

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") is entered into between MCIMetro Access Transmission Services, LLC, a Delaware corporation headquartered at 2400 N. Glenville Dr., Richardson, TX, 75082 ("MCIMetro") and the City of Portland, Oregon, ("the City"), a duly incorporated Oregon municipality (together "the Parties").

WHEREAS, the City Council granted a franchise to MCIMetro to offer telecommunications services throughout the City using the public right-of-way; and,

WHEREAS, the City's Office of Cable Communications and Franchise Management undertook a routine financial review of MCIMetro's franchise fee payments to the City for the period January 1, 2006 to June 30, 2010, which concluded that the franchise fee payments were not correctly calculated by not including some revenues in franchise fee calculations, most notably revenues from network access surcharges and carrier access charges; and,

WHEREAS, MCIMetro does not dispute the determination of this financial review; and

WHEREAS, subsequently, representatives from MCIMetro and City staff negotiated a general settlement on the determinations under the financial review; and,

WHEREAS, the Parties now wish to settle these various issues between them;

NOW THEREFORE, in consideration of the mutual promises and other valuable consideration exchanged herein, the parties agree as follows:

1. Within fifteen (15) days of full execution of this Agreement by the City (which execution is authorized only by ordinance approved by the City Council), MCIMetro Access Transmission Services, LLC shall pay to the City \$237,962.15 (Two Hundred Thirty Seven Thousand Nine Hundred Sixty Two Dollars and Fifteen Cents), which includes \$205,434.26 in principal and \$32,527.89 in interest.

2. The City hereby releases MCIMetro Access Transmission Services, LLC from any and all claims for franchise fees, interest, or penalties due or claimed to be due for the period January 1, 2006 up to and including June 30, 2010. Except as expressly provided in this Agreement, the City otherwise waives any claim to past due franchise fees, interest, or penalties for franchise fee payments due from January 1, 2006 up to and including June 30, 2010.

3. The releases described in paragraph 2 shall be effective upon the occurrence of the following conditions:

a. City's receipt of the payment from MCIMetro Access Transmission Services, LLC provided for in Paragraph 1 above; and

b. MCIMetro Access Transmission Services, LLC agrees to include revenues from Network Access Surcharges and Carrier Access Charges in the franchise fee base for all future franchise fee payments; and

c. MCIMetro Access Transmission Services, LLC agrees to submit a quarterly franchise fee report with its quarterly franchise fee payment that shows revenue derived in the City of Portland by charge group, and which revenues by charge group it includes and excludes from the franchise fee base.

4. The undersigned represent that they have carefully read the foregoing Agreement, have carefully considered its contents after consultation with legal counsel, have the authority to execute the Agreement and sign the same as duly authorized representatives of their respective party.

5. Miscellaneous.

a. The terms set forth in this Agreement are contractual and not merely recitals. There is no other agreement, promise or inducement for this Agreement other than as expressed in this Agreement. This Agreement contains the full and entire understanding of the parties. There are

no other representations, warranties, statements or agreements between the parties except as expressly set forth in this Agreement.

b. This Agreement shall be freely assignable and transferable.

c. Neither party shall be relieved of its respective obligations to comply with any of the terms and conditions of this Agreement by reason of any failure of the other party to require prompt compliance, nor does either party waive or limit any of its rights under this Agreement by reason of such failure or neglect.

d. Any litigation arising under or regarding this Agreement shall occur, if in the state courts, in the Multnomah County Court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the District of Oregon, Portland Division.

e. This Agreement shall be construed according to the law of the State of Oregon, even if Oregon's choice of law rules otherwise would require application of the law of a different jurisdiction.

f. This Agreement may not be amended, except in writing and signed by authorized representatives of both parties.

IN WITNESS WHEREOF, the parties have set their hands the date and year of the last signature affixed hereto.

City of Portland

MCIMetro Access Transmission Services, LLC

By: _____
Commissioner Amanda Fritz

By: _____

Title: Commissioner of Public Utilities

Title: _____

Date: _____

Date: _____

By: _____
City Auditor LaVonne Griffen-Valade

Date: _____

Approved as to Form:

City Attorney