

Introduced by: The Council President

At the request of: The Administration (Department of Transportation)

Prepared by: Department of Legislative Reference

Date: July 17, 2019

Referred to: HOUSING AND URBAN AFFAIRS Committee

Also referred for recommendation and report to municipal agencies listed on reverse.

CITY COUNCIL 19 - 0407

A BILL ENTITLED

AN ORDINANCE concerning

Franchise – New Cingular Wireless PCS

FOR the purpose of granting a franchise to New Cingular Wireless PCS, LLC, to construct, install, maintain, repair, operate, relocate, replace, and remove certain Communications Facilities in and across certain streets and Public Ways and Park Properties, subject to certain terms and conditions; and providing for a special effective date.

BY authority of
Article VIII – Franchises
Baltimore City Charter
(1996 Edition)

****The introduction of an Ordinance or Resolution by Councilmembers at the request of any person, firm or organization is a courtesy extended by the Councilmembers and not an indication of their position.**

Agencies

<input checked="" type="checkbox"/> Department of Public Works	<input type="checkbox"/> Baltimore City Public School System
<input checked="" type="checkbox"/> Department of Real Estate	<input type="checkbox"/> Baltimore Development Corporation
<input checked="" type="checkbox"/> Department of Recreation and Parks	<input checked="" type="checkbox"/> City Solicitor
<input checked="" type="checkbox"/> Department of Transportation	<input type="checkbox"/> Comptroller's Office
<input checked="" type="checkbox"/> Fire Department	<input type="checkbox"/> Department of Audits
<input type="checkbox"/> Health Department	<input checked="" type="checkbox"/> Department of Finance
<input type="checkbox"/> Mayor's Office of Employment Development	<input type="checkbox"/> Department of General Services
<input type="checkbox"/> Mayor's Office of Human Services	<input checked="" type="checkbox"/> Department of Housing and Community Development
<input checked="" type="checkbox"/> Mayor's Office of Information Technology	<input type="checkbox"/> Department of Human Resources
<input type="checkbox"/> Office of the Mayor	<input checked="" type="checkbox"/> Department of Planning
<input type="checkbox"/> Police Department	<input type="checkbox"/> Other: _____
<input type="checkbox"/> Other: _____	<input type="checkbox"/> Other: _____
<input type="checkbox"/> Other: _____	<input type="checkbox"/> Other: _____

Boards and Commissions

<input checked="" type="checkbox"/> Environmental Control Board	<input checked="" type="checkbox"/> Board of Estimates
<input type="checkbox"/> Fire & Police Employees' Retirement System	<input type="checkbox"/> Board of Ethics
<input type="checkbox"/> Labor Commissioner	<input type="checkbox"/> Board of Municipal and Zoning Appeals
<input type="checkbox"/> Parking Authority Board	<input type="checkbox"/> Comm. for Historical and Architectural Preservation
<input checked="" type="checkbox"/> Planning Commission	<input type="checkbox"/> Commission on Sustainability
<input type="checkbox"/> Wage Commission	<input type="checkbox"/> Employees' Retirement System
<input type="checkbox"/> Other: _____	<input type="checkbox"/> Other: _____
<input type="checkbox"/> Other: _____	<input type="checkbox"/> Other: _____
<input type="checkbox"/> Other: _____	<input type="checkbox"/> Other: _____

CITY OF BALTIMORE
ORDINANCE **19-314**
Council Bill 19-0407

Introduced by: The Council President
At the request of: The Administration (Department of Transportation)
Introduced and read first time: July 22, 2019
Assigned to: Housing and Urban Affairs Committee

Committee Report: Favorable with amendments
Council action: Adopted
Read second time: October 28, 2019

AN ORDINANCE CONCERNING

Franchise – New Cingular Wireless PCS

FOR the purpose of granting a franchise to New Cingular Wireless PCS, LLC, to construct, install, maintain, repair, operate, relocate, replace, and remove certain Communications Facilities in and across certain streets and Public Ways and Park Properties, subject to certain terms and conditions; and providing for a special effective date.

BY authority of
Article VIII – Franchises
Baltimore City Charter
(1996 Edition)

SECTION 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE, That a franchise or right is granted to New Cingular Wireless PCS, LLC (the “Grantee”), to construct, install, maintain, repair, operate, relocate, replace and remove certain facilities relating to the provision of Wireless Services in and across certain streets and Public Ways and Park Properties, subject to the terms and conditions of this Ordinance and the Franchise Agreement between the Mayor and City Council of Baltimore and the Grantee, which is attached and made a part of this Ordinance.

SECTION 2. AND BE IT FURTHER ORDAINED, That for the franchise or right granted by this Ordinance (the “Franchise”) to become effective, the Grantee must notify the Board of Estimates, within 30 days of the effective date of this Ordinance, that the Grantee accepts the Franchise. The Grantee’s failure to so notify the Board of Estimates constitutes a refusal to accept the Franchise, and, in that event, this Ordinance and the Franchise granted by it will be abrogated and of no further effect.

SECTION 3. AND BE IT FURTHER ORDAINED, That also for the Franchise to become effective, the Franchise must be executed and enjoyed by the Grantee within 6 months after the effective date of this Ordinance.

EXPLANATION: CAPITALS indicate matter added to existing law
[Brackets] indicate matter deleted from existing law
Underlining indicates matter added to the bill by amendment
~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from existing law by amendment

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1 **SECTION 4. AND BE IT FURTHER ORDAINED,** That the Mayor and City Council of Baltimore
2 expressly reserves the right at all times to exercise, in the interest of the public, full municipal
3 superintendence, regulation, and control over and in respect to all matters connected with the
4 franchise and not inconsistent with the terms of this Ordinance.

5 **SECTION 5. AND BE IT FURTHER ORDAINED,** That this Ordinance takes effect when it is
6 enacted.

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BALTIMORE CITY SMALL CELL FRANCHISE AGREEMENT

This Franchise Agreement, (the "Agreement") is made this ___ day of _____, 2019, by and between the MAYOR AND CITY COUNCIL OF BALTIMORE, a Municipal Corporation of the State of Maryland ("City") and New Cingular Wireless PCS, LLC ("Franchisee").

RECITALS

1. The City, pursuant to Article VIII of the City Charter, is authorized to grant and renew non-exclusive franchises for the installation, operation, and maintenance of communications infrastructure on, beneath, above, and within the Public Ways and Park Properties of the City.
2. Franchisee desires to obtain from City as permitted by law, and City as a municipal corporation desires to grant to Franchisee, a franchise for the right to construct, install, maintain, repair, operate, relocate, replace and remove Communications Facilities relating to the provision of Wireless Services in the Public Way and on Park Properties within the City, in a manner consistent with this Agreement.

NOW, THEREFORE, AND IN CONSIDERATION of mutual covenants and conditions set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1.0 Definitions

- 1.1 "Agreement" or "Franchise Agreement" means this Agreement, together with Appendices and Exhibits attached to this Agreement, if any, and any amendments or modifications.
- 1.2 "Applicable Law" or "Law" means all federal, state, and local laws, statutes, codes, ordinances, resolutions, orders, rules and regulations, including but not limited to all Federal Communications Commission ("FCC") resolutions, orders, rules, and regulations, this Agreement, the Baltimore City Charter, the aesthetic or design standards applicable to Communications Facilities established by the City, and the administrative and judicial decisions interpreting these sources of law.
- 1.3 "Authorizations" means the permissions Franchisee must have to deploy Communications Facilities and/or provide Wireless Services, which may include franchises; licenses; permits; zoning approvals; variances; exemptions; grants of authority to use private rights of way and/or easements or facilities; agreements to make attachments to poles, ducts, conduits, towers, buildings, rooftops, manholes, and the like; and any other approval of a governmental authority or third persons with respect to (i) the construction, installation, repair, maintenance, operation or use of tangible or intangible property, as the case may be, or (ii) any requirement by a governmental authority for the engagement in a business or enterprise.
- 1.4 "City" means the Mayor and City Council of Baltimore, Maryland, or, as appropriate in the case of specific provisions of this Agreement, any board, bureau, authority, agency, commission or department of, or any other entity of or acting on behalf of, the Baltimore city government or any officer, official, employees, or agent of the Baltimore City government, any designee of the foregoing, or any successor thereto.

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- 1 **1.5** “Conduit” means enclosed underground raceways capable of protecting fiber optic
2 and other communications cables, including associated individual ducts, inner ducts,
3 manholes, hand holes, vaults, pull-boxes, and trenches.
- 4 **1.6** “Effective Date” means the date upon which this Agreement is adopted and approved
5 by the Mayor and City Council of the City.
- 6 **1.7** “Communications Facilities” means any and all equipment and assets located on
7 Public Ways and Park Properties owned by or under the control of Franchisee that are
8 reasonably necessary and appropriate for the offering and provision of Wireless
9 Services, including, but not limited to: optical repeaters, converters, power amplifiers,
10 radios, multiplexers, remote radioheads, antennas, aboveground and underground
11 fiber optic and coaxial cable, conduit, wires, meters, pedestals, power switches,
12 electrical generation and transmission facilities, cabinets, enclosures, control boxes,
13 and accompanying support structures, whether referred to singly or collectively. The
14 term does not include facilities attached to what are commonly known as macro
15 towers.
- 16 **1.8** “Franchise” means the non-exclusive right granted, by ordinance and subject to this
17 Agreement, to Franchisee to construct, operate, repair, and maintain the
18 Communication Facilities on, over, under, upon, across, and along the Public Ways
19 and Park Properties.
- 20 **1.9** “Franchise Area” shall mean all the area within the boundaries of the City.
- 21 **1.10** “Park Properties” means the real properties controlled by the Department of
22 Recreation and Parks pursuant to the provisions of Article VII of the City Charter,
23 which include parks, zoos, squares, athletic and recreational facilities.
- 24 **1.11** “Person” means any natural person or any association, firm, partnership, joint venture,
25 corporation or other legally recognized entity, whether for-profit or not-for-profit.
- 26 **1.12** “Public Way” means the surface of, and the space above and below, any public street,
27 highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, way, lane,
28 public way, drive, circle or other public right-of-way, including, but not limited to,
29 public utility easements, dedicated utility strips, or rights-of-way utilized for
30 compatible uses. Public Way shall not include any City buildings, structures or other
31 improvements, regardless of whether they are situated in a public right-of-way.
- 32 **1.13** “Wireless Service(s)” or “Service(s)” means any services using licensed or
33 unlicensed spectrum, including the use of Wi-Fi, whether at a fixed location or
34 mobile, provided to the public.

35 **2.0 Grant of Franchise**

36 The City grants to Franchisee the nonexclusive right to construct, install, maintain, repair,
37 operate, replace and remove Communications Facilities within the Public Way and on Park
38 Properties for the purpose of providing Wireless Services, which shall be exercised at
39 Franchisee’s sole cost and expense, and which shall be subject to all deeds, easements,
40 dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record

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1 which may affect the Public Way and Park Properties. Nothing in this Agreement shall be
2 deemed to grant, convey, create or vest in Franchisee a real property interest in land,
3 including any fee, leasehold interest, or easement.

4 **2.1 Compliance With Law**

5 The Franchise granted under the terms and conditions of this Agreement shall be
6 consistent with Applicable Laws.

7 **2.2 No Waiver of Other Permits and Authorizations**

8 Nothing in this Agreement shall be construed as a waiver of any Applicable Laws
9 (including without limitation) laws, regulations or rules of the City or of the City's
10 right to require the Franchisee to secure the appropriate permits or authorizations,
11 provided that the fees and charges imposed upon the Franchisee for any such permit
12 or authorization shall be the standard fees or charges generally applicable to all
13 Persons for such permits or authorizations, and any such standard fee or charge shall
14 not be an offset against the compensation or other payment the Franchisee or other
15 person is required to pay the City or any other entity pursuant to this Agreement.

16 **2.3 No Interference**

17 Franchisee, in the performance and exercise of its rights and obligations under this
18 Agreement, shall not interfere in any manner with the existence and operation of any
19 and all public and private rights of way, sanitary sewers, water mains, storm drains,
20 gas mains, poles, aerial and underground electrical and telephone wires, cable
21 television, and other telecommunications, utility, or municipal property, without the
22 express written approval of the owner or owners of the affected property or properties,
23 except as permitted by applicable laws and this Agreement. The City agrees to
24 require the inclusion of the same or a similar prohibition on interference as that stated
25 above in all agreements and franchises the City may enter into after the Effective Date
26 with other similarly situated communications or information providers and carriers.

27 **2.4 Closing of Public Ways and Park Properties**

28 Nothing in this Agreement shall be construed as a waiver or release of the rights of
29 the City in and to the Public Ways and Park Properties. In the event that all or part of
30 the Public Ways or Park Properties within the Franchise Area are (1) closed to
31 pedestrian and/or vehicular traffic and/or utilities and services comparable to
32 Services; or (2) vacated or if ownership of the land under the affected Public Ways or
33 on Park Properties is otherwise transferred to another Person, all rights and privileges
34 granted pursuant to this Agreement with respect to such Public Ways or Park
35 Properties, or any part of such Public Ways or Park Properties so closed, vacated, or
36 transferred, shall cease upon the effective date of such closing, vacation, or transfer,
37 and Franchisee shall remove its Communications Facilities from such Public Ways or
38 Park Properties. If such closing, vacation, or transfer of any Public Way or Park
39 Properties is undertaken for the benefit of any private Person, the City shall, as
40 appropriate, condition its consent to such closing, vacation, or transfer of such Public
41 Way or Park Properties on the agreement of such private Person to: (i) grant the
42 Franchisee the right to continue to occupy and use such Public Way or Park

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1 Properties; or (ii) reimburse the Franchisee for its reasonable costs to relocate the
2 affected part of the Communications Facilities. The City shall provide reasonable
3 notice to Franchisee of any such closing, vacation, or transfer to allow Franchisee to
4 remove its Communications Facilities where the right to continue to occupy and use
5 such Public Way or Park Properties is not reserved for Franchisee.

6 **2.5 Conditions Precedent**

7 The Franchise shall commence upon the Effective Date, provided that the Franchisee
8 shall have met each of the conditions precedent set forth below and otherwise in this
9 Agreement (unless the City agrees to waive any of the conditions precedent), at which
10 time it shall become effective:

- 11 1. Board and Council Action. All necessary approvals of this Agreement by the
12 City shall have been obtained.
- 13 2. Insurance. The Franchisee shall have secured its insurance policies as set
14 forth in Section 22 of this Agreement and delivered the certificate of insurance
15 to the City Solicitor, together with evidence that the premium for each of such
16 policies has been paid, that the policies will be in effect on or before the
17 Effective Date, and that the policies are in accordance with this Agreement.
- 18 3. Clean Hands Certification. The Franchisee shall have paid all amounts due
19 and owing to the City, including, but not limited to, taxes, fees, fines, penalties
20 and interest.

21 **3.0 Relation to Attachment Rights**

22 This Franchise does not confer upon Franchisee any right to place or attach Communications
23 Facilities directly upon or to structures located in the Public Way or on Park Properties that
24 are owned by the City or by a third party, including but not limited to City-owned streetlights
25 and third party electric utility poles. Franchisee shall secure and maintain any license, lease
26 or other right as may be necessary for such desired attachment by way of a separate
27 attachment agreement or other similar instrument executed with such entity; provided,
28 however, that the City acknowledges and agrees that Franchisee shall not be required to
29 obtain any additional franchise rights from the City in connection with the attachment of
30 Communications Facilities to the City's or third parties' structures in the Public Way and on
31 Park Properties, provided, further, however, that the foregoing is not intended to waive any
32 applicable requirements that Licensee obtain any customary City permits.

33 **4.0 Term**

34 This Franchise shall be for a period of ten (10) years from the date this Franchise is approved
35 and adopted by ordinance of the Mayor and City of Baltimore City.

36 This Franchise may be automatically renewed for three (3) additional five (5) year terms
37 provided Franchisee is not in default, is not in arrears with regard to, any amount of Franchise
38 fees, and provided the City has not given notification of its desire to terminate the Franchise
39 at least one hundred twenty (120) days prior to the expiration of the then- current term, and
40 further provided that Franchisee has not given City notice of Franchisee's intention not to

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1 renew, such notice to be given not less than one hundred twenty (120) days prior to the
2 expiration of the current Franchise term.

3 **5.0 Franchise Fee**

4 For the right to construct, install, maintain, repair, operate, replace and remove
5 Communications Facilities in the Public Way and Park Properties, Franchisee shall pay to the
6 City a Franchise Fee ("Franchise Fee(s)") in the amount of \$ _____ per year.
7 Payment shall be made no later than thirty (30) days following the conclusion of each fiscal
8 year.

9 **6.0 Use of Communications Facilities**

10 The authority granted by this Franchise extends to the use of Communications Facilities for
11 purposes of offering Wireless Services. Any non-incident use of such Communications
12 Facilities for a purpose other than a Wireless Service, as described in this Agreement, or the
13 installation of facilities unrelated to a Wireless Service, may require additional Authorization
14 from the City.

15 **7.0 Installation Specifications**

16 **7.1 Conduit**

17 For the deployment of new fiber optic cable in the Public Way and on Park Properties
18 to support the Communications Facilities, Franchisee ~~shall~~ may use existing City-
19 owned Conduit. In the event there is no available City-owned Conduit to meet
20 Franchisee's requirements, and in the absence of any suitable conduit owned by a
21 Third Party, Franchisee may, in coordination with the City, cause the construction of
22 additional Conduit in the Public Way or on Park Properties. ~~If the Franchisee elects~~
23 ~~not to use or cause the construction of City-owned Conduit, the Franchisee agrees to~~
24 ~~pay an additional fee, as may be required for licenses, leases, or other agreements~~
25 ~~permitting the attachment of Communications Facilities to City-owned streetlights~~
26 ~~and other structures.~~ Any construction performed pursuant to this Section shall be
27 consistent with City specification ~~and include at least two additional spare ducts for~~
28 ~~future City use for fiber installation.~~ Franchisee agrees that title in such property shall
29 transfer to the City upon its substantial completion. Notwithstanding the foregoing, in
30 the event that the Franchisee elects to use a Third Party for the installation of fiber
31 and conduit, the City acknowledges and agrees that if the Third Party possesses a
32 valid franchise agreement with the City, the Third Party's franchise agreement with
33 the City takes precedence over the above requirements for causing construction of
34 new conduit in the Public Way or on Park Properties.

35 **7.2 Installation Plan**

36 The installation of Communications Facilities in the Public Way and on Park
37 Properties shall be made in accordance with plans and specifications approved by the
38 City, and after obtaining all necessary permits for all work in the Public Way and on
39 Park Properties. Franchisee shall submit to the Baltimore City Department of
40 Transportation and, when siting on Park Properties, to the Department of Recreation
41 and Parks, an initial installation plan, and any subsequent work plans concerning

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1 installations not addressed in the initial work plan, which shall include fully
2 dimensioned site plans and specifications that are drawn to scale and show (1) the
3 specific Communications Facilities; (2) the specific proposed location of such
4 Communications Facilities (including specific identification of each attachment to a
5 City-owned or third-party structure located in the Public Way and on Park Properties);
6 (3) the route of fiber optic cable utilized by the Communications Facilities only if
7 such fiber optic cable will be installed and owned by the Franchisee (as distinct from
8 being installed and owned by one of the fiber optic service providers that has its own
9 franchise with the City, regardless of whether such service provider is an affiliate
10 Franchisee; (4) the proposed type of construction materials for all structures, and any
11 other details that the City may reasonably request which are also applicable to other
12 regulated utilities operating within the Public Way and Park Properties . Such
13 installation plans may be submitted as part of Franchisee's annual construction report
14 described in Section 14.

15 **7.3 Approval by City**

16 Franchisee shall not attach, install, maintain, or operate any Communications
17 Facilities in or on the Public Way or Park Properties until plans for such work have
18 been approved by the City (which shall not be unreasonably withheld, delayed,
19 conditioned or denied), and all necessary permits have been properly issued.
20 Substantial modification to an installation plan (including, for example, a change of
21 Communications Facilities site) made in the course of construction shall require the
22 written consent of the City, upon which the City shall act promptly, and may require
23 modification of an existing or issuance of a new permit.

24 Approval of plans and specifications and the issuance of any permits by the City shall
25 not release Franchisee from the responsibility for, or the correction of, any errors,
26 omissions or other mistakes that may be contained in the plans, specifications and/or
27 permits. Franchisee shall be responsible for notifying the City and all other relevant
28 parties immediately upon discovery of such omissions and/or errors and shall be
29 responsible for obtaining any amendments for corrected City-approved permits, as
30 may be necessary.

31 The City shall use its best efforts to promptly respond to a request for plan approval
32 or modification within sixty (60) days, and will cooperate with Franchisee to facilitate
33 the prompt processing and issuance of any required permits.

34 Franchisee is encouraged to submit installation plans and requests for approval as part
35 of Franchisee's annual report described in Section 14.

36 **8.0 Construction**

37 **8.1 Compliance with Standards and Specifications**

38 All construction and maintenance shall be done in a workmanlike manner, and the
39 Franchisee shall meet or exceed all construction and service requirements required by
40 Applicable Law (including, without limitation, this Agreement and the Baltimore City
41 Code). All work involved in the construction, installation, operation, repair, and
42 maintenance of the Communications Facilities shall be performed in a safe, thorough,

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1 and reliable manner using materials of good and durable quality. The Franchisee shall
2 comply with applicable codes and industry standards, including the specifications set
3 forth in the most recently published edition of the "City of Baltimore Department of
4 Public Works Specifications for Materials, Highways, Bridges, Utilities, and
5 Incidental Structures (2006)," as amended from time to time ("Green Book");
6 administrative orders of the City Department of Transportation, as amended from
7 time to time; the National Electrical Code, as adopted by the City from time to time;
8 the National Electrical Safety Code, as adopted by the City from time to time; and all
9 rules, standards, practices, and procedures of the FCC, as amended from time to time;
10 and the requirements of other utilities whose poles and conduits the Franchisee may
11 use, as amended from time to time.

12 **8.2 Safety Precautions**

13 **8.2.1 Standard of Care**

14 The Franchisee shall employ ordinary care at all times and employ commonly
15 accepted methods and devices for the prevention of failures and accidents that
16 are likely to cause damage, injury, or nuisance to the public. In addition, the
17 Franchisee shall, at its sole cost and expense, undertake all necessary and
18 appropriate efforts to prevent accidents at its work sites. The Franchisee shall
19 comply with the Occupational Safety and Health Act of 1970, (29 U.S.C. §§
20 651-78), as amended, and all other Applicable Law.

21 **8.2.2 Protection of Construction Areas**

22 The Franchisee shall comply with the safety requirements of all permits,
23 licenses, and other forms of approval or authorization. In addition, Franchisee
24 shall maintain reasonable barriers, lights, signs, cones, and other similar
25 warnings and protective devices required for the safety of the public in
26 compliance with this Agreement and Applicable Law. If the Franchisee places
27 any such device in any Public Way or on Park Properties, the device shall be
28 placed and maintained in a way that does not interfere with the usual travel or
29 other existing and anticipated uses of the Public Way or Park Properties.

30 **8.2.3. Emergency Notification**

31 The Franchisee shall provide the City with a twenty-four (24) hour emergency
32 telephone number at which a representative of the Franchisee, not voice mail
33 or a recording, can be contacted in the event of an emergency. The Franchisee
34 shall respond within twenty-four (24) hours to address the reported
35 emergency.

36 **8.3 Identification**

37 The Franchisee shall ensure that all employees including employees of subcontractors,
38 who will be in contact with the public, will have proper identification, which shall
39 include a telephone number that can be used for verification. In addition, the
40 Franchisee shall clearly identify all personnel, vehicles, and other major equipment
41 operating under its authority.

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1 8.4 Antennas and Towers

2 Antenna supporting structures and towers shall be designed for the proper loading as
3 specified in Electronic Industries Alliance R.S. 222-C Specifications. In addition,
4 antenna supporting structures and towers shall be designed in accordance with the
5 International Building Code, as amended and shall be painted, lighted, erected, and
6 maintained in accordance with all applicable rules and regulations of the Federal
7 Aviation Administration and all other Applicable Law.

8 8.5 Disruption, Interference and Damage

9 Franchisee shall use commercially reasonable efforts to coordinate construction,
10 installation, and maintenance of the Communications Facilities to minimize
11 unnecessary disruption, including, as appropriate, coordination with applicable City
12 agencies. Franchisee shall not interfere with the use or development of any property
13 of the City or any other person, and promptly upon completion of construction,
14 erection or installation of Communications Facilities, Franchisee shall, at its own cost
15 and expense, promptly repair any damage to property resulting from such activity to
16 its original condition.

17 8.6 Materials and Claims

18 All materials furnished for any work done in the Franchise Area by Franchisee shall
19 be at Franchisee's sole cost and expense. Franchisee agrees to protect the Franchise
20 Area, and City, from all claims of contractors, laborers and material men, except in
21 the case of claims which solely arise from the willful or grossly negligent acts of the
22 City. Franchisee shall promptly pay all contractors and material men. Should any
23 such lien be made or filed, Franchisee shall cause the same to be discharged and
24 released of record by bond or otherwise within thirty (30) days after written request by
25 City.

26 8.7 One Call Notification System

27 For the Term of this Agreement, Franchisee shall become a full-time, private sector
28 member of: (A) the Baltimore City Department of Transportation Utility Coordinating
29 Committee; and (B) the one call notification center (otherwise known as "Miss
30 Utility") and shall comply with all of the marking and location verification
31 requirements of the one call notification system.

32 8.8 No Advertisement

33 Franchisee shall not place any advertisement or other notice on or about the
34 Communications Facilities which identifies the Franchisee in any way (except for
35 emergency notification postings).

36 8.9 Inspection by City

37 The City shall have commercially reasonable access to inspect any work conducted by
38 Franchisee during the construction of Communications Facilities.

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9.0 Maintenance and Repair

9.1 Generally

Franchisee shall, at its sole cost and expense, perform all maintenance and repairs reasonably needed to maintain Communications Facilities in good condition and neat and orderly appearance, and in compliance with all applicable Laws. Franchisee shall keep the Communications 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 interference. If the City gives Franchisee written notice of a failure by Franchisee to maintain the Communications Facilities, Franchisee shall use its best efforts to remedy such failure within forty-eight (48) hours after receipt of such written notice or if such maintenance or repair requires more than forty-eight (48) hours to remedy, Franchisee shall commence remedial operations within said forty-eight (48) hour period.

9.2 Access to Communications Facilities

Franchisee shall be given access to each of the Communications Facilities in the Public Way and on Park Properties for the purpose of routine maintenance, repair, or removal of Communications Facilities. If any such maintenance activities have the potential to result in an interruption of any City services at the Communications Facilities, Franchisee shall provide the City with a minimum of three (3) days prior written notice of such maintenance activities. Such maintenance activities shall, to the extent feasible, be done with minimal impairment, interruption, or interference to City services, which notice for such maintenance activities sent to the offices or persons identified in the permits issued to the Franchisee. In the event of an emergency (e.g., the potential for bodily harm or property damage or material disruption to the operation of the Wireless Services), such 3-day notice requirement shall be waived and Franchisee shall provide the City as much prior notice as reasonably possible under the circumstances. Such maintenance activities shall, to the extent reasonably feasible, be done with minimal impairment, interruption, or interference to City services.

9.3 Repair of Public Way and Park Properties

Franchisee shall be responsible for any damage, ordinary wear and tear excepted, to street pavement, existing facilities, and utilities, curbs, gutters, sidewalks, landscaping, and all other public or private facilities, to the extent caused by Franchisee's construction, installation, maintenance, access, use, repair, replacement, relocation, or removal of Communications Facilities in the Public Way or on Park Properties. Franchisee shall promptly repair such damage and return the Public Way and Park Properties and any affected adjacent property to a safe and satisfactory condition to the City in accordance with the City's applicable street restoration standards or to the property owner if not the City. Franchisee's obligations under this Section 9.3 shall survive for one (1) year past the completion of such reparation and restoration work.

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9.4 Appearance

Franchisee shall obtain design and location approval from the Planning Department for all attachments that are subject to this Agreement, which approvals shall be granted or denied in a non-discriminatory basis. Franchisee shall follow all legally binding City policies and state and local ordinances with respect to aesthetics and appearance for the duration of the Franchise.

9.5 Graffiti

Franchisee shall at all times keep and maintain the Communications Facilities free of all graffiti located thereon. City shall notify Franchisee in writing if graffiti is located on Communications Facilities. Thirty (30) days after notice in writing is received by Franchisee, City shall have the right to abate any graffiti present on Communications Facilities, and Franchisee shall reimburse City all costs directly attributable to graffiti abatement of Communications Facilities -which are incurred by City within thirty (30) days of City's presenting Franchisee with a statement of such costs.

9.6 Performance Bond

City may at any time during the Term require Franchisee to provide a bond in an amount determined by the City to represent the estimated cost of Franchisee's obligations under this Section, which the City may require Franchisee to increase from time to time to reflect the reasonable estimated cost of performing such obligations, to secure performance of Franchisee's obligations under this Section.

10.0 Electricity Use

Franchisee shall be responsible for obtaining and paying for any and all electrical utility service that Franchisee requires for the use or maintenance of Communications Facilities. City will reasonably cooperate with Franchisee in an effort by Franchisee to obtain electrical service from a location serving a City facility.

11.0 New Poles; Pole Replacement

11.1 New Poles

Franchisee shall not erect poles, conduits, or other Communications Facilities in a Public Way and on Park Properties without all necessary permits and authorizations and the express permission of the City, which may include the execution of a separate agreement between the City and Franchisee when new poles are sought to be installed in the Public Way or on Park Properties. Franchisee acknowledges that the installation of new stand-alone or streetlight poles in the Public Way or on Park Properties is not the City's preference and that such applications for installations on Public Ways or Park Properties may be denied. In the event the application for the installation and construction of one or more new poles is approved, the installation and construction of the new pole shall be at Franchisee's sole expense and shall comply with all applicable building permits, applicable City, state and federal specifications and laws ("New Poles") and become the property of the City. Any New Poles constructed by Franchisee shall comport with the character of existing

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1 poles in the area and otherwise comply with the City established aesthetic or design
2 standards applicable to Communications Facilities. City shall consider any request to
3 construct a New Pole in a nondiscriminatory manner and in compliance with
4 Applicable Laws.

5 **11.2 City Use of New Poles**

6 The City may use any New Poles for City purposes, including but not limited to
7 streetlights, other types of lighting and cameras so long as such use does not interfere
8 with Franchisee's use of its Communications Facilities. Franchisee shall not be
9 responsible for maintenance, repair or replacement of City-owned cameras, lights,
10 light bulbs and equipment or equipment owned by third parties authorized by the City
11 on the New Poles. Franchisee shall deed any new pole to the City.

12 **12.0 Removal and Modification of Communications Facilities During Term**

13 **12.1 Franchisee Right to Remove**

14 During the Term, Franchisee shall have the right to remove from the Public Way and
15 Park Properties all or any portion of Communications Facilities from time to time,
16 whether before or after a default under this Franchise Agreement, in Franchisee's sole
17 discretion with prior notice to City. Franchisee, at its own cost and expense, shall
18 promptly dispose of any materials used and/or generated by any and all removal
19 activities, and shall promptly repair any damage to the Public Way and Park
20 Properties caused by Franchisee's removal activities so that the Public Way and Park
21 Properties return to their condition prior to construction and installation of such
22 Communications Facilities by Franchisee, reasonable wear and tear excepted.

23 **12.2 Removal Due to Public Project**

24 Upon receipt of a written demand from the City pursuant to this Section 12.2,
25 Franchisee, at its sole cost and expense shall remove and relocate any part of the
26 Communications Facilities constructed, installed, used and/or maintained by
27 Franchisee whenever the City reasonably determines that the removal is needed for
28 any of the following purposes: (a) if required for the construction, completion, repair,
29 relocation, or maintenance of a City or other governmental agency project including
30 but not limited to, any change of grade, alignment or width of any street, sidewalk or
31 other public facility; installation of curbs, gutters or landscaping; and construction,
32 maintenance or operation of any underground or aboveground facilities such as
33 sewers, water mains, drains, storm drains, pipes, gas mains, poles, power lines,
34 telephone lines, cable television lines, and tracks; (b) because the Communications
35 Facilities are reasonably considered to be interfering with or adversely affecting
36 proper operation of City-owned light poles, traffic signals, or other City facilities; or
37 (c) to protect or preserve the public health or safety. The City shall cooperate with
38 Franchisee in relocating any portion of the Communication Facilities removed
39 pursuant to this Section 12.2 in a manner that allows Franchisee to continue providing
40 Services to its customers, including, but not limited to, expediting approval of any
41 necessary permits required for the relocation of Communications Facilities
42 corresponding to that portion relocated under this Section. No permitting or other
43 fees may be charged by the City for a removal occurring under this Section.

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12.3 Removal Due to Termination or Abandonment

Following the termination of the Franchise for any reason, or in the event Franchisee ceases to operate and abandons the Communications Facilities, Franchisee shall, within one hundred twenty (120) days, at its sole cost and expense, remove all Communications Facilities from the Public Way and Park Properties and restore the area affected by Communications Facilities to its condition at the commencement of this Franchise, reasonable wear and tear excepted, and further excepting landscaping and related irrigation equipment, or other aesthetic improvements made by Franchisee to the Facility or the adjacent property, or as otherwise required by the City. Prior to termination, Franchisee will post a payment bond in an amount up to \$500,000.00 to address the City's cost of removing any Communications Facilities not removed by Franchisee within one hundred twenty (120) days of termination, and as compensation for any damage to the Public Way and Park Properties relating to the Communications Facilities, reasonable wear and tear excepted. Alternatively, the City may allow Franchisee, in the City's sole and absolute discretion, to abandon the Communications Facilities, or any part thereof, in place and convey it to the City.

13.0 Compliance with Laws

13.1 Generally

This Agreement is subject to the terms and conditions of all Applicable Law.

13.2 Permits and Other Authorizations

Franchisee shall apply for, at its sole cost and expense, and obtain all applicable federal, state, county, and City permits and/or Authorizations required under Applicable Law in order to construct, operate, or otherwise implement and use Communications Facilities in the Public Way and on Park Properties, including, but not limited to, a conduit permit and charge, a right of way construction permit, building permits, encroachment permits, and any variance, conditional use permit, ministerial permit, or special exception required under the Baltimore City Zoning Code. Franchisee shall pay, as they become due and payable, all fees, charges, taxes and expenses, including conduit charges, associated with such permits and/or other Authorizations. If Franchisee is unable to obtain any necessary permits or Authorizations as required in this Section, Franchisee shall have the right, without obligation, to terminate this Franchise immediately.

14.0 Required Reports

14.1 Annual Construction Report

Not later than the sixtieth (60th) day after the close of each calendar year in which any work was performed in the Public Way or on Park Properties by Franchisee, the Franchisee shall provide the Baltimore City Department of Transportation and, in regard to installations on Park Properties, the Department of Recreation and Parks with the following:

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- 1 A. An updated “as-built” map clearly indicating each Communications Facility,
2 control box, and associated network route installed by Franchisee or its
3 contractors in the Public Way or on Park Properties. Specific identification of
4 attachments to City-owned structures or structures owned by a third party
5 located in the Public Way or on Park Properties. Specifying owner of
6 underlying facility (i.e., city, Baltimore Gas and Electric Company); and

- 7 B. A cumulative written list of the permits that the Franchisee has received from
8 the city through the last day of the preceding calendar year. The report shall
9 list the type of permit, the location(s) of the work being performed under the
10 permit, the date the work started or is projected to start, and the date the work
11 stopped or is projected to stop. The Franchisee shall omit a permit from this
12 list after such permit has expired and has not been renewed for three (3)
13 consecutive months.

14 Franchisee shall ensure that all drawings, maps, illustrations, or depictions required under
15 this Section are drawn to scale, show all existing utilities, and comply with Green Book
16 standards.

17 Additionally, within sixty (60) days after completion of the installation of any
18 Communications Facility in the Public Way or on Park Properties, Franchisee shall
19 provide the Baltimore Department of Transportation and, in regard to installations on
20 Park Properties, the Department of Recreation and Parks an “as built” survey of the
21 Communications Facility.

22 **15.0 Default and Remedies**

23 Each of the following events shall constitute a default of this Franchise (“Default”):

- 24 (a) If either Party fails to perform or comply with any of the material conditions or
25 covenants of this Franchise Agreement and such failure continues for a period of
26 thirty (30) calendar days after written notice thereof, unless the performance
27 cannot be reasonably completed within the thirty (30) day period, and the Party
28 has commenced good faith efforts to perform and is diligently proceeding to
29 complete performance to the satisfaction of the other Party;

- 30 (b) If Franchisee fails to pay the Franchise Fee or other sums herein specified within
31 thirty (30) calendar days after receipt of written notice of said default; or

- 32 (c) If Franchisee is adjudicated as bankrupt or becomes insolvent.

33 **15.1 Default by Franchisee**

34 In the event of default by Franchisee, the City shall have the right, while any default
35 continues, beyond any applicable cure period, by giving thirty (30) calendar days
36 written notice to Franchisee, to terminate this Franchise Agreement and promptly
37 remove or require Franchisee to promptly remove Communications Facilities from
38 the Public Way and Park Properties, at Franchisee’s sole cost and expense, without
39 prejudice to any other remedy which the City might be entitled to pursue, including
40 but not limited to City’s rights under Section 17 to eliminate any interference caused

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1 by Communications Facilities . No portion of the Franchise Fee shall be refunded in
2 the event of a termination on default by Franchisee.

3 **15.1.1 Self-Help by City**

4 In the event of any default of this Franchise by Franchisee and upon the
5 expiration of any applicable cure period set forth in this Franchise Agreement,
6 the City may at any time, after notice, cure the default for the account of and at
7 the expense of the Franchisee. If City is compelled to pay or elects to pay any
8 sum of money or to do any act which will require the payment of any sum of
9 money or is compelled to incur any expense, including reasonable attorneys'
10 fees in instituting, prosecuting or defending any action to enforce the City's
11 rights under this Franchise, the sums so paid by City, with all interest, costs
12 and damages, shall be deemed to be an additional Franchise Fee ("Additional
13 Franchise Fee") and shall be due from the Franchisee to City on the first day
14 of the month following the incurring of the respective expenses. Upon request
15 by Franchisee, City shall provide the necessary information for Franchisee to
16 verify all reasonable cost-based charges incurred.

17 **15.2 Default by City**

18 In the event of default by the City, Franchisee shall have the right to pursue any
19 remedies available to it against the City under applicable law or at equity, including,
20 but not limited to, the right to terminate this Agreement after thirty (30) days written
21 notice and an opportunity to cure the default.

22 **16.0 City Termination Right**

23 In addition to the remedies set forth in this Section 16, the City shall have the right to
24 terminate this Agreement (i) if the City is mandated by law, a court order or decision, or
25 the federal or state government to take certain actions that will cause or require the
26 removal of the Communications Facilities from the Public Way and Park Properties; or
27 (ii) if Franchisee's licenses to operate the Communications Facilities and/or provide
28 Wireless Service are terminated, revoked, expired, or otherwise abandoned.

29 **17.0 Radiofrequency Interference**

30 Radiofrequency Interference. Franchisee shall install and operate Communications
31 Facilities of a type and frequency that will not cause radiofrequency interference to any
32 FCC-licensed devices or with respect to the City's existing operations. In the event of an
33 emergency relating to interference, upon notification of such emergency by City,
34 Franchisee shall disconnect its operations and Communications Facilities from a remote
35 location. If Franchisee does not promptly disconnect its operations and Communications
36 Facilities after being notified by the City due to an emergency, City shall be permitted to
37 disconnect Franchisee's operations and Communications Facilities immediately, whether
38 such Communications Facilities are located on a City-owned facility or a third-party
39 facility within the Public Ways or Park Properties. City may perform, or cause to be
40 performed, upon notice to Franchisee, a technical evaluation to determine the cause of
41 interference. If, after considering the results of the inspection and tests or any technical
42 evaluation performed by City, City determines that Franchisee is directly causing

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1 interference to City's operations, City shall promptly notify Franchisee and Franchisee
2 shall immediately cease interfering with City's operations. If Franchisee fails to cease its
3 interference with City's operations within twelve (12) hours of such notice, City shall
4 have the right to take any steps it deems necessary, in its reasonable judgment and
5 discretion, to cause the interference to cease. Franchisee shall be responsible for all
6 reasonable and actual payments and/or expenses relating to the City's actions to correct
7 any interference problems caused by Franchisee.

8 For a period of thirty (30) calendar days after City determines that Franchisee's
9 operations have caused interference, Franchisee may request, and, if its request is
10 approved by the City, may perform intermittent testing of potential cures during specified
11 hours. City's approval of a request to remain and conduct intermittent testing during
12 specified hours shall not be unreasonably withheld, delayed or conditioned.

13 City's sole liability to Franchisee for action taken pursuant to this Section 17 shall consist
14 of the value of any damage or repairs made necessary to affected Communications
15 Facilities by willful or grossly negligent acts of the City. In no event shall the City be
16 liable for loss in value of Franchisee's Communications Facilities, or any loss of revenue
17 by Franchisee resulting from removal.

18 **18.0 MPE Evaluation**

19 Upon installation, Franchisee shall provide the City an up-to-date report on Maximum
20 Permissible Exposure (MPE) regarding radio frequency emissions and maximum
21 exposure for humans for each type of Communications Facility installed on Public Ways
22 and Parks Properties. The Parties agree that the requirement for Franchisee to provide the
23 reports in the previous sentence complies with all Applicable Law. In the event of any
24 violation of applicable laws related to radio frequency emissions, Franchisee shall take
25 immediate corrective actions and, if notice of the violation has been provided by the City,
26 provide the City with an updated MPE study from a licensed engineer confirming
27 compliance and corrective actions with respect to the frequency emissions associated with
28 its Communications Facilities. Within thirty (30) days after it receives an MPE report
29 from the Franchisee, the City shall make the report available for public review on the City
30 website.

31 **19.0 Interest**

32 If Franchisee fails to make any payment under this Agreement when due, such amounts
33 shall accrue interest from the date such payment is due until paid, including accrued
34 interest, at an annual rate of ten percent (10%) or, if lower, the highest percentage allowed
35 by law.

36 **20.0 Taxes**

37 Franchisee agrees that it will be solely responsible for the payment of any and all
38 applicable taxes, fees and assessments levied on its ownership, use and maintenance of
39 the Communications Facilities.

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1 **21.0 Liability and Indemnity**

2 **21.1 Indemnification**

3 Franchisee agrees to indemnify, defend and hold harmless City, its elected/appointed
4 officials, departments, employees, agents and representatives from any and all claims,
5 demands, suits and actions including attorneys' fees and court costs, connected
6 therewith, brought against the City, its elected/appointed officials, departments,
7 employees, agents and representatives and arising as a result of any direct willful, or
8 negligent act or omission of Franchisee, its agents, officers or employees EXCEPT for
9 any and all claims, demands, suits and actions, including attorneys' fees and court
10 costs connected therewith, brought against City or City's elected/appointed officials,
11 departments, employees, agents and representatives, arising as a result of the sole,
12 willful, or grossly negligent act or omission of City, its elected/appointed officials,
13 departments, employees, agents and representatives. This indemnification obligation
14 shall survive the termination of this Agreement with respect to claims, demands, suits
15 and actions that arose or accrued during the term of this Agreement.

16 **21.2 Waiver of Claims**

17 Franchisee waives any and all claims, demands, causes of action and rights it may
18 assert against the City on account of any loss, damage or injury to any
19 Communications Facilities or any loss or degradation of the Services as a result of an
20 event or occurrence which is beyond the reasonable control of the City.

21 **21.3 Limitation of the City's Liability**

22 Except as provided for in this Section, the City shall be liable only for the cost of
23 repair to damaged Communications Facilities arising from the gross negligence or
24 willful misconduct of the City, its council or board members, officers, elected
25 trustees, employees, agents, or contractors.

26 **22.0 Insurance**

27 The Franchisee shall procure and maintain during the term of this Franchise the following
28 required insurance coverages:

29 **(a) Workers' Compensation and Employers' Liability Insurance.**

30 Statutory workers' compensation benefits with a limit of liability no less than that
31 required by Maryland law at the time of the application of this provision for each
32 accident. Employers' liability insurance with a limit of \$1,000,000 each
33 accident/disease/policy limit. To the extent allowed by law, this policy shall
34 include a waiver of subrogation in favor of City. Franchisee shall require
35 contractors not covered under Licensee's insurance to obtain and maintain such
36 insurance.

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1 **(b) Commercial General Liability Insurance.**

2 Commercial General Liability Insurance at limits of Two Million Dollars
3 (\$2,000,000.00) per occurrence for claims arising out of bodily injuries or death,
4 and property damages and Three Million (\$3,000,000) general aggregate including
5 contractual liability coverage.

6 **(c) Automobile Liability Insurance.**

7 Commercial Automobile Liability with a combined limit of Two Million Dollars
8 (\$2,000,000.00) each accident for bodily injury and property damages. The
9 insurance shall cover any owned, non-owned, franchised, or hired automobiles
10 used in the performance of this Agreement.

11 **(d) Telecommunications, Media & Technology Errors & Omissions Insurance.**

12 Telecommunications, Media & Technology Errors & Omissions including Cyber
13 Liability Insurance with a limit of Two Million Dollars (\$2,000,000.00) each
14 claim and aggregate.

15 **(e) Umbrella/Excess Liability Insurance.**

16 Coverage is to be in excess of the sum of employers' liability, commercial general
17 liability and automobile liability insurance required above. Limits of liability
18 \$4,000,000 each occurrence, \$4,000,000 aggregate. Licensee may use any
19 combination of primary and excess insurance to meet the total limits required.

20 **(f) Coverage.**

21 The City, Mayor and City Council of Baltimore (in their official capacities) their
22 elected/appointed officials, departments, and employees, shall be covered, by
23 blanket additional insured endorsement, as additional insureds as their interests
24 may appear under this Agreement with respect to liability caused, in whole or in
25 part, by activities performed by Licensee or its employees in connection with this
26 Agreement.

27 Insurance shall apply separately to each insured against whom claim is made
28 and/or lawsuit is brought, except with respect to the limits of the insurer's
29 liability. To the extent of the Franchisee's negligence, the Franchisee's insurance
30 coverage shall be primary insurance as respects to the City, its elected/appointed
31 officials, departments, and employees. Any insurance and/or self-insurance
32 maintained by City, its elected/appointed officials, departments, and employees
33 shall not contribute with the Franchisee's insurance or benefit the Franchisee's in
34 any way to the extent Franchisee is found negligent. Upon receipt of notice from
35 its insurer(s) Franchisee shall provide the City with forty-five (45) days prior
36 written notice of cancellation of any coverage required herein. Insurance is to be
37 placed with insurers with a Best's rating of no less than A:VII, or if not rated with
38 Best's with minimum surpluses the equivalent of Best's surplus size VII and must
39 be eligible to do business in the State of Maryland.

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1 **(g) Certificate of Insurance; Other Requirements.**

2 Prior to the execution of this Agreement and within ten (10) days of each
3 insurance policy expiration date during the term of this Agreement, Franchisee
4 will furnish City with a certificate of insurance ("Certificate"). The Certificate
5 shall reference this Agreement and insurance waivers of subrogation required by
6 this Agreement. City shall be given forty-five (45) calendar days advance notice
7 of cancellation or non-renewal of insurance during the term of this Agreement that
8 is not replaced.

9 **(h) Limits.**

10 The limits of liability set out in this Article 22.0 may be increased or decreased by
11 mutual consent of the parties, which consent will not be unreasonably withheld by
12 either party, in the event of any factors or occurrences, including substantial
13 increases in the level of jury verdicts or judgments or the passage of state, federal,
14 or other governmental compensation plans, or laws that would materially increase
15 or decrease Franchisee's exposure to risk.

16 **(i) Failure to Maintain Insurance.**

17 Failure of Franchisee to maintain the proper insurance required under this Article
18 22.0 shall result in termination of this Franchise if the breach is not cured upon
19 the expiration of any applicable cure period set forth in this Franchise.

20 **23.0 Assignment and Subletting**

21 Franchisee may not assign, or otherwise transfer all or any part of its privilege in this
22 Franchise without the prior written consent of City; provided, however, that Franchisee
23 may assign its privilege to its parent company, any subsidiary or affiliate of it or its parent
24 company or to any successor-in-interest or entity acquiring fifty-one percent (51%) or
25 more of its stock or assets, in the market defined by the FCC in which the City of
26 Baltimore is located, subject to the assignee assuming all of Franchisee's obligations
27 hereunder, and subject to any financing entity's interest, if any, in this Franchise.
28 Notwithstanding anything to the contrary contained in this Franchise, Franchisee may
29 assign, mortgage, pledge, hypothecate or otherwise transfer without consent its interest in
30 Communications Facilities or in this Franchise to any financing entity, or agent on behalf
31 of any financing entity to whom Franchisee (1) has obligations for borrowed money or in
32 respect of guaranties thereof, (2) has obligations evidenced by bonds, debentures, notes or
33 similar instruments, or (3) has obligations under or with respect to letters of credit,
34 bankers acceptances and similar facilities or in respect of guaranties thereof. Any such
35 assignment to a financing entity or its agent shall be subordinate to the terms of this
36 Franchise Agreement. The City acknowledges that: (i) the State of Maryland has opted
37 into the First Responder Network Authority which is the first nationwide broadband
38 network dedicated for use by police, firefighters, emergency medical services and other
39 first responders ("FirstNet"), and (ii) Franchisee has been selected by FirstNet as its sole
40 private partner, to build, operate, maintain and manage the nationwide broadband
41 network on behalf of FirstNet. As such, Franchisee may use the Franchise Area for
42 FirstNet purposes, without the same being considered an assignment or subletting

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1 hereunder, provided that such use is otherwise in compliance with the requirements of
2 this Agreement.

3 **24.0 Environmental**

- 4 (a) Except in strict accordance with all applicable laws and regulations, Franchisee shall
5 notat any time within the Public Way or on Park Properties store, treat, transport or
6 dispose of any hazardous substance, hazardous waste or oil as defined by the Resource
7 Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. §§ 6901 et seq.,
8 Comprehensive Environmental Response, Compensation, and Liability Act of 1980
9 ("CERCLA"), 42 U.S.C. §§ 9601 et seq., Maryland Environment Article Code Ann.,
10 Title 4, Sec. 4-401, et seq. and Maryland Environment Article Code Ann., Title 7, subtitle
11 2.
- 12 (b) "Environmental Conditions" as used in this Agreement shall mean discovered or
13 undiscovered contaminants, pollutants, or toxic substances affecting health or the
14 environment, in any way arising from or related to the subject matter of this Franchise
15 which could, or do, result in any damage, loss, cost or expense to, or liability, by City to
16 any person including a government agency or other entity.
- 17 (c) In addition to all other indemnifications contained herein, Franchisee specifically agrees
18 to indemnify, reimburse, defend and hold harmless City, its elected/appointed officials,
19 employees, agents and representatives ("Indemnified Parties") from and against any and
20 all losses, costs, liabilities, including but not limited to liabilities, demands, obligations,
21 claims, suits, actions and expenses, attorneys' fees, consultant fees and court costs
22 connected therewith, brought against the Indemnified Parties, or incurred by any of them,
23 by reason of injury to persons, including death, and damage to property arising out of
24 Environmental Conditions caused by Franchisee or resulting from any direct, or indirect,
25 willful or negligent acts or omissions of Franchisee, its contractors, agents, or employees
26 in connection Environmental Conditions caused by Franchisee, unless such claims are
27 caused by the negligent act of City. Notwithstanding anything to the contrary herein,
28 Franchisee agrees to defend, indemnify and hold harmless the Indemnified Parties from
29 and against all administrative and judicial actions and rulings, claims, causes of action,
30 demands and liability including, but not limited to, damages, costs, expenses,
31 assessments, penalties, fines, losses judgments and reasonable attorney fees that the
32 Indemnified Parties may suffer or incur due to the existence of any hazardous substances
33 on the Franchise Area, in the Public Way or on Parks Property or migration of any
34 hazardous substance to other properties or the release of any hazardous substance into the
35 environment, that arise from the Franchisee's and or its representatives activities on the
36 Franchise Area, the Public Way or Parks Property. The indemnifications in this section
37 specifically include, without limitation, costs incurred in connection with any
38 investigation of site conditions or any cleanup, remedial, removal or restoration work
39 required by any governmental authority. This provision shall be in addition to, and
40 separate from, any remedies available to City for breach by the Franchisee of its
41 obligations under any of the provisions of this Agreement and shall in no way limit any
42 recourse that the City may have at the time against Franchisee pursuant to any federal,
43 state or local laws. The provisions of this section shall survive the termination or
44 expiration of this Agreement.

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1 (d) City represents to the best of its knowledge, without having made inquiry that there is no
2 hazardous substance within the Public Way or on Park Properties. Hazardous substance
3 is any substance identified as hazardous, toxic or dangerous in any applicable federal,
4 state or local law or regulation. City shall not introduce or use any hazardous substance
5 in the Public Way or Park Properties in violation of any applicable law. City shall be
6 responsible for, and shall promptly conduct any investigation into and remediation of, as
7 required by any applicable environmental laws, all spills or other releases of any
8 hazardous substance to the extent caused by the City, its employees, agents and
9 contractors that have occurred or which may occur in the Public Way or on Park
10 Properties. City agrees to defend, indemnify and hold harmless the Franchisee from and
11 against any and all administrative and judicial actions and rulings, claims, causes of
12 action, demands and liability (collectively, "Claims") including, but not limited to,
13 damages, costs, expenses, assessments, penalties, fines, losses, judgments and reasonable
14 attorney fees that the Franchisee may suffer or incur due to the existence of any hazardous
15 substances in the Public Way or Park Properties or the migration of any hazardous
16 substance to other properties or the release of any hazardous substance into the
17 environment (collectively, "Actions"), that arise from the City's activities on the
18 Franchise Area to the extent allowable under subsection 5-303 (a), (b) and (c) of the
19 Courts and Proceedings Article of the Maryland Annotated Code. City agrees to defend,
20 indemnify and hold Franchisee harmless from Claims resulting from Actions in the
21 Franchise Area caused by City prior to and during the initial term and any and all renewal
22 terms. The indemnifications in this section specifically include, without limitation, costs
23 incurred in connection with any investigation of site conditions or any cleanup, remedial,
24 removal or restoration work required by any governmental authority. In the event that
25 Franchisee discovers any hazardous substances on, under, or adjacent to the Franchise
26 Area, which presence was not caused by Franchisee, its employees, agent or contractors,
27 Licensee shall immediately notify the City and the City shall have the right to cure the
28 condition within five (5) days from the date of notice. If the City elects not to cure or
29 fails to do so within five (5) days of the notice from Licensee, then Franchisee shall have
30 the right to terminate the Agreement for the impacted portion of the Franchise Area,
31 Public Way or Park Properties, at no cost or liability. This Section shall survive the
32 termination or expiration of this Agreement.

33 **25.0 Notices**

34 All notices, requests, demands, and other communications hereunder shall be in writing and
35 shall be deemed given if personally delivered or by certified mail, return receipt requested to
36 the following addresses:

37 City: The Mayor and City Council of Baltimore
38 Department of Transportation
39 Attn: Director
40 417 E. Fayette Street, Fifth Floor
41 Baltimore, Maryland 21202

42 *with a copy which shall not constitute legal notice to:*

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1 Baltimore City Department of Real Estate
2 Room 304 City Hall
3 100 North Holliday Street
4 Baltimore, Maryland 21202
5 410-396-4768
6 410-528-1437 (fax)

7 All Franchise Fee payments to the City should be mailed to the following address and to the
8 attention of:

9 Director of Finance
10 Bureau of Treasury Management
11 Collections Division
12 200 N. Holliday Street
13 Baltimore, Maryland 21202

14 **Franchisee:**

15 New Cingular Wireless PCS, LLC
16 Attn: Network Real Estate Administration
17 1025 Lenox Park Blvd NE, 3rd Floor
18 Atlanta, GA 30319
19 Re: Baltimore City Franchise Agreement (Baltimore, MD)
20 Fixed Asset #: 13807246

21 **With a required copy to:**

22 New Cingular Wireless PSC, LLC
23 Attn: Legal Department, Network Operations
24 Re: Baltimore City Franchise Agreement (Baltimore, MD)
25 Fixed Asset #: 13807246
26 208 S. Akard Street
27 Dallas, TX 75202-4206

28 **26.0 Franchisee Point of Contact Relating to Communications Facilities**

29 Appropriate Franchisee staff shall be available to the employees of any City department
30 having jurisdiction over Franchisee's activities twenty-four (24) hours a day, seven (7) days a
31 week, regarding problems or complaints resulting from the attachment, installation,
32 operation, maintenance, or removal of Communications Facilities . The City may contact the
33 network control center operator at 1-800-638-2822 regarding such problems or complaints.

34 **27.0 Miscellaneous**

35 **27.1 Incorporation of Prior Agreements**

36 This Franchise contains all of the agreements of the parties hereto with respect to any
37 matter covered or mentioned in this Franchise, and no other agreement or
38 understanding pertaining to any such matter shall be effective for any purpose. No

Council Bill 19-0407

1 provision of this Franchise may be amended or added to except by an agreement in
2 writing signed by the parties hereto or respective successors in interest.

3 **27.2 Non-Waiver**

4 Failure of either party to insist on strict performance of any of the conditions,
5 covenants, terms or provisions of this Franchise or to exercise any of its rights
6 hereunder shall not waive such rights, but each party shall have the rights to enforce
7 such rights at any time and take such action as might be lawful or authorized
8 hereunder, either in law or equity. The receipt of any sum paid by Franchisee to City
9 after a breach of this Franchise shall not be deemed a waiver of such breach unless
10 expressly set forth in writing.

11 **27.3 Taxes**

12 (a) Franchisee, upon presentation of sufficient and proper documentation will pay,
13 within thirty (30) days, an amount equal to its proportional share of any taxes
14 imposed upon any entity which is directly attributable to the improvements
15 constructed by Franchisee, provided that Franchisee will be entitled to appeal any
16 such increase payable by it.

17 (b) Franchisee shall indemnify City from any and all liability, obligation, damages,
18 penalties, claims, liens, costs, charges, losses and expenses (including without
19 limitation, reasonable fees and expenses of attorneys, expert witnesses and
20 consultants), which may be imposed upon, incurred by or be asserted against City
21 in relation to the taxes owed or assessed on the Franchise Area and directly
22 attributable to the improvements constructed by Franchisee.

23 **27.4 Force Majeure**

24 If either City or Franchisee is prevented or delayed from fulfilling any term or
25 provision of this Agreement by reason of fire, flood, earthquake, or like acts of nature,
26 wars, revolution, civil commotion, explosion, acts of terrorism, embargo, acts of the
27 government in its sovereign capacity, material changes of laws or regulations, labor
28 difficulties, including without limitation, strikes, slowdowns, picketing or boycotts,
29 unavailability of equipment of vendor, or any other such cause not attributable to the
30 negligence or fault of the party delayed in performing the acts required by the
31 Agreement, then performance of such acts shall be excused for the period of the
32 unavoidable delay, and the affected party shall endeavor to remove or overcome such
33 inability as soon as reasonably possible.

34 **27.5 Governing Law; Jurisdiction**

35 This Franchise Agreement shall be construed in accordance with the laws of the State
36 of Maryland, without reference to its conflicts of law principles. If suit is brought by
37 a party to this Agreement, the parties agree that trial of such action shall be vested
38 exclusively in the state courts of Maryland, or in the United States District Court for
39 the District of Maryland.

Council Bill 19-0407

27.6 Change in Law and Severability

In the event that any legislative, regulatory, judicial, or other action becomes effective and settled law and affects the rights or obligations of the parties, or establishes rates, terms or conditions for the construction, operation, maintenance, repair or replacement of Communications Facilities within the Franchise Area, that differ, in any material respect from the terms of this Agreement ("New Law"), then either party may, upon thirty (30) days written notice, require that the terms of this Agreement be renegotiated to conform to the New Law. Such conformed terms shall then apply on a going forward basis for all existing and new Communications Facilities, unless the New Law requires retroactive application, in which case such new terms shall apply retroactively, as required by the New Law. In the event that the parties are unable to agree upon new terms within 90 days after Notice, then the rates contained in the New Law shall apply from the 90th day forward until the negotiations are completed, or a party obtains a ruling regarding the appropriate conforming of terms from a commission or court of competent jurisdiction.

27.7 Representations

Each of the parties to this Agreement represents and warrants that it has the full right, power, legal capacity, and authority to enter into and perform the parties' respective obligations hereunder and that such obligations shall be binding upon such party.

27.8 Amendment

This Agreement may not be amended except pursuant to a written instrument evidencing agreement by both parties.

27.9 MBE/WBE Compliance

(a) Franchisee to Comply. Franchisee agrees to comply with the City's statutes, ordinances and regulations regarding participation by minority business enterprises ("MBEs") and women's business enterprises ("WBEs") as if it were a contractor receiving funding from the City, provided that enforcement of this Section shall be exclusively by way of liquidated damages and in no event shall the City seek to suspend or rescind the Franchise for any violation of this Section. The Franchisee shall use reasonable, good faith efforts to meet a goal for participation by MBEs and WBEs for purchases and construction contracts as established by the City's Minority and Women's Business Opportunity Office ("MWBOO"). MWBOO shall administer the provisions of this Section on behalf of the City, and Franchisee shall comply with MWBOO rules and requirements.

(b) Documentation to the City on MBE/WBE Participation. Six (6) months after the Effective Date and every six (6) months thereafter while upgrade construction under this Agreement is in progress, and annually thereafter, the Franchisee shall submit to the City written documentation, including executed contracts, service agreements and utilization commitment forms, that shall identify the particular MBEs/WBEs that are (i) contracting directly with the Franchisee; or (ii) subcontracting with prime contractors who contract directly with Franchisee. The documentation submitted to the City shall specify the dollar value of the

Council Bill 19-0407

1 participation, type of work to be performed, and such other information as the
2 City may reasonably request.

3 (c) Waiver of MBE/WBE Goals. In the event that, after the use of reasonable, good
4 faith efforts to meet the goals for MBE and WBE participation established
5 pursuant to this Section, the Franchisee is able to demonstrate to the City's
6 satisfaction that sufficient qualified and willing MBEs and WBEs are unavailable,
7 the Franchisee may request a waiver or reduction of the MBE/WBE goals.

8 (d) Report on MBE/WBE Compliance. Six (6) months after the Effective Date and
9 every six (6) months thereafter, the Franchisee shall submit to MWBOO a report
10 on its compliance with this Section. Franchisee may satisfy this requirement by
11 copying MWBOO on any such report that it files with another City agency on a
12 semiannual or more frequent basis.

Council Bill 19-0407

1 **IN WITNESS WHEREOF**, the parties hereto have executed this Agreement in duplicate on the
2 day and year written above.

3 **ATTEST:** **MAYOR AND CITY COUNCIL OF BALTIMORE**

4 _____ **BY:** _____

5 **CUSTODIAN OF THE CITY SEAL** **STEVE SHARKEY**
6 **DIRECTOR**

7 **DEPARTMENT OF TRANSPORTATION**

8 **BY:** _____
9 **REGINALD MOORE, DIRECTOR**

10 **DEPARTMENT OF RECREATION AND**
11 **PARKS**
12

13 **WITNESS/ATTEST:** **NEW CINGULAR WIRELESS PCS, LLC**

14 **BY: AT&T MOBILITY CORPORATION**
15 **ITS: MANAGER**

16 _____ **BY:** _____ **(SEAL)**

17 **NAME:**

18 **TITLE:**

19 **APPROVED AS TO FORM AND LEGAL**
20 **SUFFICIENCY**

APPROVED BY THE BOARD OF
ESTIMATES

21 _____

22 **CHIEF SOLICITOR**

CLERK

DATE

Council Bill 19-0407

Certified as duly passed this _____ day of NOV 04 2019, 2019



President, Baltimore City Council

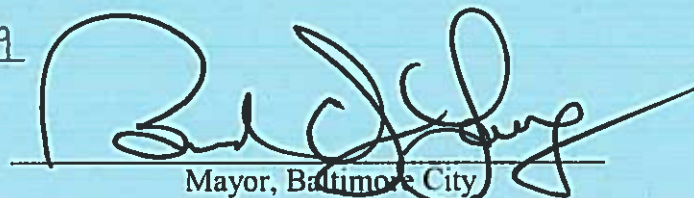
Certified as duly delivered to His Honor, the Mayor,

this _____ day of NOV 04 2019, 2019



Chief Clerk

Approved this 14th day of Nov., 2019



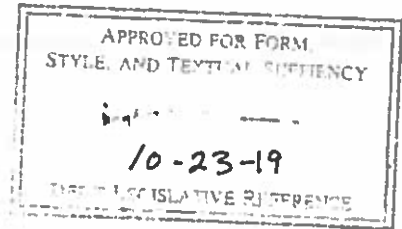
Mayor, Baltimore City

Approved For Form and Legal Sufficiency
This 12th Day of November 2019.



Chief Solicitor

AMENDMENTS TO COUNCIL BILL 19-0407
(1st Reader Copy)



By: Housing and Urban Affairs Committee

Amendment No. 1

On page 7, in line 18, strike “shall” and substitute “may”; on the same page, in line 20, after “requirements,” insert “and in the absence of any suitable conduit owned by a Third Party.”; in the same line, after “may”, insert a comma; and, in the same line, after “City”, insert a comma.

Amendment No. 2

On page 7, in line 21, strike beginning with “If” down through and including “structures.”, in line 25; and, on the same page, in line 26, strike beginning with “and” down through and including “installation”, in line 27.

ADOPTED

CITY OF BALTIMORE

BOARD OF ESTIMATES

Room 204, City Hall
Baltimore, Maryland 21202
410-396-4755



BRANDON SCOTT
PRESIDENT, CITY COUNCIL

BERNARD C. "JACK" YOUNG
MAYOR

JOAN M. PRATT
COMPTROLLER

RUDOLPH S. CHOW, P.E.
DIRECTOR OF PUBLIC WORKS

ANDRE M. DAVIS
CITY SOLICITOR

BERNICE H. TAYLOR
DEPUTY COMPTROLLER
AND CLERK TO THE BOARD

October 30, 2019

Honorable President and Members
of the City Council

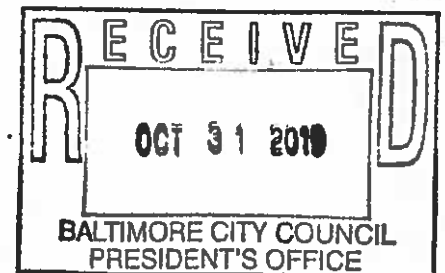
Ladies and Gentlemen:

On October 30, 2019 the Board had before it for consideration the following pending City Council Bill:

19-0407 - An Ordinance concerning a Franchise - New Cingular Wireless PCS For the purpose of granting a franchise to New Cingular Wireless PCS, LLC, to construct, install, maintain, repair, operate, relocate, replace, and remove certain Communications Facilities in and across certain streets and Public Ways and Park Properties, subject to certain terms and conditions; and providing for a special effective date.

THE LAW DEPARTMENT STATES THAT ARTICLE VIII OF THE BALTIMORE CITY CHARTER REQUIRES THAT A BILL GRANTING A FRANCHISE TO BE REFERRED TO THE BOARD OF ESTIMATES AFTER FIRST READING. CITY CHARTER, ART. VIII, §2. THE BOE IS EMPOWERED TO DETERMINE THE PROPOSED COMPENSATION TO BE PAID THE CITY AND THE CONDITIONS UNDER WHICH THE FRANCHISE IS GRANTED. ID.

IF THE ABOVE PROCEDURAL REQUIREMENTS ARE MET, THE BILL SHALL BE IN ACCORDANCE WITH ARTICLE VIII OF THE BALTIMORE CITY CHARTER AND THE LAW DEPARTMENT WILL APPROVE THE BILL FOR FORM AND LEGAL SUFFICIENCY.





RECEIVED
OCT 21 1982
BOSTON

CITY COUNCIL BILLS - cont'd

WHEN THE TWO FRANCHISE BILLS WERE DRAFTED, COUNCIL BILLS 19-0406 & 19-0407, THE PROPOSED FRANCHISEE IN COUNCIL BILL 19-0406, CELLCO PARTNERSHIP, D/B/A VERIZON, WAS UNAWARE OF ITS NEED TO CONSTRUCT CERTAIN CONDUIT IN ORDER TO SERVICE THE SMALL WIRELESS FACILITIES PERMITTED BY THE FRANCHISE. THE LAW DEPARTMENT HAS PROPOSED AN AMENDMENT TO THAT BILL TO CORRECT THE OMISSION.

IN CONTRAST TO COUNCIL BILL 19-0406, COUNCIL BILL 19-0407 FOR NEW CINGULAR WIRELESS CONTAINS PROVISIONS THAT PERMIT THE CONSTRUCTION OF CONDUIT. THOSE PROVISIONS, HOWEVER, NEED REVISIONS TO ACCOMMODATE CERTAIN FEDERAL REQUIREMENTS AND TO CONFORM WITH THE AMENDMENT PROPOSED FOR COUNCIL BILL 19-0406. THUS, THE LAW DEPARTMENT SUBMITS THE AMENDMENT TO COUNCIL BILL 19-0407.

AMENDMENT NO. 1

On page 7, in line 18, strike "shall" and substitute "may"; the same page, in line 20, after 11 requirements,", insert "and in the absence of any suitable conduit owned by a third party,"; in the same

Line, after "may", insert a comma; and, in the same line, after "city", insert a comma.

AMENDMENT NO. 2

On page 7, in line 21, strike beginning with "if" down through and including "structures.", in line 25.

BALTIMORE CITY OFFICE OF INFORMATION TECHNOLOGY (BCIT) HAS REVIEWED CITY COUNCIL BILL 19-0407 AND IS IN GENERAL SUPPORT BUT WOULD LIKE TO PROVIDE A PROPOSED AMENDMENT TO COUNCIL BILL 19-0407.

FOR THE DEPLOYMENT OF NEW FIBER OPTIC CABLE IN THE PUBLIC WAY AND ON PARK PROPERTY, THE FRANCHISE MAY USE EXISTING AVAILABLE CITY-OWNED CONDUIT, BUT THERE MAY BE INSTANCES WHEN THE CONDUIT IS FULL, COMPROMISED, OR OTHERWISE NOT

CITY COUNCIL BILLS - cont'd

AVAILABLE FOR USE. IN THESE INSTANCES WHEN THERE IS NO CITY-OWNED CONDUIT OR NO THIRD PARTY CONDUIT SOLUTION AVAILABLE, THE FRANCHISE MAY, IN COORDINATION WITH THE CITY, CONSTRUCT ADDITIONAL CONDUIT IN THE PUBLIC WAY OR PARK PROPERTIES. ANY CONSTRUCTION COMPLETED UNDER THIS AGREEMENT SHALL BE CONSISTENT WITH CITY STANDARDS.

COUNCIL BILL 19-0407 FOR NEW CINGULAR WIRELESS CONTAINS PROVISIONS THAT PERMIT THE CONSTRUCTION OF CONDUIT, HOWEVER BCIT WOULD LIKE TO PROPOSE AN AMENDMENT TO COUNCIL BILL 19-0407, THAT WOULD REQUIRE THE FRANCHISE TO CONSTRUCT AT LEAST TWO ADDITIONAL DUCT BANKS IN THE NEWLY CONSTRUCTED CONDUIT WHERE APPLICABLE. THOSE DUCT BANKS WOULD TRANSFER OWNERSHIP TO THE CITY UPON COMPLETION OF THE CONSTRUCTION.

THE ADDITIONAL DUCT BANKS WOULD ALLOW THE CITY OPPORTUNITIES TO PROVIDE SERVICES IN AREAS THAT MAY BE DIFFICULT TO SERVE. THIS OPPORTUNITY COULD ALLOW THE CITY TO PROVIDE WI-FI IN AREAS HARD TO REACH, CCTV CAMERAS AS WELL AS ADDITIONAL LIGHTING. BCIT IS HOPEFUL THAT THIS AMENDMENT WILL BE CONSIDERED CAREFULLY AND IS READY TO ASSIST MOVING FORWARD.

ALL OTHER REPORTS RECEIVED WERE FAVORABLE.

After NOTING AND CONCURRING in all favorable reports received, the Board approved the aforementioned City Council Bill and referred it to the City Council with the recommendation that it be approved and passed by that Honorable Body.

The Mayor **ABSTAINED** from voting. The President **ABSTAINED** from voting.

Sincerely,

Bernice H. Taylor Oct 30, 2019
Bernice H. Taylor
Clerk to the Board of Estimates

October 30, 2019

Baltimore Sun Media
300 E. Cromwell Street
Baltimore, Maryland 21230

Attn: Ms. Sharon Nelson
Advertising Department

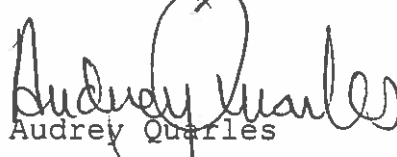
Re: Enclosed Notice CC Bill 19-0407

Dear Ms. Nelson:

It is requested that the enclosed Municipal Notice be printed on three successive dates. Only the text that appears under the caption "To Be Inserted Under Municipal Notices" is requested to be printed. Please do not print Council Bill.

If there should be any questions concerning this request, please do not hesitate to contact me at (410) 396-4755.

Sincerely yours,


Audrey Quarles

Encls:

TO BE INSERTED UNDER MUNICIPAL NOTICES

In accordance with the provisions of Article VIII, Section 6-Franchises, of the Baltimore Charter (1996 Edition), Notice is hereby given that application has been made by New Cingular Wireless PCS For the purpose of granting a franchise to New Cingular Wireless PCS, LLC, to construct, install, maintain, repair, operate, relocate, replace, and remove certain Communications Facilities in and across certain streets and Public Ways and Park Properties, subject to certain terms and conditions; and providing for a special effective date.

Sincerely,

Bernice H. Taylor Oct 30, 2019
Bernice H. Taylor, Deputy Comptroller
Clerk Board of Estimates

Three days:

THE SUN

Attn: Ms. Sharon Nelson
300 E. Cromwell Street
Baltimore, Maryland 21230

THE AFRO-AMERICAN NEWSPAPER

Attn: Ms. Marquise Goodwin
2519 N. Charles Street
Baltimore, Maryland 21218

October 30, 2019

The Afro-American Newspaper
2519 North Charles Street
Baltimore, Maryland 21218

Attn: Ms. Marquise Goodwin
Advertising Department

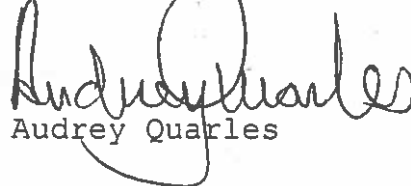
Re: Enclosed Notice CC Bill 19-0407

Dear Ms. Goodwin:

It is requested that the enclosed Municipal Notice be printed on three successive dates. Only the text that appears under the caption "To Be Inserted Under Municipal Notices" is requested to be printed. Please do not print Council Bill.

If there should be any questions concerning this request, please do not hesitate to contact me at (410) 396-4755.

Sincerely yours,



Audrey Quarles

Encls:

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Sincerely,

Bernice H. Taylor Oct 30, 2019
Bernice H. Taylor, Deputy Comptroller
Clerk Board of Estimates

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Baltimore, Maryland 21230

THE AFRO-AMERICAN NEWSPAPER

Attn: Ms. Marquise Goodwin
2519 N. Charles Street
Baltimore, Maryland 21218

BALTIMORE CITY COUNCIL
Housing and Urban Affairs Committee
VOTING RECORD

DATE: 10-22-19

BILL#: 19 0406


BILL TITLE: Ordinance - Franchise – Cellco Partnership d/b/a Verizon Wireless

MOTION BY: HENRY **SECONDED BY:** SNEED

- FAVORABLE FAVORABLE WITH AMENDMENTS
 UNFAVORABLE WITHOUT RECOMMENDATION

NAME	YEAS	NAYS	ABSENT	ABSTAIN
Bullock, J. Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Schleiffer, I. Vice Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Burnett, K.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Cohen, Z.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Dorsey, R.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Henry, B.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sneed, S.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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TOTALS	6	0	0	0

CHAIRPERSON: [Signature]
COMMITTEE STAFF: Richard G. Krummerich, Initials: RK

FROM	NAME & TITLE	CHRIS RYER, DIRECTOR	CITY of BALTIMORE MEMO	
	AGENCY NAME & ADDRESS	DEPARTMENT OF PLANNING 8 TH FLOOR, 417 EAST FAYETTE STREET		
	SUBJECT	CITY COUNCIL BILL #19-0407 / FRANCHISE – NEW CINGULAR WIRELESS PCS		

DATE:

TO

The Honorable President and
 Members of the City Council
 City Hall, Room 400
 100 North Holliday Street

October 21, 2019

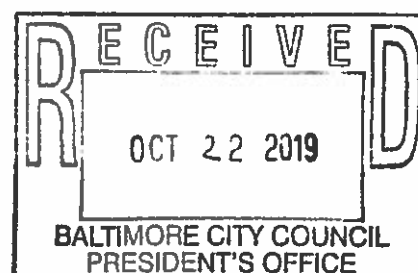
The Department of Planning is in receipt of City Council Bill #19-0407, which is for the purpose of granting a franchise to New Cingular Wireless PCS, LLC, to construct, install, maintain, repair, operate, relocate, replace, and remove certain Communications Facilities in and across certain streets and Public Ways and Park Properties, subject to certain terms and conditions; and providing for a special effective date.

The Department of Planning concurs with the Planning Commission and recommends approval of City Council Bill #19-0407.

If you have any questions, please contact Mr. Eric Tiso, Division Chief, Land Use and Urban Design Division at 410-396-8358.

CR/ewt


- cc: Mr. Nicholas Blendy, Mayor's Office
 Mr. Matthew Stegman, Mayor's Office
 Ms. Nina Themelis, Mayor's Office
 The Honorable Edward Reisinger, Council Rep. to Planning Commission
 Mr. Colin Tarbert, BDC
 Mr. Derek Baumgardner, BMZA
 Mr. Geoffrey Veale, Zoning Administration
 Ms. Stephanie Murdock, DHCD
 Ms. Elena DiPietro, Law Dept.
 Mr. Francis Burnszynski, PABC
 Mr. Liam Davis, DOT
 Ms. Natawna Austin, Council Services
 Mr. Dominic McAlily, Council Services



A



3

<p align="center">CITY OF BALTIMORE</p> <p align="center">BERNARD C. "JACK" YOUNG, <i>Mayor</i></p>		<p align="center">DEPARTMENT OF RECREATION AND PARKS</p> <p align="center">REGINALD MOORE, <i>Executive Director</i> Dr. Ralph W. E. Jones, Jr. Building 3001 East Drive - Druid Hill Park Baltimore, Maryland 21217 410-396-7900</p>
--	---	--

DATE: Thursday, October 17, 2019

TO: Honorable President and Members of the City Council
FROM: Baltimore City Recreation & Parks
POSITION: Support with amendments.
Re: City Council Bill #19-0407

Dear President and City Council Members,

Baltimore City Recreation and Parks (BCRP) has reviewed City Council Bill 19-0407 for the purpose of granting a franchise to New Cingular Wireless PCS, LLC, to construct, install, maintain, repair, operate, relocate, replace, and remove certain Communications Facilities in and across certain streets and Public Ways and Park Properties, subject to certain terms and conditions; and provide for a special effective date.

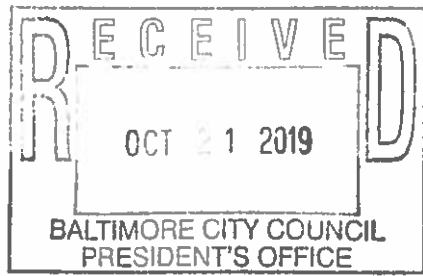
This franchise ordinance and agreement allows New Cingular Wireless PCS, LLC, to use the City rights-of-way and park properties to attach wireless antenna to existing or erected poles to provide enhanced communication services. Public rights-of-way does not include any City buildings, structures or other improvements, regardless of whether they are situated in a public rights-of-way. In addition, antenna supporting structures and towers shall be designed in accordance with the International Building Code, as amended. Franchisee shall apply for, at its sole cost and expense, and obtain all applicable federal, state, county, and City permits. This bill would grant a non-exclusive franchise to the Franchisee for installing small cell, wireless technology and other appurtenances on City property located within the City's rights-of-way and park properties. BCRP does not anticipate incurring any direct fiscal impact as a result of the proposed legislation.

After reviewing City Council Bill 19-0407, we have no objection to the passage of this bill. If you have any questions, please do not hesitate to contact Jenny Morgan at jenny.morgan@baltimorecity.gov or 410-396-7900.


Respectfully,


 Reginald Moore
Executive Director
 City of Baltimore, Department of Recreation & Parks

No obj



DLK

FROM	NAME & TITLE	Robert Cenname, Budget Chief	CITY of BALTIMORE MEMO	
	AGENCY NAME & ADDRESS	Department of Finance Room 432, City Hall (410) 396-4774		
	SUBJECT	CCB 19-0407 – Franchise – New Cingular Wireless PCS		

TO

DATE:

The Honorable President and
Members of the City Council
Room 400, City Hall

October 18, 2019

Position: Support

The Department of Finance is herein reporting on City Council Bill 19-0407, which grants a franchise to New Cingular Wireless PCS to construct, install, maintain, repair, operate, relocate, replace, and remove small cell poles in and across certain public ways and park properties.

Background

Currently, the City has a franchise agreement in place with Crown Castle to construct, install, maintain, repair, operate, relocate, replace, and remove certain communication facilities for small cell wireless services. This agreement was recently amended by City Council Bill 19-0408, pending the Mayor's signature, to expand Crown Castle franchise rights to include property owned by the Baltimore City Department of Recreation and Parks.

City Council Bill 19-0407 will allow New Cingular Wireless PCS the disposition of communication facilities and provision of wireless services under the terms specified in the agreement. It also permits New Cingular Wireless PCS to construct infrastructure for servicing these wireless facilities in public ways and park properties where such infrastructure does not exist, the same terms provided in the agreement with Crown Castle.

This bill has been jointly introduced with City Council Bill 19-0406, which would grant a similar franchise agreement to Cellco Partnership.

Fiscal Analysis

The proposed agreement has no net financial impact due to a recently upheld ruling by the Federal Communications Commission, which requires jurisdictions only collect fees from companies for the costs directly incurred by the jurisdiction. The Department of Finance considers the proposed legislation to have a positive impact to the City by promoting the expansion of the Small Cells program and increase the City's technological and wireless capabilities.

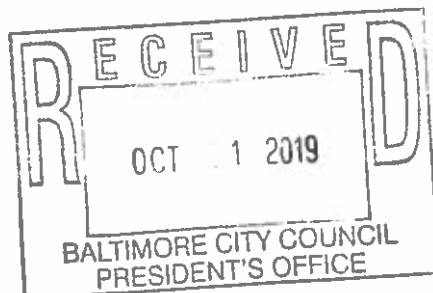
Conclusion

This legislation, along with City Council Bill 19-0406, will make the City's franchise agreements with small cell distributors the same.

For the reasons stated above, the Department of Finance supports the passage of City Council Bill 19-0407.

cc: Henry Raymond
Matthew Stegman
Nina Themelis

F



CITY OF BALTIMORE
BERNARD C. "JACK" YOUNG
Mayor



**BALTIMORE CITY OFFICE OF
INFORMATION & TECHNOLOGY**
Todd Carter
Acting Chief Information Officer/DCIO
401 E. Fayette Street, 3rd Floor
Baltimore, Maryland 21202

October 17, 2019

TO The Honorable President and
Members of the City Council
Room 400, City Hall

Re: 19-0407 (Franchise – New Cingular Wireless PCS)

Dear President and City Council Members:

Baltimore City Office of Information Technology (BCIT) has reviewed City Council Bill 19-0407 and is in general support but would like to provide a proposed amendment to Council Bill 19-0407.

For the deployment of new fiber optic cable in the public way and on park property, the franchise may use existing available city-owned conduit, but there may be instances when the conduit is full, compromised, or otherwise not available for use. In these instances when there is no city-owned conduit or no third party conduit solution available, the franchise may, in coordination with the City, construct additional conduit in the public way or park properties. Any construction completed under this agreement shall be consistent with City standards.

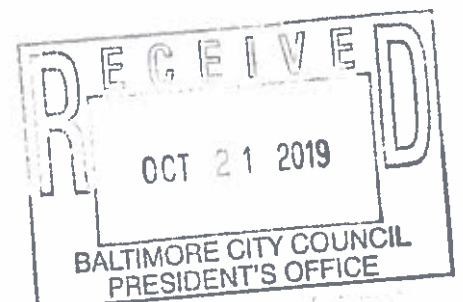
Council Bill 19-0407 for New Cingular Wireless contains provisions that permit the construction of conduit, however BCIT would like to propose an amendment to Council Bill 19-0407, that would require the franchise to construct at least two additional duct banks in the newly constructed conduit where applicable. Those duct banks would transfer ownership to the City upon completion of the construction.

The additional duct banks would allow the city opportunities to provide services in areas that may be difficult to serve. This opportunity could allow the City to provide Wi-Fi in areas hard to reach, CCTV cameras as well as additional lighting. BCIT is hopeful that this amendment will be considered carefully and is ready to assist moving forward.


If you have any questions, please do not hesitate to reach out to me at 410-387-6545.

Respectfully,

Todd Carter, Acting Chief Information Officer
Baltimore City Office of Information & Technology (BCIT)
City of Baltimore



Fav of Amend

F R O M	NAME & TITLE	Steve Sharkey, Director	CITY of BALTIMORE M E M O	
	AGENCY NAME & ADDRESS	Department of Transportation (DOT) 417 E Fayette Street, Room 527		
	SUBJECT	City Council Bill 19-0407		

TO: Mayor Bernard C. "Jack" Young
TO: Housing & Urban Affairs Committee
FROM: Department of Transportation
POSITION: Support
RE: Council Bill - 19-0407

DATE: 10/10/19

INTRODUCTION – Franchise - New Cingular Wireless PCS

PURPOSE/PLANS – For the purpose of granting a franchise to New Cingular Wireless PCS, LLC, to construct, install, maintain, repair, operate, relocate, replace, and remove certain Communications Facilities in and across certain streets and Public Ways and Park Properties, subject to certain terms and conditions; and providing for a special effective date.

COMMENTS – Council Bill 19-0407 looks to formalize a franchise agreement between the City of Baltimore and New Cingular Wireless. The franchise agreement would allow for New Cingular Wireless to use city right-of-way and park properties to build out their wireless network. Under the franchise agreement, New Cingular Wireless would be permitted to attach wireless antennas to city-owned poles, which is expected to result in faster and more reliable wireless phone and internet service across the City of Baltimore.

This bill is expected to have a moderate impact on the Department of Transportation, in particular the agency's Right of Way Division and Conduit Division. Facilities associated with this franchise agreement to be installed within Baltimore City's municipal conduit network would likely result in increased revenue for the system's enterprise fund.

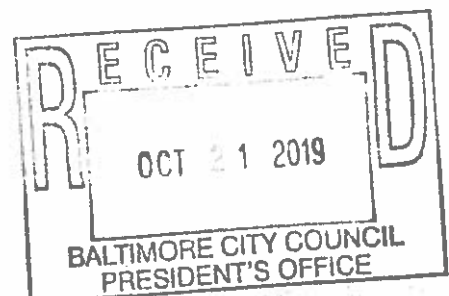
AGENCY/DEPARTMENT POSITION – The Department of Transportation supports City Council Bill 19-0407.

If you have any questions, please do not hesitate to contact Liam Davis via email at Liam.Davis@baltimorecity.gov or by phone (410) 545-3207.

Sincerely,



Steve Sharkey
Director

FROM	NAME & TITLE	CHRIS RYER, DIRECTOR
	AGENCY NAME & ADDRESS	DEPARTMENT OF PLANNING 8 TH FLOOR, 417 EAST FAYETTE STREET
	SUBJECT	CITY COUNCIL BILL #19-0407 / FRANCHISE – NEW CINGULAR WIRELESS PCS

CITY of
BALTIMORE
MEMO



DATE:

TO

The Honorable President and
Members of the City Council
City Hall, Room 400
100 North Holliday Street

October 10, 2019

At its regular meeting of October 3, 2019, the Planning Commission considered City Council Bill #19-0407, for the purpose of granting a franchise to New Cingular Wireless PCS, LLC, to construct, install, maintain, repair, operate, relocate, replace, and remove certain Communications Facilities in and across certain streets and Public Ways and Park Properties, subject to certain terms and conditions; and providing for a special effective date.

In its consideration of this Bill, the Planning Commission reviewed the attached staff report, which recommended approval of City Council Bill #19-0407 and adopted the following resolution; eight members being present (seven in favor, one recused):

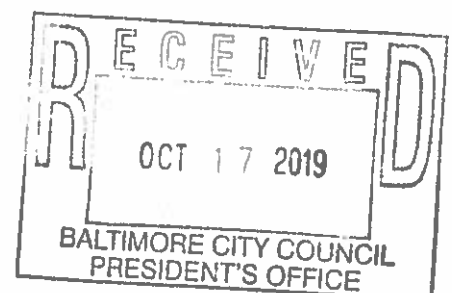
RESOLVED, That the Planning Commission concurs with the recommendation of its departmental staff, and recommends that City Council Bill #19-0407 be passed by the City Council.

If you have any questions, please contact Mr. Eric Tiso, Division Chief, Land Use and Urban Design Division at 410-396-8358.

CR/ewt

attachment

cc: Mr. Nicholas Blendy, Mayor's Office
Mr. Matthew Stegman, Mayor's Office
Ms. Nina Themelis, Mayor's Office
The Honorable Edward Reisinger, Council Rep. to Planning Commission
Mr. Colin Tarbert, BDC
Mr. Derek Baumgardner, BMZA
Mr. Geoffrey Veale, Zoning Administration
Ms. Stephanie Murdock, DHCD
Ms. Elena DiPietro, Law Dept.
Mr. Francis Burnszynski, PABC
Mr. Liam Davis, DOT
Ms. Natawna Austin, Council Services
Mr. Dominic McAlily, Council Services





*Bernard C. "Jack" Young
Mayor*

PLANNING COMMISSION

Sean D. Davis, Chairman

STAFF REPORT



*Chris Ryer
Director*

October 3, 2019

REQUEST: City Council Bill #19-0407/ Franchise – New Cingular Wireless PCS:

For the purpose of granting a franchise to New Cingular Wireless PCS, LLC, to construct, install, maintain, repair, operate, relocate, replace, and remove certain Communications Facilities in and across certain streets and Public Ways and Park Properties, subject to certain terms and conditions; and providing for a special effective date.

RECOMMENDATION: Amendment and Approval

STAFF: Matthew DeSantis, AICP

PETITIONER: The Administration, on behalf of the Department of Transportation (DOT)

HISTORY

- On June 11, 2015, the Planning Commission recommended amendment and approval of City Council Bill #15-0528, which was for a Franchise for Extenet Systems, Inc. That Ordinance has been enacted as of August 17, 2015 via Ordinance #15-400.
- On August 27, 2015, the Planning Commission recommended amendment and approval of City Council Bill #15-0551, which was for a Franchise for Crown Castle NG Atlantic, LLC. That Ordinance has been enacted as of November 6, 2015 via Ordinance #15-428.
- On March 28, 2019, the Planning Commission approved the Aesthetic and Design Standards for Small Cells on public rights-of-way.

ANALYSIS

Background: In 2015 and 2016, the City granted franchise agreements to three third-party wireless telecommunications infrastructure providers: Crown Castle, Extenet, and Mobilitie/Technology MD. As wireless telecommunication technology has evolved, there has been a greater and greater need to provide additional "small cell" antennas in order to provide both wireless coverage and capacity. These small cell facilities are much smaller than traditional cell tower installations, emit at much lower power levels, and have a much smaller range. These three franchisees (though the vast majority belong to Crown Castle) have to-date installed close to 600 wireless telecommunication facilities throughout the City within the public right-of-way. The installations are most usually attachments to existing City light poles, consisting of an antenna at the top and associated radio equipment mounted on the pole or nearby on the ground.

Federal Law: The Federal Telecommunications Act of 1996 prohibits local governments from discriminating between different providers of personal wireless services and prohibits local jurisdictions from altogether banning the construction, modification, or placement of these kinds of facilities in a particular area. Additionally, an Order adopted by the FCC in September 2018

imposes additional restrictions on local governments regarding the deployment of wireless infrastructure and how fees may be collected.

Local government does, however, maintain the authority to regulate the time, place, and manner of specific wireless telecommunications facilities. The Planning Commission approved Aesthetic and Design Standards for Small Cells on March 28, 2019. This documents governs such aspects as general equipment design, compatibility with surrounding infrastructure, minimum distance separation from residential lots, and minimum distance separation from other wireless infrastructure. The Department of Planning currently reviews each location proposed for installation of a small cell facility and ensures that such location is posted for public notice purposes. All of these variables currently in place will continue to guide the deployment of additional wireless facilities by AT&T.

The Department of Planning recognizes the importance of Baltimore having access to modern, state-of-the-art telecommunications infrastructure that is high-speed, reliable, and deployed in an equitable manner throughout its various neighborhoods. It is important to residents, business owners, and visitors that the City stays competitive with other jurisdictions in providing this kind of vital utility that people have come to rely on.

Proposed Franchise: Unlike the current franchisees which provide the infrastructure and then lease space to wireless carriers, New Cingular Wireless PCS (i.e. AT&T) seeks the right to install and maintain its own equipment for the benefit of its customers. This request for a franchise will allow AT&T to attach small cell equipment to publically owned infrastructure, such as street light poles, within the public right-of-way as well as public park properties.

Staff understands that the Franchise will be for a ten-year period, with three five-year renewals. Each installation will require a separate attachment agreement, conduit lease agreement, and that all costs will be borne by AT&T (to include working directly with BGE for power).

Attachment Agreement: The franchise bill itself is a blanket agreement that will permit AT&T to utilize public ROW and park properties for the deployment of their infrastructure – the associated Attachment Agreement is what governs the actual attachments that will be used on City poles. The substance of the Attachment Agreement is not within CCB #2019-0407 but rather is a separate document. AT&T is proposing to deploy both 4G and 5G equipment as a part of the attachment agreement. The majority of their proposed installations consist of only 5G equipment and a minority will consist of both 5G and 4G equipment on a given pole.

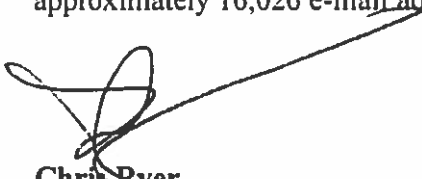
~~Proposed Amendment~~

~~Staff recommends a minor text amendment in order to explicitly reference the Small Wireless Facilities: Aesthetic Requirements document that was previously approved by the Planning Commission:~~

- ~~- Section 11.1 New Poles: "...and shall comply with all applicable laws, including the Small Wireless Facilities: Aesthetic Requirements ("New Poles")."~~

A similar text amendment was included in a recent revision to Crown Castle's franchise agreement and it is fitting that this bill language should include the same for consistency.

Community Notification: Notice this Planning Commission hearing was delivered to approximately 16,026 e-mail addresses through the GovDelivery service.

A handwritten signature in black ink, appearing to read "Chris Ryer", with a long horizontal line extending to the right.

Chris Ryer
Director



BALTIMORE CITY
DEPARTMENT OF HOUSING &
COMMUNITY DEVELOPMENT

MEMORANDUM

To: The Honorable President and Members of the Baltimore City Council
c/o Natawna Austin, Executive Secretary

From: Michael Braverman, Housing Commissioner 

Date: October 8, 2019

Re: **City Council Bill 19-0407, Franchise - New Cingular Wireless PCS**

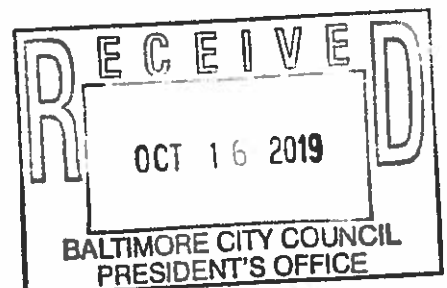
The Department of Housing and Community Development (DHCD) has reviewed City Council Bill 19-0407 for the purpose of granting a franchise to New Cingular Wireless PCS, LLC, to construct, install, maintain, repair, operate, relocate, replace, and remove certain Communications Facilities in and across certain streets and Public Ways and Park Properties, subject to certain terms and conditions; and providing for a special effective date.

This franchise ordinance and agreement allows New Cingular Wireless PCS to use the City rights-of-way and park properties to attach wireless antenna to existing or erected poles to provide enhanced communication services. Public rights-of-way does not include any City buildings, structures or other improvements, regardless of whether they are situated in a public right-of-way. In addition, antenna supporting structures and towers shall be designed in accordance with the International Building Code, as amended. Franchisee shall apply for, at its sole cost and expense, and obtain all applicable federal, state, county, and City permits. The Franchisee shall submit for approval, its installation plans to the Department of Transportation for the rights-of-way and the Department of Recreations and Parks for park properties.

DHCD has reviewed City Council Bill 19-0407 and has **no objection** to the passage of the Bill.

MB:sm

cc: Mr. Nicholas Blendy, *Mayor's Office of Government Relations*





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FROM	NAME & TITLE	Niles R. Ford, PhD, Chief of Fire Department <i>NRF</i>
	AGENCY NAME & ADDRESS	Baltimore City Fire Department 401 East Fayette St. 21202
	SUBJECT	City Council Bill #19-0407 Franchise – New Cingular Wireless PCS

CITY of
BALTIMORE
MEMO

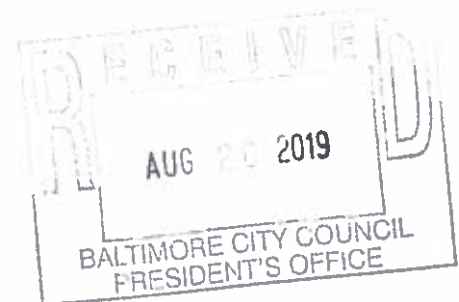


TO The Honorable Brandon M. Scott, President
And All Members of the Baltimore City Council
City Hall, Room 408

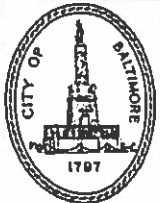
DATE: August 19, 2019

FOR the purpose of granting a franchise to New Cingular Wireless PCS, LLC, to construct, install, maintain, repair, operate, relocate, replace, and remove certain Communications Facilities in and across certain streets and Public Ways and Park Properties, subject to certain terms and conditions; and providing for a special effective date.

The Baltimore City Fire Department has no objections to Council Bill 19-0407: Franchise -New Cingular Wireless PCS. There is no fiscal impact and/or conflict with the Baltimore City Fire Code and has no impact on our agency or the City government. However, all work shall comply with applicable codes, ordinances, and laws.



No obj.

F R O M	Name & Title	Walter J. Horton Real Estate Officer <i>Walter Horton</i>	CITY OF BALTIMORE MEMO	
	Agency Name & Address	Department of Real Estate Room 304 – City Hall 100 N. Holliday Street		
	Subject	City Council Bill 19-0407		

To: Housing and Urban Affairs Committee

August 16, 2019

POSITION: Support

INTRODUCTION

I am herein reporting on City Council Bill 19-0407 introduced by City Council President Scott on behalf of the Administration (Department of Transportation).

PURPOSE

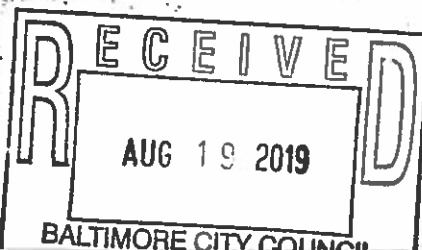
The purpose of the Bill is to grant a franchise to New Cingular Wireless PCS (New Cingular), a Delaware general partnership to construct, install, maintain, repair, operate, relocate, replace and remove certain Communications Facilities (commonly referred to as Distributed Antenna Systems-DAS) in and across certain streets and Public Ways and Park Properties, subject to certain terms and conditions; and provide for a special effective date.

BRIEF HISTORY

Article VIII of the City Charter provides authority to the City to grant franchises. In 2015 and 2016, the City of Baltimore approved three similar ordinances granting franchises to Crown Castle (Ordinance 15-428), Extenet (Ordinance 15-0400) and Mobilitie/Technology MD (Ordinance 16-464) to erect DAS facilities. To date, approximately 550 DAS nodes have been installed in the City of Baltimore. City Council Bill 19-0406, if approved, would grant a franchise to Verizon to install its equipment in the City's Right of Ways (ROW) and on Park Properties subject to certain terms and conditions.

There are certain provisions of the Franchise ordinance that are particular interest to our office. According to Article 4.0 of the Franchise ordinance, the term of the Franchise shall be for a period of ten (10) years from the date that the Franchise is approved and adopted by ordinance of the Mayor and City Council of Baltimore City. It may be automatically renewed for three (3) additional five (5) year terms provided Franchisee is not in default, is not in arrears with regard to any amount of Franchise fees, as established by the Board of Estimates and provided that Franchisee has not given notice of its intention not to renew in not less than one hundred twenty (120) days.

Franchisee must obtain all necessary permits and obtain from the Board of Estimates approval of its attachment rights before the Franchisee can commence the installation of its equipment. In addition the Franchisee shall obtain approval submit for approval its installation plans from the appropriate agency, i.e. the Department of Transportation for the ROW and the Department of Recreation and Parks for park properties.



*no objection
with
comments*

Pursuant to Article 9.4, the Franchisee shall obtain design and location approvals from the Department of Planning and the Department of Transportation. The Franchisee shall follow all legally binding Applicable Laws with respect to aesthetics and appearance for the duration of the Franchise.

Pursuant to Article 18 of the Franchise, the Franchisee shall provide the City an up-to-date Maximum Permissible Exposure (MPE) report which the City shall make the report available for public review on the City website.

Pursuant to Article 27.9, the Franchisee shall comply with the City's statutes, ordinances and regulations regarding participation by minority business enterprises ("MBEs") and women's business enterprises ("WBEs").

FISCAL IMPACT

The Department of Real Estate does not anticipate incurring any direct fiscal impact as a result of the proposed legislation.

AGENCY/DEPARTMENT POSITION

The Department has no objections to the passage of City Council Bill 19-407 though we recommend that it be modified to state the City's preference for co-location of the telecommunication equipment of all carriers, if technically possible, to minimize the visual impact of a proliferation of poles with equipment for only one carrier.

If you have any questions, please do not hesitate to contact Mr. Ted Laster at 443-984-3074 or via email at ted.laster@batimrecity.gov.

CITY OF BALTIMORE

BERNARD C. "JACK" YOUNG
Mayor



DEPARTMENT OF LAW
ANDRE M. DAVIS, CITY SOLICITOR
100 N. HOLLIDAY STREET
SUITE 101, CITY HALL
BALTIMORE, MD 21202

October 10, 2019

The Honorable President and Members
of the Baltimore City Council
Attn: Natawna B. Austin, Executive Secretary
Room 409, City Hall, 100 N. Holliday Street
Baltimore, Maryland 21202

Re: City Council Bill 19-0407 – Franchise – New Cingular Wireless PCS
Supplemental Report


Dear President and City Council Members:

The Law Department wishes to supplement its bill report dated August 16, 2019 to explain and provide a proposed amendment to Council Bill 19-0407.

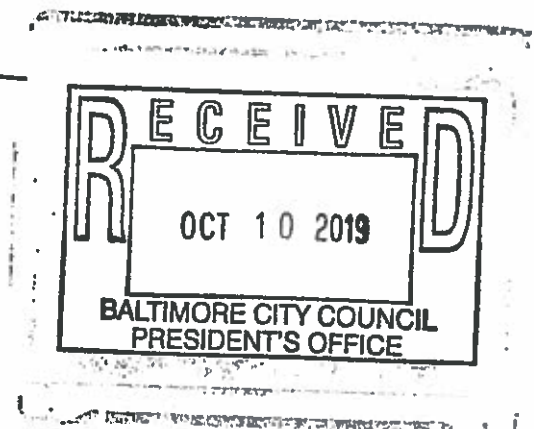
When the two franchise bills were drafted, Council Bills 19-0406 & 19-0407, the proposed franchisee in Council Bill 19-0406, Cellco Partnership, d/b/a Verizon, was unaware of its need to construct certain conduit in order to service the small wireless facilities permitted by the franchise. The Law Department has proposed an amendment to that bill to correct the omission.

In contrast to Council Bill 19-0406, Council Bill 19-0407 for New Cingular Wireless contains provisions that permit the construction of conduit. Those provisions, however, need revisions to accommodate certain federal requirements and to conform with the amendment proposed for Council Bill 19-0406. Thus, the Law Department submits the attached amendment to Council Bill 19-0407.

Sincerely,


Victor K. Tervalo
Chief Solicitor

cc: Andre M. Davis, City Solicitor
Nicholas Blendy, MOGR
Matt Stegman, Mayor's Legislative Liaison
Caylin Young, President's Legislative Director
Elena DiPietro, Chief Solicitor, General Counsel Division
Hilary Ruley, Chief Solicitor
Ashlea Brown, Assistant Solicitor



Report #2

F
Amu



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DLR DRAFT I 7OCT19

DLR DRAFT I 7OCT19

**AMENDMENTS TO COUNCIL BILL 19-0407
(1" Reader Copy)**

By: Department of Law
{To be offered to the Housing and Urban Affairs Committee}

Amendment No. 1

On page 7, in line 18, strike "shall" and substitute "may"; on the same page, in line 20, after "requirements," insert "and in the absence of any suitable conduit owned by a Third Party"; in the same line, after "may", insert a comma; and, in the same line, after "City", insert a comma.

Amendment No. 2

On page 7, in line 21, strike beginning with "If" down through and including "structures.", in line 25.

CITY OF BALTIMORE

BERNARD C. "JACK" YOUNG
Mayor



DEPARTMENT OF LAW
ANDRE M. DAVIS, CITY SOLICITOR
100 N. HOLLIDAY STREET
SUITE 101, CITY HALL
BALTIMORE, MD 21202

August 16, 2019

The Honorable President and Members
of the Baltimore City Council
Attn: Natawna B. Austin, Executive Secretary
Room 409, City Hall, 100 N. Holliday Street
Baltimore, Maryland 21202

Re: City Council Bill 19-0407 – Franchise – New Cingular Wireless PCS

Dear President and City Council Members:

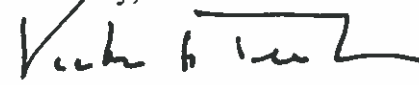
The Law Department has reviewed City Council Bill 19-0407 for form and legal sufficiency. The bill would grant a franchise to New Cingular Wireless PCS, Inc., to construct, install, maintain, repair, operate, relocate, replace and remove facilities relating to the provision of certain Communication Facilities in and across certain streets and public ways, and park properties, subject to certain terms and conditions; and providing for a special effective date.

This franchise ordinance and the attached franchise agreement, which is made part of the ordinance, allows New Cingular Wireless to use the City rights-of-way and park properties to conduct a business in which wireless antenna will be attached to poles to provide certain communication services. The exercise of this franchise ordinance is conditioned on New Cingular Wireless executing a separate attachment agreement with the City. The attachment agreement governs the actual attachments that will be used on City poles. In contrast, and pursuant to Article VIII of the City Charter, Council Bill 19-407 concerns matters pertaining to New Cingular Wireless' use of City rights-of-way and park properties.

Article VIII of the Baltimore City Charter requires that a bill granting a franchise to be referred to the Board of Estimates after first reading. City Charter, Art. VIII, § 2. The BOE is empowered to determine the proposed compensation to be paid the City and the conditions under which the franchise is granted. *Id.*

If the above procedural requirements are met, the bill shall be in accordance with Article VIII of the Baltimore City Charter and the Law Department will approve the bill for form and legal sufficiency.

Sincerely,


Victor K. Tervala
Chief Solicitor







2. The ...

EROS ...

...

...

cc: Andre M. Davis, City Solicitor
Jeffrey Amoros, Mayor's Legislative Liaison
Elena DiPietro, Chief Solicitor, General Counsel Division
Hilary Ruley, Chief Solicitor
Ashlea Brown, Assistant Solicitor

FROM	NAME & TITLE	Rebecca Woods, Esq., Executive Director <i>RW</i>
	AGENCY NAME & ADDRESS	Environmental Control Board 1 North Charles Street, 13 th Floor, Baltimore, Maryland 21201
	SUBJECT	City Council Bill # 19-0407 Franchise – New Cingular Wireless PCS

CITY OF
BALTIMORE
MEMO



DATE:

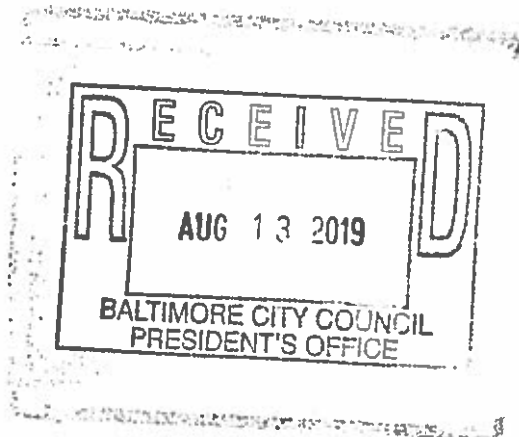
TO The Honorable President and Members of the Baltimore City Council August 13, 2019

The Baltimore City Environmental Control Board (ECB) has been requested to review City Council Bill # 19-0407, Franchise – New Cingular Wireless PCS. The purpose of the bills is to grant a franchise to New Cingular Wireless PCS, LLC, to construct, install, maintain, repair, operate, relocate, replace, and remove certain Communications Facilities in and across certain streets and Public Ways and Park Properties, subject to certain terms and conditions; and to provide for a special effective date.

Specifically, Council Bill # 19-0407 was referred to the ECB because the Franchise Agreement between the Mayor and City Council of Baltimore and New Cingular Wireless PCS, LLC has a contractual provision entitled “24.0 Environmental,” which details indemnification requirements should there be “Environmental Conditions,” as described in 24.0(b), created by either the Franchisee or the City of Baltimore.

The ECB’s operations have no connection to the storage, treatment, transportation, disposal, and/or investigation or remediation of a spill or release of waste or any otherwise hazardous substance in Baltimore City. Further, ECB’s operations would play no role in the indemnification, reimbursement, and/or defense from and against any and all losses, costs, and liabilities suffered or incurred by the Franchisee resulting from the actions or activities of the City on the franchised premises property.

For this reason, the ECB has no position on the passage of this bill.



no position

FROM	NAME & TITLE	Rudolph S. Chow, P.E. Director	CITY of BALTIMORE <i>MEMO</i>	
	AGENCY NAME & ADDRESS	Department of Public Works 600 Abel Wolman Municipal Building		
	SUBJECT	City Council Bill 19-0407		

July 29, 2019

TO:

Housing and Urban Affairs Committee

INTRODUCTION

I am herein reporting on City Council Bill 19-0407 introduced by Council President Scott on behalf of the Administration (Department of Transportation).

PURPOSE

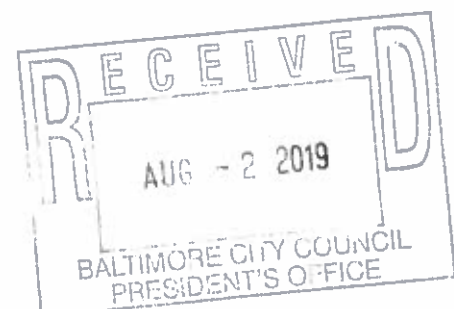
The purpose of the Bill is to grant a franchise to New Cingular Wireless PCS, LLC, to construct, install, maintain, repair, operate, relocate, replace, and remove certain Communications Facilities in and across certain streets and Public Ways and Park Properties, subject to certain terms and conditions; and provide for a special effective date.

BRIEF HISTORY

Article VIII of the Baltimore City Charter provides authority to the City to grant specific franchises or rights relating to certain public property, subject to certain conditions, limitations, and for specified periods of time. Authorization is given in the form of an ordinance, and the Board of Estimates is the body which, after the first reading of the ordinance, is empowered to change any proposed paid compensation to the City for the franchise and the conditions under which the franchise is to be granted.

City Council Bill 19-0407, if approved, would grant a franchise to New Cingular Wireless PCS, LLC to construct, install, maintain, repair, operate, relocate, replace and remove Communications Facilities within the Public Way and Park Properties. A Franchise Agreement is attached to the Bill which details the terms and conditions of the franchise, a franchise fee, and the manner and location of attachments occurring in the Public Way and Park Properties. Most attachments are expected to occur on existing City infrastructure, but poles could be erected if necessary to provide attachments where needed. The Franchise Agreement is to be approved by the Board of Estimates as well as the setting of the Franchise Fee. This Bill would grant a non-exclusive franchise to the Franchisee for installing small cell, wireless technology and other appurtenances on City property located within the City's rights-of-way and park properties.

*No
objection*



Housing and Urban Affairs Committee.
July 29, 2019
Page 2

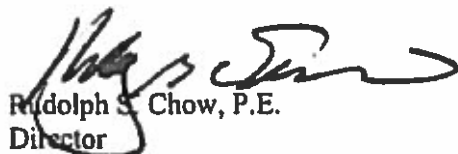
FISCAL IMPACT

The Department of Public Works does not anticipate incurring any direct fiscal impact as a result of the proposed legislation.

AGENCY/DEPARTMENT POSITION

The Department of Public Works has no objection to the passage of City Council Bill 19-0407 provided that the Department of Law and the Department of Recreation and Parks concur.

Should the Committee have any questions, please do not hesitate to contact Ms. Marcia Collins at 410-396-1960, or via email at Marcia.Collins@baltimorecity.gov.



Rudolph S. Chow, P.E.
Director

RSC:MMC

CALL TO ORDER

INTRODUCTIONS

ATTENDANCE

Present 6 - Member John T. Bullock, Member Kristerfer Burnett, Member Zeke Cohen, Member Ryan Dorsey, Member Bill Henry, and Member Shannon Sneed

Absent 1 - Member Isaac "Yitzy" Schleifer

ITEMS SCHEDULED FOR PUBLIC HEARING

19-0406

Franchise - Cellco Partnership, d/b/a Verizon Wireless

For the purpose of granting a franchise to Cellco Partnership, d/b/a Verizon Wireless, a Delaware general partnership, to construct, install, maintain, repair, operate, relocate, replace, and remove certain Communications Facilities in and across certain streets and Public Ways and Park Properties, subject to certain terms and conditions; and providing for a special effective date.

Sponsors: City Council President (Administration)

A motion was made by Member Henry, seconded by Member Sneed, that this Ordinance be Recommended Favorably with Amendment . The motion carried by the following vote:

Yes: 6 - Member Bullock, Member Burnett, Member Cohen, Member Dorsey, Member Henry, and Member Sneed

Absent: 1 - Member "Yitzy" Schleifer

ADJOURNMENT



HEARING NOTES

Bill: CC 19-0406

Ordinance - Franchise - Celco Partnership d/b/a Verizon

Committee: Housing and Urban Affairs

Chaired By: John Bullock

Hearing Date: October 22, 2019

Time (Beginning): 2:10 PM

Time (Ending): 2:52 PM

Location: Clarence "Du" Burns Chamber

Total Attendance: 47

Committee Members in Attendance:

John Bullock Sharon Sneed

Kristerfer Burnett

Zeke Cohen

Ryan Dorsey

Bill Henry

Bill Synopsis in the file? yes no n/a
 Attendance sheet in the file? yes no n/a
 Agency reports read? yes no n/a
 Hearing televised or audio-digitally recorded? yes no n/a
 Certification of advertising/posting notices in the file? yes no n/a
 Evidence of notification to property owners? yes no n/a
 Final vote taken at this hearing? yes no n/a
 Motioned by: Councilmember Henry
 Seconded by: Councilmember Sneed
 Final Vote: Fav. with Amendments

Major Speakers

(This is not an attendance record.)

- Victor Tervela - Law Department
- Lisa Jones - Attorney for Verizon
- Jennifer Van Piper - Engineer AT&T

Major Issues Discussed

1. The Chair convened the Hearing and welcomed the assembled guests. He then announced that this Bill would be heard simultaneously with CC 19-0407.
2. These Bills will allow for the installation of small antenna on public property for the purpose of improving cell phone reception.
3. Once this technology is installed downloads that now take several minutes will be accomplished in a few seconds.
4. There was overwhelming community support for this project.
5. The Bill was amended and passed on a 6-0 Vote.

Further Study

Was further study requested?

Yes No

If yes, describe.

Committee Vote:

J. Bullock:..... Yea
K. Burnett:..... Yea
Z. Cohen:..... Yea
R. Dorsey:..... Yea
B. Henry:..... Yea
S. Sneed:..... Yea

Richard G. Krummerich, Committee Staff..... Date: October 23, 2019
..... :

cc: Bill File
OCS Chrono File



CITY OF BALTIMORE

CITY COUNCIL HEARING ATTENDANCE RECORD

Committee: Housing and Urban Affairs
 Date: October 22, 2019 Time: 2:05 PM Chairperson: John Bullock
 Subject: Ordinance - Franchise - New Cingular Wireless PCS Place: Clarence "Du" Burns Chambers
 CC Bill Number: 19-0407

PLEASE PRINT

IF YOU WANT TO TESTIFY PLEASE CHECK HERE



FIRST NAME	LAST NAME	ST. #	ADDRESS/ORGANIZATION NAME	ZIP	EMAIL ADDRESS		FOR	AGAINST	YES	NO
John	Doe	100	North Charles Street	21202	Johndoebmore@yahoo.com	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Latoria	Harris				latoria.harris@att.com	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senifer	Van Piper				vsosa2@att.com	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Frank	Boston				fpd3kw@gmail.com	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marica	Collins		DPD			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Tanelle	Mummary		DPD			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Matthew	Doster		Planning		waltham.lawson@ballt.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Paulo	Port		Primes			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

(*) NOTE: IF YOU ARE COMPENSATED OR INCUR EXPENSES IN CONNECTION WITH THIS BILL, YOU MAY BE REQUIRED BY LAW TO REGISTER WITH THE CITY ETHICS BOARD. REGISTRATION IS A SIMPLE PROCESS. FOR INFORMATION AND FORMS, CALL OR WRITE: BALTIMORE CITY BOARD OF ETHICS, C/O DEPARTMENT OF LEGISLATIVE REFERENCE, 626 CITY HALL, BALTIMORE, MD 21202. TEL: 410-396-4730; FAX: 410-396-8483.

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City of Baltimore

City Council
City Hall, Room 408
100 North Holliday Street
Baltimore, Maryland 21202

Meeting Agenda - Final

Housing and Urban Affairs Committee

Tuesday, October 22, 2019

2:05 PM

Du Burns Council Chamber, 4th floor, City Hall

19-0407

Rescheduled from 9/24/19

CALL TO ORDER

INTRODUCTIONS

ATTENDANCE

ITEMS SCHEDULED FOR PUBLIC HEARING

19-0407

Franchise - New Cingular Wireless PCS

For the purpose of granting a franchise to New Cingular Wireless PCS, LLC, to construct, install, maintain, repair, operate, relocate, replace, and remove certain Communications Facilities in and across certain streets and Public Ways and Park Properties, subject to certain terms and conditions; and providing for a special effective date.

ADJOURNMENT

THIS MEETING IS OPEN TO THE PUBLIC



BILL SYNOPSIS

Committee: Housing and Urban Affairs

Bill CC 19-0407

Ordinance – Franchise – New Cingular Wireless PCS

*Sponsor: President Scott (The Administration) **

Introduced: July 22, 2019

Purpose:

For the purpose of granting a franchise to New Cingular Wireless PCS, L.L.C, to construct, install, maintain, repair, operate, relocate, replace, and remove certain Communications Facilities in and across certain streets and Public Ways and Park Properties, subject to certain terms and conditions; and providing for a special effective date

Effective: Upon enactment

Hearing Date/Time/Location: October 22, 2019 at 2:05 PM in the Council Chambers

Agency Reports

Department of Law	Favorable/Amend
Department of Public Works	No Objection
Department of Real Estate	No Objection
Fire Department	No Objection
Planning Commission	Favorable
Environmental Control Board	No Position
Department of Finance	
Office of Information Technology	
Department of Recreation and Parks	
Department of Housing and Community Development	No Objection
Department of Transportation	



Analysis

Current Law

Article VIII of the Baltimore City Charter establishes a process for granting franchises for the use of City Property. Enactment of an Ordinance of the Mayor and City Council is an essential element.

Background

CC 19-0407 grants a franchise to the entity commonly known as Cingular Wireless to install small devices on utility poles and park property for the purpose of enhancing cell phone reception. Some highlights:

1. Term of the Franchise is 10 years with options for an additional 15 years.
2. The City must approve the installation of the devices.
3. Cingular is responsible for the maintenance of all devices.
4. Cingular must comply with all existing laws and regulations.

The exact details of the installations and the Franchise Fee will be set by the board of Estimates prior to final adoption of the Bill.

Additional Information

Fiscal Note: Not Available

Information Source(s): Bill File

Analysis by: Richard G. Krummerich *RK*
Analysis Date: 11-18-19

Direct Inquiries to: 410-396-1266



**CITY OF BALTIMORE
COUNCIL BILL 19-0407
(First Reader)**

Introduced by: The Council President
At the request of: The Administration (Department of Transportation)
Introduced and read first time: July 22, 2019
Assigned to: Housing and Urban Affairs Committee

REFERRED TO THE FOLLOWING AGENCIES: City Solicitor, Department of Planning, Department of Housing and Community Development, Department of Transportation, Department of Finance, Board of Estimates, Baltimore City Information and Technology Department, Fire Department, Department of Recreation and Parks, Environmental Control Board, Department of Public Works, Department of Real Estate, *planning commission*

A BILL ENTITLED

1 AN ORDINANCE concerning

2 **Franchise – New Cingular Wireless PCS**

3 FOR the purpose of granting a franchise to New Cingular Wireless PCS, LLC, to construct,
4 install, maintain, repair, operate, relocate, replace, and remove certain Communications
5 Facilities in and across certain streets and Public Ways and Park Properties, subject to certain
6 terms and conditions; and providing for a special effective date.

7 BY authority of
8 Article VIII – Franchises
9 Baltimore City Charter
10 (1996 Edition)

11 **SECTION 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE**, That a
12 franchise or right is granted to New Cingular Wireless PCS, LLC (the “Grantee”), to construct,
13 install, maintain, repair, operate, relocate, replace and remove certain facilities relating to the
14 provision of Wireless Services in and across certain streets and Public Ways and Park Properties,
15 subject to the terms and conditions of this Ordinance and the Franchise Agreement between the
16 Mayor and City Council of Baltimore and the Grantee, which is attached and made a part of this
17 Ordinance.

18 **SECTION 2. AND BE IT FURTHER ORDAINED**, That for the franchise or right granted by this
19 Ordinance (the “Franchise”) to become effective, the Grantee must notify the Board of Estimates,
20 within 30 days of the effective date of this Ordinance, that the Grantee accepts the Franchise.
21 The Grantee’s failure to so notify the Board of Estimates constitutes a refusal to accept the
22 Franchise, and, in that event, this Ordinance and the Franchise granted by it will be abrogated and
23 of no further effect.

24 **SECTION 3. AND BE IT FURTHER ORDAINED**, That also for the Franchise to become effective,
25 the Franchise must be executed and enjoyed by the Grantee within 6 months after the effective
26 date of this Ordinance.

EXPLANATION: CAPITALS indicate matter added to existing law.
[Brackets] indicate matter deleted from existing law.

Council Bill 19-0407

1 **SECTION 4. AND BE IT FURTHER ORDAINED,** That the Mayor and City Council of Baltimore
2 expressly reserves the right at all times to exercise, in the interest of the public, full municipal
3 superintendence, regulation, and control over and in respect to all matters connected with the
4 franchise and not inconsistent with the terms of this Ordinance.

5 **SECTION 5. AND BE IT FURTHER ORDAINED,** That this Ordinance takes effect when it is
6 enacted.

Council Bill 19-0407

BALTIMORE CITY SMALL CELL FRANCHISE AGREEMENT

This Franchise Agreement, (the "Agreement") is made this ___ day of _____, 2019, by and between the MAYOR AND CITY COUNCIL OF BALTIMORE, a Municipal Corporation of the State of Maryland ("City") and New Cingular Wireless PCS, LLC ("Franchisee").

RECITALS

1. The City, pursuant to Article VIII of the City Charter, is authorized to grant and renew non-exclusive franchises for the installation, operation, and maintenance of communications infrastructure on, beneath, above, and within the Public Ways and Park Properties of the City.
2. Franchisee desires to obtain from City as permitted by law, and City as a municipal corporation desires to grant to Franchisee, a franchise for the right to construct, install, maintain, repair, operate, relocate, replace and remove Communications Facilities relating to the provision of Wireless Services in the Public Way and on Park Properties within the City, in a manner consistent with this Agreement.

NOW, THEREFORE, AND IN CONSIDERATION of mutual covenants and conditions set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1.0 Definitions

- 1.1 "Agreement" or "Franchise Agreement" means this Agreement, together with Appendices and Exhibits attached to this Agreement, if any, and any amendments or modifications.
- 1.2 "Applicable Law" or "Law" means all federal, state, and local laws, statutes, codes, ordinances, resolutions, orders, rules and regulations, including but not limited to all Federal Communications Commission ("FCC") resolutions, orders, rules, and regulations, this Agreement, the Baltimore City Charter, the aesthetic or design standards applicable to Communications Facilities established by the City, and the administrative and judicial decisions interpreting these sources of law.
- 1.3 "Authorizations" means the permissions Franchisee must have to deploy Communications Facilities and/or provide Wireless Services, which may include franchises; licenses; permits; zoning approvals; variances; exemptions; grants of authority to use private rights of way and/or easements or facilities; agreements to make attachments to poles, ducts, conduits, towers, buildings, rooftops, manholes, and the like; and any other approval of a governmental authority or third persons with respect to (i) the construction, installation, repair, maintenance, operation or use of tangible or intangible property, as the case may be, or (ii) any requirement by a governmental authority for the engagement in a business or enterprise.
- 1.4 "City" means the Mayor and City Council of Baltimore, Maryland, or, as appropriate in the case of specific provisions of this Agreement, any board, bureau, authority, agency, commission or department of, or any other entity of or acting on behalf of, the Baltimore city government or any officer, official, employees, or agent of the Baltimore City government, any designee of the foregoing, or any successor thereto.

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1 **1.5** “Conduit” means enclosed underground raceways capable of protecting fiber optic
2 and other communications cables, including associated individual ducts, inner ducts,
3 manholes, hand holes, vaults, pull-boxes, and trenches.

4 **1.6** “Effective Date” means the date upon which this Agreement is adopted and approved
5 by the Mayor and City Council of the City.

6 **1.7** “Communications Facilities” means any and all equipment and assets located on
7 Public Ways and Park Properties owned by or under the control of Franchisee that are
8 reasonably necessary and appropriate for the offering and provision of Wireless
9 Services, including, but not limited to: optical repeaters, converters, power amplifiers,
10 radios, multiplexers, remote radioheads, antennas, aboveground and underground
11 fiber optic and coaxial cable, conduit, wires, meters, pedestals, power switches,
12 electrical generation and transmission facilities, cabinets, enclosures, control boxes,
13 and accompanying support structures, whether referred to singly or collectively. The
14 term does not include facilities attached to what are commonly known as macro
15 towers.

16 **1.8** “Franchise” means the non-exclusive right granted, by ordinance and subject to this
17 Agreement, to Franchisee to construct, operate, repair, and maintain the
18 Communication Facilities on, over, under, upon, across, and along the Public Ways
19 and Park Properties.

20 **1.9** “Franchise Area” shall mean all the area within the boundaries of the City.

21 **1.10** “Park Properties” means the real properties controlled by the Department of
22 Recreation and Parks pursuant to the provisions of Article VII of the City Charter,
23 which include parks, zoos, squares, athletic and recreational facilities.

24 **1.11** “Person” means any natural person or any association, firm, partnership, joint venture,
25 corporation or other legally recognized entity, whether for-profit or not-for-profit.

26 **1.12** “Public Way” means the surface of, and the space above and below, any public street,
27 highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, way, lane,
28 public way, drive, circle or other public right-of-way, including, but not limited to,
29 public utility easements, dedicated utility strips, or rights-of-way utilized for
30 compatible uses. Public Way shall not include any City buildings, structures or other
31 improvements, regardless of whether they are situated in a public right-of-way.

32 **1.13** “Wireless Service(s)” or “Service(s)” means any services using licensed or
33 unlicensed spectrum, including the use of Wi-Fi, whether at a fixed location or
34 mobile, provided to the public.

35 **2.0 Grant of Franchise**

36 The City grants to Franchisee the nonexclusive right to construct, install, maintain, repair,
37 operate, replace and remove Communications Facilities within the Public Way and on Park
38 Properties for the purpose of providing Wireless Services, which shall be exercised at
39 Franchisee’s sole cost and expense, and which shall be subject to all deeds, easements,
40 dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record

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1 which may affect the Public Way and Park Properties. Nothing in this Agreement shall be
2 deemed to grant, convey, create or vest in Franchisee a real property interest in land,
3 including any fee, leasehold interest, or easement.

4 **2.1 Compliance With Law**

5 The Franchise granted under the terms and conditions of this Agreement shall be
6 consistent with Applicable Laws.

7 **2.2 No Waiver of Other Permits and Authorizations**

8 Nothing in this Agreement shall be construed as a waiver of any Applicable Laws
9 (including without limitation) laws, regulations or rules of the City or of the City's
10 right to require the Franchisee to secure the appropriate permits or authorizations,
11 provided that the fees and charges imposed upon the Franchisee for any such permit
12 or authorization shall be the standard fees or charges generally applicable to all
13 Persons for such permits or authorizations, and any such standard fee or charge shall
14 not be an offset against the compensation or other payment the Franchisee or other
15 person is required to pay the City or any other entity pursuant to this Agreement.

16 **2.3 No Interference**

17 Franchisee, in the performance and exercise of its rights and obligations under this
18 Agreement, shall not interfere in any manner with the existence and operation of any
19 and all public and private rights of way, sanitary sewers, water mains, storm drains,
20 gas mains, poles, aerial and underground electrical and telephone wires, cable
21 television, and other telecommunications, utility, or municipal property, without the
22 express written approval of the owner or owners of the affected property or properties,
23 except as permitted by applicable laws and this Agreement. The City agrees to
24 require the inclusion of the same or a similar prohibition on interference as that stated
25 above in all agreements and franchises the City may enter into after the Effective Date
26 with other similarly situated communications or information providers and carriers.

27 **2.4 Closing of Public Ways and Park Properties**

28 Nothing in this Agreement shall be construed as a waiver or release of the rights of
29 the City in and to the Public Ways and Park Properties. In the event that all or part of
30 the Public Ways or Park Properties within the Franchise Area are (1) closed to
31 pedestrian and/or vehicular traffic and/or utilities and services comparable to
32 Services; or (2) vacated or if ownership of the land under the affected Public Ways or
33 on Park Properties is otherwise transferred to another Person, all rights and privileges
34 granted pursuant to this Agreement with respect to such Public Ways or Park
35 Properties, or any part of such Public Ways or Park Properties so closed, vacated, or
36 transferred, shall cease upon the effective date of such closing, vacation, or transfer,
37 and Franchisee shall remove its Communications Facilities from such Public Ways or
38 Park Properties. If such closing, vacation, or transfer of any Public Way or Park
39 Properties is undertaken for the benefit of any private Person, the City shall, as
40 appropriate, condition its consent to such closing, vacation, or transfer of such Public
41 Way or Park Properties on the agreement of such private Person to: (i) grant the
42 Franchisee the right to continue to occupy and use such Public Way or Park

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1 Properties; or (ii) reimburse the Franchisee for its reasonable costs to relocate the
2 affected part of the Communications Facilities. The City shall provide reasonable
3 notice to Franchisee of any such closing, vacation, or transfer to allow Franchisee to
4 remove its Communications Facilities where the right to continue to occupy and use
5 such Public Way or Park Properties is not reserved for Franchisee.

6 **2.5 Conditions Precedent**

7 The Franchise shall commence upon the Effective Date, provided that the Franchisee
8 shall have met each of the conditions precedent set forth below and otherwise in this
9 Agreement (unless the City agrees to waive any of the conditions precedent), at which
10 time it shall become effective:

- 11 1. Board and Council Action. All necessary approvals of this Agreement by the
12 City shall have been obtained.
- 13 2. Insurance. The Franchisee shall have secured its insurance policies as set
14 forth in Section 22 of this Agreement and delivered the certificate of insurance
15 to the City Solicitor, together with evidence that the premium for each of such
16 policies has been paid, that the policies will be in effect on or before the
17 Effective Date, and that the policies are in accordance with this Agreement.
- 18 3. Clean Hands Certification. The Franchisee shall have paid all amounts due
19 and owing to the City, including, but not limited to, taxes, fees, fines, penalties
20 and interest.

21 **3.0 Relation to Attachment Rights**

22 This Franchise does not confer upon Franchisee any right to place or attach Communications
23 Facilities directly upon or to structures located in the Public Way or on Park Properties that
24 are owned by the City or by a third party, including but not limited to City-owned streetlights
25 and third party electric utility poles. Franchisee shall secure and maintain any license, lease
26 or other right as may be necessary for such desired attachment by way of a separate
27 attachment agreement or other similar instrument executed with such entity; provided,
28 however, that the City acknowledges and agrees that Franchisee shall not be required to
29 obtain any additional franchise rights from the City in connection with the attachment of
30 Communications Facilities to the City's or third parties' structures in the Public Way and on
31 Park Properties, provided, further, however, that the foregoing is not intended to waive any
32 applicable requirements that Licensee obtain any customary City permits.

33 **4.0 Term**

34 This Franchise shall be for a period of ten (10) years from the date this Franchise is approved
35 and adopted by ordinance of the Mayor and City of Baltimore City.

36 This Franchise may be automatically renewed for three (3) additional five (5) year terms
37 provided Franchisee is not in default, is not in arrears with regard to, any amount of Franchise
38 fees, and provided the City has not given notification of its desire to terminate the Franchise
39 at least one hundred twenty (120) days prior to the expiration of the then- current term, and
40 further provided that Franchisee has not given City notice of Franchisee's intention not to

Council Bill 19-0407

1 renew, such notice to be given not less than one hundred twenty (120) days prior to the
2 expiration of the current Franchise term.

3 **5.0 Franchise Fee**

4 For the right to construct, install, maintain, repair, operate, replace and remove
5 Communications Facilities in the Public Way and Park Properties, Franchisee shall pay to the
6 City a Franchise Fee ("Franchise Fee(s)") in the amount of \$_____ per year.
7 Payment shall be made no later than thirty (30) days following the conclusion of each fiscal
8 year.

9 **6.0 Use of Communications Facilities**

10 The authority granted by this Franchise extends to the use of Communications Facilities for
11 purposes of offering Wireless Services. Any non-incident use of such Communications
12 Facilities for a purpose other than a Wireless Service, as described in this Agreement, or the
13 installation of facilities unrelated to a Wireless Service, may require additional Authorization
14 from the City.

15 **7.0 Installation Specifications**

16 **7.1 Conduit**

17 For the deployment of new fiber optic cable in the Public Way and on Park Properties
18 to support the Communications Facilities, Franchisee shall use existing City-owned
19 Conduit. In the event there is no available City-owned Conduit to meet Franchisee's
20 requirements, Franchisee may in coordination with the City cause the construction of
21 additional Conduit in the Public Way or on Park Properties. If the Franchisee elects
22 not to use or cause the construction of City-owned Conduit, the Franchisee agrees to
23 pay an additional fee, as may be required for licenses, leases, or other agreements
24 permitting the attachment of Communications Facilities to City-owned streetlights
25 and other structures. Any construction performed pursuant to this Section shall be
26 consistent with City specification and include at least two additional spare ducts for
27 future City use for fiber installation. Franchisee agrees that title in such property shall
28 transfer to the City upon its substantial completion. Notwithstanding the foregoing, in
29 the event that the Franchisee elects to use a Third Party for the installation of fiber
30 and conduit, the City acknowledges and agrees that if the Third Party possesses a
31 valid franchise agreement with the City, the Third Party's franchise agreement with
32 the City takes precedence over the above requirements for causing construction of
33 new conduit in the Public Way or on Park Properties.

34 **7.2 Installation Plan**

35 The installation of Communications Facilities in the Public Way and on Park
36 Properties shall be made in accordance with plans and specifications approved by the
37 City, and after obtaining all necessary permits for all work in the Public Way and on
38 Park Properties. Franchisee shall submit to the Baltimore City Department of
39 Transportation and, when siting on Park Properties, to the Department of Recreation
40 and Parks, an initial installation plan, and any subsequent work plans concerning
41 installations not addressed in the initial work plan, which shall include fully

Council Bill 19-0407

1 dimensioned site plans and specifications that are drawn to scale and show (1) the
2 specific Communications Facilities; (2) the specific proposed location of such
3 Communications Facilities (including specific identification of each attachment to a
4 City-owned or third-party structure located in the Public Way and on Park Properties);
5 (3) the route of fiber optic cable utilized by the Communications Facilities only if
6 such fiber optic cable will be installed and owned by the Franchisee (as distinct from
7 being installed and owned by one of the fiber optic service providers that has its own
8 franchise with the City, regardless of whether such service provider is an affiliate
9 Franchisee; (4) the proposed type of construction materials for all structures, and any
10 other details that the City may reasonably request which are also applicable to other
11 regulated utilities operating within the Public Way and Park Properties . Such
12 installation plans may be submitted as part of Franchisee’s annual construction report
13 described in Section 14.

14 **7.3 Approval by City**

15 Franchisee shall not attach, install, maintain, or operate any Communications
16 Facilities in or on the Public Way or Park Properties until plans for such work have
17 been approved by the City (which shall not be unreasonably withheld, delayed,
18 conditioned or denied), and all necessary permits have been properly issued.
19 Substantial modification to an installation plan (including, for example, a change of
20 Communications Facilities site) made in the course of construction shall require the
21 written consent of the City, upon which the City shall act promptly, and may require
22 modification of an existing or issuance of a new permit.

23 Approval of plans and specifications and the issuance of any permits by the City shall
24 not release Franchisee from the responsibility for, or the correction of, any errors,
25 omissions or other mistakes that may be contained in the plans, specifications and/or
26 permits. Franchisee shall be responsible for notifying the City and all other relevant
27 parties immediately upon discovery of such omissions and/or errors and shall be
28 responsible for obtaining any amendments for corrected City-approved permits, as
29 may be necessary.

30 The City shall use its best efforts to promptly respond to a request for plan approval
31 or modification within sixty (60) days, and will cooperate with Franchisee to facilitate
32 the prompt processing and issuance of any required permits.

33 Franchisee is encouraged to submit installation plans and requests for approval as part
34 of Franchisee’s annual report described in Section 14.

35 **8.0 Construction**

36 **8.1 Compliance with Standards and Specifications**

37 All construction and maintenance shall be done in a workmanlike manner, and the
38 Franchisee shall meet or exceed all construction and service requirements required by
39 Applicable Law (including, without limitation, this Agreement and the Baltimore City
40 Code). All work involved in the construction, installation, operation, repair, and
41 maintenance of the Communications Facilities shall be performed in a safe, thorough,
42 and reliable manner using materials of good and durable quality. The Franchisee shall

Council Bill 19-0407

1 comply with applicable codes and industry standards, including the specifications set
2 forth in the most recently published edition of the "City of Baltimore Department of
3 Public Works Specifications for Materials, Highways, Bridges, Utilities, and
4 Incidental Structures (2006)," as amended from time to time ("Green Book");
5 administrative orders of the City Department of Transportation, as amended from
6 time to time; the National Electrical Code, as adopted by the City from time to time;
7 the National Electrical Safety Code, as adopted by the City from time to time; and all
8 rules, standards, practices, and procedures of the FCC, as amended from time to time;
9 and the requirements of other utilities whose poles and conduits the Franchisee may
10 use, as amended from time to time.

11 **8.2 Safety Precautions**

12 **8.2.1 Standard of Care**

13 The Franchisee shall employ ordinary care at all times and employ commonly
14 accepted methods and devices for the prevention of failures and accidents that
15 are likely to cause damage, injury, or nuisance to the public. In addition, the
16 Franchisee shall, at its sole cost and expense, undertake all necessary and
17 appropriate efforts to prevent accidents at its work sites. The Franchisee shall
18 comply with the Occupational Safety and Health Act of 1970, (29 U.S.C. §§
19 651-78), as amended, and all other Applicable Law.

20 **8.2.2 Protection of Construction Areas**

21 The Franchisee shall comply with the safety requirements of all permits,
22 licenses, and other forms of approval or authorization. In addition, Franchisee
23 shall maintain reasonable barriers, lights, signs, cones, and other similar
24 warnings and protective devices required for the safety of the public in
25 compliance with this Agreement and Applicable Law. If the Franchisee places
26 any such device in any Public Way or on Park Properties, the device shall be
27 placed and maintained in a way that does not interfere with the usual travel or
28 other existing and anticipated uses of the Public Way or Park Properties.

29 **8.2.3. Emergency Notification**

30 The Franchisee shall provide the City with a twenty-four (24) hour emergency
31 telephone number at which a representative of the Franchisee, not voice mail
32 or a recording, can be contacted in the event of an emergency. The Franchisee
33 shall respond within twenty-four (24) hours to address the reported
34 emergency.

35 **8.3 Identification**

36 The Franchisee shall ensure that all employees including employees of subcontractors,
37 who will be in contact with the public, will have proper identification, which shall
38 include a telephone number that can be used for verification. In addition, the
39 Franchisee shall clearly identify all personnel, vehicles, and other major equipment
40 operating under its authority.

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8.4 Antennas and Towers

Antenna supporting structures and towers shall be designed for the proper loading as specified in Electronic Industries Alliance R.S. 222-C Specifications. In addition, antenna supporting structures and towers shall be designed in accordance with the International Building Code, as amended and shall be painted, lighted, erected, and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other Applicable Law.

8.5 Disruption, Interference and Damage

Franchisee shall use commercially reasonable efforts to coordinate construction, installation, and maintenance of the Communications Facilities to minimize unnecessary disruption, including, as appropriate, coordination with applicable City agencies. Franchisee shall not interfere with the use or development of any property of the City or any other person, and promptly upon completion of construction, erection or installation of Communications Facilities, Franchisee shall, at its own cost and expense, promptly repair any damage to property resulting from such activity to its original condition.

8.6 Materials and Claims

All materials furnished for any work done in the Franchise Area by Franchisee shall be at Franchisee's sole cost and expense. Franchisee agrees to protect the Franchise Area, and City, from all claims of contractors, laborers and material men, except in the case of claims which solely arise from the willful or grossly negligent acts of the City. Franchisee shall promptly pay all contractors and material men. Should any such lien be made or filed, Franchisee shall cause the same to be discharged and released of record by bond or otherwise within thirty (30) days after written request by City.

8.7 One Call Notification System

For the Term of this Agreement, Franchisee shall become a full-time, private sector member of: (A) the Baltimore City Department of Transportation Utility Coordinating Committee; and (B) the one call notification center (otherwise known as "Miss Utility") and shall comply with all of the marking and location verification requirements of the one call notification system.

8.8 No Advertisement

Franchisee shall not place any advertisement or other notice on or about the Communications Facilities which identifies the Franchisee in any way (except for emergency notification postings).

8.9 Inspection by City

The City shall have commercially reasonable access to inspect any work conducted by Franchisee during the construction of Communications Facilities.

1 **9.0 Maintenance and Repair**

2 **9.1 Generally**

3 Franchisee shall, at its sole cost and expense, perform all maintenance and repairs
4 reasonably needed to maintain Communications Facilities in good condition and neat
5 and orderly appearance, and in compliance with all applicable Laws. Franchisee shall
6 keep the Communications Facilities free of debris and anything of a dangerous,
7 noxious or offensive nature or which would create a hazard or undue vibration, heat,
8 noise or interference. If the City gives Franchisee written notice of a failure by
9 Franchisee to maintain the Communications Facilities, Franchisee shall use its best
10 efforts to remedy such failure within forty-eight (48) hours after receipt of such
11 written notice or if such maintenance or repair requires more than forty-eight (48)
12 hours to remedy, Franchisee shall commence remedial operations within said forty-
13 eight (48) hour period.

14 **9.2 Access to Communications Facilities**

15 Franchisee shall be given access to each of the Communications Facilities in the
16 Public Way and on Park Properties for the purpose of routine maintenance, repair, or
17 removal of Communications Facilities . If any such maintenance activities have the
18 potential to result in an interruption of any City services at the Communications
19 Facilities, Franchisee shall provide the City with a minimum of three (3) days prior
20 written notice of such maintenance activities. Such maintenance activities shall, to
21 the extent feasible, be done with minimal impairment, interruption, or interference to
22 City services, which notice for such maintenance activities sent to the offices or
23 persons identified in the permits issued to the Franchisee. In the event of an
24 emergency (e.g., the potential for bodily harm or property damage or material
25 disruption to the operation of the Wireless Services), such 3-day notice requirement
26 shall be waived and Franchisee shall provide the City as much prior notice as
27 reasonably possible under the circumstances. Such maintenance activities shall, to the
28 extent reasonably feasible, be done with minimal impairment, interruption, or
29 interference to City services.

30 **9.3 Repair of Public Way and Park Properties**

31 Franchisee shall be responsible for any damage, ordinary wear and tear excepted, to
32 street pavement, existing facilities, and utilities, curbs, gutters, sidewalks,
33 landscaping, and all other public or private facilities, to the extent caused by
34 Franchisee's construction, installation, maintenance, access, use, repair, replacement,
35 relocation, or removal of Communications Facilities in the Public Way or on Park
36 Properties. Franchisee shall promptly repair such damage and return the Public Way
37 and Park Properties and any affected adjacent property to a safe and satisfactory
38 condition to the City in accordance with the City's applicable street restoration
39 standards or to the property owner if not the City. Franchisee's obligations under this
40 Section 9.3 shall survive for one (1) year past the completion of such reparation and
41 restoration work.

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9.4 Appearance

Franchisee shall obtain design and location approval from the Planning Department for all attachments that are subject to this Agreement, which approvals shall be granted or denied in a non-discriminatory basis. Franchisee shall follow all legally binding City policies and state and local ordinances with respect to aesthetics and appearance for the duration of the Franchise.

9.5 Graffiti

Franchisee shall at all times keep and maintain the Communications Facilities free of all graffiti located thereon. City shall notify Franchisee in writing if graffiti is located on Communications Facilities. Thirty (30) days after notice in writing is received by Franchisee, City shall have the right to abate any graffiti present on Communications Facilities, and Franchisee shall reimburse City all costs directly attributable to graffiti abatement of Communications Facilities -which are incurred by City within thirty (30) days of City's presenting Franchisee with a statement of such costs.

9.6 Performance Bond

City may at any time during the Term require Franchisee to provide a bond in an amount determined by the City to represent the estimated cost of Franchisee's obligations under this Section, which the City may require Franchisee to increase from time to time to reflect the reasonable estimated cost of performing such obligations, to secure performance of Franchisee's obligations under this Section.

10.0 Electricity Use

Franchisee shall be responsible for obtaining and paying for any and all electrical utility service that Franchisee requires for the use or maintenance of Communications Facilities. City will reasonably cooperate with Franchisee in an effort by Franchisee to obtain electrical service from a location serving a City facility.

11.0 New Poles; Pole Replacement

11.1 New Poles

Franchisee shall not erect poles, conduits, or other Communications Facilities in a Public Way and on Park Properties without all necessary permits and authorizations and the express permission of the City, which may include the execution of a separate agreement between the City and Franchisee when new poles are sought to be installed in the Public Way or on Park Properties. Franchisee acknowledges that the installation of new stand-alone or streetlight poles in the Public Way or on Park Properties is not the City's preference and that such applications for installations on Public Ways or Park Properties may be denied. In the event the application for the installation and construction of one or more new poles is approved, the installation and construction of the new pole shall be at Franchisee's sole expense and shall comply with all applicable building permits, applicable City, state and federal specifications and laws ("New Poles") and become the property of the City. Any New Poles constructed by Franchisee shall comport with the character of existing

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1 poles in the area and otherwise comply with the City established aesthetic or design
2 standards applicable to Communications Facilities. City shall consider any request to
3 construct a New Pole in a nondiscriminatory manner and in compliance with
4 Applicable Laws.

5 **11.2 City Use of New Poles**

6 The City may use any New Poles for City purposes, including but not limited to
7 streetlights, other types of lighting and cameras so long as such use does not interfere
8 with Franchisee's use of its Communications Facilities. Franchisee shall not be
9 responsible for maintenance, repair or replacement of City-owned cameras, lights,
10 light bulbs and equipment or equipment owned by third parties authorized by the City
11 on the New Poles. Franchisee shall deed any new pole to the City.

12 **12.0 Removal and Modification of Communications Facilities During Term**

13 **12.1 Franchisee Right to Remove**

14 During the Term, Franchisee shall have the right to remove from the Public Way and
15 Park Properties all or any portion of Communications Facilities from time to time,
16 whether before or after a default under this Franchise Agreement, in Franchisee's sole
17 discretion with prior notice to City. Franchisee, at its own cost and expense, shall
18 promptly dispose of any materials used and/or generated by any and all removal
19 activities, and shall promptly repair any damage to the Public Way and Park
20 Properties caused by Franchisee's removal activities so that the Public Way and Park
21 Properties return to their condition prior to construction and installation of such
22 Communications Facilities by Franchisee, reasonable wear and tear excepted.

23 **12.2 Removal Due to Public Project**

24 Upon receipt of a written demand from the City pursuant to this Section 12.2,
25 Franchisee, at its sole cost and expense shall remove and relocate any part of the
26 Communications Facilities constructed, installed, used and/or maintained by
27 Franchisee whenever the City reasonably determines that the removal is needed for
28 any of the following purposes: (a) if required for the construction, completion, repair,
29 relocation, or maintenance of a City or other governmental agency project including
30 but not limited to, any change of grade, alignment or width of any street, sidewalk or
31 other public facility; installation of curbs, gutters or landscaping; and construction,
32 maintenance or operation of any underground or aboveground facilities such as
33 sewers, water mains, drains, storm drains, pipes, gas mains, poles, power lines,
34 telephone lines, cable television lines, and tracks; (b) because the Communications
35 Facilities are reasonably considered to be interfering with or adversely affecting
36 proper operation of City-owned light poles, traffic signals, or other City facilities; or
37 (c) to protect or preserve the public health or safety. The City shall cooperate with
38 Franchisee in relocating any portion of the Communication Facilities removed
39 pursuant to this Section 12.2 in a manner that allows Franchisee to continue providing
40 Services to its customers, including, but not limited to, expediting approval of any
41 necessary permits required for the relocation of Communications Facilities
42 corresponding to that portion relocated under this Section. No permitting or other
43 fees may be charged by the City for a removal occurring under this Section.

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12.3 Removal Due to Termination or Abandonment

Following the termination of the Franchise for any reason, or in the event Franchisee ceases to operate and abandons the Communications Facilities, Franchisee shall, within one hundred twenty (120) days, at its sole cost and expense, remove all Communications Facilities from the Public Way and Park Properties and restore the area affected by Communications Facilities to its condition at the commencement of this Franchise, reasonable wear and tear excepted, and further excepting landscaping and related irrigation equipment, or other aesthetic improvements made by Franchisee to the Facility or the adjacent property, or as otherwise required by the City. Prior to termination, Franchisee will post a payment bond in an amount up to \$500,000.00 to address the City's cost of removing any Communications Facilities not removed by Franchisee within one hundred twenty (120) days of termination, and as compensation for any damage to the Public Way and Park Properties relating to the Communications Facilities, reasonable wear and tear excepted. Alternatively, the City may allow Franchisee, in the City's sole and absolute discretion, to abandon the Communications Facilities, or any part thereof, in place and convey it to the City.

13.0 Compliance with Laws

13.1 Generally

This Agreement is subject to the terms and conditions of all Applicable Law.

13.2 Permits and Other Authorizations

Franchisee shall apply for, at its sole cost and expense, and obtain all applicable federal, state, county, and City permits and/or Authorizations required under Applicable Law in order to construct, operate, or otherwise implement and use Communications Facilities in the Public Way and on Park Properties, including, but not limited to, a conduit permit and charge, a right of way construction permit, building permits, encroachment permits, and any variance, conditional use permit, ministerial permit, or special exception required under the Baltimore City Zoning Code. Franchisee shall pay, as they become due and payable, all fees, charges, taxes and expenses, including conduit charges, associated with such permits and/or other Authorizations. If Franchisee is unable to obtain any necessary permits or Authorizations as required in this Section, Franchisee shall have the right, without obligation, to terminate this Franchise immediately.

14.0 Required Reports

14.1 Annual Construction Report

Not later than the sixtieth (60th) day after the close of each calendar year in which any work was performed in the Public Way or on Park Properties by Franchisee, the Franchisee shall provide the Baltimore City Department of Transportation and, in regard to installations on Park Properties, the Department of Recreation and Parks with the following:

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- 1 A. An updated “as-built” map clearly indicating each Communications Facility,
2 control box, and associated network route installed by Franchisee or its
3 contractors in the Public Way or on Park Properties. Specific identification of
4 attachments to City-owned structures or structures owned by a third party
5 located in the Public Way or on Park Properties. Specifying owner of
6 underlying facility (i.e., city, Baltimore Gas and Electric Company); and

- 7 B. A cumulative written list of the permits that the Franchisee has received from
8 the city through the last day of the preceding calendar year. The report shall
9 list the type of permit, the location(s) of the work being performed under the
10 permit, the date the work started or is projected to start, and the date the work
11 stopped or is projected to stop. The Franchisee shall omit a permit from this
12 list after such permit has expired and has not been renewed for three (3)
13 consecutive months.

14 Franchisee shall ensure that all drawings, maps, illustrations, or depictions required under
15 this Section are drawn to scale, show all existing utilities, and comply with Green Book
16 standards.

17 Additionally, within sixty (60) days after completion of the installation of any
18 Communications Facility in the Public Way or on Park Properties, Franchisee shall
19 provide the Baltimore Department of Transportation and, in regard to installations on
20 Park Properties, the Department of Recreation and Parks an “as built” survey of the
21 Communications Facility.

22 **15.0 Default and Remedies**

23 Each of the following events shall constitute a default of this Franchise (“Default”):

- 24 (a) If either Party fails to perform or comply with any of the material conditions or
25 covenants of this Franchise Agreement and such failure continues for a period of
26 thirty (30) calendar days after written notice thereof, unless the performance
27 cannot be reasonably completed within the thirty (30) day period, and the Party
28 has commenced good faith efforts to perform and is diligently proceeding to
29 complete performance to the satisfaction of the other Party;

- 30 (b) If Franchisee fails to pay the Franchise Fee or other sums herein specified within
31 thirty (30) calendar days after receipt of written notice of said default; or

- 32 (c) If Franchisee is adjudicated as bankrupt or becomes insolvent.

33 **15.1 Default by Franchisee**

34 In the event of default by Franchisee, the City shall have the right, while any default
35 continues, beyond any applicable cure period, by giving thirty (30) calendar days
36 written notice to Franchisee, to terminate this Franchise Agreement and promptly
37 remove or require Franchisee to promptly remove Communications Facilities from
38 the Public Way and Park Properties, at Franchisee’s sole cost and expense, without
39 prejudice to any other remedy which the City might be entitled to pursue, including
40 but not limited to City’s rights under Section 17 to eliminate any interference caused

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1 by Communications Facilities . No portion of the Franchise Fee shall be refunded in
2 the event of a termination on default by Franchisee.

3 **15.1.1 Self-Help by City**

4 In the event of any default of this Franchise by Franchisee and upon the
5 expiration of any applicable cure period set forth in this Franchise Agreement,
6 the City may at any time, after notice, cure the default for the account of and at
7 the expense of the Franchisee. If City is compelled to pay or elects to pay any
8 sum of money or to do any act which will require the payment of any sum of
9 money or is compelled to incur any expense, including reasonable attorneys'
10 fees in instituting, prosecuting or defending any action to enforce the City's
11 rights under this Franchise, the sums so paid by City, with all interest, costs
12 and damages, shall be deemed to be an additional Franchise Fee ("Additional
13 Franchise Fee") and shall be due from the Franchisee to City on the first day
14 of the month following the incurring of the respective expenses. Upon request
15 by Franchisee, City shall provide the necessary information for Franchisee to
16 verify all reasonable cost-based charges incurred.

17 **15.2 Default by City**

18 In the event of default by the City, Franchisee shall have the right to pursue any
19 remedies available to it against the City under applicable law or at equity, including,
20 but not limited to, the right to terminate this Agreement after thirty (30) days written
21 notice and an opportunity to cure the default.

22 **16.0 City Termination Right**

23 In addition to the remedies set forth in this Section 16, the City shall have the right to
24 terminate this Agreement (i) if the City is mandated by law, a court order or decision, or
25 the federal or state government to take certain actions that will cause or require the
26 removal of the Communications Facilities from the Public Way and Park Properties; or
27 (ii) if Franchisee's licenses to operate the Communications Facilities and/or provide
28 Wireless Service are terminated, revoked, expired, or otherwise abandoned.

29 **17.0 Radiofrequency Interference**

30 Radiofrequency Interference. Franchisee shall install and operate Communications
31 Facilities of a type and frequency that will not cause radiofrequency interference to any
32 FCC-licensed devices or with respect to the City's existing operations. In the event of an
33 emergency relating to interference, upon notification of such emergency by City,
34 Franchisee shall disconnect its operations and Communications Facilities from a remote
35 location. If Franchisee does not promptly disconnect its operations and Communications
36 Facilities after being notified by the City due to an emergency, City shall be permitted to
37 disconnect Franchisee's operations and Communications Facilities immediately, whether
38 such Communications Facilities are located on a City-owned facility or a third-party
39 facility within the Public Ways or Park Properties. City may perform, or cause to be
40 performed, upon notice to Franchisee, a technical evaluation to determine the cause of
41 interference. If, after considering the results of the inspection and tests or any technical
42 evaluation performed by City, City determines that Franchisee is directly causing

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1 interference to City's operations, City shall promptly notify Franchisee and Franchisee
2 shall immediately cease interfering with City's operations. If Franchisee fails to cease its
3 interference with City's operations within twelve (12) hours of such notice, City shall
4 have the right to take any steps it deems necessary, in its reasonable judgment and
5 discretion, to cause the interference to cease. Franchisee shall be responsible for all
6 reasonable and actual payments and/or expenses relating to the City's actions to correct
7 any interference problems caused by Franchisee.

8 For a period of thirty (30) calendar days after City determines that Franchisee's
9 operations have caused interference, Franchisee may request, and, if its request is
10 approved by the City, may perform intermittent testing of potential cures during specified
11 hours. City's approval of a request to remain and conduct intermittent testing during
12 specified hours shall not be unreasonably withheld, delayed or conditioned.

13 City's sole liability to Franchisee for action taken pursuant to this Section 17 shall consist
14 of the value of any damage or repairs made necessary to affected Communications
15 Facilities by willful or grossly negligent acts of the City. In no event shall the City be
16 liable for loss in value of Franchisee's Communications Facilities, or any loss of revenue
17 by Franchisee resulting from removal.

18 **18.0 MPE Evaluation**

19 Upon installation, Franchisee shall provide the City an up-to-date report on Maximum
20 Permissible Exposure (MPE) regarding radio frequency emissions and maximum
21 exposure for humans for each type of Communications Facility installed on Public Ways
22 and Parks Properties. The Parties agree that the requirement for Franchisee to provide the
23 reports in the previous sentence complies with all Applicable Law. In the event of any
24 violation of applicable laws related to radio frequency emissions, Franchisee shall take
25 immediate corrective actions and, if notice of the violation has been provided by the City,
26 provide the City with an updated MPE study from a licensed engineer confirming
27 compliance and corrective actions with respect to the frequency emissions associated with
28 its Communications Facilities. Within thirty (30) days after it receives an MPE report
29 from the Franchisee, the City shall make the report available for public review on the City
30 website.

31 **19.0 Interest**

32 If Franchisee fails to make any payment under this Agreement when due, such amounts
33 shall accrue interest from the date such payment is due until paid, including accrued
34 interest, at an annual rate of ten percent (10%) or, if lower, the highest percentage allowed
35 by law.

36 **20.0 Taxes**

37 Franchisee agrees that it will be solely responsible for the payment of any and all
38 applicable taxes, fees and assessments levied on its ownership, use and maintenance of
39 the Communications Facilities.

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1 **21.0 Liability and Indemnity**

2 **21.1 Indemnification**

3 Franchisee agrees to indemnify, defend and hold harmless City, its elected/appointed
4 officials, departments, employees, agents and representatives from any and all claims,
5 demands, suits and actions including attorneys' fees and court costs, connected
6 therewith, brought against the City, its elected/appointed officials, departments,
7 employees, agents and representatives and arising as a result of any direct willful, or
8 negligent act or omission of Franchisee, its agents, officers or employees EXCEPT for
9 any and all claims, demands, suits and actions, including attorneys' fees and court
10 costs connected therewith, brought against City or City's elected/appointed officials,
11 departments, employees, agents and representatives, arising as a result of the sole,
12 willful, or grossly negligent act or omission of City, its elected/appointed officials,
13 departments, employees, agents and representatives. This indemnification obligation
14 shall survive the termination of this Agreement with respect to claims, demands, suits
15 and actions that arose or accrued during the term of this Agreement.

16 **21.2 Waiver of Claims**

17 Franchisee waives any and all claims, demands, causes of action and rights it may
18 assert against the City on account of any loss, damage or injury to any
19 Communications Facilities or any loss or degradation of the Services as a result of an
20 event or occurrence which is beyond the reasonable control of the City.

21 **21.3 Limitation of the City's Liability**

22 Except as provided for in this Section, the City shall be liable only for the cost of
23 repair to damaged Communications Facilities arising from the gross negligence or
24 willful misconduct of the City, its council or board members, officers, elected
25 trustees, employees, agents, or contractors.

26 **22.0 Insurance**

27 The Franchisee shall procure and maintain during the term of this Franchise the following
28 required insurance coverages:

29 **(a) Workers' Compensation and Employers' Liability Insurance.**

30 Statutory workers' compensation benefits with a limit of liability no less than that
31 required by Maryland law at the time of the application of this provision for each
32 accident. Employers' liability insurance with a limit of \$1,000,000 each
33 accident/disease/policy limit. To the extent allowed by law, this policy shall
34 include a waiver of subrogation in favor of City. Franchisee shall require
35 contractors not covered under Licensee's insurance to obtain and maintain such
36 insurance.

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1 **(b) Commercial General Liability Insurance.**

2 Commercial General Liability Insurance at limits of Two Million Dollars
3 (\$2,000,000.00) per occurrence for claims arising out of bodily injuries or death,
4 and property damages and Three Million (\$3,000,000) general aggregate including
5 contractual liability coverage.

6 **(c) Automobile Liability Insurance.**

7 Commercial Automobile Liability with a combined limit of Two Million Dollars
8 (\$2,000,000.00) each accident for bodily injury and property damages. The
9 insurance shall cover any owned, non-owned, franchised, or hired automobiles
10 used in the performance of this Agreement.

11 **(d) Telecommunications, Media & Technology Errors & Omissions Insurance.**

12 Telecommunications, Media & Technology Errors & Omissions including Cyber
13 Liability Insurance with a limit of Two Million Dollars (\$2,000,000.00) each
14 claim and aggregate.

15 **(e) Umbrella/Excess Liability Insurance.**

16 Coverage is to be in excess of the sum of employers' liability, commercial general
17 liability and automobile liability insurance required above. Limits of liability
18 \$4,000,000 each occurrence, \$4,000,000 aggregate. Licensee may use any
19 combination of primary and excess insurance to meet the total limits required.

20 **(f) Coverage.**

21 The City, Mayor and City Council of Baltimore (in their official capacities) their
22 elected/appointed officials, departments, and employees, shall be covered, by
23 blanket additional insured endorsement, as additional insureds as their interests
24 may appear under this Agreement with respect to liability caused, in whole or in
25 part, by activities performed by Licensee or its employees in connection with this
26 Agreement.

27 Insurance shall apply separately to each insured against whom claim is made
28 and/or lawsuit is brought, except with respect to the limits of the insurer's
29 liability. To the extent of the Franchisee's negligence, the Franchisee's insurance
30 coverage shall be primary insurance as respects to the City, its elected/appointed
31 officials, departments, and employees. Any insurance and/or self-insurance
32 maintained by City, its elected/appointed officials, departments, and employees
33 shall not contribute with the Franchisee's insurance or benefit the Franchisee's in
34 any way to the extent Franchisee is found negligent. Upon receipt of notice from
35 its insurer(s) Franchisee shall provide the City with forty-five (45) days prior
36 written notice of cancellation of any coverage required herein. Insurance is to be
37 placed with insurers with a Best's rating of no less than A:VII, or if not rated with
38 Best's with minimum surpluses the equivalent of Best's surplus size VII and must
39 be eligible to do business in the State of Maryland.

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1 **(g) Certificate of Insurance; Other Requirements.**

2 Prior to the execution of this Agreement and within ten (10) days of each
3 insurance policy expiration date during the term of this Agreement, Franchisee
4 will furnish City with a certificate of insurance ("Certificate"). The Certificate
5 shall reference this Agreement and insurance waivers of subrogation required by
6 this Agreement. City shall be given forty-five (45) calendar days advance notice
7 of cancellation or non-renewal of insurance during the term of this Agreement that
8 is not replaced.

9 **(h) Limits.**

10 The limits of liability set out in this Article 22.0 may be increased or decreased by
11 mutual consent of the parties, which consent will not be unreasonably withheld by
12 either party, in the event of any factors or occurrences, including substantial
13 increases in the level of jury verdicts or judgments or the passage of state, federal,
14 or other governmental compensation plans, or laws that would materially increase
15 or decrease Franchisee's exposure to risk.

16 **(i) Failure to Maintain Insurance.**

17 Failure of Franchisee to maintain the proper insurance required under this Article
18 22.0 shall result in termination of this Franchise if the breach is not cured upon
19 the expiration of any applicable cure period set forth in this Franchise.

20 **23.0 Assignment and Subletting**

21 Franchisee may not assign, or otherwise transfer all or any part of its privilege in this
22 Franchise without the prior written consent of City; provided, however, that Franchisee
23 may assign its privilege to its parent company, any subsidiary or affiliate of it or its parent
24 company or to any successor-in-interest or entity acquiring fifty-one percent (51%) or
25 more of its stock or assets, in the market defined by the FCC in which the City of
26 Baltimore is located, subject to the assignee assuming all of Franchisee's obligations
27 hereunder, and subject to any financing entity's interest, if any, in this Franchise.
28 Notwithstanding anything to the contrary contained in this Franchise, Franchisee may
29 assign, mortgage, pledge, hypothecate or otherwise transfer without consent its interest in
30 Communications Facilities or in this Franchise to any financing entity, or agent on behalf
31 of any financing entity to whom Franchisee (1) has obligations for borrowed money or in
32 respect of guaranties thereof, (2) has obligations evidenced by bonds, debentures, notes or
33 similar instruments, or (3) has obligations under or with respect to letters of credit,
34 bankers acceptances and similar facilities or in respect of guaranties thereof. Any such
35 assignment to a financing entity or its agent shall be subordinate to the terms of this
36 Franchise Agreement. The City acknowledges that: (i) the State of Maryland has opted
37 into the First Responder Network Authority which is the first nationwide broadband
38 network dedicated for use by police, firefighters, emergency medical services and other
39 first responders ("FirstNet"), and (ii) Franchisee has been selected by FirstNet as its sole
40 private partner, to build, operate, maintain and manage the nationwide broadband
41 network on behalf of FirstNet. As such, Franchisee may use the Franchise Area for
42 FirstNet purposes, without the same being considered an assignment or subletting

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1 hereunder, provided that such use is otherwise in compliance with the requirements of
2 this Agreement.

3 **24.0 Environmental**

- 4 (a) Except in strict accordance with all applicable laws and regulations, Franchisee shall
5 notat any time within the Public Way or on Park Properties store, treat, transport or
6 dispose of any hazardous substance, hazardous waste or oil as defined by the Resource
7 Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. §§ 6901 et seq.,
8 Comprehensive Environmental Response, Compensation, and Liability Act of 1980
9 ("CERCLA"), 42 U.S.C. §§ 9601 et seq., Maryland Environment Article Code Ann.,
10 Title 4, Sec. 4-401, et seq. and Maryland Environment Article Code Ann., Title 7, subtitle
11 2.
- 12 (b) "Environmental Conditions" as used in this Agreement shall mean discovered or
13 undiscovered contaminants, pollutants, or toxic substances affecting health or the
14 environment, in any way arising from or related to the subject matter of this Franchise
15 which could, or do, result in any damage, loss, cost or expense to, or liability, by City to
16 any person including a government agency or other entity.
- 17 (c) In addition to all other indemnifications contained herein, Franchisee specifically agrees
18 to indemnify, reimburse, defend and hold harmless City, its elected/appointed officials,
19 employees, agents and representatives ("Indemnified Parties") from and against any and
20 all losses, costs, liabilities, including but not limited to liabilities, demands, obligations,
21 claims, suits, actions and expenses, attorneys' fees, consultant fees and court costs
22 connected therewith, brought against the Indemnified Parties, or incurred by any of them,
23 by reason of injury to persons, including death, and damage to property arising out of
24 Environmental Conditions caused by Franchisee or resulting from any direct, or indirect,
25 willful or negligent acts or omissions of Franchisee, its contractors, agents, or employees
26 in connection Environmental Conditions caused by Franchisee, unless such claims are
27 caused by the negligent act of City. Notwithstanding anything to the contrary herein,
28 Franchisee agrees to defend, indemnify and hold harmless the Indemnified Parties from
29 and against all administrative and judicial actions and rulings, claims, causes of action,
30 demands and liability including, but not limited to, damages, costs, expenses,
31 assessments, penalties, fines, losses judgments and reasonable attorney fees that the
32 Indemnified Parties may suffer or incur due to the existence of any hazardous substances
33 on the Franchise Area, in the Public Way or on Parks Property or migration of any
34 hazardous substance to other properties or the release of any hazardous substance into the
35 environment, that arise from the Franchisee's and or its representatives activities on the
36 Franchise Area, the Public Way or Parks Property. The indemnifications in this section
37 specifically include, without limitation, costs incurred in connection with any
38 investigation of site conditions or any cleanup, remedial, removal or restoration work
39 required by any governmental authority. This provision shall be in addition to, and
40 separate from, any remedies available to City for breach by the Franchisee of its
41 obligations under any of the provisions of this Agreement and shall in no way limit any
42 recourse that the City may have at the time against Franchisee pursuant to any federal,
43 state or local laws. The provisions of this section shall survive the termination or
44 expiration of this Agreement.

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1 (d) City represents to the best of its knowledge, without having made inquiry that there is no
2 hazardous substance within the Public Way or on Park Properties. Hazardous substance
3 is any substance identified as hazardous, toxic or dangerous in any applicable federal,
4 state or local law or regulation. City shall not introduce or use any hazardous substance
5 in the Public Way or Park Properties in violation of any applicable law. City shall be
6 responsible for, and shall promptly conduct any investigation into and remediation of, as
7 required by any applicable environmental laws, all spills or other releases of any
8 hazardous substance to the extent caused by the City, its employees, agents and
9 contractors that have occurred or which may occur in the Public Way or on Park
10 Properties. City agrees to defend, indemnify and hold harmless the Franchisee from and
11 against any and all administrative and judicial actions and rulings, claims, causes of
12 action, demands and liability (collectively, "Claims") including, but not limited to,
13 damages, costs, expenses, assessments, penalties, fines, losses, judgments and reasonable
14 attorney fees that the Franchisee may suffer or incur due to the existence of any hazardous
15 substances in the Public Way or Park Properties or the migration of any hazardous
16 substance to other properties or the release of any hazardous substance into the
17 environment (collectively, "Actions"), that arise from the City's activities on the
18 Franchise Area to the extent allowable under subsection 5-303 (a), (b) and (c) of the
19 Courts and Proceedings Article of the Maryland Annotated Code. City agrees to defend,
20 indemnify and hold Franchisee harmless from Claims resulting from Actions in the
21 Franchise Area caused by City prior to and during the initial term and any and all renewal
22 terms. The indemnifications in this section specifically include, without limitation, costs
23 incurred in connection with any investigation of site conditions or any cleanup, remedial,
24 removal or restoration work required by any governmental authority. In the event that
25 Franchisee discovers any hazardous substances on, under, or adjacent to the Franchise
26 Area, which presence was not caused by Franchisee, its employees, agent or contractors,
27 Licensee shall immediately notify the City and the City shall have the right to cure the
28 condition within five (5) days from the date of notice. If the City elects not to cure or
29 fails to do so within five (5) days of the notice from Licensee, then Franchisee shall have
30 the right to terminate the Agreement for the impacted portion of the Franchise Area,
31 Public Way or Park Properties, at no cost or liability. This Section shall survive the
32 termination or expiration of this Agreement.

33 **25.0 Notices**

34 All notices, requests, demands, and other communications hereunder shall be in writing and
35 shall be deemed given if personally delivered or by certified mail, return receipt requested to
36 the following addresses:

37 City: The Mayor and City Council of Baltimore
38 Department of Transportation
39 Attn: Director
40 417 E. Fayette Street, Fifth Floor
41 Baltimore, Maryland 21202

42 *with a copy which shall not constitute legal notice to:*

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1 Baltimore City Department of Real Estate
2 Room 304 City Hall
3 100 North Holliday Street
4 Baltimore, Maryland 21202
5 410-396-4768
6 410-528-1437 (fax)

7 All Franchise Fee payments to the City should be mailed to the following address and to the
8 attention of:

9 Director of Finance
10 Bureau of Treasury Management
11 Collections Division
12 200 N. Holliday Street
13 Baltimore, Maryland 21202

14 **Franchisee:**

15 New Cingular Wireless PCS, LLC
16 Attn: Network Real Estate Administration
17 1025 Lenox Park Blvd NE, 3rd Floor
18 Atlanta, GA 30319
19 Re: Baltimore City Franchise Agreement (Baltimore, MD)
20 Fixed Asset #: 13807246

21 **With a required copy to:**

22 New Cingular Wireless PSC, LLC
23 Attn: Legal Department, Network Operations
24 Re: Baltimore City Franchise Agreement (Baltimore, MD)
25 Fixed Asset #: 13807246
26 208 S. Akard Street
27 Dallas, TX 75202-4206

28 **26.0 Franchisee Point of Contact Relating to Communications Facilities**

29 Appropriate Franchisee staff shall be available to the employees of any City department
30 having jurisdiction over Franchisee's activities twenty-four (24) hours a day, seven (7) days a
31 week, regarding problems or complaints resulting from the attachment, installation,
32 operation, maintenance, or removal of Communications Facilities . The City may contact the
33 network control center operator at 1-800-638-2822 regarding such problems or complaints.

34 **27.0 Miscellaneous**

35 **27.1 Incorporation of Prior Agreements**

36 This Franchise contains all of the agreements of the parties hereto with respect to any
37 matter covered or mentioned in this Franchise, and no other agreement or
38 understanding pertaining to any such matter shall be effective for any purpose. No

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1 provision of this Franchise may be amended or added to except by an agreement in
2 writing signed by the parties hereto or respective successors in interest.

3 **27.2 Non-Waiver**

4 Failure of either party to insist on strict performance of any of the conditions,
5 covenants, terms or provisions of this Franchise or to exercise any of its rights
6 hereunder shall not waive such rights, but each party shall have the rights to enforce
7 such rights at any time and take such action as might be lawful or authorized
8 hereunder, either in law or equity. The receipt of any sum paid by Franchisee to City
9 after a breach of this Franchise shall not be deemed a waiver of such breach unless
10 expressly set forth in writing.

11 **27.3 Taxes**

12 (a) Franchisee, upon presentation of sufficient and proper documentation will pay,
13 within thirty (30) days, an amount equal to its proportional share of any taxes
14 imposed upon any entity which is directly attributable to the improvements
15 constructed by Franchisee, provided that Franchisee will be entitled to appeal any
16 such increase payable by it.

17 (b) Franchisee shall indemnify City from any and all liability, obligation, damages,
18 penalties, claims, liens, costs, charges, losses and expenses (including without
19 limitation, reasonable fees and expenses of attorneys, expert witnesses and
20 consultants), which may be imposed upon, incurred by or be asserted against City
21 in relation to the taxes owed or assessed on the Franchise Area and directly
22 attributable to the improvements constructed by Franchisee.

23 **27.4 Force Majeure**

24 If either City or Franchisee is prevented or delayed from fulfilling any term or
25 provision of this Agreement by reason of fire, flood, earthquake, or like acts of nature,
26 wars, revolution, civil commotion, explosion, acts of terrorism, embargo, acts of the
27 government in its sovereign capacity, material changes of laws or regulations, labor
28 difficulties, including without limitation, strikes, slowdowns, picketing or boycotts,
29 unavailability of equipment of vendor, or any other such cause not attributable to the
30 negligence or fault of the party delayed in performing the acts required by the
31 Agreement, then performance of such acts shall be excused for the period of the
32 unavoidable delay, and the affected party shall endeavor to remove or overcome such
33 inability as soon as reasonably possible.

34 **27.5 Governing Law; Jurisdiction**

35 This Franchise Agreement shall be construed in accordance with the laws of the State
36 of Maryland, without reference to its conflicts of law principles. If suit is brought by
37 a party to this Agreement, the parties agree that trial of such action shall be vested
38 exclusively in the state courts of Maryland, or in the United States District Court for
39 the District of Maryland.

1 **27.6 Change in Law and Severability**

2 In the event that any legislative, regulatory, judicial, or other action becomes effective
3 and settled law and affects the rights or obligations of the parties, or establishes rates,
4 terms or conditions for the construction, operation, maintenance, repair or
5 replacement of Communications Facilities within the Franchise Area, that differ, in
6 any material respect from the terms of this Agreement (“New Law”), then either party
7 may, upon thirty (30) days written notice, require that the terms of this Agreement be
8 renegotiated to conform to the New Law. Such conformed terms shall then apply on a
9 going forward basis for all existing and new Communications Facilities, unless the
10 New Law requires retroactive application, in which case such new terms shall apply
11 retroactively, as required by the New Law. In the event that the parties are unable to
12 agree upon new terms within 90 days after Notice, then the rates contained in the New
13 Law shall apply from the 90th day forward until the negotiations are completed, or a
14 party obtains a ruling regarding the appropriate conforming of terms from a
15 commission or court of competent jurisdiction.

16 **27.7 Representations**

17 Each of the parties to this Agreement represents and warrants that it has the full right,
18 power, legal capacity, and authority to enter into and perform the parties’ respective
19 obligations hereunder and that such obligations shall be binding upon such party.

20 **27.8 Amendment**

21 This Agreement may not be amended except pursuant to a written instrument
22 evidencing agreement by both parties.

23 **27.9 MBE/WBE Compliance**

24 (a) Franchisee to Comply. Franchisee agrees to comply with the City's statutes,
25 ordinances and regulations regarding participation by minority business
26 enterprises (“MBEs”) and women’s business enterprises (“WBEs”) as if it were a
27 contractor receiving funding from the City, provided that enforcement of this
28 Section shall be exclusively by way of liquidated damages and in no event shall
29 the City seek to suspend or rescind the Franchise for any violation of this Section.
30 The Franchisee shall use reasonable, good faith efforts to meet a goal for
31 participation by MBEs and WBEs for purchases and construction contracts as
32 established by the City's Minority and Women's Business Opportunity Office
33 (“MWBOO”). MWBOO shall administer the provisions of this Section on behalf
34 of the City, and Franchisee shall comply with MWBOO rules and requirements.

35 (b) Documentation to the City on MBE/WBE Participation. Six (6) months after the
36 Effective Date and every six (6) months thereafter while upgrade construction
37 under this Agreement is in progress, and annually thereafter, the Franchisee shall
38 submit to the City written documentation, including executed contracts, service
39 agreements and utilization commitment forms, that shall identify the particular
40 MBEs/WBEs that are (i) contracting directly with the Franchisee; or (ii)
41 subcontracting with prime contractors who contract directly with Franchisee. The
42 documentation submitted to the City shall specify the dollar value of the

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1 participation, type of work to be performed, and such other information as the
2 City may reasonably request.

3 (c) Waiver of MBE/WBE Goals. In the event that, after the use of reasonable, good
4 faith efforts to meet the goals for MBE and WBE participation established
5 pursuant to this Section, the Franchisee is able to demonstrate to the City's
6 satisfaction that sufficient qualified and willing MBEs and WBEs are unavailable,
7 the Franchisee may request a waiver or reduction of the MBE/WBE goals.

8 (d) Report on MBE/WBE Compliance. Six (6) months after the Effective Date and
9 every six (6) months thereafter, the Franchisee shall submit to MWBOO a report
10 on its compliance with this Section. Franchisee may satisfy this requirement by
11 copying MWBOO on any such report that it files with another City agency on a
12 semiannual or more frequent basis.

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1 **IN WITNESS WHEREOF**, the parties hereto have executed this Agreement in duplicate on the
2 day and year written above.

3 **ATTEST:** **MAYOR AND CITY COUNCIL OF BALTIMORE**

4 _____ **BY:** _____

5 **CUSTODIAN OF THE CITY SEAL** **STEVE SHARKEY**
6 **DIRECTOR**

7 **DEPARTMENT OF TRANSPORTATION**

8 **BY:** _____
9 **REGINALD MOORE, DIRECTOR**

10 **DEPARTMENT OF RECREATION AND**
11 **PARKS**
12

13 **WITNESS/ATTEST:** **NEW CINGULAR WIRELESS PCS, LLC**

14 **BY: AT&T MOBILITY CORPORATION**
15 **ITS: MANAGER**

16 _____ **BY:** _____ **(SEAL)**

17 **NAME:**

18 **TITLE:**

19 **APPROVED AS TO FORM AND LEGAL**
20 **SUFFICIENCY**

APPROVED BY THE BOARD OF
ESTIMATES

21 _____

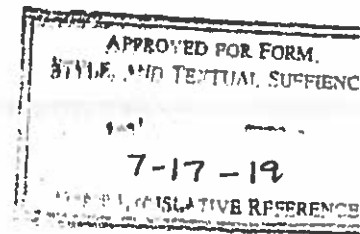
22 **CHIEF SOLICITOR**

CLERK

DATE



INTRODUCTORY*
CITY OF BALTIMORE
COUNCIL BILL _____



Introduced by: The Council President
At the request of: The Administration (Department of Transportation)

A BILL ENTITLED

AN ORDINANCE concerning

Franchise – New Cingular Wireless PCS

FOR the purpose of granting a franchise to New Cingular Wireless PCS, LLC, to construct, install, maintain, repair, operate, relocate, replace, and remove certain Communications Facilities in and across certain streets and Public Ways and Park Properties, subject to certain terms and conditions; and providing for a special effective date.

By authority of
Article VIII – Franchises
Baltimore City Charter
(1996 Edition)

SECTION 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE, That a franchise or right is granted to New Cingular Wireless PCS, LLC (the “Grantee”), to construct, install, maintain, repair, operate, relocate, replace and remove certain facilities relating to the provision of Wireless Services in and across certain streets and Public Ways and Park Properties, subject to the terms and conditions of this Ordinance and the Franchise Agreement between the Mayor and City Council of Baltimore and the Grantee, which is attached and made a part of this Ordinance.

SECTION 2. AND BE IT FURTHER ORDAINED, That for the franchise or right granted by this Ordinance (the “Franchise”) to become effective, the Grantee must notify the Board of Estimates, within 30 days of the effective date of this Ordinance, that the Grantee accepts the Franchise. The Grantee’s failure to so notify the Board of Estimates constitutes a refusal to accept the Franchise, and, in that event, this Ordinance and the Franchise granted by it will be abrogated and of no further effect.

SECTION 3. AND BE IT FURTHER ORDAINED, That also for the Franchise to become effective, the Franchise must be executed and enjoyed by the Grantee within 6 months after the effective date of this Ordinance.

SECTION 4. AND BE IT FURTHER ORDAINED, That the Mayor and City Council of Baltimore expressly reserves the right at all times to exercise, in the interest of the public, full municipal superintendence, regulation, and control over and in respect to all matters connected with the franchise and not inconsistent with the terms of this Ordinance.

* WARNING: THIS IS AN UNOFFICIAL, INTRODUCTORY COPY OF THE BILL.
THE OFFICIAL COPY CONSIDERED BY THE CITY COUNCIL IS THE FIRST READER COPY.

SECTION 5. AND BE IT FURTHER ORDAINED, That this Ordinance takes effect when it is enacted.

BALTIMORE CITY SMALL CELL FRANCHISE AGREEMENT

This Franchise Agreement, (the "Agreement") is made this ___ day of _____, 2019, by and between the MAYOR AND CITY COUNCIL OF BALTIMORE, a Municipal Corporation of the State of Maryland ("City") and New Cingular Wireless PCS, LLC ("Franchisee").

RECITALS

1. The City, pursuant to Article VIII of the City Charter, is authorized to grant and renew non-exclusive franchises for the installation, operation, and maintenance of communications infrastructure on, beneath, above, and within the Public Ways and Park Properties of the City.
2. Franchisee desires to obtain from City as permitted by law, and City as a municipal corporation desires to grant to Franchisee, a franchise for the right to construct, install, maintain, repair, operate, relocate, replace and remove Communications Facilities relating to the provision of Wireless Services in the Public Way and on Park Properties within the City, in a manner consistent with this Agreement.

NOW, THEREFORE, AND IN CONSIDERATION of mutual covenants and conditions set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1.0 Definitions

- 1.1 "Agreement" or "Franchise Agreement" means this Agreement, together with Appendices and Exhibits attached to this Agreement, if any, and any amendments or modifications.
- 1.2 "Applicable Law" or "Law" means all federal, state, and local laws, statutes, codes, ordinances, resolutions, orders, rules and regulations, including but not limited to all Federal Communications Commission ("FCC") resolutions, orders, rules, and regulations, this Agreement, the Baltimore City Charter, the aesthetic or design standards applicable to Communications Facilities established by the City, and the administrative and judicial decisions interpreting these sources of law.
- 1.3 "Authorizations" means the permissions Franchisee must have to deploy Communications Facilities and/or provide Wireless Services, which may include franchises; licenses; permits; zoning approvals; variances; exemptions; grants of authority to use private rights of way and/or easements or facilities; agreements to make attachments to poles, ducts, conduits, towers, buildings, rooftops, manholes, and the like; and any other approval of a governmental authority or third persons with respect to (i) the construction, installation, repair, maintenance, operation or use of tangible or intangible property, as the case may be, or (ii) any requirement by a governmental authority for the engagement in a business or enterprise.
- 1.4 "City" means the Mayor and City Council of Baltimore, Maryland, or, as appropriate in the case of specific provisions of this Agreement, any board, bureau, authority, agency, commission or department of, or any other entity of or acting on behalf of, the Baltimore city government or any officer, official, employees, or agent of the Baltimore City government, any designee of the foregoing, or any successor thereto.

- 1.5 “Conduit” means enclosed underground raceways capable of protecting fiber optic and other communications cables, including associated individual ducts, inner ducts, manholes, hand holes, vaults, pull-boxes, and trenches.
- 1.6 “Effective Date” means the date upon which this Agreement is adopted and approved by the Mayor and City Council of the City.
- 1.7 “Communications Facilities” means any and all equipment and assets located on Public Ways and Park Properties owned by or under the control of Franchisee that are reasonably necessary and appropriate for the offering and provision of Wireless Services, including, but not limited to: optical repeaters, converters, power amplifiers, radios, multiplexers, remote radioheads, antennas, aboveground and underground fiber optic and coaxial cable, conduit, wires, meters, pedestals, power switches, electrical generation and transmission facilities, cabinets, enclosures, control boxes, and accompanying support structures, whether referred to singly or collectively. The term does not include facilities attached to what are commonly known as macro towers.
- 1.8 “Franchise” means the non-exclusive right granted, by ordinance and subject to this Agreement, to Franchisee to construct, operate, repair, and maintain the Communication Facilities on, over, under, upon, across, and along the Public Ways and Park Properties.
- 1.9 “Franchise Area” shall mean all the area within the boundaries of the City.
- 1.10 “Park Properties” means the real properties controlled by the Department of Recreation and Parks pursuant to the provisions of Article VII of the City Charter, which include parks, zoos, squares, athletic and recreational facilities.
- 1.11 “Person” means any natural person or any association, firm, partnership, joint venture, corporation or other legally recognized entity, whether for-profit or not-for-profit.
- 1.12 “Public Way” 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 or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way utilized for compatible uses. Public Way shall not include any City buildings, structures or other improvements, regardless of whether they are situated in a public right-of-way.
- 1.13 “Wireless Service(s)” or “Service(s)” means any services using licensed or unlicensed spectrum, including the use of Wi-Fi, whether at a fixed location or mobile, provided to the public.

2.0 Grant of Franchise

The City grants to Franchisee the nonexclusive right to construct, install, maintain, repair, operate, replace and remove Communications Facilities within the Public Way and on Park Properties for the purpose of providing Wireless Services, which shall be exercised at Franchisee’s sole cost and expense, and which shall be subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record which may affect the Public Way and Park Properties. Nothing in this Agreement shall be deemed to grant, convey, create or vest in Franchisee a real property interest in land, including any fee, leasehold interest, or easement.

2.1 Compliance With Law

The Franchise granted under the terms and conditions of this Agreement shall be consistent with Applicable Laws.

2.2 No Waiver of Other Permits and Authorizations

Nothing in this Agreement shall be construed as a waiver of any Applicable Laws (including without limitation) laws, regulations or rules of the City or of the City's right to require the Franchisee to secure the appropriate permits or authorizations, provided that the fees and charges imposed upon the Franchisee for any such permit or authorization shall be the standard fees or charges generally applicable to all Persons for such permits or authorizations, and any such standard fee or charge shall not be an offset against the compensation or other payment the Franchisee or other person is required to pay the City or any other entity pursuant to this Agreement.

2.3 No Interference

Franchisee, in the performance and exercise of its rights and obligations under this Agreement, shall not interfere in any manner with the existence and operation of any and all public and private rights of way, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electrical and telephone wires, cable television, and other telecommunications, utility, or municipal property, without the express written approval of the owner or owners of the affected property or properties, except as permitted by applicable laws and this Agreement. The City agrees to require the inclusion of the same or a similar prohibition on interference as that stated above in all agreements and franchises the City may enter into after the Effective Date with other similarly situated communications or information providers and carriers.

2.4 Closing of Public Ways and Park Properties

Nothing in this Agreement shall be construed as a waiver or release of the rights of the City in and to the Public Ways and Park Properties. In the event that all or part of the Public Ways or Park Properties within the Franchise Area are (1) closed to pedestrian and/or vehicular traffic and/or utilities and services comparable to Services; or (2) vacated or if ownership of the land under the affected Public Ways or on Park Properties is otherwise transferred to another Person, all rights and privileges granted pursuant to this Agreement with respect to such Public Ways or Park Properties, or any part of such Public Ways or Park Properties so closed, vacated, or transferred, shall cease upon the effective date of such closing, vacation, or transfer, and Franchisee shall remove its Communications Facilities from such Public Ways or Park Properties. If such closing, vacation, or transfer of any Public Way or Park Properties is undertaken for the benefit of any private Person, the City shall, as appropriate, condition its consent to such closing, vacation, or transfer of such Public Way or Park Properties on the agreement of such private Person to: (i) grant the Franchisee the right to continue to occupy and use such Public Way or Park Properties; or (ii) reimburse the Franchisee for its reasonable costs to relocate the affected part of the Communications Facilities. The City shall provide reasonable notice to Franchisee of any such closing, vacation, or transfer to allow Franchisee to remove its Communications Facilities where the right to continue to occupy and use such Public Way or Park Properties is not reserved for Franchisee.

2.5 Conditions Precedent

The Franchise shall commence upon the Effective Date, provided that the Franchisee shall have met each of the conditions precedent set forth below and otherwise in this Agreement (unless the City agrees to waive any of the conditions precedent), at which time it shall become effective:

1. **Board and Council Action.** All necessary approvals of this Agreement by the City shall have been obtained.
2. **Insurance.** The Franchisee shall have secured its insurance policies as set forth in Section 22 of this Agreement and delivered the certificate of insurance to the City Solicitor, together with evidence that the premium for each of such policies has been paid, that the policies will be in effect on or before the Effective Date, and that the policies are in accordance with this Agreement.
3. **Clean Hands Certification.** The Franchisee shall have paid all amounts due and owing to the City, including, but not limited to, taxes, fees, fines, penalties and interest.

3.0 Relation to Attachment Rights

This Franchise does not confer upon Franchisee any right to place or attach Communications Facilities directly upon or to structures located in the Public Way or on Park Properties that are owned by the City or by a third party, including but not limited to City-owned streetlights and third party electric utility poles. Franchisee shall secure and maintain any license, lease or other right as may be necessary for such desired attachment by way of a separate attachment agreement or other similar instrument executed with such entity; provided, however, that the City acknowledges and agrees that Franchisee shall not be required to obtain any additional franchise rights from the City in connection with the attachment of Communications Facilities to the City's or third parties' structures in the Public Way and on Park Properties, provided, further, however, that the foregoing is not intended to waive any applicable requirements that Licensee obtain any customary City permits.

4.0 Term

This Franchise shall be for a period of ten (10) years from the date this Franchise is approved and adopted by ordinance of the Mayor and City of Baltimore City.

This Franchise may be automatically renewed for three (3) additional five (5) year terms provided Franchisee is not in default, is not in arrears with regard to, any amount of Franchise fees, and provided the City has not given notification of its desire to terminate the Franchise at least one hundred twenty (120) days prior to the expiration of the then-current term, and further provided that Franchisee has not given City notice of Franchisee's intention not to renew, such notice to be given not less than one hundred twenty (120) days prior to the expiration of the current Franchise term.

5.0 Franchise Fee

For the right to construct, install, maintain, repair, operate, replace and remove Communications Facilities in the Public Way and Park Properties, Franchisee shall pay to the City a Franchise Fee ("Franchise Fee(s)") in the amount of \$ _____ per year.

Payment shall be made no later than thirty (30) days following the conclusion of each fiscal year.

6.0 Use of Communications Facilities

The authority granted by this Franchise extends to the use of Communications Facilities for purposes of offering Wireless Services. Any non-incident use of such Communications Facilities for a purpose other than a Wireless Service, as described in this Agreement, or the installation of facilities unrelated to a Wireless Service, may require additional Authorization from the City.

7.0 Installation Specifications

7.1 Conduit

For the deployment of new fiber optic cable in the Public Way and on Park Properties to support the Communications Facilities, Franchisee shall use existing City-owned Conduit. In the event there is no available City-owned Conduit to meet Franchisee's requirements, Franchisee may in coordination with the City cause the construction of additional Conduit in the Public Way or on Park Properties. If the Franchisee elects not to use or cause the construction of City-owned Conduit, the Franchisee agrees to pay an additional fee, as may be required for licenses, leases, or other agreements permitting the attachment of Communications Facilities to City-owned streetlights and other structures. Any construction performed pursuant to this Section shall be consistent with City specification and include at least two additional spare ducts for future City use for fiber installation. Franchisee agrees that title in such property shall transfer to the City upon its substantial completion. Notwithstanding the foregoing, in the event that the Franchisee elects to use a Third Party for the installation of fiber and conduit, the City acknowledges and agrees that if the Third Party possesses a valid franchise agreement with the City, the Third Party's franchise agreement with the City takes precedence over the above requirements for causing construction of new conduit in the Public Way or on Park Properties.

7.2 Installation Plan

The installation of Communications Facilities in the Public Way and on Park Properties shall be made in accordance with plans and specifications approved by the City, and after obtaining all necessary permits for all work in the Public Way and on Park Properties. Franchisee shall submit to the Baltimore City Department of Transportation and, when siting on Park Properties, to the Department of Recreation and Parks, an initial installation plan, and any subsequent work plans concerning installations not addressed in the initial work plan, which shall include fully dimensioned site plans and specifications that are drawn to scale and show (1) the specific Communications Facilities; (2) the specific proposed location of such Communications Facilities (including specific identification of each attachment to a City-owned or third-party structure located in the Public Way and on Park Properties); (3) the route of fiber optic cable utilized by the Communications Facilities only if such fiber optic cable will be installed and owned by the Franchisee (as distinct from being installed and owned by one of the fiber optic service providers that has its own franchise with the City, regardless of whether such service provider is an affiliate Franchisee); (4) the proposed type of construction materials for all structures, and any other details that the City may reasonably request which are also applicable to other regulated utilities operating within the Public Way and Park Properties. Such

installation plans may be submitted as part of Franchisee's annual construction report described in Section 14.

7.3 Approval by City

Franchisee shall not attach, install, maintain, or operate any Communications Facilities in or on the Public Way or Park Properties until plans for such work have been approved by the City (which shall not be unreasonably withheld, delayed, conditioned or denied), and all necessary permits have been properly issued. Substantial modification to an installation plan (including, for example, a change of Communications Facilities site) made in the course of construction shall require the written consent of the City, upon which the City shall act promptly, and may require modification of an existing or issuance of a new permit.

Approval of plans and specifications and the issuance of any permits by the City shall not release Franchisee from the responsibility for, or the correction of, any errors, omissions or other mistakes that may be contained in the plans, specifications and/or permits. Franchisee shall be responsible for notifying the City and all other relevant parties immediately upon discovery of such omissions and/or errors and shall be responsible for obtaining any amendments for corrected City-approved permits, as may be necessary.

The City shall use its best efforts to promptly respond to a request for plan approval or modification within sixty (60) days, and will cooperate with Franchisee to facilitate the prompt processing and issuance of any required permits.

Franchisee is encouraged to submit installation plans and requests for approval as part of Franchisee's annual report described in Section 14.

8.0 Construction

8.1 Compliance with Standards and Specifications

All construction and maintenance shall be done in a workmanlike manner, and the Franchisee shall meet or exceed all construction and service requirements required by Applicable Law (including, without limitation, this Agreement and the Baltimore City Code). All work involved in the construction, installation, operation, repair, and maintenance of the Communications Facilities shall be performed in a safe, thorough, and reliable manner using materials of good and durable quality. The Franchisee shall comply with applicable codes and industry standards, including the specifications set forth in the most recently published edition of the "City of Baltimore Department of Public Works Specifications for Materials, Highways, Bridges, Utilities, and Incidental Structures (2006)," as amended from time to time ("Green Book"); administrative orders of the City Department of Transportation, as amended from time to time; the National Electrical Code, as adopted by the City from time to time; the National Electrical Safety Code, as adopted by the City from time to time; and all rules, standards, practices, and procedures of the FCC, as amended from time to time; and the requirements of other utilities whose poles and conduits the Franchisee may use, as amended from time to time.

8.2 Safety Precautions

8.2.1 Standard of Care

The Franchisee shall employ ordinary care at all times and employ commonly accepted methods and devices for the prevention of failures and accidents that are likely to cause damage, injury, or nuisance to the public. In addition, the Franchisee shall, at its sole cost and expense, undertake all necessary and appropriate efforts to prevent accidents at its work sites. The Franchisee shall comply with the Occupational Safety and Health Act of 1970, (29 U.S.C. §§ 651-78), as amended, and all other Applicable Law.

8.2.2 Protection of Construction Areas

The Franchisee shall comply with the safety requirements of all permits, licenses, and other forms of approval or authorization. In addition, Franchisee shall maintain reasonable barriers, lights, signs, cones, and other similar warnings and protective devices required for the safety of the public in compliance with this Agreement and Applicable Law. If the Franchisee places any such device in any Public Way or on Park Properties, the device shall be placed and maintained in a way that does not interfere with the usual travel or other existing and anticipated uses of the Public Way or Park Properties.

8.2.3. Emergency Notification

The Franchisee shall provide the City with a twenty-four (24) hour emergency telephone number at which a representative of the Franchisee, not voice mail or a recording, can be contacted in the event of an emergency. The Franchisee shall respond within twenty-four (24) hours to address the reported emergency.

8.3 Identification

The Franchisee shall ensure that all employees including employees of subcontractors, who will be in contact with the public, will have proper identification, which shall include a telephone number that can be used for verification. In addition, the Franchisee shall clearly identify all personnel, vehicles, and other major equipment operating under its authority.

8.4 Antennas and Towers

Antenna supporting structures and towers shall be designed for the proper loading as specified in Electronic Industries Alliance R.S. 222-C Specifications. In addition, antenna supporting structures and towers shall be designed in accordance with the International Building Code, as amended and shall be painted, lighted, erected, and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other Applicable Law.

8.5 Disruption, Interference and Damage

Franchisee shall use commercially reasonable efforts to coordinate construction, installation, and maintenance of the Communications Facilities to minimize unnecessary disruption, including, as appropriate, coordination with applicable City

agencies. Franchisee shall not interfere with the use or development of any property of the City or any other person, and promptly upon completion of construction, erection or installation of Communications Facilities, Franchisee shall, at its own cost and expense, promptly repair any damage to property resulting from such activity to its original condition.

8.6 Materials and Claims

All materials furnished for any work done in the Franchise Area by Franchisee shall be at Franchisee's sole cost and expense. Franchisee agrees to protect the Franchise Area, and City, from all claims of contractors, laborers and material men, except in the case of claims which solely arise from the willful or grossly negligent acts of the City. Franchisee shall promptly pay all contractors and material men. Should any such lien be made or filed, Franchisee shall cause the same to be discharged and released of record by bond or otherwise within thirty (30) days after written request by City.

8.7 One Call Notification System

For the Term of this Agreement, Franchisee shall become a full-time, private sector member of: (A) the Baltimore City Department of Transportation Utility Coordinating Committee; and (B) the one call notification center (otherwise known as "Miss Utility") and shall comply with all of the marking and location verification requirements of the one call notification system.

8.8 No Advertisement

Franchisee shall not place any advertisement or other notice on or about the Communications Facilities which identifies the Franchisee in any way (except for emergency notification postings).

8.9 Inspection by City

The City shall have commercially reasonable access to inspect any work conducted by Franchisee during the construction of Communications Facilities.

9.0 Maintenance and Repair

9.1 Generally

Franchisee shall, at its sole cost and expense, perform all maintenance and repairs reasonably needed to maintain Communications Facilities in good condition and neat and orderly appearance, and in compliance with all applicable Laws. Franchisee shall keep the Communications 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 interference. If the City gives Franchisee written notice of a failure by Franchisee to maintain the Communications Facilities, Franchisee shall use its best efforts to remedy such failure within forty-eight (48) hours after receipt of such written notice or if such maintenance or repair requires more than forty-eight (48) hours to remedy, Franchisee shall commence remedial operations within said forty-eight (48) hour period.

9.2 Access to Communications Facilities

Franchisee shall be given access to each of the Communications Facilities in the Public Way and on Park Properties for the purpose of routine maintenance, repair, or removal of Communications Facilities. If any such maintenance activities have the potential to result in an interruption of any City services at the Communications Facilities, Franchisee shall provide the City with a minimum of three (3) days prior written notice of such maintenance activities. Such maintenance activities shall, to the extent feasible, be done with minimal impairment, interruption, or interference to City services, which notice for such maintenance activities sent to the offices or persons identified in the permits issued to the Franchisee. In the event of an emergency (e.g., the potential for bodily harm or property damage or material disruption to the operation of the Wireless Services), such 3-day notice requirement shall be waived and Franchisee shall provide the City as much prior notice as reasonably possible under the circumstances. Such maintenance activities shall, to the extent reasonably feasible, be done with minimal impairment, interruption, or interference to City services.

9.3 Repair of Public Way and Park Properties

Franchisee shall be responsible for any damage, ordinary wear and tear excepted, to street pavement, existing facilities, and utilities, curbs, gutters, sidewalks, landscaping, and all other public or private facilities, to the extent caused by Franchisee's construction, installation, maintenance, access, use, repair, replacement, relocation, or removal of Communications Facilities in the Public Way or on Park Properties. Franchisee shall promptly repair such damage and return the Public Way and Park Properties and any affected adjacent property to a safe and satisfactory condition to the City in accordance with the City's applicable street restoration standards or to the property owner if not the City. Franchisee's obligations under this Section 9.3 shall survive for one (1) year past the completion of such reparation and restoration work.

9.4 Appearance

Franchisee shall obtain design and location approval from the Planning Department for all attachments that are subject to this Agreement, which approvals shall be granted or denied in a non-discriminatory basis. Franchisee shall follow all legally binding City policies and state and local ordinances with respect to aesthetics and appearance for the duration of the Franchise.

9.5 Graffiti

Franchisee shall at all times keep and maintain the Communications Facilities free of all graffiti located thereon. City shall notify Franchisee in writing if graffiti is located on Communications Facilities. Thirty (30) days after notice in writing is received by Franchisee, City shall have the right to abate any graffiti present on Communications Facilities, and Franchisee shall reimburse City all costs directly attributable to graffiti abatement of Communications Facilities -which are incurred by City within thirty (30) days of City's presenting Franchisee with a statement of such costs.

9.6 Performance Bond

City may at any time during the Term require Franchisee to provide a bond in an amount determined by the City to represent the estimated cost of Franchisee's obligations under this Section, which the City may require Franchisee to increase from time to time to reflect the reasonable estimated cost of performing such obligations, to secure performance of Franchisee's obligations under this Section.

10.0 Electricity Use

Franchisee shall be responsible for obtaining and paying for any and all electrical utility service that Franchisee requires for the use or maintenance of Communications Facilities. City will reasonably cooperate with Franchisee in an effort by Franchisee to obtain electrical service from a location serving a City facility.

11.0 New Poles; Pole Replacement

11.1 New Poles

Franchisee shall not erect poles, conduits, or other Communications Facilities in a Public Way and on Park Properties without all necessary permits and authorizations and the express permission of the City, which may include the execution of a separate agreement between the City and Franchisee when new poles are sought to be installed in the Public Way or on Park Properties. Franchisee acknowledges that the installation of new stand-alone or streetlight poles in the Public Way or on Park Properties is not the City's preference and that such applications for installations on Public Ways or Park Properties may be denied. In the event the application for the installation and construction of one or more new poles is approved, the installation and construction of the new pole shall be at Franchisee's sole expense and shall comply with all applicable building permits, applicable City, state and federal specifications and laws ("New Poles") and become the property of the City. Any New Poles constructed by Franchisee shall comport with the character of existing poles in the area and otherwise comply with the City established aesthetic or design standards applicable to Communications Facilities. City shall consider any request to construct a New Pole in a nondiscriminatory manner and in compliance with Applicable Laws.

11.2 City Use of New Poles

The City may use any New Poles for City purposes, including but not limited to streetlights, other types of lighting and cameras so long as such use does not interfere with Franchisee's use of its Communications Facilities. Franchisee shall not be responsible for maintenance, repair or replacement of City-owned cameras, lights, light bulbs and equipment or equipment owned by third parties authorized by the City on the New Poles. Franchisee shall deed any new pole to the City.

12.0 Removal and Modification of Communications Facilities During Term

12.1 Franchisee Right to Remove

During the Term, Franchisee shall have the right to remove from the Public Way and Park Properties all or any portion of Communications Facilities from time to time, whether before or after a default under this Franchise Agreement, in Franchisee's sole

discretion with prior notice to City. Franchisee, at its own cost and expense, shall promptly dispose of any materials used and/or generated by any and all removal activities, and shall promptly repair any damage to the Public Way and Park Properties caused by Franchisee's removal activities so that the Public Way and Park Properties return to their condition prior to construction and installation of such Communications Facilities by Franchisee, reasonable wear and tear excepted.

12.2 Removal Due to Public Project

Upon receipt of a written demand from the City pursuant to this Section 12.2, Franchisee, at its sole cost and expense shall remove and relocate any part of the Communications Facilities constructed, installed, used and/or maintained by Franchisee whenever the City reasonably determines that the removal is needed for any of the following purposes: (a) if required for the construction, completion, repair, relocation, or maintenance of a City or other governmental agency project including but not limited to, any change of grade, alignment or width of any street, sidewalk or other public facility; installation of curbs, gutters or landscaping; and construction, maintenance or operation of any underground or aboveground facilities such as sewers, water mains, drains, storm drains, pipes, gas mains, poles, power lines, telephone lines, cable television lines, and tracks; (b) because the Communications Facilities are reasonably considered to be interfering with or adversely affecting proper operation of City-owned light poles, traffic signals, or other City facilities; or (c) to protect or preserve the public health or safety. The City shall cooperate with Franchisee in relocating any portion of the Communication Facilities removed pursuant to this Section 12.2 in a manner that allows Franchisee to continue providing Services to its customers, including, but not limited to, expediting approval of any necessary permits required for the relocation of Communications Facilities corresponding to that portion relocated under this Section. No permitting or other fees may be charged by the City for a removal occurring under this Section.

12.3 Removal Due to Termination or Abandonment

Following the termination of the Franchise for any reason, or in the event Franchisee ceases to operate and abandons the Communications Facilities, Franchisee shall, within one hundred twenty (120) days, at its sole cost and expense, remove all Communications Facilities from the Public Way and Park Properties and restore the area affected by Communications Facilities to its condition at the commencement of this Franchise, reasonable wear and tear excepted, and further excepting landscaping and related irrigation equipment, or other aesthetic improvements made by Franchisee to the Facility or the adjacent property, or as otherwise required by the City. Prior to termination, Franchisee will post a payment bond in an amount up to \$500,000.00 to address the City's cost of removing any Communications Facilities not removed by Franchisee within one hundred twenty (120) days of termination, and as compensation for any damage to the Public Way and Park Properties relating to the Communications Facilities, reasonable wear and tear excepted. Alternatively, the City may allow Franchisee, in the City's sole and absolute discretion, to abandon the Communications Facilities, or any part thereof, in place and convey it to the City.

13.0 Compliance with Laws

13.1 Generally

This Agreement is subject to the terms and conditions of all Applicable Law.

13.2 Permits and Other Authorizations

Franchisee shall apply for, at its sole cost and expense, and obtain all applicable federal, state, county, and City permits and/or Authorizations required under Applicable Law in order to construct, operate, or otherwise implement and use Communications Facilities in the Public Way and on Park Properties, including, but not limited to, a conduit permit and charge, a right of way construction permit, building permits, encroachment permits, and any variance, conditional use permit, ministerial permit, or special exception required under the Baltimore City Zoning Code. Franchisee shall pay, as they become due and payable, all fees, charges, taxes and expenses, including conduit charges, associated with such permits and/or other Authorizations. If Franchisee is unable to obtain any necessary permits or Authorizations as required in this Section, Franchisee shall have the right, without obligation, to terminate this Franchise immediately.

14.0 Required Reports

14.1 Annual Construction Report

Not later than the sixtieth (60th) day after the close of each calendar year in which any work was performed in the Public Way or on Park Properties by Franchisee, the Franchisee shall provide the Baltimore City Department of Transportation and, in regard to installations on Park Properties, the Department of Recreation and Parks with the following:

- A. An updated “as-built” map clearly indicating each Communications Facility, control box, and associated network route installed by Franchisee or its contractors in the Public Way or on Park Properties. Specific identification of attachments to City-owned structures or structures owned by a third party located in the Public Way or on Park Properties. Specifying owner of underlying facility (i.e., city, Baltimore Gas and Electric Company); and
- B. A cumulative written list of the permits that the Franchisee has received from the city through the last day of the preceding calendar year. The report shall list the type of permit, the location(s) of the work being performed under the permit, the date the work started or is projected to start, and the date the work stopped or is projected to stop. The Franchisee shall omit a permit from this list after such permit has expired and has not been renewed for three (3) consecutive months.

Franchisee shall ensure that all drawings, maps, illustrations, or depictions required under this Section are drawn to scale, show all existing utilities, and comply with Green Book standards.

Additionally, within sixty (60) days after completion of the installation of any Communications Facility in the Public Way or on Park Properties, Franchisee shall provide the Baltimore Department of Transportation and, in regard to installations on Park Properties, the Department of Recreation and Parks an “as built” survey of the Communications Facility.

15.0 Default and Remedies

Each of the following events shall constitute a default of this Franchise (“Default”):

- (a) If either Party fails to perform or comply with any of the material conditions or covenants of this Franchise Agreement and such failure continues for a period of thirty (30) calendar days after written notice thereof, unless the performance cannot be reasonably completed within the thirty (30) day period, and the Party has commenced good faith efforts to perform and is diligently proceeding to complete performance to the satisfaction of the other Party;
- (b) If Franchisee fails to pay the Franchise Fee or other sums herein specified within thirty (30) calendar days after receipt of written notice of said default; or
- (c) If Franchisee is adjudicated as bankrupt or becomes insolvent.

15.1 Default by Franchisee

In the event of default by Franchisee, the City shall have the right, while any default continues, beyond any applicable cure period, by giving thirty (30) calendar days written notice to Franchisee, to terminate this Franchise Agreement and promptly remove or require Franchisee to promptly remove Communications Facilities from the Public Way and Park Properties, at Franchisee's sole cost and expense, without prejudice to any other remedy which the City might be entitled to pursue, including but not limited to City's rights under Section 17 to eliminate any interference caused by Communications Facilities. No portion of the Franchise Fee shall be refunded in the event of a termination on default by Franchisee.

15.1.1 Self-Help by City

In the event of any default of this Franchise by Franchisee and upon the expiration of any applicable cure period set forth in this Franchise Agreement, the City may at any time, after notice, cure the default for the account of and at the expense of the Franchisee. If City is compelled to pay or elects to pay any sum of money or to do any act which will require the payment of any sum of money or is compelled to incur any expense, including reasonable attorneys' fees in instituting, prosecuting or defending any action to enforce the City's rights under this Franchise, the sums so paid by City, with all interest, costs and damages, shall be deemed to be an additional Franchise Fee ("Additional Franchise Fee") and shall be due from the Franchisee to City on the first day of the month following the incurring of the respective expenses. Upon request by Franchisee, City shall provide the necessary information for Franchisee to verify all reasonable cost-based charges incurred.

15.2 Default by City

In the event of default by the City, Franchisee shall have the right to pursue any remedies available to it against the City under applicable law or at equity, including, but not limited to, the right to terminate this Agreement after thirty (30) days written notice and an opportunity to cure the default.

16.0 City Termination Right

In addition to the remedies set forth in this Section 16, the City shall have the right to terminate this Agreement (i) if the City is mandated by law, a court order or decision, or the federal or state government to take certain actions that will cause or require the removal of the Communications Facilities from the Public Way and Park Properties; or

(ii) if Franchisee's licenses to operate the Communications Facilities and/or provide Wireless Service are terminated, revoked, expired, or otherwise abandoned.

17.0 Radiofrequency Interference

Radiofrequency Interference. Franchisee shall install and operate Communications Facilities of a type and frequency that will not cause radiofrequency interference to any FCC-licensed devices or with respect to the City's existing operations. In the event of an emergency relating to interference, upon notification of such emergency by City, Franchisee shall disconnect its operations and Communications Facilities from a remote location. If Franchisee does not promptly disconnect its operations and Communications Facilities after being notified by the City due to an emergency, City shall be permitted to disconnect Franchisee's operations and Communications Facilities immediately, whether such Communications Facilities are located on a City-owned facility or a third-party facility within the Public Ways or Park Properties. City may perform, or cause to be performed, upon notice to Franchisee, a technical evaluation to determine the cause of interference. If, after considering the results of the inspection and tests or any technical evaluation performed by City, City determines that Franchisee is directly causing interference to City's operations, City shall promptly notify Franchisee and Franchisee shall immediately cease interfering with City's operations. If Franchisee fails to cease its interference with City's operations within twelve (12) hours of such notice, City shall have the right to take any steps it deems necessary, in its reasonable judgment and discretion, to cause the interference to cease. Franchisee shall be responsible for all reasonable and actual payments and/or expenses relating to the City's actions to correct any interference problems caused by Franchisee.

For a period of thirty (30) calendar days after City determines that Franchisee's operations have caused interference, Franchisee may request, and, if its request is approved by the City, may perform intermittent testing of potential cures during specified hours. City's approval of a request to remain and conduct intermittent testing during specified hours shall not be unreasonably withheld, delayed or conditioned.

City's sole liability to Franchisee for action taken pursuant to this Section 17 shall consist of the value of any damage or repairs made necessary to affected Communications Facilities by willful or grossly negligent acts of the City. In no event shall the City be liable for loss in value of Franchisee's Communications Facilities, or any loss of revenue by Franchisee resulting from removal.

18.0 MPE Evaluation

Upon installation, Franchisee shall provide the City an up-to-date report on Maximum Permissible Exposure (MPE) regarding radio frequency emissions and maximum exposure for humans for each type of Communications Facility installed on Public Ways and Parks Properties. The Parties agree that the requirement for Franchisee to provide the reports in the previous sentence complies with all Applicable Law. In the event of any violation of applicable laws related to radio frequency emissions, Franchisee shall take immediate corrective actions and, if notice of the violation has been provided by the City, provide the City with an updated MPE study from a licensed engineer confirming compliance and corrective actions with respect to the frequency emissions associated with its Communications Facilities. Within thirty (30) days after it receives an MPE report from the Franchisee, the City shall make the report available for public review on the City website.

19.0 Interest

If Franchisee fails to make any payment under this Agreement when due, such amounts shall accrue interest from the date such payment is due until paid, including accrued interest, at an annual rate of ten percent (10%) or, if lower, the highest percentage allowed by law.

20.0 Taxes

Franchisee agrees that it will be solely responsible for the payment of any and all applicable taxes, fees and assessments levied on its ownership, use and maintenance of the Communications Facilities.

21.0 Liability and Indemnity

21.1 Indemnification

Franchisee agrees to indemnify, defend and hold harmless City, its elected/appointed officials, departments, employees, agents and representatives from any and all claims, demands, suits and actions including attorneys' fees and court costs, connected therewith, brought against the City, its elected/appointed officials, departments, employees, agents and representatives and arising as a result of any direct willful, or negligent act or omission of Franchisee, its agents, officers or employees EXCEPT for any and all claims, demands, suits and actions, including attorneys' fees and court costs connected therewith, brought against City or City's elected/appointed officials, departments, employees, agents and representatives, arising as a result of the sole, willful, or grossly negligent act or omission of City, its elected/appointed officials, departments, employees, agents and representatives. This indemnification obligation shall survive the termination of this Agreement with respect to claims, demands, suits and actions that arose or accrued during the term of this Agreement.

21.2 Waiver of Claims

Franchisee waives any and all claims, demands, causes of action and rights it may assert against the City on account of any loss, damage or injury to any Communications Facilities or any loss or degradation of the Services as a result of an event or occurrence which is beyond the reasonable control of the City.

21.3 Limitation of the City's Liability

Except as provided for in this Section, the City shall be liable only for the cost of repair to damaged Communications Facilities arising from the gross negligence or willful misconduct of the City, its council or board members, officers, elected trustees, employees, agents, or contractors.

22.0 Insurance

The Franchisee shall procure and maintain during the term of this Franchise the following required insurance coverages:

(a) Workers' Compensation and Employers' Liability Insurance.

Statutory workers' compensation benefits with a limit of liability no less than that required by Maryland law at the time of the application of this provision for each accident. Employers' liability insurance with a limit of \$1,000,000 each accident/disease/policy limit. To the extent allowed by law, this policy shall include a waiver of subrogation in favor of City. Franchisee shall require contractors not covered under Licensee's insurance to obtain and maintain such insurance.

(b) Commercial General Liability Insurance.

Commercial General Liability Insurance at limits of Two Million Dollars (\$2,000,000.00) per occurrence for claims arising out of bodily injuries or death, and property damages and Three Million (\$3,000,000) general aggregate including contractual liability coverage.

(c) Automobile Liability Insurance.

Commercial Automobile Liability with a combined limit of Two Million Dollars (\$2,000,000.00) each accident for bodily injury and property damages. The insurance shall cover any owned, non-owned, franchised, or hired automobiles used in the performance of this Agreement.

(d) Telecommunications, Media & Technology Errors & Omissions Insurance.

Telecommunications, Media & Technology Errors & Omissions including Cyber Liability Insurance with a limit of Two Million Dollars (\$2,000,000.00) each claim and aggregate.

(e) Umbrella/Excess Liability Insurance.

Coverage is to be in excess of the sum of employers' liability, commercial general liability and automobile liability insurance required above. Limits of liability \$4,000,000 each occurrence, \$4,000,000 aggregate. Licensee may use any combination of primary and excess insurance to meet the total limits required.

(f) Coverage.

The City, Mayor and City Council of Baltimore (in their official capacities) their elected/appointed officials, departments, and employees, shall be covered, by blanket additional insured endorsement, as additional insureds as their interests may appear under this Agreement with respect to liability caused, in whole or in part, by activities performed by Licensee or its employees in connection with this Agreement.

Insurance shall apply separately to each insured against whom claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability. To the extent of the Franchisee's negligence, the Franchisee's insurance coverage shall be primary insurance as respects to the City, its elected/appointed officials, departments, and employees. Any insurance and/or self-insurance maintained by City, its elected/appointed officials, departments, and employees shall not contribute with the Franchisee's insurance or benefit the Franchisee's in

any way to the extent Franchisee is found negligent. Upon receipt of notice from its insurer(s) Franchisee shall provide the City with forty-five (45) days prior written notice of cancellation of any coverage required herein. Insurance is to be placed with insurers with a Best's rating of no less than A:VII, or if not rated with Best's with minimum surpluses the equivalent of Best's surplus size VII and must be eligible to do business in the State of Maryland.

(g) Certificate of Insurance; Other Requirements.

Prior to the execution of this Agreement and within ten (10) days of each insurance policy expiration date during the term of this Agreement, Franchisee will furnish City with a certificate of insurance ("Certificate"). The Certificate shall reference this Agreement and insurance waivers of subrogation required by this Agreement. City shall be given forty-five (45) calendar days advance notice of cancellation or non-renewal of insurance during the term of this Agreement that is not replaced.

(h) Limits.

The limits of liability set out in this Article 22.0 may be increased or decreased by mutual consent of the parties, which consent will not be unreasonably withheld by either party, in the event of any factors or occurrences, including substantial increases in the level of jury verdicts or judgments or the passage of state, federal, or other governmental compensation plans, or laws that would materially increase or decrease Franchisee's exposure to risk.

(i) Failure to Maintain Insurance.

Failure of Franchisee to maintain the proper insurance required under this Article 22.0 shall result in termination of this Franchise if the breach is not cured upon the expiration of any applicable cure period set forth in this Franchise.

23.0 Assignment and Subletting

Franchisee may not assign, or otherwise transfer all or any part of its privilege in this Franchise without the prior written consent of City; provided, however, that Franchisee may assign its privilege to its parent company, any subsidiary or affiliate of it or its parent company or to any successor-in-interest or entity acquiring fifty-one percent (51%) or more of its stock or assets, in the market defined by the FCC in which the City of Baltimore is located, subject to the assignee assuming all of Franchisee's obligations hereunder, and subject to any financing entity's interest, if any, in this Franchise. Notwithstanding anything to the contrary contained in this Franchise, Franchisee may assign, mortgage, pledge, hypothecate or otherwise transfer without consent its interest in Communications Facilities or in this Franchise to any financing entity, or agent on behalf of any financing entity to whom Franchisee (1) has obligations for borrowed money or in respect of guaranties thereof, (2) has obligations evidenced by bonds, debentures, notes or similar instruments, or (3) has obligations under or with respect to letters of credit, bankers acceptances and similar facilities or in respect of guaranties thereof. Any such assignment to a financing entity or its agent shall be subordinate to the terms of this Franchise Agreement. The City acknowledges that: (i) the State of Maryland has opted into the First Responder Network Authority which is the first nationwide broadband network dedicated for use by police, firefighters, emergency medical services and other first responders ("FirstNet"), and (ii) Franchisee has been selected by FirstNet as its sole

private partner, to build, operate, maintain and manage the nationwide broadband network on behalf of FirstNet. As such, Franchisee may use the Franchise Area for FirstNet purposes, without the same being considered an assignment or subletting hereunder, provided that such use is otherwise in compliance with the requirements of this Agreement.

24.0 Environmental

- (a) Except in strict accordance with all applicable laws and regulations, Franchisee shall not at any time within the Public Way or on Park Properties store, treat, transport or dispose of any hazardous substance, hazardous waste or oil as defined by the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. §§ 6901 et seq., Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §§ 9601 et seq., Maryland Environment Article Code Ann., Title 4, Sec. 4-401, et seq. and Maryland Environment Article Code Ann., Title 7, subtitle 2.
- (b) "Environmental Conditions" as used in this Agreement shall mean discovered or undiscovered contaminants, pollutants, or toxic substances affecting health or the environment, in any way arising from or related to the subject matter of this Franchise which could, or do, result in any damage, loss, cost or expense to, or liability, by City to any person including a government agency or other entity.
- (c) In addition to all other indemnifications contained herein, Franchisee specifically agrees to indemnify, reimburse, defend and hold harmless City, its elected/appointed officials, employees, agents and representatives ("Indemnified Parties") from and against any and all losses, costs, liabilities, including but not limited to liabilities, demands, obligations, claims, suits, actions and expenses, attorneys' fees, consultant fees and court costs connected therewith, brought against the Indemnified Parties, or incurred by any of them, by reason of injury to persons, including death, and damage to property arising out of Environmental Conditions caused by Franchisee or resulting from any direct, or indirect, willful or negligent acts or omissions of Franchisee, its contractors, agents, or employees in connection Environmental Conditions caused by Franchisee, unless such claims are caused by the negligent act of City. Notwithstanding anything to the contrary herein, Franchisee agrees to defend, indemnify and hold harmless the Indemnified Parties from and against all administrative and judicial actions and rulings, claims, causes of action, demands and liability including, but not limited to, damages, costs, expenses, assessments, penalties, fines, losses judgments and reasonable attorney fees that the Indemnified Parties may suffer or incur due to the existence of any hazardous substances on the Franchise Area, in the Public Way or on Parks Property or migration of any hazardous substance to other properties or the release of any hazardous substance into the environment, that arise from the Franchisee's and or its representatives activities on the Franchise Area, the Public Way or Parks Property. The indemnifications in this section specifically include, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any governmental authority. This provision shall be in addition to, and separate from, any remedies available to City for breach by the Franchisee of its obligations under any of the provisions of this Agreement and shall in no way limit any recourse that the City may have at the time against Franchisee pursuant to any federal, state or local laws. The provisions of this section shall survive the termination or expiration of this Agreement.

(d) City represents to the best of its knowledge, without having made inquiry that there is no hazardous substance within the Public Way or on Park Properties. Hazardous substance is any substance identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. City shall not introduce or use any hazardous substance in the Public Way or Park Properties in violation of any applicable law. City shall be responsible for, and shall promptly conduct any investigation into and remediation of, as required by any applicable environmental laws, all spills or other releases of any hazardous substance to the extent caused by the City, its employees, agents and contractors that have occurred or which may occur in the Public Way or on Park Properties. City agrees to defend, indemnify and hold harmless the Franchisee from and against any and all administrative and judicial actions and rulings, claims, causes of action, demands and liability (collectively, "Claims") including, but not limited to, damages, costs, expenses, assessments, penalties, fines, losses, judgments and reasonable attorney fees that the Franchisee may suffer or incur due to the existence of any hazardous substances in the Public Way or Park Properties or the migration of any hazardous substance to other properties or the release of any hazardous substance into the environment (collectively, "Actions"), that arise from the City's activities on the Franchise Area to the extent allowable under subsection 5-303 (a), (b) and (c) of the Courts and Proceedings Article of the Maryland Annotated Code. City agrees to defend, indemnify and hold Franchisee harmless from Claims resulting from Actions in the Franchise Area caused by City prior to and during the initial term and any and all renewal terms. The indemnifications in this section specifically include, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any governmental authority. In the event that Franchisee discovers any hazardous substances on, under, or adjacent to the Franchise Area, which presence was not caused by Franchisee, its employees, agent or contractors, Licensee shall immediately notify the City and the City shall have the right to cure the condition within five (5) days from the date of notice. If the City elects not to cure or fails to do so within five (5) days of the notice from Licensee, then Franchisee shall have the right to terminate the Agreement for the impacted portion of the Franchise Area, Public Way or Park Properties, at no cost or liability. This Section shall survive the termination or expiration of this Agreement.

25.0 Notices

All notices, requests, demands, and other communications hereunder shall be in writing and shall be deemed given if personally delivered or by certified mail, return receipt requested to the following addresses:

City: The Mayor and City Council of Baltimore
Department of Transportation
Attn: Director
417 E. Fayette Street, Fifth Floor
Baltimore, Maryland 21202

with a copy which shall not constitute legal notice to:

Baltimore City Department of Real Estate
Room 304 City Hall
100 North Holliday Street
Baltimore, Maryland 21202
410-396-4768
410-528-1437 (fax)

All Franchise Fee payments to the City should be mailed to the following address and to the attention of:

Director of Finance
Bureau of Treasury Management
Collections Division
200 N. Holliday Street
Baltimore, Maryland 21202

Franchisee:

New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration
1025 Lenox Park Blvd NE, 3rd Floor
Atlanta, GA 30319
Re: Baltimore City Franchise Agreement (Baltimore, MD)
Fixed Asset #: 13807246

With a required copy to:

New Cingular Wireless PSC, LLC
Attn: Legal Department, Network Operations
Re: Baltimore City Franchise Agreement (Baltimore, MD)
Fixed Asset #: 13807246
208 S. Akard Street
Dallas, TX 75202-4206

26.0 Franchisee Point of Contact Relating to Communications Facilities

Appropriate Franchisee staff shall be available to the employees of any City department having jurisdiction over Franchisee's activities twenty-four (24) hours a day, seven (7) days a week, regarding problems or complaints resulting from the attachment, installation, operation, maintenance, or removal of Communications Facilities. The City may contact the network control center operator at 1-800-638-2822 regarding such problems or complaints.

27.0 Miscellaneous

27.1 Incorporation of Prior Agreements

This Franchise contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Franchise, and no other agreement or understanding pertaining to any such matter shall be effective for any purpose. No provision of this Franchise may be amended or added to except by an agreement in writing signed by the parties hereto or respective successors in interest.

27.2 Non-Waiver

Failure of either party to insist on strict performance of any of the conditions, covenants, terms or provisions of this Franchise or to exercise any of its rights hereunder shall not waive such rights, but each party shall have the rights to enforce such rights at any time and take such action as might be lawful or authorized hereunder, either in law or equity. The receipt of any sum paid by Franchisee to City

after a breach of this Franchise shall not be deemed a waiver of such breach unless expressly set forth in writing.

27.3 Taxes

- (a) Franchisee, upon presentation of sufficient and proper documentation will pay, within thirty (30) days, an amount equal to its proportional share of any taxes imposed upon any entity which is directly attributable to the improvements constructed by Franchisee, provided that Franchisee will be entitled to appeal any such increase payable by it.
- (b) Franchisee shall indemnify City from any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or be asserted against City in relation to the taxes owed or assessed on the Franchise Area and directly attributable to the improvements constructed by Franchisee.

27.4 Force Majeure

If either City or Franchisee is prevented or delayed from fulfilling any term or provision of this Agreement by reason of fire, flood, earthquake, or like acts of nature, wars, revolution, civil commotion, explosion, acts of terrorism, embargo, acts of the government in its sovereign capacity, material changes of laws or regulations, labor difficulties, including without limitation, strikes, slowdowns, picketing or boycotts, unavailability of equipment of vendor, or any other such cause not attributable to the negligence or fault of the party delayed in performing the acts required by the Agreement, then performance of such acts shall be excused for the period of the unavoidable delay, and the affected party shall endeavor to remove or overcome such inability as soon as reasonably possible.

27.5 Governing Law; Jurisdiction

This Franchise Agreement shall be construed in accordance with the laws of the State of Maryland, without reference to its conflicts of law principles. If suit is brought by a party to this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of Maryland, or in the United States District Court for the District of Maryland.

27.6 Change in Law and Severability

In the event that any legislative, regulatory, judicial, or other action becomes effective and settled law and affects the rights or obligations of the parties, or establishes rates, terms or conditions for the construction, operation, maintenance, repair or replacement of Communications Facilities within the Franchise Area, that differ, in any material respect from the terms of this Agreement ("New Law"), then either party may, upon thirty (30) days written notice, require that the terms of this Agreement be renegotiated to conform to the New Law. Such conformed terms shall then apply on a going forward basis for all existing and new Communications Facilities, unless the New Law requires retroactive application, in which case such new terms shall apply retroactively, as required by the New Law. In the event that the parties are unable to agree upon new terms within 90 days after Notice, then the rates contained in the New Law shall apply from the 90th day forward until the negotiations are completed, or a

party obtains a ruling regarding the appropriate conforming of terms from a commission or court of competent jurisdiction.

27.7 Representations

Each of the parties to this Agreement represents and warrants that it has the full right, power, legal capacity, and authority to enter into and perform the parties' respective obligations hereunder and that such obligations shall be binding upon such party.

27.8 Amendment

This Agreement may not be amended except pursuant to a written instrument evidencing agreement by both parties.

27.9 MBE/WBE Compliance

- (a) **Franchisee to Comply.** Franchisee agrees to comply with the City's statutes, ordinances and regulations regarding participation by minority business enterprises ("MBEs") and women's business enterprises ("WBEs") as if it were a contractor receiving funding from the City, provided that enforcement of this Section shall be exclusively by way of liquidated damages and in no event shall the City seek to suspend or rescind the Franchise for any violation of this Section. The Franchisee shall use reasonable, good faith efforts to meet a goal for participation by MBEs and WBEs for purchases and construction contracts as established by the City's Minority and Women's Business Opportunity Office ("MWBOO"). MWBOO shall administer the provisions of this Section on behalf of the City, and Franchisee shall comply with MWBOO rules and requirements.
- (b) **Documentation to the City on MBE/WBE Participation.** Six (6) months after the Effective Date and every six (6) months thereafter while upgrade construction under this Agreement is in progress, and annually thereafter, the Franchisee shall submit to the City written documentation, including executed contracts, service agreements and utilization commitment forms, that shall identify the particular MBEs/WBEs that are (i) contracting directly with the Franchisee; or (ii) subcontracting with prime contractors who contract directly with Franchisee. The documentation submitted to the City shall specify the dollar value of the participation, type of work to be performed, and such other information as the City may reasonably request.
- (c) **Waiver of MBE/WBE Goals.** In the event that, after the use of reasonable, good faith efforts to meet the goals for MBE and WBE participation established pursuant to this Section, the Franchisee is able to demonstrate to the City's satisfaction that sufficient qualified and willing MBEs and WBEs are unavailable, the Franchisee may request a waiver or reduction of the MBE/WBE goals.
- (d) **Report on MBE/WBE Compliance.** Six (6) months after the Effective Date and every six (6) months thereafter, the Franchisee shall submit to MWBOO a report on its compliance with this Section. Franchisee may satisfy this requirement by copying MWBOO on any such report that it files with another City agency on a semiannual or more frequent basis.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate on the day and year written above.

ATTEST:

MAYOR AND CITY COUNCIL OF BALTIMORE

BY: _____

CUSTODIAN OF THE CITY SEAL

**STEVE SHARKEY
DIRECTOR**

DEPARTMENT OF TRANSPORTATION

BY: _____

REGINALD MOORE, DIRECTOR

**DEPARTMENT OF RECREATION AND
PARKS**

WITNESS/ATTEST:

NEW CINGULAR WIRELESS PCS, LLC

**BY: AT&T MOBILITY CORPORATION
ITS: MANAGER**

BY: _____ **(SEAL)**

NAME:

TITLE:

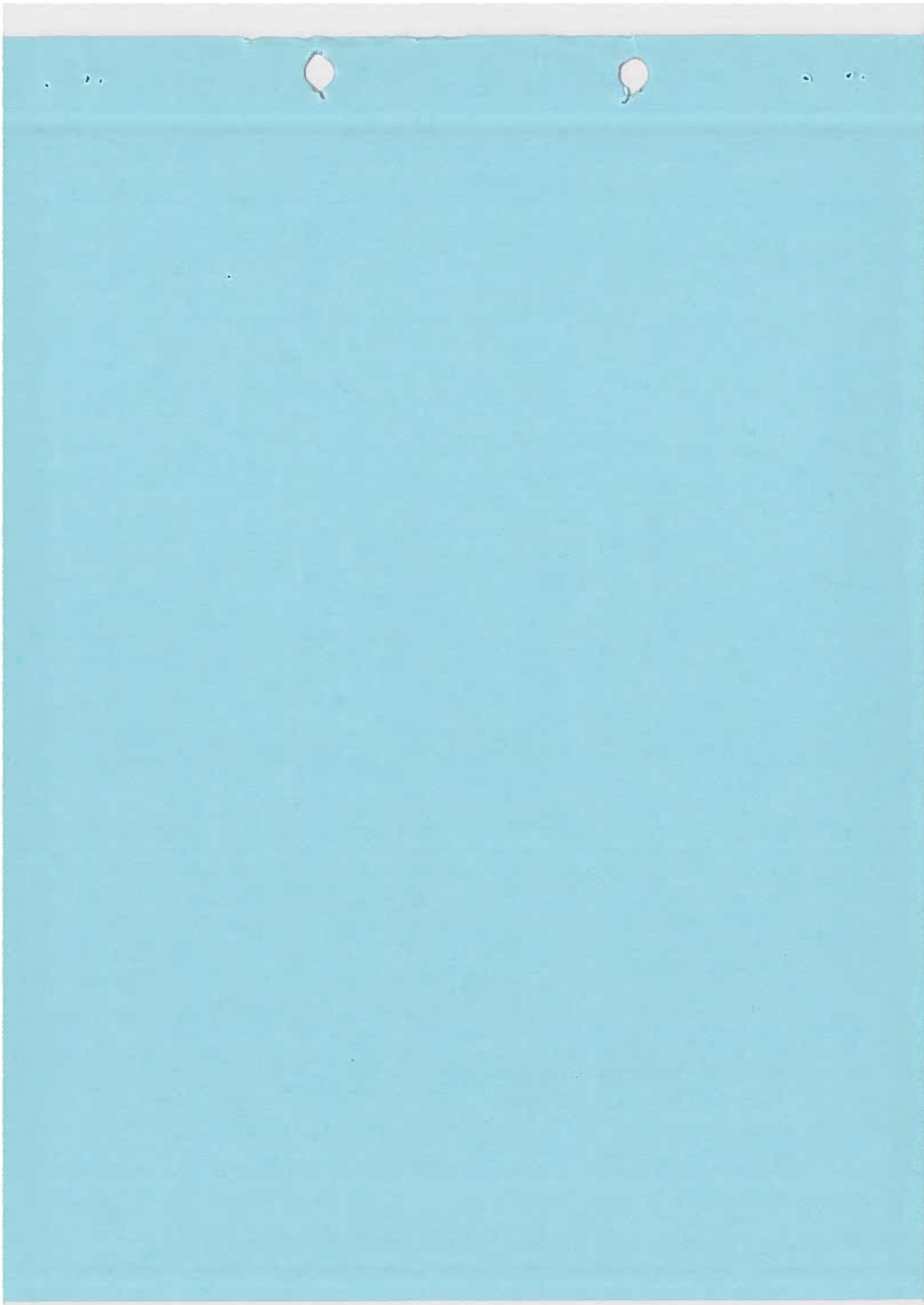
**APPROVED AS TO FORM AND LEGAL
SUFFICIENCY**

**APPROVED BY THE BOARD OF
ESTIMATES**

CHIEF SOLICITOR

CLERK

DATE



ACTION BY THE CITY COUNCIL


JUL 22 2019

FIRST READING (INTRODUCTION) _____ 20 _____

PUBLIC HEARING HELD ON 10-22 _____ 20 19

COMMITTEE REPORT AS OF _____ 20 _____

_____ FAVORABLE _____ UNFAVORABLE _____ FAVORABLE AS AMENDED _____ WITHOUT RECOMMENDATION


Chair

COMMITTEE MEMBERS:

COMMITTEE MEMBERS:

SECOND READING: The Council's action being favorable (unfavorable), this City Council bill was (was not) ordered printed for Third Reading on:

OCT 28 2019

Amendments were read and adopted (defeated) as indicated on the copy attached to this blue backing.

THIRD READING _____ NOV 04 2019

_____ Amendments were read and adopted (defeated) as indicated on the copy attached to this blue backing.

THIRD READING (ENROLLED) _____ 20 _____

_____ Amendments were read and adopted (defeated) as indicated on the copy attached to this blue backing.

THIRD READING (RE-ENROLLED) _____ 20 _____

WITHDRAWAL _____ 20 _____

There being no objections to the request for withdrawal, it was so ordered that this City Council Ordinance be withdrawn from the files of the City Council.

President

Chief Clerk