SUMMARY STATEMENT

ITEM NO. | SUBJECT: AboveNet Communications, Inc. Long Term License to Use DRPA Property for the Purpose of Installing and Operating Fiber Optic Communication Facilities Across the WWB

COMMITTEE: New Business

COMMITTEE MEETING DATE: October 17, 2007

BOARD ACTION DATE: October 17, 2007

PROPOSAL: That the Board authorize staff to negotiate a license and other necessary agreements permitting AboveNet Communications, Inc. to install, operate, and maintain fiber optic communication facilities along the Walt Whitman Bridge and to also make necessary improvements to complete the cable conduit across the bridge.

PURPOSE: The purpose of the proposed license is to permit AboveNet Communications, Inc. to install, operate, and maintain fiber optic communication facilities connecting New Jersey and Pennsylvania.

BACKGROUND: On or about January, 2007, AboveNet Communications, Inc. ("AboveNet") requested access to the Walt Whitman Bridge conduit for the purpose of installing, operating, and maintaining fiber optic communication facilities along a route of approximately 17,830 feet starting in Philadelphia, crossing the Walt Whitman Bridge, and extending into New Jersey. The purpose of the fiber optic communication facilities will enable AboveNet to enhance its telecommunication services to customers in Pennsylvania and New Jersey. Specifically, AboveNet has requested that DRPA grant AboveNet a fee based telecommunications license to enter upon the WWB and its properties in New Jersey and Pennsylvania to install, operate, and maintain the fiber optic communication facility. The license will not be exclusive, and, therefore, will not preclude the DRPA from entering into license agreements with other public entities or telecommunication service providers to allow access to the proposed fiber optic communication facility.

AboveNet seeks access to the DRPA conduits identified in the map entitled “Fiber Optic Map” prepared by AboveNet dated August 21, 2007 and attached hereto and made a part of this resolution as Exhibit “A”.

AboveNet proposes to use existing DRPA electrical conduits as they presently exist on the WWB and would also provide, at its cost and expense, labor and materials to connect 6 stranded DRPA ducts at 2
locations, completing a conduit route of about 1 mile, with AboveNet occupying 1 of the 6 ducts. The remaining 5 ducts will be controlled by the DRPA. The DRPA will reserve 1 of the 5 remaining ducts for public use, and the other 4 ducts will be available for the DRPA’s use and/or available to be licensed to other telecommunication service providers. The improvements to be constructed are identified in the scope of work attached hereto as Exhibit "B" and would be owned by DRPA following completion of the work. The estimated costs of the construction improvements are expected to be approximately $60,000.

As consideration for DRPA's grant of a license to install, operate, and maintain the fiber optic communication facility, AboveNet proposes the following license terms:

1. **License Term:** initial term of 10 years with two (2) five year options;

2. **License Fee:** $0.78 per foot of conduit/duct occupied and $0.39 per innerduct foot occupied per year, with such amount being consistent with fees paid by AboveNet to Verizon for use of Verizon conduit/duct/innerduct in accordance with regulations of the Public Utility Commission ("PUC"), and such rates may be subject to change in accordance with any changes in rates permitted by the PUC. Fee escalates based on escalation formula set by the PUC. If the PUC ceases to control rates, rates will escalate based on the Consumer Price Index. The estimated annual license fee is between $7,000 and $14,000/year based on actual usage.

3. **Construction of Improvements:** AboveNet will construct, at its cost and expense, conduit (estimated to cost $60,000) as necessary to complete a continuous conduit extending from New Jersey to Pennsylvania. Title to the improvements will be conveyed to DRPA upon completion and acceptance by DRPA.

Engineering and Bridge Operations staff have reviewed the proposal and determined that granting AboveNet access to the conduits and areas identified on the Fiber Optic Map will not be detrimental to the interests of the DRPA and will not adversely impact the operations of the DRPA. Staff has also evaluated the proposed license fee and the license fee is consistent with the license fee currently charged by the
Philadelphia Authority for Industrial Development at the Philadelphia Navy Yard. The proposed license fee appears to be market rate. Staff believes the license fee, along with the construction improvements to be conveyed to DRPA, appears to be reasonable consideration to grant the license to AboveNet.

**SUMMARY:**

Amount: $0.78 per foot of conduit/duct occupied and $0.39 per innerduct foot occupied per year plus annual escalation; (Estimated annual fee of $7,000 and $14,000)

Source of Funds: N/A
Capital Project #: N/A
Operating Budget: N/A
Master Plan Status: N/A
Other Fund Sources: N/A
Duration of Contract: 10 years with 2 five year options
Other Parties Involved: AboveNet
AboveNet Communications, Inc. Long Term License to Use DRPA Property for the Purpose of Installing and Operating Fiber Optic Communication Facilities Across the WWB

RESOLUTION

RESOLVED: That the Board of Commissioners of the Delaware River Port Authority hereby accepts the proposal of AboveNet Communications, Inc. set forth in this summary statement and resolution and approves a long term telecommunications license in favor of AboveNet Communications, Inc. to use the conduit of the Walt Whitman Bridge as identified on the Fiber Optic Map attached hereto as Exhibit “A” and the construction of certain conduits which will be turned over to the DRPA upon completion and acceptance of the conduit improvements; and be it further

RESOLVED: That the Board of Commissioners authorizes the proper officer of the Authority to negotiate a long term license agreement and any other documents required to complete the project and consistent with the intent of this resolution; and be it further

RESOLVED: That the Chairman, Vice Chairman and the Chief Executive Officer must approve and are hereby authorized to approve and execute all necessary agreements, contracts, or other documents on behalf of the DRPA. If such agreements, contracts, or other documents have been approved by the Chairman, Vice Chairman and Chief Executive Officer and if thereafter either the Chairman or Vice Chairman is absent or unavailable, the remaining Officer may execute the said document(s) on behalf of DRPA along with the Chief Executive Officer. If both the Chairman and Vice Chairman are absent or unavailable, and if it is necessary to execute the said document(s) while they are absent or unavailable, then the Chief Executive Officer shall execute such documents on behalf of DRPA.

SUMMARY:

- **Amount:** License Fee to be Paid by AboveNet
- **Source of Funds:** N/A
- **Capital Project #:** N/A
- **Operating Budget:** N/A
- **Master Plan Status:** N/A
- **Other Fund Sources:** N/A
- **Duration of Contract:** 10 years, 2 five year options
- **Other Parties Involved:** AboveNet