

7/1/98
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ROB MCKENNA
Pete von Reichbauer

Introduced By:

clerk 7/2/98

Proposed No.:

98-419

ORDINANCE NO. **13261**

AN ORDINANCE amending Ordinance 12631, adding one emergency work route for Electric Lightwave, Inc. in constructing its telecommunications system, and deleting number 3, Exhibit B of the franchise agreement.

STATEMENT OF FACTS:

1. Electric Lightwave, Inc., in accordance with King County Ordinance 12631, is operating and maintaining a telecommunications system in council districts 1, 3, 5, 6, 9, 11 and 12.
2. Electric Lightwave, Inc. requested one additional work route for emergency construction. Completion of this route will allow Electric Lightwave, Inc. to ring its fiber backbone and insure uninterrupted service is provided to its customers.
3. The emergency work authorized by this ordinance will operate within one-mile of the roads specified in the legal description in the franchise amendment consistent with other routes authorized in Ordinance 12631, Exhibit A.
4. Franchise 12631 shall expire February 2, 2002. The automatic renewal provision contained in number 3, Exhibit B of Franchise 12631, is deleted.
5. King County and Electric Lightwave, Inc. have negotiated a mutually acceptable franchise agreement which has the approval of the department of transportation, roads services division and the prosecuting attorney's office.
6. The King County executive has recommended approval of the franchise amendment.

1 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

2 SECTION 1. The amendment to Ordinance 12631 to grant Electric Lightwave, Inc.
3 one additional route to construct, operate and maintain a telecommunications system
4 within King County is hereby approved. The King County executive is authorized to enter
5 into and execute Amendment Number 1 to Franchise 12631, for the telecommunications
6 system franchise, which by this reference is fully incorporated herein. Said franchise and
7 any amendments shall include all of the general and special conditions required by the
8 county.

9 SECTION 2. Franchise 12631 shall expire on February 2, 2002. The automatic
10 renewal provision contained in number 3, Exhibit B, of Franchise 12631 is deleted. All
11 other terms and conditions of Franchise 12631 remain unchanged.

1 SECTION 3. If within thirty days after the granting of this franchise amendment, the
2 grantee shall have failed to sign the written acceptance incorporated herein, then the rights
3 and privileges granted herein shall be forfeited and said franchise shall be null and void.

4 INTRODUCED AND READ for the first time this 6th day of

5 July, 1998.

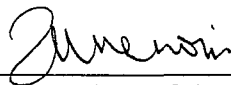
6 PASSED by a vote of 11 to 0 this 8th day of September,
7 1998.

8 KING COUNTY COUNCIL
9 KING COUNTY, WASHINGTON



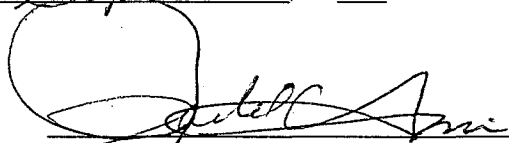
10
11 VICE Chair

12 ATTEST:

13 

14 Clerk of the Council

15 APPROVED this 11 day of September, 1998.

16 

17 King County Executive

18 Attachments: A: Amendment No. 1 to Franchise 12631 including revised Exhibits A and
19 B

FRANCHISE NO. 12631

AMENDMENT NO. 1

Effective this 6th day of September, 1998, Franchise 12631 between King County (hereinafter "County") and Electric Lightwave, Inc. (hereinafter "ELI") is hereby amended as follows:

- 1. Franchise 12631, page 2, first paragraph at the top of the page shall be deleted and shall now read:
 "This franchise is granted subject to all of the terms and conditions contained herein, in Ordinance 12631 and Exhibits A and B, and shall expire on February 2, 2002."
- 2. Exhibit A to Franchise 12631 shall add paragraphs numbered 44 - 55, providing legal descriptions for the franchise routes authorized pursuant to Franchise 12631, as attached.
- 3. Exhibit B to Franchise 12631 shall delete paragraph number 3, "Automatic Renewal and Early Termination."

Except as provided herein, all terms and conditions of Franchise 12631, as heretofore changed, remain unchanged and in full force and effect.

By [Signature]
Name ELECTRIC LIGHTWAVE, INC.

Title Vice President -
New City Development

KING COUNTY

By [Signature]
Name Richard C Sims

Title King County Executive

ADDENDUM TO EXHIBIT "A"

Electric Light wave, Inc. is authorized to operate, maintain, repair and construct its telecommunications transmission and distribution system within the following described County road rights-of-way and within County road rights-of-way which lie within one mile of the described County road rights-of-way:

44. Covington - Sawyer Road also described as Southeast 290th Street and Southeast 288th Place all that portion of said road right-of-way extending easterly from the 164th Place Southeast to 216th Avenue Southeast all being located in the Southwest quarter of Section 36, Township 22, Range 5 East, Southwest quarter of Sections 31, Township 22, Range 6 East, Section 6,5, and the northwest quarter of Section 4, Township 21, Range 6 East.
45. 216th Avenue Southeast, all that portion of said road right-of-way extending northerly from the Covington Sawyer Road to Southeast 288th Street all being located in the Northwest corner of Section 4, Township 21, Range 6 East.
46. Southeast 288th Street, all that portion of said road right-of-way extending easterly from 216 Avenue Southeast to its intersection with the 241st Avenue Southeast all being located in the north half of Sections 3 and 4, Township 21, Range 6 East and the south half of Sections 33 and 34, Township 22, Range 6 East.
47. 241st Avenue Southeast, all that portion of said road right -of-way extending southerly from Southeast 288th Street to its intersection with the north margin of Southeast 291st Street all being located in northwest quarter of Section Section 3, Township 21, Range 6 East.
48. Southeast 291st Street, all that portion of said road right-of-way extending easterly from 241st Avenue Southeast to its intersection with the west margin of State Highway 169 AKA Maple Valley-Black Diamond Highway.
49. Cedar Grove Road, all that portion of said right of way extending easterly from the east margin of State Highway 169 to the Issaquah-Hobart Road all being located in Sections 22,27,28, 33 and the northeast quarter of Section 33, Township 23, Range 6 East.
50. Issaquah-Hobart Road, all that portion of said road right-of-way extending northerly from the Cedar Grove Road to its intersection with the north margin of the Southeast May Valley Road all being located in Section 15 and the northeast quarter of Section 22, Township 23, Range 6 East.
51. Southeast May Valley Road AKA Coalfield-Issaquah Road, Southeast 136th Street, all that portion of said road right-of-way extending westerly from its intersection with the Issaquah-Hobart Road AKA Coalfield-Issaquah Road to the south margin

of Southeast 112th Street all being located in Sections 7,8,15,16,17, Township 23, Range 6 East and northhalf of Section 12, Township 23, Range 5 East.

52. Southeast 112th Street, all that portion of said road extending westerly from its intersection with the Southeast May Valley Road to the west margin of 164th Avenue Southeast all being located in northwest quarter of Section 12, northeast quarter of Section 11, southeast quarter of Section 2, and the southwest quarter of Section 1, Township 23 North, Range 5 East.
53. 164th Avenue Southeast, all that portion of said road right-of-way extending from its intersection with the south margin of Southeast 112th Street to the north margin of Southeast May Valley Road all being located in northwest quarter of Section 12, northeast quarter of Section 11, southwest quarter of Section 1 and the Southeast quarter of Section 2, Township 23, Range 5 East.
54. Southeast May Valley Road, all that portion of said road right-of-way extending westerly from north margin of 164th Avenue Southeast to its west margin of 148th Avenue Southeast all being located in the Section 2, northeast quarter of Section 3, Township 23 North, Range 5 East, southwest quarter of Section 35 and the Southeast quarter of Section 34, Township 24, Range 5 East.
55. Southeast May Valley Road, all that portion of the Southeast May Valley Road extending westerly from the east margin of 164th Avenue Southeast to its intersection with the east margin of Coal Creek Parkway Southeast also the corporate boundary of the City of Newcastle.

EXHIBIT "B"

TERMS AND CONDITIONS APPLICABLE TO UTILITY FRANCHISES GRANTED BY KING COUNTY

THIS FRANCHISE is subject to the following terms and conditions:

1. DEFINITIONS

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

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

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

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

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

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

Grantee. The term "Grantee" refers to ELECTRIC LIGHTWAVE, INC. its officers, agents, employees, contractors and sub-contractors, its successors and those assignees approved pursuant to paragraph 18 of Exhibit "B".

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

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

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

2. ACCEPTANCE BY GRANTEES OF TERMS AND CONDITIONS

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

3. NON-EXCLUSIVE FRANCHISE

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

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

4. JURISDICTION

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

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

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

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

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

5. COMMON USERS

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

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

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

6. REGULATION OF USE AND CONTROL

This franchise authorizes the use of County rights-of-way solely for the delivery by the Grantee of telecommunication services to its customers. Additional uses of County rights-of-way by the Grantee, including for cable communication services, shall first require a separate franchise from King County which conforms to the requirements of K.C.C. 6.27, as amended, or K.C.C. 6.27A, as amended, and other applicable law.

Any use of the Grantee's equipment or facilities in County rights-of-way by others, including for

telecommunication or cable communication services, is prohibited unless separately authorized and approved in writing by King County. The Grantee agrees that prior to authorizing any person to use the Grantee's equipment or facilities located in County rights-of-way, the Grantee will require the user to provide the Grantee with an affidavit that it has obtained the necessary franchise or other approval from the County to operate and provide the proposed service in County rights-of-way. At least thirty (30) days prior to executing any agreement with a potential user for the use of the Grantee's equipment or facilities, the Grantee shall fax the affidavit to the King County Office of Cable Communications at (206)-296-0842.

Neither the granting of this franchise nor any language, term or condition within this franchise deprives King County of any powers, rights, or privileges it now has or may later acquire to regulate the use of and to control County rights-of-way covered by this franchise.

7. ENFORCEMENT

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

8. INDEMNITY AND HOLD HARMLESS

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

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

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

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

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

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

9. INSURANCE REQUIREMENTS

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

The Grantee must carry commercial general liability, automobile liability and stop gap or employers liability coverage, each in minimum limits of not less than one million dollars (\$1,000,000.00). All policies must name King County as an additional insured.

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

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

10. VACATION

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

11. REPAIR, REMOVAL OR RELOCATION

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

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

12. REQUIREMENT OF CONSTRUCTION PERMITS

The Grantee, its successors or assigns, has the right, privilege and authority to enter the County Road Rights-of-Way for the purpose of operating, maintaining, repairing, or constructing its transmission, distribution and service lines, and appurtenances, on the condition permits approved by the Director and Property Services Division are obtained. The Grantee shall obtain all required permits before any construction, reconstruction, maintenance or other work. Applications for work permits shall be presented to the Property Services Division, which shall be accompanied by a map (a paper copy and a digital copy), copies of plans, blueprints, cross-sections, or further detailing of work to be done. The digital copy of the map shall be provided in .DXF format with at least two reference marks corresponding to geological survey markers.

The Grantee will provide King County a CAD map of their entire fiber network and, at the time of each permit application, provide a pricing estimate of incremental costs to lay fiber for King

County along the same route. The Grantee shall also submit electronic maps in a format compatible with the King County Regional GIS system for facilities as constructed.

In the event of an emergency, the Grantee may immediately commence the necessary work and shall apply the next business day for the work permit. Any work done, whether by Grantee, its contractors, or third parties will include necessary paving, patching, grading, and any other reasonably necessary repair or restoration to the County Road Rights-of-Way. All work shall be done to the reasonable satisfaction of the Director, but in no event shall restoration requirements exceed then effective County Road Standards.

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

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

13. RESTORATION OF COUNTY ROAD RIGHTS-OF-WAY

After work on, over, under or adjacent to County Road Rights-of-Way, the Grantee is responsible for and will leave all County Road Rights-of-Way in as good a condition as they were before any work was done. In the event that the Grantee, its contractors, or third parties working under permit should fail to restore County Road Rights-of-Way to the satisfaction of the Director, King County may make such repairs or restorations as are necessary to return the County Road Rights-of-Way to their pre-work condition. Except in the case of an emergency, however, King County shall first notify the Grantee of the needed repairs or restoration and provide an opportunity for the Grantee to perform the repairs or restoration before King County does the work. Upon presentation of an itemized bill for repairs or restorations, including the costs of labor and equipment, the Grantee will pay the bill within thirty (30) days. If suit is brought upon the Grantee's failure to pay for repair and restoration, and if judgment in such a suit is entered in favor of King County, then the Grantee shall pay all of the actual costs, including interest from the date the bill was presented, disbursements, and attorney's fees and litigation related costs incurred.

14. PERFORMANCE OF WORK

The Grantee covenants that in consideration for the rights and privileges granted by this franchise, all work performed by the Grantee on County Road Rights-of-Way shall conform to all County requirements including, but not limited to, the requirements of the current edition of the County

Road Standards in force when the work is performed and all traffic control shall also conform to the current edition of the manual of Uniform Traffic Control Devices in force when the work is performed.

15. BLASTING REQUIREMENTS

The right to operate, maintain, repair and construct Grantee's transmission and service lines and appurtenances granted by this franchise, does not preclude King County, its agents or contractors from blasting, grading, or doing other road work contiguous to the Grantee's lines, and appurtenances. Except in the case of an emergency, the Grantee will be given ten (10) business days written notice of any blasting so that the Grantee may protect its lines and appurtenances. If the Grantee notifies the County within ten (10) business days that the facilities will have to be relocated to protect them from blasting, the County will defer the blasting for up to ninety (90) days from the date of the original notice. In no event will the Grantee be given less than two (2) days written notice of any blasting. Notification of any excavation shall be provided through the One-Call System as provided by RCW 19.122, as hereinafter amended.

16. SURVEY MARKERS AND MONUMENTS

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

17. ASSIGNMENT

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

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

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

obligations, liabilities, duties and responsibilities of the Grantee, known and unknown, under this franchise and applicable law; or

- (b) a lender for purposes of security in connection with financing provided to the Grantee.

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

18. RESERVATION OF RIGHTS

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

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

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

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

- A. The Grantee and King County will select one arbitrator each, and the two selected arbitrators will select a third arbitrator. If the two arbitrators have not selected a third arbitrator within thirty (30) days after the selection of the last selection of the two, either the Grantee or King County may apply to the presiding judge of the King County Superior Court for the appointment of a third arbitrator. The three arbitrators will determine the method for determining the fair market compensation for the County property used by the Grantee. The arbitration procedure employed shall be consistent with the rules and procedures of the American Arbitration Association. The decision of a majority of the arbitrators will bind both the Grantee and King County. At the conclusion of the arbitration, the arbitrators will submit written reports to the Grantee and King County which shall contain all pertinent evidence that led to their conclusion together with an explanation of their reasoning for such conclusion.
- B. The fees of the arbitrators selected by each party shall be paid by that party, and the fees of the third arbitrator shall be paid one-half each by the County and the Grantee. The other costs of the proceeding shall be shared equally by the County and the Franchisee.
- C. In the event that the question of fair market compensation is not resolved prior to the effective date specified by the ordinance authorizing said compensation, the arbitration decision will be applied retroactively to the effective date in the ordinance. The Grantee will pay the retroactive sum plus interest in the amount of twelve percent (12%) per annum.

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

19. EXPIRATION AND RENEWAL

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

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

If the Grantee elects to have King County effect removal or if the Grantee fails to commence such

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

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

20. COMPLIANCE WITH LAWS

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

21. NON-DISCRIMINATION CLAUSE

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

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

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

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

22. PENALTY FOR VIOLATION OF CONDITIONS

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

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

During the forty-five (45) days following the notification, the Grantee shall have the opportunity to remedy the failure to comply.

23. RIGHT OF APPEAL

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

24. SEVERABILITY

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