

FILED
2020 JUN - 3 PM 4: 19
DISTRICT CIVIL COURT

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS
STATE OF LOUISIANA

NO: 2020-4371

DIVISION "B"

SECTION NO: 14

CITY OF NEW ORLEANS

VERSUS

CENTURYLINK, INC., TELCOVE HOLDINGS OF LOUISIANA, INC., LEVEL 3 COMMUNICATIONS, LLC, LEVEL 3 TELECOM HOLDINGS, LLC, LEVEL 3 TELECOM OF LOUISIANA, LLC, LEVEL 3 TELECOM MANAGEMENT CO., LLC, GLOBAL CROSSING TELECOMMUNICATIONS, INC., WILTEL COMMUNICATIONS, LLC

FILED: _____

DEPUTY CLERK

PETITION FOR DAMAGES, DECLARATORY RELIEF,
AND MANDATORY INJUNCTION

NOW INTO COURT, through undersigned counsel, comes the City of New Orleans, and which respectfully represents:

The Parties

1.

Plaintiff, the City of New Orleans (the "City"), is a municipality and political subdivision of the State of Louisiana, located in the Parish of Orleans, State of Louisiana. Plaintiff is organized under the laws of the State of Louisiana and operates pursuant to a Home Rule Charter.

2.

The following parties are made defendants:

- a. CenturyLink, Inc. ("CenturyLink") is a corporation organized under the laws of the State of Louisiana and domiciled in Monroe, Louisiana.
- b. TelCove Holdings of Louisiana, Inc. ("TelCove") is a corporation organized under the laws of the State of Delaware, authorized to do and doing business in the State of Louisiana;
- c. Level 3 Communications, LLC ("Level 3") is a corporation organized under the laws of the State of Delaware, authorized to do and doing business in the State of Louisiana;
- d. Level 3 Telecom Holdings, LLC ("Level 3 Telecom") is a corporation organized under the laws of the State of Delaware, authorized to do and doing business in the

State of Louisiana;

- e. Level 3 Telecom of Louisiana, LLC (“Level 3 Telecom-LA”) is a corporation organized under the laws of the State of Delaware, authorized to do and doing business in the State of Louisiana;
- f. Level 3 Telecom Management Co., LLC (“Level 3 Management”) is a corporation organized under the laws of the State of Delaware, authorized to do and doing business in the State of Louisiana;
- g. Global Crossing Telecommunications, Inc. (“Global Crossing”) is a corporation organized under the laws of the State of Michigan, authorized to do and doing business in the State of Louisiana;
- h. WilTel Communications, LLC (“WilTel”) is corporation organized under the laws of the State of Delaware, authorized to do and doing business in the State of Louisiana.

3.

Upon information and belief, Defendants are subsidiaries of CenturyLink, Inc., a Louisiana corporation located in Monroe, Louisiana.

4.

According to its website, CenturyLink is “a technology leader delivering hybrid networking, cloud connectivity, and security solutions to customers located in more than 60 countries. Through its extensive global fiber network, CenturyLink provides secure and reliable services to meet the growing digital demands of businesses and consumers. CenturyLink strives to be the trusted connection to the networked world and is focused on delivering technology that enhances the customer experience.”

5.

On or around November 1, 2017, CenturyLink acquired Level 3 Communications, Inc., creating one of the largest telecommunications companies in the country with annual revenues of \$24 billion.

6.

Prior to the merger between CenturyLink and Level 3 Communications, Inc., Level 3 Communications, Inc. acquired the following Defendants:

- a. American Communications Services of Louisiana, which was granted Franchise Ordinance 17636, preceded TW Telecom of Louisiana, which changed its name to Level 3 Telecom of Louisiana, a subsidiary of Level 3 Communications, LLC, which is owned by Level 3 Communications, Inc.;
- b. Hyperion Telecommunications, which was granted Franchise Ordinance 19290, merged

with TelCove Holdings of Louisiana, Inc., a subsidiary of Level 3 Communications, LLC, which is owned by Level 3 Communications, Inc.;

- c. Level 3 Communications, LLC, which was granted Franchise Ordinance 19440 is owned by Level 3 Communications, Inc.;
- d. Global Crossing North American Networks, Inc., which was granted Franchise Ordinance 19842, merged with Global Crossing Telecommunications, Inc., a subsidiary of Level 3 Communications LLC, which is owned by Level 3 Communications, Inc.;
- e. Williams Communications, which was granted Franchise Ordinance 020145, merged with WilTel Communications, LLC, a subsidiary of Level 3 Communications LLC, which is owned by Level 3 Communications, Inc.

Venue

7.

Venue is proper in this Court pursuant to LSA-C.C.P. art. 7 because this is an action on contracts that were executed in Orleans Parish.

Jurisdiction

8.

This Court has jurisdiction over the Defendants pursuant to LSA-R.S. 13:3201 because these Defendants transacted business in Louisiana.

Joinder

9.

Joinder is appropriate in this matter pursuant to LSA-C.C.P. art. 463, because Defendants are subsidiaries of CenturyLink, Inc., this Court has venue and jurisdiction in this matter, and the actions cumulated herein are mutually consistent and will employ the same form of procedure.

The Wireline Telecommunications Franchise Act

10.

The Wireline Telecommunications Franchise Act (the "Act") is set forth in Chapter 30, Article II, Division 2 of the Code of the City of New Orleans (City Code Sec. 30-43 *et seq.*). The Act governs the franchising of Wireline Telecommunications Systems in Orleans Parish.

11.

A "Wireline Telecommunications System" ("System") is defined by City Code Sec. 30-45 as "the Equipment and plant essential to the transmission, between or among points specified by the Subscriber...without change in the form or content of the information as sent and received by

means of electromagnetic transmission, fiber optic media, wireless communications system, or any combination thereof.”

12.

Each of the Defendants operates a System within Orleans Parish and is therefore subject to the Act.

13.

City Code Sec. 30-43 (a) provides that no person shall deploy any type of cable or wire on any public property or rights-of-way “for the purpose of transmitting or communicating data, information, intelligence, signals, voice and/or video signals, without first having obtained...a Franchise in accordance with this Act.”

14.

City Code Sec. 30-46 provides that Franchises granted by the Act “shall be for a definite period of time, not to exceed 15 years from the effective date of the Franchise unless terminated sooner[.]”

15.

City Code Sec. 30-50 provides that “as compensation for the occupancy of Public Property and of the Rights-of-Way of the City for the construction, operation, maintenance, and/or the reconstruction of a Wireline Telecommunications System within the City, the value of such rights and privileges granted by the Franchise, the fact that the Rights-of-Way contain limited and finite capacity, the administration of this Act and the Franchise by the Grantor, the usage and interference with the public's use of Rights-of-Way, the reduction in the useful life of the Rights-of-Way and other costs and obligations” undertaken by the City, each grantee of a Franchise shall pay to the City an annual compensation pursuant to formulas set forth in City Code Sec. 30-50.

16.

City Code Sec. 30-50(d)(1) requires that within 30 days after the effective date of a Franchise, each grantee shall create a fund deposit of up to \$100,000.00, or, at the grantee's option, post a performance bond, as security for:

- a. The faithful performance by it of all the provisions of the franchise; and
- b. Compliance by grantee with all orders, permits and directions of any agency of the

- grantor having jurisdiction over grantee's acts or defaults pursuant to this Act; and
- c. The payment by the grantee of any claims, liens, fees and/or taxes due the grantor which arise by reason of the construction, operation or maintenance of the system.

17.

City Code Sec. 30-50(d)(2) provides that if a Franchise grantee fails to pay the City any fees due, then the Grantee shall be deemed to have committed a material violation of the Franchise and in that event the City may immediately withdraw the amount thereof from the Security Fund.

18.

City Code Sec. 30-50(d)(5) provides that the rights reserved to the City with respect to the Security Fund are in addition to any other rights the City has “whether reserved by this Act or authorized by law, and no action, proceeding or exercise of a right with respect to such Security Fund shall affect any other right the [City] may have” including filing this Petition.

19.

City Code Sec. 30-50(c) provides that “[u]pon expiration of the initial term of the Franchise, the [City] may, at its election renew the Franchise. A Franchise may be renewed by the [City], upon application by the Grantee, in accordance with the then existing rules, the New Orleans City Charter, and applicable law. Nothing in this provision shall be construed to require such renewal.”

Franchise Agreements Between the City and Defendants

21.

On July 3, 1996, the City Council of New Orleans (“Council”) adopted Ordinance No. 17636 M.C.S. that granted American Communications Services of Louisiana (predecessor to TW Telecom of Louisiana, LLC) a non-exclusive Franchise (“ACS Franchise”) to construct, maintain, and operate a wireline telecommunications system throughout the rights-of-way of the City (Ex. A). The purpose of the ACS Franchise was to provide telecommunications services, including, but not limited to, fully digital voice, data, video imaging and other enhanced telecommunications services. The ACS Franchise was initially granted for a fifteen-year term from the effective date of the ordinance. In exchange for the non-exclusive ACS Franchise, American Communications Services of Louisiana agreed to remit five percent (5%) of its gross receipts due every quarter.

22.

Upon information and belief, TW Telecom of Louisiana, LLC acquired American Communications Services of Louisiana and assumed the obligations, debts, and liabilities of American Communications Services of Louisiana. TW Telecom of Louisiana, LLC changed its name to Level 3 Telecom of Louisiana, LLC on or about March 2, 2016.

23.

To date, payment has not been made from the second, third and fourth quarters of 2019; nor have payments been made for first the and second quarters of 2020 as required by the terms and conditions of the ACS Franchise and the provisions of the Act.

24.

Level 3 Telecom of Louisiana is illegally using the Public Property and Rights-of-Way of the City of New Orleans because the ACS Franchise terminated on May 31, 2014. Level 3 Telecom of Louisiana has no authority to utilize the Public Property and Rights-of-Way of the City of New Orleans because it holds no valid Franchise from the City of New Orleans.

25.

On July 1, 1999, the Council adopted Ordinance No. 19290 M.C.S. that granted Hyperion Telecommunications a non-exclusive Franchise ("Hyperion Franchise") to construct, maintain, and operate a wireline telecommunications system throughout the rights-of-way of the City (Ex. B). The purpose of the Hyperion Franchise was to operate a Competitive Local Exchange Carrier ("CLEC"). The Hyperion Franchise was initially granted for a fifteen-year term from June 1, 1999 to May 31, 2014. In exchange for the non-exclusive Hyperion Franchise, Hyperion agreed to remit five percent (5%) of its gross receipts due every quarter.

26.

Upon information and belief, TelCove Holdings of Louisiana acquired Hyperion Telecommunications on October 29, 2007, and assumed the obligations, debts, and liabilities of Hyperion Telecommunications.

27.

TelCove Holdings of Louisiana currently owes the City of New Orleans at least \$52,486.00 in franchise fees, interest, and late fees from 2010-2012 pursuant to the terms and conditions of

the Hyperion Franchise and the provisions of the Act.

28.

TelCove Holdings of Louisiana is illegally using the Public Property and Rights-of-Way of the City of New Orleans because the Hyperion Franchise terminated on May 31, 2014. TelCove has no authority to utilize the Public Property and Rights-of-Way of the City of New Orleans because it holds no valid Franchise from the City of New Orleans.

29.

On November 4, 1999, the Council adopted Ordinance No. 19440 M.C.S. that granted Level 3 Communications, LLC a non-exclusive Franchise ("Level 3 Franchise") to construct, maintain, and operate a wireline telecommunications system occupying a total of 49,650 linear ft. of the City's rights-of-way (Ex. C). The purpose of the Level 3 Franchise was the installation of a system to operate a Long-Distance Network Service System. The Level 3 Franchise was initially granted for a period of fifteen years beginning October 1, 1999 and ending on September 30, 2014. In exchange for the privilege of operating in Orleans Parish, Level 3 Communications agreed to pay \$2.60 per liner ft. or \$129,090.00 per annum.

30.

Level 3 Communications, LLC owes the City of New Orleans at least \$4,912,217.52 in franchise fees, interest, and late fees from 2007-2020 pursuant to the terms and conditions of the Level 3 Franchise and the provisions of the Act.

31.

Level 3 Communications, LLC is illegally using the Public Property and Rights-of-Way of the City of New Orleans because the Level 3 Franchise terminated on September 30, 2014. Level 3 Communications, LLC has no authority to utilize the Public Property and Rights-of-Way of the City of New Orleans because it holds no valid Franchise from the City of New Orleans.

32.

On October 5, 2000, the Council adopted Ordinance No. 19842 M.C.S. that granted Global Crossing North American Networks, Inc. a non-exclusive Franchise ("Global Crossing Franchise") to construct and operate a wireline telecommunications system occupying a total of 770 linear ft. of the City's rights-of-way (Ex. D). The purpose of the Global Crossing Franchise

was the installation of a system to operate a Long-Distance Network Service System. The Global Crossing Franchise was initially granted for a period of fifteen years beginning October 1, 2000 and ending on September 30, 2015. In exchange for the privilege of operating in Orleans Parish, Global Crossing North American Networks, Inc. agreed to pay \$2.60 per linear ft. or (\$2,002.00) per annum. In addition, beginning in 2001, and every five years thereafter, the compensation would be increased by the average increase of the Consumer Price Index (“CPI”) for the previous five years.

33.

Upon information and belief, Global Crossing Telecommunications, Inc., merged with Global Crossing North American Networks, LLC on February 2, 2011 and assumed the obligations, debts, and liabilities of Global Crossing North American Networks, LLC.

34.

Currently, Global Crossing Telecommunications, Inc. owes the City of New Orleans at least \$73,351.11 in franchise fees, interest, and late fees from 2008-2020 pursuant to the terms and conditions of the Global Crossing Franchise and the provisions of the Act.

35.

Global Crossing Telecommunications, Inc. is illegally using the Public Property and Rights-of-Way of the City of New Orleans because the Global Crossing Franchise terminated on May 31, 2014. Global Crossing Telecommunications has no authority to utilize the Public Property and Rights-of-Way of the City of New Orleans because it holds no valid Franchise from the City of New Orleans.

36.

On May 17, 2001, the Council adopted Ordinance No. 20145 M.C.S. that granted Williams Communications a non-exclusive Franchise (“Williams Franchise”) to construct and operate a wireline telecommunications system occupying a total of 89,692 linear ft. of the City’s rights-of-way (Ex. E). The purpose of the Williams Franchise was the installation of a system to operate a Long-Distance Network Service System. The Williams Franchise was initially granted for a period of fifteen years beginning June 1, 2001 and ending on May 31, 2016. In exchange for the privilege of operating in Orleans Parish, Williams Communications agreed to pay a franchise fee

of \$2.60 per linear ft. or \$233,199.20 per annum. In addition, beginning in 2001, and every five years thereafter, the franchise fee would be increased by the average increase of the CPI for the previous five years.

37.

Upon information and belief, Williams Communications, Inc. merged with WilTel Communications, LLC on or about September 14, 2005 and WilTel Communications, LLC assumed all obligations, debts, and liabilities of Williams Communications.

38.

WilTel Communications, LLC currently owes at least \$8,421,202.38 in franchise fees, interest, and late fees from 2008-2020 pursuant to the terms and conditions of the Williams Franchise.

39.

Upon information and belief, WilTel Communications, LLC is illegally using the Public Property and Rights-of-Way of the City of New Orleans because the Williams Franchise terminated on May 31, 2016. TelCove has no authority to utilize the Public Property and Rights-of-Way of the City of New Orleans because it holds no valid Franchise from the City of New Orleans.

Causes of Action

I. Breach of Contract

40.

Plaintiff incorporates and reasserts the allegations in paragraphs 1-39.

41.

A contract is formed where there is: (1) the capacity to contract; (2) mutual consent; (3) a certain object; and (4) a lawful cause. *Ramos v. Liberty Bank and Trust Company*, 18-0612 (La.App. 4 Cir. 12/19/18), 262 So.3d 917.

42.

The subject franchises are contracts under Louisiana law. In exchange for the non-exclusive use of the City's Public Property and Rights-of-Way, each of the Defendants was required to pay franchise fees to the City on a quarterly, or annual, basis.

43.

Each of the Defendants has failed to remit payment of their respective franchise fees and are in breach of their respective Franchises with the City.

44.

As such, the City seeks as damages all past due franchise fees, interest, and penalties and other amounts due from Defendants because of their breaches.

II. Violations of the Wireline Telecommunications Franchise Act

45.

Plaintiff incorporates and reasserts the allegations in paragraphs 1-44.

46.

Pursuant to the authority granted to it by the Home Rule Charter and La. R.S. 33:4401, the City Council has the power to grant franchises for the use of the City's streets and rights-of-way for the furnishing of services to the City and/or its residents.

47.

Pursuant to the authority granted to it by the Home Rule Charter and La. R.S. 33:4401, the City Council enacted the Act establishing procedures, terms, and conditions for managing the occupation of Public Property and the rights-of-way within the City of New Orleans by providers of Wireline Telecommunications Systems; to define the relationship between the Grantee(s) and the City; and to provide for the administration and supervision by the City of Franchises throughout the term of each Franchise.

48.

In consideration of the privilege of using the City's streets and rights-of-way, the Act provides that all Wireline Telecommunications System ("System") operators shall pay the city a franchise fee as set out in the Act.

49.

Each of the Defendants is a Grantee who is using the City's streets and rights-of-way making each of them subject to the Act.

50.

In exchange for the privilege of using the City's streets and rights-of-way, the Act requires

Defendants to pay the City franchise fees as set forth in the Act.

51.

As such, the City seeks as damages all past due franchise fees, interest, penalties, and other amounts due from Defendants pursuant to the Act.

52.

Defendants have also operated past their original term as prescribed by the Act and have failed to apply timely for renewal. As a result, the City seeks a declaratory judgment declaring Defendants in violation of the Act and requiring removal of their equipment from the City's streets and rights-of-way.

III. Unjust Enrichment

53.

Plaintiff incorporates and reasserts the allegations in paragraphs 1-52.

54.

In the alternative, Plaintiff pleads unjust enrichment. Louisiana Civil Code Article 2298 provides that "[a] person who has been enriched without cause at the expense of another person is bound to compensate that person."

55.

As a result of each Defendant's failure to comply with each of their respective Franchises, each Defendant has been unjustly enriched without cause at the expense of Plaintiff. Specifically, each Defendant has continued to operate along the City's streets and rights-of-way without renewing each of their respective Franchises as required by law, and each Defendant has profited from having its equipment maintained and operated along the City's streets and rights-of-way, without paying the required franchise fees, interest and late fees.

IV. Removal of Property

56.

Plaintiff incorporates and reasserts the allegations in paragraphs 1-55.

57.

City Code Section 30-51(b) provides that "[a]t the expiration or termination of any franchise the [City] shall have the right to require the grantee to remove, at its own expense, all

portions of the telecommunications system from all public property and rights-of-way within the city.”

58.

Although each Defendant’s franchise has terminated, each Defendant has failed to remove its equipment from the public property and rights-of-way within the City. Specifically, each Defendant is illegally occupying and using the public property and/or rights-of-way of the City of New Orleans without a franchise. Accordingly, Plaintiff requests a mandatory injunction compelling each Defendant to remove its equipment from the public property and rights-of-way within the City.

WHEREFORE, Plaintiff, the City of New Orleans, prays that each of the Defendants be served with this Petition, and after due proceedings are had there be judgment in favor of the City of New Orleans and against Defendants as follows:

1. Level 3 Telecom of Louisiana, LLC:
 - a. Defendant has breached Franchise Ordinance No. 17636;
 - b. Defendant owes payments for the second, third, and fourth quarters of 2019, and the first and second quarters of 2020;
 - c. Defendant has violated the Wireline Telecommunications Franchise Act by failing to remit the required fees;
 - d. In the alternative, Defendant has been unjustly enriched by continuing to operate without a Franchise;
 - e. In the further alternative, a mandatory injunction issue herein each Defendant to remove its equipment from the public property and rights-of-way within the City;
 - f. The City prays for such other and further relief to which it may be entitled, including, but not limited to general, special, and equitable relief, together with reasonable attorney’s fees, and costs.
2. TelCove Holdings of Louisiana:
 - a. Defendant has breached Franchise Ordinance No. 19290;
 - b. Defendant owes at least \$52,486.00 in franchise fees, interest, and late fees from 2010-2012;
 - c. Defendant has violated the Wireline Telecommunications Franchise Act by failing to remit the required fees;
 - d. In the alternative, Defendant has been unjustly enriched by continuing to operate without a Franchise;

- e. In the further alternative, a mandatory injunction issue herein each Defendant to remove its equipment from the public property and rights-of-way within the City;
 - f. The City prays for such other and further relief to which it may be entitled, including, but not limited to general, special, and equitable relief, together with reasonable attorney's fees, and costs.
 3. Level 3 Communications, LLC
 - a. Defendant has breached Franchise Ordinance No. 19440;
 - b. Defendant owes at least \$4,912,217.52 in franchise fees, interest, and late fees from 2008-2020;
 - c. Defendant has violated the Wireline Telecommunications Franchise Act by failing to remit the required fees;
 - d. In the alternative, Defendant has been unjustly enriched by continuing to operate without a Franchise;
 - e. In the further alternative, a mandatory injunction issue herein each Defendant to remove its equipment from the public property and rights-of-way within the City;
 - f. The City prays for such other and further relief to which it may be entitled, including, but not limited to general, special, and equitable relief, together with reasonable attorney's fees, and costs.
 4. Global Crossing Telecommunications, Inc.
 - a. Defendant has breached Franchise Ordinance No. 19842;
 - b. Defendant owes at least \$73,351.11 in franchise fees, interest, and late fees from 2008-2020;
 - c. Defendant has violated the Wireline Telecommunications Franchise Act by failing to remit the required fees;
 - d. In the alternative, Defendant has been unjustly enriched by continuing to operate without a Franchise;
 - e. In the further alternative, a mandatory injunction issue herein each Defendant to remove its equipment from the public property and rights-of-way within the City;
 - f. The City prays for such other and further relief to which it may be entitled, including, but not limited to general, special, and equitable relief, together with reasonable attorney's fees, and costs.
 5. WilTel Communications, LLC.
 - a. Defendant has breached Franchise Ordinance No. 20145;
 - b. Defendant owes at least \$8,421,202.38 in franchise fees, interest, and late fees from 2008-2020;

- c. Defendant has violated the Wireline Telecommunications Franchise Act by failing to remit the required fees;
 - d. In the alternative, Defendant has been unjustly enriched by continuing to operate without a Franchise;
 - e. In the further alternative, a mandatory injunction issue herein each Defendant to remove its equipment from the public property and rights-of-way within the City;
 - f. The City prays for such other and further relief to which it may be entitled, including, but not limited to general, special, and equitable relief, together with reasonable attorney's fees, and costs.
6. CenturyLink, Inc.
- a. As parent company to the preceding defendants, CenturyLink is liable for their breach;
 - b. As such, Defendant owes at least \$12,959,257.01 in franchise fees, interest, and late fees;
 - c. Defendant has violated the Wireline Telecommunications Franchise Act by failing to remit the required fees;
 - d. In the alternative, Defendant has been unjustly enriched by continuing to operate without a Franchise;
 - e. In the further alternative, a mandatory injunction issue herein each Defendant to remove its equipment from the public property and rights-of-way within the City;
 - f. The City prays for such other and further relief to which it may be entitled, including, but not limited to general, special, and equitable relief, together with reasonable attorney's fees, and costs.

Respectfully submitted,



SUNNI J. LEBEOUF, LSB# 28633
CITY ATTORNEY

DONESIA D. TURNER, LSB# 23338
SR. CHIEF DEPUTY CITY ATTORNEY

CHURITA H. HANSELL, LSB# 25694
CHIEF DEPUTY CITY ATTORNEY

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Counsel for Plaintiff, City of New Orleans

PLEASE SERVE:

CenturyLink, Inc.

Through its registered agent of process
CT Corporation System
3867 Plaza Tower Dr.
Baton Rouge, Louisiana 70186

TelCove Holdings of Louisiana, Inc.

Through its registered agent of process
Corporation Service Co.
501 Louisiana Ave.
Baton Rouge, Louisiana 70802

Level 3 Communications, LLC

Through its registered agent of process
CT Corporation System
3867 Plaza Tower Dr.
Baton Rouge, Louisiana 70186

Level 3 Telecom Holdings, LLC

Through its registered agent of process
CT Corporation System
3867 Plaza Tower Dr.
Baton Rouge, Louisiana 70186

Level 3 Telecom of Louisiana, LLC

Through its registered agent of process
CT Corporation System
3867 Plaza Tower Dr.
Baton Rouge, Louisiana 70186

Level 3 Telecom Management Co., LLC

Through its registered agent of process
CT Corporation System
3867 Plaza Tower Dr.
Baton Rouge, Louisiana 70186

Global Crossing Telecommunications, Inc.

Through its registered agent of process
CT Corporation System
3867 Plaza Tower Dr.
Baton Rouge, Louisiana 70186

WiTel Communication, Inc.

Through its registered agent of process
CT Corporation System
3867 Plaza Tower Dr.
Baton Rouge, Louisiana 70186

570

7/11/11
7/11/11

1102
July 2011

ORDINANCE
(AS AMENDED)
CITY OF NEW ORLEANS

CITY HALL: February 2, 1999

CALENDAR NO: 19.809

NO. 17636 MAYOR COUNCIL SERIES
BY: COUNCILMEMBER THOMAS (BY REQUEST)

AN ORDINANCE granting non-exclusive permission to AMERICAN COMMUNICATION SERVICES OF LOUISIANA, INC., ("ACSI"), to construct, maintain and operate an underground conduit system and an aerial system of telecommunications cables for a municipal area network in the City of New Orleans, to permit cuts in the street and sidewalk pavement necessary for such installation; to provide for the furnishing of a surety bond, application fee and annual payment; and to otherwise provide with respect thereto.

1 SECTION 1. THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY
2 ORDAINS that a permit and a privilege be and the same are hereby granted to ACSI, the
3 Grantee, to construct, use and maintain new conduit and/or to use and maintain existing conduit
4 owned by utilities, investor owned organizations or other entities as necessary (and as may be
5 negotiated with same), and to construct, use and maintain a network of telecommunications cable
6 (hereinafter referred to as the "telecommunications system"), including feeder cable to buildings,
7 in streets and public ways throughout the New Orleans Central Business District as well as in
8 other areas of the City to permit cuts in the street and sidewalk pavement necessary for such
9 installation and maintenance and to provide conduit, pole and telecommunications bridge
10 attachments for telecommunications cables within the limits of the City of New Orleans.

11 Prior to construction or alteration of such facilities, the Grantee shall notify the
12 Department of Utilities in writing of the proposed construction and/or alteration. The Grantee
13 shall obtain the necessary permits from the Streets Department, Maintenance Division.

14 The purpose of the telecommunications system as described is to provide
15 telecommunications services, including but not limited to fully digital voice, data, video imaging
16 and other enhanced telecommunications services. On its dedicated, high-capacity links for local
17 businesses and government users, and other services that Grantee may be authorized to provide
18 in the future. Grantee shall not use its telecommunications system to provide programming
19 services or cable services or operate a cable system as defined in the Cable Communication
20 Policy Act of 1984 (47 U.S.C.A. section 521, et. seq., as amended) or as recognized by the

EXHIBIT
A

21 Federal Communications Commission (the "FCC") without first obtaining a separate
22 authorization from the Grantor, and Grantee shall not allow the use of the telecommunications
23 system by a provider of programming services or a cable system to offer video programming
24 that has not been granted a Franchise by the Grantor.

1 SECTION 2. This permit and privilege is granted for the duration of this Ordinance, for
2 a fee based upon a percentage of Grantee's gross receipts.

3 In the event of conflict between the terms and conditions of this privilege and permit and
4 the terms and conditions on which the City can grant a privilege and permit as set forth in the
5 City Charter, the City Charter shall control.

6 This Ordinance is hereby made subject to the City Charter and general ordinance
7 provisions now in effect. Nothing in this Ordinance shall be deemed to waive the requirements
8 of the various codes and ordinances of the City regarding permits, fees to be paid or manner of
9 construction.

1 SECTION 3. PERMIT NONEXCLUSIVE.

2 A. Grant. This franchise shall be nonexclusive. The Grantor specifically reserves the
3 right to (i) grant at any time such additional permits for another telecommunication system as
4 it deems appropriate, and/or (ii) build, operate, and own such other telecommunications system
5 or systems as it deems appropriate.

1 SECTION 4. Rights, Powers and Authority of the City. In accepting this permit, ACSI
2 acknowledges that its rights hereunder are subject to the police powers of the City of New
3 Orleans to adopt and enforce general ordinances necessary for the safety and welfare of the
4 public and it agrees to comply with all applicable general laws and ordinances enacted by the
5 City of New Orleans pursuant to such power, as provided by ordinance. Nothing herein shall
6 be construed to waive, surrender or relinquish any right, power or authority of the City of New
7 Orleans under the Home Rule Charter relative to or in connection with American
8 Communication Services of Louisiana, Inc. for services provided within the territorial limits of
9 Orleans Parish.

10 The permit and privilege granted herein is non-exclusive. The Grantor specifically
11 reserves the right to grant, at any time, such additional permits and privileges for fiber optic or
12 other communications systems as it deems appropriate.

1 SECTION 5. Definitions. For the purposes of this Ordinance, the following words,
 2 terms, phrases, and their derivations shall have the meanings given herein. When not
 3 inconsistent with the context, words used in the present tense include the future tense, words in
 4 the plural number include the singular number, and words in the singular number include the
 5 plural number. The word "shall" is always mandatory and not merely discretionary.

6 "APPROVED" means approved in writing by the Director of Utilities or designated
 7 representative.

8 "CITY" means the City of New Orleans, Louisiana, and all the territory within its
 9 present and future corporate boundaries.

10 "CITY COUNCIL" means the Council of the City of New Orleans.

11 "DARK FIBER" means unused fiber through which no light is transmitted or installed
 12 fiber optic cable not carrying a signal.

13 "DURATION" means the term of this permit and privilege.

14 "EFFECTIVE DATE" means the effective date of this permit and privilege.

15 "FAIR MARKET VALUE" means, with regard to Telecommunications Services provided
 16 by Grantee, the price of such services as shown in Grantee's tariff, if any, on file with the
 17 LPSC. If the Telecommunications Services provided are not tariffed services, the Fair Market
 18 Value of those Telecommunications Services means the price that would be obtained therefor in
 19 an arms-length transaction. Fair Market Value is subject to verification by Grantor.

20 "FCC" means the Federal Communications Commission or a designated representative.

21 "GRANTEE" means American Communication Services of Louisiana, Inc. to which a
 22 privilege and permit henceforth is granted for the construction, operation, enlargement and
 23 maintenance, replacement, repair or removal of telecommunications facilities and the lawful
 24 successors, transferees, or assignees of said corporation or entity.

25 "GRANTOR" means the City of New Orleans as represented by the City Council acting
 26 within the scope of its jurisdiction.

27 "GROSS RECEIPTS" means all revenues collected by the Grantee for
 28 telecommunications services provided by the Grantee, its affiliates, successors, agents,
 29 subsidiaries, partners, or assigns to Customers located within the corporate limits of the City,
 30 and including, but not limited to, charges for the provision of recurring and non-recurring

31 service, data and message service, private line service, access charges, public telephone revenue,
32 directory assistance, directory advertising, revenues from the authorized Lease of Equipment and
33 Plant, and revenues from the resale of telecommunications services. Gross receipt is not
34 intended to cover revenue from Long Distance Network Service or wireless communication
35 services. To the extent that the Grantee does not segregate Long Distance Network Service
36 revenues from other revenues, or other revenues are commingled with Long Distance Network
37 Service revenues, all such commingled revenues shall be included in gross receipts. Gross
38 receipts shall not include any sales or excise taxes collected for direct pass through to local,
39 state, or federal governments. If Grantee participates in the provision of its telecommunications
40 system and/or associated assets with another Person whereby Grantee does not receive
41 reasonable monetary compensation then the Fair Market Value of the services or assets provided
42 by Grantee shall be imputed to Grantee's Gross Receipts for the purpose of calculating Franchise
43 Fees due to the Grantor. Without limitation of the foregoing, the Fair Market Value of
44 Grantee's transactions resulting in Gross Receipts is subject to verification by Grantor.

45 "LONG DISTANCE NETWORK SERVICE" shall mean those Telecommunications
46 Services provided by Grantee, whether message or flat rate and including public network
47 switching as well as private, that (i) either originate or terminate Toll Calls within the City or
48 (ii) pass through the City without originating or terminating Toll Calls therein. Revenues
49 derived from Long Distance Network Service shall include those revenue accounts specified in
50 47 CFR Part 32, as amended.

51 "PERSON" means any corporation, partnership, proprietorship, individual or organization
52 doing business in the State of Louisiana, or any natural person.

53 "SECTION" means any section, subsection, or provision of this privilege ordinance.

54 "STREETS AND PUBLIC WAYS" means the surface of and the space above and below
55 any public street, sidewalk, alley, or other public way of any type whatsoever, now or hereafter
56 existing as such within the City.

57 "TELECOMMUNICATIONS" means the transmission, between or among points
58 specified by the user of information or the user's choosing, including voice data, image,
59 graphics, and video, without change in the form or content of the information as sent and
60 received.

61 "TELECOMMUNICATIONS SERVICE" means services offered by means of a
62 Telecommunication System.

63 "TELECOMMUNICATIONS SYSTEM" or "SYSTEM" means the Equipment and Plant
64 essential to the transmission, between or among points specified by the Subscriber, of
65 information of the Subscriber's choosing (including the collection, storage, forwarding,
66 switching, and delivery of such information), without change in the form or content of the
67 information as sent and received, by means of an electromagnetic transmission, fiber optic
68 media, Wireless Communications System, or any combination thereof. For the purpose of this
69 Act, such terms shall include the provision of Long Distance Network Service, local exchange
70 service and competitive local access services.

71 "WIRELESS COMMUNICATIONS SYSTEM" means any system which uses a form of
72 cellular telephony which allows customers to access and/or make telephone calls to each other
73 through a system which transmits signals through the air or over the Public Switched Telephone
74 Network (PSTN) using cordless telephone devices which communicate with limited range cells
75 (transmitter/receiver sites) connected to a Backhaul Network. Wireless Communications System
76 shall include Mobile Service.

1 SECTION 6. General Requirements. Grantee shall comply with the requirements of
2 this Ordinance listed below:

3 (a) Damages and Defense.

4 1. Hold Harmless. The Grantee shall hold the Grantor harmless for all damages
5 and penalties suffered as a result of, or arising out of, the Grantee's negligent use, installation,
6 maintenance, repair and/or operation of the telecommunications system authorized whether or
7 not any act or omission complained of is authorized, allowed, or prohibited by the Franchise.
8 This provision is not intended to create liability for the benefit of third parties but is solely for
9 the benefit of the Grantor and the Grantee. In the event any claim is made against the City that
10 falls under this indemnity and a court of competent jurisdiction should adjudge, by final decree,
11 that the Grantor is liable therefor, the Grantee shall indemnify and hold the Grantor harmless
12 of and from any such judgment or liability, including any court costs, expenses, and attorney
13 fees incurred by the Grantor in defense thereof. Upon commencement of any proceeding at law
14 or in equity against the Grantor relating to or covering any matter covered by this indemnity,

15 wherein the Grantee has agreed, by accepting the Franchise, to indemnify and hold the Grantor
16 harmless, or to pay said final judgment and costs, as the case may be, the Grantor shall give the
17 Grantee immediate notice of such suit or proceeding. The Grantee shall provide a defense to
18 any such suit or proceeding. The Grantee shall provide a defense to any such suit or suits,
19 including any appellate proceedings brought in connection therewith, and pay as aforesaid, any
20 final judgment or judgments that may be rendered against the Grantor by reason of such damage
21 suit. Upon failure of the Grantee to comply with the "defense of suit" provisions of subsection
22 (a)2. below, after reasonable notice to it by the Grantor, the Grantor shall have the right to
23 defend the same and in addition to being reimbursed for any such judgement that may be
24 rendered against the Grantor, together with all court costs incurred therein, the Grantee shall
25 reimburse the Grantor for attorney's fees, including those employed by the Grantor in such case
26 or cases, as well as all expenses incurred by the Grantor by reason of undertaking the defense
27 of such suit or suits, whether such suit or suits are successfully defended, settled, compromised,
28 or fully adjudicated against the Grantor.

29 2. Defense Expense. The Grantee shall pay all expenses incurred by the Grantor
30 in defending itself with regard to all damages and penalties mentioned in subsection (a)1, above
31 and for all claims against Grantor arising out of the Franchise. These expenses shall include all
32 out-of-pocket expenses, such as attorney fees, and shall also include the reasonable value of any
33 services rendered by any employees of the Grantor. In the event the Grantor is compelled to
34 undertake the defense of any such suit by reason of the Grantee's failure to perform as here and
35 above provided, the Grantor shall have the full right and authority to make or enter into any
36 settlement or compromise of such adjudication as the City Council shall deem in the best interest
37 of the Grantor, this without the prior approval or consent of the Grantee with respect to the
38 terms of such compromise or settlement.

39 (b) Recourse Against Grantor. The Grantee shall have no recourse
40 whatsoever against the Grantor or its officials, boards, commissions, agents, or employees for
41 any loss, costs, expense, or damages arising out of any provision or requirement of the privilege
42 or because of the enforcement of the privilege.

43 (c) Insurance. Grantee shall furnish proof that satisfactory insurance policies
44 are in force, in the minimum amounts shown below:

45	Worker's Compensation (if applicable):	
46	Bodily Injury by Accident	\$100,000 each injury
47	Bodily Injury by Disease,	
48	Policy Limit	\$500,000
49	Bodily Injury by Employee	\$100,000 each employee
50	Commercial General Liability	\$2,000,000 each occurrence
51		\$2,000,000 aggregate
52	Property Damage	\$500,000/1,500,000
53	Motor Vehicle (if applicable)	\$2,000,000 CSL (Combined
54		(Single Limit)
55	Builder's Risk "All Risk"	100% of contract amount

56 Grantee shall, at its own expense, maintain in full force and effect throughout the
57 duration of this privilege a liability insurance policy or policies. Such policy or policies shall
58 be underwritten by a carrier licensed to do business in the State of Louisiana and rated by Best's
59 as either A or AA on the effective date of the policy or policies. A copy of the certificate of
60 insurance evidencing such policy or policies shall be submitted to Grantor. Said policy or
61 policies shall name the City of New Orleans, including its boards and commissions and its
62 officers, agents and employees, jointly and severally, and the Sewerage & Water Board of New
63 Orleans as additional insureds. Said policy or policies shall apply as primary insurance and shall
64 stipulate that no other insurance in effect by the City will be called on to contribute to a loss
65 covered hereunder and shall provide for a waiver of subrogation in favor of the Sewerage &
66 Water Board of New Orleans. A copy of the certificate of insurance shall be on file with the
67 Department of Utilities and maintained current at all times. Said policy or policies shall provide
68 forty-five (45) days notice to the Director of Utilities if the policy or policies should be canceled
69 or materially changed.

70 (d) Surety Bond. Grantee shall furnish a good and solvent surety bond, in solido,
71 in the sum of One Hundred Thousand and No/100 Dollars (\$100,000.00) to guarantee fulfillment
72 of all the provisions of this Ordinance.

73 (e) Construction Timetable. The Grantee shall be capable of providing services to
74 end-users within two (2) years of the effective date of this franchise.

75 (f) Duration. The term of this permit and privilege and all rights, privileges,
76 obligations and restrictions pertaining thereto shall be 15 years from the effective date of the
77 Ordinance unless terminated sooner as hereinafter provided. The effective date of this ordinance
78 shall be sixty (60) days after passage by the Council unless the Grantee fails to file by that time
79 in the appropriate office of the City a written acceptance of this Ordinance in accordance with
80 Section 20, infra, in which event it shall be null and void.

81 (g) Open Books and Records. The Grantee shall maintain an office within the City
82 or shall appoint and file and record with the Director of Utilities and the City Attorney, an agent
83 within the City of New Orleans for service of process. In connection with its right to audit as
84 set forth in Section 8, infra, the Grantor shall have the right to inspect at any time upon
85 reasonable notice during normal business hours, books, records, maps, plans, income tax
86 returns, financial statements and other information of the Grantee which relates to compliance
87 with this Ordinance. Grantor shall have the right to require information from the Grantee that
88 is reasonably related to this franchise. Such information must be provided within a reasonable
89 time period. Grantor shall have access to the aforementioned records reasonably necessary for
90 audit purposes upon execution of a confidentiality agreement, and shall treat all such information
91 as confidential. The Grantee agrees to pay reimbursement of reasonable audit expenses if an
92 audit discovers a discrepancy of at least five percent (5%) between reported and audited
93 amounts. The conditions pursuant to which Grantee can be required to pay reimbursement of
94 reasonable audit expenses, or a designated portion of reasonable audit expenses, may be changed
95 during the term of this privilege and permit only if such change is enacted by the City in an
96 ordinance of general application, which ordinance and the conditions pursuant to which full or
97 partial reimbursement of reasonable audit expenses will be required, must also be applicable to
98 local exchange service provider(s), including South Central Bell, in the City.

99 (h) Dark Fiber Provisions. Grantee shall provide six (6) dark fibers in every portion
100 of the fiber backbone cable of the telecommunications system installed during the term of the
101 Franchise for the Grantor's non-commercial use. Grantee shall also provide feeder cables to the
102 entry links of seven (7) public buildings to be designated by the City, or the Grantee can pay
103 to the City the value of providing the dark fibers to the public buildings, provided that the public
104 buildings and entry links are adjacent to Grantee's telecommunications system and the Grantor

105 constructs, or otherwise provides, the entry link to those buildings for such feeder cable.
106 Grantee shall also provide feeder cable to the entry link of one public building for every three-
107 (3) miles added to the network route after the initial route is constructed.

108 i. For purposes of this Subsection, "adjacent" shall mean adjoining or abutting a
109 portion of the Right-of-Way containing Grantee's telecommunications system, and "public
110 building" shall mean any City-owned buildings in which public functions are performed and
111 primary and secondary parochial, private and public schools.

112 ii. If the initial dark fibers are not functional due to any cause, the Grantee shall
113 provide fully operational dark fibers at no cost to the Grantor.

114 iii. The City may interconnect such dark fibers to any other telecommunications
115 system.

116 iv. In the event another franchisee has provided fiber optic cable to one of the seven
117 (7) public buildings adjacent to the Grantee's telecommunications system, the City may accept,
118 at its sole option, and in lieu of Grantee providing lateral connections, other services, facilities,
119 funds, or other financial arrangements similar in value to the provision of dark fibers provided
120 such services, facilities, funds, or other financial arrangements are related to the provision of
121 telecommunications services. In the event funds are paid to the City, such funds are to be used
122 for the sole purpose of purchasing telecommunications-related equipment.

123 v. The value of providing the dark fibers to each of the seven (7) public buildings
124 shall be determined on a building by building basis and shall be considered to be the average of
125 the amount reflected in price quotes to be obtained from three (3) independent construction
126 companies. The Grantor and Grantee will each select one construction company and the third
127 will be selected by mutual agreement. IF the Grantor and Grantee fail to agree on the third
128 construction company, the City Council will make the selection.

129 vi. The Grantee shall allow City-owned communications interface equipment, which
130 is compatible with the Grantee's equipment, to be co-located at the Grantee's principal hub site
131 or other mutually agreed upon location. At such site Grantee shall provide, free of charge a 30
132 inch x 36 inch x 6 foot space for City equipment. The Grantee shall not charge the City for the
133 use or maintenance of the dark fibers or the maintenance of co-located equipment mentioned
134 previously.

135 vii. The City shall obtain, or otherwise provide, necessary authorization, license,
136 easement or permit for entry into public buildings as provided for herein. On a best effort's
137 basis, the City shall obtain and otherwise provide necessary authorization, license, easement or
138 permit for such public building entry for the Grantee to utilize for its own telecommunication
139 system.

140 (i) Grantee shall obtain all necessary authority to transact business in New Orleans from
141 the appropriate state and federal regulatory agencies prior to providing service in New Orleans.

1 SECTION 7. Recovery of Costs. The costs for official notices for promulgation of this
2 Ordinance, Five Hundred Dollars (\$500.00), shall be paid by the Grantee, and failure to do so
3 shall be grounds for cancellation of the permit and privilege granted by this Ordinance.

4 Grantee shall pay Grantor a \$10,000.00 Acceptance Fee in addition to the costs for
5 official notices.

6 Grantee shall pay the Acceptance Fee and the costs for official notices upon submission
7 of its written acceptance of this ordinance.

1 SECTION 8. Payments to Grantor.

2 (a) No acceptance of any payment shall be construed as an accord that the amount paid
3 is in fact the correct amount, nor shall such acceptance of payment be construed as a release of
4 any claim the Grantor may have for further or additional sums payable under the provisions of
5 this ordinance. All amounts paid shall be subject to audit and recomputation by Grantor. No
6 audit or recomputation by Grantor shall occur later than one (1) year after the Grantee's
7 quarterly payment for a given year is tendered.

8 (b) In accordance with the provisions of this ordinance, as compensation for the use
9 of the streets and public ways of the City for the construction, operation, maintenance and/or
10 the reconstruction of telecommunications system granted hereby within the City, the Grantee
11 shall pay to the City an annual amount in quarterly installments due January 1, and every quarter
12 thereafter, based upon 5% of Grantee's gross receipts.

13 Grantee shall provide to the City's Director of the Department of Utilities a statement
14 in certificate form, signed by the Secretary of the Grantee or a Certified Public Accountant,
15 setting forth the amount of gross annual revenues, including specifically sources of such
16 revenues and the amount of revenue derived from each and every source thereby totalling the

17 amount of compensation due and payable to the City. The statement will be accorded
18 confidential treatment by the City pursuant to a confidentiality agreement, which shall be entered
19 by and between Grantor and Grantee. Subject to the terms of a Confidentiality Agreement, the
20 said statement, and such records of Grantee as are reasonably necessary for audit purposes, may
21 be made available to an independent firm for an audit of Grantee's records on behalf of the
22 Grantor. The financial statement described herein shall not be available to the public except as
23 otherwise required by applicable state law.

24 (c) Grantee shall pay the City a five percent (5%) penalty for any payment delinquent
25 by more than sixty (60) days. In addition, Grantee shall pay City interest on the amount due
26 from the due date at an annual rate equal to the prime rate determined by the Chase Manhattan
27 Bank on the first day of the month in which such delinquency occurs.

1 SECTION 9. Construction. Grantee shall meet or exceed the material construction
2 requirements listed below:

3 (a) Construction Codes. The Grantee shall strictly adhere to all building, safety and
4 zoning codes currently or hereafter in force including the New Orleans Building Code, National
5 Electric Safety Code, the National Electrical Code, and the requirements of the Department of
6 Streets.

7 (b) Installation. Grantee shall arrange its lines, cables, and other appurtenances, in
8 such a manner as to cause no unreasonable interference with the use of said public or private
9 property by any person. In the event of such unreasonable interference, after reasonable notice
10 to Grantee and an opportunity to rectify same, the Grantor may require the removal of the
11 Grantee's lines, cables, and appurtenances from the property in question at Grantee's sole
12 expense.

13 Although the basic system shall use fiber optics, conventional conductors, using parallel,
14 twisted pair or coaxial construction may be used where appropriate.

15 (c) Erection of Poles. If additional poles on an existing utility system route are
16 required, Grantee shall negotiate with the utility company for the installation of the needed poles
17 or Grantee may at its option, subject to the prior approval of the Grantor, install the necessary
18 poles. The Grantee shall negotiate the lease of pole space and facilities from the existing pole
19 owners for all aerial construction, under mutually acceptable terms and conditions. No poles

20 shall be erected in the underground areas of the City as stated in Section 61-51 of the Code of
21 the City of New Orleans (Ordinance No. 13,838 C.S. and Ordinance No. 4001 M.C.S., as
22 amended).

23 In any event, cables shall be installed underground at Grantee's cost where existing
24 utilities are already underground. Previously installed aerial cable shall be undergrounded in
25 concert, and on a cost-sharing basis, with other utilities when such other utilities may convert
26 from aerial to underground construction whenever possible.

27 (d) Use of Public Streets and Ways. For the purpose of operating and maintaining
28 a telecommunications cable system in the City, the Grantee may erect, install, construct, repair,
29 replace, reconstruct, and retain in, on, over, under, upon, across, and along the public streets
30 and ways within the City such wires, cables, conductors, ducts, conduits, vaults, manholes,
31 amplifiers, appliances, pedestals, attachments, and other property and equipment as are
32 necessary and appurtenant to the operation of the fiber optic system.

33 (e) Repair of Street and Public Ways. Any and all streets and public ways which
34 are disturbed or damaged during the construction, operation, maintenance or reconstruction of
35 the telecommunications system shall be promptly repaired by the Grantee, at its expense, and
36 to the reasonable satisfaction of the Grantor, where such costs were made necessary by the
37 neglect of the Grantee.

38 Whenever the Grantee shall disturb the surface of any street, alley, public highway or
39 ground for any purpose and when any opening is made by the Grantee in any hard surface
40 pavement in any street, alley or public highway, the Grantee shall promptly refill the opening
41 and restore the pavement. The Grantor may refill and/or repave in case of neglect of the
42 Grantee. The cost thereof, including the cost of inspection and supervision, shall be paid by the
43 Grantee upon demand by Grantor.

44 Excavations made by the Grantee in the streets, alleys and public highways shall be
45 properly safeguarded for the prevention of accidents.

46 The work hereby required shall be done in strict compliance with the rules, regulations
47 and ordinances of the Grantor as now or hereafter provided.

48 (f) Trimming of Trees. Nothing contained in this Ordinance shall be deemed to
49 empower or authorize Grantee to cut or trim any trees, ornamental or otherwise, in any of the

50 streets, alleys or public highways. Grantee may cut or trim trees as necessary only pursuant to
51 a prior agreement with the owner of the property which is adjacent to the street area in which
52 such tree stands.

53 In addition to the foregoing, tree cutting or trimming on public property shall be
54 performed in accordance with Chapter 106 of the Code of the City of New Orleans (Ordinance
55 No. 365 M.C.S., as amended).

56 Refuse created by tree trimming shall be removed and disposed of in an acceptable
57 manner.

58 (g) As Built Drawings. Grantee shall furnish Grantor "as built" drawings 120 days
59 after construction has been completed. Drawings shall show ownership of conduits, ducts, poles
60 and cables used for the telecommunications system.

61 Drawings shall be drawn to a scale of one inch equals one hundred feet using the
62 standard format adopted by the Sewerage & Water Board, New Orleans Public Service, Inc. and
63 the Utilities Department in Autocad DXF format on 3 1/2 inch high density diskettes. Grantee
64 shall provide one set of such diskettes and one set of blue or black line "as built" drawings to
65 the Director of the Utilities Department and one set of each to the Director of the Department
66 of Streets.

67 State plane coordinates shall be shown for benchmarks and structures. Drawings shall
68 show horizontal dimensions from the curbs and elevations.

69 (h) Right of Inspection of Construction. Grantor shall have the right to inspect all
70 construction or installation work performed subject to the provisions of this privilege and to
71 make such tests as it shall find necessary to ensure compliance with the terms of the privilege
72 and other pertinent provision of law.

1 SECTION 10. Safety. The Grantee shall, at all times, employ the standard of care
2 attendant to the risks involved and shall install and maintain in use commonly accepted methods
3 and devices for preventing failures and accidents which are likely to cause damage, injury or
4 nuisance to the public or to employees of the Grantee.

5 Grantee's telecommunications system shall at all times be kept and maintained in a safe
6 and suitable condition, and in good order and repair.

7 The Grantee shall install and maintain its wires, cables, fixtures, and other equipment in

8 accordance with the requirements of any utility or property owner providing pole or conduit
9 space in such manner that they will not interfere with any installations of the Grantor, any public
10 utility or property owner.

1 SECTION 11. Street Rights.

2 (a) Construction and Alterations. Nothing in this Ordinance shall be construed to
3 prevent the Grantor from constructing sewers, grading, paving, repairing and/or altering any
4 street, alley, or public highway, or laying down, repairing or removing water mains or
5 constructing or establishing any other public work. All such work shall be done, insofar as
6 practicable, in such manner as not to obstruct, injure or prevent the free use and operation of
7 the poles, wires, conduits, conductors, pipes or appurtenances of the Grantee. If any such
8 property of the Grantee herein shall interfere with the construction or repair of any street or
9 public improvement whether it be construction, repair or removal of a sewerage or water main,
10 the improvement of a street or any other facility, the Grantee's installations shall be removed
11 or replaced in such manner as shall be directed by the Grantor so that the same shall not
12 interfere with the said public work of the Grantor, and such removal or replacement shall be at
13 the expense of the Grantee herein; provided however, that Grantor will provide advance notice
14 to Grantee of such public improvement to minimize disruption to Grantee's installations.

15 (b) Street Vacation or Abandonment. In the event of failure, neglect or refusal
16 of the Grantee, after thirty days notice by the Grantor, to repair, improve or maintain such street
17 portion, the Grantor may do such work or cause it to be done, and the cost thereof as found and
18 declared by the Grantor shall be paid by the Grantee and collection may be made by court action
19 or otherwise.

20 (c) Movement of Facilities. In the event it is necessary temporarily to move or
21 remove any of the Grantee's overhead wires, cables, poles or other facilities placed pursuant to
22 this ordinance in order lawfully to move a large object, vehicle, building or other structure over
23 the streets, alleys or highways of the Grantor, Grantee, upon reasonable advance notice, shall
24 move its facilities as required, at the expense of the person requesting the temporary removal.

1 SECTION 12. Administration.

2 (a) Maintenance and Complaints. Before commencement of operation, Grantee
3 shall provide the Grantor and its official agencies a toll free 24 hour telephone number to receive

4 requests for repairs and complaints.

5 (b) Address and Agent for Service of Process. Grantee shall at all times maintain-
6 an office within the City of New Orleans, the current address of which shall be recorded with
7 the Director of Utilities, or shall appoint and file and record with the Director of Utilities and
8 the City Attorney, an agent within the City of New Orleans for service of process.

9 (c) Discriminatory Practices Prohibited. The Grantee shall comply at all times with
10 all applicable Federal, State and City laws, and all executive and administrative orders relating
11 to non-discrimination.

12 (d) Permission of Property Owners Required. No cable line, wire, amplifier,
13 converter, or other piece of equipment owned by Grantee shall be installed by Grantee without
14 first securing the written permission of the owner of any property involved; provided, however,
15 that where the property owner has granted a servitude to another and the servitude by its terms
16 contemplates uses such as Grantee's intended use, Grantee shall not be required to secure the
17 written permission of the owner for the installation of equipment or facilities unless Grantee
18 elects to do so. If permission is later revoked, whether by the original or a subsequent owner,
19 the Grantee shall remove forthwith any of its equipment which is visible and movable, and
20 promptly restore the property to its original condition.

21 (e) Grantee acknowledges and agrees that it is a "telephone company" as that term
22 is currently defined in L.S.A.-R.S. 47:1851Q, for the purpose of assessment of public service
23 properties for ad valorem taxation only.

1 SECTION 13. Right of Grantor to Revoke Privilege. Grantor reserves the right to
2 revoke this privilege, and all rights pertaining thereto, in the event that: (a) the Grantee willfully
3 or repeatedly violates any material provision of this Ordinance; or (b) the Grantee becomes
4 insolvent, is involuntarily adjudged as bankrupt, or files a voluntary petition for relief under the
5 Bankruptcy Act; or (d) the Grantee is adjudged to have practiced any fraud or deceit upon the
6 Grantor and such judgment becomes final after all appeals are exhausted according to law, or
7 (d) the Grantee ceases to provide telecommunications services within the City of New Orleans
8 for any reason within the control of the Grantee. The foregoing subparagraphs (a) through (d)
9 notwithstanding, the privilege shall not be subject to such revocation if any delays in
10 performance or any other instances of non-compliance are due to acts of God, civil emergencies,

11 labor unrest or strikes, or other causes which are beyond Grantee's reasonable control or which
12 are not reasonably foreseeable. The time for the performance of an obligation shall be extended
13 for the period of the forced delay.

14 Upon failure of the Grantee to comply with the terms of the privilege or to commence
15 appropriate corrective action within sixty (60) days after receiving written notice by certified
16 mail to the President of the Grantee or the Agent for Service of such non-compliance from the
17 Grantor, the Grantor may hold a public hearing to consider the option of revocation of the
18 privilege. The Grantor shall give the Grantee at least ten (10) days advance written notice of
19 such hearing and shall also publish such notice in advance in a newspaper with local circulation.
20 If, after such hearing, at which Grantee shall be afforded all due process of law including the
21 right to appear and be heard, the Grantor shall determine that this privilege should be revoked,
22 Grantor must advise the Grantee of its decision in writing and may by ordinance declare a
23 forfeiture; whereupon all rights of the holders of this privilege shall immediately be divested
24 without a further act upon the part of the Grantor, and if required by Grantor, the Grantee shall
25 forthwith remove its structures or property from the streets and restore the streets to such
26 condition as the Grantor may reasonably require and upon failure so to do, the Grantor may
27 perform the work and collect the cost thereof from the Grantee. The cost thereof shall be
28 enforced by a lien upon all plant and property of the Grantee. Such lien shall not attach to
29 property of Grantee located on the poles, ducts, or other property of utilities and other property
30 owners until removal of Grantee's property from the poles, ducts, or facilities.

1 SECTION 14. Grantor's Right to Reserve System. The Grantor reserves the right
2 to reserve any or all parts of the system if a forfeiture is declared pursuant to Section 13 above.
3 Grantor shall have the right to revoke the franchise one hundred and twenty (120) days after the
4 appointment of a receiver, or trustee, to take over and conduct the business of the Grantee,
5 whether in receivership, reorganization, bankruptcy, or other action or proceeding, unless such
6 receivership or trusteeship shall have been vacated prior to the expiration of said one hundred
7 and twenty (120) days, or unless:

8 (a). Within one hundred and twenty (120) days after his election or appointment, such
9 receiver or trustee shall have fully complied with all the provisions of the privilege and remedied
10 all defaults thereunder; and

11 (b) Such receiver or trustee, within said one hundred and twenty (120) days, shall
12 have executed an agreement, duly approved by the court having jurisdiction in the premises,
13 whereby such receiver or trustee assumes and agrees to be bound by each and every provision
14 of the privilege.

1 SECTION 15. Election Upon Expiration. Upon expiration of the initial term of the
2 privilege and consistent with this section, the Grantor may extend the Grantee's privileges
3 granted hereunder for an additional fifteen year term. Grantor and Grantee each reserve the right
4 to seek amendments and/or modifications of the terms and conditions of the extension of the
5 privileges granted hereunder to take into consideration then-existing and future conditions.

1 SECTION 16. EQUAL EMPLOYMENT OPPORTUNITY AND PROCUREMENT
2 POLICY. The Grantee will abide by all applicable local, state and federal laws, which have
3 been enacted or which may be enacted hereafter.

1 SECTION 17. Privilege Non-transferable. This privilege and permit shall not be
2 assigned to or vest in any person, except the Grantee, either by act of the Grantee or by
3 operation of law, without the consent of the City expressed by ordinance, which consent shall
4 not be unreasonably withheld; provided, however, that this privilege and permit may be
5 transferred without consent of Grantor to a subsidiary or affiliate of Grantee, or to any other
6 entity which is under common control with Grantee upon written notification of same to the
7 Director of the Department of Utilities. Commercial activities associated with Grantee's conduct
8 of its normal day to day business is excluded.

9 The granting of such consent shall not render unnecessary any subsequent consent.

10 The Grantee, upon transfer as heretofore described, shall within 60 days thereafter file
11 with the City a copy of the deed, agreement, mortgage, lease, or other written instrument
12 evidencing such sale, transfer or lease, certified and sworn to as correct by the Grantee.

13 Every such transfer as heretofore described, whether voluntary or involuntary, shall be
14 deemed void and of no effect unless Grantee shall, within 60 days after the same shall have been
15 made, file such certified copy as required.

1 SECTION 18. Laws and Regulations. Grantee shall at all times comply with all laws
2 and regulations of the state and federal government or any administrative agency thereof, as well
3 as all city ordinances, resolutions, rules, and regulations heretofore or hereafter adopted or

4 established during the entire term of the privilege including all zoning and subdivision
5 regulations.

6 If any section, subsection, provision or item of this ordinance or the application thereof,
7 is for any reason held invalid or unconstitutional by any court or governmental body of
8 competent jurisdiction, such invalidity shall not affect other sections, subsections, provisions,
9 items or applications of this ordinance which can be given effect without the invalid section,
10 subsection, provision, item or application, and to that end the provisions of this ordinance are
11 hereby declared severable

12 Should the State of Louisiana, the FCC or any other agency of the federal government
13 subsequently require the Grantee to perform any act which is inconsistent with any provision of
14 this privilege, the Grantee shall so notify the Grantor. Upon receipt of such notification, the
15 Grantor shall determine if a material provision of the privilege is affected. Upon such
16 determination, the Grantor shall have the right to modify or amend any of the provisions of the
17 privilege to such reasonable extent as may be necessary to carry out the full intent and purpose
18 of the privilege. The Grantor may terminate the privilege in the event the Grantor determines
19 that substantial and material compliance with the original terms of the privilege has been
20 frustrated by such state or federal requirement. And, accordingly, in such an event, Grantee
21 reserves its rights to pursue whatever remedies it may have, and to comply with the duties and
22 obligations which may be imposed upon it by such state or federal agencies.

1 SECTION 19. Universal Service Fund. Grantee hereby agrees to comply with
2 requirements applicable to competitive access providers designed to promote universal service
3 in a competitive market if requirements may be legally adopted in the future by regulatory
4 agencies with jurisdiction over ratemaking issues for intrastate ratemaking issues in Louisiana.
5 Grantee does not, however, waive its right to participate in any regulatory, administrative,
6 legislative or judicial proceeding to present its views on the proper definition and cost of
7 universal service, or the reasonableness and equity of any proposed funding mechanism to
8 promote universal service, or any jurisdictional issues.

1 SECTION 20. Causes Beyond Reasonable Control. In the event Grantee's
2 performance of any of the terms, conditions, obligations, or requirements of this Ordinance is
3 prevented or impaired due to any cause beyond its reasonable control or not reasonably

4 foreseeable, such inability to perform shall be deemed to be excused and no penalties or
5 sanctions shall be imposed as a result thereof. Such causes beyond Grantees reasonable control
6 or not reasonably foreseeable shall include, but shall not be limited to, acts of God, civil
7 emergencies and labor, unrest or strikes.

8 Grantee shall notify the Director of Utilities whenever performance is prevented or
9 impaired.

1 SECTION 21. Acceptance. Grantee shall, within sixty (60) days after the passage of
2 this Ordinance by the City Council, file with the Clerk of Council, with copies filed with the
3 Director of Utilities, and the City Attorney, a written acceptance of this Ordinance, said
4 Acceptance to be signed and acknowledged by the president, vice president or other authorized
5 officer of the Grantee and attested by its Secretary. Said acceptance shall be substantially in the
6 following form:

7 "TO THE COUNCIL OF THE CITY OF NEW ORLEANS

8 The Grantee, American Communication Services of Louisiana, Inc. ("ACSI"), a
9 corporation organized and existing under and by virtue of the laws of the State of Delaware,
10 does hereby accept Ordinance No. _____ M.C.S. enacted the ____ day of
11 _____, 19__ granting American Communication Services of Louisiana, Inc.,
12 the privilege to erect, construct, maintain and/or operate a conduit and telecommunications cable
13 system on and under the streets, alleys and other public places of the city, subject to certain
14 terms, conditions and limitations as set forth therein.

15 AMERICAN COMMUNICATION SERVICES OF LOUISIANA, INC.

16 BY: _____

17 ITS: _____

18 ATTEST:

19 _____

20 SECRETARY

21 Dated at _____, this the _____ day of
22 _____, 19_____.

23 Said Acceptance shall be read into the minutes of the Council of the City of New
24 Orleans.

25 In event such Acceptance is not filed within said time, this Ordinance and the rights and
26 privileges herein granted shall be null and void.

ADOPTED BY THE COUNCIL OF THE CITY OF NEW ORLEANS July 3, 1996

JAMES M. SINGLETON
PRESIDENT OF COUNCIL

DELIVERED TO THE MAYOR ON July 5, 1996

APPROVED:
~~DISAPPROVED:~~ July 9, 1996

MARC H. MORIAL
MAYOR

RETURNED BY THE MAYOR ON July 9, 1996 AT 5:10 P.M.

EMMA J. WILLIAMS
CLERK OF COUNCIL

YEAS: Carter, Glapion, Hazeur, Singleton, Terrell, Thomas, Wilson - 7
NAYS: 0
ABSENT: 0
mmf

THE FOREGOING IS CERTIFIED
TO BE A TRUE AND CORRECT COPY.

Emma J. Williams
CLERK OF COUNCIL

*
Telcov

5%
2009
MAY 2014

ORDINANCE
CITY OF NEW ORLEANS

CITY HALL May 6, 1999

CALENDAR NO. 22,548

NO. 19290 MAYOR COUNCIL SERIES

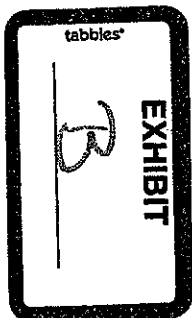
BY: COUNCILMEMBERS TERRELL, THOMAS, GLAPION AND SAPIR (BY REQUEST)

An ORDINANCE granting a non-exclusive Franchise to Hyperion Communications of Louisiana, Inc., to construct, maintain, and operate a wireline telecommunications system, to provide for the furnishing of a surety bond, annual payments, and otherwise to provide with respect thereto.

1 SECTION 1. THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY
2 ORDAINS, that a non-exclusive Franchise be and the same is hereby granted to Hyperion
3 Communications of Louisiana, Inc., the Grantee, to construct, maintain, and operate a
4 wireline telecommunications system ("System") throughout the right-of-way of the City.

5 The purpose of the installation of this System is to operate as a competitive local
6 exchange carrier (CLEC), as defined by the Louisiana Public Service Commission, and this
7 system will be used solely this purpose. It is agreed that any use of this System by the
8 Grantee for other purposes shall constitute a violation of a material provision of this
9 Ordinance.

1 SECTION 2. THIS NON-EXCLUSIVE FRANCHISE IS GRANTED for a period of
2 fifteen (15) years beginning June 1, 1999 and ending May 31, 2014. In accordance with
3 Section 30-50 of the Code of City of New Orleans (City Code), the Grantee shall pay to the
4 City an annual amount in quarterly installments due January 1, and every quarter thereafter,
5 based on 5% of Grantee's Gross receipts, as defined in Section 30-45 of the Code City, from
6 operation of the System. The Grantee shall also install six Dark Fibers in every portion of
7 the fiber backbone cable of the Grantee's System installed during the term of the Franchise
8 for the Grantor's noncommercial use. Fees shall be in an amount as set forth above, unless
9 revised by a valid ordinance or ordinances of the City of New Orleans of general application



12 This non-exclusive Franchise is granted under the terms and conditions contained
13 herein and as set forth in the New Orleans Home Rule Charter (City Charter) which terms
14 and conditions are incorporated herein by reference thereto.

15 In the event of conflict between the terms and conditions of this non-exclusive
16 Franchise and the terms and conditions on which the City can grant a non-exclusive
17 Franchise as set forth in the City Charter, the City Charter shall, without exception, control.

18 This Ordinance is made subject to the City Charter and General Ordinance provisions
19 now in effect, or hereafter effective, and Sections 146-275 through 146-285 of the Code of
20 the City of New Orleans (Ordinance No. 17,271 M.C.S., as amended). This Ordinance is
21 subject to all provisions of the Wireline Telecommunications Franchise Act of the City,
22 codified as Sections 30-44 through 30-57 of the Code of the City of New Orleans, whether
23 specifically set forth herein, or not, except where the provisions of such Franchise Act are
24 specifically revised herein. Nothing in this Ordinance shall be deemed to waive the
25 requirement of the various codes and ordinances of the City regarding permits, fees to be
26 paid, or the manner of construction.

1 **SECTION 3. RIGHT, POWER, AND AUTHORITY OF THE CITY.** In
2 accepting this non-exclusive Franchise, Grantee, acknowledges that its rights hereunder are
3 subject to police powers of the City of New Orleans to adopt and enforce general ordinances
4 necessary for the safety and welfare of the public and it agrees to comply with all applicable
5 general laws and ordinances enacted by the City of New Orleans pursuant to such power, as
6 provided by Ordinance. Nothing herein shall be construed to waive, surrender or relinquish
7 any right, power or authority of the City of New Orleans under the Home Rule Charter
8 relative to or in connection with Grantee for communications and data services of an intra
9 parish nature, intrastate communications or data services, any part of which is conducted
10 within the territorial limits of Orleans Parish. Further, nothing herein shall be deemed to
11 grant the Grantee the right to provide telecommunications services within the City of New
12 Orleans except for service specifically authorized herein.

16 constructing or establishing any other public work. All such work shall be done, insofar as
17 practicable, in such a manner as not to obstruct, injure or prevent the free use and operations
18 of Grantee's system. If any such property of the Grantee shall interfere with the construction
19 or repair of any street or public improvement, whether it be construction, repair or removal
20 of a sewer or water main, the improvement of a Right-of-Way or any other public
21 improvement, all the Grantee's system shall be removed or replaced in such a manner as shall
22 be directed by the Grantor so that the same shall not interfere with such public work of the
23 Grantor, and such removal or replacement shall be at the expense of the Grantee. Grantor
24 shall not be liable to Grantee or third parties for any damage, breakage or repair, or any
25 claims for loss of use, business interruption, claims by users, repair or replacement cost to
26 any third party in connection with the removal of any of Grantee's systems. In any event,
27 the Grantor shall not be liable for any damage occurring to the Grantee's system caused by
28 the Grantor, its officers, agents, employees, or independent contractors, in the performance
29 of their duties in connection with public works, nor shall the Grantor be held liable for the
30 interruption of service by actions of the Grantor, its officers, agents, employees, or
31 independent contractors, in the performance of their duties in connection with public works.
32 When reasonably possible, the Grantee shall be consulted prior to any public work effecting
33 its system, but the Grantor shall have no liability to the Grantee in the event it does not so
34 consult the Grantee.

1 **SECTION 4. SURETY BOND.** Grantee shall furnish a good and solvent surety
2 bond, in solido, in the sum of \$100,000.00, to guarantee the fulfillment of all the provisions
3 of the Ordinance and Sections 146-275 through 146-285 and Sections 30-44 through 30-57
4 inclusive of the Code of the City of New Orleans, (Ordinance No. 17,271 M.C.S. as
5 amended), By virtue of and subject to which sections this Franchise is granted.

1 **SECTION 5. ADDRESS AND AGENT FOR SERVICE OF PROCESS.** Grantee
2 shall at all time maintain an office within the City of New Orleans, the current address of
3 which is recorded with the Director of Utilities, or shall appoint and file and record with the

1 **SECTION 6. SEVERABILITY.** If any section, subsection, sentence, clause,
2 phrase, or portion of this Franchise is, for any reason, held invalid or unconstitutional by any
3 court of competent jurisdiction, such portion shall be deemed a separate, distinct and
4 independent provision and such holding shall not effect the validity of the remaining portions
5 of this Agreement.

1 **SECTION 7. ACCEPTANCE.** Acceptance and Acceptance terms shall be in
2 accordance with Section 30-55, of the Code of the City of New Orleans (Ordinance No.
3 17,271 M.C.S., as amended).

ADOPTED BY THE COUNCIL OF THE CITY OF NEW ORLEANS JUL 0 1 1999

EDDIE L. SAPIR

PRESIDENT OF COUNCIL

DELIVERED TO THE MAYOR ON JUL 0 2 1999

APPROVED: JUL 0 6 1999

MARC H. MORIAL

MAYOR

RETURNED BY THE MAYOR ON JUL 0 7 1999 AT 1 55 PM

EMMA J. WILLIAMS

CLERK OF COUNCIL

YEAS: Carter, Glapion, Hazeur-Distance, Sapir, Singleton, Terrell, Thomas - 7
NAYS: 0
ABSENT: 0

Administration/Utilities/rem

THE FOREGOING IS CERTIFIED
TO BE A TRUE AND CORRECT COPY

Emma J. Williams

CLERK OF COUNCIL

ORDINANCE
(AS AMENDED)
CITY OF NEW ORLEANS

CITY HALL: February 2, 1995

CALENDAR NO: 19.809

NO. 17636 MAYOR COUNCIL SERIES
BY: COUNCILMEMBER THOMAS (BY REQUEST)

AN ORDINANCE granting non-exclusive permission to AMERICAN COMMUNICATION SERVICES OF LOUISIANA, INC., ("ACSI"), to construct, maintain and operate an underground conduit system and an aerial system of telecommunications cables for a municipal area network in the City of New Orleans, to permit cuts in the street and sidewalk pavement necessary for such installation; to provide for the furnishing of a surety bond, application fee and annual payment; and to otherwise provide with respect thereto.

1 SECTION 1. THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY
2 ORDAINS that a permit and a privilege be and the same are hereby granted to ACSI, the
3 Grantee, to construct, use and maintain new conduit and/or to use and maintain conduit
4 owned by utilities, investor owned organizations or other entities as necessary (and as may be
5 negotiated with same), and to construct, use and maintain a network of telecommunications cable
6 (hereinafter referred to as the "telecommunications system"), including feeder cable to buildings,
7 in streets and public ways throughout the New Orleans Central Business District as well as in
8 other areas of the City to permit cuts in the street and sidewalk pavement necessary for such
9 installation and maintenance and to provide conduit, pole and telecommunications bridge
10 attachments for telecommunications cables within the limits of the City of New Orleans.

11 Prior to construction or alteration of such facilities, the Grantee shall notify the
12 Department of Utilities in writing of the proposed construction and/or alteration. The Grantee
13 shall obtain the necessary permits from the Streets Department, Maintenance Division.

14 The purpose of the telecommunications system as described is to provide
15 telecommunications services, including but not limited to fully digital voice, data, video imaging
16 and other enhanced telecommunications services. On its dedicated, high-capacity links for local
17 businesses and government users, and other services that Grantee may be authorized to provide
18 in the future. Grantee shall not use its telecommunications system to provide programming
19 services or cable services or operate a cable system as defined in the Cable Communication
20 Policy Act of 1984 (47 U.S.C.A. section 521, et. seq., as amended) or as recognized by the

21 Federal Communications Commission (the "FCC") without first obtaining a separate
22 authorization from the Grantor, and Grantee shall not allow the use of the telecommunications
23 system by a provider of programming services or a cable system to offer video programming
24 that has not been granted a Franchise by the Grantor.

1 SECTION 2. This permit and privilege is granted for the duration of this Ordinance, for
2 a fee based upon a percentage of Grantee's gross receipts.

3 In the event of conflict between the terms and conditions of this privilege and permit and
4 the terms and conditions on which the City can grant a privilege and permit as set forth in the
5 City Charter, the City Charter shall control.

6 This Ordinance is hereby made subject to the City Charter and general ordinance
7 provisions now in effect. Nothing in this Ordinance shall be deemed to waive the requirements
8 of the various codes and ordinances of the City regarding permits, fees to be paid or manner of
9 construction.

1 SECTION 3. PERMIT NONEXCLUSIVE.

2 A. Grant. This franchise shall be nonexclusive. The Grantor specifically reserves the
3 right to (i) grant at any time such additional permits for another telecommunication system as
4 it deems appropriate, and/or (ii) build, operate, and own such other telecommunications system
5 or systems as it deems appropriate.

1 SECTION 4. Rights, Powers and Authority of the City. In accepting this permit, ACSI
2 acknowledges that its rights hereunder are subject to the police powers of the City of New
3 Orleans to adopt and enforce general ordinances necessary for the safety and welfare of the
4 public and it agrees to comply with all applicable general laws and ordinances enacted by the
5 City of New Orleans pursuant to such power, as provided by ordinance. Nothing herein shall
6 be construed to waive, surrender or relinquish any right, power or authority of the City of New
7 Orleans under the Home Rule Charter relative to or in connection with American
8 Communication Services of Louisiana, Inc. for services provided within the territorial limits of
9 Orleans Parish.

10 The permit and privilege granted herein is non-exclusive. The Grantor specifically
11 reserves the right to grant, at any time, such additional permits and privileges for fiber optic or
12 other communications systems as it deems appropriate.

1 SECTION 5. Definitions. For the purposes of this Ordinance, the following words,
 2 terms, phrases, and their derivations shall have the meanings given herein. When not
 3 inconsistent with the context, words used in the present tense include the future tense, words in
 4 the plural number include the singular number, and words in the singular number include the
 5 plural number. The word "shall" is always mandatory and not merely discretionary.

6 "APPROVED" means approved in writing by the Director of Utilities or designated
 7 representative.

8 "CITY" means the City of New Orleans, Louisiana, and all the territory within its
 9 present and future corporate boundaries.

10 "CITY COUNCIL" means the Council of the City of New Orleans.

11 "DARK FIBER" means unused fiber through which no light is transmitted or installed
 12 fiber optic cable not carrying a signal.

13 "DURATION" means the term of this permit and privilege.

14 "EFFECTIVE DATE" means the effective date of this permit and privilege.

15 "FAIR MARKET VALUE" means, with regard to Telecommunications Services provided
 16 by Grantee, the price of such services as shown in Grantee's tariff, if any, on file with the
 17 LPSC. If the Telecommunications Services provided are not tariffed services, the Fair Market
 18 Value of those Telecommunications Services means the price that would be obtained therefor in
 19 an arms-length transaction. Fair Market Value is subject to verification by Grantor.

20 "FCC" means the Federal Communications Commission or a designated representative.

21 "GRANTEE" means American Communication Services of Louisiana, Inc. to which a
 22 privilege and permit henceforth is granted for the construction, operation, enlargement and
 23 maintenance, replacement, repair or removal of telecommunications facilities and the lawful
 24 successors, transferees, or assignees of said corporation or entity.

25 "GRANTOR" means the City of New Orleans as represented by the City Council acting
 26 within the scope of its jurisdiction.

27 "GROSS RECEIPTS" means all revenues collected by the Grantee for
 28 telecommunications services provided by the Grantee, its affiliates, successors, agents,
 29 subsidiaries, partners, or assigns to Customers located within the corporate limits of the City,
 30 and including, but not limited to, charges for the provision of recurring and non-recurring

31 service, data and message service, private line service, access charges, public telephone revenue,
32 directory assistance, directory advertising, revenues from the authorized Lease of Equipment and
33 Plant, and revenues from the resale of telecommunications services. Gross receipt is not
34 intended to cover revenue from Long Distance Network Service or wireless communication
35 services. To the extent that the Grantee does not segregate Long Distance Network Service
36 revenues from other revenues, or other revenues are commingled with Long Distance Network
37 Service revenues, all such commingled revenues shall be included in gross receipts. Gross
38 receipts shall not include any sales or excise taxes collected for direct pass through to local,
39 state, or federal governments. If Grantee participates in the provision of its telecommunications
40 system and/or associated assets with another Person whereby Grantee does not receive
41 reasonable monetary compensation then the Fair Market Value of the services or assets provided
42 by Grantee shall be imputed to Grantee's Gross Receipts for the purpose of calculating Franchise
43 Fees due to the Grantor. Without limitation of the foregoing, the Fair Market Value of
44 Grantee's transactions resulting in Gross Receipts is subject to verification by Grantor.

45 "LONG DISTANCE NETWORK SERVICE" shall mean those Telecommunications
46 Services provided by Grantee, whether message or flat rate and including public network
47 switching as well as private, that (i) either originate or terminate Toll Calls within the City or
48 (ii) pass through the City without originating or terminating Toll Calls therein. Revenues
49 derived from Long Distance Network Service shall include those revenue accounts specified in
50 47 CFR Part 32, as amended.

51 "PERSON" means any corporation, partnership, proprietorship, individual or organization
52 doing business in the State of Louisiana, or any natural person.

53 "SECTION" means any section, subsection, or provision of this privilege ordinance.

54 "STREETS AND PUBLIC WAYS" means the surface of and the space above and below
55 any public street, sidewalk, alley, or other public way of any type whatsoever, now or hereafter
56 existing as such within the City.

57 "TELECOMMUNICATIONS" means the transmission, between or among points
58 specified by the user of information or the user's choosing, including voice data, image,
59 graphics, and video, without change in the form or content of the information as sent and
60 received.

61 "TELECOMMUNICATIONS SERVICE" means services offered by means of a
62 Telecommunication System.

63 "TELECOMMUNICATIONS SYSTEM" or "SYSTEM" means the Equipment and Plant
64 essential to the transmission, between or among points specified by the Subscriber, of
65 information of the Subscriber's choosing (including the collection, storage, forwarding,
66 switching, and delivery of such information), without change in the form or content of the
67 information as sent and received, by means of an electromagnetic transmission, fiber optic
68 media, Wireless Communications System, or any combination thereof. For the purpose of this
69 Act, such terms shall include the provision of Long Distance Network Service, local exchange
70 service and competitive local access services.

71 "WIRELESS COMMUNICATIONS SYSTEM" means any system which uses a form of
72 cellular telephony which allows customers to access and/or make telephone calls to each other
73 through a system which transmits signals through the air or over the Public Switched Telephone
74 Network (PSTN) using cordless telephone devices which communicate with limited range cells
75 (transmitter/receiver sites) connected to a Backhaul Network. Wireless Communications System
76 shall include Mobile Service.

1 SECTION 6. General Requirements. Grantee shall comply with the requirements of
2 this Ordinance listed below:

3 (a) Damages and Defense.

4 1. Hold Harmless. The Grantee shall hold the Grantor harmless for all damages
5 and penalties suffered as a result of, or arising out of, the Grantee's negligent use, installation,
6 maintenance, repair and/or operation of the telecommunications system authorized whether or
7 not any act or omission complained of is authorized, allowed, or prohibited by the Franchise.
8 This provision is not intended to create liability for the benefit of third parties but is solely for
9 the benefit of the Grantor and the Grantee. In the event any claim is made against the City that
10 falls under this Indemnity and a court of competent jurisdiction should adjudge, by final decree,
11 that the Grantor is liable therefor, the Grantee shall indemnify and hold the Grantor harmless
12 of and from any such judgment or liability, including any court costs, expenses, and attorney
13 fees incurred by the Grantor in defense thereof. Upon commencement of any proceeding at law
14 or in equity against the Grantor relating to or covering any matter covered by this indemnity.

15 wherein the Grantee has agreed, by accepting the Franchise, to indemnify and hold the Grantor
16 harmless, or to pay said final judgment and costs, as the case may be, the Grantor shall give the
17 Grantee immediate notice of such suit or proceeding. The Grantee shall provide a defense to
18 any such suit or proceeding. The Grantee shall provide a defense to any such suit or suits,
19 including any appellate proceedings brought in connection therewith, and pay as aforesaid, any
20 final judgment or judgments that may be rendered against the Grantor by reason of such damage
21 suit. Upon failure of the Grantee to comply with the "defense of suit" provisions of subsection
22 (a)2. below, after reasonable notice to it by the Grantor, the Grantor shall have the right to
23 defend the same and in addition to being reimbursed for any such judgement that may be
24 rendered against the Grantor, together with all court costs incurred therein, the Grantee shall
25 reimburse the Grantor for attorney's fees, including those employed by the Grantor in such case
26 or cases, as well as all expenses incurred by the Grantor by reason of undertaking the defense
27 of such suit or suits, whether such suit or suits are successfully defended, settled, compromised,
28 or fully adjudicated against the Grantor.

29 2. Defense Expense. The Grantee shall pay all expenses incurred by the Grantor
30 in defending itself with regard to all damages and penalties mentioned in subsection (a)1. above
31 and for all claims against Grantor arising out of the Franchise. These expenses shall include all
32 out-of-pocket expenses, such as attorney fees, and shall also include the reasonable value of any
33 services rendered by any employees of the Grantor. In the event the Grantor is compelled to
34 undertake the defense of any such suit by reason of the Grantee's failure to perform as here and
35 above provided, the Grantor shall have the full right and authority to make or enter into any
36 settlement or compromise of such adjudication as the City Council shall deem in the best interest
37 of the Grantor, this without the prior approval or consent of the Grantee with respect to the
38 terms of such compromise or settlement.

39 (b) Recourse Against Grantor. The Grantee shall have no recourse
40 whatsoever against the Grantor or its officials, boards, commissions, agents, or employees for
41 any loss, costs, expense, or damages arising out of any provision or requirement of the privilege
42 or because of the enforcement of the privilege.

43 (c) Insurance. Grantee shall furnish proof that satisfactory insurance policies
44 are in force, in the minimum amounts shown below:

45	Worker's Compensation (if applicable):	
46	Bodily Injury by Accident	\$100,000 each injury
47	Bodily Injury by Disease,	
48	Policy Limit	\$500,000
49	Bodily Injury by Employee	\$100,000 each employee
50	Commercial General Liability	\$2,000,000 each occurrence
51		\$2,000,000 aggregate
52	Property Damage	\$500,000/1,500,000
53	Motor Vehicle (if applicable)	\$2,000,000 CSL (Combined
54		(Single Limit)
55	Builder's Risk "All Risk"	100% of contract amount

56 Grantee shall, at its own expense, maintain in full force and effect throughout the
57 duration of this privilege a liability insurance policy or policies. Such policy or policies shall
58 be underwritten by a carrier licensed to do business in the State of Louisiana and rated by Best's
59 as either A or AA on the effective date of the policy or policies. A copy of the certificate of
60 insurance evidencing such policy or policies shall be submitted to Grantor. Said policy or
61 policies shall name the City of New Orleans, including its boards and commissions and its
62 officers, agents and employees, jointly and severally, and the Sewerage & Water Board of New
63 Orleans as additional insureds. Said policy or policies shall apply as primary insurance and shall
64 stipulate that no other insurance in effect by the City will be called on to contribute to a loss
65 covered hereunder and shall provide for a waiver of subrogation in favor of the Sewerage &
66 Water Board of New Orleans. A copy of the certificate of insurance shall be on file with the
67 Department of Utilities and maintained current at all times. Said policy or policies shall provide
68 forty-five (45) days notice to the Director of Utilities if the policy or policies should be canceled
69 or materially changed.

70 (d) Surety Bond. Grantee shall furnish a good and solvent surety bond, in solido,
71 in the sum of One Hundred Thousand and No/100 Dollars (\$100,000.00) to guarantee fulfillment
72 of all the provisions of this Ordinance.

73 (e) Construction Timetable. The Grantee shall be capable of providing services to
74 end-users within two (2) years of the effective date of this franchise.

75 (f) Duration. The term of this permit and privilege and all rights, privileges,
76 obligations and restrictions pertaining thereto shall be 15 years from the effective date of the
77 Ordinance unless terminated sooner as hereinafter provided. The effective date of this ordinance
78 shall be sixty (60) days after passage by the Council unless the Grantee fails to file by that time
79 in the appropriate office of the City a written acceptance of this Ordinance in accordance with
80 Section 20, infra, in which event it shall be null and void.

81 (g) Open Books and Records. The Grantee shall maintain an office within the City
82 or shall appoint and file and record with the Director of Utilities and the City Attorney, an agent
83 within the City of New Orleans for service of process. In connection with its right to audit as
84 set forth in Section 8, infra, the Grantor shall have the right to inspect at any time upon
85 reasonable notice during normal business hours, books, records, maps, plans, income tax
86 returns, financial statements and other information of the Grantee which relates to compliance
87 with this Ordinance. Grantor shall have the right to require information from the Grantee that
88 is reasonably related to this franchise. Such information must be provided within a reasonable
89 time period. Grantor shall have access to the aforementioned records reasonably necessary for
90 audit purposes upon execution of a confidentiality agreement, and shall treat all such information
91 as confidential. The Grantee agrees to pay reimbursement of reasonable audit expenses if an
92 audit discovers a discrepancy of at least five percent (5%) between reported and audited
93 amounts. The conditions pursuant to which Grantee can be required to pay reimbursement of
94 reasonable audit expenses, or a designated portion of reasonable audit expenses, may be changed
95 during the term of this privilege and permit only if such change is enacted by the City in an
96 ordinance of general application, which ordinance and the conditions pursuant to which full or
97 partial reimbursement of reasonable audit expenses will be required, must also be applicable to
98 local exchange service provider(s), including South Central Bell, in the City.

99 (h) Dark Fiber Provisions. Grantee shall provide six (6) dark fibers in every portion
100 of the fiber backbone cable of the telecommunications system installed during the term of the
101 Franchise for the Grantor's non-commercial use. Grantee shall also provide feeder cables to the
102 entry links of seven (7) public buildings to be designated by the City, or the Grantee can pay
103 to the City the value of providing the dark fibers to the public buildings, provided that the public
104 buildings and entry links are adjacent to Grantee's telecommunications system and the Grantor

105 constructs, or otherwise provides, the entry link to those buildings for such feeder cable.
106 Grantee shall also provide feeder cable to the entry link of one public building for every three
107 (3) miles added to the network route after the initial route is constructed.

108 i. For purposes of this Subsection, "adjacent" shall mean adjoining or abutting a
109 portion of the Right-of-Way containing Grantee's telecommunications system, and "public
110 building" shall mean any City-owned buildings in which public functions are performed and
111 primary and secondary parochial, private and public schools.

112 ii. If the initial dark fibers are not functional due to any cause, the Grantee shall
113 provide fully operational dark fibers at no cost to the Grantor.

114 iii. The City may interconnect such dark fibers to any other telecommunications
115 system.

116 iv. In the event another franchisee has provided fiber optic cable to one of the seven
117 (7) public buildings adjacent to the Grantee's telecommunications system, the City may accept,
118 at its sole option, and in lieu of Grantee providing lateral connections, other services, facilities,
119 funds, or other financial arrangements similar in value to the provision of dark fibers provided
120 such services, facilities, funds, or other financial arrangements are related to the provision of
121 telecommunications services. In the event funds are paid to the City, such funds are to be used
122 for the sole purpose of purchasing telecommunications-related equipment.

123 v. The value of providing the dark fibers to each of the seven (7) public buildings
124 shall be determined on a building by building basis and shall be considered to be the average of
125 the amount reflected in price quotes to be obtained from three (3) independent construction
126 companies. The Grantor and Grantee will each select one construction company and the third
127 will be selected by mutual agreement. IF the Grantor and Grantee fail to agree on the third
128 construction company, the City Council will make the selection.

129 vi. The Grantee shall allow City-owned communications interface equipment, which
130 is compatible with the Grantee's equipment, to be co-located at the Grantee's principal hub site
131 or other mutually agreed upon location. At such site Grantee shall provide, free of charge a 30
132 inch x 36 inch x 6 foot space for City equipment. The Grantee shall not charge the City for the
133 use or maintenance of the dark fibers or the maintenance of co-located equipment mentioned
134 previously.

135 vii. The City shall obtain, or otherwise provide, necessary authorization, license,
136 easement or permit for entry into public buildings as provided for herein. On a best effort's
137 basis, the City shall obtain and otherwise provide necessary authorization, license, easement or
138 permit for such public building entry for the Grantee to utilize for its own telecommunication
139 system.

140 (i) Grantee shall obtain all necessary authority to transact business in New Orleans from
141 the appropriate state and federal regulatory agencies prior to providing service in New Orleans.

1 SECTION 7. Recovery of Costs. The costs for official notices for promulgation of this
2 Ordinance, Five Hundred Dollars (\$500.00), shall be paid by the Grantee, and failure to do so
3 shall be grounds for cancellation of the permit and privilege granted by this Ordinance.

4 Grantee shall pay Grantor a \$10,000.00 Acceptance Fee in addition to the costs for
5 official notices.

6 Grantee shall pay the Acceptance Fee and the costs for official notices upon submission
7 of its written acceptance of this ordinance.

1 SECTION 8. Payments to Grantor.

2 (a) No acceptance of any payment shall be construed as an accord that the amount paid
3 is in fact the correct amount, nor shall such acceptance of payment be construed as a release of
4 any claim the Grantor may have for further or additional sums payable under the provisions of
5 this ordinance. All amounts paid shall be subject to audit and recomputation by Grantor. No
6 audit or recomputation by Grantor shall occur later than one (1) year after the Grantee's
7 quarterly payment for a given year is tendered.

8 (b) In accordance with the provisions of this ordinance, as compensation for the use
9 of the streets and public ways of the City for the construction, operation, maintenance and/or
10 the reconstruction of telecommunications system granted hereby within the City, the Grantee
11 shall pay to the City an annual amount in quarterly installments due January 1, and every quarter
12 thereafter, based upon 5% of Grantee's gross receipts.

13 Grantee shall provide to the City's Director of the Department of Utilities a statement
14 in certificate form, signed by the Secretary of the Grantee or a Certified Public Accountant,
15 setting forth the amount of gross annual revenues, including specifically sources of such
16 revenues and the amount of revenue derived from each and every source thereby totalling the

17 amount of compensation due and payable to the City. The statement will be accorded
18 confidential treatment by the City pursuant to a confidentiality agreement, which shall be entered
19 by and between Grantor and Grantee. Subject to the terms of a Confidentiality Agreement, the
20 said statement, and such records of Grantee as are reasonably necessary for audit purposes, may
21 be made available to an independent firm for an audit of Grantee's records on behalf of the
22 Grantor. The financial statement described herein shall not be available to the public except as
23 otherwise required by applicable state law.

24 (c) Grantee shall pay the City a five percent (5%) penalty for any payment delinquent
25 by more than sixty (60) days. In addition, Grantee shall pay City interest on the amount due
26 from the due date at an annual rate equal to the prime rate determined by the Chase Manhattan
27 Bank on the first day of the month in which such delinquency occurs.

1 SECTION 9. Construction. Grantee shall meet or exceed the material construction
2 requirements listed below:

3 (a) Construction Codes. The Grantee shall strictly adhere to all building, safety and
4 zoning codes currently or hereafter in force including the New Orleans Building Code, National
5 Electric Safety Code, the National Electrical Code, and the requirements of the Department of
6 Streets.

7 (b) Installation. Grantee shall arrange its lines, cables, and other appurtenances, in
8 such a manner as to cause no unreasonable interference with the use of said public or private
9 property by any person. In the event of such unreasonable interference, after reasonable notice
10 to Grantee and an opportunity to rectify same, the Grantor may require the removal of the
11 Grantee's lines, cables, and appurtenances from the property in question at Grantee's sole
12 expense.

13 Although the basic system shall use fiber optics, conventional conductors, using parallel,
14 twisted pair or coaxial construction may be used where appropriate.

15 (c) Erection of Poles. If additional poles on an existing utility system route are
16 required, Grantee shall negotiate with the utility company for the installation of the needed poles
17 or Grantee may at its option, subject to the prior approval of the Grantor, install the necessary
18 poles. The Grantee shall negotiate the lease of pole space and facilities from the existing pole
19 owners for all aerial construction, under mutually acceptable terms and conditions. No poles

20 shall be erected in the underground areas of the City as stated in Section 61-51 of the Code of
21 the City of New Orleans (Ordinance No. 13,838 C.S. and Ordinance No. 4001 M.C.S., as
22 amended).

23 In any event, cables shall be installed underground at Grantee's cost where existing
24 utilities are already underground. Previously installed aerial cable shall be undergrounded in
25 concert, and on a cost-sharing basis, with other utilities when such other utilities may convert
26 from aerial to underground construction whenever possible.

27 (d) Use of Public Streets and Ways. For the purpose of operating and maintaining
28 a telecommunications cable system in the City, the Grantee may erect, install, construct, repair,
29 replace, reconstruct, and retain in, on, over, under, upon, across, and along the public streets
30 and ways within the City such wires, cables, conductors, ducts, conduits, vaults, manholes,
31 amplifiers, appliances, pedestals, attachments, and other property and equipment as are
32 necessary and appurtenant to the operation of the fiber optic system.

33 (e) Repair of Street and Public Ways. Any and all streets and public ways which
34 are disturbed or damaged during the construction, operation, maintenance or reconstruction of
35 the telecommunications system shall be promptly repaired by the Grantee, at its expense, and
36 to the reasonable satisfaction of the Grantor, where such costs were made necessary by the
37 neglect of the Grantee.

38 Whenever the Grantee shall disturb the surface of any street, alley, public highway or
39 ground for any purpose and when any opening is made by the Grantee in any hard surface
40 pavement in any street, alley or public highway, the Grantee shall promptly refill the opening
41 and restore the pavement. The Grantor may refill and/or repave in case of neglect of the
42 Grantee. The cost thereof, including the cost of inspection and supervision, shall be paid by the
43 Grantee upon demand by Grantor.

44 Excavations made by the Grantee in the streets, alleys and public highways shall be
45 properly safeguarded for the prevention of accidents.

46 The work hereby required shall be done in strict compliance with the rules, regulations
47 and ordinances of the Grantor as now or hereafter provided.

48 (f) Trimming of Trees. Nothing contained in this Ordinance shall be deemed to
49 empower or authorize Grantee to cut or trim any trees, ornamental or otherwise, in any of the

50 streets, alleys or public highways. Grantee may cut or trim trees as necessary only pursuant to
51 a prior agreement with the owner of the property which is adjacent to the street area in which
52 such tree stands.

53 In addition to the foregoing, tree cutting or trimming on public property shall be
54 performed in accordance with Chapter 106 of the Code of the City of New Orleans (Ordinance
55 No. 365 M.C.S., as amended).

56 Refuse created by tree trimming shall be removed and disposed of in an acceptable
57 manner.

58 (g) As Built Drawings. Grantee shall furnish Grantor "as built" drawings 120 days
59 after construction has been completed. Drawings shall show ownership of conduits, ducts, poles
60 and cables used for the telecommunications system.

61 Drawings shall be drawn to a scale of one inch equals one hundred feet using the
62 standard format adopted by the Sewerage & Water Board, New Orleans Public Service, Inc. and
63 the Utilities Department in Autocad DXF format on 3 1/2 inch high density diskettes. Grantee
64 shall provide one set of such diskettes and one set of blue or black line "as built" drawings to
65 the Director of the Utilities Department and one set of each to the Director of the Department
66 of Streets.

67 State plane coordinates shall be shown for benchmarks and structures. Drawings shall
68 show horizontal dimensions from the curbs and elevations.

69 (h) Right of Inspection of Construction. Grantor shall have the right to inspect all
70 construction or installation work performed subject to the provisions of this privilege and to
71 make such tests as it shall find necessary to ensure compliance with the terms of the privilege
72 and other pertinent provision of law.

1 SECTION 10. Safety. The Grantee shall, at all times, employ the standard of care
2 attendant to the risks involved and shall install and maintain in use commonly accepted methods
3 and devices for preventing failures and accidents which are likely to cause damage, injury or
4 nuisance to the public or to employees of the Grantee.

5 Grantee's telecommunications system shall at all times be kept and maintained in a safe
6 and suitable condition, and in good order and repair.

7 The Grantee shall install and maintain its wires, cables, fixtures, and other equipment in

8 accordance with the requirements of any utility or property owner providing pole or conduit
9 space in such manner that they will not interfere with any installations of the Grantor, any public
10 utility or property owner.

1 SECTION 11. Street Rights.

2 (a) Construction and Alterations. Nothing in this Ordinance shall be construed to
3 prevent the Grantor from constructing sewers, grading, paving, repairing and/or altering any
4 street, alley, or public highway, or laying down, repairing or removing water mains or
5 constructing or establishing any other public work. All such work shall be done, insofar as
6 practicable, in such manner as not to obstruct, injure or prevent the free use and operation of
7 the poles, wires, conduits, conductors, pipes or appurtenances of the Grantee. If any such
8 property of the Grantee herein shall interfere with the construction or repair of any street or
9 public improvement whether it be construction, repair or removal of a sewerage or water main,
10 the improvement of a street or any other facility, the Grantee's installations shall be removed
11 or replaced in such manner as shall be directed by the Grantor so that the same shall not
12 interfere with the said public work of the Grantor, and such removal or replacement shall be at
13 the expense of the Grantee herein; provided however, that Grantor will provide advance notice
14 to Grantee of such public improvement to minimize disruption to Grantee's installations.

15 (b) Street Vacation or Abandonment. In the event of failure, neglect or refusal
16 of the Grantee, after thirty days notice by the Grantor, to repair, improve or maintain such street
17 portion, the Grantor may do such work or cause it to be done, and the cost thereof as found and
18 declared by the Grantor shall be paid by the Grantee and collection may be made by court action
19 or otherwise.

20 (c) Movement of Facilities. In the event it is necessary temporarily to move or
21 remove any of the Grantee's overhead wires, cables, poles or other facilities placed pursuant to
22 this ordinance in order lawfully to move a large object, vehicle, building or other structure over
23 the streets, alleys or highways of the Grantor, Grantee, upon reasonable advance notice, shall
24 move its facilities as required, at the expense of the person requesting the temporary removal.

1 SECTION 12. Administration.

2 (a) Maintenance and Complaints. Before commencement of operation, Grantee
3 shall provide the Grantor and its official agencies a toll free 24 hour telephone number to receive

4 requests for repairs and complaints.

5 (b) Address and Agent for Service of Process. Grantee shall at all times maintain
6 an office within the City of New Orleans, the current address of which shall be recorded with
7 the Director of Utilities, or shall appoint and file and record with the Director of Utilities and
8 the City Attorney, an agent within the City of New Orleans for service of process.

9 (c) Discriminatory Practices Prohibited. The Grantee shall comply at all times with
10 all applicable Federal, State and City laws, and all executive and administrative orders relating
11 to non-discrimination.

12 (d) Permission of Property Owners Required. No cable line, wire, amplifier,
13 converter, or other piece of equipment owned by Grantee shall be installed by Grantee without
14 first securing the written permission of the owner of any property involved; provided, however,
15 that where the property owner has granted a servitude to another and the servitude by its terms
16 contemplates uses such as Grantee's intended use, Grantee shall not be required to secure the
17 written permission of the owner for the installation of equipment or facilities unless Grantee
18 elects to do so. If permission is later revoked, whether by the original or a subsequent owner,
19 the Grantee shall remove forthwith any of its equipment which is visible and movable, and
20 promptly restore the property to its original condition.

21 (e) Grantee acknowledges and agrees that it is a "telephone company" as that term
22 is currently defined in L.S.A.-R.S. 47:1851Q, for the purpose of assessment of public service
23 properties for ad valorem taxation only.

1 SECTION 13. Right of Grantor to Revoke Privilege. Grantor reserves the right to
2 revoke this privilege, and all rights pertaining thereto, in the event that: (a) the Grantee willfully
3 or repeatedly violates any material provision of this Ordinance; or (b) the Grantee becomes
4 insolvent, is involuntarily adjudged as bankrupt, or files a voluntary petition for relief under the
5 Bankruptcy Act; or (d) the Grantee is adjudged to have practiced any fraud or deceit upon the
6 Grantor and such judgment becomes final after all appeals are exhausted according to law, or
7 (d) the Grantee ceases to provide telecommunications services within the City of New Orleans
8 for any reason within the control of the Grantee. The foregoing subparagraphs (a) through (d)
9 notwithstanding, the privilege shall not be subject to such revocation if any delays in
10 performance or any other instances of non-compliance are due to acts of God, civil emergencies,

11 labor unrest or strikes, or other causes which are beyond Grantee's reasonable control or which
12 are not reasonably foreseeable. The time for the performance of an obligation shall be extended
13 for the period of the forced delay.

14 Upon failure of the Grantee to comply with the terms of the privilege or to commence
15 appropriate corrective action within sixty (60) days after receiving written notice by certified
16 mail to the President of the Grantee or the Agent for Service of such non-compliance from the
17 Grantor, the Grantor may hold a public hearing to consider the option of revocation of the
18 privilege. The Grantor shall give the Grantee at least ten (10) days advance written notice of
19 such hearing and shall also publish such notice in advance in a newspaper with local circulation.
20 If, after such hearing, at which Grantee shall be afforded all due process of law including the
21 right to appear and be heard, the Grantor shall determine that this privilege should be revoked,
22 Grantor must advise the Grantee of its decision in writing and may by ordinance declare a
23 forfeiture; whereupon all rights of the holders of this privilege shall immediately be divested
24 without a further act upon the part of the Grantor, and if required by Grantor, the Grantee shall
25 forthwith remove its structures or property from the streets and restore the streets to such
26 condition as the Grantor may reasonably require and upon failure so to do, the Grantor may
27 perform the work and collect the cost thereof from the Grantee. The cost thereof shall be
28 enforced by a lien upon all plant and property of the Grantee. Such lien shall not attach to
29 property of Grantee located on the poles, ducts, or other property of utilities and other property
30 owners until removal of Grantee's property from the poles, ducts, or facilities.

1 SECTION 14. Grantor's Right to Reserve System. The Grantor reserves the right
2 to reserve any or all parts of the system if a forfeiture is declared pursuant to Section 13 above.
3 Grantor shall have the right to revoke the franchise one hundred and twenty (120) days after the
4 appointment of a receiver, or trustee, to take over and conduct the business of the Grantee,
5 whether in receivership, reorganization, bankruptcy, or other action or proceeding, unless such
6 receivership or trusteeship shall have been vacated prior to the expiration of said one hundred
7 and twenty (120) days, or unless:

8 (a). Within one hundred and twenty (120) days after his election or appointment, such
9 receiver or trustee shall have fully complied with all the provisions of the privilege and remedied
10 all defaults thereunder; and

11 (b) Such receiver or trustee, within said one hundred and twenty (120) days, shall
12 have executed an agreement, duly approved by the court having jurisdiction in the premises,
13 whereby such receiver or trustee assumes and agrees to be bound by each and every provision
14 of the privilege.

1 SECTION 15. Election Upon Expiration. Upon expiration of the initial term of the
2 privilege and consistent with this section, the Grantor may extend the Grantee's privileges
3 granted hereunder for an additional fifteen year term. Grantor and Grantee each reserve the right
4 to seek amendments and/or modifications of the terms and conditions of the extension of the
5 privileges granted hereunder to take into consideration then-existing and future conditions.

1 SECTION 16. EQUAL EMPLOYMENT OPPORTUNITY AND PROCUREMENT
2 POLICY. The Grantee will abide by all applicable local, state and federal laws, which have
3 been enacted or which may be enacted hereafter.

1 SECTION 17. Privilege Non-transferable. This privilege and permit shall not be
2 assigned to or vest in any person, except the Grantee, either by act of the Grantee or by
3 operation of law, without the consent of the City expressed by ordinance, which consent shall
4 not be unreasonably withheld; provided, however, that this privilege and permit may be
5 transferred without consent of Grantor to a subsidiary or affiliate of Grantee, or to any other
6 entity which is under common control with Grantee upon written notification of same to the
7 Director of the Department of Utilities. Commercial activities associated with Grantee's conduct
8 of its normal day to day business is excluded.

9 The granting of such consent shall not render unnecessary any subsequent consent.

10 The Grantee, upon transfer as heretofore described, shall within 60 days thereafter file
11 with the City a copy of the deed, agreement, mortgage, lease, or other written instrument
12 evidencing such sale, transfer or lease, certified and sworn to as correct by the Grantee.

13 Every such transfer as heretofore described, whether voluntary or involuntary, shall be
14 deemed void and of no effect unless Grantee shall, within 60 days after the same shall have been
15 made, file such certified copy as required.

1 SECTION 18. Laws and Regulations. Grantee shall at all times comply with all laws
2 and regulations of the state and federal government or any administrative agency thereof, as well
3 as all city ordinances, resolutions, rules, and regulations heretofore or hereafter adopted or

4 established during the entire term of the privilege including all zoning and subdivision
5 regulations.

6 If any section, subsection, provision or item of this ordinance or the application thereof,
7 is for any reason held invalid or unconstitutional by any court or governmental body of
8 competent jurisdiction, such invalidity shall not affect other sections, subsections, provisions,
9 items or applications of this ordinance which can be given effect without the invalid section,
10 subsection, provision, item or application, and to that end the provisions of this ordinance are
11 hereby declared severable

12 Should the State of Louisiana, the FCC or any other agency of the federal government
13 subsequently require the Grantee to perform any act which is inconsistent with any provision of
14 this privilege, the Grantee shall so notify the Grantor. Upon receipt of such notification, the
15 Grantor shall determine if a material provision of the privilege is affected. Upon such
16 determination, the Grantor shall have the right to modify or amend any of the provisions of the
17 privilege to such reasonable extent as may be necessary to carry out the full intent and purpose
18 of the privilege. The Grantor may terminate the privilege in the event the Grantor determines
19 that substantial and material compliance with the original terms of the privilege has been
20 frustrated by such state or federal requirement. And, accordingly, in such an event, Grantee
21 reserves its rights to pursue whatever remedies it may have, and to comply with the duties and
22 obligations which may be imposed upon it by such state or federal agencies.

1 SECTION 19. Universal Service Fund. Grantee hereby agrees to comply with
2 requirements applicable to competitive access providers designed to promote universal service
3 in a competitive market if requirements may be legally adopted in the future by regulatory
4 agencies with jurisdiction over ratemaking issues for intrastate ratemaking issues in Louisiana.
5 Grantee does not, however, waive its right to participate in any regulatory, administrative,
6 legislative or judicial proceeding to present its views on the proper definition and cost of
7 universal service, or the reasonableness and equity of any proposed funding mechanism to
8 promote universal service, or any jurisdictional issues.

1 SECTION 20. Causes Beyond Reasonable Control. In the event Grantee's
2 performance of any of the terms, conditions, obligations, or requirements of this Ordinance is
3 prevented or impaired due to any cause beyond its reasonable control or not reasonably

4 foreseeable, such inability to perform shall be deemed to be excused and no penalties or
5 sanctions shall be imposed as a result thereof. Such causes beyond Grantees reasonable control
6 or not reasonably foreseeable shall include, but shall not be limited to, acts of God, civil
7 emergencies and labor, unrest or strikes.

8 Grantee shall notify the Director of Utilities whenever performance is prevented or
9 impaired.

1 SECTION 21. Acceptance. Grantee shall, within sixty (60) days after the passage of
2 this Ordinance by the City Council, file with the Clerk of Council, with copies filed with the
3 Director of Utilities, and the City Attorney, a written acceptance of this Ordinance, said
4 Acceptance to be signed and acknowledged by the president, vice president or other authorized
5 officer of the Grantee and attested by its Secretary. Said acceptance shall be substantially in the
6 following form:

7 "TO THE COUNCIL OF THE CITY OF NEW ORLEANS

8 The Grantee, American Communication Services of Louisiana, Inc. ("ACSI"), a
9 corporation organized and existing under and by virtue of the laws of the State of Delaware,
10 does hereby accept Ordinance No. _____ M.C.S. enacted the ____ day of
11 _____, 19__ granting American Communication Services of Louisiana, Inc.,
12 the privilege to erect, construct, maintain and/or operate a conduit and telecommunications cable
13 system on and under the streets, alleys and other public places of the city, subject to certain
14 terms, conditions and limitations as set forth therein.

15 AMERICAN COMMUNICATION SERVICES OF LOUISIANA, INC.

16 BY: _____

17 ITS: _____

18 ATTEST:

19 _____

20 SECRETARY

21 Dated at _____, this the _____ day of

22 _____, 19__.

23 Said Acceptance shall be read into the minutes of the Council of the City of New
24 Orleans.

25 In event such Acceptance is not filed within said time, this Ordinance and the rights and
26 privileges herein granted shall be null and void.

ADOPTED BY THE COUNCIL OF THE CITY OF NEW ORLEANS July 3, 1996

JAMES M. SINGLETON
PRESIDENT OF COUNCIL

DELIVERED TO THE MAYOR ON July 5, 1996

APPROVED:
~~DISAPPROVED:~~ July 9, 1996

MARC H. MORIAL
MAYOR

RETURNED BY THE MAYOR ON July 9, 1996 AT 5:10 P.M.

EMMA I. WILLIAMS
CLERK OF COUNCIL

YEAS: Carter, Glapion, Hazeur, Singleton, Terrell, Thomas, Wilson - 7
NAYS: 0
ABSENT: 0
mmf

THE FOREGOING IS CERTIFIED
TO BE A TRUE AND CORRECT COPY.

Emma J. Williams
CLERK OF COUNCIL

Anthony Kirk *October 7, 1999*

AGM 71

ORDINANCE
CITY OF NEW ORLEANS

A00660
MH 09

Linear

CITY HALL, October 7, 1999

CALENDAR NO. 22,769

NO. 19440

MAYOR COUNCIL SERIES

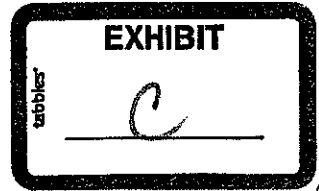
BY: COUNCILMEMBER *SAHR* TERRELL, *SAHR* SAHR, *GLAPION* THOMAS, *GLAPION* GLAPION (BY REQUEST) -

An ORDINANCE granting a non-exclusive Franchise to Level 3 Communications, LLC, to construct, maintain, and operate a wireline telecommunications system, to provide for the furnishing of a surety bond, annual payments, and otherwise to provide with respect thereto.

SECTION 1. THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY

ORDAINS, that a non-exclusive Franchise be and the same is hereby granted to Level 3 Communications, LLC, the Grantee, to construct, maintain, and operate a wireline telecommunications system ("System") commencing at the intersection of Chef Menteur Highway and Old Gentilly Road traveling in a westerly direction along the south side of Old Gentilly Road for 14,300 feet to the intersection of Old Gentilly Road and Almonaster Avenue (extension), thence continuing in a westerly direction along the south side of Almonaster Avenue (extension) for 2,650 feet, thence crossing from the south side to the median of Almonaster Avenue (extension), thence continuing within the median of Almonaster Avenue (extension) for 27,000 feet to the intersection of Almonaster Avenue (extension) and the Jourdon Road, thence crossing the Industrial Canal to the intersection of the Almonaster Avenue and France Road, thence traveling westerly along the south side of Almonaster Avenue for 2,175 feet to the intersection of Almonaster Avenue and Louisa Street, thence traveling in a northerly direction along the east side of Louisa Street for 725 feet to the intersection of Louisa Street and Old Gentilly Road, thence traveling in a westerly direction along the south side of Old Gentilly Road for 2,800 feet to the intersection of Old Gentilly Road and Chef Menteur Highway, occupying a total of 49,650 lineal feet of City rights-of-way; all as shown on the plans filed with the Director upon the introduction of this Ordinance, which plans are made part of this Ordinance.

The purpose of the installation of this System is to operate a Long Distance Network Service System, as defined in Section 30-45 of the Code of the City of New Orleans by the



CB

22 Grantee, and this system will be used solely this purpose. It is agreed that any use of this
23 System by the Grantee for other purposes shall constitute a violation of a material provision
24 of this Ordinance.

1 SECTION 2. THIS NON-EXCLUSIVE FRANCHISE IS GRANTED for a
2 period of fifteen (15) years beginning October 1, 1999 and ending September 30, 2014.
3 The prorated annual fee for 1999 shall be THIRTY TWO THOUSAND ONE HUNDRED
4 EIGHTY FOUR AND 08/00 (\$32,184.08) DOLLARS. The annual fee, payable in advance,
5 is based on a fee of \$2.60 per year per linear foot of right-of-way and public property
6 occupied, which for an entire year shall be ONE HUNDRED TWENTY NINE THOUSAND
7 NINETY AND 00/00 (\$129,090.00) DOLLARS. Beginning in the year 2001, and every five
8 years thereafter, such compensation shall be increased by the average increase of the
9 Consumer Price Index ("CPI") for the proceeding five years. Said fee is subject to field
10 verification of the exact distances by the Utilities Department and is in accordance with
11 Section 30-50(a)(1) and 146-436 through 146-459 of the Code of the City of New Orleans,
12 Ordinance No. 17,271 M.C.S., as amended. Fees shall be in an amount as set forth above
13 unless revised by a valid ordinance or ordinances of the City of New Orleans of general
14 application to telecommunications companies or services and shall be made on or before the
15 first day of January of each year.

16 This non-exclusive Franchise is granted under the terms and conditions contained
17 herein and as set forth in the New Orleans Home Rule Charter (City Charter) which terms
18 and conditions are incorporated herein by reference thereto.

19 In the event of conflict between the terms and conditions of this non-exclusive
20 Franchise and the terms and conditions on which the City can grant a non-exclusive
21 Franchise as set forth in the City Charter, the City Charter shall, without exception, control.

22 This Ordinance is made subject to the City Charter and General Ordinance provisions
23 now in effect, or hereafter effective, and Sections 146-275 through 146-285 of the Code of
24 the City of New Orleans (Ordinance No. 17,271 M.C.S., as amended). This Ordinance is
25 subject to all provisions of the Wireline Telecommunications Franchise Act of the City,
26 codified as Sections 30-44 through 30-57 of the Code of the City of New Orleans, whether
27 specifically set forth herein, or not, except where the provisions of such Franchise Act are

28 specifically revised herein. Nothing in this Ordinance shall be deemed to waive the
29 requirement of the various codes and ordinances of the City regarding permits, fees to be
30 paid, or the manner of construction.

1 SECTION 3. RIGHT, POWER, AND AUTHORITY OF THE CITY. In
2 accepting this non-exclusive Franchise, Grantee, acknowledges that its rights hereunder are
3 subject to police powers of the City of New Orleans to adopt and enforce general ordinances
4 necessary for the safety and welfare of the public and it agrees to comply with all applicable
5 general laws and ordinances enacted by the City of New Orleans pursuant to such power, as
6 provided by Ordinance. Nothing herein shall be construed to waive, surrender or relinquish
7 any right, power or authority of the City of New Orleans under the Home Rule Charter
8 relative to or in connection with Grantee for communications and data services of an intra
9 parish nature, intrastate communications or data services, any part of which is conducted
10 within the territorial limits of Orleans Parish. Further, nothing herein shall be deemed to
11 grant the Grantee the right to provide telecommunications services within the City of New
12 Orleans except for service specifically authorized herein.

13 Nothing in the Franchise shall be construed to prevent the Grantor from constructing sewers and drains, grading,
14 paving, repairing and/or altering any street, alley, public highway, or municipal structure, or laying down, repairing of
15 removing water mains or constructing or establishing any other public work. All such work shall be done, insofar as
16 practicable, in such a manner as not to obstruct, injure or prevent the free use and operations of Grantee's system. If any
17 such property of the Grantee shall interfere with the construction or repair of any street or public improvement, whether
18 it be construction, repair or removal of a sewer or water main, the improvement of a Right-of-Way or any other public
19 improvement, all the Grantee's system shall be removed or replaced in such a manner as shall be directed by the Grantor
20 so that the same shall not interfere with such public work of the Grantor, and such removal or replacement shall be at the
21 expense of the Grantee. Grantor shall not be liable to Grantee or third parties for any damage, breakage or repair, or any
22 claims for loss of use, business interruption, claims by users, repair or replacement cost to any third party in connection
23 with the removal of any of Grantee's systems. In any event, the Grantor shall not be liable for any damage occurring to
24 the Grantee's system caused by the Grantor, its officers, agents, employees, or independent contractors, in the performance
25 of their duties in connection with public works, nor shall the Grantor be held liable for the interruption of service by
26 actions of the Grantor, its officers, agents, employees, or independent contractors, in the performance of their duties in
27 connection with public works. When reasonably possible, the Grantee shall be consulted prior to any public work

28 effecting its system, but the Grantor shall have no liability to the Grantee in the event it does not so consult the Grantee.

1 **SECTION 4. SURETY BOND.** Grantee shall furnish a good and solvent surety
2 bond, in solido, in the sum of \$100,000.00, to guarantee the fulfillment of all the provisions
3 of the Ordinance and Sections 146-275 through 146-285 and Sections 30-44 through 30-57
4 inclusive of the Code of the City of New Orleans, (Ordinance No. 17,271 M.C.S. as
5 amended), By virtue of and subject to which sections this Franchise is granted.

1 **SECTION 5. ADDRESS AND AGENT FOR SERVICE OF PROCESS.** Grantee
2 shall at all time maintain an office within the City of New Orleans, the current address of
3 which is recorded with the Director of Utilities, or shall appoint and file and record with the
4 Director of Utilities, and the City Attorney, an agent within the City of New Orleans for
5 service of process.

6 The Grantee shall provide the Grantor and its official agencies a toll free 24 hour
7 telephone number to receive requests for repairs and complaints.

1 **SECTION 6. SEVERABILITY.** If any section, subsection, sentence, clause,
2 phrase, or portion of this Franchise is, for any reason, held invalid or unconstitutional by any
3 court of competent jurisdiction, such portion shall be deemed a separate, distinct and
4 independent provision and such holding shall not effect the validity of the remaining portions
5 of this Agreement.

1 SECTION 7. ACCEPTANCE. Acceptance and Acceptance terms shall be in
2 accordance with Section 30-55, of the Code of the City of New Orleans (Ordinance No.
3 17,271 M.C.S., as amended).

ADOPTED BY THE COUNCIL OF THE CITY OF NEW ORLEANS NOV 04 1999

EDDIE L. SAPIR

PRESIDENT OF COUNCIL

DELIVERED TO THE MAYOR ON NOV 05 1999

APPROVED:

~~NOV 05 1999~~ NOV 15 1999

MARC H. MORIAI

MAYOR

RETURNED BY THE MAYOR ON NOV 16 1999 AT 12 15 PM

EMMA J. WILLIAMS

CLERK OF COUNCIL

YEAS: Carter, Glapion, Hazeur-Distance, Sapir, Singleton, Terrell, Thomas - 7
NAYS: 0
ABSENT: 0

Administration/Utilities/crm

THE FOREGOING IS CERTIFIED
TO BE A TRUE AND CORRECT COPY

Emma J. Williams
CLERK OF COUNCIL

LINEAR
Expanded Sept 10

ORDINANCE
CITY OF NEW ORLEANS

CITY HALL September 7, 2000
CALENDAR NO. 23.230

NO. ~~19812~~ MAYOR COUNCIL SERIES

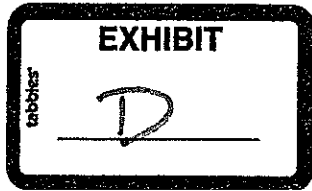
BY: COUNCILMEMBERS SAPIR, THOMAS, CARTER, AND JOHNSTON (BY
REQUEST)

An ORDINANCE granting a non-exclusive Franchise to Global Crossing North American Networks, Inc., to construct, maintain, and operate a wireline telecommunications system; to provide for the furnishing of a surety bond and annual payments; and otherwise to provide with respect thereto.

1 SECTION 1. THE COUNCIL OF THE CITY OF NEW ORLEANS
2 HEREBY ORDAINS, that a non-exclusive Franchise be and the same is hereby granted
3 to Global Crossing North American Networks, Inc., the Grantee, to construct, maintain,
4 and operate a wireline telecommunications system ("System") commencing at 639
5 Loyola Avenue, traveling in a northerly direction along the west side of Loyola Avenue
6 to the intersection of Loyola Avenue and Poydras Street for 578 feet, thence traveling in a
7 easterly along the south side of Poydras Street for 192 feet to 1250 Poydras Street, thence
8 into private property, occupying a grand total of 770 linear feet of City rights-of-way; and
9 as shown on the plans filed with the Director upon the introduction of this Ordinance,
10 which plans are made part of this Ordinance.

11 The purpose of the installation of this System is to operate a Long Distance
12 Network Service System, as defined in Section 30-45 of the Code of the City of New
13 Orleans by the Grantee, and this system will be used solely for this purpose. It is agreed
14 that any use of this System by the Grantee for other purposes shall constitute a violation
15 of a material provision of this Ordinance.

1 SECTION 2. THIS NON-EXCLUSIVE FRANCHISE IS GRANTED for a
2 period of fifteen (15) years beginning October 1, 2000 and ending September 30, 2015.
3 The prorated annual fee for 2000 shall be SIX HUNDRED, SIXTY-SEVEN AND 33/100
4 (\$667.33) DOLLARS. The annual fee, payable in advance, is based on a fee of \$2.60 per



C4

5 year per linear foot of right-of-way and public property occupied, which for an entire
6 year shall be TWO THOUSAND THOUSAND, TWO AND 00/100 (\$2,002.00)
7 DOLLARS. Beginning in the year 2001, and every five years thereafter, such
8 compensation shall be increased by the average increase of the Consumer Price Index
9 ("CPI") for the proceeding five years. Said fee is subject to field verification of the exact
10 distances by the Utilities Department and is in accordance with Section 30-50(a)(1) and
11 146-436 through 146-459 of the Code of the City of New Orleans, Ordinance No. 17,271
12 M.C.S., as amended. Fees shall be in an amount as set forth above unless revised by a
13 valid ordinance or ordinances of the City of New Orleans of general application to
14 telecommunications companies or services and shall be made on or before the first day of
15 January of each year.

16 This non-exclusive Franchise is granted under the terms and conditions contained
17 herein and as set forth in the New Orleans Home Rule Charter (City Charter) which terms
18 and conditions are incorporated herein by reference thereto.

19 In the event of conflict between the terms and conditions of this non-exclusive
20 Franchise and the terms and conditions on which the City can grant a non-exclusive
21 Franchise as set forth in the City Charter, the City Charter shall, without exception,
22 control.

23 This Ordinance is made subject to the City Charter and General Ordinance
24 provisions now in effect, or hereafter effective, and Sections 146-275 through 146-285 of
25 the Code of the City of New Orleans (Ordinance No. 17,271 M.C.S., as amended). This
26 Ordinance is subject to all provisions of the Wireline Telecommunications Franchise Act
27 of the City, codified as Sections 30-44 through 30-57 of the Code of the City of New
28 Orleans, whether specifically set forth herein, or not, except where the provisions of such
29 Franchise Act are specifically revised herein. Nothing in this Ordinance shall be deemed
30 to waive the requirement of the various codes and ordinances of the City regarding
31 permits, fees to be paid, or the manner of construction.

1 SECTION 3. RIGHT, POWER, AND AUTHORITY OF THE CITY. In
2 accepting this non-exclusive Franchise, Grantee, acknowledges that its rights hereunder
3 are subject to police powers of the City of New Orleans to adopt and enforce general
4 ordinances necessary for the safety and welfare of the public and it agrees to comply with

5 all applicable general laws and ordinances enacted by the City of New Orleans pursuant
6 to such power, as provided by Ordinance. Nothing herein shall be construed to waive,
7 surrender or relinquish any right, power or authority of the City of New Orleans under the
8 Home Rule Charter relative to or in connection with Grantee for communications and
9 data services of an intra parish nature, intrastate communications or data services, any
10 part of which is conducted within the territorial limits of Orleans Parish. Further, nothing
11 herein shall be deemed to grant the Grantee the right to provide telecommunications
12 services within the City of New Orleans except for service specifically authorized herein.

13 Nothing in the Franchise shall be construed to prevent the Grantor from
14 constructing sewers and drains, grading, paving, repairing and/or altering any street,
15 alley, public highway, or municipal structure, or laying down, repairing or removing
16 water mains or constructing or establishing any other public work. All such work shall
17 be done, insofar as practicable, in such a manner as not to obstruct, injure or prevent the
18 free use and operations of Grantee's system. If any such property of the Grantee shall
19 interfere with the construction or repair of any street or public improvement, whether it
20 be construction, repair or removal of a sewer or water main, the improvement of a Right-
21 of-Way or any other public improvement, all the Grantee's system shall be removed or
22 replaced in such a manner as shall be directed by the Grantor so that the same shall not
23 interfere with such public work of the Grantor, and such removal or replacement shall be
24 at the expense of the Grantee. Grantor shall not be liable to Grantee or third parties for to
25 any damage, breakage or repair, or any claims for loss of use, business interruption,
26 claims by users, repair or replacement cost to any third party in connection with the
27 removal of any of Grantee's systems. In any event, the Grantor shall not be liable for any
28 damage occurring to the Grantee's system caused by the Grantor, its officers, agents,
29 employees, or independent contractors, in the performance of their duties in connection
30 with public works, nor shall the Grantor be held liable for the interruption of service by
31 actions of the Grantor, its officers, agents, employees, or independent contractors, in the
32 performance of their duties in connection with public works. When reasonably possible,
33 the Grantee shall be consulted prior to any public work affecting its system, but the
34 Grantor shall have no liability to the Grantee in the event it does not so consult the
35 Grantee.

1 **SECTION 4. SURETY BOND.** Grantee shall furnish a good and solvent surety
2 bond, in solido, in the sum of \$100,000.00, to guarantee the fulfillment of all the
3 provisions of the Ordinance and Sections 146-275 through 146-285 and Sections 30-44
4 through 30-57 inclusive of the Code of the City of New Orleans, (Ordinance No. 17,271
5 M.C.S. as amended), by virtue of and subject to which sections this Franchise is granted.

1 **SECTION 5. ADDRESS AND AGENT FOR SERVICE OF PROCESS.”**
2 Grantee shall at all time maintain an office within the City of New Orleans, the current
3 address of which is recorded with the Director of Utilities, or shall appoint and file and
4 record with the Director of Utilities, and the City Attorney, an agent within the City of
5 New Orleans for service of process.

6 The Grantee shall provide the Grantor and its official agencies a toll free 24-hour
7 telephone number to receive requests for repairs and complaints.

1 **SECTION 6. SEVERABILITY.** If any section, subsection, sentence, clause,
2 phrase, or portion of this Franchise is for any reason, held invalid or unconstitutional by
3 any court of competent jurisdiction, such portion shall be deemed a separate, distinct and
4 independent provision and such holding shall not effect the validity of the remaining
5 portions of this Agreement.

1 SECTION 7. ACCEPTANCE. Acceptance and Acceptance terms shall be in
0 accordance with Section 30-55, of the Code of the City of New Orleans (Ordinance No.
3 17,271 M.C.S., as amended).

ADOPTED BY THE CITY COUNCIL OF NEW ORLEANS OCT 05 2000

JAMES M. SINGLETON

PRESIDENT OF COUNCIL

DELIVERED TO THE MAYOR ON OCT 06 2000

APPROVED:

OCT 10 2000

MARC H. MORIAI

MAYOR

RETURNED BY THE MAYOR ON OCT 17 2000 AT 2:40 PM

EMMA J. WILLIAMS

CLERK OF COUNCIL

YEAS: Breaux, Carter, Johnston, Sapir, Shea, Singleton, Thomas - 7
NAYS: 0
ABSENT: 0

THE FOREGOING IS CERTIFIED
TO BE A TRUE AND CORRECT COPY

Emma J. Williams

CLERK OF COUNCIL

Handwritten: Link
Handwritten: 3
Handwritten: March 15, 2016

ORDINANCE
(AS AMENDED)

CITY OF NEW ORLEANS

CITY HALL MARCH 15, 2016

CALENDAR NO. 23,573

NO. 020145 MAYOR COUNCIL SERIES

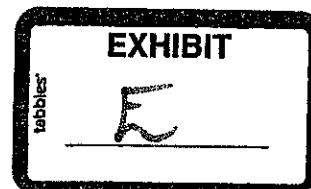
BY: COUNCILMEMBERS SAPIR, CARTER, GUSMAN, AND SINGLETON

An ORDINANCE to amend the non-exclusive franchise granted to Williams Communications, Inc. pursuant to Ordinance No. 19,253 M.C.S., to add thereto the route designated in Ordinance No. 18,592 M.C.S. together with an additional route along Loyola Avenue, Poydras Street, Perdido Street, Howard Avenue, South Rendon Street, South Lopez Street, Erato Street, South Broad Street and Earhart Boulevard, to approve the transfer and subrogation to Williams Communications, Inc. of that certain non-exclusive franchise granted to Vyvx, Inc. pursuant to Ordinance No. 18,592 M.C.S., and otherwise to provide with respect thereto.

SECTION 1. THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY

ORDAINS that Ordinance No. 19,253 which heretofore granted a certain non-exclusive franchise to Williams Communications, Inc. be and the same is hereby amended to add thereto the route designated in Ordinance No. 18,592 together with two additional routes, a North Run along Howard Avenue, North Dorgenois Street, Poydras Street and, Loyola Avenue, and a South Run along Girod Street, O'Keefe Avenue, Clio Street, Roman Street, Erato Street, South Lopez Street, Euphrosine Street, South Rendon Street and Howard Avenue, and accordingly Williams Communications, Inc is hereby granted an amended non-exclusive franchise to construct, maintain, operate, extend and/or continue a wireline telecommunications system ("System") commencing at the intersection of Chef Menteur Highway and Gentilly Road traveling in a westerly direction along the south side of Gentilly Road for 17,260 feet (16,988 feet within City rights-of-way and 172 feet within State of Louisiana rights-of-way) to the intersection of Gentilly Road and Almonaster Avenue (extension), thence continuing in a westerly direction in the median of Almonaster Avenue (extension) for 25,090 feet to the intersection of Almonaster Avenue (extension) and the Industrial Canal, thence crossing the Industrial Canal to the intersection of the Industrial Canal and Almonaster Avenue, thence traveling southwesterly along the median of Almonaster Avenue for 12,303 feet to the intersection of Almonaster Avenue and Franklin Avenue, thence traveling in a southwesterly direction in the median

Handwritten: 18,592
Handwritten: 18,592
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18 of Franklin Avenue for 2,640 feet to the intersection of Franklin Avenue and St. Claude Avenue
19 (Highway 46), thence entering the State of Louisiana right-of-way traveling in a westerly direction
20 within the median of St. Claude Avenue, for 4,015 feet to the intersection of St. Claude Avenue
21 and North Rampart Street, thence re-entering the City right-of-way and traveling in a southwesterly
22 direction within the median of North Rampart Street for 3,465 feet to the intersection of North
23 Rampart Street and Toulouse Street, thence traveling in a westerly direction along the north side of
24 Toulouse Street for 220 feet to the intersection of Toulouse Street and Basin Street, thence traveling
25 in a southerly direction along the median of Basin Street, which becomes Loyola Avenue, to the
26 intersection of Loyola Avenue and Poydras Street thence shifting to the west side of Loyola Avenue
27 and continuing in a southerly direction for 4,620 feet, thence into 639 Loyola Avenue, thence from
28 thence from 639 Loyola Avenue in a northerly direction along the west side of Loyola Avenue for
29 1,079 feet to the intersection of Loyola Avenue and Poydras Street, thence traveling in a westerly
30 direction along the north side of Poydras Street for 1,036 feet thence shifting to the south side of
31 Poydras Street for 163 feet, thence continuing along the south side of Poydras Street for 1,193 feet
32 to the intersection of Poydras Street and South Claiborne Avenue, thence entering the State of
33 Louisiana right-of way for 229 feet to the intersection of Poydras Street and South Roman Street,
34 thence re-entering the City right-of-way and traveling in a westerly direction along the south side of
35 Poydras Street for 3,253 feet to the intersection of Poydras Street and South Dourgenois Street,
36 thence traveling in a southerly direction along the west side of South Dourgenois Street for 545 feet
37 to the intersection of South Dourgenois Street and Howard Avenue, thence traveling in a westerly
38 direction along the south side of Howard Avenue for 289 feet to the intersection of Howard Avenue
39 and South Broad Street, thence entering the State of Louisiana right-of-way for 200 feet, thence re-
40 entering the City right-of way and traveling 2,213 feet to a dead end at the intersection Howard
41 Avenue and South Rendon Street, thence re-commencing at the intersection South Rendon street and
42 Palmetto street traveling in southwesterly direction along the west side of South Rendon Street for
43 418 feet to the intersection of South Rendon Street and Euphrosine Street, thence traveling in a
44 southeasterly direction along the south side of Euphrosine Street for 354 feet to the intersection of
45 Euphrosine Street and South Lopez Street, thence traveling in a southwesterly direction along the
46 east side of South Lopez Street for 1,154 feet to the intersection of South Lopez Street and Erato
47 Street, thence traveling in a southeasterly direction along the south side of Erato Street for 1,866

NEW
APRIL

INNERCONNECTS

48 feet to the intersection of Erato Street and South Broad Street, thence entering the State of Louisiana
49 right-of-way for 200 feet, thence re-entering the City right-of way and traveling 2,481 feet to the
50 intersection Erato Street and South Roman Street, thence traveling in a northeasterly direction along
51 the west side of South Roman Street for 468 feet to the intersection of South Roman Street and Clio
52 Street, thence traveling in a southeasterly direction along the north side of Clio Street for 576 feet,
53 thence entering the State of Louisiana right-of-way for 200 feet, thence re-entering the City right-of
54 way and traveling in a southeasterly direction along the north side of Clio Street for 3,489 feet to the
55 intersection of Clio Street and O'Keefe Ave., thence traveling in a northeasterly direction along the
56 west side of O'keefe Ave. for 1,969 feet to the intersection of O'Keefe Ave. and Girod Street, thence
57 traveling in a westerly direction along the south side of Girod Street for 666 feet, thence into 639
58 Loyola Avenue, thence from 639 Loyola Avenue across Girod Street for 88 feet, thence traveling in
59 an easterly direction along the south side of Girod Street for 170 feet to the intersection of Girod
60 Street and Loyola Avenue, thence traveling in a southerly along the west side of Loyola Avenue for
61 448 feet to the intersection of Loyola Avenue and Julia Street, thence traveling in a westerly direction
62 along the north side of Julia Street for 313 feet to the intersection of Julia Street and South Saratoga
63 Street, thence traveling in a southerly direction along the west side of South Saratoga Street for 135
64 feet to the intersection of South Saratoga Street and the New Orleans Union Passenger terminal right-
65 of-way, occupying a total of 89,692 linear feet of City rights-of-way; all as shown on the plans filed
66 with the Director of Utilities upon the introduction of this Ordinance, which plans are made part of
67 this Ordinance.

68 The purpose of the installation of this System is to operate a Long Distance Network Service
69 System, as defined in Section 30-45 of the Code of the City of New Orleans by the Grantee, and this
70 system will be used solely for this purpose. It is agreed that any use of this System by the Grantee
71 for other purposes shall constitute a violation of a material provision of this Ordinance.

1 **SECTION 2. THIS NON-EXCLUSIVE FRANCHISE IS GRANTED** for a period of
2 fifteen (15) years beginning June 1, 2001 and ending May 31, 2016. The prorated annual fee for 2001
3 shall be ONE HUNDRED THIRTY-SIX THOUSAND, THIRTY-TWO AND 87/100 (136,032.87)
4 DOLLARS. The annual fee, payable in advance, is based on a fee of \$2.60 per year per linear foot
5 of right-of-way and public property occupied, which for an entire year shall be TWO HUNDRED
6 THIRTY-THREE THOUSAND, ONE HUNDRED NINETY-NINE AND 20/100 (\$233,199.20)

7 DOLLARS. Beginning in the year 2001, and every five years thereafter, such compensation shall be
8 increased by the average increase of the Consumer Price Index ("CPI") for the proceeding five years.
9 Said fee is subject to field verification of the exact distances by the Utilities Department and is in
10 accordance with Section 30-50(a)(1) and 146-436 through 146-459 of the Code of the City of New
11 Orleans, Ordinance No. 17,271 M.C.S., as amended. Fees shall be in an amount as set forth above
12 unless revised by a valid ordinance or ordinances of the City of New Orleans of general application
13 to telecommunications companies or services and shall be made on or before the first day of January
14 of each year."

15 This non-exclusive Franchise is granted under the terms and conditions contained herein and
16 as set forth in the New Orleans Home Rule Charter (City Charter) which terms and conditions are
17 incorporated herein by reference thereto.

18 In the event of conflict between the terms and conditions of this non-exclusive Franchise and
19 the terms and conditions on which the City can grant a non-exclusive Franchise as set forth in the City
20 Charter, the City Charter shall, without exception, control.

21 This Ordinance is made subject to the City Charter and General Ordinance provisions now
22 in effect, or hereafter effective, and Sections 146-275 through 146-285 of the Code of the City of
23 New Orleans (Ordinance No. 17,271 M.C.S., as amended). This Ordinance is subject to all
24 provisions of the Wireline Telecommunications Franchise Act of the City, codified as Sections 30-44
25 through 30-57 of the Code of the City of New Orleans, whether specifically set forth herein, or not,
26 except where the provisions of such Franchise Act are specifically revised herein. Nothing in this
27 Ordinance shall be deemed to waive the requirement of the various codes and ordinances of the City
28 regarding permits, fees to be paid, or the manner of construction.

1 SECTION 3. RIGHT, POWER, AND AUTHORITY OF THE CITY. In accepting this
2 non-exclusive Franchise, Grantee, acknowledges that its rights hereunder are subject to police powers
3 of the City of New Orleans to adopt and enforce general ordinances necessary for the safety and
4 welfare of the public and it agrees to comply with all applicable general laws and ordinances enacted
5 by the City of New Orleans pursuant to such power, as provided by Ordinance. Nothing herein shall
6 be construed to waive, surrender or relinquish any right, power or authority of the City of New
7 Orleans under the Home Rule Charter relative to or in connection with Grantee for communications
8 and data services of an intra parish nature, intrastate communications or data services, any part of

9 which is conducted within the territorial limits of Orleans Parish. Further, nothing herein shall be
10 deemed to grant the Grantee the right to provide telecommunications services within the City of New
11 Orleans except for service specifically authorized herein.

12 Nothing in the Franchise shall be construed to prevent the Grantor from constructing sewers
13 and drains, grading, paving, repairing and/or altering any street, alley, public highway, or municipal
14 structure, or laying down, repairing or removing water mains or constructing or establishing any other
15 public work. All such work shall be done, insofar as practicable, in such a manner as not to obstruct,
16 injure or prevent the free use and operations of Grantee's system. If any such property of the Grantee
17 shall interfere with the construction or repair of any street or public improvement, whether it be
18 construction, repair or removal of a sewer or water main, the improvement of a Right-of-Way or any
19 other public improvement, all the Grantee's system shall be removed or replaced in such a manner
20 as shall be directed by the Grantor so that the same shall not interfere with such public work of the
21 Grantor, and such removal or replacement shall be at the expense of the Grantee. Grantor shall not
22 be liable to Grantee or third parties for any damage, breakage or repair, or any claims for loss of use,
23 business interruption, claims by users, repair or replacement cost to any third party in connection with
24 the removal of any Grantee's systems. In any event, the Grantor shall not be liable for any damage
25 occurring to the Grantee's system caused by the Grantor, its officers, agents, employees, or
26 independent contractors, in the performance of their duties in connection with public works, nor shall
27 the Grantor be held liable for the interruption of service by actions of the Grantor, its officers, agents,
28 employees, or independent contractors, in the performance of their duties in connection with public
29 works. When reasonably possible, the Grantee shall be consulted prior to any public work affecting
30 its system, but the Grantor shall have no liability to the Grantee in the event it does not so consult the
31 Grantee.

1 SECTION 4. SURETY BOND. Grantee shall furnish a good and solvent surety bond, in
2 solido, in the sum of \$100,000.00 to guarantee the fulfillment of all the provisions of the Ordinance
3 and Sections 146-275 through 146-285 and Sections 30-44 through 30-57 inclusive of the Code of
4 the City of New Orleans, (Ordinance No. 17,271 M.C.S. as amended), by virtue of and subject to
5 which sections this Franchise is granted.

1 SECTION 5. ADDRESS AND AGENT FOR PROCESS. Grantee shall at all time
2 maintain an office within the City of New Orleans, the current address of which is recorded with the

3 Director of Utilities, or shall appoint and file and record with the Director of Utilities, and the City
4 Attorney, an agent within the City of New Orleans for service for process.

5 The Grantee shall provide the Grantor and its official agencies a toll free 24-hour telephone
6 number to receive requests for repairs and complaints.

1 SECTION 6. SEVERABILITY. If any section, subsection, sentence, clause, phrase, or
2 portion of this Franchise is, for any reason, held invalid or unconstitutional by any court of competent
3 jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such
4 holding shall not effect the validity of the remaining portions of this Agreement.

1 SECTION 7. ACCEPTANCE. Acceptance and Acceptance terms shall be in accordance
2 with Section 30-55, of the Code of the City of New Orleans (Ordinance No. 17,271 M.C.S., as
3 amended).

1 SECTION 8. The City of New Orleans hereby consents to the transfer and subrogation by
2 Vyvx, Inc. to Williams Communications, Inc. of the non-exclusive franchise heretofore granted to
3 Vyvx, Inc. under Ordinance No. 18,592 M.C.S.

ADOPTED BY THE COUNCIL OF THE CITY OF NEW ORLEANS May 17, 2001

EDDIE L. SAPIR
PRESIDENT OF COUNCIL

DELIVERED TO THE MAYOR ON May 18, 2001

APPROVED
DISAPPROVED: May 26, 2001

MARC H. MORJAL
MAYOR

RETURNED BY THE MAYOR ON May 29, 2001 AT 2:15 P.M.

EMMA J. WILLIAMS
CLERK OF COUNCIL

YEAS: Carter, Gusman, Sapir, Shea, Singleton, Thomas, Willard-Lewis - 7

NAYS: 0

ABSENT: 0

cc/ch

THE FOREGOING IS CERTIFIED
TO BE A TRUE AND CORRECT COPY
Emma J. Williams
CLERK OF COUNCIL