



ORDINANCE NO. 28199

1 AN ORDINANCE amending that certain non-exclusive franchise granted to Zayo
2 Group, LLC, a Delaware limited liability company, by City Ordinance
3 No. 28124, dated January 29, 2013, to construct, operate, and repair a
4 telecommunications system throughout the City of Tacoma; clarifying
5 certain provisions, terms and conditions of the grant of franchise;
6 specifically making such grant apply to both underground and above
7 ground use of City right-of-way where applicable.

8 WHEREAS Zayo Group, LLC, a Delaware limited liability company (“Zayo”
9 or “Franchisee”) is a telecommunications company currently involved in the
10 business of operating a telecommunications network utilizing fiber optic
11 technology, and

12 WHEREAS, as part of such network, Zayo currently operates a system of
13 fiber optic cable, a portion of which passes through the City as a result of Zayo’s
14 predecessors in interest, Metromedia Fiber Network Services, Inc. and AboveNet,
15 Inc. (Zayo acquired AboveNet, Inc. through its wholly owned subsidiary Viola Sub,
16 Inc.; AboveNet had previously acquired Metromedia Fiber as of January 2006),
17 Metromedia Fiber Network Services, Inc. having originally been granted a non-
18 exclusive franchise for the use of City right-of-way on May 23, 2000, pursuant to
19 City Ordinance No. 26623 (the “Prior Franchise”), and

20 WHEREAS, on January 29, 2013, Zayo was granted a new franchise by
21 City Ordinance No. 28124 (the “Original Franchise”) after expiration of the Prior
22 Franchise, but Zayo neglected therein to secure the ability to locate Facilities in
23 City right-of-way both under and above ground, and
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1 WHEREAS Zayo now desires to amend the Franchise to clarify its rights,
2 and the City Council is willing to make the requested clarifications; Now, Therefore,

3 BE IT ORDAINED BY THE CITY OF TACOMA:

4 Section 1. DEFINITIONS. For the purposes of this Franchise amendment,
5 the capitalized terms, phrases, words, and their derivations defined in the Original
6 Franchise shall have the meaning given therein in their usage here unless
7 otherwise expressly indicated herein.

8 Section 2. Section 1.7 of the Franchise is hereby amended to read as
9 follows:

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11 1.7 "Facilities" or "Installations" are and refer to and include, but are
12 not limited to, plant, systems, improvements, and equipment owned,
13 leased, or otherwise used by Franchisee such as poles, fiber, wires,
14 fixtures, equipment, underground circuits, and conduit in public rights-
15 of-way and other property necessary or convenient for the
16 transmission and distribution of communications service where such
17 facilities are located. This term, when used without a modifier, shall
18 be considered to encompass both Overhead Facilities and
19 Underground Facilities.

20
21 Section 3. Section 1.11 of the Franchise is hereby deleted and replaced
22 with the following:

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24 "Gross Receipts," for purposes of this Franchise, and as referenced in
25 Article VIII of the City Charter or "Gross Revenue" as referenced in Title
26 16 of the Tacoma Municipal Code means any and all revenue received



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directly or indirectly by Franchisee, that is derived from the operation of its System. Gross Receipts/Revenues shall include, by way of example and not limitation, revenues from its Telecommunications Service, all fees, late fees, installation and connection fees, upgrade and downgrade fees, and rental fees. The term Gross Receipts/Revenues shall not include any taxes on Services furnished by Franchisee imposed by any municipality, state, or other governmental unit and collected by Franchisee for such governmental unit, nor shall the term include any wholesale services provided by Franchisee upon which fees or taxes have already been levied within the City of Tacoma.

Section 4. Section 2.1 of the Franchise is hereby amended to read as follows:

2.1 Grant of Franchise. The City hereby grants to Franchisee a non-exclusive Franchise which, once it becomes effective, shall authorize Franchisee to use the City's Public Rights-of-Way within the Franchise Area to construct, repair, and operate an ~~an underground~~ fiber optic Telecommunication System to provide Telecommunication Service, and to continue using the City's Public Rights-of-Way as hereby authorized ~~under the Prior Franchise~~.

Section 5. Section 3.1 of the Franchise is hereby amended to read as follows:

3.1 Use of Public Rights-of-Way. Franchisee may, subject to the terms of this Franchise, Title 16B, the City's Right-of-Way



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Restoration Policy, and other applicable laws, construct, operate, and maintain an ~~underground~~ fiber optic Telecommunications System in Public Rights-of-Way within the Franchise Area to provide Telecommunications Services. Without limiting the foregoing, Franchisee expressly agrees that it will construct, operate, and maintain its System in compliance with the requirements of Title 16B, including those governing the placement of its Telecommunications System, and with other applicable City codes; and will obtain and maintain all bonds and billable work orders required by the same.

Section 6. Subsection 3.2 L. of the Franchise is hereby amended to read as follows:

- L. Franchisee shall not remove any Overhead or ~~underground~~ Facilities except as hereinafter provided.
 - (1) Franchisee shall not remove any Overhead or ~~underground~~ Facilities which require trenching or other opening of the Rights-of-Way along the extension of the Facilities to be removed without the express permission of the City. Franchisee must request permission from the City to remove the Facilities at least 30 days in advance of the date Franchisee proposes to begin removal.
 - (2) Franchisee shall remove such Overhead or ~~underground~~ Facilities as the City orders it to remove; provided, that the City may not order removal where such removal is primarily to give



1 economic benefit or advantage to a competing provider of
2 Telecommunications Service.

3 (3) Where trenching or other opening of the
4 Rights-of-Way along the extension of Facilities to be removed is
5 required, Franchisee must post bonds as the City may require to
6 ensure that the property is promptly removed with minimum disruption.
7 Franchisee must restore the affected property in conformance with the
8 City's Right-of-Way Restoration Policy; and Franchisee must
9 compensate those whose property it damages for the damage.
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11 (4) Subject to the City's rights to purchase the
12 Telecommunications System, Franchisee may voluntarily remove any
13 Overhead or ~~U~~nderground Facilities from the streets which have been
14 installed in such a manner that they can be removed without trenching
15 or other opening of the Rights-of-Way.
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17 Section 7. Subsection 5.2 A. of the Franchise at further subsection A. is
18 hereby amended to read as follows:

19 A. A summary of the previous year's activities for the
20 Franchise Area, including, but not limited to, the total number of
21 Customers, miles of Overhead and ~~U~~nderground Facilities, any
22 services added or dropped, and any technological changes occurring
23 in the system;
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Section 8. Except as expressly modified in this amendment, the Original Franchise remains in full force and effect. Nothing herein shall be construed as extending the Franchise Term.

Passed _____

Mayor

Attest:

City Clerk

Approved as to form:

Deputy City Attorney



**ACCEPTANCE OF CITY FRANCHISE
AMENDMENT**

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Ordinance No. _____, effective _____, 201____,
amending the Franchise previously granted by City Ordinance No. 28124.

I, _____, am the _____ of
Zayo Group, LLC, and am the authorized representative to accept the
above-referenced City franchise amendment ordinance on behalf of Zayo Group,
LLC.

I certify that this franchise amendment and all terms and conditions thereof
are accepted by Zayo Group, LLC without qualification or reservation.

DATED this _____ day of _____, 201____.

By: _____

Its: _____

Witness: _____