

J. MICHAEL CAREY
City Clerk

CITY OF LOS ANGELES
CALIFORNIA



Office of the
CITY CLERK
Council and Public Services
Room 615, City Hall
Los Angeles, CA 90012
Council File Information - (213) 485-5703
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When making inquiries
relative to this matter
refer to File No.

RICHARD J. RIORDAN
MAYOR

98-1597

CD 9

September 18, 1998

GM, Information Technology Agency
Honorable Richard Riordan, Mayor
City Attorney

City Administrative Officer
Chief Legislative Analyst
Information Technology Commission

RE: GRANTING A FRANCHISE TO ONE WILSHIRE ARCADE IMPERIAL, LTD., TO INSTALL
AN UNDERGROUND PRIVATE LINE TELECOMMUNICATIONS FACILITY IN THE PUBLIC
RIGHT-OF-WAY OF GRAND AVENUE

At the meeting of the Council held September 8, 1998, the following
action was taken:

Attached report adopted.....	_____
" motion " (Ridley-Thomas - Ferraro).....	_____ X
" resolution " ().....	_____
Ordinance adopted.....	_____ X
Motion adopted to approve attached report.....	_____
" " " " " " communication.....	_____
To the Mayor FORTHWITH.....	_____
Ordinance Number.....	_____ 172203
Publication date.....	_____ 09-21-98
Effective date.....	_____ 10-22-98
Mayor vetoed.....	_____
Mayor approved.....	_____ 09-16-98
Mayor failed to act - deemed approved.....	_____
Findings adopted.....	_____
Negative Declaration adopted.....	_____
Categorically exempt.....	_____
Generally exempt.....	_____

J. Michael Carey

City Clerk
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steno\981597

PLACE IN FILES
SEP 22 1998

[Signature]



Mayor's Time Stamp

TIME LIMIT FILES
ORDINANCE

RECEIVED
CITY CLERK'S OFFICE
98 SEP 11 PM 3:55
CITY CLERK
BY _____
DEPUTY

RECEIVED

'98 SEP 11 P4:06

DEPUTY MAYOR

COUNCIL FILE NUMBER 98-1597

COUNCIL DISTRICT 9

COUNCIL APPROVAL DATE SEPTEMBER 8, 1998

LAST DAY FOR MAYOR TO ACT SEP 21 1998

ORDINANCE TYPE: Ord of Intent Zoning Personnel General

Improvement LAMC LAAC CU or Var Appeals - CPC No _____

SUBJECT MATTER: GRANTING A FRANCHISE TO ONE WILSHIRE ARCADE IMPERIAL, LTD., TO INSTALL AN UNDERGROUND PRIVATE LINE TELECOMMUNICATIONS FACILITY IN THE PUBLIC RIGHT-OF-WAY OF GRAND AVENUE

RECOMMENDATIONS:

APPROVED DISAPPROVED

PLANNING COMMISSION	_____	_____
DIRECTOR OF PLANNING	_____	_____
CITY ATTORNEY	<u> X </u>	_____
CITY ADMINISTRATIVE OFFICER	_____	_____
BOARD OF INFORMATION TECHNOLOGY COMMISSIONERS	<u> X </u>	_____

DATE OF MAYOR APPROVAL, DEEMED APPROVED OR *VETO: SEP 16 1998
*VETOED ORDINANCES MUST BE ACCOMPANIED WITH OBJECTIONS IN WRITING PURSUANT TO CHARTER SEC. 29

(CITY CLERK USE ONLY PLEASE DO NOT WRITE BELOW THIS LINE)

DATE RECEIVED FROM MAYOR SEP 16 1998 ORDINANCE NO. 172203

DATE PUBLISHED SEP 21 1998 DATE POSTED _____ EFFECTIVE DATE OCT 22 1998

ORD OF INTENT: HEARING DATE _____ ASSESSMENT CONFIRMATION _____

ORDINANCE NO. 172203

**AN ORDINANCE GRANTING A FRANCHISE
TO ONE WILSHIRE ARCADE IMPERIAL, LTD., TO INSTALL AN
UNDERGROUND PRIVATE LINE TELECOMMUNICATIONS
FACILITY IN THE PUBLIC RIGHT-OF-WAY OF GRAND AVENUE**

WHEREAS, One Wilshire Arcade Imperial, Ltd. ("Franchisee"), has requested permission of the City to encroach into a portion of the City's public right-of-way with a permanent installation consisting of a private line telecommunications facility, and

WHEREAS, the Board of Information Technology Commissioners ("Board") has determined that the public interest, convenience and necessity will not be harmed by the grant of such permission, and

WHEREAS, Section 13.62 of the Los Angeles Administrative Code requires that such permission be granted by way of an instrument denominated as a Franchise and issued by this Council, and

WHEREAS, the following ordinance is adopted notwithstanding and as an exception to the other provisions of Division 13 of the Los Angeles Administrative Code,

NOW, THEREFORE,

THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS:

1. GRANT OF AUTHORITY

1.1 Grant of Authority

Notwithstanding and as an exception to Division 13 of the Los Angeles Administrative Code, but in accordance with section 13.62 thereof and sections 2(11)(m) and 35 of the City Charter, the City hereby grants One Wilshire Arcade Imperial, Ltd., a California limited partnership, a limited franchise to install and maintain a private line telecommunications facility which will encroach into a portion of the public right-of-way at Grand Avenue at approximately 55 feet north of the centerline of Wilshire Boulevard, in the City of Los Angeles, as further described herein, subject to all of the terms and conditions set forth in this ordinance (hereinafter sometimes referred to as the "Franchise").

1.2 Acceptance

Acceptance of the terms of this Franchise by the Franchisee shall be conclusively established by a writing reflecting the same (appended hereto or otherwise) or by commencement of construction by the Franchisee or its agent or contractor. A replacement Franchise required by section 2.11 hereof shall not be issued or deemed to have been issued without such a writing.

1.3 Encroachment Area

That portion of Grand Avenue, 80 feet wide, in the City of Los Angeles, County of Los Angeles, State of California, as shown on map of Tract No. 1523 recorded in Book 20 Page 13 of maps, records of said county, within a 3 foot wide strip of land, the centerline of said strip lying parallel with and 55 feet northeasterly, measured at right angles, from the centerline of Wilshire Boulevard, 80 feet wide, per field Book 14609-17 on file in the Office of the City Engineer.

Said strip shall be extended or shortened to terminate southeasterly in the southeasterly right-of-way line and northwesterly in the northwesterly right-of-way line of said Grand Avenue.

1.4 Facility Description

“Private Line Telecommunications Facility” or “Facility” means a duct bank containing twelve (12) empty 4-inch diameter conduits to be installed in the Encroachment Area between a building owned by Downtown Properties, LLC, a California Limited Liability Company, at 611 Wilshire Boulevard, and a building owned by Franchisee at 624 South Grand Avenue.

1.5 Limited Purpose

The authorized purpose of construction of the Private Line Telecommunications Facility is to provide a secure hard-wired telecommunications link between mentioned buildings owned by Downtown Properties, LLC., and the mentioned building owned by the Franchisee, which link would not be possible without permission to cross the City’s public right-of-way separating the two or more buildings. This Franchise shall endure only so long as such purpose remains valid, and shall become revocable, in accordance with the procedures set forth herein, in the event any material fact justifying its limited purpose no longer exists. It is expressly contemplated that conduit space in the Facility may be occupied by communications cables owned and operated by third parties. Notwithstanding, separate legal authority for the occupation of the public right-of-way by third party users of the Facility shall in each case be obtained by or in the name of such third parties prior to use of the Facility. No such separate legal authority shall be deemed operative until granted in accordance with the Charter and ordinances of the City; provided, however, that to the

extent a "telephone corporation," as the term is used in California Public Utilities Code §7901, may occupy the public right-of-way without the consent of the City for the purpose of providing telephone service, such legal authority shall be deemed to exist ("Deemed Authority"), but only after adequate evidence of a proposed user's status as a "telephone corporation" and intent to provide telephone service is provided to the Information Technology Agency (the "Agency"), and a written acceptance and approval is issued by the Agency acknowledging the same. For purposes of this agreement only (and not for purposes of construing applicable law or binding the City in any other matter), proof of licensing by the California Public Utilities Commission or the Federal Communications Commission to send voice, video and/or data transmissions shall be deemed adequate evidence of a proposed user's status as a "telephone corporation." Other forms of evidence shall be subject to Agency approval. Deemed Authority is provided for herein solely in compromise of the disputed claims of the parties to this agreement and, except for the purposes of implementing this agreement, shall in no event be construed as a waiver of the City's rights or authority over its public right-of-way, or an admission of the effectiveness of any state statute which the City may claim to be ineffective or unconstitutional in any manner or to any degree. Further, the City reserves the right to terminate the Deemed Authority procedure effective upon adoption by the City Council of any contrary policy or ordinance, in which case all occupation of the public right-of-way contemplated by this agreement, including occupations previously authorized under the Deemed Authority procedure, shall be subject to the lawful Charter provisions, ordinances, and policies of the City. Any dispute concerning whether adequate evidence of a user's status under the Deemed Authority procedure has been supplied to the Agency shall be resolved in accordance with Section 2.8 hereof.

1.6 Limitations on Use

The privileges granted by this Franchise are limited to installation of a private line telecommunications facility to be used solely for permitting tenants, licensees, and other occupants of the buildings mentioned in Section 1.4 (collectively the "tenants") to connect their telecommunications systems, facilities, and switching equipment in the two buildings by installing cable and/or wire through the conduit Facility. Installation of communications cable or equipment in the Facility shall occur only after compliance with the provisions of Section 1.5 hereof. In addition, the Facility shall not knowingly be made available to a multichannel video programming distributor, as defined in the Cable Communications Policy Act of 1984, as amended, without the prior written consent of the Agency. Use of the Facility for purposes other than those expressed above, or in a manner other than that specified above, is expressly outside the scope of the authority granted by this Franchise. Franchisee shall alert intended third party users of their responsibility to obtain the City's consent for use of the Facility (either through the Deemed Authority procedure or as otherwise provided for in Section 1.5 above) and shall provide the City with contemporaneous copies of any instrument used when doing so. Use of the Facility for purposes outside the scope of the authority granted by this Franchise shall cause the Franchise to become revocable in accordance with the procedures set forth herein.

1.7 Effective Date

This Franchise shall become effective on the earliest date after passage provided for by the City Charter and/or applicable law.

2. GENERAL CONDITIONS

2.1 Nonexclusivity

Nothing in this Franchise shall affect the right of the city to grant to any person a Franchise, consent or right to occupy and use the streets or public ways, or any part thereof, for the construction, operation or maintenance of a communications facility within all or a portion of the Encroachment Area (other than inside the conduit Facility) or anywhere else in the city.

2.2 Non-User

If the Franchisee fails to complete construction of the Facility within six (6) months of the date this ordinance is adopted by City Council, the authority granted by this Franchise shall terminate, except that the Board may grant an extension of time to complete construction.

2.3 Priority of Public Works

Nothing in this Franchise shall abrogate the right of the City to perform any public work or public improvement of any description, including, without limitation, all work authorized by applicable law. In the event that the Facility interferes with the construction, operation, maintenance or repair of any such public work or public improvement, the Franchisee, after reasonable notice from the City, shall, at its own cost and expense, promptly protect, alter or relocate the Facility, or any part thereof, as reasonably directed by the City. In the event the Franchisee refuses or neglects to protect, alter, or relocate all or part of the Facility, the City shall have the right, in connection with the performance of such public work or public improvement, to break through, remove, alter, or relocate all or any part of the Facility without any liability to the Franchisee, except such liability as is directly caused by the City's willful misconduct or negligence, and the Franchisee shall promptly pay to the City the costs incurred by such breaking through, removal, alteration, or relocation.

2.4 No Waiver of Regulatory Authority

Except as expressly stated herein, nothing in this Franchise shall be construed as a waiver of any code or ordinance of the City or the City's right to require the Franchisee or any Person utilizing the Facility to secure all appropriate Franchises or authorizations for such use.

2.5 Compliance with Laws

The Franchisee shall comply with: (i) all applicable laws and all requirements of the State of California, the FCC, and any other federal or State agency or authority of competent jurisdiction; (ii) all local laws, rules, regulations, and all orders or other directives of the City issued pursuant to the police powers of the City; and (iii) all rules, regulations, and all other directives of the City issued pursuant to this Franchise, provided that any such rules, regulations, orders or directives issued pursuant to this Franchise shall be consistent with provisions hereof.

2.6 Franchise Revocable

This Franchise may be revoked by the City Council in accordance with the provisions hereof.

2.7 Conflict with Other Installations

No privilege or exemption is granted or conferred by this Franchise except those specifically prescribed herein. Any privilege claimed under this Franchise by the Franchisee in any street shall be subordinate to any prior lawful occupancy of the street.

2.8 Authorization of Additional Franchise Facilities

Upon application to the Board for authorization of additional conduits or lines, the replacement of existing conduits or lines, or the construction or installation of facilities other than those contemplated in Sections 1.4 and 1.5 hereof, the Board shall fix a date for a hearing on the application, and after the hearing, the Board may deny or approve such application. The Board's decision may be appealed to the Council. Facilities constructed, installed or replaced pursuant to any authorization by the Board shall be subject to all the provisions of this Franchise and to any additional conditions relating to construction, specifications, operation and the utilization of facilities or such other conditions as may be prescribed by such authorization.

2.9 Term

The term of this Franchise shall be for a period of ten (10) years from the effective date hereof, unless sooner revoked, as provided herein.

2.10 Rights Upon Termination

The termination, expiration, or revocation of this Franchise shall not operate as a waiver or release of any obligation of the Franchisee or any other person, as applicable, arising pursuant to this Franchise prior to such termination. All such obligations shall survive the termination, expiration, or revocation of this Franchise.

2.11 Renewal

The Franchisee shall apply for a replacement Franchise at least 12 months prior to the expiration date of this Franchise.

3. TRANSFERS AND HYPOTHECATIONS

3.1 Restrictions Against Transfers

This Franchise is a privilege to be held in personal trust by the Franchisee. Except as provided in Section 3 hereof, neither the Franchise nor any rights or obligations of the Franchisee in or pursuant to the Franchise, or the Facility shall be transferred in part or as a whole, by assignment, trust, mortgage, lease, sublease, pledge or other hypothecation, and is not to be sold, transferred, leased, assigned, or disposed of in part or as a whole, either by forced sale, merger, consolidation, or otherwise, nor shall title thereto, either legal or equitable, or any right or interest therein, pass to or vest in any Person, nor shall a change in Control of the Facility occur, either by act of the Franchisee, by operation of law or otherwise, without the consent of the City, which consent shall not be unreasonably withheld or delayed, and which shall be expressed by Ordinance and then only under such conditions as may be therein prescribed. The grant or waiver of any one or more of such consents shall not render unnecessary any subsequent consent or consents, nor shall the grant of any such consent constitute a waiver of any other rights of the City. This Section 3.1 shall not be construed to apply to third party use of the conduit Facility as described in Section 1.5.

3.2 Effect of Unauthorized Action

The taking of any action described in the foregoing section 3.1 hereof without the prior consent of the City shall be deemed a material violation of this Franchise; and render the Franchise subject to revocation by Council.

3.3 Exceptions

The approval of the City for any change in the ownership of the Franchisee shall not be required unless such change involves a change in Control of the Franchisee. For the purposes of this Section 3, "Change in Control of the Franchisee" means any of the following: 1) transfer of a majority of partnership interests to a partner, group of partners, or other control group not previously holding or controlling a majority interest, 2) change in the identity of the General Partner, and 3) acquisition of a controlling interest in individual partners (including by stock transfer) representing a majority interest in the Franchisee, by any third parties. Notwithstanding the provisions of Sections 3.2 and 3.3, any request by Franchisee for approval of a transfer shall be granted by the Agency without further review by the Board or by this Council if: 1) the transfer is for the purpose of a contemporaneous sale or transfer of Franchisee's building at 624 S. Grand Avenue, 2)

ownership of the Facility remains coextensive with ownership of the building after the transfer, 3) full disclosure of the identity of new owner(s) of the Facility after transfer is made to the Agency prior to the transfer, and 4) the transferee agrees in writing to undertake all of the responsibilities and obligations set forth in this agreement.

Nothing contained in this section 3 shall be deemed to prohibit or require City approval of any assignment, pledge, lease, sublease, mortgage, or other Transfer or hypothecation of all or any part of the stock of (or other evidence of ownership in) or assets (not including the Franchise) of the Franchisee or the Facility, or any right or interest therein, for securing an indebtedness, provided that each such assignment, pledge, lease, sublease, mortgage, or other Transfer or hypothecation shall be subject to this Franchise, or applicable law.

3.4 Approval Procedure

The Franchisee shall promptly notify the General Manager in writing of any action or proposed action requiring consent of the City pursuant to this section 3.

The Information Technology Agency ("Agency") shall complete its review of the petition as promptly as is reasonably possible and, thereafter, shall forward the petition and its recommendation to the Board or Council, as appropriate, for final action. Within sixty (60) days of receipt of such petition, the Agency shall present to the Board and subsequently to the Council a status report on the petition review.

4. FACILITY REQUIREMENTS

4.1 Construction

Throughout the term of this Franchise, the Franchisee shall Construct, install, operate, and maintain the Facility in a manner consistent with all laws, ordinances, and construction standards of the City.

Any change regarding construction of the Facility from the description set forth in section 1.4 shall be subject to the approval of the Board which approval shall not be unreasonably withheld. The Franchisee is aware that Franchisee's proposed use of the public right-of-way requires approvals from various City departments including, but not limited to, Public Works (in the case of street opening permits) and Water and Power (in the case of pole attachment or conduit permits). This Franchise does not exempt the Franchisee from the necessity of obtaining these approvals.

4.2 Plans

The Franchisee shall place on file with the Agency prints, plans and maps showing the proposed and as-built location of each conduit, pole, or other portion of the Facility to be installed (and, if using existing poles or conduits, the location of each pole attachment or

conduit to be entered), and the location of each manhole or other opening installed to gain access to the Facility and or its components.

4.3 Quality of Work

All work involved in the Construction, operation and maintenance, repair and removal of the Facility shall be performed with due diligence and using materials of good and durable quality.

4.4 Safety

The Franchisee shall, at its own cost and expense, take all necessary efforts to prevent accidents at its work sites, including the placing and maintenance of proper guards, fences, barricades, and security personnel and, at night, suitable and sufficient lighting.

No less than 24 hours advance notice shall be provided to the Agency prior to commencing construction activities.

4.5 Street Work

In connection with the Construction, operation, maintenance, repair, or removal of the Facility, the Franchisee shall, at its own cost and expense, protect any and all existing structures belonging to the City. The Franchisee shall obtain the prior approval of the City before altering any water main, sewage or drainage Facility, or any other municipal structure in any Public Way or Street. Any such alteration shall be made by the Franchisee, at its sole cost and expense, and in a manner reasonably prescribed by the City. The Franchisee shall also be liable, at its own cost and expense, to replace or repair and restore to as close to its prior condition as is reasonably possible and in a manner reasonably specified by the City, any Public Way, Street or any municipal structure involved in the Construction of the Facility that may become disturbed or damaged as a result of any work thereon by or on behalf of the Franchisee pursuant to this Franchise.

The Franchisee shall, at its own expense, protect, support, temporarily disconnect, relocate in the same Street or Public Way, or remove from any Street or Public Way, any Facility when required by the Board of Public Works, or by any other governmental agency acting in a governmental capacity, by reason of traffic conditions, public safety, Street vacation, freeway construction, or any public improvement or structure, provided that the Franchisee shall in all such cases have the privileges and obligations as to abandonment of the Facility in place which are provided in section 4.6 hereof.

Upon failure of the Franchisee to commence, pursue or complete any repair or restoration work required of it by law or by the provisions of this Franchise in any Street or Public Way, the City, at its option and according to law, may cause such work to be done and the Franchisee shall pay to the City the cost thereof in the itemized amounts reported by the City

to the Franchisee, within thirty (30) days after receipt of such itemized report. In the event the City undertakes to complete such work, the City shall be liable for the willful misconduct or negligence of the City.

4.6 Removal or Abandonment

In the event the use of the Facility is permanently discontinued, or upon termination, expiration or revocation of this Franchise, the City shall have the right to require the Franchisee to remove, at the Franchisee's own expense, all portions of the Facility from the Encroachment Area. The Franchisee shall promptly remove all portions of the Facility involved, other than any such portions which the Board of Public Works may permit to be abandoned in place. Facilities to be abandoned in place shall be abandoned in such manner as the Board of Public Works shall prescribe. Upon abandonment of any Facilities in place, the Franchisee shall submit to the City an instrument satisfactory to the Agency and the City Attorney transferring to the City the ownership of such facilities.

4.7 Completion and Performance Bond

The Franchisee shall obtain, maintain and file with the Agency, on or before the Effective Date of this ordinance, a performance bond or other instrument approved by the City Attorney and issued by a corporate surety authorized to do business in the State of California. Such bond or other instrument shall guarantee the compliance with any one or more of the provisions of this Franchise and the safeguarding against damage to public or private property and the restoration of any damaged property. Such bond or other instrument shall be maintained in an initial amount of ten thousand dollars (\$10,000.00) until construction of the facility is completed and such completion is reported to the Agency and acknowledged by the Agency in writing. Thereafter, the bond shall be maintained in the amount of one thousand dollars (\$1,000.00) throughout the term of the Franchise.

If, at any time during the term of this Franchise, the condition of the corporate surety shall change in such manner as to render the bond unsatisfactory to the City, the Franchisee shall replace such bond with a bond of like amount and similarly conditioned, issued by a corporate surety satisfactory to the City.

The bond or other instrument shall contain the following provisions: "It is hereby understood and agreed that this bond may not be canceled by the surety nor the intention not to renew be stated by the surety until sixty (60) days after receipt by the City, by registered mail, of written notice of such intent to cancel or not to renew."

The bond or other instrument shall further provide that there shall be recoverable by the City, jointly and severally from the principal and surety, any and all damages, losses or costs suffered by the City resulting from: (i) any loss or damage to any municipal structure during the course of Construction of the Facility; and (ii) the removal of all or any part of the Facility from the public ways and streets.

If the Franchisee fails: (i) to make any payment required by this Franchise within the time fixed herein; (ii) to pay to the City, within ten (10) working days after receipt of written notice, any taxes or liens relating to the Facility that are due and unpaid; (iii) to pay to the City within ten (10) working days after receipt of written notice from the General Manager, any damages, claims, costs or expenses which the City has been compelled to pay or incur by reason of any material act or violation by the Franchisee; or (iv) to comply, within ten (10) working days after receipt of written notice from the General Manager, with any material provision of this Franchise which the General Manager reasonably determines can be remedied by an expenditure of an amount from the bond or other instrument; then the General Manager may order the withdrawal of the amount thereof from the bond or other instrument for payment to the City, provided that, prior to each such withdrawal: (A) the Franchisee shall be afforded an opportunity to cure any of said failures within thirty (30) days after written notice from the General Manager that the withdrawal is to be made, or (B) if such cure cannot be reasonably accomplished within such thirty (30) days, then the Franchisee shall have a reasonable time to cure, provided that the Franchisee commences such cure within such thirty (30) days and diligently pursues such cure to completion.

Throughout the term of this Franchise, the Franchisee shall maintain the bond or other instrument in the amount specified in this Section 4.7. Within ten (10) business days after receipt of notice from the General Manager that any amount has been withdrawn from the bond or other instrument, as provided in this Section, the Franchisee shall restore the bond to the then applicable amount specified in this Section, provided, however, that said restoration obligation shall be suspended during the period of any judicial challenge by the Franchisee to the propriety of said withdrawal from the bond. If it is determined that said withdrawal by the City was improper, the City shall restore to the bond or other instrument an amount equal to the improperly withdrawn amount.

No action, proceeding, or exercise of a right with respect to such completion and performance bond or other instrument shall affect any other right which may be held by the City; and the faithful performance by and the liability of the Franchisee pursuant to this Franchise shall not be limited by the acceptance of the bond or other instrument required by this Section 4.7.

5. PAYMENT OBLIGATIONS

5.1 Compensation

In order to compensate the City for the burden of private occupation of its public right-of-way, the increased maintenance and repair expenses associated with private occupation of the public right-of-way, and the increased costs of supervision thereof, a fee for the use and occupation of the public right-of-way by the Franchisee is hereby imposed. Before commencement of construction of the Facility, the Franchisee shall tender the first annual right-of-way use fee payment to the City in a form and amount specified below. The Franchisee shall continue to pay the annual right-of-way use fee periodically during the term

of this Franchise. Failure to comply with any of the payment obligations set forth in this section shall render the Franchise revocable, in accordance with the procedure set forth herein.

The right-of-way use fee shall be in addition to and shall not constitute an offset or credit against any and all taxes or other fees or charges which the Franchisee shall be required to pay to the City, or to any State or federal agency or authority, as required herein or by law; the payment of said taxes, fees or charges shall not constitute a credit or offset against the right-of-way use fee, all of which shall be separate and distinct obligations of the Franchisee. No such taxes fees or charges shall be used as offsets or credits against the right-of-way use fee.

5.2 Linear Foot Formula

For underground occupation, the Franchisee shall pay an amount based on the street space required for the Facility at the rate of five dollars (\$5.00) per linear foot, per year, per conduit, assuming the maximum cross-sectional diameter of each conduit is six (6) inches or less. For overhead occupation, the Franchisee shall pay an amount based on the air space required for the Facility at the rate of one dollar and twenty five cents (\$1.25) per linear foot per year, per wire or cable.

5.3 Annual Payment

The first annual payment made pursuant to Section 5.1 hereof, shall be applied to the one year period beginning with the effective date of this ordinance. Additional annual payments shall be applied to the nine subsequent annual periods, and shall be made not later than thirty (30) days following each of the first through ninth anniversary dates of the effective date.

The annual payment amount is calculated as:

$$80 \text{ linear feet} \times \text{twelve (12) conduits/cables} \times \$5.00 = \$4,800$$

Any annual payment made after the due date shall accrue interest at an annual rate of eight percent (8%).

5.4 Option to Pay Lump Sum

In lieu of making the above annual payments specified in section 5.3 above, the Franchisee may, at its option, elect to prepay the sum of forty eight thousand dollars (\$48,000.00) in one payment, within thirty (30) days of the effective date of this Franchise.

5.5 Payment Terms

All payments by the Franchisee to the City pursuant to this Franchise shall be made payable to the City Treasurer and deposited with the General Manager. Acceptance of any payment made by the Franchisee pursuant to this Franchise shall not be construed as an acknowledgment that the amount paid is the correct amount due, nor shall such acceptance of payment be construed as a release of any claim which the City may have for additional sums due and payable.

5.6 Revocation for Non-payment

In the event that any payment required by this Franchise is not actually received by the City on or before the applicable date fixed in this Franchise, then this Franchise shall be subject to revocation by the City Council.

6. OVERSIGHT AND REGULATION

6.1 Notices

Notice of a public meeting relating to this Franchise shall be posted not less than 72 hours prior to the meeting, and shall remain posted until after the meeting.

The Franchisee shall maintain an address on file with the Agency and with the City Clerk. Notices to the Franchisee shall be addressed or delivered to the Franchisee at said address.

Notices to the City required by law or by this Franchise shall be delivered in person or by first class, receipted mail or certified mail as appropriate, to the City Clerk, Room 615, City Hall East, 200 North Spring Street, Los Angeles, California 90012 and to the General Manager not less than ten (10) business days prior to the day on which the party giving such notice shall commence any activity which requires the giving of notice. In computing business days, Saturdays, Sundays and holidays recognized by the City shall be excluded.

All required notices shall be in writing.

7. LIABILITY AND INSURANCE

7.1 Indemnification of City

Excepting claims arising out of the active negligence or willful misconduct of the City or its officers and/or employees acting within the course and scope of their employment, the Franchisee undertakes and agrees to defend, indemnify and hold harmless the City and any and all of the City's Boards, Officers, Agents, Employees, Assigns and Successors in Interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees and cost of litigation, damage or

liability of any nature whatsoever, for death or injury to any person, including the Franchisee's employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of, or incident to, the installation or operation of the Facility by or on the part of the Franchisee or sub-contractor of any tier.

7.2 Insurance Requirement

Without limiting the Franchisee's indemnification of the City pursuant to Section 7.1 hereof, the Franchisee shall provide and maintain, at its own expense, continuously during the terms specified below, the insurance listed in sections 7.3-7.5 covering installation or operation of the Facility, commencing no later than the effective date of this Franchise and subject to the following conditions:

The City, shall be named as an additional insured in all insurance policies. The City shall be named Loss Payee as its Interest may appear in all required property fidelity and surety coverage.

Evidence of insurance shall be submitted to the City Attorney and Risk Manager for approval prior to commencement of any operations under this Franchise, which approval shall not be unreasonably withheld.

With respect to the interests of the City, such insurance shall not be canceled, reduced in coverage or limits, or non-renewed except after thirty (30) days written notice, by hand delivery or certified mail, has been given to the Office of the City Attorney, 200 North Main Street, Room 1650, City Hall East, Los Angeles, California 90012-4168, Attention: Insurance and Bonds.

The appropriate City Special Endorsement forms, obtainable from the Agency, are the preferred form of evidence of insurance. Alternatively, the Franchisee may submit two (2) certified copies of the full policies containing the appropriate cancellation notice language and additional insured/loss payee language as specified.

7.3 General Liability

The Franchisee shall provide insurance with combined single limits of \$1,000,000 per occurrence for Bodily Injury and Property Damage during construction only. Such insurance must include: premises and operations, completed operations, contractual liability, independent contractors and, during the course of construction, collapse and underground hazards.

7.4 Automobile Liability

The Franchisee shall provide insurance with combined single limits of \$1,000,000 per occurrence, for Bodily Injury and Property Damage, including coverage for owned

automobiles, non-owned automobiles, and hired automobiles. This coverage is required during construction only.

7.5 Worker's Compensation and Employer's Liability

By acceptance of this Franchise, the Franchisee certifies that it is aware of the provisions of Section 3700, et seq. of the Labor Code which require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with such provisions. A minimum limit of \$1,000,000 per employee is required for Employer's Liability with a Waiver of Subrogation in favor of the City. This coverage is required during construction only.

8. TERMINATION AND RELATED RIGHTS

8.1 Revocation

In the event that the Franchisee violates or fails to comply with any conditions of this Franchise for which revocation is a remedy, the Council may revoke the Franchise granted herein and terminate this Franchise.

The Council shall exercise its right to revoke the Franchise and terminate this Franchise for a failure by the Franchisee to comply with any material provision of this Franchise in accordance with the procedure generally applicable to adoption or repeal of ordinances, provided, however, that the Council shall only act upon recommendation of the Board, and not in derogation of such recommendation, except upon a three-fourths majority of Council voting to do so.

8.2 Termination Defined

The termination of this Franchise and the termination of Franchisee's privileges herein shall become effective upon the earliest to occur of: (i) the revocation of the Franchise by action of the Council, as provided in section 8.1 hereof; (ii) the abandonment of the Facility, in whole or material part, as defined in section 4.6 hereof, by the Franchisee, without the express, prior approval of the City; (iii) non-use of the Franchise privileges as set forth in section 2.2; or (iv) the expiration of the term of the Franchise as set forth in section 2.9.

8.3 Removal Upon Termination

Upon any termination of this Franchise, the Franchisee shall, at its own cost and expense, promptly remove that part of the Facility located in the Streets and Public Ways and shall replace or repair and restore to serviceable condition each affected Street, Public Way, and governmental structure therein, in such manner as may be reasonably specified by the City.

If the Franchisee fails to remove the Facility from the public right-of-way within ninety (90) days of a City request to do so, or fails to repair or restore any street in conformance with the manner specified by the City, the City shall be permitted to initiate and/or complete such work at the expense of, and without liability to, the Franchisee.

In the event of any acquisition of the Facility by the City pursuant to section 4.6, and subject to the requirements of applicable law, the City may lease, sell, operate, or otherwise dispose of all or any part of the Facility in any manner.

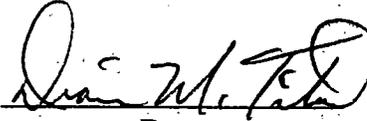
9. CERTIFICATION

9.1. Certification

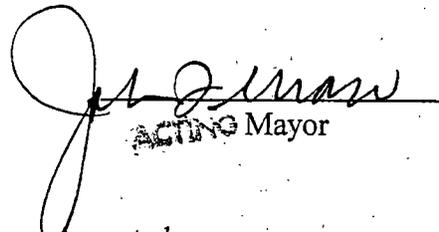
The City Clerk shall certify to the passage of this ordinance and cause the same to be published in some daily newspaper printed and published in the City of Los Angeles.

I hereby certify that the foregoing ordinance was passed by the Council of the City of Los Angeles at its meeting of **September 8, 1998**

J. MICHAEL CAREY, City Clerk

By: 
Deputy

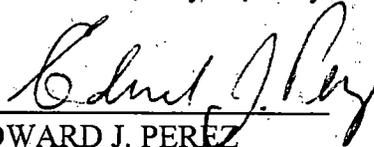
Approved: SEP 16 1998


ACTING Mayor

Approved as to Form and Legality

Date: 7-30-98

JAMES K. HAHN, City Attorney

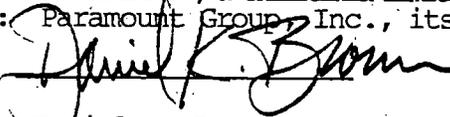
By: 
EDWARD J. PEREZ
Assistant City Attorney

Accepted:

ONE WILSHIRE ARCADE

IMPERIAL LTD., a California Limited Partnership

By: Paramount Group, Inc., its agent

By: 
Name(printed): Daniel K. Brown

Director of Property Management

Title: Western Region

Date: _____

Council File No.: 98-1597

VERBAL MOTION

I HEREBY MOVE that Council ADOPT the August 12, 1998, recommendation of the General Manager, Information Technology Agency, and accompanying Ordinance on today's Council agenda (Item No. 25, CF 98-1597) submitted directly to Council (copy attached to file), and WAIVED by the Information Technology and General Services Committee relative to the application from One Wilshire Arcade Imperial, Ltd. for a private telecommunications facility franchise, as follows:

PRESENT and ADOPT accompanying ORDINANCE, as recommended by the Board of Information Technology Commissioners on July 17, 1998, granting a franchise to One Wilshire Arcade Imperial, Ltd., to install an underground private line telecommunications facility in the public right-of-way of Grand Avenue, connecting two buildings located at 624 South Grand Avenue (owned by the Applicant) and 611 Wilshire Boulevard (owned by Downtown Properties, LLC, a California limited liability company).

**MOTION & ORD
ADOPTED**

SEP 08 1998

Los Angeles City Council

PRESENTED BY

MARK RIDLEY-THOMAS
Councilmember, 8th District

SECONDED BY

JOHN FERRARO
Councilmember, 4th District

September 8, 1998

CF 98-1597

calagend\98-1597.mot

08-SEP-98 10:36:43 AM #4

08-SEP-98 10:36:43 AM #4

08-SEP-98 10:36:43 AM #4

08-Sep-98 10:36:43 AM #4

Items For Which Public Hearings Have Not Been Held - Items 23-59
Voting on Item(s): 24-30, 32-33, 35-42, 44a-44y, 46-48, 50, 53, 55-56, 58-59

Roll Call

ALARCON	Absent 12
ALATORRE	Absent
BERNSON	Yes
CHICK	Yes
FEUER	Yes
GALANTER	Absent
GOLDBERG	Yes
HERNANDEZ	Yes
HOLDEN	Yes
MISCIKOWSKI	Yes
RIDLEY-THOMAS	Yes
SVORINICH	Yes
WACHS	Yes
WALTERS	Yes
*FERRARO	Yes

Present: ~~12~~ 12, Yes: 12 No: 0

12 13

MOTION (Ridley Thomas - Ferraro)
Adopted, together with accompanying ORDINANCE
(St. Ridley)

25

TUE
9-8-98

98-1597 COMMUNICATION FROM GENERAL MANAGER, INFORMATION
CD 9 TECHNOLOGY AGENCY and ORDINANCE relative to
 application from One Wilshire Arcade Imperial, Ltd.
 for a private telecommunications facility franchise.

Recommendation for Council action, as recommended by the
Board of Information Technology Commissioners:

PRESENT and ADOPT accompanying ORDINANCE granting a
franchise to One Wilshire Arcade Imperial, Ltd., to
install an underground private line telecommunications
facility in the public right-of-way of Grand Avenue.

Fiscal Impact Statement: None submitted by the
Department. Neither the City Administrative Officer nor
the Chief Legislative Analyst has completed a financial
analysis of this report.

**(Information Technology and General Services Committee
waived consideration of the above matter)**

BEW
8/25/98
#981597
CD 9

J. MICHAEL CAREY
City Clerk

When making inquiries
relative to this matter
refer to File No.

CITY OF LOS ANGELES
CALIFORNIA



RICHARD J. RIORDAN
MAYOR

Office of the
CITY CLERK
Council and Public Services
Room 615, City Hall
Los Angeles, CA 90012
Council File Information - (213) 485-5703
General Information - (213) 485-5705

98-1597

August 24, 1998

INFORMATION TECHNOLOGY & GENERAL SERVICES COMMITTEE

In accordance with Council Rules, communication from the Information Technology Agency relative to application from One Wilshire Arcade Imperial, Ltd. for a private telecommunications facility franchise, was referred on August 21, 1998, to the INFORMATION TECHNOLOGY & GENERAL SERVICES COMMITTEE.

J. Michael Carey

City Clerk
amm



A RESOLUTION
OF THE
BOARD OF INFORMATION TECHNOLOGY COMMISSIONERS
OF THE CITY OF LOS ANGELES

Whereas, One Wilshire Arcade Imperial, Ltd., a California limited partnership (the "Applicant") has made a request to the City to install a private line telecommunications facility which would encroach into the public right-of-way of Grand Avenue approximately 55 feet north of the centerline of Wilshire Blvd., connecting two buildings located at 624 South Grand Avenue (owned by the Applicant) and 611 Wilshire Blvd. (owned by Downtown Properties, LLC, a California limited liability company), and

Whereas, pursuant to sections 13.62, 13.14, and 13.15 of the Los Angeles Administrative Code (the "Code"), the approval and recommendation of this Board and the subsequent approval of the Los Angeles City Council is necessary to effect a grant of the City's permission to install such a facility in the public right-of-way, and

Whereas, section 13.62 of the Code requires that such permission be granted by way of an instrument denominated as a Franchise, and

Whereas, this Board finds that the public interest will not be harmed if such permission is granted subject to the terms and conditions set forth in the attached franchise ordinance, and

Whereas, pursuant to section 22.646(f) of the Code, this Board is to take official actions by resolution, and

Whereas, at this Board's meeting on July 17, 1998 the Board considered and approved certain amendments to the proposed franchise ordinance, which amendments are set forth in the Board's official records, and

Whereas, a motion to approve the franchise ordinance subject to the inclusion of the amendments approved at the July 17, 1998 meeting has been moved and seconded,

NOW THEREFORE, BE IT RESOLVED by the Board of Information Technology Commissioners of the City of Los Angeles, that:

The Board hereby approves and recommends to the City Council that a franchise in the form attached hereto (subject to amendments approved at the July 17, 1998 meeting of the Board) be granted to One Wilshire Arcade Imperial, Ltd., which franchise will permit One Wilshire Arcade Imperial, Ltd.

to install and maintain a private line telecommunications facility in the public right-of-way of Grand Avenue approximately 55 feet north of the centerline of Wilshire Blvd., subject to the terms and conditions contained therein.

ADOPTED THIS 17th DAY OF July, 1998

Board of Information Technology Commissioners

By: Joyce Emerson
Joyce Emerson, President



TRANSMITTAL

TO THE COUNCIL	DATE AUG 17 1998	COUNCIL FILE No.
FROM THE MAYOR	COUNCIL DISTRICT	

TRANSMITTED FOR YOUR CONSIDERATION. PLEASE SEE ATTACHED.

[Handwritten Signature]
MAYOR
 Information Technology and
 General Services

AUG 21 1998

25
CITY OF LOS ANGELES
CALIFORNIA

JOHN D. HWANG
GENERAL MANAGER

FRANK T. MARTINEZ
EXECUTIVE OFFICER

ASSISTANT GENERAL MANAGERS

JAMES M. CRAIN
DENNIS E. FRADY
MARY K. KOTZMAN



RICHARD J. RIORDAN
MAYOR

INFORMATION TECHNOLOGY
AGENCY

ROOM 1400, CITY HALL
200 NORTH MAIN STREET
LOS ANGELES, CA 90012
(213) 485-2892
FAX (213) 847-3512

August 12, 1998

REF: EXE-382-98

Honorable Richard J. Riordan
Mayor, City of Los Angeles
Room 800, City Hall
Los Angeles, CA 90012

Dear Mayor Riordan:

**APPLICATION FROM ONE WILSHIRE ARCADE IMPERIAL, LTD FOR A PRIVATE
TELECOMMUNICATIONS FACILITY FRANCHISE**

At its meeting on July 17, 1998, the Board of Information Technology Commissioners unanimously adopted the attached resolution recommending that the Council adopt the attached proposed franchise ordinance, based upon the application of One Wilshire Arcade Imperial, Ltd. (the "Applicant") for a private telecommunications facility located in Council District 9. This is a routine request for a private telecommunications line franchise. The facility will encroach into a portion of the public right-of-way of Grand Avenue approximately 55 feet north of the centerline of Wilshire Blvd., connecting two buildings located at 624 S. Grand Avenue (owned by the applicant) and 611 Wilshire Blvd. (owned by Downtown Properties, LLC, a California limited liability company).

A copy of the proposed Ordinance as approved by the Board is attached.

Respectfully yours,

John D. Hwang
General Manager

Enclosures

cc: June Lagmay



A RESOLUTION
OF THE
BOARD OF INFORMATION TECHNOLOGY COMMISSIONERS
OF THE CITY OF LOS ANGELES

Whereas, One Wilshire Arcade Imperial, Ltd., a California limited partnership (the "Applicant") has made a request to the City to install a private line telecommunications facility which would encroach into the public right-of-way of Grand Avenue approximately 55 feet north of the centerline of Wilshire Blvd., connecting two buildings located at 624 South Grand Avenue (owned by the Applicant) and 611 Wilshire Blvd. (owned by Downtown Properties, LLC, a California limited liability company), and

Whereas, pursuant to sections 13.62, 13.14, and 13.15 of the Los Angeles Administrative Code (the "Code"), the approval and recommendation of this Board and the subsequent approval of the Los Angeles City Council is necessary to effect a grant of the City's permission to install such a facility in the public right-of-way, and

Whereas, section 13.62 of the Code requires that such permission be granted by way of an instrument denominated as a Franchise, and

Whereas, this Board finds that the public interest will not be harmed if such permission is granted subject to the terms and conditions set forth in the attached franchise ordinance, and

Whereas, pursuant to section 22.646(f) of the Code, this Board is to take official actions by resolution, and

Whereas, at this Board's meeting on July 17, 1998 the Board considered and approved certain amendments to the proposed franchise ordinance, which amendments are set forth in the Board's official records, and

Whereas, a motion to approve the franchise ordinance subject to the inclusion of the amendments approved at the July 17, 1998 meeting has been moved and seconded,

NOW THEREFORE, BE IT RESOLVED by the Board of Information Technology Commissioners of the City of Los Angeles, that:

The Board hereby approves and recommends to the City Council that a franchise in the form attached hereto (subject to amendments approved at the July 17, 1998 meeting of the Board) be granted to One Wilshire Arcade Imperial, Ltd., which franchise will permit One Wilshire Arcade Imperial, Ltd.

to install and maintain a private line telecommunications facility in the public right-of-way of Grand Avenue approximately 55 feet north of the centerline of Wilshire Blvd., subject to the terms and conditions contained therein.

ADOPTED THIS 17th DAY OF July, 1998

Board of Information Technology Commissioners

By: Joyce Emerson
Joyce Emerson, President

ORDINANCE NO. _____

**AN ORDINANCE GRANTING A FRANCHISE
TO ONE WILSHIRE ARCADE IMPERIAL, LTD., TO INSTALL AN
UNDERGROUND PRIVATE LINE TELECOMMUNICATIONS
FACILITY IN THE PUBLIC RIGHT-OF-WAY OF GRAND AVENUE**

WHEREAS, One Wilshire Arcade Imperial, Ltd. ("Franchisee"), has requested permission of the City to encroach into a portion of the City's public right-of-way with a permanent installation consisting of a private line telecommunications facility, and

WHEREAS, the Board of Information Technology Commissioners ("Board") has determined that the public interest, convenience and necessity will not be harmed by the grant of such permission, and

WHEREAS, Section 13.62 of the Los Angeles Administrative Code requires that such permission be granted by way of an instrument denominated as a Franchise and issued by this Council, and

WHEREAS, the following ordinance is adopted notwithstanding and as an exception to the other provisions of Division 13 of the Los Angeles Administrative Code,

NOW, THEREFORE,

THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS:

1. GRANT OF AUTHORITY

1.1 Grant of Authority

Notwithstanding and as an exception to Division 13 of the Los Angeles Administrative Code, but in accordance with section 13.62 thereof and sections 2(11)(m) and 35 of the City Charter, the City hereby grants One Wilshire Arcade Imperial, Ltd., a California limited partnership, a limited franchise to install and maintain a private line telecommunications facility which will encroach into a portion of the public right-of-way at Grand Avenue at approximately 55 feet north of the centerline of Wilshire Boulevard, in the City of Los Angeles, as further described herein, subject to all of the terms and conditions set forth in this ordinance. (hereinafter sometimes referred to as the "Franchise").

1.2 Acceptance

Acceptance of the terms of this Franchise by the Franchisee shall be conclusively established by a writing reflecting the same (appended hereto or otherwise) or by commencement of construction by the Franchisee or its agent or contractor. A replacement Franchise required by section 2.11 hereof shall not be issued or deemed to have been issued without such a writing.

1.3 Encroachment Area

That portion of Grand Avenue, 80 feet wide, in the City of Los Angeles, County of Los Angeles, State of California, as shown on map of Tract No. 1523 recorded in Book 20 Page 13 of maps, records of said county, within a 3 foot wide strip of land, the centerline of said strip lying parallel with and 55 feet northeasterly, measured at right angles, from the centerline of Wilshire Boulevard, 80 feet wide, per field Book 14609-17 on file in the Office of the City Engineer.

Said strip shall be extended or shortened to terminate southeasterly in the southeasterly right-of-way line and northwesterly in the northwesterly right-of-way line of said Grand Avenue.

1.4 Facility Description

“Private Line Telecommunications Facility” or “Facility” means a duct bank containing twelve (12) empty 4-inch diameter conduits to be installed in the Encroachment Area between a building owned by Downtown Properties, LLC, a California Limited Liability Company, at 611 Wilshire Boulevard, and a building owned by Franchisee at 624 South Grand Avenue.

1.5 Limited Purpose

The authorized purpose of construction of the Private Line Telecommunications Facility is to provide a secure hard-wired telecommunications link between mentioned buildings owned by Downtown Properties, LLC., and the mentioned building owned by the Franchisee, which link would not be possible without permission to cross the City’s public right-of-way separating the two or more buildings. This Franchise shall endure only so long as such purpose remains valid, and shall become revocable, in accordance with the procedures set forth herein, in the event any material fact justifying its limited purpose no longer exists. It is expressly contemplated that conduit space in the Facility may be occupied by communications cables owned and operated by third parties. Notwithstanding, separate legal authority for the occupation of the public right-of-way by third party users of the Facility shall in each case be obtained by or in the name of such third parties prior to use of the Facility. No such separate legal authority shall be deemed operative until granted in accordance with the Charter and ordinances of the City; provided, however, that to the

extent a "telephone corporation," as the term is used in California Public Utilities Code §7901, may occupy the public right-of-way without the consent of the City for the purpose of providing telephone service, such legal authority shall be deemed to exist ("Deemed Authority"); but only after adequate evidence of a proposed user's status as a "telephone corporation" and intent to provide telephone service is provided to the Information Technology Agency (the "Agency"), and a written acceptance and approval is issued by the Agency acknowledging the same. For purposes of this agreement only (and not for purposes of construing applicable law or binding the City in any other matter), proof of licensing by the California Public Utilities Commission or the Federal Communications Commission to send voice, video and/or data transmissions shall be deemed adequate evidence of a proposed user's status as a "telephone corporation." Other forms of evidence shall be subject to Agency approval. Deemed Authority is provided for herein solely in compromise of the disputed claims of the parties to this agreement and, except for the purposes of implementing this agreement, shall in no event be construed as a waiver of the City's rights or authority over its public right-of-way, or an admission of the effectiveness of any state statute which the City may claim to be ineffective or unconstitutional in any manner or to any degree. Further, the City reserves the right to terminate the Deemed Authority procedure effective upon adoption by the City Council of any contrary policy or ordinance, in which case all occupation of the public right-of-way contemplated by this agreement, including occupations previously authorized under the Deemed Authority procedure, shall be subject to the lawful Charter provisions, ordinances, and policies of the City. Any dispute concerning whether adequate evidence of a user's status under the Deemed Authority procedure has been supplied to the Agency shall be resolved in accordance with Section 2.8 hereof.

1.6 Limitations on Use

The privileges granted by this Franchise are limited to installation of a private line telecommunications facility to be used solely for permitting tenants, licensees, and other occupants of the buildings mentioned in Section 1.4 (collectively the "tenants") to connect their telecommunications systems, facilities, and switching equipment in the two buildings by installing cable and/or wire through the conduit Facility. Installation of communications cable or equipment in the Facility shall occur only after compliance with the provisions of Section 1.5 hereof. In addition, the Facility shall not knowingly be made available to a multichannel video programming distributor, as defined in the Cable Communications Policy Act of 1984, as amended, without the prior written consent of the Agency. Use of the Facility for purposes other than those expressed above, or in a manner other than that specified above, is expressly outside the scope of the authority granted by this Franchise. Franchisee shall alert intended third party users of their responsibility to obtain the City's consent for use of the Facility (either through the Deemed Authority procedure or as otherwise provided for in Section 1.5 above) and shall provide the City with contemporaneous copies of any instrument used when doing so. Use of the Facility for purposes outside the scope of the authority granted by this Franchise shall cause the Franchise to become revocable in accordance with the procedures set forth herein.

1.7 Effective Date

This Franchise shall become effective on the earliest date after passage provided for by the City Charter and/or applicable law.

2. GENERAL CONDITIONS

2.1 Nonexclusivity

Nothing in this Franchise shall affect the right of the city to grant to any person a Franchise, consent or right to occupy and use the streets or public ways, or any part thereof, for the construction, operation or maintenance of a communications facility within all or a portion of the Encroachment Area (other than inside the conduit Facility) or anywhere else in the city.

2.2 Non-User

If the Franchisee fails to complete construction of the Facility within six (6) months of the date this ordinance is adopted by City Council, the authority granted by this Franchise shall terminate, except that the Board may grant an extension of time to complete construction.

2.3 Priority of Public Works

Nothing in this Franchise shall abrogate the right of the City to perform any public work or public improvement of any description, including, without limitation, all work authorized by applicable law. In the event that the Facility interferes with the construction, operation, maintenance or repair of any such public work or public improvement, the Franchisee, after reasonable notice from the City, shall, at its own cost and expense, promptly protect, alter or relocate the Facility, or any part thereof, as reasonably directed by the City. In the event the Franchisee refuses or neglects to protect, alter, or relocate all or part of the Facility, the City shall have the right, in connection with the performance of such public work or public improvement, to break through, remove, alter, or relocate all or any part of the Facility without any liability to the Franchisee, except such liability as is directly caused by the City's willful misconduct or negligence, and the Franchisee shall promptly pay to the City the costs incurred by such breaking through, removal, alteration, or relocation.

2.4 No Waiver of Regulatory Authority

Except as expressly stated herein, nothing in this Franchise shall be construed as a waiver of any code or ordinance of the City or the City's right to require the Franchisee or any Person utilizing the Facility to secure all appropriate Franchises or authorizations for such use.

2.5 Compliance with Laws

The Franchisee shall comply with: (i) all applicable laws and all requirements of the State of California, the FCC, and any other federal or State agency or authority of competent jurisdiction; (ii) all local laws, rules, regulations, and all orders or other directives of the City issued pursuant to the police powers of the City; and (iii) all rules, regulations, and all other directives of the City issued pursuant to this Franchise, provided that any such rules, regulations, orders or directives issued pursuant to this Franchise shall be consistent with provisions hereof.

2.6 Franchise Revocable

This Franchise may be revoked by the City Council in accordance with the provisions hereof.

2.7 Conflict with Other Installations

No privilege or exemption is granted or conferred by this Franchise except those specifically prescribed herein. Any privilege claimed under this Franchise by the Franchisee in any street shall be subordinate to any prior lawful occupancy of the street.

2.8 Authorization of Additional Franchise Facilities

Upon application to the Board for authorization of additional conduits or lines, the replacement of existing conduits or lines, or the construction or installation of facilities other than those contemplated in Sections 1.4 and 1.5 hereof, the Board shall fix a date for a hearing on the application, and after the hearing, the Board may deny or approve such application. The Board's decision may be appealed to the Council. Facilities constructed, installed or replaced pursuant to any authorization by the Board shall be subject to all the provisions of this Franchise and to any additional conditions relating to construction, specifications, operation and the utilization of facilities or such other conditions as may be prescribed by such authorization.

2.9 Term

The term of this Franchise shall be for a period of ten (10) years from the effective date hereof, unless sooner revoked, as provided herein.

2.10 Rights Upon Termination

The termination, expiration, or revocation of this Franchise shall not operate as a waiver or release of any obligation of the Franchisee or any other person, as applicable, arising pursuant to this Franchise prior to such termination. All such obligations shall survive the termination, expiration, or revocation of this Franchise.

2.11 Renewal

The Franchisee shall apply for a replacement Franchise at least 12 months prior to the expiration date of this Franchise.

3. TRANSFERS AND HYPOTHECATIONS

3.1 Restrictions Against Transfers

This Franchise is a privilege to be held in personal trust by the Franchisee. Except as provided in Section 3 hereof, neither the Franchise nor any rights or obligations of the Franchisee in or pursuant to the Franchise, or the Facility shall be transferred in part or as a whole, by assignment, trust, mortgage, lease, sublease, pledge or other hypothecation, and is not to be sold, transferred, leased, assigned, or disposed of in part or as a whole, either by forced sale, merger, consolidation, or otherwise, nor shall title thereto, either legal or equitable, or any right or interest therein, pass to or vest in any Person, nor shall a change in Control of the Facility occur, either by act of the Franchisee, by operation of law or otherwise, without the consent of the City, which consent shall not be unreasonably withheld or delayed, and which shall be expressed by Ordinance and then only under such conditions as may be therein prescribed. The grant or waiver of any one or more of such consents shall not render unnecessary any subsequent consent or consents, nor shall the grant of any such consent constitute a waiver of any other rights of the City. This Section 3.1 shall not be construed to apply to third party use of the conduit Facility as described in Section 1.5.

3.2 Effect of Unauthorized Action

The taking of any action described in the foregoing section 3.1 hereof without the prior consent of the City shall be deemed a material violation of this Franchise; and render the Franchise subject to revocation by Council.

3.3 Exceptions

The approval of the City for any change in the ownership of the Franchisee shall not be required unless such change involves a change in Control of the Franchisee. For the purposes of this Section 3, "Change in Control of the Franchisee" means any of the following: 1) transfer of a majority of partnership interests to a partner, group of partners, or other control group not previously holding or controlling a majority interest, 2) change in the identity of the General Partner, and 3) acquisition of a controlling interest in individual partners (including by stock transfer) representing a majority interest in the Franchisee, by any third parties. Notwithstanding the provisions of Sections 3.2 and 3.3, any request by Franchisee for approval of a transfer shall be granted by the Agency without further review by the Board or by this Council if: 1) the transfer is for the purpose of a contemporaneous sale or transfer of Franchisee's building at 624 S. Grand Avenue, 2)

ownership of the Facility remains coextensive with ownership of the building after the transfer, 3) full disclosure of the identity of new owner(s) of the Facility after transfer is made to the Agency prior to the transfer, and 4) the transferee agrees in writing to undertake all of the responsibilities and obligations set forth in this agreement.

Nothing contained in this section 3 shall be deemed to prohibit or require City approval of any assignment, pledge, lease, sublease, mortgage, or other Transfer or hypothecation of all or any part of the stock of (or other evidence of ownership in) or assets (not including the Franchise) of the Franchisee or the Facility, or any right or interest therein, for securing an indebtedness, provided that each such assignment, pledge, lease, sublease, mortgage, or other Transfer or hypothecation shall be subject to this Franchise, or applicable law.

3.4 Approval Procedure

The Franchisee shall promptly notify the General Manager in writing of any action or proposed action requiring consent of the City pursuant to this section 3.

The Information Technology Agency ("Agency") shall complete its review of the petition as promptly as is reasonably possible and, thereafter, shall forward the petition and its recommendation to the Board or Council, as appropriate, for final action. Within sixty (60) days of receipt of such petition, the Agency shall present to the Board and subsequently to the Council a status report on the petition review.

4. FACILITY REQUIREMENTS

4.1 Construction

Throughout the term of this Franchise, the Franchisee shall Construct, install, operate, and maintain the Facility in a manner consistent with all laws, ordinances, and construction standards of the City.

Any change regarding construction of the Facility from the description set forth in section 1.4 shall be subject to the approval of the Board which approval shall not be unreasonably withheld. The Franchisee is aware that Franchisee's proposed use of the public right-of-way requires approvals from various City departments including, but not limited to, Public Works (in the case of street opening permits) and Water and Power (in the case of pole attachment or conduit permits). This Franchise does not exempt the Franchisee from the necessity of obtaining these approvals.

4.2 Plans

The Franchisee shall place on file with the Agency prints, plans and maps showing the proposed and as-built location of each conduit, pole, or other portion of the Facility to be installed (and, if using existing poles or conduits, the location of each pole attachment or

conduit to be entered), and the location of each manhole or other opening installed to gain access to the Facility and or its components.

4.3 Quality of Work

All work involved in the Construction, operation and maintenance, repair and removal of the Facility shall be performed with due diligence and using materials of good and durable quality.

4.4 Safety

The Franchisee shall, at its own cost and expense, take all necessary efforts to prevent accidents at its work sites, including the placing and maintenance of proper guards, fences, barricades, and security personnel and, at night, suitable and sufficient lighting.

No less than 24 hours advance notice shall be provided to the Agency prior to commencing construction activities.

4.5 Street Work

In connection with the Construction, operation, maintenance, repair, or removal of the Facility, the Franchisee shall, at its own cost and expense, protect any and all existing structures belonging to the City. The Franchisee shall obtain the prior approval of the City before altering any water main, sewage or drainage Facility, or any other municipal structure in any Public Way or Street. Any such alteration shall be made by the Franchisee, at its sole cost and expense, and in a manner reasonably prescribed by the City. The Franchisee shall also be liable, at its own cost and expense, to replace or repair and restore to as close to its prior condition as is reasonably possible and in a manner reasonably specified by the City, any Public Way, Street or any municipal structure involved in the Construction of the Facility that may become disturbed or damaged as a result of any work thereon by or on behalf of the Franchisee pursuant to this Franchise.

The Franchisee shall, at its own expense, protect, support, temporarily disconnect, relocate in the same Street or Public Way, or remove from any Street or Public Way, any Facility when required by the Board of Public Works, or by any other governmental agency acting in a governmental capacity, by reason of traffic conditions, public safety, Street vacation, freeway construction, or any public improvement or structure, provided that the Franchisee shall in all such cases have the privileges and obligations as to abandonment of the Facility in place which are provided in section 4.6 hereof.

Upon failure of the Franchisee to commence, pursue or complete any repair or restoration work required of it by law or by the provisions of this Franchise in any Street or Public Way, the City, at its option and according to law, may cause such work to be done and the Franchisee shall pay to the City the cost thereof in the itemized amounts reported by the City

to the Franchisee, within thirty (30) days after receipt of such itemized report. In the event the City undertakes to complete such work, the City shall be liable for the willful misconduct or negligence of the City.

4.6 Removal or Abandonment

In the event the use of the Facility is permanently discontinued, or upon termination, expiration or revocation of this Franchise, the City shall have the right to require the Franchisee to remove, at the Franchisee's own expense, all portions of the Facility from the Encroachment Area. The Franchisee shall promptly remove all portions of the Facility involved, other than any such portions which the Board of Public Works may permit to be abandoned in place. Facilities to be abandoned in place shall be abandoned in such manner as the Board of Public Works shall prescribe. Upon abandonment of any Facilities in place, the Franchisee shall submit to the City an instrument satisfactory to the Agency and the City Attorney transferring to the City the ownership of such facilities.

4.7 Completion and Performance Bond

The Franchisee shall obtain, maintain and file with the Agency, on or before the Effective Date of this ordinance, a performance bond or other instrument approved by the City Attorney and issued by a corporate surety authorized to do business in the State of California. Such bond or other instrument shall guarantee the compliance with any one or more of the provisions of this Franchise and the safeguarding against damage to public or private property and the restoration of any damaged property. Such bond or other instrument shall be maintained in an initial amount of ten thousand dollars (\$10,000.00) until construction of the facility is completed and such completion is reported to the Agency and acknowledged by the Agency in writing. Thereafter, the bond shall be maintained in the amount of one thousand dollars (\$1,000.00) throughout the term of the Franchise.

If, at any time during the term of this Franchise, the condition of the corporate surety shall change in such manner as to render the bond unsatisfactory to the City, the Franchisee shall replace such bond with a bond of like amount and similarly conditioned, issued by a corporate surety satisfactory to the City.

The bond or other instrument shall contain the following provisions: "It is hereby understood and agreed that this bond may not be canceled by the surety nor the intention not to renew be stated by the surety until sixty (60) days after receipt by the City, by registered mail, of written notice of such intent to cancel or not to renew."

The bond or other instrument shall further provide that there shall be recoverable by the City, jointly and severally from the principal and surety, any and all damages, losses or costs suffered by the City resulting from: (i) any loss or damage to any municipal structure during the course of Construction of the Facility; and (ii) the removal of all or any part of the Facility from the public ways and streets.

If the Franchisee fails: (i) to make any payment required by this Franchise within the time fixed herein; (ii) to pay to the City, within ten (10) working days after receipt of written notice, any taxes or liens relating to the Facility that are due and unpaid; (iii) to pay to the City within ten (10) working days after receipt of written notice from the General Manager, any damages, claims, costs or expenses which the City has been compelled to pay or incur by reason of any material act or violation by the Franchisee; or (iv) to comply, within ten (10) working days after receipt of written notice from the General Manager, with any material provision of this Franchise which the General Manager reasonably determines can be remedied by an expenditure of an amount from the bond or other instrument; then the General Manager may order the withdrawal of the amount thereof from the bond or other instrument for payment to the City, provided that, prior to each such withdrawal: (A) the Franchisee shall be afforded an opportunity to cure any of said failures within thirty (30) days after written notice from the General Manager that the withdrawal is to be made, or (B) if such cure cannot be reasonably accomplished within such thirty (30) days, then the Franchisee shall have a reasonable time to cure, provided that the Franchisee commences such cure within such thirty (30) days and diligently pursues such cure to completion.

Throughout the term of this Franchise, the Franchisee shall maintain the bond or other instrument in the amount specified in this Section 4.7. Within ten (10) business days after receipt of notice from the General Manager that any amount has been withdrawn from the bond or other instrument, as provided in this Section, the Franchisee shall restore the bond to the then applicable amount specified in this Section, provided, however, that said restoration obligation shall be suspended during the period of any judicial challenge by the Franchisee to the propriety of said withdrawal from the bond. If it is determined that said withdrawal by the City was improper, the City shall restore to the bond or other instrument an amount equal to the improperly withdrawn amount.

No action, proceeding, or exercise of a right with respect to such completion and performance bond or other instrument shall affect any other right which may be held by the City; and the faithful performance by and the liability of the Franchisee pursuant to this Franchise shall not be limited by the acceptance of the bond or other instrument required by this Section 4.7.

5. PAYMENT OBLIGATIONS

5.1 Compensation

In order to compensate the City for the burden of private occupation of its public right-of-way, the increased maintenance and repair expenses associated with private occupation of the public right-of-way, and the increased costs of supervision thereof, a fee for the use and occupation of the public right-of-way by the Franchisee is hereby imposed. Before commencement of construction of the Facility, the Franchisee shall tender the first annual right-of-way use fee payment to the City in a form and amount specified below. The Franchisee shall continue to pay the annual right-of-way use fee periodically during the term

of this Franchise. Failure to comply with any of the payment obligations set forth in this section shall render the Franchise revocable, in accordance with the procedure set forth herein.

The right-of-way use fee shall be in addition to and shall not constitute an offset or credit against any and all taxes or other fees or charges which the Franchisee shall be required to pay to the City, or to any State or federal agency or authority, as required herein or by law; the payment of said taxes, fees or charges shall not constitute a credit or offset against the right-of-way use fee, all of which shall be separate and distinct obligations of the Franchisee. No such taxes fees or charges shall be used as offsets or credits against the right-of-way use fee.

5.2 Linear Foot Formula

For underground occupation, the Franchisee shall pay an amount based on the street space required for the Facility at the rate of five dollars (\$5.00) per linear foot, per year, per conduit, assuming the maximum cross-sectional diameter of each conduit is six (6) inches or less. For overhead occupation, the Franchisee shall pay an amount based on the air space required for the Facility at the rate of one dollar and twenty five cents (\$1.25) per linear foot per year, per wire or cable.

5.3 Annual Payment

The first annual payment made pursuant to Section 5.1 hereof, shall be applied to the one year period beginning with the effective date of this ordinance. Additional annual payments shall be applied to the nine subsequent annual periods, and shall be made not later than thirty (30) days following each of the first through ninth anniversary dates of the effective date.

The annual payment amount is calculated as:

$$80 \text{ linear feet} \times \text{twelve (12) conduits/cables} \times \$5.00 = \$4,800$$

Any annual payment made after the due date shall accrue interest at an annual rate of eight percent (8%).

5.4 Option to Pay Lump Sum

In lieu of making the above annual payments specified in section 5.3 above, the Franchisee may, at its option, elect to prepay the sum of forty eight thousand dollars (\$48,000.00) in one payment, within thirty (30) days of the effective date of this Franchise.

5.5 Payment Terms

All payments by the Franchisee to the City pursuant to this Franchise shall be made payable to the City Treasurer and deposited with the General Manager. Acceptance of any payment made by the Franchisee pursuant to this Franchise shall not be construed as an acknowledgment that the amount paid is the correct amount due, nor shall such acceptance of payment be construed as a release of any claim which the City may have for additional sums due and payable.

5.6 Revocation for Non-payment

In the event that any payment required by this Franchise is not actually received by the City on or before the applicable date fixed in this Franchise, then this Franchise shall be subject to revocation by the City Council.

6. OVERSIGHT AND REGULATION

6.1 Notices

Notice of a public meeting relating to this Franchise shall be posted not less than 72 hours prior to the meeting, and shall remain posted until after the meeting.

The Franchisee shall maintain an address on file with the Agency and with the City Clerk. Notices to the Franchisee shall be addressed or delivered to the Franchisee at said address.

Notices to the City required by law or by this Franchise shall be delivered in person or by first class, receipted mail or certified mail as appropriate, to the City Clerk, Room 615, City Hall East, 200 North Spring Street, Los Angeles, California 90012 and to the General Manager not less than ten (10) business days prior to the day on which the party giving such notice shall commence any activity which requires the giving of notice. In computing business days, Saturdays, Sundays and holidays recognized by the City shall be excluded.

All required notices shall be in writing.

7. LIABILITY AND INSURANCE

7.1 Indemnification of City

Excepting claims arising out of the active negligence or willful misconduct of the City or its officers and/or employees acting within the course and scope of their employment, the Franchisee undertakes and agrees to defend, indemnify and hold harmless the City and any and all of the City's Boards, Officers, Agents, Employees, Assigns and Successors in Interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees and cost of litigation, damage or

liability of any nature whatsoever, for death or injury to any person, including the Franchisee's employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of, or incident to, the installation or operation of the Facility by or on the part of the Franchisee or sub-contractor of any tier.

7.2 Insurance Requirement

Without limiting the Franchisee's indemnification of the City pursuant to Section 7.1 hereof, the Franchisee shall provide and maintain, at its own expense, continuously during the terms specified below, the insurance listed in sections 7.3-7.5 covering installation or operation of the Facility, commencing no later than the effective date of this Franchise and subject to the following conditions:

The City, shall be named as an additional insured in all insurance policies. The City shall be named Loss Payee as its Interest may appear in all required property fidelity and surety coverage.

Evidence of insurance shall be submitted to the City Attorney and Risk Manager for approval prior to commencement of any operations under this Franchise, which approval shall not be unreasonably withheld.

With respect to the interests of the City, such insurance shall not be canceled, reduced in coverage or limits, or non-renewed except after thirty (30) days written notice, by hand delivery or certified mail, has been given to the Office of the City Attorney, 200 North Main Street, Room 1650, City Hall East, Los Angeles, California 90012-4168, Attention: Insurance and Bonds.

The appropriate City Special Endorsement forms, obtainable from the Agency, are the preferred form of evidence of insurance. Alternatively, the Franchisee may submit two (2) certified copies of the full policies containing the appropriate cancellation notice language and additional insured/loss payee language as specified.

7.3 General Liability

The Franchisee shall provide insurance with combined single limits of \$1,000,000 per occurrence for Bodily Injury and Property Damage during construction only. Such insurance must include: premises and operations, completed operations, contractual liability, independent contractors and, during the course of construction, collapse and underground hazards.

7.4 Automobile Liability

The Franchisee shall provide insurance with combined single limits of \$1,000,000 per occurrence, for Bodily Injury and Property Damage, including coverage for owned

automobiles, non-owned automobiles, and hired automobiles. This coverage is required during construction only.

7.5 Worker's Compensation and Employer's Liability

By acceptance of this Franchise, the Franchisee certifies that it is aware of the provisions of Section 3700, et seq. of the Labor Code which require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with such provisions. A minimum limit of \$1,000,000 per employee is required for Employer's Liability with a Waiver of Subrogation in favor of the City. This coverage is required during construction only.

8. TERMINATION AND RELATED RIGHTS

8.1 Revocation

In the event that the Franchisee violates or fails to comply with any conditions of this Franchise for which revocation is a remedy, the Council may revoke the Franchise granted herein and terminate this Franchise.

The Council shall exercise its right to revoke the Franchise and terminate this Franchise for a failure by the Franchisee to comply with any material provision of this Franchise in accordance with the procedure generally applicable to adoption or repeal of ordinances, provided, however, that the Council shall only act upon recommendation of the Board, and not in derogation of such recommendation, except upon a three-fourths majority of Council voting to do so.

8.2 Termination Defined

The termination of this Franchise and the termination of Franchisee's privileges herein shall become effective upon the earliest to occur of: (i) the revocation of the Franchise by action of the Council, as provided in section 8.1 hereof; (ii) the abandonment of the Facility, in whole or material part, as defined in section 4.6 hereof, by the Franchisee, without the express, prior approval of the City; (iii) non-use of the Franchise privileges as set forth in section 2.2; or (iv) the expiration of the term of the Franchise as set forth in section 2.9.

8.3 Removal Upon Termination

Upon any termination of this Franchise, the Franchisee shall, at its own cost and expense, promptly remove that part of the Facility located in the Streets and Public Ways and shall replace or repair and restore to serviceable condition each affected Street, Public Way, and governmental structure therein, in such manner as may be reasonably specified by the City.

If the Franchisee fails to remove the Facility from the public right-of-way within ninety (90) days of a City request to do so, or fails to repair or restore any street in conformance with the manner specified by the City, the City shall be permitted to initiate and/or complete such work at the expense of, and without liability to, the Franchisee.

In the event of any acquisition of the Facility by the City pursuant to section 4.6, and subject to the requirements of applicable law, the City may lease, sell, operate, or otherwise dispose of all or any part of the Facility in any manner.

9. CERTIFICATION

9.1. Certification

The City Clerk shall certify to the passage of this ordinance and cause the same to be published in some daily newspaper printed and published in the City of Los Angeles.

I hereby certify that the foregoing ordinance was passed by the Council of the City of Los Angeles at its meeting of 1998.

J. MICHAEL CAREY, City Clerk

By: _____
Deputy

Approved: _____

Mayor

Approved as to Form and Legality

Accepted:
ONE WILSHIRE ARCADE
IMPERIAL LTD., a California Limited Partnership
By: Paramount Group, Inc., its agent

Date: 7-30-98

By: *Daniel K. Brown*

JAMES K. HAHN, City Attorney

Name(printed): Daniel K. Brown

By: *Edward J. Perez*
EDWARD J. PEREZ
Assistant City Attorney

Director of Property Management
Title: Western Region

Date: _____

Council File No.: _____