

ORDINANCE NO. 100

AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON, GRANTING METRICOM, INC., A DELAWARE CORPORATION, A NON-EXCLUSIVE FRANCHISE FOR FIVE YEARS, TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE, AND REPAIR A WIRELESS DATA COMMUNICATIONS SYSTEM, IN, ACROSS, OVER, ALONG, AND THROUGH CERTAIN DESIGNATED PUBLIC RIGHTS-OF-WAY OF THE CITY OF SHORELINE, WASHINGTON.

WHEREAS, RCW 35A.11.020 grants the City broad authority to regulate the use of the public right-of-way; and

WHEREAS, RCW 35A.47.040 grants the City broad authority to grant nonexclusive franchise agreements; and

WHEREAS, the Council finds that it is in the best interests of the health, safety and welfare of residents of the Shoreline community to grant a non-exclusive franchise to Metricom, Inc., for the operation of a telecommunications system within the City right-of-way; NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF SHORELINE, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Definitions. The following terms contained herein, unless otherwise indicated, shall be defined as follows:

- 1.1 **City:** The City of Shoreline, a municipal corporation of the State of Washington, specifically including all areas incorporated therein as of the effective date of this ordinance and any other areas latter added thereto by annexation or other means.
- 1.2 **Days:** Calendar days.
- 1.3 **Metricom:** Metricom, Inc. a Delaware corporation, and its respective successors and assigns.
- 1.4 **Facilities:** All wires, lines, cables, conduits, equipment, radio receivers/transmitters, modems, antennas, and supporting structures, located in the City's right-of-way, utilized by the grantee in the operation of activities authorized by this Ordinance. The abandonment by grantee of any facilities as defined herein shall not act to remove the same from this definition.
- 1.5 **Grantee:** As incorporated or used herein shall refer to Metricom.
- 1.6 **Gross Annual Revenues:** "Gross Revenues" means the gross dollar amount accrued on Metricom's books for Services provided to its customers with billing addresses in the City, excluding (i) the franchise fee required by Section 14.2 below, (ii) local, state, or

federal taxes collected by Metricom that have been billed to the subscriber and separately stated on such bill, and (iii) revenue that was projected or expected under Metricom's accrual-basis accounting system that Metricom did not actually receive because uncollectible from subscribers (i.e., bad debts) with billing addresses in the City or otherwise.

- 1.7 Permittee: A person who has been granted a permit by the Permitting Authority.
- 1.8 Permitting Authority: The head of the City department authorized to process and grant permits required to perform work in the City's right-of-way, or the head of any agency authorized to perform this function on the City's behalf. Unless otherwise indicated, all references to Permitting Authority shall include the designee of the department or agency head.
- 1.9 Person: An entity or natural person.
- 1.10 Public Works Director: The head of the Public Works department of the City, or in the absence thereof, the head of the Development Services Group of the City, or the designee of either of these individuals.
- 1.11 Radios: "Radios" means that radio equipment to be installed and operated by Metricom hereunder.
- 1.12 Ricochet™: "Ricochet" means Ricochet MicroCellular Digital Network, a wireless digital communications microcellular radio network owned and operated by Metricom.
- 1.13 Right-of-way: As used herein shall refer to the surface of and the space along, above, and below any street, road, highway, freeway, lane, sidewalk, alley, court, boulevard, parkway, drive, utility easement, and/or road right-of-way now or hereafter held or administered by the City of Shoreline.
- 1.14 Services: "Services" means the wireless digital communications services provided through Ricochet by Metricom.

Section 2. Franchise Granted.

2.1 Pursuant to RCW 35A.47.040, the City hereby grants to Metricom, its heirs, successors, and assigns, subject to the terms and conditions hereinafter set forth, a franchise (the "Franchise") for a period of five (5) years, beginning on the effective date of this Ordinance. The term of this Franchise shall be renewed automatically for two (2) successive five-year periods on the same terms and conditions set forth herein unless either Metricom or the City notifies the other party of its intention not to renew on or before the date which is six (6) months prior to commencement of the relevant succeeding renewal term.

2.2 Any and all rights expressly granted to Metricom under this Franchise, which shall be exercised at Metricom's sole cost and expense, shall be subject to the prior and continuing right of the City under applicable Laws to use any and all parts of the Public Right-of-Way only, exclusively or concurrently, with any other Person or Persons, and further shall be subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances and claims of title which may affect the Public Right-of-Way. Nothing in this Franchise shall be deemed to grant, convey, create, or vest a perpetual real property interest in land in Metricom, including any fee or leasehold interest, or easement.

2.4 The City hereby recognizes and consents to Metricom's right to attach, install, operate, maintain, remove, reattach, reinstall, relocate, and replace its Radios in or on street light poles, power poles, or other property owned by public utility companies or other property owners located within the Public Right-of-Way as may be permitted by the public utility company or property owner, as the case may be for the purposes of providing Services to Persons located within or without the limits of the City. Metricom shall furnish to the city documentation of said permission from the individual utility/property owner responsible. Any work performed pursuant to the rights granted under this Franchise may, at the City's option, be subject to the prior review and approval of the City. During the term of this Franchise, the location of each Radio installed by Metricom or its designee shall be disclosed, in writing, to the City by Metricom within thirty (30) days after its installation, removal, or relocation. Such identifications shall be incorporated in Exhibit A to this Franchise. Nothing in this section or elsewhere in this Franchise shall be construed as excusing Metricom from compliance with applicable portions of the City's ordinary permit review process.

2.5 Except as permitted by applicable Laws or this Franchise, in the performance and exercise of its rights and obligations under this Franchise, Metricom shall not interfere in any manner with the existence and operation of any and all public and private rights-of-way, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electric and telephone wires, electroliers, cable television, and other telecommunications, utility, and municipal property without the express written approval of the owner or owners of the affected property or properties.

2.6 Metricom shall comply with all applicable Laws in the exercise and performance of its rights and obligations under this Franchise.

Section 3. Non-Exclusive Franchise Grant. This Franchise is granted upon the express condition that it shall not in any manner prevent the City from granting other or further franchises in, along, over, through, or across any right-of-way, provided such subsequent franchises shall not interfere with Metricom's radio signals emanating or directed to the Radios or physically displace such Radios. Such Franchise shall in no way prevent or prohibit the City from using any right-of-way or other public property or affect its jurisdiction over them or any part of them, and the City shall retain the authority to make all necessary changes, relocations, repairs, maintenance, establishment, improvement, dedication of the same as the City may deem

fit, including the dedication, establishment, maintenance, and improvement of all new right-of-ways or other public properties of every type and description.

Section 4. Relocation of Wireless Data Communication System Facilities.

- 4.1 Metricom agrees and covenants at its sole cost and expense, to protect, support, temporarily disconnect, relocate or remove from any right-of-way its facilities when so reasonably required by the City, provided that Metricom shall in all such cases have the privilege to temporarily bypass, in the authorized portion of the same right-of-way upon approval by the City, any facilities required to be temporarily disconnected or removed.
- 4.2 If the City determines that a public project or property management necessitates the relocation of Metricom's existing facilities, the City shall:
 - 4.2.1 At least sixty (60) days prior to the commencement of such project, provide Metricom with written notice requiring such relocation; and
 - 4.2.2 Provide Metricom with copies of any plans and specifications pertinent to the requested relocation and a proposed temporary or permanent relocation for Metricom's facilities.
 - 4.2.3 After receipt of such notice and such plans and specifications, Metricom shall complete relocation of its facilities at no charge or expense to the City at least ten (10) days prior to commencement of the project.
- 4.3 Metricom may, after receipt of written notice requesting a relocation of its facilities, submit to the City written alternatives to such relocation. The City shall evaluate such alternatives and advise Metricom in writing if any of the alternatives is suitable to accommodate the work that otherwise necessitates the relocation of the facilities. If so requested by the City, Metricom shall submit additional information to assist the City in making such evaluation. In the event the City ultimately determines that there is no other reasonable alternative, Metricom shall relocate its facilities as provided in this section.
- 4.4 The provisions of this Section shall in no manner preclude or restrict Metricom from making any arrangements it may deem appropriate when responding to a request for relocation of its facilities by any person other than the City, where the improvements to be constructed by said person are not or will not become City-owned, operated or maintained, provided that such arrangements do not unduly delay a City construction project.
- 4.5 Whenever any person shall have obtained permission from the City to use any right-of-way for the purpose of moving any building or other oversized structure, Metricom, upon fourteen (14) days written notice from the City, shall raise or remove, at the expense of the Permittee desiring to move the building or structure, any of Metricom's facilities that may obstruct the movement thereof; provided, that the moving of such building or structure shall be done in accordance with regulations and general ordinances of the City. Where more than one path is available for the moving of such building or structure, the path of least interference, as determined by the City, shall be utilized.

Section 5. Metricom's Maps and Records. As a condition of this Franchise, and at its sole expense, Metricom agrees to provide the City with as-built plans, maps, and records that show the vertical and horizontal location of its facilities within the right-of-way using a minimum scale of one inch equals one hundred feet (1"=100'), measured from the center line of the right-of-way, which maps shall be in hard copy plan form acceptable to the City and in Geographical Information System (GIS) or other digital electronic format acceptable to the City. This information shall be provided between one hundred twenty (120) and one hundred eighty (180) days of the effective date of this Ordinance and shall be updated upon reasonable request by the City.

Section 6. Incorporation By Reference. Shoreline City Ordinance No. 83, Establishing Minimum Requirements, Procedures, And Application Information For Franchises Within Shoreline, as currently written and as hereafter amended, is hereby incorporated herein by this reference. In the event of a conflict between Ordinance No. 83 and this Ordinance, this Ordinance shall control over any conflicting provisions incorporated by this Section. Notwithstanding the foregoing, the parties agree that, in light of Metricom's status as a publically-traded corporation listed on NASDAQ, the reporting requirements stated in subsections 10(A)(2) and 10(A)(6) of Ordinance 83 shall be satisfied for all purposes under this Franchise by Metricom's public annual report filed with the Securities Exchange Commission.

Section 7. Undergrounding. Metricom hereby affirms its understanding and agreement that its activities within the City must comply with Shoreline City Ordinance No. 82, Establishing Minimum Requirements And Procedures For The Underground Installation Of Electric And Communication Facilities Within Shoreline, as currently written and as hereafter amended, and in exchange for an exemption from the requirements of Section 6(b) of that ordinance, and in accord with Section 6(b)(1) thereof, Metricom hereby agrees and covenants to the following:

- 7.1 Information - Metricom shall provide to the City of Shoreline, or any entity that has noticed Metricom of a joint trenching project under Section 12 of Shoreline City Ordinance No. 82, all reasonably requested information regarding the nature and location of facilities installed, owned, operated, or maintained by Metricom within a proposed undergrounding area. Said information will be provided within a reasonable period of time, not to exceed thirty (30) days following the request.
- 7.2 Notice - Metricom shall respond to any notification pursuant to Section 12 of Shoreline City Ordinance No. 82, within 45 days following such notification with written commitment either to participate in the proposed project or to remove its facilities.
- 7.3 Cost - Metricom agrees to bear its proportionate share of all costs common to participants in any joint trenching project and to bear the entire cost of all materials and labor particularly necessary for the underground installation of its facilities and, upon the completion of that installation, the removal of the overhead facilities replaced thereby.
- 7.4 Exempted Facilities - Metricom shall, whenever possible, install any of Metricom's facilities exempted from undergrounding by Section 4 of Shoreline City Ordinance No. 82 onto facilities also exempted from undergrounding by that Section. Any of

Metricom's exempt facilities installed on non-exempt facilities shall be removed or relocated, at Metricom's sole cost and expense, from said non-exempt facilities within sixty (60) days of Metricom's receipt of written notification from the Permitting Authority or the Permittee that a permit has been granted for an undergrounding project that will cause the removal of said non-exempt facilities.

Section 8. Right-Of-Way Operations And Notice Of Entry.

- 8.1 During any period of constructing, relocation or maintenance, all surface structures, if any, shall be erected and used in such places and positions within the right-of-way so as to interfere as little as possible with the safe and unobstructed passage of traffic and the unobstructed use of adjoining property. Metricom shall at all times post and maintain proper barricades and comply with all applicable safety regulations, including the Uniform Traffic Control Manual, during such period of construction as required by the ordinances of the City or state law, including RCW 39.04.180, for the construction of trench safety systems.
- 8.2 Whenever Metricom enters upon any right-of-way for the purpose of installation, construction, repair, maintenance or relocation of its facilities, it shall apply to the City for a permit to do so in accord with the ordinances and regulations of the City requiring permits to operate in the right-of-way. In no case shall any work commence within any right-of-way without a permit, except as otherwise provided in this Ordinance. During the progress of the work, Metricom shall not unnecessarily obstruct the passage or use of the right-of-way, and shall provide the City with plans, maps, and information showing the proposed and final location of any facilities in accord with Section 5 of this Ordinance.
- 8.3 At least ten (10) days prior to its intended construction of facilities, Grantee shall inform all residents in the affected area, that a construction project will commence, the dates and nature of the project, and provide a toll-free or local number which the resident may call for further information. A pre-printed door hanger may be used for this purpose.
- 8.4 At least twenty-four (24) hours prior to entering right-of-way adjacent to or on private property to perform the installation, maintenance, repair, reconstruction, or removal facilities, a written notice describing the nature and location of the work to be performed shall be physically posted upon the affected private property by the Grantee.

Section 9. Emergency Work, Permit Waiver. In the event of any emergency where any facilities located in the right-of-way are broken or damaged, or if Metricom's construction area for their facilities is in such a condition as to place the health or safety of any person or property in imminent danger, Metricom shall immediately take any necessary emergency measures to repair or remove its facilities without first applying for and obtaining a permit as required by this Franchise. However, this emergency provision shall not relieve Metricom from later obtaining any necessary permits for the emergency work. Metricom shall apply for the required permits not later than the next business day following the emergency work.

Section 10. Recovery of Costs. Metricom shall be subject to all permit fees associated with activities undertaken pursuant to this Franchise or other ordinances of the City. If the City incurs any costs and/or expenses for review, inspection or supervision of activities undertaken pursuant to this Franchise or any ordinances relating to a subject for which a permit fee is not established, Metricom shall pay the City's costs and expenses. In addition, Metricom shall promptly reimburse the City for any costs the City reasonably incurs in responding to any emergency involving Metricom's facilities.

Section 11. Dangerous Conditions, Authority for City to Abate.

- 11.1 Whenever installation, maintenance or excavation of facilities authorized by this Franchise causes or contributes to a condition that appears to substantially impair the lateral support of the adjoining right-of-way, public or private property, or endangers any person, the Public Works Director may direct the Grantee, at the Grantee's expense, to take actions to resolve the condition or remove the endangerment. Such directive shall be in writing and may include compliance within a prescribed time period.
- 11.2 In the event the Grantee fails or refuses to promptly take the directed action, or fails to fully comply with such direction, or if emergency conditions exist which require immediate action to prevent imminent injury or damages to persons or property, the City may take such actions as it believes are necessary to protect persons or property and the Grantee shall be responsible to reimburse the City for its costs.

Section 12. Safety.

- 12.1 The Grantee, in accordance with applicable federal, state, and local safety rules and regulations shall, at all times, employ ordinary care in the installation, maintenance, and repair utilizing methods and devices commonly accepted in their industry of operation to prevent failures and accidents that are likely to cause damage, injury, or nuisance to persons or property.
- 12.2 All of Grantee's facilities in the right-of-way shall be constructed and maintained in a safe and operational condition.
- 12.3 The City reserves the right to ensure that the Grantee's facilities are constructed and maintained in a safe condition. If a violation of the National Electrical Safety Code or other applicable regulation is found to exist, the City will notify the Grantee in writing of said violation and establish a reasonable time for the Grantee to take the necessary action to correct the violation. If the correction is not made within the established time frame, the City, or its authorized agent, may make the correction. The Grantee is responsible for all the costs and expenses incurred by the City in correcting the violation.

Section 13. Tree Trimming. Upon approval of the City and in accordance with City ordinances, the Grantee shall have the authority to trim trees and other plant life upon and overhanging the right-of-way to prevent interference with the Grantee's facilities. The Grantee shall provide at least seven (7) days written notice to the owner of the property on which any tree or plant life Grantee desires to trim is located. Said notice may be in the form of a doorknob hanger and shall contain a contact name, address, and telephone number where the property owner can obtain information from the Grantee regarding its tree trimming plans and express concerns regarding the trimming of the trees or plant life on their property. The Grantee shall make a good faith effort to conform with property owners' requests regarding trimming trees or plant life on their property. The Grantee shall be responsible for debris removal from any trimming activities. If such debris is not removed within twenty-four (24) hours, the City may, at its sole discretion, remove such debris and charge the Grantee for the cost of removal and disposal.

Section 14. Franchise Fee - City's Reservation of Rights. Metricom understands and agrees that its operations within the City are limited to those of a wireless data communications system. Metricom further acknowledges and agrees that these operations do not come within the definition of a telephone business included in RCW 82.04.065, and that currently no statutory prohibition on the imposition of a franchise fee by the City exists. The amount of the franchise fee imposed under this paragraph shall be as stated below and in no event greater than that charged to Cable Television or other Data Communications providers.

14.1 Metricom shall be solely responsible for the payment of all lawful Fees and utility charges in connection with the exercise of Metricom's right, title, and interest in, and the attachment, installation, operation, and maintenance of, its Radios and the rendering of Services under this Franchise.

14.2 As compensation for this Franchise, Metricom shall pay to the City, on an annual basis, an amount equal to four percent (4%) of Metricom's Gross Revenues, which amount will be collected from subscribers of the Services and remitted to City as provided herein. The compensation required by this section shall be due on or before the 45th day after the end of each calendar year or fraction thereof. Within 45 days after the termination of this Franchise, compensation shall be paid for the period elapsing since the end of the last calendar year for which compensation has been paid. Metricom shall furnish to the City with each payment of compensation required by this section a statement, executed by an authorized officer of Metricom or his or her designee, showing the amount of Gross Revenues for the period covered by the payment. If Metricom discovers that it has failed to pay the entire or correct amount of compensation due, the City shall be paid by Metricom within fifteen (15) days of discovery of the error or determination of the correct amount. Any overpayment to the City through error or otherwise shall be offset against the next payment due from Metricom. Acceptance by the City of any payment due under this section shall not be deemed to be a waiver by the City of any breach of this Franchise occurring prior thereto, nor shall the acceptance by the City of any such payments preclude the City from later establishing that a larger amount was actually due, or from collecting any balance due to the City.

14.3 Metricom shall keep accurate books of account at its principal office in Los Gatos or such other location of its choosing for the purpose of determining the amounts due to the City under Section 14.2. The City may inspect Metricom's books of account at any time during regular business hours on five (5) days' prior written notice and may audit the books from time to time at City's sole expense, but in each case only to the extent necessary to confirm the accuracy of payments due under Section 14.2. Notwithstanding the foregoing, Metricom shall bear the cost of any audit ordered by the City pursuant to this section if such audit, certified by a nationally-recognized firm of certified public accountants, confirms an error or errors in Metricom's books which has resulted in an underpayment to the City of five percent (5%) or more of the compensation owing to the City under this Franchise. The City may require annually or annual reports from Metricom relating to its operations and revenues within the City. City agrees to hold in confidence any non-public information it learns from Metricom in accordance with applicable law.

14.4 Notwithstanding anything to the contrary herein, City agrees that Metricom shall have no obligation to collect from its subscribers or pay to the City the franchise fee provided in Section 14.2 above with respect to calendar years 1996 and 1997, and such obligation shall commence with respect to revenues collected from subscribers during calendar year 1998. This provision is in the nature of an abatement and is intended to permit Metricom to establish its subscriber base during a reasonable initial deployment period. This section shall be subject and subordinate to any state or federal legal mandate which may be applicable to this Franchise requiring that the City impose uniform franchise fees on all similarly-situated franchisees operating within the City.

Section 15. Authorized Activities. The Franchise granted herein is solely for the operation of a wireless data communications business. The Grantee is required to obtain a separate franchise for any operations that include activities other than providing data signal carrying capacity.

Section 16. Indemnification.

16.1 Metricom hereby releases, covenants not to bring suit, and agrees to indemnify, defend and hold harmless the City, its elected officials, employees, agents, and volunteers from any and all claims, costs, judgments, awards or liability to any person, including claims by Metricom's own employees to which Metricom might otherwise be immune under Title 51 RCW, to the extent arising from injury, sickness, or death of any person or damage to property as a result of the negligent acts or omissions of Metricom, its agents, servants, officers or employees in performing activities authorized by this Franchise. Metricom further releases, covenants not to bring suit and agrees to indemnify, defend and hold harmless the City, its elected officials, employees, agents, and volunteers from any and all claims, costs, judgments, awards or liability to any person (including claims by Metricom's own employees, including those claims to which Metricom might otherwise have immunity under Title 51 RCW) arising against the City solely by virtue of

the City's ownership or control of the right-of-ways or other public properties, by virtue of Metricom's exercise of the rights granted herein, or by virtue of the City's permitting Metricom's use of the right-of-way or other public property based upon the inspection or lack of inspection of work performed by Metricom, its agents and servants, officers or employees in connection with work authorized on the City's property or property over which the City has control, pursuant to this Franchise or pursuant to any other permit or approval issued in connection with this Franchise. This covenant of indemnification shall include, but not be limited by this reference, claims against the City arising as a result of the negligent acts or omissions of Metricom, its agents, servants, officers or employees in barricading, instituting trench safety systems or providing other adequate warnings of any excavation, construction, or work in any right-of-way or other public place in performance of work or services permitted under this Franchise. If final judgment is rendered against the City, its elected officials, employees, agents, and volunteers, or any of them, Metricom shall satisfy the same.

16.2 Inspection or acceptance by the City of any work performed by Metricom at the time of completion of construction shall not be grounds for avoidance of any of these covenants of indemnification. Said indemnification obligations shall extend to claims that are not reduced to a suit and any claims that may be compromised prior to the culmination of any litigation or the institution of any litigation.

16.3 In the event Metricom refuses to undertake the defense of any suit or any claim, after the City's request for defense and indemnification has been made pursuant to the indemnification clauses contained herein, and Metricom's refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter), to have been a wrongful refusal on the part of Metricom, then Metricom shall pay all of the City's costs and expenses for defense of the action, including reasonable attorneys' fees of recovering under this indemnification clause as well as any judgment against the City.

16.4 Should a court of competent jurisdiction determine that this Franchise is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of Metricom and the City, its officers, employees and agents, Metricom's liability hereunder shall be only to the extent of Metricom's negligence. It is further specifically and expressly understood that the indemnification provided in Section 16 constitutes Metricom's waiver of immunity under Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

Section 17. Insurance.

17.1 Metricom shall procure and maintain for the duration of the Franchise, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of the rights, privileges and authority granted hereunder to Metricom, its agents or employees. Metricom shall provide an insurance certificate, together with an endorsement naming the City, its elected officials, employees, agents, and volunteers as additional insureds, to the City for its inspection prior to the

commencement of any work or installation of any facilities pursuant to this Franchise, and such insurance shall evidence:

17.1.1 Automobile Liability insurance with limits no less than \$1,000,000 Combined Single Limit per accident for bodily injury and property damage; and

17.1.2 Commercial General Liability insurance policy, written on an occurrence basis with limits no less than \$1,000,000 combined single limit per occurrence and \$2,000,000 aggregate for personal injury, bodily injury and property damage. Coverage shall include but not be limited to: contractual liability; products/completed operations; broad form property damage; explosion, collapse and underground (XCU); and employer's liability.

17.2 Any deductibles or self-insured retentions must be declared and approved by the City. Payment of deductible or self-insured retention shall be the sole responsibility of Metricom.

17.3 The insurance obtained by Metricom shall name the City, its elected officials, employees, agents, and volunteers as additional insureds with regard to the activities these persons perform by or on behalf of Metricom. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers, except those general limitations provided in the policy. In addition, the insurance policy shall substantially contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. Metricom's insurance shall be primary insurance for the City, its elected officials, employees, agents, and volunteers. Any insurance maintained by the City, its elected officials, employees, agents, and volunteers shall be excess of Metricom's insurance and shall not contribute with it. The insurance policy or policies required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

17.4 Any failure to comply with the reporting provisions of the policies required herein shall not affect coverage provided to the City, its elected officials, employees, agents, and volunteers.

Section 18. Abandonment of Metricom's Facilities. No section of cable or portion of the facilities laid, installed, or constructed in the right-of-way by Metricom may be abandoned by Metricom without the express written consent of the City. Any plan for abandonment or removal of Metricom's facilities must be first approved by the Public Works Director, and all necessary permits must be obtained prior to such work.

Section 19. Restoration after Construction.

19.1 Metricom shall, after any abandonment approved under Section 18, or any installation, construction, relocation, maintenance, or repair of facilities within the franchise area, restore the right-of-way to at least the condition the same was in immediately prior to any such abandonment, installation, construction, relocation, maintenance or repair. Restoration shall include, but not be limited to, landscaping, drainage systems, roadways, pedestrian pathways, and other City infrastructure. All concrete encased monuments which have been disturbed or displaced by such work shall be restored pursuant to all federal, state and local standards and specifications. Metricom agrees to promptly complete all restoration work and to promptly repair any damage caused by such work at its sole cost and expense.

19.2 If it is determined that Metricom has failed to restore the right-of-way in accord with this Section, the City shall provide Metricom with written notice including a description of actions the City believes necessary to restore the right-of-way. If the right-of-way is not restored in accord with the City's notice within thirty (30) days of that notice, the City, or its authorized agent, may restore the right-of-way. Metricom is responsible for all costs and expenses incurred by the City in restoring the right-of-way in accord with this Section. The rights granted to the City under this paragraph shall be in addition to those otherwise provided by this Franchise.

Section 20. Commencement of Construction. Metricom hereby affirms its intention to install a wireless data communications system capable of servicing the entire franchise area. Initial construction of the facilities contemplated by this Franchise ordinance shall commence no later than December 31, 1996, provided that this Ordinance is passed and finally approved on or before August 31, 1996, and further provided that such time limit shall not apply to delays caused by acts of God, strikes, eminent domain litigation, or other occurrences over which Metricom has no control. Failure to comply with this section shall make this Franchise null and void as of the date specified in this section for the commencement of construction.

Section 21. Bond. Before undertaking any of the work, installation, improvements, construction, repair, relocation or maintenance authorized by this Franchise, Metricom shall furnish a bond executed by Metricom and a corporate surety authorized to do a surety business in the State of Washington, substantially in the form attached hereto as **Exhibit B** attached hereto for the minimum amount Ten Thousand Dollars (\$10,000) to ensure performance of Metricom's obligations under this Franchise. The bond shall be conditioned so that Metricom shall observe all the covenants, terms, and conditions and faithfully perform all of the obligations of this Franchise.

Section 22. Recourse Against Bonds and Other Security. So long as the bond is in place, it may be utilized by the City for the following purposes, including, but not limited to, reimbursement of the City by reason of Metricom's failure to pay the City for actual costs and expenses incurred by the City to make emergency corrections under Section 11 of this Ordinance or to correct franchise violations not corrected by Metricom after notice, and monetary remedies

or damages assessed against Metricom due to default or violations of the requirements of City ordinances:

- 22.1 In the event Metricom has been declared to be in default by the City and if Metricom fails, within thirty (30) days of mailing of the City's default notice, to pay the City any penalties, or monetary amounts, or fails to perform any of the conditions of this Franchise, the City may thereafter obtain from the performance bond an amount sufficient to compensate the City for damages. Upon such withdrawal from the bond, the City shall notify Metricom in writing, by First Class Mail, postage prepaid, of the amount withdrawn and date thereof.
- 22.2 Thirty (30) days after the City's mailing of notice of the bond forfeiture or withdrawal authorized herein, Metricom shall deposit such further bond, cash, or other security, as the City may require, which is sufficient to meet the requirements of this Ordinance.
- 22.3 The rights reserved to the City with respect to any bond are in addition to all other rights of the City whether reserved by this Ordinance or authorized by law, and no action, proceeding, or exercise of a right with respect to any bond shall constitute an election or waiver of any rights or other remedies the City may have.

Section 23. Modification. The City and Metricom hereby reserve the right to alter, amend or modify the terms and conditions of the Franchise upon written agreement of both parties to such amendment.

Section 24. Remedies to Enforce Compliance. In addition to any other remedy provided herein, the City reserves the right to pursue any remedy to compel Metricom to comply with the terms of this Franchise, and the pursuit of any right or remedy by the City shall not prevent the City from thereafter declaring a breach or revocation of the Franchise.

Section 25. City Ordinances and Regulations. Nothing herein shall be deemed to direct or restrict the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of this Franchise, including any reasonable ordinance made in the exercise of its police powers in the interest of public safety and for the welfare of the public. The City shall have the authority at all times to control, by appropriate regulations, the location, elevation, and manner of construction and maintenance of any fiber optic cable or other facilities by Metricom. Metricom shall promptly conform with all such regulations, unless compliance would cause Metricom to violate other requirements of law.

Section 26. Cost of Publication. The cost of the publication of this Ordinance shall be borne by Metricom.

Section 27. Acceptance/Liaison. After the passage and approval of this Ordinance and within thirty (30) days after such approval, this Franchise shall be accepted by Metricom by its filing with the City Clerk a signed copy of this Ordinance. Metricom hereby designates the person named in Section 33 below as its official liaison that will act as the City's contact for all issues regarding this Franchise. Metricom shall notify the City of any change in the identity of

its liaison. Failure of Metricom to so accept this Franchise within said period of time shall be deemed a rejection thereof by Metricom, and the rights and privileges herein granted shall, after the expiration of the thirty (30) day period, absolutely cease and determine, unless the time period is extended by ordinance duly passed for that purpose.

Section 28. Survival. All of the provisions, conditions and requirements of Sections 4, Relocation of Telecommunications System Facilities; 11, Dangerous Conditions; 16, Indemnification; 18, Abandonment of Metricom's Facilities; and 19, Restoration After Construction, of this Franchise shall be in addition to any and all other obligations and liabilities Metricom may have to the City at common law, by statute, or by contract, and shall survive the City's Franchise to Metricom for the use of the areas mentioned in Section 2 herein, and any renewals or extensions thereof. All of the provisions, conditions, regulations and requirements contained in this Franchise Ordinance shall further be binding upon the heirs, successors, executors, administrators, legal representatives and assigns of Metricom and all privileges, as well as all obligations and liabilities of Metricom shall inure to its heirs, successors and assigns equally as if they were specifically mentioned wherever Metricom is named herein.

Section 29. Most Favored Community. In the event that the Grantee enters into any agreement, franchise or other understanding with another city, town, or county in the State of Washington which provides terms or conditions substantially more favorable to the city, town, or county than those provided in this Franchise, such as, but not limited to, free or reduced fee hookups, access or service, the City of Shoreline shall be entitled to request at the City's option, and the Grantee shall be required to execute, an amendment to this Franchise that incorporates such substantially more favorable terms and conditions.

Section 30. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Franchise Ordinance. In the event that any of the provisions of this Franchise are held to be invalid by a court of competent jurisdiction, the City reserves the right to reconsider the grant of this Franchise and may amend, repeal, add, replace or modify any other provision of this Franchise, or may terminate this Franchise.

Section 31. WUTC Tariff Filings, Notice Thereof. If the Grantee intends to file, pursuant to Chapter 80.28 RCW, with the Washington Utilities and Transportation Commission (WUTC), or its successor, any tariff affecting the City's rights arising under this Franchise the Grantee shall provide the City with fourteen (14) days prior written notice.

Section 32. Assignment. This Franchise shall not be sold, transferred, assigned, or disposed of in whole or in part either by sale, voluntary or involuntary merger, consolidation or otherwise, without the written approval of the City. The City's approval shall not be unreasonably withheld or delayed, but may be conditioned on the acceptance on the part of the franchisee of modifications to this agreement reasonably calculated to address the City's concerns regarding the change in ownership, provided that no such requested modification shall materially increase the obligations of the Grantee hereunder. The City's approval shall be

conditioned on the new entity's agreement to accept and affirm all the terms of this Franchise upon the transfer. Any costs associated with the City's review of any transfer proposed by the Grantee shall be reimbursed to the City by the new prospective franchisee, if the City approves the transfer, or by the Grantee if said transfer is not approved by the City.

32.1 An assignment of this Franchise shall be deemed to occur if there is an actual change in control or where ownership of fifty percent (50%) or more of the beneficial interests, singly or collectively, are obtained by other parties. The word "control" as used herein is not limited to majority stock ownership only, but includes actual working control in whatever manner exercised.

32.2 Except as otherwise provided herein, the Grantee shall promptly notify the City prior to any proposed change in, or transfer of, or acquisition by any other party of control of the Grantee's company. Every change, transfer, or acquisition of control of the Grantee's company shall cause a review of the proposed transfer. In the event that the City denies its consent and such change, transfer or acquisition of control has been effected, the City may cancel the Franchise. Approval shall not be required (a) for mortgaging purposes; (b) if said transfer or assignment is from the Grantee to any affiliate or subsidiary or another person or entity controlling, controlled by, or otherwise under common control with the Grantee; or (c) if Grantee transfers all or substantially all of its assets to an entity which intends to continue the operation of its Ricochet™ system and whose financial strength after the transfer is at least equal to that of the Grantee prior to the transfer.

Section 33. Notice. Any notice or information required or permitted to be given to the parties under this Franchise may be sent to the following addresses unless otherwise specified:

METRICOM, INC.
Attention: Property Manager
980 University Avenue
Los Gatos, CA 95030

Office: (408) 399-8344
Fax: (408) 354-9537

CITY OF SHORELINE
Attn: Director of Public Works
17544 Midvale Ave. NE
Shoreline, WA 98133

Office: (206) 546-1700
Fax: (206) 546-2200

Section 34. Alternate Dispute Resolution. If the parties are unable to resolve disputes arising from the terms of this Franchise, prior to resorting to a court of competent jurisdiction, the parties shall submit the dispute to an alternate dispute resolution process agreed to by the parties. Unless otherwise agreed between the parties or determined herein, the cost of that process shall be shared equally.

Section 35. Entire Agreement. This Franchise constitutes the entire understanding and agreement between the parties as to the subject matter herein and no other agreements or understandings, written or otherwise, shall be binding upon the parties upon execution and acceptance hereof.

Section 36. Effective Date. This ordinance shall take effect and be in full force five (5) days after the date of publication and upon acceptance by the Grantee. The City Clerk is hereby directed to publish this ordinance in full.

PASSED BY THE CITY COUNCIL ON AUGUST 12, 1996.



Mayor Connie King

ATTEST:



Sharon Mattioli, CMC
City Clerk

APPROVED AS TO FORM:



Janet Garrow
Interim City Attorney

Date of Publication: August 19, 1996
Effective Date: August 24, 1996

GRANTEE'S ACCEPTANCE

Metricom hereby unconditionally accepts the terms of the attached Franchise Ordinance.

Grantee: **METRICOM, INC.**, a Delaware corporation

By: _____
Kirk Wampler, Director Right of Way

Date: _____

[EXHIBIT A]

[LOCATION OF RADIOS]

**PROPOSED LOCATIONS TO BE PROVIDED
AFTER REVIEW OF STREET LIGHT MAPS
AND PRIOR TO DEPLOYMENT**

[EXHIBIT B]

[BOND FORM]

Exhibit __

Bond Number: _____

SURETY BOND

KNOW ALL MEN BY THESE PRESENTS:

That METRICOM, INC. as Principal, and _____, incorporated under the laws of the State of _____, and authorized to execute bonds and undertakings as sole surety, are held and firmly bound unto _____, as Obligee, in the sum of _____ (\$ _____); for the payment thereof, well truly to be made, said Principal and Surety bind themselves, their administrators, successors and assigns, jointly and severally, firmly by these present.

The condition of the foregoing obligation is such that:

WHEREAS, the above bounden Principal is about to enter into a certain agreement with the Obligee for the following:

the award of which said agreement was made to the Principal by the Obligee, on _____.

NOW THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and provisions of said agreement during the original term thereof, and any extensions thereof which may be granted by the Obligee, with or without notice to the Surety, and if he shall satisfy all claims and demands incurred under such agreement, and shall fully indemnify and save harmless the Obligee from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the Obligee all outlay and expenses which the Obligee may incur in making good any default, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the agreement or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the agreement or to the work or to the specifications.

PROVIDED, HOWEVER, this bond issued subject to the following express conditions:

1. This bond shall be deemed continuous in form and shall remain in full force and effect until canceled under Section _____, after which all liability ceases except as to any liability incurred or accrued prior to the date of such cancellation.
2. The aggregate liability of the Surety hereunder on all claims whatsoever shall not exceed the penal sum of this bond in any event.

3. The surety reserves the right to withdraw as surety from this bond except as to any liability incurred or accrued, and may do so upon giving the Obligee sixty (60) days written notice.

SIGNED AND SEALED this _____ day of _____, 19____.

PRINCIPAL

SURETY

(Type Company Name)

By: _____
Title: _____

By: _____
Title: _____

By: _____

Address: _____

Telephone: _____

(Affix Corporate Seals)

(Attach Acknowledgments of both Principal and Surety signatures)