Beier Howlett
ATTORNEYS AND COUNSELORS

MICHAEL P. SALHANEY
msalhaney@bhlaw.us.com
Direct Dial (248) 282-1076
Direct Fax (248) 282-1095

September 4, 2015

Birmingham City Commission
151 Martin Street, P.O. Box 3001
Birmingham, MI 48012-3001

Re: 123NET, Inc.'s. Telecommunications Right-of-Way METRO Act Safe Harbor Application and Safe Harbor Unilateral Permit

Dear Commissioners:

The City of Birmingham received the above permit application and permit from 123Net Inc. The Application was received on August 24, 2015, however, it was not complete, as 123Net did not include one of the two permit formats required by the statute. On August 27, 2015, the City received a completed permit in compliance with the mandates of the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act (METRO). 123Net is required to submit the Safe Harbor Application, and it chose to file the Safe Harbor Unilateral Permit format. The City of Birmingham has 45 days from the date of the application to either approve or deny the application and permit.

The purpose for the application and permit is so that 123Net can install fiber optic cable inside of conduit buried underground in the City's Rights-of-Way. The conduit will run from the AT&T building and go north on Henrietta to Maple Road. From Maple Rd., the conduit will travel east to a building located at 335 E. Maple Road.

I have reviewed the Safe Harbor application and permit, as well as the attached documents that 123Net filed with the City. I have had an opportunity to discuss these documents with Rachel Wisley, General Counsel for 123Net, and she has been the main contact person for the application. My findings are listed below.

SAFE HARBOR APPLICATION

As mentioned above, the application is the Safe Harbor Application that was approved by the Michigan Public Service Commission (MPSC) for use by telecommunications providers when those providers submit such applications and permits. Moreover, the METRO Act has incorporated by reference the Safe Harbor documents in the statute itself. ***The Application complies with the mandates of the statute, and is complete***.

SAFE HARBOR UNILATERAL PERMIT

Just as the MPSC has approved the language and format of the Safe Harbor Application, the MPSC has also approved and adopted the Unilateral Permit format as one of two formats available to providers. The provider is to fill out the information in the permit and, once complete, file it with the municipality.

I have reviewed the permit submitted by 123Net, and the permit complies with the requirements of the statute.

RECOMMENDATION

Based upon my review of the application, permit, and the METRO Act, it is my recommendation that the Commission approve the application and permit submitted by 123Net, Inc. It is my further recommendation that this application and permit be placed on the agenda for the City Commission meeting scheduled for September 21, 2015.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

BEIER HOWLETT, P.C.

Michael P. Salhaney
Michael P. Salhaney

MPS/jc
Attachments
Joseph A. Valentine, City Manager
Laura Pierce, City Clerk

24700 Northwestern Hwy., Ste. 700
Southfield, MI 48075

OFFICE OF THE GENERAL COUNSEL

RACHEL E. WISLEY, ESQ.
Email: rwisley@123.net

Telephone: (248) 228-8214
Facsimile: (248) 928-2050

August 19, 2015

Engineering Department
City of Birmingham
151 Martin Street
Room #223
Birmingham, MI 48009

Re: Metro Act Permit Application

Dear Engineering Department:

Enclosed please find 123.net's Metro Act Permit Application for a Unilateral Permit along with two copies of the application and a check for $500 to the City of Birmingham.

Should you require anything further for processing this application, please contact me.

Very truly yours,

Rachel E. Wisley, Esq.
123.Net General Counsel

RECEIVED
AUG 24 2015
CITY OF BIRMINGHAM
COMMUNITY DEVELOPMENT DEPARTMENT

METRO Act Permit Application Form
Revised April 6, 2012

City of Birmingham

APPLICATION FOR ACCESS TO AND ONGOING USE OF PUBLIC WAYS BY TELECOMMUNICATIONS PROVIDERS UNDER METROPOLITAN EXTENSION TELECOMMUNICATIONS RIGHTS-OF-WAY OVERSIGHT ACT 2002 PA 48 MCL SECTIONS 484.3101 TO 484.3120

BY

123 Net, Inc.

Unfamiliar with METRO Act?--Assistance: Municipalities unfamiliar with Michigan Metropolitan Extension Telecommunications Rights-of-Way Oversight Act ("METRO Act") permits for telecommunications providers should seek assistance, such as by contacting the Telecommunications Division of the Michigan Public Service Commission at 517-241-6200 or via its web site at http://www.michigan.gov/mpsc/0,4639,7-159-16372_22707---,00.html.

45 Days to Act—Fines for Failure to Act: The METRO Act states that "A municipality shall approve or deny access under this section within 45 days from the date a provider files an application for a permit for access to a public right-of-way." MCL 484.3115(3). The Michigan Public Service Commission can impose fines of up to $40,000 per day for violations of the METRO Act. It has imposed fines under the Michigan Telecommunications Act where it found providers or municipalities violated the statute.

Where to File: Applicants should file copies as follows [municipalities should adapt as appropriate—unless otherwise specified service should be as follows]:

-- Three (3) copies (one of which shall be marked and designated as the master copy) with the Clerk at:

Engineering Department
City of Birmingham
151 Martin Street
Room #223
Birmingham, MI 48009

City of Birmingham
Name of local unit of government

APPLICATION FOR
ACCESS TO AND ONGOING USE OF PUBLIC WAYS BY
TELECOMMUNICATIONS PROVIDERS

By
[123 Net Inc.]
("Rachel Wisley")

This is an application pursuant to Sections 5 and 6 of the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act, 2002 PA 48 (the "METRO Act") for access to and ongoing usage of the public right-of-way, including public roadways, highways, streets, alleys, easements, and waterways ("Public Ways") in the Municipality for a telecommunications system. The METRO Act states that "A municipality shall approve or deny access under this section within 45 days from the date a provider files an application for a permit for access to a public right-of-way." MCL 484.3115(3).

This application must be accompanied by a one-time application fee of $500, unless the applicant is exempt from this requirement under Section 5(3) of the METRO Act, MCL 484.3105(3).

---

1 GENERAL INFORMATION:

1.1 Date: **August 19, 2015**

1.2 Applicant's legal name: **123.Net, Inc.**
Mailing Address: **24700 Northwestern Highway**
Suite 700
Southfield, MI 48075

Telephone Number: **(248) 228-8214**
Fax Number: _____
Corporate website: 123.net

Name and title of Applicant's local manager (and if different) contact person regarding this application:

Myles Kernohan – Fiber Division Manager
Mailing Address: **24700 Northwestern Highway**
Suite 700
Southfield, MI 48075
Telephone Number: **(248) 228-8243**
Fax Number: **(248) 849-9333**
E-mail Address: **mkernohan@123.net**

1.3 Type of Entity: (Check one of the following)

__X__ Corporation
_____ General Partnership
_____ Limited Partnership
_____ Limited Liability Company
_____ Individual
_____ Other, please describe: _____

1.4 Assumed name for doing business, if any: _____
1.5 Description of Entity:

1.5.1 Jurisdiction of incorporation/formation; **Michigan**

1.5.2 Date of incorporation/formation; **8-16-1996**

1.5.3 If a subsidiary, name of ultimate parent company;

1.5.4 Chairperson, President/CEO, Secretary and Treasurer (and equivalent officials for non-corporate entities).
James Kandler
Dan Irvin
Stefania Gradinaru
Simona Anton

1.6 Attach copies of Applicant's most recent annual report (with state ID number) filed with the Michigan Department of Licensing and Regulatory Affairs and certificate of good standing with the State of Michigan. For entities in existence for less than one year and for non-corporate entities, provide equivalent information.
Please see attached.

1.7 Is Applicant aware of any present or potential conflicts of interest between Applicant and Municipality? If yes, describe: **None.**

_____.

1.8 In the past three (3) years, has Applicant had a permit to install telecommunications facilities in the public right of way revoked by any Michigan municipality?

Circle: *Yes* *No*

If "yes," please describe the circumstances.

1.9 In the past three (3) years, has an adverse finding been made or an adverse final action been taken by any Michigan court or administrative body against Applicant under any law or regulation related to the following:

1.9.1 A felony; or

1.9.2 A revocation or suspension of any authorization (including cable franchises) to provide telecommunications or video programming services?

Circle: *Yes* *No*

If "yes," please attach a full description of the parties and matters involved, including an identification of the court or administrative body and any proceedings (by dates and file numbers, if applicable), and the disposition of such proceedings.

1.10 [If Applicant has been granted and currently holds a license to provide basic local exchange service, no financial information needs to be supplied.] If publicly held, provide Applicant's most recent financial statements. If financial statements of a parent company of Applicant (or other affiliate of Applicant) are provided in lieu of those of Applicant, please explain.

N/A, Applicant is a CLEC

1.10.1 If privately held, and if Municipality requests the information within 10 days of the date of this Application, the Applicant and the Municipality should make arrangements for the Municipality to review the financial statements.

If no financial statements are provided, please explain and provide particulars.

---

2 DESCRIPTION OF PROJECT:

2.1 Provide a copy of authorizations, if applicable, Applicant holds to provide telecommunications services in Municipality. If no authorizations are applicable, please explain.

2.2 Describe in plain English how Municipality should describe to the public the telecommunications services to be provided by Applicant and the telecommunications facilities to be installed by Applicant in the Public Ways.

Proposed project involves underground installation of fiber optic cable inside 1.25" HPDE conduit using either methods as directional boring or

trenching. Route starts at AT&T manhole at intersection of Martin St and Henrietta St, and will travel North, then East to 335 E Maple Rd. Will be traveling by ATT conduit or by new build underground

2.3 Attach route maps showing the location (including whether overhead or underground) of Applicant's existing and proposed facilities in the public right-of-way. To the extent known, please identify the side of the street on which the facilities will be located. (If construction approval is sought at this time, provide engineering drawings, if available, showing location and depth, if applicable, of facilities to be installed in the public right-of-way).

The proposed route will be on the East side of Henrietta St. It will then proceed East along the South side of W Maple Rd. Finally crossing to enter the building at 335 E Maple Rd.

2.4 Please provide an anticipated or actual construction schedule.

Would like to begin construction the week of September 28th, 2015 and be completed by October 2nd, 2015.

2.5 Please list all organizations and entities which will have any ownership interest in the facilities proposed to be installed in the Public Ways.

123 Net, Inc.

2.6 Who will be responsible for maintaining the facilities Applicant places in the Public Ways and how are they to be promptly contacted? If Applicant's facilities are to be installed on or in existing facilities in the Public Ways of existing public utilities or incumbent

telecommunications providers, describe the facilities to be used, and provide verification of their consent to such usage by Applicant.

123 Net Inc.
(866) 460-3503
NOC@123.NET

3 TELECOMMUNICATION PROVIDER ADMINISTRATIVE MATTERS:

Please provide the following or attach an appropriate exhibit.

3.1 Address of Applicant's nearest local office;

24700 Northwestern Highway
Suite 700
Southfield, MI 48075

3.2 Location of all records and engineering drawings, if not at local office;

3.3 Names, titles, addresses, e-mail addresses and telephone numbers of contact person(s) for Applicant's engineer or engineers and their responsibilities for the telecommunications system;

Myles Kernohan
Fibers Systems Manager
24700 Northwestern Highway
Suite 700
Southfield, MI 48075

Bill Bell
Fiber System Design/Permits
24700 Northwestern Highway
Suite 700
Southfield, MI 48075

3.4 Provide evidence of self-insurance or a certificate of insurance showing Applicant's insurance coverage, carrier and limits of liability for the following:

3.4.1 Worker's compensation;

3.4.2 Commercial general liability, including at least:

3.4.2.1 Combined overall limits;

3.4.2.2 Combined single limit for each occurrence of bodily injury;

3.4.2.3 Personal injury;

3.4.2.4 Property damage;

3.4.2.5 Blanket contractual liability for written contracts, products, and completed operations;

3.4.2.6 Independent contractor liability;

3.4.2.7 For any non-aerial installations, coverage for property damage from perils of explosives, collapse, or damage to underground utilities (known as XCU coverage);

3.4.2.8 Environmental contamination;

3.4.3 Automobile liability covering all owned, hired, and non-owned vehicles used by Applicant, its employee, or agents.

Please see attached.

3.5 Names of all anticipated contractors and subcontractors involved in the construction, maintenance and operation of Applicant's facilities in the Public Ways.

N/A

4 CERTIFICATION:

All the statements made in the application and attached exhibits are true and correct to the best of my knowledge and belief.

123.Net, Inc.

8-19-2015
Date

By: _____
Rachel E. Wisley, Esq.
123.Net General Counsel

S:\metroapplicationform.doc

LARA
Department of Licensing and Regulatory Affairs

MICHIGAN.GOV
Michigan's Official Web Site

CORPORATE ENTITY DETAILS

Searched for: 123.NET, INC.

ID Num: 413969

Assumed Names

Entity Name: 123.NET, INC.
Type of Entity: Domestic Profit Corporation
Resident Agent: DAN IRVIN
Registered Office Address: 24700 NORTHWESTERN HWY. STE. 700 SOUTHFIELD MI 48075
Mailing Address: MI
Formed Under Act Number(s): 284-1972
Incorporation/Qualification Date: 8-16-1996
Jurisdiction of Origin: MICHIGAN
Number of Shares: 60,000
Year of Most Recent Annual Report: 15
Year of Most Recent Annual Report With Officers & Directors: 14
Status: ACTIVE **Date:** Present

View Document Images

Return to Search Results New Search

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LARA

Department of Licensing and Regulatory Affairs

MICHIGAN.GOV Michigan's Official Web Site

CORPORATE ENTITY DETAILS

Assumed Names:	Id Num	Creation Date	Renew Date	Expiration Date
MICHIGAN INTERNET ASSOCIATION. LTD.	413969	8-1-2014		12-31-2019
DETROIT INTERNET	413969	10-18-2012		12-31-2017
DETROIT INTERNET EXCHANGE	413969	10-18-2012		12-31-2017
THE DETROIT INTERNET EXCHANGE	413969	10-18-2012		12-31-2017
WEST MICHIGAN ONLINE, INC.	413969	1-26-2011		11-10-2011
ALLDIAL.NET, INC.	413969	1-26-2011		11-15-2011
WMOL.COM	413969	1-26-2011		11-15-2011
WMOL.NET	413969	1-26-2011		11-15-2011
NETPENNY.NET	413969	1-26-2011		12-29-2011
PATHWAYNET.COM	413969	1-26-2011		12-29-2011
PATHWAY INTERNET SERVICES, INC.	413969	1-26-2011		12-29-2011
ALL-IN-ONE WIRELESS, INC.	413969	1-26-2011		12-29-2011
GREAT LAKES ONLINE	413969	1-26-2011		12-29-2011
LODISNET.COM	413969	1-26-2011		12-29-2011
WEST MICHIGAN INTERNET SERVICES	413969	1-26-2011		11-10-2011
ERIECOAST.COM	413969	1-26-2011		11-10-2011
WMIS INTERNET	413969	1-26-2011		11-10-2011
WMIS	413969	1-26-2011		11-10-2011
WMIS.NET	413969	1-26-2011		11-10-2011
LOCAL EXCHANGE CARRIERS OF MICHIGAN, INC.	413969	7-6-2010		12-31-2015
MUTUAL INFORMATION EXCHANGE, INC.	413969	5-24-2010		12-31-2015
INTERNET 123, INC.	413969	5-13-2010		12-31-2015
123NET, INC.	413969	1-20-2010		7-6-2010
PRIME CIRCUITS	413969	9-7-2007	10-30-2012	12-31-2017

Return to Record

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Vers 4.1 (02/14)

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
CORPORATIONS, SECURITIES & COMMERCIAL LICENSING BUREAU
PROFIT CORPORATION INFORMATION UPDATE
2015

[X] On behalf of the Corporation, I certify that no changes have occurred in required information since the last filed annual report.

Identification Number	Corporation Name
413969	123.NET, INC.

Resident agent name and mailing address of the registered office

DAN IRVIN

MI

The address of the registered office

24700 NORTHWESTERN HWY. STE. 700

SOUTHFIELD MI 48075

Describe the purpose and activities of the corporation during the year covered by this report:

Electronic Signature

Filed By	Title	Phone
STEFANIA STOENICA	AUTHORIZED OFFICER OR AGENT	2482288206

[X] I certify that this filing is submitted without fraudulent intent and that I am authorized by the business entity to make any changes reported herein.

Payment Information

Payment Amount	Payment Date/Time	Reference Nbr
$ 25	01/28/2015 12:18:46	71315 6801 413969 2015

123NE-1 OP ID: JJ

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 09/15/2014

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Tim Crawford Ins. Agency Inc.
1415 Walton Blvd.
Rochester Hills, MI 48309
Robert Carabelli

CONTACT NAME: Robert Carabelli
PHONE (A/C, No, Ext): 248-402-5005 FAX (A/C, No): 248-402-5011
E-MAIL ADDRESS: caraber@nationwide.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A: CNA	
INSURER B:	
INSURER C:	
INSURER D:	
INSURER E:	
INSURER F:	

INSURED
123.Net, Inc.;
Local Exchange Carriers of
Michigan Corporation; etal
24700 Northwestern Hwy Ste 700
Southfield, MI 48075

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY			4024082653	08/30/2014	08/30/2015	EACH OCCURRENCE	$ 2,000,000
	CLAIMS-MADE X OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 300,000
							MED EXP (Any one person)	$ 10,000
							PERSONAL & ADV INJURY	$ 2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$ 4,000,000
	POLICY PRO-JECT LOC						PRODUCTS - COMP/OP AGG	$ 4,000,000
	OTHER:							$
A	AUTOMOBILE LIABILITY			6011153136	08/30/2014	08/30/2015	COMBINED SINGLE LIMIT (Ea accident)	$ 1,000,000
	ANY AUTO						BODILY INJURY (Per person)	$
	ALL OWNED AUTOS / X SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	X HIRED AUTOS / X NON-OWNED AUTOS						PROPERTY DAMAGE (Per accident)	$
								$
A	X UMBRELLA LIAB / X OCCUR			4024083463	08/30/2014	08/30/2015	EACH OCCURRENCE	$ 6,000,000
	EXCESS LIAB / CLAIMS-MADE						AGGREGATE	$ 6,000,000
	DED X RETENTION $ 10000							$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			4024083026	08/30/2014	08/30/2015	PER STATUTE / OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y/N	N/A					E.L. EACH ACCIDENT	$ 1,000,000
	(Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	$ 1,000,000
A	Property			4024082653	08/30/2014	08/30/2015	Building	3,761,771
A	EmployeeDishonesty			4024082653	08/30/2014	08/30/2015	Crime	25,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

For Informational Purposes

CERTIFICATE HOLDER

FIPONLY

For Informational Purposes

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Robert C Carabelli

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24700 Northwestern Hwy., Ste. 700
Southfield, MI 48075

OFFICE OF THE GENERAL COUNSEL

RACHEL E. WISLEY, ESQ.
Email: rwisley@123.net

Telephone: (248) 228-8214
Facsimile: (248) 928-2050

August 26, 2015

RECEIVED BY
AUG 31 2015
CITY CLERK'S OFFICE
CITY OF BIRMINGHAM

Laura Pierce, City Clerk
City of Birmingham
151 Martin Street
Birmingham, MI 48009

Re: 123Net Metro Act Permit Application

Dear Ms. Pierce:

Enclosed please find three (3) copies of a proposed Unilateral Metro Act Permit for 123Net's Metro Act Permit Application.

Should you require anything further for processing this application, please contact me.

Very truly yours,

Rachel E. Wisley, Esq.
123.Net General Counsel

METRO Act
Unilateral Form
Revised 12/06/02

RIGHT-OF-WAY TELECOMMUNICATIONS PERMIT

This permit issued this ___ day of _____, 20__ by the City of Birmingham.

1 Definitions

1.1 Date of Issuance shall mean the date set forth above.

1.2 Manager shall mean Municipality's [Mayor/Manager/Supervisor/Village President] or his or her designee.

1.3 METRO Act shall mean the Metropolitan Extension Telecommunications Right-of Way oversight Act, Act No. 48 of the Public Acts of 2002, as amended.

1.4 Municipality shall mean the City of Birmingham, a Michigan municipal corporation.

1.5 Permit shall mean this document.

1.6 Permittee shall mean 123.Net, Inc. organized under the laws of the State of Michigan whose address is 24700 Northwestern Highway, Suite 700, Southfield, MI 48075.

1.7 Public Right-of-Way shall mean the area on, below, or above a public roadway, highway, street, alley, easement, or waterway, to the extent Municipality has the ability to grant the rights set forth herein. Public Right-of-Way does not include a federal, state, or private right-of-way.

1.8 Telecommunications Facilities or Facilities shall mean the Permittee's equipment or personal property, such as copper and fiber cables, lines, wires, switches, conduits, pipes, and sheaths, which are used to or can generate, receive, transmit, carry, amplify or provide telecommunication services or signals. Telecommunication Facilities or Facilities do not include antennas, supporting structures for antennas, equipment shelters or houses, and any ancillary equipment and miscellaneous hardware used to provide federally licensed commercial mobile service as defined in Section 332(d) of Part I of Title III of the Communications Act of 1934, Chapter 652, 48 Stat. 1064, 47 U.S.C. 332 and further defined as commercial mobile radio service in 47 CFR 20.3, and service provided by any wireless, two-way communications device.

1.9 Term shall have the meaning set forth in Part 7.

2 Grant

2.1 Municipality hereby issues a permit under the METRO Act to Permittee for access to and ongoing use of the Public Right-of-Way identified on Exhibit A to construct, install and maintain Telecommunication Facilities on the terms set forth herein.

2.1.1 Exhibit A may be modified by Manager upon written request by Permittee.

2.1.2 Any decision of Manager on a request by Permittee for a modification may be appealed by Permittee to Municipality's legislative body.

2.2 Overlashing. Permittee shall not allow the wires or any other facilities of a third party to be overlashed to the Telecommunication Facilities without Municipality's prior written consent. Municipality's right to withhold written consent is subject to the authority of the Michigan Public Service Commission under Section 361 of the Michigan Telecommunications Act, MCL § 484.2361.

2.3 Nonexclusive. The rights granted by this Permit are nonexclusive. Municipality reserves the right to approve, at any time, additional permits for access to and ongoing usage of the Public Right-of-Way by telecommunications providers and to enter into agreements for use of the Public Right-of-Way with and grant franchises for use of the Public Right-of-Way to telecommunications providers, cable companies, utilities and other providers.

3 Contacts, Maps and Plans

3.1 Permittee Contacts. The names, addresses and the like for engineering and construction related information for Permittee and its Telecommunication Facilities are as follows:

3.1.1 The address, e-mail address, phone number and contact person at Permittee's local office (in or near Municipality) is Myles Kernohan; mkernohan@123.net ; (248) 228-8243.

3.1.2 If Permittee's engineering drawings, as-built plans and related records for the Telecommunication Facilities will not be located at the preceding local office, the location address, phone number and contact person (title or department) for them is _____.

3.1.3 The name, title, address, e-mail address and telephone numbers of

Permittee's engineering contact person(s) with responsibility for the design, plans and construction of the Telecommunication Facilities is Myles Kernohan; mkernohan@123.net ; (248) 228-8243.

3.1.4 The address, phone number and contact person (title or department) at Permittee's home office/regional office with responsibility for engineering and construction related aspects of the Telecommunication Facilities is Myles Kernohan; mkernohan@123.net ; (248) 228-8243.

3.1.5 Permittee shall at all times provide Manager with the phone number at which a live representative of Permittee (not voice mail) can be reached 24 hours a day, seven (7) days a week, in the event of a public emergency.

3.1.6 Permittee shall immediately notify Municipality in writing as set forth in Part 12 of any inaccuracies or changes in the preceding information.

3.2 Route Maps. Within ninety (90) days after the substantial completion of new Facilities in a Municipality, a provider shall submit route maps showing the location of the Telecommunication Facilities to both the Michigan Public Service Commission and to the Municipality, as required under Section 6(7) of the METRO Act, MCLA 484.3106(7).

3.3 As-Built Records. Permittee, without expense to Municipality, shall, upon forty-eight (48) hours notice, give Municipality access to all "as-built" maps, records, plans and specifications showing the Telecommunication Facilities or portions thereof in the Public Right-of-Way. Upon request by Municipality, Permittee shall inform Municipality as soon as reasonably possible of any changes from previously supplied maps, records, or plans and shall mark up maps provided by Municipality so as to show the location of the Telecommunication Facilities.

4 Use of Public Right-of-Way

4.1 No Burden on Public Right-of-Way. Permittee, its contractors, subcontractors, and the Telecommunication Facilities shall not unduly burden or interfere with the present or future use of any of the Public Right-of-Way. Permittee's aerial cables and wires shall be suspended so as to not endanger or injure persons or property in or about the Public Right-of-Way. If Municipality reasonably determines that any portion of the Telecommunication Facilities constitutes an undue burden or interference, due to changed circumstances, Permittee, at its sole expense, shall modify the Telecommunication Facilities or take such other actions as Municipality may determine is in the public interest to remove or alleviate the burden, and Permittee shall do so within a reasonable time period. Municipality will attempt to require all occupants of a pole or conduit whose facilities are a burden to remove or alleviate the burden concurrently.

4.2 No Priority. This Permit does not establish any priority of use of the Public Right-of-Way by Permittee over any present or future permittees or parties having agreements with Municipality or franchises for such use. In the event of any dispute as to the priority of use of the Public Right-of-Way, the first priority shall be to the public generally, the second priority to Municipality, the third priority to the State of Michigan and its political subdivisions in the performance of their various functions, and thereafter as between other permit, agreement or franchise holders, as determined by Municipality in the exercise of its powers, including the police power and other powers reserved to and conferred on it by the State of Michigan.

4.3 Restoration of Property. Permittee, its contractors and subcontractors shall immediately (subject to seasonal work restrictions) restore, at Permittee's sole expense, in a manner approved by Municipality, any portion of the Public Right-of-Way that is in any way disturbed, damaged, or injured by the construction, installation, operation, maintenance or removal of the Telecommunication Facilities to a reasonably equivalent (or, at Permittee's option, better) condition as that which existed prior to the disturbance. In the event that Permittee, its contractors or subcontractors fail to make such repair within a reasonable time, Municipality may make the repair and Permittee shall pay the costs Municipality incurred for such repair.

4.4 Marking. Permittee shall mark the Telecommunication Facilities as follows: Aerial portions of the Telecommunication Facilities shall be marked with a marker on Permittee's lines on alternate poles which shall state Permittee's name and provide a toll-free number to call for assistance. Direct buried underground portions of the Telecommunication Facilities shall have (1) a conducting wire placed in the ground at least several inches above Permittee's cable (if such cable is nonconductive); (2) at least several inches above that, a continuous colored tape with a statement to the effect that there is buried cable beneath; and (3) stakes or other appropriate above ground markers with Permittee's name and a toll-free number indicating that there is buried telephone cable below. Bored underground portions of the Telecommunication Facilities shall have a conducting wire at the same depth as the cable and shall not be required to provide the continuous colored tape. Portions of the Telecommunication Facilities located in conduit, including conduit of others used by Permittee, shall be marked at its entrance into and exit from each manhole and handhole with Permittee's name and a toll-free telephone number.

4.5 Tree Trimming. Permittee may trim trees upon and overhanging the Public Right-of-Way so as to prevent the branches of such trees from coming into contact with the Telecommunication Facilities, consistent with any standards adopted by Municipality. Permittee shall dispose of all trimmed materials. Permittee shall minimize the trimming of trees to that essential to maintain the integrity of the Telecommunication Facilities. Except in emergencies, all

trimming of trees in the Public Right-of-Way shall have the advance approval of Manager.

4.6 Installation and Maintenance. The construction and installation of the Telecommunication Facilities shall be performed pursuant to plans approved by Municipality. The open cut of any Public Right-of-Way shall be coordinated with the Manager or his designee. Permittee shall install and maintain the Telecommunication Facilities in a reasonably safe condition. If the existing poles in the Public Right-of-Way are overburdened or unavailable for Permittee's use, or the facilities of all users of the poles are required to go underground then Permittee shall, at its expense, place such portion of its Telecommunication Facilities underground, unless Municipality approves an alternate location. Permittee may perform maintenance on the Telecommunication Facilities without prior approval of Municipality, provided that Permittee shall obtain any and all permits required by Municipality in the event that any maintenance will disturb or block vehicular traffic or are otherwise required by Municipality.

4.7 Pavement Cut Coordination. Permittee shall coordinate its construction and all other work in the Public Right-of-Way with Municipality's program for street construction and rebuilding (collectively "Street Construction") and its program for street repaving and resurfacing (except seal coating and patching) (collectively, "Street Resurfacing").

4.7.1 The goals of such coordination shall be to encourage Permittee to conduct all work in the Public Right-of-Way in conjunction with or immediately prior to any Street Construction or Street Resurfacing planned by Municipality.

4.8 Compliance with Laws. Permittee shall comply with all laws, statutes, ordinances, rules and regulations regarding the construction, installation, and maintenance of its Telecommunication Facilities, whether federal, state or local, now in force or which hereafter may be promulgated. Before any installation is commenced, Permittee shall secure all necessary permits, licenses and approvals from Municipality or other governmental entity as may be required by law, including, without limitation, all utility line permits and highway permits. Permittee shall comply in all respects with applicable codes and industry standards, including but not limited to the National Electrical Safety Code (latest edition adopted by Michigan Public Service Commission) and the National Electric Code (latest edition). Permittee shall comply with all zoning and land use ordinances and historic preservation ordinances as may exist or may hereafter be amended.

4.9 Street Vacation. If Municipality vacates or consents to the vacation of Public Right-of-Way within its jurisdiction, and such vacation necessitates the removal and relocation of Permittee's Facilities in the vacated Public Right-of-Way,

Permittee shall, as a condition of this Permit, consent to the vacation and remove its Facilities at its sole cost and expense when ordered to do so by Municipality or a court of competent jurisdiction. Permittee shall relocate its Facilities to such alternate route as Municipality, applying reasonable engineering standards, shall specify.

4.10 Relocation. If Municipality requests Permittee to relocate, protect, support, disconnect, or remove its Facilities because of street or utility work, or other public projects, Permittee shall relocate, protect, support, disconnect, or remove its Facilities, at its sole cost and expense, including where necessary to such alternate route as Municipality, applying reasonable engineering standards, shall specify. The work shall be completed within a reasonable time period.

4.11 Public Emergency. Municipality shall have the right to sever, disrupt, dig-up or otherwise destroy Facilities of Permittee if such action is necessary because of a public emergency. If reasonable to do so under the circumstances, Municipality will attempt to provide notice to Permittee. Public emergency shall be any condition which poses an immediate threat to life, health, or property caused by any natural or man-made disaster, including, but not limited to, storms, floods, fire, accidents, explosions, water main breaks, hazardous material spills, etc. Permittee shall be responsible for repair at its sole cost and expense of any of its Facilities damaged pursuant to any such action taken by Municipality.

4.12 Miss Dig. If eligible to join, Permittee shall subscribe to and be a member of "MISS DIG," the association of utilities formed pursuant to Act 53 of the Public Acts of 1974, as amended, MCL § 460.701 et seq., and shall conduct its business in conformance with the statutory provisions and regulations promulgated thereunder.

4.13 Underground Relocation. If Permittee has its Facilities on poles of Consumers Energy, Detroit Edison or another electric or telecommunications provider and Consumers Energy, Detroit Edison or such other electric or telecommunications provider relocates its system underground, then Permittee shall relocate its Facilities underground in the same location at Permittee's sole cost and expense.

4.14 Identification. All personnel of Permittee and its contractors or subcontractors who have as part of their normal duties contact with the general public shall wear on their clothing a clearly visible identification card bearing Permittee's name, their name and photograph. Permittee shall account for all identification cards at all times. Every service vehicle of Permittee and its contractors or subcontractors shall be clearly identified as such to the public, such as by a magnetic sign with Permittee's name and telephone number.

5 Indemnification

5.1 Indemnity. Permittee shall defend, indemnify, protect, and hold harmless Municipality, its officers, agents, employees, elected and appointed officials, departments, boards, and commissions from any and all claims, losses, liabilities, causes of action, demands, judgments, decrees, proceedings, and expenses of any nature (collectively "claim" for this Part 5) (including, without limitation, attorneys' fees) arising out of or resulting from the acts or omissions of Permittee, its officers, agents, employees, contractors, successors, or assigns, but only to the extent such acts or omissions are related to the Permittee's use of or installation of facilities in the Public Right-of-Way and only to the extent of the fault or responsibility of Permittee, its officers, agents, employees, contractors, successors and assigns.

5.2 Notice, Cooperation. Municipality will notify Permittee promptly in writing of any such claim and the method and means proposed by Municipality for defending or satisfying such claim. Municipality will cooperate with Permittee in every reasonable way to facilitate the defense of any such claim. Municipality will consult with Permittee respecting the defense and satisfaction of such claim, including the selection and direction of legal counsel.

5.3 Settlement. Municipality will not settle any claim subject to indemnification under this Part 5 without the advance written consent of Permittee, which consent shall not be unreasonably withheld. Permittee shall have the right to defend or settle, at its own expense, any claim against Municipality for which Permittee is responsible hereunder.

6 Insurance

6.1 Coverage Required. Prior to beginning any construction in or installation of the Telecommunication Facilities in the Public Right-of-Way, Permittee shall obtain insurance as set forth below and file certificates evidencing same with Municipality. Such insurance shall be maintained in full force and effect until the end of the Term. In the alternative, Permittee may satisfy this requirement through a program of self-insurance, acceptable to Municipality, by providing reasonable evidence of its financial resources to Municipality. Municipality's acceptance of such self-insurance shall not be unreasonably withheld.

6.1.1 Commercial general liability insurance, including Completed Operations Liability, Independent Contractors Liability, Contractual Liability coverage, railroad protective coverage and coverage for property damage from perils of explosion, collapse or damage to underground utilities, commonly known as XCU coverage, in an amount not less than Five Million Dollars ($5,000,000).

6.1.2 Liability insurance for sudden and accidental environmental contamination with minimum limits of Five Hundred Thousand Dollars

($500,000) and providing coverage for claims discovered within three (3) years after the term of the policy.

6.1.3 Automobile liability insurance in an amount not less than One Million Dollars ($1,000,000).

6.1.4 Workers' compensation and employer's liability insurance with statutory limits, and any applicable Federal insurance of a similar nature.

6.1.5 The coverage amounts set forth above may be met by a combination of underlying (primary) and umbrella policies so long as in combination the limits equal or exceed those stated. If more than one insurance policy is purchased to provide the coverage amounts set forth above, then all policies providing coverage limits excess to the primary policy shall provide drop down coverage to the first dollar of coverage and other contractual obligations of the primary policy, should the primary policy carrier not be able to perform any of its contractual obligations or not be collectible for any of its coverages for any reason during the Term, or (when longer) for as long as coverage could have been available pursuant to the terms and conditions of the primary policy.

6.2 Additional Insured. Municipality shall be named as an additional insured on all policies (other than worker's compensation and employer's liability). All insurance policies shall provide that they shall not be canceled, modified or not renewed unless the insurance carrier provides thirty (30) days prior written notice to Municipality. Permittee shall annually provide Municipality with a certificate of insurance evidencing such coverage. All insurance policies (other than environmental contamination, workers' compensation and employer's liability insurance) shall be written on an occurrence basis and not on a claims made basis.

6.3 Qualified Insurers. All insurance shall be issued by insurance carriers licensed to do business by the State of Michigan or by surplus line carriers on the Michigan Insurance Commission approved list of companies qualified to do business in Michigan. All insurance and surplus line carriers shall be rated A+ or better by A.M. Best Company.

6.4 Deductibles. If the insurance policies required by this Part 6 are written with retainages or deductibles in excess of $50,000, they shall be approved by Manager in advance in writing. Permittee shall indemnify and save harmless Municipality from and against the payment of any deductible and from the payment of any premium on any insurance policy required to be furnished hereunder.

6.5 Contractors. Permittee's contractors and subcontractors working in the Public Right-of-Way shall carry in full force and effect commercial general liability, environmental contamination liability, automobile liability and workers'

compensation and employer liability insurance which complies with all terms of this Part 6. In the alternative, Permittee, at its expense, may provide such coverages for any or all its contractors or subcontractors (such as by adding them to Permittee's policies).

6.6 Insurance Primary. Permittee's insurance coverage shall be primary insurance with respect to Municipality, its officers, agents, employees, elected and appointed officials, departments, boards, and commissions (collectively "them"). Any insurance or self-insurance maintained by any of them shall be in excess of Permittee's insurance and shall not contribute to it (where "insurance or self-insurance maintained by any of them" includes any contract or agreement providing any type of indemnification or defense obligation provided to, or for the benefit of them, from any source, and includes any self-insurance program or policy, or self-insured retention or deductible by, for or on behalf of them).

7 Term

7.1 Term. The term ("Term") of this Permit shall be until the earlier of:

7.1.1 Five years from the Date of Issuance; or

7.1.2 When the Telecommunication Facilities has not been used to provide telecommunications services for a period of one hundred and eighty (180) days by Permittee or a successor or an assignee of Permittee; or

7.1.3 When Permittee, at its election and with or without cause, delivers written notice of termination to Municipality at least one-hundred and eighty (180) days prior to the date of such termination; or

7.1.4 Upon either Permittee or Municipality giving written notice to the other of the occurrence or existence of a default by the other party under Sections 4.8, 6, 8 or 9 of this Permit and such defaulting party failing to cure, or commence good faith efforts to cure, such default within sixty (60) days (or such shorter period of time provided elsewhere in this Permit) after delivery of such notice; or

7.1.5 Unless Manager grants a written extension, one year from the Date of Issuance if prior thereto Permittee has not started the construction and installation of the Telecommunication Facilities within the Public Right-of-Way and two years from the Date of Issuance if by such time construction and installation of the Telecommunication Facilities is not complete.

8 Performance Bond or Letter of Credit

8.1 Municipal Requirement. Municipality may require Permittee to post a bond (or letter of credit) as provided in Section 15(3) of the METRO Act, as amended [MCL § 484.3115(3)].

9 Fees

9.1 Establishment; Reservation. The METRO Act shall control the establishment of right-of-way fees. The parties reserve their respective rights regarding the nature and amount of any fees which may be charged by Municipality in connection with the Public Right-of-Way.

10 Removal

10.1 Removal; Underground. As soon as practicable after the Term, Permittee or its successors and assigns shall remove any underground cable or other portions of the Telecommunication Facilities from the Public Right-of-Way which has been installed in such a manner that it can be removed without trenching or other opening of the Public Right-of-Way. Permittee shall not remove any underground cable or other portions of the Telecommunication Facilities which requires trenching or other opening of the Public Right-of-Way except with the prior written approval of Manager. All removals shall be at Permittee's sole cost and expense.

10.1.1 For purposes of this Part 10, "cable" means any wire, coaxial cable, fiber optic cable, feed wire or pull wire.

10.2 Removal; Above Ground. As soon as practicable after the Term, Permittee, or its successor or assigns at its sole cost and expense, shall, unless waived in writing by Manager, remove from the Public Right-of-Way all above ground elements of its Telecommunication Facilities, including but not limited to poles, pedestal mounted terminal boxes, and lines attached to or suspended from poles.

10.3 Schedule. The schedule and timing of removal shall be subject to approval by Manager. Unless extended by Manager, removal shall be completed not later than twelve (12) months following the Term. Portions of the Telecommunication Facilities in the Public Right-of-Way which are not removed within such time period shall be deemed abandoned and, at the option of Municipality exercised by written notice to Permittee as set forth in Part 12, title to the portions described in such notice shall vest in Municipality.

11 Assignment. Permittee may assign or transfer its rights under this Permit, or the persons or entities controlling Permittee may change, in whole or in part, voluntarily, involuntarily, or by operation of law, including by merger or consolidation, change in the ownership or control of Permittee's business, or by other means, subject to the following:

11.1 No such transfer or assignment or change in the control of Permittee shall be effective under this Permit, without Municipality's prior approval (not to be unreasonably withheld), during the time period from the Date of Issuance until the completion of the construction of the Telecommunication Facilities in those portions of the Public Right-of-Way identified on Exhibit A.

11.2 After the completion of such construction, Permittee must provide notice to Municipality of such transfer, assignment or change in control no later than thirty (30) days after such occurrence; provided, however,

11.2.1 Any transferee or assignee of this Permit shall be qualified to perform under its terms and conditions and comply with applicable law; shall be subject to the obligations of this Permit, including responsibility for any defaults which occurred prior to the transfer or assignment; shall supply Municipality with the information required under Section 3.1; and shall comply with any updated insurance and performance bond requirements under Sections 6 and 8 respectively, which Municipality reasonably deems necessary, and

11.2.2 In the event of a change in control, it shall not be to an entity lacking the qualifications to assure Permittee's ability to perform under the terms and conditions of this Permit and comply with applicable law; and Permittee shall comply with any updated insurance and performance bond requirements under Sections 6 and 8 respectively, which Municipality reasonably deems necessary.

11.3 Permittee may grant a security interest in this Permit, its rights thereunder or the Telecommunication Facilities at any time without notifying Municipality.

12 Notices

12.1 Notices. All notices under this Permit shall be given as follows:

12.1.1 If to Municipality, to Birmingham City Manager, 151 Martin Street, Birmingham, MI 48009.

12.1.2 If to Permittee, to 123.Net General Counsel, 24700 Northwestern Hwy., Ste. 700, Southfield, MI 48075.

12.2 Change of Address. Permittee and Municipality may change its address or personnel for the receipt of notices at any time by giving notice thereof to the other as set forth above.

13 Other items

13.1 No Cable, OVS. This Permit does not authorize Permittee to provide commercial cable type services to the public, such as "cable service" or the services of an "open video system operator" (as such terms are defined in the Federal Communications Act of 1934 and implementing regulations, currently 47 U.S.C. §§ 522 (6), 573 and 47 CFR § 76.1500).

13.2 Effectiveness. This Permit shall become effective when Permittee has provided any insurance certificates and bonds required in Parts 6 and 8, and signed the acknowledgement of receipt, below.

13.3 Authority. This Permit satisfies the requirement for a permit under Section 5 of the METRO Act [MCL 484.3105].

13.4 Interpretation and Severability. The provisions of this Permit shall be liberally construed to protect and preserve the peace, health, safety and welfare of the public, and should any provision or section of this Permit be held unconstitutional, invalid, overbroad or otherwise unenforceable, such determination/holding shall not be construed as affecting the validity of any of the remaining conditions of this Permit. If any provision in this Permit is found to be partially overbroad, unenforceable, or invalid, Permittee and Municipality may nevertheless enforce such provision to the extent permitted under applicable law.

13.5 Governing Law. This Permit shall be governed by the laws of the State of Michigan.

City of Birmingham

By:_____
Its:_____
Date:_____

Acknowledgement of Receipt: Permittee acknowledges receipt of this Permit granted by Municipality.

123.Net, Inc.

By:_____
Its:_____
Date:_____

Exhibit A

Public Right-of-Way to be Used by Telecommunication Facilities

East side of Henrietta St. It will then proceed East along the South side of W Maple Rd. Finally crossing to enter the building at 335 E Maple Rd.

Exhibit B

Bond

::ODMA\PCDOCS\GRR\764521\3