ORDINANCE NO. 3010

AN ORDINANCE of the City of Kent, Washington, granting unto MCI Telecommunications Corporation, a Delaware corporation, its successors and assigns, the right, privilege, authority and franchise for ten years, to construct, maintain, operate, replace and repair an underground fiber optic cable telecommunications system, in, across, under, through and below certain designated public rights-of-way and public properties of the City of Kent, Washington.

THE CITY COUNCIL OF THE CITY OF KENT, WASHINGTON DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Franchise Granted. The existing right-of-way permit granted by the City of Kent, Washington (hereinafter the "City"), and MCI Telecommunications Corporation, a Delaware corporation (hereinafter "MCI"), for utilization of streets, avenues, rights-of-way, roads, alleys, lanes or other public places within the City of Kent is hereby cancelled as of 1-2-92.

Pursuant to RCW 35A.47.040, the City hereby grants to MCI, its heirs, successors, administrators, legal representatives and assigns, subject to the terms and conditions set forth hereinafter, a franchise for a period of ten years, commencing January 2, 1992 and expiring January 2, 2002.
This franchise shall grant MCI the right, privilege and authority to construct, operate, maintain, replace, and use all necessary equipment and facilities thereto for an underground fiber optic cable telecommunications system, in, under, on, across, or below the public right-of-ways and public places located in the City of Kent, more specifically described as follows:

<table>
<thead>
<tr>
<th>STREET</th>
<th>DISTANCE</th>
<th>LOCATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>76th Ave. So.</td>
<td>120 ft.</td>
<td>B.N.R.R. R/W Tracks</td>
</tr>
<tr>
<td>South 212th Street</td>
<td>110 ft.</td>
<td>B.N.R.R. R/W Tracks</td>
</tr>
<tr>
<td>South 228th Street</td>
<td>100 ft.</td>
<td>B.N.R.R. R/W Tracks</td>
</tr>
<tr>
<td>James Street</td>
<td>110 ft.</td>
<td>B.N.R.R. R/W Tracks</td>
</tr>
<tr>
<td>Smith Street</td>
<td>60 ft.</td>
<td>B.N.R.R. R/W Tracks</td>
</tr>
<tr>
<td>Meeker Street</td>
<td>60 ft.</td>
<td>B.N.R.R. R/W Tracks</td>
</tr>
<tr>
<td>West Gowe Street</td>
<td>60 ft.</td>
<td>B.N.R.R. R/W Tracks</td>
</tr>
<tr>
<td>West Titus Street</td>
<td>60 ft.</td>
<td>B.N.R.R. R/W Tracks</td>
</tr>
<tr>
<td>West Willis Street</td>
<td>66 ft.</td>
<td>B.N.R.R. R/W Tracks</td>
</tr>
<tr>
<td>South 259th Street</td>
<td>30 ft.</td>
<td>B.N.R.R. R/W Tracks</td>
</tr>
<tr>
<td>South 266th Street</td>
<td>30 ft.</td>
<td>B.N.R.R. R/W Tracks</td>
</tr>
</tbody>
</table>

The rights and privileges granted under this franchise shall not convey any right to MCI for the use of City-owned, leased or operated properties outside of the franchise area described above.

Section 2. Non-Exclusive Franchise Grant. This franchise is granted upon the express condition that it shall not in any manner prevent the City from granting other or further franchises in, along, over, through, under, below or across any of said right-of-ways, streets, avenues or all other public lands and properties of every type and description. Such franchise shall in no way prevent or prohibit the City from using any of said roads, streets or other public properties or affect its jurisdiction over
them or any part of them, and the City shall retain power to make all necessary changes, relocations, repairs, maintenance, establishment, improvement, dedication of same as the City may deem fit, including the dedication, establishment, maintenance, and improvement of all new rights-of-ways, thoroughfares and other public properties of every type and description.

Section 3. Relocation of Fiber Optic Cable and Telecommunications System Facilities. MCI agrees and covenants at its sole cost and expense, to protect, support, temporarily disconnect, relocate or remove from any street any of its installations when so required by the City by reason of traffic conditions or public safety, dedications of new right-of-ways and the establishment and improvement thereof, freeway construction, change or establishment of street grade, or the construction of any public improvement or structure by any governmental agency acting in a governmental capacity, provided that MCI shall in all such cases have the privilege to temporarily bypass, in the authorized portion of the same street upon approval by the City, any section of cable required to be temporarily disconnected or removed.

If the City determines that the project necessitates the relocation of MCI's then existing facilities, the City shall:

a) At least sixty (60) days prior to the commencement of such improvement project, provide MCI with written notice requiring such relocation; and

b) Provide MCI with copies of pertinent portions of the plans and specifications for such improvement project and a
proposed location for MCI's facilities so that MCI may relocate its facilities in other City right-of-way in order to accommodate such improvement project.

c) After receipt of such notice and such plans and specifications, MCI shall complete relocation of its facilities at no charge or expense to the City so as to accommodate the improvement project at least ten (10) days prior to commencement of the project.

MCI may, after receipt of written notice requesting a relocation of its facilities, submit to the City written alternatives to such relocation. The City shall evaluate such alternatives and advise MCI in writing if one or more of the alternatives is suitable to accommodate the work which would otherwise necessitate relocation of the facilities. If so requested by the City, MCI shall submit additional information to assist the City in making such evaluation. The City shall give each alternative proposed by MCI full and fair consideration. In the event the City ultimately determines that there is no other reasonable alternative, MCI shall relocate its facilities as otherwise provided in this Section.

The provisions of this Section shall in no manner preclude or restrict MCI from making any arrangements it may deem appropriate when responding to a request for relocation of its facilities by any person or entity other than the City, where the facilities to be constructed by said person or entity are not or will not become City-owned, operated or maintained facilities, provided that such arrangements do not unduly delay a City construction project.
Section 4. MCI's Maps and Records. As a condition of this franchise, MCI shall provide to the City at no cost, a copy of its current as built plans, maps and records of its fiber optic cable system and facilities as they exist on the date of this franchise agreement in the City. All such as built plans, maps and records will be available to the City upon request.

Section 5. Excavations. During any period of relocation or maintenance, all surface structures, if any, shall be erected and used in such places and positions within said public right-of-ways and other public properties so as to interfere as little as possible with the free passage of traffic and the free use of adjoining property, and MCI shall at all times post and maintain proper barricades and comply with all applicable safety regulations during such period of construction as required by the ordinances of the City or the laws of the State of Washington, including RCW 39.04.180 for the construction of trench safety systems.

Whenever MCI shall excavate in any public right-of-way or other public property for the purpose of installation, construction, repair, maintenance or relocation of its cable or equipment, it shall apply to the City for a permit to do so and shall give the City at least three (3) working days notice thereof. In no case shall any work commence within any public right-of-way or other public property without a permit, except as otherwise provided in this franchise ordinance. During the progress of the work, MCI shall not unnecessarily obstruct the passage or proper use of the right-of-way, and shall file as built plans or maps with the City showing the proposed and final location of the cable.
If either the City or MCI shall at any time plan to make excavations in any area covered by this franchise and as described in this section, the party planning such excavation shall afford the other, upon receipt of a written request to do so, an opportunity to share such excavation, PROVIDED THAT: (1) such joint use shall not unreasonably delay the work of the party causing the excavation to be made; (2) such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties; and (3) either party may deny such request for safety reasons.

Section 6. Restoration after Construction. MCI shall, after abandonment approved under Section 11 herein, or installation, construction, relocation, maintenance, or repair of cable/facilities within the franchise area, restore the surface of the right-of-way or public property to at least the condition same was in immediately prior to any such installation, construction, relocation, maintenance or repair. All concrete encased monuments which have been disturbed or displaced by such work shall be restored pursuant to all federal, state and local standards and specifications. MCI agrees to promptly complete all restoration work and to promptly repair any damage caused by such work to the franchise area or other affected area at its sole cost and expense.

Section 7. Emergency Work -- Permit Waiver. In the event of any emergency in which any facilities located in or under any street, breaks, are damaged, or if MCI's construction area is otherwise in such a condition as to immediately endanger the property, life, health or safety of any individual, MCI shall immediately take the proper emergency measures to repair its
facilities, to cure or remedy the dangerous conditions for the protection of property, life, health or safety of individuals without first applying for and obtaining a permit as required by this franchise. However, this shall not relieve MCI from the requirement of obtaining any permits necessary for this purpose, and MCI shall apply for all such permits not later than the next succeeding day during which the Kent City Hall is open for business.

Section 8. Dangerous Conditions, Authority for City to Abate. Whenever construction, installation or excavation of facilities authorized by this franchise has caused or contributed to a condition that appears to substantially impair the lateral support of the adjoining street or public place, or endangers the public, an adjoining public place, street utilities or City property, the Public Works Director may direct MCI, at MCI's own expense, to take actions to protect the public, adjacent public places, City property or street utilities; and such action may include compliance within a prescribed time.

In the event that MCI fails or refuses to promptly take the actions directed by the City, or fails to fully comply with such directions, or if emergency conditions exist which require immediate action, the City may enter upon the property and take such actions as are necessary to protect the public, the adjacent streets, or street utilities, or to maintain the lateral support thereof, or actions regarded as necessary safety precautions; and MCI shall be liable to the City for the costs thereof.
Section 9. **Recovery of Costs.** MCI shall pay a filing fee for the City’s administrative costs in drafting and processing this franchise agreement and all work related thereto. MCI shall further be subject to all permit fees associated with activities undertaken through the authority granted in this franchise ordinance or under the laws of the City. Where the City incurs costs and expenses for review, inspection or supervision of activities undertaken through the authority granted in this franchise or any ordinances relating to the subject for which a permit fee is not established, MCI shall pay such costs and expenses directly to the City. In addition to the above, MCI shall promptly reimburse the City for any and all costs it reasonably incurs in response to any emergency involving MCI’s cable and facilities.

Section 10. **City’s Reservation of Rights.** Pursuant to Section 35.21.860 of the Revised Code of Washington (RCW), the City is precluded from imposing a franchise fee on a telephone business as defined in RCW 82.04.065, except for administrative expenses or any tax authorized by RCW 35.21.865. MCI hereby warrants that its operations as authorized under this franchise are those of a telephone business as defined in RCW 82.04.065. As a result, the City will not impose a franchise fee under the terms of this ordinance, other than as described herein.

However, the City hereby reserves its right to impose a franchise fee on MCI for purposes other than to recover its administrative expenses or taxing, if MCI’s operations as authorized by this franchise change so that not all uses of the franchise are those of a ‘telephone business’ as defined in RCW 82.04.065; or, if statutory prohibitions on the imposition of such fees are removed. In the former instance, the City reserves its right to require that MCI obtain a separate franchise for its
change in use, which franchise may include provisions intended to regulate MCI's operations, as allowed under applicable law.

Section 11. Indemnification. MCI hereby releases, covenants not to bring suit and agrees to indemnify, defend and hold harmless the City, its officers, employees, agents and representatives from any and all claims, costs, judgments, awards or liability to any person, including claims by MCI's own employees to which MCI might otherwise be immune under Title 51 RCW, arising from injury or death of any person or damage to property of which the negligent acts or omissions of MCI, its agents, servants, officers or employees in performing this franchise are the proximate cause. MCI further releases, covenants not to bring suit and agrees to indemnify, defend and hold harmless the City, its officers and employees from any and all claims, costs, judgments, awards or liability to any person (including claims by MCI's own employees, including those claims to which MCI might otherwise have immunity under Title 51 RCW) arising against the City solely by virtue of the City's ownership or control of the rights-of-way or other public properties, by virtue of MCI's exercise of the rights granted herein, or by virtue of the City's permitting MCI's use of the City's rights-of-way or other public property based upon the inspection or lack of inspection of work performed by MCI, its agents and servants, officers or employees in connection with work authorized on the City's property or property over which the City has control, pursuant to this franchise or pursuant to any other permit or approval issued in connection with this franchise. This covenant of indemnification shall include, but not be limited by this reference, claims against the City arising as a result of the negligent acts or omissions of MCI, its agents, servants, officers or employees in barricading, instituting trench safety systems or providing other adequate warnings of any excavation, construction,
or work in any public right-of-way or other public place in performance of work or services permitted under this franchise.

Inspection or acceptance by the City of any work performed by MCI at the time of completion of construction shall not be grounds for avoidance of any of these covenants of indemnification. Said indemnification obligations shall extend to claims which are not reduced to a suit and any claims which may be compromised prior to the culmination of any litigation or the institution of any litigation.

In the event that MCI refuses the tender of defense in any suit or any claim, said tender having been made pursuant to the indemnification clauses contained herein, and said refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter), to have been a wrongful refusal on the part of MCI, then MCI shall pay all of the City’s costs for defense of the action, including all reasonable expert witness fees and reasonable attorneys’ fees and the reasonable costs of the City, including reasonable attorneys’ fees of recovering under this indemnification clause.

Should a court of competent jurisdiction determine that this franchise agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of MCI and the City, its officers, employees and agents, MCI’s liability hereunder shall be only to the extent of MCI’s negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes MCI’s waiver of immunity under Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

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The provisions of this Section shall survive the expiration or termination of this franchise agreement.

Section 12. Insurance. MCI shall procure and maintain for the duration of the franchise, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of the rights, privileges and authority granted hereunder to MCI, its agents, representatives or employees. MCI shall provide a copy of such insurance policy to the City for its inspection prior to the adoption of this franchise ordinance, and such insurance shall evidence:

1. Automobile Liability insurance with limits no less than $1,000,000 Combined Single Limit per accident for bodily injury and property damage; and

2. Commercial General Liability insurance policy written on an occurrence basis with limits no less than $1,000,000 Combined Single Limit per occurrence and $1,000,000 aggregate for personal injury, bodily injury and property damage. Coverage shall include but not be limited to: blanket contractual; products/completed operations; broad form property; explosion, collapse and underground (XCU); and Employer's Liability.

Any deductibles or self-insured retentions must be declared to and approved by the City. Payment of deductible or self-insured retention shall be the sole responsibility of MCI.

The insurance obtained by MCI shall name the City, its officers, employees and volunteers as insureds with regard to activities performed by or on behalf of MCI. The coverage shall
contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers. In addition, the insurance policy shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer’s liability. MCI’s insurance shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance maintained by the City, its officers, officials, employees or volunteers shall be excess of MCI’s insurance and shall not contribute with it. The insurance policy or polices required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days’ prior written notice by certified mail, return receipt requested, has been given to the City.

Any failure to comply with the reporting provisions of the policies required herein shall not affect coverage provided to the City, its officers, officials, employees or volunteers.

Section 13. Abandonment of MCI’s Cable or Telecommunication System Facilities. No cable, section of cable or facility laid in the street by MCI may be abandoned by MCI without the express written consent of the City. Any plan for abandonment or removal of MCI’s cable and facilities must be first approved by the Public Works Director, and all necessary permits must be obtained prior to such work.

Section 14. Bond. Before undertaking any of the work, installation, improvements, construction, repair, relocation or maintenance authorized by this franchise, MCI shall, upon the request of the City, furnish a bond executed by MCI and a corporate surety authorized to do a surety business in the State
of Washington, in a sum to be set and approved by the Director of Public Works as sufficient to ensure performance of MCI's obligations under this franchise. The bond shall be conditioned so that MCI shall observe all the covenants, terms and conditions and faithfully perform all of the obligations of this franchise, and to erect or replace any defective work or materials discovered in the replacement of the City's streets or property within a period of two years from the date of the replacement and acceptance of such repaired streets by the City.

Section 15. Modification. The City and MCI hereby reserve the right to alter, amend or modify the terms and conditions of this franchise upon written agreement of both parties to such alteration, amendment or modification.

Section 16. Forfeiture and Revocation. If MCI willfully violates or fails to comply with any of the provisions of this franchise, or through willful or unreasonable negligence fails to heed or comply with any notice given MCI by the City under the provisions of this franchise, then MCI shall, at the election of the Kent City Council, forfeit all rights conferred hereunder and this franchise may be revoked or annulled by the Council after a hearing held upon reasonable notice to MCI. The City may elect, in lieu of the above and without any prejudice to any of its other legal rights and remedies, to obtain an order from the superior court having jurisdiction compelling MCI to comply with the provisions of this Ordinance and to recover damages and costs incurred by the City by reason of MCI's failure to comply.

Section 17. Remedies to Enforce Compliance. In addition to any other remedy provided herein, the City reserves the right to pursue any remedy to compel or force MCI and/or its successors and assigns to comply with the terms hereof, and the pursuit of
any right or remedy by the City shall not prevent the City from thereafter declaring a forfeiture or revocation for breach of the conditions herein.

Section 18. City Ordinances and Regulations. Nothing herein shall be deemed to direct or restrict the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of this franchise, including any reasonable ordinance made in the exercise of its police powers in the interest of public safety and for the welfare of the public. The City shall have the authority at all times to control by appropriate regulations the location, elevation, and manner of construction and maintenance of any fiber optic cable or cable facilities by MCI, and MCI shall promptly conform with all such regulations, unless compliance would cause MCI to violate other requirements of law.

Section 19. Cost of Publication. The cost of the publication of this Ordinance shall be borne by MCI.

Section 20. Acceptance. After the passage and approval of this Ordinance and within sixty days after such approval, this franchise shall be accepted by MCI by its filing with the City Clerk an unconditional written acceptance thereof. Failure of MCI to so accept this franchise within said period of time shall be deemed a rejection thereof by MCI, and the rights and privileges herein granted shall, after the expiration of the sixty day period, absolutely cease and determine, unless the time period is extended by ordinance duly passed for that purpose.

Section 21. Survival. All of the provisions, conditions and requirements of Sections 9, 10, 11, and 12 of this franchise shall be in addition to any and all other obligations and
liabilities MCI may have to the City at common law, by statute, or by contract, and shall survive the City's franchise to MCI for the use of the areas mentioned in Section 1 herein, and any renewals or extensions thereof. All of the provisions, conditions, regulations and requirements contained in this franchise Ordinance shall further be binding upon the heirs, successors, executors, administrators, legal representatives and assigns of MCI and all privileges, as well as all obligations and liabilities of MCI shall inure to its heirs, successors and assigns equally as if they were specifically mentioned wherever MCI is named herein.

Section 22. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this franchise Ordinance. In the event that any of the provisions of this franchise are held to be invalid by a court of competent jurisdiction, the City reserves the right to reconsider the grant of this franchise and may amend, repeal, add, replace or modify any other provision of this franchise, or may terminate this franchise.

Section 23. Assignment. This agreement may not be assigned or transferred without the written approval of the City, except MCI may freely assign this Agreement in whole or in part to a parent, subsidiary, or affiliated corporation or as part of any corporate reorganization or refinancing. MCI shall provide written notice to the City of any such assignment.

Section 24. Notice. Any notice or information required or permitted to be given to the parties under this franchise
agreement may be sent to the following addresses unless otherwise specified:

City of Kent
Director of Public Works
300 West Gowe
Kent, WA 98032

MCI Telecommunications Corp.
Site Route Management
Department 1103
400 International Parkway
Richardson, Texas 75081

MCI Telecommunications Corp.
Office of General Counsel
Real Estate Administrator
1133 - 19th Street NW
Washington D.C 20036

Section 25. Effective Date. This Ordinance shall take effect on January 2, 1992 or thirty (30) days after its execution; having first been submitted to the Kent City Attorney; having been granted by the approving vote of at least a majority of the City Council at a regular meeting and after introduction on November 19, 1991; and after having been published at least once in a newspaper of general circulation in the City of Kent.

DAN KELLEHER, MAYOR

ATTEST:

BRENDA JACOBER, DEPUTY CITY CLERK
APPROVED AS TO FORM:

[Signature]

ROGER A. LUBOVICH, CITY ATTORNEY

PASSED the 3 day of December, 1991.
APPROVED the 4 day of December, 1991.
PUBLISHED the 22 day of November, 1991.

I hereby certify that this is a true copy of Ordinance No. 3610, passed by the City Council of the City of Kent, Washington, and approved by the Mayor of the City of Kent as hereon indicated.

[Signature]
BRENDA JACOBER, DEPUTY CITY CLERK