



LYNNWOOD
WASHINGTON

ORDINANCE NO. 3172

AN ORDINANCE OF THE CITY OF LYNNWOOD, WASHINGTON, GRANTING A NON-EXCLUSIVE FRANCHISE TO ZAYO GROUP LLC TO INSTALL, OPERATE, MAINTAIN, REPAIR AND REMOVE A MULTIPLE CONDUIT FIBER OPTIC TELECOMMUNICATIONS SYSTEM WITHIN THE CITY; PRESCRIBING RIGHTS, DUTIES, TERMS, AND CONDITIONS WITH RESPECT TO THE FRANCHISE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, previously, by Ordinance No. 2305 the City granted Metromedia Fiber Network Services, Inc. ("Metromedia") a franchise for the installation, operation, and maintenance of a multiple conduit fiber optic telecommunications system in the City's rights-of-way, which franchise term has expired; and

WHEREAS, as part of the franchise granted to Metromedia, Metromedia transferred to the City a two inch Schedule 40 conduit located within the Metromedia facilities, from the signal cabinet on the northwest corner of the intersection of 196th Avenue and 68th Street in the City, to the signal cabinet on the southeast corner of 196th Avenue and 76th Street in the City; and

WHEREAS, Metromedia Fiber Network Services, Inc. has transferred its telecommunications facility assets to Zayo Group LLC ("Zayo" or "Franchisee"), including the facilities located within the City's rights-of-way; and

WHEREAS, Zayo has requested that the City Council grant it a non-exclusive telecommunications franchise for the installation, operation, maintenance, repair, and removal of a multiple conduit fiber optic telecommunications system within the City's rights-of-way; and

WHEREAS, RCW 35A.11.020 grants the City broad authority to regulate the use of the public right-of-way; and

WHEREAS, pursuant to RCW 35A.47.040, the City is authorized to grant one or more non-exclusive franchises for use of public streets, roads, bridges, and other public rights-of-way, above and below the surface of the ground, for poles, conduits, tunnels, towers, structures, pipes, wires, and appurtenances and other facilities for the transmission and distribution of electrical energy, signals and other methods of communication; and

1 **WHEREAS**, the City has determined that it is in the best interests of the City and in the
2 best interests of the health, safety, and welfare of the Lynnwood community and the general
3 public to grant this non-exclusive Franchise to Zayo; now therefore,
4

5 **THE CITY COUNCIL OF THE CITY OF LYNNWOOD DO ORDAIN AS FOLLOWS:**
6

7 **SECTION 1. DEFINITIONS.**
8

9 For purposes of this Ordinance, the following words, terms and phrases shall have the
10 meanings stated in this section. When not inconsistent with the context, words used in the
11 present tense include the future, words in the plural include the singular, and words in the
12 singular include the plural. The word "shall" is always mandatory and not merely directory.
13

14 **1.1** "Affiliate" means any corporate entity that Zayo owns or controls, is owned or
15 controlled by, or is under common ownership with Zayo. Any entity in which Zayo has
16 ownership of 5% or more of the equity ownership, (either voting, control or value), or in which
17 Zayo has actual working control, in whatever manner exercised, will also be deemed an
18 Affiliate. Both the entity owned or controlled, and the entity owning or controlling, shall be
19 considered Affiliates of each other.
20

21 **1.2** "City" means the City of Lynnwood, Washington, and all the territory within its present
22 and future boundaries and including any area over which the City exercises jurisdiction.
23

24 **1.3** "Communications Service" means any telecommunications services,
25 telecommunications capacity, or dark fiber, provided by the Franchisee using its Facilities,
26 either directly or by its Affiliates, including, but not limited to, the transmission of voice, data,
27 or other electronic information, by wire, optical cable, or other similar means. For purposes of
28 this subsection, "information" means knowledge or intelligence represented by writing, signs,
29 signals, pictures, sounds, or any other symbols. For purposes of this Franchise,
30 Communications Service excludes wireless communications, over-the-air transmission of
31 broadcast television, and broadcast radio signals. Further, Communications Services shall not
32 include the provision of cable services or open video services as defined in the Communications
33 Act of 1934, as amended, for which a separate franchise would be required.
34

35 **1.4** "Facilities" means the Franchisee's fiber-optic cable system constructed and operated
36 within the City's Right-of-Ways, including all cables, amplifiers, conductors, lines, wires,
37 conduits, ducts, manholes, pedestals, and any associated converters, equipment or other
38 appurtenances and facilities, for the purpose of providing Communications Services under this
39 Franchise.
40

41 **1.5** "FCC" means the Federal Communications Commission, or any successor governmental
42 agency.
43

1 **1.6** "Franchise" means the non-exclusive rights, privileges, and authority granted to
2 Franchisee to use its Facilities in the City's Rights-of-Way pursuant to this Ordinance.

3
4 **1.7** "Person" means any individual, corporation, partnership, association, joint venture, or
5 organization of any kind and the lawful trustee, successor, assignee, transferee, or personal
6 representative thereof.

7
8 **1.8** "Right-of-Way" means the surface of, and any space above or below, any land
9 previously or hereafter acquired by or dedicated to the public or the City for purposes in whole
10 or in part of pedestrian or vehicular travel, including but not limited to public streets, roads,
11 highways, avenues, lanes, alleys, bridges, sidewalks, easements, and similar public property
12 located within the Service Area.

13
14 **1.9** "Service Area" means the present municipal boundaries of the City and shall include any
15 future additions thereto by annexation or other legal means.

16
17 **SECTION 2. GRANT.**

18
19 **2.1 Grant of a Non-Exclusive Franchise.**

20
21 2.1.1 The City hereby grants to Franchisee the non-exclusive right, privilege, and
22 authority to use and occupy the Rights-of-Way for the purpose of providing Communications
23 Services, including without limitation the right to lawfully install, remove, construct, erect,
24 operate, use, maintain, relocate, and repair Facilities in, along, under, and across the Rights-of-
25 Way subject to the terms and conditions of this Ordinance. In order to provide any other
26 services over the Facilities, the Franchisee shall be required to obtain any additional
27 governmental authorizations required by law.

28
29 2.1.2 In exercising its rights under this Ordinance, Franchisee shall comply with all
30 lawfully enacted City Codes, ordinances, standards, procedures, and regulations; provided that,
31 in the event of conflict, the provisions of this Franchise shall control. The provisions of this
32 Franchise are subject to the lawful exercise of the City's police powers upon reasonable notice
33 to Franchisee. In accepting this Franchise, the Franchisee acknowledges that its rights
34 hereunder are subject to the police power of the City to adopt and enforce, from time to time
35 and in the manner it deems reasonable, general ordinances necessary for the safety, health,
36 and welfare of the public. This Franchise shall not be interpreted to prevent the City from
37 imposing additional lawful conditions, including additional compensation conditions for use of
38 the Rights-of-Way, should Franchisee provide service other than Communications Service.
39 Franchisee agrees to comply with all applicable laws that are now or may in the future be
40 enacted by the City pursuant to such police power.

41
42 2.1.3 The authority granted herein to Franchisee is a limited authorization to occupy
43 and use the Rights-of-Way for providing Communications Services, and shall not include or be a
44 substitute for:

1 a. Any other permit or authorization required for the privilege of transacting and
2 carrying on a business within the City, including but not limited to a City business license; or
3

4 b. Any permit, agreement, authorization, or condition that may be required by
5 the City for using the Right-of-Way in connection with operations on or in the Right-of-Way or
6 public property, such as Right-of-Way Use Permits and approved traffic control plans.
7

8 2.1.4 This Franchise only conveys limited rights and interests as to those Rights-of-Way
9 in which the City has an actual interest. It is not a warranty of title or interest, nor does it
10 provide the Franchisee with any representation as to any location of a City Right-of-Way or the
11 nature of the City's interest in any Right-of-Way. No right to install any facility, infrastructure,
12 wires, lines, cables, or other equipment, on any City property other than a Right-of-Way, or
13 upon private property without the owner's consent, or upon any public or privately owned
14 utility poles or conduits is granted herein.
15

16 2.1.5 Nothing in this Franchise is a bar to the imposition of any lawful condition with
17 respect to the Franchisee's delivery of any services other than Communications Services, nor
18 does this Franchise relieve the Franchisee from obtaining authorization from the City for
19 providing any other such services.
20

21 2.1.6 This Franchise shall not be construed as to deprive the City of any rights or
22 privileges which it now has or may hereafter have to regulate the use and control of the Rights-
23 of-Way, and public property. Nothing in this Franchise shall limit nor expand the City's right of
24 eminent domain under State law. If at any time the City exercises its authority to vacate all or
25 any portion of any Right-of-Way, the City shall not be liable for any damages or loss to
26 Franchisee by reason of such vacation. The City may, upon ninety- (90) days' written notice to
27 Franchisee, terminate this Franchise with respect to such vacated area.
28

29 2.1.7 The City specifically reserves the right to grant, at any time, such additional
30 franchises for other similar systems to the Franchisee or to other persons or entities, as the City
31 deems appropriate; provided, however, such additional grants shall not operate to materially
32 modify, revoke, or terminate any rights previously granted to Franchisee. The grant of any
33 additional franchise shall not of itself be deemed to constitute a modification, revocation, or
34 termination of rights previously granted to Franchisee
35

36 2.1.8 This Franchise does not establish any priority for the use of the Rights-of-Way by
37 Franchisee or by any present or future franchisees or other permit holders. In the event of any
38 dispute as to the priority of use of the Rights-of-Way, the first priority shall be to the City in the
39 performance of its various functions, the second priority shall be to the public generally, and
40 thereafter, as between franchisees and other permit holders, as reasonably determined by the
41 City in the exercise of its powers, including the police power and other powers reserved to and
42 conferred on it by the State of Washington.
43

1 2.1.9 To the extent that any of the Rights-of-Way within the Franchise Area are a part of
2 the State highway system ("State Highways") and are governed by the provisions of Chapter
3 47.24 RCW and applicable Washington State Department of Transportation regulations,
4 Franchisee shall comply with said requirements in addition to local ordinances and other
5 applicable regulations. Franchisee shall correct any noncompliant facilities identified by the
6 City or by any other local, State or federal governmental entity.
7

8 **2.2 Term of Franchise.**

9
10 The term of this Franchise shall be for a period of ten (10) years from the date of acceptance as
11 set forth in Section 8.6 (Acceptance), unless sooner terminated or revoked. This Franchise shall
12 not renew unless and until the City and Franchisee reach agreement on a renewal and said
13 agreement is approved by ordinance of the City Council. In the event that agreement is not
14 reached, this Franchise shall terminate at the end of the then current term. Nothing in this
15 Section prevents the parties from reaching agreement on renewal provisions earlier than the
16 conclusion of any then current term.
17

18 **2.3 Non-Exclusive.**

19
20 This Franchise shall be non-exclusive, and subject to all prior rights, interests, easements, or
21 licenses granted by the City or its predecessors to any Person to use any property, Right-of-
22 Way, easement, right interest, or license. The City may at any time grant authorization to use
23 the Right-of-Way for any purpose not incompatible with the Franchisee's authority under this
24 Franchise and for such additional franchises as the City deems appropriate.
25

26 **2.4 Effect of Acceptance.**

27
28 By accepting this Franchise, the Franchisee acknowledges and accepts the City's legal right to
29 issue and enforce the Franchise; accepts and agrees to comply with each and every provision of
30 this Franchise; and agrees that the Franchise was granted pursuant to processes and
31 procedures consistent with applicable law.
32

33 **SECTION 3. GENERAL RIGHT OF WAY USE AND CONSTRUCTION.**

34 35 **3.1 Use of Rights-of-Way.**

36
37 Franchisee shall not erect, install, construct, repair, replace, or maintain its Facilities in such a
38 fashion as to unduly burden the present or future use of the City's Rights-of-Way. If the City in
39 its reasonable judgment determines that any portion of the Franchisee's Facilities is an undue
40 burden, City shall provide notice to Franchisee. Following reasonable advance written notice of
41 not less than thirty (30) days, Franchisee at its expense shall modify its Facilities or take such
42 other actions as the City may determine are in the public interest to remove or alleviate the
43 burden, and Franchisee shall do so within the time period established by the City. Franchisee
44 may, subject to the terms of this Franchise, erect, install, construct, repair, replace, reconstruct,

1 and retain in, on, over, under, upon, across, and along the Rights-of-Way within the City such
2 lines, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals,
3 attachments, and other appurtenances and equipment as are necessary to the provision of its
4 Communications Services.

5
6 **3.2 Construction or Alteration.**

7
8 Franchisee shall in all cases comply with all City laws, resolutions and regulations regarding the
9 acquisition of permits and/or such other items as may be reasonably required in order to
10 construct, alter, or maintain its Facilities and to provide Communications Services. All work
11 authorized and required under this Franchise shall be accomplished in a safe, thorough, and
12 workmanlike manner, or better. All installations of equipment shall be durable and installed in
13 accordance with current engineering standards.

14
15 **3.3 Non-Interference.**

16
17 Franchisee shall exert commercially reasonable efforts to construct and maintain its Facilities so
18 as not to interfere with other use of the Rights-of-Way. Franchisee shall, where possible, in the
19 case of above ground lines or facilities, make use of existing poles and other facilities available
20 to Franchisee.

21
22 **3.4 Consistency with Designated Use.**

23
24 Notwithstanding any other provision of this Franchise, no Right-of-Way shall be used by the
25 Franchisee if the City, in its sole opinion, determines that such use is inconsistent with the
26 terms, conditions, or provisions by which such Right-of-Way was created or dedicated, or
27 presently used under City, County, State or federal laws.

28
29 **3.5 Undergrounding.**

30
31 Franchisee shall place underground, at Franchisee's expense unless stated otherwise, all of its
32 Facilities which are located or are to be located above or within the Rights-of-Way of the City in
33 the following cases:

34
35 (a) All other existing utilities are required to be placed underground by statute,
36 resolution, policy or other regulation;

37
38 (b) Franchisee is unable to get pole attachment permits from pole owners;

39
40 (c) Underground easements are obtained from developers of new residential areas; and

41
42 (d) When required by ordinances, resolutions, regulations, or policy of the City or
43 applicable State or federal law.

1 3.5.1 Whenever the City may require the undergrounding of aerial utilities, Franchisee
2 shall underground its aerial Facilities in the manner specified by the City, concurrently with and
3 in the area of the other affected utilities. The location of any such relocated and underground
4 Facilities shall be approved by the City, following consultation with the Franchisee. Where
5 other utilities are present and involved in the undergrounding project, Franchisee shall only be
6 required to pay its fair share of the common costs borne by all utilities, in addition to the costs
7 specifically attributable to the undergrounding of Franchisee's Facilities. "Common costs" shall
8 include necessary costs not specifically attributable to the undergrounding of any particular
9 facility, such as costs for common trenching and utility vaults. "Fair share" shall be determined
10 for a project on the basis of the number and size of all other utility facilities being
11 undergrounded.

12
13 3.5.2 If an ordinance is passed creating a local improvement district which involves
14 placing underground utilities including Franchisee's Facilities which are currently located
15 overhead, Franchisee shall participate in such underground project and shall remove poles,
16 cables, overhead wires and other facilities within such district if requested to do so and place
17 such facilities underground. If such undergrounding of Franchisee's Facilities is part of such a
18 project, the costs thereof shall be included in such local improvement district.

19
20 3.5.3 If those areas and portions of the City where the transmission or distribution
21 facilities of the utility(ies) providing telephone service and the utility(ies) providing electric
22 service are underground or hereafter are placed underground, then the Franchisee shall
23 likewise construct, operate, and maintain all of its transmission and distribution facilities
24 underground. Amplifiers and connectors in Franchisee's transmission and distribution lines
25 may be in appropriate enclosures upon or above the surface of the ground in locations
26 approved by the City. Upon sufficient notice, work shall be done at the same time as other
27 facilities that are placed underground and all work shall be done consistent with City
28 regulations and to minimize impact on streets and neighborhoods.

29
30 3.5.4 Franchisee shall use conduit or its functional equivalent to the greatest extent
31 possible for undergrounding, except that drops from pedestals to Franchisee's customer's
32 homes and for cable on other private property where the owner requests that conduit not be
33 used. Cable and conduit shall be utilized which meets the highest industry standards for
34 electronic performance and resistance to interference or damage from environmental factors.
35 Franchisee shall use and construct, in conjunction and coordination with other utility
36 companies or providers, common trenches for underground construction wherever available
37 and possible.

38 39 **3.6 Construction in Right-of-Way.**

40
41 In cases where the Franchisee's facilities will not be placed underground, the Franchisee shall
42 utilize existing poles and conduit wherever possible. In cases where Franchisee's Facilities will
43 be placed underground, whenever it is possible and reasonably and financially practicable to
44 joint trench or share bores and cuts, Franchisee shall work with other providers (such as

1 telecommunications, cable, gas, electric utilities, or the City), licensees, permittees, and
2 franchisees to reduce as far as possible the number of Right-of-Way disturbances.

3
4 **3.7 Maintenance and Restoration.**

5
6 3.7.1 Restoration. In case of disturbance of any Right-of-Way or public improvement,
7 Franchisee shall, at its own cost and expense and in accordance with the requirements of the
8 City, restore such Right-of-Way or public improvement to substantially the same condition as
9 existed before the work involving such disturbance took place, less ordinary wear and tear, as
10 determined by the City and in accordance with any applicable City public works construction
11 standards. This includes vegetation that is damaged by or removed during the Right-of-Way
12 disturbance. All requirements of this Section pertaining to public property shall also apply to
13 the restoration of private easements and other private property. Franchisee shall perform all
14 restoration work promptly. If Franchisee fails, neglects, or refuses to make restorations as
15 required under this Section, then the City may (but is not required to) do such work or cause it
16 to be done, and Franchisee shall pay the cost thereof to the City within 30 days of the City
17 providing an itemized list of the costs and expenses incurred in performing such work. If
18 Franchisee causes any damage to private property in the process of restoring facilities,
19 Franchisee shall repair such damage, ordinary wear and tear excepted. Franchisee shall
20 warrant any restoration work performed under this Franchise, including the maintenance of
21 any landscaping or vegetation installed as part of the restoration work, for a period of two
22 years.

23
24 3.7.2 Maintenance. Franchisee shall maintain all above ground improvements that it
25 places on City Rights-of-Way pursuant to this Franchise. In order to avoid interference with the
26 City's ability to maintain the Right-of-Way, Franchisee shall provide a clear zone of five feet on
27 all sides of such improvements. If Franchisee fails to comply with this provision, and by its
28 failure, property is damaged, then Franchisee shall be responsible for all damages caused
29 thereby, including restoration.

30
31 3.7.3 Disputes. In any dispute over the adequacy of restoration or maintenance under
32 this Section, the City's Public Works Department shall have the authority, in the exercise of its
33 reasonable discretion, to determine the adequacy of the restoration or maintenance.

34
35 **3.8 Relocation.**

36
37 3.8.1 City Property. If during the term of the Franchise the City or any government
38 entity elects or requires a third party, or if the City or other governmental entity determines
39 that it is necessary, to alter, repair, realign, abandon, improve, vacate, reroute, or change the
40 grade of any street, public way, or other public property; or to construct, maintain, or repair
41 any public improvement; or to replace, repair install, maintain, or otherwise alter any cable,
42 wire conduit, pipe, line, pole, wire-holding structure, or other facility, including a facility used
43 for the provision of utility or other services or transportation of drainage, sewage, or other
44 liquids, Franchisee shall, upon request, except as otherwise hereinafter provided, at its sole

1 expense remove or relocate as necessary its poles, wires, cables, underground conduits, vaults,
2 pedestals, manholes, and any other facilities which it has installed.
3

4 3.8.2 Utilities and Other Franchisees. If during the term of the Franchise another
5 entity which holds a franchise or any utility requests Franchisee to remove or relocate such
6 facilities to accommodate the construction, maintenance or repair of the requesting party's
7 facilities, or their more efficient use, or pursuant to an agreement between Franchisee and such
8 requesting party to "make ready" the requesting party's facilities for use by others, or because
9 Franchisee is using a facility which the requesting party has a right or duty to remove,
10 Franchisee and such requesting party shall mutually negotiate the actions required in
11 connection with the "make ready" relocation or removal. The companies involved shall decide
12 among themselves who is to bear the cost of "make ready" removal or relocation, provided
13 that the City shall not be liable for such costs.
14

15 3.8.3 Notice to remove or relocate. Any utility, other franchisee, or City request to
16 Franchisee to remove or relocate its facilities shall give Franchisee reasonable advance written
17 notice of no less than ninety (90) days to Franchisee advising Franchisee of the date or dates
18 removal or relocation is to be undertaken; provided that the City may provide whatever notice
19 is reasonable under the circumstances in emergencies or in cases where public health and
20 safety or property is immediately endangered.
21

22 3.8.4 Failure by Franchisee to remove or relocate. If Franchisee fails, neglects or
23 refuses to remove or relocate its facilities as directed by the City; or in emergencies or where
24 public health and safety or property is endangered, the City may do such work or cause it to be
25 done, and the cost thereof to the City shall be paid by Franchisee. If Franchisee fails, neglects,
26 or refuses to remove or relocate its facilities as directed by another franchisee or utility, that
27 franchisee or utility may do such work or cause it to be done, and if Franchisee would have
28 been required to pay for the cost of performing such work under the provisions of this
29 Agreement, the cost thereof to the party performing the work or having the work performed
30 shall be paid by Franchisee.
31

32 3.8.5 If in the sole but reasonable opinion of the City Public Works Director, damage to
33 the public Right-of-Way resulting from damage or disturbance during the construction,
34 operation, or maintenance of the Franchisee's Facilities requires immediate repair, the City may
35 perform such repairs, at the cost of the Franchisee. In such event, the City will endeavor to
36 notify the Franchisee of the immediate repairs needed. The Franchisee shall pay to the City the
37 City's costs, including administrative costs related to such repairs within thirty (30) days of the
38 date of written notice of the costs to the Franchisee.
39

40 3.8.6 Procedure for removal of Facilities. Franchisee shall not remove any
41 underground facilities which requires trenching or other opening of the streets along the
42 facilities to be removed, except as hereinafter provided. Franchisee may remove any
43 underground facilities from the streets which have been installed in such a manner that it can
44 be removed without trenching or other opening of the streets. Subject to applicable law,

1 Franchisee shall remove, at its sole cost and expense, any underground facilities by trenching or
2 opening of the streets along the extension thereof or otherwise which is ordered to be
3 removed by the City based upon a determination, in the sole discretion of the City, that
4 removal is required in order to eliminate or prevent a hazardous condition. Usable
5 underground cable and conduit in the streets that is not removed as required in this subsection
6 shall be deemed abandoned and title thereto shall vest in the City at no cost to the City.
7

8 **3.9 Movement of Buildings.**

9

10 Franchisee shall, on the request of any person holding a building moving permit issued by the
11 City, temporarily raise or lower its wires to permit the moving of such building. Franchisee shall
12 be entitled to ninety- (90) days' notice to arrange the raising or lowering of the wires.
13 Franchisee may charge a reasonable fee no greater than its actual costs incurred in raising or
14 lowering its wires, for this service to the person or entity holding a building permit and may
15 request that the costs be paid in advance.
16

17 **3.10 City Right to Inspect and Cost Recovery.**

18

19 The City shall have the right to inspect all work performed by Franchisee in, on or above City
20 Rights-of-Way, whether during the performance of such work or after completion so long as
21 such inspection does not disrupt Franchisee's system operation. To the extent that the City is
22 required to perform any inspections, maintenance, or repairs to City streets, Right-of-Way, or
23 other City property due to Franchisee's use thereof, the City shall be entitled to recover the
24 costs and expenses incurred therefore from Franchisee and such costs and expenses shall be
25 payable on demand. In the event that the City incurs any costs or expenses for designing,
26 installing, repairing, or altering any City facilities that would not have occurred but for
27 Franchisee's exercise of the rights granted under this Franchise, the City may bill Franchisee for
28 reimbursement of such costs and expenses and such shall be immediately due and payable to
29 the City. Any such recovery of City costs or reimbursements of such costs shall not be an off-set
30 or credit against any Franchise Fee to be paid to the City by the Franchisee.
31

32 **3.11 Construction Standards.**

33

34 3.11.1 All work authorized or required under this Franchise shall be done in a safe,
35 thorough, and workmanlike manner, or better. All installations of equipment shall be durable
36 and installed in accordance with current professional engineering standards. Prior to
37 commencement of construction or any work being performed in any Right-of-Way, all of such
38 work shall be conducted pursuant to engineering plans submitted by the Franchisee to the City
39 for review and approval, which may be conditional approval, by the City Public Works
40 Department. Franchisee shall take prompt corrective action if it or the City finds that any
41 facilities are not operating as expected, or if it or the City finds that facilities and equipment do
42 not comply with the requirements of this Franchise or applicable law, the Lynnwood Municipal
43 Code or any permit requirements.
44

1 3.11.2 Franchisee shall comply with all applicable City construction and other codes,
2 ordinances, and regulations, including without limitation, all building and zoning codes.
3

4 3.11.3 Any erection of poles, antennae, wires, cables, and other installations, upon the
5 poles of the Franchisee located in the Right of Way or upon the poles of others located in the
6 Right of Way, shall be done only in accordance with a plan or maps first submitted to and
7 approved by the City or other person designated by the City. Antenna supporting structures
8 (towers) shall be designed for the proper loading as specified by the Electronics Industries
9 Association (EIA), as those specifications may be amended from time to time, and shall meet all
10 requirements and regulations adopted by the Federal Communications Commission
11 (FCC). Antenna supporting structures (towers) shall be painted, lighted, erected, and
12 maintained in accordance with all applicable rules and regulations of the Federal Aviation
13 Administration, the FCC, and all other applicable federal, State, and local codes or
14 regulations. Any repair work or replacement work performed in the Right of Way shall be done
15 under the supervision of the City and only after permission from the City is received.
16

17 3.11.4 Prior to placing any underground facilities, Franchisee shall join and maintain
18 membership in good standing with the Utility Coordinating Council One Call Center or other
19 similar or successor organization which is designated to coordinate underground equipment
20 locations and installations. Franchisee represents that it is familiar with Chapter 19.122 RCW
21 (Washington State's "Underground Utilities" statute), and understands and will comply with
22 local procedures and practices relating to the one call locator service program.
23

24 3.11.5 Franchisee shall comply with any generally applicable ordinances, rules,
25 regulations, and policies of the City regarding geographic information systems mapping for
26 users of the Right-of-Way; provided, that all similarly situated users of the Right-of-Way are
27 also required to comply.
28

29 **3.12 Notice of Construction.**

30
31 3.12.1 If at any time the Franchisee intends to perform construction work in any Right-
32 of-Way, the Franchisee shall obtain a Right-of-Way Permit from the City and shall provide the
33 City with notice before commencing any such work as required by the Right-of-Way Permit
34 application process.
35

36 3.12.2 The City may establish requirements for advance notification to residents
37 adjacent to the proposed construction areas to be provided by the Franchisee, and Franchisee
38 shall comply with such advance notification requirements.
39

40 **3.13 Safety Requirements.**

41
42 3.13.1 The Franchisee shall, at all times, employ industry standards of care and shall
43 install and maintain and use commonly accepted methods for preventing failures and accidents
44 which are likely to cause damage, injuries, or nuisances to the public. All structures and all

1 lines, equipment, and connection in, over, under, and upon the streets, sidewalks, alleys, and
2 public ways or places of the Service Area, wherever situated or located, shall at all times be
3 kept and maintained in a safe condition. Franchisee shall comply with all federal, State, and
4 City safety requirements, rules, regulations, laws and practices, and employ all necessary
5 devices as required by applicable law during the construction, operation, maintenance,
6 upgrade, repair, or removal of its Facilities. By way of illustration and not limitation, Franchisee
7 shall also comply with the National Electric Code, National Electrical Safety Code, FCC
8 regulations, and Occupational Safety and Health Administration (OSHA) Standards.
9

10 3.13.2 If an unsafe condition is found to exist, the City agrees to give Franchisee notice
11 of such condition and afford Franchisee a reasonable opportunity to repair the same. If
12 Franchisee fails to start to make the necessary repairs and alterations within the time frame
13 specified by the City, then the City may make such repairs or contract for them to be made. All
14 costs, including administrative costs, incurred by the City in repairing any unsafe conditions
15 shall be borne by Franchisee. The Franchisee shall pay to the City all of the City's costs,
16 including administrative costs, incurred as a result of circumstances herein within thirty (30)
17 days of the date of the written notice of the costs that is delivered to the Franchisee. Any such
18 recovery of City costs or reimbursements of such costs shall not be an off-set or credit against
19 any Franchise Fee to be paid to the City by the Franchisee. If the Franchisee fails to comply
20 with the time frames herein, this Franchise shall terminate without further action required.
21

22 **3.14 Permits Required for Construction.**

23
24 3.14.1 Prior to doing any work in the City, Franchisee shall apply for, and obtain,
25 appropriate permits from the City. As part of the permitting process, the City may impose such
26 conditions and regulations as are necessary for the purpose of protecting any Rights-of-Way,
27 the proper restoration of Rights-of-Way and structures, the protection of the public, and the
28 continuity of pedestrian or vehicular traffic, or as may be required by law, ordinance, codes, or
29 regulations. Such conditions may also include requiring the provision of a construction
30 schedule and maps showing the location of the facilities to be installed in the Right-of-
31 Way. Franchisee shall pay all applicable fees for the requisite City permits, reviews, and/or
32 approvals required of or received by Franchisee. In the event that emergency repairs are
33 necessary, Franchisee shall immediately notify the City of the need for such repairs. Franchisee
34 shall apply for appropriate permits within two (2) working days after discovery of the
35 emergency. During emergencies, the City may move Franchisee's Facilities without prior notice.
36

37 3.14.2 Before commencing any construction work exceeding Ten Thousand Dollars
38 (\$10,000.00) in cost, Franchisee shall, if requested by the City, provide a construction bond to
39 ensure the faithful performance of its responsibilities under this Franchise and applicable law,
40 including without limitation, its duty to restore City streets and other property. The amount of
41 the construction bond shall be at least one hundred twenty-five percent (125%) of the
42 estimated project cost. The bond shall be in a form and with a surety acceptable to the City.
43 Franchisee shall pay all premiums and costs associated with obtaining the bond, and shall keep
44 the bond in full force and effect until the completion of the construction project, including all

1 restoration of public and private property. Upon completion of the construction, the City shall
2 return the original bond to the Franchisee.
3

4 3.14.3 In the event of any emergency in which any of Franchisee's Facilities break or are
5 damaged, or if the Franchisee's construction area is otherwise in such a condition as to
6 immediately endanger the property, life, health, or safety of any person, the Franchisee shall
7 immediately take proper emergency measures to repair its Facilities, to cure or remedy the
8 dangerous condition, without first applying for and obtaining City permits otherwise required
9 for said work; provided, that the Franchisee shall immediately notify the City of said condition
10 and of the emergency work, and shall obtain all necessary permits as promptly as possible after
11 the emergency work is performed, and in any event no later than the second business day
12 following the discovery of the condition requiring the emergency work.
13

14 **3.15 Tree Trimming.**

15
16 In cases of emergency, the Franchisee shall notify the City of its intent to trim trees or other
17 natural growth necessary to access and maintain its Facilities immediately upon determining
18 that such an emergency exists and prior to engaging in such activity. Upon receipt of such
19 notice, the City may inspect such circumstance prior to the removal of the emergency
20 condition. In non-emergency conditions, Franchisee may, at its own expense, trim trees or
21 other natural growth overhanging any of its installed Facilities to prevent branches from coming
22 in contact with the Franchisee's wires, cables, or other equipment upon twenty (20) days'
23 notice of the actual trees and other natural growth that is intended to be affected in non-
24 emergency situations, and upon approval of the City Public Works Department, which shall not
25 be unreasonably withheld, and subject to the requirement to obtain a Right-of-Way Use Permit
26 and complying with any and all conditions of that Permit. Nothing herein grants the Franchisee
27 any authority to act on behalf of the City or to enter upon any private property, or to trim any
28 tree or natural growth not owned by the City. The Franchisee shall be solely responsible and
29 liable for any damage to any third-parties' trees or natural growth, and in addition to the terms
30 and conditions of Section 7, the Franchisee shall indemnify, defend, and hold harmless the City
31 from claims of any nature arising from any act or negligence of the Franchisee with regard to
32 tree and/or natural growth trimming, damage, and/or removal. Franchisee shall reasonably
33 compensate the City or the property owner for any damage caused by such trimming, damage
34 or removal. The Franchisee, may, at their own discretion, but in a manner and of a style
35 approved by the City or property owner, provide replacement of any trees or shrubbery
36 damaged as a result of actions taken by the Franchisee in lieu of compensation.
37

38 **3.16 Temporary Disconnection.**

39
40 The City may direct the Franchisee to temporarily disconnect, relocate, or bypass any
41 equipment of the Franchisee in order to complete street construction or modification, install
42 and remove underground utilities, or for other reasons of public safety and efficient operation
43 of the City, including construction projects. Such removal, relocation, or other requirement
44 shall be at the sole expense of the Franchisee.

1 **3.17 Access to Open Trenches.**
2

3 3.17.1 The Franchisee shall be entitled to reasonable access to open utility trenches,
4 provided that such access does not interfere with the City's placement of utilities or increase
5 the cost to the City thereby. The Franchisee shall pay to the City the actual cost to the City
6 resulting from providing the Franchisee access to an open trench, including without limitation
7 the pro rata share of the costs of access to an open trench and any costs associated with the
8 delay of the completion of a public works project.
9

10 3.17.2 The City shall use reasonable efforts to include the Franchisee in any platting
11 process within the City, to exercise reasonable efforts to include as a condition of issuing a
12 permit for open trenching to any utility or developer that (a) the utility or developer give the
13 Franchisee at least ten- (10) business days' advance written notice of the availability of the
14 open trench and (b) that the utility or developer provide the Franchisee with reasonable access
15 to the open trench. Any such recovery of City costs or reimbursements of such costs shall not
16 be an off-set or credit against any Franchise Fee to be paid to the City by the Franchisee. The
17 City's non-compliance with this Section shall not be a breach or default by the City of this
18 Franchise.
19

20 **3.18 Reservation of Rights.**
21

22 Nothing in this Franchise shall limit, waive, release, or terminate any rights or interests of the
23 City in its property and/or Right-of-Way, including but not limited to the City retaining all right
24 to sewer, plank, pave, grade, alter, repair, vacate, and improve and/or work upon, under, or
25 above any public Rights-of-Way, and, further the City shall retain its right to grant Franchise
26 rights or similar rights to others, and the City shall not be liable for damage resulting to the
27 Franchisee by reason of or as a result of the performance of such work or by the exercise of
28 such rights by the City.
29

30 **SECTION 4. PAYMENTS TO CITY.**
31

32 **4.1 Recovery of Costs.**
33

34 4.1.1 Franchisee shall pay an administrative fee to the City for the City's administrative,
35 legal, and other costs incurred in drafting and processing this Franchise and all work related
36 thereto, in an amount up to \$2,500. No construction permits shall be issued for the installation
37 of Facilities authorized hereby until such time as the City has received payment of the
38 administrative fee.
39

40 4.1.2 Franchisee shall be subject to all standard permit fees associated with activities
41 undertaken through the authority granted in this Franchise or under the laws of the City.
42 Where the City incurs costs and expenses for review, inspection, or supervision of activities,
43 including but not limited to reasonable fees associated with attorneys, consultants, City staff,
44 and City Attorney time, undertaken through the authority granted in this Franchise or any

1 ordinances relating to the subject for which a permit fee is not established, Franchisee shall pay
2 such costs and expenses directly to the City. In addition to the above, Franchisee shall, within
3 thirty days (30) upon receipt of a request from the City, reimburse the City for any and all costs
4 the City reasonably incurs in response to any emergency involving Franchisee's Facilities.
5 Franchisee shall reimburse the City within sixty (60) days of submittal by the City of an itemized
6 billing for incurred costs, itemized by project, for the Franchisee's proportionate share of all
7 actual, identified expenses incurred by the City in planning, constructing, installing, repairing,
8 altering, or maintaining any City facility as the result of the presence of Franchisee's Facilities in
9 the Rights-of-Way. Such costs and expenses shall include but not be limited to the Franchisee's
10 proportionate cost of City personnel assigned to oversee or engage in any work in the Rights-of-
11 Way as the result of the presence of the Franchisee's Facilities in the Rights-of-Way. Such costs
12 and expenses shall also include the Franchisee's proportionate share of any time spent
13 reviewing construction plans in order to either accomplish the relocation of the Franchisee's
14 Facilities or the routing or rerouting of any utilities so as not to interfere with the Franchisee's
15 Facilities.

16 17 **4.2 City's Reservation of Rights.**

18
19 4.2.1 Pursuant to RCW 35.21.860, the City is precluded from imposing a franchise fee
20 on a "telephone business" as defined in RCW 82.16.010, or a "service provider" as defined in
21 RCW 35.99.010, for use of the Right-of-Way, excepting actual administrative expenses directly
22 related to the franchise or any tax authorized by state law. Franchisee hereby warrants that its
23 operations as authorized under this Franchise are those of a "telephone business" as defined in
24 RCW 82.16.010 or a "service provider" as defined in RCW 35.99.010. As a result, the City will
25 not impose a franchise fee under the terms of this Franchise, other than as described herein.
26

27 4.2.2 Franchise acknowledges that its operation within the City may constitute a
28 telephone business subject to the utility tax imposed pursuant to Title 3 of the Lynnwood
29 Municipal Code. Franchisee shall pay any and all utility tax due to the City in accordance with
30 the provisions of the City code. Franchisee understands that RCW 35.21.870 currently limits
31 the rate of city tax to six percent (6%) of gross receipts from telephone business activities,
32 unless a higher rate is otherwise approved. The parties agree however that nothing in this
33 Franchise shall limit the City's power of taxation as may now or hereafter exist. Franchisee
34 stipulates and agrees that should its business activities be subject to taxation that Franchisee
35 shall pay to the City the rate then applicable to such services under the City's utility tax code,
36 and consistent with state and federal law. This provision does not limit the City's power to
37 amend the City's utility tax code as may be permitted by law.
38

39 4.2.3 The City reserves its right to impose a franchise fee, in accordance with state or
40 federal law, on Franchisee for purposes other than to recover its administrative expenses, if
41 Franchisee's operations as authorized by this Franchise change such that Franchisee's activities
42 are not those of a "telephone business" as defined in RCW 82.16.010 and Franchisee is not a
43 "service provider" as defined in RCW 35.99.010, and if there are no statutory prohibitions on
44 the imposition of such fees.

1 **4.3 Acceptance of Payment.**
2

3 No acceptance of any payment by the City shall be construed as an accord that the amount paid
4 is, in fact, the correct amount, nor shall such acceptance of payment be construed as a release
5 of any claim which the City may have for further or additional sums payable under the
6 provisions of this Franchise. Franchisee's payment to the City shall not be construed as an
7 acknowledgement by the Franchisee that the amount paid is the correct amount and
8 Franchisee reserves the right to subsequently seek to recover any amount of such payments in
9 the event of an erroneous overpayment or for other lawful reasons. The costs of such
10 verification shall be borne solely by the Franchisee.
11

12 **4.4 Audits and Examinations.**
13

14 No more than twice per calendar year, the City may arrange for with Franchisee for an
15 independent audit, on a non-contingent fee basis, of the Franchisee's books and records to
16 verify the accuracy of any payments made to the City under this Franchise, including but not
17 limited to any utility tax. Any additional identified amount due to the City shall be paid within
18 fourteen (14) calendar days of the City submitting an undisputed invoice for such sum, and if
19 such sum shall exceed three percent (3%) of the total payment which the audit determines
20 should have been paid for any calendar year, the Franchisee shall pay the City's reasonable out
21 of pocket costs of the audit.
22

23 In addition to the forgoing, the City, upon thirty (30) days' written notice to the
24 Franchisee, shall have the right to inspect, upon reasonable notice, the books and records of
25 the Franchisee for the purpose of determining the accuracy and completeness of the financial
26 reports. Other records that may be required by the City for review include, but are not limited
27 to, annual financial statements and customer data. Any audit or such examination shall be
28 done in a professional manner during reasonable business hours and following not less than 30-
29 days' notice to Franchisee.
30

31 **4.5 Interest and Penalties on Late Payments.**
32

33 In the event that any payment due to the City under this Franchise, except for utility taxes
34 which shall be governed by applicable provisions of the City code, is not received by the City by
35 the date due, (1) interest shall be charged from such date at the rate of twelve percent (12%)
36 per annum, and (2) in addition, Franchisee shall pay the City an additional amount equal to five
37 percent (5%) of the amount not paid by the date due.
38

39 **4.6 Taxes and Assessments.**
40

41 The payments required under this Franchise shall be in addition to any and all taxes, levies, or
42 other assessments which are now or hereafter required to be paid by businesses or utilities by
43 any law of the City, the State, or the federal government, including, without limitation, sales,
44 use, utilities, and business and occupation taxes, business license fees, or other payments.

1 Nothing stated herein shall limit Franchisee's obligation to pay lawful and applicable local,
2 state, or federal taxes, and payment of fees under this Franchise shall not exempt Franchisee
3 from payment of any other lawfully imposed license fee, permit fee, tax, or other charge on the
4 business, occupation, property, or income of Franchisee.
5

6 **SECTION 5. FRANCHISE RENEWAL, EXTENSION AND TRANSFER.**

7 8 **5.1 Transfer of Franchise.**

9
10 5.1.1 This Franchise may not be assigned or transferred (including by operation of law)
11 without the written approval of the City, which approval shall not be unreasonably withheld,
12 conditioned or delayed. Notwithstanding the above, Franchisee may, upon thirty (30) days'
13 written notice to the City, freely assign this Franchise in whole or in part to an Affiliate,
14 including without limitation a parent or subsidiary organization or as part of any corporate
15 financing, reorganization, or refinancing; provided, that the assignee or transferee must have
16 the legal, technical, financial, and other requisite qualifications to own, hold, and operate the
17 Franchisee's Facilities for the purpose of providing Communications Services. The Franchisee
18 shall reimburse the City for all direct and indirect costs and expenses reasonably incurred by
19 the City in considering a request to transfer or assign this Franchise. In the case of transfer or
20 assignment as security by mortgage or other security instrument in whole or in part to secure
21 indebtedness, such approval shall not be required unless and until the secured party elects to
22 realize upon the collateral. No assignment or transfer of this Franchise shall be deemed to
23 occur based on the public trading of the Franchisee's stock.
24

25 5.1.2 Franchisee may, without the prior written approval of the City: (i) grant an
26 indefeasible right of user interest in the Facilities, or any portion thereof, to another entity; or
27 (ii) offer or provide capacity or bandwidth from the Facilities to another person; provided, that
28 Franchisee at all times retains exclusive control over the Facilities and remains responsible for
29 locating, servicing, repairing, relocating, or removing its Facilities pursuant to the terms of this
30 Franchise and remains in compliance with this Franchise.
31

32 5.1.3 Notwithstanding the above, Franchisee may, without the prior written approval
33 of the City, lease the capacity or bandwidth to another telecommunications provider for the
34 purpose of providing services to customers in the City; provided, that Franchisee shall furnish
35 the City in advance with a copy of any such proposed lease or agreement and the proposed
36 lessee or person shall comply with all of the requirements of this Franchise and the City code;
37 and further provided, that the lessee's obligation to comply with the requirements of this
38 Franchise shall not apply to the leasing of dark fiber or other conductive infrastructure for
39 general business purposes, unless such lease is for all or substantially all of the Facilities.
40

41 **5.2 Franchise Renewal.**

42
43 The City and the Franchisee agree that any proceedings undertaken by the City that relate to
44 the renewal of the Franchisee's Franchise shall be governed by and comply with applicable

1 federal, state and local laws, ordinances, and regulations or as otherwise agreed to by the
2 parties.

3
4 **SECTION 6. VIOLATIONS; ENFORCEMENT.**

5
6 **6.1 Enforcement.**

7
8 6.1.1 Notice of Violation. In the event that the City believes that the Franchisee has not
9 complied with any terms of the Franchise, the City, at its sole election may informally discuss
10 the matter with Franchisee. If discussions do not lead to resolution of the problem or if the City
11 elects not to informally discuss the matter with the Franchisee, the City shall issue a written
12 Notice of Violation to the Franchisee, stating with particularity the alleged breach, violation or
13 other non-compliance.

14
15 6.1.2 Franchisee's Right to Cure or Respond. The Franchisee shall have thirty (30) days
16 from receipt of the Notice of Violation to (i) respond to the City, contesting the asserted breach,
17 violation or non-compliance and requesting a meeting as provided in section 6.2.1 (ii) cure such
18 default, or (iii) in the event that, by the nature of default, such default cannot be cured within
19 the thirty- (30) day period, initiate reasonable steps to remedy such default and notify the City
20 of the steps being taken and the estimated date that they will be completed.

21
22 **6.2 Franchisee Contests Non-compliance.**

23
24 6.2.1 If the Franchise timely notifies the City that it contests the asserted breach,
25 violation or non-compliance and requests a meeting with the City, the Mayor shall hold a
26 meeting with the Franchisee within fourteen (14) days, provided that said timeframe may be
27 extended at the sole discretion of the Mayor.

28
29 6.2.2 If after such meeting, the Mayor determines that the Franchisee is in breach,
30 violation or non-compliance with the Franchise, then the Mayor shall notify the Franchisee of
31 his/her decision in writing within seven (7) days, stating the grounds of the breach, violation, or
32 non-compliance, and revoking the Franchise. Said revocation shall be effective immediately
33 after the delivery of the written notice to the Franchisee.

34
35 6.2.3 After receiving the Mayor's written notice of decision, the Franchisee may request
36 a public hearing before the City Council as to whether or not a violation, breach, or non-
37 compliance with the Franchise has occurred. Said request must be made in writing, stating with
38 specificity the reasons why the Franchisee believes that the alleged non-compliance has not
39 occurred, and delivered to the City Clerk within fourteen (14) days of receipt of the Mayor's
40 decision.

41
42 6.2.4 If the Franchisee does not request a public hearing before the City Council under
43 Section 6.2.3 above, at the next available meeting, the City Council shall pass an ordinance
44 declaring the Franchise revoked and terminated, and any security or bonds shall be forfeited to

1 the City. If the Franchisee does request a public hearing before the City Council under Section
2 6.2.3 above, the City Clerk shall cause the public hearing to be held at the next available City
3 Council meeting, provided that the Franchisee shall be provided at least ten- (10) business days'
4 notice of such hearing.
5

6 6.2.5 At the City Council public hearing, the City shall have the burden of proof that a
7 violation, breach, or non-compliance with the Franchise has occurred, and must demonstrate
8 that a preponderance of evidence supports the conclusion that there is a violation or breach of
9 the Franchise and that such violation or breach was not timely cured as required in this
10 Franchise.
11

12 6.2.6 The City Council's decision following the close of the public hearing shall be made
13 based upon a majority of the City Council present at the City Council meeting. In the event of a
14 tie vote, the decision of the Mayor shall be deemed to be upheld as the decision of the City
15 Council.
16

17 6.2.7 If the City Council upholds the Mayor's decision that the Franchisee is in breach,
18 violation, or non-compliance, then the City Council shall immediately pass an ordinance
19 declaring the Franchise revoked and terminated, and any security or bonds shall be forfeited to
20 the City. Said revocation ordinance shall include findings of fact and conclusions derived from
21 those facts which support the decision of the City Council; provided, that the City Council may
22 adopt the findings and conclusions of the Mayor.
23

24 6.2.8 The Franchisee shall be bound by the decision of the City Council, unless an
25 appeal is filed to a court of competent jurisdiction within thirty (30) days of the date of the
26 Council's decision.
27

28 **6.3 Failure to Timely Cure.**

29

30 If the Franchisee has not contested the asserted breach, violation, or non-compliance and fails
31 to timely cure the breach, violation, or non-compliance under Section 6.1.2 above, then in
32 addition to any other remedy at law or equity, or provided for in this Franchise, the City may
33 revoke the Franchise. Said revocation shall be effective immediately after the delivery of a
34 written notice of revocation executed by the Mayor stating the grounds of the breach,
35 violation, or non-compliance with the Franchise. If the Franchisee has contested the asserted
36 breach, violation, or non-compliance and the City has determined, as provided in Section 6.2,
37 that the Franchisee is in breach, violation, or non-compliance, Franchisee shall cure the breach,
38 violation, or non-compliance within thirty (30) days from receipt of the City's decision, or within
39 thirty (30) days from the issuance of a final non-appealable order by a court of competent
40 jurisdiction, or in the event that, by the nature of default, such default cannot be cured within
41 the thirty- (30) day period, initiate reasonable steps to remedy such default and notify the City
42 of the steps being taken and the estimated date that they will be completed. If Franchisee fails
43 to timely cure the breach, violation, or non-compliance as provided in this Section 6.3 after
44 receiving the City's decision or following an appeal, then in addition to any other remedy at law

1 or equity, or provided for in this Franchise, the City may revoke the Franchise. Said revocation
2 shall be effective immediately after the delivery of a written notice of revocation executed by
3 the Mayor stating the grounds of the breach, violation, or non-compliance with the Franchise.
4

5 **6.4 Removal.**

6
7 6.4.1 If the Franchise has been terminated, revoked, canceled, or has expired, and
8 Franchisee has not exercised its rights, if any, to contest the termination, revocation,
9 cancelation or nonrenewal, the City may give Franchisee written notice to remove its Facilities
10 from the City's Rights-of-Way or it may, in the City's sole discretion, allow Franchisee to
11 abandon the system in place if the Franchisee requests in writing to abandon its Facilities in
12 place. Within ten (10) days of receiving the City's notice, in the event that the City requires
13 removal of the Facilities, the Franchisee agrees to commence removal of its system and to
14 proceed diligently with such removal. Work shall be completely done one hundred-eighty (180)
15 days from notice to complete such work. Prior to the commencement of such work, the
16 Franchisee shall submit to the City a performance bond in the amount of one hundred fifty
17 percent (150%) of the estimated cost of removal and the restoration required by this Franchise.
18 Upon the completion of such work, the City shall return the original bond to the Franchisee.
19

20 6.4.2 If the Franchisee fails to remove any of its property as provided herein, the City
21 may elect to cause such removal and may recover its reasonable costs and expenses from
22 Franchisee, including its reasonable attorney's fees and costs incurred in recovering such costs
23 and expenses.
24

25 **6.5 Effective Abandonment.**

26
27 Any property of the Franchisee remaining in place ninety (90) days after the termination or
28 expiration of the Franchise may be considered permanently abandoned. Upon abandonment
29 of the property of the Franchisee in place the property shall become that of the City, and the
30 Franchisee shall submit to the City Clerk an instrument in writing, to be approved by the City
31 Attorney, transferring to the City the ownership of such property.
32

33 **SECTION 7. FINANCIAL AND INSURANCE REQUIREMENTS.**

34 **7.1 Indemnity and Hold Harmless.**

35
36 7.1.1 General Indemnification. The Franchisee shall indemnify, defend, and hold the
37 City, its officers, officials, employees, agents, and consultants ("City"), harmless from and
38 against any and all liabilities, claims, fees, costs, and damages, whether to person or property,
39 or expense of any type or nature which may occur to the City or to any third party, including
40 without limitation reasonable attorneys' fees, experts' fees, and other costs, by reason of the
41 construction, operation, maintenance, repair, and alteration of Franchisee's Facilities by
42 Franchisee or any other act done under this Franchise by Franchisee, its employees or agents,
43

1 except to the extent that such liabilities, claims, fees, costs, and damages are caused by the
2 negligence of the City.

3
4 7.1.2 Relocation Indemnification. To the extent not covered by the indemnity
5 requirements of Section 7.1.1, Franchisee shall indemnify, defend and hold the City harmless
6 from and against any and all liabilities, claims, fees, costs, and damages, whether to person or
7 tangible property, or expense of any type or nature which may occur to the City or any third
8 party, including without limitation reasonable attorneys' fees, experts' fees and other costs,
9 arising out of, or resulting from, directly or indirectly, Franchisee's failure to remove, adjust, or
10 relocate any of its Facilities in the Right-of-Way in a timely manner in accordance with any
11 relocation required by the City under this Franchise, except to the extent that such liabilities,
12 claims, fees, costs, and damages are caused by the negligence of the City.

13
14 7.1.3 Procedures and Defense. In any case in which suit or action is instituted against
15 the City by reason of damages or injury caused in whole or in part by a negligent act or
16 omission of Franchisee, the City shall cause written notice thereof to be given to the Franchisee
17 and Franchisee thereupon shall have the duty to appear and defend in any such suit or action,
18 without cost or expense to the City. The City may participate in the defense of a claim, at its
19 sole expense, and in any event, Franchisee may not agree to any settlement of claims financially
20 affecting the City without the City's prior written consent, which consent shall not be
21 unreasonably withheld. The City shall not agree to any settlement of claims without the prior
22 written consent of Franchisee.

23
24 7.1.4 Inspection or acceptance by the City of any work performed by Franchisee at the
25 time of completion of construction shall not be grounds for avoidance by Franchisee of any of
26 its obligations under this Franchise. Said indemnification obligations shall extend to claims
27 which are not reduced to a suit and any claims which may be compromised, with Franchisee's
28 prior written consent, prior to the culmination of any litigation or the institution of any
29 litigation.

30 31 **7.2 Insurance.**

32
33 7.2.1 General Requirement. During the entire term of this Franchise, the Franchisee
34 shall have and maintain in full force and effect, at its own cost and expense, a general
35 comprehensive liability insurance policy, in protection of the City, its officers, elected officials,
36 boards, commissioners, agents, employees, and consultants, in a company and a form
37 satisfactory to the City, protecting the City and all persons against liability for loss or damage or
38 personal injury, death, and property damage, and errors or omissions, occasioned by the
39 operations of Franchisee under such Franchise.

40
41 7.2.2 Minimum Insurance Limits. Franchisee shall maintain in full force and effect at its
42 own cost and expense each of the following policies of insurance:
43

- 1 A. Comprehensive General Liability Insurance with limits of no less than Five
2 Million Dollars (\$5,000,000) per occurrence and Five Million Dollars
3 (\$5,000,000.00) excess liability, aggregate for personal injury, bodily
4 injury and property damage. Coverage shall include but not be limited
5 to: blanket contractual; premises; operations; independent contractors;
6 stop gap liability; personal injury; products, and completed operations;
7 broad form property damage; explosion, collapse, and underground
8 (XCU); and employer's liability.
9
- 10 B. Commercial Automobile Liability Insurance with minimum combined
11 single limits of Three Million Dollars (\$3,000,000) per occurrence and Five
12 Million Dollars (\$5,000,000) excess liability with respect to each of
13 Franchisee's owned, hired, and non-owned vehicles assigned to or used
14 in the operation of the Facilities in the City.
15
- 16 C. Professional Liability: One Million Dollars (\$1,000,000) per claim for all
17 professionals employed or retained by Franchisee to perform services
18 under this Franchise
19
- 20 D. Worker's Compensation coverage as required by the Industrial Insurance
21 laws of the State of Washington.
22

23 7.2.3 Franchisee's insurance coverage shall be primary insurance with respect to the
24 City. Any insurance or self-insurance maintained by the City shall be in excess to the
25 Franchisee's insurance. A certificate of insurance acceptable to the City shall be filed with the
26 City Clerk. The company shall be approved by the state insurance Commissioner pursuant to
27 Title 48 RCW, and have at least an A- Best Rating.
28

29 7.2.4 Each policy of insurance shall provide that a written notice of cancellation shall be
30 delivered to the City thirty (30) days in advance of the effective date thereof. If the insurance is
31 cancelled or materially altered so as to be out of compliance with the requirements of this
32 section, Franchisee shall provide a replacement policy. Franchisee shall maintain continuous,
33 uninterrupted insurance coverage, in at least the amounts required, for the duration of the
34 Franchise term, and in the case of Commercial General Liability, for at least one year after
35 expiration of this Franchise.
36

37 7.2.5 Franchisee may utilize primary and umbrella liability insurance policies to satisfy
38 insurance policy limits required herein.
39

40 **7.3 Performance Bond.**
41

42 7.3.1 If requested by the City, no later than the effective date of this Franchise, Franchisee
43 shall establish and provide to the City, as security for the faithful performance of all of the
44 requirements of this Franchise, a performance bond, from a surety or financial institution

1 acceptable to the City, in the amount of Ten Thousand Dollars (\$10,000). The performance
2 bond may be drawn upon by the City for purposes, including but not limited to the following:
3 (1) failure of Franchisee to pay the City sums due under the terms of this Franchise; (2)
4 reimbursement of costs borne by the City to correct Franchise violations not corrected by
5 Franchisee; and (3) monetary remedies or damages assessed against Franchisee due to default
6 or breach of Franchise requirements.

7
8 7.3.2 The City shall give Franchisee written notice of any withdrawal under this section upon
9 such withdrawal. Within seven (7) days following receipt of such notice, Franchisee shall
10 restore the performance bond to the amount required under this Franchise. Franchisee's
11 maintenance of the bond shall not be construed to excuse performance of obligations under
12 the Franchise, or to limit the liability of Franchisee or otherwise limit the City's recourse to any
13 other remedy available at law or equity.

14
15 **SECTION 8. MISCELLANEOUS TERMS**

16
17 **8.1 Confirmation of Consistency with Federal Provisions.**

18
19 If any portion of this Franchise ordinance is deemed to be inconsistent with the Act or any
20 federal or state rule or regulation now existing or hereinafter adopted, then to the extent of the
21 inconsistency, the Act or rule or regulation shall control for so long, but only for so long, as such
22 rule or regulation shall remain in effect, and the remaining provisions of this Franchise
23 ordinance shall not thereby be affected. If that rule or regulation allows existing franchises to
24 not be affected, then there shall be no effect to this Franchise. If federal law changes, whether
25 through legislative or rule-making action or court or administrative interpretation during the
26 term of this Franchise, then this Franchise ordinance shall be considered modified to be
27 consistent with such federal law changes.

28
29 **8.2 Severability.**

30
31 Each section, subsection, or other portion of this Ordinance shall be severable and the invalidity
32 of any section, subsection, or other portion shall not invalidate the remainder.

33
34 **8.3 Notice.**

35
36 Any notice or information required or permitted to be given to the parties under this Franchise
37 may be sent to the following addresses unless otherwise specified:

38
39 CITY OF LYNNWOOD:
40 City of Lynnwood
41 City Clerk
42 19100 44th Ave W
43 Lynnwood, WA 98036

FRANCHISEE:
Zayo Group LLC
Attn: General Counsel, ZPI
1805 29th Street
Boulder, CO 80301

1 Notice shall be deemed given upon actual receipt or refusal of delivery and shall be sent by
2 personal delivery, United States Certified Mail, return receipt requested, or by overnight
3 delivery.

4
5 **8.4 Entire Franchise.**

6
7 This Franchise and its acceptance constitutes the entire terms between the parties as to the
8 subject matter herein and no other agreements or understandings, written or otherwise, shall
9 be binding upon the parties. Any amendment to this Franchise shall only occur by mutual
10 written agreement of the parties and amendment of this Ordinance.

11
12 **8.5 Reserved Rights.**

13
14 The City reserves all rights and powers under its police powers and powers conferred by
15 federal, state or local law. In particular the City reserves the right to alter, amend, or repeal its
16 municipal code as it determines shall be conducive to the health, safety, and welfare of the
17 public, or otherwise in the public interest. The City agrees that by accepting this Franchise,
18 Franchisee has not waived its right to object to the application to it of actions by the City
19 pursuant to its reserved rights or police powers.

20
21 Both the City and the Franchisee expressly reserve all rights they may have under law to the
22 maximum extent possible; neither the City nor the Franchisee shall be deemed to have waived
23 any federal or state constitutional or statutory rights they may now have or may acquire in the
24 future by entering into this agreement.

25
26 **8.6 Franchise Acceptance.**

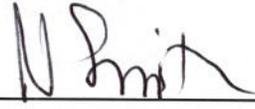
27
28 Within sixty (60) days of the effective date of this ordinance, Franchisee shall execute and
29 return to the City three Franchisee Acceptance forms, attached to this Ordinance. The
30 executed Franchise Acceptances shall be returned to the City accompanied by performance
31 bonds, security funds, and evidence of insurance, all as provided in this Ordinance. In the event
32 Franchisee fails to accept this Franchise, or fails to provide the required documents and/or
33 funds, by said date, this Franchise shall be null and void and Franchisee shall have no rights or
34 privileges hereunder.

35
36 **8.7 Effective Date.**

37
38 This Franchise ordinance shall be effective upon passage, approval and publication as provided
39 by law; provided, however, that if Franchisee does not accept this Franchise and comply with all
40 conditions for such acceptance set forth herein prior to the effective date, this Franchise
41 ordinance shall be null and void.

42
43 PASSED BY THE CITY COUNCIL this 25th day of January, 2016 and signed in
44 authentication this 29th day of January, 2016.

APPROVED:

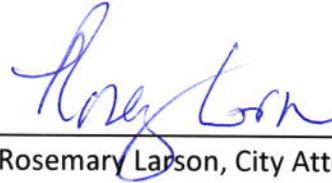


Nicola Smith, Mayor

ATTEST/AUTHENTICATED:


Sonja Springer, Finance Director

APPROVED AS TO FORM:


Rosemary Larson, City Attorney

FILED WITH ADMINISTRATIVE SERVICES:	<u>01/26/2016</u>
PASSED BY THE CITY COUNCIL:	<u>01/25/2016</u>
PUBLISHED:	<u>01/29/2016</u>
EFFECTIVE DATE:	<u>02/03/2016</u>
ORDINANCE NUMBER:	<u>3172</u>

1
2 **FRANCHISEE ACCEPTANCE**
3
4

5 **Zayo Group LLC**, for itself and for its successors and assigns, hereby accepts
6 and agrees to be bound by all lawful terms, conditions and provisions of the Franchise
7 attached hereto and incorporated by this reference. **Zayo Group LLC** expressly
8 acknowledges that in accepting this Franchise it did so relying on its own investigation
9 and understanding of the power and authority to grant this Franchise.

10
11 ACCEPTED this 14th day of December, 2015.

12
13 Zayo Group LLC

14
15 

16
17 Name: Dylan DeVito
18 Title: Assistant General Counsel
19
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On the, 25th day of January, 2016 the City Council of the City of Lynnwood, Washington, passed ordinance 3172. A summary of the content of this ordinance consisting of the title, provides as follows:

ORDINANCE NO. 3172

AN ORDINANCE OF THE CITY OF LYNNWOOD, WASHINGTON, GRANTING A NON-EXCLUSIVE FRANCHISE TO ZAYO GROUP LLC TO INSTALL, OPERATE, MAINTAIN, REPAIR AND REMOVE A MULTIPLE CONDUIT FIBER OPTIC TELECOMMUNICATIONS SYSTEM WITHIN THE CITY; PRESCRIBING RIGHTS, DUTIES, TERMS, AND CONDITIONS WITH RESPECT TO THE FRANCHISE; AND PROVIDING FOR AN EFFECTIVE.

The full text of this ordinance will be mailed upon request.

DATED this 29th day of January, 2016.

A handwritten signature in blue ink that reads 'D. Karber'.

Debbie Karber, Deputy City Clerk

Everett Daily Herald

Affidavit of Publication

State of Washington }
County of Snohomish } ss

Dicy Sheppard being first duly sworn, upon oath deposes and says: that he/she is the legal representative of the Everett Daily Herald a daily newspaper. The said newspaper is a legal newspaper by order of the superior court in the county in which it is published and is now and has been for more than six months prior to the date of the first publication of the Notice hereinafter referred to, published in the English language continually as a daily newspaper in Snohomish County, Washington and is and always has been printed in whole or part in the Everett Daily Herald and is of general circulation in said County, and is a legal newspaper, in accordance with the Chapter 99 of the Laws of 1921, as amended by Chapter 213, Laws of 1941, and approved as a legal newspaper by order of the Superior Court of Snohomish County, State of Washington, by order dated June 16, 1941, and that the annexed is a true copy of EDH680247 ORDS 3171/3172 as it was published in the regular and entire issue of said paper and not as a supplement form thereof for a period of 1 issue(s), such publication commencing on 01/29/2016 and ending on 01/29/2016 and that said newspaper was regularly distributed to its subscribers during all of said period.

The amount of the fee for such publication is \$41.50.

Dicy Sheppard

Subscribed and sworn before me on this

29 day of Jan,
2016

Debra Ann Grigg

DEBRA ANN GRIGG
Notary Public
State of Washington
My Commission Expires
October 31, 2017

Notary Public in and for the State of
Washington.



On the, 25th day of January, 2016 the City Council of the City of Lynnwood, Washington, passed ordinances 3171 and 3172. A summary of the content of these ordinances, consisting of the title, provides as follows:

ORDINANCE NO. 3171

AN ORDINANCE OF THE CITY OF LYNNWOOD, WASHINGTON, SUPERSEDING ORDINANCE 3147, ESTABLISHING PROJECT FUNDING FOR THE 60th AVENUE W UTILITY REPLACEMENT PROJECT; AND AUTHORIZING EXPENDITURES IN PROJECT FUND 411; AND CONSISTENT WITH THE PROJECT FINANCIAL PLAN; AND PROVIDING FOR SEVERABILITY, AN EFFECTIVE DATE AND SUMMARY PUBLICATION.

ORDINANCE NO. 3172

AN ORDINANCE OF THE CITY OF LYNNWOOD, WASHINGTON, GRANTING A NON-EXCLUSIVE FRANCHISE TO ZAYO GROUP LLC TO INSTALL, OPERATE, MAINTAIN, REPAIR AND REMOVE A MULTIPLE CONDUIT FIBER OPTIC TELECOMMUNICATIONS SYSTEM WITHIN THE CITY; PRESCRIBING RIGHTS, DUTIES, TERMS, AND CONDITIONS WITH RESPECT TO THE FRANCHISE; AND PROVIDING FOR AN EFFECTIVE.

The full text of these ordinances will be mailed upon request.
DATED this 29th day of January, 2016.

Debbie Karber, Deputy City Clerk
EDH680247

Published: January 29, 2016.

B9



LYNNWOOD
WASHINGTON

CERTIFICATE

I, the undersigned, Debra Karber, the duly appointed Deputy City Clerk of the City of Lynnwood, Washington, hereby certify that the Ordinance hereto attached is a full, true and correct copy of Ordinance No. 3172 of the City of Lynnwood, Washington, entitled as follows:

ORDINANCE NO. 3172

AN ORDINANCE OF THE CITY OF LYNNWOOD, WASHINGTON, GRANTING A NON-EXCLUSIVE FRANCHISE TO ZAYO GROUP LLC TO INSTALL, OPERATE, MAINTAIN, REPAIR AND REMOVE A MULTIPLE CONDUIT FIBER OPTIC TELECOMMUNICATIONS SYSTEM WITHIN THE CITY; PRESCRIBING RIGHTS, DUTIES, TERMS, AND CONDITIONS WITH RESPECT TO THE FRANCHISE; AND PROVIDING FOR AN EFFECTIVE DATE.

That said ordinance was passed by the Council on January 25, 2016 of said City and was published and posted according to law; that said ordinance was duly published in the official newspaper of said City on January 29, 2016.

Debra Karber, Deputy City Clerk