AN ORDINANCE of the City of Kent, Washington, granting unto Metricom, Inc., ("Metricom"), a Delaware corporation, its successors and assigns, the right, privilege, authority and franchise for five years, to construct, maintain, operate, replace and repair a wireless data communications system on, across, through, and above the public right-of-ways of the City of Kent, Washington for the sole purpose of operating a subscriber-based wireless data communications network, which is to be comprised of radio transmitters installed on utility poles and/or facilities.

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

Section 1. Franchise Granted. Pursuant to RCW 35A.47.040, the City of Kent, Washington (hereinafter the "City") hereby grants to Metricom, Inc., a Delaware corporation (hereinafter "Metricom"), subject to the terms and conditions set forth herein, a franchise for a period of five years, commencing on the effective date of this ordinance.

This franchise shall grant Metricom the right, privilege and authority to construct, operate, maintain, replace, and use all necessary equipment and facilities thereto for a wireless data communications system on, across, through, and above the public right-of-ways of the City of Kent, Washington for the sole purpose of operating a subscriber-based wireless data communications network, which is to be comprised of radio transmitters installed on utility poles and/or facilities.
communications system on, across, through and above the public
dright-of-ways located in the City of Kent. Metricom's system
shall be comprised of radio transceivers and related equipment
installed on utility poles and/or facilities.

Subject to the provisions of RCW 35A.14.900, these franchise
privileges shall extend automatically to all additional territory
annexed by the City during the term of this franchise, subject to
the rights, privileges and limitations established in this
franchise.

This franchise shall automatically renew for one (1)
additional five year term only upon the occurrence of the
following conditions:

(a) Metricom provides the City written notice, delivered by
certified mail to the City's Public Works Director and to
the City Clerk, at least 180 but not more than 240 days
prior to the termination of the original five-year term, of
the pending expiration of this franchise;

(b) The notice must specifically refer to this franchise by
its City Ordinance Number, must inform the City of the
franchise's expiration date, must specifically reference
this franchise provision, and further must inform the City
that this franchise will automatically renew for one
additional five-year term, unless the City can, in good
faith, show a substantial change in position of either party
evidencing that the franchise should be renegotiated or
terminated and the City provides, within ninety (90) days of receipt of Metricom's notice, written notice to Metricom of its decision not to renew or to re-open negotiations of this franchise.

Notwithstanding the preceding limitations on franchise renewal, the City reserves its absolute right, at its sole option, to reopen franchise negotiations during the last year of operation of the first five (5) year franchise term, for the purpose of modifying or amending this franchise only as it relates to the imposition of a franchise fee to be imposed for the second five (5) year franchise term.

Metricom's failure to comply in any material way with any part of these franchise renewal conditions shall cause this franchise to fully terminate at the end of the initial five-year term.

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

This franchise does not convey warranty or title or any interest in City right-of-ways. Nor does this franchise convey any interest in any particular location in City right-of-ways.

**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 City right-of-ways. The City shall retain power to make all necessary changes, relocations, repairs, maintenance, establishment, improvement, and dedication of its right-of-ways as the City may deem fit, including the dedication, establishment, maintenance, and improvement of all new right-of-ways.

This permit does not provide Metricom exclusive use of any City poles or property, and the City may install additional users on its poles; however, the City shall first obtain from any future pole user written agreements that subsequent to the installation by Metricom of its equipment on a City pole in accordance with this franchise ordinance, (i) that subsequent user shall not install new equipment on the pole if the equipment causes radio interference with Metricom's operations and (ii) in the event interference occurs, the subsequent user shall immediately take all reasonable steps necessary to eliminate that interference.

Section 3. Franchise Fee. Metricom shall pay the City quarterly, on or before the thirtieth (30th) day of each January, April, July and October, a sum equal to four percent (4%) of Metricom's gross revenues from subscribers whose billing address lies within the corporate limits of the City of Kent. Revenues that are derived as a portion of a national or regional service shall be computed on a per subscriber basis if such determination cannot be achieved by other means.
A. Late Payment. Any quarterly franchise fee not paid by Metricom within thirty (30) days of the end of a quarter shall bear interest at the rate of twelve percent (12%) per annum from the due date until paid.

B. Financial Reports. Each franchise fee payment shall be accompanied by a financial report showing the basis for the Operator's computation and separately indicating revenues received by the Operator within the City from the various subscription and other services it provides, together with such other information directly related to confirming the amount of Metricom's gross revenues as may be reasonably required by the City.

C. Audit by City. The City shall have the right, upon reasonable notice or no less than two working days, to inspect Metricom's books and records during normal business hours, for the purpose of ascertaining the actual gross revenues collected by Metricom. In the event that this audit discloses a discrepancy of more than ten percent (10%) between the financial report submitted by Metricom with a quarterly payment and the actual gross revenues collected by Metricom, Metricom shall pay the City the costs of that audit. In the event that the audit results in a determination that additional franchise fees are due the City, Metricom further agrees to pay interest as required for late payment on such additional franchise fees computed from
the date on which such additional franchise fees were due and payable.

D. **Non-waiver.** Acceptance of any franchise fee payment by the City shall not be construed as an agreement by the City that the franchise fee paid is in fact the correct amount, nor shall acceptance of payment by the City be construed as a release or waiver of any claim the City may have for further or additional sums payable under the provisions of this Ordinance.

E. **Taxes.** Nothing in this Section 3 shall limit Metricom's obligation to pay applicable local, State, or Federal taxes.

**Section 4. Facility Installation and Availability.** All Metricom facilities installed pursuant to this franchise ordinance will be installed on existing utility poles and/or facilities owned by Puget Power Company or the City, unless otherwise agreed to in writing. Metricom shall not construct or cause the construction of any poles or other structures within City right-of-ways.

The City may agree by separate agreement or ordinance to make City facilities, such as poles and traffic signals, available for use by Metricom provided that Metricom provides fair market value for the use of such facilities or, alternatively, provides other compensation or services as the
City deems equivalent. Additionally, Metricom's use of these City facilities cannot interfere with the City's use of the facilities.

To the extent that Metricom makes its facilities and/or services available to other governmental entities within the State of Washington in exchange for the use of property similar to those right-of-ways authorized to be used by Metricom hereunder, Metricom shall also make those facilities and/or services available to the City subject to similar terms and conditions.

Section 5. Relocation of Wireless Data Communications System Facilities. Subject to all applicable laws, within thirty (30) days, or within the period of time determined by the City in the event of an emergency, Metricom, at its sole cost, shall remove or relocate any of its equipment subject to this franchise ordinance upon the City's demand, for good cause shown. For the purposes of this Section 5, "good cause" for removal or relocation of Metricom's equipment shall include, without limitation, any lawful change of grade, alignment, or width of any public right-of-way or the replacement of any street light or utility pole.

The provisions of this Section 5 shall in no manner preclude or restrict Metricom 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 6. Technological Changes. To address technological changes in the state-of-the-art communication services during the term of this franchise ordinance, the City may elect to review, at intervals not less than three (3) years, the Metricom communications system and services in light of reasonable needed change in facilities and/or service provision, Metricom shall meet and confer with representatives of the City concerning any identified communications requirements of the City that Metricom might fulfill.

Section 7. Charge for Power Usage. Metricom's radio transmitters draw their operating power from the same power line that feeds City streetlights. Metricom shall, however, arrange by separate agreement with Puget Power Co., which provides electricity to the City, to independently pay for all electricity used by Metricom that is drawn from City streetlights.

Section 8. Maps, Records and Other Information. Metricom agrees to supply or update, without cost to the City, information requested by the City's Public Works Director, which information may include an installation inventory, maps, plans, and as-built drawings of all Metricom's installations. Metricom shall keep the Public Works Director informed of its long-range plans for coordination with the City's long range plans.
Section 9. No Obstruction; Pole Standards. Except during an emergency as provided for in Section 11, Metricom will not obstruct, hinder, damage, or otherwise interfere with any City facility or installation, including City utility fixtures or other authorized uses of the public right-of-ways, unless the City has first provided its written authorization. The City shall not unreasonably withhold this authorization. Metricom shall, when conducting any work on or at a City-owned utility pole, conduct that work in accordance with all applicable Puget Power "pole standards" in effect at the time Metricom conducts the work. Metricom shall be responsible for anticipating and reasonably avoiding conflicts with other right-of-way occupants or users, other utilities, franchisees, or permittees. The City assumes no responsibility for these conflicts or errors.

Section 10. Permits and Approvals. Except as provided for in Section 11, nothing in this franchise ordinance shall relieve Metricom from its obligation to obtain approvals or necessary permits from applicable federal, state, and City authorities for all activities, whether or not contemplated in this franchise, within the franchise area.

Section 11. Emergency Work -- Permit Waiver. In the event any of Metricom's facilities in any way create an immediate danger to the property, life, health or safety of the public or any individual, Metricom shall immediately take the proper emergency measures to repair its facilities and to cure or remedy the dangerous conditions for the protection of property, life, health or safety without first applying for and obtaining a
permit as required by this franchise. However, this shall not relieve Metricom from the requirement of obtaining any permits necessary for this purpose, and Metricom shall apply for these permits within seven (7) calendar days.

Section 12. Dangerous Conditions, Authority for City to Abate. Whenever construction or installation of the facilities authorized by this franchise has caused or contributed to a condition that appears to endanger the public, an adjoining public place, street utilities or City property, the Public Works Director may direct Metricom, at Metricom'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 Metricom 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 take such actions as are necessary to protect the public, the adjacent streets, or street utilities, and Metricom shall be liable to the City for the costs thereof.

Section 13. Recovery of Costs and Fees. Metricom shall pay a filing fee for the City's administrative costs in drafting and processing this franchise agreement in the amount of Two Thousand Dollars ($2000.00) together with an additional Five Hundred Dollars ($500.00) charge for all work related thereto. Metricom 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 reasonable costs 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, Metricom shall pay such costs and expenses directly to the City. In addition to the above, Metricom shall promptly reimburse the City for any and all costs it reasonably incurs in response to any emergency involving Metricom's facilities.

Nothing provided in this Section 13 shall exempt or in any manner limit Metricom's obligation to pay any tax required by the Kent City Code or any other ordinance, specifically including, without limitation, City utility taxes. Metricom shall remit to the City any taxes, including utility users' taxes, all in compliance with the provisions of the Kent City Code. Metricom reserves its right to collect any city imposed taxes from its customers.

Section 14. Indemnification. Metricom shall defend, indemnify and hold the City, its officers, officials, employees and agents harmless from any and all claims, actions, injuries, damages, losses or suits, including all legal costs, witness fees and attorney fees, arising out of or in connection with the performance of any of Metricom's rights or obligations granted by this franchise ordinance, but only to the extent of the negligence or comparative fault of Metricom, its employees, agents, contractors, subcontractors or assigns.
The City's inspection or acceptance of any of Metricom's work when completed shall not be grounds to avoid any of these covenants of indemnification.

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES Metricom'S WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY FOR THE PURPOSES OF THIS INDEMNIFICATION. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER.

The provisions of this Section 14 shall survive the expiration or termination of this franchise ordinance.

Section 15. Insurance. Metricom 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 Metricom, its agents, representatives or employees. Metricom 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 $2,000,000 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 Metricom.

The insurance obtained by Metricom shall name the City, its officers, employees and volunteers as insureds with regard to activities performed by or on behalf of Metricom. 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. Metricom'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 Metricom'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 16. Abandonment of Metricom's Facilities. No facility installed in any City right of way by Metricom may be abandoned by Metricom without the express written consent of the City. Any plan for abandonment or removal of Metricom's facilities must be first approved by the Public Works Director, and all necessary permits must be obtained prior to that work.

Section 17. Modification. The City and Metricom 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 18. Termination. If Metricom willfully violates or fails to substantially comply with any of the provisions of this franchise, or through willful or unreasonable negligence fails to heed or comply with any notice given Metricom by the City under the provisions of this franchise, then the Kent City Council may terminate this franchise.
This franchise creates no obligation to make any payment or award in condemnation to Metricom, except to the extent any state or federal laws may independently require.

Section 19. Failure to Commence Installation.
Notwithstanding the provisions of Section 18, this franchise ordinance shall be deemed void in its entirety if Metricom fails to commence installation of its facilities within one year from the effective date of this franchise ordinance, unless otherwise agreed to in writing by the City.

Section 20. 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 Metricom 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 21. 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 and permits the location, elevation, and manner of construction and maintenance of any wireless data communications system facilities by
Metricom, and Metricom shall promptly conform with all these regulations or permits, unless compliance would cause Metricom to violate other requirements of law.

Section 22. Cost of Publication. The cost of the publication of this ordinance shall be borne by Metricom.

Section 23. Acceptance. After the passage and approval of this ordinance and within sixty days after such approval, this franchise shall be accepted by Metricom by its filing with the City Clerk an unconditional written acceptance thereof. Failure of Metricom to so accept this franchise within said period of time shall be deemed a rejection thereof by Metricom, and the rights and privileges herein granted shall, after the expiration of the sixty day period, absolutely cease, unless the time period is extended by ordinance duly passed for that purpose.

Section 24. Survival. All of the provisions, conditions and requirements of Sections 14, 20 and 21 of this franchise shall be in addition to any and all other obligations and liabilities Metricom may have to the City at common law, by statute, or by contract, and shall survive the City's franchise to Metricom, 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 Metricom and all privileges, and all obligations and liabilities of Metricom shall inure to its heirs, successors and
assigns equally as if they were specifically mentioned wherever Metricom is named herein.

Section 25. 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.

Section 26. Assignment. Metricom shall not assign or transfer this franchise ordinance without the express written consent of the City, which consent shall not be unreasonably withheld. Metricom shall give to the City thirty (30) days' prior written notice of any such transfer. Any attempted assignment in violation of this Section 26 shall be void.

Section 27. 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
(206) 859-3383
Section 28. Effective Date. This Ordinance shall take effect thirty (30) days after its passage after first being submitted to the Kent City Attorney, and after being granted by the approving vote of at least a majority of the City Council at a regular meeting on July 18, 1995 and after introduction on July 5, 1995, and after being published at least once in a newspaper of general circulation in the City of Kent, and shall remain in force and effect for five years and for an additional five years thereafter if renewed under the provisions of Section 1; PROVIDED, THAT it shall not be effective unless and until written acceptance of this ordinance by Metricom signed by its appropriate officers, shall be filed with the City Clerk within sixty (60) days of its passage by the Kent City Council.
ATTEST:

Brenda Jacob
BRENDA JACOBER, CITY CLERK

APPROVED AS TO FORM:

[Signature]
ROGER A. LUBOVICH, CITY ATTORNEY

PASSED the 18 day of July, 1995.
APPROVED the 19 day of July, 1995.
PUBLISHED the 21 day of July, 1995.

I hereby certify that this is a true copy of Ordinance No. 3238, passed by the City Council of the City of Kent, Washington, and approved by the Mayor of the City of Kent as hereon indicated.

Brenda Jacob
BRENDA JACOBER, CITY CLERK
Metricom, Inc.

ACCEPTANCE OF CITY FRANCHISE

Ordinance No. _______, Passed on ____________, 1995.

I, ____________________, am the ____________________
of Metricom, Inc. and am an authorized representative to accept
the above-referenced City of Kent franchise ordinance on behalf
of Metricom, Inc.

I certify that this franchise and all its terms and
conditions are accepted by Metricom, Inc. without qualification
or reservation.

DATED this ___ day of ____________, 1995.

Metricom, Inc.

__________________________________________
by ______________________________
its ______________________________

STATE OF WASHINGTON
) ss.
COUNTY OF KING

I certify that I know or have satisfactory evidence that __________
____________________ is the person who appeared before me, and said person
acknowledged that he/she signed this instrument, on oath stated that he/she
was authorized to execute the instrument, and acknowledged it as the __________
____________________ of Metricom, Inc. to be the free and voluntary act of that
corporation for the uses and purposes mentioned in the instrument.

DATED: __________________________

________________________
NOTARY PUBLIC in and for the State of
Washington, residing at __________.
My commission expires __/__/____.