

ORIGINAL

ORDINANCE NO.116

AN ORDINANCE OF THE CITY OF WOODINVILLE, WASHINGTON, GRANTING STARCOM SERVICE CORPORATION, A WASHINGTON CORPORATION, A NONEXCLUSIVE FRANCHISE TO HAVE AND USE ITS FACILITIES IN, UPON, OVER, UNDER, ALONG, ACROSS, AND THROUGH THE FRANCHISE AREA WITHIN THE CITY FOR PURPOSES OF CONSTRUCTING, MAINTAINING, REPAIRING, RENEWING AND OPERATING A FIBER OPTIC TELECOMMUNICATIONS SYSTEM.

WHEREAS, the City of Woodinville has determined that the general public health, safety, welfare, necessity and convenience require that fiber optic telecommunications system facilities be constructed, installed, maintained, operated and repaired in an orderly manner when such facilities are located, in, under, on or along City roads, streets, alleys, and rights-of-way.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WOODINVILLE, WASHINGTON, DO HEREBY ORDAIN AS FOLLOWS:

Section 1. Definitions

Where used in this Franchise the following terms shall be defined as follows:

1.1 "City" means the City of Woodinville, a Washington municipal corporation, and its respective successors and assigns.

1.2 "Construction" or "Construct" means constructing, laying, maintaining, testing, operating, extending, renewing, removing, replacing, repairing, and using the facilities.

1.3 "Customer" means any person that uses the fiber optic telecommunications system, including residential, commercial and industrial users.

1.4 "Council" means the City of Woodinville City Council acting in its official capacity.

1.5 "Administrator" means the Public Services Administrator of the City of Woodinville.

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1.6 "Facilities" means wires, lines, conduits, cables, communication and signal lines, vaults, duct runs, and all attachments, appurtenances, and appliances necessary and incidental thereto or in any way appertaining to the transmission and sale of telecommunications signals, and which are located within the Franchise Area.

1.7 "Franchise Area" means City rights-of-way which intersect Burlington Northern rights-of-way in the following locations and any additional municipal right of way required for a City-initiated conduit relocation:

<u>Road Name</u>	<u>Distance (Feet)</u>
NE 200th Street	30
NE Woodinville Way	65
Woodinville-Snohomish Road	190
NE 181st Place	33
Woodinville-Redmond Road (SR 202)	55
NE 145th Street (SR 202)	30

1.8 "Franchisee" means Starcom Service Corporation, a Washington corporation, and its respective successors and assigns.

1.9 "Maintenance", "Maintaining", or "Maintain" shall mean and include relaying, repairing, replacing, examining, testing, inspecting, removing, digging and excavating, and restoring operations thereto.

1.10 "Persons" means a person, firm, association, partnership, corporation or individual.

Section 2. Grant/Acceptance

2.1 Grant of Franchise. The City does hereby grant to Franchisee the right, privilege, authority and franchise to construct, install, support, attach, connect, maintain, repair, replace, enlarge, operate and use the Facilities in, upon, over, along, across and through the Franchise Area for purposes of conducting its wholesale fiber optic telecommunications business.

2.2 Acceptance by Franchisee. The full acceptance of this Franchise and all of its terms and conditions shall be filed by the Franchisee with the Woodinville City Clerk within thirty (30) days from the effective date of this Ordinance. Acceptance of this Franchise is a condition precedent to its taking effect, and unless such acceptance is filed within the time period specified, this Franchise shall be null and void.

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Section 3. Term

In the event Franchisee files the acceptance pursuant to Subsection 2.2 herein, the term of this Franchise shall be for a period of fifteen years commencing on the effective date of this Ordinance and terminating fifteen years thereafter, unless terminated earlier pursuant to the terms of this Franchise or other applicable law ("Term").

Section 4. Reservation of Police, Tax and Other Powers

All the rights granted under this Franchise shall be subject to and governed by this Ordinance. The City Council expressly reserves unto itself all its police, tax and other powers to adopt ordinances necessary to protect the health, safety and welfare of the general public in relation to the rights granted under this Franchise. The City reserves the right to use, occupy and enjoy the Franchise Area for any purpose, including without limitation, the construction of any water, sewer or storm drainage system, installation of traffic signals, street lights, trees, landscaping, bicycle paths and lanes, equestrian trails, sidewalks, other pedestrian amenities, other City services and other public street improvement projects. The City reserves the right, as the interest of the public may require, to require the installation or construction of new facilities proposed by Franchisee to be constructed in arterial thoroughfares, to be installed in alternate public rights-of-way which are substantially comparable in terms of the expense to Franchisee for installation or construction, and which are equal or better to the requested installation route. The Administrator shall give particular preference to the alternate installation location in cases in which the existing improvements to the public right-of-way would be affected by the proposed installation, or where the structural integrity of the surface of the right-of-way, or inconvenience to the public caused by the proposed installation cannot be mitigated through alternative means.

Section 5. Location of Facilities

Franchisee agrees to provide the City with a map or maps which shall show the vertical and horizontal location of its facilities within the Franchise Area using a minimum scale of one inch equals one hundred feet (1" = 100'). Maps shall be in hard copy and/or digital format, acceptable to the City. This information shall be provided within sixty (60) days of the effective date of this Franchise and shall be updated at least every six (6) months thereafter provided that no submissions shall be required if in the period since last submission no changes have been made. In connection with the original installation of Facilities, the Franchisee shall locate the Facility in relationship to all other utilities and within the right-of-way pursuant to the Administrator's instructions. Franchisee shall install a means of detection device with all new or relocated underground Facilities, which will allow subsequent location. In all cases, the Facilities of the Franchisee shall be located in the Franchise Area so as not to unnecessarily or unreasonably tear up the streets except where necessary as determined by the Franchisee and approved by the Administrator. The location of all conduits, cables and appurtenances, and their depth below the surface of the ground or grade of any public rights-of-way, shall be approved by the Administrator, so long as the location or depth is not inconsistent with applicable regulations of federal or state agencies having jurisdiction over the Franchisee. The Franchisee shall at all times keep full and

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complete plans, plats, specifications, profiles and records showing the exact location, and size of all conduits and lines heretofore laid in the City, and showing the location of all vaults, manholes and other appurtenances; and such plans, plats, specifications, profiles, and records shall be kept current semi-annually by the Franchisee to show thereon the exact location of all additional conduits and lines hereinafter installed by the Franchisee. These records shall be subject to inspection at all reasonable times by the proper officials and agents of the City, and a copy of these plans, plats, specifications, profiles and records, shall be furnished to the City upon request. Upon completion of installation of the Facilities, the "as-built" location of the Facilities shall be no greater than two (2) feet from the location of the Facilities shown in the plans on file with the City.

Section 6. Vegetation

Franchisee agrees to periodically inspect its above ground facilities to ensure that they are free and unobstructed from encroaching vegetation and Franchisee will trim vegetation in the vicinity of its above ground facilities in compliance with the Woodinville City Code, and all other applicable codes, rules and regulations, unless determined by the Administrator.

Section 7. Noninterference of Facilities

Franchisee agrees to maintain the Facilities and perform all work within the Franchise Area so as to not unreasonably interfere with the free passage of traffic, including without limitation, motor vehicles, bicycles and pedestrians. Traffic control shall be provided in compliance with MUTCD standards and specifications.

Section 8. Requirement of Permits

Except in the case of an emergency which endangers property, life, health, or safety, Franchisee shall file with the City detailed plans, specifications and profiles of the intended work, and shall receive an appropriate permit or permits from the City prior to commencing any work within the Franchise Area. Franchisee shall pay all permit fees and shall comply with all terms, conditions, standards and insurance coverage as may be required under the terms of the permit. In the case of an emergency the Franchisee is may commence work without first applying for and obtaining a permit, but in such event, the Franchisee shall apply for a permit no later than the next succeeding business day.

Section 9. Standard of Performance

All work shall be completed to the satisfaction of the Administrator. Franchisee shall be responsible for constructing, operating and maintaining the Facilities in compliance with all applicable laws, ordinances, codes, regulations and standards as now existing or hereafter adopted or amended, pursuant to all completion dates, and in compliance with the terms of this Franchise, whether or not the work is performed by the Franchisee, or its agents, employees, subcontractors, or other third parties, at Franchisee's direction.

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Section 10. Construction Standards

All conduits, cables and appurtenant facilities shall be installed in conformity with the plans and specifications filed with the City, except in instances in which deviation may be allowed in writing by the Administrator pursuant to a permit application made by Franchisee. All plans and specifications shall specify the class and type of material and equipment to be used, manner of excavation, construction and installation, backfill, erection of temporary structures, erection of permanent structures, and traffic control measures as provided by the Manual on Uniform Traffic Control Devices, or similar standards as may be applicable. All such work shall be subject to the approval of and shall meet the standards set forth in the Control Zone Guidelines promulgated by the State of Washington, Department of Transportation for protection of utility objects in traffic hazard areas. If any right-of-way within the City forms a part of a state highway route, the Franchisee shall determine the requirements of the State of Washington, and comply fully with such requirements.

Section 11. Survey Markers and Monuments

Prior to the commencement of any work, the Franchisee shall establish two (2) or more reference marks to all monuments and markers of every nature relating to subdivisions, plats, rights-of-way, and other surveys. The reference points shall be located so that they will not be disturbed by such work. The method of referencing monuments or other markers shall be approved by the Administrator. Franchisee shall immediately replace all markers or monuments, using a licensed land surveyor, disturbed during any work. Franchisee shall pay all costs associated with restoring lost, destroyed or disturbed monuments or markers.

Section 12. Surface Location of Facilities

Prior to commencing any work, or if requested by the City in connection with any design or construction project within the Franchise Area, Franchisee shall locate any Facilities within the identified project boundary by placing temporary identification surface markings on the pavement or hard ground, made with spray paint, spray caulk or temporary wood stakes, and color coded to indicate the type of underground Facility pursuant to the American Public Works Association Uniform Color Code Marking Standards, as now existing or hereafter adopted or amended.

Section 13. Restoration/Repair

Whenever it shall be necessary for Franchisee, in the exercise of its rights under this Franchise to make any excavation or perform any work in the Franchise Area, Franchisee agrees upon completion of such excavation or work to restore and repair the surface of the Franchise Area, at its sole cost and expense, to a safe condition, similar or better than prior to such excavation or work, in compliance with all applicable federal, state, or local safety standards or other applicable laws, rules or regulations, to the City's satisfaction and within a reasonable time period prescribed by the City. In the event of excavation within any public street or paved area, Franchisee shall restore the pavement to a condition acceptable to the Administrator or specified in the permit issued by the City for the work.

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Section 14. Right to Complete Work

In the event Franchisee fails to comply with any applicable federal, state or City laws, ordinances, rules, regulations or standards, or with any of the terms of this Franchise, the City may, but in no event is the City obligated to order any work completed, including, without limitation, Franchisee's obligation to repair pursuant to Section 13 herein, and Franchisee's obligation to remove and/or relocate Facilities pursuant to Section 15 herein. If the City causes such work to be done by its own employees or by any person or entity other than Franchisee, Franchisee shall, upon the City's written request, reimburse the City for all reasonable costs and expenses incurred by the City having such work performed, which costs may include the City's reasonable overhead and administrative expenses.

Section 15. Relocation of Facilities

15.1 City's Duties. In the event any City public improvement project or use of the Franchise Area necessitates the relocation or removal of Franchisee's existing Facilities within the Franchise Area, the City shall:

- (a) Provide a minimum of ninety (90) days written notice to Franchisee with a request to relocate.
- (b) Provide Franchisee with copies of pertinent portions of the City's plans and specifications for such project so that Franchisee may relocate its Facilities to accommodate such project or other use.
- (c) The City shall cooperate with Starcom to designate a substitute location for its Facilities with the Franchise Area.

15.2 Franchisee's Duties. After receipt of the City notice requesting the relocation or removal of Facilities, Franchisee shall, at its sole cost and expense, remove or relocate such Facilities within the time period prescribed by the City.

The City shall have prior and superior right to the use of the Franchise Area for installation and maintenance of its utilities and other governmental purposes, and should a conflict arise with the Franchisee's lines, the Franchisee shall, at its own expense and cost, conform to the utilities and other governmental purposes of the City in the event that a reasonable feasible alternative is available. The owners of all utilities, public or private, installed in such Franchise Area prior to the installation of the lines and facilities of the Franchisee, shall have preference as to the positioning and location of such utilities so installed with respect to the Franchisee. Such preference shall continue in the event of the necessity of relocating or changing the grade of any such public properties. Franchisee shall pay all reasonable costs of and expense necessarily incurred by the City in the examination, inspection and approval of all plans and specifications for, and all details of construction of, all facilities involved herein. If Franchisee is asked to relocate to accommodate a private party, that party shall bear the cost of relocation.

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Section 16. Changes in Facilities

16.1 To the extent that Starcom makes facilities and/or services available to other governmental entities, Stardom shall also make such facilities and services available to the City.

16.2 To address technological changes in the state-of-the-art communication services during the term of the Agreement, the City may elect to review, at intervals not less than three (3) years, the Starcom communication system and services in light of reasonable City needs and interests. Should such review identify a needed change in facilities and/or service provision, Starcom shall meet and confer with representatives of the City concerning any identified communications requirements of the City that Starcom might fulfill.

Section 17. Temporary Removal of Facilities

When necessary, in order to permit any duly authorized person to move any building or other structure across, upon, or along any public properties within the City, the Franchisee shall temporarily raise or remove its conduits, cables and appurtenances, upon reasonable notice in advance (90 days) from each person, such notice to bear the approval of the Administrator, and at such time and in such manner as may be reasonably necessary to accommodate such moving, consistent with the maintenance of proper service to the Franchisee's customer. The cost to the Franchisee of such temporary relocation or removal and of any interruption of the Franchisee's service to its customers caused thereby shall be paid or provided for by the owner or mover of such building or facility, unless the owner or mover of such building is the City.

Section 18. Emergency Response Plan

Franchisee shall prepare and file with the City an emergency management plan for responding to any spill or other emergency condition. The plan shall designate responsible officials and emergency 24-hour on-call personnel and the procedures to be followed when responding to an emergency. After being notified of an emergency, Franchisee shall cooperate with the City and make every effort to respond as fast as practical with action to minimize damage and to protect the health and safety of the public.

Section 19. Road Side Hazard Inventory and Control

All fiber optic telecommunication system utility objects located in hazard areas, as defined by the State of Washington, Department of Transportation, Control Zone Guidelines, shall be relocated, protected or removed within thirty-six (36) months after the acceptance of this Franchise by the Franchisee.

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Section 20. Default

20.1 Notice of Default. If Franchisee shall fail to comply with any of the provisions of this Franchise, the City may serve a written notice to Franchisee ordering such compliance, and Franchisee shall have thirty (30) days from the date of such notice in which to comply ("Notice of Default"); provided, however, that this Section shall not interfere with the City's right to complete any work or repair in the Franchise Area pursuant to this Franchise.

20.2 Revocation of Franchise. If Franchisee is not substantially in compliance with this Franchise or any applicable statute, after the expiration of thirty (30) day period, the City may revoke and terminate this Franchise at its sole discretion. If any failure to comply with this Franchise by Franchisee cannot reasonably be corrected with due diligence within such thirty (30) day period, then the time within which Franchisee may so comply ~~may~~ shall be extended for such time as may be reasonably necessary and so long as Franchisee commences promptly and diligently to effect such compliance.

20.3 Survival. The provisions of Sections 13. 14. and 29. will survive termination or revocation of the Franchise.

Section 21. Nonexclusive Franchise

This Franchise shall not be deemed an exclusive Franchise. This Franchise shall not in any manner prohibit the City from granting other and further franchises of a like nature or franchises for other public or private utilities in, under, over, upon, and along the Franchise Area. This Franchise shall not prohibit or prevent the City from using the Franchise Area for any reason or affect the jurisdiction of the City over the Franchise Area or any part thereof.

Section 22. Limited Rights

This Franchise is intended to convey only limited right and interest to Franchisee in the Franchise Area. This Franchise is not a warranty of title or conveyance of any interest in or to the Franchise Area to Franchisee.

Section 23. Eminent Domain

This Franchise is subject to the exercise of eminent domain. In the event of an exercise of eminent domain by the City, the value to be attributed to all rights and interests granted under this Franchise shall not exceed the actual amount Franchisee paid to the City in obtaining this Franchise; provided, however, that this will not apply to Franchisee's facilities.

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Section 24. Vacation

If at any time the City vacates all or any portion of the Franchise Area, the City will not be liable for any damage or loss to the Franchisee by reason of such vacation and the Franchisee expressly waives and releases any and all potential claims against the City for damages related to such vacation. The City agrees that it will not require the removal of Franchisee's facilities unless such removal is necessary, in the City's judgment, for its planned use of such vacated Franchise Area. The City may grant a utility easement prior to the vacation. The City may, after thirty (30) days written notice to Franchisee and if the City determines that the removal of the Facilities is necessary, terminate this franchise with respect to any such vacated area.

Section 25. UTC Tariff

This Franchise is subject to the provisions of any applicable tariff now on file with the Washington Utilities and Transportation Commission or its successor. In the event of any conflict or inconsistency between the provision of this Franchise and such existing tariff, the tariff shall dictate. If Franchisee shall file, pursuant to Chapter 80.26 RCW, with the Washington Utilities and Transportation Commission, or its successor, any tariff regarding the use of the Franchise Area, Franchisee shall provide written notice to the City within at least ten (10) days prior to filing. In the event of any conflict or inconsistency between the provision of this Franchise and any subsequently enacted tariff, the provisions of this Franchise shall dictate.

Section 26. Compliance with Laws

Franchisee shall comply with all applicable federal, state and City laws, ordinances, resolutions, standards and procedures, including, without limitation, the State Environmental Policy Act, as now existing or hereafter amended or adopted. Franchisee shall use no pesticides or herbicides within the Franchise Area without obtaining prior written City approval and complying with all applicable laws, rules, and regulations governing the application and use of such pesticides and herbicides.

Section 27. Charge for Administrative Costs

Franchisee agrees to pay a fee or charge to recover the actual administrative expenses incurred by the City which are directly related to receiving and approving this Franchise. In addition, Franchisee shall pay the City all administrative costs incurred by the City in the approval of permits or in the supervision, inspection or examination of all work by Franchisee in the Franchise Area.

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Section 28. Customer Service

Franchisee shall respond to non-emergency inquiries from the City or from any of Franchisee's customers as soon as reasonably possible after the inquiry or request is made. In the event of an emergency which constitutes an imminent threat to life, safety, health or welfare, Franchisee shall dispatch its personnel to respond within ten (10) minutes of such an emergency inquiry if reasonably practicable. Franchisee shall maintain and staff a twenty-four (24) hour phone line and maintain an office within 30 miles of the City limits.

Section 29. Indemnification

29.1 Starcom shall indemnify, save harmless and defend the City, its elected and appointed officials, employees, and agents (including reimbursing the City for all costs and attorneys' fees) from any and all damages, claims, or demands, of any kind, on account of injury to or death of any and all persons (including but not limited to Starcom, its agents, employees, subcontractors and their successors and assigns as well as the City or the City's employees, elected and appointed officials and agents, contractors and all third parties), and/or on account of all property damage of any kind, whether tangible or intangible, including loss of use resulting therefrom, in connection with any work performed by Starcom, or caused in whole or in part by reason of the presence of the Starcom cable or Starcom's officials, employees, agents, contractor, subcontractor, or their property, employees or agents upon or in proximity to City right-of-way, except only for those losses resulting principally from the negligence of the City, its employees, agents, and contractors.

This indemnification, hold harmless and defense agreement includes the promise that Starcom shall indemnify, save harmless and defend the City, its elected and appointed official, employees and agents (including reimbursing the City for all costs and attorneys' fees) from any and all damages, claims, or demands of any kind on account of a violation of city, county, state or federal laws relating to environmental health except only for a loss resulting principally from the negligence of the City.

29.2 Survival. The provisions of this Section shall survive the expiration or termination of this Franchise with respect to any event occurring prior to such expiration or termination.

Section 30. Equal Opportunity Employer

In all Franchisee's services, programs or activities, and all Franchisee's hiring and employment made possible by or resulting from this Franchise, there shall be no discrimination by Franchisee or by Franchisee's employees, agents, subcontractors or representatives against any person because of sex, age, (except minimum age and retirement provisions), race, color, creed, national origin, marital status or the presence of any disability, including sensory, mental or physical handicaps, unless based upon a bona fide occupational qualification in relationship to hiring and employment. This requirement shall apply, but not be limited to the following: employment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including

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apprenticeship. Franchisee shall not violate any of the terms of Chapter 49.60 RCW, Title VII of the Civil Rights Act of 1964, the Americans With Disabilities Act, Section 504 of the Rehabilitation Act of 1973 or any other applicable federal, state or local laws or regulations regarding non-discrimination. Any material violation of this provision shall be grounds for termination of this Franchise by the City and, in the case of the Franchisee's breach, may result in ineligibility for further City agreements.

Section 31. Insurance

31.1 Minimum Limits. The Franchisee agrees to maintain in full force and effect as a minimum, the following insurance coverage which is at least as broad as insurance service office ("ISO") Form Number CG 00001 (commercial general liability), including "X", "C", "U" and ISO Form Number CA 00001 (commercial auto)"

- (a) One Million Dollars (\$1,000,000) comprehensive general liability insurance for bodily injury or death to any one person; and
- (b) Two Million Dollars (\$2,000,000) comprehensive general liability insurance for bodily injury or death resulting from any one accident;
- (c) One Million Dollars (\$1,000,000) comprehensive general liability insurance for property damage resulting from any one accident; and
- (d) The City shall be named as an additional insured on any policy for the purposes of any action performed under this Agreement.

31.2 Verification of Coverage. Franchisee shall furnish the City with certificates of insurance and original endorsements evidencing the coverage required by this Section. The certificates and endorsements shall be signed by a person authorized by the insurer to bind coverage on its behalf and must be received and approved by the City prior to the commencement of any work. At the City's request, Franchisee shall deliver certified copies of all required insurance policies. In satisfying the foregoing insurance requirements, Franchisee may self-insure against risks in such amounts and upon such verification as is acceptable to the City. Franchisee's failure to maintain such insurance policies shall be grounds for the City's immediate termination of this Franchise.

Section 32. Records

The Franchisee agrees to maintain books, records, and documents which sufficiently and properly reflect all direct and indirect costs related to this Franchise and maintain such accounting procedures and practices as may be deemed necessary by the to assure proper accounting. These records shall be subject, at all reasonable times, to inspection, review or audit by the City, its authorized representative, the State Auditor, or other governmental officials authorized by law to monitor this Franchise.

Section 33. Bond Assignment of Funds

Prior to the commencement of any work in the Franchise Area, Franchisee shall either furnish a bond executed by Franchisee and a surety authorized to do business in the State or assign funds in favor of the City in the amount of \$30,000, which performance bond or assignment of funds shall be in a form acceptable to the City Attorney, in order to guarantee Franchisee's performance of its obligations under this Franchise. Performance bond or assignment of funds shall be conditioned to require that the Franchisee observe all of the covenants, terms and conditions and faithfully perform all of the Franchisee's obligations under this Franchise; shall correct or replace forthwith, on receipt of notice thereof, any defective work or materials used in the replacement of the City right-of-way or other public property discovered within a two-year period from the date of the replacement and acceptance by the City; and shall restore the rights-of-way within the period of time specified by the Administrator in the permit issued for such work.

Section 34. Scope of Services

In the event, during the term of this Franchise, Franchisee offers additional services or new technology to any other Franchisee within the State of Washington, the same additional services or new technology shall be provided to Franchisee's customers within the City limits; provided, however, that this provision shall not apply to services or technology that are being offered by Franchisee for a limited time period to non-Woodinville customers for the purpose of testing such additional services or new technology.

Section 35. Franchise Fees

Starcom shall pay for the City's reasonable administrative costs, not to exceed \$2,000, in drafting and processing this franchise agreement and all work related thereto. In addition, Starcom shall pay to the City a franchise fee consisting of a fixed fee of \$5,550 for the term of the franchise with payment before commencement of construction.

Starcom shall further be subject to all permit fees associated with activities undertaken through the authority granted in this franchise ordinance or under the laws of the City. Where the City incurs cost and expenses for review, inspection, or supervision of activities undertaken through the authority granted in this franchise or any ordinances relating to the subject for which a permit fee is not established, Starcom shall pay such cost and expenses directly to the City. Last, Starcom shall promptly reimburse the City for any and all costs its reasonable incurs in response to any emergency involving Starcom's facilities.

Section 36. General Provisions

36.1 Entire Agreement. This Franchise contains all of the agreements of the Parties with respect to any matter covered or mentioned in this Franchise and no prior agreements or understandings pertaining to any such matters shall be effective for any purpose.

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36.2 Modification. No provision of this Franchise may be amended or supplemented except by written agreement signed by both of the Parties.

36.3 Full Force and Effect. Any provision of this Franchise which is declared invalid, void or illegal shall in no way affect, impair, or invalidate any other provision hereof and such other provisions shall remain in full force and effect.

36.4 Assignment. Franchisee shall not have the right to transfer or assign, in whole or in part, any or all of its obligations, facilities, and rights thereunder without the prior written consent of the City. Any assignee shall, within thirty (30) days of the date of any approved assignment, file written notice of the assignment with the City together with its written acceptance of all terms and conditions of this Franchise.

36.5 Attorney Fees. In the event the City or the Franchisee defaults on the performance of any terms in the Franchise, and the Franchisee or the City places the enforcement of the Franchise or any part thereof, or the collection of any moneys due, or to become due thereunder, in the hands of any attorney, or file suit upon the same, each party shall pay its own costs, including reasonable attorney's fee, costs and expenses. The venue for any dispute related to this Franchise shall be King County, Washington.

36.6 No Waiver. Failure of the City to declare any breach or default immediately upon the occurrence thereof, or delay in taking any action in connection with, shall not waive such breach or default, but the City shall have the right to declare any such breach or default at any time. Failure of the City to declare one breach or default does not act as a waiver of the City's right to declare another breach or default.

36.7 Governing Law. This Franchise shall be made in and shall be governed by and interpreted in accordance with the laws of the State of Washington.

36.8 Authority. Each individual executing this Franchise on behalf of the laity and Franchisee represents and warrants that such individuals are duly authorized to execute and deliver this Franchise on behalf of the Franchise or the City.

36.9 Notice. Any notices required to be given by the City to Franchisee or by Franchisee to the City shall be delivered to the parties at the following addresses:

Franchisee:

Starcom Service Corporation
c/o Starcom International Optic Corp.
555 West Hastings St., Suite 2770
Vancouver, B.C. V68 4N5
Canada

City:

City Manager
City of Woodinville
13203 NE 175th Street
Woodinville, WA 98072

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Any notices may be delivered personally to the addressee of the notice, or may be deposited in the United States mail, postage prepaid, to the address set forth herein. Any notice so posted in the United States mail shall be deemed received three (3) days after the date of mailing.

36.10 Captions. The respective captions of the Sections of this Franchise are inserted for convenience of reference only and shall not be deemed to modify or otherwise affect in any respect any of the provisions of this Franchise.

36.11 Time and Essence. Time is of the essence of this Franchise and each and all of its provisions in which performance is a factor.

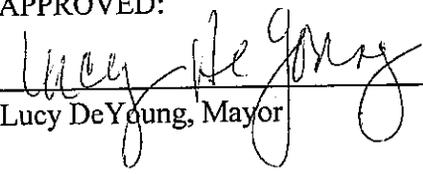
36.12 Remedies Cumulative. Any remedies provided for under the terms of this Franchise are not intended to be exclusive but shall be cumulative with all other remedies available to the City by law, in equity or by statute.

Section 37. Effective Date

This Ordinance shall take effect and be in full force five (5) days after its passage and acceptance according to law.

PASSED BY THE CITY COUNCIL OF THE CITY OF WOODINVILLE and signed in authentication of its passage this 22nd day of May, 1995.

APPROVED:



Lucy DeYoung, Mayor

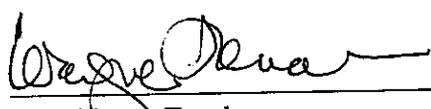
ATTEST/AUTHENTICATED:



James K. Katica, City Clerk

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY



By: Wayne Tanaka

LAW OFFICES
SESSIONS & Co.
A PROFESSIONAL SERVICE CORPORATION

RECEIVED

JUL 6 1995

City of Woodinville

July 5, 1995

Ms. Lane Youngblood
Public Service Assistant
City of Woodinville
13203 N.E. 175th St.
Woodinville, WA 98072

Re: Ordinance No. 116

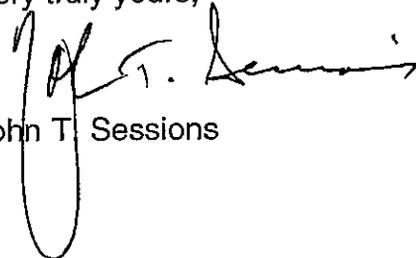
Dear Lane:

We received this morning the Ordinance referenced above granting to Starcom Service Corporation certain rights to construct and maintain a fiber optic telecommunications system. We understand that this Ordinance was approved by the City Council of the City of Woodinville on May 22, 1995. In reviewing the Ordinance we note that Section 2.2 requires acceptance by Starcom within 30 days from the "effective date." Section 37 stipulates that this Ordinance shall take effect and be in full force five days after its passage and acceptance according to law. These provisions seem circular, so we wish to clarify our understanding.

This is to confirm acceptance of Ordinance 116 by Starcom Service Corporation. If appropriate, please file a copy of this letter with the Woodinville City Clerk. Also, please acknowledge acceptance of this Ordinance by Starcom and confirm that the City will not take the position at any future point that acceptance was not timely filed.

Thank you.

Very truly yours,



John T. Sessions

JTS:jp

cc: Brian Connors (with Ordinance 116)
Wayne Tanaka, Esq.