



New York State Thruway Authority

OCCUPANCY PERMIT APPLICATION

For Official Use Only

New Amended

Occupancy Permit Number:

4123

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: Time Warner Cable Federal ID or SS#: 59-1353813

Mailing Address: Street INDUSTRIAL DR Suite or Apt. No. _____ P.O. Box 887

City/Town/Village MIDDLETOWN State NY Zip Code 10841

Contact Person Name (please print): JOHN PERA Telephone Number: (914) 542-3957 ext _____ Fax Number: () _____

Section 2 FACILITY IDENTIFICATION INFORMATION

TYPE OF FACILITY (Check one):

Water Mains Telephone Other: (please describe): _____
 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):

Highway Bore For The Underground Placement of Fiber optic Cables Under Route 84, along Rt 208. (-See Attached map)

Section 3 FOR THRUWAY USE ONLY

FACILITY LOCATION MILEPOST BOUNDARY beginning Milepost Number <u>184-28.78</u>	FACILITY LOCATION CITY/TOWN/VILLAGE (use beginning milepost to make determination) <u>MONTGOMERY</u>	FACILITY LOCATION COUNTY (use beginning milepost to make determination) <u>ORANGE</u>
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FACILITY LOCATION DIVISION (Check one):

Use beginning milepost number to make determination; see Section 9 for further information)

New York Albany Syracuse Buffalo

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

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

SIGNATURE OF FEE APPROVAL		PLEASE PRINT NAME		DATE
Subject to Back Charges: <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	Subject to Liquidated Damages: <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	Type of Insurance Furnished: <u>ON FILE DP 3990</u>		
Condition Rider attached: <input checked="" type="checkbox"/> YES <input checked="" type="checkbox"/> NO		<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		

Section 7 **APPLICANT AFFIRMATION**

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 18th day of April 2001.



SIGNATURE OF APPLICANT
JOHN PIERA

PLEASE PRINT NAME

PROJECT COORDINATOR

TITLE
(if applicable)

Section 8 **FOR THRUWAY USE ONLY**

Permission is hereby granted to TIME WARNER CABLE (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 this 30th day of April 2001.

OK gaff
4/30/01



SIGNATURE

RAMESH MENTA, PE

PLEASE PRINT NAME

DIVISION DIRECTOR

TITLE



New York State Thruway Authority

OCCUPANCY PERMIT APPLICATION

For Official Use Only

New Amended

Occupancy Permit Number:

4146

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: Time Warner Cable Federal ID or SS#: 59-1353813

Mailing Address: Street 27 Industrial Drive Suite or Apt. No. _____ P.O. Box 887
 City/Town/Village Middletown State NY Zip Code 10941

Contact Person Name (please print): Chris Austin Telephone Number: (845) 692-5339 ext. 7762 Fax Number: (845) 692-0778

Section 2: FACILITY IDENTIFICATION INFORMATION

TYPE OF FACILITY (Check one):

Water Mains Telephone Other: (please describe): _____
 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):

install fiber optic cable in 4" schedule 80 PVC under I-87 @ Mill Road overpass. Bond/Insurance on file. AS PER PLAN APPROVED-AS-NOTED

Section 3: FOR THRUWAY USE ONLY

FACILITY LOCATION MILEPOST BOUNDARY FACILITY LOCATION CITY/TOWN/VILLAGE FACILITY LOCATION COUNTY
 (use beginning milepost to make determination) (use beginning milepost to make determination)

Beginning Milepost Number: 65.51

Ending Milepost Number: _____

NEWburgh

Orange

FACILITY LOCATION DIVISION (Check one):

(Use beginning milepost number to make determination; see Section 9 for further information)

New York Albany Syracuse Buffalo

Section 7 **APPLICANT AFFIRMATION**

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 3rd day of June 2002

X Chris Austin Area Construction Manager
SIGNATURE OF APPLICANT TITLE
(if applicable)

X Chris Austin
PLEASE PRINT NAME

Section 8 **FOR THRUWAY USE ONLY**

Permission is hereby granted to TIME WARNER CABLE (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: this 6th day of JUNE 2002

*OK
 6/10/02*

[Signature]
SIGNATURE

RAMESH MENA TE
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 - 71.46
<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
 Four Executive Boulevard
 Suffern, NY 10901
 Phone: (845) 918-2502
 Fax: (845) 918-2598

Thruway Division Director
 Albany Division
 9W, Interchange No. 23
 P.O. Box 189
 Albany, NY 12201-0189
 Phone: (518) 436-2999
 Fax: (518) 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) 437-2749
 Fax: (315) 483-5835

Thruway Division Director
 Buffalo Division
 3901 Genesee Street
 Cheektowaga, NY 14225-0121
 Phone: (716) 631-9017
 Fax: (716) 625-1023

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.

Exhibit 36

Item 6 by Ms. DeLucco (Appendix F)
Salary Plan (Continued)

the Board for Managerial/Confidential employees, and be it further

~~RESOLVED, that salary adjustments for the Executive Director and Deputy Executive Director beyond those provided for in the salary plan for Managerial/Confidential salary grade 38 shall be subject to Board approval, and be it further~~

~~RESOLVED, that this resolution be incorporated in the minutes of this meeting.~~

Item 7 by Ms. DeLucco (Appendix G)
Approving Modifications of Resolution No. 5339 Adopted at Thruway Authority
Board Meeting No. 626 Held on February 3, 2004

Board Member Carey-Cassidy asked whether or not the fee policy was clear that negotiated fees would always equal or exceed the fees in the schedule. Staff indicated that was the intention and that it would be sure to clarify the policy in that regard. In addition the Board asked about the current levels in the fee schedule including information relative to the last time the schedule was updated and how it compared with other schedules. Staff indicated that it would report back to the Board with that information.

After full discussion, on the motion of Ms. Carey Cassidy, seconded by Mr. Riedman, without any objections, the Board adopted the following resolution:

RESOLUTION NO. 5360
APPROVING MODIFICATION OF RESOLUTION
NO.5339 ADOPTED AT THRUWAY AUTHORITY
BOARD MEETING NO. 626 ON FEBRUARY 3, 2004

RESOLVED, that RESOLUTION NO. 5339 adopted at Meeting No. 626 on February 3, 2004 be, and the same hereby is, modified and superseded to the extent that it is inconsistent with the terms of the agenda item and resolutions set forth below, and be it further



Item 7 by Ms. DeLuco (Appendix G)

Approving Modifications of Resolution No. 5339 Adopted at Thruway Authority Board Meeting No. 626 Held on February 3, 2004 (Continued)

RESOLVED, that the Director of Engineering Services, or his designee, be and he hereby is, authorized, to consent to third party use of Authority owned fiberoptic facilities on Authority right of way following approval of fees for such uses by the Authority's Finance Committee and provided user agreements between Adesta LLC and third parties for such uses are in form and substance acceptable to the Authority's General Counsel, and the Authority's Director of Engineering Services, and be it further

RESOLVED, that the Director of Engineering Services, or his designee, be and he hereby is, authorized, to consent to NEON Optica's use of a regeneration site ~~connection on Authority right of way provided the user agreement between NEON and Adesta LLC Agreement is~~ in form and substance acceptable to the Authority's General Counsel and the Authority's Director of Engineering Services, and conforms to the economic terms authorized by the Authority Board at Meeting No. 626, and be it further,

RESOLVED, that the Executive Director, or his designee, be, and he hereby is authorized to take all actions necessary to amend the Fee Policy for Thruway Occupancy Permits to provide that fees for fiberoptic connection permits are to be negotiated amounts determined by the Authority's Finance Committee, and be it further

RESOLVED, that upon the advice of the Authority's General Counsel, and the Authority's Director of Engineering Services, or his designee, occupancy permits with riders may be issued for new fiberoptic connections in accordance with the Authority's Occupancy and Work Permit Accommodation Policy



Item 7 by Ms. DeLuco as Amended (Appendix G)

Approving Modifications of Resolution No. 5339 Adopted at Thruway Authority Board Meeting No. 626 Held on February 3, 2004 (Continued)

following approval of permit fees by the Authority's Finance Committee, and be it further

RESOLVED, that the Executive Director, or his designee, be, and he hereby is, authorized to take all actions to amend the Occupancy and Work Permit Accommodation Policy to: (1) provide that fees for Occupancy Permits for new fiberoptic connections, are to be reviewed and approved by the Authority's Finance Committee; and (2) conform to the Fee Policy for Thruway Occupancy Permits adopted by the Authority Board at Meeting No. 447 pursuant to Resolution No. 4729 and further amended by this resolution, and be it further

RESOLVED, that Authority Occupancy and Work Permits may continue to be issued without submission to the New York State Comptroller's Office for review and approval, and be it further

RESOLVED, that the General Counsel be, and she hereby is, authorized to undertake rulemaking of the Fee Policy and of the Accommodation Policy, as amended by the agenda item, pursuant to the State Administrative Procedures Act, and be it further,

RESOLVED, that all terms and provisions of Resolution No. 5339 not amended hereby shall remain in full force and effect, and be it further

RESOLVED, that this resolution be incorporated in the minutes of this meeting.



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In fact, however, the NEON agreement and future agreements both for regeneration sites and for backbone duct can continue to be cast as user agreements between Adesta LLC ("Adesta") and the third party user.

Authority approval of user agreements is still required. However, the Authority's signature on the user agreement can be limited to Authority consent to the third party's use of the applicable Authority owned fiberoptic facility, e.g. regeneration site, duct on the Authority right of way.

Since Resolution No. 5339 authorized the Executive Director to "execute" an agreement with NEON and to execute other user agreements both for regeneration access for fiberoptic backbone, we wish to clarify that the Authority will simply consent to use of the Authority owned facility on Authority right of way by the third party user. This may limit the potential for Authority liability. We recommend that authority to execute the consent be delegated to the Director of Engineering Services or his designee.

It should be pointed out that in addition to user agreements for regeneration access and backbone duct, third parties may also want to enter into agreements with Adesta for fiber, and these would be handled in the same fashion as user agreements for duct and regeneration site access.

- B. The February 2004 Item indicated that new connections would take the form of occupancy permits with riders. Three changes are recommended.

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1. Clarify that authorization of new connections will take the form of Occupancy Permits with Riders and that such Permits with Riders shall be progressed in accordance with the Thruway Authority Occupancy and Work Permit Accommodation Policy (the "Accommodation Policy"). Resolution No. 5339 authorized the Executive Director, or his designee, to execute "the types of connection agreements described in this agenda item."

2. Authorize a change to the Accommodation Policy indicating that fees for new fiberoptic connections will be determined by the Authority Finance Committee.

Section III.C., Permit Approval and Annual Fees, of the Accommodation Policy provides in Subdivision 2 that the Authority's Real Property Management Committee is to evaluate the nature of the permit and establish the annual fee and schedule for subsequent fee revisions.

Since the February 2004 Item provided that fees for new fiberoptic connections are to be reviewed and determined by the Authority's Finance Committee, this change should be reflected in the Accommodation Policy.

3. Authorize a change to The Fee Policy for Thruway Occupancy Permits (the "Fee Policy") adopted by the Board at Meeting No. 557 pursuant to Resolution No. 4729.

The Fee Policy provides that fees for utilities are to be set by a market-based rate schedule and approved by the Division Director. Since the February 2004 Item provided that permit fees for fiberoptic connections to the backbone are to be submitted to the Finance Committee, it is recommended that the Fee Policy make clear that fiberoptic connection permit fees will be negotiated (as opposed to set by schedule) and will be determined by the Authority's Finance Committee.

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- C. In addition to the foregoing, the Board is requested to: (1) confirm that Authority Permits will continue to be issued without submission to the New York State Comptroller's Office for review and approval; (2) authorize the Executive Director to approve amendments to the Accommodation Policy to bring it into conformance with the Fee Policy as amended by this item; and (3) authorize the General Counsel to undertake rulemaking of the Fee Policy and of the Accommodation Policy, as amended by this item, pursuant to the State Administrative Procedures Act.

To implement the foregoing changes to the Resolution, it is recommended that Resolution No. 5339 be modified and superseded to the extent that it is inconsistent with this Agenda item.

RECOMMENDATION:

It is recommended that the Board adopt the following resolution:

RESOLUTION NO. _____

APPROVING MODIFICATION OF RESOLUTION NO.5339
ADOPTED AT THRUWAY AUTHORITY BOARD MEETING
NO. 626 ON FEBRUARY 3, 2004

RESOLVED, that RESOLUTION NO. 5339 adopted at Meeting No. 626 on February 3, 2004 be, and the same hereby is, modified and superseded to the extent that it is inconsistent with the terms of the agenda item and resolutions set forth below, and be it further

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RESOLVED, that the Director of Engineering Services, or his designee, be and he hereby is, authorized, to consent to third party use of Authority owned fiberoptic facilities on Authority right of way following approval of fees for such uses by the Authority's Finance Committee and provided user agreements between Adesta LLC and third parties for such uses are in form and substance acceptable to the Authority's General Counsel, and the Authority's Director of Engineering Services, and be it further

RESOLVED, that the Director of Engineering Services, or his designee, be and he hereby is, authorized, to consent to NEON Optica's use of a regeneration site connection on Authority right of way provided the user agreement between NEON and Adesta LLC Agreement is in form and substance acceptable to the Authority's General Counsel and the Authority's Director of Engineering Services, and conforms to the economic terms authorized by the Authority Board at Meeting No. 626, and be it further,

RESOLVED, that the Executive Director, or his designee, is, and he hereby is authorized to take all actions necessary to amend the Fee Policy for Thruway Occupancy Permits to provide that fees for fiberoptic connection permits are to be negotiated amounts determined by the Authority's Finance Committee, and be it further

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RESOLVED, that upon the advice of the Authority's General Counsel, and the Authority's Director of Engineering Services, or his designee, occupancy permits with riders may be issued for new fiberoptic connections in accordance with the Authority's Occupancy and Work Permit Accommodation Policy following approval of permit fees by the Authority's Finance Committee, and be it further

RESOLVED, that the Executive Director, or his designee, be, and he hereby is, authorized to take all actions to amend the Occupancy and Work Permit Accommodation Policy to: (1) provide that fees for Occupancy Permits for new fiberoptic connections, are to be reviewed and approved by the Authority's Finance Committee; and (2) conform to the Fee Policy for Thruway Occupancy Permits adopted by the Authority Board at Meeting No. 447 pursuant to Resolution No. 4729 and further amended by this resolution, and be it further

RESOLVED, that Authority Occupancy and Work Permits may continue to be issued without submission to the New York State Comptroller's Office for review and approval, and be it further

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RESOLVED, that the General Counsel be, and she hereby is, authorized to undertake rulemaking of the Fee Policy and of the Accommodation Policy, as amended by the agenda item, pursuant to the State Administrative Procedures Act, and be it further,

RESOLVED, that all terms and provisions of Resolution No. 5339 not amended hereby shall remain in full force and effect, and be it further

RESOLVED, that this resolution be incorporated in the minutes of this meeting.


Director of Administrative
Services

RECOMMENDATION APPROVED:


Executive Director

7/28/04
Date

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EXHIBIT 1

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TO: The Thruway Authority Board
FROM: Wilma DeLucco
Director of Administrative Services

DATE: January 26, 2004

SUBJECT: Authorizing the Executive Director to Approve an Agreement with NEON Optica, Inc. to Access the Authority's Right of Way for a Fiber Connection and Delegating Authority to the Executive Director to Approve Future Agreements Related to the Fiber Optic Facilities

In 2003, the Authority signed Amendment #3 to the Agreement for Services Relating to the Design, Construction, Marketing and Maintenance/Operation of a Fiber Optic Infrastructure along the New York State Thruway Authority Rights of Way with MFS Network Technologies, Inc. (This Agreement as amended by Amendment Nos. 1, 2, and 3 and the Partial Release and Settlement Agreement is hereinafter referred to as the "Adesta Agreement").

Among other provisions, Amendment #3 transferred ownership of the fiber optic facilities, which include such items as telecommunication cables, lines, conduits, manholes and regeneration facilities, to the Authority. The resolution approving Amendment #3 did not include clarification that staff would continue to approve or consent to agreements with users of the fiberoptic facilities.

In recent months, staff has had discussions with NEON Optica, Inc., a company that seeks an access connection from a regeneration site at Woodbury (MP 45.5) to the Authority's right of way line. This agreement would actually replace an agreement the Authority previously had with Global Crossing North America Networks, Inc. ("Global Crossing") which was rejected by Global Crossing during the course of bankruptcy. The agreement with NEON Optica, Inc. would be for the same fee as Global Crossing had paid, \$48,000 annually, at a rate of \$2,000 per

fiber. The Authority would continue to receive 50% of this annual fee. (User fees are shared with Adesta according to the Agreement). The proposed term of the agreement is 14 years, which ends on April 12, 2017.

Prior to Amendment #3, this agreement would have been between NEON and Adesta, since they owned the facilities. Now that the Authority owns the facilities, the Authority must consent to the use of the facilities, and of the Authority's right of way on which such facilities are located by signing the agreement.

Because of the lack of an explicit delegation, we ask that the Board approve the NEON agreement. We also propose that the Board delegate to the Executive Director or his designee, the ability to execute similar future user agreements for regeneration site connections as well as two other types of agreements relating to the Adesta Agreement that may arise in the future: agreements for use of the ducts on the fiberoptic backbone, and agreements for new connections to the backbone.

The Adesta Agreement has been interpreted to include user rights for 14 connections off the backbone, but if a user wants to connect at a different location, a connection agreement with additional annual fees has been required. In addition, if a sub-user seeks permission from the Authority to make any connection off the backbone, connection agreements would be needed.

With regard to user agreements for ducts on the backbone, the Adesta Agreement provides that fees are to be determined in accordance with a matrix to be approved by the Finance Committee. With regard to the NEON type of agreement and the connection agreements, the recommendation is that proposed fees would be submitted first to the Finance Committee for review to determine if the fee structure is fair, consistent, if applicable, with other

prior agreements, and/or consistent with current market conditions. These agreements would take the form of occupancy permits with riders.

Lastly, as the transfer of infrastructure to the Authority pursuant to Amendment No. 3 may necessitate execution of additional documents to address such changes, it is also recommended that the Executive Director, or his designee, be delegated the authority to execute such documents as may be necessary to reflect such change in ownership and responsibility.

RECOMMENDATION:

It is recommended that the Board adopt the following resolution:

RESOLUTION NO.

AUTHORIZING THE EXECUTIVE DIRECTOR TO APPROVE AN AGREEMENT WITH NEON OPTICA, INC. TO ACCESS THE AUTHORITY'S RIGHT OF WAY FOR A FIBER CONNECTION AND DELEGATING AUTHORITY TO THE EXECUTIVE DIRECTOR TO APPROVE FUTURE AGREEMENTS RELATED TO THE FIBER OPTIC FACILITIES

RESOLVED, the proposed terms of an agreement with NEON Optica, Inc. be, and hereby is approved, and be it further

RESOLVED, that the Executive Director or his designee be, and he hereby is authorized to execute, upon the advice of the Authority's General Counsel and the Authority's Director of Administrative Services, an agreement with NEON Optica, Inc., including the terms outlined in the Agenda Item and on such other terms as may be, or determined by the Executive Director, or his

designee, to be in the best interest of the Authority, and be it further

RESOLVED, that the Executive Director, or his designee be, and he hereby is authorized to execute other user agreements for regeneration site connections as well as user agreements for duct on the fiberoptic backbone as well as the types of connection agreements described in this agenda item related to the fiber facilities upon recommendations made by the Authority's Finance Committee, and upon the advice of the Authority's General Counsel and the Authority's Director of Administrative Services and be it further

RESOLVED, that the Executive Director, or his designee, be, and he hereby is, authorized to execute, upon the advice of the Authority's General Counsel and the Authority's Director of Administrative Services, such documents as may be necessary to address the transfer of ownership of the fiberoptic facilities to the Authority, and be it further

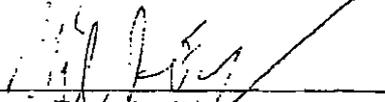
RESOLVED, that this resolution be incorporated in the minutes of this meeting.



Director of
Administrative Services

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RECOMMENDATION APPROVED:



Executive Director

1/26/04

Date

Item 2 by Mr. Fleischer (Appendix B)

Quarterly Report on Personal Service Contracts Up to \$150,000 for the Period 10/1/03 through 12/31/03

Mr. Fleischer submitted as Exhibit I a listing containing Personal Service Contracts up to \$150,000 for the period of October 1, 2003 through December 31, 2003.

After full discussion, on the motion of Mr. Riedman, seconded by Ms. Carey Cassidy, without any objections, the Board accepted Mr. Fleischer's report.

Item 3 by Ms. DeLucco (Appendix C)

Authorizing the Executive Director to Approve an Agreement with NEON Optica, Inc. to Access the Authority's Right of Way for a Fiber Connection and Delegating Authority to the Executive Director to Approve Future Agreements Related to the Fiber Optic Facilities

After full discussion, on the motion of Ms. Carey Cassidy, seconded by Mr. Riedman, without any objections, the Board adopted the following resolution:

RESOLUTION NO. 5339

AUTHORIZING THE EXECUTIVE DIRECTOR TO APPROVE AN AGREEMENT WITH NEON OPTICA, INC. TO ACCESS THE AUTHORITY'S RIGHT OF WAY FOR A FIBER CONNECTION AND DELEGATING AUTHORITY TO THE EXECUTIVE DIRECTOR TO APPROVE FUTURE AGREEMENTS RELATED TO THE FIBER OPTIC FACILITIES

RESOLVED, the proposed terms of an agreement with NEON Optica, Inc. be, and hereby is approved, and be it further



CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of July 2009, I caused a true and correct copy of the foregoing "Petition for Declaratory Ruling that Certain Right-of-Way Rents Imposed by the New York State Thruway Authority Are Preempted Under Section 253" to be delivered by First Class mail to the following:

Edna Goldsmith
Assistant Counsel
New York State Thruway Authority
200 Southern Blvd., PO Box 189
Albany, NY 12209

Henry C. Collins
Assistant Attorney General
Office of the Attorney General
Civil Recoveries Bureau
The Capitol
Albany, NY 12224-0341



Charles Breckinridge