5

AGREEMENT BETWEEN METROPOLITAN FIBER SYSTEMS OF DETROIT, INC. AND CITY OF WARREN

This Agreement (Agreement) is made this _____ day of June, 1999, between the City of Warren, a Michigan Municipal Corporation, whose address is 29500 Van Dyke Ave., Warren, Michigan ("the City") and Metropolitan Fiber Systems of Detroit, Inc. ("MFS"), a Delaware Corporation with an office at One Tower Lane, Suite 1600, Oakbrook Terrace, IL 60181.

PREMISES

A. MFS desires to use the public rights-of-way in the City of Warren to provide telecommunications service to business customers in the City of Warren.

B. As of the date of this Agreement, the parties have not mutually agreed upon the terms and conditions governing access to the public rights-of-way.

C. To promote harmonious relations until such time as issues are resolved, and to prevent loss of MFS' business relationship with customers, MFS and the City have agreed that MFS may use the rights-of-way on a limited basis.

DEFINITIONS

Unless otherwise stated in this Agreement, the following terms shall have the following definitions:

A. ***Authorized route*** means the lineal routes within the specified public rights-of-way of the City of Warren which MFS is authorized to use, subject to the requirements and limitation of this Agreement, for the purposes of installing, constructing, operating, maintaining, and repairing the telecommunications system.

B. ***Rights-of-Way*** means all public rights-of-way, highways, streets, sidewalks and alleys within the geographical boundaries of the City of Warren. Public rights-of-way shall not include other City-owned property.

C. ***Telecommunications Service*** means a system used or to be used to provide telecommunication service including public or private voice, two-way interactive communication or data service, and associated usage, excluding residential services.

D. ***Telecommunications System*** means the telecommunications network to be constructed and installed in the public rights-of-way to provide telecommunications services, including fiber optic cable, poles, wires, fixtures, underground circuits, conduits, manholes, and appurtenances. "Facilities" may be used interchangeably in this Agreement with "System" to mean all or any part of the Telecommunications System.

Accordingly, in consideration for permission to use the public rights-of-way and for the mutual promises of the parties, the parties agree as follows:

1. Limited Authorization.

(a) Subject to the terms of this agreement, MFS may install and/or maintain a Telecommunications System ("System" or "Facilities") within the City's public rights-of-way, in accordance with the route ("Authorized Route"), attached as Exhibit A.

(b) This authorization may be used for the sole and exclusive purpose of providing business customers within the City along its route those telecommunications services as defined by and authorized under the Michigan Telecommunications Act of 1995, MCLA 484.2101, et. seq. The Telecommunications System may not be used for any other purpose; nor shall there be any expansion of the System either individually by MFS or in concert with another utility or telecommunications provider without express written consent of the City, as provided in subsection 1(g) below.

(c) MFS may not use the Telecommunications System to provide residential telecommunications, cable programming services, as defined by the Cable Communication and Policy Act of 1984, as amended, or related content-based video programming services to any customer or subscriber, except as authorized by law and with the permission of the City of Warren. MFS shall further be subject to the terms and conditions of this agreement and the further exercise of the City's regulatory power to protect the public health, safety, and welfare.

(d) This authorization for the use of the City public rights-of way is non-exclusive and does not establish priority for use over other users of the rights-of-way or the City's own use of public property. In the event of a dispute, the first priority shall be to the public generally, the second shall be to the City, and thereafter, as between other franchisees, licensees, and permit holders, the priorities shall be reasonably determined by the City in the exercise of its police powers. MFS shall respect the rights and property of the City and other authorized users of streets, sidewalks and other public places.

(e) By executing this Agreement, MFS acknowledges that its rights hereunder are subject to the police power of the City to adopt and enforce laws and regulations to protect the health, safety, and welfare of the public, and MFS agrees to comply with all ordinances, rules, regulations, directives, orders, memoranda, and permits enacted by or issued by the City in accordance with such power. Any conflict between the provisions of this Agreement and the exercise of the City's police powers shall be resolved in favor of the latter. The City reserves the right to amend its Telecommunications Regulatory Ordinance from time to time to impose any conditions allowed by law uniformly applicable to telecommunications providers. MFS agrees to abide by such amendments.

(f) This Agreement shall not take effect unless, within sixty (60) days from the date the Warren City Council approves the agreement, MFS files with the City of Warren a properly executed agreement, all insurance certificates, bonds, and payments required under this Agreement. In the event MFS fails to meet these requirements, this

agreement may be terminated with no further proceedings as provided in the termination clause of this agreement.

(g) Lateral extensions up to 1500 feet to add business customers along the Authorized Route are permitted with the administrative approval of the City Engineer. Any expansion of the System beyond the initial Authorized Route or lateral extensions beyond 1500 feet shall require the prior written consent of the City Council, signed by the Mayor and Clerk. Any such expansion shall be restricted to areas zoned for business, office or industrial use, except with the approval of the City Engineer for good cause shown. For any extension of the System referenced herein, the City Engineer may require new construction to be underground or impose other reasonable conditions upon the placement of new facilities, for the appearance of the right-of-way or safety and convenience of the public. Any expansion of the System shall be governed by this Agreement and any new conditions reasonably imposed by the City Engineer.

2. Duration. This authorization shall remain in effect for thirty (30) months from the date of execution hereof. The agreement may be renewed for an additional thirty (30) months upon mutual agreement of the parties as provided in Section 15.

3. Compensation.

(a) Subject to Section 7, MFS shall pay to the City the initial "Annual Fee" of $27,721.65, which represents payment of the Linear Distance Fee as defined below for the route footages set forth on Exhibit A. This payment shall be paid upon execution of this Agreement, and annually thereafter. Within thirty (30) days of this Agreement, MFS shall conduct a physical audit of its facilities in the right-of-way. In the event the annual fee would be greater than $27,721.65 based on a computation of $0.33 per linear foot for aerial facilities and $0.66 per linear foot for underground facilities (Linear Distance Fee), MFS shall pay the balance of that sum to the City within thirty (30) days of the date of the physical audit. MFS shall pay to the City the Annual Fee, subject to adjustment forward for new construction based upon the Linear Distance Fee.

(b) In the event any annual payment is made after close of business on the date due, MFS shall pay a late payment penalty of the greater of: (i) $100 or, (ii) simple interest at ten percent (10%) annual percentage-rate of the total amount past due. Acceptance of money under this Section shall not in any way limit or inhibit any of the privileges or rights of either party. If this Agreement is terminated or expires mid-year, the annual payment shall be prorated for the period the Agreement was in effect.

(c) In addition to the annual payment, MFS shall pay a one-time formation and administration fee $ 5,000.00, which shall be payable and delivered to the City of Warren upon execution of this Agreement.

(d) The foregoing annual use and formation fees shall be in addition to any tax, fee, or assessment MFS is required to pay to the City under law, ordinance, or regulation.

(f) MFS shall not allow any other telecommunications provider, cable provider, or any other business or person to share, use, lease, share, affix, or attach to any portion of the System except upon fourteen (14) days advance notice to the City,

unless that telecommunications provider, cable provider, person, or business certifies that it obtained the prior permission of the City of Warren, which permission may take the form of a local franchise, right-of-way agreement or license or other form of validly, executed authorization directly issued by the City of Warren. MFS shall provide the City of Warren with the name, contact person, phone number, and address of any such provider, business or person, which fails to make that certification.

4. Construction.

(a) Prior to the commencement of construction of the System, including the erection or installation of poles, guys, anchors, underground conduits, manholes, or fixtures, MFS shall first submit to the City Engineer a concise description of all Facilities to be erected or installed, with any plans, specifications, drawings, or maps that may be requested. MFS shall not commence construction of any part of the System until approval therefore has been received from the City Engineer. All construction shall be subject to final approval of the City Engineer, which shall not be unreasonably delayed.

(b) Prior to construction, MFS shall first obtain all permits that are required under the Warren Code of Ordinances, and shall comply with all conditions and regulations as may be imposed by the City Engineer with respect to construction in the right-of-way. Nothing in this Agreement shall be construed as a waiver of any codes, ordinances, or regulations of the City. Any standard fees or charges for any such permits or authorizations shall not be offset against the annual usage fee, franchise fee, or formation fee MFS is required to pay under this Agreement.

(c) MFS shall construct the System using material of good and durable quality and all work in the construction, maintenance, installation, and repair of the System shall be performed in a safe, orderly, thorough, and reliable manner.

(d) MFS shall at all times comply with the National Electrical Safety Code (National Bureau of Standards); National Electrical Code (National Bureau of Fire Underwriters); applicable federal, state, and local regulations; and any applicable codes and Ordinances of the City.

(e) MFS shall provide adequate barriers, lights, signals, and warnings to properly guard any opening or obstruction in, or disturbance of any property to prevent danger to any person or vehicle, and such openings, obstructions or disturbances shall be properly and promptly repaired in a manner specified by the City Engineer. MFS shall not endanger or interfere with the safety of persons or property where MFS may have equipment located within the City.

(f) All working facilities, conditions, and procedures, used or occurring, during construction of the System shall comply with the standards of the Occupational Safety and Health Administration.

(g) All cable and wires shall be installed, where possible, parallel with electric and telephone lines, and multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering and aesthetic consideration, and in close coordination with utilities serving the City, following accepted industry construction procedures and practices.

(h) MFS shall not erect aerial facilities in or on a public right-of-way in which one or more public service providers (electrical, telephone, or cable) has buried its lines, or in an area where the City has prohibited aerial facilities to be constructed or existing facilities to be maintained.

(i) In the event the City requires utilities to relocate facilities underground, MFS shall likewise relocate its facilities underground, at MFS sole expense, within sixty (60) days notice.

(j) MFS shall participate in and have all facilities marked by the Miss Dig program.

(k) MFS shall provide the City with a name and phone number of a person available and qualified to respond to emergencies or problems on a 24-hour basis.

(l) MFS shall clearly mark where the Facilities are located in the public rights-of-way with surface identification signs acceptable to the City Engineer and sufficient to indicate the Facilities belong to MFS.

(m) Grounding of equipment in all manholes shall be provided as deemed necessary by the City Engineer for the safety of the public.

5. Conditions of Street Occupancy.

(a) All wires, conduits, and fiber and other property and facilities of MFS shall be so located, constructed, installed, and maintained so as not to endanger or unnecessarily interfere with the usual and customary use, traffic, and travel upon streets, easements, and other public rights-of-way or upon private property. MFS shall remove any part of the telecommunications system that creates a hazardous or unsafe condition or an unreasonable interference with property.

(b) In the case of disturbance or damage to any public or private property, MFS shall, at its own cost, restore and replace such property promptly, and in a manner acceptable to the City or property owner, replace, repair, and otherwise restore such disturbance or damage.

(c) In the event MFS fails to replace, repair, or restore public property, the City may, at its option, cause such work to be done, and MFS shall pay the costs within thirty (30) days of receipt of an invoice.

(d) MFS shall act diligently and without delay to repair, regardless of time of day, any safety hazard that occurs involving MFS' equipment and plant.

(e) MFS shall, at its own cost, protect, support, temporarily disconnect, relocate, remove, raise, or lower from the public rights-of-way, any of its property or Facilities when required to do so by the City because of street or other public excavation, construction, repair, traffic conditions, public safety, street closing; street construction or resurfacing, installation of sewers, water pipes, power or signal lines, traffic signals, or any other public improvement or construction or repair. MFS shall,

upon reasonable written notice from the City, remove and relocate its Facilities at MFS' expense in a manner reasonably acceptable to the City. The City shall use its best efforts to find MFS a suitable relocation for its Facilities. MFS' failure to remove or relocate its Facilities shall be at MFS' risk, and MFS shall pay for any costs incurred by the City as a result of MFS' failure to remove or relocate its Facilities for such City purposes. In the event of emergency, the City may sever, disrupt, dig-up or otherwise destroy the Facilities of MFS using its best efforts to notify MFS prior to performing such work whenever practicable. Repairs to MFS' equipment and Facilities shall be done at MFS' expense.

(f) MFS shall on the request of any person other than the City holding a moving permit temporarily raise, lower, or remove is facilities to permit the moving of buildings. The expense of such temporary removal, raising, or lowering of wires shall be paid by the person requesting the same.

(g) MFS shall not place, or cause to be placed, poles or other equipment in such a manner as to interfere with the rights and convenience of adjoining property owners without securing their written approval in advance.

(h) In the event that the City determines that any portion of the telecommunications system either planned or constructed, unduly burdens any portion of the public rights-of-way for present or future use, MFS shall either modify its plans for construction of the system or eliminate the burden within a reasonable time.

(i) MFS acknowledges and accepts at its own risk that the City may make use in the future of the public rights-of ways in which the telecommunications system is located in a manner inconsistent with MFS' use of such public rights-of-ways for its placement and use of its telecommunications system and that in such event MFS will cooperate with the City to relocate its facilities within a reasonable time at its own expense.

(j) To the extent feasible and subject to reasonable availability and agreement among telecommunication companies concerning maintenance, access and security, MFS shall make a diligent effort to lease space in existing conduit and on existing utility poles, make joint installation of new fiber optic cable and conduit with other providers building networks in the City, and/or interconnect with other telecommunications companies within the City.

(k) All personnel of MFS or its contractors who work in the public right-of-way shall identify themselves as working for MFS and provide their name and business address, upon request. Every service vehicle of MFS and its contractors shall be clearly identified as working for MFS.

(l) All contractors performing work in the rights-of-way shall be competent and fully licensed. MFS shall be responsible for compliance with this Agreement and work performed in the right-of-way regardless of whether such work is performed by a subcontractor, contractor, agent or employee.

(m) Mini-hubs, switches, nodes, and other equipment shall be installed in underground enclosures whenever possible. The City Engineers' approval shall be required for any mini-hubs, switches, nodes, and other equipment installed above ground in the right-of-way. MFS shall cooperate with private property owners when placing and screening structures located above ground.

(n) MFS shall construct, install, operate and maintain the telecommunications system in a manner consistent and in compliance with all applicable laws, ordinances, construction standards, governmental requirements, and technical standards established by the Federal Communications Commission, Michigan Public Service Commission or other local, state, or federal agency.

6. Maps, Records, and Reports.

(a) Within sixty (60) days of completion of construction, MFS shall provide the City with as-built drawings of the Facilities on a computerized disk compatible with the City's system. Except as authorized in this Agreement, no extension or changes may be made to the Facilities without the mutual agreement between the parties.

(b) MFS annually shall file with the City Clerk a copy of its annual financial reports when such reports are completed by MFS and ready for distribution.

(c) As it relates to this Agreement, MFS shall submit to the City such other information or reports either electronically or in such other form and at such times as the City may reasonably request. Upon request, the City shall withhold confidential business information from the public to the extent such nondisclosure conforms to the Michigan Freedom of Information Act, MCLA 15.231, et seq.

(d) Subject to federal, state, and local laws and regulations, MFS shall keep open books and records. The City shall have the right to inspect at any time during normal business hours all books, records, maps, plans, and other like materials of MFS, as they relate to MFS' presence with the City of Warren and to this Agreement.

(e) MFS shall allow the City to make inspections of any of MFS' Facilities and equipment within the City of Warren at any time upon receiving reasonable prior written notice or, in case of an emergency, upon demand without notice.

(f) All records, reports required under this section, except as otherwise provided, to be provided to the City shall be available for public inspection in the City Clerk's office during normal business hours, subject to the Michigan Freedom Information Act, MCLA 15.231, et seq.

(g) The refusal, failure, or neglect of MFS to file any of the records or reports required to be provided to the City under this section shall be deemed a material breach of this Agreement, and shall subject MFS to all penalties and remedies, legal or equitable, which are available to the City.

(h) Any false material or misleading statement or representation knowingly

made by MFS in any report shall be deemed a material breach of this Agreement, and shall subject MFS to all penalties and remedies, legal or equitable, which are available to the City.

7. Acknowledgements; Legal Developments.

(a) MFS and the City acknowledge their differences of opinion regarding the conditions and requirements that a municipality may impose upon telecommunications providers for the use of rights-of-ways and the application of the laws pertaining to telecommunications providers. By entering into this agreement, the City is not waiving its position that MFS must obtain a local franchise to use the rights-of-way, and MFS is not waiving its position that the City must grant a telecommunications permit for the use of the rights-of-way. The City expressly reserves the right to require a franchise of MFS in lieu of the regulations and fees set forth in this Agreement in the event that the Michigan Telecommunications Act of 1995 is amended, repealed or superseded by future federal or state law, in such a way as to provide municipalities with the authority to require a franchise from a telecommunications carrier.

(b) The parties acknowledge the appeal of TCG Detroit vs. City of Dearborn (USDC, E.D. Case No. 96-CV-74338-DT), which may subject MFS to a local franchise requirement. During the appeal of that case, MFS shall pay to the City the greater of the difference between five percent of gross revenues derived from the operation of MFS' system and the compensation paid to the City under Section 3(a) of this Agreement, which the City Treasurer shall hold on MFS' behalf until exhaustion of the final appeal period. Each payment shall be accompanied by a statement setting forth the basis for the computation. In the event the appeal results in a final decision that would not allow the City to charge a franchise fee, the City shall return such monies with interest, as applicable, no later than thirty (30) days following the final decision. In the event the decision would allow payment of a franchise fee, the City may retain such monies.

8. Representations. MFS makes the following express acknowledgments:

(a) The City shall not be bound to renew or extend the Agreement beyond the negotiated term.

(b) MFS represents and agrees that MFS, and any parent, affiliate, holding or subsidiary of MFS, is not currently, and shall not in the future, be a party to an irrevocable easement, license, or other agreement or arrangement to construct, install, or erect any Facilities or other property on or about property located at 6085 East Eleven Mile Rd, Warren, Michigan (as of the date of this Agreement), and commonly known as the "Tacom" property.

(c) MFS shall have no recourse whatsoever against the City for any loss, cost, expense, or damage arising out of the failure of the City to have the authority to grant all or any part of permission to use the rights-of-way. MFS expressly acknowledges that on accepting this Agreement, it did so relying on its own investigation and understanding of the power and authority of the City regarding the public rights-of-way.

(d) In the event of termination or expiration of this Agreement, MFS shall indemnify and further hold harmless the City of Warren, and its officers and employees from any claim, demand or lawsuit, or any other third-party from any community whose service was dependent upon any part of the Facilities, for any injury or damages, such as loss of business, loss of income or revenue, or any other injury which may result from the termination of service from the System.

(e) By acceptance of this Agreement, MFS acknowledges that it has not been induced whether verbal or written, by or on behalf of the City or by any other third person concerning any term or condition of an agreement not expressed in this Agreement.

(f) MFS further acknowledges by the acceptance of this Agreement, that it has carefully read its terms and conditions, and does accept all of the risks of the meaning of such terms and conditions and agrees that in the event of any ambiguity or in the event of any dispute over the meaning, the same shall be construed strictly against MFS and in favor of the City.

(g) In the event that the City wishes to utilize any of MFS' services of the System, MFS agrees to provide those services to the City at the lowest rate it charges to any of its commercial customers for comparable services.

9. Transfer of Rights.

This Agreement nor any part or portion of interest in this Agreement or the Facilities shall be assigned, sold, transferred, pledged, leased or sublet, in any manner, in whole or in part, to any person or entity, without the prior consent of the City, which consent shall not be unreasonably withheld. Nothing herein shall prevent MFS from assigning its rights and obligations to a parent, affiliate or subsidiary of MFS that is controlling, controlled by, or under the same common control as MFS, provided MFS gives the City at least forty-five (45) days advance written notice. Further, nothing herein shall prevent or prohibit MFS, or any of its parents, subsidiaries or affiliates, from granting a security interest in any of its financing transactions. The grant or waiver of any one or more consent shall not render unnecessary any subsequent consent, nor shall the grant of any said consent constitute a waiver of any other rights of the City.

In reviewing a request for a sale, transfer, assignment, or change of control, MFS shall have the responsibility to establish the legal, technical, and financial ability of the proposed transferee, and shall submit such information as the City may reasonably deem necessary to evaluate the proposed transfer. Any proposed transfer will be subject to the terms of this Agreement, but will in no way relieve MFS from its obligations to the City under this Agreement. Any attempted sale, transfer, or assignment in violation of this section shall constitute a material default of this Agreement.

10. Performance Bond.

(a) MFS shall, at its sole expense, obtain and maintain during the term of this Agreement a corporate surety bond with a United States surety company authorized to do business in the State of Michigan and found acceptable by the City Attorney, in the amount of $100,000 both to guarantee the timely construction of the Fiber Cable and to

secure MFS' performance of its obligations and faithful adherence to all requirements of the Agreement, including removal of the system and property restoration upon removal.

(b) The rights reserved to the City with respect to the bond are in addition to all other rights of the City, whether reserved by this Agreement or authorized by law; and no action, proceedings, or exercise of a right with respect to such bond shall affect any other rights the City may have. Notwithstanding the foregoing, the City may not draw upon the bond until notice and an opportunity to cure pursuant to section 13 hereof have been complied with.

(c) The bond(s) shall contain the following endorsement: It is hereby understood and agreed that this bond may not be canceled by the surety nor any intention not to renew be exercised by the surety until sixty (60) days after receipt by the City, by registered mail, of written notice of such intent.

11. Insurance. During the term of the Franchise, MFS and any contractor hired by MFS shall procure and maintain, at its sole cost and expense, the following types and limits of insurance:

(a) Workers' Compensation Insurance meeting Michigan statutory requirements and employer's liability insurance with minimum limits of One Hundred Thousand Dollars ($100,000) for each accident.

(b) Comprehensive Commercial General Liability Insurance on an "occurrence" basis with limits of liability not less than One Million Dollars ($1,000,000) as the combined single limits for each occurrence of bodily injury, personal injury, and property damages. The policy shall include the following extensions:

1. Contractual Liability;
2. Products and Completed Operations;
3. Independent Contractors Coverage;
4. Broad Form General Liability Extensions or equivalent;
5. Coverage for X, C, and U Hazards.

(c) Motor Vehicle Liability Insurance, including Michigan No-Fault Coverage for all vehicles used in the performance of this Agreement by MFS, its employees and agents, residual liability insurance with minimum limits of One Million Dollars ($1,000,000) as the combined single limit for each occurrence for bodily injury and property damage.

(d) Umbrella Coverage in the sum of Two Million Dollars ($2,000,000).

(e) All policies other than those for worker's compensation shall be written on an occurrence and not on a claim made basis.

(f) Commercial General Liability Insurance and Automotive Liability Insurance as described above shall include an endorsement stating the following shall be an additional insured: "The City of Warren, including all elected and appointed officials, boards, commissions, officers, and employees."

(g) Certificates of insurance and all renewals for each insurance policy required in compliance with this section shall be filed and maintained with the City. Failure to timely provide the certificates of insurance and to maintain coverage throughout the Agreement term is a material breach of the Agreement.

(h) All insurance policies maintained pursuant to the Agreement shall contain the following endorsement:

> "It is understood and agreed that this insurance policy may not be canceled by the insurer nor the intention not to renew be stated by the insurer until sixty (60) days after receipt by the City, by registered mail, of a written notice of such intention to cancel or not renew."

(i) All insurance shall be effected under valid and enforceable policies, insured by insurers licensed to do business by the State of Michigan or surplus line carriers on the Michigan Insurance Commissioner's approved list of companies qualified to do business in Michigan. All insurance carriers and surplus line carriers shall be rated A or better by A.M. Best Company.

(j) MFS shall require that each and every one of its contractors and their subcontractors carry, in full force and effect, Worker's Compensation, Comprehensive Public Liability, and Automotive Liability Insurance Coverage of the type which Grantee is required to obtain under the terms of this section with the same limits of insurance.

(k) MFS and any contractor hired by MFS to install, maintain, improve, restore, or remove the Facilities within the City shall not commence work until they have obtained the insurance required under this section. If any insurance is written with a deductible or self-insured retention, MFS or contractor shall be solely responsible for said deductible or self-insured retention.

(l) The limits imposed by this section are the minimum requirements. MFS, and any contractor hired by MFS shall maintain adequate insurance to cover any claims arising from the installation, construction, operation, or removal of the System and Facilities and activities under the Agreement, regardless of the limits imposed by the City. MFS further agrees that the insurance coverage or surety bonds pursuant to this Agreement shall in no way limit MFS' liabilities and responsibilities specified in the Agreement or by law or for damages or injuries in excess of the coverage provided in such policies of insurance or bond.

12. Indemnity/Hold Harmless.

(a) MFS shall and does hereby agree to indemnify, defend, and hold harmless the City, its elected and appointed offices, officers, employees, agents, and boards and commissions, from any injury, claim, demand, suit, judgment, execution, liability, debt, damages or penalty arising out of, resulting from, or alleged to arise out of or result from or related to, any act or omission of MFS and/or its agents, representatives, contractors and employees, or connected with the construction, operation, use, maintenance, repair, removal or termination of the System, failure of MFS, its agents, contractors, or employees, to comply with and federal, state or local

law or regulation, or the performance of any obligations under this Agreement, except where such claim is caused by the gross negligence or willful misconduct of the City.

(b) MFS undertakes and assumes for its officers, agents, contractors, subcontractors, and employees, all risk of dangerous conditions, if any, on or about any City-owned or controlled property, including public ways, and MFS agrees to indemnify and hold harmless the City against and from any claim asserted or liability imposed upon the City for personal injury or property damage to any person arising out of the installation, operation, maintenance, or condition of the Telecommunications system, except where such claim is caused by the gross negligence or willful misconduct of the City.

(c) As indicated section 8(d) above, MFS further agrees to indemnify and hold harmless the City, its officers, employees, boards, and commissions for and from any loss or interference with business, income, revenue, or contractual relationships which may be incurred by any third party beneficiary (either incidental or direct) affected by the terms and conditions of this Agreement and which may be claimed by such third party at law or in equity from either a termination or expiration of this Agreement and/or failure of the parties to successfully negotiate a term of this contract beyond the initial term and the renewal term as set forth in section 2 and 15 of this Agreement.

13. Termination.

In addition to all other rights and powers reserved or pertaining to the City, the City reserves as an additional, separate, and distinct remedy the right to terminate this Agreement and all rights and privileges of MFS in any of the following events or for any of the following reasons:

(a) MFS fails to comply with any of the provisions of this Agreement, or has, by act or omission, violated any term or condition; or

(b) MFS becomes insolvent, unable or unwilling to pay its debts, or is adjudged bankrupt; or

(c) All or part of MFS' Facilities are sold under any instrument to secure a debt and are not redeemed by MFS within ninety (90) days of such sale; or

(d) MFS is found by a court of law to have committed fraud or deceit in its conduct or relations with the City under this Agreement; or

(e) MFS abandons the System or Facilities, in whole or in part, or ceases to provide telecommunications services in the City of Warren, or is no longer authorized in Michigan to provide such telecommunication services, or fails to seek renewal of this Agreement or other authorization from the City for continued use of the City rights-of-way beyond the initial term.

No termination, except as stated below, shall be effective unless and until the City provides MFS with advance written notice of such default, which may be given by administrative action of the Mayor, City Attorney, City Engineer, Director of Public

Service, or their designee. MFS has the right to cure such default within thirty (30) days after receipt of such written notice except that where such default cannot reasonably be cured with such thirty (30) day period, then MFS shall proceed promptly to cure the same with due diligence. If the default has not been cured within reasonable time, the termination shall become effective after the City shall have adopted a resolution setting forth the causes and reason for the revocation and the effective date, which resolution shall not be adopted without thirty (30) days prior notice to MFS and an opportunity for MFS to be heard on the proposed resolution; unless MFS waived the procedures set forth in this paragraph.

14. Removal.

Upon the expiration, termination, or non-renewal of this Agreement, the City shall have the option, without expense to the City and within such time as the City may reasonably require, to direct MFS to remove said underground or aerial Facilities, or portions thereof, including conduit and all appurtenances, and restore the premises hereby authorized to be used and occupied to a condition satisfactory to the City. MFS shall, at its sole expense, remove from the streets all above ground elements of the Facilities, including but not limited to pedestal mounted terminal boxes, and lines attached to or suspended from poles, unless relieved of this obligation by the City. MFS shall apply for and obtain such encroachment permits, license, authorizations, or other approvals and pay such fees and deposit such security as required by the City for the conduct and completion of the work of removal and for the restoration of the streets and public rights-of-way to the same or similar conditions they were before the work of commencement of the work. In no event shall removal be completed any later than twelve (12) months after termination, expiration, or non-renewal of this Agreement. At the City's option, the City may assume control over the telecommunications system, if MFS does not obtain permits to remove its property within thirty (30) days of the notice of termination, non-renewal or abandonment, or, MFS obtains the permit but does not remove the Facilities within the twelve (12) month period provided above. Upon assuming control of the system, the City shall have no duty to compensate MFS for the System, and MFS shall have no claim for damages against the City arising from the City's assumption of control over the system, and MFS shall have no further liability for the system. MFS shall execute any undertaking to transfer title to such facilities, upon request of the City.

15. Renewal.

This Agreement may be renewed upon mutual agreement of the parties, terms for an additional thirty (30) months upon expiration of the initial thirty (30) month term provided in section 2 above, provided MFS submits to the City sixty (60) days advance written notice of its intent to renew; and provided further MFS has complied with all terms of this Agreement. In the event the parties agree to the same Linear Distance Fee set forth in section 3(a), the parties agree to adjust the Annual Fee forward by amount equal to the percentage increase in the Consumer Price Index for Michigan from the date of this Agreement.

16. Notices. All notices required by this Agreement shall be deemed given by depositing them in the United States Mail, first class, and addressed to:

City Clerk
City of Warren
29500 Van Dyke Ave.
Warren, MI 48093

with a copy to:

Warren Legal Department
Attn: Mary Michaels, Assistant City Attorney
29500 Van Dyke Avenue
Warren, MI 48093

-and to MFS-

MCI WorldCom, Inc.
Purchasing & Contracts, MD 1.1 - 131 F
Attn: Steven Harper, Contract Administrator
6929 N. Lakewood Avenue
Tulsa, OK 74117

with a copy to:

MCI WorldCom, Inc.
Attn: Jodi J. Caro, Counsel for Development
One Tower Lane, Suite 1600
Oakbrook Terrace, IL 60181

17. Right to Modify. If during the term of the agreement, any change in local, state, or federal laws, statutes, or regulations have the effect of expanding the rights of the City in any way, the City shall have the right to amend the terms of this agreement to include any rights allowed by law.

18. Covenant not to Discriminate. MFS covenants that MFS and its contractors, if any, shall not discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, or marital status. Breach of this covenant may be regarded as a material breach of this Agreement.

19. Headings. The headings of the sections and paragraphs of this Agreement are for convenience only and shall not be used to construe or interpret the scope or intent of the contract or in any way affect the same.

20. Entire Agreement. This Agreement constitutes the entire agreement between the parties and shall supersede any prior agreements and understandings with respect to the subject of this Agreement. Unless indicated otherwise in this Agreement, the terms of this Agreement may be modified or amended except in writing signed by the parties.

21. Execution and Representations. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. MFS represents that it has the authority to enter into this Agreement and its executor(s) has (have) all the requisite corporate power and authority to execute, deliver, and perform this Agreement and to consummate the transactions contemplated by this Agreement; proof of which shall be provided to the City. MFS represents that it has legal title to the Facilities as set forth in Exhibit A. This agreement shall be binding upon any successors or assigns.

22. Governing Law. This Agreement shall be construed and interpreted under the laws of the State of Michigan, and parties agree that any action for enforcement or otherwise relating to this Agreement shall be brought in any court having jurisdiction of and is located in or whose district includes Macomb County, State of Michigan.

23. Waiver. The failure of either party to enforce any provision of this Agreement, or to exercise any right, term, or remedy upon a breach thereof shall not constitute a waiver of any such right, term, or condition. No waiver of any breach shall constitute a waiver of the right to enforce subsequent breaches of the agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

Attest:

Doreen F. McGuire

Doreen F. McGuire

Kathryn H. Dombrowski

KATHRYN H. DOMBROWSKI

CITY OF WARREN

By: _____

Mark A. Steenbergh, Mayor

Sandra Ann Billings

SANDRA ANN BILLINGS, CITY CLERK

Attest:

Witness

Kimberly Fuselam

Paralegal

METROPOLITAN FIBER SYSTEMS OF DETROIT, INC., a Delaware Corporation:

By: _____

Its: Senior VP Planning, Development & Business Analysis

Mfs cable agreement.final

EXHIBIT "A"

Warren, Michigan Route Footages

8 Mile Road to Mound (Aerial)	10,526 ft.
Mound/8 Mile to 10 Mile (Aerial)	10,644 ft.
Mound/10 Mile to Bear Creek Drain (Buried)	6,736 ft.
Bear Creek Drain to South of 12 Mile (Aerial)	3,260 ft.
South of 12 Mile to North of 13 Mile (Buried)	5,625 ft.
North of 13 Mile to South of 14 Mile (Aerial)	5,420 ft.
Mound/10 Mile to Centerline (Aerial)	1,500 ft.
I-696 crossing @ Van Dyke (Aerial)	200 ft.
11 Mile and Van Dyke (Buried)	320 ft.
Van Dyke n/o 11 Mile to s/o 12 Mile (Aerial)	5,006 ft.
Van Dyke s/o 12 Mile to s/o Civic Center (Buried)	2,681 ft.
Van Dyke s/o Civic Center to Chicago (Aerial)	3,727 ft.
Van Dyke Chicago to 14 Mile (Aerial)	5,630 ft.
14 Mile, Ryan to Mound (Aerial portion in Warren)	7,368 ft.

Total	Aerial	Buried
68,643 ft.	53,281 ft.	15,362 ft.
13.0 mi.	10.09 mi.	2.91 mi.

53,281 x .33 = 17,582.73
15,362 x .66 = 10,138.92
27,721.65

INTERIM
RIGHT-OF-WAY PERMIT

PREMISES

The City of Sterling Heights ("City") is authorized to allow placement of cable within public right-of-way by MCImetro Access Transmission Services, Inc., ("Company") subject to all conditions and regulations imposed by the City or other governmental agency:

ACCORDINGLY, THE PARTIES AGREE AS FOLLOWS:

1. **Permission Granted.**

The Company may install a fiber optic cable as set forth in Exhibit "A"subject to the terms and conditions of this Permit and the further exercise of the City's regulatory power protecting the public health, safety and welfare. This Permit shall have a term of five years. It shall be revocable at will by either of the parties upon sixty (60) day notice to the other as required by the City Charter.

The City is in the process of preparing a comprehensive telecommunications ordinance. The Company agrees to be bound by any lawful ordinance adopted by the City and all requirements of the ordinance shall be applicable to the Company on the effective date of the ordinance.

2. **Right-of-Way Access.**

For the reason that the streets, highways and public rights-of-way to be used in the operation of its fiber optic cable within the boundaries of the City are valuable public properties, acquired and maintained by the City at great expense to its taxpayers, and that the grant of the use of said streets, highways and public rights-of-way is a valuable property right without which the Company would be required to invest substantial capital in right-of-way costs and acquisitions, the Company shall pay to the City:

(a) Before commencing construction, a one-time fee of $10,000.00;

(b) 40¢ per linear foot of underground and 25¢ per linear foot of overhead lines, wires, cables, poles, conduits and like structures, erections and fixtures upon, over, across, or under streets, rights-of-way and easements in the City per year; and

(c) The amount set forth in subsection (b) shall not exceed the fixed and variable costs to the City in maintaining the rights-of-way, easements and other public places used by a provider of telecommunication service. The fixed and variable costs of

maintaining the rights-of-way, easements and other public places used by Company shall be calculated on a per foot or other appropriate basis within 90 days to be retroactively applied and recalculated at least every three (3) years thereafter by the City Finance Director subject to approval by the Council following public notice and hearing.

(d) Company shall pay to the City for each quarter an amount equal to one fourth (1/4) of the annual fee, calculated on the basis of a twelve-month compensation year. Company shall forward an amount equal to the quarterly payment by noon of the twenty-fifth day of the calendar month immediately following the close of the calendar quarter for which the payment is calculated. Any necessary prorations shall be made.

(e) In the event any quarterly payment is made after noon on the date due, Company shall pay a late payment penalty of the greater of: (i) $100 or (ii) simple interest at ten percent (10%) per year of the total amount past due. Acceptance of payment under this subsection shall not in any way limit any other privilege or right of the City.

(f) All plan review and inspection fees required by the City Code.

3. **Permitted Uses and Fees.**

The Company may not use the fiber optic cable to provide telecommunication service to any other person in the City except the Chrysler Corporation. The Company may not use the fiber optic cable to provide cable television service to any person.

4. **Conflicts.**

If any state or federal law or regulation shall require the Company to perform any service, or shall permit the Company to perform any service in conflict with the terms of this Permit or of any law or regulation of the City, then as soon as possible, the Company shall notify the City of the point of conflict believed to exist between such regulation or law and the laws and regulations of the City or the Permit. The laws of the State of Michigan will govern this Permit.

5. **Severability.**

If any provision of the Permit is held by any court of competent jurisdiction to be invalid as conflicting with any federal or state law, rule or regulation now or later in effect, or is held by such court to be modified in any way in order to conform to the requirements of any law, rule or regulation, the provision shall not be considered a separate, distinct and independent part of the Permit, and such holding shall render the Permit null and void.

6. **Conditions of Street Occupancy.**

The Company shall not engage in any construction in any street, highway or public right-of-way without first obtaining permits, if any, as required under the law of the State of Michigan or the ordinances of the City which apply to the installation of fiber optic cables within the public right-of-way.

7. **Technical and Construction Standards.**

The Company shall construct, install and maintain its fiber optic cable in a manner consistent and in compliance with all applicable laws, ordinances, construction standards, governmental requirements and technical standards. In any event, the fiber optic cable shall not endanger or interfere with the safety of persons or property within the City or other areas where the Company may have equipment located. All working facilities, conditions, and procedures, used or occurring during construction of the fiber optic cable shall comply with the standards of the Occupational Safety and Health Administration. Construction, installation and maintenance of a fiber optic cable shall be performed in an orderly and workmanlike manner, and in close coordination with public and private utilities serving the City following accepted industry construction procedures and practices. All cable and wires shall be installed, where feasible, (as determined by the City Engineer), parallel with electric and telephone lines, and multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering consideration. The Company shall join the Miss Dig program.

8. **Maps, Records, and Reports.**

The Company shall provide the City with current maps of its existing and proposed installations in a standard computer data format for use with the City's G.I.S. data system. The Company shall allow the City to make inspections of any facilities and equipment within the City's boundaries at any time upon three (3) day's notice or, in case of emergency, upon demand without notice.

9. **Removal**

(a) Upon revocation of the Permit, the Company may remove any underground cable from the streets which has been installed in such a manner that it can be removed without trenching or other opening of the streets along the extension of cable to be removed. The Company shall not remove any underground cable or conduit which requires trenching or other opening of the streets along the extension of cable to be removed, except as provided. The Company shall remove, at its sole cost and expense, any underground cable or conduit by trenching or opening of the streets along the extension or otherwise which is ordered to be removed by the City based upon a determination, in the sole discretion of the City, that removal is required in order to eliminate or prevent a hazardous condition or promote future utilization of the streets for public purposes. The Company shall file written notice with

the City Clerk not later than thirty (30) calendar days following the date of expiration or termination of the Permit of its intention to remove cable and a schedule for removal by location. The schedule and timing of removal shall be subject to approval and regulation by the City. Underground cable and conduit in the streets and public rights-of-way which is not removed shall be deemed abandoned and title shall be vested in the City and Company shall have no further liability.

(b) Upon revocation of this Permit, if the Permit is not renewed, the Company, at its sole expense, shall, unless relieved of the obligation by the City, remove, from the streets all above ground elements of the cable, including but not limited to pedestal mounted terminal boxes, and lines attached to or suspended from poles. If the City consents to abandonment of facilities in place, the Company shall transfer title to the City and shall have no further liability.

(c) The Company shall apply for and obtain such encroachment permits, licenses, authorizations or other approvals and pay such fees and deposit such security as required by applicable law or ordinance of the City, shall conduct and complete the work of removal in compliance with all such applicable law or ordinances, and shall restore the streets and public rights-of-way to the same condition they were in before the work of removal commenced. The work of removal shall be completed not later than twelve (12) months from the date of revocation of this Permit.

10. <u>Insurance</u>.

The Company and any contractor hired by the Company to install, maintain, improve, restore or remove cable within the City right-of-way shall not commence work under this Permit until they have obtained the insurance required within this section. All insurance coverages shall be with insurance carriers acceptable to the City. If any insurance is written with a deductible or self-insured retention, the Company or contractor shall be solely responsible for said deductible or self-insured retention. The purchase of insurance and the furnishing of a certificate of insurance shall not be a satisfaction of the Company's indemnification of the City. The Company is responsible to meet all MIOSA requirements for on-the-job safety. The Company and any contractor hired by the Company shall procure and maintain during the life of this contract the following:

(a) Workers Compensation Insurance in accordance with all applicable statutes of the State of Michigan. Coverage shall include Employers Liability Coverage.

(b) Commercial General Liability Insurance on an "occurrence" basis with limits of liability not less than $1,000,000 per occurrence and aggregate combined single limit, Personal Injury, Bodily Injury and Property Damage. Coverage shall include the following extensions:

1. Contractual Liability
2. Products and Completed Operations
3. Independent Contractors Coverage
4. Broad Form General Liability Extensions or equivalent
5. Coverage for X, C and U Hazards.

(c) Motor Vehicle Liability Coverage, including Michigan No-Fault Coverages for all vehicles used in the performance of the contract. Limits of Liability shall not be less than $1,000,000 per occurrence combined single limit Bodily Injury and Property Damage.

(d) Additional Insured. Commercial General Liability Insurance as described above shall include an endorsement stating the following shall be an additional insured:

> "The City of Sterling Heights, including all elected and appointed officials and employees, volunteers, boards, commissions and authorities and employees of such boards, commission and authorities solely as it relates to this Permit."

(e) Cancellation Notice. Workers' Compensation Insurance, Commercial General Liability Insurance, and Motor Vehicle Liability Insurance as described above shall include an endorsement stating that thirty (30) days advance written notice of cancellation, non-renewal, reduction and/or material change shall be sent to:

City of Sterling Heights
40555 Utica Road
P.O. Box 8009
Sterling Heights, MI 48311-8009

11. **Proof of Insurance.**

The Company and any contractors hired by the Company shall within thirty (30) days of such request supply a certificate of insurance evidencing the insurance coverages required under this Permit.

12. **Indemnity/Hold Harmless Permit.**

To the fullest extent permitted by law, the Company shall indemnify and hold the City, its elected and appointed officials, employees, volunteers and others working on behalf of the City and in the performance of their duties, harmless from and against all loss, cost, expense, damage, liability or claims, whether groundless or not, arising out of bodily injury, sickness or disease (including death resulting at any time therefrom) which may be sustained or claimed by any person or persons, or the damage or destruction of any property, including the loss of use thereof, based on any act or omission, negligent or otherwise, of the Company or anyone acting in its behalf in connection with or incident to this Permit, except that the Company shall not be

responsible to the City on indemnity for damages to the extent caused by or resulting from the City's willful misconduct or gross negligence; the City will mitigate damages and the Company shall, at its own cost and expense, defend any such claim and any suit, action, or proceeding which may be commenced, and the Company shall pay any and all judgments which may be recovered in any suit, action or proceeding, and any and all expense, including but not limited to costs, reasonable attorney's fees and settlement expenses which may be incurred. The City agrees to give prompt notice of any such claims which the Company may defend with counsel of its own choosing. No claims shall be settled or compromised without the consent of the Company.

13. **Notices.**

All notices required by this Permit shall be deemed given by depositing them in the United States Mail, first class, and addressed to:

City	City Manager City of Sterling Heights 40555 Utica Road P.O. Box 8009 Sterling Heights, MI 48311-8009
Company	MCImetro Access Transmission Services, Inc. 2250 Lakeside Blvd. Richardson, TX 75082 ATTN: Dept. 0430/642

14. **Effective Date.**

This Permit shall take effect upon execution by the City of Sterling Heights, Michigan.

ATTEST:

By: Mary T. Zander
Its: City Clerk Mary T. Zander

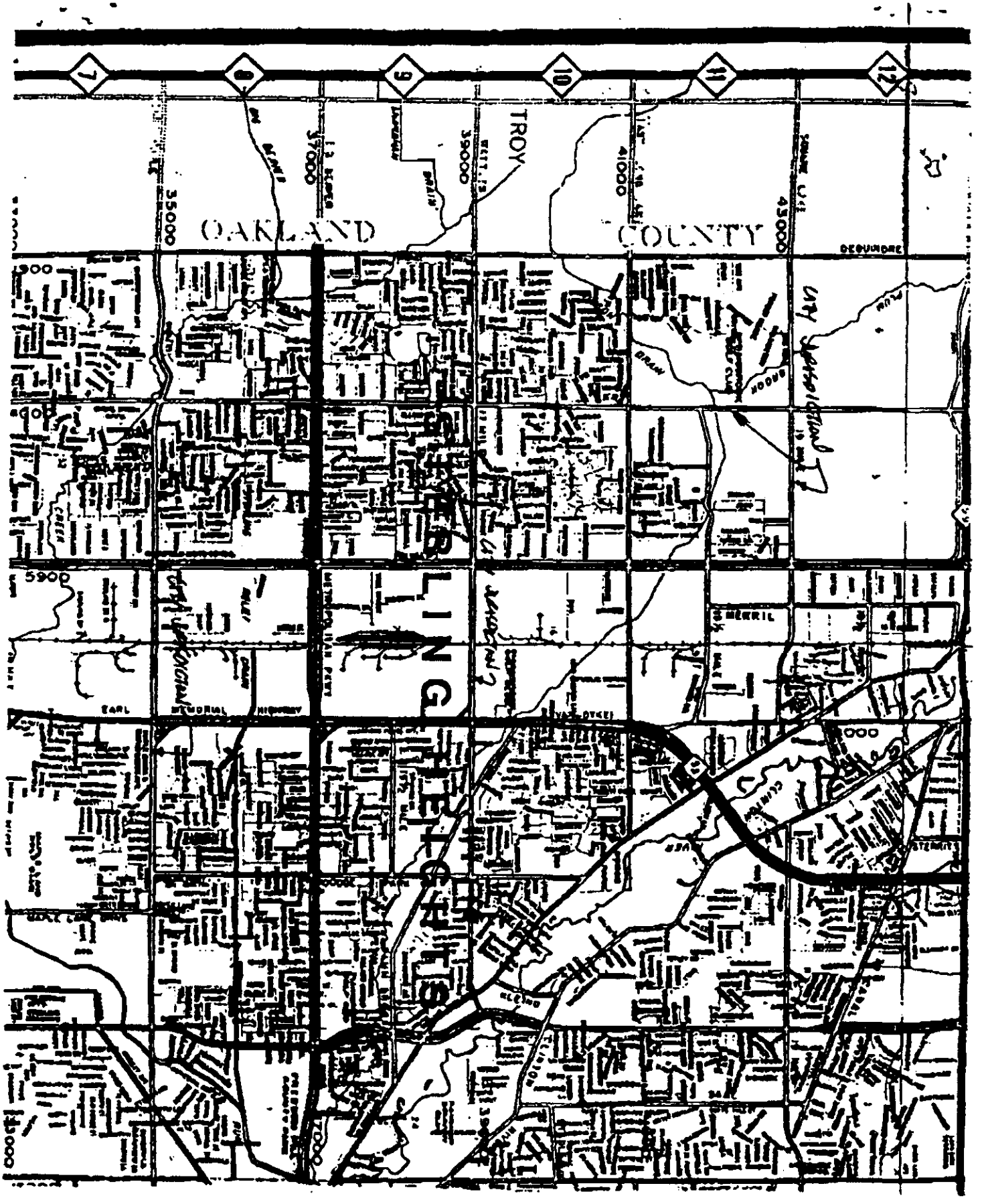
By: [illegible]
Its: RICHARD STROM
ASSISTANT SECRETARY

CITY OF STERLING HEIGHTS, a Michigan municipal corporation ("City")

By: Richard J. Notte
Its: Mayor Richard J. Notte
Date: 6-12-96

MCImetro Access Transmission Services, Inc., ("Company")

By: [illegible]
Its: KENNETH C. GEESLIN - VICE PRESIDENT
Date: 6/6/96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