

December , 1988

RIGHT OF WAY AGREEMENT

dated as of

February 13, 1989

BETWEEN

LOUISVILLE GAS AND ELECTRIC COMPANY

AND

MCI TELECOMMUNICATIONS CORPORATION

FILED  
MAY 19 1989  
PUBLIC SERVICE  
COMMISSION

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December 27, 1988

THIS AGREEMENT, made as of February 13, 1989, by and between the LOUISVILLE GAS AND ELECTRIC COMPANY, a Kentucky corporation, having its principal office at 311 West Chestnut Street, Louisville, Kentucky 40232 ("LG&E"), the OHIO VALLEY TRANSMISSION CORPORATION, an Indiana Corporation, and MCI TELECOMMUNICATIONS CORPORATION, a Delaware corporation having its principal office at 1133 19th Street, N.W., Washington, D.C. 20036 ("MCI").

WITNESSETH:

Recitals:

A. LG&E and MCI have heretofore approved a summary of terms on July 28, 1988, setting forth their intention to enter into a transaction for the design, construction, operation, maintenance and replacement of a communications system (hereinafter more particularly described and defined as the "System") generally between cities, as more particularly described pursuant to this Agreement, which System is intended to be incorporated into MCI's intercity communications link, utilizing LG&E's power grid transmission system.

B. The System is to be constructed along the Right of Way along the Route (each as hereinafter defined).

C. The Ohio Valley Transmission Corporation, an Indiana corporation, is a wholly owned subsidiary of LG&E which does business in and owns real property interests with respect to the Right of Way in Indiana.

D. To enable MCI to construct, operate, maintain and replace the System, MCI desires to acquire from LG&E and, where appropriate, the Ohio Valley Transmission Corporation, and LG&E and the Ohio Valley Transmission Corporation have agreed to grant to MCI (i) an indefeasible right of use in and to the MCI Capacity, as hereinafter defined; (ii) the rights and easements hereinafter defined and described in, on, upon, over, under, across, along and through the Right of Way at Route locations designated on Appendix A attached hereto and made a part hereof,

upon and subject to the terms and conditions hereinafter set forth governing the design, construction, operation, maintenance and replacement of the System and the respective segments thereof (the "System Segments"); and (iii) an option and a right of first refusal for the use of the last static wire on LG&E and Ohio Valley Transmission Corporation transmission structures along any part of LG&E and Ohio Valley Transmission Corporation rights of way or easements where the LG&E and Ohio Valley Transmission Corporation transmissions system may now or in the future extend.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements hereinafter set forth, the parties hereto hereby agree as follows:

## 1. DEFINITIONS

The terms defined in this Article shall, for all purposes of this Agreement and all agreements supplemental hereto, have the meanings herein specified.

1.1 "Acceptance of Construction" shall mean written notification from the Engineer that work has been performed substantially in accordance with the Approved Plans.

1.2 "Agent" shall have the meaning set forth in 12.2(b)(I)(B) hereof.

1.3 "Amendment" means a change or revision of a clause or article or an added provision to the Agreement.

1.4 "Approved Plans" shall mean plans which have been reviewed and approved by LG&E's Engineer.

1.5 "CPI" shall mean the revised composite Consumer Price Index (revised CPI-U), All Items, Base 1982-84=100, published by the Bureau of Labor Statistics of the U.S. Department of Labor. The parties agree that the cumulative adjustments for CPI throughout each Extension Period of this Agreement shall not exceed      percent      per annum.

1.6 "Cable" shall mean the composite fiber optic ground wire which will be provided by MCI and installed along the Route.

1.7 "Chief Engineer" shall mean (i) the Chief Engineering Officer of LG&E or his designee in those instances where LG&E has primary responsibility for applicable tasks and (ii) the Chief Engineering Officer designated by MCI in those instances where MCI has primary responsibility for applicable tasks.

1.8 "Commencement Date" shall have the meaning set forth in Section 2.3 hereof.

1.9 "Composite Static Ground Wire" shall mean static wire containing optical fibers.

1.10 "Consideration" shall have the meaning set forth in Section 2.4 hereof.

1.11 "Discontinuance" shall mean the cessation of use of a Right of Way Segment other than during periods of Unavoidable Delays, maintenance, repair, restoral, alteration or replacement, with respect to which the Discontinuance Notice has been given.

1.12 "Discontinuance Notice" shall mean the notice which a party planning a Discontinuance with respect to a particular Right of Way segment(s) is required to give the other party, setting forth the proposed date and Right of Way segment scheduled for Discontinuance.

1.13 "Discontinued Right of Way" shall mean those portions of the Right of Way the use of which LG&E has decided to discontinue for power transmission purposes, but which MCI has the right to continue to use, together with LG&E's power transmission structures, at its election, pursuant to Section 7.1(b) hereof.

1.15 "Easements" shall mean a non-exclusive easement in gross and/or the highest lesser right of occupancy or use permitted to be granted by the nature of LG&E's interest in such portion of the Right of Way.

1.16 "Engineer" shall mean the field engineer for the System designated by LG&E or MCI, as applicable.

1.17 "Expiration Date" shall have the meaning set forth in Section 2.3 hereof.

1.18 "Extension Period" shall have the meaning set forth in Section 3.1 hereof.

1.19 "Facilities", when applied to property of or installed by or on behalf of MCI, shall mean fiber optic transmission systems designed to carry communications traffic between System Segment End Points. Each System Segment shall consist of all equipment from time to time and at any time installed in connection with the System and located between System Segment End Points in, on, upon, over, under, across, along and through the Right of Way, including, without limitation, conduit, Towers, cable, fibers, Junctions, Regenerators, Terminals, power sources, fault alarm systems, electronics, structures or shelters, and all other

articles of personal property connected with, necessary for or useful to the construction, installation, operation, maintenance, repair, reinstallation, replacement, relocation and removal of the System.

1.20 "Incremental" shall mean unique to a fiber optic ground wire or fiber optic telecommunications system, as distinct from a static ground wire or power transmission system.

1.21 "Indemnitee" shall have the meaning set forth in Sections 9.4 and 9.5 hereof.

1.22 "Indemnitor" shall have the meaning set forth in Sections 9.4 and 9.5 hereof.

1.23 "Initial Term" shall have the meaning set forth in Section 2.3 hereof.

1.24 "Junction" shall mean a location where equipment is installed for the purpose of joining two or more communication transmission routes, including all attendant structures and power sources and which may or may not include multiplex and telephone interface and switching capabilities.

1.25 "Junction Sites" shall mean those areas on or off the Right of Way on which Junctions are located.

1.26 "LG&E" shall mean Louisville Gas and Electric Company, a Kentucky corporation and, with respect to those portions of the System in Indiana, the Ohio Valley Transmission Corporation, an Indiana corporation and a wholly-owned subsidiary of LG&E doing business in Indiana.

1.28 "MCI" shall mean MCI Telecommunications Corporation, a Delaware corporation.

1.29 "MCI Capacity" shall mean the total telecommunications capacity which can be provided through the Cable, with respect to which LG&E is granting MCI the exclusive Rights of Use.

1.30 "Maps" shall mean maps of the LG&E Right of Way which identify "as-built" conditions, as updated from time to time.

1.31 "Option" shall mean the Option granted to MCI under Section 2.1(v) hereof.

1.32 "Regenerator" shall mean a Facility which receives,

regenerates, and retransmits a telecommunications transmission signal, together with all attendant equipment and structures, including power sources.

1.33 "Regenerator Sites" shall mean those areas on or off the Right of Way on which Regenerators are located.

1.34 "Relocation", when related to movement, alteration or removal of electric transmission Towers from the Right of Way, shall mean a change in location thereof in order to avoid or eliminate power transmission operational problems, creation or deletion of double or multiple routes, and installation of additional Towers for operating needs or plans. This term, however, shall not include condemnation, discontinuance, abandonment or complete removal of any Towers in conjunction with termination or Discontinuance of a service route.

1.35 "Right of First Refusal" shall mean the right of first refusal granted to MCI under Section 2.1(vi) hereof.

1.36 "Right of Way" shall mean the real property along the Route, which is owned, operated, leased or controlled by LG&E pursuant to subsisting grants, easements, leases, licenses or other agreements and shall include Discontinued Right of Way which MCI has elected to use under Article 7 hereof, Spurs and Tower Sites.

1.37 "Rights" shall mean, collectively, the Option, Rights of Use and the Right of First Refusal.

1.38 "Rights of Use" shall mean the indefeasible rights of use and quiet enjoyment in and to the MCI Capacity being granted to MCI by LG&E along the Route.

1.39 "Route" shall mean those routes identified in Appendix A, as amended, and shall include Discontinued Right of Way which MCI has elected to use under Article 7 hereof, Spurs which MCI has elected to use under Sections 2.1(v) or (vi) hereof and Tower Sites.

1.40 "Severance Agreement" shall have the meaning set forth in Section 22.1 hereof.

1.41 "Splice" shall mean a point where two independent sections of the Cable are physically joined.

1.42 "Spur(s)" shall mean those portions of the LG&E rights of way or easements where the LG&E transmission system may now or in the future extend beyond those Route segments identified in Appendix A hereto, with respect to which (i) the parties have agreed to the design, construction, operation, maintenance and replacement of extensions or spurs to the System or (ii) MCI has

exercised its option or right of first refusal for the use of the last static wire on any LG&E transmission structures pursuant to Section 2.1 hereof.

1.43 "Static Wire" shall mean an overhead ground wire.

1.44 "System" shall mean the fiber optic telecommunications transmission system installed by or on behalf of LG&E and MCI in, on, upon, over, under, across, along or through each segment of the Right of Way along the Route, and as provided through and connected to such Facilities, regenerator buildings, improvements, electronics and other equipment as MCI deems appropriate to create a fiber optic telecommunications transmission system.

1.45 "System Right of Way" shall mean those portions of the Right of Way along the Route in, on, upon, over, under, across, along and through which the System is actually located.

1.46 "System Segment" shall have the meaning set forth in Recital Paragraph C hereof and shall include Spurs and Discontinued Right of Way which MCI has elected to use pursuant to Article 7 hereof.

1.47 "System Segment End Points" shall be the beginning and terminating points of the System Segments

1.48 "Taking" shall have the meaning set forth in Section 8.2 hereof.

1.49 "Temporary" shall mean, with respect to any use or occupation of land or property for construction (but not permanent use or occupation of any Tower), a term not to exceed eighteen (18) months.

1.50 "Term" shall mean the Initial Term of this Agreement as set forth in Section 2.3 hereof, as the same may be extended pursuant to the provisions of Section 3.1 hereof, or sooner terminated as hereinafter provided.

1.51 "Terminal" shall mean a location which provides telephone interface capability.

1.52 "Tower" shall mean a tower, pole and other structure erected for power transmission, including all attendant equipment, structures and power sources, or used for the attachment of electrical power transmission facilities.

1.53 "Tower Rights" shall mean the right, arising by agreement, of third parties, including other utilities, to use LG&E Towers or any wires thereon or attached thereto.



1.54 "Tower Sites" shall mean those areas on the Right of Way on which Towers are located.

1.55 "Transfer" shall have the meaning set forth in Section 12.1 hereof.

1.56 "Transferees" shall have the meaning set forth in Section 12.1 hereof.

1.57 "Unavoidable Delays" shall mean delays on the part of one party due to the other party's actions or omissions, strikes, lockouts, acts of God, inability to obtain labor or materials due to governmental restrictions, enemy action, civil commotion, fire, unavoidable casualty, weather or other causes beyond the reasonable control of the party claiming the Unavoidable Delay.

1.58 "Working Drawings" shall have the meaning set forth in Section 4.2 hereof.

## 2. GRANTS OF EASEMENTS AND RIGHTS

2.1 For the Term hereof and the consideration hereinafter described, LG&E hereby grants to MCI and its successors and assigns:

(i) the Rights of Use in and to the MCI Capacity along the Right of Way. The MCI Capacity shall be provided through and connected to such Towers, Facilities, and other improvements, as MCI deems appropriate to create the System.

(ii) Easements in, on, along, upon, over, under, across and through (hereinafter collectively "within") the Right of Way as may be necessary for the use by MCI of LG&E Right of Way, including construction, installation, operation, maintenance, repair, replacement, relocation, reinstallation and removal therein, thereon, thereover, or therefrom of the System.

(iii) Easements within the Right of Way, wherever LG&E owns property in fee or along LG&E's right of way (to the extent such use is permitted under the applicable right of way agreement), as may be necessary for the use by MCI and its successors and assigns as Regenerator, Junction, Terminal or Tower Sites pursuant to Article 6. MCI shall have the right to access Regenerator or other Facilities with any and all telecommunications systems and/or networks.

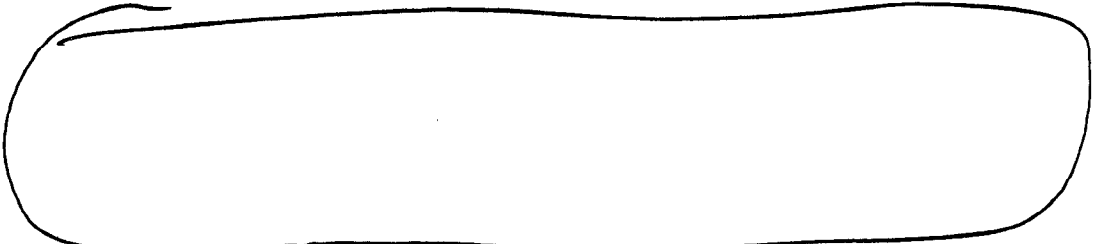
(iv) Rights of Use of the LG&E Towers for the System.

(v) the Option for the use of the last static wire on

any LG&E Towers along any part of LG&E's right of way or easements, where the LG&E transmission system may now or in the future extend for use as Spurs to the System; provided, however, that MCI may not exercise the Option with respect to any portions of LG&E rights of way where LG&E determines that MCI's use of such right of way would adversely affect LG&E's current or future operations. The Option may be exercised by MCI giving LG&E notice at least twelve (12) months before commencement of Cable installation along each right of way segment (the "Option Notice"). In the event that LG&E determines that such exercise would adversely affect LG&E's operations, it shall respond to the Option Notice within sixty (60) days of its receipt (the "Interference Notice"). If LG&E does not give the Interference Notice, LG&E shall, within sixty (60) days of receipt of the Option Notice, grant MCI the Easements and Rights of Use along such Spur(s) as set forth in 2.1(i), (ii), (iii) and (iv) above. The price per mile for the use of such Spur shall equal:

Payment of such fee shall be due and payable on the earlier of (i) sixty (60) days subsequent to the System Spur being placed in service under MCI's internal procedures or (ii) eighteen months from the exercise of its Option.

(vi) the Right of First Refusal for the use of the last static wire on any LG&E Towers along any part of LG&E's right of way or easements where the LG&E transmission system may now or in the future extend, for use as Spurs to the System. LG&E shall give MCI notice of the receipt by LG&E of an offer by a third party or the decision by LG&E to use the last static wire on any LG&E Towers (the "Right of First Refusal Notice"). Within sixty (60) days of receipt of the Right of First Refusal Notice, MCI shall give LG&E notice whether MCI plans to exercise MCI's Right of First Refusal (the "Exercise Notice"). If no response is received within sixty (60) days of the Right of First Refusal Notice or if MCI informs LG&E that MCI will not exercise its Right of First Refusal, such Right of First Refusal with respect to such right of way segment, together with the Option for the use thereof, shall terminate. Within sixty (60) days of the receipt by LG&E of the Exercise Notice, LG&E shall grant to MCI the Easements and Rights of Use along such Spur Routes, as set forth in Section 2.1(i), (ii), (iii) and (iv) above. The price per mile for the use of such Spur Routes shall equal:



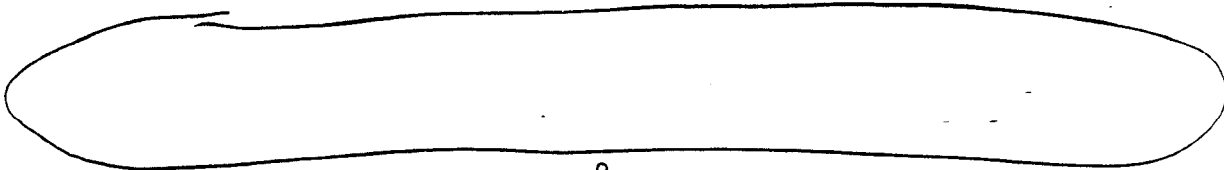
Payment of such fee shall be due and payable on the earlier of (i) sixty (60) days subsequent to the System Spur being placed in service under MCI's internal procedures or (ii) eighteen (18) months from the exercise of right of first refusal.

2.2 (a) Except as provided in subparagraph (b) below, LG&E agrees to defend MCI's right to use the Easements and Rights and shall take all actions and execute additional documents which MCI determines is necessary in connection with the establishment or defense of MCI's Rights and Easements hereunder.

(b) In order to convey an indefeasible right of quiet enjoyment to MCI, LG&E believes that modification of easements for the Right of Way along the Route is necessary. MCI will provide a standard easement agreement to LG&E which shall be designed for modification of all easements along the Route, to allow LG&E to provide MCI with an indefeasible right of quiet enjoyment for the Route. Modification of easements shall be at MCI's option and expense. Except for those easements expressly designated by LG&E or successfully modified by MCI, LG&E does not warrant that the easements are suitable for MCI's contemplated uses.

2.3 The Easements and Rights hereby granted shall be for an initial term (the "Initial Term") commencing for each System Segment on the date of the execution of this Agreement (the "Commencement Date") and ending for each System Segment on the date which shall be forty (40) years following the said Commencement Date for the first System Segment placed in service, unless (a) sooner terminated, in whole or in part, by mutual agreement of the parties, by a Discontinuance of the System or any of the System Segments by MCI, its successors or assigns or any other party (in the case of a termination of a System Segment or Segments such termination shall relate only to the System Segment(s) affected by the Discontinuance) or otherwise, or (b) extended in accordance with Section 3.1 hereof (respectively, the "Expiration Date").

2.4 As consideration for the grant of the Rights and the Easements herein contemplated and the use of such Rights and Easements during the Term hereof (the "Consideration"), MCI shall provide LG&E with:



(b) pay LG&E (i) a fee of \_\_\_\_\_ for the first \_\_\_\_\_ years of the Initial Term. Such fee shall be payable according to the following schedule: (A) one-third (1/3) within five (5) business days of the execution of this Agreement; (B) one-third (1/3) upon the approval by LG&E of MCI's construction drawings, prorated based upon the mileage of the affected System Segment; and (C) one-third (1/3), prorated based upon the mileage of the affected System Segment. As it is placed in service. At the commencement of the \_\_\_\_\_ year of the Initial Term, MCI will make a lump sum cash payment equal to \$ \_\_\_\_\_

(ii) for any of said Extension Period(s), at the beginning of each Extension Period, MCI shall pay LG&E a fee determined by using the following formula:

The parties agree that the cumulative adjustments for CPI during the second twenty years of the Initial Term or any renewal period thereafter shall not exceed \_\_\_\_\_ percent per annum.

2.5 (a) To the extent that LG&E does not as of the date hereof own or control sufficient interest in any portion of the Route for the purposes described herein, LG&E shall assist MCI in obtaining from the owner of such portion(s) of the Right of Way the right to grant to MCI, its successors and assigns the Rights and Easements covering the Acquired Rights of Way. MCI does not anticipate that it will need services from LG&E hereunder which will be material; should MCI determine that it does require material services from LG&E, LG&E agrees to provide such services and MCI agrees to pay LG&E \_\_\_\_\_ of the pre-approved cost incurred by LG&E.

(b) LG&E will make available to MCI for its review all agreements and other documents in LG&E's possession with respect to LG&E's right, title and interest in and to the Right of Way along the Route to enable MCI to make its own determination as to the fitness of the Right of Way for use for the System. In addition, LG&E will inform MCI of any facts of which LG&E has knowledge which are material to MCI's investigation.

### 3. OPTIONS TO EXTEND TERM AND EXCLUSIVE RIGHTS

3.1 Subject to the provisions of this Section 3.1, LG&E hereby grants MCI and its successors and assigns the right and option to extend the Initial Term of this Agreement in its entirety or in respect of any of the System Segments from the date upon which it would otherwise expire for up to six (6) additional consecutive extension periods of ten (10) years each, except as hereinafter provided (each such 10-year period being hereinafter referred to as an "Extension Period"). LG&E shall have the right to approve such extensions, which approval shall not be unreasonably withheld. LG&E's approval right shall be applicable to all or part of the System. LG&E shall exercise such right by providing MCI at least two (2) years prior written notice (the "Disapproval Notice") that LG&E does not approve such extension. Unless MCI is in material default under the Definitive Agreement or the provisions of Section 7.1 hereof are applicable, LG&E shall reimburse MCI for all necessary and reasonable costs that MCI incurs as a result of LG&E's actions in not approving such renewal. Such option or options shall be deemed to have been exercised (either individually as to each System Segment or collectively as to two or more System Segments) automatically, unless (i) LG&E gives the Disapproval Notice or (ii) MCI gives written notice to LG&E at any time on or before the date which shall be twelve (12) months prior to the expiration of the Initial Term or any of said Extension Periods, as applicable, informing LG&E to which of such System Segments MCI does not intend to exercise its option. But on and after the Expiration Date, MCI shall have the right to terminate this Agreement as to any such System Segment by giving to LG&E one (1) year prior notice of termination. Should MCI choose to exercise its Discontinuance rights under Section 7.2 hereof with respect to any System Segment(s), this Agreement with respect to such System Segment(s) shall be terminated and MCI shall have no liability hereunder other than, at its election, to leave the Cable in place or to reimburse LG&E for the installation of a replacement static wire in the event that MCI removes the cable. If not removed, the cable shall become the sole property of LG&E.

3.2 If MCI or its successors or assigns shall elect to exercise any one or more of said options for extension and no Disapproval Notice has been given by LG&E, the Term of this Agreement in its entirety or in respect of the particular System Segments for which such option(s) shall have been exercised shall

automatically be extended for the Extension Period(s) for which such options(s) shall have been exercised, without necessity for execution of an extension or renewal agreement.

#### 4. ROUTE DESIGNATION; CABLE AND SYSTEM DESIGN

4.1 MCI will be responsible for providing, at its sole expense, the engineering, design, installation and splicing of the Cable; LG&E will be responsible for providing all reasonable design specifications which affect or potentially impact the operation of LG&E's electric power system. Prior to the execution of this Agreement, MCI was provided with LG&E's current design standards; MCI hereby agrees that the standards previously reviewed by MCI will be deemed reasonable for purposes of this Agreement. The design and installation contractors employed by MCI must be approved by LG&E, which approval shall not be unreasonably withheld or delayed. All such design shall be performed in a good, workmanlike manner and in compliance with the minimum requirements in the National Electrical Safety Code, regulations of the Kentucky Public Service Commission and any other applicable laws, ordinances, codes, and regulations of any governmental authority having jurisdiction thereover.

4.2 LG&E agrees to participate with MCI in a joint review of the preliminary Route designation plans and in making physical inspections of the Route for the purpose of identifying problem areas, arriving at suitable and economically viable alternatives, and defining final Routes. Based upon such preliminary plans, physical inspections and other engineering data available to MCI, MCI shall prepare and submit to LG&E construction plans ("Working Drawings") for the System, which may be submitted either for the entire System or for designated System Segments. Working Drawings for each System Segment shall be submitted by MCI not less than forty-five (45) days prior to the anticipated initiation of construction for such System Segment. Following each submission of such Working Drawings, LG&E shall approve the same in whole or in part (which approval shall not be unreasonably withheld) or raise any reasonable objections thereto in whole or in part which shall be stated in writing and in reasonable detail and include a statement of the necessary modifications required to obtain LG&E's approval. LG&E agrees to review Working Drawings promptly following submission and to approve or raise reasonable objections thereto as soon as reasonably practicable, but in no event later than thirty (30) days following each such submission. If LG&E shall fail to raise any such objections within said 30-day period, the Working Drawings previously submitted or those Working Drawings not objected to shall be deemed approved and shall constitute Approved Plans for all purposes under this Agreement. Upon receipt of any such reasonable objections, MCI shall either (i) correct the Working Drawings with respect to which such objections were noted by making appropriate changes thereto and resubmit the same to LG&E for its approval or objection as

aforesaid, except that upon such resubmission the period within which objections may be raised shall be reduced to ten (10) business days; or (ii) dispute such objection, by referring the matter in question for determination in the first instance, and without thereby waiving any rights in respect of the matter in controversy, to the Chief Engineers of MCI and LG&E and thereupon, if so desired, to binding arbitration to be conducted in Louisville, Kentucky in accordance with the Construction Industry Rules then obtaining of the American Arbitration Association, and the determination rendered in such arbitration shall be binding upon each of the parties thereto and may be entered in any court having jurisdiction thereover. LG&E alone shall have the responsibility for determining the fitness of the Cable as set forth in the Working Drawings for use on the Towers and other LG&E facilities; approval of such Working Drawings by LG&E shall constitute LG&E's approval of such fitness and MCI shall thereafter have no liability to LG&E for damages as a result of any design defect in the Cable.

4.3 (a) MCI, at its own expense, will provide all Cable and associated hardware and specialized construction and splicing equipment necessary to install the Cable, which Cable, associated hardware and equipment will meet the reasonable specifications provided by LG&E which affect LG&E's electric power system.

(b) The MCI Capacity shall be provided through and connected to such Facilities, Regenerator buildings, improvements, electronics and other equipment as MCI deems appropriate to create the System.

4.4 LG&E shall permit MCI, its employees, agents and contractors to enter the Right of Way at reasonable times and on reasonable prior notice to LG&E for the purpose of surveying and inspecting the same and to make such engineering and other tests as may be necessary or advisable to enable MCI to prepare all engineering, design and installation plans for the Cable and to determine the engineering and cost considerations with respect to installation of the balance of the System therein. To facilitate the foregoing, LG&E shall furnish to MCI, with reasonable promptness and at MCI's expense, copies of all available Maps, charts and other engineering data and documentation pertaining to the Right of Way and the Route and the physical conditions thereof, including the location and nature of all Towers, power stations, substations and other improvements, as well as all available engineering data and plans relating thereto. LG&E shall also furnish to MCI, at MCI's expense, copies of all available title documentation with respect to the Right of Way (including existing easements, rights of use or other use or occupancy rights, if any, heretofore granted within any portion of the Route) Tower Rights and other existing agreements in respect of the Right of Way (including, without limitation, utility crossings) and/or restrictions on the right to use and to occupy .

the same for the purposes intended by this Agreement. LG&E shall also make available to MCI, at MCI's expense, maps and other available documentation sufficient to describe the identity and location of other users of the portions of Right of Way, Tower Sites and/or Towers which MCI may have under consideration for the placement of the System, as well as identification of areas within the Route which might contain title or possession problems due to the nature of the ownership, third-party right of way ownership (including, without limitation, reversionary or re-entry rights of underlying fee owners) or third-party Tower Rights. LG&E shall promptly notify MCI of any adverse claims, actual or threatened, affecting System Segments which MCI has identified for inclusion in the System. Additionally, LG&E shall furnish to MCI, upon request and at MCI's expense, a copy of each Map each year throughout the Term, when prepared and/or filed with any governmental agency, and a copy of any amendments or supplements thereto as prepared and so filed from time to time. Additionally, LG&E shall furnish to MCI, at MCI's expense, any and all engineering drawings and/or plans that are available with respect to the Route, Tower Sites and/or applicable power plants and substations.

4.5 LG&E shall coordinate the inspection of the Right of Way, the Towers and the Tower Sites, the plan approval process and the construction of the System within the LG&E owned and controlled Right of Way along the Route among MCI, LG&E's Engineer and LG&E's engineering and operating staffs to avoid, to the fullest extent possible, the need to make revisions to the Approved Plans or other changes in the means or methods of construction of the System or any System Segment to accommodate local site or other conditions or local LG&E facilities or operational requirements. Notice of approval by LG&E of the Working Drawings and copies of the relevant portions of the Approved Plans shall be furnished by LG&E to the engineering and/or operating staffs of LG&E which shall have responsibilities in the coordination of MCI's construction of the applicable System Segment. LG&E's engineering and operating staffs shall be bound by the Approved Plans and shall have no authority to order changes thereto, except with the written authorization of LG&E's Chief Engineer and acceptance and pre-approval of MCI, which approval shall not be unreasonably withheld.

## 5. INSTALLATION, MAINTENANCE AND REINSTALLATION OF SYSTEM

5.1 Installation of the Cable shall be accomplished by removing the existing static ground wire and installing Composite Static Ground Wire along the Route, at MCI's expense. LG&E will be responsible for providing



at MCI's expense, LG&E inspectors whenever LG&E determines, in its reasonable judgment, that an inspector is necessary during the installation and subsequent maintenance and operation of the Cable. LG&E will use best efforts to minimize inspection expense to MCI while assisting in a joint effort to provide safe and reliable operation of the telecommunications and power systems. LG&E inspectors shall have the right to inspect and assure that all work is being performed in a good, workmanlike manner and in compliance with the minimum requirements in the National Electrical Safety Code, regulations of the Kentucky Public Service Commission and any other applicable laws, ordinances, codes, and regulations of any governmental authority having jurisdiction thereover. If the LG&E inspector should find the existence of a clear and present safety hazard, all effected work may be immediately stopped until the LG&E and MCI engineering staff resolve the issue. Installation of the Cable, the System and the respective System Segments shall, to the extent practicable, be carried out in accordance with a schedule to be prepared, updated and revised at regular intervals by LG&E and MCI, as applicable to the particular phase of Cable/System installation, and pre-approved by the other party, which approval will not be unreasonably withheld. Such installation schedule with respect to the Cable shall constitute an agreement by the party providing such installation services to construct and install the Cable within the times therein stated, and shall also serve to coordinate, when appropriate, the construction and installation work with the other party's personnel.

5.2 MCI shall secure, at its expense, all necessary final and unconditional approvals, permits and licenses (collectively, "Approvals") from all governmental authorities and/or other parties having jurisdiction or approval rights in respect of the use and occupation of the Right of Way and/or the Towers, including, without limitation, all required environmental approvals, and requisite Approvals for those installation, operation and maintenance functions for which MCI has responsibility. MCI shall indemnify and save harmless LG&E from any and all claims, including the expenses incurred by LG&E to defend itself against such claims, resulting from or arising out of the failure of MCI to secure such rights, licenses, franchises, or permits. LG&E shall obtain all required Approvals for those functions for which LG&E has responsibility. MCI and LG&E agree to cooperate with each other and to cause its personnel to render all reasonable assistance in the procurement of the Approvals.

5.3 LG&E will use its best efforts to present any reimbursable expenses incurred by LG&E to MCI as soon as possible, but in no event later than 120 days after the expense was incurred, unless LG&E notifies MCI, in writing, during such 120

day period that such expense cannot be presented due to circumstances beyond the control of LG&E, such notice to include a description of such circumstances. LG&E's reimbursement requests shall be in the form reasonably requested by MCI and shall include itemized and verifiable invoices. Within 60 days of receipt of LG&E's invoice presenting such expenses, MCI shall (i) remit payment to LG&E for all reimbursable expenses other than those questioned in (ii) herein and/or (ii) notify LG&E in writing of any questions MCI has about the invoice and/or request additional information about the invoice. MCI agrees to pay a late payment fee of one and one half percent (1 1/2%) per month on payments made beyond such sixty (60) day period for all expenses which MCI has questioned but which were determined to be reimburseable hereunder.

5.4 MCI will provide and pay for the shelters and related assembly, power systems equipment, Regenerator or other electronics, field testing and maintenance systems for use in conjunction with the System, including all miscellaneous hardware for installation of such equipment.

5.5 MCI, at its sole discretion, shall have the right to select the vendors supplying all equipment and materials used for the System.

5.6 Immediately following the completion of construction with respect to any System Segment, LG&E and MCI shall each cause its Engineer to make a joint inspection of the portion of the System located within such Segment for conformance with the plans and the other construction requirements of this Agreement. Following such inspection, LG&E shall furnish MCI with either (i) an Acceptance of Construction in respect of such System Segment or (ii) a statement setting forth in reasonable detail any reasonable objections to or defects in the construction thereof. Upon receipt of any such statement of reasonable objections and/or defects, MCI shall either (i) correct the objections or defects, whereupon LG&E's Engineer and MCI's Engineer shall make a joint reinspection of the same within thirty (30) days following notice from MCI that the work has been corrected and, if found corrected, issue an Acceptance of Construction, as aforesaid or (ii) dispute such statement of objections or defects by referring the disputed issues for determination in the first instance, and without thereby waiving any rights in respect of the matter(s) in controversy, to the Chief Engineers of MCI and LG&E and thereupon, if so desired, to binding arbitration to be conducted in Louisville, Kentucky in accordance with the Construction Industry Rules then obtaining of the American Arbitration Association, and the determination rendered in such arbitration shall be binding upon the parties thereto and may be entered in any court having jurisdiction thereover. LG&E alone shall have the responsibility for determining the fitness of the System as constructed for use on the Towers and other LG&E facilities; approval of such

construction by LG&E shall constitute LG&E's approval of such fitness and MCI shall thereafter have no liability to LG&E for damages as a result of any defects in the construction of the Cable.

5.7 Within six months following completion of construction of the respective System Segments (or any alteration or relocation thereof), MCI shall furnish LG&E with "as-built" drawings of such System Segment, which drawings, as the same may be amended from time to time and/or as the Cable alignment may from time to time be shifted by settlement, natural forces or casualties, shall constitute the locations of the System Right of Way, and such drawings shall thereupon become Appendices to and form a part of this Agreement.

5.8 Within thirty (30) days following the delivery of the "as-built" drawings with respect to any System Segment, at no additional charge, LG&E shall cause its Engineer to inspect the portion of the System located within such Segment for conformance with the "as-built" drawings and the other construction requirements of this Agreement. Following such inspection, LG&E shall furnish MCI with either (i) an acceptance of Drawings in respect of such System Segment or (ii) a statement setting forth in reasonable detail any reasonable objections to or defects in the Drawings thereof. Upon receipt of any such statement of reasonable objections and/or defects, MCI shall either (i) amend the "as-built" drawings, if so requested by LG&E's Engineer, (ii) correct the objections or defects, whereupon LG&E's Engineer shall reinspect the same within thirty (30) days following notice from MCI that the work has been corrected and, if found corrected, issue an acceptance of Drawings, as aforesaid or (iii) dispute such statement of objections or defects by referring the disputed issues for determination in the first instance, and without thereby waiving any rights in respect of the matter(s) in controversy, to the Chief Engineers of MCI and LG&E and thereupon, if so desired, to binding arbitration to be conducted in Louisville, Kentucky in accordance with the Construction Industry Rules then obtaining of the American Arbitration Association, and the determination rendered in such arbitration shall be binding upon the parties thereto and may be entered in any court having jurisdiction thereover. LG&E alone shall have the responsibility for correctness of the "as built" drawings of the System; approval of such drawings by LG&E shall constitute LG&E's approval of such correctness and MCI shall thereafter have no liability to LG&E for damages as a result of any defects in the "as built" drawings of the Cable.

5.9 MCI will provide maintenance and operational support for the Cable from the Regenerator Facilities up to, but not including the Tower, or at such other demarcation points to which the parties mutually agree. LG&E (a) shall maintain and provide operational support for the portions of the Cable and associated

hardware which are affixed to power transmission structures and (b) shall perform routine maintenance on the Right of Way and the Towers to which the Cable is affixed for the Term of this Agreement, including any Extension Period(s) thereof. In connection with the maintenance of the Cable, MCI shall pay LG&E any Incremental pre-approved, verifiable direct costs for such services relating solely to the System which are above and beyond normal LG&E maintenance as set forth in an Operating Procedure which is mutually agreeable to the parties. MCI shall be responsible for all fiber splicing relating to the System.

5.10 (a) Restoral of any of the Cable necessary due to any reason beyond the control of LG&E, will be at MCI's sole cost and expense, excluding any restoral of System Segments the use of which MCI has discontinued. LG&E agrees to cooperate with MCI to restore the affected portion(s) of the System as soon as possible. LG&E agrees to use its best efforts to do emergency repair work on MCI's system simultaneously with emergency repair work on LG&E's power system.

(b) LG&E and MCI will develop ongoing maintenance, replacement and restoral procedures for the Cable and the System. At its own expense, MCI will, on an ongoing basis, make available pre-approved restoral cable, replacement cable, accessories, supplies, and other necessary items as the parties may agree are required in order to provide such maintenance and operational support.

5.11 Initially, MCI will provide training at its expense for up to technicians of LG&E, which training will take the form of an orientation to fiber optic technology, as well as covering emergency restoration procedures, maintenance and fiber splicing of the Cable. The course will be provided at an MCI training facility in Richardson, Texas or McLean, Virginia. MCI will also provide transportation, meals, lodging and other incidental expenses associated with this training. Additional training will be provided on an agreed basis as LG&E and MCI may reasonably agree.

5.12 Unless MCI elects to retain legal title to the following, MCI will deliver to LG&E, upon completion of each System Segment, all equipment relating to the services which LG&E provides under this Agreement, the Cable and associated hardware affixed to LG&E's Towers, all as relates to such System Segment. Upon acceptance by LG&E of the foregoing items, MCI will transfer title thereto to LG&E.

5.13 MCI will retain title to all Facilities, buildings, improvements (except for improvements relating to LG&E

Towers), electronics and equipment (other than equipment transferred to LG&E pursuant to Section 5.12 hereof) which MCI installs and pays for as a part of the System.

5.15 MCI will be permitted to access the MCI Capacity at any splice point along the Route, at MCI's sole expense. LG&E will provide the MCI Capacity to MCI in respect of each System Segment at the time each such System Segment is placed in service.

5.16 MCI and LG&E shall each have the right, in its sole discretion, to determine whether the Cable needs to be replaced because of wear and tear. The party who initiates a request for Cable reinstallation shall provide the other party with written notice at least six (6) months before the commencement of the reinstallation that such procedure will occur (the "Reinstallation Notice"). Reinstallation shall occur under the same conditions as the initial installation under this Agreement. The date upon which such reinstalled Segment is placed in service for purposes of this Agreement shall be deemed to be the date upon which such reinstallation was completed. If, at the time of the Reinstallation Notice, either party has scheduled during its current planning cycle Discontinuance, abandonment or relocation of such Route segment, the party planning such Discontinuance abandonment or relocation shall give the Discontinuance Notice within thirty (30) days of receipt of the Reinstallation Notice. MCI and LG&E will cooperate (i) to determine the method of replacement that will result in the lowest life cycle cost to both parties (ii) so as not to adversely impact the continuous operation of their respective systems. The party requesting the replacement of the Cable shall reimburse the other for any expenses incurred in connection with such replacement or upgrading, in accordance with the procedures set forth in Section 5.3; provided, however, that LG&E's liability hereunder shall be limited to the cost which LG&E would have incurred to replace a static wire rather than a fiber optic ground wire. Should the requesting party require material services from the other, the parties agree that such services will be provided, at a cost to the requesting party of the pre-approved verifiable expenses of the complying party.

## 6. REGENERATOR, JUNCTION AND TERMINAL SITES

6.1 At [redacted] MCI shall be entitled to install its Regenerator, Terminal or Junction Facilities for the System, including the Spurs, on LG&E's right of way (to the extent that the use is permitted under the applicable right of way agreement) or on land which LG&E owns in fee simple. The locations of such Facilities shall be subject to LG&E's approval, which approval shall not be unreasonably withheld. All shelters and exterior fixtures provided by MCI and located at LG&E's office buildings, substations and power plants shall be designed, constructed, and operated in accordance with all applicable laws, regulations, codes and standards.

6.2 The location and size of any buildings, structures, Towers, or other improvements to be erected on such property or to be made available to MCI for such purposes, shall not interfere with LG&E's anticipated use of such vacant land or space at the time MCI requests the use of such vacant land or space and shall be subject to the provisions of Article 4 hereof governing design, plans and approval thereof by LG&E and, to the extent applicable, the construction of any such improvements on such property or within any buildings thereon shall be governed by Article 5 hereof.

The average site required for use as a Regenerator measures approximately [redacted] MCI understands that LG&E will not consent to any use of land which would violate applicable laws and regulations, provided, however, should MCI take the appropriate action to comply with such applicable laws and regulations, MCI will be allowed to use such property.

6.3 In addition to the Rights of Use, Easements and/or leases, granted by LG&E as described in Article 2 and in Section 6.1 hereof, LG&E will grant MCI the necessary Easements to each Regenerator, Junction, and Terminal where LG&E is unable to provide power under Section 5.1 hereof for the installation, maintenance, operation, repair, replacement and removal, at MCI's sole cost and expense, of utilities required to service the System and all of its Facilities at such sites including, but not limited to, auxiliary and primary power sources and water and sewer lines. In furtherance of the foregoing covenants, as and when required by the utility company or municipality providing such services, LG&E shall grant necessary Easements to such utility company and/or municipality. Power sources installed by or on behalf of MCI shall meet all applicable National Electrical Codes

and local ordinance requirements. MCI shall have the right to access Regenerator and all other Facilities with any and all telecommunications systems and/or networks.

## 7. DISCONTINUANCE AND RELOCATION

7.1 (a) LG&E shall be entitled to discontinue its use of any part of the electrical power system or Right of Way along the Route for power transmission and distribution purposes; LG&E shall not, however, take any action to release or relinquish voluntarily its rights of way or easements along the Route. LG&E shall give the Discontinuance Notice to MCI as soon as reasonably practical. The Discontinuance Notice shall be accompanied by a plan of the alternate route, if available. LG&E will provide MCI with the option to relocate to a mutually agreeable alternate route, the cost of obtaining such alternate route to be borne solely by LG&E, the cost to relocate the System along such alternate route to be MCI's own replacement cost for the portion of the System affected by such involuntary Discontinuance. If the Discontinuance is involuntary, MCI shall bear MCI's own replacement cost for the portion of the System affected by such involuntary Discontinuance. An involuntary Discontinuance shall include, but not be limited to, requests for removals or relocations of LG&E facilities, towers, poles or other structures of the System by any state, federal or local governmental authority, agency or sub-divisions thereof.

(b) Should MCI choose not to relocate upon either voluntary or involuntary Discontinuance by LG&E, MCI may elect to continue using the affected portion of the Right of Way without further consideration to LG&E and MCI alone shall bear all costs of operations, including the maintenance and surveillance of MCI Capacity, which are directly related to the portion of the Route which MCI elects to continue using.

LG&E shall retain legal ownership of the Cable if MCI deems such ownership to be necessary for MCI's continued use of the LG&E Right of Way with respect to the affected portion of the Route.

7.2 MCI shall have the right to discontinue its use of the System, or Segments thereof, if it decides such Discontinuance is in the company's best interests; MCI shall give LG&E the Discontinuance Notice as soon as reasonably practical. MCI shall, at its sole discretion, have the right to abandon the Cable in place. Should MCI decide to remove the Cable, LG&E will install a replacement static wire at MCI's expense. If not removed, the Cable shall become the sole property of LG&E. LG&E may retain the

affected Segment(s) of the System, including any site improvements for the Segment(s), which LG&E needs to continue to utilize the LG&E Capacity upon the payment to MCI of the fair market value of the portions of the Segment(s) other than the Cable, which LG&E wishes to retain, as determined by the parties, or if the parties shall be unable to agree, by an independent appraiser mutually agreed upon by MCI and LG&E. If the parties shall be unable to agree upon the selection of an appraiser, such appointment shall be made by the American Institute of Real Estate Appraisers. LG&E shall thereafter be responsible for the cost of operation and maintenance of such affected portion of the System which LG&E elects to continue using.

## 8. CONDEMNATION

8.1 LG&E agrees that it will not appropriate and/or acquire by condemnation or the power of eminent domain the MCI Capacity or Facilities or equipment related thereto.

8.2 Should any portion of the Right of Way intended to be or used by MCI for the System or any portion thereof be appropriated and/or acquired by condemnation or the power of eminent domain by any public or quasi-public authority other than LG&E (a "Taking"), then, subject to Section 8.3 hereof, the Rights, Easements and/or leases hereby granted to the extent appropriated by such Taking shall terminate, but at MCI's option this Agreement shall otherwise remain in full force and effect.

8.3 If any such Taking (or an involuntary Discontinuance in anticipation of a Taking) includes any portion of the System, MCI's interest in the System and in the applicable portion of the Right of Way shall be severed from LG&E's interest in such proceeding and the parties agree to have the condemnation awards specifically allocated between and payable in accordance with MCI's interest (both physical and occupational, including any Incremental value of the Right of Way by virtue of the installation therein of the System) and LG&E's interest (both physical and ownership rights). In addition, MCI shall be entitled to claim and receive the portion of the total award attributable to the System and the MCI Capacity and/or damages payable on account of relocation expenses relating to the System and the MCI Capacity.

8.4 LG&E shall notify MCI immediately of any condemnation threatened or filed against any portion of the Right of Way which includes (or, based upon MCI's preliminary route designation plan, could include) any part of the System, and LG&E further agrees not to sell or convey any portion of the Right of Way containing (or, based upon MCI's preliminary route designation plan, could contain) any Facilities to such acquiring authority in lieu of condemnation without giving prior notice to and the opportunity by



MCI to participate in the negotiation with respect thereto. Upon giving any such notice to MCI, LG&E shall, to the extent available to it, offer MCI, without payment of any additional consideration therefor by MCI, alternate contiguous Right of Way within which the System may be relocated following such Taking.

## 9. LIABILITY; INDEMNITY

9.1 MCI and LG&E each hereby release the other and shall indemnify and save harmless the other from any and all claims, demands or causes of action for personal injuries, property damage, or loss of life or property, including the Cable and the System, and all reasonable costs and expenses, including reasonable legal fees, incurred in connection with actions arising out of or in any way connected with their respective activities regarding the installation, use, operation, maintenance, repair, defect or failure of the Cable and the System, except those personal injuries, property damage or loss of life or property caused or occasioned solely by the other's gross negligence or willful misconduct. In cases of joint negligence, each party shall be responsible for damages caused by its respective comparative negligence.

9.2 MCI and LG&E shall each indemnify and hold the other harmless from and against any and all liability, losses, damages, claims or causes of action and expenses connected therewith (including reasonable attorney's fees) asserted by them or any of their customers by reason of any outage or interruption in the MCI or LG&E Capacity, as applicable, including any failure to transmit messages accurately, or in electric power transmission, even if such outage, interruption or failure was occasioned in whole or in part by the other party, its agents or employees; provided, however, that such indemnity shall not extend to willful misconduct or gross negligence.

9.3 Neither party shall be liable to the other party for consequential damages, including but not limited to those arising out of this transaction or from breach of this Agreement.

9.4 Either party ("Indemnitor") shall have the right to defend the other party ("Indemnitee"), by counsel of the Indemnitor's selection reasonably satisfactory to the other party ("Indemnitee"), with respect to any claims within the indemnification obligations hereof. The parties shall give each other prompt notice of any asserted claims or actions indemnified against, shall cooperate with each other in the defense of any such claims or actions and shall not settle any such claims or actions without the prior consent of the indemnified party ("Indemnitee").

9.5 Neither party may obligate the other with respect to claims of third parties.

9.6 The obligations of the respective parties under this Article 9 shall survive the Expiration Date in respect of any occurrences within the Term.

9.7 Notwithstanding anything to the contrary in this Agreement, LG&E alone shall have the responsibility for (i) the fitness of the Approved Plans for the construction of the Cable as it relates to LG&E Towers or other facilities, (ii) fitness of the Cable as constructed for use of the LG&E Towers or other facilities and (iii) the correctness of the "as built" drawings of the Cable. Upon the approval of the foregoing by LG&E, MCI shall thereafter have no liability to LG&E for damages as a result of any defects in the design or construction of the Cable or as a result of any defect in the "as built" drawings of the Cable.

9.8 (a) Except for those easements or rights of way expressly designated by LG&E or successfully modified pursuant to Section 2.2(c) above, MCI shall indemnify and save harmless LG&E from any and all claims, including the expenses incurred by LG&E to defend itself, resulting from or arising out of the failure of MCI to modify said easements or rights of way, provided however, MCI's indemnity shall not extend to claims which could have been avoided had LG&E not failed to disclose information in its possession.



## 10. INSURANCE

10.1 Throughout the Term of this Agreement:

(a) Each party shall procure and maintain in force, at its own cost and expense, Comprehensive General Liability, including Automobile/Vehicle Liability, insurance covering liability assumed by such party under this Agreement, including a Contractual Liability Coverage Endorsement referring to this Agreement, with a combined single limit of not less than \$10,000,000 for bodily and personal injury (including death) and property damage per occurrence. Each party shall furnish the other party with a certificate of such insurance and of renewals thereof prior to the expiration of any such policy(ies).

(b) MCI and LG&E each shall also procure and maintain in force and furnish the other with evidence of Worker's Compensation, Employer's Liability (\$100,000 policy limit) and other statutory forms of insurance.

10.2 The maintenance of the insurance hereinabove specified shall not limit either party's liability under this Agreement, but shall be additional security therefor.

10.3(a) The limits of the policies required hereunder shall be increased from time to time by agreement of the parties to meet changed circumstances including, but not limited to, changes in the purchasing power of the dollar and the course of plaintiffs' verdicts in personal injury actions; provided, however, such limits shall not be increased more frequently than every five (5) years.

(b) All insurance shall be effected by valid and enforceable policies issued by insurers of responsibility and licensed to do business in the state where each System Segment is located, such responsibility and the insuring agreements to meet with the reasonable approval of LG&E and MCI.

(c) To the extent obtainable, all the policies required hereunder shall contain agreements by the insurers that, except in respect of cancellation for nonpayment of premium, such policy(ies) shall not be cancelled upon less than thirty (30) days prior written notice to the parties, except in the case of nonpayment of premium where the written notice period shall be reduced to ten (10) days.

(d) In recognition of the potential for changes in the insurance market and the availability and cost of insurance, the parties hereby expressly agree that, in the event that either (i) the insurance required of either party hereunder shall cease to be available (either as to limits or coverages) or (ii) such insurance shall be available only at excessive cost, the parties shall agree upon alternative policy limits and/or coverages, as well as appropriate levels of self-insurance for both parties.

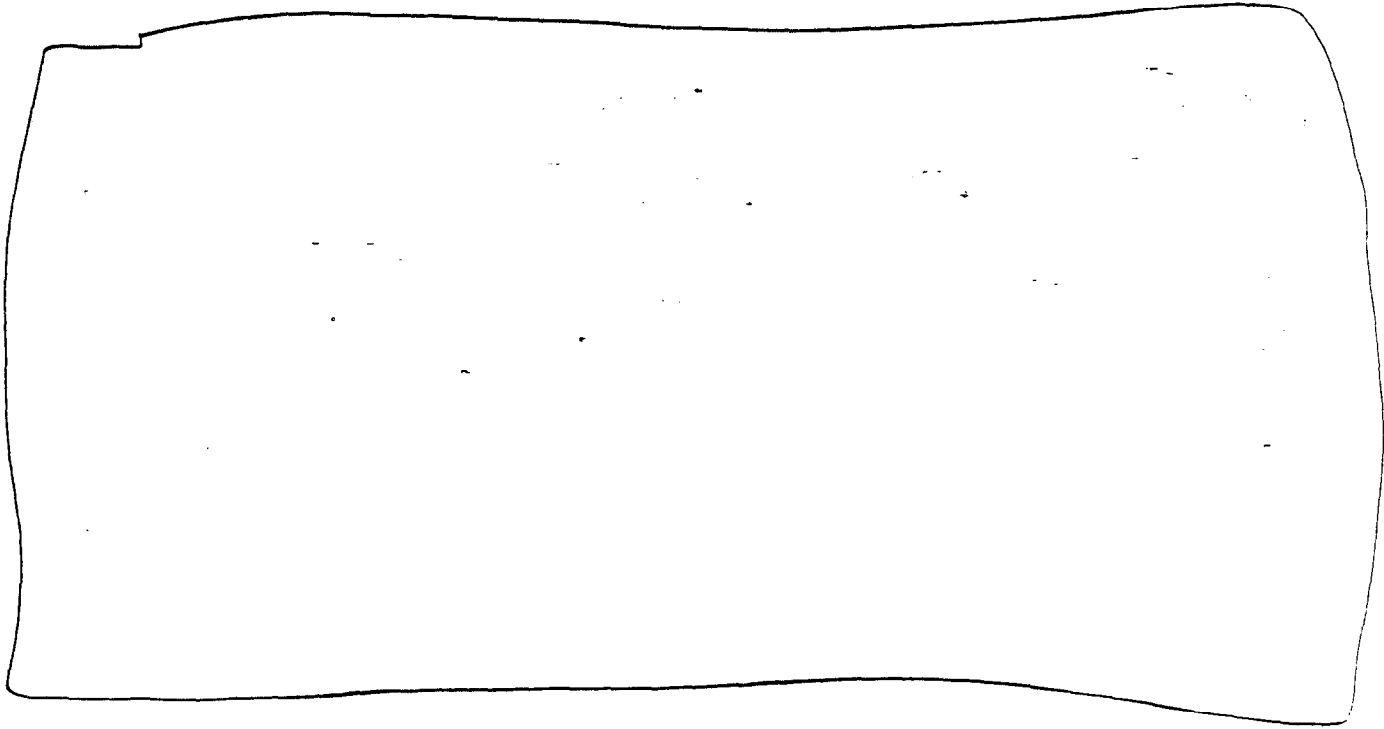
(e) Nothing in this Article 10 shall be construed to prevent either party from satisfying its insurance obligations pursuant to this Agreement under a blanket policy or policies or pursuant to a decision to self-insure which meets or exceeds the requirements hereof.

## 11. ENVIRONMENTAL HAZARD LIABILITY

11.1 LG&E represents to MCI that prior to the execution of this Agreement it has disclosed to MCI any information it may possess regarding the existence of any hazardous or toxic waste areas within the Right of Way along the Route (whether or not designated as such by the Environmental Protection Agency or any other similar federal, state or local authority) intended to be

used by MCI for the installation of the System, and LG&E agrees to promptly inform MCI of any such hazardous or toxic waste areas of which it may subsequently learn. LG&E agrees to defend, indemnify and hold MCI harmless from any and all expenses, claims, fines and actions arising out of the existence of any such hazardous or toxic waste areas or the obligations which may now or hereafter be imposed (statutory or otherwise) to remove therefrom, or otherwise neutralize or contain, any such toxic or hazardous substances; provided, however, in cases of joint fault by both MCI and LG&E, each party shall be responsible for damages caused by its comparative fault.

11.2 Upon learning of any such hazardous or toxic waste areas within which the System is intended to be or is located, LG&E shall, to the extent available to it, offer MCI, without payment of any additional consideration therefor, alternate contiguous areas within which the System may be relocated to avoid such hazardous or toxic waste areas. All direct costs incurred by MCI in effecting such relocation of the System shall be borne by MCI, unless LG&E failed to inform MCI of the hazardous or toxic conditions at such site under Section 11.1 hereof.



## 12. ASSIGNMENT, SUBLETTING AND OTHER TRANSFERS

12.1 So long as this Agreement shall be in effect, MCI and its successors and assigns shall have the right, at any time and from time to time, to assign, sublease, license, relinquish possession or control of, or otherwise transfer or apportion, in whole or in part, its rights and/or interests under this Agreement, the Rights, the Easements, the MCI Capacity, the

System, any System Segment(s), the Facilities or any part or parts thereof (collectively, a "Transfer"), to any entity whatsoever, provided that (a) the assignee, sublessee, licensee or other transferee (collectively a "Transferee") shall (i) agree that its rights with respect to this Agreement, the Rights, the Easements, the MCI Capacity, the System, the System Segment(s), the Facilities or the part or parts thereof affected by the Transfer (each such part being herein referred to as an "Affected Portion"), shall be subject to all of the terms and conditions of this Agreement, and (ii) assume and agree to perform all of the terms and provisions of this Agreement (or if less than all of such party's rights and/or interests hereunder or in the Rights, the Easements, the MCI Capacity, the System, the System Segment(s) or the Facilities shall be affected by such Transfer, assume and agree to perform such of the terms and provisions hereof as relate to the Affected Portion) from and after the date of such Transfer and for and during the period such party shall have an interest in this Agreement, the Rights, the Easements, the MCI Capacity, the System, the System Segment(s), its Facilities or any part or parts thereof; (b) unless LG&E shall have consented to such Transfer, MCI shall not by reason of such Transfer be released from any of its obligations under this Agreement; and (c) promptly following the effective date of any such Transfer, MCI shall notify LG&E thereof and, if so requested by LG&E shall as soon as reasonably practicable after such request furnish to LG&E a true and complete copy of the instrument(s) affecting such Transfer.

12.2 (a) In addition to the rights granted to MCI pursuant to Section 12.1 hereof, MCI and its successors and assigns shall have the further right, at any time and from time to time, to mortgage, pledge, or otherwise Transfer and/or re-Transfer, in whole or in part, this Agreement and/or any of its rights and/or interests hereunder and/or in the Rights, the Easements, the MCI Capacity, the System, or any System Segment(s), the Facilities or any part or parts thereof, as necessary or desirable in connection with any sale-leaseback or other forms of financing transactions, with or without re-purchase options, undertaken by MCI or its successors or assigns.

(b) Any lessor(s) under any such sale-leaseback of the Rights, the Easements, the MCI Capacity, the System, any System Segment(s), or any part or parts thereof and/or any holder(s) of any security interest therein and any successors or assigns of such parties (all of the foregoing being encompassed within the foregoing definition of the term "Transferee") shall have the further right to make a Transfer to any other owner(s) or user(s) of the Rights, the Easements, the MCI Capacity, the System, any System Segment(s), or part or parts thereof and/or to any party or parties providing financing to such owner(s) or user(s) of all or any part or parts of the System. However, upon any Transfer made in connection with any such financing arrangement, MCI shall not be released from any of its obligations under this Agreement and

may nevertheless continue to exercise all of its rights hereunder; and, following LG&E's receipt of notice of any such financing arrangement and of any Transfer made in connection therewith (which for purposes of this Section 12.2 shall include the granting of any mortgage, deed of trust or other security interest covering this Agreement, the Rights, the Easements, the MCI Capacity, the System, any System Segment(s), the Facilities or any part or parts thereof, LG&E agrees that:

I. (A) Unless MCI is in default under this Agreement with respect to an Affected Portion (subject, nevertheless, to the rights of any Transferee to cure any such default as hereinafter set forth), LG&E shall not unilaterally terminate or cancel this Agreement with respect to such Affected Portion, without the prior written consent of such Transferee(s). Furthermore, LG&E shall not accept or agree to a surrender by MCI or cancellation of this Agreement with respect to an Affected Portion by Discontinuance, mutual agreement of the parties hereto or otherwise, nor shall LG&E agree to the modification of this Agreement with respect to such Affected Portion, other than modifications limited to routine operational aspects of this Agreement or modification which do not have a material adverse effect on such Transferee(s), without the prior written consent of such Transferee(s).

(B) No notice which may or must be given to MCI under this Agreement in respect of an Affected Portion shall be effective, unless, simultaneously therewith, LG&E gives a copy of such notice to a single agent (such agent or any successor agent is herein referred to as the "Agent"), appointed by the Transferee(s) with respect to the Affected Portion to receive such notices (notice of whose appointment shall be given to LG&E concurrently with the aforementioned notice to LG&E of a Transfer) in the manner specified in this Agreement for the giving of notices (and notice of the appointment of a successor Agent by the Transferee(s) with respect to the Affected Portion shall be given to LG&E by like notice).

(C) LG&E may rely on any notice received from the Agent purporting to exercise any rights or remedies of MCI under this Agreement; and, in the event of any conflict between any notice received from the Agent and a notice received from MCI, LG&E shall rely on the former. LG&E shall accept payment or performance by the Agent of any obligation of MCI as though paid or performed by MCI, provided such payment and/or performance shall be made within the applicable cure periods allowed by this Agreement or the extended periods granted to the Agent by this Section 12.2

(D) The Agent shall have the right, but not the obligation, to cure any default by MCI relating to an Affected Portion within the applicable cure periods allowed by this Agreement, except that:

(1) upon MCI's failure to cure a monetary default in respect of an Affected Portion within said cure period, LG&E shall give a further notice of each default to the Agent (in addition to any notice required by paragraph (B) above) and afford the Agent one additional ten (10) day period following the effective date of such notice to cure such default;

(2) upon MCI's failure to cure a non-monetary default in respect of an Affected Portion within said cure period, LG&E shall give a further notice of such default to the Agent (in addition to any notice required by paragraph (B) above) and afford the Agent an additional thirty (30) day period following the effective date of such notice to cure such default (or, if such default is not susceptible of being cured within such 30-day period, then LG&E shall allow the Agent such additional period of time requested by the Agent as shall be necessary to cure such default with reasonable diligence, provided that the Agent has commenced the cure within said 30-day period and thereafter diligently pursues such cure); and

(3) if a default by MCI occurs which cannot be cured without obtaining possession of all or any part of an Affected Portion and/or without acquiring all or part of MCI's rights and/or interests under this Agreement with respect to such Affected Portion and/or such default is not of a type or nature which can be cured by money or possession, and if the Agent promptly notifies LG&E that the Transferee(s) has (have) commenced steps so to acquire such possession, rights, interests and/or the means to effect a cure which cannot be effected by possession or money, then, except as hereinafter set forth, if such Transferee(s) shall promptly commence and diligently pursue steps to acquire such possession, interests, means and/or rights, LG&E shall forbear from exercising any of its rights or remedies against MCI for an additional period of thirty (30) days and, provided such Transferee(s) shall then be acting diligently to acquire such possession, interests, means and/or rights, for such additional period of time requested by the Agent as LG&E may approve, which approval shall not be unreasonably withheld if such additional period of time is necessary to acquire such possession, interests, means or rights;

Upon the curing by Agent or any Transferee of any of such defaults(s) of MCI within the respective cure periods set forth in this paragraph (D), all rights of MCI under this Agreement which may have been lost or terminated by virtue of MCI's said defaults(s) shall be deemed reinstated upon such cure.

(E) If any such Transferee shall obtain possession and use of all or any part of an Affected Portion, then, as long as all of the obligations of MCI under this Agreement with respect to such Affected Portion are being performed (subject to the provisions of paragraph (D) above) and as long as such Transferee shall be in possession and use of all or part of such Affected Portion, (i) such Transferee shall agree to be bound by and to observe and perform the obligations of MCI under this Agreement with respect to such Affected Portion, and (ii) LG&E shall not disturb the possession or use of the Affected Portion and shall recognize such Transferee's right to possession and use thereof, subject, nevertheless, to the terms of this Agreement and the respective rights of the parties herein.

(F) If this Agreement with respect to an Affected Portion shall terminate or be terminated by reason of a default by MCI or for any other reason, LG&E shall promptly notify the Agent, and, subject to the provisions regarding forbearance set forth in paragraph (D) above, LG&E hereby agrees to forebear from exercising any of its other rights or remedies against MCI under this Agreement or otherwise until the thirtieth (30th) day after the giving of such notice. The Agent shall have the right within such thirty (30) day period, to submit to LG&E a single written request for LG&E to enter into a new agreement (a "New Agreement") in respect of the Affected Portion with the Transferee(s) designated by the Agent, upon all of the same terms and provisions, including Extension Period options, as are contained in this Agreement, as the same may have been amended from time to time, with credit being given for Consideration previously paid or provided to LG&E pursuant to this Agreement with respect to the Affected Portion, except that such credit and any Consideration thereafter to be paid under the New Agreement shall be calculated only in respect of the pro-rata portion represented by such Affected Portion at the same rate as, and otherwise in the manner, set forth in this Agreement. If the Agent shall make such request, LG&E, subject to the provisions regarding forbearance set forth in paragraph (D) above, agrees to continue its forbearance and, within twenty (20) days of such request, to enter into a New Agreement with such Transferee(s); provided that (a) simultaneously with the execution and delivery of such New Agreement, such Transferee(s) shall pay all fees and charges then owed by MCI or otherwise due under this Agreement with respect to the



Affected Portion as if it had continued in effect, and (b) such Transferee(s) shall agree that, following the execution and delivery of such New Agreement, such Transferee(s) shall promptly proceed to cure all existing defaults with respect to the Affected Portion, failing which LG&E shall have the right (i) to exercise all rights and remedies against MCI under this Agreement in accordance with its terms, and (ii) to terminate the New Agreement and to exercise all rights and remedies against such Transferee(s) under the New Agreement in accordance with its terms. Such New Agreement with respect to an Affected Portion shall be effective as of the date of termination of this Agreement and the term of the New Agreement shall remain in effect until the date that, but for the termination of this Agreement, would have been the date of expiration of the Term of this Agreement, including renewal options, if exercised, unless sooner terminated, in whole or in part, as provided for in the New Agreement.

II. In the event of a Transfer and except as otherwise expressly set forth herein:

(i) MCI shall not be released, relieved or discharged of or from any of the obligations or liabilities assumed by MCI under this Agreement, and MCI agrees to be and remain bound by all of the terms, covenants and retain all rights and remedies set forth in this Agreement to the same extent as if such Transfer or subsequent Transfer had not been made; (iii) LG&E shall have no greater obligations to any Transferee than LG&E has to MCI under this Agreement; and (iv) no Transferee shall have any rights which are greater than the rights granted to MCI under this Agreement. Any curative acts performed by any Transferee or by the Agent on behalf of a Transferee upon a default by MCI shall be performed in accordance with the terms and provisions of this Agreement. If any such Transferee shall become a party to a New Agreement, such Transferee's liability under the New Agreement shall be limited (subject, nevertheless, to the obligations of such Transferee under paragraph I(F) above) to its interest in the Affected Portion.

III. Nothing contained in this Section 12.2 or elsewhere in this Agreement is intended to limit or restrict the right of any Transferee from exercising any of its rights or remedies against MCI under or pursuant to any agreements entered into between MCI and such Transferee, including, but not limited to, any right by such Transferee, to obtain possession of all or any part of the MCI Capacity, the System, the Rights, the Easements, the Facilities and/or all or any part of MCI's rights and/or interests under this Agreement (as they relate to the Affected Portion) and/or from realizing upon any and all security held by any such Transferee; and, in connection therewith, without the consent of LG&E, to Transfer the MCI Capacity, the System or any System Segment(s), Facilities and/or any part or parts thereof and such

Transferee's rights and/or interests under this Agreement or the Rights of Use, the Easements (as they relate to the Affected Portion); provided, however, that no such further Transfer to a party with use and possession of the System or any System Segment shall be effective unless and until such Transferee with use and possession of the System shall either have assumed all of MCI's obligations under this Agreement in respect of the Affected Portion or have entered into a New Agreement with LG&E, as the case may be.

IV. If and when a Transferee's interest in the MCI Capacity, the System, any System Segment(s), the Rights, the Easements and/or the Facilities (whether such interest be an ownership interest or a security interest) shall be transferred, terminate or expire, the rights of such Transferee under this Agreement shall forthwith cease and determine, and such Transferee shall be released from all further obligations hereunder, except for debts, duties or obligations for which such Transferee is liable hereunder or under a New Agreement which shall have attached or accrued prior to such transfer, termination or expiration. Upon the occurrence of any of the foregoing, each Transferee shall promptly give notice thereof to LG&E in the manner specified in this Agreement for the giving of notices.

12.3 LG&E and MCI each agree, upon reasonable request, to execute and deliver an amendatory agreement incorporating such modifications or amendments of the terms, covenants and provisions of this Agreement as any party providing financing (as described in Sections 12.1 and 12.2 above) shall reasonably require as a condition precedent to its granting of such financing or a commitment therefor. Notwithstanding the foregoing, however, neither party shall be required to execute any such Amendment which shall seek to modify any material provision of this Agreement, including provisions relating to the amount of consideration payable by MCI hereunder, or the length of the Term or Extension Period(s).

### 13. LIENS

13.1 (a) In the event that any property of LG&E shall become subject to any mechanics', artisans' or materialmen's lien chargeable to or through MCI, MCI shall promptly cause such lien to be discharged and released of record (by payment, posting of bond, court deposit or other means) without cost to LG&E and shall indemnify LG&E against all costs and expenses (including reasonable attorneys' fees) reasonably incurred in discharging and releasing such lien; provided, however, that if any such lien is not so discharged and released within thirty (30) days after notice thereof by LG&E to MCI (or within such shorter period as shall be mandated under applicable local law), then LG&E may pay or secure the release or discharge thereof at the expense of MCI.

(b) In the event that any property of MCI shall become subject to any mechanics', artisans' or materialmen's lien chargeable to or through LG&E, LG&E shall promptly cause such lien to be discharged and released of record (by payment, posting of bond, court deposit or other means) without cost to MCI and shall indemnify MCI against all costs and expenses (including reasonable attorneys' fees) reasonably incurred in discharging and releasing such lien; provided, however, that if any such lien is not so discharged and released within thirty (30) days after notice thereof by MCI to LG&E (or within such shorter period as shall be mandated under applicable local law), then MCI may pay or secure the release or discharge thereof at the expense of LG&E.

13.2 Nothing herein shall preclude MCI and/or LG&E, as the case may be, from contesting any such lien or the contract or action upon which the same arose after the same shall have been bonded or otherwise released of record, as aforesaid.

13.3 To the fullest extent permitted by law, LG&E hereby waives all rights granted by or under any present or future laws to levy or distrain for any sums due hereunder from MCI upon the MCI Capacity, the System, the Rights, Easements, and/or the Facilities, or any part or parts thereof, whether by reason of any breach by MCI of its obligations hereunder or otherwise, or if not permitted by law to waive, then LG&E subordinates to any security interest in the MCI Capacity, the System, the Rights, Easements and/or the Facilities.

13.4 (a) LG&E hereby recognizes and agrees that the MCI Capacity, the System, the Rights of Use, and/or the Facilities shall be and remain at all times the personal property of MCI, its successors and assigns; the Rights of Use, the MCI Capacity, and the System and/or the Facilities shall at no time be or become subject to or collateral under said mortgages, bonds and other indentures of LG&E.

(b) The subordination of this Agreement to the existing mortgages, bonds and other indentures of LG&E referenced in Section 13.4(a) above is expressly conditioned upon LG&E delivering to MCI on or before March 1, 1988, written agreements, in form and substance satisfactory to MCI, from the holders of such mortgages, bonds and other indentures that (i) MCI will not be named or joined in any proceeding to enforce any such mortgage, bond or other indenture unless such be required by law in order to perfect the proceeding, (ii) enforcement of any such mortgage, bond or other indenture shall not terminate this Agreement nor disturb MCI in the possession and use of the Right of Way, nor disturb or interfere with MCI's use, operation and maintenance of the System, the Facilities and/or the MCI Capacity (except in the case where MCI is in default beyond the period, if any, provided in this Agreement to remedy such default), (iii) any party

succeeding to the interest of LG&E as a result of the enforcement of any such mortgage, bond or other indenture shall be bound to MCI, and MCI shall be bound to it, under all the terms, covenants and conditions of this Agreement, for the balance of the Term hereof, including Extension Periods (if exercised by MCI), with the same force and effect as if such party were an original signatory hereto, and (iv) whenever any provision of any such mortgage, bond or other indenture purports to limit the rights or increase the obligations of MCI under this Agreement, the provisions of this Agreement shall govern.

#### 14. LIAISON AND DISPUTE RESOLUTION

14.1 It is the intent of MCI and LG&E that disputes which may arise between them, or between employees of each, be resolved as quickly as possible, both for the prompt survey, design, plan, construction, installation, operation and maintenance of the Cable, the System and Facilities, as well as for the safe operation of LG&E's electric power transmission system. Quick resolution may, in certain instances, involve decisions made on the spot. When such resolution is not possible, and depending upon the nature of the dispute and the phase of installation of the Cable, the System and the Facilities, the parties agree to seek to resolve such disputes, insofar as the same do not constitute a breach or default under this Agreement, in the manner set forth in this Article.

14.2 LG&E and MCI shall each designate, by notice to the other, division or field representatives as points of contact and decision making for each System Segment during installation of the System and Facilities by MCI; it being recognized by the parties that the installation of the System and Facilities may be undertaken and performed simultaneously within several separate System Segments. Such designation shall be made by each party within thirty (30) days of the date MCI submits Working Drawings for each portion or Segment of the System as set forth in Article 4 hereof.

14.3 Questions as to the right of access to the Right of Way during design, planning, construction, installation, maintenance and operational phases, or access to or copies of LG&E's documents, shall in all instances be referred initially to the designated or authorized representative of LG&E's Chief Engineer, which authorized or designated Engineer shall render such decision within twenty-four (24) hours. Decisions of such Engineer shall be referable by MCI to LG&E's Chief Engineer, whose decision shall be issued within forty-eight (48) hours of the notice from MCI of MCI's dispute with the authorized or designated Engineer.

14.4 Any other dispute between the parties relative to the matters described in Section 14.1, except as specifically provided

in Sections 14.3 shall be referred initially by the disputing party to the other party's Chief Engineer for decision, which he shall render in writing within ten (10) business days after submission.

14.5 Either party may appeal an initial decision rendered by the other party's Chief Engineer pursuant to Section 14.4 by written request for arbitration given within ten (10) business days after the date of receipt of such initial decision. Arbitration shall proceed in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining. The arbitration shall be held in Louisville, Kentucky within thirty (30) days of the date of the notice initiating arbitration and the arbitrators shall render their decision within thirty (30) days following the final hearing. The determination rendered in such arbitration shall be binding on the parties thereto and may be entered in any court having jurisdiction thereover.

14.6 LG&E and MCI recognize that delays in responding to questions and/or in resolving disputes, as referred to in the foregoing Sections of this Article, will adversely impact upon the timely installation of the Cable and completion of construction of the System and the Facilities and the estimated cost thereof. Adherence to the time limitations within which responses are to be made and/or decisions are to be reached and communicated to the parties are therefore deemed to be material obligations hereunder. Accordingly, upon any failure to adhere thereto, it shall be deemed and presumed, in addition to any other rights or remedies available under such circumstances, that any requests for approvals or for resolution of disputes shall be granted and/or resolved against the party causing the delay.

#### 15. BREACH; NO WAIVER

15.1 MCI and LG&E agree that neither shall proceed against the other by litigation or otherwise before the offending party has had notice of and a reasonable time and opportunity to respond to and/or cure any breach or default hereunder. For purposes of this Agreement and except as set forth in Article 12 hereof, a reasonable time to cure any breach or default shall be deemed to be: thirty (30) days after notice in the case of a monetary default; sixty (60) days after notice in the case of a non-monetary default, unless the nature of the default in question is such that it is not reasonably susceptible of being cured within such 60-day period, then if the curing thereof shall not have commenced within such 60-day period and shall not thereafter be prosecuted to completion with reasonable diligence.

15.2 For purposes of this Article 15, any substantial non-compliance, or any repeated non-compliance which of itself

might be considered minor or singular, shall constitute a breach by either party. Failure by either party to give required notices, or to give required approvals without cause, or to comply with a final decision under Sections 14.4 or 14.5, or to give timely responses or decisions under Article 14, shall constitute a breach.

15.3 Any waiver by either party at any time of any of its rights as to anything herein contained shall not be deemed to be a waiver of any similar breach of covenant or other matter subsequently occurring. Any waiver must be made in writing.

## 16. TERMINATION

16.1 This Agreement shall terminate in whole or in part as to any System Segment, upon the happening of any of the following events:

(a) at the option of either party, upon the termination or abandonment by MCI of the use of any or all of the MCI Capacity, but, if less than all, only as to the System Segments or portions thereof affected thereby;

(b) at the option of the non-defaulting party, upon a breach or default by the other party of any material obligation hereunder and the continuance thereof following the expiration of the applicable grace period, except that this Agreement shall not be terminated upon the occurrence of any breach or default as to which specific performance or injunctive relief may be available (in the event a court ultimately determines that the party whose action is enjoined was in default hereunder, such party shall pay all costs of the non-defaulting party for pursuing such relief, including attorney's fees);

(c) upon the subsequent written mutual agreement of the parties hereto;

(d) at MCI's election the failure of MCI to receive a satisfactory response, in MCI's judgment, to the letter sent to landowners regarding static wire replacement; or

(e) the failure of the Kentucky Public Service Commission to approve the provisions of this Agreement.

(f) at MCI's sole option and discretion, if LG&E is unable, despite the exercise of its best efforts, to obtain the agreement(s) contemplated by Section 13.4(b) hereinabove.

16.2 If at any time prior to the expiration of the Term MCI determines, in its sole discretion, that discontinuing its use of the System and the MCI Capacity, the System Right of Way within the Route and/or any of the System Segments is in its best interests, MCI shall have the right to terminate this Agreement in its entirety or in respect of any System Segments, by giving the Discontinuance Notice to LG&E. If MCI shall so elect to terminate this Agreement, this Agreement shall cease, terminate and expire

in respect of the System Segment(s) effected thereby with the same force and effect as if the date of such termination (to be specified in MCI's aforementioned notice) was the date originally fixed herein for the expiration of the Term, and thereupon each of the parties shall be relieved of and from all further obligations hereunder in respect of the System Segment(s) effected thereby, except as otherwise provided in Sections 7.2, 9.6 and 24.7 hereof. In the event of a termination because of an MCI Discontinuance, LG&E may retain the affected Segment(s) of the System, including any site improvements for the Segment(s),

#### 17. END OF TERM

Except as provided in Section 7.2 hereof, at the expiration or any sooner termination of the Term, MCI shall have the right (a) to remove the System and its Facilities from the System Right of Way and to restore any material damage resulting from such removal, or (b) to abandon all or any Facilities in place, and to remove all Facilities not so abandoned, as aforesaid.

#### 18. RECORDINGS, TAXES AND OTHER CHARGES

18.1 (a) LG&E agrees to pay and shall indemnify MCI against all additional or incremental income taxes charged to LG&E as a result of this Agreement except for income tax liability, if any, resulting from the transfer of legal title to the Cable from MCI to LG&E, as described in Section 5.12, for which liability MCI shall indemnify LG&E.

(b) LG&E agrees to pay and shall indemnify MCI against any and all transfer taxes, including sales or use taxes, if any, which arise from the transfer or disposition of property rights pursuant to this Agreement (other than the transfer of legal title to the Cable).

(c) LG&E agrees to indemnify MCI against and with respect to any and all other annual or periodic real property taxes levied or assessed with respect to the Right of Way except for increases in such taxes specifically attributable to this Agreement.

(d) MCI agrees to pay and shall indemnify LG&E against any other additional or incremental tax liability (excluding income tax liability) incurred by LG&E as a result of the construction or operation of the System pursuant to this Agreement.

(e) Either party's indemnification set forth in this Section 18.1 is expressly conditioned upon the indemnitor receiving timely notice of any tax liability to which the indemnitee believes this indemnity applies and the indemnitor having the right to contest the assertion or potential assertion of such liability, both at the time such issue is first raised and later, both administratively and judicially.

18.2 Appropriate recordings (i.e., in compliance with applicable laws of the particular jurisdictions) may be made in each County of the respective States in which the System is to be located, substantially in the form of Appendix B annexed hereto and made a part hereof. MCI shall pay all documentary stamps, recording costs or fees, or any similar expense in connection with the recording or filing of any such recordings.

## 19. REPRESENTATIONS, WARRANTIES AND COVENANTS

19.1 Each of the parties represents, warrants and covenants to the other that (i) it has full right and authority, including any requisite corporate and governmental approvals (other than the approval of the Kentucky Public Service Commission, which approval LG&E shall use its best efforts to obtain), to enter into and to perform its respective obligations under this Agreement; (ii) the execution of this Agreement is not violative of its charter, by-laws or any law, regulation or agreement by which it is bound or to which it is subject; (iii) no litigation or governmental proceeding is pending or threatened which might adversely affect this Agreement, the transactions contemplated by this Agreement, or the rights of the parties hereunder.

19.2 LG&E further represents, warrants and covenants that (i) LG&E power system will be operated in a safe manner and in compliance in all material respects with all applicable laws, regulations and/or governmental orders; (ii) LG&E will maintain the Cable in accordance with the procedures agreed to between the parties; (iii) to its knowledge, LG&E has not violated any rule, order or regulation issued by any governmental authority with respect to the Right of Way which may adversely affect MCI's use thereof or LG&E's right to grant the Rights, Easements or leases herein provided for or to execute and perform this Agreement; (iv) except as set forth in Appendix C annexed hereto and made a part hereof, there exist no restrictive covenants, reservations or other rights granted to or reserved by third parties in respect of the Route now owned or controlled by LG&E; (v) except as set forth in Appendix D annexed hereto and made a part hereof, there exist no Rights of Use, Easements, licenses, agreements or other rights in favor of any third party to install, use or maintain within the Right of Way now owned or controlled by LG&E any telecommunications transmission system or for the installation, use and maintenance of any underground cables, conduits, or other



facilities or appurtenances; and (vi) this Agreement does not violate any terms, conditions, covenants or restrictions in said mortgages, bonds and other indentures of LG&E and the System, the Facilities and/or the MCI Capacity will not be subject to or deemed to be collateral under any such agreements of LG&E.

19.3 Should a sovereign act of the United States Government or a force majeure make it commercially impracticable for either LG&E or MCI to perform a duty under this Agreement, performance of such duty shall be excused; provided, however, that, if the duty being excused is material to the transaction contemplated hereby, the party whose performance would not be excused under this Section shall have the option to terminate the Agreement.



## 20. CERTIFICATES

Upon request of any party hereto, at any time and from time to time hereafter, the other party or parties agree(s), without charge, within fifteen (15) days following receipt of such request, to certify and confirm in writing to the party making such request (i) that this Agreement is in full force and effect and has not been supplemented, modified or amended (or if there have been supplements, modifications or amendments, specifying same); (ii) whether the Consideration set forth in Section 2.4, due to the date of such certificate shall have been paid in full; (iii) whether any other sums then due and payable by MCI to LG&E or by LG&E to MCI pursuant to any provisions of this Agreement are then unpaid (and if such sums remain unpaid, the amount thereof); (iv) whether, to the best knowledge of the party issuing such certificate, the other party or parties is (are) in default in the performance of any of the covenants or agreements on its (their) part to be performed hereunder (or, if defaults exist, specifying each particular in which it is asserted such other party or parties is (are) in default); (v) if such certificate is issued in connection with any financing of the Cable, the MCI Capacity, the System and/or the Facilities by MCI, that MCI is authorized to enter into such financing transaction and that LG&E will adhere to and perform its obligations under Article 12 hereof, following its receipt of notice of the Transfer; and (vi) as to such other matters in respect of this Agreement as the party requesting such certificate may reasonably request.

## 21. INDEPENDENT CONTRACTOR STATUS

LG&E acknowledges and agrees that it reserves no control whatsoever over the employment, discharge, compensation of or services rendered by MCI's employees or contractors, and it is the intention of the parties that MCI shall be and remain an independent contractor and nothing herein shall be construed as inconsistent with that status or relationship or as creating or implying any partnership or joint venture between MCI and LG&E.

## 22. SEVERANCE AGREEMENTS

22.1 At any time and from time to time during the Term, upon request of MCI, and within thirty (30) days after the making of such request, LG&E agrees to modify this Agreement and enter into new agreements (a "Severance Agreement" or collectively, "Severance Agreements") covering designated System Segments, which collectively with this Agreement shall cover the entire System Right of Way. Each such Severance Agreement shall:

(a) serve to release from this Agreement such System Segment or Segments as shall be covered under the Severance Agreements; and

(b) contain the same terms, covenants and provisions as are set forth herein, except that (i) the Consideration given by MCI pursuant to Section 2.4 shall be pro-rated on a per mile basis for such portion of the System Right of Way as may be covered by the respective Severance Agreements and (ii) each such Severance Agreement shall grant the Rights of Use, Easements or leases contained within the severed System Segment(s) covered by such Severance Agreement.

22.2 At any time and from time to time subsequent to the execution of any Severance Agreement, LG&E agrees, upon request of MCI, to have one or more of such Severance Agreements combined into a single agreement, and within thirty (30) days following the making of such request, to enter into a new agreement combining any of the System Segments previously covered by a Severance Agreement, upon the same terms, covenants and conditions as set forth in the Severance Agreements replaced thereby, except that the Consideration given by MCI pursuant to Section 2.4 as set forth in each of the affected Severance Agreements shall be combined.

## 23. NON-MERGER

There shall be no merger of this Agreement or of the Rights of Use, Easements or leases hereby granted with the fee estate in the Right of Way by reason of the fact that this Agreement, the Rights of Use, Easements and/or the leasehold estates created by this

Agreement, or any interest in this Agreement or in any such Rights of Use, Easements and/or in the leasehold estates, may be held, directly or indirectly, by or for the account of any person who shall own the fee estate in the Right of Way or any interest in such fee estates, and no such merger shall occur unless and until all persons having an interest in this Agreement, in the Rights of Use, Easements and/or leasehold estates created by this Agreement, shall join in a written instrument effecting such merger and shall duly record the same.

#### 24. DOCUMENT CONFIDENTIALITY

24.1 MCI and LG&E agree that any information identified as trade secrets or as proprietary or confidential information, not already known to the other party or not already in the public domain, which may be disclosed one to the other pursuant hereto, and the discussions relating thereto, are confidential to such parties.

24.2 LG&E and MCI agree to respect such confidentiality and shall restrict the distribution of this Agreement only to those persons designated to implement the provisions hereof and their respective counsels, consultants and advisers; provided, however, that any such disclosure to persons who are not employees of the parties shall be made only after such persons have executed a written agreement to be bound by the terms of this Article 24. The parties further agree that they shall not disclose or furnish to any third parties copies of this Agreement or any materials referred to herein without the prior written consent of the other party hereto, except as shall be necessary in order to implement the provisions hereof, including the installation of the Cable and construction of the System and the Facilities, securing the necessary Approvals therefor, and the financing of the Cable, the MCI Capacity, the System and/or the Facilities, and except as required by a court order or as otherwise required by law, or in any legal or arbitration proceeding relating to this Agreement.

24.3 Neither party shall have the right to obtain any information or documents from the other which are not material to the provisions or implementation of this Agreement.

24.4 The parties recognize that this Agreement, and the materials and documents referred to herein, may contain information which a reasonably informed person would recognize as confidential, insider information which should be handled accordingly.

24.5 The parties agree that in distributing copies or portions of these materials to parties necessary to implement the same, such copies or materials shall be clearly marked or indicated as "confidential", prohibiting the further distribution, copy or reproduction of the same.

24.6 In the event of an actual or threatened disclosure of such information by either party, its agents, employees or contractors, which might cause irreparable harm to the other party, it is agreed that monetary remedies available at law may be inadequate and, therefore, the aggrieved or threatened party shall be entitled to receive injunctive relief as an equitable remedy.

24.7 The obligations of the parties under this Article 24 shall survive the Expiration Date for a period of three (3) years.

## 25. NOTICES

25.1 Unless otherwise herein specifically set forth, all notices and other communications concerning this Agreement shall be in writing addressed to:

MCI at: (one copy each to:)

- (1) Executive Vice President-Engineering
- (2) Senior Vice President and General Counsel  
1133 19th Street, N.W.  
Washington, D.C. 20036

and

- (3) Vice President of Transmission Systems Construction  
400 International Parkway  
Richardson, Texas 15081

LG&E at:

Senior Vice President of Operations  
P.O. Box 32010  
311 West Chestnut Street  
Louisville, Kentucky 40232

or at such other addresses and/or to such other addressees as may be designated in writing to the other party.

25.2 Unless otherwise herein set forth, notices shall be sent, postage prepaid, either by registered or certified U.S. Mail, Return Receipt Requested, or by overnight express delivery service, and shall be deemed served or given when received by the addressee, as evidenced by the date of the Return Receipt or the receipt provided by the delivery service.

## 26. SEVERABILITY

If any provision of this Agreement as applied to any party hereto or to any circumstance shall be adjudged by a court of competent jurisdiction to be void or unenforceable for any reason, the same shall in no way affect, to the maximum extent permissible by law, any other provision of this Agreement, the application of any such provision under circumstances different from the one adjudicated by the court, or the validity or enforceability of the Agreement as a whole.

## 27. BINDING EFFECT

The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, and the Rights of Use and Easements (and leases) granted hereby shall constitute covenants running with the land affected thereby.

## 28. GOVERNING LAW

This Agreement shall be interpreted, construed and enforced in accordance with the internal laws of the State of Kentucky, without giving effect to the principles of conflicts of law.

## 29. FURTHER ASSURANCES

LG&E and MCI each agree to do such other and further acts and things, and to execute and deliver such additional instruments and documents (not creating any obligations, or imposing any expenses, additional to those otherwise created or imposed by this Agreement), as either party may reasonably request from time to time whether at or after the execution of this Agreement, in furtherance of the express provisions of this Agreement.

## 30. NO BROKER

LG&E and MCI, respectively, each represents and warrants to the other that it has not retained any broker or agent in connection with the transaction contemplated by this Agreement, and each party indemnifies and agrees to hold harmless the other from and against any claims for commissions or fees by any broker or agent in connection with this transaction resulting from a breach of such party's aforesaid representation; however, each of the parties agrees to pay the fees or compensation due its own consultant, if any, in this transaction.

### 31. MISCELLANEOUS

31.1 No consent or approval required of any party pursuant to this Agreement shall be unreasonably withheld or delayed.

31.2 Except as otherwise set forth in this Agreement, each party shall be responsible for its own costs, including legal fees, incurred in negotiating or finalizing this Agreement.

31.3 This Agreement expresses the entire understanding of the parties relating to the subject matter hereof; all prior understandings, written or oral, with respect to such subject matter are hereby merged herein and superseded.

31.4 Neither this Agreement nor any term or provision hereof can be amended, waived, modified, supplemented, discharged or terminated, except by an instrument in writing signed by the party against which enforcement thereof is sought and except as otherwise set forth in Article 16 hereof.

31.5 This Agreement and any amendment, modification, waiver or supplement hereto may be executed by the parties hereto on separate counterparts, each of which when so executed and delivered shall be an original for all purposes, but all such counterparts shall together constitute but one and the same instrument.

31.6 The Section headings in this Agreement and the table of contents hereof are for convenience of reference only and shall neither be deemed to be a part of this Agreement nor modify, define, expand or limit any of the terms or provisions hereof. All references herein to numbered or lettered Sections or Subsections, Schedules and Appendices, unless otherwise indicated, are to Sections, Subsections, Schedules and Appendices to this Agreement. Words and definitions in the singular shall be read and construed as though in the plural and vice versa, and words in the masculine, neuter or feminine gender shall also be read and construed as though in either of the other genders.

31.7 Neither party shall be prohibited or restricted by this Agreement from any mergers or acquisitions.

31.8 The parties agree that time is of the essence in the performance of the obligations hereunder.

31.9 Whenever LG&E notifies MCI that the System or any portion thereof materially interferes with the operation of LG&E's equipment or with existing equipment of current licensees, or constitutes a hazard to the service rendered by LG&E or other licensee, or fails to comply with the codes or regulations hereinbefore referred to, MCI shall use its best efforts to cooperate with and assist LG&E to remedy the interference or

hazard. If such interference or hazard is the result of LG&E approved design, engineering, or construction of the Cable, all costs to correct the situation shall be borne by LG&E. In no event shall LG&E be responsible should manufacturers warranties or defects apply. Under no circumstances shall MCI, its employees or contractors or subcontractors, disturb, tamper with or contact any LG&E equipment, without LG&E's consent. MCI shall take extra precautions to avoid contact with LG&E's lines, wires, and transformers, whether or not they appear to be energized.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

LOUISVILLE GAS AND ELECTRIC COMPANY *CGWK*

ATTEST:

*[Handwritten Signature]*

By:

*[Handwritten Signature: Fred Wright]*

MCI TELECOMMUNICATIONS CORPORATION

ATTEST:

*[Handwritten Signature]*

By:

*[Handwritten Signature]*

Richard T. Liebhaber  
Executive Vice President

ATTEST:

*[Handwritten Signature]*

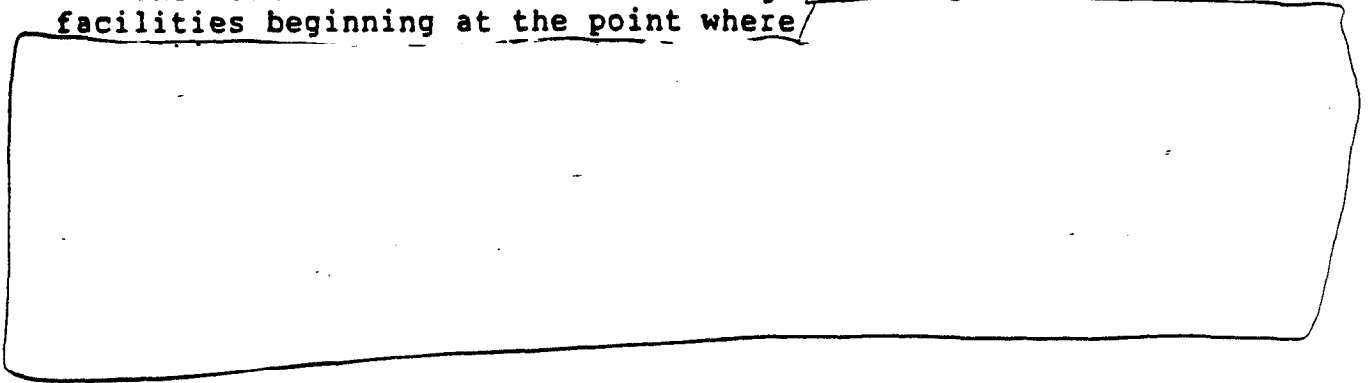
By:

*[Handwritten Signature]*

OHIO VALLEY TRANSMISSION CORPORATION

Appendix A

The Route will consist of LG&E rights of way and transmission facilities beginning at the point where





[LOUISVILLE GAS AND ELECTRIC COMPANY]  
[OHIO VALLEY TRANSMISSION CORPORATION]

GRANTOR

AND

MCI TELECOMMUNICATIONS CORPORATION,

GRANTEE

MEMORANDUM OF EASEMENT

Record and Return to:

Karen A. Hammer, Esq.  
Office of General Counsel  
MCI Telecommunications Corporation  
1133 Nineteenth Street, N.W.  
Washington, D.C. 20036

This instrument was prepared by:

Karen A. Hammer, Esq.  
Office of General Counsel  
MCI Telecommunications Corporation  
1133 Nineteenth Street, N.W.  
Washington, D.C. 20036

MEMORANDUM OF EASEMENT

THIS MEMORANDUM OF EASEMENT made as of the \_\_\_\_ day of \_\_\_\_\_, between [Louisville Gas and Electric Company, a Kentucky corporation, whose address is \_\_\_\_\_,] [Ohio Valley Transmission Corporation, an Indiana corporation, whose address is \_\_\_\_\_] ("Grantor"), and MCI TELECOMMUNICATIONS CORPORATION, a Delaware corporation, whose address is 1133 Nineteenth Street, N.W. Washington, D.C. 20036 ("Grantee").

1. Grantor, for and in consideration of the sum of One Dollar (\$1.00), in hand paid, and other good and valuable consideration, hereby grants and conveys to Grantee, pursuant to the terms and conditions of a Right of Way Agreement dated as of \_\_\_\_\_ (the "Right of Way Agreement"), which terms are incorporated herein by reference, a non-exclusive easement in gross in, on, along, upon, over, under, across and through Grantor's right of way shown on Exhibit "A" attached hereto and specifically incorporated herein by reference (the "Right of Way") as may be necessary for the use by MCI of such Right of Way to construct, install, operate, maintain, repair, replace, relocate, reinstall and remove therein, thereon, thereover or therefrom Grantee's communication system (the "System"), in the Right of Way. The "System" shall have the meaning attributed to it in the Right of Way Agreement.

2. Subject to certain terms set forth in the Right of Way Agreement, Grantor also hereby grants to Grantee an indefeasible right of use in and to LG&E towers, poles and other structures erected for power transmission, including all attendant equipment, structures and power sources, or used for the attachment of electric power transmission facilities ("Towers") along the Right of Way.

3. Pursuant to the terms of the Right of Way Agreement, the rights granted therein commence on \_\_\_\_\_ (the "Commencement Date") and run for a term of forty (40) years, with renewal options exercisable by MCI for six (6) consecutive terms of ten (10) years each.

4. Any and all property constructed and/or installed and subsequently operated, maintained, reinstalled, replaced, relocated and/or removed by Grantee, or at the direction of Grantee, shall be and remain at all times the personal property of Grantee regardless of the manner or method of attachment to or installation in, on, upon, over, under, across, along and through the Right of Way.

5. Subject to certain terms set forth in the Right of Way Agreement, Grantee and its successors and assigns shall have the right, at any time and from time to time, to assign, lease, sublease, license, sublicense, mortgage, pledge, relinquish possession or control of, or otherwise transfer or apportion, in whole or in part, its rights and/or interests under the Right of Way Agreement, the System, or any segment(s), facilities or any part thereof.

6. In the event of a conflict between the terms and provisions of this Memorandum of Easement and those of the Right of Way Agreement, the terms and provisions of the Right of Way Agreement shall govern.

7. This Memorandum of Easement is executed for the purpose of recordation in the appropriate land records in order to give notice of the Right of Way Agreement and certain of its terms, provisions and conditions, and this Memorandum of Easement is not intended, and shall not be construed to define, limit or modify the Right of Way Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Memorandum of Easement to be signed and their corporate seals affixed by their properly and duly authorized officers as of the \_\_\_ day of \_\_\_\_\_, \_\_\_\_.

ATTEST:

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[LOUISVILLE GAS AND ELECTRIC  
COMPANY]  
[OHIO VALLEY TRANSMISSION  
CORPORATION]

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST:

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

MCI TELECOMMUNICATIONS  
CORPORATION

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_

WPPAT598/502

STATE OF \_\_\_\_\_ )  
 )  
COUNTY OF \_\_\_\_\_ )

Personally appeared before me, \_\_\_\_\_,  
a Notary Public, \_\_\_\_\_ and \_\_\_\_\_,  
with whom I am personally acquainted, and who acknowledge that  
they executed the within instrument for the purposes therein  
contained, and who further acknowledge that they  
are \_\_\_\_\_ and \_\_\_\_\_,  
respectively, of Louisville Gas and Electric Company, and are  
authorized by the corporation to execute this instrument on  
behalf of the corporation.

WITNESS my hand, at office, this \_\_\_\_\_ day  
of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

STATE OF \_\_\_\_\_ )  
 )  
COUNTY OF \_\_\_\_\_ )

Personally appeared before me, \_\_\_\_\_,  
a Notary Public, \_\_\_\_\_ and \_\_\_\_\_,  
with whom I am personally acquainted, and who acknowledge that  
they executed the within instrument for the purposes therein  
contained, and who further acknowledge that they  
are \_\_\_\_\_ and \_\_\_\_\_,  
respectively, of Ohio Valley Transmission Corporation, and are  
authorized by the corporation to execute this instrument on  
behalf of the corporation.

WITNESS my hand, at office, this \_\_\_\_\_ day  
of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

STATE OF \_\_\_\_\_)  
  )  
COUNTY OF \_\_\_\_\_)

Personally appeared before me, \_\_\_\_\_,  
a Notary Public, \_\_\_\_\_ and \_\_\_\_\_,  
with whom I am personally acquainted, and who acknowledge that  
they executed the within instrument for the purposes therein  
contained, and who further acknowledge that they are Vice  
President and Assistant Secretary, respectively, of MCI  
Telecommunications Corporation, and are authorized by the  
corporation to execute this instrument on behalf of the  
corporation.

WITNESS my hand, at office, this \_\_\_\_\_ day  
of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

APPENDIX C

1. Such matters as set forth in the instruments of conveyance by which LG&E has received its rights.
2. Franchise for applicable cities.
3. Permits granted by Kentucky Department of Transportation.
4. Permits and Crossing Agreements between LG&E and other utilities, governmental agencies and railroads.
5. All matters and interests of others which your title search revealed.