

ORDINANCE NO. 8687-3

AN ORDINANCE
APPROVING AND AUTHORIZING THE EXECUTION
OF A LICENSE AGREEMENT BETWEEN THE CITY OF URBANA, ILLINOIS
AND THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF URBANA, ILLINOIS, as follows:

Section 1. That a License Agreement between the City of Urbana, Illinois, and the Board of Trustees of the University of Illinois, in substantially the form of the copy of said Agreement attached hereto and hereby incorporated by reference, be and the same is hereby authorized and approved.

Section 2. That the Mayor of the City of Urbana, Illinois be and the same is hereby authorized to execute and deliver such Agreement and the City Clerk of the City of Urbana, Illinois, be and the same is authorized to attest to such execution thereof, all as so authorized and approved for and on behalf of the City of Urbana, Illinois.

This Ordinance is hereby passed by the affirmative vote, the "ayes" and "nays" being called, of a majority of the members of the Council of the City of Urbana, Illinois, at a regular meeting of said Council.

1986. PASSED by the City Council this 7th day of July


Ruth S. Brookens
Ruth S. Brookens, City Clerk

1986. APPROVED by the Mayor this 14th day of July,

Jeffrey T. Markland
Jeffrey T. Markland, Mayor

THIS IS THE ATTACHMENT WHICH IS REFERRED TO IN
ORDINANCE NO. 8687-3 AND IS INCORPORATED
THEREIN BY REFERENCE.

Ruth S. Brookens
Ruth S. Brookens, City Clerk

September 10, 1987
Date



LICENSE AGREEMENT BETWEEN
THE CITY OF URBANA, ILLINOIS AND
THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS

SECTION I. BASIC GRANT; TERM.

The City of Urbana, Illinois hereby grants to The Board of Trustees of the University of Illinois a non-exclusive license to construct, maintain, inspect, protect, repair, replace, retain and use Telecommunications Equipment for Telecommunications Service in, under, upon along and across the Property owned or under the control of the City of Urbana, and at substantially the same locations, as are identified in Attachment A, which is attached hereto and is hereby incorporated herein by reference, subject to the following: (i) the regulatory powers of the City of Urbana, Illinois, (ii) the terms and conditions hereinafter set forth, (iii) the rights of any public utility or other person or entity currently having rights, licenses or easements in and about the Property and (iv) authorization herein granted to the University to expand the number of rights-of-way to be entered upon or crossed during the term of this Agreement for the purposes specified herein from 28 to 56 provided that all of such expanded number shall occur within the current configuration of the University of Illinois campus at Urbana-Champaign.

This license shall extend for such period as the University continues to use and maintain the Telecommunications Equipment in good condition and repair and only for so long as the University shall use the Telecommunications Equipment for the intended purpose as stated herein, and the same shall immediately lapse and terminate upon cessation of such use at each such location. If the parties are unable to reach agreement concerning renegotiation of the license fee pursuant to Section 12 (e) herein by December 31, 1996, the city may at its option terminate this agreement. Notwithstanding any of the foregoing, this license shall automatically terminate if, as a result of the City's proper use of the right-of-way, the City determines that the removal of the Telecommunications Equipment shall be necessary in connection with such a proper public purpose for the use of said right-of-way. In the event of such termination the university shall either remove the Telecommunications Equipment or, upon the concurrence of the city, the equipment may be abandoned by the University. If the equipment is removed, the removal of the Telecommunications Equipment shall be at University's sole cost and expense and shall be done in a timely manner as nearly as practicable in accordance with the City's request for such removal. Upon any such removal or abandonment the University shall restore the Public Property to the condition it was prior to the installation of the Telecommunications Equipment.

SECTION 2. DEFINITIONS.

- (a) "City" shall mean the City of Urbana, Illinois.
- (b) "University" shall mean The Board of Trustees of the University of Illinois.
- (c) "Public Property" or "Property" shall mean public rights of way and any improvement thereon and therein, including, but not limited to, paved streets, alleys, sidewalks, grass, vegetation, trees, street lights, traffic signals, water mains, sewers, and any other improvement or equipment located thereon owned by or under the control of the City of Urbana.

(d) "Telecommunications Equipment" shall mean all equipment operated by, leased or subleased by the University and shall include but not be limited to poles, wires, fiber optic cables, underground conduits, ducts, manholes and other structures or appurtenances in connection with the Telecommunication Service owned, leased, operated or maintained by the University.

(e) "Telecommunications Service" shall mean the provision of offering or provision for rent, sale or lease, or in exchange for other value received, or the transmittal of information, by means of electromagnetic, electric light transmission with or without benefit of any closed transmission medium, including all instrumentalities, facilities, apparatus, and services (including the collection, storage, forwarding, switching, and delivery of such information) used to provide such transmission.

"Telecommunications Service" does not include, however:

(i) community antenna television service which is operated to perform for hire the service of receiving and distributing video and audio program signals by wire, cable or other means to members of the public who subscribe to such service, to the extent that such service is utilized solely for the distribution of such entertainment services with no more than incidental subscriber interaction required for the selection of such entertainment service, or

(ii) the rent, sale, lease, or exchange for consideration of Telecommunications Services to a non-governmental entity.

SECTION 3. PERMITS, CONSTRUCTION AND COSTS.

(a) PERMITS. The University shall obtain all permits required by the codes and ordinances of the City prior to commencement of construction, repair or excavation in the Public Property or within one business day of the commencement of emergency construction, repair or excavation in the Public Property. The University shall not be charged the fee required by the City's codes and ordinances for any such permit, but such permit by the City may include such additional requirements for scheduling directions, traffic control and any other matters relating to the same as the City, in its sole discretion, may from time to time require. If the University fails to obtain the required permits within the time required, it shall pay two times the required permit fee. The University shall pay such fee within twenty-eight days of written notification by the City.

(b) CONSTRUCTION.

(i) General. All Telecommunications Equipment, laid in, under, upon, over, along, or across Public Property shall be laid in a workmanlike manner. All Telecommunications Equipment shall be so located, relocated, maintained, and installed so as to not injure any

Public Property of the City, any equipment or other improvements of other utilities, or property of another, but should any Public Property of the City, equipment or other improvements of another utility, or property of another, be injured by such location, relocation, maintenance, or installation, the University shall, at its own expense, forthwith repair or cause repair to the Public Property or other property damaged.

(ii) Grade. Prior to installing any Telecommunications Equipment, in, under, over, along, across, or upon Public Property, the University shall obtain the approval of the grade from the City Engineer and shall install the telecommunications equipment to the grade as approved. If the University fails to lay the Telecommunications Equipment to the approved grade, the University shall, if required by the City, relocate the Telecommunications Equipment and shall pay the entire cost of such relocation.

(iii) Interference with Traffic. The University shall conduct its construction, reconstruction, repair, relocation, or maintenance work in the Public Property in such a manner that such work will cause as little interference as possible with the pedestrian and vehicular traffic, and shall abide by the scheduling directions, if any, given by the City Engineer.

(iv) Mandatory Underground Construction. The City, at its option, and upon direction of the City Engineer, may require underground construction or relocation of all the University's Telecommunications Equipment and facilities at the designated sites in the public right-of-way, in which such event, such construction or relocation shall be at University's own expense and shall be done in a timely manner as nearly as practical in accordance with the request and direction of the City and City Engineer.

SECTION 4. MAINTENANCE.

(a) GENERAL. The University, after doing any construction, repair or excavation, in the Public Property, shall leave the surface in a neatly graded condition. All Public Property disturbed by the University shall be expeditiously restored by it to as good condition as before said Public Property thereon was disturbed by it. Vegetation disturbed by construction, repair, or excavation shall be replaced and grass shall be replaced with sod. In the event that any Public Property shall become uneven, unsettled or otherwise require repair or replacement, because of the disturbance by the University, the City shall give written notice of such condition; provided, however, that verbal notice shall suffice in the event of an emergency. The University shall, within five (5) days of receipt of notice from the City and entirely at its own cost, cause such Public Property to be repaired or restored to as good as condition as before said Public Property were disturbed by the University or commence the repair or restoration within five (5) days if such repair or restoration cannot reasonably be completed within five (5) days. The University shall keep all structures and equipment which it shall construct in the Public Property in reasonably safe condition at all times.

(b) FAILURE TO COMPLY; REMEDY. If the University fails to comply with the provisions of subsection (a) of this Section, the City may, without election, repair or restore, or cause to be repaired or restored, the Public Property or improvement to a condition as good as the property was in prior to the disturbance by the University. The University shall pay the costs and charges to the City within thirty (30) days after receipt of the City's billing.

SECTION 5. SITE SAFETY.

The University shall maintain such barriers and danger signals during construction, relocation, repair, or renewal work performed on Public Property or adjacent thereto as will reasonably avoid damage to life, limb and property and as called for in the State of Illinois Uniform Manual of Traffic Control Devices, or the Illinois Department of Transportation Traffic Control Plans for Construction and Maintenance Projects, or as otherwise required by the City.

SECTION 6. SUBORDINATE USE, RELOCATION.

It is expressly understood and agreed that the license herein granted is and the same shall be at all times subordinate to the City's use of the Public Property, and if the City for reasonable cause shall require the relocation or the lowering or raising of the grade of any Telecommunications Equipment, the University shall do so forthwith. The University shall pay the entire cost of the relocation or lowering or raising of the grade of such Telecommunications Equipment.

SECTION 7. WORK BY CITY AND OTHERS, CONSTRUCTION BY ABUTTING OWNERS, ALTERATION TO CONFORM WITH PUBLIC IMPROVEMENTS.

(a) The City reserves the right to lay, and permit to be laid, sewer, gas, water, and other pipe lines or cables and conduits, and to do and permit to be done, any underground and overhead installation or improvement that may be deemed necessary or proper by the governing body of the City in, across, along, over or under any Public Property occupied by the University, and to change any curb or sidewalk or the grade of any street. In performing or permitting such work to be done, the City shall not be liable to the University for any damage so caused, nor shall the City be liable to the University for any damages arising out of the performance by the City of its contractors or subcontractors, not willfully occasioned; provided, however, nothing herein shall relieve any other person or corporation from liability for damage to the telecommunications equipment of the University.

(b) In the event that the governing body of the City subsequently authorizes abutting landowners to occupy space under the surface of any Public Property, such grant to an abutting landowner shall be subject to the rights herein granted to the University.

SECTION 8. PLANS AND COORDINATION.

(a) CONSTRUCTION, EXCAVATION AND EXPANSION PLANS. On or before December 31 and June 30 of each year, the University shall provide the City with a schedule of all planned construction and excavation work in the public right-of-way, excepting emergency work on the designated sites, which schedule shall be used by the City only for the purpose of planning and organizing growth and development of the City.

The University shall, at the written request of the City Engineer, reschedule any such work within the City to coordinate with any work to be done by the City.

(b) The University shall adjust to grade all appurtenances related to their Telecommunications Equipment at the time any street rehabilitation, repair or reconstruction is made by or on behalf of the City.

(c) AS BUILT PLANS. The University shall furnish to the City a copy of all plans for all construction, reconstruction, repair, relocation or other work as built by the University related to Telecommunications Equipment located on Public Property.

SECTION 9. MAPS, RECORDS, REPORTS AND DOCUMENTS.

(a) MAINTENANCE OF RECORDS. The University shall keep complete and accurate maps in connection with this License Agreement.

(b) EXAMINATION AND AUDIT OF RECORDS. The City shall have the right, at reasonable times and for reasonable purposes, to examine, audit, review, and/or obtain copies of the maps and plans of the University pertaining to this License.

SECTION 10. LIABILITY AND INDEMNIFICATION.

(a) To the extent allowed by law the University shall, at its own expense, defend all suits that may be brought against the City on account of or in connection with the alleged violation by the University of any of the obligations hereby imposed upon or assumed by it, or by reason of or in connection with any damage to life, limb or property as a result of existence, construction, repair, inspection or disrepair of any Telecommunications Equipment under its ownership or control, or from the construction, repair, inspection or disrepair of public property in connection with any Telecommunications Equipment under its ownership or control, or from the negligence or malfeasance of the employees, officers or agents of the University or from their control of others in connection with this Agreement, shall save and keep harmless the City, its employees, officers and agents from any and all injury, damages, claim, demand, suit, judgments, costs and expenses of every kind, including reasonable attorneys' fees, that may arise by reason thereof; whether such acts or omissions are those of the University or whether or not any such act or omission is authorized,

allowed or prohibited by this Agreement, provided that notice in writing shall be given to University of any claim or suit against the City which, by the terms hereof, the University shall be obligated to defend; and provided, further, that the City shall furnish to the University all information in its possession relating to said claim or suit and cooperate with said University in the defense of said claim or suit. The City may, if it so desires, assist in defending any such claim or suit and the University shall not be required to reimburse the City for expenses incurred by it in case of the election to so assist. If, however, the University refuses to defend the City when it is so obligated, the University shall bear any costs incurred by the City in such defense.

(b) To the extent allowed by law the University shall pay and by its acceptance of this Agreement shall be deemed to have specifically agreed that it will pay all expenses incurred by the City in defending itself with regard to all claims mentioned in subsection (a) above. These expenses shall include all out-of-pocket expenses, such as attorneys' fees, and shall also include the reasonable value to any services rendered by any employee of the City.

(c) The University will require that the city be indemnified and held harmless by any general contractor employed for work on the property covered by this agreement. Further the University will require that certification of insurance, naming the City as an additional insured shall be furnished to the City by any such contractor.

(d) The University will provide a certificate of coverage in the amount of \$1,000,000 to the City under the University's self insurance program. If at some future time the University replaces the self insurance program, the University will provide at its expense equivalent coverage.

SECTION 11. LICENSE FEE.

(a) The University shall pay a fee to the City in the amount of \$62,268 per year payable in equal monthly installments for the license granted hereunder; provided, however, that the fee shall be reduced by the amount of utility tax collected by the City for Telecommunication Services sold to the University. (See Attachment B)

(b) Any reduction in the utility tax rate will reduce the fee paid by the University by a like percentage.

(c) All services related to premise exchange or access to the local telephone exchange will be included in calculating the reduction specified in Section 13-a. Long distance, private lines and other telecommunication services not related to premise exchange or access to the local public exchange will be excluded from any reduction.

(d) Each year this license agreement is in effect, the University shall report to the City (1) the amount of City telephone Utility taxes paid, and (2) the number of telephone access lines utilized by the University.

(e) The license fee shall be subject to renegotiation on or after July 1, 1996.

(f) If the University sells Telecommunication Services to individuals or entities who are or may be subject to the Utility tax or payment thereof the University will collect and remit such tax to the City. If the University sells Telecommunications Services utilizing Telecommunications Equipment installed on Public Property pursuant to this Agreement, not otherwise subject to the City's utility taxes, but for which the City would otherwise collect a franchise fee, occupation tax, or fee of like character, the University shall pay or collect and remit such amount to the City on the same basis as other persons similarly situated.

SECTION 12. VIOLATIONS OF AGREEMENT.

(a) Under evidence being received by the City that violations of this License Agreement, or ordinances or regulations relating to the use of the Public Property, for the purposes defined in this Agreement are occurring, or have occurred, the City may cause an investigation to be made. If the City finds that such a violation exists or has occurred, the City will notify the University and request compliance with the terms of this Agreement.

(b) The City shall notify the University that violations of this License Agreement or ordinances or regulations of the City relating to the use of Public Property have occurred and the University shall respond in writing, unless a shorter time is provided for herein, within fourteen (14) days after receipt of such notice.

(c) If the University fails to respond in writing as set forth in subsection 12(b) or fails within a reasonable time after City's notification of violations of Sections 3, 4, 5, 6, 7, 8 or 9 to correct such violations, the University shall pay to the City, in addition to the cost, if any, that the City incurred in remedying the violation the sum of \$25.00 per day the violation continues or remains unremedied, provided that the City may, but is not under a duty to, correct or mitigate the violation by the University. Such amount shall be paid by the University within twenty-eight (28) days of notification by the City Engineer.

SECTION 13. BREACH.

If the University shall fail or neglect to comply with any or all of the provisions of this Agreement (unless by valid order of a court of competent jurisdiction the University is otherwise directed or

unless the compliance by the University with such provision is prohibited or adjudged unlawful by a valid order of a court of competent jurisdiction), the City may apply to a court of competent jurisdiction to seek University compliance with any term or provision of this license and/or any damages caused by the University's noncompliance with any term or provision of this license. In addition if the University fails to pay the City any amount due for any reason including specifically the availability of funds as provided in Section 14 hereof in violation of this agreement and continues in noncompliance after notification in accordance with Section 12 of this agreement the City may terminate this agreement forthwith.

SECTION 14. AVAILABILITY OF FUNDS AND CONSTITUTIONAL AND STATUTORY LIMITATIONS.

(a) All commitments by the University are subject to the availability of funds which may be lawfully applied thereto.

(b) All commitments by the University under this Agreement are subject to constitutional and statutory limitations and restrictions binding on the University.

(c) Neither this Agreement, nor any obligation hereunder shall create any debt, indebtedness, liability or obligation of the State of Illinois within the meaning of any applicable statutory or constitutional restriction or limitation pertaining to debts or other evidence of indebtedness, and the State shall not be liable hereon nor shall this agreement, or any obligation of the University hereunder, create any liability or indebtedness of the University under any such statutory or constitutional restriction or limitation prior to the time when any payment hereunder, or any renewal hereof, becomes actually due and payable, and then only for an amount which is not in excess of funds in the hands of the University at the time when any such payment becomes actually due and payable, and which may under any such statutory or constitutional restriction or limitation be specially and properly applied to the payment of the same.

SECTION 15. ASSIGNMENT.

This Agreement shall not be assignable without the express consent of the City Council of the City; such consent to be evidenced by an ordinance or resolution that fully recites the terms and conditions, if any, upon which such consent is given.

SECTION 16. VACATION OF STREETS AND ALLEYS.

So long as this Agreement remains in effect, the City will not, by ordinance or otherwise, vacate any street, alley or public way in which the University has its Telecommunications Equipment installed without reserving such rights as necessary to comply with the terms of this Agreement.

SECTION 17. DELIVERY OF NOTICES.

Any notices required or permitted hereunder shall be in writing and shall be delivered via certified mail, addressed to the parties as follows unless otherwise indicated in the future.

If to Licensor: Mayor
City of Urbana
400 South Vine Street
Urbana, Illinois 61801

If to Licensee: The Board of Trustees
University of Illinois
354 Administration Building
506 South Wright Street
Urbana, Illinois 61801

provided, however, that in the case of an emergency, notices may be given verbally to any agent of the above-named.

Notice shall be deemed given three days after date of mailing.

In witness to their Agreement, the parties have executed this document this ____ day of _____, 1986.

THE BOARD OF TRUSTEES OF THE
UNIVERSITY OF ILLINOIS

CITY OF URBANA

By: _____
Comptroller

By: _____
Mayor

ATTEST: _____
Secretary

ATTEST: _____
City Clerk

Attachment A

URBANA STREET CROSSINGS

<u>Page</u>	<u>Ref. No.</u>	<u>Location</u>
1	1	University West of Romine
1	2	Clark at Mathews
1	3	Mathews at Mathews
1	3A	Main at Mathews
1	4	Goodwin at Mathews
1	5	Mathews at Alley South of Springfield
1	8	Goodwin at Alley South of Springfield
1	11	Mathews on South side of Stoughton
1	12	Springfield East of Romine
1	14	Mathews North of Green
1	15	Goodwin North of Green
1	12A	Mathews at Springfield
1	12B	Springfield East of Mathews
1	12C	Mathews South of Springfield
1	12D	Goodwin South of Springfield
3	1	Oregon West of Goodwin
3	2	Mevada at Goodwin
3	4	Nevada East of Goodwin
3	5A	Illinois East of Goodwin
3	6	Illinois East of Gregory Place
3	7	Goodwin at Illinois
3	8	California at Goodwin
3	9	Oregon at Goodwin
3	10	Mathews North of Nevada
3	11	Mathews South of Green
4	1	Lincoln South of Pennsylvania
4	2	Maryland at Florida
4	<u>3</u>	Florida West of Lincoln
	TOTAL	28

Attachment B

License fee due to the City of Urbana for month of _____.

(A) Total amount billed by IBT		\$99,999.99
(B) Non taxable amount		99,999.99
(C) Total taxable amount		99,999.99 A-B
Excluded items		
Long distance	\$99,999.99	
Other charges and credits	99,999.99	
Other excluded items	99,999.99	
(D) Total excluded items		99,999.99
(E) Billed amount applicable to fee		99,999.99 C-D
Amount of tax applicable to		
Urbana fee (line E X.6,18 X .05)	9,999.99	
(G) Credit for one time payment	1,616.00	
(H) Total tax applicable to fee		9,999.99
(I) Fee due (\$5,189.00 less Line H)		9,999.99

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