

## City Council Agenda Item

Meeting Date: 02/11/2020

Level 3 Communications LLC Franchise Ordinance

Staff Lead: Jeff Taraday, City Attorney

Department: City Attorney's Office

Preparer: Scott Passey

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### Background/History

The City Council previously approved a Franchise Agreement with MCImetro Access Transmission Services Corp., D/B/A Verizon Access Transmission Services in 2017. The Level 3 Franchise is based substantially on the terms of the MCI Metro Access Franchise.

### Staff Recommendation

The City Attorney's Office recommends the Council authorize the City to execute this Franchise Agreement via Ordinance with Level 3 Communications, LLC.

### Narrative

Level 3 Communications, LLC is a wholly owned subsidiary of CenturyLink providing telecommunications services and seeks a Franchise from City of Edmonds in order to conduct work in the City right of way to provide its telecommunications services to its customers.

As soon as the Franchise is executed Level 3 intends to begin the permit process in order to provide Virginia Mason Medical Center with new fiber into its building for additional bandwidth.

The terms of this Franchise Agreement are based substantially on the terms of the MCImetro Access agreement, which the City Council approved in 2017.

In particular, several significant provisions are identical: Section 5 Term; Section 8 Undergrounding; Section 10 Work in Public Ways; Section 11 Restoration After Construction, Section 12 Emergency Work; Section 14 Recovery of Costs; Section 16 Indemnification and Waiver; Section 17 Insurance; Section 18 Abandonment and Removal; Section 19 Construction Bond; Section 21 Forfeiture and Revocation; Section 22 City Ordinances and Regulations; Section 24 Severability; Section 25 Assignment; Section 28 Attorney's Fees.

The following provisions have minimal differences: Section 3 Construction Permits Required (stating Franchisee can propose alternate routes for City Engineer consideration, cost is not an issue where Franchisee bears all costs); Section 7 Relocation (parties agree to comply with RCW 35.99.060(2) relating to notice and service provider relocation timeline-the parties would have to comply regardless); Section 9 Maps and Records (City will not ask Franchisee to provide a format not already used by Franchisee); Section 23 Survival (is broader by maintaining survival obligations even if Franchisee transfers ownership of the Facilities or abandons them.)

Section 15 Consideration, is similar to the MCI Franchise in that it acknowledges the City cannot charge a franchise fee on a telephone business under state law, acknowledges City can and will be reimbursed costs and expenses as set forth in Recovery of Costs Section, and states nothing in this Franchise affects City authority of taxation. Where it differs is that it states Franchisee agrees that all of its activities authorized by this Franchise are subject to City Telephone Business Tax and is subject to all taxes authorized by state law.

Section 15A imposes an audit provision upon Franchisee.

Section 1 defines terms, including the service provided. The service Franchisee is authorized to provide is telecommunications services, as in the MCI Franchise, but here we define Telecommunications Service as it is defined by statute. Whereas the MCI Franchise included internet services, this Franchise does not.

Level 3 Communications, LLC has indicated that they agree to the terms of the attached draft Franchise, but their formal agreement can occur only after the Franchise has been approved by the City Council.

Attachments:

200206 FINAL draft franchise Ordinance with Level 3 Communications, LLC