

AGREEMENT BETWEEN THE OREGON FISHERMEN'S CABLE COMMITTEE, INC., AND TYCOM NETWORKS (US) INC.

This Agreement is entered into on the date noted below between and among: The Oregon Fishermen's Cable Committee, Inc. ("Oregon Committee"), an Oregon non-profit corporation with a business address at 2001 Marine Drive, Suite 112, Astoria, Oregon 97103, and TyCom Networks (US) Inc. (TyCom US) with a business address at Patriots Plaza, 60 Columbia Road, Morristown, New Jersey 07960. The Oregon Committee and TyCom US are at times referred to collectively as the "Parties".

The Oregon Committee is constituted of representatives of both the Oregon commercial fishing industry and the telecommunications industry. The fishing representatives are from the areas near and the waters off of Astoria/Columbia River, Garibaldi, Newport/Yaquina Bay, Charleston/Coos Bay and Brookings/Harbor in the State of Oregon. The current telecommunications representatives are from WCI Cable, Inc. and MFS Globenet, Inc. TyCom US intends to install submarine fiber optic cables from Tillamook County, Oregon seaward through commercial fishing grounds in the waters off of the State of Oregon. TyCom US agrees to adhere to the terms and conditions of the Oregon Accord (established on July 9, 1998 between Certain Oregon Commercial Fishing Interests and WCI Cable, Inc.) as modified and amended to date by this Agreement as amended by the Oregon Committee. Among the other Goals set forth below, the Oregon Accord seeks to minimize risks to, interference with, and/or interruption of commercial fishing activities and of submarine fiber optic cable operations.

GOALS

The Parties to this Agreement endorse and encourage the pursuit and fulfillment of the Goals set forth in the original Oregon Accord. The Goals originally stated in the Oregon Accord are:

To continue communication, coordination and cooperation between members of the Oregon commercial fishing and fiber optic cable industries so that they can amiably discuss and resolve concerns;

To encourage the employment of commercially reasonable cable installation and maintenance techniques to minimize interference with and/or interruption of commercial fishing activities;

To sponsor a 24 hour toll free telephone hot line staffed by an individual who has authority to approve the cutting of fishing gear which is possibly snagged on [the] fiber optic cable and to reimburse the fishermen for the cost of the cut gear;

To establish a Fund to compensate commercial fishermen for the replacement of cable-related fishing gear losses and to fund the Committee and Committee activities;

To form a Committee constituted of Oregon commercial fishermen and [the] fiber optic cable representatives who oversee the Fund and administer the Committee's related activities;

To release participating commercial fishermen from liability for damage to [the] fiber optic cable system; and

To create, support and promote the establishment of a buried telecommunications submarine cable corridor from Nedonna Beach, Oregon offshore through fishing grounds for future submarine cables.

SHARED UNDERSTANDINGS

The Oregon Accord was the first effort by representatives of the commercial fishing and telecommunications industries to discuss, describe, and delineate their shared use of a community resource – the ocean. The Oregon Accord and this Agreement are a refinement of the rights and duties set forth in and under international and national law. These Agreements are private compacts between and among individuals and entities. These Agreements are not intended to nor do they create any rights in third parties other than the individual Participating Fisherman who executes the “Individual Fisherman's Agreement And Mutual Release”, a copy of which is attached to this Agreement. These Agreements are intended to be implemented with a minimum of government involvement and interference. These Agreements are not intended to be and should not be interpreted or enforced by an agency or court except as set forth in the Dispute Resolution section of the Agreements. These Agreements perforce are not intended to be disclosed in any administrative or judicial proceeding except as otherwise required by law.

The Parties acknowledge and agree that this Agreement covers only the TyCom fiber optic cables running from the shoreside of Tillamook County, Oregon seaward to a water depth of 2000 meters. The Parties also acknowledge and agree that because the fiber optic cables are intended to remain buried all current fishing activities undertaken by Class A limited entry groundfish permit holders with trawl endorsement, Washington, Oregon and California pink shrimp permit holders, and participants in the prawn trawl fisheries may continue in the area of the TyCom cables. The Parties also acknowledge and agree that this Agreement is limited to the traditional fisheries and current gear and technology in the fishing industry. This Agreement expressly does not cover or protect the fishermen who utilize clam dredges, scallop dredges, and/or any other sub-benthic technology.

24 HOUR TELEPHONE HOTLINE; PROVISION OF REPLACEMENT GEAR

TyCom US shall provide and maintain, either individually or in collaboration with other cable companies, a 24 hour toll free telephone hot line for fishermen to call who believe they have snagged their gear on the TyCom fiber optic cables from shore side of Tillamook County, Oregon seaward to a water depth of 2000 meters. There shall be one TyCom US person or a designee on duty at all times who has authority (1) to make a decision and (2) the background and experience to make the most prudent decision under the circumstances. The individual

shall have the authority to make a quick decision to cut the snagged fishing gear based on limited information if a failure to cut the gear could jeopardize lives or property including the TyCom fiber optic cables. The individual shall have the authority immediately to approve cutting the gear and perforce is authorizing the provision of replacement gear to the Participating Fisherman from suppliers approved by the Oregon Committee. This authorization to the approved suppliers to provide replacement gear to the Participating Fisherman is intended to avoid any delay in providing the replacement gear.

FUNDS

[This Section not available online]

RESOLUTION OF CLAIMS

The Oregon Committee has established a claims review procedure. A Participating Fisherman shall submit a written claim for compensation pursuant to the claims review procedure and on approved forms including the "Sacrificed Gear Claim Form And Release And Settlement" within the time set by the Oregon Committee. The Oregon Committee shall review and then approve or deny a claim in accordance with its claims review procedure. As part of its review, the Oregon Committee may review an inspection of the cables by an underwater remote operated vehicle ("ROV"). If the Oregon Committee approves a claim, the Oregon Committee waives any right to collect from the claimant for the replacement gear it previously caused to be provided to the Participating Fisherman. In addition, the Oregon Committee shall pay from the Fund an amount equal to fifty percent (50%) of the value of the replacement gear to the Participating Fisherman. This sum represents liquidated damages in settlement and satisfaction of any and all claims or possible claims for loss of business, lost profits or any other damages incurred by the Participating Fisherman. The current "Individual Fisherman's Agreement And Mutual Release" and the "Sacrificed Gear Claim Form And Release And Settlement" that accompany the Oregon Accord shall be modified to reflect this amendment. If the Oregon Committee denies a claim because of fraud, misrepresentation or failure to follow the required procedures, the authorization to the approved suppliers for the sacrificed gear is treated as a bridge loan to the fisherman that must be repaid by the fisherman.

THE OREGON COMMITTEE

The size, structure and membership of the Oregon Committee are set forth in the Oregon Accord as amended by the Oregon Committee. Upon execution of this Agreement, the Committee membership and voting membership of the Oregon Committee shall be modified to include one TyCom US voting Committee member.

RELEASE OF LIABILITY

TyCom US agrees to release claims against vessel owners and operators and refrain from taking any administrative, legal or other action to sanction and/or recover damages against vessel owners and operators who honor the Operating Procedures ("Procedures to

Follow While Operating Near Submarine Fiber Optic Cables”) (attached) and other procedures adopted by the Oregon Committee. TyCom US further agrees to encourage all administrative, legal and other authorities to refrain from taking action against fishermen who honor the Operating Procedures and other procedures adopted by the Oregon Committee. The specific terms and conditions of the releases are set forth in the “Individual Fisherman’s Agreement And Mutual Release” and the “Sacrificed Gear Claim Form And Release And Settlement” that accompany the Oregon Accord and are attached to this Agreement.

TYCOM US ACTIVITIES

Support of OFCC Representatives

TyCom US agrees that two Oregon Committee fishermen representatives shall be allowed on board cable survey, installation and maintenance vessels out to a water depth of 2000 meters. The Oregon Committee fishermen representatives shall have access to observe all operations including access to instruments on board vessels whenever space and working conditions reasonably allow. TyCom US shall pay all of the representatives’ approved expenses in the course of their observing such operations. [Sentence removed from online document.]

CABLE BURIAL

TyCom US shall install the fiber optic cables at a depth of one meter or more beneath the seabed seaward from shore to a water depth of 1500 meters or to another point agreed by OFCC and TyCom, not to exceed 2000 m water depth. The fiber optic cables may be buried at less than one meter in hard ground. In addition, where soft bottom is encountered, the fiber optic cables may be buried deeper than one meter. In all instances, current technology will be utilized in the cable burial process including the use of an ROV for post-lay burial, where required, and ROV inspection immediately following installation to a water depth of 2000 meters. The cables shall be armored in such a way as to allow burial to 2,000 m water depth, in case post-lay burial to this depth should become necessary in the future. If TyCom US cannot bury the cables at one meter or greater in the surf zone, TyCom US shall utilize other technology such as a submerged trencher or articulated pipe armoring to protect the cables against storm erosion and sediment drift.

If commercial fishing grounds expand to deeper waters near the cable, then post-installation burial to depths of 2000m can be required by a vote of the Committee. It is understood that the Committee will allow a reasonable time to mobilize the required vessels and equipment.

Miscellaneous Activities

TyCom US shall undertake stringent debris control efforts during installation and burial of the cable. Concurrent with burial of the cable, TyCom US shall undertake an ROV

inspection of the cable out to a water depth of 1500 meters, or employ other acceptable technology to verify cable burial along the cable route.

All ROV inspections resulting from this Agreement shall follow protocols to be agreed to by TyCom and OFCC.

PATROL VESSELS

TyCom US shall pay for patrol boats to be nominated by the Oregon Committee during the cable landing, laying and burial, and any post-lay inspection and burial operation out to a maximum water depth of 2000 meters. The Oregon Committee shall only nominate patrol boats that offer reasonable rates for their services.

AS-BUILT COORDINATES AND CHARTS

TyCom US shall provide to the Oregon Committee Differential Global Positioning System ("DGPS") coordinates recorded from the high-water mark (or first plow-down) to a water depth of 2000 meters and Loran C coordinates in both 5990 and 9940 chains that coincide with each of these DGPS coordinate recordings. As soon after installation as reasonably practicable, TyCom US shall provide OFCC with a complete set of installation charts of the cables from shore to 2000 m water depth. The Oregon Committee or its representatives on the cables ship shall gather Loran C coordinates along the cable route.

Maintenance Activities

TyCom US shall conduct ROV burial verification at least every five years and after any major geological or environmental event as determined by the Oregon Committee. If required, TyCom US shall pay committee-approved gear compensation associated with these or other maintenance activities.

REVIEW BY LEGAL COUNSEL

The Parties acknowledge and agree that they have had this Agreement reviewed by legal counsel or were afforded an opportunity to have this Agreement reviewed by legal counsel. TyCom US shall be responsible for the cost of legal counsel for the Oregon Committee until the Final Agreement is executed by both parties.

DISPUTE RESOLUTION

In the event of a dispute between or among the Parties to this Agreement involving the terms and conditions of this Agreement, the Parties shall (1) discuss the problem between themselves and attempt a resolution. If the dispute is not thereby resolved within seven (7) days, the Parties shall (2) mediate the problem in Portland, Oregon or in another mutually agreed location. If the dispute is not thereby resolved within thirty (30) days, the Parties shall (3) engage in binding arbitration in Portland, Oregon or in another mutually agreed location according to the rules and provisions of the American Arbitration Association.

In the event of a dispute between or among the Parties to this Agreement on a technical issue, the Parties shall discuss the problem between themselves and diligently attempt to reach a resolution. If the dispute is not thereby resolved in a timely manner, the Parties shall employ an independent engineer to review the issue and render an opinion that shall be binding. The engineer shall be hired from a mutually agreeable independent engineering firm with expertise in undersea cable systems and paid by TyCom US.

Notwithstanding any other provision of this agreement, so long as TyCom US is in compliance with the terms and conditions of this Agreement, the parties to this Agreement shall not hold TyCom US, its affiliates, subsidiaries or any of its directors, officers, employees or agents liable for any consequential, incidental, indirect, reliance or special (including punitive) damages. So long as TyCom US is in compliance with this Agreement, the parties to this Agreement will hold TyCom US' maximum aggregate liability, whether in tort, contract or otherwise, as set forth in the paragraphs above on fund, resolution of claims, and dispute resolution.

SUPPORT FOR TYCOM US CABLE PROJECT

The fishing industry members of the Oregon Committee express their support to Governmental Agencies in connection with the permitting, installation, operation and maintenance of the two TyCom US cables that are the subject of this agreement. These members shall also support for subsequent cables that may be proposed by TyCom US, provided that these subsequent cables are covered by the provisions of this Agreement or a similar agreement.

CONFIDENTIALITY

All data concerning cable installation and engineering shall be considered confidential and released outside the OFCC only by written consent of TyCom US.

AGREEMENT OPEN TO NEW MEMBERS

Additional cables and cable companies may be added to this Agreement by majority vote of the Oregon Committee. If additional companies join, the administrative and other costs of the Committee will be shared among the cable company committee members and such cable companies must agree to the substantive terms and provisions of this Agreement.

This Agreement is solely for the benefit of the Parties and their respective successors and permitted assigns, and this Agreement shall not otherwise be deemed to confer upon or give to any other third-party any remedy, claim, liability, reimbursement, cause of action or other right.

This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

This Agreement shall be construed and governed in accordance with the laws of the State of Oregon, United States, excluding its conflicts of law provisions.

Notices. Any notices, consent, approval, or other communication pursuant to this Agreement shall be in writing, in the English language, and shall be deemed to be duly given or served on a Party if sent to the Party at the address stipulated below and if sent by any one of the following means only:

Sent by hand: Such communication shall be deemed to have been received on the day of delivery provided receipt of delivery is obtained.

Sent by facsimile: Such communication shall be deemed to have been received, under normal service conditions, twenty-four (24) hours following the time of dispatch or on confirmation by the receiving Party, whichever is earlier.

Sent by registered or certified mail: Such communication shall be deemed to have been received, under normal service conditions, on the day it was received or on the tenth day after it was dispatched, whichever is earlier.

For purposes of this Article, the names, addresses and fax numbers of the Parties are as detailed below. Any change to the name, address, and facsimile numbers may be made at any time by giving thirty (30) days prior written notice.

TyCom Networks (US) Inc.
Patriot's Plaza
Columbia Road
Building A
Morristown, New Jersey
Attn: Steve Drew

Fax: 973-656-8247

The Oregon Fishermen's Cable Committee, Inc.
2001 Marine Drive, Suite 112,
Astoria, Oregon 97103

Fax: 503 325 7012

This Agreement shall be binding on the Parties and their respective successors and assigns.

If any of the provisions of this Agreement shall be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Agreement, but rather the entire Agreement shall be construed as if not containing the particular invalid or unenforceable provision or provisions and the rights and obligations of the Parties shall be construed and enforced accordingly.

A waiver of any of the terms and conditions of this Agreement, or the failure of either Party strictly to enforce any such term or condition, on one or more occasions shall not be construed

as a waiver of the same or of any other term or condition of this Agreement on any other occasion.

This Agreement supersedes all prior oral or written understanding between the Parties and constitutes the entire agreement with respect to the subject matter herein. Such terms and conditions shall not be modified or amended except by a writing signed by authorized representatives of all Parties.

AUTHORITY TO EXECUTE

The Parties execute this Agreement by and through their respective duly authorized representatives who warrant and covenant their authority to enter into this Agreement.

This Agreement is executed this ____ day of _____.

Oregon Fishermen’s Cable Committee, Inc.

By: _____
Scott McMullen, President/Chairman
(Astoria/Columbia River)

By: _____
Jim Seavers, Secretary
(Newport/Yaquina Bay)

By: _____
Terry Thompson (Newport/Yaquina Bay)

By: _____
Brad Pettinger
(Brookings/Harbor)

By: _____
Gerald Gunnari (Charleston/Coos Bay)

By: _____
Geoffrey G. Fowler
(WCIC)

By: _____
David Jordan (Garibaldi)

By: _____
Mikal Modisette (MFSG)

TyCom Networks (Us) Inc.

By: _____
Rob Munier