AN ORDINANCE introduced by Deputy Mayor Duane Pomeroy, granting to Brooks Fiber Communications of Missouri, Inc., its successors and assigns, a system of voice, video conferencing and data transmission franchise in the City of Topeka, Kansas, prescribing the terms thereof and relating thereto.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TOPEKA, KANSAS:

Section 1. Findings.

a. Brooks Fiber Communications of Missouri, Inc. (hereinafter referred to as Brooks Fiber) has submitted to the City of Topeka, Kansas (hereinafter referred to as City) an application for a franchise to utilize City's rights-of-way for the purpose of installing and operating a telecommunications system and specifically excluding cable television service as defined by state and federal law (hereinafter referred to as the Network).

b. Brooks Fiber's qualifications have been considered and approved in a public proceeding.

c. Brooks Fiber's plans for constructing, operating, and maintaining the Network have been considered and found to be adequate in a public proceeding.

d. The franchise granted herein is pursuant to K.S.A. 12-2001.

e. The franchise granted herein is non-exclusive.

Section 2. Definitions.

For the purpose of this Franchise, the following words and phrases shall have the meaning ascribed to them unless the context clearly requires otherwise. Words and phrases not otherwise defined shall be given their common and ordinary meaning.
Customer shall mean any person, partnership, or corporation lawfully receiving
service from Brooks Fiber.

Gross revenue shall mean all revenue derived directly or indirectly by Brooks Fiber
from or in connection with operation of its network within the City of Topeka.

Service area shall mean the geographical area within the City of Topeka to which
Brooks Fiber shall extend its telecommunication network as set forth in Appendix 1 and
incorporated by reference herein.

Telecommunications network or network shall mean the system of transmission
services, described herein above and as more fully detailed in Appendix 2.

Section 3. Enforcement by City.

City shall have continuing regulatory jurisdiction and supervision over the operation
and enforcement of this Franchise, and may from time to time, adopt such reasonable
rules and regulations as it may deem necessary for the management of its rights-of-way as
contemplated herein. The continuing regulatory jurisdiction of City may be delegated and
exercised by such municipal board, agency, or department, as may be determined by City,
provided however, City may not delegate determination hereunder relating to penalties,
fines, default, or termination.

Section 4. Failure to Enforce.

Brooks Fiber shall not be excused from complying with any of the terms and
conditions of this Franchise by any failure of City upon one (1) or more occasions to insist
upon or to seek compliance with any of such terms and conditions.
Section 5. Grant of Telecommunications Network Franchise and Acceptance of Franchise.

Grant of franchise. Brooks Fiber is hereby granted a non-exclusive franchise, subject to the terms and conditions of this Ordinance.

Franchise acceptance procedures. Brooks Fiber shall have sixty (60) days from and after the passage and approval of this Ordinance to file its written acceptance of this Franchise Ordinance with the city clerk and upon such filing, this Franchise Ordinance shall be considered as taking effect and being in force from and after the date of its passage and approval by the Council of the City of Topeka.

Section 6. Acceptance of Power and Authority of City.

Brooks Fiber expressly acknowledges by acceptance of this Franchise that (1) it has relied upon its own investigation and understanding of the power and authority of City to grant and enforce the franchise and that it has no objection to the exercise of City's power and authority therein; (2) it has not been induced to accept this Franchise arrangement by any understanding or promise or other statement whether verbal or written, by or on behalf of City concerning any term or condition of the franchise that is not specifically included herein; (3) it has carefully read the terms and conditions contained herein and that Brooks Fiber is willing to and does accept all the obligations of such terms and conditions, of this Franchise; and (4) the matters contained in Brooks Fiber's application for a franchise (on file with the city clerk's office) and related written correspondence, and all subsequent applications or proposals for extensions or renewals of the franchise, and as stated in any and all of presentations to City, are incorporated into this Franchise as though set out verbatim.
Section 7. Use of Right-of-Way.

The use of the Right-of-Way under this Franchise by Brooks Fiber shall be subject to all rules, regulations, policies, resolutions, and ordinances now or hereafter adopted or promulgated by the City in the reasonable exercise of its police power relating to use, placement, location, or management of utilities located in the City's Right-of-way. In addition, Brooks Fiber shall be subject to all laws, rules, regulations, policies, resolutions, and ordinances now or hereafter adopted or promulgated by the City relating to permits, fees, sidewalk and pavement cuts, utility location, construction coordination, screening, and other requirements on the use of the Right-of-Way; provided, however, that nothing contained herein shall constitute a waiver of or be construed as waiving the right of Brooks Fiber to oppose, challenge, or seek judicial review of, in such manner as is now or may hereafter be provided by law, any such rules, regulation, policy, resolution, or ordinance proposed, adopted, or promulgated by the City. Further, Brooks Fiber shall comply with the following:

a. The Company's use of the Right-of-Way shall in all matters be subordinate to the City's use of the Right-of-Way for any public purpose. Brooks Fiber shall coordinate the installation of its Facilities in the Right-of-Way in a manner which minimizes adverse impact on Public Improvements, as reasonably determined by the City. Where installation is not otherwise regulated, the Facilities shall be placed with adequate clearance from such Public Improvements so as not to conflict with such Public Improvement.

b. All earth, materials, sidewalks, paving, crossings, utilities, Public Improvements, or improvements of any kind located within the Right-of-Way damaged or removed by Brooks Fiber in its activities under this Franchise shall be fully repaired or
replaced promptly by Brooks Fiber without cost to the City, however, when such activity is a
ton project of utilities or franchise holders, the expenses thereof shall be prorated among
the participants, and to the reasonable satisfaction of the City in accordance with the
ordinances and regulations of the City pertaining thereto.

c. The Company shall comply with all laws, rules, regulations, policies,
resolutions, or ordinances now or hereinafter adopted or promulgated by the City relating to
any construction, reconstruction, repair, or relocation of Facilities which would require any
street closure which reduces traffic flow except in the event of an emergency, as
reasonably determined by the City. In addition, all work performed in the traveled way or
which in any way impacts vehicular or pedestrian traffic shall be properly signed,
barricaded, and otherwise protected.

d. The Company shall cooperate promptly and fully with the City and take all
reasonable measures necessary to provide accurate and complete information regarding
the location of its Facilities located within the Right-of-Way when requested by the City or
its authorized agents for a Public Project. Such location and identification shall be promptly
communicated in writing to the City without cost to the City, its employees, agents, or
authorized contractors. Brooks Fiber shall designate and maintain an agent, familiar with
the Facilities, who is responsible for providing timely information needed by the City for the
design and replacement of Facilities in the Right-of-Way during and for the design of Public
Improvements. At the request of Brooks Fiber, the City may include design for Facilities in
the design of Public Projects. Also at the request of Brooks Fiber, the City and/or its
contractor(s) or agent(s) shall provide accurate and timely field locations of proposed
Public Projects in the event Brooks Fiber is required to install new and/or relocate its
Facilities.

e. The Company shall promptly locate, remove, relocate, or adjust any Facilities located in the Right-of-Way, City's easements, platted utility easements which contain City utilities or facilities, or other City property or facilities if reasonably necessary and requested by the City for a Public Project. Such location removal, relocation, or adjustment for a particular Public Project shall be performed by Brooks Fiber without expense to the City, its employees, agents, or authorized contractors, and shall be specifically subject to rules and regulations of the City pertaining to such. If additional location, removal, relocation, or adjustment is the result of the inaccurate or mistaken information of Brooks Fiber, Brooks Fiber shall be responsible for costs associated with such without expense to the City. Likewise, if additional location, removal, relocations or adjustment is the result of inaccurate or mistaken information of the City, the City shall reimburse Brooks Fiber for any additional expense necessarily incurred by Brooks Fiber directly due to such inaccurate or mistaken information. Brooks Fiber shall only be responsible for removal, relocation, or adjustment of Facilities located in the Right-of-Way, the City's easements, platted utility easements containing City utilities or facilities or other City property or facilities at Brooks Fiber's sole cost once each five (5) years for that particular facility. The City shall reimburse Brooks Fiber for the removal, relocation, or adjustment of Brooks Fiber's Facilities located in the Right-of-Way, City's easement, platted utility easements containing City utilities or facilities or other City property or facility if required before the expiration of five (5) years from the date of the last relocation, removal, or adjustment of that particular facility.

The Company shall not be responsible for the expenses of relocation to
accommodate any new Public Project for Private Development initiated after the effective date of this Ordinance. The expenses attributable to such a project shall be the responsibility of the third (3rd) party upon the request and appropriate documentation of Brooks Fiber. Before such expenses may be billed to the third (3rd) party, Brooks Fiber shall be required to coordinate with the third (3rd) party and the City on the design and construction to ensure that the work required is necessary and done in a cost effective manner.

The City may continue to provide a location in the Right-of-Way for Brooks Fiber's Facilities as part of a Public Project, provided that Brooks Fiber has cooperated promptly and fully with the City in the design of its Facilities as part of the Public Project.

f. It shall be the responsibility of Brooks Fiber to take adequate measures to protect and defend its Facilities in the Right-of-Way from harm or damage. If Brooks Fiber fails to accurately locate Facilities when requested, it shall have no claim for costs or damages against the City. Brooks Fiber shall be responsible to the City and its agents, representatives, and authorized contractors for all damages including, but not limited to, delay damages, repair costs, down time, construction delays, penalties or other expenses of any kind arising out of the failure of Brooks Fiber to perform any of its obligations under this Ordinance. The above general provisions notwithstanding, the City and its authorized contractors shall take reasonable precautionary measures including calling for utility locations through Kansas One Call and exercising due caution when working near Brooks Fiber's Facilities.

g. All technical standards governing construction, reconstruction, installation, operation, testing, use, maintenance, and dismantling of the Facilities in the Right-of-Way
shall be in accordance with applicable present and future federal, state, and City laws and
regulations, including but not limited to the most recent standards of the Kansas
Corporation Commission and Department of Transportation, City of Topeka Standard
Technical Specifications as may be amended from time to time, or such substantive
equivalents as may hereafter be adopted or promulgated. It is understood that the
standards established in this paragraph are minimum standards and the requirements
established or referenced in this Franchise may be additional to or stricter than such
minimum standards.

h. The City encourages the conservation of the Right-of-Way by the sharing of
space by all utilities. Notwithstanding provisions of this Franchise prohibiting third (3rd)
party use, to the extent required by federal or state law, Brooks Fiber will permit any other
franchised entity by an appropriate grant, or a contract, or agreement negotiated by the
parties, to use any and all Facilities constructed or erected by Brooks Fiber.

Section 8. Term of Franchise.

This Franchise shall be in full force and effect, unless sooner terminated pursuant to
the terms and conditions contained herein, for a period of ten (10) years from the effective
date, and shall expire on October 31, 2013. Brooks Fiber shall have the option to request
renegotiation of one (1) additional ten (10) year term upon mutually-agreeable terms and
conditions.

Section 9. Non-Exclusive Franchise.

This Franchise is non-exclusive. City reserves the right to grant additional
franchises to any person at any time.
Section 10. Amendments.

This Franchise may be amended upon the mutual written consent of City and Brooks Fiber.

Section 11. Service of Notice.

Except as otherwise specifically provided herein, any notices required or permitted to be given under this Franchise shall be deemed properly served when deposited with the United States Postal Service, postage paid, certified mail, addressed to the party to receive the same, or at such other address of which the party to receive the notice shall have designated in the franchise.

NOTICES TO THE CITY shall be addressed to all of the following:

   City Clerk
   City of Topeka
   215 SE 7th Street, Room 166
   Topeka, KS 66603

With Copy to:

   City Attorney
   City of Topeka
   215 SE 7th Street, Room 353
   Topeka, KS 66603

NOTICES TO GRANTEE shall be addressed to the following:

   WorldCom, Inc.
   Attn. Municipal Affairs Department
   2400 N Gleneville Drive
   Richardson, TX 75082

With Copy to:

   WorldCom, Inc.
   5055 North Point Parkway
   Alpharetta, Georgia 30022
   Attn: Managing Attorney - Real Estate and Network Law
Section 12. Limitations Upon Franchise.

a. Privileges must be specific. No privilege or exemption is granted or conferred by this Franchise except as may be specifically prescribed.

b. No right of property. Any privilege claimed under this Franchise in any street or public way shall be subordinate to any lawful occupancy or any subsequent exercise of city police power. The grant of franchise shall not impart to Brooks Fiber any fee title property rights in or on any public or private property to which Brooks Fiber does not otherwise have title.

Section 13. Review of Franchise.

City shall initiate periodic review of Brooks Fiber’s franchise performance, plans, and prospects for use of City’s rights-of-way. Such reviews may occur once every three (3) years beginning on the first (1st) anniversary of the effective date of this Franchise. City may require Brooks Fiber to make available reasonable records, documents, and information for this purpose. Either City or Brooks Fiber may submit proposals for modifications of franchise obligations during such review, or at any other time during the term of the franchise.

Nothing herein shall be construed to prohibit City and Brooks Fiber from engaging in a continuous review of the performance of Brooks Fiber, and City may initiate or Brooks Fiber request a public hearing on any issue related to compliance with the franchise or any permit related thereto.

Section 14. Reports and Records of Brooks Fiber.

a. Reports required. Brooks Fiber shall file a report annually with the city clerk not later than three (3) months after the end of each fiscal year to include, at a minimum,
maps of the network and facilities locations and any other information related to Brooks Fiber's use of City's rights-of-way and not otherwise protected by law. Such information requests by City may include, but are not limited to, the following information:

1. Financial information sufficient for City to evaluate Brooks Fiber's compliance with the fee provisions of this Franchise.

2. The names and both business and residential address and phone numbers of the network resident manager and engineer.

b. *Private/confidential information.* Brooks Fiber shall not be required to submit to City proprietary or confidential information to the extent such information is identified as proprietary or confidential information by law or regulation and thus protected. City shall maintain, to the extent legally possible, the confidentiality of any proprietary, confidential, or competitive information submitted by Brooks Fiber to City.

**Section 15. Design of Network.**

*Telecommunications network.* Brooks Fiber shall construct, maintain, and operate a fiber optic network to provide telecommunications services. Brooks Fiber shall indicate in Appendix 2, when its construction and installation will begin, and when it is completed. All information, maps, studies, and analysis in Appendices 1 and 2 relating to the Network shall be provided to City within forty-five (45) days of the effective date of this Franchise. The construction, operation, and repair of Brooks Fiber's network shall be performed in an orderly and workmanlike manner. Brooks Fiber shall construct, operate, and maintain the network in accordance with applicable federal, state, and local laws and ordinances, including, but not limited to, building codes, zoning codes, and standard engineering specifications now or hereinafter in effect.
Section 16. Franchise Fee.

a. Basic computation. Brooks Fiber shall pay, in addition to permit fee or costs associated with construction, operation or maintenance of the network, a non-discriminatory and competitively neutral franchise fee to City in an amount equal to five percent (5%) of Brooks Fiber's annual gross revenues.

b. Payment due. Payments due City under this provision shall be computed quarterly and shall be paid within sixty (60) days of the end of each quarter. The payment period shall commence as of the effective date of this Franchise. City shall be furnished a statement with each payment, certified by a designated official of Brooks Fiber, reflecting the total amounts of quarterly gross revenue and the computations thereof, for the quarterly payment period covered by the payment.

c. No waiver. No acceptance of any payment shall be construed as a release, waiver, or an accord and satisfaction of any claim City may have for further or additional sums payable as a franchise fee under this Franchise nor for the performance of any other obligation of Brooks Fiber. All amounts paid City shall be subject to audit and recomputation by City.

d. Interest. In the event that any payment is not made as required or recomputation results in additional fees owed in addition to violating this Franchise, such amounts shall be subject to a twelve percent (12%) per annum interest charge. The interest percentage may be amended no more than once each year by the Council of the City of Topeka, consistent with increased costs for municipal facilities and supervision and applicable rules of other regulatory agencies.

e. Other types. Nothing in this section shall be interpreted as supplanting or
otherwise relieving Brooks Fiber of its liability for applicable permit fees, municipal property
taxes, or other federal, state, county, or local taxes.

Section 17. Indemnification and Insurance.

a. No liability. Except to the extent caused by the negligence or willful
misconduct of City, its officers, board, committees, commissions, elected officials,
employees, and agents shall not be liable for any loss or damage to any real or personal
property of any person, or for any injury to or death of any person, or any other suit, claim
or demand arising out of or in connection with the construction, operation, maintenance,
repair, or removal of Brooks Fiber's network, or any such suit, claim, or demand arising
from the award of this Franchise, or City's authority related to such a grant.

b. Indemnification. By acceptance of this Franchise and right, Brooks Fiber
agrees that it shall indemnify, protect, and hold harmless the City of Topeka and its
officers, agents, and employees from any and all claims whatsoever, from liabilities, losses,
costs, judgments, penalties, damages, and expenses, including attorneys' fees, arising out
of the installation, operation, or maintenance by Brooks Fiber of the fiber optic transmission
system, or the failure to perform any of the obligations of this Franchise and right, including
but not limited to claims for injury or death to any person or persons, or damage to any
property, as may be incurred by or asserted against City, its officers, agents, or employees,
directly or indirectly, by the installation, operation, or maintenance by Brooks Fiber of the
fiber optic transmission cable system with the City of Topeka.

c. City's right of intervention. If City otherwise has the right to intervene, Brooks
Fiber expressly acknowledges and agrees, by acceptance of this Franchise, not to oppose
such intervention by City in any suit or proceeding to which Brooks Fiber is a party related
to the franchise.

d. **Insurance coverage.** Brooks Fiber shall maintain liability insurance pursuant to and in amounts as detailed below. Such liability insurance shall be kept in full force and effect by Brooks Fiber during the existence of this Franchise and all renewals and extensions thereof, and thereafter until after the removal of all lines, should such removal be required by City or undertaken by Brooks Fiber. Any contractors of Brooks Fiber performing on behalf of Brooks Fiber pursuant to this Franchise shall also be insured as required herein and name City as an additional insured.

e. **Failure to procure insurance.** Brooks Fiber acknowledges and agrees, by acceptance of this Franchise, that failure to procure or maintain the required insurance shall constitute a material breach of this Franchise and that City may immediately suspend operations under the franchise, terminate the franchise, or, at its discretion, procure or renew such insurance to protect City's interests and be reimbursed by Brooks Fiber for all premiums paid in connection therewith. Brooks Fiber will be notified in writing and given a thirty (30) day period to cure the infraction.

f. **Insurance amounts.** Brooks Fiber shall maintain throughout the term of this Franchise, workmen's compensation insurance, and liability insurance in the minimum amounts of:

1. General liability insurance public liability including premise, products and complete operations:

   a. Bodily injury liability $500,000.00 each person/$1,000,000.00 each occurrence.

   b. Property damage liability $1,000,00.00 each occurrence; or
c. In lieu of (1) and (2) above, bodily injury and property damage combined $1,000,000.00 single limit.

2. Comprehensive automobile liability insurance, including owned, non-owned and hire vehicles.
   a. Bodily injury liability $500,000.00 each person/ $1,000,000.00 each occurrence.
   b. Property damage liability $1,000,000.00 each occurrence; or
   c. In lieu of (1) and (2) above, bodily injury and property damage combined $1,000,000.00 single limit.

g. General insurance requirements. Brooks Fiber agrees that with respect to the above-required insurance contracts, such contracts will contain the following required provisions:

1. City and its officers, agents, employees, board members, and elected representatives shall be named as additional insured (as the interests of each may appear) as to all applicable coverage.

2. Contracts shall provide for thirty (30) days notice to City prior to cancellation, revocation, non-renewal, or material change.

f. Proof of insurance. Brooks Fiber shall furnish proof to the city attorney that a satisfactory insurance policy has been obtained. A certificate of insurance shall be filed and maintained with the city clerk.

Section 18. Transfer, Renewal, and Revocation of Franchise.

a. City's right to revoke. City shall have the right to revoke and terminate this Franchise and Brooks Fiber shall be obligated to remove its network, if it is determined
that:

1. Brooks Fiber has violated any material provisions of the franchise or otherwise defaults in the performance of any of its obligations there, and fails to correct or cure such default within thirty (30) days after receipt of written notice from City of such default; or

2. Brooks Fiber has violated any City orders or rulings unless Brooks Fiber is lawfully contesting the legality or applicability of such order or ruling; or

3. Brooks Fiber has practiced fraud or deceit upon City; or

4. Brooks Fiber fails to begin or complete network construction as provided under this Franchise; or

5. Brooks Fiber fails to maintain insurance required under this Franchise.

b. Sale or transfer of franchise.

1. City approval required. No assignment, lease, sale, or transfer of this Franchise shall take place until the parties to the sale or transfer files a written request with City for its approval. Such approval will not be unreasonably withheld by City. This approval shall not be required where Brooks Fiber mortgages, pledges, or grants a security interest in its network to secure an indebtedness or if such transfer is to a wholly owned subsidiary of WorldCom Inc. Provided however, that in the event of a transfer of this Franchise, as permitted above, Brooks Fiber will endeavor to provide City with fourteen (14) days prior written notice of its intent to transfer the Franchise.

2. Transferee must be signatory. In no event shall a transfer or assignment of ownership or control be approved without the transferee
acknowledging the obligations under this Franchise, becoming a signatory to this
Franchise and assuming all rights and obligations hereunder and assuming all other
rights and obligations of the transferor to City.

3. **Franchise renewal.** Brooks Fiber may seek renewal of this Franchise, and City shall review such request for renewal in accordance with the terms of this Franchise and applicable law.

**Section 19.** Miscellaneous.

a. **Force majeure.** Prevention or delay of any performance under this Franchise due to circumstances beyond the control of Brooks Fiber or City, including weather, acts of God, strikes, and similar unforeseen circumstances, but not including economic hardship or inability to secure materials, shall not be deemed to be non-compliance with or a violation of this Franchise.

b. **Severability.** If any section, subsection, sentence, clause, phrase, or portion of this Franchise Ordinance is, for any reason, held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof. In such event, the parties mutually agree to make any amendments to this Franchise Ordinance other applicable agreements necessary to effectuate the intention of this Franchise Ordinance. In the event that such amendments are barred by any legal requirements governing any party, the parties shall use their best efforts to otherwise avoid prejudice to the respective parties' interests, and to implement changes to effectuate the intent in entering into this Franchise.

**Section 20.** Effective Date.
This Ordinance shall take effect and be in force from and after its passage, approval and publication in the official city newspaper once a week for two (2) consecutive weeks and upon expiration of sixty (60) days from a date of its final passage unless a sufficient petition for a referendum is duly filed prior to the expiration of sixty (60) days pursuant to K.S.A. 12-2001(m) in which case the ordinance shall become effective if approved by a majority of the electors voting thereon.

PASSED and APPROVED by the City Council ________ NOV 18 2003 ________

Duane Pomeroy, Deputy Mayor

ATTEST:

Iris E. Walker, City Clerk

APPROVED AS TO FORM AND LEGALITY
DATE 10/2/03 BY
TO BE CODIFIED
NOT TO BE CODIFIED
NOTICE OF INTENTION

to adopt a new franchise fee of five percent (5%) established under a Franchise Agreement between the City of Topeka, Kansas and Brooks Fiber Communications of Missouri, Inc. pursuant to K.S.A. 12-2001.

Notice is hereby given that the City of Topeka, Shawnee County, Kansas, (the "City") intends to adopt a new franchise fee established under a franchise agreement between the City and Brook Fiber Communications of Missouri, Inc. (Brooks Fiber).

The nonexclusive Franchise Agreement permits Brooks Fiber to install and operate a telecommunications system in the City's right-of-way. The proposed new franchise fee will be in the amount of five percent (5%) of Brooks Fiber's annual gross revenue from its telecommunications system located in the City under the terms of the franchise.

Unless written protests against the proposed Project signed by not less than twenty percent (20%) of the qualified electors of the City are filed with the City Clerk within sixty (60) days after the October 28, 2003, City Council meeting at which the new fee was proposed, the Governing Body will proceed in accordance to adopt a franchise fee of five percent (5%) of the annual gross revenue of Brooks Fiber derived from its telecommunications system located in the City of Topeka under the Franchise Agreement.

Done by order and direction of the Council of the City of Topeka, Shawnee County, Kansas, this 18th day of November, 2003.

Duane Pomeroy, Deputy Mayor

ATTEST:

Iris E. Walker, City Clerk