

PLATTEVILLE COMMUNITY AREA NETWORK, an Unincorporated Association

AGREEMENT OF ASSOCIATION

This Agreement of Association (this "Agreement") is entered into as of the 15th day of February, 2012 (the "Effective Date"), by and among the members identified on the attached Exhibit A (the "Initial Members") for the purpose of forming, pursuant to Chapter 184 of the Wisconsin Statutes, an unincorporated, nonprofit association to be known as Platteville Community Area Network, Unincorporated Association.

BACKGROUND

The Platteville Community Area Network ("PCAN") currently exists as an informal community area network or "CAN" comprised of the City of Platteville, the Platteville School District, and the University of Wisconsin - Platteville for the purpose of installing and maintaining in working order a fiber optic cable network as indicated on the map of the network attached to this Agreement as Exhibit B ("Network").

AGREEMENT

In consideration of the foregoing, the mutual covenants and obligations created in this Agreement, the benefits each of the Initial Members (and any subsequent Members) will derive from the maintenance and expansion of the Network, and other valuable consideration, the receipt and sufficiency of which they acknowledge, the Initial Members agree as follows:

1. **Creation and Name of Association.** The Initial Members, by their execution of this Agreement and pursuant to Chapter 184 of the Wisconsin Statutes, hereby create an unincorporated, non-profit association (the "Association"). The name of the Association shall be the Platteville Community Area Network Unincorporated Association.

2. **Membership in the Association.**

a. **Initial Members.** Membership in the Association as of the Effective Date shall consist of all of the Initial Members whose names appear on Exhibit A and who are signatories to this Agreement.

b. **Additional Members.** Additional members ("New Members") may join the Association by entering into a Joining Agreement, in a form and under such terms as are determined by the Executive Committee (defined below) from time to time. The Initial Members and Additional Members are sometimes referred to in this Agreement individually as a "Member" and collectively as "Members." When such references are

used in a provision of this Agreement, the intent is to make no distinction between Initial Members and Additional Members with respect to that provision.

- c. **Withdrawal of a Member.** A Member may withdraw voluntarily from the Association at any time by providing written notice of withdrawal to the then acting Secretary of the Association, including a withdrawal date that is not sooner than thirty (30) days after delivery of the withdrawal notice. Withdrawing Members do not receive a return of any assets or other resources conveyed to or bestowed upon the Association by such withdrawing Members. If any Member who otherwise would have remained a Member is required to withdraw from the Association because that Member is no longer legally permitted to be a Member (an "Involuntary Withdrawal"), that withdrawn Member shall have the right following the Involuntary Withdrawal, but subject to any applicable legal requirements, to apply to the Association for continued use of the Network under the terms of Section 3.a. below and the Executive Committee shall give all due consideration to that withdrawn Member's application in the spirit of this Agreement and the Association's purposes.
- d. **Services to Non-Members.** The Association may make the Network available for use by non-Member entities whose missions or functions the Executive Committee reasonably believes are consistent with the Association's stated mission, pursuant to terms specified by the Executive Committee; provided that the Association expressly herein states that it is not the intention of the Association that the Network be made available to end users of the public generally, and further states that, under no circumstances will the Association, or its Members, provide telecommunications services, relevant group of services or broadband service provided by the basic network function to end users, nor will the Network be made available to non-Member entities in a manner that competes with more than one provider of broadband service.

3. **Assets of the Association.**

- a. **Existing Network.** As of the Effective Date, the Initial Members hereby convey to the Association, all of their right, title and interest in and to the Existing Network together with all of their right, title and interest in and to any and all easements relating to such portions of the Existing Network.

i. Should any member withdraw from the Association for any reason whatsoever, the withdrawing member retains the right to access the Existing Network and any improvements or changes made thereto, which the withdrawing member initially transferred to the Association with the understanding that the withdrawing member will pay their proportionate share of the costs for maintenance, repair, locates, relocation and improvement of such portions of the Existing Network. The purpose of this reservation is to allow the member who is withdrawing, to have access to the Existing Network upon which the public entity depends.

ii. Public policy would support the reservation of those rights of members in such portions of the Existing Network in that it would cost each public entity large amounts of public tax monies to replace that fiber optic cable and the operating systems that were used with them, all of which were originally purchased with taxpayer money.

- b. **Existing Rights and Uses.** Notwithstanding the rights and interests they are transferring to the Association by this Agreement, each of the Initial Members shall continue to have and enjoy the same level of use of the Existing Network as they enjoy on the Effective Date, subject to the terms of this Agreement, including the use and benefit resulting from any Projects undertaken pursuant to Subsection 3.c. i, ii, iii, or v.
- c. **Expansion of Network.** Future expansion of the Existing Network may continue to occur through projects undertaken by two or more Members ("Projects") under the following parameters:
- i. **Project Proposal.** A Project may be initiated by the submission of a proposal (a "Proposal") to the Executive Committee. At a minimum, a Proposal shall identify:
- the route of the proposed expansion
 - the Members who will benefit from the Project
 - any New Members who will join the Association in connection with the Project
 - each Member's use of the Network as expanded by the approved Project
 - the source(s) of funding for the Project;
 - such other factors as the Executive Committee may require

- ii. **Project Approval.** If the Executive Committee approves of the Project, the Association will arrange for the design and construction of the Project on behalf of the Members proposing the Project (including the New Members described in the Proposal provided those New Members enter into Joining Agreements as described above).
- iii. **Expanded Network.** Upon completion of the Project, the Network shall be deemed to include all of the fiber optic cable installed as part of the approved Project, and the Network map shall be updated accordingly.
- iv. **Projects Not Approved/Other Projects by Members.** Nothing in this Agreement shall prevent any Member or group of Members from carrying out, individually, as a group of Members, or as a group including non-Members, projects that were presented to the Association in a Proposal that was not approved by the Executive Committee or other projects that such Member(s) determine would be better completed without involving the Association. Installations constructed through projects completed under this Subsection 3.c.iv. will not become part of the Network or be owned by the Association, but the Association, on behalf of one or more of its Members may enter into separate arrangements whereby those Members may obtain the use or other benefit of such projects on terms agreed upon among the Members (and/or others) who constructed the project and those other Members who wish to obtain the benefit of such project.
- v. **PCAN-Initiated Projects.** In addition to the above, the Association, acting through the Executive Committee, shall have the authority to approve and undertake a project to expand the Network whenever the Executive Committee deems such expansion to be in the best interest of the Association. The funding for and use of an Executive Committee initiated project will be explained to the then-current Members in a regularly-scheduled Association meeting or in a special meeting called in accordance with procedures set forth in the Association's Bylaws prior to the commencement of that project, provided, however, that no Member may be required to participate in the funding of

design and construction for a project initiated by the Executive Committee under this Subsection 3.c.v. over that Member's objection.

d. **Maintenance, Repair, Relocation or Replacement of the PCAN Network.**

The Association will be responsible for the maintenance, repair, relocation and replacement of the Network as the same may be expanded from time to time as provided in Section 3.c. above. The costs of such maintenance, repair, relocation and replacement shall be assessed against the Members as set forth in Section 5.b. below and the Association's Bylaws, provided, however, that the Executive Committee may, in its discretion, apply grant funds received by the Association for these purposes in accordance with the requirements of any such grants. Members shall be solely responsible for the maintenance, repair, relocation and replacement of all Laterals, including the funding of its own costs to connect to the network, the purchase and maintenance of the network hardware and software needed at its own facilities to connect to the network and any network encryption, firewall or network security devices or software deemed necessary to protect its private network; provided, however, that Members may contract with or through the Association for such maintenance, repair or replacement, on such terms as may be determined by the Executive Committee.

4. **Association Governance and Meetings.**

a. **Association Bylaws.** The governance of the Association and the scheduling of the annual and other Association meetings shall be as set forth in the Association's Bylaws (as initially adopted and as they may be amended from time to time, the "Bylaws"), the initial version of which shall take effect upon adoption by the Initial Members, either by unanimous adoption as evidenced by the signature of all Initial Members on a copy of the Bylaws, or by majority vote of the Initial Members present at the Inaugural Meeting (defined below). Thereafter, the Bylaws may be amended as set forth in the Bylaws.

b. **Executive Committee/Other Committees.** The affairs of the Association shall be governed by an Executive Committee consisting of:

i. two (2) members appointed by each of the following Initial Members:

City of Platteville

Platteville School District

UW-Platteville

- ii. two (2) members elected by majority vote among any New Members who may join the Association that do not appoint an Executive Committee member under Subsection 4.b.i. above, if any.

The inaugural Executive Committee members shall be appointed by the respective governing body of each of the initial members within thirty (30) days after the execution of this Agreement by all of the Initial Members. Executive Committee Members appointed will serve until they resign or are removed as provided in the Bylaws. Thereafter, the appointment and election of Executive Committee members shall be conducted as set forth in the Association's Bylaws.

- c. **Other Committees.** The Bylaws may also provide for the establishment of additional committees or the appointment of such additional committees by the Executive Committee.

5. **Association Finances.**

- a. **Cost Sharing.** The initial breakdown of cost sharing for the Network is set forth in Appendix "A". Cost sharing allocations for maintenance and extensions of the Network will be reviewed eighteen (18) months after the commencement of this Agreement and annually thereafter. Any additional fiber optic cable, equipment or software that benefits all parties will be funded by all of the parties. Modification of the cost sharing formula will be determined and unanimously agreed upon by the parties to the agreement upon the recommendation of the Executive Committee.
- b. **Annual Budget/Assessments.** The Association's finances shall be overseen by the Executive Committee. Prior to the end of each calendar year, the Executive Committee shall prepare an annual budget for the upcoming calendar year showing the Association's anticipated expenses for that year, together with proposed assessments for each of the Members. The Annual Budget shall be subject to the approval of the governing bodies of each of the Members.

- c. **Fiscal Agent.** The Association may select a fiscal agent (the "Fiscal Agent") from among the Members to act in the Association's behalf in contracting for Projects and other services needed by the Association as approved by the Executive Committee. As of the Effective Date, and until an alternative agent is selected, the Fiscal Agent is the University of Wisconsin-Platteville.
- d. **Insurance.** The Executive Committee shall obtain and keep in force such property and liability insurance as it deems advisable to protect the Association from casualty loss or damage of or to the Network and to protect the Members, and the Executive Committee Members and Officers, from liability in connection with the ownership and operation, maintenance, repair and replacement of the Network by the Association, and the operation of the Association generally.

6. **Dissolution.** The following events shall result in the dissolution of the Association:

- a. **Lack of Membership.** There remain fewer Members in the Association than required by applicable law (as of the Effective Date, a minimum of three (3) members is required by Wisconsin Statutes Section 184.01(2)); or
- b. **Vote of Members.** A duly-presented motion to dissolve the Association at a duly-called meeting of the Association is approved by not less than three-fourths 3/4 of the then-existing Members; or
- c. **Condemnation.** The taking by eminent domain (or the transfer in lieu of condemnation) of all or substantially all of the assets of the Association; or
- d. **Final Judgment.** A non-appealable judgment by a court of competent jurisdiction that the Association is or shall be dissolved; or
- e. **Effect of Dissolution.** If the Association is dissolved, after satisfying all debts and obligations of the Association, any remaining assets of the Association shall be disposed of in one of the following manners, as approved by a majority of the Members then entitled to vote under the Association's Bylaws:

- i. the remaining assets may be conveyed, in whole, to an "Eligible Entity" as that term is defined below; or
- ii. the Existing Network initially transferred by a Member to the Association may be returned to that Member and the remaining assets distributed proportionately "in kind" to the then-current Members, such Member's share being calculated by a fraction the numerator of which is the total value of all cash and non-cash support (not including annual maintenance fees) a then-current Member has paid or provided to the Association and the denominator of which is the total value of all cash and non-cash support (not including annual maintenance fees) all the then-current Members have paid or provided to the Association, (including, to the extent they can be calculated with reasonable accuracy, the value of all cash and non-cash support provided to the PCAN by a then-current Initial Member as of the Effective Date), all as determined by the Association's records as supplemented by any additional records that the Executive Committee deems reliable; or
- iii. the remaining assets may be liquidated and the proceeds thereof distributed as follows: (a) First, to the then-current Members, a payment shall be made calculated by multiplying the total amount of such proceeds by a fraction the numerator of which is the total value of all cash and non-cash support (not including annual maintenance fees) a then-current Member has paid or provided to the Association and the denominator of which is the total value of all cash and non-cash support (not including annual maintenance fees) that all then-current Members have paid or provided to the Association (including, to the extent they can be calculated with reasonable accuracy, the value of all cash and non-cash support provided to PCAN by the then-current Initial Members as of the Effective Date), all as determined by the Association's records as supplemented by any additional records that the Executive Committee deems reliable. Notwithstanding the foregoing, no then-current Member may receive a payment in excess of 100% of the total amount of cash and non-cash support that a then-current Member provided to the Association (not including annual maintenance fees), the intent being that no such

Member shall profit from the disposition of the Association's assets upon the dissolution of the Association; and (b) any remaining assets shall be distributed to one or more Eligible Entities.

- iv. For purposes of this section, an "Eligible Entity" is an entity of the type designated as eligible for a distribution of the Association's assets under then applicable law, as determined and selected by the Executive Committee. As of the Effective Date, Wisconsin Statutes Section 184.09(2) identifies as Eligible Entities:
- A nonprofit association or non-profit corporation pursuing broadly similar purposes; or
 - A government or governmental subdivision, agency or instrumentality.

7. **Miscellaneous.**

- a. **Binding Effect; Amendment.** This Agreement shall be binding upon and inure to the benefit of the Initial Members and any New Members who join the Association under the terms hereof. This Agreement shall be amended or modified only in a written amendment signed by all of the then-current Members or as otherwise provided in the Bylaws of the Association.
- b. **Third Part Beneficiary.** No one who is not a Member shall be entitled to or have the right to claim to be a third party beneficiary hereunder or otherwise be entitled to enforce or seek the benefit of any of the terms or provisions of this Agreement.
- c. **Exhibits.** The Exhibits appended to this Agreement are incorporated herein and for all purposes are a part of this Agreement.
- d. **Captions/Headings.** The captions or headings placed upon sections of this Agreement are for convenience only, do not constitute a part of this Agreement, and shall not limit or affect in any way the interpretation or construction of this Agreement.
- e. **Severability.** If any part of this Agreement shall be found to be invalid or unenforceable by a court of competent jurisdiction, such finding shall not affect the validity or enforceability of any other provisions of this

Agreement that can be given effect in the absence of the parts determined to be invalid or unenforceable.

- f. **Governing Law/Authority.** All matters relating to the making, enforcement, and performance of this Agreement shall be governed by the internal laws of the State of Wisconsin. It shall be the obligation of each Member to determine whether its membership in the Association is within its governmental, municipal, corporate or other legal power and authority, and for each such Member to comply with all applicable laws, codes, and ordinances and with the provisions of its governing documents. Each Initial Member executing this Agreement represents and warrants that such execution has been duly authorized by all required procedures, that the person or persons signing this Agreement on such Initial Member's behalf has the proper authority to do so, and that upon execution by such Initial Member, this Agreement shall be binding and enforceable against such Initial Member in accordance with its terms.

- g. **Counterparts/Facsimile or Digital Signatures.** This Agreement may be executed in any number of counterparts, each of which shall constitute an original and all of which shall constitute one and the same Agreement. Facsimile or digitally transmitted signatures shall be binding upon the parties hereto.

- h. **Personal Liability.** Under no circumstances shall any Member, or any officer, official, director, commissioner, member, agent, or employee of any Member, have any personal liability arising out of this Agreement, and no Member shall seek or claim any such personal liability on the part of any of the above. Notwithstanding the foregoing, the Members agree to the fullest extent permitted under applicable law to indemnify, defend, and hold one another harmless from and against any claims or liabilities arising out of damage to person or property caused by the gross negligence or willful misconduct of the indemnifying Member, or its agents or employees in the performance of this Agreement.

[Signature Pages Follow]

Dated this 15th day of February, 2012.

CITY OF PLATTEVILLE,


By: 
Larry Bierke, City Manager

Attest:


Jan Martin, City Clerk

Dated this 15th day of February, 2012.

PLATTEVILLE SCHOOL DISTRICT,

By: 
Dr. Connie Valenza, Superintendent

Dated this 15th day of February, 2012.

UNIVERSITY OF WISCONSIN –

PLATTEVILLE,

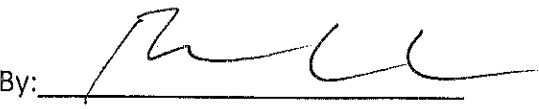
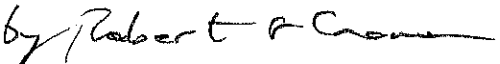
By: 
Dennis J. Shields, Chancellor
by 

EXHIBIT A

INITIAL MEMBERS/NOTICE ADDRESSES

CITY OF PLATTEVILLE

Attn: Mr. Larry Bierke, City Manager

75 N. Bonson Street

P.O. Box 780

Platteville, WI 53818-0780

PLATTEVILLE SCHOOL DISTRICT

Attn: Dr. Connie Valenza, Superintendent

40 E. Madison Street

Platteville, WI 53818

UNIVERSITY OF WISCONSIN-PLATTEVILLE

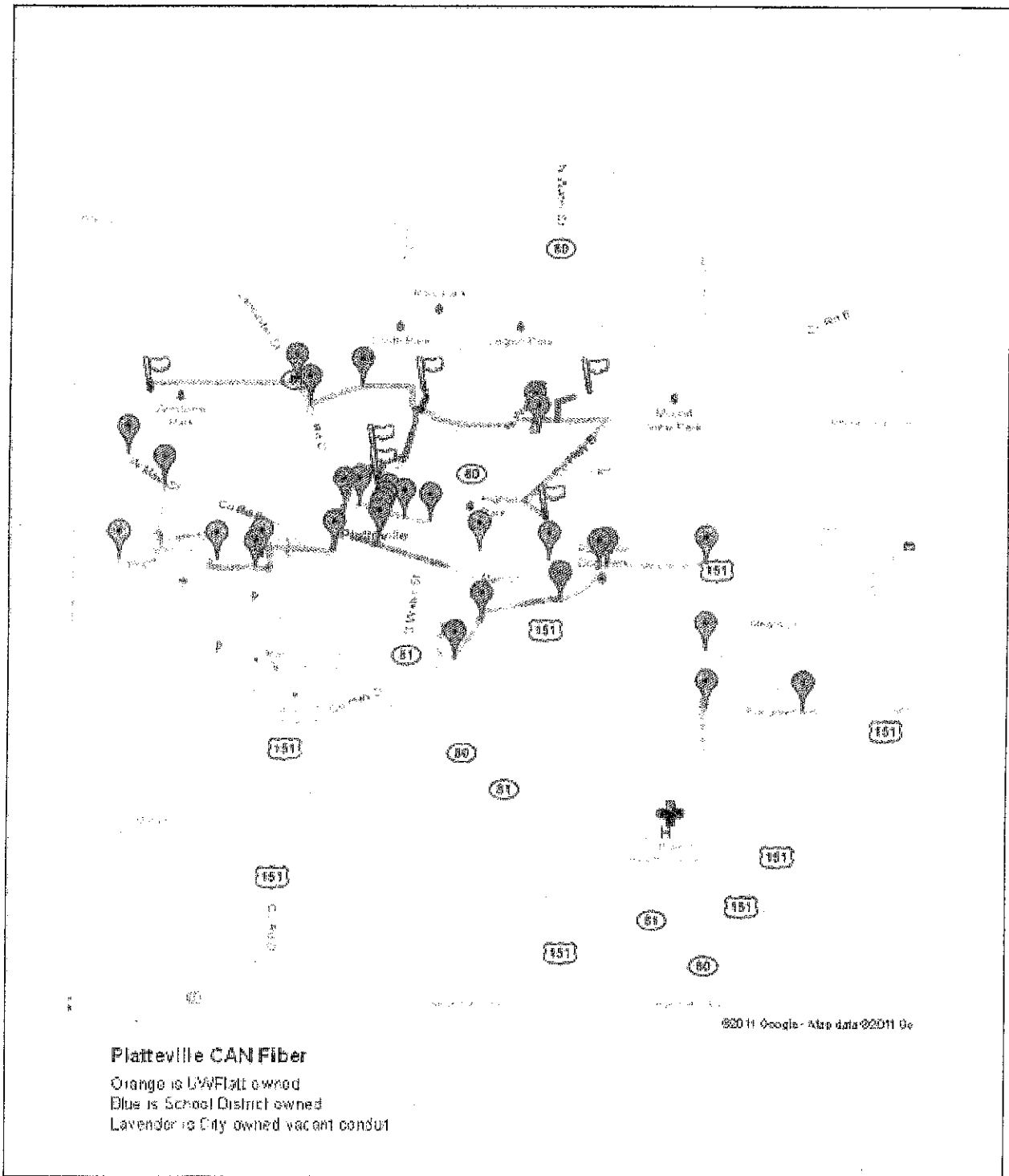
Attn: Mr. Dennis J. Shields, Chancellor

1 University Plaza

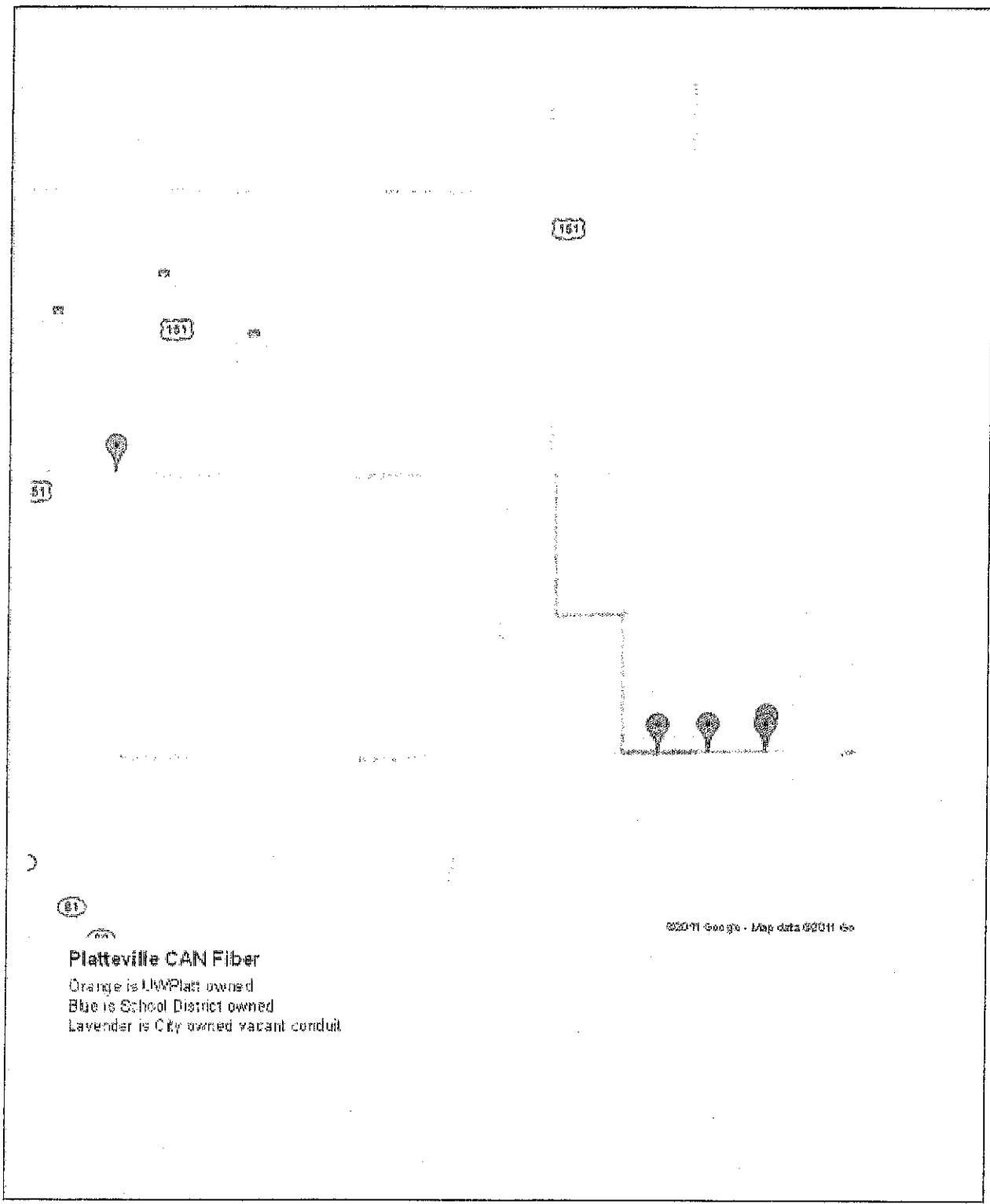
Platteville, WI 53818

EXHIBIT B

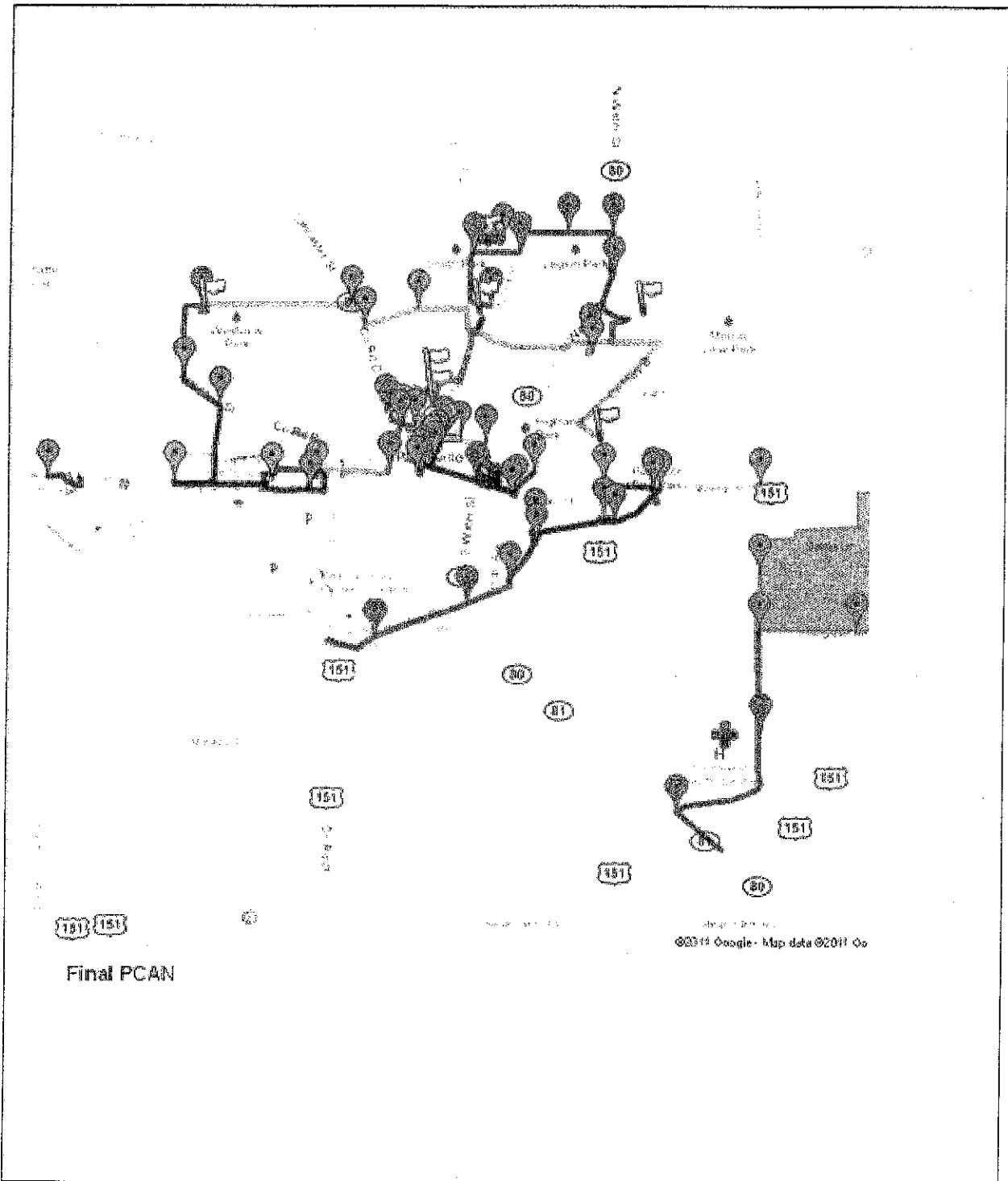
MAP OF EXISTING NETWORK



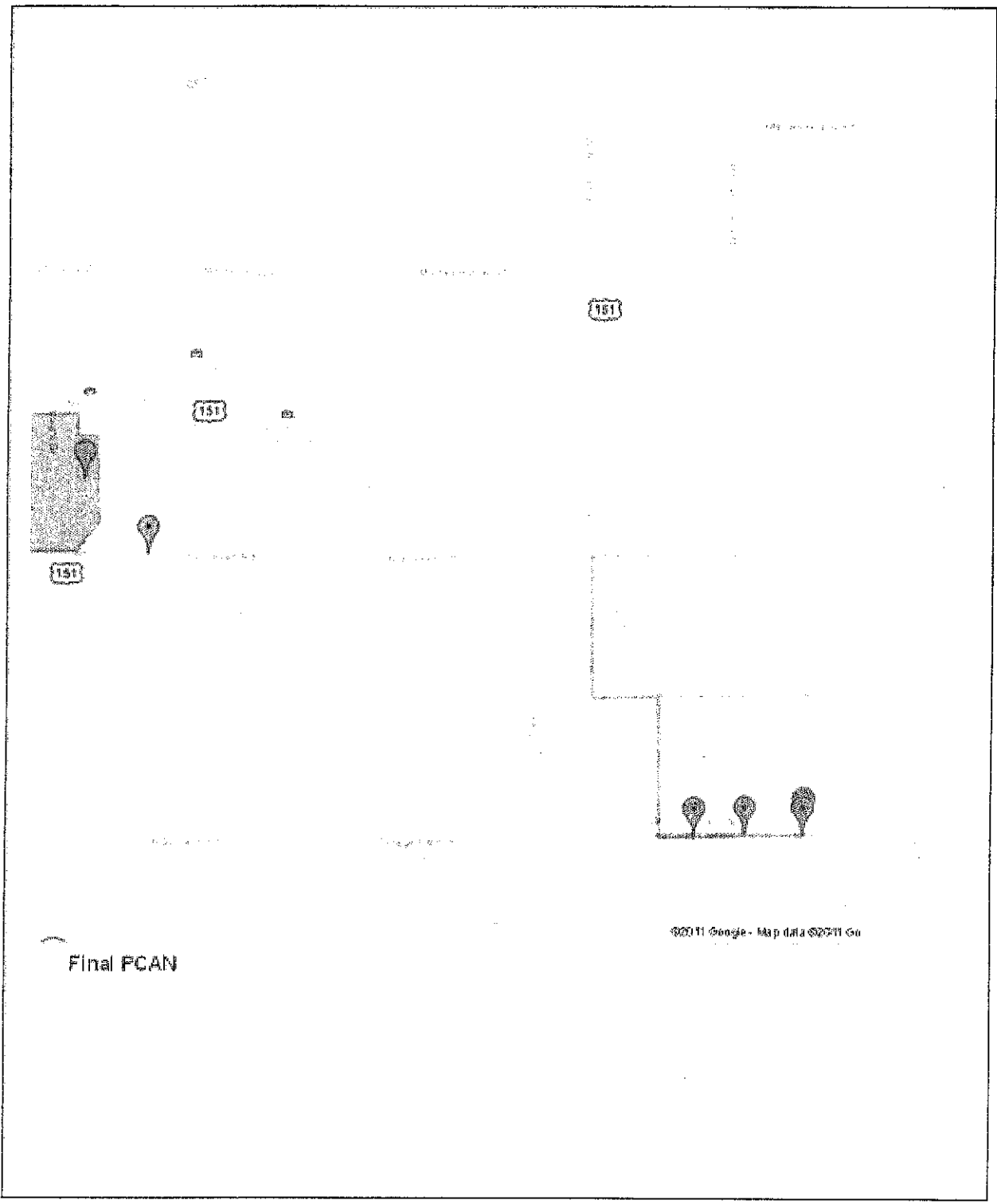
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MAP OF PROPOSED NETWORK



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Final PCAN

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APPENDIX A

INITIAL BREAKDOWN OF COST SHARING ESTIMATES

Description	Cost	Qty	Total	PSD	UWP	City
Annual SupportNet for SSA-G1018-0652	1,577.00	1	1,577.00	525.67	525.67	525.67
Diggers Hotline Ticketing service			600.00	200.00	200.00	200.00
Locate service			10,000.00	3,333.33	3,333.33	3,333.33
Fiber relocate/maintenance costs/break fix (fund)			4,000.00	1,333.33	1,333.33	1,333.33
Shared Network Equipment replacement (fund)	Years:	8	2,510.53	836.84	836.84	836.84
Organization Insurance			1,500.00	500.00	500.00	500.00
			20,187.53	6,729.18	6,729.18	6,729.18