

EXHIBIT 1

TELECOMMUNICATION SYSTEM FRANCHISE

Between the

CITY OF SALEM, ILLINOIS

And

METRO COMMUNICATIONS COMPANY

_____, 2021

TELECOMMUNICATION FRANCHISE AGREEMENT

On this ____ day of _____, 2021, this TELECOMMUNICATION FRANCHISE AGREEMENT (the “Franchise Agreement”) is entered into by and between the City of Salem, Illinois (“City”) and Metro Communications Company (“Metro”).

THE SIGNATORIES DO HEREBY AGREE AS FOLLOWS:

1. Grant of Authority.

(a) Grant of Authority.

(1) The Franchise issued to the Franchisee is subject to the terms and conditions of this Franchise Agreement. The Franchise grants the Franchisee the right to construct, operate and maintain a Telecommunication System along the Public Rights-of-Way within the Franchise Area, for the purpose of providing telecommunication service, as well as any other services as allowed by applicable law.

(2) The Franchise is issued for the entire area presently served by the Franchisee within the territorial limits of the City. In the event the City annexes territory in which Franchisee provides telecommunication services, such annexed territory shall be incorporated into the Franchise Area and made subject to this Franchise Agreement on notice of the annexation from the City of the Franchisee.

(b) Term.

This Franchise Agreement shall expire at 12:00 a.m. on January 1, 2026. This Franchise shall be automatically extended for an additional five (5) years, unless either party notifies the other in writing of its desire not to exercise this automatic extension at least three years before the expiration of this Franchise.

(c) Grant Not Exclusive.

This Franchise and the rights granted to use and occupy the Public Rights-of-Way are not exclusive to the Franchisee and do not explicitly or implicitly preclude the issuance of other franchises to operate telecommunication systems within the City, subject to applicable law.

(d) Franchise Agreement Subject to Exercise of Police Power.

The Franchisee agrees to comply with the terms of any lawfully adopted generally applicable local ordinance, to the extent that the provisions of the ordinance do not have the effect of limiting the benefits or expanding the obligations of the Franchisee that are granted by this Franchise. This Franchise is a contract and except as to those changes which are the result

of the City's lawful exercise of its general police power, the City may not take any unilateral action which materially changes the explicit mutual promises in this contract. Any changes to this Franchise must be made in writing, signed by the Franchisee and the City. In the event of any conflict between this Franchise and any City ordinance or regulation, this Franchise will prevail.

(e) Approval and Effective Date.

This Franchise Agreement shall take effect and be in force from and after final passage thereof, as provided by law, provided that within sixty (60) days after the date of final passage of the Franchise, the Franchisee shall file with the City its acceptance of the Franchise.

(f) Franchise Transfer

The Franchise granted hereunder shall not be assigned without prior consent of the City, such consent not to be unreasonably withheld or delayed. No such consent by the City shall be required, however, for a transfer of trust, by mortgagee, or by other hypothecation, or by assignment of any rights, title, or interest of the Franchisee in the Franchise, to secure an indebtedness or for a transfer to an entity controlling, controlled by, or under common control with the Franchisee. With thirty (30) days of receiving a request of transfer, the City shall notify the Franchisee in writing of any additional information it reasonable requires to determine the legal, financial and technical qualifications of the transferee. If the City has not taken action on the Franchisee's request for transfer within one hundred twenty (120) days after receiving the request, consent by the City shall be deemed given.

2. Regulation and Oversight.

(a) Severability.

If any section, subsection, sentence, clause, phrase, or portion of this Franchise is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this Franchise.

3. Construction provisions.

(a) System Construction Schedule.

A construction schedule that will apply to any upgrade construction of the telecommunication system shall be provided to the City.

(b) Construction Procedures.

(1) Franchisee shall construct, operate and maintain the telecommunication system in compliance in all material respects with all adopted local, State and national construction and electrical codes which are in effect as of the date of this Franchise.

(2) The telecommunication system, and all parts thereof, shall be subject to periodic inspection by the City.

(3) No construction or relocation of the system or any part thereof within the Public Rights-of-Way shall be commenced until written permits have been obtained from the proper City officials. In any permit so issued, such officials may impose such conditions and regulations, provided such conditions and regulations are uniformly and consistently applied by the City as to other public utility companies and other entities operating in the Franchise Area.

(c) Construction Standards.

(1) Franchisee shall be required to comply with all generally acceptable applicable construction standards related to tower construction and maintenance, antenna structures and O.S.H.A.

(2) All construction practices and installation of equipment shall be done in accordance with all applicable sections of the National Electric Safety Code.

(3) All of the Franchisee's plant and equipment, including but not limited to the antenna site, head-end, and distribution system, towers, house connections, structures, poles, wires, cable, coaxial cable, fixtures and appurtenances shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated in accordance with good engineering practices and performed by experienced maintenance and construction personnel.

(4) Any and all Public Rights-of-Way, disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance, or construction of a System shall be repaired or replaced by Franchisee within a reasonable time specified by the City.

(5) Franchisee shall, by a reasonable time specified by the City, protect, support, temporarily disconnect, relocate, or remove discrete portions of its property when required by the City by reason of traffic conditions; public safety; Public Rights-of-Way construction; Public Rights-of-Way maintenance or repair (including resurfacing or widening); change of Public Rights-of-Way grade; construction, installation or repair of sewers, drains, water pipes, power lines, signal lines, tracks, or, public work or improvement or any government-owned utility; Public Rights-of-Way vacation; or for any other purpose where the convenience of the City would be reasonably served thereby; provided, however, that Franchisee may abandon any property in place if approved by the City in writing, and provided further that Franchisee shall not be required to make permanent changes in its facilities to accommodate the installation of another Cable System or any other entity providing video service, nor should it be required to make temporary changes solely to disrupt its business or otherwise provide an unfair advantage to a competitor. No action hereunder shall be deemed a taking of the property of a Franchisee and a Franchisee shall not be

entitled to any compensation therefore. No location of any pole or wire-holding structure of Franchisee shall be a vested interest.

(6) If any action under the preceding paragraph is required to accommodate the construction, operation, or repair of the facilities of another Person that is authorized to use the Public Rights-of-Way, a Franchisee shall, after reasonable advance written notice, take action to effect the necessary changes requested, provided that the expense of such is paid by any such Person benefiting from the relocation. The Franchisee may require such payment in advance. For the purposes of this subsection, "reasonable advance written notice" shall mean no less than ten (10) business days in the event of a temporary relocation and no less than one hundred and twenty (120) days for a permanent relocation.

(7) If funds are available to any Person using the Public Rights-of-Way for the purposes of defraying the costs of any of the foregoing, the City shall reimburse the Franchisee in the same manner in which other Persons affected by the requirement are reimbursed. If funds are controlled by another governmental entity, the City shall assist the Franchisee in making the application for such funds on behalf of the Franchisee if the City assisted any Person in making applications for such funds.

(8) In the event of an emergency, or where the Cable System creates or is contributing to an imminent danger to health, safety, or property, the City may remove, relay, or relocate the pertinent parts of that Cable System without prior notice. No charge shall be made by Franchisee against the City for restoration and repair, unless such acts amount to gross negligence by the City.

(9) Franchisee shall, on the request of the City or any Person holding a permit issued by the City, temporarily raise or lower its wires to permit the moving of buildings or oversized vehicles. The expense of such temporary removal or raising or lowering of wires shall be paid by the Person requesting same, and the Franchisee shall have the authority to require such payment in advance, except in the case where the request is made by the City on its own behalf, in which case no such payment shall be required. The Franchisee shall be given not less than forty-eight (48) hours advance notice to arrange for such temporary wire changes unless the City has declared an emergency.

(10) Franchisee or its designee shall have the authority to trim trees on the Public Rights-of-Way at its own expense as may be necessary to protect its wires and facilities.

(11) Franchisee shall use, with the owner's permission, existing underground conduits or overhead utility facilities whenever feasible and may not erect poles in Public Rights-of-Way without the express written permission of the City, which permission shall not be unreasonably withheld.

(12) Trunk, feeder and drop cable may be constructed overhead where poles exist and electric, cable television or telephone lines are overhead, but where no overhead line

exists, all trunk, feeder and drop cable shall be constructed underground. Whenever and wherever all electric lines and telephone lines are moved from overhead to underground placement, all telecommunication system cables shall be similarly moved and the cost of movement of its cable shall be solely the obligation of Franchisee.

(13) Prior to construction or rebuild of the telecommunication system, Franchisee shall first submit to the City for approval a concise description of the telecommunication system proposed to be erected or installed, including engineering drawings, if required by the City, together with a map and plans indicating the proposed location of all such facilities, and obtain written approval therefore from the City, which approval shall not be unreasonably withheld. If designated by the Franchisee as confidential, such information shall be exempt from inspection and copying and shall not be disclosed by the City to any third party without the written consent of the Franchisee.

(14) Any contractor performing work for Franchisee with respect to construction, upgrade, installation, repair, or maintenance of the telecommunication system shall be properly and currently licensed under the laws of the State of Illinois and under Ordinances of the City, provided that such licenses are uniformly and consistently applied by the City as with other public utility companies and other entities operating in the Franchise Area.

(15) Upon failure of Franchisee to commence, pursue or complete any work required by law or by the provisions of this Agreement to be done in any street, within the time prescribed and to the reasonable satisfaction of the City, the City may, at its option, after thirty (30) days' notice to Franchisee, 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 Franchisee within thirty (30) days after receipt of such itemized report.

(d) New Development.

(1) The City shall use best efforts to notify the Franchisee of any new applications for permits submitted by developers or property owners to the City in Cases of new construction or property development within the Franchisee's franchise area.

(2) In cases of new construction or property development where utilities are to be placed underground, on request of Franchisee the developer or property owner shall give Franchisee reasonable notice of the particular date on which open trenching will be available to Franchisee for installation of conduit, pedestals, and/or vaults, and laterals to be provided at Franchisee's expense. Franchisee shall also provide specifications as needed for trenching. Costs of trenching and easements required to bring facilities within the development shall be borne by the developer or property owner; except that if Franchisee fails to install its conduit, pedestals and/or vaults, and laterals within five (5) working days of the date the trenches are available, as designated in the notice given by the developer or property owner, then should the trenches be closed after the five-day period, the cost of new trenching is to be borne by Franchisee.

(e) *Commercial Construction.*

The City recognizes that the Franchisee may require commercial customers to pay all reasonable costs of construction (including time and materials) for the connection of telecommunication services.

4. Guarantees and Remedies.

(a) *Performance Bond.*

Except as expressly provided herein, the Franchisee shall not be required to obtain or maintain bonds or other surety as a condition of being awarded the Franchise or continuing its existence. The City acknowledges that the legal, financial, and technical qualifications of the Franchisee are sufficient for compliance with the terms of the Franchise and the enforcement thereof. The Franchisee and the City recognize that the costs associated with bonds and other surety may ultimately be borne by the Subscribers in the form of increased rates for telecommunication services. In order to minimize such costs, the City agrees to require bonds and other surety only in such amounts and during such times as there is a reasonably demonstrated need therefore. The City agrees that in no event, however, shall it require a bond or other related surety in an aggregate amount greater than \$25,000, conditioned upon the substantial performance of the material terms, covenants, and conditions of the Franchise. Initially, no bond or other surety will be required. In the event that a bond or other surety is required in the future, the City agrees to give Franchisee at least sixty (60) days prior written notice thereof stating the exact reason for the requirement. Such reason must demonstrate a change in the Franchisee's legal, financial, or technical qualifications which would materially prohibit or impair its ability to comply with the terms of the Franchise or afford compliance within.

(b) *Remedies.*

(1) If the City believes that the Franchisee has not complied with the terms of the Franchise, the City shall first informally discuss the matter with Franchisee. If these discussions do not lead to resolution of the problem, the City shall notify the Franchisee in writing of the exact nature of the alleged noncompliance (the "Violation Notice").

(2) The Franchisee shall have sixty (60) days from receipt of the Violation Notice to (i) respond to the City, contesting the assertion of noncompliance, or (ii) to cure such default, or (iii) if, by the nature of default, such default cannot be cured within the sixty (60) day period, initiate reasonable steps to remedy such default and notify the City of the steps taken and the projected date that they will be completed.

(3) If the Franchisee fails to respond to the Violation Notice from the City, or if default is not remedied within the cure period set forth above, the City shall schedule a public hearing if it intends to continue its investigation into the default. The City shall provide the Franchisee at least twenty (20) days prior written notice of such hearing, which specifies the

time, place and purpose of such hearing, notice of which shall be published by the Clerk of the City in a newspaper of general circulation with in the City in accordance with Section 13(b) hereof. The Franchisee shall have the right to present evidence and to question witnesses. The City shall determine if the Franchisee has committed a violation and shall make written findings of fact relative to its determination. If a violation is found, the Franchisee may petition for reconsideration before any competent tribunal having jurisdiction over such matters.

(4) Subject to applicable federal and State law, in the event the City, after the hearing set forth in Section 10(b)(3), determines that the Franchisee is in default of any provision of the Franchise, the City may:

(a) Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages; or

(b) Commence an action at law for monetary damages or seek other equitable relief; or

(c) In the case of the substantial default of a material provision of the Franchise, seek to revoke the Franchise itself in accordance with Section 10(b)(5).

(5) Prior to revocation or termination of the Franchise, the City shall give written notice to the Franchisee of its intent to revoke the Franchise on the basis of a pattern of noncompliance by the Franchisee, including one or more instances of substantial noncompliance with material provision of the Franchise. The notice shall set forth the exact nature of the noncompliance. The Franchisee shall have sixty (60) days from such notice to either object in writing and to state its reasons for such objection and provide any explanation or to cure the alleged noncompliance. If the City has not received a satisfactory response from Franchisee, it may then seek to revoke the Franchise at a public hearing. The Franchisee shall be given at least twenty (20) days prior written notice to such public hearing, specifying the time and place of such hearing and stating its intent to revoke the Franchise.

(a) At the hearing, the City shall give the Franchisee and opportunity to state its position on the matter, present evidence and question witnesses, after which it shall determine whether or not the Franchise shall be revoked. The public hearing shall be on the record and a written transcript shall be made available to the Franchisee within ten (10) business days. The decision of the City shall be made in writing and shall be delivered to the Franchisee. The Franchisee may appeal such determination to an appropriate court, which shall have the power to review the decision of the City de novo. The Franchisee may continue to operate the telecommunication system until all legal appeals procedures have been exhausted.

(b) Notwithstanding the above provisions, the Franchisee does not waive any of its rights under federal law or regulation.

(c) Upon revocation of the Franchise, Franchisee may remove the telecommunication system from the Public Rights-of-Way of the City, or abandon the telecommunication system in place.

5. Rights of Individuals Protected.

(a) Discriminatory Practices Prohibited.

(1) Franchisee shall not deny service, deny access, or otherwise discriminate against Subscribers, users, Programmers, or residents or businesses in the City on the basis of race, color, religion, national origin, sex, or age.

(2) Franchisee shall not unreasonably discriminate among similarly situated persons or take any retaliatory action against a person because of that person's exercise of any right it may have under federal, state, or local law, not may Franchisee require a person to waive such rights as a condition of providing service.

(3) Franchisee shall not deny access to telecommunication service or levy different rates and charges on any group of potential residential telecommunication Subscribers because of the income of the residents of the local area in which such group resides.

(b) Equal Employment Opportunity.

Franchisee shall not refuse to employ, discharge from employment, or discriminate against any person in compensation or in terms, conditions, or privileges of employment because of race, color, religion, national origin, sex, or age. A Franchisee shall comply with all federal, state and local laws and regulations governing equal employment opportunities, as the same may be from time to time amended, including but not limited to 47 U.S.C. § 554.

(c) Privacy.

The Franchisee shall fully comply with the privacy rights of the Subscriber as contained in 47 U.S.C. § 551.

6. Insurance, Indemnification.

(a) Insurance Required.

Franchisee shall maintain throughout the entire length of the Franchise period, at least the following liability insurance coverage in the minimum amounts as follows:

- (1) Workers' compensation – Statutory Limits;
- (2) Commercial General Liability - \$2,000,000 per occurrence,
Combined Single Liability C. S. L. - \$2,000,000 General Aggregate;
- (3) Auto Liability - \$2,000,000 per occurrence C. S. L.

(including coverage on all owned, non-owned hired autos)

(4) Umbrella Liability - \$10,000,000 per occurrence C. S. L.

(b) *Qualifications of Sureties.*

All insurance policies shall be with reputable, qualified, and financially sound sureties licensed to do business in the State of Illinois.

(c) *Certificates of Insurance.*

The Franchisee shall furnish the City with current certificates of insurance coverage.

(d) *Additional Insureds; Prior Notice of Policy Cancellation.*

All general insurance policies shall name the City, its officers, Councils, Council members, commissions, commissioners, agents, and employees as additional insured.

(e) *Indemnification.*

The Franchisee shall, by acceptance of the Franchise granted herein, defend the City, its officers, Councils, commissions, agents, and employees for all claims for injury to any Person or property caused by the negligence of the Franchisee in the construction or operation of the Cable System and in the event of a determination of liability shall indemnify and hold the City, its officers, Councils, commissions, agents, and employees harmless from any and all liabilities, claims, demands, or judgments growing out of an injury to any Person or property as a result of the negligence of Franchisee arising out of construction, repair, extension, maintenance, operation or removal of its wires, poles or other equipment of any kind or character used in connection with the operation of the Cable System, provided the City shall give the Franchisee written notice of its obligation to indemnify the City within ten (10) days of receipt of a claim or action pursuant to this section. In the event any such claim arises, the City shall tender the defense thereof to the Franchisee and the Franchisee shall have the right to defend, settle or compromise any claims arising hereunder and the City shall cooperate fully herein. If the City determined in good faith that its interests cannot be represented by the Franchisee, the Franchisee shall be excused from any obligations to represent the City. Notwithstanding the foregoing, the Franchisee shall not be obligated to indemnify the City for any damages, liability or claims resulting from the willful misconduct of negligence of the City or for the City's use of the Cable System, including any PEG channels.

7. Miscellaneous Provisions.

(a) *Waiver of Federal or State Rights.*

In entering into this agreement, Franchisee and the City do not wave, and hereby expressly reserve any and all rights that they have under applicable Federal and State Laws.

(b) Notices.

Unless otherwise expressly stated herein, notices required under this Franchise Agreement shall be mailed first class, postage prepaid, to the addressees below. Each party may change its designee by providing written notice to the other party, but each party may only designate one entity to receive notice.

- (1) Notices to the Franchisee shall be mailed to:

Metro Telecommunications Company
8 South Washington Street
Sullivan, IL 61951

- (2) Notices to the City shall be mailed to:

City of Salem
Attn: City Manager
101 South Broadway Avenue
Salem, IL 62881

(c) Time of Essence.

In determining whether the Franchisee has substantially complied with this Franchise Agreement, the parties agree that time is of the essence.

(d) Entire Agreement.

This Franchise sets forth the entire agreement between the parties respecting the subject matter hereof. All agreements, covenants, representations and warranties, express and implied, oral and written, of the parties with regard to the subject matter hereof are contained herein. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made by any party to another with respect to the matter of this Franchise. All prior and contemporaneous conversations, negotiations, possible and alleged agreements, representations, covenants and warranties with respect to the subject matter hereof are waived, merged herein and therein and are superseded hereby and thereby.

8. Signature

AGREED TO THIS _____ DAY OF _____, 2021.

(Seal)

CITY OF SALEM, ILLINOIS

By: _____
Mayor

ATTEST:

City Clerk

The Franchisee hereby accepts the terms and conditions of this Franchise Agreement on this
_____ day of _____, 2021.

METRO COMMUNICATIONS COMPANY

By: _____

Name: _____

Title: _____