

9. Glendale submits that MFNS' unverified comments to the FCC regarding Glendale's underground encroachment permit agreements and fees are wholly improper, have no relevance to the case in chief and should be stricken or dismissed outright.

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 13, 2001, at the City of Glendale, County of Los Angeles, State of California.



Christina R. Sansone, Assistant City Attorney
City of Glendale, California

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8 CITY OF RICHMOND

9
10 Before the
FEDERAL COMMUNICATIONS COMMISSION
11 Washington, D.C.

12 In the Matter of)
13 City Signal Communications, Inc.) 00-253, 254, 255
Petition for Declaratory Ruling)
14 Concerning Use of Rights of Way) DECLARATION OF
for Access to Poles in Cleveland) JUDITH ANDREA TRICE
15 Heights, Wickliffe,)
and Pepper Pike, Ohio)
16 _____)

17 I, Judith Andrea Trice, declare:

18 1. I am and, during the events described below, was an Assistant City Attorney for the
19 City of Richmond, California.

20 2. In 1998, the City of Richmond, California, adopted a new Telecommunications
21 Ordinance (Richmond Municipal Code Chapter 7.94, hereinafter referred to as the "Richmond
22 Telecommunications Ordinance"), applicable to persons providing Telecommunications Services
23 via facilities located within any public right-of-way within the City's jurisdictional boundaries.

24 "Telecommunications Services" is defined very broadly in the ordinance as "the transmission of
25 voice, video, data or other information between two or more points along wires, optical fibers or
26 other transmission media, or using radio waves or other wireless media, including but not limited
27 to cable television services, telephone services, cellular telephone services, personnel
28 communications services, internet services, open video system services and other similar

1 services.” Richmond Municipal Code Sec. 7.94.030.

2 3. In adopting the Richmond Telecommunications Ordinance, the Richmond City
3 Council made the finding that the development of telecommunications systems has the potential
4 of having great benefit and impact upon the residents of Richmond and expressed its intent that
5 the Ordinance was to provide for the attainment of the best public interest, in view of the
6 complex and rapidly changing technology in this field. Richmond Municipal Code Sec.
7 7.97.010.

8 4. The Richmond Telecommunications Ordinance establishes a two-step regulatory
9 process: first, any provider of Telecommunications Services using the public right-of-way in
10 Richmond is required to register with the City of Richmond and to state the nature of its
11 business, as well as any exemptions it claims from local franchising requirements; second, if no
12 exemption exists for the registrant, the registrant is required to apply to the City of Richmond for
13 a franchise to use the public rights-of-way. A nominal registration fee of \$75.00 is requested at
14 the time of registration.

15 5. At the time of the adoption of the Richmond Telecommunications Ordinance, the City
16 of Richmond knew of a number of Telecommunications Services located within its public
17 rights-of-way in the form of aerial or underground wires, cables, or fibers or, in the case of
18 wireless transmitters, antennas attached to telephone poles in the public rights-of-way, in
19 addition to the other utility providers (such as electric, gas and water utilities) also located there.
20 I have been informed by the Richmond City Engineer that, as of the year 2000, so much conduit
21 has been installed in some of Richmond’s streets that there is no room, physically, for additional
22 installation. Nevertheless, to my best knowledge and information, the City of Richmond through
23 its City Council and its various staff departments is committed to providing access to providers
24 of Telecommunications Services for the benefit of its residences and businesses.

25 6. Telephone corporations certified by the California Public Utilities Commission (the
26 “California PUC”) under California Public Utilities Code Sec. 7901 and engaged in the business
27 of providing the telephone services for which they were certified by the PUC, would normally be
28 exempt from the franchising requirement of the Richmond Telecommunications Ordinance. For

1 example, in 2000 at least one registrant was determined by City of Richmond staff to be eligible
2 for this exemption after registering and providing the requested information and was granted an
3 encroachment permit without the necessity of obtaining a franchise.

4 7. In 1999, Metromedia Fiber Network Services ("MFNS") approached the City of
5 Richmond and requested a permit to install new conduit and to pull fiber through existing
6 conduit in the City's streets. I requested the MFNS representative (an associate at a San
7 Francisco law firm) to comply with the Telecommunication Ordinance by registering with the
8 City and providing the City with information about the nature of MFNS' business. Over the
9 following months, on occasion MFNS would again request a permit and I or other City
10 representatives would again request compliance with the City's Telecommunication Ordinance
11 registration requirement and/or information as to the nature of MFNS' business. MFNS failed to
12 either register or to provide the requested information and on several occasions I was informed
13 by MFNS representatives that they did not know the nature of MFNS' business, but that MFNS
14 was certified as a "telephone corporation" by the California PUC under California Public
15 Utilities Code Section 7901 and therefore was not required to register under the City's ordinance
16 or to obtain a franchise to use the City's public rights-of-way. I finally learned the nature of
17 MFNS' business, which I believe is the installation of "dark fiber" for sale or lease for any
18 purpose, from Richmond's Telecommunications Coordinator, who is the administrator of the
19 Richmond Telecommunications Ordinance and who had learned this information from
20 researching MFNS' advertisements on the Internet.

21 8. Further discussions with MFNS representatives (both company staff and private
22 attorneys representing the company) confirmed that this was the nature of MFNS' business and
23 that MFNS had no clear intent to provide telephone services, as opposed to any other service
24 which might be transmitted over their dark fiber by the ultimate purchaser or lessee. At this
25 point, I informed MFNS that I believed they were required to obtain a franchise under the
26 Richmond Telecommunications Ordinance before obtaining a permit to install facilities in
27 Richmond's public rights-of-way to their commercial benefit.

28 9. Said MFNS representatives continued to refuse to formally register under the

1 Richmond Telecommunications Ordinance and continued to claim that MFNS was exempt from
2 any local franchising requirements. I informed MFNS that we believed they were not exempt to
3 the extent they wished to engage in non-certified “non-telephone” business and offered to draft a
4 special franchise agreement specifying that it applied only to the “non-telephone” aspects of their
5 business. Alternately, we offered to seek declaratory relief from the courts on this issue on an
6 expedited basis. (Contrary to MFNS’ allegation (Comments, p. 10), at no time did the City of
7 Richmond take the simplistic position that telephony consists of only voice telephony.) MFNS
8 rejected both offers and, instead, requested that the City enter into negotiations for an agreement
9 to settle the issue. In an effort to accommodate MFNS’s claims of rapidly approaching
10 deadlines for installation of its facilities, the City of Richmond initiated a joint negotiation
11 process with the City of Walnut Creek and shortly thereafter, on or about July 1, 2000, entered
12 into an agreement with MFNS, granting MFNS the right to use the public right-of-way for a short
13 term (at the request of MFNS) in return for the payment of a fully-negotiated and relatively
14 modest franchise fee.

15 10. MFNS delayed its installation of fiber in the City of Richmond for some months after
16 the approval of this agreement by the Richmond City Council and only then, for the first time
17 (and after repeated requests) provided the City with a registration form stating its business.

18 I declare under penalty of perjury under the laws of the State of California that the
19 foregoing is true and correct.

20 Executed this 13th day of February, 2001, at Richmond, California.

21 
22 JUDITH ANDREA TRICE
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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In re: City Signal Communications, Inc. Petition for Declaratory ruling Concerning Use of Public Rights of Way for Access to Poles in Cleveland Heights, Ohio)	CS Docket No. 00-253
In re: City Signal Communications, Inc. Petition for Declaratory ruling Concerning Use of Public Rights of Way for Access to Poles in Wickliffe, Ohio)	CS Docket No. 00-254
In re: City Signal Communications, Inc. Petition for Declaratory ruling Concerning Use of Public Rights of Way for Access to Poles in Pepper Pike, Ohio)	CS Docket No. 00-255

Declaration of Paul M. Valle-Riestra in Support of Comments of NATOA et al.

I, Paul M. Valle-Riestra, declare:

1. I am an Assistant City Attorney for the City of Walnut Creek. I personally negotiated the encroachment agreement with Metromedia Fiber Network Services, Inc. ("MFNS") that MFNS references in its comments. In its comments, MFNS has cited the City of Walnut Creek as its first and apparently prime example of cities supposedly interfering with the development of infrastructure. In doing so, MFNS resorts to completely distorting the truth. The facts paint a completely different picture.
2. Walnut Creek has understood the importance of telecommunications and encouraged the development of telecommunications infrastructure for many years. In 1996, the City Council appointed a citizens' committee to look into various telecommunications issues, including how to encourage infrastructure development. The City Council then adopted a series of telecommunications policies, including the first policy:

1 **1. Encourage Development of Open Telecommunications**

2 **Infrastructure.** The City shall encourage the development of
3 telecommunications infrastructure, including both wire/fiber
4 systems and wireless systems, by reducing unnecessary barriers to
5 private enterprise when consistent with other City policies. In
6 particular, the City shall encourage the development of open,
7 interactive and ubiquitous systems available on a common carrier
8 basis.

9 3. In furtherance of this policy, Walnut Creek subsequently actively recruited a broadband
10 provider, Seren Innovations, Inc., to develop a broadband system in the city. Seren is currently
11 constructing the system throughout the entire city and will offer cable television, high-speed
12 internet, local and long distance telephony and a variety of other broadband services. Seren is
13 doing so quite willingly as a good corporate citizen under an agreement that provides the
14 payment of compensation to the city, the provision of free services to our libraries, and a variety
15 of mitigation measures.

16 4. The city has also facilitated the development of infrastructure by several other
17 telecommunications companies. Among other things, Walnut Creek recently cajoled four
18 telecommunications companies that were planning separate projects down the city's busiest
19 street to do a joint trench project, thereby saving the companies hundreds of thousands of dollars,
20 not to mention reducing street and traffic impacts. Further, the city has approved scores of
21 cellular and PCS antenna, without denying a single one to the author's knowledge.

22 5. MFNS first contacted Walnut Creek in 1999. MFNS primarily installs dark fiber and
23 provides it to competitive local exchange carriers, cable companies, other communications
24 carriers and private companies for their own internal uses. MFNS obtained a Certificate of
25 Public Convenience and Necessity from the California Public Utilities Commission ("CPUC") as
26 an inter-exchange carrier. That Certificate did not authorize MFNS to engage in construction
27 activity. Nevertheless, MFNS proceeded to illegally begin construction of telecommunications
28 infrastructure in California. In late 1999, the CPUC issued a stop work notice, forbidding MFNS
29

1 from proceeding with excavation work (except in San Francisco). MFNS was permitted to do
2 work limited to pulling fiber through existing conduit owned by other telecommunications
3 companies.

4
5 6. MFNS subsequently applied for a modification to its Certificate. The CPUC was expected
6 to rule on this application in late 2000, although I am unaware if this has occurred. The CPUC's
7 environmental documentation indicated that MFNS would be required to comply with a variety
8 of local government requirements, including complying with all "local plans, policies and
9 regulations" and obtaining and complying with all local encroachment permit requirements.

10
11 7. Walnut Creek's first contact with MFNS was when a junior attorney with a law firm
12 representing MFNS contacted me as an Assistant City Attorney for Walnut Creek. The attorney
13 asked what type of agreement would be required for MFNS to install infrastructure. Not
14 knowing anything about MFNS, I asked what type of services would be provided by MFNS.
15 This question was relevant because Walnut Creek's regulatory authority depends in part on the
16 type of service being provided. For example, Walnut Creek can franchise cable systems and
17 open video systems under Federal law and certain types of telecommunications lines under
18 California law. The attorney said that she didn't really know anything about MFNS except that
19 they are a telecommunications company, and that she'd have to get back to me.

20
21 8. On November 19, 1999, the attorney sent me an "encroachment agreement" with another
22 city and suggested that it "serve as a starting point for negotiations between MFN and the City of
23 Walnut Creek."

24
25 9. On November 30, 1999, the attorney sent me a two-paragraph generic description of MFNS
26 and its project in the San Francisco Bay Area.

1 10. On December 9, 1999, I sent a reply letter again explaining that the nature of any agreement
2 with MFNS depended in part on the services to be provided, and asked that a questionnaire be
3 completed and returned.

4
5 11. On January 12, 2000, the attorney responded by saying that she was “still working on
6 obtaining responses to your informational questionnaire”, and saying “Thank you very much for
7 your patience.”

8
9 12. Finally on January 20, 2000, the attorney provided some responses to the questionnaire
10 which were misleading at best and completely avoided disclosing what services would be
11 provided. For example, the responses indicated that it would be making its infrastructure
12 available to communications carriers, then stated that it has no plans to sell or lease capacity or
13 infrastructure to any other person or entity. Then the attorney reversed herself again, saying that
14 MFNS intends to provide “infrastructure to a variety of clientele which have yet to be
15 determined.”

16
17 13. I responded on February 11, 2000, noting the inconsistencies and the fact that while MFNS
18 was claiming it didn't know any of its clientele yet, a number of its agreements with customers
19 had already been publicly announced. I asked for a clarification and, in order to expedite
20 matters, sent a draft encroachment agreement for the installation of the infrastructure. MFNS
21 never did clarify its intended uses, other than to admit in conversations that they did have
22 agreements or commitments with a variety of users, while claiming that the identity of the users
23 and the nature of the uses were confidential.

24
25 14. After an exchange of drafts, MFNS requested a meeting with the City Manager and me in
26 mid-April. At that meeting, I reemphasized that we very much want the MFNS project to be
27 built, but that we need to know what the proposed uses are in order to determine the proper type
28 of franchise or encroachment agreement. A partner with the law firm, who seemed to have an
29

1 understanding of MFNS's business, said he would replace the other attorney in negotiations, and
2 that corporate counsel would also be involved.

3
4 15. MFNS subsequently indicated that they had construction crews lined up for the beginning of
5 July. I agreed to schedule numerous meetings in a short period of time in order to reach a final
6 agreement before July. By mid-June, the parties had reached agreement. While MFNS's
7 corporate department took several weeks thereafter to get the final agreement executed, Walnut
8 Creek was able to do so in less than a week. MFNS then installed its infrastructure in Walnut
9 Creek on schedule.

10
11 16. MFNS appears to suggest that the compensation provided for in the agreement is excessive.
12 The agreement provides for MFNS to pay an annual fee of \$.75 per linear foot to occupy conduit
13 leased from others, or \$1.50 per linear foot for facilities up to 36 inches in diameter. Initially
14 Walnut Creek had proposed a 5% franchise fee, roughly the same as the court of appeal in TCG
15 Detroit v. City of Dearborn (7th Cir. 2000) __ F.3d __, 2000 FED App. 0081P held was
16 consistent with Section 253 of the 1996 Telecommunications Act. However, I repeatedly stated
17 that the city's goal was not to get the maximum compensation possible, it was to get a fair
18 amount that wouldn't have the effect of encouraging MFNS to route its project around Walnut
19 Creek. While the agreement included a waiver of both parties' right to challenge the legality of
20 the agreement, this was a fully negotiated provision. The parties specifically discussed including
21 a higher compensation amount with no waiver provision, and MFNS chose not to include such a
22 provision. MFNS indicated that their initial installation would be 8 conduits containing 432
23 fibers each pulled through Pacific Bell conduit, or a total of up to 3,456 fibers. Under the
24 agreement, MFNS can install many times that number of fibers for the same compensation paid
25 to the city. Currently their cost totals approximately two-one thousandths of a cent per fiber per
26 linear foot per year – by any fair-minded evaluation, not a bad deal for MFNS.

27
28 17. MFNS claims in its comments that Walnut Creek "refused to grant MFNS permits to
29 construct in the public rights-of-way, or even to simply pull fiber through existing ILEC

1 conduit.” The foregoing description of the facts shows this is simply not true. It should be
2 further noted that until late in the process, MFNS continually said they were not sure if they
3 wanted to install new conduit or pull fiber through existing ILEC conduit. They failed to
4 disclose the reason for their waffling, i.e. that the CPUC had shut down their illegal construction
5 activities and they were waiting to see what authority they would be able to obtain. In any event,
6 the parties reached an agreement in a cooperative, timely manner. Any slight delays were caused
7 primarily by MFNS, not Walnut Creek.

8
9 18. I declare under the penalty of perjury that the foregoing is true and correct.

10 Dated: February 13, 2001

11 
12 Paul M. Valle-Riestra

RE: CS Docket Nos. 00-253, 00-254, 00-255

**Reply of Jefferson Parish, Louisiana to
Comments to Metromedia Fiber Network Services, Inc.**

Patricia N. Jackson
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Jefferson, Louisiana 70123
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February 13, 2001

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
City Signal Communications, Inc.)	
)	CS Docket No. 00-253
Petitioner)	
v.)	
)	
City of Cleveland Heights)	
)	
Defendant)	

In the Matter of)	
)	
City Signal Communications, Inc.)	
)	CS Docket No. 00-254
Petitioner)	
v.)	
)	
City of Wickliffe)	
)	
Defendant)	

In the Matter of)	
)	
City Signal Communications, Inc.)	
)	CS Docket No. 00-255
Petitioner)	
v.)	
)	
City of Pepper Pike)	
)	
Defendant)	

**Reply of Jefferson Parish, Louisiana to
Comments to Metromedia Fiber Network Services, Inc.**

Jefferson Parish, Louisiana (“the Parish”) hereby responds to the statements at page 12 of the “Comments” of Metromedia Fiber Network Services, Inc. (“MFNS”) on the Petitions for Declaratory Ruling filed by City Signal Communications, Inc. before the Federal Communications Commission.

Franchise Fee

The Parish has very limited rights-of-way, many of which are already overburdened with utility facilities. The existing crowded condition of the Parish rights-of-way plus the ever increasing demand for space on those rights-of-way have created a situation which requires increased planning and monitoring by the Parish of its rights-of-way. The annual franchise fee for the use of Parish owned rights-of-way and other Parish-owned property (“Parish property”) by utilities reflects this ever increasing demand and the related increase in monitoring and upkeep costs to the Parish. The franchise fee of \$2.60 per linear foot of Parish property occupied by long distance network service providers such as MFNS is exactly the same franchise fee charged by the City of New Orleans which shares a common boundary with the Parish. The franchise fee does not apply to Parish servitudes. “Servitudes” are similar to Common Law “easements.”

Permit Fee

Although the Parish has long had a permitting process in place for installations on rights-of-way, utilities owned by the Parish (“Parish utilities”) have been damaged during the underground installation of conduit by non-franchised and non-permitted communications service providers. One such incident is the subject of a pending lawsuit

because the service provider has failed to compensate the Parish for the significant damages to a Parish forced sewer main resulting from the installation of the provider's conduit. In another location, the Parish has had to halt a conduit installation because of imminent threat to natural gas lines.

Based on the increased crowding of public rights-of-way, the continually increasing demand for space which increase the risk of damage to public safety and to public property, the Parish instituted a permit process which requires an extensive review of proposed plans for utility installations on Parish property and also on servitudes occupied by Parish utilities and also increased inspections during such installations. The Parish permit for utility installations is not limited to communication service providers.

The Parish requires a permit before any telecommunication services or other utility, not owned by the Parish, is installed on Parish owned rights-of-way, on Parish servitudes or any other property owned or under the control of the Parish. The permit fee of \$1.50 per linear foot is a one-time fee designed to reimburse the Parish for (1) review of plans by the Parish Engineering Department for the determination of risk of damage to Parish property (particularly, Parish utilities); (2) review of insurance and indemnification documents; (3) administration of the permit; and (4) on the site inspection by Parish inspectors while the installation is underway.

Servitudes: Parish Utilities on State Rights-of-Way

The Parish, its districts and sub-districts own the water, sewerage and drainage facilities that service the unincorporated area of the Parish and in many of the municipalities in the Parish. Many of the main and feeder lines of these publicly owned facilities are located on State rights-of-way which often cross over Parish rights-of-way. The Parish owned facilities on the crowded Parish and on the State rights-of-way are

fragile, some are old. The Parish has a responsibility to insure that the vital services provided by the Parish utilities are not interrupted. In order to protect all parish-owned facilities during utility installations on State rights-of-way, the Parish must be able through the permitting process to monitor the location and installation of all utilities on the servitudes occupied by the Parish utilities on State rights-of-way as well as on Parish rights-of-way. The permit fee is designed to cover the costs to the Parish for review of plans prior to the installation and the inspection during the installation of utilities.

Exhibit B: Letter of Protest to Jefferson Parish, Louisiana

MFNS in its letter of protest to the Parish dated December 7, 2000 “expresse[s] its disappointment with the delay that it has encountered in the Parish’s permitting process.” This complaint is totally unfounded. The Parish did not delay the process. It was MFNS that delayed the issuance of the permit.

The Parish allowed permit application to be “pre-reviewed” before the franchise ordinance was adopted and processed the permit application while the required permit documentation was incomplete.

The permit application clearly states the specific requirements for the insurance certificates required for a permit which are the same as the insurance requirements for other work on Parish property. Nevertheless, MFNS submitted two insurance certificates that did not meet the stated requirements before finally submitting an acceptable certificate with an attached “Description of Operations” dated November 9, 2000 which fulfilled the requirements.

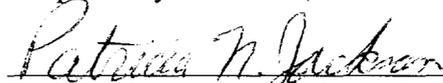
The very specific requirement stated on the permit application that: “[a] corporate resolution bearing the seal of the corporation and *specifically* appointing the representative to sign for and bind the applicant to all the requirements of the permit shall

be required for a corporation's application" was ignored regarding the surety bonds submitted for both segment permits. This is the primary requirement for the permit application without which the entire application as well as the indemnification documents and bond are worthless. For each segment permitted to date, the signature of the representative of MFNS on the surety bond has not been the signature of the person authorized to bind MFNS per the corporate resolution submitted with the application and the Parish has had to request written confirmation of that person's authority to bind MFNS. The written confirmation of such authority of the person who signed the surety bond for the first segment permit was mailed to the Parish by MFNS's local counsel on Wednesday, November 29, 2000. The permit was issued on Monday, December 4, 2000. This permit was not delayed. The second permitting process has proceeded more quickly because the Parish allowed MFNS's insurance and indemnification documents to remain on file. However, the same delay regarding the signature on the surety bond delayed the process.

Conclusion

The complaints submitted by MFNS, if not stricken or dismissed, should be denied for lack of merit.

Respectfully submitted,



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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
City Signal Communications, Inc.)
Petition for Declaratory Ruling) 00-253, 254, 255
Concerning Use of Rights of Way)
for Access to Poles in Cleveland)
Heights, Wickliffe,)
and Pepper Pike, Ohio)

AFFIDAVIT OF MICHAEL ROURKE,
CHIEF ADMINISTRATIVE OFFICER, NEWTON, MASSACHUSETTS

I, Michael Rourke, on oath, depose and say as follows:

1. I am employed as the Chief Administrative Officer of the City of Newton, Massachusetts.
2. I am making this affidavit in support of reply comments of Newton, Massachusetts as to facts of my own personal knowledge.
3. During late 1999/early 2000, a number of meetings were held between representatives of Metromedia Fiber Network Services, Inc. ("MFNS") and the City of Newton regarding MFNS's proposal to construct an underground fiber network in the public ways of the City of Newton.
4. The MFNS proposal consisted of excavation of an approximately three mile long trench, affecting the vehicular lanes of heavily traveled public ways. The magnitude of such a project was by far the largest underground telecommunications excavation that Newton officials had ever reviewed.
5. The City repeatedly raised its concerns regarding traffic control during the installation; protection of the existing utilities in the public ways; restoration of the street surfaces; and the long-term increase in the City's street maintenance expenses that would result from the MFNS installation.
6. The timeframe for the discussions was affected by MFNS's lack of experience or ability in preparing the type of detailed construction plans reasonably required by the City. The location of the MFNS project is in a fully developed urbanized area replete with existing underground utilities, which the City required to be shown on MFNS's plans.
7. Delay also resulted during the discussions when MFNS changed its mind about the type of street restoration it was willing to undertake.

8. The City did not seek to delay the process.

9. During the course of these discussions, MFNS raised the possibility of making a voluntary payment to the City. MFNS indicated its willingness to make such a payment and provided information about payments that it was making to neighboring municipalities.

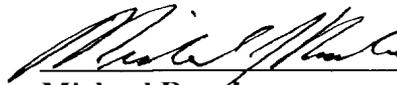
10. Ultimately, such a payment became part of a letter agreement executed between the parties on February 23, 2000. The letter agreement was in the nature of a settlement by which both parties compromised their positions, waived legal rights and agreed to voluntarily settle their dispute. It also stated, "Neither MFN nor the City shall characterize the above donation by MFN as a condition imposed by the City for the issuance of orders of grants of location to MFN pursuant to Section 22 of Chapter 166 of the General Laws of Massachusetts, as amended."

11. Pursuant to the terms of the City Ordinance section 23-37, MFN was required to provide conduit for municipal use. Although the City could have required such municipal conduit for the full route of the MFNS network, the City and MFNS compromised upon a portion of the route that consisted of 5,100 linear feet.

12. The City's legitimate concerns about the restoration of the public ways that were excavated as part of MFNS's project were consistent with the standard set out in Massachusetts General Laws chapter 166 section 21. That statute provides that a telephone company's installation of conduits and equipment in the public ways "shall not incommode the public use of public ways or endanger or interrupt navigation."

13. I am generally familiar with the *Standards to Be Employed by Public Utility Operators When Restoring any of the Streets, Lanes and Highways in Municipalities* which was issued by the Massachusetts Department of Telecommunications and Energy in August 1999. Although such *Standards* appear to allow a telephone company to undertake minimal restoration of the public ways, it is my understanding that the statutory standard described in the foregoing paragraph is the paramount law of the Commonwealth on this matter.

Signed under the pains and penalties of perjury this 12th day of February, 2001.



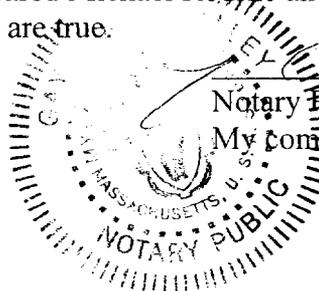
Michael Rourke

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss

February 12 2001

Then personally appeared Michael Rourke and swore that the statements contained in the foregoing Affidavit are true.



Notary Public (Gayle A. Smiley)
My commission expires: _____