

1 (d) If Permittee is proposing an underground installation within new ducts or conduits  
2 to be constructed within the Rights-of-Way:

3 (1) the location, depth, size and quantity of proposed new ducts or conduits;

4 (2) the Excess Capacity that will exist in such ducts or conduits after installation of  
5 Permittee's Telecommunications Facilities.

6 (e) A preliminary installation schedule and completion date.

7 (f) When the Permittee is intending to install Facilities, the posting of a Construction Bond  
8 sufficient for all the Facilities shall be filed.

9  
10 **Sec. 10.5-13. General requirements granting all private use permits.**

11 (a) Every Applicant for a Private Use Permit shall also submit to the Manager in a form  
12 acceptable to the Manager:

13 (1) a copy of all insurance policies and certificates required under this Article with a  
14 signed statement from the City's Director of Risk Management who shall notify the  
15 Director when such policies and certificates are acceptable to the City; and

16 (2) a copy of applicable authorizations to offer Telecommunications Services in the City  
17 from the Public Utilities Commission, and the Federal Communications  
18 Commission, to the Director;

19 (3) a statement signed by the Applicant that the Applicant agrees to be bound by all  
20 provisions of this Article and agrees to obtain all applicable permits and  
21 authorizations prior to constructing, installing, or operating Telecommunications  
22 Facilities in Rights-of-Way.

1 (b) Permits shall be of no force or effect until the Application is approved by the  
2 Manager, the Applicant files a written acceptance of the terms and conditions of this Article and the  
3 Permit, and the Director certifies in writing to City Council that the foregoing general requirements  
4 have been performed.

5  
6 **Sec. 10.5-14. Issuance of permit; conditions.**

7 If the Manager determines that the Applicant has satisfied the requirements of this Ordinance  
8 the Manager may issue a Permit, and the Manager may impose reasonable conditions upon the  
9 issuance of the Permit and the performance of the Applicant thereunder in order to protect the public  
10 health, safety and welfare, to insure the structural integrity of the Rights-of-Way, to protect the  
11 property and safety of other users of the Rights-of-Way, and to minimize the disruption and  
12 inconvenience to the traveling public.

13  
14 **Sec. 10.5-15. Reporting obligations.**

15 (a) Each Permittee shall, by December 1 of each year, file a construction and major  
16 maintenance plan with the Manager. Such plan shall be submitted using a format designated by the  
17 Manager and shall contain the information determined by the Manager to be necessary to facilitate  
18 the coordination and reduction in the frequency of excavations and obstructions of Rights-of-Way.

19 The plan shall include, but not be limited to, the following information:

- 20 (1) the specific locations and the beginning and ending dates of all planned construction  
21 projects to be commenced during the next calendar year, and  
22 (2) the tentative locations and beginning and ending dates for all construction projects  
23 contemplated for the five (5) years following the next calendar year.

1           (b)     Each Permittee shall maintain such records of the location of its Facilities in the  
2 Rights-of-Way within the City, and such other records as the Manager may reasonably require to  
3 enable the proper and efficient enforcement of the provisions of this Ordinance. Each Permittee will  
4 annually make such reports, in such form as the Manager may reasonably require. Each Applicant  
5 shall annually cause an audit to be performed, at its sole expense, or certify that the records and  
6 reports that are on file in the Manager's office are accurate.

7           (c)     Each Permittee shall notify the City and provide a copy of all FCC, Federal, PUC and  
8 State reports and filings on behalf of the Permittee or affiliates which relate to the operation of its  
9 Facilities within the City.

10          (d)     Each Permittee shall provide to the Manager information indicating the horizontal  
11 and approximate vertical location, relative to the boundaries of the Rights-of-Way, of all Facilities  
12 which it owns or over which it has control and which is located in any Rights-of-Way. This  
13 information shall be provided with the specificity and in the format designated by the Manager for  
14 inclusion in the mapping system used by the City.

15          (e)     Within three (3) months of the acquisition, installation, or construction of additional  
16 Facilities or any relocation, abandonment, or disuse of existing Facilities, each Permittee shall  
17 supplement the mapping information required herein with as-builts. Each Permittee shall make this  
18 information available with the specificity and in the electronic format specified by the Department.

19          (f)     The Permittee shall not allow the use of its Facilities for the provision of services  
20 within the City, by its affiliates or any service provider unless the service provider has been granted  
21 any necessary permit or franchise by the City.

22

1 FEES

2 Sec. 10.5-16. Permit fee and financial controls.

3 (a) The Permittee shall pay to the City a Private Use Permit fee based on the following  
4 annual charges:

5 Local Rights-of-Way = \$ .36 per foot  
6 Collector Rights-of-Way = \$1.50 per foot  
7 Arterial Rights-of-Way = \$2.84 per foot

8 This compensation shall be reduced, but not below zero, by the amount of any utility  
9 occupation or similar tax levied on the Permittee, any franchise fee paid to the City by the Permittee  
10 relating to provision of basic Telecommunications Service, and the cost to the Permittee of any in-  
11 kind compensation provided to the City. The Permit fee costs are based on the Permittee's portion  
12 of the City's annual overall maintenance, administration and care costs of the public Rights-of-Way.  
13 The per foot charges listed above shall be increased at the annual positive rate of the Construction  
14 Price Index (CPI) as published in the Engineering News Record each year starting in 1998. The  
15 Permittee's total annual payments (cap) shall not exceed three and one-half million dollars  
16 (\$3,500,000) for 1997. This cap shall be increased at the annual positive rate equal to the CPI  
17 percentage starting in 1998. In the event that the CPI decreases, the cap shall remain unchanged.  
18 All monies received by the City pursuant to this section shall be retained in a separate account and  
19 used exclusively for right-of-way acquisition, maintenance and administration. This permit fee is  
20 established pursuant to the City Council's obligation to oversee and condition use of public property  
21 by private entities, and is not established through exercise of the municipal taxing power. The fees  
22 established herein are for the purpose of recouping City Costs related to the impact of the use of the  
23 Rights-of-Way by the Provider of Telecommunications Service.

1           (1)    The Permit fee shall be calculated based on the actual usage of the Rights-of-Way for  
2                    the placement of Telecommunications Facilities identified in the Permit as verified  
3                    by "as built" maps and/or City inspection. The Permit fee calculation is based on the  
4                    following:

5                    a.     The cost per foot is applied per run of cable or conduits owned or controlled  
6                            by any provider. Up to two 4" conduits will be considered a single run. The  
7                            number of cables or fiber strands within the two 4" conduits shall be in  
8                            conformance with the National Electric Safety Code;

9                    b.     All measurements will be taken to the nearest foot; and

10                   c.    The Permittee will be charged for all cable and conduit in place at the time  
11                            the Permit is issued. Where an existing permit is revoked in favor of a new  
12                            Permit issued according to this Article, the Permittee shall be given credit for  
13                            all permit fee payments already made to the City during the initial calendar  
14                            year of the new Permit. Credit shall not be given for standard permit costs,  
15                            or street repair or other costs incurred during Facilities construction,  
16                            installation and operation.

17           (2)    Accrual of the Permit fee shall begin on the effective date of the issuance of the  
18                    Permit. The Permittee shall not be exempt from any property, sales or use tax, or any  
19                    other tax not directly related to the Permit, from head taxes, from other fees or taxes  
20                    assessed generally upon businesses, or from fees and charges that are uniform and  
21                    generally applicable to contractors performing similar work, except as may be  
22                    specifically provided herein.

1 (3) The Permittee may place aerial Facilities only in locations approved in advance by  
2 the City. All Permit Fees listed in this section shall apply at the same rate for aerial  
3 cable.

4 (4) In addition to the charges listed above, the Permittee shall be responsible, at the time  
5 of application, for:

- 6 a. Private Use Permit application fees;
- 7 b. Public Works plan review costs;
- 8 c. Street cut permit applications and fees; and
- 9 d. Street occupancy permit application and fees.
- 10 e. Radium street cut permit.

11 (b) The Permittee's Private Use Permit fee payments to the City shall be paid in quarterly  
12 installments, based on the calendar year, and delivered to the City not more than thirty (30) days  
13 following the close of the quarter for which payment is made. Initial and final payments shall be  
14 prorated for any portion of the quarter at the beginning and/or end of the term of the Permit. All  
15 payments shall be delivered to the City, attention of the Manager of Revenue. In the event an error  
16 by the Permittee results in an overpayment of a Permit fee to the City, at the option of the City, credit  
17 to the Permittee for the overpayment may be spread over a period equal to the period during which  
18 the error was undiscovered, or credit shall be taken against the next payment.

19 (c) No acceptance of any payment shall be construed as an accord by the City that the  
20 amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a  
21 release of any claim the City may have for further or additional sums payable or for the performance  
22 of any other obligation of the Permittee.

1 (d) Each payment shall be accompanied by a written statement in a form provided by the  
2 Manager, with a cover letter on company letterhead, to the City, verified by an officer of the  
3 Permittee, containing an accurate statement in summarized form describing the computation of the  
4 payment amount.

5 (e) On an annual basis, upon thirty (30) days prior written notice, the City may conduct  
6 an independent audit of the Permittee's records, books, maps, plans and other like materials  
7 reasonably related to the administration or enforcement of this Article and the Permit, in accordance  
8 with Generally Accepted Accounting Principles. If the City shall have an audit made for any year  
9 and the Permit fees for such year should be found to be understated by more than one percent (1%),  
10 the Permittee shall pay to the City the cost of such audit, all unpaid Permit fees, and penalty and  
11 interest on late payment as listed below. The City's right to have such an audit made with respect  
12 to any year, and the Permittee's obligation to retain the above records, shall expire three (3) years  
13 after the Permittee's statement for any period has been delivered to the City.

14 (f) In the event any payment is not received by close of business on the payment due  
15 date, the Permittee shall be assessed a penalty of ten percent (10%) of the payment due plus interest  
16 at the rate of one percent (1%) per month, or fraction thereof. Interest shall be due on the entire late  
17 payment from the date on which the payment was due until, and including, the date on which the  
18 City receives the payment.

19  
20 **Sec. 10.5-17. User fee.**

21 Any Permittee under this Article may elect to pay a Use Fee of 5% of the gross revenues of  
22 the Permittee from the provision of Telecommunications Services within the City instead of the  
23 Private Use Permit Fee.

1           This compensation shall be reduced, but not below zero, by the amount of any utility  
2 occupation or similar tax levied on the Permittee, any franchise fee paid to the City by the Permittee  
3 relating to provision of basic Telecommunications Service, and the cost to the Permittee of any in-  
4 kind compensation provided to the City.

5           *Gross Revenues* means any and all cash, credits, property or other consideration of any kind  
6 or nature received directly or indirectly by a Telecommunications Provider, its affiliates, or any  
7 entity in which such Telecommunications Provider has a financial interest, arising from, attributable  
8 to, or in any way derived from the operation of such Provider's telecommunications system.

9           All monies received by the City pursuant to this section shall be retained in a separate  
10 account and used exclusively for right-of-way acquisition, maintenance, and administration.

11  
12 **Sec. 10.5-18. In-kind fee.**

13           The City may accept or require in-kind compensation from rights-of-way users in lieu of all  
14 or a portion of fee payments. *In-kind Compensation* means a non-monetary payment of equipment,  
15 facilities, fixtures and/or services by a Telecommunications Provider in consideration for utilizing  
16 equipment, facilities or fixtures in the public's Rights-of-Way on a continuous or non-transitory  
17 basis. In-kind compensation is established pursuant to the City Council's obligation to oversee,  
18 condition and maximize public benefit from the utilization of public property by private entities, and  
19 is not established through exercise of the municipal taxing power. However, the City will not accept  
20 in-kind payments unless it allows other users who have applied or will apply for a similar permit  
21 within a 12-month period to make equivalent in-kind payments.

1     CONSTRUCTION

2     Sec. 10.5-19. Underground construction.

3             Except as provided below, all of the Permittee's facilities shall be installed underground and  
4     all Street crossings installation shall be made by Trenchless Technology. The Permittee shall make  
5     no open cuts without specific prior written permission of the Manager or his designee, which shall  
6     not be unreasonably withheld or delayed.

7  
8     Sec. 10.5-20. Aerial construction.

9             (a)     Aerial construction of Facilities must be specifically authorized by the City prior to  
10     construction and located to minimize interference with the other uses of the Rights-of-Way and other  
11     public properties, and interference with the rights and reasonable convenience of property owners  
12     whose property adjoins any of the Rights-of-way and other public properties.

13            (b)     Aerial Facilities shall be moved underground at the Permittee's own cost upon request  
14     from the City or when other users of the rights-of-way convert to underground Facilities.

15  
16     Sec. 10.5-21. Collocation.

17            Each Permittee authorized to construct backbone facilities in the Right-of-Way shall, when  
18     feasible, construct those facilities so that they are capable of accommodating additional Facilities  
19     owned by other persons. Lateral connections into specific locations are not included in this  
20     requirement. Each Permittee authorized to construct facilities in the Rights-of-Way shall permit, to  
21     the greatest extent possible, utilization of their conduit, poles, trenches and other Facilities by other  
22     Permittees and franchise holders and shall, when feasible, collocate its Facilities in existing

1 Facilities. In reviewing whether to require collocation in any particular instance, the City shall take  
2 into account first the demand for use of a particular Right-of-Way or route corridor, the Company's  
3 costs and the potential adverse impact, if any, on Company's construction schedule from such  
4 collocation, a Company's specific access, security and maintenance concerns as well as any technical  
5 constraints. (By way of example but not limitation, RF interference, electrical code, OSHA, loading,  
6 fire code.) To the extent such use shall be subject to requirements of the Telecommunications Act  
7 of 1996 regarding use of utilities including electric, gas, and telephone right-of-way conduit and  
8 facilities for cable television telecommunication purposes, rates and charges shall be consistent with  
9 the general objectives and requirements outlined in the Act.

10 Any Permittee whose facilities contain additional capacity for installation or collocation of  
11 Telecommunications Facilities owned by other persons shall agree to allow other persons to install  
12 or collocate their Telecommunications Facilities on such facilities subject to reasonable and non-  
13 discriminatory terms and conditions negotiated between the parties. All costs of collocating or  
14 installing additional facilities shall be borne by the person seeking to do so.

15  
16 **Sec. 10.5-22. Location of facilities.**

17 The Manager shall have the power to prohibit or limit the placement of new or additional  
18 Facilities within the Rights-of-Way if there is insufficient space to accommodate all of the requests  
19 of Permittees to occupy and use the Rights-of-Way. In making such decisions, the Manager shall  
20 strive to the extent possible to accommodate all existing and potential users of the Rights of, but  
21 shall be guided primarily by considerations of the public interest, the public's needs for the particular  
22 Telecommunications Service, the condition of the Rights-of-Way, the time of year with respect to

1 essential utilities, the protection of existing Facilities in the Rights-of-Way, and future City plans  
2 for public improvements and development projects which have been determined to be in the public  
3 interest.

4  
5 **Sec. 10.5-23. Special exceptions.**

6 The City may grant a special exception to the requirements of this Article if a Permittee,  
7 upon application, demonstrates with written evidence that:

8 (a) The exception will not create any threat to the public health, safety or welfare.

9 (b) The Permittee demonstrates that the increased economic burden and the potential  
10 adverse impact on the Permittee's construction schedule resulting from the strict enforcement of the  
11 requirement actually or effectively prohibits the ability of the Permittee to provide  
12 Telecommunications Services in the City.

13 (c) The Permittee demonstrates that the requirement unreasonably discriminates against  
14 the Permittee in favor of another Person.

15 (d) The total of the Permittee's Facilities located in the Rights-of-Way does not exceed  
16 five hundred (500) feet.

17  
18 **Sec. 10.5-24. Inspections.**

19 All construction, installation and operation of the Permittee's Telecommunications Facilities  
20 in the Rights-of-Way is subject to inspection by the Manager during reasonable hours. In the case  
21 of an Emergency, the Facilities shall be subject to inspection at all hours.

1     RESTORATION, ABANDONMENT AND TRANSFER

2     Sec. 10.5-25. Removal of facilities.

3             Upon revocation or Surrender of a Permit the Permittee shall, within a reasonable period of  
4     not more than ninety (90) days after such revocation: (1) remove said Telecommunications Facilities  
5     at the Permittee's expense; or (2) with the City's approval, abandon its Facilities in place and transfer  
6     ownership of the installed Facilities to the City at no cost to the City. If the Permittee removes its  
7     Facilities upon revocation of the Permit, the Permittee shall return the Streets and Rights-of-Way  
8     to, at a minimum, the condition which existed prior to construction, under the supervision of the  
9     Manager.

10

11     Sec. 10.5-26. Transfer of ownership.

12             The Permittee shall not assign the Permit or any rights or obligations accorded the Permittee  
13     thereunder to any party, other than to a subsidiary, or parent of the Permittee upon corporate  
14     reorganization, or an affiliate entity, without the prior written consent of the City, which shall not  
15     be unreasonably withheld.

16             (a)     In the event the Permittee assigns the Permit to a subsidiary, parent or affiliate entity,  
17     the Permittee shall provide the City with notice of such assignment and shall provide the City with  
18     relevant information about the assignee's qualifications.

19             (b)     Should the Permittee attempt to assign the Permit or its rights hereunder without the  
20     prior consent of the City, the Permit shall be subject to revocation as provided herein, unless such  
21     assignment is ratified by the City within ninety (90) days of such attempt to assign, and the Permittee  
22     shall be liable to the City for any and all costs incurred, including attorneys fees, resulting from any  
23     such attempt to assign the Permit, in whole or part.

1 (c) A refusal by the City to approve an assignment of the Permit or the Permittee's rights  
2 hereunder shall be deemed reasonable if and insofar as it relates to any City requirement or condition  
3 that the proposed assignee cure any existing default of the Permittee under the Permit, and/or to any  
4 demonstration of the assignee's qualifications equivalent to demonstrations of the Permittee's  
5 qualifications required by this Article, including, but not limited to, the technical and financial  
6 strength and operating experience of the assignee.

7  
8 **RELOCATION**

9 **Sec. 10.5-27. Relocation of facilities.**

10 The City may require the Permittee to relocate its Facilities in order to allow the City to make  
11 any public use of Streets or Rights-of-Way or if such relocation becomes necessary because of a  
12 change in the grade or for any other purpose by reason of the improving, repairing, constructing, or  
13 maintaining of any Street or Rights-of-Way, or by reason of traffic conditions, public safety or by  
14 reason of installation of any type of structure or public improvement by the City or other public  
15 agency or special district, including urban renewal and development, and any general program for  
16 the undergrounding of such facilities, upon 90 days notice to the Permittee. In such cases:

17 (a) The Permittee shall, at its sole cost and expense, accomplish the necessary relocation,  
18 removal or no later than three (3) working days prior to the date the City has notified the Permittee  
19 that the City intends to commence its work.

20 (b) Upon the Permittee's failure to accomplish such work, the City or other public  
21 agencies may perform such work at the Permittee's expense and the Permittee shall reimburse the  
22 City or other agency within thirty (30) days after receipt of a written invoice. In cases of Emergency,

1 the City may relocate the Permittee's facilities immediately at the Permittee's expense without notice  
2 to the Permittee.

3  
4 **INSURANCE**

5 **Sec. 10.5-28. Indemnification.**

6 (a) The Permittee for itself and its related entities, agents, employees, subcontractors and  
7 the agents and employees of said subcontractors shall save the City harmless, defend, and indemnify  
8 the City, its successors, assigns, officers, employees, agents and appointed and elected officials from  
9 and against all liability or damage and all claims or demands whatsoever in nature, and reimburse  
10 the City for all its reasonable expenses as incurred, arising out of the installation and operation of  
11 the Permittee's System within the Streets and Rights-of-Way, including but not limited to the actions  
12 of the Permittee, its employees, agents, contractors, related entities, successors and assigns, or the  
13 securing of and the exercise by the Permittee of the Permit rights granted in the Permit, including  
14 any third party claims, administrative hearings, actions for copyright infringement and litigation,  
15 whether or not any act or omission complained of is authorized, allowed, or prohibited by this  
16 Article.

17 (b) The terms of each contract awarded by the Permittee for activities pursuant to the  
18 Permit shall contain indemnity provisions whereby the contractor shall indemnify the City to the  
19 same extent as described above.

20 (c) The Permittee shall have the right to defend the City with regard to all damages and  
21 penalties arising in any way out of the exercise of any rights in the Permit. If at any time, however,  
22 the City elects to defend itself with regard to such matters, the Permittee shall pay all actual expenses  
23 incurred by the City related to its defense.

1           (d)     Within thirty (30) days after receipt of same by the City Attorney, the City will  
2 provide notice to the Permittee of the assertion of any claim or action arising out of the exercise by  
3 the Permittee of its Permit rights. The Permittee will be allowed, at its own expense, to appear and  
4 defend or assist in defense of such claims. The Permittee shall have no recourse whatsoever against  
5 the City for or on account of any loss, cost, expense or damage arising out of the provisions or  
6 requirements of the Permit, or the grant of permit.

7           (e)     In the event the City institutes litigation against the Permittee for a breach of the  
8 Permit or for an interpretation of this Article and the City is the prevailing party, the Permittee shall  
9 reimburse the City for all costs related thereto, including reasonable attorneys fees.

10          (f)     The Permittee shall not be obligated to hold harmless or indemnify the City for claims  
11 or demands to the extent that are due solely to the gross negligence, or any intentional and/or willful  
12 acts of the City or any of its officers, employees or agents.

13  
14 **Sec. 10.5-29. Insurance.**

15          (a)     Permittees shall maintain on file with the City's Director of Risk Management a  
16 certified copy of the insurance policy(s) specifically endorsed to include all liability assumed by the  
17 Permittee hereunder and a certificate of insurance certifying the coverage required under this Article,  
18 which certificate shall be subject to the approval of the City as to the adequacy of the certificate and  
19 of the insurance certified under the requirements of this Article. Such policy(s) and certificate shall  
20 be identified on their face by the name of the Permittee, and Article Number, and shall be submitted  
21 to the Director of Risk Management at 1445 Cleveland Place, Room 203A, Denver, CO 80202, in  
22 accordance with the terms and conditions of this Article. Failure to maintain adequate insurance as  
23 required under this Article shall be deemed a breach of the Permit.

1 (b) The Permittee shall maintain public liability, property damage and other insurance  
2 required by the Director of Risk Management that protects the Permittee and the City, its officers,  
3 agents, employees and appointed and elected officials from any and all claims for damages or  
4 Personal injury including death, demands, actions, and suits brought against any of them arising  
5 from operations under the Permit or in connection therewith. This insurance coverage constitutes  
6 a minimum requirement and shall in no way be deemed to lessen, limit or define the liability of the  
7 Permittee, related entities, its successors or assigns, under the terms of the Permit.

8 (c) Upon written application to, and written approval by, the City's Director of Risk  
9 Management, a Permittee may be self-insured to provide all of the same coverages as listed in this  
10 section. No approval for self-insurance shall be given until a complete review of the Permittee's  
11 financial ability to provide such self-insurance is made by the City's Director of Risk Management.  
12 As part of the review process, the City's Director of Risk Management may require, and the self-  
13 insurance applicant shall provide, any and all financial documents necessary to make a valid  
14 determination of the ability of the applicant to meet the requirements of this Article.

15 (d) Nothing herein shall be in any way construed as a waiver on behalf of the City of any  
16 of the protections or provisions of the Colorado Governmental Immunity Act, and the Permittee shall  
17 ensure that in naming the City as an insured under this section, all insurance policies or agreements  
18 shall specifically contain a non-waiver provision, and shall not impair said protection and provisions.

19  
20 SECURITY

21 Sec. 10.5-30. Security.

22 (a) To secure the faithful performance of its obligations under its Permit, the Permittee  
23 shall provide the City with a clean, unconditional and irrevocable letter of credit issued by a local

1 bank or a clean, unconditional penal performance bond issued by an agency included on the most  
2 recent U.S. Department of Treasury's list of approved bonding companies for the federal  
3 government, found in the Federal Register, and annual update thereof, acceptable to the City  
4 Attorney in the amount of three hundred thousand dollars (\$300,000.00). Subject to amendments to  
5 the Permit that specify additional construction, the letter of credit or performance bond may be  
6 reduced to one hundred and fifty thousand dollars (\$150,000.00) after successful completion of the  
7 construction and activation of all Telecommunications Facilities authorized under the Permit.

8 (b) Failure of the Permittee to comply with its obligations under this Article or the Permit  
9 as determined by the City shall entitle the City to draw against the letter of credit or performance  
10 bond. The rights reserved to the City with respect to the letter of credit or performance bond are in  
11 addition to all other rights of the City, whether reserved by this Article or authorized by law, and no  
12 action, proceeding or exercise of a right with respect to such letter of credit or performance bond  
13 shall affect any other rights the City may have.

14 (c) The performance bond shall not expire or be materially altered without forty-five (45)  
15 days written notice and without securing and delivering to the City a substitute, renewal and  
16 replacement bond in conformance with this Article, consistent with the replacement and continuous  
17 coverage requirements for insurance found in subsection (c). In the event the City does draw monies  
18 against the performance bond, within ten (10) days thereafter, the Permittee shall pay such funds to  
19 the bonding company as necessary to bring the performance bond back to the principal amount of  
20 \$300,000.00 or \$150,000.00, whichever is applicable, where it shall continue to be maintained at all  
21 times. The performance bond shall contain the following endorsement:

22 "It is hereby understood and agreed that this performance bond may not be  
23 reduced, altered or canceled by the Permittee or the bonding company

1 without forty-five (45) days written notice, by certified mail, to the City's  
2 Director of Risk Management."

3 (d) The letter of credit shall not expire, and be kept in force for the full term of the  
4 Permit. In the event the City does draw monies against the letter of credit, within ten (10) days  
5 thereafter, the Permittee shall deposit funds in the bank under the letter of credit sufficient to bring  
6 the balance available under the letter of credit back to the principal amount of \$300,000.00 or  
7 \$150,000.00, whichever is applicable, where it shall continue to be maintained at all times.

8  
9 **Sec. 10.5-31. Denial of permit.**

10 (a) Mandatory denial. Except in the case of an Emergency, no Rights-of-Way Permit  
11 will be granted:

- 12 (1) To any Person not authorized to operate in the State of Colorado;  
13 (2) To any Person who has failed within the past three (3) years to comply, or is  
14 presently not in full compliance, with the requirements of this Article;  
15 (3) To any Person who has outstanding debt owed to the City; or  
16 (4) To any Person when there exists grounds for the revocation of a Permit.

17 (b) Permissive denial. The Manager may deny a Permit in order to protect the public  
18 health, safety and welfare, to prevent interference with the safety and convenience of ordinary travel  
19 over the Rights-of-Way, or when necessary to protect the Rights-of-Way and its users. The City  
20 may consider one or more of the following factors: the extent to which Rights-of-Way space where  
21 the Permit is sought is available; the competing demands for the particular space in the Rights-of-  
22 Way; the availability of other locations in the Rights-of-Way or in other Rights-of-Way for the

1 Facilities of the particular company; the applicability of law that affect location of Facilities in the  
2 Rights-of-Way; the degree of compliance of the applicant with the terms and conditions of its  
3 franchise, this ordinance, and other applicable ordinances and regulations; the degree of disruption  
4 to surrounding communities and businesses that will result from the use of that part of the Rights-of-  
5 Way; the condition and age of the Rights-of-Way, and whether and when it is scheduled for total or  
6 partial reconstruction; and the balancing of the costs of disruption to the public and damage to the  
7 Rights-of-Way, against the benefits to that part of the public served by the expansion into additional  
8 parts of the Rights-of-Way.

9 (c) Discretionary issuance. Notwithstanding the provisions of subsections (a) and (b)  
10 of this section 10.5-33, the City may issue a Permit in any case where the Permit is necessary: (a)  
11 to prevent substantial economic hardship to a customer of the Permit applicant; (b) to allow such  
12 customer to materially improve its Telecommunications Service; or (c) to allow a new economic  
13 development project and where the Permit applicant did not have knowledge of the hardship, the  
14 plans for improvement of Service, or the development project when it was required to submit its list  
15 of next year projects.

16  
17 **Sec. 10.5-32. Revocation of permits.**

18 (a) Permittees hold Permits issued pursuant to the Article as a privilege and not as a right.  
19 The City reserves its right, as provided herein, to revoke any Permit, without refunding any fees, in  
20 the event of a substantial breach of the terms and conditions of any statute, ordinance, rule or  
21 regulation, or any condition of the Permit. A substantial breach by Permittee shall include, but shall  
22 not be limited to, the following:

- 1 (1) The violation of any material provision of the Permit;
- 2 (2) An evasion or attempt to evade any material provision of the Permit, or the
- 3 perpetration or attempt to perpetrate any fraud or deceit upon the City or its citizens;
- 4 (3) Any material misrepresentation of fact in the application for a Permit;
- 5 (4) The failure to maintain the required security and/or insurance;
- 6 (5) The failure to complete any work in a timely manner; or
- 7 (6) The failure to correct a condition indicated on an order issued pursuant to this
- 8 section.

9 (b) If the Manager determines that the Permittee has committed a substantial breach of  
10 a term or condition of any statute, ordinance, rule, regulation or any condition of the Permit the  
11 Manager shall make a written demand upon the Permittee to remedy such violation. The demand  
12 shall state that continued violations may be cause for revocation of the Permit. Further, a substantial  
13 breach, as stated above, will allow the Manager, at his or her discretion, to place additional or revised  
14 conditions on the Permit.

15 (c) Within twenty-four (24) hours of receiving notification of the breach, Permittee shall  
16 contact the Manager with a plan, acceptable to the Manager, for its correction. Permittee's failure  
17 to so contact the Manager, or the Permittee's failure to submit an acceptable plan, or Permittee's  
18 failure to reasonably implement an approved plan, shall be cause for immediate revocation of the  
19 Permit. Further, Permittee's failure to so contact the Manager, or the Permittee's failure to submit  
20 an acceptable plan, or Permittee's failure to implement an approved plan, shall automatically place  
21 the Permittee on Probation for one full year.

22 (d) From time to time, the Manager may establish a list of conditions of the Permit  
23 which, if breached, will automatically place the Permittee on Probation for one full year, such as,

1 but not limited to, working out of the allotted time period or working on Rights-of-Way grossly  
2 outside of any Permit issued by the City.

3 (e) If a Permittee, while on Probation, commits a breach as outlined above, Permittee's  
4 Permit will automatically be revoked and the Permittee shall not install Facilities in the Rights-of-  
5 Way for one full year, except for Emergency repairs.

6 (f) If a Permit is revoked, the Permittee shall reimburse the City for the City's reasonable  
7 costs, including restoration costs, the costs of collection and reasonable attorneys' fees incurred in  
8 connection with such revocation.

9  
10 **MISCELLANEOUS PROVISIONS**

11 **Sec. 10.5-33. Equal opportunity.**

12 In accordance with D.R.M.C. § 28-103, the Permit is conditioned upon full compliance with  
13 the provisions of Article IV of Chapter 28 of the Denver Revised Municipal Code, entitled  
14 Prohibition of Discrimination in Employment, Housing and Commercial Space, Public  
15 Accommodations, Educational Institutions and Health and Welfare Services.

16  
17 **Sec. 10.5-34. Emergency use of facilities.**

18 The Permittee shall assign a management level Person to coordinate with, and assist the  
19 Office of Emergency Management (OEM) of the City, in the development of emergency plans.  
20 When an emergency is declared by the Mayor or Governor, the Permittee shall, without cost to the  
21 City:

22 (a) Ensure the restoration of City Facilities and services first;

23 (b) Provide priority lines for City emergency services;

1 (c) Assign Personnel to work directly with the OEM through the duration of the  
2 emergency;

3 (d) Ensure that vehicles active in the field assist the OEM in notification and  
4 identification of emergency problems;

5 (e) Direct employees of the Permittee to render assistance upon request from any  
6 emergency Personnel or OEM representative;

7 (f) Establish an "emergency override notification" system consistent with the cable  
8 television model, that will interrupt all Open Video System services with audio and video messages,  
9 to be used at the discretion of the Director of the OEM.

10  
11 **Sec. 10.5-35. Non-waiver.**

12 Neither the City nor the Permittee shall be excused from complying with any provisions of  
13 this Article by any failure of the other to insist upon or to seek compliance with such provisions.

14  
15 **Sec. 10.5-36. Corporate qualifications to be maintained.**

16 The Permittee shall maintain and preserve its corporate existence, its business, and all of its  
17 rights and privileges necessary or desirable in the normal conduct of said business. The Permittee  
18 shall maintain its good standing in its state of incorporation and continue to qualify to do business  
19 and remain in good standing in a foreign jurisdiction in which it conducts business. Process in any  
20 action, legal proceeding or procedure under this Article or in any way related to the Permit may be  
21 served on the Permittee either in Person, or by registered mail addressed to the Permittee at the  
22 address set forth in the Permit or any update thereof.

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**Sec. 10.5-37. Governing law.**

The Permit shall be deemed to be executed in the City and County of Denver, State of Colorado and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with the laws of the State of Colorado, as applicable to contracts entered into and to be performed entirely within Colorado.

**Sec. 10.5-38. City's right to purchase or condemn.**

The right of the City to construct, purchase, vacate, or condemn any public works or ways, and the rights of the Permittee in connection therewith, as provided by the Colorado Constitution and statutes are hereby expressly reserved.

**Sec. 10.5-39. Representatives.**

The City and the Permittee shall designate, in writing, representatives who shall cooperate to assure that any difficulties arising under the terms of the Permit shall be expeditiously resolved. Each party shall have a representative to whom notices shall be sent regarding the Permit, as specified in the Permit. Notices, including notice of any change of representative, shall be in writing and forwarded by certified mail, hand delivery or overnight delivery service to the designated representative of the other party. If the representative or the address of such representative for either party changes, that party shall notify the other promptly of said change in writing providing the name of the new contact and/or the new address.

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**Sec. 10.5-40. Taxes and assessments.**

To the extent taxes or other assessments are imposed by taxing authorities on the use of the City property as a result of a provider's use or occupation of the Rights-of-Way, the provider shall be responsible for payment of such taxes, payable annually unless otherwise required by the taxing authority. Such payments shall be in addition to any other fees payable pursuant to this Ordinance.

**Sec. 10.5-41. Severability.**

Should any one or more provisions of this Article or the Permit be determined to be illegal or unenforceable, all other provisions nevertheless shall remain effective.

**Section 2.** That Article II of Chapter 10.5 of the Revised Municipal Code shall be and the same is hereby amended only by changing the section numbers 10.5-21 through 10.5-24 to now read 10.5-51 through 10.5-54.

**Section 3.** That Article III of Chapter 10.5 of the Revised Municipal Code be and the same is hereby amended only by changing the section numbers 10.5-31 through 10.5-36 to now read 10.5-61 through 10.5-66.

1 PASSED BY THE COUNCIL September 22, 1997  
2 Cally Reynolds - PRESIDENT  
3 APPROVED: Wally S. Smith - MAYOR Sept 23, 1997  
4 ATTESTED: Frances E. Gordon - CLERK AND RECORDER,  
5 EX-OFFICIO CLERK OF THE  
6 CITY AND COUNTY OF DENVER  
7 PUBLISHED IN THE ROCKY MOUNTAIN NEWS Sept. 12, 1997 Sept. 26, 1997  
8 PREPARED BY: Andrew L. Weber ASSISTANT CITY ATTORNEY - September 4, 1997  
9 REVIEWED BY: D. W. Austin DEPUTY CITY ATTORNEY - September 4, 1997  
10 SPONSORED BY COUNCIL MEMBER(S) \_\_\_\_\_



# **EXHIBIT L**

OFFICE OF TELECOMMUNICATIONS  
303 W. Colfax Ave. Denver, CO 80204

Post-it* Fax Note	7671	Date	9/3	# of pages	1
To	KEN FELLMAN		From	D. SMITS	
Co./Dept.			Co.		
Phone #	320-6100		Phone #	640-2845	
Fax #	320-6613		Fax #	640-3888	

MEMO:

September 2, 1999

TO: Dean Smits, Director Office of Telecommunications

FROM: Arnter Jamison. *AJ*

Phone #303-640-2845

SUBJECT: "Private Use Permits"/Telecommunication providers:

Since 1983 Denver has awarded 19 telecommunications permits (revocable and private use permits) for access/occupancy in the City's Rights of Way. There are 4 private use applications currently being processed.

Between 1983 and 4/96 the city awarded 10 revocable permits to telecomm providers.

Between April 1996 and December 1997, 1 revocable permit was awarded.

Between January 1998 and July 1999, 12-applications/or notice of intent to apply for private use permits have been received (8 issued).

**Breakout of ROW permits by date type and Company:**

Date	Type of Permit	Name of Original Company (Name Change & or Current Company)
10/83	Revocable	US West
6/84	Revocable (Franchise)	Mile Hi Cable Partners/TCI/AT&T
10/89	Revocable	AT & T
5/91	Revocable	Williams (WTG/WorldCom)
5/91	Revocable	MCI
5/91	Revocable	Western Union (MCI)
2/92	Revocable	Teleport of Denver (ICG)
12/92	Revocable	Jones Lightwave (MFS)
1/93	Revocable	SP Telecom (QWEST)
3/95	Revocable	MFS
<u>10</u>		<u>Total Revocable Permits awarded prior to 4/96</u>

6/96 Revocable O'Allaghan (QWEST)

1 Total Number of Permits between 4/96 and 12/97

**Applications for Private Use Permits: (Ord. 628/97) 12 Applications: 8 Issued:**

Date Applied	Date Issued:	Type	Company
7/9/98	8/21/98	Private Use	NextLink CO., LLC
8/6/98	10/1/98	Private Use	Level (3) Communications
8/19/98	10/22/98	Private Use	Williams Communications
9/23/98	1/7/99	Private Use	MCI Metro Access
10/13/98	1/8/99	Private Use	New Century Energies
11/4/98		Private Use	US West Communications Inc.
11/10/98	4/29/99	Private Use	MFS Network Technologies.
1/21/99	3/18/99	Private Use	Sprint Communications
3/22/99		Private Use	ICG Telecom Group
4/30/99	8/31/99	Private Use	Enron Communications
8/9/99		Private Use	McLeod USA
10/8/98		Private Use	ACSI of Colorado (aka-e.spire)