

**CONSENT OF
TRANSFER AND ASSIGNMENT OF THE FRANCHISE AGREEMENT OF
IDACOMM, INC.
TO
AMERICAN FIBER SYSTEMS, INC.**

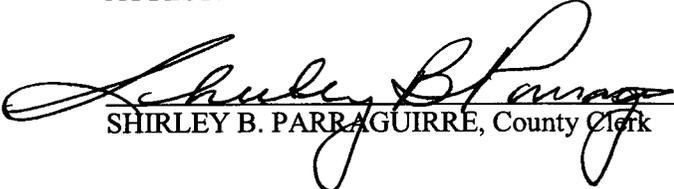
The Board of County Commissioners of the County of Clark, a political subdivision of the State of Nevada, has approved of and hereby consents to the aforementioned Transfer and Assignment of the Franchise Agreement and the transfer of rights, duties and obligations under the existing **CLARK COUNTY TELECOMMUNICATIONS FRANCHISE AGREEMENT ORIGINALLY ISSUED TO SIERRA PACIFIC COMMUNICATIONS DATED SEPTEMBER 5, 2000, AND SUBSEQUENTLY TRANSFERRED AND ASSIGNED TO IDACOMM ON JULY 6, 2004**, to AMERICAN FIBER SYSTEMS, INC., a Delaware corporation.

Dated: 11/18/08

BOARD OF COUNTY COMMISSIONERS
CLARK COUNTY, NEVADA

By: 
RORY REID, Chairman

ATTEST:


SHIRLEY B. PARRAGUIRRE, County Clerk

APPROVED AS TO FORM:
DISTRICT ATTORNEY


By: MARK E. WOOD
Deputy District Attorney

**TRANSFER AND ASSIGNMENT OF THE FRANCHISE AGREEMENT
OF IDACOMM, INC. TO AMERICAN FIBER SYSTEMS, INC.**

Idacomm, Inc., an Idaho corporation, with its principal office at 350 N. Mitchell Street, Boise, Idaho, as "Assignor" hereby assigns, transfers and conveys all of its rights, title, interest and obligations in and to that certain **Clark County Telecommunications Franchise Agreement** ("Agreement") granted to Sierra Pacific Communications dated September 5, 2000, between Clark County, Nevada, and Sierra Pacific Communications, subsequently transferred to **IDACOMM, INC.** on July 6, 2004, to **American Fiber Systems, Inc.**, a Delaware corporation with its principal office at 100 Meridian Centre, Third Floor, Rochester, New York, 14618 as "Assignee", effective upon final approval of such transfer and assignment by the Clark County Commission.

Dated: November 13, 2008

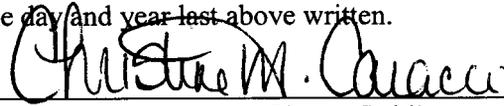
IDACOMM, INC.

By: 
Name: Gita Ramachandran
Its: Secretary & CFO

STATE OF NEW YORK)
) ss.
COUNTY OF MONROE)

Before me, the undersigned, a Notary Public in and for said County and State, on this 13th day of November, 2008, personally appeared Gita Ramachandran, to me known to be the identical person who subscribed the name of the maker thereof to the foregoing Transfer and Assignment instrument and acknowledged to me that she is authorized to and did execute the same as the free and voluntary act and deed of such company, for the uses and purposes therein set forth.

Given under my hand and seal of office the day and year last above written.



Notary Public

My Commission expires: 2/28/2010

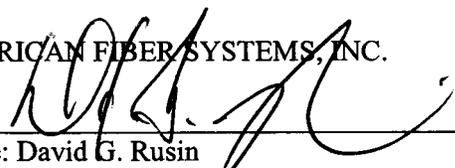
CHRISTINE M. CARACCI
NOTARY PUBLIC, State of New York
Monroe Co., Reg. No. 4828956
My Commission Expires 2/28/10

ACCEPTANCE OF TRANSFER AND ASSIGNMENT

Assignee hereby accepts the above Assignment and agrees to assume and faithfully perform all of the obligations and duties as set forth in the Agreement and to be bound by the terms of the Agreement. Assignee accepts responsibility for and agrees to indemnify, defend and hold harmless Clark County against any claims or causes of action arising out of the transfer and assignment of the Agreement.

Dated: November 13, 2008

AMERICAN FIBER SYSTEMS, INC.

By: 
Name: David G. Rusin
Its: President & CEO

STATE OF NEW YORK)
) ss.
COUNTY OF MONROE)

Before me, the undersigned, a Notary Public in and for said County and State, on this 13th day of November, 2008, personally appeared David G. Rusin, to me known to be the identical person who subscribed the name of the maker thereof to the foregoing Acceptance of Transfer and Assignment instrument and acknowledged to me that he is authorized to and did execute the same as the free and voluntary act and deed of such company, for the uses and purposes therein set forth.

Given under my hand and seal of office the day and year last above written.


Notary Public

My Commission expires: 4/5/11

BRUCE T. FRANKIEWICH
Notary Public, State of New York
Qualified in Monroe County
My Commission Expires Apr. 5, 2011

Telecommunications



Franchise

SIERRA PACIFIC COMMUNICATIONS

September 5, 2000 - September 5, 2010

**CLARK COUNTY ADMINISTRATIVE SERVICES
FRANCHISE SERVICES DIVISION
500 S. GRAND CENTRAL PARKWAY, 6TH FLOOR
LAS VEGAS, NEVADA, 89155-1712
(702) 455-3530**

CLARK COUNTY BOARD OF COMMISSIONERS
Bruce L. Woodbury, Chairman ♦ Erin Kenny, Vice-Chair
Yvonne Atkinson Gates ♦ Dario Herrera ♦ Mary J. Kincaid ♦ Lance M. Malone ♦ Myrna Williams
COUNTY MANAGER
Dale W. Askew

**CLARK COUNTY
TELECOMMUNICATIONS UTILITY SYSTEM
FRANCHISE AGREEMENT
GRANTED TO
SIERRA PACIFIC COMMUNICATIONS**

THIS FRANCHISE is granted this 5TH day of September, 2000, by Clark County, Nevada, a political subdivision of the State of Nevada, acting by and through its Board of County Commissioners which is its governing body (hereafter called "County"), to Sierra Pacific Communications (hereafter called "Franchisee"), authorized by the Nevada Public Utilities Commission to do business in the State of Nevada.

WITNESSETH:

WHEREAS, the Franchisee, a corporation organized and existing under and by virtue of the laws of the State of Nevada, and duly qualified to transact business within the State of Nevada, is engaged in the business of operating a telecommunications utility system to provide subscription service, as defined by Clark County Code; and

WHEREAS, the County is authorized, pursuant to Nevada Revised Statutes Chapter 709, to grant a franchise to install, maintain and operate facilities, as defined by Clark County Code, which requires the use of County's rights-of-way; and

WHEREAS, the Franchisee hereby attests that the information submitted in Franchisee's applications to the County to obtain this Telecommunications Utility System Franchise, attached hereto as Exhibit A and made a part hereof, is true and correct.

NOW, THEREFORE, in consideration of the premises and of the performance by Franchisee of the requirements hereinafter set forth, and subject to the following terms and conditions, the County hereby grants to the Franchisee this Telecommunications Utility System Franchise.

TERMS AND CONDITIONS:

1. DEFINITIONS

Definitions of terms in this Franchise Agreement shall be the same as those definitions listed in Clark County Code Chapter 5.01, as amended from time to time.

2. *FRANCHISE AGREEMENT DURATION, CONDITIONS, EXTENSION*

- (A) This Franchise shall be non-exclusive and shall be in force and effect from the date first written above until the 5th day of September, 2010.
- (B) All provisions of Titles 5, 6, 27 and 30 of Clark County Code, as amended from time to time, and all provisions of this Franchise Agreement shall be binding upon the Franchisee, its successors, or assignees. In the event of any conflict between any provisions in Titles 5, 6, 27 or 30 of Clark County Code, as amended from time to time, and any provisions of this Franchise Agreement, the Code provision shall control.
- (C) Franchisee shall not permit use of its facilities located in County rights-of-way by other persons who are required to obtain a business license, Franchise or Rights-of-way License Agreement from the County for such use, unless and until the other persons obtain such licenses or franchises. Franchisee shall not permit another person to install its own facilities in, on, under, along or above the Franchisee's facilities.
- (D) Franchisee is hereby granted, during the term of this Agreement, a Franchise to install, operate and maintain its facilities in rights-of-way in unincorporated Clark County, pursuant to Clark County Code Titles 5, 6, 27 and 30. On the effective date of this Franchise Agreement, Franchisee shall provide the County with written description of the locations of facilities Franchisee will install in County rights-of-way during the first year of this Franchise Agreement of which it is aware.
- (E) Franchisee may expand this Franchise Agreement to install, maintain and operate its facilities in the County's rights-of-way beyond the original geographic area identified in this Agreement only by obtaining approval of an amended Franchise Agreement from the County. The County Commission may grant, with or without conditions, or deny such amendment in its sole discretion. In the event that an amendment of this Franchise Agreement is approved by the County Commission, such amendment shall be subject to all the terms and conditions of this Franchise Agreement and the terms and conditions of any amended agreement, and Titles 5, 6, 27 and 30 of the Clark County Code, and as amended from time to time.
- (F) This Franchise may be extended beyond its original expiration date by the Franchisee under the terms and conditions of Clark County Code Chapter 5.01, and as amended from time to time. Failure to extend this Franchise Agreement shall automatically terminate this Agreement on its expiration date.
- (G) This Franchise does not grant the Franchisee permission to offer subscription Cable Television services in the County, unless and until Franchisee has applied for and is granted a separate Cable Television Service Area Permit in accordance with Clark

County Code Titles 5 and 6, or unless Franchisee's cable television service is exempt from franchising under 47 U.S.C. §571.

- (H) Franchisee acknowledges that this Franchise is for installation of facilities in County rights-of-way only, and that installation in, on, under, along or above other County property may be permitted only through separate agreement and payment of rental fees.

3. *FRANCHISEE'S WORK IN COUNTY RIGHTS-OF-WAY*

The Franchisee shall, in the installation, construction, operation, maintenance, reconstruction, removal, relocation or abandonment of its facilities in the County's rights-of-way, comply with all applicable provisions of Clark County Code Titles 5 and 6, and the improvement standards adopted in Titles 27 and 30, as set forth and hereafter amended, and the "Uniform Standard Specifications for Off-Site Construction, Clark County Area" (latest edition) as adopted by the County Commission.

4. *FRANCHISE PAYMENTS AND FEES*

The Franchisee shall pay all payments and fees assessed in accordance with its County business license(s) pursuant to Clark County Code Title 6, as amended from time to time.

5. *FRANCHISE REPORTING*

Each year during the term of the Franchise Agreement, the Franchisee shall submit a written report to the County's Director of Administrative Services as required by Clark County Code Section 5.01.110.

6. *REVOCAION AND PENALTIES*

- (A) After providing notice and an opportunity for the Franchisee to be heard and a reasonable opportunity to cure, the County Commission may impose fines or penalties in an amount deemed appropriate by the County Commission, but not exceeding the amount of the security deposit established in Section 9 of this Agreement, upon the Franchisee if the County Commission finds that the Franchisee has failed to comply with the provisions of this Franchise Agreement or the applicable sections of Clark County Code Titles 5, 6, 27 or 30. Any such fines or penalties shall be due within thirty (30) days of written notification by County, made payable to the County Treasurer, and delivered to the County's Director of Administrative Services at the County's address indicated in Section 13 of this Franchise Agreement. A late charge of five percent (5%) of the fine or penalty imposed shall be assessed if the fine or penalty is not paid within thirty (30) days of the written notification.

If a fine or penalty which has been imposed by the County Commission is not paid within thirty (30) days from the date of written notification, Franchisee hereby grants the County authorization to deduct the amount of the fine or penalty plus late charges, if any, from the security deposit provided for such purposes, pursuant to Section 9 of this Agreement and the applicable sections of Clark County Code Titles 5 and 6. If at any time the Director of Administrative Services has drawn upon such security deposit, the Franchisee shall within thirty (30) days of notification from the Director of Administrative Services replenish such security deposit to the original minimum amount established in Section 9 of this Franchise Agreement.

- (B) In addition to the grounds for revocation set forth in the applicable sections of Clark County Code Titles 5 and 6, this Franchise Agreement may be revoked if, after providing notice and an opportunity for the Franchisee to be heard, and a reasonable opportunity to cure, the County Commission finds that the Franchisee failed to make payment of fines or penalties due under this Franchise Agreement or to comply with the provisions of this Franchise Agreement.

7. *TRANSFERS AND ASSIGNMENTS*

The terms and conditions for transfer and assignment of franchises pursuant to the applicable sections of Clark County Code Chapter 5.01, and as amended from time to time, shall apply to this Franchise Agreement.

8. *INDEMNIFICATION*

The Franchisee shall indemnify, save harmless, and defend the County, its officers and employees in accordance with the indemnification provisions of the applicable sections of Clark County Code Chapter 5.01.

9. *INSURANCE AND SECURITY FOR PERFORMANCE*

- (A) The Franchisee shall secure, maintain and provide certification of all insurance coverages in the amounts, kinds and form required pursuant to the applicable sections of Clark County Code Chapter 5.01 prior to commencement of any work in County's rights-of-way.
- (B) The Franchisee shall provide to the Director of Administrative Services security for performance pursuant to the applicable sections of Clark County Code Chapter 5.01 in the amount of two hundred fifty thousand dollars (\$250,000). Franchisee hereby grants the County authorization to deduct assessed fines or penalties and late charges, if any, pursuant to Section 6 of this Agreement and the applicable sections of Clark County Code Chapter 5.01, from such security deposit.

10. RIGHTS RESERVED TO COUNTY

The County does hereby expressly reserve its rights, powers, and authorities pursuant to the applicable sections of Clark County Code Title 5, and as may be amended. The County expressly reserves the right to amend this Franchise Agreement by amendment to the Clark County Code to the maximum extent permitted by law.

11. SEVERABILITY

If any provision, section, paragraph, sentence, clause, or phrase of this Franchise Agreement is for any reason held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity of the remaining portions of this Franchise Agreement. It is the intent of the County Commission in approving this Franchise Agreement that no portion or provision thereof shall become inoperative or fail by reason of any invalidity or unconstitutionality of any other portion or provision, and to this end all provisions of this Franchise Agreement are declared to be severable.

12. GIFTS

No officer or employee of Franchisee shall offer to any officer or employee of the County, either directly or indirectly, any rebate, contribution, gift, money, service without charge, or other thing of value whatsoever, except where given for the use and benefit of the County.

13. NOTICE

All notices shall be sent to the County or Franchisee at the addresses indicated below. The Franchisee shall notify the County's Director of Administrative Services of any change of address within ten (10) working days of such occurrence. Failure to provide notification, and any resulting delay in receipt of notice, shall not excuse the Franchisee from any obligation imposed by this Franchise Agreement, nor shall it serve as cause for reduction or removal of any restriction, fine or penalty imposed by the County.

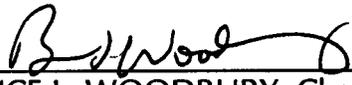
COUNTY:
Director of Administrative Services
Clark County Manager's Office
500 S. Grand Central Pkwy., 6th Floor
P.O. Box 551712
Las Vegas, NV 89155-1712

FRANCHISEE:
Director
Sierra Pacific Communications
6100 Neil Road
P.O. Box 30088
Reno, NV 89520

IN WITNESS WHEREOF the parties hereto have set their hands the day and year first above written.

CLARK COUNTY BOARD OF COMMISSIONERS

ATTEST:

By 
BRUCE L. WOODBURY, Chairman


SHIRLEY B. PARRAGUIRRE, Clerk

APPROVED AS TO FORM:
DISTRICT ATTORNEY


By: VICTOR W. PRIEBE
Deputy District Attorney

SIERRA PACIFIC COMMUNICATIONS

By 
STEVE OLDHAM, President