

**AMENDED AND RESTATED FIBER OPTIC CABLE
ON FREEWAYS IN MISSOURI AGREEMENT**

This Amended and Restated Fiber Optic Cable on Freeways in Missouri Agreement (the "Agreement"), is made as of June 5, 2003, by and among Digital Teleport, Inc., a Missouri corporation ("Digital Teleport"), the Missouri Highway and Transportation Commission ("MHTC") and the Missouri Department of Transportation (collectively referred to herein with MHTC as "MoDOT"), each a "Party" and together, the "Parties".

SECTION 1. Recitals

A. Digital Teleport and MHTC are parties to that certain Fiber Optic Cable on Freeways in Missouri Agreement dated as of July 29, 1994, which was amended by that certain amendment effective September 22, 1994, that certain Second Amendment effective November 7, 1994 and that certain Third Amendment effective October 9, 1996 (collectively, the "Old Agreement").

B. MHTC and Digital Teleport entered into that certain Settlement Agreement and Agreement to Restate the Digital Teleport/MoDOT Agreement, dated as of October 17, 2002 (the "Settlement Agreement").

C. Whereas, Digital Teleport has filed the Settlement Agreement along with a motion under Federal Rule of Bankruptcy Procedure 9019 seeking approval from the Federal Bankruptcy Court in the Eastern District of Missouri (the "Bankruptcy Court") for the compromise contemplated by the Settlement Agreement.

D. MoDOT obtained authority from MHTC to enter into the Settlement Agreement on October 11, 2002 and obtained required authorization from MHTC to enter into this Agreement on June 5, 2003.

E. To effect the terms of the Settlement Agreement and to amend and restate the terms of the Old Agreement, in their entirety, the parties hereto have entered into this Agreement.

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereto agree as follows:

SECTION 2. Easement

2.1. This Agreement specifies the terms and conditions agreed upon by the Parties for the construction, operation and maintenance by Digital Teleport of fiber optic communication facilities longitudinally on the mainline freeway system in Missouri. This Agreement supersedes and replaces all prior agreements between the Parties, including without limitation the Old Agreement, and all rights and remedies thereunder are fully and forever waived, and all claims thereunder are fully and forever released, subject only to the obligations of the Parties hereunder.

2.2. MoDOT has granted, remised and quit-claimed to Digital Teleport, all of its successors and assigns, and all their respective tenants, subtenants, utility providers, licensees, contractors and agents, subject to the terms and conditions of this Agreement:

(a) an exclusive easement with respect to the installation of fiber optic facilities as described in Section 3.1 on, over under and across the Fiber Optic Cable Corridor in place as of the date of this Agreement (the "Easement Area") for the use, construction, operation, maintenance, repair, replacement and upgrade (collectively, "Operations") of all of Digital Teleport's fibers, cables, conduit, hand holes, equipment shelters and other communication facilities, improvements, equipment and fixtures that exist either above or below ground within MoDOT's rights of way as of the date of this Agreement (the "Existing Facilities"); together with

(b) the right to enter upon the Easement Area and all other portions of MoDOT's rights of way that may be reasonably required to be entered for the purposes of the Operations.

2.3. The easement granted herein shall also include the right of Digital Teleport to construct fiber lateral routes and hand holes to create new fiber connections to the Existing Facilities (whether in the median or otherwise), subject to compliance by Digital Teleport with the provisions of the Policy (defined in Section 10.1) and Section 10.

SECTION 3. Fiber Optic Cable Corridors And Equipment Shelters

3.1. This Agreement applies to Digital Teleport's current facility installations on the roadway system in Missouri along the corridors listed below (the "Fiber Optic Cable Corridors"): The exact location of the Existing Facilities are indicated on the "as-built" plans previously provided to MoDOT, generally along the routes depicted on Exhibits A, C and E attached hereto, which are incorporated herein and made a part of this Agreement. Digital Teleport shall provide MoDOT with updates to the as-built plans within forty-five (45) days of any changes, additions or deletions to the Existing Facilities.

- (a) For purposes hereof, Existing Facilities are identified as follows:
- (1) the St. Louis Freeway System as depicted on Exhibit A hereto.
 - (2) the Kansas City Freeway System as depicted on Exhibit C hereto.
 - (3) the Rural Interstate as depicted on Exhibit E hereto.

(b) Digital Teleport has also constructed certain fiber optic facilities on non-MoDOT rights of way in downtown St. Louis and Kansas City as depicted on Exhibits B and D respectively ("Non-MoDOT Existing Facilities").

3.3. Equipment Shelters Digital Teleport may operate and maintain, equipment shelters for its fiber optic cable and communications system at various sites along the right-of-way as listed below (the "Equipment Shelters"). The exact location of the Equipment Shelters are indicated on the "as built" plans previously provided to MoDOT as depicted on Exhibit F hereto. MoDOT will provide access to MoDOT rights of way for ingress and egress to and from such Equipment Shelters to Digital Teleport, its agents, and employees or authorized contractors who operate fiber and/or maintain equipment in such facilities. Subject to MoDOT prior written approval, Digital Teleport shall be allowed to have other utilities, e.g. electrical and water service, installed to serve its Equipment Shelters.

SECTION 4. Consideration

4.1. In consideration of the mutual covenants and conditions set forth herein, and other good and valuable consideration, including forgiveness of defaults by Digital Teleport in prior agreements and in MoDOT's waiver of future performance of prior agreements, Digital Teleport acknowledges the receipt and sufficiency of consideration, and the Parties agree that Digital Teleport, at no charge or expense to MoDOT other than as explicitly set forth below, shall provide MoDOT with all of the following services and good as consideration, within the time specified herein or if no time is specified within ninety (90) days after the Effective Date (as defined in Section 13(t) below):

(a) Legal title, free and clear of all liens and encumbrances, to six (6) unlit fibers (SMF-28) dedicated to MoDOT in (i) the Existing Facilities installed on the Easement Area and (ii) in the Non-MoDOT Existing Facilities; *provided, however*, that MoDOT has previously utilized some or all of these six (6) strands on various routes in the St. Louis metro area to construct its four (4) ATM ITS rings as depicted on Exhibit H and further *provided*, that Digital Teleport will provide to MoDOT an additional two (2) unlit (dark) fibers SMF-28 (for a total of eight (8) fibers) between the fiber patch panel in the Digital Teleport building at 700 South 21st Street and the Digital Teleport handhole at the Southeast corner of the I-64/Compton Avenue overpass (collectively, the "MoDOT Fibers"). Legal title shall be delivered within ten (10) days of the Effective Date.

In relation to the MoDOT Fibers Digital Teleport agrees as follows:

- (1) Digital Teleport has provided a fiber testing data booklet clearly delineating and identifying MoDOT Fibers with industry standard OTDR traces, continuity tests, power loss ratings and other industry specific characteristics unique to the MoDOT Fibers; and
- (2) MoDOT may in the future, at MoDOT's cost, install its own electronics along the route of the MoDOT Fibers.
- (3) Digital Teleport will promptly and expeditiously complete the splicing and related work to support the St. Louis Intelligent Transportation System ("ITS") as set forth on Exhibit G hereto.
- (4) Digital Teleport will provide to MoDOT access to the MoDOT Fibers at all existing and future Equipment Shelters in the Fiber Optic Cable Corridor and at all existing and future Digital Teleport hand holes containing either splice points or slack coils; *provided, however*, that such requested access does not materially and adversely affect the operations of the Digital Teleport Fiber Optic Network.
- (5) MoDOT may request in writing that Digital Teleport add a new hand hole and splice point along the route of the MoDOT Fiber at which MoDOT may access the MoDOT Fibers for immediate use by MoDOT provided that such requested access does not materially and adversely affect the operations of the Digital Teleport Fiber Optic Network. Digital Teleport will commence installation of any such new hand hole or splice point within thirty (30) days of the applicable request. Digital Teleport will pay for all costs of purchasing and installing only the new hand hole or splice point

and MoDOT will pay for 100% of the actual out of pocket all other expenses incurred by Digital Teleport in physically accessing and splicing the MoDOT Fibers at that new hand hole or splice point. MoDOT will be responsible for all costs of constructing for MoDOT's use any additional lateral fiber route out from that new Digital Teleport hand hole or splice point.

(b) Digital Teleport will continue to provide to MoDOT access to a total of 622 Mbps of bandwidth capacity on the Digital Teleport fiber optic ring from Kansas City to Columbia to Lebanon to Joplin to Kansas City "West Ring" on the Existing Facilities (currently in the form of a SONET OC-12 circuit) which bandwidth will be accessible at the St. Joseph, Kansas City, Springfield, Joplin and Jefferson City district offices through a 622 Mbps connection from each district office to that bandwidth on the West Ring.

(c) Digital Teleport will continue to provide to MoDOT access to a total of 622 Mbps of bandwidth capacity on the Digital Teleport fiber optic ring from St. Louis to Columbia to Lebanon to Rolla to St. Louis "East Ring" on the Existing Facilities (currently in the form of a SONET OC-12 circuit) which bandwidth will be accessible at the St. Louis and Sikeston district offices through a 622 Mbps connection from each such district office to that bandwidth on the East Ring.

(d) Digital Teleport will continue to provide MoDOT access to a total of 2,488 Mbps of bandwidth capacity on the route depicted on Exhibit I in the St. Louis metro area (currently in the form of a SONET OC-48 circuit) to transport the ITS traffic data from the four (4) MoDOT ATM rings back to the MoDOT Traffic Operations Center ("TOC") ("St. Louis ITS Bandwidth").

(e) No later than forty-five (45) days following the Effective Date Digital Teleport will provide to MoDOT:

- (1) a 622 Mbps connection (utilizing the Existing Facilities) between the Hannibal MoDOT district office and the 622 Mbps of bandwidth capacity that is available to MoDOT on the East Ring.
- (2) a 45 Mbps connection (utilizing a DS-3 circuit leased from a third party) between the Macon MoDOT district office and the 622 Mbps of bandwidth capacity that is available to MoDOT on the East Ring.
- (3) a 45 Mbps connection (utilizing a DS-3 circuit leased from a third party) between the Willow Springs MoDOT district office and the 622 Mbps of bandwidth capacity that is available to MoDOT on the East Ring.

(f) If, in the future, MoDOT can demonstrate an immediate need for a connection greater than 45 Mbps to the Macon or Willow Springs district office for MoDOT's Governmental Purposes only, then Digital Teleport will provide such additional bandwidth, subject to availability from 3rd party carriers, within ninety (90) days of such request with evidence of such need, *provided, however*, Digital Teleport shall not be required to provide more than 622 Mbps of bandwidth capacity between the East Ring and either the Macon or Willow Springs district office.

(g) Digital Teleport and MoDOT will jointly design and plan the Kansas City ITS system for MoDOT. Digital Teleport will only be required to provide bandwidth transport

services to MoDOT by installing optical electronics equipment on two (2) Digital Teleport fiber strands on the Existing Facilities and the Non-MoDOT Existing Facilities (which are not MoDOT Fibers) to support this jointly developed Kansas City ITS system ("Kansas City ITS Bandwidth"), and MoDOT will pay for all out of pocket costs incurred by Digital Teleport in excess of \$190,000 to purchase and install that equipment. The bandwidth transport services provided to MoDOT pursuant to sections 5.1(b) through (g) shall be referred to herein as "MoDOT Bandwidth".

(h) Digital Teleport agrees that any maintenance or corrective measures, including replacement of equipment to provide the MoDOT Bandwidth will be performed without charge to MoDOT. Digital Teleport agrees that subject to the force majeure clause of Section 9 in this Agreement, all outages will be restored within twenty-four (24) hours of MoDOT notification to Digital Teleport, at no expense to MoDOT.

(i) Digital Teleport will provide to MoDOT a license to use one (1) standard 19" telecommunications equipment rack in the joint use collocation area of each Equipment Shelter ("MoDOT Racks"). Digital Teleport will provide to MoDOT 30 amps of 48v DC power to each MoDOT Rack through bulk power feeds. MoDOT will provide its own fiber patch panels, power distribution panels, racks and other equipment that will be installed in the MoDOT Rack. The demarcation point for access to the MoDOT Fibers within the Equipment Shelters will be at DTI's fiber distribution panel in the Equipment Shelter.

(j) MoDOT shall have the right to use all MoDOT Fibers and MoDOT Bandwidth provided to MoDOT in this Agreement for any legitimate, state governmental purpose ("Governmental Purpose").

4.2. All access to MoDOT Bandwidth for the district offices and the St. Louis and Kansas City ITS systems that is provided through the Digital Teleport network will be through a dim fiber meet at the location where those services are to be delivered to MoDOT:

(a) Access to the MoDOT Bandwidth at each district office shall be through a dim fiber meet located at a patch panel inside of each district office.

(b) Access to the St. Louis ITS Bandwidth and projects shall be through a dim fiber meet located at existing Digital Teleport hand holes with slack coils or splice cases in the Fiber Optic Cable Corridor.

(c) MoDOT will be responsible for providing all other fiber and optronic equipment necessary to access that MoDOT bandwidth from that dim fiber meet.

(d) MoDOT may also access MoDOT Bandwidth at all Equipment Shelters along the fiber route transporting the MoDOT Bandwidth that have Digital Teleport add/drop optronic equipment that has existing interface capacity and which transports the MoDOT Bandwidth.

4.3. Notwithstanding anything herein to the contrary, the Parties acknowledge and agree that SONET ring protection (i) is the current transport protocol utilized by Digital Teleport in provision of services to its commercial customers in Missouri, and (ii) is the transport protocol that is useful for MoDOT to meet its communications needs on the MoDOT district office network and on the St. Louis and Kansas City ITS networks. Notwithstanding the foregoing, due to the long term nature of this Agreement, Digital Teleport and MoDOT will work cooperatively to determine, from time to time, whether the transport protocol utilized by Digital

Teleport in delivering the MoDOT bandwidth should change in order to keep that protocol consistent with the prevailing transport protocol utilized by Digital Teleport in providing services to the commercial customers of Digital Teleport and utilized by MoDOT to meet its communications needs for its district office network and the ITS networks. When Digital Teleport and MoDOT agree that a change in the protocol is needed, (i) any costs to replace or modify the Digital Teleport equipment used to transport the MoDOT Bandwidth to the dim fiber meet point in the hand holes shall be paid by Digital Teleport, and (ii) any costs to replace or modify the MoDOT equipment that receives the MoDOT Bandwidth at the MoDOT Bandwidth service delivery locations shall be paid by MoDOT.

4.4. If MoDOT shall have an immediate need for additional similar telecommunications services along I-94 between I-70 and I-64, then Digital Teleport shall obtain for MoDOT, at Digital Teleport's cost, such bandwidth transport services from a third party to the extent then available from a third party. The level and means to deliver such services that must be provided by Digital Teleport shall not be required to exceed the prevailing level of services that MoDOT provides for its own use through dark fiber provided to MoDOT along the System Additions (as set forth in Section 6.1 below).

SECTION 5. Transfer of Digital Teleport Fibers

5.1. Digital Teleport has the right to sell, lease, license, grant title to any third party or enter into any similar transaction regarding the Existing Facilities to any third party without obtaining an additional permission or utility permit for either Digital Teleport or such third party from MoDOT. All agreements of Digital Teleport with third parties regarding such transactions shall contain a provision that (i) expressly excludes the right of any third party to take any interest in or right to the MoDOT right of way and (ii) provides that the third party will comply in all material respects with MoDOT health and safety regulations while accessing any equipment buildings located on the MoDOT right of way.

SECTION 6. Facility Relocation

6.1. The location of the easement granted herein shall be relocated at MoDOT's sole discretion within MoDOT's rights of way, provided that MoDOT shall bear the full cost of any relocation of all Existing Facilities which it requires of Digital Teleport after installation thereof *provided, however*, that MoDOT shall have no obligation to pay for such relocation for Existing Facilities along the following routes:

- (a) Route 376-Route 67 from I-270 to Mississippi River
- (b) Route 94 from I-70 to Hemstath Rd
- (c) Route 61 from I-70 to Route 36 (Hannibal)
- (d) Route 65 from I-44 to Division St(Springfield)
- (e) Route 71 from I-435 to I-44 and continuing to Arkansas State line(future I-49)

6.2. If MoDOT requires that the Existing Facilities to be relocated to a location in MoDOT's airspace which is already occupied by MoDOT utility corridor, or another utility is occupying that location by permit or variance and the Existing Facilities cannot be relocated in a feasible or prudent manner elsewhere in MoDOT's rights of way in that vicinity, then MoDOT shall have the option to either acquire additional right-of-way in which to place the Existing Facilities in a manner acceptable to Digital Teleport, or to remove or relocate the other utility or

utility corridor at MoDOT's sole expense, so that Digital Teleport may relocate its Existing Facilities in that corridor, as necessary.

SECTION 7. Exclusivity

7.1. No other fiber optic cable will be permitted to be installed in the MoDOT rights of way along the route of the Existing Facilities during the Term of this Agreement; *provided, however,* that this provision shall not prohibit another firm's fiber optic cable from crossing the Fiber Optic Cable Corridor at approximately a right angle, at a location to be mutually agreed by MoDOT and Digital Teleport. Furthermore, nothing herein shall limit MoDOT's authority to install its own independent fiber optic cable within MoDOT's airspace exclusively for Governmental Purposes.

SECTION 8. Termination

8.1 Rights Granted: This agreement may be terminated by either party at its option upon material breach by the other party, subject to the right to cure in Section 8.2.

8.2 Right to Cure: In the event that a party determines in good faith that any event has occurred which would give it the right to terminate this Agreement that party shall notify the other party of said event in writing, after which, notwithstanding anything else herein to the contrary, the other party shall have a period of ninety (90) days from the date of such notice to cure such violation of the terms of this Agreement. This ninety (90) day period may be extended upon the mutual written agreement of the parties.

8.3 Termination of the Agreement: When this Agreement and the rights it conveys is terminated, Digital Teleport shall have the option to:

(a) Remove all fiber optic cable equipment shelters and hand holes from MoDOT's property at Digital Teleport's own cost and repair all damages to MoDOT's property which result. Empty conduit may be abandoned in place without removal. Digital Teleport shall have one-hundred and eighty (180) days from the termination of this Agreement to complete that work. Digital Teleport shall not block or materially delay, impede or interrupt traffic to effect the removal of its property and shall not take any action which creates a dangerous condition of public property or which would endanger any pedestrian or occupant of a motor vehicle. If Digital Teleport elects this option, Digital Teleport must remove all hazardous or regulated wastes it generates or is responsible for (directly or indirectly) from MoDOT property in accord with all federal, state and local environmental laws, regulations and ordinances.

(b) Sell to MoDOT the Existing Facilities or any portion thereof which is acceptable to MoDOT, at a price to be mutually agreed upon.

(c) Sell to any third party the Existing Facilities *provided, however,* that such third party can show reasonable evidence of its ability to comply with the Policy.

(d) Abandon all Existing Facilities in place or any portion thereof, in a written notice to MoDOT, in which instance that portion of the Existing Facilities becomes the sole and exclusive property of MoDOT; *provided, however,* Digital Teleport may not abandon any items or equipment which may contain or create hazardous or regulated wastes or materials without

prior notice to MoDOT of the description and location of those materials. MoDOT may refuse to accept the abandonment of all or any portion of the Existing Facilities tendered by Digital Teleport until any hazardous or regulated wastes or materials have been removed in accord with all applicable laws. In any event, Digital Teleport remains liable for the remediation and full restoration of any damaged real or personal property and for injuries or death resulting from the presence of any hazardous or regulated wastes or materials on or adjacent to MoDOT's property, which wastes or materials are or were owned, placed or operated by Digital Teleport.

SECTION 9. Force Majeure

9.1. If either Party's performance of its obligations hereunder becomes impossible or impractical because of an act of God, war, riot, fire, explosion, accident, flood, sabotage, inclement weather, strikes, lockouts or injunctions or any other cause beyond the reasonable control of such party, such party shall be given a reasonably adequate time to remedy such situation. These conditions do not constitute grounds for avoidance of a party's obligations hereunder but merely excusable delay. A condition, however, will not excuse performance if it does not directly affect performance under the terms hereof.

(a) The Party invoking this provision shall immediately notify the other party orally and promptly thereafter provide notice in writing of the cause for the delay, restriction or limitation of its ability to perform, together with an estimate of the extent to which its performance has been and will be delayed.

(b) Should a "Force Majeure" delay the performance of this Agreement for a period in excess of thirty (30) days, the Party delayed from performing shall on or before the 1st and 15th day of each calendar month thereafter notify the other Party of its best estimate of the length of time such "Force Majeure" will remain in effect and, notwithstanding any provision herein to the contrary, the other Party may take such reasonable actions as will mitigate any damages.

SECTION 10. Median Fiber Access

10.1. MoDOT's Utility Accommodation Policy and the exceptions thereto granted by MoDOT in order to implement and comply with This Agreement on the date of the Old Agreement (the "Policy") shall apply to all aspects of construction, operation, and maintenance of Digital Teleport's communication facilities. This Policy may be amended from time to time by MoDOT, *provided, however*, that no changes to the Policy will change the rights or obligations of Digital Teleport under this Agreement.

10.2. It is acknowledged and agreed that MoDOT has granted Digital Teleport exceptions to the Policy including, without limitation, allowing longitudinal installation of fiber optic cables within the freeway right-of-way, provided that this exception does not compromise other provisions of the Policy, including the prohibition of maintenance access from the freeway roadway *provided, however*, that prior to being granted the right to construct fiber lateral routes to Existing Facilities in the interstate median, Digital Teleport shall certify to MoDOT that constructing such fiber lateral routes to the nearest interchange that has an existing hand hole outside the median is at least fifteen percent (15%) more costly to Digital Teleport than constructing the new fiber lateral route to establish a hand hole point of connection in the median. Standard utility permits will be issued covering all the installations.

SECTION 11. Maintenance

11.1. Digital Teleport will be responsible for the maintenance and Missouri One Call utility locate duties regarding the Existing Facilities (including the MoDOT Fibers) accordance with Digital Teleport's company policies.

11.2 Digital Teleport shall maintain and repair the MoDOT Fibers at Digital Teleport's expense. Digital Teleport disclaims any and all warranties, express or implied, as to the use or condition of the MoDOT Fibers and Rack Spaces or any other matter hereunder, including without limitation warranties of merchantability, workmanship, quality or fitness for a particular purpose and MoDOT agrees to look solely to the manufacturer of all materials and equipment subject to the grant of title or license to MoDOT hereunder for any recovery for claims of MoDOT relating to such materials and equipment.

11.3. All plans for work on the Existing Facilities involving excavation or trenching shall be submitted to MoDOT's State Traffic Engineer for approval at least thirty (30) days prior to the desired date of such work. Attachment to any structure shall be submitted thirty (30) days prior to installation. MoDOT will approve or disapprove any such submissions within twenty-one (21) days of receipt thereof. MoDOT's approval or disapproval of such plans shall be made in accordance with the Policy.

SECTION 12. Taxes And Liens

12.1. Digital Teleport shall promptly pay and discharge all personal property taxes, assessments, fees, and other similar charges levied or assessed against it or its assets situated on MoDOT right-of-way, and any and all other charges levied or assessed by reason of Digital Teleport's use and occupancy of the right-of-way which become due during the term of this Agreement which are hereby declared the obligation of Digital Teleport under this Agreement. Digital Teleport shall keep the right-of-way free from any liens arising from work performed, materials furnished or obligations incurred by Digital Teleport provided, however, Digital Teleport shall have the right to pledge its rights and privileges contained in this Agreement to secure financial obligations to third parties without the need to obtain consent from MoDOT.

SECTION 13. Miscellaneous

(a) Applicable State Laws and Encumbrances: At no time during this Agreement or any renewal period thereto shall Digital Teleport place, install or deposit any hazardous waste or hazardous substance in the MoDOT airspace. This does not include, however, those hazardous substances which are lawfully and properly contained within Digital Teleport's equipment or structures with the exception of propane tanks which shall be buried in compliance with all federal, state and local regulations. If Digital Teleport causes, allows or permits a spill of a hazardous waste or substance within MoDOT airspace, or on property immediately adjacent thereto, then Digital Teleport shall remain solely liable.

(b) Conflict of Interest: No official or employee of MoDOT or its governing body and no other public official of MoDOT who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of the project covered by this Agreement shall voluntarily acquire any personal interest, directly or indirectly, in this Agreement. Digital Teleport covenants that it presently has no interest and shall not acquire any such interest,

directly or indirectly, which will conflict in any manner or degree with the performance of the services hereunder. Digital Teleport further covenants that no person having any such known interest shall be employed or conveyed such interest, directly or indirectly, in this Agreement.

(c) Liability Insurance: At a minimum, Digital Teleport shall maintain the following insurance coverage:

- (1) Commercial general liability insurance, having minimum liability limits of four hundred thousand dollars per each bodily injury or property damage claim up to two million five hundred dollars per occurrence.
- (2) Commercial automobile liability insurance for all vehicles owned or used by Digital Teleport in any phase of the construction, installation, operation, maintenance and repair of the fiber optic cable system on MoDOT's right-of-way. The minimum limits of liability of such insurance shall be two million five hundred dollars per occurrence.

Hereafter as those limits may be increased under RSMo Section 537.600. If a statutory limit of liability for a type of liability specified in this section is repealed or does not exist, the Commission shall set reasonable limits of that insurance coverage which shall be as specified or adjusted periodically in a written notice from the Commission to Digital Teleport, Inc

(d) Workers Compensation: Workers compensation insurance shall be maintained at all times by Digital Teleport in amounts sufficient to comply with all the obligations of Digital Teleport under the laws of the State of Missouri relating to workers compensation.

(e) Subcontractors: Digital Teleport shall be responsible to see that its subcontractors possess at least the same minimum extent of liability insurance at such times that they are constructing, installing, operating, maintaining or repairing any portion of the fiber optic cable system on MoDOT's right-of-way.

(f) Proof of Insurance: Digital Teleport shall provide proof of insurance to MoDOT within seven (7) business days upon receipt of a written request for same from an authorized representative of MoDOT. Digital Teleport shall also provide proof of insurance to MoDOT of any subcontractor, or require that subcontractor to do so, within seven (7) business days upon receipt of a written request for that subcontractor's insurance status from an authorized representative of MoDOT.

(g) Digital Teleport's Liability for Negligent Acts or Omissions: Digital Teleport shall be responsible for any and all injury or damage to third parties as a result of any negligent acts or omissions in the services provided to MoDOT under the terms and conditions of this Agreement. In addition to the liability imposed upon Digital Teleport on account of personal injury, bodily injury (including death) or property damage suffered as a result of Digital Teleport's negligence, Digital Teleport assumes the obligation to save harmless MoDOT including its employees and assigns from every expense, liability or cost arising solely out of such negligent act or omission. Digital Teleport also agrees to hold harmless MoDOT, its employees and assigns for any negligent act or omission committed by any subcontractor or other person employed by or under the supervision of Digital Teleport under the terms of this Agreement.

(h) MoDOT's Liability to Digital Teleport: MoDOT will reimburse Digital Teleport for all actual repair costs if the MoDOT personnel or any other contractor or subcontractor to MoDOT damages or destroys any part of the fiber optic cable system or equipment installed by Digital Teleport. However, MoDOT, its employees, agents and assigns will not be liable for lost revenues or any other types of incidental or consequential damages sustained by Digital Teleport as a result of an inadvertent or unintentional cable cut or other loss of signal transmission. This provision does not limit the scope of liability of an MoDOT highway construction contractor or subcontractor to Digital Teleport for actionable negligence in the construction, reconstruction, repair or maintenance of a state highway or other state transportation facility.

(i) Limitation of Liability. Notwithstanding any provision of this Agreement to the contrary, in no event shall any Party to this Agreement be liable to any other Party for any special, incidental, indirect, punitive, reliance or consequential damages, whether foreseeable or not, arising out of, or in connection with, transmission interruptions or problems, including but not limited to, damage or loss of property or equipment, loss of profits or revenue, cost of capital, cost of replacement services, or claims of customers, whether occasioned by any repair or maintenance performed by, or failed to be performed by, any Party to this Agreement, or any other cause whatsoever, including, without limitation, breach of contract, breach of warranty, negligence, or strict liability. No claims for damages with respect to this Agreement may be made more than five (5) years after the date that the event giving rise to such claim is known or reasonably should have been known to the person or entity making such claim; and no claim for indemnity under the provisions of Section 6 hereof may be made more than five (5) years after the first notice of any claim received by the Party claiming under such indemnity provision.

(j) Performance and Payment Bond: Digital Teleport must furnish and attach to this Agreement, a performance bond on the form provided by MoDOT without deviations, omissions or additions, in at least the penal sum of Two Hundred Fifty Thousand Dollars (\$250,000.00). This bond shall be issued and executed by a surety or sureties acceptable to MoDOT, to ensure the continued maintenance and performance of the MoDOT Fibers and MoDOT Bandwidth for the remaining term of this Agreement in accord with its provisions, and the payment for all labor performed and materials installed, consumed or used in that phase of the contract work. This bond shall remain in full force and effect at all times, without a break in coverage, for the initial period and all renewal periods of this Agreement. This bond shall not be cancelled except prospectively, and with at least thirty (30) days' advance notice in writing to MoDOT and Digital Teleport. Prior to such effective date of cancellation of this bond, Digital Teleport must obtain and submit to MoDOT a valid substitute bond meeting all terms of this Agreement.

(k) Amendments: No modification of any provision of the Agreement shall be made or construed to have been made unless such modification is mutually agreed to in writing by Digital Teleport and MoDOT and incorporated in a written amendment to the Agreement and approved by MoDOT prior to the effective date of such modification.

(l) Communications and Notices: Any notices required or permitted to be delivered under this Agreement shall be in writing and shall be deemed to be delivered on the earliest to occur of (a) actual receipt; or (b) three (3) business days after having been deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested; or (c) one (1) business day after having been deposited with a reputable overnight express mail service that provides tracking and proof of receipt of items mailed. All notices shall be addressed to MoDOT or Digital Teleport, as the case may be, at the address or addresses set forth below, or such other addresses as the parties may designate in a notice similarly sent:

If to MoDOT, address to:

Missouri Highway and Transportation Commission
Capitol Avenue and Jefferson Street
P.O. Box 270
Jefferson City, Missouri 65102
Attn: Chief Engineer

and if to Digital Teleport, Inc.:

Digital Teleport, Inc.
14567 N. Outer Forty Rd., Ste. 500
Chesterfield, MO 63017
Attn: General Counsel

(m) Venue: No action may be brought by either party hereto concerning any matter, thing or dispute arising out of or relating to the terms, performance, nonperformance or otherwise of this Agreement except in the Circuit Court of Cole County, Missouri. The parties agree that this Agreement is entered into at Jefferson City, Missouri, and substantial elements of its performance will take place or be delivered at Jefferson City, Missouri, for which Digital Teleport consents to venue of any action against it in Cole County, Missouri.

(n) Wage Laws: Digital Teleport and its subcontractors shall pay the prevailing hourly rate of wages for each craft or type of workmen required to execute this project work as determined by the Department of Labor and Industrial Relations of Missouri, and they shall further comply in every respect with the minimum wage laws of Missouri and the United States. Federal wage rates under the Davis-Bacon or other federal acts apply to and govern this Agreement also for such work which is performed at the jobsite, in accord with 29 CFR Part 5. Thus, this Agreement is subject to the "Work Hours Act of 1962", Public Law 87-581, 76 Stat. 357, as amended, and its implementing regulations. Digital Teleport shall take those acts which may be required to fully inform itself of the terms of, and to comply with, state and federal labor and wage laws applicable to this Agreement. This Agreement is a service contract, and not a public works contract.

(o) Nondiscrimination Assurance: With regard to work under this Agreement, Digital Teleport agrees as follows:

- (1) Civil Rights Statutes: Digital Teleport shall comply with all state and federal statutes relating to nondiscrimination, including but not limited to Title VI and Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d and 2000e), as well as any applicable titles of the Americans with Disabilities Act. In addition, if Digital Teleport is providing services or operating programs on behalf of MoDOT, it shall comply with all applicable provisions of Title II of the Americans with Disabilities Act.
- (2) Executive Order: Digital Teleport shall comply with all the provisions of Executive Order 94-03, issued by the Honorable Mel Carnahan, Governor of Missouri, on the fourteenth (14th) day of January 1994, promulgating a Code of Fair Practices in regard to nondiscrimination, which is incorporated herein by reference and made a part of this Agreement.

This Executive Order prohibits discriminatory practices by the state, Digital Teleport or its subcontractors based on race, color, religion, national origin, sex, age, disability or veteran status.

- (3) **Nondiscrimination:** Digital Teleport shall not discriminate on grounds of the race, color, religion, creed, sex, disability, national origin, age or ancestry of any individual in the selection and retention of subcontractors, including procurement of materials and leases of equipment. Digital Teleport shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR Subtitle A, Part 21, Section 21.5, including employment practices.

(p) **Laws of Missouri to Govern:** This Agreement shall be construed according to the laws of the State of Missouri without regard to its conflicts of laws provisions.

(q) **Nonsolicitation:** Digital Teleport warrants that it has not employed or retained any company or person, other than a bona fide employee working for Digital Teleport, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, MoDOT shall have the right to terminate this Agreement without liability, or in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gifts, or contingent fees.

(r) **Assignment.** Digital Teleport may transfer this Agreement (i) in whole in connection with a transfer or assignment of all or substantially all of Digital Teleport's assets pursuant to the ongoing bankruptcy reorganization of Digital Teleport, or (ii) in whole to any party who agrees to be bound by all of the terms herein and has shown to MoDOT, to MoDOT's reasonable satisfaction, that party's ability to fulfill the obligations of Digital Teleport under this Agreement.

(s) **Severability:** To the extent that a provision of this Agreement is contrary to the constitution or the laws of the State of Missouri or of the United States, that provision shall be void and unenforceable. However, the balance of the Agreement shall remain in full force and effect between MoDOT and Digital Teleport.

(t) **Effectiveness:** This Agreement shall become effective upon the last to occur of the following (the "Effective Date"):

- (1) Approval of the Settlement Agreement and this Agreement by the Bankruptcy Court;
- (2) Approval of the Settlement Agreement and/or this Agreement by MoDOT; and
- (3) Receipt of clarification from the FHWA that the provisions of Section 10 are not in conflict with existing FHWA law, rules or regulations, in form and substance reasonably acceptable to Digital Teleport.

(u) The parties agree that the Exhibits A-I to the Agreement are drawings and are not intended to be engineering specifications or plans. Correspondence dated May 14, 2003 from David P. Stoeberl to Spencer P. Desai is incorporated as part of the Agreement and attached as Exhibit J.

In witness whereof, the undersigned has executed this Agreement on the date set forth opposite their signature.

DIGITAL TELEPORT, INC.

BY:

Name

Title

Paul Henry
CEO/President 6.5.03

STATE OF Missouri }
COUNTY OF St. Louis } ss.

Sworn to and subscribed before me this 5th day of June, 2002.

Jennine Schmidt
Notary Public

Jan. 28, 2006
My commission expires

JENNINE SCHMIDT
Notary Public - Notary Seal
STATE OF MISSOURI
St. Louis County
My Commission Expires: Jan. 28, 2006

In witness whereof, the undersigned has executed this Agreement on the date set forth opposite their signature.

MISSOURI HIGHWAY AND
TRANSPORTATION COMMISSION

BY: 

Name

Title

Chief Operating Officer

MISSOURI DEPARTMENT OF
TRANSPORTATION

BY: 

Name

Title

Chief Operating Officer

STATE OF MISSOURI)

COUNTY OF _____)

) ss.

Sworn to and subscribed before me this _____ day of _____, 2002.

Notary Public

My commission expires.

Approved as to Form:


Commission Counsel

Approved as to Form:

Title _____

Exhibit A
St. Louis Freeway System – MoDOT Rights of Way

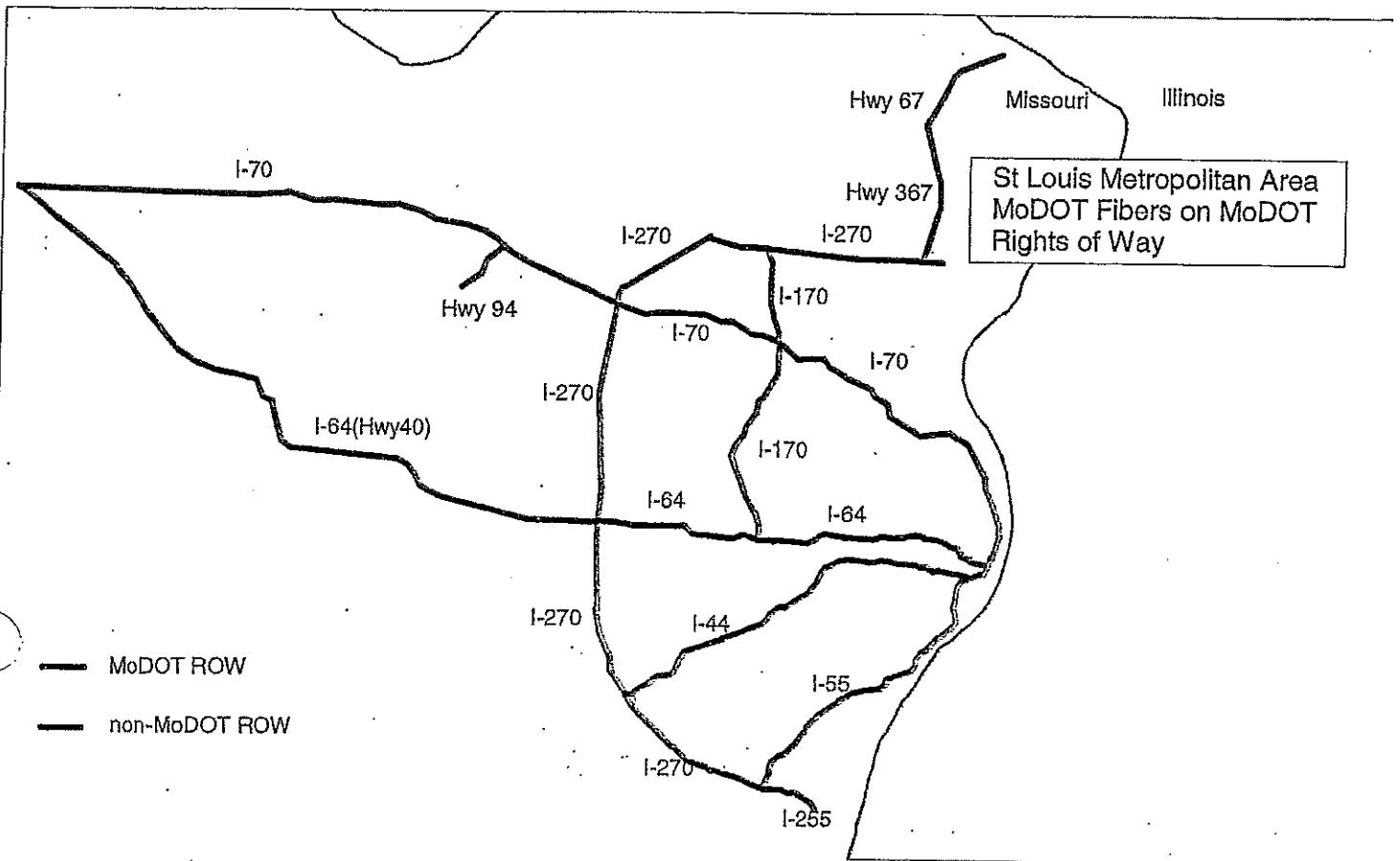


Exhibit C
Kansas City Freeway System – MoDOT Rights of Way

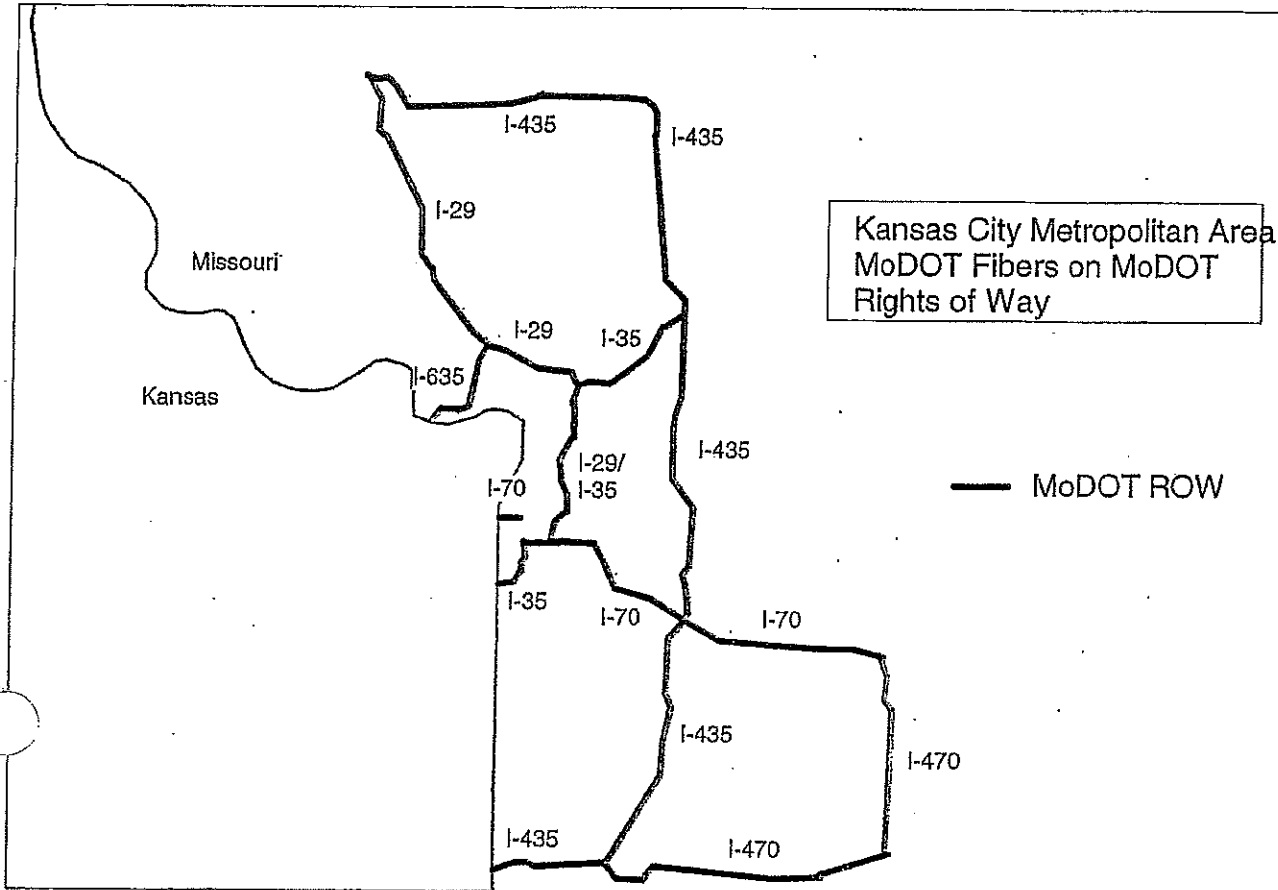


Exhibit D
Downtown Kansas City Freeway System – Non-MoDOT Rights of Way

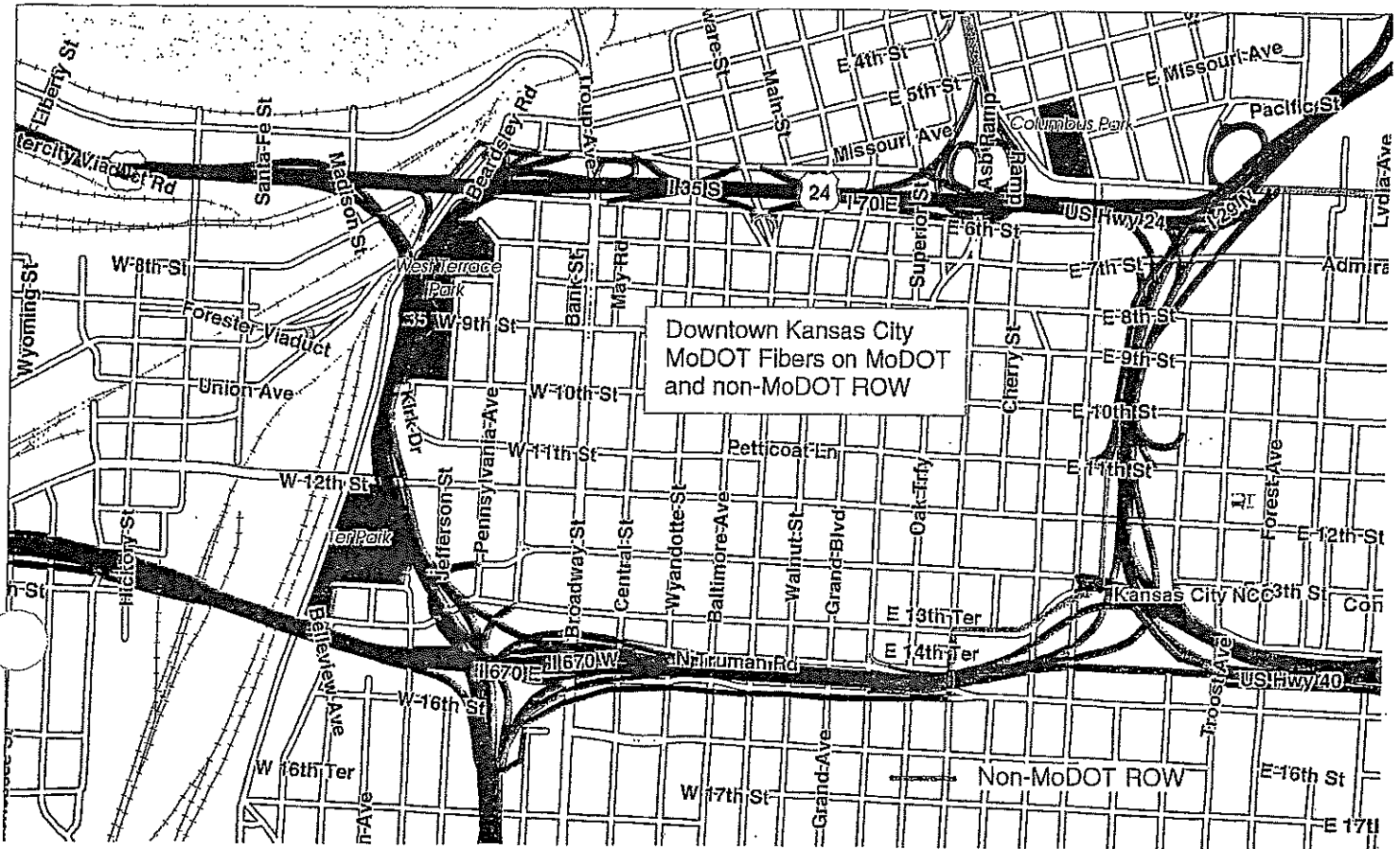


Exhibit E
Rural Interstate System

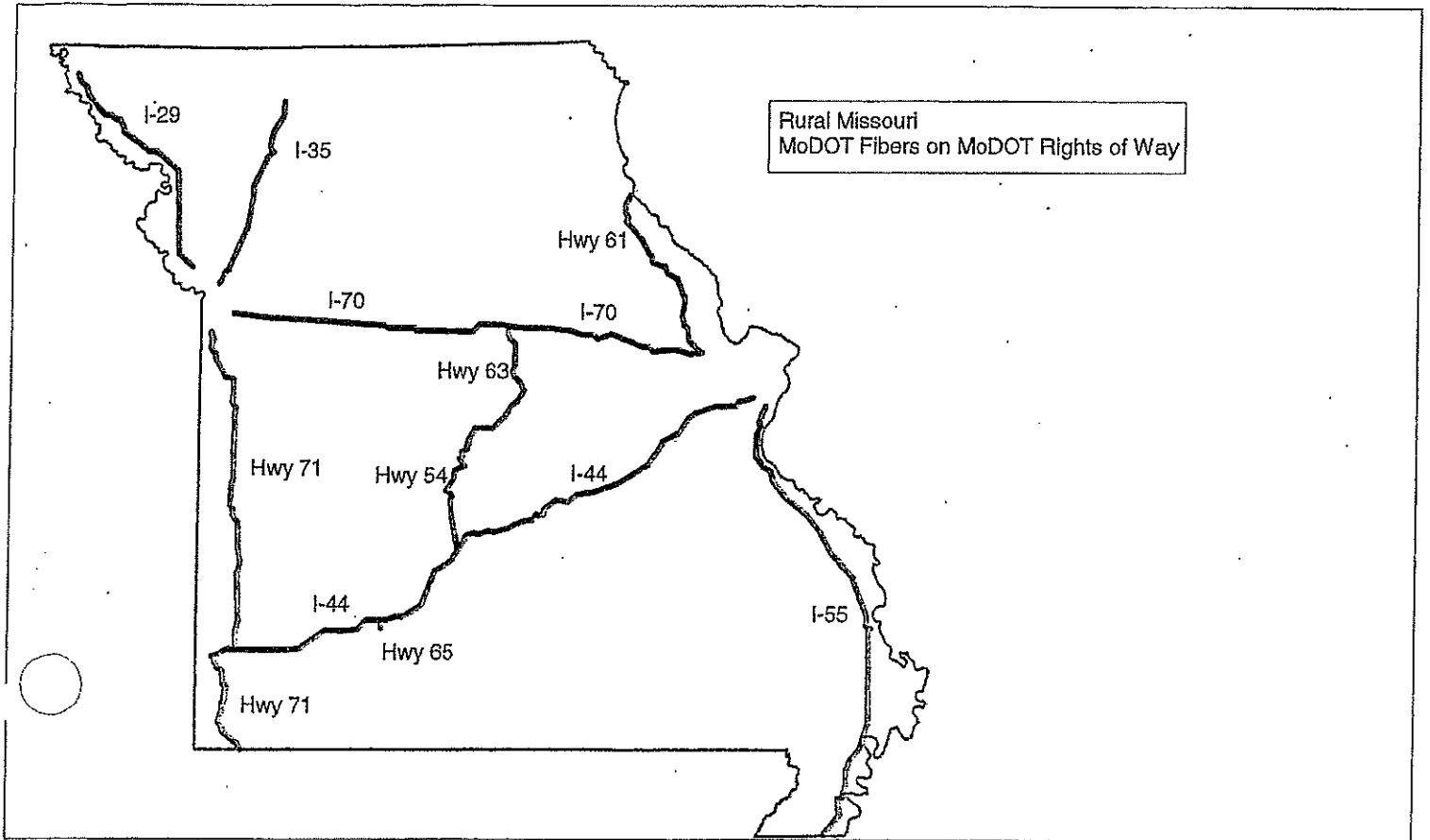


Exhibit F Equipment Shelter Locations

Site Name	Address of Building	City	State	Zip Code
Anderson (DTI)	Hwy 59 & Park Street	Anderson	MO	64831
Bethany (DTI)	NE corner of Hwy 136 & I-35	Bethany	MO	64424
Booneville (DTI)	I-70 & Hwy 5	Booneville	MO	65233
Bourbon (DTI)	SW Corner I-44 & Hwy J/N	Bourbon	MO	65441
Bowling Green (DTI)	NW Corner of US 61 & US Hwy 54	Bowling Green	MO	63334
Branson (DTI)	2449 State Hwy 76 E (Sho-Me buldg behind White Riv	Branson	MO	65616
Brewer (DTI)	SE corner of Hwy M & I-55	Brewer	MO	63775
Butler (DTI)	SE corner of Hwy 52 & Hwy 71	Butler	MO	64730
Camden Point (DTI)	SE corner Hwy E & I-29	Camden Point	MO	64018
Cape Girardeau (DTI)	5500 Old Cape Road	Cape Girardeau	MO	63701
Columbia Jct. (DTI)	SE Corner I-70 & US 63	Columbia	MO	65203
Festus/Crystal City (DTI)	HWY 61 & St. Pius Dr.	Festus	MO	63028
Gray Summit (DTI)	I-44 & Hwy 100 - exit 253	Gray Summit	MO	63039
Hannibal (DTI)	3250 Rendlen Ave. - (NE corner of US 36/61 Interchange)	Hannibal	MO	63401
Harrisonville (DTI)	102 Plaza Drive (NE Corner Hwy 28 & 71)	Harrisonville	MO	64701
Jefferson City Jct. (DTI)	SE Corner Hwy 54 & Hwy 50	Jefferson City	MO	65101
Joplin Jct. (DTI)	3590 S. Rangeline Rd	Joplin	MO	64804
Kingdom City (DTI)	I-70 & Hwy 54 (South I-70 Outer Rd)	Kingdom City	MO	65262
Lake Ozark (DTI)	686 Osage Hills Rd. (St. Hwy 54 & Bus. Rt. 54)	Eldon	MO	65026
Lamar (DTI)	Junction Hwy 71 & 126 (SE)	Lamar	MO	64759
Lebanon (DTI)	I-44 & State Hwy 5	Lebanon	MO	65536
Mound City (DTI)	I-29/Hwy 118	Mound City	MO	64470
Mt. Vernon (DTI)	1151 E. Industrial Dr.	Mount Vernon	MO	65712
Nevada (DTI)	1355 N. Osage Rd	Nevada	MO	64772
New Florence (DTI)	I-70 & Hwy 19	New Florence	MO	63363
New Madrid (DTI)	I-55 N. New Madrid Rest Area (1355 N. Osage)	New Madrid	MO	63869
Niangua (DTI)	I-44 N Outer Rd Exit 100 (2255 Rolling Meadows)	Niangua	MO	65713
Odessa (Higginsville) (DTI)	N side of I-70 Frontage Rd 1/2 ml west of Hwy 131 in MoDOT Maintenance Lot	Odessa	MO	64076
Rockport (DTI)	1/2 mile E of I-29 S side of Hwy 136 next to Rock Port Hotel	Rock Port	MO	64482
Rolla (DTI)	I-44 Hwy & Hwy 63	Rolla	MO	65401
Sikeston (DTI)	108 S. Interstate Drive	Sikeston (Miner)	MO	63081
Springfield (DTI)	2801 North Eastgate	Springfield	MO	65803
St. Joseph (DTI)	I-44 and Mitchell Ave. (NE Corner Rt YY & I-29)	St. Joseph	MO	64507
St. Robert (DTI)	I-44 & Rt Y	Waynesville	MO	65583
Stanbury (Savannah) (DTI)	NE corner of Hwy 136 & State Hwy B	Stanbury	MO	64489
Sweet Springs (KCPL)	Hwy 27, 600 ft. south of Oak Street	Sweet Springs	MO	65351
Sweet Springs (EE/K) DTI	NW corner of I-70 & Hwy EE/K	Sweet Springs	MO	65333
Wentzville (Bldg 1) (DTI)	200 Callahan Rd	Wentzville	MO	63385

Exhibit G ITS Splicing

Ring 1

- I-70 west of Pearce DMS splice due to construction change
- I-64 west of Mo River Bridge splice due to construction
- I-64 at Mason DMS splice not made
- I-64 at Ballas CCTV splice that was changed needs to be corrected
- I-270 at Rte 100 splice needed to tie in Barrett Station Road Signal Shop
- J6I1412 - 40 @ Mo. River; (modification splices due to removal and relocation of CCTV on const. Project)
- J6I1412 - 70 at Pearce Blvd; (Modification of splices due to construction of interchange)

Ring 3

- Connection in DTI downtown hub for backbone connection

Ring 2

- 270 at 170 (Potential modification to splices due to interchange construction and relocate of ITS equipment)
- Field elements away from Field Terminals have not had fiber checks

Ring 3

- I-55/64/70 Field Terminal - Poplar and 4th St. splice not made
- I-55/64/70 I-70 leg OTDR indicates fiber may not be turned at I-170 requiring splice change
- I-64 at I-170 fiber to DTI backbone did not appear to be connected at the DTI Ladue Hub (some work was done at HUB)
- I-64 at I-170 OTDR to east appeared to make I-64 at 20th St. but do not see Field Terminal
- I-64 at Compton splices need to be made
- I-64 at 20th cannot connect to Field Terminal in either direction (probable splice problem at Popular and 4th St.)
- Field elements away from Field Terminals have not had fiber checks
- J6I1450D - 44/55 (Modification of existing splices due to application of ITS devices)
- Possible splices or patches missing at downtown hub.

Ring 4

- I-55 at Butler Hill splices not made for Detector and DMS
- Field elements away from Field Terminals have not had fiber checks

Exhibit H MoDOT ATM ITS rings

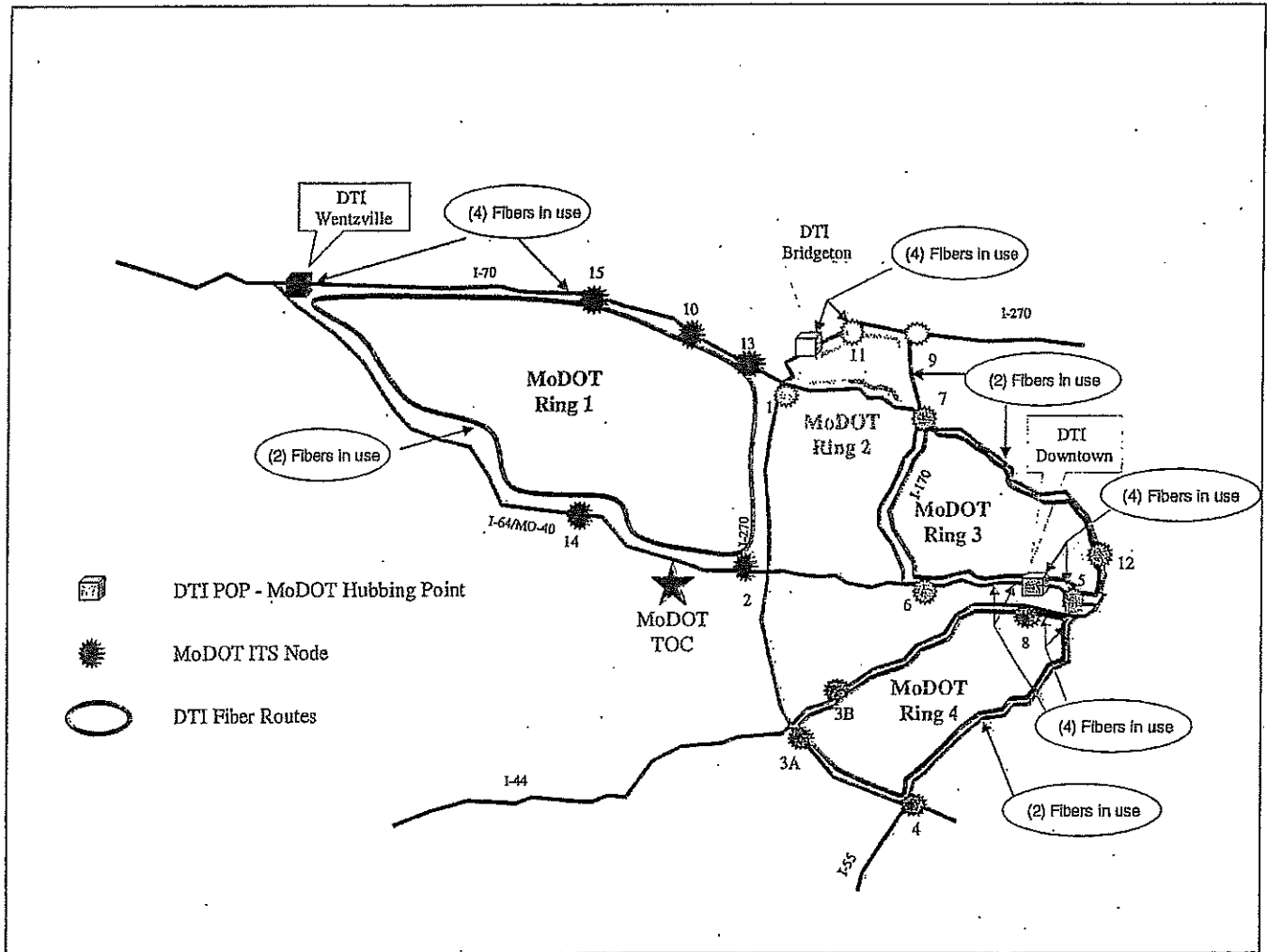


Exhibit I St. Louis ITS Bandwidth

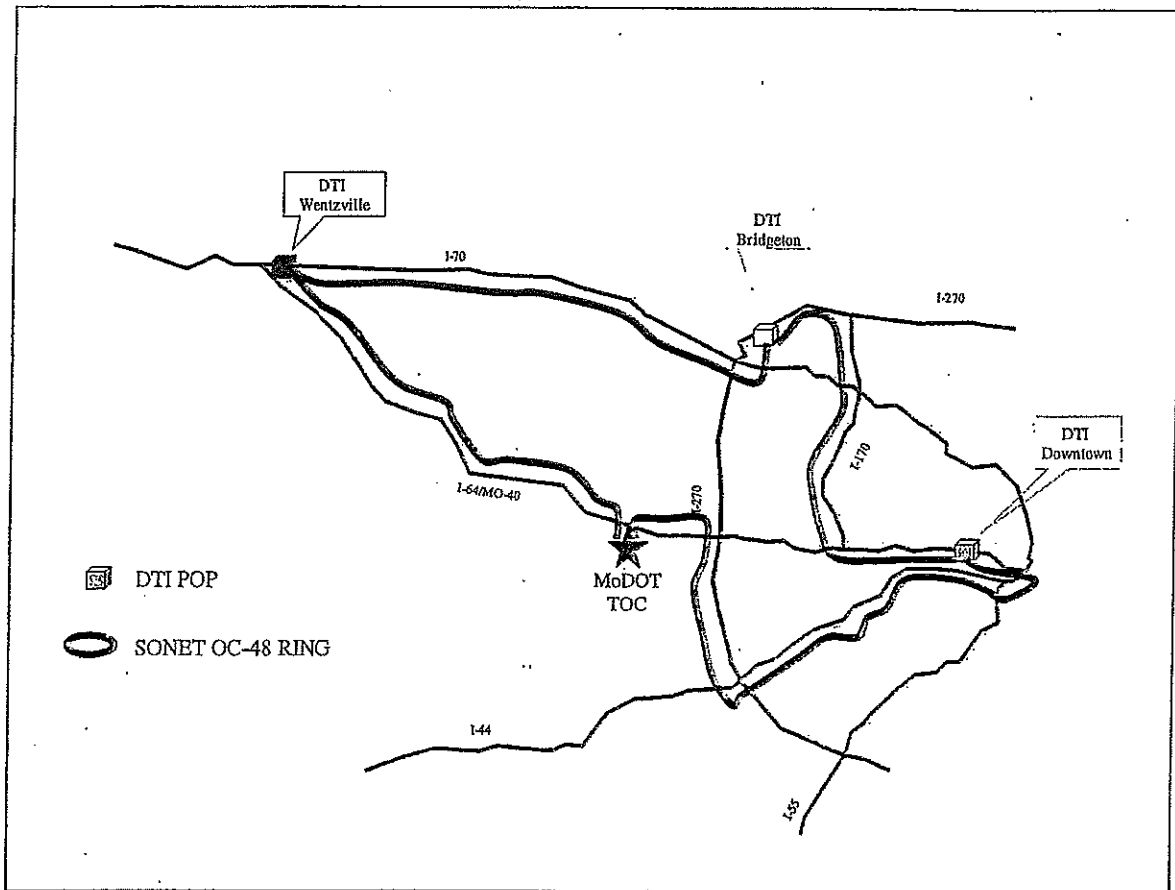


Exhibit J

REIMBURSEMENT AND AUDIT AGREEMENT

THIS REIMBURSEMENT AND AUDIT AGREEMENT is entered into by the Missouri Highways and Transportation Commission (hereinafter "Commission") and CenturyTel Fiber Company II, LLC d/b/a Lightcore, a Century Tel Company (hereinafter "Company").

WITNESSETH:

WHEREAS, Commission and Digital Teleport, Inc. Company entered into an Amended and Restated Fiber Optic Cable on Freeways in Missouri Agreement ("Contract") on June 5, 2003.

WHEREAS, the Company is the successor in interest to Digital Teleport, Inc. pursuant to an order of the Bankruptcy court that provided for the assignment of substantially all of the assets of Digital Teleport including the Contract;

WHEREAS, the Commission proposes to construct and improve numerous sections of state highways designated by Job Number, Route, and County, in accordance with road plans filed in the office of the County Clerk in the county in which the job is located; and

WHEREAS, in order to improve said highway in accordance with said plans, it will be necessary to adjust certain facilities now located on easement(s) granted to the Company by the Contract in order to maintain the present services of said Company.

WHEREAS, in order to reduce paperwork which will improve the business operations of the Company and the Commission, it is agreed that this Agreement will supplement the Contract and detail reimbursement of the Company's costs to relocate or adjust the Company's facilities required by the Commission's state-wide highway projects. This Agreement will remain in full force until both parties agree, in writing, that amendments are needed, or unless the Agreement is terminated by either party.

NOW, THEREFORE, in consideration of these mutual covenants, the parties agree as follows:

(1) COMPLY WITH FEDERAL AID POLICY GUIDE (FAPG). The Company agrees that the detail plan and estimate of cost for the required adjustment of the Company's facilities have been prepared in accordance with FAPG 23 CFR 645A and any amendments which by reference are made a part of this Agreement. The Company also agrees that the work hereunder will be performed in accordance with said regulation.

(2) HIGHWAY IMPROVEMENT INFORMATION. The Commission agrees to furnish the Company all necessary information on the highway improvement in order to properly carry out the utility relocation. Known hazardous waste sites will be identified on the right of way.

(3) COMMISSION REPRESENTATIVE. Eileen Rachers in the district engineer's office is designated as the Commission's representative for the purpose of administering the provisions of this Agreement. The Commission's representative may designate by written notice other persons having the authority to act on behalf of the Commission in furtherance of the performance of this Agreement. Issues relating to reimbursement will be referred to Debbie Rickard in the Commission's controller office. Issues relating to audit will be referred to Roberta Broeker in the Commission's Office of Inspector General.

(4) COST. The Commission will furnish written approval of the Company's plan of adjustment, and estimate of cost for each Commission project. The Commission shall then pay the Company one hundred percent (100%) of the estimated cost of the Commission's obligation prior to Company commencing the work. When a lump sum cost estimate is approved, the Commission shall pay no more or no less than the approved Commission obligation. When an actual cost estimate is approved, the Commission shall pay the Commission's obligation. For approved actual cost estimates if the final invoice is greater than the Commission's payment, the Commission shall promptly pay the Company the additional Commission obligation. Conversely, if the final invoice is less than the Commission's payment, the Company shall promptly remit the Commission's overpayment. If the Commission instructs the Company not to proceed with the work, the Commission shall reimburse the Company for the Commission's hereinabove stated percentage share of the Company's costs incurred prior to the date the work is canceled, as allowed pursuant to FAPG 23 CFR 645A. The Company shall promptly return any previously paid funds to the Commission in excess of those actually incurred prior to the date work is canceled.

(5) CHANGE ORDER. If any substantial change is made in the original plan and extent of the work as a result of changes requested by the Commission, the Company agrees that reimbursement shall be limited to costs covered by a supplemental agreement or change order prepared by the Commission's resident engineer or his/her representative and having approval of the Commission and Federal Highway Administration PRIOR to the performance of the work, as set out in FAPG 23 CFR 645A.

(6) PERMIT REQUIREMENT. The Company shall obtain a no cost permit from the Commission's district engineer prior to adjusting or relocating its property from, within, or onto the Commission's right of way. The permit shall be signed by an authorized Company representative.

(7) SUBCONTRACT. If the Company determines to contract any of the work of adjusting its facilities, it shall comply with the procedures outlined in FAPG 23 CFR 645A relating to performing part or all of the work by contract. Furthermore, if the Company solicits bids for the work, the Company shall furnish the Commission a tabulation of bids received, a copy of the invitation to bid, and any other information to support the Company's recommendation for award to the lowest qualified bidder prior to any contract work being performed. The Company shall obtain the Commission's written approval prior to awarding the contract. The Commission's approval or disapproval shall be communicated in writing to the Company no later than twenty-one (21) days after the Company provides the above information to the Commission. If the Commission fails to notify the Company in writing of its decision within the twenty-one (21) day period, the Commission shall be deemed to have approved the

Company's selection. When the lump sum method of reimbursement is approved, the Commission shall not require approval of the Company's contractors.

(8) COMMENCEMENT AND COMPLETION OF WORK. After approval of the detail plan and estimate of cost and upon notification by the Commission, the Company will commence, without unnecessary delay, to make the changes to its facilities. The Company will actively pursue completion of the work to reach the earliest possible completion date and to minimize interference with the Commission's roadway contractor. The Company agrees to provide a written estimated time schedule of its planned work and a written notification to the Commission's district engineer at least five (5) days prior to beginning the work. If the Company falls behind in its work schedule, it shall submit a revised work schedule to the Commission's resident engineer. The Company will make every effort to get back on schedule and complete its work.

(9) COOPERATION. When the Company's relocation work is being done concurrent with the Commission's roadway contractor operation, the Company agrees to cooperate and coordinate its work to minimize disturbance to the roadway contractor or other utility companies working on the project. The Commission's contractor has a contractual duty to cooperate and coordinate its activities with utility companies.

(10) BACKFILL. The Company agrees to compact backfill of all excavation within the roadway limits in accordance with the Missouri Standard Specifications for Highway Construction, current edition, or as approved by the Commission's resident engineer.

(11) SAFETY DEVICES. At all times when work is being performed by the Company under such conditions as will affect traffic on the public highways, the Company will display warning signs, barricades, flags, lights and/or flares as circumstances may require and shall employ and use a flagger when required for safety of the traveling public, all in accordance with the standards set forth in the "Manual on Uniform Traffic Control Devices" (MUTCD).

(12) CONDITION OF RIGHT OF WAY. Upon completion of the work provided in this Agreement, all leftover materials and debris resulting from the work shall be removed by the Company and the right-of-way left in a neat, workmanlike condition, free of holes, mounds of dirt, or other objectionable material.

(13) FINAL INVOICE SUBMITAL. After completion of the utility work, for work approved as actual cost projects, the Company agrees to submit a final invoice for the cost of the work to the Commission within sixty (60) days or as mutually agreed to by the Company and the Commission's resident engineer or his/her representative. The final invoice shall be in as much detail as possible to verify the cost of the completed work. It should follow the format of the original cost estimate when possible to promote faster processing by the Commission. For work approved as actual cost projects, if the final invoice indicates the Commission owes an amount in addition to amounts previously paid to Company. The Commission will pay such invoice within 45 days of invoice receipt.

(14) AUDIT OF RECORDS. For work approved as actual cost projects, as one of the conditions of payment from the Commission, the Company's estimates of costs for all work and

any final invoice shall be based on the actual direct and related indirect costs in accordance with 23 CFR 645A. The direct costs shall be in accordance with an established accounting procedure used by the Company for its regular operations. Indirect costs or additives shall be based on actual costs and in accordance with an established accounting procedure used by the Company for its regular operations. The company shall keep a detailed and accurate account of all services, labor, materials, supplies, incidentals, additives, additional necessary private easement acquisition, if any, and other necessary costs involved in making such changes. The Commissions' resident engineer in charge of said project, or any authorized agent of the Commission or the Federal Highway Administration, shall have access during normal business hours to audit such Company records. These records shall be available at no charge during the contract period and any extension thereof, and for three (3) years from the date of final payment or the company's final invoice, whichever is later. If the audit reveals that the Company has been overpaid, as a result of not complying with these standards, the Company will immediately refund to the Commission such overpayment. If the audit reveals that the Company has been underpaid, as a result of not complying with these standards, the Commission will immediately pay the Company the difference.

(15) LAW OF MISSOURI TO GOVERN. This Agreement shall be construed according to the laws of the State of Missouri. The Company shall comply with all local, state and federal laws and regulations relating to the performance of this Agreement.

(16) VENUE. It is agreed by the parties that any action at law, suit in equity, or other judicial proceeding to enforce or construe this Agreement, or respecting its alleged breach, shall be instituted only in the Circuit Court of Cole County, Missouri.

(17) ASSIGNMENT. The Company shall not assign, transfer, or delegate any interest in this Agreement without the prior written consent of the Commission provided, however, that Company may assign this Agreement to any Affiliate.

(18) CANCELLATION. It is agreed that either party may cancel this Agreement at any time by providing the other party with thirty (30) days advance written notification of such cancellation, and only after active utility relocation projects have been completed. Cancellation of this Agreement shall not affect in any way the terms or effectiveness of the Contract.

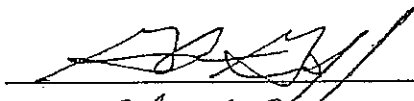
(19) SCOPE OF AGREEMENT. Upon payment to Company of \$390,418.22 currently owed to Company for previously submitted and approved relocation projects, the terms of this Agreement shall cover all relocation projects completed and submitted for payment, those currently in progress (which will be deemed to have been authorized as a lump sum cost project), and future projects.

IN WITNESS WHEREOF, the parties have entered into this Agreement on the last date written below.

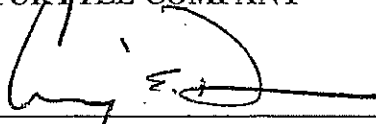
Executed by the Company this 18th day of November, 2003.

Executed by the Commission this 25th day of November, 2003.

**MISSOURI HIGHWAYS AND
TRANSPORTATION COMMISSION**

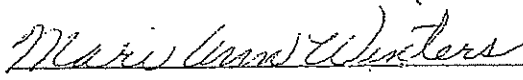

Title: Chief Operating Officer

**CENTURYTEL FIBER COMPANY II,
LLC d/b/a LIGHTCORE, A
CENTURYTEL COMPANY**

By: 
Print Name: Craig Davis

Title: Vice President

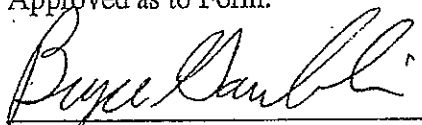
ATTEST:


Typed: Mari Ann Winters
Secretary to the Commission

ATTEST:

By: _____
Title: Assistant Secretary

Approved as to Form:


Commission Counsel

Approved as to Form:

Title: General Counsel

ACKNOWLEDGMENT BY CORPORATION

STATE OF ^{AA})
) ss
COUNTY OF ^{AA} —)

On this 18th day of November, 2003, before me personally appeared Craig Davis known to me, who being by me duly sworn, did say that he/she is the Vice President of CenturyTel Fiber Company, II, LLC and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and that he/she acknowledged said instrument to be the free act and deed of said corporation and that it was executed for the consideration stated therein and no other.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the county and state aforesaid the day and year written above.

Notary Public

My Commission Expires:

ACKNOWLEDGMENT BY COMMISSION

STATE OF MISSOURI)
) ss
COUNTY OF COLE)

On this 25TH day of November, 2003, before me personally appeared Pat Goff known to me, who being by me duly sworn, did say that he/she is the Chief Operating Officer of the Missouri Highways and Transportation Commission and the seal affixed to the foregoing instrument is the official seal of said Commission and that said instrument was signed in behalf of said Commission by authority of the Missouri Highways and Transportation Commission and said Pat Goff acknowledged said instrument to be the free act and deed of said Commission.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the county and state aforesaid the day and year written above.

Stacy M. Kaiser
Notary Public

My Commission Expires:

STACY M. KAISER
Notary Public - Notary Seal
STATE OF MISSOURI
Audrain County
My Commission Expires: Nov. 19, 2005

FIBER OPTIC CABLE ON FREEWAYS IN MISSOURI

This Agreement is entered into by the Missouri Highway and Transportation Commission (hereinafter the "MHTC") and Digital Teleport, Inc., (hereinafter the "Fiber Optic Contractor", or "FOC").

WITNESSETH:

WHEREAS, the Intermodal Surface Transportation Efficiency Act of 1991, P.L. 102-240, 105 Stat. 1914-2207 (ISTEA), enacted at Section 1034 established requirements for highway management and traffic monitoring systems in 42 U.S.C. Section 303; and

WHEREAS, pursuant to ISTEA and 42 U.S.C. Section 303, the Federal Highway Administration (FHWA) has adopted 23 CFR Parts 500 and 626, which govern such highway traffic management and monitoring systems, with sanctions on those states which fail to comply with its program mandates; and

WHEREAS, at ISTEA Title VI, Part B, Congress enacted the Intelligent Vehicle-Highway Systems Act of 1991, calling for the widespread implementation of intelligent vehicle-highway systems to enhance the capacity, efficiency, and safety of the Federal-aid highway system and to serve as an alternative to additional physical capacity of the Federal-aid highway system; and

WHEREAS, within the presently available technology, the development and installation of a dedicated fiber optic cable system at or in close proximity to the Federal-aid highway system is desirable or necessary in order to achieve the mandates of these federal laws and regulations; and

WHEREAS, on February 1, 1994, the FHWA approved the request of the Missouri Highway and Transportation Department (MHTD) for an exception to its utility accommodation policy on freeways, to allow longitudinal installation of fiber optic cables within the freeway right-of-way, provided that this exception does not compromise other provisions of MHTD's utility policy, including the prohibition of maintenance access from the freeway roadway; and

WHEREAS, the parties hereto desire to enter into an agreement, under which the FOC installs and maintains a buried fiber optic cable system on the mainline freeway system in Missouri, pursuant to a three phase plan to include the St. Louis metropolitan area, the Kansas City metropolitan area, and certain rural areas of Missouri, a portion of which system is reserved for the use of the MHTD and MHTC to aid in complying with these federal legal mandates.

NOW, THEREFORE, in consideration of these mutual covenants, promises and representations, the parties agree as follows:

(1) DEFINITIONS:

- (A) Airspace: That space located above, at, or below an MHTC highway's established gradeline, lying within the approved right-of-way limits.
- (B) Boring: Drilling or pushing under roadway.
- (C) Collapsed Ring: Redundant fibers within the same cable.
- (D) Conduit: Rigid pipe used to house cable.
- (E) Crossroads: Any public road or street that crosses over or under freeways.
- (F) Distribution Nodes: A point where lines of the same speed or different speed are brought together to create a line of greater speed in the digital hierarchy.
- (G) DS-1: Circuit that runs at 1.54 megabits/second.
- (H) Exhibit A: Three Phase Construction Plan
Exhibit B: Fiber Optic Terminal Equipment location and Schedules for Three Phases
Exhibit C: Technical Interface Design
- (I) Existing Structures: Bridges, walls, overpasses, etc., that are currently in place or which might be constructed in the future.
- (J) Fiber Optic Cable Corridor: The three-dimensional area above, below, and at ground level, within the metes and bounds description of MHTC's airspace.
- (K) Fiber Optic Cable System: The fiber optic cable system consists of all fiber optic cable, conduits, splices, buildings and enclosures, manholes and hand holes and optical termination equipment to provide DSI's, OC-3 and OC-12 circuit capacity.
- (L) Highway Purpose: To maintain and operate the state highway system in Missouri and not for commercial use or resale.
- (M) Interchanges: Any point that has ramps or roadways that access or exit the through lanes on the freeway where FOC will locate all fiber optic cable corridor components as described in the definition of Fiber Optic Cable Corridor.
- (N) Kansas City Freeway System: As shown on Exhibits A and B.
- (O) Mainline Freeway System: Through lanes of a roadway that are divided and accessible only at interchanges.

- (P) Multiplexor Nodes: A point where lines of the same speed or different speeds are brought together to create a line of greater speed in the digital hierarchy.
- (Q) OC-3: A circuit that runs at 155.52 mb/s.
- (R) OC-12: A circuit that runs at 622.08 mb/s.
- (S) Off Hour Services: Services performed after 5:00 p.m. and before 8:00 a.m. or on weekends or holidays.
- (T) Point of Demarcation: Electronic interface apparatus ~~wherein~~ FOC provides MHTC connections to DS1's, OC3's and OC12's as required in the Agreement.
- (U) Rural Freeway System: As shown on Exhibit A and B.
- (V) Schedule of Construction: The FOC will provide the network to MHTC in three construction phases. Phase One is the St. Louis metropolitan area, Phase Two is the Kansas City metropolitan area, and Phase Three is the Federal Rural Limited Access Interstate as described in Exhibit A. All phases include the full installation and completion of all fiber optic cable and electronic terminal equipment. Phase Three will initially include fiber optic cable to all interchange locations. In Phase Three, the FOC will locate fiber optic cable terminal equipment at the locations set forth in Exhibit B.
- (W) Self-healing Loop Configuration: If service is lost from one direction, it will automatically be restored from another direction.
- (X) Sonet: Synchronous Optical Network is a set of domestic phone company optical standards for fiber optic interfacing rates and band widths.
- (Y) St. Louis Freeway System: As shown in Exhibits A and B.
- (Z) Through-pavement: Pavement that goes from one interchange to another.
- (AA) Unconducted: Cable not placed in conduit.
- (BB) Urban Area of St. Louis: As shown on map as part of Exhibit B.

(2) PURPOSE: This Agreement establishes the respective responsibilities of MHTC and the FOC for the purpose of installing and maintaining a buried fiber optic cable corridor along the mainline freeway system (existing and future) in Missouri pursuant to the three-phase plan set forth in Exhibit A.

(3) CONTRACT PERIOD: The initial contract period shall be for forty (40) years. The contract shall not bind nor purport to bind MHTC or the FOC for any contractual commitment in excess of the original contract period. MHTC and FOC shall have the right, at their option, to renew the contract at twenty (20) year intervals thereafter. In the event the parties exercise this right, all terms, conditions and provisions of the original contract shall remain the same and apply during the renewal period. In the event MHTC and FOC exercise this right, all terms, conditions and provisions of the original contract shall remain the same and apply during the renewal period, unless otherwise mutually agreed to by the parties or their successors.

(4) CONTRACT CONSIDERATION: In exchange for granting to FOC an exclusive easement in the fiber optic cable corridor, and in additional consideration of the exclusive right to construct and operate the fiber optic cable system in the fiber optic cable corridor, FOC will provide MHTC with six (6) dedicated and lighted fiber optic strands in the statewide system and the necessary connections thereto set forth in Exhibit B, and will maintain them in good operating condition.

(5) EXCLUSIVE EASEMENT: The exclusive easement granted to FOC by this Agreement shall be located within MHTC's airspace but outside of the utility corridor. It shall be broad enough to accommodate the fiber optic cable system and its maintenance, and shall be located as specified by MHTC's representative. The fiber optic cable corridor easement shall be exclusive only as to other fiber optic cable systems or communications systems. An exception is that another firm's fiber optic cable may cross the easement at approximately a right angle, with the mutual consent as to location by MHTC and FOC. The existence of the easement may be recorded by the FOC at its sole option and expense. The location of the easement shall be movable at MHTC's sole discretion within MHTC's airspace, provided that MHTC shall bear the cost of any relocation of the fiber optic cable corridor which it requires of the FOC after the fiber optic cable system is installed. The FOC shall have the option to locate any part of the fiber optic cable system within MHTC's utility corridor, but the use of that corridor shall not be exclusive. This easement is terminable by MHTC or its successor at its sole discretion at the conclusion of this Agreement and any option period exercised. Nothing in this provision or Agreement shall limit MHTC's authority to install its own independent fiber optic cable within MHTC airspace for highway purposes, if MHTC elects to do so.

(6) CONTRACT DOCUMENTS: This Agreement between MHTC and the FOC incorporates and merges the terms of: (1) the Request for Proposal (hereinafter "RFP"), and any amendments thereto; and (2) the FOC's proposal submitted in response to the RFP.

(7) EASEMENT GRANT AND CONSTRUCTION GUIDELINES:

- (A) MHTC, by this Agreement grants to FOC an exclusive easement as that term is defined in paragraph (5), for the purposes of constructing and operating the fiber optic cable system within the defined fiber optic cable corridor.

- (B) No other fiber optic cable will be permitted in the fiber optic cable corridor (or on the mainline freeway system outside any MHTC utility corridor unless a variance exists or is granted) as long as this fiber optic cable system is maintained under this Agreement. However, this provision shall not prohibit another firm's fiber optic cable from crossing the fiber optic cable corridor at approximately a right angle, at a location to be mutually agreed by MHTC and FOC. No new variance shall be granted to place fiber optic cable for more than 1000 yards within MHTC's right-of-way at any one location. Any variance of a greater distance will be done only with the approval of FOC.
- (C) The fiber optic cable is to be buried twenty (20) feet to thirty (30) feet from the edge of the through-pavement, where possible, on MHTC right-of-way. Where that is not possible, due to structures, bridges, walls, lack of right-of-way, etc., installation shall be as mutually agreed between MHTC and the FOC. Where possible, the cable should be placed in existing conduit on bridge structures or conduit added by the FOC.
- (D) Distribution nodes and their associated power needs will be allowed only at interchanges or crossroads, where a service vehicle of the FOC will be off the paved roadway.
- (E) Boring will be required under any pavement, including roadways and ramps, in conduit. Crossing of the freeway may be at existing structures where possible, as determined by MHTC.
- (F) The location of all facilities constructed within the fiber optic cable corridor or on MHTC right-of-way shall be approved by MHTC. Standard utility permits will be issued covering all the installations. Any and all such permits or approvals shall be issued by MHTC's District Engineer for the district of installation. All plans for the installation of the fiber optic cable system shall be submitted to MHTC's district engineer for approval at least 30 days prior to the desired date of excavation or trenching for installation. Attachment to any structure should be submitted 60 days prior to installation.
- (G) With the exceptions noted in this Agreement, the work shall be accomplished in accordance with the existing permit policies and regulations in the Missouri Highway and Transportation Commission's Revised Rule 7 CSR 10-3.010 Location and Re-Location of Utilities on State Highways.

(B) TERMS AND CONDITIONS:

- (A) MHTC's use of the fiber optic cable corridor will be for highway purposes. MHTC shall have access nodes at each interchange along the freeway system set forth in Exhibit B. MHTC shall have dedicated six (6) fibers for the provision of service in a self-healing loop configuration of a collapsed ring.

- (B) The FOC shall own and operate the fiber optic cable system and retain all the revenues derived from it. If MHTC transfers or relinquishes ownership rights in any property on which the fiber optic cable system is located while this or a successive contract exists, MHTC shall preserve the FOC's easement and other rights under this Agreement. This includes, but is not limited to, the continuity of self-healing loops.

(9) FOC'S FAILURE TO PERFORM:

- (A) If the FOC fails to either complete the installation of its system as bid or to provide the service as bid on a regular and uninterrupted basis, in accordance with its timetable as bid, the FOC will be liable to MHTC for all resulting damages allowed by law which its breach has caused MHTC and the traveling public. These damages shall include but are not limited to: delay and impact costs, public inconvenience, and expenses of any kind resulting from the failure of the system to be in place and fully functional, and all MHTC costs to remedy the breach, including self-help or hiring a replacement firm to complete the work.
- (B) Force Majeure: If the following events occur, MHTC or the FOC shall be given an adequate time to remedy the situation unless performance becomes impossible or impractical by an act of God, war, riot, fire, explosion, accident, flood, sabotage, inclement weather, governmental laws, regulations, strikes, lockouts or injunctions or any other cause beyond the reasonable control of such party, subject to the following. These conditions do not constitute grounds for avoidance of the contract, but merely excusable delay. A condition, however, will not be excusable if it does not directly affect performance under the terms of the contract.
1. The party invoking this provision shall immediately notify the other party verbally and promptly thereafter in writing of the cause for the delay, restriction or limitation of its ability to perform, together with an estimate of the extent to which its performance has been and will be delayed.
 2. Should a "Force Majeure" delay the performance of this Agreement for a period in excess of thirty (30) days, the party delayed from performing shall on or before the 1st and 15th day of each calendar month thereafter notify the other party of its best estimate of the length of time that "Force Majeure" will remain in effect and, notwithstanding any provision herein to the contrary, the other party may take such reasonable actions as will mitigate any damages.

(10) EQUIPMENT TO BE PROVIDED BY THE FIBER OPTIC CONTRACTOR:

- (A) General Description: The FOC will construct the network in the three phases as set forth in Exhibit A. This construction will result in the installation of all fiber optic cables on the routes and detailed per FOC route maps set forth in Exhibit B.
- (B) Equipment to be Provided:

FIBER OPTIC TERMINAL EQUIPMENT

The FOC will furnish and install Northern Telecom fiber optic terminal equipment, or its equivalent. The equipment the FOC provides for MHTC will be updated at any time the FOC updates any portion of the fiber optic cable system on MHTC right-of-way.

FIBER OPTIC CABLE

The FOC will furnish single mode fiber optic cable that meets necessary "fiber optic link-loss" budgets for the specific path/distance application. Fiber optic cable will contain "Corning" standard quality glass or the equivalent.

- (C) Graphic Outline Displaying Technical Interface Between Components: the FOC design of technical interface set forth in Exhibit C.

(11) INSTALLATION: [TIMETABLE FOR COMPLETION OF EACH PHASE]

- (A) St. Louis Metropolitan Area (*)
- (B) Kansas City Metropolitan Area (*)
- (C) Rural Interstate (*)
- (*) The FOC's timetable for the completion of Phases 1, 2 and 3 is set forth in Exhibits A and B.

(12) MAINTENANCE

(A) General Maintenance:

1. General Maintenance. General maintenance will be the same for all three phases and associated service areas. FOC technicians will be responsible for the maintenance of the network.
2. Preventive Maintenance. Preventive maintenance programs will be provided to maintain all equipment in accordance with the manufacturer's specifications. This will further ensure that all equipment is maintained to the manufacturer's specified tolerances and qualities.

3. Warranties and liabilities. The FOC will be responsible for all warranties and liabilities for service and performance to ensure satisfactory network performance to points of demarcation.
4. Distribution of Duties Among the FOC and Subcontractors: The FOC will have the ultimate responsibility to MHTC for all aspects of the network installation and operation, including those aspects the FOC subcontracts to other firms.
5. Service. Service will be provided seven (7) days a week, twenty-four (24) hours a day.
 - (a) The primary service locations, in accordance with the installation and completion of FOC three construction phases shall be located in St. Louis, Jefferson City and Kansas City.
 - (b) A minimum of two (2) service representatives located at the three primary locations will be certified by the FOC on the equipment to be serviced.
 - (c) The following is how the FOC will respond to off-hours requests for service on holidays, weekends and vacations: Twenty-four (24) hours a day, seven (7) days a week.
 - (d) The following procedures for the FOC's service representatives staffing shall apply during vacation and holidays. A minimum of two service technicians will be on immediate call.
 - (e) The following procedures shall apply to FOC's service personnel during normal working hours and on weekends: a minimum of two (2) technicians during normal working hours available in each of the three (3) primary areas and available for call after hours and on weekends.
 - (f) The guaranteed response time following notification is two (2) hours for a major or minor outage. Response time is determined when a qualified technician, certified on the FOC-furnished equipment, is on-site or the problem is corrected.
 - (g) Moves, additions and changes, and other service calls shall be completed within 48 hours after a request for normal service. Any special work will be completed within other time frames, to be agreed upon by MHTC and FOC.

(13) STATE AND FEDERAL REGULATIONS: The FOC agrees to abide by all federal and state regulations which pertain to the subject matter of this Agreement and shall maintain and/or obtain any necessary certifications, licenses, or governmental approval and file any required reports, tariffs, or notices needed to effectuate the terms of this Agreement.

(14) RIGHTS GRANTED: This Agreement grants the FOC an easement within the fiber optic cable corridor in return for the consideration set forth in paragraph 4. This easement may be terminated by MHTC at MHTC's option upon the occurrence of any of the following events: (1) material failure to provide fiber optic cable service to MHTC in accord with the terms of this Agreement between MHTC and the FOC, including but not limited to the failure to develop or maintain in good repair the fiber optic cable system and any related equipment owned or operated by the FOC; (2) a breach or default by the FOC of any provision of this Agreement; (3) the termination of this Agreement or any option period exercised; and (4) the bankruptcy or insolvency of the FOC.

(15) RIGHT TO CURE: In the event that MHTC determines that FOC is in violation of any of its obligations under this Agreement or should any event occur which would give MHTC the right to terminate this Agreement including, but not limited to the provisions of paragraph (14), MHTC shall notify FOC of said violation in writing, after which, notwithstanding anything else herein to the contrary, FOC shall have a period of ninety (90) days from the date of such notice to cure such violation. This ninety (90) day period may be extended upon the agreement of the parties.

(16) FOC PREFERENCE: As in the case of highway expansion which conflicts with the location of existing utilities, if:

- (A) The FOC desires the fiber optic cable corridor to be placed in a location in MHTC's airspace which is already occupied by MHTC utility corridor, or another utility is occupying that location by permit or variance; and
- (B) The fiber optic cable corridor cannot be located in a feasible or prudent manner elsewhere in MHTC's airspace in that vicinity;

then, MHTC shall have the option to either acquire additional right-of-way in which to place the fiber optic cable corridor in a manner acceptable to the FOC, or MHTC shall remove and relocate the other utility or utility corridor at its sole expense, so that the FOC may place its fiber optic cable system in that corridor, as necessary.

(17) SALE OR ASSIGNMENT: FOC reserves the right to sell or assign, at any time, any or all of its rights under this Agreement, or any of FOC's assets under this Agreement to any entity which shall agree, in writing, to abide by the terms of this Agreement and to take over each and every obligation of the FOC set out herein. FOC shall provide written notice to MHTC of any such sale or assignment and provide MHTC the written assignee's agreement to abide by the terms of this Agreement and to undertake the obligations of the FOC no later than thirty (30) days prior to the effective date of any such sale or assignment.

(18) TERMINATION OF THE AGREEMENT: When this Agreement and the rights it conveys is terminated, the FOC shall have the option to:

- (A) Remove all fiber optic cable and related appurtenances from MHTC's property at the FOC's own cost and repair all damages to MHTC's property which result. The FOC shall have one-hundred and eighty (180) days from the termination of this Agreement to complete that work. The FOC shall not block or materially delay, impede or interrupt traffic to effect the removal of its property and shall not take any action which creates a dangerous condition of public property or which would endanger any pedestrian or occupant of a motor vehicle. If the FOC elects this option, the FOC must remove all hazardous or regulated wastes it generates or is responsible for (directly or indirectly) from MHTC property and must restore MHTC property to at least the condition it was in before it was awarded this Agreement, in accord with all federal, state and local environmental laws, regulations and ordinances.
- (B) Sell the fiber optic cable system and the FOC's owned equipment and fixtures pertinent to the system on MHTC property to MHTC, or any portion thereof which is acceptable to MHTC, at a price to be mutually agreed upon.
- (C) Sell the fiber optic cable system and the FOC's owned equipment and fixtures pertinent to the system on the MHTC property to a successor provider of fiber optic cable services to MHTC, or sell any portion thereof to a successor provider which is acceptable to MHTC.
- (D) Abandon the entire fiber optic cable system on MHTC's property, or any portion thereof, in a written notice to MHTC, in which instance that portion of the fiber optic cable system becomes the sole and exclusive property of MHTC; except, however, the FOC may not abandon any items or equipment which may contain or create hazardous or regulated wastes or materials without prior notice to MHTC of the description and location of those materials. MHTC may refuse to accept the abandonment of all or any portion of the fiber optic cable system tendered by the FOC until any hazardous or regulated wastes or materials have been removed in accord with all applicable laws. In any event, the FOC remains liable for the remediation and full restoration of any damaged real or personal property and for injuries or death resulting from the presence of any hazardous or regulated wastes or materials on or adjacent to MHTC's property, which wastes or materials are or were owned, placed or operated by the FOC.

(19) APPLICABLE STATE LAWS AND ENCUMBRANCES: At no time during this Agreement or any renewal period thereto shall the FOC place, install or deposit any hazardous waste or hazardous substance in the MHTC airspace. This does not include, however, those hazardous substances which are lawfully and properly contained within the FOC's equipment or structures. If the FOC causes, allows or permits a spill of a hazardous waste or substance within MHTC airspace, or on property immediately adjacent thereto, then the FOC shall remain solely liable.

- (A) Conflict of Interest: No official or employee of MHTC or its governing body and no other public official of MHTC who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of the project covered by this Agreement shall voluntarily acquire any personal interest, directly or indirectly, in the Agreement or the proposed Agreement. The FOC covenants that it presently has no interest and shall not acquire any

interest, directly or indirectly, which will conflict in any manner or degree with the performance of the services hereunder. The FOC further covenants that no person having any such known interest shall be employed or conveyed an interest, directly or indirectly, in the contract.

- (B) Title: Title to any leased and/or lease-purchased equipment required by the Agreement shall be held by and vested in the FOC. MHTC shall not be liable in the event of loss, incident, destruction, theft, damage, etc., for the leased equipment, including but not limited to devices, wires, software, technical literature, etc. It shall be the FOC's sole responsibility to obtain insurance coverage for such loss in the amount the FOC deems appropriate.
- (C) Liability Insurance: The FOC shall obtain sufficient liability insurance to protect itself and MHTC from tort liability due to the construction, installation, operation, maintenance and repair of the fiber optic cable system on MHTC's right-of-way. At a minimum, the FOC shall obtain the following insurance coverage:
 - 1. The FOC shall obtain commercial general liability insurance, having minimum liability limits of one million dollars for each bodily injury or property damage occurrence, combined single limit, one million dollars aggregate; and one million dollars product/completed operations aggregate. Each such policy shall be endorsed so as to cover liability arising from underground property damage.
 - 2. The FOC shall obtain commercial automobile liability insurance for all vehicles owned or used by the FOC in any phase of the construction, installation, operation, maintenance and repair of the fiber optic cable system on MHTC's right-of-way. The minimum limits of liability of such insurance shall be one million dollars combined single limit.
- (D) Workers Compensation: Workers compensation insurance shall be maintained at all times by the FOC in amounts sufficient to comply with all the obligations of the FOC under the laws of the State of Missouri relating to workers compensation.
- (E) Subcontractors: The FOC shall be responsible to see that its subcontractors possess at least the same minimum extent of liability insurance at such times that they are constructing, installing, operating, maintaining or repairing any portion of the fiber optic cable system on MHTC's right-of-way.
- (F) Proof of Insurance: The FOC shall provide proof of insurance to MHTC within seven (7) business days upon receipt of a written request for same from an authorized representative of MHTC. The FOC shall also provide proof of insurance to MHTC of any subcontractor, or require that subcontractor to do so, within seven (7) business days upon receipt of a written request for that subcontractor's insurance status from an authorized representative of MHTC.

(20) LIABILITIES, RIGHTS AND REMEDIES: The FOC agrees that MHTC shall not be responsible for any liability incurred by the FOC or its employees arising out of the ownership, selection, possession, leasing, renting, operation, control, use, maintenance, delivery, return and/or installation of equipment provided by the FOC except as otherwise provided in this Agreement. No provision in this Agreement shall be construed expressly or implied as a waiver by MHTC of any existing or future right and/or remedy available by law in the event of any claim made by, or default in or breach of contract of the FOC. Notwithstanding the above, the FOC shall not be liable for any damages incurred by MHTC or its subordinate department and employees, due to causes beyond the reasonable control of the FOC, attributable to any service, products or actions of any person other than the FOC, its employees, subcontractors and agents.

(21) FOC'S LIABILITY FOR NEGLIGENT ACTS OR OMISSIONS: The FOC shall be responsible for any and all injury or damage as a result of any negligent acts or omissions in the services rendered under the terms and conditions of this Agreement. In addition to the liability imposed upon the FOC on account of personal injury, bodily injury (including death) or property damage suffered as a result of the FOC's negligence, the FOC assumes the obligation to save harmless MHTC including its employees and assigns from every expense, liability or cost arising out of such negligent act or omission. The FOC also agrees to hold harmless MHTC, its employees and assigns for any negligent act or omission committed by any subcontractor or other person employed by or under the supervision of the FOC under the terms of this Agreement.

(22) MHTC'S LIABILITY TO THE FIBER OPTIC CONTRACTOR: MHTC will reimburse the FOC for all actual repair costs if the MHTC personnel or any other contractor or subcontractor to MHTC damages or destroys any part of the fiber optic cable system or equipment installed by the FOC. However, MHTC, its employees, agents and assigns will not be liable for lost revenues or any other types of incidental or consequential damages sustained by the FOC as a result of an inadvertent or unintentional cable cut or other loss of signal transmission. This provision does not limit the scope of liability of an MHTC highway construction contractor or subcontractor to the FOC for actionable negligence in the construction, reconstruction, repair or maintenance of a state highway or other state transportation facility.

(23) PERFORMANCE AND PAYMENT BOND: The FOC must furnish and attach to this Agreement, a performance and payment bond on the form provided by MHTC without deviations, omissions or additions, in at least the penal sum of Two Hundred Fifty Thousand Dollars (\$250,000.00). This bond shall be issued and executed by a surety or sureties acceptable to MHTC, to ensure the proper and prompt completion of the work in accordance with the provisions of this contract, and to ensure payment for all labor performed and materials installed, consumed or used in the work. The bond, if executed by a surety which is a corporation organized in a state other than Missouri, shall be signed by an agent or broker licensed by the Director of the Missouri Department of Insurance. The bond shall remain in full force and effect until the entire fiber optic cable system, and all related equipment and materials are fully installed and operational, in accordance with the terms of this contract. At such time, and upon production of satisfactory documentation by the FOC that it has paid in full the costs of all labor performed and materials installed, consumed or used in the fiber optic cable system, the FOC may apply to MHTC to substitute another bond having the penal sum of not less than Fifty Thousand Dollars (\$50,000), to ensure the continued maintenance and performance of that system for the remaining term of this Agreement in accord with its provisions, and the payment for all labor performed and materials installed, consumed

or used in that phase of the contract work. The initial bond shall remain in effect for the purpose of satisfying those valid project claims against the FOC for work, materials or

obligations performed or incurred prior to the date a valid substitute bond was accepted by MHTC. In any event, the original or a valid substitute bond shall remain in full force and effect at all times, without a break in coverage, for the initial period and all renewal periods of this Agreement. No initial or substitute performance and payment surety bond shall be cancelled except prospectively, and with at least thirty (30) days' advance notice in writing to MHTC and the FOC. Prior to such effective date of cancellation of the performance and payment bond, the FOC must obtain and submit to MHTC a valid substitute bond meeting all terms of this Agreement.

(24) AMENDMENTS: No modification of any provision of the Agreement shall be made or construed to have been made unless such modification is mutually agreed to in writing by the FOC and MHTC and incorporated in a written amendment to the Agreement and approved by MHTC prior to the effective date of such modification.

(25) COMMUNICATIONS AND NOTICES: Any notices required or permitted to be delivered under this Agreement shall be in writing and shall be deemed to be delivered on the earliest to occur of (a) actual receipt; or (b) three (3) business days after having been deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested; or (c) one (1) business day after having been deposited with a reputable overnight express mail service that provides tracking and proof of receipt of items mailed. All notices shall be addressed to MHTC or the FOC, as the case may be, at the address or addresses set forth below, or such other addresses as the parties may designate in a notice similarly sent:

If to MHTC, address to:

Missouri Highway and Transportation Commission
Capitol Avenue and Jefferson Street
P.O. Box 270
Jefferson City, Missouri 65102
Attn: Division Engineer, Maintenance and Traffic

and if to the Fiber Optic Contractor:

Digital Teleport, Inc.
11111 Dorsett Road
St. Louis, Missouri 63043
Attn: Richard D. Weinstein, President

(26) VENUE: No action may be brought by either party hereto concerning any matter, thing or dispute arising out of or relating to the terms, performance, nonperformance or otherwise of this Agreement except in the Circuit Court of Cole County, Missouri. The parties agree that this Agreement is entered into at Jefferson City, Missouri, and substantial elements of its performance will take place or be delivered at Jefferson City, Missouri, for which the FOC consents to venue of any action against it in Cole County, Missouri. The FOC shall cause this provision to be incorporated in all of its contracts with subcontractors for this fiber optic cable system, to be binding upon all subcontractors of the FOC in the performance of this Agreement.

(27) WAGE LAWS: The FOC and its subcontractors shall pay the prevailing hourly rate of wages for each craft or type of workmen required to execute this project work as determined by the Department of Labor and Industrial Relations of Missouri, and they shall further comply in every respect with the minimum wage laws of Missouri and the United States. Federal wage rates under the Davis-Bacon or other federal acts apply to and govern this Agreement also for such work which is performed at the jobsite, in accord with 29 CFR Part 5. Thus, this Agreement is subject to the "Work Hours Act of 1962", Public Law 87-581, 76 Stat. 357, as amended, and its implementing regulations. The FOC shall take those acts which may be required to fully inform itself of the terms of, and to comply with, state and federal labor and wage laws applicable to this Agreement.

(28) NONDISCRIMINATION ASSURANCE: With regard to work under this Agreement, the FOC agrees as follows:

- (A) Civil Rights Statutes: The FOC shall comply with all state and federal statutes relating to nondiscrimination, including but not limited to Title VI and Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d and 2000e), as well as any applicable titles of the Americans with Disabilities Act. In addition, if the FOC is providing services or operating programs on behalf of the Department or Commission, it shall comply with all applicable provisions of Title II of the Americans with Disabilities Act.
- (B) Executive Order: The FOC shall comply with all the provisions of Executive Order 94-03, issued by the Honorable Mel Carnahan, Governor of Missouri, on the fourteenth (14th) day of January 1994, promulgating a Code of Fair Practices in regard to nondiscrimination, which is incorporated herein by reference and made a part of this Agreement. This Executive Order prohibits discriminatory practices by the state, the FOC or its subcontractors based on race, color, religion, national origin, sex, age, disability or veteran status.
- (C) Nondiscrimination: The FOC shall not discriminate on grounds of the race, color, religion, creed, sex, disability, national origin, age or ancestry of any individual in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The FOC shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR Subtitle A, Part 21, Section 21.5, including employment practices.
- (D) Solicitations for Subcontracts, Including Procurements of Material and Equipment: These assurances concerning nondiscrimination also apply to subcontractors and suppliers of the FOC. In all solicitations either by competitive bidding or negotiation made by the FOC for work to be performed under a subcontract including procurement of materials or equipment, each potential subcontractor or supplier shall be notified by the FOC of the requirements of this Agreement relative to nondiscrimination on grounds of the race, color, religion, creed, sex, disability or national origin, age or ancestry of any individual.

(E) Information and Reports: The FOC shall provide all information and reports required by the Agreement, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by MHTC or the U.S. Department of Transportation to be necessary to ascertain compliance with other contracts, orders and instructions. Where any information required of FOC is in the exclusive possession of another who fails or refuses to furnish this information, the FOC shall so certify to MHTC or the U.S. Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.

(F) Sanctions for Noncompliance: In the event the FOC fails to comply with the nondiscrimination provisions of this Agreement, MHTC shall impose such contract sanctions as it or the U.S. Department of Transportation may determine to be appropriate, including but not limited to:

1. Withholding of payments to the FOC under the Agreement until the FOC complies; and/or
2. Cancellation, termination or suspension of the Agreement, in whole or in part, or both.

(29) COMMISSION REPRESENTATIVE: MHTC's Division Engineer for Maintenance and Traffic is designated as MHTC's representative for the purpose of administering the provisions of this Agreement. The Division Engineer for Maintenance and Traffic may designate additional representatives, generally or for specific purposes, as deemed appropriate by MHTC.

(30) FIBER OPTIC CONTRACTOR'S REPRESENTATIVE: Richard D. Weinstein, Digital Teleport, Inc.'s President, is designated as the FOC's representative for the purpose of administering the provisions of this Agreement.

(31) LAW OF MISSOURI TO GOVERN: The Agreement shall be construed according to the laws of the state of Missouri. The FOC shall comply with all local, state and federal laws and regulations relating to the performance of the Agreement.

(32) CONFIDENTIALITY: Neither the FOC nor MHTC shall disclose to third parties confidential factual matter provided by either party, except as may be required by federal or state statutes or regulations by court order, or as authorized by the provider of that confidential information. Either party shall notify the other immediately of any request for such information.

(33) NONSOLICITATION: The FOC warrants that it has not employed or retained any company or person, other than a bona fide employee working for the FOC, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, MHTC shall have the right to terminate this Agreement without liability, or in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gifts, or contingent fees.

(34) SEVERABILITY: To the extent that a provision of this Agreement is contrary to the constitution or the laws of the State of Missouri or of the United States, that provision shall be void and unenforceable. However, the balance of the Agreement shall remain in full force and effect between MHTC and the FOC.

IN WITNESS WHEREOF, the parties have entered into this Agreement on the date last written below.

Executed by Digital Teleport, Inc. this 29 day of JULY, 19 94.

Executed by the Commission this 29 day of JULY, 19 94.

MISSOURI HIGHWAY AND
TRANSPORTATION COMMISSION

Gary Chellaro
Assistant Chief Engineer

DIGITAL TELEPORT, INC.

Richard D. Weinstein
Richard D. Weinstein, President

Attest:

Mari Anne Winters
Secretary to the Commission

Attest:

By Richard D. Weinstein
Title President

Approved as to Form:

Mae L. Horton
Commission Counsel

Approved as to Form:

Richard S. Brownlee
Richard Brownlee, Attorney at Law

j/lc/draft-f

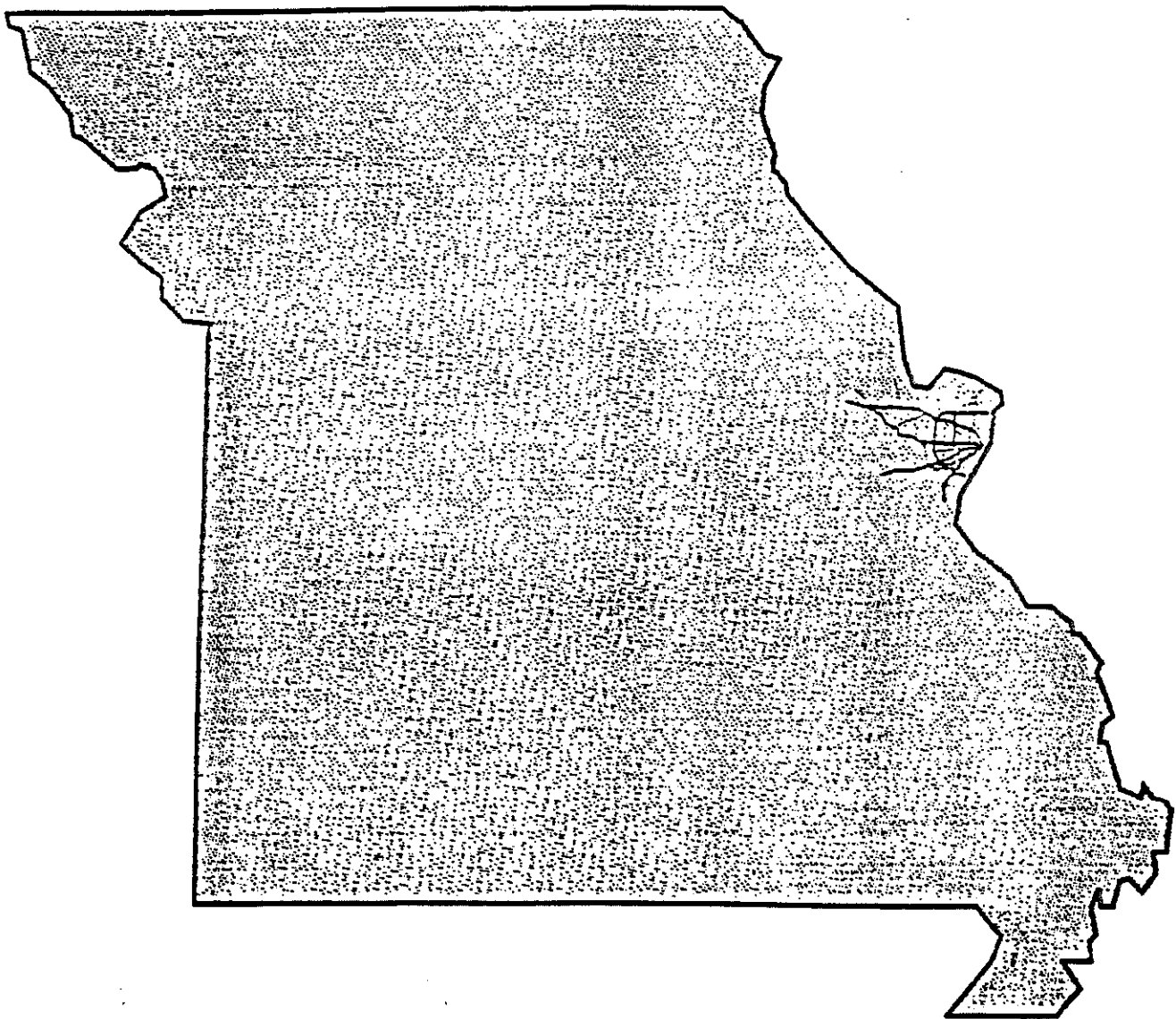
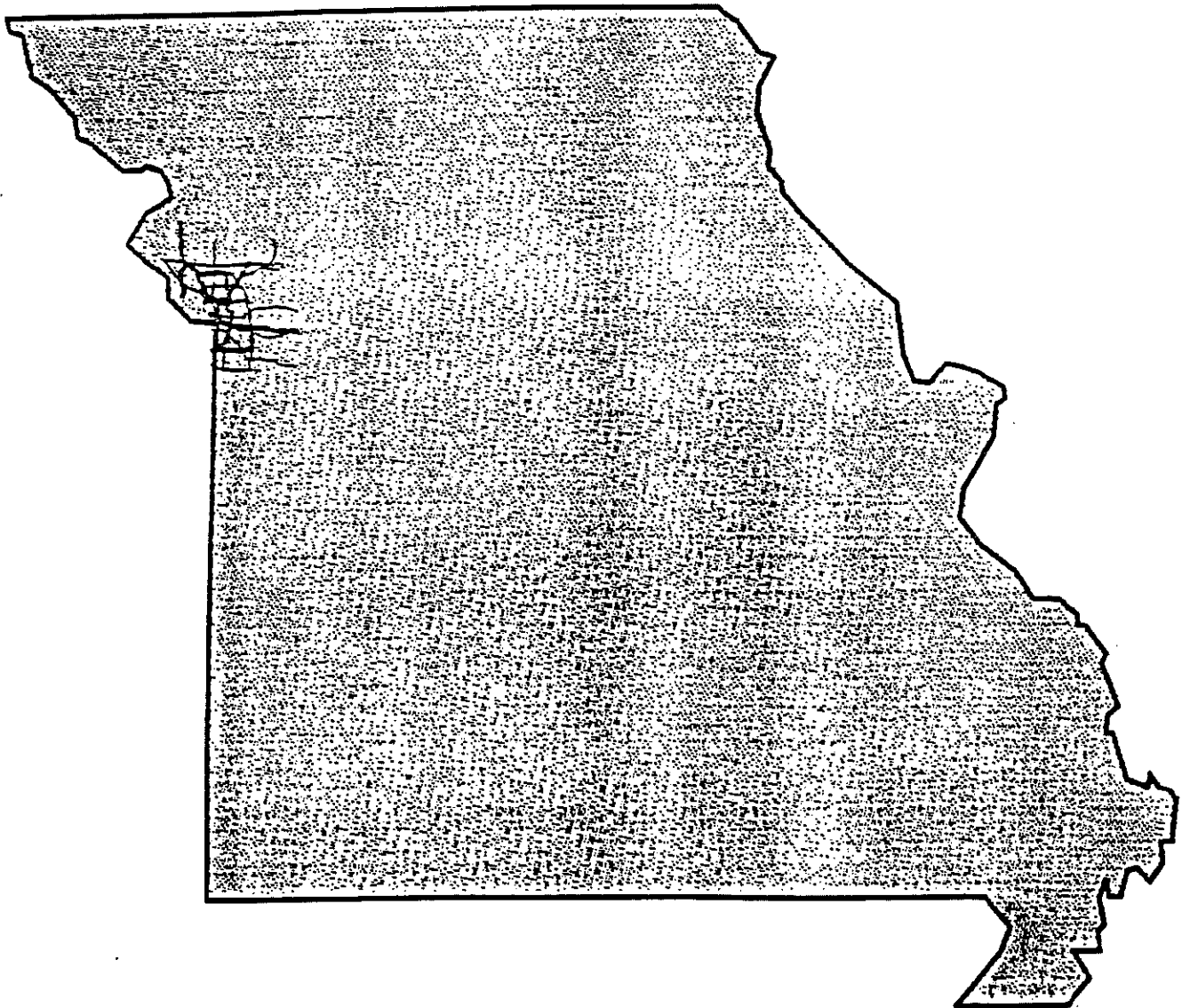


EXHIBIT A - Phase One

FOC will construct and maintain fiber and points of demarcation for the St. Louis Freeway System as set forth in MHTC RFP.

PHASE ONE
100% St. Louis
Metropolitan
Area

©1994
DTL St. Louis, MO.
"Proprietary"



PHASE TWO
100% Kansas City
Metropolitan
Area

EXHIBIT A - Phase Two

FOC will construct and maintain fiber and points of demarcation for the Kansas City Freeway System on all Kansases similar to those for the St. Louis Freeway

© 1994
DTL St. Louis, MO.
"Proprietary"



PHASE THREE
100% Rural Area, FOC will construct and maintain fiber
Interstate, and points of demarcation for the Rural
Including, Columbia Freeway System per Exhibit A Phase Three
to Jefferson City attached.
to Lake Of The Ozarks
to I-44

EXHIBIT A
Phase Three

© 1994
DTI, St. Louis, MO.
"Proprietary"

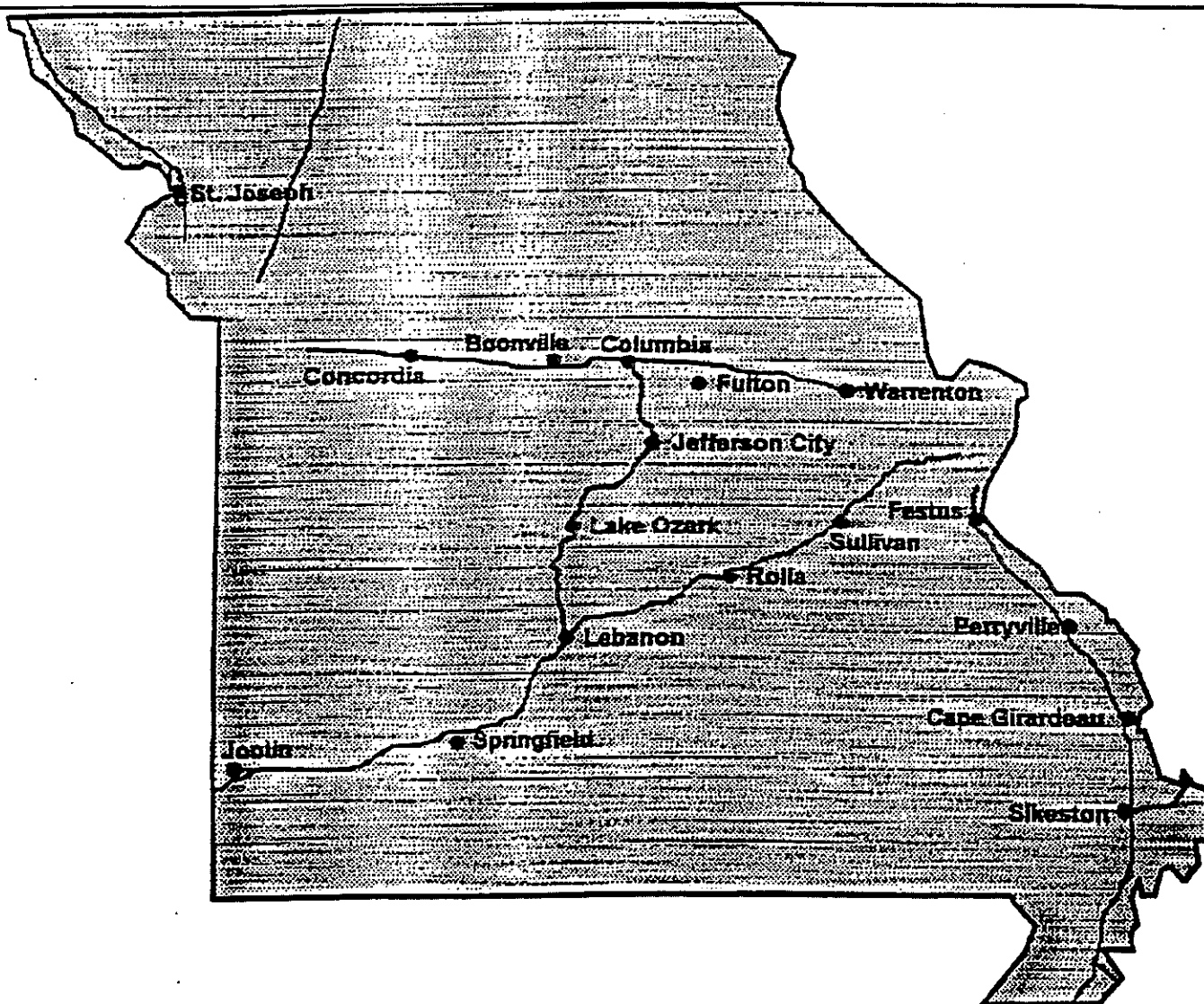


EXHIBIT A PHASE THREE - ATTACHED

Digital Teleport, Inc.
Timeline/Construction Schedule
Commencing on or before, 9/94

1994 1995 1996 1997

9 10 11 12 | 1 2 3 4 5 6 7 8 9 10 11 12 | 1 2 3 4 5 6 7 8 9 10 11 12 | 1

St. Louis



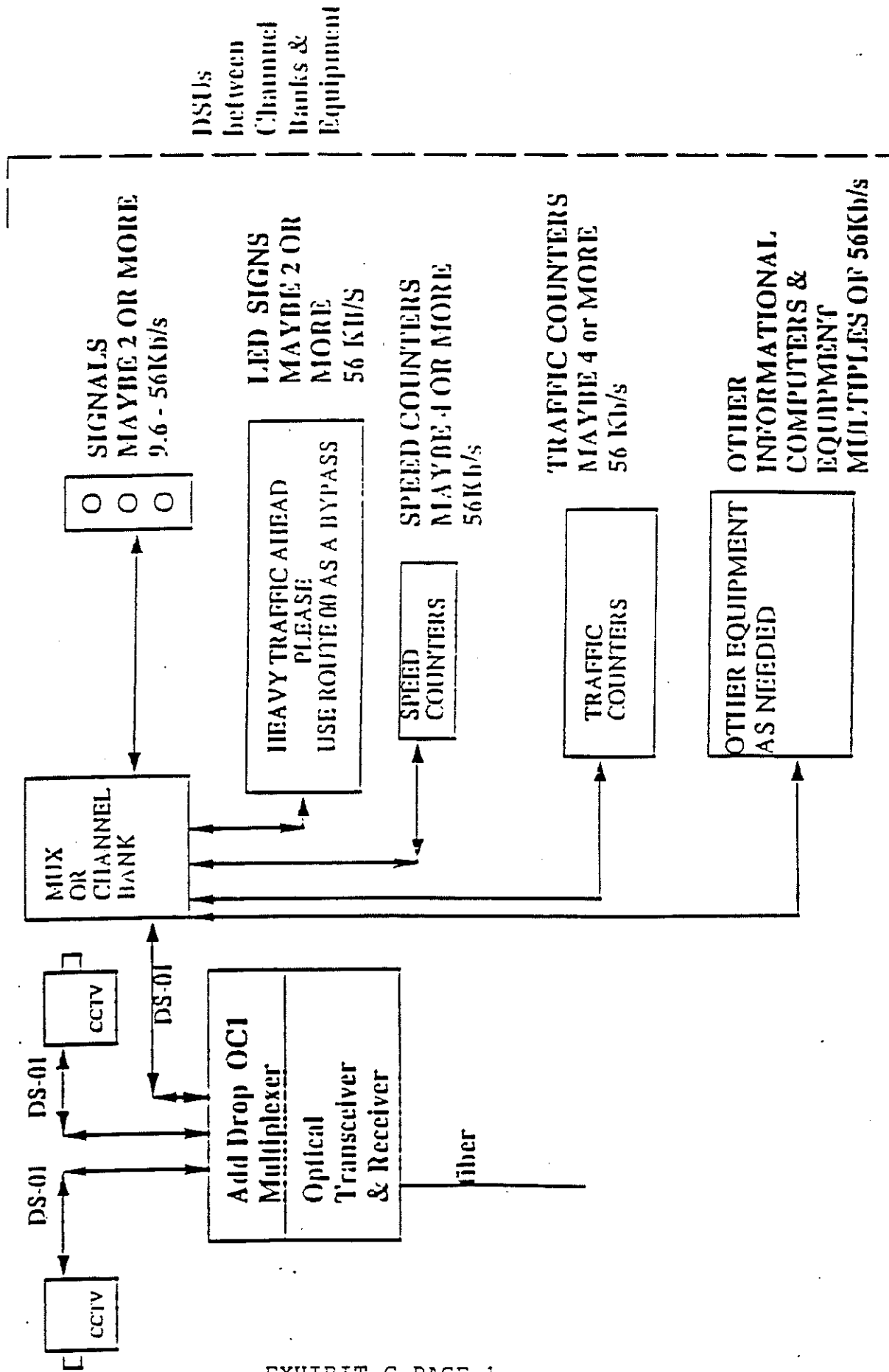
Kansas City



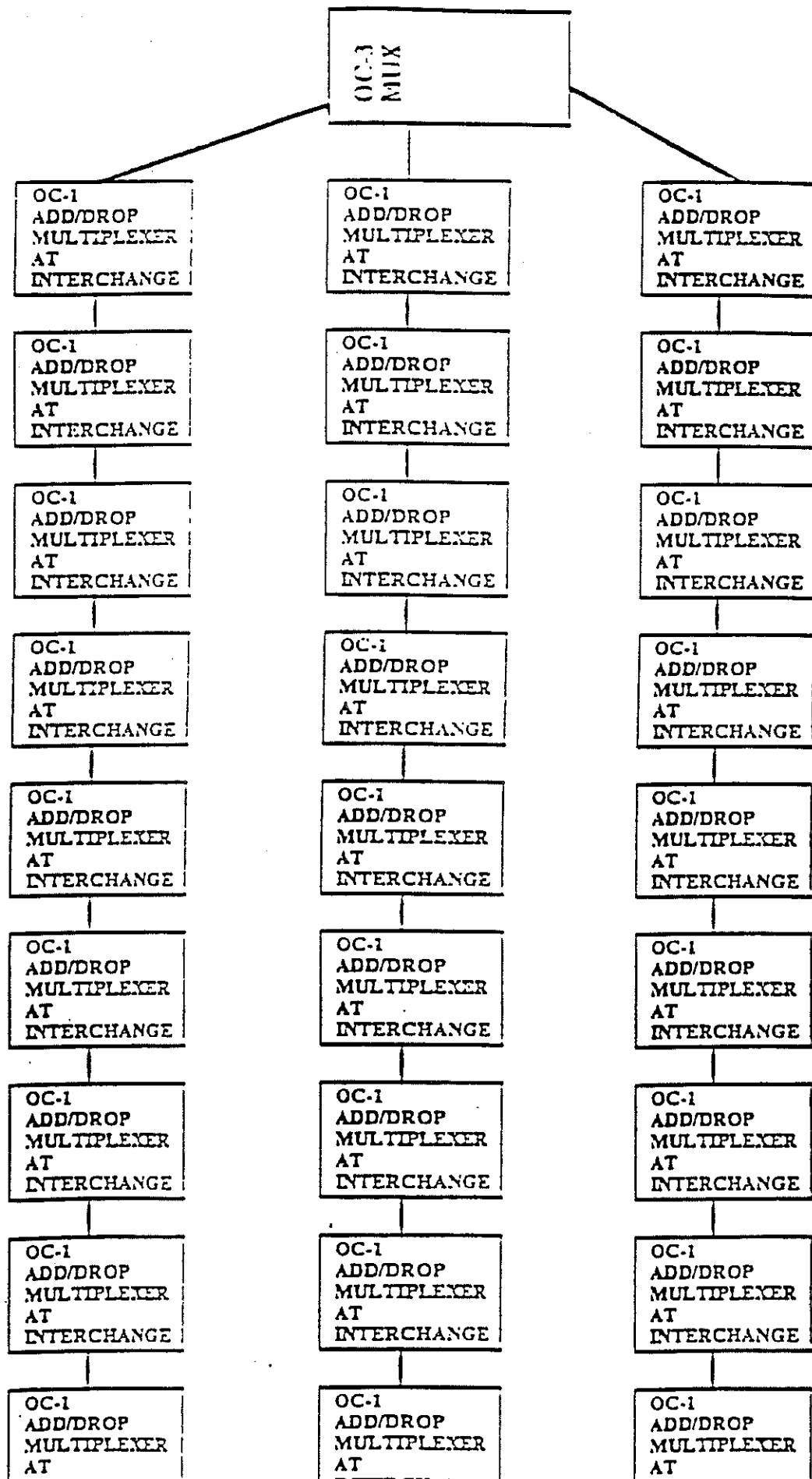
Rural Interstate



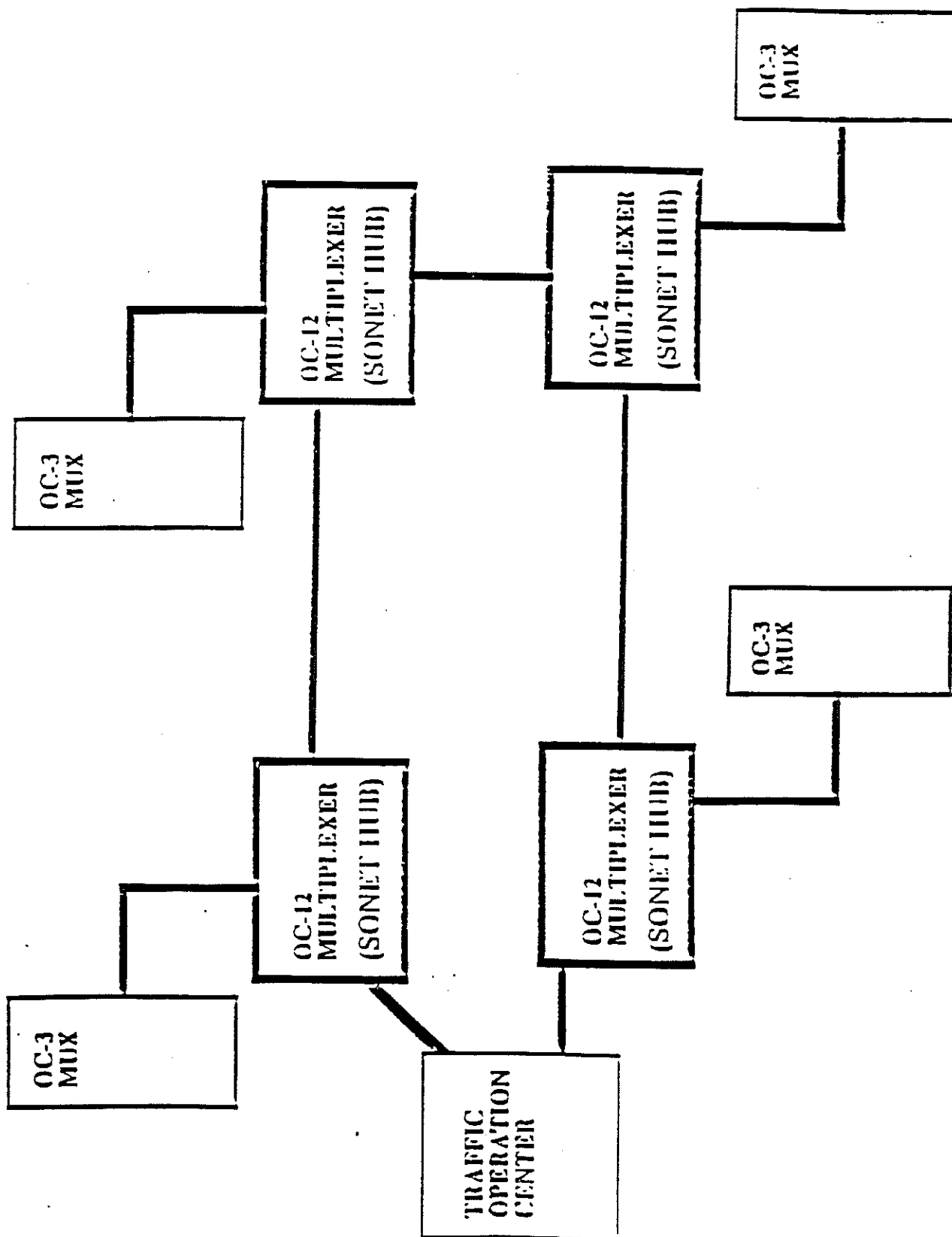
INTERCHANGE



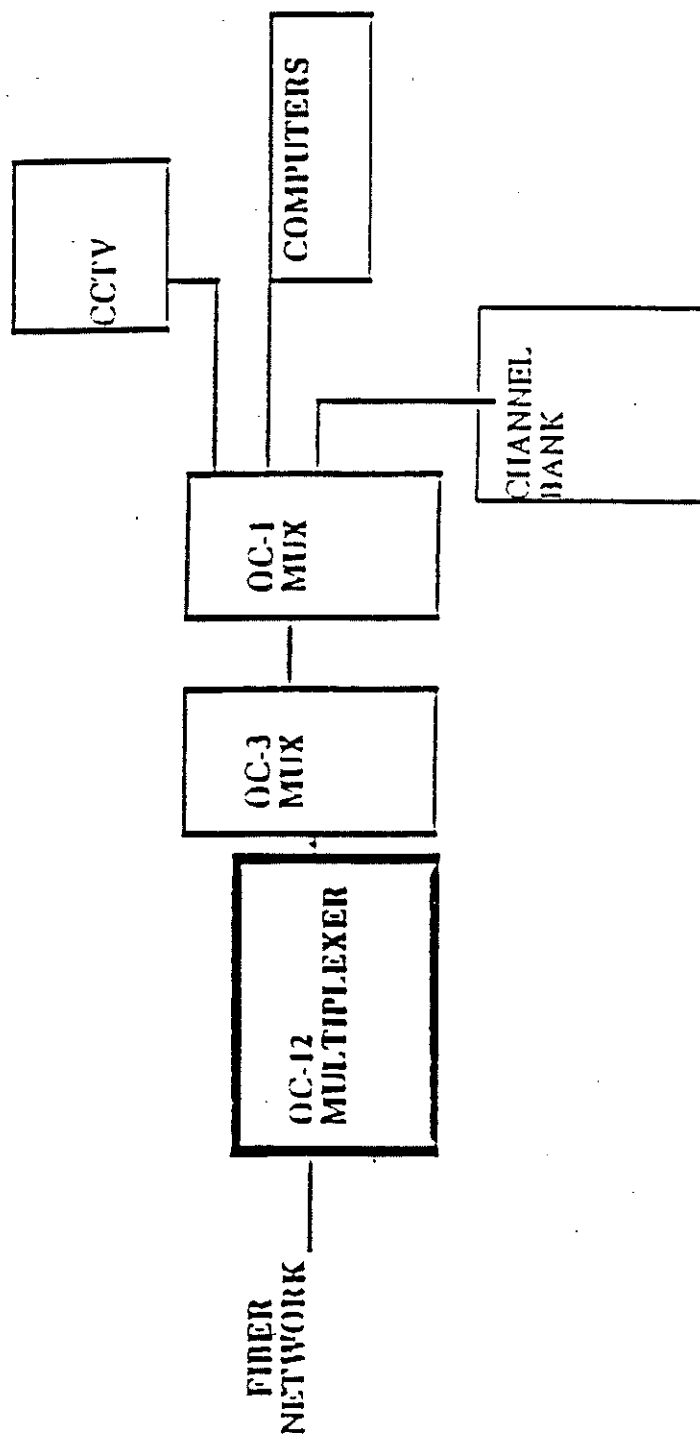
INTERCHANGES TO OC-3 NETWORK



OC-12 BACKBONE



TRAFFIC OPERATION CENTER



FIBER OPTIC CABLE ON FREEWAYS IN MISSOURI AMENDMENT

This amendment to the Agreement executed July 29, 1994 is entered into by the Missouri Highway and Transportation Commission (hereinafter the "MHTC") and Digital Teleport, Inc., (hereinafter the "Fiber Optic Contractor," or "FOC").

(1) Paragraph (23) of the original Agreement is hereby amended to read as follows:

(23) PERFORMANCE AND PAYMENT BOND: The FOC must furnish and attach to this Agreement, a performance and payment bond on the form provided by MHTC without deviations, omissions or additions, in at least the penal sum of Two Hundred Fifty Thousand Dollars (\$250,000). This bond shall be issued and executed by a surety or sureties acceptable to MHTC, to ensure the proper and prompt completion of the work in accordance with the provisions of this contract, and to ensure payment for all labor performed and materials installed, consumed or used in the work. The bond, if executed by a surety which is a corporation organized in a state other than Missouri, shall be signed by an agent or broker licensed by the Director of the Missouri Department of Insurance. A bond shall remain in full force and effect until the entire fiber optic cable system, and all related equipment and materials are fully installed and operational, in accordance with the terms of this contract. Provided however, the bond will be issued on an annually renewable basis. All renewals will be at the option of the surety, and will be provided in the form of a written continuation certificate executed by the surety. The continuation certificate will be provided to MHTC no later than thirty (30) days prior to the expiration of the current bond. At such time, and upon production of satisfactory documentation by the FOC that it has paid in full the costs of all labor performed and materials installed, consumed or used in the fiber optic cable system, the FOC may apply to MHTC to substitute another bond, or Irrevocable Letter of Credit acceptable to MHTC, having the penal sum of not less than Fifty Thousand Dollars (\$50,000), to ensure the continued maintenance and performance of that system for the remaining term of this Agreement in accord with its provisions, and the payment for all labor performed and materials installed, consumed or used in that phase of the contract work. The initial bond(s) shall remain in effect for the purpose of satisfying those valid project claims against the FOC for work, materials or obligations performed or incurred prior to the date a valid \$50,000 substitute bond, or Irrevocable Letter of Credit, was accepted by MHTC. In any event, the original, or a valid substitute bond, or Irrevocable Letter of Credit, shall remain in full force and effect at all times, without a break in coverage, for the initial period and all renewal periods of this Agreement. No initial or substitute performance and payment surety bond shall be cancelled except prospectively, and with at least thirty (30) days' advance notice in writing to MHTC and the FOC. Neither non-renewal by the surety, nor failure, nor inability of the FOC to file a replacement bond shall constitute a loss to the MHTC which is recoverable under the expiring bond. The Surety's liability under this bond and all continuation certificates issued in connection therewith shall not be cumulative and shall in no event exceed the amount as set forth in the bond, or in any additions, riders, or endorsements properly issued by the surety as supplements thereto. Prior to such effective date of cancellation of the performance and payment bond, the FOC must obtain and submit to MHTC a valid substitute bond, or Irrevocable Letter of Credit, meeting all terms of this Agreement. The FOC shall not perform any construction, work or maintenance under the original contract without an original bond or an Irrevocable Letter of Credit in full force during the actual time of performance of the original contract.

(2) All other terms and conditions of the original Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have entered into this Agreement on the date last written below.

Executed by Digital Teleport, Inc. this 21 day of September, 1994.

Executed by the Commission this 22 day of Sept., 1994.

MISSOURI HIGHWAY AND
TRANSPORTATION COMMISSION

Darryl Chuleno

Assistant Chief Engineer

DIGITAL TELEPORT, INC.

Richard D. Weinstein

Richard D. Weinstein, President

Attest:

Mary Ann McIntire
Secretary to the Commission

Attest:

By Richard D. Weinstein
Title Pres. D. C.

Approved as to Form:

Maui K. Harte
Commission Counsel

Approved as to Form:

Richard S. Brownlee
Richard Brownlee, Attorney at Law

jk/schrog/draft-11

**FIBER OPTIC CABLE ON FREEWAYS IN MISSOURI
SECOND AMENDMENT**

This second amendment to the Agreement executed July 29, 1994 is entered into by the Missouri Highway and Transportation Commission (hereinafter the "MHTC") and Digital Teleport, Inc., (hereinafter the "Fiber Optic Contractor," or "FOC").

(1) Paragraph (27), "Wage Laws", in the original Agreement is hereby deleted in its entirety as unnecessary. This contract is a service contract, and not a public works contract.

(2) All other terms and conditions of the original Agreement as previously amended at Paragraph (23), shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have entered into this Agreement on the date last written below.

Executed by Digital Teleport, Inc. this 27th day of OCTOBER, 19 94.

Executed by the Commission this 7th day of November, 19 94.

MISSOURI HIGHWAY AND
TRANSPORTATION COMMISSION

Gary Chellier
Assistant Chief Engineer

DIGITAL TELEPORT, INC.

Richard D. Weinstein
Richard D. Weinstein, President

Attest:

Martin L. Winters
Secretary to the Commission

Attest:

By Richard D. Weinstein
Title President

Approved as to Form:

Gregory W. Schwede
Commission Counsel

Approved as to Form:

Richard S. Brownlee
Richard Brownlee, Attorney at Law

FIBER OPTIC CABLE ON FREEWAYS IN MISSOURI THIRD AMENDMENT

This third amendment to the Agreement executed July 29, 1994 is entered into by the Missouri Highway and Transportation Commission (hereinafter the "MHTC") and Digital Teleport, Inc. (hereinafter the "Fiber Optic Contractor", or "FOC").

WITNESSETH:

WHEREAS, it is to the mutual benefit of the parties to modify the July 29, 1994 Agreement, by providing additional locations for the FOC to install its fiber optic cable and related equipment outside of existing utility corridors on MHTC highway right-of-way, in certain locations which provide further IVHS (now "Intelligent Transportation System" or "ITS") resources for MHTC and its state highway and transportation system; and

WHEREAS, it is to the mutual benefit of the parties for the FOC to receive these additions to the Fiber Optic Cable System, in return for MHTC having that system fully connected to all Missouri Department of Transportation (MoDOT) District headquarters office buildings at no additional expense to MHTC;

NOW, THEREFORE, in consideration of these mutual covenants, promises and representations, the parties agree as follows:

(1) AMENDMENTS: The original Agreement, as previously modified by a first and second amendment to that Agreement, is further amended as follows:

(A) Section (1), "DEFINITIONS", is amended by adding a subsection (CC), "System Additions", to read as follows:

(CC) System Additions: Those proposed Fiber Optic Cable System builds that are agreed to by MHTC and FOC, which were not designated on the original freeway system designated in the Agreement, but which are now considered necessary to support that system and the MHTC's intent in developing that system.

(B) Section (1), "DEFINITIONS", is further amended by modifying its subsection "H", adding a new "Exhibit D", so that the subsection now reads in full as follows:

(H) Exhibit A: Three Phase Construction Plan

Exhibit B: Fiber Optic Terminal Equipment location and Schedules for Three Phases

Exhibit C: Technical Interface Design

Exhibit D: System Additions

(C) Section (7), "EASEMENT GRANT AND CONSTRUCTION GUIDELINES", is amended by adding a subsection (H), to read as follows:

(H) Commencing no later than January 1, 1997, the FOC shall physically mark the surface location of the existing buried cable or conduit on an on-

going basis until all locations are marked in a manner acceptable and approved by MHTC's Division Engineer for Traffic. Cable or conduit which are placed after October 1, 1996, that are shown in Exhibits A and B shall be marked by the FOC within sixty (60) calendar days after burial of the cable or conduit. Cable or conduit placed as shown in Exhibit D shall be marked by the FOC within forty-five (45) calendar days after burial of the cable or conduit, if any of the locations are not within the existing utility corridor. The surface location of cable or conduit buried within the utility corridor may (but need not be) physically marked in the same manner.

(D) Section (7), "EASEMENT GRANT AND CONSTRUCTION GUIDELINES", is further amended by adding a subsection (I), to read as follows:

- (I) All terms and conditions of this Agreement will govern and apply to all system additions (as shown in Exhibit D), except that any such system additions shall be relocated at the expense of the FOC, if relocation is deemed necessary by the MHTC or by its Commission Representative designated in Section (29) of this Agreement.

(E) Section (11), "INSTALLATION", is amended by adding a subsection (D), which subsection reads as follows:

(D) System Additions:

1. Without regard to the FOC's timetable for the completion of Phases 1, 2 and 3, the installation of those system additions described in Exhibit D must be completed by the FOC no later than July 31, 1998. If the system additions are not completely installed and operational on the designated routes and locations, the FOC must provide alternative, comparable and acceptable service to the MHTC no later than July 31, 1998. At the sole option of the MHTC, if any system additions are incomplete and no alternate, comparable and acceptable service is provided by the FOC by July 31, 1998, under this Agreement and Exhibit D, any partial Fiber Optic Cable System installations within those designated routes may be reconsidered for disposition by the MHTC. If an alternate service is provided to a designated route shown in Exhibit D, the designated route shown in Exhibit D may be removed at any time after July 31, 2000, at the sole discretion of the MHTC.

2. Further, the FOC shall connect all of the MoDOT District Headquarters office buildings to the Fiber Optic Cable System either from the original system, the system additions, or by other means of access, no later than July 31, 1998. The FOC's obligation shall be to connect the system to the exterior of one such building within each district headquarters complex at a location to be specified by the Division Engineer for Traffic. The authority to install any system additions in locations outside of the utility corridor is conditioned upon compliance with this provision.

(2) EXTENSIONS FOR WORK TO BE COMPLETED BY THE FOC: At the sole option of the MHTC, the MHTC may allow an extension of time for the FOC to complete the work required under this Agreement or in any of the amendments to the Agreement. The FOC shall formally request an extension in writing to the MHTC regarding such an

extension. The MHTC will respond in writing to the FOC regarding the FOC's request for an extension to complete any of the required work.

(3) NAME CHANGE OF HIGHWAY AND TRANSPORTATION DEPARTMENT: With the enactment of H.B. 991, effective August 28, 1996, the "department of highways and transportation" is to be known as the Department of Transportation." As a result, any references in the Agreement or in any of the previous amendments to the Missouri Highway and Transportation Department (MHTD) shall now be referred to the Missouri Department of Transportation (MoDOT).

(4) REAFFIRMATION OF CONTRACT AS AMENDED: Except as they may be amended by this third amendment, all other terms and conditions of the original Agreement, and those contained in the first and second amendments to that Agreement, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have entered into this agreement on the date last written below.

Executed by Digital Teleport, Inc. this 14 day of OCTOBER, 1996.

Executed by MHTC this 9th day of October, 1996.

MISSOURI HIGHWAY AND
TRANSPORTATION COMMISSION

DIGITAL TELEPORT, INC.

By: *Gary Chellaro*
Title: Deputy Chief Engineer

By: *Richard D. Weinstein*
Richard D. Weinstein, President

Attest:

Attest:

Mari Ann Winters
Secretary to the Commission

By: *Richard D. Weinstein*
Title: SEAL

Approved as to Form:

Approved as to Form:

Robert M. Hiles
Commission Counsel

Richard S. Brownlee III
Richard S. Brownlee, III
Attorney at Law

SYSTEM ADDITIONS

St. Louis Metropolitan Area Additions

- (1) Route 367 - Route 67 from I-270 to Mississippi River
- (2) Route 94 from I-70 to Route 40/I-64

Outside Additions

- (1) Route 60 from Route 65 to Route 76 (Willow Springs)
- (2) Route 61 from I-70 to Route 36 (Hannibal)
- (3) Route 63 from I-70 to Route 36 (Macon)
- (4) Route 65 from I-44 to the Arkansas state line
(including Route 765 in Branson)
- (5) Route 71 from I-435 to I-44 and continuing to Arkansas
state line (future I-49)

EXHIBIT D

DTI
DIGITAL
TELEPORT, INC.

a State Regulated Telecommunications Utility

February 7, 1997

Mr. Tom Dollus,
Asst. Division Engineer - Traffic Division
MO. DEPARTMENT OF TRANSPORTATION
105 W. Capitol Avenue
Jefferson City, MO 65102

*re: Extension of Schedule Phase 1, 2 & 3
completion dates of the "Fiber
Optic Cable on the Freeways in
Missouri" Agreement, dated July
29, 1994*

Dear Mr. Dollus:

Pursuant to paragraph (2) of the "Third Amendment" executed by the parties on October 9th, 1996, please herein find a request for a "Revised Schedule" of dates for completion of the phases of the project. The amended dates for completion are as follow:

Phase One: September 30, 1997

Phase Two: July 31, 1998

Phase Three: December 31, 1998

Indicate the acceptance of the revised completion dates on behalf of MHTC and return three executed copies to us. Thank you for your cooperation in this matter.

DIGITAL TELEPORT, INC.

By: Richard D. Winston
Title: President
Dated: February 7, 1997

ACCEPTED BY:

MISSOURI HIGHWAY AND TRANSPORTATION
COMMISSION

By: Greg Chellino
Title: Deputy Chief Engineer
Dated: February 13, 1997

APPROVED AS TO FORM:

Robert M. Hills
Assistant Counsel

ATTEST

Mari Ann Winters
Secretary to State Highway &
Transportation Commission