service markings, administrative costs and overhead, legal support and lost pavement life. Glendale has determined that said annual encroachment fee of $1.80 per lineal foot is the minimum amount necessary to cover Glendale's costs. The Agreement provides that the fee may be adjusted based on increases or decreases in actual costs. In-lieu services, facilities or equipment may also be provided should the parties mutually agree to same in advance.

6. MFNS' charge that Glendale delayed its encroachment permit is wholly unfounded and misrepresents the facts. MFNS first applied for an encroachment permit to construct facilities and structures in Glendale, in approximately May 1999, at which time I sent a copy of the Application and encroachment permit requirements to Frances K. Greenleaf, Esq., then-legal counsel for MFNS. On September 24, 1999, after discussions regarding the annual encroachment permit fee, MFNS agreed to execute the Agreement and began the process of submitting documentation as to its status as a telephone corporation under the California Public Utilities Code. However, MFNS failed to provide environmental documentation to show that it complied with state environmental law. Upon further questioning, MFNS admitted that it had no such documentation.

7. On November 17, 1999, Glendale became aware of a stop work notice issued by the Public Utilities Commission to MFNS on October 21, 1999. That notice stated that MFNS had undertaken construction of a fiber optic network in the San Francisco Bay Area without appropriate authority from the Commission and without appropriate environmental review. The stop work notice arose out of the limitations placed on MFNS by the California Public Utilities Commission which stated that it was not permitted under its certificate of public convenience and necessity to engage in construction (digging, trenching, boring, etc) except to open utility holes and feed fiber through existing in situ conduits. In a meeting with Commission staff, MFNS agreed to voluntarily cease all construction operations with the exception of specified work in the City of San Francisco. As of November 1999, MFNS stopped providing information and documentation for the Glendale encroachment permit. MFNS recently submitted a second application for installation of underground facilities in certain areas of Glendale. This second application is currently under review and there still appears to be a question as to whether MFNS can engage in construction in the street. I have contacted MFNS' legal counsel on the issue but as of this writing, I have had no response.

8. MFNS asserts that it is troubled that it is required to sign "the exact same agreement executed by another CLEC." Glendale does indeed require all new telephone companies who seek entry into the public right-of-way to execute the Agreement under the same terms and conditions so that the City may provide an even playing field for all new entrants to ensure the public rights-of-way are managed on a competitively neutral and nondiscriminatory basis as required by law. MFNS appears to be concerned that other telephone corporations have signed the Agreement and have received encroachment permits while MFNS has yet to be issued one. However, in MFNS' case, because MFNS has not yet provided sufficient information regarding its authority to commence construction and for the reasons stated in paragraphs 7 and 8 above, MFNS' encroachment permit has not yet been issued.

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 Sansone

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

JUDITH ANDREA TRICE
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Attorneys for the
CITY OF RICHMOND

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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

I, Judith Andrea Trice, declare:

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

2. In 1998, the City of Richmond, California, adopted a new Telecommunications Ordinance (Richmond Municipal Code Chapter 7.94, hereinafter referred to as the "Richmond Telecommunications Ordinance"), applicable to persons providing Telecommunications Services via facilities located within any public right-of-way within the City's jurisdictional boundaries. "Telecommunications Services" is defined very broadly in the ordinance as "the transmission of voice, video, data or other information between two or more points along wires, optical fibers or other transmission media, or using radio waves or other wireless media, including but not limited to cable television services, telephone services, cellular telephone services, personnel communications services, internet services, open video system services and other similar

services." Richmond Municipal Code Sec. 7.94.030.

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

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

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

6. Telephone corporations certified by the California Public Utilities Commission (the "California PUC") under California Public Utilities Code Sec. 7901 <u>and engaged in the business of providing the telephone services</u> for which they were certified by the PUC, would normally be exempt from the franchising requirement of the Richmond Telecommunications Ordinance. For

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

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

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

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

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

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

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

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

JUDITH ANDREA TRICE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

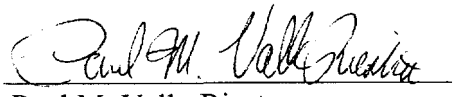
16. MFNS appears to suggest that the compensation provided for in the agreement is excessive. The agreement provides for MFNS to pay an annual fee of $.75 per linear foot to occupy conduit leased from others, or $1.50 per linear foot for facilities up to 36 inches in diameter. Initially Walnut Creek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

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

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

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

Dated: February 13, 2001



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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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.

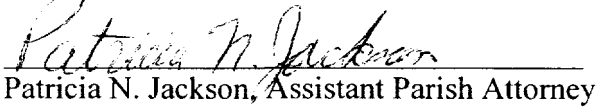
The very specific requirement stated on the permit application that: "[a] corporate resolution bearing the seal of the corporation and ***specifically*** appointing the representative to sign for and bind the applicant to all the requirements of the permit shall

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 todate, 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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LSBA Bar #1988

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. Smalley)
My commission expires: _____

NOTARY PUBLIC