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PUBLIC SERVICE
COMMISSION

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

**Application of Windstream Kentucky East, LLC For)
A Certificate of Pubic Convenience and Necessity)
Authorizing the Applicant to Obtain A Franchise to)
Provide Telecommunications and Related Services)
In Fayette County, Kentucky)
)
)**

Cast No. 2008-325

VERIFIED APPLICATION

Windstream Kentucky East, LLC. ("Windstream") for its application pursuant to KRS 278.020 for a certificate of convenience and necessity to enter into a franchise agreement with the Lexington-Fayette Urban County Government permitting Windstream to provide telecommunications and related services in Fayette County, Kentucky states:

1. Windstream is a Delaware limited liability company engaged in the business of providing telecommunications and related services in Fayette County, Kentucky. A copy of Windstream's articles of organization is attached hereto as Exhibit 1.

2. Windstream's post office address is 130 West New Circle Road, Suite 170, Lexington, Kentucky 40505.

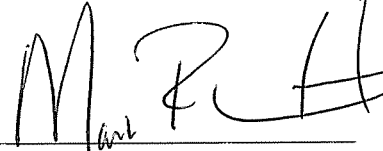
3. Windstream is now and since 2002 has been providing telecommunications and related services in Fayette County, Kentucky. The public convenience and necessity requires that this service be continued. To do so, Windstream must enter into a new franchise agreement with the Lexington-Fayette Urban County Government.

4. Attached is a copy of the form of franchise agreement Windstream intends to enter into with the Lexington-Fayette Urban County Government.

Wherefore, Windstream Kentucky East, LLC respectfully requests it be issued a certificate of public convenience and necessity authorizing it to enter into a franchise agreement with the Lexington-Fayette Urban County Government.

Respectfully submitted

Windstream Kentucky East, LLC

By: 
Mark R. Overstreet
STITES & HARBISON PLLC
421 West Main Street
P.O. Box 634
Frankfort, Kentucky 40602-0634
(502) 223-3477


VERIFICATION

COMMONWEALTH OF KENTUCKY

COUNTY OF Fayette

I, Dan Logsdon, Vice President, External Affairs, Windstream Kentucky East, LLC, first being duly sworn states and deposes as follows:

I have read the foregoing application and the matters set forth therein are true and complete.



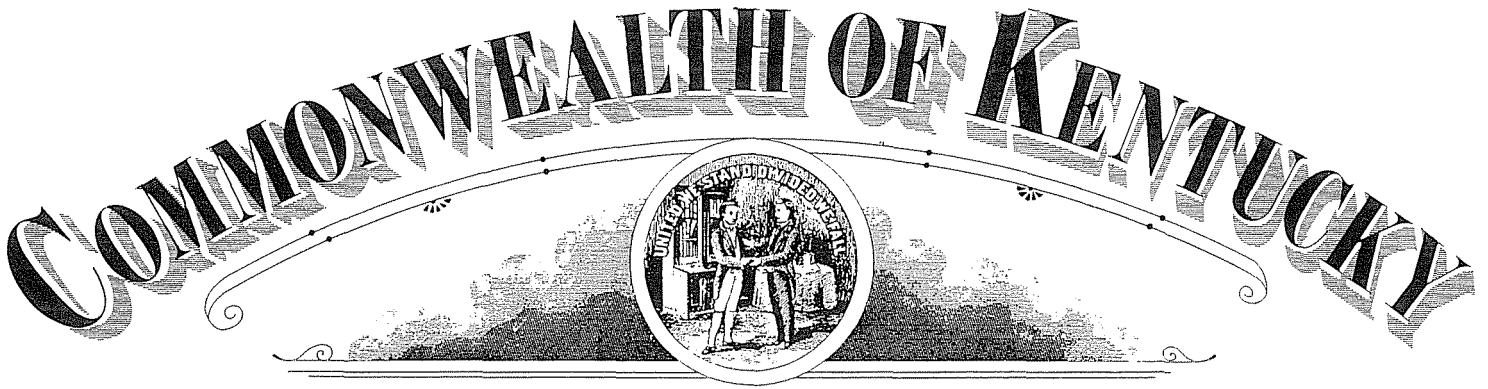
Dan Logsdon

Subscribed and sworn to before me this ___ day of August, 2008.

Margaret (Peggy) B. Brooks
Notary Public

My commission expires: 3-29-2011

EXHIBIT 1



**Trey Grayson
Secretary of State**

Certificate

I, Trey Grayson, Secretary of State for the Commonwealth of Kentucky, do hereby certify that the foregoing writing has been carefully compared by me with the original thereof, now in my official custody as Secretary of State and remaining on file in my office, and found to be a true and correct copy of

APPLICATION FOR CERTIFICATE OF AUTHORITY OF
WINDSTREAM KENTUCKY EAST, LLC FILED JUNE 13, 2008.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal at Frankfort, Kentucky, this 6th day of August, 2008.



Trey

Trey Grayson
Secretary of State
Commonwealth of Kentucky
mstratton/0707420 - Certificate ID: 68379

0707420.06

AMcRay
L902

**Kentucky Secretary of State
TREY GRAYSON**

Trey Grayson
Secretary of State
Received and Filed
06/13/2008 1:11:34 PM
Fee Receipt: \$90.00

Division of Corporations
BUSINESS FILINGS

P.O. Box 718
Frankfort, KY 40602
(502) 564-2848
<http://www.sos.ky.gov/>

Application for Certificate of Authority

Pursuant to the provisions of KRS Chapter 275, the undersigned hereby applies for authority to transact business in Kentucky on behalf of the limited liability company named below and for that purpose submits the following statements:

1. The company is a limited liability company (LLC).
 a professional limited liability company (PLLC).

2. The name of the limited liability company is
Windstream Kentucky East, LLC

3. The name of the limited liability company to be used in Kentucky is

4. Delaware (if "real name" is unavailable for use) is the state or country of organization.

5. 10/22/2001 is the date of organization and, if the limited liability company has a specific date of dissolution, the latest date upon which the limited liability company is to dissolve is Perpetual.

6. The street address of the office required to be maintained in the state of formation or, if not so required, the principal office address is
4001 Rodney Parham Road Little Rock AR 72212
Street City State Zip Code

7. The names and usual business addresses of the current managers, if any, are as follows:
SEE ATTACHED "EXHIBIT A"

Name	Address

(Attach a continuation, if necessary)

8. The street address of the registered office in Kentucky is
Kentucky Home Life Building, Louisville, Kentucky 40202
Street City State Zip Code

and the name of the registered agent at that office is
C T Corporation System

9. This application will be effective upon filing, unless a delayed effective date and/or time is specified:

(Delayed effective date and/or time)

I certify that, as of the date of filing this application, the above-named limited liability company validly exists as a limited liability company under the laws of the jurisdiction of its formation.

John P. Fletcher
Signature
John P. Fletcher, Exec. Vice Pres., Gen. Counsel, Secretary
Type or Print Name & Title
Date: June 4, 2008

I, C T Corporation System, consent to serve as the registered agent on behalf of the limited liability company.
Type or print name of registered agent

J.L. Miles
Signature of Registered Agent
Type or Print Name & Title Asst. Secy.

FLC (06/07)

(See attached sheet for instructions)

EXHIBIT A
To
Application for Certificate of Authority
State of Kentucky

WINDSTREAM KENTUCKY EAST, LLC

7. The names and usual business addresses of the current managers, if any, are as follows:

Jeffery R. Gardner, Manager, President and Chief Executive Officer
4001 Rodney Parham Road, Little Rock, AR 72212

Francis X. Frantz, Manager
4001 Rodney Parham Road, Little Rock, AR 72212

Brent Whittington, Executive Vice President and Chief Financial Officer
4001 Rodney Parham Road, Little Rock, AR 72212

John P. Fletcher, Executive Vice President, General Counsel and Secretary
4001 Rodney Parham Road, Little Rock, AR 72212

Richard J. Crane, Executive Vice President, Chief Marketing Officer
4001 Rodney Parham Road, Little Rock, AR 72212

William G. Raney, Executive Vice President, Network Operations
4001 Rodney Parham Road, Little Rock, AR 72212

Gregg Richey, Senior Vice President – Consumer Sales
4001 Rodney Parham Road, Little Rock, AR 72212

Susan Bradley, Senior Vice President – Human Resources
4001 Rodney Parham Road, Little Rock, AR 72212

Frank Schueneman, Senior Vice President – Network Operations
4001 Rodney Parham Road, Little Rock, AR 72212

Michael D. Rhoda, Senior Vice President – Government Affairs
4001 Rodney Parham Road, Little Rock, AR 72212

Robert G. Clancy, Senior Vice President – Treasurer
4001 Rodney Parham Road, Little Rock, AR 72212

Tony Thomas, Controller
4001 Rodney Parham Road, Little Rock, AR 72212

Willis Kemp, Vice President – Tax
4001 Rodney Parham Road, Little Rock, AR 72212

David Cameron, Assistant Secretary
4001 Rodney Parham Road, Little Rock, AR 72212

EXHIBIT 2

ORDINANCE NO. ____-2008

AN ORDINANCE CREATING AND ESTABLISHING A NON-EXCLUSIVE TELECOMMUNICATIONS FRANCHISE AND PROVIDING FOR: THE PLACEMENT OF FACILITIES FOR THE GENERATION, TRANSMISSION, DISTRIBUTION AND SALE OF TELECOMMUNICATIONS SERVICES WITHIN THE PUBLIC RIGHTS-OF-WAY; COMPLIANCE WITH ALL APPLICABLE EXISTING AND FUTURE LOCAL LAWS AND ORDINANCES AND REGULATIONS; INCORPORATION BY REFERENCE OF THE PROVISIONS OF SECTION 253 OF THE TELECOMMUNICATIONS ACT OF 1996, KRS 136.600, ET SEQ., CHAPTERS 17, 17B AND 17C OF THE CODE OF ORDINANCES, LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, AND THE APPLICABLE ZONING LAWS; DEFINITIONS; CONSTRUCTION, INSTALLATION, MAINTENANCE AND FACILITY STANDARDS; SEPARATE CABLE FRANCHISE REQUIRED FOR CABLE SERVICES; COMPLIANCE WITH VARIOUS NATIONAL AND STATE STANDARDS AND REGULATIONS; MATERIALS AND EQUIPMENT QUALITY; DUE REGARD FOR RIGHTS OF GOVERNMENT AND OTHERS IN PERFORMING WORK IN THE RIGHTS-OF-WAY; PLACEMENT OF LIGHTS OR SIGNALS; UNDERGROUNDING OF FACILITIES IN SOME INSTANCES; TEMPORARY MOVING OF WIRES; TREE TRIMMING; ADDITIONAL PERFORMANCE GUARANTEES OF UP TO \$200,000 ON PROJECTS WITH CONSTRUCTION COSTS EXCEEDING \$100,000; AN INDEMNIFICATION AND HOLD HARMLESS PROVISION; COMMERCIAL GENERAL LIABILITY INSURANCE POLICY CONSISTENT WITH THE PROVISIONS OF THE PUBLIC RIGHT-OF-WAY ORDINANCE; COMPLIANCE WITH NON-DISCRIMINATION AND AFFIRMATIVE ACTION REQUIREMENTS; NOTICE OF FILING FOR A GENERAL BASE RATE INCREASE OR TRANSFER OF CONTROL BEFORE THE PUBLIC SERVICE COMMISSION; A THREE YEAR DURATION; NO VESTED RIGHTS FOR INSTALLATION OR EMBLEMMENT OF FACILITIES OTHER THAN THOSE PROVIDED IN FRANCHISE OR AT LAW; NOTIFICATION OF ASSIGNMENT WITH CONSENT NOT TO BE UNREASONABLY WITHHELD; THE FOLLOWING PENALTIES RECOVERABLE FOR VIOLATIONS AFTER COMPANY IS PROVIDED THE OPPORTUNITY TO PRESENT EVIDENCE TO THE COMMISSIONER OF PUBLIC WORKS AND DEVELOPMENT OR HIS DESIGNEE, WITH SUCH DECISIONS APPEALABLE TO A COURT OF COMPETENT JURISDICTION: \$500 A DAY FOR FAILURE TO COMPLETE CONSTRUCTION PROJECTS BY NO LATER THAN THE END OF THE FRANCHISE, WITH THE OPTION OF PROVIDING SUITABLE PERFORMANCE BOND OR OTHER PROTECTION TO GOVERNMENT IN LIEU OF SUCH PENALTY, AND \$100 A DAY FOR FAILURE TO PROVIDE DATA AND REPORTS REQUESTED BY GOVERNMENT AS REQUIRED BY THE ORDINANCE, OR FOR FAILURE TO TIMELY PAY THE FRANCHISE FEE OR AN ITEMIZED BILL; A \$100 A DAY PENALTY APPEALABLE TO A COURT OF COMPETENT JURISDICTION FOR A FAILURE TO COMPLY WITHIN THIRTY DAYS TO A COUNCIL RESOLUTION DIRECTING COMPLIANCE WITH A PROVISION OF THE ORDINANCE; NON-WAIVER AND CONTINUED PERFORMANCE AND ENFORCEMENT UPON GOVERNMENT'S FAILURE TO INSIST ON SPECIFIC PERFORMANCE; THE PAYMENT OF PENALTIES NOT AN EXCUSE FOR NON-PERFORMANCE; SYSTEM TO BE MAINTAINED IN REASONABLE OPERATING CONDITION AT ALL TIMES ABSENT EXCUSING CONDITION OR EVENT; CUSTOMER INQUIRIES AND BUSINESS HOURS CONSISTENT WITH PUBLIC SERVICE COMMISSION'S ORDER; TERMINATION UPON WILLFUL VIOLATIONS OF THE FRANCHISE, WILLFUL EVASION OF PROVISIONS OF THE FRANCHISE, FRAUD AND DECEIT UPON THE GOVERNMENT, OR KNOWINGLY MAKING MATERIAL MISREPRESENTATIONS, AND PROCEDURES FOR TERMINATING THE FRANCHISE; THIRTY DAYS ADVANCE WRITTEN NOTICE OF FORECLOSURE OR JUDICIAL SALE OR LEASE TERMINATION INVOLVING ALL OR PART OF COMPANY'S FACILITIES IN FAYETTE COUNTY, WITH NOTIFICATION TO BE TREATED AS TRANSFER OR ASSIGNMENT; GOVERNMENT'S RIGHT TO CANCEL FRANCHISE THIRTY DAYS AFTER THE APPOINTMENT OF A RECEIVER OR TRUSTEE UNLESS CERTAIN CONDITIONS ARE MET; SALE AT PUBLIC AUCTION OF THE FRANCHISE AND DUE ADVERTISEMENT REQUIREMENTS THEREON; WRITTEN BIDS, RIGHT TO REJECT, PAYMENT OF FIVE PERCENT OF THE ESTIMATED COST OF THE SYSTEM UNLESS THE COMPANY ALREADY HAS SUFFICIENT FACILITIES TO PROVIDE THE FRANCHISE SERVICES, AND PAYMENT OF \$500 FOR ADVERTISEMENT AND ADMINISTRATIVE COSTS WITH ANY EXCESS AMOUNTS EXCEEDING ACTUAL COSTS TO BE RETURNED TO BIDDER(S) WITHIN THIRTY DAYS; ACKNOWLEDGEMENT THAT TELECOMMUNICATIONS TAX ACT PRECLUDES COLLECTION OF TRADITIONAL FRANCHISE FEE WITH AN AGREEMENT TO NEGOTIATE SUCH A FEE IN GOOD FAITH IN THE EVENT THAT THE ACT IS FOUND UNLAWFUL; PAYMENT OF PERMITTING AND INSPECTION FEES WITH RIGHT TO SEEK TARIFF APPROVAL FROM THE PUBLIC SERVICE COMMISSION; AGREEMENT TO ENTER INTO GOOD FAITH NEGOTIATIONS ON A POLE ATTACHMENT AGREEMENT; ADDITIONAL CONSTRUCTION AND NOTIFICATION REQUIREMENTS FOR NEW PROVIDERS OR FOR CERTAIN SUBSTANTIAL REBUILDS OR EXPANSIONS OF FACILITIES; ADDITIONAL PERFORMANCE AND SECURITY REQUIREMENTS FOR CONSTRUCTION BY NEW PROVIDERS; BIDS MUST ACCEPT THE CONDITIONS OF THIS ORDINANCE AND MAY INCLUDE ADDITIONAL CONSIDERATION PAYMENTS; VIOLATIONS OF THE FRANCHISE SHALL BE

CONDITION FOR FORFEITURE, LAW OF KENTUCKY APPLIES; VENUE IN FAYETTE COUNTY; NO THIRD-PARTY RIGHTS; ANY UNLAWFUL PROVISION IS SEVERABLE; AND FRANCHISE EFFECTIVE WHEN THE COUNCIL ACCEPTS THE BID(S); ALL EFFECTIVE ON DATE OF PASSAGE.

BE IT ORDAINED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 – There is hereby created a non-exclusive franchise granting to the purchaser thereof whose bid may be accepted, the discretionary right to construct, erect, operate and maintain upon, through, along, under and over the streets, alleys, avenues, public roads, highways, bridges, viaducts, sidewalks and other public ways of Fayette County, a telecommunications system embracing underground conduits, manholes, telephone poles, cables, boxes, wires, fixtures, fiber, electrical conductors and other apparatus, equipment and facilities necessary, essential, used or useful to and in the operation of a telecommunications system, including telephone exchange service (as defined by 47 USC §153(47)) and exchange access (as defined by 47 USC §153 (16)), subject to all of the provisions of this Ordinance. This franchise does not excuse the franchisee from complying with any and all applicable existing and future local laws and ordinances, as may be adopted or amended in the future, and their pursuant regulations.

Section 2 - The Lexington-Fayette Urban County Government has already adopted legislation and regulations pertaining to, and including but not limited to, permitting, construction, street project and other related activities by franchisees and others in its Rights-of-way. Therefore, the following are incorporated herein by reference, and shall apply as if fully set forth herein:

(a) The terms and provisions of Section 253 of the Telecommunications Act of 1996, and as it may be amended in the future;

(b) The terms and provisions of KRS 136.600, et seq. (the "Telecommunications Tax Act"), and as it may be amended in the future;

(c) The terms and provisions of Chapter 17, of the Code of Ordinances, Lexington-Fayette Urban County Government (the "Code"), and as it may be amended in the future, pertaining to utilities or Right-of-way construction;

(d) The terms and provisions of Chapters 17B and 17C of the Code, and as they may be amended in the future; and

(e) The terms and provisions of the Lexington-Fayette Urban County Government Zoning Ordinance (the "Zoning Ordinance"), and as it may be amended in the future.

Section 3 – The person, firm, or corporation which shall become the purchaser of said franchise, or any successor or assignee of such person, shall hereinafter be referred to as the “Company”, and the Lexington-Fayette Urban County Government shall hereinafter be referred to as the “Government”. The definitions and terminology contained in the applicable provisions of the Code are hereby incorporated herein by reference.

Section 4 – The Company shall have the non-exclusive right and privilege of constructing, erecting, operating and maintaining a telecommunications system for the purpose of providing telecommunications or telecommunications services, upon, through, along, under and over the Rights-of-way within Fayette County as they now exist or may hereafter be extended; subject to the provisions hereof and to all powers (including police power) inherent in, conferred upon or reserved to the Government, including but not limited to those contained in the Code. Telecommunications or Telecommunications Services includes the providing or offering for rent, sale or lease, whether for money or other value, of plant, equipment, Facilities, or other property for the transmittal of voice, data, image, graphics, and other communications between or among points by wire, fiber optics, or other similar Facilities; and includes telephone exchange service (as defined by 47 USC §153(47)) and exchange access (as defined by 47 USC §153 (16); “telecommunications service”, or “enhanced service” as such terms are now, or may in the future be, defined under federal law; services connecting interexchange carriers or competitive carriers for the purpose of voice or data transmission; services connecting interexchange carriers to any entity, other than another interexchange carrier, or telephone or telecommunications company providing local exchange services, for the purpose of voice or data transmission; services providing private line point to point service for end users of voice and data transmission; nonentertainment video, videoconferencing, or point to point private line service; or any other intrastate or interstate telecommunication services which the Kentucky Public Service Commission or the FCC has authorized. This franchise does not include the right or privilege to provide cable service (as defined by 47 USC §522 (6)) or open video service (as defined by 47 USC §76.1500 (a)), which shall be subject to separate franchising requirements, and also does not apply to the provision of any wireless service as defined by law, unless the providers of such services have Facilities located within the Rights-of-way.

Section 5 - In addition to complying with other applicable law, the Company agrees that:

(a) All working Facilities and conditions used during construction, installation and maintenance of Facilities (including clearance of wires and cables above the Rights-of-way and placement of any underground facilities) shall comply with the standards of the Occupational

Safety and Health Administration, the National Electric Safety Code, and the National Electric Code. In the operation of system, the Company shall conform to all standards required by applicable state or federal law or regulation;

(b) All materials and equipment used or installed in construction shall be of first class quality, and any defect in the work, materials or equipment, whether latent or patent, will be remedied by the Company at its cost;

(c) Construction, reconstruction, maintenance, or removal of any Facilities, shall be performed with due regard for the rights of the Government and others, and shall not unnecessarily interfere with, or in any way injure the property of the Government or others under, on, or above the ground, or otherwise unduly interfere with the public use of the Rights-of-way;

(d) Placement of lights, danger signals or warning signs shall be undertaken by the Company in compliance with applicable law; and

(e) Unless exempted by the Government, Facilities shall be installed underground at any location where all other utilities' Facilities that are used to provide customer service are then being installed underground, or when otherwise required under the Code, and shall be in conformance with the applicable requirements of this Ordinance and those set forth in the Code, the Zoning Ordinance, or any other applicable local law or regulation. The Company assumes all responsibility for damage or injury resulting from placement or maintenance of any above-ground Facilities.

Section 6 - (a) The Company shall, at the request of any person holding a moving permit issued by the Government, temporarily raise or lower its wires to permit the moving of buildings or other structures. The expense of such temporary removal or raising or lowering of wires shall be paid by the person requesting the same, and the Company shall have the authority to require such payment in advance. The Company shall be given not less than five (5) days advance notice to arrange for such temporary wire changes.

(b) The Company shall have the authority to trim trees upon the overhanging Rights-of-way so as to prevent the branches of such trees from coming in contact with the wires or cables of the Company. Any trimming, removal or other disturbance of trees shall conform to all applicable law or regulation.

Section 7 - In addition to any performance bond(s) required pursuant to Section 17C-23 of the Code, the Company may, with respect to aspects of those significant projects in excess of one hundred thousand dollars (\$100,000.00) which are not addressed in Section 17C-23 but

which do involve the Rights-of-way, be required to post an additional project performance bond(s). This bond (or bonds) shall be set in an amount and duration to be determined by the Government upon discussing and verifying the scope of such a project with the Company, and shall be in favor of the Government to be issued by an entity subject to jurisdiction and venue in Fayette County, Kentucky. In no event shall the total cumulative amount of such bonds exceed two hundred thousand dollars (\$200,000.00) per year, and as an alternative, the Company may choose to post one such bond to cover all of its projects on an ongoing basis.

Section 8 - The Company shall defend, indemnify, and hold harmless the Government consistent with the indemnification and hold harmless provisions as set forth in Section 17C-17 of the Code, and as it may be amended in the future.

Section 9 - The Company shall maintain in full force and effect a commercial general liability insurance policy consistent with the insurance provisions set forth in Section 17C-16 of the Code, and as it may be amended in the future.

Section 10 - The Company shall comply with all applicable federal, state or local non-discrimination and affirmative action requirements of any laws, regulations and executive directives, and shall not discriminate in its employment practices against any employee or applicant for employment because of race, color, religion, national origin, sex, age or physical handicap.

Section 11 - In the event that the Company files for a transfer of control of the Company, or a general rate case with the Kentucky Public Service Commission it will furnish the Mayor or his designee with timely notice of such filing.

Section 12 - (a) The franchise hereby created shall be for a period of time not to exceed three (3) years from the date of acceptance by the Government of the initial bid(s) for the franchises created herein. This franchise is not exclusive, and the Government reserves the right to grant similar franchises to more than one Company. All franchises awarded pursuant to this Ordinance are intended to terminate at the same time. Therefore any Company awarded a franchise pursuant to this Ordinance shall only be awarded a franchise that is equal in duration to the remaining term of the initial franchise(s).

(b) This franchise creates no vested rights in the Company other than those provided by this franchise or at law, and any installation or emplacement of Facilities by the Company in the Rights-of-way is at the Company's risk.

(c) The Company is hereby given the right to assign the franchise created by this Ordinance to any person, firm or corporation able, ready and willing to carry out the terms of this

franchise, but shall, prior to such assignment, provide at least sixty (60) days advance written notice to the Government and obtain its consent, which consent shall not be unreasonably withheld. This provision is not intended to apply in those instances in which the Company has filed for a transfer of control before the Public Service Commission.

Section 13 - (a) If, after the Company is provided the opportunity to appear and present evidence before the Government's Commissioner of Public Works and Development or his designee, the Government finds that the Company has violated any of the following provisions of this Ordinance, the following penalties shall be recoverable. The decision of the Commissioner shall be the final administrative decision and shall be in writing and provide the basis for the decision. The decision may be appealed to a court of competent jurisdiction.

(1) For failure to complete or remove any construction project by no later than the ending term of any franchise awarded pursuant to this Ordinance or any extension thereof, the Company shall forfeit five hundred dollars (\$500.00) per day or part thereof that the violation continues; in lieu of a penalty, the Company may post a performance bond, letter of credit or other surety acceptable to the Government in an amount sufficient to complete such construction projects. This section shall not apply to any projects for which performance bonds or other surety is already pledged.

(2) For failure to provide data and reports requested by the Government and as required by this Ordinance the Company shall forfeit one hundred dollars (\$100.00) per day or part thereof that the violation continues.

(3) For failure to pay a permit fee when due pursuant to local law, the Company shall forfeit one hundred dollars (\$100.00) per day or part thereof that the violation continues.

(b) If the Company fails to comply within thirty (30) days of any Council resolution directing compliance with any other provisions of this Ordinance, the Company shall forfeit one hundred dollars (\$100.00) per day or part thereof that the violation continues. The decision of the Council may be appealed to a court of competent jurisdiction.

(c) The Company shall not be excused from complying with any of the terms and conditions of this Ordinance by any failure of the Government, upon any one or more occasions, to insist upon the Company's performance or to seek the Company's compliance with any one or more of such terms or conditions. Payment of penalties shall not excuse non-performance under this Ordinance. The right of the Government to seek and collect penalties as set forth in this section is in addition to its right to terminate and cancel as set forth in Section 15 of this Ordinance.

Section 14 - The Company shall maintain its System in reasonable operating condition at all normal times during the term of this Franchise. An exception to this is automatically in effect when service furnished by the Company is interrupted, impaired or prevented by fires, strikes, riots or other occurrences beyond the control of the Company, or by storms, floods or other casualties, in any of which events the Company shall do all things reasonably within its power to restore normal service within a reasonable period of time. If applicable, the Company will maintain normal business hours at its headquarters located in Lexington, Kentucky, to receive customer inquiries in accordance with any relevant Kentucky Public Service Commission order(s).

Section 15 - (a) In addition to all other rights and powers pertaining to the Government by virtue of the franchise or otherwise, the Government, by and through its Council, reserves the right to terminate and cancel the franchise and all rights and privileges of the Company hereunder in the event that the Company:

(1) Willfully violates any provision of the franchise or any material rule, order, or determination of the Government made pursuant to the franchise, except where such violation is without fault or through excusable neglect or due to a force majeure act;

(2) Willfully attempts to evade any provision of the franchise or practices any fraud or deceit upon the Government;

(3) Fails to begin or complete construction as provided under the franchise;

(4) Knowingly makes a material misrepresentation of any fact in the application, proposal for renewal, or negotiation of the franchise; or

(5) Entry of a final and appealable order by the Public Service Commission of Kentucky revoking the Company's certificate of authority required under KRS 278.020(1) for providing service in Fayette County, Kentucky.

(b) The Government may make a written demand that the Company do or comply with any such provision, rule, order or determination. The Company will be provided the opportunity to appear and present evidence before the Government's Commissioner of Public Works and Development or his designee, whose decision shall be the final administrative decision, and shall be in writing and provide the basis for the decision. If the violation by the Company continues for a period of thirty (30) days following such a decision by the Commissioner without written proof that the corrective action has been taken or is being actively and expeditiously pursued by the Company, the Government may place its request for termination of the franchise as early as the next regular Council meeting agenda. The Government shall cause to be served upon Company, at least ten (10) days prior to the date of

such Council meeting, a written notice of intent to request such termination and the time and place of the meeting, legal notice of which shall be published in the Lexington Herald-Leader, or another newspaper of general circulation published in Lexington, Fayette County, Kentucky.

(1) It shall be a defense to any attempt to terminate and cancel the franchise that the Company was relying on federal law, state law, or a valid tariff in acting or not acting on the issue in dispute.

(2) The Council shall consider the request of the Government and shall hear any person interested therein, and shall determine in its discretion, whether or not any violation by the Company was with just cause.

(3) If such violation by the Company is found to have been with just cause, the Council shall direct the Company to comply therewith within such time and manner and upon such terms and conditions as are just and reasonable within the Government's lawful authority.

(4) If the Council determines such violation by the Company was without just cause, then the Council may, by resolution, declare that the franchise of the Company shall be terminated and forfeited unless there is compliance by the Company within such reasonable period as the Council may fix. Any such determination by the Council is a final appealable action to a court of competent jurisdiction.

Section 16 - The Company shall provide the Government, in the form and manner required by the appropriate court or judicial body, at least thirty (30) days advance written notice, if at all possible, of the foreclosure or other judicial sale of all or a substantial part of the Company's Facilities within Fayette County, or upon the termination of any lease covering all or a substantial part of its Facilities, and such notification shall be treated as a notification that a transfer or assignment of the franchise has taken place.

Section 17 - The Council shall have the right to cancel this franchise thirty (30) days after the appointment of a receiver, or trustee, to take over and conduct the business of the Company, whether in receivership, reorganization, bankruptcy, or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said thirty (30) days, unless:

(a) Within thirty (30) days after his election of appointment, such receiver or trustee shall have fully complied with all the provisions of this Ordinance and remedied all defaults thereunder; and,

(b) Such receiver or trustee, within said thirty (30) days shall have executed an agreement, duly approved by the court having jurisdiction in the premises, whereby such receiver

or trustee assumes and agrees to be bound by each and every provision of this Ordinance and the franchise granted to the Company.

Section 18 - It shall be the duty of the Mayor or his designee as soon as practicable after the passage of this Ordinance to offer for sale at public auction said franchise and privilege. In the event that additional interested bidders are identified or express an interest in obtaining a franchise after this initial offering, the additional offering and advertisement to accommodate such bidders is hereby authorized. Said franchise and privilege shall be sold to the highest and best bidder or bidders at a time and place fixed by the Mayor or his designee after he has given due notice thereof by advertisement in at least one (1) issue of the Lexington Herald-Leader, or another newspaper of general circulation published in Lexington, Fayette County, Kentucky. This advertisement shall appear not less than seven (7) days nor more than twenty-one (21) days before the date of bid opening.

Section 19 - Bids and proposals for the purchase and acquisition of the franchise hereby created shall be in writing and shall be delivered to the Mayor or his designee upon the date and at the time fixed by him or her in said advertisement for receiving same. Thereafter, the Mayor shall report and submit to the Council, at the time of its next regular meeting or as soon as practicable thereafter, said bids and proposals for its approval. The Council reserves the right, for and on behalf of the Government, to reject any and all bids for said franchise; and, in case the bids reported by the Mayor shall be rejected by the Council, it may direct said franchise and privilege to be again offered for sale, from time to time, until a satisfactory bid therefore shall be received and approved. Each bid made by a corporation or person not already owning Facilities within the territorial limits of Fayette County sufficient to render the service required by this Ordinance, shall be accompanied by cash or a certified check drawn on a bank of the Commonwealth of Kentucky, or a national bank, equal to five percent (5%) of the fair estimated cost of the system required to render the service, which check or cash shall be forfeited to the Government in case the bid should be accepted and the bidder should fail, for thirty (30) days after the confirmation of the sale, to pay the price and to give a good and sufficient performance bond in favor of the Government in a sum equal to one-fourth (1/4) of the fair estimated cost of the system to be erected, conditioned that it shall be enforceable in case the Company should fail, within one hundred eighty (180) days, to establish and begin rendering the service in the manner set forth in this Ordinance. Upon rendering the initial service, this bond may be replaced by the performance bond required by Section 22(b), if applicable. Bids shall include such documentation as is necessary to support the bidder's determination of the fair estimated cost of the system required to render the service and

compliance with all applicable state, federal and local statutes, ordinances and regulations. The Government reserves the right to review any of bidder's supporting documentation which justify bidder's determination of the estimated cost and compliance with laws and regulations. In addition, each bid shall be accompanied by a non-refundable payment to the Government in the amount of five hundred dollars (\$500.00) to cover the Government's cost of advertising and other administrative expenses incurred. In the event that the total amount submitted by all bidders exceeds the Government's actual costs, it will refund the overcharge to each Company on a pro rata basis within thirty (30) days.

Section 20 - The Government and Company acknowledge that pursuant to the Telecommunications Tax Act, the Commonwealth of Kentucky collects a tax in lieu of a traditional franchise fee assessment by the local government, and that the Government is precluded from the collection of additional fees that are not directly related to the advertisement of this franchise or the management, inspection or permitting of construction in the Rights-of-way. Therefore, in the event that the Telecommunications Tax Act, or the portion thereof pertaining to the collection of franchise fees by a local government, is found unlawful by a court of competent jurisdiction, the Company and the Government shall negotiate in good faith to establish a new franchise fee.

(a) Notwithstanding the above, the Company shall be required to pay the Government an amount intended to adequately compensate it for its permitting and inspection of the Company's construction activities in the Rights-of-way pursuant to Chapter 17C of the Code as required by said ordinance. The Company may seek tariff approval from the Kentucky Public Service Commission for the recovery of such payment, and may elect to pay for its permit fees upon application for each respective permit, if approved by the Government. These permitting fees are subject to change during the term of the franchise based upon an audit of the actual cost of permitting for the Government or a change in the amount of the respective permitting fees found in Section 17C-22 of the Code, as may be amended. In the event of such a change, the Company shall be provided at least sixty (60) days advance written notice.

(b) Upon the execution of this Franchise Agreement, the Company and the Government agree to enter into good faith negotiations on a pole attachment agreement.

Section 21 - In addition to all other requirements, and except to the extent prohibited by law, any Company not already owning Facilities within the Rights-of-way sufficient to render Telecommunications Services within Fayette County, or any Company that is required pursuant to law to file for a certificate of convenience and necessity from the Kentucky Public Service

Commission in order to replace or significantly upgrade or expand a substantial portion of its existing Facilities within the Rights-of-way, shall also be required to perform the following requirements during the construction, replacement, upgrade or expansion of its network system unless the Council determines that any or all of such requirements are not necessary to adequately protect the interests of the Government:

(a) In addition to obtaining any and all permits required pursuant to the Code, the Company shall submit for the Government's approval a comprehensive schedule of construction of its Facilities system network no later than one (1) month after the Government's acceptance of the Company's bid. The schedule shall include sufficient detail for Government to determine the time and locations of construction activities and shall also depict the anticipated time frame of identifiable tasks required for construction purposes, as delineated by the Government. No construction related activities may be conducted in the Rights-of-way until the schedule is approved by the Government. In addition, at thirty (30) day intervals during construction, the Company shall provide the Government with a plan of construction activities setting forth a general description of the activities to be undertaken during the following thirty (30) days and designating the geographical area of Fayette County that will be affected. Approval by the Government of these plans shall constitute a condition which must be met prior to undertaking any construction activities.

(b) The Company shall furnish traffic control plans, including site-specific hours of construction, to the Government no later than seven (7) days prior to the commencement of any construction activities. Such plans are subject to approval or modification by the Government. No construction related activities may be conducted in the Rights-of-way without an approved traffic control plan.

(c) The Company shall provide the Government a local telephone contact number, staffed twenty-four (24) hours per day, to enable the Government to report any concerns regarding construction of the system network. In the event that the Government reports any concerns to the Company, the Company shall respond within a reasonable time as specified by Government or as specified elsewhere in this Ordinance. The Company shall perform the required repair or correct any adverse impact to Government's use or operations or the use or operations of a third party caused by the Company's construction activities in the Rights-of-way at no cost to the Government.

(d) Fourteen (14) days prior to commencement of construction, and every thirty (30) days thereafter during construction the Company shall publish, at its sole cost, a notice containing

a map depicting where construction will occur in the Lexington Herald-Leader. Additionally, such notice shall provide a general description of construction activities and a telephone number to be called by citizens with questions concerning construction activities. A copy of said notice(s) shall be provided to the Government.

(e) The Company shall provide at least fourteen (14) days notice to other utilities in Fayette County of its interest in seeking construction permits to open the street before it applies for any street cut permit. The Government shall provide the Company with a listing of all such utilities and their points of contact upon request. Such notice shall inform the other utility companies of the Company's intent to undertake construction in the affected areas and state that the other utility companies must notify the Government and the Company within seven (7) days of receipt of such notice of their desire to simultaneously lay conduit, or other Facilities, in any trench opened by the Company.

(f) Failure to comply with the above provisions, or the Code may, in the sole discretion of the Government:

(1) Be the basis for the Government to reasonably require that the Company perform more extensive restoration work than otherwise anticipated by a permit; and

(2) May result in the Company being assessed an additional premium on any permit fee to recoup any additional costs or expenses reasonably associated with the Company's failure.

(g) Unless otherwise provided an extension by the Council, the Company must make telecommunications services available within Fayette County within one hundred eighty (180) days from the date of the award of the franchise. This requirement shall not apply to a Company that does not provide, or has no intention of providing, any services to Fayette County subscribers.

(h) The Company shall maintain accurate network design drawings, maps and improvement plans of the network system, in a form acceptable to the Government, in a manner consistent with industry construction standards. The Company shall furnish the Government, without charge, with a complete set of "as-built" drawings within sixty (60) days of completion of construction of the network system. Such maps and improvement plans shall also be furnished to Government in digital form and shall be provided pursuant to a lawful protective agreement.

Section 22 - In addition to all other requirements, and except to the extent prohibited by law, any Company not already owning Facilities within the Rights-of-way sufficient to render Telecommunications Services within Fayette County, shall also be required to perform the following requirements during the construction of its network system unless the Council

determines that any or all of such requirements are not necessary to adequately protect the interest of the Government:

(a) Within ten (10) days after the award of this franchise, the Company shall deposit with the Government's Division of Revenue a one-year irrevocable renewable letter of credit from a Fayette County financial institution in the amount of fifty thousand dollars (\$50,000.00). The form and content of such letter of credit shall be approved by the Government. The letter of credit shall be used to insure the faithful performance by the Company of all provisions of this franchise; and compliance with all orders, permits and directions of any agency, commission, board, department, division or office of the Government having jurisdiction over its acts or defaults under this franchise, and the payment by the Company of any claims, liens and taxes due the Government which arise by reason of the construction, operation or maintenance of the system network.

(1) The letter of credit shall be maintained at fifty thousand dollars (\$50,000.00) during the entire term of this franchise, even if amounts have to be withdrawn pursuant to this section.

(2) If the Company fails to pay to the Government any compensation within the time fixed herein; or, fails, after ten (10) days notice to pay to the Government any taxes due and unpaid; or, fails to repay the Government, within such ten (10) days, any damages, costs or expenses which the Government is compelled to pay by reason of any act or default of the Company in connection with this franchise; or, fails, after three (3) days notice of such failure by the Government to comply with any provision of this franchise which the Government reasonably determines can be remedied by demand on the letter of credit, the Government may immediately request payment of the amount thereof, with interest and any penalties, from the letter of credit. Upon such request for payment, the Government shall notify the Company of the amount and date thereof.

(3) The rights reserved to the Government with respect to the letter of credit are in addition to all other rights of the Government and no action, proceeding or exercise of a right with respect to such letter of credit shall affect any other right the Government may have.

(4) The letter of credit shall contain the following endorsement:

"It is hereby understood and agreed that this letter of credit may not be cancelled by the surety nor the intention not to renew be stated by the surety until thirty (30) days after receipt by the Government, by registered mail, a written notice of such intention to cancel or not to renew."

(b) If necessary, after the initial service requirement is met and the bond required by Section 19 of this Ordinance no longer protects the Government, the Government may require the Company to file with the Government a Performance Bond in the amount of Five Hundred

Thousand Dollars (\$500,000.00) in favor of the Government. This bond shall be maintained throughout the construction period. In lieu of the above-mentioned performance bond, the Company may deposit with the Government's Department of Revenue an irrevocable letter of credit from a Fayette County financial institution in the amount of Five Hundred Thousand Dollars (\$500,000.00). The form and content of such letter shall be approved by the Government.

(1) In the event the Company fails to comply with the Code or any law, Ordinance or regulation governing the franchise, or fails to well and truly observe, fulfill and perform each term and condition of the franchise, including the Company's proposal which is incorporated herein by reference, there shall be immediately recoverable, jointly and severally, from the principal and surety of the bond or the letter of credit, any damages or loss suffered by the Government as a result, including the full amount of any compensation, indemnification, or cost of removal or abandonment of any property of the Company, plus a reasonable allowance for attorney's fees, including the Government legal staff, and costs, up to the full amount of the bond.

(2) Upon completion of construction the Company's initial service area the requirement of this additional performance bond shall be waived.

(3) The bond or letter of credit shall contain the following endorsement:

"It is hereby understood and agreed that this bond [letter of credit] may not be cancelled by the surety nor the intention not to renew be stated by the surety until thirty (30) days after receipt by the Government, registered mail, a written notice of such intent to cancel or not to renew."

(4) The rights reserved to the Government with respect to the performance bond or letter of credit are in addition to all other rights of the Government, and no action, proceeding or exercise of a right with respect to such performance bond or letter of credit shall affect any other right the Government may have.

Section 23 - Bids offered for purchase of this franchise shall state the bidder's acceptance of the conditions set forth in this Ordinance. If any bid shall include an offer of payment over and above the terms of the franchise, then a certified check for said amount, payable to the Lexington-Fayette Urban County Government, shall be deposited with the Government. This amount shall be in addition to the provision for any payments contained in Sections 19 and/or 20 of this Ordinance. Any check deposited pursuant to this section by an unsuccessful bidder shall be returned when the Council shall have accepted the bid or bids which in its judgment is or are the highest and best.

Section 24 - Any violation by the Company or successor or authorized Company representative of the provisions of this franchise or any material portions thereof, or the failure promptly to perform any of the provisions thereof, shall be cause for the forfeiture of this

franchise and all rights hereunder after written notice to the Company and continuation of such violations, failure or default, as set forth herein.

Section 25 - This Ordinance and any franchise awarded pursuant to it shall be governed by the laws of the Commonwealth of Kentucky, both as to interpretation and performance. The venue for any litigation related to this Ordinance or any franchise shall be in the court of competent jurisdiction in Fayette County, Kentucky.

Section 26 - This Ordinance and any franchise awarded pursuant to it does not create a contractual relationship with or right of action in favor of a third party against either the Government or the Company.

Section 27 - If any section, sentence, clause or phrase of the Ordinance is held unconstitutional or otherwise invalid, such infirmity shall not affect the validity of the Ordinance.

Section 28 - The franchise created by this Ordinance shall become effective when the bid for it is accepted by the Council.

Section 29 - This Ordinance shall become effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL:

MAYOR

ATTEST:

CLERK OF URBAN COUNTY COUNCIL

PUBLISHED:
00173127

EXHIBIT 2