

**CITY OF LIBERTY LAKE
SPOKANE COUNTY, WASHINGTON
ORDINANCE NO. 100**

**AN ORDINANCE RELATING TO THE TRANSFER OF A FRANCHISE FOR A
PUBLIC SERVICE BUSINESS FROM AVISTA FIBER TO FIBERLINK, LLC**

WHEREAS, the City Council on August 14, 2001 approved Ordinance No. 38 which granted a public service franchise to Avista Fiber, Inc. upon the same terms and conditions as the pre-existing franchise with Spokane County under No. 98-0847;

WHEREAS, Avista Communications ("Avista"), as the successor in interest to Avista Fiber, Inc. and WWP Fiber, Inc. has entered into an agreement with FiberLink, LLC (dba Columbia Fiber Solutions) whereby FiberLink will acquire Avista's assets related to the fiberoptic network within Spokane County; and

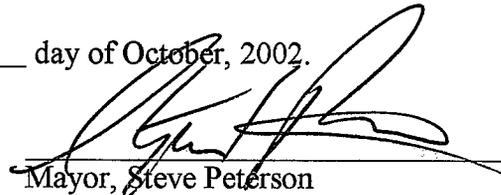
WHEREAS, the City consents to this assignment and transfer as set forth herein.

NOW, THEREFORE, the City Council of the City of Liberty Lake, Washington, do ordain as follows:

Section 1. Transfer of Franchise. The City of Liberty Lake hereby consents to and approves the assignment and transfer by Avista Communications, Inc., the successor in interest to Avista Fiber, Inc., of the franchise granted pursuant City of Liberty Lake Ordinance No. 38 to FiberLink, LLC (dba Columbia Fiber Solutions) provided that FiberLink assumes and accepts all terms and conditions set forth in Ordinance No. 38.

Section 2. Effective Date. This Ordinance shall be in full force and effect five (5) days after publication of this Ordinance or a summary thereof in the official newspaper of the City as provided by law.

PASSED by the City Council this 1 day of October, 2002.



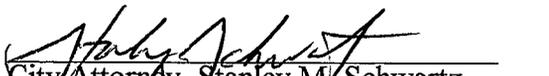
Mayor, Steve Peterson

ATTEST:



City Clerk-Treasurer, Arlene Fisher

APPROVED AS TO FORM:



City Attorney, Stanley M. Schwartz
Date of Publication: 10/10/02
Effective Date: 10/15/02

DEC - 2 2002

City Clerk/Treasurer
Initials CSM

PERFORMANCE BOND

Bond No. K06735058

KNOW ALL BY THESE PRESENTS:

That we FiberLink, LLC, as Principal, hereinafter called Principal, and Westchester Fire Insurance Company, a New York corporation, as Surety, hereinafter called Surety, are held and firmly bound unto City of Liberty Lake, P.O. Box 370, Liberty Lake, Washington 99019, as Obligee, hereinafter called Obligee, in the amount of One hundred thousand dollars and no/100ths Dollars (\$100,000.00) for the payment of which sum, well and truly to be made, the said Principal and Surety bind themselves, and their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has entered into a Permit/Lease No. 98-0847 dated August 14, 2001 for the construction of a telecommunication system located: in, over, along and under City roads, highways, and right of ways in the City of Liberty Lake, Washington, which Permit/Lease is by reference made a part hereof, and

WHEREAS, as a condition of said Permit/Lease requires Principal to provide a Bond guaranteeing the removal of telecommunication facility and/or equipment at said location.

NOW, THEREFORE, THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That if Principal shall remove telecommunication equipment in accordance with said Permit/Lease, then this obligation is void, otherwise to remain in full force and effect.

PROVIDED, HOWEVER, That:

1. It shall be a condition precedent to any right of recovery hereunder, that in event of any default on the part of the Principal, a written statement of the particular facts of such default shall be forwarded to the Surety, within thirty (30) days of the occurrence of such default, delivered by registered mail to Surety at its Home Office in Seattle, Washington.
2. That no action, lawsuit or proceeding shall be had or maintained against the Surety on this Bond unless the same be filed and properly served upon the Surety within one year from the effective date of the cancellation of the Bond.
3. That no right of action shall accrue under this Bond to or for the use of a person or entity other than the Obligee, and its successors and assigns.
4. This Bond shall become effective November 27, 2002.
5. This Bond shall continue in full force and effect until canceled by the Surety by providing thirty (30) days written notice to the Obligee.
6. The liability of the Surety shall in no event exceed the aggregate penal sum of the Bond penalty.
7. If any conflict or inconsistency exists between the Surety's obligation or undertakings as described in the Bond and as described in the underlying document, then the terms of the Bond shall prevail.

8. THIS BOND SHALL NOT BIND THE SURETY UNLESS THE BOND IS ACCEPTED BY THE OBLIGEE. THE ACKNOWLEDGMENT AND ACCEPTANCE OF SUCH BOND IS DEMONSTRATED BY SIGNING WHERE INDICATED BELOW. IF THIS OBLIGATION IS NOT ACCEPTED BY WAY OF SIGNATURE OF THE OBLIGEE BELOW, THIS BOND SHALL BE DEEMED NULL AND VOID.

IN WITNESS WHEREOF, The said Principal and Surety have signed and sealed this instrument on this 25th day of November, 2002.

FiberLink, LLC

By: *John Everett* General Mgr.
Name/Title

Westchester Fire Insurance Company

By: *Sheryl L. Cruse*
Sheryl L. Cruse Attorney-in-Fact

The above terms and conditions of this bond have been reviewed and accepted by the City of Liberty Lake, Washington.

Acknowledged and Accepted:

By: _____

Printed Name: _____

Title: _____

Date: _____

Return to: Surety Department
Marsh USA Inc.
1215 Fourth Avenue
Suite 2300
Seattle, Washington 98161-1095



136072

Know all men by these presents: That WESTCHESTER FIRE INSURANCE COMPANY, a corporation of the State of New York, having its principal office in the City of Atlanta, Georgia, pursuant to the following Resolution, adopted by the Board of Directors of the said Company on November 8, 1999, to wit:

- *RESOLVED, that the following Rules shall govern the execution for the Company of bonds, undertakings, recognizances, contracts and other writings in the nature thereof.
- (1) That the President, any Senior Vice President, any Vice President, and Assistant Vice President, or any Attorney-in-Fact, may execute for and on behalf of the Company any and all bonds, undertakings, recognizances, contracts and other writings in the nature thereof, the same to be attested when necessary by the Corporate Secretary, or any Assistant Corporate Secretary, and the seal of the Company affixed thereto; and that the President, any Senior Vice President, any Vice President or any Assistant Vice President may appoint and authorize any other Officer (elected or appointed) of the Company, and Attorneys-in-Fact to so execute or attest to the execution of all such writings on behalf of the Company and to affix the seal of the Company thereto.
- (2) Any such writing executed in accordance with these Rules shall be as binding upon the Company in any case as though signed by the President and attested to by the Corporate Secretary.
- (3) The signature of the President, or a Senior Vice President, or a Vice President, or an Assistant Vice President and the seal of the Company may be affixed by facsimile on any power of attorney granted pursuant to this Resolution, and the signature of a certifying Officer and the seal of the Company may be affixed by facsimile to any certificate of any such power, and any such power or certificate bearing such facsimile signature and seal shall be valid and binding on the Company.
- (4) Such other Officers of the Company, and Attorneys-in-Fact shall have authority to certify or verify copies of this Resolution, the By-Laws of the Company, and any affidavit or record of the Company necessary to the discharge of their duties.
- (5) The passage of this Resolution does not revoke any earlier authority granted by Resolutions of the Board of Directors.

Does hereby nominate, constitute and appoint MURIEL M. VAN VEEN, ED THOMPSON, GAIL A. FLYNN, CHARLENE EASON, JILL C. GOODHOUSE and SHERYL L. CROUSE all of the City of Portland, State of Oregon, each individually if there be more than one named, its true and lawful attorney-in-fact, to make, execute, seal and deliver on its behalf, and as its act and deed any and all bonds, undertakings, recognizances, contracts and other writings in the nature thereof in penalties not exceeding Five Hundred Thousand Dollars (\$500,000) and the execution of such writings in pursuance of these presents shall be as binding upon said Company, as fully and amply as if they had been duly executed and acknowledged by the regularly elected officers of the Company at its principal office.

IN WITNESS WHEREOF, the said Gregory J. Otterson, Vice-President, has hereunto subscribed his name and affixed the corporate seal of the said WESTCHESTER FIRE INSURANCE COMPANY this 26th day of August, 2002.



WESTCHESTER FIRE INSURANCE COMPANY

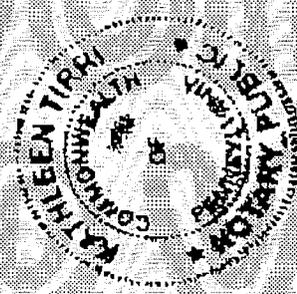
Gregory J. Otterson

Gregory J. Otterson, Vice President

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF PHILADELPHIA ss

On this 26th day of August, A.D. 2002, before me, a Notary Public of the Commonwealth of Pennsylvania in and for the County of Philadelphia came Gregory J. Otterson, Vice-President of the WESTCHESTER FIRE INSURANCE COMPANY to me personally known to be the individual and officer who executed the preceding instrument, and he acknowledged that he executed the same, and that the seal affixed to the preceding instrument is the corporate seal of said Company; that the said corporate seal and his signature were duly affixed by the authority and direction of the said corporation, and that Resolution, adopted by the Board of Directors of said Company, referred to in the preceding instrument, is now in force.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at the City of Philadelphia the day and year first above written.



NOTARIAL SEAL
Kathleen Tirri, Notary Public
Philadelphia City, Philadelphia County
My commission expires Sep. 22, 2003

Kathleen Tirri

Notary Public

I, the undersigned Secretary of WESTCHESTER FIRE INSURANCE COMPANY, do hereby certify that the original POWER OF ATTORNEY, of which the foregoing is a substantially true and correct copy, is in full force and effect.

In witness whereof, I have hereunto subscribed my name as Secretary, and affixed the corporate seal of the Corporation, this 25th day of November 2002.



George D. Mulligan

George D. Mulligan, Secretary

THIS POWER OF ATTORNEY MAY NOT BE USED TO EXECUTE ANY BOND WITH AN INCEPTION DATE AFTER August 26, 2004.