

SR 2817

08/28/17
10/02/17

ORDINANCE M - 7214

AN ORDINANCE relating to management of the public rights-of-way, granting to MCImetro Access Transmission Services Corp. d/b/a/ Verizon Access Transmission Services (hereinafter referred to as the "Franchisee"), a Delaware Limited Liability Company having a non-exclusive and revocable franchise to install, operate and maintain a telecommunications system in, on, over, upon, along, and across public rights-of-way of the City of Vancouver, Washington (hereinafter referred to as the "City"), prescribing certain rights, duties, terms and conditions with respect to such franchise; providing for setting an effective date and conditions.

WHEREAS, Franchisee is a telecommunications company that provides voice and data services to its customers; and

WHEREAS, Franchisee has requested that the City grant it the right to install, operate, and maintain a telecommunications system within the public ways of the City; and

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

WHEREAS, the City Council has the authority, including pursuant to chapter 35.99 RCW, to grant franchises for the use of its streets and other public properties; and

WHEREAS, the City is willing to grant the rights requested subject to certain terms and conditions authorized by law.

NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF VANCOUVER:

ORDINANCE - 1
Does not require codification

Section 1. Definitions. For the purposes of this Franchise, the following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number and words in the singular number include the plural number.

"Affiliate" means an entity that owns or controls, is owned or controlled by, or is under common ownership with the Franchisee.

"City" means the City of Vancouver, Washington, and either or both, as applicable, the person designated by the City.

"Telecommunications Service" shall mean 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 Franchisee over its Communication System, either directly or as a carrier for its subsidiaries, Affiliates, or customers.

"Communication System" or "Facilities" shall mean the Franchisee's system of cables, wires, conduits, ducts, pedestals, and any associated converter, equipment, or facilities within the City owned and operated by Franchisee, including without limitation those Facilities that are existing or currently planned by Franchisee.

"FCC" means the Federal Communications Commission or any successor governmental entity hereto.

ORDINANCE - 2

Does not require codification

"Franchise" shall mean initial authorization, or renewal thereof, issued by the City, which authorizes construction and operation of the Franchisee's Communication System.

"Franchisee" means MCImetro Access Transmission Services Corp. d/b/a/ Verizon Access Transmission Services, a corporation licensed to do business in the state of Washington, or the lawful successor, transferee, or assignee thereof.

"Indefeasible Right of User Interest" or "IRU" means a form of acquired capital in a telecommunications system, in which the holder of the interest possesses a right to use the telecommunications system, but not the right to control, maintain, construct or revise the telecommunications system.

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

"Public Way" shall mean the surface of, and any space on, above or below, any street, public right-of-way or utility easement for which the City now or hereafter holds any interest and which, consistent with the purpose for which it was acquired or dedicated, may be used for the installation or maintenance of the Communication System. Public Way shall not mean utility easements dedicated for a specific utility system or systems and not specifically identifying telecommunications as a permitted use within the easement.

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

"Subscriber" or "Customer" means a Person who lawfully receives Telecommunications Service from the Communications System with the Franchisee's express permission.

ORDINANCE - 3

Does not require codification

Section 2. Authority Granted. The City hereby grants to the Franchisee, its heirs, successors, legal representatives, and assigns, subject to the terms and conditions hereinafter set forth, a nonexclusive Franchise within the Service Area which authorizes the Franchisee to erect, construct, operate and maintain in, upon, along, across, above, over and under the Public Ways, now in existence and as may be created or established during the term of this Franchise, any Facilities necessary for the maintenance and operation of a Communication System. The authority granted herein is a limited authorization to occupy and use of Public Ways of the City for the purpose of providing Telecommunications Services. Nothing contained herein shall be construed to grant, warrant or convey any right, title, or interest in the public rights-of-way of the City to the Franchisee.

Section 3. Grant Limited to Occupation and Service. Nothing contained herein shall be construed to grant or convey to the Franchisee or warrant any right, title, or interest in the Public Ways.

Section 4. Term of Franchise. The first term of this Franchise shall be for an initial period of ten (10) years from the date of acceptance, unless sooner terminated. This Franchise may be renewed for subsequent, successive additional five (5) year terms pursuant to the following process: If the Franchisee desires to renew, the Franchisee shall notify the City not later than 180 days prior to the expiration of this Franchise of its desire to renew and its desire, if any, to renegotiate any of the terms set forth within this Franchise or desires to add to or delete any such terms. The City shall respond to the request for the renewal not later than 120 days prior to the expiration date, and may request renegotiation of any term, or the addition or deletion

ORDINANCE - 4

Does not require codification

of any term at that time. If the Franchisee does not request renewal, this Franchise shall be deemed terminated. If the Franchisee requests renewal, and either party requests renegotiation, or addition or deletion of any term or terms, this Franchise shall not renew unless and until the City and Franchisee reach agreement and said agreement is approved by ordinance of the City Council. Nothing in this Section prevents the parties from reaching agreement on renewal earlier than the time periods indicated.

Section 5. Non-Exclusive Grant. This Franchise shall not in any manner prevent the City from entering into other similar agreements or granting other or further franchises in, under, on, across, over, through, along or below any of said Public Ways of the City. Further, this Franchise shall in no way prevent or prohibit the City from using any of its Public Ways or affect its jurisdiction over them or any part of them, and the City shall retain power to make all necessary reasonable changes, relocations, repairs, maintenance, establishment, improvement, dedication of the same as the City may deem fit, including the dedication, establishment, maintenance, and improvement of all new Public Ways, and in compliance with Section 8, below.

Section 6. Relocation of Communications System. The Franchisee agrees to relocate its Facilities as provided by the Vancouver Municipal Code as it currently exists (VMC 11.50.120) or may hereinafter be amended or replaced. Upon the request of the City, in order to facilitate the design and construction of City projects, the Franchisee agrees to, at its sole cost and expense, locate, and if reasonably determined necessary by the City, to excavate and expose portions of its communication Facilities for inspection so that the location of same may be taken

ORDINANCE - 5

Does not require codification

into account in the improvement design, PROVIDED that, Franchisee shall not be required to excavate and expose its Facilities unless the Franchisee provides as-built plans and maps of its Facilities that are reasonably determined by the City to be adequate for purposes of this paragraph. The decision to require the relocation of Facilities in order to accommodate the City's projects shall be made by the City upon review of the location and construction of the Franchisee's Facilities. Notwithstanding any other provision of this Ordinance, Franchisee may seek reimbursement for its relocation expenses consistent with the provisions of RCW 35.99.060.

Section 7. Undergrounding of Facilities. In any area of the City in which there are no aerial facilities other than antennas or other equipment required to remain above ground in order to be functional, or in any Public Ways in which all telephone, electric power wires and cables have been placed underground, the Franchisee shall not be permitted to erect poles or to run or suspend wires, cables or other Facilities thereon, unless required to do so by the City, but shall lay such wires, cables or other Facilities underground in the manner required by the City.

Whenever the City or other governmental entity requires or initiates undergrounding of aerial utilities in any area of the City, the Franchisee shall underground its Facilities in the manner specified by the City, concurrently with and in the area of all the other affected utilities. The location of any such relocated and underground Facilities shall be approved by the City. The Franchisee is encouraged to contact and agree with other affected utilities so that all costs for common trenching, common utility vaults and other costs not specifically attributable to the undergrounding of any particular facility are shared fairly and proportionately by all the utilities

ORDINANCE - 6

Does not require codification

involved in the underground project. The costs of the undergrounding of Facilities shall be as provided in RCW 35.99.060 as existing or hereinafter amended.

Section 8. Work Within Public Ways. The Franchisee agrees to undertake all work related to the installation, construction or maintenance of its Facilities within the Public Ways in compliance with state and local law as now existing or hereinafter enacted. The local laws include, without limitation:

Chapter 11.50 VMC Utilities in the Right-of-Way

Chapter 11.60 VMC Street Use Permits

Chapter 11.80 VMC Street and Development Standards

Chapter 11.90 VMC Construction in the Right-of-Way

Section 9. Emergency Work -- Permit Waiver. In the event of any emergency in which any of the Franchisee's Facilities located in, above, or under any Public Way breaks, are damaged, or if the Franchisee's construction area is otherwise in such a condition as to immediately endanger the property, life, health, or safety of any individual, the Franchisee shall immediately take the proper emergency measures to repair its Facilities, to cure or remedy the dangerous conditions for the protection of property, life, health, or safety of individuals without first applying for and obtaining a Construction Permit as required by this Franchise. However, this shall not relieve the Franchisee from the requirement of notifying the City of the emergency work and obtaining any permits necessary for this purpose after the emergency work. The Franchisee shall notify the City by telephone immediately upon learning of the emergency and shall apply for all required permits not later than the

ORDINANCE - 7

Does not require codification

second succeeding day during which the City's Public Works Department Offices are open for business.

The City retains the right and privilege to cut or move any Facilities located within the Public Ways of the City, as the City may determine to be necessary, appropriate or useful in response to any public health or safety emergency. The City shall not be liable to the Franchisee or any other party for any direct, indirect, or any other such damages suffered by any person or entity of any type as a direct or indirect result of the City's actions under this Section.

Section 10. Dangerous Conditions, Authority for City to Abate, and Graffiti Removal. Whenever construction, installation, or excavation of Facilities authorized by this Franchise has caused or contributed to a condition that appears to substantially impair the lateral support of the adjoining public way, street, or public place, or endangers the public, street utilities, or City-owned property, the Public Works Director may direct the Franchisee, at the Franchisee's own expense, to take action to protect the public, adjacent public places, City-owned property, streets, utilities, and Public Ways. Such action may include compliance within a prescribed time.

In the event that the Franchisee fails or refuses to promptly take the actions directed by the City, or fails to comply with such directions, or if emergency conditions exist which require immediate action, the City may enter upon the property and take such actions as are necessary to protect the public, the adjacent streets, utilities, public ways, to maintain the lateral support thereof, or actions regarded as necessary safety precautions;

ORDINANCE - 8

Does not require codification

and the Franchisee shall be liable to the City for the costs thereof. The provisions of this Section shall survive the expiration, revocation, or termination of this Franchise.

Within the earlier of forty-eight (48) hours after discovery of the graffiti, as defined by Vancouver Municipal Code 8.21.010(D), by Franchisee or receipt of notice from the City, Franchisee shall remove any graffiti on any part of its facilities, including, by way of example and not limitation, equipment cabinets. If Franchisee fails to do so, the City may remove the graffiti and bill Franchisee for the cost thereof.

Section 11. The Franchisee's Maps and Records. Upon acceptance and thereafter as construction is completed, the Franchisee shall provide the City with accurate copies of all as-built plans and maps in a form and content prescribed by the City. These plans and maps shall be provided at no cost to the City.

The Franchisee shall supply and maintain updated, at no cost and locally available, any information reasonably requested by the City to coordinate municipal functions with the Franchisee's activities and fulfill any municipal obligations under state law. Said information may include any installation inventory, location of existing or planned facilities, maps, plans, operational data, and as-built drawings of Franchisee's installations in the City. Said information may be requested either in hard copy and/or electronic format compatible with the City's data base system, as now or hereafter existing. Franchisee shall keep the City reasonably informed of its long-range plans for coordination with the City's long-range plans.

If the Franchisee informs the City that any information to be provided pursuant to this paragraph is confidential, or proprietary, a trade secret, or otherwise entitled to protection from

ORDINANCE - 9

Does not require codification

disclosure, then, subject to the Washington State Public Records Act (RCW 42.56), the City will not disclose such information to any third party without first giving the Franchisee ten (10) days prior written notice of the City's intent to do so in order to give the Franchisee, at its sole expense, the opportunity to seek judicial protection. In such instance, the Franchisee will reimburse the City for all reasonable attorneys' fees and costs, and any penalties, attorneys' fees, and costs awarded, as a result of not disclosing such information.

Section 12. Restoration after Construction or Damage. The Franchisee shall, after installation, construction, relocation, maintenance, removal, or repair of its communication Facilities within the Public Ways, restore the surface of said Public Ways and any other City-owned property which may be disturbed by the work, to at least the same condition the Public Way or City-owned property was in immediately prior to any such installation, construction, relocation, maintenance, or repair, reasonable wear and tear excepted. Said restorations shall be done in conformance with the most recent edition of City ordinances and standards. The City shall have final approval of the condition of such Public Ways and City-owned property after restoration. The Franchisee agrees to promptly complete all restoration work and to promptly repair any damage caused by such work to the Public Ways or other affected areas and City-owned property at its sole cost and expense and shall be responsible for said restoration work and repair of damage done by Franchisee to City facilities for the life of the Franchisee's Facility. Franchisee also agrees to restore all other existing facilities and/or property affected by Franchisee's work, at its sole cost and expense.

ORDINANCE - 10

Does not require codification

Section 13. Recovery of Costs. The Franchisee 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 Franchisee shall reimburse the City directly for any and all actual reasonable costs, after receipt of an itemized bill.

In addition to the above, the Franchisee shall promptly reimburse the City for any and all reasonable costs the City incurs in response to any emergency involving the Franchisee'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 Franchisee with the City's itemization of costs at the conclusion of each project for information purposes.

Section 14. City's Reservation of Rights. Pursuant to RCW 35.21.860 the City may recover from Franchisee its actual administrative expenses as well as any applicable tax authorized by RCW 35.21.865. This Franchise is premised upon the City and Franchisee's agreement that either Franchisee is a "service provider" as used in RCW 35.21.860 and defined in RCW 35.99.010(6) or Franchisee'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 Franchisee's exercise of the rights granted in

ORDINANCE - 11

Does not require codification

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 Franchisee, 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) Franchisee no longer falls within the definition of "service provider" in RCW 35.99.010(6) and Franchisee'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 Franchisee obtain a separate Agreement for its change in use, which Agreement may include provisions intended to regulate the Franchisee'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 Franchisee's business activities under applicable law.

Section 15. Administrative Fee. Franchisee agrees to pay, at the time of acceptance of this Franchise, a one-time administrative fee to defray City's actual administrative costs and expenses associated with negotiating and enacting this Franchise, provided that such expenses shall not be included in the reimbursement provisions set forth in Section 13 of this Franchise.

Section 16. Utility Owned Poles. The parties acknowledge that the poles which the Franchisee desires to use for the location of its Facilities are poles owned by a third party or parties, and that Franchisee has entered or shall enter into an agreement with the third party or

ORDINANCE - 12

Does not require codification

parties, setting forth the terms and conditions under which the Franchisee shall be permitted to do so.

Section 17. Vacation of Right of Way. The process for the vacation of rights of way is provided for in City code, currently chapter 11.05 VMC. The City will endeavor to follow the process provided for in the code. If at any time the City, by ordinance, vacates all or any portion of the area affected by this Franchise, the City shall not be liable for any damages or loss to the Franchisee by reason of such vacation. The Franchisee shall remove its Facilities from any vacated right of way unless such vacation provides for the continuing right of the Facilities to exist within the vacated area.

Section 18. Indemnification and Waiver.

A. Franchisee hereby releases and covenants not to bring suit and agrees to indemnify, defend and hold harmless the City, its officers, employees, agents and representatives from any and all claims, costs, judgments, awards or liability to any person for injury, sickness, or death of any person or damage to any property or interests:

1. Arising as a result of the acts or omissions of Franchisee, its agents, servants, officers or employees or the construction, placement, operation or maintenance of Facilities in the Public Ways; or

2. Based on the City's inspection or lack of inspection of work performed by Franchisee, its agents and servants, officers or employees in connection with work authorized on the Public Ways or property over which the City has control pursuant to this Franchise or pursuant to any other permit or approval issued in connection with this Franchise;

ORDINANCE - 13

Does not require codification

B. The provisions of Subsection A of this Section shall apply to claims by Franchisee's own employees and the employees of the Franchisee's agents, representatives, contractors, and subcontractors to which Franchisee might otherwise be immune under Title 51 RCW. This waiver of immunity under Title 51 RCW has been mutually negotiated by the parties hereto, and Franchisee acknowledges that the City would not enter into this Franchise without Franchisee's waiver thereof.

C. Inspection or acceptance by the City of any work performed by the Franchisee at the time of completion of construction shall not be grounds for avoidance of any of these covenants of indemnification. Provided that Franchisee has been given prior written notice by the City of any such claim, said indemnification obligations shall extend to claims which are not reduced to a suit and any claims which may be compromised with Franchisee's consent prior to the culmination of any litigation or the institution of any litigation. The City has the right to participate in the defense of any such claim, and has the right to approve any settlement or other compromise of any such claim, which consent shall not unreasonably withheld or delayed. Franchisee shall not be liable for settlement or other compromise of any claim unless it has consented thereto. Franchisee shall not be required to provide indemnification for any claim unless it has been provided the opportunity to control the defense of such claim, provided that Franchisee may not settle any claim unless it unconditionally releases the City of all liability.

D. The obligations of Franchisee under the indemnification provisions of this Section shall apply regardless of whether liability for damages arises out of bodily injury to persons or damages to property, except to the extent that such claims, actions, damages, costs, expenses,

ORDINANCE - 14

Does not require codification

and attorneys' fees were caused by the sole negligence or willful misconduct of the City. In the event that a court of competent jurisdiction determines that this Franchise is subject to the provisions RCW 4.24.115, the parties agree that the indemnity provisions hereunder shall be deemed amended to conform to said statute and liability shall be allocated as provided therein.

E. Notwithstanding any other provisions of this Section, Franchisee releases and waives any and all claims against the City, its officers, agents, employees or contractors and assumes the risk of damage to its Facilities located in the Public Ways and upon City-owned property from such activities conducted by the City, its officers, agents, employees and contractors, except to the extent any such damage or destruction is caused by or arises from the negligent, willful or malicious action on the part of the City, its officers, agents, employees or contractors. Franchisee further agrees to indemnify, hold harmless and defend the City against any claims for damages, including, but not limited to, business interruption damages and lost profits, brought by or under users of Franchisee's Facilities as the result of any interruption of service due to damage or destruction of Franchisee's Facilities caused by or arising out of activities conducted by the City, its officers, agents, employees or contractors, except to the extent any such damage or destruction is caused by or arises from the negligent, willful or malicious actions on the part of the City, its officers, agents, employees or contractors.

Section 19. Abandonment and Removal of Franchisee's Communication Facilities.

Upon the expiration, termination, or revocation of the rights granted under this Franchise, or the upon the removal of any Facility from service, the Franchisee shall remove the Facility or Facilities from the Public Ways of the City within 90 days of receiving notice from the City. If

ORDINANCE - 15

Does not require codification

the Franchisee fails to remove its Facilities, the City may declare said Facilities to be the property of the City.

In the alternative, the City may, in its sole discretion, permit the Franchisee to abandon its Facilities in place, upon such terms and conditions as the City may reasonably prescribe by written notice. Upon agreement by the Franchisee, ownership of the Facilities shall be transferred to the City and the Franchisee shall submit to the City the necessary transfer documents. If the Franchisee does not transfer ownership within 90 days of receiving notice from the City, the City may commence legal action to enforce the transfer.

In the event that the City does not grant the Franchisee permission to abandon the Facilities or the Franchisee does not comply with the terms and conditions set by the City for such abandonment, the City may elect, in its sole discretion to declare the Facilities permanently abandoned and assume ownership of the Facilities; proceed with legal action to compel the Franchisee to remove such Facilities; or remove the Facilities and recover the costs of such removal from the Franchisee.

Section 20. Modification. The City and the Franchisee hereby reserve the right to alter, amend or modify the terms and conditions of this Franchise Agreement upon the written agreement of both parties to such alteration, amendment or modification. Said modifications shall be expressed by ordinance of the City Council passed for that purpose and accepted by the Franchisee consistent with Section 31 of this Franchise Agreement.

Section 21. City Ordinances and Regulations. Nothing herein shall be deemed to direct or restrict the City's ability to adopt and enforce all necessary and appropriate ordinances

ORDINANCE - 16

Does not require codification

regulating the performance of the conditions of this Franchise, including any valid ordinance made in the exercise of its police powers in the interest of public safety and for the welfare of the public. The City shall have the authority at all times to control by appropriate regulations the locations, elevation, manner or construction and maintenance of any Facilities by the Franchisee, and the Franchisee shall promptly conform with all such regulations, unless compliance would cause the Franchisee to violate other requirements of the law.

Section 22. Survival. All of the provisions, conditions, and requirements of this Franchise shall be in addition to any and all other obligations and liabilities the Franchisee may have to the City at common law, by statute, or by contract. The provisions, conditions, and requirements of Sections 6, Relocation of Telecommunications Facilities; 7, Undergrounding of Facilities; 8, Work in the Public Ways; 10, Dangerous Conditions; 12, Restoration after Construction; 18, Indemnification; 20, Abandonment and Removal of the Franchisee's Facilities, shall survive the expiration or termination of this Franchise, and any renewals or extensions thereof and remain effective until such time as the Franchisee removes its communication Facilities from the Public Ways, transfers ownership of said Facilities to a third party, or abandons said System in place, all as provided herein. All of the provisions, conditions, regulations and requirements contained in this Franchise shall further be binding upon the heirs, successors, executors, administrators, legal representatives and assigns of the Franchisee and all privileges, as well as all obligations and liabilities of the Franchisee shall inure to its heirs, successors, and assigns equally as if they were specifically mentioned wherever the Franchisee is named herein.

ORDINANCE - 17

Does not require codification

Section 23. Severability. If any section, sentence, clause, or phrase of this Franchise should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this Franchise.

Section 24. Assignment. This agreement may not be assigned or transferred without the written approval of the City, which approval shall not be unreasonably withheld or delayed, except that the Franchisee may freely assign this Franchise in whole or part to a parent, subsidiary, or affiliated corporation or as part of any corporate financing, reorganization or refinancing. In the case of transfer or assignment as security by mortgage or other security instrument in whole or in part to secure indebtedness, such consent shall not be required unless and until the secured party elects to realize upon the collateral. The Franchisee shall provide prompt, written notice to the City of any such assignment.

In addition, Franchisee may, without the prior written consent of the City: (i) lease the Facilities, or any portion thereof, to another Person, provided, that such other Person shall obtain a City Franchise, if required; (ii) grant an Indefeasible Right of User Interest in the Facilities, or any portion thereof, to another Person; or (iii) offer or provide capacity or bandwidth in its Facilities to another Person; PROVIDED THAT: (i) Franchisee at all times retains exclusive control over such Facilities and remains responsible for locating, servicing, repairing, relocating or removing its facilities pursuant to the terms and conditions of this Franchise; and (ii) written notice of said transaction as described in (i) and (ii) of the first sentence of this paragraph is provided to the City within 30 days.

ORDINANCE - 18

Does not require codification

Section 25. Liability Insurance. Franchisee shall, at its own expense, upon adoption, obtain and maintain throughout the term this Franchise, a commercial general liability insurance policy with limits of at least five million dollars (\$5,000,000.00) per occurrence for bodily injury (including death) and property damage and five million dollars (\$5,000,000.00) general aggregate, with the City named as an additional insured as their interest may appear under this Agreement, protecting and saving the City harmless against liability for losses or damage arising out of or resulting from Franchisee's use and occupancy of the premises and the operations conducted thereon under this Franchise. Franchisee may utilize primary and umbrella liability policies to satisfy the preceding per occurrence and aggregate insurance policy limit requirements. The Franchisee shall, within thirty (30) days from the effective date of this Franchise, file with the City Clerk proof of continued insurance coverage, at least in the amounts required in this Section, through a Certificate of Insurance including the additional insured endorsement indicating City coverage required herein. It is hereby understood and agreed that Franchisee's insurance coverage may not be canceled nor the intention not to renew be stated until thirty (30) days after receipt of written notice by the City of Franchisee's intent to cancel or not to renew such insurance coverage. If the Franchisee's insurance coverage is canceled or reduced in coverage, Franchisee shall provide an equivalent replacement policy.

Additional certificates shall be furnished to the City from time to time as it shall require. Franchisee's insurance shall be primary and non-contributory with any insurance coverage or program of self-insurance that may be maintained by the City. The insurance required under this section may be through a utility self-insurance fund under which the Franchisee is insured.

ORDINANCE - 19

Does not require codification

Section 26. Legal Action to Enforce Franchise Terms. This Franchise is entered into in Clark County, Washington. In the event that legal action is brought with respect to this Franchise, the State of Washington shall have personal jurisdiction over each of the parties and venue of any such action shall lie in the Superior Court of Clark County. In the event that legal action is brought with respect to this Franchise, the prevailing party shall be awarded its costs and reasonable attorney's fees in an amount to be determined by the Court.

Section 27. Revocation. This franchise may be revoked by the City Council by resolution in the event the Franchisee or any of Franchisee's lessees or other users shall fail, after notice or demand, to comply with any of the terms, conditions, or obligations imposed upon the Franchisee hereunder, but the City shall have no obligation to do so. No forbearance by the City of any term of condition of this franchise in any instance or at any time shall ever comprise a waiver or estoppel of the City's right to enforce said term condition

Section 28. Notice. 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:

City:
City Manager
City of Vancouver
PO Box 1995
Vancouver, WA 98668-1995

Franchisee:
MCIMETRO ACCESS
TRANSMISSION SERVICES CORP.
D/B/A VERIZON ACCESS
TRANSMISSION SERVICES
Attn: Franchise Manager
600 Hidden Ridge
Mailcode: HQE02E88
Irving, TX 75038NAME

with an additional copy to:

Verizon Business Network Services
1320 North Courthouse Road, Suite 900
Arlington, VA USA 22201
Attn: Vice President and Deputy General
Counsel, Network Operations

Notice shall be deemed given upon receipt in the case of personal delivery, three 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 29. Entire Franchise. This Franchise constitutes the entire understanding and agreement between the parties as to the subject matter herein and no other agreements or understandings, written or otherwise, shall be binding upon the parties upon approval and acceptance of this Franchise.

Section 30. Acceptance. Within 60 days after the passage and approval of this ordinance, this Franchise may be accepted by Franchisee by its filing with the City Clerk its written and sworn unconditional written acceptance and promise to comply with all terms of this Franchise. Failure of the Franchisee to so accept this Franchise within said period of time shall be deemed a rejection thereof, and the rights and privileges herein granted shall, after the

ORDINANCE - 21
Does not require codification

expiration of the 60 day period, absolutely cease and determine, unless the time period is extended by ordinance duly passed for that purpose.

Section 31. Effective Date. Subject to compliance with Section 30 of this Ordinance, this ordinance shall become effective five (5) days from and after its final passage by the Vancouver City Council and publication of a summary of the ordinance pursuant to City Charter.

ORDINANCE - 22

Does not require codification

Read First Time: August 28, 2017

Ayes: Councilmembers Stober, Tapper, McEnemy-Ogle, Tulay, Hansen,
Bunker

Nays: Councilmembers

Absent: ~~Councilmembers~~ Mayor Leavitt

Read Second Time: October 2, 2017

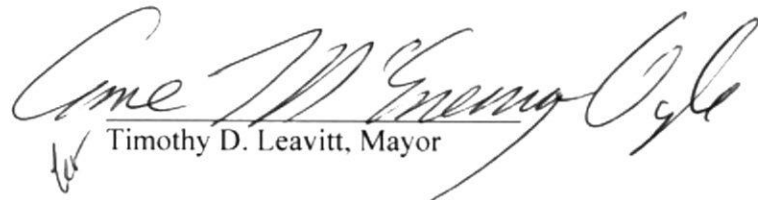
Passed by the following vote: 6-0

Ayes: Councilmembers


Nays: Councilmembers

Absent: ~~Councilmembers~~ Mayor Leavitt

SIGNED this 2nd day of October, 2017.


Timothy D. Leavitt, Mayor

Attest:


R. Lloyd Tyler, City Clerk
By: Carrie Lewellen, Deputy City Clerk

Approved as to form:


E. Bronson Potter, City Attorney

ORDINANCE - 23

Does not require codification

SUMMARY

ORDINANCE M- 4214

AN ORDINANCE relating to management of the public rights-of-way, granting to MCImetro Access Transmission Services Corp. d/b/a/ Verizon Access Transmission Services, a Delaware limited liability company, a non-exclusive and revocable franchise to install, operate and maintain a telecommunications system in, on, over, upon along, and across public rights-of-way of the City of Vancouver, Washington, prescribing certain rights, duties, terms and conditions with respect to such franchise; providing for setting an effective date and conditions.

The full text of this ordinance will be mailed upon request. Contact Raelyn McJilton, Records Officer at 487-8711, or via www.cityofvancouver.us (Go to City Government and Public Records).

ORDINANCE - 24
Does not require codification