

AN ORDINANCE  
BY



01-0-0317

**AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE AN INTERIM FRANCHISE AGREEMENT WITH TIME WARNER TELECOM OF GEORGIA, L. P., A DELAWARE LIMITED PARTNERSHIP, FOR THE PROVISION OF TELECOMMUNICATIONS SERVICES USING PUBLIC RIGHT-OF-WAY; AND FOR OTHER PURPOSES**

**WHEREAS**, Time Warner Telecom of Georgia, L. P., has applied for a franchise to provide telecommunications services on, under, over and through the public right-of-way of the City; and

**WHEREAS**, the City intends to enact a comprehensive ordinance governing such use of its right-of-way, pursuant to the federal 1996 Telecommunications act, but wishes to provide access to its right-of-way, on an interim and nondiscriminatory basis; and

**WHEREAS**, Time Warner Telecom of Georgia, L. P., has negotiated an interim franchise agreement with the City which provides such access and preserves the rights of the City until such time as a comprehensive ordinance is enacted;

**NOW, THEREFORE THE CITY COUNCIL OF THE CITY OF ATLANTA GEORGIA HEREBY ORDAINS:**

**SECTION 1:** That the Mayor be and is hereby authorized to execute an interim franchise agreement in substantially similar form as attached, with Time Warner Telecom of Georgia, L. P., for use of the public right-of-way for telecommunications purposes.

**SECTION 2:** That such interim franchise agreement shall expire and terminate on March 31, 2001.

**SECTION 3:** That Time Warner Telecom of Georgia, L. P., shall pay a franchise fee of three percent (3%) of gross revenues.

**SECTION 4:** That the City Attorney shall prepare a franchise agreement document, which shall be approved by the city Attorney as to form.

**SECTION 5:** That said franchise agreement shall not be binding on the City until approved by the Mayor and delivered to Time Warner Telecom of Georgia, L. P.

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**INTERIM FRANCHISE AGREEMENT**

**BETWEEN**

**THE CITY OF ATLANTA, GEORGIA**

**AND**

**TIME WARNER TELECOM OF GEORGIA, L. P.**

**Dated:** \_\_\_\_\_

## INTERIM FRANCHISE AGREEMENT

This **AGREEMENT**, executed as of the \_\_\_\_\_ day of \_\_\_\_\_, 2001 (the “Effective Date”), by and between **THE CITY OF ATLANTA, GEORGIA** (hereinafter referred to as the “City”), and **Time Warner Telecom of Georgia, L. P.**, a Delaware corporation, duly organized and validly existing under the laws of the State of Georgia, whose principal place of business is located at 10 Glenlake Parkway, Suite 150, Atlanta, GA 30328 (hereinafter referred to as the “Grantee”).

### W I T N E S S E T H:

**WHEREAS**, the City has the authority pursuant to applicable State and local laws to grant franchises and other authorizations for the use and occupancy of the Streets (as hereinafter defined);

**WHEREAS**, consistent with applicable law, the City desires to manage the Streets and obtain fair and reasonable compensation from Telecommunications Providers (as hereinafter defined) for the use of the Streets on a non-discriminatory basis;

**WHEREAS**, the Grantee desires to obtain a franchise to use and occupy the Streets for the purpose of constructing and maintaining a Telecommunications System (as hereinafter defined) and providing Telecommunications Services (as hereinafter defined) on a competitively neutral and nondiscriminatory basis in accordance with the Federal Telecommunications Act of 1996, 47 U.S.C. § 151 et. seq.;

**WHEREAS**, the City intends to exercise, to the fullest extent permitted by applicable law, its authority with respect to the regulation of the occupation and use of the Streets in connection with the provision of Telecommunication Services;

**WHEREAS**, the City is considering the adoption of a comprehensive telecommunications ordinance that would, consistent with applicable laws, establish the procedures and requirements for granting franchises for the use of the Streets in connection with the provision of Telecommunications Services (the "Telecommunications Ordinance");

**WHEREAS**, the Grantee has requested that the City grant it a telecommunications franchise prior to adoption of the Telecommunications Ordinance to permit the Grantee to proceed with the construction of a Telecommunications System;

**WHEREAS**, in response to the Grantee's request, the City has agreed to grant a telecommunications franchise to the Grantee and enter into this Agreement prior to adoption of the Telecommunications Ordinance; and

**WHEREAS**, the Grantee understands and acknowledges that if the City adopts the Telecommunications Ordinance, the Grantee shall be subject to the requirements of such ordinance, which requirements shall be in addition to the terms and conditions of this Agreement;

**NOW, THEREFORE**, in consideration of the foregoing clauses, which clauses are hereby made a part of this Agreement, the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby covenant and agree as follows:

## **ARTICLE 1.**

### **DEFINITIONS**

1.1. Definitions. The following terms, as used in this Agreement, have the following meanings, with all terms defined in this Article 1 in the singular to have the correlative meaning when used in the plural and vice versa:

1.1.01. “Affiliated Person” means each Person who falls into one or more of the following categories: (i) each Person having, directly or indirectly, a Controlling Interest in the Grantee; (ii) each Person in which the Grantee has, directly or indirectly, a Controlling Interest; (iii) each officer, director, joint venturer or joint venture partner of the Grantee; and (iv) each Person, directly or indirectly, controlling, controlled by, or under common Control with, the Grantee; provided that “Affiliated Person” shall in no event mean the City or any creditor of the Grantee solely by virtue of its status as a creditor and that is not otherwise an Affiliated Person by reason of owning a Controlling Interest in, being owned by, or being under common ownership, common management or common Control with, the Grantee.

1.1.02. “Agreement” means this Interim Franchise Agreement, together with all Appendices attached hereto and all amendments or modifications thereto.

1.1.03. “Cable Services” means “cable services” as defined in the Communications Act of 1934, as amended by the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996 and as may be further amended from time to time (the “Cable Act”). In the event that “cable services” is no longer defined in the Cable Act or the definition in the Cable Act otherwise becomes inapplicable, “Cable Services” shall mean “cable services” as

defined in the Cable Act immediately prior to such term no longer being defined in the Cable Act or such definition otherwise becoming inapplicable.

1.1.04. "City" means the City of Atlanta, Georgia.

1.1.05. "Code" means the Code of Ordinances of the City, as amended from time to time.

1.1.06. "Control" or "Controlling Interest" means actual working control in whatever manner exercised, including, without limitation, working control through ownership, management, debt instruments or negative control, as the case may be, of the Grantee or the Equipment in the Streets. A rebuttable presumption of the existence of Control or a Controlling Interest shall arise from the beneficial ownership, directly or indirectly, by any Person, or group of Persons acting in concert, of more than twenty percent (20%) of any Person (which person or group of Persons is hereinafter referred to as "Controlling Person). "Control" or "Controlling Interest" as used herein may be held simultaneously by more than one Person or group of persons.

1.1.07. "Customer" means any Person who uses the Telecommunications Services of the Grantee in the corporate limits of the City.

1.1.08. "Effective Date" means the date this Agreement was executed as set forth in the opening clause of this Agreement.

1.1.09. "Equipment" means any and all transmission facilities, poles, wires, electrical conductors, conduits, ducts, subways, manholes, fixtures, appliances and appurtenances that are used in connection with the provision of Telecommunications Services.

1.1.10. "FCC" means the Federal Communications Commission.

1.1.11. “Franchise” has the meaning set forth in Section 2.1 of this Agreement.

1.1.12. “Franchise Fee” has the meaning set forth in Section 4.1 of this Agreement.

1.1.13. “GPSC” means the Georgia Public Service Commission.

1.1.14. “Grantee” means Time Warner Telecom of Georgia, L. P.

1.1.15. “Gross Revenues” means all revenue, as determined in accordance with generally accepted accounting principles and applicable law, that is received, directly or indirectly, by the Grantee and any Affiliated Person from or in connection with the provision of Telecommunication Services over the Grantee’s Telecommunications System in the established corporate limits of the City; provided that, Gross Revenue shall not include any franchise fees or any sales or excise taxes collected for direct pass-through to any entity, other than an Affiliated Person, including any local, state or federal government.

1.1.16. “Performance Bond/Security Fund” has the meaning set forth in Section 9.1 of this Agreement.

1.1.17. “Person” means any individual or any association, firm, partnership, joint venture, corporation or other legally recognized entity, whether for profit or not for profit, but shall not mean the City.

1.1.18. “SEC” means the Securities and Exchange Commission.

1.1.19. “Streets” means the surface of, as well as the spaces above and below, any and all paved or unpaved public roads, as defined in Ga. Code Ann. § 32-1-3(24) (1998), public alleyways and boulevards and other public rights-of-way within or belonging to the City.

1.1.20. “Telecommunications” means the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.

1.1.21. “Telecommunications Ordinance” has the meaning set forth in the fifth whereas clause of the preamble to this Agreement.

1.1.22. “Telecommunications Provider” means any Person who:

- (1) owns, constructs, operates or maintains Equipment in the Streets used to provide Telecommunications Services, regardless of whether such Telecommunications Services originate or terminate in the City; or
- (2) provides Telecommunications Services that originate or terminate in the City by means of: (i) specifically identifiable Equipment in the Streets, which Equipment is owned by such Person or made available to such Person under a lease or any other arrangement for a period longer than one hundred twenty 120 days; or (ii) Equipment in the Streets if the use of such Equipment is continuing and substantial, and the City has determined that it is necessary and appropriate to impose the requirements of the Telecommunications Ordinance in order to preserve the application of the Telecommunications Ordinance on a competitively neutral and nondiscriminatory basis consistent with applicable law.

1.1.23. "Telecommunications Services" means the offering of Telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used, provided, however, that the term "Telecommunications Services" shall not include Cable Services.

1.1.24. "Telecommunications System" means the plant, Equipment, real property (including interests in real property), personal property (tangible and intangible), cable(s), wire(s), optical fibers, amplifier(s), antenna, and all other electronic devices, equipment and facilities used to provide Telecommunications Services to, from, within or across any part of the City.

1.1.25. "Term" has the meaning set forth in Section 2.2 of this Agreement.

## **ARTICLE 2.**

### **GRANT OF AUTHORITY**

2.1. Grant of Franchise. The City hereby grants the Grantee, subject to the conditions of this Agreement, a franchise (the "Franchise") to occupy and use the Streets to construct, install, operate, upgrade, repair, maintain and remove Equipment used to provide Telecommunications Services upon, along, over and under the Streets.

2.2. Term of Franchise. The Franchise commences on the Effective Date and expires on March 31, 2001, unless the Franchise is renewed as provided in Section 2.4, or terminated as provided in Section 11.1, of this Agreement. The period of time that the Franchise is in effect is referred to as the "Term."

2.3. Nonexclusive Franchise. Nothing in this Agreement affects the right of the City to grant any other Person a franchise to occupy and use the Streets to construct, install, operate,

upgrade, repair, maintain and remove Equipment used to provide any Telecommunications Services, or to engage in any other activity in the Streets. Nothing in this Agreement affects the right of the City to occupy and use the Streets to construct, install, operate, upgrade, repair, maintain and remove Equipment used to provide any Telecommunications Services, or to engage in any other activity in the Streets, provided such occupancy and use or other activity does not interfere unreasonably with the rights granted to Grantee herein.

2.4. Renewal. The Grantee may submit a written petition to renew the Franchise, not later than six (6) months nor more than twelve (12) months prior to the end of the Term. The City is not obligated to renew the Franchise, and the Grantee has no right to renewal of the Franchise.

2.5. Public Works and Public Improvements. Nothing in this Agreement abrogates the right of the City to perform any public works or public improvements. If Equipment interferes with the construction, installation, operation, maintenance, repair or removal of such public works or public improvements, the Grantee, at its own expense, shall, promptly after receipt of notice of such interference from the City, protect, alter or relocate such Equipment, as directed by the City. If the Grantee refuses or neglects to so protect, alter or relocate said Equipment within a reasonable time, the City may break through, remove, alter or relocate the Equipment without any liability to the Grantee, and the Grantee shall pay to the City the reasonable costs incurred in connection with such breaking through, removal, alteration or relocation. The City and its officers, employees, agents, attorneys, consultants and independent contractors shall not have any liability to the Grantee for any damage as a result of, or in connection with, such public works or public improvements.

2.6. Regulatory Approvals. The Grantee shall obtain all necessary approvals, licenses, permits or other authorizations from the appropriate federal, state and local authorities to offer Telecommunications Services through the Equipment, and shall, upon the City's request, submit evidence of such approvals to the City.

2.7. Street Closings. Nothing in this Agreement waives or releases the rights of the City in and to the Streets. If all or part of the Streets are eliminated, closed or abandoned, the Franchise shall cease with respect to such Streets upon the effective date of the final action of the City in connection therewith. If the elimination, closing or abandonment of all or part of the Streets is undertaken for the benefit of any private Person, the City shall make reasonable efforts to condition its consent to the elimination, closing or abandonment on the agreement of the private Person to (i) grant the Grantee the right to continue to occupy and use the Streets, or (ii) reimburse the Grantee for the reasonable costs of relocating the affected Equipment.

2.8. Lease of Excess Capacity. The City may request that the Grantee lease any excess capacity contained in its Telecommunications System to one or more Non-Affiliated Persons. Upon receipt of any such request from the City, the Grantee will review the capacity then available on the system and the Grantee's future plans for its use. Should the Grantee determine that (i) excess capacity then exists, (ii) there are no plans for immediate or future use of such excess capacity, and (iii) the proposed use of said excess capacity by such Non-Affiliated Person is feasible, then the Grantee may lease the excess capacity in accordance with the City's request; provided such an arrangement will not interfere with the operation of the Grantee's Telecommunication System in the manner intended by the Grantee; and provided further, that said Non-Affiliated Person(s) agree(s) to compensate the Grantee for the reasonable value thereof in accordance with Section 138-131(b) of the Code.

### **ARTICLE 3.**

#### **SERVICES**

3.1. No Discrimination. The Grantee shall not discriminate in the provision of Telecommunications Services on the basis of race, creed, color, national origin, sex, age, handicap, marital status or sexual orientation.

3.2. Uses of Equipment. On May 1 of each year throughout the Term, the Grantee shall provide annually to the City a detailed description of the uses of the Equipment and the categories of users during the previous twelve (12) months. The description shall be in a form and provide sufficient detail to allow the City to identify the categories of uses over, on and through the Equipment.

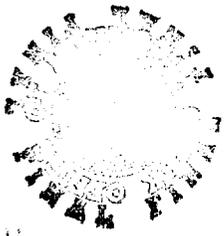
### **ARTICLE 4.**

#### **COMPENSATION AND OTHER PAYMENTS**

4.1. Franchise Fee. As compensation for the rights granted herein, the Grantee shall pay three percent (3%) of Gross Revenues to the City as a "Franchise Fee." The Grantee's obligation to pay the Franchise Fee shall commence on the Effective Date and continue throughout the Term. Franchise Fee payments shall be made quarterly on or before thirty (30) days after the quarters ended on the last day of each March, June, September and December throughout the Term. In the event the Term commences or expires on a day other than the first or last day of a calendar quarter, the Franchise Fee shall be prorated relative to the number of days in the quarter that the Franchise is in effect.

4.2. Franchise Application and Acceptance Fees. The City hereby acknowledges receipt of a non-refundable application fee of Five Hundred Dollars (\$500.00) upon receipt of

RCS# 2699  
3/05/01  
8:00 PM



Atlanta City Council

Regular Session

MULTIPLE

CU Items 3-8; Franchise Agreements for  
telecom. services usage of right-of-way  
FILE

Ø1-0-Ø180  
Ø1-0-Ø239  
Ø1-0-Ø315  
Ø1-0-Ø316  
Ø1-0-Ø317  
Ø1-R-Ø318

YEAS: 11  
NAYS: 0  
ABSTENTIONS: 0  
NOT VOTING: 2  
EXCUSED: 2  
ABSENT 1

Y McCarty	E Dorsey	Y Moore	Y Thomas
Y Starnes	Y Woolard	NV Martin	Y Emmons
Y Bond	Y Morris	B Maddox	E Alexander
Y Winslow	Y Muller	Y Boazman	NV Pitts

MULTIPLE

**LARGE ATTACHMENT:**

**DOCUMENT(S),**

**MANUAL(S)**

**OR**

**MAP(S)**

**NOT COPIED,**

**PULL ORIGINAL**

**FOR COPY OR TO VIEW**

01-0-0317

(Do Not Write Above This Line)

AN ORDINANCE

BY

*[Signature]*  
 AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE AN INTERIM FRANCHISE AGREEMENT WITH TIME WARNER TELECOM OF GEORGIA, L.P., A DELAWARE LIMITED PARTNERSHIP, FOR THE PROVISION OF TELECOMMUNICATIONS SERVICES USING PUBLIC RIGHT-OF-WAY; AND FOR OTHER PURPOSES.

FILED BY  
CITY COUNCIL

MAR 05 2001

- CONSENT REFER
- REGULAR REPORT REFER
- ADVERTISE & REFER
- 1st ADOPT 2nd READ & REFER
- PERSONAL PAPER REFER

Date Referred 2/19/01

Referred To: City Utilities

Date Referred

Referred To:

Date Referred

Referred To:

First Reading

Committee \_\_\_\_\_  
 Date \_\_\_\_\_  
 Chair \_\_\_\_\_  
 Referred to \_\_\_\_\_

Committee *City Utilities*  
 Date *2/27-01*  
 Chair *Glenn Muller*  
 Action: \_\_\_\_\_  
 Fav, Adv, Hold (see rev. side) \_\_\_\_\_  
 Other: \_\_\_\_\_  
 Members *[Signature]*  
 Refer To \_\_\_\_\_

Committee \_\_\_\_\_  
 Date \_\_\_\_\_  
 Chair \_\_\_\_\_  
 Action: \_\_\_\_\_  
 Fav, Adv, Hold (see rev. side) \_\_\_\_\_  
 Other: \_\_\_\_\_  
 Members \_\_\_\_\_  
 Refer To \_\_\_\_\_

Committee \_\_\_\_\_  
 Date \_\_\_\_\_  
 Chair \_\_\_\_\_  
 Action: \_\_\_\_\_  
 Fav, Adv, Hold (see rev. side) \_\_\_\_\_  
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Committee \_\_\_\_\_  
 Date \_\_\_\_\_  
 Chair \_\_\_\_\_  
 Action: \_\_\_\_\_  
 Fav, Adv, Hold (see rev. side) \_\_\_\_\_  
 Other: \_\_\_\_\_  
 Members \_\_\_\_\_  
 Refer To \_\_\_\_\_

FINAL COUNCIL ACTION  
 2nd  
 1st & 2nd  
 3rd  
 Readings  
 Consent  
 V Vote  
 ARC Vote

CERTIFIED

**CERTIFIED**  
 MAR 5 2001  
 ATLANTA CITY COUNCIL PER CLERK  
*[Signature]*

**CERTIFIED**  
 MAR 05 2001  
*[Signature]*

MAYOR'S ACTION