



VIA FACSIMILE
(403) 410-4019

March 19, 2003

Bell West Inc.
21st Floor
111 – 5th Avenue S.W.
Calgary, AB T2P 3Y6

Attention: Mary Daye

RE: Letter of Understanding – 940 Blanshard Street, Victoria, BC

This letter of understanding evidences the terms of a non-exclusive licence made between British Columbia Buildings Corporation, as owner (the 'Owner') of the building and property located at 940 Blanshard Street (the 'Property') in the City of Victoria, BC, and Bell West Inc. (the 'Licensee') on the following terms and conditions:

1. **Grant of License** - The Owner grants to the Licensee a non-exclusive license to install, operate, maintain, repair and replace the communications equipment including, without limitation, cabinets, racks, electronic equipment and other similar equipment (the "Communications Equipment") of the Licensee solely in the enclosed room located in the Property and described in Schedule "A" hereto (the "Telecommunications Room"), at the Licensee's sole expense and risk on the terms and subject to the conditions set out in this letter of understanding.

The Owner makes no representation, warranty or condition with respect to the Property and the Telecommunications Room including, without limitation, any representation, warranty or condition with respect to the size, condition, quality, suitability or fitness of the Property and the Telecommunications Room and any source of utilities for the Licensee's purposes hereunder or any other purpose. The Licensee acknowledges that it has inspected the Property and Telecommunications Room and agrees to accept the Property and Telecommunications Room and any utility services on an "as-is", "where-is" basis and acknowledges that the Owner has not made any commitment or undertaking to make any modifications or improvements to the Property or the Telecommunications Room.

2. **Term** – Subject to the early termination provisions contained herein, the term (the "Term") of the non-exclusive licence created hereby is for five

Buildings
for a Better
British
Columbia

3350 Douglas St.
Victoria BC V8Z 3L1



Tel (250) 952-8500
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British Columbia Buildings Corporation

Revision Date: 2003/03/19

Approved to form 

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Owner	Licensee
	

(5) years, commencing March 13th, 2003 (the "Commencement Date").

3. **Nature of Interest** - The licence granted to the Licensee under this letter of understanding is a licence only, and shall not constitute a lease or other right in the Property or the Telecommunications Room nor shall it constitute a partnership or joint venture between the parties.
4. **Non-Exclusivity** - The non-exclusive licence granted to the Licensee under this letter of understanding is not exclusive to the Licensee, and the Owner has the unrestricted right to grant similar or competing rights, licences and privileges in respect of the Property and the Telecommunications Room to other parties.
5. **No Commitment** - Nothing in this letter of understanding shall be construed as an agreement, undertaking or commitment by or on behalf of the Owner to grant any additional rights, licenses or privileges to the Licensee in respect of all or any portion of the Property, the Telecommunications Room or any other property of the Owner.
6. **License Fee** - In consideration of the grant of the non-exclusive licence hereunder, the Licensee shall pay to the Owner an annual license fee in an amount of Seven Hundred Fifty Dollars (\$750.00) which, shall include \$250.00 for electricity plus all applicable taxes including without limitation GST, which license fee shall be paid in advance on the Commencement Date and, thereafter, on each anniversary of the Commencement Date during the Term.
7. **Non-Disclosure** - The Owner and the Licensee each agree to use good faith efforts to refrain from disclosing the financial terms of this Agreement, except that either party may disclose the financial terms of this Agreement if required by law or regulation. The Licensee acknowledges that Owner is bound by and subject to the *Freedom of Information and Protection of Privacy Act (BC)*.
8. **No Endorsement** - The Licensee shall not make any statements or representations in any manner or form that the Owner uses or endorses any of the Licensee's services or products nor shall the Licensee use the Owner's name in any manner or form to promote the Licensee's products or services.
9. **Use of Telecommunications Room** - The Licensee shall use the Telecommunications Room solely for the purpose of the installation, operation, maintenance, repair and replacement of the Licensee's Communications Equipment as required by the Licensee for the sole

purpose of providing communications services to BCNet on the Property. Any additional use or uses shall require the prior consent of the Owner.

10. **Title and Risk** – The Owner acknowledges and agrees that title to, and ownership of, the Communications Equipment shall remain with the Licensee at all times notwithstanding that the Communications Equipment may be affixed to a part of the Property for the time being. The Licensee acknowledges and agrees that Communications Equipment is and shall remain at the sole risk of the Licensee.
11. **Cost of Installation** - The Licensee shall be responsible for all costs incurred in connection with installation and operation of the Communications Equipment in the Telecommunications Room.
12. **Approval of Installation** - The Licensee will provide the Owner with plans and details of the proposed installation of the Communications Equipment in the Telecommunications Room. The plans and proposed installation details shall be approved by the Owner prior to the commencement of installation. Such approval not to be unreasonably withheld by the Owner. In installing, maintaining, operating, repairing, replacing, removing and providing services through the Communications Equipment the Licensee shall comply at all times with all applicable laws, regulations, by-laws, rules, orders and ordinances of all federal, provincial and municipal governmental authorities, including, without limitation, the rulings and decisions of the CRTC and shall perform all work in a good and workman like manner in accordance with acceptable industry standard and applicable laws.
13. **Electrical Power** – The Licensee shall have the right to connect the Licensee's Equipment to the electric power distributing system within the Building at the sole cost and expense of the Licensee. The Owner may require the Licensee to pay for all electricity consumed by the Licensee on a load and usage basis. If required by the Owner, the Licensee, at its sole cost and expense, shall install a separate metre to determine the Licensee's electricity consumption. The Owner shall use reasonable commercial efforts to notify the Licensee in advance of any planned utility outages that may interfere with the Licensee's use. The Licensee agrees that the Owner has no obligation or responsibility to provide emergency or backup power to the Licensee, unless the parties agree that the Owner will provide emergency or backup power to the Licensee on such terms and conditions as mutually agreed between the parties.

14. **Removal of Communications Equipment** - The Licensee may remove, at its option, the Communications Equipment or a portion thereof and promptly upon the expiration or termination of the Term shall remove the Communications Equipment and shall be responsible for any damage to the Property arising as a result of such removal or installation and shall be responsible for restoring the Property to the same condition or a better condition that existed immediately prior to the installation of the Communications Equipment, reasonable wear and tear excepted.
15. **Access to Property** - Subject to the Licensee's compliance with the Owner's "Building Access and Security Policies" (a copy of which the Licensee acknowledges receiving), the Licensee shall have commercially reasonable access to the Property solely for the purpose of exercising its rights hereunder during all reasonable business hours except that in situations of emergency in which case the Licensee will have access at any and all times. If the Owner incurs any additional expenses in connection with providing emergency access to the Licensee, the charges shall be for the Licensee's account.
16. **Insurance** - The Licensee shall obtain, maintain and pay for Comprehensive General Liability Insurance, for an amount acceptable to the Owner, but not less than \$2 million dollars per occurrence. Such insurance shall include the Owner as a named insured and shall contain a standard form of cross liability clause and shall provide for thirty days prior notice of cancellation, lapse or material change. The Licensee agrees that certificate of insurance or, if required by the Owner, certified copies of each such insurance policy, will be delivered to the Owner prior to the Licensee taking occupancy. The Licensee further agrees that if there be a breach of the insurance requirements of this Section, the Owner may obtain the necessary insurance coverage on the Licensees behalf and recover the costs thereof as additional rent.

The Licensee will be responsible for loss, damage or destruction of its own chattels, trade equipment, fixtures installed by, or on behalf of the Licensee and tenant improvements installed by, or on behalf of the Licensee. The Licensee specifically acknowledges that the Owner will not cover insurance to cover or will indemnify the Licensee for loss, damage or destruction on the items mentioned in this paragraph.

17. **Indemnification** - The Licensee shall indemnify and save harmless the Owner against claims or losses arising from the use or occupation of the Licensee's Communication Equipment in the Telecommunications

Room and the Property, or any act or omission on the part of the Licensee or anyone for whom Licensee is responsible in law, except to the extent that any such loss, suit, claim, action, damage or expense is due solely to the negligence or willful misconduct of the Owner or those for whom the Owner is in law responsible.

18. **Limitation of Liability** - notwithstanding anything to the contrary contained herein, in no event shall either party be liable to the other party or any other third party for any indirect, economic, consequential or special damages including, without limitation, loss of profit, revenue, data or loss of use or opportunity, whether arising in tort, contract or otherwise and whether or not the owner had been advised of the possibility of such damages.
19. **Termination by Licensee** - The Licensee shall have the right, at its option, to terminate the non-exclusive license upon written notice to the Owner in the event of the occurrence of any of the following:
- (a) the Licensee is unable to secure, on terms and conditions reasonably satisfactory to the Licensee, all necessary consents, approvals, permits and authorizations of any federal, provincial or municipal governmental authority having jurisdiction over the installation, operation, maintenance, repair, removal and use of the Communications Equipment;
 - (b) the Communications Equipment is damaged or destroyed and the Licensee determines that it will not effect repairs to, or replace, the Communications Equipment or the Licensee no longer requires the Telecommunications Room for the purpose of providing its communications services to customers in the Property;
 - (c) the Owner defaults in the observance or performance of any of the Owner's obligations under this Agreement, and such default continues for more than thirty (30) days after receipt of written notice of such default by the Licensee to the Owner, unless such default cannot reasonably be cured within such thirty (30) day period, in which event the period for curing such default shall be extended for the minimum period of time reasonably required to effect such cure, provided that the Owner promptly commences such cure with reasonable diligence; or
 - (d) the Owner makes an assignment for the benefit of creditors or becomes bankrupt, or takes the benefit of, and becomes subject to, the legislation in force relating to bankruptcy or

insolvency, it being understood that the appointment of a receiver, receiver/manager, or trustee of the property and the assets of the Owner is conclusive evidence of insolvency.

20. **Termination by the Owner** - The Owner shall have the right, at its option, to terminate the non-exclusive license and the Licensee's rights hereunder upon written notice to the Licensee in the event of the occurrence of any of the following:

- (a) the Licensee defaults in the payment of the License Fee or any other sum due under this Agreement, and such default continues for more than ten (10) days after receipt of written notice of such default by the Owner to the Licensee;
- (b) the Licensee defaults in the observance or performance of any of the Licensee's obligations under this Agreement and such default continues for more than thirty (30) days after receipt of written notice of such default by the Owner to the Licensee, unless such default cannot reasonably be cured within such thirty (30) day period, in which event the period for curing such default shall be extended for the minimum period of time reasonably required to effect such cure, provided that the Licensee promptly commences such cure with reasonable diligence;
- (c) the Licensee makes an assignment for the benefit of creditors or becomes bankrupt, or takes the benefit of, and becomes subject to, the legislation in force relating to bankruptcy or insolvency, it being understood that the appointment of a receiver, receiver/manager, or trustee of the property and the assets of the Licensee is conclusive evidence of insolvency; or
- (d) the Property is damaged to such an extent that the Licensee is unable to effectively exercise its rights pursuant to the license granted by the Owner under this letter of understanding, and the Owner decides not to rebuild or repair the Property within 180 days after such event, the Owner shall have the right to terminate the license hereunder upon providing thirty (30) days prior written notice to the Licensee, in which event the Licensee shall remove the Communications Equipment in accordance with the provisions of this letter of understanding. The Licensee shall have no obligation to pay the License Fee or any other amounts under this letter of understanding during the thirty (30) day notice period, and the portion of the License Fee paid by the Licensee in advance shall be refunded by the Owner to the

Licensee on a pro-rated bases to the date of damage to the Property.

21. **Effect of Termination and Survival** – Upon the termination of this letter of understanding the Licensee shall promptly comply with its obligations under section 14 hereof. Notwithstanding the termination or expiration of the non-exclusive licence or this letter of understanding, the obligations under sections 17 and 18 shall survive such termination or expiration and shall remain in full force and effect.
22. **Notices** – Any notice pursuant to this letter of understanding shall be sufficiently given if in writing and personally delivered or sent by facsimile addressed as follows: (a) in the case of the Owner, Rick Townsend at the address or facsimile number set out on page 1 hereof phone (250) 952-8122 and fax number (250) 952-8123; and (b) in the case of the Licensee shall be Bell West Inc. Access and Right of Way at 1-800-333-2811 and fax number (403) 410-4019.
- Any notice that is delivered personally or by facsimile during usual business hours on a business day shall be deemed to have been received on that business day and if delivered outside of usual business hours or on a non-business day, the notice shall be deemed to have been received on the next business day.
23. **Entire Agreement** – This letter of understanding constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, proposals, agreements, representations, warranties and conditions, whether oral or written. This letter of understanding cannot be amended or modified except by mutual agreement of the parties expressed in writing.
24. **No Waiver – No failure by** either party to exercise any right or remedy hereunder or to insist upon strict compliance by the other party of any obligation hereunder shall constitute waiver of any such right, remedy or obligation. No waiver shall be effective unless made in writing and signed by the waiving party.
25. **No Assignment or Sublicence** – The Licensee shall not assign or sublicense all or any portion of its rights or obligations hereunder without the prior written consent of the Owner, which consent shall not be unreasonably withheld.
26. **Governing Law** – This letter of understanding shall be governed by and interpreted in accordance with the laws of the Province of British

Columbia. The parties hereby irrevocably submit to the jurisdiction of the courts of British Columbia.

Please acknowledge acceptance of these terms and conditions by signing where indicated below and returning a copy of this Letter of Understanding to our office by facsimile at (250) 952-8288 and delivering an original copy.

BRITISH COLUMBIA BUILDINGS CORPORATION

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The undersigned acknowledges and agrees to be bound by the terms and conditions set out above in this letter of understanding. Dated the 26th day of March, 2003.

**Barrister & Solicitor
General Counsel**

BELL WEST INC.

**DIRECTOR,
CORPORATE SERVICES**