

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:25-cv-191

METRO FIBERNET, LLC,

Plaintiffs,

v.

CITY OF COLORADO SPRINGS,

Defendant.

**VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF
AND EXPEDITED TREATMENT**

Plaintiff Metro Fibernet, LLC (“Metronet”), by its undersigned counsel, alleges, upon knowledge as to its own actions and upon information and belief as to all other matters, as follows:

INTRODUCTION

1. Metronet is the nation’s largest privately owned, 100 percent fiber-to-the-premises communications service provider, connecting small and medium sized cities and towns to the world through high-speed fiber optic networks. Metronet provides homes and businesses with fiber based telecommunications, data, and Internet services, introducing competition into each market it serves. Since 2022, beginning in Colorado Springs (the “City”), Metronet has invested significant time, resources, and money into building fiber networks throughout the State of Colorado. But the City is now unlawfully blocking Metronet’s deployment of fiber optic facilities to offer Internet connectivity, data, and telecommunications services in competition with existing providers and other potential competitors including, most notably, the City’s municipal utility.

2. In order to construct its fiber network and bring Internet connectivity, data and telecommunications services to residents and businesses in Colorado Springs, Metronet—like any other fiber or wired broadband provider—requires access to existing utility easements. The utility easements at issue in this case are located in two places. First, public utility easements exist within the public right-of-way (“ROW”) and run parallel to the streets and curb lines, crossing driveways and sidewalks where they provide vehicular and pedestrian access to the ROW. The second category of utility easements at issue are those outside the ROW that cross real property, generally parallel to rear lot lines (“Rear Public Utility Easements”).

3. Rear Public Utility Easements are commonly established by property developers who dedicate the utility easements to the public by recording plats of subdivision showing the easements. Rear Public Utility Easements are also established through other means such as direct grants of easements from homeowners and other property owners to utility companies, such as the

incumbent telephone company Lumen. The Rear Public Utility Easements relevant in this case were established primarily by property developers who established the utility easements by recording plats of subdivision dedicating public utility easements to the public along with public rights of way and easements for drainage.

4. The City's utility department is constructing its own fiber optic communications network. The City utility plans to finance its fiber network in part with revenues from a third party that currently provides Internet and other services that compete directly with Metronet's service offerings. The details of the City's financial interest in a network that competes directly with Metronet are provided below.

5. In Colorado Springs, Metronet has constructed its fiber networks in utility easements located both within the public ROW and within Rear Public Utility Easements. For almost two years, the City permitted Metronet to use Rear Public Utility Easements without issue. That changed abruptly in May 2024, however, when the City suddenly demanded that Metronet cease installing its fiber facilities within Rear Public Utility Easements. Then, just a few months later in November 2024, the City adopted an unwritten, blanket "stop-work" order even for areas in the front ROW in addition to Rear Public Utility Easements, tantamount to a *de facto* moratorium on any further construction by Metronet. As a result, Metronet's construction in Colorado Springs has ground to a halt.

6. The City's actions are in direct contravention of both state and federal laws that recognize the critical public interest in the deployment of advanced telecommunications networks free from unreasonable interference by local entities — including the City. The City's adoption of a *de facto* "stop-work" order is discriminatory, competitively biased, and has the effect of

prohibiting Metronet from providing telecommunications services, in violation of, and preempted by, Section 253 of the federal Communications Act. 47 U.S.C. § 253.

7. The City's discriminatory treatment of Metronet also violates Colorado law, including laws that promote fair competition among telecommunications service providers. Colo. Rev. Stat. § 38-5.5-101. The City is also violating state laws that authorize Metronet to construct and operate its facilities along and under any "public highway" in the state," Colo. Rev. Stat. § 38-5.5-103(1), which the Legislature defined to include the use of "*dedicated rights-of-way and utility easements*," Colo. Rev. Stat. § 38-5.5-102(6).

8. Finally, City staff is now routinely defaming Metronet to the public, and interfering with Metronet's contractor relationships, by falsely informing home and property owners that Metronet has no legal right to build its network in Rear Public Utility Easements. In fact, the City's defamation of Metronet has put Metronet's construction personnel and partners in danger of imminent physical harm, with at least one homeowner threatening to use a gun to force Metronet's contractor to cease otherwise lawful work within Rear Public Utility Easements.

9. Metronet has undertaken significant efforts to resolve this dispute without litigation. It made its legal position underlying this Complaint unequivocally known to the City, while simultaneously trying to find a way to continue its work in Rear Public Utility Easements in satisfaction of whatever concerns the City might have. That effort has only cemented the facts that require this Court's intervention: the City refuses to recognize Metronet's right to use Rear Public Utility Easements; the City insists that Metronet has no such rights; and the City demands that Metronet construct in Rear Public Utility Easements only under discriminatory conditions that in practice block Metronet's ability to compete with existing providers in the market. Metronet's efforts to avoid litigation with the City thus have served only to delay Metronet's ability to serve

customers in the City, and aggravated the harm to Metronet's business and the public interest in competitive communications services.

10. Based on these violations of Metronet's legal rights, Metronet seeks expedited declaratory and injunctive relief from the City's ongoing infliction of harm to Metronet's business and its harm to the public interest in having access to competitive telecommunications and broadband services.

PARTIES

11. Plaintiff Metro Fibernet, LLC is a limited liability company organized under the laws of the state of Nevada, with its principal place of business at 11880 College Boulevard, Suite 100, Overland Park, Kansas 66210. Metronet provides telecommunications services to businesses and residential customers throughout Colorado pursuant to a Certificate of Public Convenience and Necessity ("CPCN") issued by the Public Utilities Commission of the State of Colorado ("PUC") effective March 4, 2022. Attached hereto as Exhibit 1 is a true and correct copy of the PUC's Decision in Proceeding No. 22A-0050T granting Metronet's application for a CPCN to provide telecommunication services in the State of Colorado.

12. Defendant City of Colorado Springs is a duly authorized municipality constituted and existing under the laws of the State of Colorado. The City's primary administrative offices, including the Offices of the City Clerk and the City Attorney/Chief Legal Officer, are located at 30 S. Nevada Ave., Colorado Springs, Colorado 80903.

JURISDICTION AND VENUE

13. This Court has subject-matter jurisdiction over this action under 28 U.S.C. § 1331 because of the existence of a federal question arising under the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the "Communications Act"). This Court has authority to issue declaratory relief pursuant to 28 U.S.C. § 2201(a).

14. The Court has supplemental jurisdiction over Metronet’s claims arising under Colorado law pursuant to 28 U.S.C. § 1367(a).

RELEVANT FEDERAL TELECOMMUNICATIONS LAW

15. In 1996, Congress amended the federal Communications Act of 1934 by enacting the Telecommunications Act of 1996 (“1996 Act”). The 1996 Act was expansive legislation intended to increase and improve competition in the telecommunications industry. An important purpose of the 1996 Act was to “accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition” H.R. Conf. Rep. No. 458, 104th Cong., 2d Sess. 1 (1996).

16. When it enacted the 1996 Act, Congress considered the potential conflict between state and local government regulation of the public ROW, and the national need for deployment of advanced telecommunications and information technologies. Accordingly, the 1996 Act created Section 253 of the Communications Act, which prohibits state and local governments from erecting legal requirements that prohibit or have the effect of prohibiting the ability of any entity to provide any telecommunications services, including taking actions or inactions that result in an unreasonable delay in the deployment of the provider’s facilities and provision of telecommunications services. 47 U.S.C. § 253(a).

RELEVANT COLORADO TELECOMMUNICATIONS LAW

17. The Colorado Legislature has enacted laws that govern the deployment of telecommunications facilities, including provisions limiting the authority of local governments to interfere with network construction in public rights of way and utility easements that have been dedicated to the public.

18. As an overriding policy, Colorado law encourages competitive providers of telecommunications and broadband services to use existing utility corridors as a matter of public interest. Specifically, Section 38-5.5-101 provides in relevant part that:

“(a) . . . House Bill 95-1533 . . . established a policy within the state to encourage competition among the various telecommunications providers, to reduce the barriers to entry for those providers, to authorize and encourage competition within the local exchange telecommunications market, and to ensure that all consumers benefit from such competition and expansion.

(b) The stated goals of House Bill 95-1335 were that all citizens have access to a wider range of telecommunications services at rates that are reasonably comparable within the state, that basic service be available and affordable to all citizens, and that universal access to advanced telecommunications services would be available to all consumers. Such goals are essential to the economic and social well-being of the citizens of Colorado and can be accomplished only if telecommunications providers are allowed to develop ubiquitous, seamless, statewide telecommunications networks. *To require telecommunications companies to seek authority from every political subdivision within the state to conduct business is unreasonable, impractical, and unduly burdensome. In addition, the general assembly further finds and declares that since the public rights-of-way are dedicated to and held on a nonproprietary basis in trust for the use of the public, their use by telecommunications companies is consistent with such policy and appropriate for the public good.*

Colo. Rev. Stat. § 38-5.5-101(1).

19. Among the provisions the Legislature adopted to encourage further the goals of this statute is a section that declares: “Any . . . telecommunications provider or broadband provider authorized to do business under the laws of this state has the right to construct, maintain, and operate conduit, cable, switches, and related appurtenances and facilities, and communications and broadband facilities . . . along, across, upon, above, and under any *public highway* in this state, subject to this article 5.5 and article 1.5 of title 9.” Colo. Rev. Stat. § 38-5.5-103(1) (emphasis added).

20. A “public highway” is defined to mean “all roads, streets, and alleys and *all other dedicated rights-of-way and utility easements* of the state or any of its political subdivisions,

whether located within the boundaries of a political subdivision or otherwise.” Colo. Rev. Stat. § 38-5.5-10(9) (emphasis added).

21. Colorado law distinguishes between providers of “regulated” telecommunications services and telecommunications services that are “deregulated” under part 4, article 15 of Title 40 of the Colorado Revised Statutes (titled “Utilities”). Colo. Rev. Stat. § 40-15-401(1). The PUC, however, modified its rules to allow providers of deregulated services to obtain a *voluntary* CPCN because without a CPCN, they cannot exercise the substantial rights a CPCN affords to providers of regulated telecommunications service. *In re Proposed Amendments to the Telecommunications Rules Implementing HB 14-1329, HB 14-1330, and HB 14-1331*, 4 Colo. Code of Regs. 723-2, Recommended Decision of Hearing Commissioner Frances A. Koncilja Amending Rules, Decision R17-0295 ¶ 29 (Mailed: April 14, 2017) (https://www.dora.state.co.us/pls/efi/EFI_Search_UI.Show_Decision?p_dec=24027&p_session_id=) (“*Recommended Decision*” adopted June 7, 2017 by the full Public Utilities Commission in Decision No. C17-0490) (“*Part 4 Services Decision*”).

22. The PUC further concluded that the plain language of Colorado’s telecommunications statutes gives the PUC “the authority to issue authorizations to telecommunications providers so that they can efficiently access public ROWs.” *Recommended Decision* ¶¶ 29 – 36. The Hearing Commissioner therefore concluded that “*imposing conditions on those operating authorities obtained voluntarily that are similar to the conditions imposed*” on providers of regulated telecommunications services “*encourages competition and meets the public policy objectives*” of Title 40 of the Colorado Revised Statutes. *Recommended Decision* ¶ 37 (emphasis added). The modified PUC rules therefore allow, but do not require, providers of

services deregulated under Colo. Rev. Stat. § 40-15-401—such as Metronet— to obtain a CPCN from the PUC and thereby “efficiently access” the ROW and Rear Public Utility Easements.

STATEMENT OF FACTS

Metronet’s Telecommunications Service

23. Metronet provides telecommunications services, as that term is defined by the federal Communications Act, 47 U.S.C. § 153(53).

24. Metronet is a domestic “telecommunications provider” under Colorado law because it “provides telecommunications service, as defined in section 40-15-102(29) . . . pursuant to authority granted by the public utilities commission of this state or by the federal communications commission.” Colo. Rev. Stat. § 38-5.5-102(9).

25. Metronet is also a “broadband provider” under Colorado law because it provides “broadband” internet services. Colo. Rev. Stat. § 38-5.5-102(3).

26. Metronet provides businesses and residential customers with fiber optic telecommunications, data, and Internet access services, including multi-gigabit fiber internet and full-featured fiber phone services.

27. Metronet built its first 100 percent fiber-optic network in 2005 in Greencastle, Indiana. Since then, Metronet has deployed fiber optics networks that reach more than 2 million homes and businesses across 17 states.

28. Metronet is committed to safety, quality, and clean-up in its construction practices. As part of this commitment, when Metronet’s network construction involves digging trenches within and otherwise disturbing utility easements, Metronet contractually requires its crews and contractors to restore any impacted property to a condition similar to its original condition or better than existed before the construction work commenced.

29. In addition to its emphasis on property restoration, Metronet prioritizes the safety of its crews, contractors, and the public. For example, Metronet maintains a dedicated safety and quality assurance team which manages a comprehensive safety program focused on the prevention of construction damage and the protection of construction crews and the public. Every Metronet employee involved in network construction is required to undertake ongoing and advanced safety training, including hands-on training through Metronet University, the company's central training facility. Likewise, Metronet requires contractors that it uses for construction projects to complete appropriate safety training for the work they are contracted to perform. All Metronet contractors are also licensed through the City before beginning work in the field. Although occasional accidents and "strikes" of existing utility lines are to some extent unavoidable in practice, Metronet has taken substantial precautions to avoid any such strikes. As a consequence of Metronet's efforts to minimize safety concerns and utility line strikes, in 2020 Metronet was awarded the Vectren Energy Safe Digging Partner Award for its safety practices and procedures.

**Metronet's Authorization from the Colorado Public Utilities Commission
to Provide Telecommunications Services**

30. Metronet is currently authorized to provide telecommunications services in the State of Colorado by the PUC.

31. Effective March 2, 2022, the PUC granted Metronet a CPCN to provide telecommunications services in Colorado to businesses and residential customers. See Exhibit 1. Colorado Springs is included within Metronet's service area and within the State of Colorado.

32. Possession of the CPCN subjects Metronet to the jurisdiction of the Colorado PUC as a telecommunications utility. Colo. Rev. Stat. § 40-15-102.

33. Metronet’s CPCN specifically declares that “[a] CPCN will allow the company access to utility poles and public rights-of-way for the construction of fiber optic cable to customer premises.” Exhibit 1 (CPCN ¶ 2).

34. As a condition of obtaining a CPCN from the PUC, and before commencing operations under the CPCN, the PUC ordered that “Metro [sic] shall not unjustly discriminate among customers in the same class of service, per Commission Rule 4 Code of Colorado Regulations 723-2-2103.” Exhibit 1 (CPCN ¶ 3).

35. The PUC also requires Metronet to file with the Commission financial assurance in the form of a bond or a letter of credit in the amount of \$42,115, as security for Metronet’s fulfillment of its public service obligations. Exhibit 1 (CPCN ¶ 4). If Metronet had not filed the required financial assurance, its CPCN would have been “deemed null and void without further action of the Commission.” Exhibit 1 (CPCN ¶ 5).

36. Finally, as another condition of its CPCN, the PUC required Metronet to contribute to several government funds that support the construction and maintenance of telecommunications facilities, as well as funds that support the purchase of services by consumers. Specifically, Metronet’s CPCN requires the company to contribute to the PUC’s Telecommunications Utilities Fund, the Colorado High-Cost Support Mechanism & Broadband Program, and the Colorado Telephone Users Disabilities Fund, the Statewide 9-1-1 Surcharge Trust Cash Fund, among other financial support mechanisms. Exhibit 1 (CPCN ¶ 6).

37. Metronet is in compliance with each of the terms and conditions of its CPCN.

Metronet Invests Millions to Build a Telecommunications Fiber Network in Colorado Springs

38. Upon receiving a CPCN from the PUC, Metronet began construction in Colorado Springs in 2022.

39. Metronet has completely funded the Colorado Springs project using private funds. No taxpayer funds are being used to subsidize Metronet's construction of network infrastructure.

40. Through the end of fiscal year 2024, Metronet has planned a total capital expenditure of \$48.2 million for Colorado Springs.

41. For fiscal year 2025, Metronet has budgeted an additional \$21.9 million to invest in Colorado Springs.

42. Presently, Metronet's construction is focused on four areas within Colorado Springs: District 1, District 2, District 5, and District 7.

43. In order to construct its fiber-optic network in Colorado Springs, and therefore provide telecommunications services to its customers, Metronet must have access to both the public ROW and to Rear Public Utility Easements to install its facilities and equipment.

44. Timely access to the public ROW and Rear Public Utility Easements is critical to Metronet's ability to construct its fiber network safely and efficiently.

45. As of January 2025, Metronet's planned build in Colorado Springs is approximately 25 percent complete.

46. To date, Metronet's telecommunications, Internet access, and data services are available to approximately 24,500 homes in Colorado Springs. Metronet plans to make service available to 52,000 additional homes by the time its planned buildout of Colorado Springs is complete.

In May 2024, the City Abruptly Announced That Metronet May No Longer Use Rear Public Utility Easements Outside the Public ROW

47. In the past, Metronet constructed its fiber network both within existing utility easements located in the public ROW and in existing Rear Public Utility Easements.

48. Driven by safety concerns and communications with the City and its municipal utility department regarding Metronet's frequency of utility strikes within the front public ROW, in late 2023, Metronet began to focus on using Rear Public Utility Easements rather than the front-facing public ROWs. Metronet had previously been permitted to build in Rear Public Utility Easements by the City.

49. Metronet's initial efforts to construct within utility easements within the public ROW slowed Metronet's construction, required more care in locating the existing City electric and gas lines, and increased Metronet's costs as well as the incidence of workers accidentally striking existing utility lines. If Metronet is forced to construct only in utility easements located within the public ROW rather than in Rear Public Utility Easements where the City allows Metronet's competitors to locate and maintain their networks, Metronet's costs will increase substantially due to increased labor costs, materials, permit fees, restoration costs, utility strikes and fines. By forcing Metronet to work only in the public ROW, the City also increases the time it takes for Metronet to install its network, and delays Metronet's ability to offer services to the public in competition with existing providers who the City did not block from using Rear Public Utility Easements.

50. Because its efforts to construct in utility easements within the public ROW materially increased the time, cost, and safety concerns of its construction work, Metronet changed its network design to install its fiber facilities in Rear Public Utility Easements where possible. With this move, Metronet's instances of utility strikes dropped dramatically. Specifically, by moving its work to Rear Public Utility Easements, Metronet estimates that the incidences of its work causing strikes to other utility facilities dropped to one strike for every 62,836 linear feet of construction. Previously, when Metronet was constructing in utility easements located only within

the public ROW, it experienced one utility line strike for every 6,705 linear feet of construction. The increase of damage for work done in the public ROW was caused by the dense concentration of other utility facilities – including the municipal electric and gas systems – that already occupy the narrow space for utility work within the public ROW.

51. Despite Metronet’s improved track record and fewer strikes of existing underground facilities, on May 20, 2024, Metronet received a letter from the Office of the City Attorney. The City Attorney’s letter asserted that “[n]otwithstanding any CPCN, *MetroNet is not a public utility under Colorado law*, and has no state-granted authority to occupy public utility easements outside of the public rights of way.” *See Exhibit 2* (a true and correct copy of the City’s May 20, 2024 letter) (emphasis added).

52. The City Attorney’s letter also informed Metronet that while it would “allow” Metronet to deploy its network within public ROW, Metronet would be required to obtain an agreement with each property owner in order to deploy its network facilities on private property or on public property located outside of the public ROW. *Exhibit 2*.

53. This was the first time since Metronet began building its fiber optic network in August 2022 that the City took the position that Metronet was not a public utility and therefore, not authorized to use existing Rear Public Utility Easements.

54. On June 5, 2024, Metronet responded to the City Attorney’s May 20, 2024 letter. Metronet explained that Metronet is a public utility and that it has the right to access utility easements in Colorado Springs under both state and federal law. Attached hereto as *Exhibit 3* is a true and correct copy of Metronet’s June 5, 2024 letter.

55. The City responded in a letter dated June 27, 2024. That letter affirmed the City’s position that Metronet’s possession of a CPCN does not “elevate Metronet to the status of a public

utility,” and affirmed the City’s intention to continue to deny Metronet access to Rear Public Utility Easements within the City, in contravention of state and federal law. Attached hereto as Exhibit 4 is a true and correct copy of the City’s June 27, 2024 letter.

56. Since its May 20, 2024 letter, the City has rejected Metronet’s excavation permits that include Rear Public Utility Easements.

**The City’s “Policy” Prohibiting Metronet From
Building in Rear Public Utility Easements Is Unlawful**

57. Metronet’s status as a holder of a CPCN to provide telecommunications services in Colorado confers upon it numerous rights and obligations, including the right to use Rear Public Utility Easements.

58. The City has incorrectly assumed that the City has the unilateral power to determine whether Metronet’s CPCN in fact authorizes Metronet to use existing Rear Public Utility Easements. The City’s position, however, contradicts both the express language of the law and fails to respect the PUC’s stated intention to give providers of unregulated telecommunications services, such as Metronet, the same rights and obligations as providers of regulated telecommunications services.

59. As a “telecommunications provider or broadband provider authorized to do business under the laws of this state,” Metronet “has the right to construct, maintain, and operate conduit, cable, switches, and related appurtenances and facilities, and communications and broadband facilities . . . along, across, upon, above, and under any *public highway* in this state, subject to this article 5.5 and article 1.5 of title 9.” Colo. Rev. Stat. § 38-5.5-103(1) (emphasis added).

60. The “public highways” that Metronet is authorized to use under state law expressly include “all roads, streets, and alleys and *all other dedicated rights-of-way and utility easements*

of the state or any of its political subdivisions, whether located within the boundaries of a political subdivision or otherwise.” Colo. Rev. Stat. § 38-5.5-10(9) (emphasis added).

61. “Dedicated rights-of-way and utility easements” under this provision includes “[a]ll streets, parks, *and other places* designated or described *as for public use on the map or plat* of any city or town or of any addition made to such city or town *are public property* and the fee title thereto vested in such city or town.” Colo. Rev. Stat. § 31-23-107 (“Public Property Dedicated”).

62. A “statutory dedication” under this provision “operates by way of grant and ordinarily conveys the full fee title to the subject property” to the government. *City of Greenwood Village v. Boyd*, 624 P.2d 362, 364 (Colo. Ct. App. 1981).

63. The City does not deny that a public utility ordinarily has the right to use Rear Public Utility Easements. Instead, its position is that because Metronet provides services that the Legislature “deregulated” under the state Code, that Metronet is not a “public utility” possessing the rights described above to use Rear Public Utility Easements. *See* Exhibit 4. But as explained above, the PUC modified its rules in 2017 specifically to *allow* providers of deregulated services like Metronet to *voluntarily* obtain a CPCN in order to secure the same legal rights to construct within dedicated utility rights of way and easements as traditional regulated providers of telecommunications services. *Recommended Decision* ¶ 37.

64. Because Metronet is both a “telecommunications provider” and “broadband provider” Metronet has a legal right under Colo. Rev. Stat. § 38-5.5-103(1) to build and maintain its facilities within “public highways” defined by the Legislature to include both dedicated public ROW and dedicated utility easements. Such easements are ubiquitous and are frequently platted across both the front and rear lot lines of subdivided properties.

65. For example, Metronet’s current dispute with the City in part concerns Metronet’s work within the subdivision for “Meadow Ridge at Briargate,” and the plats for this subdivision include a dedication to the public of both the streets and utility easements designated on the plats. Specifically, the plats state: “The undersigned do hereby grant unto the City of Colorado Springs those easements shown on the plat and further restrict the use of all easements to the City of Colorado Springs and/or its assignees” Attached hereto as Exhibit 5 are true and correct copy of the plats of subdivision for Meadow Ridge at Briargate (“Dedication” paragraph).

66. The same plats separately declare under the heading of “Easements” that “*both sides of all rear lot lines are hereby platted with a seven (7) foot easement for drainage purposes and public utilities only* with the sole responsibility for maintenance being vested with the adjacent property owners.” Exhibit 5 (“Easements” dedication block) (emphasis added). The plats thus dedicate to the City all easements shown on the plats as well as the streets and roads. Pursuant to Colo. Rev. Stat. § 38-5.5-103(1), Metronet has the statutory right to use these dedicated and platted Rear Public Utility Easements.

67. On July 3, 2024, the City rejected a Metronet excavation permit application seeking access to both the public ROW and a Rear Public Utility Easement on the grounds that Metronet should submit plans for infrastructure placement in the public ROW only.

68. This rejection was directly at odds with the City’s own approval of Metronet’s permits to build within Rear Public Utility Easements in Colorado Springs as recently as two months earlier. For instance, on May 6, 2024, the City approved a Metronet excavation permit application containing essentially identical language requesting access to Rear Public Utility Easements as was rejected on July 3, 2024.

69. More recently, the City has rejected numerous Metronet permit applications for work in the Rear Public Utility Easements on grounds that the City does not recognize Metronet's authority to work in such locations.

70. Upon information and belief, the City's new "policy" toward Metronet preventing it from building in Rear Public Utility Easements is also not being applied consistently to competing telecommunications providers, in violation of state and federal law.

71. For instance, Metronet is aware of at least two other telecommunications providers—Lumen and Comcast—that have already located their network facilities in Rear Public Utility Easements in Colorado Springs. Visual evidence demonstrates that those companies continue to use those Rear Public Utility Easements to this day, including through active construction and maintenance projects with, upon information and belief, no apparent objection from the City.

72. Upon information and belief, neither Lumen nor Comcast have entered into any sort of agreement or understanding with the City concerning their use of Rear Public Utility Easements in the City to construct and maintain their telecommunications networks.

73. Like Lumen and Comcast, Metronet is a public utility and has statewide authorization.

The City Issues a *De Facto* Stop-Work Order Against Metronet

74. On October 9, 2024, the City sent another letter to Metronet. The letter repeated the City's claim that Metronet is not a public utility, and confirmed that its "position has not changed" with respect to granting Metronet access to Rear Public Utility Easements. Attached hereto as Exhibit 6 is a true and correct copy of the City's October 9, 2024 letter.

75. Significantly, the City’s October 9th letter revealed that it “did not have a process for reviewing the portions of the [permit] applications going through private property and did not have an understanding as to whether Metronet had the legal right to use the rear yard easements.” The City also admitted that it “advised Metronet that it was not authorized to locate facilities in rear yards” in response to complaints from residents.

76. Nonetheless, the City issued Metronet an ultimatum:

- a. Construct only in utility easements located parallel to the public streets and within the public road ROW, where the City’s electric utility system, gas lines, and the City’s broadband facilities that compete with Metronet are located;
- b. Enter into a “master licensing agreement” (“MLA”) authorizing Metronet to work within the City; and
- c. Provide a “phasing plan” to disrupt its current construction plans and move its construction from the Rear Public Utility Easements to the front of the homes.

77. If Metronet did not acquiesce to the City’s demands, then the City threatened to “issue stop work orders on rear yard work currently in progress and [] reject future permit requests.” According to the City, “the rear yard easement issue” needed to be resolved by the end of October to avoid a stop-work order. The City did not provide Metronet with a proposed MLA at that time.

78. On November 11, 2024, the City made good on its threat. Prior to that date, the City had rejected permit applications that included Rear Public Utility Easement access. Starting

on November 11, 2024, the City began to reject Metronet's permits for public ROW access, resulting in a *de facto* stop-work order and bringing Metronet's construction in the City to a halt.

79. On November 11, 2024, the City ROW Inspector Matt Herrera denied three of Metronet's excavation permits to construct in the public ROW in District 7 of the city. Prior to being rejected, each of these permits had been approved by the city's Traffic Control Department, but that approval was overridden.

80. The stated reason for rejecting each of Metronet's permits was identical: "The City Engineer is not approving permits for Metronet build until pending legal issues are resolved." The City has not provided any substantive reason for rejecting the permits and therefore the City is rejecting Metronet's otherwise-valid permit applications, even for areas planned exclusively to be constructed within the front public ROW.

81. Notwithstanding that at the time there were no legal issues pending between the parties, when Metronet Project Director Scott Carl spoke to Mr. Herrera regarding these permit denials, Mr. Herrera told him that all ROW inspectors had been instructed by the City Attorney on the morning of November 11, 2024 to deny all Metronet permit requests. Mr. Herrera also told Mr. Carl that Metronet should expect a "stop work order" by the end of that week.

82. On November 12, 2024, Mr. Herrera repeated this message to Brad Bradford of B & M Underground, one of Metronet's contractors in Colorado Springs. That morning, Mr. Herrera called Mr. Bradford and told him that the Metronet project would be receiving a blanket stop-work order by the end of that week, *i.e.*, by November 15.

83. By letter dated November 14, 2024, Metronet again explained its legal position and rights to the City and demanded that the City cease and desist in its ongoing violations of, among

other things, Metronet's legal rights to construct its facilities in Rear Public Utility Easements. Attached hereto as Exhibit 7 is a true and correct copy of Metronet's November 14, 2024 letter.

84. By letter dated November 22, 2024, the City rejected Metronet's legal position and stated that it would allow Metronet to file permit applications for use of utility easements within the public ROW only. Attached hereto as Exhibit 8 is a true and correct copy of the City's November 22, 2024 letter. Although the City proposed an "all hands" meeting of "principals" of the parties to attempt to reach a solution, it maintained that Metronet should work "only in public rights of way and easements adjacent to those rights of way until such time as the matters in dispute regarding back yard public utility easements are resolved," with the threat that the City may issue citations to Metronet "in the event of complaints from property owners."

85. Despite the City's representations in its November 22, 2024 letter that it would consider and grant Metronet's requests for permits to work in the public ROW, on November 26, 2024, the City denied Metronet's new permit requests for work in the public ROW on the grounds that "[t]he City Engineer is not approving permits for Metronet build until pending legal issues are resolved." Attached hereto as Exhibit 9 are true and correct copies of three City permit records: PWK-EXC24-7111; PWK-EXC24-7121; PWK-EXC24-7122 (all marked with "Comment: The City Engineer is not approving permits for Metronet build until pending legal issues are resolved.").

86. On November 27, 2024, Metronet responded to the City and agreed to an "all-hands-on-deck meeting between the principals" of the parties in an attempt to reach a solution to the parties' dispute. Metronet had previously tried to set up a similar meeting between its CEO and the City's Mayor in August 2024, to no avail. Attached hereto as Exhibit 10 is a true and correct copy of Metronet's November 27, 2024 letter to the City.

87. That same day, the City finally sent Metronet the draft MLA referenced in its October 9, 2024 correspondence. The City’s insistence that Metronet enter into an MLA amounts to a demand that Metronet obtain “additional authorization” from the City before it will allow Metronet “to conduct business within a given geographic area,” in violation of Colo. Rev. Stat. § 38-5.5-101(2)(b). Instead, a provider must only “first obtain[] the consent of the authorities . . . of the political subdivision,” and that “consent” is expressly limited to the “lawful exercise of its police power, and shall not be unreasonably withheld.” Colo. Rev. Stat. § 38-5.5-101(2)(a).

88. On December 9, 2024, senior representatives from the City (including the Public Works Director, Senior Engineer, and the Mayor’s Chief of Staff, Engineering and Infrastructure) and Metronet met in an attempt to resolve the parties’ disputes. However, the parties were unable to come to a resolution as to the key issue: Metronet’s use of rear Rear Public Utility Easements.

89. On December 18, 2024, counsel for the parties participated in a conference call to discuss Metronet’s efforts to reach an acceptable arrangement to proceed with the build out of its broadband network in the City, and to discuss the City’s draft MLA. The City representatives stated that the City intended to provide Metronet with a proposal regarding Metronet’s use of Rear Public Utility Easements.

90. With respect to the MLA, Metronet informed the City that it did not object to entering into an MLA that covers standard permitting matters, but could not agree to terms that would be tantamount to requiring them to obtain “additional authorization” from the City to construct their broadband network. The City’s police power does not allow it to require a separate agreement authorizing Metronet’s construction. *See* Colo. Rev. Stat. § 38-5.5-101(2)(a), (b). Metronet also expressed concern that its competitors did not have a similar agreement in place,

and therefore the MLA placed them at a competitive disadvantage in terms of the speed and costs of its work in the City.

91. Metronet has repeatedly told the City that it would agree to reasonable measures for community notice and complaint resolution, and has asked the City to work with it to inform the public of Metronet's right to build in the rear Rear Public Utility Easements. Instead, on January 7, 2025, the City provided Metronet with a "policy clarification" concerning the use of Rear Public Utility Easements that would apply to "[A]uthorized Entit[ies]." The policy clarification defines Authorized Entity as "any entity who possesses the legal right to occupy [rear and side lot public utility easements]." The policy clarification further specifies that "[a] or utility-like entity that is not a public utility that seeks to locate facilities in [rear and side lot public utility easements] may become an Authorized Entity" by, among other requirements, entering in to a Master License Agreement, and obtaining written permission from each property owner to enter their property and utilize the Rear Public Utility Easement. Under the City's "policy clarification," the City refuses to recognize Metronet's right to use Rear Public Utility Easements unless Metronet agrees to enter into the MLA and obtain "written permission from the property owner" to use the Rear Public Utility Easements, and to otherwise conform to detailed procedures. Attached hereto as Exhibit 11 is a true and correct copy of the City's "Policy Clarification."

92. As further confirmation of the City's position that Metronet is not an "Authorized Entity" as contemplated by the City's "Policy Clarification," Metronet received on January 7, 2025 unsigned correspondence from Colorado Springs, on Colorado Springs Public Works Department letterhead emailed from Colorado Springs's Deputy Public Works Director/City Engineer Gayle Sturdivant. The correspondence detailed Colorado Springs's requests for modifications to Metronet's construction notification practices to city residents. That correspondence specifically

states “[f]rom the City’s perspective, Metronet is not an ‘Authorized Entity,’ meaning it does not hold the legal right to occupy public utility easements Construction cannot begin without explicit, signed permission from the resident at any given address.” The correspondence continues “[i]nstead of ‘[Metronet] construction crews need to access your easement,’ language should instead reflect that ‘Metronet is requesting written permission to use the easement.’” Attached hereto as Exhibit 11 is a true and correct copy of the City’s January 7, 2025 correspondence.

93. Given this history of efforts to resolve the parties’ differences, further efforts at informal resolution would be futile. The parties have been unable to resolve their disputes, and the City continues to block Metronet from constructing in Rear Public Utility Easements.

The City’s Utility Department Has Invested Millions in a Broadband Fiber Network that Competes With Metronet’s Network for Customers

94. The City is prohibiting Metronet from constructing its network while at the same time, the City’s utility department is constructing a fiber network that is intended to compete directly with Metronet’s network and service offerings. Specifically, in January 2022, Colorado Springs Utilities (“CSU”) announced that it would build a fiber network to every residence and business within City limits. CSU also stated its intention to finance its fiber network in significant part by leasing capacity to a retail broadband service provider that would sell services directly to customers.

95. According to CSU, “Once complete, Colorado Springs will be one of the best-connected cities in the country, enabling the highest-speed internet connectivity for every home and business.” *See Fiber Network*, Colorado Springs Utilities, available at <https://www.csu.org/current-projects/fiber-network> (last visited Nov. 20, 2024). The same webpage informs the public that “Ting Internet is the leasing anchor tenant of the fiber network. Ting signed a 25-year network lease, meaning we will receive fixed payments from Ting to help

offset the cost of the network. We expect to have additional companies that require high-quality telecommunications to lease capacity on this network.”

96. The “anchor tenant” for CSU’s fiber network announced in August 2023 that it was “currently available in northeast neighborhoods and is steadily expanding across all of Colorado Springs, with full municipal access expected by the end of 2028.” Exhibit 12 (*Ting launches 2-gigabit fiber internet in Colorado Springs*, news release, August 15, 2023). In the same announcement, a member of the City Council who also serves as Chairman of the Board of CSU stated that Ting’s use of the CSU fiber network would “lessen[] the financial burden to our ratepayers.” Exhibit 12.

97. A recent audit conducted by the City Auditor confirms the key details of CSU’s plan to generate revenue from retail broadband services:

“The fiber network was projected to cost \$600 million and scheduled to be completed in 2028. . . The design included excess capacity which would be leased to third parties. Revenues from the lease were projected to offset construction cost in the long term.”

24-12 Colorado Springs Utilities Operational Fiber Network Expansion, Office of the City Auditor (April 2024) at p. 1, available at https://coloradosprings.gov/system/files/2024-07/24-12_csu_operational_fiber_network_expansion_-_final_v3.pdf (“CSU Fiber Audit”).

83. According to the City Auditor, the City and CSU “signed an executive agreement in 2022 for permitting and inspection of fiber construction in the ROW” which “the agreement specified streamlined processes and payments by Utilities to cover the cost of inspection.” CSU Fiber Audit at 1-2.

84. The City Auditor’s report concluded, however, that despite “streamlined processes and payments,” CSU and its contractors are experiencing problems managing and implementing

the construction project. In summarizing its audit findings, the City Auditor concluded that, despite CSU's "processes and controls for project management and project governance should be improved." CSU Fiber Audit at 1.

85. The City utility department's massive investment in a fiber network that will be used to compete with Metronet, and its admitted financial interest in the success of a third party's ability to compete door-to-door for customers with Metronet, raises serious and unresolved questions as to the City's motives in blocking Metronet from constructing its network in a manner both authorized by state law and used by the incumbent service providers.

**The City Engages in an Unlawful Campaign to
Undermine Metronet and Interfere with Its Business**

98. Not only has the City issued an unlawful and discriminatory *de facto* stop-work order against Metronet, it has also undertaken a campaign to defame Metronet's reputation with the public and potential customers.

99. On August 26, 2024, Metronet's Mr. Carl received an email from Chasity McMorro, the purported Homeowners' Association president of the Sands Metropolitan District, a new planned community of single family homes within the City (the "Sands Community"). The plats of subdivision for the Sands Community show utility easements across all rear lot lines that have been dedicated for public utility use. Metronet shared its plan to construct within Rear Public Utility Easements of the subdivision, but Ms. McMorro stated that her biggest concern was "if MetroNet [sic] is authorized to access the public utility easement. MetroNet [sic] is not listed as the easement holder and the city said that they do not have an agreement with you either."

100. On November 12, 2024, the City's false statements to homeowners that Metronet is not a public utility and has no right to utilize platted Rear Public Utility Easements escalated into threats of violence. That morning Metronet's contractor partner went to perform additional

work at 5140 Villa Circle, a home where Metronet had already constructed its network in the Rear Public Utility Easement. Upon arrival, the crew spoke to the homeowner and told him they needed access to the utility easement in his rear yard. Although he initially permitted them to enter the property, soon thereafter he told the workers that the City had informed him that Metronet had no right to work in the Public Utility Easement. The homeowner warned Metronet's crew that he would get his gun if they did not leave his property. Metronet called law enforcement which intervened in the escalating situation.

101. On or around November 12, 2024, Metronet also began receiving reports from its contractors that the City was reaching out to them directly and telling those contractors that it is rejecting Metronet's permit requests because Metronet is not authorized to use Rear Public Utility Easements. For instance, Mr. Bradford of B & M Underground reported that Mr. Herrera, a City ROW inspector for District 7, suggested to him on November 12th that B & M Underground might find alternate work with Comcast or the City's utility department, which is also deploying CSU's fiber facilities throughout Colorado Springs in direct competition to Metronet, because the City was planning to issue a stop-work order to Metronet.

102. Similarly on November 12, 2024, Joshua Eckles, Project Manager with Southern Tier Telecommunications, and Thomas Jay, Field Supervisor for Metronet, had a final inspection with City inspector Israel Molinar, who is the inspector responsible for District 8. The purpose of this inspection was to close out a current permit in order to have a new one approved within the same neighborhood. Upon completing the final inspection Mr. Molinar informed both Southern Tier and Metronet that due to a pending lawsuit between the City and Metronet, no new permits would be approved going forward, and that any existing permits would not be renewed once they expired. He urged them to complete any current work immediately, because, he said, there would

be no additional work in the near future for Metronet. At the time Mr. Molinar made this representation, there was no pending lawsuit between the City and Metronet.

103. The City has continued to tell residents that Metronet has no authority to work outside the public ROW, leading residents to believe the company's workers are trespassers—which they are not—and endangering their contractors.

COUNT I

Violation of 47 U.S.C. § 253

104. Plaintiff incorporates herein by reference the allegations of paragraphs 1 through 103 above.

105. 47 U.S.C. § 253(a) provides that “[n]o state or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.”

106. The FCC and the courts have broadly interpreted the ban on actions that “prohibit or have the effect of prohibiting” an entity from providing service to include any action that “materially inhibits” an entity’s ability to provide, maintain, or expand its services. *In re Cal. Payphone Ass’n*, 12 FCC Rcd. 14191, 14206 (quoted with approval in *Qwest Corp. v. City of Santa Fe*, 380 F.3d 1258, 1271 (10th Cir. 2004) (*City of Santa Fe*); *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, 33 FCC Rcd. 7705, 7779 n.542 (2018) (the “*FCC Moratoria Order*”), *aff’d in relevant part, City of Portland v. United States*, 969 F.3d 1020 (9th Cir. 2020) (affirming relevant parts of the *FCC Moratoria Order*).

107. The City’s institution of an unwritten, “stop-work” order to Metronet in Colorado Springs constitutes a *de facto* moratoria, because it has “effectively halt[ed] or suspend[ed] the acceptance, processing, or approval of applications or permits for telecommunications services or

facilities in a manner akin to an express moratorium,” and continues to effectively prohibit Metronet from providing telecommunications services in Colorado Springs by obstructing Metronet’s construction efforts. *FCC Moratoria Order* ¶ 149.

108. To the extent that the City requires Metronet to enter into a MLA as a precondition of applying for or receiving approval of excavation permits in Rear Public Utility Easements, that requirement has created a *de facto* moratorium that has the effect of prohibiting Metronet from providing telecommunications service.

109. The City’s demand that Metronet cease construction of its fiber network in Rear Public Utility Easements has effectively prohibited Metronet from providing telecommunications services, and continues to effectively prohibit Metronet from providing telecommunications services in in Colorado Springs, impacting competition in the process.

110. In contrast, on information and belief, the City has either granted or not interfered with the access to the public ROW and to Rear Public Utility Easements in Colorado Springs by competing telecommunications service providers. On information and belief, the City has not issued any competing telecommunications service providers a stop-work order, or informed them they may not construct their networks in the public ROW or in Rear Public Utility Easements. Metronet competes with some or all other telecommunications services providers that the City has permitted to deploy in the public ROW and in Rear Public Utility Easements in Colorado Springs. The City’s interference with Metronet’s construction and its demands that Metronet operate under conditions that it has not imposed on Metronet’s direct competitors effectively prohibits Metronet from providing telecommunications services in in Colorado Springs in violation of 47 U.S.C. § 253(a).

111. The City's treatment of Metronet is not competitively neutral and nondiscriminatory management of the public ROW, in violation of 47 U.S.C. § 253(c).

112. The City's interference with Metronet's use of Rear Public Utility Easements is not competitively neutral and nondiscriminatory, in violation of 47 U.S.C. § 253(c).

113. Metronet has been and continues to be irreparably harmed by the City's effective prohibition of Metronet's ability to provide telecommunications services.

114. The City's refusal to grant Metronet's permit applications that refer to Rear Public Utility Easements is not reasonable management of the public ROW.

115. Accordingly, the City's actions and/or failures to act prohibit or effectively prohibit Metronet from providing telecommunications service, and are, therefore, in violation of and preempted by 47 U.S.C. § 253(a), and are not within the City's reserved authority under 47 U.S.C. § 253(c).

COUNT II

Violation of Colo. Rev. Stat. §§ 38-5.5-101, 38-5.5-103, 38-5.5-106(2)(a)

116. Plaintiff incorporates herein by reference the allegations of paragraphs 1 through 115 above.

117. As both a "telecommunications provider" and a "broadband provider" authorized to do business in Colorado, Colo. Rev. Stat. § 38-5.5-102(3), (9), Metronet has "the right to construct, maintain, and operate conduit, cable, switches, and related appurtenances and facilities, and communications and broadband facilities, including small cell facilities and small cell networks, along, across, upon, above, and under any *public highway* in this state." Colo. Rev. Stat. § 38-5.5-103(1) (emphasis added).

118. Under this statute, the term “public highway” specifically includes “all roads, streets, and alleys and all other *dedicated rights-of-way and utility easements* of the state or any of its political subdivisions, whether located within the boundaries of a political subdivision or otherwise.” Colo. Rev. Stat. § 38-5.5-102(6) (emphasis added).

119. The City may not unreasonably deny a telecommunications provider use of the public highways within its jurisdiction. Colo. Rev. Stat. § 38-5.5-106(2)(a). Nor may it discriminate among or grant preference to competing telecommunications providers or broadband providers in the issuance of permits. Colo. Rev. Stat. § 38-5.5-103(2).

120. The City is interfering with Metronet’s right to construct its network under the foregoing statutory provisions, and in doing so discriminating against Metronet so as to interfere with Metronet’s right to provide competitive services under state law.

121. Additionally, “Telecommunications providers operating under the authority of the federal communications commission or the Colorado public utilities commission . . . require no additional authorization or franchise by any municipality or other political subdivision of the state to conduct business within a given geographic area.” Colo. Rev. Stat. § 38-5.5-101(2)(b). The City is plainly demanding Metronet obtain additional authorization before the City will allow Metronet to conduct business, in violation of Colo. Rev. Stat. § 38-5.5-101(2)(b). On information and belief, the City is not requiring other providers of telecommunications services to enter into another agreement with the City before they are allowed to conduct business in the City.

122. Accordingly, the City is unreasonably and unlawfully denying Metronet the right to occupy Rear Public Utility Easements within Colorado Springs, and is discriminating against Metronet, all in violation of state law.

COUNT III

Defamation *Per Se*

123. Plaintiff incorporates herein by reference the allegations of paragraphs 1 through 122 above.

124. On at least August 26, 2024 and November 12, 2024, the City stated that Metronet is not a public utility and has no right to right to utilize platted Rear Public Utility Easements in Colorado Springs.

125. Upon information and belief, the City has told and continues to falsely tell residents in Colorado Springs and prospective customers that Metronet is not a public utility and has no right to right to utilize platted Rear Public Utility Easements in Colorado Springs.

126. On at least November 12, 2024, the City also made false statements to Metronet's contractors and partners that the City was rejecting Metronet's permit requests and issuing a "stop-work" order against Metronet due to "legal issues."

127. Upon information and belief, the City has told and continues to falsely tell Metronet's contractors and partners that due to "legal issues," the City would no longer be granting Metronet's permit requests and suggesting they find alternative work.

128. The City's statements were communicated orally to, and understood by, home and property owners and/or representatives in Colorado Springs.

129. The City's statements to home and property owners and/or representatives in Colorado Springs are defamatory *per se* because they impute the criminal offense of trespass and/or other criminal offenses to Metronet, and are specifically directed at Metronet.

130. The criminal offense of trespass is one of the traditional defamation *per se* categories.

131. The City's statements were false at the time they were published.

132. At the time they were published, the City knew the statements were false, or the City made the statements with reckless disregard as to whether they were false.

133. The City's statements caused Metronet actual damages, including but not limited to harm to Metronet's reputation with customers and prospective customers, its business reputation, and its standing in the market for telecommunications services. Metronet personnel and partners have also suffered emotional distress, mental anguish, and personal humiliation caused by threats to their physical safety from homeowners acting on misinformation provided by the City.

WHEREFORE, Plaintiff demands judgment in its favor and that this Court enter:

(a) An expedited review of the matters set forth in this Complaint in order to further the Legislature's stated interest "to encourage competition among the various telecommunications providers, to reduce the barriers to entry for those providers, to authorize and encourage competition within the local exchange telecommunications market, and to ensure that all consumers benefit from such competition and expansion." Colo. Rev. Stat. § 38-5.5-101(2). An expedited review of this matter is also warranted to reduce ongoing irreparable harm the City is inflicting on Metronet, and to avoid emergency proceedings before this Court;

(b) A declaration and judgment that the City's actions effectively prohibit Metronet from providing telecommunications services and are in violation of and preempted by 47 U.S.C. § 253(a);

(c) A declaration and judgment that the City's actions violate Metronet's rights under Colo. Rev. Stat. § 38-5.5-103 to construct its network within public ROW and in Rear Public Utility Easements that have been dedicated to the public;

(d) A declaration and judgment that the City's actions violate Metronet's rights under Colo. Rev. Stat. § 38-5.5-101(2)(b) to construct its network without the need to enter into any agreement with the City for additional authorization;

(e) A declaration and judgment that the City's actions violate Metronet's rights under Colo. Rev. Stat. § 38-5.5-103(2) to compete in a nondiscriminatory legal and regulatory environment;

(f) A declaration and judgment that the City's actions constitute defamation *per se* against Metronet;

(g) A declaration and judgment affirming Metronet is entitled to equal access to all public highways as defined Colo. Rev. Stat. § 38-5.5-10(9);

(h) An injunction requiring the City to grant within 10 days of the Court's Judgment all pending excavation permit applications submitted by Metronet and to thereby authorize and permit Metronet to install, operate, and maintain a telecommunications network in Rear Public Utility Easements in the City;

(i) An injunction prohibiting the City from denying all future permit applications submitted by Metronet to construct in the public ROW and/or in Rear Public Utility Easements in the City;

(j) An injunction prohibiting the City from interfering with Metronet's contractual relationships, including any communications with Metronet contractor suggesting they should not work with Metronet;

(k) An injunction prohibiting the City from defaming Metronet by falsely informing members of the public that Metronet is not authorized to construct in the public ROW and/or in Rear Public Utility Easements in the City; and

- (l) Such other and further relief as the Court deems just and proper.

Dated: January 17, 2025

Respectfully submitted,
METRO FIBERNET, LLC
/s/ Robert G. Scott
Robert G. Scott
Courtney T. DeThomas
Davis Wright Tremaine LLP
1301 K Street, NW
Suite 500 East
Washington, DC 20005
(202) 973-4200
(202) 973-4499
bobscott@dwt.com
courtneydethomas@dwt.com

Counsel for Plaintiffs

VERIFICATION

I declare under penalty of perjury under the laws of the United States that: I have reviewed the foregoing Complaint; as to those allegations of which I have personal knowledge, I believe them to be true; as to those allegations for which I do not have personal knowledge, based on information and documents within Metronet's possession, I believe them to be true. Executed on the 17th day of January, 2025, in Evansville, Indiana.

Signature:

/s/ Kyle Hamilton
Kyle Hamilton
Executive Vice President of OSP Construction
On behalf of Plaintiff Metro Fibernet, LLC

Plaintiff Address

3701 Communications Way
Evansville, IN 47715