

August 3, 1995

Introduced by: BRUCE LAING

CLT:dh

Proposed No.: 95 - 578

ORDINANCE NO. **11988**

AN ORDINANCE approving a franchise for Metropolitan Fiber Systems of Seattle, Inc. to construct, operate and maintain a telecommunications system in King County Council Districts 1, 3, 6 and 12 and authorizing the Executive to execute the franchise agreement.

STATEMENT OF FACTS:

1. Metropolitan Fiber Systems of Seattle, Inc. (MFS) has filed an application for a franchise in council districts 1, 3, 6 and 12 to construct, operate and maintain a telecommunications system in accordance with R.C.W. 36.55.010.
2. MFS intends to construct a fiber optic network running around Lake Washington.
3. MFS is authorized by the Washington Utilities and Transportation Commission to provide telecommunication services in Washington.
4. MFS's franchise application was referred to the relevant county departments for review.
5. King County and MFS 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 Metropolitan Fiber Systems of Seattle, 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.

# 11983

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 28<sup>th</sup> day of August, 1995.

PASSED by a vote of 9 to 0 this 2<sup>nd</sup> day of October, 1995.

KING COUNTY, COUNCIL  
KING COUNTY, WASHINGTON

Kent Pullen  
Chair

ATTEST:

Gerald A. Peterson  
Clerk of the Council

APPROVED this 13<sup>th</sup> day of October, 1995.

Jimmy Lohr  
King County Executive

Attachments:

A. Franchise Agreement

UTILITIES

FRANCHISE NO. **11983**

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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METROPOLITAN FIBER SYSTEMS OF SEATTLE, 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 2<sup>nd</sup> day of October, 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 METROPOLITAN FIBER SYSTEMS OF SEATTLE, INC., the Grantee, subject to the conditions set forth in Exhibit "B" attached hereto, this franchise and Ordinance No. 11983. 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 11983 and Exhibit "B", and shall expire in 5 years on 10-2-2000, unless otherwise extended pursuant to Section 3 of Exhibit B.

KING COUNTY, WASHINGTON

BY *Doug Locke*

TITLE KING COUNTY Executive

DATE October 13, 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 \_\_\_\_\_ and Exhibit B attached hereto and with these references incorporated herein.

*[Signature]*  
GRANTEE

BY Kevin O'Hara

TITLE Authorized Agent

DATE October 30, 1995

EXHIBIT "A"

1. From Bothell Way, south on 68th Ave. NE approximately 220' to NE 175th St., then east on NE 175th St. approximately 4150' to 80th Ave. NE.

This segment is within the following quarter sections:

NW 1/4, Sec 12, T26N, R4E  
NE 1/4, Sec 12, T26N, R4E

2. From the Kirkland city limits (Slater Ave.) east on NE 124th St. approximately 3150' to Willows Road NE.

This segment is within the following quarter sections:

NE 1/4, Sec 28, T26N, R5E  
NW 1/4, Sec 27, T26N, R5E  
NE 1/4, Sec 27, T26N, R5E

3. Approximately 100' at the intersection of SE 36th St. and 148th Ave. SE within the SW 1/4, Sec 11, T24N, R5E.

4. From the Bellevue city limits (153rd Ave. SE) east on SE 38th St. approximately 740' to 156th Ave. SE, then northeast on 156th Ave. SE approximately 130' to the Bellevue city limits.

This segment is within the SE 1/4, Sec 11, T24N, R5E.

5. From the Bothell city limits (NE 145th St.) South on 100th Ave. NE approximately 5300' to the Kirkland city limits (NE 132nd St.)

This segment is within the following quarter sections:

W 1/2, Sec 29, T26N, R5E  
E 1/2, Sec 30, T26, R5E  
NE 1/4, Sec 30, T26, R5E  
NW 1/4, S32, T26N, R5E

Note: See Franchise Map dated August 3, 1995.

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 METROPOLITAN FIBER SYSTEMS OF SEATTLE, 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".

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 GRANTEE 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 all other 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 all 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 electrical or 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. The Grantee may abandon its facilities in place with the approval of the County Road Engineer.

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

Grantee shall conform to all applicable federal, state and local laws and regulations including but not limited to the State Environmental Policy Act and King County environmental standards and ordinances.

#### 22. NON-DISCRIMINATION CLAUSE

In all hiring or employment made possible or resulting from this franchise agreement, there shall be no discrimination against any employee or applicant for employment because of sex, sexual orientation, age, race, color, creed, national origin, marital status or the presence of any sensory, mental, or physical handicap, unless based upon a bona fide occupational qualification, and this requirement shall apply to but not be limited to the following: employment, advertising, lay-off or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

No person shall be denied, or subjected to discrimination in receipt of the benefit of any services or activities made possible by or resulting from this agreement on the grounds of sex, sexual orientation, race, color, creed, national origin, age except minimum age and retirement provisions, marital status, or the presence of any sensory, mental or physical handicap.



Any violation of this provision shall be considered a violation of a material provision of this agreement and shall be grounds for cancellation, termination or suspension in whole or in part, of the agreement by the County and may result in ineligibility for further County agreements.

The Grantee shall make the best efforts to make opportunities for employment and/or contracting services available to women and minority persons. The Grantee recognizes that King County has a policy of promoting affirmative action, equal opportunity and has resources available to assist Grantee in these efforts.

### 23. PENALTY FOR VIOLATION OF CONDITIONS

If the Grantee shall violate or fail to comply with any of the material terms, conditions, or responsibilities of this franchise through neglect or failure to obey or comply with any notice given the Grantee under the provisions of this franchise, if the Grantee abandons its franchise, or if the Grantee fails to commence construction of its initial telecommunications system in the franchise area within one year of the effective date of this franchise, the Council may revoke the franchise. King County shall give written notice of its intent to revoke this franchise. A public hearing shall be scheduled within forty-five (45) days following the notification. The decision to revoke this franchise will become effective ninety (90) days following the public hearing if the County, by ordinance, finds:

- 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.