

TRADEMARK ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	RELEASE BY SECURED PARTY		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
CapitalSource Finance LLC		03/08/2010	LIMITED LIABILITY COMPANY: DELAWARE
RECEIVING PARTY DATA			
Name:	Fibernet Operations, Inc.		
Street Address:	570 Lexington Avenue		
City:	New York		
State/Country:	NEW YORK		
Postal Code:	10022		
Entity Type:	CORPORATION: DELAWARE		
Name:	Devnet L.L.C.		
Street Address:	570 Lexington Avenue		
City:	New York		
State/Country:	NEW YORK		
Postal Code:	10022		
Entity Type:	LIMITED LIABILITY COMPANY: DELAWARE		
Name:	Fibernet Telecom Group, Inc.		
Street Address:	570 Lexington Avenue		
City:	New York		
State/Country:	NEW YORK		
Postal Code:	10022		
Entity Type:	CORPORATION: DELAWARE		
Name:	Fibernet Telecom, Inc.		
Street Address:	570 Lexington Avenue		
City:	New York		
State/Country:	NEW YORK		

900156845

TRADEMARK
 REEL: 004165 FRAME: 0280

CH \$165.00 3198383

Postal Code:	10022
Entity Type:	CORPORATION: DELAWARE

Name:	Availius, LLC
Street Address:	570 Lexington Avenue
City:	New York
State/Country:	NEW YORK
Postal Code:	10022
Entity Type:	LIMITED LIABILITY COMPANY: NEW YORK

Name:	Local Fiber, LLC
Street Address:	570 Lexington Avenue
City:	New York
State/Country:	NEW YORK
Postal Code:	10022
Entity Type:	LIMITED LIABILITY COMPANY: NEW YORK

Name:	Fibernet Equal Access, L.L.C.
Street Address:	570 Lexington Avenue
City:	New York
State/Country:	NEW YORK
Postal Code:	10022
Entity Type:	LIMITED LIABILITY COMPANY: NEW YORK

PROPERTY NUMBERS Total: 6

Property Type	Number	Word Mark
Registration Number:	3198383	PHONOMENUM
Serial Number:	78693888	FIBERNET
Serial Number:	78716561	AVAILIUS
Serial Number:	77044317	
Serial Number:	77037993	
Serial Number:	75880854	FIBERNET

CORRESPONDENCE DATA

Fax Number: (312)827-8185

Correspondence will be sent via US Mail when the fax attempt is unsuccessful.

Email: valerie.swanson@klgates.com

Correspondent Name: K&L Gates LLP

Address Line 1: P.O. Box 1135

TRADEMARK
REEL: 004165 FRAME: 0281

Address Line 4: Chicago, ILLINOIS 60690-1135	
ATTORNEY DOCKET NUMBER:	3717423.00020
NAME OF SUBMITTER:	Doug Hatlestad
Signature:	/doug hatlestad/
Date:	03/11/2010
<p>Total Attachments: 10</p> <p>source=Payoff Letter (CapitalSource-Fibernet)#page1.tif</p> <p>source=Payoff Letter (CapitalSource-Fibernet)#page2.tif</p> <p>source=Payoff Letter (CapitalSource-Fibernet)#page3.tif</p> <p>source=Payoff Letter (CapitalSource-Fibernet)#page4.tif</p> <p>source=Payoff Letter (CapitalSource-Fibernet)#page5.tif</p> <p>source=Payoff Letter (CapitalSource-Fibernet)#page6.tif</p> <p>source=Payoff Letter (CapitalSource-Fibernet)#page7.tif</p> <p>source=Payoff Letter (CapitalSource-Fibernet)#page8.tif</p> <p>source=Payoff Letter (CapitalSource-Fibernet)#page9.tif</p> <p>source=Payoff Letter (CapitalSource-Fibernet)#page10.tif</p>	

September 9, 2009

VIA ELECTRONIC MAIL (michael.hubner@ftgx.com) AND FEDERAL EXPRESS

Fibernet Operations, Inc.
DEVNET L.L.C.
FiberNet Telecom Group, Inc.
FiberNet Telecom, Inc.
Availius, LLC
Local Fiber, LLC
FiberNet Equal Access, L.L.C.
c/o FiberNet Telecom Group, Inc.
570 Lexington Avenue
New York, New York 10022
Attention: Michael S. Hubner – Senior Vice President, General Counsel

Re: Amended and Restated Credit Agreement dated as of November 7, 2007 by and among Fibernet Operations, Inc., Devnet L.L.C., Fibernet Telecom Group, Inc., Fibernet Telecom, Inc., Availius, LLC, Local Fiber, LLC, Fibernet Equal Access, L.L.C., certain Borrower Subsidiaries (collectively, “**Borrower**”) and certain Guarantors (collectively with Borrower, the “**Credit Parties**”), CapitalSource Finance LLC, a Delaware limited liability company as agent and lender (“**Agent**”) and other Lenders party thereto (as amended, modified, supplemented and/or restated to date and from time to time, the “**Loan Agreement**”) and other Loan Documents.

Ladies and Gentlemen:

We reference the Loan Agreement and all other Loan Documents. Capitalized terms used but not defined herein shall have the meanings given them in the Loan Agreement.

We have been advised by the Credit Parties that on September 9, 2009 (the “**Payoff Date**”), the Credit Parties intend to (i) to repay in full the outstanding principal amount of the Loans together with all accrued and unpaid interest, fees, costs and expenses and all other indebtedness and obligations of any and all kinds owing by Credit Parties (including without limitation the Obligations) to Agent and Lenders under the Loan Documents, and (ii) terminate all commitments and obligations of Agent and Lenders to the Credit Parties under the Loan Documents. Credit Parties hereby acknowledge and agree that a prepayment fee shall be due and payable in connection with this letter agreement and the transactions contemplated hereby as set forth herein.

Please be advised that there will be owing to Agent on the Payoff Date the following amounts (collectively, the “**Payoff Amount**”), assuming (a) no additional loans or borrowings are made, (b) no change in the interest rate or fees on or after the date of this letter agreement, and (c) the full remittance,

in the manner prescribed below, of the Payoff Amount on or prior to 5:00 p.m. (New York City time) on the Payoff Date:

Principal	
Accrued and unpaid interest	
Other fees and expenses	
Cash Collateral for Existing Letters of Credit (defined below)	
Total	

If the Payoff Amount is remitted after 5:00 p.m. Eastern Standard Time on the Payoff Date, the additional per diem interest and fees will be \$2,103.26 per day. If the Payoff Amount is not remitted by 5:00 p.m. Eastern Standard Time on September 16, 2009, this letter shall be null and void, and as such, the Loan Agreement and other Loan Documents shall continue in full force and effect and all Obligations under the Loan Agreement shall remain due and payable.

The above-referenced Payoff Amount includes (the "Cash Collateral"), which equals 105% of the aggregate amount of the following issued and outstanding Letters of Credit under the Loan Agreement (each an "Existing Letter of Credit", and, collectively, the "Existing Letters of Credit"):

- (1) that certain Letter of Credit issued and outstanding in the amount of issued to FiberNet Telecom Group, Inc., by Bank of America, as issuer;
- (2) that certain Letter of Credit No. issued and outstanding in the amount of issued to FiberNet Telecom Group, Inc., by Bank of America, as issuer,
- (3) that certain Letter of Credit, issued and outstanding in the amount of issued to FiberNet Telecom Group, Inc., by Bank of America, as issuer, and
- (4) that certain Letter of Credit issued and outstanding in the amount of issued to FiberNet Telecom Group, Inc., by Bank of America, as issuer.

Credit Parties hereby grant to Agent and Lenders a security interest in and right of set off against the Cash Collateral to secure the Credit Parties, Agent's and/or Lenders' obligations with respect to the Existing Letters of Credit, including, without limitation, all fees, costs and expenses relating thereto as provided for in the Loan Agreement. Agent, on behalf of Lenders, is hereby authorized, without any prior notice or demand, to debit and/or set off against the Cash Collateral to pay any drawing or other payment owing with respect to the Existing Letters of Credit (including without limitation all fees, costs and expenses relating thereto as provided for in the Loan Agreement). Credit Parties acknowledge and agree: (a) that Agent, on behalf of Lenders, is authorized (but not obligated) to give notice of non-renewal or other similar notice to the beneficiary of any Existing Letter of Credit, the result of which may be that such beneficiary draws such Existing Letter of Credit prior to its then scheduled expiry date; (b) the Commitments of Lenders and Agent to issue or cause the issuance of Letters of Credit and/or to incur L/C Undertakings under the Loan Documents are terminated as of the Payoff Date, and, as of the Payoff Date, none of Lenders or Agent shall have any further obligation to issue or cause the issuance of Letters of Credit and/or to incur L/C Undertakings on behalf of, the Credit Parties or to renew, extend or amend any existing Letters of Credit or L/C Undertakings, including, without limitation, the Existing Letters of Credit; and (c) to use commercially reasonable efforts to arrange with the beneficiaries of such Existing Letters of Credit to return the originals of such Existing Letters of Credit to Agent promptly after the

Payoff Date, together with the originals of all amendments thereto for cancellation, together with a cancellation authorization notice executed by each such beneficiary in form and substance satisfactory to Agent. Within three (3) business days after Agent receives the original of any Existing Letter of Credit, together with the originals of all amendments thereto for cancellation, together with a cancellation authorization notice executed by the beneficiary in form and substance satisfactory to Agent, in each case without a request for a draw thereunder, Agent shall remit to the bank account specified in writing by Credit Parties, the Cash Collateral then held with respect to that particular Existing Letter of Credit, as applicable, less any amounts charged against such Cash Collateral after the date hereof. To the extent that the Cash Collateral is insufficient to compensate Agent, on behalf of Lenders, for all reimbursement obligations of Credit Parties relating to any Existing Letters of Credit, Credit Parties acknowledge and agree that they shall remain liable for payment of all such amounts.

The Payoff Amount is to be remitted to Agent by wire transfer of immediately available funds as follows:

Bank Name & Location Bank of America -NY Charlotte, NC
ABA Number: [REDACTED]
Account Number: [REDACTED]
Account Name: CapitalSource Funding -CFG
Re: FiberNet Payoff

Upon Agent's timely receipt of the Payoff Amount in immediately available funds: (i) all amounts (other than Obligations in respect of indemnification under the Loan Documents to the extent not due and payable and all obligations of the Credit Parties in respect of Letters of Credit and L/C undertakings, including, without limitation, all reimbursement and other obligations of the Credit Parties arising under Appendix B to the Loan Agreement and all obligations in respect of the Cash Collateral and the Existing Letters of Credit arising under this letter (collectively, the "Letter of Credit Obligations")) then owing to Agent and Lenders under the Loan Agreement and the other Loan Documents shall have been paid in full, (ii) the Loan Agreement and other Loan Documents shall be terminated except (a) the Letter of Credit Obligations, which shall remain in full force and effect, and (b) to the extent provisions therein survive termination by the terms of such documents; (iii) all security interests and liens granted to Agent for itself and for the benefit of the Lenders in all real and personal property collateral of the Credit Parties pursuant to the Loan Documents shall terminate except that the Lien of the Agent, for the benefit of Lenders, in the Cash Collateral shall survive such termination, (iv) Credit Parties or their designees are hereby authorized to prepare and file any and all releases and terminations necessary to terminate any and all UCC financing statements filed against Credit Parties by or on behalf of Agent for itself and for the benefit of the Lenders and (v) Credit Parties or their designees are hereby authorized to file the releases and terminations attached hereto as Exhibit A. The Agent agrees to take any such further action or execute any such further documents reasonably requested by any Credit Party for the purposes set forth in the immediately preceding sentence at such Credit Party's sole expense; provided that Agent shall be entitled to receive, upon its request, a deposit from such Credit Party in advance of Agent taking any such action and in such amount as requested by Agent, to be applied to Agent's reasonable fees (including attorneys' fees and/or in-house counsels' fees), costs and expenses in connection therewith; and provided, further, that such deposit will be refundable to the extent it exceeds Agent's actual fees, costs and expenses incurred.

Notwithstanding anything to the contrary above contained, Agent hereby reserves all of its rights with respect to any and all checks or similar instruments for the payment of money heretofore received by it in connection with its arrangements with Borrowers, and all of its rights to any monies due or to become due under said checks or similar instruments and/or all of its claims thereon. Further, Credit

Parties acknowledge that Agent may not yet have received full and final credit for all checks or similar instruments for the payment of money deposited by Agent for collection, the amount of which checks and similar instruments have nevertheless been credited to Credit Parties in the computation of the Payoff Amount. For and in consideration of Agent's agreements contained herein, Credit Parties agree to indemnify Agent from, and hold Agent harmless against, all losses, liabilities, charges, expenses and fees which Agent may incur as a result of any non-payment, claim or refund or charge back of any checks or other items which have been credited by Agent to Credit Parties' account with agent, together with all expenses and other reasonable charges incident thereto.

Each Credit Party acknowledges and agrees that (A) it has no claims, counterclaims, offsets, credits or defenses to the Loan Documents and the performance of its obligations thereunder, or (B) if it has any claims, counterclaims, offsets, credit or defenses to the Loan Documents and/or any transaction related to the Loan Documents and/or the Obligations and/or with respect to Agent and/or Lenders, the same are hereby waived, relinquished and released in consideration of Agent's execution and delivery of this letter agreement.

In addition, for and in consideration of Agent's agreements contained herein, each Credit Party hereby forever releases and discharges Agent, its officers, directors, employees, agents, representatives, successors and assigns ("**Released Parties**") from any and all claims, causes of action, damages and liabilities of any nature whatsoever, known or unknown, which such Credit Parties has, ever had or might hereafter have, against the Released Parties, or any of them, related, directly, to the Loan Agreements, the other Loan Documents, and the transactions related thereto.

Notwithstanding and without limiting any other provision of this letter agreement or any Loan Document, any provision of any Loan Document that survives the termination of such Loan Document in accordance with the terms of such Loan Document shall so survive and continue and remain in full force and effect.

This letter agreement shall not become effective unless it is executed by Agent and each of the Credit Parties on or before the Payoff Date.


This letter agreement may be executed in counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same agreement. Delivery of an executed counterpart of this letter agreement by PDF or other electronic means shall be as effective as delivery of a manually executed original counterpart.

[Remainder of Page Intentionally Left Blank]

This Agreement becomes effective upon the execution and delivery of this Agreement by all of the parties hereto. It constitutes and contains the entire agreement of Credit Parties and the Agent with respect to its subject matter and supercedes any and all prior agreements, correspondence and communications. This letter agreement shall be governed by, and construed in accordance with, the laws of the State of New York applicable to contracts made and to be performed in that State, and may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same letter.

Very truly yours,

CAPITALSOURCE FINANCE LLC

By: 
Name: Christopher J. Blagg
Title: Authorized Signatory

ACKNOWLEDGED AND AGREED TO:

BORROWERS AND CREDIT PARTIES:

FIBERNET OPERATIONS, INC.

DEVNET L.L.C.

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

GUARANTORS AND CREDIT PARTIES:

FIBERNET TELECOM GROUP, INC.

FIBERNET TELECOM, INC.

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

AVAILIUS, LLC

LOCAL FIBER, LLC

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

This Agreement becomes effective upon the execution and delivery of this Agreement by all of the parties hereto. It constitutes and contains the entire agreement of Credit Parties and the Agent with respect to its subject matter and supercedes any and all prior agreements, correspondence and communications. This letter agreement shall be governed by, and construed in accordance with, the laws of the State of New York applicable to contracts made and to be performed in that State, and may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same letter.

Very truly yours,

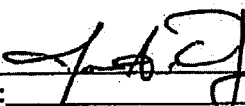
CAPITALSOURCE FINANCE LLC

By: _____
Name: _____
Title: _____

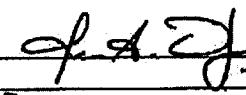
ACKNOWLEDGED AND AGREED TO:

BORROWERS AND CREDIT PARTIES:

FIBERNET OPERATIONS, INC.

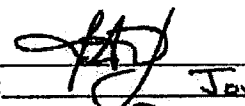
By: 
Name: Jon A. Deluca
Title: President, CEO

DEVNET L.L.C.

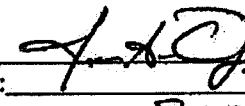
By: 
Name: Jon A. Deluca
Title: President, CEO

GUARANTORS AND CREDIT PARTIES:

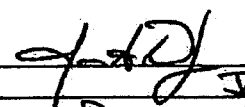
FIBERNET TELECOM GROUP, INC.

By: 
Name: Jon A. Deluca
Title: President, CEO

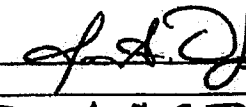
FIBERNET TELECOM, INC.

By: 
Name: Jon A. Deluca
Title: President, CEO

AVAILIUS, LLC

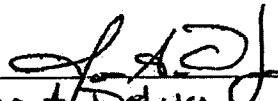
By: 
Name: Jon A. Deluca
Title: President, CEO

LOCAL FIBER, LLC

By: 
Name: Jon A. Deluca
Title: President, CEO

GUARANTORS AND CREDIT PARTIES (cont'd):

FIBERNET EQUAL ACCESS, L.L.C.

By: 
Name: Jon A. Deluca
Title: President, CEO

Releases

NOTICE OF RELEASE OF
SECURITY INTEREST IN **TRADEMARK**


WHEREAS, by an Acknowledgment of Intellectual Property Collateral Lien dated as of March 21, 2007, recorded in the United States Patent and Trademark Office on March 23, 2007, FiberNet Operations, Inc., a Delaware corporation ("FiberNet"), Devnet L.L.C., a Delaware limited liability company ("Devnet"), FiberNet Telecom Group, Inc., a Delaware corporation ("Holdings"), FiberNet Telecom, Inc., a Delaware corporation ("FiberNet Telecom"), Availius, LLC, a New York limited liability company ("Availius"), Local Fiber, LLC, a New York limited liability company ("Local Fiber"), and FiberNet Equal Access, L.L.C., a New York limited liability company ("FiberNet Equal Access") (FiberNet, Devnet, Holdings, FiberNet Telecom, Availius, Local Fiber, and FiberNet Equal Access are each sometimes referred to herein individually and collectively as the "Assignor") assigned to and granted to CapitalSource Finance LLC, as Agent ("Assignee"), a security interest in all right, title and interest of Assignor in and to United States Trademarks listed on Schedule I attached hereto (the "Trademark"); and

WHEREAS, Assignee wishes to provide a document suitable for recording in the United States Patent and Trademark office for purposes of recording the release, relinquishment and discharge of its security interest in the Trademark;

NOW, THEREFORE, in consideration of and in exchange for good and valuable consideration, Assignee hereby relinquishes, releases and discharges its security interest in the Trademark.

IN WITNESS WHEREOF, the Assignee has caused this Notice of Release of Security Interest in Trademark to be duly executed as of September 9, 2009.

CAPITALSOURCE FINANCE LLC, as Agent

By: 
Name: Christopher J. Blagg
Title: Authorized Signatory

SCHEDULE I

TRADEMARKS

(Acknowledgement of Intellectual Property Collateral Lien attached as a separate document)

<u>MARK</u>	<u>APPLICATION NO.</u>	<u>APPLICATION DATE</u>	<u>REGISTRATION NO.</u>	<u>REGISTRATION DATE</u>
PHONOMENUM	78750871	11/09/2005	3198383	01/16/2007
FIBERNET	78693888	08/16/2005	NA	NA
AVAILIUS	78716561	09/20/2005	NA	NA
FIBERNET	77044317	11/15/2006	NA	NA
FIBERNET	77037993	11/16/2006	NA	NA
FIBERNET	75880854	12/27/1999	NA	NA