

MODEL FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT (hereinafter Agreement") is entered into by and between the Town of Kanosh, Utah (hereinafter "CITY"), a municipal corporation and political subdivision of the State of Utah, with principal offices at _____ Utah, and _____ (hereinafter "PROVIDER"), with its principal offices at _____.

W I T N E S S E T H :

WHEREAS, the PROVIDER desires to provide voice, data or video transmission services within the CITY and in connection therewith to establish a telecommunications network in, under, along, over and across present and future rights-of-way of the CITY; and

WHEREAS, the CITY has enacted _____ of the _____ City Code (hereinafter the "TELECOMMUNICATION RIGHTS-OF-WAY RESOLUTION") which governs the application and review process for Telecommunication Franchises in the CITY; and

WHEREAS, the CITY, in exercise of its management of public Rights-of-Way, believes that it is in the best interest of the public to provide the PROVIDER a nonexclusive franchise to operate a telecommunications network in the CITY.

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties contained herein, and for other good and valuable consideration, the CITY and the PROVIDER agree as follows:

ARTICLE 1. FRANCHISE AGREEMENT AND RESOLUTION.

1.1 Agreement. Upon approval by the CITY Council and execution by the parties, this Agreement shall be deemed to constitute a contract by and between CITY and PROVIDER.

1.2 Resolution. The CITY has adopted the TELECOMMUNICATIONS RIGHTS-OF-WAY RESOLUTION which is attached to this Agreement as Exhibit AA@ and incorporated herein by reference. The PROVIDER acknowledges that it has had an opportunity to read and become familiar with the TELECOMMUNICATIONS RIGHTS-OF-WAY RESOLUTION. The parties agree that the provisions and requirements of the TELECOMMUNICATIONS RIGHTS-OF-WAY RESOLUTION are material terms of this Agreement, and that each party hereby agrees to be contractually bound to comply with the terms of the TELECOMMUNICATIONS RIGHTS-OF-WAY RESOLUTION. The definitions in the TELECOMMUNICATIONS RIGHTS-OF-WAY RESOLUTION shall apply herein unless a different meaning is indicated. Nothing in this Section shall be deemed to require the PROVIDER to comply with any provision of the TELECOMMUNICATIONS RIGHTS-OF-WAY

RESOLUTION which is determined to be unlawful or beyond the CITY's authority.

1.3 Resolution Amendments. The CITY reserves the right to amend the TELECOMMUNICATIONS RIGHTS-OF-WAY RESOLUTION at any time. The CITY shall give the PROVIDER notice and an opportunity to be heard concerning any proposed amendments. If there is any inconsistency between the PROVIDER's rights and obligations under the TELECOMMUNICATIONS RIGHTS-OF-WAY RESOLUTION as amended and this Agreement, the provisions of this Agreement shall govern during its term. Otherwise, the PROVIDER agrees to comply with any such amendments.

1.4 Franchise Description. The Telecommunications Franchise provided hereby shall confer upon the PROVIDER the nonexclusive right, privilege, and franchise to construct and maintain a telecommunications network in, under, above and across the present and future public Rights-of-Way in the CITY. The franchise does not grant to the PROVIDER the right, privilege or authority to engage in community antenna (or cable) television business; although, nothing contained herein shall preclude the PROVIDER from (1) permitting those with a cable franchise who are lawfully engaged in such business to utilize the PROVIDER's System within the CITY for such purposes, or (2) from providing such service in the future if an appropriate franchise is obtained and all other legal requirements have been satisfied.

1.5 Licenses. The PROVIDER acknowledges that it has obtained the necessary approvals, licenses or permits required by federal and state law to provide with the provisions of this Agreement and with the TELECOMMUNICATIONS RIGHTS-OF-WAY RESOLUTION.

1.6 Relationship. Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third persons or the public in a manner that would indicate any such relationship with each other.

ARTICLE 2. FRANCHISE FEE.

2.1 Franchise Fee. For the Franchise granted herein, the PROVIDER shall pay to the CITY a franchise fee of ____% of its Gross Revenues [cannot exceed six percent], less any business license fee or business license tax enacted by the CITY. All payments shall be made to the CITY, and sent as follows, unless the PROVIDER is otherwise notified of a change in address in writing by the CITY:

2.2 Up-front Franchise Fee. Upon granting of this Franchise, the Provider shall pay a \$2500 up-front franchise fee. The Provider may offset the franchise fee paid to the City pursuant to Article 2.1, up to the amount of the up-front franchise fee paid to the City.

2.3 Equal Treatment. CITY agrees that if any service forming part of the base for calculating the franchise fee under this Agreement is, or becomes, subject to competition from a third party, the CITY will either impose and collect from such third party a fee or tax on Gross Revenues from such competing service in the same percentage specified herein, plus the percentage

specified as a utility revenue tax or license fee in the then current ordinances of the CITY, or waive collection of the fee provided for herein that are subject to such competition.

ARTICLE 3. TERM AND RENEWAL.

3.1 Term and Renewal. The franchise granted to PROVIDER shall be for a period of (____) years commencing on the first day of the month following this Agreement, unless this Franchise be sooner terminated as herein provided. At the end of the initial (____) year term of this Agreement, the franchise granted herein may be renewed by the PROVIDER upon the same terms and conditions as contained in this Agreement for an additional (____) year term, by providing to the CITY's representative designated herein written notice of the PROVIDER's intent to renew not less than ninety (90) calendar days before the expiration of the initial franchise term.

3.2 Rights of PROVIDER Upon Expiration or Revocation. Upon expiration of the franchise granted herein, whether by lapse of time, by agreement between the PROVIDER and the CITY, or by revocation or forfeiture, the PROVIDER shall have the right to remove from the Rights-of-Way any and all of its System, but in such event, it shall be the duty of the PROVIDER, immediately upon such removal, to restore the Rights-of Way from which such System is removed to as good condition as the same was before the removal was effected.

ARTICLE 4. PUBLIC USE RIGHTS.

4.1 City Uses of Poles and Overhead Structures. The CITY shall have the right, without cost, to use all poles owned by the PROVIDER within the CITY for fire alarms, police signal systems, or any lawful public use; provided, however, any said uses by the CITY shall be for activities owned, operated or used by the CITY for any public purposes and shall not include the provision of telecommunications service to third parties.

4.2 Limitations on Use Rights. Nothing in this Agreement shall be construed to require the PROVIDER to increase pole capacity, alter the manner in which the PROVIDER attaches equipment to the poles, or alter the manner in which the PROVIDER operates and maintains its equipment. Such CITY attachments shall be installed and maintained in accordance with the reasonable requirements of the PROVIDER and the current National Electrical Safety Code. CITY attachments shall be attached or installed only after written approval by the PROVIDER, which approval will be processed in a timely manner and will not be unreasonably withheld.

4.3 Maintenance of CITY Facilities. The CITY's use rights shall also be subject to the parties reaching an agreement regarding the CITY's maintenance of the CITY attachments.

ARTICLE 5. POLICE POWERS.

The CITY expressly reserves, and the PROVIDER expressly recognizes, the CITY's right and duty to adopt, from time to time, in addition to provisions herein contained, such ordinances and rules and regulations as the CITY may deem necessary in the exercise of its police power for the

protection of the health, safety and welfare of its citizens and their properties.

ARTICLE 6. CHANGING CONDITIONS AND SEVERABILITY.

6.1 Meet to Confer. The PROVIDER and the CITY recognize that many aspects of the telecommunication business are currently the subject of discussion, examination and inquiry by different segments of the industry and affected regulatory authorities and that these activities may ultimately result in fundamental changes in the way the PROVIDER conducts its business and the way the CITY regulates the business. In recognition of the present state of uncertainty respecting these matters, the PROVIDER and the CITY each agree, upon request of the other during the term of this Agreement, to meet with the other and discuss in good faith whether it would be appropriate, in view of developments of the kind referred to above during the term of this Agreement, to amend this Agreement or enter into separate, mutually satisfactory arrangements to effect a proper accommodation of any such developments.

6.2 Severability. If any section, sentence, paragraph, term or provision of this Agreement or the TELECOMMUNICATIONS RIGHTS-OF-WAY RESOLUTION is for any reason determined to be or rendered illegal, invalid or superseded by other lawful authority, including any state or federal, legislative, regulatory or administrative authority having jurisdiction thereof, or is determined to be unconstitutional, illegal or invalid by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision, all of which shall remain in full force and effect for the term of this Agreement or any renewal or renewals thereof. Provided that if the invalidated portion is considered a material consideration for entering into this Agreement, the parties will negotiate, in good faith, an amendment to this Agreement. As used herein, "material consideration" for the CITY is its ability to collect the Franchise Fee during the term of this Agreement and its ability to manage the Rights-of-Way in a manner similar to that provided in this Agreement, the TELECOMMUNICATIONS RIGHTS-OF-WAY RESOLUTION, and the CITY's excavation ordinance. For the PROVIDER, "material consideration" is its ability to use the Rights-of-Way for telecommunication purposes in a manner similar to that provided in this Agreement, the TELECOMMUNICATIONS RIGHTS-OF-WAY RESOLUTION, and the CITY's excavation resolution.

ARTICLE 7. EARLY TERMINATION, REVOCATION OF FRANCHISE AND OTHER REMEDIES.

7.1 Grounds for Termination. The CITY may terminate or revoke this Agreement and all rights and privileges herein provided for any of the following reasons:

(a) The PROVIDER fails to make timely payments of the Franchise Fee as required under Article 2 of this Agreement and does not correct such failure within sixty (60) calendar days after written notice by the CITY of such failure;

(b) The PROVIDER, by act or omission, materially violates a material duty herein set forth in any particular within the PROVIDER's control, and with respect to which redress is not

otherwise herein provided. In such event, the CITY, acting by or through its CITY Council, may determine, after hearing, that such failure is of a material nature, and thereupon, after written notice giving the PROVIDER notice of such determination, the PROVIDER, within sixty (60) calendar days of such notice, shall commence efforts to remedy the conditions identified in the notice and shall have ninety (90) calendar days from the date it receives notice to remedy the conditions. After the expiration of such 90-day period and failure to correct such conditions, the CITY may declare the franchise forfeited and this Agreement terminated, and thereupon, the PROVIDER shall have no further rights or authority hereunder; provided, however, that any such declaration of forfeiture and termination shall be subject to judicial review as provided by law, and provided further, that in the event such failure is of such nature that it cannot be reasonably corrected within the 90-day time period provided above, the CITY shall provide additional time for the reasonable correction of such alleged failure if the reason for the noncompliance was not the intentional or negligent act or omission of the PROVIDER; [for an Agreement with the incumbent local exchange carrier, they should be allowed to continue operation while the issue is being negotiated in good faith] or

(c) The PROVIDER becomes insolvent, unable or unwilling to pay its debts; is adjudged bankrupt; or all or part of its facilities should be sold under an instrument to secure a debt and is not redeemed by the PROVIDER within sixty (60) days.

7.2 Reserved Rights. Nothing contained herein shall be deemed to preclude the PROVIDER from pursuing any legal or equitable rights or remedies it may have to challenge the action of the CITY.

7.3 Remedies at Law. In the event the PROVIDER or the CITY fails to fulfill any of its respective obligations under this Agreement, the CITY or the PROVIDER, whichever the case may be, shall have a breach of contract claim and remedy against the other, in addition to any other remedy provided herein or by law; provided, however, that no remedy that would have the effect of amending the specific provisions of this Agreement shall become effective without such action that would be necessary to formally amend the Agreement.

7.4 Third Party Beneficiaries. The benefits and protection provided by this Agreement shall inure solely to the benefit of the CITY and the PROVIDER. This Agreement shall not be deemed to create any right in any person who is not a party and shall not be construed in any respect to be a contract in whole or in part for the benefit of any third party (other than the permitted successors and assigns of a party hereto).

ARTICLE 8. PARTIES DESIGNEES.

8.1 CITY Designee and Address. The _____ or his/her designee(s) shall serve as the CITY's representative regarding administration of this Agreement. Unless otherwise specified herein or in the TELECOMMUNICATIONS RIGHTS-OF-WAY RESOLUTION, all notices from the PROVIDER to the CITY pursuant to or concerning this Agreement, shall be delivered to the CITY's representative at _____, or such other officer and address as the CITY may designate by written notice to the PROVIDER.

8.2 PROVIDER Designee and Address. The _____ or his/her designee(s) shall serve as the PROVIDER's representative regarding administration of this Agreement. Unless otherwise specified herein or in the TELECOMMUNICATIONS RIGHTS-OF-WAY RESOLUTION, all notices from the CITY to the PROVIDER pursuant to or concerning this Agreement, shall be delivered to _____, and such office as the PROVIDER may designate by written notice to the CITY.

8.3 Failure of Designee. The failure or omission of the CITY's or PROVIDER's representative to act shall not constitute any waiver or estoppel by the CITY or PROVIDER.

ARTICLE 9. GENERAL PROVISIONS.

9.1 Binding Agreement. The parties represent that (a) when executed by their respective parties, this Agreement shall constitute legal and binding obligations of the parties; and (b) that each party has complied with all relevant statutes, ordinances, resolutions, by-laws and other legal requirements applicable to their operation in entering into this Agreement.

9.2 Utah Law. This Agreement shall be interpreted pursuant to Utah law.

9.3 Time of Essence. Time shall be of the essence of this Agreement.

9.4 Interpretation of Agreement. The invalidity of any portion of this Agreement shall not prevent the remainder from being carried into effect. Whenever the context of any provision shall require it, the singular number shall be held to include the plural number, and vice versa, and the use of any gender shall include any other and all genders. The paragraphs and section headings in this Agreement are for convenience only and do not constitute a part of the provisions hereof.

9.5 No Presumption. All parties have participated in preparing this Agreement. Therefore, the parties stipulate that any court interpreting or construing the Agreement shall not apply the rule of construction that the Agreement should be more strictly construed against the drafting party.

9.6 Amendments. This Agreement may be modified or amended by written agreement only. No oral modifications or amendments shall be effective.

9.7 Binding Agreement. This Agreement shall be binding upon the heirs, successors, administrators and assigns of each of the parties.

SIGNED AND ENTERED INTO this _____ day of _____, 199__.

"CITY",

TOWN OF KANOSH

By: _____

Kanosh Town Corporation, Mayor

ATTEST:

City Recorder

"PROVIDER"

By: _____

Title _____

(Print Name and Title Here)

STATE OF _____)

: ss.

COUNTY OF _____)

On the _____ day of _____, 199__, personally appeared before me
_____, who being by me duly sworn did say that he/she is the
_____ of _____, and that the foregoing instrument was
signed in behalf of said corporation by authority of a resolution of its board of directors; and they
acknowledged to me that said corporation executed the same.

Notary Public