

12/13/99

ORDINANCE NO. 2063

AN ORDINANCE OF THE CITY OF REDMOND, WASHINGTON, GRANTING TO METROMEDIA FIBER NETWORK SERVICES, INC., A DELAWARE CORPORATION, ITS SUCCESSORS AND ASSIGNS, A NON EXCLUSIVE FRANCHISE FOR FIVE (5) YEARS, TO ATTACH, INSTALL, OPERATE, AND MAINTAIN A TELECOMMUNICATIONS SYSTEM IN, ON, OVER, UPON, ALONG, AND ACROSS CERTAIN DESIGNATED PUBLIC RIGHTS-OF-WAY OF THE CITY OF REDMOND, WASHINGTON, PRESCRIBING CERTAIN RIGHTS, DUTIES, TERMS, AND CONDITIONS WITH RESPECT THERETO, AND ESTABLISHING AN EFFECTIVE DATE.

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WHEREAS, Metromedia Fiber Network Services, Inc. (hereinafter "the Franchisee") has requested that the City grant it the right to install, operate and maintain a telecommunications system within the public ways of the City; and

WHEREAS, the City Council has found it desirable for the welfare of the City and its residents that such a non-exclusive franchise be granted to the Franchisee; and

WHEREAS, the City Council has the authority under RCW 35A.47.040 to grant franchises for the use of its streets and other public properties; and

WHEREAS, the City is willing to grant the rights requested subject to certain terms and conditions, NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF REDMOND, WASHINGTON DO  
ORDAIN AS FOLLOWS:

Section 1. Authority Granted. The City hereby grants to the Franchisee, its heirs, successors, legal representatives, and assigns, subject to the terms and conditions hereinafter

set forth, the right, privilege, and authority to construct, operate, maintain, replace, use, acquire, install, repair, reconstruct, inspect, sell, lease transfer and to otherwise utilize in any lawful manner all necessary equipment and facilities thereto for the telecommunications facilities described in Exhibit A, which is attached hereto and incorporated by this reference. The Franchisee is authorized to place its telecommunications facilities in, under, on, across, over, through, along, or below the public ways of the City which are designated in Exhibit A and the plans attached thereto or as subsequently approved by the City, and to provide telecommunications services to persons located within the City. Provided, however, that the Franchisee shall apply for and obtain a Street Use Permit pursuant to RMC Chapter 12.08 prior to site-specific location and installation of any and all such telecommunications facilities, as referred to in Section 9 below.

Section 2. Grant Limited to Occupation and Service. This Franchise merely authorizes Franchisee to occupy and use public ways and offer telecommunications services within the City. Nothing contained herein shall be construed to grant or convey any right, title, or interest in the public ways of the City to the Franchisee.

Section 3. Terms, Conditions, and Provisions of RMC Chapter 12.14 Incorporated by Reference. The terms, conditions, and provisions of RMC Chapter 12.14 are incorporated herein by reference. All rights granted hereunder are subject to the terms, conditions, and requirements of RMC Chapter 12.14 unless this Franchise specifically provides to the contrary. In the event that a conflict exists between the terms of this Franchise and the terms of RMC Chapter 12.14, the terms of this Franchise shall control.

Section 4. Term of Franchise. The term of this Franchise shall be for a period of 5 years from the effective date set forth in Section 33, below, unless sooner terminated. This Franchise may be renewed pursuant to the provisions of RMC Section 12.14.0430, as said Section

presently exists or is hereafter amended.

Section 5. Non-Exclusive Grant. This Franchise shall not in any manner prevent the City from entering into other similar agreements or franchises in, under, on, across, over, through, along or below any public ways of the City or other City-owned properties. Further, this Franchise shall in no way prevent or prohibit the City from using any of its public ways or other City-owned properties or affect its jurisdiction over them or any part of them, and the City shall retain power to make all necessary changes, relocations, repairs, maintenance, establishment, improvements, and dedication of the same as the City may deem fit, including the dedication, establishment, maintenance, and improvement of all new public ways and other City-owned properties of every type and description.

Section 6. Relocation of Telecommunications Facilities.

A. The Franchisee agrees and covenants at its sole cost and expense, to protect, support, temporarily disconnect, relocate, or remove from any public ways any of its telecommunications facilities when so required by the Public Works Director by reason of traffic conditions and public safety, dedications of new public ways and the establishment and improvement thereof, widening and improvement of existing public ways, street vacations, freeway construction, change or establishment of street grade, or the construction of any public improvement or structure by any governmental agency acting in a governmental capacity; provided that the Grantee shall in all such cases have the privilege to temporarily bypass, at a location approved by the Public Works Director, any section of cable or any other facility required to be temporarily disconnected or removed.

B. Upon request of the Public Works Director, and in order to facilitate the design of City street and right-of-way improvements, the Franchisee agrees to, at its sole cost and

expense, locate, and if reasonably determined necessary by the City, to excavate and expose its telecommunications facilities for inspection so that the location of the same may be taken into account in the improvement design. The decision as to whether said facilities need to be relocated in order to accommodate the City's improvements shall be made by the Public Works Director upon review of the location and construction of the Franchisee's facilities.

C. If the Public Works Director determines that the project necessitates relocation of the Franchisee's facilities, the City shall:

1. Within a reasonable time, which shall be no less than 30 days, prior to the commencement of such improvement project, provide the Franchisee with written notice requiring such relocation; provided, however, that in the event of an emergency posing a threat to the public safety or welfare, or in the event of an emergency beyond the control of the City and which will result in severe financial consequences to the City, the City shall give the Franchisee written notice as soon as practicable; and

2. Provide the Franchisee with copies of pertinent information for such improvement project and a proposed location for the Franchisee's facilities so that the Franchisee may relocate its facilities in other public ways in order to accommodate such improvement project.

3. After receipt of such notice and such pertinent information, the Franchisee shall complete relocation of its facilities at no charge or expense to the City so as to accommodate the improvement project at least 10 days prior to commencement of the project.

D. The Franchisee may, after receipt of written notice requesting a relocation of its facilities, submit to the City written alternatives to such relocation. The City shall evaluate such alternatives and advise the Franchisee in writing if one or more of the alternatives is suitable to accommodate the work which would otherwise necessitate relocation of the facilities. If so requested by the City, the Franchisee shall submit additional relevant information to assist the City in making such evaluation. The City shall give each alternative proposed by the Franchisee full and fair consideration, within a reasonable time so as to allow for the relocation work to be performed in a timely manner. In the event the City ultimately determines that there is no other reasonable

alternative, the Franchisee shall relocate its facilities as otherwise provided in this Section. The provisions of this Section shall survive the expiration, revocation, or termination of this Franchise; provided that relocation shall not be required after expiration of this Franchise if the City consents to the Franchisee abandoning its facilities in place.

E. The provisions of this Section shall in no manner preclude or restrict the Franchisee from making any arrangements it may deem appropriate when responding to a request for relocation of its facilities by any person or entity other than the City, where the facilities to be constructed by said person or entity are not or will not become city-owned, operated or maintained facilities provided that such arrangements do not unduly delay a City construction project.

F. The Franchisee will indemnify, hold harmless, and pay the costs of defending the City against any and all claims, suits, actions, damages, or liabilities for delays on City construction projects caused by or arising out of the failure of the Franchisee to relocate its facilities in a timely manner; provided, that the Franchisee shall not be responsible for damages due to delays caused by circumstances beyond the control of the Franchisee. The indemnity provisions of this Section shall survive the expiration, revocation, or termination of this Franchise.

Section 7. Undergrounding of Facilities.

A. The undergrounding requirements of this Section shall apply where the Franchisee's facilities consist of cable or any other facilities which are capable of being placed underground. This Section shall not apply to antennas or other facilities which are required to remain above ground in order to be functional.

B. In any area of the City in which there are no aerial facilities other than antennas or other facilities required to remain above ground in order to be functional, or in any public way in which all telephone, electric power wires and cables capable of undergrounding have

been placed underground, the Franchisee shall not be permitted to erect poles or to run or suspend wires, cables or other facilities thereon, but shall lay such wires, cables or other facilities underground in the manner required by the City. The Franchisee acknowledges and agrees that if the City does not require the undergrounding of its facilities at the time of initial installation, the City may, at any time in the future, require the conversion of the Franchisee's above-ground and/or aerial facilities to underground installation at the Franchisee's expense as provided by RMC Sections 12.14.0680 and 20C.20.250(05), or as such Sections may hereafter be amended.

C. Whenever the City requires the undergrounding of above-ground and/or aerial utilities in any area of the City which the City has the legal authority to require to underground without the payment of costs under any tariff, the Franchisee shall underground its above-ground and/or aerial facilities in the manner specified by the City, concurrently with and in the area of all the other affected utilities. The location of any such relocated and underground utilities shall be approved by the City. The Franchisee shall underground its facilities at its own expense, but the Franchisee is encouraged to contact and agree with other affected utilities so that all costs for common trenching, common utility vaults and other costs not specifically attributable to the undergrounding of any particular facility are borne fairly and proportionately by all the utilities involved in the underground project. The provisions of this section shall survive the expiration, revocation, or termination of this Franchise. Nothing in this paragraph shall be construed as requiring the City to pay any costs of undergrounding any of the Franchisee's facilities.

Section 8. The Franchisee's Maps and Records. After construction is complete, the Franchisee shall provide the City with accurate copies of all as-built plans, maps, and records. These plans, maps, and records shall be provided at no cost to the City, and shall conform to the requirements of RMC Section 12.14.01140.

Section 9. Work in Public Ways.

A. During any period of relocation, construction, or maintenance, all surface structures, if any, shall be erected and used in such places and positions within said public ways and other public properties so as to interfere as little as possible with the free passage of traffic and the free use of adjoining property, and the Franchisee shall at all times post and maintain proper barricades and comply with all applicable safety regulations during such period of construction as required by the ordinances of the City or the laws of the State of Washington, including RCW 39.04.180 for the construction of trench safety systems.

B. Whenever the Franchisee shall commence any work within a public way, regardless of whether excavation is required, it shall apply to the City for a Street Use Permit to do so and, in addition, shall give the City at least 10 working days notice of the Franchisee's intent to commence work in the public ways. The Franchisee shall file plans or maps with the City showing the proposed location of its telecommunications facilities and pay all duly established permit and inspection fees associated with the processing of the permit. In no case shall any work commence within any public way without said permit, except as otherwise provided in this Franchise. During the progress of the work, the Franchisee shall not unnecessarily obstruct the passage or proper use of the public ways, and all work by the Franchisee in any area covered by this Franchise and as described in this Section shall be performed in accordance with City of Redmond Public Works Construction Standards and warranted for a period of 1 year.

C. If the City has plans to improve any public way to which this Franchise applies within 2 years of the Franchisee's application for a Street Use Permit to locate its facilities in such public way, the Franchisee may be allowed to install its facilities above ground, to the extent feasible, until such time as the City's improvements occur, at which time the Franchisee shall

underground its facilities concurrent with the City's improvement project.

D. If either the City or the Franchisee shall at any time plan to make excavations in any area covered by this Franchise and as described in this Section, the party planning such excavation shall afford the other, upon receipt of a written request to do so, an opportunity to share such excavation, PROVIDED THAT:

1. Such joint use shall not unreasonably delay the work of the party causing the excavation to be made;

2. Such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties; and

3. Either party may deny such request for safety reasons.

E. The joint use provisions of this Section shall apply only to joint use by the City and the Franchisee. Nothing in this Section is intended to require the Franchisee to afford other similar users the opportunity to share the Franchisee's excavations. The provisions of this Section shall survive the expiration, revocation, or termination of this Franchise.

Section 10. Restoration after Construction. The Franchisee shall, after installation, construction, relocation, maintenance, removal, or repair of its telecommunications facilities within the public ways, restore the surface of said public ways and any other City-owned property which may be disturbed by the work, to at least the same condition the public way or City-owned property was in immediately prior to any such installation, construction, relocation, maintenance, or repair. The Public Works Director shall have final approval of the condition of such public ways and City-owned property after restoration. All survey monuments which are to be disturbed or displaced by such work shall be referenced and restored, as per WAC 332-120, as the same now exists or may hereafter be amended, and all pertinent federal, state and local standards and specifications, including, but not limited to, the City of Redmond Benchmark System's second

order, first class specifications. The Franchisee agrees to promptly complete all restoration work and to promptly repair any damage caused by such work to the Public ways or other affected area at its sole cost and expense according to the time and terms specified in the Street Use Permit issued by the City and in Chapter 12.08 of the Redmond Municipal Code, as the same now exists or as it may hereafter be amended or superseded. The provisions of this Section shall survive the expiration, revocation, or termination by other means of this Franchise. All work by the Franchisee pursuant to this Section shall be performed in accordance with City of Redmond Public Works Construction standards and warranted for a period of 1 year.

Section 11. Emergency Work -- Permit Waiver. In the event of any emergency in which any of the Franchisee's telecommunications facilities located in, above, or under any public way breaks, are damaged, or if the Franchisee's construction area is otherwise in such a condition as to immediately endanger the property, life, health, or safety of any individual, the Franchisee shall immediately take the proper emergency measures to repair its facilities, to cure or remedy the dangerous conditions for the protection of property, life, health, or safety of individuals without first applying for and obtaining a permit as required by this Franchise. However, this shall not relieve the Franchisee from the requirement of notifying the City of the emergency work and obtaining any permits necessary for this purpose after the emergency work. The Franchisee shall notify the City by telephone immediately upon learning of the emergency and shall apply for all required permits not later than the second succeeding day during which the Redmond City Hall is open for business.

Section 12. Dangerous Conditions, Authority for City to Abate. Whenever construction, installation, or excavation of telecommunications facilities authorized by this Franchise has caused or contributed to a condition that appears to substantially impair the lateral

support of the adjoining public way, street, or public place, or endangers the public, street utilities, or City-owned property, the Public Works Director may direct the Franchisee, at the Franchisee's own expense, to take action to protect the public, adjacent public places, City-owned property, streets, utilities, and public ways. Such action may include compliance within a prescribed time.

In the event that the Franchisee fails or refuses to promptly take the actions directed by the City, or fails to fully comply with such directions, or if emergency conditions exist which require immediate action, the City may enter upon the property and take such actions as are necessary to protect the public, the adjacent streets, utilities, public ways, to maintain the lateral support thereof, or actions regarded as necessary safety precautions; and the Franchisee shall be liable to the City for the costs thereof. The provisions of this Section shall survive the expiration, revocation, or termination by other means of this Franchise.

Section 13. Recovery of Costs. The Franchisee shall be subject to all permit fees associated with activities undertaken through the authority granted in this Franchise or under the laws of the City. Where the City incurs reasonable costs and expenses for review, inspection, or supervision of activities undertaken through the authority granted in this Franchise or any ordinances relating to the subject for which a permit fee is not established, the Franchisee shall reimburse the City directly for any and all costs after receiving an invoice documenting said costs and expenses in sufficient detail to demonstrate that they were reasonably necessary to perform the aforementioned actions.

In addition to the above, the Franchisee shall promptly reimburse the City for any and all costs the City reasonably incurs in response to any emergency involving the Franchisee's telecommunications facilities.

Finally, the Franchisee shall reimburse the City upon submittal by the City of an

itemized billing by project of costs, for the Franchisee's proportionate share of all actual, identified expenses incurred by the City in planning, constructing, installing, repairing or altering any City facility as the result of the presence in the right-of-way of the Franchisee's facilities. Such costs and expenses shall include but not be limited to the Franchisee's proportionate cost of City personnel assigned to oversee or engage in any work in the public ways as the result of the presence of the Franchisee's facility in the public ways. Such costs and expenses shall also include the Franchisee's proportionate share of any time spent reviewing construction plans in order to either accomplish the relocation of the Franchisee's facilities or the routing or rerouting of any utilities so as not to interfere with the Franchisee's facilities.

The time of City employees shall be charged at their respective rate of salary, including overtime if applicable, plus benefits and overhead. Any other costs will be billed proportionately on an actual cost basis. All billings will be itemized so as to specifically identify the costs and expenses for each project for which the City claims reimbursement. A charge for the actual costs incurred in preparing the billing may also be included in said billing. The billing may be on an annual basis, but the City shall provide the Franchisee with the City's itemization of costs at the conclusion of each project for information purposes.

Section 14. City's Reservation of Rights. Pursuant to RCW Section 35.21.860, the City is precluded from imposing a fee on a "telephone business" as defined in RCW 82.04.065, except for administrative expenses or any applicable tax authorized by RCW 35.21.865. This Franchise is premised upon the City and Franchisee's understanding that the activities proposed by the Franchisee constitute a "telephone business." As such, the rights granted under this Franchise are not conditioned upon payment of compensation in addition to reimbursement for administrative costs as set forth in Section 13 herein, payment of the utility tax set forth in RMC Chapter 5.44, and

payment of the fee set forth in Section 15 for use of City-owned poles. The City hereby reserves its right to impose a fee on the Franchisee, to the extent authorized by law, for purposes other than to recover its administrative expenses, if the Franchisee's operations are not those of a "telephone business" as defined in RCW 82.04.065, if the Franchisee's operations are now those of a telephone business and change in the future, or if statutory prohibitions on the imposition of such fees are removed. The City also reserves its right to require that the Franchisee obtain a separate Agreement for its change in use, which Agreement may include provisions intended to regulate the Franchisee's operations, as allowed under applicable law.

Section 15. Fee for City-Owned Poles. In addition to any other fees or taxes for which the Franchisee is required to pay the City, the Franchisee shall pay the City an annual fee in the amount of \$60.00 for the use of each City-owned pole upon which the Franchisee's telecommunications facilities are installed pursuant to this Franchise. The initial annual fee shall be due and payable not later than the date of installation on the first City-owned pole pursuant to this Franchise, and shall equal the total number of City-owned poles the Franchisee then estimates it will install during the remaining portion of the calendar year multiplied by the annual fee. Provided, however, that if the Franchisee utilizes more City-owned poles than initially estimated, the Franchisee shall include full payment for the additional poles at the time payment is made for the subsequent year's use of the City-owned poles. In all subsequent years, the annual fee shall equal the total number of City-owned poles occupied for any portion of the calendar year multiplied by the annual fee. Following the initial year of installation, the fee imposed by this Section shall be due by January 31st of each year. Provided further, that the terms of this Section shall not apply to proposals to locate cellular telephone, personal communication system (PCS), or other similar wireless communications facilities upon City-owned poles. Compensation for the placement of

such facilities upon City-owned poles shall be negotiated on a case-by-case basis through the Facilities Lease process set forth in RMC Sections 12.14.0490 through 12.14.0630.

Section 16. Indemnification and Waiver.

A. Franchisee hereby releases, covenants not to bring suit and agrees to indemnify, defend and hold harmless the City, its officers, employees, agents and representatives from any and all claims, costs, judgments, awards or liability to any person arising from injury, sickness, or death of any person or damage to property:

1. For of which the negligent acts or omissions of Franchisee, its agents, servants, officers or employees in performing the activities authorized by this Agreement are the proximate cause;
2. By virtue of Franchisee's exercise of the rights granted herein;
3. By virtue of the City's permitting Franchisee's use of the City's public ways or other public property;
4. Based upon the City's inspection or lack of inspection of work performed by Franchisee, its agents and servants, officers or employees in connection with work authorized on the Facility or property over which the City has control, pursuant to this Agreement or pursuant to any other permit or approval issued in connection with this Agreement;
5. Arising as a result of the negligent acts or omissions of Franchisee, its agents, servants, officers or employees in barricading, instituting trench safety systems or providing other adequate warnings of any excavation, construction, or work upon the Facility, in any public way, or other public place in performance of work or services permitted under this Agreement;
6. Based upon radio frequency emissions or radiation emitted from Franchisee's equipment located upon the Facility, regardless of whether Franchisee's equipment complies with applicable federal statutes and/or FCC regulations related thereto.

B. Franchisee's indemnification obligations pursuant to Subsection A of this Section shall include assuming potential liability for actions brought by Franchisee's own employees and the employees of Franchisee's agents, representatives, contractors, and subcontractors even though Franchisee might be immune under Title 51 RCW from direct suit

brought by such an employee. It is expressly agreed and understood that this assumption of potential liability for actions brought by the aforementioned employees is limited solely to claims against the City arising by virtue of Franchisee's exercise of the rights set forth in this Agreement. The obligations of Franchisee under this Subsection B have been mutually negotiated by the parties hereto, and Franchisee acknowledges that the City would not enter into this Agreement without Franchisees waiver thereof. To the extent required to provide this indemnification and this indemnification only, Franchisee waives its immunity under Title 51 RCW as provided in RCW 4.24.115.

C. Inspection or acceptance by the City of any work performed by Franchisee at the time of completion of construction shall not be grounds for avoidance of any of these covenants of indemnification. Provided that Franchisee has been given prompt written notice by the City of any such claim, said indemnification obligations shall extend to claims which are not reduced to a suit and any claims which may be compromised prior to the culmination of any litigation or the institution of any litigation. The City has the right to defend or participate in the defense of any such claim, and has the right to approve any settlement or other compromise of any such claim.

D. In the event that Franchisee refuses the tender of defense in any suit or any claim, said tender having been made pursuant to this Section, and said refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter), to have been a wrongful refusal on the part of Franchisee, then Franchisee shall pay all of the City's costs for defense of the action, including all reasonable expert witness fees, reasonable attorneys' fees, the reasonable costs of the City, and reasonable attorneys' fees of recovering under this Subsection.

E. The obligations of Franchisee under the indemnification provisions of this

Section shall apply regardless of whether liability for damages arising out of bodily injury to persons or damages to property were caused or contributed to by the concurrent negligence of the City, its officers, agents, employees or contractors. The provisions of this Section, however, are not to be construed to require the Franchisee to hold harmless, defend or indemnify the City as to any claim, demand, suit or action which arises out of the sole negligence of the City. In the event that a court of competent jurisdiction determines that this Agreement is subject to the provisions of RCW 4.24.115, the parties agree that the indemnity provisions hereunder shall be deemed amended to conform to said statute and liability shall be allocated as provided therein.

F. Notwithstanding any other provisions of this Section, Franchisee assumes the risk of damage to its telecommunications facilities located in the public ways and upon City-owned property from activities conducted by the City, its officers, agents, employees and contractors, except to the extent any such damage or destruction is caused by or arises from any wilful or malicious action on the part of the City, its officers, agents, employees or contractors. Franchisee releases and waives any and all such claims against the City, its officers, agents, employees or contractors. Franchisee further agrees to indemnify, hold harmless and defend the City against any claims for damages, including, but not limited to, business interruption damages and lost profits, brought by or under users of Franchisee's facilities as the result of any interruption of service due to damage or destruction of Franchisee's facilities caused by or arising out of activities conducted by the City, its officers, agents, employees or contractors, except to the extent any such damage or destruction is caused by or arises from the sole negligence or any wilful or malicious actions on the part of the City, its officers, agents, employees or contractors.

G. The provisions of this Section shall survive the expiration, revocation, or termination of this Agreement.

Section 17. Insurance. The Franchisee shall procure and maintain for the duration of the Franchise, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of the rights, privileges and authority granted hereunder to the Franchisee, its agents, representatives or employees. The Franchisee shall provide an insurance certificate, together with an endorsement naming the City, its officers, elected officials, agents, employees, representatives, engineers, consultants and volunteers as additional insureds, to the City for its inspection prior to the commencement of any work or installation of any facilities pursuant to this Franchise, and such insurance certificate shall evidence:

A. Comprehensive general liability insurance inclusive of umbrella, written on an occurrence basis, with limits not less than:

- (1) \$2,000,000.00 for bodily injury or death to each person;
- (2) \$2,000,000.00 for property damage resulting from any one accident;  
and
- (3) \$2,000,000.00 for all other types of liability covered under Franchisee's General Liability policy;

B. Automobile liability inclusive of umbrella for owned, non-owned and hired vehicles with a limit of \$2,000,000.00 for each person and \$2,000,000.00 for each accident;

C. Worker's compensation within statutory limits and employer's liability insurance with limits of not less than \$1,000,000.00; and

D. Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than \$2,000,000.00.

The liability insurance policies required by this Section shall be maintained by the Franchisee throughout the term of this Franchise, and such other period of time during which the Franchisee is operating without a Franchise hereunder, or is engaged in the removal of its

telecommunications facilities. The Franchisee shall provide an insurance certificate, together with an endorsement naming the City, and its elected and appointed officers, officials, agents, employees, representatives, engineers, consultants, and volunteers as additional insureds, to the City prior to the commencement of any work or installation of any facilities pursuant to this Franchise. Any deductibles or self-insured retentions must be declared to and approved by the City. Payment of deductibles and self-insured retentions shall be the sole responsibility of the Franchisee. The insurance certificate required by this Section shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. The Franchisee's insurance shall be primary insurance with respect to the City, its officers, officials, employees, agents, consultants, and volunteers. Any insurance maintained by the City, its officers, officials, employees, consultants, agents, and volunteers shall be in excess of the Franchisee's insurance and shall not contribute with Lessee's insurance.

In addition to the coverage requirements set forth in this Section, each such insurance policy shall contain the following endorsement:

"It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until 60 days after receipt by the City, by registered mail, of a written notice addressed to the Public Works Director of such intent to cancel or not to renew."

Within 30 days after receipt by the City of said notice, and in no event later than 15 days prior to said cancellation or intent not to renew, the Franchisee shall obtain and furnish to the City replacement insurance policies meeting the requirements of this Section.

Section 18. Abandonment and Removal of the Franchisee's Telecommunications Facilities. Upon the expiration, termination, or revocation of the rights granted under this Franchise, and consistent with the provisions of RMC Section 12.14.0780, the Franchisee shall remove all of its telecommunications facilities from the public ways of the City within 90 days of

receiving notice from the Public Works Director. Except as specifically provided by RMC Chapter 12.14, the Franchisee shall not be allowed to abandon any of its telecommunications facilities within the public ways of the City or upon City-owned property.

Section 19. Commencement of Construction. Construction of the facilities contemplated by this Franchise shall commence no later than one year after the effective date of this Franchise; provided, that such time limit shall not apply to delays caused by acts of God, strikes, eminent domain litigation or other occurrences over which the Franchisee has no control.

Section 20. Restoration Bond. Before undertaking any of the work, installation, improvements, construction, repair, relocation or maintenance authorized by this Franchise, the Franchisee shall furnish a performance bond written by a corporate surety acceptable to the City equal to at least 100% of the estimated cost of removing the Franchisee's telecommunications equipment and facilities and restoring the public ways of the City to their pre-construction condition. Said bond shall be required to remain in full force until 60 days after completion of the construction and/or improvements within the public ways of the City, and shall warrant all such construction and/or improvements for a period of 1 year.

Section 21. Security Fund. Before undertaking any of the work, installation, improvements, construction, repair, relocation or maintenance authorized by this Franchise, the Franchisee shall establish a security fund in the amount of \$10,000.00 to guarantee the full and complete performance of the requirements of this Franchise, the requirements of RMC Chapter 12.14, and to guarantee payment of any costs, expenses, damages, or loss the City pays or incurs, including civil penalties, because of any failure attributable to the grantee, franchisee, or lessee to comply with the codes, ordinances, rules, regulations, or permits of the City. Prior to withdrawal of any funds from the security fund, the City shall comply with the provisions of RMC Section

12.14.0880 as that section presently exists or is hereafter amended.

Section 22. Modification. Subject to the provisions of RMC Section 12.14.0250, the City and the Franchisee hereby reserve the right to alter, amend or modify the terms and conditions of this Franchise upon written agreement of both parties to such alteration, amendment or modification.

Section 23. Forfeiture and Revocation. The rights granted under this Franchise may be revoked or forfeited as provided in RMC Sections 12.14.0930 through 12.14.0960 as said Sections presently exist or are hereafter amended.

Section 24. Remedies to Enforce Compliance. In addition to any other remedy provided in this Franchise or within RMC Chapter 12.14, the City reserves the right to pursue any remedy to compel or force the Franchisee and/or its successors and assigns to comply with the terms hereof, and the pursuit of any right or remedy by the City shall not prevent the City from thereafter declaring a forfeiture or revocation for breach of the conditions herein.

Section 25. City Ordinances and Regulations. Nothing herein shall be deemed to direct or restrict the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of this Franchise, including any valid ordinance made in the exercise of its police powers in the interest of public safety and for the welfare of the public. The City shall have the authority at all times to control by appropriate regulations the location, elevation, manner of construction and maintenance of any telecommunications facilities by the Franchisee, and the Franchisee shall promptly conform with all such regulations, unless compliance would cause the Franchisee to violate other requirements of law.

Section 26. Survival. All of the provisions, conditions and requirements of Sections 6, Relocation of Telecommunications Facilities; 7, Undergrounding of Facilities; 9, Work

in the Public Ways; 10, Restoration after Construction; 12, Dangerous Conditions; 16, Indemnification; 17, Insurance; and 18, Abandonment and Removal of the Franchisee's Facilities, of this Franchise shall be in addition to any and all other obligations and liabilities the Franchisee may have to the City at common law, by statute, or by contract, and shall survive the expiration or termination of this Franchise, and any renewals or extensions thereof. All of the provisions, conditions, regulations and requirements contained in this Franchise shall further be binding upon the heirs, successors, executors, administrators, legal representatives and assigns of the Franchisee and all privileges, as well as all obligations and liabilities of the Franchisee shall inure to its heirs, successors and assigns equally as if they were specifically mentioned wherever the Franchisee is named herein.

Section 27. Non-Severability. Each term and condition of this Franchise is an integral part of the consideration given by each party and as such, the terms and conditions of this Franchise are not severable. If any section, sentence, clause or phrase of this Franchise should be held to be invalid or unconstitutional by a court of competent jurisdiction, this Franchise shall terminate unless suitable replacement terms can be agreed to by the parties.

Section 28. Assignment. This agreement may not be assigned or transferred except as provided in RMC Sections 12.14.0910 and 12.14.0920, except that the Franchisee may freely assign this Franchise in whole or in part to a parent, subsidiary, or affiliated corporation or as part of any corporate financing, reorganization or refinancing. In the case of transfer or assignment as security by mortgage or other security instrument in whole or in part to secure indebtedness, such consent shall not be required unless and until the secured party elects to realize upon the collateral. The Franchisee shall provide prompt, written notice to the City of any such assignment.

Franchisee may, without the prior written consent of the City; (i) Lease the facility,

or any portion thereof, to another; (ii) grant an Indefeasible Right of User Interest in the facilities, or any portion thereof, to another: or (iii) offer or provide capacity or bandwidth in its facilities to another, PROVIDED THAT: Franchisee at all times retains exclusive control over such facilities and remains responsible for locating, servicing, repairing, relocating and removing its facilities pursuant to the terms and conditions of this Franchise.

Section 29. Notice. Any notice or information required or permitted to be given to the parties under this Franchise may be sent to the following addresses unless otherwise specified:

|                          |   |
|--------------------------|---|
| <u>City:</u>             | <u>Franchisee:</u>                      |
| City of Redmond          | Metromedia Fiber Network Services, Inc. |
| Director of Public Works | V.P. Legal Affairs                      |
| 15670 N.E. 85th Street   | One North Lexington Avenue              |
| P.O. Box 97010           | White Plains, N.Y. 10601                |
| Mail Stop CHPWE          |   |
| Redmond, WA 98073-9710   |   |

Section 30. Entire Agreement. This Franchise constitutes the entire understanding and agreement between the parties as to the subject matter herein and no other agreements or understandings, written or otherwise, shall be binding upon the parties upon execution of this Franchise.

Section 31. Acceptance. Within 60 days after the passage and approval of this ordinance, this Franchise may be accepted by Franchisee filing with the City Clerk an unconditional written acceptance thereof. Failure of the Franchisee to so accept this franchise within said period of time shall be deemed a rejection thereof, and the rights and privileges herein granted shall, after the expiration of the 60 day period, absolutely cease and determine, unless the time period is extended by ordinance duly passed for that purpose.

Section 32. Notice of Tariff Changes. The Franchisee shall, when making

application for any changes in tariffs affecting the provisions of this Franchise, notify the City in writing of the application and provide the Public Works Director with a copy of the submitted application within three days of filing with the Washington Utilities and Transportation Commission or other regulatory body. The Franchisee shall further provide the Public Works Director with a copy of any actual approved tariff change affecting the provisions of this Franchise.

Section 33. Effective Date. This ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect 5 days after passage and publication of an approved summary thereof consisting of the title.

CITY OF REDMOND  
/S/ MAYOR ROSEMARIE IVES

ATTEST/AUTHENTICATED:  
/S/ CITY CLERK, BONNIE MATTSON

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY:  
By: /S/ JAMES E. HANEY

|                             |                   |
|-----------------------------|-------------------|
| FILED WITH THE CITY CLERK:  | December 30, 1999 |
| PASSED BY THE CITY COUNCIL: | January 18, 2000  |
| SIGNED BY THE MAYOR:        | January 18, 2000  |
| PUBLISHED:                  | January 22, 2000  |
| EFFECTIVE DATE:             | January 27, 2000  |
| ORDINANCE NO.               | 2063              |