



New York State Thruway Authority

OCCUPANCY PERMIT APPLICATION

**For Official Use Only**

New  Amended

Occupancy Permit Number:  
**4005**

Work Permit Number:

**APPLICANTS:** Please read and complete Sections 1, 2, 4, 5 (print or type) and sign Section 7. Any missing or incorrect information may cause a delay in the processing of your application.

**Section 1: APPLICANT IDENTIFICATION INFORMATION**

Check one:  
 Individual  Business/Corporation  Municipality  Other (please describe): \_\_\_\_\_

Name: Williams Communication Inc Federal ID or SS#: 73-1349451

Mailing Address:  
 Street: 110 U 7th Suite or Apt. No. 500 P.O. Box \_\_\_\_\_  
 City/Town/Village: Tulsa State: OK Zip Code: 74119

Contact Person Name (please print): Jess Nelson Telephone Number: 918 1573 0068 ext. \_\_\_\_\_ Fax Number: 918 1573 6389

**Section 2: FACILITY IDENTIFICATION INFORMATION**

TYPE OF FACILITY (Check one):  
 Water Mains  Telephone  Other (please describe): Fiber Optic  
 Gas Mains  Cable Television  
 Sewers  Electric \_\_\_\_\_ Voltage \_\_\_\_\_

LOCATION OF FACILITY (Check one):  
 Underground  Aerial  
 Surface  Bridge Attachment

PURPOSE OF APPLICATION (Please provide brief description and location):  
575' connection under Castleton Bridge  
which consists of (12) 1 1/4" conduits and vault.

**Section 3: FOR THRUWAY USE ONLY**

FACILITY LOCATION MILEPOST BOUNDARY Beginning Milepost Number <u>81.4</u>	FACILITY LOCATION CITY/TOWN/VILLAGE (use beginning milepost to make determination) <u>Schodack</u>	FACILITY LOCATION COUNTY (use beginning milepost to make determination) <u>Rensselaer</u>
Only if longitudinal (include Ending Milepost Number <u>81.5</u> )		

FACILITY LOCATION DIVISION (Check one):  
 (Use beginning milepost number to make determination; see Section 9 for further information)

New York  Albany  Syracuse  Buffalo

TA-41337 (2/93) 2 of 4

**Section 4 PLEASE READ THOROUGHLY BEFORE SIGNING**

Authority lands are devoted to public use. Permits, therefore, are by sufferance and the duration thereof is at the Authority's discretion, regardless of the length of term granted. All permits are, therefore, revocable unilaterally by the Authority. The permittee will maintain all installations permitted hereunder subject to the risk of relocating or removing them at the permittee's own expense, in accordance with the directions of the Authority.

**Section 5 ADDITIONAL INFORMATION**

It is absolutely necessary that the permittee notify the appropriate Thruway Authority Division Director at least 24 hours before work is started and upon its completion. Similar notification is required in case of any future replacements or repairs.

If you need quick and accurate identification of New York State permits necessary for a complex business venture, use the State's Master Application Procedure by dialing 1-800-342-3464 and describing your plans to the Governor's Office of Regulatory Reform (GORR).

Write or Call the Thruway Division Checked on the Back of this Application.  
 If You Have Further Questions About This Permit.

*Applicant continue with Section 6*

**Section 6 FOR THRUWAY USE ONLY**

<b>Administrative Fee:</b> <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> Original \$ <u>750.00</u> <input type="checkbox"/> Amended \$ _____	<b>Annual Fee required:</b> <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> Original \$ <u>96,000.00</u> <input type="checkbox"/> Amended \$ _____	<b>Performance Bond:</b> <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> Original \$ _____ <input type="checkbox"/> Amended \$ _____	<b>Security Deposit:</b> <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> Original \$ _____ <input type="checkbox"/> Amended \$ _____
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**APPROVAL (If Applicable):**


Donald F. Broth
7/6/00  
 SIGNATURE OF FEE APPROVAL PLEASE PRINT NAME DATE

<b>Subject to Back Charges:</b> <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	<b>Subject to Liquidated Damages:</b> <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	<b>Type of Insurance Furnished:</b> <input checked="" type="checkbox"/> TA-51333 <input checked="" type="checkbox"/> Expiration Date _____ <input type="checkbox"/> Undertaking, effective date _____ <input type="checkbox"/> Duplicate policy # _____ Effective date _____ <input type="checkbox"/> TA-51318 Engineering Agreement
<b>Condition Rider attached:</b> <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		

**Section 7 APPLICANT AFFIRMATIONS**

Application is hereby made by the undersigned in accordance with the map and/or plan hereto attached, and subject to the RULES AND REGULATIONS OF THE NEW YORK STATE THRUWAY AUTHORITY and to the NEW YORK STATE THRUWAY AUTHORITY OCCUPANCY AND WORK PERMIT ACCOMMODATION POLICY (TAP-401) and any CONDITION RIDER or amendments thereto forming a part hereof. This applicant will obtain any other consents or permits that may be necessary to accomplish the purposes set forth above, as it is understood that in granting a permit, the New York State Thruway Authority merely expresses its assent in so far as it is authorized.

In consideration of the granting of a permit, the undersigned hereby accepts the same subject to the conditions therein described.

Dated this 30th day of June 19 2000

X Jess Nelson Project Manager Construction  
SIGNATURE OF APPLICANT TITLE  
(if applicable)  
X Jess Nelson  
PLEASE PRINT NAME

**Section 8 FOR THRUWAY USE ONLY**

Permission is hereby granted to Williams Communications, Inc. (hereinafter referred to as "permittee") to proceed as set forth and represented in the foregoing application and at the particular location described therein in accordance with the map and/or plan thereto attached and subject to the RULES AND REGULATIONS OF THE NEW YORK STATE THRUWAY AUTHORITY and to the NEW YORK STATE THRUWAY AUTHORITY OCCUPANCY AND WORK PERMIT ACCOMMODATION POLICY (TAP-401) and any amendments thereto which are incorporated herein as though fully set forth and to all terms and conditions set forth in any CONDITION RIDER and all terms attached hereto.

Dated at ALBANY, N.Y. this 6th day of July 19 2000.

Arthur O'Donnell  
Arthur O'Donnell, P.E.  
Director  
Dept. of Engineering Services

Michael J. Rose  
SIGNATURE  
Michael J. Rose, P.E.  
PLEASE PRINT NAME  
Division Director  
TITLE

**SUBMIT PERMIT APPLICATIONS TO THE APPROPRIATE THRUWAY AUTHORITY DIVISION DIRECTOR**

<u>DIVISION</u>	<u>HIGHWAY SECTIONS</u>	<u>DIVISION MILEPOST LIMITS</u>
<input type="checkbox"/> New York	New York (Main Line) • Garden State Parkway Connection • New England Section • I-287 Cross Westchester • I-84	0.00 - 76.50 G.S. 0.00 - G.S. 2.40 N.E. 0.17 - N.E. 15.01 C.W.E. 0.00 - C.W.E. 10.90 0.00 - 71.48
<input type="checkbox"/> Albany	Albany (Main Line) • Berkshire Section	76.50 - 197.90 B 0.00 - B 24.28
<input type="checkbox"/> Syracuse	Syracuse (Main Line)	197.90 - 350.60
<input type="checkbox"/> Buffalo	Buffalo (Main Line) • Niagara Section	350.60 - 496.00 N 0.00 - N 21.50

TELEPHONE NUMBERS AND ADDRESSES

Thruway Division Director  
New York Division  
333 South Broadway  
Tarrytown, NY 10591-5697  
Phone: (914) 524-0290  
Fax: (914) 332-8509

Thruway Division Director  
Albany Division  
9W, Interchange No. 23  
P.O. Box 189  
Albany, NY 12201-0189  
Phone: (518) 436-2999  
Fax: (618) 436-0233

Thruway Division Director  
Syracuse Division  
Mailing Address: P.O. Box 308  
East Syracuse, NY 13057-0308  
Location: 6712 Brooklawn Parkway  
Syracuse, NY  
Phone: (315) 437-2741  
Fax: (315) 463-5835

Thruway Division Director  
Buffalo Division  
3901 Genesee Street  
Cheektowaga, NY 14225-0121  
Phone: (716) 631-9017  
Fax: (716) 626-1328

NOTE: For the Cross Westchester Expressway (I-287), the New York State Department of Transportation shall issue Occupancy Permits and the Thruway Authority shall issue Work Permits.

# CONFIDENTIAL

## RIDER TO OCCUPANCY PERMIT APPLICATION

Pursuant to an agreement between the Authority and MFSNT (now Adesta), whereby a Fiber Optics Facility was constructed on the Authority ROW, and MFSNT was authorized to enter User agreements subject to Authority approval. Williams Communications, Inc. (Williams) entered an agreement approved by the Authority with MFSNT to use that facility. Williams also entered an amendment approved by the Authority denominated: "Third Addendum to User Agreement for Innerduct and Dark Fiber" dated December 2, 1999. Williams has requested an occupancy permit to expand the Facility with an additional fiber access connection at the subject location. The Authority has agreed to issue such permit upon the terms and conditions hereof, including that Williams shall obtain agreement from Adesta that Adesta shall construct and be responsible for such expanded Facility, and that Williams shall pay the Authority an annual connection fee.

The following additional terms and conditions are incorporated into form TA-41337 (2-98), the Occupancy Permit Application (which, inter alia, incorporates by reference the terms and conditions of the New York State Thruway Occupancy and Work Permit Accommodation Policy). In the event of any conflict or inconsistency between this Rider and the terms of the form TA-41337 (2-98), the terms of this Rider shall govern and control.

### 1. Definitions.

The following terms when used in this Rider shall have the following meanings:

**Permit Agreement:** This Rider, form TA-41337 (2-98), and all documents incorporated therein, are hereinafter referred to as the "Permit Agreement."

**Adesta:** Adesta Communications, Inc. (formerly known as MFS Network Technologies, Inc.), its successors and assigns.

**Authority:** The New York State Thruway Authority, its successors and assigns.

**Permittee:** Williams Communications, Inc., its successors and assigns (or Williams).

### A. General

The purpose of this Permit Agreement is to set forth the terms and conditions for an additional fiber access connection for Williams' communication system at New York State Thruway Milepost 1.6, approximately 575 feet to the Thruway ROW line at Route 9J under the Castleton Bridge (the Permit Area).

1. NYSTA shall permit Williams to connect a 96 fiber cable in each of two innerducts to the ROW at RT 9J. Williams shall obtain agreement with Adesta to expand its existing Facility to accommodate and arrange for the construction of such connection in accordance with the design criteria herein. In addition to this permit, a work permit shall be required for any specific construction or maintenance work activity on Authority property. The design plans and the Permit Area shall be approved by the Division Director and the Chief Engineer of NYSTA or his designee prior to issuance of a work permit. As-builts shall be filed with the Chief Engineer.

Construction details shall include the following: 12 1/4 inch innerducts (6 in and 6 out) connected to the existing facility at a hand hole, and proceeding thence to an underground work vault on Authority property, adjacent to the Authority ROW line, with inner dimensions of 12 x 7 x 6 feet minimum, and thence to the Authority ROW line at a point safely and practicably accessible for construction and maintenance from off-ROW public property. In all other respects, construction details shall be the same as the existing Adesta facility.

2. Permittee shall require Adesta, at no cost or expense to NYSTA, to be responsible for the construction and maintenance of the additional access connection. Adesta may perform such work through contractual arrangements with others including Williams or Williams' contractors.
3. Permittee shall comply with all applicable laws, rules and regulations, including, without limitation, all environmental laws.
4. In addition to and not in limitation of Permittee's liability and indemnification obligations pursuant section IV B of the Occupancy and Work Permit Accommodation Policy, in no event shall Permittee be entitled to recover lost profits or consequential damages from the Authority.
5. NYSTA shall have the right to approve final plans for the installation and location of the additional fiber access connection.
6. Permittee shall require Adesta to provide NYSTA with evidence of insurance in amounts and form reasonably satisfactory to NYSTA with respect to all construction activity to be performed by or on behalf of Permittee.
7. Permittee shall require Adesta to relocate the additional fiber access connection at its sole cost if NYSTA, in its sole discretion, requires relocation for any reason.

8. At the expiration of the Agreement, title to the facility and cable shall be governed by the existing agreements between Adesta and the NYSTA and Adesta and Williams.
9. Permittee shall not use the Thruway for access to the fiber access connection from the Thruway. Therefore, access for all construction and maintenance activities shall be exclusively from the ROW line.
10. Permittee asserts that a dispute has arisen between the parties in relation to Permittee's rights to an additional fiber access connection at the subject location. Permittee and the Authority are desirous of resolving all disputes with the connection at Route 9J and they acknowledge and agree that this Permit Agreement will settle any such disputes. Permittee hereby settles and releases and agrees to hold harmless the Authority from any claim it may have with respect to this Permit Agreement or any other agreement it may have with the Authority or Adesta concerning an additional fiber access connection proximate to Route 9J at or near the Castleton Bridge.
11. This Permit Agreement shall not be construed as an admission on the part of any party and, inasmuch as it is entered into in settlement of alleged disputes related solely to the Route 9J connection, shall not be admissible for any purpose in connection with any other dispute, claim or litigation.

**B. Economic Terms**

Rent shall be paid as follows:

- (1) Rent shall be payable (i) at the rate of \$500 per lit fiber per annum for any fibers Alit in either the first or second innerducts in the Permit Area and (ii) at the rate of \$333 per Alit fiber per annum for any fibers lit in either the third or fourth innerducts in the Permit Area. Rent shall be escalated annually by an amount equal to the increase in Albany, New York Consumer Price Index, but in no event greater than 5% or less than 2.54% compounded per annum. For purposes hereof, the term "lit" shall mean that the fiber is actively transmitting, or capable of actively transmitting, data or other information at any speed or frequency. Upon the execution of the Agreement, 96 fibers shall be deemed lit in each of the first and second innerducts.
- (2) Rent for the first year (i.e., the date of execution of the Agreement through the end of the first anniversary thereof) shall be paid upon the execution of this Term Sheet by Permittee. During the term of the Agreement, rent for

each other year shall be paid annually in advance on or before each anniversary of the date of the Agreement.

C. Term

The term of the Agreement shall commence upon the date of execution of the Agreement and shall terminate upon the termination of the User Agreement. Notwithstanding anything to the contrary in this Permit Agreement, absent a material breach by Permittee of this Permit Agreement, this Permit may not be revoked prior to the end of the term of the User Agreement.

D. Restrictions/NYSTA Reserved Rights

1. Permittee may not assign or transfer its rights or obligations hereunder, either voluntarily or involuntarily, with respect to the leased space to any other party without the prior written consent of NYSTA. Notwithstanding the foregoing, this Section shall not prevent the lease or license of fiber strands, the provision of indefeasible rights of use grants, leases or other rights to use such fibers in Permittee's system to third party customers of Permittee. Furthermore, with each such notice, Permittee shall certify that such licensee, sub-lessee or other user has no involvement, affiliation or known contact with any entity intending to utilize the facility for an illegal purpose or entity, individual or member of any organized crime organization or similar criminal enterprise. Nothing contained herein shall prevent or impair NYSTA from transferring or assigning the Thruway, the Agreement or any of its rights or obligations thereunder.
2. The rights granted to Permittee under the Agreement shall be non-exclusive.
3. Additional terms:

Holding Over.

Any holding over by the Permittee after the expiration of the Term without the Authority's prior written consent shall be treated as a daily tenancy at sufferance at a rate equal to 1.50 times the Fixed Rent then in effect plus other charges herein provided (prorated on a daily basis). The Permittee shall also pay to the Authority all damages, direct and/or indirect, sustained by reason of any such holding over. Otherwise, such holding over shall be on the terms and conditions set forth in this Agreement as far as applicable.

**Entire Agreement.**

This Permit Agreement granted in conjunction with the User Agreement of April 12, 1999 and the Third Addendum to User Agreement for Innerduct and Dark Fiber dated December 2, 1999, contains the entire agreement between the parties hereto regarding the subject matter hereof. Other than as noted, any prior or contemporaneous oral or written representations, agreements, understanding and/or statements shall be of no force and effect, except that the Work Permit shall remain in full force and effect.

**Waiver: Amendment.**

No modification, waiver, amendment, discharge or change of this Agreement shall be valid unless the same is in writing and signed by the party against which the enforcement of such modification, waiver, amendment, discharge or change is or may be sought.

**Joint Venture.**

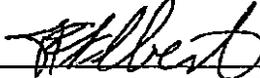
Nothing contained in this Agreement shall be construed to create a partnership, a joint venture, an association, a trust or other entity, nor to constitute either party as the agent of or for the other.

**Severability.**

If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

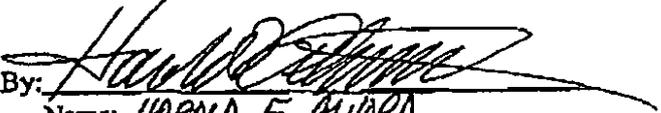
Agreed to and acknowledged as of the date first above written by individuals duly authorized on behalf of the parties hereto.

WILLIAMS COMMUNICATIONS, INC.

By:   
Name: **T. F. ELBERT**  
Title: **Attorney-in-fact**

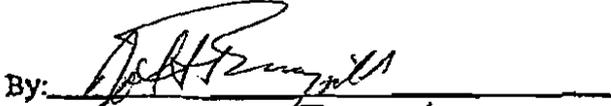
By its execution below Adesta agrees, with respect to this additional access connection, (1) to construct and maintain the Vault and Twelve innerducts to be installed herein at no cost or expense to NYSTA, (2) that NYSTA shall be entitled to all rent payable by Permittee on account of the transaction contemplated hereby, (3) that Adesta shall perform any locates or relocations without charge to the Authority, and (4) that the Authority will not be responsible for any damages except for gross negligence or intentional damage.

ADESTA COMMUNICATIONS, INC.

By:   
Name: HAROLD F. ALVORD  
Title: SR VP, CONSTR & ENGRG

Agreed and Permitted this 7<sup>th</sup> day of July 2000.

NEW YORK STATE THRUWAY AUTHORITY

By:   
Name: John T. Brizzell  
Title: Dep. Exec. Director

**FIELD PAYMENT RECEIPT  
WORK/OCCUPANCY PERMITS AND REVIEW FEES**

White-Finance Yellow-Division Pink-Payer (See instructions on Reverse Side)

Received From (Print Name):

*Williams Communications*

Date:

*7/6/00*

Address:

Amount Received:

*\$ 750.00*

METHOD OF PAYMENT:

- Cash
- Check # *159386*
- Money Order # \_\_\_\_\_

PURPOSE OF FUNDS:

- Work Permit # \_\_\_\_\_
- Occupancy Permit - \*See note below. *1*
- Security Deposits
- Other Engineering Review Fees - Attach correspondence explaining fee collection.

RECEIVED BY:

*[Signature]*  
(Signature)

PRINT Name & Title:

*Donald F. Broth*  
*Civil Engr I*

DIVISION:

- New York  Syracuse
- Albany  Buffalo

\* NOTE TO OCCUPANCY PERMIT APPLICANT:

The Authority's acceptance of the above funds assures that the Authority will perform an engineering analysis on your Occupancy Permit Application. these funds do NOT assure that you will be issued an Occupancy Permit.

COMMENTS:

*\$750.00 - Occupancy Permit #4605  
Application Review Fee*



# Exhibit 16

## Contract Brief

File Number C00727  
 Contract Name RIDER TO OCCUPANCY PERMIT APPLICATION - REGEN - SITE #4 - DUNKIRK  
 Contract From Williams Communications, Inc.  
 Contract To New York State Thruway Authority  
 Agreement Type Permit  
 Effective Date 11/13/2000  
 Evergreen No

To Party Notice Address New York State Thruway Authority  
 Director Albany Div. Thruway  
 P O Box 189  
 Albany, NY 12201

Consideration Annual Fee: \$18,000, subject to annual escalation by same percentage as Albany, NY CPI, but in no event shall increase be greater than 5% or less than 2.54%.

Legal Additional fiber access connection for Williams' system at New York State Thruway Milepost 476.76 to Williams' off-Thruway regen located at Lake Avenue and Route 380 (Site #4) within Authority's Buffalo Division and designated by Milepost 476.76 ("DUNKIRK REGENERATION CONNECTION")

Term Term of Permit Agreement shall terminate upon termination of User Agreement (20 years after acceptance of Williams Fibers)

Termination Except for default by Permittee, Permit may not be revoked prior to end of term of User Agreement

Insurance Requirements Williams shall require Adesta to provide Authority with proof of insurance. (Section 6)

Deliverables Williams shall file as-builts with the Authority's Chief Engineer upon completion of construction. (Section 1)

Comments User Agreement for Innerduct (4/12/99) between MFS Network Technologies (NOW ADESTA) and Williams - C00137.004 (99E0591.00). ADDITIONAL FIBERS: If additional fibers are installed in either of Williams' two innerducts on the backbone Facility, Williams shall promptly notify Authority of each fiber and of each Authority approved access connection location to such Facility that it intends to use. Williams shall notify Authority of any additional fibers to be installed at regen location. Failure to provide such notice shall be deemed a material breach of Agreement. Permit Agreement will be amended to reflect such addition and set forth additional fees. (Section II)

Assignability Permittee may not assign or transfer rights without prior written consent of Authority. Permittee may lease or license fiber strands, grant IRUs, leases or other rights to use such fibers to third party customers. (Section II, D)

Relocation Williams shall require Adesta to relocate the additional fiber access connection at no cost to Authority if Authority requires relocation for any reason; however, this does not alter Williams' obligation to reimburse Adesta under the User Agreement. (Section 7)

Maintenance Adesta, at no expense to the Authority, responsible for construction and maintenance of the additional connection. (Section 2)

**Contract Brief**

**Line Information** Williams permitted to connect one (1) 96-fiber cable in each of two (2) innerducts from Facility to ROW line. Williams shall construct three (3) ducts, each containing four (4) 1.25" innerducts, from Vault to ROW line, and a single trench containing twelve (12) 1.25" innerducts from Vault to Facility. (Section I)

**Line Names** Cleveland to New York - Cleveland to Yonkers;

**Line States** Test State;

**Line Counties** Sample County (XX);

**C00727 IRU**

**Iru Type**

**Third Party Name**

**Line Segment**

**Mileage**

**Comments**

**IRU Line Components**

**IRU Line Names**

**IRU Line States**

**IRU Line Counties**

**RIDER TO OCCUPANCY PERMIT APPLICATION**

Pursuant to an agreement between the New York State Thruway Authority (the "Authority") and MFS Network Technologies, Inc. ("MFSNT") (now known as "Adesta Communications, Inc. ("Adesta")), whereby a Fiber Optics Facility was constructed within the Authority ROW (the "Facility"), and MFSNT was authorized to enter User agreements subject to Authority approval, Williams Communications, Inc. ("Williams") entered into an agreement approved by the Authority with MFSNT to use that Facility. Williams has requested an occupancy permit to expand the Facility by means of an additional fiber access connection at the subject location. The Authority has agreed to issue such permit upon the terms and conditions subject location. The Authority has agreed to issue such permit upon the terms and conditions hereof, including that Williams shall obtain agreement from Adesta that Adesta (or its ~~contractors, including Williams, if Adesta contracts with Williams to perform the work~~) shall construct and be responsible for such expanded Facility, and that Williams shall pay the Authority an annual connection fee as rent.

The following additional terms and conditions are incorporated into form TA-41337 (2-98), the Occupancy Permit Application (which, inter alia, incorporates by reference the terms and conditions of the New York State Thruway Occupancy and Work Permit Accommodation Policy). In the event of any conflict or inconsistency between this Rider and the terms of the form TA-41337 (2-98), the terms of this Rider shall govern and control.

**I. Definitions**

The following terms when used in this Rider shall have the following meanings:

Permit Agreement: This Rider, form TA-41337 (2-98) and, all documents incorporated therein, are hereinafter referred to as the "Permit Agreement."

Adesta: Adesta Communications, Inc. (formerly known as MFS Network Technologies, Inc.), its successors and assigns.

Authority: The New York State Thruway Authority, its successors and assigns.

Permittee: Williams Communications, Inc., its successors and assigns (or Williams).

**II. General**

The purpose of this Permit Agreement is to set forth the terms and conditions for an additional fiber access connection for Williams's communications systems at New York State Thruway Milepost 476.76, approximately \* feet to the Thruway ROW line at \* (the "Permit Area") to an off-Thruway regeneration facility ("Regeneration Station") owned or leased by the Permittee. This connection is generally described as being located at Lake Avenue and Route 380 (Site No. 4) within the Authority's Buffalo Division and designated by Drawing Milepost 476.76 ("Dunkirk Regeneration Connection").

\*See attached site drawings within Occupancy Permit

*Regeneration Rider for Site No. 4 (Dunkirk) MP No. 476.76*

1. The Authority shall permit Williams to connect one 96 fiber cable in each of 2 innerducts from the Facility to the ROW line, provided that Williams carry out such connection by constructing: (a) three ducts, each containing four (4) 1¼ inch innerducts, from the Vault to the ROW line; and (b) a single trench containing twelve (12) 1¼ inch innerducts from the Vault to the Facility all as more particularly described in the plans attached hereto as Exhibit 1. For purposes of clarification, from the Facility to the Vault, each of the 96 fiber cables shall be contained in one innerduct and from the Vault to the Right of Way line, each of such cables shall be contained in one innerduct. Williams shall obtain agreement with Adesta to expand its existing facility to accommodate and arrange for the construction of such connection in accordance with the design criteria herein. In addition to this permit, a work permit, which work permit shall contain any and all conditions required by the Authority, shall be required for any specific construction or maintenance work activity on Authority property. The design plans and the Permit Area shall be approved by the Division Director and the Chief Engineer of the Authority or his designee prior to issuance of a work permit. As-builts shall be filed with the Chief Engineer and incorporated into this Permit Agreement when completed.

Construction details shall include the following: twelve (12) 1¼ inch ducts (6 in and 6 out) connected to the existing Facility at a hand hole, and proceeding thence to an underground work vault on Authority property, adjacent to the Authority ROW line, with inner dimensions of 12 X 7 X 6 feet minimum, and thence in 3 ducts, each containing 4 innerducts, from the Vault to the Authority ROW line at a point safely and practicably accessible for construction and maintenance from off-ROW public property. In all other respects, construction details shall be the same as the existing Adesta Facility. Work shall be confined to that shown in the plans attached hereto and made a part hereof as Exhibit 1

2. Permittee shall require Adesta, at no cost or expense to the Authority, to be responsible for the construction and maintenance of the additional access connection. Adesta may perform such work through contractual arrangements with others, including Williams or Williams's contractors.
3. Permittee shall comply with all applicable laws, rules and regulations, including, without limitation, all environmental laws.
4. In addition to, and not in limitation of, Permittee's liability and indemnification obligations pursuant to Section IV. B. of the Occupancy and Work Permit Accommodation Policy, in no event shall Permittee be entitled to recover lost profits or consequential damages from the Authority.
5. The Authority shall have the right to approve final plans for the installation and location of the additional fiber access connection.

*Regeneration Rider for Site No. 4 (Dunkirk) MP No. 476.76*

6. Permittee shall require Adesta to provide the Authority with evidence of insurance in amounts and form reasonably satisfactory to the Authority with respect to all construction activity to be performed by or on behalf of Permittee.
  7. Permittee shall require Adesta to relocate the additional fiber access connection at no cost to the Authority if the Authority, in its sole discretion, requires relocation for any reason. Nothing herein is intended to alter Williams' obligation to reimburse Adesta under the User Agreement.
  8. At the expiration of the Agreement, title to the Facility and cable shall be governed by the existing agreements between Adesta and the Authority and Adesta and Williams.
- 
9. Permittee shall not access the fiber access connection from Thruway right of way; access for all construction and maintenance activities shall be exclusively from public right of way adjacent to the Thruway ROW line.
  10. Permittee asserts that a dispute has arisen between the parties in relation to Permittee's rights to an additional fiber access connection at the subject location. Permittee and the Authority are desirous of resolving all disputes with the subject location, and they acknowledge and agree that this Permit Agreement will settle any such disputes. Permittee hereby settles and releases and agrees to hold harmless the Authority from any and all claims it may have with respect to this Permit Agreement or any other agreement it may have with the Authority or Adesta concerning an additional fiber access connection at this location.

This Permit Agreement shall not be construed as an admission of liability, fault or otherwise on the part of any party and, inasmuch as it is entered into in settlement of alleged disputes related solely to the connection at this location, shall not be admissible for any purpose in connection with any other dispute, claim or litigation.

11. If additional fibers are installed in either of Williams' two innerducts on the backbone Facility, Williams shall promptly notify the Authority of each fiber and of each Authority approved access connection location to such Facility that it intends to use. Without limiting the foregoing, Williams shall promptly notify the Authority of any additional fibers to be installed at the location covered by this Permit Agreement. The parties hereto agree that failure to furnish such notice shall be deemed a material breach of this Permit Agreement.

In addition to paying additional fees as provided for in Article II. B. Permittee will be required to obtain: (a) a work permit from the Authority for such additional fiber installation; and (b) consent from Adesta on all of such terms as are agreed to by Adesta in executing this Permit Agreement Agreement.

If additional fibers are installed, this Permit Agreement will be amended to reflect such addition, and the Authority reserves the right to increase insurance and bond requirements if it, in its sole discretion, deems such escalation to be necessary.

*Regeneration Rider for Site No. 4 (Dunkirk) MP No. 476.76*

Although this Permit Agreement provides for the possibility of installing additional fibers, the Permittee understands and agrees that: (a) installation will only be permitted in 4 innerducts, i.e., the two innerducts connecting to Williams' existing 96 fiber cable located in the backbone Facility and the two innerducts connecting to the Williams' second innerduct on the backbone Facility; and (b) nothing herein shall obligate the Authority to allow such fiber count to be increased unless all of the Authority's engineering conditions in connection with such increase have been met, including, but not limited to, submission of design plans that are fully approved by the Division Director and the Chief Engineer of the Authority.

12. The Authority at any time shall have the right to audit the number of fibers ~~composing the Connection at this location.~~
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B. Economic Terms

Rent shall be paid as follows:

- (1) A. Permittee shall pay to the Authority an annual fee of \$18,000.  
B. The annual fee set forth in Paragraph (1)A. shall be escalated annually by the same percentage that the Albany, New York Consumer Price Index, increases annually. Notwithstanding the foregoing, in no event shall the increase of any annual fee be greater than 5% or less than 2.54%, compounded per annum.
- (2) Rent for the first year (i.e., the date of execution of this Permit Agreement through the end of the first anniversary thereof) shall be paid upon the execution of this Rider by Permittee. During the term of the Agreement, rent for each other year shall be paid annually in advance on or before each anniversary of the date of this Permit Agreement.
- (3) Permittee shall pay the first year's annual fee set forth in Paragraph (1)A. above, plus all one-time non-recurring fees required by the Authority for such Occupancy Permits, prior to issuance of the Work Permit required per Article II. A. 1. above.

C. Term

The term of this Permit Agreement shall commence upon the date of execution of this Permit Agreement and shall terminate upon the termination of the User Agreement. Notwithstanding anything to the contrary in this Permit Agreement, including, but not limited to form TA-41337 (2-98) and the Occupancy and Work Permit Accommodation Policy, absent a material breach by Permittee of this Permit Agreement, this permit may not be revoked prior to the end of term of the User Agreement.

D. Restrictions/NYSTA Reserved Rights

1. Permittee may not assign or transfer its rights or obligations hereunder, either voluntarily or involuntarily, with respect to the leased space to any other party without the prior written consent of the Authority. Notwithstanding the foregoing, this Article shall not prevent: (a) Permittee from assigning or transferring its rights and obligations hereunder to an Affiliate as defined below; or (b) the lease or license of fiber strands, the provision of indefeasible rights of use grants, leases or other rights to use such fibers in Permittee's systems to third party customers of Permittee. Furthermore, with each such notice, Permittee shall certify that such licensee, sub-lessee or other user has no involvement, affiliation or known contact with any entity intending to utilize the facility for an illegal purpose or entity, individual or member of any organized crime organization or similar criminal enterprise. Nothing contained herein shall prevent or impair the Authority from transferring or assigning the Thruway, the Agreement or any of its rights or obligations thereunder.

"Affiliate" shall mean any party controlling, controlled by or under common control with Williams.

2. The rights granted to Permittee under the Agreement shall be non-exclusive.
3. Additional terms:

(a) Holding Over

Any holding over by the Permittee after the expiration of the Term without the Authority's prior written consent shall be treated as a daily tenancy at sufferance at a rate equal to 1.50 times the Fixed Rent then in effect plus other charges herein provided (prorated on a daily basis). The Permittee shall also pay to the Authority all damages, direct and/or indirect, sustained by reason of any such holding over. Otherwise, such holding over shall be on the terms and conditions set forth in this Agreement as far as applicable.

(b) Entire Agreement

This Permit Agreement granted in conjunction with the User Agreement of April 12, 1999 contains the entire Agreement between the parties hereto regarding the subject matter hereof.

(c) Waiver, Amendment

No modification, waiver, amendment, discharge or change of this Agreement shall be valid unless the same is in writing and signed by the party against which the enforcement of such modification, waiver, amendment, discharge or change is or may be sought.

*Regeneration Rider for Site No. 4 (Dunkirk) MP No. 476.76*

(d) Joint Venture

Nothing contained in this Agreement shall be construed to create a partnership, a joint venture, an association, a trust or other entity, nor to constitute either party as the agent of or for the other.

(e) Severability

If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

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Agreed to and acknowledged as of the date first above written by individuals duly authorized on behalf of the parties hereto.

WILLIAMS COMMUNICATIONS, INC.

By: \_\_\_\_\_

Name:

T. F. ELBERT

Title:

Attorney-in-fact

By its execution below, Adesta agrees, with respect to this additional access connection: (1) to construct and maintain the Vault and the Twelve innerducts, and any and all appurtenances, to be installed herein at no cost or expense to the Authority; (2) that the Authority shall be entitled to all rent payable by Permittee on account of the transaction contemplated hereby; (3) that Adesta

*Regeneration Rider for Site No. 4 (Dunkirk) MP No. 476.76*

shall perform any locates or relocations without charge to the Authority; and (4) that the Authority will not be responsible for any damages except for gross negligence or intentional damages.

ADESTA COMMUNICATIONS, INC.

By: *Harold F. Award*

Name: *HAROLD F. AWARD*

Title: *SENIOR VICE PRESIDENT*

Agreed and Permitted this *5<sup>th</sup>* day of *Nov*, 2000.

NEW YORK STATE THRUWAY AUTHORITY

By: *John T. Brizzell*

Name: *John T. Brizzell, P.E.*

Title: *Deputy Executive Director/Chief Engineer*

# Exhibit 17

## Contract Brief

File Number C00728  
 Contract Name RIDER TO OCCUPANCY PERMIT APPLICATION - REGEN - SITE #11 - ONEIDA  
 Contract From Williams Communications, Inc.  
 Contract To New York State Thruway Authority  
 Agreement Type Permit;  
 Effective Date 12/13/2000  
 Evergreen No

To Party Notice Address New York State Thruway Authority  
 Director Albany Division Thruway  
 P O Box 189  
 Albany, NY 12201

Consideration Annual fee: \$18,000, escalated annually by same increase that Albany, NY CPI increases; in no event shall increase be greater than 5% or less than 2.54%.

Legal Additional fiber access connection for Williams' system at New York State Thruway Milepost 248.3 to Williams' off-Thruway regen facility located at Lowell Road and Route 26 (Site #11) within Authority's Syracuse Division and designated by Drawing Milepost 248.3 ("ONEIDA REGENERATION CONNECTION")

Term Term of Permit Agreement shall terminate upon termination of User Agreement (20 years after acceptance of Williams Fibers)

Termination Except for default by Permittee, Permit may not be revoked prior to end of term of User Agreement

Insurance Requirements Williams shall require Adesta to provide Authority with proof of Insurance. (Section 6)

Deliverables Williams shall file as-builts with the Authority's Chief Engineer upon completion of construction. (Section 1)

Comments User Agreement for Innerduct (4/12/99) between MFS Network Technologies (NOW ADESTA) and Williams - C00137.004 (99E0581.00). ADDITIONAL FIBERS: If additional fibers are installed in either of Williams' two innerducts on the backbone Facility, Williams shall promptly notify Authority of each fiber and of each Authority approved access connection location to such Facility that it intends to use. Williams shall notify Authority of any additional fibers to be installed at regen location. Failure to provide such notice shall be deemed a material breach of Agreement. Permit Agreement will be amended to reflect such addition and set forth additional fees. (Section II)

Assignability Permittee may not assign or transfer rights without prior written consent of Authority. Permittee may lease or license fiber strands, grant IRUs, leases or other rights to use such fibers to third party customers. (Section II, D)

Relocation Williams shall require Adesta to relocate the additional fiber access connection at no cost to Authority if Authority requires relocation for any reason; however, this does not alter Williams' obligation to reimburse Adesta under the User Agreement. (Section 7)

Maintenance Adesta, at no expense to the Authority, responsible for construction and maintenance of the additional connection. (Section 2)

**Contract Brief**

**Line Information** Williams permitted to connect one (1) 96-fiber cable in each of two (2) innerducts from Facility to the ROW line. Williams to construct three (3) ducts, each containing four (4) 1.25" innerducts, from the Vault to the ROW line, and a single trench containing twelve (12) 1.25" innerducts from the Vault to the Facility. (Section 1)

**Line Names** Cleveland to New York - Cleveland to Yonkers;

**Line States** Test State;

**Line Counties** Sample County (XX);

**C00728 IRU**

**IRU Type**

**Third Party Name**

**Line Segment**

**Mileage**

**Comments**

**IRU Line Components**

**IRU Line Names**

**IRU Line States**

**IRU Line Counties**