

AN ORDINANCE GRANTING A NON-EXCLUSIVE FRANCHISE TO THE BALDWIN COUNTY COMMISSION FOR THE PURPOSE OF CONSTRUCTING AND MAINTAINING A FIBER-OPTIC TRANSMISSION LINE WITHIN CERTAIN PUBLIC RIGHTS-OF-WAY WITHIN THE TOWN OF LOXLEY, ALABAMA

WHEREAS, the BALDWIN COUNTY COMMISSION (hereinafter referred to as the "the Commission") desires to construct a fiber-optic transmission line within certain public rights-of-way within the Town of Loxley, Alabama; and

WHEREAS, the Commission agrees and recognizes that it is required to obtain consent in the form of a franchise from the Town of Loxley in order to construct the proposed fiber-optic transmission line within the corporate limits of the Town of Loxley; and

WHEREAS, the fiber-optic transmission lines will be used to strengthen and improve the communication apparatus for departments and agencies of the Baldwin County Commission, as well as for the Office of the Judge of Probate, Office of the Sheriff, Office of the Revenue Commissioner and for the court system of the 28th Judicial Circuit of the State of Alabama (Baldwin County); and

WHEREAS, the Commission acknowledges that the fiber-optic transmission lines are not constructed to generate revenue; and

WHEREAS, the Town Council wishes to accomodate the Commission's request and grant a franchise for the construction of the proposed fiber-optic transmission line in accordance with the terms and conditions contained herein.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF LOXLEY, ALABAMA, AS FOLLOWS:

The Town Council of the Town of Loxley does hereby grant to BALDWIN COUNTY COMMISSION a non-exclusive franchise granting the limited authority to construct a fiber-optic transmission line in the Town of Loxley in and along certain rights-of-way outlined in Exhibit A below, subject to the terms and conditions set forth in the following agreement:

AGREEMENT

This Agreement is entered into on this the 13th day of December, 2004, by and between the Town of Loxley, Alabama (hereinafter referred to as the "Town"), and the BALDWIN COUNTY COMMISSION, (hereinafter referred to as the "The Commission").

WITNESSETH:

The Town and The Commission do hereby mutually covenant and agree as follows:

SECTION 1. Defined Terms. For purposes of this Agreement, the following terms, words and phrases shall have the meanings set forth below. When not inconsistent with the context, words used in the singular number shall include the plural number, and words in the plural number shall include the singular.

1.1 "Town" means the Town of Loxley, Alabama.

1.2 "Governing Body" or "Town Council" means the Town Council of the Town of Loxley, Alabama.

1.3 "Person" means any natural or corporate person, business association or other business entity including, but not limited to, a partnership, sole proprietorship, political

subdivision, public or private agency of any kind, utility, successor or assign of any of the foregoing, or any other legal entity.

1.4 "Rights-of-way" means the surface and space above and below any public street, boulevard, road, highway, freeway, lane, alley, sidewalk, parkway, driveway, public ways, or other public rights of way, including, public utility easements, dedicated utility strips or rights of way dedicated for compatible uses held by the Town or location within the Town which shall entitle the Town and the Commission to use the same for the purpose of installing, operating, repairing and maintaining the System.

1.5 "System" shall mean a system of pipes, transmission lines, meters, equipment and all other facilities associated with the operation of a fiber-optic transmission line by the Commission in accordance with the terms and conditions contained in this Agreement.

SECTION 2. Grant of Authority. The Town hereby grants to the Commission the non-exclusive and limited authority to construct, install and maintain, or cause to be constructed, installed or maintained, a fiber-optic transmission line in and along the rights-of-way in the Town of Loxley as described and depicted in Exhibit A which is attached hereto and incorporated by reference (hereinafter referred to as the "System"). The Commission shall not expand or extend the System installed or constructed within the Town pursuant to this Agreement without approval from the Town Council, in its sole discretion.

SECTION 3. Compensation.

3.1 The Commission shall be exempt from the franchise fee, or other charge for use of public rights-of-way in the Town, as long as the fiber-optic transmission lines are not used to generate revenue. In the event the fiber-optic lines are used to generate revenue the Commission shall pay the Town of Loxley a franchise fee as follows:

A. Payment to Town. The Commission shall pay each year to the Town as a franchise fee five percent (5%) of its gross receipts for telecommunications services originating or terminating within the Town limits during each calendar year of operation under this franchise. Such payments shall be made quarterly during each calendar year, within fifteen (15) days of the close of each quarter. An annual financial statement shall be furnished to the Town by the Commission on or before April 1st of each year, or at any time upon the request of the Town after thirty (30) days written notice, such report to show gross revenues received by the grantee from its operations originating or terminating within the Town limits for the previous year. However, at any time, upon request by the Town and after sixty (60) days written notice, an annual certified audit report shall be furnished to the Town by the Commission, showing gross revenues received by the Commission from telecommunications services originating or terminating within the Town limits for the previous year. All other license fees or taxes levied upon the Commission by Town shall be in addition to the payment required herein. The Commission agrees that the Town will be allowed to amend this franchise to the extent necessary to adjust the amount of the franchise fee paid to the Town in conjunction with changes in applicable FCC regulations.

B. Acceptance of any fee payment shall not be deemed a waiver or release of any claims the Town may have for additional sums, nor construed as an accord or agreement that the amount paid is correct.

SECTION 4. Duration and Term. The franchise granted hereunder shall be for a term of twenty (20) years commencing on the effective date of this Ordinance and Agreement, unless otherwise lawfully renewed, revoked or terminated as herein provided.

SECTION 5. Grant of Non-Exclusive Authority. The right to use and occupy the rights-of-way for the purposes herein set forth shall not be exclusive, and the Town reserves the right to grant the use of said rights-of-way to any person at any time and for any lawful purpose. This Agreement shall not be construed to create any rights beyond the terms, conditions and

periods set forth in this Agreement, except as provided herein. The Town does not warrant any of the rights granted by this Agreement.

SECTION 6. Reservation of Regulatory and Police Powers. Subject to Section 3, above, the Town, by the granting of this franchise and approving this Agreement, does not surrender or to any extent lose, waive, impair or lessen the lawful powers and rights now, or which may be hereafter, vested in the Town under the Constitution and the statutes of the State of Alabama to regulate the use of its rights-of-way by the Commission or any person and the Commission, by its acceptance of this franchise and Agreement, agrees that all lawful powers and rights, regulatory power, police power or otherwise, that may be from time to time vested in or reserved to the Town, shall be in full force and effect and subject to the exercise thereof by the Town at any time. The Commission is deemed to acknowledge that its rights are subject to the regulatory and police powers of the Town to adopt and enforce ordinances necessary for the safety and welfare of the public and agrees to comply with all applicable laws and ordinances enacted by the Town pursuant to such powers.

Any conflict between the provisions of this Agreement and any other present or future lawful exercise of the Town's police powers shall be resolved in favor of the latter.

SECTION 7. Standards of Service.

7.1. Conditions of Street Occupancy. All portions of the System and all associated equipment installed or erected by the Commission pursuant to this Agreement shall be located so as to cause minimum interference with the proper use of the rights-of-way and with the rights and reasonable convenience of property owners who own property that adjoins any of such rights-of-way.

7.2 Restoration of Rights-of-way. If during the course of the Commission's construction, operation or maintenance of the System there occurs a disturbance of any rights-of-way by the Commission, it shall, at its expense, replace and restore such rights-of-way to a condition comparable to the condition of the rights-of-way existing immediately prior to such disturbance to the satisfaction of the Town. The work to be done under this Agreement, and the restoration of rights-of-way as required herein, must be completed within the dates specified in any permits authorizing the work. The Commission shall perform the work according to the standards and with the materials specified or approved by the Town Engineer.

7.3 Relocation at Request of the Town. Upon its receipt of reasonable notice, not to be less than forty-five (45) days, except where emergency conditions require shorter notice, the Commission shall, at its own expense, protect, support, temporarily disconnect, relocate in the rights-of-way, or remove from the rights-of-way, any property of the Commission when lawfully required by the Town by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, electrical or telecommunications lines, when such installation or construction is being done directly by or for the Town. Should the Commission refuse or fail to remove its equipment or plant as provided for herein within forty-five (45) days after written notification, the Town shall have the right to do such work or cause it to be done, and the reasonable cost thereof shall be chargeable to the Commission.

7.4 Trimming of Trees and Shrubbery. The Commission shall reasonably compensate the Town for any damages, in such amounts as determined by the Town, caused by trimming, cutting or removing trees or shrubbery, or shall, at its own expense, replace all trees or shrubs damaged as a result of any construction, installation, repair or maintenance of the System undertaken by the Commission to the satisfaction of the Town.

7.5. Safety and Permit Requirements. Construction, installation, repair and maintenance of the System shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial compliance with applicable federal, state, and local laws, rules and regulations, including all permit requirements and ordinances adopted by the Town which are now in effect or are hereafter adopted. The System or parts thereof shall not unreasonably endanger or interfere with the safety of persons or property in the area,

7.7. Minimum Standards. All of the construction by the Commission shall conform, at a minimum, to the minimum standards of the Commission. In the event there is a conflict between the standards adopted by the Commission and any applicable federal, state or local standards, including ordinances adopted by the Town, the stricter standard shall apply.

7.8. Obstructions of Rights-of-Way. Except in the case of an emergency, or with the approval of the Town Engineer, no rights-of-way obstruction or excavation may be performed when seasonally prohibited or when conditions are unreasonable for such work.

The Commission shall not so obstruct the rights-of-way so as to interfere with the natural, free and clear passage of water through the gutters, drains, ditches or other waterways.

7.9. Safety Requirements.

- A. The Commission shall at all times ensure the employment of the highest degree of care as is commensurate with the practical operation of its business and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries or nuisances to the public.
- B. The Commission shall install and maintain the System, or shall cause the System to be installed and maintained, in accordance with the requirements of all applicable regulations of the Town, which may be amended from time to time, and in such manner that its operations will not interfere with any installations of the Town or of a public utility serving the Town.
- C. All structures and all lines, equipment and connections in, over, under and upon the rights-of-way, wherever situated or located, shall at all times be kept and maintained in a safe and suitable condition and in good order and repair.
- D. The Commission shall ensure that personnel are maintained at all times sufficient to provide safe, adequate and prompt service for the System.

7.10. Least Disruptive Technology. The Commission is encouraged to perform, or cause to be performed construction and maintenance of the System in a manner resulting in the least amount of damage and disruption to the rights-of-ways. Use of trenchless technology is required for any portion of construction or maintenance projects which lie beneath the paved or improved portion of any roadway to which this Agreement applies, unless otherwise approved by the Town Council. The Town Engineer may require trenchless technology in other locations, where circumstances prevent or make open-cut methods impractical. The Commission may use either the open-cut method or trenchless technology for construction outside the paved or improved portion of any roadway to which this Agreement applies.

SECTION 8. Enforcement and Termination of Agreement.

8.1. Notice of Violation. In the event the Commission has not complied with the terms of this Agreement, the Town shall notify the Commission in writing of the nature of the alleged noncompliance.

8.2. Right to Cure or Respond. The Commission shall have 30 days from receipt of the notice described in Section 8.1: (a) to respond to the Town by contesting the assertion of noncompliance, (b) to cure such default, or (c) in the event that, by the nature of default, such default cannot, for reasons beyond the control of the Commission, be cured within the 30-day period, initiate reasonable steps to remedy such default and notify the Town of the steps being taken and the projected date that they will be completed.

8.3. Public Hearing. In the event the Commission fails to satisfactorily respond to the notice described in Section 8.1 or contests the assertion of noncompliance pursuant to the procedures set forth in Section 8.2, or in the event the alleged default is not remedied within 30 days or by the date projected pursuant to 8.2(c) above, the Town shall schedule a public hearing

to investigate the default. Such public hearing shall be held at the next regularly scheduled meeting of the Town which is scheduled at a time not less than five business days therefrom. The Town shall notify the Commission in writing of the time and place of such meeting and provide the Commission with an opportunity to be heard.

8.4. Enforcement. In the event the Town, after such meeting, determines that the Commission is in default of any provision of this Agreement, the Town may pursue any or all of the following remedies:

- A. Seek specific performance of any provision which reasonably lends itself to such a remedy;
- B. Make a claim against any surety or performance bond which may be required to be posted;
- C. Restrain by injunction the default or reasonably anticipated default by the Commission of any provision of this Agreement;
- D. Seek any other available remedy permitted by law or in equity;
- E. In the case of a material default of this Agreement, declare the Agreement to be revoked in accordance with the following:

(1) The Town shall give written notice to the Commission of its intent to revoke the Franchise on the basis of noncompliance by the Commission. The notice shall set forth the exact nature of the noncompliance. The Commission shall have 30 days from such notice to object in writing and to state its reasons for such objection. In the event the Town has not received a satisfactory response from the Commission, it may then seek termination of this Agreement at a public meeting. The Town shall cause to be served upon the Commission, at least 10 days prior to such public meeting, a written notice specifying the time and place of such meeting and stating its intent to seek such termination.

(2) At the designated meeting, the Town shall give the Commission an opportunity to state its position on the matter, after which it shall determine whether or not this Agreement shall be terminated. The Commission may appeal such determination to the Circuit Court of Baldwin County, which shall have the power to review the decision of the Town and to modify or reverse such decision as justice may require. Such appeal must be taken within 30 days of the issuance of the determination by the Town.

(3) The Town may, in its sole discretion, take any lawful action which it deems appropriate to enforce the Town's rights under this Agreement in lieu of revocation of the Agreement.

8.5. Impossibility of Performance. The Commission shall not be held in default or noncompliance with the provisions of this Agreement, nor suffer any enforcement or penalty relating thereto, where such noncompliance or alleged defaults are caused by strikes, acts of God, power outages or other events reasonably beyond its ability to control.

SECTION 9. Default. Each of the following shall constitute a material default by the Commission:

- (1) Failure to make any payments to the Town required to be made as set forth in this Agreement;
- (2) Failure to maintain a liability insurance policy that is not cured within thirty (30) days following written notice to the Commission;

- (3) Failure to provide or furnish any information required under this Agreement to the Town that is not cured within thirty (30) days following written notice to the Commission;
- (4) Any breach or violation of any ordinance, rule or regulation or any applicable safety or construction requirements or regulations that present a threat to health or safety that has not been cured within thirty (30) days written notice;
- (5) The occurrence of any event relating to the financial status of the Commission which may reasonably lead to the foreclosure or other judicial or non-judicial sale of all or any material part of the System or the assets of the Commission;
- (6) The condemnation by a public authority, other than the Town, or sale or dedication under threat or in lieu of condemnation, of all or substantially all of the facilities; or
- (7) If (a) the Commission shall make an assignment for the benefit of creditors, shall become and be adjudicated insolvent, shall petition or apply to any tribunal for, or consent to, the appointment of, or taking possession by, a receiver, custodian, liquidator or trustee or similar official pursuant to state or local laws, ordinances or regulations of any substantial part of its property or assets, including all or any part of the System; (b) a writ of attachment, execution, distraint, levy, possession or any similar process shall be issued by any tribunal against all or any material part of the Commission's property or assets; (c) any creditor of the Commission petitions or applies to any tribunal for the appointment of, or taking possession by, a trustee, receiver, custodian, liquidator or similar official for the Commission or for any material parts of the property or assets of the Commission under the law of any jurisdiction, whether now or hereafter in effect, and a final order, judgment or decree is entered appointing any such trustee, receiver, custodian, liquidator or similar official, or approving the petition in any such proceeding; or (d) any final order, judgment or decree is entered in any proceedings against the Commission decreeing the voluntary or involuntary dissolution of the Commission.

SECTION 10. Prior to any excavation within the rights-of-way, the Commission shall obtain a permit from the Town pursuant to this Agreement, and the work shall be performed in accordance with all applicable ordinances and codes and any subsequent ordinances or regulations that may be adopted by the Town. Repair and replacement of the rights-of-ways due to the Commission's installation, removal, relocation, maintenance and repair of its System or facilities shall be accomplished to the satisfaction of the Town.

SECTION 11. Insurance. The Commission represents and warrants that it has retained a contractor to perform the work made the subject of this Agreement, and that pursuant to the said contract, the contractor has procured workers compensation and liability insurance evidenced by the insurance certificates attached hereto as Exhibit B. The Commission shall ensure that said insurance is maintained in full force and effect.

SECTION 12. Indemnity and Hold Harmless. The Commission agrees to indemnify, defend, and hold harmless the Town, its elected officers, employees, agents, and representatives, against all claims, costs, losses, expenses, demands, actions, or causes of action, including reasonable attorney's fees and other costs and expenses of litigation, which may be asserted against or incurred by the Town or for which the Town may be liable, which arise from the negligence or willful misconduct, of the Commission, its employees, agents, or subcontractors arising out of the construction, operation, maintenance, upgrade, repair or removal of Facilities except for those claims, costs, losses, expenses, demands, actions, or causes of action which arise solely from the negligence, willful misconduct, or other fault of the Town. The Town does not and shall not waive any rights against the Commission which it may have by reason of this indemnification, or because of the acceptance by, or the Commission's deposit with the Town of

any of the insurance policies described in this Agreement. The indemnification by the Commission shall apply to all damages, penalties and claims of any kind, regardless of whether any insurance policy shall have been determined to be applicable to any such damages or claims for damages.

SECTION 13. Disclaimer of Warranties. The Town makes no representation or warranty regarding its rights to authorize the installation or operation of the System on any particular right-of-way, and the burden and responsibility for making such determination in advance of the installation shall be upon the Commission. This Agreement shall not be construed to deprive the Town of any rights or privileges which it now has, or may hereafter have, to regulate the use and control of its streets.

SECTION 14. Warranties and Representations. The Commission hereby agrees, represents and warrants that it is legally authorized to enter into this Agreement in accordance with all applicable laws, rules and regulations. Furthermore, the Commission further agrees, represents and warrants that this Agreement is legal, valid and binding, and that it is required to obtain authorization and consent from the Town prior to the construction, installation, operation or maintenance of the System.

SECTION 15. Other Obligations. Obtaining a franchise pursuant to this Agreement does not relieve the Commission of its duty to obtain all other necessary permits, licenses, authority and the payment of fees required by any other Town, county, state or federal rules, laws or regulations, and the Commission is responsible for all work done in the rights-of-way pursuant to this Agreement, regardless of who performs the work.

SECTION 16. Payment of Costs. The Commission shall be responsible for all costs associated with the installation, repair and maintenance of the System and all associated equipment including, but not limited to (1) the costs to repair the rights-of-way due to the installation, repair and maintenance of the System, and (2) the costs incurred in removing or relocating any portion of the System or facilities constructed when required by the Town.

SECTION 17. Priority of Use. This Agreement does not establish any priority for the use of the rights-of-way by the Commission or any present or future franchisees or permit holders. In the event of any dispute as to the priority of use of the rights-of-way, the first priority shall be to the public generally, the second priority to the Town, the third priority to the State of Alabama and its political subdivisions, including the Commission, in the performance of their various functions, and thereafter, as between franchisees and other permit holders, as determined by the Town in the exercise of its powers, including the police powers and other powers reserved to and conferred on it by the State of Alabama.

SECTION 18. Notice. Every notice or response required by this Agreement to be served upon the Town or the Commission shall be in writing and shall be deemed to have been duly given to the required party three (3) business days after having been posted in a properly sealed and correctly addressed envelope when hand delivered or sent by certified or registered mail, postage prepaid as follows:

The notices or responses to the Town shall be addressed as follows:

Town of Loxley, Alabama
Post Office Box 226
Loxley, Alabama 36527

The notices or responses to the Commission shall be addressed as follows:

County Commission
Baldwin County
312 Courthouse Square, Suite 12
Bay Minette, Alabama 36507

SECTION 19. The Town and The Commission may designate such other address or addresses from time to time by giving written notice to the other party as set forth in this section.

SECTION 20. Application. The terms and conditions contained in this Agreement shall apply to all areas within the corporate limits of the Town and those areas annexed by the Town after the passage and approval of this Ordinance and Agreement.

SECTION 21. Acceptance. The Commission's acceptance of this Agreement shall be in writing in a form approved by the Town attorney and shall be accompanied by delivery of all payments, insurance certificates, applications, acceptance fees and performance of other requirements relating to commencement of construction as set forth in this Agreement.

SECTION 22. Assignment. The Commission's interest in this Agreement shall not be sold, transferred, assigned or otherwise encumbered or disposed of, either by forced or voluntary sale or otherwise, without the prior written consent of the Town Council. The Town reserves the right to be reimbursed by the Commission for costs incurred by it in reviewing the request for transfer of ownership.

SECTION 23. Miscellaneous. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in singular number shall be held to include the plural and vice versa, unless context requires otherwise. The captions used in connection with the sections of this Agreement are for convenience only and shall not be deemed to construe or limit the meaning of the language contained in this Agreement, or be used in interpreting the meanings and provisions of this Agreement.

SECTION 24. Rules of Construction. The parties hereto acknowledge that each party and its counsel have had the opportunity to review and revise this Agreement, and the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits thereto.

SECTION 25. Governing Law. This Agreement shall be deemed to have been made in the State of Alabama and the validity of the same, its construction, interpretation, enforcement and the rights of the parties hereunder, shall be determined under, governed by and construed in accordance with the substantive laws of the State of Alabama, without giving effect to any choice of law provisions arising thereunder.

SECTION 26. Severability Clause. If any part, section or subdivision of this Ordinance shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this Ordinance, which shall continue in full force and effect notwithstanding such holding.

SECTION 27. Repealer Clause. Any Ordinance heretofore adopted by the Town Council of the Town of Loxley, Alabama, which is in conflict with this Ordinance is hereby repealed to the extent of such conflict.

SECTION 28. Effective Date. This Ordinance shall become effective only upon receipt of a written unconditional acceptance by the Commission of the terms and conditions contained herein within thirty (30) days of the passage of this Ordinance.

ADOPTED AND APPROVED this 13th day of December, 2004.

TOWN OF LOXLEY, ALABAMA

BY: Seely Middleton
MAYOR

ATTEST:

Cara P. Middleton
Town CLERK

STATE OF ALABAMA
COUNTY OF BALDWIN

I, PAULETTE D. STANTON, a Notary Public, in and for said County in said State, hereby certify that BILLY MIDDLETON and CAROL P. MIDDLETON whose names as Mayor and Town Clerk of the Town of Loxley, Alabama, a municipal corporation, are signed to the foregoing instrument and who are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they, as such officers and with full authority, executed the same voluntarily for and as the act of said municipal corporation.

Given under my hand and seal this 20 day of DECEMBER, 2004.

Paulette D. Stanton
Notary Public, Baldwin County, Alabama
My Commission Expires: 5/7/10

BALDWIN COUNTY COMMISSION

BY: David E. Bishop
David E. Bishop
Its: Chairman

ATTEST:

Locke W. Williams
Locke W. Williams, Clerk/Treasurer

STATE OF ALABAMA
COUNTY OF BALDWIN

I, Kari A. Ruffin, a Notary Public, in and for said County in said State, hereby certify that David Ed Bishop whose name as Chairman and Locke W. Williams, whose name as Clerk/Treasurer of the Baldwin County Commission is signed to the foregoing instrument and who are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they, as such officers and with full authority, executed the same voluntarily for and as the act of said Baldwin County Commission.

Given under my hand and seal this 4th day of January, 2005

Kari A. Ruffin
Notary Public, Baldwin County, Alabama
My Commission Expires: NOTARY PUBLIC STATE OF ALABAMA AT LARGE

MY COMMISSION EXPIRES: Dec 13, 2008
BONDED THIRD NOTARY PUBLIC UNDERWRITERS

PERMIT REQUEST

CONSTRUCTION NOTES

NOTIFY THE DEPARTMENT OF TRANSPORTATION (251-937-2086) 48 HOURS PRIOR TO COMMENCING WORK ON STATE RIGHT OF WAY

WET BORING (JETTING) IS NOT ALLOWED WITHIN THE BALDWIN COUNTY RIGHT-OF-WAY.

CONTRACT COMPANY WILL DEVELOP AND USE A TRAFFIC CONTROL PLAN FOR THIS PERMIT THAT WILL COMPLY WITH THE FEDERAL MANUAL ON TRAFFIC CONTROL DEVICES (FMUTCD) FOR STREETS AND HIGHWAY, VOL. VI. A COPY OF THE TRAFFIC CONTROL PLAN WILL BE AVAILABLE AT THE JOB SITE.

ADHERENCE IS REQUIRED TO THE ALABAMA DEPARTMENT OF TRANSPORTATION UTILITY MANUAL AND TO THE STATE OF ALABAMA HIGHWAY DEPARTMENT STANDARD SPECIFICATIONS FOR HIGHWAY CONSTRUCTION.

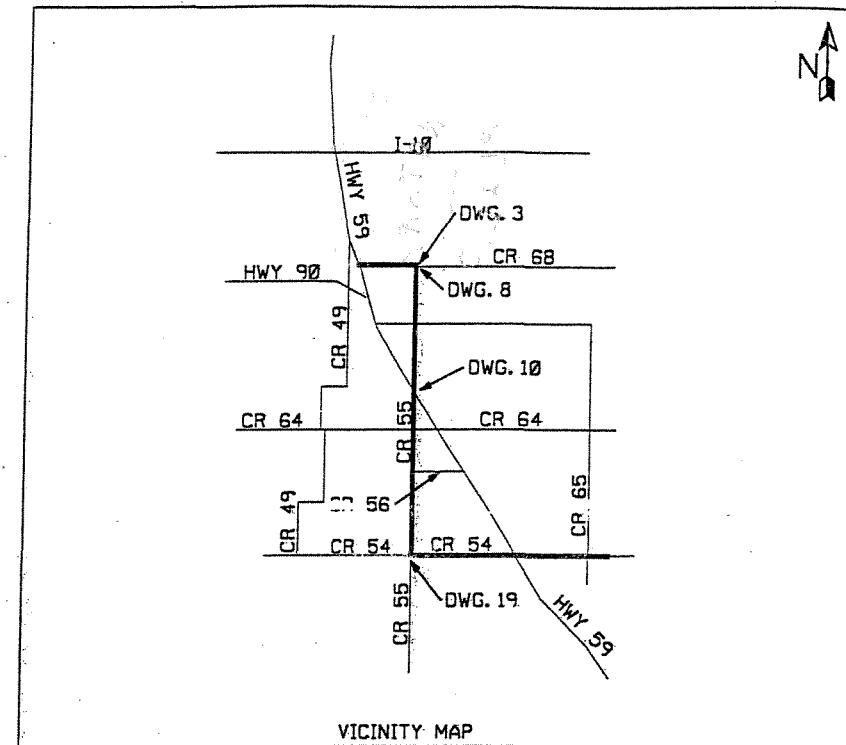
CONTRACTOR SHOULD TAKE NECESSARY PRECAUTIONS TO PREVENT SILT AND/OR ERODED MATERIALS FROM BEING DEPOSITED ON PRIVATE PROPERTIES ADJACENT TO THE PROJECT. REFERENCE "BEST MANAGEMENT PRACTICES."

THESE DRAWINGS MAY NOT REVEAL THE EXISTENCE OR LOCATION OF ALL UNDERGROUND UTILITIES OR OBSTRUCTIONS. CONTACT THE ALABAMA LINE LOCATION CENTER AT 800-292-8525 AND ANY NONMEMBERS IN CONFLICT 48 HOURS PRIOR TO CONSTRUCTION FOR EXACT UTILITY LOCATIONS.

PROPOSED HANDHOLES ARE 24" WIDE X 24" DEPTH X 36" LENGTH. PROPOSED FIBER IS LUCENT TRUEWAVE RS.

LEGEND

	EXISTING	PROPOSED
BURIED BC CABLE		
AERIAL BC CABLE		
BURIED TELEPHONE LINE		
BURIED POWER LINE		
BURIED GAS LINE		
BURIED WATER LINE		
BURIED SEWER LINE		
POWER POLE		
TELEPHONE POLE		
BC ANCHOR AND GUY		
POWER ANCHOR AND GUY		
TELEPHONE ANCHOR AND GUY		
BC OVERHEAD GUY		
CULVERT		
CUT AND RESTORE		
BORE		
PIPE		
DEPTH OF COVER		
BC HANDHOLE		
POWER TRANSFORMER		
SPAN MEASUREMENT		
MULTI-GROUND NEUTRAL		
LASH PROPOSED CABLE TO EXISTING CABLE		
POLE NUMBER (IF AVAILABLE)		
RIGHT OF WAY MARKER		
TELEPHONE PEDESTAL		
CABLE MARKER		



VICINITY MAP

BALDWIN COUNTY	
SECTIONS	3, 11, 14, 23
TOWNSHIP	55
RANGE	3E
SECTIONS	35, 36
TOWNSHIP	55
RANGE	3E

CONTACTS

DEPARTMENT OF TRANSPORTATION
47450 RABUN ROAD
BAY MINETTE, AL 36507
JACKIE SMITH
251-937-2086

SOUTHERN LIGHT FIBER, 877-652-2321

RIVIERA UTILITIES (GAS IN ROBERTSDALE)
MIKE DUGGER, 251-943-5001

ROBERTSDALE PUBLIC WORKS
(WATER, SEWER), 251-947-8950

TOWN OF LOXLEY (WATER, SEWER, GAS)
TOMMY HUDSON, 251-964-5162

MCI-WORLDCOM, 800-292-8525

WILLIAMS, 888-265-2283

GULFTEL (LOCAL TELEPHONE)
800-292-8525

BALDWIN COUNTY SEWER SERVICE
251-979-2981

SUBMITTED BY:
TREASURE COAST CONTRACTING SERVICES, INC.
P.O. BOX 2704
GULF SHORES, AL 36547
877-291-4363

BALDWIN COUNTY FIBER NETWORK

JOB NUMBER: TCC-004; PHASE 1, SECTION 4

LOCATION: COUNTY ROADS 68, 55, AND 54

SCALE: NONE Stage 3rd DWG 1 OF 26

Exhibit A

Note: Front page only, the entire set of plans on file in Building Inspectors Office, Town of Loxley.

PREPARED BY:
BYERS ENGINEERING COMPANY
SUITE 101
801 EXECUTIVE PARK DRIVE
MOBILE, AL 36686
PHONE: 251-478-1717

ACORD CERTIFICATE OF LIABILITY INSURANCE		DATE (MM/DD/YYYY) 11/01/04
PRODUCER Int'l Assurance Baldwin City Inc P O Box 1946 Foley, AL 36536 251 943-2305	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
INSURED Treasure Coast Contracting Services Inc P O Box 2704 Gulf Shores, AL 36547	INSURERS AFFORDING COVERAGE INSURER A: Penn Nat'l Mutual Casualty INSURER B: Progressive Casualty Ins. Co. INSURER C: Continental Casualty Co. INSURER D: INSURER E:	NAIC #

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CLASS CODES LTD. RATED	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: POLICY <input type="checkbox"/> PCO <input type="checkbox"/> LOC	[REDACTED]	04/20/04	04/20/05	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (EA OCCURRENCE) \$100,000 MED EXP (ANY ONE PERSON) \$5,000 PERSONAL & ADY INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMPOR AGG \$2,000,000
B A	AUTOMOBILE LIABILITY ANY AUTO <input checked="" type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOM GARAGE LIABILITY <input type="checkbox"/> ANY AUTO EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$	(Penn National) (Progressive)	08/18/04 04/20/04	08/18/05 04/20/05	COMBINED SINGLE LIMIT (EA accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY EA ACC \$ AGG \$ EACH OCCURRENCE \$ AGGREGATE \$ \$ \$
C Y	WORKERS COMPENSATION AND EMPLOYERS LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED I/EL COVERED UNDER SPECIAL PROVISIONS ONLY OTHER	[REDACTED]	09/27/04	09/27/05	<input checked="" type="checkbox"/> HOSPITAL-TREATY LIMITS (OTA BR) I.L. EACH ACCIDENT \$100,000 I.L. DISEASE - EA EMPLOYEE \$100,000 I.L. DISEASE - POLICY LIMIT \$600,000

DESCRIPTION OF OPERATIONS / LOCATION / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS
 Re: WC/EL - Officer is excluded in accordance with NCCI Rules & Regulations.
 Certificate holder is additional insured as respect general liability.

CERTIFICATE HOLDER Baldwin County Commission Attn: Wanda 312 Courthouse Square - Ste 15 Bay Minette, AL 36507	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE <i>Carolyn W. Seaman</i>
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CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YY) . . .
03/12/04

PRODUCER
Intl Assurance Baldwin Cty Inc
 P O Box 1946
 Foley, AL 36536
 251 943-2305

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE

INSURED
Treasure Coast Contracting Services Inc
 P O Box 2704
 Gulf Shores, AL 36547

INSURER A: **Penn Nat'l Mutual Casualty**
 INSURER B: **Zurich American Ins Co**
 INSURER C:
 INSURER D:
 INSURER E:

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SA POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	[REDACTED]	04/20/03	04/20/04	EACH OCCURRENCE \$1,000,000 FIRE DAMAGE (Any one fire) \$100,000 MED EXP (Any one person) \$5,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	[REDACTED]	09/08/03	04/20/04	COMBINED SINGLE LIMIT (Ea accident) \$500,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$
	EXCESS LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	[REDACTED]	01/17/04	01/17/05	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$100,000 E.L. DISEASE - EA EMPLOYEE \$100,000 E.L. DISEASE - POLICY LIMIT \$500,000
	OTHER				

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS
Certificate holder is additional insured as respect general liability.

CERTIFICATE HOLDER Baldwin County Commission Attn: Wanda 312 Courthouse Square - Ste 15 Bay Minette, AL 36507	ADDITIONAL INSURED; INSURER LETTER: CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE <i>Carolyn H. Seelan</i>
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IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

SUBCONTRACT LABOR AND MATERIAL PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS: That Two-Way Communications, Inc.
of Louisiana as Principal,
hereinafter called Principal, and Merchants Bonding Company
of Iowa as Surety, hereinafter called Surety, are held and
firmly bound unto County Commission of Baldwin County
of Alabama as Obligee, hereinafter called Obligee,
for the use and benefit of claimants as hereinbelow defined, in the amount of Fifty Percent of Performance
and Payment bond Dollars (\$ 50%), for the payment
whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and
severally, firmly by these presents.

WHEREAS, Principal has by written agreement dated _____
entered into a subcontract with Obligee for Placement of fiber optic cable in Baldwin County AL
in accordance with drawings and specifications prepared by _____
which subcontract is by reference made a part
hereof, and is hereafter referred to as the subcontract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the Principal shall promptly make
payment to all claimants as hereinafter defined, for all labor and material used or reasonably required for use in the
performance of the subcontract, then this obligation shall be void; otherwise it shall remain in full force and effect, subject,
however, to the following conditions:

- (1) A claimant is defined as one having a direct contract with the Principal for labor, material, or both, used or
reasonably required for use in the performance of the contract, labor and material being construed to
include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment
directly applicable to the subcontract.
- (2) The above-named Principal and Surety hereby jointly and severally agree with the Obligee that every
claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90)
days after the date on which the last of such claimant's work or labor was done or performed, or
materials were furnished by such claimant, may sue on this bond for the use of such claimant, prosecute
the suit to final judgment for such sum or sums as may be justly due claimant, and have execution
thereon. The Obligee shall not be liable for the payment of any costs or expenses of any such suit.
- (3) No suit or action shall be commenced hereunder by any claimant,
 - (a) After the expiration of one (1) year following the date on which Principal ceased work on said
subcontract it being understood, however, that if any limitation embodied in this bond is prohibited b
any law controlling the construction hereof such limitation shall be deemed to be amended so as to
be equal to the minimum period of limitation permitted by such law.
 - (b) Other than in a state court of competent jurisdiction in and for the county or other political subdivision
of the state in which the project, or any part thereof, is situated, or in the United States District Court
for the district in which the project, or any part thereof, is situated, and not elsewhere.
- (4) The amount of this bond shall be reduced by and to the extent of any payment or payments made in
good faith hereunder.

Signed and sealed this 12th day of March A.D., ~~19~~ 2004

In the presence of:

Two-Way Communications, Inc. (Seal)
Principal

By: Gerald J. Sweeney
Gerald J. Sweeney, Vice-Pres.
Merchants Bonding Company (Seal)
Surety

By R Parke Ellis
Attorney in Fact R. Parke Ellis

Merchants Bonding Company
(MUTUAL)

POWER OF ATTORNEY

Know All Persons By These Presents, that the MERCHANTS BONDING COMPANY (MUTUAL), a corporation duly organized under the laws of the State of Iowa, and having its principal office in the City of Des Moines, County of Polk, State of Iowa, hath made, constituted and appointed, and does by these presents make, constitute and appoint

R. Parks Ellis, W. Anderson Baker III, William A. Baker, Jr. and/or Robert S. Ward

of New Orleans and State of Louisiana its true and lawful Attorney-in-Fact, with full power and authority hereby conferred in its name, place and stead, to sign, execute, acknowledge and deliver in its behalf as surety any and all bonds, undertakings, recognizances or other written obligations in the nature thereof, subject to the limitation that any such instrument shall not exceed the amount of:

ONE MILLION (\$1,000,000.00) Dollars

and to bind the MERCHANTS BONDING COMPANY (MUTUAL) thereby as fully and to the same extent as if such bond or undertaking was signed by the duly authorized officers of the MERCHANTS BONDING COMPANY (MUTUAL), and all such acts of said Attorney-in-Fact, pursuant to the authority herein given, are hereby ratified and confirmed.

This Power-of-Attorney is made and executed pursuant to and by authority of the following Amended Substituted and Restated By-Laws adopted by the Board of Directors of the MERCHANTS BONDING COMPANY (MUTUAL) on October 3, 1992.

ARTICLE II, SECTION 8. - The Chairman of the Board or President or any Vice President or Secretary shall have power and authority to appoint Attorneys-in-Fact, and to authorize them to execute on behalf of the Company, and attach the Seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof.

ARTICLE II, SECTION 9. - The signature of any authorized officer and the Seal of the Company may be affixed by facsimile to any Power of Attorney or Certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligations of the Company, and such signature and seal when so used shall have the same force and effect as though manually fixed.

In Witness Whereof, MERCHANTS BONDING COMPANY (MUTUAL) has caused these presents to be signed by its President and its corporate seal to be hereto affixed, this 1st day of January, 2000

MERCHANTS BONDING COMPANY (MUTUAL)

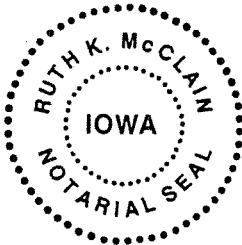


By *Larry Taylor*
President

STATE OF IOWA
COUNTY OF POLK ss.

On this 1st day of January, 2000, before me appeared Larry Taylor, to me personally known, who being by me duly sworn did say that he is President of the MERCHANTS BONDING COMPANY (MUTUAL), the corporation described in the foregoing instrument, and that the Seal affixed to the said instrument is the Corporate Seal of the said Corporation and that the said instrument was signed and sealed in behalf of said Corporation by authority of its Board of Directors.

In Testimony Whereof, I have hereunto set my hand and affixed my Official Seal at the City of Des Moines, Iowa, the day and year first above written.

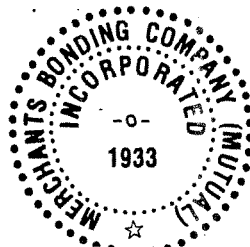


Ruth K. McClain
Notary Public, Polk County, Iowa

STATE OF IOWA
COUNTY OF POLK ss.

I, William Warner, Jr., Secretary of the MERCHANTS BONDING COMPANY (MUTUAL), do hereby certify that the above and foregoing is a true and correct copy of the POWER-OF-ATTORNEY, executed by said MERCHANTS BONDING COMPANY (MUTUAL), which is still in force and effect.

In Witness Whereof, I have hereunto set my hand and affixed the Seal of the Company on this 12th day of March, 2004



William Warner Jr.
Secretary

THE AMERICAN INSTITUTE OF ARCHITECTS



Bond No. [REDACTED]

AIA Document A312

Payment Bond

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

Two-Way Communications, Inc.
1704 Justin Rd.
Metairie LA 70001

SURETY (Name and Principal Place of Business):

Merchants Bonding Company
6850 Austin Center Blvd. #200
Austin TX 78731

OWNER (Name and Address):

County Commission of Baldwin County AL
175 Courthouse Square
Bay Minette, AL

CONSTRUCTION CONTRACT

Date:

Amount: \$1,298,798.00

Description (Name and Location): Placement of fiber optic cable in Baldwin County, AL

BOND

Date (Not earlier than Construction Contract Date):

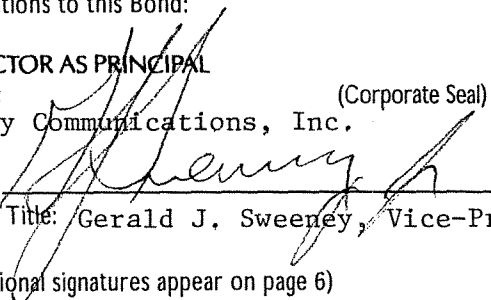
Amount: \$1,298,798.00

Modifications to this Bond:

None

See Page 6

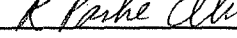
CONTRACTOR AS PRINCIPAL

Company:  (Corporate Seal)
Two-Way Communications, Inc.

Signature: _____
Name and Title: Gerald J. Sweeney, Vice-Pres.

SURETY

Company: Merchants Bonding Company (Corporate Seal)

Signature:  _____
Name and Title: R. Parke Ellis, Attorney-in-fact

(Any additional signatures appear on page 6)

(FOR INFORMATION ONLY — Name, Address and Telephone)

AGENT or BROKER:

Gillis, Ellis & Baker, Inc.
1615 Poydras St. #600
New Orleans LA 70112
504-581-3334

OWNER'S REPRESENTATIVE (Architect, Engineer or other party):

1 The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference.

2 With respect to the Owner, this obligation shall be null and void if the Contractor:

2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and

2.2 Defends, indemnifies and holds harmless the Owner from all claims, demands, liens or suits by any person or entity who furnished labor, materials or equipment for use in the performance of the Construction Contract, provided the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety, and provided there is no Owner Default.

3 With respect to Claimants, this obligation shall be null and void if the Contractor promptly makes payment, directly or indirectly, for all sums due.

4 The Surety shall have no obligation to Claimants under this Bond until:

4.1 Claimants who are employed by or have a direct contract with the Contractor have given notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.

4.2 Claimants who do not have a direct contract with the Contractor:

- .1 Have furnished written notice to the Contractor and sent a copy, or notice thereof, to the Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed; and
- .2 Have either received a rejection in whole or in part from the Contractor, or not received within 30 days of furnishing the above notice any communication from the Contractor by which the Contractor has indicated the claim will be paid directly or indirectly; and
- .3 Not having been paid within the above 30 days, have sent a written notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Contractor.

5 If a notice required by Paragraph 4 is given by the Owner to the Contractor or to the Surety, that is sufficient compliance.

6 When the Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions:

6.1 Send an answer to the Claimant, with a copy to the Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.

6.2 Pay or arrange for payment of any undisputed amounts.

7 The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

8 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any Construction Performance Bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and the Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

9 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.

10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

11 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the work or part of the work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Subparagraph 4.1 or Clause 4.2 (iii), or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, the Owner or the Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.

13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be

deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

14 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.

15 DEFINITIONS

15.1 Claimant: An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms

"labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

15.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

15.3 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL
Company: _____ (Corporate Seal)

SURETY
Company: _____ (Corporate Seal)

Signature: _____
Name and Title:
Address:

Signature: _____
Name and Title:
Address:

THE AMERICAN INSTITUTE OF ARCHITECTS



Bond No. [REDACTED]

AIA Document A312

Performance Bond

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

Two-Way Communications, Inc.
1704 Justin Road
Metairie LA 70001

SURETY (Name and Principal Place of Business):

Merchants Bonding Company
6850 Austin Center Blvd. #200
Austin TX 78731

OWNER (Name and Address):

County Commission of Baldwin County, AL
175 Courthouse Square
Bay Minette AL

CONSTRUCTION CONTRACT

Date:

Amount: \$1,298,798.00

Description (Name and Location): Placement of fiber optic cable in Baldwin County, AL

BOND

Date (Not earlier than Construction Contract Date):

Amount: \$1,298,798.00

Modifications to this Bond:

None

See Page 3

CONTRACTOR AS PRINCIPAL

Company: Two-Way Communications, Inc. (Corporate Seal)

Signature: [Signature]
Name and Title: Gerald J. Sweeney Vice-Pres.

(Any additional signatures appear on page 3)

SURETY

Company: Merchants Bonding Company (Corporate Seal)

Signature: [Signature]
Name and Title: R. Parke Ellis, Attorney-in-fact

(FOR INFORMATION ONLY — Name, Address and Telephone)

AGENT or BROKER:

Gillis, Ellis & Baker, Inc.
1615 Poydras St. #600
New Orleans LA 70112
504-581-3334

OWNER'S REPRESENTATIVE (Architect, Engineer or other party):

1 The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except to participate in conferences as provided in Subparagraph 3.1.

3 If there is no Owner Default, the Surety's obligation under this Bond shall arise after:

3.1 The Owner has notified the Contractor and the Surety at its address described in Paragraph 10 below that the Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Construction Contract. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default; and

3.2 The Owner has declared a Contractor Default and formally terminated the Contractor's right to complete the contract. Such Contractor Default shall not be declared earlier than twenty days after the Contractor and the Surety have received notice as provided in Subparagraph 3.1; and

3.3 The Owner has agreed to pay the Balance of the Contract Price to the Surety in accordance with the terms of the Construction Contract or to a contractor selected to perform the Construction Contract in accordance with the terms of the contract with the Owner.

4 When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

4.1 Arrange for the Contractor, with consent of the Owner, to perform and complete the Construction Contract; or

4.2 Undertake to perform and complete the, Construction Contract itself, through its agents or through independent contractors; or

4.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and the contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 6 in excess of the Balance of the Contract Price incurred by the Owner resulting from the Contractor's default; or

4.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, tender payment therefor to the Owner; or

.2 Deny liability in whole or in part and notify the Owner citing reasons therefor.

5 If the Surety does not proceed as provided in Paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Subparagraph 4.4, and the Owner refuses the payment tendered or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

6 After the Owner has terminated the Contractor's right to complete the Construction Contract, and if the Surety elects to act under Subparagraph 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. To the limit of the amount of this Bond, but subject to commitment by the Owner of the Balance of the Contract Price to mitigation of costs and damages on the Construction Contract, the Surety is obligated without duplication for:

6.1 The responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

6.2 Additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 4; and

6.3 Liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

7 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators or successors.

8 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

9 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the

minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

10 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page.

11 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

12 DEFINITIONS

12.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Con-

struction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

12.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

12.3 Contractor Default: Failure of the Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract.

12.4 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL
Company:

(Corporate Seal)

SURETY
Company:

(Corporate Seal)

Signature: _____
Name and Title:
Address:

Signature: _____
Name and Title:
Address:

CERTIFICATION OF POSTING

I, Carol P. Middleton, Town Clerk/Treasurer of the Town of Loxley, Alabama hereby certify that the foregoing Ordinance Number 2004-31 was published by posting copies thereof in the Loxley Town Hall, Loxley Post Office, Loxley Public Library and Loxley Police Station beginning December 20, 2004; and took effect five (5) days thereafter.

Carol P. Middleton
Carol P. Middleton, Town Clerk/Treasurer

I, Carol P. Middleton, Town Clerk/Treasurer of the Town of Loxley, Alabama, do hereby certify the foregoing to be a true and exact copy of an Ordinance approved and adopted by the Town Council of the Town of Loxley, Alabama, at its meeting held on the 13th day of December 2004.

Carol P. Middleton
Carol P. Middleton, Town Clerk/Treasurer