

1 franchise, which include a description of the franchise area (Appendix 1); the franchise
2 agreement, (Appendix 2); the performance bond, (Appendix 3); the deployment schedule
3 map (Appendix 4); and the acceptance of the franchise (Appendix 5). Attachment A,
4 together with its appendices, is fully incorporated herein by reference as if set out in full.

5 D. Metricom, Inc. will install its network on poles owned by another utility.

6 Metricom, Inc. will not cut or bore under county roads in the course of constructing,
7 operating, maintaining and repairing its network.

8 SECTION 2. By this ordinance, the council hereby grants Metricom, Inc. a franchise
9 to use the road rights-of-way of King County to construct, operate, maintain and repair a
10 wireless digital communications radio network; PROVIDED THAT: Metricom, Inc. and
11 the county execute an amendment to the franchise agreement incorporating the
12 requirements of any future ordinances or formal policies as adopted over the term of this
13 franchise, which may impact this franchise agreement. The franchise shall expire at
14 midnight June 1, 2007.

15

12826

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

SECTION 3. The King County executive is hereby authorized to execute the Franchise, Franchise Agreement, and other documents related to the grant of this franchise in substantially the same form as contained in Attachment A and appendices thereto to this ordinance.

INTRODUCED AND READ for the first time this 30th day of

June, 1997.

PASSED by a vote of 12 to 0 on this 18th day of August, 1997.

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

Jan Hague
Chair

ATTEST:

Zuzanna
Clerk of the Council

APPROVED this 29 day of August, 1997

[Signature]
King County Executive

- Attachments: Franchise (Attachment A)
- Legal Description of the Franchise Area (Appendix 1)
- Franchise Agreement (Appendix 2)
- Performance Bond (Appendix 3)
- Deployment Schedule Map (Appendix 4)
- Acceptance of the Franchise (Appendix 5).

12823

**APPENDIX 1
TO
METRICOM, INC. WIRELESS DIGITAL
COMMUNICATIONS RADIO NETWORK FRANCHISE**

Legal Description of the Franchise Area:

Those portions of King County located within the unincorporated portions of King County, Washington, a political subdivision of the State of Washington.

April 16, 1997

12826

ATTACHMENT A

METRICOM FRANCHISE AGREEMENT

August 29, 1997

WIRELESS DIGITAL COMMUNICATIONS RADIO NETWORK

FRANCHISE NO. 12826

In the matter of the application of Metricom, Inc. for a Franchise to construct, operate, maintain and repair a WIRELESS DIGITAL COMMUNICATIONS RADIO NETWORK in, over, and along County streets, alleys, roads and compatible utility easement rights-of-way in King County, Washington for the sole purpose of transmitting digital communications radio signals.

METRICOM, INC. filed an Application for a Franchise to construct, operate, maintain and repair a WIRELESS DIGITAL COMMUNICATIONS RADIO NETWORK in, over, and along County roads and appropriate rights-of-way within the unincorporated portions of King County for the purpose of transmitting digital communications radio signals. The King County Council held a public hearing on the Application and the proposed ordinance on the 18th day of August 1997.

Legal notice of the Application and of the hearing were given as required by law.

The King County Council, having considered the interests proposed and advanced, has found that the grant of a Franchise to METRICOM, INC. subject to conditions, is in the public interest. It hereby ORDERS, pursuant to Ordinance No. 12826, that a Wireless Digital Communications Radio Network Franchise is granted to METRICOM, INC., subject to the conditions set forth in the Franchise Agreement attached as Exhibit 2 hereto, this Franchise and Ordinance No. 12826 (hereinafter the "Granting Ordinance"). This Franchise grants the right, subject to conditions, to construct, operate, maintain and repair a Wireless Digital Communications Radio Network in, over, and along County

ATTACHMENT A

roads and appropriate rights-of-way within the unincorporated portions of King County for the purpose of transmitting digital signals commencing on the effective date of the Franchise through and including _____, 2006. The Franchise shall become effective when the Franchisee has:

- A. Signed the Franchise Agreement attached as Exhibit 2;
- B. Filed an unconditional acceptance of this Franchise attached as Exhibit 5; and
- C. Made all payments, posted all securities and supplied all information that it is required to supply prior to or upon the effective date of the Franchise.

Provided that all these actions must be completed within 30 days of the effective date of Ordinance No. 12826, or the Franchise shall be null and void and without effect.

METRICOM, INC.

BY: [Signature]

ITS: [Signature]

DATE: _____

KING COUNTY, WASHINGTON

BY: [Signature]

ITS: King County Executive

DATE: 9-23-97

APPENDIX 2

WIRELESS DIGITAL COMMUNICATIONS RADIO NETWORK

FRANCHISE AGREEMENT

BETWEEN KING COUNTY, WASHINGTON

AND METRICOM, INC. FOR

FRANCHISE NO. 12826

WHEREAS, METRICOM, INC., a Delaware Corporation, seeks a nonexclusive franchise from King County to provide wireless digital communication radio services within the unincorporated part of the County; and

WHEREAS, the County has conducted proceedings in which METRICOM, INC. has participated, to identify the future needs and interests of the community; to consider METRICOM, INC.'s financial, technical, and legal qualifications; and to determine whether METRICOM, INC.'s plans for constructing and operating its Network are reasonable; and

WHEREAS, based in part upon METRICOM, INC.'s representations and information, the County has determined that, subject to the terms and conditions set forth herein, the granting of METRICOM, INC.'s nonexclusive franchise is consistent with the public interest; and

WHEREAS, the County is willing to issue such a franchise, conditioned on METRICOM, INC.'s acceptance of the terms and conditions thereof; and

WHEREAS, METRICOM, INC. is willing to accept the franchise subject to such terms and conditions, and to abide by those terms and conditions:

NOW, THEREFORE, in consideration of the mutual promises made herein, and other good and valuable consideration, the receipt and the adequacy of which is hereby acknowledged, THE SIGNATORIES

DO HEREBY AGREE AS FOLLOWS:

1. Definitions

(a) Except as otherwise provided herein, the definitions and provisions governing the interpretation of terms set forth in King County Code ("K.C.C."), Section 6.27A.010 shall govern this Franchise Agreement. References to any County official or office also refer 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 includes laws now in effect, as the same may be amended from time to time, and new laws. In addition, the following definitions shall apply:

(b) Books and Records. The terms "books" or "records" means any recorded information relating to the WIRELESS DIGITAL COMMUNICATIONS RADIO NETWORK or its management, including but not limited to information regarding its construction, operation, maintenance or repair, in whatever form stored, including, but not limited to computerized records and programs, paper records, and video or audio-taped records.

(c) Construction, Operation or Repair. These and similar formulations of those terms refer to the named actions interpreted broadly, encompassing, among other things, installation, extension, maintenance, replacement of components,

relocation, site preparation, adjusting, testing, and make-ready.

(d) County. The term "County" or "King County" means King County, Washington and includes its elected officials, officers, employees, and agents.

(e) Director. The term "Director" means the chief executive of the King County Department of Transportation.

(f) Franchise Agreement. The terms "Agreement" or "Franchise Agreement" means this contract and any amendments, exhibits, or appendices hereto.

(g) Franchisee. The terms "Franchisee" or "Grantee" means METRICOM, INC., and its lawful and permitted successors and assigns.

(h) Gross Revenues. The term "Gross Revenues" means all revenues and other consideration accrued on Franchisee's books in accordance with generally accepted accounting principles for subscription fees to Franchisee's Ricochet services collected or to be collected from subscribers with billing addresses in unincorporated portions of the County except for (1) the Franchise Fee required by Section 6 below, (2) federal, state or local taxes that are separately stated on the bill to subscribers and collected by Franchisee, and (3) bad debts (i.e., uncollectible subscription fees from subscribers with billing addresses in unincorporated portions of the County). If the Franchisee leases, rents, or otherwise transfers a significant

share of the capacity on its system to another person and if the Franchisee shows, to the County's satisfaction, that the transaction is an arms-length transaction, the lease payment, rental payment, and other consideration shall be included in the computation of Gross Revenues. For all other transfers of a significant share of the Network capacity, the total consideration received by the transferee from use of the capacity shall also be included in the computation of the Franchisee's Gross Revenues as if the transferee were the Franchisee.

Notwithstanding the foregoing, the parties acknowledge that Franchisee currently bills its customers on a flat fee basis, and agree that should Franchisee change its billing practice to other than a flat fee basis, the definition of Gross Revenues would be amended to account for such change in billing practices.

(i) Office. The term "Office" means the King County Office of Cable Communications and its lawful and permitted successors.

(j) Person. The term "Person" means any individual, corporation, partnership, limited partnership, association, joint venture, organization, or any other legal entity of any kind, and any lawful trustee, successor, assignee, transferee or personal representative thereof.

(k) Rights-of-way. The term "Right(s)-of-Way" means County streets, alleys, roads and compatible utility easements located within the unincorporated portions of King County. It does not

Appendix 2

include, for example, parks or recreational or nature trails or any County-owned property located in incorporated areas of King County.

(1) Wireless Digital Communications Radio Network. The terms "Wireless Digital Communications Radio Network" or "Network" means the Franchisee's Ricochet network deployed in the Right-of-Way which operates in one or more of the following spectra of radio frequencies: 902-928 MHz, 2305-2350 MHz, 2400-2483.5 MHz, or 5725-5850 MHz, as permitted by the FCC. The term is used to refer to the Wireless Digital Communications Radio Network as a whole, or to any part of the Wireless Digital Communications Radio Network, including equipment or facilities appurtenant thereto.

2. Grant of Authority; Limits and Reservations.

(a) Grant of Authority. The Franchisee is hereby granted, subject to the terms and conditions of this Franchise Agreement, the right, privilege, and authority to construct, operate, maintain, and repair a wireless digital communications radio network within the Franchise territory defined in this Agreement. The Franchise issued to the Franchisee is subject to the terms and conditions of this Agreement. It shall remain in effect until midnight June 1, 2007, unless otherwise terminated by action of the County as hereinafter provided. The only activity authorized by this franchise is the construction, operation,

maintenance, and repair of wireless radios and associated antenna and power cabling (radios shall be approximately 18 inches in length, 12 inches in width and 8 inches in height; and antenna shall not exceed three feet in height) on street lights and utility poles located within King County Rights-of-Way. The construction, operation, maintenance, and repair of any other equipment, whether on King County property or not, shall require separate authorization from the property owner.

(b) Scope of Franchise.

(1) The Franchise is intended to convey limited rights and interests only as to those County streets, alleys, roads and compatible utility easement Rights-of-Way, located in unincorporated King County, in which the County has an actual interest. It is not a warranty of title or interest in any Right-of-Way; it does not provide the Franchisee any interest in any particular location within the Right-of-Way ; and it does not confer rights other than as expressly provided in the grant or as mandated by federal, state, or local law. Neither the granting of this Franchise nor any language, term, or condition herein, deprives the County of any powers, rights or privileges it now has or may later acquire in the future to use, perform work on or to regulate the use of and to control the County's Right-of-Way covered by the Franchise, including without limitation the right to perform work on its roadways, Right-of-Way or appurtenant

drainage facilities, including by constructing, altering, renewing, paving, widening, grading, blasting or excavating. When practical, the County will give the Franchisee forty-eight (48) hours notice of any excavating which is likely to damage the Franchisee's appurtenances so that the Franchisee may protect its appurtenances from any County work.

(2) Whenever any of the County Right-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 town or city limits, this Franchise shall continue in full force and effect until such time as the incorporation and/or annexation is complete according to applicable state law, after which time the County shall no longer have any responsibility for maintenance of such roads, Right-of-Way or other County property within the area of the annexation and/or incorporation.

(c) Exercise of Authority Under Franchise. Franchisee may only engage in wireless digital communications radio network service and any other lawful activity related to the operation of a wireless digital communications radio network. Franchisee shall provide wireless digital service under this Franchise and any other use of the Franchise is prohibited. Specifically, and without limitation, this Franchise does not permit use of the network to provide real time video or telephone service, other

Appendix 2

than via the Internet or similar on-line service. Use of the Network for these purposes requires a separate Franchise from King County. Because the types of services the Franchisee may choose to offer in the future is uncertain, and the effect on the public interest cannot be fully anticipated, the County reserves the right to impose additional conditions on the offering of new services.

(d) Activities of Affiliates. Franchisee promises and guarantees, as a condition of exercising the privileges granted by this Franchise, that any Affiliate or joint venture or partner of the Franchisee involved in the management or operation of the WIRELESS DIGITAL COMMUNICATIONS RADIO NETWORK in the County will comply with the terms and conditions of this Franchise.

(e) Franchise Not Exclusive. The right to use and occupy the public Right-of-Way is not exclusive and does not explicitly or implicitly preclude the issuance of other Franchises to construct, operate, maintain or repair other telecommunications operations within the County; or affect the County's right to use or authorize the use of any of its public Right-of-Way or other property by other persons as it determines appropriate. However, County agrees to advise such other providers of telecommunications services of the presence or planned deployment of the WIRELESS DIGITAL COMMUNICATIONS RADIO NETWORK in the public Right-of-Way. The foregoing notice is intended as a

courtesy only and is not intended to create, nor shall it result in, any liability for County should it fail to give the requisite notice.

(f) Relation to Other Franchises. This Agreement and all rights and privileges granted under the Franchise are binding on the parties to this Agreement without reference to any other action or Franchise grant by the County.

(g) Construction of Agreement. The provisions of this Agreement shall be liberally construed to promote the public interest.

(h) Relation to County Ordinances. The provisions of applicable law, as amended over the term of this Franchise, shall apply to the Franchise Agreement as if fully set forth in the Franchise Agreement, and the express terms of applicable law will prevail over conflicting or inconsistent provisions in the Franchise Agreement unless the Franchise Agreement expresses an explicit intent to waive a requirement of applicable law.

3. Relation to Other Provisions of Law. This Agreement and all rights and privileges granted under the Franchise are subject to the County's police and other powers and other applicable law. Other applicable law includes, but is not limited to, federal, state, and County law and rules promulgated thereunder. The Franchise issued and the Franchise fee paid hereunder are not in lieu of any other required permit,

authorization, fee, charge or tax applicable to other similarly situated telecommunication provider businesses operating in the County, unless expressly stated herein.

(a) Effect of Grant. By granting this Franchise, the County acknowledges and agrees that it has the authority to issue this Franchise and did so pursuant to processes and procedures consistent with applicable law, and that it will not raise any claim to the contrary.

(b) Effect of Acceptance. By accepting the Franchise, the Franchisee: (1) acknowledges and accepts the County's legal right to issue and enforce the Franchise; (2) agrees that it will not oppose the County intervening in any proceeding affecting its WIRELESS DIGITAL COMMUNICATIONS RADIO NETWORK; (3) accepts and agrees to comply with each and every provision of this Agreement; and (4) accepts that the Franchise was granted pursuant to processes and procedures consistent with applicable law, and that it will not raise any claim to the contrary.

(c) Franchisee Bears Its Own Costs. Unless otherwise expressly provided in this Agreement, all acts that the Franchisee is required to perform must be performed at the Franchisee's own expense.

(d) No Waiver. The failure of a party, on one or more occasions, to exercise a right or to require compliance or performance under this Agreement or 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. Any waiver of a breach is not a waiver of any other breach, whether similar or different from that waived.

(e) No Recourse. To the extent permitted by law, the Franchisee shall have no recourse whatsoever against the County or its officials, boards, commissions, agents or employees for any loss, costs, expenses, or damages arising out of any provision or requirement of the Franchise or Franchise Agreement because of the enforcement of the Franchise or Franchise Agreement, except if such loss, costs, expenses, or damages are the result of the sole negligence, or misconduct on the part of the County or its officials, boards, commissions, agents or employees. The rights of the County under this provision are in addition to, and shall not be read to limit, any immunities the County may enjoy or rights which the Franchisee may enjoy under federal or state law.

4. Effect of Changes in Law.

(a) Severability. In the event that a court or agency or legislature of competent jurisdiction acts or declares any nonmaterial provision of this Agreement unenforceable according to its terms, or otherwise void, said provision shall be considered a separate, distinct, and independent part of this Appendix 2

Agreement, and such holding shall not affect the validity and enforceability of all other provisions hereof. In the event that a court or agency or legislature of competent and controlling jurisdiction acts or declares any material provision of this Agreement unenforceable according to its terms, or is otherwise void, the parties agree to immediately enter into negotiations in good faith to restore benefits or equivalent consideration to the injured party as a substitute for the benefits the injured party expected to receive from the provision which was declared unenforceable. If the parties are not able to agree to a modification to this Agreement within sixty (60) days of the date the decree became final, the injured party may at any time thereafter request compulsory arbitration under the rules of the American Arbitration Association. The parties agree the arbitrator shall modify the terms of this Agreement in a manner which is equitable to both parties with respect to the full value of the consideration promised in this Agreement. The decision of the arbitrator shall be final and fully enforceable in any court of competent jurisdiction. By way of illustration and not limitation, the following provisions shall be considered material: 2(h) (Relation to County Ordinances); 6 (Franchise Fee); 16 (Network Facilities, Equipment and Services); and 18 (Conditions on Use of Rights-of-Way; Specific Practices).

(b) Effect of Change in Law. In the event that state or

federal laws, rules, or regulations preempt a provision or limit the enforceability of a provision of this Agreement, then, subject to the parties' rights under Section 4(a) of this section, the provision shall be read to be preempted to the extent and for the time, but only to the extent and for the time, required by law. In the event such state or federal law, rule, or regulation is subsequently repealed, rescinded, amended, voided, or otherwise changed, so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of either party.

5. Transfers.

(a) Assignment. This Franchise Agreement shall not be assigned or transferred by Franchisee without the prior written consent of County, which consent shall not be unreasonably withheld, conditioned, or delayed. Franchisee shall give County written notice of any proposed assignment or transfer for which County's consent is required hereunder. County shall give Franchisee a written decision on any such proposed assignment or transfer within one-hundred and twenty (120) days of the date that County receives all of the requested information and documents. The County's failure to approve or deny any such request within one-hundred and twenty (120) days of receipt of

Appendix 2

the requested documents shall be deemed an approval. Franchisee shall provide any and all relevant information and documents requested by the County relating to the transaction and assignee/grantee. Franchisee agrees to reimburse County for its + expenses incurred in reviewing any proposal for an assignment or transfer for which County's consent is required hereunder. The transfer of operating control over the WIRELESS DIGITAL COMMUNICATIONS RADIO NETWORK pursuant to a management contract or similar arrangement shall be deemed a transfer for purposes of this Franchise Agreement. Notwithstanding the foregoing, (i) the transfer of the rights and obligations of Franchisee to a subsidiary or other affiliate of Franchisee that is under the control of Franchisee shall not be deemed an assignment or transfer for purposes of this Franchise Agreement so long as Franchisee remains jointly and severally liable with such affiliate with respect to all liabilities and obligations of Franchisee hereunder, and (ii) a change in control of Franchisee (as defined in this Section 5) shall not be deemed an assignment or transfer for purposes of this Franchise Agreement.

(b) Change in Control Defined. For purposes of this Franchise Agreement, a "change in control" of Franchisee shall mean the acquisition by any person, including any "group" within the meaning of Section 13(d) of the Securities Exchange Act of 1934, as amended, of the power directly or indirectly, through

Appendix 2

the ownership of voting securities, by contract or otherwise, to direct the management and policies of Franchisee; provided however that the ownership of more than fifty percent (50%) of Franchisee's outstanding voting securities shall be deemed to constitute control, and the ownership of thirty percent (30%) or less of Franchisee's voting securities shall be deemed not to constitute control. Franchisee shall advise County whenever any person or "group" becomes the owner of more than thirty percent (30%) of Franchisee's outstanding voting securities.

(c) Change in Control Process. Upon a change in control of Franchisee (as defined in this Section 5), County shall have the right, for a period of one-hundred and twenty (120) days after the date that County receives the required information and documents required by the next sentence (hereinafter the "Clock Start Date"), to notify Franchisee in writing of its intention to terminate this Franchise Agreement effective no less than ninety (90) days after the Clock Start Date. Franchisee shall provide any and all relevant information and documents requested by the County relating to the transaction and assignee/grantee. Such termination shall not be effective, and this Franchise Agreement shall continue in full force and effect in accordance with its terms, if, during such ninety (90) day period, Franchisee provides County evidence demonstrating that: (i) it is not then in breach of this Franchise Agreement; (ii) the financial

Appendix 2

condition of Franchisee or any successor in interest to Franchisee's status as Franchisee immediately after the change in control would be at least as strong as Franchisee's financial condition immediately prior to the change in control; and (iii) the experience and technical qualifications of Franchisee or of Franchisee's successor in interest, as the case may be, or its then-existing management team, in the provision of telecommunications or similar services evidences an ability to own and operate the WIRELESS DIGITAL COMMUNICATIONS RADIO NETWORK. Franchisee agrees to reimburse the County for its expenses incurred in reviewing any proposed change in control.

(d) Application for Transfer. An entity which seeks approval of a proposed assignment or transfer (hereinafter, the "Applicant") shall file an application for approval of that transfer no later than one hundred twenty (120) days prior to the proposed effective date of the transfer. The application shall meet the requirements of applicable law.

(e) Notice of Transfer. The Franchisee shall notify the Cable Office in writing as soon as any agreement or contract is executed for an assignment or transfer that is subject to the approval of the County.

(f) Review of Transfer. In determining whether to grant an application submitted under this Section 5 with respect to a proposed assignment or transfer, the County may consider the

Appendix 2

financial resources, capability and experience of the Applicant, the potential impact of the transfer on the rates, terms and conditions of the Services, Applicant's service record in other markets, Applicant's record of compliance with the terms of its Franchises and agreements in other jurisdictions, other relevant information required by County, and the effect of the transfer upon the operation and management of the WIRELESS DIGITAL COMMUNICATIONS RADIO NETWORK. As it determines necessary in evaluating the application, the County may require the Franchisee and Applicant to submit information in addition to that provided as part of the application.

(g) Mandatory Conditions.

No application for approval of an assignment or transfer shall be granted unless the Applicant agrees in writing that it will: :

(1) abide by and accept the terms of this Agreement and any additional terms and conditions that the County determines are needed to protect the public interest;

(2) assumes and be responsible for the obligations and liabilities of the Franchisee, known and unknown, under this Agreement and applicable law; and

(3) Provide performance guarantees to the County that the County considers sufficient and adequate to guarantee the full and faithful performance of all Franchise obligations by the Franchisee.

(h) No Waiver or Release.

Approval by the County of the transfer shall not constitute a waiver or release of any rights of the County under this Franchise Agreement or applicable law, whether arising before or after the effective date of the transfer.

(i) No application shall be granted unless the Applicant posts all required bonds, securities, and the like in its own name at least thirty (30) days prior to the effective date of the transfer.

6. Franchise Fee.

(a) Payment to County. As compensation for use of public Right-of-Way, the Franchisee and its affiliates shall pay the County a Franchise fee in an amount equal to ten percent (10%) of the Gross Revenues; provided, however, that, if, during the term of the Franchise Agreement the Communications Act of 1934, as amended by the Telecommunications Act of 1996 and the rules promulgated thereunder, become settled such that the County and the Franchisee agree in writing that the Franchise Fee may lawfully be reduced from ten percent (10%) to six percent (6%) of gross revenues, then the Franchisee and its affiliates shall pay the County a Franchise Fee in an amount equal to six percent (6) of Gross Revenues from that time forward. Franchisee shall be entitled to indicate on its billings to its subscribers the amount of such bill which represents the Franchise fee provided

Appendix 2

that it shall not act to draw special attention to the fee.

(b) Not in Lieu of Any Other Assessments, Tax or Fee. The Franchise fee is in addition to all other fees, assessments, taxes or payments that the Franchisee may be required to pay under any federal, state, or local law applicable to other similarly situated telecommunication provider businesses operating in the County.

(c) Payments. Franchise fees shall be paid quarterly, within forty-five (45) days of the end of Franchisee's fiscal quarters (i.e., within forty-five (45) days of March 31st, June 30th, September 30th, and December 31st). If a Franchise fee payment or other sum due is not received by the Cable Office on or before the date due, or is underpaid, the Franchisee shall pay in addition to the payment, or sum due, interest from the due date at a rate equal to the maximum rate permitted under Washington State law, compounded daily.

(d) No Accord or Satisfaction. No acceptance of any payment by the County shall be construed as a release or an accord and satisfaction of any claim the County may have for further or additional sums payable as a Franchise fee or for the performance of any other obligation of the Franchisee. The Franchisee shall be released of further responsibility for any unclaimed past or overdue Franchise fees for a particular calendar year six (6) months following the resolution of a County

financial audit or financial review of Franchisee's books and records related to payments for that year or years unless the Franchisee practices some fraud or deceit which is not discovered in the course of the audit or review.

(e) Payment on Termination. If the Franchise terminates for any reason, the Franchisee shall file with the Cable Office within ninety (90) calendar days of the date of the termination, a financial statement certified by Franchisee's chief financial officer or designee, showing the Gross Revenues for the period since the end of the previous fiscal year. The County reserves the right to satisfy any remaining financial obligations of the Franchisee to the County by utilizing the Surety Bond. County may, upon any termination, require an audit of Franchisee's books. If the results of such audit indicate that Franchisee (i) paid the correct Franchise fee, (ii) overpaid the Franchise fee and is entitled to a refund or credit, or (iii) underpaid the Franchise fee by six percent (6%) or less, then the County shall pay the costs of the audit. If the results of the audit indicate that Franchisee underpaid the Franchise fee by more than six percent (6%), then Franchisee shall pay the costs of the audit. In either event, if the results of the audit indicate that additional Franchise fees are due the County, Franchisee shall pay such additional Franchise fees within thirty (30) days

following determination by the County that such amount is due and

payable. Where the results of the audit indicate that Franchisee overpaid the Franchise fee, Franchisee shall receive a refund of the amount overpaid. Franchisee shall cooperate with County in any such audits. .

7. Notices.

(a) All notices to Franchisee shall be mailed to:

Metricom, Inc.
980 University Avenue
Los Gatos, CA 95030
Attn.: Property Manager

All notices, payments, and reports to County shall be mailed to:

King County Office of Cable Communications
700 Fifth Ave., Suite 2300
Seattle, WA 98104
Attn.: Manager

(b) A party may change its address by making an appropriate filing with the Cable Office, as contemplated by K.C.C.

\$6.27A.070, in the case of Franchisee or by giving notice to Franchisee, in the case of County.

(c) A notice may be "mailed" to either party by depositing it in the U.S. Mail, first class postage prepaid, by providing the notice by overnight delivery service, or by facsimile at the following number: (408) 354-9537 in the case of Franchisee or

(206) 296-0842 in the case of County. Either party may change the foregoing by providing written notice to the other.

8. Insurance Requirements.

(a) General Requirement. Franchisee 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 Franchisee and its employees. As of the effective date of the Franchise, the Franchisee must have insurance coverage in place in the amounts and the form specified in (b) - (e); it shall maintain at least that coverage throughout the Franchise term. In addition, Franchisee shall ensure that its agents, representatives, contractors and subcontractors, if any, who work in the Right of Way, carry their own insurance substantially complying with the requirements of this section. By requiring such minimum insurance, the County shall not be deemed or construed to have assessed the risks that may be applicable to the Franchisee under this Agreement. The Franchisee shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and /or broader coverage.

Nothing contained within these insurance requirements shall be deemed to limit the scope, application and/or limits of the

coverage afforded, which coverage will apply to each insured to the full extent provided by the terms and conditions of the policy(s). Nothing contained within this provision shall affect and/or alter the application of any other provision contained within this agreement.

(b) Scope of Insurance. Franchisee must keep insurance in effect in accordance with the minimum insurance scope the County Risk Manager may set from time to time as compared to insurance maintained by other similar telecommunications providers after consulting with the Cable Officer. The initial minimum insurance coverage shall be at least as broad as:

(1) Insurance Services Office form number CG-00-01 (Ed. 11-88) covering commercial general liability;

(2) Insurance Services Office form number CA-00-01 (Ed. 12-90), covering automobile liability symbol (1), "any auto"; and

(3) Workers Compensation insurance as required by applicable federal, state, and local laws, and stop gap or employer's liability insurance.

(c) Initial Insurance Limits. Franchisee must keep insurance in effect in accordance with the minimum insurance limits the County Risk Manager may reasonably set from time to time as compared to insurance limits maintained by other similar telecommunications providers. The Franchisee shall obtain

policies for the following initial minimum insurance limits:

(1) Commercial General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury, and property damage; and for those policies with aggregate limits, a \$2,000,000 aggregate limit;

(2) Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage; and

(3) Stop Gap or Employer's Liability: \$1,000,000.

(d) Deductibles and Self-insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the County Risk Manager. The deductible and/or self-insured retentions of the policies shall not in any way limit or apply to the Franchisee's liability to the County and shall be the sole responsibility of the Franchisee.

(e) Endorsements.

(1) General liability and automobile liability policies shall contain, or shall be endorsed to contain, substantially the following provisions:

(i) King County, its officers, officials, employees, and agents are to be covered, and have the rights of additional insureds with respect to liability arising out of activities performed by or on behalf of Franchisee under this Agreement or applicable law, or in the operation and ownership of its WIRELESS DIGITAL COMMUNICATIONS RADIO NETWORK;

(ii) To the extent of Franchisee's negligence, the Franchisee's insurance coverage shall be primary insurance with respect to the County, its officers, officials, employees, and agents. Any insurance or self-insurance maintained by the County, its officers, officials, employees, and agents shall not contribute with the Franchisee's Insurance or benefit the Franchisee in any way.

(iii) Franchisee's insurance shall apply separately to each insured against whom a claim is made or lawsuit is brought, except with respect to the limits of the insurer's liability.

(2) All policies shall contain, or shall be endorsed to contain, substantially the following provision:

The Policy shall not be suspended, voided, canceled, or reduced in coverage or in limits, nor shall the intention not to renew be stated by the insurance company, except after forty-five (45) calendar days prior written notice, return receipt requested, has been given to King County's Office of Cable Communications and Office of Risk Management.

(f) Acceptability of Insurers. The insurance obtained by Franchisee shall be placed with insurers with a Best's rating of no less than A:VIII, or if not rated by Best's, with surpluses equivalent to Best's A:VIII rating.

(g) Verification of Coverage. The Franchisee shall furnish the County with certificates of insurance and endorsements required by this Agreement. The certificates and endorsements

for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for each insurance policy are to be on accord forms to be received and approved by the County prior to the commencement of activities associated with the Franchise. The Franchisee hereby warrants that its insurance policies satisfy the requirements of this Franchise Agreement.

9. Indemnification.

(a) Scope of Indemnity. The Franchisee agrees, at its sole cost and expense, to indemnify, hold harmless, and defend King County as provided herein to the maximum extent possible under law. Accordingly, the Franchisee agrees for itself, its successors and its assigns to defend, indemnify, and hold harmless King County, its officers, boards, commissions, agents, and employees, against any and all claims, including but not limited to third party claims, demands, suits, causes of action, proceedings, and judgments for damages or equitable relief which is caused by, arises out of, or is incidental to the Franchisee's exercise of rights or privileges granted by this Franchise, including but not limited to construction, repair, maintenance or operation of its WIRELESS DIGITAL COMMUNICATIONS RADIO NETWORK, regardless of whether the act or omission complained of is

authorized, allowed, or prohibited by this Agreement, except insofar as caused by the sole negligence, gross negligence or willful misconduct of the County, its officers, boards, commissions, agents and employees. The Franchisee's obligations under this section shall include:

(1) Indemnification and hold harmless for such claims whether or not they arise from the Franchisee's sole negligence or the negligence of one or more third parties;

(2) The duty to promptly accept tender of defense and provide defense to the County;

(3) Indemnification and hold harmless for claims made by the Franchisee's own employees or agents; and

(4) Waiver of the Franchisee'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.

Without limiting in any way the Franchisee's obligation to indemnify the County and its officers, boards, commissions, agents, and employees as set forth above, this indemnity provision applies to, but is not limited to, expenses for legal fees and for disbursements incurred by the County and liabilities as follows:

(1) Arising out of any claim for injury to persons or property;

(2) Arising out of any claim for invasion of the right of privacy, for defamation of any person, firm or corporation, for the violation or infringement of any copyright, trademark, trade name, service mark, or patent, for a failure by the Franchisee to secure consents from the owners or authorized distributors of information to be delivered by the WIRELESS DIGITAL COMMUNICATIONS RADIO NETWORK, or for violation of any other right of any person, excluding claims arising out of or relating to information transmitted by the County or of any act or omission of the County; and

(3) Arising out of Franchisee's failure to comply with the provisions of any federal, state or local statute, ordinance, rule or regulation applicable to the Franchisee with respect to any aspect of its business to which this Agreement applies. Nothing contained within this provision shall affect and/or alter the application of any other provision contained within this agreement.

In the event it is determined that RCW 4.24.115 applies to this Franchise Agreement, the Franchisee 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 the Franchisee's negligence.

(b) Duty to Give Notice and Tender Defense. The County shall give the Franchisee timely written notice of the making of any claim or of the commencement of any action, suit or other proceeding covered by the indemnity provisions in this Section. In the event any such claim arises, the County or any other indemnified party shall tender the defense thereof to the Franchisee and the Franchisee shall have the duty to defend, settle or compromise any claims arising hereunder and the County shall cooperate fully therein. 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/defense provision, all such fees, expenses, and costs shall be recoverable from the Franchisee.

(c) Exception to Duty to Tender Defense. 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 Franchisee and the County.

(d) Additional Indemnifications. The County may require Franchisee to execute specific and additional indemnifications in connection with issuing any permits related to performance under this Agreement, provided same are no broader than those provided for herein.

10. Surety Bond.

(a) Amount. Within thirty (30) days of the effective date

of this Agreement, Franchisee shall post a surety bond in the form attached hereto as Exhibit X to ensure Franchisee's performance of all of its obligations, within the time frames required, by this Agreement and in connection with its network construction in the amount of Thirty Five Thousand dollars (\$35,000). The bond shall be maintained at the Thirty Five Thousand dollar (\$35,000) level throughout the term of this Agreement.

(b) Use. The County may draw on the Surety Bond to ensure the Franchisee's faithful performance of and compliance with this Agreement, applicable law, and all orders and permits of the County. This may include, without limitation, Franchisee's failure to pay the County any fees or taxes due; liquidated damages; damages, costs or expenses incurred by the County by reason of any act or default of the Franchisee; or Franchisee's failure to comply with any provisions of this Franchise Agreement, applicable law or with any order or permit of the County, which failure the County determines can be remedied by drawing upon the Surety Bond. The County shall notify the Franchisee of the amount and date of any drawing upon the bond. Franchisee's recourse, in the event Franchisee believes any drawing upon the Surety Bond is improper, shall be through legal action after the Surety Bond has been drawn upon. The parties shall comply with orders of a court or agency of competent

jurisdiction concerning the use of Franchisee's surety bond. Such compliance is subject to the applicable appeals process of the court or agency entering the order.

(c) Restoration of Bond. Within thirty (30) calendar days after the County gives Franchisee written notice that it has drawn down upon the Surety Bond, the Franchisee must ensure that the Surety Bond has been restored to the original amount.

(d) Return of Surety Bond. If the Franchise terminates for any reason, and the Franchisee ceases to provide service in the County, the Surety Bond shall be returned to the Franchisee. The Surety Bond shall not be returned until the County has determined that the Franchisee does not owe funds to the County and is not in default.

12. Relationship of Remedies.

(a) Remedies are Non-exclusive. The remedies provided for in this Agreement are cumulative and not exclusive; the exercise of one remedy shall not prevent the exercise of another, or any rights of the County at law or equity, provided however, cumulative remedies may not exceed the total wrong involved.

(b) No Election of Remedies. Without limitation, drawing down upon the Surety Bond, or the recovery of amounts under the insurance or indemnity provisions of this Agreement shall not be construed as an election of remedies or a limit on the liability of the Franchisee under the Franchise for damages or otherwise or

Appendix 2

excuse Franchisee's failure to perform.

13. Non-discrimination.

(a) No Discrimination.

(1) The Franchisee shall comply with King County Code Sections 12.16, 12.18, and all applicable local, state and federal laws and regulations prohibiting discrimination, including without limitation, laws and regulations prohibiting discrimination in the provision of service or employment.

(2) The Franchisee is specifically prohibited from discriminating among persons or taking any retaliatory action against a person because of that person's exercise of any right it may have under federal, state, or local law, nor may the Franchisee require a person to waive such rights as a condition of taking service.

(3) The Franchisee is specifically prohibited from denying access or levying different rates and charges on any group of potential residential subscribers because of the income of the residents of the local area in which such group resides.

(4) To the extent the County may enforce such a requirement, the Franchisee is specifically prohibited from discriminating in its rates or charges or from granting undue preferences to any subscriber, potential subscriber, or group of subscribers or potential subscribers. The Franchisee may,

however, offer temporary, bona fide promotional discounts in

order to attract or maintain subscribers, and may offer special discounts to college or university students, so long as such discounts are offered on a non-discriminatory basis to similar classes of subscribers throughout the County;

(5) The Franchisee may request in writing, and the County may grant, temporary authority to the Franchisee for periods not to exceed twenty-four (24) months to offer specifically identified services, packages and combinations of services to selected groups of subscribers at terms and conditions not generally available to all subscribers throughout the County. The County may refuse to grant this waiver unless it is persuaded upon sufficient showing by the Franchisee that the temporary authority will be used solely to offer services on an experimental or test market basis, and that the services will either be withdrawn at the conclusion of the test or will be made generally available to all subscribers throughout the County in a uniform, consistent and nondiscriminatory manner.

(b) Equal Employment Plan. The Franchisee must adopt and follow an equal employment opportunity plan that complies with all applicable provisions of federal, state and local laws and regulations (which requirement includes the obligation to amend that plan to bring it into compliance with those laws and regulations, as hereafter amended or interpreted). A plan must be submitted to the County on the effective date of the Franchise

Appendix 2

for the County's review and approval.

(c) Minority/Women's Business Procurement.

(1) The provisions of K.C.C. Section 4.18, as it may be amended from time to time, are incorporated by reference as if fully set forth herein.

(2) The Franchisee shall:

(i) Develop and apply a minority/women's business procurement plan that satisfies the requirements of this Section as well as the requirements of K.C.C. Section 4.18. A proposed plan must be submitted for approval to the M/WBE and Contract Compliance Division within thirty (30) days of the effective date of the Franchise, which plan shall be effective immediately upon approval by the M/WBE and Contract Compliance Division. The M/WBE and Contract Compliance Division may exercise any remedies it may exercise under K.C.C. Section 4.18 if the Franchisee fails to submit an appropriate plan; in addition, the County may exercise any other remedies it has under this Agreement or applicable law.

(ii) Any purchases undertaken for the WIRELESS DIGITAL COMMUNICATIONS RADIO NETWORK prior to the approval of the M/WBE AND CONTRACT COMPLIANCE DIVISION plan are subject to the requirements of K.C.C. Section 4.18.

(3) The purpose of the County's minority/women's business ordinance is to provide a prompt remedy for the effects

of past discrimination. The County in general, and this program in particular, are damaged when a contract, or portion of a contract, to be performed by a minority/women's business is not actually performed by a minority/women's business enterprise in compliance with K.C.C. Section 4.18. Because the actual amount of such damage is not reasonably calculable, the parties agree and stipulate that liquidated damages equal to those listed below in subparagraphs i and ii fairly estimate the amount required to compensate the County for resulting delays in carrying out the purpose of the program, the costs of meeting utilization goals through additional contracts, the administrative costs of investigation and enforcement, and other damages and costs caused by the violation:

(i) The dollar value of the minority/women's business utilization contemplated in the Franchisee's approved minority/women's business utilization plan; or

(ii) If the Franchisee, by virtue of a failure to submit an appropriate plan, has been found to have violated K.C.C. Section 4.18 in accordance with the procedures set forth in that section, ten percent (10%) of the total value of the contracts subject to this Section that are let in the year the violation occurs.

(d) Annual reports. In addition to its other obligations to submit reports and records to the County the Franchisee shall

submit an annual report to the King County M/WBE Contract Compliance Division listing: all purchases during the preceding year made by it or by others for it or on its behalf with respect to the WIRELESS DIGITAL COMMUNICATIONS RADIO NETWORK and the persons from whom such purchases were made, including whether each person is a minority and/or women's business enterprise certified as such by the State Office of Minority and Women Business Enterprises. The report also shall include projections for purchases to be made over the next year with respect to the WIRELESS DIGITAL COMMUNICATIONS RADIO NETWORK, and a description of how the Franchisee plans to comply with the requirements of this Section over the next year. The first report must be submitted within sixty (60) days of the effective date of the Franchise, showing purchases made for calendar 1996 (to the extent that information is available), and purchase projections and purchase plans above the threshold amount referenced above for calendar 1997. The annual report shall be filed on February 1 of each succeeding year.

14. Rates.

[omitted]

15. Customer service.

[omitted]

16. Network Facilities, Equipment and Services.

(a) Network Construction and Activation. The Franchisee's WIRELESS DIGITAL COMMUNICATIONS RADIO NETWORK shall be activated and Franchisee shall deploy the WIRELESS DIGITAL COMMUNICATIONS RADIO NETWORK in accordance with the Schedule of Deployment set forth on Exhibit 4 hereto. The failure to activate the network and offer service within the applicable time periods set forth in Exhibit 4 shall constitute a material breach of this Franchise. The failure to maintain the network and offer service throughout the County continually thereafter, except for minor interruptions for maintenance, repairs, and upgrades, shall constitute a material breach of the Franchise and shall not be subject to cure unless the breach is waived in writing by the County.

(b) Construction, Operation and Interference. The network shall be constructed and operated in compliance with applicable FCC rules and regulations in a manner as to avoid causing impermissible interference with the reception of cellular telephone, off-the-air broadcast, and other communications signals.

(c) Equipment to be Used. The Network shall use equipment generally used in high-quality, reliable, modern networks of similar design.

(d) Proof of Performance Tests. Every six (6) months or as required by FCC rules, whichever is more often, the Franchisee shall conduct proof of performance tests to demonstrate

compliance with this Franchise Agreement and FCC requirements, and shall provide to the County a written report showing the results of such tests. If the tests reveal that the Franchisee is not in compliance with all applicable requirements, the Franchisee shall immediately take whatever steps are necessary to achieve compliance. Not later than thirty (30) days following completion of the tests which revealed non-compliance, the Franchisee shall conduct additional proof of performance tests to determine whether it has corrected its non-compliance; provided that the County may extend this thirty (30) day requirement as it deems necessary. Notwithstanding, this Section 16(d) is enforceable only to the extent consistent with federal and state law.

(e) Commercial Access to Network. County acknowledges that the WIRELESS DIGITAL COMMUNICATIONS RADIO NETWORK is in large part composed of hardware and software technology which Franchisee has spent and continues to spend considerable resources in creating and protecting and that it deems to be proprietary and confidential. Nevertheless, Franchisee will consider in good faith proposals it receives from third parties with respect to accessing the WIRELESS DIGITAL COMMUNICATIONS RADIO NETWORK for commercial purposes.

(f) Standards Available for License. The standards for the hardware interfaces and software protocols used by the WIRELESS

DIGITAL COMMUNICATIONS RADIO NETWORK, other than those required to maintain network integrity and security, the protection of copyrighted or other confidential or proprietary information, or those protocols utilized to bill users of the WIRELESS DIGITAL COMMUNICATIONS RADIO NETWORK for network usage, including subscriber devices, shall be readily and inexpensively licensable.

(g) Excess Transmission Capacity. If the County wishes to use transmission capacity on the WIRELESS DIGITAL COMMUNICATIONS RADIO NETWORK, and Franchisee has capacity available to sell to County, the charges for such use shall be freely negotiated on terms and conditions at least equal to the those offered to any other governmental user.

(h) No Additional Compensation After Data Reaches FiberNet. Franchisee acknowledges that once data has entered County's FiberNet from the WIRELESS DIGITAL COMMUNICATIONS RADIO NETWORK, the County may use such data without any additional compensation to Franchisee.

17. Timing and Planning of Construction; Extension.

(a) Permit Fees. Franchisee shall pay all applicable fees required by the County in connection with any construction in the Right-of-Way.

(b) Retention of Discretion. The County retains discretion, acting through the Cable Office, to waive, extend or

grant a substitute construction schedule upon request and showing by Franchisee that the waiver, extension or substitution will result in improved network design or performance. If the County exercises its discretion under this Section, Franchisee shall to that extent only be excused from its deployment schedule obligations set forth in Exhibit 4 hereto.

18. **Conditions on Use of Rights-of-Way: Specific Practices.**

As provided in Sections 2(a) and 3, the construction, operation and repair of the WIRELESS DIGITAL COMMUNICATIONS RADIO NETWORK must be performed in compliance with this Agreement and all applicable laws. The Franchisee's obligations and the County's rights under that Section include, but are not limited to, the following:

(a) Use of Public and Private Property; Generally.

(1) The WIRELESS DIGITAL COMMUNICATIONS RADIO NETWORK shall be constructed, operated, maintained and repaired so as to cause minimum interference with the rights and convenience of property owners (including the County) and users of the Right-of-Way and other public property. The County may from time to time issue rules, regulations and permit requirements concerning the construction, operation and repair of the WIRELESS DIGITAL COMMUNICATIONS RADIO NETWORK as appropriate to ensure compliance with this Section. Applications for work permits shall be presented to the County's Property Services Division which may

require copies of plans, blueprints, cross-sections, or further detailing of work to be done. Any work done, whether by Franchisee, its contractors, or third parties will include necessary paving, patching, grading, and any other reasonably necessary repair or restoration to the County Rights-of-Way. All work shall be done to the satisfaction of the County's Director of Transportation.

(2) All equipment, lines, and appurtenances which are used in the operation, maintenance, repair or construction of the Franchisee's network, except for those pieces specifically noted in this Franchise, and which are located within the County's Rights-of-Way shall be considered to be part of Franchisee's network and shall be the Franchisee's responsibility. All permits for the operation, maintenance, repair or construction of said network shall be applied for and given in the name of the Franchisee, who shall be responsible for all work done under the permit regardless of whether the work is done by the Franchisee, its employees or contractors, or by third parties. The County may impose permit conditions that are more stringent than the provisions of this Franchise and the permit conditions shall govern.

(3) Franchisee shall obtain all required permits or easements before commencing any construction, reconstruction, repair, maintenance, or other work or property use. Permits for

emergency work shall be obtained as soon as possible, but in no event later than one (1) working day after the work is begun.

(4) All work authorized and required hereunder shall be done in a safe, thorough and workmanlike manner and may be subject to the supervision, inspection, approval and direction of the County Road Engineer. The Franchisee must comply with all safety requirements, rules, and practices and employ all necessary devices as required by applicable law and permits during construction, operation and repair of its WIRELESS DIGITAL COMMUNICATIONS RADIO NETWORK. By way of illustration and not limitation, the Franchisee must comply with the then current edition of the County Road Standards, the Manual of Uniform Traffic Control Devices, the National Electric Code published by the National Fire Protection Association (currently ANSI/NFPA 70-1990, and replaced by subsequently adopted additions); National Electrical Safety Code published by the Institute of Electrical and Electronics Engineers, Inc. (currently ANSI C2-1990 and replaced by subsequently adopted additions); and Occupational Safety and Health Administration (OSHA) Safety and Health Standards. In addition, all work shall be performed in accordance with the Franchisee's Construction Procedures Manual, to the extent the Franchisee has such a manual, except to the extent the practices described therein are inconsistent with applicable law. All traffic control shall be done in compliance

with the then current edition of Manual on Uniform Traffic Control Devices, Part VI.

(5) Inspection fees shall be charged and billed monthly in accordance with administrative procedures developed by the County's Department of Transportation and which are applicable to other telecommunications companies utilizing the County's Right-of-Way.

(6) The right to construct, operate, maintain, and repair Franchisee's network as granted by this Franchise Agreement, does not preclude King County, its employees, agents, or contractors from blasting, grading, or doing other road work contiguous to the Franchisee's network. Except in the case of an emergency, the Franchisee will be given not less than ten (10) business days written notice of any blasting in the immediate area so that it can protect its network. If the Franchisee notifies the County within such ten (10) business day period that the facilities will need to be relocated to protect them from blasting, the County will defer blasting for up to ninety (90) days from the date of the original notice. In no event will the Franchisee be given less than two days written notice of any blasting. Notification of blasting may be given to the pole owner in lieu of notice to the Franchisee.

(7) It shall be the responsibility of the Franchisee working in County Right-of-Way to restore all survey markers and

monuments disturbed during such work in accordance with RCW 58.09.130, as hereinafter amended.

(b) Use of Poles and Conduits.

(1) When the street lights upon which the Attachments are attached are subsequently placed underground, all WIRELESS DIGITAL COMMUNICATIONS RADIO NETWORK lines or wiring and equipment affected by such underground placement shall either be removed or relocated with other similar services at no expense to the County. Related network equipment must be placed in accordance with County code requirements and underground utility rules as interpreted by the County Road Engineer. In areas where both electric and telephone utility wiring is aerial, the Franchisee may install its equipment aerially.

(2) The Franchisee shall utilize existing poles wherever possible.

(3) The Franchise does not grant, give or convey to the Franchisee the right or privilege to install its facilities in any manner on specific utility poles or equipment of the County or any other person without their written permission. Copies of agreements for use of poles, conduits or other utility facilities must be provided upon request by the Cable Office.

(4) Where the Franchisee is or has been authorized to erect a pole, the Franchisee shall extend the right to use its poles 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 (a "Franchise holder"). The rights to use Franchisee's poles by another franchise holder shall not be unreasonably withheld. The County shall have the right to install and maintain free of charge a sheath containing coaxial or fiber optic cable on the poles owned by the Franchisee to the extent that the cables do not interfere with the Franchisee's WIRELESS DIGITAL COMMUNICATIONS RADIO NETWORK.

(c) Repair and Restoration of Property.

(1) The Franchisee shall protect public and private property from damage. If the Franchisee causes any damage to public or private property, the Franchisee shall promptly notify the property owner.

(2) If public or private property is disturbed or damaged by the Franchisee, the Franchisee shall restore the property to its former condition including necessary paving, patching, grading and other necessary repair or restoration, normal wear and tear excepted. Public Right-of-Way or other County property disturbed or damaged by the Franchisee shall be restored to its former condition, normal wear and tear excepted, in a manner and within a time approved by the County Road Engineer or custodial agency. If restoration of public Right-of-Way or other County property is not satisfactorily performed within 30 days, the County Road Engineer or custodial agency may, after prior notice

to the Franchisee, or without notice where the disturbance or damage may create a risk to public health or safety, or cause delay or added expense to a public project or activity, cause the repairs to be made at the Franchisee's expense and recover the cost of those repairs from the Franchisee pursuant to the provisions of Paragraph 10 herein. Within thirty (30) days of receipt of an itemized list of those costs, including the costs of labor, materials and equipment, the Franchisee shall pay the County. Consistent with Section 12, if suit is brought upon Franchisee's failure to pay for repair and restoration, and if judgment in such a suit is entered in favor of the County, then the Franchisee shall pay all of the County's actual costs resulting from the non-payment, including interest from the date the bill was presented, disbursements, attorney's fees and litigation-related costs. Private property must be restored promptly, considering the nature of the work that must be performed.

(3) Prior to entering onto private property to construct, operate or repair its WIRELESS DIGITAL COMMUNICATIONS RADIO NETWORK, Franchisee shall give the person residing on or using the property adequate notice that it intends to work on the property, a description of the work it intends to perform and a name and phone number the person can call to protest or seek modification of the work. Work shall be done in a manner that

causes the least interference with the rights and convenience of property owners, residents and users.

(d) Movement of WIRELESS DIGITAL COMMUNICATIONS RADIO NETWORK For and By County. The County may remove, replace, modify or disconnect Franchisee's facilities and equipment located in the public Right-of-Way or on any other County property in the case of fire, disaster, or other emergency, or when a County project or activity makes the removal, replacement, modification or disconnection necessary or less expensive for the County. Except during an emergency, the County shall attempt to provide thirty (30) days notice to Franchisee or the pole owner prior to taking such action and shall, when feasible, provide Franchisee with the opportunity to perform such action. Following notice by the County, Franchisee shall remove, replace, modify or disconnect any of its facilities or equipment within any public Right-of-Way, or on any other County property, except that the County shall provide at least one hundred eighty (180) days written notice of any major capital improvement project which would require the removal, replacement, modification or disconnection of Franchisee's facilities or equipment. If the Franchisee fails to complete this work within the time prescribed and to the County's satisfaction, the County may cause such work to be done and bill the cost of the work to the Franchisee.

Within thirty (30) days of receipt of an itemized list of those

costs, the Franchisee shall pay the County. Notwithstanding the provisions of Section 3(e), the County, its officials, officers employees and agents shall not be liable to the Franchisee for any damage caused as a result of action taken under this Section.

(e) Movement for Other Franchise Holders. If any removal, replacement, modification or disconnection is required to accommodate the construction, operation, or repair of the facilities or equipment of another Franchise holder or other valid permittee, Franchisee shall, after at least thirty (30) days advance written notice, take action to effect the necessary changes requested by the responsible entity at the sole expense of such responsible entity provided it does not materially interfere with the operation of the WIRELESS DIGITAL COMMUNICATIONS RADIO NETWORK.

(f) Tree Trimming and Excavation. The Franchisee shall have the authority to trim trees that overhang the public Right-of-Way of the County so as to prevent the branches of such trees from interfering with the operation or maintenance of its WIRELESS DIGITAL COMMUNICATIONS RADIO NETWORK, in accordance with the applicable King County Code and regulations. At the option of the County and within thirty (30) days notice to Franchisee, such trimming satisfying the purpose of this Section may be done at Franchisee's expense by the County or under its direct supervision.

(g) Decisions of County Road Engineer. Whenever the decision, requirement or approval is by this Agreement to be a determination of the County Road Engineer, that determination shall be conclusive upon the parties hereto, except in that instance where the determination is arbitrary, capricious, made in bad faith or to defraud either of the parties hereto.

(h) Road Vacations. If, at any time, the County vacates any County Rights-of-Way covered by this limited Franchise, the County shall not be held liable for any damages or loss to the Franchisee by reason of such vacation.

19. Operation and Reporting Provisions.

(a) Books and Records.

(1) The County and its representatives shall have the right to inspect and to copy or have copied any and all books and records of the Franchisee and its affiliates which the County deems appropriate in order to monitor compliance with the terms of this Agreement or applicable law. The County may conduct its inspection and copying at any time during normal business hours upon ten (10) business days notice.

(2) The Franchisee shall maintain throughout the Franchise term, at its principal executive office in Los Gatos, California or such other location of Franchisee's choosing, all records and information necessary to document its compliance with this Agreement, including those respecting its equal employment

opportunity plan and its utilization of minority and women's businesses in its overall public and private business activities within the County. The County shall have the right to inspect and copy or have copied all such records and information at any time during normal business hours upon ten (10) business days notice. If copies of the books and records are made available at a location other than within King County, the Franchisee shall pay all reasonable expenses of the County or its representatives associated with traveling including travel time to inspect, audit or copy the books or records.

(3) The County shall have the right to copy or have copied any documents it requires or believes it requires to carry out its responsibilities under this Agreement or applicable law. If the Franchisee considers any portion of the documents provided pursuant to this Agreement to be protected under the law, the Franchisee shall clearly identify each such portion with words equivalent to "CONFIDENTIAL," "PROPRIETARY," or "BUSINESS SECRET." If a request is made for disclosure of such portion, the County will notify the Franchisee of the request and allow the Franchisee five (5) business days, or such other period as provided by law, to take whatever action the Franchisee deems necessary to protect its interests. If the Franchisee fails or neglects to take such action within said period, the County will release the requested documents. By entering into this Franchise

Agreement the Franchisee assents to the procedure outlined in this paragraph and shall have no claim against the County on account of actions taken under such procedure.

(4) To the extent the books and records the County deems relevant are held by the Franchisee or its Affiliates, the Franchisee is responsible for collecting those books and records and producing them at the location identified by the Franchisee .

(5) After the County has carried out its responsibilities which involve any copied records of the Franchisee, it shall, at Franchisee's option, either destroy such copies or return them to Franchisee to the extent permitted by law.

(b) Reports. The Franchisee shall provide the reports specified below, and such other reports as, in the County's discretion, may be required to carry out its responsibilities under this Agreement or applicable law.

(1) Within three (3) months of the close of its fiscal year, the Franchisee shall provide the Cable Office with an annual report certified by a corporate officer that includes the following information:

(i) A summary of the previous fiscal year's activities in construction of the WIRELESS DIGITAL COMMUNICATIONS RADIO NETWORK, including services initiated or discontinued, number of subscribers in the County receiving each type and class

of service, and gains and losses from the previous year. The summary shall also include a comparison of any construction during the year with any projections previously provided to the County, as well as rate and charge increases and/or decreases from the previous fiscal year.

(ii) A copy of updated maps depicting the location of all of Franchisee's plant and equipment. On these maps, one (1) inch shall represent no more than 800'. These maps shall be accompanied by a digital copy in a standard format (such as .DXF) and medium agreed upon by the County and the Franchisee.

(iii) If Franchisee is a partnership at the time the report is submitted, a list of the partners, including any limited partners, and their addresses; and if a general partner is a corporation, a list of officers and members of the board of directors, the officers and directors of any and all parent corporations; and if any controlling corporation's or other parent entity's stock or ownership interests is publicly traded, a copy of its most recent annual report.

(iv) A chart detailing all persons holding a beneficial interest in Franchisee's Common Stock in excess of five (5) percent.

(v) A copy of Franchisee's procedures and terms and conditions of service, if any, applicable to subscribers in

the County of the WIRELESS DIGITAL COMMUNICATIONS RADIO NETWORK.

For example, the procedures should include procedures for resolving complaints and for prioritizing installation and service calls.

(vi) A copy of Franchisee's arrangements and procedures for ensuring that subscribers in the County can conveniently make payments, exchange or accept equipment, receive responses to inquiries and schedule appointments. In addition, Franchisee shall give the Cable Office sixty (60) days notice before ceasing to use any location used to receive payments, exchange or accept equipment, receive responses to inquiries or schedule appointments.

(vii) A full schedule and description of services offered to subscribers in the County.

(viii) A summary of all subscriber and consumer complaints in the County, identifying the number and nature of complaints and their disposition. Where complaints involve one or more recurrent problems, the nature of each such problem and what steps have been taken to correct it shall be identified. More detailed information on complaints shall be submitted upon request of the County.

(ix) A report detailing whether each applicable customer service standard, if any, was met. For each standard

not met, the report will explain the cause, and corrections taken for each.

(2) Within six months (6) of the close of its fiscal year, the Franchisee shall provide the Cable Office with an annual report that includes the following information:

(i) A combined financial statement of the Franchisee's operations which the Controller or Chief Financial Officer of the Franchisee certifies is true and accurate.

(ii) A financial statement setting forth the computation of Gross Revenues used to calculate the Franchise fee for the preceding year and a detailed explanation of the method of computation. The accuracy of the statement must be certified by the Controller or the Chief Financial Officer of the Franchisee.

(iii) If Franchisee is a public corporation at the time the report is submitted, Franchisee will provide a copy of its 10-K report relevant to the particular year. If Franchisee is not obligated to file a 10-K report, it will provide the following: a list of officers and members of the board of directors; the officers and members of the board of directors of any and all parent or controlling corporations or persons; and if Franchisee or any controlling corporation's or other parent entity's stock or ownership interests is publicly traded, a copy of its most recent annual report.

(iv) A report on the number of disabled, elderly and low income subscribers receiving any rate discounts, if any, and the amount of the discount.

(3) Within one (1) month of the end of each fiscal quarter, the Franchisee shall provide the Cable Office with the following information:

(i) A copy of any reports submitted to the FCC regarding compliance with technical requirements together with information on instrumentation, calibration, procedures and tester's qualifications, as well as any response by the FCC to the report(s).

(ii) A statement, in a form specified by the County showing the number of subscribers served in the entire Franchise area. In addition, the statement shall separately list revenues for each source of revenue which is included within the definition of Gross Revenues. Each source shall also state the number of units comprising the total for that source. If revenue is calculated by means of allocation rather than by segregation of actual revenues, the statement shall include a description of the method used in making the allocation.

(iii) A report summarizing WIRELESS DIGITAL COMMUNICATIONS RADIO NETWORK outages. An outage is a loss of service due to a problem with the Franchisee's network, not with a subscriber's modem or the telephone network, affecting more

than thirty (30) percent of Franchisee's then total subscribers in the County and lasting more than one (1) hour.

(iv) For each month during the quarter, a subscriber bill showing all categories used by the network but with zero dollar amounts will be addressed to the County Cable Office, together with copies of all other information, offers and notices sent to subscribers in the County as a group.

(4) Franchisee shall provide the Cable Office the following:

(i) A statement of the resolution of complaints referred to it by the Cable Office. Such notice shall be by telephone unless the Cable Office requests written notice, which shall be given as soon as practicable.

(ii) a copy of its equal employment opportunity plan, and any changes to the employment opportunity plan made in the last year. If the Franchisee is required to submit a copy of Form 395A to the FCC, the Franchisee shall submit a copy of its most recent FCC Form 395A to the County. If the FCC replaces Form 395A, the Franchisee shall file the succeeding forms which contain any of the information previously required in Form 395A. If the FCC no longer requires the filing of Equal Employment Opportunity information, the Franchisee shall file with the County the information it would have been required to file with the County on the date the Franchise was signed, including the Appendix 2.

information which would have been included on Form 395A.

(iii) Franchisee will comply with County ordinances related to persons with disabilities and will provide the Cable Office copies of all required reports covering persons with disabilities.

(iv) Copies of all notices, legal pleadings and applications which may materially affect Franchisee's operations in the County and of all notices, legal pleadings and decisions pertaining to any allegation that the Franchisee, or controlling owners, have: filed for bankruptcy; or have been accused of violating a Franchise or license; or violating security or antitrust laws; or of having committed a felony, or any crime involving moral turpitude, fraud, deceit or bribery. The notice shall be given to the Cable Office in writing and shall be sent by next day delivery.

(v) Franchisee shall provide the Cable Office with notice of any loss of service that affects at least thirty percent (30%) of Franchisee's then subscribers including the date, time, cause, location by street, and expected time of repair. Such notice shall be by facsimile or telephone as soon as possible but no later than two (2) business days after the Franchisee first becomes aware of any such outage. As soon as possible after completion of the repair work, the Franchisee shall notify the Cable Office of the actual date and time of

completion of the repair and any actions taken to prevent a reoccurrence.

(c) Books and Records Must Be Complete. Franchisee must maintain a complete set of books and records available for inspection, audit and copying by the County for purposes of ascertaining compliance with requirements of this Agreement and applicable law and regulations. Books and records must be retained for a period of at least five years. The County shall conduct inspections and audits no more frequently than annually unless the County believes the Franchisee is in material violation of this Agreement. The Franchisee shall be given notice prior to any inspection, audit or copying of books and records but in any event not less than ten (10) business days prior written notice; the inspection shall be conducted during normal business hours. If copies of the books and records are made available at a location other than within the County, the Franchisee must pay all reasonable expenses of the County or its representatives associated with traveling to inspect, audit or copy the books or records. Nothing in this Section waives FCC open records provisions.

(d) Provision of Other Materials. Franchisee shall supply the Cable Office with such other information the Office determines is necessary or relevant in accomplishing its mandated tasks. Franchisee shall provide such requested information in a

Appendix 2

useable form or in such form as the information is kept in the usual course of business, and will have no less than thirty (30) business days, in which to comply.

(e) Retention of Records; Relation to Applicable Laws. The Franchisee shall take all steps required to ensure that it provides the County with all information required under this Agreement. However, nothing in this Section shall be read to require the Franchisee to violate 47 U.S.C. Section 551 or the privacy provisions of applicable law. The Franchisee shall strike out any such data

(f) Charges for Inspection, Audits or Tests. In addition to any expenses the Franchisee must bear under Section 19(c), if an inspection, audit or test determines that Franchisee has not materially complied with its obligations, the Franchisee shall reimburse the County for all reasonable costs, including expert fees, arising from such inspection, audit or test. In addition, if it is determined that Franchisee has underpaid amounts due the County by more than six percent (6%) of the amount owing, or the Franchisee has not materially complied with other requirements, the County shall have the right to conduct additional inspections, audits or tests, and to charge all reasonable costs arising from these inspections, audits or tests to the Franchisee until it is determined that the Franchisee is in full compliance. These charges are incidental to the enforcement of the Franchisee;

they do not limit any right the County may have to exercise any other remedy.

20. Remedies.

(a) Rights of County. In addition to exercising any of the other remedies provided in this Agreement, or the remedies specified under applicable law, the County may revoke the Franchise and void the Franchise Agreement if:

(1) Franchisee attempts to or practices any fraud or deceit in its conduct or relations under this Franchise Agreement or in the process of being granted the rights, authority, power, privileges and permission herein; or

(2) Franchisee attempts deliberately to evade any material provision of this Franchise Agreement; or

(3) Franchisee fails to correct any material breach of this Agreement after notice and opportunity to cure; or

(4) Franchisee repeatedly violates this Agreement regardless of whether any single provision violated is deemed immaterial; or

(5) Franchisee abandons its Franchise.

Without limitation, the failure of Franchisee to comply with the deadlines established herein, its failure to provide or maintain the required reports and records or its failure to comply with applicable law shall be deemed a material violation of this Franchise Agreement.

(b) Rights of Franchisee. Before the County revokes the Franchise, it shall:

(1) Provide notice to the Franchisee of the violation;

(2) Permit the Franchisee to request an opportunity to be heard on the issue; and

(3) If the Franchisee timely requests an opportunity to be heard, allow the Franchisee to appear and present information relevant to determining whether the violation occurred, and the appropriate remedy for the violation, if any.

(c) Revocation Procedures

(1) Notice of Violation. County shall provide Franchisee with a detailed written notice of any Franchise violation upon which it proposes to take revocation action, and a ninety (90) day period within which Franchisee may demonstrate that a violation does not exist.

(2) Default. If Franchisee fails to disprove or cure the violation within ninety (90) days, then County may declare the Franchisee in default, which declaration must be in writing.

(3) Hearing Available to Franchisee. Within fifteen (15) days after receipt of a written declaration of default from the County, Franchisee may request, in writing, a hearing before the King County Hearing Examiner pursuant to KCC 6.27A.240(D). Such hearing shall be held within forty-five (45) days of the receipt of the request therefor, unless the parties agree

otherwise, and a decision rendered within thirty (30) days after the conclusion of the hearing. Any decision shall be in writing and shall be based upon written findings of fact.

(d) Duty to Exhaust Remedies. In the event of any dispute between the Franchisee and the County arising out of this Franchise Agreement, the Franchisee agrees to pursue and exhaust all administrative remedies pursuant to law prior to pursuing any legal or equitable remedy.

(e) Effect of Revocation or Forfeiture. The revocation or forfeiture of the Franchisee's rights under the Franchise shall not affect any of the County's rights under the Franchise or applicable law.

21. Abandonment.

(a) Effect of Abandonment. If the Franchisee abandons its network during the Franchise term, or fails to operate its WIRELESS DIGITAL COMMUNICATIONS RADIO NETWORK in accordance with its duty to provide continuous service pursuant to Section 16(a) above, the County, at its option, may revoke this Franchise in accordance with Section 20 and require Franchisee to remove the WIRELESS DIGITAL COMMUNICATIONS RADIO NETWORK.

(b) What Constitutes Abandonment. The network shall be deemed abandoned if:

(1) The Franchisee fails to provide Service in a third or more of its service area in the County for thirty (30)

consecutive days, unless the County authorizes a longer interruption of service; or

(2) The Franchisee, for any period, willfully and without cause refuses to provide Service in accordance with this Franchise Agreement.

22. Miscellaneous Provisions.

(a) Governing Law. This Franchise Agreement shall be governed in all respects by the laws of the State of Washington.

All actions brought by the Franchisee against the County, whether brought in state or federal court, shall be brought in a court located in King County, Washington, unless prohibited by law.

(b) Force Majeure. The Franchisee shall not be deemed in default with provisions of its Franchise where performance was rendered impossible by war or riots, civil disturbances, floods, or other circumstances beyond the Franchisee's anticipation and control, and the Franchise shall not be revoked or the Franchisee penalized for such noncompliance, provided that the Franchisee takes immediate and diligent steps to bring itself back into compliance and to comply as soon as possible under the circumstances with its Franchise without unduly endangering the health or safety of the Franchisee's employees or agents or the integrity of its property, or the health or safety of the public, or the integrity of public Right-of-Way, public property, or

private property; and only if the Franchisee has notified the County in writing of the reason for the inability within three (3) business days of the Franchisee's discovery of the reason.

(c) Calculation of Time. Unless otherwise indicated, when the performance or doing of any act, duty, matter, or payment is required hereunder and a period of time or duration for the fulfillment of doing thereof is prescribed and is fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period of time. For example, if on January 1, the Franchisee is directed to take action within ten (10) calendar days, the action must be completed no later than midnight January 11.

(d) Time of Essence; Maintenance of Records of Essence. In determining whether the Franchisee has substantially complied with its Franchise, the parties agree that time is of the essence to this Agreement. As a result, the Franchisee's failure to complete construction, extend service, seek approval of transfers, or provide information in a timely manner may constitute material breaches. The maintenance of records and provision of reports in accordance with the Franchise is also of the essence to this Agreement.

(e) Captions. The captions and headings of this Agreement are for convenience and reference purposes only and shall not affect in any way the meaning and interpretation of any

provisions of this Agreement.

(f) Regulatory Authority. This Franchise applies to King County's control of its rights-of-way and does not limit or impair the regulatory authority of King County held now or hereafter granted to it.

(g) Entire Agreement. The Agreement, together with Attachments and Exhibits, shall constitute the entire agreement between the parties. In the interpretation of this Franchise, sections or material which were stricken or omitted from previous drafts shall not be used as admissible evidence of an intent to limit the County's regulatory or police powers, as they exist now or in the future, or to otherwise affect the interpretation of this Agreement. The Provisions of this Franchise are agreed to and hereby accepted. By accepting this Franchise, Franchisee covenants and agrees to perform and be bound by each and all of the terms of and conditions this Franchise.

12826

(h) Intent of Parties.

It is not the intent of the parties that by entering into this Agreement that Franchisee is or shall be deemed to be a common carrier.

METRICOM, INC.

BY: 

ITS: VP

DATE: _____

KING COUNTY, WASHINGTON

BY: 

ITS: King County Executive

DATE: 9-23-97

Approved as to Form
Prosecuting Attorney's Office

Bond Number: _____

SURETY BOND

KNOW ALL MEN BY THESE PRESENTS:

That METRICOM, INC. as Principal, and _____, incorporated under the laws of the State of _____, and authorized to execute bonds and undertakings as sole surety, are held and firmly bound unto _____, as Obligee, in the sum of _____ (\$ _____); for the payment thereof, well truly to be made, said Principal and Surety bind themselves, their administrators, successors and assigns, jointly and severally, firmly by these present.

The condition of the foregoing obligation is such that:

WHEREAS, the above bounden Principal is about to enter into a certain agreement with the Obligee for the following:

the award of which said agreement was made to the Principal by the Obligee, on _____.

NOW THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and provisions of said agreement during the original term thereof, and any extensions thereof which may be granted by the Obligee, with or without notice to the Surety, and if he shall satisfy all claims and demands incurred under such agreement, and shall fully indemnify and save harmless the Obligee from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the Obligee all outlay and expenses which the Obligee may incur in making good any default, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the agreement or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the agreement or to the work or to the specifications.

PROVIDED, HOWEVER, this bond issued subject to the following express conditions:

1. This bond shall be deemed continuous in form and shall remain in full force and effect until canceled under Section _____, after which all liability ceases except as to any liability incurred or accrued prior to the date of such cancellation.
2. The aggregate liability of the Surety hereunder on all claims whatsoever shall not exceed the penal sum of this bond in any event.
3. The surety reserves the right to withdraw as surety from this bond except as to any liability incurred or accrued, and may do so upon giving the Obligee sixty (60) days written notice.

SIGNED AND SEALED this _____ day of _____, 19_____.

PRINCIPAL

SURETY

(Type Company Name)

By: _____
Title:

By: _____
Title:

By: _____

Address: _____

Telephone: _____




(Affix Corporate Seals)

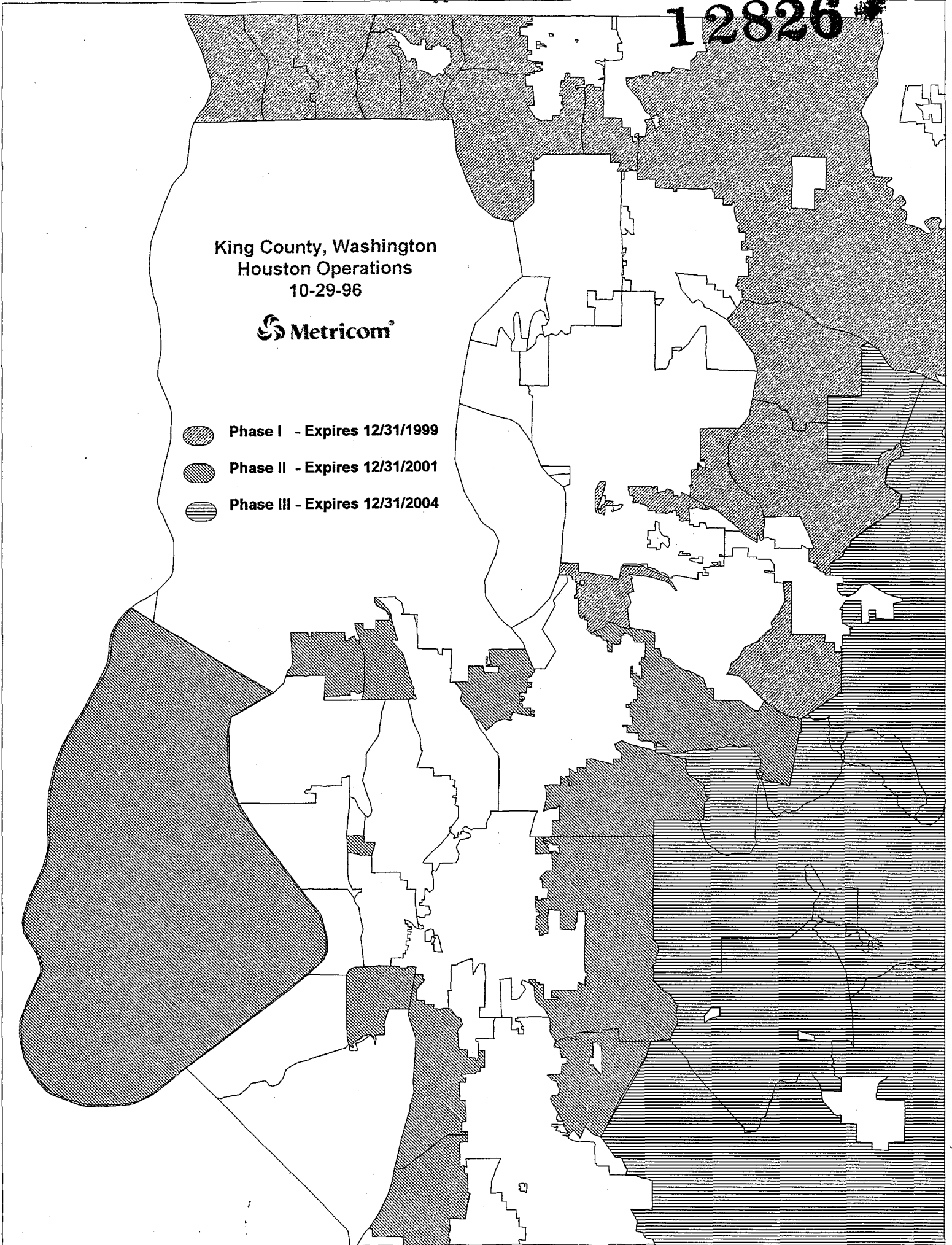
(Attach Acknowledgments of both Principal and Surety signatures)

12826

King County, Washington
Houston Operations
10-29-96



-  Phase I - Expires 12/31/1999
-  Phase II - Expires 12/31/2001
-  Phase III - Expires 12/31/2004



ACCEPTANCE OF WIRELESS DIGITAL COMMUNICATIONS RADIO NETWORK FRANCHISE

MERTICOM, INC. ("Franchisee") hereby accepts the Franchise offered by Ordinance No. 12826 of the King County, Washington, County Council ("Council"), to construct, operate, maintain, and repair a Wireless Digital Communications Radio Network ("Network"). By this acceptance, Franchisee agrees that, as set forth in the Franchise and Franchise Agreement, it shall be bound by the terms and conditions of the County Code.

By accepting the Franchise, the Franchisee further: (1) acknowledges and accepts the County's legal right to issue and enforce the Franchise; (2) agrees that it will not oppose the County intervening in any proceeding affecting its System; (3) accepts and agrees to comply with each and every provision of the Franchise Agreement; (4) agrees that the Franchise and Franchise Agreement shall not be effective until and unless all conditions precedent are satisfied; and (5) agrees that the Franchise was granted pursuant to processes and procedures consistent with applicable law, and that it will not raise any claim to the contrary.

The Franchisee declares that it has carefully read all of the applicable terms and conditions of the King County Code and this Franchise Agreement, and accepts and agrees to abide by same.

12826

Appendix 5

Upon the Franchise becoming effective, the Franchisee shall be immediately bound to build, repair, maintain and operate a network under the terms, conditions and limitations set forth in the Franchise Agreement and the County Code as of the time and date it files this written acceptance with the Cable Office of King County.

AGREED TO AS OF THE 17th DAY OF September, 1997.

METRICOM, INC.

Signature: [Handwritten Signature]

Print Name: W.D. Swain

Title: VP

ALL-PURPOSE ACKNOWLEDGMENT

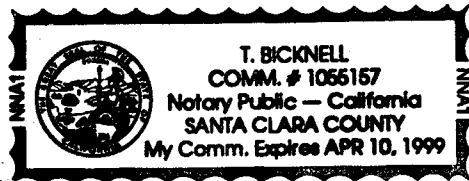
NO 209

State of California
County of Santa Clara

on Sept. 17, 1997 before me, T. Bicknell, Notary Public
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared William D. Swain
NAME(S) OF SIGNER(S)

personally known to me - OR - proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Witness my hand and official seal.

[Handwritten Signature]
SIGNATURE OF NOTARY

CAPACITY CLAIMED BY SIGNER

- INDIVIDUAL(S)
- CORPORATE VP.
OFFICER(S) _____ TITLE(S) _____
- PARTNER(S)
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- SUBSCRIBING WITNESS
- GUARDIAN/CONSERVATOR
- OTHER: _____

SIGNER IS REPRESENTING:

NAME OF PERSON(S) OR ENTITY(IES)

ATTENTION NOTARY: Although the information requested below is OPTIONAL, it could prevent fraudulent attachment of this certificate to unauthorized document.

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED AT RIGHT:

Title or Type of Document _____
Number of Pages _____ Date of Document _____
Signer(s) Other Than Named Above _____

June 27, 1997
clerk 7/7/97, 8/19/97

Introduced By: Louise Miller

Proposed No.: 97-426

12827

ORDINANCE NO. _____

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41

AN ORDINANCE providing an exception allowing traffic through Petrovitsky Park to access the McGarvey Park 4 to 1 Program project and amending Ordinance 6798, Section 26, as amended and K.C.C. 7.12.260.

PREAMBLE:

The metropolitan King County council established a 4 to 1 Program under Countywide Planning Policy FW-1, Step 7, and further described in the 1994 King County Comprehensive Plan (KCCP), policies I-204 and I-205, to actively pursue the dedication of open space along the Urban Growth Area Line of the county.

In the KCCP, the metropolitan King County council recognized in Policy U-201 that 500 acres of land near Lake Desire, adjacent to the Urban Growth Area Line, owned by the Glacier Ridge Partnership were conditionally suitable for the 4 to 1 Program and included the 100 acres in the urban area (with any remaining issues to be resolved through the subdivision process).

The Glacier Ridge Partnership's nearly 500 acre 4 to 1 Proposal known as McGarvey Park includes approximately 100 acres of urban land and approximately 400 acres of proposed open space. The open space shall be dedicated upon final plat approval as provided in KCCP Policy I-205.

The plat application includes, and the SEPA review process completed for this ordinance analyzes, the potential impacts of primary and secondary access routes to the McGarvey Park plat through Petrovitsky Park, which provide the only feasible access to the project. The plat proponent shall be responsible for constructing the access roads,