ORDINANCE NO. 4145

AN ORDINANCE of the city council of the city of Kent, Washington, acknowledging the merger of tw telecom inc., and Level 3 Communications, Inc., and approving the resulting indirect change of control of the tw telecom of washington LLC, telecommunications franchise with conditions and establishing an effective date.

RECITALS

A. On May 20, 2014, the City of Kent (the “City”) adopted Ordinance No. 4112, granting a nonexclusive telecommunications franchise to tw telecom of washington llc (the “Franchisee”) to operate a telecommunications system (the “System”) within the city limits of the City of Kent, with an effective date of May 28, 2014 (the “Franchise”).

B. On June 15, 2014, tw telecom inc. (“TWTC”), the Franchisee’s indirect parent company, entered into an Agreement and Plan of Merger (the “Merger Agreement”) with Level 3 Communications, Inc. (“Level 3”).

C. As a result of this Merger Agreement, Level 3 acquired direct ownership of TWTC and indirect control of the Franchisee.
D. Section 28 of the Franchise requires that Level 3 and TWTC receive the consent of the City for the indirect transfer of control of the Franchisee to Level 3.

E. Both Level 3 and TWTC have jointly requested that the City Council consent to the indirect change of control.

F. The consent of the City to the indirect change of control shall not constitute a waiver or release of any rights the City may have under the Franchise.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF KENT, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

ORDINANCE

SECTION 1. Consent. The City hereby consents to the indirect change of control in accordance with the terms of applicable law, subject to and contingent upon the following conditions:

1. The City’s consent to the indirect change of control shall not be construed to constitute a waiver or release of any rights the City may have now or in the future under federal, state or local law, the Franchise, or any separate written agreements with the Franchisee that relate to the Franchise. Level 3 shall acknowledge in writing that the Franchisee remains responsible for any and all non-compliance issues, if any, that may have arisen prior to and after the effective date of the Merger Agreement and any and all obligations under the Franchise that existed prior to and after the effective date of the Merger Agreement.
2. Level 3 has represented that substantially all of the tangible and intangible assets of the Franchisee acquired by Level 3 as a consequence of the Merger Agreement with TWTC remain in the Franchisee.

3. Following the indirect change of control and receipt of written acknowledgement of the Franchise from Level 3, the Franchise shall remain in full effect through May 28, 2024.

4. By consenting to this indirect change of control, the City does not waive or release any rights of the City in and to the rights-of-way as provided by state law and the Kent Municipal Code, nor does the City waive or release any claim or issue of non-compliance it may have, known or unknown, now or in the future related to the Franchise.

5. Written acknowledgement shall be filed by Level 3 with the City Clerk, with copies to the City Attorney, within sixty (60) days after the enactment of this ordinance. Such written acceptance shall be accompanied by construction and completion bonds, security funds, and evidence of insurance all as may be required pursuant to the Franchise, if any such construction and completion bonds, security funds or insurance change as a result of this indirect change of control.

SECTION 2. - To the best of the City’s knowledge and belief, there are no existing facts or circumstances that with or without the giving of notice or the passage of time, or both, would constitute a default of any term or condition of the Franchise.

SECTION 3. - Effective Date. This ordinance or a summary thereof consisting of the title shall be published in the official newspaper of the
City, and shall take effect and be in full force five (5) days after publication.

Suzette Cooke
SUZETTE COOKE, MAYOR

ATTEST:

Ronald F. Moore, MMC
RONALD F. MOORE, CITY CLERK

APPROVED AS TO FORM:

TOM BRUBAKER, CITY ATTORNEY

PASSED: 21st day of April, 2015.

APPROVED: 21st day of April, 2015.

PUBLISHED: 21st day of April, 2015.

I hereby certify that this is a true copy of Ordinance No. 4145 passed by the city council of the city of Kent, Washington, and approved by the Mayor of the city of Kent as hereon indicated.

Ronald F. Moore, MMC (SEAL)
RONALD F. MOORE, CITY CLERK

Ordinance Acknowledging Merger and Indirect Change of Control
STATEMENT OF ACKNOWLEDGEMENT

WHEREAS, the City Council of the City of Kent, Washington, has acknowledged the consummation of the merger of tw telecom inc. ("TWTC") and Level 3 Communications, Inc. ("Level 3") and has consented to the resulting indirect change of control of tw telecom of washington LLC (the "Franchisee") the holder of the telecommunications franchise (the "Franchise") issued by the City to the Franchisee as Ordinance No. 4112 and the resulting indirect change in control pursuant to the conditions set forth in Ordinance No. 4112, bearing the date of April 21, 2015 ("Ordinance").

NOW, THEREFORE, Level 3, hereby acknowledges said Ordinance and all the terms and conditions thereof, and files this, its written acknowledgement, and all written instrument(s) evidencing such indirect change of control of the Franchisee.

Level 3 hereby acknowledges that the indirect change of control will not affect, diminish, impair or supersede the binding nature of the Franchise and any other valid ordinances, resolutions, and agreements applicable to the operation of the telecommunications system in the City. Level 3 represents that substantially all of the tangible and intangible assets of the Franchisee acquired by Level 3 as a consequence of the merger with TWTC remain in the Franchisee. Level 3 hereby agrees that subject to the Franchise, tw telecom of washington llc will comply with the Kent Municipal Code, all related applicable federal and state laws, lawful orders, contracts, agreements, commitments, and regulatory actions.

IN TESTIMONY WHEROF, Level 3, has caused this written Statement of Acknowledgement to be executed in its name by its duly authorized officer on this 30 day of March, 2015.

LEVEL 3 COMMUNICATIONS, INC.

By: 

Name Printed: Neil Eckstein

Title: Sr. Vice President

March 30, 2015.
I certify that I know or have satisfactory evidence that Neil Eckstein is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the SVP of Communications Inc., to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: March 30, 2015

HEATHER DIANE KAVANAUGH
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 2012071845
MY COMMISSION EXPIRES 11/07/2016

Printed: Heather Kavanaugh
Notary Public in and for Colorado,
My appointment expires: 11/7/2016

Received by the City of Kent on April 21, 2015

By: [Signature]
City Clerk