

RESOLUTION NUMBER R- 286813

ADOPTED ON JAN 16 1996

WHEREAS, The City of San Diego ("City") embraces the global vision that the ability to share "knowledge" will define the quality of life for our citizens. Our hope to improve education, to enhance the delivery of affordable health care, to strengthen our economy and to make government more efficient and more responsive, can be realized through the exploitation of advanced communication and computer technologies.

WHEREAS, the City's attractiveness, as a place for business to invest and as a place to live, will be greatly enhanced with the full implementation of a world-class communication capability. A fiber optic telecommunications superhighway is essential to the competitive advantage for our City.

WHEREAS, San Diego Gas & Electric Company ("SDG&E") has built a fiber optic network to serve its communication needs in providing electric and gas services. In the spirit of joint public-private partnerships, SDG&E desires to make available to others its excess fiber optic network capacity not presently required to provide service to its customers. SDG&E intends to enter into an agreement with MCImetro Access Transmission Services, Inc. ("MCIM") whereby MCIM will utilize certain excess SDG&E fiber optics.

WHEREAS, the City and SDG&E entered in Franchise Agreements ("Franchises") both of which were dated December 17, 1970 and adopted that date by the Council of the City of San Diego as

Ordinances Nos. 10465 and 10466 respectively. Pursuant to those Franchises, SDG&E maintains electric and gas facilities in the streets of the City, for which it pays franchise fees to the City.

WHEREAS, on January 10, 1994, SDG&E was granted a license to have its excess capacity on its fiber optic network, within areas covered by the Franchises, used by Teleport Communications Group (R-283256).

WHEREAS, the City understands that to make SDG&E's fiber optic network available to MCIM, SDG&E's fiber optic facilities located in City streets must be available for purposes other than those related to the provision of gas or electric service and is prepared to give SDG&E a license for that purposes; NOW THEREFORE,

By approving this Resolution, City agrees that it does not now and will not in the future, make any claim against SDG&E for compensation of any kind other than as set forth in this Resolution for SDG&E allowing MCIM to use SDG&E's fiber optic facilities located in areas covered by the Franchises. In addition, City agrees that it does not now and will not in the future make any claim that SDG&E has breached or in any way violated its Franchises with City by allowing these fiber optic facilities to be used by MCIM for purposes unrelated to SDG&E's gas and electric business pursuant to this license.

By accepting this license and conducting the business authorized herein, SDG&E and the City agree that neither will use the grant of this license as any precedent for any future contentions with respect to the use by SDG&E or MCIM of SDG&E's

fiber optic network.

BE IT RESOLVED, by the Council of The City of San Diego, as follows:

1. That SDG&E is granted a license for five years from the effective date hereof for MCIM to use excess capacity on SDG&E's fiber optic network, located in areas covered by the Franchises, in order to further the implementation of a fiber optic telecommunications superhighway within the City which is in the public interest.

2. That City does not waive any right it has now or may have in the future to take a different position with regard to use of non-telecommunications franchises for telecommunications purposes. Both SDG&E and City acknowledge that they have each informed the other that neither party waives any right it has now or may have in the future to assert or contest that the City has any right to regulate or charge for SDG&E's use of its Franchises for telecommunication purposes.

3. That SDG&E's agreement with MCIM for the use of portions of SDG&E's fiber optic network that are located in areas covered by the Franchises and are not then presently necessary or useful for the provision of gas and electric service, are not in contravention or violation of the Franchises and will not require the payment of additional franchise fees from SDG&E to City.

4. That, as consideration for this license agreement, SDG&E agrees to pay the City 5% of gross revenues it receives from MCIM for the use of its fiber optic network located in the City's franchise area for the period of this license agreement. Gross revenues shall not include the fees SDG&E pays to City

pursuant to this Resolution.

5. That the effective date of this license agreement is the date of passage of this Resolution.

APPROVED: JOHN W. WITT, City Attorney

By


Deborah L. Berger
Deputy City Attorney

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