

1 FILE NO. 80-A

PROPOSAL NO.2005-71

2 Sponsored by: Councilmember Terry Lee

3 Requested by: Pierce County Executive

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6 **ORDINANCE NO. 2005-71**
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9 **AN ORDINANCE OF THE PIERCE COUNTY COUNCIL FINDING THE PROPOSED NON-**
10 **EXCLUSIVE TELECOMMUNICATIONS FRANCHISE TO MCI**
11 **WORLDCOM NETWORK SERVICES INC., FOR A**
12 **TELECOMMUNICATIONS NETWORK IN PIERCE COUNTY TO BE IN**
13 **THE PUBLIC INTEREST; SETTING FORTH TERMS AND**
14 **CONDITIONS ACCOMPANYING THE GRANTING OF THE**
15 **TELECOMMUNICATIONS FRANCHISE; PROVIDING FOR THE**
16 **REGULATION OF CONSTRUCTION, OPERATION, MAINTENANCE,**
17 **AND USE OF THE NETWORK; PRESCRIBING REMEDIES FOR THE**
18 **VIOLATION OF THE PROVISIONS OF THE FRANCHISE; AND**
19 **AUTHORIZING THE COUNTY EXECUTIVE TO ENTER INTO THE**
20 **FRANCHISE AGREEMENT.**
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22 WHEREAS, MCI WORLDCOM Network Services, Inc., a Delaware
23 corporation, doing business in the State of Washington, has applied
24 for a non-exclusive telecommunications franchise to construct,
25 operate, and maintain telecommunications facilities upon, in,
26 under, across, along, and over certain County roads, highways, and
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1 other County property in Pierce County, Washington as hereinafter
2 set forth; and

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4 WHEREAS, Said application came on regularly for hearing before
5 the Pierce County Council on the date set forth below under the
6 provisions of Chapter 36.55, Revised Code of Washington and Chapter
7 12.34 Pierce County Code; and

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9 WHEREAS, Notice of said hearing has been duly given as
10 required by law, and that it is in the public interest to grant the
11 Franchise; NOW, THEREFORE,

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13 BE IT ORDAINED by the Council of Pierce County:

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15 Section 1. The Pierce County Council hereby finds that the
16 Telecommunications Franchise, a copy of which is attached hereto
17 and incorporated herein by reference as Exhibit "A," is in the
18 public interest.

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, phrases,
9 words and their derivations herein shall have the meaning given in the Telecommunications
10 Ordinance. Words not otherwise defined shall be given their common and ordinary meaning. When
11 consistent with the context, words used in the singular number include the plural number, words in
12 the plural number include the singular number and words used in the present tense include the future
13 tense.
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16 **Section 2. Specific Definitions.**

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18 A. **"Agency"** means any governmental agency or quasi-governmental agency other than the
19 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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D. **"Effective Date"** means the date identified in Article XXII, Section 4.

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

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

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

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

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

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

K. **"Laws"** means any and all judicial decisions and any and all federal, state and local statutes, constitutions, ordinances, resolutions, regulations, rules, tariffs, administrative orders,

1 certificates, orders, or other requirements of the County or other Agency having jurisdiction over
2 the parties to this Franchise, in effect at the time of execution of this Franchise and 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 limited
7 partnership, a sole proprietorship, a joint venture, a business trust, and any other form of
8 business association.
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11 N. **"Provision"** means any clause, condition, covenant, qualification, restriction, reservation, term,
12 or other stipulation in this Franchise that defines or otherwise controls, establishes, or limits the
13 performance required or permitted by this Franchise. All Provisions, whether covenants or
14 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.

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

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

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

12 A. Grant of Franchise.

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

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

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

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

1 in any manner with the existence and operation of any and all private property and Rights-of-
2 Way, sanitary sewers, water mains, storm drains, gas mains, poles, aerial or underground electric
3 and telephone wires, cable television and other telecommunications, utility and municipal
4 property without the express written approval of the owner or owners of the affected property or
5 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 obligations
10 under this Franchise. If required by Law, Grantee shall obtain all required approvals from the
11 appropriate governing authorities.
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14 **Section 2. Acceptance of Franchise.**

15 A. Franchise Acceptance Procedures.

16 This Franchise and the rights, privileges and authority granted hereby shall take effect provided
17 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 damage to
23 or loss of any facility within the Right-of-Way as a result of or in connection with any public
24 works, public improvements, construction, excavation, grading, filling, or work of any kind in
25 the Right-of-Way by or on behalf of the County.
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1 B. Acceptance of Power and Authority of County.

2 Grantee expressly acknowledges by acceptance of this Franchise that: (1) it has relied upon its
3 own investigation and understanding of the power and authority of the County to grant and
4 enforce the Franchise; (2) it has not been induced to enter into this Franchise arrangement by any
5 understanding or promise or other statement, whether verbal or written, by or on behalf of the
6 County concerning any term or condition of the Franchise that is not specifically included herein;
7 (3) it has carefully read the terms and conditions contained herein and of the Ordinance and that
8 Grantee is willing to and does accept all the obligations of such terms and conditions to the
9 extent not inconsistent with state or federal law and further agrees that it will not set up as
10 against the County any claim that any Provision of this Franchise or the Ordinance is
11 unreasonable, arbitrary, invalid or void subject to its rights herein; and (4) the matters contained
12 in Grantee's Application and all subsequent applications or proposals for extensions or renewals
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1 Franchise, and as stated in any and all other presentations to County, except as inconsistent with
2 law, regulations or local ordinance, are incorporated into this Franchise as though set out
3 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 terms,
9 conditions, and requirements of the Pierce County Code Chapter 12.34, this Franchise, the
10 County Charter and Code, and all applicable Laws, and Grantee's right to construct, erect, install
11 or modify its Telecommunications Network is specifically subject to the requirement that
12 Grantee obtain Permits as set forth in the Pierce County Code Chapter 12.34.
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15 B. After-Acquired Facilities.

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

24 No privilege or exemption is granted or conferred by this Franchise except as may be specifically
25 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:

1 Pierce County Executive Office

2 930 Tacoma Avenue South, Room 737

3 Tacoma, WA 98402-2100

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5 With Copy to:

6 Director, Public Works and Utilities

7 Public Services Bldg.

8 2401 South 35th, Room 150

9 Tacoma, WA 98409-7485

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12 Clerk of Pierce County Council

13 930 Tacoma Avenue South, Room 1046

14 Tacoma, WA 98402

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 With Copy to:

7 MCI WORLDCOM Network Services, Inc.

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

9 2400 North Glennville Drive

10 Richardson, Texas 75082

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15 **Section 7. Franchise Review.**

16 A. Regular Review.

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

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25 C. Other Review.

26 Nothing herein shall be construed to prohibit the County and the Grantee from engaging in a
27 continuous review of the performance of Grantee, and County may initiate or Grantee request a

1 public hearing on any issue related to compliance with the Franchise or any Permit related thereto.

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3 **ARTICLE III - TERM OF FRANCHISE**

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

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9 **ARTICLE IV - FEES AND CONSIDERATION**

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

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

1 option, may remove the abandoned Facilities at Grantee's sole cost and expense or accept the transfer
2 of ownership of the same to the County, consent for which transfer is hereby expressly given by
3 Grantee. The County shall not exercise its option hereunder to remove or transfer ownership of
4 Facilities, unless and until the County first gives ninety (90) days prior written notice to Grantee to
5 remove the Facilities. If Grantee shall fail to remove the Facilities or place them back into service as
6 required by the County, the County shall be entitled to remove the Facilities at Grantee's sole cost and
7 expense. Grantee shall execute such documents of title as will convey all right, title and interest in the
8 event of transfer.
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2. Grantee's failure to pay reimbursements for County-incurred costs relating to this Franchise or the Fees or any other payments required hereunder when due, and such failure continues for twenty (20) days after written notice is given to Grantee, provided the County shall not be required to give written notice more than twice during any twelve Month period. After notice has been given twice during any twelve Month period, Grantee shall be deemed in default, without the requirement of notice and the opportunity to cure, for any subsequent failure to pay amounts due hereunder during the same twelve Month period if such failure continues for ten days after the same becomes due.
 3. Upon Grantee's failure to perform any other obligation under this Franchise or cure any failure of performance within thirty days after written notice of such failure or demand for cure is given by the County to Grantee (or, if such failure of performance is not curable within thirty days in the reasonable determination of County, if the defaulting party fails to commence such cure within thirty days and fails to thereafter diligently pursue such cure to completion).
 4. Grantee becomes insolvent, liquidates, is adjudicated as bankrupt, makes an assignment for the benefit of creditors, invokes any provision of law for the relief of debtors, or initiates any proceeding seeking protection from its creditors.

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ARTICLE IX - REMOVAL AND RELOCATION OF FACILITIES

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Section 1. Facilities Relocation.

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

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3 A. Insurance Certificate.

4 Grantee shall obtain insurance of a quality and amounts as required in Pierce County Code
5 Section 12.34.630 and as detailed below and shall file the required original certificate(s) of
6 insurance with endorsements with the County, subject to the County's prior approval, which shall
7 clearly state:
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10 (1) Policy number; name of insurance company; name, address and telephone number of the
11 agent or authorized representative; name, address and telephone number of insured; project
12 name and address; policy expiration date; and specific coverage amount.

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14 (2) That thirty days prior written notice of cancellation is required to the County; and
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1 (3) That Grantee's insurance is primary with respect to any other valid or collectible insurance
2 that the County may possess, including any self-insured retentions the County may possess,
3 and any other insurance the County does possess shall be considered excess insurance only
4 and shall not be required to be contributory with this insurance.
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7 B. Coverage.

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

17 Grantee acknowledges and agrees, by acceptance of this Franchise, that failure to procure or
18 maintain the required insurance shall constitute a material breach of this Franchise and that the
19 County may immediately suspend
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1 operations under the Franchise, terminate the Franchise, or, at its discretion, procure or renew
2 such
3 insurance to protect the County's interests and be reimbursed by such Grantee for all premiums
4 paid in connection therewith.
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7 D. Insurance Amounts.

8 The Grantee shall maintain throughout the term of this Franchise worker's compensation
9 coverage and liability insurance in the minimum amounts of:

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11 (1) Commercial General Liability insurance - public liability including premises, products and
12 complete operations.

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.
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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 (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.

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

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8 E. General.

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

11
12 (1) The County shall be named as additional insured as to all applicable coverage.

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15 (2) Contracts shall provide for thirty day notices to the County prior to cancellation,
16 revocation, non-renewal or material change.

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18 **Section 2. Policy Limitations.**

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20 "Cross liability," "severability of interest" or "separation of insured's" clauses shall be made a
21 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 waiver by the County of Grantee's default or the County's remedies on account of such default.

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ARTICLE XII - TERMINATION OF FRANCHISE

Section 1. Termination.

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

Section 2. Notice.

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

Section 3. Removal.

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

1 event of an abandonment, the County may remove Grantee's Facilities, personal property and
2 improvements and charge Grantee the reasonable expense of removal and restoration. Grantee shall
3 further reimburse to the County all costs of cleanup associated with any leakage or contamination
4 from such Facilities whether such leakage or contamination occurs prior to or in the course of such
5 removal. Grantee shall not be responsible to the County for contamination caused by any Person
6 other than Grantee, its agents, employees, or contractors.
7
8

9 **Section 4. Lesser Sanctions.**

10 Additionally, the County may impose a lesser sanction as per Section 12.34.652 of the Pierce
11 County Code.
12
13

14
15 **ARTICLE XIII - GENERAL TERMS**
16

17 **Section 1. Reports and Records of the Grantee.**

18
19 A. Reports Required.

20 Grantee shall supply, upon request and at no cost, any information, including maps requested by the
21 County Executive, County Engineer or Director of Transportation as it relates to the physical aspects
22 of Grantee's facilities in the Rights-of-Way. Said information may be requested in hard copy and/or
23 electronic format compatible with County databases, including a GIS system if compatible with
24 Grantee's existing system.
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27 **Section 2. Enforcement and Administration by County.**

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A. Permits.

Grantee shall comply with Section 12.34.600 of the Pierce County Code. In addition thereto, Grantee shall apply for a construction Permit prior to beginning any work in a Public Way or Right-of-Way generally including the opening of any street in County and shall comply with Chapters 12.04 and 12.32 of the County Code. No work, other than emergency

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 than the
3 next business day. Grantee shall further comply with Sections 12.34.700, 12.34.705, and
4 12.34.715 of the Pierce County Code which generally apply to construction standards,
5 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-Way,
11 and other Public Property which might affect the other party or require its coordination.
12

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 moratorium,
17 unnecessary damage to public property, public expense, inconvenience, interference with County
18 utilities, or for any other reason determined by the County Executive or designee, or the County
19 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 for
4 each separate Network location requiring work or construction in public rights-of-way or other
5 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 County
11 for public needs or, where requested, other third party needs, how such accommodation should
12 be made, and a reasonable apportionment of any expenses of the same; PROVIDED, that this
13 Franchise creates no third party beneficial interests or enforceable contractual right to require the
14 County to order such accommodation. Notwithstanding the foregoing, it remains the
15 responsibility of the Grantee to anticipate and avoid conflicts with other right-of-way occupants
16 or users, other utilities, franchises or permittees. The County assumes no responsibility for such
17 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 12.34.614 of
7 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
15 **Section 2. Undergrounding.**

16
17 In those areas of County where the transmission or distribution facilities of the local exchange
18 carrier and/or the electric utility are underground, or hereafter placed underground, Grantee shall
19 likewise construct or relocate, operate and maintain that portion of its Network in the area
20 underground upon County approval. Further, consistent with any general municipal undergrounding
21 policy or program now or hereafter developed; the County may require Grantee's participation in
22 municipally imposed undergrounding or related requirements. Grantee agrees to coordinate its
23 underground installation and planning activities with the County's underground plan and policies.
24 Such undergrounding in any event shall be at Grantee's expense.
25
26

27 **ARTICLE XVI - INDEMNIFICATION**

Section 1. Indemnification.

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

If the claim, suit, or action for injuries, death, or damages as provided for in the preceding paragraphs of this contract is caused by or results from the concurrent negligence of (a) the indemnitee or the indemnitee's agents or employees and (b) the indemnitor or the indemnitor's agents or employees, the

1 indemnity provisions provided for in the preceding paragraphs of this contract shall be valid and
2 enforceable only to the extent of the indemnitor's negligence.

3
4 Grantee specifically and expressly waives any immunity under Industrial Insurance Title 51,
5 RCW, and acknowledges that this waiver was mutually negotiated by the parties herein.

6
7 **Section 2. No Responsibility for Loss.**

8
9 The County shall not be responsible for any damages, losses, or liability of any kind arising
10 from the issuance or approval by the County of a permit, license or franchise to any third party or any
11 interruption in Services.

12
13 **Section 3. Breach.**

14
15 The waiver of any breach or violation of any Provision of this Franchise shall not be deemed
16 to be a waiver or a continuing waiver of any subsequent breach or violation of the same or any other
17 Provision of this Franchise.

18
19 **Section 4. Intervention.**

20
21 If the County otherwise has the right to intervene, Grantee expressly acknowledges and
22 agrees, by acceptance of this Franchise, not to oppose such intervention by the County in any suit or
23 proceeding to which the Grantee is a party related to the Franchise.
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ARTICLE XVII - BONDS

Section 1. Bond Requirement.

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

Section 2. Rights Cumulative.

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

Section 3. Time to Cure.

1
2 Upon notice of a violation under this Franchise, Grantee shall have thirty days in which to cure
3 such violation. The time for Grantee to correct any violation, default or liability, shall be extended by
4 County if the necessary action to correct such violation, default or liability is of such a nature or
5 character as to require more than thirty days within which to perform, provided Grantee provides
6 written notice that it requires more than thirty days to correct such violations or liability, commences
7 the corrective action within the thirty days period and thereafter uses reasonable diligence to correct
8 the violation, default or liability.
9
10

Section 4. Franchise Termination Costs or Damages.

11
12 In the event this Franchise is canceled or terminated by reason of default of the Grantee or
13 otherwise revoked, County shall be entitled to collect from the Bond that amount which is attributable
14 to any damages sustained by County. The Grantee, however, shall be entitled to the return of such
15 Bond, or portion thereof, as remains nine Months after the expiration of the term 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 to
3 this Franchise and assuming all rights and obligations hereunder, and assuming all other rights and
4 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 for
10 renewal in accordance with Sections and 12.34.460, 12.34.465, and 12.34.470 (as appropriate) of the
11 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 part:
16 "All franchises shall be subject to ... the right of the Council, or the people acting for themselves
17 through referendum, to repeal for cause, amend, or modify the franchise in the interest of the public".
18

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 granted
26 to Grantee in the County.
27

Section 2. Severability.

1
2
3 If any section, subsection, sentence, clause, phrase or portion of this Franchise is for any
4 reason held invalid or unconstitutional by any court or administrative agency of competent
5 jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such
6 holding shall not affect the validity of the remaining portions thereof. In such event, the parties
7 mutually agree to make any amendments to this Agreement of other applicable agreements necessary
8 to effectuate the intention of this Agreement. In the event that such amendments are barred by any
9 legal requirements governing any party, the parties shall use their best efforts to otherwise avoid
10 prejudice to the respective parties' interests, and to implement changes to effectuate the intent in
11 entering into this Agreement. Should the County, in its sole discretion, determine that the severed
12 portions substantially alter the Agreement so

1 that the original intent and purpose of this Agreement no longer exists, the County may, in its sole
2 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
11 **Section 4. Effective Date.**

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 Auditor
15 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 any
22 Public Facilities, or in any manner limiting, relinquishing or waiving the County's control over the
23 operation and maintenance of the Rights-of-Way or any Public Facilities or in any manner limiting,
24 relinquishing or waiving governmental rights that the County may possess.
25

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

1 Agreement to be executed as of the ___ day of _____, 2005.

3 COUNTY OF PIERCE

5 By _____
6 John W. Ladenburg
7 Its COUNTY EXECUTIVE

7 Attest:

8 _____

10 _____
11 MCI WORLDCOM NETWORK

11 SERVICES, INC.
12 Grantee

13 By _____

14 Its _____

15 Dated: _____

17
18 Witness:

19
20 _____