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THOMAS M. AUCHINCLOSS, JR.
LEO C. FRANEY
KEITH G. O'BRIEN
BRYCE REA, JR.
BRIAN L. TROIANO

2/4/93

DONALD E. CROSS (1923-1986)

June 15, 2005

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001



Re: STB Docket No. AB 556 (Sub-No. 2X)
Railroad Ventures, Inc., -

Verified Petition of Columbiana County Port
Authority for Declaratory Order

ENTERED
Office of Proceedings

JUN 16 2005

Part of
Public Record

Dear Secretary Williams:

Enclosed for filing and appropriate action is the original and ten copies of the petition of Columbiana County Port Authority (CCPA). CCPA is seeking a Declaratory Order to resolve a serious controversy arising from dealings that adversely affect the fee simple interest in the railroad property acquired by CCPA in this proceeding.

As noted in your letter of December 7, 1999, CCPA has previously been found qualified for the fee waiver provisions of 49 C.F.R. 100.2.2 (E)(1). (A copy of your letter is attached).

Sincerely,

Keith G. O'Brien
Rea, Cross & Auchincloss
1707 L Street, N.W.
Suite 570
Washington, DC 20036

Attorney for Columbiana County Port
Authority

FILING FEE WAIVED

214193

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB 556 (SUB-NO. 2X)
RAILROAD VENTURES, INC. – ABANDONMENT EXEMPTION
BETWEEN YOUNGSTOWN, OHIO AND DARLINGTON, IN MAHONING
AND COLUMBIA COUNTIES, OH AND BEAVER AND BEAVER COUNTY, PA



VERIFIED PETITION OF COLUMBIANA COUNTY PORT
AUTHORITY FOR DECLARATORY ORDER

FILING FEE WAIVED

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Office of Proceedings

JUN 16 2005

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Public Record

Keith G. O'Brien
Rea, Cross & Auchincloss
1707 L Street, N.W.
Suite 570
Washington, DC 20036

Attorney for Columbiana County Port Authority

Dated: June 15, 2005

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB 556 (SUB-NO. 2X)
RAILROAD VENTURES, INC. – ABANDONMENT EXEMPTION
BETWEEN YOUNGSTOWN, OHIO AND DARLINGTON, IN MAHONING
AND COLUMBIA COUNTIES, OH AND BEAVER AND BEAVER COUNTY, PA

VERIFIED PETITION OF COLUMBIANA COUNTY PORT
AUTHORITY FOR DECLARATORY ORDER

The Columbiana County Port Authority (CCPA) hereby requests the Surface Transportation Board (STB or Board) to initiate a declaratory order proceeding pursuant to 5 U.S.C. 554 (c) and 49 U.S.C. 721 to resolve serious controversies which have arisen from dealings which purport to adversely affect the fee simple interest in the railroad property acquired by CCPA in this proceeding by clarifying and reaffirming the extent of the interest acquired by CCPA.

BACKGROUND

Pursuant to the January 2000 Decision in this proceeding CCPA acquired a fee simple estate in the 35.7-mile Youngstown – Darlington rail line from Railroad Ventures, Inc., (RVI) in accordance with the offer of financial assistance (OFA) provisions of 49 U.S.C. 10904 and 49 C. F.R. 1152.27. The only exception was the right given to RVI to receive income from 156 pre-existing lease and license agreements identified by CCPA's appraiser. Those specific exceptions resulted in a reduction in the valuation of the property in the amount of \$100,000 which was the income producing value ascribed to those licenses by CCPA's appraiser.

Subsequently it was discovered that there were other agreements relating to the property that were not disclosed by RVI during the OFA process. The Board has required that all such agreements must be transferred to CCPA. Because RVI has engaged in a pattern of actions intended to thwart the underlying OFA process, CCPA has been concerned about further manipulations by RVI that are contrary to the interests and entitlements of CCPA.

RVI's president has advised that "we [RVI and its assignee Venture Properties of Boardman (VPB)] are only invoicing and collecting monies from those agreements listed on the Rossi appraisal¹. However, CCPA recently discovered that VPB created an entirely new and more extensive burden on CCPA's rail property in place of at least one such agreement. Specifically in regard to the Litel agreement² which was among those set aside for income purposes for the benefit of RVI, CCPA learned from Litel's successor Quest Communications (Qwest) that VPB purports to have converted that agreement into a permanent burden on CCPA's rail property for the benefit of Qwest for a lump sum payment of \$212, 500³. Clearly the purported change would result in an entirely new and substantial permanent burden on the rail property that could only be created by CCPA as the fee owner.

In accordance with the Board's preference that differences be resolved whenever possible through direct negotiations, CCPA has endeavored to correct misapprehensions as to the extent of interests retained by RVI or any successor through exchanges with

¹ Copy of January 4, 2005 letter from David Handel is attached as Exhibit No. 1.

² The Litel Agreement was for a period of 25 years commencing 6/20/85 with possible renewal for an additional 25 years with compensation shown as \$1,300 per year (see Rossi appraisal excerpt, Exhibit No. 2). Although the pre-existing agreement is termed to be an easement, it is more properly described as 2 licenses because of its limited duration.

³ Copy of Qwest replacement agreement attached as Exhibit No. 3.

Qwest and with Mr. David Handel who serves as a principal for both RVI and VPB. Those efforts have failed. RVI and VPB have not been forthcoming in regard to any similar changes they may have attempted to make in other agreements and VPB refuses to recognize and acknowledge that any new burden on the rail property can only be negotiated with CCPA and that RVI VPB interests are limited to the specific terms of agreements that were not transferred to CCPA pursuant to the Board's decisions as affirmed by the Court of Appeals. Moreover, VPB has now filed an action in the Court of Common Pleas, Mahoning County, Ohio, claiming that CCPA has tortiously interfered in its dealings with property interests in the railroad property.⁴

On May 24, 2005, CCPA's Executive Director advised Qwest that CCPA would be seeking a ruling from the STB confirming that RVI received only the right to passive income from certain pre-existing agreements pursuant to authorizing Board orders.⁵

Further, on June 7, 2000, Mr. Joseph Kovalchick submitted a verified statement in these proceedings in which he averred that he had negotiated to purchase rails, ties and bridges located on the former Y&S line for \$100,000. He then stated that the agreement was subsequently amended to make the sale subject to "RVI obtaining STB abandonment approval." He further asserted:

Kovalchick Corp. gave RVI the complete and absolute
right and authority to use or dispose of the rail material
on (the) line in any manner necessary to comply with STB
Orders and RVI's obligations to acquire, operate, abandon

⁴ Copy of complaint attached as Exhibit No. 4. This is another attempt by RVI and VPB to circumvent and thwart decisions of the Board.

⁵ Copy of May 24 letter from Tracy V. Drake is as Exhibit 5.

or sell this line under an OFA.

...

I understand that the STB allocated approximately \$730,000 for the value of the trackage in the OFA case. Under my understanding with RVI, this amount is acceptable to me and if an OFA completed I will accept the \$730,000 from RVI as full payment for my interest in the track material ...⁶

Notwithstanding the above statements Mr. Kovalchick placed a lien on the railroad track and track materials on the former Y&S rail line on December 6, 2000, prior to transfer of the rail line to CCPA.

Mr. David Handel has advised that he believes "Mr. Kovalchick may have placed the lien on the property to secure his interest in the proceeds resulting from that sale. RVI has no remaining financial obligations to Mr. Kovalchick."⁷ It is the understanding of CCPA that Mr. Kovalchick has released RVI from any further claim as to his previous interest related to the railroad property.

The Board required that the railroad property be transferred to CCPA free of any encumbrance except for the pre existing license agreements that were identified in the appraisal report submitted by CCPA. Moreover, CCPA is subject to no obligations to Mr. Kovalchick either before or after the transfer of the rail property to CCPA. Nevertheless, he steadfastly refuses to release the lien on CCPA's rail property despite repeated requests and demands that he do so.

⁶ Copy of Kovalchick affidavit is attached as Exhibit 6.

⁷ See copy of David L. Handel letter, Exhibit No. 1.

Basis for Relief Requested

In regard to RVI and VPB interests, the Board's Decision and Order served November 9, 2001, states:

Except for unusable chattels and income from licenses, crossing leases, easements and similar agreements specifically listed in Exhibit A (Confidential Version) to Exhibit 7 in CCPA's Request to Set Terms, neither RVI nor VPB is entitled to any ownership interest in, or income from the former Y&S line.⁸ (Emphasis supplied)

Further, the Sixth Circuit Court of Appeals specifically affirmed the STB's October 4, 2000 Decision ordering RVI to transfer its entire fee simple interest in the property constituting the line that was the subject of RVI's exemption petition for abandonment. In so doing the Court emphasized "*until such time as the STB loses jurisdiction over the matter, any transaction affecting the property interest associated with the rail line entered into by a rail owner after filing an abandonment petition are invalid.*"⁹

Nothing in the Board's Orders or in the Sixth Circuit Decision affirming the Board's actions purports to allow RVI or any successor or assignee of its interest to replace pre-existing agreements identified in CCPA's appraisal with new and more extensive burdens on the fee interest acquired by CCPA. Nevertheless, VPB has arrogated to itself the ability to enter into an agreement with Qwest which purports to make permanent a limited term license thereby apparently creating an entirely new and more extensive burden on CCPA's rail property. It is CCPA's position that neither RVI

⁸ November 2001 Decision, p. 8.

⁹ Railroad Ventures, Inc. v. STB, 299 F.3d 523, 554 (6th Cir. 2002).

nor its successor has right or color of right to enter into such a transaction and that any attempted departure from limited term agreements should be found to have voided any further right on the part of RVI or VPB to collect revenues from the underlying limited term agreement(s). The Board's guidance in this matter is very much needed lest VPB or RVI attempt to convert other limited agreements into permanent or more extensive burdens on CCPA's fee simple interest in the rail property if either has not already done so.

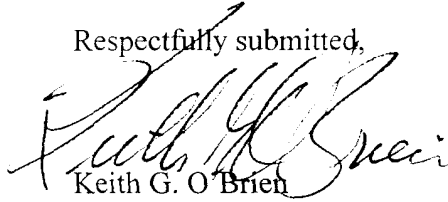
The Board's further affirmation that it has required that CCPA was to receive fee simple interest in the rail property unencumbered by any lien related to pre-existing obligations of RVI should serve to assure that the Kovalchick lien will be properly removed from the property.

CONCLUSION

CCPA respectfully urges the Board to exercise its authority to dispel serious misconceptions and to reaffirm and clarify in unmistakable terms that RVI and/or VPB retains only the right to receive passive income from unaltered pre-existing agreements specifically identified in the CCPA appraisal and that RVI or any successor has no interest in CCPA's rail property out of which to create new or extended burdens. Specifically CCPA requests that the Board (1) order RVI and VPB to promptly disclose any alteration or replacement to pre-existing agreements which were set aside solely for the income benefit of RVI and (2) declare void any alterations or replacements of pre-existing agreements entered into by RVI, VPB, or any other successor to RVI. Further, reaffirmation that CCPA was to receive the rail property unencumbered by any lien involving disputes concerning RVI's obligations to Kovalchick Corporation, its

principals or to any other party will be most helpful in resolving the matter of the Kovalchick lien.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Keith G. O'Brien", written over the typed name.

Keith G. O'Brien
Rea, Cross & Auchincloss
1707 L Street, N.W.
Suite 570
Washington, DC 20036

Attorney for Columbiana County Port Authority

Dated: June 15, 2005

CERTIFICATE OF SERVICE

I hereby certify that on this the 15th day of June, 2005, a copy of this Verified Petition of Columbiana County Port Authority for Declaratory Order was served by first-class U.S. Mail, postage prepaid upon the following:

Stuart R. Strasfeld, Esq.
600 City Center One
100 Federal Plaza East
Youngstown, OH 44503-1893

Counsel for Venture Properties of
Boardman

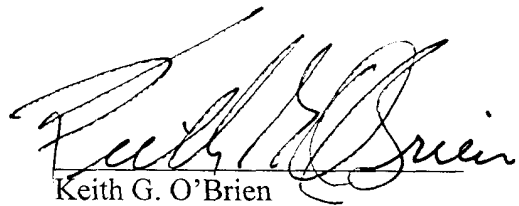
Richard R. Wilson, Esq.
Vuono & Gray
2310 Grant Building
Pittsburgh, PA 15219

Counsel for Railroad
Ventures, Inc.

Mark L. Rodeo, Esq.
F. Nanz Ward, LLP
2500 Key Center
127 Public Square
Cleveland, OH 49114-1730

Counsel for Qwest Communications

Mr. Joseph Kovalchick
Kovalchick Corporation
1060 Wayne Avenue
Indiana, PA 15701



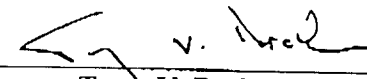
Keith G. O'Brien

cc: Tracy V. Drake, Esq.
Richard Streeter, Esq.
Cecelia Cannazaro, Esq., STB

VERIFICATION

I Tracy V. Drake, Executive Director/CEO of Columbiana County Port Authority, declare under penalty of perjury that I have carefully reviewed the facts and matters set forth herein and that all representations are true and correct to the best of my knowledge and belief.

Executed on June 14, 2005



Tracy V. Drake



RAILROAD VENTURES, INC.

721 BOARDMAN - POLAND RD., SUITE 205 , YOUNGSTOWN, OHIO 44512
PHONE (330) 758-2424 FAX (330) 758-5572

January 4, 2005

Mr. Tracy V. Drake, Executive Director
Columbiana County Port Authority
1250 St. George Street
East Liverpool, Ohio 43920

RE: STB Decision dated December 13, 2004 – Motion to Compel

Dear Tracy:

While we disagree with your interpretation of our rights over the Rossi appraised agreements, the immediate issue before us is RVI's turnover of all third party agreements that were to be transferred by order of the STB. First, I want to assure you that we are only invoicing and collecting monies from those agreements listed on the Rossi Appraisal. We had previously provided you with a list of all the agreements that to our knowledge were in place at the time of the transfer. If there is a specific agreement or list of agreements that you are looking for, I would be more than happy to research our files. Otherwise, I believe we have provided you with all of the information we had available when we acquired the line.

As to Mr. Kovalchick's lien, I am totally in the dark. We have had no dialog with Mr. Kovalchick for years. If the lien pre-dates the transfer of the line to CCPA, I believe Mr. Kovalchick may have placed the lien on the property to secure his interest in the proceeds resulting from that sale. RVI has no remaining financial obligations to Mr. Kovalchick.

I spoke with Bill Strawn on Monday and I understand that, along with the operation of the line, Bill will be assuming your interest in the license agreements not contained in the Rossi Appraisal. We have a good working relationship with Bill and have provided him with a list of what we believe those agreements to be. I understand that you are going to send to Bill all of the information you have relative to those agreements and I have promised Bill that to the extent that any voids exist, we would research our files and try to plug the gaps.



With respect to the monies due under the STB's December 13, 2004 order, CCPA's liability to RVI is totally unrelated to the CCPR bankruptcy proceedings in Arkansas. We are hopeful that CCPA honors its obligations by the January 12th deadline. Given the impending transfer of the railroad, RVI has no alternative but to file the appropriate notices of this obligation against the railroad property and other CCPA holdings to protect our interest. Notices were filed this week.

Lastly, we have computed the interest on the \$217,286 payment and believe that number to be approximately \$8,000.

Sincerely,

A handwritten signature in black ink, appearing to read 'DLH', with a stylized flourish extending from the end.

David L. Handel

DLH/mld

cc: Surface Transportation Board, Office of Proceedings
Keith O'Brien, Esq.
Richard R. Wilson, Esq.
Bill Strawn

Confidential					
Income Summary					
General Description	Commencement	Lease (Per Year)	Easements (Per Year)	Licenses (Per Year)	Excluded Ohio Edison (Per Year)
EOG	9/17/54			\$ 4.00	
Fifthian	8/26/83			\$ 100.00	
Mah Co. Comm	8/1/66			\$ 18.00	
EOG	7/1/61			\$ 10.00	
EOG	12/1/63			\$ 30.00	
EOG	9/1/69			\$ 30.00	
EOG	2/1/87			\$ 100.00	
EOG	5/1/85			\$ 100.00	
Everflow eastern	1/1/88			\$ 4,000.00	
Everflow eastern	5/1/88			\$ 2,000.00	
Everflow eastern	12/21/87	\$ 1,200.00			
Everflow eastern	11/29/88			\$ 500.00	
Everflow eastern	7/14/92	\$ 1,200.00			
Everflow eastern	1/1/95			\$ 1,530.00	
Eastern Tool	12/1/91			\$ 100.00	
Metal Carbides	9/25/53			\$ 18.00	
Ohio Bell	9/1/75			\$ 25.00	
Ohio Bell	3/24/38			\$ 4.00	
Ohio Bell	3/1/67			\$ 20.00	
Ohio Bell	5/1/68			\$ 15.00	
Ohio Bell	9/1/75			\$ 25.00	
Ohio Bell	12/1/80			\$ 100.00	
<u>Litel Telecomm</u>	<u>6/20/85</u>			<u>\$ 1,300.00</u>	
Ohio Edison	10/1/75			\$ 75.00	\$ 75.00
Ohio Edison	8/1/75			\$ 75.00	\$ 75.00
Ohio Edison	10/27/50			\$ 19.00	\$ 19.00
Ohio Edison	4/9/58			\$ 10.00	\$ 10.00
Ohio Edison	7/1/61			\$ 779.15	\$ 779.15
Ohio Edison	7/1/61			\$ 1,241.00	\$ 1,241.00
Ohio Edison	5/1/61			\$ 350.80	\$ 350.80
Ohio Edison	5/1/63			\$ 105.00	\$ 105.00
Ohio Edison	5/1/63			\$ 70.50	\$ 70.50
Ohio Edison	4/1/67			\$ 100.00	\$ 100.00
Ohio Edison	10/1/75			\$ 75.00	\$ 75.00
Ohio Edison	8/1/76			\$ 90.00	\$ 90.00
R & J Trucking	10/1/95			\$ 750.00	
Scamey Ind	11/1/84			\$ 100.00	
Spirex	8/9/93			\$ 2,600.00	
Mchale	3/1/65			\$ 10.00	
Armstrong Util	3/10/97			\$ 750.00	
Armstrong Util	3/10/97			\$ 750.00	
Armstrong Util	3/10/97			\$ 750.00	
Armstrong Util	3/10/97			\$ 750.00	
Enon Valley	3/1/75			\$ 100.00	
Brookville Tele	4/1/88			\$ 100.00	
Enon Valley	3/1/77			\$ 125.00	
Enon Valley	3/1/75			\$ 12.00	
Enon Valley	3/1/77			\$ 135.00	
Enon Valley	3/1/75			\$ 100.00	
Enon Valley	2/1/88			\$ 100.00	

Licenses and Other Revenues



ADDENDUM TO EASEMENT

This Addendum, is made and entered into this ____ day of November 2001, by and between Venture Properties of Boardman, Inc., as successor in interest to Railroad Ventures, Inc. and The Youngstown & Southern Railway Company (herein "Venture Properties") and Qwest Communications Corp., as successor in interest to Litel Telecommunications Corp. (herein "Qwest").

RECITALS:

A. On June 20, 1985, Youngstown & Southern Railway Co., as Grantor, granted to Litel Telecommunications Corp., as Grantee, an Easement, which the Grantee has been using for the installation and maintenance of a subsurface fiber-optic cable system and other facilities.

B. On August 29, 1999, Venture Properties acquired from Railroad Ventures all interests with respect to Third Party Agreements, including occupations, license agreements, crossing agreements, contracts, and rights of way, which include the aerial, surface, and subsurface occupancy rights in the real property owned by Railroad Ventures.

C. A dispute has arisen between the parties as to the payment of the consideration for the Easement and to resolve said dispute, the parties have agreed to amend certain provisions contained in the Easement without otherwise affecting the other terms and conditions set forth therein.

Now Therefore, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby agree as follows:

1. Sections 1.1 and 1.2 of Article I of the Easement are hereby amended to read as follows:



The term of this Easement shall be perpetual unless otherwise (i) terminated by the Grantee, (ii) abandoned by the Grantee as set forth in Section 3.2 of the Easement, or (iii) terminated by either the Grantor or the Grantee pursuant to any of the other provisions contained in the Easement except for the payment of the consideration which will be as set forth in this Addendum.

2. Section 1.3 of the Easement is hereby amended to read as follows:

Consideration: Upon execution of this Addendum, Qwest shall pay Venture Properties the sum of TWO HUNDRED TWELVE THOUSAND FIVE HUNDRED DOLLARS (\$212,500.00) as consideration for the Easement for the term set forth in this Addendum.

3. The Easement, as amended by the terms of this Addendum, shall remain in full force and effect and shall be binding upon the parties hereto, their respective successors and Assigns.

VENTURE PROPERTIES OF BOARDMAN, INC.

Witnesses:

(Signature)

(Print Name)

(Signature)

(Print Name)

By: _____

(Print Name and Title)

"VENTURE PROPERTIES"

QWEST COMMUNICATION CORP.

Witnesses:

Harold V. Edson
(Signature)

Harold V. Edson
(Print Name)

Julie Chubb
(Signature)

Julie Chubb
(Print Name)

By: J.L. Shivers
J.L. Shivers Assistant Vice President
(Print Name and Title)

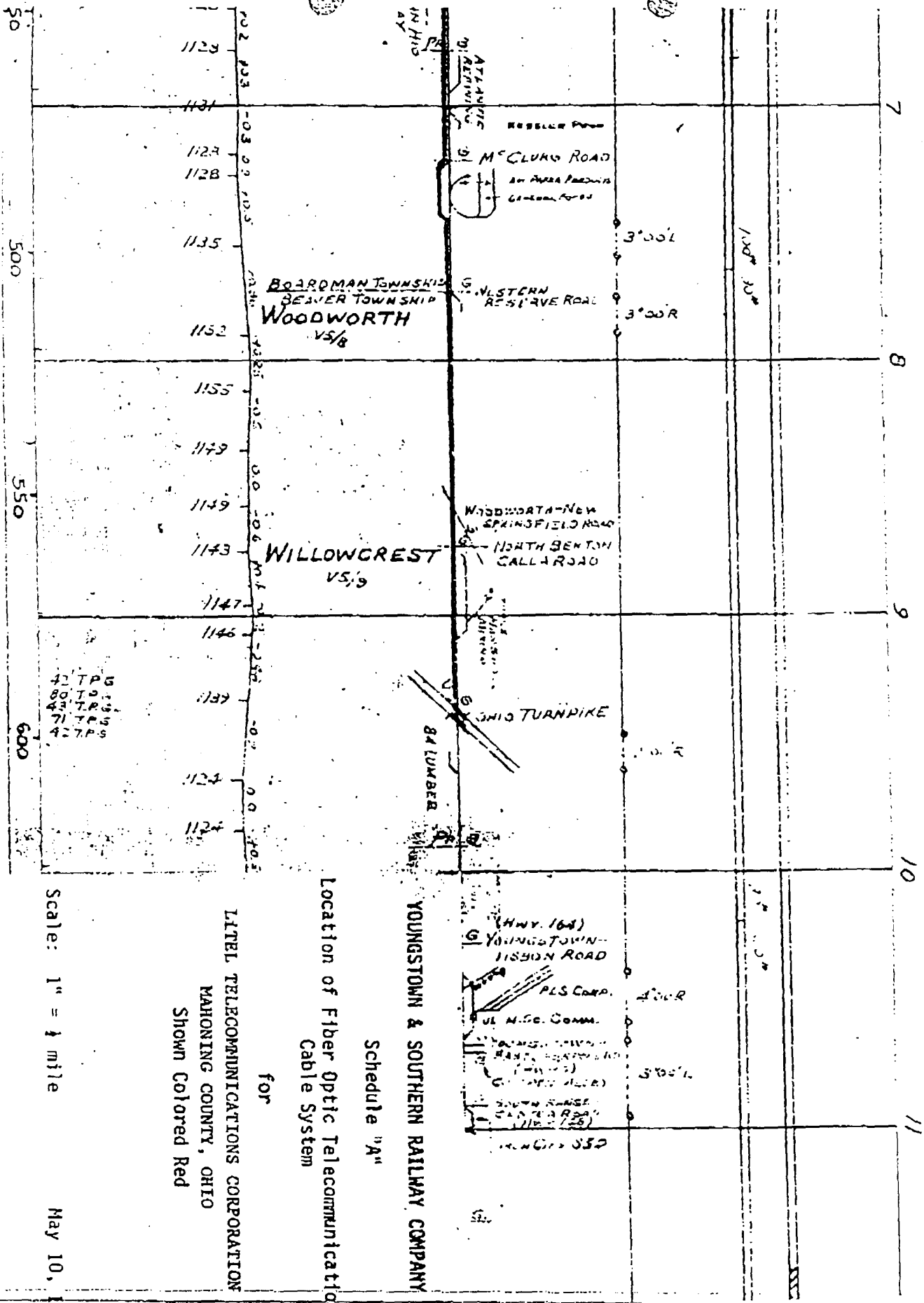
"QWEST"

This Instrument Prepared By:

Stuart A. Strasfeld, Esq.
ROTH, BLAIR, ROBERTS, STRASFELD & LODGE
600 City Centre One
100 Federal Plaza East
Youngstown, OH 44503-1893

REC 204 PAGE 208

REC 204 PAGE 2



Location of Fiber Optic Telecommunications
Cable System

for
LITTEL TELECOMMUNICATIONS CORPORATION
MAHONING COUNTY, OHIO
Shown Colored Red

Scale: 1" = 1 mile
May 10, 19

Court of Common Pleas, Mahoning County
120 Market Street
Youngstown, Ohio 44503

S U M M O N S O N C O M P L A I N TRule 4 Ohio Rules of Civil Procedure
-----*-----

Case No. 2005 CV 01479

VENTURE PROPERTIES OF
BOARDMAN INC
721 BOARDMAN POLAND RD
SUITE 101
YOUNGSTOWN, OH 44512

-vs-

COLUMBIANA COUNTY PORT AUTHORITY
ATTN: TRACY V DRAKE, CEO
1250 ST GEORGE ST
EAST LIVERPOOL, OH 43920

TO: COLUMBIANA COUNTY PORT
AUTHORITY

ATTN: TRACY V DRAKE, CEO
1250 ST GEORGE ST
EAST LIVERPOOL, OH 43920

Defendant

To the above named defendant(s): (See attached complaint for additional parties)

You are hereby summoned that a complaint (a copy of which is hereto attached and made a part hereof) has been filed against by in this court by the plaintiff(s) named herein.

You are required to serve upon the plaintiff('s') attorney, or upon the plaintiff(s) if he/she/they has/have no attorney of record, a copy of your answer to the complaint within 28 days after service of this summons upon you, exclusive of the day of service. Said answer must be filed with this court within three (3) days after service on plaintiff(s) attorney.

The name and address of the plaintiff('s') attorney is as follows:

STUART A. STRASFELD
600 CITY CENTRE ONE
YOUNGSTOWN OH 44503-1893
YOUNGSTOWN OH 44503

If you fail to appear and defend, judgment by default will be taken against you for the relief demanded in the complaint.

ANTHONY VIVO
Mahoning County Clerk of Courts

May 20, 2005

By: N. Dascenzo
Deputy Clerk



Summons issued to additional defendants:

RAILROAD VENTURES INC 721 BOARDMAN POLAND RD SUITE #101 BOARDMAN OH
44512

Court of Common Pleas, Mahoning County
120 Market Street
Youngstown, Ohio 44503

S U M M O N S O N C O M P L A I N TRule 4 Ohio Rules of Civil Procedure
-----*-----

Case No. 2005 CV 01479

VENTURE PROPERTIES OF
BOARDMAN INC
721 BOARDMAN POLAND RD
SUITE 101
YOUNGSTOWN, OH 44512

-vs-

COLUMBIANA COUNTY PORT AUTHORITY
ATTN: TRACY V DRAKE, CEO
1250 ST GEORGE ST
EAST LIVERPOOL, OH 43920

TO: RAILROAD VENTURES INC

721 BOARDMAN POLAND RD
SUITE #101
BOARDMAN, OH 44512

Defendant

To the above named defendant(s): (See attached complaint for additional parties)

You are hereby summoned that a complaint (a copy of which is hereto attached and made a part hereof) has been filed against by in this court by the plaintiff(s) named herein.

You are required to serve upon the plaintiff('s') attorney, or upon the plaintiff(s) if he/she/they has/have no attorney of record, a copy of your answer to the complaint within 28 days after service of this summons upon you, exclusive of the day of service. Said answer must be filed with this court within three (3) days after service on plaintiff(s) attorney.

The name and address of the plaintiff('s') attorney is as follows:

STUART A. STRASFELD
600 CITY CENTRE ONE
YOUNGSTOWN OH 44503-1893
YOUNGSTOWN OH 44503

If you fail to appear and defend, judgment by default will be taken against you for the relief demanded in the complaint.

ANTHONY VIVO
Mahoning County Clerk of Courts

May 20, 2005

By: N. Dascenzo
Deputy Clerk

Summons issued to additional defendants:

COLUMBIANA COUNTY PORT AUTHORITY ATTN: TRACY V DRAKE, CEO 1250 ST
GEORGE ST EAST LIVERPOOL OH 43920

**ASSIGNED TO COURT
ROOM NO. 5**

**IN THE COURT OF COMMON PLEAS
MAHONING COUNTY, OHIO**

VENTURE PROPERTIES OF
BOARDMAN, INC.
721 Boardman-Poland Road, Suite #101
Boardman, Ohio 44512

and

RAILROAD VENTURES, INC.
721 Boardman-Poland Road, Suite #101
Boardman, Ohio 44512

Plaintiffs

v.

COLUMBIANA COUNTY
PORT AUTHORITY
Attention: Tracy V. Drake, CEO
1250 St. George Street
East Liverpool, Ohio 43920

Defendant

Case No. 2005 CV 1479

Judge _____

**COMPLAINT FOR
DECLARATORY RELIEF
- and -
INJUNCTIVE RELIEF**

with

INSTRUCTIONS FOR SERVICE

Now come the Plaintiffs, Venture Properties of Boardman, Inc. and Railroad Ventures, Inc., by and through legal counsel, and for their Complaint against the Defendant state as follows:

BACKGROUND

1. Plaintiff, Venture Properties of Boardman, Inc. (herein "Venture Properties") is an Ohio Corporation, with its principal place of business located in Boardman Township, Mahoning County, Ohio. Venture Properties is engaged in the business of owning and managing real property.

**ROTH, BLAIR, ROBERTS,
STRASFELD & LODGE**

A LEGAL PROFESSIONAL ASSOCIATION

CITY CENTRE ONE
100 FEDERAL PLAZA EAST, SUITE 600
YOUNGSTOWN, OHIO
44503

TELEPHONE: (330) 744-5211

2. Plaintiff, Railroad Ventures, Inc. (herein "Railroad Ventures") is a Pennsylvania Corporation, licensed to do business in Ohio, with its principal place of business located in Boardman Township, Mahoning County, Ohio. Railroad Ventures formerly owned all rights, title, and interest in and to the 35.7 mile railroad line extending from Youngstown, Ohio to Darlington, Pennsylvania, and together with Venture Properties retains certain interests with respect to said line, under Orders issued by the Surface Transportation Board.

3. Railroad Ventures and Venture Properties are successors in interest to the Youngstown & Suburban Railway Company and the Youngstown & Southern Railway Company, with respect to the right, title, and interest in and to certain occupations, license agreements, easements, crossing agreements, contracts, and rights-of-way granted to third parties with respect to certain real property which consists of approximately 35.7 miles of the former Youngstown & Southern Railway Company railroad line.

4. Defendant, Columbiana County Port Authority (herein "CCPA") is a municipal authority in the State of Ohio, responsible for the promotion and economic development of properties and projects within the State of Ohio.

5. On January 24, 2001, CCPA, pursuant to an Order issued by the Surface Transportation Board in AB-556 (SUB NO. 2X), Railroad Ventures, Inc. - Exempt Abandonment between Youngstown, Ohio and Darlington, Pennsylvania in Mahoning and Columbiana Counties, Ohio, and Beaver County, Pennsylvania, acquired the rail line between Youngstown, Ohio and Darlington, Pennsylvania from Railroad Ventures, and has become a "rail carrier" under the provisions of 49 U.S.C. §10102(5).

ROTH, BLAIR, ROBERTS,
STRASFELD & LODGE

A LEGAL PROFESSIONAL ASSOCIATION

CITY CENTRE ONE
100 FEDERAL PLAZA EAST, SUITE 600
YOUNGSTOWN, OHIO
44503

TELEPHONE: (330) 744-6211

6. By Quit-Claim Deed dated January 23, 2001, and filed for record on January 24, 2001, Railroad Ventures conveyed to the Defendant its entire fee simple interest in the property associated with the railroad line, excepting therefrom, a certain easement granted to the Ohio Edison Company by instrument dated September 22, 1999; any property not necessary for effective rail service; and further, under and subject to the Orders and Decisions of the Surface Transportation Board in Docket No.: AB 556 (SUB NO. 2X); Railroad Ventures, Inc. - Abandonment Exemption - between Youngstown, Ohio and Darlington, Pennsylvania, in Mahoning and Columbiana Counties, Ohio, and Beaver County, Pennsylvania, and the Orders and Decision of the United States Court of Appeals for the Sixth Circuit in Railroad Ventures, Inc. v. United States of America and Surface Transportation Board, Docket No. 00-3261 et seq.

7. On or about June 20, 1985, the Youngstown & Southern Railway Company, predecessor to the Plaintiffs, entered into an Easement agreement with Lited Telecommunications Corporation, a Delaware Corporation, and predecessor in interest to Qwest Communications Corporation for the purpose of installing a fiber optic cable system and other facilities for the use and operation of voice, video, or data fiber optic communications systems along the railroad line. A copy of the Easement is attached hereto as Exhibit "A," and hereby made a part hereof.

8. The Exhibit "A" Easement was subsequently amended in accordance with its terms after the filing of the case of Venture Properties of Boardman, Inc., et al v. LCI International, et al, United States District Court, Northern District of Ohio, Eastern Division, Case No. 4:00 CV 3199, to provide for a perpetual grant of Easement under certain conditions and for certain consideration.

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First Claim for Relief

9. Plaintiffs incorporate by reference the allegations set forth in Paragraphs 1 through 8 of this Complaint.

10. On January 23, 2001, when Railroad Ventures transferred the property associated with the railroad line to the Defendant, Railroad Ventures, its successors and assigns, retained those property interests not conveyed to CCPA, including, without limitation, property not necessary for effective rail service and third party occupancy agreements, as they were not required for the provision of effective rail service, which third party occupancy agreements included, but were not limited to, the Easement with Qwest Communications Corporation. The Easement with Qwest Communications Corporation was excepted from the conveyance of the railroad line from Railroad Ventures to the Defendant.

11. The grant of Easement, dated June 20, 1985, from the Youngstown & Southern Railway Company to Litel Telecommunications Corporation was for the purpose of the installation, construction, repair, alteration, renewal, replacement, relocation, use, and removal of a fiber optic telecommunications system over, across, along, or under certain of the tracks of the Youngstown & Southern Railway Company.

12. The Easement dated June 20, 1985, from the Youngstown & Southern Railway Company to Litel Telecommunications Corporation, as amended, is not necessary for effective rail service; was not included in the conveyance of the railroad line to the Defendant; and was specifically included in the one hundred fifty-six (156) agreements entered into between Railroad Ventures and Venture Properties, all of which were expressly excluded from the sale to CCPA.

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13. The reservation and exception in the Quit-Claim Deed from Railroad Ventures to CCPA included the Easement to Qwest Communications Corporation, successor by merger to Litel Telecommunications Corporation, and is a reservation of an easement in fee, and cannot be changed by the Defendant.

14. Defendant has knowledge that the Easement between Plaintiffs, as successors in interest to the Youngstown & Southern Railway Company, and Qwest Communications Corporation, as successor in interest to Litel Telecommunications Corporation, was excepted from the conveyance of the railroad line from Railroad Ventures to Defendant.

15. By letter dated October 6, 2004, Tracy V. Drake, Chief Executive Officer of the Defendant, demanded that Qwest Communications Corporation cease and desist from any activity on the *"Port Authority Property, formerly known as the Y&S Railway, now known as the Central Columbiana & Pennsylvania Railroad."*

16. A controversy has arisen between the parties as to their respectful rights and responsibilities under the Easement between Venture Properties and Qwest Communications Corporation.

17. By virtue of the foregoing, Plaintiffs are entitled to an Order from this Court declaring that the Easement between Venture Properties and Qwest Communications Corporation is a valid and subsisting agreement between the parties thereto, said Easement was not acquired by the Defendant, and Defendant has no right to interfere therewith.

Second Claim for Relief

18. Plaintiffs incorporate by reference the allegations contained in Paragraphs 1 through 17 of this Complaint.

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19. Ohio law prohibits the tortious interference with a party's contractual relationship.

20. Defendant had knowledge that the Easement between Plaintiffs, as successors in interest to the Youngstown & Southern Railway Company, and Qwest Communications Corporation, as successor in interest to Litel Telecommunications Corporation, was excepted from the conveyance of the railroad line from Railroad Ventures to Defendant.

21. Defendant has tortiously interfered with the contractual relationship between Plaintiffs and third parties, with respect to the third party occupancy agreements that were excepted from the conveyance of the railroad line, with the purpose or intent to harm Plaintiffs by preventing those relationships from continuing.

22. Defendant's tortious interference with Plaintiffs' contractual relationships and prospective economic advantages, was and is being done knowingly, willfully, and maliciously, and with a reckless disregard for Plaintiffs' rights.

Third Claim for Relief

23. Plaintiffs incorporate by reference the allegations contained in Paragraphs 1 through 22 of this Complaint.

24. Unless the Defendant, and all those acting in concert and participating with the Defendant, are preliminarily and permanently enjoined from further attempts to interfere with Plaintiffs' rights under the various third party occupancy agreements that were excepted from the conveyance of the railroad line from Railroad Ventures to Defendant, Plaintiffs will be deprived of the rights specifically reserved to them.

25. Plaintiffs have no adequate remedy at law.

ROTH, BLAIR, ROBERTS,
STRASFELD & LODGE
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100 FEDERAL PLAZA EAST, SUITE 600
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44503

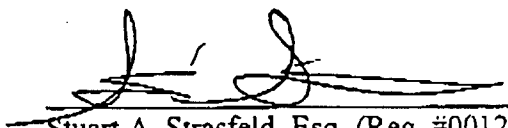
TELEPHONE: (330) 744-6211

WHEREFORE, Plaintiffs demand judgment against the Defendant as follows:

- A. A judgment declaring the rights and responsibilities of the Plaintiffs and Defendant under the Easement with Qwest Communications Corporation, as well as under all other third party occupancy agreements not included within and/or excepted from the conveyance of the railroad line from Railroad Ventures to Defendant;
- B. For an Order preliminarily and permanently enjoining the Defendant from interfering with the rights of the Plaintiff under the Easement with Qwest Communications Corporation, as well as all other third party occupancy agreements not included within and/or excepted from the conveyance of the railroad line from Railroad Ventures to Defendant;
- C. Reasonable attorneys' fees;
- D. Monetary damages under the Second Claim for Relief, in an amount not yet precisely determined, to be proven at Trial, which amount is estimated to be in excess of \$25,000.00;
- E. The costs of this action; and
- F. All such further relief as this Court deems just and proper.

Respectfully submitted,

ROTH, BLAIR, ROBERTS, STRASFELD & LODGE



Stuart A. Strasfeld, Esq. (Reg. #0012399)
600 City Centre One, 100 Federal Plaza East
Youngstown, OH 44503-1893

Attorney for Plaintiffs

Telephone: (330) 744-5211
Facsimile: (330) 744-3184
e-mail: sstrasfeld@roth-blair.com

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AT 12:22 PM

MAY 5 1986

WILLIAM E. HEPASKY
Recorder, Mahoning County, Ohio

756.00

COMPARED
P. Y.EASEMENT

Youngstown and Southern

THIS EASEMENT, made this 20th day of June, 1985, between THE YOUNGSTOWN AND SOUTHERN RAILWAY COMPANY, a Delaware corporation, with its principal office at Commerce Court, Four Station Square, Pittsburgh, Pennsylvania 15219-1199, hereinafter referred to as "Grantor", and LITEL TELECOMMUNICATIONS CORPORATION, a Delaware corporation, with its principal office at Corporate Hill 1, 200 Old Wilson Bridge Road, Worthington, Ohio 43085, hereinafter referred to as "Grantee".

WITNESSES:

WHEREAS, Grantee desires an easement on Grantor's premises for the purpose of installing a fiber optic cable system and other facilities, and

WHEREAS, Grantor is willing to grant to Grantee an Easement on its Premises for such purposes.

NOW, THEREFORE, Grantor for and in consideration of Grantee's keeping and performing the covenants and conditions hereinafter stated, does hereby grant unto Grantee, effective with payment of the first annual consideration as provided in Subarticle 1.3, to the extent the title of Grantor permits, an Easement for the space and dimensions required, subject to Grantor's requirements for minimum clearances, in common with



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Grantor and others to whom other or similar rights may be granted by Grantor, for the purpose of installation, construction, repair, alteration, renewal, replacement, relocation, use and removal of a fiber optic telecommunications system, including without limitation, aboveground or underground fiber optic cables, environmentally controlled vaults for repeater stations, junctions (with the right to tie into the cable with lateral connections), microwave tower antenna and dishes, and all other facilities and equipment now available or hereafter developed for the use and operation of voice, video or data fiber optic communication systems, together with any appurtenances thereto, herein referred to as the "Facilities", over, across, along or under the tracks of Grantor described as follows:

Extending from Mile Post 0.40 Fountain Street to Mile Post 9.35 situate in Mahoning County, Ohio (at the Ohio Turnpike) for a distance of 8.95 miles shown colored red and more fully described on print of plan dated May 10, 1985, attached hereto and made a part hereof and marked "Schedule A".

ARTICLE 1

INITIAL TERM, RENEWAL TERM, CONSIDERATION, TITLE

1.1 Initial Term. The initial term of this Easement shall be twenty-five (25) years, commencing with the date of this Easement appearing on the first page hereof ("Initial Term").

1.2 Renewal Term. Grantee may, by written notice delivered to Grantor not less than six (6) months prior to the

OF
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end of the Initial Term, renew the term of this Easement for an additional twenty-five (25) year term beginning on the date of expiration of the Initial Term ("Renewal Term").

1.3 Consideration. The consideration for this Easement is an annual payment of \$1,300 per year per mile based upon the actual mileage constructed in accordance with the construction plans approved by the Grantor. The first annual consideration shall become due upon execution of this Easement, but shall not be payable until one year following the date construction is completed and the Facilities are capable of operation. However, in any event, said first annual consideration shall be due not later than October 1, 1986. Each subsequent annual payment shall be made on the anniversary date of the payment of the first annual consideration. During the Renewal Term the annual payment shall be increased by a percentage equal to .75 multiplied by the percentage of increase in the CPI from the second quarter of 1985 to the most recently available quarter preceding the beginning date of the Renewal Term. CPI shall mean the "Consumer Price Index for All Urban Consumers, All Cities, All Items (1967 = 100)" as published by the United States Department of Labor, Bureau of Labor Statistics or, if such index shall be discontinued, the successor index thereto or, if there shall be no successor index, a comparable index mutually agreed upon by Grantor and Grantee.

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1.4 Title. In the event that Grantor's underlying title necessary to support this Easement and the rights granted to Grantee hereunder shall fail, or any adverse or inconsistent claim should be asserted, Grantor shall at its own cost, defend any such claim, and if reasonably required to protect such underlying title shall exercise its power of eminent domain to acquire such title as is necessary to protect the Easement and the rights granted to Grantee hereunder. Grantee shall cooperate with Grantor in perfecting such title and agrees to join with or permit Grantor to exercise any of Grantee's rights of eminent domain to acquire title to property necessary for such Facilities, or Grantee may exercise such rights directly provided Grantor shall reimburse Grantee for all costs and expenses in connection therewith, including reasonable attorney's fees.

ARTICLE 2

CONSTRUCTION, INSPECTION, MAINTENANCE, REPAIR

2.1 Approval of Chief Engineer. Prior to the construction and installation of the Facilities, Grantee shall furnish to Grantor's Chief Engineer a complete set of the Grantee's general construction specifications and drawings for approval of their conformity to railroad standards. The Facilities shall be installed in the manner set forth in such approved general construction specifications and drawings, which are incorporated herein by reference.

1250 St. George Street
East Liverpool OH 43920
PH: (330)386-9051
FAX: (330)386-1122

**Columbiana County
Port Authority**

Fax

To: Keith Dibrino From: Tracy Drake
Fax: 202-659-4934 Pages: _____
Phone: _____ Date: 5/24/05
Re: _____ CC: _____

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

35 pages TOTAL

~~17 pgs 1st set~~

18 pgs to follow

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determination shall prevail, provided such determination is more restrictive, and Grantee agrees to comply therewith at its sole cost and expense.

2.4 Right of Entry. The Grantee agrees that it will require any contractor, subcontractor or other non-employee performing work in connection with this Easement, to execute Grantor's standard Right of Entry Agreement. Grantee or its contractors will carry Railroad Protective Insurance or such other insurance coverage as is prescribed by the Grantor prior to beginning any construction of the Facilities.

2.5 Inspection of Facilities and Approval of Materials. Grantor shall have the right to inspect the Facilities at any time and to approve the materials used in the construction, maintenance, repair, alteration, renewal, relocation, replacement, or removal of the Facilities, provided, however, that Grantor's right of approval shall not extend to any communications related equipment located in the environmentally controlled vaults or microwave shelters.

2.6 Grantor's Right of Inspection. To the extent that Grantee may have rights therein, the right of inspection of the Facilities by Grantor will extend for an appropriate distance on each side of the property of Grantor, inasmuch as the method of construction and the materials used in the construction, maintenance, repair, alteration, renewal, replacement, or relocation of the Facilities may have a significant impact upon the

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strength and stability of the Facilities over, under, upon or in Grantor's railroad.

2.7 Entry on Right-of-Way. The time and manner of constructing the Facilities at the locations aforesaid, the maintenance thereof, as well as any additions, the location, alteration or renewal thereof, shall be subject to the prior approval of Grantor's Chief Engineer. Grantee agrees to advise the Chief Engineer seventy-two (72) hours in advance and receive his approval before entering on Grantor's right-of-way.

2.8 Proximity to Tracks. When performing any work in connection with the Facilities, Grantee will keep all persons, equipment and materials at least ten (10) feet from the nearest rail of the tracks of Grantor, except where the Facilities must be installed in closer proximity to the tracks in accordance with plans approved by Grantor's Chief Engineer. During construction, Grantee will provide supervision at its sole cost and expense to assure strict compliance with this subarticle.

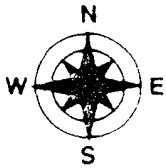
2.9 Drainage and Railroad Operation. Upon completion of the construction of the Facilities, Grantee will, at its sole cost and expense, (i) reestablish any and all of Grantor's drainage ditches affected by said construction in order to provide drainage along the railroad right-of-way to existing cross drainage structures, and (ii) at all times thereafter, maintain and keep its Facilities in good and safe order and

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repair so as not to interfere with or impair the safe and continuous operation of the Grantor's railroad.

2.10 Depth of Installation. Grantee shall install its fiber optic cable, conduit, and casing pipes at least thirty-six (36) inches below the level of ordinary ground, except that (i) at bridge crossings said cable may be installed at a lesser depth provided such cable be encased in a conduit, (ii) where the cable is within ten (10) feet of the nearest rail such cable shall be at least 66" below the top of the rail, and (iii) where the cable crosses Grantor's signal or communication cable, such cable shall be encased and at a depth of not more than 48". Whenever fiber optic cable crosses beneath a track or tracks of Grantor, Grantee shall encase such cable in casing pipes.

2.11 Flagmen and Watchmen. If at any time Grantor shall deem flagmen, watchmen, or inspectors necessary to protect its operations, property, employees, patrons, or licensees, during the course of the construction, maintenance, repair, alteration, renewal, relocation, replacement, or removal of the Facilities, Grantor shall have the right to place such flagmen, watchmen, or inspectors and Grantee agrees to bear the full cost and expense thereof and to promptly reimburse Grantor upon demand for such cost and expense. The furnishing or failure to furnish flagmen, watchmen or inspectors by Grantor, however, shall not release Grantee from any liability assumed by Grantee hereunder.



Columbiana County Port Authority

1250 St. George Street, East Liverpool, Ohio 43920
(330) 386-9051 • FAX (330) 386-1122

May 24, 2005

Mark L. Rodio, Esq.
Frantz Ward LLP
2500 Key Center
127 Public Square
Cleveland, OH 44114-1230

Dear Attorney Rodio:

This letter is in regard to your last correspondence regarding the QWEST license/easement. Therein you questioned the Port Authority's legal authority to treat the original license/easement as void. The Port Authority's position is that when QWEST entered into a new license/easement agreement with Railroad Ventures, Inc. or its affiliate ("RVI") the original agreement became void as a matter of contract law. Given the unique factual situation, this will likely be a case of first impression before a local court.

Please be advised that the Port Authority will be seeking a ruling from the Surface Transportation Board confirming that RVI received only the right to passive income from certain existing licenses/easements under its previous rulings. You are likely aware that RVI has attempted to frame the issue under Ohio law by suing the Port Authority for tortious interference in a Youngstown Court. However, we believe this issue is exclusively a matter of federal jurisdiction. If the Port Authority receives a ruling in its favor on this issue then the most QWEST will retain are its rights under the original license/easement through 2035.

You also questioned the Port Authority's offer to provide QWEST with a permanent easement. Please be advised that we verbally initially offered to work with QWEST to ensure that it would receive a permanent license/easement for \$212,000.00, the same as had been done with RVI. This offer was rejected. We then offered a permanent license/easement for a right to use certain QWEST dark fiber and connectivity. We believed that this offer would provide QWEST with a no cash out of pocket alternative plus provide certainty for future long-term operations. This was also rejected. Based upon these rejections we made the last offer, which is hereby withdrawn. If the Port Authority prevails under either (or both) of our positions, you may advise your client that we will entertain an offer from them for license/easement rights with the caveat that our initial telephonic expressions to Andy Clauss of good will in regard to their utilization of our real property, have been tempered by their and RVI's apparently coordinated subsequent actions.

Finally, it has come to our attention that QWEST may have laid or is utilizing two separate cable lines along the railroad, even though it claims right under a license/easement for only one line of cable. Can you check with your client on this matter?

Yours truly,

Tracy V. Drake
Chief Executive Officer

TVD/sls

cc: Board of Directors
Attorney's Brookes, Delay, O'Brien, Streeter

EXHIBIT

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tabbles

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Before the
SURFACE TRANSPORTATION BOARD
Washington, D.C.

DOCKET NO: AB 556 (Sub No. 2X)
RAILROAD VENTURES, INC. - EXEMPT ABANDONMENT
BETWEEN YOUNGSTOWN, OH AND DARLINGTON, PA,
IN MAHONING AND COLUMBIANA COUNTIES, OH
AND BEAVER COUNTY, PA

STB FINANCE DOCKET NO: 33385
RAILROAD VENTURES, INC. - ACQUISITION EXEMPTION -
RAIL LINE OF YOUNGSTOWN & SOUTHERN RAILWAY COMPANY

VERIFIED STATEMENT OF JOSEPH KOVALCHICK

1. My name is Joseph Kovalchick. I own and operate Kovalchick Corporation, a family business that was started in 1928. Our main office is in Indiana, PA. Our company is diversified and one of our specialties is buying and selling railroad trackage. The purpose of this Verified Statement is to provide the Surface Transportation Board ("Board") with an accurate description of the transaction in which I paid \$400,000.00 to Railroad Ventures, Inc. ("RVI") for the rails, ties, bridges and other track material located on the former Youngstown & Southern ("Y&S") rail line between Youngstown, OH and Darlington, PA.

2. I met Ron Hall in 1995 when he was working for a contractor in the Pittsburgh area. Subsequently, Ron Hall came to me to discuss the opportunities of him being involved with me in various business ventures. During the course of those discussions, I learned that he was under substantial financial pressures and had limited

financial resources. He informed me that he had a very good connection with the people that were liquidating the residual assets of the former P&LE Railroad. He asked if I would be interested in becoming involved in certain projects. I told him to come and see me if any opportunity presented itself, and I would take a look.

3. In the fall of 1996, Ron Hall came to me and explained that he had a deal to purchase the Youngstown & Southern Railroad assets. He said that he could buy the entire railroad for somewhere in the area of \$730,000.00. . He told me that the line was out of service and that he was in the process of acquiring all the Y&S assets in a Bankruptcy Court approved sale. He said that he wanted to sell me the rails, ties, bridges of my choice and equipment located on the line. He said that he wanted to keep the land portion for himself. Ron Hall and I went to look at the line and then negotiated my buying the rails, ties, bridges of my choice and equipment for \$425,000.00. A short time later, Ron Hall came to me and said that he was embarrassed, that he did not have the opportunity to buy the equipment. and we renegotiated, omitting the equipment, and settled on a price of \$400,000.00. Ron Hall explained to me that he would give me a warranty bill of sale from his newly-formed business, RVI.

4. However, during the first or second week of November, 1996, Ron Hall told me that the line might be subject to STB jurisdiction and we amended our agreement and made the sale subject to RVI obtaining STB abandonment approval. Exhibit A. I paid Ron Hall the entire \$400,000.00, and within a short time he provided me a warranty bill of sale.

5. A short time later, Ron Hall told me that he was selling his interest, or most of his interest, in RVI to a group of people in Ohio. In early January, 1997, we met

in Boardman, OH, at which time I met the new owners. We discussed the sale of the rails, ties and bridges. We also discussed how to comply with the STB, and we agreed that I would simply wait for RVI to get acquisition authority and see if it could operate the line. If the line couldn't be operated, RVI would abandon the line or sell the line in an OFA. Kovalchick Corp. gave RVI the complete and absolute right and authority to use or dispose of the rail materials on this line in any manner necessary to comply with STB orders and RVI's obligations to acquire, operate, abandon or sell this line under an OFA.

6. I understand that the STB allocated approximately \$730,000.00 for the value of the trackage in the OFA case. Under my understanding with RVI, this amount is acceptable to me, and if an OFA is completed, I will accept the \$730,000.00 from RVI as full payment for my interest in the track material. If an OFA is not completed and the line is abandoned, then I will simply go and remove the track materials from the line and sell it.

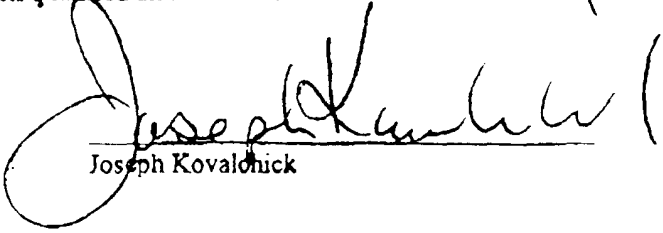
7. I have also read the Affidavit submitted by Mr. Hall to the STB on May 15, 2000. That affidavit is incorrect. At no time did Kovalchick Corp. ever buy operating rights or any real estate interest on the Y&S line and Kovalchick Corp.'s purchase of the track materials on this line has always been conditioned on STB abandonment approval.

1581

VERIFICATION

I, Joseph Kovalchick, declare under penalty of perjury, that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file these Comments.

Executed on June 7, 2000.


Joseph Kovalchick

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2.12 Notice to Grantee to Make Repairs. Grantor, for the purposes of protecting and safeguarding its property, traffic, patrons or employees from damage or injury may, by written notice, request Grantee, at its sole cost and expense, to make any reasonable repairs to the Facilities, or replacements thereof for such purposes. In the event that Grantee fails to perform such work with due diligence promptly after receipt of such notification, Grantor may, at its option, but without obligation to do so, enter upon the easement premises to make such repairs and replacements and furnish such material as Grantor may deem adequate and necessary for such purposes, all at the sole cost and expense of Grantee.

2.13 Emergency Repairs Affecting Railroad Operations. In the event of any emergency, where the Facilities are adversely affecting the normal operation of Grantor's railroad, Grantee shall take steps immediately after verbal notice from Grantor's Chief Engineer, followed by written confirmation, and with due diligence make any repairs reasonably necessary to permit the resumption of normal operation of Grantor's railroad, and in the event Grantee fails to do so, Grantor shall have the right, but not the obligation, to make such repairs at the sole cost and expense of Grantee.

2.14 Repair of Inductive Interference. In the event the Facilities consist of electrical power or communication wires and appurtenances, Grantee shall promptly remedy any

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inductive interference with any of Grantor's communication and signal circuits growing out of, or resulting from the presence of the Facilities, and if Grantee fails to do so, then Grantor may do so, and Grantee agrees to pay to Grantor on demand the full cost and expense thereof.

2.15 Repair of Settlement. In the event the Facilities consist of an underground occupation, Grantee will be responsible for any settlement caused by reason of the underground occupation of the Facilities, to the roadbed, right-of-way and/or tracks, grade crossings, facilities, and appurtenances of Grantor's railroad arising from or as a result of the construction, maintenance, repair, alteration, renewal, relocation, replacement, or removal of the Facilities for a period of one (1) year subsequent to the date of completion of such work. Grantee shall promptly remedy any such settlement within 30 days of the receipt of written notice of each occurrence, and if Grantee fails to do so, Grantee agrees to pay to Grantor on demand the full cost and expense of correcting such settlement.

2.16 Determination of Costs and Expenses. Except as provided in Subarticle 3.1 of this Easement, all cost and expense in connection with the construction, maintenance, repair, alteration, renewal, relocation, replacement, or removal of the Facilities shall be borne by Grantee, and in the event of work being performed or material being furnished by Grantor under its right to perform such work under any section hereof, Grantee agrees to pay to Grantor the actual cost of material (plus the current applicable overhead percentages for storage,

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handling, transportation, purchasing and other related material management expenses) and the actual cost of labor (plus the current applicable overhead percentages as developed and published by the Accounting Department of Grantor for fringe benefits, payroll taxes, administration, supervision, use of tools, machinery and other equipment, supplies, employers liability insurance, public liability insurance, and other insurance, taxes and all other indirect expenses, including but not limited to, automobile mileage charges then in effect as published by the United States Government). It is understood that such material and labor overhead charges shall be applied at the rates which are effective at the time of the performance of any such work by employees of Grantor. Grantee agrees to pay such bills within thirty (30) days of the presentation thereof by Grantor.

ARTICLE 3

MODIFICATION AND ABANDONMENT

3.1 Modification of Facilities. Grantee shall, within thirty (30) days following receipt of written notice from Grantor, commence to relocate, strengthen, support, or otherwise protect or modify any of the Facilities (any such requested action being hereinafter referred to as a "Modification"). Such Modification shall be performed at the cost and expense of Grantee, except where Grantor has the right of reimbursement for

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such Modification from a third party. Where available, and if reasonably necessary, Grantor shall provide so much of its land or improvements within Grantor's property to Grantee for such Modification without payment of any consideration by Grantee. Grantor shall pay for the cost of any substitute land or easement which is not owned by Grantor reasonably required for such Modification. The obligation of Grantee to pay for such Modification shall be conditioned upon such Modification (i) being reasonably necessary for the legitimate conduct of the railroad business of Grantor, (ii) being required of Grantor by a governmental entity with the power of eminent domain or (iii) being required by any lessee or sublessee of Grantor, or the holder of an easement, or a right in the nature of an easement, from Grantor which legally obligates Grantor to do so under any lease, sublease, easement or right in the nature of an easement or any modification thereto in existence prior to the date of this Easement. Such Modification may be so required regardless whether such necessity or requirement is temporary or permanent. All construction in connection with any Modification shall comply with the terms and conditions of this Easement.

3.2 Abandonment of Facilities. Mere non-use of the Facilities, or a portion thereof, shall not constitute an abandonment of the Facilities, unless such non-use continues for a period of three (3) years, in which event such Facilities, or a portion thereof, shall be considered abandoned. Otherwise,

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such Facilities may be abandoned by Grantee giving Grantor written notification verifying the Facilities or a portion thereof, have been abandoned. Upon abandonment, such Facilities shall be excluded from this Easement and that portion of the Easement where such Facilities are located shall be terminated. Grantee, however, shall have the right to remove any or all such abandoned Facilities within one year of the date of abandonment, but shall be under no obligation to do so, except for (i) environmentally controlled vaults, (ii) underground manholes, (iii) Facilities which are attached to bridges owned by Grantor, and (iv) microwave towers.

ARTICLE 4

RIGHTS RESERVED BY GRANTOR OR GRANTED TO GRANTEE

4.1 Reserved by Grantor - Circuits at Terminal Locations. So long as Grantee, its successors or assigns, is operating the Facilities, Grantor shall have the right to use at the most favorable comparable rate established from time to time by Grantee, the following circuits at each of Grantee's terminal locations in operation within this Easement:

- 4 - Data Circuits capable of at least 9600 Band;
- 12 - Voice Circuits with a minimum of 200 to 2300 Hertz Bandpass, such as generally used for telephone service.

4.2 Reserved by Grantor - Rail Transportation and Related Purposes. The Easement herein granted is subject to use

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for railroad purposes and the facilities of Grantor located on the Premises. Grantor reserves the right to use such Premises, or any part thereof, for rail transportation and related purposes and for all other purposes which are not inconsistent, or which do not interfere with, or impair, the rights granted by this Easement.

4.3 Grantee's Right to Use Available Ducts to Landmarks Building. Grantee shall have the right to use in common with others any available ducts extending from the Grantor's Railroad right-of-way in the City of Pittsburgh, to the Landmarks Building, which was formerly used as a railroad passenger depot by the Grantor. Grantee shall not pay any additional consideration for the right to use such ducts, but Grantee shall be responsible to obtain, at its expense, all governmental or other approvals necessary to use such ducts for Grantee's Facilities.

4.4 Grantee's Right to Mortgage Easement. Grantee shall have the right to mortgage this Easement and any interests or rights thereunder or any portion thereof.

ARTICLE 5

COVENANTS OF GRANTEE

5.1 Permits and Licenses. Grantee shall comply with all statutes, regulations, orders, directives, ordinances and similar promulgations of law applicable to the Facilities,

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obtain all permits and licenses applicable hereto, obtain all permits or authorizations which may be necessary for the Facilities to cross or occupy public highways, and shall assume all cost, expense and responsibility in connection therewith, without any liability of Grantor therefor, and Grantee hereby agrees to indemnify, defend and hold Grantor harmless from and against all costs, fines, penalties and expenses (including legal fees) arising from the failure of Grantee to so comply.

5.2 Damage to Facilities. Grantee understands that the proximity of railroad operations to the Facilities creates a risk of loss or damage, and Grantee, as partial consideration for the grant of this Easement, and with full knowledge and appreciation of such risk, hereby releases and waives any right to ask for or demand direct, indirect or consequential damages for or on account of any loss or damage to the Facilities over, under, upon or in the property of the Grantor, including loss of, or interference with service or use thereof, whether attributable to the fault, failure or negligence of Grantor or otherwise, provided, however, Grantor shall be liable to Grantee for all direct damage to the Facilities and the cost of repair and replacement thereof which may be due to the fault, failure or negligence of Grantor without the fault, failure or negligence of Grantee contributing thereto.

5.3 Indemnification of Grantor During Construction, etc. Grantee agrees to defend, indemnify, and save harmless

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Grantor from and against all cost and expense arising from, or in connection with, any and all losses, damages, detriments, suits, claims, demands, costs and charges which Grantor may directly or indirectly suffer, sustain, or be subject to by reason of the construction, placement, attachment, presence, use, maintenance, repair, alteration, renewal, relocation, replacement, or removal of the Facilities, in or about, under, over, or from the property of Grantor, whether such loss and damage be suffered or sustained by Grantor directly, or by its employees, patrons, or licensees, or other persons or entities, including Grantee, its employees and agents, who may seek to hold Grantor liable therefor and whether attributable to the fault, failure or negligence of Grantor. In the event that Grantee damages any of Grantor's underground signal or communication cable or other underground facilities where Grantor has notified Grantee of the location of the affected facilities and such notification is incorrect by more than $\pm$ one foot, horizontally only, then Grantor and Grantee shall equally share the cost of repairing such damaged facilities. In no event shall Grantee be liable for any consequential damages.

5.4 Indemnification of Grantor, Generally. Notwithstanding Subarticle 5.3 hereof, and regardless of any negligence of Grantor causing or contributing thereto, Grantee assumes sole responsibility for and agrees to indemnify, save harmless and defend Grantor from and against all claims, actions, or legal

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proceedings arising, in whole or in part, from (1) the failure of Grantee to comply with any obligations imposed on it by this Easement, (2) any claims, actions, or legal proceedings under the Federal Employers' Liability Act and any amendments to such Act now or hereafter in effect, brought by any of Grantee's employees alleging or claiming in legal effect that Grantor in respect to that portion of its land which lies under or near the Facilities failed to prevent, correct or guard against an unsafe condition, failed to furnish a safe place to work, or created or permitted an unsafe condition. Failure by Grantor to make verbal or written complaints to Grantee with respect to unsafe working conditions or with respect to Grantee's failure to carry out its obligations under this Easement, or knowledge on the part of Grantor of such unsafe conditions or place to work and of such failures by Grantee to carry out its obligations under this Easement, shall not be deemed to constitute acquiescence therein by Grantor or actionable negligence on the part of Grantor.

5.5 Contractual Liability Insurance. To effectuate the indemnification provisions of this Easement, Grantee shall obtain and carry at its own cost contractual insurance in such form as shall be approved by Grantor covering the liability assumed by the Grantee herein, in the following amounts:

Bodily Injury - \$2,000,000 for each person.
\$2,000,000 for each accident; in aggregate of \$10,000,000.

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Property Damage - \$2,000,000 for each accident.
Grantor reserves the right to modify amounts of liability coverage from time to time. Grantee shall furnish Grantor an appropriate certificate or certificates of insurance executed by an authorized representative of the insurer, evidencing the maintenance of the insurance coverage required herein and containing a provision to the effect that the insurer will give the Grantor at least ten (10) days' prior written notice of any cancellation or modification of any such insurance policy.

5.6 Payment of Liens, Assessments and Taxes. Grantee agrees to pay, and further agrees to indemnify, defend, and hold Grantor harmless from and against any liens, assessments, taxes, or charges of any kind made against Grantor or any of its property by reason of the construction, maintenance, or use of any of the Facilities. Grantee agrees to pay Grantor, promptly upon bills rendered therefor, the full amount of any such liens, assessments, taxes, or charges rendered against Grantor or any of its property, including penalties, interest, late fees, and the costs to remove any lien, assessment, tax, or charge from official records. Grantee shall have the right to contest, at its expense, any such lien, assessment, tax or charge by appropriate action or proceeding, and Grantor shall not pay the same so long as Grantee proceeds with due diligence to contest the same and to post any bond or other security to protect Grantor from any forfeiture or judgment.

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REARTICLE 6

GENERAL PROVISIONS

6.1 Separability. If any part of this Easement is determined to be invalid, illegal, or unenforceable, such determination shall not affect the validity, legality, or enforceability of any other part of this Easement, and the remaining parts of this Easement shall be enforced as if such invalid, illegal, or unenforceable part were not contained herein, provided, however, that the remaining parts permit Grantee to continuously operate the Facilities as an integral telecommunications system and to realize all the material benefits granted to Grantee hereunder without incurring additional significant costs, payments or obligations.

6.2 Access to Facilities. Except as otherwise permitted in this Easement Grantor shall not, nor shall it license, permit or authorize its agents, employees or contractors to damage the Facilities or interfere with the use or operation thereof or Grantee's rights hereunder, nor shall Grantor deny Grantee access to the Facilities.

Grantor's Chief Engineer will not permit any other cable or underground pipe, wire, duct or other structure which would unduly interfere with the operation of the Facilities to be installed subsequent to the construction of the Facilities or any part thereof, nor any excavation, to be made within two (2) feet of the cable.

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Prior to permitting such installation, Grantor will give written notice of its intention and Grantee will identify, in writing, any objection it has thereto within ten (10) days of receipt of such notice.

6.3 Grantor and Grantee. The words "Grantor" and "Grantee" used herein shall be construed as if they read "Grantors" and "Grantees", respectively, whenever the sense of this Easement so requires.

6.4 Successors and Assigns. The terms and conditions of this Easement shall inure to the benefit of and be binding upon the parties hereto and their respective legal representatives and permitted successors and assigns. It is agreed that Grantee shall have the right to assign this Easement or any interests or rights thereunder to any corporation owned or controlled by Grantee or any corporation owning or controlling Grantee or any corporation owned or controlled by such parent corporation or Grantee without the consent of Grantor. This Easement shall not be otherwise assignable by Grantee without the prior written consent of Grantor, which consent shall not be unreasonably withheld or delayed.

6.5 Recording. Grantee hereby agrees to pay all costs and fees in conjunction with the filing or recording of this instrument in or with any public place or with any public agency or subdivision.

6.6 Captions. The captions used herein are for

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convenience only and are of no effect in the interpretation or construction of any provision of this Easement.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have caused this Easement to be fully executed the day and year first above written.

WITNESSES:

C. R. Halling
F. F. Victor

as to Y & S Railway Company

THE YOUNGSTOWN AND SOUTHERN
RAILWAY COMPANY

By John E. Hemmich
President

Attest:

By

SECRETARY



WITNESSES:

K. L. Peuniger
Thomas A. Curry

as to Litel Telecommunications
Corporation

LITEL TELECOMMUNICATIONS
CORPORATION

By

Vice President

Attest:

By

Assistant Secretary

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ACKNOWLEDGMENT

COMMONWEALTH OF PENNSYLVANIA)
) SS:
 COUNTY OF ALLEGHENY)

On this 20th day of June, 1985,
 personally appeared before me, the undersigned, a Notary Public,
D.E. Neunshwander, who acknowledged that he is the
President of The Youngstown and Southern Rail-
 way Company and that he executed the foregoing and affixed the
 corporate seal thereto on behalf of the said corporation for the
 purposes therein contained.

Kathleen P. Cavanagh
 Notary Public

KATHLEEN P. CAVANAGH, NOTARY PUBLIC
 PITTSBURGH, ALLEGHENY COUNTY
 MY COMMISSION EXPIRES SEP. 1, 1987
 Member, Pennsylvania Association of Notaries

STATE OF Ohio)
) SS:
 COUNTY OF Franklin)

On this 21st day of May, 1985,
 personally appeared before me, the undersigned, a Notary Public,
Larry E. Wolfe, who acknowledged that he is the
Vice-President of Local Telecommunications and that
 he executed the foregoing and affixed the corporate seal thereto
 on behalf of said corporation for the purposes therein con-



JOSEPH P. COWIN, Attorney At Law
 Notary Public, State of Ohio
 Commission Has No Expiration Date
 Section 147.03 O.R.C.

[Signature]
 Notary Public

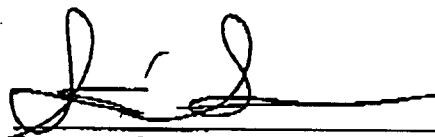
INSTRUCTIONS FOR SERVICE

Clerk, Court of Common Pleas
Mahoning County, Ohio

**RE: Venture Properties of Boardman, Inc., et al, Plaintiffs
-v- Columbiana County Port Authority, Defendant**

Please serve the Defendant with Summons and a copy of the Complaint via Certified Mail, Return Receipt Requested, as follows:

**Columbiana County Port Authority
Attention: Tracy V. Drake, CEO
1250 St. George Street
East Liverpool, OH 43920**



Stuart A. Strasfeld, Esq.
ROTH, BLAIR, ROBERTS, STRASFELD & LODGE
Youngstown, OH 44503-1893

**ROTH, BLAIR, ROBERTS,
STRASFELD & LODGE**

A LEGAL PROFESSIONAL ASSOCIATION

CITY CENTRE ONE
100 FEDERAL PLAZA EAST, SUITE 600
YOUNGSTOWN, OHIO
44503

TELEPHONE: (330) 744-6211