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 AMENDED AND RESTATED  
  
 FRANCHISE AGREEMENT  
  
 Between  
  
 THE CITY OF NEW YORK  
  
 and  
  
 METROMEDIA FIBER NETWORK NYC, INC.  
  
 Franchise for Local High-Capacity  
 Telecommunications Services  
  
 Dated February 28, 2000  
  
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 THIS AGREEMENT, dated as of 28th day of February, 2000 (the "Effective  
Date"), is by and between THE CITY OF NEW YORK (as defined in Section 1 hereof,  
the "City") and METROMEDIA FIBER NETWORK NYC, INC., whose principal place of  
business is located 0 Xxxxx Xxxxxxxxx Xxxxxx, Xxxxx Xxxxxx Xxx Xxxx 00000 (as  
defined in Section 1 hereof, the "Company"), (each, a "party" and collectively,  
the "parties").  
  
 WITNESSETH  
  
 WHEREAS the City and National Fiber Network, Inc. ("NFN") previously  
entered into a franchise agreement (as amended, the "Original Agreement") dated  
as of the 20th day of December, 1993 (the "Original Agreement Date") pursuant to  
which NFN was granted a franchise to install cable, wire, fiber optic  
telecommunications cable or other transmission medium that may be used in lieu  
of cable, wire or fiber optic telecommunications cable for the same purposes and  
related equipment and facilities on, over, and under the City's Inalienable  
Property to be used in providing Telecommunications Services:  
  
 WHEREAS NFN transferred the Original Agreement to the Company as permitted  
by resolution passed by the New York City Franchise and Concession Review  
Committee (as defined in Section 1 hereof, the "FCRC") on September 10, 1997  
(Cal. No. 3);  
  
 WHEREAS, the City and Company wish to amend and restate the Original  
Agreement to reflect certain additional developments and to incorporate the  
parties' understanding with respect to the System and the Services, and to  
replace the Original Agreement with this Agreement;  
  
 WHEREAS, the New York City Department of Information Technology and  
Telecommunication (as defined in Section 1 hereof, "DoITT"), on behalf of the  
City, has the authority to grant franchises involving the occupation or use of  
the Inalienable Property (as defined in Section 1 hereof) of the City in  
connection with the provision of Telecommunications Services (as defined in  
Section 1 hereof including renewals thereof; and  
  
 WHEREAS, the Company had submitted to DoITT its proposal in response to a  
Request for Proposals issued by DoITT pursuant to Resolution No. 404 (adopted by  
the New York City Council on March 26, 1992); and  
  
 WHEREAS, on February 7, 2000 the FCRC held a public hearing on the  
Company's petition for an amended and restated franchise to install cable, wire,  
fiber optic telecommunications cable or other transmission medium that may be  
used in lieu of cable, wire or fiber optic telecommunications cable for the same  
purposes and related equipment and facilities on, over, and under the City's  
Inalienable Property to be used in providing Telecommunications Services, which  
was a full public proceeding affording due process in compliance with the  
requirements of Chapter 14 of the City Charter; and  
  
  
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 WHEREAS, at said hearing, the FCRC reviewed the Company's financial, legal  
and technical ability to carry out its obligations pursuant to this Agreement;  
reviewed the Company's plan for constructing, operating, maintaining and  
upgrading the System (as defined in Section 1 hereof); and determined that this  
Agreement granting the Company a nonexclusive franchise complies with all  
applicable City Laws and regulations; and  
  
 WHEREAS, DoITT has reviewed the proposed action under the New York State  
Environmental Quality Act ("SEQRA") (Section 8-010 et. seq.) of the New York  
State Environmental Conservations Law), the SEQRA regulations set forth at Part  
617 of Title 6 of the New York Code of Rules and Regulations, and the City  
Environmental Quality Review ("CEQR") process (Chapter 5 of Title 62 and Chapter  
6 of Title 42 of the Rules of the City of New York) and determined that this  
action is properly classified as "Type II" action thereunder; and  
  
 WHEREAS, the New York City Department of City Planning determined, as  
evidenced in its letter dated April 23, 1992, that the proposed franchise would  
have no land use impacts and that review pursuant to Section 197c of the New  
York City Charter (the "City Charter") would not be necessary; and  
  
 WHEREAS, the City intends to exercise the full scope of its municipal  
powers, including both its police power and contracting authority, to promote  
the public interest, to enhance the health, welfare and safety of the public,  
and to stimulate commerce by assuring the widespread availability of reliable  
high-capacity telecommunications services; and, in pursuit of these goals among  
other purposes, desires to maximize the availability of such Telecommunications  
Services and to develop innovative uses by the City and its institutions of such  
Services.  
  
 NOW, THEREFORE, in consideration of the foregoing clauses, which clauses  
are hereby made a part of this Agreement, the mutual covenants and agreements  
herein contained, and other good and valuable consideration, the parties hereby  
covenant and agree as follows:  
  
 SECTION 1 -- DEFINED TERMS  
  
 For purposes of this Agreement, the following terms, phrases, words, and  
their derivatives shall have the meanings set forth in this Section, unless the  
context clearly indicates that another meaning is intended.  
  
 1.1. "Affiliated Person" means each Person who falls into one or more of  
the following categories. (i) each Person having, directly or indirectly, a  
Controlling Interest in the Company; (ii) each Person in which the Company has,  
directly or indirectly, a Controlling Interest; (iii) each officer, director,  
general partner, limited partner holding an interest of ten percent (10%) or  
more, joint venturer or joint venture partner of the Company; and (iv) each  
Person, directly or indirectly, controlling, controlled by or under common  
Control with the Company; provided that "Affiliated Person" shall in no event  
mean the City, any limited partner holding an interest of less than ten percent  
(10%) of the Company or any creditor of the Company solely by virtue of its  
status as a creditor and which is not otherwise an Affiliated Person.  
  
  
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 1.2 "Agreement" means this agreement, together with the Appendices  
attached hereto and all amendments, modifications or renewals hereof or thereof.  
  
 1.3 "City" means the City of New York or, as appropriate in the case of  
specific provisions of this Agreement, any board, bureau, authority, agency,  
commission, department or any other entity of the City of New York, or any  
authorized officer, official, employee or agent thereof, or any successor  
thereto.  
  
 1.4 "Commissioner" means the Commissioner of DoITT, or his or her  
designee, or any successor in function to the Commissioner.  
  
 1.5 "Company" means METROMEDIA FIBER NETWORK NYC, INC., a corporation  
organized and existing under the laws of the State of Delaware and authorized to  
do business as a corporation in the State of New York, whose principal place of  
business is located at 0 Xxxxx Xxxxxxxxx Xxxxxx, Xxxxx Xxxxxx Xxx Xxxx 00000.  
  
 1.6 "Comptroller" means the Comptroller" means the Comptroller of the  
City, the Comptroller's designee, or any successor in function to the  
Comptroller.  
  
 1.7 "Control" or of "Controlling Interest" in a Person means actual  
working control whatever manner exercised, including, without limitation,  
working control through ownership, management, debt instruments or negative  
control, as the case may be, of such Person. A rebuttable presumption of the  
existence of Control of or a Controlling Interest in a Person shall arise from  
the beneficial ownership, directly or indirectly, by any Person, or group of  
Persons acting in concert, of more than ten percent (10%) of such Person (which  
Person or group of Persons is hereinafter referred to as "Controlling Person").  
"Control" or "Controlling Interest" as used herein may be held simultaneously by  
more than one Person or group of Persons.  
  
 1.8 "Customer" means any Person lawfully receiving any Service provided by  
the Company by means of the System.  
  
 1.9 "DoITT" means the Department of Information Technology and  
Telecommunications of the City of New York, or any successor thereto(1).  
  
 1.10 "Effective Date" means the date this Agreement is fully executed and  
delivered by the City and the Company.  
  
 1.11 "FCC" means the Federal Communications Commission, or any successor  
thereto.  
  
 1.12 "FCRC" means the Franchise and Concession Review Committee of the  
City of New York, or any successor thereto.  
  
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(1) Formerly the Department of Telecommunications and Energy ("DTE").  
  
  
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 1.13 "Fiber" means fiber optic telecommunications cable or other  
transmission medium that may be used in lieu thereof for the same purposes.  
  
 1.14 "Franchise Area" means the City of New York, unless a smaller area is  
depicted in Appendix A to this Agreement.  
  
 1.15 "Gross Revenue" shall include all revenue, as determined in  
accordance with the generally accepted accounting principles, that is received  
directly or indirectly by the Company or by any Affiliated Person from or in  
connection with any Telecommunications Services provided in accordance with this  
Agreement which originate in and/or terminate in the City (which shall include a  
proportional allocation, which allocation shall be fair and equitable, of  
revenues received by, or that should have been received by, the Company, any  
Affiliated Person or any other Person for Service utilizing any part of the  
System, provided, however, that such proportional allocation shall in no case be  
less than the fair market value for such Service). The Company shall, within two  
years following the Effective Date, submit to the City for the City's review and  
approval the method by which such allocation is to be made, and such approval by  
the City shall not be unreasonably withheld. If the City's decision become  
subject to court review, the court shall undertake its review consistent with  
the standards established in this Section 1.15. The revenues described in this  
paragraph shall include, without limitation, the value of any free Services  
provided by the Company (provided, however, that the value of any free Service  
provided hereunder to the City pursuant to Section 7.1.1(b) or Appendix E or to  
any other governmental entity shall not constitute Gross Revenue); the fair  
market value of any nonmonetary transactions between the Company and any Person  
other than an Affiliated Person, but not less than the customary prices paid in  
connection with equivalent transactions, viewing all components of the  
transactions taken as a whole, the fair market value of any nonmonetary  
transactions between the Company and any Affiliated but not less than the  
customary prices paid in connection with equivalent transactions, considering  
the entirety of all transactions taken as a whole, conducted with Persons who  
are not Affiliated Persons; and any revenue received by the Company or by any  
Affiliated Person, as reasonably determined from time to time by the City,  
through any means which is intended to have the effect of evading the payment of  
compensation that would otherwise be paid to the City for the franchise granted  
herein. Gross Revenue shall also include revenue derived from the sale or lease  
of equipment and/or facilities provided by the Company or any Affiliated Person  
if such facilities and/or equipment are required for and integrated with the  
Services provided by the Company within the Franchise Area, except that Gross  
Revenue shall not include revenue from the sale of customer equipment that is  
readily available for sale in the consumer retail market. Gross Revenue shall  
not include (i) actual payments received from interconnecting telecommunications  
services providers outside the boundaries of New York City, for services  
provided outside the boundaries of New York City; (ii) taxes collected to pay to  
legitimate taxing authorities; (iii) any revenues that are already included in  
the calculation of franchise fees payable to the City under any other franchise  
agreement between (a) the City and (b) the Company or any Affiliated Person  
provided that any services other than a "cable system" as defined in the Cable  
Communications Policy Act of 1984 as amended 47 U.S.C ss. 522 et. seq., and/or  
"mobile telecommunications services" as defined in the authorizing resolution  
adopted by the Council on August 11, 1999 (Resolution 957) shall be considered  
to be provided under the franchise granted herein; (iv) any free Services  
required by this Agreement; (v) the revenue of any Person (including, without  
limitation, a supplier of services) to the extent that such revenue is also  
included in Gross Revenue of the Company; (vi)  
  
  
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the revenue of the Company of any Affiliated Person received directly from the  
sale of any merchandise, goods or other non-Telecommunications Services that are  
sold through any Service distributed over the System (other than that portion of  
such revenue which represents or can be attributed to a customer fee or other  
payment for the use of the System for the sale of such merchandise, goods or  
non-Telecommunications Services, which portion shall be included in Gross  
Revenue), provided, however, that the foregoing exclusion from Gross Revenue  
shall in no way be deemed to exclude from Gross Revenue any revenue derived from  
the sale or lease of equipment and/or facilities provided by the Company or any  
Affiliated Person if such facilities and/or equipment are required for and  
integrated with the Services provided by the Company; (vii) investment income;  
(viii) the revenue of any Affiliated Person which represents standard and  
reasonable amounts paid by the Company to the Affiliated Person for ordinary and  
necessary business expenses of the Company, including, without imitation,  
professional service fees and insurance or bond premiums; (ix) advertising  
commissions deducted by advertising agencies before advertising revenues are  
paid over to the Company; (x) any amount billed to customers and collected by  
the Company or any Affiliated Person on behalf of any non-Affiliated Person who  
is a telecommunications provider for services provided by such provider to such  
customers where such amount is passed through in its entirety by the Company or  
Affiliated Person to such provider; (xi) the value of any use of the System by  
the Company or Affiliated Person for wholly owned internal administrative  
purposes, including the distribution of cable programming from one Affiliated  
Person to another Affiliated Person, provided that such Affiliated Persons are  
substantially owned by the Company or its parent; (xii) to the extent consistent  
with generally accepted accounting principles, consistently applied, bad debt  
write-offs; and (xiii) the value of short-term promotional Services. With  
respect to the Gross Revenue from customers receiving "resold" service (as  
opposed to "facilities-based" service), Gross Revenue shall be reduced by the  
amounts paid by the Company to the independent third party owner of the facility  
(or facilities) through which such customers are being served, for such  
facilities, services and equipment as are necessary to provide the resold  
services to such customers (such amounts paid may include (if applicable under  
the circumstances) for example, and without limitation, monthly service charges,  
non-recurring charges, local and itemized call charges, enhanced service fees,  
directory assistance fees and surcharges. For purposes of this Agreement "resold  
services" shall include the sale of services by the Company using the fiber or  
other transmission facilities of any independent third party.  
  
 1.16 "Inalienable Property" means the rights of the City in and to its  
waterfront, ferries, wharf property, bridges, land under water, public landings,  
wharves, docks, streets, avenues, highways, parks, waters, waterways and all  
other public places.  
  
 1.17 "Initial Backbone" means the backbone depicted in Appendix O to this  
Agreement.  
  
 1.18 "Mayor" means the chief executive officer of the City, the Mayor's  
designee, or any successor to the executive powers of the present Mayor.  
  
 1.19 "Original Agreement" and "Original Agreement Date" have the meanings  
set forth in the first paragraph of the preamble to this Agreement.  
  
  
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 1.20 "Person" means any natural person or any association, firm,  
partnership, joint venture, corporation, or other legally recognized entity,  
whether for profit or not for profit, but shall not mean the City.  
  
 1.21 "PSC" means the New York State Public Service Commission, or any  
successor thereto.  
  
 1.22 (a) "Service" or "Telecommunications Service(s)" means any  
telecommunications services provided by the Company within the Franchise Area  
which the Company is authorized to provide under applicable federal, state and  
local law, and any equipment and/or facilities required for and integrated with  
the Services provided by the Company within the Franchise Area except as  
excluded in paragraphs (b) or (c)(i) below.  
  
 (b) "Service" or "Telecommunications service(s)" do not include (i)  
a "cable service" as defined in Cable Communications Policy Act of 1984, (47  
U.S.C. ss.522 et. seq.) (ii) "mobile telecommunication services" as defined in  
the authorizing resolution adopted by the New York City Council on July 19, 1994  
(Resolution No. 438), and (iii) the installation or operation of public pay  
telephones as defined in the authorizing resolution adopted by the New York City  
Council on March 25, 1997 (Resolution No. 2248), (iv) other telecommunications  
activities requiring the installation or operation of street furniture or (v)  
open video service as described in 47 U.S.C. ss. 573.  
  
 (c) (i) "Service" or "Telecommunications service(s)" shall not  
include the providing or leasing of Fiber capacity by the Company to either (x)  
any related entity providing "mobile telecommunications services" or (y) any  
related or unrelated entity providing "cable service" (as defined in 47 U.S.C.  
ss.522) unless such entity has a franchise from the City for the provision of  
"mobile telecommunications services", "cable service" or an agreement to provide  
an open video system (as described in 47 U.S.C. and in the rules and regulations  
promulgated thereunder).  
  
 (ii) "Service" or "Telecommunications Service(s)" shall  
include the providing or leasing of Fiber capacity by the Company to any  
unrelated entity providing "mobile telecommunications services".  
  
 (d) For purposes of this definition, a related entity is an entity  
(i) which, directly or indirectly, owns a beneficial interest of 10% or more in  
the Company, or (ii) in which the Company, directly or indirectly, a common  
owner of a beneficial interest of 10% or more in each, or (iv) which is an  
Affiliated Person, or (v) which is otherwise related to the Company in a manner  
similar, or to an extent comparable, to the relationships described in the  
proceeding clauses (i) through (iv).  
  
 (e) For the purposes of this definition, an unrelated entity means  
an entity which is not a related entity.  
  
 1.23 "Signal" means any transmission of electronic, electrical or radio  
frequency energy or optical information.  
  
  
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 1.24 "System" or "Telecommunications System" means the telecommunications  
system which is to constructed, operated and maintained by the Company pursuant  
to this Agreement, including, without limitation, all real property and  
interests in real property, all tangible and intangible personal property,  
buildings, offices, furniture, Customer lists, cables, wires, optical fibers,  
amplifiers and all other electronic devices, equipment and facilities used in  
connection therewith, and all rights, contracts and understandings with regard  
to any matter related thereto.  
  
 SECTION 2 -- GRANT OF AUTHORITY  
  
 2.1 Term  
  
 This Agreement, and the franchise granted hereunder, shall commence  
upon the Effective Date, and shall continue for a period of fifteen (15) years  
from the Original Agreement Date, unless this Agreement is earlier terminated  
upon the earliest to occur of: (a) a revocation of the franchise, as provided by  
Section 11.3 hereof, or (b) the expiration of the term of the franchise by  
acceleration, or otherwise. The period of time that this Agreement remains in  
effect is herein referred to as the "Term".  
  
 2.2 Conditions to Execution  
  
 2.2.1 Certain Actions by the Company Before Execution  
  
 Prior to the execution of this Agreement, the Company has  
satisfied certain conditions to the City's execution of this Agreement by  
delivering to DoITT the following: (a) evidence that it has deposited with the  
Comptroller the Performance Bond/Security Fund required pursuant to Section 5.8  
hereof; (b) a certificate of liability insurance, pursuant to Section 10.2  
hereof, with a copy to the Comptroller; (c) an opinion of the Company's counsel  
dated as of the Effective Date opining that this Agreement has been duly  
authorized, executed and delivered by the Company and is a binding obligation of  
the Company and opining as to such other matters as the City has requested; (d)  
the questionnaires required in connection with the City's Vendor Information  
Exchange System ("VENDEX"); (e) evidence that the Company has paid the initial  
portion of its pro rata share of the City's franchising cost pursuant to Section  
7.2.1 herein; and (f) certified copies of the Company's organizational and  
governing documents, as amended to date, pursuant to Section 13.6[ILLEGIBLE]  
herein.  
  
 2.2.2 Vendex  
  
 Favorable completion of the City's appropriate review in  
connection with Vendex shall be a condition to the City's execution of this  
Agreement.  
  
 2.3 Nature of Franchise, Effect of Termination and Renewal  
  
 2.3.1 Nature of Franchise  
  
 (a) The City hereby grants the Company, subject to the terms  
and conditions of this Agreement, a nonexclusive franchise providing the right  
and consent to  
  
  
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 install, operate, repair, maintain, remove and replace cable, wire, Fiber  
 or other transmission medium that may be used in lieu of cable, wire or  
 Fiber for the same purposes and related equipment and facilities on, over  
 and under the Inalienable Property of the City in order to provide  
 Telecommunications Services which originate and/or terminate in or transit  
 the Franchise Area.  
  
 (b) The Telecommunications Services the Company intends (as of  
 the Effective Date) to offer and the Telecommunications Systems the  
 Company intends (as of the Effective Date) to construct, operate and  
 maintain, are set forth on Appendix D to this Agreement.  
  
 (c) Before offering or providing any Telecommunications  
 Services pursuant to this franchise, the Company shall obtain any and all  
 regulatory approvals, permits, authorizations or licenses for the offering  
 or provision of such Telecommunications Services from the appropriate  
 federal, state and local authorities, if required, and shall submit to  
 DoITT upon the written request of the City evidence of all such approvals,  
 permits, authorizations or licenses.  
  
 2.3.2 Effect of Termination  
  
 Upon termination of this Agreement, the franchise shall  
expire; all rights of the Company in the franchise shall cease, with no value  
allocable to the franchise itself; and the rights of the City and the Company to  
the System, or any part thereof, shall be determined as provided in Sections  
11.3 through 11.6 hereof. The termination of this Agreement and the franchise  
granted hereunder shall not, for any reason, operate as a waiver or release of  
any obligation of the Company or any other Person, as applicable, for any  
liability (i) pursuant to Section 10.1 hereof, which arose or arises out of any  
act or failure to act required hereunder prior to the termination; (ii) which  
exists pursuant to Sections 7, "Compensation," 8.7.2, "Right of Inspection,"  
11.3 through 11.6, "Termination," 13.14, "Governing Law," and 13.17, "Claims  
under Agreement," hereof; and (iii) to maintain in full force and effect the  
Performance Bond/Security Fund and coverage under the liability insurance  
policies required under and in accordance with Sections 5.8 and 10.2 hereof.  
  
 2.3.3 Renewal  
  
 This Agreement does not grant to the Company any right to  
renewal of this Agreement or the franchise granted hereunder, and there shall be  
no such right. The Company may submit a written petition to the City to renew  
this Agreement and the franchise granted hereunder not later than twelve (12)  
months nor more than eighteen (18) months before the expiration of the Term.  
Nonetheless, the City shall not be obligated to renew this Agreement or the  
franchise granted hereunder.  
  
 2.4 Conditions and Limitations on Franchise  
  
 2.4.1 Not Exclusive  
  
 Nothing in this Agreement shall affect the right of the City  
to grant to any Person a franchise, consent or right to occupy and use  
Inalienable Property of the City, or any  
  
  
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part thereof, for the construction, operation and/or maintenance of a system to  
provide telecommunications services in the City for any purpose, or the right of  
the City to construct, operate and/or maintain a system to provide  
telecommunications services in the City or to acquire and operate the System  
pursuant to this Agreement, except that the City shall not use any Services,  
equipment, cable, wire, Fiber or other transmission medium provided by the  
Company pursuant to this Agreement to sell to non-governmental entities in  
competition with the Company.  
  
 2.4.2 Construction of System.  
  
 (a) The Company is authorized to install the System, including  
 cable, wire, Fiber or other transmission medium that may be used in lieu  
 of cable, wire or Fiber for the same purposes, or related equipment and  
 facilities at any location on, over or under the Inalienable Property of  
 the City within the Franchise Area at any time during the Term, without  
 further approval of DoITT, subject to the terms and conditions of this  
 Agreement. The Company shall use its best efforts to coordinate its  
 construction schedule with the appropriate City agencies, including,  
 without limitation, the appropriate Borough Engineer and the Office of  
 Construction, to minimize unnecessary disruption.  
  
 (b) The Company agrees to commence construction of the Initial  
 Backbone as soon as feasible after the Original Agreement Date and in any  
 event no later than six (6) months after the Original Agreement Date,  
 subject to the timely issuance of necessary permits and licenses, which  
 will be diligently pursued by the Company. The Company agrees to  
 substantially complete the installation of the Initial Backbone within  
 twenty-four (24) months after the date of commencement of construction of  
 the Initial Backbone, subject to the timely issuance of necessary permits  
 and licenses, which will be diligently pursued by the Company.  
  
 (c) The Company shall obtain all construction, building or  
 other permits or approvals necessary before installing such cable, wire,  
 Fiber or other transmission medium that may be used in lieu of cable, wire  
 or Fiber for the same purposes, or related equipment and facilities. The  
 Company shall provide copies of any such permits and approvals to DoITT  
 upon request.  
  
 2.4.3 Public Works and Improvements  
  
 Nothing in this Agreement shall abrogate the right of the City  
to perform any public works or public improvements of any description. In the  
event that the System interferes with the construction, operation, maintenance,  
repair or removal of such public work or public improvements, the Company shall,  
at its own cost and expense (unless, dedicated funds have been provided to the  
City specifically for such purpose), upon reasonable notice from the City,  
promptly protect or alter or relocate the System, or any part thereof, as  
directed by the City. In the event that the Company refuses or neglects to so  
protect, alter or relocate all or part of the System, the City shall have the  
right, upon notice by the City, to break through, remove, alter, relocate all or  
any part of the System without any liability to the Company, and the Company  
shall pay to the City the costs incurred in connection with such breaking  
through, removal, alteration, or relocation.  
  
  
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 2.4.4 No Waiver  
  
 Nothing in this Agreement shall be construed as a waiver of  
any codes, ordinances or regulations of the City or of the City's right to  
require the Company or Persons utilizing the System to secure the appropriate  
permits or authorizations for such use, provided that no fee or charge may be  
imposed upon the Company for any such permit or authorization, other than the  
standard fees or charges generally applicable to all Persons for such permits or  
authorizations. Any such standard fee or charge shall not be an offset against  
the compensation the Company is required to pay to the City pursuant to Section  
7 of this Agreement.  
  
 2.4.5 No Release  
  
 Nothing in this Agreement shall be construed as a waiver or  
release of the rights of the City in and to the Inalienable Property of the  
City. In the event that all or part of the Inalienable Property within the  
Franchise Area is eliminated, discontinued, closed or demapped, all rights and  
privileges granted pursuant to this Agreement with respect to said Inalienable  
Property, or any part thereof so eliminated, discontinued, closed or demapped,  
shall cease upon the effective date of such elimination, discontinuance, closing  
or demapping. If said elimination, discontinuance, closing or demapping is  
undertaken for the benefit of any private Person, the City shall make reasonable  
efforts to condition its consent to said elimination, discontinuance, closing or  
demapping on the agreement of said private Person to (i) grant the Company the  
right to continue to occupy and use said Inalienable Property or (ii) reimburse  
the Company for the reasonable costs of relocating the affected part of the  
System.  
  
 2.5 Renegotiation of Agreement  
  
 (a) Each party shall have the right, any one time following  
 the date seven (7) years after the Original Agreement Date and upon six  
 (6) months notice to the other party, to require the renegotiation of the  
 terms of Sections 7 and 8 hereof based on changes in technological, legal,  
 regulatory or market conditions that have occurred since the Effective  
 Date, provided, however, that any renegotiated terms shall apply only  
 prospectively to any contracts entered into by the Company with customers  
 following the effective date of the renegotiated terms. The parties shall,  
 during renegotiation of said Sections under this Section 2.5, negotiate in  
 good faith.  
  
 (b) If, despite such good faith negotiations, the parties fail  
 to reach an agreement that is reasonably acceptable to both parties within  
 a reasonable period, then either party shall have the right, by notice to  
 the other, that the term of this Agreement and the franchise granted  
 hereunder shall be accelerated and shall terminate on the date which is  
 one half of the number of days between the date of such notice and the  
 fifteenth anniversary of the Original Agreement Date.  
  
 (c) The parties' rights pursuant to this Section 2.5 shall be  
 cumulative and shall be in addition to and not in derogation of all other  
 rights reserved under other provisions of this Agreement.  
  
  
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 SECTION 3 -- SERVICE  
  
 3.1 No Interference  
  
 In the operation of the System, the Company shall not interfere with  
the technical operation of any other telecommunications system in the City.  
  
 3.2 No Monopoly  
  
 If, at any time during the Term, it is finally determined by a court  
of competent jurisdiction (not subject to further appeal) that the distribution  
or provision of any Service in the Franchise Area by the Company or any  
Affiliated Person, or any other action in connection with the operation of the  
System, has tended to create or has created a monopoly or a restraint of trade  
in violation of law, such determination shall be deemed to be an Event of  
Default under this Agreement. In such event, in addition to pursuing any of the  
actions set forth in Section 11.2 hereof, DoITT may issue a directive to correct  
such conditions, consistent with this Agreement and the determination of the  
court, without following the procedural requirements of Sections 11.2.2 and  
11.2.3 hereof.  
  
 3.3 No Discrimination  
  
 The Company shall not discriminate in the provision of Services on  
the basis of race, creed, color, national origin, sex, age, handicap, marital  
status, or real or perceived sexual orientation.  
  
 3.4 Service  
  
 The Company agrees to market its Services on the System throughout  
the Term. In the event the Company, with the consent of the City, sells or  
otherwise transfers the System Control thereof to any Person, the City or the  
City's assignee, or in the event the franchise terminates, the Company shall  
transfer the System in an orderly manner in order to maintain continuity of  
Service to the City and to other Customers.  
  
 SECTION 4 - TARIFF FILINGS  
  
 4.1 Tariffs  
  
 The Company shall from time to time at the reasonable request of the  
City provide the City with a copy of any tariff filed by the Company with  
respect to any services offered in the Franchise Area and provide a reasonable  
response to any City request for an explanation of the nature or applicability  
of such tariff.  
  
  
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 SECTION 5 -- CONSTRUCTION AND TECHNICAL REQUIREMENTS  
  
 5.1 General Requirement  
  
 The Company agrees to comply with each of the terms set forth in  
this Section governing construction and technical requirements for its System,  
in addition to any other requirements or procedures specified by the  
Commissioner and which are not inconsistent with any express provision of this  
Agreement.  
  
 5.2 Quality  
  
 All work involved in the construction, operation, maintenance,  
repair, upgrade and removal of the System shall be performed in a safe, thorough  
and reliable manner using materials of good and durable quality. If, at any  
time, it is reasonably determined by the City or any other agency or authority  
of competent jurisdiction that nay part of the System, including, without  
limitation, any means used to distribute Signals over or within the System, is  
harmful to the public health or safety, then the Company shall, at its own cost  
and expense, take all steps necessary to correct all such conditions.  
  
 5.3 Licenses and Permits  
  
 The Company shall have the sole responsibility for diligently  
obtaining, at its own cost and expense, all permits, licenses or other forms of  
approval or authorization necessary to construct, operate, maintain, upgrade or  
repair the System, including but not limited to any necessary approvals from  
Persons to use private property, easements, poles and conduits. The Company  
shall obtain any required permit, license, approval or authorization prior to  
the commencement of the activity for which the permit, license, approval or  
authorization is required.  
  
 5.4 Relocation of the System  
  
 5.4.1 New Grades or Lines  
  
 If the grades or lines of any Inalienable Property within the  
Franchise Area are changed at any time during the Term in a manner affecting the  
System, then the Company shall, at its own cost and expense, and upon reasonable  
notice by the City, promptly protect or promptly alter or relocate the System,  
or part thereof, so as to conform with such new grades or lines. In the event  
that the Company unreasonably refuses or neglects to so protect, alter or  
relocate all or part of the System, the City shall have the right to break  
through, remove, alter or relocate such part of the System without any liability  
to the Company, and the Company shall pay to the City the costs incurred in  
connection with such breaking through, removal, alteration or relocation.  
  
 5.4.2 City Authority to Move Wires  
  
 The City may, at any time, in case of fire, disaster or other  
emergency, as determined by the City in its reasonable discretion, cut or move  
any other optical fibers, wires, cable, amplifiers, appliances or other parts of  
the System on, over or under the Inalienable  
  
  
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Property of the City, in which event the City shall not be liable therefor to  
the Company. The City shall notify the Company in writing prior to, if  
practicable, but in any event as soon as possible and in no case later than the  
next business day following any action taken under this Section 5.4.2.  
  
 5.4.3 Company Required to Move Wires  
  
 The Company shall, upon prior written notice by the City or  
any Person holding a permit to move any structure, and within the time that is  
reasonable under the circumstances, temporarily move its wires to permit the  
moving of said structure. The Company may impose a reasonable charge on any  
Person other than the City for any such movement of its wires.  
  
 5.5 Protect Structures  
  
 In connection with the construction, operation, maintenance, repair,  
upgrade or removal of the System, the Company shall, at its own cost and  
expense, protect any and all existing structures belonging to the City and all  
designated landmarks, as well as all other structures within any designated  
landmark district. The Company shall obtain the prior approval of the City  
before altering any water main, sewerage or drainage system, or any other  
municipal structure on, over or under the Inalienable Property of the City  
required because of the presence of the System. Any such alteration shall be  
made by the Company, at its own cost and expense and in a manner prescribed by  
the City. The Company agrees that it shall be liable, at its own cost and  
expense, to replace or repair and restore to its prior condition in a manner as  
may be reasonably specified by the City, any municipal structure or any other  
Inalienable Property of the City involved in the construction, operation,  
maintenance, repair, upgrade or removal of the System that may become disturbed  
or damaged as a result of any work thereon by or on behalf of the Company  
pursuant to this Agreement.  
  
 5.6 No Obstruction  
  
 In connection with the construction, operation, maintenance,  
upgrade, repair or removal of the System, the Company shall not unreasonably  
obstruct the inalienable Property of the City, subways, railways, passenger  
travel, river navigation, or other traffic to, from or within the Franchise Area  
without the prior consent of the appropriate authorities..  
  
 5.7 Safety Precautions  
  
 The Company shall, at its own cost and expense, undertake all  
necessary and appropriate efforts to prevent accidents at its work sites,  
including the placing and maintenance of proper guards, fences, barricades,  
security personnel and suitable and sufficient lighting.  
  
 5.8 Performance Bond/Security Fund  
  
 5.8.1 General Requirements  
  
 Prior to the execution of this Agreement, the Company shall  
have deposited with the Comptroller an irrevocable, unconditional letter of  
credit and surety bond  
  
  
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which together total two million dollars ($2,000,000). Such $2,000,000  
constitutes the Company's Performance Bond/Security Fund. A minimum of one  
million dollars ($1,000,000) of this amount shall be in the form of a surety  
bond, and the Company may, at it discretion, further increase the proportion of  
the Performance Bond/Security Fund that is in the form of a surety bond so long  
as at least two hundred fifty thousand dollars ($250,000) of the Performance  
Bond/Security fund remains in the form of a letter of credit. The total amount  
of the Performance Bond/Security Fund may be reduced to one million dollars  
($1,000,000), which must consist of at least a two hundred fifty thousand dollar  
($250,000) letter of credit, following the date 30 days after completion by the  
Company of the Initial Backbone. Throughout the Term, and for one hundred twenty  
(120) days thereafter, unless the City notifies the Company that a reasonable  
longer period shall apply, the company shall maintain the Performance  
Bond/Security Fund in the amount specified in this Section 5.8. At any time  
during the Term, the City may, acting reasonably, require the Company to  
increase the amount of the Performance Bond/Security Fund if it finds that new  
risk factors exist, such as an increase in the amount of compensation payments  
to be made pursuant to Section 7.1 hereof or the failure of the Company to  
perform any of its obligations pursuant to Section 7.1 hereof or the failure of  
the Company to perform any of its obligations pursuant to this Agreement, which  
reasonably necessitate an increase in the amount of the Performance  
Bond/Security Fund.  
  
 5.8.2 Indemnification  
  
 The Performance Bond/Security Fund shall indemnify the City,  
up to the full face amount of the Performance Bond/Security Fund, for: (i) the  
cost to continue any construction of the portion of the System being constructed  
for the City pursuant to Section 7.1.1(b) herein and Appendix E hereof; (ii) the  
cost of maintaining operation of the System following a termination of this  
Agreement as a result of a default by the Company, pursuant to Section 11.3  
hereof, in excess of all net revenue actually received through the continued  
operation of the System during said period; (iii) any loss or damage to any  
municipal structure or other Inalienable Property of the City during the course  
of any construction of the System; (iv) any other costs, or loss or damage  
actually incurred by the City as a result of the Company's failure to perform  
its obligations pursuant to this Agreement; and (v) the removal of all or any  
part of the System from the Inalienable Property of the City, as authorized by  
this Agreement.  
  
 5.8.3 Other Purposes  
  
 The Performance Bond/Security Fund shall also serve as  
security for:  
  
 (a) the faithful performance by the Company of all terms,  
 conditions and obligations of this Agreement;  
  
 (b) any expenditure, damage, or loss incurred by the City  
 occasioned by the Company's failure to comply with all rules, regulations,  
 orders, permits and other directives of the City and the Commissioner  
 issued pursuant to this Agreement;  
  
 (c) payment of compensation set forth in Section 7 hereof;  
  
 (d) the payment of premiums for the liability insurance  
 required pursuant to Section 10 hereof;  
  
  
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 (e) the removal of the System from the Inalienable Property of  
 the City at the termination of the Agreement; at the election of the City,  
 pursuant to Section 11.4 hereof;  
  
 (f) the Payment to the City of any amounts for which the  
 Company is liable pursuant to Section 10.1.1 hereof which are not paid by  
 the Company's insurance;  
  
 (g) the payment of any other amounts which become due to the  
 City pursuant to this Agreement or law;  
  
 (h) the timely renewal of the letter of credit that  
 constitutes the Performance Bond/Security Fund; and  
  
 (i) any costs, losses or damages incurred by the City as a  
 result of a default of the Company's obligations under this Agreement.  
  
 1.1.4 Withdrawals from the Performance Bond/Security Fund  
  
 In accordance with the procedures set forth in Sections 5.8.5,  
11.2 and 11.3, the Comptroller, upon the direction of the Commissioner, may make  
withdrawals from the Performance Bond/Security Fund and pay to the City such  
amount for the satisfaction of obligations under Section 5.8.2 hereof, or for  
the purposes specified in Section 5.8.3 hereof. Withdrawals from the Performance  
Bond/Security Fund shall not be deemed a cure of the default(s) that led to such  
withdrawals. The City may not seek recourse against the Performance  
Bond/Security Fund for any costs or damages for which the City has previously  
been compensated through a withdrawal from the Performance Bond/Security Fund or  
otherwise by the Company.  
  
 5.85 Notice of Withdrawals  
  
 Within one (1) week after any withdrawals from the Performance  
Bond/Security Fund, the Comptroller shall notify the Company of the date and  
amount thereof, provided, however, that the City shall not make any withdrawals  
by reason of any breach for which the company has not been given notice. The  
withdrawal of amounts from the Performance Bond/Security Fund shall constitute a  
credit against the amount of the applicable liability of the Company to the City  
but only to the extent of said withdrawal.  
  
 5.86 Replenishment  
  
 Within thirty (30) days after receipt of notice from the  
Comptroller that any amount has been withdrawn from the Performance  
Bond/Security Fund letter of credit, as provided in Section 5.8 hereof, the  
Company shall restore the Performance Bond/Security Fund to the amount specified  
in Section 5.8.1 hereof, provided that, if a court finally determines that said  
withdrawal by the City was improper, the City shall refund the improperly  
withdrawn amount to the Performance Bond/Security Fund or to the Company such  
that the balance in the Performance Bond/Security Fund shall not exceed the  
amount specified in Section 5.8.1 hereof. In case of such an improper  
withdrawal, the Company shall receive any interest accrued on the amount  
improperly withdrawn from the time of withdrawal to the time of refund to the  
Fund. If  
  
  
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the Company has not made the required restoration to the Performance  
Bond/Security Fund within such thirty (30) day period, interest on said amount  
shall accrue at the rate specified in Section 7.4 hereof, to commence at the  
completion of such 30-day period. The Comptroller may withdraw from the  
Performance Bond/Security Fund and pay to the City such interest periodically up  
to the date on which the Company makes the required principal payment, provided  
that the Company shall not be obligated to pay such interest with such principal  
payment to the extent such interest has been already withdrawn by the  
Comptroller.  
  
 5.8.7 Not a Limit on Liability  
  
 The obligation to perform and the liability of the Company  
pursuant to this Agreement shall not be limited by the acceptance of the  
Performance Bond/Security Fund required by this Section 5.8.  
  
 5.8.8 Form  
  
 The Performance Bond/Security Fund does, and any replacement  
bond shall, contain the following endorsement: "It is hereby understood and  
agreed that this bond may not be cancelled or not renewed by the surety nor the  
intention to cancel or not to renew be stated by the surety until ninety (90)  
days after completion of construction of the Initial Backbone and  
notwithstanding the foregoing, shall in no case be cancelled or not renewed by  
the surety until at least ninety (90) days' written notice is given to the City  
of surety's intention to cancel or not renew this bond." Notwithstanding the  
preceding, the letter of credit portion of the Performance Bond/Security Fund  
shall not be cancelled or not renewed by the issuer until at least sixty (60)  
days' notice to the City of the issuer's intention to cancel or not renew the  
letter of credit.  
  
 SECTION 6 -- EMPLOYMENT AND PURCHASING  
  
 6.1 Right to Bargain collectively  
  
 The Company agrees to recognize the right of its employees to  
bargain collectively through representatives of their own choosing in accordance  
with applicable law. The Company shall recognize and deal with the  
representatives duly designated or selected by a majority of its employees for  
the purpose of collective bargaining with respect to rates of pay, wages, hours  
of employment or any other terms, conditions or privileges of employment. The  
Company shall not dominate, interface with, participate in the management or  
control of, or give financial support to any union or association of its  
employees.  
  
 6.2 Local Preference  
  
 The company shall, at its own cost and expense, develop and maintain  
a plan for the recruitment, education, training and employment of residents of  
the City, for the opportunities to be created by the construction, operation,  
marketing and maintenance of the System. Such recruitment activities shall  
include provisions for the posting of employment and training opportunities at  
appropriate City agencies responsible for encouraging employment of City  
residents. Such plan shall be designed so as to ensure the promotion of equal  
employment opportunity for all qualified Persons employed by, or seeking  
employment with, the Company.  
  
  
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Such plan shall be updated from time to time as the City deems reasonably  
necessary. The Company shall, throughout the Term, implement such plan at its  
own cost and expense, by ensuring, to the maximum feasible extent, the  
recruitment, education, training, and employment of City residents.  
  
 6.3 City Vendors  
  
 To the maximum feasible extent, after taking into account price and  
quality considerations, the Company shall utilize vendors located in the City in  
connection with the construction, operation, marketing and maintenance of the  
System. The Company shall, after taking into account price and quality  
considerations, in the purchase of comparable materials, equipment, services or  
supplies of any nature, give effect to a preference for such items which are  
assembled, manufactured, or otherwise produced, in whole or in part, within the  
City.  
  
 6.4 Equal Employment Opportunity  
  
 The Company agrees to comply in all respects with the provisions of  
the Mayor's Executive Order No. 50 (April 25, 1980) (codified at Title 10  
Sections 1-14 of the Rules of the City of New York) and City Administrative Code  
6-108.1 (1984) and all rules and regulations promulgated thereunder  
collectively, the "EEO Requirements"), as such EEO Requirements may be amended,  
modified or superseded throughout the Term. Notwithstanding that the EEO  
Requirements may not apply on their face to the Company as a franchisee of the  
City, the Company shall comply in all respects with the provisions of such EEO  
Requirements and successor and replacement laws, orders and regulations adopted  
following the Effective Date. As required by said Executive Order No. 50, the  
provisions of Sections 50.30 and 50.31 of the Final Rule implementing said Order  
are incorporated herein by this reference. The Company agrees to make a  
reasonable inquiry and to engage in reasonable compliance monitoring efforts  
with all unions to ensure that all contractors and subcontractors comply with  
the required contractual language in Section 6.5. The Company shall not contract  
with and shall discontinue any contract entered into after the Effective Date  
with any union, contractor or subcontractor that refuses to agree to or fails to  
comply with the contractual language in Section 6.5.  
  
 6.5 Local law 33  
  
 The Company agrees to comply in all respects with the provisions of  
the Local Law 33 of 1997 and all rules or regulations promulgated thereunder, as  
such law and all rules or regulations may be amended, modified or succeeded  
throughout the term. Notwithstanding that Local Law 33 may not apply on its face  
to the company as a franchisee of the City, the Company shall comply in all  
respects with the provisions of such Law and rules or regulations and successor  
and replacement laws, and rules or regulations adopted following the Effective  
Date.  
  
 6.6 Enforcement  
  
 The Company shall take steps to ensure that the requirements of  
Section 6.4 hereof are adhered to by each union with which the company deals,  
each officer, employee, agent, contractor or subcontractor of the Company, and  
each Person performing work pursuant to this Agreement with respect to the  
System for, on behalf of, or at the discretion of the Company.  
  
  
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The requirements of Section 6.4 hereof shall apply to every contract relating to  
the System between the Company and: (i) any union; (ii) any contractor; (iii)  
any subcontractor; or (iv) any Person with which any of the foregoing Persons  
has a relationship in connection with any aspect of the System. To comply with  
the obligations of this Section 6.6, the Company shall include, in all contracts  
described in the foregoing sentence which are entered into following the  
Effective Date (which shall include any renewals, amendments and modifications  
of existing contracts), the following language, stating that such party: "has  
received a copy of Section 6 of a certain agreement by and between the City of  
New York and the Company dated as of \_\_\_\_\_\_\_, 2000, granting to the Company a  
nonexclusive franchise providing the right and consent to install cable, wire,  
Fiber or other transmission medium that may be used in lieu of cable, wire or  
Fiber for the same purposes and related equipment and facilities on, over and  
under the Inalienable Property of the City within the Franchise Area to provide  
Telecommunications Services and agrees to comply with each term, condition and  
requirement of Section 6 of such agreement, which terms, conditions and  
requirements are deemed to be incorporated herein by this reference."  
  
 SECTION 7 -- COMPENSATION AND OTHER PAYMENTS  
  
 7.1 Compensation  
  
 7.1.1 Compensation  
  
 As compensation for the franchise, the Company shall have the  
following obligations:  
  
 (a) Franchise Fee. The Company's obligation to pay franchise  
 fees shall commence on the Completion Date. For purposes of this Section  
 7.1, the Completion Date shall be the earlier of the date of completion of  
 the Initial Backbone or the second anniversary of the Original Agreement  
 Date. Commencing on the Completion Date, the Company shall pay to the City  
 five percent (5%) of Gross Revenue each year during the Term.  
  
 During each year of the Term following the Completion  
 Date, the Company's compensation payments pursuant to this Section  
 7.1.1(a) shall not be less than $200,000.00 (two hundred thousand dollars)  
 per annum. Such minimum payment, however, shall be prorated if necessary  
 to reflect a partial first or last year of the franchise. To the extent  
 that the sum of all payments pursuant to this Section 7.1.1(a) with  
 respect to any year is less than said minimum payment, then the Company's  
 compensation payment to be made within forty-five (45) days of the last  
 day of December of said year pursuant to Section 7.1.2 shall include an  
 amount which brings the total amount paid with respect to said year up to  
 said minimum payment.  
  
 (b) Services to City. The Company shall provide Services to  
 the City, and observe its other obligations, as specified in Appendix E to  
 this Agreement. The Company expressly acknowledges and agrees that neither  
 the provision of Services to the City nor the satisfaction of other  
 obligations specified in Appendix E to this Agreement  
  
  
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shall be chargeable against the franchisee fees to be paid to the City by the  
Company pursuant to Section 7.1.1(a) hereof.  
  
 7.1.2 Timing  
  
 (a) All payments made pursuant to Section 7.1.1(a) hereof  
 shall be made on a quarterly basis within forty-five (45) days of the  
 close of each calendar quarter. The Company shall in good faith estimate  
 each quarterly payment based on anticipated revenues for that quarter.  
  
 (b) Within sixty (60) days following the end of the calendar  
 year, the Company shall calculate the exact fee due to the City pursuant  
 to section 7.1.1(a) hereof for said calendar year. Should the total  
 calculated franchise fee for the year exceed the estimated quarterly  
 payments made by the Company for the year, the Company shall, within the  
 60-day period following the end of the calendar year, remit to the City  
 any balance due. Should the estimated quarterly payments made by the  
 Company for the year exceed the total calculated franchise fee for the  
 year, the City will remit the overpayment within thirty (30) days  
 following notice form the Company of the balance due.  
  
 (c) In no case shall the estimated quarterly payments to be  
 paid pursuant to paragraph (a) of this Section 7.1.2 be less than  
 one-forth (1/4) of the total calculated franchise fee based on Section  
 7.1.1(a) thereof for the preceding calendar year.  
  
 7.1.3 Records and Audits  
  
 The Company shall keep comprehensive itemized records of all  
revenues received and of all Services provided, in sufficient detail to enable  
the City to determine whether all compensation owed to the City pursuant to  
Section 7.1 is being paid to the City.  
  
 7.1.4 Reservation of Rights  
  
 No acceptance of any compensation payment by the City shall be  
construed as an accord and satisfaction that the amount paid is in fact the  
correct amount, nor shall such acceptance of any payment be construed as a  
release of any claim that the City may have for further or additional sums  
payable under the provisions of this Agreement. All amounts paid shall be  
subject to audit and recomputation by the City.  
  
 7.15 Ordinary Business Expense  
  
 Nothing contained in this section 7.1 or elsewhere in this  
Agreement is intended to prevent the company from treating the compensation and  
other payments that it may pay pursuant to this Agreement as an ordinary expense  
of doing business and, accordingly, form deducting said payments from gross  
income in any City, state, or federal income tax return.  
  
  
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 7.2 Other Payments  
  
 7.2.1 Franchising Costs  
  
 The company has, prior to the execution of this Agreement,  
paid a portion of the Company's pro rata share of costs incurred by the City for  
the services of third parties (including, without limitation, attorneys and  
other consultants) in connection with the award of this franchise. Within thirty  
(30) days after receipt of an itemized and detailed invoice for services  
rendered, the Company shall pay to DoITT, or at the direction of the  
Commissioner to third party, the company's pro rata share of all remaining  
reasonable costs and expenses incurred by the City for the services of third  
parties (including, without limitation, attorneys and other consultants) in  
connection with the award of this franchise. The company expressly agrees that  
the payments referred to in this Section 7.2.1 are in addition to and not in  
lieu of, and shall not be offset against, the compensation to be paid to the  
City by the Company pursuant to Section 7.1 hereof.  
  
 7.2.2 Future Costs  
  
 7.2.3 The Company shall pay to the City or to third parties,  
at the direction of the commissioner, an amount equal to the reasonable costs  
and expenses which the City incurs for the services of third parties (including  
but not limited to attorneys and other consultants) in connection with any  
renewal or Company-initiated renegotiation, transfer, amendment or other  
modification of this Agreement or the franchise, provided, however, that in the  
case of renewal only, the parties shall agree upon a reasonable financial cap at  
the outset of negotiations. The Commissioner shall review the contested charges  
and the services rendered and shall reasonably determine whether such charges  
are reasonable for the services rendered. The Company expressly agrees that the  
payments made pursuant to this Section 7.2 are in addition to and not in lieu  
of, and shall not be offset against, the compensation to be paid to the City by  
the Company pursuant to Section 7.1 hereof.  
  
 7.3 No Credits or Deductions  
  
 (a) The Company expressly acknowledges and agrees that:  
  
 (i) The compensation and other payments to be made or  
 Services to be provided pursuant to this Section 7 shall not be  
 deemed to be in the nature of a tax, and shall be in addition to any  
 and all taxes or other fees or charges which the Company or any  
 Affiliated Person shall be required to pay to the City or to any  
 state or federal agency or authority, all of which shall be separate  
 and distinct obligations of the Company; and  
  
 (ii) The Company expressly relinquishes and waives its  
 rights and the rights of any Affiliated Person to a deduction or  
 other credit pursuant to Section 626 of the New York State Real  
 Property Tax Law and any successor or amendment thereto, and to any  
 subsequent law, rule, regulation, or order which would purport to  
 permit any of the acts prohibited by this Section 7.3; and  
  
  
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 (iii) Except as might be permitted by Section 7.1.5, the  
 Company shall not, and shall not otherwise support any attempt by an  
 Affiliated Person to make any claim for any deduction or other  
 credit of all or any part of the amount of the compensation or other  
 payments to be made or Services to be provided pursuant to this  
 Agreement from or against any City or other governmental taxes of  
 general applicability or other fees or charges which the Company or  
 any Affiliated Person is required to pay to the City or other  
 governmental agency; and  
  
 (iv) Except as might be permitted by Section 7.1.5, the  
 Company shall not, and shall not otherwise support any attempt by an  
 Affiliated Person to apply or seek to apply all or any part of the  
 amount of the compensation or other payments to be made or Services  
 to be provided pursuant to this Agreement as a deduction or other  
 credit from or against any City or other government taxes of general  
 applicability (other than income taxes) or other fees or charges,  
 each of which shall be deemed to be separate and distinct  
 obligations of the Company and the Affiliated Persons.  
  
 (b) In any situation where the Company believes the effect of  
 this Section 7.3 is unduly harming, in a manner inconsistent with the  
 intent of this Section 7.3, an Affiliated Person of the Company, the  
 Company may petition the City for relief, and such relief shall not be  
 unreasonably withheld.  
  
 7.4 Interest on Late Payments  
  
 In the event that any payment required by this Agreement is not  
actually received by the City on or before the applicable date fixed in this  
Agreement, interest thereon shall accrue from such date until received at a rate  
equal to the rate of interest then in effect charged by the City for late  
payments of real estate taxes.  
  
 7.5 Method of Payment  
  
 Except as provided elsewhere in this Agreement, all payments made by  
the Company to the City pursuant to this Agreement shall be made to the City's  
Department of Finance, with a copy to DoITT.  
  
  
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 7.6 Continuing Obligation and Holdover  
  
 (a) In the even the Company continues to operate all or any  
 part of the System after the Term, then the Company shall continue to  
 comply with all applicable provisions of this Agreement, including,  
 without limitation, all compensation and other payment provisions of this  
 Agreement, throughout the period of such continued operation, provided  
 that any such continued operation shall in no way be construed as a  
 renewal or other extension of this Agreement or the franchise granted  
 pursuant to this Agreement, nor as a limitation on the remedies, if any,  
 available to the City as a result of such continued operation after the  
 Term, including, but not limited to, damages and restitution.  
  
 (b) In the event this Agreement terminates for any reason  
 whatsoever and the Company fails to cease providing Service over the  
 System, the City, in addition to all other remedies available to it under  
 this Agreement or by law, shall be entitled to receive all payments it is  
 entitled to receive under this Agreement including, but not limited to,  
 the compensation set forth in Section 7.  
  
 SECTION 8 -- OVERSIGHT AND REGULATION  
  
 8.1 Protection from Disclosure  
  
 To the extent permissible under applicable law, the City shall  
protect from disclosure any confidential, proprietary information submitted to  
the City under this Agreement or made available to the City pursuant to Sections  
8.5, 8.7.1 and 8.7.2, provided that the Company notifies the City of, and  
clearly labels, the information which the Company deems to be confidential,  
proprietary information. Such notification and labeling shall be the sole  
responsibility of the Company.  
  
 8.2 Oversight  
  
 The City shall have the right to oversee, regulate and inspect  
periodically the construction, maintenance, operation and upgrade of the System,  
and any part thereof, in accordance with the provisions of this Agreement and  
applicable law. The Company shall establish and maintain managerial and  
operational records, standards, procedures and controls to enable the Company to  
prove, in reasonable detail, to the satisfaction of the City at all times  
throughout the Term, that the Company is in compliance with this Agreement. The  
Company shall retain such records for not less than six (6) years following  
their creation, and for such additional period as DoITT may direct.  
  
 8.3 Notification to City  
  
 (a) The Company shall, upon the request of the Commissioner,  
 but no more frequently than once a year, provide DoITT with a report  
 describing the Services offered and classes of customers served by the  
 Company during the previous twelve months. Further, such report shall  
 describe the Company's plans for the coming twelve months with regard to  
 new Services that the Company reasonably anticipates might be  
  
  
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 offered or new classes of customers that the Company reasonably  
 anticipates might be served. Notwithstanding the requirements of this  
 Section 8.3(a), the Company shall provide to the City, upon the City's  
 request, any additional information that the City reasonably deems  
 necessary during the Term.  
  
 (b) The Company shall also, on an annual basis, provide DoITT  
 with a report describing any construction or installation of cable, wire,  
 Fiber or other transmission medium that may be used in lieu of cable, wire  
 or Fiber for the same purposes, or related equipment and facilities, in  
 any areas outside of the Initial Backbone, that has occurred during the  
 previous twelve months. Such report shall also describe the Company's  
 reasonably anticipated plans for such construction and installation for  
 the coming twelve months. Notwithstanding the requirements of this Section  
 8.3(b), the Company shall provide to the City, upon the City's request,  
 any additional information that the City reasonably deems necessary during  
 the Term. It is not anticipated that confidential information will be  
 required under this Section 8.3(b).  
  
 8.4 Regulation by City  
  
 To the full extent permitted by applicable law either now or in the  
future, the City reserves the right to adopt or issue such rules, regulations,  
orders, or other directives governing telecommunications that are consistent  
with the terms of this Agreement and that it finds necessary or appropriate in  
the lawful exercise of its police powers, and the Company expressly agrees to  
comply with all such lawful rules, regulations, orders, or other directives.  
  
 8.5 Reports  
  
 8.5.1 Status Reports  
  
 The Company shall submit to DoITT reports describing, in  
detail, the status of the construction of the Initial Backbone every six (6)  
months from the Effective Date until its substantial completion. The Company  
shall, upon substantial completion of the Initial Backbone, notify the  
Commissioner in writing.  
  
 8.5.2 Financial Reports  
  
 The Company shall submit to the Comptroller and DoITT not  
later than three (3) months after the end of each annual fiscal period, a copy  
of the Company's annual financial statements for such period which statements  
shall be signed by the Chief Financial Officer of the Company, provided,  
however, that the Comptroller may also require such statements to be audited and  
certified by an independent certified public accountant in accordance with  
generally accepted accounting principles. Such statements shall be accurate and  
complete. The Company shall be permitted to provide consolidated financial  
statements in satisfaction of this Section 8.5.2.  
  
  
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 8.5.3 Ownership Reports  
  
 The Company shall promptly report to the City any change in  
ownership of the Company which is inconsistent with the description of  
ownership set forth in Appendix G hereof.  
  
 8.5.4 Additional Reports  
  
 The Company shall submit to DoITT, upon the request of the  
Commissioner, but no more frequently than once a year, a report describing  
the Company's compliance with its obligations under Sections 6.2 and 6.3  
hereof. Such report shall be accurate and complete.  
  
 8.5.5 Additional Information and Reports  
  
 Upon the request of the Commissioner, the Company shall  
promptly submit to DoITT any information or report reasonably related to the  
Company's obligations under this Agree, its business and operations, or those  
of any Affiliated Person, with respect to the System or its operation, or any  
Service distributed over the System, in such form and containing such  
information as the Commissioner shall specify. such information or report  
shall be accurate and complete.  
  
 8.6 Additional Filings  
  
 The Company shall provide upon the request of the  
Commissioner, but no more frequently than once a year, to DoITT a list of any  
and all material communications, public reports, petitions or other filings,  
either received from or submitted to any municipal, county, state or federal  
agency or official (and any response thereto submitted by or received by the  
Company), which materially affects the operation of the System or any Service  
or the Company's representations and warranties set forth herein, but not  
including tax returns or other filings which are confidential. Upon the  
request of DoITT, the Company shall promptly, but in no case later than ten  
(10) business days following the request, deliver to DoITT a complete copy of  
any item on said list.  
  
 8.7 Books and Records/Audit  
  
 8.7.1 Books and Records  
  
 Throughout the Term, the Company shall maintain complete  
and accurate books of account and records of the business, ownership, and  
operations of the Company with respect to the System in a manner that allows  
the City at all times to determine whether the Company is in compliance with  
the Agreement. Should the City reasonably determine that the records are not  
being maintained in such a manner, the Company shall alter the manner in  
which the books and/or records are maintained so that the Company comes into  
compliance with this Section. All financial books and records which are  
maintained in accordance with the regulations of the PSC and generally  
accepted accounting principles shall be deemed to be acceptable under this  
Section. The Company shall also maintain and provide such additional  
  
  
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books and records as the Comptroller or the Commissioner deem reasonably  
necessary to ensure proper accounting of all payments due the City.  
  
 8.7.2 Right of Inspection  
  
 The Commissioner and the Comptroller, or their designated  
representatives, shall had the right to inspect, examine or audit during  
normal business hours and upon reasonable notice to the Company under the  
circumstances, all documents, orecords or other information which pertain to  
the Company or any Affiliated Person with respect to the System, its  
operation, its employment and purchasing practices, Services distributed over  
the System, and with respect to the Company's obligations pursuant to this  
Agreement. All such documents shall be made available within New York City or  
in such other place that the City may agree upon in writing in order to  
facilitate said inspection, examination, or audit, provided, however, that is  
such documents are located outside of the City, then, upon notice to the  
Company, the Company shall pay the reasonable expenses incurred by the  
Commissioner, the Comptroller or their designated representatives in  
travelling to such location. All of such documents shall be retained by the  
Company for a minimum of six (6) years following termination of this  
Agreement. Access by the City to any of the documents covered by this Section  
8.7.2 shall not be denied by the Company on grounds that such documents are  
alleged by the Company to contain confidential, proprietary or privileged  
information, provided that this requirement shall not be deemed to constitute  
a waiver of the Company's right to assert that confidential, proprietary or  
privileged information contained in such documents should not be disclosed,  
subject to Section 8.1 hereof. In order to determine the validity of such  
assertion and withholding by the Company, the City agrees to review the  
alleged proprietary information, and/or a log of the documents believed by  
the Company to be privileged reflecting sufficient information to establish  
the privilege claimed, at the Company's premises and, in connection with such  
review, to limit access to the alleged proprietary information to those  
individuals who require the information in the exercise of the City's rights  
under this Agreement. If the Corporation Counsel of the City concurs with the  
Company's assertion regarding the proprietary nature of such information, the  
City will hold such information in confidence to the extent authorized by and  
in accordance with applicable law and will not remove from the Company's  
premises the proprietary portion of any document or other intangible thing  
that contains such proprietary information. If the Corporation counsel of the  
City concurs with the Company's assertion regarding the privileged nature of  
such information, then the Company will not be required to disclose such  
information. If the Corporation Counsel of the City does not concur with such  
assertions, then the Company shall promptly provide such documents, including  
the alleged proprietary or privileged portion thereof, to the City, provided  
that the Company shall not be required to provide the proprietary or  
privileged portion thereof during the pendency of any court challenge to such  
provision.  
  
 8.8 Compliance with "Investigations Clause"  
  
 The Company agrees to comply in all respects with the City's  
"Investigations Clause," a copy of which is attached at Appendix F hereto.  
  
  
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 SECTION 9 - RESTRICTIONS AGAINST ASSIGNMENT AND OTHER TRANSFERS  
  
 9.1 Transfer of Interest  
  
 Except as provided in Section 96 hereof and Appendix G hereto,  
and excepting conveyances and leases of real or personal property in the  
ordinary course of the operation of the System (but not excepting leases  
which by their size or nature are the functional equivalent of transfers of  
the System), neither the franchise granted herein nor any rights or  
obligations of the Company in the System or pursuant to this Agreement shall  
be encumbered, assigned, sold, transferred, pledged, leased, sublet, or  
mortgaged in any manner, in whole or in part, to any Person, nor shall title  
therein, either legal or equitable, or any right or interest therein, pass to  
or vest in any Person, either by act of the Company, by act of any Person  
holding Control of or any interest in the Company or the System or the  
franchise granted herein, by operation of law, or otherwise, without the  
prior written consent of the City pursuant to the procedures set forth in  
this Section 9, provided that the City shall consider any such action in  
accordance with its usual procedural rules.  
  
 9.2 Transfer of Control or Stock  
  
 Notwithstanding any other provision of this Agreement, except as  
provided in Section 9.6 hereof or as set forth in on Appendix G, no change in  
Control of the Company, the System or the franchise granted herein shall  
occur after the Effective Date, by act of the Company, by act of any Person  
holding Control of the Company, the System or the franchise granted herein,  
by operation of law, or otherwise, without the prior written consent of the  
City granted pursuant to the procedures set forth in this Section 9. The  
requirements of Section 9.3 hereof shall also apply whenever any change is  
proposed of ten percent (10%) or more of the ownership or Control of the  
Company, the System, the franchise granted herein or of any Person holding  
Control of the Company or in the System or in the franchise (but nothing  
herein shall be construed as suggesting that a proposed change of less than  
ten percent (10%) does not require consent of the City (acting pursuant to  
the procedures set forth in this Section 9) if it would in face result in a  
change in Control of the Company, the system or the franchise granted  
herein), and any other event which could result in a change in ownership or  
Control of the Company, regardless of the manner in which such ownership or  
Control is evidenced (e.g., stock, bonds, debt instruments or other indicia  
of ownership or Control).  
  
 9.3 Petition  
  
 The Company shall promptly notify the Commissioner of any  
proposed action requiring the consent of the City pursuant to Sections 9.1 or  
9.2 hereof or to which this Section 9.3 applies by submitting to the  
Commissioner, with a copy of the Corporation Counsel, a petition requesting  
the submission by the Commissioner of such petition to the FCRC and approval  
thereof by the FCRC or requesting a determination that no such submission and  
approval is required and its argument why such submission and approval is not  
required. Each petition shall fully describe the proposed action and shall be  
accompanied by a justification for the action and, if applicable, the  
Company's argument as to why such action would not involve a change in  
Control of the Company, the System or the franchise, and such additional  
supporting information as the Commissioner and/or the FCRC may reasonably  
require in order to review  
  
  
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and evaluate the proposed action. The Commissioner shall expeditiously review  
the petition and shall (a) notify the Company in writing if the Commissioner  
determines that the submission by the Commissioner and the approval of the  
FCRC is not required or (b) if the Commissioner determines that such  
submission and approval is required, either (i) notify the Company that the  
Commissioner does not approve the proposed action and therefore will not  
submit the petition to the FCRC, or (ii) submit the petition to the FCRC for  
its approval.  
  
 9.4 Consideration of the Petition  
  
 DoITT and the FCRC, as the case may be, may take such actions as  
it deems appropriate in considering the petition and determining whether  
consent is needed or should be granted. In considering the petition, DoITT  
and the FCRC, as the case may be, may inquire into: (i) the qualifications of  
each Person involved in the proposed action, (ii) all matters relevant to  
whether the relevant Person(s) will adhere to all applicable provisions of  
this Agreement, (iii) the effect of the proposed action on competition; and  
(iv) all other matters it deems relevant in evaluating the petition,  
including whether the Company executed this Agreement under a good faith  
belief that it would itself carry out the obligations of the Company  
hereunder. After receipt of a petition, the FCRC may, as it deems necessary  
or appropriate, schedule a public hearing on the petition. Further DoITT and  
the FCRC may review the Company's performance under the terms and conditions  
of this Agreement. The Company shall provide all requested assistance to  
DoITT and the FCRC in connection with any such inquiry and, as appropriate,  
shall secure the cooperation and assistance of all Persons involved in said  
action.  
  
 9.5 Conditions  
  
 As a condition to the granting of any consent required by this  
Section 9, the Commissioner and/or the FCRC may: (i) upon a determination  
that the Company did not execute this Agreement under a good faith belief  
that it would itself carry out the obligations of the Company pursuant to  
this Agreement, require the Company of any Affiliated Person to pay to the  
City part or all of the profits earned or to be earned by such Person in  
connection with, upon the completion of, or as a result of, any of the  
actions described in Sections 9.1 or 9.2 hereof with respect to any of such  
actions which occur within the four (4) years after the Effective Date; and  
(ii) require that each Person involved in any action described in Sections  
9.1 or 9.2 hereof shall execute an agreement, in a form and containing such  
conditions as may be specified by the City, providing that such Person  
assumes and agrees to be bound by all applicable provisions of this Agreement  
and such other conditions which the City deems necessary or appropriate in  
the circumstances. The execution of such agreement by such Person(s) shall in  
no way relieve the Company or any other transferor involved in any action  
described in Sections 9.1 or 9.2 hereof, of its obligations pursuant to this  
Agreement.  
  
 9.6 Permitted Encumbrances  
  
 Nothing in this Section 9 shall be deemed to prohibit any  
assignment, pledge, lease, sublease, mortgage, or other transfer of all or  
any part of the System, or any right or interest therein, for financing or  
refinancing purposes, provided that each such assignment, pledge, lease,  
sublease, mortgage, or other transfer shall be subject to the rights of the  
City pursuant to this Agreement and applicable law. The consent of the City  
shall not be required  
  
  
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with respect to any transfer to, or taking of possession by, any banking or  
lending institution which is s secured creditor of the Company or all or any  
part of the System pursuant to the rights or such secured creditor under  
Article 9 of the Uniform Commercial Code, as in effect in the State of New  
York, and, to the extent that the collateral consists of real property, under  
the New York Real Property Law; provided, further that, the City's rights are  
in no way adversely affected or diminished.  
  
 9.7 Consent Not a Waiver  
  
 The grant or waiver of any one or more of such consents shall not  
render unnecessary any subsequent consent, nor shall the grant of any such  
consent constitute a waiver of any other rights of the City, as required in  
this Section 9.  
  
 9.8 Petitions From Persons Other Than the Company  
 Seeking Control Over the Company  
  
 Notwithstanding the foregoing, DoITT reserves the right, on a  
case-by-case basis, to accept, hear and/or grant petitions for the transfer  
of Control of the Company, the System or the franchise granted herein from  
Persons seeking to obtain Control of the Company. Notwithstanding the  
foregoing, the City shall provide the Company with reasonable notice of any  
such petitions and the Company shall be afforded the opportunity to respond  
to any such petitions before the City grants any approval with respect to  
such petitions, including but not limited to, the hearing or granting of such  
petitions. The City, its officers, employees, agents, attorneys, consultants  
and independent contractors shall not be liable to the Company or any other  
Person for exercising its rights herein. The Company shall be entitled to  
rely upon publicly filed reports to which it has access in connection with  
its determination of the applicability of this Section 9.8, except to the  
extent the Company knows or has reason to believe that any such report is or  
may be incorrect, or is aware of the information which is the subject of this  
Section otherwise than as a result of publicly filed reports.  
  
 SECTION 10 - LIABILITY AND INSURANCE  
  
 10.1 Liability and Indemnity  
  
 10.1.1 Company  
  
 The Company shall be liable for, and the Company and each  
Affiliated Person (not including a limited partner or an individual  
shareholder) shall indemnify, defend and hold the City, its officers, agents,  
servants, employees, attorneys, consultants and independent contractors (the  
"Indemnitees") harmless from, any and all liabilities, suits, obligations,  
fines, damages, penalties, claims, costs, charges and expenses (including,  
without limitation, reasonable attorneys' fees and disbursements), that may  
be imposed upon or incurred by or asserted against any of the Indemnitees  
arising out of the construction, operation, maintenance, upgrade, repair or  
removal of the System or otherwise arising out of or related to this  
Agreement; provided, however, that the foregoing liability and indemnity  
obligation of the Company pursuant to this Section 10.1 shall not apply to  
any willful misconduct or gross negligence of the City, its officers,  
employees, servants, agents, attorneys, consultants or independent  
contractors.  
  
  
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Further, it is a condition of this Agreement that the City assumes no liability  
for liabilities, suits, obligations, fines, damages, penalties, claims, costs,  
charges and expenses (including, without limitation, reasonable attorneys' fees  
and disbursements) to either Persons or property on account of the same, except  
as expressly provided herein.  
  
 10.1.2 No Liability for Public Work, etc.  
  
 None of the City, its officers, agents, servants, employees,  
attorneys, consultants or independent contractors shall have any liability to  
the Company for any damage as a result of or in connection with the protection,  
breaking through, movement, removal, alteration or relocation of any part of the  
System by or on behalf of the Company or the City in connection with any  
emergency, public work, public improvement, alteration of any municipal  
structure, any change in the grade or line of any Inalienable Property of the  
City, or the elimination, discontinuation, closing or demapping of any  
Inalienable Property of the City, as provided in Sections 2.4.5 and 5.4 hereof.  
When reasonably possible, the Company shall be consulted prior to any such  
activity and shall be given the opportunity to perform such work itself, but the  
City shall have no liability to the Company in the event it does not so consult  
the Company. All costs to repair or replace the System, or parts thereof,  
damaged or removed as a result of such activity shall be borne by the Company;  
provided, however, that the foregoing obligations of the Company pursuant to  
this Section 10.1.2 shall not apply to any willful misconduct or gross  
negligence of the City, its officers, employees, servants, agents, attorneys,  
consultants or independent contractors.  
  
 10.1.3 No Liability for Damages  
  
 None of the City, its officers, agents, servants, employees,  
attorneys, consultants and independent contractors shall have any liability to  
the Company for any special, incidental, consequential, punitive, or other  
damages as a result of the proper and lawful exercise of any right of the City  
pursuant to this Agreement or applicable law, including, without limitation, the  
rights of the City to terminate, amend, or otherwise modify all or any part of  
this Agreement or the franchise granted herein; provided, however, that the  
foregoing limitation on liability pursuant to this Section 10.1.3 shall not  
apply to any willful misconduct or gross negligence of the City, its officers,  
employees, servants, agents, attorneys, consultants or independent contractors.  
  
 10.1.4 Defense of Claim, etc.  
  
 If any claim, action or proceeding is made or brought against  
any of the Indemnitees by reason of any event to which reference is made in  
Section 10.1.1 hereof, then upon demand by the City, the Company shall either  
resist, defend or satisfy such claim, action or proceeding in such Indemnitee's  
name, by the attorneys for, or approved by, the Company's insurance carrier (if  
such claim, action or proceeding is covered by insurance) or by the Company's  
attorneys. The foregoing notwithstanding, upon a showing that the Indemnitee  
reasonably requires additional representation, such Indemnitee may engage its  
own attorneys to defend such Indemnitee, or to assist such Indemnitee in such  
Indemnitee's defense of such claim, action or proceeding, as the case may be,  
and the Company shall pay the reasonable fees and disbursements of such  
attorneys of such Indemnitee.  
  
  
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 1.2 Insurance  
  
 10.2.1 Specifications  
  
 Prior to the execution of this Agreement, the Company has, at  
its own cost and expense, obtained and furnished to DoITT, with a copy to the  
Comptroller, a liability or umbrella insurance policy taking effect no later  
than the Original Agreement Date, insuring the Company and the City, its  
officers, agents, servants, employees, attorneys, consultants and independent  
contractors against each and every form of liability referred to in Section 10.1  
herein, in the minimum combined amount of fifty million dollars ($50,000,000),  
covering bodily injury, including death, personal injury and property damage.  
Such policy or policies have been issued by companies duly licensed to do  
business in the State of New York and acceptable to the Comptroller, carrying a  
rating by Best's of not less than A. The foregoing minimum coverage shall not  
prohibit the Company from obtaining a liability insurance policy or policies  
with coverage in excess of such minimum, provided that the City shall be named  
as an additional insured to the full extent of any limitation contained in any  
such policy or policies obtained by the Company. The Company shall be permitted  
to provide evidence of a blanket policy in satisfaction of this Section 10.2.1.  
  
 10.2.2 Maintenance  
  
 (a) The Company shall continuously maintain one or more  
 liability insurance policies meeting the requirements in Section 10.2.1  
 hereof throughout the Term and thereafter until completion of removal of  
 the System over, under or on the Inalienable Property of the City to the  
 extent such removal is required pursuant to this Agreement.  
  
 (b) Each such liability insurance policy shall contain the  
 following endorsement: "It is hereby understood and agreed that this  
 policy may not be canceled nor the intention not to renew be stated until  
 ninety (90) days after receipt by the City, by registered mail, of a  
 written notice of such intent to cancel or not to renew." Within sixty  
 (60) days after receipt by the City of any said notice, and in no event  
 later than thirty (30) days prior to any said cancellation, the Company  
 shall obtain and furnish to DoITT, with a copy to the Comptroller,  
 replacement insurance policies in a form reasonably acceptable to DoITT  
 and the Comptroller together with evidence demonstrating that the premiums  
 for such insurance have been paid.  
  
 10.2.3 Adjusted Insurance Coverage  
  
 The Company agrees to adjust the minimum coverage of the  
liability insurance policy or policies required by Section 10.2.1 within three  
(3) months of notice from the City that the City has reasonably determined that  
additional amounts or types of insurance are being commonly carried with respect  
to systems of a size and nature similar to the System or other circumstances  
have arisen which make it reasonably prudent to obtain such additional amounts  
or types of insurance.  
  
  
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 10.2.4 Liability Not Limited  
  
 The liability of the Company and any Affiliated Person (not  
including a limited partner or an individual shareholder) to the City or any  
Person for any of the matters which are the subject of the liability insurance  
policy or policies required by this Section 10.2 shall not be limited by said  
insurance policy or policies nor by the recovery of any amounts thereunder;  
provided, however, that the City shall in no case be entitled to duplicative  
recoveries from different sources.  
  
 SECTION 11 - SPECIFIC RIGHTS AND REMEDIES  
  
 11.1 Not Exclusive  
  
 The Company agrees that the City shall have the specific rights and  
remedies set forth in this Section 11. These rights and remedies are in addition  
to and cumulative of any and all other rights or remedies, existing or implied,  
now or hereafter available to the City at law or in equity in order to enforce  
the provisions of this Agreement. Such rights and remedies shall not be  
exclusive, but each and every right and remedy specifically provided or  
otherwise existing or given may be exercised from time to time and as often and  
in such order as may be deemed expedient by the City, except as provided herein.  
The exercise of one or more rights or remedies shall not be deemed a waiver of  
the right to exercise at the same time or thereafter any other right or remedy  
nor shall any such delay or omission be construed to be a waiver of or  
acquiescence to any default. The exercise of any such right or remedy by the  
City shall not release the Company from its obligations or any liability under  
this Agreement, provided, however, that the City shall in no case be entitled to  
duplicate recoveries from different sources.  
  
 11.2 Default  
  
 11.2.1 Events of Default  
  
 In addition to any other Event of Default specified herein,  
any of the following shall constitute an Event of Default:  
  
 (a) any breach of a provision of the Agreement requiring the  
 Company (i) to replenish the Performance Bond/Security Fund (Section  
 5.8.6); (ii) to maintain the Performance Bond/Security Fund (Section 5.8);  
 (iii) to make any payments to the City; (iv) to maintain a liability  
 insurance policy (Section 10.2); or (v) to provide or furnish information  
 to the City, that is not cured within thirty (30) days after notice  
 pursuant to Section 11.2.2;  
  
 (b) any substantial breach of a material provision of this  
 Agreement by the Company that is not cured within thirty (30) days after  
 notice pursuant to Section 11.2.2; or  
  
 (c) any persistent failure by the Company to comply with any  
 of the provisions, terms or conditions of this Agreement or with any  
 rules, regulations, orders or other directives of the City after having  
 received notice of a failure to comply.  
  
  
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 11.2.3 Cure Procedures  
  
 (a) The Commissioner shall notify the Company, in writing,  
of any breach under this Agreement, in accordance with Section 13.5 hereof.  
The notice shall specify the alleged breach(es) with reasonable  
particularity. The Company shall either (i) within the number of days set  
forth in the applicable paragraph of Section 11.2.1 hereof, or such longer  
period of time as the Commissioner may specify in such notice, cure such  
alleged breach(es); or (ii) in a written response submitted to the  
Commissioner within fifteen (15) days after the notice of breach, present  
facts and arguments in refutation or excuse of such alleged failure. The  
submission of such a response shall toll the running of the applicable cure  
period as provided in Section 11.2.1 hereof. Notwithstanding the preceding,  
no Event of Default shall exist if a breach is curable but work to be  
performed, acts to be done, or conditions to be removed which cannot, by  
their nature, reasonably be performed, done or removed within the cure period  
provided, so long as the Company shall have commenced curing the same within  
the cure period provided and shall diligently and continuously prosecute the  
same promptly to completion.  
  
 (b) If the Company fails to cure the breach within the  
applicable cure period, and fails to submit a response to the Commissioner  
pursuant to subparagraph (a) hereof within the period provided herein for  
submitting such response, an Event of Default will be deemed to have occurred.  
  
 (c) If, after the Company makes a response to the  
Commissioner, the Commissioner determines, in his or her reasonable  
discretion, that a breach under this Agreement has occurred, the Company  
shall cure such breach within the balance of the time period to cure that  
remained when the submission was made. If the Company is not able to cure  
within the remaining time, the breach will be deemed to be an Event of  
Default provided, however, that no Event of Default shall exist if a breach  
is curable but work to be performed, acts to be done, or conditions to be  
removed which cannot, by their nature, reasonably be performed, done or  
removed within the cure period remaining, so long as the Company shall have  
commenced curing the same within the cure period provided and shall  
diligently and continuously prosecute the same promptly to completion.  
  
 (d) If, as a result of a failure or alleged failure to  
comply with a material provision of this Agreement, the Company is unable to  
comply with any other material provision(s) which necessarily and directly  
arise(s) out of said failure or alleged failure as delineated in said  
subsections, such inability to comply with such other provision(s) shall not  
be deemed to be an independent failure to comply with a material provision of  
this Agreement.  
  
 11.2.3 Remedies of the City  
  
 (a) Upon an Event of Default, DoITT may:  
  
 (i) cause a withdrawal from the Performance Bond/  
 Security Fund for any specified amount due the City under this  
 Agreement;  
  
  
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 (ii) assess money damages from the Company as  
 compensation for such Event of Default;  
  
 (iii) revoke the franchise granted pursuant to this  
 Agreement by termination of this Agreement;  
  
 (iv) accelerate the expiration of the Term by decreasing  
 the term of the franchise provided in Section 2.1 hereof, provided  
 that the remaining term of the franchise as accelerated pursuant to  
 this Section 11.2.3(a)(iv) shall not be less than twelve (12)  
 months;  
  
 (v) restrain by injunction, the default or reasonably  
 anticipated default by the Company of any provision of this  
 Agreement; and  
  
 (vi) invoke any other available remedy that would be  
 permitted by law.  
  
 (b) DoITT shall give the Company notice in writing when it  
 determines to pursue one or more remedies, but nothing herein shall  
 prevent DoITT from electing more than one remedy, simultaneously or  
 consecutively, for any default, provided, however, that the City shall in  
 no case be entitled to duplicate recoveries from different sources.  
  
 11.3 Termination  
  
 11.3.1 Termination Events  
  
 (a) The occurrence of any of the following shall result in  
 termination of the Agreement:  
  
 (i) the occurrence of any event relating to the  
 financial status of the Company which may reasonably lead to the  
 foreclosure or other judicial or nonjudicial sale of all or any  
 material part of the System, and the Company fails to demonstrate to  
 the reasonable satisfaction of the Commissioner within thirty (30)  
 days after notice that such event will not lead to such foreclosure  
 or other judicial or nonjudicial sale;  
  
 (ii) the condemnation by public authority, other than  
 the City or sale or dedication under threat or in lieu of  
 condemnation, of all or substantially all of the System, the effect  
 of which would materially frustrate or impede the ability of the  
 Company to carry out its obligations and the purposes this Agreement  
 and the Company fails to demonstrate to the reasonable satisfaction  
 of the Commissioner, within thirty (30) days after notice that such  
 condemnation, sale or dedication would not materially frustrate or  
 impede such ability of the Company;  
  
 (iii) except as otherwise provided in Section 9.6, if:  
 (A) the Company shall make an assignment of the Company or  
 substantially all of the  
  
  
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 System for the benefit of creditors, shall become and be adjudicated  
 insolvent, shall petition or apply to any tribunal for, or consent  
 to, the appointment of , or taking possession by, a receiver,  
 custodian, liquidator or trustee or similar official pursuant to  
 state or local laws, ordinances or regulations of or for it or any  
 substantial part of its property or assets, including all or any  
 part of the System; (B) a writ or warranty of attachment, execution,  
 distraint, levy, possession or any similar process shall be issued  
 by any tribunal against all or any material part of the Company's  
 property or assets; (C) any creditor of the Company petitions or  
 applies to any tribunal for the appointment of, or taking possession  
 by, a trustee, receiver, custodian, liquidator or similar official  
 for the Company or of any material parts of the property or assets  
 of the Company under the law of any jurisdiction, whether now or  
 hereinafter in effect, and a final order, judgment or decree is  
 entered appointing any such trustee, receiver, custodian, liquidator  
 or similar official, or approving the petition in any such  
 proceeding or (D) any final order, judgment or decree is entered in  
 any proceedings against the Company decreeing the voluntary or  
 involuntary dissolution of the Company; or  
  
 (iv) if there shall occur any denial, forfeiture or  
 revocation by any federal, state or local governmental authority  
 having regulatory jurisdiction over the Company of an authorization  
 required by law or the expiration without renewal of any such  
 authorization, and such events, either individually or in the  
 aggregate, materially jeopardize the System or its operation, and  
 the Company fails to take steps to obtain or restore such  
 authorization within thirty (30) days after notice.  
  
 (b) In addition, an Event of Default under Section 11.2 herein  
 may result in termination of the Agreement.  
  
 11.3.2 Rights Upon Termination  
  
 In the event of any termination of this Agreement, whether  
pursuant to Section 11.3.1 hereof, by the expiration of the Term or by  
revocation of the franchise by DoITT, the Company, at the City's election, shall  
(a) sell to the City or to the City's designee the portions of the System on,  
over or under the Inalienable Property of the City and all equipment necessary  
for the functioning of such portions of the System; and/or (b) remove the  
System, of portions of the System, installed on, over or under the Inalienable  
Property of the City at the Company's own cost and expense, pursuant to Section  
11.4 hereof.  
  
 11.3.3 Price  
  
 (a) The price to be paid to the Company upon an acquisition  
 pursuant to Section 11.3.2 herein shall be fair value (or, in case of  
 termination by revocation, an equitable price, determined with due regard  
 to the inquiry to the City and its residents), with no value allocable to  
 the franchise itself, which price shall be the fair value as provided in  
 Section 33(h)(S) of the City Charter, as may be amended, or under any  
 successor provision. Subject to the limitations found in the next  
 sentence, to the extent the City effects an acquisition pursuant to  
 Section 11.3.2 herein and subsequently sell  
  
  
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 that portion of the System acquired to a third party, and the amount  
 received by the City from such sale exceeds the price paid by the City to  
 the Company pursuant to this Section 11.3.3, the City shall pay such  
 excess amount to the Company after deducting all reasonable expenses  
 incurred by the City in connection with such acquisition and sale. The  
 preceding sentence shall apply only in cases where the Agreement has  
 terminated by reason of the expiration of the full Term or by reason of  
 the occurrence of an event in Section 11.3.1 (a) hereof, and shall not  
 apply in any case where the Agreement has been terminated for cause. In  
 cases where the Agreement has been terminated for cause and the City  
 effects an acquisition or transfer of the System for any reason, and the  
 party acquiring the System acquires it directly from the Company, then The  
 City shall be entitled to receive from such party any amount in excess of  
 the price which the City could have received if it had purchase the System  
 from the Company and subsequently sold the System to such third party.  
  
 (b) The date of valuation for purposes of Section 11.3.2  
 hereof shall be the date of termination of the Agreement. For the purpose  
 of determining such valuation, the parties shall select a mutually  
 agreeable independent appraiser to compute the purchase price in  
 accordance with industry practice and the aforementioned standards. If  
 they cannot agree on an appraiser in ten (10) days, the parties will seek  
 an appraiser from the American Arbitration Association. The appraiser  
 shall be instructed to make the appraisal as expeditiously as possible,  
 but in no more than sixty (60) days and shall submit to both parties a  
 written appraisal. The appraiser shall be afforded access to the Company's  
 books and records, as necessary to make the appraisal. Not withstanding  
 the provisions of Section 7.2.2 hereof, the parties shall share equally  
 the costs and expenses of the appraiser.  
  
 (c) The City will notify the company, within thirty (30) days  
 after receipt of the appraisal, of its election of rights pursuant to  
 Section 11.3.2 hereof. If it elects to make the purchase permitted under  
 Section 11.3.2 hereof. If it elects make the purchase permitted under  
 Section 11.3.2 hereof, it will purchase the same at closing to occur  
 within a reasonable time after its election.  
  
 (d) The Company agrees, at the request of the City, (i) to  
 operate the System on behalf of the City pursuant to the provisions of  
 this Agreement and such additional terms and conditions as are equitable  
 to the City and the Company for a period of up to four (4) months after  
 the termination of this Agreement, until the City either elects not to  
 purchase any portion of the System, or closes on such a purchase, or (ii)  
 to cease all construction and operational activities in a prompt and  
 workmanlike manner.  
  
 11.3.4 Company's Obligations  
  
 In the event of any acquisition of the System by the City or  
the City's designee pursuant to Section 11.3.2 hereof, the Company shall:  
  
 (a) cooperate with the City to effectuate an orderly transfer  
 of all records and information concerning the System to the City;  
  
  
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 (b) promptly execute all appropriate documents to transfer to  
 the City subject to any liabilities, title to the System as well as all  
 contracts, leases, licenses, permits, rights-of-way, and any other rights,  
 contracts or understanding necessary to maintain and operate the System,  
 as appropriate; provided, that such transfers shall be made subject to the  
 rights, under Article 9 of the Uniform Commercial code as in effect in the  
 State of New York and, to the extent that any collateral consists of real  
 property under the New York Real Property Law, of banking or any other  
 lending institutions which are secured creditors or mortgagees of the  
 Company at the time of such transfers; and provided, that, with respect to  
 such creditors and mortgagees, the City shall have no obligation following  
 said transfers to pay, pledge, or otherwise commit in any way any general  
 or any other revenues or funds of the City, other than the gross operating  
 revenues received by the City from its operation of the System, in order  
 to repay any amounts outstanding on any debts secured by the System which  
 remain owing to such creditors or mortgagees; and provided, finally, that  
 the total of such payments by the City to such creditors and mortgages,  
 from the gross operating revenues received by the City from its operation  
 of the System, shall in no event exceed the lesser of: (i) the fair market  
 value of the System on the date of the transfer of title to the City or  
 (ii) the outstanding debt owed to such creditors and mortgagees on said  
 date. Nothing in this Section 11.3. shall be construed to limit the rights  
 of any such secured creditors to exercise it or their rights as secured  
 creditors or mortgagees at any time prior to the payment of all amounts  
 due pursuant to the applicable debt instruments; and  
  
 (c) promptly supply the Commissioner with all necessary  
 records (i) to reflect the City's ownership of the System; and (ii) to  
 operate and maintain the System including, without limitation, all  
 Customer records and plant and equipment layout documents.  
  
 11.4 Removal  
  
 11.4.1 Discretion of DoITT  
  
 Upon any termination of this agreement, DoITT, in its sole  
discretion may, but shall not be obligated to, direct the Company to remove, at  
the Company's sole cost and expense, all, or any portion designated by DoITT, of  
the System installed by the Company from the Inalienable Property of the City in  
accordance with all applicable requirements of the City and subject to the  
following:  
  
 (a) this provision shall not apply to buried portions of the  
 System which, in the opinion of DoITT, cannot be removed;  
  
 (b) in removing the System, or part thereof, the Company shall  
 refill and compact, at its own cost and expense, any excavation that shall  
 be made by it and shall leave, in all material aspects, all Inalienable  
 Property and other property in as good condition as that prevailing prior  
 to the Company's removal of the System from Inalienable Property of the  
 City and without affecting, altering or disturbing in any way any  
 electric, telephone or other cables, wires, structures or attachments;  
  
  
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 (c) the City shall have the right to inspect and approve the  
 condition of such Inalienable Property after removal and, to the extent  
 that the City determines that said Inalienable Property and other property  
 have not been left in materially as good condition, as that prevailing  
 prior to the Company's removal of the System, the Company shall be liable  
 to the City for the cost or restoring the Inalienable Property and other  
 property to said condition;  
  
 (d) the Performance Bond/Security Fund, liability insurance  
 and indemnity provisions of this Agreement shall remain in full force and  
 effect during the entire period of removal and associated repair of all  
 Inalienable Property of the City, and for not less that one hundred twenty  
 (120) days thereafter; and  
  
 (e) removal shall be commenced within thirty (30) days of the  
 removal order by DoITT and shall be substantially completed within twelve  
 (12) months thereafter including all reasonably associated repair of the  
 Inalienable Property of the City.  
  
 11.4.2 Failure to Commence Removal  
  
 If, in the reasonable judgment of the Commissioner, the  
Company fails to commence removal of the System as designated by DoITT, within  
thirty (30) days after DoITT's removal order, or if the Company fails to  
substantially complete such removal, including all associated repair of the  
Inalienable Property of the City, within twelve (12) months thereafter, then, to  
the extent not inconsistent with applicable law, the City shall have the right  
to:  
  
 (a) declare that all rights, title and interest to the System  
 belong to the City with all rights of ownership including, but not limited  
 to, the right to connect and use the System or to effect a transfer of all  
 right, title and interest in the System to another Person for operation;  
 or  
  
 (b) authorize removal of the System installed by the Company  
 on, over or under the Inalienable Property of the City at the Company's  
 cost and expense, by another Person; and  
  
 (c) to the extent consistent with applicable law, and portion  
 of the Company's System on, over or under the Inalienable Property of the  
 City designated by DoITT for removal and not timely removed by the Company  
 shall belong to and become the property of the City without payment to the  
 Company notwithstanding the provisions of Section 11.3.2 hereof, and the  
 Company shall execute and deliver such documents, the Commissioner shall  
 request, in form and substance acceptable to the Commissioner, to evidence  
 such ownership by the City.  
  
 11.4.3 No Condemnation  
  
 None of the declaration, connection, use, transfer or other  
actions by the City or the Commissioner under Section 11.4.2 shall constitute a  
condemnation by the City or a sale or dedication under threat or in lieu of  
condemnation.  
  
  
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 11.5 Return of Performance Bond/Security Fund  
  
 Upon the later of the date one hundred and twenty (12)) days after  
the termination of this Agreement for any reason or the date of the completion  
of removal of the System from and associated repair of the Inalienable Property  
of the City pursuant to Section 11.4.1 hereof, the Company shall be entitled to  
the return of the Performance Bond/Security Fund deposited pursuant to Section  
5.8 hereof, or such portion thereof as remains on deposit with the Comptroller  
at said termination, provided that all offsets necessary (a) to compensate the  
City pursuant to Section 5.8.2 and/or 5.8.3 hereof, (b) to cover any costs, loss  
or damage incurred by the City as a result of any Event of Default, in the event  
of termination of this Agreement by the City pursuant to Section 11.3 hereof,  
and (c) to reimburse the City for the cost of removal of the System from the  
Inalienable Property of the City pursuant to Section 11.4.2 hereof have been  
taken by the City.  
  
 11.6 Other Provisions  
  
 The City and the Company shall negotiate in good faith all other  
terms and conditions of any such acquisition or transfer, except that the  
Company hereby waives its rights, if any to relocation costs arising out of the  
termination of this Agreement pursuant to this Section 11 that may be provided  
by law and except that, in the event of any acquisition of the System by the  
City: (i) the City shall not be required to assume any of the obligations of any  
collective bargaining agreements or any other employment contracts held by the  
Company or any other obligation of the Company or its officers, employees, or  
agents including, without limitation, any pension or other retirement, or any  
insurance obligations; and (ii) the City may lease, sell, operate, or otherwise  
dispose of all or any part of the System in any manner.  
  
 SECTION 12-SUBSEQUENT ACTION  
  
 12.1 Compensation  
  
 In the event that, after the Effective Date any court, agency,  
commission, legislative body, or other authority of competent jurisdiction takes  
any action or enters any judgment which has a materially adverse effect, with  
respect to the City or the Company, on the compensation or other payments to be  
made by the Company pursuant to Section 7 of this Agreement, then the Company  
and DoITT shall enter into negotiations to amend this Agreement in a manner not  
inconsistent with any such action or judgment so as to establish a fair and  
equitable relationship between the parties. In the event that either party fails  
to negotiate in good faith to produce an agreement which is reasonably  
acceptable to both parties within a reasonable period, then either party shall  
have the right, by notice to the other, to accelerate the term of this Agreement  
and the franchise granted hereunder such that the term and the franchise shall  
terminate on the date which is one half of the number of days between the date  
of such notice and the fifteenth anniversary of the Original Agreement Date, but  
in no event shall the City be permitted to reduce the Term of this franchise by  
virtue of this Section 12.1 such that the Term of this franchise is less than 10  
years.  
  
  
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 12.2 Procedure for subsequent Invalidity  
  
 12.2.1 Declaration of Invalidity or Injunction  
  
 Except as provided in Section 12.1 hereof, in the event that,  
after the Effective Date, any court, agency, commission, legislative body, or  
other authority of competent jurisdiction:  
  
 (a) declares this Agreement invalid, in whole or in part, or  
  
 (b) requires the City or the Company either to: (i) perform  
 any act which is inconsistent with any provision of this Agreement or (ii)  
 cease performing any act required by any provision of this Agreement, then  
 the Company or the City, as the case may be, shall promptly notify the  
 other party in writing of such fact.  
  
 1.1.2 Continued Compliance  
  
 After the occurrence of the events described in Section 12.2.1  
hereof, the Company and the City shall continue to comply with all provisions of  
this Agreement, including the affected provision, until the validity of the  
declaration or requirements has been finally adjudicated or a court orders the  
Company or the City to comply with such declaration or order, provided that  
either party may comply with any court order which is not stayed during the  
pendency of any appeal leading to said final adjudication.  
  
 12.2.3 Negotiations to Amend Agreement  
  
 Except as provided in Section 12.1 hereof, to the extent that  
any statute, rule, regulation, ordinance or any other law is enacted, adopted,  
repealed, amended, modified, changed or interpreted in any way during the term  
of this Agreement so as to (a) declare the Agreement invalid, in whole or in  
part, or (b) require the Company or City either to: (i) perform any act which is  
inconsistent with any provision of this Agreement, or (ii) cease performing any  
act required by any provision of this Agreement, the Company and City shall  
enter into good faith negotiations so as to modify this Agreement and /or  
regulate the System, as applicable, to reflect such enactment, adoption, repeal,  
amendment, modification, change or interpretation and the Company agrees to  
comply with any such modifications or regulations arising out of such  
negotiations. In the event that either party fails to negotiate in good faith to  
produce an agreement which is reasonably acceptable to both parties within a  
reasonable period, then either party shall have the right, by notice to the  
other, to accelerate the term of this Agreement and the franchise granted  
hereunder such that the term and the franchise shall terminate on the date which  
is one half of the number of days between the date of such notice and the  
fifteenth anniversary of the Original Agreement Date but in no event shall the  
City be permitted to reduce the Term of this franchise by virtue of this Section  
12.2.3 such that the Term of this franchise is less than 10 years.  
  
  
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 SECTION 13-MISCELLANEOUS  
  
 13.1 Appendices  
  
 The Appendices to this Agreement, attached hereto, and all portions  
thereof and exhibits thereto, are, except as otherwise specified in said  
appendices, incorporated herein by reference and expressly made a part of this  
Agreement. The procedures for approval of any subsequent amendment or  
modification to said Appendices shall be the same as those applicable to any  
amendment or modification hereof.  
  
 13.2 Action Taken by City  
  
 Any action to be taken by DoITT pursuant to this Agreement shall be  
taken in accordance with the applicable provisions of the City Charter as said  
Charter may be amended or modified throughout the Term. Whenever, pursuant to  
the provisions of this Agreement, the City, the Company, or any other Person is  
required or permitted to take any action, including, without limitation, the  
making of any request or the granting of any consent, approval, or  
authorization, the propriety of said action shall be measured against the  
standard of reasonableness such that each such action shall be undertaken in a  
reasonable manner, unless this Agreement authorizes the City, the Company, or  
other Person to take such action in its sole discretion.  
  
 13.3 Entire Agreement  
  
 This Agreement, including all Appendices hereto, embodies the entire  
understanding and agreement of the City and the Company with respect to the  
subject matter hereof and merges and supersedes all prior representations,  
agreements and understandings, whether oral or written, between the City and the  
Company with respect to the subject matter hereof, including, without  
limitation, all prior drafts of this Agreement and any Appendix to this  
Agreement and any and all written or oral statements or representations by any  
official, employee, agent, attorney, consultant or independent contractor of the  
City or the Company.  
  
 13.4 Delays and Failures Beyond Control of Company  
  
 Notwithstanding any other provision of this Agreement, the Company  
shall not be liable for delay in the performance of, or failure to perform, in  
whole or in part, its obligation pursuant to this Agreement due to strike, war  
or act of war (whether an actual declaration of war is made or not),  
insurrection, riot, act of public enemy, accident, fire, flood or other act of  
God, technical failure where the Company has exercised all due care in the  
prevention thereof, or other causes or events, to the extent that such any such  
causes or events are beyond the control of the Company. In the event that any  
such delay in performance or failure to perform affects only part of the  
Company's capacity to perform, the Company shall perform to the maximum extent  
it is able to do so and shall take all steps within its power to correct said  
cause(s), it shall take all reasonable steps to do so in as expeditious a manner  
as possible. The company shall notify DoITT in writing of the occurrence of any  
event covered by this Section 13.4 within five (5) business days of the date  
upon which the Company learns or should have learned of its occurrence.  
  
  
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 13.5 Notices  
  
 Every notice, order, petition, document, or other direction or  
communication to be served upon the City or the Company shall be in writing and  
shall be sufficiently given if sent by registered or certified mail, return  
receipt requested. Every such communication to the Company shall be sent to its  
office located at c/o General Counsel, Metromedia Fiber Network, Inc. 0  
Xxxxxxxxxxx Xxxxx, Xxxx Xxxxxxxxxx, Xxx Xxxxxx 00000 or to such other location  
in New York City as the Company may designate, from time to time. Every  
communication from the Company shall be sent to the individual, agency or  
department designated in the applicable section of this Agreement, unless it is  
to "the City," in which case such communication shall be sent to the  
Commissioner of DoITT at 00 Xxxx Xxxxx, 0xx Xxxxx, Xxx Xxxx, Xxx Xxxx 00000. A  
required copy of each communication from the Company shall be sent to  
Corporation Counsel New York City Law Department, 000 Xxxxxx Xxxxxx, Xxx Xxxx,  
Xxx Xxxx 00000, Attention: Chief, Economic Development Division. Except as  
otherwise provided herein, the mailing of such notice, direction, or order shall  
be equivalent to direct personal notice and shall be deemed to have been given  
when mailed. Any notice the Commissioner is required to give to the Company  
pursuant to Section 11.2 hereof for which a cure period is ten (10) days or less  
must be served by personal delivery, overnight mail service or facsimile  
transmission.  
  
 13.6 General Representations, Warranties and Covenants of the Company  
  
 In addition to the representations, warranties, and covenants of the  
Company to the City set forth elsewhere herein, the Company represents and  
warrants to the City and covenants and agrees (which representations,  
warranties, covenants and agreements shall not be affected or waived by any  
inspection or examination made by or on behalf of the City), that, as of the  
Effective Date:  
  
 13.6.1 Organization, Standing, Power and Ownership  
  
 The Company is a limited liability company duly organized, validly  
existing and in good standing under the laws of the State of Delaware and is  
duly authorized to do business in the State of New York, The Company has all  
requisite power and authority to own or lease its properties and assets, to  
conduct its business as currently conducted and to execute, delivery and perform  
this Agreement and all other agreements entered into or delivered in connection  
with or as contemplated hereby. Certified copies of the Company's organizational  
and governing documents, as amended to date, have been delivered to the  
Commissioner, and are completed and correct. The Company is qualified to do  
business and is in good standing in the State of New York. The description of  
the ownership of the Company n Appendix G attached hereto is accurate and  
complete.  
  
 13.6.2 Authorization; Non-Contravention  
  
 The execution, delivery and performance of this Agreement and  
all other agreements, if any, entered into in connection with the transaction  
contemplated hereby have been duly, legally and validly authorized by all  
necessary action on the part of the Company and the Company has furnished the  
City with a certified copy of authorizations for the execution and delivery of  
this Agreement. This Agreement and all other agreements, if any, entered into in  
  
  
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connection with the transactions contemplated hereby have been duly executed and  
delivered by the Company and constitute (or upon execution and delivery by the  
Company and the City will constitute) the valid and binding obligations of the  
Company, and are enforceable (or upon execution and delivery will be  
enforceable) in accordance with their respective terms. The Company has  
obtained, or is in the process of obtaining, the requisite authority to  
authorize, execute and deliver this Agreement and to consummate the transactions  
contemplated hereby and no other proceedings or other actions are necessary on  
the part of the Company to authorize the execution and delivery of this  
Agreement and the consummation of the transactions contemplated hereby. Neither  
the execution and delivery of this Agreement by the Company nor the performance  
of its obligations contemplated hereby will:  
  
 (a) conflict with, result in a materiel breach of or  
 constitute a material default under (or with notice or lapse of time or  
 both result in a material breach of or constitute a material default  
 under) (i) any governing document of the Company or to the Company's  
 knowledge, any agreement among the owners of the Company, or (ii) any  
 statute, regulation, agreement, judgment, decree, court or administrative  
 order or process or any commitment to which the Company is a party or by  
 which it (or any of its properties or assets) is subject or bound;  
  
 (b) result in the creation of, or give any part the right to  
 create, any material lien, charge, encumbrance or security interest upon  
 the property and assets of the Company; or  
  
 (c) terminate, modify or accelerate, or give any third party  
 the right to terminate, modify or accelerate, any provision or term of any  
 contract, arrangement, agreement, license agreement or commitments, except  
 for any event specified in (a) or (b) above which individually or in the  
 aggregate would not have a material and adverse effect on the business,  
 properties or financial condition of the Company or the System.  
  
 1.1.3 Consent  
  
 No consent, approval or authorization of, or declaration or  
filing with, any public, governmental or other authority is required for the  
valid execution and delivery of this Agreement or any other agreement or  
instrument, if any, executed or delivered in connection herewith.  
  
 13.6.4 Compliance with Law  
  
 The Company certifies that, to the best of its knowledge after  
diligent inquiry, it is in compliance with all laws, ordinances, decrees and  
governmental rules and regulations applicable to the System and has filed, has  
obtained or will file for all government licenses, permits, and authorizations  
necessary for the operation, marketing and maintenance of the System.  
  
 13.6.5 Litigation; Investigations  
  
 To the best of the Company's knowledge, after diligent  
inquiry, except to the extent otherwise disclosed to the City: (a) there is no  
civil, criminal, administrative,  
  
  
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arbitration or other proceeding, investigation or claim (including, without  
limitation, proceedings with respect to unfair labor practice matters or labor  
organization activity matters), pending or threatened against the Company or any  
Affiliated Person, at law or in equity, or before any foreign, federal, state,  
municipal or other governmental department, commission, board, bureau agency or  
instrumentality (including without limitation any matter involving the granting  
of a temporary or permanent injunction against the Company or any Affiliated  
Person) that is reasonably likely to have a material adverse effect on the  
business, operation, properties, assets or financial condition of the Company or  
the System, or which questions the validity or prospective validity of this  
Agreement, or of any essential element upon which this Agreement depends, or of  
any action to be taken by the Company or any Affiliated Person; (b) no  
investigation or review by any governmental entity with respect to the Company  
or any Affiliated Person, relating to the System or any of the transactions  
contemplated hereby is pending or is threatened against the Company or any  
Affiliated Person, nor has any governmental entity indicated to the Company or  
any Affiliated Person an intention to conduct the same; and (c) neither the  
Company nor any Affiliated Person is subject to any outstanding order, writ,  
injunction or decree which materially and adversely affects the business,  
operations, properties, assets or financial condition of the System.  
  
 13.6.6 Fees  
  
 The Company has paid all franchise, license or other fees and  
charges which have become due pursuant to any franchise or permit to which it is  
a party and has made adequate provisions for any such fees and charges which  
have accrued, except where contested in good faith and by appropriate  
proceedings.  
  
 13.6.7 Criminal Acts  
  
 Neither the Company, or any Person holding a Controlling  
Interest in the Company, nor any director or officer of the Company nor any  
employee or agent of the Company nor any Controlling Person, acting pursuant to  
the express direction, or with the actual consent of the foregoing, has been  
convicted (where such conviction is a final, nonappealable judgment) or has  
entered a guilty plea with respect to: (a) any criminal offense, excluding Class  
B misdemeanors, violations, and traffic infractions as designated in the New  
York State Penal Law or their equivalents in other jurisdictions; or (b) any  
criminal offense, including, without limitation, bribery or fraud, arising out  
of or in connection with (i) this Agreement, (ii) the award of the franchise  
granted pursuant to this Agreement, or (iii) any act to be taken following the  
Effective Date, pursuant to this Agreement the City, its officers, employees, or  
agents.  
  
 13.6.8 Misrepresentation  
  
 No material misrepresentation has been made, either oral or  
written, intentionally or negligently, by or on behalf of the Company in this  
Agreement, in connection with any submission to DoITT or the Commissioner,  
including the Proposal, in connection with the negotiation of this Agreement.  
For the purpose of this Section, Proposal means the response to the City's  
Request for Proposals for Local High Capacity Telecommunications Services r  
submitted to the City by the Company, and any amendments thereto.  
  
  
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 13.7 Additional Covenants  
  
 Until the termination of this Agreement and the satisfaction in full  
by the Company of its obligation under this Agreement, in consideration of the  
franchise granted herein, the Company agrees that it will comply with the  
following affirmative covenants, unless the City otherwise consents in writing:  
  
 13.7.1 Compliance with Laws; Licenses and Permits  
  
 The Company shall comply with: (a) all applicable laws, rules,  
regulations, orders, writs, decrees and judgments (including, but not limited to  
those of the PSC and the FCC and any other federal or state agency or authority  
of competent jurisdiction) affecting this Agreement, the franchise, and the  
System; and (b) all local laws and all rules, regulations, orders, or other  
directives of the City, DoITT, and the Commissioner issued pursuant to and in  
accordance with this Agreement or otherwise.  
  
 The Company shall have the sole responsibility for obtaining  
or causing to be obtained all permits, licenses and other forms of approval or  
authorization necessary to construct, operate, maintain, upgrade, repair or  
remove the System, or any part thereof. The Company will, prior to any  
construction, operation, maintenance, upgrade, repair or removal of the System,  
secure all necessary permits, license and authorizations in connection with the  
construction, operation, maintenance, upgrade, repair or removal of the System,  
or any part thereof, and will file all required registrations, applications,  
reports and other documents with the FCC, the PSC and other entities exercising  
jurisdiction over the provision of telecommunications services or the  
construction of delivery systems therefor, except those which cannot be obtained  
prior to the date hereof, which the Company will promptly seek to obtain. The  
Company will promptly seek to obtain all leases, easements and equipment rental  
or other agreements necessary for the maintenance and operation of the System.  
  
 The Company shall not permit to occur, or shall promptly take  
corrective action if there shall occur, any event which (a) could result in the  
revocation or termination of any such license or authorization, (b) could  
materially and adversely affect any rights of the Company, or (c) permits or,  
after notice or lapse of time or both, would permit, revocation or termination  
of any such license or which materially and adversely affects or reasonably can  
be expected to materially and adversely affect the System or any part thereof.  
  
 137.2 Criminal Acts  
  
 The Company shall not permit any of the convictions or guilty  
pleas of the types listed in Section 13.6.7 to occur during the term of this  
Agreement, arising out of or in connection with (i) this Agreement, (ii) the  
award of the franchise granted pursuant to this Agreement, or (iii) any act to  
be taken following the Effective Date, pursuant to this Agreement by the City,  
its officers, employees, or agents, and it shall be an Event of Default if any  
such convictions or guilty pleas shall occur during the term of its Agreement,  
provided that the City's right to take enforcement action under this Agreement  
in the event of said conviction or guilty pleas shall arise only with respect to  
any of the foregoing convictions or guilty pleas of the Company itself or, with  
respect to any of the foregoing convictions or guilty pleas of any of the  
  
  
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other Persons specified in Section 13.6.7, if the Company shall have failed to  
disassociate itself from, or terminate the employment of, said Person or Persons  
within thirty (30) days after the Commissioner orders such disassociation.  
  
 13.7.3 Maintain Existence  
  
 The Company will preserve and maintain its existence, its  
business, and all of its rights and privileges necessary or desirable in the  
normal conduct of said business in the Franchise Area, unless any such change  
shall not have a material and adverse impact on the Company's ability to  
construct, operate, maintain and upgrade the System as provided herein fulfill  
the obligation of the Company hereunder. The Company shall maintain its good  
standing in its state of organization and continue to qualify to do business and  
remain in good standing in the State of New York. The Company shall conduct  
business in accordance with its organizational and governing documents, and  
shall comply with the material terms of all mortgages, indentures, leases,  
contracts and other agreements and instruments binding upon it except where  
contested in good faith and by appropriate proceedings.  
  
 13.7.4 Condition of System  
  
 All of the properties, assets and equipment used as part of  
the System will be maintained in good repair, working order and good condition.  
  
 13.8 Binding Effect  
  
 This Agreement shall be binding upon and inure to the benefit of the  
parties hereto and their respective successors and permitted transferees and  
assigns. All of the provisions of this Agreement shall apply to the Company, its  
successors, and assigns.  
  
 13.9 No Waiver; Cumulative Remedies  
  
 No failure on the part of the City to exercise, and no delay in  
exercising, any right hereunder shall operate as a waiver thereof, nor shall any  
single or partial exercise of any such right preclude any other right, except as  
provided herein, subject to the conditions and limitations established in this  
Agreement. The rights and remedies provided herein are cumulative and not  
exclusive of any remedies provided by law, and nothing contained in this  
Agreement shall impair any of the rights of the City under applicable law,  
subject in each case to the terms and conditions of this Agreement. A waiver of  
any right or remedy by the City at any one time shall not affect the exercise of  
such right or remedy or any other right or other remedy by the City at any other  
time. In order for any waiver of the City to be effective, it must be in  
writing. The failure of the City to take any action regarding a default or any  
Event of Default by the Company shall not be deemed or construed to constitute a  
waiver of or otherwise affect the right of the City to take any action permitted  
by this Agreement at any other time regarding such default or Event of Default  
which has not been cured, or with respect to any other default or Event of  
Default by the Company.  
  
  
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 13.10 No Opposition  
  
 The Company agrees that it shall not oppose the intervention by the  
City in any suit, action, or proceeding involving the Company with respect to  
the System or its construction, operation, maintenance, repair or removal, or to  
any provision of this Agreement, Prior to the fifth anniversary of the Effective  
Date, the Company agrees that it will not, at any time, set up against the City  
any claim nor institute against the City any proceeding alleging that, pursuant  
to any law, rule or regulation in effect on the Effective Date, a condition or  
term of this Agreement is unreasonable, arbitrary, void, or otherwise  
unenforceable, or that the City had no power or authority to make such term or  
condition. By execution of this Agreement, the Company accepts the validity of  
the terms and conditions of this Agreement in their entirety and hereby waives  
and relinquishes, to the maximum extent permitted by applicable law, any and all  
rights it has, in law or in equity, to assert in any manner at any time or in  
any forum that this Agreement, the franchise granted pursuant to this Agreement,  
the terms and conditions of this Agreement or the processes and procedures  
pursuant to which this Agreement was entered into and the franchise was granted  
are not consistent with applicable law in effect on the Effective Date.  
  
13.11 Partial Invalidity  
  
 If any section, subsection, sentence, clause, phrase or other portion of  
this Agreement is, for any reason, declared invalid, in whole or in part, by any  
court, agency, commission, legislative body, or other authority of competent  
jurisdiction, such portion shall be deemed a separate, distinct, and independent  
portion. Except as provided in Section 12 hereof such declaration shall not  
affect the validity of the remaining portions hereof, which other portions hall  
continue in full force and effect.  
  
 13.12 Headings  
  
 The headings contained in this Agreement are to facilitate reference only,  
do not form a part of this Agreement, and shall not in any way affect the  
construction or interpretation hereof. Terms such as "hereby," "herein,"  
"hereof," "hereinafter," "hereunder," and "hereto" refer to this Agreement as a  
whole and not to the particular sentence or paragraph where they appear, unless  
the context otherwise requires. The term "may" is permissive; the terms "shall"  
and "will" are mandatory, not merely directive. All references to any gender  
shall be deemed to include both the male and female, and any reference by number  
shall be deemed to include both the singular and plural, as the context may  
require. Terms used in the plural include the singular, and vice versa, unless  
the context otherwise requires.  
  
 13.13 No Agency  
  
 The Company shall conduct the work to be performed pursuant to this  
Agreement as an independent contractor and not as an agent of the City.  
  
  
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 13.14 Governing Law  
  
 This Agreement shall be deemed to be executed in the City of New  
York, State of New York, and shall be governed in all respects, including  
validity, interpretation and effect, and construed in accordance with the laws  
of the State of New York, as applicable to contracts entered into and to be  
performed entirely within that State.  
  
 13.15 Survival of Representation and Warranties  
  
 All representations and warranties contained in this Agreement shall  
survive the Term.  
  
 13.16 Delegation of City Rights  
  
 The City reserves the right to delegate and redelegate, from time to  
time and to the extent permitted by law, any of its rights or obligations under  
this Agreement to any governmental body or organization, or official of any  
other governmental body or organization and to revoke any such delegation or  
redelegation. Any such delegation or redelegation by the City shall be effective  
upon written notice by the City to the Company of such delegation or  
redelegation. Upon receipt of such notice by the Company, the Company shall be  
bound by all terms and conditions of the delegation or redelegation not in  
conflict with this Agreement. Any such delegation, revocation or redelegation,  
no matter how often made, shall not be deemed an amendment to this Agreement or  
require the Company's consent.  
  
 13.17 Claims Under Agreement  
  
 The City and the Company agree that, except to the extent  
inconsistent with applicable law, any and all claims asserted by or against the  
City arising under this Agreement or related thereto shall be heard and  
determined either in a court of the United States located in New York City  
("Federal Court") or in a court of the State of New York located in the City and  
County of New York ("New York State Court"). To effect this Agreement and  
intent, the Company agrees that:  
  
 (a) If the City initiates any action against the Company in  
 Federal Court or in New York State Court, service of process may be made  
 on the Company as provided in Section 13.20 hereof;  
  
 (b) With respect to any action between the City and the  
 Company in New York State Court, the Company hereby expressly waives and  
 relinquishes any rights it might otherwise have (i) to move or dismiss on  
 grounds of forum non conveniens: (ii) to remove to Federal Court outside  
 of the City of New York; and (iii) to move for a change of venue to a  
 court of the State of New York outside New York County;  
  
 (c) With respect to any action between the City and the  
 Company in Federal Court, the Company expressly waives and relinquishes  
 any right it might otherwise have to move to transfer the action to a  
 United States Court outside the City of New York; and  
  
  
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 (d) If the Company commences any action against the City in a  
 court located other than in the City and State of New York, then, upon  
 request of the City, the Company shall either consent to a transfer of the  
 action to a court of competent jurisdiction located in the City and State  
 of New York or, if the court where the action is initially brought will  
 not or cannot transfer the action, the Company shall consent to dismiss  
 such action without prejudice and may thereafter reinstitute the action in  
 a court of competent jurisdiction in the City of New York. When the  
 Company either gives such consent or dismisses such action, to allow for  
 such reinstitution, the City agrees, where it is able, to waive any statue  
 of limitation, provided the Company has brought such action at least three  
 (3) months prior to the expiration of the statute of limitation and has  
 provided the City with notice pursuant to the Agreement.  
  
 13.18 Modification  
  
 Except as otherwise provided in this Agreement, any Appendix to this  
Agreement or applicable law, no provision of this Agreement nor any Appendix to  
this Agreement shall be amended or otherwise modified, in whole or in part,  
except by a written instrument, duly executed by the City and the Company, and  
approved as required by applicable law.  
  
 13.19 Maintain Office  
  
 The Company agrees to maintain an office in the City of New York  
throughout the Term of this Agreement. Such office is currently located at: 000  
0xx Xxxxxx, 00xx Xxxxx, Xxx Xxxx, Xxx Xxxx 00000.  
  
 13.20 Service of Process  
  
 Process may be served either in person, wherever the Company may be  
found, by registered mail addressed to the Company at its office in the City, or  
as set forth in Section 13.5 of this Agreement, to such other location as the  
Company may provide to the City in writing, or to the Secretary of State of the  
State of New York.  
  
 13.21 Compliance With Certain City Requirements  
  
 The Company agrees to comply in all respects with the City's  
"XxxXxxxx Principles', a copy of which is attached at Appendix H hereto. The  
Company agrees to comply in all respects with the Local Law 33 of 1997, a copy  
of which is attached at Appendix I hereto. The Company agrees to comply in all  
respects with the City's Vendor Information Exchange System, as the same may be  
amended from time to time.  
  
 13.22 Matching Provision  
  
 (a) In the event that the City grants, renews or renegotiates  
 one or more franchise(s), agreement(s) or similar authorization(s), for  
 the provision of local, high-capacity telecommunications services or  
 similar services in the Franchise Area, and such franchise(s),  
 agreement(s) or authorization(s) contain provisions imposing lesser  
 obligations on the grantee(s) thereof than are imposed by the provisions  
 of this  
  
  
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 Agreement, the Company may at any time petition the City for a  
 modification of this Agreement.  
  
 (b) The City shall consider any petition for modification  
 pursuant to Section 13.22(a) hereof, and shall grant such prospective  
 modification(s) to the extent that the City reasonably determines that  
 such modification(s) must be granted in order to ensure fair and equal  
 treatment among the Company and other franchises, provided that the  
 Company establishes by a preponderance of the evidence each of the  
 following:  
  
 (i) that the Company is in compliance with this  
 Agreement and the other franchise(s), agreement(s) or  
 authorization(s) were not granted as a result of the Company's  
 failure to comply, on a timely basis, with the provision of this  
 Agreement;  
  
 (ii) that the other franchise(s), agreement(s) or  
 authorization(s) allow substantially similar services to those  
 offered by the Company under this Agreement;  
  
 (iii) that the obligations imposed on the Company under  
 this Agreement, taken as a whole, place the Company at a substantial  
 competitive disadvantage in relation to the obligations imposed on  
 the grantee(s) holders of the other franchise(s), agreement(s) or  
 authorization(s), taken as a whole; and  
  
 (iv) that the reason for the City's imposition of or  
 failure to act with respect to a lesser obligation under the other  
 franchise(s), agreement(s) or authorization(s) is not due to the  
 differing nature of the City's regulatory authority with respect to  
 the other communications systems or justified by the relative  
 benefits, in whatever form, received by the City due to the  
 operation of other communications systems.  
  
 (c) For the purposes of this Section 13.22, in order to  
 promote fair comparison, to the extent possible all benefits and burdens  
 shall be quantified monetarily.  
  
 13.23 Joint Services  
  
 Notwithstanding any other provision of this Agreement, in the event  
the Company provides any Telecommunications Services in conjunction with, in a  
joint venture with or in any other arrangement with (the "Joint Services") any  
one or more entities that the City has also authorized to provide local  
high-capacity telecommunications services (the "Other Franchisees"):  
  
 (a) no revenues with respect to Telecommunications Services  
 being provided by such Other Franchisees, other than Joint Services, shall  
 be included in the Company's Gross Revenue, so long as the revenues  
 distributed to or otherwise retained by the Other Franchisees with respect  
 to Joint Services are subject to the terms of such other Franchisees' own  
 agreements with the City; and  
  
  
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 (b) only those revenues received by the Company with respect  
 to Joint Services and not distributed to or otherwise retained by the  
 Other Franchisees shall be included in the Company's Gross Revenue, so  
 long as the revenues distributed to or otherwise retained by the Other  
 Franchisees with respect to Joint Services are subject to the terms of  
 such other Franchisees' own agreements with the City.  
  
 -- end of page --  
  
 [signatures appear on next page]  
  
  
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 IN WITNESS WHEREOF, the party of the first part, by its Deputy Mayor, duly  
authorized by the Charter of the City of New York, has caused the corporate name  
of said City to be hereunto signed and the corporate seal of said City to be  
hereunto affixed and the party of the second part, by its officers thereunto  
duly authorized, has caused its name to be hereunto signed and its seal to be  
hereunto affixed as of the date and year first above written.  
  
 THE CITY OF NEW YORK  
  
  
 By: /s/ Xxxxxx Xxxxx  
 -----------------------------  
 Deputy Mayor  
  
 2-29-00  
 ---------------------------------  
 Date  
  
Approved as to form:  
  
  
Corporation Counsel  
  
  
/s/ [illegible]  
------------------------------------  
Acting Corporation Counsel  
  
 METROMEDIA FIBER NETWORK NYC, INC.  
  
  
 By: /s/ Xxxx Xxxxx  
 -----------------------------  
 Name: Xxxx Xxxxx  
 Title: President  
  
(Seal)  
 --------------  
Attest: /s/ [illegible] APPROVED AS TO  
 -------------------------------- /s/ [ILLEGIBLE]  
 City Clerk FORM  
 --------------  
  
  
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XXXX XX XXX XXXX )  
 ) ss:  
STATE OF NEW YORK )  
  
 I , Xxxxx Xxxxxxxxx a Notary Public in and for the State of New York,  
residing therein, duly commissioned and sworn, do hereby certify that Xxxxxx  
Xxxxx, Deputy Mayor of the City of New York, party to the above instrument,  
personally appeared before me in said State on the 29 day of February , 2000,  
the said Xxxxxx Xxxxx being personally well known to me and who executed the  
foregoing instrument and acknowledged to me that he executed the same as his  
free act and deed in his capacity as Deputy Mayor of the City of New York.  
  
 Given under my hand and seal, this 29 day of February , 2000.  
  
  
 /s/ Xxxxx Xxxxxxxxx  
 Notary Public  
  
My Commission Expires: 0-00-00  
  
XXXX XX XXX XXXX )  
 ) ss:  
STATE OF NEW YORK )  
  
 I, Xxxxxx Xxxxxxxxx a Notary Public in and for the State of New York,  
residing therein, duly commissioned and sworn, do hereby certify that Xxxx  
Xxxxx, party to the above instrument, personally appeared before me in said  
State on the 16 day of February, 2000, the said President being personally well  
known to me and who executed the foregoing instrument and acknowledged to me  
that he executed the same as his free act and deed.  
  
 Given under my hand and seal, this 16 day of February, 2000.  
  
  
 /s/ Xxxxxx Xxxxxxxxx  
 Notary Public  
  
 XXXXXX XXXXXXXXX  
 Notary Public State of New York  
My Commission Expires: No. 00-0000000  
 Qualified in New York County  
 Commission Expires Mar. 1, 2001  
  
  
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