



(Board Copy)  
Washington Metropolitan Area Transit Authority  
**METRO ELECTRONIC ACTION  
DOCUMENT**

IDENTIFICATION			
MEAD ID:	99372	ACTION:	N/A
AWARD VALUE:	(Not yet awarded)	CONTRACT: (Proposed)	
FUND SOURCES: (View)		CONTRACTOR:	
LAST MODIFIED:	05/09/2006		

DESCRIPTION	
SUBJECT:	License Agreement with FiberLight LLC (FiberLight) for Fiber Optic System
PURPOSE:	To obtain Board approval for the General Manager to 1) negotiate and execute a non-exclusive License Agreement with FiberLight LLC (FiberLight) for installation and operation of a fiber optic cable system within the Metrorail system; and 2) as part of the Agreement, for WMATA to indemnify FiberLight for WMATA's gross negligence or willful and/or wanton misconduct.

ORIGINATION					
INITIATOR			DEPARTMENTAL APPROVAL		
MARK MEISTER on 03/15/2006			Approved by SALPEAS , PANAGIOTIS 04/04/2006		
PHONE:	202-962-1589	OFFICE:	LAND	DEPT:	Secretary and Chief of St

COORDINATION (ROUTING)		
OFFICE	NAME	ACTION/DATE
LAND (7310)	MALASKY, GARY	Approved 03/29/2006
IRPG (4710)	COUCH, DAVID	Approved 04/03/2006
(4110)	SALPEAS, PANAGIOTIS	Approved 04/04/2006
COUN (1410)	O'KEEFFE, CAROL	Approved 04/07/2006
COUN (1410)	O'KEEFFE, CAROL	Re-assigned 04/07/2006
(1120)	Moneme, Emeka	Approved 04/18/2006

FINAL APPROVALS	
OFFICE	NAME/ACTION
PLN_DEV_CMTE	Approved for by PANAGIOTIS SALPEAS on 04/04/2006
BEMR	Approved for by Emeka Moneme on 04/18/2006
BEMR	Emeka Moneme (Not Yet Approved)
GM	GMGR CEO (Not Yet Approved)
BOARD	BOARD WMATA (Not Yet Approved)
GM	GMGR CEO (Not Yet Approved)
GM	GMGR CEO (Not Yet Approved)
GM	Approved for GMGR by GMGR CEO on 05/09/2006
BOARD	BOARD WMATA (Not Yet Approved)



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**NARRATIVE**

**DISCUSSION:**

Xspedius Management Co. of D.C., LLC, successor-in-interest to American Communication Services of D.C. Inc. (ACSI) wishes to assign three (3) cables covered by their License Agreement with WMATA to FiberLight.

This is a proposed non-exclusive agreement with FiberLight to maintain the current cable installation and for future placement of fiber optic cable within the Metrorail right-of-way. As a leading provider of network infrastructure solutions and strategic network design services, FiberLight designs, constructs and maintains an extensive Fiber Optic Infrastructure in and around the metro areas of Atlanta, GA; Baltimore, MD; Dallas, TX; Houston, TX; San Antonio, TX; South Florida; Tampa, FL; and Washington D.C. FiberLight serves a diverse customer base including local and long distance telecommunications carriers, Internet Service Providers, municipalities, utilities, Fortune 500 enterprises, school systems, local, city, and Federal Government entities.

A summary of the terms proposed to be negotiated in the Agreement follows:

- 1) Acceptance of the Assignment of three existing cable segments.
- 2) For any new cable installations, FiberLight will give WMATA, in a separate cable, twelve (12) dark (unused) fibers within the FiberLight System for its use. Such use includes the right for WMATA to lease or license those fibers to third parties. In lieu of these twelve (12) dark (unused) fibers, WMATA may, with FiberLight consent, negotiate other compensation. WMATA has previously received cable as part of the original compensation of the three installed cable segments.
- 3) The initial term of the Agreement is the same as the remaining term of the ACSI/Xspedius Agreement of three (3) years with automatic renewal for an additional ten (10) year term. Annual rental is shown on the Confidential Attachment. The rental will be adjusted for any additional cable installed and will be adjusted yearly based on the increase in the Consumer Price Index.
- 4) Upon termination of the Agreement, all cable and associated equipment shall, at the option of WMATA, become the property of WMATA or be removed within six (6) months at the written direction of WMATA.
- 5) FiberLight is solely responsible for all costs associated with building and maintaining the FiberLight System, including the cost for WMATA staff time in design, review, coordination, engineering, inspection, administration, escort service and any other activities in connection with the Agreement.

6) FiberLight will indemnify WMATA and provide all required insurance coverages. WMATA agrees to indemnify FiberLight only for WMATA's gross negligence or willful and/or wanton misconduct. Additionally, the Agreement provides that no claims for indemnification can be made by either party unless the aggregate amount of the claim exceeds \$5,000.

ALTERNATIVE:

Do not enter into the Agreement with FiberLight. WMATA would forego significant revenue from the lease of its right-of-way.

IMPACT ON FUNDING: See Confidential Memorandum

RECOMMENDATION:

That the Board authorize the General Manager to 1) negotiate and execute a non-exclusive License Agreement with FiberLight LLC for installation and operation of a fiber optic cable system within the Metrorail system; and 2) as part of the Agreement, for WMATA to indemnify FiberLight for WMATA's gross negligence or willful and/or wanton misconduct.

Attachment