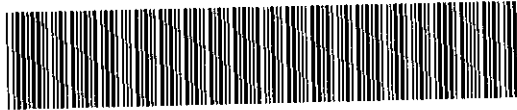


BK 1393 PG 075-083



MISC 2001 11754

RICHARD N. TAKECHI
REGISTER OF DEEDS
DOUGLAS COUNTY, NE

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PAGE DOWN FOR BALANCE OF INSTRUMENT

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RETURN: Dodie Protzman
1150S W Dodge Rd
Omaha NE 68154

**TELECOMMUNICATIONS FACILITIES AND EASEMENT AGREEMENT
(Commercial)**

This Telecommunications Facilities Agreement ("Agreement") is entered into this **20th day of July, 2001** by and between Cox Com, Inc., d/b/a Cox Communications Omaha ("Cox") and **Blue Cross & Blue Shield of Nebraska** ("Owner"). Owner holds title to, or is the authorized agent of the title holder of, certain real property located at **2120 S. 72nd St. Omaha NE** and commonly known as **The Commercial Federal Tower** ("Property"), and Owner and Cox desire to enter into this Agreement for Cox to provide its telecommunications services to the Property under the terms and conditions herein. For valuable consideration, including the mutual promise of the parties herein, the adequacy and receipt of which is acknowledged, the Owner and Cox agree as follows:

1. Grant of Access and Easement. Owner hereby grants to Cox permission to install and maintain its telecommunications distribution facilities ("Facilities") on the Property for the purpose of providing telecommunications services including voice, video and data telecommunications services ("Services") to Owner's tenants and/or other persons occupying the Property ("Tenants"). Owner further grants to Cox a perpetual non-exclusive easement together with the right to enter the Property at any time to install, connect, disconnect, transfer, service, remove or repair the Facilities. Upon termination of Cox's provision of Services to the Property, Cox may at its option enter upon the Property and remove the Facilities. At Owner's written request, however, Cox shall remove its Facilities within thirty (30) days of the termination of this Agreement. Cox's right to enter upon the Property for the purpose of removing its Facilities shall survive termination of this Agreement.

2. Ownership of Facilities. Facilities shall mean all distribution plant and associated electronics, equipment and wiring installed or provided by Cox. Except for Internal Wiring, the Facilities are and shall remain the sole and exclusive property of Cox and shall not become fixtures of the Property. Internal Wiring is defined as that wiring, ports and outlets located within a commercial unit receiving Services back up to the demarcation point. The demarcation point in the case of telephone Services is the building's minimum point of entry, and for all other telecommunication Services is that point roughly twelve (12) inches outside of the Tenant's individual commercial unit.

3. Obligations of Cox. Cox hereby agrees as follows:

- (i) To install the Facilities at its expense including dirt trenching, backfill, compacting and boring, cable, conduit, electronics, pedestals, splitters, and any other materials and labor reasonably necessary to install the Facilities in accordance with Exhibit "A" attached hereto. Any changes to Exhibit "A" will be require written approval by Owner. Cox shall keep the Property free of liens resulting from the installation of the Cox Facilities;
- (ii) That Owner shall have no responsibility for the Services provided by Cox to Owner's tenants or for the proper functioning of the Facilities;
- (iii) To repair any damage to Owner's landscaping, building, personal property or underground facilities located on the Property (including any necessary replacements), if such damage results directly from Cox's installation, maintenance, removal and repair of the Facilities, and to restore the Property to as near its condition prior to installation of the Facilities as may be practicable to Owner's reasonable satisfaction; and
- (iv) To obtain all necessary governmental authorizations for the construction and operation of the Facilities on the Property and to perform such construction;
- (v) The operation of the Cox Facilities will not cause interference with the delivery or reception of telecommunications signals of any other provider of telecommunications services that has placed facilities within the Building or upon the roof, under a contract or agreement with Owner. In the event of interference, Owner shall notify Cox in writing, and Cox shall within 24 hours of receipt shall inspect its Facilities to ensure same are operating within FCC guidelines. If the Cox Facilities are causing signal interference, Cox shall immediately correct such interference and provide Owner with written verification of such repair or correction.

4. Obligations of Owner. Owner hereby agrees as follows:

- (i) Subject to Paragraph 3. (v) above, Owner will not use or permit others to use the Facilities or any equipment that interferes with the Facilities' operation;

- (ii) That Owner will not move, disturb, alter or change the Facilities or permit any third party to do so without Cox's prior written consent which shall not be unreasonably withheld, conditioned or delayed;
- (iii) That this Agreement and Cox's rights granted herein shall be binding upon Owner's successors and assigns and that Owner shall notify any successor Property owner of Cox's rights under this Agreement;
- (iv) That Owner has full authority to execute this Agreement and to grant the rights herein granted and that there are no prior or existing agreements, nor will there be any agreements during the Term, that would be breached by the execution by Owner of this Agreement or by Cox's provision of the Services.
- (v) That Owner will execute a Memorandum of Agreement and Grant of Easement a copy of which is set forth as Exhibit B to evidence Cox's rights hereunder. Except as otherwise provided herein, upon termination of this Agreement, Cox shall vacate and release its right in the easement.

5. Indemnification.

- (i) Owner agrees to indemnify, defend and hold Cox harmless from and against all claims, suits, proceedings, liabilities, losses, costs, damages, and expenses (including reasonable attorneys' fees) arising out of or in connection with (a) injuries or damage to Cox's employees, agents or the Facilities arising out of or in connection with the negligent acts or omissions of Owner, its agents or employees, or (b) Owner's breach of this Agreement.
- (ii) Cox agrees to indemnify, defend and hold Owner harmless from and against all claims, suits, proceedings, liabilities, losses, costs, damages, and expenses (including reasonable attorneys' fees) for personal injury or property damages arising out of or in connection with (a) Cox's negligence in the installation of the Facilities or provision of Services, or (b) Cox's breach of this Agreement.

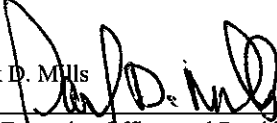
6. Term. This Agreement shall be effective upon execution by the parties for a term of five (5) years. At the end of the original term, or any successive term, this Agreement will automatically renew for successive terms of five (5) years each unless either party gives written notice of its intent not to renew to the other party at least ninety (90) days prior to the expiration of the previous term (the "Term"). The foregoing notwithstanding, Cox may terminate this Agreement in the event Cox is unable to continue the distribution of any Services because of any law, rule, regulation or judgment of any court, or any similar reason beyond the reasonable control of Cox, or if the applicable franchise or licenses are assigned, terminated, surrendered or revoked for any reason.

7. Default. If either party fails to perform any material condition or agreement to be performed or observed by it hereunder and such default is not cured within thirty (30) days after written notice from the other party, the non-defaulting party shall have the right to immediately terminate this Agreement.

8. Insurance. Cox shall maintain (a) comprehensive general liability insurance with a policy limit of at least \$5,000,000 to protect Owner against bodily injury or property damage resulting from the installation, operation or maintenance of the Distribution System on the Premises and (b) Workers' Compensation insurance in statutory amounts. Owner shall be an "additional insured" under such general liability insurance coverage. Owner shall maintain "all risk" or "special form" property insurance which will fully protect Cox against damage or destruction to the Distribution System on a replacement cost basis with a policy limit of at least \$2,000,000. Cox shall be named as a "loss payee" for damage to the Distribution System provided by such property insurance coverage. Upon written request by the other party, each party shall provide a certificate of insurance for the foregoing policies. All policies written pursuant to this Section 8 shall be with insurers (i) licensed to do business in the state in which the Premises are located and (ii) carrying an A.M. Best rating of at least A-VIII. All policies, including any renewals thereof, shall specify that such policy cannot be canceled without at least thirty (30) days written notice to the other party.

9. Miscellaneous. This Agreement is the entire understanding between the parties and supercedes any prior agreements or understandings whether oral or written. This Agreement may not be amended except by a written instrument executed by both parties. Cox may assign this Agreement or any part to any affiliate or any entity merging with or acquiring substantially all of the assets of Cox or to any telecommunications carrier providing services to tenants. Notices required to be given shall be sent by United States Certified Mail or nationally recognized courier to the address set forth below each parties signature. This Agreement shall be governed by the laws of the state where the property is located.

OWNER:

Name: Jack D. Mills
Signature: 
Title: Chief Executive Officer and President
Date: 7/20/01
Address: 7261 Mercy Rd.
Omaha NE 68114

COX COMMUNICATIONS OMAHA

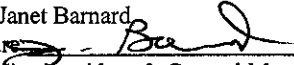
Name: Janet Barnard
Signature: 
Title: Vice President & General Manager
Date: 7/24/01
Address:

EXHIBIT 'A'

LEGAL DESCRIPTION

A tract of land located in the Northeast Quarter of the Southeast Quarter (NE¼ SE¼) of Section 26, Township 15 North, Range 12 East of the 6th P.M., in the City of Omaha, in Douglas County, Nebraska, more particularly described as follows:

Commencing at the Northeast corner of said Southeast Quarter of Section 26; thence South 00°00'00" West (assumed bearing), along the East line of said Southeast Quarter of Section 26, a distance of 485.00 feet; thence South 90°00'00" West, a distance of 122.31 feet, to the point of intersection of the South right-of-way line of Cedar Street and the Westerly right-of-way line of 72nd Street, said point also being the Point of Beginning; thence Southerly, along said Westerly right-of-way line of 72nd Street, on the following described courses; thence South 02°58'52" West, a distance of 85.00 feet; thence North 90°00'00" East, a distance of 43.00 feet; thence South 02°58'52" West, a distance of 149.68 feet; thence Southerly, on a curve to the right with a radius of 1,216.50 feet, a distance of 256.51 feet, said curve having a long chord which bears South 09°01'04" West, a distance of 256.03 feet; thence Southerly, on a curve to the right with a radius of 472.91 feet, a distance of 64.23 feet, said curve having a long chord which bears South 18°56'55" West, for 64.18 feet; thence South 22°50'23" West, a distance of 36.61 feet; thence Southerly, on a curve to the left with a radius of 308.58 feet, a distance of 62.23 feet, said curve having a long chord which bears South 17°03'50" West, a distance of 62.11 feet; thence South 11°17'16" West, a distance of 78.81 feet; thence Southerly, on a curve to the right with a radius of 42.05 feet, a distance of 53.57 feet, said curve having a long chord which bears South 47°46'45" West, a distance of 50.02 feet, to the point of intersection of said Westerly right-of-way line of 72nd Street and the Northerly right-of-way line of Mercy Road; thence Westerly, along said Northerly right-of-way line of Mercy Road, on a curve to the right with a radius of 662.22 feet, a distance of 66.97 feet, said curve having a long chord which bears South 87°11'38" West, a distance of 66.94 feet; thence North 89°54'32" West, along said Northerly right-of-way line of Mercy Road, a distance of 113.74 feet; thence North 00°00'00" East, a distance of 415.87 feet; thence South 90°00'00" West, a distance of 173.00 feet, to a point on the Easterly right-of-way line of 73rd Street; thence North 00°00'00" East, along said Easterly right-of-way line of said 73rd Street, a distance of 53.94 feet; thence Northerly, along said Easterly right-of-way line of 73rd Street, on a curve to the right with a radius of 175.00 feet, a distance of 78.16 feet, said curve having a long chord which bears North 12°47'40" East, a distance of 77.51 feet; thence North 25°35'19" East, along said Easterly right-of-way line of 73rd Street, a distance of 133.66 feet; thence South 00°00'00" West, a distance of 120.91 feet; thence North 90°00'00" East, a distance of 200.00 feet; thence North 00°00'00" East, a distance of 210.00 feet, to a point on said South right-of-way line of Cedar Street; thence North 90°00'00" East, along said South right-of-way line of Cedar Street, a distance of 193.79 feet, to the Point of Beginning.

Exhibit B

Memorandum

RECORDING REQUESTED BY)
AND WHEN RECORDED MAIL TO:)

Cox Communications)
11505 W. Dodge Rd.)
Omaha NE 68154)

Attention: Commercial Development Manager)

NO TAX DUE - NO CONSIDERATION PAID

DOCUMENT TRANSFER TAX \$0.00

(Space above line for Recorder' s use only)

MEMORANDUM OF AGREEMENT AND GRANT OF EASEMENT FOR TELECOMMUNICATIONS
FACILITIES

PLEASE TAKE NOTICE as follows:

1. Cox Communications, INC. d/b/a Cox Communications Omaha ("Cox"), a Delaware corporation and **Blue Cross & Blue Shield of Nebraska for the Commercial Federal Tower at 2110 S. 72nd St. Omaha NE** ("Owner"), a Nebraska corporation have entered into an agreement to Telecommunication Facilities Agreement dated July 17, 2001 ("Agreement").

2. Owner hereby grants to Cox a non-exclusive perpetual easement entitling Cox to provide cable television, telephone, data transmission and/or other telecommunications service and programming to all units located on the property described on the Exhibit attached hereto and incorporated herein by this reference (the "Property") and to any management/leasing or office and all other common area facilities located on the Property. Owner and Cox are recording this memorandum in the Official Records of Omaha, NE to evidence and confirm the same of record.

3. The Agreement grants to Cox rights of access, ingress and egress to and from the Property for the purpose of placing, removing, repairing, and maintaining telecommunications facilities and services at the Property and such rights will survive the expiration or earlier termination of the Agreement to permit Cox to remove its facilities.

4. The Agreement is effective on July 20, 2001 and shall continue for so long as Cox is providing Services at the Property.

5. The Agreement further provides that Cox shall own fee title to certain telecommunications facilities and equipment constructed or installed at the Property, and that the same constitute the personal property of Cox and shall not be considered real property or fixtures or become a part of the Property despite attachment to the Property.

6. The Agreement shall run with the Property and shall be binding upon and inure to the benefit of (a) Owner and any person acquiring any right, title or interest in or to the Property or any portion thereof and (b) Cox and

its permitted successors and assigns. A copy of relevant provisions of the Agreement will be provided to any properly interested person upon written request.

7. The Memorandum is created and recorded for the purpose of providing notice of the terms and provisions of the Agreement and does not vary or amend any terms and provisions of the Agreement, or affect or invalidate any prior easement rights Cox may have on the Property. In the event of any conflict between this Memorandum and the Agreement, the Agreement shall control.

IN WITNESS WHEREOF, the undersigned have executed this Memorandum this 20 day of July, 2001.

BLUE CROSS & BLUE SHIELD NEBRASKA

By: 

Name: JACK D. MILLS

Title: PRESIDENT/CEO

COX COMMUNICATIONS OMAHA

By: 

Name: Janet Barnard

Title: Vice President & General Manager

W063

Commercial Federal Tower
 7202 Mercy Road
 for Troy Mason
 Tom G. 06-08-01

751/0-53
W063A
JLX-T-750P/LC
15'
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MB-750D-H
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344'

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622'

234'

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77.2V

7262

Change out existing LE for Minios shown

Add cable, tops and minios shown

MERCY RD

73 ST

72 ST

FOR CONSTRUCTION
 Maps have already been updated

JUN 09 2001

Please forward ASBUILTS to
 CAD TEAM when completed.

