

**AMENDED AND RESTATED FIBER OPTIC CABLE
ON FREEWAYS IN MISSOURI AGREEMENT**

This Amended and Restated Fiber Optic Cable on Freeways in Missouri Agreement (the "Agreement"), is made as of June 5, 2003, by and among Digital Teleport, Inc., a Missouri corporation ("Digital Teleport"), the Missouri Highway and Transportation Commission ("MHTC") and the Missouri Department of Transportation (collectively referred to herein with MHTC as "MoDOT"), each a "Party" and together, the "Parties".

SECTION 1. Recitals

A. Digital Teleport and MHTC are parties to that certain Fiber Optic Cable on Freeways in Missouri Agreement dated as of July 29, 1994, which was amended by that certain amendment effective September 22, 1994, that certain Second Amendment effective November 7, 1994 and that certain Third Amendment effective October 9, 1996 (collectively, the "Old Agreement").

B. MHTC and Digital Teleport entered into that certain Settlement Agreement and Agreement to Restate the Digital Teleport/MoDOT Agreement, dated as of October 17, 2002 (the "Settlement Agreement").

C. Whereas, Digital Teleport has filed the Settlement Agreement along with a motion under Federal Rule of Bankruptcy Procedure 9019 seeking approval from the Federal Bankruptcy Court in the Eastern District of Missouri (the "Bankruptcy Court") for the compromise contemplated by the Settlement Agreement.

D. MoDOT obtained authority from MHTC to enter into the Settlement Agreement on October 11, 2002 and obtained required authorization from MHTC to enter into this Agreement on June 5, 2003.

E. To effect the terms of the Settlement Agreement and to amend and restate the terms of the Old Agreement, in their entirety, the parties hereto have entered into this Agreement.

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereto agree as follows:

SECTION 2. Easement

2.1. This Agreement specifies the terms and conditions agreed upon by the Parties for the construction, operation and maintenance by Digital Teleport of fiber optic communication facilities longitudinally on the mainline freeway system in Missouri. This Agreement supersedes and replaces all prior agreements between the Parties, including without limitation the Old Agreement, and all rights and remedies thereunder are fully and forever waived, and all claims thereunder are fully and forever released, subject only to the obligations of the Parties hereunder.

2.2. MoDOT has granted, remised and quit-claimed to Digital Teleport, all of its successors and assigns, and all their respective tenants, subtenants, utility providers, licensees, contractors and agents, subject to the terms and conditions of this Agreement:

(a) an exclusive easement with respect to the installation of fiber optic facilities as described in Section 3.1 on, over under and across the Fiber Optic Cable Corridor in place as of the date of this Agreement (the "Easement Area") for the use, construction, operation, maintenance, repair, replacement and upgrade (collectively, "Operations") of all of Digital Teleport's fibers, cables, conduit, hand holes, equipment shelters and other communication facilities, improvements, equipment and fixtures that exist either above or below ground within MoDOT's rights of way as of the date of this Agreement (the "Existing Facilities"); together with

(b) the right to enter upon the Easement Area and all other portions of MoDOT's rights of way that may be reasonably required to be entered for the purposes of the Operations.

2.3. The easement granted herein shall also include the right of Digital Teleport to construct fiber lateral routes and hand holes to create new fiber connections to the Existing Facilities (whether in the median or otherwise), subject to compliance by Digital Teleport with the provisions of the Policy (defined in Section 10.1) and Section 10.

SECTION 3. Fiber Optic Cable Corridors And Equipment Shelters

3.1. This Agreement applies to Digital Teleport's current facility installations on the roadway system in Missouri along the corridors listed below (the "Fiber Optic Cable Corridors"). The exact location of the Existing Facilities are indicated on the "as-built" plans previously provided to MoDOT, generally along the routes depicted on Exhibits A, C and E attached hereto, which are incorporated herein and made a part of this Agreement. Digital Teleport shall provide MoDOT with updates to the as-built plans within forty-five (45) days of any changes, additions or deletions to the Existing Facilities.

- (a) For purposes hereof, Existing Facilities are identified as follows:
- (1) the St. Louis Freeway System as depicted on Exhibit A hereto.
 - (2) the Kansas City Freeway System as depicted on Exhibit C hereto.
 - (3) the Rural Interstate as depicted on Exhibit E hereto.

(b) Digital Teleport has also constructed certain fiber optic facilities on non-MoDOT rights of way in downtown St. Louis and Kansas City as depicted on Exhibits B and D respectively ("Non-MoDOT Existing Facilities").

3.3. Equipment Shelters Digital Teleport may operate and maintain, equipment shelters for its fiber optic cable and communications system at various sites along the right-of-way as listed below (the "Equipment Shelters"). The exact location of the Equipment Shelters are indicated on the "as built" plans previously provided to MoDOT as depicted on Exhibit F hereto. MoDOT will provide access to MoDOT rights of way for ingress and egress to and from such Equipment Shelters to Digital Teleport, its agents, and employees or authorized contractors who operate fiber and/or maintain equipment in such facilities. Subject to MoDOT prior written approval, Digital Teleport shall be allowed to have other utilities, e.g. electrical and water service, installed to serve its Equipment Shelters.

SECTION 4. Consideration

4.1. In consideration of the mutual covenants and conditions set forth herein, and other good and valuable consideration, including forgiveness of defaults by Digital Teleport in prior agreements and in MoDOT's waiver of future performance of prior agreements, Digital Teleport acknowledges the receipt and sufficiency of consideration, and the Parties agree that Digital Teleport, at no charge or expense to MoDOT other than as explicitly set forth below, shall provide MoDOT with all of the following services and good as consideration, within the time specified herein or if no time is specified within ninety (90) days after the Effective Date (as defined in Section 13(t) below):

(a) Legal title, free and clear of all liens and encumbrances, to six (6) unlit fibers (SMF-28) dedicated to MoDOT in (i) the Existing Facilities installed on the Easement Area and (ii) in the Non-MoDOT Existing Facilities; *provided, however*, that MoDOT has previously utilized some or all of these six (6) strands on various routes in the St. Louis metro area to construct its four (4) ATM ITS rings as depicted on Exhibit H and further *provided*, that Digital Teleport will provide to MoDOT an additional two (2) unlit (dark) fibers SMF-28 (for a total of eight (8) fibers) between the fiber patch panel in the Digital Teleport building at 700 South 21st Street and the Digital Teleport handhole at the Southeast corner of the I-64/Compton Avenue overpass (collectively, the "MoDOT Fibers"). Legal title shall be delivered within ten (10) days of the Effective Date.

In relation to the MoDOT Fibers Digital Teleport agrees as follows:

- (1) Digital Teleport has provided a fiber testing data booklet clearly delineating and identifying MoDOT Fibers with industry standard OTDR traces, continuity tests, power loss ratings and other industry specific characteristics unique to the MoDOT Fibers; and
- (2) MoDOT may in the future, at MoDOT's cost, install its own electronics along the route of the MoDOT Fibers.
- (3) Digital Teleport will promptly and expeditiously complete the splicing and related work to support the St. Louis Intelligent Transportation System ("ITS") as set forth on Exhibit G hereto.
- (4) Digital Teleport will provide to MoDOT access to the MoDOT Fibers at all existing and future Equipment Shelters in the Fiber Optic Cable Corridor and at all existing and future Digital Teleport hand holes containing either splice points or slack coils; *provided, however*, that such requested access does not materially and adversely affect the operations of the Digital Teleport Fiber Optic Network.
- (5) MoDOT may request in writing that Digital Teleport add a new hand hole and splice point along the route of the MoDOT Fiber at which MoDOT may access the MoDOT Fibers for immediate use by MoDOT provided that such requested access does not materially and adversely affect the operations of the Digital Teleport Fiber Optic Network. Digital Teleport will commence installation of any such new hand hole or splice point within thirty (30) days of the applicable request. Digital Teleport will pay for all costs of purchasing and installing only the new hand hole or splice point

and MoDOT will pay for 100% of the actual out of pocket all other expenses incurred by Digital Teleport in physically accessing and splicing the MoDOT Fibers at that new hand hole or splice point. MoDOT will be responsible for all costs of constructing for MoDOT's use any additional lateral fiber route out from that new Digital Teleport hand hole or splice point.

(b) Digital Teleport will continue to provide to MoDOT access to a total of 622 Mbps of bandwidth capacity on the Digital Teleport fiber optic ring from Kansas City to Columbia to Lebanon to Joplin to Kansas City "West Ring" on the Existing Facilities (currently in the form of a SONET OC-12 circuit) which bandwidth will be accessible at the St. Joseph, Kansas City, Springfield, Joplin and Jefferson City district offices through a 622 Mbps connection from each district office to that bandwidth on the West Ring.

(c) Digital Teleport will continue to provide to MoDOT access to a total of 622 Mbps of bandwidth capacity on the Digital Teleport fiber optic ring from St. Louis to Columbia to Lebanon to Rolla to St. Louis "East Ring" on the Existing Facilities (currently in the form of a SONET OC-12 circuit) which bandwidth will be accessible at the St. Louis and Sikeston district offices through a 622 Mbps connection from each such district office to that bandwidth on the East Ring.

(d) Digital Teleport will continue to provide MoDOT access to a total of 2,488 Mbps of bandwidth capacity on the route depicted on Exhibit I in the St. Louis metro area (currently in the form of a SONET OC-48 circuit) to transport the ITS traffic data from the four (4) MoDOT ATM rings back to the MoDOT Traffic Operations Center ("TOC") ("St. Louis ITS Bandwidth").

(e) No later than forty-five (45) days following the Effective Date Digital Teleport will provide to MoDOT:

- (1) a 622 Mbps connection (utilizing the Existing Facilities) between the Hannibal MoDOT district office and the 622 Mbps of bandwidth capacity that is available to MoDOT on the East Ring.
- (2) a 45 Mbps connection (utilizing a DS-3 circuit leased from a third party) between the Macon MoDOT district office and the 622 Mbps of bandwidth capacity that is available to MoDOT on the East Ring.
- (3) a 45 Mbps connection (utilizing a DS-3 circuit leased from a third party) between the Willow Springs MoDOT district office and the 622 Mbps of bandwidth capacity that is available to MoDOT on the East Ring.

(f) If, in the future, MoDOT can demonstrate an immediate need for a connection greater than 45 Mbps to the Macon or Willow Springs district office for MoDOT's Governmental Purposes only, then Digital Teleport will provide such additional bandwidth, subject to availability from 3rd party carriers, within ninety (90) days of such request with evidence of such need, *provided, however*, Digital Teleport shall not be required to provide more than 622 Mbps of bandwidth capacity between the East Ring and either the Macon or Willow Springs district office.

(g) Digital Teleport and MoDOT will jointly design and plan the Kansas City ITS system for MoDOT. Digital Teleport will only be required to provide bandwidth transport

services to MoDOT by installing optical electronics equipment on two (2) Digital Teleport fiber strands on the Existing Facilities and the Non-MoDOT Existing Facilities (which are not MoDOT Fibers) to support this jointly developed Kansas City ITS system ("Kansas City ITS Bandwidth"), and MoDOT will pay for all out of pocket costs incurred by Digital Teleport in excess of \$190,000 to purchase and install that equipment. The bandwidth transport services provided to MoDOT pursuant to sections 5.1(b) through (g) shall be referred to herein as "MoDOT Bandwidth".

(h) Digital Teleport agrees that any maintenance or corrective measures, including replacement of equipment to provide the MoDOT Bandwidth will be performed without charge to MoDOT. Digital Teleport agrees that subject to the force majeure clause of Section 9 in this Agreement, all outages will be restored within twenty-four (24) hours of MoDOT notification to Digital Teleport, at no expense to MoDOT.

(i) Digital Teleport will provide to MoDOT a license to use one (1) standard 19" telecommunications equipment rack in the joint use collocation area of each Equipment Shelter ("MoDOT Racks"). Digital Teleport will provide to MoDOT 30 amps of 48v DC power to each MoDOT Rack through bulk power feeds. MoDOT will provide its own fiber patch panels, power distribution panels, racks and other equipment that will be installed in the MoDOT Rack. The demarcation point for access to the MoDOT Fibers within the Equipment Shelters will be at DTI's fiber distribution panel in the Equipment Shelter.

(j) MoDOT shall have the right to use all MoDOT Fibers and MoDOT Bandwidth provided to MoDOT in this Agreement for any legitimate, state governmental purpose ("Governmental Purpose").

4.2. All access to MoDOT Bandwidth for the district offices and the St. Louis and Kansas City ITS systems that is provided through the Digital Teleport network will be through a dim fiber meet at the location where those services are to be delivered to MoDOT:

(a) Access to the MoDOT Bandwidth at each district office shall be through a dim fiber meet located at a patch panel inside of each district office.

(b) Access to the St. Louis ITS Bandwidth and projects shall be through a dim fiber meet located at existing Digital Teleport hand holes with slack coils or splice cases in the Fiber Optic Cable Corridor.

(c) MoDOT will be responsible for providing all other fiber and optronic equipment necessary to access that MoDOT bandwidth from that dim fiber meet.

(d) MoDOT may also access MoDOT Bandwidth at all Equipment Shelters along the fiber route transporting the MoDOT Bandwidth that have Digital Teleport add/drop optronic equipment that has existing interface capacity and which transports the MoDOT Bandwidth.

4.3. Notwithstanding anything herein to the contrary, the Parties acknowledge and agree that SONET ring protection (i) is the current transport protocol utilized by Digital Teleport in provision of services to its commercial customers in Missouri, and (ii) is the transport protocol that is useful for MoDOT to meet its communications needs on the MoDOT district office network and on the St. Louis and Kansas City ITS networks. Notwithstanding the foregoing, due to the long term nature of this Agreement, Digital Teleport and MoDOT will work cooperatively to determine, from time to time, whether the transport protocol utilized by Digital

Teleport in delivering the MoDOT bandwidth should change in order to keep that protocol consistent with the prevailing transport protocol utilized by Digital Teleport in providing services to the commercial customers of Digital Teleport and utilized by MoDOT to meet its communications needs for its district office network and the ITS networks. When Digital Teleport and MoDOT agree that a change in the protocol is needed, (i) any costs to replace or modify the Digital Teleport equipment used to transport the MoDOT Bandwidth to the dim fiber meet point in the hand holes shall be paid by Digital Teleport, and (ii) any costs to replace or modify the MoDOT equipment that receives the MoDOT Bandwidth at the MoDOT Bandwidth service delivery locations shall be paid by MoDOT.

4.4. If MoDOT shall have an immediate need for additional similar telecommunications services along I-94 between I-70 and I-64, then Digital Teleport shall obtain for MoDOT, at Digital Teleport's cost, such bandwidth transport services from a third party to the extent then available from a third party. The level and means to deliver such services that must be provided by Digital Teleport shall not be required to exceed the prevailing level of services that MoDOT provides for its own use through dark fiber provided to MoDOT along the System Additions (as set forth in Section 6.1 below).

SECTION 5. Transfer of Digital Teleport Fibers

5.1. Digital Teleport has the right to sell, lease, license, grant title to any third party or enter into any similar transaction regarding the Existing Facilities to any third party without obtaining an additional permission or utility permit for either Digital Teleport or such third party from MoDOT. All agreements of Digital Teleport with third parties regarding such transactions shall contain a provision that (i) expressly excludes the right of any third party to take any interest in or right to the MoDOT right of way and (ii) provides that the third party will comply in all material respects with MoDOT health and safety regulations while accessing any equipment buildings located on the MoDOT right of way.

SECTION 6. Facility Relocation

6.1. The location of the easement granted herein shall be relocated at MoDOT's sole discretion within MoDOT's rights of way, provided that MoDOT shall bear the full cost of any relocation of all Existing Facilities which it requires of Digital Teleport after installation thereof *provided, however*, that MoDOT shall have no obligation to pay for such relocation for Existing Facilities along the following routes:

- (a) Route 376-Route 67 from I-270 to Mississippi River
- (b) Route 94 from I-70 to Hemstath Rd
- (c) Route 61 from I-70 to Route 36 (Hannibal)
- (d) Route 65 from I-44 to Division St(Springfield)
- (e) Route 71 from I-435 to I-44 and continuing to Arkansas State line(future I-49)

6.2. If MoDOT requires that the Existing Facilities to be relocated to a location in MoDOT's airspace which is already occupied by MoDOT utility corridor, or another utility is occupying that location by permit or variance and the Existing Facilities cannot be relocated in a feasible or prudent manner elsewhere in MoDOT's rights of way in that vicinity, then MoDOT shall have the option to either acquire additional right-of-way in which to place the Existing Facilities in a manner acceptable to Digital Teleport, or to remove or relocate the other utility or

utility corridor at MoDOT's sole expense, so that Digital Teleport may relocate its Existing Facilities in that corridor, as necessary.

SECTION 7. Exclusivity

7.1. No other fiber optic cable will be permitted to be installed in the MoDOT rights of way along the route of the Existing Facilities during the Term of this Agreement; *provided, however,* that this provision shall not prohibit another firm's fiber optic cable from crossing the Fiber Optic Cable Corridor at approximately a right angle, at a location to be mutually agreed by MoDOT and Digital Teleport. Furthermore, nothing herein shall limit MoDOT's authority to install its own independent fiber optic cable within MoDOT's airspace exclusively for Governmental Purposes.

SECTION 8. Termination

8.1 Rights Granted: This agreement may be terminated by either party at its option upon material breach by the other party, subject to the right to cure in Section 8.2.

8.2 Right to Cure: In the event that a party determines in good faith that any event has occurred which would give it the right to terminate this Agreement that party shall notify the other party of said event in writing, after which, notwithstanding anything else herein to the contrary, the other party shall have a period of ninety (90) days from the date of such notice to cure such violation of the terms of this Agreement. This ninety (90) day period may be extended upon the mutual written agreement of the parties.

8.3 Termination of the Agreement: When this Agreement and the rights it conveys is terminated, Digital Teleport shall have the option to:

(a) Remove all fiber optic cable equipment shelters and hand holes from MoDOT's property at Digital Teleport's own cost and repair all damages to MoDOT's property which result. Empty conduit may be abandoned in place without removal. Digital Teleport shall have one-hundred and eighty (180) days from the termination of this Agreement to complete that work. Digital Teleport shall not block or materially delay, impede or interrupt traffic to effect the removal of its property and shall not take any action which creates a dangerous condition of public property or which would endanger any pedestrian or occupant of a motor vehicle. If Digital Teleport elects this option, Digital Teleport must remove all hazardous or regulated wastes it generates or is responsible for (directly or indirectly) from MoDOT property in accord with all federal, state and local environmental laws, regulations and ordinances.

(b) Sell to MoDOT the Existing Facilities or any portion thereof which is acceptable to MoDOT, at a price to be mutually agreed upon.

(c) Sell to any third party the Existing Facilities *provided, however,* that such third party can show reasonable evidence of its ability to comply with the Policy.

(d) Abandon all Existing Facilities in place or any portion thereof, in a written notice to MoDOT, in which instance that portion of the Existing Facilities becomes the sole and exclusive property of MoDOT; *provided, however,* Digital Teleport may not abandon any items or equipment which may contain or create hazardous or regulated wastes or materials without

prior notice to MoDOT of the description and location of those materials. MoDOT may refuse to accept the abandonment of all or any portion of the Existing Facilities tendered by Digital Teleport until any hazardous or regulated wastes or materials have been removed in accord with all applicable laws. In any event, Digital Teleport remains liable for the remediation and full restoration of any damaged real or personal property and for injuries or death resulting from the presence of any hazardous or regulated wastes or materials on or adjacent to MoDOT's property, which wastes or materials are or were owned, placed or operated by Digital Teleport.

SECTION 9. Force Majeure

9.1. If either Party's performance of its obligations hereunder becomes impossible or impractical because of an act of God, war, riot, fire, explosion, accident, flood, sabotage, inclement weather, strikes, lockouts or injunctions or any other cause beyond the reasonable control of such party, such party shall be given a reasonably adequate time to remedy such situation. These conditions do not constitute grounds for avoidance of a party's obligations hereunder but merely excusable delay. A condition, however, will not excuse performance if it does not directly affect performance under the terms hereof.

(a) The Party invoking this provision shall immediately notify the other party orally and promptly thereafter provide notice in writing of the cause for the delay, restriction or limitation of its ability to perform, together with an estimate of the extent to which its performance has been and will be delayed.

(b) Should a "Force Majeure" delay the performance of this Agreement for a period in excess of thirty (30) days, the Party delayed from performing shall on or before the 1st and 15th day of each calendar month thereafter notify the other Party of its best estimate of the length of time such "Force Majeure" will remain in effect and, notwithstanding any provision herein to the contrary, the other Party may take such reasonable actions as will mitigate any damages.

SECTION 10. Median Fiber Access

10.1. MoDOT's Utility Accommodation Policy and the exceptions thereto granted by MoDOT in order to implement and comply with This Agreement on the date of the Old Agreement (the "Policy") shall apply to all aspects of construction, operation, and maintenance of Digital Teleport's communication facilities. This Policy may be amended from time to time by MoDOT, *provided, however,* that no changes to the Policy will change the rights or obligations of Digital Teleport under this Agreement.

10.2. It is acknowledged and agreed that MoDOT has granted Digital Teleport exceptions to the Policy including, without limitation, allowing longitudinal installation of fiber optic cables within the freeway right-of-way, provided that this exception does not compromise other provisions of the Policy, including the prohibition of maintenance access from the freeway roadway *provided, however,* that prior to being granted the right to construct fiber lateral routes to Existing Facilities in the interstate median, Digital Teleport shall certify to MoDOT that constructing such fiber lateral routes to the nearest interchange that has an existing hand hole outside the median is at least fifteen percent (15%) more costly to Digital Teleport than constructing the new fiber lateral route to establish a hand hole point of connection in the median. Standard utility permits will be issued covering all the installations.

SECTION 11. Maintenance

11.1. Digital Teleport will be responsible for the maintenance and Missouri One Call utility locate duties regarding the Existing Facilities (including the MoDOT Fibers) accordance with Digital Teleport's company policies.

11.2 Digital Teleport shall maintain and repair the MoDOT Fibers at Digital Teleport's expense. Digital Teleport disclaims any and all warranties, express or implied, as to the use or condition of the MoDOT Fibers and Rack Spaces or any other matter hereunder, including without limitation warranties of merchantability, workmanship, quality or fitness for a particular purpose and MoDOT agrees to look solely to the manufacturer of all materials and equipment subject to the grant of title or license to MoDOT hereunder for any recovery for claims of MoDOT relating to such materials and equipment.

11.3. All plans for work on the Existing Facilities involving excavation or trenching shall be submitted to MoDOT's State Traffic Engineer for approval at least thirty (30) days prior to the desired date of such work. Attachment to any structure shall be submitted thirty (30) days prior to installation. MoDOT will approve or disapprove any such submissions within twenty-one (21) days of receipt thereof. MoDOT's approval or disapproval of such plans shall be made in accordance with the Policy.

SECTION 12. Taxes And Liens

12.1. Digital Teleport shall promptly pay and discharge all personal property taxes, assessments, fees, and other similar charges levied or assessed against it or its assets situated on MoDOT right-of-way, and any and all other charges levied or assessed by reason of Digital Teleport's use and occupancy of the right-of-way which become due during the term of this Agreement which are hereby declared the obligation of Digital Teleport under this Agreement. Digital Teleport shall keep the right-of-way free from any liens arising from work performed, materials furnished or obligations incurred by Digital Teleport provided, however, Digital Teleport shall have the right to pledge its rights and privileges contained in this Agreement to secure financial obligations to third parties without the need to obtain consent from MoDOT.

SECTION 13. Miscellaneous

(a) Applicable State Laws and Encumbrances: At no time during this Agreement or any renewal period thereto shall Digital Teleport place, install or deposit any hazardous waste or hazardous substance in the MoDOT airspace. This does not include, however, those hazardous substances which are lawfully and properly contained within Digital Teleport's equipment or structures with the exception of propane tanks which shall be buried in compliance with all federal, state and local regulations. If Digital Teleport causes, allows or permits a spill of a hazardous waste or substance within MoDOT airspace, or on property immediately adjacent thereto, then Digital Teleport shall remain solely liable.

(b) Conflict of Interest: No official or employee of MoDOT or its governing body and no other public official of MoDOT who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of the project covered by this Agreement shall voluntarily acquire any personal interest, directly or indirectly, in this Agreement. Digital Teleport covenants that it presently has no interest and shall not acquire any such interest,

directly or indirectly, which will conflict in any manner or degree with the performance of the services hereunder. Digital Teleport further covenants that no person having any such known interest shall be employed or conveyed such interest, directly or indirectly, in this Agreement.

(c) Liability Insurance: At a minimum, Digital Teleport shall maintain the following insurance coverage:

- (1) Commercial general liability insurance, having minimum liability limits of four hundred thousand dollars per each bodily injury or property damage claim up to two million five hundred dollars per occurrence.
- (2) Commercial automobile liability insurance for all vehicles owned or used by Digital Teleport in any phase of the construction, installation, operation, maintenance and repair of the fiber optic cable system on MoDOT's right-of-way. The minimum limits of liability of such insurance shall be two million five hundred dollars per occurrence.

Hereafter as those limits may be increased under RSMo Section 537.600. If a statutory limit of liability for a type of liability specified in this section is repealed or does not exist, the Commission shall set reasonable limits of that insurance coverage which shall be as specified or adjusted periodically in a written notice from the Commission to Digital Teleport, Inc

(d) Workers Compensation: Workers compensation insurance shall be maintained at all times by Digital Teleport in amounts sufficient to comply with all the obligations of Digital Teleport under the laws of the State of Missouri relating to workers compensation.

(e) Subcontractors: Digital Teleport shall be responsible to see that its subcontractors possess at least the same minimum extent of liability insurance at such times that they are constructing, installing, operating, maintaining or repairing any portion of the fiber optic cable system on MoDOT's right-of-way.

(f) Proof of Insurance: Digital Teleport shall provide proof of insurance to MoDOT within seven (7) business days upon receipt of a written request for same from an authorized representative of MoDOT. Digital Teleport shall also provide proof of insurance to MoDOT of any subcontractor, or require that subcontractor to do so, within seven (7) business days upon receipt of a written request for that subcontractor's insurance status from an authorized representative of MoDOT.

(g) Digital Teleport's Liability for Negligent Acts or Omissions: Digital Teleport shall be responsible for any and all injury or damage to third parties as a result of any negligent acts or omissions in the services provided to MoDOT under the terms and conditions of this Agreement. In addition to the liability imposed upon Digital Teleport on account of personal injury, bodily injury (including death) or property damage suffered as a result of Digital Teleport's negligence, Digital Teleport assumes the obligation to save harmless MoDOT including its employees and assigns from every expense, liability or cost arising solely out of such negligent act or omission. Digital Teleport also agrees to hold harmless MoDOT, its employees and assigns for any negligent act or omission committed by any subcontractor or other person employed by or under the supervision of Digital Teleport under the terms of this Agreement.

(h) MoDOT's Liability to Digital Teleport: MoDOT will reimburse Digital Teleport for all actual repair costs if the MoDOT personnel or any other contractor or subcontractor to MoDOT damages or destroys any part of the fiber optic cable system or equipment installed by Digital Teleport. However, MoDOT, its employees, agents and assigns will not be liable for lost revenues or any other types of incidental or consequential damages sustained by Digital Teleport as a result of an inadvertent or unintentional cable cut or other loss of signal transmission. This provision does not limit the scope of liability of an MoDOT highway construction contractor or subcontractor to Digital Teleport for actionable negligence in the construction, reconstruction, repair or maintenance of a state highway or other state transportation facility.

(i) Limitation of Liability. Notwithstanding any provision of this Agreement to the contrary, in no event shall any Party to this Agreement be liable to any other Party for any special, incidental, indirect, punitive, reliance or consequential damages, whether foreseeable or not, arising out of, or in connection with, transmission interruptions or problems, including but not limited to, damage or loss of property or equipment, loss of profits or revenue, cost of capital, cost of replacement services, or claims of customers, whether occasioned by any repair or maintenance performed by, or failed to be performed by, any Party to this Agreement, or any other cause whatsoever, including, without limitation, breach of contract, breach of warranty, negligence, or strict liability. No claims for damages with respect to this Agreement may be made more than five (5) years after the date that the event giving rise to such claim is known or reasonably should have been known to the person or entity making such claim; and no claim for indemnity under the provisions of Section 6 hereof may be made more than five (5) years after the first notice of any claim received by the Party claiming under such indemnity provision.

(j) Performance and Payment Bond: Digital Teleport must furnish and attach to this Agreement, a performance bond on the form provided by MoDOT without deviations, omissions or additions, in at least the penal sum of Two Hundred Fifty Thousand Dollars (\$250,000.00). This bond shall be issued and executed by a surety or sureties acceptable to MoDOT, to ensure the continued maintenance and performance of the MoDOT Fibers and MoDOT Bandwidth for the remaining term of this Agreement in accord with its provisions, and the payment for all labor performed and materials installed, consumed or used in that phase of the contract work. This bond shall remain in full force and effect at all times, without a break in coverage, for the initial period and all renewal periods of this Agreement. This bond shall not be cancelled except prospectively, and with at least thirty (30) days' advance notice in writing to MoDOT and Digital Teleport. Prior to such effective date of cancellation of this bond, Digital Teleport must obtain and submit to MoDOT a valid substitute bond meeting all terms of this Agreement.

(k) Amendments: No modification of any provision of the Agreement shall be made or construed to have been made unless such modification is mutually agreed to in writing by Digital Teleport and MoDOT and incorporated in a written amendment to the Agreement and approved by MoDOT prior to the effective date of such modification.

(l) Communications and Notices: Any notices required or permitted to be delivered under this Agreement shall be in writing and shall be deemed to be delivered on the earliest to occur of (a) actual receipt; or (b) three (3) business days after having been deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested; or (c) one (1) business day after having been deposited with a reputable overnight express mail service that provides tracking and proof of receipt of items mailed. All notices shall be addressed to MoDOT or Digital Teleport, as the case may be, at the address or addresses set forth below, or such other addresses as the parties may designate in a notice similarly sent:

If to MoDOT, address to:

Missouri Highway and Transportation Commission
Capitol Avenue and Jefferson Street
P.O. Box 270
Jefferson City, Missouri 65102
Attn: Chief Engineer

and if to Digital Teleport, Inc.:

Digital Teleport, Inc.
14567 N. Outer Forty Rd., Ste. 500
Chesterfield, MO 63017
Attn: General Counsel

(m) Venue: No action may be brought by either party hereto concerning any matter, thing or dispute arising out of or relating to the terms, performance, nonperformance or otherwise of this Agreement except in the Circuit Court of Cole County, Missouri. The parties agree that this Agreement is entered into at Jefferson City, Missouri, and substantial elements of its performance will take place or be delivered at Jefferson City, Missouri, for which Digital Teleport consents to venue of any action against it in Cole County, Missouri.

(n) Wage Laws: Digital Teleport and its subcontractors shall pay the prevailing hourly rate of wages for each craft or type of workmen required to execute this project work as determined by the Department of Labor and Industrial Relations of Missouri, and they shall further comply in every respect with the minimum wage laws of Missouri and the United States. Federal wage rates under the Davis-Bacon or other federal acts apply to and govern this Agreement also for such work which is performed at the jobsite, in accord with 29 CFR Part 5. Thus, this Agreement is subject to the "Work Hours Act of 1962", Public Law 87-581, 76 Stat. 357, as amended, and its implementing regulations. Digital Teleport shall take those acts which may be required to fully inform itself of the terms of, and to comply with, state and federal labor and wage laws applicable to this Agreement. This Agreement is a service contract, and not a public works contract.

(o) Nondiscrimination Assurance: With regard to work under this Agreement, Digital Teleport agrees as follows:

- (1) Civil Rights Statutes: Digital Teleport shall comply with all state and federal statutes relating to nondiscrimination, including but not limited to Title VI and Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d and 2000e), as well as any applicable titles of the Americans with Disabilities Act. In addition, if Digital Teleport is providing services or operating programs on behalf of MoDOT, it shall comply with all applicable provisions of Title II of the Americans with Disabilities Act.
- (2) Executive Order: Digital Teleport shall comply with all the provisions of Executive Order 94-03, issued by the Honorable Mel Carnahan, Governor of Missouri, on the fourteenth (14th) day of January 1994, promulgating a Code of Fair Practices in regard to nondiscrimination, which is incorporated herein by reference and made a part of this Agreement.

This Executive Order prohibits discriminatory practices by the state, Digital Teleport or its subcontractors based on race, color, religion, national origin, sex, age, disability or veteran status.

- (3) **Nondiscrimination:** Digital Teleport shall not discriminate on grounds of the race, color, religion, creed, sex, disability, national origin, age or ancestry of any individual in the selection and retention of subcontractors, including procurement of materials and leases of equipment. Digital Teleport shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR Subtitle A, Part 21, Section 21.5, including employment practices.

(p) **Laws of Missouri to Govern:** This Agreement shall be construed according to the laws of the State of Missouri without regard to its conflicts of laws provisions.

(q) **Nonsolicitation:** Digital Teleport warrants that it has not employed or retained any company or person, other than a bona fide employee working for Digital Teleport, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, MoDOT shall have the right to terminate this Agreement without liability, or in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gifts, or contingent fees.

(r) **Assignment.** Digital Teleport may transfer this Agreement (i) in whole in connection with a transfer or assignment of all or substantially all of Digital Teleport's assets pursuant to the ongoing bankruptcy reorganization of Digital Teleport, or (ii) in whole to any party who agrees to be bound by all of the terms herein and has shown to MoDOT, to MoDOT's reasonable satisfaction, that party's ability to fulfill the obligations of Digital Teleport under this Agreement.

(s) **Severability:** To the extent that a provision of this Agreement is contrary to the constitution or the laws of the State of Missouri or of the United States, that provision shall be void and unenforceable. However, the balance of the Agreement shall remain in full force and effect between MoDOT and Digital Teleport.

(t) **Effectiveness:** This Agreement shall become effective upon the last to occur of the following (the "Effective Date"):

- (1) Approval of the Settlement Agreement and this Agreement by the Bankruptcy Court;
- (2) Approval of the Settlement Agreement and/or this Agreement by MoDOT; and
- (3) Receipt of clarification from the FHWA that the provisions of Section 10 are not in conflict with existing FHWA law, rules or regulations, in form and substance reasonably acceptable to Digital Teleport.

(u) The parties agree that the Exhibits A-I to the Agreement are drawings and are not intended to be engineering specifications or plans. Correspondence dated May 14, 2003 from David P. Stoeberl to Spencer P. Desai is incorporated as part of the Agreement and attached as Exhibit J.

Exhibit A
St. Louis Freeway System – MoDOT Rights of Way

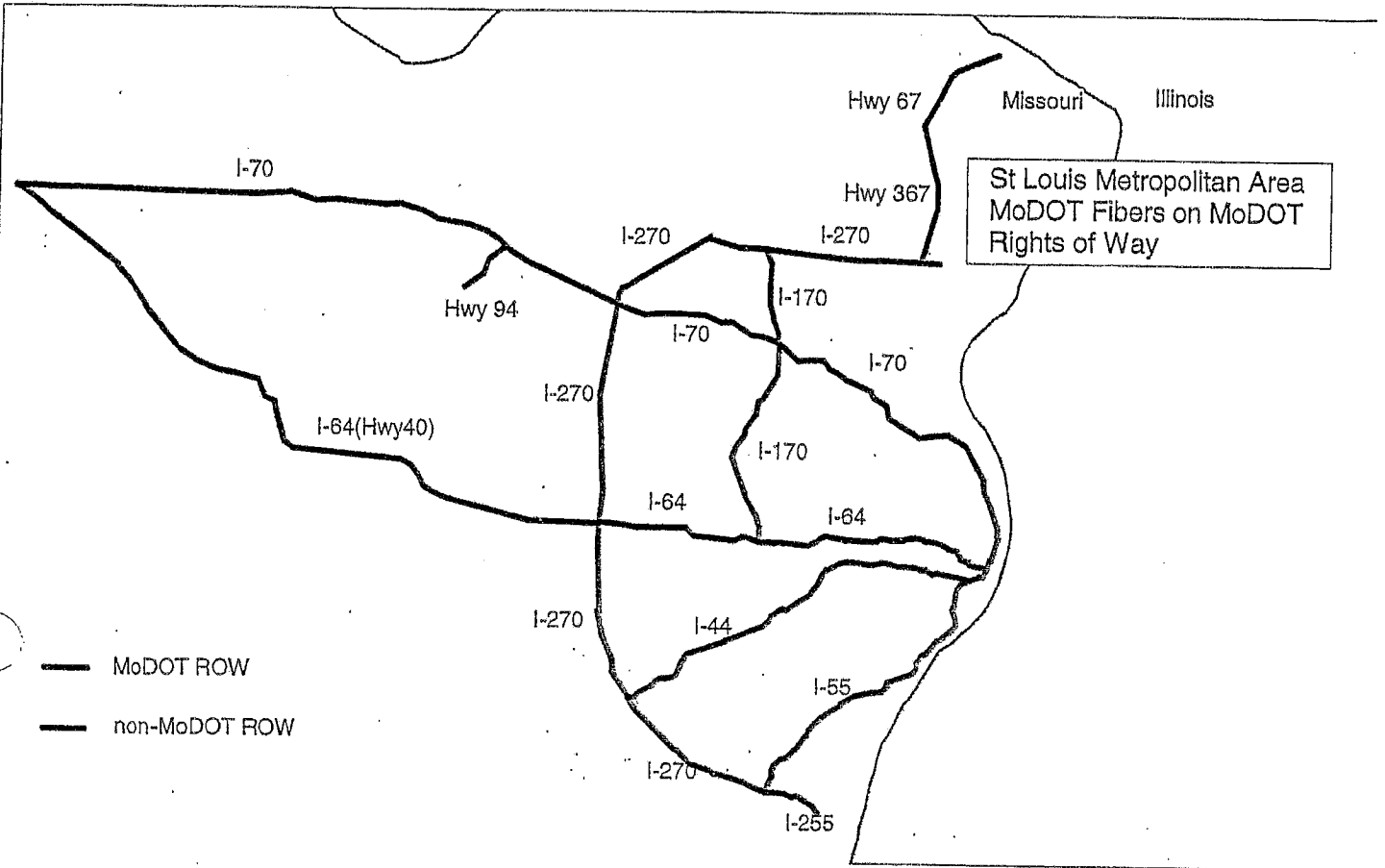
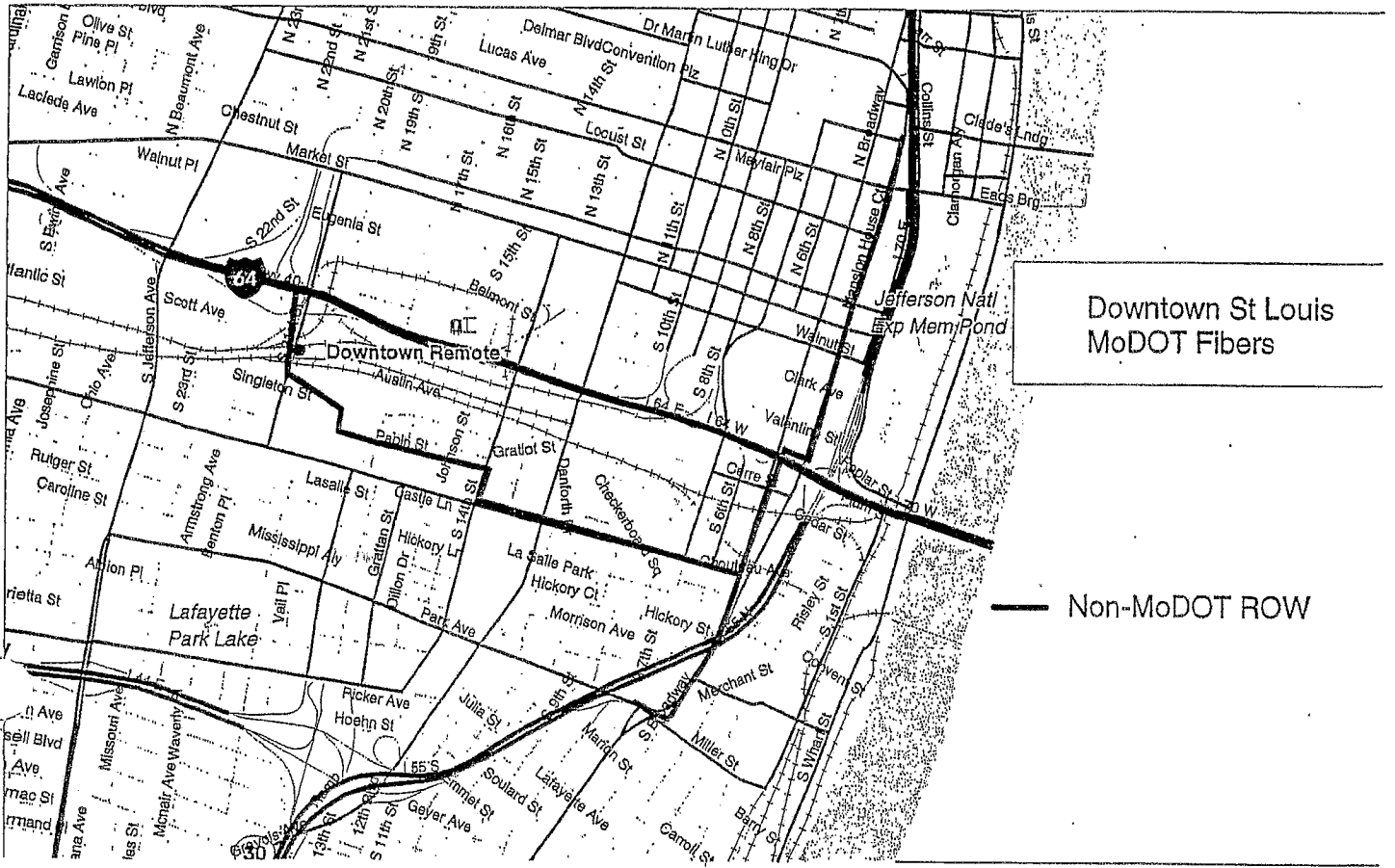


Exhibit B
Downtown St. Louis Freeway System - Non-MoDOT Rights of Way



Downtown St Louis
MoDOT Fibers

— Non-MoDOT ROW

Exhibit C
Kansas City Freeway System - MoDOT Rights of Way

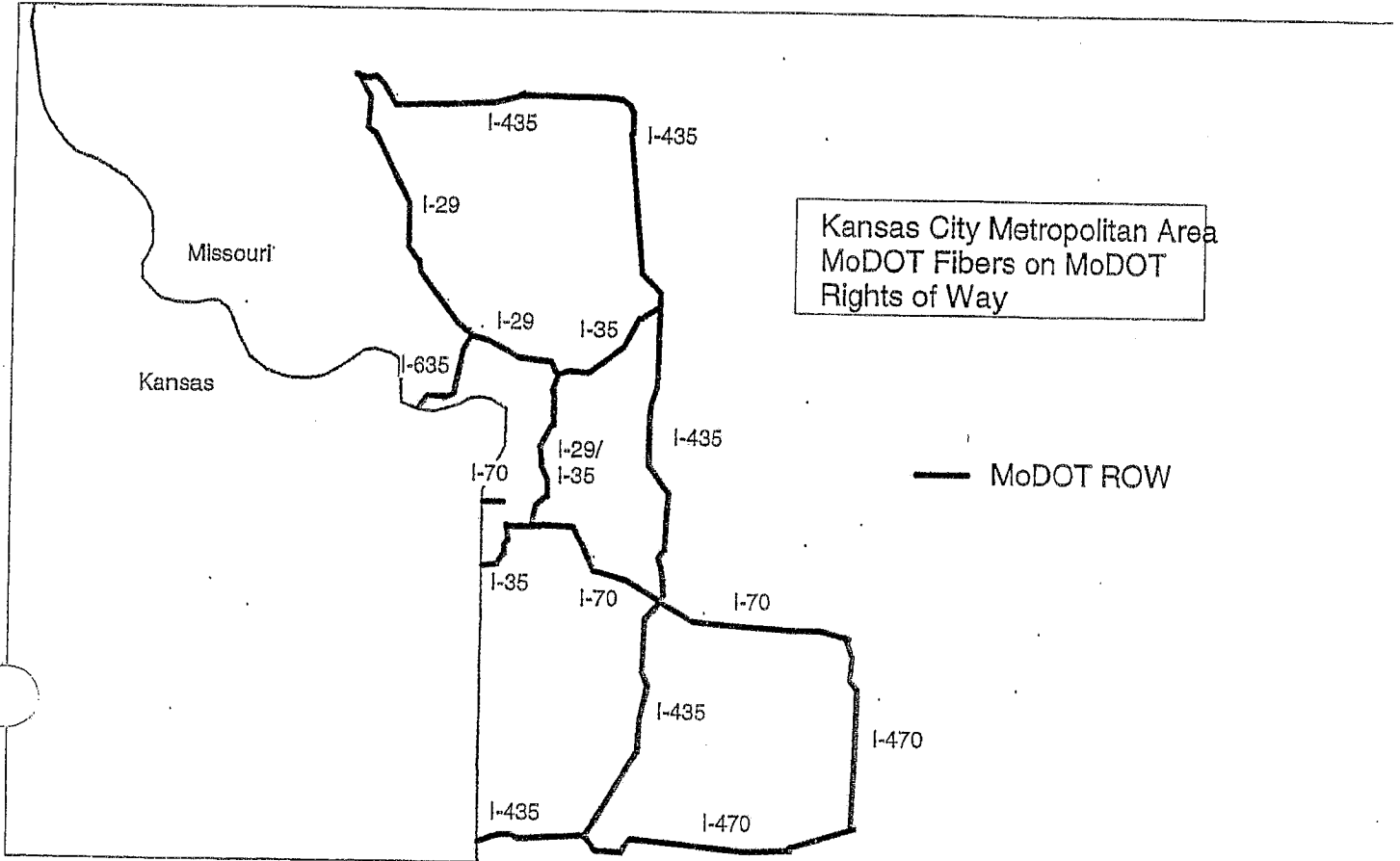


Exhibit D
Downtown Kansas City Freeway System - Non-MoDOT Rights of Way

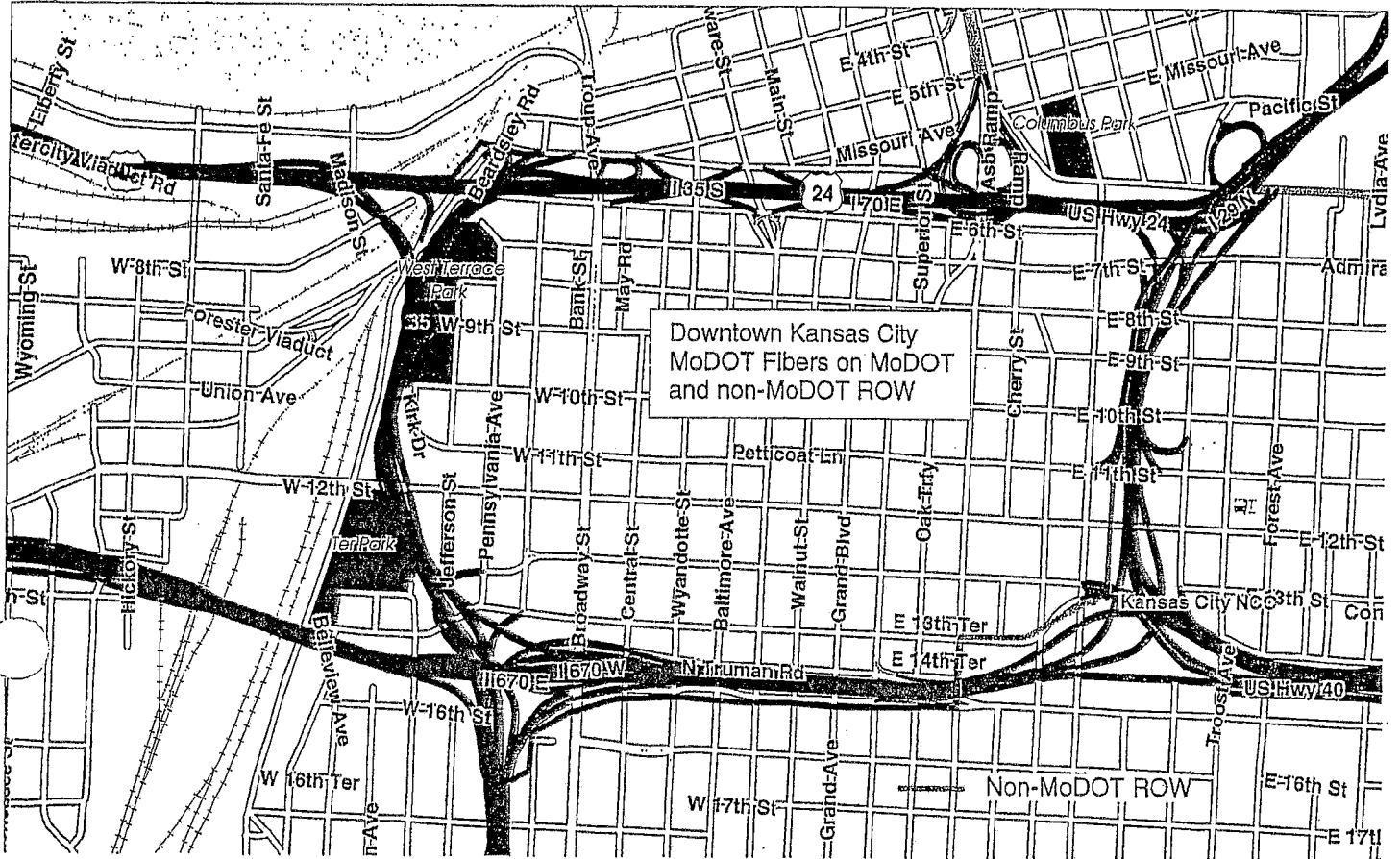
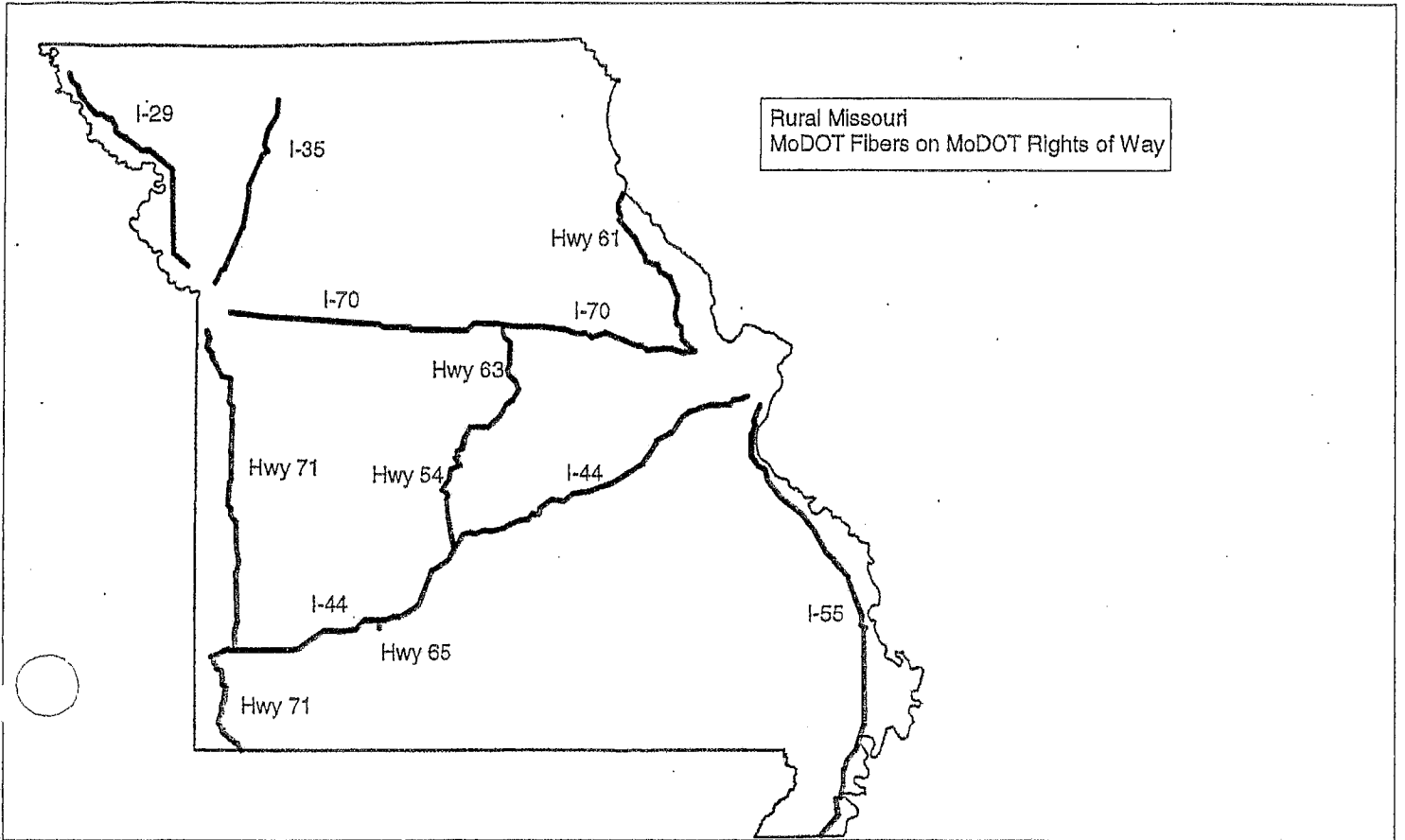


Exhibit E
Rural Interstate System



**Exhibit F
Equipment Shelter Locations**

Site Name	Address of Building	City	State	Zip Code
Anderson (DTI)	Hwy 59 & Park Street	Anderson	MO	64831
Bethany (DTI)	NE corner of Hwy 136 & I-35	Bethany	MO	64424
Booneville (DTI)	I-70 & Hwy 5	Booneville	MO	65233
Bourbon (DTI)	SW Corner I-44 & Hwy J/N	Bourbon	MO	65441
Bowling Green (DTI)	NW Corner of US 61 & US Hwy 54	Bowling Green	MO	63334
Branson (DTI)	2449 State Hwy 76 E (Sho-Me buldg behind White Riv	Branson	MO	65616
Brewer (DTI)	SE corner of Hwy M & I-55	Brewer	MO	63775
Butler (DTI)	SE corner of Hwy 52 & Hwy 71	Butler	MO	64730
Camden Point (DTI)	SE corner Hwy E & I-29	Camden Point	MO	64018
Cape Girardeau (DTI)	5500 Old Cape Road	Cape Girardeau	MO	63701
Columbia Jct. (DTI)	SE Corner I-70 & US 63	Columbia	MO	65203
Festus/Crystal City (DTI)	HWY 61 & St. Plus Dr.	Festus	MO	63028
Gray Summit (DTI)	I-44 & Hwy 100 - exit 253	Gray Summit	MO	63039
Hannibal (DTI)	3250 Rendlen Ave. - (NE corner of US 36/61 Interchange)	Hannibal	MO	63401
Harrisonville (DTI)	102 Plaza Drive (NE Corner Hwy 28 & 71)	Harrisonville	MO	64701
Jefferson City Jct. (DTI)	SE Corner Hwy 54 & Hwy 50	Jefferson City	MO	65101
Joplin Jct. (DTI)	3590 S. Rangeline Rd	Joplin	MO	64804
Kingdom City (DTI)	I-70 & Hwy 54 (South I-70 Outer Rd)	Kingdom City	MO	65262
Lake Ozark (DTI)	686 Osage Hills Rd. (St. Hwy 54 & Bus. Rt. 54)	Eldon	MO	65026
Lamar (DTI)	Junction Hwy 71 & 126 (SE)	Lamar	MO	64759
Lebanon (DTI)	I-44 & State Hwy 5	Lebanon	MO	65536
Mound City (DTI)	I-29/Hwy 118	Mound City	MO	64470
Mt. Vernon (DTI)	1151 E. Industrial Dr.	Mount Vernon	MO	65712
Nevada (DTI)	1355 N. Osage Rd	Nevada	MO	64772
New Florence (DTI)	I-70 & Hwy 19	New Florence	MO	63363
New Madrid (DTI)	I-55 N. New Madrid Rest Area (1355 N. Osage)	New Madrid	MO	63869
Niangua (DTI)	I-44 N Outer Rd Exit 100 (2255 Rolling Meadows)	Niangua	MO	65713
Odessa (Higginsville) (DTI)	N side of I-70 Frontage Rd 1/2 ml west of Hwy 131 in MoDOT Maintenance Lot	Odessa	MO	64076
Rockport (DTI)	1/2 mile E of I-29 S side of Hwy 136 next to Rock Port Hotel	Rock Port	MO	64482
Rolla (DTI)	I-44 Hwy & Hwy 63	Rolla	MO	65401
Sikeston (DTI)	108 S. Interstate Drive	Sikeston (Miner)	MO	63081
Springfield (DTI)	2801 North Eastgate	Springfield	MO	65803
St. Joseph (DTI)	I-44 and Mitchell Ave. (NE Corner Rt YY & I-29)	St. Joseph	MO	64507
St. Robert (DTI)	I-44 & Rt Y	Waynesville	MO	65583
Stanbury (Savannah) (DTI)	NE corner of Hwy 136 & State Hwy B	Stanbury	MO	64489
Sweet Springs (KCPL)	Hwy 27, 600 ft. south of Oak Street	Sweet Springs	MO	65351
Sweet Springs (EE/K) DTI	NW corner of I-70 & Hwy EE/K	Sweet Springs	MO	65333
Wentzville (Bldg 1) (DTI)	200 Callahan Rd	Wentzville	MO	63385

Exhibit G
ITS Splicing

Ring 1

- I-70 west of Pearce DMS splice due to construction change
- I-64 west of Mo River Bridge splice due to construction
- I-64 at Mason DMS splice not made
- I-64 at Ballas CCTV splice that was changed needs to be corrected
- I-270 at Rte 100 splice needed to tie in Barrett Station Road Signal Shop
- J611412 – 40 @ Mo. River; (modification splices due to removal and relocation of CCTV on const. Project)
- J611412 – 70 at Pearce Blvd; (Modification of splices due to construction of interchange)

Ring 3

- Connection in DTI downtown hub for backbone connection

Ring 2

- 270 at 170 (Potential modification to splices due to interchange construction and relocate of ITS equipment)
- Field elements away from Field Terminals have not had fiber checks

Ring 3

- I-55/64/70 Field Terminal – Poplar and 4th St. splice not made
- I-55/64/70 I-70 leg OTDR indicates fiber may not be turned at I-170 requiring splice change
- I-64 at I-170 fiber to DTI backbone did not appear to be connected at the DTI Ladue Hub (some work was done at HUB)
- I-64 at I-170 OTDR to east appeared to make I-64 at 20th St. but do not see Field Terminal
- I-64 at Compton splices need to be made
- I-64 at 20th cannot connect to Field Terminal in either direction (probable splice problem at Popular and 4th St.)
- Field elements away from Field Terminals have not had fiber checks
- J611450D – 44/55 (Modification of existing splices due to application of ITS devices)
- Possible splices or patches missing at downtown hub.

Ring 4

- I-55 at Butler Hill splices not made for Detector and DMS
- Field elements away from Field Terminals have not had fiber checks

Exhibit H MoDOT ATM ITS rings

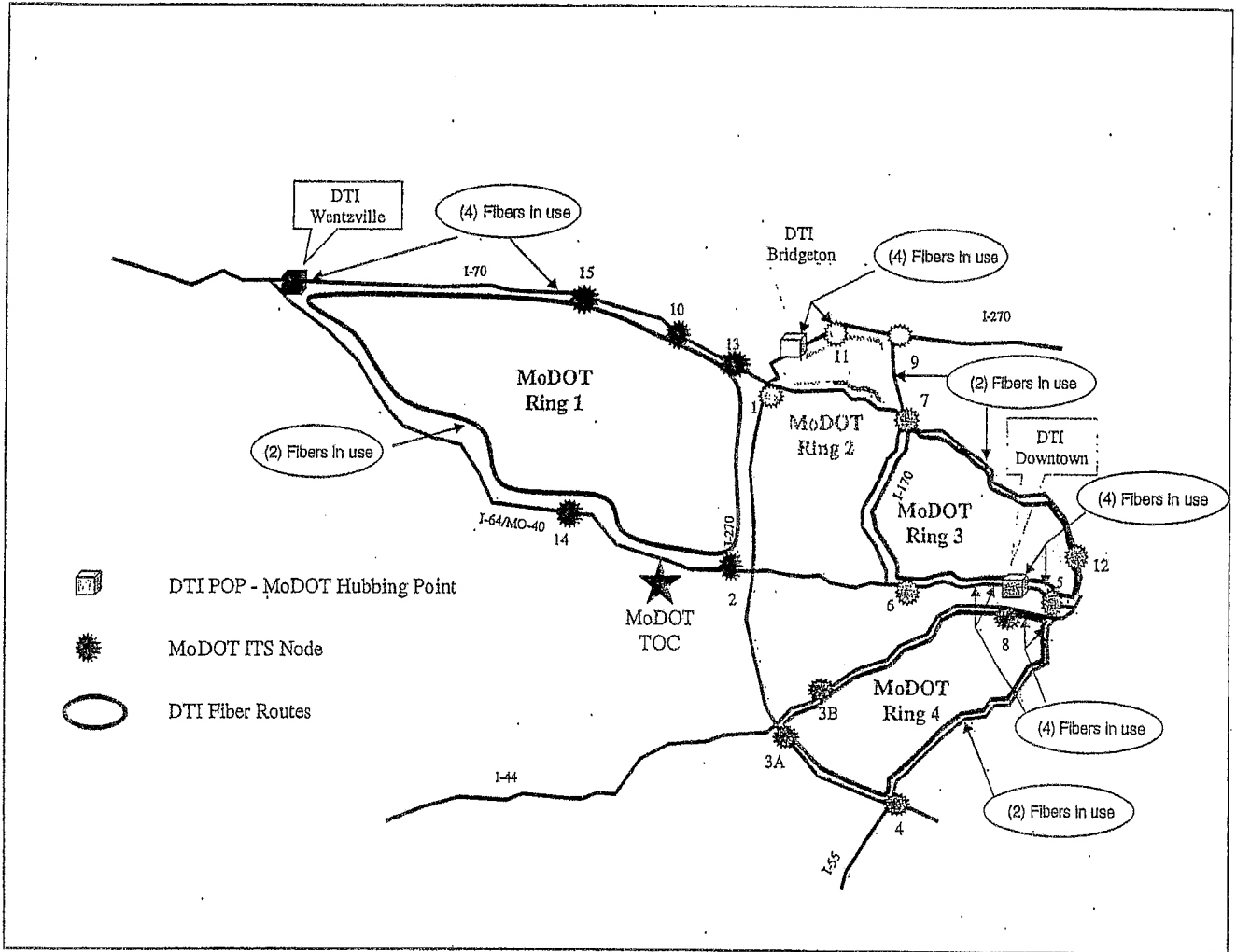


Exhibit I St. Louis ITS Bandwidth

