



ORDINANCE NO. 28390

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

8 WHEREAS MCImetro Access Transmission Services Corp., a Delaware
9 corporation, d/b/a Verizon Access Transmission Services (“MCImetro” or
10 “Franchisee”) is a telecommunications company currently involved in the business
11 of operating a telecommunications network utilizing fiber optic technology, and
12

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

17 WHEREAS MCImetro has applied to the City to install and operate fiber optic
18 cable and Facilities within the City streets and public rights-of-way, and
19

20 WHEREAS the City Council has determined to grant such a franchise to
21 MCImetro upon those certain terms and conditions which the Council deems
22 necessary due to the unique nature of fiber optic cable and Facilities as set forth
23 herein, and

24 WHEREAS this City of Tacoma Telecommunications Franchise Ordinance
25 contains the following sections:
26



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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 City Charter refers to the same, as may be amended from time to time.

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.

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.



1 1.6 "Facilities" means, refers to, and includes, but is not limited to, plant,
2 systems, improvements, and equipment owned, leased, or otherwise used by the
3 Franchisee, such as poles, fiber, wires, fixtures, equipment, underground circuits,
4 and conduit, in Public Rights-of-Way necessary or convenient for the transmission
5 and distribution of communications services in the City of Tacoma. "Facilities,"
6 when used without a modifier, shall be considered to encompass both Overhead
7 Facilities and Underground Facilities. Nothing in this definition, or anything else in
8 this Franchise shall be interpreted as authorizing Franchisee to construct any
9 Facilities in the Franchise Area without first having obtained all necessary permits.
10

11 1.7 "Franchise" means the rights expressly granted by this Franchise and
12 conditioned as set forth herein and under the TMC and the City Charter.

13 1.8 "Franchise Area" means that area within the present and future
14 corporate limits of Tacoma.

15 1.9 "Franchisee" is MCImetro Access Transmission Services Corp., a
16 Delaware corporation ("MCImetro" of "Franchisee") with its primary office at One
17 Verizon Way, Basking Ridge, NJ, 07920.

18 1.10 "Gross Receipts," for purposes of this Franchise, means any and all
19 revenue received directly or indirectly by Franchisee which is derived from the
20 operation of its System in the City, less uncollectibles. Gross Receipts shall
21 include, by way of example and not limitation, revenues from its
22 Telecommunications Service, all fees, late fees, installation and connection fees,
23 upgrade and downgrade fees, and rental fees. The term Gross Receipts shall not
24 include any taxes or surcharges on services furnished by Franchisee imposed by
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1 any municipality, state, or other governmental unit and collected by Franchisee for
2 such governmental unit, nor shall the term include any wholesale services provided
3 by Franchisee upon which fees or taxes have already been levied within the City of
4 Tacoma.

5 1.11 "Operator," when used with reference to a System, refers to a Person
6 (a) who provides service over a Communications System and directly or through
7 one or more affiliates owns a significant interest in such facility; or (b) who
8 otherwise controls or is responsible for, through any arrangement, the management
9 and operation of such a facility for or on behalf of Franchisee. A Person that
10 operates under agreement of a Telecommunications System or a specific portion of
11 a Telecommunications System to provide Telecommunications Services shall be
12 treated as an Operator for purposes of this Franchise.
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14 1.12 "Overhead Facilities" refers to electric utility and Communications
15 Facilities located above the surface of the ground, including the underground
16 supports and foundations for such Facilities.
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18 1.13 "Person" includes any individual, corporation, partnership, association,
19 joint stock company, trust, or any other legal entity, but not the City for purposes
20 hereof.
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22 1.14 "Public Rights-of-Way" mean the public streets and easements over
23 which, under the City Charter, the TMC, City ordinances, and applicable laws, the
24 City has authority to grant Franchises, permits, or Licenses for use thereof or has
25 regulatory authority thereover, but expressly excluding railroad
26 rights-of-way/crossings, airport, and harbor areas. Public Rights-of-Way, for the



1 purpose of this Franchise, also do not include buildings, parks, poles, conduits, or
2 similar facilities or property owned by or leased to the City, including, by way of
3 example and not limitation, structures in the Public Rights-of-Way such as utility
4 poles and light poles.

5 1.15 "System" means the Telecommunications System.

6 1.16 "Telecommunications Service" or "Service" means the transmission for
7 hire of information in electronic or optical form, including, but not limited to, voice,
8 video, or data, whether or not the transmission medium is owned by the provider
9 itself. Telecommunications Service includes telephone service, data, voice, and
10 other communications-related services, but does not include cable TV or
11 commercial video service or over-the-air broadcasts to the public-at-large from
12 facilities licensed by the Federal Communications Commission or any successor
13 thereto.
14

15 1.17 "Telecommunications System" means a tangible facility that is used to
16 provide one or more Telecommunications Services, any portion of which occupies
17 Public Rights-of-Way. The term Telecommunications System, by way of example
18 and not limitation, includes wires, equipment cabinets, guys, conduit, radio
19 transmitting towers, poles, other supporting structures, and associated and
20 appurtenant facilities used to transmit telecommunications signals. The term
21 Telecommunications System includes all devices mounted on power poles in the
22 Public Rights-of-Way through which Telecommunications Services are originated or
23 terminated. An Open Video System is not a Telecommunications System to the
24 extent that it provides only video services; a Cable System is not a
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1 Telecommunications System to the extent that it provides only Cable Service. The
2 term Telecommunications System includes any of the tangible components of a
3 Telecommunications System which occupies Public Rights-of-Way.

4 1.18. "Telephone Service" means the provision of access to a local
5 telephone network, local telephone network switching service, intrastate toll service,
6 or coin telephone service, or providing telephonic, video, data, or similar
7 communication or transmission for hire via a local telephone network, toll line,
8 channel, cable, microwave, or similar communication or transmission system by any
9 person. Telephone Service includes intrastate or interstate service, including toll
10 service, originating from or received on communications equipment or apparatus in
11 this State if the charge for the service is billed to a person in this State. Telephone
12 Service does not include the providing of Competitive telephone service as defined
13 in TMC 6A.40.030, the providing of cable television service, or the providing of
14 broadcast services by radio or television stations.
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17 1.19 "Title," when used alone in the context of referring to this Title of the
18 TMC, shall mean Title 16 (and more specifically Title 16B) of the TMC.

19 1.20 "Underground Facilities" refers to electric utility and Communications
20 Facilities located under the surface of the ground, excluding the underground
21 foundations or supports for Overhead Facilities.
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23 Section 2. Franchise.

24 2.1 Grant of Franchise. The City hereby grants to Franchisee a
25 non-exclusive Franchise which, once it becomes effective, shall authorize
26 Franchisee to use the City's Public Rights-of-Way within the Franchise Area to



1 construct, maintain, and operate a fiber optic System to provide Telecommunication
2 Service and internet access services, and to use the City's Public Rights-of-Way as
3 authorized herein.

4 Such grant is subject to and must be exercised in strict accordance with and
5 subject to this Franchise Agreement, Title 16B, and other applicable provisions of
6 the TMC, and the Tacoma City Charter, including, but not limited to, the provisions
7 set forth in Article VIII of the Charter, and this Franchise may be revoked under
8 Section 2.5 if it is not so exercised. The exercise of any rights pursuant to this
9 Franchise is subject to the exercise of the City's police powers and other regulatory
10 powers as the City may have or obtain in the future, and all rights granted herein
11 must be exercised in strict accordance with applicable laws, including, by way of
12 example and not limitation, zoning codes and permitting requirements. No rights
13 shall pass to Franchisee by implication. This Franchise shall constitute both a right
14 and an obligation to provide the services of the Telecommunications System as
15 required by the provisions of this Franchise.
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18 The grant of this Franchise is limited to the purpose of Franchisee providing
19 Telecommunications Service and internet access service. This Franchise does not
20 include permission to provide cable service, as defined in 47 U.S.C. § 522,
21 multichannel video programming, open video systems, or uses other than
22 Telecommunications Service.
23

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 that
26 such use is inconsistent with the terms, conditions, or provisions by which such



1 Public Rights-of-Way were created or dedicated, or presently used under applicable
2 laws.

3 In the event of any conflict between a provision in this Franchise and any
4 provision of the City Charter, which Charter is incorporated herein by reference, the
5 applicable provision of the Charter shall control over any inconsistent provision of
6 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 City Charter.
9 At the expiration of the term, Franchisee may apply to extend or renew the
10 Franchise as provided in Title 16B.02.100.

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

13 2.4 Transfers, Generally.

14 A. Any transfer of this Franchise, as the term "Transfer" is defined in
15 TMC 16B.01.030.Y, shall be accomplished in accordance with TMC 16B.02.120.
16 Any Transfer not made in accordance with TMC 16B.02.120 may be considered a
17 substantial violation of this Franchise by the City and may subject the Franchise to
18 termination proceedings by the City as provided herein and in Title 16B. Transfers
19 to Affiliates of Franchisee shall be excepted from the requirements of
20 TMC 16B.02.120.A and B, provided the Transfer meets the requirements of and
21 complies with the process set forth in TMC 16B.02.120.F.

22 B. Applications for approval of any Transfer shall be filed in
23 accordance with procedures set out in Title 16B of the TMC.
24



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

9
10 D. The requirements of this section shall not be deemed to prohibit
11 the use of Franchisee's property as collateral for security in financing the
12 construction or acquisition of all or part of the Telecommunications System
13 franchised hereunder, provided that no such security shall purport to attach to the
14 City's real property interest in the Public Rights-of-Way or any other City interest.
15 In addition, no such arrangement may be made if it would in any respect under any
16 condition prevent the Operator or any successor from complying with the Franchise
17 and applicable law. Any mortgage, pledge, or lease shall be subject to and
18 subordinate to the rights of the City under this Franchise and other applicable law.

19
20 2.5 Revocation. In addition to any rights set out elsewhere in this Franchise,
21 the City Charter, or Title 16, subject to the notice and cure provisions contained in
22 Title 16B, Section 16B.05.100, the City reserves the right to declare a forfeiture or
23 otherwise revoke this Franchise, and all rights and privileges pertaining thereto, as
24 provided in Title 16(B) or in the event that:
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1 A. Franchisee is in non-compliance with a material provision of this
Franchise; or

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

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

8 D. At any time during the term of the Franchise, Franchisee (i) fails to
9 provide and maintain all of the securities required under this Franchise, including,
10 but not limited to, the performance bond required under this Franchise; (ii) fails to
11 maintain the insurance required by this Franchise; (iii) fails to satisfy the indemnity
12 set out in this Franchise; or (iv) if any guarantor of Franchisee revokes its guarantee
13 or fails to satisfy or becomes unable to satisfy its obligations under such guarantee.

14 E. The procedures for revocation and forfeiture shall be governed by
15 Title 16B, Section 16B.05.100. Before the Franchise is revoked, Franchisee shall
16 be given notice and opportunity to cure at least equivalent to that required by
17 Title 16B as of the effective date of this Franchise (except in those cases where
18 notice and opportunity to cure are not required or would be futile), and shall be
19 accorded an opportunity to be heard that provides at least the due process
20 protections required by Title 16B as of the effective date of this Franchise, which
21 opportunities and protections are set out in Section 2.5.F below.
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1 F. 1. Where, after notice and providing Franchisee an opportunity
2 to be heard, the City finds that there has been an act or omission that would justify
3 revocation of the Franchise, the City may make an appropriate reduction in the
4 remaining term of the Franchise or revoke the Franchise. However, the Franchise
5 may only be revoked if Franchisee (a) was given written notice of the default; and
6 (b) 30 days to cure the default; and (c) Franchisee failed to cure the default, or to
7 propose a schedule for curing the default acceptable to the City where it is
8 impossible to cure the default in 30 days. The required written notice shall be given
9 before the City conducts the proceeding required by this paragraph. No opportunity
10 to cure is required for repeated violations of material provisions of the Franchise,
11 and fraud shall be deemed incurable.

13 2. Notwithstanding the foregoing, the City may declare a
14 Franchise forfeited without opportunity to cure when Franchisee: (a) fails to begin
15 to exercise its rights hereunder within 45 days of Franchisee's acceptance of this
16 Franchise, (b) stops providing all Service it is required to provide under the
17 Franchise for a period of not less than three consecutive months, (c) Transfers
18 without the prior consent of the City as and when required in the Franchise, or (d) is
19 found by a court or regulatory body with appropriate jurisdiction to have defrauded
20 or attempted to defraud the City or Franchisee's Customers within the City.
21 Notwithstanding the provisions of Title 16B.05.100C.2, if Franchisee fails to timely
22 pay any undisputed Franchise application/administrative fees or other fees owed
23 hereunder or under Title 16B, before the City can initiate any termination or
24 forfeiture of rights, Franchisee shall be provided with ten (10) business days' prior
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1 written notice and an opportunity to cure the failure to pay. However, Franchisee
2 shall have the right to receive 30 days' prior notice of an intent to declare a
3 Franchise forfeited, and shall have the opportunity to show cause why the
4 Franchise should not be forfeited.

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

3 2.6 Continuity of Service and Right to Purchase the System.

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

11 B. In the event the City has declared a forfeiture for cause or
12 otherwise validly revoked this Franchise as provided herein, or in the event of
13 expiration of the initial term of this Franchise without this Franchise being renewed
14 or extended as provided in Section 2.2 (referred to collectively in this paragraph B
15 as a "termination"), the City shall have an option upon termination of the Franchise
16 to purchase that portion of the Telecommunications System owned by Franchisee
17 and located in the Public Rights-of-Way, whether termination is, or is not, for cause.
18 This option requires Franchisee to convey the Telecommunications System or such
19 portion thereof as the City may choose to purchase, provided, that nothing herein
20 shall require the City to accept or pay for any contract that it does not wish to
21 assume. Franchisee is not required to convey portions of the Telecommunications
22 System not located in the Public Rights-of-Way, located outside the City, or that is
23 leased or used (but not owned) by Franchisee from a third party pursuant to a tariff
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or contract. The foregoing option also requires Franchisee to sell the
1 Telecommunications System owned by Franchisee and located in the Public
2 Rights-of-Way, or such portion thereof as the City may choose to purchase at a fair
3 market price, if the Franchise is terminated for cause. If Franchisee's request for a
4 Franchise renewal is denied, the option requires Franchisee to sell the
5 Telecommunications System owned by Franchisee and located in the Public
6 Rights-of-Way, or such portion thereof as the City may choose to purchase, at fair
7 market value, determined on the basis of the value of the Telecommunications
8 System as a going concern (taking into account such property used and useful in
9 providing service within the City that is not to be conveyed) and with no value
10 allocated to the Franchise itself.
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13 C. The City may exercise its Section 2.6.B option rights in the
14 following manner: the City will have up to 180 days after receiving the inventory
15 required by Section 2.6.A to notify Franchisee that it intends to exercise its right to
16 purchase the Telecommunications System or a portion of the Telecommunications
17 System. Within 90 days of the date the City notifies Franchisee of its intent to
18 exercise the option, or by such other time as the parties may separately agree, the
19 parties shall meet to establish a price that comports with the requirements of
20 Section 2.6.B. If the parties are unable to agree to a price within 180 days after the
21 City notifies Franchisee that the City intends to exercise its purchase option, either
22 party may require the price to be set by appraisal by sending the other party notice
23 that it wishes to have the price set by appraisal. Within 45 days of the date that
24 notice is submitted, each party may appoint one appraiser. If each party appoints
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an appraiser, the two appraisers shall appoint a third appraiser; if only a single appraiser is appointed (whether by mutual agreement or because of the failure of a party to timely nominate an appraiser) that appraiser shall be the sole appraiser.

The appraiser or appraisers shall establish a price for the System or portion thereof that the City desires to purchase in accordance with Section 2.6.B. This appraisal determination shall be final and non-appealable. The City shall have 120 days after the decision of the appraisers to notify Franchisee that it wishes to conclude the transaction; if it does not so notify Franchisee, the option shall be deemed terminated.

If the City gives the notice required by the preceding paragraph, the parties will thereafter promptly sign all necessary documents required to close the transaction; provided, however, that the City may make conclusion of the transaction conditional upon any necessary voter approval of any bond funding for acquisition of all or a part of the System and, if applicable, the successful sale of the bonds.

The City and Franchisee will share equally the costs associated with any appraiser that is jointly appointed (by them or by the appraisers each selects); the City will bear costs associated with any appraiser that it separately appoints and Franchisee will bear costs associated with any appraiser that it separately appoints.

D. 1. Nothing in this section or in any other section of this Franchise shall prevent the City's exercise of its rights under the Tacoma City Charter. Included within the rights granted under Tacoma's Charter is the right to



1 purchase or condemn Franchisee's property within the Franchised Area at any
2 time, which right is expressly set out in Section 8.1(c) of the Charter as follows:

3 "to acquire by purchase or condemnation, for the use of the
4 City itself or its inhabitants, all of the property of the grantee
5 within the public streets, alleys, or places at a fair and just
6 value, which shall not include any valuation of the franchise,
7 right, or privilege, which shall thereupon be terminated."

8 2. Likewise, nothing in this section or in any other section of
9 this Franchise shall be read to limit the City's right to acquire the
10 Telecommunications System through exercise of any right of eminent domain under
11 state law.

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

14 E. In the event the City purchases, acquires, takes over, or holds all
15 or parts of the System, the City shall have the right, without limitation, to assign,
16 sell, lease, or otherwise transfer its interest in all or parts of such System to any
17 other Person or entity, including any other Franchisee of a Telecommunications
18 System, on whatever terms the City deems appropriate.

19 2.7 Right to Require Removal of Property/Right to Remove Property.

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

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

11 C. Any order by the City issued pursuant to Section 2.7.A to remove
12 Facilities shall be sent by registered or certified mail, postage prepaid, return receipt
13 requested, to Franchisee not later than 24 months following the date of Franchise
14 termination. Removal shall be completed (except with respect to property that
15 Franchisee is permitted to abandon in place) not later than 12 months following the
16 date of notification to remove the Facilities.

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

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

11
12 2.8 Customers' Right to Obtain Service. It shall be the right of all Customers
13 to receive all available services insofar as their financial and other obligations to
14 Franchisee are honored during the term of the Franchise. In addition to the
15 obligations established under the other provisions of this Franchise, in the event
16 that Franchisee elects to overbuild, rebuild, modify, or sell the System, Franchisee
17 shall make its best effort to ensure that all Customers receive service subject to the
18 terms and conditions of the service contract then in effect between the respective
19 Customer and Franchisee.

20
21 2.9 Responsibility for Costs. Except as expressly provided otherwise, any
22 act that Franchisee is required to perform under this Franchise shall be performed
23 at its cost. If Franchisee fails to perform work that it is required to perform within
24 the time provided for performance, the City, after first providing notice and an
25 opportunity to cure as herein provided, may perform the work and bill Franchisee
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1 the actual cost thereof. Franchisee shall pay the amounts billed within 30 days of
2 receipt of an itemized bill. The parties agree that any amounts paid pursuant to this
3 section or Title 16B are not franchise fees.

4 2.10 Work of Contractors and Subcontractors. Work by contractors and
5 subcontractors is subject to the same restrictions, limitations, and conditions as if
6 the work were performed by Franchisee. Franchisee shall be responsible for all
7 work performed by its contractors and subcontractors, and others performing work
8 on its behalf as if the work were performed by it and shall ensure that all such work
9 is performed in compliance with this Franchise and Title 16B, and other applicable
10 laws, including, without limitation, the City's Right-of-Way Restoration Policy.

11 Franchisee and its contractors and subcontractors shall be jointly and severally
12 liable for all damages and correcting all damages they cause. It is Franchisee's
13 responsibility to ensure that contractors, subcontractors, or other Person(s)
14 performing work on Franchisee's behalf are familiar with the requirements of this
15 Franchise, Title 16B, the City's Right-of-Way Restoration Policy, and other
16 applicable laws governing the work performed by them.

17 2.11 Survival of Terms. Upon the termination or forfeiture of the Franchise,
18 Franchisee shall no longer have the right to occupy the Public Rights-of-Way for the
19 purpose of providing Telecommunications Service. However, Franchisee's
20 obligations to the City (other than the obligation to provide service to Customers)
21 survive the expiration of these rights according to their terms. By way of illustration
22 and not limitation, Sections 2.6, 2.7, 2.9, 2.10, and 4 of this Franchise shall continue
23 in effect as to Franchisee notwithstanding any expiration, forfeiture, or revocation of
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1 the Franchise, except to the extent that a City-approved Transfer, sale, or
2 assignment of the Telecommunications System is completed, and another entity
3 has assumed full and complete responsibility for the Telecommunications System
4 or for the relevant acts or omissions.

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

6 3.1 Use of Public Rights-of-Way. Franchisee may, subject to the terms of
7 this Franchise and Title 16B, the City's Right-of-Way Restoration Policy, and other
8 applicable laws, construct, operate, and maintain a fiber optic Telecommunications
9 System in Public Rights-of-Way within the Franchise Area to provide
10 Telecommunications Services and internet access services. Without limiting the
11 foregoing, Franchisee expressly agrees that it will construct, operate, and maintain
12 its System in compliance with the requirements of Title 16B, including those
13 governing the placement of its Telecommunications System and with other
14 applicable City codes; and will obtain and maintain all bonds and billable work
15 orders required by the same.
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18 3.2 Construction, Operation, or Maintenance. Franchisee shall, in all cases,
19 comply with all lawful City ordinances and regulations now in effect or hereinafter
20 enacted regarding the acquisition of permits and such other items as may be
21 required by the City in connection with the construction, operation, or maintenance
22 of the Telecommunications System, including, without limitation, the City's
23 Right-of-Way Restoration Policy.
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1 Without limiting the foregoing, Franchisee agrees that it shall, in the course
2 of constructing, operating, and maintaining its Telecommunications System, comply
3 with the requirements of Title 16B and, among other things:

4 A. 1. Franchisee shall, by a time specified by the City, protect,
5 support, temporarily disconnect, relocate, or remove any of its property when
6 required by the City by reason of traffic conditions; public safety; Public
7 Rights-of-Way construction; Public Rights-of-Way repair (including resurfacing
8 or widening); change of Public Rights-of-Way grade; construction, installation, or
9 repair of sewers, drains, water pipes, power lines, signal lines, tracks, or any
10 other type of government-owned Communications System, public work, public
11 project, public facility, or improvement or any government-owned utility; Public
12 Rights-of-Way vacation; or for any other purpose where the work involved would
13 be aided by the removal or relocation of the Telecommunications System.

14 Collectively, such matters are referred to herein as the "public work."
15

16 2. In the event of an emergency, or where the
17 Telecommunications System creates or is contributing to an imminent danger to
18 health, safety, or property, the City may protect, support, temporarily disconnect,
19 remove, or relocate any or all parts of the Telecommunications System without prior
20 notice and charge Franchisee for actual costs incurred.
21

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

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

B. Franchisee's obligation to construct, operate, and maintain its Telecommunications System in compliance with all applicable laws, ordinances, departmental rules and regulations, and published or otherwise readily available practices affecting such System, includes, by way of example and not limitation, the obligation to construct, operate, and maintain in accordance with zoning codes, safety codes, and City construction standards, including the most current version of the Standard Specifications for Road, Bridge and Municipal Construction, as prepared by the Washington State Department of Transportation ("WSDOT") and



1 the Washington State Chapter of American Public Works Association (“APWA”); the
2 most current version of the APWA Amendments to Division One, and the most
3 current version of the City of Tacoma Amendments thereto. In addition, the
4 construction, operation, and maintenance shall be performed in a manner
5 consistent with industry standards. Franchisee shall exercise reasonable care in
6 the performance of all its activities and shall use commonly accepted methods and
7 devices for preventing failures and accidents that are likely to cause damage, injury,
8 or nuisance to the public or to property. In the event that Franchisee’s work or
9 other use of the Public Rights-of-Way causes damage to any City facility,
10 Franchisee shall bear the cost of repairing, or replacing as necessary, such City
11 facility.
12

13 C. Franchisee's construction, operation, or maintenance of its
14 Telecommunications System shall not commence until all required permits have
15 been properly filed for and obtained from the proper City officials and all required
16 permits and associated fees paid. In any permit so issued, the City may impose, as
17 a condition of the granting of the permit, such conditions and regulations as may be
18 necessary to the management of the Public Rights-of-Way, including, by way of
19 example and not limitation, for the purpose of protecting any structures in the Public
20 Rights-of-Way, maintaining proper distance from other utilities, for the proper
21 restoration of such Public Rights-of-Way and structures, and for the protection of
22 the City and the public and the continuity of pedestrian and vehicular traffic.
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24 D. Franchisee must follow City-established requirements for
25 placement of Facilities in Public Rights-of-Way, including the specific location of
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1 Facilities in the Public Rights-of-Way, and must in any event install Facilities in a
2 manner that minimizes interference with the use of the Public Rights-of-Way by
3 others, including others that may be installing or have installed Communications
4 Facilities. The City may require that Facilities be installed at a particular time, at a
5 specific place, or in a particular manner as a condition of access to a particular
6 Public Right-of-Way area; may deny access if Franchisee is not willing to comply
7 with the City's requirements; and may remove, or require removal of, any Facility
8 that is not installed in compliance with the requirements established by the City, or
9 which is installed without prior City approval of the time, place, or manner of
10 installation, and charge Franchisee for all costs associated with removal; and may
11 require Franchisee to cooperate with others to minimize adverse impacts on the
12 Public Rights-of-Way through joint trenching and other arrangements consistent
13 with requirements the City imposes on other similarly situated franchisees or users
14 of the Public Rights-of-Way.
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17 E. Franchisee agrees that, as a condition of a permit for installation of
18 conduit, the City may require it to install conduit, at the same location for which a
19 permit has been requested, in excess of its reasonably foreseeable requirements
20 for the purpose of accommodating the City where the City Manager determines it is
21 appropriate to do so to minimize disruption of public passage or infrastructure, to
22 forestall or relieve exhaustion of Right-of-Way capacity, or to protect
23 environmentally sensitive areas; provided that the City will be responsible for the
24 additional costs, including material and labor, associated with installing such excess
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conduit; and provided further that the City's use of any such excess conduit is limited to non-commercial, governmental uses.

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

G. Whenever all existing utilities are located underground in an area in the City, Franchisee, at its own cost, must also locate its Telecommunication System underground, including Telecommunication System Facilities, such as drops, which cross private property.

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 prorated 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 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 underground in areas where other existing utilities are ordered to locate or relocate their facilities underground under other provisions



1 of the TMC, it being the intent that the number and extent of Overhead Facilities
2 and the visual pollution resulting therefrom will, over time, be reduced and
3 eventually, to the extent feasible, be eliminated.

4 H. Franchisee shall participate in conversion to underground Local
5 Improvement Districts (“LIDs”) at the same time as all other utilities are required to
6 participate in conversion to underground LIDs. Franchisee, at no cost to the City or
7 abutting property owners, shall share fairly with other utilities their proportionate
8 share of the cost of undergrounding when done through the LID process. As part of
9 its obligations under the TMC, Franchisee shall provide the preliminary cost
10 estimate, facility conversion designs, and final cost estimates to any LID project
11 coordinator in a timely manner. At the request of an LID project coordinator,
12 Franchisee shall perform underground construction and movement of Customer
13 connections underground (overhead reclaim), in coordination with the
14 undergrounding services provided by all other LID utilities, at no cost to the City or
15 abutting property owners.
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18 I. Franchisee shall promptly repair any and all Public Rights-of-Way,
19 public property, or private property that is disturbed or damaged during the
20 construction, operation, or maintenance of its Telecommunications System.
21 Public property and Public Rights-of-Way must be restored in conformance with
22 the City’s Right-of-Way Restoration Policy.
23

24 J. No tree trimming shall be performed without the permission of the
25 City and other affected authorities, and any tree trimming must be performed in
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1 strict accordance with the TMC. Even if tree trimming is authorized by the City,
2 Franchisee is liable for any damage it causes during the course of tree trimming.

3 K. In any dispute over the adequacy of a restoration relative to this
4 section, the Tacoma Department of Public Works Director shall, in his/her sole
5 discretion, make the final determination.

6 L. Franchisee may freely remove its Facilities, provided it complies
7 with the following provisions.

8 1. Franchisee shall not remove any Facilities which require
9 trenching or other opening of the Rights-of-Way along the extension of the Facilities
10 to be removed without the express permission of the City, which permission shall
11 not be unreasonably withheld, conditioned, or delayed. Franchisee must request
12 permission from the City to remove the Facilities at least 30 days in advance of the
13 date Franchisee proposes to begin removal.

14 2. Franchisee shall remove such Facilities as the City orders it
15 to remove; provided, that the City may not order removal where such removal is
16 primarily to give economic benefit or advantage to a competing provider of
17 Telecommunications Service.

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

1 Telecommunications System under Section 2, Franchisee may voluntarily remove
2 any Facilities from the streets which have been installed in such a manner that they
3 can be removed without trenching or other opening of the Rights-of-Way.
4

5 3.3 Right To Inspect and Order Corrections. The City may inspect the
6 Telecommunications System at any time reasonable under the circumstances to
7 ensure compliance with this Franchise and applicable law, including to ensure that
8 Franchisee's Telecommunications System is constructed and maintained in a safe
9 condition. If Franchisee's representatives are not on-site performing work on the
10 Telecommunications System, whenever feasible, the City shall give reasonable
11 advance notice of its intent to inspect so that Franchisee may have a representative
12 present during the inspection. If an unsafe condition is found to exist, the City, in
13 addition to taking any other action permitted under applicable law, may order
14 Franchisee, in writing, to make the necessary repairs and alterations specified
15 therein forthwith to correct the unsafe condition on a time table established by the
16 City which is reasonable in light of the unsafe condition. The City has the right to
17 correct, inspect, administer, and repair the unsafe condition if Franchisee fails to do
18 so in a timely manner, and to charge Franchisee therefor.
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21 3.4 Information Regarding Ongoing Work. In addition to providing notice to
22 the public of ongoing work as may be required under applicable law, Franchisee
23 shall make available information regarding any ongoing construction, operation, or
24 installation of its Telecommunications System sufficient to show (1) the nature of
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1 the work being performed; (2) where it is performed; (3) its estimated completion
2 date; and (4) progress to completion.

3 Section 4. Regulatory Provisions.

4 4.1 Intent. The City shall have the right to administer and regulate activities
5 of this Franchise up to the fullest extent of the law. The failure to reserve a
6 particular right to regulate or reference a particular regulation shall not be
7 interpreted by negative implication or otherwise to prevent the application of a
8 regulation to Franchisee.

9 4.2 Remedies for Franchise Violations. The City has the right to exercise
10 any and all of the following remedies, singly or in combination, in the event
11 Franchisee violates any provision of this Franchise:
12

13 A. Draw upon the performance bond or other security provided under
14 this Franchise; provided, however, such drawing shall be only in such a manner
15 and in such amount as the City reasonably determines is necessary to remedy the
16 default. Should the City take this action, Franchisee shall be responsible for all
17 direct and actual costs related to such action, including, but not limited to, actual
18 legal and administrative costs:
19

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

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

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

23 E. Seeking specific performance of any provision, which reasonably
24 lends itself to such remedy.
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1 In determining which remedy or remedies for Franchisee's violation are
2 appropriate, the City may take into consideration the nature and extent of the
3 violation, the remedy needed to prevent such violations in the future, whether
4 Franchisee has a history of previous violations of the same or similar kind, and such
5 other considerations as are appropriate under the circumstances. Remedies are
6 cumulative; the exercise of one shall not foreclose the exercise of others.

7 4.3 Procedure for Remediating Franchise Violations. Before imposing
8 liquidated damages or drawing upon the performance bond, or any other security
9 set out in Section 6, the City shall follow the procedure below.
10

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

14 B. Franchisee's Right to Cure or Respond. Except as provided in
15 Section 4.3.D, Franchisee shall have 30 days from the receipt of notice described
16 above to (a) respond to the City contesting the assertion of noncompliance, or (b) to
17 cure such default or, in the event that by the nature of the default such default
18 cannot be cured within the 30-day period, initiate steps to remedy such default as
19 promptly as possible and complete the cure within a reasonable time. The duty to
20 cure includes the duty to cure all harms caused by the acts or omissions of
21 Franchisee which gave rise to the alleged non-compliance. At the end of the
22 30-day period, Franchisee shall notify the City, in writing, of the steps it has taken to
23 cure the default, if any; if the cure is not complete, the reason it is not complete and
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1 the projected date for completion; and if the default is disputed, the complete basis
2 for that contention.

3 C. Public Hearing. The City may schedule a public hearing to
4 investigate any alleged default. The City shall give Franchisee 20 calendar days'
5 notice of the time and place of the hearing and provide Franchisee with an
6 opportunity to be heard.

7 D. Action after Hearing. If the City determines after such hearing that
8 Franchisee did not timely cure or initiate steps to cure the default in a timely manner
9 satisfactory to the City, after the notice required by Section 4.3.A was provided,
10 then the City may draw upon any performance bond, security fund, or other
11 security, including requiring performance under the guarantee; and impose
12 liquidated damages. However, notice and opportunity to cure are not required for
13 repeat violations or for a failure to correct a default where Franchisee knew or
14 should have known it was in default; in such cases, the performance bond, letter of
15 credit or other security may be drawn upon, the guarantor required to perform and
16 liquidated damages imposed after the hearing required by Section 4.3.C.

17 E. Liquidated Damage Amounts. Because any material failure to
18 comply with the provisions of this Franchise by Franchisee will result in injury to
19 the City, and because it may be difficult to estimate the extent of each such injury,
20 Franchisee and the City agree to the following liquidated damages, which
21 provisions represent the best estimate of the damages resulting from injuries of
22 specific types. The amounts of liquidated damages set forth in this Franchise are
23 in 2016 dollars and shall be increased each year by the increase in the
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U. S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index for Pacific Cities and U. S. City Average for the greater Seattle area. The amount of liquidated damages for all material violations of this Franchise for which actual damages may not be ascertainable shall be: \$500 per day for each violation, for each day the violation continues. It is provided, however, that the City shall allow Franchisee a minimum of 30 days after notice to Franchisee of such neglect, failure, or refusal to comply within which to meet compliance or correct performance prior to the assessment of any liquidated damages.

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

4.5 Force Majeure. Franchisee shall not be deemed in default with provisions of this Franchise where performance was rendered impossible by war or riots, civil disturbances, floods, or other natural catastrophes beyond Franchisee's control; the unforeseeable unavailability of labor or materials; or power outages exceeding back-up power supplies. The acts or omissions of affiliates shall not be deemed to be beyond the Franchisee's control, and the knowledge of affiliates shall be imputed to Franchisee. This Franchise shall not be revoked or Franchisee penalized for such noncompliance, provided that Franchisee takes immediate and diligent steps to bring itself back into compliance and to comply as soon as possible under the circumstances with this Franchise without unduly endangering the health,



1 safety, and integrity of Franchisee's employees or property, or the health, safety,
2 and integrity of the public, Public Rights-of-Way, public property, or private property.

3 4.6 Alternative Remedies. No provision of this Franchise shall be deemed
4 to bar the right of the City or Franchisee to seek or obtain judicial relief from a
5 violation of any provision of this Ordinance or any rule, regulation, requirement or
6 directive promulgated thereunder. Neither the existence of other remedies
7 identified in this Franchise nor the exercise thereof shall be deemed to bar or
8 otherwise limit the right of the City or Franchisee to recover monetary damages for
9 such violation by Franchisee, or to seek and obtain judicial enforcement of
10 Franchisee's or the City's obligations by means of specific performance, injunctive
11 relief or mandate, or any other judicial remedy at law or in equity.
12

13 4.7 Compliance with the Laws. Franchisee shall comply with all applicable
14 federal and state laws and regulations, including regulations of any administrative
15 agency thereof, as well as all applicable City ordinances, resolutions, rules, policies,
16 and regulations heretofore or hereafter adopted or established during the entire
17 term of the Franchise; provided that, nothing herein shall prevent Franchisee from
18 challenging a provision of laws that applies only to it as an impairment of contract.
19 Nothing in this Franchise shall limit the City's right of eminent domain under state
20 law. Nothing in this Franchise shall be deemed to waive the requirements of any
21 lawful code or resolution of the City regarding permits, fees to be paid, or manner of
22 construction.
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Section 5. Reporting Requirements.

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5.1 Quarterly Reports. Within 30 days after the end of each of Franchisee's fiscal quarters, Franchisee shall submit a written report to the City which shall contain a listing of all categories of Gross Receipts collected by Franchisee for its business activities as identified in Section 2.1, which are activities specifically taxable as a telephone business under TMC Title 6. Said written report shall be in sufficient detail and with sufficient explanation to enable the City to understand the report and to verify the accuracy of the report. In addition, Franchisee shall provide such other reports as may be required by Title 16B.

5.2 Annual Report. In the event that changes in applicable laws allow the City to require a franchise fee as referenced at Section 6 below, then no later than 120 days following the end of Franchisee's fiscal year each year after the imposition of franchise fees, Franchisee shall present a written report to the City which shall include:

A. Unaudited financial statements for (1) Franchisee and (2) any affiliate which is involved in any way with the operation or ownership of the System; and a financial statement for Franchisee that includes Gross Receipts from all sources, gross Subscriber revenues from each category of service, as well as an income statement and a balance sheet.

All financial reports required under this section shall be presented to the City, accompanied by such notes and explanations as are required to fully understand the reports. Such notes and explanations shall include, but not be



1 limited to, an explanation of any and all deductions made from Gross Receipts for
2 the calculation of Fees or taxes to be paid to the City, as well as:

3 1. A summary of the previous year's activities for the Franchise
4 Area, including, but not limited to, the total number of Customers, miles of Facilities,
5 any services added or dropped, and any technological changes occurring in the
6 system;

7 2. Plans for the future; and

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

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10 5.3 Additional Reports. Franchisee shall prepare and furnish to the City
11 within 60 days of written request, to the person and address specified in the City's
12 request, in a form reasonably prescribed by the City, such additional reports with
13 respect to Franchisee's operation, affairs, transactions, or property as may be
14 reasonably necessary and appropriate to ensure compliance with the material
15 provisions of this Franchise, or to permit the performance of any of the rights,
16 functions, or duties of the City in connection with the Franchise.
17

18 5.4 Preservation of Confidential Information. Trade secrets and confidential
19 information designated as such by Franchisee shall be subject to such protection as
20 provided in Title 16B or under chapter 42.56 RCW, or as otherwise provided by
21 applicable laws. Franchisee shall be responsible for clearly and conspicuously
22 identifying the work as confidential or proprietary, and shall provide a brief written
23 explanation regarding its position on the protected status of the information under
24 State or federal law. In the event that the City receives a public records request
25 under chapter 42.56 RCW or similar law for the disclosure of information
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1 Franchisee has designated as confidential, trade secret, or proprietary, the City
2 shall promptly provide notice of such disclosure so that Franchisee can take
3 appropriate steps to protect its interests. Nothing in this section prohibits the City
4 from complying with chapter 42.56 RCW, or any other applicable law or court order
5 requiring the release of public records, and the City shall not be liable to Franchisee
6 for compliance with any law or court order requiring the release of public records.
7 The City shall comply with any injunction or court order obtained by Franchisee
8 which prohibits the disclosure of any such confidential records.

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10 Section 6. Compensation and Financial Provisions.

11 6.1 Fees; Taxes.

12 A. State Prohibition of Franchise Fee. The parties understand that
13 RCW 35.21.860 currently prohibits a municipal franchise fee for the intended use.
14 Franchisee agrees that if this statutory prohibition is removed, the City may assess
15 a reasonable franchise fee, to be agreed to by the parties if the statutory prohibition
16 is removed. The parties agree that this Section 6.1.A does not limit the right of
17 Franchisee to challenge the franchise fee pursuant to 47 USC § 253. Nothing in
18 this Section 6 is intended to alter or add to presently required/allowed taxes and
19 fees that can be charged on Franchisee's business under applicable laws.
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21 B. Franchisee Subject to the City Telephone Business Tax.

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

6 C. Franchisee Obligated to Pay Administrative Costs. In accord with
7 RCW 35.21.860, as presently effective and as it may be later amended, Franchisee
8 must pay the City an amount sufficient to recover administration expenses incurred
9 in receiving and approving this Franchise, including, but not limited to, the
10 reasonable costs of outside consultants retained by the City to assist in the City's
11 consideration and processing of this Franchise application. The first \$5,000 of said
12 expenses will be covered by the \$5,000 application fee deposited with the City. To
13 the extent allowed by RCW 35.21.860 or other applicable laws, Franchisee may be
14 required to pay other costs applicable to this Franchise and Franchisee's activities
15 hereunder. The amount of payment to be made by Franchisee to cover these
16 administrative costs is an amount determined to be reasonable by the Franchise
17 Services Manager. Such obligation further includes municipal fees related to
18 receiving and approving permits or licenses, inspecting plans and construction, or
19 relating to the preparation of a detailed statement pursuant to Chapter 43.21C RCW.
20 Said fees must be paid within 30 days of receipt of the City's billing therefor.
21
22
23

24 D. Manner of Payment; Audit. Franchisee will pay the City Telephone
25 Business Tax specified in Section 6.1.B on a monthly basis, accompanied by
26 Franchisee's standard remittance form which specifies the net taxable charges, the



local tax rate, and the local tax due, plus penalties and/or interest, if any is due.

1 Franchisee shall make all other required fee payments in the form, at the intervals,
2 and in the manner requested by the City Treasurer, and furnish him/her any
3 information related to his/her revenue collection functions reasonably requested. In
4 case of audit, the City Treasurer may require Franchisee to furnish a verified
5 statement of compliance with Franchisee's obligations or in response to any
6 questions. Said certificate may be required from an independent, certified public
7 accountant at Franchisee's expense. All audits will take place on Franchisee's
8 premises or offices furnished by Franchisee, which shall be a location within the City
9 of Tacoma or other mutually agreeable place; however, Franchisee must agree to pay
10 the associated costs of travel. Franchisee agrees, within 30 days of written request of
11 the City Treasurer, to provide, to the person and address specified in the City
12 Treasurer's request, copies of all documents filed with any federal, state, or local
13 regulatory agency, to be mailed to the City Treasurer on the same day as filed,
14 postage prepaid, affecting any of Franchisee's Facilities or business operations in the
15 City of Tacoma.
16
17
18

19 E. No Other Deductions. No deductions, including current or
20 previously paid fees, shall be subtracted from the Gross Receipts amount, except
21 as allowed under state or federal law, upon which payments are calculated and due
22 for any period, nor shall copyright fees or other license fees paid by Franchisee be
23 subtracted from Gross Receipts for purposes of calculating payments.
24
25
26



1 F. Late Payments. Any fees owing which remain unpaid more than
2 10 days after the dates specified herein shall be delinquent and shall thereafter
3 accrue interest at the maximum allowable rate pursuant to RCW 19.52.020.

4 G. Period of Limitations. The period for commencing an action for
5 the recovery of any fee payable hereunder shall be six years from the date on
6 which payment by Franchisee is due, subject to tolling as provided as a matter of
7 law or equity. Unless within six years from and after the due date for a particular
8 payment, the City makes written request to review Franchisee's records with
9 respect to such fee payment (either individually or as part of a broader request)
10 recovery shall be barred with respect to such payment and the Franchising
11 Authority shall be estopped from asserting any claims whatsoever against
12 Franchisee relating to any alleged deficiencies in that particular payment.
13

14 6.2 Auditing and Financial Records. Franchisee shall manage all of its
15 operations in accordance with a policy of keeping books and records open and
16 accessible to the City. Without limiting its obligations under this Franchise,
17 Franchisee agrees that it will collect and make books and records available for
18 inspection and non-confidential books and records for copying by the City in
19 accordance with Title 16B. Franchisee shall be responsible for collecting the
20 information and producing it. Books and records shall be made available for
21 inspection to the City at the Tacoma Municipal Building, or such other location as
22 the parties may agree. Notwithstanding any provision of Title 16B or this Franchise,
23 if documents are too voluminous or for security reasons cannot be produced at the
24 Tacoma Municipal Building or mutually agreeable location within the City, then
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26



1 Franchisee may produce the material at another central location, provided it also
2 agrees to pay the additional reasonable costs incurred by the City in reviewing the
3 materials.

4 Franchisee shall take all steps reasonably required, if any, to ensure that it is
5 able to provide the City all information which must be provided or may be requested
6 under Title 16B or this Franchise, including by providing appropriate Subscriber
7 privacy notices. Nothing in this section shall be read to require Franchisee to
8 violate 47 U.S.C. §§ 222 or 551 or to disclose or make available to the City any
9 books and records protected from disclosure under other applicable law.
10

11 Franchisee shall be responsible for redacting any data that federal law prevents it
12 from providing to the City. Records shall be kept for at least six years. In addition
13 to maintaining all records as required by Title 16B, Franchisee shall maintain
14 records sufficient to show its compliance with the requirements of this Franchise,
15 and shall produce those records within 30 days of a City request.
16

17 Franchisee agrees to meet with a representative of the City, upon request, to
18 review its methodology of record-keeping, financial reporting, computing fee
19 obligations, and other procedures, the understanding of which the City deems
20 necessary for understanding the meaning of reports and records.
21

22 The City agrees to request access to only those books and records, in
23 exercising its rights under this section, which it deems reasonably necessary as
24 part of a bona fide exercise of its authority over the Telecommunications System
25 under this Franchise, Title 16B, or other applicable law. The City further agrees
26 that it will withhold from public disclosure those books and records made available



1 to it pursuant to this Section 6.2, but only to the extent that the City believes that it
2 has the discretion to do so under state law. The City will, however, provide notice
3 to Franchisee of any request for such books and records so that Franchisee can
4 engage whatever protective measures are available to it.

5 6.3 Performance Bond. At the same time it provides its Franchise
6 acceptance to the City, Franchisee shall provide a performance bond to ensure the
7 faithful performance of its responsibilities under this Franchise and applicable law,
8 including, by way of example and not limitation, its obligations to relocate and
9 remove its facilities; and to restore City Public Rights-of-Way and other property.
10 The initial amount of the performance bond shall be \$250,000. The amount of the
11 bond may be changed from time to time to reflect changed risks to the City or to the
12 public. Franchisee may be required to obtain additional bonds in accordance with
13 the City's ordinary practices and/or pursuant to applicable TMC provisions. The
14 bond shall be in a form and with a surety (authorized to do business in the state of
15 Washington) reasonably acceptable to the City's Risk Manager, and in a form
16 reasonably acceptable to the City Attorney. Franchisee shall pay all premiums or
17 costs associated with maintaining the bond, and shall keep the same in full force
18 and effect at all times during the Franchise Term.
19
20

21 6.4 Indemnification by Franchisee.

22 A. Franchisee, by accepting this Franchise, agrees to release the City
23 from and against any and all liability and responsibility in or arising out of, or by
24 reason of, or resulting from or of the negligent acts, errors, or omissions of
25 Franchisee during the construction, operation, or maintenance of the
26



1 Telecommunications System, and, without limiting the provisions of Section 7.4,
2 agrees not to sue or seek any money or damages from City, except to the extent
3 Franchisee's Telecommunication System is damaged by the negligent acts or
4 omissions or willful misconduct of the City or its agents.

5 B. Franchisee agrees to indemnify and hold harmless the City, its
6 trustees, elected and appointed officers, agents, and employees, from and against
7 any and all claims, demands, or causes of action of whatever kind or nature, and
8 the resulting losses, costs, expenses, reasonable attorneys' fees, liabilities,
9 damages, orders, judgments, or decrees, sustained by any third party arising out of,
10 or by reason of, or resulting from or of the acts, errors, or omissions of Franchisee,
11 or its agents, independent contractors, or employees related to or in any way
12 arising out of the construction, operation, maintenance, or relocation of the
13 Telecommunications System. Franchisee waives immunity under Title 51 RCW
14 and affirms that the City and Franchisee have specifically negotiated this provision,
15 as required by RCW 4.24.115, to the extent it may apply.
16
17

18 C. Franchisee agrees that the covenants and representations
19 relating to the indemnity provided in Sections A and B above shall survive the
20 term/expiration/termination of this Franchise and continue in full force and effect
21 as to Franchisee's responsibility to indemnify.
22

23 6.5 Franchisee Insurance.

24 A. Franchisee shall maintain, throughout the term of the Franchise,
25 adequate insurance to protect the City, its trustees, elected and appointed officers,
26



agents, and employees against claims and damages that may arise as a result of the construction, operation or maintenance of the Telecommunications System.

B. General Requirements.

1. The insurance must be provided by an insurer with a rating of A [-] VII or higher in A.M. Best's Key Rating Guide, and pursuant to RCW 48, licensed, authorized, or permitted to do business in the state of Washington (or issued as a surplus line by a Washington Surplus lines broker.) The City reserves the right to approve or reject the insurance provided, based upon the insurer (including financial condition), terms and coverage, the Certificate of Insurance, and/or endorsements.

2. Franchisee shall keep this insurance in force during the entire term of the contract and for thirty (30) days after completion of all work required by the contract, unless otherwise provided herein.

3. The liability insurance policies required by this section shall contain a "severability of insureds," "separation of interest," or "cross liability" provision.

4. The insurance required by this section shall be primary and non-contributory insurance to any insurance coverage or self-insurance program the City may maintain. The General Liability and Automobile Liability insurance must contain a Waiver of Subrogation endorsement in favor of the City of Tacoma.

5. Franchisee shall provide the City not less than 30 days' notice of any cancellation or non-renewal of this required insurance.

6. Upon request, Franchisee shall forward to the City a full and



certified copy of the insurance policy(s) and endorsements required by this section.

1 7. Franchisee shall not begin work under the contract until the
2 required insurance has been obtained and approved by the City.

3 8. Failure on the part of Franchisee to obtain and maintain the
4 insurance as required by this section shall constitute a material default of the
5 Franchise, upon which the City may revoke the Franchise in accordance with
6 Section 2.5.

7 9. This obligation shall require Franchisee to maintain
8 insurance in at least the following amounts:

9 (a) Commercial General Liability Insurance Services
10 Office ("ISO") Form CG0001(04-13) or its equivalent. A policy of Commercial
11 General Liability Insurance ("CGL") shall be written on an "occurrence," not
12 "claims made," basis, with a limit of \$5,000,000 per occurrence for bodily injury and
13 property damage and \$10,000,000 general aggregate, and shall include the
14 following coverage:
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- 18 • Products Hazard/Completed Operations – Shall be maintained for a period
19 of six years after the termination of the Franchise or License (in the case of
20 the Communication System owner or operator) or completion of the work
21 for the Communications System Owner or Operator (in the case of
22 contractor or subcontractor).
- 23 • Personal/Advertising Injury
- 24 • Contractual Liability
- 25 • Explosion, Collapse, or Underground Property Damage
- 26 • Blasting (only required when Franchisee's work under this contract includes
exposures to which this specified coverage responds)
- If Franchisee is performing work within 50 feet of a railroad right-of-way, the
General Liability policy shall be endorsed to eliminate the Contractual



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Liability exclusion pertaining to work within 50 feet of a railroad right-of-way using ISO form CG2417(10-01) or the equivalent.

- The City of Tacoma, its trustees, elected and appointed officers, agents, and employees shall be included as an additional insured as their interest may appear under this Franchise for both ongoing and completed operation using ISO Forms CG2026(04-13) and CG 2037(04-13) or the equivalent.
- Primary and Non-Contributory with any insurance or self-insurance maintained by the City.
- Waiver of Subrogation in favor of the City.

(b) Workers' Compensation insurance shall be maintained during the life of this contract to comply with statutory limits for all employees, and in the case any work is sublet, Franchisee shall require its contractors and subcontractors similarly to provide workers' compensation insurance for all the latter's employees unless such employees are covered by the protection afforded by Franchisee. Franchisee shall also maintain during the life of this policy employers liability insurance. The following minimum limits must be maintained:

- | | |
|---------------------------|---|
| (i) Workers' Compensation | Statutory |
| (ii) Employer's Liability | \$1,000,000
Each accident/
disease/policy limit |

(c) Commercial Automobile Liability Coverage using ISO Form CA0001 or the equivalent, and shall include all owned (if any), hired, and non-owned vehicles with a limit of \$5,000,000 each accident for bodily injury and property damage. Such insurance shall be Primary and Non-Contributory with any insurance or self-insurance maintained by the City and shall contain a Waiver of Subrogation in favor of the City.



(d) A Commercial Umbrella Liability or Excess Liability

1 policy with limits not less than \$1,000,000 each occurrence and \$5,000,000
2 aggregate. Such policy must provide coverage in excess of the above-required
3 Commercial General Liability, Commercial Automobile Liability, and Employer's
4 Liability policies.
5

6 C. The required insurance must be obtained and maintained for the
7 entire period Franchisee has facilities in the Public Rights-of-Way, and for six years
8 thereafter. If Franchisee, its contractors, or subcontractors do not have the required
9 insurance, the City may order such entities to stop operations until the insurance is
10 obtained and approved.
11

12 D. Certificates of insurance, reflecting evidence of the required
13 insurance and naming the City as an additional insured with all required
14 endorsements on the General Liability and Automotive policies described above,
15 shall be filed with the City's Risk Manager. The certificate shall be filed with the
16 acceptance of the Franchise, and annually thereafter, and as provided in Section E
17 below.
18

19 E. Policies shall be issued by companies authorized to do business
20 under the laws of the state of Washington. Financial Ratings must be no less than
21 "A [-] VII" in the latest edition of A.M. Best's Key Rating Guide.
22

23 F. 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 coverage



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

3 G. The City shall reserve the right to require any other insurance
4 coverage it deems necessary during the term of the Franchise, depending upon the
5 exposures.

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

9
10 6.6 Security Fund. Franchisee shall establish a cash security fund or
11 provide the City an irrevocable letter of credit or assignment of funds in the amount
12 of \$50,000 as additional security to secure the payment of fees owed, to secure any
13 other performance promised in this Franchise, and to pay any taxes, fees, or liens
14 owed to the City. Any letter of credit shall be in a form and with an institution
15 acceptable to the City's Director of Finance and in a form acceptable to the City
16 Attorney. Should the City draw upon the cash security fund or letter of credit or
17 assignment of funds, it shall promptly notify Franchisee and Franchisee shall
18 promptly restore the fund or the letter of credit or assignment of funds to the full
19 required amount. The City may, from time to time, change the amount of the
20 required security fund/letter of credit/assignment of funds to reflect changes in the
21 risks to the City and to the public, including delinquencies in taxes or other
22 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 Franchise.
4

5 7.2 Guarantee of Performance. Franchisee acknowledges that it enters into
6 the Franchise voluntarily in order to secure and in consideration of the grant from
7 the City of a ten-year Franchise. Performance pursuant to the terms and conditions
8 of this Franchise agreement is guaranteed by Franchisee.
9

10 7.3 Governing Law and Venue. The Franchise shall be governed by and
11 construed in accordance with the laws of the state of Washington without recourse
12 to any principles of Conflicts of Laws, except that where federal law preemptively
13 applies it shall control. Any litigation between the City and Franchisee arising under
14 or regarding this Franchise shall occur, if in the state courts, in the Superior Court of
15 Pierce County, and if in the federal courts, in the United State District Court for the
16 Western District of Washington.
17

18 7.4 No Recourse. Without limiting such immunities as the City or other
19 Persons may have under applicable law, Franchisee shall have no monetary
20 recourse whatsoever against the City or its officials, boards, commissions,
21 agents, or employees for any loss, costs, expense, or damage arising out of any
22 provision or requirement of Title 16B or because of the enforcement of Title 16B
23 or the City's exercise of its authority pursuant to Title 16B, this Franchise, or
24 other applicable law, except to the extent Franchisee's Telecommunication
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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,
4 every notice, billing, or response required by this Franchise to be served upon
5 the City or Franchisee shall be in writing, and shall be deemed to have been duly
6 given to the required recipient upon actual receipt or refusal of delivery, and shall
7 be sent by a nationally recognized overnight courier or by U.S. certified mail,
8 return receipt requested, postage prepaid. The notices or responses to the City
9 shall be 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 MCImetro Access Transmission Services Corp.
18 Attn: Franchise Manager
19 600 Hidden Ridge
20 Mailcode: HQE02G295
21 Irving, TX 75038

22 With copies to (except for invoices):

23 Verizon Business Services, Inc.
24 1320 N. Courthouse Road, Suite 900
25 Arlington, VA 22201
26 Attn: Vice President and Deputy General Counsel

The City and Franchisee may designate such other address, from time to
time, by giving written notice to the other, but notice cannot be required to more
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 the
10 assistance of counsel, that it was not induced to accept a Franchise, that this
11 Franchise represents the entire agreement between Franchisee and the City,
12 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 performance
16 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
22
23
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26



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 void.

3
4 Passed _____

5
6 _____
Mayor

7 Attest:
8
9 _____
City Clerk

10 Approved as to form:
11
12 _____
13 Deputy City Attorney

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ACCEPTANCE OF CITY FRANCHISE

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Ordinance No. _____, effective _____, 2016.

I, _____, am the _____ of
MCImetro Access Transmission Services Corp., a Delaware corporation, and am
the authorized representative to accept the above referenced City franchise
ordinance on behalf of MCImetro.

I certify that this franchise and all terms and conditions thereof are accepted
by MCImetro.

DATED this _____ day of _____, 2016.

MCImetro Access Transmission Services Corp.

By _____

Its _____