that will reduce the relevant pole attachment fees pursuant to Section 10.3(b), the Parties will reduce the Pole Attachment Fee by the following: (a) fifty percent (50.00%), *multiplied by* (b) the EKN Pole Attachment Rate *minus* the Actual Pole Attachment Rate, *multiplied by* (c) the number of poles owned or managed by the relevant Targeted Pole Owner that are incorporated into the NG-KIH System and include Commonwealth Fibers.

**10.5. EKN Relocation Procedures.** If EKN 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, EKN shall provide Commonwealth thirty (30) calendar days' prior notice of any such relocation, if possible, and shall proceed with such relocation. EKN 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 in any material manner the use, operation or performance of Commonwealth's network or business, or change any Connecting Points or end points of the Major Segment; and

(c) shall not unreasonably interrupt service to Commonwealth.

**10.6. Maintenance of Commonwealth Equipment Excluded.** EKN shall have no obligation under this Agreement to maintain, repair, or replace Commonwealth Equipment.

**10.7. Payment of Relocation Costs.** Commonwealth shall pay its Pro-Rata Share of EKN's costs, which 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 EKN's costs shall apply to the extent EKN 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 EKN's Costs, and such relocation is not made necessary because of negligence or willful misconduct on the part of EKN.

#### **ARTICLE XI** **AUDIT RIGHTS**

**11.1.** 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; *provided, however,* that the auditing party shall (i) only have access to such books and records as it reasonably needs access to pursuant to this provision, (ii) provide no less than five (5) business days prior written notice to the party being audited that it wishes to have access to such books and records for purposes of auditing the party pursuant to this Section, (iii) only have access to books and records and conduct such audit during the ordinary course of business hours of the party being audited, and (iv) not unreasonably interfere with the business of the party being audited.

#### **ARTICLE XII** **WARRANTIES**

**12.1. 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;
- (b) it has taken all requisite corporate action to approve the execution, delivery, and performance of this Agreement;
- (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.

**12.2. EXCLUSION OF WARRANTIES.** EXCEPT FOR THE LIMITED EXPRESS WARRANTIES SET FORTH IN SECTION 12.1, EKN MAKES NO WARRANTY TO COMMONWEALTH OR ANY OF ITS REPRESENTATIVES, AFFILIATES, OR LENDERS, 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.

**12.3. No Third-Party Warranties.** No Facility Owners or Lenders have made any representation or warranty of any kind, express or implied, to Commonwealth concerning EKN, the Commonwealth Fibers, the Cable, or the System or as to any of the matters set forth in Section 12.1. No Commonwealth Lenders have made any representation or warranty of any kind, express or implied, to EKN concerning Commonwealth, the Commonwealth Fibers, the Cable, or the System or as to any of the matters set forth in Section 12.1.

### ARTICLE XIII DEFAULT

**13.1. Default and Cure.** Commonwealth may terminate this Agreement for either default or convenience in accordance with 200 KAR 5:312. Except as set forth in Section 13.2, 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 other Party; *provided, however*, that any disputed amount must be submitted to the other Party pursuant to Section 13.2; (ii) either Party fails to perform or comply with any other material obligation, agreement, term, or provision of this 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 other 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 as may be reasonably necessary to complete such curing. Upon the failure of a defaulting Party to timely cure any such default pursuant to this Section 13.1, then the other 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.

**13.2. Disputed Amounts.** Notwithstanding any provision to the contrary in Sections 13.1 or 13.3, 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) such dispute is submitted in good faith by the disputing party; (iii) 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 (iv) 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 in favor of EKN within thirty (30) days of the resolution of such dispute.



EKN shall credit disputed amounts mutually agreed upon 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 XXII of this Agreement.

**13.3. Failure to Pay.** If Commonwealth fails to pay any undisputed amounts owed under this Agreement as required by KRS 45.453, and fails to pay all of such amount within thirty (30) days of EKN's notice that it will disconnect the Commonwealth Fibers, EKN may, in addition to the remedies set forth in Section 13.1, disconnect the Commonwealth Fibers from all Connecting Points and from all Commonwealth Equipment on EKN's premises. EKN shall restore such Connecting Points and Commonwealth Equipment connections and resume providing services only if Commonwealth (a) pays EKN's bona fide estimate of the Costs incurred or to be incurred pursuant to this Section 13.3 and (b) pays all amounts due and owing to EKN with applicable interest pursuant to KRS 45.454. In the event that Commonwealth does not take the actions described in clauses (a) and (b) above in this Section 13.3 within thirty (30) days after EKN's disconnection of the Commonwealth Fibers or cessation of services as described in this Section, then, in addition to all other remedies described in this Section 13.3, this Article XIII or otherwise in this Agreement, EKN shall have the right to terminate this Agreement and shall have no further obligation with respect to this Agreement.

**13.4. 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 (1.0%) per month or, if lower, the highest percentage allowed by law.

#### **ARTICLE XIV** **INDEMNIFICATION**

**14.1. Indemnification.** To the extent permitted by law, including but not limited to Section 177 of the Kentucky Constitution, the Commonwealth and EKN (each party known individually as the "Indemnitor") each hereby agrees to indemnify, defend, protect and hold harmless the other party and its Representatives, Facility Owners (with respect to EKN), 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 grossly negligent acts or omissions or willful misconduct of the Indemnitor or its Representatives, Affiliates, 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.

**14.2. 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 XV**  
**LIMITATION OF LIABILITY**

**15.1. EXCLUSION OF INDIRECT DAMAGES.** SUBJECT TO THE COMMONWEALTH'S AUTHORITY TO SEEK ALL APPLICABLE DAMAGES FOR EKN'S DEFAULT AS PROVIDED FOR IN 200 KAR 5:312, AND NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT OR ANY APPLICABLE LAW OR REGULATION OTHER THAN 200 KAR 5:312 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 (I) TRANSMISSION INTERRUPTIONS OR PROBLEMS, ANY INTERRUPTION OR DEGRADATION OF SERVICE OR OTHERWISE; (II) CLAIMS OF COMMONWEALTH, WHETHER OCCASIONED BY ANY OBLIGATIONS PERFORMED BY, OR FAILED TO BE PERFORMED BY, THE OTHER PARTY; OR (III) ANY OTHER CAUSE WHATSOEVER, INCLUDING BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, OR STRICT LIABILITY, ALL CLAIMS FOR WHICH INDIRECT DAMAGES ARE HEREBY SPECIFICALLY WAIVED. NOTHING CONTAINED IN SECTION 15.1 SHALL BE DEEMED TO LIMIT AN INDEMNITOR'S OBLIGATIONS UNDER SECTION 14.1. FOR PURPOSES OF CLARITY, COMMONWEALTH SHALL ONLY BE ENTITLED TO SEEK DAMAGES THAT WOULD OTHERWISE BE EXCLUDED PURSUANT TO THIS SECTION 15.1 TO THE EXTENT THAT COMMONWEALTH IS PROHIBITED FROM WAIVING THE DAMAGES DESCRIBED IN SECTION 15.1 PURSUANT TO 200 KAR 5:312.

**15.2. 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 whatsoever 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.

**15.3. Pursuit of Actions Against Facility Owners.** Notwithstanding the foregoing provisions of this Article, and only to the extent EKN 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 any such claim arises 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 EKN in writing before pursuing any such Claim against a Facility Owner, and such notification shall make specific reference to this provision of the Agreement. Nothing in this Section 15.3 shall be construed as a release or waiver by Commonwealth of any Claim against EKN.

**15.4. Pursuit of Actions Against Third Parties.** Except as provided in Sections 15.2 and 15.3, nothing contained in this Agreement shall operate as a limitation on the right of either EKN or

Commonwealth to bring an action or claim for damages against any third party. Each of EKN and Commonwealth shall reasonably cooperate with the other Party to the extent necessary to enable the other Party (at such other Party's sole expense) to pursue any such action or claim related to the terms and conditions of this Agreement against such third party.

**15.5. 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 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 is at least as restrictive in all material respects as the limitations set forth in Sections 15.1, 15.2 and 15.3.

**ARTICLE XVI**  
**PURPOSELY LEFT BLANK**

**ARTICLE XVII**  
**TAXES AND GOVERNMENTAL FEES**

**17.1. Taxation of Commonwealth.** EKN understands that, as of the Effective Date, Commonwealth is a tax-exempt entity. Accordingly, and notwithstanding the remainder of this Article, EKN shall not, directly or indirectly, request or receive reimbursement or contribution from Commonwealth for any tax from which Commonwealth is exempt. For any taxes or fees, including, but not limited to, universal service funding, that may be assessed against EKN for which Commonwealth is not exempt, or if the Commonwealth Fibers are assigned to a non-tax exempt entity, EKN will collect and remit such taxes and fees to the appropriate Government Authority.

**17.2. EKN Obligations.** Subject to Section 17.1 above, EKN 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 XVIII**  
**NOTICE**

**18.1. 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

**With copy to KCNA:** KCNA  
General Government Cabinet  
209 St. Clair Street  
4<sup>th</sup> Floor  
Frankfort, KY 40601  
Facsimile No. (502) 564-0883

**If to EKN:** East Kentucky Network, LLC  
Attention: Allen Gillum, CEO/General Manager  
101 Technology Trail  
Ivel, KY 41642

**With copy to:** East Kentucky Network, LLC  
Attention: Lynn Haney, Regulatory Compliance Director  
101 Technology Trail  
Ivel, KY 41642

or at such other address as may be designated in writing to the other party in accordance with this Article XVIII.

**18.2. 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, 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, 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 XIX** **CONFIDENTIALITY**

**19.1. 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, attorneys, contractors, and consultants (collectively, the "Representatives") and its 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, 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. In the event that Commonwealth receives a Kentucky Open Records Act request pursuant to which any information related to this Agreement will be disclosed, Commonwealth shall give EKN notice of such request before disclosing any information with respect to such request; *provided*, however, that Commonwealth shall use best efforts to ensure that any and all information that is exempt from disclosure pursuant to the Kentucky Open Records Act is redacted and not disclosed to any party requesting such information pursuant to the Kentucky Open Records Act. 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 19.3. 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. Notwithstanding anything to the contrary in this Agreement, Commonwealth acknowledges and agrees that EKN may disclose, share, and discuss this Agreement and all matters related to the transactions contemplated herein with each of the following:

- (a) Brandenburg Telephone Company, Inc.;
- (b) Duo County Telephone Cooperative Corporation, Inc.;
- (c) Foothills Rural Telephone Cooperative Corporation, Inc.;
- (d) Gearheart Communications Company, Inc.;
- (e) Logan Telephone Cooperative, Inc.;
- (f) Mountain Rural Telephone Cooperative Corporation, Inc.;
- (g) North Central Telephone Cooperative Corporation;
- (h) Peoples Rural Telephone Cooperative Corporation, Inc.;
- (i) South Central Rural Telephone Cooperative Corporation, Inc.;
- (j) Thacker-Grigsby Telephone Company, Inc.; and
- (k) Bluegrass Network, LLC.

**19.2. Permitted Disclosures.** Notwithstanding any other provision herein, neither EKN 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 who is not otherwise restricted from disclosing such information;
- (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.

**19.3. Goodwill and Publicity.** Neither party shall use the name, trade name, service mark, or trademark of the other party in any promotional or advertising material without the prior written consent of the other party. 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 the execution of this Agreement.

## **ARTICLE XX** **PROHIBITION ON ILLEGAL PAYMENTS**

**20.1.** Neither party shall use any funds received under this Agreement for purposes that violate any applicable laws, regulations, decrees, or judgments of any Governmental Authority applicable to that party. 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; *provided, however*, that the auditing party shall (i) only have access to such books and records as it reasonably needs access to pursuant to this provision, (ii) provide no less than five (5) business days prior written notice to the party being audited that it wishes to have access to such books and records for purposes of auditing the party pursuant to this Section, (iii) only have access to books and records and conduct such audit during the ordinary course of business hours of the party being audited, and (iv) not unreasonably interfere with the business of the party being audited.

## **ARTICLE XXI** **FORCE MAJEURE; EMINENT DOMAIN**

**21.1. Excused Performance.** Neither EKN nor Commonwealth shall be in default under this Agreement with respect to any delay in its performance 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, including, but not limited to, any shortage of fiber optic cable (each Party hereby acknowledges and agrees that ten (10) weeks is the customary period of time necessary for delivery of fiber optic cable), not resulting from the responsible Party's failure to timely place orders or take other necessary and commercially reasonable actions therefor; (e) codes, laws, rules, regulations, decrees, judgments, or restrictions of a Governmental Authority; (f) war, acts of terrorism or civil disorder; (g) power outages and cable cuts not due to EKN's gross 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 and the expected duration of the Force Majeure Event (if known) and upon 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 EKN's timely performance pursuant to the Maintenance Agreement in any area not affected by the Force Majeure, except to the extent timely performance is beyond the reasonable control of EKN.

**21.2. Eminent Domain.** Should any portion of the Commonwealth Fibers belonging to EKN 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 21.1. In the event Commonwealth wishes to restore the affected Route that was subject to a Taking during the Term, EKN shall relocate all or any portion of the Commonwealth Fibers which is the subject of the Taking in accordance with the Sections 10.5 and 10.7.

**ARTICLE XXII**  
**DISPUTE RESOLUTION**

**22.1.** It is the intent of EKN 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, the parties hereto agree to resolve such disputes in accordance with the provisions of this Article.

**22.2.** Any claims or disputes arising under the terms and provisions of this Agreement, or any claims or disputes which the parties are unable to resolve within the seventy-two (72) hour time period, shall be resolved pursuant to KRS 45A.230 - 245.

**ARTICLE XXIII**  
**RULES OF CONSTRUCTION**

**23.1. 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 federal holidays and holidays in the Commonwealth of Kentucky. Unless expressly defined herein, words having well-known technical or trade meanings shall be so construed.

**23.2. Cumulative Remedies.** Except as set forth to the contrary herein, any right or remedy of EKN or Commonwealth shall be cumulative and without prejudice to any other right or remedy, whether contained herein or not.

**23.3. No Third-Party Rights.** Nothing in this Agreement is intended to provide any legal rights to any other person or entity other than the Parties except under the indemnification provisions and except that (a) the Released Parties shall have the benefit of Section 15.2; and (b) the Facility Owners or Lenders shall be entitled to rely on, and have the benefit of, Sections 12.3, 14.1, 15.2, and 15.3.

**23.4. Agreement Fully Negotiated.** This Agreement has been fully negotiated between and jointly drafted by EKN and Commonwealth.

**23.5. 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 engaging in an undertaking of similar scope and size shall be the measure of whether a party's performance is reasonable and timely.

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

**23.7. Limited Effect of Waiver.** The failure of either EKN 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.

**23.8. 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.

**23.9. No Partnership Created.** The relationship between EKN 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. EKN 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 XXIV** **ASSIGNMENT**

**24.1. Conditions to Effective Assignment.** Subject to the other terms and conditions set forth in this Article XXIV, an assignment or other transfer of this Agreement or a Party's rights or obligations hereunder, in whole or in part, to any other party shall not be effective without (a) the non-assigning Party's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed; (b) the written agreement of the assignee to be bound by all terms and conditions of this Agreement; and (c) such assignee's agreement to promptly 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.

**24.2. Consent Not to be Unreasonably Withheld.** The non-assigning party shall not unreasonably withhold, delay, or condition 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, EKN'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 EKN 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 Commonwealth may sublicense the use of the Commonwealth Fibers to third parties, including the Designated Parties, for commercial use or economic development reasons, which shall not be considered an assignment of this Agreement.

**24.3. Assignments to Particular Classes of Entities.** The provisions of Section 24.1 notwithstanding:

- (a) EKN 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 EKN. If Commonwealth so requests, EKN shall use commercially reasonable efforts to obtain from any such Lender a written non-disturbance agreement, containing such terms and conditions as are customary, pursuant to which 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 of Commonwealth. If EKN so requests, Commonwealth shall use commercially reasonable efforts to obtain from any such Lender a written agreement pursuant to which such Lender acknowledges 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 EKN under this Agreement at such time.
- (c) EKN 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, conditioned, or delayed if, at the time of EKN's request, (a) neither EKN 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, consolidation, or sale of stock or equity; (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.

**24.4. 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, EKN and Commonwealth and their respective permitted successors and assigns.

**24.5. 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 shall not be deemed an assignment for purposes of this Agreement.

**24.6. Right to Subcontract.** EKN may subcontract with any third party for construction, 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 EKN in any event shall remain fully and directly responsible to Commonwealth for the performance of such services and obligations.

**24.7. Designated Parties as Agents.** The Parties acknowledge and agree that the Designated Parties may operate as agents of Commonwealth and shall have authority to make decisions for and bind Commonwealth. Commonwealth agrees and acknowledges that EKN may follow the instructions and take such actions or not take such actions as the Designated Parties may instruct EKN, and the actions and instructions of the Designated Parties shall be binding on Commonwealth. In no event will EKN be obligated to confirm that a Designated Party is duly-authorized by Commonwealth or otherwise has the



authority to make such determination or otherwise bind Commonwealth with respect to this Agreement or the actions to be taken or actions not to be taken, and Commonwealth shall have no claim or defense against EKN that such Designated Party was not authorized to act as the agent of and bind Commonwealth pursuant to this Agreement and any action taken or action not taken pursuant to this Agreement.

**ARTICLE XXV**  
**ENTIRE AGREEMENT; AMENDMENT; EXECUTION**

**25.1. Integration; Exhibits.** This Agreement constitutes the entire and final agreement and understanding between EKN 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.

**25.2. No Amendment.** This Agreement may only be amended, modified, or supplemented by an instrument in writing executed by duly authorized representatives of EKN and Commonwealth.

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

**25.4. Electronic Delivery.** This Agreement may be duly executed and delivered by a Party by execution and delivery of the signature page of a counterpart to the other Party by electronic mail in "portable document format" (".pdf") form, or by any other electronic means; *provided* that, if delivery is made by electronic mail in .pdf form, or by any other electronic means, the executing Party shall promptly deliver a complete counterpart that it has executed to the other Party.

*[Remainder of Page Left Blank Intentionally – Signature Page Follows]*

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, EKN and Commonwealth have executed this Agreement as of the dates set forth below.

EAST KENTUCKY NETWORK LLC

By: WA Gillum  
Print Name: W. Allen Gillum  
Title: CEO/General Manager

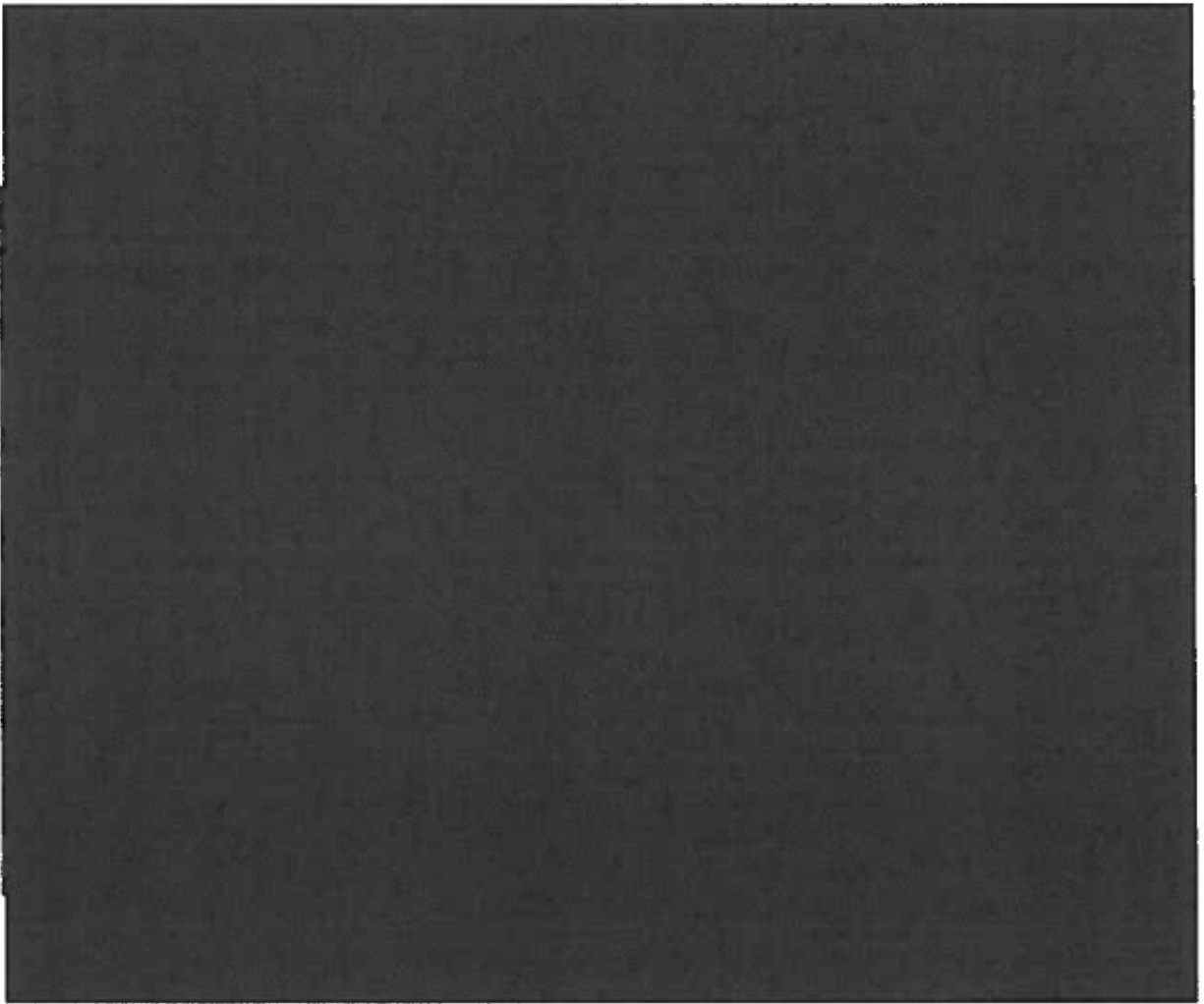
Date: 8-25-2016

COMMONWEALTH OF KENTUCKY

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

Date: 25 Aug 2016

**EXHIBIT A**  
**Route Descriptions**





**EXHIBIT A-2  
DESCRIPTION OF MAJOR SEGMENT AND GRANTEE FIBERS**

Line ID	Site Category	Site Name	Address	City	County	Quantity	Grantee	QTY	Grantee	V.S.I. #	V.S.I. #	Lat/Long	Hub/Spoke	Hub/Spoke	Hub/Spoke	Total Mile Production
141	Governmental Site	Prentissburg HS	815 Blackton Blvd Prentissburg, Ky	Prentissburg	Prentissburg	1000	Prentissburg	1000	Prentissburg	41853	37.67701919	-82.77794153	N	12	6	0.03216
397	Governmental Site	OTC DCB/PA Community Branch-Prentissburg	311 N Abbott Rd	Prentissburg	Prentissburg	1000	Prentissburg	1000	Prentissburg	41853	37.6772745	-82.7782745	N	2	1	0.01658
404	Governmental Site	OTC FLOYD CO	216 BRUCE St	Prentissburg	Prentissburg	1000	Prentissburg	1000	Prentissburg	41853	37.666841	-82.774776	N	2	1	0.03131
416	Governmental Site	OTC DCBS FLOYD CO	1009 N Lake Dr	Prentissburg	Prentissburg	1000	Prentissburg	1000	Prentissburg	41853	37.67791650	-82.78000013	N	2	1	0.01895
520	Governmental Site	OTC CASHION Big Sandy Data Office	5033 KY ROUTE 231	Prentissburg	Prentissburg	1000	Prentissburg	1000	Prentissburg	41653	37.754117	-82.7627517	N	2	1	0.06245
654	Governmental Site	OTC FLOYD Co Clerk / PVA	249 Crant of Ave Room #1	Prentissburg	Prentissburg	1000	Prentissburg	1000	Prentissburg	41653	37.66860	-82.771695	N	2	1	0.11712
708	Governmental Site	Floyd Co. Court Probation and Parole	1019 KY Route 231	Prentissburg	Prentissburg	1000	Prentissburg	1000	Prentissburg	41853	37.69537538	-82.76911744	N	2	1	0.04519
709	Governmental Site	Floyd Co Health Dept & Bio Terment Video Conf	288 Gable St	Prentissburg	Prentissburg	1000	Prentissburg	1000	Prentissburg	41853	37.6681310	-82.775695	N	2	1	0.05242
710	Governmental Site	Floyd County Circuit Court / ETC DE Hearing	127 S Lake Dr	Prentissburg	Prentissburg	1000	Prentissburg	1000	Prentissburg	41653	37.66213737	-82.77276191	N	2	1	0.03002
1075	Governmental Site	OTC FLOYD County RI	5018 KY Route 1428	Alton	Floyd	1000	Floyd	1000	Floyd	41601	37.631141	-83.7746899	N	2	1	0.55779
1176	Governmental Site	HS SURFACE ASBESTOS/Prentissburg AAJ/PVA/EL	1140 S LALE DR	Prentissburg	Prentissburg	1000	Prentissburg	1000	Prentissburg	41853	37.667789	-82.738672	N	2	1	3.18039
1287	Governmental Site	OTC FLOYD County	119 E Court St 100	Prentissburg	Prentissburg	1000	Prentissburg	1000	Prentissburg	41853	37.6603109	-82.7774610037	N	2	1	0.08931
1336	Governmental Site	OTC FLOYD COUNTY S&P	619 Jermey Way Drive	Prentissburg	Prentissburg	1000	Prentissburg	1000	Prentissburg	41853	37.667783	-82.774623	N	2	1	0.02719
1360	Governmental Site	WFO DEPT for the BLIND Floyd Co	16 BORGUM ST	Prentissburg	Prentissburg	1000	Prentissburg	1000	Prentissburg	41853	37.667798	-82.775101	N	2	1	0.01600
1374	Governmental Site	WFO DEPT Prentissburg	606 N Lake Drive	Prentissburg	Prentissburg	1000	Prentissburg	1000	Prentissburg	41653	37.675614	-82.778079	N	2	1	0.01416
8	E-12	Jackson County	3331 Highway 421 South	Mc Ew	Jackson	1000	Jackson	1000	Jackson	40847	37.422148	-81.917888	N	12	6	27.87062
915	Governmental Site	OTC Jackson County Health Center / PVA	616 Main St South	Mc Ew	Jackson	1000	Jackson	1000	Jackson	40847	37.430017	-81.899812	N	2	1	0.01719
762	Governmental Site	Jackson Co REV PVA, County Clerk	100 Main Street, Room 106	Mc Ew	Jackson	1000	Jackson	1000	Jackson	40847	37.410019	-81.896259	N	2	1	0.00586
763	Governmental Site	Jackson County OHS Family Support & Protection and Permanency	1028 MacCommon Ridge Rd	Mc Ew	Jackson	1000	Jackson	1000	Jackson	40847	37.413496	-81.914931	N	2	1	0.07097
764	Governmental Site	Jackson County Circuit Clerk	100 3rd St	Mc Ew	Jackson	1000	Jackson	1000	Jackson	40847	37.4037548	-82.9773311	N	2	1	0.01814
1636	Library	Jackson County Public Library	318 Highway 421 North, McEw, KY 40517	Mc Ew	Jackson	1000	Jackson	1000	Jackson	40847	37.430425	-81.900185	N	2	1	0.64159
84	E-12	Jackson Co. Board	251 N. May Jr. Parkway, Ky 41240	Parisville	Jackson	1000	Jackson	1000	Jackson	41740	37.82181983	-82.8164518	N	12	5	0.09489
331	E-12	Parisville Elementary School	305 2nd St Parisville, KY 41240	Parisville	Jackson	1000	Jackson	1000	Jackson	41740	37.8153797	-81.89665275	N	12	6	0.15264
182	ETCS	Big Sandy Community & Technical College - Hight H8 Campus	150 Industrial Park Rd., Hight H8, KY 41222	Hightsville	Jackson	1000	Jackson	1000	Jackson	41222	37.76534364	-82.78314971	N	4	2	0.18932
251	Governmental Site	OTC DCBS JONESBORO CO	205 MAIN St	Parisville	Jackson	1000	Jackson	1000	Jackson	41740	37.81181174	-82.80492871	N	2	1	0.07116
610	Governmental Site	OTC PVA JONESBORO CO	708 3RD St	Parisville	Jackson	1000	Jackson	1000	Jackson	41740	37.8251725	-82.808164	N	2	1	0.14102
770	Governmental Site	Jackson Co Clerk	230 Court St	Parisville	Jackson	1000	Jackson	1000	Jackson	41740	37.8165449	-82.80874311	N	2	1	0.07769
1639	Library	Jackson County Public Library	244 Main Street, Parisville, KY 41240	Parisville	Jackson	1000	Jackson	1000	Jackson	41740	37.811434	-82.800233	N	2	1	0.01273
89	E-12	County Co. Board	1156 Highway Bypass, Headman, KY 41822	Headman	Madison	1000	Madison	1000	Madison	41822	37.35139791	-82.98929205	N	12	6	0.00515
900	ETCS	Headman Community College - South County Branch	258 Highway 150, Headman, KY 41822	Headman	Madison	1000	Madison	1000	Madison	41822	37.353431	-81.977541	N	4	2	1.91524
335	Governmental Site	OTC DCBS MADITT	125 Courtois Road, Headman, KY 41827 540 W Main St / 12 Court Town Rd	Headman	Madison	1000	Madison	1000	Madison	41822	37.3429913	-82.989312	N	2	1	0.00406
675	Governmental Site	OTC OHS KWITT CO	13 Main St # 3 M, Headman, KY 41822	Headman	Madison	1000	Madison	1000	Madison	41822	37.348291	-82.981702	N	2	1	0.00017
1279	Governmental Site	REV PVA, Court Co Clerk	14 W Main St	Headman	Madison	1000	Madison	1000	Madison	41822	37.395168	-82.981914	N	2	1	0.11109
96	E-12	Lawrence Co. Maintenance Building	368 Bull Dog Ln, Louisa, KY 41230	Louisa	Lawrence	1000	Lawrence	1000	Lawrence	41230	38.09678017	-81.60589777	N	12	6	1.87402
250	Governmental Site	OTC DCBS LAWRENCE Co	140 BASHWOOD LN	Spotts	Lawrence	1000	Lawrence	1000	Lawrence	41230	38.097683	-82.603846	N	2	1	0.21702
535	Governmental Site	County Clerk/PVA LAWRENCE CO	122 S MAIN CEDARS ST	Louisa	Lawrence	1000	Lawrence	1000	Lawrence	41230	38.119519	-82.608279	N	2	1	1.25403
1645	Library	Lawrence County Public Library	108 West Main and Jefferson, Louisa, KY 41230	Louisa	Lawrence	1000	Lawrence	1000	Lawrence	41230	38.114765	-82.60173	N	2	1	0.01952
86	E-12	Mc Co. Board Office	342 Lee Ave, Beattyville, KY 41311	Beattyville	Macon	1000	Macon	1000	Macon	41311	37.1793081	-82.70900991	N	12	6	31.20002



**EXHIBIT A-2  
DESCRIPTION OF MAJOR SEGMENT AND GRANTEE FIBERS**

Site #	Site Category	Site Name	Address	City	County	Zip Code	F.R.S.#	F.R.S.Y	Support Type	Mode of Acquisition	All Locations	Number of Fibers	Number of Fiber Pairs	Total Mile Relocation
473	Government Site	DCS DCBS/Lea County Clerk	154 Main St	Beattyville	Lee	41331	37-2765404	-81.70977235		Manufacturer	M	2	1	0.01345
1742	Library	Lee County Public Library	Highway 31 South, Industrial Park,	Beattyville	Lee	41311	TBD	TBD			M	2	1	3.11000
97	K-12	Leake Co. High School	25 Eagle Ln, Hydco, KY 41749	Hyden	Leake	41749	37,449,96342	-81.37932931			M	17	6	1.10806
202	KCTCS	Hazard Community College - Leake County Center	100 Maple Avenue Hydco, KY 41749	Hyden	Leake	41749	37,463,84631	-81.3794899			M	4	2	0.25640
311	Government Site	KFC DCBS / Perm & Protection (LEAKE CO	31150 US-421 S	Hyden	Leake	41749	37,15,0081	-81.3772147			M	2	1	0.04113
1112	Government Site	Leake County Circuit Clerk - DATA ONLY	32010 Main St	Hyden	Leake	41749	37,10,3579	-81.374032			M	2	1	0.01904
1647	Library	Leake County Public Library	37003 Main Street, Hydco, KY 41749	Hyden	Leake	41749	37,10,3981	-81.37493			M	2	1	0.01177
87	K-12	Leake Co. Ins Usage	3409 Hwy 805 Hydco, KY 41537	Leitch	Leitch	41537	37,18,78178	-83.6470871			M	12	6	0.64087
96	K-12	Leitch Co. Ins Usage	751 Hazard Rd Dade & Whitesburg, Ky 41828	Whitesburg	Leitch	41828	37,12,64979	-82.83679545			M	12	6	2.40490
243	KCTCS	Healthcare Embassy Community & Technical College - Whitesburg Campus	7 Long Run, Whitesburg, KY 41858	Whitesburg	Leitch	41858	37,12,11793	-82.87771846			M	4	2	0.06827
410	Government Site	DCS DCBS/MS/MS/DVR/LEITCH CO	415 Hwy 2034	Whitesburg	Leitch	41858	37,11,5867	-82.793792			M	2	1	0.43008
1113	Government Site	Leitch County Circuit Clerk - DATA ONLY	116 Main St	Whitesburg	Leitch	41858	37,11,00778	-82.8267333			M	2	1	0.14413
1114	Government Site	Leitch County Health Department	115 E Main St	Whitesburg	Leitch	41858	37,11,01583	-82.8264267			M	2	1	0.00911
1629	Library	Mary M. Cragg Memorial Library	320 Main Street, Whitesburg, KY 41858	Whitesburg	Leitch	41858	37,11,7784	-82.824399			M	2	1	0.00805
106	K-12	Magoffin Co. District Office	309 Gardner Tr., Whitesburg, KY 41865	Whitesburg	Magoffin	41865	37,7,305973	-81.0770579			M	12	6	19.60654
677	Government Site	007-006, Magoffin Co	101 E MAIN ST	Lafayette	Magoffin	41865	37,7,32783	-81.084956			M	2	1	0.01546
1116	Government Site	Magoffin County Health Department	132 E Mountain Parkway	Lafayette	Magoffin	41865	37,74,112	-83.048287			M	2	1	0.01650
1261	Government Site	RTV PVA, Magoffin Co Clerk	42 East Maple Street	Lafayette	Magoffin	41865	37,7,92124	-83.067915			M	2	1	0.06421
1656	Library	Magoffin County Public Library	141 Church Street, Whitesburg, KY 41865	Lafayette	Magoffin	41865	37,7,92425	-81.06931765			M	2	1	0.05579
84	K-12	West Elementary School	3000 Elementary Drive West, KY 41224	West	Martin	41224	37,63,368977	-82.51811346			M	12	6	20.34672
462	Government Site	DCS DCBS Martin County	301 East Main St., Suite 200	West	Martin	41224	37,66,31187	-82.53714764			M	2	1	0.01819
577	Government Site	DCS Martin Co	64 Court St (Kearlthorse Ave)	West	Martin	41224	37,66,5851	-82.539391			M	2	1	0.01530
1760	Government Site	PA/County Clerk MARTIN CO	62 E Main Street, County Government Center	West	Martin	41224	37,66,6099	-82.534424			M	2	1	0.01816
1659	Library	Martin County Public Library	180 East Main Street, West, KY 41224	West	Martin	41224	37,66,67	-82.53997			M	2	1	1.91611
116	K-12	Martin Co. Elementary School	97 Indian Creek Rd Whitesburg, KY 40322	Whitesburg	Martin	40322	37,95,12744	-83.64621255			M	12	6	14.84821
349	Government Site	Martin Co. Elementary School	784 Kentucky St, Whitesburg, KY 40322	Whitesburg	Martin	40322	37,95,94141	-83.61612145			M	2	1	0.02376
1111	Government Site	DCS DCBS/MS/MS	103 Walnut Street	Whitesburg	Martin	40322	37,95,1176	-83.63974			M	2	1	0.01581
1666	Library	Magoffin County Circuit Clerk - DATA ONLY	1505 Main Street, Whitesburg, KY 40322	Whitesburg	Martin	40322	37,95,71914	-83.6274587			M	2	1	0.07070
271	K-12	Morgan County Board	208 University Dr West Liberty, Ky 41872	West Liberty	Morgan	41872	37,90,92477	-83.24825463			M	12	6	25.32175
270	Government Site	DCS Morgan County MS/MS	37 Bayshore Rd West 3rd S Jefferson Ave	West Liberty	Morgan	41872	37,91,63295	-83.2464973			M	2	1	0.01663
1003	Government Site	MS/MS/MS (Morgan Co. Correctional Campus)	100 Road to Bridge, West Liberty, Kentucky 41872	West Liberty	Morgan	41872	37,90,45	-83.26288			M	2	1	0.12276
1206	Government Site	MS/MS/MS (Morgan Co. Clerk)	408 WEST TOWNSHIP ST	West Liberty	Morgan	41872	37,90,917	-81.24434			M	2	1	0.66497
1403	Government Site	MS/MS/MS (Morgan Co. Clerk)	343 B MAIN ST, West Liberty Ky 41872	West Liberty	Morgan	41872	37,92,19688	-83.26023145			M	2	1	0.00990
111	K-12	MS/MS/MS (Morgan Co. Clerk)	Court and Main Streets, Whitesburg, KY 41814	Whitesburg	Owsley	41814	37,47,68765	-81.87571189			M	12	6	0.01298
374	Government Site	DCS DCBS/MS/MS	31 Kentucky Highway 11 South	Booneville	Owsley	41814	37,47,9147	-83.873316			M	2	1	0.02297
1278	Government Site	Owsley Co Clerk	1 MAIN ST	Booneville	Owsley	41814	37,47,9082	-83.875085			M	2	1	0.00196
1677	Library	Owsley County Public Library	180 W Highway 11	Booneville	Owsley	41814	37,47,9191	-81.877015			M	2	1	0.39545
70	K-12	Hazard and Boyd	708 Main St Hazard, KY 41701	Hazard	Peru	41701	37,23,21331	-83.197411			M	12	6	0.02432

**EXHIBIT A-2  
DESCRIPTION OF MAJOR SEGMENT AND GRANTEE FIBERS**

Site ID	Site Category	Site Name	Address	City	County	Site Code	V.B. In 3	V.B. In 4	Use or Unimproved	Full Occupied	Number of Fiber Poles	Number of Fiber Poles	Fiber Mile
196	G-17	Perry Co. High	305 Park Ave. Hazard, KY 41701	Hazard	Perry	41701	37,246,033	-83,210,826	Hazard	M	17	6	1.4025
200	ICTCS	Hazard Community College - Technical Campus	101 N. Tech Dr., Hazard, KY 41701	Hazard	Perry	41701	37,246,448	-81,381,092	Hazard	M	4	2	0.2521
304	ICTCS	Hazard Community College - Bakery/Storage Building	750 Houston Blvd., Hazard, KY	Hazard	Perry	41701	37,273,745	-81,227,708	Hazard	M	4	2	0.15462
470	Governmental Site	CHS DECK OFFICE/PEP Perry County	742 High St	Hazard	Perry	41701	37,250,367	-81,195,345	Hazard	M	2	1	0.00790
505	Governmental Site	CHS DECK Perry Co. BY BYTES BSH OFFICE Hazard	103 Town & Country Lane, Suble A	Hazard	Perry	41701	37,259,322	-81,209,727	Hazard	M	2	1	0.49415
636	Governmental Site	Division of Water, Venice Island, Air Quality, EPSC 108 Perry Co	233 BUNCH ST	Hazard	Perry	41701	37,240,778	-81,181,671	Hazard	M	2	1	0.13226
679	Governmental Site	SOFT-BOX PERRY CO	545 MAIN ST	Hazard	Perry	41701	37,240,937	-81,195,503	Hazard	M	2	1	0.02511
689	Governmental Site	DNA Eastern KY Veterans Center	208 Veterans Dr	Hazard	Perry	41701	37,298,483	-83,154,143	Hazard	M	2	1	0.87001
990	Governmental Site	105 437/POST 13 Perry Co	100 JUSTICE DR	Hazard	Perry	41701	37,291,003	-81,216,523	Hazard	M	2	1	0.87246
1055	Governmental Site	ET Bure Dist Health Dept	141 Garman Hollow Rd	Hazard	Perry	41701	37,239,953	-81,190,442	Hazard	M	2	1	0.61711
1221	Governmental Site	OHM Perry County	470 Main Street	Hazard	Perry	41701	37,248,181	-81,195,417	Hazard	M	2	1	0.65603
2232	Governmental Site	Perry County Clerk / KYTC Driver License Hearings	481 Main St	Hazard	Perry	41701	37,248,718	-81,195,406	Hazard	M	2	1	0.07295
2246	Governmental Site	PHS/Mesa & Mesoch PERRY CO	146 VILLAGE LN	Hazard	Perry	41701	37,270,118	-83,227,54	Hazard	M	2	1	0.06453
3177	Governmental Site	WFD 011 ONE STOP HAZARD	412 Hwy Campbell Dr	Hazard	Perry	41701	37,270,765	-83,225,14	Hazard	M	2	1	1.13001
137	G-12	Perry Co. Central HS	100 Weaver Circle Dr. Phyllis, KY 41507	Phyllis	PHa	41501	37,514,191	-82,999,948	Phyllis	M	12	6	0.22048
118	G-12	Phyllis Ind Board	148 2nd St. Phyllis, KY 41507	Phyllis	PHa	41501	37,482,198	-82,516,099	Phyllis	M	12	6	0.18274
978	Governmental Site	KYC DCBS PNE CD	795 HAMMILL BLVD	Phyllis	PHa	41501	37,481,756	-82,534,169	Phyllis	M	2	1	0.06134
431	Governmental Site	KYC DCB-CA PNA Co	143 MAIN ST	Phyllis	PHa	41501	37,479,272	-82,579,627	Phyllis	M	2	1	0.00470
464	Governmental Site	OHM DCBS PNA County	131 Summit Drive	Phyllis	PHa	41501	37,476,308	-82,535,888	Phyllis	M	2	1	0.10880
518	Governmental Site	OHM Local Health/Phyllis Co	119 PEARL DR	Phyllis	PHa	41501	37,477,781	-82,522,548	Phyllis	M	2	1	0.07644
618	Governmental Site	OHM 12 WAM Circuit	100 Larkins St	Phyllis	PHa	41501	37,482,395	-82,535,314	Phyllis	M	2	1	0.01515
1000	Governmental Site	OHM 437/Post 9 PNA Co	2499 N MAINS TR	Phyllis	PHa	41501	37,516,221	-82,569,928	Phyllis	M	2	1	0.06591
1101	Governmental Site	Labor - Dept of Workers Claims	107 Coal Hollow Road, Suite 110	Phyllis	PHa	41501	37,483,181	-82,532,996	Phyllis	M	2	1	0.01611
1177	Governmental Site	HR SURFACE ABRASIVE/Phyllis	100 371 MAINS BRANCH RD	Phyllis	PHa	41501	37,491,085	-82,581,082	Phyllis	M	2	1	0.96278
1221	Governmental Site	OHM PNA County	126 Triette Drive	Phyllis	PHa	41501	37,482,931	-82,515,196	Phyllis	M	2	1	0.07422
1237	Governmental Site	PHa County Circuit Clerk	175 Main St.	Phyllis	PHa	41501	37,480,212	-82,517,441	Phyllis	M	2	1	0.20053
1247	Governmental Site	PHM/Mesa & Mesoch PNA Co	284 WEDDINGTON BRANCH RD	Phyllis	PHa	41501	37,376,456	-82,569,133	Phyllis	M	2	1	0.57600
1282	Governmental Site	PHV PVA, PNA Co Clerk	146 MAIN ST	Phyllis	PHa	41501	37,479,573	-82,517,574	Phyllis	M	2	1	0.01671
1389	Governmental Site	WFD ONE STOP/Phyllis	138 COLLEGE ST	Phyllis	PHa	41501	37,476,749	-82,549,133	Phyllis	M	2	1	0.06382
1461	ICT	Phyllis	Johnston Mountain, Phyllis, KY 41051	Phyllis	PHa	41001	37,484,076	-82,549,574	Phyllis	M	2	1	2.61291
1643	Library	PHa County Public Library District	126 Lee Avenue, Phyllis, KY 41502	Phyllis	PHa	41501	37,476,481	-82,531,660	Phyllis	M	2	1	0.25563
140	G-12	Powell Co. High School	700 W College Ave. Stanton, KY 40240	Stanton	Powell	40180	37,687,004	-81,873,017	Stanton	M	17	6	0.10799
463	Governmental Site	CHS DECK Powell Co	124 N Main St	Stanton	Powell	40180	37,687,782	-81,878,017	Stanton	M	2	1	0.21212
529	Governmental Site	Co Clerk DOL / PVA / Co Clerk POWELL CO	125 WASHINGTON ST	Stanton	Powell	40180	37,651,158	-81,829,911	Stanton	M	2	1	0.11518
1224	Governmental Site	OHM Powell County	651 Washington St	Stanton	Powell	40180	37,652,201	-81,859,119	Stanton	M	2	1	0.00219
1335	Governmental Site	YOU PK/Robert Bridge SLP	2335 NATURAL BRIDGE RD	Stanton	Powell	40276	37,777,215	-81,806,597	Stanton	M	2	1	2.19676
1681	Library	Powell County Public Library	725 Brookridge St, Stanton, KY 40280	Stanton	Powell	40180	37,853,774	-81,860,777	Stanton	M	2	1	0.54159
1725	Governmental Site	Powell County Child Support Office	481 Washington Street	Stanton	Powell	40180	37,652,295	-81,829,916	Stanton	M	2	1	1.82800

**EXHIBIT A-2  
DESCRIPTION OF MAJOR SEGMENT AND GRANTEE FIBERS**

Site ID	Site Company	Site Name	Address	City	County	Site Code	V.6.1 - E	V.6.1 - F	Request Type	Works to be Undertaken	Est. Location	Number of Fibers	Number of Fiber Pairs	Total Sites Requiring
175	Waffle Co. Inc.	Waffle Co. Inc.	48 Main St, Compton, NY 41301	Compton	Waffle	41301	37,738,81183	-81,549,74599		Underhead	N	17	6	47,34750
192	Government S&B	CTC DCES WOLFE CD	110 MAIN ST	Compton	Waffle	41301	37,738,82378	-81,546,54047		Underhead	N	7	1	8,09392
1411	Government S&B	Waffle County Chrom/CTC DCS CAUREV PVA	10 COURT ST	Compton	Waffle	41301	37,738,86371	-81,547,44548		Underhead	N	7	1	8,09857
1704	Library	Waffle County Public Library	178 Kirtchey 15 North, Compton, NY 41301	Compton	Waffle	41301	37,738,90185	-81,550,61122		Underhead	N	7	1	8,20375

**EXHIBIT B**  
**Maintenance Agreement**

Throughout the Term, EKN shall have the obligation to maintain and repair the System, including the Commonwealth Fibers, at its cost, 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, EKN and shall include, at a minimum, the following activities:

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

(ii) EKN will subscribe to each and all One-Call Agencies that affect one or more of the Routes.

For purposes of this Exhibit B, "One-Call Agencies" includes the following, which may be updated from time to time: Kentucky811.

(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, EKN and shall consist of:

(i) "Emergency Unscheduled Maintenance" in response to (A) the identification of a failure, interruption or impairment in the operation of Commonwealth Fibers by EKN's OC (as defined below); (B) notification of EKN's OC by any third party of any failure, interruption or impairment in the operation of Commonwealth's Fibers; or (C) any event imminently likely to cause the failure, interruption or impairment in the operation of Commonwealth Fibers of which EKN's OC has actual knowledge.

(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 of which EKN's OC has actual knowledge.

EKN shall report the need for Emergency Unscheduled Maintenance to Commonwealth within thirty (30) minutes of EKN learning of same and shall report the need for Non-Emergency Unscheduled Maintenance to Commonwealth within twenty-four (24) hours of EKN learning of same. EKN will log the time of the report to Commonwealth, verify the problem, and dispatch personnel to assess and commence corrective action within four (4) hours of notification to EKN of the service-affecting situation or any potential service-affecting situation.

2. **Operations Center.**

EKN shall operate and maintain, or shall enter into an agreement with an Affiliate or third party for the operation and maintenance of, 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. The OC shall be able to dispatch maintenance personnel twenty-four (24) hours a day, seven

(7) days a week, and at least one maintenance personnel will be dispatched to the site requiring Emergency or Non-Emergency Unscheduled Maintenance activity within four (4) hours after the time EKN becomes aware of an event requiring Unscheduled Maintenance, unless delayed by circumstances beyond the reasonable control of EKN. EKN shall maintain a toll-free telephone number to contact personnel at the OC. EKN's OC personnel shall dispatch maintenance personnel along the System to handle and repair problems detected in the System (i) through EKN's remote surveillance equipment or (ii) upon notification of EKN by Commonwealth or its employees.

3. Cooperation and Coordination.

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

(b) EKN shall notify Commonwealth at least ten (10) business days prior to the commencement date of any Scheduled 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 EKN's ability to perform its obligations under this Agreement. In the event that Scheduled Maintenance is canceled or delayed for any reason, EKN shall notify Commonwealth within 24 hours of the cancellation of such Scheduled Maintenance. EKN will comply with the provisions of this subsection in rescheduling any cancelled Scheduled Maintenance.

4. Facilities.

(a) EKN shall maintain the System in a manner which will permit Commonwealth's full use of the Commonwealth Fibers 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 Commonwealth Equipment 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) EKN shall perform appropriate Scheduled Maintenance on the Cable in accordance with EKN's then-current preventative maintenance procedures, which procedures shall meet or exceed standard industry practice.

(b) EKN shall use commercially reasonable efforts to 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) EKN 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 in the event of Emergency and Non-Emergency Unscheduled Maintenance, EKN shall repair traffic-affecting discontinuity within twelve (12) hours of notification to EKN of the service-affecting situation or the potential service-affecting situation. The repairs so affected may be temporary in nature, and in such event, within twenty-four (24) hours after completion of any such temporary repair for Emergency and Non-Emergency Unscheduled

Maintenance, EKN 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) EKN's maintenance employees shall carry the appropriate equipment and testing devices on their vehicles that are customary for its industry and that would enable a temporary splice to restore a cut Cable.

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 weekends. A calendar showing approved Scheduled Maintenance will be agreed upon by EKN 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, EKN, 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. EKN 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, EKN 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.

EKN may subcontract any of the maintenance services hereunder, provided that EKN 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 shall continue to meet the prevailing industry standards and the Acceptance Standards as described in Exhibit D. EKN 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 (i) EKN' response and restoration times, rounded up to the nearest minute; (ii) the location of the Commonwealth Fiber outage by Major Segment; and (iii) the mean response and restoration times for the subject month.

The Parties acknowledge that EKN'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 hours:	-\$0-
4 hours 1 minute 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

For the avoidance of doubt, the Mean Time to First Maintenance Responder to Site standard will apply to each Outage that occurs during a calendar month. For example, if a unique Site is impacted by two separate Outages in a given month, and the respective response times for said Outages are 4 hours 15 minutes and 6 hours, the Mean Time to First Maintenance Responder to Site penalty would be equal to \$500 + \$1,000 = \$1,500.

**Mean Time to Restore (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 pursuant to this Exhibit B will be calculated as follows: (x) Average Number of Sites impacted, *multiplied by* (xi) the Mean Time To Restore.

For purposes of this Exhibit B, the following definitions shall apply:

- (i) "Average Number of Sites" is calculated as follows: (a) the number of unique Outages in a calendar month *multiplied by* the number of Sites impacted by such Outages, *divided by* (b) the total number of unique Outages.
- (ii) "Mean Time to Restore" is calculated as follows: (x) the sum of the duration of each Outage, calculated in minutes, *divided by* (y) the total number of unique Outages in each calendar month, where the duration of an Outage will be calculated as the number of minutes from the point at which EKN's Operating Center is notified of Sites not being Available until all Sites impacted by such Outage are Available.

*For example purposes only, if there are 10 Outages in a given month, 5 of which each impact 5 Sites and 5 of which each impact 3 Sites, the Average Number of Sites is calculated as follows: (i) (a) 5 Outages multiplied by 5 Sites plus (b) 5 Outages multiplied by 3 Sites, divided by (ii) 10 Outages, which equals 4. If the Mean Time to Restore the Outages is 14 hours, the total penalty for the relevant monthly billing period is calculated as follows: \$232 x 4, which equals \$928.*

Notwithstanding anything to the contrary contained in this Exhibit B or the Agreement, in no event may the penalties assessed pursuant to this Exhibit B during any calendar month exceed Seven Thousand Four Hundred Forty-Eight Dollars (\$7,448.00).

**EXHIBIT C**  
**Interconnection Procedures**

**1. Interconnection Points**

A. **Permitted Connecting Points.** Commonwealth may request that EKN establish Connecting Points with other telecommunications facilities ("Interconnect Facilities") at Commonwealth's sole expense, which shall be equal to EKN's cost, 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. Commonwealth may request the right to establish connections to the System at other locations. Subject to any underlying agreements, EKN shall not unreasonably withhold permission for such additional connections. A determination by EKN 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.** Commonwealth shall have no right to access any Fibers within the Cable or to enter any splice or EKN vault.

**2. Requests for Interconnections**

A. **Connection Requests.** Commonwealth shall provide EKN at least sixty (60) days' prior written notice (the "Interconnect Notice") of the date it requests that a connection be completed or sixty (60) days' prior written notice if the connection requires installation of Commonwealth Equipment at a Transmission Site. 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 EKN.

B. **Response to Requests.** Within twenty-one (21) days of receiving the Interconnect Notice,



EKN shall respond with its acceptance or objections to the proposed interconnection. EKN 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. EKN may decline to make a requested connection if EKN 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 a risk of creating an interruption of transmission; (iv) EKN 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.** EKN 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. EKN 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 EKN of the Interconnect Facility shall extend no further than the boundary of EKN'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 EKN premises or right of way not removed by Commonwealth within ninety (90) days shall pass to EKN.

### **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 EKN 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 EKN-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 EKN's lease or other agreements relating to a co-location facility, and if space is available, EKN shall at its sole discretion provide to Commonwealth access to building entrances, conduits and risers at the co-location facility or use of EKN'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 EKN 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 EKN.

If necessary, and where applicable, EKN shall assist Commonwealth, at Commonwealth's sole expense, in obtaining from any third-party building owner or EKN 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 EKN 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 EKN premises shall be subject to EKN'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. EKN'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. EKN may submit a request to Commonwealth to pay additional costs incurred in maintaining any connection that requires EKN to obtain additional Required Rights, and Commonwealth shall pay such costs.

C. Standards. Commonwealth shall (except to the extent EKN has installation or maintenance responsibility) ensure that any Interconnect Facilities are installed, operated, and maintained to meet or exceed any reasonable requirements of EKN, any requirements of EKN'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**

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 Co-location. Unless otherwise agreed, Commonwealth shall not establish dark fiber cross-connects between Commonwealth's co-located facilities or the Commonwealth Equipment and the co-located facilities of other parties who are using a Transmission Site. Unless otherwise agreed, Commonwealth shall not use any Interconnect Facility to allow third parties co-located in any Transmission Site to interconnect with each other at that Transmission Site.

C. Additional Co-location Requirements. If any Interconnect Facility requires installation or storage of Commonwealth Equipment (other than the spur cable) at EKN premises, Commonwealth must arrange for co-location of such Commonwealth Equipment through a separate written agreement.

#### **7. Additional Requirements for Connections at Splice Points**

A. At any time there is cable activity (including 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 EKN'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 EKN access to Commonwealth's FDP for the duration of the cable activity.

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

C. The restoral times stated in Exhibit B of this Agreement, for the services EKN is providing, do not apply to the mid-span interconnection splice(s).

D. During a cable emergency situation, EKN 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. EKN may defer blind splicing until all other fibers in the damaged cable are spliced. Commonwealth shall make reasonable efforts to coordinate with an EKN 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 Maintenance Agreement do not provide for fiber rolls to dark fiber to restore Commonwealth's service. However, if EKN 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 EKN 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 7(C), 7(D), 7(E) and 7(F) of this Exhibit C 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 EKN perform a mid-span interconnection splice at existing EKN splice points and then only with EKN's prior written consent.

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

## **EXHIBIT D**

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

#### **1. Installation Testing**

A. During installation, EKN shall use an OTDR to test splices and a 1-km launch cable to test pigtail connectors. Such installation tests shall be uni-directional and performed at 1550 nm.

B. If the combined front-end connectors and pigtail splice loss value exceeds 0.8 dB, EKN shall break the splice and re-splice until the loss value is 0.8 dB or less. If EKN is unable to achieve a loss value of 0.8 dB or less after five total splicing attempts, the splice shall be marked as Out-of-Spec ("OOS"). The .8 dB spec does not apply to fibers that are being spliced that have different mode-fields. Splice loss may be higher due to the mode-field mismatch.

C. If the loss value for a splice, when measured in one direction with an OTDR, exceeds 0.3 dB, EKN shall break the splice and re-splice until the loss value is 0.3 dB or less; provided that, if EKN is not able to achieve a loss value of 0.3 dB after three total splicing attempts, then EKN shall mark the splice as OOS. The .3 dB loss spec does not apply to fibers that are being spliced that have different mode-fields. Splice loss may be higher due to the mode-field mismatch.

#### **2. End-to-End Testing**

A. After EKN has established end-to-end connectivity on the fibers during installation, it shall:

- perform bi-directional OTDR end-to-end tests to record splice loss measurements,
- test continuity to confirm that no fibers have been "frogged" or crossed at any splice points, and
- record loss measurements using a light source and a power meter.

B. At Fiber termination points, the pigtail splice loss shall be no greater than .80 dB, and the reflection level at such termination points shall be equal to or greater than -50dB.

C. When a Fiber has been spliced, the splice loss shall not be greater than .3 dB in any one direction.

D. EKN shall perform the bi-directional OTDR end-to-end testing at both 1310 nm and 1550 nm, provided that 1310 nm OTDR tests are not required (i) for Spans longer than 64 kilometers or (ii) where the fiber being tested is not manufactured to support 1310 nm optical signals. The results of such tests for any given Span shall not be deemed within specification unless showing loss measurements between fiber distribution panels at each end of such Span in accordance with the loss specifications set forth by the cable manufacturer's specifications for dB per kilometer loss as shown in Exhibit D. EKN shall measure and verify losses for each splice point in both directions and average the loss values. EKN shall mark any splice points as OOS that have a loss value, based on uni-directional OTDR testing, in excess of 0.3 dB. EKN shall mark any Span as OOS that has an average splice loss on that Span in excess of .15dB. Any such splice points or Span shall be subject to Section 4, below.

**3. Post-Installation Testing**

After performing permanent splicing (in conjunction with repair of a cable cut, replacement of a segment of cable, or other work after initial installation and splicing of the cable), the test procedures set forth in Section 2 (End-to-End Testing) of this Exhibit shall apply to the relevant fibers and cable segments. The provisions in Sections 5 (OTDR Equipment and Settings) and 6 (Acceptance Test Deliverables) of this Exhibit, that are relevant to such testing shall also apply. EKN may adopt any alternative methods of testing that are generally accepted in the industry and that provide sufficient data to fulfill the objectives of the tests set forth in this Exhibit.

**4. Out-of-Spec Splices**

Out-of-Spec splices or Spans shall be noted, but shall not preclude Acceptance of a fiber if the Out-of-Spec condition does not affect transmission capability (based on use of then-prevailing telecommunications industry standards applicable to equipment generally used with the relevant type of fiber) or create a significant possibility of an outage. In the event the Commonwealth is later able to reasonably establish that the OOS splice or Span affects service, EKN shall take necessary action to bring the splice or Span into compliance with the applicable specifications under Section 1 of this Exhibit.

**5. OTDR Equipment and Settings**

EKN shall use OTDR equipment and settings that are, in its reasonable opinion, suitable for performing accurate measurements of the fiber installed. Such equipment and settings shall include, without limitation, equipment models compatible for testing and able to support the following settings:

**A. Index of refraction settings:**

	1310 nm	1550 nm	1625nm
Corning SMF-28	1.4675	1.4681	1.4681

**B. Tests of a pigtail connector and its associated splice:**

4 km Range  
50ns Pulse

1. m Resolution

**6. Acceptance Test Deliverables**

EKN shall provide a file containing the following information for the relevant fibers and cable segments:

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

**B. Verification that the loss at each splice point is either (i) in accordance with 2.C. above or (ii) in accordance with the requirements of Section 4 of this Exhibit.**

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

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

EKN will provide required documentation for new fiber that meets G.652D specification E. In the event Commonwealth notifies EKN of its purchase or bona fide intent to install electronics operating at 1625 nm on a Segment, EKN shall provide documentation from Chromatic Dispersion and PMD measurements for such Segment within 90 days and if necessary provide Fibers that meets the specification.

#### **7. General Testing Procedures and Acceptance**

A. As soon as EKN determines that the Commonwealth Fibers in a given Span meet the Acceptance Standards such that there is Fiber connectivity between all fiber distribution panels along such Span or connectivity to Commonwealth requested spliced off-net location, it shall provide the deliverables set forth in Section 6 of this Exhibit. Commonwealth shall have fourteen (14) calendar days after receipt of test deliverables for any Span to provide EKN written notice of any bona fide determination that the Commonwealth Fibers on such Span do not meet the Acceptance Standards. Such notice shall identify the specific data that indicate a failure to meet the Acceptance Standards.

B. Upon receiving written notice pursuant to Subsection 7.A of this Exhibit, EKN shall either:

- (i) expeditiously take such action as shall be reasonably necessary to cause such portion of the Commonwealth Fibers to meet the Acceptance Standards and then re-test the Commonwealth Fibers in accordance with the provisions of this Exhibit; or
- (ii) provide Commonwealth written notice that EKN disputes Commonwealth's determination that the Commonwealth Fibers do not meet the Acceptance Standards.

After taking corrective actions and re-testing the Commonwealth Fibers, EKN shall provide Commonwealth with a copy of the new test deliverables and Commonwealth shall again have all rights provided in this Subsection 7.B of this Exhibit with respect to such new test deliverables. The cycle described above of testing, taking corrective action and re-testing shall take place until the Commonwealth Fibers meet the Acceptance Standards.

C. If EKN provides notice to Commonwealth pursuant to Subsection 7.B.ii of this Exhibit, Commonwealth shall, within five (5) calendar days of such notice, designate by written notice to EKN the names and addresses of three reputable and independent fiber optic testing companies. EKN shall designate one of such companies to conduct an independent re-test of the Commonwealth Fibers for the relevant Span. If, after such re-testing, the testing company determines that the Commonwealth Fibers

- (i) meet the Acceptance Standards, then Commonwealth shall pay the testing company's charges for performing the testing and the acceptance date for the relevant Span shall be fourteen (14) days after EKN provided its test deliverables.

- (ii) do not meet the Acceptance Standards, then EKN shall pay the testing company's charges for performing the testing and shall perform the corrective action and re-testing set forth in Subsection 7.B.i of this Exhibit.

D. Unless Commonwealth provides a written objection pursuant to Subsection 7.A of this Exhibit, the acceptance date of a Span shall occur on the fourteenth (14<sup>th</sup>) day after EKN provides the test deliverables for that Span, or, if earlier, the date Commonwealth provides written acceptance of such Span. Commonwealth's acceptance (pursuant to this subsection or of Subsection 7.C of this Exhibit) of the last Span within a Major Segment shall constitute "Acceptance" of the Commonwealth Fibers for such Major Segment. The date of Acceptance for each Major Segment shall constitute the "Acceptance Date" of such Major Segment.

E. Acceptance testing shall progress Span by Span along the System as Cable splicing progresses so that test deliverables may be reviewed in a timely manner. The Commonwealth shall have the right, but not the obligation, to have an individual present to observe such testing and EKN shall provide the Commonwealth at least seven (7) days' prior notice of its testing schedule. Within thirty (30) calendar days after EKN conclusion of the Fiber Acceptance Testing in any given Span, EKN shall provide the Commonwealth with a copy of the test deliverables.



**EXHIBIT E**  
**Cable Installation Specifications**

**1. Material**

- Existing fiber, conduit and poles will be used to the maximum extent possible, as is/where is, and may not comply with portions of these cable installation specifications. Only new construction shall follow these specifications.
- Steel or PVC conduit shall be minimum schedule 40 wall thickness.
- Any exposed steel conduit, brackets or hardware (e.g., bridge attachments) shall be hot-dipped galvanized after fabrication.
- All new split steel shall be flanged.
- Handholes shall have a minimum H-15 loading rating.
- Manholes shall have a minimum H-20 loading rating.
- Warning signs shall display universal do not dig symbol, "Warning-Buried Fiber-Optic Cable," company name and logo, local and emergency One Call toll-free numbers.

**2. Minimum Depths**

Minimum cover required in the placement of the conduit/cable shall be forty-two inches (42"), except in the following instances:

- Existing construction will be used as is/where is and may not comply with portions of these cable installation specifications as existing fiber is typically buried at a depth of 30 to 36 inches.
- The minimum cover across streams, river washes, and other waterways shall be sixty inches (60") below the clean out line or existing grade, whichever is greater.
- At locations where the cable crosses other subsurface utilities or other structures, the cable/conduit shall be installed to provide a minimum of twelve inches (12") of vertical clearance from the utility/obstacle. The cable/conduit can be placed above the utility/obstacle, provided the minimum clearance and applicable minimum depth can be maintained; otherwise the cable/conduit shall be installed under the existing utility or other structure.
- In rock, the cable/conduit shall be placed to provide a minimum of eighteen inches (18") below the surface of the solid rock, or provide a minimum of forty-two inches (42") of total cover, whichever requires the least rock excavation.
- Where existing pipe is used, current depth is sufficient.

**3. Buried Cable Warning Tape**

All cable/conduit shall be installed with buried cable warning tape. The warning tape shall be:

- laid a minimum of twelve inches (12") above the cable/conduit
- generally placed at a depth of twenty-four inches (24") below grade and directly above the cable/conduit
- a minimum of three inches (3") wide and display "Warning-Buried Fiber-Optic Cable," a company name, logo and emergency one-call toll-free number repeated every twenty-four inches (24").

#### **4. Conduit Construction**

- Conduits may be placed by means of trenching, plowing, jack and bore, multi-directional bore or directional bore.
- Conduits shall generally be placed on a level grade parallel to the surface, with only gradual changes in grade elevation.
- Steel conduit shall be joined with threaded collars, Zap-Lok or welding. (Welding is the preferred method.)
- All jack and bores shall use HDPE or steel conduit.
- All directional or mini-directional bores shall use HDPE or steel conduit.
- Any cable placed in swamp or wetland areas shall be placed in HDPE, PVC, or steel conduit.

Where required by the permitting agency:

- all crossings of paved city, county, state, federal, and interstate highways, or railroad crossings shall be encased in steel conduit,
- all longitudinal cable runs under paved streets shall be placed in steel or concrete encased PVC conduit,
- all cable placed in metropolitan areas shall be placed in steel or concrete covered PVC conduit, and
- at all foreign utility/underground obstacle crossings, steel conduit shall be placed and shall extend at least five feet (5') beyond the outer limits of the obstacle in both directions,

#### **5. Innerduct Installation**

- No cable shall be placed directly in any split/solid steel conduit without innerduct. This might not be the case in existing fiber.
- Innerduct(s) shall extend beyond the end of all conduits a minimum of eighteen inches (18"). No cable shall be placed directly in any split/solid steel conduit without innerduct. This might not be the case with existing fiber.

#### **6. Cable Installation in Conduit**

- The cable shall be installed using either a sealed pneumatic cable blowing system or a powered pulling winch and hydraulic powered assist pulling wheels.
- The maximum pulling force to be applied to the cable shall be six hundred pounds (600 lbs.).
- Sufficient pulling assists shall be available and used to insure the maximum pulling force is not exceeded at any point along the pull.
- The cable shall be lubricated at the reel and all pulling assist locations.
- A pulling swivel breakaway rated at six hundred pounds (600 lbs.) shall be used at all times.
- Splices shall be allowed only at planned junctions and reel ends.
- All splices shall be contained in a handhole or manhole.
- A minimum of twenty meters (20m) of slack cable shall be left in all intermediate handholes and manholes.
- A minimum of thirty meters (30m) of slack cable shall be left in all splice locations.
- A minimum of fifty meters (50m) of slack cable shall be left in Transmission Sites and points of presence.

- PVC conduit/innerduct may be split, with the cable installed inside the split duct and plowed in.

**7. Manholes and Handholes**

- Manholes shall be placed in traveled surface streets and shall have locking lids. This might not be the case with existing fiber.
- Handholes shall be placed in all other areas, and be installed with a minimum of eighteen inches (18") of soil covering lid. This might not be the case with existing fiber.

**8. EMS Markers**

EMS Markers shall be placed directly above the lid of all buried handholes or shall be fabricated into the lids of the handholes.

**9. Cable Markers (Warning Signs)**

- Cable markers shall be installed at all changes in buried cable running line direction, splices, pull boxes, assist-pulling locations, and at both sides of street, highway or railroad crossings.
- Markers shall be spaced at intervals of no more than five hundred feet (500') apart in metropolitan areas (areas where there is either extensive development and improvement or rapid growth (new building construction)) and within line of sight (not to exceed one thousand feet (1,000')) in non-metropolitan areas.
- Markers shall be positioned so that they can be seen from the location of the cable and generally set facing perpendicular to the cable running line.
- Splices and pull boxes shall be marked on the cable marker post.

**10. Updating of Specifications**

EKN may revise these Cable Installation Specifications to include new procedures, materials, or processes so long as the changes achieve the objectives of the specifications set forth above and are in accordance with, or superior to, then-current telecommunications industry standards.

**EXHIBIT F**  
**As-Built Drawing Specifications**

**1. Alignment Sheets**

**A. As-Built Alignment Sheets shall include:**

- cable and conduit information
- splice locations
- assist point locations with permanent structures
- Transmission Site locations
- optical distances to the nearest Transmission Sites from each splice location.

**B. As-Built Alignment Sheets shall be updated with actual construction field data.**

**C. The scale of As-Built Alignment Sheets shall not exceed 1" = 200' in metropolitan areas (areas where there is either extensive development and improvement or rapid growth (new building construction)) or 1" = 500' in non-metropolitan areas.**

**2. Format**

Drawings shall be "blue lines" as such term is understood in the industry. EKN may, after the Acceptance Date, adopt any replacement method of creating or providing drawings that is generally accepted in the industry and that provides equivalent information.

**3. Transmission Site Floor Plans**

Floor plans for Transmission Sites shall show rack placement and assignment for Commonwealth's equipment. EKN shall provide hard copies of such floor plans one time free of charge. Soft copies of such floor plans are available for Two hundred and no/100 dollars (\$200.00) per site.