

ORDINANCE NO. 1920-17

AN ORDINANCE OF THE CITY OF MILTON, WASHINGTON, GRANTING TO MCIMETRO ACCESS TRANSMISSION SERVICES CORPORATION (DBA VERIZON ACCESS TRANSMISSION SERVICES) AND ITS SUCCESSORS AND ASSIGNS, THE RIGHT, PRIVILEGE, AUTHORITY AND NONEXCLUSIVE FRANCHISE FOR TEN YEARS, TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE AND REPAIR A FIBER OPTIC CABLE NETWORK, IN, ACROSS, OVER, ALONG, UNDER, THROUGH AND BELOW CERTAIN DESIGNATED PUBLIC RIGHTS-OF-WAY OF THE CITY OF MILTON, WASHINGTON.

Franchise Between the City of Milton and MCI metro Access Transmission Services Corp. d/b/a Verizon Access Transmission Services

WHEREAS, MCI metro Access Transmission Services Corp. (“MCI metro”), d/b/a Verizon Access Transmission Services, has requested that the City Council grant it a nonexclusive franchise, and

WHEREAS, the City Council has the authority to grant franchises for the use of its streets and other public properties pursuant to RCW 35A.47.040, NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MILTON, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Franchise Granted. Pursuant to RCW 35A.47.040, the City of Milton, a Washington municipal corporation (hereinafter the “City “), hereby grants MCI metro (the “Franchisee”), its heirs successors, legal representatives and assigns, subject to the terms and conditions hereinafter set forth, a franchise for a period of ten (10) years, beginning on the effective date of this ordinance, set forth in herein.

This franchise shall grant Franchisee the right, privilege, and authority to construct, operate, maintain, replace, acquire, sell, lease and use all necessary Facilities for a telecommunications network, in, under, on, across, over, through, along or below the public Rights-of-Ways located in the City of Milton, including such additional areas as may be subsequently included in the corporate limits of the City during the term of this franchise (the “Franchise Area”), as approved pursuant to City permits issued pursuant to this franchise. The phrase “Rights-of-Way” (singular “Right-of-Way”) as used herein means the surface of, and the space above and below, any and all public streets, highways, freeways, bridges, land paths, alleys, courts, boulevards, sidewalks, parkways, lanes, public ways, drives, or circles, including, but not limited to, public utility easements, or dedicated utility strips, provided the City has authority to grant permits, licenses or franchises for the use thereof, or has regulatory authority thereover of the City as now or hereafter laid out, platted, dedicated or improved. “Facilities” as used herein means one or more elements of Franchisee’s telecommunications network consisting of all necessary poles, plant, equipment, fixtures, cables, wires, conduits, ducts, pedestals,

antennas, electronics, together with all other necessary appurtenances; provided that new utility poles for overhead wires or cabling are specifically excluded. Equipment enclosures with air conditioning or other human audible noise generating equipment are also excluded from permitted "Facilities."

Section 2. Authority Limited to Occupation of Public Rights-of-Way. The authority granted herein is a limited authorization to occupy and use specific Rights-of-Way of the City. Nothing contained herein shall be construed to grant or convey any right, title, or interest in the Rights-of-Way of the City to the Franchisee other than for the purpose of providing telecommunications services and internet access services. As described in Section 8, construction is not authorized without the appropriate permits. This franchise does not and shall not convey any right to Franchisee to install its Facilities on, under, over, across or to otherwise use City owned or leased properties of any kind outside of the area shown on Exhibit A (the "Franchise Area") or to install Facilities on, under, over, across or otherwise use any City owned or leased property other than in said "Rights-of-Way" described above. No substantive expansions, additions to or modifications or relocation of any of the Facilities shall be permitted without first having received prior authorization from the City. Under this Franchise, the Facilities shall not be used for Cable Services as that term is defined in 47 U.S.C § 522(6).

Section 3. Non-exclusive Franchise Grant. This franchise is granted upon the express condition that it shall not in any manner prevent the City from granting other or further franchises in, along, over, through, under, below, or across any said Rights-of-Way. Such franchise shall in no way prevent or prohibit the City from using any of said roads, streets, or other public properties or affect its jurisdiction over them or any part of them, and the City shall retain power to make all necessary changes, relocations, repairs, maintenance, establishment, improvement, dedication of same as the City may deem fit, including the dedication, establishment, maintenance, and improvement of all new Rights-of-Way, thoroughfares and other public properties of every type and description.

Section 4. Location of Telecommunications Network. Franchisee is maintaining a telecommunications network, consisting of Facilities within the City. Franchisee may locate its Facilities anywhere within the Franchise Area consistent with the City's Design and Construction Standards and subject to the City's applicable permit requirements. Franchisee shall not be required to amend this franchise to construct or acquire Facilities within the Franchise Area.

Section 5. Relocation of Telecommunications Network Facilities.

Section 5.1 Franchisee agrees and covenants to protect, support, temporarily disconnect, relocate or remove from any Rights-of-Way any of its Facilities when reasonably required by the City by reason of traffic conditions or public safety, dedications of new Rights-of-Way and the establishment and improvement thereof, widening and improvement of existing Rights-of-Way, street vacations, freeway construction, change or establishment of street grade, or the construction of any public improvement or structure by any governmental agency acting in a governmental capacity or as otherwise necessary for the operations of the City or other

governmental entity, provided that Franchisee shall in all such cases have the privilege to temporarily bypass, in the authorized portion of the same Rights-of-Way upon approval by the City, which approval shall not unreasonably be withheld or delayed, any Facilities required to be temporarily disconnected or removed. Except as otherwise provided by law, the costs and expenses associated with relocations ordered pursuant to this section shall be borne by Franchisee.

Section 5.2 Upon request of the City and in order to facilitate the design of City street and Right-of-Way improvements, the Franchisee agrees, at its sole cost and expense, to locate, and if reasonably determined necessary by the City, to excavate and expose its Facilities for inspection so that the location of the same may be taken into account in the improvement design. The decision as to whether said Facilities need to be relocated in order to accommodate the City's improvements shall be made by the City upon review of the location and construction of the Franchisee's Facilities. The City shall provide Franchisee at least fourteen (14) days written notice prior to any excavation or exposure of Facilities.

Section 5.3 If the City determines that the project necessitates the relocation of Franchisee's then existing Facilities, the City shall:

- (a) At least sixty (60) days prior to the issuance of the Notice to Proceed by the City to the City's contractor, provide Franchisee with written notice requiring such relocation; provided, however, that in the event of an emergency posing a threat to public safety or welfare, or in the event of an emergency beyond the control of the City, the City shall give the Franchisee written notice as soon as practicable; and
- (b) Provide to Franchisee at least forty-five (45) days prior to commencing the project with copies of pertinent portions of the plans and specifications for such improvement project and a proposed location for Franchisee's Facilities so that Franchisee may relocate its Facilities in other City Rights-of-Way in order to accommodate such improvement project.
- (c) After receipt of such notice and such plans and specifications, Franchisee shall complete relocation of its Facilities at least ten (10) days prior to commencement of the City's project at no charge or expense to the City, except as otherwise provided by law. Relocation shall be accomplished in such a manner as to accommodate the City's project. In the event of an emergency, the Franchisee shall relocate its Facilities within the time period specified by the City.

Section 5.4 Franchisee may, after receipt of written notice requesting a relocation of its Facilities, submit to the City written alternatives to such relocation. Such alternatives must be submitted at least thirty (30) days prior to the issuance of the Notice to Proceed by the City to the City's contractor. The City shall evaluate such alternatives and advise Franchisee in writing if one or more of the alternatives is suitable to accommodate the work which would otherwise necessitate relocation of the Facilities. If so requested by the City, Franchisee shall submit at its sole cost and expense additional information to assist the City in making such evaluation. The

City shall give each alternative proposed by Franchisee full and fair consideration. In the event the City ultimately determines that there is no other reasonable or feasible alternative, Franchisee shall relocate its Facilities as otherwise provided in this Section 5.

Section 5.5 The provisions of this Section shall in no manner preclude or restrict Franchisee 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 do not unduly delay a City construction project.

Section 5.6 The Franchisee will indemnify, hold harmless, and control the defense of and pay the costs of defending the City against any and all claims, suits, actions, damages, or liabilities for delays on City construction projects caused by or arising out of the failure of the Franchisee to remove or relocate its Facilities in a timely manner; provided, that the Franchisee shall not be responsible for damages due to delays caused by circumstances beyond the control of the Franchisee or the negligence, willful misconduct, unreasonable delay of the City, or any unrelated third party.

Section 5.7 Whenever any person shall have obtained permission from the City to use any street or public way for the purpose of moving any building, the Franchisee, upon ten (10) business days' written notice from the City, shall raise, relocate, or remove to another part of the Right-of-Way, at the expense of the person desiring to move the building, any of the Franchisee's Facilities which may obstruct the removal of such building.

Section 5.8 Unless Franchisee's Facilities are abandoned or transferred to the City under Section 16, the provisions of this Section shall survive the expiration or termination of this franchise.

Section 6. Undergrounding of Facilities. In areas where other utilities' facilities are installed above ground, and with respect to City-owned poles upon executing a Joint Utility Pole Use Agreement with the City, Franchisee may be permitted to run or suspend wires, cables or other facilities above ground on existing poles, but shall lay such wires, cables or other facilities underground in areas where other utilities' facilities are installed underground. Franchisee acknowledges and agrees that if the City does not require the undergrounding of its Facilities at the time of permit application, the City may, at any time in the future when the City requires other utilities with facilities in the same Rights-of-Way to convert aerial facilities to underground, require the conversion of Franchisee's aerial facilities to underground installation at Franchisee's expense. Unless otherwise permitted by the City, Franchisee shall underground its Facilities in all new developments and subdivisions where other utilities' facilities are installed underground. Whenever the City may require the undergrounding of the aerial utilities in any area of the City, Franchisee shall underground its aerial facilities in the manner specified by the City, concurrently with and in the area of the other affected utilities. The location of any such relocated and underground utilities shall be approved by the City. Where other utilities are present and involved in the undergrounding project, Franchisee shall only be required to pay its fair share of common costs borne by all utilities, in addition to the costs specifically attributable

to the undergrounding of Franchisee's own Facilities. "Common costs" shall include necessary costs not specifically attributable to the undergrounding of any particular facility, such as costs for common trenching and utility vaults. "Fair share" shall be determined for a project on the basis of the number and size of Franchisee's Facilities being undergrounded in comparison to the total number and size of all other utility facilities being undergrounded. Unless Franchisee's Facilities are abandoned or transferred to the City under Section 16, the provisions of this Section shall survive the expiration, revocation, or termination of this Franchise. Nothing in this Section shall be construed as requiring the City to pay any costs of undergrounding any of the Franchisee's Facilities, except as otherwise set forth in RCW § 35.99.

Section 7. Maps and Records. Within ten (10) days after construction is complete, the Franchisee shall provide the City with accurate copies of as-built plans and maps in a form and content reasonably prescribed by the Public Works Director. These plans and maps shall be provided at no cost to the City, and shall include hard copies and digital files in Autocad, ArcGIS.MDB or other readable industry standard formats approved by the City and delivered electronically.

Section 7.1 Within thirty (30) days of a written request from the Public Works Director, the Franchisee shall furnish the City with information sufficient to demonstrate: 1) that the Franchisee has complied with all applicable requirements of this Franchise; and 2) that all sales, utility and/or telecommunications taxes due the City in connection with the Franchisee's services and Facilities provided by the Franchisee have been properly collected and paid by the Franchisee.

Section 7.2 All books, records, maps and other documents, maintained by the Franchisee with respect to its Facilities within the Rights-of-Way shall be made available for inspection by the City at reasonable times and intervals; provided, however, that nothing in this Section shall be construed to require the Franchisee to violate state or federal law regarding customer privacy, nor shall this Section be construed to require the Franchisee to disclose proprietary or confidential information without adequate safeguards for its confidential or proprietary nature.

Section 7.3 Franchisee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature. The City agrees to keep confidential any proprietary or confidential books or records to the extent permitted by law. Franchisee shall be responsible for clearly and conspicuously identifying the work as confidential or proprietary. In the event that the City receives a public records request under RCW 42.56 or similar law for the disclosure of information Franchisee has designated as confidential, trade secret or proprietary, the City shall promptly provide notice of such disclosure so that Franchisee can take appropriate steps to protect its interests. Nothing in Section 7.3 prohibits the City from complying with RCW 42.56, or any other applicable law or court order requiring the release of public records, and the City shall not be liable to Franchisee for compliance with any law or court order requiring the release of public records. The City shall comply with any injunction or court order obtained by Franchisee which prohibits the disclosure of any such confidential records; however, in the event a higher court overturns such injunction or court order, Franchisee shall reimburse the City for any fines or penalties imposed for failure to disclose such records.

Section 8. Work in the Rights-of-Way. During any period of relocation, construction or maintenance, all work performed by Franchisee or its contractors shall be accomplished in a safe and workmanlike manner, so to minimize interference with the free passage of traffic and the free use of adjoining property, whether public or private. Franchisee shall at all times post and maintain proper barricades, flags, flaggers, lights, flares and other measures as required for the safety of all members of the general public and comply with all applicable safety regulations during such period of construction as required by the ordinances of the City or the laws of the State of Washington, including RCW 39.04.180 for the construction of trench safety systems.

Section 8.1 Whenever Franchisee shall commence work in any public Rights-of-Way for the purpose of excavation, installation, construction, repair, maintenance, or relocation of its cable or equipment, it shall apply to the City for a permit to do so and, in addition, shall give the City at least five (5) working days prior notice of its intent to commence work in the Rights-of-Way. During the progress of the work, the Franchisee shall not unnecessarily obstruct the passage or proper use of the Rights-of-Way, and all work by the Franchisee in the area shall be performed in accordance with applicable City standards and specifications and warranted for a period of two (2) years. In no case shall any work commence within any Rights-of-Way without a permit, except as otherwise provided in this franchise ordinance. Unless Franchisee's Facilities are abandoned or transferred to the City under Section 16, the provisions of Section 8 shall survive the expiration or termination of this franchise ordinance.

Section 8.2 If either the City or Franchisee shall at any time plan to make excavations in any area covered by this franchise and as described in this Section, the party planning such excavation shall afford the other, upon receipt of a written request to do so, an opportunity to share such excavation, PROVIDED THAT:

- (a) Such joint use shall not unreasonably delay the work of the party causing the excavation to be made;
- (b) Such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties; and
- (c) Either party may deny such request for safety reasons.

Section 8.3 Franchisee shall provide a notice indicating the nature and location of the work to be performed at least twenty-four (24) hours prior to entering private property or streets or public easements adjacent to or on such private property. Such notice shall be physically posted upon the affected property by the Franchisee, a door hanger is permissible. The Franchisee shall make a good faith effort to comply with the property owner/resident's preferences, if any, on location or placement of underground installations (excluding aerial cable lines utilizing existing poles and existing cable paths), consistent with sound engineering practices.

Section 8.4 The Franchisee, in accordance with applicable federal, State and local safety requirements, shall, at all times, employ ordinary care and shall install and maintain and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury or nuisance to the public. All structures and all lines, equipment and connections in, over, under and upon the streets, sidewalks, alleys and public ways or places of a

permit area, wherever situated or located, shall at all times be kept and maintained in a safe, suitable condition and in good order and repair. The City reserves the general right to see that the Facilities are constructed and maintained in a safe condition. If a violation of the National Electrical Safety Code or other applicable regulation is found to exist by the City, the City will, after discussions with Franchisee, establish a reasonable time for Franchisee to make necessary repairs. If the repairs are not made within the established time frame, the City may make the repairs itself or have them made and collect all reasonable costs thereof from a Franchisee.

Section 8.5 Franchisee may trim trees upon and overhanging on Rights-of-Way so as to prevent the branches of such trees from coming in contact with the Franchisee's Facilities. Franchisee shall ensure that its tree trimming activities protect the appearance, integrity and health of the trees to the extent reasonably possible. Should Franchisee trim trees in the Franchise Area Franchisee shall prepare and maintain a tree trimming schedule to ensure compliance with Section 8.5 and to avoid exigent circumstances where tree cutting, trimming or removal is necessary to protect the public safety or continuity of service without the regard for the appearance, integrity or health of the trees that planned maintenance would otherwise allow. Franchisee shall submit the schedule to the Public Works Director upon request. All trimming is to be done after the explicit prior written notification and approval of the City and at the expense of the Franchisee. Franchisee may contract for such services, however, any contractor so retained shall receive City approval prior to commencing such trimming.

Section 9. One Call Locator Service. Prior to doing any work in the Rights-of-Way, the Franchisee shall follow established procedures, including contacting the Utility Notification Center in Washington and comply with all applicable State statutes regarding the One Call Locator Service pursuant to RCW 19.122.

Section 10. RCW 35.99. Franchisee shall inform the City with at least thirty (30) days' advance written notice that it is constructing, relocating, or placing ducts or conduits in the Rights-of-Way and provide the City with an opportunity to request that Franchisee provide the City with additional duct or conduit and related structures necessary to access the conduit pursuant to RCW 35.99.070 at Franchisee's then current market rates.

Section 11. Restoration after Construction.

Franchisee shall, after abandonment approved under Section 16 herein, or installation, construction, relocation, maintenance or repair of its Facilities within the Franchise Area, promptly remove any obstructions from the Rights-of-Way and restore the surface of the Rights-of-Way to at least the same condition the property was in immediately prior to any such installation, construction, relocation, maintenance or repair.

The Public Works Director shall have final approval of the condition of such streets and public places after restoration. All concrete encased monuments which have been disturbed or displaced by such work shall be restored pursuant to all federal, state and local standards and specifications. Franchisee agrees to promptly complete all restoration work and to promptly repair any damage caused by such work to the Franchise Area or other affected area at its sole costs and expense and according to the time and terms specified in the construction

permit issued by the City. All work by the Franchisee pursuant to this Section shall be performed in accordance with applicable City standards and warranted for a period of two (2) years. In the event the Franchisee does not repair a Right-of-Way or an improvement in or to a Right-of-Way in a prompt fashion or as agreed to with the Public Works Director, the City may repair the damage and shall be reimbursed its actual cost within thirty (30) days of submitting an invoice to Franchisee. The provisions of this Section 11 shall survive the expiration, revocation or termination by other means of this franchise.

Section 11.1 Emergency Work – Permit Waived. In the event of any emergency in which any of Franchisee’s Facilities located above, in or under any street breaks, becomes damaged, or if Franchisee’s construction area is otherwise in such a condition as to immediately endanger the property, life, health or safety of any individual, 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 permit as required by this franchise. However, this shall not relieve Franchisee from the requirement of obtaining any permits necessary for this purpose, and Franchisee shall apply for all such permits not later than the next succeeding day during which the Milton City Hall is open for business. The City retains the right and privilege to cut or move any Facilities located within the Rights-of-Way 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 notify Franchisee by telephone promptly upon learning of the emergency and shall exercise reasonable efforts to avoid an interruption of Franchisee’s service. The City shall not be liable to the Franchisee 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 11.2 Dangerous Conditions, Authority for City to Abate. Whenever the 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 street or public place, or endangers the public, an adjoining public place, street utilities or City property, the Public Works Director may direct Franchisee, at Franchisee’s own expense, to take reasonable action to protect the public, adjacent public places, City property or street utilities, and such action may include compliance within a prescribed time. In the event that Franchisee fails or refuses to promptly take the actions directed by the City, or fails to fully comply with such directions, or if emergency conditions exist which require immediate action, before the City can timely contact Franchisee to request Franchisee effect the immediate repair, the City may enter upon the property and take such reasonable actions as are necessary to protect the public, the adjacent streets, or street utilities, or to maintain the lateral support thereof, or reasonable actions regarded as necessary safety precautions, and Franchisee shall be liable to the City for the costs thereof.

Section 12. Recovery of Costs. Franchisee shall pay a grant fee in the amount of \$3,000 for the City’s administrative, legal, and other costs incurred in drafting and processing this franchise ordinance and all work related thereto. No construction permits shall be issued for the installation of facilities authorized hereby until such time as the City has received payment of the grant fee. Franchisee shall further be subject to all generally applicable permit fees associated with activities undertaken through the authority granted in this franchise ordinance or under the

laws of the City. Where the City incurs costs and expenses for review, inspection or supervision of activities, including but not limited to fees associated with attorneys, consultants, City Staff and City Attorney time, undertaken through the authority granted in this franchise or any ordinances relating to the subject for which a permit fee is not established, City will provide Franchisee with a detailed invoice identifying the costs and expenses, Franchisee shall pay such costs and expenses directly to the City within sixty (60) days after receipt of the invoice. In addition to the above, Franchisee shall promptly reimburse the City for any and all costs the City reasonably incurs in response to any emergency involving Franchisee's Facilities. The Franchisee shall reimburse the City within sixty (60) days of submittal by the City of an itemized billing for reasonably incurred costs, itemized by project, for the Franchisee's proportionate share of all actual, identified expenses incurred by the City in planning, constructing, installing, repairing, altering, or maintaining any City facility as the result of the presence of Franchisee's Facilities in the Rights-of-Way. Such costs and expenses shall include but not be limited to the Franchisee's proportionate cost of City personnel assigned to oversee or engage in any work in the Rights-of-Way as the result of the presence of the Franchisee's Facilities in the Rights-of-Way. Such costs and expenses shall also include the Franchisee's proportionate share of any time spent reviewing construction plans in order to either accomplish the relocation of the Franchisee's Facilities or the routing or rerouting of any utilities so as not to interfere with the Franchisee's Facilities.

Section 13. City's Reservation of Rights. Pursuant to RCW 35.21.860, the City is precluded from imposing a franchise fee on a telephone business as defined in RCW 82.16.010 or service provider as defined in RCW 35.99.010, except for administrative expenses or any tax authorized by state law. Franchisee hereby warrants that its operations as authorized under this franchise are those of a telephone business as defined in RCW 82.16.010 and service provider as defined in RCW 35.99.010. As a result, the City will not impose a franchise fee under the terms of this ordinance, other than as described herein. Franchisee acknowledges that portions of its operation with the City may constitute a telephone business subject to the utility tax imposed pursuant to the Milton Municipal Code Chapter 5.32.

However, the City hereby reserves its right to impose a franchise fee on Franchisee for purposes other than to recover its administrative expenses, if Franchisee's operations as authorized by this franchise change so that not all uses of the franchise are those of a "telephone business" as defined in RCW 82.16.010 or a service provider as defined in RCW 35.99.010; or, if statutory prohibitions on the imposition of such fees are removed. In either instance, the City also reserves its right to require that Franchisee obtain a separate franchise for its change in use, which franchise may include provisions intended to regulate Franchisee's operations, as allowed under applicable law. Nothing contained herein shall preclude Franchisee from challenging any such new fee or separate agreement under applicable Federal, State, or local laws.

Section 14. Indemnification. Franchisee hereby releases, 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 third party, including claims by Franchisee's own employees for which Franchisee might otherwise be immune under Title 51 RCW, for injury or death of any person or damage to property caused by

or arising out of the negligent acts or omissions of Franchisee, its agents, servants, officers or employees in the performance of this franchise, and any rights granted hereunder.

Section 14.1 Inspection or acceptance by the City of any work performed by Franchisee at the time of completion of construction shall not be grounds for avoidance by Franchisee of any of its obligations under this Section. 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.

Section 14.2 In the event that Franchisee refuses the tender of defense in any suit or any claim, said tender having been made pursuant to the indemnification provision contained herein, and said refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter), to have been a wrongful refusal on the part of Franchisee, the Franchisee shall pay all of the City's reasonable costs for defense of the action, including all expert witness fees, costs, and attorney's fees, and including costs and fees incurred in recovering under this indemnification provision.

Section 14.3 In the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of Franchisee and the City, its officers, employees and agents, Franchisee's liability hereunder shall be only to the extent of Franchisee's negligence. It is further specifically and expressly understood that the indemnification provision provided herein constitutes Franchisee's waiver of immunity under Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

Section 14.4 The obligations of Franchisee under the indemnification provisions of this Section shall apply regardless of whether liability for damages arising out of bodily injury to persons or damages to property were caused or contributed to by the concurrent negligence of the City, its officers, agents, employees or contractors. The provisions of this Section, however, are not to be construed to require the Franchisee to hold harmless, defend or indemnify the City as to any claim, demand, suit or action to the extent arising out of the negligence, willful misconduct, or criminal acts of the City its officers, agents, employees or contractors. In the event that a court of competent jurisdiction determines that this Franchise is subject to the provisions of 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.

Section 14.5 Notwithstanding any other provisions of this Section, Franchisee assumes the risk of damage to its Facilities located in the Rights-of-Way and upon City-owned property from activities conducted by the City, its officers, agents, employees, volunteers, elected and appointed officials, and contractors, except to the extent any such damage or destruction is caused by or arises from any willful, malicious, or criminal actions on the part of the City, its officers, agents, employees, volunteers, or elected or appointed officials, or contractors. Franchisee releases and waives any and all such claims against the City, its officers, agents, employees, volunteers, or elected or appointed officials, 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 negligence or any willful, malicious, or criminal actions on the part of the City, its officers, agents, employees, volunteers, or elected or appointed officials, or contractors.

Section 14.6 The provisions of this Section 14 shall survive the expiration, revocation, or termination of this franchise.

Section 15. Insurance. Franchisee shall procure and maintain for the duration of the franchise, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of rights, privileges and authority granted hereunder to Franchisee, its agents, representatives or employees. Franchisee shall provide a copy of a Certificate of Insurance to the City for its inspection prior to the adoption of this franchise ordinance, and such insurance certificate shall evidence a policy of insurance that includes:

- (a) Automobile Liability insurance with limits no less than \$3,000,000 Combined Single Limit per occurrence for bodily injury and property damage; and
- (b) Commercial General Liability insurance, written on an occurrence basis with limits no less than \$5,000,000 combined single limit per occurrence and \$5,000,000 aggregate for personal injury, bodily injury and property damage. Coverage shall include but not be limited to: blanket contractual; premises; operations; independent contractors; stop gap liability; personal injury; products and completed operations; broad form property damage; explosion, collapse and underground (XCU); and employer's liability.
- (c) Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

The liability insurance policies required by this Article shall be maintained by Franchisee throughout the term of this Agreement, and such other period of time during which Franchisee is using the Right-of-Way without this Agreement, or is engaged in the removal of its facilities from the Right-of-Way. Franchisee shall provide an insurance certificate, together with a blanket additional insured endorsement including the City, and its elected and appointed officers, officials, employees, representatives and volunteers as an additional insured as their interest may appear under this Agreement on the commercial general liability and commercial automobile liability, to the City prior to the commencement of any work or installation of any facilities pursuant to this Agreement. Payment of deductibles and self-insured retentions shall be the sole responsibility of Franchisee. Franchisee's insurance shall be primary insurance with respect to the City, its officers, officials, employees, and volunteers with respect to liability, claims, or injuries related to Franchisee's use of the Right-of-Way, except with respect to intentional acts on the part of the City. Any insurance maintained by the City, its officers, officials, employees, and volunteers shall be in excess of Franchisee's insurance and shall not contribute with it.

Upon receipt of notice from its insurer(s) Franchisee will provide the City with thirty (30) days prior written notice of cancellation.

Section 16. Abandonment of Franchisee's Telecommunications Network. Upon the expiration, termination, or revocation of the rights granted under this Franchise, the Franchisee shall remove all of its Facilities from the Rights-of-Way within ninety (90) days of receiving notice from the Public Works Director. The Facilities, in whole or in part, may not be abandoned by Franchisee without written notice to the City. Any plan for abandonment or removal of franchisee's Facilities must be first approved by the Public Works Director, and all necessary permits must be obtained prior to such work. Provided, however, that the City may permit the Franchisee's improvements to be abandoned and placed in such a manner as the City may prescribe. Upon permanent abandonment, and the Franchisee's agreement to transfer ownership of the Facilities to the City, the Franchisee 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 and which are not removed within ninety (90) 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 Franchisee to remove any such Facilities through judicial action when the City has not permitted the Franchisee to abandon said Facilities in place. The provisions of this Section shall survive the expiration, revocation or termination of this franchise ordinance.

Section 17. Construction and Completion Bond. Franchisee shall furnish a construction and completion bond written by a corporate surety acceptable to the City equal to at least 100% of the estimated cost of constructing the Franchisee's telecommunications Facilities within the public ways of the City prior to commencement of any such work. The bond shall guarantee the following: (1) timely completion of construction; (2) construction in compliance with all applicable plans, permits, technical codes, and standards; (3) proper location of the Facilities as specified by the City; (4) restoration of the Rights-of-Way and other properties affected by the construction; (5) submission of as-built drawings after completion of construction; and, (6) timely payment and satisfaction of all claims, demands, or liens for labor, materials, or services provided in connection with the work which could be asserted against the City or City property. Said bond shall be required to remain in full force until sixty (60) days after completion of the construction and shall warrant all such restoration work for a period of two (2) years.

Section 18. Security Fund. Franchisee shall provide City with a performance bond in the amount of Ten Thousand Dollars (\$10,000) running or renewable for the term of this Franchise, in a form and substance reasonably acceptable to City. In the event Franchisee shall fail to substantially comply with any one or more of the provisions of this franchise following notice and a reasonable opportunity to cure, then there shall be recovered jointly and severally from the bond any damages suffered by City as a direct result thereof, including but not limited to staff time, material and equipment costs, compensation or indemnification of third parties, and the cost of removal or abandonment of facilities hereinabove described. Franchisee specifically agrees that its failure to comply with the terms of Section 18 shall constitute a material breach of this franchise. Such a financial guarantee shall not be construed to limit Franchisee's liability to the guarantee amount, or otherwise limit City's recourse to any remedy to which City is otherwise entitled at law or in equity.

Section 19. Modification. The City and Franchisee hereby reserve the right to alter, amend, or modify the terms and conditions of this franchise upon written agreement of both parties to such alteration, amendment or modification.

Section 20. Forfeiture and Revocation. If Franchisee willfully violates or fails to materially comply with any of the provisions of this franchise, or through willful misconduct or gross negligence fails to heed or comply with any notice given Franchisee by the City under the provisions of this franchise, then Franchisee shall, at the election of the Milton City Council, forfeit all rights conferred hereunder and this franchise may be revoked or annulled by the Council after a hearing held upon thirty (30) days' notice to Franchisee.

Section 21. Remedies to Enforce Compliance.

Section 21.1 The City may elect, without any prejudice to any of its other legal rights and remedies, to obtain an order from the superior court having jurisdiction compelling Franchisee to comply with the provisions of the franchise and to recover damages and costs incurred by the City by reason of Franchisee's failure to comply. In addition to any other remedy provided herein, the City reserves the right to pursue any remedy to compel or force Franchisee and/or its successors and assigns to comply with the terms hereof, and the pursuit of any right or remedy by the City shall not prevent the City from thereafter declaring a forfeiture or revocation for breach of the conditions herein. Provided, further, that by entering into this franchise, it is not the intention of the City or Franchisee to waive any other rights, remedies, or obligations as otherwise provided by law equity, or otherwise, and nothing contained here shall be deemed or construed to effect any such waiver.

Section 21.2 If Franchisee shall violate, or fail to comply with any of the provisions of this franchise, or should it fail to heed or comply with any notice given to Franchisee under the provisions of this franchise, the City shall provide Franchisee with written notice specifying with reasonable particularity the nature of any such breach and Franchisee shall undertake all commercially reasonable efforts to cure such breach within thirty (30) days of receipt of notification. If City reasonably determines the breach cannot be cured within (30) thirty days, City may specify a longer cure period, and condition the extension of time on Franchisee's submittal of a plan to cure the breach within the specified period, commencement of work within the original thirty (30) day cure period, and diligent prosecution of the work to completion. If the breach is not cured within the specified time, or Franchisee does not comply with the specified conditions, City may, at its discretion, (1) revoke this Franchise with no further notification, or (2) claim damages of Two Hundred Fifty Dollars (\$250.00) per day against the security fund set forth in Section 18, or (3) pursue other remedies as described in Section 21.1 above.

Section 22. Non-Waiver. The failure of the City to insist upon strict performance of any of the covenants and agreements of this franchise or to exercise any option herein conferred in any one or more instances, shall not be construed to be a waiver or relinquishment of any such covenants, agreements or option or any other covenants, agreements or option.

Section 23. City Ordinances and Regulations. Nothing herein shall be deemed to restrict the City's ability to adopt and enforce all necessary and appropriate ordinances 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 reasonably control by appropriate regulations the location, elevation, manner of construction and maintenance of any fiber optic cable or cable facilities by Franchisee, and Franchisee shall promptly conform with all such regulations, unless compliance would cause Franchisee to violate other requirements of law. In the event of a conflict between the provisions of this Franchise and any other ordinance(s) enacted under the City's police power authority and in effect as of the effective date set forth in Section 39, such other ordinance(s) shall take precedence over the provisions set forth herein. In the event of a conflict between the provisions of this Franchise and any other ordinance(s) enacted under the City's police power authority after the effective date set forth in Section 39, the provisions set forth herein shall take precedence over such other ordinance(s).

Section 24. Cost of Publication. The cost of publication of this Ordinance shall be borne by Franchisee.

Section 25. Acceptance. This franchise may be accepted by Franchisee by its filing with the City Clerk an unconditional written acceptance, within sixty (60) days from the City's execution of this franchise, in the form attached hereto as Exhibit B. Failure of Franchisee to so accept this franchise shall be deemed a rejection thereof by Franchisee and the rights and privileges herein granted shall absolutely cease and determine. In addition, Franchisee shall file proof of insurance obtained pursuant to Section 15, any construction or completion bonds pursuant to Section 17 and the performance bond required pursuant to Section 18.

Section 26. Survival. All of the provisions, conditions, and requirements of Section 5, Section 6, Section 8, Section 11, Section 14 and Section 16 of this franchise shall be in addition to any and all other obligations and liabilities Franchisee may have to the City at common law, by statute, or by contract, and shall survive the City's franchise to Franchisee for the use of the Franchise Area, and any renewals or extensions thereof, subject to the exceptions set forth in those sections. All of the provisions, conditions, regulations and requirements contained in this franchise ordinance shall further be binding upon the heirs, successors, executors, administrators, legal representatives and assigns of Franchisee and all privileges, as well as all obligations and liabilities of Franchisee shall inure to its heirs, successors and assigns equally as if they were specifically mentioned where Franchisee is named herein.

Section 27. Assignment. This agreement may not be assigned or transferred without the written approval of the City, which approval shall not be unreasonably withheld, except Franchisee may freely assign this Franchise in whole or in part to a parent or subsidiary organization or as part of any corporate financing, reorganization or refinancing. The Franchisee shall provide prompt, written notice to the City of any such assignment. The franchisee shall have the sole responsibility of notifying the assignee or transferee of any notice of construction received from the city. The assignee or transferee must have the legal, technical, financial and other requisite qualifications to own, hold and operate the Franchisee's telecommunications network. The Franchisee shall reimburse the City for all direct and indirect costs and expenses reasonably incurred by the City in considering a request to transfer or assign this franchise and shall pay the applicable application fee. Franchisee may pledge this franchise to its lender, solely

for purposes of securing indebtedness, without the City's consent; provided that the City's consent is required before the lender may assume the franchise.

Any transactions which singularly or collectively result in a change of fifty percent (50%) or more of the ownership or working control of the Franchisee, of the ownership or working control of the Facilities, or of the ownership or working control of affiliated entities having ownership or working control of the Franchisee or of the Facilities, shall be considered an assignment or transfer requiring City approval. The Franchisee shall promptly notify the City prior to any proposed change in, or transfer of, or acquisition by any other party of control of the Franchisee's company. Every change, transfer, or acquisition of control of a Franchisee's company shall cause a review of the proposed transfer. In the event that the City adopts a resolution denying its consent and such change, transfer or acquisition of control has been effected, the City may cancel this Franchise.

Franchisee may, without the prior written consent of the City: (i) lease the Facilities, or any portion thereof, to another entity; (ii) grant an indefeasible right of use interest in the Facilities, or any portion thereof, to another entity; or (iii) offer or provide capacity or bandwidth from the Facilities to another person, PROVIDED THAT: Franchisee at all times retains exclusive control over the Facilities and remains responsible for locating, servicing, repairing, relocating, or removing its Facilities pursuant to the terms and conditions of this Franchise and remains in compliance with this Franchise.

Section 28. Entire Agreement. 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 execution of this franchise.

Section 29. Eminent Domain. The existence of this franchise shall not preclude the City from acquiring by condemnation in accordance with applicable law, all or a portion of the Franchisee's Facilities for the fair market value thereof. In determining the value of such Facilities, no value shall be attributed to the right to occupy the area conferred by this franchise.

Section 30. Vacation. 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 City shall notify the Franchisee in writing not less than ninety (90) days before vacating all or any portion of any such area. The City may, after ninety (90) days written notice to the Franchisee, terminate this Franchise with respect to such vacated area.

Section 31. Notice. Any Notice or information required or permitted to be given to the parties under this franchise agreement may be sent to the following addresses unless otherwise specified:

CITY OF MILTON
Public Works
1000 Laurel St.

Milton WA 98354

MCImetro Access Transmission Services Corp. d/b/a Verizon Access Transmission
Services
600 Hidden Ridge
Mailcode: HQE02G295
Irving, TX 75038
Attn: Franchise Manager

With copies to (except for invoices):

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

Section 32. Severability. If any section, sentence, clause or phrase of this ordinance 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 ordinance unless such invalidity or unconstitutionality materially alters the rights, privileges, duties, or obligations hereunder, in which event either party may request renegotiation of those remaining terms of this franchise materially affected by such court's ruling.

Section 33. Compliance with All Applicable Laws. The Franchisee agrees to comply with all present and future federal, state and local laws, ordinances, rules and regulations. This Franchise is subject to ordinances of general applicability enacted pursuant to the City's police powers. The Franchisee further agrees to save and hold the City harmless from damage, loss or expense, arising out of the said use or work, unless caused by the City's sole negligence and to remove all liens and encumbrances arising as a result of said use or work. The Franchisee shall, at its own expense, maintain its Facilities in a safe condition, in good repair and in a manner suitable to the City. Additionally, the Franchisee shall keep its Facilities free of debris and anything of a dangerous, noxious or offensive nature or which would create a hazard or undue vibration, heat, noise or any interference with City services. City reserves the right at any time to amend this Franchise to conform to any hereafter enacted, amended, or adopted federal or state statute or regulation relating to the public health, safety, and welfare, or relating to roadway regulation, or a generally applicable City ordinance enacted pursuant to such federal or state statute or regulation upon providing Franchisee with sixty (60) days written notice of its action setting forth the full text of the amendment and identifying the statute, regulation, or ordinance requiring the amendment. Said amendment shall become automatically effective upon expiration of the notice period unless, before expiration of that period, Franchisee makes a written request for negotiations over the terms of the amendment. If the parties do not reach agreement as to the terms of the amendment within sixty (60) days of the call for negotiations, City may enact the proposed amendment, by incorporating Franchisee's concerns to the maximum extent City deems possible.

Section 34. Attorneys' Fees. If a suit or other action is instituted in connection with any controversy arising out of this Franchise, the prevailing party shall be entitled to recover all of its costs and expenses, including such sum as the Court may judge as reasonable for attorneys' fees, costs, expenses and attorneys' fees upon appeal of any judgment or ruling.

Section 35. Hazardous Substances. The Franchisee shall not introduce or use any hazardous substances (chemical or waste), in violation of any applicable law or regulation, nor shall the Franchisee allow any of its agents, contractors or any person under its control to do the same. The Franchisee will be solely responsible for and will defend, indemnify and hold the City, its officers, officials, employees, agents and volunteers harmless from and against any and all claims, costs and liabilities including reasonable attorneys' fees and costs, arising out of or in connection with the cleanup or restoration of the property associated with the Franchisee's use, storage, or disposal of hazardous substances, whether or not intentional, and the use, storage or disposal of such substances by the Franchisee's agents, contractors or other persons acting under the Franchisee's control, whether or not intentional.

Section 36. Licenses, Fees and Taxes. Prior to constructing any improvements, the Franchisee shall obtain a business or utility license from the City. The Franchisee shall pay promptly and before they become delinquent, all taxes on personal property and improvements owned or placed by the Franchisee and shall pay all license fees and public utility charges relating to the conduct of its business; shall pay for all permits, licenses and zoning approvals, shall pay any other applicable tax unless documentation of exemption is provided to the City and shall pay utility taxes and license fees imposed by the City.

Section 37. Miscellaneous.

Section 37.1 City and the Franchisee respectively represent that its signatory is duly authorized and has full right, power and authority to execute this franchise.

Section 37.2 This franchise shall be construed in accordance with the laws of the State of Washington. Venue for any dispute related to this franchise shall be the United States District Court for the Western District of Washington, or King County Superior Court.

Section 37.3 Section captions and headings are intended solely to facilitate the reading thereof. Such captions and headings shall not affect the meaning or interpretation of the text herein.

Section 37.4 Where the context so requires, the singular shall include the plural and the plural includes the singular.

Section 37.5 Franchisee shall be responsible for obtaining all other necessary approvals, authorizations and agreements from any party or entity and it is acknowledged and agreed that the City is making no representation, warranty or covenant whether any of the foregoing approvals, authorizations or agreements are required or have been obtained by the Franchisee by any person or entity.

Section 37.6 This franchise may be enforced at both law and equity.

Section 38. EFFECTIVE DATE. This ordinance shall be in full force and effect five (5) days from and after its passage, approval, and publication as provided by law.

PASSED BY THE CITY COUNCIL OF THE CITY OF MILTON THIS 17th DAY OF April,
2017; AND SIGNED IN AUTHENTICATION OF ITS PASSAGE THIS 17th DAY OF April,
2017.

CITY OF MILTON:


Debra Perry, Mayor

Attest/Authenticated: 
Katie Bolam, City Clerk

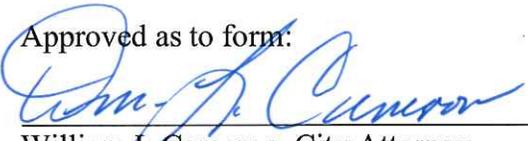
Approved as to form:

William L. Cameron, City Attorney

EXHIBIT A
FRANCHISE AREA

The City Limits of the City of Milton, Washington.

