



CITY OF RICHMOND

REPORT TO COMMITTEE

TO: Public Works and Transportation Committee **DATE:** February 4, 2000
FROM: Jeff Day, P. Eng.
Director, Engineering **FILE:** 1000-01
RE: **Utility Access Agreement with AT&T Canada Telecom Services Company
(Formerly MetroNet)**

STAFF RECOMMENDATION

That the attached Utility Access Agreement with AT&T Canada Telecom Services Company be approved for endorsement as it is regulated by Bylaw No. 6896 for the use of city streets by telecommunication companies.

Jeff Day, P. Eng.
Director, Engineering

FOR ORIGINATING DIVISION USE ONLY		
ROUTED TO:	CONCURRENCE	CONCURRENCE OF GENERAL MANAGER
Law	Y <input type="checkbox"/> N <input type="checkbox"/>	
Budget	Y <input type="checkbox"/> N <input type="checkbox"/>	

STAFF REPORT

ORIGIN

On February 22, 1999 Council adopted the bylaw cited as "Federally Governed Telecommunication Company Access to City Road Rights-of-Way Regulation Bylaw No. 6896".

In 1998, the City received an application from MetroNet Communications Group Inc. (now merged with AT&T) to install telecommunication facilities within City Rights-of-Way. On January 21, 2000, after several months of negotiation with City staff, AT&T Canada Telecom Services Company (Formerly MetroNet) made application to the City to approve the attached agreement.

ANALYSIS

The Federal Telecommunications Act gives municipalities the right to negotiate access agreements with telecommunications companies governed by the act.

Staff have reviewed the proposed agreement as attached. Attachment 1, **hilites** all of the revisions which are specific to this agreement and as they affect the City's master Utility Access Agreement under cover of Bylaw No. 6896.

The important features of this proposed agreement with AT&T Canada Telecom Services Company are:

1. FCM principles are upheld;
2. This agreement can be amended on a one year notice;
3. Richmond assumes no liability in the event of damage; and
4. Richmond assumes no liability for relocation costs (Unlike with Telus, Hydro etc.).

In December 1999, the City of Vancouver filed an application with the CRTC for a ruling on the 'Terms and Conditions for Access to Municipal Property in the City of Vancouver'. In late December 1999, the CRTC announced their Public Notice to receive submissions from all interested parties. Subsequently, in January 2000, staff made a joint submission with the City of New Westminister to the CRTC, regarding these matters as they relate to the City of Richmond and the City of New Westminister.

When the CRTC ruling comes down or a market rate is determined, the City may request to meet with the Company to discuss the adjustment of the fees or as provided in Article 14 (2), the City can terminate this Agreement upon 12 months written notice to the Company.

FINANCIAL IMPACT

The City is guaranteed a maximum annual compensation in the amount of \$10,000.00 per year calculated at a rate of \$6.00 per lineal meter of Equipment installed by the Company. This fee calculation amount is similar to a lineal meter rate charged in Delta.

CONCLUSION

Staff recommend approval to proceed with endorsement of this agreement between the City and AT&T Canada Telecom Services Company. The flexibility and protection from liabilities provided in this agreement, sufficiently protects the City's interests and the compensation amount establishes a basis for negotiating future agreements with other companies

Bill Jones
Supervisor, Infrastructure Planning

BJ:bj

Revisions To The City's Master 'Utility Access Agreement' Per Bylaw No.6896

(*Specific To This AT&T Canada Agreement)

Clause (c), Page 1 – **Added** "...within the City and generally shown (excluding the plans of lateral connections to customers) in plans attached hereto as Schedule AB ; and"

Article 2, Page 2 – **Deleted** "...setting out the location of the Equipment in the Service Corridor, copies of which are attached hereto as Schedule "A"."

Article 4, Page 3 – **Added** "Notwithstanding Clause 2 and 3, the Company..."

Article 5(a), Page 3 – **Added** "...at the General Manager, Engineering & Public Works sole discretion **acting reasonably**,"

Article 7, Page 4 – **Added** "...the installation of any of the equipment in a **mutually acceptable** form..."

Article 9, Page 5 – **Added** "The Company shall provide to the General Manager, Engineering & Public Works a list of **at least three** 24 hour emergency contact personnel (**at least one of which is based in the Lower Mainland**) for the Company..."

Article 10, Page 5 – **Revised** "Upon receipt of **ninety (90)** days notice..."(* Rev. from 30 days)

Article 10, Page 5 – **Added** "...any work in connection with the Service Corridor as may be required by the City **for municipal purposes**, ...".

Article 14, Page 6 – **Revised** completely to read "**(1) Subject to Article 14(2), this Agreement, shall commence upon the date of execution and shall, unless renewed, terminate 5 years after the first day of the month in which the Agreement is executed. The Agreement shall automatically renew for successive 5 year period without limitation to the number of renewal periods.**

" 14 (2) Either party may, upon twelve (12) months written notice to the other, terminate this agreement. On the day so named in such notice, this Agreement and all rights and privileges thereunder, shall come to an end, provided that notwithstanding such termination the Company shall continue to be liable to the City for all payments due and obligations incurred thereunder prior to the date of such termination, unless by mutual agreement, the parties establish terms for discontinuing all provisions for payment and all other obligations incurred under the Agreement being terminated."

(Article 14, **Previously read...** " This Agreement, shall commence upon the date of execution and shall, unless renewed, terminate 5 years after the first day of the month in which the Agreement is executed. The Agreement shall automatically renew for successive 5 year period without limitation to the number of renewal periods unless either the City or the Company give written notice of cancellation to the other not less than six (6) months prior to the expiration of this Agreement or any renewal term upon which this Agreement shall terminate. On the day so named in such notice, this Agreement and all rights and privileges thereunder, shall come to an end, provided that notwithstanding such termination the Company shall continue to be liable to

the City for all payments due and obligations incurred thereunder prior to the date of such termination, unless by mutual agreement, the parties establish terms for discontinuing all provisions for payment and all other obligations incurred under the Agreement being terminated.)

Article 15, Page 7 – **Added** “...and administration of the Agreement, **which fee is included in the fee set out in Article 16 below.**”

Article 16, Page 6 – **Revised** completely to read “**The Company agrees to pay to the City an annual fee of \$6.00 per linear trench meter of Equipment installed after the execution date of this Agreement and located in the Service Corridor to a maximum of ten thousand (\$10,000.00) dollars per year. The first such payment shall be due and payable on the date this Agreement is executed and yearly thereafter. Fees shall be credited to the Company’s annual fee where the installation of the Equipment is not completed.**

Fees payable under this section may be reduced by mutual agreement in consideration for in-kind services provided to the City by the Company.

Three months prior to the end of each five year period, the parties shall meet and use their best efforts to reach an agreement on the adjustment of fees and if no such agreement has been reached by the date which is one month prior to the end of the five year period, the adjustment of fees shall be determined by a single arbitrator pursuant to the Commercial Arbitration Act, 1996 RSBC 55 as amended from time to time.”

(Article 16, **Previously read...** “ The Company further this covenant and agrees to pay \$____ as a fee for using the Service Corridors.)

Article 17, Page 7 – **Added** “...to the satisfaction of the General Manager, Engineering & Public Works, **acting reasonably.**”

UTILITY ACCESS AGREEMENT

THIS AGREEMENT made this ____ day of _____, 19____

BETWEEN

CITY OF RICHMOND
7577 Elmbridge Way
Richmond, BC V6X 2Z8
(the "City")

AND:

AT&T CANADA TELECOM SERVICES COMPANY
2200, 401 West Georgia Street
Vancouver, BC V6B 5A1
(the "Company")

WHEREAS:

- (a) The Company operates a communications undertaking by transmitting signals and information through its facilities;
- (b) The Company is regulated by the Canadian Radio-Television and Telecommunications Commission to operate in the area designated in the Company's licence, such area including all or a portion of the land within the boundaries of the City;
- (c) The Company wishes to install and maintain wires, fibre-optic cables, ducts, conduits, manholes and other accessories, structures and equipment including lateral connections (collectively, the "Equipment") in, on, under, over, along and across highways, streets, road allowances, lanes, bridges, tunnels, viaducts and any other ways open to public use (singularly a "Service Corridor" and collectively, the "Service Corridors") within the City and generally shown (excluding the plans of lateral connections to customers) in plans attached hereto as Schedule A; and

- (d) The City is willing to permit the use of Service Corridors where in its judgement such use will not unreasonably interfere with its own service requirements and use of the streets including the consideration of the economy and safety and any rights or privileges previously conferred or hereafter conferred by the City by contract or otherwise to others not parties to this Agreement to use any of the Service Corridors;

NOW THEREFORE in consideration of the sum of TEN DOLLARS (\$10) paid by each of the parties to the others and of the premises mutual covenants herein contained, the City and the Company each agree with each other as follows:

1. The City hereby agrees to permit the Company to use the Service Corridors for the purpose of installing, maintaining and removing the Equipment subject to the terms and conditions hereinafter set forth and in accordance with all federal, provincial and municipal statutes, laws and bylaws or other rules and regulations pertaining to the application and use of the Service Corridors or the Equipment.
2. The Company shall not install any of its Equipment in, on, under, over, along or across a Service Corridor or other Municipal-owned property without first obtaining the written approval of the General Manager, Engineering & Public Works with regard to the proposed location of the Equipment in, under, over, above and across the Service Corridor and second providing plans to the General Manager, Engineering & Public Works, setting out the location of the Equipment in the Service Corridor.
3. Prior to commencing work of any kind in, on, under, over, along or across a Service Corridor or other Municipal-owned property, including the installation, maintenance and removal of its Equipment, the Company shall obtain the prior written approval for such work from the General Manager, Engineering & Public Works and the General Manager, Engineering & Public Works may establish the terms and conditions under which the work may be conducted by the Company. As a condition of such approval, the City may, at its sole discretion, require that the Company submit detailed engineering plans to the General Manager, Engineering & Public Works with respect to the work to be conducted on a Service Corridor or on other Municipal owned property.

4. Notwithstanding Clause 2 and 3, the Company may carry out routine maintenance, placement on or in existing support structures, field testing and subscriber connections on existing equipment within approved service corridors, without the consent of the City, but in no case shall it carry out any excavation without the City's prior consent.

5. All work conducted by the Company on a Service Corridor or other Municipal-owned property, including installation, maintenance and removal of its Equipment, is subject to the following conditions:

- (a) all work shall be conducted and completed to the satisfaction of the General Manager, Engineering & Public Works, at the General Manager, Engineering & Public Works sole discretion acting reasonably;
- (b) the portions of the Equipment which pass over or under existing utilities or cross beneath streets shall be placed in a carrier pipe or be encased in concrete;
- (c) if the Company breaks the surface of a Service Corridor, it shall repair and restore the surface of the Service Corridor to substantially the same condition it was in before such work was undertaken by the Company and to the satisfaction of the General Manager, Engineering & Public Works. If the Company fails to repair and restore a Service Corridor to the satisfaction of the General Manager, Engineering & Public Works within twenty (20) days of being notified by the City, the City may effect such repairs and charge all normal City costs related thereto to the Company in accordance with paragraph 11 hereof;
- (d) if the City requires the installation, maintenance or removal of the Equipment to be stopped for any reason, the Company shall cease all such

installation, maintenance, or removal of the Equipment forthwith upon receipt of notice from the City, and

- (e) the Company is responsible for all installation, maintenance and removal of the Equipment including the cost of such work.

6. The Company represents and warrants to and covenants and agrees with the City that:

- (a) after completion of any work related to the installation, maintenance, repair, replacement or removal of the Equipment, the Company shall leave the Service Corridors in a sanitary, neat, tidy and safe condition and free from nuisance, all to the satisfaction of the General Manager, Engineering & Public Works;
- (b) the Company shall not suffer or permit any lien to be filed or registered against the Service Corridors or other Municipal-owned property;
- (c) if this Agreement is terminated by the City, all the unfulfilled covenants, indemnities and obligations of the Company hereunder shall survive such termination; and
- (d) the City has made no representations or warranties as to the state of repair of the Service Corridors or the suitability of the Service Corridors for any business, activity or purpose whatsoever and the Company hereby agrees to take the Service Corridors on an "as is" basis.

7. The Company shall provide "as built" drawings to the City within two months of completing the installation of any of the Equipment in a mutually acceptable form specified by the General Manager, Engineering & Public Works.

8. The Company shall, at no cost to the City, provide locations of its Equipment within 24 hours of receiving a request by the City.
9. The Company shall provide to the General Manager, Engineering & Public Works a list of at least three 24 hour emergency contact personnel (at least one of which is based in the Lower Mainland) for the Company and shall ensure that the aforementioned list is always current.
10. Upon receipt of ninety (90) days notice from the City, the Company shall, at its own expense, relocate its Equipment within a Service Corridor, or perform any other work in connection with the Service Corridor as may be required by the City for municipal purposes, provided that in cases of emergency, the City may take any measures deemed necessary for public safety with respect to the Equipment that may be required in the circumstances as the City shall determine, and the Company shall reimburse the City for all expenses thereby incurred.
11. If the Company fails to complete the relocation of the Equipment in accordance with paragraph 10 or fails to repair the Service Corridors or do anything else required by the Company pursuant to this Agreement in a timely and expeditious manner to the satisfaction of the General Manager, Engineering & Public Works, the City may, but is not obligated to, at its option complete such relocation or repair and the Company shall pay the cost of such relocation or repair to the City forthwith plus an overhead equal to fifteen percent (15%) of such cost and in default of payment thereof, the amount of such cost with interest at the rate of two percent (2%) per annum above the prime lending rate of the Canadian Imperial Bank of Commerce carrying on business in the City shall be due and payable by the Company to the City upon receipt by the Company of an invoice setting out such costs and interest.
12. The City is not responsible, either directly or indirectly, for any damage to the Equipment that may occur during its installation, maintenance or removal by the Company, nor is the City liable to the Company for any losses, claims, charges, damages and expenses whatsoever suffered by the Company including claims for loss of revenue or loss of profits, on account of the actions of the City, its agents or employees, working in, under, over, along, upon and across its highways and Service Corridors or other Municipal-owned property, whether or not such damages,

losses, costs, actions, causes of action, claims, demands, builders liens, liabilities, expenses, indirect or consequential damages (including loss of profits and loss of use) are related in any way to negligence or wilful acts or omissions on the part of the City, its officers, employees or agents.

13. The Company covenants and agrees to indemnify and save harmless the City, its agents, officers, elected officials, employees and assigns from and against all losses, claims, including a claim for injurious affection, charges, damages and expenses which the City may at any time or times bear, sustain or suffer, by reason, or on account of the placement, installation, relocation, maintenance or use of the Equipment in, on, under, over, along or across a Service Corridor, and the Company will, upon demand and at its own sole risk and expense, defend any and all suits, actions or other legal proceedings which may be brought or instituted by third persons against the City on any such claim, demand or cause of action, and will pay and satisfy any judgment or decree which may be rendered against the City in any such suit, action or other legal proceeding, and will reimburse the City for any and all legal expenses incurred in connection therewith. The Company's obligation to indemnify and save harmless the City shall survive the termination of this Agreement.

14. (1) Subject to Article 14(2), this Agreement, shall commence upon the date of execution and shall, unless renewed, terminate 5 years after the first day of the month in which the Agreement is executed. The Agreement shall automatically renew for successive 5 year period without limitation to the number of renewal periods.

(2) Either party may, upon twelve (12) months written notice to the other, terminate this agreement. On the day so named in such notice, this Agreement and all rights and privileges thereunder, shall come to an end, provided that notwithstanding such termination the Company shall continue to be liable to the City for all payments due and obligations incurred thereunder prior to the date of such termination, unless by mutual agreement, the parties establish terms for discontinuing all provisions for payment and all other obligations incurred under the Agreement being terminated.

15. The Company covenants and agrees to pay to the City an annual licence fee for each year or portion thereof in which this Agreement is in effect to cover the approval and administration of the Agreement, which fee is included in the fee set out in Article 16 below.

16. The Company agrees to pay to the City an annual fee of \$6.00 per linear trench meter of Equipment installed after the execution date of this Agreement and located in the Service Corridor to a maximum of ten thousand (\$10,000.00) dollars per year. The first such payment shall be due and payable on the date this Agreement is executed and yearly thereafter. Fees shall be credited to the Company's annual fee where the installation of the Equipment is not completed.

Fees payable under this section may be reduced by mutual agreement in consideration for in-kind services provided to the City by the Company.

Three months prior to the end of each five year period, the parties shall meet and use their best efforts to reach an agreement on the adjustment of fees and if no such agreement has been reached by the date which is one month prior to the end of the five year period, the adjustment of fees shall be determined by a single arbitrator pursuant to the Commercial Arbitration Act, 1996 RSBC 55 as amended from time to time.

17. Security in a form acceptable to the City in an amount equal to fifty percent of the construction costs of the installation of the Equipment shall be deposited with the City prior to any construction. The security will be released by the City to the Company upon acceptance of the installation of the Equipment and repair of the Service Corridor to the satisfaction of the General Manager, Engineering & Public Works, acting reasonably.

18. The City and the Company mutually agree that should the Company fail to carry out any of the terms, covenants and conditions herein contained or default in any of its obligations under the terms hereof or fail within thirty (30) days after receiving written notice from the City to correct any such failure capable of correction, then this Agreement shall thereupon be null and void

and of no affect and the Company shall thereupon remove all its Equipment from the Service Corridors.

19. This Agreement shall be binding upon and shall enure to the benefit of the parties hereto and their respective successors and assigns. The Company shall not assign, transfer or sublet any rights or privileges granted hereunder without the prior written consent of the City.

20. No use of a Service Corridor under this Agreement shall create or vest in the Company any ownership or property rights in a Service Corridor or any other property belonging to the City, and the Company shall be and remain a mere non-exclusive licensee of the Service Corridor and placement of the Equipment in a Service Corridor shall not create or vest in the City any ownership on property rights to the Equipment.

21. Nothing in this Agreement shall be construed as affecting any rights or otherwise of others not a party to this Agreement to use any Service Corridor in accordance with the City's legal authority.

22. The Company agrees that it shall at its own expense procure and carry or cause to be produced and carried and paid for, full Workers' Compensation Board coverage for itself and all workers, employees, servants and other engaged in or upon any work.

23. The Company shall maintain insurance in sufficient amount and description as will protect the Company and the City from claims for damages, personal injury including death, and for claims from property damage which may arise from the Company's operations in the City under this Agreement, including the use or maintenance of the Equipment on or in the Service Corridors or any act or omission of the Company's agents or employees while engaged in the work of placing, maintaining, renewing or removing the Equipment and such coverage shall include all costs, charges and expenses reasonably incurred with any injury or damage.

24. In addition to the foregoing the Company covenants and agrees that:

- (a) the limits of liability for Personal Injury, Bodily Injury and Property Damage combined shall be for not less than Five Million (\$5,000,000.00) Dollars for each occurrence;
- (b) the Comprehensive General Liability Insurance shall extend to cover the contractual obligations of the Company as stated within this Agreement; and
- (c) all policies shall provide that they cannot be cancelled, lapsed or materially changed without at least thirty (30) days notice to the City by registered mail; and

25. Any notice required or permitted to be given hereunder or any tender or delivery of documents may be sufficiently given by personal delivery or, if other than the delivery of an original document, by facsimile transmission to the City at the following address:

City of Richmond
7577 Elmbridge Way
Richmond, B.C., V6X 2Z8
ATTN: General Manager, Engineering and Public Works
Fax Number: [604] 276-4222

and to the Company at the following address:

AT&T Canada Telecom Services Company
2200 - 401 West Georgia Street
Vancouver, BC , V6B 5A1
ATTN: Vancouver City Manager
Fax: (604) 899-3245

with a copy to:

AT&T Canada Telecom Services Company
16 Flr., 200 Wellington St. W.

Toronto, ON M5V 3G2

ATTN: General Counsel

Fax: (416) 345-2070

Any notice may also be given by prepaid registered mail mailed within the Province or Territory of and such notice shall be effective five (5) days following the date of mailing, except in the event that there shall be a disruption in postal services at the date of mailing, in which case notice shall be effective by personal delivery or a facsimile transmission as stated above.

26. This Agreement is the entire agreement between the City and the Company regarding the subject of this Agreement and it can be amended or supplemented only by a document executed in writing by both the City and the Company.

27. This Agreement benefits and binds the City and the Company and the successors of each of them.

28. If any term of this Agreement is found to be invalid, illegal, or unenforceable by a court having the jurisdiction to do so, that term is to be considered to have been severed from the rest of this Agreement and the rest of this Agreement remains in force unaffected by that finding or by the severance of that term.

29. This Agreement creates contractual rights only between the City and the Company and not an interest in the Service Corridors and the Company covenants and agrees with the City that the Company shall desist always from any registration of this Agreement or of any right howsoever arising under it.

30. No alleged waiver or breach of this Agreement is effective unless it is an express waiver in writing of the breach in respect of which it is asserted against the party alleged to have given the waiver. No waiver by a party of any breach of the Agreement operates as a waiver of any other breach of this Agreement.

31. In this Agreement, unless the context otherwise requires, the singular includes the plural and the masculine includes the feminine gender and a corporation.

32. This Agreement shall be governed by and construed and enforced in accordance with the laws of the Province of British Columbia and the laws of Canada which may be applicable to a party in the Province of British Columbia.

IN WITNESS WHEREOF the parties hereto have executed this Agreement by their duly authorized representatives.

The Corporate Seal of the City
was hereunto affixed in the presence of:

Mayor

City Clerk

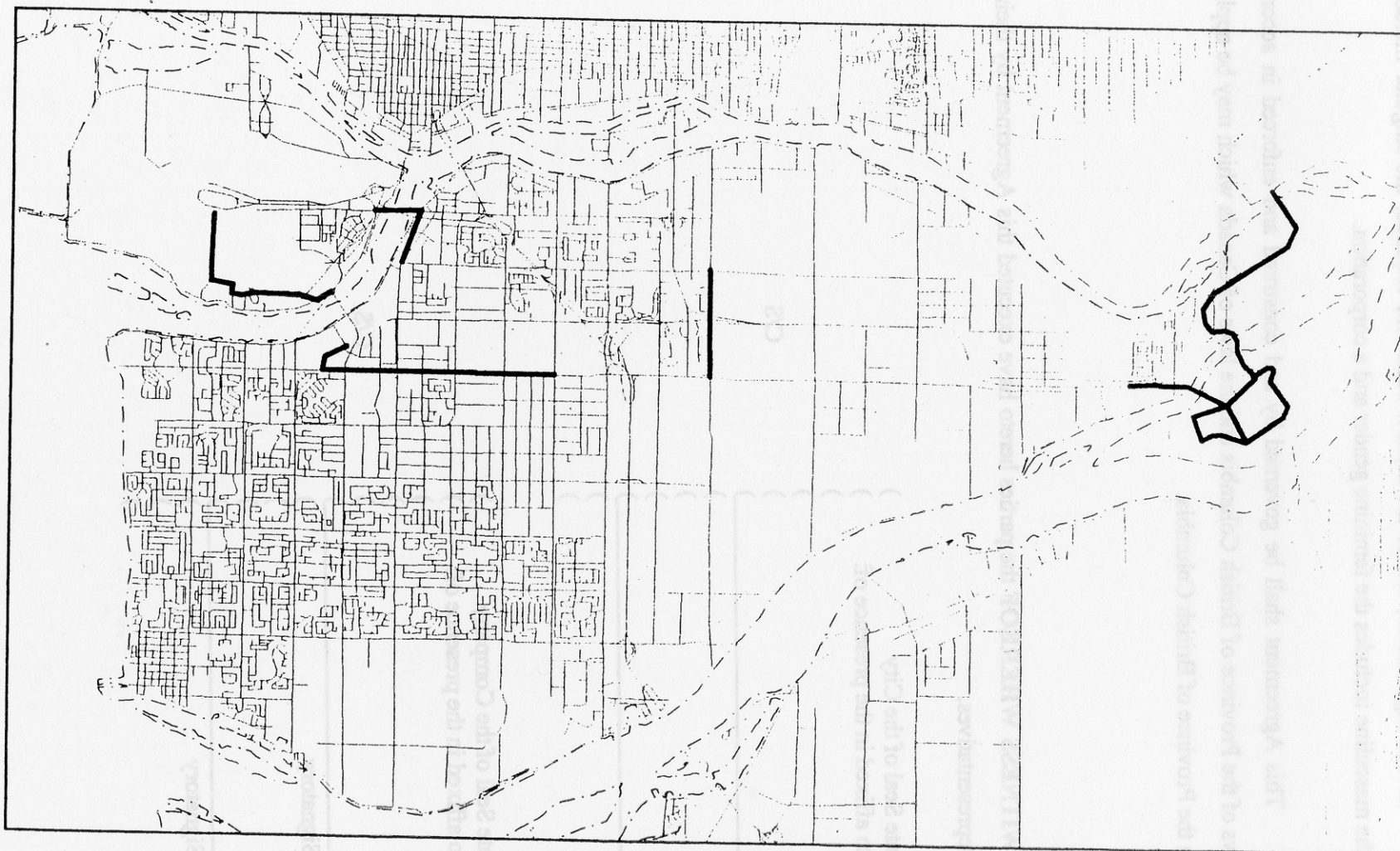
)
)
)
)
) C/S
)
)
)
)
)

The Corporate Seal of the Company
was hereunto affixed in the presence of:

Authorized Signatory

Authorized Signatory

)
)
)
)
) C/S
)
)
)
)
)



RICHMOND FIBER NETWORK

Planned Fiber

