

June 23, 1995

Introduced by: BRIAN DERDOWSKI

CLT:dh

Proposed No.: 95 - 483

ORDINANCE NO. **11929**

AN ORDINANCE approving a franchise for MCI Metro Access Transmission Services, Inc. to construct, operate and maintain a telecommunications system in King County Council Districts 6, 9 and 12 and authorizing the Executive to execute the franchise agreement.

STATEMENT OF FACTS:

1. MCI Metro Access Transmission Services, Inc. has filed an application for a franchise in council districts 6, 9 and 12 to construct, operate and maintain a telecommunication's system in accordance with R.C.W. 36.55.010.
2. MCI Metro is constructing a transmission line from its antenna site on county owned property east of Kent through unincorporated King County to the City of Newcastle. The line will connect MCI Metro's antenna site to its planned Bellevue route.
3. MCI Metro is authorized by the Washington Utilities and Transportation Commission to provide telecommunication services in Washington.
4. MCI Metro's franchise application was referred to the relevant county departments for review.
5. King County and MCI Metro have negotiated a mutually acceptable franchise agreement which has the approval of the department of public works, roads division and the prosecuting attorney's office.
6. The King County executive has recommended approval of the franchise.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. The granting of a franchise to MCI Metro Access Transmission Services, Inc. to construct, operate and maintain a telecommunications system within King County is hereby approved. The King County executive is authorized to enter into and execute the telecommunications franchise, which by this reference is fully incorporated herein. Said franchise shall include all of the general and special conditions required by the county.

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SECTION 2. If within 30 days after the granting of this franchise, applicant shall have failed to sign the written acceptance incorporated herein, then the rights and privileges granted herein shall be forfeited and said franchise shall be null and void.

INTRODUCED AND READ for the first time this 17<sup>th</sup> day of July, 1995.

PASSED by a vote of 11 to 0 this 14<sup>th</sup> day of August 1995.

KING COUNTY, COUNCIL  
KING COUNTY, WASHINGTON

Kent Pullen  
Chair

ATTEST:

Gerald A. Peterson  
Clerk of the Council

APPROVED this 22<sup>nd</sup> day of August, 1995.

Gary Locke  
King County Executive

Attachments:

A. Franchise Agreement

UTILITIES

FRANCHISE NO. **11929**

In the matter of the application for a franchise to operate, maintain, repair, and construct telecommunication transmission and service lines and appurtenances in, over, along, and under County streets, alleys, roads and compatible utility easement rights-of-way in King County, Washington.

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MCI METRO ACCESS TRANSMISSION SERVICES, INC. has filed an application for a franchise to operate, maintain, repair and construct transmission, distribution and service lines and appurtenances in, over, along, and under County roads and appropriate rights-of-way located within the unincorporated portion of the area described in attached Exhibit "A" for the purpose of transmitting, receiving and processing data, voice and other signals. The King County Council held a public hearing on the application on the 14<sup>th</sup> day of August, 1995.

Legal notice of the franchise application and of the hearing has been given as is required by law.

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The King County Council, having considered the interests proposed and advanced, and finding that the granting of this franchise is in the public interest, ORDERS that a telecommunication system franchise be granted to MCI METRO ACCESS TRANSMISSION SERVICES, INC., the Grantee, subject to the conditions set forth in Exhibit "B" attached hereto, this franchise and Ordinance No. 11929. This franchise grants the right, privilege, authority and franchise, subject to conditions, to operate, maintain, repair, and construct transmission, distribution and service lines and appurtenances as a part of its telecommunication transmission and distribution system for the purpose of transmitting, receiving and processing data, voice and other signals in, over, along, and under County roads and rights-of-way located within the area described in Exhibit "A".

This franchise is granted subject to all of the terms and conditions contained herein, in Ordinance 11929 and Exhibit "B", and shall expire in 5 years on August 19, 2000, unless otherwise extended pursuant to Section 3 of Exhibit B.

KING COUNTY, WASHINGTON

BY Jay Locke

TITLE King County Executive

DATE Aug 22, 1995

The undersigned accept all the rights, privileges, and duties of this franchise subject to all terms, conditions, stipulations, and obligations as described in Ordinance 11929 and Exhibit B attached hereto and with these references incorporated herein.

A. J. Martin  
GRANTEE

BY ANTHONY D. MARTIN

TITLE VICE PRESIDENT

DATE SEPTEMBER 3, 1995

EXHIBIT "A"

That portion of King County, Washington, described as follows:

Beginning at all that portion of the S.E. May Valley Rd. and its intersection with Coal Creek Parkway S.E. all being located in the southwest quarter of Section 34, Township 24, Range 5 East, thence east along all that portion of the S.E. May Valley Road to a point where it intersects with the east margin of 148th Ave S.E. all being located in the southwest corner of Section 35, Township 23, Range 5 East and northwest corner of Section 2, Township 23, Range 5 East, thence south along that portion of 148th Ave. S.E. to a point where it intersects with the north line of Sections 10 and 11, Township 23 N, Range 5 East, except those portions of right-of-way lying in State Sign Route 900 a.k.a. S.E. Renton-Issaquah Road, thence continuing south along said road to its intersection with the south margin of S.E. 128th St. all being located in Sections 14 and 15, Township 23 N, Range 5 East, thence east along all that portion of S.E. 128th St. to its intersection with the east margin of 156th Ave. S.E. all being located in Sections 11 and 14, Township 23 N, Range 5 East, thence south along that portion of 156th Ave. S.E. to its intersection with the south margin of S.E. 142nd Pl. all being located in said Sections 11 and 14, thence southwesterly, southerly and easterly along that portion of S.E. 142nd Pl. to its intersection with the south margin of S.E. 144th St. all being located in Sections 14 and 23, Township 23 N, Range 5 East, thence continuing southeasterly and southwesterly along 154th Pl. S.E. to its intersection with the south margin of Jones Road all being located in the northwest quarter of Section 23, Township 23 N, Range 5 East, thence northwesterly, westerly and southerly along the Jones Road a.k.a. 149th Ave. S.E. to its intersection with the north margin of Renton-Maple Valley Road a.k.a. State Highway 169 all being located in the southwest quarter of Section 23, Township 23 N, Range 5 East, and beginning at the intersection of the south margin of the S.E. Renton Maple Valley Highway and its intersection with 140th Way S.E. all being located in the northwest quarter of Section 22, Township 23, Range 5 East, thence continuing south, southeasterly, and southwesterly to a point where said road intersects with the north line of Section 27, Township 23 N, Range 5 East, thence continuing southwesterly along said road to its intersection with the west margin of 140th Ave. S.E. all being located in said Section 27, thence south along said road to the south margin of the S.E. Petrovitsky Road all being located in said Section 27, thence south along all that portion of 140th Ave. S.E. being located in said Section 27, thence south along said road to its intersection with the south margin of S.E. 192nd St. in Section 3, township 22, Range 5 East, thence continuing south along all that portion of 140th Ave. S.E. to its intersection with the south margin of S.E. 200th St. in said Section 3, thence south along all that portion of 140th Ave S.E. to its intersection with the south margin of S.E. 204th Way a.k.a. S.E. Lake Young Way being located in said Section 3, thence continuing southwest along all that portion of the S.E. 204th Way to its intersection with the west margin of 132 Ave. S.E. being located in Section 4, Township 22, Range 5 East, thence south along all that portion of 132 Ave. S.E. being located in Section 3 and 4, Township 22, Range 5 East, thence continuing south along said road to its intersection with the south margin of S.E. 224th St. being located in Section 15 and 16, Township 22, Range 5 East, thence south along all that

portion of 132 Ave. S.E. being located in said sections to the south margin of S.E 240th St. being located in said Section 21 and 22, Township 22, Range 5 East, thence west along all that portion of S.E. 240th St. being located in Sections 15, 16, 21, and 22, Township 22, Range 5 East to its intersection with the west margin of 120th Ave. S.E. being located in Section 16 and 21, Township 22, Range 5 East, thence north along all that portion of 120th Ave. S.E. being located in said Section 16 to its intersection with the northeast boundary of the plat of Terra Heights, Volume 125, Page 7-9, thence extending north along the proposed extension of 120th Ave. S.E. ( Note: If this portion of property is dedicated or deeded to King County as a public road said area shall be a part of this franchise) to its intersection with the south line of the plat of Hunter Run Too, Volume 151/54-56, thence continuing north along all that portion of 120th Ave S.E. to its intersection with the northline of the Hunter Run, Volume 144/ 26 and 27 being the terminus point of the franchise.

EXHIBIT "B"

## TERMS AND CONDITIONS APPLICABLE TO UTILITY FRANCHISES GRANTED BY KING COUNTY

THIS FRANCHISE is subject to the following terms and conditions:

1. DEFINITIONS

References to any County official or office also refers to any official or office that succeeds to any or all of the responsibilities of the named official or office. References to laws or "applicable laws" include federal, state and local laws and regulations adopted pursuant to those laws; unless otherwise stated, references to laws include laws now in effect, as the same may be amended from time to time, and laws in effect at any point in time during the operation of this franchise. In addition, the following definitions shall apply:

Cable Services. The term "Cable Services" is used as defined in 47 United States Code 522 (5), as amended.

Cable System. The term "Cable System" is used as defined in 47 United States Code 522(6) and King County Code 6.27A.010(J), as amended.

County Road Rights-of-Way. The term "County Road Rights-of-Way" includes any road, street, avenue, alley or compatible utility easement located within the area described in the attached Exhibit "A". It does not include recreational and natural trails.

Council. The term "Council" refers to the King County Council, acting in its official capacity.

Director. The term "Director" refers to the chief executive of the King County Department of Public Works.

Grantee. The term "Grantee" refers to MCI METRO ACCESS TRANSMISSION SERVICES, INC., its officers, agents, employees, contractors and sub-contractors, its successors and those assignees approved pursuant to paragraph 18 of Exhibit "B".

King County. The term "King County" includes its elected officials, officers, employees and agents.

Other Governing Body. The term "Other Governing Body" refers to any public official or other public board or body as may have the power and jurisdiction to permit or regulate the installation and maintenance of utilities and other facilities in, under, over, across, and along any of the County property described in Exhibit "A".

Other Governing Body. The term "Other Governing Body" refers to any public official or other public board or body as may have the power and jurisdiction to permit or regulate the installation and maintenance of utilities and other facilities in, under, over, across, and along any of the County property described in Exhibit "A".

Utility. The term "Utility" refers either to the Grantee or, depending on the context, to any other person, firm, or corporation, public or private, which may hold a franchise to maintain and operate similar facilities in, under, over, across, and along any of the County property described in Exhibit "A".

## 2. ACCEPTANCE BY GRANTEES OF TERMS AND CONDITIONS

The full acceptance of this franchise and all of its terms and conditions, as signified by the Grantee's signing of the franchise document, shall be filed with the Clerk of the Council within thirty (30) days from \_\_\_\_\_, 19\_\_\_\_, by the Grantee. Full acceptance of this franchise is a condition precedent to its taking effect, and unless this franchise is accepted within the time specified, this grant will be null and void and have no force or effect.

## 3. AUTOMATIC RENEWAL AND EARLY TERMINATION

This franchise shall be in effect for a period of five (5) years from the effective date of this franchise and shall be automatically renewed for an additional five year term, unless either party provides the other party with a notice of termination at least one (1) year prior to the termination date of the first five year term.

## 4. NON-EXCLUSIVE FRANCHISE

This franchise is not exclusive. It does not prohibit King County from granting franchises for other public or private utilities, in, under, over, across, and along any County property, including County Road Rights-of-Way.

This franchise does not prevent or prohibit King County from constructing, altering, maintaining or using any County Road Rights-of-Way covered by this franchise. King County retains full power to make all changes, relocations, repair, maintenance, etc., as it may deem fit.

## 5. JURISDICTION

To the extent described in Exhibit "A", all rights granted by this franchise to County Road Rights-of-Way outside incorporated towns and cities apply to all existing County Road Rights-of-Way, improved and unimproved, and to all County Road Rights-of-Way acquired by King County during the term of this franchise.

This franchise conveys limited rights and interest only as to those roads and rights-of-way in which King County has an actual interest. It is not a warranty of title or of interest in any particular County Road Rights-of-Way within the franchise area. It does not provide the Grantee any interest in any particular location within the right-of-way and it does not confer rights or interests other than as expressly provided in this franchise.

Whenever any of the County Road Rights-of-Way as designated in this franchise, by reason of the subsequent incorporation of any Town or City, or extension of the limits of any Town or City, shall fall within the City or Town limits, this franchise shall continue in force and effect until such time as the incorporation and/or annexation is complete according to applicable State law, after which time the County will no longer have any responsibility for maintenance of any County roads, rights-of-way or other County property within the area of annexation/incorporation.

None of the rights granted to the Grantee shall affect the jurisdiction of King County over County Road Rights-of-Way or the County's power to perform work upon its roadways, rights-of-way or appurtenant drainage facilities including by constructing, altering, renewing, paving, widening, grading, blasting or excavating.

All of the rights herein granted shall be subject to and governed by this franchise; provided, however, that nothing in this franchise may be construed in any way as limiting King County's authority to adopt ordinances, rules and regulations which are necessary to protect the health, safety and welfare of the general public.

#### 6. COMMON USERS

Where electrical and telephone utility wiring is installed underground at the time of the initial construction, or when such wiring is subsequently placed underground, all of the Grantee's telecommunications system lines or wiring and equipment shall also be placed underground on a nondiscriminatory basis with other wire line services at no additional expense to the County. Related system equipment such as pedestals must be placed in accordance with County code requirements and underground utility rules as interpreted by the County Road Engineer. In areas where both electrical and telephone utility wiring is aerial, the Grantee may install aerial cable, except when a property owner or resident requests underground installation and agrees to bear the additional cost in excess of aerial installation.

The Grantee shall utilize existing poles and conduits wherever possible. However, the franchise does not grant, give or convey to the Grantee the right or privilege to install its facilities in any manner on specific utility poles or in conduit or other equipment of the County or any other person without their permission. Copies of agreements for use of poles, conduits or other utility facilities must be provided upon request by the Property Services Division.

In any case where the Grantee is or has been authorized to erect a pole or lay a conduit, the Grantee shall extend the right to use its poles or conduit upon reasonable terms and conditions to other persons having a franchise or permit to maintain lines and facilities upon the same road or right-of-way, pursuant to the terms and conditions of an agreement for use of such ducts and conduits being entered into by the parties.

#### 7. REGULATION OF USE AND CONTROL

This franchise does not deprive King County of any powers, rights, or privileges it now has or may later acquire in the future to regulate the use of and to control the County Road Right-of-Way covered by this franchise.

#### 8. ENFORCEMENT

Failure of King County on one or more occasions to exercise a right or to require compliance or performance under this franchise or any applicable law, shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance, unless such right has been specifically waived in writing. Failure of King County to enforce or exercise its rights under any provision of this franchise or applicable law does not constitute a waiver of its right to enforce or exercise a right in any other provision of this franchise or applicable law.

#### 9. INDEMNITY AND HOLD HARMLESS

The Grantee agrees to indemnify and hold harmless King County as provided herein to the maximum extent possible under law. Accordingly, the Grantee agrees for itself, its successors, and assigns, to defend, indemnify, and hold harmless King County, its appointed and elected officials, and employees from and against liability for all claims, demands, suits, and judgments, including costs of defense thereof, for injury to persons, death or property damage which is caused by, arises out of, or is incidental to Grantee's exercise of rights and privileges granted by this franchise. The Grantee's obligations under this section shall include:

- (a) Indemnification for such claims whether or not they arise from the sole negligence of the Grantee, the concurrent negligence of both parties, or the negligence of one or more third parties.
- (b) The duty to promptly accept tender of defense and provide defense to the County at the Grantee's own expense.
- (c) Indemnification of claims made by the Grantee's own employees or agents.
- (d) Waiver of the Grantee's immunity under the industrial insurance provisions of Title 51 RCW, as respects the County only, which waiver has been mutually negotiated by the parties.

In the event it is necessary for the County to incur attorney's fees, legal expenses, or other costs to enforce the provisions of this indemnification/hold harmless agreement, all such fees, expenses and costs shall be recoverable from the Grantee.

In the event it is determined that RCW 4.24.115 applies to this franchise agreement, the Grantee agrees to defend, hold harmless, and indemnify King County to the maximum extent permitted thereunder, and specifically for its negligence concurrent with that of King County to the full extent of Grantee's negligence. Grantee agrees to defend, indemnify, and hold harmless the County for claims by Grantee's employees and agrees to waiver of its immunity under Title 51 RCW, which waiver has been mutually negotiated by the parties.

King County shall give the Grantee timely written notice of the making of any claim or of the commencement of any such action, suit or other proceeding covered by the indemnity in this section. In the event any such claim arises, the County or any other indemnified party shall tender the defense thereof to the Grantee and the Grantee shall have the duty to defend, settle or compromise any claims arising hereunder and the County shall cooperate fully therein.

Notwithstanding the above, the County shall have no obligation to tender a defense as a condition of the indemnity where there is a material conflict between the interests of the Grantee and King County.

#### 10. INSURANCE REQUIREMENTS

The Grantee must have adequate insurance during the entire term of the franchise against claims for injuries to persons or damages to property which in any way relate to, arise from, or are connected with the holding of the franchise by the Grantee, its agents, representatives, contractors, subcontractors and employees. As of the effective date of the franchise, the Grantee must have insurance coverage in place in the amounts and form specified below and shall maintain at least that coverage throughout the franchise term.

The Grantee must carry commercial general liability, automobile liability and stop gap or employers liability coverage, each in minimum limits of not less than one million dollars (\$1,000,000). All policies must name King County as an additional named insured.

If a material change in circumstances increases the risk to which County is exposed by Grantee's facilities, then the County may reasonably revise insurance requirements specified herein and require Grantee to comply therewith within sixty (60) days of County's official notice of the revision.

All policies shall be placed with insurers having a Bests' rating of no less than A:VIII or, if not rated by Bests', with surpluses equivalent to or greater than Bests' A:VIII rating. Grantee shall send copies of certificates, endorsements or other adequate evidence of compliance to the Property Services Division and the Office of Risk Management prior to the issuance of any permits.

#### 11. VACATION

If at any time King County, in accordance with RCW Chapter 36.87, and as hereinafter amended, vacates any County Road Rights-of-Way covered by this franchise, King County will not be held liable for any damages or loss to the Grantee by reason of such vacation. King County may, after giving ninety (90) day's written notice to the Grantee, terminate this franchise with respect to any County Road Rights-of-Way vacated. Alternatively, King County, at its sole discretion, may in its vacation proceedings reserve an easement for the Grantee pursuant to the terms and conditions of this franchise.

#### 12. REPAIR, REMOVAL OR RELOCATION

The Grantee hereby covenants, at its own expense, to repair, remove or relocate existing facilities including all appurtenant facilities and service lines connecting its services to users within County Road Rights-of-Way if such repair, removal, or relocation is required by King County for any County road purpose. Such repair, removal or relocation shall not be unreasonably required.

On any King County road project, should the Grantee become aware of federal, state or other financial assistance available to defray the costs of utility displacement or relocation, King County agrees, upon written notice from the Grantee of such availability, to apply for such assistance funding on behalf of the Grantee so long as such funding obtained will not reduce the amount of federal, state or other funds provided to King County for the affected road project. In the event the County applies for and receives assistance funds specifically for utility relocation from a granting agency, the Grantee shall be reimbursed to the extent of those assistance funds received. If the Grantee accepts such reimbursement, the Grantee

agrees to be bound to all grant conditions as reflected in any agreements between King County and the granting agency executed for that purpose.

### 13. REQUIREMENT OF CONSTRUCTION PERMITS

The Grantee, its successors or assigns, has the right, privilege and authority to enter the County Road Rights-of-Way for the purpose of operating, maintaining, repairing, or constructing its transmission, distribution and service lines, and appurtenances, on the condition permits approved by the Director and Property Services Division are obtained. The Grantee shall obtain all required permits before commencing any construction, reconstruction, maintenance or other work. Applications for work permits shall be presented to the Property Services Division, which shall be accompanied by a map (a paper copy and a digital copy), copies of plans, blueprints, cross-sections, or further detailing of work to be done. The digital copy of the map shall be provided in .DXF format with at least two reference marks corresponding to geological survey markers. In the event of an emergency, the Grantee may immediately commence the necessary work and shall apply the next business day for the work permit. Any work done, whether by Grantee, its contractors, or third parties will include necessary paving, patching, grading, and any other reasonably necessary repair or restoration to the County Road Rights-of-Way. All work shall be done to the reasonable satisfaction of the Director, but in no event shall restoration requirements exceed then effective County Road Standards.

All equipment, lines and appurtenances which are used in the operation, maintenance, repair or construction of the Grantee's service and which are located within the County Road Rights-of-Way shall be considered to be part of the Grantee's system and the responsibility of the Grantee. All permits for the operation, maintenance, repair or construction of said system shall be applied for and given in the name of the Grantee, who will be responsible for all work done under the permit. The Grantee remains responsible whether the work is done by the Grantee, its contractors, or by third parties.

The Grantee shall post and maintain a bond to King County in the amount sufficient for any road repair or restoration. The amount of the bond shall be set by the Director and must be filed with the Property Services Division before a permit will be issued.

### 14. RESTORATION OF COUNTY ROAD RIGHTS-OF-WAY

After work on, over, under or adjacent to County Road Rights-of-Way, the Grantee is responsible for and will leave all County Road Rights-of-Way in as good a condition as they were before any work was done. In the event that the Grantee, its contractors, or third parties working under permit should fail to restore County Road Rights-of-Way to the satisfaction of the Director, King County may make such repairs or restorations as are necessary to return the

County Road Rights-of-Way to their pre-work condition. Except in the case of an emergency, however, King County shall first notify the Grantee of the needed repairs or restoration and provide an opportunity for the Grantee to perform the repairs or restoration before King County does the work. Upon presentation of an itemized bill for repairs or restorations, including the costs of labor and equipment, the Grantee will pay the bill within thirty (30) days. If suit is brought upon the Grantee's failure to pay for repair and restoration, and if judgment in such a suit is entered in favor of King County, then the Grantee shall pay all of the actual costs, including interest from the date the bill was presented, disbursements, and attorney's fees and litigation related costs incurred.

#### 15. PERFORMANCE OF WORK

The Grantee covenants that in consideration for the rights and privileges granted by this franchise, all work performed by the Grantee on County Road Rights-of-Way shall conform to all County requirements including, but not limited to, the requirements of the current edition of the County Road Standards in force when the work is performed and all traffic control shall also conform to the current edition of the manual of Uniform Traffic Control Devices in force when the work is performed.

#### 16. BLASTING REQUIREMENTS

The right to operate, maintain, repair and construct Grantee's transmission, distribution and service lines and appurtenances granted by this franchise, does not preclude King County, its agents or contractors from blasting, grading, or doing other road work contiguous to the Grantee's lines, and appurtenances. Except in the case of an emergency, the Grantee will be given ten business days written notice of any blasting so that the Grantee may protect its lines and appurtenances. If the Grantee notifies the County within ten business days that the facilities will have to be relocated to protect them from blasting, the County will defer the blasting for up to ninety (90) days from the date of the original notice. In no event will the Grantee be given less than two days written notice of any blasting. Notification of any excavation shall be provided through the One-Call System as provided by RCW 19.122, as hereinafter amended.

#### 17. SURVEY MARKERS AND MONUMENTS

It shall be the responsibility of the Grantee performing any construction work in the County rights-of-ways to restore any survey markers or monuments disturbed by such construction in accordance with RCW 58.09.130, and as hereinafter amended.

**18. ASSIGNMENT**

The Grantee shall notify the King County Property Services Division in writing of its intent to assign the franchise at least one hundred and twenty (120) days prior to the effective date of the assignment. The Grantee shall not have the right to assign this franchise without the consent of the King County Council given by Ordinance. Council approval of the assignment may be made subject to the assignee's acceptance of new or modified terms of the franchise.

Notwithstanding the foregoing, the Grantee shall have the right to assign this franchise in whole or in part without consent of the King County Council to:

- (a) a parent, subsidiary, affiliated corporation, or any other entity having common control with Grantee, provided that the following conditions are met:
  - i. The Grantee or the assignee submits written documentation showing that the transfer does not increase liability to the County or increase the risk of nonperformance or partial performance of any obligation contained in the franchise and applicable law; and
  - ii. The assignee agrees in writing that it will assume and be responsible for the obligations, liabilities, duties and responsibilities of the Grantee, known and unknown, under this franchise and applicable law; or
- (b) a lender for purposes of security in connection with financing provided to the Grantee.

No assignment shall be effective unless an acceptance by the assignee of all rights, conditions, terms, provisions, and responsibilities contained within the franchise, as well as insurance and surety bonds which the County deems necessary to be posted are received in the assignee's name. No assignment shall be effective unless the assignee agrees in writing that County approval of or consent to the assignment shall not constitute a waiver or release of any rights of the County under this franchise or applicable law nor of any of the Grantee's obligations, liabilities, duties and responsibilities under this franchise or applicable law, whether arising before or after the effective date of the assignment.

**19. RESERVATION OF RIGHTS**

King County specifically reserves for itself the right to impose a utility tax on the Grantee if such taxing authority is granted by the State of Washington and the local option is exercised by the King County Council.

King County also specifically reserves the right to exercise authority it has or may acquire in the future to secure and receive fair market compensation for the use of its property, pursuant

to an ordinance. If King County elects to exercise such authority, the fair market compensation requirement for Grantee shall be imposed by ordinance not less than one hundred eighty (180) days after written notice ("Compensation Notice") is delivered to the Grantee, said Compensation Notice identifying with specificity the definition, terms and/or formula to be used in determining such fair market compensation. Acceptance of King County's definition, terms and/or formula identified in the Compensation Notice will occur if the Grantee accepts in writing within thirty (30) days of receipt of the Compensation Notice; or, if Grantee takes no action in writing within thirty (30) days of receipt of the Compensation Notice; in which case the applicable ordinance that the King County Council passes will be determinative.

Nothing in this section shall be construed as an agreement by the Grantee of King County's right to exercise authority it has or may acquire in the future to secure and receive fair market compensation for the use of its property. Nothing in this section shall be construed to prohibit the Grantee from challenging, in King County Superior Court or a court of competent jurisdiction, the legality of such right.

Grantee's rejection of the definition, terms, and/or formula identified in the Compensation Notice will only occur if such rejection is in written form, identifying with specificity the grounds for such rejection, and delivered to King County within thirty (30) days after receipt of the Compensation Notice, in which case the below identified arbitration terms will apply:

- A. The Grantee and King County will select one arbitrator each, and the two selected arbitrators will select a third arbitrator. If the two arbitrators have not selected a third arbitrator within thirty (30) days after the selection of the last selection of the two, either the Grantee or King County may apply to the presiding judge of the King County Superior Court for the appointment of a third arbitrator. The three arbitrators will determine the method for determining the fair market compensation for the County property used by the Grantee. The arbitration procedure employed shall be consistent with the rules and procedures of the American Arbitration Association. The decision of a majority of the arbitrators will bind both the Grantee and King County. At the conclusion of the arbitration, the arbitrators will submit written reports to the Grantee and King County which shall contain all pertinent evidence that led to their conclusion together with an explanation of their reasoning for such conclusion.
- B. The fees of the arbitrators selected by each party shall be paid by that party, and the fees of the third arbitrator shall be paid one-half each by the County and the Grantee. The other costs of the proceeding shall be shared equally by the County and the Franchisee.

- C. In the event that the question of fair market compensation is not resolved prior to the effective date specified by the ordinance authorizing said compensation, the arbitration decision will be applied retroactively to the effective date in the ordinance. The Grantee will pay the retroactive sum plus interest in the amount of twelve percent (12%) per annum.

Nothing in this franchise may be construed to limit the exercise of authority now or later possessed by the County or any other governing body having competent jurisdiction to fix just, reasonable and compensatory rates or other requirements for services under this franchise. Nothing in this section shall be construed to prohibit the Grantee from challenging, in King County Superior Court or a court of competent jurisdiction, the authority of the County or any other governing body to fix rates or other requirements for services.

## 20. EXPIRATION AND RENEWAL

The franchise shall become null and void and of no force and effect if the Grantee fails to commence construction of its facilities/system within one year of the effective date of this franchise unless otherwise agreed to in writing by the County.

If the Grantee has not applied for a renewal of this franchise before it expires, King County has the right to require the Grantee to remove any lines and appurtenances of the Grantee as is reasonably necessary for the public's health, welfare, safety, or convenience including, but not limited to, the safe operation of County roads, franchise holders, or for the construction, renewing, altering, or improving of any County Road Rights-of-Way, or for the installation of lines and/or facilities of other franchise holders.

If the Grantee elects to have King County effect such removal or if the Grantee fails to commence such removal within ninety (90) days of the County's request for removal or relocation and fails to effect such removal within one (1) year of the date of the County's request, Grantee shall be liable for the costs incurred in any removal of its lines and appurtenances under this section. Costs include the expense of labor and equipment, provided that any removal is effected within two (2) years from the expiration date of this franchise.

Upon expiration of this franchise, the grantee shall continue to be responsible for the operation and maintenance of existing facilities in the County Road Rights-of-Way but shall not have the right to provide additional services. This section and Sections 9, 10, 12-15, 17 and 26 of this franchise shall continue in force until such time as the lines are removed from County Road Rights-of-Way or abandoned in place with the approval of the County Road Engineer.

## 21. COMPLIANCE WITH LAWS

- A. that the Grantee has not substantially cured the violation or failure to comply which was the basis of the notice; or
- B. that the violation or failure to comply which was the basis of the notice is incapable of cure; or
- C. that the Grantee has repeatedly violated or failed to comply with any of the material terms, conditions or responsibilities of the franchise, even though the individual violations have been cured; and
- D. that the revocation of the franchise is in the public interest.

During the forty-five days following the notification, the Grantee shall have the opportunity to remedy the failure to comply.

#### 24. RIGHT OF APPEAL

Decisions, requirements, or approvals of the Director are binding on the parties to this franchise. Appeals from the Director's determinations will be made by filing a complaint with the King County Superior Court.

#### 26. CABLE SERVICES NOT AUTHORIZED BY THIS FRANCHISE

No part of the telecommunication system shall be used to deliver services which are cable services and no part of the telecommunication system shall be used as a cable system without the Grantee first obtaining from King County a separate franchise which conforms to the requirements of K.C.C. 6.27A.

#### 27. SEVERABILITY

This franchise gives effect to purposes and uses which are consistent with economical and efficient services rendered in the public interest. If any section, sentence, clause or phrase of this franchise should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this franchise.