



AGREEMENT BETWEEN CABLE COMPANIES AND FISHERMEN

THIS AGREEMENT (“Agreement”) dated as of this 30TH day of January, 2002, is made by and among MFS Globenet, Inc. (“MFS Globenet”), AT&T Corp. (“AT&T”), Global West Network, Inc., a wholly owned subsidiary of Global Photon Holding Co. (a.k.a. Global Photon Systems, Inc.) (“Global West”) (each of MFS Globenet, AT&T, and Global West are hereinafter called “Cable Company” and collectively they are hereinafter called “Cable Companies”), individual trawl vessel owners and operators doing business in San Luis Obispo County who sign this Agreement and other commercial fishermen licensed to fish along the California coast who sign this Agreement (hereinafter collectively called the “Fishermen”), and the Morro Bay Commercial Fishermen’s Organization, a California Mutual Benefit Corporation, the Port San Luis Commercial Fishermen’s Association, a California Mutual Benefit Corporation, (collectively hereinafter called “the Associations”), with regard to the following facts:

RECITALS

WHEREAS, the Cable Companies have applied to and received from the California State Lands Commission, and to the United States Army Corp of Engineers, in addition to other governmental agencies having jurisdiction thereover (hereinafter “Governmental Agencies”), for approval to construct, install, continue and maintain telecommunications cable networks along the California coast (hereinafter “Cable Projects”), and

WHEREAS, the Governmental Agencies are responsible for preparing and certifying environmental review documents in compliance with the requirements of the California Environmental Quality Act (“CEQA”) and the National Environmental Policy Act (“NEPA”), to assess the potential environmental impacts of the Cable Projects, the cumulative impacts of such projects, alternatives to such projects, and appropriate mitigation measures for such projects, and

WHEREAS, this Agreement is intended to identify, establish, and confirm certain mitigation measures and monitoring programs which are intended to facilitate environmental review of the Cable Projects, reduce potential conflicts between the installation, continuation, and maintenance of the Cable Projects and commercial fishing activities along the California coast; and

WHEREAS, this Agreement supercedes and replaces an Interim Agreement dated July 22, 1999 (as amended) among certain of the parties (the “July 22 Interim Agreement”), a copy of which is attached hereto as Exhibit “A”; and

WHEREAS, the parties acknowledge that commercial fishing activities are coastal dependent uses receiving the highest priority under the California Coastal Act, and the Federal Coastal Zone Management Act, the continuing viability of which is of critical importance to maintaining historic fishing activity along the California coast; and

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WHEREAS, MFS Globenet, Inc.'s Cable Project is installed in the areas identified on Exhibit "B" hereto; and

WHEREAS, AT&T's Cable Project is installed in the areas identified on Exhibit "C" hereto; and

WHEREAS, Global West Network's Cable Project is installed in the areas identified on Exhibit "D" hereto; and

WHEREAS, each of the cables depicted on Exhibit "B," Exhibit "C," and Exhibit "D" is a "Covered Cable"; and

WHEREAS, The "Covered Area" is the area within one nautical mile on either side of a "Covered Cable" in the area from Point Arguello, Latitude 34 Degrees 34' North to Point Piedras Blancas, Latitude 35 degrees 40'N and out to the 1000 fathom curve; and

WHEREAS, the parties acknowledge that the commercial fishing industry is subject to substantial economic pressures, is vulnerable from a variety of regulatory, economic, and market sources, and that its continuing viability is subject to cumulative impacts which these Cable Projects may have upon the commercial fishing industry; and

WHEREAS, it is the intent of this Agreement to provide an enforceable agreement, and the Cable Companies acknowledge that in entering into this Agreement, the Fishermen are relying upon the good faith and representations by the Cable Companies that the provisions of this Agreement are enforceable and will be implemented in conjunction with any approved Cable Projects; and

WHEREAS, as a result of the environmental review by the Governmental Agencies, the Cable Projects may be conditioned and modified in order to appropriately mitigate impacts upon the commercial fishing industry.

NOW, THEREFORE, the Cable Companies, the Associations and the Fishermen hereby agree as follows:

ARTICLE I. GENERAL PROVISIONS

Section 1.01 Committee

(a) Formation. A Committee has been formed, concurrently with the execution of the July 22 Interim Agreement, for the purposes described in this Agreement, and has been organized as a California non-profit Mutual Benefit Corporation.

(b) Name. The Committee is named the Central California Joint Cable/Fisheries Liaison Committee, Inc. (hereinafter "Committee").

(c) Representation. The Committee is governed by ten (10) voting Directors: four (4) Trawl Fishing Industry Representatives, four (4) Cable Company Representatives and two Association Representatives. The Trawl Fishing Industry Representatives shall be selected in the manner specified in the Bylaws. One Association Representative shall be appointed by the Morro Bay Commercial Fishermen's Organization and one shall be appointed by the Port San Luis Commercial Fishermen's Association (collectively "the Associations").

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Each Cable Company shall appoint one Representative. The fourth Cable Company Representative shall be appointed in the manner specified in the Committee Bylaws.

The Committee shall adopt Bylaws to implement all aspects of this agreement. The Bylaws shall provide that in the event that the Directors of the Committee are deadlocked on any issue, then the deadlock shall be resolved by a designated mediator mutually agreeable to the parties, and appointed to serve as mediator within thirty (30) days of the date of the first deadlock being declared, and who shall continue serving as mediator until replaced by a majority vote of the Directors.

It is not the intent of this Agreement to create any liability of any kind or nature for any Directors of the Committee. The Committee shall obtain liability insurance naming the Committee as the primary insured and each individual Director as an additional insured.

(d) Committee Jurisdiction. The Committee activities shall relate to the Covered Cables within the Covered Area and the activities within the Covered Area of the Cable Companies and the Fishermen.

(e) Initial Trawl Fishing Industry Representatives. The initial Trawl Fishing Industry Representatives on the Committee were (1) John Doherty; (2) Joseph Giannini, Jr.; (3) "BJ" Johnson; and (4) Randy Larsen. The initial Trawl Fishing Industry alternates were: (1) Chris Kubiak and (2) Bill Ward.

(f) Committee/Liaison Office Fund. The Cable Companies shall fund a Committee/Liaison Office Fund to be used to pay for and reimburse Committee activities and Committee representatives as approved by the Committee. Each Cable Company made a deposit of Fifty Thousand dollars (\$50,000) to the Committee/Liaison Office Fund following execution of the July 22 Interim Agreement and each made annual contributions of \$50,000 in 2000 and 2001. In 2002 and thereafter, each Cable Company shall deposit Fifty Thousand Dollars (\$50,000) to the Committee/Liaison Office Fund within 30 days of receipt of an invoice from the Committee which shall be issued at the beginning of each calendar year. This obligation terminates with respect to any Cable Company if the Cable Company fails to place a fiberoptic cable in service by December 31, 2001. Funds in excess of the amount reasonably needed to fund the annual office administrative expense shall be transferred to the Commercial Fishing Industry Improvement Fund unless otherwise directed by the Committee.

The Committee shall establish an annual budget for all Committee activities to be paid from the Committee/Liaison Office Fund. The organizational budget shall include reasonable amounts for the activities described in Sections 1.01 (g) through (j). Accounting control procedures shall be developed by a San Luis Obispo County based certified public accountant selected by the Committee.

(g) Compensation for Committee Activities. Committee Trawl Fishing Industry and Association Representatives shall be compensated out of the Committee/Liaison Office Fund for time and travel expenses reasonably incurred for approved committee activities, including attendance at Committee meetings. The rate of compensation shall be Fifty Dollars (\$50) per hour, capped at no more than Five Hundred Dollars (\$500) per day plus reasonable travel expense.

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(h) Trawl Fishing Industry and Association Representatives' Compensation and Attorney's Fees for Negotiating Agreement. Committee Trawl Fishing Industry and Association Representatives shall be compensated out of the Committee/Liaison Office Fund for time and travel expenses reasonably incurred to achieve execution of this Agreement at rates and in amounts approved by the Committee. The time charges and expenses reasonably incurred by an attorney or attorneys representing the Trawl Fishing Industry and/or the Associations in the preparation and review of this Agreement shall be paid by the Cable Companies.

(i) Committee Office. Office expenses reasonably incurred and approved by the Committee to carry out Committee activities shall be paid out of the Committee/Liaison Office Fund.

(j) Cable Committee Liaison Officer. The Committee shall develop procedures to select, hire and oversee a Committee Liaison Officer to carry out Committee activities and establish and run an office as necessary and approved by the Committee. The Committee Liaison Officer shall be paid out of the Committee/Liaison Office Fund at rates and in amounts approved by the Committee.

(k) Committee Procedures. The Committee shall establish policies and procedures, to review claims, to publicize and advance the goals of this Agreement and to conduct other activities consistent with the provisions of this Agreement.

(l) Fishing Vessel Operating Procedures. The Committee has established operating procedures, which shall be followed by Fishermen to guide operation of commercial fishing vessels in the vicinity of cables. The procedures address requirements for up-to-date charts and navigational aids, a prohibition of trawling over cables known to be exposed and procedures to follow if forward motion stops. The procedures include reasonable measures that the vessel operator may employ to avoid damage to the cable. A copy of the Operating Procedures adopted by the Committee is attached and incorporated as Exhibit E.

Section 1.02 **Cable Installations, Inspection and Information**

(a) Each Cable Company shall have its Covered Cables installed at a depth of 1.0 meters beneath the seabed where feasible. In shallow water areas close to shore, the Covered Cables will be installed in a conduit. Each Covered Cable is intended to be buried to the extent reasonably possible and to remain buried, except in locations where due to geophysical constraints that is infeasible. Each Cable Company shall examine the seafloor and subsurface within reasonable proximity to the intended cable route to determine routes with ideally less than 5% cable exposure due to hard ground, rock seabed or other features which prohibit burial between three miles from shore and 1,000 fathom water depth. Each Cable Company shall consult with the Committee, pursuant to paragraph (g) regarding the timing and method of construction and installation of its cable project. Video equipment on the plow shall be used to record the burial operation. This shall serve as evidence of burial and will also indicate if the need exists to carry out post lay burial operations using an ROV. In all instances, the most modern technology in general commercial use shall be utilized in the cable burial process including Remote Operated Vehicle ("ROV") inspected for problematic regions immediately following installation, and ROV post-lay burial as required. In all "crossings" of its Covered Cables

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over existing undersea cable or pipelines, each Cable Company shall employ the latest industry standard protection techniques, and ROV and/or diver inspection shall be utilized as required. If any length of cable or cable-crossing cannot be completely buried after the inspection and burial procedure, the precise location will be identified in “as-built” coordinates provided by the Cable Company to the Fishermen. In the course of any repair or maintenance, the Covered Cable shall be buried to the extent possible to the same depth as it originally was buried. It is the intent of the parties to achieve the Cable Projects’ objectives with minimal impacts upon the viability of the commercial fishing industry and minimal effects upon the extent and historic areas in which the commercial fishing industry is able to operate, and the practices and procedures used by the commercial fishing industry.

(b) Installation Observation and Guard Ship Assignments.

(i) An observer selected by the Committee as described below shall be on board the Cable Company installation vessel to observe cable installation within the Covered Area. The observer’s reasonable fees and expenses shall be paid by the Cable Company involved in the installation. The compensation shall be in addition to any funds provided in Sections 1.01(f) and 1.07 of this Agreement. The rate of compensation shall not exceed One Thousand Dollars (\$1,000.00) per day, plus reasonable travel expenses.

(ii) The Committee shall equip the observer with a laptop computer and GPS equipment or other portable devices that will permit the observer to record the approximate position of the cable being installed. Cable position information recorded by the observer shall be distributed to the commercial fishing industry by the Committee as quickly as reasonably possible. The Cable Company shall bear no responsibility for the accuracy of the information recorded by the observer. The Committee shall inform recipients of the position information that the information is not the responsibility of the Cable Company but is being provided by the Committee. Recipients shall be required to sign a release in which they agree to use the information at their own risk and to release the Committee, the observer and the Cable Company from any and all claims that may arise from the use of the information.

(iii) The Committee shall obtain from the Cable Company the requirements applicable to any fisherman observer. The Committee shall compile a list of all bottom contact fishermen doing business in San Luis Obispo County who wish to be considered for observer duty and who meet the requirements of the Cable Company. The list shall indicate the range of water depth within which each individual has the greatest fishing experience. Names shall be listed in random order, except that all individuals with previous experience as an observer shall be listed randomly after all individuals without such prior experience. When a Cable Company is required by this Agreement to have a fisherman observer aboard a cable vessel, the Cable Company shall inform the Committee where and when an observer may board the cable ship. The Committee shall select an observer from the list compiled. Observer positions shall be offered to individuals experienced in the water depth range in which the cable ship will be working in the order in which they appear on the list. To the extent that it can do so without interfering with efficient operations of the cable

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ship, the Cable Company shall change observers when convenient to the cable ship operations if the work continues outside the depth range of the initial observer. If the Committee fails to select an observer or the individual selected is not available or for any reason cannot be available to meet the operation schedule of the cable ship (such operation schedule to be determined at the sole discretion of the master of the cable ship) then the Cable Company shall have the option to proceed without an observer.

(iv) Before the start of any cable project involving the use of guard vessels, the Committee shall provide the Cable Company's installation contractor with a list of commercial fishing vessels doing business in San Luis Obispo County that agree to be available for guard vessel duty. The list shall indicate the water depth range with which the vessel has the most fishing experience and shall include other information about the vessel's characteristics and operating status. The Cable Companies shall encourage their contractors to select guard vessels from the Committee list in the order listed, if the contractors elect to employ local vessels for guard duty. The Cable Companies shall encourage their contractors to change guard vessels from time to time and to employ vessels indicated by the Committee's list to be experienced in the depth range where the cable installation is to occur. Payment terms shall be negotiated between the contractors and the owners of the guard vessels employed.

(c) Post-Installation Information. Each Cable Company shall provide cable as built installations, latitude and longitude in WGS 84 datum coordinates to the Fishermen and the Committee as soon as reasonably possible after the Cable Companies' contractor for the installation of the cable delivers the information to Cable Companies. This data shall be provided in writing, electronically, and on navigational charts.

(d) Post-Installation Inspections. Each Cable Company shall conduct ROV Burial verification to determine whether any buried sections of its Covered Cables have become exposed at minimum of every 18 months and not to exceed 24 months and after any events which may affect the Cable Project. Copies of videotapes recording the verification shall be provided to the Committee.

(e) Unforeseen Consequences. The economic and environmental impacts of the Cable Projects and the appropriate level of mitigation shall be reviewed by the Committee after each of the first two years following the completion of installation of each Cable Project and adjusted, if necessary, for unforeseen consequences arising from the installation, assignment, operation, use, repair, replacement, continuation, and maintenance of the Cable Projects.

(f) Continuing jurisdictions. The parties agree that all of the approving Governmental Agencies for the Cable Projects shall reserve jurisdiction to amend or modify the terms, conditions, and project mitigation measures over the useful life of the Cable Projects, and shall have jurisdiction to impose additional mitigation measures based upon the monitored actual impacts of the Cable Projects upon fisheries and/or the commercial fishing industry. Such jurisdiction, and the ongoing authority of the Committee, shall include modifications of the approved projects and this Agreement to address, consistent with the purposes of this Agreement, future fishery gear types which may be affected by the Cable Projects.

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(g) Construction and installation. The timing and methods of construction and installation of the Cable Projects shall be determined in consultation with the Committee, with the goal of minimizing any adverse impacts upon the commercial fishing industry. The Cable Companies agree to compensate any segments of the commercial fishing industry which are damaged as a result of the acts of installing, repairing, replacing, or maintaining of the Cable Projects, or any incidental activities in connection therewith. The amount of such compensation, as well as those entitled to receive it, shall be determined by the Cable Company involved, implementing guidelines approved by the Committee. Such compensation shall be in addition to any funds provided in Sections 1.01(f) and 1.07 of this Agreement.

Section 1.03 **24-Hour Telephone Hotline**

Each Cable Company, either individually or in cooperation with other Cable Companies, shall provide and maintain a 24-hour, toll-free telephone hotline to receive calls from Fishermen who believe they have snagged their gear on a Covered Cable owned and/or operated by that Cable Company. Furthermore, the Cable Companies will endeavor to include all Covered Cables on one 24-hour toll-free hotline. There shall be a representative on duty at all times who has the authority, background, and experience to advise the Fisherman whether the reported position is in the vicinity of a Covered Cable owned and/or operated by that Cable Company. Reporting procedures when using the hotline shall be developed by the Committee.

Section 1.04 **Gear Replacement Costs/Claims**

Each Cable Company shall pay 100% of the costs of gear sacrificed by a fishing vessel as a result of being snagged on a Covered Cable owned and/or operated by that Cable Company, provided 1) the vessel has informed the 24-hour, toll-free telephone hotline of its situation at the time of, or immediately following being snagged and 2) the vessel's conduct was consistent with the Fishing Vessel Operating Procedures established pursuant to paragraph 1.01 (l). The Cable Company shall also pay a premium in the amount of 50% of the value of the sacrificed gear to settle claims for loss of business incurred by the vessel. The Cable Company shall be responsible for promptly disbursing payments for the gear replacement costs and claims.

Section 1.05 **Cable Damage Claims/Release of Liability**

(a) The Cable Companies agree to release any claims they might otherwise have, either individually, or collectively, against individual fishermen and refrain from taking any administrative, legal, or other action to sanction and/or recover damages against Fishermen who comply with the Fishing Vessel Operating Procedures established by the Committee. The Cable Companies further agree to encourage all administrative, legal, judicial and other authorities to respect the terms and conditions of this Agreement, and the procedures established by the Committee for the resolution of any cable damage claims. The Cable Companies hereby agree to assume all liability, responsibility, and risk for any damage which may occur to their Cable Projects resulting from their inability to construct, maintain, place, and continue Covered Cables in a manner which does not interfere with fishing conducted in conformity with the Fishing Vessel Operating Procedures.

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(b) A three-step procedure shall be provided for resolution of all disputes, including disputes concerning claims by a Cable Company for damage to its Cable Project (“cable damage claims”) and disputes concerning the following claims of Fishermen: 1) claims regarding a Fisherman’s entitlement to the compensation provided in Section 1.04 above for the sacrifice of fishing vessel gear to avoid injuring any Covered Cable or related facilities being constructed or operated by the Cable Companies; 2) claims arising from any incident involving conduct by any Cable Company that negligently damages the Fisherman’s fishing gear and the fish contained in such gear, and 3) claims arising from any conduct by the Cable Company that removes or damages, or tampers with the Fisherman’s fishing gear and the fish contained in such gear without authorization from the Fisherman. Pursuant to the procedure: (1) the parties shall meet with the Committee in an effort to settle the dispute; (2) if the parties are unable to settle the dispute within a reasonable period of time with the assistance of the Committee, the parties shall request the Committee to select an independent mediator to assist in the resolution of the dispute; (3) if the parties are unable to settle the dispute within a reasonable period of time with the assistance of the mediator, the parties shall submit to binding arbitration all disputes over Fishermen’s claims and any dispute over cable damage claims that the parties mutually agree to submit to binding arbitration. With respect to disputes over cable damage claims, unless the parties agree within seven days of the end of mediation to submit the dispute to binding arbitration, the Cable Company shall be free to pursue any legal remedies available to it and the vessel owner and operator shall be free to assert any legal defenses available. Any arbitration shall be determined in San Luis Obispo County, California. Each party to the arbitration shall appoint an independent arbitrator. If the two arbitrators so appointed cannot agree within 30 working days after their appointment, they shall select a third arbitrator. The decision in writing of the three arbitrators, or any two of them, shall be final and binding upon the parties therein, who shall conform to and abide by said decision. If either party fails to appoint his arbitrator within seven days after notice in writing requiring him to do so, the arbitrator appointed by the other party shall act for both, his decision in writing shall be final and binding upon both parties, as if he had been appointed by consent, and both parties thereto shall conform to and comply therewith. The expenses for the process described in this paragraph (b) shall be paid by the Cable Company in addition to any other payments that are required under this Agreement. When a claim before the Committee involves a bottom trawl vessel, the Association representatives on the Committee shall not have a vote. When a claim before the Committee involves a vessel that is not a bottom trawl vessel, the Association representatives shall have a vote and the Trawl Fishing Industry representatives shall not have a vote.

Section 1.06 **Out-of-Service Cables**

(a) To the extent required by any governmental approvals, the Cable Companies agree to abandon and remove out-of-service Covered Cables as necessary so as not to interfere with commercial fishing activities in the areas where such cables were previously installed.

(b) AT&T agrees to use its best efforts to secure the removal of the existing HAW-3 cable between the three-mile limit and 1000 fathoms water depth.

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Section 1.07 **Commercial Fishing Industry Improvement Fund**

Each Cable Company shall annually deposit One Hundred Thousand Dollars (\$100,000) per project in a special fund for enhancement of commercial fisheries and the commercial fishing industry and support facilities. This payment obligation shall commence and the first payment shall be due within thirty (30) days of the Cable Company receiving final approval from all agencies of the State of California and all local agencies for its project. Full payment shall be required for the calendar year in which final approval is received. Annually thereafter, each Cable Company shall deposit one hundred thousand dollars (\$100,000) to the Commercial Fishing Industry Improvement Fund, or as directed by the Committee, within 30 days of receipt of an invoice from the Committee, which shall be issued at the beginning of each calendar year.

Lease applications for projects in addition to those projects specified in paragraph 1.09 shall constitute new projects for the purpose of this paragraph. For each cable installed as part of a new project, the Cable Company shall annually contribute an additional \$100,000 to this fund.

In the event that any mitigation intended for the commercial fishing industry is ordered by action of a governmental agency, the payment of such ordered mitigation shall offset funds required to be paid pursuant to this paragraph.

Section 1.08 **Parties**

This Agreement shall be by and between and for the benefit of the Cable Companies and the Fishermen, and any other licensed commercial fisherman operating in the Covered Area who signs this Agreement.

Section 1.09 **Covered Cables**

This Agreement shall cover the following telecommunications cable projects of the Cable Companies: (a) MFS Globenet – Southern Cross (one cable); Japan-US (one cable); (b) AT&T – China-U.S. (two cables); Japan-US Interlink (one cable); and (c) Global West – Global West (two cables). These cable projects are depicted in Exhibits B, C, and D attached hereto.

Section 1.10 **Assignment**

This Agreement shall be assignable to future successors, assigns and donees of a Cable Company, including their lenders as required, provided that such successor, assignee or donee agrees to be bound by the provisions of this Agreement.

Section 1.11 **Upgrading of Communications and Navigation Equipment**

A one-time payment of Five Hundred Dollars (\$500) shall be made by each Cable Company to each vessel engaged in trawl fishing in the Covered Area that is owned and operated by a Fisherman for use in upgrading communication and navigation equipment for such vessel.

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ARTICLE II. MISCELLANEOUS

Section 2.01 **Governing Law**

This Agreement, and the rights and duties of the parties arising hereunder shall be governed by and construed in accordance with the laws of the State of California except provisions of that law referring governance or construction to the law of another jurisdiction.

Section 2.02 **Counterparts**

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which constitute but one Agreement.

Section 2.03 **Miscellaneous**

(a) Unless specifically agreed in writing, no party may commit the other parties to any agreement or undertaking.

(b) Nothing in this Agreement shall be construed to create or constitute a partnership, agency or similar relationship or to create joint or several liability on the part of any of the parties.

(c) All correspondence should be directed to the addressees and individuals indicated next to the signature of each party, or to such other address or individuals as a party may request in writing from time to time.

(d) This agreement shall terminate as to any Cable Company or its successors at such time as it ceases to operate commercial fiberoptic cables within the Covered Area or if the Cable Company does not place a cable in service before December 31, 2001.

(e) This agreement may be amended only by vote of the Board of Directors of the Committee.

ARTICLE III. AMENDMENTS

Section 3.01 **Amendment I**

WHEREAS, the Parties recognize that the broader economic environment has changed dramatically from the time when the Final Agreement was first entered; and

WHEREAS, the Parties recognize that the initial funding of the Committee/Liaison Office Fund was greater than required; and

WHEREAS, the Parties seek to rationalize the budgeting process and reduce the economic burden on the Cable Companies;

NOW THEREFORE, The Parties agree to amend the Final Agreement by striking Section 1.01 (f) and replacing that Section with the texts attached hereto as Exhibit 'A'.

EXHIBIT 'A'

Final Agreement, Section 1.01 (f), as amended:

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(f) Committee/Liaison Office Fund. The Cable Companies shall fund a Committee/Liaison Office Fund to be used to pay for and reimburse Committee activities and Committee representatives as approved by the Committee. Each Cable Company made a deposit of Fifty Thousand dollars (\$50,000) to the Committee/Liaison Office Fund following execution of the July 22 Interim Agreement and each made annual contributions of \$50,000 in 2000 and 2001. In 2002 and thereafter, each Cable Company shall deposit Fifty Thousand Dollars (\$50,000) to the Committee/Liaison Office Fund within 30 days of receipt of an invoice from the Committee, which shall be issued at the beginning of each calendar year. This obligation terminates with respect to any Cable Company if the Cable Company fails to place a fiberoptic cable in service by December 31, 2001 or otherwise by action of the Board. Funds in excess of the amount reasonably needed to fund the annual office administrative expense shall be transferred to the Commercial Fishing Industry Improvement Fund unless otherwise directed by the Committee.

The Committee shall establish an annual budget for all Committee activities to be paid from the Committee/Liaison Office Fund. The organizational budget shall include reasonable amounts for the activities described in Sections 1.1(g) through (j). Accounting control procedures shall be developed by a San Luis Obispo County based certified public accountant selected by the Committee.

For calendar year 2008 and beyond, pursuant to action by the Board, the fifty thousand dollar (\$50,000) annual assessment for each Cable Company shall cease and each Cable Company shall only be assessed its share of the actual budget for all Committee activities as determined by the Board. Excess funds remaining in the Committee/Liaison Office Fund as of January 1, 2008 may be transferred to the Improvement Fund by vote of the Board.

Section 3.02 **Amendment II**

WHEREAS, the Parties recognize that the broader economic environment has changed dramatically from the time when the AGREEMENT BETWEEN CABLE COMPANIES AND FISHERMEN (the "Final Agreement") was first entered; and

WHEREAS, the Parties recognize that the initial funding of the Committee/Liaison Office Fund was greater than required; and

WHEREAS, the Parties seek to rationalize the budgeting process and reduce the economic burden on the Cable Companies;

NOW THEREFORE, The Parties agree to amend the Final Agreement by striking Section 1.01 (f) and replacing that section with the texts attached hereto as Exhibit 'A'.

EXHIBIT 'A'

Final Agreement, Section 1.01 (f), as amended:

(f) Committee/Liaison Office Fund. The Cable Companies shall fund a Committee/Liaison Office Fund to be used to pay for and reimburse Committee activities and Committee representatives as approved by the Committee. Each Cable Company made a deposit of Fifty Thousand dollars (\$50,000) to the Committee/Liaison Office Fund following execution of the July 22 Interim Agreement and each made annual

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contributions of \$50,000 in 2000 and 2001. In 2002 and thereafter, each Cable Company shall deposit Fifty Thousand Dollars (\$50,000) to the Committee/Liaison Office Fund within 30 days of receipt of an invoice from the Committee which shall be issued at the beginning of each calendar year. This obligation terminates with respect to any Cable Company if the Cable Company fails to place a fiberoptic cable in service by December 31, 2001 or otherwise by action of the Board.

For calendar year 2008 and beyond, pursuant to action by the Board, the fifty thousand dollar (\$50,000) Committee/Liaison Office Fund annual assessment for each Cable Company shall cease and each Cable Company shall be assessed its share of the actual budget for all Committee activities as determined by the Board. Excess funds remaining in the Committee/Liaison Office Fund as of January 1, 2008 may be transferred to the Commercial Fishing Industry Improvement Fund by vote of the Board.

(i) The Committee shall establish an annual budget for all Committee activities to be paid from the Committee/Liaison Office Fund. The organizational budget shall include reasonable amounts for the activities described in Sections 1.1(g) through (j).

Accounting control procedures shall be developed by a San Luis Obispo County based certified public accountant selected by the Committee.

Pursuant to action by the Board, a five person Administrative Budget Committee consisting of two Cable Company Representatives, two Trawl Fishing Industry/Association Representatives and the Committee Liaison Officer, has been formed. The Administrative Budget Committee will meet prior to the fiscal year and will determine the amounts needed to fund the annual office administrative expenses (hereinafter called the "*Administrative Budget*"). The Budget Committee will present the Administrative Budget to the full Committee. If approved, fifty percent (50%) of the Approved Administrative Budget will be invoiced to the Cable Companies. At mid-year, the Administrative Budget Committee will meet again to affirm the Administrative Budget or recommend adjustments (either up or down) to the full Committee. If approved, the remainder of the Approved Adjusted Administrative Budget will be invoiced to the Cable Companies.

Beginning with the second Approved Administrative Budget assessment of calendar year 2009 and continuing thereafter, the Approved Administrative Budget assessment shall be apportioned to each Cable Company in a proportion equal to the proportion of each Cable Companies contribution to the Commercial Fishing Industry Improvement Fund described in section 1.07 of this Agreement.

Section 3.03 **Amendment III**

WHEREAS, the Parties recognize that the broader economic environment has changed dramatically from the time when the AGREEMENT BETWEEN CABLE COMPANIES AND FISHERMEN (the "*Final Agreement*") was first entered; and

WHEREAS, the Parties seek to rationalize the process for adding additional covered cables and reduce the economic burden on the Cable Companies;

NOW THEREFORE, The Parties agree to amend the Final Agreement by striking Section 1.07 (f) and replacing that section with the texts attached hereto as Exhibit 'A'; and,

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The parties agree to add section 1.12 to the Final Agreement. Section 1.12 is attached hereto as Exhibit 'B'.

EXHIBIT 'A'

Final Agreement, Section 1.07, as amended:

Section 1.07 **Commercial Fishing Industry Improvement Fund**

Each Cable Company shall annually deposit One Hundred Thousand Dollars (\$100,000) per project in a special fund for enhancement of commercial fisheries and the commercial fishing industry and support facilities. This payment obligation shall commence and the first payment shall be due within thirty (30) days of the Cable Company receiving final approval from all agencies of the State of California and all local agencies for its project. Full payment shall be required for the calendar year in which final approval is received. Annually thereafter, each Cable Company shall deposit one hundred thousand dollars (\$100,000) to the Commercial Fishing Industry Improvement Fund, or as directed by the Committee, within 30 days of receipt of an invoice from the Committee, which shall be issued at the beginning of each calendar year.

Cable Companies that have deposited funds in the Commercial Fishing Industry Improvement Fund prior to March 1, 2009 shall be considered Current Member Cable Companies for the purpose of this paragraph. Lease applications for projects in addition to those projects specified in paragraph 1.09 shall constitute new projects for the purpose of this paragraph. For each cable installed as part of a new project by any Current Member Cable Company, the Current Member Cable Company shall annually contribute an additional \$50,000.00 to the Commercial Fishing Industry Improvement Fund. For each cable installed as part of a new project by any New Member Cable Company, the New Member Cable Company shall annually contribute \$100,000 to the Commercial Fishing Industry Improvement Fund.

In the event that any mitigation intended for the commercial fishing industry is ordered by action of a governmental agency, the payment of such ordered mitigation shall offset funds required to be paid pursuant to this paragraph.

EXHIBIT 'B'

Section 1.12 **Current Member Cable Company Additional Covered Cables**

This Agreement shall cover the following telecommunications cable projects of the Cable Companies: (a) AT&T – Asia America Gateway (one cable).

Section 3.04 **Amendment IV**

WHEREAS, the California State Lands Commission and the California Coastal Commission have changed the interval between periodic post-installation verification surveys applicable to Covered Cables from that originally required in each Cable Company's respective authorizations from those agencies (collectively, the "California governmental authorizations"); and

WHEREAS, the Parties seek to conform the interval for post-installation verification surveys specified in Section 1.2(d) of the Final Agreement with the interval required under the California governmental authorizations; now therefore,

RESOLVED, that the Parties agree to amend Section 1.2(d) of the AGREEMENT BETWEEN CABLE COMPANIES AND FISHERMEN (the "*Final Agreement*") by striking from that section "at minimum of every 18 months and not to exceed 24 months", and replacing

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it with “at such interval as is required by the Cable Company’s California governmental authorizations”, and striking “videotapes”, and replacing it with “electronic storage media”.

Section 1.2(d), as amended, is attached hereto as Exhibit A.

EXHIBIT ‘A’

Final Agreement, Section 1.2 (d), as amended:

(d) Post-Installation Inspections. Each Cable Company shall conduct ROV Burial verification to determine whether any buried sections of its Covered Cables have become exposed at such interval as is required by the Cable Company’s California governmental authorizations and after any events which may affect the Cable Project. Copies of electronic storage media recording the verification shall be provided to the Committee.