



ORDINANCE NO. 28463

1 AN ORDINANCE granting a non-exclusive franchise to WA-CLEC LLC, a
2 Delaware limited liability company, to construct, operate, and maintain a
3 telecommunications system in the City of Tacoma; setting forth provisions,
4 terms, and conditions of the grant of franchise; specifically making such
5 grant subject to the provisions of Title 16B, Title 9, and Title 10 of the
6 Tacoma Municipal Code, as well as the Tacoma City Charter; providing for
7 City regulation of the Telecommunications System; prescribing liquidated
8 damages and certain other remedies for violation of franchise provisions in
9 addition to those specified pursuant to the Tacoma Municipal Code and the
10 Tacoma City Charter.

11 WHEREAS WA-CLEC LLC, a Delaware limited liability company (“CLEC” or
12 “Franchisee”) is a telecommunications company currently involved in the business
13 of operating a telecommunications network utilizing fiber optic and wireless
14 technology, and

15 WHEREAS, as part of expanding such network, CLEC desires to obtain a
16 franchise to operate its telecommunications network in City of Tacoma
17 right-of-way, and

18 WHEREAS CLEC has applied to the City to install and operate Personal
19 Wireless Facilities (as defined at Section 1.14 below) and fiber optic cable within
20 the City streets and public rights-of-way, and also intends, with appropriate,
21 additional City authorization and subject to City zoning and land use regulations, to
22 place above-ground transmission facilities in certain locations in City right-of-way,
23 and

24 WHEREAS the City Council has determined to grant such a franchise to
25 CLEC upon those certain terms and conditions which the City Council deems
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necessary due to the unique nature of fiber optic cable and wireless transmission facilities as set forth herein, and

WHEREAS this City of Tacoma Telecommunications Franchise Ordinance contains the following sections:

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Now, Therefore,



BE IT ORDAINED BY THE CITY OF TACOMA:

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Section 1. Definitions. For the purposes of this Franchise, the following terms, phrases, words, and their derivations shall have the meaning given herein; words not defined herein which are defined in Title 16B of the Tacoma Municipal Code (“TMC”), shall have the same meaning or be interpreted as provided in Title 16B. Words not defined here or in Title 16B shall be construed consistently with Title 47 of the United States Code, and if not therein, they shall have their common and ordinary meaning. A reference to any Title of the TMC or to the Tacoma City Charter refers to the same as may be amended from time to time. Any reference to a “party” hereunder shall mean the City or Franchisee, as applicable, and a reference to the “parties” shall mean collectively the City and Franchisee.

1.1 “City” means the City of Tacoma, a municipal corporation of the state of Washington, and all departments, divisions, and agencies thereof, including Tacoma Public Utilities.

1.2 “City Manager” means the City Manager or the City Manager’s designee.

1.3 “Communications System” refers to a telecommunications system.

1.4 “Construction, operation, or maintenance” and similar formulations of these terms mean the named actions interpreted broadly, encompassing, among other things, installation, extension, maintenance, replacement, or components thereof, relocation, undergrounding, grading, site preparation, adjusting, testing, make-ready, and excavation.



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1.5 "Customer" means any Person or entity who legally receives within the corporate limits of the City any one or more of the services provided by the Telecommunications System. The definition of "Customer" shall also include Persons who use Franchisee's Facilities, whether as lessees or through other arrangement.

1.6 "Facilities" or "Installations" are and refer to and include, but are not limited to, plant, systems, improvements, and equipment owned, leased, installed, operated, maintained, or otherwise used by Franchisee, such as antennae, poles, fiber, wires, fixtures, equipment, underground circuits, and conduit in Public Rights-of-Way and other property necessary or convenient for the transmission and distribution of communications service where such facilities are located.

"Facilities" or "Installations," when used without a modifier, encompasses both Overhead Facilities/Installations and Underground Facilities/Installations. Nothing in this definition, or anything else in this Franchise shall be interpreted as authorizing Franchisee to construct its own support system for Overhead Facilities or any other above-ground Facilities in the Franchise Area without the additional authorizations required herein below and as proscribed by City zoning and land use regulation ordinances.

1.7 "Franchise" means the rights expressly granted by this Franchise and conditioned as set forth herein and under the TMC and City Charter.

1.8 "Franchise Area" means that area within the present and future corporate limits of Tacoma.



1 1.9 "Franchisee" means WA-CLEC LLC, a Delaware limited liability
2 company registered to do business in the state of Washington with its principal
3 office located at 2000 Corporate Drive, Canonsburg, PA 15317.

4 1.10 "Gross Receipts," for purposes of this Franchise, means any and all
5 receipts or income received directly or indirectly by Franchisee, which is derived
6 from the operation of its System in the City, less uncollectibles. Gross Receipts
7 shall include, by way of example and not limitation, revenues from its
8 Telecommunications Service, all fees, late fees, installation and connection fees,
9 upgrade and downgrade fees, and rental fees. The term Gross Receipts shall not
10 include any taxes on services furnished by Franchisee imposed by any
11 municipality, state, or other governmental unit and collected by Franchisee for such
12 governmental unit, nor shall the term include any wholesale services provided by
13 Franchisee upon which fees or taxes have already been levied within the City of
14 Tacoma.
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16 1.11 "Operator," when used with reference to a System, refers to a Person
17 (a) who provides service over a Communications System and directly or through
18 one or more affiliates owns a significant interest in such facility; or (b) who
19 otherwise controls or is responsible for, through any arrangement, the
20 management and operation of such a facility. A Person that operates under
21 agreement of a Telecommunications System or a specific portion of a
22 Telecommunications System to provide Telecommunications Services shall be
23 treated as an Operator for purposes of this Franchise.
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1.12 "Overhead Facilities" refers to existing electric utility and communications Facilities located above the surface of the ground, including the underground supports and foundations for such Facilities.

1.13 "Person" includes any individual, corporation, partnership, association, joint stock company, trust, or any other legal entity, but not the City for purposes hereof.

1.14 "Personal Wireless Facilities" are Facilities which are above ground such as transmitters, antenna structures, and other types of installations, whether related to wireless or fiber/optic transmission, now or hereafter used for the provision of personal wireless services as that term is defined in Section 704 of the 1996 Telecommunications Act.

1.15 "Public Rights-of-Way" mean the public streets and easements over which, under the City Charter, the TMC, City ordinances, and applicable laws, the City has authority to grant Franchises, permits, or Licenses for use thereof or has regulatory authority there over, but expressly excluding railroad rights-of-way/crossings, airport, and harbor areas. Public Rights-of-Way, for the purpose of this Franchise, also do not include buildings, parks, poles, conduits, or similar facilities or property owned by or leased to the City, including, by way of example and not limitation, structures in the Public Rights-of-Way such as utility poles and light poles.

1.16 "System" means the Telecommunications System.

1.17 "Telecommunications Service" or "Service" means the transmission for hire of information in electronic, optical form, or by wireless transmission, including,



1 but not limited to, voice, video, or data, whether or not the transmission medium is
2 owned by the provider itself. Telecommunications Service includes telephone
3 service, but does not include cable TV or commercial video service or over-the-air
4 broadcasts to the public-at-large from facilities licensed by the Federal
5 Communications Commission or any successor thereto.

6 1.18 "Telecommunications System" means a tangible facility that is used to
7 provide one or more Telecommunications Services, any portion of which occupies
8 Public Rights-of-Way. The term Telecommunications System, by way of example
9 and not limitation, includes antennae, wires, equipment cabinets, guys, conduit,
10 radio transmitting towers, poles, other supporting structures, and associated and
11 appurtenant facilities used to transmit telecommunications signals. The term
12 Telecommunications System includes all devices mounted on light poles (where
13 separately authorized by an attachment agreement) in the Public Rights-of-Way
14 through which Telecommunications Services are originated or terminated. An
15 Open Video System is not a Telecommunications System to the extent that it
16 provides only video services; a Cable System is not a Telecommunications System
17 to the extent that it provides only Cable Service. The term Telecommunications
18 System includes any of the tangible components of a Telecommunications System
19 which occupies Public Rights-of-Way, but poles and other structures to which
20 Franchisee's Facilities are attached shall not be deemed to be part of Franchisee's
21 Telecommunications System unless such poles or other structures are owned by
22 Franchisee.
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1 1.19. "Telephone Service" means the provision of access to a local
2 telephone network, local telephone network switching service, intrastate toll
3 service, or coin telephone service, or providing telephonic, video, data, or similar
4 communication or transmission for hire via a local telephone network, toll line,
5 channel, cable, microwave, or similar communication or transmission system by
6 any person. Telephone Service includes intrastate or interstate service, including
7 toll service, originating from, or received on, communications equipment or
8 apparatus in this State if the charge for the service is billed to a person in this
9 State. Telephone Service does not include the providing of Competitive telephone
10 service as defined in TMC 6A.40.030, the providing of cable television service, or
11 the providing of broadcast services by radio or television stations.
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13 1.20 "Underground Facilities" refers to electric utility and Communications
14 Facilities located under the surface of the ground, excluding the underground
15 foundations or supports for Overhead Facilities.
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17 Section 2. Franchise.

18 2.1 Grant of Franchise. The City hereby grants to Franchisee a
19 non-exclusive Franchise which, once it becomes effective, shall authorize
20 Franchisee to use the City's Public Rights-of-Way within the Franchise Area to
21 construct, maintain, and operate a fiber optic/wireless Telecommunication System
22 to provide Telecommunication Service and internet access service, and to use the
23 City's Public Rights-of-Way as authorized herein. This grant of Franchise does
24 not, by itself, grant any right to construct, operate, or maintain any new, above-
25 ground Facilities without prior City approval, which will require additional permitting
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1 and/or an additional site specific or master siting agreement, in conformance with
2 City zoning and land use ordinances and applicable state laws.

3 This grant is subject to and must be exercised in strict accordance with and
4 subject to this Franchise Agreement, Title 16B, and other applicable provisions of
5 the TMC and Tacoma City Charter, including, but not limited to, the provisions set
6 forth in Article VIII of the Charter, and TMC Title 13, and this Franchise may be
7 revoked under Section 2.5 if it is not so exercised. The exercise of any rights
8 pursuant to this Franchise is subject to the exercise of the City's police powers,
9 and other regulatory powers as the City may have or obtain in the future, and all
10 rights granted herein must be exercised in strict accordance with applicable laws,
11 including, by way of example and not limitation, zoning codes and permitting
12 requirements. No rights shall pass to Franchisee by implication. This Franchise
13 shall constitute both a right and an obligation to provide or cause to be provided
14 the services of the Telecommunications System as required by the provisions of
15 this Franchise.
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18 The grant of this Franchise is limited to the purpose of Franchisee providing
19 or causing to be provided Telecommunications Service and internet access
20 service. This Franchise does not include permission to provide cable service as
21 defined in 47 U.S.C. § 522, multichannel video programming, open video systems,
22 or uses other than Telecommunications Service.
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24 Notwithstanding the above grant to use Public Rights-of-Way, no Public
25 Rights-of-Way shall be used by Franchisee if the City, in its opinion, determines
26 that such use is inconsistent with the terms, conditions, or provisions by which



1 such Public Right-of-Way was created or dedicated, or presently used under
2 applicable laws.

3 In the event of any conflict or inconsistency between a provision in this
4 Franchise and any provision of the Tacoma City Charter, which Charter is
5 incorporated herein by reference, the applicable provision of the City Charter shall
6 control over any inconsistent provision of this Franchise.

7 2.2 Franchise Term. The term of the Franchise shall be ten years unless
8 terminated sooner in accordance with this Franchise, Title 16B, or the Tacoma City
9 Charter. At the expiration of the term, Franchisee may apply to extend or renew
10 the Franchise as provided in Title 16B.02.100.

11 2.3 Franchise Non-Exclusive. The Franchise granted herein shall be non-
12 exclusive.

13 2.4 Transfers, Generally.

14 A. Any transfer of this Franchise, as the term "Transfer" is defined in
15 TMC Title 16B.01.030.Y, shall be accomplished in accordance with
16 TMC Title 16B.02.120. Any intra-company Transfer of this Franchise shall be
17 excepted from the requirements of TMC Title 16B.02.120.A-B if such Transfer and
18 the Transferee Affiliate meet all of the requirements of TMC Title 16B.02.120.F (or
19 any successor ordinance). Any Transfer not made in accordance with
20 TMC Title 16B.02.120 may be considered a substantial violation of this Franchise
21 by the City and may subject the Franchise to termination proceedings by the City
22 as provided herein and in Title 16B.
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1 B. Applications for approval of any Transfer shall be filed in
2 accordance with procedures set out in Title 16B of the TMC.

3 C. Franchisee shall, within 60 days of the closing date of any
4 Transfer, file with the City Clerk a copy of the deed, agreement, contract,
5 mortgage, lease, SEC filing, or other written instrument evidencing such
6 Transfer, certified and sworn to as correct by Franchisee, subject to any
7 confidentiality provisions in any such document. Every such Transfer, whether
8 voluntary or involuntary, may be deemed void and of no effect as to the
9 effectiveness of this Franchise by the City unless Franchisee files the required
10 copy within the 60-day period.

11 D. The requirements of this section shall not be deemed to
12 prohibit the use of Franchisee's property as collateral for security in financing
13 the construction or acquisition of all or part of the Telecommunications System
14 franchised hereunder, provided that no such security shall purport to attach to
15 the City's real property interest in the Public Right-of-Way or any other City
16 interest. In addition, no such arrangement may be made if it would in any
17 respect under any condition prevent the Operator or any successor from
18 complying with the Franchise and applicable law. Any mortgage, pledge, or
19 lease shall be subject to and subordinate to the rights of the City under this
20 Franchise, and other applicable law.

21 2.5 Revocation. In addition to any rights set out elsewhere in this
22 Franchise, the City Charter, or Title 16, subject to the notice and cure provisions
23 contained in Title 16B, Section 16B.05.100, the City reserves the right to declare
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1 a forfeiture or otherwise revoke this Franchise, and all rights and privileges
2 pertaining thereto, as provided in Title 16B or in the event that:

3 A. Franchisee is in non-compliance with a material provision of this
4 Franchise; or

5 B. Franchisee is found to have engaged in any actual or attempted
6 fraud or deceit upon the City, Persons, or Customers in the City; or

7 C. Franchisee fails to obtain and maintain any permit required by
8 any federal or state regulatory body or by the City, relating to the construction,
9 maintenance, and operation of the Facilities within the Public Rights-of-Way within
10 the Franchise Area; or

11 D. At any time during the term of the Franchise, Franchisee fails to
12 provide and maintain all of the securities required under this Franchise, including,
13 but not limited to, the performance bond required under this Franchise; fails to
14 maintain the insurance required by this Franchise; or fails to satisfy the indemnity
15 set out in this Franchise; or if any guarantor of Franchisee revokes its guarantee or
16 fails to satisfy or becomes unable to satisfy its obligations under such guarantee.
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18 E. The procedures for revocation and forfeiture shall be governed by
19 Title 16B, Section 16B.05.100. Before the Franchise is revoked, Franchisee shall
20 be given notice and opportunity to cure at least equivalent to that required by
21 Title 16B as of the effective date of this Franchise (except in those cases where
22 notice and opportunity to cure are not required or would be futile), and shall be
23 accorded at least an opportunity to be heard that provides at least the due process
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1 protections required by Title 16B as of the effective date of this Franchise, which
2 opportunities and protections are set out in Section 2.5.F, below.

3 F. (1) Where, after notice and providing Franchisee an
4 opportunity to be heard (if such opportunity is requested by Franchisee), the City
5 finds that there has been an act or omission that would justify revocation of the
6 Franchise, the City may make an appropriate reduction in the remaining term of
7 the Franchise or revoke the Franchise. However, the Franchise may only be
8 revoked if Franchisee (a) was given written notice of the default; and (b) 30 days to
9 cure the default; and (c) Franchisee failed to cure the default, or to propose a
10 schedule for curing the default acceptable to the City where it is impossible to cure
11 the default in 30 days. The required written notice shall be given before the City
12 conducts the proceeding required by this paragraph. No opportunity to cure is
13 required for repeated violations of material provisions of the Franchise, and fraud
14 shall be deemed incurable.
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17 (2) Notwithstanding the foregoing, the City may declare a
18 Franchise forfeited without opportunity to cure when Franchisee: (a) fails to begin
19 to exercise its rights hereunder within 45 days of Franchisee's acceptance of this
20 Franchise, (b) stops providing or causing to be provided all Service it is required to
21 provide or cause to be provided under this Franchise, (c) Transfers without the
22 prior consent of the City as and when required in the Franchise, or (d) is found by a
23 court or regulatory body with appropriate jurisdiction to have defrauded or
24 attempted to defraud the City or Franchisee's Customers within the City.
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26 Notwithstanding the provisions of Title 16B.05.100.C.2, if Franchisee fails to timely



1 pay any undisputed Franchise application/administrative fees or other undisputed
2 fees owed hereunder or under Title 16B, before the City can initiate any
3 termination or forfeiture of rights, Franchisee shall be provided with
4 ten (10) business days' prior written notice and an opportunity to cure the failure to
5 pay. However, Franchisee shall have the right to receive 30 days' prior notice of
6 an intent to declare a Franchise forfeited, and shall have the opportunity to show
7 cause why the Franchise should not be forfeited.

8 (3) Notwithstanding the foregoing and only to the extent
9 permitted by applicable law, the Franchise will automatically terminate by force of
10 law 120 calendar days after an assignment for the benefit of creditors or the
11 appointment of a receiver or trustee to take over the business of Franchisee,
12 whether in a receivership, reorganization, bankruptcy, assignment for the benefit of
13 creditors, or other action or proceeding. However, the Franchise may be
14 reinstated within that 120-day period, if: (a) such assignment, receivership, or
15 trusteeship has been vacated; or (b) such assignee, receiver, or trustee has fully
16 complied with the terms and conditions of Title 16B and this Franchise and has
17 executed an agreement, approved by any court having jurisdiction, assuming and
18 agreeing to be bound by the terms and conditions of Title 16B and this Franchise.
19 However, in the event of foreclosure or other judicial sale of any of the facilities,
20 equipment, or property of Franchisee, the City may revoke this Franchise, following
21 a public hearing before the City Council, by serving notice upon Franchisee and
22 the successful bidder at the sale, in which event the Franchise and all rights and
23 privileges of this Franchise will be revoked and will terminate 30 calendar days
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1 after serving such notice, unless: (a) the City has approved the Transfer of the
2 Franchise to the successful bidder in writing; and (b) the successful bidder has
3 covenanted and agreed in writing with the City to assume and be bound by the
4 terms and conditions of this Franchise and Title 16B.

5 2.6 Continuity of Service and Right to Purchase the System.

6 A. In the event the City has declared a forfeiture for cause or
7 otherwise validly revoked this Franchise as provided herein, or in the event of
8 expiration of the initial term of this Franchise without this Franchise being renewed
9 or extended as provided in Section 2.2 (referred to below collectively as a
10 "termination"), Franchisee shall remove its Facilities from the Public Rights-of-Way
11 under Section 2.7, unless the City elects to purchase the Facilities as provided in
12 Section 2.6.B.

13 B. In the event the City has declared a forfeiture for cause or
14 otherwise validly revoked this Franchise as provided herein, or in the event of
15 expiration of the initial term of this Franchise without this Franchise being
16 renewed or extended as provided in Section 2.2 (referred to below collectively
17 as a "termination"), the City shall have an option upon termination of the
18 Franchise to purchase that portion of the Telecommunications System located in
19 the Right-of-Way owned by Franchisee, whether termination is, or is not, for
20 cause. This option requires Franchisee to convey the Telecommunications
21 System or such portion thereof as the City may choose to purchase, provided,
22 that nothing herein shall require the City to accept or pay for any contract that it
23 does not wish to assume. Franchisee is not required to convey portions of the
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1 Telecommunications System not located in the Right-of-Way, located outside
2 the City, or that is leased or used (but not owned) by Franchisee from a third
3 party pursuant to a tariff or contract. The foregoing option also requires
4 Franchisee to sell the Telecommunications System owned by Franchisee and
5 located in the Right-of-Way or such portion thereof as the City may choose to
6 purchase at a fair market price, if the Franchise is terminated for cause. If
7 Franchisee's request for a Franchise renewal is denied, the option requires
8 Franchisee to sell the Telecommunications System owned by Franchisee and
9 located in the Right-of-Way, or such portion thereof as the City may choose to
10 purchase, at fair market value, determined on the basis of the value of the
11 Telecommunications System as a going concern (taking into account such
12 property used and useful in providing service within the City that is not to be
13 conveyed) and with no value allocated to the Franchise itself.

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16 C. The City may exercise its Section 2.6.B option rights in the
17 following manner: the City will first give Franchisee written notice of its intent to
18 purchase the Telecommunications System or a portion of the Telecommunications
19 System and request an inventory of the System or portion specified in the City of
20 Tacoma. Thereafter, Franchisee shall sixty (60) days to produce the requested
21 inventory and the City shall have up to 180 days after receiving the inventory to
22 notify Franchisee that it intends to continue with the exercise of its right to
23 purchase the Telecommunications System or a portion of the Telecommunications
24 System. Within 90 days of the date the City notifies Franchisee of its intent to
25 exercise the option, or by such other time as the parties may separately agree, the
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1 parties shall meet to establish a price that comports with the requirements of
2 Section 2.6.B. If the parties are unable to agree to a price within 180 days after the
3 City notifies Franchisee that the City intends to exercise its purchase option, either
4 party may require the price to be set by appraisal by sending the other party notice
5 that it wishes to have the price set by appraisal. Within 45 days of the date that
6 notice is submitted, each party may appoint one appraiser. If each party appoints
7 an appraiser, the two appraisers shall appoint a third appraiser; if only a single
8 appraiser is appointed (whether by mutual agreement or because of the failure of a
9 party to timely nominate an appraiser) that appraiser shall be the sole appraiser.
10
11 The appraiser or appraisers shall establish a price for the System or portion thereof
12 that the City desires to purchase in accordance with Section 2.6.B. This appraisal
13 determination shall be final and non-appealable. The City shall have 120 days
14 after the decision of the appraisers to notify Franchisee that it wishes to conclude
15 the transaction; if it does not so notify Franchisee, the option shall be deemed
16 terminated.
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18 If the City gives the notice required by the preceding paragraph, the
19 parties will thereafter promptly sign all necessary documents required to close the
20 transaction; provided, however, that the City may make conclusion of the
21 transaction conditional upon any necessary voter approval of any bond funding for
22 acquisition of all or a part of the System and, if applicable, the successful sale of
23 the bonds.
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25 The City and Franchisee will share equally the costs associated with
26 any appraiser that is jointly appointed (by them or by the appraisers each selects);



1 the City will bear costs associated with any appraiser that it separately appoints
2 and Franchisee will bear costs associated with any appraiser that it separately
3 appoints.

4 D. (1) Nothing in this section or in any other section of this
5 Franchise shall prevent the City's exercise of its rights under the Tacoma City
6 Charter. Included within the rights granted under Tacoma's Charter is the right to
7 purchase or condemn Franchisee's property within the Franchised Area at any
8 time, which right is expressly set out in Section 8.1(c) of the Charter as follows:

9 To acquire by purchase or condemnation, for the use of
10 the city itself or its inhabitants, all of the property of the
11 grantee within the public streets, alleys, or places at a fair
12 and just value, which shall not include any valuation of
13 the franchise, right, or privilege, which shall thereupon be
14 terminated.

15 (2) Likewise, nothing in this section or in any other section
16 of this Franchise shall be read to limit the City's right to acquire the
17 Telecommunications System through exercise of any right of eminent domain
18 under state law.

19 (3) Nothing in this section shall be read to limit the City's right
20 to acquire the Telecommunications System as a result of abandonment.

21 E. In the event the City purchases, acquires, takes over, or holds all
22 or parts of the System, the City shall have the right, without limitation, to assign,
23 sell, lease, or otherwise transfer its interest in all or parts of such System to any
24 other Person or entity, including any other Franchisee of a Telecommunications
25 System, on whatever terms the City deems appropriate.
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2.7 Right to Require Removal of Property/Right to Remove Property.

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A. Upon termination of this Franchise, Franchisee may be required to remove its property from any Public Rights-of-Way and restore such Rights-of-Way to the condition required by the TMC and City's Right-of-Way Restoration Policy, subject to any rights Franchisee may have to abandon property in place, as set out in Title 16B. If Franchisee fails to remove property that the City requires it to remove, the City may perform the work and collect the actual cost thereof from Franchisee. The actual cost thereof, including direct and indirect administrative costs, shall be a lien upon all plant and property of Franchisee effective upon filing of the lien with the Pierce County Auditor. In the event that Franchisee is permitted to abandon its Facilities in place, the City acknowledges that any ownership it takes in the Facilities thereafter is taken on an AS-IS, WHERE-IS basis.

B. To the extent any portion of the System in the Public Rights-of-Way or on any other public property of the City is not removed by the Operator within 12 months of the end of the Franchise term, the property will be deemed abandoned in its AS-IS, WHERE-IS condition and shall become the property of the City if the City wishes to own it.

C. Any order by the City issued pursuant to Section 2.7.A to remove Facilities shall be sent by registered or certified mail, postage prepaid, return receipt requested, to Franchisee not later than 24 months following the date of Franchise termination. Removal shall be completed (except with respect to



property that Franchisee is permitted to abandon in place) not later than 12 months following the date of notification to remove the Facilities.

D. Franchisee shall file a written removal plan with the City not later than 30 calendar days following the date of the receipt of any orders directing removal, or any consent to removal describing the work that will be performed, the manner in which it will be performed, and a schedule for removal by location. The removal plan shall be subject to approval and regulation by the City, including, without limitation, the City's Right-of-Way Restoration Policy. The affected property must be restored in compliance with the City's Right-of-Way Restoration Policy; and any damage caused by Franchisee's removal must be addressed/compensated to the reasonable satisfaction of the City.

E. The purchase option provided for in Section 2.6 does not affect the City's authority to require Franchisee to remove any portion of its Telecommunications System that the City will not purchase upon Franchisee termination, as provided in this section and Title 16B, nor does it affect the City's right to assume ownership of any portion of the Telecommunications System that is abandoned. Within 60 days of a request by the City, Franchisee shall execute such documents as may be required to convey such abandoned property to the City, free and clear of all encumbrances.

2.8 Intentionally Omitted.

2.9 Responsibility for Costs. Except as expressly provided otherwise, any act that Franchisee is required to perform under this Franchise shall be performed at its cost. If Franchisee fails to perform work that it is required to perform within



1 the time provided for performance, the City, after first providing notice and an
2 opportunity to cure as herein provided, may perform the work and bill Franchisee
3 the actual cost thereof. Franchisee shall pay the amounts billed within 30 days of
4 receipt of an itemized bill. The parties agree that any amounts paid pursuant to
5 this section or Title 16B are not franchise fees.

6 2.10 Work of Contractors and Subcontractors. Work by contractors and
7 subcontractors is subject to the same restrictions, limitations, and conditions as if
8 the work were performed by Franchisee. Franchisee shall be responsible for all
9 work performed by its contractors and subcontractors, and others performing work
10 on its behalf as if the work were performed by it, and shall ensure that all such
11 work is performed in compliance with this Franchise and Title 16B, and other
12 applicable laws, including, without limitation, the City's Right-of-Way Restoration
13 Policy. Franchisee and its contractors and subcontractors shall be jointly and
14 severally liable for all damages and correcting all damages they cause. It is
15 Franchisee's responsibility to ensure that contractors, subcontractors, or other
16 Person(s) performing work on Franchisee's behalf are familiar with the
17 requirements of this Franchise, Title 16B, the City's Right-of-Way Restoration
18 Policy, and other applicable laws governing the work performed by them.

19 2.11 Survival of Terms. Upon the termination or forfeiture of the Franchise,
20 Franchisee shall no longer have the right to occupy the Public Rights-of-Way for
21 the purpose of providing Telecommunications Service. However, Franchisee's
22 obligations to the City (other than the obligation to provide service or cause such
23 service to be provided to Customers) survive the expiration of these rights
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1 according to their terms. By way of illustration and not limitation, Sections 2.6, 2.7,
2 2.9, 2.10, and 4 of this Franchise shall continue in effect as to Franchisee
3 notwithstanding any expiration, forfeiture, or revocation of the Franchise, except to
4 the extent that a City-approved Transfer, sale, or assignment of the
5 Telecommunications System is completed and another entity has assumed full and
6 complete responsibility for the Telecommunications System or for the relevant acts
7 or omissions.

8 2.12 Termination by Franchisee. Franchisee may terminate this Franchise,
9 with or without cause, upon sixty (60) days' written notice of its intent to so
10 terminate. Upon termination, Franchisee shall accrue no further obligations
11 hereunder, but any obligations accrued prior to termination shall remain, as shall
12 obligations that by their terms survive the termination hereof.

14 Section 3. Operation in Streets and Rights-of-Way.

15 3.1 Use of Public Rights-of-Way. Franchisee may, subject to the terms of
16 this Franchise and TMC Titles 16B and 13, the City's Right-of-Way Restoration
17 Policy, and other applicable laws, enter onto and use the Public Rights-of-Way to
18 construct, operate, and maintain a Telecommunications System in Public
19 Rights-of-Way within the Franchise Area, to provide, or cause to be provided,
20 Telecommunications Services and internet access services. Under this Franchise,
21 Franchisee may also construct Personal Wireless Facilities, but may only do so
22 after obtaining an additional site-specific or master siting agreement from the City
23 for such Personal Wireless Facilities. Without limiting the foregoing, Franchisee
24 expressly agrees that it will construct, operate and maintain its System in
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1 compliance with the requirements of the TMC, including, but not limited to,
2 Title 16B and Title 13 zoning and land use regulations governing the placement of
3 its Telecommunications System; and will obtain and maintain all bonds and billable
4 work orders required by the same.

5 3.2 Construction, Operation, or Maintenance. Franchisee shall, in all
6 cases, comply with all lawful City ordinances and regulations now in effect or
7 hereinafter enacted regarding the acquisition of permits and such other items as
8 may be required by the City in connection with the construction, operation, or
9 maintenance of the Telecommunications System, including, without limitation, the
10 City's Right-of-Way Restoration Policy.
11

12 Without limiting the foregoing, Franchisee agrees that it shall, in the course
13 of constructing, operating, and maintaining its Telecommunications System,
14 comply with the requirements of Titles 16B and 13, and among other things:
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16 A. (1) Franchisee shall, by a time specified by the City, protect,
17 support, temporarily disconnect, relocate, or remove any of its property when
18 required by the City by reason of traffic conditions; public safety; Public
19 Rights-of-Way construction; Public Rights-of-Way repair (including resurfacing or
20 widening); change of Public Rights-of-Way grade; construction, installation or
21 repair of sewers, drains, water pipes, power lines, signal lines, tracks, or any other
22 type of government-owned Communications System, public work, public project,
23 public facility, or improvement or any government-owned utility; Public Rights-of-
24 Way vacation; or for any other purpose where the work involved would be aided by
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1 the removal or relocation of the Telecommunications System. Collectively, such
2 matters are referred to below as the “public work.”

3 (2) In the event of an emergency, or where the
4 Telecommunications System creates or is contributing to an imminent danger to
5 health, safety, or property, the City may protect, support, temporarily disconnect,
6 remove, or relocate any or all parts of the Telecommunications System without
7 prior notice, and charge Franchisee for actual costs incurred.

8 (3) In the case of non-public work, if any Person that is
9 authorized to place Facilities in the Rights-of-Way requests Franchisee to protect,
10 support, temporarily disconnect, remove, or relocate Franchisee’s facilities to
11 accommodate the construction, operation, or maintenance of the facilities of such
12 other Person, Franchisee shall, after 30 days’ advance written notice, take action
13 to effect the necessary changes requested. In the case of non-public work or
14 non-public projects, unless, and to the extent, the matter is governed by a valid
15 contract between Franchisee and such Person requesting Franchisee to take
16 action under this subsection (3) or governed by a valid state or federal law or
17 regulation, or unless Franchisee’s Telecommunications System was not properly
18 installed, the reasonable cost of the same shall be borne by the Person requesting
19 the protection, support, temporary disconnection, removal, or relocation and at no
20 charge to the City, even if the City makes the request for such action.

21 (4) Franchisee shall, on the request of any Person holding a
22 valid permit issued by a governmental authority, temporarily raise or lower its wires
23 to permit the moving of buildings or other objects. The expense of such temporary
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1 removal or raising or lowering of wires shall be paid by the Person requesting the
2 same.

3 B. Franchisee's obligation to construct, operate, and maintain its
4 Telecommunications System in compliance with all applicable laws, ordinances,
5 departmental rules and regulations, and published or otherwise readily available
6 practices affecting such System, includes, by way of example, and not limitation,
7 the obligation to construct, operate, and maintain in accordance with zoning codes,
8 safety codes, and City construction standards, including the most current version
9 of the Standard Specifications for Road, Bridge, and Municipal Construction, as
10 prepared by the Washington State Department of Transportation ("WSDOT") and
11 the Washington State Chapter of American Public Works Association ("APWA");
12 the most current version of the APWA Amendments to Division One; and the most
13 current version of the City of Tacoma Amendments thereto. In addition, the
14 construction, operation, and maintenance shall be performed in a manner
15 consistent with industry standards. Franchisee shall exercise reasonable care in
16 the performance of all its activities and shall use commonly accepted methods and
17 devices for preventing failures and accidents that are likely to cause damage,
18 injury, or nuisance to the public or to property. In the event that Franchisee's work
19 or other use of the Public Rights-of-Way causes damage to any City facility,
20 Franchisee shall bear the cost of repairing, or replacing as necessary, such City
21 facility.
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25 C. Franchisee's construction, operation, or maintenance of its
26 Telecommunications System shall not commence until all required permits or



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agreements have been properly filed for and obtained from the proper City officials and all required permits and agreements obtained and associated fees paid. In any permit so issued, the City may impose, as a condition of the granting of the permit, such conditions and regulations as may be necessary to the management of the Public Rights-of-Way, including, by way of example and not limitation, for the purpose of protecting any structures in the Public Rights-of-Way, maintaining proper distance from other utilities, for the proper restoration of such Public Rights-of-Way and structures, and for the protection of the City and the public and the continuity of pedestrian and vehicular traffic.

D. Franchisee must follow City-established requirements for placement of Facilities in Public Rights-of-Way, including the specific location of all Facilities, which includes, without limitation, Personal Wireless Facilities, in the Public Rights-of-Way, and must in any event install Facilities in a manner that minimizes interference with the use of the Public Rights-of-Way by others, including others that may be installing Communications Facilities.

The City may require that Facilities be installed at a particular time, at a specific place, or in a particular manner as a condition of access to a particular Public Right-of-Way area; may deny access if Franchisee is not willing to comply with the City's requirements; and may remove, or require removal of, any Facility that is not installed in compliance with the requirements established by the City, or which is installed without prior City approval of the time, place, or manner of installation and charge Franchisee for all the costs associated with removal; and may require Franchisee to cooperate with others to minimize adverse impacts on



1 the Public Rights-of-Way through joint trenching and other arrangements
2 consistent with requirements the City imposes on other similarly situated
3 franchisees or users of the Public Rights-of-Way.

4 E. Franchisee agrees that, as a condition of a permit for installation
5 of conduit, the City may require it to install conduit in excess of its reasonably
6 foreseeable requirements for the purpose of accommodating the City where the
7 City Manager determines it is appropriate to do so to minimize disruption of public
8 passage or infrastructure, to forestall or relieve exhaustion of Right-of-Way
9 capacity, or to protect environmentally sensitive areas; provided, that the City will
10 be responsible for the additional costs, including material and labor, associated
11 with installing such excess conduit if installed for City use; and provided further,
12 that City's use of any such excess conduit is limited to non-commercial,
13 governmental uses.

14 F. To the extent possible and technically and operationally feasible,
15 Franchisee shall use conduit existing at the time of permitting in installing its
16 System.

17 G. Subject to subsection G(3) below, and recognizing that
18 Franchisee's intended Personal Wireless Facilities are intended to be located
19 above-ground, Franchisee shall be subject to the requirement that whenever all
20 existing utilities are located underground in an area in the City, Franchisee, at its
21 own cost, must also locate its Telecommunication System underground, including
22 Telecommunication System Facilities, such as drops, which cross private property.
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(1) Whenever the owners of poles locate or relocate underground within an area of the City, Franchisee shall concurrently relocate its Facilities underground at its own cost.

(2) Whenever an electric utility opens a trench for the purpose of installing or relocating Facilities underground, Franchisee shall concurrently relocate its Facilities underground and, if it uses the same trench, be responsible for its pro-rated share of the cost.

(3) The City Manager may, for good cause shown, exempt a particular portion of the Telecommunication System from the obligation to locate or relocate Facilities underground, where relocation is impractical, where the Facilities, due to the nature of their function must be above-ground, or where the interest in protecting against visual blight can be protected in another manner. Nothing in this Section 3.2.G prevents the City from ordering Franchisee to locate or relocate its Telecommunication System, either underground, or to a mutually agreed upon above-ground location, when other existing utilities in an area are ordered to locate or relocate their facilities underground under other provisions of the TMC, it being the intent that the number and extent of Overhead Facilities and the visual pollution resulting therefrom will, over time, be reduced and eventually, to the extent feasible, be eliminated.

H. Subject to subsection G(3) above, Franchisee shall participate in conversion to underground Local Improvement Districts ("LIDs") at the same time as other utilities are required to participate in conversion to underground LIDs. Franchisee, at no cost to the City or abutting property owners, shall share fairly



with other utilities the cost of undergrounding when done through the LID process.

1 As part of its obligations under the TMC, Franchisee shall provide the preliminary
2 cost estimate, facility conversion designs, and final cost estimates to any LID
3 project coordinator in a timely manner. At the request of an LID project
4 coordinator, Franchisee shall perform underground construction and movement of
5 Customer connections underground (overhead reclaim), in coordination with the
6 undergrounding services provided by other LID utilities, at no cost to the City or
7 abutting property owners.
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9 I. Franchisee shall promptly repair any and all Public Rights-of-Way,
10 public property, or private property that is disturbed or damaged during the
11 construction, operation, or maintenance of its Telecommunications System. Public
12 property and Public Rights-of-Way must be restored in conformance with the City's
13 Right-of-Way Restoration Policy.
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15 J. No tree trimming shall be performed without the permission of the
16 City and other affected authorities, and any tree trimming must be performed in
17 strict accordance with the TMC. Even if tree trimming is authorized by the City,
18 Franchisee is liable for any damage it causes during the course of tree trimming.
19

20 K. In any dispute over the adequacy of a restoration relative to this
21 section, the Tacoma Department of Public Works Director shall, in his/her sole
22 discretion, make the final determination.
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24 L. Franchisee shall not remove any Facilities except as hereinafter
25 provided.
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(1) Franchisee shall not remove any 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, which permission shall not be unreasonably withheld, conditioned, or delayed. 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 Facilities as the City orders it to remove; provided, that the City may not order removal where such removal is primarily to give economic benefit or advantage to a competing provider of Telecommunications Service.

(3) Where trenching or other opening of the Rights-of-Way along the extension of Facilities to be removed is required, Franchisee must post bonds as the City may require ensuring that the property is promptly removed with minimum disruption. Franchisee must restore the affected property in conformance with the City's Right-of-Way Restoration Policy; and Franchisee must compensate those whose property it damages for the damage.

(4) Subject to the City's rights to purchase the Telecommunications System under Section 2, Franchisee may voluntarily remove any Facilities from the Public Rights-of-Way which have been installed in such a manner that they can be removed without trenching or other opening of the Public Rights-of-Way.

3.3 Right to Inspect and Order Corrections. The City may, at its cost, inspect the Telecommunications System at any time reasonable under the



1 circumstances to ensure compliance with this Franchise and applicable law,
2 including to ensure that Franchisee's Telecommunications System is constructed
3 and maintained in a safe condition. If Franchisee's representatives are not on-site
4 performing work on the Telecommunications System, whenever feasible, the City
5 shall give reasonable advance notice of its intent to inspect so that Franchisee may
6 have a representative present during the inspection. If an unsafe condition is
7 found to exist, the City, in addition to taking any other action permitted under
8 applicable law, may order Franchisee, in writing, to make the necessary repairs
9 and alterations specified therein forthwith to correct the unsafe condition on a time
10 table established by the City which is reasonable in light of the unsafe condition.
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12 The City has the right to correct, inspect, administer, and repair the unsafe
13 condition if Franchisee fails to do so in a timely manner, and to charge Franchisee
14 therefor.

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16 3.4 Information Regarding Ongoing Work. In addition to providing notice to
17 the public of ongoing work as may be required under applicable law, Franchisee
18 shall make available information regarding any ongoing construction, operation, or
19 installation of its Telecommunications System sufficient to show (1) the nature of
20 the work being performed; (2) where it is performed; (3) its estimated completion
21 date; and (4) progress to completion.

22
23 Section 4. Regulatory Provisions.

24 4.1 Intent. The City shall have the right to administer and regulate activities
25 of this Franchise up to the fullest extent of the law. The failure to reserve a
26 particular right to regulate, or reference a particular regulation, shall not be



1 interpreted by negative implication or otherwise to prevent the application of a
2 regulation to Franchisee.

3 4.2 Remedies for Franchise Violations. The City has the right to exercise
4 any and all of the following remedies, singly or in combination, in the event
5 Franchisee violates any provision of this Franchise:

6 A. Draw upon the performance bond or other security provided
7 under this Franchise; provided, however, such drawing shall be only in such a
8 manner and in such amount as the City reasonably determines is necessary to
9 remedy the default. Should the City take this action, Franchisee shall be
10 responsible for all direct and actual costs related to such action, including, but not
11 limited to, actual legal and administrative costs:

12 B. Commencing an action at law for monetary damages;

13 C. Commencing an action for equitable or other relief;

14 D. Declaring the Franchise to be revoked; and/or

15 E. Seeking specific performance of any provision which reasonably
16 lends itself to such remedy.
17

18 In determining which remedy or remedies for Franchisee's violation are
19 appropriate, the City may take into consideration the nature and extent of the
20 violation, the remedy needed to prevent such violations in the future, whether
21 Franchisee has a history of previous violations of the same or similar kind, and
22 such other considerations as are appropriate under the circumstances. Remedies
23 are cumulative; the exercise of one shall not foreclose the exercise of others.
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1 4.3 Procedure for Remedying Franchise Violations. Before imposing
2 liquidated damages, or drawing upon the performance bond or any other security
3 set out in Section 6, the City shall follow the procedure below.

4 A. Notice of Violation. In the event that the City believes that
5 Franchisee has not complied with the terms of this Franchise, the City shall notify
6 Franchisee in writing, by certified mail, of the nature of the alleged noncompliance.

7 B. Franchisee's Right to Cure or Respond. Except as provided in
8 Section 4.3.D, Franchisee shall have 30 days from the receipt of notice described
9 above to (a) respond to the City contesting the assertion of noncompliance, or
10 (b) to cure such default or, in the event that by the nature of the default such
11 default cannot be cured within the 30-day period, initiate steps to remedy such
12 default as promptly as possible and complete the cure within a reasonable time.
13 The duty to cure includes the duty to cure all harms caused by the acts or
14 omissions of Franchisee which gave rise to the alleged non-compliance. At the
15 end of the 30-day period, Franchisee shall notify the City in writing of the steps it
16 has taken to cure the default, if any; if the cure is not complete, the reason it is not
17 complete and the projected date for completion; and if the default is disputed, the
18 complete basis for that contention.
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21 C. Public Hearing. The City may schedule a public hearing to
22 investigate any alleged default. The City shall give Franchisee 20 calendar days'
23 notice of the time and place of the hearing and provide Franchisee with an
24 opportunity to be heard.
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1 D. Action after Hearing. If the City determines after such hearing
2 that the Franchisee did not timely cure, or initiate steps to cure the default in a
3 timely manner satisfactory to the City, after the notice required by Section 4.3.A
4 was provided, then the City may draw upon any performance bond, security fund,
5 or other security, including requiring performance under the guarantee; and impose
6 liquidated damages. However, notice and opportunity to cure are not required for
7 repeat violations, or for a failure to correct a default where Franchisee knew or
8 should have known it was in default; in such cases, the performance bond, letter of
9 credit, or other security may be drawn upon, the guarantor required to perform and
10 liquidated damages imposed after the hearing required by Section 4.3.C.
11

12 E. Liquidated Damage Amounts. Because any material failure to
13 comply with the provisions of this Franchise by Franchisee will result in injury to the
14 City, and because it may be difficult to estimate the extent of each such injury,
15 Franchisee and the City agree to the following liquidated damages, which
16 provisions represent the best estimate of the damages resulting from injuries of
17 specific types. The amounts of the liquidated damages set forth in this Franchise
18 are in 2017 dollars and shall be increased each year by the increase in the
19 U. S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index for
20 Pacific Cities and U. S. City Average for the greater Seattle area. The amount of
21 liquidated damages for all material violations of this Franchise for which actual
22 damages may not be ascertainable shall be: \$500 per day for each violation, for
23 each day the violation continues. It is provided, however, that the City shall allow
24 Franchisee a minimum of 30 days after notice to Franchisee of such neglect,
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1 failure, or refusal to comply within which to meet compliance or correct
2 performance, prior to the assessment of any liquidated damages.

3 4.4 Failure to Enforce. Franchisee shall not be relieved of any of its
4 obligations to comply promptly with any provision of this Franchise by reason of
5 any failure of the City to enforce prompt compliance, and the City's failure to
6 enforce shall not constitute a waiver of rights or acquiescence in Franchisee's
7 conduct.

8 4.5 Force Majeure. Franchisee shall not be deemed in default with
9 provisions of this Franchise where performance was rendered impossible by war
10 or riots, civil disturbances, floods, or other natural catastrophes beyond
11 Franchisee's control; the unforeseeable unavailability of labor or materials; or
12 power outages exceeding back-up power supplies. The acts or omissions of
13 affiliates shall not be deemed to be beyond Franchisee's control, and the
14 knowledge of affiliates shall be imputed to Franchisee. This Franchise shall not
15 be revoked or Franchisee penalized for such noncompliance, provided that
16 Franchisee takes immediate and diligent steps to bring itself back into compliance
17 and to comply as soon as possible under the circumstances with this Franchise
18 without unduly endangering the health, safety, and integrity of Franchisee's
19 employees or property, or the health, safety, and integrity of the public, Public
20 Rights-of-Way, public property, or private property.
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24 4.6 Alternative Remedies. No provision of this Franchise shall be deemed
25 to bar the right of the City or Franchisee to seek or obtain judicial relief from a
26 violation of any provision of this Ordinance or any rule, regulation, requirement, or



1 directive promulgated thereunder. Neither the existence of other remedies
2 identified in this Franchise nor the exercise thereof shall be deemed to bar or
3 otherwise limit the right of the City or Franchisee to recover monetary damages for
4 such violation by Franchisee, or to seek and obtain judicial enforcement of
5 Franchisee's or City's obligations by means of specific performance, injunctive
6 relief or mandate, or any other judicial remedy at law or in equity.

7 4.7 Compliance with the Laws. Franchisee shall comply with all applicable
8 federal and state laws and regulations, including regulations of any administrative
9 agency thereof, as well as all applicable City ordinances, resolutions, rules,
10 policies, and regulations heretofore or hereafter adopted or established during the
11 entire term of the Franchise; provided that, nothing herein shall prevent Franchisee
12 from challenging a provision of laws that applies only to it as an impairment of
13 contract. Nothing in this Franchise shall limit the City's right of eminent domain
14 under state law. Nothing in this Franchise shall be deemed to waive the
15 requirements of any lawful code or resolution of the City regarding permits, fees to
16 be paid, or manner of construction.

19 Section 5. Reporting Requirements.

20 5.1 Annual Reports. Within 120 days following the end of Franchisee's
21 fiscal year each year, Franchisee shall submit a written report to the City which
22 shall contain a listing of all categories of Gross Receipts collected by Franchisee
23 for its business activities as identified in Section 2.1, which are activities
24 specifically taxable as a telephone business under TMC Title 6. Said written report
25 shall be in sufficient detail and with sufficient explanation to enable the City to
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understand the report and to verify the accuracy of the report. In addition,
1 Franchisee shall provide such other reports as may be required by Title 16B.

2 5.2 Future Franchise Fee Report. In the event that changes in applicable
3 laws allow the City to require a franchise fee as referenced at Section 6 below,
4 then no later than 120 days following the end of Franchisee's fiscal year each year
5 after the imposition of franchise fees, Franchisee shall present a written report to
6 the City which shall include:
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8 A. Audited financial statements for (1) Franchisee and (2) any
9 affiliate which is involved in any way with the operation or ownership of the
10 System; and a financial statement for Franchisee that includes Gross Receipts
11 from all sources, as well as an income statement and a balance sheet. In the
12 event any audited financial report has not been published by the date due under
13 this section, then the audited financial report shall be deemed presented on time if
14 presented within 30 days after publication.
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17 All financial reports required under this section shall be presented to
18 the City, accompanied by such notes and explanations as are required to fully
19 understand the reports. Such notes and explanations shall include, but not be
20 limited to, an explanation of any and all deductions made from Gross Receipts for
21 the calculation of fees or taxes to be paid to the City, as well as:
22

23 (1) A summary of the previous year's activities for the
24 Franchise Area, including, but not limited to, the total number of Franchisee's
25 customers (if any), miles of Facilities, any services added or dropped, and any
26 technological changes occurring in the system;



(2) Plans for the future; and

(3) Such other information as is required by Title 16B.

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5.3 Additional Reports. Franchisee shall prepare and furnish to the City within 60 days of written request, to the person and address specified in the City's request, in a form reasonably prescribed by the City, such additional reports with respect to Franchisee's operation, affairs, transactions, or property as may be reasonably necessary and appropriate to ensure compliance with the material provisions of this Franchise, or to permit the performance of any of the rights, functions, or duties of the City in connection with the Franchise.

5.4 Preservation of Confidential Information. Trade secrets and confidential information designated as such by Franchisee shall be subject to such protection as provided in Title 16B or under chapter 42.56 RCW, or as otherwise provided by applicable laws. Franchisee shall be responsible for clearly and conspicuously identifying the work as confidential or proprietary, and shall provide a brief written explanation regarding its position on the protected status of the information under state or federal law. In the event that the City receives a public records request under chapter 42.56 RCW or similar law for the disclosure of information Franchisee has designated as confidential, trade secret, or proprietary, the City shall promptly provide notice of such disclosure so that Franchisee can take appropriate steps to protect its interests. Nothing in this section prohibits the City from complying with chapter 42.56 RCW, or any other applicable law or court order requiring the release of public records, and the City shall not be liable to Franchisee for compliance with any law or court order requiring the release of



public records. The City shall comply with any injunction or court order obtained by Franchisee which prohibits the disclosure of any such confidential records.

Section 6. Compensation and Financial Provisions.

6.1 Fees; Taxes.

A. State Prohibition of Franchise Fee. The parties understand that RCW 35.21.860 currently prohibits a municipal franchise fee for the intended use. Franchisee agrees that if this statutory prohibition is removed, the City may assess a reasonable franchise fee, to be agreed to by the parties if the statutory prohibition is removed. The parties agree that this Section 6.1.A does not limit the right of Franchisee to challenge the Franchise Fee pursuant to 47 USC § 253.

B. Franchisee Subject to the City Telephone Business Tax.

Franchisee agrees that its activities in the City of Tacoma identified in Section 2.1, but excluding internet access service, are activities specifically taxable as a telephone business under TMC Chapter 6A, and are taxable at the rate specified in TMC 6A.40.050.D, now in effect or as amended, but excluding any Gross Receipts from the provision of internet access service. It is agreed that the amount of Gross Receipts to be taxed will include the amount of tax imposed on Franchisee by City ordinance. This Franchise does not limit the City's power of taxation.

C. Franchisee Obligated to Pay Administrative Costs. In accord with

RCW 35.21.860 as presently effective, and as it may be later amended, Franchisee must pay the City an amount sufficient to recover administration expenses incurred in receiving and approving this Franchise, including, but not limited to, the reasonable costs of outside consultants retained by the City to assist



1 in the City's consideration and processing of this Franchise application. The first
2 \$5,000 of said expenses will be covered by the \$5,000 application fee deposited
3 with the City. To the extent allowed by RCW 35.21.860 or other applicable laws,
4 Franchisee may be required to pay other costs applicable to this Franchise and
5 Franchisee's activities hereunder. The amount of payment to be made by
6 Franchisee to cover these administrative costs shall be determined by the Franchise
7 Services Manager in conformance with applicable laws. Such obligation further
8 includes municipal fees related to receiving and approving permits or licenses,
9 inspecting plans and construction, or relating to the preparation of a detailed
10 statement pursuant to Chapter 43.21C RCW. Said fees must be paid within 30 days
11 of receipt of the City's billing therefor.
12

13 D. Manner of Payment; Audit. Franchisee will pay the City Telephone
14 Business Tax specified in Section 6.1.B on a monthly basis accompanied by
15 Franchisee's standard remittance form which specifies the net taxable charges, the
16 local tax rate, and the local tax due, plus penalties and/or interest, if any is due.
17 Franchisee shall make all other required fee payments in the form, at the intervals,
18 and in the manner requested by the City Treasurer, and furnish him/her any
19 information related to his/her revenue collection functions reasonably requested. In
20 case of audit, the City Treasurer may require Franchisee to furnish a verified
21 statement of compliance with Franchisee's obligations or in response to any
22 questions. Said certificate may be required from an independent, certified public
23 accountant, at Franchisee's expense. All audits will take place on Franchisee's
24 premises or offices furnished by Franchisee, which shall be a location within the City
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1 of Tacoma or other mutually agreeable place; however, Franchisee must agree to
2 pay the associated costs of travel. Franchisee agrees, within 30 days of written
3 request of the City Treasurer, to provide, to the person and address specified in the
4 City Treasurer's request, copies of all documents filed with any federal, state, or
5 local regulatory agency, to be mailed to the City Treasurer on the same day as filed,
6 postage prepaid, affecting any of Franchisee's Facilities or business operations in the
7 City of Tacoma.

8 E. No Other Deductions. No deductions, including current or
9 previously paid fees, shall be subtracted from the Gross Receipts amount except
10 as allowed under state or federal law, upon which payments are calculated and
11 due for any period, nor shall copyright fees or other license fees paid by
12 Franchisee be subtracted from Gross Receipts for purposes of calculating
13 payments.
14

15 F. Late Payments. Any fees owing which remain unpaid more than
16 10 business days after the dates specified herein shall be delinquent and shall
17 thereafter accrue interest at the maximum allowable rate pursuant to
18 RCW 19.52.020.
19

20 G. Period of Limitations. The period for commencing an action for
21 the recovery of any fee payable hereunder shall be six years from the date on
22 which payment by Franchisee is due, subject to tolling as provided as a matter of
23 law or equity. Unless within six years from and after the due date for a particular
24 payment, the City makes written request to review Franchisee's records with
25 respect to such fee payment (either individually or as part of a broader request)
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1 recovery shall be barred with respect to such payment and the City shall be
2 estopped from asserting any claims whatsoever against Franchisee relating to any
3 alleged deficiencies in that particular payment.

4 6.2 Auditing and Financial Records. Franchisee shall manage all of its
5 operations in the City of Tacoma in accordance with a policy of keeping books and
6 records open and accessible to the City. Without limiting its obligations under this
7 Franchise, Franchisee agrees that it will collect and make books and records for
8 operations in the City of Tacoma available for inspection and non-confidential
9 books and records for operations in the City of Tacoma for copying by the City in
10 accordance with Title 16B. Franchisee shall be responsible for collecting the
11 information and producing it. Books and records shall be made available for
12 inspection to the City at the Tacoma Municipal Building, or such other location as
13 the parties may agree. Notwithstanding any provision of Title 16B or this
14 Franchise, if documents are too voluminous or for security reasons cannot be
15 produced at the Tacoma Municipal Building or mutually agreeable location within
16 the City, then Franchisee may produce the material at another central location,
17 provided it also agrees to pay the additional reasonable costs incurred by the City
18 in reviewing the materials if such location is outside the City.

19 Franchisee shall take all steps reasonably required, if any, to ensure that it
20 is able to provide the City all information which must be provided or may be
21 requested under Title 16B or this Franchise, including by providing, or causing to
22 be provided, appropriate Subscriber privacy notices. Nothing in this section shall
23 be read to require a Franchisee to violate 47 U.S.C. §§ 222 or 551 or to disclose or
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make available to the City any books and records protected from disclosure under other applicable law. Franchisee shall be responsible for redacting any data that federal law prevents it from providing to the City; provided, that the City shall promptly return or destroy upon Franchisee's written request any data prohibited by federal law to be provided to the City and erroneously provided to the City. Records shall be kept for at least six years. In addition to maintaining all records as required by Title 16B, Franchisee shall maintain records sufficient to show its compliance with the requirements of this Franchise, and shall produce those records within 30 days of a City request.

Franchisee agrees to meet with a representative of the City upon request to review its methodology of record-keeping, financial reporting, computing fee obligations, and other procedures, the understanding of which the City deems necessary for understanding the meaning of reports and records.

The City agrees to request access to only those books and records, in exercising its rights under this section, which it deems reasonably necessary as part of a bona fide exercise of its authority over the Telecommunications System under this Franchise, Title 16B, or other applicable law. The City further agrees that it will withhold from public disclosure those books and records made available to it pursuant to this Section 6.2, but only to the extent that the City believes that it has the discretion to do so under state law. The City will, however, provide notice to Franchisee of any request for such books and records so that Franchisee can engage whatever protective measures are available to it.



6.3 Performance Bond. At the same time it provides its Franchise
1 acceptance to the City, Franchisee shall provide a performance bond to ensure the
2 faithful performance of its responsibilities under this Franchise and applicable law,
3 including, by way of example and not limitation, its obligations to relocate and
4 remove its facilities, and to restore City Rights-of-Way and other property. The
5 initial amount of the performance bond shall be \$250,000. The amount of the bond
6 may be changed from time to time to reflect changed risks to the City or to the
7 public. Franchisee may be required to obtain additional bonds in accordance with
8 the City's ordinary practices and/or pursuant to applicable TMC provisions. The
9 bond shall be in a form and with a surety (authorized to do business in the state of
10 Washington) reasonably acceptable to the City's Risk Manager and in a form
11 reasonably acceptable to the City Attorney. Franchisee shall pay all premiums or
12 costs associated with maintaining the bond, and shall keep the same in full force
13 and effect at all times during the Franchise Term.
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6.4 Indemnification by Franchisee.
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18 A. Franchisee, by accepting this Franchise, agrees to release the
19 City from and against any and all liability and responsibility in or arising out of, or
20 by reason of, or resulting from or of the negligent acts, errors, or omissions of
21 Franchisee during the construction, operation, or maintenance of the
22 Telecommunications System, and, without limiting the provisions of Section 7.4,
23 agrees not to sue or seek any money or damages from City, except to the extent
24 Franchisee's Telecommunication System is damaged by the negligent acts or
25 omissions or willful misconduct of the City or its agents.
26



1 B. Franchisee agrees to indemnify and hold harmless the City, its
2 trustees, elected and appointed officers, agents, and employees, from and against
3 any and all claims, demands, or causes of action of whatever kind or nature, and
4 the resulting losses, costs, expenses, reasonable attorneys' fees, liabilities,
5 damages, orders, judgments, or decrees, sustained by any third party arising out
6 of, or by reason of, or resulting from or of the acts, errors, or omissions of
7 Franchisee or its agents, independent contractors, or employees related to or in
8 any way arising out of the construction, operation, maintenance, or relocation of
9 the Telecommunications System, unless and to the extent caused by the
10 negligence of the City or its agents or representatives. Franchisee waives
11 immunity under Title 51 RCW and affirms that the City and Franchisee have
12 specifically negotiated this provision, as required by RCW 4.24.115, to the extent it
13 may apply.
14

15 C. Franchisee agrees that the covenants and representations
16 relating to the indemnity provided in Sections A and B above shall survive the
17 term/expiration/termination of this Franchise and continue in full force and effect as
18 to Franchisee's responsibility to indemnify, subject to the applicable statute of
19 limitations.
20

21 6.5 Franchisee Insurance.

22 A. Franchisee shall maintain, throughout the term of the Franchise,
23 adequate insurance, in Franchisee's reasonable judgment, to protect the City, its
24 trustees, elected and appointed officers, agents, and employees against claims
25 and damages that may arise as a result of the construction, operation, or
26



1 maintenance of the Telecommunications System. The City makes no
2 representation as to what constitutes adequate insurance for Franchisee's
3 operations. The foregoing notwithstanding, Franchisee must maintain at least the
4 minimum insurance coverages and amounts set forth in TMC 16B.05.090.

5 B. The required insurance must be obtained and maintained for the
6 entire period Franchisee has facilities in the Public Rights-of-Way, and for six years
7 thereafter. If Franchisee, its contractors, or subcontractors do not have the
8 required insurance, the City may order such entities to stop operations until the
9 insurance is obtained and approved.
10

11 C. Certificates of insurance, reflecting evidence of the required
12 insurance and naming the City as an additional insured with all required
13 endorsements on the Commercial General Liability and Automotive
14 policies/coverages hereby required, shall be filed with the City's Risk Manager.
15 The certificate shall be filed with the acceptance of the Franchise, and annually
16 thereafter, and as provided in Section E below.
17

18 D. Policies shall be issued by companies authorized to do business
19 under the laws of the state of Washington. Financial Ratings must be no less than
20 "A-VII" in the latest edition of "Bests Key Rating Guide," published by A.M. Best
21 Guide.
22

23 E. In the event that the insurance certificate provided indicates that
24 the insurance shall terminate or lapse during the period of the Franchise,
25 Franchisee shall furnish, at least 30 days prior to the expiration of the date of such
26 insurance, a renewed certificate of insurance as proof that equal and like



1 coverage has been or will be obtained prior to any such lapse or termination
2 during the balance of the period of the Franchise.

3 F. The City reserves the right to require any other insurance
4 coverage it deems necessary during the term of the Franchise, depending upon
5 the exposures; provided that such requirement(s) conforms with TMC 16B.

6 G. It is Franchisee's responsibility to ensure that each
7 subcontractor obtains and maintains adequate liability insurance coverage, and
8 upon request of the City, Franchisee shall provide evidence of such insurance.

9 6.6 Security Fund. Franchisee shall establish a cash security fund or
10 provide the City an irrevocable letter of credit or assignment of funds in the
11 amount of \$50,000 as additional security to secure the payment of fees owed, to
12 secure any other performance promised in this Franchise, and to pay any taxes,
13 fees, or liens owed to the City. Any letter of credit shall be in a form and with an
14 institution acceptable to the City's Director of Finance and in a form acceptable to
15 the City Attorney. Should the City draw upon the cash security fund or letter of
16 credit or assignment of funds, it shall promptly notify Franchisee and Franchisee
17 shall promptly restore the fund or the letter of credit or assignment of funds to the
18 full required amount. The City may from time to time change the amount of the
19 required security fund/letter of credit/assignment of funds to reflect changes in
20 the risks to the City and to the public, including delinquencies in taxes or other
21 payments to the City.
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Section 7. Miscellaneous Provisions.

1 7.1 Posting and Publication. Franchisee shall assume the cost of posting
2 and publication of this Franchise, as such posting and publication is required by
3 law, and such is payable upon Franchisee's filing its acceptance of the
4 Franchise.
5

6 7.2 Guarantee of Performance. Franchisee acknowledges that it enters
7 into the Franchise voluntarily in order to secure and in consideration of the grant
8 from the City of a ten-year Franchise. Performance pursuant to the terms and
9 conditions of this Franchise agreement is guaranteed by Franchisee.
10

11 7.3 Governing Law and Venue. The Franchise shall be governed by and
12 construed in accordance with the laws of the state of Washington without
13 recourse to any principles of Conflicts of Laws, except that where federal law
14 preemptively applies, it shall control. Any litigation between the City and
15 Franchisee arising under or regarding this Franchise shall occur, if in the state
16 courts, in the Superior Court of Pierce County, and if in the federal courts, in the
17 United States District Court for the Western District of Washington.
18

19 7.4 No Recourse. Without limiting such immunities as the City or other
20 Persons may have under applicable law, Franchisee shall have no monetary
21 recourse whatsoever against the City or its officials, boards, commissions,
22 agents, or employees for any loss, costs, expense, or damage arising out of any
23 provision or requirement of Title 16B or because of the enforcement of Title 16B
24 or the City's exercise of its authority pursuant to Title 16B, this Franchise, or
25 other applicable law, except to the extent Franchisee's Telecommunication
26



1 System is damaged by the negligent acts or omissions or willful misconduct of
2 the City or its representatives.

3 7.5 Notice. Unless expressly otherwise agreed between the parties, every
4 notice, billing, or response required by this Franchise to be served upon the City or
5 Franchisee shall be in writing, and shall be deemed to have been duly given to the
6 required recipient upon actual receipt or refusal of delivery and shall be sent by a
7 nationally recognized overnight courier or by U.S. certified mail, return receipt
8 requested, postage prepaid. The notices or responses to the City shall be
9 addressed as follows:
10

11 City of Tacoma
12 Municipal Services Building
13 1224 MLK Jr Way
14 Tacoma, WA 98405
15 Attn: Franchise Services Manager

16 The notices or responses to Franchisee shall be addressed as follows:

17 WA-CLEC, LLC
18 c/o Crown Castle
19 2000 Corporate Drive
20 Canonsburg, PA 15317
21 Attn: Ken Simon, General Counsel

22 with a copy to:

23 WA-CLEC, LLC
24 c/o Crown Castle
25 2000 Corporate Drive
26 Canonsburg, PA 15317
27 Attn: SCN Contracts Management

28 The City and Franchisee may designate such other address from time to
29 time by giving written notice to the other, but notice cannot be required to more
30 than two addresses.



1 7.6 Execution. Franchisee shall execute and return to the City three
2 original countersigned copies of this Ordinance and a signed acceptance of the
3 Franchise granted hereunder within 30 days after the date of passage of the
4 Ordinance by the City Council. The acceptance shall be submitted in the form
5 attached hereto or other form acceptable to the City Attorney and in accepting
6 the Franchise, Franchisee warrants that it has carefully read the terms and
7 conditions of this Franchise and unconditionally accepts all of the terms and
8 conditions of this Franchise and agrees to abide by the same and acknowledges
9 that it has relied upon its own investigation of all relevant facts, that it has had
10 the assistance of counsel, that it was not induced to accept a Franchise, that
11 this Franchise represents the entire agreement between Franchisee and the
12 City, and that Franchisee accepts all risks related to the interpretation of this
13 Franchise. The countersigned Ordinance and acceptance shall be returned to
14 the City accompanied by: evidence of insurance; a payment for publication
15 costs; billable work order deposit; and the security fund deposit and
16 performance bond.
17

18
19 The Franchise rights granted herein shall not become effective until all of
20 the foregoing is received in acceptable form. In the event Franchisee fails to
21 submit the countersigned Ordinance and acceptance as provided for herein, or
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1 fails to provide the required accompanying documents and payments, within the
2 time limits set forth in this section, the grant of the Franchise shall be null and
3 void.

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5 Passed _____

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7 _____
8 Mayor

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10 _____
11 Attest:
12 City Clerk

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14 Approved as to form:
15 _____
16 Deputy City Attorney

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ACCEPTANCE OF CITY FRANCHISE

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Ordinance No. _____, effective _____, 2017.

I, _____, am the _____ of
WA-CLEC, LLC, a Washington limited liability company, and am the authorized
representative to accept the above-referenced City franchise ordinance on behalf
of WA-CLEC, LLC.

I certify that this franchise and all terms and conditions thereof are accepted
by WA-CLEC, LLC.

DATED this ____ day of _____, 2017.

WA-CLEC, LLC

By _____

Its _____