

ORDINANCE NO. 691

AN ORDINANCE OF THE CITY OF LAKEWOOD (hereinafter "City") GRANTING MCI METRO ACCESS TRANSMISSION SERVICES CORP. D/B/A VERIZON ACCESS TRANSMISSION SERVICES (hereinafter "Grantee") A NON-EXCLUSIVE FRANCHISE FOR THE CONSTRUCTION, OPERATION, MAINTENANCE, REPAIR, AND REMOVAL OF TELECOMMUNICATIONS SERVICES IN, THROUGH, OVER AND UNDER THE RIGHTS-OF-WAY OF THE CITY OF LAKEWOOD. GRANTEE'S TELECOMUNICATION FACILITIES SHALL NOT INCLUDE ANTENNAS THAT ARE USED FOR PERSONAL WIRELESS COMMUNICATIONS SERVICES.

WHEREAS, Grantee is a competitive telecommunications company providing telecommunication services, which desires to occupy the City rights-of-way to install, construct, operate, maintain, and repair a telecommunication facilities and network for the purpose of providing services to its customers within and outside the City; and

WHEREAS, the City Council has the authority under state law to grant franchises for the use of its rights-of-way; and

WHEREAS, the City Council finds it desirable for the welfare of the City and its residents that such a non-exclusive franchise be granted to Grantee; and

WHEREAS, the City is willing to grant the rights requested by Grantee subject to certain terms and conditions;

NOW, THEREFORE, The City Council of the City of Lakewood do ordain as follows:

**Section 1. Definitions.** Where used in this Ordinance and the franchise granted hereby (the "Franchise") these terms have the following meanings:

**A. "Affiliate"** means an entity which owns or controls, is owned or controlled by, or is under common ownership with Grantee.

**B. "City"** means the City of Lakewood, a municipal corporation of the State of Washington.

**C. "Emergency Situation"** means an emergency involving likely loss of life or substantial property damage as determined by City in good faith.

**D. "Facilities"** means Grantee's telecommunications system constructed and operated within the City's Rights-of-Way, and shall include all cables, wires, conduits, ducts, pedestals and any associated converter, equipment or other facilities within the City's Rights-of-Way, designed and constructed for the purpose of providing Telecommunications Service and other lawful services not prohibited by this Ordinance

For the purposes of this franchise the term Facilities excludes "microcell" facilities, "minor facilities," "small cell facilities," all as defined by RCW 80.36.375.

**E. "Franchise"** shall mean the initial authorization or renewal thereof, granted by the City, through this Ordinance, or a subsequently adopted Ordinance, which authorizes installation, construction and operation of the Grantee's Facilities for the purpose of offering Telecommunications Service and other lawful services not prohibited by this Ordinance.

**F. "Franchise Area"** means the present municipal boundaries of the City, and shall include any additions thereto by annexation or other legal means.

**G. "Person"** means an individual, partnership, association, joint stock company, trust, corporation, limited liability company or governmental entity.

**H. "Rights-of-way"** means the surface and the space above and below streets, roadways, highways, avenues, courts, lanes, alleys, sidewalks, rights-of-way and similar public areas within the City.

**I. "Telecommunications Service"** means any "telecommunications service" as defined by RCW 35.99.010(7), excluding "cable television service" as defined by RWC 35.99.010(1) and further excluding "personal wireless services" as defined by RCW 35.99.010(4), provided by the Grantee over its Communication System, either directly or as a carrier for its subsidiaries, Affiliates, or customers.

## **Section 2. Franchise Area and Authority Granted.**

**A. Facilities within Franchise Area.** The City does hereby grant to Grantee the right, privilege, authority and franchise to construct, support, attach, connect and stretch Facilities between, maintain, repair, replace, enlarge, operate and use Facilities in, upon, over, under, along and across rights-of-way in the Franchise Area for purposes of telecommunications service as defined in RCW 82.04.065.

**B. Permission Required to Enter Onto Other City Property.** Nothing contained in this Ordinance is to be construed as granting permission to Grantee to go upon any other public place other than Rights-of-Way within the Franchise Area in this Ordinance. Permission to go upon any other property owned or controlled by the City must be sought on a case-by-case basis from the City.

**C. Compliance with WUTC Regulations.** At all times during the term of the Franchise, Grantee shall fully comply with all applicable regulations of the Washington Utilities and Transportation Commission.

## **Section 3. Construction and Maintenance.**

**A. Grantee's Facilities and Excavation.** Grantee's Facilities shall be located, relocated and maintained within the rights-of way in accordance with Lakewood Municipal Code

("LMC") and so as not to unreasonably interfere with the free and safe passage of pedestrian and vehicular traffic and ingress or egress to or from the abutting property and in accordance with the laws of the State of Washington.

Whenever it is necessary for Grantee, in the exercise of its rights under the Franchise, to make any excavation in the rights-of-way, Grantee shall obtain prior approval from the City of Lakewood Public Works Department, pay the applicable permit fees, and obtain any necessary permits for the excavation work pursuant to LMC. Upon completion of such excavation, Grantee shall restore the surface of the rights-of-way to the specifications established within the Lakewood Municipal Code and City of Lakewood Engineering Standards Manual.

If Grantee should fail to leave any portion of the excavation in a condition that meets the City's specifications per the LMC and City Engineering Standards, the City may, on five (5) days' notice to Grantee, which notice shall not be required in case of an Emergency Situation, cause all work necessary to restore the excavation to a safe condition. Grantee shall pay to the City the reasonable cost of such work.

**B. Excavation Failure.** Any surface or subsurface failure occurring during the term of this Agreement caused by any excavation by Grantee, normal wear and tear excepted, shall be repaired to the City's specifications, within thirty (30) days, or, upon five (5) days written notice to Grantee, the City may order all work necessary to restore the damaged area to a safe and acceptable condition and Grantee shall pay the reasonable cost of such work to the City.

**C. Emergency.** In the event of an Emergency Situation, Grantee may commence such emergency and repair work as required under the circumstances, provided that Grantee shall notify the City Public Works Engineering Director in writing as promptly as possible before such repair or emergency work commences, or as soon thereafter as possible, if advance notice is not reasonably possible. The City may act, at any time, without prior written notice in the case of an Emergency Situation, but shall notify Grantee in writing as promptly as possible under the circumstances.

**D. Damage Repaired.** Grantee agrees that if any of its actions under the Franchise materially impair or damage any City property, survey monument, or property owned by a third party, Grantee will restore, at its own cost and expense, the impaired or damaged property to the same condition as existed prior to such action. Such repair work shall be performed and completed to the reasonable satisfaction of the Public Works Engineering Director.

#### **Section 4. Location and Relocation of Facilities.**

**A. Facilities – Underground and Existing Poles.** Grantee shall place any new Facilities underground where existing telecommunications and cable facilities are located underground. Any new Facilities to be located above-ground shall be placed on existing



utility poles. No new utility poles shall be installed in connection with placement of new above-ground Facilities.

**B. Clear Zones.** Grantee recognizes the need for the City to maintain adequate width for installation and maintenance of sanitary sewer, water and storm drainage utilities owned by the City and other public utility providers. Thus, the City reserves the right to maintain clear zones within the public right-of-way for installation and maintenance of said utilities. The clear zones for each right-of-way segment shall be noted and conditioned with the issuance of each Right-of-Way permit. If adequate clear zones are unable to be achieved on a particular right-of-way, Grantee shall locate in an alternate right-of-way, obtain easements from private property owners, or propose alternate construction methods which maintain and/or enhance the existing clear zones.

**C. Relocate, Remove or Reroute Facilities.** Except as otherwise required by law, Grantee agrees to relocate, remove or reroute its Facilities as ordered by the City, at no expense or liability to the City, except as may be required by RCW Chapter 35.99. Pursuant to the provisions of Section 5, Grantee agrees to protect and save harmless the City from any third party claims for service interruption or other losses in connection with any such change or relocation other than City's negligence or willful misconduct.

**D. Process to Relocate.** If the City determines that a project necessitates the relocation of the Grantee's existing Facilities, then:

**1. Notice.** Within a reasonable time, which shall be no less than ninety (90) days prior to the commencement of the project, the City shall provide the Grantee with written notice requiring relocation; provided that, in the event of an Emergency Situation beyond the control of the City and which will result in severe financial consequences to the City or its citizens or businesses, the City shall give the Grantee written notice as soon as practicable;

**2. Information.** The City shall provide the Grantee with copies of information for such improvement project and a proposed location for the Grantee's Facilities so that Grantee may relocate its Facilities in other rights-of-way in order to accommodate the project; and

**3. Timing.** The Grantee shall complete relocation of its Facilities at no charge or expense to the City so as to accommodate the project at least ten (10) days prior to commencement of the project. In the event of an Emergency Situation as described in this Section, the Grantee shall relocate its Facilities within the reasonable time period specified by the City.

**E. Alternative Locations.** The Grantee may, after receipt of written notice requesting a relocation of its Facilities, submit to the City written alternatives to such relocation. The City shall evaluate such alternatives and advise the Grantee in writing if one or more of the alternatives are suitable to accommodate the work, which would otherwise necessitate relocation of the Facilities. If so requested by the City, the Grantee shall submit



additional information to assist the City in making such evaluation. The City shall give each alternative proposed by the Grantee full and fair consideration, within a reasonable time, so as to allow for the relocation work to be performed in a timely manner. In the event the City ultimately determines that there is no other reasonable alternative, the Grantee shall relocate its Facilities as otherwise provided in this Section.

**F. Requests to Relocate by Others.** The provisions of this Section shall in no manner preclude or restrict the Grantee from making any arrangements it may deem appropriate when responding to a request for relocation of its Facilities by any Person or entity other than the City, where the Facilities to be constructed by said Person or entity are not or will not become City-owned, operated or maintained Facilities; provided, that such arrangements shall not unduly delay a City construction project.

**G. Grantee Indemnifies City.** The Grantee shall indemnify, hold harmless, defend and pay the costs of defending the City against any and all third party claims, suits, actions, damages, or liabilities for delays on City construction projects caused by or arising out of the failure of the Grantee to relocate its Facilities in a timely manner; provided, that the Grantee shall not be responsible for damages due to delays caused by the City or circumstances beyond the reasonable control of the Grantee.

**H. Reimbursement – Limited.** Consistent with RCW 35.99.060, in the event that the City orders the Grantee to relocate its Facilities for a project which is primarily for private benefit, the private party or parties causing the need for such project shall reimburse the Grantee for the cost of relocation in the same proportion as their contribution to the total cost of the project.

**I. Emergency.** In the event of an unforeseen Emergency Situation that creates a threat to public safety, health or welfare, the City may require the Grantee to relocate its Facilities at its own expense, any other portion of this Section notwithstanding.

## **Section 5. Indemnification.**

**A. General.** Grantee shall indemnify, defend and hold the City, its agents, officers, employees, volunteers and assigns harmless from and against any and all third party claims, demands, liability, loss, cost, damage or expense of any nature whatsoever, including all costs and reasonable attorney's fees, made against them on account of injury, sickness, death or damage to persons or property which is caused by or arises out of, in whole or in part, the willful, tortious or negligent acts, failures and/or omissions of Grantee or its agents, servants, employees, contractors, subcontractors or assigns in the construction, operation or maintenance of its Facilities or in exercising the rights granted Grantee in the Franchise; *provided, however*, such indemnification shall not extend to injury or damage caused by the negligence or willful misconduct of the City, its agents, officers, employees, volunteers or assigns.

**B. Notice.** In the event any such claim or demand be presented to or filed with the City, the City shall promptly notify Grantee thereof (and in any event prior to the date that

Grantee's rights to defend such claim or demand would be prejudiced), and Grantee shall have the right, at its election and at its sole cost and expense, to settle and compromise such claim or demand, provided further, that in the event any suit or action be begun against the City based upon any such claim or demand, it shall likewise promptly notify Grantee thereof, and Grantee shall have the right, at its election and its sole cost and expense, to settle and compromise such suit or action, or defend the same at its sole cost and expense, by attorneys of its own election.

## **Section 6. Default.**

**A. Failure to Comply.** If Grantee shall fail to comply with any of the provisions of the Franchise, unless otherwise provided in the Franchise, the City will serve upon Grantee a written order to comply within thirty (30) days from the date such order is received by Grantee. If Grantee is not in compliance with the Franchise after expiration of the thirty (30) day period, the City may act to remedy the violation and may charge the reasonable costs and expenses of such action to Grantee. The City may act without the thirty (30) day notice in case of an Emergency Situation. If any failure to comply with the Franchise by Grantee cannot be corrected with due diligence within said thirty (30) day period, then the time within which Grantee may so comply shall be extended for such time as may be reasonably necessary and so long as Grantee works promptly and diligently to effect such compliance. During such a period, if Grantee is not in compliance with the Franchise, and is not proceeding with due diligence in accordance with this section to correct such failure to comply, then the City may in addition, by ordinance and following written notice to Grantee, declare an immediate forfeiture of the Franchise and all of Grantee's rights and obligations thereunder.

**B. Remedies.** In addition to other remedies provided in this Franchise or otherwise available at law, if Grantee is not in compliance with requirements of the Franchise, and if a good faith dispute does not exist concerning such compliance, the City may place a moratorium on issuance of pending Grantee Right-of-Way use permits until compliance is achieved.

## **Section 7. Nonexclusive Franchise.**

A. The Franchise granted by this Ordinance is not and shall not be deemed to be an exclusive franchise. The Franchise granted by this Ordinance shall not in any manner prohibit the City from granting other and further franchises over, upon, and along the Franchise Area. The Franchise granted by this Ordinance shall not prohibit or prevent the City from using the Franchise Area or affect the jurisdiction of the City over the same or any part thereof.

## **Section 8. Franchise Term.**

**A. Ten Years.** Unless earlier terminated by Grantee upon notice to the City, the Franchise is and shall remain in full force and effect for a period of ten (10) years from and after the effective date of this Ordinance, provided that the term may be extended for



an additional five (5) years upon the agreement of Grantee and the City; and provided further, however, Grantee shall have no rights under the Franchise nor shall Grantee be bound by the terms and conditions of the Franchise unless Grantee shall, within thirty (30) days after the effective date of this Ordinance, file with the City its written acceptance of the Franchise, in a form acceptable to the City Attorney.

**B. Failure to Renew – Franchise to Continue.** This Franchise may be renewed for an additional term of 5 years upon the terms and conditions set forth herein. If either Party chooses not to renew this Franchise, the Party shall provide written notice to the other Party of its intent not to renew this Franchise at least 180 days prior to the expiration of the Initial Term.

**C. Effect of Expiration of Franchise.** Upon expiration of the Franchise, Grantee shall have up to 90 days following expiration in which to remove all of its Facilities and related equipment from City Rights-of-Way, except as otherwise provided in Section 21. Within 30 days following expiration, Grantee shall provide the City with a schedule and timeline for all Facilities. Thereafter, Grantee shall have no access to City Rights-of-Way for the purpose of installing any Facilities.

## **Section 9. Compliance with Codes and Regulations.**

**A. Governing Law.** The rights, privileges and authority herein granted are subject to and governed by this Ordinance, the applicable laws of the State of Washington and the applicable laws of the United States, and all other applicable ordinances and codes of the City of Lakewood, as they now exist or may hereafter be amended, including but not limited to the provisions of Lakewood Municipal Code. Nothing in this ordinance limits the City's lawful power to exercise its police power to protect the safety and welfare of the general public. Any location, relocation, erection or excavation by Grantee shall be performed by Grantee in accordance with applicable federal, state and city rules and regulations, including the City's Public Works Policies and Standard Plans, and any required permits, licenses or posted fees, and applicable safety standards then in effect.

**B. Annexation.** In the event that any territory served by Grantee is annexed to the City after the effective date of the Franchise, such territory shall be governed by the terms and conditions contained herein upon the effective date of such annexation.

**C. Taxes.** The City acknowledges that Washington law currently limits the tax the City may impose on Grantee's activities hereunder to 6% of revenue derived from the provision of network telephone service (i.e., "telephone business" as defined in RCW 82.16.010) and that the federal Internet Tax Freedom Act prohibits the imposition of a tax or other fee on revenue derived by Grantee from Grantee's provision of Internet access services. Grantee agrees that if federal or Washington law is changed, Grantee, following not less than ninety (90) days written notice from the City, will negotiate in good faith with the City to amend the Franchise to expand the revenue base on which such tax is applied.



## **Section 10. Undergrounding.**

A. New Facilities shall be installed underground pursuant to Section 4 of the Franchise. Grantee acknowledges the City's policy of undergrounding of Facilities within the Franchise Area. Grantee will cooperate with the City in the undergrounding of Grantee's existing Facilities within the Franchise area. If, during the term of the Franchise, the City shall direct Grantee to underground Facilities within any Franchise Area, such undergrounding shall be at no cost to the City except as may be provided in RCW Chapter 35.99. Grantee shall comply with all federal, state, and City regulations on undergrounding. If the City undertakes any street improvement which would otherwise require relocation of Grantee's above-ground Facilities, the City may, by written notice to Grantee, direct that Grantee convert any such Facilities to underground Facilities. P

## **Section 11. Record of Installations and Service.**

A. **Record.** With respect to excavations by Grantee and the City within the Franchise Area, Grantee and the City shall each comply with its respective obligations pursuant to Chapter 19.122 RCW and any other applicable state or federal law.

B. **Plans.** Upon written request of the City, Grantee shall provide the City with the most recent update available of any plan of potential improvements to its Facilities within the Franchise Area; provided, however, any such plan so submitted shall be for informational purposes within the Franchise Area, nor shall such plan be construed as a proposal to undertake any specific improvements within the Franchise Area.

C. **Drawings and Maps.** As-built drawings and maps of the precise location of any Facilities placed by Grantee in any rights-of-way shall be made available by Grantee to the City within ten (10) working days of the City's written request. These plans and maps shall be provided at no cost to the City and shall include hard copies and/or digital copies in a format commonly used in the telecommunications industry.

## **Section 12. Shared Use of Excavations and Trenches.**

A. **Notice of Excavations.** If either the City or Grantee shall at any time after installation of the Facilities plan to make excavations in the area covered by the Franchise and as described in this Section, the party planning such excavation shall afford the other, upon receipt of written request to do so, an opportunity to share such an excavation, *provided that*: (1) such joint use shall not unreasonably delay the work of the party causing the excavation to be made or unreasonably increase its costs; (2) such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties. In addition, pursuant to RCW 35.99.070, the City may request that Grantee install additional conduit, ducts and related access structures for the City pursuant to contract, under which Grantee shall recover its incremental costs of providing such facilities to the City.

B. **Reservation to not allow Trenching.** The City reserves the right to not allow open trenching for five years following a street overlay or improvement project. Grantee shall

be given written notice at least ninety (90) days prior to the commencement of the project. Required trenching due to an emergency will not be subject to five (5) year street trenching moratoria.

**C. Joint Trench.** The City reserves the right to require Grantee to joint trench with other franchisees if both entities are anticipating trenching within the same franchise area and provided that the terms of this Section are met.

### **Section 13. Recovery of Costs.**

- A. The Grantee shall be subject to all permit fees reflecting actual reasonable administrative costs associated with activities undertaken through the authority granted in this Franchise or under the laws of the City. Where the City incurs costs and expenses for review, inspection, or supervision of activities undertaken through the authority granted in this Franchise or any ordinances relating to the subject, for which a fee is not established, the Grantee shall reimburse the City directly for any and all actual reasonable costs, after receipt of an itemized bill. In addition to the above, the Grantee shall promptly reimburse the City for any and all reasonable costs the City incurs in response to any emergency involving the Grantee's communication Facilities, after receipt of an itemized bill. All billings will be itemized as to specifically identify the costs and expenses for each project for which the City claims reimbursement. The billing may be on an annual basis, but the City shall provide the Franchise with the City's itemization of costs at the conclusion of each project for information purposes.

### **Section 14. City's Reservation of Rights.**

- A. Pursuant to RCW 35.21.860 the City may recover from Grantee its actual administrative expenses as well as any applicable tax authorized by RCW 35.21.865. This Franchise is premised upon the City and Grantee's agreement that either Grantee is a "service provider" as used in RCW 35.21.860 and defined in RCW 35.99.010(6) or Grantee's Telecommunications Services fall within the definition of "telephone business" set forth in RCW 82.16.010(7)(b)(iii). As such, the rights granted under this Franchise are not conditioned upon payment of a franchise fee or other compensation for use of the Public Ways. Provided, however, that the Grantee's exercise of the rights granted in this Franchise are conditioned upon reimbursement for actual administrative costs including as set forth for use of City-owned poles, if any, and payment of any other fee set forth herein. The City hereby reserves its right to impose a fee on the Grantee, to the extent authorized by law, for purposes other than to recover its administrative expenses, in the event that (1) statutory prohibitions on the imposition of such fees are removed, or that (2) Grantee no longer falls within the definition of "service provider" in RCW 35.99.010(6) and Grantee's Telecommunications Services fall outside the definition of "telephone business" in RCW 82.16.010(7)(b)(iii). Under those circumstances, the City also reserves its right to require that the Grantee obtain a separate Agreement for its change in use, which Agreement may include provisions intended to regulate the Grantee's operations, as allowed under applicable law. Nothing in this Franchise shall limit the City's right of taxation as authorized by law. Nothing in this Franchise is



intended to alter, amend, modify, expand, or diminish, in any way, taxes that may lawfully be assessed on Grantee's business activities under applicable law.

### **Section 15. Utility Owned Poles.**

A. The parties acknowledge that the poles which the Grantee desires to use for the location of its Facilities are poles owned by a third party or parties, and that Grantee has entered or shall enter into an agreement with the third party or parties, setting forth the terms and conditions under which the Grantee shall be permitted to do so.

### **Section 16. Insurance.**

**A. General.** Grantee shall procure and maintain for the duration of the Franchise, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of work under the Franchise by Grantee, its agents, representatives or employees in the amounts and types set forth below.

1. Commercial General Liability insurance with limits no less than \$5,000,000 combined single limit for bodily injury (including death) and property damage, including premises operation, products and completed operations and explosion, collapse and underground coverage extensions;
2. Automobile liability for owned, non-owned and hired vehicles with a combined single limit of \$3,000,000 for each accident for bodily injury and property damage; and
3. Worker's compensation within statutory limits and employer's liability insurance with limits of not less than \$1,000,000 for each accident/disease/policy limit or as required by law.

**B. Primary.** Grantee's insurance coverage shall be primary insurance as respects the City. Any insurance, self-insurance or insurance pool coverage maintained by the City shall be in excess of Grantee's insurance and shall not contribute with it.

**C. Certificates of Insurance.** Grantee shall furnish the City with certificates of the foregoing insurance coverage or a copy of amendatory endorsements, including but not necessarily limited to the additional insured endorsement.

**D. Self-Insurance.** Grantee shall have the right to self-insure any or all of the above-required insurance. Any such self-insurance is subject to approval by the City.

**E. Other Remedies.** Grantee's maintenance of insurance as required by the Franchise shall not be construed to limit the liability of Grantee to the coverage provided by such insurance, or otherwise limit City's recourse to any remedy to which the City is otherwise entitled at law or in equity.



## **Section 17. Bonding Requirement.**

**A. General.** Before undertaking any of the work authorized by this Franchise, the Grantee shall furnish an ongoing performance bond executed by the Grantee and a corporate surety authorized to do surety business in the State of Washington, in a sum to be set and approved by the Public Works Engineering Director as reasonably sufficient to ensure performance of Grantee's obligations under this Franchise. The bond shall be conditioned so that Grantee shall observe all the covenants, terms and conditions and faithfully perform all of the obligations of this Franchise, and to restore or replace any defective work or materials discovered in the restoration of the Franchise Area within a period of two (2) years from the final City inspection date of any such restoration. Grantee may meet the obligations of this section with one (1) or more bonds with an -A VII rating or better. In the event that a bond furnished pursuant to this section is canceled by the surety, after proper notice and pursuant to the terms of said bond, the Grantee shall, prior to the expiration of said bond, procure a replacement bond which complies with the terms of this section.

**B. Failure in Obligations.** With respect to undertaking any of the work authorized by this Franchise, in the event the Grantee fails to perform its obligations under this Franchise and further fails to cure any deficiency within a reasonable period of time after receipt of written notice of such deficiency by the City, then the City may use any bond(s) furnished by the Grantee pursuant to Section 14(A) to cure such deficiency. Neither the amount of such bond(s) nor the City's use thereof shall limit the City's full recovery from the Grantee of costs incurred by the City to cure such deficiency.

**C. Notice.** In the event the City makes use of such bond(s) furnished by the Grantee pursuant to Section 14 (B) the City shall promptly provide written notice of same to the Grantee. Within thirty (30) days of receipt of such notice, the Grantee shall replenish or replace such bond(s) as provided in Section 14 (A).

**D. Reservation of Rights.** The rights reserved to the City by this Section 14 are in addition to other rights of the City whether reserved by this Franchise or authorized by law, and no action, proceeding, or exercise of right under this Section 14 shall constitute an election or waiver of any rights or other remedies the City may have.

## **Section 18. Street Vacation.**

A. If any Public right-of-way of 'portion thereof used by Grantee is to be vacated during the term of this Franchise, unless as a condition of such vacation the Grantee is granted the right to continue its Facilities in the vacated Public right-of-way, Grantee shall, without delay or expense to the City, remove its Facilities from such Public right-of-way, and restore, repair or reconstruct the Public right-of-way where such removal has occurred, and place the Public right of-way in such condition as may be required by the City.

## Section 19. Assignment.

**A. General.** All of the provisions, conditions, and requirements herein contained shall be binding upon Grantee, and no right, privilege, license or authorization granted to Grantee hereunder may be assigned or otherwise transferred without the prior written authorization and approval of the City, which the City may not unreasonably withhold. Notwithstanding the foregoing, Grantee, without the consent of, but upon notice to the City, may assign this agreement in whole or in part to: (a) an Affiliate (as defined in this Ordinance); or (b) a lender for security purposes only.

**B. Lease.** Grantee may lease the Facilities or any portion thereof to another or provide capacity or bandwidth in its Facilities to another, *provided that:* Grantee at all times retains ownership over such Facilities and remains responsible for locating, servicing, repairing, relocating or removing its Facilities pursuant to the terms and conditions of the Franchise.

## Section 20. Unauthorized Installations.

A. Any Facilities installations in the City Rights-of-way that were not authorized under this Franchise or other approval by the City that are identified by the City as a result of comparing the Inventory to internal records or through any other means will be subject to the payment of an Unauthorized Facilities Charge by the Grantee. City shall provide written notice to the Grantee of any Unauthorized Facilities identified by City staff and the Grantee shall have 30 days thereafter in which to establish that this site was authorized. Failure to establish that the site is authorized will result in the imposition of an Unauthorized Facilities Installation Charge in the amount of \$1,000.00 per Unauthorized Facility per day starting on the 31st day. Grantee may submit an application to the City under this Franchise for approval of the Unauthorized Facilities, and the imposition of the aforementioned charge shall not be made until a final decision on the application is rendered by the City to Grantee in writing. If the application for the Unauthorized Facilities is not approved based on applicable considerations under this Franchise or applicable Laws, Grantee shall remove the Unauthorized Facilities and any related facilities from the City's Rights-of-way within 30 days after the expiration of all appeal periods for such denial. The City shall not refund any assessed fines, unless Grantee is successful in an appeal.

## Section 21. Abandonment and Removal of Facilities.

A. Upon the expiration, termination, or revocation of the rights granted under the Franchise, the Grantee shall remove all of its Facilities from the Rights-of-Way of the City within sixty (60) days of receiving notice from the City's Public Works Engineering Director; *provided however,* that the City may permit the Grantee's improvements to be abandoned in place in such a manner as the City may prescribe. Upon permanent abandonment, and Grantee's agreement to transfer ownership of the Facilities to the City, the Grantee shall submit to the City a proposal and instruments for transferring ownership to the City. Any such Facilities which are not permitted to be abandoned in place which are not removed within sixty (60) days of receipt of said notice shall automatically



become the property of the City; *provided however*, that nothing contained within this Section shall prevent the City from compelling the Grantee to remove any such Facilities through judicial action when the City has not permitted the Grantee to abandon said Facilities in place.

## **Section 22. Dangerous Conditions, Authority for City to Abate.**

**A. Abatement.** In the event that Grantee's Facilities or operations cause or contribute to a condition that appears to endanger any person or substantially impair the lateral support of the Franchise Area or public or private property adjacent thereto, the Public Works Engineering Director may direct Grantee, at no charge or expense to the City, to promptly take such action as may be reasonably necessary to resolve such condition to eliminate such endangerment. Such directive may include compliance within a prescribed period of time.

**B. Cost Recovery.** In the event Grantee fails to promptly take action as directed by the City pursuant to Section 17 (A), or fails to fully comply with such direction, or if emergency conditions exist which require immediate action to prevent imminent injury or damage to persons or property, the City may take action as it reasonably believes is necessary with respect to Grantee's Facilities or operations to protect persons or property and in such event Grantee shall be responsible to reimburse the City for its costs incurred in so doing.

## **Section 23. Miscellaneous.**

**A. Severability.** If any term, provision, condition or portion of this Ordinance shall be held to be invalid, such invalidity shall not affect the validity of the remaining portions of this Ordinance which shall continue in full force and effect. The headings of sections and paragraphs of this Ordinance are for convenience of reference only and are not intended to restrict, affect, or be of any weight in the interpretation or construction of the provisions of such sections or paragraphs.

**B. Administrative Costs.** Grantee shall pay for the City's reasonable administrative costs in drafting and processing this Ordinance and all work related thereto, which payment shall not exceed \$2,000. Grantee shall further be subject to all published permit fees associated with activities and the provisions of any such permit, approval, license, agreement or other document, the provisions of the Franchise shall control.

**C. Waiver.** Failure of the City to declare any breach or default under this Franchise or any delay in taking action shall not waive such breach or default, but the City shall have the right to declare any such breach or default at any time. Failure of the City to declare one breach or default does not act as a waiver of the City's right to declare another breach or default.

**D. Federal Law.** Notwithstanding anything to the contrary herein, any determination by the City with respect to matters contained in this Ordinance and matters related to the



Franchise shall be made in accordance with applicable federal law, including without limitation any applicable rules and regulations promulgated by the Federal Communications Commission, applicable state law and in a reasonable and non-discriminatory manner.

**E. Coordination.** Grantee will provide contact information to the City for purposes of including the Grantee in any coordination with local utility providers.

**Section 24. Notice.**

**A. Addresses.** Any notice or information required or permitted to be given to the parties under this Franchise may be sent to the following addresses unless otherwise specified:

|   |   |
|---|---|
| <p>City of Lakewood:<br/>Public Works Engineering Director<br/>City of Lakewood<br/>6000 Main Street SW<br/>Lakewood, WA 98499-5027</p> | <p>Grantee:<br/>MCImetro Access Transmission Services Corp.<br/>600 Hidden Ridge, Mailcode: HQE02E102<br/>Irving, TX 75038<br/>Attn: Franchise Manager</p> <p>with a copy (except for invoices) to:</p> <p>Verizon Business Services<br/>1320 N. Courthouse Road, Suite 900<br/>Arlington, VA 22201<br/>Attn: General Counsel, Network &amp; Technology</p> |
|---|---|

**B. United States Mail.** Notice shall be deemed given upon receipt in the case of personal delivery, three (3) days after deposit in the United States Mail in the case of regular mail, or the next day in the case of overnight delivery.

**Section 25. Alteration of Franchise.**

**A. General.** The City and Grantee hereby reserve the right to alter, amend or modify the terms and conditions of this Franchise in accordance with the provisions of this Section.

**B. Participation.** At any time during the term of this Franchise, the City or Grantee may request, by written notice, that the other promptly participate in negotiations to alter, amend or modify the terms and conditions of this Franchise.

**C. Process.** Within a reasonable time after receipt of the notice, the City and Grantee shall, at a mutually agreed-upon time and place, commence negotiations to alter, amend or modify the terms and conditions of this Franchise. The City and Grantee shall conduct such negotiations in good faith and with due regard to all pertinent facts and circumstances; provided, however, that neither the City nor Grantee shall be obligated to

agree to any proposed alteration, amendment or modification. Further, no rights or privileges granted by this Franchise shall be prejudiced, impaired or otherwise affected by the failure of the City or Grantee to agree to any proposed alteration, amendment or modification.

**D. Negotiations.** Neither the City nor Grantee shall be obligated to continue negotiations after the expiration of ninety (90) days from the date they commence such negotiations; provided, however, the City and Grantee may agree to continue such negotiations for an additional period of time.

**E. Ordinance.** Any alteration, amendment or modification to which the City and Grantee agree shall be submitted to the legislative authority of the City as a proposed ordinance. The ordinance so proposed shall expressly provide that, unless Grantee properly files a written notice of acceptance within sixty (60) days of its effective date, the ordinance shall not be effective and this Franchise shall not be altered, amended or modified. To the extent permitted by law, the party proposing the alteration, amendment or modification shall bear all actual administrative costs directly related to approval thereof.

**F. Facilities – Limited.** It is the understanding of the parties that this franchise is limited to facilities necessary to provide Telecommunications Service. The parties to this agreement acknowledge that if the Grantee endeavors to provide services or utilities beyond the scope of this agreement, such additional services or utilities may be added to this franchise only by written addendum. Additional services or utilities may be subject to franchise fees, and state or local taxes as allowed by law.

#### **Section 26. Effective date.**

This Ordinance, being in compliance with RCW 35A.47.040, shall be in force and effect thirty (30) days from and after its passage by the Lakewood City Council and publication in the summary form attached to the original of this ordinance and by this reference approved by the City Council.

Passed by majority vote of the Lakewood City Council in open meeting this 6<sup>th</sup> day of August, 2018.

Signed in authentication thereof this 6<sup>th</sup> day of August, 2018.

CITY OF LAKEWOOD



Don Anderson, Mayor

Attest:



Briana Schumacher, City Clerk

Approved as to Form:



Heidi Ann Wachter, City Attorney

ACCEPTED this 20<sup>th</sup> day of August, 2018 subject to applicable federal, state and local law.

MCImetro Access Transmission Services Corp.



Robert J. Hayes  
Sr Mgr-Ntwk Eng & Ops