

COUNCIL CHAMBER

City of Berea, Ohio

ORDINANCE No. 2019-30

By Nick Haschka Sponsored By Mayor Cyril M. Kleem

AN ORDINANCE

GRANTING A REVOCABLE NON-EXCLUSIVE LICENSE TO MCIMETRO ACCESS TRANSMISSION SERVICES CORP, dba VERIZON ACCESS TRANSMISSION SERVICES, TO OCCUPY AND USE THE VARIOUS PUBLIC RIGHTS-OF-WAY IN THE CITY FOR THE INSTALLATION, MAINTENANCE AND OPERATION OF WIRELINE TELECOMMUNICATIONS FACILITIES, AND DECLARING AN EMERGENCY.

WHEREAS, the City is the owner in fee of all public rights-of-way within the City and is responsible for the competent management of such rights-of-way in furtherance of the public interest generally, and specifically to preserve, coordinate and optimize the various existing and future uses of the public right-of-way for the benefit of Berea residents; and

WHEREAS, management of the public right-of-way is a matter of local concern, protected by the first clause of Section 3 of Article 18 of the Ohio Constitution; and

WHEREAS, MCIMetro Access Transmission Services Corp., dba Verizon Access Transmission Services, seeks authority of this Council to install, maintain and operate certain wireline telecommunications facilities in the public right-of-way, subject to the approval and supervision of the City Engineer; and

WHEREAS, the public interest, convenience and necessity will not be harmed by the grant of authority requested, subject to the terms and conditions of the license authorized herein.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Berea, State of Ohio:

SECTION 1. That this Council hereby grants a revocable, nonexclusive license to MCIMetro Access Transmission Services Corp, dba Verizon Access Transmission Services, a subsidiary of Verizon, a Delaware Corporation ("Licensee") to install, maintain, operate, repair and remove telecommunications facilities in various public rights-of-way of the City, but at all times subject to the terms and conditions of this Ordinance and the approval and supervision of the City Engineer, in substantial conformance with Exhibit "A", License Agreement, which is incorporated herein. Further installations by MCIMetro Access may be permitted by the City Engineer without further action of the Council.

SECTION 2: That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, to the extent applicable, including Section 121.22 of the Ohio Revised Code.

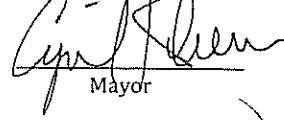
SECTION 3: That this ordinance shall take effect and be in force from and after the earliest period allowed by law;

PASSED: April 1, 2019

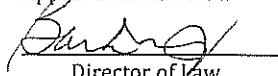

President of Council

ATTEST: John E. Egan
Clerk of Council

APPROVED: April 4, 2019


Mayor

Approved as to Form:


Director of Law

LICENSE AGREEMENT

This REVOCABLE LICENSE ("License"), made and entered into this _____ day of _____, 20____ by and between the City of Berea, Ohio, a municipal corporation (hereinafter referred to as the "City") as licensor and MCIMetro Access Transmission, dba Verizon Access Transmission Services, hereinafter collectively referred to as the "Licensee") as licensee.

WITNESSETH, that in consideration of the mutual obligations and covenants herein, the parties hereto do mutually agree as follows:

1. License. Subject to the terms and conditions of this License, the City licenses Licensee to construct, install, operate, maintain, replace, and remove wireline telecommunication facilities (hereinafter referred to as the "Facility") within the City's Property at the following location, as more particularly shown on the drawing which is attached hereto as **Exhibit "A"** and made a part of this License.

2. Use. The Licensee shall use the Facility for the purpose described above and will not use it for any other purpose whatsoever without first obtaining the written consent of the City.

Unless specifically provided otherwise herein, the Licensee shall have no right to locate any surface installation on any part of the rights-of-way or to fence the rights-of-way or any part thereof.

3. Compensation. As compensation for this License, the Licensee shall pay the City a one-time, non-refundable administrative fee of \$2,500.00. The administrative shall be paid upon execution of this License and shall be made payable to the City of Berea, at 11 Berea Commons, Berea, OH 44017.

4. Annual license maintenance fee. Deemed earned and accrued as of January 1 of each calendar year after the effective date of this Agreement and due no later than January 31 of each calendar year after the effective date of this Agreement, LICENSEE shall pay to the City of Berea the following non-refundable license maintenance fee amounts:

5. Term. Termination and Removal. This License will remain in effect for an indefinite period from the date of execution of this License, so long as the need for the Facility exists and the Facility continues to function as initially intended (hereinafter referred to as the "Term"), unless terminated and revoked as a result of:

- a. The Licensee's breach of term of this License; or
- b. The City's giving the Licensee written notice thirty (30) days in advance of termination; or
- c. The Licensee's giving the City written notice thirty (30) days in advance of termination; or
- d. An order of a court of competent jurisdiction.

Upon termination of this License and any renewal hereof, the Licensee shall abandon the use of the Facility, and shall remove the Facility and restore the City's Property as nearly as possible to the condition it was in prior to removal, all at the sole expense of the Licensee.

If, after termination and within thirty (30) days after being directed to do so by the City, the Licensee fails to remove the Facility and restore the City's Property, the City may perform the work and the Licensee shall reimburse the City within thirty (30) days after the City submits a bill to the Licensee for the costs of such work.

Termination of this License for any reason shall not release the Licensee from any liability or obligation relating to the installation, operation, maintenance, or removal of the Facility or any other term of this License.

6. Limitations. This license shall be construed to authorize the Licensee to install, maintain, repair and remove telecommunications facilities as approved by the City Engineer, consisting of overhead and underground fiber optic cable, attachments, pole-mounted and ground-mounted equipment necessary to provide wireline telecommunications services, broadband Internet access and dark fiber. This License does not authorize use of the public right-of-way for any other business or endeavor or to deliver any product or service other than those set forth herein. No cellular telephone or other wireless communications equipment shall be installed in the right-of-way. None of the limitations or conditions contained in this License will be excused or vitiated by the terms of any pole attachment agreement between the Licensee and any other utility, or by any pole attachment tariff of such other utility.

7. Location, Installation, Maintenance and Removal. At its own expense, the Licensee shall install and construct the Facility of such material, and in a manner that will not at any time be a source of danger to, or interfere with the City's present or future use of the City's Property, or the use of the City's Property by any utility presently franchised by the City, or interfere with its use as a public way. If during installation it becomes evident that the Licensee's proposed installation will interfere with existing City installations or any existing underground installations, then the Licensee shall modify its installation within the Location to avoid the conflict, after obtaining the City's approval for the change, at the sole expense of the Licensee.

The Facility shall be constructed, installed, and maintained in conformity with plans and specifications, subject to prior approval by the City and which are made a part of this License by reference, and with recognized standards, applicable federal, state, or local laws, codes ordinances and regulations. Before performing any construction, the Licensee's contractors shall obtain all permits and insurance required by the City for work within the right-of-way and will pay all fees and reimburse the City for all reasonable and necessary costs incurred in inspecting and supervising the work performed.

After installation of the Facility, the Licensee shall be responsible for maintaining and immediately repairing/replacing/repaving, to original condition, at Licensee's sole cost and expense, all resulting trenches, fence, curbs, gravel, pavement, landscaping, utilities or culverts damaged by Licensee, its employees, agents or representatives which results directly or indirectly from its operations to the full satisfaction of the City, in accordance with the latest version of Cuyahoga County Department of Public Works Standard Construction Drawings/Specifications, ODOT CMS, or as directed by the City. Licensee shall regrade and reseed all areas disturbed by construction and place barriers to prevent erosion of the topsoil in the construction area. Reseeding shall be accomplished during the first appropriate seeding season following regrading.

If, in the judgment of the City, the Licensee at any time fails to perform its obligations under this section, the City, at the City's option, may perform whatever work the City deems necessary for the public safety, health and welfare, and the Licensee shall reimburse the City within thirty (30) days after the City submits a bill to the Licensee for the costs of performing such work. However, the City is not required to perform such work, and any failure by the City to perform the Licensee's obligations shall not release the Licensee from liability for any loss or damage caused by the Licensee's failure to perform its obligations.

Installation, maintenance, and removal of the Facility shall be accomplished in a manner which will not unreasonably impede City access on the public roads, route or impede its use for operation and maintenance of infrastructure, as determined by the City. The timing and manner of such construction, maintenance, and removal shall be done in compliance with the City's requirements at the direction of the City Engineer.

If the Facility or any part thereof is the cause of an emergency condition, and the City determines that the situation makes it unreasonable to notify the Licensee or await action by the Licensee, the City may take over whatever actions it deems necessary to remedy the emergency situation at the sole expense of the Licensee, which will reimburse the City within thirty (30) days after the City submits a bill to the Licensee for the costs of such actions.

8. As-Builts. Upon completion of the construction and installation of the Facility, the Licensee shall promptly provide the City with one set of reproducible as-built, record drawings, reflecting construction and installation as actually accomplished.

9. Location Markers and Marking. As deemed necessary the Licensee shall furnish, install, and place signs required by the City to give notice and location of the Facility.

Licensee shall install permanent markers situated so as not to impede use of the public roads by the City, members of the public or currently franchised utilities on each side of the public roads where the Facility crosses the public roads. The permanent markers shall indicate the location of the Facility, the name and address of Licensee, and a telephone number to contact for information regarding the Facility. Licensee shall conduct periodic inspections of the markers to ensure that such markers are legible and in place as required herein.

The Licensee shall provide access to the location of the Facility whenever requested to do so by the City, and franchised utility or any licensed contractor excavating along the public roads.

10. No New Utility Poles. All facilities installed by the Licensee will be installed overhead on existing utility poles or underground. Licensee shall not procure, suggest, or order up the installation of new utility poles from any utilities or other entities. Guy wires will be specifically called out on plans submitted for permit, and their location will be subject to adjustment by the City Engineer. Licensee's facilities shall not be attached to street light poles (except wooden utility poles used for streetlighting) or to traffic signal poles or masts. The City will have the affirmative duty to authorize underground construction to close any gap in a pole line that would otherwise require the installation of a new utility pole.

11. No Vested Rights. This License shall not be construed to grant the Licensee a vested right to maintain facilities or equipment in any particular place or space in the right-of-way. In the event the Licensee's facilities or equipment interfere with the future construction, operation, maintenance, or repair of any public work or public improvement, or the vacation, relocation, realignment, widening or change of grade of any street, the Licensee, after reasonable notice from the City, shall, at its own cost and expense, promptly protect, alter or relocate the affected facilities or equipment to another location in the right-of-way approved by the City Engineer. However, if relocation is requested or required due to the needs or actions of a third party or non-City use, the third party shall reimburse Licensee for all costs and expenses incurred for the relocation. No dispute with any third party shall be grounds to refuse or delay compliance with a requirement of the City under this Section or under Chapter 307.

12. Undergrounding. When permanent removal of a utility pole or poles is mandated by a City streetscaping or undergrounding ordinance, the Licensee shall cooperate by relocating its facilities underground at its own cost, or pursuant to any cost-sharing provisions contained in such ordinance. Any tariff or charge for such relocation is waived.

13. Abandonment/Decommissioning. No facilities will be abandoned or decommissioned in place without the express written permission of the City Engineer, and only upon the submission of drawings depicting the location of abandoned facilities. Abandonment or decommissioning in place will not be deemed to cause a transfer of ownership to the City unless the City, by ordinance, accepts such ownership. In the absence of approval to abandon or decommission in place, facilities that are not used in the provision of service, whether installed overhead or underground, will be removed from the public right-of-way and the affected portion of the right-of-way will be restored to the standards promulgated by the City Engineer.

14. Insurance. Without limiting the Licensee's indemnification of the City, the Licensee shall maintain the insurance listed in this paragraph continuously during the term of this License:

- i. Commercial General Liability: \$2,000,000 aggregate and \$1,000,000 per occurrence for bodily injury and property damage.
- ii. Auto: \$1,000,000 combined single limit each accident for bodily injury, including accidental death, and property damage.
- iii. Ohio Workers' Compensation coverage.

The City shall be included as an additional insured as its interest may appear under this Agreement on the commercial general liability and automobile liability insurance policies. Upon receipt of notice from its insurer(s) Licensee shall provide the City with thirty (30) days prior written notice of cancellation of any required coverage. A certificate of insurance in compliance with the above must be furnished to the City prior to the City's execution of this License.

15. Damages and Indemnity. The Licensee shall repair or pay for all actual damages done to the City Property and improvements, or to the improvements of the City's Tenants caused by Licensee's Operations.

The Licensee shall be solely responsible for maintaining the premises upon which the Improvements are being constructed in a safe condition. The Licensee agrees to indemnify and hold harmless the City and its officials, agents and employees from any claims, actions, suits or other proceedings arising from or out of the acts or omissions of the Licensee, its agents, representatives,

contractors or subcontractors or arising from the failure of the Licensee, its agents, representatives, contractors or subcontractors to perform any act or duty required of the Licensee herein. The indemnification required hereunder shall not be limited as a result of the specifications of any applicable insurance coverage. Nothing herein is intended to impair any right or immunity under the laws of the State of Ohio.

This indemnity shall not apply to any liability, claims, damages, losses or expenses, including attorney's fees, arising out of bodily injury to persons or damage or damage to property caused by or resulting from, in whole or in part, the negligent act or omission of the City, or the agents or employees of the City.

16. City Use. The City reserves the right to place along, under, across and over the Route and the Facility as many roads, streets, sidewalks, passageways, conduits, electric light and power lines, waterlines, storm drains, sanitary sewer lines, gas lines, telephone poles and telephone lines, and other utilities and facilities as the City may desire.

17. Interference with City. If, after the Licensee installs the Facility, it is the City's good faith, reasonable determination that the Facility is not located as indicated on as-built plans provided to the City by the Licensee, and the Facility interferes with the City's reasonable use of the City's Property, the Licensee shall immediately relocate the Facility to another location approved in advance by the City, at the Licensee's sole expense, restoring the surface as nearly as possible to its prior condition.

If the Facility is at the location indicated on the as-built plans provided to the City by the Licensee and the Facility interferes with the City's reasonable use of its City's Property, the City will provide written notice to the Licensee that relocation of the Facility is required and the Licensee shall relocate the Facility within sixty (60) days of notice to the new location as approved in advance by the City, at the Licensee's sole expense, restoring the surface as nearly as possible to its prior condition.

18. Interference with Utility. Whenever, after the Licensee installs the Facility, it is determined that the Facility is not located as indicated on as-built plans provided to the City by the Licensee, the Facility interferes with the reasonable use of the City's Property by a utility franchised by the City prior to execution of this License, the Licensee shall immediately relocate the facility to a location within the Route approved in advance by the City. None of the related costs shall be paid by the City. The Licensee and the previously-franchised utility shall determine between themselves who will pay the cost of relocation and restoration of the surface.

If the Facility is at the location indicated on the as-built plans provided to the City by the Licensee and it is alleged by a utility franchised by the City prior to the execution of this License that the Facility interferes with the previously-franchised utility's use of the City's Property, the Licensee shall make a good faith effort to negotiate with the previously-franchised utility to resolve any conflict. None of the related costs shall be paid by the City. The Licensee and the previously-franchised utility shall determine between themselves who will pay the cost of relocation and restoration of the surface.

19. Installation by Third Party. If any road, street, sidewalk, passageway, conduits, electric light or power line, waterline, storm drain, sanitary sewer line, gas line, telephone pole, telephone line or other utility, appurtenances or facility is placed along or across the Facility by any entity other than the City, and the construction requires the Licensee to relocate the Facility, then that entity and the

Licensee shall determine between themselves who will pay the cost of relocation and the restoration of the surface. None of the related costs shall be paid by the City.

20. Entire Agreement. This License contains the entire agreement of the parties regarding the Facility and supersedes any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.

21. Modification. This License embodies the entire understanding and agreement between the City and the Licensee with respect to the subject matter hereof and supersedes all prior representations, agreements, and understandings, whether oral or written, between the City and the Licensee. All prior authorizations granted to the Licensee or to any predecessor or affiliate are hereby repealed and/or superseded. This License shall not be modified or amended, or be deemed modified or amended in any manner except by an instrument in writing authorized by ordinance and executed by both parties.

22. Captions. The captions to the sections or paragraphs of this License are not part of this License and will not affect the meaning or construction of any of its provisions.

23. Binding Effect. This License is binding upon and inures to the benefit of the successors and/or assigns of the parties.

24. Compliance with Laws. The Licensee shall comply with: (i) all applicable federal laws, all applicable laws of the State of Ohio and the applicable regulations of any federal or state agency; (ii) all local ordinances, rules, regulations, and all orders or other directives of the City issued pursuant to the police powers of the City; (iii) all directives of the City issued pursuant to this License, and (iv) the applicable requirements of the National Electrical Safety Code ("NESC"). Ground clearance requirements in the NESC will be strictly observed. Upon notice that any installation does not comply with applicable codes or otherwise presents a safety hazard, Licensee shall remove, rearrange or change its facilities to correct the hazard, danger or noncompliance within twenty (20) days thereafter. In case of a bona fide emergency, the City may take such actions as are necessary to protect life and property or to abate nuisance conditions. In this regard, no claim will be made by the Licensee for damage to its facilities as a result of emergency actions taken by the City in good faith.

25. Applicable Law. This License is governed by and construed and enforced in accordance with the laws of the State of Ohio.

26. Construction and Severability. If any part of this License is held to be invalid or unenforceable, this License shall be construed as not containing such provision, and all other provisions which are otherwise lawful shall remain in full force and effect, and to this end, the provisions of this License are declared to be severable.

27. Non-transferability. Except as otherwise provided in this Ordinance, neither this License nor the rights and privileges granted hereunder shall be sold or transferred in part or as a whole, by any means, and nor shall the facilities installed in the public right-of-way be sold, transferred, leased, assigned, or disposed of in part or as a whole, without the express written consent of the City authorized by ordinance. "Sold or transferred" includes sale of the company, merger, consolidation, divestiture, public offering, or other change in control of the Licensee but does not include an internal corporate reorganization of the Licensee. This section is not intended to require consent for third

parties to provide telecommunications services through Licensee's facilities, but neither shall such third parties acquire any rights under this License. Consent of the City shall not be unreasonably withheld or delayed, but may be conditioned by acceptance of the terms of this License by the transferee. The grant or waiver of any one or more of such consents shall not render unnecessary any subsequent consent or consents, nor shall the grant of any such consent constitute a waiver of any of the rights of the City to performance of this License.

28. Eminent Domain. Licensee acknowledges the City's right to purchase any and all facilities installed in the right-of-way by the Licensee through eminent domain, pursuant to Art. 18, §4 of the Ohio Constitution. Any sale to the City initiated under Art. 18, §4 of the Ohio Constitution shall include title to all facilities and all rights necessary to operate the facilities, but shall not require compensation for any "going concern" value of the facilities.

29. Notice. For purposes of giving formal written notice to the Licensee, the Licensee's address is:

Phone No.: _____

For purposes of giving formal, written notice of the City, the City's address is:

Director of Public Service
City of Berea
11 Berea Commons
Berea, Ohio 44017

Copies of any notices to the City must also be given to:

Engineer
City of Berea
11 Berea Commons
Berea, Ohio 44017

Written notice must be made either personally or by regular United States Mail. If the notice is mailed, the notice will be complete when deposited in the United States Mail, postage paid, and addressed as required in this section. Licensee's contact information shall be kept current and on file with the City Engineer at all times during the term of the license. If the Licensee cannot be reached using the contact information on file, it shall be sufficient notice for the City to use the name and address of the Licensee's statutory agent on file with the Ohio Secretary of State. Notice of discontinued use of the Facility by the Licensee will be given in the same manner as required by this section and within thirty (30) days of such action.

25. This License Agreement shall not become effective or binding until approved by the Council of the City of Berea and the Mayor.

26. This Agreement shall be binding upon Licensee's Property, its successors and assigns and shall run with title to the Property. The Licensee shall be the property owner or agents working for the utility company. Contractor or third-party installation group is not acceptable.

LICENSEE:

By [signature]: _____

Name [print]: _____

Title: _____

Date: _____

Company/Utility Name: _____

Address: _____

City: _____

State: _____

Zip Code: _____

Phone: _____

Other (fax, e-mail): _____

CITY OF BEREAL:

By [signature]: _____

Name [print]: _____

Title: _____

Date: _____

STATE OF OHIO

COUNTY OF CUYAHOGA

This instrument was acknowledged before me on this ____ day of _____, 20__ by [name of person:] _____, [title or capacity, for instance, "President", "General Partner" or "Managing Member":] _____ on behalf of [name of Licensee:] _____.

Notary Public

My commission expires:

STATE OF OHIO

COUNTY OF CUYAHOGA

This instrument was acknowledged before me this ____ day of _____, 20__ by _____, _____, on behalf of the City of Berea, Ohio a municipal corporation.

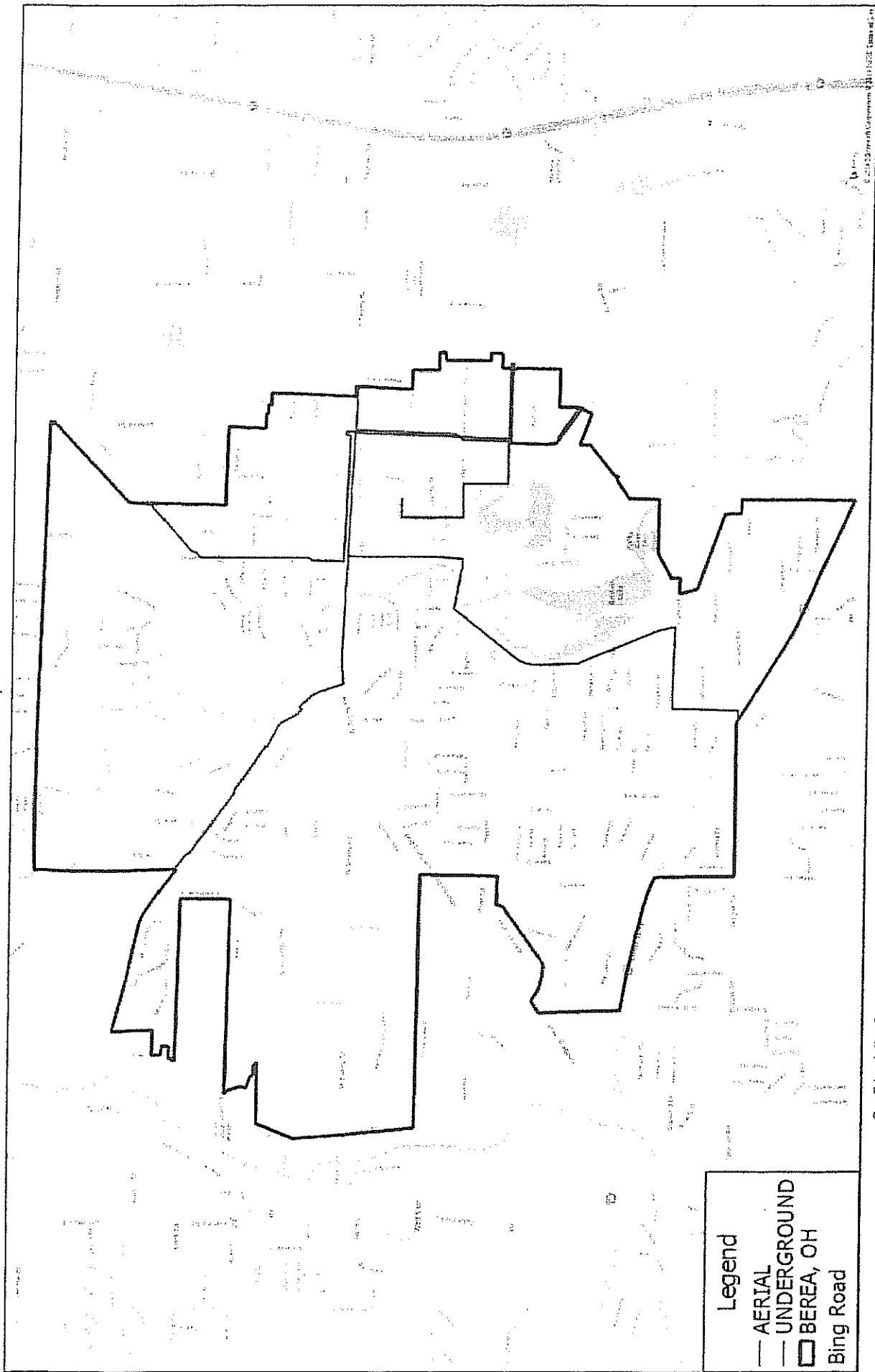
Notary Public

My commission expires:

EXHIBIT A

Ech. "f"
of Distance Agreement

BEREA, OH



Confidentiality Statement: Verizon/MCInnetro Confidential and Proprietary. May Contain Trade Secrets, or Sensitive Commercial or Financial Information. Any Unauthorized Review, Use, Disclosure, Distribution, or Copying is Prohibited.