AN ORDINANCE of the city council of the city of Kent, Washington, granting to MCIMETRO Access Transmission Services Corp. d/b/a Verizon Access Transmission Services, a Delaware corporation, and its successors and assigns, the right, privilege, authority and nonexclusive franchise for ten years, to construct, maintain, operate, replace, and repair a telecommunications network, in, across, over, along, under, through, and below certain designated public rights-of-way of the City of Kent, Washington.

RECITALS

A. MCIMETRO Access Transmission Services Corp. d/b/a Verizon Access Transmission Services, a Delaware corporation ("Franchisee") has requested that the city council grant it a nonexclusive franchise to construct, maintain and operate a telecommunications network in the city’s right-of-way; and

B. 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 KENT, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

ORDINANCE

1 Franchise – Verizon Ordinance
SECTION 1. - Definitions. In addition to terms otherwise defined herein, the following definitions shall apply generally to the provisions of this Franchise.

1.1 Director means the Public Works Director or his/her designee.

1.2 Emergency means a condition posing an imminent threat to property, life, health, or safety of any person or entity.

1.3 Facilities mean one or more elements of Franchisee’s telecommunications network, with all necessary cables, wires, conduits, ducts, pedestals, antennas, electronics, and other necessary appurtenances; except that new utility poles or towers for overhead wires, cabling or antennas are specifically excluded. Facilities shall not include: microcells or small cells. Equipment enclosures with air conditioners or other noise generating equipment are also excluded from Facilities, to the extent any such equipment is located in zoned residential areas of the City.

1.4 Rights-of-Way (singular “Right-of-Way”) as used in this Franchise, means the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, way, lane, public way, drive, circle, pathways, spaces, or other public right-of-way, and over which the City has authority to grant permits, licenses or franchises for use thereof, or has regulatory authority thereover. Right-of-Way does not include railroad right-of-way, airports, harbor areas, buildings, parks, poles, conduits, open spaces, nature trails, poles, dedicated but un-opened right-of-way, environmentally sensitive areas and any land, facilities, or property owned, maintained, or leased by
the City in its governmental or proprietary capacity or as an operator of a utility.

SECTION 2. – Franchise Granted.

2.1 Pursuant to RCW 35A.47.040, the City of Kent, a Washington municipal corporation ("City"), hereby grants to Franchisee, its successors, legal representatives and assigns, subject to the terms and conditions set forth below, a non-exclusive Franchise for a period of ten (10) years, beginning on the effective date of this ordinance, set forth in Section 41. This Franchise supersedes and replaces in its entirety the Temporary License entered into by the City and Franchisee on June 15, 2017, except that any and all permits issued pursuant to the Temporary License shall remain valid and be deemed issued pursuant to this Franchise.

2.2 This Franchise grants 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, and any areas added to the corporate limits of the City during the term of this Franchise (the "Franchise Area"). All Facilities require City permits issued pursuant to Section 8.3.

2.3 This Franchise shall not prevent the City from granting other or further franchises in, along, over, through, under, below, or across any Rights-of-Way. This Franchise shall not prevent or prohibit the City from using any Rights-of-Way or affect its jurisdiction over any Rights-of-Way or any part of Right-of-Way. The City shall retain power to make all necessary changes, relocations, repairs, maintenance, establishment, improvement, dedication of Right-of-Way as the City deems 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 3. - Grant of Authority Limited.**

3.1 The authority granted by this Franchise is a limited, non-exclusive authorization to occupy and use the City's Rights-of-Way. Franchisee represents that it currently provides or intends to provide the following services within the City: data transport, internet access, and local and long distance voice services, including IP voice services, cell site fronthaul and backhaul and Facilities leasing to third parties (the "Services"). If Franchisee desires to expand the Services provided within the City, it shall provide written notification of the addition of such services prior to the addition of the service or within a reasonable time (not to exceed ninety (90) days) after such services are offered; except that Franchisee may not offer Cable Services as that term is defined in 47 U.S.C. § 522(6).

3.2 Nothing within this Franchise shall be construed to grant or convey any right, title, or interest in the Rights-of-Way of the City to Franchisee other than for the purpose of providing the Services.

3.3 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 incorporated area of the City or to install Facilities on, under, over, across, or otherwise use any City owned or leased property other than the City's Rights-of-Way. This Franchise does not convey any right to Franchisee to install its Facilities on, under, over, or across any facility or structure owned by a third-party without such written approval of the third-party.
3.4 Franchisee is authorized without prior City approval, to offer or provide capacity or bandwidth to its customers consistent with this Franchise provided:

a. Franchisee at all times retains exclusive control over its telecommunications system, Facilities and Services and remains responsible for constructing, installing, and maintaining its Facilities pursuant to the terms and conditions of this Franchise;

b. Franchisee may not grant rights to any customer or lessee that are greater than any rights Franchisee has pursuant to this Franchise;

c. Such customer or lessee shall not be construed to be a third-party beneficiary under this Franchise; and

d. No such customer or lessee that accesses Franchisee’s telecommunications Facilities within the City limits may use the telecommunications system or Services for any purpose not authorized by this Franchise, unless that customer has a franchise agreement with the City and then the customer may use Franchisee’s Facilities or Services consistent with the terms of its franchise.

SECTION 4. - Location of Facilities. 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 Facilities.

5.1 Franchisee agrees to protect, support, temporarily disconnect, relocate, or remove from any Rights-of-Way any of its Facilities when
reasonably required by the City, including but not limited to the following reasons:

a. To improve traffic conditions or public safety;

b. 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;

c. The construction of any public improvement or structure by any governmental agency or as otherwise necessary for the operations of the City or other governmental entity; and

5.2 Except as otherwise provided by law, the costs and expenses associated with relocations required pursuant to Section 5.1 shall be borne by Franchisee. Nothing contained within this Franchise shall limit Franchisee’s ability to seek reimbursement for relocation costs when authorized by RCW 35.99.060.

5.3 Upon request of the City and in order to facilitate the design of City street and Right-of-Way improvements, Franchisee agrees, at its sole cost and expense, to locate, and if determined necessary by the City, to excavate and expose its Facilities for inspection so that the Facilities’ location may be taken into account in the improvement design. The decision as to whether any 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 Franchisee’s Facilities. The City shall provide Franchisee at least fourteen (14) days’ written notice prior to any excavation or exposure of Facilities. Franchisee shall be responsible for any delays due to failure to locate its facilities when requested, except
that Franchisee shall not be responsible for delays or damages due to circumstances beyond the control of the Franchisee.

5.4 If the City determines that the relocation of Franchisee’s existing Facilities is necessary, the City shall:

a. At least forty-five (45) days prior to commencing the project, provide Franchisee with written notice requiring such relocation; except that in the event of an emergency, the City shall give Franchisee written notice as soon as practicable; and

b. At least forty-five (45) days prior to commencing the project, provide Franchisee with copies of pertinent portions of the plans and specifications for the improvement project and at the City’s discretion, 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; and

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 and is subject to permit requirements in Section 8.3. In the event of an emergency, Franchisee shall relocate its Facilities within the time period specified by the City.

5.5 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 to the City at least twenty (20) days prior to commencement of the project. The City shall evaluate the alternatives and advise Franchisee in writing if one or more of
the alternatives are suitable to accommodate the work that 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. If 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.

5.6 The Franchisee may make its own appropriate arrangements in response to a request for relocation of its Facilities from a person or entity other than the City, so long as any improvements being constructed are not or will not become City-owned, operated or maintained; except that any such arrangements shall not unduly delay a City construction project.

5.7 If any person has obtained permission from the City to use any Right-of-Way for the purpose of moving any building, upon thirty (30) days’ written notice from the City, Franchisee, shall raise, remove, or relocate to another part of the Right-of-Way, any of Franchisee’s Facilities that may obstruct the removal of such building, at the expense of the person desiring to move the building.

5.8 If Franchisee, after making all commercially reasonable efforts, fails, neglects, or refuses to remove or relocate its Facilities as directed by the City, the City may perform such work or cause it to be done, and the City’s costs shall be paid by Franchisee pursuant to Section 16.3 and Section 16.4.

5.9 Franchisee shall indemnify, hold harmless, and pay the costs of defending the City, in accordance with the provisions of Section 18.3, 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
Franchisee to locate, remove or relocate its Facilities in a timely manner; provided, that Franchisee shall not be responsible for damages due to delays caused by circumstances beyond the reasonable control of Franchisee or the negligence, willful misconduct, or unreasonable delays by the City or delays by any unrelated third party.

5.10 The provisions of this Section 5 shall survive the expiration or termination of this Franchise during such time as Franchisee continues to have Facilities in the Rights-of-Way. Additionally, the provisions of this Section 5 are applicable only so long as the Right-of-Way is owned and/or controlled by the City.

**SECTION 6. – Undergrounding of Facilities.**

6.1 Franchisee shall install all wires, cables or other facilities underground (unless specifically authorized by permit of the City) in the manner required by the City as described in Kent City Code Chapter 7.10. Unless otherwise permitted by the City, Franchisee shall also underground its Facilities in all new developments and subdivisions and in any development or subdivision where utilities are currently underground. Except as specifically authorized by the City, Franchisee shall not erect poles or run or suspend wires, cables, or any other facilities on existing poles.

6.2 Franchisee acknowledges and agrees that if the City does not require the undergrounding of its Facilities at the time of a permit application, the City may, at any time in the future, require that the Franchisee to underground its Facilities at Franchisee’s expense.

6.3 If the City requires 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 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 of conduits of Franchisee’s Facilities being undergrounded in comparison to the total number of conduits of all other utility facilities being undergrounded. This Section 6.3 shall only apply to the extent Franchisee has existing aerial Facilities in the City or is specifically authorized to build aerial Facilities by the City.

6.4 Within forty-eight (48) hours (excluding weekends and City-recognized holidays) following a request from the City, Franchisee shall, at its sole cost and expense, locate underground Facilities by marking the location on the ground. The location of the underground Facilities shall be identified using orange spray paint, unless otherwise specified by the City, and within two feet of the actual location.

6.5 Franchisee shall be entitled to reasonable access to open utility trenches, provided that such access does not interfere with the City’s placement of utilities or increase the City’s costs. Franchisee shall pay the City’s actual costs resulting from providing Franchisee access to an open trench, including without limitation the pro rata share of the costs of access to an open trench and any costs associated with the delay of the completion of a public works project. Franchisee shall reimburse the City in accordance with the provisions of Section 16.3 and Section 16.4.
6.6 Franchisee shall not remove any underground cable or conduit that requires trenching or other opening of the Rights-of-Way along the extension of cable to be removed, except as provided in this Section 6.6. Franchisee may remove any underground cable from the Right-of-Way that can be removed without trenching or other opening of the Right-of-Way along the extension of cable to be removed, or if otherwise permitted by the City. Franchisee may remove any underground cable from the Rights-of-Way where reasonably necessary to replace, upgrade, or enhance its Facilities, or pursuant to Section 5. Franchisee must apply and receive a permit, pursuant to Section 8.3, prior to any such removal of underground cable or conduit from the Right-of-Way and must provide as-built plans and maps pursuant to Section 7.1.

6.7 When the City determines, in the City’s sole discretion, that Franchisee’s underground Facilities must be removed in order to eliminate or prevent a hazardous condition, Franchisee shall remove the Facilities at Franchisee’s sole cost and expense.

6.8 Underground cable and conduit in the Right-of-Way that is not removed will be deemed abandoned and title thereto shall vest in the City at no cost to the City. The City may also pursue any available remedy set forth in Section 5 and Section 20.

6.9 The provisions of this Section 6 shall survive the expiration, revocation, or termination of this Franchise during such time as Franchisee continues to have Facilities in the Rights-of-Way. Nothing in this Section 6 shall be construed as requiring the City to pay any costs of undergrounding any of Franchisee’s Facilities.

SECTION 7. – Maps and Records.
7.1 No later than sixty (60) days after construction is complete, Franchisee shall provide the City with accurate copies of as-built plans and maps stamped and signed by a professional land surveyor having a form and content reasonably prescribed by the Director. These plans and maps shall be provided at no cost to the City, and shall include hard copies and digital files in AutoCAD or other industry standard readable formats that are acceptable to the City. The Franchisee shall also provide any as-built plans, maps and records (digital and/or hard copies) within ten (10) days following a request from the City. Franchisee shall warrant the accuracy of all plans, maps and as-builts provided to the City.

7.2 Within thirty (30) days of a written request from the City, Franchisee shall furnish the City with information sufficient to demonstrate: 1) that Franchisee has complied with all applicable requirements of this Franchise; and 2) that all taxes, including but not limited to sales, utility and/or telecommunications taxes due the City in connection with Franchisee’s Services and Facilities have been properly collected and paid by Franchisee.

7.3 All books, records, maps, and other documents maintained by 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; except that nothing in this Section 7.3 shall be construed to require Franchisee to violate state or federal law regarding customer privacy. This Section 7.3 shall not be construed to require Franchisee to disclose proprietary or confidential information without adequate safeguards for its confidential or proprietary nature. Unless otherwise prohibited by State or federal law, nothing in this Section 7.3 shall be construed as permission to withhold relevant customer data from the City that the City requests in conjunction with a tax audit or review; except that Franchisee may redact identifying information such as names, street
addresses (excluding City and zip code), Social Security Numbers, or Employer Identification Numbers related to any confidentiality agreements Franchisee has with third parties.

7.4 Franchisee acknowledges that information submitted to the City is subject to the Washington Public Records Act, chapter 42.56 RCW, and is open to public inspection, subject to any exceptions permitted by law (unless an exemption applies).

7.5 Franchisee may identify documents submitted to the City that Franchisee believes are non-disclosable, such as trade secrets. Franchisee shall be responsible for clearly and conspicuously identifying the work as confidential or proprietary, and shall provide a brief written explanation as to why such information is confidential and how it may be treated as such under State or federal law. The City agrees to keep confidential any proprietary or confidential books or records to the extent permitted by law. If the City receives a public records request under chapter 42.56 RCW or similar law for the disclosure of the documents or any part of the documents Franchisee has designated as confidential, trade secret, or proprietary, the City shall provide Franchisee with written notice of the request, including a copy of the request prior to disclosure so that Franchisee can take appropriate steps to protect its interests. Nothing in this Section 7.5 prohibits the City from complying with chapter 42.56 RCW 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 will not assert an exemption from disclosure or production on Franchisee’s behalf. The City shall comply with any injunction or court order obtained by Franchisee that prohibits the disclosure of any such confidential records. If a higher court overturns an injunction or court order and such higher court action is or has become final and non-appealable, Franchisee
shall reimburse the City for any fines or penalties imposed for failure to disclose such records within forty-five (45) days of a request from the City, unless additional time is reasonably necessary under the circumstances and is agreed to by the parties.


8.1 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 and only after obtaining permits pursuant to Section 8.3. Franchisee shall 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 traffic control to warn and direct the road users. Traffic control devices include but are not limited to barricades, traffic cones, traffic drums, tubular markers, flags, certified flaggers, lights, flares, and other measures as required for the safety of all members of the general public. Franchisee shall also 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 requirement of trench safety systems for trench excavations.

8.2 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, 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. The provisions of this Section 8 shall survive the expiration of this Franchise during such time as Franchisee continues to have Facilities in the Rights-of-Way.
8.3 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 ten (10) working days prior notice of its intent to commence work in the Rights-of-Way. All work by Franchisee in the area shall be performed in accordance with applicable City standards and specifications and warranted for a period of two (2) years, normal wear and tear excepted. In no case shall any work commence within any Rights-of-Way without a permit, except as otherwise provided in this Franchise.

8.4 If either the City or Franchisee plans to make excavations in any area covered by this Franchise and as described in this Section 8.4, the party planning such excavation shall afford the other, an opportunity to share such excavation, PROVIDED THAT:

   a. The joint use shall not unreasonably delay the work of the party causing the excavation to be made;

   b. The joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties; and

   c. The initiating party may deny such request for safety reasons.

8.5 Except for emergency situations, Franchisee shall give at least seven (7) days’ prior written notice of intended construction to residents within 300 feet of the construction area. This notice shall contain the dates, contact number, nature and location of the work to be performed; a door hanger is permissible. At least twenty-four (24) hours prior to entering private property or streets or public easements adjacent to or on such private property, Franchisee shall physically post a notice on the
property indicating the nature and location of the work to be performed; a
door hanger is permissible. Nothing in this Franchise gives the Franchisee
the right to enter onto private property without the permission of the
private property owner.

8.6 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. Following performance of the work, Franchisee shall restore the
private property as nearly as possible to its condition prior to construction,
except for any change in condition not caused by Franchisee. Any
disturbance of landscaping, fencing, or other improvements on private
property caused by Franchisee’s work shall, at the sole expense of
Franchisee, be promptly repaired and restored to the reasonable
satisfaction of the property owner/resident.

8.7 Franchisee shall at all times comply with the safety requirements
contained in Section 11 and all applicable federal, State and local safety
requirements.

8.8 Upon prior written notice from the City, Franchisee shall meet with
the City and other franchise holders to schedule and coordinate
construction in the Rights-of-Way. To minimize public inconvenience,
disruption or damage, the Franchisee shall coordinate all construction
locations, activities, and schedules as directed by the City.

8.9 Franchisee acknowledges that it shall be solely responsible for
compliance with all marking and lighting requirements of the FAA and the
FCC with respect to Franchisee’s Facilities. Franchisee shall indemnify and
hold the City harmless from any fines or other liabilities caused by
Franchisee’s failure to comply with these requirements. Should Franchisee
or the City be cited by either the FCC or the FAA because the Facilities or Franchisee’s equipment is not in compliance and should Franchisee fail to cure the conditions of noncompliance within the timeframe allowed by the citing agency, the City may elect any or all of the following remedies: (1) cure the conditions of noncompliance at Franchisee’s expense, and collect all reasonable costs from Franchisee in accordance with the provisions of Section 16.3 and Section 16.4; (2) collect damages pursuant to Section 22.2; and (3) revoke this Franchise pursuant to Section 23. Franchisee shall not be liable for any claims, damages or liability resulting from City’s acts in effecting the cure on behalf of Franchisee.

SECTION 9. - Trees.

9.1 Franchisee may trim trees upon and overhanging on public ways, streets, alleys, sidewalks, and other public places of the City so as to prevent the branches of any such trees from coming in contact with Franchisee’s Facilities. The right to trim trees in this Section 9.1 only applies to the extent necessary to protect above ground Facilities. Franchisee shall ensure that its tree trimming activities protect the appearance, integrity, and health of the trees to the extent reasonably possible. Franchisee shall be responsible for all debris removal from such activities.

9.2 Franchisee shall prepare and maintain a tree trimming schedule to ensure compliance with this Section 9.2 and to avoid exigent circumstances where tree cutting, trimming, or removal is necessary to protect the public safety or continuity of service. Franchisee shall submit the tree trimming schedule to the Director. Franchisee shall notify and obtain written approval from the City before completing any trimming, except in an emergency.
9.3 All tree trimming shall be completed at the expense of Franchisee. Franchisee may contract for such services, however, City approval is required prior to commencing such trimming. Nothing in this Franchise grants Franchisee any authority to act on behalf of the City, to enter upon any private property, or to trim any tree or natural growth not owned by the City. Franchisee shall be solely responsible and liable for any damage to any third parties' trees or natural growth caused by Franchisee's actions. Franchisee shall indemnify, defend and hold harmless the City from claims of any nature arising out of any act or negligence of Franchisee with regard to tree and/or natural growth trimming, damage, and/or removal. Franchisee shall reasonably compensate the City or the property owner for any damage caused by trimming, damage, or removal by Franchisee. Except in an emergency, all tree trimming must be performed under the direction of an arborist certified by the International Society of Arboriculture, unless otherwise approved by the Director.

SECTION 10. – 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 chapter 19.122 RCW. The City shall not be liable for any damages to Franchisee's Facilities or for interruptions in service to Franchisee's customers that are a direct result of Franchisee's failure to accurately locate its Facilities within the prescribed time limits and guidelines established by the One Call Locator Service regardless of whether the City issued a permit.

SECTION 11. – Safety Requirements.

11.1 Franchisee shall, at all times, employ professional care and shall install and maintain and use industry-standard methods for preventing
failures and accidents that are likely to cause damage, injuries, or nuisances to the public. All structures and all lines, equipment, and connections in, over, under, and upon the Rights-of-Ways, wherever situated or located, shall at all times be kept and maintained in a safe condition. Franchisee shall comply with all federal, State, and City safety requirements, rules, regulations, laws, and practices, and employ all necessary devices as required by applicable law during the construction, operation, maintenance, upgrade, repair, or removal of its Facilities. By way of illustration and not limitation, Franchisee shall also comply with the applicable provisions of the National Electric Code, National Electrical Safety Code, FCC regulations, and Occupational Safety and Health Administration (OSHA) Standards. Upon reasonable notice to Franchisee, the City reserves the general right to inspect the Facilities to evaluate if they are constructed and maintained in a safe condition.

11.2 If an unsafe condition or a violation of Section 11.1 is found to exist, and becomes known to the City, the City agrees to give Franchisee written notice of any such condition and afford Franchisee a reasonable opportunity to repair the condition. If Franchisee fails to start to make the necessary repairs and alterations within the time frame specified in such notice (and pursue the cure to completion), then the City may make such repairs or contract for them to be made. All costs, including administrative costs, incurred by the City in repairing any unsafe conditions shall be borne by Franchisee and reimbursed to the City pursuant to Section 16.3 and Section 16.4.

11.3 Additional safety standards include:

a. Franchisee shall endeavor to maintain all equipment lines and facilities in an orderly manner, including, but not limited to, the removal of all bundles of unused cable.
b. All installations of equipment, lines, and ancillary facilities shall be installed in accordance with industry-standard engineering practices and shall comply with all federal, State, and local regulations, ordinances, and laws.

c. The Franchisee shall protect any opening or obstruction in the Rights-of-Way or other public places made by Franchisee in the course of its operations with adequate barriers, fences, or boarding, the bounds of which, during periods of dusk and darkness, shall be clearly marked and visible at night.

**SECTION 12. - Work of Contractors and Subcontractors.**

Franchisee’s contractors and subcontractors shall be licensed and bonded in accordance with State law and the City’s ordinances, regulations, and requirements. Work by contractors and subcontractors is subject to the same restrictions, limitations, and conditions as if the work were performed by Franchisee. Franchisee shall be responsible for all work performed by its contractors and subcontractors and others performing work on its behalf as if the work were performed by Franchisee and shall ensure that all such work is performed in compliance with this Franchise and applicable laws.

**SECTION 13. - Provision of Conduit.**

13.1 The City may request that Franchisee provide the City with a single two (2) inch conduit, and related structures necessary to access the conduit pursuant to RCW 35.99.070 in one or more of the locations where Franchisee constructs, installs or relocates Facilities underground. Franchise shall install a locator wire and cap off all conduit ends. Conduit ends shall be marked on the as-built plans and maps required in Section 7.
13.2 Except in emergency situations, Franchisee shall provide the Director with at least thirty (30) days' advance written notice of any construction, relocation, or placement of ducts or conduits in the Rights-of-Way and provide the City 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. This notification shall be in addition to the requirement to apply for and obtain permits pursuant to Section 8.3.

SECTION 14. - Restoration after Construction.

14.1 Franchisee shall repair any damage to the Rights-of-Way, and the property of any third party, after installation, construction, relocation, maintenance, or repair of its Facilities or after abandonment approved pursuant to Section 20, within ten (10) days following the date of any of these activities at Franchisee’s sole cost and expense. Franchisee shall restore the Rights-of-Way and the surface of the Rights-of-Way to the same or better condition as it was immediately prior to any installation, construction, relocation, maintenance or repair by Franchisee. Franchisee shall not be responsible for any changes to the Rights-of-Way not caused by Franchisee or anyone doing work for Franchisee. No survey monument may be removed (or replaced) without a professional land surveyor obtaining a permit in advance from the Washington State Department of Natural Resources and submitting a copy of the approved permit to the City. Franchisee shall restore all concrete encased monuments that will be disturbed or displaced by such work to City standards and specifications. The Director shall have final approval of the condition of the Rights-of-Way after repair or restoration by the Franchisee.

14.2 Franchisee agrees to complete all restoration 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. Franchisee also agrees to repair any damage caused by work to the Franchise Area within fourteen (14) days unless otherwise approved by the Director. All work by Franchisee pursuant to this Franchise shall be performed in accordance with applicable City standards and warranted for a period of two (2) years and for undiscovered defects as is standard and customary for this type of work.

14.3 If conditions (e.g., weather) make the complete restoration required under Section 14 impracticable, Franchisee shall temporarily restore the affected Right-of-Way or property at its sole cost and expense. Franchisee shall promptly undertake and complete the required permanent restoration as soon as conditions no longer make such permanent restoration impracticable.

14.4 If Franchisee does not repair a Right-of-Way or an improvement in or to a Right-of-Way within the time prescribed by this Section 14, the City may repair the damage and shall be reimbursed its actual cost within sixty (60) days of submitting an itemized invoice to Franchisee in accordance with the provisions of Section 16.3 and Section 16.4. The City may also bill Franchisee for any expenses associated with the inspection of such restoration work.

14.5 The provisions of this Section 14 shall survive the expiration or termination of this Franchise so long as Franchisee continues to have Facilities in the Rights-of-Way and has not completed all restoration to the City’s standards.

SECTION 15. – Emergencies.

15.1 In the event of any emergency in which any of Franchisee’s Facilities located in or under any street endangers the property, life,
health, or safety of any person, entity or the City, or if Franchisee’s construction area is otherwise in such a condition as to immediately endanger the property, life, health, or safety of any person, entity or the City, Franchisee shall immediately repair its Facilities and cure or remedy the dangerous conditions for the protection of property, life, health, or safety of any person, entity or the City, without first applying for and obtaining a permit as required by this Franchise. The Franchisee shall apply for any necessary permits on the next day Kent City Hall is open for business.

15.2 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, an adjoining public place, street utilities, City property, Rights-of-Way, or private property (collectively “Endangered Property”) or endangers the public, the Director may direct Franchisee, at Franchisee’s own expense, to take reasonable action to protect the Endangered Property or the public within a prescribed time. If Franchisee fails or refuses to promptly take the actions directed by the City, or fails to fully comply with such directions, or if an emergency situation exists that requires immediate action before the City can timely contact Franchisee to request Franchisee effect the immediate repair, the City may enter upon the Endangered Property and take such reasonable actions as are necessary to protect the Endangered Property or the public. Franchisee shall be liable to the City for the costs of any such repairs in accordance with the provisions of Sections 16.3 and 16.4.

15.3 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 operations.

15.4 The City shall not be liable for any damage to or loss of Facilities within the Rights-of-Way as a result of or in connection with any public works, public improvements, construction, grading, excavation, filling, or work of any kind in the Rights-of-Way by or on behalf of the City, unless directly and proximately caused by the gross negligence or willful acts of the City, its employees, contractors, or agents. The City shall further not be liable to 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 15 unless caused by the gross negligence or willful acts of the City, its employees, contractors, or agents.

15.5 Franchisee shall promptly reimburse the City in accordance with the provisions of Section 16.3 and Section 16.4 for any and all costs the City reasonably incurs in response to any emergency situation involving Franchisee’s Facilities, to the extent said emergency is not the fault of the City. The City agrees to simultaneously seek reimbursement from any franchisee or permit holder who caused or contributed to the emergency situation.

**SECTION 16. – Recovery of Costs.**

16.1 Franchisee shall reimburse the City for its actual and documented administrative, legal, and other costs incurred in drafting and processing this Franchise and all work related thereto pursuant to RCW 35.21.860(1)(b), in an amount not to exceed $6,000.00. No construction permits shall be issued for the installation of Facilities authorized until the City has received this reimbursement.
16.2 Franchisee shall further be subject to all permit fees associated with activities undertaken through the authority granted in this Franchise or under the laws of the City. Where the City incurs costs and expenses for review, inspection, or supervision of activities, including but not limited to reasonable 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, Franchisee shall pay such costs and expenses directly to the City in accordance with the provisions of Section 16.3.

16.3 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 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 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 Franchisee’s Facilities in the Rights-of-Way. Such costs and expenses shall also include Franchisee’s proportionate share of any time spent reviewing construction plans in order to either accomplish the relocation of Franchisee’s Facilities or the routing or rerouting of any utilities so as not to interfere with Franchisee’s Facilities.

16.4 The time of City employees shall be charged at their respective rate of salary, including overtime if applicable, plus benefits and reasonable overhead. Any other costs will be billed proportionately on an actual cost basis. All billings will be itemized so as to specifically identify the costs and expenses for each project for which the City claims reimbursement. A charge for the actual costs incurred in preparing the billing may also be
included in said billing. At the City's option, the billing may be on an annual basis, but the City shall provide the Franchisee with the City's itemization of costs, in writing, at the conclusion of each project for information purposes.

**SECTION 17.** - *City's Reservation of Rights.*

17.1 Franchisee represents that its Services, as authorized under this Franchise, are a telephone business as defined in RCW 82.16.010, or that it is a service provider as used in RCW 35.21.860 and defined in RCW 35.99.010. As a result, the City will not impose franchise fees under the terms of this Franchise. The City reserves its right to impose a franchise fee on Franchisee if Franchisee’s Services as authorized by this Franchise change such that the statutory prohibitions of RCW 35.21.860 no longer apply or if statutory prohibitions on the imposition of such fees are otherwise removed. The City also reserves its right to require that Franchisee obtain a separate franchise for a change in use, which franchise may include provisions intended to regulate Franchisee’s operations as allowed under applicable law. Nothing contained within this Franchise shall preclude Franchisee from challenging any such new fee or separate agreement under applicable federal, State, or local laws.

17.2 Franchisee acknowledges that certain of its operations within the City may constitute a telephone business subject to the utility tax imposed pursuant to the Kent City Code Chapter 3.18. Franchisee understands that RCW 35.21.870 currently limits the rate of city tax upon telephone business activities to six percent (6%) of gross income (as that term is defined in Kent City Code Chapter 3.18), unless a higher rate is otherwise approved. Franchisee stipulates and agrees that certain of its business activities may be subject to taxation as a telephone business and that Franchisee shall pay to the City the rate applicable to such taxable
services under Kent City Code Chapter 3.18, and consistent with state and federal law. The parties agree however, that nothing in this Franchise shall limit the City's power of taxation as may exist now or as later imposed by the City. This provision does not limit the City's power to amend Kent City Code Chapter 3.18 as may be permitted by law. Nothing in this Section 17 is intended to alter, amend, modify or expand the taxes and fees that may lawfully be assessed on Verizon’s business activities under this franchise under applicable law.

SECTION 18. - Indemnification.

18.1 General Indemnification. Franchisee shall indemnify, defend, and hold the City, its officers, officials, boards, commissions, agents, and employees, harmless from any action or claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and reasonable attorneys' fees or reasonable expenses, arising from any casualty or accident to Person or property, including, without limitation, damages in any way arising out of, or by reason of, any construction, excavation, operation, maintenance, reconstruction, or any other act done under this Franchise, by or for Franchisee, its agents, or its employees, or by reason of any neglect or omission of Franchisee. Franchisee shall consult and cooperate with the City while conducting its defense of the City under this Franchise. Franchisee shall not be obligated to indemnify the City to the extent of the City’s negligence or willful misconduct.

18.2 Indemnification for Relocation. Franchisee shall defend, indemnify, and hold the City harmless for any damages, claims, additional costs or reasonable expenses and attorneys’ fees, including contractor construction delay damages, assessed against or payable by the City and arising out of or resulting from Franchisee's negligence or willful misconduct contributing to Franchisee's failure to remove, adjust, or relocate any of its facilities in
the Rights-of-Way in accordance with any relocation required by the City, provided that Franchisee shall not be liable under this section in the event Franchisee’s failure to remove, adjust or relocate any of its facilities is the result of a force majeure event or events beyond the control of Franchisee.

18.3 **Procedures and Defense.** If a claim or action arises, the City or any other indemnified party shall promptly notify Franchisee of such claim or action and tender the defense of the claim or action to Franchisee, which defense shall be at Franchisee’s expense. The City’s failure to so notify and request indemnification shall not relieve Franchisee of any liability that Franchisee might have, except to the extent that such failure prejudice Franchisee’s ability to defend such claim or suit. The City may participate in the defense of a claim, but if Franchisee provides a defense at Franchisee’s expense then Franchisee shall not be liable for any attorneys’ fees, expenses, or other costs the City may incur if it chooses to participate in the defense of a claim, unless and until separate representation as described in Section 18.5 is required. In that event, the provisions of Section 18.5 shall govern Franchisee’s responsibility for City’s attorney’s fees, expenses, or other costs. In any event, Franchisee may not agree to any settlement of claims affecting the City without the City's consent, such consent not to be unreasonable withheld or delayed.

18.4 **Non-waiver.** The fact that Franchisee carries out any activities under this Franchise through independent contractors shall not constitute an avoidance of or defense to Franchisee's duty of defense and indemnification under this subsection.

18.5 **Expenses.** If separate representation to fully protect the interests of both parties is or becomes necessary, such as a conflict of interest between the City and the counsel selected by Franchisee to represent the
City, Franchisee shall pay, from the date such separate representation is required forward, all reasonable expenses incurred by the City in defending itself with regard to any action, suit, or proceeding subject to indemnification by Franchisee. Provided, however, that in the event that such separate representation is or becomes necessary, and the City desires to hire counsel or any other outside experts or consultants and desires Franchisee to pay those expenses, then the City shall be required to obtain Franchisee’s consent to the engagement of such counsel, experts, or consultants, such consent not to be unreasonably withheld. The City’s expenses shall include all reasonable out-of-pocket costs and expenses, such as consultants’ fees and court costs, but shall not include outside attorneys’ fees for services that are unnecessarily duplicative of services provided the City by Franchisee, except in the event of a conflict of interest where such duplication may be required. Each party agrees to cooperate and to cause its employees and agents to cooperate with the other party in the defense of any claim or action.

18.6 The parties acknowledge that this Franchise is subject to RCW 4.24.115. Accordingly, 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, officials, employees, and volunteers, Franchisee’s liability shall be only to the extent of Franchisee’s negligence. It is further specifically and expressly understood that the indemnification provided 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.

18.7 The provisions of this Section 18 shall survive the expiration, revocation, or termination of this Franchise.
SECTION 19. – Insurance.

19.1 Franchisee shall maintain in full force and effect at its own cost and expense each of the following policies of insurance:

a. Commercial General Liability insurance with limits of no less than $5,000,000 per occurrence and $5,000,000 general aggregate. Coverage shall be at least as broad as that provided by ISO CG 00 01 1/96 or its equivalent and include severability of interests. Such insurance shall name the City, its officers, officials and employees as additional insureds per ISO CG 2026 or its equivalent. There shall be a waiver of subrogation and rights of recovery against the City, its officers, officials and employees. Coverage shall apply as to claims between insureds on the policy, if applicable. Coverage may take the form of a primary layer and a secondary or umbrella layer, but the combination of layers must equal $5,000,000 at a minimum.

b. Commercial Automobile Liability insurance with minimum combined single limits of $5,000,000.00 each occurrence with respect to each of Franchisee’s owned, hired and non-owned vehicles assigned to or used in the operation of the Facilities in the City. The policy shall contain a severability of interests provision.

c. Workers’ Compensation coverage as required by the Industrial Insurance laws of the State of Washington and employer’s liability with a limit of $1,000,000 each accident/disease/policy limit; and

19.2 Deductibles/Certificate of Insurance. Any deductible of the policies shall not in any way limit Franchisee’s liability to the City.

19.3 Endorsements. All policies shall contain, or shall be endorsed so that:
a. The City, its officers, officials, boards, commissions, employees, and agents are to be covered as, and have the rights of, additional insureds with respect to liability arising out of activities performed by, or on behalf of, Franchisee under this Franchise or Applicable Law, or in the construction, operation or repair, or ownership of the Cable System;

b. Franchisee's insurance coverage shall be primary insurance with respect to the City, its officers, officials, boards, commissions, employees, and agents. Any insurance or self-insurance maintained by the City, its officers, officials, boards, commissions, employees, and agents shall be in excess of the Franchisee's insurance and shall not contribute to it; and

c. Franchisee's insurance shall apply separately to each insured against whom a claim is made or lawsuit is brought, except with respect to the limits of the insurer's liability.

19.4 Acceptability of Insurers. The insurance obtained by Franchisee shall be placed with insurers with a Best's rating of no less than "A VII."

19.5 Verification of Coverage. The Franchisee shall furnish the City with certificates of insurance and endorsements or a copy of the page of the policy reflecting blanket additional insured status. The certificates and endorsements for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for each insurance policy are to be on standard forms or such forms as are consistent with standard industry practices.

19.6 Franchisee’s maintenance of insurance as required by this Section 19 shall not be construed to limit the liability of Franchisee to the coverage
provided by such insurance, or otherwise limit the City’s recourse to any remedy available at law or equity. Further, Franchisee’s maintenance of insurance policies required by this Franchise shall not be construed to excuse unfaithful performance by Franchisee.

SECTION 20. - Abandonment of Franchisee’s Telecommunications Network. Upon the expiration, termination, or revocation of the rights granted under this Franchise, Franchisee shall remove all of its Facilities from the Rights-of-Way within thirty (30) days of receiving written notice from the Director. The Facilities, in whole or in part, may not be abandoned by Franchisee without written approval by the City. Any plan for abandonment or removal of Franchisee’s Facilities must be first approved by the Director, and all necessary permits must be obtained prior to this work. The plan for abandonment shall include a proposal and instruments for transferring ownership to the City. Any Facilities that are not permitted to be abandoned in place and that are not removed within thirty (30) days of receipt of City’s notice shall automatically become the property of the City. Except that nothing contained within this Section 20 shall prevent the City from compelling Franchisee to remove any such Facilities through judicial action when the City has not permitted the Franchisee to abandon the Facilities in place. The provisions of this Section 20 shall survive the expiration, revocation, or termination of this Franchise.

SECTION 21. - Bonds.

21.1 Construction Guarantee. As a condition of performing work in the Right-of-Way, the timely, complete, and faithful performance of all construction work in the Right-of-Way shall be guaranteed in an amount equal to one hundred twenty-five percent (125%) of the cost estimate (prepared by a licensed contractor, professional engineer, or architect) of
the construction work. The guarantee may be by performance bond or irrevocable letter of credit. If Franchisee, in the sole judgment of the City, has a history of corrections or defaults, Franchisee must provide the full guarantee by assignment of funds. These funds 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 City 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 that could be asserted against the City or City property. The guarantee must remain in full force until the completion of construction, including final inspection, corrections, and final approval of the work, recording of all easements, provision of as-built drawings, and the posting of a maintenance guarantee as described in Section 21.2. Compliance with the performance guarantee requirement of the City’s current Design and Construction Standards shall satisfy the provisions of this Section 21.1.

21.2 Maintenance Guarantee. Maintenance and the successful operation of the Right-of-Way improvements shall be bonded for a period of at least two (2) years (or other period as required by Kent City Code) from the date of final construction approval. The bond shall be in an amount to be determined by the City. The minimum maintenance guarantee shall be Five Thousand Dollars ($5,000.00) or twenty percent (20%) of the original performance construction guarantee as described in Section 20.1, whichever is greater. At six (6)-month intervals during this maintenance period, the City will inspect the improvements and identify to Franchisee any noted deficiencies. Franchisee will have thirty (30) days to correct any deficiencies. The satisfactory correction of the work may commence a
new two (2)-year maintenance period for the improvements as corrected, as determined by the City. The City will initiate collection against the financial guarantee if deficiencies are not satisfactorily addressed by the end of the thirty (30)-day response period. Compliance with the maintenance guarantee requirement of the City’s current Design and Construction Standards shall satisfy the provisions of this Section 21.2.

21.3 Original financial guarantee amounts described in Section 21.1 and Section 21.2 above may be reduced one time only prior to the maintenance period, at the discretion of the City. If an extension to any associated permits are granted, the financial guarantees may be increased based on an updated engineer’s cost estimate or as determined by the City. Financial guarantees will be fully released only after all final punchlist items are accomplished, final construction approval, and the elapse of the two (2)-year maintenance guarantee period with all corrective actions complete and accepted by the City.

21.4 Franchisee shall provide City with a bond in the amount of Twenty-Five Thousand Dollars ($25,000.00) (“Franchise Bond”) 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 written notice and a reasonable opportunity to cure, then there shall be recovered jointly and severally from Franchisee and the bond any actual damages suffered by City as a 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. Franchisee specifically agrees that its failure to comply with the terms of this Section 21.4 shall constitute a material breach of this Franchise, subject to the notice and cure provisions of Section 22.2. Franchisee further agrees to replenish the Franchise Bond
within fourteen (14) days after written notice from the City that there is a deficiency in the amount of the Franchise Bond. The amount of the Franchise Bond shall not be construed to limit Franchisee's liability or to limit the City's recourse to any remedy to which the City is otherwise entitled at law or in equity.

21.5 All bonds provided to the City under this Section 21 shall be on forms provided by the City and with sureties registered with the Washington State Insurance Commissioner or other financial institutions acceptable to the City.

**SECTION 22. – Remedies to Enforce Compliance.**

22.1 In addition to any other remedy provided in this Franchise, the City reserves the right to pursue any remedy available at law or in equity to compel or require Franchisee and/or its successors and assigns to comply with the terms of this Franchise. The pursuit of any right or remedy by the City shall not prevent the City from thereafter declaring a revocation for breach of the conditions. In addition to any other remedy provided in this Franchise, Franchisee reserves the right to pursue any remedy available at law or in equity to compel or require the City, its officers, employees, volunteers, contractors and other agents and representatives, to comply with the terms of this Franchise. Further, all rights and remedies provided in this Franchise shall be in addition to and cumulative with any and all other rights and remedies available to either the City or Franchisee. Such rights and remedies shall not be exclusive, and the exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy. 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 provided by law, equity or otherwise, and nothing
contained in this Franchise shall be deemed or construed to effect any such waiver. The parties reserve the right to seek and obtain injunctive relief with respect to this Franchise to the extent authorized by applicable law. The execution of this Franchise shall not constitute a waiver or relinquishment of this right. The parties agree that if a party obtains injunctive relief, neither party shall be required to post a bond or other security and the parties agree not to seek the imposition of such a requirement.

22.2 If either party violates or fails to comply with any of the provisions of this Franchise or a permit issued as required by Section 8.3, or should it fail to heed or comply with any notice given to such party under the provisions of this Franchise (the “Defaulting Party”), the other Party (the “Non-defaulting Party”) shall provide the Defaulting Party with written notice specifying with reasonable particularity the nature of any such breach and the Defaulting Party shall undertake all commercially reasonable efforts to cure such breach within thirty (30) days of receipt of notification. If the Non-defaulting Party reasonably determines the breach cannot be cured within thirty (30) days, the Non-defaulting Party may specify a longer cure period, and condition the extension of time on the Defaulting Party’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 the Defaulting Party does not comply with the specified conditions, the Non-defaulting Party may pursue any available remedy at law or in equity as provided in Section 22.1, or in the event Franchisee has failed to timely cure the breach, the City, at its sole discretion, may elect to: (1) revoke this Franchise pursuant to Section 23; (2) claim damages of Two Hundred Fifty Dollars ($250.00) per day against Franchisee (and collect from the Franchise Bond
if necessary); or (3) extend the time to cure the breach if under the circumstances additional time is reasonably required.

**SECTION 23. - Revocation.** If Franchisee willfully violates or fails to comply with any material provisions of this Franchise, the City may revoke this Franchise after (1) providing at least thirty (30) days’ written notice to Franchisee specifying the alleged violation or failure; and (2) holding a hearing before City Council. This hearing shall be open to the public and Franchisee and other interested parties may offer written and/or oral evidence explaining or mitigating such alleged noncompliance. Within thirty (30) days after the hearing, the Kent City Council, on the basis of the record, shall make the determination as to whether there is cause for revocation, whether the Franchise will be terminated, or whether lesser sanctions should otherwise be imposed. The Kent City Council may in its sole discretion fix an additional time period to cure violations. If the deficiency has not been cured at the expiration of any additional time period or if the Kent City Council does not grant any additional period, the Kent City Council may by resolution declare the Franchise to be revoked and forfeited or impose lesser sanctions. If Franchisee appeals revocation and termination, such revocation may be held in abeyance pending judicial review by a court of competent jurisdiction, provided Franchisee is otherwise in compliance with the Franchise.

**SECTION 24. - Non-Waiver.** The failure of either party to insist upon strict performance of any of the covenants and agreements of this Franchise or to exercise any option 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 25. - Police Powers and City Regulations.** Nothing within this Franchise 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, consistent with 47 U.S.C. § 253, the location, elevation, manner of construction, and maintenance of any Facilities by Franchisee, and Franchisee shall promptly conform with all such regulations, unless compliance would cause Franchisee to violate other requirements of law. The City reserves the right to promulgate any additional regulations of general applicability as it may find necessary in the exercise of its lawful police powers consistent with 47 U.S.C. § 253. 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, such other ordinance(s) shall take precedence over this Franchise.

SECTION 26. – Cost of Publication. The cost of publication of this Franchise shall be borne by Franchisee.

SECTION 27. – Acceptance. This Franchise may be accepted by Franchisee by its filing with the City Clerk of an unconditional written acceptance, within sixty (60) days from the City’s execution of this Franchise, in the form attached as Exhibit A. Failure of Franchisee to so accept this Franchise shall be deemed a rejection by Franchisee and the rights and privileges granted shall cease. In addition, Franchisee shall file the certificate of insurance and the additional insured endorsements obtained pursuant to Section 19, any construction guarantees, if applicable, pursuant to Section 21.1, the Franchise Bond required pursuant to Section 21.4, and the costs described in Section 16.1.

SECTION 28. – Survival. All of the provisions, conditions, and requirements of Section 5, Section 6, Section 8, Section 14, Section 18,
Section 20, and this Section 28 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 this Franchise, and any renewals or extensions, to the extent provided for in those sections. All of the provisions, conditions, regulations, and requirements contained in this Franchise shall further be binding upon the 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 successors and assigns equally as if they were specifically mentioned where Franchisee is named.

SECTION 29. – Changes of Ownership or Control.

29.1 This Franchise may not be directly or indirectly assigned, transferred, or disposed of by sale, lease, merger, consolidation or other act of Franchisee, by operation of law or otherwise, unless approved in writing by the City, which approval shall not be unreasonably withheld, conditioned or delayed. The above notwithstanding, Franchisee may freely assign this Franchise in whole or in part to a parent, subsidiary, or affiliated entity, unless there is a change of control as described in Section 29.2. Franchisee shall provide prompt, written notice to the City of any such assignment. In the case of transfer or assignment as security by mortgage or other security instrument in whole or in part to secure indebtedness, such consent shall not be required unless and until the secured party elects to realize upon the collateral. For purposes of this Section 29, no assignment or transfer of this Franchise shall be deemed to occur based on the public trading of Franchisee’s stock; provided, however, any tender offer, merger, or similar transaction resulting in a change of control shall be subject the provisions of this Franchise.

29.2 Any transactions that singularly or collectively result in a change of more than fifty percent (50%) of the: ultimate ownership or working
control of Franchisee, ownership or working control of the Facilities, ownership or working control of affiliated entities having ownership or working control of Franchisee or of the Facilities, or of control of the capacity or bandwidth of Franchisee’s Facilities, shall be considered an assignment or transfer requiring City approval. Transactions between affiliated entities are not exempt from City approval if there is a change in control as described in the preceding sentence. Franchisee shall promptly notify the City prior to any proposed change in, or transfer of, or acquisition by any other party of control of Franchisee. Every change, transfer, or acquisition of control of Franchisee shall cause a review of the proposed transfer. The City shall approve or deny such request for an assignment or transfer requiring City’s consent within one hundred twenty (120) days of a completed application from Franchisee, unless a longer period of time is mutually agreed to by the parties or when a delay in the action taken by the City is due to the schedule of the City Council and action cannot reasonably be obtained within the one hundred twenty (120) day period. If the City adopts a resolution denying its consent and such change, transfer, or acquisition of control has been effected, the City may revoke this Franchise, following the revocation procedure described in Section 23. The assignee or transferee must have the legal, technical, financial, and other requisite qualifications to own, hold, and operate Franchisee’s Services. 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, in accordance with the provisions of Section 16.3 and Section 16.4, and shall pay the applicable application fee.

29.3 Franchisee may, without prior consent from the City: (1) lease the Facilities, or any portion, to another person; (2) grant an indefeasible right of user interest in the Facilities, or any portion, to another person; or (3) offer to provide capacity or bandwidth in its Facilities to another person,
provided further, that Franchisee shall at all times retain exclusive control over its Facilities and remain fully responsible for compliance with the terms of this Franchise, and Franchisee shall furnish, upon request from the City, a copy of any such lease or agreement, provided that Franchisee may redact the name, street address (except for City and zip code), Social Security Numbers, Employer Identification Numbers or similar identifying information, and other information considered confidential under applicable laws provided in such lease or agreement, and the lessee complies, to the extent applicable, with the requirements of this Franchise and applicable City codes. Franchisee’s obligation to remain fully responsible for compliance with the terms under this Section 29.3 shall survive the expiration of this Franchise but only if and to the extent and for so long as Franchisee is still the owner or has exclusive control over the Facilities used by a third party.

SECTION 30. – Entire Agreement. This Franchise constitutes the entire understanding and agreement between the parties as to the subject matter within this Franchise and no other agreements or understandings, written or otherwise, shall be binding upon the parties upon execution of this Franchise.

SECTION 31. – 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 Franchisee’s Facilities for the fair market value. In determining the value of such Facilities, no value shall be attributed to the right to occupy the area conferred by this Franchise.

SECTION 32. – Vacation. If at any time the City, by ordinance and in accordance with applicable laws, 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 Franchisee in writing not less than sixty (60) days before vacating all or
any portion of any such area. The City will, if practicable, reserve an
easement for Franchisee’s telecommunications network under the same
terms and conditions as this Franchise at the location vacated by City, and
if not practicable, the City may, after sixty (60) days’ written notice to
Franchisee, terminate this Franchise with respect to such vacated area.

SECTION 33. – Notice. Any notice or information required or
permitted to be given to the parties under this Franchise shall be sent to
the following addresses unless otherwise specified by personal delivery,
overnight mail by a nationally recognized courier, or by U.S. certified mail,
return receipt requested and shall be effective upon receipt or refusal of
delivery:

CITY OF KENT
Attn: City Clerk
220 Fourth Avenue South
Kent, WA 98032

Company Address:

MCImetro Access Transmission Services Corp.
ATTN: Franchise manager
600 Hidden Ridge
Mailcode: HQE02G295
Irving, TX 75038

With Copies (except for invoices) to:

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

SECTION 34. – Severability. If any section, sentence, clause, or
phrase of this Franchise should be held to be invalid or unconstitutional by
a court of competent jurisdiction, such invalidity or unconstitutionality
shall not affect the validity or constitutionality of any other section,
sentence, clause, or phrase of this Franchise unless such invalidity or
unconstitutionality materially alters the rights, privileges, duties, or obligations, in which event either party may request renegotiation of those remaining terms of this Franchise materially affected by such court’s ruling.

**SECTION 35.** - *Compliance with all Applicable Laws.* Each party 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 City reserves the right at any time to amend this Franchise to conform to any 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 City ordinance enacted pursuant to such federal or state statute or regulation, when such statute, regulation, or ordinance necessitates this Franchise be amended in order to remain in compliance with applicable laws, but only upon providing Franchisee with thirty (30) days’ written notice of its action setting forth the full text of the amendment and identifying the statute, regulation, or ordinance requiring the amendment. This amendment shall become automatically effective upon expiration of the notice period unless, before expiration of that period, Franchisee makes a written request for negotiations regarding the terms of the amendment. If the parties do not reach agreement as to the terms of the amendment within thirty (30) days of the call for negotiations, either party may pursue any available remedies at law or in equity.

**SECTION 36.** - *Attorney Fees.* If a suit or other action is instituted in connection with any controversy arising out of this Franchise, each party shall pay all its legal costs and attorney fees incurred in defending or bringing such claim or lawsuit, including all appeals, in addition to any other recovery or award provided by law; except that nothing in this
section shall be construed to limit the City's right to indemnification under Section 18 of this Franchise.

**SECTION 37. - Hazardous Substances.** Franchisee shall not introduce or use any hazardous substances (chemical or waste), in violation of any applicable law or regulation, nor shall Franchisee allow any of its agents, contractors, or any person under its control to do the same. 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 attorney fees and costs, arising out of or in connection with the cleanup or restoration of the property to the extent caused by Franchisee’s use, storage, or disposal of hazardous substances, whether or not intentional, and the use, storage, or disposal of such substances by Franchisee’s agents, contractors, or other persons acting under Franchisee’s control, whether or not intentional. Franchisee shall have only that responsibility or liability for managing, monitoring, or abating a hazardous condition that it may have under state or federal law and this Franchise shall not be interpreted to expand Franchisee’s legal obligations relating to any pre-existing hazardous substances undisturbed by Franchisee.

**SECTION 38. - Licenses, Fees and Taxes.** Prior to constructing any Facilities or providing Services within the City, Franchisee shall obtain a business or utility license from the City, if so required. Franchisee shall pay all applicable taxes on personal property and Facilities owned or placed by Franchisee in the Rights-of-Way and shall pay all applicable license fees, permit fees, and any applicable tax unless documentation of exemption is provided to the City and shall pay utility taxes and license fees properly imposed by the City under this Franchise. However, nothing in this Franchise is intended to alter, amend, modify or expand the taxes
and fees that may lawfully be assessed on Franchisee’s business activities under applicable law.

**SECTION 39. – Miscellaneous.**

39.1 The City and Franchisee respectively represent that their respective signatories are duly authorized and have full right, power, and authority to execute this Franchise on such party’s behalf.

39.2 This Franchise shall be construed in accordance with the laws of the State of Washington. The United States District Court for the Western District of Washington, and King County Superior Court have proper venue for any dispute related to this Franchise.

39.3 Section captions and headings are intended solely to facilitate the reading of this Franchise. These captions and headings shall not affect the meaning or interpretation of the text within this Franchise.

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

39.5 Franchisee shall be responsible for obtaining all other required 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 Franchisee.

39.6 This Franchise is subject to all applicable federal, State and local laws, regulations and orders of governmental agencies as amended, including but not limited to the Communications Act of 1934, as amended, the Telecommunications Act of 1996, as amended, and the Rules and
Regulations of the FCC. Neither the City nor Franchisee waive any rights they may have under any such laws, rules or regulations.

39.7 There are no third party beneficiaries to this Franchise.

39.8 This Franchise may be enforced at both law and in equity.

**SECTION 40. – Corrections by City Clerk or Code Reviser.** Upon approval of the City Attorney, the City Clerk and the code reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors; ordinance, section or subsection numbering; or references to other local, state or federal laws, codes, rules, or regulations.

**SECTION 41. – Effective Date.** This ordinance shall take effect and be in force five (5) days from and after its publication as provided by law.

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**ATTEST:**

SUZETTE COOKE, MAYOR  
Date Approved: 10/03/17

KIMBERLY A. KOMOTO, CITY CLERK  
Date Adopted: 10/03/17  
Date Published: 10/06/17

APPROVED AS TO FORM:

TOM BRUBAKER, CITY ATTORNEY

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*Franchise – Verizon Ordinance*
EXHIBIT A

STATEMENT OF ACCEPTANCE

MCImetro Access Transmission Services Corp. d/b/a Verizon Access Transmission, a Delaware Corporation ("Verizon") for itself, its successors and assigns, accepts and agrees to be bound by all lawful terms, conditions and provisions of the Franchise attached and incorporated by this reference. Verizon declares that it has carefully read the terms and conditions of this Franchise and unconditionally accepts all of the terms and conditions of the Franchise and agrees to abide by such terms and conditions. Verizon has relied upon its own investigation of all relevant facts and it has not been induced to accept this Franchise and it accepts all reasonable risks related to the interpretation of this Franchise.

MCImetro Access Transmission Services Corp. d/b/a Verizon Access Transmission, a Delaware Corporation

By: [Signature]
Name: Robert F. McGov
Title: Exec. Dir. Netw. Engineering

Date: 10/24/17
STATE OF WASHINGTON, COUNTY OF KING  
AFFIDAVIT OF PUBLICATION

PUBLIC NOTICE
Linda M Mills, being first duly sworn on oath that she is the Legal Advertising Representative of the

Kent Reporter

a weekly newspaper, which newspaper is a legal newspaper of general circulation and is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a weekly newspaper in King County, Washington. The Kent Reporter has been approved as a Legal Newspaper by order of the Superior Court of the State of Washington for King County.
The notice in the exact form annexed was published in regular issues of the Kent Reporter (and not in supplement form) which was regularly distributed to its subscribers during the below stated period. The annexed notice, a:

Public Notice

was published on October 6, 2017.

The full amount of the fee charged for said foregoing publication is the sum of $149.61.

Linda Mills
Legal Advertising Representative, Kent Reporter
Subscribed and sworn to me this 6th day of October, 2017.


CITY OF KENT  
NOTICE OF ORDINANCES PASSED BY THE  
CITY COUNCIL

The following are summaries of the ordinances adopted by the Kent City Council on October 3, 2017.

ORDINANCE NO. 4253 - AN ORDINANCE of the city council of the city of Kent, Washington, granting to MCIMETRO Access Transmission Services Corp. d/b/a Verizon Access Transmission Services, a Delaware corporation, and its successors and assigns, the right, privilege, authority and nonexclusive franchise for ten years, to construct, maintain, operate, replace, and repair a telecommunications network, in, across, over, along, under, through, and below certain designated public rights-of-way of the City of Kent, Washington.

This ordinance shall take effect and be in force five days from and after its publication as provided by law.

ORDINANCE NO. 4254 - AN ORDINANCE of the City Council of the City of Kent, Washington, providing for the condemnation, appropriation, taking, and damaging of real property and/or property rights as are necessary for that purpose and provides for the payment thereof out of the S. 224th Street Improvements Project Fund (Fund No. R90067. 64420.220). This ordinance also directs the City Attorney or designee to prosecute the appropriate legal proceedings, together with the authority to enter into settlements, stipulations, or other agreements, and acknowledges that all of the real property affected is located within King County, Washington.

This ordinance shall take effect and be in force five days from and after its publication as provided by law.

A copy of the complete text of any ordinance will be mailed upon request of the City Clerk.

Kimberley A. Komoto, City Clerk
Published in the Kent Reporter on October 6, 2017. #1971647.