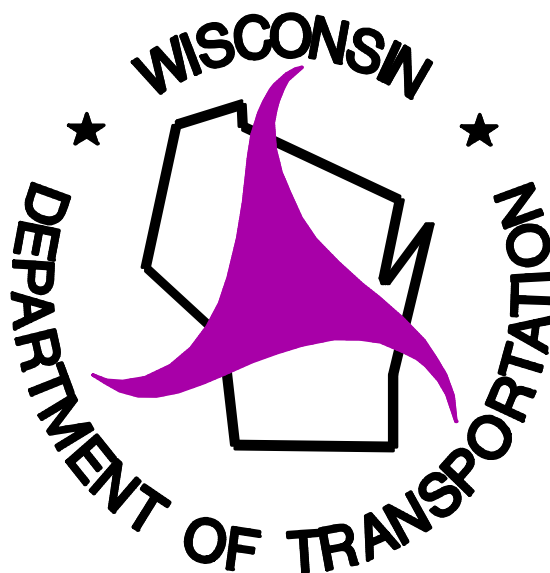


RIGHT-OF-WAY OCCUPANCY AGREEMENT
between
TOUCH AMERICA
and the
WISCONSIN DEPARTMENT OF TRANSPORTATION



May 20, 2010

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1. INTRODUCTION

This agreement between **Touch America, Inc.** (Carrier) for itself and for its employees, agents, and contractors, and the Wisconsin Department of Transportation (WisDOT), specifies the terms and conditions required by WisDOT to enable Carrier to construct, operate, and maintain fiber optic communication facilities longitudinally within WisDOT's Interstate 94 & 894 right-of-way in exchange for 36 dark fibers, conduit, handholes, and cash. WisDOT's authority to enter into this Agreement includes sections 66.047, 84.01(30), 84.08, 85.15, 86.07(2), 86.16, and 182.017, Wisconsin Statutes (1997-98).

2. UTILITY ACCOMMODATION POLICY

Unless otherwise specified in this Agreement or right-of-way occupancy permit, WisDOT's Utility Accommodation Policy (8/97) (Policy) shall govern during all aspects of construction, operation, and maintenance of Carrier's communication facilities. This Policy is amended from time to time by WisDOT. Facilities installed by Carrier prior to changes in the Policy shall not be expected to meet the new version unless modifications to those facilities require an occupancy permit from WisDOT or are required by federal, state or local laws, codes or ordinances. By signing this Agreement, Carrier acknowledges that it has received, read, and understands the Policy.

3. PRELIMINARY CORRIDOR SURVEYS

Carrier may perform preliminary corridor surveys to develop engineering plans, check for environmental conditions, perform soil borings, etc. If Carrier elects to perform a corridor survey, it shall submit for approval form EM-405, "Application/Permit to Work on Highway Right-of-Way", from WisDOT prior to doing any work.

4. RIGHT-OF-WAY USE

Carrier shall use WisDOT's right-of-way only for the construction, operation, and maintenance (collectively: operations) of a longitudinal communications facility. Any other use of the right-of-way without the prior written permission of WisDOT shall constitute breach by Carrier of this Agreement. The use of the right-of-way along with all corresponding operations shall:

- 1) Be in accordance with the requirements of all applicable governing agencies including the Federal Communications Commission (FCC), the United States Corps of Engineers, and the Wisconsin Department of Natural Resources.
- 2) Comply with all laws, orders, ordinances, regulations, licenses and permits, if any, of federal, state, and local authorities.
- 3) Not interfere with WisDOT's use of its property, the free and safe flow of traffic, WisDOT construction or maintenance work, or with WisDOT's radio or other communications unless written approval is expressly granted by WisDOT.
- 4) Not interfere with the operations of any utility or other carrier.
- 5) Not cause any public safety hazard.

5. HIGHWAY LOCATIONS

This Agreement covers Carrier's facility installations along I-94 and I-894. A list of the specific sections along each highway is included as Attachment A.

6. OTHER UTILITIES

Subject to WisDOT approval, Carrier shall be allowed to have other utilities installed to serve its facility. All utilities shall first obtain a permit from WisDOT in order to occupy its right-of-way. Carrier shall be solely responsible for and timely pay all of its utility costs.

7. OCCUPANCY PERMITS

Carrier shall follow WisDOT's standard utility permit process to facilitate the installation of its facilities. Neither this Agreement nor any occupancy permit issued grants Carrier or any other person or entity an easement nor any property right or interest to the occupied WisDOT right-of-way, nor supersedes any other governmental agencies' more restrictive requirements.

Carrier shall fill out and submit one original with an authorized signature plus four copies of WisDOT's current permit form DT-1553, "Application/Permit to Construct and Operate Utility Facilities on Highway Right-of-Way" [see Attachment B], for each of the counties where Carrier proposes to locate its facilities along with detailed engineering plans depicting the proposed alignment locations. See Policy 96.11 for more information. Upon receiving the application in the appropriate District office, WisDOT shall have 20 calendar days in which to approve or deny the occupancy permit. WisDOT reserves the right to suspend permits or withhold permit approvals for non-compliance violations as outlined in section 13B of this Agreement.

The permits covered under this Agreement are for I-94 and I-894 occupancy only. Permits to longitudinally occupy 2-lane highways or cross any other state trunk highway shall be submitted separately to the appropriate district office. Permits for joint construction (see section 9-13,14) cover the location and installation of facilities for both carriers, but each carrier is still obligated to comply with its own Agreement and WisDOT's Policy. Carrier is also obligated to obtain the necessary permits from those local jurisdictions whose highways cross over or under WisDOT's right-of-way even though Carrier is technically within WisDOT's right-of-way.

8. AGREEMENT/PERMIT TERM LENGTH

The Agreement term shall be 40 years from the date of signing by WisDOT. Carrier shall have the option to enter into another Agreement with WisDOT after the first one expires. If Carrier exercises this option, then Carrier and WisDOT agree to begin negotiations to develop a new Agreement at least one year prior to expiration of the original one.

If the Agreement expires before a new one can be implemented, Carrier shall be allowed to continue to occupy the right-of-way unless WisDOT provides notice of termination as stated in section 13. Such occupancy shall be on a month-to-month basis under the same terms and conditions as this Agreement, except a monthly occupation fee shall be charged to Carrier.

Each of the individual occupancy permits for the construction, operation, and maintenance of Carrier's communications facilities shall become part of this Agreement upon issuance as Attachment A, and expire at the same time as this Agreement. If Carrier and WisDOT achieve a new Agreement, new permits may be issued or the existing permits extended for the new term.

Other permits issued to Carrier prior to actual construction (e.g., for preliminary corridor surveys) or for changes beyond routine maintenance after construction (see Policy 96.61), shall be effective for the dates listed on each individual permit and shall not affect the terms of this Agreement.

9. CONDITIONS of ISSUING OCCUPANCY PERMITS

Carrier and WisDOT agree to the following conditions in conjunction with WisDOT authorization of occupancy permits on Interstate 94 and 894 right-of-way for a 40-year period:

- 1) Carrier shall install no more than five, 2-inch conduits to comprise its own facility, but is not limited to the number of fibers contained within each conduit.
- 2) Carrier shall install an additional 2-inch SDR 11 HDPE duct in its own trench wherever Carrier locates its facilities throughout the State of Wisconsin, along with a 36-count, SIECOR, double sheath/single armor, Corning SMF 28 fiber cable with six fibers per tube. The fiber shall meet the splicing, testing, and acceptance procedures listed in Attachment C.
- 3) Carrier shall retain ownership of all conduit/fiber, but shall grant WisDOT an indefeasible right of use (IRU) of the facility listed in item 9-2. WisDOT agrees not to market excess fiber to other carriers, but may allow other state agencies to use it.
- 4) Carrier shall install handholes for WisDOT use adjacent to all locations where Carrier installs its own handholes, and at up to 70 additional locations as directed by WisDOT. WisDOT handholes shall be of the same quality and material as Carrier's handholes.
- 5) Carrier shall provide the following maintenance services on the conduit/fiber listed in item 9-2 throughout the duration of the Agreement, but not on any electronics installed by WisDOT:
 - a) Respond to facility locate requests through the Wisconsin's one-call network, Diggers Hotline, only on the portion of WisDOT fiber listed in item 9-11.
 - b) A yearly optical time domain reflectometer test on the fiber to check for loss. The amount of loss shall not be more than the acceptable limits as listed in Attachment C. If the loss is more than those limits and is due to a material or construction defect or negligent act or omission of Carrier, Carrier shall be responsible for making and paying for the necessary repairs as soon as possible.
 - c) Provide emergency and permanent restoration of facilities. Carrier shall bill WisDOT on a time and materials basis for both.
- 6) Carrier shall be allowed random ingress/egress from the interstate shoulder to facilitate the loading/unloading of equipment and materials. This special shoulder access requires the presence of a law enforcement officer and squad car since a traffic lane or shoulder closure is also required for work zone safety. See section 16C for details.

In all counties except Milwaukee, WisDOT, Division of State Patrol (DSP), shall provide the law enforcement presence where the interstate vehicle count is 50,000 ADT (Average Daily Traffic) or more. In Milwaukee County, the Sheriff's Department shall provide the presence. In counties where the interstate vehicle count is 50,000 ADT or less, DSP or another law enforcement agency may be used. Carrier shall pay all costs associated with law enforcement presence which includes labor, fringe benefits, meals, and squad car use. The estimated cost for DSP services during the initial conduit/fiber installation is \$29,008.17 (see Attachment D). Carrier shall enter into a separate contract with the Milwaukee County Sheriff's Department for shoulder access operations in that county and other law enforcement agencies if the need arises.

9. CONDITIONS of ISSUING OCCUPANCY PERMITS (continued)

- 7) Carrier shall pay all costs incurred by WisDOT in providing qualified construction inspectors on the project who will solely represent WisDOT's interests. These inspectors shall include staff from WisDOT and consulting engineering firms. The estimated cost for these services during the initial conduit/fiber installation is \$542,488.60 and is detailed in Attachment E.
- 8) Carrier shall make an initial deposit of \$500,000 to cover the costs associated with items 9-6 and 9-7 within one week after the date that WisDOT signs the Agreement. Within 60 days after the completion of the project, Carrier shall receive the difference between its deposit and the actual costs if they are lower than \$500,000, or be sent a final bill (payable within 30 days upon receipt) for the outstanding balance over \$500,000. Carrier shall receive a monthly report as to the amount of the expenses billed.
- 9) Carrier shall be allowed to attach its facility to various interstate bridges as listed in Attachment A. Carrier shall be billed for all future maintenance or improvement costs incurred by WisDOT due to the attachment including, but not limited to, structure inspections, washing, painting, and redecking.
- 10) Carrier shall be allowed to install repeater huts at the following locations:
 - Within the infield of the USH 51 northbound to I-39/90/94 westbound entrance (loop) ramp in Dane County near Madison
 - On a remnant parcel located northwest of the I-39 southbound to I-90/94 westbound entrance ramp in Columbia County near Portage

The installation of these huts is subject to prior WisDOT permit approval with regards to the site's size, composition, orientation of the facilities, and access. The Federal Highway Administration's concurrence is also needed for the USH 51 site because the installation is considered an "exception" to WisDOT's Utility Accommodation Policy.

- 11) Carrier shall construct fiber "spurs" and associated handholes in two additional locations in which Carrier's route has deviated from I-94:
 - a) Waukesha County, from USH 18 (Exit 297) to just west of the CTH T interchange at milepost 292.5 – approximately 4.5 miles
 - b) Dane County, from STH 30 to USH 51 – approximately 5 miles
- 12) Carrier shall not be billed for WisDOT's administrative costs for pre-construction corridor surveys, reviewing permit/application forms, random field inspections by staff, meetings, Agreement development, environmental review, legal services, addressing non-compliance issues, and administrative duties such as phone calls, right-of-way plat retrieval, copying, etc. Carrier shall be billed for each full day (8 hours or more) that a WisDOT staff person performs construction inspection on Carrier's project.
- 13) Carrier shall joint construct with Williams Communications of Tulsa, OK along I-94 from the Illinois/Wisconsin border to just south of the I-43/94/894 (Mitchell) interchange and from the St. Croix River bridge in St. Croix County to USH 12 in Dunn County (Elk Mound). Carrier will be the lead carrier for the installation. Carrier shall place three conduits for Williams next to its own conduits, but Williams shall be responsible for installing its own fiber. See Attachment F for the joint construction agreements.

9. CONDITIONS of ISSUING OCCUPANCY PERMITS (continued)

- 14) Carrier shall joint construct with MediaOne of St. Paul, MN on the westbound I-94 bridge over the St. Croix River. MediaOne shall be the lead carrier for this construction. See Attachment G for the joint construction agreement.
- 15) WisDOT's conduit shall be distinguishable from other telecommunications conduits and shall consist of a black duct with a green stripe. Carrier shall install ONLY the fiber that WisDOT will use in that conduit. Carrier shall not install any additional fiber in WisDOT's conduit without the prior written approval of WisDOT.
- 16) Carrier's installation is defined as a transmission line by WisDOT. Therefore, no service connections shall be allowed to individual property owners adjacent to the corridor without prior authorization from WisDOT. Subject to WisDOT permit approval, Carrier shall have the right to exit and enter the right-of-way to make connections to its fiber optic cables for the purposes of extending its existing line or building or connecting to another transmission line.
- 17) Carrier shall obtain new permit approvals from WisDOT, and other applicable governmental agencies and highway authorities, for the future installation of additional fiber to its existing conduits. If construction inspection or a law enforcement presence is required by WisDOT as part of the new fiber installation, Carrier shall be required to pay for those costs in a similar manner as the initial conduit/fiber installation.

10. FACILITY OWNERSHIP

The facilities installed by Carrier on WisDOT right-of-way shall be Carrier's property from the date that construction begins and throughout the term of this Agreement. However, WisDOT shall retain all ownership rights to the facilities if any of the situations as outlined in sections 13B- 6&7, and 13C-3/5/6 occurs.

Carrier shall retain the right to grant an "indefeasible right of use" (IRU) to other carriers to enable them to use Carrier's conduits or individual fibers. Those customers that obtain communications services from Carrier, either through purchasing service or leasing fiber/capacity from Carrier, do not have to pay a right-of-way occupancy fee to WisDOT nor obtain a right-of-way occupancy agreement from WisDOT.

Carrier may sell a portion of its facility (conduits or fibers) to another carrier, or grant an IRU for one or more of its conduits to another carrier with the carrier installing its own fiber. If either situation occurs, two distinct owners will now be occupying WisDOT's right-of-way. Before any transaction is completed, the new (carrier) owner shall obtain a similar right-of-way occupancy agreement from WisDOT and pay an appropriate occupancy fee. Carrier shall notify WisDOT, in writing, a minimum of 30 days prior to the transaction. WisDOT may terminate this Agreement if it discovers that Carrier has sold a portion of its facility, or granted an IRU for its conduit but another carrier retains ownership of the fiber inside, without notifying WisDOT.

Upon request by WisDOT, Carrier shall submit an affidavit to verify that it still owns all of the fiber and conduit installed under this Agreement. The affidavit shall also include the names, addresses, and contacts of the companies which have an IRU for Carrier's fiber. Even though the request will typically be made on an annual basis, WisDOT reserves the right to make a request at any time.

11. FACILITY RELOCATION

Carrier shall be given an opportunity to relocate its facility within WisDOT right-of-way if a highway project or other WisDOT-approved use conflicts with its location. In keeping with WisDOT's policy on compensable and non-compensable utility facility moves, WisDOT shall not compensate Carrier to move its facility within its right-of-way as part of a highway project. However, Carrier shall be reimbursed on a proportional basis when WisDOT has an IRU for Carrier's facility. For example, if WisDOT has an IRU for 36 fibers and Carrier has 288 for its own use, then WisDOT will pay 36/324 or approximately 11% of the relocation costs.

If it is necessary to maintain uninterrupted service, Carrier shall be allowed to temporarily locate in WisDOT right-of-way at a mutually acceptable location for up to 180 days during the relocation of its facilities to another permanent site.

12. FUTURE ACCOMMODATIONS

This Agreement does not provide exclusive use of WisDOT right-of-way by Carrier. WisDOT may allow other utility installations adjacent to Carrier's facilities, and shall provide for a reasonable distance (5-foot minimum) to be maintained from Carrier's facility to minimize potential conflicts, reduce the possibility of accidental damage, and still retain a corridor that could be utilized by other communication companies in the future. WisDOT may encourage other communications companies interested in locating within Carrier's corridor to talk to Carrier about leasing part of its facility to minimize the number of times that WisDOT's right-of-way is disrupted.

13. TERMINATION

This Agreement, or any individual occupancy permit, may be terminated at any time upon mutual consent of Carrier and WisDOT. Upon termination of this Agreement, all occupancy permits issued to Carrier and in effect at the time shall also terminate. In addition, this Agreement may terminate as follows:

A. By WisDOT for Convenience

WisDOT may revoke any individual occupancy permit if its own use or sale of the right-of-way would be facilitated by relocation of Carrier's facilities, and shall provide Carrier with written notice a minimum of one year prior to such termination. During this period, WisDOT shall work with Carrier to find a suitable replacement area on right-of-way near the terminated location. If this type of revocation occurs and no replacement area is agreed upon by the parties, Carrier shall be entitled to receive a prorated refund of any prepaid fees, if applicable, based only upon the affected length of the facility.

B. By WisDOT for Non-Compliance

WisDOT may terminate this Agreement or revoke individual occupancy permits if Carrier:

- 1) Fails to comply with the terms of this Agreement, or any special occupancy permit provisions.
- 2) Fails to comply with the Utility Accommodation Policy, or fails to take the proper action(s) required by WisDOT to correct Policy violations.
- 3) Violates federal, state, or local laws, codes, ordinances, licenses or permits applicable to the ownership, operation, or maintenance of the facility.
- 4) Interferes with WisDOT's operations.
- 5) Operates in a manner that affects public safety. *Exception:* WisDOT shall not have the authority to determine that Carrier's operations threaten public safety due to concerns or complaints relating to electromagnetic emissions or other matters within the regulatory authority of the FCC or any other state or federal authority having appropriate jurisdiction, provided that Carrier is in compliance with all applicable laws and regulations of the FCC and other applicable authorities.

The specified items in 1-5 shall hereinafter be referred to as "non-compliance" actions. If public safety is threatened or there is some other non-compliance action that requires Carrier's prompt attention, WisDOT shall provide Carrier with an oral or facsimile notice and Carrier shall immediately act to effect a cure. A subsequent written notice shall follow.

With other non-compliance actions, WisDOT shall provide Carrier with written notice and Carrier shall have up to 30 days to cure the action, or start the cure, if by its nature, the condition cannot be cured within that time. Carrier may ask for an extension if the cure could take longer than 30 days. With any non-compliance action, WisDOT may temporarily suspend any (all) occupancy permit(s), shut down work in-progress, or withhold the approval of permit applications until Carrier takes action towards a cure to the satisfaction of WisDOT.

If, in WisDOT's reasonable opinion, a cure has not been effected for non-compliance actions in accordance with the terms of this Agreement, Carrier shall be provided with written notice of termination of the applicable occupancy permit(s) or the entire Agreement. Upon termination of this Agreement or any occupancy permit(s) for non-compliance actions, Carrier shall forfeit any prepaid fees, if applicable, as liquidated damages. In addition, WisDOT **shall** require Carrier to do **one** of the following:

13. TERMINATION (continued)

- 6) Forfeit ownership of its entire communications facility (conduits and fiber optic cables) or only the portion of the facility used by WisDOT if the entire Agreement is terminated, or only the portion covered under an occupancy permit if that permit is revoked, as long as the facility does not pose an environmental hazard. This does not include the equipment necessary to operate or "light up" the fiber.
- 7) Remove all of its facilities if the entire Agreement is terminated, or only those facilities affected under an occupancy permit if that permit is revoked, except for those portions used by WisDOT, within 60 days, and return the right-of-way to an equal or better condition than what existed upon issuance of the occupancy permit (normal wear and tear and casualty loss excepted) at Carrier's sole cost and expense.

Carrier shall not have any further obligation with respect to a right-of-way area if WisDOT exercises its option to keep the communications facilities in that area. Carrier's failure to comply with respect to an individual occupancy permit may not necessarily result in default to all occupancy permits. If WisDOT notifies Carrier to remove its facilities and Carrier fails to comply within 60 days of the notice, then WisDOT shall have the facilities removed and bill Carrier for the reasonable cost of removal or deduct such costs from moneys due Carrier under this Agreement.

C. By Carrier for Commercial Reasons

Carrier may terminate this Agreement or any individual occupancy permit on 30 days written notice to WisDOT if:

- 1) At any time during the term of this Agreement, it becomes commercially, economically, technologically, or legally inadvisable in Carrier's business judgment for it to utilize WisDOT's right-of-way, or if all or a significant portion of Carrier's facilities are destroyed by a natural disaster, fire, war, or other calamity.
- 2) Any required certificate, permit, license or approval is denied, canceled or otherwise terminated for reasons beyond Carrier's control such that it is unable to use WisDOT's right-of-way for its intended purposes.

Upon Carrier's termination of this Agreement or any occupancy permit(s) for commercial reasons or expiration of this Agreement without renewal, Carrier shall forfeit any prepaid fees, if applicable, to compensate WisDOT as liquidated damages, and **shall** do **one** of the following:

- 3) Sell the communication facilities to another carrier, except for WisDOT's portion. WisDOT would receive full ownership of its portion, and new carrier shall enter into a new Agreement with WisDOT upon mutually agreeable terms and conditions.
- 4) Sell the communication facilities to another carrier, provided that WisDOT retains all IRUs (see section 10) granted to WisDOT for Carrier's facility and new carrier enters into a new Agreement with WisDOT upon mutually agreeable terms and conditions.
- 5) Abandon its facilities in place provided they do not interfere with WisDOT's operations, and Carrier proves, to the satisfaction of WisDOT, that the facilities do not pose an environmental hazard.
- 6) Remove all of its facilities within 60 days, except for the portion used by WisDOT, and return the right-of-way to an equal or better condition than what existed upon issuance of the occupancy permit(s) (normal wear and tear and casualty loss excepted) at Carrier's sole cost and expense.

Nothing in this section shall excuse Carrier from prompt payment of any fees, taxes, insurance or any other charges required of Carrier.

14. EMERGENCIES

Carrier may respond to any facility-related emergency without first obtaining a permit from WisDOT so long it follows Policy guidelines while handling the emergency. If necessary, Carrier shall submit a permit application after the emergency to document any changes to its facility. Carrier shall pay all costs associated with any fire calls for emergency responses to its facilities including the amount billed to WisDOT by a town, village, or city fire department under sections 60.557(2), 61.65(8), and 62.13(8) Wisconsin Statutes (1997-98) respectively.

15. ENVIRONMENTAL COMPLIANCE

Carrier shall comply with existing or hereinafter enacted environmental laws or regulations that apply to or affect the operation of Carrier's facilities covered by this Agreement or any occupancy permit. Carrier shall not generate, store, or dispose of any hazardous substances nor transport those substances to or from the right-of-way. Carrier's facilities shall not constitute, contain, generate or release any hazardous substance, waste, pollutant, or contaminant as defined under federal, state, and local laws.

Carrier shall perform an environmental analysis for each highway district within which it wants to place facilities before any occupancy permits are issued for that district. The screening sheets in Attachment H shall be used to document the analysis and submitted prior to Agreement approval or with each permit application. If any question on the screening sheets is checked "No", then Carrier shall work with the district environmental coordinator to resolve the conflict before a permit can be issued.

Carrier shall be responsible for obtaining all necessary permits or approvals from the Wisconsin Department of Natural Resources (DNR). Copies of those approvals/permits shall be submitted to WisDOT prior to starting construction and included as a supplement to Attachment H.

If WisDOT has an improvement project in the vicinity of Carrier's location(s) and has done an environmental assessment for that project at any time, WisDOT shall furnish Carrier with that information upon request. Any information provided to Carrier shall be considered "*for informational purposes only*" since the assessment may be incomplete or inaccurate, i.e., conditions at a particular location may change between the date of the field investigation or report, and the date a report is reviewed.

Policy 96.08 shall be used if Carrier discovers any environmental conditions on WisDOT right-of-way – either before, during, or after installation of its facilities. Carrier shall not be responsible for the assessment, mitigation or remediation of preexisting right-of-way conditions unless its operation causes the material to be disturbed and Carrier fails to follow Policy 96.08(E). When right-of-way remediation must be undertaken as a result of contamination from Carrier-generated materials not preexisting on the right-of-way, Carrier shall initiate, finance, and carry out a WisDOT approved remediation plan.

The obligations of Carrier set forth in this section shall survive the termination of this Agreement. However, if Carrier removes all of its facilities from a right-of-way area and completes the required restoration or is allowed by WisDOT to leave its underground facilities in place, and provides WisDOT with a survey from an environmental consultant licensed to do business in Wisconsin documenting that the area is free and clear from all Carrier-generated contaminants, then this obligation shall be released in writing by WisDOT for that particular location.

16. INSTALLATION REQUIREMENTS

Carrier shall be responsible for obtaining all of the required approvals or permits from agencies outside of WisDOT before commencing any construction activity on WisDOT's right-of-way, and submitting evidence of those approvals or permits with each applicable occupancy permit application. Carrier shall complete construction of its facilities by December 31, 2000. If Carrier fails to complete said construction, WisDOT shall have the option of revoking the permit and issuing a new one, or extending the time frame for completion. All installations shall follow the guidelines set forth in WisDOT's Policy, except as specified in this Agreement or in any special occupancy permit provisions. Specifically:

A. Contact List/Scheduling

Carrier shall provide WisDOT with the names and telephone numbers of the people in charge of its field operations as well as other staff members who are assigned to the project and permanently stationed at Carrier's regional and corporate headquarters. This includes people who are responsible for the overall project, specific spreads, or directional boring crews. It also includes any subordinates or team leaders who may make key decisions, and any consultants or contractors who are hired by Carrier.

Field personnel shall have cellular phones or pagers that would enable a WisDOT representative to contact them at any time. Carrier shall provide WisDOT with the staff names and corresponding phone numbers no later than the pre-construction meeting (section C) and shall update them as necessary within three working days of a change.

Carrier shall also provide a weekly schedule of all field operations in WisDOT right-of-way to the district utility permit coordinator, Bureau of Highway Operations staff, and State Patrol District office for their respective counties. See Attachment I for a sample format. The schedule shall be provided by 8:00 AM every Monday morning, or the first working day of the week in case of a Monday holiday, and may be sent by fax, e-mail, carrier or regular mail. Specifically, the information provided shall include:

- 1) Contractor name(s) and/or Carrier crew number (or other identifying feature).
- 2) Lead contact person in the field for each contractor or crew listed in #1.
- 3) Cell phone number and/or pager number of #2.
- 4) Contractors' main office phone numbers.
- 5) Crew locations: County, highway, and termini (milepost range, road crossing(s), or other identifying features).
- 6) Brief description of planned operation for the week: include planned work activities, stoppages, number of crews, etc.

If schedules are not received by 8:00 AM, WisDOT may shut down the work operation within the district(s) involved.

B. Right-Of-Way Access

Access to WisDOT's interstate right-of-way shall be from adjacent lands, frontage roads, or crossing highways, and may be allowed from the shoulder of the highway under the strict provisions as outlined in section 16C. **WisDOT does not authorize the use of any median crossover on I-94 or I-894 for any reason. Such activity is illegal and subject to a citation and fine.**

Carrier may temporarily remove a portion of WisDOT's security fence to gain access to the right-of-way. Carrier shall be responsible for effectively restricting access by others during the period when the fence is open. Overnight, the security fence shall be restored, a locked gate installed, or some other way of securing the fence completed to keep people and animals out.

16. INSTALLATION REQUIREMENTS (continued)

C. Traffic Control

All work zone traffic control shall be in accordance with the Wisconsin Manual on Uniform Traffic Control Devices. Additional guidance is available from WisDOT through a booklet entitled, *Work Zone Safety, Guidelines for Construction, Maintenance, and Utility Operations* or from Policy 96.51. For freeway/expressway operations which continuously remain more than 30 feet from the edge of the closest traffic lane, work zone signing is not required. For operations that remain entirely beyond the delineator posts, a shoulder closure is not needed.

When unloading/loading from the interstate shoulder where the vehicle count is 50,000 ADT (Average Daily Traffic) or more, a lane closure shall be required. Lane closures are not required if the unloading/loading vehicle can park entirely off the paved shoulder, or if it can safely have the driver's side wheels on the paved shoulder and the passenger side wheels on the gravel shoulder or grass inslope, without causing any damage to the shoulder. A lateral safety buffer of at least **six** feet shall be provided between the edge of the traffic lane and the vehicle. If this buffer distance cannot be met, then a full lane closure shall be required.

With **any interstate** lane or shoulder closure where the vehicle count is 50,000 ADT or more, a law enforcement officer and squad car **shall** be present at all times to monitor the work zone. A truck mounted attenuator is recommended, but not required, to provide additional protection of vehicles and equipment parked along the shoulder. The closed lane shall remain free of all vehicles, equipment, and other obstacles to provide a lateral safety buffer.

To properly access from the interstate shoulder, the following provisions shall be strictly adhered to:

- 1) **Prior to** loading and unloading equipment or materials, proper traffic control shall be set up to close the right lane (if required) or the shoulder, and a law enforcement officer and squad car in place.
- 2) Carrier shall move its vehicles, equipment, and materials onto the shoulder **after** authorization from the officer present at the scene.
- 3) The lane closure shall be taken down (if utilized), and proper traffic control reestablished for a shoulder closure once the unloading has finished, and if the vehicles or equipment need to remain parked on the shoulder to facilitate Carrier's operation.
- 4) Lane closures shall not take place during weekday peak hours from 6-9 AM and 3-6 PM or during holiday work restriction times (see section 16D) unless specifically authorized by law enforcement and the district utility permit coordinator or other appropriate highway district representative.
- 5) Lane closures may occur between 6 PM and 6 AM upon authorization from the appropriate law enforcement agency.

When unloading/loading from the interstate shoulder where the vehicle count is less than 50,000 ADT, a lane closure may be used, but is not required. A shoulder closure shall be set up prior to any vehicles arriving and shall remain in place until all operations are beyond the delineator posts or the vehicles have departed. The use of a truck mounted attenuator is recommended, but not required.

16. INSTALLATION REQUIREMENTS (continued)

C. Traffic Control (continued)

Carrier shall procure the use of a law enforcement officer and squad car to protect all vehicles as they decelerate and maneuver from the live lane to the shoulder. If no law enforcement presence is available, then Carrier shall reschedule its unloading/loading operation. Once the vehicles have parked on the shoulder, the law enforcement officer shall resume his/her normal duties. A law enforcement presence may be used as the vehicles depart from the shoulder, but is not required. No vehicle or any piece of equipment shall be allowed to park on any shoulder overnight.

Shoulder closures are not needed when:

- 6) The work activity is beyond the delineator posts.
- 7) Carrier, contractor, or state/county inspector vehicles are stopped on the shoulder for a short duration (1/2-hour maximum).
- 8) Work vehicles or equipment needing to use the shoulder temporarily (1-2 minutes) to get around a culvert or other natural feature that block their path by the right-of-way line.

D. Hours of Operation/Holiday Work Restrictions

Carrier is authorized to work between normal daytime hours – sunrise to sunset – seven days per week. No work shall take place during nighttime hours unless authorized by WisDOT. Carrier shall not work anytime during the following peak holiday travel periods during 2000:

- 1) Fourth of July Weekend
From 12 Noon on Friday, June 30 until 6 AM on Wednesday, July 5. *Carrier may submit a request to WisDOT to work on Monday, July 3, however, WisDOT shall not be obligated to approve the request.*
- 2) Labor Day Weekend
From 12 Noon on Friday, Sept 1, until 6 AM on Tuesday, Sept 5.
- 3) Opening of Deer Hunting Season
From 12 Noon on Friday, Nov 17, until 7:30 AM on Monday, Nov 20.
- 4) Thanksgiving Weekend
From 12 Noon on Wednesday, Nov 22, until 7:30 AM on Monday, Nov 27.
- 5) Christmas Weekend
From 12 Noon on Friday, Dec 22, until 7:30 AM on Tuesday, December 26.

In addition, Carrier shall not have any lane or shoulder closures from 12 Noon on Friday both eastbound and westbound, until 9 AM westbound or 12 Noon eastbound on the following Monday during all weekends between Memorial Day and Labor Day weekends. Carrier may still work during those weekend times, but would have to load/unload equipment only upon authorization from the appropriate law enforcement agency.

E. Pre-Construction Meetings

WisDOT and Carrier along with its contractors and consultants, State Patrol, Milwaukee County Sheriff's Department, and WisDNR representatives shall meet at least two weeks prior to the start of construction in each district to discuss the entire project and its corresponding timetable. No work shall begin without a pre-construction meeting.

16. INSTALLATION REQUIREMENTS (continued)

F. WisDOT Inspections

WisDOT reserves the right to inspect the work in progress either with WisDOT personnel or county highway department personnel who are under contract with WisDOT to provide highway maintenance services. WisDOT shall also hire consultant personnel at Carrier's expense to provide full-time inspection of Carrier's installation. A copy of any permit issued to Carrier shall be present at any job location during all work times.

G. Diggers Hotline

Carrier shall become a member of Wisconsin's one-call network, Diggers Hotline. Carrier shall be aware that WisDOT does not have all of its facilities mapped by Diggers Hotline at this time. Carrier and its contractors shall call each highway district office at least 72 hours prior to excavating on WisDOT right-of-way and a representative shall come out to the site and mark WisDOT's facilities. When crossing WisDOT facilities with its own facility, Carrier shall expose WisDOT's facility and determine its vertical location before commencing installation of Carrier's facility.

H. Bridge Attachments

Any attachment by Carrier shall be approved by WisDOT's bridge section prior to permit approval. No bridge member shall be cut, drilled into, or welded to in any manner to accommodate Carrier's facility.

The hanger assembly design shall first be approved by WisDOT and shall be included as part of the bridge occupancy permit documentation. The design shall include mechanisms that will allow the hanger assembly and duct to expand and contract in a similar manner as the bridge. Carrier shall provide WisDOT with the total dead load of the hanger assembly, duct, and fiber cables. The duct assembly shall not be fitted through either abutment.

During its operation, Carrier shall take all necessary actions to prevent anything from falling into any river. If something large enough to constitute a navigational hazard (e.g. section of falsework, conduit, etc.) does fall into a river and it cannot be retrieved immediately, Carrier shall contact a DNR conservation warden. Carrier shall immediately report any hazardous material spill (gasoline, oil, paint, etc.) to DNR at 1-800-943-0003.

I. Horizontal Location Within Corridor

Carrier shall install its fiber optic cable at the locations shown on the **approved** occupancy permits only. Deviations from these locations may be allowed, but shall first be approved by the district utility permit coordinator or his/her designee. "As-built" plan sheets showing the approved deviations and handhole locations shall be sent to the appropriate district office and Central Office within three months after project completion.

J. Vertical Location Within Corridor

Carrier shall bury all fiber optic cables that are placed in WisDOT's right-of-way. In addition to compliance with Policy 96.53(C), all cables shall be placed at a depth of 30 inches or more with a plastic "warning" tape placed approximately one foot above the cables to prevent accidental cutting. Carrier may install its cable by means of plowing or directional boring. At specific locations as directed by WisDOT (e.g. under culverts, crossroads, trees, etc.), Carrier shall directional bore.

K. Work Area Protection During Non-Work Times

Carrier shall store its equipment/materials off of the right-of-way during non-work times if possible. If necessary, Carrier may store its equipment/materials on the right-of-way provided they are placed as close to the right-of-way line as possible and outside of the clear zone. Carrier shall ensure that any excavation left open during non-work times is well marked and secured from public intrusion.

16. INSTALLATION REQUIREMENTS (continued)

L. Erosion Control

In accordance with Policy 96.55, Carrier shall submit a formal erosion control plan since its operation will most likely have open excavations and disturbed soil from equipment tracks for more than a 24-hour period. See Attachment H. Carrier shall take all steps necessary to prevent soil from getting into nearby inlets and waterways and shall protect excavated areas with the proper erosion control devices to contain the soil directly at the location. All necessary erosion control devices shall be in place prior to starting any construction.

M. Right-Of-Way Restoration

Carrier shall restore any WisDOT right-of-way disturbed to its original (as best as practical) condition within **two weeks** after installing its facilities. Upon notification from WisDOT, Carrier shall temporarily restore rutted right-of-way up to 15 feet from the edge of shoulder **one week** prior to the scheduled date of mowing operations in the area. Time extensions for restoration may be allowed by WisDOT in the case of inclement weather, poor soil conditions, or if Carrier's operations would track over the same disturbed areas – provided that proper erosion control devices are in place to protect the disturbed areas.

If Carrier fails to do restoration within the required time period, WisDOT shall have the right-of-way restored and bill Carrier for the work. Special seed mixes may be required by WisDOT for surface restoration to prevent the establishment of non-native forbs and grasses in the area. Carrier's contractors shall thoroughly wash all equipment before bringing it to the job site if such equipment was used in other states prior to being in Wisconsin.

N. Working Around Trees & Tree/Vegetation Removal

The following guidelines have been developed to assist Carrier when working around trees and other types vegetation (See Attachment J for graphic representation). Carrier:

- 1) Shall bore underneath trees **planted** by WisDOT for aesthetics, living snow fence, or screening, along with those **volunteer** trees greater than 8-10" DBH (diameter measured at breast Height). Planted and volunteer trees shall be identified by WisDOT in all locations prior to any construction.
- 2) May remove **isolated, volunteer or scrub** trees which are less than 8" DBH unless it is a visual landmark or adjacent to a property owner's home.
- 3) May locate its facility inside (towards the interstate) any **isolated** trees, a **stand** of trees, or **planted** snow-fence provided there will be 50 feet or more from the edge of pavement (painted stripe) to the proposed facility location, and at least 8 more feet from that location to the nearest tree trunk greater than 8-10" DBH, or at least 4 more feet to the nearest edge of living snow-fence. A few (less than 5) trees greater than 8-10" DBH may be removed on the edge of a stand to improve the running line if needed.
- 4) May locate on the back side of the security fence within the 3-foot typical area between the fence and the right-of-way line to avoid a **stand** of trees. Carrier shall first verify with WisDOT before installation that the 3-foot area exists.
- 5) May clear up to a 13-foot swath of **volunteer or scrub** trees or brush from the fence line. *Brush is defined as trees or vegetation up to 1½" in diameter*
- 6) Shall not clear **any** trees or vegetation which serve as a visual barrier between an adjacent property owner and a sound barrier or the interstate itself.
- 7) Shall not break off any lower branches to accommodate equipment passing nearby. Instead, these branches shall be properly pruned.

16. INSTALLATION REQUIREMENTS (continued)

N. Working Around Trees & Tree/Vegetation Removal (continued)

In all cases, all trees and vegetation to be removed by Carrier to accommodate facility installation shall first be reviewed and approved by WisDOT. All trees, stumps, and shrubs scheduled for removal shall be completely removed and grubbed and the holes properly backfilled within one foot either side of Carrier's running line, and may be flush cut at or slightly below ground level outside of that area. Dead trees shall be removed if they would constitute a hazard under OSHA regulations.

To prevent Oak Wilt Disease from spreading, oak trees shall not be cut or pruned between April 1 and October 15 unless a thick coat of asphalt base tree paint is applied immediately after **any** cut, pruning wound, or abrasion made between those dates. This includes any oak stumps which will remain after flush cutting. Carrier shall check with each county it works in to see if that county has an Oak Wilt ordinance, and shall adhere to that ordinance if it is more strict than WisDOT specifications.

Carrier may dispose of trees by giving them to the adjacent property owner. If that owner does not want the trees, then Carrier may dispose of them as it wishes so long as it is off of WisDOT's right-of-way and out of sight from the traveling public. Trees may be chipped and mulched on the right-of-way upon approval from WisDOT. Carrier is advised to comply with applicable laws that may regulate the sale or transport of trees.

WisDOT may require Carrier to transplant, or remove and replace, trees or other vegetation that WisDOT planted for a living snow fence or for aesthetic purposes. In addition, Carrier shall immediately replace any trees cut or removed due to Carrier's or contractor's error which serve as a visual barrier between an adjacent property and a sound barrier or the interstate itself, or were planted by WisDOT for aesthetic purposes. All transplanted or newly planted trees and vegetation shall be maintained by Carrier for a period of two years. If any trees or vegetation die within the 2-year period, Carrier shall replace and maintain them for another 2-year period.

Carrier shall not burn, nor use any pesticides (herbicides, rodenticides or insecticides), on any portion of the right-of-way without prior approval from WisDOT. WisDOT reserves the right to disapprove the use of any pesticide – even one that has been approved by the United States Environmental Protection Agency.

O. Above-Ground Facility Marking

Carrier may mark its facility with above ground markers spaced at a minimum of 1,000 feet and at critical locations such as road and culvert crossings. The markers should be designed to notify anyone in the vicinity of the facility as to its approximate location, but be small enough that they are not readable from the highway.

17. TAXES AND LIENS

Carrier shall promptly pay and discharge all taxes, assessments, fees, and other charges levied or assessed against its facilities situated on WisDOT right-of-way, and all special assessments, license fees, permits, area charges, occupancy taxes, and any and all other charges levied or assessed by reason of Carrier's use and occupancy of the right-of-way which become due during, or apply to the term covered by, this Agreement and any renewal term or extension thereof, which are hereby declared the obligation of Carrier under this Agreement. Such obligation specifically excludes any and all income, gross receipt taxes, and other taxes of this nature assessed upon WisDOT.

17. TAXES AND LIENS (continued)

Carrier shall keep the right-of-way free from any liens arising from work performed, materials furnished or obligations incurred by Carrier. Carrier shall not permit the filing of a lien against any part of the right-of-way. Upon completion of any construction, copies of the signed lien waivers, if any, shall be supplied to WisDOT.

18. HOLD HARMLESS

WisDOT's standard indemnification clause, Policy 96.03, is part of this Agreement and incorporated herein by reference and shall be applicable to and included on all permits. A copy of the language is on the back of the DT-1553 permit application [see Attachment B].

19. INSURANCE AND SUBROGATION

During the Agreement term, Carrier shall secure at its cost, maintain in full force and effect at all times, and require any contractor entering and/or performing any type of work whatsoever on behalf of Carrier to have in full force and effect, the following types and limits of commercial insurance:

TYPE OF INSURANCE	MINIMUM LIMITS REQUIRED*
1) <u>Commercial General Liability</u> ; shall include blanket contractual liability and completed operations coverage.	\$2 million combined single limits per occurrence; may be subject to an annual aggregate limit of not less than \$4 million.
2) <u>Workers' Compensation and Employers' Liability</u>	Workers' Compensation: Statutory Limits Employers' Liability: Bodily injury by accident: \$100,000 each occurrence Bodily injury by disease: \$500,000 each occurrence \$100,000 each employee
3) <u>Commercial Automobile Liability</u> ; shall cover all Carrier and contractor-owned, non-owned, and hired vehicles used in carrying out the contract.	\$1 million combined single limits per occurrence
4) <u>Pollution Liability</u> ; may be required when Carrier has a bridge attachment over water.	\$3 million per occurrence \$5 million annual aggregate

* These requirements may be satisfied either through primary insurance coverage or through excess/umbrella policies. WisDOT reserves the right to require increased amounts of coverage over the period of the Agreement.

Carrier shall provide WisDOT [see Attachment K] with certificates of insurance as evidence that required coverage for insurance types 1, 2, and 3 are in force. The certificates shall be provided at the time of execution and delivery of this Agreement except that certificates of insurance for contractors entering and/or performing any work on behalf of Carrier shall be provided to WisDOT prior to the contractor entering or commencing any work. All certificates of insurance shall provide that the insurance shall not be canceled by the insurer or the limits reduced below the minimum requirements as listed above without 30 days prior written notice to WisDOT.

In the event of the expiration of any of the insurance policies as listed above, a change from one insurance carrier to another, or any changes affecting exposure, exclusions, and amounts of coverage, Carrier shall submit, within three working days, a new certificate to WisDOT reflecting such information. All coverage shall be placed with insurance companies licensed to do business in the State of Wisconsin that have an A.M. Best rating of A- or better.

20. CHOICE OF LAW

This Agreement is entered into and governed by the laws of the State of Wisconsin.

21. SEVERABILITY

If any provision of this Agreement should be found to be illegal, invalid or otherwise void, it shall be considered severable. The remaining provisions shall not be impaired and the Agreement shall be interpreted as far as is possible to give effect to the parties' intent.

22. NO PARTNERSHIP CREATED

Nothing herein shall be deemed to create a partnership between WisDOT and Carrier and neither party shall have authority to obligate the other.

23. APPROPRIATIONS

Nothing herein shall be construed as obligating WisDOT to the expenditure of funds or for the future payment of money in excess of appropriations authorized by law.

24. SUBSEQUENT LEGISLATION, REGULATION, AND PROCEDURES

Legislation pertaining to the use of WisDOT right-of-way or other facilities may be passed after the date of this Agreement, or WisDOT may adopt regulations or new policies pertaining to the same. Should any of these events occur, the new statutes, administrative rules, and policies, including subsequent amendments thereto, shall become part of or applicable to this Agreement. In addition, any language in this Agreement that is inconsistent with the new statutes, regulations, or policies may be voided immediately upon its effective date. WisDOT may need to draft new Agreement language to remedy any inconsistencies, but shall work with Carrier in order not to materially impair Carrier's operations.

25. NOTICES

All notices under this Agreement and any individual occupancy permits shall be in writing and shall be deemed valid if sent by overnight delivery or certified mail, return receipt requested, and effective on the third day following the date the notice is postmarked if no other date is specified in the notice itself. Notices should be addressed as shown in Attachment K. Either party may change the designated recipient of notices and the address by so notifying the other party in writing. Failure of WisDOT to give notice for any default shall not be deemed to be a waiver thereof nor consent to the continuation thereof.

26. WORKING RELATIONSHIP

WisDOT and Carrier shall **at all times** cooperate with each other, act in good faith, and expedite all decisions, notices, and correspondence in a timely manner throughout the performance of this Agreement.

27. ASSIGNMENT

This Agreement is specific to WisDOT and Carrier only and shall not be assigned by either party to another carrier or any other entity.

27. ASSIGNMENT (continued)

If Carrier simply changes its name (e.g. due to a reorganization or merger with another company or carrier) with no material change in ownership of the permitted facility, WisDOT may also change the name on the Agreement to Carrier's new name. This action shall not constitute an assignment.

28. ENTIRE AGREEMENT

The terms and provisions herein contained, including all attachments and occupancy permits issued to Carrier for its respective locations, constitute the entire Agreement between the parties and shall supersede all previous communications, either oral or written, between the parties with respect to the subject matter hereof, and no agreements or understandings varying or extending the same shall be binding upon either party unless in writing signed by a duly authorized officer or representative of each party.

In order, the hierarchy for resolving inconsistencies between documents is as follows:

- 1) An individual occupancy permit.
- 2) This Agreement.
- 3) The Utility Accommodation Policy.

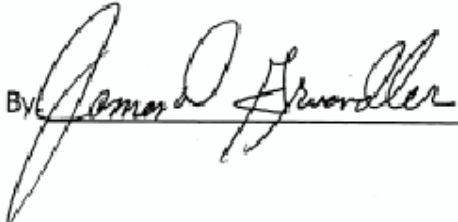
29. WARRANTY OF AUTHORITY

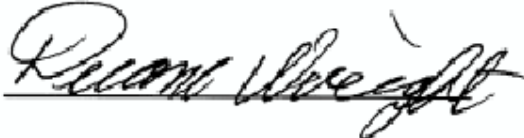
The signatories hereto warrant that they have full authority to enter into this Agreement and make it binding on the parties hereto without further action or approval. The effective date of this Agreement shall be the date that WisDOT signs it.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in duplicate by their duly authorized and empowered officers or representatives:

**WISCONSIN DEPARTMENT OF
TRANSPORTATION**

TOUCH AMERICA, INC.

By: 

By: 

Title: Administrator

Title: SR. PROJECT MANAGER

Date: 6-12-00

Date: 6/9-00

ATTACHMENT A**Carrier's Facility Locations / Structure Attachments
& Corresponding Individual Occupancy Permit Numbers**

Note: All permits have a construction completion date of 6/1/2001

County/ Milepost Loc.	Hwy(s)	Dir	Termini	Miles	Permit #/ Date Issued	Comments
St. Croix 0	94	WB	B55-61 over the St. Croix River	0	000736 7/26/00	Joint construction w/ MediaOne & Williams
St. Croix 0 – 31.4	94	EB	Mn/Wis state line to St. Croix/Dunn Co line	31.4	000730 6/12/00	Joint construction w/ Williams
Dunn 31.4 – 56.8	94	EB	St. Croix/Dunn Co line to Dunn/Eau Claire Co line	25.4	000733 7/3/00	Joint construction w/ Williams
Dunn 43.7	94	EB	B17-33 over the Red Cedar River	0	000763 12/14/00	
Eau Claire 56.8 – 71.8	94	EB	Dunn/Eau Claire Co line to Hobbs Road	15.0	000735 7/27/00	JC w/ Williams to USH 12 (Elk Mound)
Eau Claire 64.7	94	EB	B18-23 over the Chippewa River	0	000770 1/12/01	
Eau Claire 71.8 – 87.0	94	WB	Hobbs Road to Eau Claire/Trempealeau Co line	15.2	000735 7/27/00	Switch from EB to WB
Trempealeau 87.0 – 91.4	94	WB	Eau Claire/Trempealeau Co line to Trempealeau/Jackson Co line	4.4	000756 9/19/00	
Jackson 91.4 – 132.5	94	WB	Trempealeau/Jackson Co line to Jackson/Monroe Co line	41.1	000755 9/19/00	
Jackson 115.8	94	WB	B27-40 over the Black River	0	000771 1/12/01	
Monroe 132.5 – 147.5	94	WB/ EB	Jackson/Monroe Co line to I-90 (Tomah)	15.0	000751 9/8/00	EB only: MP 144.4 – 145.0 (New Wal-Mart interchange)
Monroe 45.5 - 52.5	90/94	WB	I-90 (Tomah) to Monroe/Juneau Co line	7.0	000751 9/8/00	MP 147.5 I-94 = MP 45.5 I-90/94
Juneau 52.5 - 86.4	90/94	WB	Monroe/Juneau Co line to Juneau/Sauk Co line	33.9	000750 9/8/00	
Sauk 86.4 - 102.0	90/94	WB	Juneau/Sauk Co line to Sauk/Columbia Co line	15.6	000747 8/28/00	
Sauk 91.0	90/94	WB	B56-48 over Mirror Lake	0	000783 3/7/01	
Columbia 102.0 - 108.5	90/94	WB	Sauk/Columbia Co line to I-39 (Portage)	6.5	000739 8/11/00	

ATTACHMENT A**Carrier's Facility Locations / Structure Attachments
& Corresponding Individual Occupancy Permit Numbers**

Note: All permits have a construction completion date of 6/1/2001

County/ Milepost Loc.	Hwy(s)	Dir	Termini	Miles	Permit #/ Date Issued	Comments
Columbia N/A	39/90/94	WB	NW quadrant of I-39/90/94 – STH 78 interchange (D1 remnant parcel). Access from Cascade Mountain Road.	0	000781 3/1/01	Repeater hut location
Columbia 108.5 – 111.5	39/90/94	WB	I-39 (Portage) to Wisconsin River Bridge	3.0	000738 8/11/00	
Columbia 111.5	39/90/94	WB	B11-23 over the Wisconsin River	0	000784 3/7/01	
Columbia 111.5 – 123.2	39/90/94	WB	Wisconsin River Bridge to Columbia/Dane Co line	11.7	000739 8/11/00	
Dane 123.2 – 133.2	39/90/94	WB	Columbia/Dane Co line to USH 51 (DeForest)	10.0	000737 7/26/00	
Dane 133.2	39/90/94	WB	NE quadrant of the I-39/90/94 – USH 51 interchange (within the infield of the entrance ramp)	0	000780 2/21/01	Repeater hut location
Dane 133.2 – 138.5	39/90/94	WB	USH 51 (DeForest) to STH 30 (Badger Interchange)	5.3	000782 3/1/01	1 conduit for WisDOT 2 conduits for Touch America
Dane N/A	51	SB	I-39/90/94 to Anderson Street		000764 12/21/00	
Dane N/A	30	EB	USH 151 (E. Washington Ave) to I-39/90/94 (Badger interchange)			
Dane 240.5 – 254.1	94	EB	I-39/90 & STH 30 (Badger Interchange) to Dane/Jefferson Co line	13.6	000726 4/10/00	MP 138.5 I-39/90/94 = MP 240.5 I-94
Jefferson 254.1 - 263.3	94	EB	Dane/Jefferson Co line to Ziebell Road	9.2	000731 6/20/00	
Jefferson 272.4 - 278.7	94	EB	CTH P to Jefferson/Waukesha Co line	6.3	000752 9/8/00	
Waukesha 278.7 - 287.3	94	EB	Jefferson/Waukesha Co line to STH 83 (Delafield)	8.6	000753 9/20/00	
Waukesha 292.5 – 298.0	94	EB	MP 292.5 (W of CTH T) to USH 18 (Blue Mound Road)	5.5		1 conduit for WisDOT 2 conduits for Touch America
Waukesha 298.0 - 303.4	94	WB	USH 18 (Blue Mound Road) to Waukesha/Milwaukee Co line	5.4	000774 1/23/01	

ATTACHMENT A**Carrier's Facility Locations / Structure Attachments
& Corresponding Individual Occupancy Permit Numbers**

Note: All permits have a construction completion date of 6/1/2001

County/ Milepost Loc.	Hwy(s)	Dir	Termini	Miles	Permit #/ Date Issued	Comments
Milwaukee 303.4 – 305.2	94	WB	Waukesha/Milwaukee Co line to I-894 (Zoo interchange)	1.8	000786 3/8/01	
Milwaukee 305.2 – 307.5	94	WB	I-894 (Zoo Interchange) to 60 th Street (just before Hawley Road interchange) Page 2 of 3	2.3	000786 3/8/01	
Milwaukee 305.2 - 307.6	94	EB	I-894 (Zoo interchange) to Hawley Road	2.4	000761 11/14/00	
Milwaukee 307.6 - 310.0	94	WB	Hawley Road to 8 th Street. Includes portions of Tory Hill Road and McAuley Place under the Marquette interchange.	3.0	000761 11/14/00	
Milwaukee 308.5	94	WB	B40-50 over the Menomonie River	0	000785 3/7/01	
Milwaukee 0 – 9.0	43/45/ 894	WB	I-94 (Zoo interchange) to I-43/94 (Mitchell interchange)	9.0	000757 10/25/00	
Milwaukee 316.6 – 325.0	94	EB	I-43/894 (Mitchell interchange) to Milwaukee/Racine Co line	8.4	000731 6/27/00	
Racine 325.0 - 331.1	94/West Front Rd	EB	Milwaukee/Racine Co line to 2-Mile Road	6.1	000729 5/10/00	Joint construction with Williams
Racine 332.7 - 333.5	94/West Front Rd	EB	CTH C (Spring St.) to approximately 0.3 mile south of STH 20 (Washington Ave.)	0.8	000729 5/10/00	Joint construction with Williams
Racine 335.1 - 335.7	94/West Front Rd	EB	58 th Road (Old STH 11) to approximately 0.3 mile south of STH 11 (Durand Ave.)	0.6	000729 5/10/00	Joint construction with Williams
Racine 336.8 - 337.1	94/West Front Rd	EB	Approximately 0.3 mile north of CTH KR (First St) to Racine/Kenosha County line	0.3	000729 5/10/00	Joint construction with Williams
Kenosha 337.1 - 349.2	94/West Front Rd	EB	Racine/Kenosha Co line to Wis/Ill state line	12.1	000728 4/20/00	Joint construction with Williams

**APPLICATION/PERMIT
TO CONSTRUCT AND OPERATE UTILITY FACILITIES ON HIGHWAY RIGHT-OF-WAY**

s.66.047,84.08, 85.15, 86.07(2), 86.16, 182.017 and such other applicable Wis. Stats.

Location Description - Quarter section, section, township, range, etc.
To each copy of the application attach one copy of the sketch showing location.

Proposed Work Location

Town Village City

OF

County

Applicant Name and Address

Construction Starting Date

Construction Completion Date *See Note Below

Applicant Work Order - if any

Highway

Utility Facility/Work Type

Line Orientation

Trans. 401 Project Designation
(See policy 96.55)

STH _____

Electric

CATV

Overhead

Minor

USH _____

Telephone/
Communications

Gas/Petroleum

Underground

Major

Interstate _____

Water

Chemical Treatment

Bridge Attachment

For Major projects only,
the utility shall notify the
Department at least 24
hours prior to the installation
of erosion control and storm
water management
measures Trans. 401.09(1).

Sanitary Sewer

Tree Cutting/Removal

* NOTE: If the work described is not completed by the "Completion Date" specified, this permit is null and void, and the work shall not be completed unless authorized through a subsequent permit or an approved time extension.

Name of Utility Person Responsible for Construction

(Area Code) Telephone Number

It is understood and agreed that approval is subject to the applicant's full compliance with the pertinent Statutes, as well as any rules and regulations of other jurisdictional agencies, which may be more restrictive, and with the Wisconsin Department of Transportation's Utility Accommodation Policy, current edition.

Are You a member of Diggers Hotline?

Yes

(Signature of Authorized Representative)

(Date)

No, provide number _____

(Title)

(Authorized Representative Telephone Number)

District Location and Telephone Number

Date Application Received by District

The applicant shall contact the Transportation District Office at the Telephone Number given at right NOT LESS THAN 3 WORKING DAYS prior to the start of the permitted work to arrange for a District Representative to locate and mark the existing traffic signal and/or highway lighting lines. No work under this permit shall be accomplished prior to the District Representative's arrival.

Special Telephone Number

Wisconsin Department of Transportation Permit Approval

Permit Number

Issuance Date

(Approval for Bureau of Highway Operations Director)

INDEMNIFICATION

This Applicant shall save and hold the State, its officers, employees, agents, and all private and governmental contractors and subcontractors with the State under Chapter 84 Wisconsin Statutes, harmless from actions of any nature whatsoever (including any by Applicant itself) which arise out of, or are connected with, or are claimed to arise out of or be connected with any of the work done by the Applicant, or the construction or maintenance of facilities by the Applicant, pursuant to this permit or any other permit issued by the State for location of property, lines or facilities on highway right-of-way, (1) while the Applicant is performing its work, or (2) while any of the Applicant's property, equipment, or personnel, are in or about such place or the vicinity thereof, or (3) while any property constructed, placed or operated by or on behalf of Applicant remains on the State's property or right-of-way pursuant to this permit or any other permit issued by the State for location of property, lines or facilities on highway right-of-way; including without limiting the generality of the foregoing, all liability, damages, loss expense, claims, demands and actions on account of personal injury, death or property loss to the State, its officers, employees, agents, contractors, subcontractors or frequenters; to the Applicant, its employees, agents, contractors, subcontractors, or frequenters; or to any other persons, whether based upon, or claimed to be based upon, statutory (including, without limiting the generality of the foregoing, worker's compensation), contractual, tort, or whether or not caused or claimed to have been caused by active or inactive negligence or other breach of duty by the State, its officers, employees, agents, contractors, subcontractors or frequenters; Applicant, its employees, agents, contractors, subcontractors or frequenters; or any other person. Without limiting the generality of the foregoing, the liability, damage, loss, expense, claims, demands and actions indemnified against shall include all liability, damage, loss, expense, claims, demands and actions for damage to any property, lines or facilities placed by or on behalf of the Applicant pursuant to this permit or any other permit issued by the State for location of property, lines or facilities on highway right-of-way in the past or present, or that are located on any highway or State property or right-of-way with or without a permit issued by the State, for any loss of data, information, or material; for trademark, copyright or patent infringement; for unfair competition or infringement of personal or property rights of any kind whatever. The Applicant shall at its own expense investigate all such claims and demands, attend to their settlement or other disposition, defend all actions based thereon and pay all charges of attorneys and all other costs and expenses of any kind arising from any such liability, damage, loss, claims, demands and actions.

Any transfer, whether voluntary or involuntary, of ownership or control of any property constructed, placed or operated by or on behalf of the Applicant that remains on the State's property or right-of-way pursuant to this permit shall not release Applicant from any of the indemnification requirements of this permit, unless the State is notified of such transfer in writing. Any acceptance by any other person or entity, whether voluntary or involuntary, of ownership or control of any property constructed, placed or operated by or on behalf of the Applicant that remains on the State's property or right-of-way pursuant to this permit, shall include acceptance of all of the indemnification requirements of this permit by the other person or entity receiving ownership or control.

Notwithstanding the foregoing, a private contractor or subcontractor with the State under Chapter 84 Wisconsin Statutes, that fails to comply with sections 66.047 and 182.0175 Wisconsin Statutes (1985-1986), remains subject to the payment to the Applicant of the actual cost of repair of intentional or negligent damage by the contractor or subcontractor to any property, lines or facilities placed by or on behalf of the Applicant pursuant to this permit or any other permit issued by the State for location of property, lines or facilities on highway right-of-way, and remains subject to payment to the Applicant for losses due to personal injury or death resulting from negligence by the contractor or subcontractor.

Notwithstanding the foregoing, if the State, or its officers, employees and agents, fail to comply with sections 66.047 and 182.0175 Wisconsin Statutes (1985-1986), the State or its officers, employees and agents, remain subject to the payment to the Applicant of the actual cost of repair of willful and intentional damage by the State, or its officers, employees and agents, to any property, lines or facilities placed by or on behalf of the Applicant pursuant to this permit or any other permit issued by the State for location of property, lines or facilities on highway right-of-way, and remain subject to payment to the Applicant for losses due to personal injury or death resulting from negligence by the State, its officers, employees and agents.

No indemnification of private contractors or subcontractors with the State under Chapter 84 Wisconsin Statutes, shall apply in the event of willful and intentional damage by such private contractors or subcontractors to the property, lines and facilities of the Applicant located on the highway right-of-way pursuant to this permit or any other permit issued by the State for the location of property, lines or facilities on highway right-of-way.

ATTACHMENT C**Fiber Cable Splicing, Testing and Acceptance Procedures**

Page 1 of 2

1. The cable sheath will be an armored sheath, loose tube cable manufactured with the fibers shown by:
 - Siecor (Armored) comprised of standard single mode fibers.
2. The fiber optic cable shall be installed per AT&T's specifications for Carrier.
3. All splices shall be contained in a hand-hole or manhole when in the underground or buried environment. Splices will be in enclosure or splice cabinets when inside an office.
4. Splice closures which facilitate taut sheath entry and which are designed to seal, bond, anchor and protect various types of cable and splices shall be used. Metal aerial closures shall be encapsulated in outer closures if the plant is in a corrosive atmosphere or saltwater environment.
5. The entire fiber optic cable system shall be properly protected from foreign voltage and grounded with an industry-accepted system. Foreign voltage on the cable system shall not exceed 50 VAC.
6. All splices will be made with a fusion-splicing machine on new fiber route installations. Temporary maintenance splices shall be low reflectance mechanical splices such as Fiberlock as manufactured by 3M. A steel Coyote splice case shall be used for all splices.
7. Carrier shall perform directional span testing once end-to-end continuity, fiber distribution panel (FDP) to fiber distribution panel (FDP), is established. Loss measurements will be taken and recorded using an industry accepted laser source and power meter at the required wavelength(s). Standard single mode conventional fiber will be tested at 1310 nm and 1550 nm. The loss measurements should be made from FDP to FDP. These measurements shall be made after the splice manholes or hand-holes are closed to check for macro-bending problems.
8. Total Optical Return Loss (TORL) must be measured using industry standards. TORL is also known as overall Reflectance of a fiber path. The Reflectance measurements should be made from the FDPs.
9. Route Splicing Criteria

Although no single maximum splice loss limit is placed on individual splices, WisDOT's system shall be designed utilizing the following design criteria:

- (i) 0.05 dB engineering loss for each single fusion splice
- (ii) 0.08 dB engineering loss for mass fusion splices.
- (iii) 0.25 dB engineered loss per transition splice (standard single mode fiber spliced to non-zero dispersion shifted fiber)
- (iv) 1.0 dB engineered loss per "through" office (fibers connected through an office with jumpers, includes connector loss).

ATTACHMENT C
Fiber Cable Splicing, Testing and Acceptance Procedures
 Page 2 of 2

9. Route Splicing Criteria (continued)

The end-to-end loss value as measured with an industry-accepted laser source and power meter includes the fiber loss, splice loss, and connections in “through” offices. The end-to-end loss must meet the design loss value of 0.40 dB/km at 1310 nm and 0.25 dB/km at 1550nm (plus engineered splice loss and “through” office loss) for conventional single mode fiber.

Example

- Route is 50 km conventional single mode fiber
- Ten mass fusion splices
- One “through” office

The engineered loss will be calculated as follows:

Step 1. Conventional Single Mode Fiber @ 1310 nm = 50 km x 0.40 = 20.0 dB

Step 2. Conventional Single Mode Fiber @ 1550 nm = 50 km x 0.25 = 12.5 dB

Step 3. Mass fusion splice loss for 10 splices x 0.08 dB = 0.8 dB

Step 4. “Through” office loss = 1 @ 1.0 dB each

Step 5. Engineered Loss from FDP to FDP is:

@ 1310 nm = 20 dB + 0.8 dB + 1.0 dB = 21.8 dB

@ 1550 nm = 12.5 dB + 0.8 dB + 1.0 dB = 14.3 dB

10. Carrier shall record end to end loss on testing documentation or in an electronic format acceptable to WisDOT and supply a copy to WisDOT.
11. Carrier shall record Total Optical Return Loss (Reflectance) on testing documentation or in an electronic format acceptable to WisDOT and supply a copy to WisDOT. The Reflectance must be -24 dB or better (-25dB is better).
12. If WisDOT’s fibers terminate in Carrier’s office, the fibers shall be terminated in a FDP equipped with “positive contact” type connectors.

ATTACHMENT D**Division of State Patrol Services & Estimated Costs**

Page 1 of 3

INTERSTATE HIGHWAY CONSTRUCTION PROJECTS 2000**WISCONSIN STATE PATROL
and
TOUCH AMERICA, INC.****I. INTRODUCTION**

The Division of Transportation Infrastructure Development (DTID) has determined that WisDOT should employ extraordinary traffic control and protection efforts for the installation of a fiber optic facility by Touch America (Carrier) along I-94 and I-894 from the Illinois/Wisconsin border in Kenosha County to the Wisconsin/Minnesota border in St. Croix County within Division of State Patrol (DSP) Districts 1, 2, 5, & 6 during 2000. Subsequently, DTID has contacted DSP and requested that an list of services and estimate of costs be prepared and included with this Agreement which details DSP's involvement in Carrier's project.

Historically, WisDOT's Division of Transportation Districts (DTD) and DSP entered into agreements wherein DSP provided extraordinary traffic surveillance and enforcement in various major construction zones. Trooper personnel were assigned to provide help, guidance and discipline to motorists, encourage a free-flowing traffic stream, and provide a safe project environment. Those programs were successful.

II. PROJECT BACKGROUND

This project started on April 17, 2000 and is expected to conclude on or about December 31, 2000. Carrier and its prime contractor, Michels Pipeline Construction Company, will be installing conduits, fiber optic cables, and handholes throughout the majority of the I-94 and I-894 corridors. Multiple work sites in various counties may operate simultaneously along the entire project corridor. It is anticipated that motorists will be affected at times, and the use of law enforcement is designed to minimize that effect as much as possible.

The majority of work will be accomplished along the fence line area and require no special traffic control or protection. However, Carrier has requested to load/unload equipment and materials from the right paved shoulder of the interstate at random times and locations. To facilitate this, temporary lane and/or shoulder closures are necessary for the safety of both motorists and workers. DTID agreed to Carrier's request only if a law enforcement presence is included with any closure, and Carrier pays for the additional costs of labor, squad cars, meals, and supervisory staff. Traffic on affected highways will be slowed, diverted, or stopped as the situation dictates. It is these efforts which require DSP's assistance.

III. SCOPE OF SERVICES

DSP shall provide a full-time presence using overtime labor on I-94 in locations where the average daily traffic (ADT) count is at or above 50,000. This includes the counties of Waukesha, Dane/Columbia (I-39/90/94 & STH 30 interchange in Madison to the I-39/90/94 & STH 78 interchange near Portage), and St. Croix (STH 35 to WI/MN border). In these areas, Carrier shall be required to have a DSP officer and squad car on site for the duration of any lane or shoulder closure.

ATTACHMENT D

Page 2 of 3

III. SCOPE OF SERVICES (Continued)

In addition, DSP shall provide, only when regular (non-overtime) staff are available, a part-time presence on I-94 in locations under 50,000 ADT. This part-time presence is needed to protect Carrier's or contractor's vehicles and/or equipment as they decelerate and maneuver from the live lane to the shoulder. Once the vehicles have parked on the shoulder, the DSP officer shall resume his/her normal duties. If a DSP officer is unavailable, Carrier shall call the county sheriff's department or local municipal law enforcement to provide the protection. If no law enforcement presence is available, then Carrier shall reschedule its unloading/loading operation.

All plans which direct State Patrol enforcement efforts shall be conducted within the guidelines set forth in DSP Policy and Procedure 15-7. This contract does not cover Milwaukee County, and Carrier shall enter into a separate contract with the Sheriff's Department for those operations within that county.

The following represents DSP's best estimate of anticipated staffing levels, squad car usage, and meal costs based upon recommendations provided by Carrier:

A. Trooper Wages

It is anticipated that interstate lane closures will occur during the loading and unloading process only and protection of standing vehicles on the shoulder will be limited to special occasions requiring such vehicle placement. Troopers will be assigned to handle each closure and/or protection need, for a minimum period of four (4) hours in those locations at or above 50,000 ADT. The I-94 project will be staffed only as the need arises and, for planning purposes, staffing needs shall be projected a minimum of 48 hours in advance.

Extraordinary patrol presence is projected only for Waukesha, Dane, Columbia, and St. Croix Counties, where an estimated 2 shifts per week may be required. The presence in Dane and Columbia Counties is projected to be split between the two. The presence in St. Croix County will only be required from the Hwy. 35 interchange to the Minnesota State Line. Any temporary needs for protection consisting of less than 30 minutes will be provided by existing on-duty officers when appropriately available. It is anticipated that many shifts projected in this cost estimate will not be filled depending upon geographical conditions and progress of the project. Cancellation of previously scheduled staffing needs shall be made no less than 24 hours prior to the start of the scheduled shift.

Trooper wages attached to traffic mitigation for this construction area are based upon an estimated two (2), four hour shifts per week in the target counties, limited as described herein, for a total of 125 shifts. On those days where the project may operate from multiple work sites, additional four hour shifts may be scheduled accordingly. The project is scheduled to operate Monday through Saturday, excluding holidays or a total of 25 weeks, less the July 4th, and Labor Day holiday weekends. No lane closures are anticipated after noon on any summer Friday. The project length is scheduled for a total of 25 weeks, but may be extended depending on work progress. Total projected hours are 125 (four) hour shifts, for a total of 500 hours, at an estimated premium rate of pay of \$53.754 per hour (wages & 55.2% fringe) for a total of \$26,877.05.

B. Sergeant Wages

It is the proposal of the Division of State Patrol that first line supervisory personnel (sergeants) shall be incorporated in such a manner as to ensure continuity in scheduling, ongoing communications with highway construction personnel and line level leadership. Scheduling by Sergeants shall be conducted as part of ordinary supervisory tasks and involve no extraordinary costs.

ATTACHMENT D

Page 3 of 3

III. SCOPE OF SERVICES (Continued)**C. Mileage Costs**

Projected mileage is based upon prior construction project experience adjusted for this project which indicate an average of 105 miles per day (8 hours) per trooper. At an estimated average of four (4) hours per shift, or 52.5 miles per shift, total mileage is projected at 6,562.5 miles. At a projected rate of .29 cents per mile, costs are estimated at \$1,631.12.

D. Meal Costs

Meal costs are based upon troopers having the option of taking a \$4.00 bag lunch in each four (4) hour shift (125, four hour shifts).

This estimate does not address such issues as alternate routing or additional calls for service within the project corridor. Carrier shall note that historically, crashes and weather have both played a significant role in escalating the costs of mitigation within construction areas and on alternate routes. Proposed costs are based upon projected wages (**contract pending legislative approval**), meals, and estimated mileage. All costs incurred through requests for coverage beyond that described in this document shall be reimbursed by Carrier.

IV. SUMMARY

The following represents an **estimate** of the costs for the law enforcement services that DSP will provide to Carrier. Carrier shall only pay for actual costs – whether they are higher or lower than this estimate.

Trooper wages & fringe benefits	\$26,877.05
Sergeant wages & fringe benefits	\$0.00
Mileage costs	\$1,631.12
Meal costs	\$500.00
Equipment costs	<u>\$0.00</u>
Total project cost	\$29,008.17

ATTACHMENT E
Construction Inspection Cost Estimate

Page 1 of 1

The following consultants have been selected by WisDOT to represent WisDOT's interests and provide construction inspection services for Carrier's project in the counties listed. The dollar amounts shown are estimates of the labor costs which have been agreed to by WisDOT and each firm. The final numbers may be higher or lower depending on Carrier's work schedule.

- Graef-Anhalt-Schloemer, Milwaukee WI:
Kenosha, Racine, Milwaukee, Waukesha, Eastern Jefferson
\$138,019.57

- Westbrook & Associates, Spring Green, WI:
Western Jefferson, Dane, Columbia, Sauk, Juneau, Monroe
\$159,937.46

- Fleming, Andre & Associates, Eau Claire, WI:
Jackson, Trempealeau, Eau Claire, Dunn, St. Croix
\$124,551.47

Upon request, a copy of the contracts between WisDOT and each firm shall be sent to Carrier.

In addition, WisDOT will have some staff that provide construction inspection services if a person works 8 or more hours in any given day directly on Carrier's project. An estimate of that time is as follows:

2 staff x 15 days x 8 hours/day x \$25/hour x 1.3714 (fringe benefit rate) = \$8,228.40

Total Consultant Inspection Estimate of Costs: \$430,736.90

ATTACHMENT F
Agreement Between Carrier and Williams Communications
Kenosha, Racine, & Milwaukee Counties
Page 1 of 2

CONSTRUCTION AND ACCESS AGREEMENT

This Services Agreement ("Agreement") is entered into as of the 24 day of APRIL, 2000, by and between Touch America ("TA"), with offices at 130 North Main Street, Butte, Montana 59701 and Williams Communications, Inc. ("Williams"), with offices at 110 West 7th Street, Suite 800, Tulsa, Oklahoma 74119, TA and Williams hereinafter sometimes being referred to individually as "Party and together as "Parties".

For the consideration hereinafter set forth, the parties agree as follows:

1. **Scope of Work:** TA is installing six (6) fiber optic conduits in Wisconsin between Illinois border and Milwaukee (the "Route"). TA agrees to install (3) additional fiber optic conduits (including peripheral construction materials) for Williams, which materials Williams shall timely provide to TA, in the Route when it installs its own conduit in the Route. Williams' conduits will be installed with TA's conduits between the intersection of Wisconsin's I-43/894 and I-43/94 in Milwaukee and the Wisconsin/Illinois State Line, on or along Wisconsin's I-94 right-of-way.
2. **Consideration:** As consideration for TA installing three conduit for Williams, Williams agrees to pay 1/3 of the cost, including engineers, permitting and construction in whatever form such permission may be given, to place fiber optic conduit in the Route. Williams will be responsible for securing its own "Right-of-Way Occupancy Agreement" with the State of Wisconsin and will further be responsible for any annual fees or renewal fees associated with Williams' occupancy of State rights of ways and will pay such fees directly to the Wisconsin Department of Transportation or its designee.
3. **Payment:**
 - a. TA shall invoice Williams when installation is complete. Payment shall be made within 30 days of the invoice date.
 - b. TA shall invoice Williams on an ongoing basis for any recurring costs associated with rights-of-way and similar charges. Payment shall be made within 30 days of the invoice date.
4. **Access:** TA grants to Williams a license for access to TA's rights-of-way and licenses for the maintenance, operation, and repair of the three Williams conduit and for installation, maintenance, and repair of fiber optic cable in the conduit and associated equipment; provided, however, such access is conditioned upon Williams being bound by the terms contained in such rights of way, licenses, or similar documents and with Williams complying with access protocols. If consent of a third party such as a landlord is required, TA will make reasonable good faith efforts to obtain same.

ATTACHMENT F

Agreement Between Carrier and Williams Communications

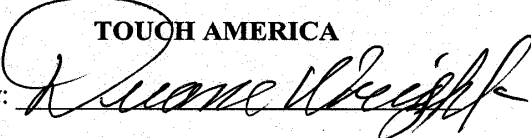
Kenosha, Racine, & Milwaukee Counties

Page 2 of 2

- 5. **Term/Termination:** Unless terminated earlier for failure to perform obligations under this Agreement, the term of this Agreement shall extend for as long as the underlying rights-of-way and similar rights to occupy are in place.
- 6. **Limitation of Liability:** Except for third party claims, neither Party shall be liable to the other Party for consequential, incidental, special, punitive, or exemplary damages related to this Agreement.
- 7. **Assignment:** Williams may not assign this Agreement without TA's prior written consent, which consent shall not be unreasonably withheld or delayed.
- 8. **Applicable Law:** This Agreement shall be governed by and construed in accordance with the domestic laws of the state of Wisconsin without reference to its choice of law principles.
- 9. **As-Built Drawings:** TA shall provide Williams with relined construction drawings within thirty days (30) of the completion of installation of Williams' conduits and with as-built drawings within ninety (90) days of the completion of TA's Minneapolis to Chicago construction project.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in duplicate the day and year first above written.

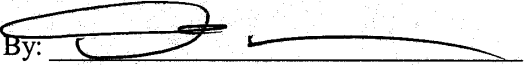
TOUCH AMERICA

By: 

Name: TOUCH AMERICA

Title: Senior Project Manager

WILLIAMS COMMUNICATIONS, INC.

By: 

Name: DONALD R. PALMER
Attorney-in-fact

Title: _____

ATTACHMENT F
Agreement Between Carrier and Williams Communications
St. Croix & Dunn Counties
Page 1 of 2

CONSTRUCTION AND ACCESS AGREEMENT

This Services Agreement ("Agreement") is entered into as of the 27 day of APRIL, 2000, by and between Touch America ("TA"), with offices at 130 North Main Street, Butte, Montana 59701 and Williams Communications, Inc. ("Williams"), with offices at 110 West 7th Street, Suite 800, Tulsa, Oklahoma 74119, TA and Williams hereinafter sometimes being referred to individually as "Party" and together as "Parties".

For the consideration hereinafter set forth, the Parties agree as follows:

1. **Scope of Work:** TA is installing six (6) fiber optic conduits in Wisconsin between the Minnesota/Wisconsin border and Milwaukee (the "Route"). TA agrees to install three (3) additional fiber optic conduits (including peripheral construction materials) for Williams, which materials Williams shall timely provide to TA, in the Route when it installs its own conduit in the Route. Williams' conduits will be installed with TA's conduits between the Minnesota/Wisconsin State Line and I-94's MP 56.1 near Elk Mound, Wisconsin in, on or along Wisconsin's I-94 right-of-way.
2. **Consideration:** As consideration for TA installing three conduit for Williams, Williams agrees to pay \$30,000 per conduit mile (Installation Cost) Said Installation Cost includes all engineering, permitting, construction and proofing in whatever form such permission may be given, to place fiber optic conduit, handholes and markers in the Route. Williams will be responsible for securing its own "Right-of-Way Occupancy Agreement" with the State of Wisconsin and will further be responsible for any annual fees or renewal fees associated with Williams' occupancy of State rights of ways and will pay such fees directly to the Wisconsin Department of Transportation or its designee.
3. **Payment:**
 - a. TA shall invoice Williams when installation is complete. Payment shall be made within 30 days of the invoice date.
 - b. TA shall invoice Williams on an ongoing basis for any recurring costs associated with rights-of-way and similar charges. Payment shall be made within 30 days of the invoice date.
4. **Access:** TA grants to Williams a license for access to TA's rights-of-way and licenses for the maintenance, operation, and repair of the three Williams conduit and for installation, maintenance and repair of fiber optic cable in the conduit and associated equipment; provided, however, such access is conditioned upon Williams being bound by the terms contained in such rights of way, licenses, or similar documents and with Williams complying with access protocols. If consent of a third party such as a landlord is required, TA will make reasonable good faith efforts to obtain same.

ATTACHMENT F

Agreement Between Carrier and Williams Communications

St. Croix & Dunn Counties

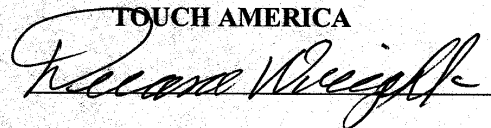
Page 2 of 2

- 5. **Term/Termination:** Unless terminated earlier for failure to perform obligations under this Agreement, the term of this Agreement shall extend for as long as the underlying rights-of-way and similar rights to occupy are in place.
- 6. **Limitation of Liability:** Except for third party claims, neither Party shall be liable to the other Party for consequential, incidental, special, punitive, or exemplary damages related to this Agreement.
- 7. **Assignment:** Williams may not assign this Agreement without TA's prior written consent, which consent shall not be unreasonably withheld or delayed.
- 8. **Applicable Law:** This Agreement shall be governed by and construed in accordance with the domestic laws of the state of Wisconsin without reference to its choice of law principles.
- 9. **As-Built Drawings:** TA shall provide Williams with redlined construction drawings within thirty days (30) of the completion of installation of Williams' conduits and with as-built drawings within ninety (90) days of the completion of TA's Minneapolis to Chicago construction project.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in duplicate the day and year first above written.

TOUCH AMERICA

By:



Name:

TOUCH AMERICA

Title:

SENIOR PROJECT MANAGER

WILLIAMS COMMUNICATIONS, INC.

By:



Name:

DONALD R. PALMER
Attorney-in-fact

Title:

ATTACHMENT G
Agreement Between Carrier and MediaOne
Page 1 of 2

MediaOne
Law & Public Policy Department
10 River Park Plaza
St. Paul, MN 55107

Telephone: (651) 312-5280
Facsimile: (651) 312-5288

David G. Seykora
Vice President - Law & Public Policy



April 18, 2000

VIA AIRBORNE EXPRESS

Mr. Robert C. Fasick
Wisconsin Department of Transportation
Bureau of Highway Operations – Room 501
P.O. Box 7986
Madison, WI 53707-7986

Dear Mr. Fasick:

This letter is to inform you that MediaOne of Minnesota, Inc., ("MediaOne"), and Touch America, Inc. ("Touch America") (together referred to as the "parties") are currently engaged in good faith negotiations with the intention of executing a definitive agreement not later than April 21, 2000, whereby the parties will install a duct system capable of containing fiber optic communications facilities on the westbound Interstate 94 Bridge across the St. Croix River at Hudson, WI. This installation will include underground construction within the I-94 right-of-way leading to the bridge abutments on both the Wisconsin and Minnesota sides.

This letter sets forth the present understanding of the parties with respect to the stated negotiations. The parties agree to negotiate the installation of two (2) six-inch ducts, each of which will hold eight (8) one-and-a-half inch innerducts, for a total of sixteen (16) innerducts. The innerducts will be divided for use as follows: one each for the Wisconsin Department of Transportation and the Minnesota Department of Transportation, two (2) for MediaOne, six (6) for Touch America, and six (6) extra ducts. The definitive agreement will address ownership of the extra ducts.

Such installations shall occur as outlined by this letter. The parties agree to hire a single contractor (currently anticipated to be Muller Prybil Utilities) to perform the installation work. The parties agree that the cost of the ducts that will contain fiber optic facilities shall be shared among the parties on a prorated basis to equal one hundred percent (100%). (Each party will, at its own cost, pull fiber optic facilities through the duct(s) available to it.) Additionally, the parties agree that their respective percentage of cost shall be allocated proportionate to the number of innerducts allocated to that party. The costs to construct the two (2) ducts required for the Wisconsin and Minnesota Departments of Transportation will be shared equally by the parties.

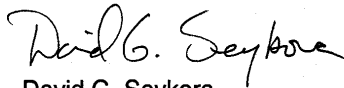
ATTACHMENT G
Agreement Between Carrier and MediaOne

Page 2 of 2

Fulfillment of this understanding is contingent upon the negotiation of a formal agreement covering the work as described herein, and no obligations between the parties shall arise unless and until duly authorized representatives of the parties execute a definitive written agreement. Any work performed under this letter shall be subject to the terms and conditions of the agreement. MediaOne intends that the formal agreement may be attached to the Right-Of-Way Occupancy Agreement between MediaOne and the Wisconsin Department of Transportation.

MediaOne looks forward to the successful completion of this project.

Best Regards,



David G. Seykora
VP, Law & Public Policy

Concurred,



Duane Wright
Touch America, Inc.

cc: D. Willis
P. Wagner
S. Keesen

ATTACHMENT H
PROGRAMMATIC ENVIRONMENTAL CRITERIA CHECK LIST

List District(s) or Counties Applicable _____

1) **Significant Cultural Resource** - Cultural Resources are considered significant if they are on or eligible for the National Register of Historic Places. Properties on the National Register of Historic Places may be pre-historic or historic buildings, structures, or sites. Local sites must be evaluated to determine whether they are eligible for the National Register. See Chapter 26 of the FDM.

There are no adverse effects to a significant cultural resource?

Project Meets Criteria Yes No Criteria Does Not Apply

Comments: _____

2) **Nationwide Section 404 Permit** - A Nationwide Section 404 Permit may be authorized by the US Army Corps of Engineers whenever a fill is placed into a wetland, stream, lake or other "water of the United States" and it fulfills the conditions of a Nationwide Permit, i.e., it does not create a significant adverse effect. Nationwide Section 404 Permits for fills into a wetland, stream, lake, or other water of the United States have specific criteria and must be authorized by the US Army Corps of Engineers. See FDM Procedure 21-30-1.

Fills Placed into waters of the United States will be covered by a Nationwide Section 404 Permit.

Project Meets Criteria Yes No Criteria Does Not Apply

Comments: _____

3) **Contaminated Sites** - Sites contaminated with hazardous materials or wastes shall not be used for this project. If hazardous materials are encountered at a site, the DNR and WisDOT shall be notified immediately.

Sites with hazardous materials or wastes shall not be used for this project.

Project Meets Criteria Yes No Criteria Does Not Apply

Comments: _____

4) **Endangered Species** - Endangered species and their critical habitat are protected by both state and federal laws. The Wisconsin DNR has lists of species protected by both state and federal laws.

No endangered species or their habitat will be affected by this project.

Project Meets Criteria Yes No Criteria Does Not Apply

Comments: _____

ATTACHMENT H
PROGRAMMATIC ENVIRONMENTAL CRITERIA CHECK LIST

List District(s) or Counties Applicable _____

5) **Access Control** - Access controls are used to control the number of access points along a length of highway to maintain the traffic flow conditions. Minor access adjustments for individual parcels are acceptable, e.g., access moved off the road to be improved to a side road .

Existing access will be maintained along the length of the project.

Project Meets Criteria Yes No Criteria Does Not Apply

Comments: _____

6) **Consistency with existing plans** - Endorsed transportation, air quality, and land use plans reflect the goals and objectives of the area and a proposed action must be consistent with them.

The proposed action is consistent with the locally endorsed transportation, air quality, and land use plans of the area.

Project Meets Criteria Yes No Criteria Does Not Apply

Comments: _____

7) **Coastal Zone** - The Coastal Zone Management Plan guides development in the counties of Wisconsin which have coastline on either Lake Michigan or Lake Superior.

The proposed action is consistent with the goals of the Coastal Zone Management Plan.

Project Meets Criteria Yes No Criteria Does Not Apply

NOTE: Consistency with the Coastal Zone Management is considered achieved when a project is coordinated with DNR and they have noted no objections.

Comments: _____

8) **Flood Plains** - No significant encroachment into a flood plain pursuant to Governor's Executive Order 79 or Presidential Executive Order 11988 is allowable. See FDM 21-25-25.

The project will not have a significant encroachment into a flood plain.

Project Meets Criteria Yes No Criteria Does Not Apply

Comments: _____

ATTACHMENT H
DNR Permit Approvals

The following permits for the installation of a fiber optic cable in the waterways and wetlands of various Wisconsin counties have been issued by DNR and are incorporated into this Agreement. For brevity, copies of these permits are not attached but shall be on file with both WisDOT and Carrier.

Permit 3-CO-2000-001 – Dunn & Jackson Counties

Permit 3-CO-2000-002 – St. Croix, Dunn, Eau Claire, Trempealeau, Jackson, Monroe, & Juneau Counties

Permit 3-CO-2000-003 – Sauk, Columbia, Dane, Jefferson, Waukesha, & Milwaukee Counties

Permit 3-CO-2000-004 – Racine & Kenosha Counties

ATTACHMENT H
Formal Erosion Control Plan

Carrier has submitted a comprehensive erosion control plan through its environmental consultant, Natural Resource Group of Minneapolis, MN, which was approved by WisDOT on April 10, 2000. This plan is hereby incorporated into the Agreement. For brevity, this plan is not attached but shall be on file with both WisDOT and Carrier.

ATTACHMENT I
Sample Weekly Schedule of Carrier's Field Operations

Person filling out report: _____ Company: _____ Phone: _____

TOUCH AMERICA – SCHEDULE OF FIELD OPERATIONS				WEEK OF <u>April 24 - 28</u>	
CONTRACTOR NAME & FIELD CONTACT	COUNTY	HIGHWAY	TERMINI [List mileposts, road crossing, or other identifying feature]	OPERATION [Fully describe all planned work activities]	COMMENTS
Michels John Smith 800/555-1212	Racine	I-94, West Frontage Rd	MP 325 - 340	Cat plow and tree removal	
Michels Tom Franks 608/516-8895	Dane	I-94	MP 241 - 252	Cat plow and tree removal	Will load/unload from shoulder on Mon and Fri.
XYZ Excavating Zeke Clinton 888/555-2233	Dane	I-94	Sprecher Rd M-Tu CTH N W-Th Koshkonong Cr F-Sa	Directional boring	
1234 Telecom Monica Dumbrowski 262/555-1234	Kenosha	I-94, West Frontage Rd	MP 340 - 348	Fiber pulling and splicing	2 crews
A & B Boring Phil McFarren 262/555-1212	Milw	I-94	Racine/Milw Co Line to Mitchell Interchange	Directional boring	
SAMPLE					

Please fax to each District Utility Permit Coordinator when working in that District, and Central Office (for any District), by 8:00 AM Monday morning:

<u>CO: 608/267-7856</u> All counties	<u>D1: 608/246-7996</u> Dane, Jefferson, Columbia, Sauk	<u>D2: 262/548-8655</u> Milwaukee, Racine Kenosha, Waukesha	<u>D4: 715/421-7300</u> Juneau	<u>D5: 608/789-7896</u> Monroe, Jackson Trempealeau	<u>D6: 715/836-2807</u> Eau Claire, Dunn St. Croix
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Please fax to each State Patrol District office when working in that District by 8:00 AM Monday morning:

<u>D1: 608/846-8536</u> Sauk, Columbia Dane	<u>D2: 262/785-4723</u> Jefferson, Kenosha, Racine, Waukesha	<u>D5: 608/374-0599</u> Juneau, Monroe Jackson	<u>D6: 715/839-3841</u> Trempealeau, Dunn Eau Claire, St. Croix
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ATTACHMENT J

Working Around Trees & Tree/Vegetation Removal

(Graphic Depiction of Section 16N)

DBH = Tree diameter measured at breast height

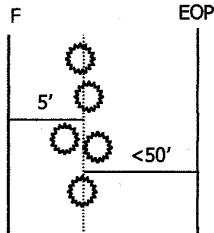


Figure 1. Bore under isolated trees or living snow fence planted by WisDOT, or volunteer trees >8-10" DBH.

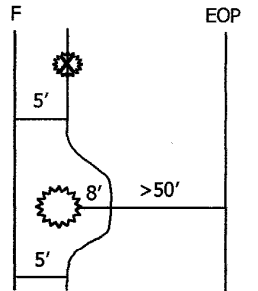


Figure 2. Remove volunteer or scrub trees <8-10" DBH. Move inside trees >8-10" DBH when sufficient clearances are available.

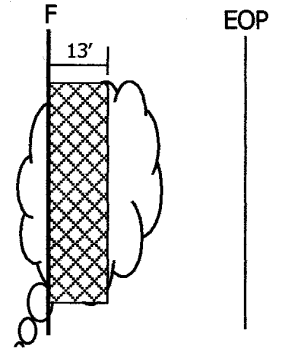
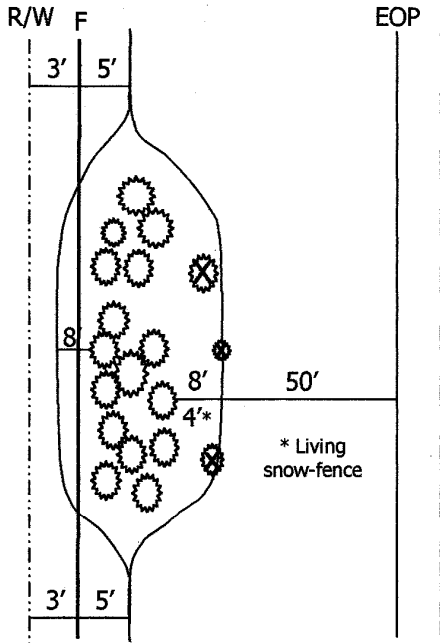
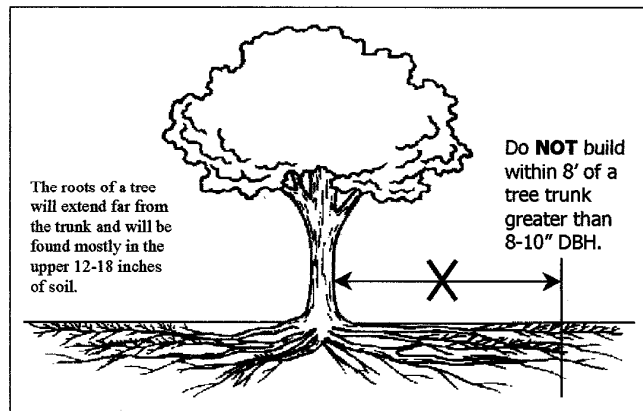


Figure 5. Clear up to a 13' swath of volunteer or scrub trees & brush.



Figures 3 & 4. Proposed alignment avoids trees or snow fence by going on either side of them.



In any event, all trees and vegetation to be removed by Carrier to accommodate facility installation shall first be reviewed and approved by WisDOT.

This page shall be accompanied by Section 16(N) and shall not stand or act on its own accord.

ATTACHMENT K
Important Addresses

Questions regarding this Agreement or the Utility Accommodation Policy

Where to send NOTICES*

Where to send Carrier’s Evidence of Insurance

Bob Fasick
Wisconsin DOT
Bureau of Hwy Operations – Room 501
PO Box 7986
Madison, WI 53707-7986

* cc: District Utility Permit Coordinators
See list in Policy 96.93

Office: 608/266-3438 Fax: 608/267-7856 Pager: 608/278-2615

Questions regarding Wisconsin Laws and Administrative Rules

James Thiel
Wisconsin DOT
Office of General Counsel
PO Box 7910 -- Room 115B
Madison, WI 53707-7910

Office: 608/266-8810 Fax: 608/267-6734

Questions regarding specific permits

Each highway district office will review permit applications within their boundaries. See appendices 96.91 and 92 in the Policy for a directory of District offices.

Carrier’s contact for notices

Name: _____	Office: _____
Company: <u>Touch America, Inc.</u>	Fax: _____
Address : _____	Emergency: _____

