

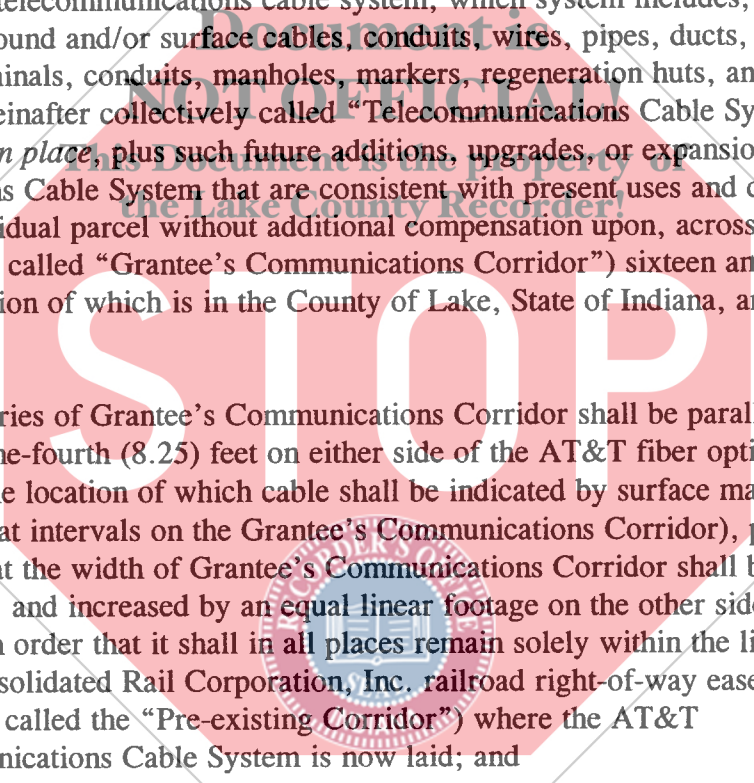
Cross-Reference: Instrument Number 97053637, Lake County Recorder

GRANT OF COMMUNICATIONS SYSTEMS EASEMENT

In consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, receipt whereof is hereby acknowledged, the undersigned, Henry J. Nyenhuis (hereinafter collectively with his/her/its successors in interest called "Grantor"), hereby grants, conveys and assigns to AT&T Corp., a New York corporation, its associated and allied companies, and its and their successors and assigns (hereinafter called "Grantee"), a permanent easement to operate, maintain (to include aerial patrol), reconstruct, replace and remove its present telecommunications cable system, which system includes, without limitation, underground and/or surface cables, conduits, wires, pipes, ducts, waveguides, surface testing terminals, conduits, manholes, markers, regeneration huts, and other appurtenances (hereinafter collectively called "Telecommunications Cable System"), all where they are presently in place, plus such future additions, upgrades, or expansions to the Telecommunications Cable System that are consistent with present uses and do not increase the burden of the individual parcel without additional compensation upon, across or under a strip of land (hereinafter called "Grantee's Communications Corridor") sixteen and one-half (16.5) feet wide, the location of which is in the County of Lake, State of Indiana, and described as follows:

The boundaries of Grantee's Communications Corridor shall be parallel lines eight-and-one-fourth (8.25) feet on either side of the AT&T fiber optic cable now laid (the location of which cable shall be indicated by surface markers set by Grantee at intervals on the Grantee's Communications Corridor), provided however that the width of Grantee's Communications Corridor shall be reduced on one side and increased by an equal linear footage on the other side wherever necessary in order that it shall in all places remain solely within the limits of the former Consolidated Rail Corporation, Inc. railroad right-of-way easement (hereinafter called the "Pre-existing Corridor") where the AT&T Telecommunications Cable System is now laid; and

Located entirely within the following described real estate located immediately adjacent to or within the northeastern boundary line of the property described in the attached Exhibit "A" ("Property"): Commencing at the southeast corner of such northeastern boundary line of the Property, the point of beginning; thence in a northeasterly direction 50 feet to a point on the centerline of the Pre-existing Corridor; thence in a northwesterly direction on and along the centerline of the Pre-existing Corridor and parallel to the northeastern boundary line of the Property to a point adjacent to the northeast corner of the Property; thence in an southwesterly direction 50 feet to such northeast corner of the Property; thence in



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a southeasterly direction on and along the northeastern boundary line of the Property to the point of beginning.

It is understood and agreed that the permanent easement granted herein is subject to all presently existing uses of Grantor's land whether such uses are by Grantor or others and whether for surface uses, crossings or encroachments by communications companies or utilities, and Grantor shall have the exclusive rights to permit, restrict, maintain or remove such existing uses on the land of the Grantor, including land comprising the Grantee's Communications Corridor. It is further understood and agreed that Grantee shall not interfere with such reasonable uses of the land of the Grantor, and that Grantor retains the right to grant, convey, assign, and restrict any and all rights on his land that is not part of the Grantee's Communications Corridor.

The permanent easement granted herein, including all rights incidental thereto, shall vest in and belong to Grantee exclusive of any rights or claims of Grantor that are not expressly reserved herein, and Grantor shall have no rights to grant other or additional telecommunications or utility easements of any kind upon, across or under Grantee's Communications Corridor without the consent of and upon payment of just compensation to Grantee. Grantee shall have the right to grant, convey, and assign to third parties in Grantee's sole and absolute discretion, and with no further compensation to Grantor, sublicenses, subeasements or other rights (collectively "Subeasement Rights"), provided Grantee's rights hereunder are limited to grants, conveyances or assignments to use excess capacity within systems and additions that were installed and maintained primarily for Grantee's own use.

In the event that any utility, or any Corridor Entity created pursuant to the Settlement Agreement in *Hinshaw v. AT&T*, hereafter requests from Grantee a sublicense or subeasement to cross or encroach on Grantee's Communications Corridor, Grantee shall not unreasonably withhold its consent to the granting of the same; provided that the use and maintenance of the same shall not interfere with or restrict the rights granted, conveyed and assigned to Grantee or the rights retained by Grantor and subject to just compensation to Grantee.

The Grantor further grants and conveys to the Grantee the following incidental rights and powers:

- (1) Temporary rights-of-way and easement to be used during all periods of construction, reconstruction, repair and removal upon so much of a strip of land ten (10) feet wide on each side of Grantee's Communications Corridor as is owned by Grantor.
- (2) Ingress and egress upon and across the lands of the Grantor to and from said temporary and permanent easement for the purpose of exercising the aforesaid rights, all upon reasonable notice by Grantee.

- (3) In keeping with environmentally safe and sound practices, the right to clear all trees, roots, brush, vines, overhanging limbs, and other obstructions from the surface and subsurface of the above described permanent easement as are reasonably necessary for the Grantee's use and operations, and during periods of construction, reconstruction, repair and removal only, the same rights on the surface and subsurface of the above described temporary easement, subject to just compensation to Grantor for damage.
- (4) The right to install gates in any fence that Grantor may choose to erect across Grantee's Communications Corridor, provided however that Grantee has no right to erect fences.

The Grantor hereby covenants that with the exception of fences in which Grantee has a right to install gates, no excavation, building, structure or obstruction will be constructed, erected, built, or permitted on said permanent easement, and no change will be made by grading or otherwise to the surface or subsurface of Grantee's Communications Corridor, and that no change will be made by grading or otherwise to the surface or subsurface of the land immediately adjacent to Grantee's Communications Corridor in such a manner that will interfere with Grantee's rights herein granted.

The Grantor shall have the right to use and enjoy the land hereby encumbered by the above described temporary and permanent easement so long as such use does not interfere with Grantee's use and enjoyment of such land or the rights herein granted.

The Grantee agrees to pay for any damages to fences and growing crops arising from the construction and maintenance of the aforesaid systems; provided, however, that Grantor agrees that from and after the date hereof, Grantor shall not plow or cultivate to a depth greater than fifteen inches on the Grantee's Communications Corridor, and shall not operate equipment, other than normal farming equipment such as tractors, plows, trucks, combines, balers, pickers, tillers, etc., on or across the Grantee's Communications Corridor. Prior to commencement of any digging or excavation (other than cultivation or plowing) on or in the immediate vicinity of the Grantee's easement, Grantor shall notify "Call Before You Dig" at 1-800-252-1133 at least 24 hours prior to such activity.

Grantee releases Grantor from any and all damages and liability of any kind, whether past, present or future and whether foreseen or unforeseen, arising directly or indirectly on or from Grantor's use of Grantee's Communications Corridor, including any damages to Grantee's Telecommunications Cable System, except upon proof of Grantor's negligence, and if such negligence shall be proven then such damages and liability shall be limited to costs of repair and restoration and shall not include consequential damages. Grantor and Grantee shall mutually indemnify, defend and hold harmless each other from any loss, damages, injuries or liability, arising directly or indirectly in whole or part from either party's actions upon or use of the land encumbered by Grantee's Communications Corridor.

The Grantor represents, warrants, covenants, and agrees that (a) except as to any ownership interest of CSX Transportation, Inc. or Consolidated Rail Corporation or anyone claiming title through either of them, the Grantor is the fee simple owner of the property and/or has/have the right, power, and authority to grant and convey to Grantee the above described rights and easement; and (b) the Grantor will obtain, in recordable form, from any person currently having a lien, security interest or other interest in the land encumbered by the above described easements, which is senior to the rights of the Grantee granted and conferred hereunder, such person's consent to the terms and provisions of this grant of easement.

Grantor and Grantee expressly acknowledge and agree that this Grant of Communications System Easement sets forth the entire understanding and agreement of Grantor and Grantee with respect to Grantor's and Grantee's use, maintenance, and operation of the Communications Corridor on Grantor's property, and as between Grantor and Grantee, any prior easement, license, or other similar rights with respect to Grantee's use of Grantor's property from any source derived is hereby disclaimed and of no further force or effect.

The covenants, rights, terms, conditions, and provisions herein shall extend to and be binding upon the parties hereto and their respective heirs, executors, administrators, personal representatives, successors, assigns, lessees and agents.

Grantor's right, title and interest in and to the land that is subject to this permanent easement arises out of the acquisition of the land acquired pursuant to instrument dated August 4, 1997, and recorded on or about August 10, 1997, as Instrument Number 97053637, in the Office of the Recorder of Lake County, Indiana.

IN WITNESS WHEREOF, Grantor has executed this Grant of Communications Systems Easement on this 14th day of August, 2002.


Grantor

Printed: Henry J. Nyenhuis

ACKNOWLEDGMENT

STATE OF INDIANA)
) SS:
COUNTY OF LAKE)

Before me, a Notary Public in and for such County and State, personally appeared Henry J. Nyenhuis, who, after having been duly sworn, acknowledged the execution of the foregoing Grant of Communications Systems Easement.

WITNESS, my hand and Notarial Seal this 14 day of AUGUST, 2002.

Brenda L. Crockett
(BRENDA L. CROCKETT) Notary Public
printed name of Notary

My Commission Expires: 01/18/2010
My County of Residence: LAKE

This instrument prepared by William P. Wooden, Attorney at Law, WOODEN & McLAUGHLIN, LLP, 1600 Capital Center South, 201 N. Illinois Street, Indianapolis, IN 46204.



Accepted and agreed to this 23rd day of October, 2002.

GRANTEE:

AT&T Corp.

By:

Peggy J. Wornack
SR. TECHNICAL STAFF MGR.



Part of the Northwest Quarter of the Southeast Quarter of Section 5, Township 34 North, Range 8 West of the Second Principal Meridian, in Lake County, Indiana, more particularly described as follows;

Beginning at a point on the centerline of Merrillville Road and the centerline of the Pittsburgh, Cincinnati, Chicago and St. Louis Railroad; thence North 44 degrees 17 minutes 14 seconds West, along the centerline of said railroad to the East line of Main Street also known as State Road No. 55; thence North, along said East line of Main Street, to the North right of way line of the Pittsburgh, Cincinnati, Chicago and St. Louis Railroad right of way; thence South 44 degrees 17 minutes 14 seconds East along said North right of way line to the centerline of Merrillville Road; thence South 19 degrees 26 minutes 24 seconds West, along said centerline, 55.76 feet to the point of beginning, excepting therefrom the following described tract of land:

Part of the Northwest Quarter of the Southeast Quarter of Section 5, Township 34 North, Range 8 West of the Second Principal Meridian, in Lake County, Indiana, more particularly described as follows:

Beginning at a point on the centerline of Merrillville Road and the centerline of the Pittsburgh, Cincinnati, Chicago and St. Louis Railroad; thence North 44 degrees 17 minutes 14 seconds West 278.95 feet; thence North 45 degrees 42 minutes 46 seconds East 50.0 feet to the northerly right of way of said railroad; thence South 44 degrees 17 minutes 14 seconds East along said Northerly right of way, 254.27 feet, more or less, to the centerline of Merrillville Road; thence South 19 degrees 26 minutes 24 seconds West, along said centerline, 55.76 feet to the point of beginning.

