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Joseph A. Post
Deputy General Counsel – NY

January 26, 2018

Honorable Kathleen H. Burgess
Secretary
New York Public Service Commission
Three Empire State Plaza
Albany, NY 12223

Re: Petition of Verizon New York Inc. to Compel Optical Communications Group, Inc. to Enter into an Agreement or, in the Alternative, to Authorize Termination of Service

Dear Secretary Burgess:

Attached please find the Petition of Verizon New York Inc. to Compel Optical Communications Group, Inc. to Enter into an Agreement or, in the Alternative, to Authorize Termination of Service.

Respectfully submitted,

A handwritten signature in black ink that reads "Joseph A. Post". The signature is written in a cursive, slightly slanted style.

Joseph A. Post

cc: Kenneth J. Sheehan, Esq.
Bevan, Mosca & Giuditta, P.C.

Mr. Brad Ickes
Optical Communications Group, LLC

Brian Ossias, Esq.
Graham Jesmer, Esq.
Department of Public Service – Counsel's Office

**NEW YORK
PUBLIC SERVICE COMMISSION**

**Petition of Verizon New York Inc. to
Compel Optical Communications
Group, Inc. to Enter Into an Agreement
or, in the Alternative, to Authorize
Termination of Service**

Case 18-C-_____

PETITION OF VERIZON NEW YORK INC.

**JOSEPH A. POST
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January 26, 2018

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**NEW YORK
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**Petition of Verizon New York Inc. to
Compel Optical Communications
Group, Inc. to Enter Into an Agreement
or, in the Alternative, to Authorize
Termination of Service**

Case 18-C-_____

PETITION

I. INTRODUCTION

Optical Communications Group, Inc. (“OCG”) is a certified, facilities-based local exchange carrier¹ that provides services to a variety of end-user customers in New York. In order to do so, it leases space for its cables in conduit owned by Verizon New York Inc. (“Verizon”). Verizon makes conduit space available to providers such as OCG pursuant to its tariffs² and, as required by those tariffs, pursuant to standardized conduit occupancy agreements (“Agreements”).³ In April 2017, Verizon invoked its explicit right under its 1998 Agreement with OCG to terminate the Agreement for repeated, persistent failures to pay the charges due to Verizon. The termination notice also advised OCG that it “must remove [its] facilities from the conduit system within 30 days, pursuant to Article VII, Section 5 of the Agreement.”

¹ See Case 98-C-0923, “Order Issuing Certificate of Public Convenience and Necessity” (issued and effective December 8, 1998).

² See Verizon Tariff PSC No. 15, §§ 7(E)(5)(a), 14.7(E)(5).

³ See *id.* § 7(E)(5)(a) (licenses to occupy Verizon conduit are “granted in accordance with the terms and conditions of the Conduit Occupancy agreement entered into by [Verizon] and the licensee.” The purpose of such Agreements is to flesh out the tariff requirements by specifying the terms and conditions under which licensees may occupy conduit. Included in the Agreements are provisions relating to procedures for ordering conduit space, insurance, surety requirements, liability, payment, remedies for non-payment or other violations of the agreement, and a variety of other matters. The basic rates for conduit occupancy, however, are set forth in the relevant tariff provisions, which are incorporated into the Agreements.

A lengthy period of litigation before the Commission⁴ and negotiation between the parties ensued, the end result of which was that OCG belatedly paid a portion of the amount it owed to Verizon, and Verizon agreed not to take action at that time to remove OCG's facilities from Verizon's conduit system. Nevertheless, OCG continued to ignore its timely-payment obligations, and once again unpaid balances rapidly accumulated.⁵ Worse, OCG refused, despite Verizon's written request, to comply with the requirements of Verizon's tariff by entering into a new Agreement to replace the one that had been terminated, which would have established a reasonable framework for managing the customer-provider relationship between the parties.

By this Petition, Verizon asks the Commission to compel OCG to enter into Verizon's current form of Agreement, and to comply with the terms of that Agreement.⁶ In the alternative, if OCG continues to refuse to enter into an Agreement, the Commission should authorize Verizon to terminate OCG's occupancy of its conduit system. In either case, OCG should be directed to pay the undisputed amounts it owes to Verizon. Such an order, although rarely necessary or warranted in dealings between carriers, is amply justified here by the history of OCG's dealings with Verizon and with the Department of Public Service. As is shown below, the Commission has clear authority both to order those remedies, and to enforce compliance through statutory penalties.

⁴ See Matter 17-01133, Petition of Optical Communications Group Inc. for Dispute Resolution and Stay of Action.

⁵ As of the filing date of this Petition, OCG owes Verizon \$93,954.96 in conduit occupancy charges and \$31,561.83 in additional charges for pole attachments. It also has substantial unpaid balances with Verizon's subsidiary Empire City Subway Co. (Limited) ("ECS").

⁶ Those terms include the posting of surety for payment in the form of a bond or letter of credit: a measure that is important for any conduit occupant, and — given OCG's prolonged history of non-payment — is especially important for OCG.

II. BACKGROUND

OCG has a long history with Verizon of non-payment and of broken promises to pay. Indeed, its practice has been to forbear from making any significant payment to Verizon until it is required to do so by judicial or administrative action or an imminent risk of termination of service (and sometimes not even then) — a course of conduct that has led to prior litigation both in the State courts and before this Commission.

For example, in 2009, Verizon and ECS initiated a proceeding in New York State Supreme Court seeking payment of outstanding conduit occupancy fees and other obligations. On April 2, 2015, the court issued a default judgment against OCG, making it immediately responsible for paying \$550,000 to Verizon.⁷ In a separate dispute, the Department of Public Service’s Office of Telecommunications issued an advisory opinion in 2010 requiring OCG to pay Verizon \$350,000.⁸ However, even after the default judgment and the advisory opinion, OCG continued to stonewall on repayment. And its unpaid indebtedness continued to grow, to the extent that by mid-2017 OCG owed Verizon more than \$955,000 under its Agreement, over and above the unsatisfied \$550,000 default judgment — \$760,593 in conduit occupancy charges, and \$185,586 in late payment charges authorized by the Agreement.

As noted previously, on April 13, 2017, Verizon notified OCG that Verizon was exercising its right to terminate the Agreement, “effective immediately,” for repeated and

⁷ Important additional details concerning the Supreme Court proceeding and OCG’s subsequent failure to comply with its obligations to Verizon are provided in Verizon’s June 16, 2017 “Response to the Petition” in Matter 17-01133 (Confidential Version).

⁸ Matter 10-01917, Letter from Chad G. Hume, Director, Office of Telecommunications, to Andrew M. Klein, Esq. and Richard C. Fipphen, Esq. (October 26, 2010).

prolonged non-payment by OCG of amounts due to Verizon.⁹ Three months later, on July 21, 2017, Verizon and OCG were able to reach an agreement under which OCG's obligation to remove its cables from Verizon's conduit system as a result of the termination of the Agreement would be deferred if OCG made three payments, totaling \$1,668,793.56, on three specified dates ending in late August 2017. However, OCG materially breached that agreement by failing to make all of the required payments when and as due.

On November 13, 2017, with a significant portion of the amounts due under the July 21, 2017 agreement still unpaid, Verizon notified OCG that it would begin disconnecting OCG's facilities in Verizon's conduit system starting on December 13, 2017.¹⁰ On November 30, 2017, more than three months after the due date, OCG finally completed payment of the full amount that had been called for under the July 21, 2017 agreement.

Since the November 30, 2017 payment, OCG has continued to run up conduit occupancy bills beyond those covered by the July 21, 2017 agreement. As of the date of this Petition, OCG has been billed by Verizon for \$93,954.96 in unpaid conduit occupancy charges, as well as \$31,561.83 in additional charges for pole attachments.

On December 6, 2017, Verizon advised OCG in writing that because its prior Agreement had been terminated, by January 20, 2018 it would have to execute a new conduit occupancy agreement, in the standard form currently used by Verizon, if it wished to continue to occupy space in Verizon's conduit system.¹¹ Article 5, § 2 of that Agreement would require OCG to

⁹ A copy of the April 13, 2017 notice is provided as Exhibit A to this Petition.

¹⁰ A copy of the November 30, 2017 notice is provided as Exhibit B to this Petition.

¹¹ A copy of the December 6, 2017 letter, with the form of Agreement that was attached to it, is provided as Exhibit C to this Petition.

“furnish a Surety Bond or irrevocable Letter of Credit satisfactory to [Verizon]” The amount of the security, as calculated pursuant to Article 5, § 2(a) based on OCG’s conduit footage, would be \$500,000. Such surety is essential to Verizon’s ability to manage its relationship with a company such as OCG. OCG never responded to its letter, and simply ignored Verizon’s demand that it enter into, and comply with, a new Agreement.

As Staff is all too aware, it is not only its obligations to Verizon that OCG ignores and treats with contempt. At times when removal of OCG’s cable from Verizon’s conduit system seemed imminent, and OCG’s ability to continue providing service to its customers was therefore at risk, Staff reasonably demanded that OCG provide advance notice to its customers, so that they would have sufficient time to make alternative arrangements for service.

Unsurprisingly, in view of its long history of defiant non-compliance, OCG failed to do so.

Because Verizon acquiesced in Staff’s requests to take no action to terminate OCG’s occupancy until such notice had been sent and the notice period had lapsed, this intransigence on OCG’s part effectively enabled it to avoid the removal of its facilities and — for a time — to avoid payment. Having learned the advantages it can realize by withholding notice and by stonewalling, OCG cannot be expected in the future to comply with ordinary demands to live up to its obligations. Only a Commission order — backed by the Commission’s power under the Public Service Law to seek statutory penalties — has any likelihood of getting OCG’s attention and compelling its compliance.

In short, Verizon is filing this Petition in an effort to find a reasonable alternative to the cycle of delay and non-compliance that has resulted from OCG’s cynical strategy of “playing the notice card” — in effect, using its customers as hostages — in order to avoid its obligation to pay undisputed bills for services it uses.

III. REMEDIES SOUGHT BY VERIZON

A. COMPELLING OCG TO ENTER INTO VERIZON'S STANDARD FORM OF CONDUIT OCCUPANCY AGREEMENT AND TO PROVIDE THE SURETY REQUIRED BY THE AGREEMENT

OCG has no sound reason for refusing to enter into a standard Agreement with Verizon.

In general, such an Agreement establishes a reasonable and orderly framework for dealings between a provider such as Verizon and a carrier-customer. Entry into an Agreement is particularly important if Verizon is going to be able to continue dealing with a customer like OCG, which has no respect even for clear and enforceable written obligations, and thus can be expected simply to ignore obligations that, even if clearly imposed by law, are *not* embodied in a written contract.

Moreover, as noted above, entry into an Agreement is a term and condition of service as set forth in Verizon's conduit occupancy tariff. There should be no doubt as to the Commission's jurisdiction to enforce against a regulated telephone corporation, by order, the terms of an effective tariff pursuant to which that corporation purchases services from another regulated carrier. Such power is incident to the Commission's "general supervision," under Publ. Serv. L. § 94(2), "of all ... telephone corporations ... and telephone lines within its jurisdiction as hereinbefore defined," and its power to "keep informed as to their general condition, their capitalization, their franchises and the manner in which their lines and property are leased, operated or managed, conducted and operated ... with respect to their compliance with all provisions of law, orders of the commission, franchises and charter requirements." It is also established by *id.* § 97(2), which authorizes the Commission, when it concludes that the "practices of any ... telephone corporation are unjust or unreasonable," to "determine the just, reasonable, adequate, efficient and proper regulations [and] practices ... thereafter to be ...

observed and used, and to fix and prescribe the same by order to be served upon every ... telephone corporation to be bound thereby.”

Exercising its authority to ensure reasonable operating relationships *between* regulated carriers is as essential to the Commission’s mission under the Public Service Law as regulating a carrier’s relationship to its non-carrier customers. For example, in a 2007 order related to a dispute between Level 3 and Neutral Tandem, the Commission asserted its authority to require regulated carriers to establish interconnection relationships — in effect, to enter into agreements to govern their dealings.¹²

To be sure, such powers should not be lightly exercised, since experience has shown that carriers are generally capable of negotiating appropriate relationships with each other, subject to Commission intervention only where the voluntary process breaks down and the public interest so requires. However, the history of OCG’s dealings with Verizon, as summarized above, clearly evidence such a breakdown and warrant Commission action.

The Commission’s order should also specifically require OCG to *comply with* the Agreement after executing it, including particularly its surety provisions.

B. IN THE ALTERNATIVE, AUTHORIZING VERIZON TO TERMINATE OCG’S OCCUPANCY OF THE CONDUIT SYSTEM AND REQUIRING OCG TO PROVIDE APPROPRIATE AND TIMELY NOTICE TO ITS CUSTOMERS

The order compelling OCG to enter into an Agreement should make it clear that if OCG does *not* do so by a date certain, not only will OCG be potentially liable for a statutory penalty or an enforcement order under Publ. Serv. L. §§ 24-26, but Verizon will be authorized to terminate OCG’s occupancy of Verizon’s conduit within a reasonable time after notice is given to OCG’s

¹² See Case 07-C-0233, “Order Preventing Service Disruption and Requiring Continuation of Interim Interconnection” (issued and effective June 22, 2007), at 4-7. See also Case 07-C-1332, “Order Instituting Proceeding” (issued and effective November 9, 2007).

customers. Of course, the giving of such notice should be directed in the order as a consequence of OCG's failure to enter into an Agreement. The termination remedy would be warranted in such a case by: (a) OCG's failure to comply with its pre-existing tariff obligation to enter into an Agreement; and (b) its knowing violation of a Commission order. It would, of course, in any event be independently justified by OCG's repeated past violations of Verizon's tariff and the prior Verizon-OCG Agreement (while it was in effect).

C. COMPELLING OCG TO PAY UNDISPUTED AMOUNTS DUE AND OWING TO VERIZON

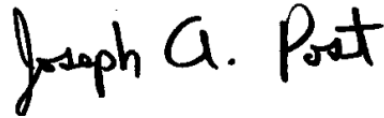
Although carriers should normally resolve payment disputes between themselves or through judicial proceedings, with the Commission intervening only for the purposes of resolving disputed substantive issues as necessary or appropriate under the doctrine of primary jurisdiction, here OCG's intransigence and repeated disregard of its obligations warrants an order requiring to it to pay for the wholesale services that it purchases. Prompt payment of past-due amounts and ongoing reasonable compliance with payment obligations should therefore be an additional requirement of any order issued by the Commission in response to this Petition. Indeed, in much less compelling circumstances the Commission has exercised its authority to order payment by regulated carriers.¹³

¹³ See Case 04-C-1176, "Order Resolving Interconnection Agreement Issues" (issued and effective December 18, 2006), at 19 (Ordering Paragraph 3: "[Verizon] is required to pay Manhattan Telephone Corp ... \$2,329,348.93, plus interest").

IV. SUMMARY AND CONCLUSIONS

For the reasons set forth above, the Commission should issue an order granting the relief specified in Section III of this Petition.

Respectfully submitted,

A handwritten signature in black ink that reads "Joseph A. Post". The signature is written in a cursive, slightly slanted style.

JOSEPH A. POST
Deputy General Counsel – NY

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Counsel for Verizon New York Inc.

January 26, 2018

EXHIBIT A



Sarah Lyzak
Counsel

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Basking Ridge, NJ 07920
sarah.lyzak@verizon.com
T (908) 559-2072

April 13, 2017

Brad Ickes
79-24 71 Ave
Glendale, NY 11385

Dear Mr. Ickes:

On July 15, 1998, Optical Communications Group ("OCG") and Verizon New York Inc. ("Verizon New York") entered into a Conduit Occupancy Agreement ("Agreement") that specified the terms and conditions by which OCG may place facilities in Verizon New York's conduit system. Pursuant to Article VII of the Conduit Occupancy Agreement, as consideration for the right to place its cable facilities in Verizon New York's conduit system OCG is obligated to pay monthly fees calculated on a per-foot basis according to schedules filed with the Public Service Commission. Article VIII also provides that in the event OCG fails to make prompt payment, interest at the rate of 1.5% per month shall accrue. OCG continually and persistently has failed to pay the monthly conduit occupancy rental fees owed to Verizon New York under the Agreement. Specifically, as of the date of this letter, OCG owes Verizon New York \$715,175.32 for monthly conduit rentals, \$687,653.79 of which is past due. Moreover, OCG continues to maintain its cable facilities in Verizon New York's conduit system and continues to receive monthly bills which it refuses to pay. These costs continue to compound with the amounts already past due and are subject to the 1.5% interest rate as stated in Article VIII of the Conduit Occupancy Agreement.

Further, OCG's failure to timely pay monthly conduit rental fees was one of the issues in litigation captioned *Verizon New York Inc. and Empire City Subway Company (Limited) v. Optical Communications Inc.*, Index No. 602146/2008 (the "Action"). On December 18, 2014 the parties executed a Settlement Agreement resolving the Action. Pursuant to Paragraph 7 of that Agreement, OCG promised to resume payment of monthly conduit occupancy bills issued by Verizon New York effective October 1, 2014. Yet, OCG has repeatedly failed to make monthly payments since the Action was resolved.

Pursuant to Article VII, Section 3 of the Conduit Occupancy Agreement, Verizon New York may terminate the Agreement immediately if OCG fails to pay any sum due under the Agreement. In an effort to resolve this issue, we previously provided you with notice that we were prepared to exercise our rights under the Agreement should you continue

to fail to make the required monthly payments. As OCG continues to be significantly in arrears, we are providing you with notice that the Conduit Occupancy Agreement is terminated, effective immediately. You must remove your facilities from the conduit system within 30 days, pursuant to Article VII, Section 5 of the Agreement. Further, you must provide notice to your customers that they need to find an alternative service provider.

Sincerely,



Sarah E. Lyzak

EXHIBIT B

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Joseph A. Post
Deputy General Counsel – NY

November 13, 2017

BY FEDERAL EXPRESS AND BY EMAIL

Mr. Brad Ickes
Optical Communications Group, LLC
79-24 71st Avenue
Glendale, NY 11385
brad@ocgfiber.com

Kenneth J. Sheehan, Esq.
Bevan, Mosca & Giuditta, P.C.
222 Mount Airy Road, Suite 200
Basking Ridge, NJ 07920
ksheehan@bmg.law

Re: Verizon New York Inc. and Optical Communications Group, LLC

Dear Messrs. Ickes and Sheehan:

This letter will notify you of the intention of Verizon New York Inc. (“Verizon”) to begin disconnection of facilities of Optical Communications Group, LLC (“OCG”) in Verizon’s conduit system starting on December 13, 2017.

On April 13, 2017, Verizon provided OCG with notice that Verizon was exercising its right under Article VII, § 3 of the Conduit Occupancy Agreement between the parties (the “Agreement”) to terminate the Agreement, “effective immediately,” for repeated and prolonged non-payment by OCG of conduit occupancy charges due to Verizon under the Agreement. That notice also required OCG to “remove [its] facilities from the conduit system within 30 days, pursuant to Article VII, Section 5 of the Agreement.”

Subsequently, Verizon and OCG were able to reach an agreement under which OCG’s obligation to remove its conduit would be deferred if OCG made three payments, totaling \$1,668,793.56, on three specified dates. The details of this arrangement are set forth in our email correspondence of July 21, 2017. However, OCG breached that agreement by failing to make all of the required payments. Our attempts to negotiate a payment plan for the remaining amounts due under the July 21, 2017 agreement, as well as subsequently accrued amounts, were unsuccessful. Indeed, despite repeated requests, we have been unable to obtain additional

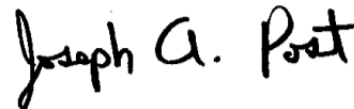
Mr. Brad Ickes and Kenneth J. Sheehan, Esq.
November 13, 2017

information from OCG concerning its intention to make further payments or to provide security for such payments.

As of August 25, 2017, the date on which the final payment was due (but not made) under the July 21, 2017 payment agreement, OCG still owed Verizon \$417,576.40 of the charges covered by that agreement. Since that time, OCG has not made any further payments under that agreement, has incurred substantial additional indebtedness to Verizon for conduit occupancy charges, and has made only insignificant payments in respect of that additional indebtedness. In total, OCG now owes Verizon in excess of \$500,000 in unpaid conduit occupancy charges, including late payment charges authorized under the Agreement.

In view of these facts, Verizon hereby notifies OCG that it will begin disconnecting OCG's facilities in Verizon's conduit system starting on December 13, 2017. We are providing this additional thirty days' notice not because of any obligation to do so under the Agreement or under applicable law, but in order to permit you to notify your customers of the disconnection so that they may make arrangements for alternative service.

Very truly yours,

A handwritten signature in black ink that reads "Joseph A. Post". The signature is written in a cursive, slightly slanted style.

Joseph A. Post

cc: Department of Public Service (By Email)

Mr. Michael Corso
Brian Ossias, Esq.
Graham Jesmer, Esq.

EXHIBIT C

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New York, NY 10007
(212) 519-4717
joseph.a.post@verizon.com



Joseph A. Post
Deputy General Counsel – NY

December 6, 2017

BY FEDERAL EXPRESS AND BY EMAIL

Mr. Brad Ickes
Optical Communications Group, LLC
79-24 71st Avenue
Glendale, NY 11385
brad@ocgfiber.com

Kenneth J. Sheehan, Esq.
Bevan, Mosca & Giuditta, P.C.
222 Mount Airy Road, Suite 200
Basking Ridge, NJ 07920
ksheehan@bmg.law

Re: Optical Communications Group, LLC

Dear Messrs. Ickes and Sheehan:

The purpose of this letter is to summarize the current status of the dealings between Optical Communications Group, LLC (“OCG”) and Verizon New York Inc. (“Verizon”), as well as various matters related to those dealings that need to be addressed on a going-forward basis.

By way of background:

1. On April 13, 2017, Verizon provided OCG with notice that Verizon was exercising its right under Article VII, § 3 of the Conduit Occupancy Agreement between the parties (the “Agreement”) to terminate the Agreement, “effective immediately,” for repeated and prolonged non-payment by OCG of amounts due to Verizon under the Agreement.

2. Subsequently, Verizon and OCG were able to reach an agreement under which OCG’s obligation to remove its cables from Verizon’s conduit system as a result of the termination of the Agreement (*see* Article VII, § 5) would be deferred if OCG made three payments, totaling \$1,668,793.56, on three specified dates, ending in late August 2017. The details of this arrangement are set forth in our email correspondence of July 21, 2017. However, OCG materially breached that agreement by failing to make all of the required payments when and as due.

Mr. Brad Ickes & Kenneth J. Sheehan, Esq.
December 6, 2017

3. On November 13, 2017, with the amounts due under the July 21 agreement still unpaid, Verizon notified OCG that it would begin disconnecting OCG's facilities in Verizon's conduit system starting on December 13, 2017. On November 30, 2017, more than three months after the due date, OCG finally completed payment of the full amount that had been called for under the July 21 agreement.

4. OCG has continued to use Verizon's conduit system and continued to run up conduit occupancy bills beyond those covered by the July 21 agreement. Taking account of the November 30, 2017 payment, as of the date of this letter OCG has been billed by Verizon for \$68,308.43 in unpaid conduit occupancy charges, as well as \$23,730.76 in additional charges for pole attachments.

In view of these facts, the following matters need to be addressed:

1. Because the Agreement was terminated as of April 13, 2017, if OCG wishes to continue to occupy Verizon's conduit system on a going-forward basis, it must execute a new conduit occupancy agreement in the standard form currently used by Verizon. (*See* Verizon Tariff PSC No. 15, § 7(E)(5)(a).) A copy of this form is attached (please sign two copies). Absent OCG's and Verizon's execution of a new agreement, OCG would have no continuing right or license to occupy Verizon's conduit system.

2. Article 5, § 2 of the current form of agreement requires conduit licensees to "furnish a Surety Bond or irrevocable Letter of Credit satisfactory to [Verizon]" The amount of the security, as calculated pursuant to Article 5, § 2(a) based on OCG's conduit footage, would be \$500,000.

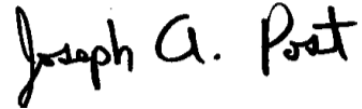
3. If, by January 20, 2018, OCG does not return to Verizon *both* a signed copy of the new agreement, and the surety bond or irrevocable letter of credit required by the agreement, Verizon will petition the New York Public Service Commission for an order: (a) requiring OCG to take those steps if it continues to occupy Verizon's conduit system, and (b) imposing statutory penalties under § 25 of the Public Service Law if it fails to do so.

4. Arrangements must be made for prompt payment to Verizon of the past-due charges. Verizon will reject all new orders for conduit occupancy until such amounts are paid. Additionally, OCG must promptly pay all recent and future invoices as they become due. If prompt payment is not made, Verizon will resort to any available remedies for non-payment under applicable law.

Mr. Brad Ickes & Kenneth J. Sheehan, Esq.
December 6, 2017

Please contact Verizon promptly to make arrangements for executing a new agreement and for posting security in the required amount.

Very truly yours,

A handwritten signature in black ink that reads "Joseph A. Post". The signature is written in a cursive style with a large, prominent "P" at the end.

Joseph A. Post

cc: Graham Jesmer, Esq. (By Email)

CONDUIT LICENSE AGREEMENT

DATED _____
(Date to be filled by licensor only)

BETWEEN

VERIZON NEW YORK INC. (LICENSOR)

AND

OPTICAL COMMUNICATIONS GROUP (LICENSEE)

CONDUIT OCCUPANCY AGREEMENT

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CONDUIT OCCUPANCY AGREEMENT

THIS AGREEMENT, made as of the ____ day of _____, 2017,
(Date to be filled by licensor only)

between VERIZON NEW YORK INC., formerly known as NEW YORK TELEPHONE COMPANY, a corporation of the State of New York, having its principal office at 140 West Street, New York, New York 10007 (hereinafter called “Licensor”, and OPTICAL COMMUNICATIONS GROUP, a corporation organized and existing under the laws of the State of New York, having its principal office at 79-24 71st Ave, Glendale NY. 11385 (hereinafter called “Licensee”).

W I T N E S S E T H:

WHEREAS, Licensee for its own use desires to place and maintain cable facilities in the conduit system of Licensor; and

WHEREAS, Licensor is willing to permit, to the extent it may lawfully do so, the placement of said cable facilities in its conduit system;

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the parties do hereby mutually covenant and agree as follows:

ARTICLE I SCOPE OF AGREEMENT

Subject to the provisions of this Agreement, the Licensor will issue to Licensee for any lawful purpose revocable, nonexclusive licenses authorizing the installation of Licensee’s cable facilities in Licensor’s conduit system in the state of New York.

ARTICLE II DEFINITIONS

1. Conduit System - Any reinforced passage or opening in, on, under/over or through the ground capable of containing communications facilities, and includes: Main conduit; underground dips such as short sections of conduit under roadways, driveways, parking lots and similar conduit installations; laterals to poles or into buildings; ducts; and manholes.
2. Duct - A single enclosed raceway for wire conductors or cables within the conduit system.
3. Innerduct - A small - diameter, semi-flexible subduct, installed in existing underground conduit systems to provide a means for compartmentalizing conventional underground ducts into multiple pathways for housing and protecting smaller cables.
4. Licensee - The person, corporation or other legal entity authorized by the Licensor under this Agreement to install its facilities in Verizon New York Inc.’s conduit system and the party responsible for compliance with Licensor’s regulations regarding such accommodations.
5. Licensee’s Facilities - The cables installed for the sole use of the Licensee.

6. Licensor - The owner of the conduit system and the party that issue's Licenses for conduit occupancy.

7. Make-Ready Work - All work, including but not limited to the rearrangement of existing facilities, replacement of cable or any other activity required to accommodate the installation of Licensee's facilities in a conduit or manhole.

8. Manhole - An underground enclosure where conduit(s) are terminated and provides ready access to conduit system.

9. Occupancy Rate - A specified amount revised periodically, billed monthly to the Licensee, and payable in advance to the Licensor for each foot of conduit occupied. The rate shall be in accordance with the New York State Public Service Commission methodology.

10. Other Licensees - Any person, corporation, or other legal entity other than Licensee herein, to whom the Licensor has or hereafter shall extend an authorization to occupy its Conduit System.

11. Periodic Inspection - Inspections conducted at irregular intervals on all or portions of Licensee's facilities, to determine that occupancies are authorized and are maintained in conformance with the required standards.

12. Post-Construction Inspection - The work operations performed to visually observe Licensee's cable facilities during or shortly after the completion of the construction of such facilities, to determine that all occupancies conform to the standards required by this Agreement.

13. Pre-construction Survey - The work operations performed in order to process an application for conduit occupancy to the point just prior to performing any necessary Make-Ready work. There are three elements of the Pre-construction Survey: 1) engineering record search to determine spare capacity of the conduit system, 2) field inspection of the existing facilities, to verify available spare facility and determine if make ready work is required, and 3) administrative effort required to process the application and prepare the Make-Ready work order.

14. Subsequent Inspections - The work operations performed in order to verify that corrective action has been taken by the Licensee on variances from required construction and maintenance practices reported to the Licensee by Licensor.

ARTICLE III GENERAL CONDITIONS

1. Compliance with Applicable Laws

The Licensee and the Licensor shall at all times observe and comply with, and the provisions of this Agreement are subject to, all laws, ordinances, and regulations which in any manner affect the rights and obligations of the parties.

2. Rights in Licensor's Conduit System - No use, however extended, of a conduit system or payment of any fee or charge required hereunder shall create or vest in the Licensee any ownership or property right in such conduit system.

3. Requirement to Construct and Maintain a Conduit System - Nothing contained herein shall be construed to compel the Licensor to construct, reconstruct, retain, extend, repair, place, replace or maintain any underground facility not needed for the Licensor's own service requirements, except as provided in Article IV (3 b) and Article IV (5. f.)

4. Other Agreements - Nothing contained in this Agreement shall be construed as a limitation, restriction, or prohibition against Licensor entering into agreements with other parties regarding the conduit occupancy covered by this Agreement. The Licensor, in negotiating and entering into any future agreement(s) and arrangement(s), shall give due and reasonable regard to the Licensee's interest in a conduit occupancy to be covered by such future agreements(s) and arrangement(s)

5. Assignment of Rights

- a. Licensee shall not assign or transfer any license or any authorization granted under this Agreement, and such licenses and authorizations shall not inure to the benefit of Licensee's successors or assigns, without the prior written consent of Licensor, which shall be in the form of the document of assignment Exhibit G. Licensor shall not unreasonably withhold, condition, or delay such consent.
- b. In the event such consent or consents are granted by Licensor, then the provisions of this Agreement shall apply to and bind the successors and assigns of Licensee. Notwithstanding anything herein to the contrary, Licensee may, assign this Agreement without Licensor's consent to an entity controlling, controlled by, or under common control with Licensee or to an entity acquiring fifty-one percent (51%) or more of Licensee's stock or assets provided that any such assignment shall be subject to the assignee's being capable of assuming all of the obligations of Licensee hereunder. Any such assignment shall impose no obligations upon or be effective against Licensor, and Licensor shall have no liability to any assignee of such assignment, until Licensor has received prior notice of any such assignment. Licensee may also assign this Agreement, without Licensor's consent and without prior notice to Licensor, to an institutional mortgagee or lender providing financing to Licensee with respect to Licensee's Facilities in the event such institutional mortgagee or lender exercises its foreclosure right against Licensee and operates the Licensee Facilities on the Right of Way; provided such institutional mortgagee or lender is capable of assuming all of the obligations of the Licensee hereunder and further provided that such assignment shall not be effective against Licensor unless and until written notice of such assignment and exercise of rights is provided to Licensor. Anything herein to the contrary notwithstanding, Licensee shall not be relieved of any of its obligations hereunder without Licensor's prior written consent. Upon Licensee's assignment of the Agreement in compliance with the terms set forth herein, including paragraph c. below, Licensee shall be relieved of its obligations hereunder.

c. All notice of such assignments shall include any change to the notice address provided in Article III (8). Within sixty (60) days of receipt of the document of assignment from Licensee, Licensor will execute the document of assignment. The assignment requirements herein shall be deemed met if Licensor fails to respond within sixty (60) such documentation receipt by Licensor. Exhibit G shall not be changed materially without the prior written consent of the Licensee and Licensor.

6. Permits and Consent

- a. Licensee shall be responsible for obtaining from private and/or public authority any necessary easement, right of way, license, permit, permission, certification or franchise to construct, operate and/or maintain its facilities on private and public property at the location of the conduit and/or manhole into which Licensee installs its facilities. The Licensor does not warrant the validity or apportionability of any rights it may hold to place facilities on private property. The Licensor will, upon written request by the Licensee, provide available information and copies of any documents in its files pertinent to the nature of the rights the Licensor possesses over private property. The cost of providing such information and reproducing documents shall be borne by Licensee.
- b. Where Licensor has an easement over a public or private right of way sufficiently broad under applicable law to permit Licensee occupancy, Licensee shall not be required to obtain independent permission from the property owner to place its facility. In any case where the Licensor seeks to obtain any necessary permission from a property owner for Licensee's facilities, the fully allocable cost of such efforts shall be paid by the Licensee along with Make-Ready costs, if any.

7. This Agreement supersedes all previous agreements between the parties for maintenance and placement of underground cable facilities by the Licensee and constitutes the entire agreement between the parties. It may not be modified or amended nor may any obligation of either party be changed or discharged except in writing signed by the duly authorized officer or agent of the party to be charged. Currently effective licenses, if any, issued pursuant to previous agreements shall remain in effect as if issued pursuant to this Agreement.

8. Any legal notice to be given to the Licensee pursuant to Articles IV (for periodic inspections only), VII, X and XI of this Agreement shall be sent by certified mail, return receipt requested or by a nationally recognized overnight carrier service to the legal contact and primary contact listed on Licensees' customer profile attached in appendixes. Any such notice shall be effective immediately upon receipt. Any other notice to be given to Licensee under this Agreement may be sent using first class mail or, if time sensitive, successfully transmitted facsimile or electronic mail to license contact and primary contact listed in Licensees customer profile attached in appendix section. Such notice shall be deemed effective as of the date of the notice.

9. If the presence of the Licensee in Licensor's conduit system causes Licensor to pay any new or additional tax which Licensor would not otherwise pay, Licensee shall reimburse Licensor to the full extent of such new or additional tax, as additional rent, within thirty (30) days of receiving a bill therefore from Licensor. Upon request, Licensor shall provide evidence that such new or additional tax was in fact paid by Licensor.

10. This Agreement shall be governed by, and interpreted according to, the laws of the State of New York

ARTICLE IV
PROCEDURES

1. Application for Authorization

- a. Prior to the Licensee occupying any conduit, Licensee shall make written application for and have received an authorization therefore. (Exhibit A attached.)
- b. Licensee shall file application for conduit occupancy authorizations which designate a desired priority of authorizations in blocks of 12 conduit sections or less.
- c. The Licensor will accept applications on a first come first served basis and shall attempt to satisfy the designated priority of completions. Licensor shall be obligated to perform the required preconstruction survey and/or Make-Ready work in accordance with the time frames set forth in paragraph (4) (j) of this Article to permit the issuance by the Licensor of a volume not to exceed a total of forty-eight (48) conduit section occupancy authorizations per month in each of the Licensor's plant construction operating areas, i.e., Western, Central, Northeastern, Mid-State, Long Island and each of the five Boroughs of the City of New York. If more than forty-eight (48) conduit section occupancies are included in all such applications received for any one month in each construction operating area, at least one block of 12 conduit sections or less per applicant, will be processed, selected in the sequence in which the applications were received, until the forty-eight (48) conduit section limit has been reached. If one block of 12 or less for each applicant is processed and the forty-eight (48) conduit section occupancies have not been exceeded, the remaining applications shall be processed on a first come first served basis.

2. Multiple Occupancy Applications

The provisions of this Article IV (2) apply in the case of applications received by the Licensor from two or more Licensees for occupancy authorizations in the same conduit system, prior to the completion of the pre-construction survey and the commencement of any Make-Ready work required to accommodate any Licensee.

- a. Applications received from multiple applicants for the same conduit system will be classified as follows:
 - (1) non-simultaneous - received by the Licensor on different business days.
 - (2) simultaneous - received by the Licensor on the same business day.
- b. Where applications are non-simultaneous, the initial applicant will be offered the following options after application (s) is received from the additional applicant(s):

Option 1 - the application of the initial applicant will be processed as if there is no other occupancy application on file for the same conduit section.

Option 2 - the applications of the initial and additional applicant(s) will be processed as if they were simultaneous applications.

- (1) The initial applicant will be required to indicate the option desired no later than fifteen (15) days after the Licensor has quoted the Make-Ready charges that will apply under each option, otherwise the Licensor will deem the initial applicant to have selected Option 1. Selection of an option prior to the quotation of the aforementioned Make-Ready charges is permissible.
- (2) Option 2 will be subject to acceptance by all of the multiple applicants involved. The additional applicant(s) will have fifteen (15) days from the date of receipt of written notification from the Licensor that the initial applicant has selected Option 2, to accept or reject the conditions applicable under Option 2, otherwise, the Licensor will deem the additional applicant(s) to have rejected such conditions.
- (3) All work in progress on the initial applicant's application involving multiple applications will be suspended by the Licensor from the time that the initial applicant is offered Options 1 and 2 until it notifies the Licensor of the option it elects in accordance with (1) preceding.

- c. Where multiple applicants are simultaneous or the initial applicant in the case of non-simultaneous applications has selected Option 2, the multiple applicants must develop mutually agreeable order of facility availability and overall Make-Ready work completion schedule. Where multiple applicants cannot reach mutual agreement regarding order of facility availability and an overall Make-Ready work completion schedule within fifteen (15) days of written notification from the Licensor of the charges for the required Make-Ready work, the Licensor will offer as an alternative to complete the total Make-Ready work required for all multiple applicants before simultaneously granting occupancy authorizations to the multiple applicants.
- d. Any multiple applicant who fails to agree to the alternate arrangement set forth in (c) preceding within ten (10) days after being advised in writing of the availability of such alternate arrangement by the Licensor will be considered by the Licensor to have canceled its application(s) relative to those facilities which involve pending occupancy applications by other Licensees.
- e. Where multiple applications are non-simultaneous and the initial applicant has selected Option 1, the Licensor:

- (1) will consider the initial applicant as a non-multiple applicant. Any change of priority or facility availability or work schedule completion that is desired after either has been initially agreed upon by the initial applicant with the Licensor will be subject to the Licensor's ability to accommodate such changes in its established work schedule.
- (2) will not perform the required Make-Ready work for the additional applicant until occupancy authorizations have been granted to the initial applicant, unless the the performance of such work will not delay the completion of the Make-Ready work required to accommodate the initial applicant

f. Preconstruction survey costs will be allocated as follows:

- (1) Simultaneous applications - each applicant will bear an equal share of the total initial and resurvey costs involved.
- (2) Non-simultaneous applications - each applicant will bear the costs related only to determining the accommodation requirements for its specific application.

g. Make-Ready cost will be allocated as follows:

- (1) Simultaneous applications -
 - a. each applicant will be charged an equal share of the total Make-Ready cost.
 - b. if only one applicant agrees to the shared portion of total cost, that applicant will be quoted the cost applicable to accommodate a single licensee.
- (2) Non-simultaneous applications -
 - a. the initial applicant will be charged the total Make-Ready cost to accommodate its facilities.
 - b. the additional applicant(s) will be charged the total added Make-Ready cost to accommodate the additional applicant's facilities.

3. Specifications

- a. Licensee's Facilities shall be placed and maintained in accordance with the requirements and specifications of the latest editions of the "Blue Book - Manual of Construction Procedures" (Blue Book), published by Telcordia Technologies Inc.; the "National Electrical Code" (NEC), published by the National Fire Protection Association, Inc.; the "National Electrical Safety Code" (NESC), published by the Institute of Electrical and Electronics Engineers, Inc.; and rules and regulations of the U.S. Department of Labor issued pursuant to the "Federal Occupational Safety and Health Act of 1970", as amended, (OSHA) or any governing authority having jurisdiction over the subject matter. Where a difference in specifications may exist, the more stringent shall apply.
 1. While many of the standards and technical requirements for Licensee's cable, equipment and facilities are set forth in (a) above, Licensor reserves the right to specify the type of cable and construction standards required in situations not

otherwise covered in this Agreement. In such cases, Licensor will in its discretion furnish to Licensee written material which will specify and explain the required construction.

2. Licensee shall provide written notice to the Licensor, at least fifteen (15) days in advance, of the exact conduit locations where Licensee's plant is to be constructed. performance of such work will not delay the completion of the Make-Ready work required to accommodate the initial applicant.
 3. Rodding of ducts and placing of cable in Licensor's conduit system shall be done only when specific authorization for such work, and approval of the person, firm or corporation that will perform such work has been obtained in writing in advance from Licensor. Licensor, retains the right to prescribe the manner in which such construction will be done and retains the right to specify what, if any, work shall be performed by Licensor
 4. Licensor reserves the right to prohibit all equipment and facilities, other than cable, from its manholes, pull boxes and handholes. Splices in Licensee's cables shall be located only in manholes, pull boxes or handholes.
 5. Where a Licensee's duct physically connects with Licensor's manhole, Licensor shall designate the point of entrance. The section of duct which connects with the manhole shall be installed, at the Licensee's expense, by Licensor, its contractor or a contractor approved by Licensor. The "Manhole Entrance Fee" is specified in the "Schedule of Rates" (Exhibit D).
- b. If any part of Licensee's facilities is not placed, maintained or relocated in accordance with the requirements and specifications, as stated herein, and if Licensee fails to correct any non-compliance with these standards within fifteen (15) days written notice to the Licensee, the Licensor may correct said conditions. However, when such conditions pose an immediate threat to the safety of the Licensor's employees, interfere with the performance of the Licensor's service obligations, or pose an immediate threat to the physical integrity of the conduit system or the cable facilities of the Licensor, the Licensor may perform such work and/or take such action that the Licensor deems necessary without prior notice to Licensee. The cost of said work and/or actions shall be borne by Licensee.
- c. Licensor shall not use, nor shall Licensor permit its lessees, licensees, employees, invitees or agents to use any portion of Licensor's conduits in any way which materially interferes with the operations of Licensee.
4. Pre-Construction Surveys and Make-Ready Work
- a. A pre-construction survey will be required for each conduit section for which occupancy is requested to determine the availability of conduit space to accommodate Licensee's facilities (Exhibit E). In determining the availability of

space in Licensor's conduit system, Licensor will consider its present and foreseeable communications and maintenance needs for conduit space. If conduit space is available, a license to occupy the conduit system will be granted to Licensee; provided, however, that Licensor will not warrant the condition of such conduit. The field inspection will be performed by representatives of the Licensor with optional participation by other Licensees and the Licensee.

b. In the event the Licensor determines that Licensor's cable facilities need rearrangement to accommodate the facilities of Licensee, the Licensor will inform Licensee in writing of the cost of the required Make-Ready work. Charges for Make-Ready work, including the cost of surveys and/or inspections, shall be as specified in Article VIII, Rates and Charges.

c. The Licensor shall specify the conduit to be occupied by Licensee's facilities and the location where and manner in which Licensee's cable will enter and exit Licensor's manholes, pull boxes or handholes. Clearing obstructions, repairs, dig-ups and any other work required to make a duct usable for the initial placing of Licensee's cable shall be done at Licensee's expense by the Licensor, its contractor or a contractor approved by Licensor.

d. Licensee shall have thirty (30) days from the receipt of written notification from the Licensor of the costs of Make-Ready work to accept and pay all Make-Ready costs; provided, however, that if the Licensor receives a request from another Licensee for an authorization to occupy the conduit system for which a written notification of Make-Ready work costs has been sent to Licensee, then Licensee must accept within fifteen (15) days after receipt of notification from the Licensor of the other occupancy request or until the end of the thirty (30) day period, whichever period of time is shorter.

e. Any required Make-Ready work will be performed following receipt by the Licensor of payment of the cost of the Make-Ready work. Licensee shall also reimburse the owner(s) of other facilities occupying said conduit system for any expense incurred by them in rearranging their facilities to accommodate Licensee's facilities.

f. When Licensor deems it an immediate threat to safety and/or an emergency exists, it may rearrange or remove Licensee's facilities occupying Licensor's conduit system at Licensee's expense. Licensor shall make reasonable efforts to contact Licensee as circumstances permit.

g. Upon written notice by Licensor, Licensee shall promptly rearrange its facilities in the conduit system as required by Licensor to permit Licensor to perform any routine maintenance of the conduit system, including replacement of worn or damaged manholes, conduits, ducts, and laterals. Licensee shall be responsible for all costs associated with such rearrangements.

h. Licensee shall notify the Licensor in writing before adding to, relocating, replacing or otherwise modifying its facilities in a conduit system where additional space may be required.

i. When additional Make-Ready or related work is required as a result of circumstances beyond anyone's control, including but not limited to storms, accidents, or public work projects, Licensee is responsible for the timely repairing, relocating or replacing of its own facilities.

j. Unless prevented from doing so by circumstances beyond Licensor's reasonable control, including, but not limited to acts of god, fire, strikes, embargo, seasonal limitations on construction, acts or inaction of the Government, or acts or inaction of another Licensee, and subject to the quantity limitations set forth in paragraph (1) (c) of this Article, Licensor shall adhere to the following timetable in the performance of pre-construction and Make-Ready work:

(1) Upon receipt of a written application (Exhibit A), Licensor shall perform a pre-survey to determine whether Licensee's proposed occupancy can be accommodated and determine what, if any, Make-Ready work is required. Licensor shall complete these tasks within forty-five (45) days of receipt of Licensee's written application.

(2) If Make-Ready work is required and there are other entities occupying the same conduit section, Licensor shall send written notification to all such entities describing the proposed modifications to the conduit system based on Licensee's application. Entities receiving such notice shall have sixty (60) days to determine whether they wish to add to or modify their existing facilities and to submit written notification of their requirements to Licensor.

(3) Licensor shall design the Make-Ready work, or redesign the Make-Ready work to incorporate any additional requirements submitted by other entities in accordance with subparagraph (2) above, and estimate the costs of Licensor's Make-Ready work. Licensor shall complete these tasks within thirty (30) days of receipt of all written notifications of modification requirements or notifications that no additional requirements are sought.

(4) Licensor shall complete all its Make-Ready work within ninety (90) days of receipt of payment by Licensee of the estimated Make-Ready work costs. The foregoing Make-Ready commitments shall apply solely to Make-Ready work to be performed by Licensor. These commitments shall not apply to Make-Ready work to be performed by other Licensees.

(5) Licensor shall not be considered in default of any of its obligations under this paragraph (k) unless such default continues for more than fifteen (15) days after Licensee shall have provided Licensor written notice specifying the nature of the default and, if applicable, the manhole

location(s) in which Make-Ready work has not been performed

5. Inspections of Licensee's Facilities

- a. The Licensor reserves the right to make post-construction, subsequent and periodic inspections (of any part or all) of Licensee's facilities occupying the conduit system at the expense of the Licensee as specified in Article VIII.
- b. Licensee shall provide written notice to the Licensor, at least fifteen (15) days in advance, of the exact conduit locations where Licensee's plant is to be constructed.
- c. The Licensee shall forward Exhibit B to the Licensor within five (5) days of the date(s) of the occupancy.
- d. Within seven (7) days of the date of completion of a post-construction inspection, the Licensor shall notify Licensee in writing of the date of the completion of the Post-Construction Inspection.
- e. Where Post-Construction Inspection by the Licensor has been completed within thirty (30) days of the date of notice of placement of Licensee's facilities required in (c.) above, Licensee shall be obligated to correct such non-complying conditions within fifteen (15) days of the date of the written notice from the Licensor or as agreed to by the parties. If corrections are not completed within said fifteen (15) day period, occupancy authorizations for the conduit system where non-complying conditions remain uncorrected shall terminate forthwith, regardless of whether Licensee has energized the facilities occupying said conduit system, and Licensee shall remove its facilities from said conduit system in accordance with the provisions of Article VII. No further occupancy authorization shall be issued to Licensee until such non-complying conditions are corrected or until Licensee's facilities are removed from the conduit system where such non-complying conditions exist.
- f. Where such Post-Construction Inspection by the Licensor has not been completed within thirty (30) days of the date of notice of placement of Licensee's facilities, Licensee shall correct such non-complying conditions within fifteen (15) days of the written notice from the Licensor or as agreed to by the parties. If corrections are not made by Licensee within said fifteen (15) day period, the Licensor shall perform or have performed such corrections and Licensee shall pay to the Licensor the cost of performing such work.
- g. Subsequent inspections to determine if appropriate corrective action has been taken may be made by the Licensor. Licensee shall reimburse the Licensor for the cost of such inspections as specified in Article VIII.
- h. The making of post-construction, subsequent and periodic inspections or the failure to do so shall not operate to relieve Licensee of any responsibility, obligation or liability specified in this Agreement.

i. The costs of inspections made during construction and/or the initial post-construction survey shall be billed to the Licensee upon completion of the inspections. The cost of periodic inspection or any inspection found necessary due to the existence of sub-standard or unauthorized occupancies shall be billed separately.

j. Licensor reserves the right to make periodic inspections of the entire plant of the Licensee occupying Licensor's conduit system at the expense of the Licensee as specified in Article VIII. Periodic inspections of the entire plant of the Licensee will not be made more often than once every five (5) years and upon 30 days notice to Licensee unless in Licensor's judgment such inspections are required for reasons involving safety or because of an alleged violation of the terms of the Agreement by Licensee

6. Unauthorized Occupancies

a. If any facilities of the Licensee shall be found occupying a conduit system for which authorization has not been granted by the Licensor, the Licensor, without prejudice to its other rights or remedies under this Agreement, including termination or otherwise, may impose a charge and require the Licensee to submit in writing, within ten (10) days after receipt of written notification from the Licensor of the unauthorized occupancy, a conduit occupancy application (Exhibit A). If such application is not received by the Licensor within the specified time period, the Licensee will be required to remove its unauthorized facility within ten (10) days of the final date for submitting the required application, or the Licensor may remove the Licensee's facilities without liability, and the cost of such removal shall be borne by the Licensee.

b. For the purpose of determining the applicable charge, the unauthorized conduit occupancy shall be treated as having existed for a period of five (5) years prior to its discovery; or for the period beginning with the date of the initial Agreement, whichever period shall be shorter, and the charges, as specified in Article VIII, shall be due and payable forthwith whether or not Licensee is permitted to continue the occupancy of the conduit system.

c. No act or failure to act by the Licensor with regard to an unauthorized occupancy shall be deemed as the authorization of the occupancy; and, if any authorization should be subsequently issued said authorization shall not operate retroactively or constitute a waiver by the Licensor of any of its rights or privileges under this Agreement or otherwise, provided, however, that Licensee shall be subject to all liabilities, obligations and responsibilities of this Agreement in regard to said unauthorized occupancy from its inception.

ARTICLE V OTHER OBLIGATIONS OF LICENSEES

1. Insurance

a. Licensee shall secure and maintain (and ensure its subcontractors, if any, secure and

maintain) all insurance and/or bonds required by law or this Agreement including without limitation:

(1) Commercial General Liability insurance (including, but not limited to, premises-operations; explosion, collapse and underground hazard; broad form property damage; products/completed operations; contractual liability; independent contractors; personal injury) with limits of at least \$2,000,000 combined single limit for each occurrence.

(2) Commercial Automobile Liability insurance with limits of at least \$2,000,000 combined single limit for each occurrence. Notwithstanding, if the Licensee does not own or operate any vehicles or automobiles associated with the Licensee's business or associated with the work related to this Agreement, then Licensee must only provide satisfactory evidence that its subcontractor(s) have purchased and maintained Commercial Automobile Liability insurance in such amount.

(3) Workers' Compensation insurance as required by statute and Employer's Liability insurance with limits of not less than \$1,000,000 per occurrence.

b. All policies provided by the Licensee shall be deemed primary and non-contributory to all other applicable coverages. The Commercial General Liability and Commercial Auto Liability policies must name Licensor, its subsidiaries and affiliates excluding Verizon Wireless as additional insureds. The Licensee's insurance companies must be licensed to do business in the applicable state(s) and must meet or exceed an A.M. Best rating of A-X or its equivalent.

c. All insurance must be in effect before Licensor will authorize Licensee to place facilities in Licensor's conduit and shall remain in force until such facilities have been removed from all such conduit. For all insurance, the Licensee must deliver an industry-recognized certificate of insurance evidencing the amount and nature of the coverage, the expiration date of the policy and stating that the policy of insurance issued to Licensee will not be cancelled without thirty (30) days written notice to Licensor. Also, where applicable, such certificate of insurance shall evidence the name of the Licensor as an additional insured. The Licensee shall submit such certificates of insurance annually to the Licensor as evidence that it has maintained all required insurance.

d. Licensee is responsible for determining whether the above minimum insurance coverages are adequate to protect its interests. The above minimum coverages shall not constitute limitations upon Licensee's liability.

2. Surety Requirements

a. Licensee shall furnish a Surety Bond or irrevocable Letter of Credit satisfactory to the Licensor according to the following criteria:

Conduit Footage	Security
1-2500	\$10,000
2501-25,000	\$80,000
25,001-75,000	\$250,000
75,001-150,000	\$475,000
150,000 +	\$500,000

b. The maximum security limit required is \$500,000.

c. If the financial security is in the form of a bond, irrevocable Letter of Credit, or other security as deemed acceptable by Licensor, such instrument shall be issued by a nationally recognized and rated surety company or bank and shall guarantee Licensee's obligations under the agreement. The Licensee is obligated to maintain the security in the full amount for the terms of the agreement.

d. The amount of the bond or the financial security shall not operate as a limitation upon the obligations of the Licensee.

**ARTICLE VI
LIABILITY AND DAMAGES**

1. Licensor reserves to itself, its successors and assigns, the right to relocate and maintain its conduit system and to operate its facilities in conjunction therewith in such a manner as will best enable it to fulfill its own service requirements. The Licensor shall be liable to Licensee only for and to the extent of any damage caused the negligence of the Licensor's agents or employees to Licensee's facilities occupying Licensor's conduit system. The Licensor shall not be liable to Licensee for any interruption of Licensee's service or for interference with the operation of Licensee's facilities arising in any manner out of Licensee's use of Licensor's conduit system.

2. Licensor shall exercise reasonable care to avoid damaging the facilities of Licensee occupying conduit under this Agreement, and shall make an immediate report to Licensee of the occurrence of any such damage caused by Licensor's employees, agents or contractors.

3. Licensee shall exercise reasonable care to avoid damaging the facilities of Licensor and of others attached to Licensor's poles, and shall make an immediate report of damage caused by Licensee to the owner of facilities so damaged.

4. Licensor and Licensee shall each indemnify, protect and save harmless each other from and against any and all claims, demands, causes of actions and costs, including reasonable attorneys' fees, for damages to the property of the other party and other persons and injury or death to the other party's employees or other persons, including but not limited to, payments under any Workers Compensation law or under any plan for employee's disability and death benefits,

which may arise out of or be caused by the negligence or intentional misconduct of the indemnifying party as it relates to the erection, maintenance, presence, use or removal of the indemnifying party's facilities, or by any act or omission of the indemnifying party's employees, agents or contractors on or in the vicinity of Licensor's poles. The foregoing indemnity, hold harmless and defense provisions shall not apply in the case of claims, which solely arise from the negligence, misconduct or other fault of the other party. It shall apply, however, if a claim is the result of the joint negligence, joint misconduct or joint fault of Licensee and Licensor, their agents, employees or contractors, but in such case the amount of the claim for which each party is entitled to indemnification shall be limited to that portion of such claim attributable to the negligence, misconduct or other fault of the respective party.

5. Each party shall indemnify, protect and save harmless the other party from any and all claims, demands, causes of action and costs, including reasonable attorneys' fees, which arise directly from or are caused by the negligence or intentional misconduct of the indemnifying party as it relates to the construction, attachment or operation of its facilities on Licensor's poles, including but not limited to damages, costs and expense of relocating poles due to the loss of right-of-way or property owner consents, taxes, special charges by others, claims and demands for damages or loss from infringement of copyright, for libel and slander, for unauthorized use of television or radio broadcast programs and other program material, and from and against all claims, demands and costs, including reasonable attorneys' fees, for infringement of patents with respect to the manufacture, use and operation of the indemnifying party's facilities in combination with poles or otherwise. The foregoing indemnity shall not apply in the case of claims, which solely arise from the negligence, misconduct or other fault of the other party. It shall apply, however, if a claim is the result of the joint negligence, joint misconduct, or joint fault of Licensee and Licensor, their agents, employees or contractors, but in such case the amount of the claim for which each party is entitled to indemnification shall be limited to that portion of such claim attributable to the negligence, misconduct or other fault of the respective party.

6. Licensor and Licensee shall promptly advise the other of all claims relating to damage to property or injury to or death of persons, arising or alleged to have been caused by the erection, maintenance, repair, replacement, presence, use or removal of facilities governed by this License Agreement. Copies of all accident reports and statements made to a Licensor's or Licensee's insurer by the other Licensor or Licensee or affected entity shall be furnished promptly to the Licensor or Licensee.

7. Notwithstanding anything to the contrary herein, neither Licensor nor Licensee shall be liable to the other for any special, consequential or other indirect damages arising under this Agreement, including without limitation loss of profits and revenues.

8. The provisions of this Article shall survive the expiration or earlier termination of this Agreement or any license issued hereunder.

ARTICLE VII TERMINATIONS OF AUTHORIZATIONS

1. In addition to rights of termination provided to the Licensor under other provisions of this Agreement, the Licensor shall have the right to terminate conduit occupancy, manhole occupancy, and/or manhole entrance authorizations and rights granted under provisions of this Agreement where:

a. the Licensee's facilities are maintained or used in violation of any law or in aid of any unlawful act or undertaking, or

b. the Licensee ceases to have authority to construct and operate its facilities on public or private property at the location of the particular conduit system covered by authorization and has not sought judicial or regulatory review of any decision that (1) acted to terminate such authority or (2) declared that Licensee lacks such authority; or

c. the Licensee fails to comply with any of the terms and condition of this Agreement or defaults in any of its obligations thereunder; or

d. the Licensee occupies Licensor's conduit system without having first been issued authorization therefore; or

e. the Licensee, subject to the provisions specified in Article III (5), should cease to provide its services.

f. the Licensee sublets or apportions part of the licensed assigned space or otherwise permits

g. except in circumstances in which Licensor has accepted evidence of self-insurance in accordance with Article VI, the Licensee's insurance carrier shall at any time notify the Licensor that the policy or policies of insurance as required in Article VI will be or have been cancelled or amended so that those requirements will no longer be satisfied;

h. the Licensee shall fail to pay any sum due under Article VIII or to deposit any sum required under this Agreement, or shall fail to maintain satisfactory surety as required in Article V;

i. any authorization that may be required by any governmental or private authority for the construction, operation and maintenance of the Licensee's facilities on a Pole or Anchor is denied, revoked or cancelled by a final, non-appealable order or decision.

2. The Licensor will promptly notify the Licensee in writing of any instances cited in Article VII (1) preceding. The Licensee shall take corrective action as necessary to eliminate the noncompliance and shall confirm in writing to the Licensor within thirty (30) days following such written notice that the noncompliance has ceased or been corrected. If Licensee fails to discontinue such noncompliance or to correct same and fails to give the required written

confirmation to the Licensor within the time stated above, the Licensor may terminate the occupancy authorizations granted hereunder for the conduit or manhole to which such noncompliance shall have occurred.

3. Licensee may at any time remove its facilities from a conduit system after first giving the Licensor written notice of Licensee's intention to so remove its facilities (Exhibit C).

4. In the event of termination of any of the Licensee's authorizations hereunder, the Licensee will remove its facilities from the conduit system within thirty (30) days of the effective date of the termination; provided, however, that Licensee shall be liable for and pay all fees and charges pursuant to provisions of this Agreement to the Licensor until Licensee's facilities are actually removed from the conduit system. If the Licensee fails to remove its facilities within the specified period, the Licensor shall have the right to remove such facilities at the Licensee's expense.

5. When Licensee's facilities are removed from a Licensor's conduit system, no occupancy in the same conduit system shall be permitted until the Licensee has first complied with all of the provisions of this Agreement as though no such conduit system occupancy had been previously made and all outstanding charges due to the Licensor for conduit system occupancy have been paid in full.

6. Prior to terminating or revoking any license under this Agreement or the Agreement itself for whatever cause or purpose, a petition may be brought, by either party, to the Public Service Commission requesting the Commission to decide the dispute. A Public Service Commission determination shall be binding on all parties to this Agreement. However, the right of the Licensor or Licensee for judicial review of the Commission's determination remains.

ARTICLE VIII RATES AND CHARGES

The Licensee is responsible for payment of all rates, charges and costs as specified elsewhere in this Agreement and as set forth below. Licensee shall be responsible for payment of all charges for preconstruction survey and Make-Ready work in advance for work performed or expenses incurred by the Licensor regardless of whether Licensee subsequently withdraws its application for occupancy authorizations for the conduit system as to which such work is performed.

Licensee agrees that, in the event Licensee fails to pay an amount due and owing within the period of time set forth for payment in this Agreement, interest shall accrue on the unpaid balance thereof at the rate of 11/2% per month for each month from the expiration of such period until payment is received by Licensor.

1. Conduit Occupancy Rate

The conduit rates shall be as specified in the PSC No 15 Tariff currently filed with Public Service Commission and attached as Exhibit D.

2. Charges for Make-Ready Work

Make-Ready charges shall be billed in advance. Work on individual conduit sections shall not commence prior to receipt of payment. All charges for surveys, inspections, engineering, rodding, swabbing, placement and removal of cable and any other charges for worked performed for Licensee or fees paid by Licensor on account of Licensee's presence in the conduit system, shall be based upon the full cost to Licensor for performing such work and a premium of 35% shall be added to the Licensor's full costs incurred on the investment of the labor hours and materials used. When Licensor employs an outside contractor rather than its own work forces to perform Make-Ready, Licensee shall pay an amount equal to the contractor's fees plus a premium equal to no more than 10% of those fees. Licensor shall make available copies of all written contracts, agreements, understandings and work orders pertinent to Make-Ready work performed by such contractors.

3. Charges for Inspections

a. The cost of the initial post-construction inspection shall be billed as part of the charges for Make-Ready work. If the post-construction inspection is not performed Licensor shall refund the amounts paid for such inspection.

b. The cost of periodic inspections will be billed to the Licensee upon completion of the inspection by the Licensor.

c. Licensee shall pay the cost of subsequent inspections to insure correction of variances from required construction and maintenance practices, determined to exist through post-construction or periodic inspections.

4. Payment of Rates and Charges

Unless otherwise provided elsewhere in this Agreement, Licensee shall pay all rates and and charges, as specified in the Agreement and/or in the PSC No 15 Tariff currently filed with the Public Service Commission, within thirty (30) days from the dates of billing thereof.

ARTICLE IX
EQUAL EMPLOYMENT OPPORTUNITIES

Licensee affirms that the Equal Employment Opportunity provisions required by law, regulation or executive order to be incorporated in this Agreement as set forth in a Compliance Undertaking prepared by Licensor have been read and signed by Licensee, and that the said Compliance Undertaking has been delivered to Licensor. Such Compliance Undertaking shall continue in effect until specifically withdrawn in writing by Licensee (Exhibit F).

ARTICLE X
WAIVER OR TERMS AND CONDITIONS

Failure of Licensee or Licensor to enforce or insist upon compliance with any of the terms or conditions of this Agreement or failure to give notice or declare this Agreement or the licenses granted hereunder terminated shall not constitute a waiver or relinquishment of any such term, condition or act but the same be and remain at all times in full force and effect.

ARTICLE XI
TERM OF AGREEMENT

If not terminated in accordance with its terms, this Agreement shall continue in effect for a term of one (1) year from the date hereof and thereafter until three (3) months after written notice of termination is given by either party. Such notice of termination may be given to take effect at the end of the original one (1) year period or at any time thereafter.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in multiple originals on the day and year first above written.

VERIZON NEW YORK INC. (LICENSOR)

By: _____
(Print Name) Reneta Haynes _____
(Title) Director – Network Eng & Ops _____
(Date) _____

OPTICAL COMMUNICATIONS GROUP (LICENSEE)

By: _____
(Print Name) _____
(Title) _____
(Date) _____

EXHIBIT A

APPLICATION AND LICENSE FOR CONDUIT SYSTEM1

_____, N.Y., _____ 20____

Verizon New York Inc.

_____, New York

In accordance with the terms and conditions of the Conduit Occupancy Agreement between us, dated as of _____, 20____, application is hereby made for a license to occupy your conduit system as follows:

Municipality

Licensee to Furnish

Licensor to Furnish

Location _____ Municipality

<u>From</u>	<u>To</u>	<u>Cable & Equipment</u>	<u>Duct</u>	<u>Rental</u>
<u>Manhole at</u>	<u>Manhole at</u>	<u>To Be Placed in System</u>	<u>No.</u>	<u>length</u>

All work will be performed by _____ We will advise at least fifteen (15) days in advance of commencing work.

(Name of licensee)

By _____

Title _____

License number _____ is hereby granted to occupy our conduit system to the extent that items have not been stricken from the above list _____ . 20____

1. Applications shall be submitted in duplicate.
2. A complete description of all facilities shall be given, including a print showing the locations, quantities, sizes and types of all cables and equipment.
3. Sketch to be furnished showing duct assigned to Licensee by Licensor

PULLING IN REPORT

_____ N.Y., _____ 20__

Verizon New York Inc.
_____, New York

This is to advise you that pursuant to License No. _____ granted to us under the terms of the Conduit Occupancy Agreement, dated _____ 20__, we have completed installation of the following cable into the following ducts

_____ Location _____ Municipality			
<u>From Manhole at</u>	<u>To manhole at</u>	<u>Cable and Equipment installed</u>	<u>Date</u>

(Name of Licensee)

By _____

Title _____

Receipt of the above report is hereby acknowledged _____, 20__

Verizon New York Inc.

By _____

Title _____

1. Reports shall be submitted in duplicate.
2. A complete description of all facilities shall be given, including a print showing the locations, quantities, sizes and types of all cables and equipment.
3. Sketch to be furnished showing duct used. Must be same duct assigned to Licensee by Licensor as shown on Exhibit A, unless a change has been previously authorized in writing by Licensor.

NOTIFICATION OF REMOVAL FROM
CONDUIT SYSTEM BY LICENSEE1

_____ N.Y., _____ 20____
Verizon New York Inc.
_____, New York

In accordance with the terms and conditions of the Conduit Occupancy Agreement between us,
dated as of _____, 20__, kindly cancel from your records the following occupancies
covered by the licenses indicated. Our facilities were removed on _____, 20__.

License No. _____ Dated _____, 20__.

<u>Location</u>		<u>Municipality</u>	<u>Rental Length</u>
<u>From Manhole at</u>	<u>To Manhole at</u>		

(Name of Licensee)

By _____
Title _____

Receipt of the above report is hereby acknowledged _____, 20____
Verizon New York Inc.

By _____
Title _____

1. Notification shall be submitted in duplicate.

SCHEDULE OF FEES AND CHARGES

This Exhibit D is, from the effective date hereof, an integral part of this Underground Agreement between VERIZON NEW YORK INC., therein called Licensor, and _____ therein called Licensee, dated as of _____ (hereinafter called the Agreement) and contains the fees and charges governing the use of Licensor's conduit system to accommodate Licensee's cable, equipment and facilities in the State of New York. The effective date of this Exhibit D is March 1, 2002.

1. OCCUPANCY FEE:

Licensee shall be charged the rates specified in the PSC No15 Tariff currently filed with the Public Service Commission.

The full duct rate will apply when the Licensee occupies 100% of the innerducts in a duct, or where the placement of a single Licensee's cable in a duct precludes the placement of additional cable.

The half duct rate will apply when the Licensee occupies a duct that does not contain innerduct or when the Licensee occupies 50% of the innerducts in a duct.

The third duct rate will apply when the Licensee occupies 33% of the innerducts in a duct.

The quarter duct rate will apply when the Licensee occupies 25% of the innerducts in a duct.

a. Computation

Fee shall be computed from the date of the license to the date of termination thereof. For the purpose of computing the total conduit occupancy fee due hereunder, the length of the conduit shall be measured from the center to the center of manholes, or from the center of a manhole to the end of Licensor's conduit system occupied by Licensee's cable.

b. Payment Date

Conduit occupancy fees shall be due and payable monthly, in advance, on the first of each month. Failure to pay such fees within thirty (30) days after presentment of the bill therefore or on the specified payment date, whichever is later, shall constitute a default of this Agreement.

c. Termination of License

Upon termination of a license granted hereunder, the applicable occupancy fee shall be prorated for the period during which the conduit space was occupied during the final month and shall be credited to the Licensee.

2. OTHER CHARGES:

a. Manhole Entrance Fee

A one-time fee of \$1000 per duct shall be charged for a Licensee to connect its conduit to Licensor's manhole. This fee is in addition to other fees and charges specified elsewhere in this agreement.

b. Inspection and Make-Ready Work

All charges for surveys, inspections, engineering, rodding, swabbing placement and removal of cable, and any other charges for work performed for Licensee or fees paid by Licensor on account of Licensee's presence in the conduit system shall be based upon the full cost to Licensor for performing such work plus a premium of thirty-five percent (35%) will be added to Licensor's full costs incurred in

performing such work for Licensee. The cost to Licensor shall include the costs of all materials, supplies, engineering, labor (including overtime and board and lodging, where necessary to meet the Licensee's requirements), supervision, transportation, taxes, general overhead, including appropriate loadings for such things as relief and pension accruals, social security taxes, vacations, holidays, sickness, workmen's compensation, and any other items associated with the work that are chargeable to the Licensor's accounts under the Uniform System of Accounts applicable to the Licensor as prescribed by the Federal Communications Commission

c. Payment Date

All bills for such other charges shall be payable upon presentment to Licensee, and shall be deemed delinquent if not paid within (30) days after presentment to Licensee.

EXHIBIT E

PROCEDURE FOR DETERMINING WHEN EXISTING VERIZON NEW YORK CONDUIT SYSTEMS HAVE AVAILABLE CAPACITY TO ACCOMMODATE AUTHORIZED LICENSEE OCCUPANCIES

When an application is submitted by Licensee for a license to place its cable, facilities and/or equipment in the conduit system of Licensor, Licensor will advise Licensee of the availability of conduit space. In determining the availability of space in Licensor's conduit system, Licensor will consider its present communications and maintenance needs for conduit and equipment space. If it is determined that conduit space is available, a license to occupy the conduit system will be granted to Licensee; provided, however, that Licensor will not warrant the condition of such conduit.

RECORDS

The Licensor's conduit records will be checked to determine the number of spare conduits in the run. The Licensee is required to pay for this activity, in advance. The cost will be based on an estimate of the engineering hours to complete the record analysis.

The records will be reviewed to determine if there are any plans by Verizon New York, another Licensee or by a state or local government to occupy conduit. Under franchise, license, right-of-way or other agreements with municipalities, Verizon New York may be required to set aside conduit for use by state or local governments.

All unoccupied ducts or innerducts in a conduit system are considered spare with the exception of duct(s) or innerduct(s) that may be needed for maintenance, municipal obligations and scheduled occupancies by Verizon New York or another Licensee.

A maintenance duct or innerduct in a conduit system will be set aside so that if a cable in another conduit fails a temporary cable may be placed in the maintenance conduit and spliced into the damaged cable.

MAKE-READY ALTERNATIVES

When no conduits are available for licensing, per the above, it may be possible to provide spare facilities, at the Licensor's option, and at the Licensee's expense. Possible alternative Make-Ready work may involve a section throw of a small cable into a larger cable, (b) replacement of small cables with a larger cable, or (c) grant manhole entrance license for Licensee owned conduit.

MANHOLE CONDITION

Condition of manhole. There may be conduit but no splicing room in manhole. The Licensor may deny conduit occupancy if there is not sufficient room in the manholes.

ENTRANCE CONDUITS TO BUILDINGS

Availability of Building entrances will be based upon the criteria above. Conduit entrances to Central Office vaults will not be licensed since they are covered by the Collocation or CATT tariffs.

PLUGGED CONDUIT

An unusable spare conduit, one that is plugged with dirt or a dropped conduit situation making rodding impossible. Such conduits may be repaired at Licensor's option, at the Licensee's expense in situations where no other spare is available.

ADVANCEMENT OF WORK

It is anticipated that new conduit systems will not be constructed nor existing conduit routes reinforced solely for the benefit of the Licensee. In the event such a situation does occur, the Licensee will be required to assume the burden of any added cost to Verizon New York Inc. These costs will include the advancement penalty of conduit construction expenditures from the time, when new conduit construction or reinforcement was scheduled to meet Verizon New York Inc.'s normal requirements.

STUDIES

In fulfilling its responsibility, of providing basic conduit information, it will be necessary for Verizon New York Inc. to devote engineering manpower to work closely with the prospective applicant. Prior to embarking on any study, the prospective applicant shall be advised, in writing, that charges for Verizon New York Inc. involvement will be estimated and billed in advance on the basis of full costs plus 35% administrative compensation.

E.E.O. COMPLIANCE UNDERTAKING

I. EQUAL EMPLOYMENT OPPORTUNITY PROVISIONS

In accordance with Executive Order No. 11246, dated September 24, 1965, as amended by Executive Order No. 11375, date October 13, 1967, and U.S. Code of Federal Regulations, Title 41-Public Contracts and Property Management, Chapter 60-Office of Federal Contract Compliance, Equal Employment Opportunity, Department of Labor, Part 60-1-Obligations of Contractors and Subcontractors, the parties include in this contract the following understanding and agreement:

A. FOR CONTRACTS EXCEEDING \$10,000
 EQUAL EMPLOYMENT OPPORTUNITY CLAUSE (41 CFR 60-1.4)

During the performance of this contract _____
 (hereafter referred to as Contractor) agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
- (3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the present rules, regulations, and relevant orders of the Secretary of Labor.
- (5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in the Executive Order No. 11246 of

September 24, 1965, or by rule, regulation, or order of the Secretary of Labor , or as otherwise provided by law.

(7) The contractor will include the provisions of the paragraphs (1) through (7) in every subcontract or purchase order unless exempted by such rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204, of Executive Order No.11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor, or vendor as the result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

B. CERTIFICATION OF NONSEGREGATED FACILITIES (41 CFR 60-1.8)

The contractor certifies to Verizon New York Inc. that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. It understands and agrees that a breach of this certification may be violation of Equal Opportunity clause required by Executive Order 11246 of September 24, 1965.

As used in this certification, the term “segregated facilities” means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are in fact segregated on the basis of race, color, religion, sex or national origin, because of habit, local custom or otherwise except as permissible by law (e.g. restrooms designated for employees on the basis of sex).

It further agrees that (except where it has obtained similar certification from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause; that it will retain such certification in its files; and that it will forward the following notice to such proposed subcontractors (except where the proposed subcontractors have submitted similar certification for specific time periods):

“NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES. A certification of nonsegregated Facilities, as required by the May 9, 1967, order on Elimination of Segregated Facilities, by the Secretary of Labor (32 Fed. Reg. 7439, May 19, 1967), must be submitted prior to the award of a subcontract exceeding \$10,000 which is not except from the provisions of the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semi-annually, or annually).”

NOTE: “Whoever knowingly and willfully makes any false, fictitious or fraudulent representation may be liable to criminal prosecution under 18 U.S.C. 1001.”

C. FOR CONTRACTS EXCEEDING \$50,000 WITH CONTRACTOR WITH 50 OR MORE EMPLOYEES (41 CFR 60-1.40) AFFIRMATIVE ACTION PROGRAM CERTIFICATION

The contractor, (or subcontractor) certifies to the Verizon New York Inc. that it has developed or will develop a written affirmative action compliance program in accordance with the requirements set forth in Title 41-Public Contracts and Property Management, Chapter 60-Office of Federal Contract Compliance, Equal Employment Opportunity, Department of Labor, Part 60-1-Obligations of Contractors and Subcontractors, Section 60-1.40, Code of Federal Regulations, effective July 1, 1968, as amended.

D. CONTRACTOR'S INFORMATION REPORT CERTIFICATION (41 CFR 60-1.7)

The contractor, (or subcontractor) certifies to Verizon New York Inc. that E.E.O. -1, Standard Form 100 promulgated jointly by the Office of Federal Contract Compliance, the Equal Employment Opportunity Commission and Plans for Progress, has been or will be filed in accordance with the requirements set forth in Title 41-Public Contracts and Property Management, Chapter 60-Office of Federal Contract Compliance, Equal Employment Opportunity, Department of Labor, Part 60-1--Obligations of Contractors and Subcontractors, Section 60-1.7 Code of Federal Regulations, effective July 1, 1968, as amended.

II. MINORITY BUSINESS ENTERPRISES (41 CFR 1-1. 1310-2)

In accordance with Executive Order No. 11625, dated October 13, 1971, and U.S. Code of Federal Regulations, Title 41-Public Contracts and Property Management, Chapter 1-Federal Procurement Regulations, Part 1-1.13--Minority Business Enterprises, as such may be amended from time to time, the parties include in this contract the following understanding and agreement:

FOR CONTRACTS EXCEEDING \$5,000---
UTILIZATION OF MINORITY BUSINESS ENTERPRISES

- (a) It is the policy of the Government that minority business enterprises shall have the maximum practicable opportunity to participate in the performance of Government contracts.
- (b) The Contractor agrees to use his best efforts to carry out this policy in the award of his subcontracts to the fullest extent consistent with the efficient performance of this contract. As used in this contract, the term "minority business enterprise" means a business, at least 50 percent of which is owned by minority group members or, in case of publicly owned businesses, at least 51 percent of the stock of which is owned by minority group members. For the purpose of this definition, minority group members are Negroes, Spanish-speaking American persons, American-Orientals, American-Indians, American-Eskimos, and American Aleuts. Contractors may rely on written representations by subcontractors regarding their status as minority business enterprises in lieu of an independent investigation.

FOR CONTRACTS EXCEEDING \$500,000--
MINORITY BUSINESS ENTERPRISES SUBCONTRACTING PROGRAM

- (a) The Contractor agrees to establish and conduct a program which will enable minority business enterprises (as defined in the clause entitled "Utilization of Minority Business Enterprises"), to be considered fairly as subcontractor and suppliers under this contract. In this connection, the Contractor shall--(1) Designate a liaison officer who will administer the Contractor's minority business enterprises program. (2) Provide adequate and timely consideration of the potentialities of known minority business enterprises in all "make-or-buy" decisions. (3) Assure that known minority business enterprises will have an equitable opportunity to compete for subcontracts, particularly by arranging solicitations, time for the

preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation of minority business enterprises. (4) Maintain records showing (i) procedures which have been adopted to comply with the policies set forth in this clause, including the establishment of a source list of minority business enterprises, (ii) awards to minority business enterprises on the source list, and (iii) specific efforts to identify and award contracts to minority business enterprises. (5) Include the Utilization of Minority Business Enterprises clause in subcontracts which offer substantial minority business enterprises subcontracting opportunities. (6) Cooperate with the Contracting Officer in any studies and surveys of the Contractor's minority business enterprises procedures and practices that the Contracting Officer may from time to time conduct. (7) Submit periodic reports of subcontracting to known minority business enterprises with respect to the records referred to in subparagraph (4), above, in such form and manner and at such time (not more often than quarterly) as the Contracting Officer may prescribe.

(b) The Contractor further agrees to insert, in any subcontract hereunder which may exceed \$500,000, provisions which shall conform substantially to the language of this clause, including this paragraph (b), and to notify the Contracting Officer of the names of such subcontractors.

II. LISTING OF EMPLOYMENT OPENINGS FOR VETERANS (41 CFR 50-250.2)

In accordance with Executive Order No. 11701, dated January 24, 1973, and U.S. Code of Federal Regulations Title 41-Public Contracts and Property Management, Chapter 50, Part 50-250-Veteran's Employment Emphasis Under Federal Contracts, as such may be amended from time to time, the parties include in this contract the following understanding and agreement.

FOR CONTRACTS \$2,500 OR MORE –

The contract clauses relating to listing employment openings that may be suitable for qualified disabled veterans and veterans of the Vietnam era, with the local office of the State employment service, contained in 41 CFR 50-250.2 are adopted and incorporated herein by this reference.

FOR CONTRACTS \$10,000 OR MORE –

The provisions of PL 93-508, 38 U.S.C. 42 Sections 2012 and 2014 requiring affirmative action in the hiring and advancement of qualified disabled veterans and veterans of the Vietnam era are adopted and incorporated herein by this reference

IV. EMPLOYMENT OF THE HANDICAPPED CLAUSE (10 CFR 741.3)

In accordance with Executive Order No. 11758, dated January 17, 1974, and U.S. Code of Federal Regulations, Title 20-Employees' Benefits, Chapter VI--Employment Standards Administrations, Department of Labor, Subchapter C--Rehabilitation Act of 1973 (Public Law 93-112, Section 503), Part 741--Affirmative Action Obligations of Contractors and Subcontractors, as such may be amended from time to time, the parties include in this contract the following understanding and agreement:

FOR CONTRACTS EXCEEDING \$2,500—

- (a) The Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship.
 - (b) The Contractor agrees that, if a handicapped individual files a complaint with the Contractor that he is not complying with the requirements of the Act, he will (1) investigate the complaint and take appropriate action consistent with the requirements of 20 CFR 741.29 and (2) maintain on file for three years, the record regarding the complaint and action taken.
 - (c) The Contractor agrees that, if a handicapped individual files a complaint with the Department of Labor that he has not complied with the requirements of the Act, (1) he will cooperate with the Department in its investigation of the complaint, and (2) he will provide all pertinent information regarding his employment practices with respect to the handicapped.
 - (d) The Contractor agrees to comply with the rules and regulations of the Secretary of Labor in 20 CFR Ch VI, Part 741.
 - (e) In the event of the Contractor's non-compliance with the requirements of this clause, the contract may be terminated or suspended in whole or in part.
 - (f) This clause shall apply to all subcontracts over \$2,500.
- FOR CONTRACTS UNDER \$500,000---

Paragraphs (a) through (f) above and the following:

- (g) The Contractor agrees (1) to establish an affirmative action program, including appropriate procedures consistent with the guidelines and the rules of the Secretary of Labor, which will provide the affirmative action regarding the employment and advancement of the handicapped required by PL 93-112, (2) to publish the program in his employee's or personnel handbook or otherwise distribute a copy to all personnel, (3) to review his program on or before March 31 of each year and to make such change as may be appropriate, and (4) to designate one of his principal officials to be responsible for the establishment and operation of the program.
- (h) The Contractor agrees to permit the examination by appropriate contracting agency officials or the Assistant Secretary for Employment Standards or his designee, of pertinent books, documents, papers and records concerning his employment and advancement of the handicapped.

(i) The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Assistant Secretary for Employment Standards, provided by the contracting officer stating contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment and the rights and remedies available.

(j) The Contractor will notify each labor union or representative of workers with which he has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of Section 503 of the Rehabilitation Act, and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.

FOR CONTRACTS OVER \$500,000---

Paragraphs (a) through (j) above and the following:

(k) The Contractor agrees to submit a copy of his affirmative action program to the Assistant Secretary for Employment Standards within 90 days after the award to him of a contract or subcontract.

(l) The Contractor agrees to submit a summary report to the Assistant Secretary for Employment Standards, by March 31 or each year during performance of the Contract and by March 31 of the year following completion of the contract, in the form prescribed by the Assistant Secretary covering employment and complaint experience, accommodations made and all steps taken to effectuate and carry out the commitments set forth in the affirmative action program.

NOTE: Paragraphs (g) through (l) are only applicable for contracts and subcontracts which provide for performance of the work in 90 days or more and contracts of a continuing nature.

AGREED AND ACCEPTED

By

(Date)

EXHIBIT G

ASSIGNMENT AGREEMENT

THIS ASSIGNMENT AGREEMENT made this ____ day of _____, 200 , between VERIZON NEW YORK INC., formerly known as NEW YORK TELEPHONE COMPANY, organized and existing under the laws of the State of New York, having its principal office at 140 West St., New York, New York 10007, and (hereinafter called "Licensor"), _____, a _____ corporation (hereinafter referred to as the "Assignor"), and _____, a _____ corporation (hereinafter referred to as the "Assignee").

WITNESSETH

WHEREAS, the Licensor and Assignor, entered into an agreement dated (DATE) (the "Agreement"), as amended, covering attachments to certain poles in the _____; and

WHEREAS, on or about _____, Assignor was acquired by Assignee.

NOW THEREFORE, in consideration of the premises and the mutual covenants herein contained the parties hereto hereby covenant and agree as follows:

- 1. The Agreement is hereby amended and restated in its entirety except as follows: any reference in the Agreement to Assignor as the Licensee is hereby deleted and replaced with " _____, a _____ corporation," and Assignor shall have no further rights or obligations under the Agreement on or after the effective date of this Assignment Agreement.
- 1. By execution hereof, Assignee certifies and represents to the Licensor that the insurance required under the Agreement has been obtained in its name, except as otherwise required by such Agreement, and remains in full force and effect. As of the effective date of this Assignment Agreement, Assignee shall comply with all obligations and requirements of the Agreement.
- 1. The effective date of this Assignment Agreement shall be _____.

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IN WITNESS WHEREOF, the parties have hereunto caused these presents to be executed by their respective representatives thereunto duly authorized, all as of the day and year first above written.

VERIZON NEW YORK INC.
(LICENSOR)

BY: _____
TITLE: _____
DATE: _____

_____ (ASSIGNOR)

BY: _____
TITLE: _____
DATE: _____

_____ (ASSIGNEE)

BY: _____
TITLE: _____
DATE: _____