

Telecommunications



Franchise

AMERICAN FIBER SYSTEMS, INC.

August 17, 2010 –
August 17, 2020

***DEPARTMENT OF BUSINESS LICENSE
FRANCHISE SERVICES DIVISION
500 S. GRAND CENTRAL PARKWAY, 3RD FLOOR
LAS VEGAS, NEVADA 89155-1810***

**CLARK COUNTY BOARD OF COMMISSIONERS
RORY REID, Chairman • SUSAN BRAGER, Vice Chair
LARRY BROWN • TOM COLLINS • CHRIS GIUNCHIGLIANI • STEVE SISOLAK • LAWRENCE WEEKLY**

**COUNTY MANAGER
VIRGINIA VALENTINE, P.E.**

CLARK COUNTY, NEVADA
TELECOMMUNICATIONS UTILITY SYSTEM
FRANCHISE AGREEMENT
GRANTED TO
AMERICAN FIBER SYSTEMS, INC.

THIS FRANCHISE is granted this 17th day of August, 2010, 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 (hereinafter called "County"), to American Fiber Systems, Inc. (hereinafter called "Franchisee"), authorized by the Nevada Public Utilities Commission of Nevada 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 Delaware, 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, American Fiber Systems, Inc. has an existing Franchise with the County; 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 the 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 the 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 Chapters 5.01 and 6.13, 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 17th day of August, 2020. The Franchisee may request one additional five-year extension of this Agreement, pursuant to Chapter 5.01 of the Clark County Code.
- (B) All provisions of Titles 5,6 and 30 of the 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 assigns. In the event of any conflict between the provisions in Titles 5, 6 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) Except as otherwise provided by applicable law: (1) Franchisee shall not permit use by other persons of its facilities located in County rights-of-way, including but not limited to the use 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 franchise; and (2) unless required by law, the 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, as identified in the map attached hereto, labeled Exhibit B and a part hereof, and pursuant to Clark County Code Titles 5, 6 and 30. On the effective date of this Agreement, Franchisee shall provide the County with the location of the facilities Franchisee has currently installed in the County rights-of-way and the facilities Franchisee will install in County rights-of-way during the first 12-month period of this Agreement, of which it is aware at that time.
- (E) Franchisee may expand this Franchise Agreement to install, maintain and operate its facilities in the County's rights-of-way 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 and 30 of the Clark County Code, 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, 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 Video Service in the County. In order to provide Video Service to customers within the unincorporated areas of Clark County the Franchisee must apply for and be granted a Certificate of Authority by the Nevada Secretary of State to provide video service and construct a video service network within Clark County as provided for in Chapter 711 of the Nevada Revised Statutes and apply for and obtain the appropriate business license from Clark County.
- (H) The Franchisee acknowledges that this Franchise is for installation of facilities in, on, under, along or above 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.
- (I) The Franchisee shall be responsible for the maintenance and upkeep of any of the Franchisee's above-surface facilities located immediately adjacent to the rights-of-way granted by this Agreement.

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 Title 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 licenses(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 Manager as required by Clark County Code Section 5.01.110.

6. *REVOCATION 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 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 Clark County Code Titles 5,

6 or 30. Any such fines or penalties shall be due within thirty (30) days of written notification by the County, made payable to the County Treasurer, and delivered to the County's Director of Business License 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 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 Business License has drawn upon such security deposit, the Franchisee shall within thirty (30) days of notification from the Director of Business License 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 Agreement.

7. TRANSFER AND ASSIGNMENTS

The terms and conditions for transfer and assignment of franchises pursuant to the applicable sections of Clark County Code Chapter 5.01, as amended from time to time, shall apply to this 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 the County's rights-of-way.
- (B) The Franchisee shall provide to the Director of Business License 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, 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. *AMENDMENTS*

This Agreement may only be amended by written agreement between the Parties, subject to the approval of the County Commission, except as otherwise provided in Section 10 above.

12. *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 Franchisee in requesting this Agreement and of the County Commission in approving this Agreement that no portion or provision thereof shall become inoperative or fail by reason of any invalidity or unconstitutionality of any portion of provision, and to this end all provisions of the Agreement are declared to be severable.

13. *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.

14. *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 Business License of any change of address with 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 the 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 Business License
Clark County
500 S. Grand Central Pkwy., 3rd Floor
PO Box 551810
Las Vegas, NV 89155-1810

FRANCHISEE:

American Fiber Systems, Inc.
100 Meridian Center, Ste. 300
Rochester, NY 14618
Att: General Counsel &
Vice President of Regulatory

15. PUBLIC PURPOSE

All of the regulations provided in this Agreement are hereby declared to be for a public purpose and the health, safety and welfare of the general public. Any member of the governing body or County official or employee charged with the enforcement of this Agreement, acting for the County in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of said duties. Neither the County nor the Franchisee by accepting this Agreement waives its rights to seek all appropriate legal and equitable remedies as allowed by law upon violation of the terms of this Agreement, including seeking injunctive relief in a court of competent jurisdiction.

16. PRIOR RIGHTS

Notwithstanding anything else to the contrary in this Agreement, this Agreement shall have no effect on any and all real property rights granted to the Franchisee or its predecessors prior to the date of this Agreement, whether such rights were granted in the form of an easement or otherwise.

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17. APPLICABLE LAW

This Agreement is governed by and construed and enforced in accordance with the laws of the State of Nevada, and the Federal Communications Act of 1934, as amended by the Telecommunications Act of 1996 or subsequent amendments.

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

CLARK COUNTY BOARD OF COMMISSIONERS

By 

RORY REID, Chairman

ATTEST:



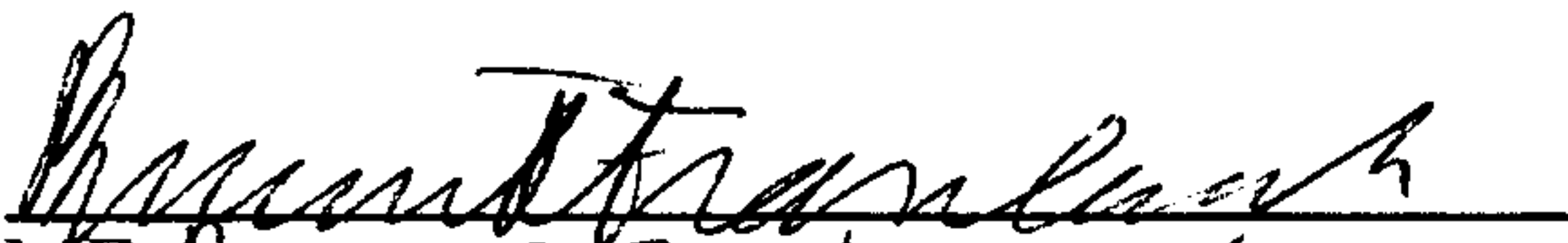
DIANA ALBA, County Clerk

APPROVED AS TO FORM:
DISTRICT ATTORNEY



By: MARK E. WOOD, Deputy District Attorney

AMERICAN FIBER SYSTEMS, INC.

By: 

NAME: Bruce T. Frankovich
TITLE: General Counsel / VP of Regulatory

ATTACHMENT A

CLARK COUNTY, NEVADA – DEPARTMENT OF BUSINESS LICENSE

FRANCHISE APPLICATION – TELECOMMUNICATION SERVICE



Applicant: American Fiber Systems, Inc. D/B/A (if any): _____

Business Entity in Nevada: Corporation Limited Liability Company Partnership Other _____

Location Address: 100 Meridian Centre, Suite 300 City: Rochester State: NY Zip: 14618

Mailing Address: Same as Above City: _____ State: _____ Zip: _____

Contact Person: Michael J. Nighan Telephone No. 585-785-5837

E-mail address: mnighan@afsnetworks.com

Clark County Business License: Lic. #2000058.486 Applied For on Date: _____

PUC Nevada Certificate of Public Convenience and Necessity (CPCN) Number: CPC 2805 Sub 2

Length of term desired (not to exceed 10 years plus one 5-year extension) 10 years + 5 Year Extension

Has the applicant ever been denied a franchise or had a franchise suspended or revoked for any reason?

No Yes If "Yes", attach a detailed description of the suspension, revocation and or denial.

List all third parties that the applicant is aware of at the time of application that will be using the applicant's facilities in the County's rights-of-way. Integra/Electric Lightwave, XO Communications, Level 3 Communications, Global Crossing Telecommunications, Verizon Business, Qwest, AT&T, TelePacific, Excella/Nevada Telephone, Cogent/Performance Systems International, Clearwire

Please attach the following:

- Order and CPCN issued by the Public Utilities Commission of Nevada
- Disclosure of Ownership Form
- Map of the Service Area desired (pursuant to NRS 709.060 (2)) (combined Service Area/Route Map attached)
- Map of proposed initial route (pursuant to NRS 709.060 (4)) (combined Service Area/Route Map attached)

Clark County Department of Business License
Franchise Division
500 S. Grand Central Pky, 3rd Floor
Las Vegas, NV 89106
(702) 455-6588 or (702) 455-6186

*Rec'd. 7/16/10
MA*

Procedure, indicating that interested and affected parties should file written comments or protests in writing, petitions for leave to intervene, or notices of intent to participate as a commenter by November 28, 2007. No comments, protests in writing, petitions for leave to intervene, or notices of intent to participate as a commenter were filed pursuant to this public notice. In accordance with the provisions of NRS 704.390, the Commission may dispense with a hearing under these circumstances.

5. The Regulatory Operations Staff ("Staff") of the Commission has completed its review of the Application. Staff recommends that the Commission approve the Application and issue an Order canceling CPC 2805 and issue an amended CPC reflecting the new name of American Fiber Systems, Inc. and authorizing American Fiber Systems, Inc. to operate as a competitive provider of telecommunications services, providing resold and facilities-based interexchange and basic services within the state of Nevada. Staff indicates that Idacomm has requested that the name change and amended CPC be made effective January 1, 2008, and Staff agreed to support that request.

6. At a duly noticed agenda meeting held on December 19, 2007, the Commission voted to accept Staff's recommendations in this matter.

7. The Commission finds that Idacomm has met the requirements of NAC 704.7494 and that it is in the public interest to approve this Application, cancel CPC 2805 and issue an amended CPC to reflect the new name of American Fiber Systems, Inc.

THEREFORE, based upon the foregoing findings and conclusions, it is hereby ORDERED that:

1. **The Application of IDACOMM, Inc., designated as Docket No. 07-10016, is GRANTED.**

2. **The Commission Secretary is authorized to CANCEL CPC 2805, and issue an amended certificate to reflect the new name of American Fiber Systems, Inc. and authorize American Fiber Systems, Inc. to operate as a competitive provider of**

PUBLIC UTILITIES COMMISSION OF NEVADA

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

American Fiber Systems, Inc.

CPC 2805 Sub 2
(supersedes and replaces
CPC 2805 Sub 1)
Docket No. 08-02029

The Public Utilities Commission of Nevada ("Commission") hereby grants American Fiber Systems, Inc. the authority to operate as a competitive supplier of telecommunication service within the State of Nevada, pursuant to Assembly Bill 518 passed by the Nevada Legislature in 2007.

American Fiber Systems, Inc. is hereby granted this Certificate of Public Convenience and Necessity as evidence of its authority to operate as a competitive supplier of telecommunication service within the State of Nevada. As a condition of this Certificate, American Fiber Systems, Inc. shall render reasonably continuous and adequate service to the public within the State of Nevada. Failure to comply with all applicable provisions of the Nevada Revised Statutes; all applicable rules, regulations and orders of the Commission; and any applicable terms, conditions and limitations pertaining to the privileges granted in this Certificate shall comprise sufficient grounds for the suspension or revocation of this Certificate. Nothing contained in this Certificate shall be construed to create a franchise or to constitute the grant of an irrevocable Certificate.

This Certificate of Public Convenience and Necessity supersedes and replaces, in all respects, CPC 2805 Sub 1. CPC 2805 Sub 1 shall be, and the same is hereby, cancelled.

This Certificate of Public Convenience and Necessity shall not be conveyed or transferred without the Commission's prior approval.

Any errors in the drafting of this Certificate of Public Convenience and Necessity may be corrected without further proceedings by the Commission.

By the Commission,


JO ANN P. KELLY, Chairman



Attest: CRYSTAL JACKSON, Commission Secretary

Dated: Carson City, Nevada

4-3-08
(SEAL)

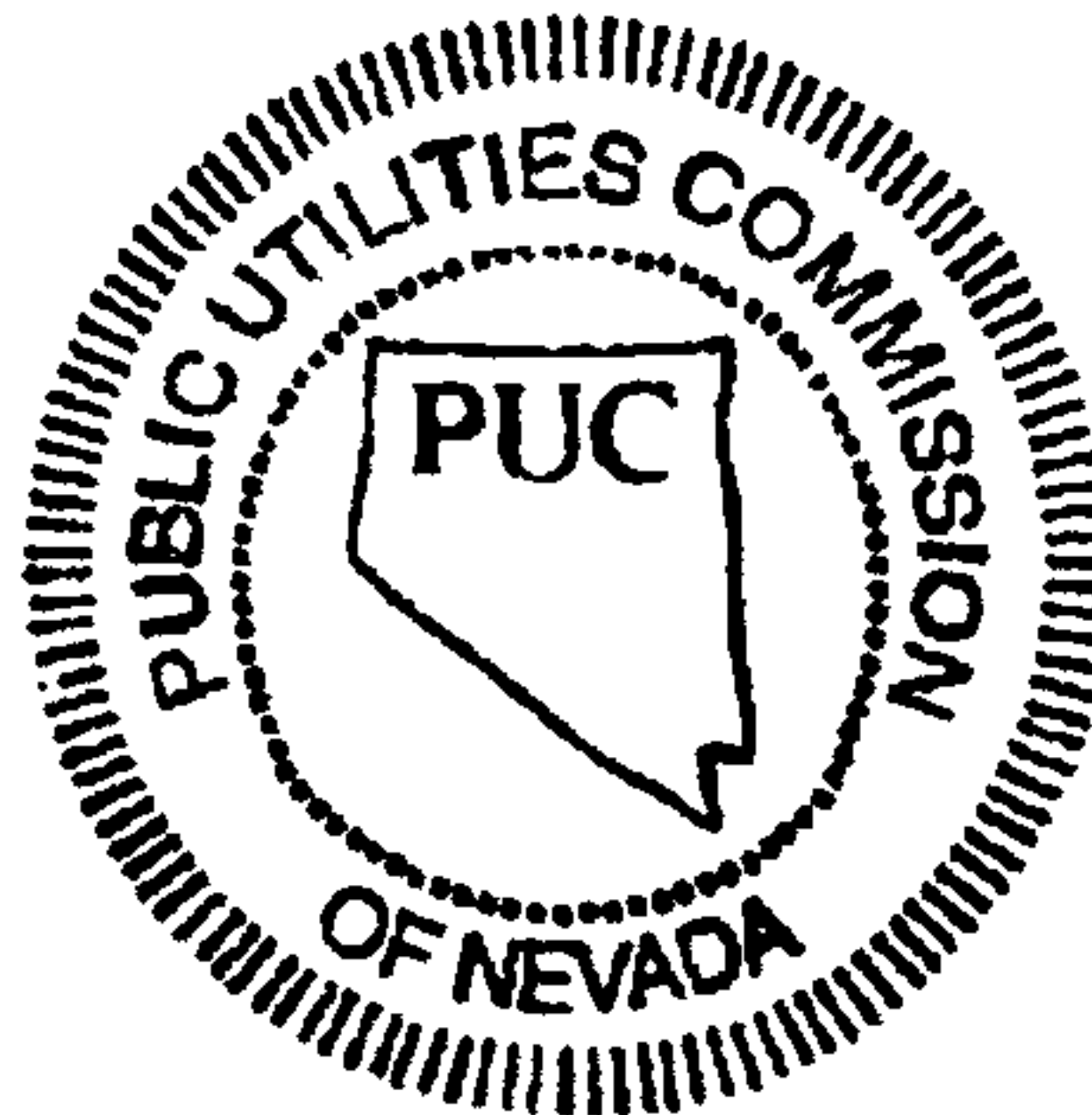
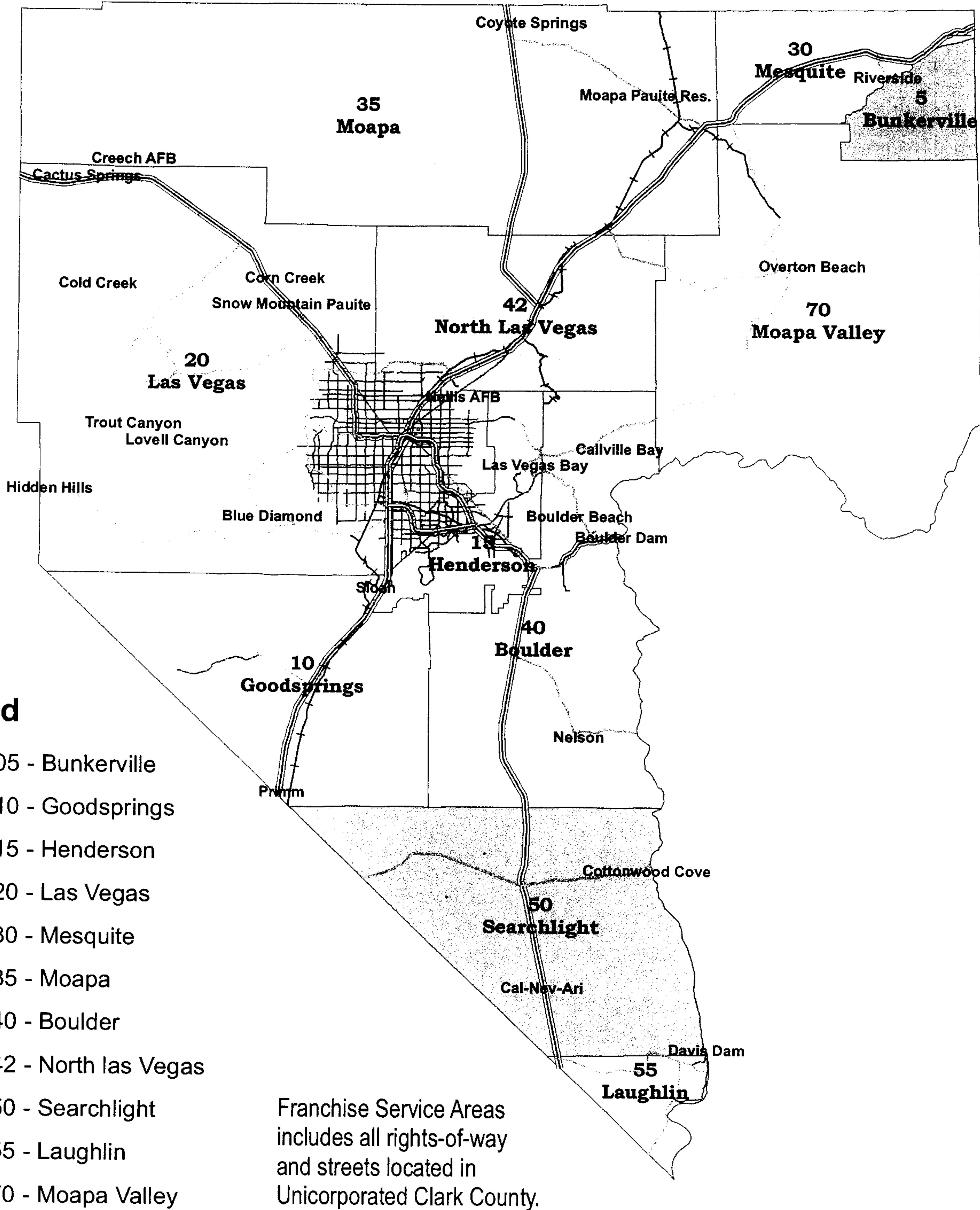
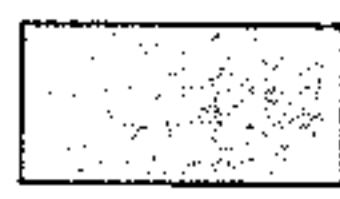
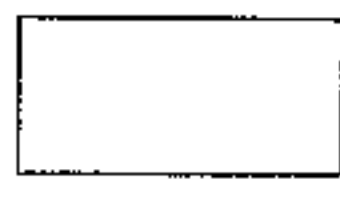

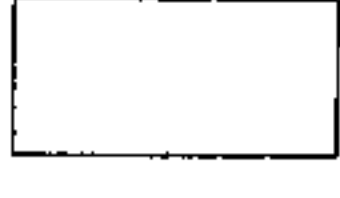
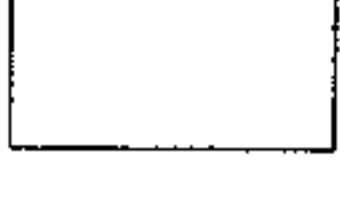

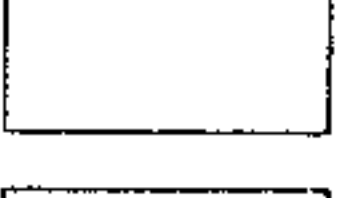
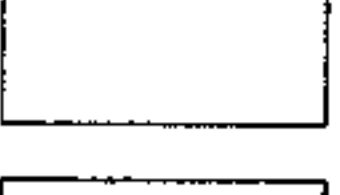
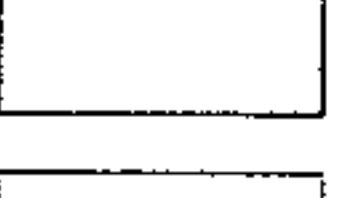
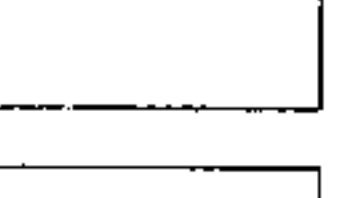
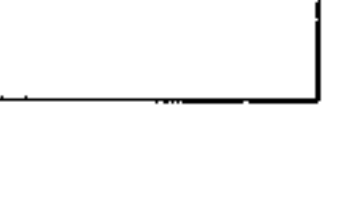


Exhibit B



Legend

-  005 - Bunkerville
-  010 - Goodsprings
-  015 - Henderson
-  020 - Las Vegas
-  030 - Mesquite
-  035 - Moapa
-  040 - Boulder
-  042 - North Las Vegas
-  050 - Searchlight
-  055 - Laughlin
-  070 - Moapa Valley

Franchise Service Areas
includes all rights-of-way
and streets located in
Unincorporated Clark County.

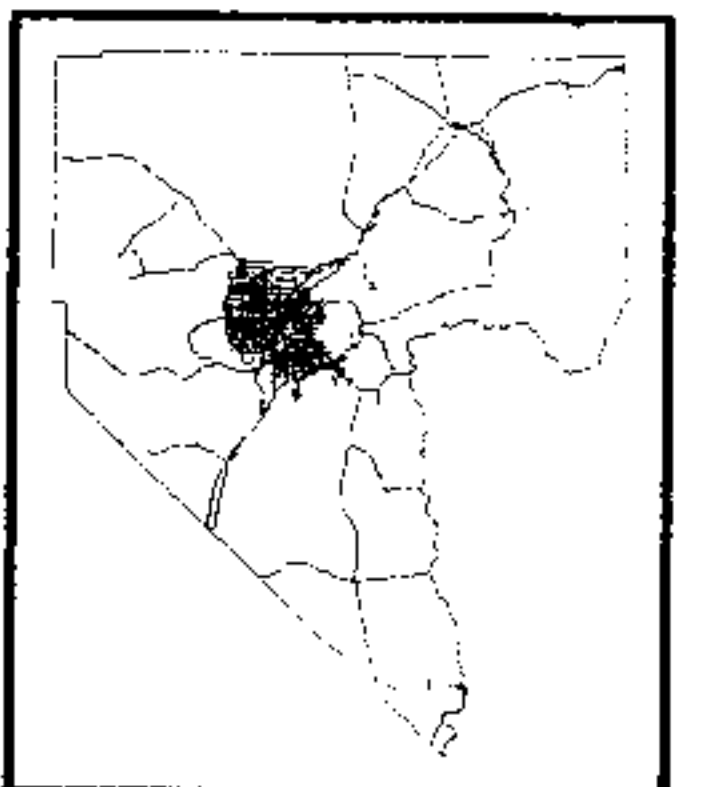
1 inch equals 87,718 feet

Date: August 4, 2008



Exhibit B

Clark County, Nevada



Vicinity Map - No Scale

This information is for display purposes only. No liability is assumed as to the accuracy of the data delineated herein.