

**BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

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IN RE:

PETITION OF CII HOLDCO, INC.,  
MEMPHIS NETWORKX, LLC, MEMPHIS LIGHT  
GAS & WATER DIVISION, AND MEMPHIS  
BROADBAND, LLC FOR APPROVAL OF  
CHANGE OF CONTROL OF MEMPHIS  
NETWORKX, LLC

Docket No. 07-000178

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**STATUS REPORT OF CITY OF MEMPHIS**

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In response to the November 4, 2008 instructions from the Hearing Officer, the City of Memphis reports that the City of Memphis has instituted suit against Zayo Bandwidth Tennessee, LLC (formerly Memphis Networkx, LLC) in the Chancery Court of Shelby County, Tennessee regarding a number of issues pertaining to Memphis Networkx's Franchise Agreement with the City, including the issue of ownership of certain of Memphis Networkx's assets. A copy of the Complaint is attached. The City reiterates its position that the Petition should be held in abeyance pending resolution of the threshold issues raised by the City of Memphis and described in the November 4th Order of the Hearing Officer.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that I forwarded a true and correct copy of the foregoing document to the following individuals by electronic means or by U.S. mail, postage prepaid, this the 4th day of March, 2009.

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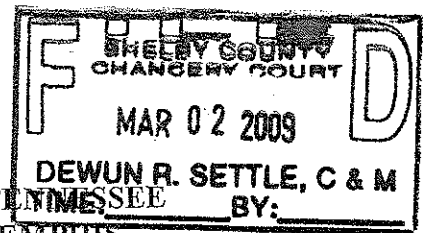
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/s/ Allan J. Wade



IN THE CHANCERY COURT OF SHELBY COUNTY, TENNESSEE  
FOR THE THIRTIETH JUDICIAL DISTRICT AT MEMPHIS

CITY OF MEMPHIS, TENNESSEE,

Plaintiff,

v.

No.: 09-0452-1  
JURY DEMANDED

ZAYO BANDWIDTH TENNESSEE, LLC f/k/a  
MEMPHIS NETWORKX, LLC,

Defendant.

**COMPLAINT FOR DECLARATORY JUDGMENT, BREACH OF CONTRACT,  
DAMAGES AND SPECIFIC PERFORMANCE**

Comes now the City of Memphis (the "City") to file and state its complaint against Zayo Bandwidth Tennessee, LLC formerly known as Memphis Networkx, LLC (herein called "Networkx") for declaratory judgment pursuant to Tenn. Code Ann. § 29-14-101, et seq., for breach of contract for damages, statutory damages, *quantum meruit*, unjust enrichment and for specific performance of Networkx's franchise agreement.

1. Plaintiff, the City of Memphis, is a duly chartered, home rule municipality, having taken the requisite steps to become such under Tennessee Constitution Article XI, § 9. The City acts through its elected Mayor and City Council. The City has the authority under its Home Rule Charter to exercise its proprietary right to contract and to exercise its police powers to protect the health, safety and welfare of its citizens.

2. Defendant Memphis Networkx is a Tennessee limited liability company providing telecommunications services and duly registered with the Secretary for the State of Tennessee on March 6, 1998. It was formerly a joint venture between Memphis Light, Gas and Water Division

and Memphis Broadband. Its principal place of business is that 7620 Appling Center Drive, Suite 101, Memphis, Tennessee 38133-5074. Memphis Network's agent for service of process in Tennessee is CT Corporation Services, Inc., 800 S. Gay Street, Suite 2021, Knoxville, TN, 37929.

3. All actions complained of have taken and currently take place in Memphis, Shelby County, Tennessee and all of the parties are located in Memphis, Shelby County, Tennessee; therefore, subject matter jurisdiction and venue in this Court is proper.

4. The City is a municipal corporation duly chartered and organized under the laws of the state of Tennessee that has adopted home rule pursuant to Article XI § 9 of the Tennessee Constitution.

5. By Chapter 26, § 1 of the Acts of Tennessee 1869-70 ("1869-70 Acts") the Tennessee General Assembly amended the City's Charter to grant the City of Memphis the following powers:

... 'to own and hold property, real, personal and mixed;' and declared that 'all right, title, and interest in, and to use, all real estate within the limits of the said city which may hereafter be dedicated, donated or granted to any public use shall be vested in the corporation of the city of Memphis for the said use' and 'that the city counsel may do all other things as a natural person.'

6. By Chapter 11, § 3 of the Acts of 1879 ("1879 Acts") the Tennessee General Assembly amended the City's Charter to grant the City of Memphis the following additional powers:

... the city of Memphis is given power 'to repair and keep in repair, streets, sidewalks, and other public grounds and places in the taxing district; to open and widen streets, to change the location or close the same and to lay off new streets and alleys when necessary; and to have and exercise entire control over all streets and other public property of the taxing district.'

7. The City possesses the powers authorized by the 1869-70 Acts and by the 1879 Acts until it adopted Home Rule in 1966 at which time the powers granted in those respective Acts were expressly continued and incorporated into the City's Home Rule Charter. The City continues to possess and exercise the police and proprietary powers granted by the 1869-70 Acts and by the 1879 Acts and has possessed and exercised such powers at all times relevant to the allegations in this Complaint. By its charter of the city has the power to grant Franchises.

8. The 1869-70 Acts properly delegated and vested ownership and entire control of the City's streets, rights of way and other public property in the City of Memphis.

9. Under its charter, the City has also been granted the power to contract. The power to contract is vested in the Mayor of the City, except the power to enter into franchise contracts is vested in the Memphis City Council exercisable by ordinance. Acting in its proprietary capacity the City may freely contract with non-governmental entities for the use by such private entities of the City's streets and public rights of way as could any natural person for such compensation as the parties could mutually agree on.

10. Where control of the streets and public rights of way is properly delegated and vested in the City by the General Assembly, the City holds its streets in a proprietary and not in a governmental capacity. The City's duty to construct and maintain its streets and public rights of way is a corporate or proprietary duty. In addition to its proprietary powers, the delegation of the entire control of its streets and public rights of way by the General Assembly to the City also vested in the City the governmental or sovereign power and duty to control, regulate and police the use, construction, maintenance and operation of activities by non-governmental entities on the City's lands, streets and public rights of way in order to protect the health and safety of its

inhabitants. Such governmental power is broad and cannot be limited by contract with private entities.

11. The City is authorized by its charter and applicable law to contract with non-governmental entities for the use by such entities of the City's streets and public rights of way in exchange for a fee considering the amount of use contemplated by such user and the amount others in the marketplace would be willing to pay for such use ("Market Based Fee").

12. None of the City's ROW Powers have been repealed or abrogated by any subsequent Act of the General Assembly. However, by the Acts of 1885, Chapter 66 § 1 the General Assembly authorized persons or corporations organized for the purpose of transmitting intelligence by magnetic telegraph or telephone, or other system of transmitting intelligence the equivalent thereof, to construct, operate and maintain such telegraph, telephone or other lines along and over the public highways and streets of cities and towns provided the ordinary use of such public streets shall not be obstructed and provided such companies pay just damages by reason of their occupation of the lands of cities and towns. ("1885 Telephone Company Authorization").

13. The 1885 Telephone Company Authorization was a limited authorization granted to telephone companies and did not supercede or repeal the City's ROW Powers. The 1885 Telephone Company Authorization is not an irrevocable perpetual statewide grant of power to telephone companies, but is subordinate to the City's prior existing ROW Powers.

14. By Acts of 1907, Chapter 134, § 1 the General Assembly (the "1907 Act") expressly made the 1885 Telephone Company Authorization subordinate to the City's reasonable police powers and to the City's right to exact rentals for the use of the City's streets and rights of

way by telephone companies. The 1907 Act is expressly limited to telecommunications corporations. Defendant is not a telecommunications corporation.

15. Although absolute control of Memphis streets and public rights of way has been properly delegated to the City pursuant to Chapter 11, Section 3 of the 1879 Tennessee Acts, this absolute control is to be exercised with recognition of the 1885 Telephone Company Authorization.

16. The City's ROW Powers are not preempted by any provision of state law. The elemental powers of a telecommunications company must be obtained from the state's regulatory authority over utilities, but permission for telecommunication companies to occupy the streets, roads and public ways of cities with its facilities must be obtained from the local political subdivision whose rights of way will be occupied by such telecommunication companies.

17. In the absence of a mutual agreement or franchise contract between the City and a telephone company, the City could police and regulate such company's use, construction, maintenance and operation of private activities on its land, streets and rights of way in order to protect the public health and safety only in its governmental capacity. Acting in its governmental capacity, the City could only demand and receive reasonable rentals, which are limited to the recovery of its reasonable costs associated with repair, management, policing and maintenance of its PROW, and just damages by reason of a telephone company's occupation of the City's lands, streets and rights of way.

18. Memphis Networx voluntarily made application to the City for the non-exclusive privilege and authorization to occupy or use the streets and/or public rights of way within the City for the contraption, operation and maintenance of a fiber optic and/or other telecommunications system within all or a portion of the City. Memphis Networx was



represented by counsel in all proceedings related to its application. Memphis Networkx aggressively lobbied the City Council for approval of its franchise agreement. Memphis Networkx vigorously defended opposition to the grant of its franchise and voluntarily made concessions to the Council to obtain its franchise. Memphis Networkx did not protest any provisions of the franchise contract prior to execution thereof. Memphis Networkx did not reserve any rights or objections to the franchise contract. In fact, Memphis Networkx affirmatively sought approval to operate its telecommunications business from the Tennessee Regulatory Authority pursuant to the terms of its franchise agreement with the City without reservation or exception.

19. The City and Memphis Networkx entered into a Telecommunications Franchise Contract Agreement in the form approved by the Memphis City Council on December 5, 2000 in Ordinance No. 4744 (the "Franchise Agreement"). The Franchise Agreement was executed as of January 3, 2001 by the City and on behalf of "MEMPHIS NETWORKX, LLC, A joint venture between Memphis Light Gas & Water Division and Memphis Broadband" separately by Ward Huddleston Jr. Chairman of the Board, Chief Executive Officer/Director, Herman Morris Jr. Chief Executive Officer of Memphis Light Gas & Water Division and by Frank McGrew IV, Manager of Memphis Broadband.

20. In the Franchise Agreement, the City granted Memphis Networkx the non-exclusive right to construct, use, operate, own and maintain a ubiquitous telecommunications network in, on, under and over the City's Public Rights of Way ("ROW"). In exchange for the non-exclusive rights granted Memphis Networkx by the City, Memphis Networkx agreed to pay promptly all fees and compensation set forth in Sections 20 and 21 thereof.

21. The City and Memphis Networkx expressly agreed in paragraph 12 of the Franchise Agreement as follows:

Upon the execution of this franchise contract, said Franchise Contract shall be deemed to constitute a contract by and between Grantee and the City of Memphis and shall be enforceable in accordance with his terms even if Ordinance No. 4404. or any subsection, sentence, clause, phrase, term, provision, condition, covenant or portion thereof is held invalid or unenforceable by a court of competent jurisdiction.

22. The stated term of the Franchise Agreement does not expire by its own terms until January 2, 2021. From and after January 3 2001, Memphis Networkx has not:

- (a) Paid any general compensation as required by Ordinance No. 4404;
  - (b) Paid state assessed utility taxes timely and before default was declared ;
  - (c) Notified the City of the transfer of the franchise or of a majority interest in thereof as it agreed to do pursuant to Section 26 of Ordinance No. 4404;
- Memphis Networkx has refused to comply with the terms of the Franchise Agreement.

23. The City entered into a franchise agreement with MEMPHIS NETWORKX, LLC, a joint venture between Memphis Light Gas & Water Division and Memphis Broadband. On or about August 1, 2007 MEMPHIS NETWORKX, LLC, joint venture between Memphis Light Gas & Water Division and Memphis Broadband purported to transfer its rights and obligations under the Franchise Agreement from the joint venture to the sole ownership and control of CII Holdco without requesting or obtaining the approval of the Memphis City Council as it agreed to do in the Franchise Agreement.

24. Memphis Networkx has been in continuous default since 2002 of the Franchise Agreement in a number of respects, has been given opportunity to cure these defaults and has failed or refused to do so.

## COUNT 1

### DECLARATORY JUDGMENT

25. The allegations of paragraphs 1 through 24 are incorporated by reference as if set forth herein verbatim.

26. The Franchise Agreement is a voluntary arms length agreement between the City and Memphis Networkx, both of whom were free to contract as they each determined was in their respective best interests. The Franchise Agreement is not a state or local statute, regulation or local legal requirement that prohibits or has the effect of prohibiting Memphis Networkx's ability to provide any interstate or intrastate telecommunications service. The Franchise Agreement is not preempted by 47 U.S.C. § 253.

27. Neither the Franchise Agreement nor any City legal requirement has prohibited in the past or will have the effect of prohibiting the ability of Memphis Networkx to provide any interstate or intrastate telecommunications services in the future.

28. The City's Franchise Agreement with Memphis Networkx is legal and enforceable in its entirety because it is a lawful exercise of the City's governmental and proprietary power, because it was duly agreed to, without reservation of any rights by Memphis Networkx and because it is not preempted by state law or 47 U.S.C. § 253. Memphis Networkx instituted no legal action contesting the Franchise Agreement, made no objection to its terms prior to executing it.

29. The City's general ordinances and, in part, the Franchise Agreement all attempt (a) to preserve the physical integrity of the City's streets and ROW's, (b) to establish standards and procedures: (i) for excavation of public streets, (ii) for construction within public streets and (iii) for constructing lines across private property, (c) to control the orderly flow of vehicles and pedestrians, (d) to manage gas, water, cable (both electric and cable television), and telephone

facilities that crisscross the streets and public rights-of-way, (e) to coordinate construction schedules, (f) to determine insurance, bonding and indemnity requirements, (g) to establish and enforce building codes, (h) to prevent street obstructions, and (i) to keep track of various systems using the rights-of-way to prevent interference between them. The City's general ordinances and the Franchise Agreement also attempt to eliminate interference with the delivery of essential government services such as police, fire, building code enforcement or other public safety entities. The provisions of the City's Ordinances and the Franchise Agreement relate to the City's management of its ROW and are therefore not preempted by 47 U.S.C. § 253(a) nor violative of the limitations of 47 U.S.C. 253(c).

30. The agreed compensation under the Franchise Agreement is fair and reasonable compensation and, therefore is not preempted by 47 U.S.C. 253(a) nor violative of the limitations of 47 U.S.C. § 253(c). The Franchise Agreement Compensation is the same compensation charged to all holders of voluntary franchises for ubiquitous access to the City's PROW. Such compensation is under the totality of the circumstances (i) fair and reasonable market based compensation for ubiquitous access and (ii) applied on a competitively neutral and non-discriminatory basis to all who are similarly situated.

31. Without limiting the City's right to fair and reasonable market based compensation, the Franchise Agreement Compensation is also fair and reasonable compensation, because it bears a reasonable relationship (i) to the City's cost of administering, maintaining, policing and repairing its PROW, (ii) to damages to its PROW by Memphis Networkx and (iii) to damages resulting from the obstruction of its PROW from its ordinary uses. The Franchise Agreement Compensation is not preempted by 47 U.S.C. § 253(a) nor violative of the limitations of 47 U.S.C. § 253(c).

32. 47 U.S.C. § 253 cannot constitutionally be applied pursuant to the Tenth Amendment of the United States Constitution, to limit the City's compensation for Memphis Networkx's occupation of the City's ROW to recovery of its costs of administering, maintaining, policing and repairing its ROW.

33. Memphis Networkx refused to honor its agreement with the City and failed to pay Franchise Agreement Compensation owed under the Franchise Agreement for any year since the inception of the Franchise Agreement.

34. Accordingly, the City is entitled to a declaratory judgment pursuant to Tenn. Code Ann. § 29-14-101, et seq. that it had a valid, binding and enforceable contract with Memphis Networkx not invalidated in any way by 47 U.S.C. § 253 or any other law and that the City is entitled to enforce the Franchise Agreement as written.

## **COUNT 2**

### **BREACH OF CONTRACT**

35. The allegations of paragraphs 1 through 34 are incorporated by reference as if set forth herein verbatim.

36. The City entered into the Franchise Agreement with Memphis Networkx in the exercise of its governmental and proprietary authority under its Charter and under the laws of the state of Tennessee.

37. Memphis Networkx fully accepted and agreed to be bound by the terms of its Franchise Agreement with the City. Memphis Networkx did not sign this agreement with any reservation of rights. Memphis Networkx sought approval from the Tennessee Regulatory Authority of the Franchise Agreement without any reservation of rights. Memphis Networkx waited for over six (6) years to assert that it believes the Franchise Agreement to be invalid or unenforceable after obtaining the benefits of the agreement. The City has fully performed its

obligations under the Franchise Agreement in good faith. Memphis Networkx is barred by laches, estoppel and statutes of limitations from contesting the Franchise Agreement. Accordingly, Memphis Networkx is bound for the entire term of the Franchise Agreement. Memphis Networkx accepted, used and enjoyed all of the authorities, benefits and powers granted to it by the City under the Franchise Agreement for its pecuniary benefit and as a necessary prerequisite to obtaining TRA approval.

38. Memphis Networkx had a duty under Tennessee law to negotiate the Franchise Agreement in good faith. By failing to advise the City that it was executing the agreement under reservation of rights Memphis Networkx fraudulently induced the City to enter into the Franchise Agreement rather than to seek a judicial declaration of its rights at that time.

39. By refusing to pay the amounts owed under its contract with the City, Memphis Networkx has breached its contract with the City.

40. For this breach, the City is entitled to damages in an amount equal to what Memphis Networkx was required to pay the City under the Franchise Agreement from the time of Memphis Networkx's initial breach through the termination of such contract by its own terms together with prejudgment interest under Tennessee law and for specific performance of its terms.

41. Under the terms of the Franchise Agreement, the City is also entitled to receive reimbursement of all costs and expenses, including attorney's fees for bringing this action as a result of Memphis Networkx's breach. The City has fully performed all of its duties and obligations under the Franchise Agreement. Memphis Networkx has occupied the City's ROW continuously throughout the term of the Franchise Agreement, has used, operated, constructed

and maintained its network in the City's ROW continuously since January 3, 2001, and has thereby received the full benefit for which it bargained.

### **COUNT 3**

#### **STATUTORY RIGHT TO REASONABLE RENTALS AND JUST DAMAGES**

42. Paragraphs 1 through 41 are incorporated by reference as if set forth herein verbatim.

43. To the extent the Franchise Agreement is declared invalid or if the Court declines to award damages for breach of the Franchise Agreement, the City pleads alternatively its statutory right to receive reasonable compensation, statutory rentals and just damages from Memphis Networkx by reason of its occupation of the City's ROW and by reason of its use, operation, construction and maintenance of its network in the City's ROW from January 3, 2001 to the present date. The City has the statutory right to receive reasonable compensation, rentals and just damages from Memphis Networkx by reason of its occupation of the City's ROW from and after January 3, 2001. The Franchise Agreement Compensation is a fair and reasonable measure of reasonable compensation, statutory rentals and just damages due the City from Memphis Networkx for each year from and after January 3, 2001 together with prejudgment interest under Tennessee law.

### **COUNT 4**

#### **QUANTUM MERUIT AND UNJUST ENRICHMENT**

44. Paragraphs 1 through 43 are incorporated by reference as if set forth herein verbatim.

45. Since January 3, 2001, when Memphis Networkx entered into the Franchise Agreement with the City, Memphis Networkx has received valuable licenses, services and property rights from the City of Memphis and has been allowed access to the City's ROW for its pecuniary gain.

46. Memphis Networkx gained the benefit of its contractual agreement with the City and the City changed its position to its detriment by allocating a portion of its limited rights of way to Memphis Networkx in reliance upon the Franchise Agreement. Memphis Networkx should, therefore, be estopped from denying its obligations to pay the general compensation which is a binding contractual agreement.

47. Should this Court decline to award Plaintiff damages for breach of contract, then Memphis Networkx should be required to pay to the City compensation, just damages and the reasonable rental value of Memphis Networkx's use of the City's ROW and the benefit received by Memphis Networkx from the City's acquisition, policing, construction, maintenance and operation of its rights of way, in an amount to be determined by this Court, pursuant to a theory of *quantum meruit* together with prejudgment interest under Tennessee law.

48. In the absence of such recovery, Memphis Networkx would be unjustly enriched by its use of the City's publicly funded ROW and City services without compensation to the City or reimbursement of the City's reasonable ROW costs.

49. The Franchise Agreement Compensation is fair and reasonable measure of reasonable compensation, rentals, costs and just damages due the City from Memphis Networkx for each year from and after January 3, 2001.

#### COUNT 5



### SPECIFIC PERFORMANCE

50. Paragraphs 1 through 49 are incorporated by reference as if set forth herein verbatim.

51. Memphis Networkx is a significant user of the City's ROW and since it entered into the Franchise Agreement Memphis Networkx has installed approximately eighty (80) miles of its telecommunications system therein. The City has also installed at its sole expense over twenty (20) miles of a telecommunications system, which is connected with Memphis Networkx's telecommunications system and which is used for the City's essential Fire and Police services. The City has also interconnected to the Memphis Networkx telecommunications system at different points to connect fire stations and police precincts to the City's information system. The City has deployed its information technology systems for essential services on Memphis Networkx's telecommunications system in such a way that its information technology systems for essential services is unique to the City and could not be replaced, if at all, without great expense and risk of interruption of its essential communications for fire and police services.

52. Section 28.3 Ordinance No. 4404, which was incorporated by reference into the franchise agreement provides:

Upon expiration of the term of the Franchise Agreement or upon any other termination therefor as provided herein, or by application for approval of transfer of the entire franchise or a majority interest thereof, the City at its election and upon the payment to the Grantee of a price equal to the fair market value of the System shall have the right to purchase the System and all interest therein as the City's sole and absolute property.

53. Section 28.3 of Ordinance No. 4404 also provides that the right of first refusal to purchase the System shall also include the right to purchase the System for the price offered to the Grantee. In accordance with Section 28.3 of Ordinance No. 4404, the City has given notice of its election to buy Memphis Networkx's System.

54. Memphis Networkx defaulted under the Franchise Agreement (i) by failing and refusing to pay the mutually agreed to General Compensation, (ii) by failing to comply timely with applicable laws of the State of Tennessee, (iii) by purportedly transferring the Franchise Agreement and rights thereunder to CII Holdco without approval of the Memphis City Council. As a result of Defendant's defaults, Plaintiff is entitled to purchase Defendant's telecommunications system in accordance with Section 28.3 of the Franchise Agreement.

55. The City seeks specific performance of the terms of the Franchise Agreement.

#### COUNT 6

#### CONVERSION

56. Paragraphs 1 through 54 are incorporated by reference as if set forth herein verbatim.

57. The City has constructed at its sole expense over twenty (20) miles of a telecommunications system. The City's system is connected to Networkx's system because Networkx had not extended its system into underserved areas of the City where the City had deployed fire and police services.

58. In order to provide essential communications services the City constructed and installed its own system in these underserved areas solely and exclusively for its municipal purposes. Based on information and belief, Memphis Networkx has, without consent or authorization from the City, spliced into the City's system to provide services to its customers and without just compensation to the City for such unauthorized use.

59. Memphis Networkx has converted the City's property for its own pecuniary gain.

60. The City hereby demands an accounting of all funds and revenues obtained by Networkx from its unlawful and tortious misappropriation of the City's property.

WHEREFORE, PREMISES CONSIDERED, the City respectfully requests:

1. That Memphis Networkx be required to respond to this Complaint within the time prescribed by law.

2. That this Court enter a preliminary injunction enjoining Memphis Networkx from destroying any and all books, records, papers and vouchers, in electronic format or otherwise, pertaining in any way to the operation of Memphis Networkx's business within the City of Memphis for the period of time commencing January 3, 2001 to the present.

3. That the Court grant the City a declaratory judgment pursuant to Tenn. Code Ann. § 29-14-101, et seq that it has a valid, binding contract with Memphis Networkx, not invalidated in any way by 47 U.S.C. § 253 or any other provision of law.

4. That this Court find that Memphis Networkx has breached its contract with the City and award damages for this breach in an amount not less than \$700,000, plus any additional compensation due the City under the Franchise Agreement together with prejudgment interest from the date of breach until judgment at the maximum rate allowable by law.

5. That alternatively the City be awarded damages equal to the compensation, just damages and the reasonable rental value of Memphis Networkx's use and occupation of the City's rights of way up together with prejudgment interest from the date of breach until judgment at the maximum rate allowable by law.

6. That alternatively the City be awarded damages equal to the compensation, just damages and the reasonable rental value of Memphis Networkx's use and occupation of the City's

rights of way from and after January 3, 2001 in an amount not less than the Franchise Agreement Compensation for each year or part thereof until judgment together with prejudgment interest from the date of breach until judgment at the maximum rate allowable by law.

7. Or, alternatively, that the Court compensate the City for Memphis Networkx's use and occupation of the City's rights of way and for the benefit of City services that Memphis Networkx has received under a theory of *quantum meruit* or under the rights granted to the City by applicable statutes to receive compensation, just damages and reasonable rentals for the use and occupation of its rights of way.

8. For an order directing Memphis Networkx to specifically perform the Franchise Agreement, specifically including Section 28.3 of ordinance No. 4404, which was incorporated into the Franchise Agreement by reference.

9. That Memphis Networkx be ordered to reimburse the City's reasonable attorney's fees and discretionary costs incurred in prosecuting this cause.

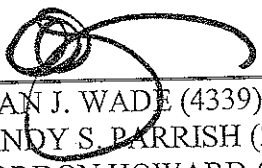
10. That all court costs be assessed against Memphis Networkx.

11. For a jury to try this cause.

12. For any other relief to which the City may be entitled.

**JURY DEMANDED.**

Respectfully submitted,

By:   
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