

RESOLUTION NO. 29-09
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER Paul Hresham ON THE 17th
DAY OF August, 2009.

**A RESOLUTION AUTHORIZING AND DIRECTING THE CITY
MANAGER TO ENTER INTO A UTILITY EASEMENT
AGREEMENT WITH MCI COMMUNICATION SERVICES, INC.
TO CONTINUE TO ALLOW A TELECOMMUNICATIONS
TRANSMISSION SYSTEM LOCATED ON CITY OF
CENTERVILLE PROPERTY.**

WHEREAS, a parcel of land owned by the City of Centerville, located at the southeast corner of Yankee Street and Social Row Road, has a telecommunications transmission system consisting of wires, cables and other related fixtures, equipment, marker posts and appurtenances, existing thereon; and

WHEREAS, it was discovered that this system was owned by MCI Communication Services, Inc. and was deemed a trespass on City property; and

WHEREAS, in exchange for Twenty Thousand Dollars and 00/100 (\$20,000.00) to be paid by MCI Communication Services, Inc., the City has agreed to grant an easement for this telecommunications line and to allow MCI Communication Services, Inc. to have the rights and privileges of this easement; and

WHEREAS, the City Council of the City of Centerville must approve and authorize such an easement be granted; and

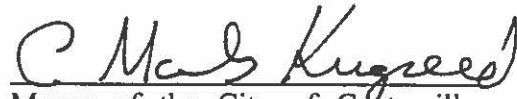
NOW, THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY RESOLVES:

Section 1: The City Manager is authorized and directed to enter into a Utility Easement Agreement with MCI Communication Services, Inc. for the installation, maintenance and operation of a telecommunications transmission system in accordance with the terms of said agreement, a copy of which is attached hereto as Exhibit "A" and incorporated herein.

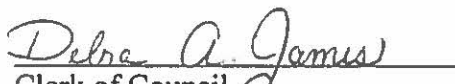
Section 2: The City hereby agrees to accept MCI Communication Services, Inc.'s payment of Twenty Thousand Dollars and 00/100 (\$20,000.00) as full consideration for the granting of this easement.

Section 3: This Resolution shall become effective at the earliest date allowed by law.

PASSED THIS 17th day of August, 2009.


Mayor of the City of Centerville,
Ohio

ATTEST:


Clerk of Council
City of Centerville, Ohio

CERTIFICATE

The undersigned, Clerk of Council of the City of Centerville, Ohio, hereby certifies the foregoing to be a true and correct copy of Resolution No. 29-09, passed by the Council of the City of Centerville, Ohio on the 17th day of August, 2009.


Clerk of the Council

Approved as to form, consistency
with existing ordinances, the Charter
and Constitutional Provisions.
Department of Law
Scott A. Liberman
Municipal Attorney

UTILITY EASEMENT AGREEMENT

THIS UTILITY EASEMENT AGREEMENT ("this Agreement") made and entered into as of the _____ day of _____, 2009, by and between **The City of Centerville, Ohio, an Ohio Municipality**, having an address of 100 W. Spring Valley Rd., Centerville, Ohio ("Grantor"), and **MCI Communications Services, Inc., a Delaware corporation**, having an office at 2400 North Glenville Drive, Richardson, Texas 75082 ("Grantee").

WITNESSETH:

THAT, for and in consideration of the sum of Ten no/100 Dollars (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor hereby grants, sells and conveys unto Grantee, its successors and assigns, a perpetual easement to install, maintain and operate a telecommunications transmission system consisting of wires, cables and other related fixtures, equipment, marker posts and appurtenances deemed necessary or appropriate by Grantee, in, under, upon, over and across a ten foot (10') wide strip of land located in the City of Centerville, County of Montgomery, State of Ohio, and being more particularly described on Exhibit "A" attached hereto and made a part hereof (the "Easement Property"); said Easement Property being located within property owned by Grantor pursuant to that certain Deed filed of record on November 30, 1994, in the Real Property Records of Montgomery County, Ohio, at Microfiche 94-0742 D04, being more particularly described as Parcel or Tract #4 on Exhibit "B" attached hereto and made a part hereof ("Grantor's Property");

TOGETHER with the rights and easements, privileges and appurtenances over and across Grantor's Property necessary or convenient for the full enjoyment and use of the rights herein granted, including, but not limited to, the rights of ingress and egress over and across Grantor's Property to and from the Easement Property, the right to clear and keep cleared all trees, roots, brush and other obstructions located in and around the Easement Property which may interfere with the construction, maintenance, or operation of Grantee's telecommunications transmission system. Grantee's right to remove any natural or constructed improvements from the Easement Property is limited to situations where such removal is necessary in regard to the purpose of the easement, and is subject to the policies and procedures on damages outlined herein.

Grantor hereby represents and warrants that it is the sole owner in fee simple of Grantor's Property and that it has the lawful right and authority to grant the easement conveyed herein.

Grantor, its heirs and assigns, will have the right to construct and/or repair and

maintain upon Grantor's Property, a public or private right of way and/or public or private parking facility constructed pursuant to applicable laws and regulations in effect at the time of such construction or repairs, and to operate and park upon such property heavy construction equipment and/or vehicles necessary to construct and maintain the same, without liability to Grantee for any damage caused to Grantee's telecommunications transmission systems located in the Easement Property, provided that any such uses do not prevent Grantee from using the Easement Property for the purposes set forth in this Agreement.

Grantee agrees that all cable, wire or conduit installed underground shall be buried below normal cultivation depth and at such a reasonable depth to allow for the construction and/or repair of future public or private right of way and/or a public or private parking facility. Grantee further agrees to pay the reasonable amount of any actual damage to growing crops, timber, fences, landscaping, or other structural improvements located both upon and outside the Easement Property and caused by the construction or maintenance activities of Grantee. Grantee shall pay Grantor for damages that result from building, laying, rebuilding, maintaining, repairing, operating, replacing, relocating, moving, removing, and changing the size of any wiring, conduits or other equipment or appurtenances of the telecommunications transmission system, and any other systems incident and ancillary to such telecommunications transmission system. Damages to or removal of trees, shrubs, crops, buildings, or other improvements, including, but not limited to, improved road ways and parking areas, that now or hereinafter occupy Grantor's Property shall be compensated at a rate agreed on by and between Grantor and Grantee. In the event Grantor and Grantee cannot mutually agree upon the definition and compensation for such damages, then three (3) disinterested appraisers will determine the same. Grantor shall appoint one (1) appraiser. Grantee will appoint one (1) appraiser, and these two (2) appointees will in turn appoint a third appraiser. The award agreed upon among these three (3) appraisers shall be final.

Grantee will indemnify, defend, protect, and hold harmless Grantor and Grantor's lessees, agents, successors, and assigns, (collectively called the "Grantor"), from and against all criminal and civil claims and causes of action (including, but not limited to, claims resulted from, or causes of action incurred concerning the death of or injury to any person, or damage to any property), liabilities (including, but not limited to, liabilities arising by reason of actions taken by any governmental agency, where such agencies include, but are not limited to, a Bureau of Worker's Compensation, or an Environmental Protection Agency), penalties, forfeitures, prosecutions, losses, and expenses (including reasonable attorney's fees) which directly arise from or are caused by or result from the building, laying, rebuilding, maintaining, repairing, operating, replacing, relocating, moving, removing, and changing the size of Grantee's telecommunications transmission system, and any other systems incident and ancillary to such telecommunications transmission system. Grantee's obligations with respect to the indemnification provisions

set forth herein will include, but not be limited to, obligations to bear the expense of all costs, whether foreseeable or unforeseeable, of any necessary (as required by law) repair, cleanup, detoxification, or decontamination of all or any portion of the Easement Property and the preparation and implementation of any closure, remedial action or other required plan or plans in connection therewith, including, but not limited to, any affected portion of the Grantor's Property.

If Grantee terminates its use of the Easement Property for the purpose for which it was granted and such non-use continues for a period of twelve (12) months, then the grant of this easement shall terminate automatically, and thereupon all of Grantee's rights and Grantor's obligations herein shall cease.

Grantee shall have no above-ground installations or structures associated with the construction, repair, maintenance operation or removal of the telecommunications transmission system on Grantor's Property, except identification markers suitable to Grantor's use of the above land, and subject to Grantor's approval.

TO HAVE AND TO HOLD the easement and rights of way granted herein unto Grantee, together with the right to assign or transfer the said easement and rights of way, in whole or in part. Grantor hereby binds itself, its successors and assigns, to warrant and forever defend all and singular the easement and rights of way granted herein unto Grantee, its successors and assigns, against every person whomsoever, lawfully claiming or attempting to claim the same, or any part thereof.

This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

EXECUTED on the date first above written.

Grantor:

**The City of Centerville, Ohio
an Ohio Municipality**

By: _____
Its: _____

Grantee:

**MCI Communications Services, Inc.
a Delaware Corporation**

By: _____
Its: _____

STATE OF OHIO)
) SS
COUNTY OF MONTGOMERY)

BE IT REMEMBERED, that on this _____ day of June, 2009, before me, the subscriber, a Notary Public in and for said County and State, personally came Gregory B. Horn, the City Manager of the municipality which executed the foregoing instrument, who acknowledged that he did sign said instrument in such capacity on behalf of said municipality and by authority of the City Council; that said instrument was signed as his free act and deed individually, and the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my notarial seal on the day and year first above written.

Notary Public
My Commission Expires:

STATE OF _____)
) SS
COUNTY OF _____)

BE IT REMEMBERED, that on this _____ day of June, 2009, before me, the subscriber, a Notary Public in and for said County and State, personally came _____, the _____ of the corporation which executed the foregoing instrument, who acknowledged that he/she did sign said instrument as such officer on behalf of said corporation and by authority of the Board of Directors; that said instrument was signed as his/her free act and deed individually, and the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my notarial seal on the day and year first above written.

Notary Public
My Commission Expires: