

FIBER FACILITIES EASEMENT DEED AND AGREEMENT

7202241

THIS FIBER FACILITIES EASEMENT DEED AND AGREEMENT ("Easement Agreement") is made this 22nd day of December, 1998, between GATEWAY ASSOCIATES, LTD., a Utah limited partnership ("Grantor"), and UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("Grantee").

1. Grant of Easement. Subject to the provisions of this Easement Agreement, Grantor grants to Grantee, its successors and assigns, a perpetual non-exclusive easement (the "Easement") upon, over, under and across the property in the City and County of Salt Lake, Utah, described in **Exhibit A** attached hereto and made a part hereof (the "Easement Areas") to construct, reconstruct, rebuild, reinstall, operate and maintain underground fiber optics communication cable and appurtenant facilities (collectively, "Fiber Facilities"), together with the right of reasonable access, ingress and egress to and from the Easement Areas for the purpose of exercising Grantee's rights in accordance with and subject to the terms of this Easement Agreement.

Grantee shall have the exclusive right to grant to Qwest Communications Corporation, WorldCom Network Services, Inc., MCI Telecommunications Corporation, and their affiliates and corporate successors, the right to use the Easement Areas for Fiber Facilities; provided, however, that any such grants shall be subordinate to the rights of Grantor under this Easement Agreement. Grantee, at its cost and expense, agrees to use commercially reasonable diligence to notify such third parties of any notices received by Grantee from Grantor that pertain to the Fiber Facilities owned by such third parties. Grantee, at its cost and expense, further agrees to make a commercially reasonable effort to enforce the obligations of such third parties with respect to the Fiber Facilities owned by such third parties, when requested to do so by Grantor.

2. Reserved Rights. Without limitation of Grantor's other rights reserved in this Easement Agreement, and subject to the provisions of Paragraph 3 below, Grantor may construct buildings, structures, roadways, parking lots, landscaping, footings, foundations and similar supports, and other improvements (collectively, "Improvements"), provided that (a) no Improvements may be constructed or used in any manner that damages or destroys any Fiber Facilities in existence at the time the applicable Improvement is constructed, or that adversely affects the ability of Grantee to access, use, enjoy, repair, replace, remove, maintain or operate any such Fiber Facilities, and (b) prior to commencing construction, Grantor shall provide Grantee with copies of drawings and engineering studies (the "Construction Plans") with respect to any Improvement to be constructed, and depicting areas of access (the "Guaranteed Access Areas") through which Grantee's right of access to the Fiber Facilities for the purpose of exercising Grantee's rights under this Easement Agreement shall be guaranteed regardless of the impact of such access on the Improvement and which shall provide Grantee reasonable access to the Fiber Facilities, and (c) Grantor shall not commence construction

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12/24/98 12:45 PM 28.00
NANCY WORKMAN
RECORDER, SALT LAKE COUNTY, UTAH
STEWART TITLE GUARANTY CO
455 E 500 S #200
SLC, UT 84111
REC BY: A GARAY DEPUTY - WI

of any Improvement until Grantee approves the Construction Plans for the Improvement with respect to whether the access provided by the Guaranteed Access Areas is reasonable and whether the proposed Improvement may result in damage or destruction of any Fiber Facilities.

3. Protection of Fiber Facilities. Grantor acknowledges that the continuity of operation of the Fiber Facilities is of critical importance at all times. Grantor agrees that it will use its best efforts to protect the integrity of the Fiber Facilities. Specifically, Grantor agrees that it shall not dig, excavate or build any parallel installation within the Easement Areas, or permit any third party to do so, except where such installation is a perpendicular crossing of the Easement Areas and the Fiber Facilities are adequately protected. Grantor agrees/ that if its or a third party's activities may threaten the integrity of the Fiber Facilities, Grantor shall notify Grantee of such situation as far in advance as is practical under the circumstances, and cooperate with Grantee so as to enable Grantee to coordinate the identification and marking of the location of the Fiber Facilities to protect the Fiber Facilities.

4. Access. Upon reasonable advance written notice to Grantor (except that no written notice shall be required in emergency situations or situations requiring expeditious action) Grantee shall have the right of reasonable access, ingress and egress to and from the Easement Areas to exercise Grantee's rights pursuant to this Easement. Grantee shall not have the right to damage, dispel, weaken, undermine, destroy, remove or compel the removal of any Improvements, unless Grantee is engaged in the non-negligent use of a Guaranteed Access Area, or unless and to the extent the Improvements were installed by Grantor in violation of the provisions of this Easement Agreement or Grantor created the need for a repair which Grantee cannot otherwise practicably accomplish. When conducting repair or maintenance of the Fiber Facilities, Grantee may disturb (but not permanently remove or compel the removal of) landscaping, walkways and similar non-structural improvements as may be reasonably necessary, provided that:

- i. The work shall occur only in the Easement Areas and the Guaranteed Access Areas, unless there is no reasonable alternative.
- ii. Grantee will, at its expense (unless and to the extent the need for repair of the Fiber Facilities was caused by Grantor, and the repair cannot practicably be accomplished without disturbance), return any such disturbed non-structural improvement located off the Easement Areas to substantially the same condition as existed prior to the repair or maintenance work.

5. Relocation. Grantor may from time to time require Grantee to protect or relocate the Fiber Facilities to facilitate the construction of Improvements on the Property, but only if (a) Grantor agrees in writing to pay any and all costs of the required action including costs of the owner of the affected Fiber Facilities for overhead and personnel to administer the required action, and such agreement is accompanied by payment to Grantee of not less than eighty percent (80%) of Grantee's estimated costs and expenses of the required action and one hundred percent (100%) of the replacement value, as determined by Grantee's Chief Financial Officer, of such of the Fiber Facilities

as cannot be moved, and (b) Grantor provides Grantee with a recordable document under which Grantee is granted the same rights as to the areas to which the Fiber Facilities are to be relocated as granted to Grantee under this Easement Agreement, together with evidence of good and sufficient title to support such grant, and (c) Grantor shall provide Grantee with copies of any drawings and engineering studies with respect to any planned relocation or protection of the Fiber Facilities (the "Relocation Plans") for Grantee's approval. At Grantee's election, the relocation or protection work shall be performed by the forces of the owner of the affected Fiber Facilities, or by a contractor retained by Grantee, or by a contractor retained by Grantor and approved by Grantee; provided, that if the work is performed by the forces of Grantee or the Fiber Facilities' owner, the cost shall not exceed the amount that would be charged by a third-party contractor to perform such work.

6. Compliance with Law. Grantee agrees to maintain, operate, repair and remove the Fiber Facilities in compliance with all applicable laws.

7. Remedies. If either Grantor or Grantee fails to honor its obligations under this Easement Agreement, the other party shall be entitled to specific performance and/or damages. In the event of any action arising out of this Easement Agreement, the prevailing party shall be entitled to recover reasonable attorney fees, costs and expenses from the other party.

8. Consents. No consent or approval required of either party under this Easement Agreement may be unreasonably withheld, conditioned or delayed.

9. Indemnity. Grantee by the acceptance of this Easement Agreement agrees to indemnify, defend and hold harmless Grantor, its successors and assigns, against and from any and all liability, loss, damage, claims, demands, actions, causes of action, costs and expenses of whatsoever nature, including court costs and attorney's fees, which may result from personal injury to or death of persons whomsoever, or damage to or loss or destruction of property whatsoever, when such personal injury, death, loss, destruction or damage is caused by Grantee's negligence or willful misconduct in exercising Grantee's rights under this Easement Agreement.

10. Location Signs. Grantee, at its sole cost and expense, shall furnish, erect and thereafter maintain reasonable signs showing the location and depth of all Fiber Facilities.

11. Condemnation. If any portion of the Easement Areas becomes the subject of condemnation proceedings, it is agreed that the Fiber Facilities and Grantee's property rights under this Easement Agreement shall be severed from Grantor's interest in such proceedings and any award in any condemnation proceeding shall be specifically allocated between Grantee's interest and Grantor's interest. Grantor shall use its best efforts to notify Grantee of any condemnation action or threatened action against any portion of the Easement Areas, or of any sale in lieu of condemnation.

12. Ownership of Fiber Facilities. Nothing in this Easement Agreement shall be deemed to give, and Grantor hereby expressly waives, any claim of ownership in and to the Fiber Facilities.

13. Abandonment

a. If Grantee abandons use of the Fiber Facilities or portions thereof, Grantee shall notify Grantor in writing of the abandonment within six (6) months thereof. Upon written notice by Grantor, Grantee, at its sole cost, risk and expense, shall promptly (i) remove all above ground Fiber Facilities from the Easement Areas, and (ii) restore the Easement Areas and any disturbed portions of the Property and Improvements to the condition existing prior to such removal.

b. Grantee may abandon any underground Fiber Facilities in place, but only in such manner and upon such terms as are accepted by Grantor.

c. Grantee will execute correcting deeds, quitclaim deeds, or other documents reasonably requested by Grantor to reflect of record any abandonment of the Easement in whole or in part.


14. Runs with Land. The benefits and burdens of this Easement Agreement shall run with the land, and shall bind each and every subsequent owner of the Property.

IN WITNESS WHEREOF, Grantor and Grantee have duly executed this Easement Agreement as of the date first herein written.

GATEWAY ASSOCIATES, LTD., a Utah
limited partnership, by its General Partner


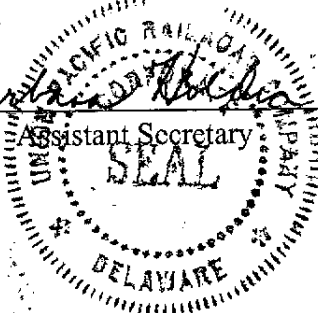
BOYER GATEWAY, L.C., a Utah limited
liability company, by its Manager,

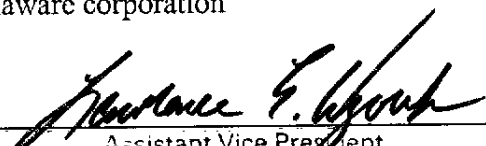
THE BOYER COMPANY, L.C., a
Utah limited liability company

By: 
H. Roger Boyer
Its Chairman and Manager

UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation

Attest:

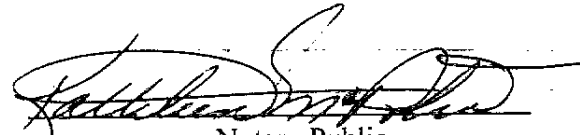
 (Seal)
Assistant Secretary


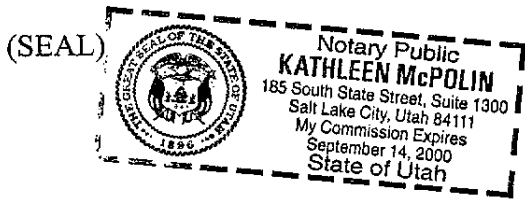
By: 
Title: Assistant Vice President

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

On December 23 1998, before me, a Notary Public in and for said County and State, personally appeared H. Roger Boyer, Chairman and Manager of THE BOYER COMPANY, L.C., a Utah limited liability company, Manager of BOYER GATEWAY, L.C., a Utah limited liability company, General Partner of GATEWAY ASSOCIATES, LTD., a Utah limited partnership, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.


Notary Public



STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

On December 21, 1998, before me, a Notary Public in and for said County and State, personally appeared Assistant Vice President Lawrence E. Wzorek and Barbara Holder, Assistant Vice President and Assistant Secretary, respectively, of UNION PACIFIC RAILROAD COMPANY, a Delaware corporation, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Donna Coltrane
Notary Public

(SEAL)

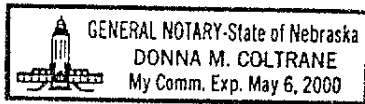


EXHIBIT A

Page 1 of 3

A 10.00 FOOT WIDE UTILITY EASEMENT BEING 5.0 FEET PERPENDICULARLY EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE.

BEGINNING AT A POINT ON THE NORTH LINE OF BLOCK 101, PLAT "A", SALT LAKE CITY SURVEY, SAID POINT BEING SOUTH 89° 54' 23" WEST 96.43 FEET FROM THE NORTHEAST CORNER OF LOT 5, SAID BLOCK 101, AND RUNNING THENCE SOUTH 08° 06' 10" EAST 5.05 FEET; THENCE NORTH 89° 54' 23" EAST 90.73 FEET; THENCE SOUTH 00° 06' 11" EAST 325.45 FEET; THENCE SOUTH 07° 26' 29" EAST 316.80 FEET; THENCE SOUTH 04° 08' 39" EAST 143.37 FEET; THENCE SOUTH 89° 59' 27" WEST 15.23 FEET TO A POINT ON A 1103.72 FOOT RADIUS CURVE TO THE LEFT, THE RADIUS POINT OF WHICH BEARS NORTH 87° 01' 21" EAST; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE 61.77 FEET TO A POINT OF TANGENCY; THENCE SOUTH 06° 11' 03" EAST 50.06 FEET TO A POINT OF A 640.28 FOOT RADIUS CURVE TO THE RIGHT; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE 69.06 FEET TO A POINT OF TANGENCY; THENCE SOUTH 00° 00' 15" EAST 622.65 FEET; THENCE SOUTH 40° 08' 13" EAST 91.61 FEET; THENCE SOUTH 99.00 FEET; THENCE NORTH 89° 47' 32" EAST 22.58 FEET; THENCE NORTH 72° 41' 56" EAST 56.61 FEET TO AN EXISTING COMMUNICATIONS MANHOLE.

CONTAINS: 0.45 ACRES

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A 10.00 FOOT WIDE UTILITY EASEMENT BEING 5.0 FEET PERPENDICULARLY EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE.

BEGINNING AT A POINT ON THE SOUTH LINE OF BLOCK 80, PLAT "A", SALT LAKE CITY SURVEY, SAID POINT BEING NORTH 89° 49' 32" EAST 6.43 FEET FROM THE SOUTHWEST CORNER OF SAID BLOCK 80, AND RUNNING THENCE NORTH 09° 10' 20" WEST 168.27 FEET; THENCE NORTH 00° 08' 56" WEST 1249.33 FEET; THENCE NORTH 86° 52' 14" WEST 31.00 FEET; THENCE SOUTH 04° 01' 30" WEST 114.66 FEET; THENCE SOUTH 09° 07' 43" WEST 35.50 FEET TO A POINT 66.00 FEET WEST OF THE WEST LINE OF BLOCK 83, PLAT "A", SALT LAKE CITY SURVEY.

CONTAINS: 0.37 ACRES

A 10.00 FOOT WIDE UTILITY EASEMENT BEING 5.0 FEET PERPENDICULARLY EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE.

BEGINNING AT A POINT SOUTH 00° 00' 51" EAST 13.81 FEET AND WEST 66.00 FEET FROM THE NORTHWEST CORNER OF BLOCK 83, PLAT "A", SALT LAKE CITY SURVEY AND RUNNING THENCE SOUTH 85° 31' 40" EAST 40.41 FEET; THENCE NORTH 02° 23' 49" WEST 60.37 FEET; THENCE NORTH 00° 54' 29" EAST 104.35 FEET; THENCE NORTH 02° 50' 47" EAST 229.40 FEET; THENCE NORTH 04° 13' 16" EAST 73.17 FEET; THENCE NORTH 00° 25' 01" EAST 56.92 FEET; THENCE NORTH 42° 18' 53" EAST 21.41 FEET; THENCE NORTH 68° 58' 25" EAST 34.82 FEET; THENCE NORTH 75° 37' 42" EAST 42.79 FEET; THENCE NORTH 02° 12' 56" WEST 307.37 FEET; THENCE NORTH 00° 52' 45" EAST 146.78 FEET; THENCE NORTH 00° 05' 32" WEST 415.03 FEET; THENCE NORTH 37° 33' 46" EAST 126.84 FEET; THENCE NORTH 42° 49' 33" EAST 94.74 FEET TO THE NORTH LINE OF BLOCK 101, PLAT "A", SALT LAKE CITY SURVEY.

CONTAINS: 0.40 ACRES

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