EXHIBIT A
Raleigh, NC Proposed License

TELECOMMUNICATIONS LICENSE 2000 - X

This License is issued by and between the City of Raleigh, a North Carolina municipal corporation, herein after the "City," and **XX Xxxxxxxxxxxxxx, Inc.**, herein after "Grantee," a North Carolina corporation qualified to do business in North Carolina.

WHEREAS, the City desires to assure the widespread availability of Telecommunications Services within the City to promote commerce and otherwise further the public interest;

WHEREAS, the City seeks to ensure that the telecommunications infrastructure deployed within the City enables all people to effectively exercise their fundamental rights to pursue and exchange information;

WHEREAS, the City desires to assure that telecommunications providers shall interconnect their facilities to offer unrestricted access to other information networks;

WHEREAS, the City is the owner of certain public rights-of-way;

WHEREAS, the Grantee wishes for its sole interest and convenience to construct and lease a fiber optic, coaxial and multi-pair cables along portions of the City's right-of-way; said areas being more fully described in Section 1; and

WHEREAS, the City, under the terms and conditions set out herein, permits the requested construction of primary telecommunications and lease of third party telecommunications facilities in accordance within Section 1.

NOW, THEREFORE, the City of Raleigh ("City") hereby grants to **XX Xxxxxxxxxxxxxx, Inc.** ("Grantee") a Telecommunications License ("License) authorizing the Grantee to use the public way for the construction and deployment of Telecommunications Network(s) (Telecommunications Network") for the privilege of providing telecommunications services to businesses and residents within and outside the City.

Section 1. Nature and Terms of Grant

A. The City does hereby convey to the Grantee a license to operate a Telecommunications Network, using constructed, owned and leased facilities, in the City rights-of-way.

B. Notwithstanding the preceding, Grantee is awarded a license to construct and lease fiber optic, coaxial and multi-pair cable and other telecommunication facilities from Licensed Providers throughout the City.

C. Grantee is given the right to operate its Telecommunications Network, as defined in Section 1(A.) for a ten (10) year term, and may be renewed for two (2) consecutive terms, subject to the conditions of then current City ordinances, public right-of-way use conditions, and encroachment policies. The initial term shall commence on the date this License is executed by the City.

Section 2. Definitions

For the purposes of this License, the following terms, phrases, and their derivations shall have the meanings given below unless the context indicates otherwise. When inconsistent with the context, words used in the present tense include the future tense, words in the plural include the singular, and words in the singular include the plural.

A. **Gross Revenues** means revenues from the provision of Telecommunications Services within the City as defined in Section 2.B. As used in this Section, gross revenues shall mean all revenues, exclusive of sales tax, collected by the Grantee from operations of Grantee's Network and any related services provided by the Grantee within the corporate limits of the City.

1. Gross Revenues shall include:
   a. a prorated share of services originating in the City and terminating outside of the City;
   b. a probated share of services originating outside the City and terminating within the City;
   c. a full share of services originating and terminating within the City;
2. Gross Revenues shall be calculated upon:
   a. all telecommunication service revenues levied on a usage rate basis;
   b. all telecommunication services levied on a usage sensitive or mileage basis;
   c. all revenues from installation charges;
   d. all revenues collected from connection or disconnection fees;

e. all revenues from penalties or charges to customers for checks returned from banks, net of bank costs paid;
f. all revenues from equipment sold or rented to customer for use on customer premises. (Equipment sold is exempt, if purchaser paid sales tax.);
g. all revenues from local service;
h. all other revenues collected by Grantee from business pursued within the City;
I. recovery of bad debts previously written off, and revenue from sales of assignments of bad debts. Unrecovered bad debts charged off after diligent, unsuccessful efforts to collect are excusable from gross revenue computations; and
j. the value of any bartered services provided by the Grantee, except those free services required under the License.

3. Specifically exempt from the Gross Revenue calculations are:
   a. funds acquired for capital construction activities to improve or expand Grantee's Telecommunications Network;
   b. interstate carrier access fees;
   c. usual and customary telecommunication infrastructure lease payments to a telecommunication provider licensed by the City; and
   d. usual and customary telecommunication infrastructure lease payments received by the Grantee from another Federal, North Carolina or City of Raleigh licensed telecommunications provider.

B. **Licensed Providers** shall mean telecommunication providers certificated by the Federal Communications Commission and/or the North Carolina Utilities Commission and the City.

C. **Public way and right-of-way** shall also mean the surface of, and the space above and below all streets, avenues, boulevards, roads, alleys, lanes, squares, bridges, viaducts, tunnels, causeways, and sidewalks, lying within the rights-of-way, and all other public highways within the City.

D. **Telecommunications Network** means all wire and fiber cables, wireless transmission devices, and other necessary facilities and other property owned or leased by the Grantee for purposes of providing voice, video or data transmission Telecommunications Services.

E. **Telecommunications Services** shall mean voice, video or data transmission over the Telecommunications Network, the lease of the Network or Services to third-party resellers, or other access or private line service. Grantee shall not provide a cable network or provide video

programming, as defined by Section 602 of the Cable Communications Policy Act of 1984 (47 U.S.C. Section 522).

F. **Used for** shall also mean arranged for designed for, intended for, maintained for, and occupied for.

G. **Year** shall mean a calendar year.

Section 3. Compensation and Auditing

A. The Grantee shall pay the City of Raleigh throughout the term of this License, as compensation, a license fee of two percent (2%) of Grantee's Gross Revenues, on a **quarterly basis**, within forty-five (45) days following the end of each quarter. The license fee is assessed on Licensed Providers operating within the City. In the event 2% of Grantee's Gross Revenues is less than five thousand dollars ($5,000) in any single calendar year, Grantee shall pay to the City a total of five thousand dollars ($5,000) for that calendar year with the balance due within (45) days following the end of the fourth quarter.

B. The annual License Fee is compensation to the City in consideration of the Grantee is for the right to operate its Telecommunications Network within the public way, and is in lieu of an encroachment fee payment.

C. The Grantee shall furnish an annual statement to the City by March 1 of each year, certified by an official of the Grantee responsible for the Grantee's financial statements, reflecting the total amounts of Gross Revenues as defined herein, and all payments, and computations for the previous calendar year. Upon ten (10) days prior written notice, the City shall have the right to conduct an independent audit of Grantee's records. If, after resolving any dispute arising from such audit, Grantee has made a license fee underpayment of one and one half percent (1 ½%) or more, the Grantee shall assume all reasonable costs of such audit. In other events, the City shall sustain all costs associated with such audit.

D. All Grantee's books, maps and records concerning its Gross Revenues and its calculation of payments to the City shall be open for inspection by the appropriate officer of the City, or its designee, at all convenient times to determine the amount of compensation due to the City from Grantee under this License. Such records shall be kept so as to show accurately the same. Grantee shall prepare and make available to the City at times reasonable prescribed by the City and in the form prescribed by the City after consultation with the Grantee, such reports with respect to its Telecommunications Network in Raleigh and the Gross Revenues derived therefrom, as the City may deem reasonable necessary or appropriate. All

other reports required by the Charter and ordinances of the City shall be made by Grantee from time to time as required.

E. In the event Grantee makes one or more under payments pursuant to Section 3.A. or in the event Grantee fails to make any payment on or before the date it is due, Grantee shall pay interest at a rate of one and one half percent (1.5%) per month on said underpayment(s) and/or said late payment(s).

F. The Grantee shall file no less frequently than annually any tariffs, amendments, or modifications to licenses directly effecting the sale of Telecommunications Services and operation of the Telecommunication Network and shall notify the City of any changes in any such licenses within thirty (30) days of any such changes. The Grantee shall also provide to the City copies of all filings, reports and petitions to local, state, or federal regulatory agencies.

Section 4. License Not Exclusive

This License is not exclusive. The City expressly reserves the prerogative to grant rights to other persons or corporations, as well as the right in its own name as a municipality, to use its public ways for similar or different purposes allowed Grantee hereunder.

Section 5. Regulation

A. The City Council shall be vested with the power and authority to reasonably regulate the exercise of the privileges permitted by this License in the public interest. Any failure by the City to promptly enforce compliance with this License by federal, state and local laws and ordinances shall not relieve Grantee of its obligation to comply with any provision of this License.

B. The City reserves the right to inspect the installation and maintenance of the fiber optic cable and related equipment. Grantee shall provide to the City accurate maps of the planned cable installation within thirty days of the completion of installation and construction.

C. Grantee shall adhere to all federal, state, and local regulations regarding the location, construction, and maintenance of its facilities within the public right-of-way.

D. Engineering design, construction and as-built documents shall be provided in both hard copy (paper) and electronic (data files) formats. Such maps should designate the location of Grantee's facilities in a mutually

acceptable form. The electronic version must be based upon NC State Plane Coordinates NAD 1983.

E. Grantee shall file an application for encroachment and secure a Right-of-Way Permit from the Inspections Department prior to installation. Such permit shall not be unreasonably withheld or delayed.

F. Grantee shall reimburse the City for inspection services by an independent contractor to monitor construction, traffic control, compaction and restoration of the roadway during and thirty (30) days subsequent to the construction period.

1. The cost to Grantee shall not exceed $560 (e.g., 20 hours times $28/hour) weekly from the date of project commencement to conclusion. Also, Grantee shall reimburse the City for the full cost of compaction testing which shall not exceed $200 per 1000' or upon mutual agreement, compaction testing may be performed by an independent body satisfactory to the City and the Grantee at Grantee's expense.

2. The City, at its option, shall either invoice Grantee: a) no more frequently than monthly, or b) at project conclusion.

3. Should Grantee fail to make the payments required by this paragraph, the City, at its option, by written notice may declare this License canceled and terminated and all rights acquired hereunder by Grantee shall thereupon terminate, except Grantee shall be responsible for removing the facilities installed pursuant to this License from the City rights-of-way.

G. All installation shall be beneath the ground, except where collocated with other aerial utilities and for any temporary, not to exceed thirty (30) days, facilities which may be necessary to provide continued service. Facilities shall be installed underground in streetscape areas designated by the City. Grantee agrees that it shall remove its abandoned facilities in the right-of-way.

H. The City reserves the right, upon reasonable notice, to require Grantee at its expense to protect, support, temporarily disconnect, relocate or remove from the City's streets any property of Grantee by reason of traffic conditions, public safety, street construction or excavation, change or establishment of street grade, installation of sewers, drains, water pipes, power or communication lines, tracts, or other types of structure or improvements by governmental agencies or any structures of public improvement. Reasonable notice for this provision shall be construed to mean at least ninety (90) days except in the case of emergencies where no

specific notice period shall be required. The City shall endeavor to notify and seek comment from Grantee, with respect to minimizing disruption to the installed facilities where public works projects may affect Grantee's facilities.

I. Grantee shall place and construct its facilities so as not to interfere with the construction, location and maintenance of sewer or water mains, lines or connections, existing sidewalk, handicap ramps and trees along the ROW. Grantee shall take the necessary preventative measures to protect existing facilities within the public rights-of-way.

J. Grantee shall locate its underground facilities within the right-of-way by placing concrete surface mount cable markers immediately above its facilities. Sufficient clearance shall be provided to enable lawn-mowing equipment to pass unimpeded and safely overhead. The Grantee shall not place "cable marker posts" within the right of way to designate the location of its underground facilities. Clearance information can be secured from the Department of Parks and Recreation (919) 872-4115.

K. Grantee shall contract NC One Call Center forty-eight (48) hours prior to excavation and, where possible, shall remain at least ten (10) feet from existing water and sewer mains.

L. Grantee shall contact the Urban Forestry Inspector at (919) 872-4115 or the City (Urban Forester) at (919) 890-3152 a minimum of forty-eight (48) hours prior to commencing work to obtain guidelines should work to be done be within the crown drip-lines of trees on City rights-of-way or property. Grantee shall bore forty-eight inches (48") beneath trees and no less than ten fee (10') either side of the tree's drip-line and shall be responsible for any damage to trees caused solely by Grantee's construction and/or facilities. The City (Urban Forester) reserves the right to alter Grantee's construction activities on the job site to safeguard trees and shrubs within the right-of-way.

M. Grantee shall restore and replace landscaped areas, pavement, pedestrian lighting, sidewalks, curbs, gutters or other facilities damaged by Grantee or its contractors with like material to their condition immediately preceding the construction at Grantee's expense, and shall thereafter, from time to time, but no longer than one (1) year from the completion of the job, readjust, fill and finish the same as may be necessary due to settling of the earth associated with Grantee's disruption of the public way. The Department of Parks and Recreation shall approve all grass seed types, seed mixtures and plant material used for landscape restoration, call 872-4115 for seed type authorization.

N. Where possible, grantee shall not disturb existing public sidewalks located within the right-of-way.

O. The City, at its sole discretion, may require Grantee to locate and identify its facilities within the public right-of-way.

P. The Grantee shall comply with the Customer Service Standards (Exhibit B) promulgated by the City for cable-telecommunication service providers as they may be amended from time to time.

Q. The Grantee shall comply with all federal, state and local regulations, such as the National Electrical Code, National Electrical Safety Code, Fiber Optic Cable Installation Specifications, 1987 (Telecommunication Industry Committee), traffic safety/lane closure rules and construction requirements promulgated by the City and as amended periodically.

R. Grantee agrees to provide written notice to the City identifying any third party Licensed Provider granted occupancy of its Telecommunications Network facilities to provide Telecommunications Services within the City. Grantee agrees to require such third party to obtain: 1) A Certificate of Public Convenience And Necessity issued by the North Carolina Utility Commission, 2) A Telecommunication License from the City of Raleigh, and 3) An independent lawful authorization to occupy the right-of-way pursuant to City of Raleigh Code 12-1022.

Section 6. Allocation of Telecommunication Resources for Public Purposes

A. Subject to availability at the time of the City's request, the Grantee agrees to make available up to five percent (5%) of the installed capacity on the Grantee's Telecommunications Network for civic purposes by City agencies, upon City's request and upon payment of Grantee's actual construction cost for capacity requested by the City; for example, the City may request use or purchase of four (4) fibers within each 96-fiber cable.

B. It is the intent of the City to secure an Indefeasible Right of Use ("IRU") of bandwidth and/or fiber optic cable ("fibers") from the Grantee. The term shall be coterminous with the term of the License unless otherwise agreed to in writing between Grantor and Grantee.

C. The Grantee shall provide access to the requested telecommunication facilities within ninety (90) days from written notification. The City or public agency shall reimburse the Grantee for the actual cost for construction and activation.

Section 7. Assignment/Transfer of Control

A. This License shall not be sold, mortgaged, assigned or otherwise transferred without the prior consent, which shall not be unreasonably withheld, of the City, as expressed by the City Manager, except to entities that control, are controlled by, or are under common control with the Grantee. Grantee shall notify the City of any pending transfer or hypothecation of assets thirty (30) days prior to such a

transfer. The City's having granted consent in one instance shall not render unnecessary its subsequent consent in any other instance. Nothing contained herein shall be deemed to prohibit mortgage, pledge or assignment of tangible assets of Grantee's Telecommunications Network for the purpose of financing the acquisition of equipment for, or the construction and operation of, Grantee's Telecommunications Network, without the City's consent, but any such mortgage, pledge or assignment shall be subject to the City's other rights contained in this License.

B. For the purpose of determining whether the City shall consent to any assignment, transfer, merger or mortgage, the City may inquire into the qualifications of the prospective party. The Grantee shall assist the City in any such inquiry. The City may condition any assignment, transfer, merger or mortgage upon such reasonable conditions as it deems appropriate.

Section 8. Remedies

A. **Forfeiture.**

In addition to any other rights set out elsewhere in this License, and subject to Section 6(B), the City reserves the right to declare a forfeiture of this License, and all of Grantee's rights arising hereunder, in the event that:

1. The Grantee violates any material provision of the Contract; or

2. The Grantee is found by a court of competent jurisdiction to have practiced any fraud or deceit upon the City.

B. **Notice and Opportunity to Cure.**

The City shall give Grantee thirty (30) days written notice of its intent to exercise its rights under Section 8(A) above, stating the reasons for such action. If Grantee cures the problem within the thirty (30) days notice period, or if the Grantee initiates substantial effort, to remedy the stated problem, and the efforts continue in good faith, the City may, at its option, defer its rights to terminate this License. If Grantee fails to cure the stated violation within the thirty (30) day notice period, or fails to undertake efforts satisfactory to the City, to remedy the stated violation, then the City may, upon reasonable notice, terminate this License in accordance with Section 8(A)

Section 9. Confidential Information

The Grantee may request that the Grantor treat records containing trade secrets or proprietary information as confidential under the North Carolina Public Records law. To the extent authorized by the Public Records law and other applicable state and federal law, Grantor shall maintain the confidentiality of information designated "proprietary" by Grantee. Should Grantor receive a request to review Grantee's records or books under the

North Carolina Public Records law, it will promptly notify Grantee and provide an opportunity for the Grantee to raise an objection, demonstrate why the requested information is proprietary and, if necessary, seek a court order to protect its proprietary information. However, any action taken by the Grantee to protect its records or information shall be done at no cost or liability to the Grantor.

Section 10. Forum for Litigation

Any litigation relating to this License shall be brought in the Wake County Court having jurisdiction thereof, or if in the federal courts, in the United States District Court for the Eastern District of North Carolina.

Section 11. Notice

Any notice provided for under this License shall be sufficient if in writing and delivered personally to the following addressee or deposited in the United States Mail, postage prepaid, (Certified Mail, Return Receipt Requested), addressed as follows, or to such other address as the receiving party hereafter shall specify in writing:

If to the City: City Manager
City of Raleigh
PO Box 590
Raleigh, NC 27602

If to the Grantee: FirstName LastName, Title
XX Xxxxxxxxxxxxx, Inc.
1st Address
2nd Address
City, State ZipCode

Grantee agrees to serve on the City a copy of any filing made at the North Carolina Public Utilities Commission relating to Grantee's Telecommunications Network, although failure to do so shall not constitute a breach of this License.

Section 12. Insurance

The Grantee, during the life of this License, agrees to procure or cause to be procured from a responsible insurance carrier or carriers, authorized under the laws of the State of North Carolina, insurance shall include, in amounts not less than those indicated herein:

A. Worker's Compensation coverage for all employees with Statutory Limits in compliance with applicable state and federal laws. The policy shall include Employers' Liability with a limit of five hundred thousand dollars ($500,000) for each accident;

B. Comprehensive General Liability with a minimum limit of one-million dollars ($1,000,000) per occurrence, two-million ($2,000,000) aggregate, combined single limit for bodily injury liability and property damage liability. This shall include premises and/or operations, independent contractors, and subcontractors and/or completed operations, broad form property damage, XCU Coverage, and a Contractual Liability Endorsement; and

C. Business Auto Policy shall have minimum limits of one-million dollars ($1,000,000) per occurrence combined single limit for bodily injury liability and property damage liability. This shall include owned vehicles, hired and non-owned vehicles.

D. An umbrella policy which shall have minimum limits of ten million dollars ($10,000,000) per occurrence.

E. The City of Raleigh shall be named an additional insured as its interests may appear.

F. The Grantee shall provide a Certificate of Insurance to the City within thirty (30) days from the execution date of this License.

Section 13. Letter of Credit

A. Within thirty (30) calendar days following the award of the License, Grantee shall deposit with Grantor a letter of credit from a financial institution, approved by Grantor's Finance Director, in the amount of twenty thousand dollars ($20,000). The City Attorney shall approve the form and content of the letter. The letter of credit shall be used to insure the faithful performance of Grantee of all provisions of the License, and compliance with all orders, permits and directions of any agency, commission, board, department, division or office of Grantor exercising jurisdiction over Grantee's acts or defaults, and payment by Grantee of any penalties, claims, liens, liquidated damages, or fees due Grantor.

B. If Grantee fails to pay to Grantor any compensation not in dispute, due Grantor within the time fixed herein; or fails, after ten (10) calendar days notice to pay Grantor any penalties, claims, liens, liquidated damages, fees due Grantor, then such failure by Grantee can be remedied by demand on the letter of credit. Grantor may immediately request payment of the amount due from the letter of credit. Upon such request for payment, Grantor shall notify Grantee of the amount and date thereof.

C. The letter of credit shall be maintained at twenty thousand dollars ($20,000) during the entire term of the License. In the event that amounts are withdrawn pursuant to this Section, Grantee, shall take any required action to restore the letter of credit to twenty thousand dollars ($20,000) within ten (10) calendar days of notification by Grantor of its withdrawal against the letter of credit.

D. The rights reserved to Grantor with respect to the letter of credit are in addition to all

other rights of Grantor, whether reserved by the Franchise, or authorized by law, and no action, proceeding or exercise of a right with respect to such a letter shall affect any other right Grantor may have.

E. The letter of credit shall contain the following endorsement:

> *"It is hereby understood and agreed that this letter of credit shall not be canceled by the surety nor the intention not to renew be stated by the surety until thirty (30) calendar days after receipt by the City, by registered mail, of a written notice of such an intention to cancel or not to renew."*

F. Grantee shall renew the letter of credit not less than thirty (30) calendar days prior to its expiration and provide a copy of the renewal to Grantor.

Section 14. Remedies - Liquidated Damages

A. Because Grantee's failure to comply with provisions of this Franchise may result in injury to Grantor, Grantor may impose penalties commensurate to the harm caused to Grantor consistent with the standards set forth herein. Grantor may adjust maximum damage amounts throughout the License term by resolution to take into account increases in the Consumer Price Index.

B. For failure to comply with material requirements of the regulatory provisions of the License: up to five hundred dollars ($500.00) each calendar day for each offense. A separate and distinct offense shall be deemed committed each calendar day on which a violation occurs or continues;

C. For failure, pursuant to this agreement, to submit reports, maintain records, provide documents or information: up to five hundred dollars ($500.00) for each offense per calendar day. A separate and distinct offense shall be deemed committed each calendar day on which a violation occurs or continues;

D. For failure to comply with material requirements of the Customer Service Standards; up to five hundred dollars ($500.00) for each offense per calendar day. A separate and distinct offense shall be deemed committed each calendar day on which a violation occurs or continues;

E. For failure to comply with assignment provisions (Section 7(A)); up to five hundred dollars ($500.00) for each calendar day from the date of any unlawful transfer; and

F. For failure to comply with any material provision herein for which a penalty or sanction is not otherwise specifically provided: up to five hundred dollars ($500.00) for each offense per calendar day. A separate and distinct offense shall be deemed committed each calendar day on which a violation occurs or continues.

G. The Grantor shall provide the Grantee with a Notice of Noncompliance and Grantee shall have thirty (30) days in which to cure the deficiency. Penalties shall commence and accumulate only for calendar days of noncompliance, which occur after the final date set by Grantor for achieving compliance. Such date shall be set at a public hearing of which Grantee is given at least three (3) calendar days notice and at which it has an opportunity to be heard. No penalties will be assessed for a violation period, which has existed prior to the expiration of the period set by Grantor herein for correcting the defect.

H. Consistent with Section 16, Grantor shall stay or waive the imposition of any penalties set forth herein upon a finding that any failure or delay is the result of an act of God or due to circumstances beyond the reasonable control of Grantee.

Section 15. Severability

If any section, subsection, sentence, clause, phrase or portion of this License is declared invalid, unenforceable, or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct, independent, and severable provision, and such holding shall not affect the validity of the remaining portions hereof.

Section 16. Nondiscriminating

The Grantee shall not to discriminate in any manner on the basis of age, race, sex, handicap, color, creed, or national origin. The Grantee shall comply with the terms and conditions of Ordinance Number 1969-889, as amended.

Section 17. Non divestiture

This License shall not divest the City of any right or interest in the public rights-of-way.

Section 18. Force Majeure

In the event Grantee's performance of any of the terms, conditions, obligations or requirements of this Franchise is prevented or impaired due to any cause beyond its reasonable control or not reasonably foreseeable, such inability to perform shall be deemed to be excused and no penalties or sanctions shall be imposed as a result thereof, provided Grantee provides notice to Grantor in writing within thirty (30) calendar days of Grantee's discovery of the occurrence of such an event or within thirty (30) calendar days of Grantor's notice to Grantee of a failure to perform occasioned by such cause, which notice explains the circumstances. Such causes beyond Grantee's reasonable control or not reasonably foreseeable shall include, but shall not be limited to, acts of God, civil emergencies and labor unrest or work stoppages (strikes), untimely delivery of equipment, inability of Grantee to obtain access to property easements, rights of way and inability of Grantee to secure all necessary permits to utilize poles and conduits so long as Grantee utilizes due diligence to obtain said permits in a timely fashion.

Section 19. Acceptance by Grantee.

This License and all of its terms and provisions shall be accepted by the Grantee in writing in the form hereinafter set forth by the grant of this License by the City Council and when accepted shall be filed with the City Clerk who shall record the same. Such written acceptance may be upon or at the end of a copy of this License and it shall state and express the acceptance of the said License and its terms, conditions, and provisions; and the said Grantee shall agree in said written acceptance to abide by, to observe and to perform the same according to all of its terms and provisions, and shall declare that statements and recitals contained on said License are correct and that it has made and does make the agreements and statements set forth in this License approved by the City Council of the City of

Raleigh recited to have been made or to be made. Acceptance herein referred to shall be in the following form:

"The undersigned 1st Name 2nd Name, on behalf of Grantee, does hereby accept and approve the foregoing License and all of its terms and conditions. In consideration of the benefits and privileges granted to it does hereby agree to abide by, carry out, observe, and perform all of the obligations and things provided to be carried out and performed by it in said License approved by the City Council of the City of Raleigh, subject to applicable state and federal law.

This the _____day of _____ ,1999.

BY:

1st Name 2nd Name, Title

ATTEST: corp-seal

Print name/title here> ,

STATE OF NORTH CAROLINA)
)
COUNTY OF WAKE)

On the_____day of _____, 2000, before me, a Notary Public in and for the County and State aforesaid, personally appeared 1st Name 2nd Name, Title, of XX Xxxxxxxxxxxxx, the company, and for themselves and as such officers respectively, before and on the behalf of the said Company, acknowledge the signing and execution of the foregoing instrument and acknowledge that the seal affixed to said instrument is the corporate seal of the said Company; and they affixed such corporate seal to and otherwise executed said instrument on behalf of the said instrument is their free and voluntary act and deed as such officers respectively and is the free and voluntary act of the Company for all of the uses and purposes and said instrument mentioned, all pursuant to authority and direction duly given by the Board of Directors of the said Company.

In testimony whereof I have hereunto subscribed my name and affixed by notarial seal on the day and year first above written.

Notary Public:

_____ seal

Print name here>

My commission expires:

_____

Section 20. Grant

Approved this the _____ day of _____ 2000.

IN WITNESS WHEREOF, the undersigned have caused this License to be executed by their properly authorized representatives.

ATTEST

By: _____
Gail G. Smith
City Clerk

CITY OF RALEIGH

By: _____
D. E. Benton
City Manager

APPROVED AS TO FORM

By: _____
Tom McCormick
City Attorney

city-seal

Exhibit A

Certificate of Public Convenience And Necessity for **XX Xxxxxxxxxxxxxx**, Inc. issued by the North Carolina Utility Commission

(Attached)

Exhibit B
Customer Service Standards

1. Privacy

   No less than annually, provide a privacy notice in the form of a separate written statement to customers.

2. Employee Identification

   When calling in person on customers or other residents, all employees or authorized representatives of Grantee are required to display an employee identification card with their name, photograph and signature, and a telephone number that can be used for verification of the representative's capacity with Grantee. Grantee's vehicles shall display the name of the Company in easily distinguishable alphanumeric characters. Grantee shall make a reasonable effort to cause its subcontractors' vehicles to be identified in a like fashion.

3. Office and Telephone Availability

   A. Knowledgeable, qualified company representatives will be available to respond to customer telephone inquiries Monday through Friday during normal business hours. Additionally, based on community needs, Grantee will staff its telephones for supplemental hours on weekdays and/or weekends.

   B. Under normal operating conditions, telephone answer time by Grantee's customer service representatives, including wait time required to transfer the call, shall not exceed thirty (30) seconds. This standard shall be met no less than ninety percent (90%) of the time measured on an annual basis.

   C. Under normal operating conditions, the customer shall receive a busy signal less than three percent of the total time that Grantee's office is open for business.

   D. Customer service center and bill payment locations operated by Grantee shall be open for transactions Monday through Friday during normal business hours. Additionally, based on community needs, Grantee shall schedule supplemental hours on weekdays and/or weekends during which these centers shall be open.

   E. Grantee shall be responsible for adopting and implementing customer complaint procedures, and for advising customers of the availability of these procedures. The procedures shall be designed to resolve customer complaints in a timely and satisfactory manner; to develop sensitivity and

responsiveness to customer needs by Grantee and its management; and to improve the quality and dependability of services to customers by Grantee.

Established complaint procedures shall include: specific provisions permitting customer repair service complaints received to be received by telephone twenty-four (24) hours each day and seven (7) calendar days each week; permitting customer repair service complaints to be received at Grantee's business office from 8:00 A.M. until 7:00 P.M. on Monday through Friday of each week and from 9:00 A.M. until 1:00 P.M. on Saturday; and the address of Grantee's business office.

4. Installations, Outage and Service Calls

Under normal operating conditions, each of the following standards shall be met no less than ninety-five percent (95%) of the time measured on an annual basis.

A. Standard installation shall be performed within seven (7) business days after an order has been placed. "Standard" installations are up to one hundred fifty (150) feet from the existing distribution system.

B. Excluding those situations beyond the control of Grantee, Grantee shall respond to service interruptions promptly and no later than twenty-four (24) hours after the interruption becomes known to Grantee. Grantee must begin actions to correct other service problems the next business day after notification to Grantee of the service problem.

C. The "appointment window" alternatives for installations, service calls, and other installation activities shall be 1) morning, 2) afternoon, or 3) all day during normal business hours. Additionally, based on the community needs, Grantee shall schedule supplemental hours during which appointments can be set.

D. If, at any time an installer or technician is behind schedule, the technician or dispatcher shall attempt to contact the customer and the appointment reschedule as necessary at a time convenient to the customer.

E. Grantee shall render efficient service, make repairs promptly and interrupt service only for good cause and for the shortest time possible. A notice to customers shall precede such interruptions, insofar as possible.

5. Communication, Statements, Refunds, and Credits

A. Grantee shall provide written information in each of the following areas at the time of installation and at any future time upon request:

* products and services offered
* prices and service options
* installation and service policies
* how to use the telecommunication service

B. Customer invoice statements shall be clear, concise and understandable. Such statements shall reflect all services and fees in an itemized fashion.

C. Refund checks shall be issued promptly, but no later than the earlier of thirty (30) calendar days or the customer's next billing cycle following the resolution of the request.

D. Customers shall be notified in writing a minimum of thirty (30) calendar days in advance of any rate or channel change, provided the change is within the control of Grantee.

E. Grantee shall provide outage credit to customers in accordance with the following policy:

Upon notification, should Grantee fail to correct a service outage problem - within its control - within 24 hours after having receipt of such notice, Grantee shall credit 1/30th of the monthly charge for the affected service for each 24-hour period or fraction thereof following the first twenty-four (24) hour period during which the customer experiences service outage. Customer must advise Grantee of the duration of the service interruption for which credit is sought in order to receive such credit. Reasonable notice for this provision shall mean written, telephonic (voice), facsimile or e-mail communication to the Grantee.

F. Late fees shall not be assessed earlier than thirty (30) calendar days past the billing cycle due date.

6. Complaint - Appeals

A. Upon notification by a customer of an unresolved complaint, the Information Access Manager shall determine the facts of the complaint by obtaining information from the customer and Grantee and shall act to resolve the complaint in a manner consistent with the City's authority.

B. The customer may register a complaint with the City, the Public Utility Commission of North Carolina or the Federal Communications Commission.

EXHIBIT B
Letter of Protest to Jefferson Parish, Louisiana

Baton Rouge, Louisiana 70821-4412
(225) 346-0285
Fax (225) 381-9197

Suite 900
3040 Post Oak Boulevard
Houston, Texas 77056
(713) 626-1386
Fax (713) 626-1388

EVANS MARTIN MCLEOD
New Orleans Office
Admitted in Louisiana and Mississippi
mcleodm@phelps.com

New Orleans, Louisiana 70130-6534
(504) 566-1311 - Fax (504) 568-9130

www.phelpsdunbar.com

Jackson, Mississippi 39225-3066
(601) 352-2300
Fax (601) 360-9777

One Mississippi Plaza - Seventh Floor
P O Box 1220
Tupelo, Mississippi 38802-1220
(662) 842-7907
Fax (662) 842-1873

Lloyd's - Suite 731
1 Lime Street
London EC3M 7DQ England
011-44-207-929-4765
Fax 011-44-207-929-0040

December 7, 2000

16598-1

Ms. Alicia O'Brien
Jefferson Parish
Department of Public Works
1901 Ames Boulevard
Marrero, LA 70072

Re: *Metromedia Fiber Network Services, Inc.*
Jefferson Parish Construction Permit Application Fee
Permit No. PM-MM-01-00

Dear Ms. O'Brien:

Metromedia Fiber Network Services, Inc. ("Metromedia") refers you to its check in the amount of $14,980.00 that paid the construction permit application fee (the "Permit Fee"), as calculated by Jefferson Parish (the "Parish"), for permit No. PM-MM-01-00 (the "Permit"). Metromedia understands that the Parish calculated this Permit Fee at a rate of $1.50 per linear foot as per Metromedia's engineering plans, which the Parish contends shows that Metromedia's fiber optic cable network system (the "System") spans 10,120 linear feet of "utility or similar installations on **Parish** rights-of-way and any other property owned or under the control of the Parish. . . ." *See Jefferson Parish's Telecommunications and Utility Franchises and Right-of-Way Occupancy Agreements Ordinance (the "Franchise Ordinance")*, § 35.5-60 (Emphasis added.) As set forth below, because the Parish did not calculate this Permit Fee accurately and because this Permit Fee – conjoined with the Parish's franchise fees – may well conflict with the Federal Telecommunications Act of 1996 (the "Act"), Metromedia paid this Permit Fee under protest, fully reserving its rights.

NO-99136852 1

First, Metromedia protests the Permit Fee's amount because the Parish included in it 3,159 feet (at a cost of $4,738.50) of Metromedia's System that is located on **Louisiana Department of Transportation and Development** ("L.D.O.T.D."), and **not Parish** right-of-way. This is contrary to my previous discussions with the Parish. On July 20, 2000, I was told that as per § 35.5-60 of the Franchise Ordinance, the Parish would not charge Metromedia any Permit Fee for that part of its System located on L.D.O.T.D. right-of-way. The plain language of § 35.5-60 makes it clear that the $1.50 per linear foot fee applies only when Metromedia installs its System "on **Parish** rights-of-way and any other property owned or under the control of the Parish. . . ." (Emphasis added.) By charging Metromedia the Permit Fee where its System is located on L.D.O.T.D. rights-of-way, the Parish improperly requires Metromedia to pay this Permit Fee.

By letter to the Parish dated August 23, 2000, Metromedia has already informed the Parish that it believes that the $1.50 per linear foot Permit Fee, coupled with the Parish's franchise fees, conflicts with § 253 of the Act. The Parish's attempt to now extend the $1.50 fee to property that it does not even own or control is especially troubling.

In sum, Metromedia hopes that the Parish will first reconsider imposition of the Permit Fee altogether, and barring that, that it will at least reconsider the manner in which it calculated the Permit Fee. In this instance, Metromedia has decided to pay the Permit Fee as calculated by the Parish only because it is under a duty to fulfill certain third party contractual obligations to provide telecommunications services that require it to obtain this Permit. We understand that the Parish would not have issued the Permit to Metromedia unless it paid the entire Permit Fee.

Finally, Metromedia wishes to express its disappointment with the delay that it has encountered in the Parish's permitting process. Although the Parish granted Metromedia its franchise approval on September 20, 2000 – almost two months ago – and assured Metromedia that it could parallel track the permitting and franchising processes, Metromedia just received its first permit. Even in Orleans Parish, Metromedia faced no such similar delay. In fact, Metromedia has already installed over 50,000 feet of its System there. In the future, Metromedia hopes that the Parish will – as did Orleans Parish – streamline the permitting process so that similar delays can be avoided.

Yours very truly,

Evans Martin McLeod

EMM/phs

NO:99136852.1

cc: Pat Jackson
Brian Allen
Brian Rell
Traci Bone
Roy C. Cheatwood
Edward B. Poitevent, II
Daniel Davillier

NO99136852.1

EXHIBIT C
Letter from Berkley, California

BERKELEY

Department of Public Works
Engineering Division

RECEIVED
APR 26 2000
By

April 19, 2000

Metromedia Fiber Network, Inc.
20936 Cabot Boulevard
Hayward, CA 94545
Attn: Laura Boat

Re: Applications for Permit to Excavate

Dear Ms. Boat:

On March 30, 2000, the City of Berkeley received applications for Permits to Excavate from Metromedia Fiber Network, Inc. related to Segment No. 1 of the Marin County Loop. Please be advised that MFN's proposed use of the public right of way requires a franchise agreement from the City pursuant to Article XII of the City Charter. The applications for Permits to Excavate are therefore denied, pending compliance with all applicable legal requirements.

If you have any questions or comments contact Herschel Hollie, Engineering Inspector at 665-3465.

Sincerely yours,

Jeffrey Egoberg
Manager of Engineering

Attachment: Article XII, Charter of the City of Ber

Cc: James Keene, City Manager
Manuela Albuquerque, City Attorney