

# **EXHIBIT 1 TO APPENDIX E**

## **[COMCAST/D.C. I-NET AGREEMENT]**

### **1. Indefeasible Right of Use of I-Net Fiber**

To help facilitate and implement the District's Institutional Network ("I-Net"), the Company grants the District an indefeasible right of use of the fiber distribution plant specifically described in this Exhibit. This fiber distribution plant shall be referred to herein as the "I-Net Fiber". At all times, ownership of the I-Net Fiber shall remain with the Company and no District use, of any amount of time shall convey or vest in the District any right of ownership, in whole or in part, in the I-Net Fiber. The term of this Exhibit shall be the term of the Company's Franchise Agreement. If the District should either terminate or not renew the Company's Franchise Agreement, the Company and the District shall enter into good faith negotiations as to appropriate compensation for the District's continued use of the I-Net Fiber. The District will be allowed to continue use of the I-Net Fiber during such negotiations as long as the District negotiates in good faith. Capitalized terms used in this Exhibit and not defined herein shall have the meanings assigned to such terms in the Franchise Agreement.

### **2. NonCommercial Use Restrictions**

The purpose of the District's use of the Company's I-Net Fiber is to provide and enhance the provision of noncommercial government services. Any uses of the Company's I-Net Fiber to meet the District's communications needs are permitted. However, unless otherwise agreed to by the Company and the District, the Company's I-Net Fiber shall not be leased or sold by the District, nor will the District (or any other party authorized by the District) engage in any

activities or outcomes that would result in business competition between the District and Comcast or that may result in loss of business opportunity for Comcast.

**3. Company is Providing Use of Dark Fiber**

The I-Net Fiber provided by the Company for the District's use is dark fiber distribution plant. The Company is not responsible or obligated to provide any electronics associated with the I-Net Fiber. The District shall be responsible for any and all electronics necessary to provide services to the I-Net sites. Further, the District will be responsible for housing any necessary electronics and/or premise equipment.

**4. Company Fiber Available for District Use (I-Net Fiber)**

(A) **Fiber Ring Distribution Plant.** The District will have the exclusive right of use of up to 24 fibers, which are bundled with other Company fibers in the Company's "Fiber Ring". The specific configuration of the Fiber Ring is set forth in Attachment 1 to this Exhibit. The District will have use of the 24 fibers along the entire route of the Fiber Ring as shown in Attachment 1. The Company shall use all reasonable efforts to complete the construction of the Fiber Ring by October 1, 2002. As part of the consideration provided by the Company to the District in this Franchise Agreement, there shall be no charge by the Company for the District's use of the 24 fibers on the Fiber Ring. It is understood by the District and the Company that connections to the Fiber Ring in the downtown area are limited due to certain utility rules and construction conditions. The Company will cooperate with the District to find a solution to this problem. If the Company cannot reach agreement with a utility provider with respect to any

connections necessary to enable the District to use the 24 fibers, then the District may, in coordination with the Company, negotiate with such utility provider with respect to such connections. The District shall reimburse the Company for any actual costs incurred by the Company to implement such connections for the District. The payment obligations will be under cover of a District “purchase notification” which will authorize a not-to-exceed amount. The Company is not obligated to incur any costs on behalf of the District prior to notice of an approved District “purchase notification” authorizing sufficient funds. The costs reimbursable to the Company shall not exceed such cost reimbursement ceiling. The Company shall notify the District’s Office of the Chief Technology Officer (“OCTO”), in writing, whenever it has reason to believe the total cost will be greater than such cost reimbursement ceiling. As part of the notification, the Company shall provide OCTO a revised estimate of the total cost of performance. The District is not obligated to reimburse the Company for costs incurred in excess of the cost reimbursement ceiling, and the Company is not obligated to continue performance under this provision, or otherwise incur costs in excess of the cost reimbursement ceiling, until OCTO notifies the Company, in writing, that the estimated cost has been increased and provides a revised cost reimbursement ceiling.

(B) **Fiber from the Ring to the Node**. As specifically set forth in Attachment 2 to this Exhibit, the District shall have use of certain Company fiber that runs from the Fiber Ring to certain individual cable nodes identified in Attachment 2 (referred to herein as “Fiber to Node”). This Fiber to Node for District use will be bundled with other Company fibers. Both the fiber routes and the number of fibers that will be available for the District’s use are specifically set forth in Attachment 2. If a fiber route or fiber count is not specified in

Attachment 2, then it is not available for District use. However, it is understood by the District and the Company that the final design and construction of the Fiber to Node may not be complete by the Effective Date of the Franchise Agreement. For those phases where construction has been completed the attached description of the Fiber to Node is final. For those phases where the final design and/or construction has not been completed a tentative description of the Fiber to Node will be provided. Upon completion of the design, a final description of the Fiber to Node will be provided which will not significantly vary from the tentative description, unless construction problems warrant a change. In the event that changes have to be made to the tentative description, the District will be informed and given opportunity to request reasonable changes to the Fiber to Node deployment, and the Company shall make all reasonable efforts to insure that the Fiber to Node for District use meets the District's design requirements, including the various numbers of fibers set forth on Attachment 2. The District will reimburse the Company for any actual costs incurred by the Company (including any Company labor time) in the deployment of the Fiber to Node specified in Attachment 2. Costs reimbursable to the Company for District-reserved Fiber to Node shall be limited to: (a) the pro rata material purchase costs of the fibers set aside for the District as identified in Attachment 2; and (b) the labor and material costs of splices and connections for such fiber. The payment obligations will be under cover of a District "purchase notification" which will authorize a not-to-exceed amount. The Company is not obligated to incur any costs on behalf of the District prior to notice of an approved District "purchase notification" authorizing sufficient funds. The costs reimbursable to the Company shall not exceed such cost reimbursement ceiling. The Company shall notify OCTO, in writing, whenever it has reason to believe the total cost will be greater than such cost reimbursement ceiling. As part of the notification, the Company shall provide OCTO a revised

estimate of the total cost of performance. The District is not obligated to reimburse the Company for costs incurred in excess of the cost reimbursement ceiling, and the Company is not obligated to continue performance under this provision, or otherwise incur costs in excess of the cost reimbursement ceiling, until OCTO notifies the Company, in writing, that the estimated cost has been increased and provides a revised cost reimbursement ceiling. Company will allow District-reserved I-Net Fibers to pass through Company facilities on the route from the ring to the nodes by fiber cable jumpers between fiber termination shelves. Company will protect, segregate and specifically identify such District-reserved fibers to insure that such fibers remain undisturbed as they pass through Company facilities on the route from the ring to the nodes. Except for routes within the Fire Zone (as that term is defined by DDOT), the Company shall use all reasonable efforts to complete the construction of the Fiber to Node by December 31, 2002. With respect to routes within the Fire Zone, the Company shall complete the construction of the Fiber to Node by the third anniversary of the Effective Date.

(C) **Aerial Fiber for Individual Site Routes.** For those District I-Net sites to be connected to the Fiber Ring or the Fiber to Node by aerial fiber, the Company will provide use of individual aerial site route fiber to reach individual I-Net sites (referred to herein as “Aerial Site Route Fiber”). The District’s use of Aerial Site Route Fiber will be implemented pursuant to the following terms and procedures: The Company will provide all aerial fiber from District I-Net sites to an appropriate point on the Fiber Ring or Fiber to Node as designated by the Company. The Company will make all splicings and connections of the Aerial Site Route Fiber onto the Fiber Ring or Fiber to Node. The Company will also terminate all Site Route Fiber at the appropriate demarcation point at each District I-Net site. To the extent necessary to

complete an Aerial Site Route, that cannot be completed through the Company's existing permits easements, licenses or clearances, the District will be responsible for obtaining any necessary permits, easements, licenses or rights-of-way clearances. Further, to the extent necessary to enter an I-Net site, the District shall be responsible for obtaining all necessary building access or other site access. In certain instances, there may be more than one Aerial Site Route into an I-Net site.

**5. Procedures for Deployment Aerial Site Route Fiber**

Once the District makes a request for the deployment of aerial fiber to an individual I-Net site, the Company shall provide the District with a timely cost estimate of each Aerial Site Route requested by the District. The Company will not commence any work on an Aerial Site Route until the cost estimate has been approved in writing by the District.

**6. Cost for Deployment of Aerial Site Route Fiber.**

The District will be responsible for reimbursing any actual costs incurred by the Company in deploying Aerial Site Route Fiber, including all labor (including the Company's labor time), materials, conduit, splicings, entry and termination costs. The District will make payment to the Company within thirty days of receipt of an invoice from the Company. Such invoice shall itemize the costs to be paid by the District for the identified number of satisfactorily completed I-Net sites. The payment obligations will be under cover of a District "purchase notification" which will authorize a not-to-exceed amount. The Company is not obligated to incur any costs on behalf of the District prior to notice of an approved District "purchase notification" authorizing sufficient funds. The costs reimbursable to the Company shall not

exceed such cost reimbursement ceiling. The Company shall notify OCTO, in writing, whenever it has reason to believe the total cost will be greater than such cost reimbursement ceiling. As part of the notification, the Company shall provide OCTO a revised estimate of the total cost of performance. The District is not obligated to reimburse the Company for costs incurred in excess of the cost reimbursement ceiling, and the Company is not obligated to continue performance under this provision, or otherwise incur costs in excess of the cost reimbursement ceiling, until OCTO notifies the Company, in writing, that the estimated cost has been increased and provides a revised cost reimbursement ceiling. . For the purposes of this Exhibit, the term “actual costs” shall include the following: (1) Company employee labor costs of base salary plus a mark up of fifty percent to cover benefits and burdens; (2) materials at invoice cost; (3) equipment costs at prevailing hourly market rates; and (4) subcontractor costs in accordance with standard costs and price terms of subcontracts between Comcast and the contractors performing the work.

#### **7. Additional Fiber Deployment by Mutual Agreement**

By mutual agreement, the Company and the District may agree that the Company will deploy additional fiber for the District’s I-Net beyond the I-Net Fiber described in this Exhibit. Such deployment will not be mandatory and will only be undertaken upon the agreement of the Company.

#### **8. I-Net Site Demarcation Points**

At each I-Net site, fibers shall be run to a demarcation point agreed upon by the Company and the District (“Demarcation Point”). at a location reasonably close to the fiber

entrance to the building. The Company will not be responsible for any relocation of the fiber that runs from the building entry point to the Demarcation Point. Any I-Net fiber starting at the Demarcation Point and extending outward from the building shall be on the Company's side of the Demarcation Point, and any I-Net fiber starting at the Demarcation Point and extending inward into the building shall be deemed to be on the District side of the Demarcation Point. The District shall have ownership and be responsible for all fiber on the District's side of the Demarcation Point.

#### **9. Fiber Distribution Plant Specifications**

The specifications for the I-Net Fiber distribution plant to be deployed by the Company are attached to this Exhibit as Attachment 3. The I-Net Fiber to be used by the District shall be installed to industry standards. The maximum fiber attenuation shall be 0.4 dB/km. at 1310 nm, plus a maximum of 0.2 dB loss for each splice. The average loss shall not exceed 0.3 dB per connector. The maximum allowed loss shall be 0.75 dB per connector. The Company shall provide documentation of acceptance testing. Acceptance testing shall be in accordance with procedures agreed upon by the District and the Company.

#### **10. Anticipated Connections/Splicings to I-Net Fiber**

In addition to the Aerial Site Routes that the Company will provide and connect to the Fiber Ring or Fiber-to-Node, it is agreed that the District will provide fiber routes for all those I-Net sites requiring underground deployment. Such fiber shall be owned by the District. Additionally, it is anticipated that the District will provide fiber routes from up to twenty District points of presence that will be connected to the Fiber Ring. For the connection and splicing of



the District's underground I-Net site routes and its points of presence fiber routes to the Company's I-Net Fiber, the Company will first be given the option of making such connection/splice and charging the District its actual costs. If the Company declines the option to make the necessary connection/splice, the District may make such connections/splice by either: (1) use of a contractor that has been approved by the Company; or (2) use of a contractor that meets the connection/splicing specifications, standards and procedures approved by the Company. In any instance in which the Company does not make the connection/splice, the Company will have the opportunity to inspect and require the District to promptly correct any deficiencies discovered by such inspection.

#### **11. Maintenance of I-Net Fiber**

The District shall be responsible for the maintenance and repair of all I-Net Fiber. In accordance with procedures jointly developed by the parties which remain subject to the Company's ongoing approval, in order to perform trouble shooting, maintenance and repair, the District may access and physically contact elements of the I-Net Fiber. All such access and contact may only be made if the District provides advance notice to the Company, records the nature of the work performed, provides the Company the opportunity to supervise or inspect the work, and the District promptly corrects any deficiencies discovered by such inspection. It shall be the District's responsibility to insure that such notice and opportunity is given. In addition to the above requirements, unless the District reasonably finds that the access and contact must be performed on an emergency basis, before access and contact is made, the Company will be given the opportunity to review and approve the specific work planned by the District, including the qualifications of the entities and personnel performing such work. In those instances where the

Company and the District agree that it would be most efficient for the Company to make the necessary repairs, the Company will charge the District its actual costs for such work. The payment obligations will be under cover of a District “purchase notification” which will authorize a not-to-exceed amount. The Company is not obligated to incur any costs on behalf of the District prior to notice of an approved District “purchase notification” authorizing sufficient funds. The costs reimbursable to the Company shall not exceed such cost reimbursement ceiling. The Company shall notify OCTO, in writing, whenever it has reason to believe the total cost will be greater than such cost reimbursement ceiling. As part of the notification, the Company shall provide OCTO a revised estimate of the total cost of performance. The District is not obligated to reimburse the Company for costs incurred in excess of the cost reimbursement ceiling, and the Company is not obligated to continue performance under this provision, or otherwise incur costs in excess of the cost reimbursement ceiling, until OCTO notifies the Company, in writing, that the estimated cost has been increased and provides a revised cost reimbursement ceiling.

## **12. Pole/Conduit Indemnification**

If the District’s use of Company provided I-Net Fiber results in any increase in the pole attachment or conduit fees or rates payable by the Company, the District will be responsible for (a) negotiating with the applicable party the increased fee caused by the District’s use and (b) paying such increased amount to the applicable party. Additionally, should the Company face loss of any of its pole attachment or conduit rights as a result of the District’s use of the Company’s provided I-Net Fiber, the Company shall have the right to terminate such District use of I-Net Fiber only to the extent necessary to maintain the Company’s pole attachment and conduit rights.

### **13. No Company Liability**

Other than the liquidated damages or fines provided for in the Franchise Agreement, the Company shall have no liability to the District, to any other user of the I-Net Fiber, or to any other third party for any performance failure of the I-Net Fiber including without limitation any outage or interruption of service. Further, the Company shall have no liability for the content of any transmissions made over the I-Net Fiber. Additionally, the District shall indemnify and hold the Company harmless for any liability arising out of the District's construction, repair or operation of the I-Net Fiber or other fiber connected to the I-Net Fiber. Any financial obligation or liability that the District may incur by virtue of this Section 13 shall be subject to the availability of appropriations authorized by Congress at the time the obligation or liability is created. The District shall have such indemnification obligation covered under an insurance policy which names the Company as a beneficiary, so that to the extent the District's indemnification obligation is not fulfilled pursuant to a Congressional appropriation as described above, then the Company may recover from such insurance policy. The Company shall have an opportunity to review such insurance policy.

### **14. No Offsets of Other Payments**

The Company shall not offset any payments to be made or owed to it under this Exhibit by the District against any payment to be made or owed by the Company under this Agreement.

# **ATTACHMENT 1**

## **FIBER RING MAP**

**[This attachment has been excluded for this copy of the Franchise Agreement as it contains trade secret and commercial information that could result in substantial harm to the competitive position of the Company]**

## **ATTACHMENT 2**

### **FIBER TO NODE MAP AND DESIGN**

**[This attachment has been excluded for this copy of the Franchise Agreement as it contains trade secret and commercial information that could result in substantial harm to the competitive position of the Company]**