

ORDINANCE NO. 093-061

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS, GRANTING TO TELEPORT COMMUNICATION DALLAS, INC. A STREET USE AND RENTAL AGREEMENT FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING AND OPERATING ITS FIBER OPTIC NETWORK IN PUBLIC STREETS, ALLEYS, AND RIGHTS-OF-WAY IN THE TOWN OF ADDISON; PROVIDING FOR THE CONDITIONS GOVERNING THE CONSTRUCTION, EXPANSION, USE, RECONSTRUCTION, EXCAVATION, MAINTENANCE AND OPERATION OF A FIBER OPTIC NETWORK; PROVIDING FOR A BOND AND INSURANCE; PROVIDING FOR THE REGULATION OF WORK BY OTHERS, CONSTRUCTION BY ABUTTING OWNERS AND REQUIRING ALTERATION TO CONFORM WITH PUBLIC IMPROVEMENTS; PROVIDING FOR THE CITY'S RIGHT TO USE CERTAIN PORTIONS OF THE FIBER OPTIC NETWORK; PROVIDING FOR COMPENSATION FOR THE PRIVILEGES CONFERRED UNDER THIS STREET USE AND RENTAL AGREEMENT; PROVIDING FOR ACCOUNTING AND OTHER INFORMATION; PROVIDING FOR CONDITIONS CONCERNING RENEWAL; PROVIDING FOR CONDITIONS OF TRANSFER OR ASSIGNMENT; PROVIDING AN INDEMNITY CLAUSE; PROVIDING FOR A LOCAL OFFICE; PROVIDING FOR CONSEQUENCES OF AGREEMENT VIOLATIONS; PROVIDING FOR COMPLIANCE WITH EXISTING LAWS; PROVIDING FOR WRITTEN ACCEPTANCE OF THE TERMS OF THIS AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:

SECTION 1. DEFINITIONS

For the purpose of this ordinance, the following terms, phrases, words, abbreviations and their derivations shall have the meaning given herein unless more specifically defined within other sections of this ordinance. When not inconsistent with the context, words used in the present tense include the future tense, words in the single number include the plural number. The word "shall" is always mandatory, and not merely directory.

- A. "Acceptance Fee" means the amount payable based on a formula of \$1.00 per linear foot of streets traversed, and \$1,000 per public street crossing that is underground.
- B. "General Compensation" means the amount Grantee is required to pay City under Section 11.

- C. "Annual Gross Revenue Based Fee" means an amount equal to five percent (5%) of (i) Grantee's Gross Revenues received by Grantee during the year for the operation of Grantee's Network within the City, and (ii) a proportionate share of Grantee's Gross Revenue derived from the physical interconnection of Grantee's Network with other cities.
- D. "City" shall mean the Town of Addison, a home-rule municipal corporation.
- E. "Anniversary Date" shall mean the date on which this agreement is accepted by the company.
- F. "Fiber Optic Telecommunications Network" shall mean the Company's system of cables, wires, lines, towers, wave guides, optic fiber, microwave, laser beams, and any associated converters, equipment, or facilities designed and constructed for the purpose of producing, receiving, amplifying or distributing by audio, video or other forms of electronic signals to or from subscribers or locations within the City.
- G. "Company" or "Grantee" shall mean Teleport Communications Dallas, Inc., a Delaware corporation, its successors and assigns.
- H. "Day or days" shall mean a calendar day or days.
- I. "Director" shall mean the Director of the Finance Department of the City or his designee.
- J. "Gross Revenue" shall mean all receipts collected by the Company for all communications and related operations and services within the corporate limits of the City as well as any other revenue arising from the operation or possession of this franchise. By way of example, but without limitation, "Gross Revenue" includes the sale or lease of customer premise equipment, installation charges, access charges paid to the Company by other carriers, street use and rental fees and occupation taxes surcharged to customer, and the lease or re-sale of lines or circuit paths to third parties. "Gross Revenue" does not include revenue uncollectible from customers (bad debts).
- K. "Director of Engineering" shall mean the Director of the City's Engineering Department or his designate.
- L. "Minimum Annual Fee" shall be based on the projected Gross Revenue for the first year's operation. Minimum Annual Fee for subsequent years is based on the highest amount paid for any previous year.

- M. "Compensation Year" means each calendar year during the term of this franchise agreement in which General Compensation is paid by Grantee to the City.

SECTION 2. GRANT OF CERTAIN RIGHTS

There is hereby granted, subject to the City's prompt receipt of monetary and services compensation, to Teleport Communications Dallas, Inc., a corporation, hereinafter called "Grantee", for an initial term of ten (10) years from passage of this streets use and rental agreement (thereinafter referred to as the agreement, agreement ordinance or ordinance) (unless otherwise terminated as provided for herein), the non-exclusive right and privilege to have, acquire, construct, expand, reconstruct, maintain, use and operate in, along, across, on, over, through, above and under the public streets, alleys and rights-of-way of the City, a Fiber Optics Telecommunications Network (the "Network"), which shall be limited to audio, video, data, voice and signalling communications services. Grantee shall not provide services directly regulated by the Texas Public Utility Commission (the "PUC") under the Texas Public Utility Regulatory Act unless authorized by the PUC. Grantee shall not provide cable services or operate a cable system in the Town of Addison as defined in the Cable Communications Policy Act of 1992 (47 U.S.C.A. §521, et seq., as amended) or as recognized by the Federal Communications Commission (the "FCC") without first obtaining a cable franchise from the Town of Addison. Neither Grantee nor the Town of Addison shall allow the use of the Network by a cable system that has not been granted authority by the City. This agreement ordinance is granted to Grantee solely for the purpose of directly serving its end-user customers (including hotels, motels, hospitals and buildings with shared tenant services) and interexchange carriers.

This ordinance does not require Grantee to provide ubiquitous service throughout the entire city as a public service provider.

SECTION 3. CONSTRUCTION, MAINTENANCE, EXPANSION, RECONSTRUCTION, AND EXCAVATION

(a) The construction, expansion, reconstruction, excavation, use, maintenance and operation of Grantee's Network, facilities and property shall be subject to all lawful police regulations of the City and performed in accordance with the City's regulations for utility location and coordination. In addition to any other City regulations or requirements, thirty (30) days prior to the commencement of construction, Grantee shall provide the City Engineer (or such other officials as the City may designate from time to time) each with a copy of the construction work plans and drawings. Grantee shall not proceed with construction until the plans and drawings have been approved in writing by the proper City officials.

(b) Upon request of the City, Grantee shall remove and abate any portion of the Network or any facility that is dangerous to life or property, and in case Grantee, after reasonable notice, fails or refuses to act, the City may remove or abate

the same, at the sole cost and expense of Grantee, all without compensation or liability for damages to Grantee. Grantee shall promptly restore the public streets, alleys and rights-of-way to their condition prior to Grantee's construction, maintenance, or excavation, to the reasonable satisfaction of the City Engineer. Grantee shall excavate only for the construction, installation, expansion, repair, removal, and maintenance of all or a portion of its Network.

(c) Except in an emergency, Grantee shall not excavate any pavement in any public alley or street or significant amounts of any unpaved public right-of-way without first securing permission of the City Engineer, but such permission shall be given if the proposed excavation is in accordance with the terms of this ordinance. The City Engineer shall be notified as soon as practicable regarding work performed under emergency conditions; and Grantee shall comply with the City Engineer's reasonable requirements for restoration of any disturbed public property.

(d) Within thirty (30) days of completion of each segment of Grantee's Network, Grantee shall supply the City with a complete set of "as built" drawings for that segment. Further, after each replacement, relocation, reconstruction, or removal, Grantee shall promptly notify the City of the exact changes made and shall provide a new set of "as built" drawings of each modification to the City Engineer. Grantee shall provide annually a complete set of "as built" drawings incorporating these changes. Grantee shall obtain the City's approval before any system changes are made.

(e) Grantee shall complete construction and full activation of one hundred percent (100%) of its Network within 24 months after passage of this franchise ordinance. Further, Grantee shall be capable of providing service to end use customers no later than twelve (12) months after passage of this agreement ordinance.

SECTION 4. TERM OF AGREEMENT

Upon the filing with the City by the Grantee of the acceptance required herein, this agreement shall be in full force and effect for a term and period of ten (10) years, beginning on the Anniversary Date. This agreement shall be automatically renewed for one subsequent ten (10) year period unless either party shall file ninety (90) day prior written notice of cancellation to the other and the other shall have responded their acknowledgement in a similar form.

SECTION 5. CONSTRUCTION WORK REGULATION BY CITY AND UNDERGROUND CONDUIT USED BY CITY

(a) All work done in connection with the construction, expansion, reconstruction, maintenance or repair of the Network shall be subject to and governed by all laws, rules, and regulations of the City, and Grantee shall place all

facilities underground according to reasonable requirements that may be adopted from time to time by the City; provided, however, Grantee shall be given due notice and shall be entitled, upon request, to a hearing before the City Council of the Town of Addison prior to the adoption of any such requirements, and further provided that Grantee may present evidence to demonstrate that such requirements will substantially impair its ability to recover its operation expenses.

(b) All excavations and other construction in the public streets, alleys, and rights-of-way shall be carried on to interfere as little as practicable with the use of public and private property and in accordance with any direction given by the City under the police and regulatory powers of the City.

(c) Grantee may be required by the City to construct portions of the Network, or all of its Network, underground, or to share conduit or duct trench space owned and maintained by any other person or entity, or to permit the wires or equipment of any other person or entity authorized by the City to be attached to the facilities owned and maintained by the Grantee, upon reasonable, non-discriminatory terms and at fair market value. Grantee may require any such person or entity to furnish evidence of adequate insurance covering Grantee and adequate bonds covering the performance of the person or entity attaching to Grantee's facilities as a condition precedent to granting permission to any such person or entity to attach wires or equipment to Grantee's facilities; provided Grantee's requirements for such insurance shall be reasonable.

(d) Any facilities of other persons or entities that are attached to or within Grantee's Network shall be placed, replaced, maintained and removed in a safe manner so that the attachment does not interfere unnecessarily with the erection, replacement operation, repair or maintenance of the Network or other persons or entities using the same Network. Grantee shall not be required to attach its Network to the facilities of any other person or entity franchised by the City or to permit the facilities of any other person or entity to be attached to Grantee's facilities, if it can be satisfactorily shown that thereby Grantee will be subjected to increased risks of interruption to its service or to increased liability for accidents, or if the facilities of such other person or entity are not of the character, design and construction required by, or are not being maintained in accordance with current practice. Provided, however, nothing herein shall modify or abrogate the power of the City to require any holder of a franchise or any street use and rental agreement or similar agreement from the City to allow use of its facilities by any other holder of a City franchise pursuant to the City Charter.

SECTION 6. BONDS

(a) Grantee shall obtain and maintain, at its sole cost and expense, and file with the City Secretary, a corporate surety bond with a surety company authorized to do business in the State of Texas and found acceptable by the City Attorney, in

the amount of Two Hundred Fifty Thousand Dollars (\$250,000) both to guarantee the timely construction and full activation of Grantee's Network and to secure Grantee's performance of its obligations and faithful adherence to all requirements of this agreement ordinance. After the first five (5) years of the initial term, bond requirement shall be reduced to One Hundred Thousand Dollars (\$100,000). Grantee shall provide this corporate surety bond at the time of filing the acceptance of franchise, as required by Section 27 herein.

The bond shall provide, but not be limited to, the following condition: there shall be recoverable by the City, jointly and severally from the principal and surety, any and all damages, loss or costs suffered by the City resulting from the failure of the Grantee to satisfactorily construct, complete and fully activate one hundred percent (100%) of Network miles within 24 months after passage of this ordinance.

(b) Any extension to the prescribed time limit of one hundred percent (100%) of Network miles within 24 hours shall be authorized by the City Council. Such extension shall be authorized only when the City Council determines that such extension is necessary and appropriate due to reasonable causes.

(c) The rights reserved to the City with respect to the bond are in addition to all other rights of the City, whether reserved by this agreement ordinance or authorized by law; and no action, proceeding or exercise of a right with respect to such bond shall affect any other rights the City may have.

(d) The bond shall contain the following endorsement: It is hereby understood and agreed that this bond may not be canceled by the surety nor any intention not to renew be exercised by the surety until sixty (60) days after receipt by the City, by registered mail, of written notice of such intent.

SECTION 7. INSURANCE

(a) Grantee shall obtain and maintain in full force and effect throughout the term of this agreement ordinance, and any extension or renewal thereof, insurance with an insurance company licensed to do business in the State of Texas, approved by the State of Texas and acceptable to the City. All companies will be required to be rated A-VI or better by A.M. Best or A or better by Standard and Poors. The insurance shall be issued in the standard form approved by the State Board of Insurance. Grantee shall provide City with proof of such insurance certificates so required at the time of filing the acceptance of franchise, as required by Section 27 herein. The City reserves the right to review these insurance requirements during the effective period of the agreement ordinance and any extension or renewal thereof, and to adjust insurance coverage and their limits when deemed necessary and prudent by the City Manager, based upon changes in statutory law, court decisions, or the claims history of the industry or the Grantee.

(b) Subject to the Grantee's right to maintain reasonable deductibles in such amounts as are approved by the City, Grantee shall obtain and maintain in full force and effect for the duration of this agreement ordinance, and any extension or renewal thereof, at Grantee's sole expense, insurance policy coverage in the following type and minimum amounts:

<u>TYPE</u>	<u>AMOUNT</u>
1. Worker's Compensation and Employer's Liability	Statutory \$500,000/500,000/100,000
2. Commercial General (public) Liability - to include coverage for the following where the exposure exists:	
(i) Premises operations	Combined single limit for bodily injury and property damages \$3,000,000 per occurrence or its equivalent
(ii) Independent contractors	
(iii) Products/completed	
(iv) Personal injury	
(v) Contractual liability	
(vi) Explosion, collapse and underground property damage	
3. Comprehensive Automobile insurance coverage for loading and unloading hazards, for:	
(i) Owned/leased automobiles	Combined single limit for bodily injury and property damage \$1,000,000 per occurrence or its equivalent
(ii) Non-owed automobiles	
(ii) Hired automobiles	

(c) The City shall be entitled, upon request and without expense, to review copies of the policies and all endorsements thereto. The City may make any reasonable requests for deletion, revision or modification of particular policy terms, conditions, limitations or exclusions, except where policy provisions are established by law or regulation binding upon either City or Grantee or upon the underwriter for any of such policies. Upon request for deletion, revision or modification by the City,

Grantee shall exercise reasonable efforts to accomplish the changes in policy coverage, and shall pay the cost thereof.

(d) Grantee agrees that with respect to the above-required insurance, all certificates of insurance will contain the following required provisions:

(i) Name the Town of Addison and its officers, employees, board members and elected representatives as additional insured (as the interests of each insured may appear) as to all applicable coverage;

(ii) Provide for forty-five (45) days notice to the City for cancellation, non-renewal, or material change;

(iii) Provide for notice to the Director of Finance by certified mail; and

(iv) Provide that all provisions of the agreement ordinance, as amended, concerning liability, duty, and standard care, including the Indemnity, Section 16, of this agreement ordinance, shall be underwritten by contractual coverage sufficient to include such obligations within applicable policies.

(e) The insurance policies obtained by Grantee in compliance with this Section shall be subject to approval by the City, and such proof of insurance, along with written evidence of payment of required premiums as requested, shall be filed and maintained with the Director of Finance during the term of this agreement ordinance, or any extension or renewal thereof, and may be changed from time to time to reflect changing liability limits, as required by the City. Grantee shall immediately advise the City Attorney of any actual or potential litigation that may develop that would affect this insurance.

(f) Insurers shall have no right of recovery against the City, it being the intention that the insurance policies shall protect Grantee and the City and shall be primary coverage for all losses covered by the policies.

(g) The policy clause "Other Insurance" shall not apply to the Town of Addison where the City is an insured on the policy.

(h) Companies issuing the insurance policies shall have no recourse against the Town of Addison for payment of any premiums or assessments which all are set at the sole risk of the Grantee.

SECTION 8. WORK BY OTHERS, CONSTRUCTION BY ABUTTING OWNERS, ALTERATION TO CONFORM WITH PUBLIC IMPROVEMENT

(a) The City reserves the right to lay and permit to be laid, sewer, gas, water, and other pipe lines or cables and conduits, and to do and permit to be done, any underground and overhead work that may be deemed necessary or proper by the City in, across, along, over or under any public street, alley, or right-of-way occupied by Grantee, and to change any curb or sidewalk or the grade of any street. In permitting such work to be done, the City shall not be liable to Grantee for any damages not directly caused by the sole negligence of the City; provided, however, nothing herein shall relieve any other person or entity from liability for damage to Grantee's Network. All work performed will be in accordance to the City manual for Utility Location and Coordination.

(b) In the event that the City authorizes abutting landowners to occupy space under the surface of any public street, alley, or right-of-way, such grant to an abutting landowner shall be subject to the rights herein granted to Grantee. In the event that the City shall close or abandon any public street, alley, or right-of-way which contains any portion of Grantee's Network, any conveyance of land contained in such closed or abandoned public street, alley, highway, or right-of-way shall be subject to the rights herein granted.

(c) Whenever by reason of the changes in the grade of any street or in the location or the manner of constructing any water pipes, gas pipes, sewers, or any other underground or overhead structure for any purpose whatever, it shall be deemed necessary by the City to alter, change, adapt or conform a portion of Grantee's Network thereto, such alterations or changes shall be promptly made by Grantee when ordered in writing by the City, without claim for reimbursement or damages against the City.

(d) In the event that Grantee has not relocated those of its affected facilities which are located in a public street, alley, or right-of-way within a reasonable length of time (as determined by the City's Director of Engineer) prior to the City's commencement date for public street, alley, or right-of-way construction, the City shall have the right to relocate or cause to be relocated the affected portion of Grantee's Network, and the Grantee shall reimburse the City for all reasonable costs of relocation.

(e) During the term of this agreement, Grantee shall be liable for the acts or omissions of any entity used by Grantee (including an affiliate) when such entity is involved directly or indirectly in the construction, installation, maintenance or operations of Grantee's Network as if the acts or omissions of such entity were the acts or omissions of Grantee.

SECTION 9. COMPLIANCE WITH CITY CHARTER

Grantee recognizes, accepts and agrees that the terms, conditions, and provisions of this agreement are subject to the applicable provisions of the Town of Addison Charter. Any request by Grantee for a modification to this agreement shall be subject to review by the City Attorney for compliance with the applicable provisions of the City Charter.

SECTION 10. SERVICE TO THE CITY

Grantee, at its sole cost and expense, shall be required to provide to City for its own use, but not for resale, two (2) fiber pairs ("fiber facility") as determined by City throughout the portion of the Network used for transmission purposes (the "Backbone"), including lateral lines in public rights-of-way connecting the end user's location to that portion of the Network. In case of emergency or diaster, Grantee shall, upon request of the City, make available its facilities to the City, without cost, for emergency use.

SECTION 11. COMPENSATION TO THE CITY

(a) Acceptance Fee - The Grantee agrees to pay a one time acceptance fee to the City the sum of One Dollar (\$1.00) per linear foot of the City's streets traversed and a fee of One Thousand Dollars (\$1,000) per public street crossing that is underground at acceptance of the agreement pursuant to Section 27.

(b) General Compensation - For the reason that the public streets, alleys and rights-of-way to be used by Grantee in the operation of its Network within the boundaries of the City are valuable public properties, acquired and maintained by the City at a great expense to its taxpayers, and that the grant to Grantee of the use of said public streets, alleys and rights-of-way is a valuable property right without which Grantee would be required to invest substantial capital in right-of-way costs and acquisitions, the Grantee agrees to pay to the City as General Compensation during each year of this agreement ordinance, a sum equal to the greater of the Minimum Annual Fee or Annual Gross Revenue Based Fee. The Minimum Annual Fee for the first year of operation shall be \$5,000. The Minimum Annual Fee for subsequent years shall be equal to the highest amount paid to the City as General Compensation for any previous year.

(c) Calculation and Payment on a Quarterly Basis - Grantee shall pay to the City for each quarter an amount equal to the greater of:

- (i) one fourth (1/4) of the Minimum Annual Fee, calculated on the basis of a twelve month Compensation Year, or
- (ii) 5% of Gross Revenues for such quarter.

The greater of (i) or (ii) above shall be referred to as the "Quarterly Payment." Grantee shall forward a check or money order in an amount equal to the Quarterly Payment by the fifteenth (15th) day of the calendar month immediately following the close of the calendar quarter for which the payment is calculated. Any necessary prorations shall be made.

(d) Recalculation at end of Compensation Year - At the end of each Compensation Year, Grantee shall recalculate the total General Compensation actually due. If additional amounts are due the City by Grantee, said amounts shall be paid by the fifteenth (15th) day of the second month of the Compensation Year following the Compensation Year during which such amounts were originally due. If amounts are found to be due the Grantee by the City, said amounts shall be credited by the fifteenth (15th) day of the second month of the Compensation year, during which such amounts were originally due. Any necessary prorations shall be made. The compensation set forth in this Section 11 shall be exclusive of and in addition to all special assessments and taxes of whatever nature, including, but not limited to, ad valorem taxes. In the event any Quarterly Payment is made after noon on the date due, Grantee shall pay a late payment penalty of the greater of: (i) \$100 or (ii) simple interest at ten percent (10%) annual percentage rate of the total amount past due. As used in this Section 11, Gross Revenues shall mean all revenues (exclusive of sales tax) collected by Grantee from operation of Grantee's Network installed pursuant to this agreement ordinance, and any related services provided by the Grantee within the corporation limits of the City including but not limited to:

- (i) all telecommunications service revenue charges on a flat rate basis,
- (ii) all telecommunications services charged on a usage sensitive or mileage basis,
- (iii) all revenues from installation service charges,
- (iv) all revenues from connection or disconnection fees,
- (v) all revenues from penalties or charges to customers for checks returned from banks, net of bank costs paid,
- (vi) all revenues from equipment sold or rented to customer upon customer premises,
- (vii) all revenues from local service
- (viii) all revenues from authorized rental of conduit space,

(ix) all revenues from authorized rentals of any portion of Grantee's Network, including plant, facilities, or capacity leased to others,

(x) all other revenues collected by Grantee from business pursued within the City, and

(xi) recoveries of bad debts previously written off and revenues from the sale or assignment of bad debts. Unrecovered bad debts charged off after diligent, unsuccessful efforts to collect are excluded from Gross Revenues.

Payment of money under this Section shall not in any way limit or inhibit any of the privileges or rights of the Town of Addison, whether under this agreement ordinance or otherwise.

Grantee shall file annually with the Director of Finance no later than ninety (90) days after the end of the Grantee's fiscal year, an audited statement of revenues (for that year) attributable to the operations of the Grantee's Network within the Town of Addison pursuant to this ordinance. This statement shall present, in a form prescribed in Exhibit A, a detailed breakdown of Gross Revenues and uncollectible accounts for the year. This statement shall be audited by an Independent Certified Public Accountant whose report shall accompany the statement.

Any transactions which have the effect of circumventing payment of required agreement fees and/or evasion of payment of agreement fees by non-collection or non-reporting of Gross Revenues, bartering, or any other means which evade the actual collection of revenues for business pursued by Grantee are prohibited.

SECTION 12. WAIVER

Except as provided in Section 22 of this ordinance, any provisions of the Town of Addison Code of Ordinances that are inconsistent with the terms, conditions and provisions of this agreement ordinance are waived, provided, however, the City Council retains the right to terminate this agreement ordinance, whenever in its judgment Grantee's use of the public streets, alleys, and rights-of-way is inconsistent with the public use or whenever the Grantee's use is likely to become a nuisance.

SECTION 13. ACCOUNTS AND OTHER RECORDS AND REPORTS AND INVESTIGATIONS

(a) Grantee shall keep the City fully informed as to all matters in connection with or affecting the construction, reconstruction, removal, maintenance, operation, and repair of Grantee's Network, Grantee's account methods and procedures in connection therewith, and the recording and reporting by Grantee of all revenues and uncollectibles.

(b) Grantee shall keep complete and accurate books of account and records of its business and operations pursuant to this agreement ordinance in accordance with generally accepted accounting principals, subject to approval by the City. If required by the FCC, Grantee shall use the system of accounts and the forms of books, accounts, records, and memoranda prescribed by the FCC in 47CFR Part 32 or its successor and as may be further described herein. The City may require the keeping of additional records or accounts which are reasonably necessary for purposes of identifying, accounting for, and reporting gross revenues and uncollectibles for purposes of Section 11. Grantee shall keep its books of account and records in such a way that breakdowns of revenues are available by type of service within the City.

In order to determine the Gross Revenues received by the Grantee for those categories identified in Section 11, Grantee agrees that on the same date that payment is made, as provided in Section 11, it will file with the City Secretary a sworn copy of a report in a form (Exhibit "A") to be prescribed and acceptable to the City in sufficient detail to itemize revenues from each of the categories identified in Section 11. City may, if it sees fit, have the books and records of Grantee examined by a representative upon five (5) day notice of said City to ascertain the correctness of the reports agreed to be filed herein.

(c) Grantee shall report to the City such other information relating to Grantee as the City may consider useful and shall comply with the City's determination of forms for reports, the time for reports, the frequency with which any reports are to be made, and if reports are to be made under oath.

(d) Grantee shall provide the City with access at reasonable times and for reasonable purposes, to examine, audit, review, and/or obtain copies of the papers, books, accounts, documents, maps, plans and other records of Grantee pertaining to this agreement ordinance. Grantee shall fully cooperate in making available its records and otherwise assisting in these activities.

(e) The City may, at any time, make inquires pertaining to Grantee's operation of its Network within the Town of Addison. Grantee shall respond to such inquiries pertaining to Grantee's operating of its Network within the Town of Addison. Grantee shall respond to such inquiries on a timely basis.

(f) Grantee shall provide the City upon request with notices of all petitions, applications, communications and reports submitted by Grantee to the FCC, Securities and Exchange Commission and the PUC, or their successor agencies, relating to any matters affecting the use of City streets, alleys, and public rights-of-way and/or the telecommunications operations authorized pursuant to this agreement ordinance. Upon written request from City, Grantee shall provide the City with copies of all such documentation.

SECTION 14. RULES AND REGULATIONS

(a) The City may establish, after reasonable notice and hearing, such rules and regulations as may be in the public interest regarding Grantee operations with the City.

(b) In order to ascertain any and all facts, the City shall have full power and authority from Grantee to (i) inspect, or cause to be inspected, the books and records of Grantee, (ii) inventory and appraise, or cause to be inventoried or appraised, the property of Grantee within the Town of Addison, (iii) compel the attendance of witnesses and the production of books and records, and (iv) prescribe penalties for the failure or refusal of Grantee to testify or to produce books and records from time to time as required. Upon five (5) days notice and the City shall keep such information confidential.

SECTION 15. ASSIGNMENT OR LEASE OF AGREEMENT

(a) Neither the agreement, the assets held by Grantee for use under this agreement ordinance, any rights nor privileges of Grantee under this agreement ordinance, Grantee's Network capacity, or allowance of access to Grantee's Network, either separately or collectively, shall be sold, resold, assigned, transferred or conveyed by Grantee to any other person, firm, corporation affiliate or entity, without the prior written consent of the City by ordinance or resolution unless otherwise permitted in this agreement ordinance or by the City Council. No such sale, assignment, transfer or conveyance by Grantee shall be approved by the City Council for one year after the passage of this agreement ordinance, unless such sale, assignment, transfer or conveyance is to another City franchisee or licensee and the City Council determines such sale, assignment, transfer or conveyance is in the best interest of the Town of Addison. Grantee may assign agreement to related affiliate once during the term of this agreement with prior notice and consent of City. In the event that the purchaser is the holder of a like agreement held by the purchaser upon such terms and conditions as may be set out by the City Council when permission for merger is granted. Should the Grantee sell, assign, transfer, convey or otherwise dispose of any of its rights or its interests under this agreement ordinance, or attempt to do so, in violation of this requirement to obtain prior consent, the City may revoke this agreement for default, in which event all rights and interest of the Grantee shall cease and no purported sale, assignment, transfer or conveyance shall be effective.

(b) Plant and facilities owned by Grantee located within public property shall never be leased or subleased to a provider or reseller of similar services for the purpose of serving the reseller's own customers, except for the purpose of directly serving Grantee's end-user customers (including but not limited to hotels, motels, hospitals and buildings with shared tenant services); provided, however, access services from interexchange or long distance carriers is not required.

SECTION 16. INDEMNITY

Grantee shall indemnify, defend and save whole and harmless, the City and all of its officers, agencies, and employees against and from any and all claims, suits, judgments, actions, losses, costs and expenses, including attorneys' fees and costs or expenses incidental to the investigation and defense of claims and lawsuits brought for, on behalf of or on account of any injuries or damages received or sustained by any person, firm or corporation or to any property, which may be occasioned by, or arising out of or from, the conduct of Grantee in connection with this agreement ordinance, the construction, reconstruction, expansion, removal, maintenance, operation, or repair of Grantee's Network, the conduct of Grantee's business in the City pursuant to this agreement ordinance, any occurrence in connection with the agreement ordinance, any and all claims and lawsuits arising from any breach or default on the part of Grantee in the performance of any term, condition, provision, covenant or agreement to be performed by Grantee pursuant to this agreement ordinance, any act or omission of Grantee, or any of its agents, contractors, subcontractors, servants, employees or licensees, or any relationship between Grantee and its end use customers and retailers (even if caused in whole or part by the negligence of the City, the intent of this provision being to bring this indemnity provision within the express negligence doctrine) and Grantee shall pay all judgments, with costs, counsel fees and expenses, which may be obtained against the City related to any such claim - City agrees to give Grantee prompt and reasonable notice of any claims or lawsuits; and Grantee shall have the right to investigate, compromise and defend same to the extent of its own interest. The above indemnification shall not apply to any judgment or liability resulting from the gross negligence or willful misconduct of the City. The terms and provisions contained in this Section are intended to be for the benefit of City and Grantee and are not intended to be for the benefit of any third party.

SECTION 17. PRINCIPAL OFFICE LOCATION

Location of the Grantee's principal office shall be within the Dallas Metro area. Grantee shall always keep and maintain specific books, records, contracts, accounts, documents, and papers for its operations within the Dallas Metro area. All maps, plats, records and inventories and books of the Grantee, insofar as they show values and location of existing property shall be preserved for use, if necessary, in connection with any future valuation of the property of the Grantee.

SECTION 18. NOTICES

All notices from Grantee to the City pursuant to this agreement ordinance shall be directed to the Office of the City Manager, P. O. Box 144, Addison, Texas 75001, or to such officer as designated by the City Manager. All notices to Grantee pursuant to this agreement ordinance shall be to such local corporate officer in the Dallas Metropolitan area designated by Grantee. Grantee shall maintain within the Dallas Metropolitan area through the term of this agreement ordinance an address for service of notices by mail. Grantee shall also maintain within the City a local telephone number operational during normal

business hours for the conduct of matters related to this agreement ordinance. Any change in address or telephone number shall be furnished to the City ten (10) days prior to the change.

SECTION 19. CONFIDENTIALITY

City agrees to use its best efforts to preserve the confidentiality of information designated by Grantee as proprietary, to the extent permitted by law.

SECTION 20. VIOLATIONS

If the City has reason to believe that Grantee is in violation of this agreement, the City shall notify Grantee in writing of the violation setting forth the nature of such violation. Within five (5) business days of receipt of such notice, Grantee shall respond in writing to provide explanation or documentation to support that the violation did not occur. Grantee shall be allowed thirty (30) days to cure violations after written notice is received from the City.

Upon evidence being received by the City that any violation of this agreement ordinance any City Charter provisions or any ordinances lawfully regulating Grantee in the construction and operation of its Network is occurring, or has occurred, the City shall cause an investigation to be made. If the City finds that such a violation exists or has occurred, the Grantee shall take appropriate steps to comply with the terms of this agreement ordinance and any lawful regulation. Should Grantee fail to comply, after notice and opportunity to cure, then the City may take any action authorized by law, including forfeiture of this agreement and a suit in court to compel compliance. If, in any such proceeding, default is finally established, Grantee shall be required to pay to the City the reasonable expenses incurred in the prosecution of such suit and all the City's damages and costs (including attorneys' fees), but Grantee shall be allowed either by the court in the judgment of forfeiture or by order of the City Council, a reasonable time thereafter, as fixed by such judgment or order, to correct the default and pay such expenses, damages and costs as it may be adjudged to pay, and if Grantee does so correct and so pay within such time, forfeiture shall not become effective nor be enforced.

SECTION 21. FORFEITURE AND TERMINATION

(a) In addition to all other rights and powers retained by the City under this agreement ordinance or otherwise, the City reserves the right to terminate this agreement ordinance, and all rights and privileges of Grantee hereunder shall cease in the event of substantial breach, subject to reasonable notice and opportunity to cure, of its terms and conditions. A substantial breach by Grantee shall include, but shall not be limited to, the following:

(i) Grantee's violation of any material provision of the agreement ordinance or any material rule, order, regulation or determination of the City made pursuant to this agreement ordinance;

(ii) Grantee's failure to properly compensate the City as required in this agreement ordinance;

(iii) Grantee's attempt to evade any material provision of the agreement ordinance or to practice any fraud or deceit upon the City or upon Grantee's end-user customers or interexchange carriers;

(iv) Grantee's failure to be capable of providing actual services to its end-user customers within twelve (12) months from the date of this agreement, unless otherwise authorized by the City Council;

(v) Grantee's failure to complete its construction and provide service as described in Section 3 of this agreement ordinance;

(vi) Grantee's attempt to sell, transfer, convey or assign any of the rights and privileges granted pursuant to this agreement ordinance within one (1) year after the passage of this ordinance;

(vii) Grantee's attempt to sell, transfer, convey or assign any of the rights and privileges granted pursuant to this agreement ordinance without City Council approval;

(viii) Grantee's failure to respond or comply with City requested reports, audits, statements and other information;

(ix) Grantee's failure to operate its Network for six (6) months after it has been constructed; or

(x) Grantee's material misrepresentation of fact in its application or negotiations during the agreement process; or the conviction of any director, officer, employee or agent of Grantee for the offense of bribery or fraud connected with or resulting from the award of the agreement to Grantee.

SECTION 22. POLICE POWERS

In accepting this agreement ordinance, the Grantee acknowledges that its rights hereunder are subject to the police power of the Town of Addison to adopt and enforce general ordinances necessary to the safety and welfare of the public; and Grantee shall comply with all applicable general laws and ordinances enacted by the City pursuant to such powers. Any conflict between the provisions of this agreement ordinance and any other

present or future lawful exercise of the City's police powers shall be resolved in favor of the latter.

SECTION 23. CITY MANAGER

The City Manager may delegate the exercise of any and all of the powers conferred upon the City by its Charter or by general law relating to the administration and enforcement of this agreement ordinance and to the Grantee's exercise of the rights and privileges herein conferred.

SECTION 24. GOVERNING LAW

This agreement ordinance is passed subject to the provisions of the Constitution and laws of the State of Texas and the Charter and ordinances of the Town of Addison.

SECTION 25. FORCE MAJEURE

The time within which Grantee shall be required to perform any act under the agreement ordinance shall be extended by a period of time equal to the number of days due to a force majeure. The term "force Majeure" shall mean delays due to acts of God, war, civil disturbances, fire, unavoidable casualty, construction delays due to weather, or other similar causes beyond the control of Grantee. Notwithstanding anything contained anywhere else in this agreement ordinance, Grantee shall not be excused from performance of any of its obligations under this agreement ordinance by misfeasance or malfeasance of its directors, officers or employees or by mere economic hardship.

SECTION 26. SEVERABILITY

If any section, subsection, sentence, clause, phrase, term, provision, condition, covenant or portion of this agreement ordinance is for any reason held invalid or unenforceable by any court of competent jurisdiction, the remainder of this agreement ordinance shall not be affected thereby but shall be deemed as a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof, and each remaining section, subsection, sentence, clause, phrase, term, provision, condition, covenant and portion of this agreement ordinance shall be valid and enforceable to the fullest extent permitted by law.

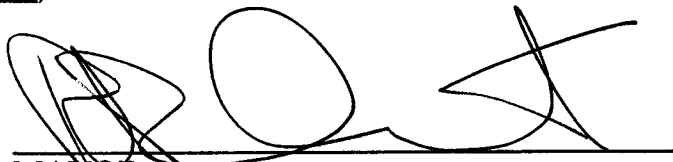
SECTION 27. ACCEPTANCE OF AGREEMENT

Grantee shall, within thirty (30) days after the passage of this agreement ordinance, file in the office of the City Secretary a written instrument accepting this agreement ordinance and all terms and conditions thereof, signed and acknowledged by its proper officers in a form acceptable to the City. Grantee shall not commence construction, operation or activation of its Network until providing City with the required insurance, bond and acceptance.

SECTION 28. EFFECTIVE DATE

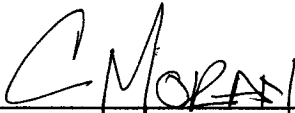
This agreement ordinance shall take effect immediately from and after its passage and acceptance in accordance with the provisions of the Charter of the Town of Addison and it is accordingly so ordained.

DULY PASSED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS, on this the 26 day of October, 1993.



MAYOR

ATTEST: ..



CITY SECRETARY

Published
11/11/93



TOWN OF ADDISON
ORDINANCE NO. 93-XXX
STREET USE AND RENTAL AGREEMENT
TELEPORT COMMUNICATION DALLAS, INC.

EXHIBIT A
SAMPLE AFFIDAVIT OF ANNUAL GROSS REVENUES

<u>Revenue Categories</u>	<u>Revenue During Grantee's Fiscal Year</u>
Telecommunication Service Revenue Charges - Flat Rate Basis	\$ _____
Telecommunication Service Revenue Charges - Usage Sensitive or Mileage Basis	\$ _____
Installation Service Charges	\$ _____
Connection/Disconnection Fees	\$ _____
Equipment Sales	\$ _____
Equipment Rentals	\$ _____
Penalties and Interest	\$ _____
Local Access Fees	\$ _____
Conduit Rental	\$ _____
Other Revenues	\$ _____
TOTAL ADDISON SERVICE REVENUES	\$=====
Five Percent Gross Revenue Fee to Addison	\$ _____


Sworn and Attested To:

Company Comptroller/Chief Financial Officer

ACKNOWLEDGMENT OF ACCEPTANCE OF STREET RENTAL AGREEMENT

On October 26, 1992 the City Council of The Town of Addison adopted the Ordinance granting to Teleport Communications Dallas Inc. a Street Use Rental Agreement for the purpose of constructing, maintaining and operating a fiber optic network on public streets, alleys and right-of-ways in the Town of Addison. Teleport Communications Dallas, Inc. does hereby accept the Agreement and Ordinance and all terms and conditions thereof.

Teleport Communications Dallas, Inc.

By: 
Print Name: A.T. HANSEN
Print Title: SENIOR VICE PRESIDENT

RECORD COPY