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January 24, 2005

Federal Communications Commission
ATTN: Secretary
Washington, D.C. 20554

Re: Borough of Blawnox/Fiber Technologies Networks, LLC
WC Docket No. 03-37
Motion to Dismiss Petition for Section 253 Preemption

Dear Sir or Madam:

Enclosed please find the Borough of Blawnox's Motion to Dismiss Petition for Section 253 Preemption. Please file the same on behalf of the Borough of Blawnox.

Thank you in advance for your cooperation in this matter.

Very truly yours,

DODARO, CAMBEST & ASSOCIATES, P.C.

John F. Cambest

JFC/jg
Enclosure

cc: Fiber Tech (w/encl.)

J:\clients\B\blawnox\RightofWay Ordinance\Ltr. to FCC encl. our Motion to Dismiss 1-24-05.doc

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Borough of Blawnox
January 25, 2005
County of Allegheny, Pennsylvania

RECEIVED & INSPECTED
JAN 27 2005
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	WC Docket No. 03-37
FIBER TECHNOLOGIES NETWORKS, LLC	)	
Motion to Dismiss Petition for Section 253 Preemption	)	

MOTION TO DISMISS PETITION FOR SECTION 253 PREEMPTION

Submitted By:

John F. Cambest, Esquire
Dodaro Cambest & Associates, P.C.
1001 Ardmore Boulevard, Suite 100
Pittsburgh, PA 15221-5233
Phone No.(412) 243-1600

Borough of Blawnox
1001 Ardmore Boulevard, Suite 100
Pittsburgh, PA 15221-5233

Dated: January 25, 2005

Borough of Blawnox
January 25, 2005
County of Allegheny, Pennsylvania

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	WC Docket No. 03-37
FIBER TECHNOLOGIES NETWORKS, LLC	)	
Motion to Dismiss Petition for Section 253 Preemption	)	

To: The Commission:

MOTION TO DISMISS PETITION FOR SECTION 253 PREEMPTION

The Borough of Blawnox, respectfully submits this Motion to Dismiss the Petition for Preemption Pursuant to Section 253 of the Federal Communications Act filed by the Complainant, and in support thereof states as follows:

1. On or about January 30, 2003, the Complainant filed a Petition for Section 253 Preemption pursuant to Section 253 of the Federal Communications Act of 1934, as amended. 47 U.S.C., Section 253.

2. During the course of the proceedings, counsel for the Complainant and counsel for the Borough of Blawnox have engaged in settlement discussions which resulted in the Borough of Blawnox rescinding the Borough's Ordinance No. 529 (See Exhibit "A" and Exhibit "B" of the Petition) and adopting Ordinance No. 542 and Resolution No. 2004-13, which the Borough of Blawnox believes addresses the issues raised by the Complainant and therefore renders their Petition moot. Copies of

Ordinance No. 542 and Resolution 2004-13 are attached hereto as Exhibits "1" and "2" respectively.

3. As of December 31, 2004, neither the Complainant nor any other individual has filed an appeal from the adoption of Ordinance No. 542 and Resolution No. 2004-13, pursuant to the Borough Code, 53 PS. Section 46010, as amended.

Therefore, the Borough of Blawnox respectfully requests the following relief:

(a) That the Commission dismiss the Petition filed by the Complainant for preemption pursuant to Section 253 of the Federal Communications Act of 1934, as amended, as moot

Respectfully submitted,

BOROUGH OF BLAWNOX

By_____
John F. Cambest, Esquire
PA ID No. 20134

Dodaro Cambest & Associates, P.C.
1001 Ardmore Boulevard, Suite 100
Pittsburgh, PA 15221-5233
Phone No. (412) 243-1600

Solicitor - Borough of Blawnox

January 25, 2005

ORDINANCE NO. 542

AN ORDINANCE OF THE BOROUGH OF BLAWNOX, COUNTY OF ALLEGHENY, COMMONWEALTH OF PENNSYLVANIA, TO REGULATE ACCESS TO AND WORK IN THE PUBLIC RIGHTS OF WAY; PROVIDING FOR INSPECTIONS AND COMPLIANCE; REQUIRING INSURANCE AND INDEMNIFICATION; AND CREATING MECHANISMS FOR ENFORCMENT.

WHEREAS, pursuant to its powers and under the Borough Code, as amended, the general supervision of the Borough of Blawnox, Commonwealth of Pennsylvania, is in the hands of the Borough Council; and

WHEREAS, the Borough has the power to regulate access to and use of the public ways in the Borough, pursuant to 53 P.S. Section 46202(17), subject to any exceptions contained in 36 P.S. Sec. 670-411; and

WHEREAS, obstructions and excavations in the Borough's Public Ways disrupt and interfere with public use of the rights of way; and

WHEREAS, obstructions and excavations in the Borough's Public Ways result in loss of parking and loss of business to merchants and others whose places of business are in the vicinity of such obstructions and excavations; and

WHEREAS, it is desirable to adopt policies and regulations which will enable the Borough of Blawnox to gain greater control over the disruption and interference with the public use of the Public Ways, in order to provide for the health, safety and well-being of the Borough's residents and users of its streets; and

WHEREAS, significant public funds have been invested to acquire, build, maintain and repair the streets within the Borough and cuts and excavations in the streets reduce the useful life of the pavement infrastructure; and

WHEREAS, significant public funds have been invested to place and maintain landscaping within the Borough's Public Ways and cuts and excavations in the Public Ways cause damage to, and increase the costs of maintaining that landscaping; and

WHEREAS, the various public and commercial entities which install, maintain, and operate facilities under the Borough's streets are constrained, from time to time, to make excavation cuts which degrade the surfaces of these thoroughfares, thereby reducing their useful life; and

WHEREAS, operators of motor vehicles (private and commercial) pay added gasoline taxes to compensate for the damage their vehicles cause to Borough streets and roads. Part of these taxes are used by the federal government (the federal highway "trust fund") for construction and maintenance of interstate and federal highways. The Commonwealth of Pennsylvania annually transfers revenue from gasoline taxes to the

Borough for street maintenance. Commercial utilities and similar entities which degrade the streets presently do not adequately pay amounts attributable to the damage done to the roadway surfaces; and

WHEREAS, at the present time there is no formal mechanism nor legal requirement that public and commercial utilities and telecommunications companies coordinate roadway cuts.

NOW, THEREFORE BE IT ORDAINED, the Borough Council of the Borough of Blawnox, Allegheny County, Pennsylvania, hereby enacts this Rights of Way Ordinance as provided herein.

BOROUGH OF BLAWNOX
RIGHTS OF WAY ORDINANCE

SECTION 1
DEFINITION OF TERMS

1.1 **TERMS**. For the purpose of this Ordinance, the following terms, phrases, words and abbreviations shall have the meanings ascribed to them below. Definitions of words defined the Communications Act shall have the meaning ascribed to them therein unless otherwise set forth in this Ordinance. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number and words in the singular number include the plural number:

A. "Affiliate" means a Person or entity (i) with a direct or indirect ownership interest in the subject entity of five (5%) percent or more or which controls such interest, including forms of ownership such as general, limited liability companies and other forms of business organizations and entities but, not including corporations, (ii) with a stock interest in the subject entity where the subject entity is a corporation and such stockholder or its nominee is an officer or director of the Permittee or who directly or indirectly owns or controls five (5%) percent or more of the outstanding stock, whether voting or non-voting; or (iii) which controls Permittee and/or, is controlled by, or is under common control with such Person or entity.

B. "Attachment" means any wire, optical fiber or other cable, and any related device, apparatus or auxiliary equipment, for the purpose of voice, video, or data transmission.

C. "Borough" means the Borough of Blawnox, Allegheny County, Commonwealth of Pennsylvania, or its lawful successor, transferee or assignee thereof.

D. "Communications Act" means the Communications Act of 1934, as now or hereafter amended.

E. "Conduit Facility" means any structure, or section thereof, containing one or more ducts, conduits, manholes, handholes or other such facilities in the Permittee's Telecommunications System.

F. "Council" means the Borough Council, the elected governing body of the Borough of Blawnox.

G. "Duct" means a single enclosed raceway for conductors, optical fiber, wire or other cable.

H. "Facility" means, including, without limitation, any pipes, conduits, wires, cables, amplifiers, transformers, fiber optic lines, antennae, poles, street lights, ducts, fixtures and appurtenances and other like equipment used in connection with transmitting, receiving, distributing, offering, and providing telecommunications, utility and/or other services..

I. "FCC" means Federal Communications Commission, or successor governmental entity thereto.

J. "Licensee" means any Person, franchised, licensed, permitted or otherwise lawfully occupying space in the Public Way.

K. "Permit" means any authorization for use of the Public Way granted in accordance with the terms of this ordinance, and the laws and policies of the Borough.

L. "Permittee" means the holder of a valid Permit issued pursuant to this Chapter.

M. "Person" means any individual, sole proprietorship, partnership, association, limited liability company, corporation or other form of organization authorized to do business in the Commonwealth of Pennsylvania, and includes any natural person.

N. "Public Way" means the surface of, and the space above and below, any public street, highway, turnpike, bridge, land path, alley, court, boulevard, sidewalks, parkway, way, lane, public way, circle, or other public right-of-way, including public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the Borough in the Service Area which shall entitle the Borough and the Permittee to the use thereof for the purpose of constructing, leasing, operating and maintaining the Telecommunications System. Public Way shall also mean any easement now or hereafter held by the Borough within the Service Area for the purpose of public travel and/or for utility and/or public service

use dedicated for compatible uses, and shall include other easements and/or rights-of-way as shall within their proper use and meaning entitle the Borough and the Permittee to use thereof for the purposes of constructing, leasing, operating, or maintaining Permittee's Telecommunications System over poles, wires, cables, conductors, ducts, conduits, pedestals, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the Telecommunications System. The definition of Public Way is subject to subject to any exceptions contained in 36 P.S. Sec. 670-411.

O. "Service Area" means the present municipal boundaries of the Borough and shall include any additions thereto by annexation or other legal means.

P. "Surplus ducts or conduits" are Conduit Facilities other than those occupied by the Permittee or any prior Licensee and unoccupied duct(s) held by Permittee as for emergency or spare use.

Q. "Year", "Annual", or "Annually" means the period consisting of a full calendar year, beginning January 1 and ending December 31, unless otherwise provided in this Franchise.

SECTION 2
PERMITS

2.1 **PERMIT REQUIRED**. It shall be unlawful for any Person to construct, lease, maintain or operate a Facilities within the Public Ways without first obtaining a Permit from the Borough as set forth in this Chapter, except as provided in Section 2.2. Each Permit obtained, along with associated documents, shall be maintained on the job site and available for inspection upon request by any officer or employee of the Borough.

2.2 **NON-EXCLUSIVE USE**. A permit for the right to use and occupy said Public Ways, as defined above, shall not be exclusive in a Permittee. This Rights of Way Ordinance shall not apply to use of the Public Ways by a governmental entity or quasi governmental entity.

2.3 **NOT A CABLE SYSTEM**. Any Permit granted hereunder does not authorize the Permittee to operate a cable television system

2.4 **NOT A POLE ATTACHMENT AGREEMENT**. Any Permit granted hereunder does not authorize the Permittee to attach equipment or facilities to any pole or other structure for the intentional transmission or radiation of radio frequency emissions or energy through the ether by any means now known or hereafter developed. Further, the granting of a Permit does not authorize Permittee to attach or to occupy any property owned by the Borough, but for the Public Ways.

2.5 **CONSTRUCTION, EXCAVATION OR WORK AREA.** No Permittee shall perform construction, excavation, or work in an area larger or at a location different, or for a longer period of time than that specified in the Permit or Permit application. If, after construction, excavation, or work is commenced under an approved Permit, it becomes necessary to perform construction, excavation, or work in a larger or different area than originally requested under the application or for a longer period of time, the Permittee shall notify the Borough immediately and within twenty-four hours shall file a supplementary application for the additional construction, excavation, or work.

2.6 **PERMIT TRANSFERABILITY OR ASSIGNABILITY.** The applicant may subcontract the work to be performed under a Permit provided that the Permittee shall be and remain responsible for the performance of the work under the Permit and all insurance and financial security as required. Permits are transferable and assignable if the transferee or assignee posts all required security pursuant to this Ordinance and agrees to be bound by all requirements of the Permit and this Ordinance.

2.7 Any person or utility found to be conducting any excavation activity within the Public Way without having first obtained the required Permit(s) shall immediately cease all activity (exclusive of actions required to stabilize the area) and be required to obtain a Permit before work may be restarted. A surcharge to be set by Council resolution shall be required in addition to all applicable Permit fees.

2.8 **PERMIT APPLICATION**

A. An applicant for a Permit to allow construction, excavation, or work in the Public Way under this section shall:

1. File a written application on forms furnished by the Borough which include the following: the date of application; the name and address of the applicant; the name and address of the developer, contractor or subcontractor licensed to perform work in the Public Way; the exact location of the proposed construction, excavation or work activity; the type of existing public infrastructure (street pavement, curb and gutter, sidewalks or utilities) impacted by the construction, excavation or work; the purpose of the proposed construction, excavation or work; the dates for beginning and ending the proposed construction, excavation or Work; proposed hours of work; itemization of the total cost of restoration, based upon R.S. Means Estimating Standards or at the discretion of the Borough, other published street repair cost estimating standards; and type of work proposed.
2. Include an affirmative statement that the applicant or its contractor is not delinquent in payments due the Borough on prior work.
3. Attach copies of all Permits or licenses (including required insurance, deposits, bonding, and warranties) required to do the proposed work, and to work in the Public Way, if licenses or

Permits are required under the laws of the United States, the Commonwealth of Pennsylvania, or the ordinances or regulations of the Borough. If relevant permits or licenses have been applied for but not yet received, provide a written statement so indicating. Copies of any such permits or licenses shall be provided to the Borough within forty-eight (48) hours after receipt.

4. Provide a satisfactory plan of work acceptable to the Borough showing protection of the subject property and adjacent properties.
5. Provide a satisfactory plan for the protection of existing landscaping acceptable to the Borough, when the Borough determines that damage may occur.
6. Include a signed statement verifying that all orders issued by the Borough to the applicant, requiring the applicant to correct deficiencies under previous Permits issued under this ordinance, have been satisfied. This verification shall not apply to outstanding claims that are honestly and reasonably disputed by the applicant, if the applicant and the Borough are negotiating in good faith to resolve the dispute.
7. Include with the application engineering construction drawings or site plans for the proposed construction, excavation, or work.
8. Include with the application a satisfactory traffic control and erosion protection plan for the proposed construction, excavation, or work.
9. Include a statement indicating any proposed joint use or ownership of the Facility; any known existing Facility or Permit of the applicant at this location; any known existing Facility of others with which the proposed installations might conflict; and the name, address and telephone number of a representative of the applicant available to review proposed locations at the site.
10. Pay the fees prescribed by this ordinance.

B. Applicants shall update any new information on Permit applications within ten (10) days after any material change occurs.

C. Joint Applications. Applicants may apply jointly for Permits to work in Public Way at the same time and place. Applicants who apply jointly for Permits may share in the payment of the Permit fee. Applicants must agree among themselves as to the portion each shall pay.

SECTION 3
STANDARDS OF SERVICE

3.1 **CONDITIONS OF STREET OCCUPANCY**. All transmission and distribution structures, poles, other lines, and equipment installed or erected by the Permittee pursuant to the terms hereof shall be located so as to cause a minimum of interference with the

proper use of Public Ways and with the rights and reasonable convenience of property owners who own property that adjoins any of said Public Ways.

3.2 **RESTORATION OF PUBLIC WAYS**. If during the course of Permittee's construction, operation, and/or maintenance of the Facilities there occurs a disturbance of any Public Way of Permittee, Permittee shall, at its expense, replace and restore such Public Way to a condition which existed immediately prior to such disturbance and in a manner approved by the Borough. If Permittee excavates the surface of any Public Way, Permittee shall be responsible for restoration of the Public Way and its surface within the area affected by the excavation. The Borough may, after providing notice to Permittee, refill and/or repave any opening made by Permittee in the Public Way, and the expense thereof shall be paid by Permittee. The Borough reserves the right, after providing notice to Permittee, to remove and/or repair any work done by Permittee, which, in the sole determination of the Borough Engineer, is inadequate. The cost thereof, including the cost of inspection and supervision, shall be paid by the Permittee. All excavations made by Permittee in the Public Way shall be properly safeguarded for the prevention of accidents. All of Permittee's work shall be done in strict compliance with all applicable rules, regulations and ordinances of the Borough.

3.3 **RELOCATION AT REQUEST OF THE BOROUGH**. Upon its receipt of reasonable advance notice except under exigent circumstances, the Permittee shall, at its own expense, locate, protect, support, temporarily disconnect, relocate in the Public Way, and/or remove from the Public Way or other property owned by the Borough by reason of traffic conditions, public safety, street abandonment, freeway an street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, electrical conduits or any other type of structures or improvements by the Borough; provided, however, the Permittee in all such cases shall share proportionately with utility companies in any federal, state, or county funds awarded to The Borough specifically for any of the purposes enumerated above. Nothing in this section shall be construed to require the Borough to make applications for or seek a grant for any funds. Upon failure of the Permittee to commence, pursue, or complete any work required by law, (or by the provisions of Permittee's franchise, or any other applicable federal, state or local law, ordinance, rule or regulation) to be done in any Public Way or other public place within the time prescribed, and to the satisfaction of the Borough, the Borough, at its option, may cause such work to be done, and the Permittee shall pay to The Borough the cost thereof in the itemized amounts reported by the Borough to the Permittee within thirty (30) days after receipt of such itemized report. But, the Permittee, upon prior approval of the Borough, may elect to abandon any or all of the Facilities rather than relocate it.

3.4 **RELOCATION AT REQUEST OF THIRD PARTY**. The Permittee shall, on the request of any Person holding a requisite lawful permit issued by the Borough, temporarily raise or lower its wires to permit the moving of any equipment, building, material or otherwise provided: (a) the expense of such temporary raising or lowering of wires is paid by said person, including, if requires by the Permittee, making such payment in advance; and (b) the Permittee is given not less than ten (10) days advance written notice to arrange for such temporary wire changes. The Permittee may request

the Borough to temporarily raise or lower its wires to make other changes in its plant and equipment to accommodate Permittee's construction, which request shall be promptly considered by the Borough.

3.5 **TREES AND SHRUBBERY**. The Permittee shall notify the Borough and all affected property owners regarding Permittee's need to trim trees or other natural growth upon and overhanging Public Ways so as to prevent the branches of such trees from coming in contact with the Facilities of the Permittee; at the option of the Borough, such trimming may be done by the Borough at the reasonable expense of the Permittee, or by the Permittee under the Borough's supervision and direction at the expense of the Permittee. Trimming shall be limited to the area required for clear Facilities' passages and shall not include major structural branches which materially alter the appearance and natural growth habits of the tree. Permittee shall give the Borough and all affected property owners five (5) business days prior written notice of Permittee's intent to trim trees or other natural growth pursuant to this section.

3.6 **USE OF PERMITTEE'S EQUIPMENT BY THE BOROUGH**. Except as already set forth in this Ordinance and subject to any applicable state or federal regulations or tariffs, the Borough shall have the right to make additional use, for any purpose, of any poles or conduits controlled or maintained exclusively by or for the Permittee in any Public Way; provided that (a) such use by the Borough does not interfere with use by the Permittee; (b) the Borough holds the Permittee harmless from and against any and all claims, demand, costs, and/or liabilities of every kind and nature whatsoever arising out of such use of said poles or conduits, including, but not limited to, reasonable attorneys' fees and costs provided, however, that the Borough shall not hold harmless from claims and damages arising out of the willful or negligent acts caused by Permittee and, (c) at Permittee's sole discretion, the Borough may be required either to pay a reasonable rental fee or otherwise reasonably compensate Permittee for the use of such poles, conduits or equipment.

3.7 **SAFETY REQUIREMENT**. Construction, installation, and maintenance of the Facilities shall be performed in an orderly and workmanlike manner. All cable, wires, conductors and other components, elements and parts of the Facilities shall be installed, where possible, parallel with and in the same manner as electric and telephone lines. All such work shall be performed in accordance with applicable safety code or technical requirements, including but not limited to, National Electrical Safety Code (National Bureau of Standards); National Electrical Code (National Bureau of Fire Underwrites); Bell System Code of Pole Line Construction; and applicable FCC and/or other federal and state regulations. Multiple cable wires, lines, fiber optic cable, waveguides and/or other similar facility configurations shall be arranged in parallel and bundled with due respect for engineering considerations. The Facilities shall not endanger and/or interfere with the safety of persons or property in the Service Area. In particular, Permittee shall comply with all federal laws and/or regulations, which govern plant signal leakage and/or interference with communications media. Any antenna structure used in the Facilities shall comply with all construction, marking, and lighting of antenna structure requirements of the United States Department of Transportation (Federal Aviation

Administration), the Borough's zoning requirements and the FCC. If, at any time, it is determined by the Borough and/or any other agency or authority of competent jurisdiction that any part of the Facilities is harmful to the health and safety of any person, then the Permittee shall, at its own cost and expense, promptly correct all such conditions.

3.8 **MAPS**. Prior to beginning any construction, Permittee shall provide the Borough with a constructions schedule for work in the Public Ways which schedule shall be updated as changed. Upon completion of initial construction and upon completion of construction of any modification to the Facilities made after completion of initial construction, Permittee shall provide the Borough with the total amount of Public Ways, measured linearly, occupied by Permittee's Facilities, with a map showing the location of its installed Facilities in the Public Ways, as built. Such "as-built" maps shall be provided in both paper form, as well as in an electronic format for placement in the Borough's GIS system, each in a form acceptable to the Borough Engineer. Annually thereafter, Permittee shall provide a map to the Borough showing the location of Permittee's Facilities in the Public Ways on a scale of one hundred fifty feet (150') per inch or whatever standard scale the Borough adopts for general use.

3.9 **AERIAL AND UNDERGROUND CONSTRUCTION**. In those areas of the Service Area where all of the transmission or distribution facilities in the form of cables, wires, lines, fiber optic cable, waveguides and/or other similar facilities of the respective public utilities providing telephone communications and electric services are underground, the Permittee likewise shall construct, operate, and maintain all of its transmission and distribution facilities underground. In those areas of the Service Area where the transmission and/or distribution facilities of the respective public utilities providing telephone communications, and electric services are both aerial and underground, Permittee shall have the sole discretion to construct, operate, and maintain all of its transmission and distribution facilities, or any part thereof, aerially or underground. If at any time the Borough determines that existing wires, cables or other like facilities of public utilities anywhere in the Service Area shall be changed from an overhead to an underground installation, the Permittee shall also, at no expense to the Franchise Authority, convert its Facilities to an underground installation. Nothing in this section shall be construed to require the Borough to request such utility relocations. Permittee's design and engineering specifications shall take into account the existing landscaping of the property.

3.10 **EXCAVATIONS**. Permittee may make excavations in Public Ways for any Facility needed for the maintenance or extension of the Permittee's Facilities subject to obtaining excavation permits from the Borough. Prior to doing such work, Permittee must apply for, and obtain, appropriate permits from the Borough, and give appropriate notices to any other franchisees, licensees and/or permittees of the borough, and/or other units of government owning or maintaining facilities which may be affected by the proposed excavation.

3.11 **INSTALLATION OF SERVICE**. All installation of Facilities shall be performed in a workmanlike manner, using materials of good and durable quality with due regard to the preservation and protection of existing structures. All work to be performed in, on, or about the dwelling or structure of a customer or potential customer shall be performed under the reasonable direction or with the consent of such customer or potential customer.

3.12 **MAINTENANCE OF FACILITIES**. Permittee shall provide and put in use all Facilities necessary to control and carry Permittee's services so as to prevent injury to the Borough's property or property belonging to any Person within the Borough. Permittee, solely at its own expense, shall repair, renew, change and improve said Facilities from time to time as may be necessary to accomplish this purpose. Permittee shall not construct its Facilities in a manner that requires any customer, except the Borough, to install cables, ducts, conduits, or other facilities, in, under or over the Borough's Public Ways.

3.13 **EMERGENCY USAGE**. Permittee shall comply with emergency or disaster notification requirements of the Federal Communications Commission and all state and all local emergency and/or disaster agencies.

3.14 **TECHNICAL PERFORMANCE AND STANDARDS**. All performance and technical standards governing construction, reconstruction, installation, operation, testing, maintenance and dismantling of the Facilities provided herein shall be in accordance with all FCC and/or other applicable federal, state and local laws, ordinances and regulations.

3.15 **RESERVATION OF BOROUGH PUBLIC WAYS**. Nothing in any Permit shall be construed to prevent the Borough from constructing sewers, grading, paving, repairing and/or altering any street and/or laying down, repairing and/or removing water mains and/or constructing and/or establishing any other public work or improvement. If any of the Permittee's Facilities interferes with the construction or repair of any street or public improvement, including construction, repair or removal of a sewer or water main, the Permittee's Facilities shall be removed or replaced in the manner the Borough shall direct; provided, however, the Borough will cooperate with the Permittee to identify alternate locations within the Public Ways. Any and all such removal or replacement shall be at the expense of the Permittee. Should Permittee fail to remove, adjust or relocate its Facilities by the date established by the Borough Engineer's written notice to Permittee, the Borough may cause and/or effect such removal, adjustment or relocation, and the expense thereof shall be paid by Permittee, including all costs and expenses incurred by the Borough due to Permittee's delay.

3.16 **COMMON USERS**. Permittee acknowledges that the Public Ways have a finite capacity for containing conduits. Therefore, Permittee agrees that whenever the Borough Engineer determines it is impracticable to permit construction of an underground conduit system by an Person which may at the time have authority from the Borough to construct or maintain conduits or ducts in the Public Ways, the Borough Engineer may require Permittee to afford to such other Person the right to use Permittee's surplus ducts or

conduits in common with the Permittee, pursuant to the terms and conditions of an agreement for use of surplus conduits and ducts being entered into by the Permittee and the Licensee.

3.17 **NOTICE TO COMMON USERS**. The Permittee shall give a Licensee and the Borough one hundred twenty (120) days advance NOTICE OF Permittee's need to occupy a licenses conduit and shall propose that the Licensee take the first feasible action listed:

A. Pay conduit rent to Permittee designed to recover the cost of retrofitting the conduit with multiplexing, optical fibers, or other space-saving technology sufficient to meet the Licensee's space needs; or

B. Pay conduit rent to Permittee based on the cost of new conduit constructed to meet the Licensee's space needs; or

C. Vacate ducts that are no longer needed; or

D. Construct and maintain sufficient new conduits to meet the Licensee's space needs.

3.18 **OCCUPANCY RIGHT**. When two or more Licensees occupy a section of Conduit Facility, the last Licensee to occupy the Conduit Facility shall be the first to vacate or construct a new conduit. When conduit rent is revised because of retrofitting of space-saving technology and/or construction of new conduit, all Licensees shall bear the revised cost.

3.19 **SAFETY STANDARDS FOR LICENSEES**. All attachments shall meet local, state, and federal clearance and other safety requirements, be properly grounded and anchored, and meet the provisions of contracts executed between the Permittee and the Licensee. The Permittee may, at its option, correct any attachment deficiencies and charge the Licensee for its costs. Each Licensee shall pay the Permittee for any fines, fees, damages, or other reasonable costs the Licensee's attachments cause the Permittee to incur.

3.20 **REMOVAL OF EQUIPMENT**. Upon its failure to comply with this Rights of Way Ordinance the Borough shall have the right to require the Permittee to remove at its own expense all portions of the Facilities from all Public Ways. The Permittee shall within six (6) months after having been given written notice, remove from the Public Ways all such property of such Facilities other than any which the Borough may permit to be abandoned in place. In the event of such removal, the Permittee shall promptly restore the Public Way or other area from which such property has been removed to a condition as good as that previously prior to such work.

A. Any property of the Permittee remaining in place six (6) months after the Permittee is given notice pursuant to this Section 3.20 may at the option of

the Borough be considered permanently abandoned. The Borough may extend such time not to exceed an additional ninety (90) days.

B. Any property of Permittee which the Borough permits to be abandoned in place shall be abandoned in such manner as the Borough shall prescribe. Subject to the provisions of any utility joint use attachment agreement, upon permanent abandonment of the property of the Permittee in place the property shall become that of the Borough, and the Permittee shall submit to the Borough an instrument in writing, to be approved by the Borough, transferring to the Borough the ownership of such property.

SECTION 4
REGULATION BY THE BOROUGH

4.1 **PERMIT FEE.**

A. Before a Permit is issued pursuant to this Ordinance, the applicant shall pay to the Borough a Permit fee, which shall be determined in accordance with a fee schedule adopted by the Council by resolution. Fees will be reasonably related to the costs inherent in managing the Public Way. As used in this Ordinance, these costs include, but are not necessarily limited to, the costs of permitting rights of way occupants, verifying rights of way occupation, mapping rights of way occupations, inspecting job sites and rights of way restorations, administering this Ordinance, and costs incurred by the Borough relating to the degradation of the Public Ways, i.e., the cost to achieve a level of restoration as determined by the Borough at the time the Permit is issued.

B. The portion of the Permit fee relating to degradation/restoration costs shall be reduced by the Borough in cases where the applicant demonstrates to the satisfaction of the Borough that the excavation proposed will be used by two or more entities, legally and financially unrelated, for the installation, maintenance or repair of Facilities. The degradation/restoration cost portion of the Permit fee shall be further reduced in cases where the applicant demonstrates to the satisfaction of the Borough that the excavation to be made will be commenced and completed during the twenty-four (24) month period immediately prior to the scheduled repaving or resurfacing of a street, as indicated in the most recent edition of the Borough's Repaving Plan.

C. Any Permit for use or occupation of the Public Ways, where there is no underground construction involved, shall not require payment of a degradation fee as part of the Permit fee.

D. An applicant may avoid the imposition of a degradation/restoration fee if it agrees to perform the required restoration of the Public Way to the Borough's standards. The applicant shall decide at the time of application whether the applicant will perform the required restoration, and the applicant's decision shall

be final.

1. If the existing roadway pavement section is six (6) inches or less, the disturbed pavement area will be removed and the subgrade will be scarified and recompacted.

   a. for a full lane width if the cut is in the center third of a driving lane; or

   b. half the street if the cut is on one half of a two lane road, or outside the center third of an individual driving lane; or

   c. a minimum of twenty-six (26) feet wide if the cut is down the center of the road.

2. If the existing roadway pavement section is greater than six (6) inches, the restoration area is as provided in subsection 1 above, together with restoration requirements to rotomil two (2) inches and overlay the restoration limit area.

3. In all cases the longitudinal limits of restoration will extend past the street cut by a minimum of ten (10) feet in each direction.

E. That portion of any Permit fee relating to degradation/restoration costs shall be segregated by the Borough into an account to cover general street maintenance and construction.

SECTION 5
INSURANCE, INDEMNIFICATION AND BONDS OR OTHER SURETY

5.1 INSURANCE, INDEMNIFICATION AND BONDS OR OTHER SURETY.

A. Permittee shall save the Borough, its agents, employees and elected and appointed officials, harmless from and against all claims, damages, losses and expenses, including reasonable attorney's fees, sustained by the Borough on account of any suit, judgment, execution, claim or demand whatsoever arising out of the construction, leasing, operation or maintenance of the Telecommunications System authorized herein, whether or not any act or omission complained of is authorized, allowed and/or prohibited by the Franchise and the rights granted thereunder.

B. (1) Permittee shall obtain and maintain in full force and effect throughout the term of this Franchise insurance with an insurance company licensed to do business and doing business in the Commonwealth of Pennsylvania and acceptable to the Borough. All companies will be required to be rated A-VII or better by A.M. Best or A better by Standard and Poors. Permittee shall

provide the Borough with proof of such insurance so requires at the Effective Date. The Borough reserves the right to review these insurance requirements during the Franchise, and upon reasonable advance notice to Permittee, to reasonably adjust insurance coverage and their limits when deemed necessary and prudent by the Borough, based upon changes in statutory law, court decisions, and/or the claims history of the industry and/or the Permittee.

(2) Subject to Permittee's right to maintain reasonable deductibles in such amounts as are approved by the Borough, Permittee shall obtain and maintain in full force and effect for the duration of this Franchise, at Permittee's sole expense, insurance coverage in the following types and minimum amounts:

	Type	*Amount*
a.	Workers' Compensation and Statutory Employers Liability	$100,000/$500,000/$100,000
b.	Commercial General (public) Liability – to include coverage for the following where the exposure exists: - Premises operations - Independent contactors - Products/completed operations - Personal injury - Contractual liability - Explosion, collapse and underground property damage	Combined single limit for bodily injury and property damages $2,000,000 per occurrence or its equivalent
c.	Comprehensive Automobile insurance coverage for loading and unloading hazards, for: - Owned/leased automobiles - Non-owned automobiles - Hires automobiles	Combined single limit of bodily injury and property damage $1,000,000 per occurrence or its equivalent

(3) The Borough shall receive without expense copies of certificates of insurance evidencing coverage sated above. The Borough may make reasonable requests for deletion, revision or modification of particular policy terms, conditions, limitations or exclusions, except where policy provisions are established by law or regulation binding upon either the Borough or Permittee or upon the underwriter for any of such policies. Upon request for deletion, revision or modification by the Borough, Permittee shall exercise its

best reasonable efforts to accomplish the changes and shall pay the cost thereof.

(4) Permittee agrees that with respect to the above-required insurance, al insurance certificates will contain the following required provisions.

a. Name the Borough and its officers, employees, Council members and elected and appointed officials as additional insured parties (as the interests of each insured may appear) as to all applicable coverage (except workers' compensation);

b. Provide for thirty (30) days written notice to the Borough for cancellation, non-renewal, or material change;

c. Provide that all provisions of this Franchise concerning liability, duty, and standard of care, including the Indemnity provisions, shall be underwritten by contractual coverage sufficient to include such obligations within applicable policies, subject to policy terms and conditions.

(5) Companies issuing the insurance polices shall have no recourse against the Borough for payment of any premiums or assessments which all are set at the sole risk of the Permittee. Insurance policies obtained by Permittee shall provide that the issuing company waives all rights of recovery by way of subrogation against the Borough in connection with damage covered by these policies.

C. (1) Permittee shall obtain and maintain, at its sole cost and expense, and file with the Borough, a corporate surety bond with a company authorized to do business in the Commonwealth of Pennsylvania and found acceptable by the Borough, in the amount of fifteen percent (15%) of Permittee's estimated project costs to secure Permittee's performance of its obligations and faithful adherence to all requirements of this Franchise. The Borough shall have the right to verify all such estimated project costs and to require Permittee to increase the amount of said bond accordingly.

(2) The rights reserved to the Borough with respect to the bond are in addition to all other rights of the Borough, whether reserved by this Franchise or authorized by law; and no action, proceeding or exercise of a right with respect to such bond shall affect the Borough's rights to demand full and faithful performance under this Franchise or limit Permittee's liability for damages.

(3) The bond shall contain the following endorsement: "It is hereby understood and agreed that this bond may not be cancelled by the surety nor any intention not to renew be exercised by the surety until sixty (60) days

after receipt by the Borough of Blawnox, by registered mail, or written notice of such intent."

D. All expenses of the above-noted insurance and bond shall be paid by the Permittee.

E. The insurance policies mentioned herein shall contain an endorsement stating the following:

> Should any policies of insurance be cancelled or coverage be reduced, before the expiration date of said policies of insurance, the issuer shall deliver thirty (30) days advance written notice to the Borough.

F. Neither the provisions of this Agreement not any insurance accepted by the Borough pursuant hereto, nor any damages recovered by the Borough thereunder, shall be construed to excuse faithful performance by the Permittee and/or limit the liability of the Permittee under the Franchise issued hereunder and/or for damages, either to the full amount of the bond or otherwise.

SECTION 6
ENFORCEMENT AND TERMINATION OF PERMITS

6.1 GENERAL. In addition to all other rights, remedies and powers reserved and/or retained by the Borough under this Rights of Way Ordinance or otherwise, the Borough reserved the right to forfeit and revoke any permit and all rights and privileges of Permittee in the event of willful or repeated violation of this Ordinance.

6.2 PENALTIES. Any Person which commits or suffers the violation of the Ordinance, shall, upon being found liable in a civil enforcement proceeding commenced by the Borough, pay a fine of Six Hundred Dollars ($600.00) plus all court costs, including reasonable attorneys fees incurred by the Borough. A separate offense shall arise for each day or portion thereof in which a violation is found to exist or for each section of this Ordinance which is found to have been violated. In addition, to civil actions before a District Justice, the Borough may enforce this Ordinance in an action in equity brought in the Allegheny County Court of Common Pleas.

SECTION 7
MISCELLANEOUS PROVISIONS

7.1 COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES. The Permittee shall, at all times during the term of this Agreement, be subject to the exercise of the police power by the Borough and to such other lawful ordinances, rules and regulations as the Borough shall hereafter adopt. There is hereby reserved to the Borough every right and power which is required to be herein reserved or provided by any ordinance, rule or regulation of the Borough, and the Permittee shall comply with any

action or requirements of the Borough in its exercise of such right or power heretofore or laws, rules and regulations of the Borough, County of Allegheny, Commonwealth of Pennsylvania, and the United States of America which are now in effect or hereafter enacted.

7.2 CONFLICT. Whenever the requirements of this Ordinance are in conflict with other requirements of the Ordinances of the Borough of Blawnox, the most restrictive, or those imposing the highest standards shall govern and award of a Franchise by the Borough does not constitute a waiver or impairment of the rights of the Borough at law or equity now or hence forth existing to proceed versus Permittee for enforcement of the Franchise or violation of the Franchise or ordinances of the Borough.

7.3 EFFECTIVE DATE. This Ordinance shall become effective five (5) days after the date of its within enactment.

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SECTION 2. The provisions of this Ordinance are severable. If any section, clause, sentence part or provision thereof shall be held illegal, invalid or unconstitutional by any court of competent jurisdiction, such decision of the Court shall not affect or impair any of the remaining Sections, clauses, sentences, parts of provisions of the Ordinance. It is hereby declared to be the intent of the Borough Council that this Ordinance would have been adopted if such illegal, invalid or unconstitutional Section, clause, sentence or part of a provision has not been included herein.

SECTION 3.

DULY ADOPTED THE 18th DAY OF November, 2004.

ATTEST:

BOROUGH OF BLAWNOX

S/
Sherry Kordas
Borough Manager/Secretary

S/
Samuel H. McNaughton, Jr.
President

ENTERED INTO LEGAL BOOK ON _____

Examined and approved this 18th day of NOV, 2004.

S/
Thomas M. Smith, Mayor

RESOLUTION NO. 2004-13

A RESOLUTION OF THE BOROUGH OF BLAWNOX, ALLEGHENY COUNTY, PENNSYLVANIA, AMENDING RESOLUTION NO. 505 ESTABLISHING A PERMIT FEE FOR REGULATING ACCESS TO AND WORK IN THE PUBLIC RIGHTS-OF-WAY AND FOR INSPECTIONS AND COMPLIANCE WITH ORDINANCE NO. 542

WHEREAS, the Council of the Borough of Blawnox has adopted Ordinance No. 542 an Ordinance which provides for the regulation of access to and work in the public rights-of-way as well as for inspections and compliance with the terms and conditions of the aforesaid Ordinance;

WHEREAS, Section 4 of Ordinance No. 542 requires an entity to obtain a permit fee to permit the Borough to recoup its cost of permitting rights-of-way occupants, verifying rights-of-way occupation, mapping rights-of-way occupations, inspecting job sites and rights-of-way restorations, administering this Ordinance, recouping costs relative to the degradation of public ways and inspecting facilities placed within the rights-of-way of the Borough.

NOW, THEREFORE, be it resolved by the Council of the Borough of Blawnox, and it is hereby resolved as follows:

Section 1. Resolution No. 505 is hereby amended to read as follows:

RIGHT OF WAY PERMIT FEE

1. ADMINISTRATIVE COST OF PERMITTING RIGHTS OF WAY OCCUPANTS, ADMINISTRATION OF ORDINANCE	$30.00 PER HOUR
2. VERIFYING RIGHTS-OF-WAY OCCUPATION, INSPECTING JOB SITES AND RIGHTS-OF-WAY RESTORATIONS	$40.00 PER HOUR

Exhibit "2"

3. THE DEGREDATION/ RESTORATION COST	ACTUAL COST TO RESTORE RIGHT-OF-WAY
4. ANNUAL INSPECTION FEE	$900.00 PER YEAR

Section 2. Any Resolution or part of a Resolution in conflict herewith is hereby repealed.

Section 3. If any provision of this Ordinance or the application thereof to any PERSON or circumstance is held invalid, such holding shall not affect the other provisions or applications of this Ordinance which can be given effect without the invalid provisions or application, and to this end, the provisions of this Ordinance are declared severable.

RESOLVED this 18 day of NOV, 2004.

WITNESS:

BOROUGH OF BLAWNOX

S/
Sherry Kordas,
Borough Secretary

S/
Samuel H. McNaughton, Jr.
President

Examined and Approved by me this 18th day of NOV, 2004.

S/
Thomas Smith, Mayor

CERTIFICATE OF SERVICE

I hereby certify that on January 25, 2005, I served a copy of the foregoing on the persons listed below by depositing a copy of same in the U.S. Mail, with first class postage paid to

Charles B. Stockdale, V.P. & Corporate Counsel
Robert T. Witthauer, Deputy Corporate Counsel
Fibertech Networks, LLC
140 Allens Creek Road
Rochester, New York 14618

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