

LICENSE AGREEMENT

THIS LICENSE AGREEMENT, made this ____ day of _____ 1999, between the CITY OF TACOMA ("City"), a municipal corporation, operating under the laws of the State of Washington, (hereinafter called the "Licensor"), and ADVANCED TELCOM GROUP, INC. ("ATG"), a Delaware corporation, (hereinafter called the "Licensee"), and collectively, the "Parties";

WITNESSETH:

WHEREAS the Licensee is a Facilities-based telecommunications company providing local and long distance voice and internet access services to businesses and selected residential customers; and

WHEREAS the Licensee does not currently operate a Telecommunication System within the City; and

WHEREAS the Licensee desires to install Facilities for a Telecommunication System within the Public Rights-of-Way to provide local and long distance voice and internet access service to businesses and selected residential customers within the City; and

WHEREAS the Licensee has made application for a Telecommunications Franchise for the purpose of providing local and long distance Telecommunication Services; and

WHEREAS the Licensee desires to begin Construction of its Telecommunication Facility prior to obtaining and having in full force and effect a telecommunications Franchise with the City; and

WHEREAS Title 16 of the Tacoma Municipal Code provides that the Franchise requirement may be waived where, in circumstances where the City determines, that the use of the Public Rights-of-Way is de minimis and a License may be issued in lieu of the Franchise; and

WHEREAS factors to consider when determining if the use of Public Rights-of-Way may be considered de minimis are: the period of time for the use, the location and size of the geographical area for the use, whether services will be provided as a result of the right-of-way use, and the ease by which the City may monitor compliance with the terms and conditions of the License Agreement; and

WHEREAS the Licensor and the Licensee desire to enter into a non-exclusive License Agreement setting forth the terms and conditions under which the Facilities may be installed;

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Licensor and the Licensee hereby agree as follows:

Section 1 - DEFINITIONS. For the purposes of this License Agreement, the following terms, phrases, words, and their derivations shall have the meaning given herein; words not defined herein, which are defined in Title 16, shall have the same meaning or be interpreted as provided in Title 16. Words not defined here or in Title 16 shall have their ordinary meaning. A reference to Title 16 or to the City's Charter refers to the same as amended from time to time.

1.1 "City" means the City of Tacoma, a municipal corporation of the State of Washington.

1.2 "City Manager" means the City Manager or the City Manager's designee.

1.3 "Communications Facility" means a device which, along or as part of an aggregation of devices, is capable of transmitting signals from place to place.

1.4 "Communications System" refers to a Telecommunication System.

1.5 "Construction" means the named action interpreted broadly, encompassing, among other things, installation, extension, replacement, or components, relocation, undergrounding, grading, site preparation, adjusting, testing, make-ready, and excavation.

1.6 "Facilities" or "Installations" are, refer to, and include, but are not limited to, plant, Systems, improvements, and equipment owned, leased, or otherwise used by the Licensee, such as poles, fiber, wires, fixtures, equipment, underground circuits, and conduit in Public Rights-of-Way and other property necessary or convenient for the transmission and distribution of communications services where such Facilities are located.

1.7 "Franchise" means a franchise granted under the Tacoma Municipal Code and the City Charter.

1.8 "License" means the rights granted by this License Agreement and conditioned as set forth herein, and under the Tacoma Municipal Code and the City Charter.

1.9 "License Area" means that area within the present and future corporate limits of Tacoma that the Licensee is authorized to construct, as defined in the attached Exhibit "A."

1.10 "Licensee" is Advanced TelCom Group, Inc., a Delaware corporation, with its home office at 100 Stony Point Road, Suite 130, Santa Rosa, California 95401, telephone number (707) 535-8900.

1.11 "Operator," when used with reference to a System, refers to a Person (a) who provides service over a Communications System and directly or through one or more Affiliates owns a significant interest in such facility; or (b) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a facility. A Person that operates under agreement of a Telecommunication System or a specific portion of a Telecommunication System to provide Telecommunication Services shall be treated as an Operator for purposes of this title.

1.12 "Overhead Facilities" refers to electric utility and Communications Facilities located above the surface of the ground, including the underground supports and foundations for such Facilities.

1.13 "Person" includes any individual corporation, partnership, association, joint stock company, trust, or any other legal entity, but not the City.

1.14 "Public Rights-of-Way" mean the public streets and easements which, under the City Charter, the Tacoma Municipal Code, City ordinances, and applicable laws, the City has authority to grant License Agreements, permits, or

Licenses for use thereof, or has regulatory authority thereover, excluding railroad rights-of-way, airport, and harbor areas. Public Rights-of-Way, for the purpose of this License Agreement, do not include buildings, parks, poles, conduits, or similar Facilities or property owned by or leased to the City, including, by way of example and not limitation, structures in the Public Rights-of-Way such as utility poles and light poles.

1.15 “System” means the Telecommunication System.

1.16 “Telecommunication Services” means the transmission for hire of information in electronic or optical form, including, but not limited to, voice, video, or data, whether or not the transmission medium is owned by the provider itself. Telecommunication Services include Telephone Service but does not include Cable Service or over-the-air broadcasts to the public-at-large from Facilities licensed by the Federal Communications Commission or any successor thereto.

1.17 “Telecommunication System” means a tangible facility that is used to provide one or more Telecommunication Services, any portion of which occupies Public Rights-of-Way. The term Telecommunication System, by way of example and not limitation, includes wires, equipment cabinets, guys, conduit, radio transmitting towers, poles, other supporting structures, and associated and appurtenant Facilities used to transmit telecommunication signals. The term Telecommunication System includes all devices mounted on light poles in the Public Rights-of-Way through which Telecommunication Services are originated or terminated. An Open Video System is not a Telecommunication System to the

extent that it provides only video services; a Cable System is not a Telecommunication System to the extent that it provides only Cable Service.

1.18. "Telephone Service" means the providing by any Person of access to a local telephone network, local telephone network switching service, toll service, or coin Telephone Service, or providing telephonic, video, data, or similar communication or transmission for hire via a local telephone network, toll line, channel, cable, microwave, or similar communication or transmission system. Telephone Service includes intrastate or interstate service, including toll service originating from or received on communications equipment or apparatus in this State if the charge for the service is billed to a Person in this State. Telephone Service does not include the providing of competitive Telephone Service as defined in Tacoma Municipal Code § 6.66.020, the providing of cable television service, or the providing of broadcast services by radio or television stations.

1.19 "Title," when used in the context of referring to this Title of the Tacoma Municipal Code, shall mean Title 16 of the Tacoma Municipal Code, Chapters 16.01 through 16.06.

1.20 "Underground Facilities" refers to electric utility and Communications Facilities located under the surface of the ground, excluding the underground foundations or supports for Overhead Facilities.

Section 2 - LICENSE.

2.1 Grant of License Agreement. The City hereby grants to the Licensee a non-exclusive License Agreement which, once it becomes effective, shall

authorize the Licensee to use the City's Public Rights-of-Way within the License Area to construct, maintain, and repair a Telecommunication System to provide Telecommunication Services. Such grant is subject to and must be exercised in strict accordance with this License Agreement, Title 16 of the Tacoma Municipal Code, and City Charter, and may be revoked if it is not so exercised. Provided further, that the exercise of any rights pursuant to the License Agreement is subject to the exercise of the City's police powers and other regulatory powers as it may have or obtain in the future, and all rights granted herein must be exercised in strict accordance with applicable law, including by way of example and not limitation, zoning codes and permitting requirements. No rights shall pass to the Licensee by implication.

The grant of this License Agreement is limited to the purpose of constructing, maintaining, and repairing Telecommunication Facilities in the Public Rights-of-Way within the License Area. This License Agreement does not include permission to operate a Telecommunication System or provide Telecommunication Services, nor does it grant permission to provide Cable Service, as defined in 47 U.S.C. § 522, multichannel video programming, Open Video Systems, information services, or other uses. The Licensee agrees that it must have in full force and effect a telecommunication Franchise with the City before it may operate a Telecommunication System within the License Area.

Exercise of the rights granted under this License Agreement as to specific rights-of-way in addition to conditions specified elsewhere in this License Agreement is contingent upon the occurrence of the following conditions:

A. That the Licensee submit to the City Manager detailed plans relating to precise location of rights-of-way proposed for installation of Facilities, precise location of proposed Facilities within those rights-of-way, what those Facilities will be, and proposed Construction of those Facilities.

B. That the Licensee obtain approval by the City Manager relative to precise location, both in terms of use of requested rights-of-way and approval of the precise location of the Facilities within the requested rights-of-way, as well as approval of the type of Facility to be installed and the Construction techniques to be utilized.

C. Within five business days of execution of the License Agreement, the Licensee shall execute and return to the City three original countersigned copies of a Franchise Agreement with substantially the same terms and conditions as provided in the Franchise Agreement attached hereto as Exhibit "B" and a signed acceptance thereof. The acceptance shall be in a form acceptable to the City Attorney, and in accepting the Franchise, the Licensee warrants that it has carefully read the terms and conditions of this Franchise, and unconditionally accepts all of the terms and conditions of this Franchise, and agrees to abide by the same upon execution of the Franchise by the City, and acknowledges that it has relied upon its own investigation of all relevant facts, that

it has had the assistance of counsel, that it was not induced to accept a Franchise, and that the Licensee accepts all risks related to the interpretation of this Franchise. In the event the Licensee fails to submit the countersigned Franchise and acceptance as provided for herein, the grant of the License Agreement shall be null and void.

Notwithstanding the above grant to use Public Rights-of-Way, no Public Rights-of-Way shall be used by the Licensee if the City, in its sole opinion, determines that such use is inconsistent with the terms, conditions, or provisions by which such Public Rights-of-Way was created or dedicated, or presently used under applicable laws.

In the event of any conflict between a provision in this License Agreement and any provision of the City Charter, which Charter is incorporated herein by this reference, the applicable provision of the Charter shall control over any inconsistent provision of this License Agreement.

2.2 License Agreement Term. The term of the License Agreement shall be 90 days from the date of execution, unless terminated sooner in accordance with this License Agreement, Title 16, or the City Charter.

2.3 License Agreement Non-Exclusive. The License Agreement granted herein shall be non-exclusive.

2.4 Revocation. In addition to any rights set out elsewhere in this License Agreement, the City Charter, or the Tacoma Municipal Code, the City reserves the

right to otherwise revoke the License Agreement, and all rights and privileges pertaining thereto, in the event that:

A. Licensee is in substantial non-compliance with the License Agreement; or

B. Licensee is found to have engaged in any actual or attempted fraud or deceit upon the City; or

C. Licensee fails to obtain and maintain any permit required by any federal or state regulatory body or by the City, relating to the construction of the System; or

D. At any time during the term of the License Agreement, the Licensee fails to provide and maintain all of the securities required under this License Agreement including, but not limited to, the performance bond and letter of credit; fails to maintain the insurance required by this License Agreement; or fails to satisfy the indemnity set out in this License Agreement; or if the Licensee's guarantor revokes its guarantee, or fails to satisfy or becomes unable to satisfy its obligations thereunder; or

E. The procedures for revocation shall be the same as those provided by Tacoma Municipal Code 16.01.8.5. Before the License Agreement is revoked, the Licensee shall be given notice and opportunity to cure at least equivalent to that required by Title 16 as of the effective date of this License Agreement (except in those cases where notice and opportunity to cure are not required), and shall be accorded at least an opportunity to be heard that provides

at least the due process provided by Title 16 as of the effective date of this License Agreement, which opportunities and protections are set out in Section 2.4.F; or

F. Where, after notice and providing the Licensee an opportunity to be heard (if such opportunity is timely requested by the Licensee), the City finds that there has been an act or omission that would justify revocation of the License Agreement, the City may make an appropriate reduction in the remaining term of the License Agreement or revoke the License Agreement. However, the License Agreement may only be revoked if the Licensee (a) was given written notice of the default; (b) 15 days to cure the default; and (c) the Licensee failed to cure the default, or to propose a schedule for curing the default acceptable to the City where it is impossible to cure the default in 30 days, or prior to expiration of the License Agreement, whichever occurs first. The required written notice may be given before the City conducts the proceeding required by this paragraph. No opportunity to cure is required for repeated violations, and fraud shall be deemed incurable.

2.5 Right to Require Removal of Property/Right to Remove Property.

A. If the Licensee has not obtained a Franchise in full force and effect from the City upon or prior to expiration of the term of this License Agreement, despite the best efforts of the City and the Licensee, the Licensee agrees to cease Construction of the Telecommunication System in the License Area and not operate its System using its Facilities in the License Area, until such

time as the Licensee obtains the necessary Franchise from the City. Provided, however, that such cessation of Construction of the Telecommunication System shall not be considered an abandonment thereof, so long as the Licensee acts reasonably to seek a completed Franchise thereafter, the Licensee complies with all other obligations of the License Agreement and Tacoma Municipal Code, and the Licensee, during cessation of Construction at construction sites within the License Area, exercises reasonable care and utilizes commonly accepted methods and devices for preventing failures and accidents that are likely to cause damage, injury, or nuisance to the public or to property during cessation of construction.

B. Upon termination of the License Agreement, if the Licensee has not obtained a Franchise as contemplated at section 2.1.C herein, the City may require the Licensee to remove its property from any Public Rights-of-Way, and restore such right-of-way to its same or better condition as existed just prior to such removal, subject to any rights the Licensee may have to abandon property in place, as set out in Title 16. If the Licensee fails to remove property that the City requires it to remove, the City may perform the work and collect the cost thereof from the Licensee. The actual cost thereof, including direct and indirect administrative costs, shall be a lien upon all plant and property of the Licensee within the License Area effective upon filing of the lien with the Pierce County Auditor.

C. If the Licensee has not obtained a Franchise as contemplated at section 2.1.C herein, then to the extent any portion of the System in the Public Rights-of-Way or on any other public property is not removed by the Operator within 95 days of the end of the License Agreement term or the date an order to remove Installations is provided to the Licensee, whichever is later, the property will be deemed abandoned and shall become the property of the City, if the City wishes to own it.

D. Any order by the City issued pursuant to Section 2.5.B to remove Installations shall be sent, by registered or certified mail, to the Licensee no earlier than 60 days prior to, and no later than 120 days following, the date of the License Agreement termination. Removal and restoration shall be completed (except with respect to property that the Licensee is permitted or required to abandon in place) not later than 60 days following the date of notification to remove the Facilities.

E. The Licensee shall file a written removal plan with the City not later than 25 calendar days following the date of the receipt of any orders directing removal, or any consent to removal describing the work that will be performed, the manner it will be performed, and a schedule for removal by location. The removal plan shall be subject to review, approval, and regulation by the City which review shall be complete and a decision as to approval made within 10 days of submittal of the removal plan. The affected property must be restored

to as good or better condition than existed immediately prior to removal, and those damaged by removal must be compensated for the damage.

2.6 Responsibility for Costs. Except as expressly provided otherwise, any act that the Licensee is required to perform under this License Agreement shall be performed at its cost. If the Licensee fails to perform work that it is required to perform within the time provided for performance, the City may perform the work and bill the Licensee. The Licensee shall pay the amounts billed within 30 days. The parties agree that any amounts paid pursuant to this section are not License Agreement fees.

2.7 Work of Contractors and Subcontractors. Work by contractors and subcontractors is subject to the same restrictions, limitations, and conditions as if the work were performed by the Licensee. The Licensee shall be responsible for all work performed by its contractors and subcontractors, and others performing work on its behalf as if the work were performed by it, and shall ensure that all such work is performed in compliance with this License Agreement, Title 16, and other applicable law, and shall be jointly and severally liable for all damages and correcting all damage caused by them. It is the Licensee's responsibility to ensure that contractors, subcontractors, or other persons performing work on the Licensee's behalf are familiar with the requirements of the License Agreement, Title 16, and other applicable laws governing the work performed by them.

2.8 Survival of Terms. Upon the termination or revocation of the License Agreement, the Licensee shall no longer have the right, except as may be granted

pursuant to a Franchise with the City, to occupy the Public Rights-of-Way for the purpose of Construction and Installation of a Telecommunication System.

However, the Licensee's obligations to the City survive the expiration of these rights according to their terms.

SECTION 3 - CONSTRUCTION IN STREETS AND RIGHTS-OF-WAY.

3.1 Use of Public Rights-of-Way. Licensee may, subject to the terms of this License Agreement and other applicable laws, construct a Telecommunication System to provide Telecommunication Services. Without limiting the foregoing, the Licensee expressly agrees that it will construct its System in compliance with the requirements of Title 16, including those governing the placement of its Telecommunication System, and with other applicable City codes; and will obtain and maintain all bonds and billable work orders required by the same.

3.2 Construction. The Licensee shall, in all cases, comply with all lawful City ordinances and regulations, now in effect or hereinafter enacted, regarding the acquisition of permits and such other items as may be required by the City in connection with the Construction of the Telecommunication System.

Without limiting the foregoing, the Licensee agrees that it shall, in the course of constructing its Telecommunication System, comply with the requirements of Title 16 and, among other things:

A. (1) The Licensee shall, by a time specified by the City, protect, support, temporarily disconnect, relocate, or remove any of its property when

required by the City by reason of traffic conditions; public safety; Public Rights-of-Way Construction; Public Rights-of-Way repair (including resurfacing or widening); change of Public Rights-of-Way grade; Construction, Operation, or Repair of sewers, drains, water pipes, power lines, signal lines, tracks, or any other type of government-owned Communications System, public work, public facility, or improvement or any government-owned utility; Public Rights-of-Way vacation; or for any other purpose where the work involved would be aided by the removal or relocation of the Telecommunication System. Collectively, such matters are referred to below as the "public work."

(2) In the event of an emergency, or where the Telecommunication System creates or is contributing to an imminent danger to health, safety, or property, the City may protect, support, temporarily disconnect, remove, or relocate any or all parts of the Telecommunication System without prior notice, and charge the Licensee for costs incurred.

(3) If any person that is authorized to place Facilities in the right-of-way requests the Licensee to protect, support, temporarily disconnect, remove, or relocate the Licensee's Facilities to accommodate the Construction, Operation, or Repair of the Facilities of such other Person, the Licensee shall, after 30 days' advance written notice, take action to effect the necessary changes requested. Unless the matter is governed by a valid contract or a state or federal law or regulation, or unless the Licensee's Telecommunication System was not properly installed, the reasonable cost of the same shall be borne by the person

requesting the protection, support, temporary disconnection, removal, or relocation, and at no charge to the City, even if the City makes the request for such action.

(4) The Licensee shall, on the request of any Person holding a valid permit issued by a governmental authority, temporarily raise or lower its wires to permit the moving of buildings or other objects. The expense of such temporary removal or raising or lowering of wires shall be paid by the person requesting the same.

B. The Licensee's obligation to construct its Telecommunication System in compliance with all laws, ordinances, departmental rules and regulations, and practices affecting such System includes, by way of example and not limitation, the obligation to construct in accordance with zoning codes, safety codes, and City construction standards, including the most current version of the Standard Specifications for Road, Bridge, and Municipal Construction, as prepared by the Washington State Department of Transportation (WSDOT) and the Washington State Chapter of American Public Works Association (APWA); the most current version of the APWA Amendments to Division One, and the most current version of the City of Tacoma Amendments thereto. In addition, the Construction shall be performed in a manner consistent with high industry standards. The Licensee shall exercise reasonable care in the performance of all its activities and shall use commonly-accepted methods and devices for

preventing failures and accidents that are likely to cause damage, injury, or nuisance to the public or to property.

C. The Licensee's Construction of its Telecommunication System shall not commence until all required permits have been properly filed for and obtained from the proper City officials and all required permits and associated fees paid. In any permit so issued, the City may impose, as a condition of the granting of the permit, such conditions and regulations as may be necessary to the management of the Public Rights-of-Way, including, by way of example and not limitation, for the purpose of protecting any structures in the Public Rights-of-Way, maintaining proper distance from other utilities, for the proper restoration of such Public Rights-of-Way and structures, and for the protection of the City, the public, and the continuity of pedestrian and vehicular traffic.

D. The Licensee must follow City-established requirements for placement of Facilities in Public Rights-of-Way, including the specific location of Facilities in the Public Rights-of-Way, and must in any event install Facilities in a manner that minimizes interference with the use of the Public Rights-of-Way by others, including others that may be installing Communications Facilities. The City may require that Facilities be installed at a particular time, at a specific place, or in a particular manner as a condition of access to particular Public Rights-of-Way; may deny access if the a Licensee is not willing to comply with the City's requirements; and may remove, or require removal of, any Facility that is not installed in compliance with the requirements established by the City, or which

is installed without prior City approval of the time, place, or manner of Installation, and charge the Licensee for all the costs associated with removal; and may require the Licensee to cooperate with others to minimize adverse impacts on the Public Rights-of-Way through joint trenching and other arrangements.

E. The Licensee agrees that, as a condition of a permit for erection of new poles or installation of conduit, the City may require it to install poles or conduit in excess of its reasonably foreseeable requirements for the purpose of accommodating the City and/or other Licensees , where the City Manager determines it is appropriate to do so, to minimize disruption of public passage or infrastructure, to forestall or relieve exhaustion of right-of-way capacity, or to protect environmentally-sensitive areas.

F. To the extent possible, the Licensee shall use existing poles and conduit existing at the time of permitting in installing its System. Additional poles may not be installed in the Public Rights-of-Way, nor may pole capacity be increased by vertical or horizontal extenders, without the permission of the City Manager.

G. (1) Whenever all existing utilities are located underground in an area in the City, the Licensee must also locate its Telecommunication System underground, including Telecommunication System Facilities, such as drops which cross private property.

(2) Whenever the owners of poles locates or relocates underground within an area of the City, the Licensee shall concurrently relocate its Facilities underground.

(3) Whenever an electric utility opens a trench for the purpose of installing or relocating Facilities, the Licensee shall concurrently relocate its Facilities underground and, if it uses the same trench, share the cost.

(4) The City Manager may, for good cause shown, exempt a particular portion of the Telecommunication System from the obligation to locate or relocate Facilities underground, where relocation is impractical, or where the interest in protecting against visual blight can be protected in another manner. Nothing in this Section 3.2.G prevents the City from ordering the Licensee to locate or relocate its Telecommunication System underground under other provisions of the Tacoma Municipal Code, it being the intent that the number and extent of Overhead Facilities and the visual pollution resulting therefrom will, over time, be reduced and eventually, to the extent feasible, eliminated.

H. The Licensee shall promptly repair any and all Public Rights-of-Way, public property, or private property that is disturbed or damaged during the Construction, Operation, or Repair of its Telecommunication System. Public property and Public Rights-of-Way must be restored to the satisfaction of the City, or to a condition as good or better than before the disturbance or damage occurred.

I. No tree trimming shall be performed without the permission of the City and other affected authorities, and any tree trimming must be performed in strict accordance with the City Code. Even if tree trimming is authorized by the City, the Licensee is liable for any damage it causes during the course of tree trimming.

J. In any dispute over the adequacy of a restoration relative to this section, the City's Department of Public Works Director shall, in his/her sole discretion, make the final determination.

K. The Licensee shall not remove any Underground Facilities except as hereinafter provided.

(1) The Licensee shall not remove any Underground Facilities which require trenching or other opening of the rights-of-way along the extension of the Facilities to be removed, without the express permission of the City. The Licensee must request permission from the City to remove the Facilities at least 30 days in advance of the date the Licensee proposes to begin removal.

(2) The Licensee shall remove such Underground Facilities as the City orders it to remove; provided, that the City may not order removal where such removal is primarily to give economic benefit or advantage to a competing provider of Telecommunication Service.

(3) Where trenching or other opening of the rights-of-way along the extension of Facilities to be removed is required, the Licensee must post bonds as the City may require to ensure that the property is promptly

removed, with minimum disruption. The Licensee must restore the affected property to as good or better condition than existed just prior to the removal; and the Licensee must compensate those whose property it damages for the damage.

(4) Subject to the City's rights to purchase the Telecommunication System, the Licensee may voluntarily remove any Underground Facilities from the streets which have been installed in such a manner that they can be removed without trenching or other opening of the rights-of-way.

3.3 Right To Inspect and Order Corrections. The City may inspect the Telecommunication System at any time reasonable under the circumstances to ensure compliance with this License Agreement and applicable law, including to ensure that the Telecommunication System of the Licensee is constructed and maintained in a safe condition. If an unsafe condition is found to exist, the City, in addition to taking any other action permitted under applicable law, may order the Licensee, in writing, to make the necessary repairs and alterations specified therein forthwith to correct the unsafe condition on a time table established by the City which is reasonable in light of the unsafe condition. The City has the right to correct, inspect, administer, and repair the unsafe condition if the Licensee fails to do so, and to charge the Licensee therefor.

3.4 Information Regarding Ongoing Work. In addition to providing notice to the public of ongoing work as may be required under applicable law, the Licensee shall make information available regarding any ongoing Construction,

Operation, or Repair of its Telecommunication System sufficient to show (1) the nature of the work being performed; (2) where it is being performed; (3) its estimated completion date; and (4) progress to completion.

SECTION 4 - REGULATORY PROVISIONS.

4.1 Intent. The City shall have the right to administer and regulate activities of the License Agreement up to the fullest extent of the law. The failure to reserve a particular right to regulate, or reference a particular regulation, shall not be interpreted by negative implication or otherwise to prevent the application of a regulation to the Licensee.

4.2 Remedies for License Violations. The City has the right to exercise any and all of the following remedies, singly or in combination, in the event the Licensee violates any provision of this License Agreement:

A. Draw upon or foreclose all or any part of any letter of credit, security fund, performance bond, or other security provided under this License Agreement; provided, however, such drawing or foreclosure shall be only in such a manner and in such amount as the City reasonably determines is necessary to remedy the default. Should the City take this action, the Licensee shall be responsible for all direct and actual costs related to such action, including, but not limited to, legal and administrative costs.

B. Commencing an action at law for monetary damages.

C. Commencing an action for equitable or other relief, including injunctive relief.

D. Declaring the License Agreement to be revoked.

E. Seeking specific performance of any provision which reasonably lends itself to such remedy.

In determining which remedy or remedies for the Licensee's violation are appropriate, the City may take into consideration the nature and extent of the violation, the remedy needed to prevent such violations in the future, whether the Licensee has a history of previous violations of the same or similar kind, and such other considerations as are appropriate under the circumstances. Remedies are cumulative; the exercise of one shall not foreclose the exercise of others.

4.3 Procedure for Remedying License Agreement Violations. Before imposing liquidated damages, or drawing upon the performance bond, letter of credit, security fund, or any other security set out in Section 5, the City shall follow the procedure below.

A. Notice of Violation. In the event that the City believes that the Licensee has not complied with the terms of this License Agreement, the City shall notify the Licensee in writing, by certified mail, of the nature of the alleged non-compliance.

B. The Licensee's Right to Cure or Respond. Except as provided in Section 4.3.D., the Licensee shall have 10 days from the receipt of notice described above, to (a) respond to the City contesting the assertion of non-compliance, or (b) to cure such default or, in the event that by the nature of the default such default cannot be cured within the 10-day period, initiate steps to

remedy such default as promptly as possible. The duty to cure includes the duty to cure all harms caused by the acts or omissions of the Licensee. At the end of the 10-day period, the Licensee shall notify the City, in writing, of the steps it has taken to cure the default, if any; if the cure is not complete, the reason it is not complete and the projected date for completion; and if the default is disputed, the complete basis for that contention.

C. Public Hearing. The City may schedule a public hearing to investigate any alleged default. The City shall give the Licensee five calendar days' notice of the time and place of the hearing, and provide the Licensee with an opportunity to be heard.

D. Action After Hearing. If, after such hearing, the City determines that the Licensee did not cure or initiate steps to cure to the City's satisfaction, after the notice required by Section 4.3.A was provided, then the City may draw upon any performance bond, letter of credit, security fund, or other security, including requiring performance under the guarantee, and impose liquidated damages. However, notice and opportunity to cure are not required for repeat violations or for a failure to correct a default where the Licensee knew, or should have known, it was in default. In such cases, the performance bond, security fund, letter of credit, or other security may be drawn upon, the guarantor required to perform, and liquidated damages imposed after the hearing required by Section 4.3.C.

E. Liquidated Damage Amounts. Because the Licensee's failure to comply with the provisions of this License Agreement will result in injury to the City, and because it may be difficult to estimate the extent of each such injury, the Licensee and the City agree to the following liquidated damages, which provisions represent the best estimate of the damages resulting from injuries of specific types. The amounts of the liquidated damages set forth in this License Agreement are in 1999 dollars and shall be increased each year by the increase in the U. S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index for Pacific Cities and U. S. City Average, Seattle, Urban Wage Earners and Clerical Workers Second Half Yearly Report. The amount of liquidated damages for all material violations of the License Agreement for which actual damages may not be ascertainable shall be: \$500 per day for each violation for each day the violation continues. It is provided, however, that the City shall allow the Grantee a minimum of 10 days after notice to the Grantee of such neglect, failure, or refusal to comply within which to meet compliance or correct performance prior to the assessment of any liquidated damages.

4.4 Confession of Judgment. If the Licensee has not obtained a Franchise from the City on or before expiration of the term of the License Agreement, despite the best efforts of the City and the Licensee, the Licensee agrees to cease Construction of and not operate the Telecommunication System in the License Area until such time as the Licensee obtains the necessary Franchise from the City. Provided, however, that such cessation of Construction and

non-operation of the Telecommunication System shall not be considered an abandonment thereof, so long as the Licensee acts reasonably to seek a completed Franchise thereafter.

Should the Licensee not obtain a Franchise within the term of the License Agreement, the City may give the Licensee 48 hours advance notice to cease all Construction and Operation of the Telecommunication System in the License Area. If the Licensee has not ceased all Construction and operation of the Telecommunication System in the License Area within 48 hours after such notice is provided, or obtained a Franchise within such period, the Licensee agrees that continued Construction or operation of the Telecommunication System thereafter will create irreparable harm to the City for which the City has no adequate remedy at law. The Licensee hereby grants to the City a confession of judgment limited to obtaining a permanent injunction from a Court of competent jurisdiction, requiring the Licensee to cease Construction and not operate the Telecommunication System unless and until the Licensee has obtained a Franchise.

4.5 Failure to Enforce. The Licensee shall not be relieved of any of its obligations to comply promptly with any provision of this License Agreement by reason of any failure of the City to enforce prompt compliance, and the City's failure to enforce shall not constitute a waiver of rights or acquiescence in the Licensee's conduct.

4.6 Force Majeure. The Licensee shall not be deemed in default with the provisions of its License Agreement where performance was rendered impossible

by war or riots, civil disturbances, floods, or other natural catastrophes beyond the Licensee's control; the unforeseeable unavailability of labor or materials; or power outages exceeding back-up power supplies. The acts or omissions of Affiliates are not beyond the Licensee's control, and the knowledge of Affiliates shall be imputed to Licensee. The License Agreement shall not be revoked or the Licensee penalized for such non-compliance, provided the Licensee takes immediate and diligent steps to bring itself back into compliance and to comply as soon as possible under the circumstances with its License Agreement without unduly endangering the health, safety, and integrity of the Licensee's employees or property, or the health, safety, and integrity of the public, Public Rights-of-Way, public property, or private property.

4.7 Alternative Remedies. No provision of this License Agreement shall be deemed to bar the right of the City to seek or obtain judicial relief from a violation of any provision of the ordinance or any rule, regulation, requirement, or directive promulgated thereunder. Neither the existence of other remedies identified in this License Agreement nor the exercise thereof shall be deemed to bar or otherwise limit the right of the City to recover monetary damages for such violation by the Licensee, or to seek and obtain judicial enforcement of the Licensee's obligations by means of specific performance, injunctive relief or mandate, or any other judicial remedy at law or in equity.

4.8 Compliance with the Laws. The Licensee shall comply with all federal and state laws and regulations, including regulations of any administrative agency

thereof, as well as all City ordinances, resolutions, rules, and regulations heretofore or hereafter adopted or established during the entire term of the License Agreement. Provided that, nothing herein shall prevent the Licensee from challenging a provision of laws that applies only to it as an impairment of contract. Nothing in this License Agreement shall limit the City's right of eminent domain under state law. Nothing in this License Agreement shall be deemed to waive the requirements of any lawful code or resolution of the City regarding permits, fees to be paid, or manner of construction.

SECTION 5 - COMPENSATION AND FINANCIAL PROVISIONS.

5.1 Performance Bond. At the same time it provides its License Agreement acceptance to the City, the Licensee shall provide a performance bond to ensure the faithful performance of its responsibilities under this License Agreement and applicable law, including, by way of example and not limitation, its obligations to relocate and remove its Facilities; and to restore City rights-of-way and other property. The initial amount of the performance bond shall be \$100,000. The amount of the bond may be changed from time to time to reflect changed risks to the City or to the public. The Licensee may be required to obtain additional bonds in accordance with the City's ordinary practices. The bond shall be in a form and with a surety acceptable to the City's Risk Manager and in a form acceptable to the City Attorney. The Licensee shall pay all premiums or costs associated with maintaining the bond, and shall keep the same in full force and effect at all times.

5.2 Indemnification by the Licensee.

A. The Licensee, by accepting this License Agreement, agrees to release the City from and against any and all liability and responsibility in or arising out of the Construction of the Telecommunication System, and, without limiting the provisions of Section 6.4, agrees not to sue or seek any money or damages from the City in connection with the above-mentioned matters.

B. The Licensee agrees to indemnify and hold harmless the City, its trustees, elected and appointed officers, agents, and employees from and against any and all claims, demands, or causes of action of whatsoever kind or nature, and the resulting losses, costs, expenses, reasonable attorneys' fees, liabilities, damages, orders, judgments, or decrees sustained by the City or any third party arising out of, or by reason of, or resulting from or of the acts, errors, or omissions of the Telecommunication System, or its agents, independent contractors, or employees related to or in any way arising out of the construction of the Telecommunication System. The Licensee waives immunity under RCW Title 51 and affirms that the City and the Licensee have specifically negotiated this provision, as required by RCW 4.24.115, to the extent it may apply.

C. The Licensee agrees that the covenants and representations relating to the indemnity provided in A through B above shall survive the term of its License Agreement and continue in full force and effect as to the Licensee's responsibility to indemnify.

5.3 Licensee Insurance.

A. The Licensee shall maintain, throughout the term of the License Agreement, adequate insurance to protect the City, its trustees, elected and appointed officers, agents, and employees against claims and damages that may arise as a result of the Construction of the Telecommunication System. This obligation shall require the Licensee to maintain insurance at least in the following amounts:

(1) COMPREHENSIVE GENERAL LIABILITY insurance to cover liability, bodily injury, and property damage. Exposures to be covered are: premises, operations, products/completed operations, and certain contracts. Coverage must be written on an occurrence basis, with the following limits of liability:

(a) Bodily Injury

i. Each Occurrence	\$ 1,000,000
ii. Annual Aggregate	\$ 3,000,000

(b) Property Damage

i. Each Occurrence	\$ 1,000,000
ii. Annual Aggregate	\$ 3,000,000

(c) Personal Injury

i. Annual Aggregate	\$3,000,000
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(2) COMPLETED OPERATIONS AND PRODUCTS

LIABILITY shall be maintained for two years after the termination of the License Agreement (in the case of the Communications System owner or Operator) or

completion of the work for the Communications System owner or Operator (in the case of a contractor or subcontractor).

(3) PROPERTY DAMAGE LIABILITY INSURANCE shall include coverage for the following hazards: X - explosion, C - collapse, U - underground.

(4) WORKERS' COMPENSATION insurance shall be maintained during the life of this License Agreement to comply with statutory limits for all employees, and in the case any work is sublet, the Licensee shall require its contractors and subcontractors similarly to provide workers' compensation insurance for all the latter's employees unless such employees are covered by the protection afforded by the Licensee. The Licensee shall also maintain, during the life of this policy, employer's liability insurance. The following minimum limits must be maintained:

(a) Workers' Compensation	Statutory
(b) Employer's Liability	\$ 500,000 per occurrence

(5) COMPREHENSIVE AUTO LIABILITY insurance shall include owned, hired, and non-owned vehicles. The following minimum limits must be maintained:

(a) <u>Bodily Injury</u>	
i. Each Occurrence	\$ 1,000,000
ii. Annual Aggregate	\$ 3,000,000

(b) Property Damage

i.. Each Occurrence	\$ 1,000,000
ii. Annual Aggregate	\$ 3,000,000.

B. The required insurance must be obtained and maintained for the entire period the Licensee has Facilities in the Public Rights-of-Way, and for six years thereafter. If the Licensee, its contractors, or subcontractors do not have the required insurance, the City may require such entities to stop operations until the insurance is obtained and approved.

C. Certificates of insurance, reflecting evidence of the required insurance, and naming the City as an additional insured on the GENERAL LIABILITY and AUTOMOTIVE policies described above, shall be filed with the City's Risk Manager. The certificate shall be filed with the acceptance of the License Agreement, and annually thereafter, and as provided in Section E below.

D. The certificates shall contain a provision that coverages afforded under these policies will not be canceled until at least 30 days' prior written notice has been given to the City. Policies shall be issued by companies authorized to do business under the laws of the state of Washington. Financial ratings must be no less than "A" in the latest edition of "Bests Key Rating Guide," published by A.M. Best Guide.

E. In the event that the insurance certificate provided indicates that the insurance shall terminate or lapse during the period of the License Agreement, then, in that event, the Licensee shall furnish, at least 30 days prior to

the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage has been or will be obtained prior to any such lapse or termination during the balance of the period of the License Agreement.

F. The City shall reserve the right to require any other insurance coverage it deems necessary during the term of the License Agreement, depending upon the exposures.

5.4 Security Fund. The Licensee shall establish a cash security fund or provide the City with an irrevocable letter of credit in the amount of \$50,000, to secure the payment of fees owed, to secure any other performance promised in this License Agreement, and to pay any taxes, fees, or liens owed to the City. The letter of credit shall be in a form and with an institution acceptable to the City's Director of Finance and in a form acceptable to the City Attorney. Should the City draw upon the cash security fund or letter of credit, it shall promptly notify the Licensee, and the Licensee shall promptly restore the fund or the letter of credit to the full required amount. The City may, from time to time, change the amount of the required security fund/letter of credit to reflect changes in the risks to the City and to the public, including delinquencies in taxes or other payments to the City.

SECTION 6 - MISCELLANEOUS PROVISIONS.

6.1 Posting and Publication. The Licensee shall assume the cost of posting and publication of this License Agreement as such posting and

publication is required by law, and such is payable upon the Licensee's filing of acceptance of the License Agreement.

6.2 Guarantee of Performance. The Licensee acknowledges that it enters into the License Agreement voluntarily in order to secure, and in consideration of, the grant from the City of a 90-day License Agreement. Performance pursuant to the terms and conditions of this License Agreement is guaranteed by the Licensee.

6.3 Governing Law and Venue. The License Agreement shall be governed by and construed in accordance with the laws of the state of Washington, and the Licensee agrees that any action brought relative to enforcement of this License Agreement shall be initiated in the Superior Court of Pierce County, and shall not be removed to a federal court.

6.4 No Recourse. Without limiting such immunities as the City or other Persons may have under applicable law, the Licensee shall have no monetary recourse whatsoever against the City or its officials, boards, commissions, agents, or employees for any loss, costs, expenses, or damages arising out of any provision, or requirement of Title 16, or because of the enforcement of Title 16 or the City's exercise of its authority pursuant to Title 16, this License Agreement, or other applicable law.

6.5 Notice. Unless otherwise expressly agreed to between the parties, every notice or response required by this License Agreement to be served upon the City or the Licensee shall be in writing, and shall be deemed to have been

duly given to the required party five business days after having been posted in a properly sealed and correctly addressed envelope when hand delivered or sent by mail, postage prepaid. The notices or responses to the City shall be addressed as follows:

City of Tacoma
Tacoma Municipal Building
747 Market St., Suite 208
Tacoma, WA 98402-3768
Attn: General Services Director

The notices or responses to the Licensee shall be addressed as follows:

Advanced TelCom Group, Inc.
General Manager
917 Pacific Avenue, Suite 407
Tacoma, WA 98407

The City and the Licensee may designate such other address from time to time by giving written notice to the other, but notice cannot be required to more than one address, and the address must be within the City, except by mutual agreement.

6.6 Execution. The Licensee shall execute and return to the City three original countersigned copies of this License Agreement and a signed acceptance of the License Agreement granted hereunder within 10 days after the date of passage of the resolution by the City Council. The acceptance shall be in a form acceptable to the City Attorney and in accepting the License Agreement, the Licensee warrants that it has carefully read the terms and conditions of this License Agreement, unconditionally accepts all of the terms and conditions of this

License Agreement, agrees to abide by the same, and acknowledges that it has relied upon its own investigation of all relevant facts, that it has had the assistance of counsel, that it was not induced to accept a License Agreement, that this License Agreement represents the entire agreement between the Licensee and the City, and that the Licensee accepts all risks related to the interpretation of this License Agreement. The countersigned License Agreement and acceptance shall be returned to the City accompanied by: evidence of insurance, a payment for publication costs, billable work order deposit, and security deposit (or the letter of credit). The License Agreement rights granted herein shall not become effective until all of the foregoing are received in an acceptable form. In the event the Licensee fails to submit the countersigned License Agreement and acceptance as provided for herein, or fails to provide the required accompanying documents and payments, within the time limits set forth in this section, the grant of the License Agreement shall be null and void.

CITY OF TACOMA

Attest:

Ray E. Corpuz, Jr.
City Manager

City Clerk

Countersigned:

Approved as to form and legality:

Leslie Rowen, General Services Director

Robin S. Jenkinson, City Attorney

Peter Luttropp, Finance Director

Andrew Michels, Risk Manager

ADVANCED TELCOM GROUP, INC.
ACCEPTANCE OF CITY LICENSE AGREEMENT

I, _____, am the _____ of
ADVANCED TELCOM GROUP, INC., and am the authorized representative to
accept the above-referenced City License Agreement on behalf of ADVANCED
TELCOM GROUP, INC.

I certify that this License Agreement and all terms and conditions thereof
are accepted by ADVANCED TELCOM GROUP, INC., without qualification or
reservation.

DATED this _____ day of _____, 1999.

ADVANCED TELCOM GROUP, INC.

By _____
Its _____

Witness: _____