

ORDINANCE #65432
Board Bill No. 78

An ordinance approving a settlement agreement between the City of St. Louis and St. Louis Tele-Communications, Inc., a Missouri corporation: authorizing and directing the Communications Commissioner and Comptroller to execute, on behalf of the City of St. Louis, such settlement agreement in substantially the form attached.

BE IT ORDAINED BY THE CITY OF ST. LOUIS, AS FOLLOWS:

SECTION ONE. A settlement agreement relating to compliance by St. Louis Tele-Communications, Inc., a Missouri corporation, with the terms of cable television franchises held by it in the City of St. Louis, in the form attached as Exhibit 1, incorporated herein by this reference, is hereby approved on behalf of the City of St. Louis.

SECTION TWO. The Communications Commissioner and Comptroller are hereby authorized and directed to execute, on behalf of the City of St. Louis, a settlement agreement with St. Louis Tele-Communications, Inc., in substantially the form attached hereto as Exhibit 1.

EXHIBIT 1

SETTLEMENT AGREEMENT

THIS AGREEMENT (the "Settlement Agreement") is made this ___ day of _____, _____, by and between: the City of St. Louis, a municipal corporation of the State of Missouri, organized and existing under its Charter and the constitution and laws of the State of Missouri and St. Louis Tele-Communications, Inc., a Missouri corporation ("Grantee"),

WHEREAS, in 1984 pursuant to Ordinance 59197 the City of St. Louis awarded two cable television franchises (the "Prior Franchises") for separate areas of the City comprising the entire area of the City to STL Cablevision Partners and St. Louis City Communications, Inc.; and

WHEREAS, in 1989 pursuant to Ordinance 61093 the City consented to the transfer of the Prior Franchises from the original grantees to St. Louis Tele-Communications, Inc., a Missouri corporation (the "Grantee"), which was owned by Tele-Communications, Inc. ("TCI"); and

WHEREAS, the parties disagree regarding the Grantee's compliance with its obligations under the Prior Franchises and its liability for any noncompliance with those obligations; and

WHEREAS, the City and the Grantee have agreed upon the terms of a renewal Franchise, which is being authorized concurrently with this Settlement Agreement; and

WHEREAS, the parties wish to settle their differences in a manner that will avoid litigation;

NOW, THEREFORE, in consideration of the promises and undertakings herein, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, THE PARTIES DO HEREBY AGREE as follows:

1. DEFINITIONS

1.1. *Access Channel Manager:* the organization designated by the City to manage and program Public Access and Community Access Channels in the City pursuant to the Franchise Agreement.

1.2. *Authorized User:* any person that lawfully uses the Institutional Network pursuant to this Settlement Agreement.

1.3. *Cable System:* that term as defined at 47 U.S.C. § 522(7) on the date of this Settlement Agreement.

1.4. *City:* the City of St. Louis, a municipal corporation of the State of Missouri, organized and existing under its Charter and the constitution and laws of the State of Missouri, generally acting by and through its Communications Division for purposes of this agreement.

1.5. *Demarcation Point*: the output or connection point to the interface modules at each City or Authorized User site as required herein.

1.6. *Institutional Network or Network*: a high-capacity network related to and, to the extent deemed feasible by the Grantee, jointly constructed with the System Upgrade of the Grantee's Cable System, as described in detail in Section 6 herein; such network is to be designed and constructed by Grantee and is not generally available to residential subscribers of the Grantee's Cable System.

1.7. *PEG*: public, educational, and governmental.

1.8. *Service Outage*: any loss of functionality of the Institutional Network.

1.9. *Subcontractor*: an entity that has a direct contract with the Grantee to perform a portion of the Work.

1.10. *System Upgrade*: the upgrade of the Grantee's Cable System specified in the Franchise Agreement.

1.11. *Work*: whatever is required of the Grantee to perform and complete its duties under Section 6 of this Settlement Agreement. The term does not refer to activities of the Grantee required to perform and complete its duties under the Franchise Agreement, including but not limited to construction of the System Upgrade.

2. INTENT AND INTERPRETATION

2.1. When a word, term or phrase is used in the Settlement Agreement, it shall be interpreted or construed as follows: First, as defined in this Settlement Agreement; second, if not so defined, then according to the definition in the Franchise Agreement authorized by Ordinance ____ (BB ____) or the Cable Regulatory Ordinance, Ordinance ____ (BB ____); third, if not defined in any of the above documents, then according to definitions in the Cable Act or federal regulations pursuant thereto; fourth, if not defined in any of the above, according to its generally accepted meaning in the cable industry; and finally, if there is no generally accepted meaning in the cable industry, according to its common and customary usage.

2.2. Words or terms used as nouns in the Settlement Agreement shall be inclusive of their singular and plural forms, unless the context of their usage clearly requires a contrary meaning.

3. TERM

3.1 This Settlement Agreement shall be effective on the date on which the Franchise Agreement becomes effective and shall be for a term ending upon the expiration of the Franchise Agreement, including any extension of the Franchise Agreement (as distinct from any renewal of the Franchise Agreement under 47 U.S.C. § 546 or other applicable law). Notwithstanding the foregoing, provisions of this Settlement Agreement shall continue beyond such date and survive the expiration of the Franchise Agreement or revocation of the Franchise if and to the extent necessary to carry out the obligations set forth in Section 6.5.3 of this Settlement Agreement.

3.2 The City reserves the right to terminate and cancel the Franchise and all rights and privileges of the Grantee thereunder, pursuant to the processes specified under the Franchise, if the Grantee materially violates any provision of this Settlement Agreement.

4. SETTLEMENT AND RELEASE OF CLAIMS

4.1. The recitals of this Settlement Agreement are true and correct and are incorporated herein by reference.

4.2. The parties acknowledge and agree that this Settlement Agreement settles and the parties hereby release all claims and causes of action which were or could have been asserted by either party on its own behalf or on behalf of its parents, subsidiaries, affiliates, successors, assigns, officers, directors, shareholders, agents, officials, and employees against the other party or its past and present parents, subsidiaries, affiliates, successors, assigns, officers, directors, shareholders, agents, officials, and employees with respect to their past compliance with their obligations under the Prior Franchises, as well as any other disputes between the parties with respect to the Cable System or the providing of Cable Services which have been raised prior to the date the ordinance authorizing this Settlement Agreement is adopted by the Board of Aldermen, except to the extent otherwise specifically provided in this Settlement Agreement. and reserve all rights as to all other claims and defenses.

4.3. This Settlement Agreement does not resolve and shall not affect the City's review of Grantee's March 1, 2001, rate filing, and the City reserves any rights it may have to order refunds and rate reductions or pursue other remedies with respect to that filing, to the extent consistent with and FCC regulations and other applicable law.

4.4. The settlement of open claims and disputes pursuant to this Settlement Agreement shall not affect any outstanding obligation of the Grantee with respect to payment of franchise fees in full as required by the Prior Franchises to the extent such obligation is not the subject of a separate settlement between the City and Grantee or expressly settled herein.

5. PAYMENTS BY THE GRANTEE

5.1. The Grantee shall provide a grant totaling \$75,000, to be used by the Access Channel Manager, in its discretion, for public and community access equipment and facilities (including, but not limited to, studio and portable production equipment, training equipment, editing equipment and program playback equipment, and PEG-related facilities construction or renovation). This grant shall be payable in three equal installments of \$25,000 each on March 1 of 2002, 2003, and 2004. The Grantee shall also provide a grant totaling \$325,000, to be used by the City's Communications Division for equipment and facilities (including, but not limited to, studio and portable production equipment, training equipment, editing equipment and program playback equipment, and related facilities construction or renovation). This grant shall be payable to the City in three equal installments of \$108,333 each on March 1 of 2002, 2003, and 2004.

5.2. The Grantee shall provide additional grants to the Access Channel Manager in the amount of \$2,000 on the first business day of each calendar month, to be used for purposes of studio rent and overhead. These grants shall be in year 2001 dollars, adjusted for inflation annually on the anniversary date of the Franchise Agreement pursuant to the most recent Consumer Price Index figures then available.

5.3. The Grantee shall provide additional grants to the Public Access Channel Manager. These grants shall be paid to the Public Access Channel Manager on the first business day of each calendar month. These grants shall be in the amount of \$258,000 each year (\$21,500 each month) in year 2001 dollars, adjusted for inflation annually on the anniversary date of the Franchise Agreement pursuant to the most recent Consumer Price Index figures then available.

5.4. The inflation adjustments specified in Sections 5.2 and 5.3 (to the extent they exceed the base amounts of \$2,000 and \$258,000 specified in those Sections) are subject to pass-through to subscribers and line itemization on subscriber bills pursuant to Federal Communications Commission regulations and other applicable federal law.

5.5. Title to any equipment purchased with the grants required under Section 5 shall be held by the Access Channel Manager, but shall be reassigned if the City designates a new Access Channel Manager pursuant to the Franchise Agreement.

6. INSTITUTIONAL NETWORK

6.1. Intent. The intent of this Section of the Settlement Agreement is to require design, construction and maintenance of an Institutional Network consisting of two elements: (1) direct dedicated fiber links (the "Fiber Network") and (2) cable modem connections using capacity dedicated throughout the Grantee's Cable System (the "Cable Modem Network") as further described herein. For purposes of this Settlement Agreement, the Fiber Network and Cable Modem Network will be referred to collectively as the "Institutional Network."

6.2. The Work. The Fiber Network shall consist of a high-capacity, broadband, general-purpose communications network, employing modern broadband digital switching technology. The Cable Modem Network shall consist of a cable modem private network as described herein. The Institutional Network shall be capable of supporting a wide range of voice, data and video interfaces.

6.2.1. Grantee shall be responsible for installing and maintaining all of the components on the Grantee's side of the Demarcation Point that are required to provide the functionalities described in Exhibit 1. Grantee shall not be responsible for components on the City's side of the Demarcation Point. Major components of the Fiber Network on the Grantee's side of the Demarcation Point include but are not limited to digital network adapters (switches), backbone fiber optic links, Fiber Network management platform, system operating software and customer service interface equipment. The Fiber Network shall support priority allocation. Grantee shall not be responsible for the use, operation or management of the Institutional Network by the City or any Authorized User, except to the extent of providing connectivity between Demarcation Points.

6.2.2. The Fiber Network deployment shall include premises network access equipment with uplinks supporting data rates of 10/100 Mbps Ethernet and/or 622 Mbps OC-12C ATM UNI interfaces with a minimum committed information rate ("CIR") as specified in Exhibit 1. The CIR between the sites and City Hall shall be scalable to the Transport Link Capacity indicated in Exhibit 1 at no cost to the City if additional interfaces are added as discussed in Section 6.2.4. The facilities are to be connected by fiber optic lines. Exhibit 1 contains a list of the fourteen (14) sites that will comprise the Fiber Network, along with designation of the number and type of interfaces, the minimum CIR, and the transport link capacity. In addition, there will be a CIR of 622 Mbps, less the nominal overhead required for operation of the network, dedicated to the City's use between each of the North hub, South hub and Central hub.

6.2.3. The Grantee will provide Cable Modem Network as follows:

6.2.3.1. The Grantee will dedicate a cable modem termination system (CMTS) for use for the Cable Modem Network. The CMTS will connect to a dedicated 6 MHz Channel, to be designated by the Grantee, in the downstream direction and to 3.2 MHz of dedicated contiguous upstream capacity, to be designated by the Grantee. The Grantee may change the dedicated channels to be so used as long as such change does not impair the functionality of the Cable Modem Network and the Grantee absorbs all costs of or resulting from such change.

6.2.3.2. The Grantee will install a modem at each user location in Exhibit 2, including installation of a cable drop if necessary. The City shall be responsible for configuring user equipment with an Ethernet network interface card and IP address. The Grantee shall test each modem installation to ensure that, in the upstream direction, carrier to noise exceed 25 dB and carrier to ingress exceed 25 dB; and, in the downstream direction, carrier to noise exceed 35 dB, and carrier to ingress exceed 35 dB.

6.2.3.3. Upon request of the City, Grantee shall move any cable modem to a new service location at the City's expense, based upon a mutually agreed upon reasonable cost for the move and any necessary reconfigurations. The Communications Commissioner shall be responsible for requesting moves of service.

6.2.3.4. The City will supply IP addresses for each modem.

6.2.3.5. The Grantee shall interconnect the CMTS to a port designated by the City at City Hall. The capacity of the City connection to the CMTS shall be 100 Mbps or greater. Between the CMTS and the port designated by the City, the Cable Modem Network traffic shall at all times be electronically separate from the Fiber Network and other networks, either by using separate fibers and network switches or by use of separate virtual local area networks (VLAN).

6.2.3.6. The cable modem private network shall be designed so that only modems authorized by the Grantee and City can use the cable frequencies assigned to the City. The City shall be responsible for any additional encryption or encoding it deems necessary for its signal security.

6.2.3.7. Grantee will provide to each Cable Modem Network site a minimum throughput of 500 Kbps downstream and 128 Kbps upstream. The Grantee shall meter capacity usage and provide reports to the City upon request.

6.2.3.8. Additional Cable Modem Network sites may be added at the City's request at the City's expense, subject to mutual agreement between the City and the Grantee as to the reasonable costs resulting from the addition of such sites, including but not limited to CMTS costs resulting from increasing the total number of cable modem sites.

6.2.4. Under this Settlement Agreement, Grantee shall supply the City with user interfaces as shown in Exhibit 1. In addition, upon request by the City and on a schedule reasonably agreed upon by the City and the Grantee, the following interfaces shall be made available by the Grantee either through use or modification of initially installed equipment or through modular upgrade of that equipment (hereafter, the "Upgrade Hardware"): 10/100/1000 Mbps Ethernet, DS1, DS3, circuit emulation DS1, OC-3C ATM UNI, and full-motion NTSC video with associated camera control for pan, tilt and zoom function. The City shall pay the expense for the Upgrade Hardware (other than initially installed equipment) and its installation, integration, and testing, based upon mutual agreement between the City and Grantee as to the reasonable costs of the Upgrade Hardware and its installation, integration, and testing, such reasonable costs to reflect the lowest price offered by Grantee to any other customer for such equipment, installation, integration or testing.

6.2.5. Changes in the Work during the construction period within the general scope of this Section 6, consisting of reasonable additions, deletions, revisions or any combination thereof, may be ordered only by written change orders, subject to mutual agreement where additional costs are reasonably expected to be incurred. If after such mutual agreement the City directs

Grantee to perform such changes, Grantee agrees to do so.

6.2.6. The City and Grantee may mutually agree to install additional Fiber Network or Cable Modem Network sites, or to replace a Cable Modem Network connection with a Fiber Network connection, at mutually agreed costs to be paid by the City.

6.3. Ownership and Management

6.3.1. Ownership of the Institutional Network facilities provided by the Grantee hereunder shall remain with the Grantee. Such facilities may also be used by the Grantee for other purposes, in its sole discretion, to the extent not inconsistent with the City's use as provided in this Settlement Agreement, subject to this Settlement Agreement. All right, title and interest in all facilities and associated equipment provided by the City shall at all times remain exclusively with the City.

6.3.2. Prior to initial activation of the Fiber Network, Grantee shall either (a) obtain written waivers of liens (in a form reasonably acceptable to the City) in the fibers for the Fiber Network from any person that has a lien on any part of the Fiber Network, or (b) grant the City a security interest in such fibers. Such waivers or security interest shall protect the City's right to continue using the Fiber Network pursuant to this Settlement Agreement.

6.3.3. Grantee shall operate, maintain and repair any components of the Institutional Network between Demarcation Points and is responsible for any components between Demarcation Points. The City shall be responsible for operation, maintenance and repair of any user premises equipment, such as switches, servers, routers, or other active components, required on the City's side of the Demarcation Point.

6.4. Construction.

6.4.1. Concurrent with the System Upgrade, Grantee shall construct the Institutional Network to the locations listed in Exhibit 1.

6.4.2. In addition, Grantee shall construct and maintain a fiber connection between the Communications Division, 4971 Oakland, and the Water Division, 1640 S. Kingshighway. Such connection shall consist of single-mode fibers, installed to industry standards, terminated and labeled using industry standard connectors in equipment closets at reasonable mutually agreed locations at each site. The cost of this connection may be passed through to subscribers to the extent permitted by FCC regulations only if the City is unable to provide Grantee with a technically feasible means of crossing the Burlington Northern tracks without undergrounding. The City shall be responsible for providing any electronics required to light or use this connection.

6.4.3. The City shall have access to inspect and observe the Work at all times from commencement of the Work through its completion, in accordance with applicable law. The Grantee shall take all reasonable steps to provide such access when requested, provided, however, that such access shall not unreasonably impede efforts of the Grantee, its subcontractors or others engaged in the Work.

6.4.4. Grantee will provide the City with a design and relevant engineering support documentation for review and acceptance by the City not later than one hundred eighty (180) days after the effective date of this Settlement Agreement. Documentation shall include but not be limited to a list of materials, network diagram, map of fiber routing, identification of any critical circuits that the City may have designated in advance in writing, project plan and timetable, list of information required from the City, responsibilities of the City in network operation, Grantee's procedures for repair of network problems, Grantee points of contact, problem escalation procedure, forms for documentation of problems, and procedures for tracking problems and complaints.

6.4.5. Grantee shall continuously maintain at its local office for the benefit of the City one record copy of the design and relevant engineering support documentation marked to record on a current basis changes, selections and modifications made during construction. Additionally, Grantee shall maintain at its local office for the City any maps, specifications, and other required submittals.

6.4.6. Following commencement of construction of a phase of the Institutional Network, every three months until that phase of the Institutional Network is completed, Grantee shall provide detailed written reports to the City on the Grantee's progress in constructing the Institutional Network and shall meet with the City to discuss such progress.

6.4.7. Within six months after the effective date of this Settlement Agreement, the City and Grantee shall jointly develop an acceptance test plan for the Institutional Network. The acceptance testing to determine completion of Institutional Network

construction shall be composed of two parts:

- (a) Physical inspection pursuant to Section 6.4.9;
- (b) End-to-end performance testing pursuant to Section 6.4.10.

6.4.8. Each of these inspections will lead to the initial operational testing of the network, develop the turnover documentation, and form a reference for future troubleshooting.

6.4.9. Physical Inspection. During the construction process, Grantee shall inspect the physical configuration of the Institutional Network to monitor conformance with the Institutional Network design and applicable law. Inspection of the cable runs and components will be made to maintain the integrity of the design, and Grantee shall keep records of such inspections. Should a change be required, written documentation shall be developed that outlines the reason for the change.

6.4.10. Performance Testing. Construction of the Institutional Network shall include the following procedures:

(i) Grantee shall notify the City in writing at least fifteen days in advance of completion of construction of each site identified in Exhibit 1. The notice shall include the date Grantee is prepared to conduct OTDR and power meter tests to demonstrate that the fiber connectivity meets specifications. If directed by the City, the test shall be conducted in the presence of the City's designated observer.

(ii) The City shall also have the option of conducting a physical inspection of the construction and connections to the site. This inspection shall be conducted no later than the date of the test in paragraph (i).

(iii) If the connections to the site pass the performance test required by paragraph (i) above, and the City does not inform Grantee in writing within ten days that the physical inspection discloses errors in construction or installation or fails to conform with the approved design, the site shall be deemed accepted. Acceptance of a test shall not be unreasonably withheld. If the City does not accept the site test, it shall provide a written explanation of the reasons it does not accept the test. Grantee shall promptly correct any deficiencies in the Work and retest that site.

6.4.11. In addition, as part of the acceptance testing, Grantee shall demonstrate that the combined networks used to transmit and receive signals are operating and meet the standards for the Institutional Network as agreed in the design and operations document in Section 6.4.4. If the testing shows that there is a problem with the internal wiring or equipment for a location that is not the Grantee's responsibility, Grantee will so notify the City and the sites.

6.4.12. If any Work is found to be defective or not in accordance with this Settlement Agreement after a portion of the Work has passed the performance test, Grantee shall correct it promptly upon receipt of written notice from the City. Grantee shall pay all costs and expenses associated with correcting such work, including any additional testing and inspections that may be required.

6.4.13. Grantee shall design and operate the portion of the Institutional Network on its side of the Demarcation Point so as to provide reasonable protection against security breaches on Grantee's side of the Demarcation Point, as measured by standard industry practice. The City network shall be isolated from other network traffic by use of VLAN or other equivalent technology.

6.5. Time Period.

6.5.1. Grantee shall complete Institutional Network construction, including all testing as specified in Section 6.4, and make the Institutional Network fully operational to all sites, within 34 months after the effective date of the Franchise Agreement.

6.5.2. The City's rights to use the Institutional Network as specified herein shall commence on the date the Settlement Agreement is effective, subject to the gradual construction of the Institutional Network concurrent with the System Upgrade as specified in Section 6.4.1, and shall continue throughout the term of this Settlement Agreement.

6.5.3. If the Grantee's Franchise terminates prior to the expiration date of the Franchise Agreement, the Grantee, or any successor in interest, shall continue meeting the Grantee's obligations as specified in this Settlement Agreement until such expiration date, and is hereby authorized by the City to do so.

6.6. Use.

6.6.1. So long as they comply with all material obligations under this Settlement Agreement, the City and any Authorized Users shall have the indefeasible right to use the Institutional Network pursuant to this Settlement Agreement.

6.6.2. The City, in its discretion, may permit the following entities to be Authorized Users:

- (a) the City, and any agency, department, division, or office thereof;
- (b) all political subdivisions of the State located within the external boundaries of the City, to the extent participation by these entities is useful for lawful City activities.

6.6.3. The City and Authorized Users may use the Institutional Network solely for noncommercial purposes, and neither the City nor any Authorized User shall resell access to the Institutional Network. Grantee may use any portion of the Institutional Network not used by the City or Authorized Users for its own purposes, in its sole discretion, subject to applicable law and compliance with its obligations under this Settlement Agreement, as long as such other use does not interfere with use by the City and Authorized Users.

6.6.4. The City shall retain sole and exclusive title to any cable installed by it on the City side of the Demarcation Point. Grantee shall also provide the City with 24-hour, 365-day access to each Demarcation Point for the purposes of maintaining the City's cable and splices.

6.6.5. The City may attach such devices to the Institutional Network on its side of the Demarcation Point as it deems appropriate, provided that such devices do not adversely affect the technical integrity of the Institutional Network. In particular, the City may, at its own expense, to establish connections between the Institutional Network and the Internet, the public switched telephone network, or other public or private networks, provide for connection to such networks by Authorized Users over the Institutional Network. The Grantee shall reasonably cooperate with the City in making any such connections.

6.6.6. There shall be no charge to the City or any other Authorized User for the construction, operation, maintenance, or use of the Institutional Network pursuant to this Settlement Agreement, except as may be expressly set forth in this Settlement Agreement.

6.7. Maintenance and Repair.

6.7.1. In meeting its obligations hereunder, Grantee shall use trained and qualified personnel, and comply with all applicable laws.

6.7.2. Grantee shall conduct reasonable testing of the Institutional Network, on a schedule as reasonably agreed to by the parties, to demonstrate continuing compliance with the requirements of this Section 6.

6.7.3. At any time that any portion of the Institutional Network for which Grantee is responsible is known to fall below the performance standards set forth herein but no Service Outage has occurred, Grantee shall begin action to restore operation to those standards within four hours and complete such action as soon as reasonably possible.

6.7.4. Grantee will provide technical support for the Institutional Network necessary to meet Grantee's obligations under this Settlement Agreement 24 hours a day, seven days a week. Such support will be provided through "on-call" technicians who are knowledgeable as to the Institutional Network, carry pagers, will respond to all pages within twenty minutes, and will address Service Outages within sixty minutes after being paged. A Service Outage will be corrected as soon as reasonably possible.

6.7.5. The Grantee shall be responsible for programming, operation and maintenance of the CMTS. The Grantee shall respond within two (2) hours to carry out repairs or troubleshooting, and the Grantee shall use best efforts to restore full functionality within four (4) hours.

6.7.6. Grantee shall set up mechanisms and procedures for all Authorized Users to quickly and easily report Institutional Network problems. These trouble or service calls shall be documented to demonstrate compliance with the requirements of this Settlement Agreement. Grantee shall provide monthly service call reports to the City, including a breakdown of reasons for and resolutions of problems, as well as call handling efficiency.

6.7.7. Notwithstanding the staffing, testing, equipment and response requirements set forth herein, Grantee shall provide in-house and/or contractor staff, spares and equipment backup, test and maintenance equipment, and take additional steps necessary to ensure that the Institutional Network can transmit signals reliably up to the following standards:

6.7.7.1. Grantee will provide Authorized Users the highest level of service, reliability, repair and maintenance consistent with industry standards.

6.7.7.2. Institutional Network paths carrying critical circuits (as identified from time to time by the City) shall receive the highest priority in Grantee's Institutional Network repair program.

6.7.7.3. Institutional Network reliability for all channels and transmission links between any two Demarcation Points, plus equipment for which Grantee is responsible at Authorized User premises, shall meet or exceed 99.8% for the Fiber Network and 98% for the Cable Modem Network. This shall be taken to mean that the total cumulative Service Outage time at any Institutional Network site attributable to a failure of that portion of the Institutional Network for which Grantee is responsible shall not exceed 17.5 hours over a period of one year for the Fiber Network and 175.2 hours over a period of one year for the Cable Modem Network. *Force majeure* conditions, as defined herein, or service Outages for normal maintenance or testing that have been scheduled in advance by Grantee with the concurrence of the City shall not be included in this total cumulative Service Outage time.

6.7.7.4. On a password-protected Web site or other format mutually agreed by the City and the Grantee, Grantee shall provide the real-time live-link status and available throughput of each Institutional Network link for access by staff authorized by the City.

6.7.8. The City may inspect the Institutional Network, and require appropriate testing, to determine whether the Institutional Network is functioning properly or whether repairs have been properly completed. Grantee will cooperate with the City to allow the City access to facilities as necessary to maintain and monitor signal and fiber quality on the Institutional Network.

6.7.9. The City agrees to allow Grantee to co-locate its own Grantee-owned network equipment and software at City locations and spaces designated for the location of City Fiber Network equipment, provided that (a) such additional equipment or software does not appreciably expand the space taken up by the equipment and software used for Institutional Network purposes, and (b) such co-located equipment and software shall not interfere with or impair the City's use of the Institutional Network pursuant to this Settlement Agreement. Grantee will have reasonable access to and use of such locations as necessary to enable Grantee to operate, maintain, manage and repair its equipment and software located on City premises, provided such access does not interfere with City operations. The insurance requirements specified in Section 6.9 of this Settlement Agreement shall extend to this equipment and Grantee's access thereto, and Grantee shall indemnify the City as provided in Section 6.9 of this Settlement Agreement against any liability, claims, damages, losses and expenses, including attorney's fees, arising out of or resulting from the presence or use of such equipment at City locations and spaces or from the Grantee's access thereto, including but not limited to any third-party claims based on the City's permitting such co-location.

6.8. *Performance and Warranty.*

6.8.1. Grantee shall perform the Work strictly in accordance with this Settlement Agreement.

6.8.2. Grantee shall comply with all lawful requirements applicable to the Work and shall give and maintain any and all notices required by applicable law pertaining to the Work.

6.8.3. Grantee shall supervise and direct the Work, using the Grantee's best skill and attention. Grantee shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under this Settlement Agreement, except to the extent otherwise specifically provided in this Settlement Agreement or the Franchise.

6.8.4. If Grantee performs any of the Work knowing it involves a recognized error, inconsistency or omission in this Settlement Agreement without notice to and approval of the City, Grantee shall bear responsibility for such performance and shall bear the cost of correction.

6.8.5. Grantee warrants to the City that all labor furnished to progress the Work under the Settlement Agreement will be competent to perform the tasks undertaken, that the product of such labor will be free from defects not inherent in the quality required or permitted, that the Work will conform with requirements of this Settlement Agreement, that the materials and equipment

furnished under the Settlement Agreement will be of good quality and new unless otherwise specifically required or permitted by this Settlement Agreement. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. Grantee's warranty excludes remedy for damage or defect caused by the City, modifications or maintenance or abuse not executed by Grantee or its authorized agents, improper operation by the City, or normal wear and tear under normal usage.

6.9. Insurance, Indemnity, and Bond

6.9.1. Grantee shall maintain all insurance and bonds required under the Franchise Agreement. Bonds required under the Franchise Agreement shall be security for performance of obligations under this Settlement Agreement; just as though the bonds set forth therein had been required hereunder.

6.9.2. To the fullest extent permitted by law, Grantee shall protect, defend, indemnify and hold harmless the City from and against liability, claims, damages, losses and expenses, including reasonable attorney's fees, arising out of or resulting from performance of the Work, provided that such liability, claims, damages, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury or to destruction of tangible property (other than the Work itself) including loss of use resulting therefrom, but only to the extent caused in whole or part by negligent acts or omissions of Grantee, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such liability, claim, damage, loss or expense is caused in part by a party indemnified hereunder. Notwithstanding anything herein to the contrary, if any such injuries to persons or property arising out of the performance of this Settlement Agreement are caused by or result from the concurrent negligence of Grantee or its agents or employees, and of the City and its agents or employees, Grantee's indemnification obligations, if any, apply only to the extent of the negligence of Grantee, its agents or employees.

6.9.3. Grantee's obligation under this section shall include indemnification for claims made by the Grantee's own employees or agents. In the event the City incurs any judgment, award and/or cost arising therefrom including reasonable attorneys' fees to enforce the provisions of this Settlement Agreement, all such fees, expenses, and costs shall be recoverable from Grantee.

6.9.4. In claims against any person or entity indemnified hereunder made by an employee of the Grantee, by a subcontractor, by anyone directly or indirectly employed by them or by anyone for whose acts they may be liable, the indemnification obligation hereunder shall not be limited by a limitation on any amount or type of damages, compensation or benefits payable by or for the Grantee or a subcontractor under Workers Compensation Acts, Disability Benefit Acts and other employee benefits acts.

6.10. Subcontractors.

6.10.1. Grantee shall be responsible to the City for any and all acts or omissions of the Grantee, its employees, subcontractors and others engaged in the Work on behalf of Grantee as though the Work had been performed by Grantee itself.

6.10.2. All subcontractors used by Grantee for purposes of this Settlement Agreement shall be licensed to do business in the City pursuant to applicable law. Grantee shall not enter into a subcontract with a proposed subcontractor with reference to whom the City has made timely and reasonable objection. Grantee shall not be required to subcontract with any party to whom Grantee has objection.

6.10.3. All subcontracts shall afford Grantee rights against the subcontractor which correspond to those rights afforded to the City against the Grantee herein.

6.11. Other Provisions.

6.11.1. Grantee shall keep Work sites reasonably clean during performance of the Work. Upon final completion of Work, Grantee shall clean the site and move all waste, together with all of Grantee's property therefrom.

7. FRANCHISE FEE DISPUTE

Grantee and City hereby resolve all disputes and disagreements regarding Grantee's franchise fee obligations for the period January 1, 1995 through December 31, 1997 and all issues relating to penalties and interest related thereto. To that end Grantee will pay, upon written instruction from the City, to a designee of the City, \$150,000 on or before January 4, 2002, and an additional \$150,000 on or before July 1, 2002, as financial support of a legitimate independent job skills/internship training program for telecommunications sanctioned by the City, which may be overseen by the United States Department of Labor or some other

appropriate monitor, or, in the event such instruction from the City is not received on or before December 15, 2001, Grantee will make such payments on such dates to the City. Such payment shall constitute complete satisfaction and settlement of all disputes regarding franchise fee amounts due for the period January 1, 1995 through December 31, 1997, and any penalties and interest related thereto. This obligation is in the nature of a settlement and none of the amounts paid pursuant to this Section 7 may be passed through to subscribers. The City will join with Grantee in appropriate public promotion and appreciation of Grantee's commitment under this Section 7 to the training program.

8. RATES AND FRANCHISE FEES

8.1. Except as expressly set forth in this Settlement Agreement, no costs, payments, or other consideration provided pursuant to this Settlement Agreement shall be passed through to subscribers in any form, itemized on subscriber bills, or for rate regulation purposes treated as external costs subject to pass-through, nor have any other adverse effect on subscriber rates. The Grantee agrees that it will not raise any claim or defense to the contrary.

8.2. No costs, payments, or other consideration provided pursuant to this Settlement Agreement shall be construed to constitute a franchise fee, or to be subject to any limitations on Franchise fees under applicable law or in the Franchise Agreement. The Grantee agrees that it will not raise any claim or defense to the contrary.

9. ENFORCEMENT

Upon violation of this Settlement Agreement, any party may proceed to protect and enforce its rights by mandamus or other suit, action or proceeding at law or in equity, for damages, injunctive relief, or any other lawful relief, including but not limited to an action for specific performance of any provision of this Settlement Agreement.

10. REPRESENTATIONS AND WARRANTIES

Grantee hereby represents and warrants that at the time of the execution of this Settlement Agreement: (a) it is a corporation or partnership duly organized, validly existing and in good standing under the laws of the jurisdiction in which it is organized; (b) the Grantee's signatories to this document are authorized to execute this Settlement Agreement on behalf of the Grantee; and (c) the execution and delivery of, and its performance under, this Settlement Agreement are within Grantee's power and authority without the joinder or consent of any other party and have been duly authorized by all requisite corporate or partnership action on the part of Grantee and are not in contravention of Grantee's charter, bylaws, and/or other organizational documents.

11. MISCELLANEOUS PROVISIONS.

11.1. Successors and Assigns: This Settlement Agreement shall be effective and binding upon any successors or assignees, with respect to the Cable System, of the Grantee.

11.2. Voluntary Agreement: This Settlement Agreement is freely and voluntarily given by each party, without any duress or coercion, and after each party has consulted with its counsel. Each party has carefully and completely read all of the terms and provisions of this Settlement Agreement.

11.3. Force Majeure and Other Delays. Grantee shall not be held in default under, or in noncompliance with, the provisions of this Agreement, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults were caused by extraordinary circumstances reasonably beyond the ability of the Grantee to control. Grantee shall not be held in default under, or in noncompliance with, the provisions of this Settlement Agreement, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults were caused by work delays required by waiting for utility providers to service or monitor their utility poles to which the Grantee's Cable System is attached, provided, however, that the Grantee shall use its best efforts to prevent such delays.

11.4. Severability: If any term, condition, or provision of this Settlement Agreement shall, to any extent, be held to be invalid, preempted, or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective. In the event of a change in applicable law so that the provision which had been held invalid is no longer invalid, said provision shall thereupon return to full force and effect without further action by the City and shall thereafter be binding on the Franchisee and the City. If the terms of this Settlement Agreement are materially altered due to changes in governing law, then the parties shall negotiate in good faith to reconstitute this Settlement Agreement in a way consistent with then-applicable law in a form that, to the maximum extent possible, is consistent with the original intent of Grantee and the City and preserves the benefits bargained for by each party.

11.5. Counterparts: This Settlement Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all parties shall not have signed the same counterpart.

11.6. Governing Law: This Settlement Agreement shall be governed in all respects by the law of the State of Missouri.

11.7. Captions and References: The captions and headings of sections throughout this Settlement Agreement are intended solely to facilitate reading and reference to the sections and provisions of this Settlement Agreement. Such captions shall not affect the meaning or interpretation of this Settlement Agreement.

AGREED TO THIS ____ DAY OF _____, _____.

CITY OF ST. LOUIS, MISSOURI,
a municipal corporation of Missouri

By: _____

Larry D. Stone
Communications Commissioner

By: _____

Darlene Green
Comptroller

APPROVED AS TO FORM:

City Counselor

ATTEST:

(Seal)

City Register

ST. LOUIS TELE-COMMUNICATIONS, INC.

By: _____

[name & title of signatory]

ATTEST:

[Corporate secretary or other appropriate person]

EXHIBIT 1

List of Fiber Network Sites

Site	Address	Number of Interfaces	Type	Minimum Committed Information Rate* (Mbps)	Transport Link Capacity* (Mbps)
City Hall	1200 Market	1	OC-12C	600	622
Personnel	1300 Convention Plaza	8	Ethernet	100	155
Police Area #3	4014 Union	8	Ethernet	100	155
Medium Security	7600 Hall Street	8	Ethernet	100	155
Health Dept	634 N. Grand	8	Ethernet	100	155
Fire Headquarters	1421 N. Jefferson	8	Ethernet	100	155
Parks	5600 Clayton	8	Ethernet	100	155
Comm. Div	4971 Oakland	8	Ethernet	100	155
Police Area #2	991 N. Jefferson	8	Ethernet	100	155
New Jail**	11 th and Walnut	8	Ethernet	100	155
Water Division	1640 S. Kingshighway	8	Ethernet	100	155
Police Area #1	3167 Sublette	8	Ethernet	100	155
South Refuse and Animal Regulation	4100 S. 1 st	8	Ethernet	100	155
Street Dept	1900 Hampton	8	Ethernet	100	155

*Less the nominal overhead required for operation of the network.

**Service to this site will not begin until completion of the System Upgrade for the Downtown Area, unless existing conduit under Tucker Blvd. can be used to permit completion during the non-Downtown Area System Upgrade.

EXHIBIT 2

List of Cable Modem Network Sites

Community Centers	
Buder	2900 Hickory
Cherokee	3200 South Jefferson
Dunn-Marquette	4025 Minnesota
Soulard	1614 South Eight
12th & Park	1410 South Tucker
Parkside	3126 Alfred
West End	5250 Enright / 724 Union
Wohl	1515 N. Kingshighway @MLK
Tandy	4206 Kennerly
Gamble	2907 Gamble
Neighborhood Stabilization Offices	
Shaw / NSO	5329 Columbia Room #123

McKinley / NSO	2156 Russell	3rd Fl Northwest
Stevens/NSO	1033 Whittier	Room #118
Ford/ NSO	5599 Ridge	Room # 108
Health Division Satellite Facilities		
Vector/ Lead	1212 North Thirteenth	
Courtney Center	1717 Biddle	
F. Hill Center	5541 Riverview	
Homer G. Phillips Center	2425 Whittier	
Starkloff Center	2220 Lemp	
Miscellaneous		
Family Court Juvenile Court	3287 Enright 920 N.Vandeventer	
EMS	2634 Hampton	
Water/ ESD	10450 Riverview	
North Refuse / ESD	100 East Grand	
Compton Hill Reservoir	Grand & Russell	
Towing Services	7410 Hall Street	
Fleet Services (Police)	3919 Laclede	
Family Services	3545 Lindell	
Housing Authority	4100 Lindell	
Air Pollution/ Forestry	1415 North 13 th	
Election Board*	208 South Tucker	
CDA / SLDC*	1015 Locust	
Fireman's Retirement	1601 South Broadway	
Fire Engine Houses		
# 10	District 1	4161 Kennerly 63113
# 17		3238 Martin L. King 63115
# 9		814 La Beaume 63102
# 8		1501 Salisbury 63107
# 5		2123 North Market 63106
# 7	District 2	2600 LaSalle 63104
# 11		2224 South Seventh 63104
# 1		2910 South Jefferson 63118

# 2		314 South Tucker	63102
# 31	District 3	4408 Donovan	63109
# 36		5000 S. Kingshighway	631
# 35		5450 Arsenal	63139
# 22		1229 McCausland	63117
# 6		5749 Manchester	63110
# 14	District 4	3523 Magnolia	63118
# 23		6500 Michigan	63111
# 19		6624 Morganford	63116
# 34		8227 South Broadway	63111
# 32		3500 South Grand	63118
# 4		4425 South Compton	63111
# 29	District 5	200 South Vandeventer	63108
# 13		1400 Shawnut Place	63112
# 30		521 DeBaliviere	63112
# 28		4810 Enright	63108
# 26		4520 Margareta	63115
# 33		8300 North Broadway	63147
# 24		5245 Natural Bridge	63115
# 27		5435 Patridge	63120
# 20		5600 Prescott	63147
# 12		5214 West Florissant	63115

¹If there is existing usable conduit of a suitable size from the demarcation point of the building to within 10 feet of the existing cable plant.

*Service to this site will not begin until completion of the System Upgrade for the Downtown Area.

Approved: March 4, 2002