

RESOLUTION NO. 64-97
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER JAMES REPERT ON THE
6th DAY OF OCTOBER, 1997.

A RESOLUTION RATIFYING THE ACTION TAKEN BY THE CITY MANAGER TO GRANT AN EASEMENT, ON BEHALF OF THE CITY OF CENTERVILLE, TO AMERITECH TELEPHONE COMPANY TO INSTALL UNDERGROUND CABLE FOR THE EXPANSION OF SERVICES TO RESIDENCES IN YANKEE TRACE.

WHEREAS, it was necessary for the City of Centerville to grant unto The Ohio Bell Telephone Company a.k.a. Ameritech Ohio, an easement to provide for the installation of underground cable for the expansion of services to residences in Yankee Trace, and

WHEREAS, to accomplish this Ameritech Ohio requested a 10 foot wide, 90 foot long easement across property owned by the City of Centerville, Montgomery County, State of Ohio, said property being a parcel of land situated in section 4, township 2, range 5, M.R.S. and section 35, township 3, range 5, City of Centerville, Washington Township, Montgomery County, Ohio and containing 309.426 acres more or less.

NOW, THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY RESOLVES:

SECTION 1. That the action taken by the City Manager is hereby ratified to grant an easement to The Ohio Bell Telephone Company a.k.a. Ameritech Ohio to provide for the installation of underground cable for the expansion of services to the residences in Yankee Trace, in accordance with said Ameritech Non-Exclusive Easement and addendum, both of which are attached hereto and made a part hereof, marked Exhibit "A".

SECTION 2. That this Resolution shall become effective at the earliest date allowed by law.

PASSED this 6th day of OCTOBER, 1997

Sally D. Bink
Mayor of the City of Centerville, Ohio

ATTEST:

Marilyn J. Saughel
Clerk of the Council of the
City of Centerville, Ohio

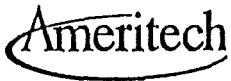
CERTIFICATE

The undersigned, Clerk of the Council of the City of Centerville, Ohio, hereby certifies that the foregoing is a true and correct copy of Resolution Number 64-97, passed by the Council of the City of Centerville, Ohio, on the 6th day of OCTOBER, 1997.

Marilyn J. Saughel
Clerk of Council

Approved as to form, consistency
with the Charter and Constitutional Provisions.

Department of Law
Robert N. Farquhar
Municipal Attorney



Cross Reference to Instrument Number: 94-0742-D06

AMERITECH NON-EXCLUSIVE EASEMENT

Undertaking No. _____

Easement No. _____

Parcel No's. _____

For a valuable consideration of one dollar (\$1.00), receipt of which is hereby acknowledged, the undersigned (Grantor) hereby grants and conveys to Ohio Bell Telephone Company a.k.a. Ameritech Ohio, an Ohio Corporation, and its affiliates and licensees, successors and assigns (collectively "Grantees") an easement in, under, and across the Easement Area (described below), for the purposes of and in order to construct, reconstruct, modify, supplement, maintain, operate and/or remove facilities for the transmission of signals used in the provision of communication, video and/or information services and/or any other services or uses for which such facilities may be used including, but not limited to poles, guys, anchors, and messenger strand, equipment cabinets or enclosures and support posts or pads, cables, wires, pedestals, or other above-ground cable or wire enclosures, marker posts, and signs, and other related or useful equipment, fixtures, appurtenances and facilities, together with the right to have commercial electrical service extended across the Property (described below) and Easement Area to provide service to such facilities and the right of ingress and egress across the Property and the Easement Area for the purpose of access to and use of the easement granted herein.

The Property is legally described as: Being the property of **The City of Centerville** and situated in section 4, township 2, range 5, M.R.S. and section 35, township 3, range 5, City of Centerville, Washington Township, Montgomery County, Ohio and containing 309.426 Acres more or less.

The Easement Area as shown on Exhibit A attached hereto and made a part hereof:

The Grantor represents and warrants to the Grantee that Grantor is the true and lawful owner of the Property and has full right and power to grant and convey the rights conveyed herein.

Grantee hereby agrees to restore all property disturbed by its activities in use of the easement to the condition existing prior to the disturbance.

Grantee shall have the right to remove or trim such trees and brush in the Easement Area as is necessary to exercise the rights conveyed herein.

The Grantor shall not construct improvements in the Easement Area or change the finish grade of the Easement Area without the consent of the Grantee.

This Easement is binding upon and shall inure to the benefit of the heirs, successors, assigns, and licensees of the parties hereto.

Signed and Acknowledged
in the Presence of:

The City of Centerville

Linda L. Schroth
(Witness Signature)

[Signature]
(Grantor Signature)

LINDA L. SCHROTH
(Witness Printed)

GREGORY B. HORN
(Grantor Printed)

Cecy Greive
(Witness Signature)

(Grantor Signature)

Cecy GREIVE
(Witness Printed)

(Grantor Printed)

STATE OF OHIO
COUNTY OF Montgomery

Personally appeared before me, a Notary Public, in and for said County and State,
this 27th day of August, 1997,
Gregory B Horn, City Manager, Centerville
who acknowledged the execution of the above easement.

Marilyn J. McLaughlin
Notary Public Signature

Marilyn J. McLaughlin
Notary Public Printed

My Commission expires _____

Address of Grantee:
Ameritech Telephone Company
Right of Way Department
5870 N. College Avenue
Indianapolis, Indiana 46220

MARILYN J. McLAUGHLIN, Notary Public
In and for the State of Ohio
My Commission Expires September 29, 1999

on Township
33 Ac.

San. Sewer Ease.
H.F. 89-585C04

N 84°56'52"
725.56'

Ronald C. & Christine A. Hill
H.F. 89-508012

Washington Township

S 84°55'37"
718.45'
Excluded 2.86

Ext. Cart Path

20' GAS R/W
D.B.2364, PG.104

Arch. Site
#33-my-668

GAS EASEMENT 10' WIDE
D.B.1382, PG.160

San. Sewer Ease.

N 02°43'35" E

S 02°43'15" W

N 07°11'58" E

N 06°13'38" E

280.01

163.30'

1472.88'

63.95'

399.54'

160.83'

798.16'

10" ELEC. R/W & EASE.
H.F. NO. 90-0637-D09

C-3

T-8

Wash TWRD
0.008 Ac.

Ext. Res.

Ext. Barns

Existing
Iron Pipe

637.33'

Ext. Res.

Ext. Barns

Existing Nail
w/ Shiner

HALEY DRIVE

SILVERLAKE DRIVE

SILVERLAKE DRIVE

PLAT BOOK 106, PAGE 75

N 85°17'38" E

681.51'

City of Centerville
M.F. 90-252E05
11.403 Ac. Calc.
11.402 Ac. Orig.

20' SAN. SEWER EASE.
H.F. 89-0655D01

City of Centerville
M.F. 90-252E05
10.094 Ac. Calc.
10.094 Ac. Orig.

S 85°17'38" W

S 85°57'14" E

1437.97'

1350.54'

City of Centerville
M.F. 90-261B03
41.999 Ac. Calc.
42.000 Ac. Orig.

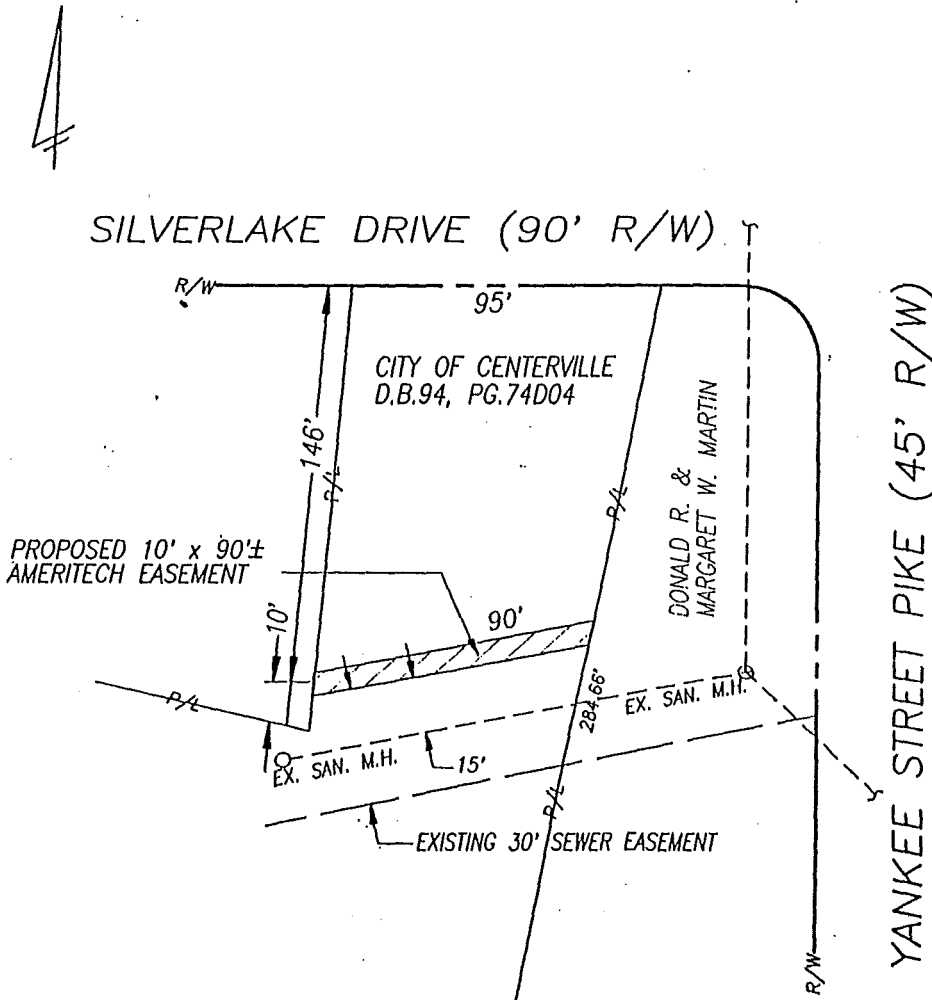
EXHIBIT "A"

To Easement Dated _____ 19____

FROM
CITY OF CENTERVILLE

TO
THE OHIO BELL TELEPHONE COMPANY

Being the property of CITY OF CENTERVILLE
DEED BOOK 94, PAGE 74D04
CITY OF CENTERVILLE, MONTGOMERY COUNTY, OHIO.



Scale: NOT TO SCALE

W.O. 7122469
F95036-2226

This Document Prepared By THE FISHEL COMPANY.
This Exhibit Is Drawn For The Limited Use Of THE OHIO BELL TELEPHONE CO. To Identify
The Easement Location And Is Not Intended To Represent An Accurate Survey Of The Property

ADDENDUM

The Ohio Bell Telephone Company, a/k/a Ameritech Ohio ("Ameritech") and the City of Centerville (City), to further define the rights and obligations of each with regard to this use of the right of way or easement, agree as follows:

I. Obligations of Ameritech

A. In addition to other conditions set forth in the easement, Ameritech shall:

1. Use its best efforts to cooperate with the City and other occupants of the right of way (if any), consistent with safety, and to minimize traffic and other disruptions including street cuts;
2. Participate in such joint planning in advance notification of right of way work as the City might set forth in its regulations, excepting such work performed in emergencies or other exigent circumstances;
3. Cooperate with other users of the right of way in the utilization of, construction in and occupancy of the rights of way but only to the extent it is not inconsistent with the grant thereof or is not additionally burdensome to any property owner;
4. Upon written notice from, and at the direction of the City, and at Ameritech's sole cost, Ameritech will promptly remove or rearrange facilities upon its poles as necessary, during any construction, repair or modification of any street or within the limits of any road right of way, as defined in O.R.C. 4511.01 (UU), inconsistent with then current uses of *Ameritech*.
5. Provide maps or other information in such form and at such times, as the regulations require. Said maps and information shall locate, describe and identify all uses, structures and facilities of Ameritech in the rights of way;
6. Perform all work, construction, maintenance or removal of structures and facilities within the right of way in accordance with good engineering and construction practice including any appropriate safety codes and in accordance with the regulations and use best efforts to repair and replace any street, curb or other portion of the right of way, or facilities or structure located therein,

to a condition materially equivalent to its condition prior to such work and to do so in a manner which minimizes any inaccommodation to the public, the City and other users of the right of way, all in accordance with the City's regulations;

7. Register with all appropriate underground reporting services; and
8. Not, unless otherwise set forth in a permit and without City's prior written approval, enter into leases or other agreements for the use of Ameritech's facilities located within these rights of way except for such use by other holders of City permits or franchises.

B. Ameritech hereby assures the City that any subcontractors or others performing any work or services in the right of way on behalf of Ameritech shall comply with all applicable provisions of this easement and addendum and Ameritech shall be responsible and liable hereunder for all actions of any such subcontractor.

II. Notice of Right of Way Work, Joint Planning

A. Ameritech shall file a written notice with the City Manager in accordance with the standard work permitting process before working in or on the right of way. In addition to such other information as the City Manager may require, such notice shall contain or indicate, to the extent possible:

1. The right of way affected;
2. A description of any facilities to be installed, constructed or maintained;
3. Whether or not any street will be opened or otherwise need to be restricted, blocked or closed;
4. An estimate of the amount of time needed to complete such work;
5. A description and timetable of any remedial measures planned to close any street opening or repair any damage done to facilitate such work;
6. A statement verifying that other affected or potentially affected users of the right of way have been notified; and
7. A statement that any consumers of any utility, cable television, communications or other service which will be adversely affected by such work have been or will be notified.

- B. Ameritech may, under emergency or other exigent circumstances, work in the right of way so long as it uses its best efforts to provide the City the notice required by this section at the earliest possible time.

III. Use of Ameritech Facilities

The city shall have the right to install and maintain free of charge, upon any poles and within any underground pipes and conduits or other facilities of Ameritech any facilities desired by the City unless (i) such installation and maintenance unreasonably and materially interferes with existing and future operations of Ameritech, or (ii) such installation and maintenance would be unduly burdensome to Ameritech. Ameritech shall cooperate with the City in planning and design of its facilities so as to accommodate the City's reasonably disclosed requirements in this regard. The City's use of any such facilities shall be limited solely to the City's own official uses. The City shall not resell services of such facilities or sublease capacity on or transfer such facilities to others. The City's use of such Ameritech facilities shall be subject to the terms and conditions of Ameritech's tariffs regarding access to structures.

IV. Indemnity

Ameritech shall indemnify, protect and hold harmless the City from any claim, loss or damage arising in any way from Ameritech's use of the right of way including but not limited to the construction, operation or maintenance of Ameritech's facilities or from any negligent or wrongful act or omission committed by Ameritech.

V. Removal of Facilities

- A. In the event Ameritech intends to discontinue use of any facilities within the right of way, Ameritech shall submit a notice to the City Manager describing the portion of the facilities to be discontinued and the date of discontinuance, which date shall not be less than 30 days from the date such notice is submitted. Ameritech shall remove and secure such facilities as set forth in the notice unless directed by the City Manager to abandon such facilities in place.
- B. Upon such abandonment and acceptance by the City in writing, full title and ownership of such abandoned facilities shall pass to the City without the need to pay compensation. Ameritech shall however continue to be responsible for all taxes on such facilities or other liabilities associated therewith, until the date accepted by the City.

VI. Reservation of Rights

- A. Nothing in this agreement shall be construed to prevent the City from constructing, maintaining, repairing or relocating any City utility, communications or light facilities, grading, paving, maintaining, repairing, relocating or altering any street or right of way; or constructing, maintaining, relocating or repairing any sidewalk or other public work or improvement.
- B. Nothing in this chapter should be construed so as to grant any right or interest in any right of way or public property other than that explicitly set forth herein or in a permit.

VII. Street Vacation

Unless preempted by state or federal law, in the event any street or right of way used by Ameritech shall be vacated by the City, the City will grant an easement to Ameritech to continue the same. Ameritech may choose to remove its facilities, and upon the removal thereof, restore, repair or reconstruct the area where such removal has occurred to a condition materially equivalent to that existing before such removal took place. Should Ameritech fail to do so after 30 days written notice by the City, the City may do such work or cause it to be done, and the cost thereof shall be paid by Ameritech.

VIII. Temporary Movement of Facilities

In the event it is necessary temporarily to move or remove any of Ameritech's wires, cables, poles, or other facilities placed pursuant to this agreement, in order to lawfully move a large object, vehicle, building or other structure over the streets of the City, upon two (2) weeks written notice by the City to Ameritech, Ameritech shall at the expense of the person requesting the temporary removal of such facilities, comply with the City's request.

IX. Reservation of Rights

This right of way permit or easement shall be modified so as to reflect that is subject to any comprehensive right of way ordinance or regulations adopted by the City and to indicate that nothing in the grant of this right of way permit or easement should be construed to waive any franchise rights of the City.