

**AGREEMENT BETWEEN AND AMONG  
THE OREGON FISHERMEN'S UNDERSEA CABLE COMMITTEE, INC.,  
MFS GLOBENET, INC. AND WCI CABLE, INC.**

This Agreement is entered into on the date noted below between and among: The Oregon Fishermen's Undersea Cable Committee, Inc. ("Oregon Committee"), an Oregon non-profit corporation with a business address at 2001 Marine Drive, Suite 112, Astoria, Oregon 97103, and MFS Globenet, Inc. ("MFSG"), a subsidiary of MCI WORLDCOM, Inc., Delaware corporations with a business address at One Tower Lane, Suite 1600, Oakbrook Terrace, Illinois 60181, and WCI Cable, Inc. ("WCIC"), a Delaware corporation with a business address at 1815 NW 169<sup>th</sup> Place, Suite 5050, Beaverton, Oregon 97006. The Oregon Committee and MFSG are at times referred to collectively as the "Parties." WCIC is a signatory to this Agreement because it is a party to the "Agreement To Create And Establish The Oregon Fishermen's Undersea Cable Committee" ("Oregon Accord") executed on July 9, 1998 and through representatives is a member of the Oregon Committee. The Oregon Accord is also referred to as the "Oregon Fishermen's UnderSea Cable Accord." WCIC is a signatory to this Agreement because WCIC is relinquishing one of its voting memberships on the Oregon Committee, among other changes requiring its written consent. This Agreement is the "Final Agreement" referred to in and contemplated by the "Memorandum Of Understanding" entered into by the Parties and WCIC on or about December 15, 1999.

The Oregon Committee is constituted of representatives of both the Oregon commercial fishing industry and the telecommunications industry. The fishing representatives are from the areas near and the waters off of Astoria/Columbia River, Garibaldi, Newport/Yaquina Bay, Charleston/Coos Bay and Brookings/Harbor in the State of Oregon. The telecommunications representatives are from WCIC and other telecommunications companies. MFSG intends to install a submarine fiber optic cable from Nedonna Beach, Oregon seaward through commercial fishing grounds in the waters off of the State of Oregon. MFSG agrees to adhere to the terms and conditions of the Oregon Accord as modified and amended by this Agreement and as amended by the Oregon Committee. Among the other Goals set forth below, the Oregon Accord seeks to minimize risks to, interference with, and/or interruption of commercial fishing activities and of submarine fiber optic cable operations.

**GOALS**

The Parties to this Agreement endorse and encourage the pursuit and fulfillment of the Goals set forth in the original Oregon Accord. The Goals originally stated in the Oregon Accord are:

*To continue communication, coordination and cooperation between members of the Oregon commercial fishing and fiber optic cable industries so that they can amiably discuss and resolve concerns;*

*To encourage the employment of commercially reasonable cable installation and maintenance techniques to minimize interference with and/or interruption of commercial fishing activities;*

*To sponsor a 24 hour toll free telephone hot line staffed by an individual who has authority to approve the cutting of fishing gear which is possibly snagged on [the] fiber optic cable and to reimburse the fishermen for the cost of the cut gear;*

*To establish a Fund to compensate commercial fishermen for the replacement of cable-related fishing gear losses and to fund the Committee and Committee activities;*

*To form a Committee constituted of Oregon commercial fishermen and [the] fiber optic cable representatives who oversee the Fund and administer the Committee's related activities;*

*To release participating commercial fishermen from liability for damage to the [the] fiber optic cable system; and*

*To create, support and promote the establishment of a buried telecommunications submarine cable corridor from Nedonna Beach, Oregon offshore through fishing grounds for future submarine cables.*

### **SHARED UNDERSTANDINGS**

The Oregon Accord was the first effort by representatives of the commercial fishing and telecommunications industries to discuss, describe and delineate their shared use of a community resource – the ocean. The Oregon Accord and this Agreement are a refinement of the rights and duties set forth in and under international and national law. These Agreements are private compacts between and among individuals and entities. These Agreements are not intended to nor do they create any rights in third parties other than the individual Participating Fisherman who executes the “Individual Fisherman's Agreement And Mutual Release”, a copy of which is attached to this Agreement. These Agreements are intended to be implemented with a minimum of government involvement and interference. These Agreements are not intended to be and should not be interpreted or enforced by an agency or court except as set forth in the Dispute Resolution section of the Agreements. These Agreements perforce are not intended to be disclosed in any administrative or judicial proceeding except as otherwise required by law.

The Parties acknowledge and agree that this Agreement covers only the MFSG fiber optic cable running from the shoreside of Nedonna Beach, Oregon seaward to a water depth of 2000 meters. The Parties also acknowledge and agree that because the fiber optic cable is intended to remain buried all current fishing activities undertaken by Class A limited entry groundfish permit holders with trawl endorsement, Washington, Oregon and California pink shrimp permit holders, and participants in the prawn trawl fisheries shall continue in the area of the MFSG cable. The Parties also acknowledge and agree that this Agreement is limited to the traditional fisheries and current gear and technology in the fishing industry. This Agreement expressly does not cover or protect the fishermen who utilize clam dredges, scallop dredges, and/or any other sub-benthic technology.

**24 HOUR TELEPHONE HOTLINE;**  
**PROVISION OF REPLACEMENT GEAR**

MFSG shall provide and maintain a 24 hour toll free telephone hot line for fishermen to call who believe they have snagged their gear on the MFSG fiber optic cable from shoreside of Nedonna Beach, Oregon seaward to a water depth of 2000 meters. There shall be one MFSG person or a designee on duty at all times who has authority (1) to make a decision and (2) the background and experience to make the most prudent decision under the circumstances. The individual shall have the authority to make a quick decision to cut the snagged fishing gear based on limited information if a failure to cut the gear could jeopardize lives or property including the MFSG fiber optic cable. The individual shall have the authority immediately to approve cutting the gear and perforce is authorizing the provision of replacement gear to the Participating Fisherman from suppliers approved by the Oregon Committee. This authorization to the approved suppliers to provide replacement gear to the Participating Fisherman is intended to avoid any delay in providing the replacement gear.

**FUND**

[This section not available on line.]

**RESOLUTION OF CLAIMS**

The Oregon Committee has established a claims review procedure. A Participating Fisherman shall submit a written claim for compensation pursuant to the claims review procedure and on approved forms including the “Sacrificed Gear Claim Form And Release And Settlement” within the time set by the Oregon Committee. The Oregon Committee shall review and then approve or deny a claim in accordance with its claims review procedure. As part of its review, the Oregon Committee may review an inspection of the cable by an underwater remote operated vehicle (“ROV”). If the Oregon Committee approves a claim, the Oregon Committee waives any right to collect from the claimant for the replacement gear it previously caused to be provided to the Participating Fisherman. In addition, the Oregon Committee shall pay from the Fund an amount equal to fifty percent (50%) of the value of the replacement gear to the Participating Fisherman. This sum represents liquidated damages in settlement and satisfaction of any and all claims or possible claims for loss of business, lost profits or any other damages incurred by the Participating Fisherman. The current “Individual Fisherman’s Agreement And

Mutual Release” and the “Sacrificed Gear Claim Form And Release And Settlement” that accompany the Oregon Accord shall be modified to reflect this amendment. If the Oregon Committee denies a claim because of fraud, misrepresentation or failure to follow the required procedures, the authorization to the approved suppliers for the sacrificed gear is treated as a bridge loan to the fisherman that must be repaid by the fisherman.

### **THE OREGON COMMITTEE**

The size, structure and membership of the Oregon Committee are set forth in the Oregon Accord as amended by the Oregon Committee. Upon execution of this Agreement, the Committee membership and voting membership of the Oregon Committee shall be modified to include one MFSG voting Committee member. At the same time, WCIC shall reduce its voting Committee membership by one voting member to provide the voting membership to MFSG. The Parties and WCIC intend to maintain the current Committee size, structure and voting membership set forth in the Oregon Accord as amended by the Oregon Committee.

### **RELEASE OF LIABILITY**

MFSG agrees to release claims against vessel owners and operators and refrain from taking any administrative, legal or other action to sanction and/or recover damages against vessel owners and operators who honor the Operating Procedures (“Procedures to Follow While Operating Near the Southern Cross Cable”) and other procedures adopted by the Oregon Committee. MFSG further agrees to encourage all administrative, legal and other authorities to refrain from taking action against fishermen who honor the Operating Procedures and other procedures adopted by the Oregon Committee. The specific terms and conditions of the releases are set forth in the “Individual Fisherman’s Agreement And Mutual Release” and the “Sacrificed Gear Claim Form And Release And Settlement” that accompany the Oregon Accord and are attached to this Agreement.

### **MFSG ACTIVITIES**

#### **CABLE BURIAL**

MFSG shall install the fiber optic cable at a depth of one meter or more beneath the sea bed seaward from shore to a water depth of 2000 meters. The fiber optic cable may be buried at less than one meter in hard ground. In addition, where soft bottom is encountered, the fiber optic cable may be buried deeper than one meter. In all instances, current technology will be utilized in the cable burial process including the use of a ROV and post-lay burial, where required, and ROV inspection immediately following installation to a water depth of 2000 meters. If MFSG cannot bury the cable at one meter or greater in the surf zone, MFSG shall utilize other technology such as a submerged trencher or articulated pipe armoring to protect the cable against storm erosion and sediment drift.

MFSG agrees that two Oregon Committee fishermen representatives shall be allowed on board the cable installation vessels during cable reconnaissance and installation out to a water depth of 2000 meters. The Oregon Committee fishermen representatives shall have access to

observe all activities while the cable is being installed. MFSG shall pay all of the representatives' expenses. [Sentence deleted from on-line document]

MFSG shall undertake stringent debris control efforts during installation and burial of the cable. Concurrent with burial of the cable, MFSG shall undertake an ROV inspection of the cable out to a water depth of 2000 meters or employ other acceptable technology to inspect the cable to verify cable burial along the cable route.

### **PATROL VESSELS**

MFSG shall pay for patrol boats to be nominated by the Oregon Committee during the cable landing, laying and burial, and any post-lay inspection and burial operation out to a water depth of 2000 meters. The Oregon Committee shall only nominate patrol boats that offer competitive rates for their services.

### **AS-BUILT COORDINATES**

MFSG shall provide to the Oregon Committee Differential Global Positioning System ("DGPS") coordinates recorded from the high-water mark (or first plow-down) to a water depth of 2000 meters and Loran C coordinates in both 5990 and 9940 chains that coincide with each of these DGPS coordinate recordings.

### **ROV BURIAL VERIFICATION**

MFSG shall conduct ROV burial verification at least every five years and after any major geological or environmental event as determined by the Oregon Committee.

### **REVIEW BY LEGAL COUNSEL**

The Parties and WCIC acknowledge and agree that they have had this Agreement reviewed by legal counsel or were afforded an opportunity to have this Agreement reviewed by legal counsel. MFSG shall be responsible for the cost of legal counsel for the Oregon Committee until the Final Agreement is executed by both parties and WCIC.

### **DISPUTE RESOLUTION**

In the event of a dispute between or among the Parties to this Agreement and/or WCIC involving the terms and conditions of this Agreement, the Parties and/or WCIC shall (1) discuss the problem between themselves and attempt a resolution. If the dispute is not thereby resolved within seven (7) days, the Parties and/or WCIC shall (2) mediate the problem in Portland, Oregon or in another mutually agreed location. If the dispute is not thereby resolved within thirty (30) days, the Parties and/or WCIC shall (3) engage in binding arbitration in Portland, Oregon or in another mutually agreed location according to the rules and provisions of the American Arbitration Association.

**AUTHORITY TO EXECUTE**

The Parties and WCIC execute this Agreement by and through their respective duly authorized representatives who warrant and covenant their authority to enter into this Agreement.

This Agreement is executed this 11<sup>th</sup> day of January, 2000.

**Oregon Fishermen's Undersea Cable Committee, Inc.**

By: <u>Scott McMullen</u> Scott McMullen, President/Chairman (Astoria/Columbia River)	By: <u>Jim Seavers</u> Jim Seavers, Secretary (Newport/Yaquina Bay)
By: <u>Terry Thompson</u> Terry Thompson (Newport/Yaquina Bay)	By: <u>Brad Pettinger</u> Brad Pettinger (Brookings Harbor)
By: <u>Gerald Gunnari</u> Gerald Gunnari (Charleston/Coos Bay)	By: <u>Jack Stoess</u> Jack Stoess (WCIC)
By: <u>David Jordan</u> David Jordan (Garibaldi)	By: <u>Steve Brock</u> Steve Brock (WCIC)
By: <u>Rob Munier</u> Rob Munier (Undersea Telecom. Maintenance Specialist)	By: <u>Geoffrey G. Fowler</u> Geoffrey G. Fowler (WCIC)

**MFS Globenet, Inc.**

By: Clem Jones  
Clem Jones, Senior Vice President and Authorized Agent of MFS Globenet, Inc.

**WCI Cable, Inc.**

By: Geoffrey G. Fowler  
Geoffrey G. Fowler, Project Manager

By: Steve Brock  
Steve Brock, Vice President of Operations