

1 **NOT OFFICAL DOCUMENT**

2 FILE NO. 81

PROPOSAL NO. 2005-74

3 Sponsored by: Councilmember Terry Lee

4 Requested by: County Executive/Public Works & Utilities Dept.

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6 **ORDINANCE NO. 2005-74**

7  
8 **AN ORDINANCE OF THE PIERCE COUNTY COUNCIL GRANTING A**  
9 **NONEXCLUSIVE FRANCHISE TO JOPP WATER COMPANY, FOR**  
10 **LOCATION OF WATERLINES ON CERTAIN COUNTY OWNED**  
11 **RIGHTS-OF-WAY; AND AUTHORIZING THE COUNTY EXECUTIVE**  
12 **TO EXECUTE SAID FRANCHISE.**

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14 WHEREAS, Jopp Water Company of Pierce County, Washington,  
15 has applied for a nonexclusive Franchise to construct, operate,  
16 and maintain a waterline system under and along certain county  
17 roads, highways, and other county property in Pierce County,  
18 Washington, as hereinafter set forth; and

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20 WHEREAS, An application for Franchise came on regularly for  
21 hearing before the Pierce County Council on the date set forth  
22 below under the provisions of Chapter 36.55, Revised Code of  
23 Washington; and

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25 WHEREAS, It appears to the Council that notice of said  
26 hearing has been duly given to the public and those interested  
27 in providing the same service applied for by the applicant as

1 required by law and that it is in the public interest to grant  
2 the Franchise; NOW, THEREFORE,

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4 BE IT ORDAINED by the Council of Pierce County:

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6 Section 1. A nonexclusive Franchise, a copy of which is  
7 attached hereto and identified as Exhibit "A," is hereby given  
8 and granted to Jopp Water Company, of Pierce County, Washington,  
9 hereinafter referred to as the Grantee, for a period of 15  
10 years, from and after the date of filing of the Franchise to be  
11 granted with the Clerk of the Pierce County Council.



2 **TELECOMMUNICATIONS FRANCHISE AGREEMENT**

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4 **ARTICLE I – DEFINITIONS**

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6 **Section 1. General Interpretation.**

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8 For the purpose of this Franchise, and except as defined specifically below, the terms,  
9 phrases, words and their derivations herein shall have the meaning given in the  
10 Telecommunications Ordinance. Words not otherwise defined shall be given their common and  
11 ordinary meaning. When consistent with the context, words used in the singular number include  
12 the plural number, words in the plural number include the singular number and words used in the  
13 present tense include the future tense.

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15 **Section 2. Specific Definitions.**

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17 A. **"Agency"** means any governmental agency or quasi-governmental agency other than the  
18 County, including the FCC and the WUTC.  
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21 B. **"County"** means the County of Pierce, Washington, and its lawful designees.  
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23 C. **"County Property"** means any real property owned by the County whether in fee or other  
24 ownership, estate or interest.  
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2 D. **"Effective Date"** means the date identified in Article XXII,  
3 Section 4.

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5 E. **"Facilities"** means the equipment and facilities used in the provision of Services hereunder  
6 to be installed and operated by Grantee.

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9 F. **"FCC"** means the Federal Communications Commission.

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11 G. **"Fee"** means any assessment, license, charge, fee, imposition, tax (but excluding any utility  
12 users' tax or occupation tax), or levy lawfully imposed by any governmental body.

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14 H. **"Franchise"** means the non-exclusive authorization granted herein and pursuant to the  
15 Telecommunications Ordinance to use County rights-of-way to construct, operate and  
16 maintain Grantee's Facilities.

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19 I. **"Franchised Service Area"** means the unincorporated County limits.

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21 J. **"Grantee"** means MCI WORLDCOM Network Services, Inc., a Delaware corporation, its  
22 agents and employees, lawful transferees, successors or assigns.

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25 K. **"Laws"** means any and all judicial decisions and any and all federal, state and local statutes,  
26 constitutions, ordinances, resolutions, regulations, rules, tariffs, administrative orders,  
27 certificates, orders, or other requirements of the County or other Agency having jurisdiction

1 over the parties to this Franchise, in effect at the time of execution of this Franchise and  
2 thereafter.

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4 L. **"Month"** means a calendar month.

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6 M. **"Person"** means an individual, a corporation, a limited liability company, a general or  
7 limited partnership, a sole proprietorship, a joint venture, a business trust, and any other  
8 form of business association.  
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11 N. **"Provision"** means any clause, condition, covenant, qualification, restriction, reservation,  
12 term, or other stipulation in this Franchise that defines or otherwise controls, establishes, or  
13 limits the performance required or permitted by this Franchise. All Provisions, whether  
14 covenants or conditions, shall be deemed to be both covenants and conditions.  
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O. **"Public Facility"** means any tower, water tower, building, pole or other structure which the County owns or controls.

P. **"Public Way"** means and includes the surface of and space above and below any real property in the County in which the County has an ownership interest or interest as trustee for the public, including but not limited to, all public streets, highways, roads, alleys, sidewalks, tunnels, viaducts, bridges, subways or skyways or any other public place or property under control of the County, and any public or utility easements established, dedicated, or devoted for public utility purposes.

Q. **"Rights-of-Way"** means all County Property and Public Ways, collectively, within unincorporated Pierce County.

R. **"Services"** means the telecommunications services provided through or in connection with the Facilities, as authorized herein.

S. **"SONET"** is an acronym for Synchronous Optical Network, which provides the transmission of light signals over optical fiber and allows different fiber systems or networks to interconnect efficiently and accurately.

T. **"Telecommunications Network"** or **"Network"** means all of Grantee's Facilities used in the provision of Services in County, taken together as a unified system.

1 U. **"Telecommunications Ordinance"** or **"Ordinance"** means Pierce County Code Chapter  
2 12.34 which sets forth terms and conditions applicable to any and all franchised  
3 telecommunications providers making use of public rights-of-way in County.

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5 V. **"WUTC"** means the Washington Utilities and Transportation Commission.  
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8 **ARTICLE II – FRANCHISE**

9 **Section 1. Grant of Broadband Telecommunications Franchise.**

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11 A. Grant of Franchise.

12 Subject to obtaining any permits as might be required under the County's Charter or Code or  
13 other applicable Laws (and subject to Grantee obtaining any additional necessary  
14 agreements, approvals or authorizations from any entity which owns poles or any other third  
15 party rights), the County hereby grants on a non-exclusive basis as provided in Pierce  
16 County Code 12.34.420 authorization for Grantee to attach, install, operate, maintain,  
17 remove, reattach, reinstall, relocate, and replace Facilities within the Rights-of-Way in  
18 unincorporated Pierce County for the purposes of providing Services to Persons located  
19 within or without the limits of the County. Exhibit I represents the initial location of the  
20 Facilities. Any work performed pursuant to the rights granted under this Franchise may, at  
21 the County's option, be subject to the prior review and approval of the Director of Public  
22 Works and Utilities. During the term of this Franchise, the location of Facilities installed by  
23 Grantee or its designee shall be disclosed, in writing, to the County by Grantee within ten  
24 days before its installation, removal, or relocation. Such disclosures shall be incorporated in  
25 Exhibit I by way of a modification to this Franchise Agreement and shall not change except  
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1 upon submittal of a revised Exhibit I, and a written request for a modification of the number  
2 and/or location of such Facilities. Revised Exhibit I and request for modification shall be  
3 subject to the review and approval of the Director of Public Works and Utilities. This  
4 Franchise grants authority to construct and maintain Facilities in Public Ways. This  
5 Franchise is granted pursuant to the terms and conditions contained in the Pierce County  
6 Code Chapter 12.34. All provisions of such Ordinance, except as may be explicitly set-forth  
7 in this Agreement, are hereby incorporated by reference.  
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10 B. Compliance.

11 The County has determined that this Franchise, taken as a whole, offers no more or less  
12 favorable terms than those required of existing similarly situated grantee(s) in County.  
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14 C. Costs Related to Exercise of Franchise.

15 Any and all rights expressly granted to Grantee under this  
16 Franchise shall be exercised at Grantee's sole cost and expense, shall be subject to the prior  
17 and continuing right of the County to use any and all parts of the Rights-of-Way or Public  
18 Facilities or property, non-exclusively or concurrently, with any other Person, and further  
19 shall be subject to County's police powers and all deeds, easements, dedications, conditions,  
20 covenants, restrictions, encumbrances and claims of title which may affect the Rights-of-  
21 Way, or Public Facilities now or hereafter existing. Nothing in this Franchise shall be  
22 deemed to grant, convey, create, or vest a real property interest in land to or in Grantee,  
23 including any fee or leasehold interest or easement rights.  
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27 D. No Interference.

1 Except as expressly permitted by applicable Laws or this Franchise, in the performance and  
2 exercise of its rights and obligations under this Franchise, Grantee shall not interfere

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1 in any manner with the existence and operation of any and all private property and Rights-  
2 of-Way, sanitary sewers, water mains, storm drains, gas mains, poles, aerial or underground  
3 electric and telephone wires, cable television and other telecommunications, utility and  
4 municipal property without the express written approval of the owner or owners of the  
5 affected property or properties.

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8 E. Compliance with Laws.

9 Grantee shall comply with all Laws in the exercise and performance of its rights and  
10 obligations under this Franchise. If required by Law, Grantee shall obtain all required  
11 approvals from the appropriate governing authorities.

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13 **Section 2. Acceptance of Franchise.**

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15 A. Franchise Acceptance Procedures.

16 This Franchise and the rights, privileges and authority granted hereby shall take effect  
17 provided that Grantee complies with the acceptance procedures detailed herein.

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20 B. Grantee to Have No Recourse.

21 Except as provided in this Franchise, the County shall not be liable, unless directly and  
22 proximately caused by the willful, intentional or malicious acts of the County, for any  
23 damage to or loss of any facility within the Right-of-Way as a result of or in connection  
24 with any public works, public improvements, construction, excavation, grading, filling, or  
25 work of any kind in the Right-of-Way by or on behalf of the County.

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27 B. Acceptance of Power and Authority of County.

1 Grantee expressly acknowledges by acceptance of this Franchise that: (1) it has relied upon  
2 its own investigation and understanding of the power and authority of the County to grant  
3 and enforce the Franchise; (2) it has not been induced to enter into this Franchise  
4 arrangement by any understanding or promise or other statement, whether verbal or written,  
5 by or on behalf of the County concerning any term or condition of the Franchise that is not  
6 specifically included herein; (3) it has carefully read the terms and conditions contained  
7 herein and of the Ordinance and that Grantee is willing to and does accept all the obligations  
8 of such terms and conditions to the extent not inconsistent with state or federal law and  
9 further agrees that it will not set up as against the County any claim that any Provision of  
10 this Franchise or the Ordinance is unreasonable, arbitrary, invalid or void subject to its  
11 rights herein; and (4) the matters contained in Grantee's Application and all subsequent  
12 applications or proposals for extensions or renewals of the  
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1 Franchise, and as stated in any and all other presentations to County, except as inconsistent  
2 with law, regulations or local ordinance, are incorporated into this Franchise as though set  
3 out verbatim.

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5 **Section 3. Limitations on Authority.**  
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7 A. Subject to Other Requirements.

8 Grantee's right to operate and maintain its Telecommunications Network is subject to the  
9 terms, conditions, and requirements of the Pierce County Code Chapter 12.34, this  
10 Franchise, the County Charter and Code, and all applicable Laws, and Grantee's right to  
11 construct, erect, install or modify its Telecommunications Network is specifically subject to  
12 the requirement that Grantee obtain Permits as set forth in the Pierce County Code Chapter  
13 12.34.  
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16 B. After-Acquired Facilities.

17 Grantee expressly acknowledges and agrees, by acceptance of this Franchise, that Facilities  
18 and appurtenances in Public Ways which are subsequently acquired by the Grantee and  
19 which (if acquired prior to this original Franchise grant) would have been subject to this  
20 Franchise and the permitting authority related thereto shall be subject to the Provisions of  
21 this Franchise and all Permits related thereto.  
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24 C. Privileges Must be Specific.

25 No privilege or exemption is granted or conferred by this Franchise except as may be  
26 specifically prescribed.  
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**Section 4. Non-Exclusive Franchises.**

This Franchise is non-exclusive as per Section 12.34.420 of the Pierce County Code. County reserves the right to grant additional Franchises to any Person at any time. Any Franchise granted pursuant to the Telecommunications Ordinance shall confer and impose substantially similar rights and obligations. In establishing the rights and obligations pursuant to a franchise, to the degree allowed by county, state and federal laws, consideration shall be given to the Services to be provided, the area to be served, the commitments made by the applicant to County, the regulatory authority of County and the investment proposed by such applicant.

**Section 5. Amendments.**

This Franchise may be amended only upon the mutual written consent of County and Grantee or in the exercise of the County's police power authority or other explicit authority pursuant to applicable Laws.

**Section 6. Service of Notice.**

Except as otherwise specifically provided herein, any notices required or permitted to be given under this Franchise shall be deemed properly served when deposited with the United States Postal Service, postage paid, certified or registered mail, or via nationally recognized overnight carrier, and addressed to the party to receive same, or at such other address of which the party to receive the notice shall have designated in the Franchise.

NOTICES TO THE County shall be addressed to all of the following:

Pierce County Executive Office

1 930 Tacoma Avenue South, Room 737

2 Tacoma, WA 98402-2100

3 With Copy to:

4 Director, Public Works and Utilities

5 Public Services Bldg.

6 2401 South 35th, Room 150

7 Tacoma, WA 98409-7485

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10 Clerk of Pierce County Council

11 930 Tacoma Avenue South, Room 1046

12 Tacoma, WA 98402

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1 NOTICES TO THE GRANTEE shall be addressed to all of the following:

2 MCI WORLDCOM Network Services, Inc.

3 Attn: Right of Way and Municipal Affairs

4 2400 North Glennville Drive

5 Richardson, Texas 75082

6  
7 With Copy to:

8 MCI WORLDCOM Network Services, Inc.

9 Attn: Law and Public Policy- Real Estate and Network Facilities

10 2400 North Glennville Drive

11 Richardson, Texas 75082

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14 **Section 7. Franchise Review.**

15  
16 A. Regular Review.

17 The County may initiate periodic reviews of Grantee's Franchise performance. Such reviews  
18 shall occur no more than once every three years beginning on the third anniversary of the  
19 effective date of this Franchise. However, there shall be no remedies or presumptions  
20 resulting from the County's failure to conduct any such periodic reviews. Either County or  
21 Grantee may submit proposals for modification of Franchise obligations during such review,  
22 or at any other time during the term of the Franchise.

23  
24 C. Other Review.

25 Nothing herein shall be construed to prohibit the County and the Grantee from engaging in a  
26 continuous review of the performance of Grantee, and County may initiate or Grantee request  
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1 a public hearing on any issue related to compliance with the Franchise or any Permit related  
2 thereto.

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4 **ARTICLE III - TERM OF FRANCHISE**

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6 This Franchise shall be in full force and effect, unless sooner terminated pursuant to the  
7 Ordinance or the terms and conditions contained herein, for a period of ten years from the  
8 Effective Date.

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10 **ARTICLE IV - FEES AND CONSIDERATION**

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12 Pierce County specifically reserves the right to exercise authority it has to annually fix by  
13 ordinance a fair and reasonable compensation for the use of its property. If Pierce County elects  
14 to exercise such authority, Grantee will receive written notice ("Compensation Notice") not less  
15 than 60 days prior to its effective date and provide an opportunity to comment. Acceptance of  
16 Pierce County's definition, terms, and/or formula identified in the Compensation Notice will  
17 occur if the Grantee accepts in writing within sixty days of receipt of the compensation Notice;  
18 in which case the applicable ordinance that the Pierce County Council passes will be  
19 determinative. Rejection by the Grantee shall be deemed grounds for termination of the  
20 Franchise. Any subsequently enacted compensation terms will be applied on a competitively  
21 neutral and non-discriminatory basis, and in compliance with county, state and federal laws.  
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25 **ARTICLE V - FACILITIES OR NETWORK ABANDONMENT**

26 In the event that any Facilities or the Network is abandoned and no longer placed in  
27 service for a period of Nine Months or more, Grantee shall promptly notify the County, and the

1 County, at its option, may remove the abandoned Facilities at Grantee's sole cost and expense or  
2 accept the transfer of ownership of the same to the County, consent for which transfer is hereby  
3 expressly given by Grantee. The County shall not exercise its option hereunder to remove or  
4 transfer ownership of Facilities, unless and until the County first gives ninety (90) days prior  
5 written notice to Grantee to remove the Facilities. If Grantee shall fail to remove the Facilities or  
6 place them back into service as required by the County, the County shall be entitled to remove  
7 the Facilities at Grantee's sole cost and expense. Grantee shall execute such documents of title as  
8 will convey all right, title and interest in the event of transfer.  
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**ARTICLE VI - REPAIR AND REPLACEMENT OF DAMAGES**

Grantee is responsible to locate and avoid all utilities within the Right-of-Way or in private property and is responsible for any costs to repair or replace any damage due to the construction or location of Facilities to the sole satisfaction of the County to the extent such damage is caused by and the fault of Grantee.

**ARTICLE VII – REIMBURSEMENT**

Grantee shall reimburse the County within thirty days after receipt of an invoice for all reasonable amounts paid and costs incurred by the County in relation to this Franchise or the enforcement thereof. Except in cases of emergency, the County shall advise Grantee of the cost thereof in advance of performing any work for which it will seek reimbursement from Grantee.

**ARTICLE VIII - DEFAULT**

Grantee shall be in default under this Franchise upon the occurrence of any of the following events:

1. Grantee's violation of material terms or provisions of Pierce County Code Chapter 12.34, this Franchise or any applicable Laws.

- 1 2. Grantee's failure to pay reimbursements for County-incurred costs relating to this  
2 Franchise or the Fees or any other payments required hereunder when due, and such  
3 failure continues for twenty (20) days after written notice is given to Grantee, provided  
4 the County shall not be required to give written notice more than twice during any  
5 twelve Month period. After notice has been given twice during any twelve Month  
6 period, Grantee shall be deemed in default, without the requirement of notice and the  
7 opportunity to cure, for any subsequent failure to pay amounts due hereunder during the  
8 same  
9  
10 twelve Month period if such failure continues for ten days after the same becomes due.  
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- 12 3. Upon Grantee's failure to perform any other obligation under this Franchise or cure any  
13 failure of performance within thirty days after written notice of such failure or demand  
14 for cure is given by the County to Grantee (or, if such failure of performance is not  
15 curable within thirty days in the reasonable determination of County, if the defaulting  
16 party fails to commence such cure within thirty days and fails to thereafter diligently  
17 pursue such cure to completion).  
18
- 19 4. Grantee becomes insolvent, liquidates, is adjudicated as bankrupt, makes an assignment  
20 for the benefit of creditors, invokes any provision of law for the relief of debtors, or  
21 initiates any proceeding seeking protection from its creditors.  
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24 **ARTICLE IX - REMOVAL AND RELOCATION OF FACILITIES**

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26 **Section 1. Facilities Relocation.**  
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1           Upon the receipt of a demand by the County, within ninety (90) days, or in the event of  
2 an emergency, upon such shorter notice period as the County deems reasonable under the  
3 circumstances, Grantee, at its sole cost and expense, shall remove or relocate any Facilities, if  
4 and when the removal or relocation of such Facilities is made necessary by the County acting  
5 pursuant to any lawful governmental or proprietary purpose, including, without limitation,  
6 engaging in any lawful change of grade, alignment or width of any Rights-of-Way in the County  
7 pursuant to any concern regarding health, safety and welfare, or in the installation or replacement  
8 of any street light pole. The County shall provide Grantee one year notice of Right-of-Way  
9 projects which may require relocation of Grantee's Facilities pursuant to the Manual on  
10 Accommodating Utilities in Pierce County Right-of-Way as adopted by PCC 17B.10.060.  
11 Further the County will maintain communication with Grantee during development of such  
12 project, making plans and details available  
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1 and attempting to design the project to avoid relocation of Facilities.  
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3 **Section 2. Relocation Costs.**  
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5 Whenever the removal or relocation of Facilities is required under this Franchise or  
6 otherwise by order of County, and such removal or relocation shall cause the Rights-of-Way to  
7 be damaged, Grantee, at its sole cost and expense, shall promptly, upon written notice of such  
8 damage, repair and return the Rights-of-Way, in which the Facilities is located, to the same  
9 condition as existed prior to such work in the determination of County. If Grantee fails to  
10 comply with this requirement, then the County shall have the option to perform or cause to be  
11 performed such reasonable and necessary work and charge Grantee for the actual cost incurred  
12 by County. Upon the receipt of a demand for payment by the County, Grantee shall reimburse  
13 the County for such costs within ninety (90) days.  
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15  
16 **Section 3. Relocation for Third Parties.**  
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18 If during the term of this Franchise any person or entity other than Pierce County  
19 (hereinafter "Third Party") requests the relocation of Grantee's Facilities to accommodate work  
20 within the Rights-of-Way to be undertaken by or on behalf of such Third Party, and the County  
21 determines that such relocation of Grantee's Facilities is in the public interest and is necessary,  
22 then the County may, in its discretion, grant such Third Party request. In such event, upon  
23 written notice to the Grantee from the County, Grantee shall, at the expense of the Third Party  
24 upon terms acceptable to Grantee, relocate its Facilities within the Franchise Area to  
25 accommodate the work of such Third Party.  
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**ARTICLE X - INSURANCE**

**Section 1. Insurance Requirement.**

A. Insurance Certificate.

Grantee shall obtain insurance of a quality and amounts as required in Pierce County Code Section 12.34.630 and as detailed below and shall file the required original certificate(s) of insurance with endorsements with the County, subject to the County's prior approval, which shall clearly state:

- (1) Policy number; name of insurance company; name, address and telephone number of the agent or authorized representative; name, address and telephone number of insured; project name and address; policy expiration date; and specific coverage amount.
- (2) That thirty days prior written notice of cancellation is required to the County; and

1 (3)That Grantee's insurance is primary with respect to any other valid or collectible  
2 insurance that the County may possess, including any self-insured retentions the  
3 County may possess, and any other insurance the County does possess shall be  
4 considered excess insurance only and shall not be required to be contributory with this  
5 insurance.

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8 B. Coverage.

9 Grantee shall maintain liability insurance in amounts as detailed below. Such liability  
10 insurance shall be kept in full force and effect by Grantee during the existence of this  
11 Franchise and all renewals and extensions thereof and thereafter until after the removal of  
12 all Facilities, should such removal be required by the County or undertaken by the Grantee.  
13 Any contractors of Grantee performing on behalf of Grantee pursuant to this Franchise shall  
14 also be insured as required herein and name County as an additional insured.

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17 C. Failure to Procure.

18 Grantee acknowledges and agrees, by acceptance of this Franchise, that failure to procure or  
19 maintain the required insurance shall constitute a material breach of this Franchise and that  
20 the County may immediately suspend

1 operations under the Franchise, terminate the Franchise, or, at its discretion, procure or  
2 renew such  
3 insurance to protect the County's interests and be reimbursed by such Grantee for all  
4 premiums paid in connection therewith.  
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6 D. Insurance Amounts.  
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8 The Grantee shall maintain throughout the term of this Franchise worker's compensation  
9 coverage and liability insurance in the minimum amounts of:

10 (1) Commercial General Liability insurance - public liability including premises, products  
11 and complete operations.  
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13 (a) Bodily injury liability - \$2,000,000 each occurrence,

14 (b) Property damage liability - \$2,000,000 each  
15 occurrence, or

16 (c) In lieu of (a) and (b) above, bodily injury and  
17 property damage combined - \$2,000,000 single limit.  
18

19 (2) Commercial - Automobile Liability Insurance including owned, non-owned and hired  
20 vehicles.  
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22 (a) Bodily injury liability - \$1,000,000 each occurrence and \$3,000,000 for each  
23 occurrence,  
24

25 (b) Property damage liability - \$1,000,000 each occurrence,  
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1 (c) In lieu of (a) and (b) above, bodily injury and property damage combined -  
2 \$3,000,000 single limit.

3 (3) Workers' Compensation within statutory limits and employer's liability insurance with  
4 limits of not less than \$1,000,000 or coverage by Worker's Compensation Act of  
5 Washington Account Number 457,008-04.  
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7  
8 E. General.

9 Grantee agrees that with respect to the above required insurance contracts, such contracts  
10 will contain the following required provisions:  
11

12 (1) The County shall be named as additional insured as to all applicable coverage.  
13

14 (2) Contracts shall provide for thirty day notices to the County prior to cancellation,  
15 revocation, non-renewal or material change.  
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17  
18 **Section 2. Policy Limitations.**

19 "Cross liability," "severability of interest" or "separation of insured's" clauses shall be  
20 made a part of the commercial general liability and business automobile liability policies.  
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**Section 3. Mailing of Insurance Certificate.**

The certificate(s) of insurance with endorsements and notices, shall be mailed to:

Mike Panagiotu, Risk Manager

Risk Management

955 Tacoma Avenue South, Suite 303

Tacoma, WA 98402-2160

**Section 4. Insurance Provider.**

Any insurance provider of Grantee shall be admitted and authorized to do business in Washington and shall be rated at least A:X in A.M. Best and Company's Insurance Guide.

**ARTICLE XI - COUNTY'S RIGHT TO ACT**

In the event Grantee fails to perform any obligation under this Franchise the County shall have the right, but no obligation or duty, to take action that Grantee has failed to take, after giving at least thirty days notice in advance of taking such action, except in the event of an emergency, as determined by the County, in which case no advance notice shall be required. In the event County takes such action, Grantee shall promptly pay to the County upon demand, the sum or sums expended or incurred by the County to take such action. Any such action taken by the County shall not by itself constitute a wavier by the County of Grantee's default or the County's remedies on account of such default.

**ARTICLE XII - TERMINATION OF FRANCHISE**

1 **Section 1. Termination.**

2  
3 In addition to the Provisions of Pierce County Code Section 12.34.646 this Franchise  
4 may be terminated upon a default hereof as provided in this Franchise. A termination of this  
5 Franchise because of Grantee's default shall not prejudice any other remedy for breach of  
6 contract, damages, non-payment or otherwise which the County has under this Franchise or  
7 under law.  
8

9  
10 **Section 2. Notice.**

11 This Franchise may be terminated by the County in accordance with the Provisions of  
12 Sections 12.34.648 and 12.34.650 of the Pierce County Code after notice, an opportunity to cure  
13 and a hearing as provided therein.  
14

15  
16 **Section 3. Removal.**

17  
18 Upon termination of this Franchise for any reason, subject to County's lien rights, as  
19 provided by Washington law or other applicable Laws Grantee shall remove all of its Network  
20 and related Facilities, personal property and any other improvements installed by Grantee and  
21 restore all property to the same condition existing prior to usage by Grantee. Except as provided  
22 herein, Grantee shall be deemed to have abandoned to the County at no cost or expense to  
23 County any of its Facilities, personal property or other improvements which it has failed to  
24 remove from the Rights-of-Way within the ninety (90) days following termination, unless such  
25 removal is prohibited because of the County's exercise of its lien rights or unless the County  
26 grants in writing a longer period for removal. In the event of an abandonment, the County may  
27

1 remove Grantee's Facilities, personal property and improvements and charge Grantee the  
2 reasonable expense of removal and restoration. Grantee shall further reimburse to the County all  
3 costs of cleanup associated with any leakage or contamination from such Facilities whether such  
4 leakage or contamination occurs prior to or in the course of such removal. Grantee shall not be  
5 responsible to the County for contamination caused by any Person other than Grantee, its agents,  
6 employees, or contractors.  
7

#### 8 **Section 4. Lesser Sanctions.**

9  
10 Additionally, the County may impose a lesser sanction as per Section 12.34.652 of the  
11 Pierce County Code.  
12

### 13 **ARTICLE XIII - GENERAL TERMS**

#### 14 **Section 1. Reports and Records of the Grantee.**

##### 15 **A. Reports Required.**

16  
17 Grantee shall supply, upon request and at no cost, any information, including maps requested by  
18 the County Executive, County Engineer or Director of Transportation as it relates to the physical  
19 aspects of Grantee's facilities in the Rights-of-Way. Said information may be requested in hard  
20 copy and/or electronic format compatible with County databases, including a GIS system if  
21 compatible with Grantee's existing system.  
22  
23  
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25

#### 26 **Section 2. Enforcement and Administration by County.**

1 The County, through the office of the County Executive, shall have continuing regulatory  
2 jurisdiction and supervision over the occupancy of the Rights of Way pursuant to this Franchise  
3 and may from time to time adopt such reasonable rules and regulations as it may deem  
4 necessary.

5  
6 **Section 3. Failure to Enforce.**  
7

8 The Grantee shall not be excused from complying with any of the terms and conditions of  
9 this Franchise by any failure of the County upon one or more occasions to insist upon or to seek  
10 compliance with any of such terms or conditions.  
11

12 **ARTICLE XIV - INSPECTION**  
13

14 The County maintains the right to inspect and approve of, at Grantee's expense, all of  
15 Grantee's facility installations. In addition, the County Engineer may require Grantee to furnish  
16 certification from Grantee's engineer (so long as such engineer's certifications are accepted by  
17 the Washington State Department of Transportation or the Federal Rural Utilities Service and if  
18 such certifications are not so acceptable, then by an independent, qualified engineer) that the  
19 facilities are constructed and operated in accordance with good engineering practice and are  
20 reasonably protected from damage and injury.  
21

22  
23 **ARTICLE XV - PERMITS, INITIAL SERVICE AREA AND**  
24 **CONSTRUCTION STANDARDS**  
25

26 **Section 1. Initial Service Area and General Standards.**  
27

1 A. Permits.

2 Grantee shall comply with Section 12.34.600 of the Pierce County Code. In addition  
3 thereto, Grantee shall apply for a construction Permit prior to beginning any work in a  
4 Public Way or Right-of-Way generally including the opening of any street in County and  
5 shall comply with Chapters 12.04 and 12.32 of the County Code. No work, other than  
6 emergency  
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1 work, shall commence without such Permit pursuant to the Pierce County Code Section  
2 12.34.710. Emergency repairs shall be made immediately with notice to County no later  
3 than the next business day. Grantee shall further comply with Sections 12.34.700,  
4 12.34.705, and 12.34.715 of the Pierce County Code which generally apply to construction  
5 standards, construction codes, utility Right-of-Way permits and applications.  
6

7  
8 B. Network Planning.

9 The Grantee and the County shall make reasonable good faith efforts to advise each other of  
10 plans and programs, both long and short range, for the placement of Facilities in Rights-of-  
11 Way, and other Public Property which might affect the other party or require its  
12 coordination.  
13

14 C. Limited Access.

15 The County reserves the right to limit or exclude Grantee's access to a specific route, public  
16 right-of-way or other location when there is inadequate space, a pavement cutting  
17 moratorium, unnecessary damage to public property, public expense, inconvenience,  
18 interference with County utilities, or for any other reason determined by the County  
19 Executive or designee, or the County Engineer.  
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1 D. Facilities Placement.

2 Grantee will comply with Sections 12.34.725, 12.34.730 and 12.34.735 of the Pierce County  
3 Code Chapter 12.34. Additionally, Grantee shall obtain a Permit pursuant to the Ordinance  
4 for each separate Network location requiring work or construction in public rights-of-way or  
5 other public property, and shall comply with all terms of such Permit(s).

6  
7  
8 E. Additional Accommodations.

9 In addition, the County Executive or designee may determine, in the exercise of reasonable  
10 discretion, when and where reasonable accommodations shall be made by Grantee to the  
11 County for public needs or, where requested, other third party needs, how such  
12 accommodation should be made, and a reasonable apportionment of any expenses of the  
13 same; PROVIDED, that this Franchise creates no third party beneficial interests or  
14 enforceable contractual right to require the County to order such accommodation.  
15 Notwithstanding the foregoing, it remains the responsibility of the Grantee to anticipate and  
16 avoid conflicts with other right-of-way occupants or users, other utilities, franchises or  
17 permittees. The County assumes no responsibility for such conflicts.  
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1 F. Notice of Work.

2 Grantee shall provide notice of emergency and non-emergency work as provided in Sections  
3 12.34.606, 12.34.608, 12.32.110 and 12.04.030 of the Pierce County Code.

4  
5 G. Removal of Facilities.

6 Removal of Grantee's facilities shall be in accordance with Sections 12.34.612 and  
7 12.34.614 of the Pierce County Code.

8  
9  
10 H. Coordination of Construction Activities.

11 Work shall be coordinated in accordance with Sections 12.34.640 and Section 12.32 of the  
12 Pierce County Code.

13  
14 **Section 2. Undergrounding.**

15  
16 In those areas of County where the transmission or distribution facilities of the local  
17 exchange carrier and/or the electric utility are underground, or hereafter placed underground,  
18 Grantee shall likewise construct or relocate, operate and maintain that portion of its Network in  
19 the area underground upon County approval. Further, consistent with any general municipal  
20 undergrounding policy or program now or hereafter developed; the County may require  
21 Grantee's participation in municipally imposed undergrounding or related requirements. Grantee  
22 agrees to coordinate its underground installation and planning activities with the County's  
23 underground plan and policies. Such undergrounding in any event shall be at Grantee's expense.

24  
25  
26 **ARTICLE XVI - INDEMNIFICATION**

**Section 1. Indemnification.**

1  
2 The Grantee agrees to defend, indemnify, and hold harmless Pierce County, its appointed  
3 and elected officers and employees, from and against all damages, losses and expenses, including  
4 reasonable attorneys' fees and costs of suit or defense, arising out of, resulting from, or alleged  
5 to arise out of or result from the acts, omissions, failure to act, or misconduct of the Grantee or  
6 its affiliates, officers, employees, agents, contractors, or subcontractors in the construction,  
7 operation, maintenance, repair, or removal of its facilities and in providing or offering services  
8 over the Facilities, or from physical contact with facilities or supporting structures, whether such  
9 acts or omissions are authorized, allowed, or prohibited under this Franchise or the Ordinance.  
10  
11

12 If the claim, suit, or action for injuries, death, or damages as provided for in the preceding  
13 paragraphs of this contract is caused by or results from the concurrent negligence of (a) the  
14 indemnitee or the indemnitee's agents or employees and (b) the indemnitor or the indemnitor's  
15 agents or employees,  
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1 **Section 1. Bond Requirement.**

2  
3 Pursuant to Section 12.34.638 PCC, during construction of new or additional facilities in  
4 the rights of way, Grantee shall furnish a Bond equal to at least 100% of the estimated cost of  
5 restoring the rights of way to substantially the same condition as existed prior to Grantee's  
6 construction, or such other amount as may be determined to be appropriate by the County  
7 Engineer under PCC Chapter 12.32 for the particular class of work being permitted.  
8

9  
10 **Section 2. Rights Cumulative.**

11 The rights reserved by County with respect to the Performance Bond are in addition to all  
12 other rights County may have under the Ordinance or a Franchise or any other law. County may,  
13 from year to year, in its sole discretion, reduce the amount of the bond.  
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**Section 3. Time to Cure.**

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2           Upon notice of a violation under this Franchise, Grantee shall have thirty days in which  
3 to cure such violation. The time for Grantee to correct any violation, default or liability, shall be  
4 extended by County if the necessary action to correct such violation, default or liability is of such  
5 a nature or character as to require more than thirty days within which to perform, provided  
6 Grantee provides written notice that it requires more than thirty days to correct such violations or  
7 liability, commences the corrective action within the thirty days period and thereafter uses  
8 reasonable diligence to correct the violation, default or liability.  
9

10  
11                           **Section 4. Franchise Termination Costs or Damages.**  
12

13           In the event this Franchise is canceled or terminated by reason of default of the Grantee  
14 or otherwise revoked, County shall be entitled to collect from the Bond that amount which is  
15 attributable to any damages sustained by County. The Grantee, however, shall be entitled to the  
16 return of such Bond, or portion thereof, as remains nine Months after the expiration of the term  
17 of the Franchise.  
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**Section 5. Performance Required.**

Neither the Provisions of this Section nor any bond accepted by the County pursuant thereto, nor any damages recovered by the County thereunder shall be construed to excuse faithful performance by a Grantee or limit the liability of a Grantee for damages, to the full amount of the bond. The rights reserved by the County with respect to the bonds herein are in addition to all other rights and remedies the County may have under this franchise or any other law.

**Section 6. Change in Surety.**

If, at any time during the term of this Franchise, the condition of the corporate surety shall change in such manner as to render the bond unsatisfactory to the Pierce County Risk Manager, the Grantee shall replace such bond by a bond of like amount, similarly conditioned, issued by a corporate surety satisfactory to the Risk Manager.

**ARTICLE XVIII - PROOF OF INSURANCE AND BONDING**

Grantee shall furnish proof to the County Executive that a satisfactory insurance policy and bonds have been obtained. A certificate of insurance and the Bond shall be filed and maintained with the County Risk Manager.

**ARTICLE XIX - ASSIGNMENT OR TRANSFER OF GRANT  
AND FRANCHISE RENEWAL**

**Section 1. Transferee Must Be Signatory.**

1 In no event shall a transfer, assignment, or disposal of ownership or control be effective  
2 without the transferee acknowledging the obligations under the Ordinance, becoming a signatory  
3 to this Franchise and assuming all rights and obligations hereunder, and assuming all other rights  
4 and obligations of the transferor to the County.  
5

6  
7 **Section 2. Franchise Renewal.**

8  
9 The Grantee may seek renewal of this Franchise, and County shall review such request  
10 for renewal in accordance with Sections and 12.34.460, 12.34.465, and 12.34.470 (as  
11 appropriate) of the Pierce County Code and applicable Laws.  
12

13 **ARTICLE XXI - CHARTER LANGUAGE ADDED**  
14

15 Grantee acknowledges that Pierce County Charter Section 9.20 Franchises provides in  
16 part: "All franchises shall be subject to ... the right of the Council, or the people acting for  
17 themselves through referendum, to repeal for cause, amend, or modify the franchise in the  
18 interest of the public".  
19

20 **ARTICLE XXII - MISCELLANEOUS**  
21

22 **Section 1. Previous Rights Abandoned.**  
23

24 This Franchise supersedes any and all other rights, privileges, powers, immunities, and  
25 authorities owned, possessed, controlled, or exercisable pursuant to any previous Franchise  
26 granted to Grantee in the County.  
27

**Section 2. Severability.**

1  
2 If any section, subsection, sentence, clause, phrase or portion of this Franchise is for any  
3 reason held invalid or unconstitutional by any court or administrative agency of competent  
4 jurisdiction, such portion shall be deemed a separate, distinct and independent provision and  
5 such holding shall not affect the validity of the remaining portions thereof. In such event, the  
6 parties mutually agree to make any amendments to this Agreement of other applicable  
7 agreements necessary to effectuate the intention of this Agreement. In the event that such  
8 amendments are barred by any legal requirements governing any party, the parties shall use their  
9 best efforts to otherwise avoid prejudice to the respective parties' interests, and to implement  
10 changes to effectuate the intent in entering into this Agreement. Should the County, in its sole  
11 discretion, determine that the severed portions substantially alter the Agreement so  
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1 that the original intent and purpose of this Agreement no longer exists, the County may, in its  
2 sole discretion, terminate this Agreement without cost or penalty.

3  
4 **Section 3. Applicable Law.**

5  
6 The Franchise is governed by the Laws of the State of Washington, and venue for any  
7 enforcement litigation shall be in Pierce County Superior Court. In case of conflict or ambiguity  
8 between this Franchise and Grantee's Request or Application, this Franchise shall be controlling.

9  
10 **Section 4. Effective Date.**

11  
12 The Provisions of this Franchise shall be effective upon the written acceptance of this  
13 Franchise by the Grantee, signed by its proper officers filed with the Clerk of the Pierce County  
14 Council within sixty days of its execution by the County and recorded with the Pierce County  
15 Auditor in accordance with RCW 36.55.080.

16  
17  
18 **Section 5. Limitation.**

19  
20 Nothing in this Franchise shall be construed or interpreted in any manner as limiting,  
21 relinquishing or waiving any rights of ownership enjoyed by the County in any Rights-of-Way or  
22 any Public Facilities, or in any manner limiting, relinquishing or waiving the County's control  
23 over the operation and maintenance of the Rights-of-Way or any Public Facilities or in any  
24 manner limiting, relinquishing or waiving governmental rights that the County may possess.

25  
26 **Section 6. Non-Waiver.**



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**Section 8. Franchise Subject to Future Ordinance(s).**

Grantee acknowledges that the County may develop additional rules, regulations, and specifications for the use of the Rights-of-Way and/or Public Facilities, and Grantee agrees that such rules, regulations, and specifications, when finalized and to the extent not preempted by federal or state law, shall govern Grantee's activities hereunder as if they were in effect at the time this Franchise was executed by the County; provided, however, no subsequently enacted rule, regulation, or specification may retroactively place Grantee in violation thereof.

**Section 9. No Warranties.**

Grantee shall be responsible for obtaining all necessary approvals, authorizations and agreements from any party or entity and it is acknowledged and agreed that the County is making no representation, warranty or covenant whether any of such approvals, authorizations or agreements are required or have been obtained by Grantee from any Person or entity.

**Section 10. Recordation.**

This Franchise shall be recorded with the Pierce County Auditor as provided in RCW 36.55.080. The Provisions and terms of this Franchise are agreed to and hereby accepted.

**Section 11. Authorization.**

The undersigned respectively represent and warrant that its signatory is duly authorized and empowered to sign this Franchise Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Franchise

Agreement to be executed as of the \_\_\_ day of \_\_\_\_\_, 2005.

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COUNTY OF PIERCE

By \_\_\_\_\_  
John W. Ladenburg  
Its COUNTY EXECUTIVE

Attest:

\_\_\_\_\_

SERVICES, INC.

Grantee

\_\_\_\_\_  
MCI WORLDCOM NETWORK

By \_\_\_\_\_

Its \_\_\_\_\_

Dated: \_\_\_\_\_

Witness:

1 EXHIBIT "A" TO ORDINANCE NO. 2005-74

2 In the Matter of the Application of )  
3 Jopp Water Company, of Pierce County, )  
4 State of Washington, for a Franchise ) EXHIBIT "A"  
5 to construct, operate, and maintain )  
6 pipelines for a Water System under and ) F R A N C H I S E  
7 along certain Public Roads and )  
8 Highways in Pierce County, Washington )

8 Application of Jopp Water Company, of Pierce County,  
9 Washington, for a nonexclusive Franchise to construct and  
10 maintain water pipelines with appurtenances for a water system  
11 under and along certain public roads, highways, and other County  
12 property in Pierce County, Washington, as hereinafter set forth,  
13 having come on regularly for hearing before the County Council  
14 of Pierce County, Washington, under the provisions of Chapter  
15 36.55, Revised Code of Washington (RCW), and it appearing to the  
16 Council that notice of said hearing has been duly given as  
17 required by law, and that it is in the public interest to grant  
18 the Franchise herein requested;

19  
20 NOW, THEREFORE, IT IS ORDERED, that a Franchise be, and the  
21 same is, hereby given and granted to Jopp Water Company, of  
22 Pierce County, Washington, hereinafter called "Grantee" for a  
23 term of 15 years from and after the date of filing this  
24 Franchise with the Clerk of the Pierce County Council. This  
25 Franchise is a license for the privilege, and authority to  
26 construct, maintain, and operate for the said period of time, a  
27 water pipeline with appurtenances for a water system under and

1 along public roads, highways, and other County property in  
2 Pierce County, Washington, as follows:

3  
4 Section 7, Township 20 North, Range 1 East, W.M. All  
5 Pierce County roads in said section.

6  
7 Section 12, Township 20 North, Range 1 East, W.M. All  
8 Pierce County roads in the Northeast, Southeast, and  
9 Southwest quarters of said section.

10  
11 I

12 In the construction and installation of water system  
13 appurtenances and the excavation of trenches on County roads for  
14 the purposes of laying, relaying, connecting, disconnecting, and  
15 repairing mains and pipes and making connections between the  
16 same to the dwellings and other buildings of the consumers,  
17 Grantee shall be governed by and conform to the general rules  
18 adopted by Pierce County Public Works and Utilities -  
19 Transportation Services of Pierce County, Washington; and  
20 Grantee, at no expense to the County, shall complete all such  
21 work and shall repair the County roads and leave the same in as  
22 a good condition as before the work was commenced;

23  
24 PROVIDED, HOWEVER, that no such work shall be done prior to  
25 obtaining permits therefore issued by the Pierce County Engineer  
26 (hereinafter "Engineer"), which permits shall set forth  
27 conditions pertaining to the work to be done and specifications

1 for the restoration of the roads to the same condition as they  
2 were prior to such work; and

3  
4 PROVIDED FURTHER, the Engineer, in his or her discretion,  
5 may require a bond in a sum sufficient to guarantee to Pierce  
6 County that such roads shall be restored to the same condition  
7 as existed prior to such work. If Grantee does not repair  
8 County roads to the satisfaction of the Engineer, Pierce County  
9 Public Works and Utilities - Transportation Services may, at its  
10 sole discretion, repair such County roads, or cause them to be  
11 repaired, and Grantee hereby agrees to reimburse the County of  
12 Pierce for the cost of such work, including overhead costs.

13  
14 Before any work is performed under this Franchise, which  
15 may affect any existing monuments or markers of any nature  
16 relating to section subdivisions, plats, roads, and all other  
17 surveys, Grantee shall reference all such monuments and markers  
18 in accordance with RCW 58.09.130. The reference points shall be  
19 so located that they will not be disturbed during Grantee's  
20 operations under this Franchise. The method of referencing  
21 these monuments or other points to be referenced shall be  
22 approved by the County Engineer. The replacement of all such  
23 monuments or markers disturbed during construction shall be made  
24 as expeditiously as conditions permit, and as directed by the  
25 County Engineer. The cost of monuments or other markers lost,  
26 destroyed, or disturbed, and the expense of replacement with  
27 approved monuments shall be borne by Grantee.

1 A complete set of reference notes for monuments and other  
2 ties shall be filed with Pierce County Public Works and  
3 Utilities - Transportation Services.

4  
5 II

6 The water mains and pipes shall be laid down as directed by  
7 the Engineer at a depth of not less than 36 inches below the  
8 surface of the ground under and along the County roads, and in  
9 such a manner as not to interfere unnecessarily with the  
10 construction of sewers and drains, nor with the grading of  
11 County roads. All surface appurtenances to the water system  
12 shall be installed or constructed as approved by the Engineer.

13  
14 III

15 All work done under this Franchise shall be done in a  
16 thorough and professional manner. In the laying of water pipes  
17 and conduits and the digging of ditches therefore, Grantee shall  
18 leave ditches in such a way as to interfere as little as  
19 possible with public travel and shall take all due and necessary  
20 precautions to ensure that damage or injury shall not occur or  
21 arise by reason of such work; and that where any ditches or  
22 trenches are left open at night, Grantee shall place at all  
23 crossings suitable lights in such a position to guard against  
24 danger, and Grantee shall be liable for all property damage or  
25 personal injury that may be caused by reason of any injury  
26 sustained through Grantee's negligence by reason of any person,  
27 animal or property being injured through any negligence of

1 Grantee, or by reason of any damage caused through the neglect  
2 to properly guard any ditches or trenches dug or maintained by  
3 Grantee. The Engineer may specify actions to be taken to ensure  
4 the safety of the public and Grantee shall comply with such  
5 specifications.

6  
7 IV

8 The County of Pierce, in granting this Franchise does not  
9 waive any rights that it now holds or may hereafter acquire and  
10 shall not be construed to deprive the County of Pierce of any  
11 powers, rights, or privileges that it now has or may hereafter  
12 acquire, including the right of eminent domain to regulate use  
13 and control of County roads covered by this Franchise, or to go  
14 upon any and all County roads and highways for the purpose of  
15 constructing and improving the same in such a manner as the  
16 County of Pierce, or its representatives may elect.

17  
18 V

19 Grantee shall provide a certificate of insurance showing  
20 evidence of commercial general liability and property damage  
21 liability insurance that includes but is not limited to the  
22 operations of Grantee, Grantee's protective liability, products  
23 completed operation's coverage, broad form blanket contractual  
24 liability:



1 Grantee's insurance policies shall contain a  
2 "cross-liability" endorsement substantially as follows:

3  
4 The inclusion of more than one Insured under this  
5 policy shall not affect the rights of any Insured with  
6 respect to any claim, suit, or judgment made or  
7 brought by or for any other insured or by or for any  
8 employee of any other Insured. This policy shall  
9 protect each Insured in the same manner as though a  
10 separate policy has been issued to each, except that  
11 nothing herein shall operate to increase Grantee's  
12 liability beyond the amount or amounts for which  
13 Grantee would have been liable had only one Insured  
14 been named.

15  
16 Grantee's insurance is primary over any insurance that  
17 may be carried by Pierce County. Grantee agrees to  
18 provide proof of insurance each year to Pierce County.

19  
20 Grantee agrees to defend, indemnify, and save harmless  
21 Pierce County, its appointed and elected officials and  
22 employees, from and against all loss or expense,  
23 including but not limited to, judgments, settlements,  
24 attorney's fees, and costs by reasons of any and all  
25 claims and demands upon the County, its elected or  
26 appointed officials or employees for damages because  
27 of personal or bodily injury including death at any

1 time resulting therefrom, sustained by any person or  
2 persons, and on account of damage to property  
3 including loss of use thereof, whether such injury to  
4 persons or damage to property is due to the negligence  
5 of Grantee, its contractors, its or their employees or  
6 agents, Pierce County, its appointed or elected  
7 officers, or its employees or agents, except only such  
8 injury or damage as shall have been occasioned by the  
9 sole negligence of Pierce County, its appointed or  
10 elected officials or employees.

11  
12 If the claim, suit, or action for injuries, death, or  
13 damages as provided for in this Franchise agreement is  
14 caused by or results from the concurrent negligence of  
15 (a) Pierce County or Pierce County's agents or  
16 employees; or (b) Grantee, or Grantee's agents or  
17 employees, the indemnity provisions provided for in  
18 this Franchise shall be valid and enforceable only to  
19 the extent of Grantee's negligence.

20  
21 Grantee specifically and expressly waives any immunity  
22 under Industrial Insurance Title 51 RCW, and  
23 acknowledges that this waiver was mutually agreed upon  
24 by the parties herein.

VI

If, at any time, the County of Pierce shall vacate any County street, road or alley that is subject to rights granted by this Franchise, the Pierce County Council may, at its option, and by giving 30 days written notice to Grantee, its successors and assigns, terminate this Franchise with reference to such County road, street, or alley so vacated and the County of Pierce shall not be liable for any damages or loss to Grantee by reason of such termination.

VII

If, at any time, a new County road is created or established, and constructed, or an existing County road is reconstructed, realigned, or its grade is changed, or if sewer or drainage facilities, or any other facilities within future or existing County road rights-of-way are constructed, reconstructed, maintained, or relocated (all such work to be called "County Projects" hereinafter) and if the installation of the facilities as allowed in this Franchise, and all supplements and changes thereto, should interfere in any manner with any such County Projects then Grantee at no expense to Pierce County shall, upon notice, change the location or adjust the elevation of its facilities so that such facilities shall not interfere with such County Projects.

1           When relocation of Grantee's facilities are required by  
2 such County Projects, the following procedures shall be  
3 followed:

4  
5           1. Pierce County shall make available to Grantee a list  
6 of anticipated projects for each new budget period as  
7 soon as is reasonably possible.

8  
9           2. Pierce County shall provide to Grantee two sets of  
10 preliminary plans for individual projects as soon as  
11 such plans are developed to a state of reasonable  
12 certainty, and shall advise Grantee of the anticipated  
13 date of start of work on such projects.

14  
15           3. Grantee shall, when requested by Pierce County in  
16 writing, locate its facilities in the field, show  
17 those locations on one set of preliminary plans  
18 provided, and return that set to Pierce County Public  
19 Works and Utilities - Transportation Services within  
20 four weeks of receiving the written request.

21  
22           4. Pierce County shall provide to Grantee final plans for  
23 such projects as soon as such plans are available and  
24 shall confirm or correct the anticipated date of start  
25 of work on such projects.

1 5. Pierce County shall assist Grantee in determining how  
2 its facilities shall be relocated. Such assistance by  
3 Pierce County shall include, at a minimum, copies of  
4 plans (as required above) and specifications for such  
5 County Projects, and information known to Pierce  
6 County as to existing survey control available for  
7 location of such County Projects. Such assistance  
8 shall not subject Pierce County to any liability for  
9 the costs of relocating the subject facilities a  
10 second time if Grantee incorrectly relocated its  
11 facilities the first time.

12  
13 6. When requested, Pierce County and Grantee shall meet  
14 to discuss how County Projects and utility relocations  
15 can be accomplished with the least impact on the  
16 other. Pierce County's decision shall be final in  
17 such matters, but shall not be unreasonable.

18  
19 7. Relocation of Grantee's facilities shall be completed  
20 in a timely manner defined as follows:

21  
22 Relocation of Grantee's facilities shall normally  
23 be accomplished in advance of County Projects.  
24 In the event relocation of Grantee's facilities  
25 is done concurrently with such Projects, Pierce  
26 County shall be so notified and agree to a  
27 written schedule for relocation. Compliance with

1           such a written schedule shall be Grantee's duty.  
2           In no event shall relocation of Grantee's  
3           facilities interfere with County Projects.  
4

5           8. If Grantee does not relocate its facilities in a  
6           timely manner as required above, Pierce County may  
7           relocate, or cause to be relocated, such facilities of  
8           Grantee as Pierce County deems necessary, and in the  
9           manner Pierce County deems necessary, in its sole  
10          discretion. Grantee hereby indemnifies and holds  
11          Pierce County, its employees, officers, officials, and  
12          agents totally free and harmless from all and any  
13          liability which may arise from damages caused by the  
14          relocation by Pierce County of the facilities of  
15          Grantee, even if such damages and liability arise from  
16          the negligence of Pierce County, its employees,  
17          officers, officials, and agents.  
18

19          9. Grantee hereby indemnifies and holds harmless Pierce  
20          County, its officers, officials, and employees, from  
21          damages that may arise from Grantee's failure to  
22          relocate its facilities in accordance with the dates  
23          for completion of relocation of facilities set forth  
24          above, or any other act or omission by Grantee, its  
25          contractor(s), agents, officers, or employees related  
26          to the provisions of this Franchise.  
27

1 10. It shall be conclusively presumed that Pierce County  
2 will have suffered damages as a result of exercising  
3 its rights as set forth in Item 8 above, and  
4 compensation for such damages will be difficult to  
5 ascertain, and therefore, Grantee shall compensate  
6 Pierce County for such damages in the amount of twice  
7 the amount of the cost of such relocation of Grantee's  
8 facilities by Pierce County.

9  
10 11. The exercise of its rights, as set forth in Item 8  
11 above, by Pierce County in no way relieves Grantee of  
12 completing and/or finalizing the relocation of its  
13 facilities at no expense to Pierce County, if the  
14 relocation work done by Pierce County is incomplete.

15  
16 12. In the event a lawsuit is brought by Pierce County  
17 against Grantee to collect damages presumed under Item  
18 10 above for the exercise by Pierce County of its  
19 rights under Item 8 above, Grantee hereby agrees the  
20 only issue will be the actual cost to Pierce County  
21 for relocating Grantee's facilities. The party  
22 prevailing in such an action shall be allowed its  
23 legal fees and costs.

24  
25 VIII

26 Grantee shall not sell, transfer, or assign this Franchise  
27 without first notifying the Pierce County Council. The terms

1 and conditions set forth herein shall be binding on Grantee's  
2 successors and assigns unless amended by the Council of Pierce  
3 County.

4  
5 IX

6 This Franchise is granted upon the further express  
7 condition that it shall not be an exclusive Franchise and shall  
8 not, in any manner, prohibit the County of Pierce from granting  
9 any other Franchise under and along any of the said County roads  
10 of any kind and character or territories that may be deemed  
11 proper by the Pierce County Council, and this Franchise shall  
12 not in any way prevent the County of Pierce from using the  
13 County rights-of-way, or affect the jurisdiction over them, and  
14 every part of them by the County of Pierce with full power to  
15 make the necessary repairs, changes and alterations in the same  
16 and like manner as though this Franchise had never been granted.

17  
18 Pierce County reserves for itself the right to so change,  
19 amend, modify, or amplify this Franchise to conform to any State  
20 statute, order of the Washington Utilities and Transportation  
21 Commission, or County regulation, ordinance, or right-of-way  
22 regulation, as may hereafter be enacted, adopted, or  
23 promulgated. This Franchise may be terminated at any time upon  
24 90 days written notice to Grantee to terminate this Franchise if  
25 Grantee fails to comply with its terms and conditions, or if  
26 Grantee fails to comply with such changes, amendments,  
27 modifications, or amplifications and upon termination Pierce

1 County shall have a lien upon all equipment and materials  
2 erected or placed under this Franchise, which lien may be  
3 enforced to reimburse Pierce County for any reasonable expenses  
4 and payments incurred in terminating this Franchise, and to cure  
5 defaults by Grantee.

6  
7 Grantee agrees to and shall provide available financial  
8 information to the County upon reasonable request. Grantee  
9 agrees to and shall during regular business allow agents of  
10 Pierce County access for inspection and reproduction of all of  
11 Grantee's business records, gross revenue reports, or rules and  
12 regulations relevant to a determination of the gross revenues  
13 received by Grantee from the area served by the facilities  
14 permitted by this Franchise.

15  
16 X

17 In the event that the territory covered by this Franchise  
18 shall at any time during the Franchise period be included within  
19 the limits of any incorporated city or town, the authorities of  
20 said city or town shall have the right, to be exercised at their  
21 discretion, to acquire by purchase or condemnation, any part of  
22 such pipes, conduits, and water system other than transmission  
23 lines at a price to be based upon the reasonable value of the  
24 same at the time, without any additional value for the Franchise  
25 or any unexpired period thereof, and upon such acquirement, this  
26 grant and Franchise shall immediately terminate, only that  
27 portion to be incorporated.

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XI

Grantee acknowledges that Pierce County Charter Section 9.20 Franchises provides in part: All Franchises shall be subject to the right of the Council, or the people acting for themselves through referendum, to repeal for cause, amend, or modify the Franchise in the interest of the public, and agrees to said condition.

XII

Any failure to render adequate service to the patrons of said water system, or the discontinuance of such water services without fault on the part of the patron or patrons involved, for a period of 30 days, shall work a forfeiture of this Franchise, at the discretion of the Pierce County Council, unless the failure should result from causes beyond human control.

XIII

Venue and jurisdiction for any controversy arising from the Franchise shall be in Pierce County, Washington.

XIV

Grantee shall provide full acceptance of this Franchise and all its terms and conditions by filing a signed copy of the Franchise with the Clerk of the Pierce County Council within 60 days from \_\_\_\_\_, 2005. This requirement shall be a condition precedent to the Franchise taking effect. If Grantee does not provide a signed copy of the Franchise as

1 set forth in this Section, this Franchise shall be null and  
2 void.

3  
4 Pursuant to RCW 36.55.080, a copy of this Franchise shall  
5 be recorded in the Office of the Pierce County Auditor.

6  
7 DATED at Tacoma, Washington, this \_\_\_\_\_ day of  
8 \_\_\_\_\_, 2005.

9  
10 PIERCE COUNTY EXECUTIVE  
11  
12 \_\_\_\_\_  
13 John W. Ladenburg

14  
15 Jopp Water Company accepts and agrees to comply with all  
16 terms and conditions of this Franchise.

17  
18 \_\_\_\_\_  
19 Name

20  
21 \_\_\_\_\_  
22 Title

23  
24 \_\_\_\_\_  
25 Company, Corporate Name, or  
26 Individual

27  
\_\_\_\_\_