

# Index

XO Communications Formerly Known As Telecommunications  
of Nevada, Franchise Agreement

XO Communications Continuation of Franchise Agreement

1 FRANCHISE AGREEMENT

2 THIS FRANCHISE AGREEMENT, entered into this 24th day of May, 1999, between  
3 the City Council, City of Las Vegas, a municipal corporation of the State of Nevada and  
4 Telecommunications of Nevada, LLC, dba NEXTLINK Nevada (hereinafter "NEXTLINK"), a  
5 Delaware limited liability company, authorized to do business in the State of Nevada:

6  
7 WITNESSETH:

8 WHEREAS, the CITY OF LAS VEGAS is a municipal corporation duly incorporated  
9 within the State of Nevada, and authorized, pursuant to the Charter of the City of Las Vegas and  
10 applicable provisions of general laws of the State of Nevada, to enter into this Franchise Agreement;  
11 and

12 WHEREAS, NEXTLINK did, on the 2nd day of November, 1998, file with the City  
13 of Las Vegas, State of Nevada, a written request for a Franchise for a term of ten (10) years with an  
14 option to renew for five (5) years for the purpose of constructing, installing, operating and maintaining  
15 a Telecommunications Service System within the corporate limits of the City; and

16 WHEREAS, subsequent to the filing of this application, the City Council adopted a  
17 resolution acknowledging the filing of this application and setting forth the name of the applicant for  
18 and the purpose, character of, terms, time and conditions of the proposed Franchise Agreement and  
19 the date, time and place of a public hearing on the question of the advisability of granting said  
20 proposed Franchise to NEXTLINK; and

21 WHEREAS, said application coming on regularly for hearing on the 24th day of May,  
22 1999, and it appearing by an Affidavit of Publication that due and legal notice of the filing of said  
23 application, and of the filing of the date, time and place for consideration of the same, has been given  
24 by publication of that Resolution adopted by the City Council in the Las Vegas Review Journal, a  
25 newspaper of general circulation within the City of Las Vegas, County of Clark, State of Nevada,  
26 to-wit:

27 In the issue of said newspaper published on the 13th day of May, 1999,  
28 and the 20th day of May, 1999; and

REC. MAY 21 11 2 AM  
CITY OF LAS VEGAS  
CLERK OF THE CITY  
CLERK

1 WHEREAS, the CITY OF LAS VEGAS has been requested to grant the right,  
2 privilege, permission and authority to do those acts more specifically described herein by  
3 NEXTLINK; and

4 WHEREAS, the CITY COUNCIL of the CITY OF LAS VEGAS, in the exercise of  
5 its lawful power has determined that it is in the best interests of the inhabitants of the CITY OF LAS  
6 VEGAS that a Franchise be granted, subject to the terms and conditions hereinafter set forth;

7 NOW THEREFORE, in consideration of the premises and of the performance by  
8 NEXTLINK of the conditions hereinafter set forth, the City Council of the CITY OF LAS VEGAS,  
9 State of Nevada, hereby grants a Franchise to NEXTLINK, subject to the following terms and-  
10 conditions.

11 **SECTION 1: SHORT TITLE.**

12 This Franchise Agreement may be cited as the NEXTLINK Franchise Agreement.

13 **SECTION 2: DEFINITIONS.**

14 For the purpose of this Franchise Agreement, the following terms, phrases, words and  
15 their derivations shall have the meaning given in this Section. When not inconsistent with the context,  
16 words used in the present tense include the future tense, words in the plural number include the  
17 singular number, and words in the singular number include the plural number. The word "shall" is  
18 mandatory and "may" is permissive. Words not defined in this Section shall be given their common  
19 and ordinary meaning.

20 A. "City" is the City of Las Vegas, a municipal corporation of the State of Nevada.

21  
22 B. "City Clerk" means City Clerk of the City of Las Vegas or a designated  
23 representative.

24 C. "Company" is and refers to Telecommunications of Nevada, LLC, dba  
25 NEXTLINK Nevada ("NEXTLINK").

26 D. "Council" refers to the legislative body of the City of Las Vegas sometimes  
27 referred to as "City Council."

28 E. "Director" means the Director of the Public Works Department of the City of

1 Las Vegas or his/her designee.

2 F. "Facilities" are and refer to and include, but are not limited to, plant, works,  
3 systems, improvements and equipment owned, leased or otherwise used by the Company such as  
4 poles, wires, fixtures, equipment, underground circuits and conduit in Public Rights-of-way and other  
5 property necessary or convenient for the transmissions, distribution, and/or connection of  
6 Telecommunications Service.

7 G. "Franchise" means the non-exclusive authorization granted herein to rent and  
8 use Rights-of-way and Public Places to construct, operate, and maintain Company Facilities in the  
9 City or any portion or portions thereof for the specific purpose of maintaining a Telecommunications-  
10 Service.

11 H. "Gross Revenues" shall mean any and all intrastate retail revenue collected by  
12 the Company for services provided to customers within the City including but not limited to:

- 13 1. All Telecommunications Service revenues charged on a flat rate basis;
- 14 2. All revenue for intrastate long distance calls originating in the state of  
15 Nevada and billed to an address physically located in the City of Las Vegas;
- 16 3. All revenues from installation service charges;
- 17 4. All revenues from connection or disconnection fees;
- 18 5. All revenues from penalties or charges to customers for checks returned  
19 from banks;
- 20 6. All revenues from joint pole or conduit use;
- 21 7. All revenues from authorized rental or use of any portion of the  
22 Company's network in the City, including plant and facilities leased to others;
- 23 8. Recoveries of bad debts previously written off and revenues from the  
24 sale or assignment of bad debts. Gross revenues may be adjusted for net write-off of uncollectible  
25 accounts computed on the average annual rate for customers within the City of Las Vegas jurisdiction;
- 26 9. Any and all revenues that are designated by City, State or Federal law  
27 to be subject to these Franchise Agreement fees or which may develop by future technology within  
28 this industry; and

1                   10. Any and all revenues from video dial tone, data transmission or Personal  
2 Communication Service.

3                   "Gross Revenues" shall not include any tax passed through to consumers on behalf of  
4 governmental agencies received by the Company for services provided to customers through use of  
5 Facilities, or any charges passed through to the customers for interconnection with the local exchange  
6 provider. Gross revenue shall not include proceeds from the sale of bonds, mortgages or other  
7 evidence of indebtedness, securities or stocks.

8                   The Company is not required to measure each category of revenues separately;  
9 however, in the event of an audit by the City, the Company will be required to provide an appropriate  
10 justification for amounts reported as gross revenues under this Franchise Agreement.

11  
12                  I.       **"Line Extension"** means any extension of distribution or transmission Facilities  
13 into areas within the boundaries of the City not then served by the Company.

14                  J.       **"Mayor"** means the Mayor of the City of Las Vegas or his/her designated  
15 representative.

16                  K.       **"Public Places"** means all sidewalks, alleys, or other public ways and any and  
17 all public places, spaces, grounds and buildings of the City within the City limits.

18                  L.       **"Reasonable Attorney Fees"** are reasonable charges for legal representation  
19 as may be incurred by the City and determined by a court of proper jurisdiction.

20                  M.       **"Rights-of-way"** means all present and future streets, avenues, highways,  
21 alleys, bridges and public ways, (excluding railroad rights-of-way) of the City within the City limits.

22                  N.       **"Telecommunications"** means the transmission, between or among points  
23 specified by the user, of information of the user's choosing, without change in the form or content of  
24 the information as sent and received.

25                  O.       **"Telecommunications Carrier"** means any provider of telecommunications  
26 services. "Telecommunications carrier" does not include any person that, in the ordinary course of  
27 his or her operations, makes telephones available to the public or to transient users of his or her  
28 premises, for interstate telephone calls using a provider of operator services.

1 P. "Telecommunications Service" means the offering of telecommunications for  
2 a fee directly to the public, or to such classes of users as to be effectively available directly to the  
3 public, regardless of the facilities used. "Telecommunications Service" shall not include cable  
4 services or open video services as defined in Title VI of the Communications Act of 1934, as amended  
5 by the Telecommunications Act of 1996 (47 USCA §521, et seq.) or as recognized by the Federal  
6 Communications Commission. Before proposing to provide such cable services or open video  
7 services, Company agrees to obtain a separate agreement from the City for the provision of such  
8 services.

9 Q. "Treasurer" shall mean the Treasurer of the City of Las Vegas.

10 **SECTION 3: GRANT OF FRANCHISE.**

11 A. The City of Las Vegas, Nevada, hereby grants to Telecommunications of  
12 Nevada, LLC (dba NEXTLINK Nevada), a Delaware limited liability company, authorized to do  
13 business in the State of Nevada, subject to the terms, conditions, and limitations contained in this  
14 Franchise Agreement, a non-exclusive franchise with permission to rent, use and occupy Rights-of-  
15 way and Public Places, to provide Telecommunications Service and right and privilege to erect,  
16 construct, maintain and operate a telecommunications system within the corporate limits of the City  
17 as the same now exist or may be extended in the future, and a nonexclusive franchise, right and  
18 privilege to erect, construct, maintain and operate wires, fixtures, equipment, underground circuits and  
19 conduits property necessary or convenient for the transmission and distribution of  
20 Telecommunications Service in the City and to its inhabitants and to transmit, distribute and sell  
21 Telecommunications Service, upon, over, along, under and across the streets, alleys, roads and other  
22 public ways and places, including, but not limited to private property easements on which a  
23 preliminary subdivision plat has been approved by the City for the provision of public utilities within  
24 the corporate limits of the City as the same now exist or may be extended in the future.

25 B. The Company shall be subject to all requirements of City ordinances, rules,  
26 regulations and specifications hereafter enacted or established in so far as such ordinances are not in  
27 violation of any State or Federal regulation.

28 C. This grant of Franchise to the Company does not give permission to the

1 Company to provide cable services or open video services without a separate agreement with the City.

2 **SECTION 4: DURATION.**

3 The Franchise granted herein is for a period of ten (10) years from and after the  
4 effective date of this Franchise Agreement. If Company is in compliance with all the material  
5 provisions of this Franchise Agreement, Company has the option of renewing the Franchise under the  
6 same terms and conditions of this Franchise Agreement for one (1) additional period of five (5) years.

7 **SECTION 5: CONSTRUCTION PLANS AND DRAWINGS.**

8 A. Before the Company may conduct underground work involving excavation,  
9 new construction or major relocation work in any Rights-of-way or Public Place:

10 1. The Company shall first notify the City and shall comply with any  
11 special conditions relating to location, scheduling, coordination and public safety;

12 2. The Company shall make proper application for an encroachment  
13 agreement with the Department of Public Works;

14 3. The Company shall file maps and drawings with the Director showing  
15 the location of any construction or extension of its Facilities and services in any Rights-of-way or  
16 Public Place of the City. For multi-conduit banks, maps and drawings shall show overall size, material  
17 and configuration of the duct bank. As further set out in Section 16, upon request from the City the  
18 Company shall provide City with updates of the maps and drawings showing the location of any new  
19 construction, extension or relocation of its Facilities. All materials provided pursuant to this Section  
20 shall be kept confidential to the fullest extent possible under the law; and

21 4. The Company shall participate in "Call Before You Dig" with regard  
22 to giving and receiving notice of the location of facilities and excavations.

23 B. Such proposed construction work to be done by the Company shall be  
24 performed in a safe manner subject to the approval of the Director and in accordance with applicable  
25 Federal and State laws and City ordinances, regulations and permitting requirements. Company shall  
26 pay all normal permit fees and provide the City with evidence of insurance coverage pursuant to  
27 Section 25.

28

1 **SECTION 6: INSTALLATIONS, EXCAVATIONS AND RESTORATIONS.**

2           A.       The Company shall have the right to excavate in, occupy and use any and all  
3 Rights-of-way and Public Places for the purpose of installing, erecting, constructing, repairing,  
4 maintaining, removing, relocating and operating its Facilities after obtaining any and all appropriate  
5 permits from the City, provided, however, that:

6                   1.       The Company shall not, pursuant to this Franchise Agreement, place  
7 any of its Facilities, on, over, under or within any City park duly designated as such by the City, but  
8 nothing herein contained shall preclude the City from granting a revocable permit therefore;

9                   2.       The Company shall not place any of its Facilities, on, over, or within  
10 the median portion of any boulevard or parkway without first having obtained the written permission  
11 of the City;

12                  3.       Where appropriate and as may be required by the City through any  
13 permitting process, installation, excavations and restorations affecting street and/or lane closures shall,  
14 as often as practicable, be performed after 6:30 p.m. and before 6:00 a.m., but in no event shall any  
15 such work be performed from 7:00 a.m. to 9:00 a.m. and from 4:00 p.m. to 6:00 p.m. except for  
16 emergency repairs;

17                  4.       The City reserves the right to assist in the coordination and scheduling  
18 of any Company projects where such project may be reasonably coordinated with the placement of  
19 other Company facilities. Otherwise, and subject to City permitting processes and approvals, it is  
20 recognized that, notwithstanding the foregoing, the Company retains discretion over the timing of the  
21 Company's proposed projects which shall be in accordance with the Company's construction schedule  
22 or its network ring which schedule shall be furnished to the City during Company's initial permitting  
23 process by the City; and

24                  5.       The Company shall, to the extent commercially reasonable, employ  
25 "trenchless" technology in the placement of its Facilities. Except in an emergency, not less than seven  
26 (7) working days prior to the commencement of any work by the Company which involves excavation  
27 in any Rights-of-way or Public Place, the Company shall notify the Director and any appropriate  
28 utility coordinating committee for purposes of utility location. Minimum notice to the City shall be



1 by telephone communication or in person prior to any work, followed by notice in writing as soon as  
2 practical. Company will provide advance notice so as not to disrupt services of the City or any other  
3 person or utility using any Rights-of-way and Public Places in the City and allow the City to place any  
4 inspector it may deem necessary at the site of the project.

5 B. Whenever work is performed in any Rights-of-way or Public Place, the  
6 Company shall take all reasonable precautions to minimize interruption to traffic flow, damage to  
7 property or creation of a hazardous condition.

8 C. After any excavation shall be made and after work is completed pursuant to the  
9 provision of this Franchise Agreement, the Company, at Company expense shall, as soon as  
10 practicable, but not longer than one (1) day, remove all surplus material in compliance with  
11 specifications, requirements and regulations of the City in effect at the time of such restoration and  
12 restore the portion of the Rights-of-way or Public Place. Following written notice to Company, the  
13 Company has thirty (30) days to use its best efforts to make the restoration in a manner satisfactory  
14 to City and all costs incurred for such restoration, whether done with City work forces and equipment  
15 or otherwise, shall be paid by the Company, including the cost of any inspectors the City may assign  
16 to the project.

17 D. The Company shall be responsible for its pro rata share of the maintenance and  
18 repair of all Rights-of-way, to the extent the same are directly impacted by the presence of the  
19 Company's Facilities subject to all City Ordinances and within reasonable proximity of and upon  
20 which the Company maintains above-ground Facilities, including the removal of weeds and litter.

21 E. The Company shall ensure its Facilities in Rights-of-way and Public Places are  
22 located and constructed in a manner such that access is not impaired in compliance with the  
23 Americans with Disabilities Act (ADA). Following notice by the City of an ADA construction  
24 problem, the Company shall have thirty (30) days or other reasonable time as deemed by the City to  
25 remedy the problem.

26 **SECTION 7: LOCATION AND RELOCATION OF FACILITIES.**

27 A. All Facilities of the Company shall be placed so that they do not interfere with  
28 the use of Rights-of-way and Public Places by the City and shall only be placed after approval of the

1 location by the Director and in accordance with any specifications adopted by the City governing the  
2 location of Facilities. The City reserves the right to construct, install, maintain and operate any public  
3 improvement, work or facility, do any work that the City may find desirable on, over or under any  
4 Rights-of-way and Public Places, and vacate, alter or close any Rights-of-way and Public Places. All  
5 such work shall be done, in such manner as not to obstruct, injure or prevent free use and operation  
6 of the Company's Facilities. Company agrees to obtain the City's express written approval before  
7 placing any new poles in Rights-of-way and other Public Places, that do not currently exist in  
8 Rights-of-way and other Public Places. The Company agrees to comply with Title 13 of the Las Vegas  
9 Municipal Code when locating facilities in Rights-of-way or other public places.

10           B.       The City shall have the right to require the removal or relocation of Facilities  
11 used by the Company in any Rights-of-way or Public Place as may reasonably be required by the City  
12 for any reason, after notice to the Company, including but not limited to, City projects for the  
13 installations of water, sanitary sewer, storm drainage, landscaping, or traffic signal facilities, road  
14 reconstruction and construction. The Company shall remove and relocate such Facilities within the  
15 City within sixty (60) days following written notice to do so from the City. Prior to any such  
16 relocation, the City agrees to provide for suitable location for such relocated Facilities sufficient to  
17 maintain service. The cost directly attributable to removal or relocation of Company Facilities shall  
18 be paid by the Company. The Company shall at the City's request, if joint use, pursuant to Section 11  
19 is not feasible due to technical reasons, relocate its Facilities to accommodate another franchisee in  
20 the City if both the Company's and other franchisee's facilities can be located in the City's  
21 Rights-of-way without interfering with operations of Company's Facilities. The costs of any  
22 reallocations occasioned by another franchise agreement of the City, shall be paid by said other  
23 franchisee, and in no event shall the costs be the responsibility of the City. The Company shall remove  
24 and relocate its Facilities upon receipt of payment of anticipated costs from other franchisee. Other  
25 franchisee shall pay the Company any balance owed within thirty (30) days of receipt of statement  
26 following the Company's completion of removing and replacing its Facilities.

27           The Company shall reconstruct, replace or restore any street, alley, or public way or  
28 place, and any water, sewer, sanitary sewer, storm drainage, traffic signalization facilities, or other

1 facility of the City disturbed by the Company, in a timely fashion, without cost to the City to a  
2 condition acceptable to the City consistent with reasonable standards of safety and appearance. Any  
3 facility so disturbed by the Company shall be reconstructed, replaced, or restored only under the  
4 supervision of City personnel. Subject to the provision of Section 5 herein and upon notice to the City,  
5 the Company may remove or relocate transmission and distribution Facilities maintained by the  
6 Company on its own initiative.

7 C. When the City, acting through itself, an agent, contractor or permit holder,  
8 proposes to improve a street, including but not limited to, landscaping, traffic signalization, water line,  
9 storm sewer or sanitary sewer, repair or installation, within the Rights-of-way or other Public Place  
10 under its jurisdiction or control, and such improvements include: (1) excavation, and (2) the placement  
11 of underground utilities vaults and conduit sufficient for Company's Telecommunications Service  
12 distribution purposes, by and at the expense of someone other than the Company, then upon  
13 notification by the City and upon such reasonable scheduling as may be required by the City's  
14 ordinances and policies, the Company shall replace such overhead distribution Facilities as are then  
15 within the effected Rights-of-way with underground Facilities within the vaults and conduits provided  
16 therefore. Any such placement shall be at Company expense. The conversion from overhead to  
17 underground shall be conditioned upon the City requiring the undergrounding in the area in which  
18 both the existing and new Facilities are and will be located and the City shall require: (1) that all  
19 existing overhead communication and electric distribution facilities in such area be removed; (2) that  
20 each customer served from such existing overhead distribution facilities shall, in accordance with the  
21 Company's rules for underground service, make all Facility changes on customer's premises necessary  
22 to receive service from the underground Facilities of the Company as soon as it is available; and (3)  
23 that the Company is authorized to discontinue its overhead service on completion of the underground  
24 Facilities. Such replacement of overhead with underground distribution Facilities shall be paid for by  
25 the Company.

26 **SECTION 8: PUBLIC WORKS AND IMPROVEMENTS.**

27 A. The City reserves the right to construct, install, maintain and operate any public  
28 improvement, work or facility and do any work that the City may find desirable on, over or under any

1 Rights-of-way or Public Place. All such work shall be done, if possible, in such manner as not to  
2 obstruct, injure or prevent free use and operation of the Company's Facilities.

3 B. Whenever the City shall excavate or perform any work in any present and/or  
4 future Rights-of-way or Public Place of the City, or shall contract, for such excavation work, where  
5 such excavation or work may disturb but not require removal or relocation of Company's Facilities,  
6 the City shall notify the Company sufficiently in advance of such contemplated excavation or work  
7 to enable the Company to take such measures as may be deemed necessary to protect such Facilities  
8 from damage and possible inconvenience or injury to the public or the City's Rights-of-way or Public  
9 Place. If the Company cannot take such measures, the Company shall be required to relocate its  
10 Facilities in accordance with Section 7. In such case, the Company upon request, shall furnish field  
11 markings to the City or contractor, as the case may be, showing the location of all its Facilities in the  
12 area involved in such proposed excavation or other work.

13 C. Whenever the City shall vacate any Rights-of-way or Public Place for the  
14 convenience or benefit of any person or governmental agency or instrumentality, the Company's rights  
15 shall be preserved as to any of its Facilities then existing in such Rights-of-way or Public Place.

#### 16 **SECTION 9: MOVING OF BUILDINGS.**

17 Whenever it becomes necessary to temporarily rearrange, remove, lower or raise the  
18 aerial cables or wires or other apparatus of the Company to permit the passage of any building,  
19 machinery or other object, the Company shall perform such rearrangement upon the receipt of written  
20 notice from the person or persons desiring to move said building, machinery or other objects. The  
21 written notice shall detail the route of movement of the building, machinery or other object. The costs  
22 incurred by the Company in making such rearrangements of its aerial facilities will be borne,  
23 excepting the City, by the person or persons seeking such rearrangement, unless the aerial facilities  
24 are placed or maintained in violation of the applicable rules of any local, state, or federal regulatory  
25 agency and thereby interferes with the movement.

#### 26 **SECTION 10: SAFETY STANDARDS.**

27 The Facilities of the Company shall at all times be constructed, operated and  
28 maintained so as to protect and safeguard the health and safety of the public and to this end Company

1 shall observe all rules pertaining thereto prescribed by any local, state, or federal regulatory authority.

2 **SECTION 11: JOINT USE AGREEMENTS.**

3           The Company is authorized to enter into joint-use agreements with any person or entity  
4 franchised by the City with respect to the placement of Facilities. The Company may require any such  
5 person or entity to furnish evidence of adequate insurance covering the Company and adequate bonds  
6 covering the performance of the person or entity attaching to the Company's Facilities as a condition  
7 precedent to granting permission to any such person or entity to attach transmission facilities to the  
8 Company's Facilities; provided that the Company's requirements for such insurance shall be  
9 reasonable.

10 **SECTION 12: FEES; CONDITIONS.**

11           A.     As consideration for this Franchise Agreement (which provides for the use by  
12 the Company of Rights-of-way and other Public Places within the boundaries of the City, which the  
13 City contends are valuable public properties acquired and maintained by the City at great expense to  
14 its taxpayers and citizens) the Company agrees that it must acquire a valid unexpired business license  
15 from the City and pay business license fees based on its gross revenue pursuant to the provisions of  
16 Title 6, Chapter 67, of the Las Vegas Municipal Code. The Company further agrees that the definition  
17 of "gross revenue" as set forth in Section 2 of this Franchise Agreement is controlling for determining  
18 gross revenue; provided, however, the exception for sales of services to other Telecommunications  
19 Service providers holding a certificate of public convenience and necessity from the Public Utilities  
20 Commission of Nevada or to operators of a commercial mobile radio service allowed in the provisions  
21 of LVMC 6.67.020 still applies. Should the City enter into a future franchise agreement with any  
22 company providing services substantially similar to those stated herein, the Company shall have the  
23 option, within sixty (60) days of final adoption by the City, of substituting the franchise terms and  
24 conditions adopted by the City, in place of the terms and conditions of this Franchise Agreement.

25           B.     In addition to payment of consideration pursuant to Subsection (A), Company  
26 shall be liable for lawful property, ad valorem taxes and local improvement district assessments. The  
27 Company shall also be responsible for exactions, fees and charges, which are generally applicable  
28 during Company's real property development or use as required by the City's ordinances.

1 C. In the event that the business license fee set forth in this Franchise Agreement  
2 is declared illegal, unconstitutional or void for any reason by any court or proper authority, the  
3 Company shall be contractually bound to pay the City, at the same times and in the same manner as  
4 provided for herein, an aggregate amount equal to the amount which would have been paid as a  
5 business licensee fee; provided such fee is applied to all telecommunications providers in a  
6 competitively neutral, non-discriminatory manner. This Section, however, shall not constitute a  
7 waiver of any claim the Company may assert against the City.

8 D. Commencing on the effective date of this Franchise Agreement, the business  
9 license fees required to be paid pursuant to Subsection (A) shall be paid quarterly by the fifteenth (15)  
10 day of the second month following the end of each calendar quarter for which payment or portion  
11 thereof is due. For each year, a quarter shall be determined to end on the last day of March, June,  
12 September and December. The Company shall furnish to the City with each payment of compensation  
13 required by this Section a written statement, showing the amount of gross revenue of the Company  
14 subject to a fee under this Franchise Agreement, within the City, for a period covered by the payment.

15 E. Acceptance by the City of any payment due under this Section shall not be  
16 deemed to be a waiver by the City of any breach of this Franchise Agreement occurring prior thereto,  
17 nor shall the acceptance by the City of any such payments preclude the City from later establishing  
18 that a larger amount was actually due, or from collecting any balance due to the City.

19 **SECTION 13: PERFORMANCE BOND.**

20 A. As security for compliance with the terms of this Franchise Agreement and the  
21 Las Vegas Municipal Code, including restoration of rights-of-way in which the Company has initiated  
22 projects to construct, maintain, operate, reconstruct, remove or relocate its facilities, the Company  
23 shall provide, and maintain at the minimum level herein specified for the life of this Franchise  
24 Agreement, security delivered to the Manager of Real Estate and Asset Management Division, made  
25 payable to the City Treasurer, a performance bond, in the amount of TWO HUNDRED THOUSAND  
26 and NO/100ths DOLLARS (\$200,000.00), or an amount agreed to by the City Council, to remain in  
27 force for the term of its Franchise, any or all of which may be claimed by the City as payment for fees  
28 and liquidated damages, and to recover losses resulting to the City from the Company's failure to

1 perform.

2 B. All bonds shall be in accordance with the following:

3 1. All bonds shall, in addition to all other costs, provide for payment of  
4 reasonable attorney's fees.

5 2. All bonds shall be issued by a surety company authorized to do business  
6 in the state of Nevada, and which is listed in the U.S. Department of the Treasury Fiscal Service  
7 (Department Circular 570, Current Revision): companies holding certificates of authority as  
8 acceptable sureties on federal bonds and as acceptable reinsuring companies.

9 3. The Company shall require the attorney-of-fact who executes the bonds  
10 on behalf of the surety to affix thereto a certified and current copy of his power of attorney.

11 4. All bonds prepared by a licensed non-resident agent must be  
12 countersigned by a resident agent per Nevada Revised Statutes, Section 680A.300.

13 C. If at any time the City draws upon such performance bond, the Company shall  
14 within thirty (30) days of notice from the City replenish such performance bond to the original  
15 minimum amount established in this Section.

16 D. Reduction of Bond. Upon written application by the Company, the City may,  
17 at its sole option, in writing, permit the amount of the bond to be reduced or waive the requirements  
18 for a performance bond. Reductions granted or denied upon application by the Company shall be  
19 without prejudice to the Company's subsequent applications or to the City's right to require the full  
20 bond at any time thereafter. However, no application shall be made by the Company within one (1)  
21 year of any prior application.

22 E. Performance Bond Procedures. The following procedures shall apply to  
23 drawing on the performance bond:

24 1. If the Company fails to make timely payment to the City of any amount  
25 due under its agreement or applicable law, or fails to compensate the City within ten (10) days of  
26 written notification that such compensation is due, for any damages, costs, or expenses the City suffers  
27 or incurs by reason of any act or omission of the Company in connection with this Franchise  
28 Agreement or its enforcement, or fails, after thirty (30) days' written notice, to comply with any

1 provision of this Franchise Agreement or the Las Vegas Municipal Code that the City determines can  
2 be remedied by an expenditure of the security, the City may withdraw the amount thereof, with  
3 interest and any penalties, from the performance bond.

4                   2.       Within three (3) days of a withdrawal from a performance bond, the City  
5 shall mail, by certified mail, return receipt requested, written notification of the amount, date, and  
6 purpose of such withdrawal to the Company.

7                   3.       If at the time of a withdrawal from a performance bond by the City, the  
8 amounts available are insufficient to provide the total payment towards which the withdrawal is  
9 directed, the balance of such payment shall continue as the obligation of the Company to the City until  
10 it is paid.

11                   4.       No later than thirty (30) days after mailing of notification to the  
12 Company by certified mail, return receipt requested, of a withdrawal under a performance bond, the  
13 Company shall restore the performance bond to the total amount specified herein.

14                   F.       Failure Constitutes Material Violation. Failure to maintain or restore the  
15 performance bond shall constitute a material violation of this Franchise Agreement.

16                   G.       Remedies Cumulative. All remedies under this Franchise Agreement are  
17 cumulative unless otherwise expressly stated. The exercise of one remedy shall not foreclose use of  
18 another, nor shall the exercise of a remedy or the payment of liquidated damages or penalties relieve  
19 the Company of its obligations to comply with this Franchise Agreement. Remedies may be used  
20 singly or in combination; in addition, the City may exercise any rights it has at law or equity.

21                   H.       Relation to Insurance and Indemnity Requirements. Recovery by the City of  
22 any amounts under insurance, the performance bond, or otherwise does not limit the Company's duty  
23 to indemnify the City in any way; nor shall such recovery relieve the Company of its obligations under  
24 this Franchise Agreement, limit the amounts owed to the City, or in any respect prevent the City from  
25 exercising any other right or remedy it may have.

26 **SECTION 14: BREACH.**

27                   In the event that a forfeiture is declared as provided under Section 26 (C)(4) of this  
28 Franchise Agreement, it shall be deemed a failure to perform on the part of the Company, and the City



1 may proceed against the performance Bond, Letter of Credit or Surety Fund provided for in Section  
2 13 of this Franchise Agreement. In such event, it is agreed by and between the parties that the City  
3 will be damaged in an amount and to an extent not reasonably foreseeable or calculable, and, that,  
4 therefore, the City shall be entitled to the sum of ONE HUNDRED THOUSAND and NO/100ths  
5 DOLLARS (\$100,000.00) as liquidated damages and not as a penalty, which sum shall be covered  
6 by the Bond, Letter of Credit or Surety Fund required to be posted by the Company.

7 **SECTION 15: BOOKS OF ACCOUNT AND REPORTS.**

8           A.     The City shall have the right to annually review or audit the Company's books  
9 and records in accordance with regularly accepted accounting and audit standards regarding any-  
10 amounts which may be owed under this Franchise Agreement. This right includes the right to review  
11 and audit all books and records of revenue which may be reasonably considered by the City to be  
12 subject to a franchise fee. The City shall give written notice to the Company of any additional amount  
13 claimed to be due to the City as a result of the City's review. Such amount due, if any, shall be paid  
14 within thirty (30) days following determination by the City that such amount is due and payable. If  
15 the City's review shows the Company has overpaid, said overpayment shall be reimbursed to the  
16 Company by the City within thirty (30) days of such determination.

17           B.     The Company shall keep complete and accurate books and records of its  
18 business and operations pursuant to this Franchise Agreement in accordance with generally accepted  
19 accounting principles and in accordance with the rules and regulations of the State of Nevada.

20           C.     In the event of an audit, the Company shall provide City specific books,  
21 records, contracts, accounts, documents and papers for its operations within the City.

22           D.     All such books, records, and accounts of the Company shall be retained by the  
23 Company for a period of five (5) years. The Company shall make such records available to the City  
24 as are necessary for the City to complete its audit, and the same shall be available for inspection by  
25 the City, in the City, upon thirty (30) days notice from the City.

26           E.     All audits will take place on Company premises in the Las Vegas area.

27           F.     Upon request by the City, the Company shall provide to the City by U.S. mail,  
28 postage prepaid, a copy of all papers filed by the Company with any federal or state regulatory agency

1 that pertain to the Company's Facilities located in Nevada.

2 **SECTION 16: SUPPLYING MAPS UPON REQUEST.**

3           Company shall maintain on file maps and operational data pertaining to its operations  
4 in the City. The City may inspect the maps and data at any time during business hours. Upon request  
5 of the City, the Company shall furnish to the City as soon as practical without charge, current maps  
6 either in a "hard copy" printed form or in the City's GIS format or compatible data base, showing the  
7 location and dimension of any existing facilities and proposed facilities, but not other proprietary  
8 information, used in operating the Company's Facilities within the City of Las Vegas served by the  
9 Company.

10 **SECTION 17: RATES.**

11           The rates to be charged by the Company for Telecommunications Service shall comply  
12 with the appropriate local, state or federal regulatory authority, or any other governmental official,  
13 commission or body having jurisdiction. If no governmental official or body had rate setting  
14 jurisdiction, the Company may set rates to be charged at its sole discretion. To the extent that the City  
15 may in the future become legally entitled to set fees and charges for the services provided pursuant  
16 to this Franchise Agreement, the City reserves the right to regulate the rates, fees, charges, deposits  
17 and associated terms and conditions for any service provided pursuant to this Franchise Agreement  
18 to the fullest extent permitted by applicable law with appropriate procedural due process.

19 **SECTION 18: FRANCHISE NOT EXCLUSIVE.**

20           The Franchise Agreement hereby granted shall not be exclusive and shall not be  
21 construed as a limitation on the City's right to grant rights, privileges and authority to other persons  
22 or corporations similar to or different from those herein set forth to construct, install, operate or  
23 maintain a public utility.

24 **SECTION 19: TRANSFERS.**

25           A       City Approval Required.

26                   1.       The Franchise granted to the Company pursuant to the terms of this  
27 Franchise Agreement shall be a privilege that is in the public trust and personal to the Company. The  
28 Company's obligations under this Franchise Agreement involve services whose performance involves

1 trust and confidence in the Company.

2                     2. No transfer of this Franchise Agreement or the Franchise granted  
3 pursuant thereto, or of control over the same (including, but not limited to, transfer by forced or  
4 voluntary sale, merger, consolidation, receivership, or any other means) shall occur unless prior  
5 application is made by the Company to the City and the City Council's prior written consent is  
6 obtained and only then upon such terms and conditions as the Council deems necessary and proper,  
7 except to the extent that this Franchise Agreement provides that certain interaffiliate transfers may  
8 occur without such consent. Any such transfer without the prior written consent of the Council shall  
9 be considered to impair the City's assurance of due performance. The granting of approval for a  
10 transfer in one instance shall not render unnecessary approval of any subsequent transfer.

11                     B. Approval Does Not Constitute Waiver. Approval by the City Council of a  
12 transfer does not constitute a waiver or release of any of the rights of the City under this Franchise  
13 Agreement, whether arising before or after the date of the transfer.

14                     C. Application.

15                     1. The Company shall promptly notify the Manager of Real Estate and  
16 Asset Management Division of the Office of Business Development of any proposed transfer. If any  
17 transfer should take place without prior notice to the Manager, the Company will promptly notify the  
18 Manager that such a transfer has occurred.

19                     2. At least one hundred twenty (120) calendar days prior to the  
20 contemplated effective date of a transfer, the Company shall submit to the Manager of Real Estate and  
21 Asset Management Division of the Office of Business Development a written application for approval  
22 of the transfer. Such an application shall provide complete information on the proposed transaction,  
23 including details on the legal, financial, technical, and other qualifications of the transferee. At a  
24 minimum, the following information must be included in the application, unless these requirements  
25 are waived, reduced, or modified by the City:

- 26                     a. All information and forms required under federal law;  
27                     b. A detailed statement of the corporate or other business entity  
28 organization of the proposed transferee, including an identification of any entity or entities that

1 exercises actual working control over the Company;

2 c. Complete and unredacted copies of any contracts, financing  
3 documents, or other documents that relate to the proposed transaction, and all documents, schedules,  
4 exhibits, or the like referred to therein, except that the Company may redact such portions of those  
5 documents as are proprietary and confidential and would cause the Company substantial harm if  
6 disclosed, if and only if the Company makes the complete documents available for review and  
7 analysis by the City and its agents from the date of the application until the City approves or denies  
8 the application.

9 3. At the Company's option, the Company may notify the Manager of the  
10 Real Estate and Asset Management Division of the proposed transaction in general terms at least one  
11 hundred fifty (150) days prior to the contemplated effective date of a transfer, and request that the City  
12 waive some or all of the information requirements specified in Subsection (C)(2) of this Section. To  
13 the extent consistent with applicable law, the City may waive in writing any such requirement that  
14 information be submitted as part of the initial application, without thereby waiving any rights the City  
15 may have to request such information after the initial application is filed.

16 4. For the purposes of determining whether it shall consent to a transfer,  
17 the City or its agents may inquire into all qualifications of the prospective transferee and such other  
18 matters as the City may deem necessary to determine whether the transfer is in the public interest and  
19 should be approved, denied, or conditioned. The Company and any prospective transferees shall assist  
20 the City in any such inquiry, and if they fail to do so, the request for transfer may be denied.

21 D. Determination by the City Council.

22 1. In making a determination as to whether to grant, deny, or grant subject  
23 to conditions an application for a transfer, the City Council may consider, without limitation, the legal,  
24 financial, and technical qualifications of the transferee to comply with the Company's obligations  
25 under this Franchise Agreement; whether the Company is in compliance with this Franchise  
26 Agreement and, if not, whether the proposed transferee will cure any noncompliance; and whether  
27 operation by the transferee or approval of the transfer would adversely affect the City's interest under  
28 this Franchise Agreement, other applicable law, or the public interest.

1                   2.       Any transfer without the City Council's prior written approval shall be  
2 ineffective, and shall make the Company's franchise subject to cancellation at the City Council's sole  
3 discretion, and to any other remedies available under this Franchise Agreement or applicable law.

4                   3.       The Company shall be fully liable under this Franchise Agreement for  
5 any transfer that is in violation of the terms of this Franchise Agreement and caused in whole or in part  
6 by any other entity or entities, including but not limited to any parents or affiliated entities, as if such  
7 transfer had been caused by the Company itself.

8                   4.       Any mortgage, pledge or lease shall be subject and subordinate to the  
9 rights of the City under this Franchise Agreement and other applicable law.

10                  E.       Transferee's Agreement. No application for a transfer shall be granted unless  
11 the transferee agrees in writing that it will abide by and accept all terms of this Franchise Agreement,  
12 and that it will assume the obligations, liabilities, and responsibility for all acts and omissions, known  
13 and unknown, of the Company under this Franchise Agreement for all purposes, including renewal,  
14 unless the City, in its sole discretion, expressly waives this requirement in whole or in part.

15 **SECTION 20: ADDITIONAL CITY RIGHTS.**

16                  Pursuant to the City Charter and applicable State statute, the right and privilege of the  
17 City to construct, purchase or condemn a public utility or telecommunications provider located within  
18 or without the boundaries of the City is expressly recognized herein.

19 **SECTION 21: CUSTOMER SERVICE STANDARDS.**

20                  Provided that the Public Utilities Commission of Nevada ceases to set or regulate  
21 customer service standards, then the following conditions shall apply:

22                  A.       The Company shall be required to establish and maintain offices within the Las  
23 Vegas metro area for customer service. Company shall make available at such offices, at a minimum,  
24 documents required by this Franchise Agreement with reasonable notice by the City to the Company.

25                  B.       Company representatives shall be available to respond to customer telephone  
26 inquiries and complaints Monday through Friday during normal business hours. The Company shall  
27 also maintain a toll-free number by which subscribers may report technical and other problems on a  
28 twenty-four hour basis.

1 C. Excluding those situations beyond the control of the network operator, the  
2 Company shall respond to service interruptions promptly and in no event later than six (6) hours,  
3 seven (7) days per week. Other service problems will be responded to within twenty-four (24) hours  
4 during the normal work week.

5 D. Company shall establish procedures for receiving, acting upon, and resolving  
6 subscriber complaints to the satisfaction of the City.

7 E. Company shall maintain a written records listing date and time of customer  
8 complaints, identifying the customer and describing the nature of the complaints and when and what  
9 action was taken by the Company in response thereto.

10 **SECTION 22: EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION.**

11 The Company is committed to stimulating and strengthening the participation of  
12 minorities and women within the Company and is also committed to the principle that the success and  
13 economic well being of the Company are related closely to the economic strength and vigor of the  
14 communities and people it serves.

15 **SECTION 23. AGREEMENT TO REOPEN NEGOTIATIONS.**

16 The City and the Company agree that the services provided pursuant to this Franchise  
17 Agreement are in an area of law undergoing significant review by state and federal authorities and that  
18 there is a real possibility that some of the terms of this Franchise Agreement may be preempted by  
19 state or federal law during the term of this Franchise Agreement. Therefore, the City and the Company  
20 expressly agree that:

21 A. The preempted terms of this Franchise Agreement including the terms relating  
22 to the compensation to be paid, shall be subject to renegotiation one (1) year from the effective date  
23 of this Franchise Agreement, and again, two (2) years and three (3) years from the effective date of  
24 this Franchise Agreement.

25 B. In addition to and separate and apart from the provisions of Subsection (A) of  
26 this Section, in the event an earlier negotiation must occur in order to comply with newly enacted or  
27 decided federal or state law, such negotiation shall begin within thirty (30) days after any request for  
28 renegotiation is issued by either the City or the Company, or at such time as it becomes apparent that

1 a portion of this Franchise Agreement has been preempted by state or federal law.

2 C. The parties agree that upon the mutually acceptable conclusion of any such  
3 renegotiations, the parties will enter into any reasonably necessary amendments to this Franchise  
4 Agreement.

5 D. It is further expressly agreed that any renegotiation and subsequent amendment  
6 shall not reduce the initial term of this Franchise Agreement. In no event shall such renegotiations  
7 impose obligations on the Company that similar service providers would not also be subject to.  
8 Further, if the City's right to impose a franchise agreement is totally preempted, this Franchise  
9 Agreement is null and void.

10 **SECTION 24: INDEMNIFICATION.**

11 The Company, as a condition of the grant of this Franchise Agreement, and in  
12 consideration thereof, shall protect, indemnify, and hold the City harmless against all claims for  
13 damages to persons or property by reason of the construction, maintenance and operation of its  
14 Facilities, and conduct of business, or any way arising out of performance under this Franchise  
15 Agreement, directly, or indirectly, when or to the extent injury is caused, or alleged to have been  
16 caused, wholly or in part, by any act, omission, negligence, or misconduct of the Company or any of  
17 its contractors, subcontractors, officers, agents, or employees, or by any person for whose act,  
18 omission, negligence, or misconduct, the Company is by law responsible.

19 This provision is not intended to create liability for the benefit of third parties but is  
20 solely for the benefit of the Company and the City. In the event any claim is made against the City that  
21 falls under this indemnity provision and a Court of competent jurisdiction should adjudge, by final  
22 decree, that the City is liable therefor, the Company shall indemnify and hold the City harmless of and  
23 from any such liability, including any court costs, expenses, and Reasonable Attorney Fees incurred  
24 by the City in defense thereof and incurred at any stage. Upon commencement of any suit, proceeding  
25 at law or in equity against the City relating to or covering any matter covered by this indemnity,  
26 wherein the Company has agreed by accepting this Franchise Agreement, to indemnify and hold the  
27 City harmless, or to pay said settlement, final judgment and costs, as the case may be, the City shall  
28 give the Company immediate notice of such suit or proceeding; whereupon the Company shall provide

1 a defense to any such suit or suits, including any appellate proceedings brought in connection  
2 therewith, and pay as aforesaid, any settlement, costs or judgments that may be rendered against the  
3 City by reason of such damage suit.

4           Upon failure of the Company to comply with the "defense of suit" provisions of this  
5 Franchise Agreement, after reasonable notice to it by the City, the City shall have the right to defend  
6 the same and in addition to being reimbursed for any settlement or judgment that may be rendered  
7 against the City, together with all costs incurred therein, the Company shall reimburse the City  
8 Reasonable Attorney Fees, including those employed by the City in such case or cases, as well as all  
9 expenses incurred by the City by reason of undertaking the defense of such suit or suits, whether such  
10 suit or suits are successfully defended, settled, comprised, or fully adjudicated against the City. In the  
11 event the City is compelled to undertake the defense of any such suit by reason of the Company's  
12 failure to perform as here and above provided, the City shall have the full right and authority to make  
13 or enter into any settlement or compromise of such adjudication as the governing body shall deem in  
14 the best interest of the City, this without the prior approval or consent of the Company with respect  
15 to the terms of such compromise or settlement.

16 **SECTION 25: INSURANCE.**

17           A.     Company, concurrently with the filing of an acceptance of granting of this  
18 Franchise Agreement, shall furnish to the City and file with the City Clerk, and at all times during the  
19 existence of this Franchise Agreement, maintain in full force and effect, at its own cost and expense,  
20 a general comprehensive liability insurance policy for the protection of the City, its officers, boards,  
21 commissions, agents and employees, in a Company approved by the City Manager and a form  
22 satisfactory to the City Attorney, protecting the City and all persons against liability for loss or  
23 damage for personal injury, death and property damage occasioned by the operations of Company  
24 under this Franchise Agreement, with minimum liability limits of ONE MILLION and NO/100ths  
25 DOLLARS (\$1,000,000.00) for personal injury or death of any one person and THREE MILLION  
26 and NO/100ths DOLLARS (\$3,000,000.00) for personal injury or death of two or more persons in any  
27 one occurrence and FIVE HUNDRED THOUSAND and NO/100ths DOLLARS (\$500,000.00) for  
28 damage to property resulting from any one occurrence.



1           B.     The policies mentioned in the foregoing Subsection (A) shall name the City,  
2 its officers, boards, commissions, agents and employees as additional insured and shall contain a  
3 provision that a written notice of cancellation of, or reduction in coverage under each said policy shall  
4 be delivered to the City at least thirty (30) days in advance of the effective date thereof; if any such  
5 insurance is provided by a policy which also covers the Company or any other entity or person other  
6 than those above named, then such policy shall contain the standard cross-liability endorsement.

7           C.     With respect to the Company's obligation to comply with requirements for  
8 Commercial General (public) Liability Insurance coverage, the City may allow the Company to self-  
9 insure upon annual production of evidence that is satisfactory to the City's Risk Manager. With  
10 respect to the Company's obligation to comply with the requirements for automobile liability  
11 insurance and for workers' compensation insurance, a Company may also self-insure.

12 **SECTION 26: REMEDIES AND PENALTIES NOT EXCLUSIVE: DEFAULT.**

13           A.     All remedies and penalties under this Franchise Agreement are cumulative and  
14 not exclusive, and the recovery or enforcement by one available remedy or imposition of any penalty  
15 is not a bar to recovery or enforcement by any other such remedy or imposition of any other penalty.  
16 The City reserves the right to enforce the penal provisions of any ordinance or resolution and to avail  
17 itself of any and all remedies available at law or in equity. Failure to enforce shall not be construed  
18 as a waiver of a breach of any term, condition or obligation imposed upon the Company by or  
19 pursuant to this Franchise Agreement. A specific waiver of a particular breach of any term, condition  
20 or obligation imposed upon the Company by or pursuant to this Franchise Agreement shall not be a  
21 waiver of any other or subsequent or future breach of the same or of any other term, condition or  
22 obligation, or a waiver of the term, condition or obligation itself.

23           B.     The Company agrees that an Event of Default shall include, but shall not be  
24 limited to, any of the following acts or failure to act by the Company:

25                   1.     Failure to obtain any applicable permits from the City pursuant to this  
26 Franchise Agreement;

27                   2.     Failure to comply with the terms of Section 19 which limits the  
28 assignment of this Franchise Agreement, or transfer of control of this Franchise Agreement;

1                   3.       Failure to supply the necessary performance bonding as specified in  
2 Section 13;

3                   4.       Final, unappealable adjudication against the Company for violation of  
4 any local, state or federal law that prohibits discrimination in employment, or prohibits the creation  
5 of hostile working environments for an employee of the Company;

6                   5.       Failure to make any of the payments set forth in Section 6 or Section  
7 12 of this Franchise Agreement;

8                   6.       Failure to pay any permit fees, or failure to comply with any rules,  
9 regulations, orders or directives of the City as set forth in this Franchise Agreement;

10                  7.       Substantial or repeated failure to comply with Section 6 concerning  
11 Installations, Excavations and Restorations and, if applicable, Section 21 concerning Customer  
12 Service; or

13                  8.       Refusal to renegotiate the terms and conditions of this Franchise  
14 Agreement in accordance with Section 23.

15                  C.       Upon the occurrence of an Event of Default, then, in accordance with the  
16 procedures provided for in this Franchise Agreement, the City may:

17                   1.       Require the Company to take such actions as are reasonably required  
18 to remedy such Event of Default;

19                   2.       Seek money damages from the Company as compensation for such  
20 Event of Default;

21                   3.       Accelerate the expiration of the term of this Franchise Agreement by  
22 decreasing the term of the Franchise Agreement provided in Section 4; the extent of such acceleration  
23 shall be determined by the City and may include any period of time, but not less than six (6) months  
24 provided that six (6) months remain under this Franchise Agreement; or

25                   4.       As a last measure only, revoke the Franchise granted herein by  
26 termination of this Franchise Agreement.

27                  D.       The City shall exercise the rights set forth in this Section in accordance with  
28 the following procedures:

1                   1.       The Director shall notify the Company, in writing, of an alleged Event  
2 of Default. This written notice shall set forth with reasonable specificity the facts the City believes are  
3 the basis for declaring that an Event of Default has occurred. The Company shall, within sixty (60)  
4 days of the date the notice is received by the Company, or such additional time as the Director may  
5 specify in the notice, cure the alleged Event of Default, or, in writing, present for review by the  
6 Director a reasonable time frame and method to cure the Event of Default. The Company, in lieu of  
7 the cure of the Event of Default as set forth herein, may, in writing, present facts and arguments as to  
8 why the Company disagrees that an Event of Default has occurred.

9                   2.       If the Company presents a written response that challenges whether an  
10 Event of Default has occurred, the Director shall within fourteen (14) days review the submitted  
11 materials and determine again whether an Event of Default has occurred. If the Director reaffirms than  
12 an Event of Default has occurred, the Company shall be notified in writing of this decision and shall,  
13 within thirty (30) calendar days, cure the alleged Event of Default.

14                   3.       If the Company fails to cure the Event of Default so declared pursuant  
15 to this Section within the time permitted by the Director, the Director shall prepare a written report  
16 to the Council and recommend action to be taken. If the City Attorney, after consideration of this  
17 report and hearing, agrees than an Event of Default has occurred, he/she may order an appropriate  
18 remedy as set forth in this Section.

19                   E.       In addition to the rights under this Section, the City, upon any termination, may  
20 direct the Company to remove, at the Company's sole cost and expense, any or all of the Facilities  
21 from all Rights-of-way and other Public Places within the City, subject to the following:

22                   1.       If the City determines that removal of buried fiber optic cable, or  
23 conduit is not necessary, the Company shall abandon its Facilities in place and transfer ownership of  
24 the installed Facilities to the City.

25                   2.       In removing any part of the Facilities, the Company shall refill and  
26 compact, at its own expense, any excavation that shall be made by it and shall leave all Rights-of-way  
27 and other Public Places in as good a condition as that prevailing prior to the Company's removal of  
28 the Facilities;

1                   3.       The City shall have the right to inspect and approve the conditions of  
2 the streets and Public Places after removal has occurred;

3                   4.       The removal shall commence within thirty (30) days of an order to  
4 remove being issued by the Director at the direction of the Council;

5                   5.       The Company shall be responsible for all necessary removals of the  
6 Facilities, and maintenance of the street area in the same manner and degree as if the Facilities were  
7 in active use, and the Company shall retain all liability associated with such removals.

8                   6.       Nothing herein shall cause the City to incur any costs related to the  
9 removal of the Company's Facilities or the transfer of ownership of said Facilities to the City.

10 **SECTION 27: SEVERABILITY CLAUSE.**

11                   If any section, subsection, sentence, clause, phrase, term, provision, condition,  
12 covenant or portion of this Franchise Agreement is for any reason, held invalid, unenforceable or  
13 unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct  
14 and independent provision, and such holding shall not affect the validity or enforceability of the  
15 remaining portions of this Franchise Agreement. The Council hereby declares that it would have  
16 approved this Franchise Agreement and each portion thereof irrespective of any provision being  
17 declared unconstitutional or otherwise invalid.

18 **SECTION 28: NOTICES.**

19                   Any notice of other communication required or permitted to be given under this  
20 Franchise Agreement (herein the "Notices") shall be in writing and shall be (1) personally delivered,  
21 or (2) delivered by certified mail, return receipt requested, and deposited in the U.S. Mail, postage  
22 prepaid. The Notices shall be deemed received upon actual receipt. The Notices shall be directed to  
23 the parties at their respective addresses shown below, or such other address as either party may, from  
24 time to time, specify in writing to the other party in the manner described above to the following:

25 ...

26 ...

27 ...

28 ...

1 CITY: Office of Business Development  
2 Real Estate & Asset Management Division  
3 Attention: Manager  
314 Las Vegas Boulevard North  
Las Vegas, NV 89101

4 with a copy to: City Attorney's Office  
5 City of Las Vegas  
400 E. Stewart Avenue, 9th Floor  
6 Las Vegas, NV 89101

7 COMPANY: NEXTLINK Nevada  
8 Attention: General Manager  
2240 Corporate Circle  
Henderson, NV 89014

9 with copy to : NEXTLINK Management Services  
10 Attention: Legal  
11 111 East Broadway Suite 1250  
Salt Lake City, UT 84111

12 **SECTION 29: PUBLIC PURPOSE.**

13 All of the regulations provided in this Franchise Agreement are hereby declared to be  
14 for a public purpose and the health, safety, and welfare of the general public. Any member of the  
15 governing body or City official or employee charged with the enforcement of this Franchise  
16 Agreement, acting for the City in the discharge of his duties, shall not thereby render himself  
17 personally liable; and he is hereby relieved from all personal liability for any damage that might  
18 accrue to persons or property as a result of any act required or permitted in the discharge of his said  
19 duties. Neither the City nor the Company by accepting this Franchise Agreement waives its right to  
20 seek all appropriate legal and equitable remedies as allowed by law upon violation of the terms of this  
21 Franchise Agreement, including seeking injunctive relief in a court of competent jurisdiction. Such  
22 right to injunctive relief is expressly reserved and all terms and provisions hereof shall be enforceable  
23 through injunctive relief. Neither party shall be liable for any consequential or punitive damages,  
24 including lost profits.

25 **SECTION 30: APPLICABLE LAW.**

26 This Franchise Agreement is governed by and construed and enforced in accordance  
27 with the laws of the State of Nevada, and the Federal Communications Act of 1934 as amended by  
28 the Telecommunications Act of 1996.

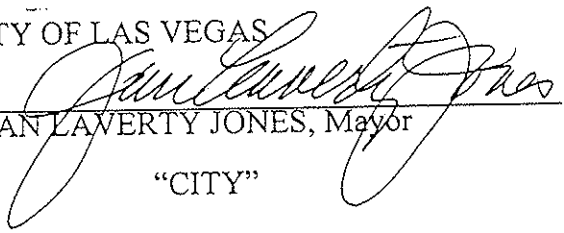
1 SECTION 31: STATE PUBLIC UTILITIES COMMISSION AND CHARTER  
2 REQUIREMENT.

3 This Franchise Agreement is subject to and contingent upon the Company complying  
4 with all applicable rules and regulations of the Public Utilities Commission of Nevada and the City  
5 adopting a Resolution, conducting a public hearing and enacting an Ordinance granting a Franchise  
6 Agreement to Company in accordance with Section 7.050 of the City Charter.

7 IN WITNESS WHEREOF, the parties hereto have caused this instrument to be  
8 executed by their duly authorized representatives the day and year first herein above written:

9 CITY OF LAS VEGAS

10 By

  
JAN LAVERTY JONES, Mayor

"CITY"

11  
12 ATTEST:

13   
14 BARBARA JO RONEUMUS, City Clerk

15 APPROVED AS TO FORM:

16  5-6-99  
17 Date

18 Telecommunications of Nevada, LLC, dba  
19 NEXTLINK Nevada

20 By

  
RICHARD K. SCHEER

Regulatory and External Affairs Manager

21 "NEXTLINK"  
22  
23  
24  
25  
26  
27  
28



September 18, 2014

LAS VEGAS  
CITY COUNCIL

CAROLYN G. GOODMAN  
MAYOR

STAVROS S. ANTHONY  
MAYOR PRO TEM

LOIS TARKANIAN  
STEVEN D. ROSS  
RICKI Y. BARLOW

BOB COFFIN  
BOB BEERS

ELIZABETH N. FRETWELL  
CITY MANAGER

Ms. Gegi Leeger  
Director – Regulatory Contracts and Privacy Compliance  
XO Communications  
13865 Sunrise Valley Drive  
Herndon, VA 20171

Re: Continuation of Franchise

Dear Ms. Leeger:

As you know, the original franchise agreement dated May 24, 1999 expired during the process of settling the dispute regarding fees.

This letter will confirm that the City of Las Vegas will treat the terms of that original franchise agreement dated May 24, 1999 as if still effective until such time as the Las Vegas City Council considers and acts upon a new franchise agreement. The City Council's decision with regard to the relationship between XO and the City of Las Vegas is final.

Please feel free to contact me if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Gina D. Bishop", with a stylized flourish at the end.

Gina D. Bishop  
Franchise Analyst  
Phone: (702) 229-1206  
Email: gbishop@lasvegasnevada.gov

cc: Mary C. McElhone, Business License Section Manager  
James B. Lewis, Deputy City Attorney  
Gary Champ, Director – Indirect Taxes  
Kirsten A. Gulotta, Esq.

CITY OF LAS VEGAS  
DEPARTMENT OF PLANNING  
BUSINESS LICENSING DIVISION  
DEVELOPMENT SERVICES CENTER  
333 NORTH RANCHO DRIVE  
6TH FLOOR  
LAS VEGAS, NEVADA 89106

VOICE 702 229 6281

FAX 702 382 6642

TTY 7-1-1

[www.lasvegasnevada.gov](http://www.lasvegasnevada.gov)