

**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 19-0406

A BILL ENTITLED

AN ORDINANCE concerning

**Franchise – Celco Partnership, d/b/a Verizon Wireless**

FOR the purpose of granting a franchise to Celco 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.

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                                       |
| Health Department  | <input checked="" type="checkbox"/> Department of Finance                           |
| Mayor's Office of Employment Development                                     | <input type="checkbox"/> Department of General Services                             |
| 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                              |
| Office of the Mayor  | <input checked="" type="checkbox"/> Department of Planning                          |
| Police Department  | <input type="checkbox"/> Other: _____   |
| Other: _____   | <input type="checkbox"/> Other: _____   |
| Other: _____   | <input type="checkbox"/> Other: _____   |

**Boards and Commissions**

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

CITY OF BALTIMORE  
ORDINANCE **19-313**  
Council Bill 19-0406

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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

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

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AN ORDINANCE CONCERNING

1                                   **Franchise – Celco Partnership, d/b/a Verizon Wireless**

2   FOR the purpose of granting a franchise to Celco Partnership, d/b/a Verizon Wireless, a  
3       Delaware general partnership, to construct, install, maintain, repair, operate, relocate, replace,  
4       and remove certain Communications Facilities in and across certain streets and Public Ways  
5       and Park Properties, subject to certain terms and conditions; and providing for a special  
6       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 Celco Partnership, d/b/a Verizon Wireless (the “Grantee”), to  
13   construct, install, maintain, repair, operate, relocate, replace and remove certain facilities relating  
14   to the provision of Wireless Services in and across certain streets and Public Ways and Park  
15   Properties, subject to the terms and conditions of this Ordinance and the Franchise Agreement  
16   between the Mayor and City Council of Baltimore and the Grantee, which is attached and made a  
17   part of this 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.  
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 COMMUNICATIONS FACILITIES 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 Cellco Partnership, d/b/a Verizon Wireless, a Delaware general partnership ("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 Service 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 applicable federal, state, and local laws, statutes, codes, ordinances, resolutions, orders, rules and regulations, including but not limited to all 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 the 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

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1 Baltimore city government or any officer, official, employees, or agent of the  
2 Baltimore City government, any designee of the foregoing, or any successor thereto.

3 **1.5** "Conduit" means enclosed underground raceways capable of protecting fiber optic  
4 and other communications cables, including associated individual ducts, inner ducts,  
5 manholes, handholes, vaults, pull-boxes, and trenches.

6 **1.6** "Effective Date" means the date upon which this Agreement is adopted and approved  
7 by the Mayor and City Council of the City.

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

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

22 **1.9** "Franchise Area" shall mean all the area within the boundaries of the City.

23 **1.10** "Park Properties" means the real property controlled by the Department of Recreation  
24 and Parks pursuant to the provisions of Article VII of the City Charter, which includes  
25 parks, zoos, squares, athletic and recreational facilities.

26 **1.11** "Person" means any natural person or any association, firm, partnership, joint venture,  
27 corporation or other legally recognized entity, whether for-profit or not-for-profit.

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

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

37 **2.0 Grant of Franchise**

38 The City grants to Franchisee the nonexclusive right to construct, install, maintain, repair,  
39 operate, replace and remove Communications Facilities within the Public Way and on Park

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1 Properties for the purpose of providing Wireless Services, which shall be exercised at  
2 Franchisee's sole cost and expense, and which shall be subject to all deeds, easements,  
3 dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record  
4 which may affect the Public Way and Park Properties. Nothing in this Agreement shall be  
5 deemed to grant, convey, create or vest in Franchisee a real property interest in land,  
6 including any fee, leasehold interest, or easement.

7 **2.1 Compliance With Law**

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

10 **2.2 No Waiver of Other Permits and Authorizations**

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

19 **2.3 No Interference**

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

30 **2.4 Closing of Public Ways and Park Properties**

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

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1 appropriate, condition its consent to such closing, vacation, or transfer of such Public  
2 Way or Park Properties on the agreement of such private Person to: (i) grant the  
3 Franchisee the right to continue to occupy and use such Public Way or Park  
4 Properties; or (ii) reimburse the Franchisee for its reasonable costs to relocate the  
5 affected part of the Communications Facilities. The City shall provide reasonable  
6 notice to Franchisee of any such closing, vacation, or transfer to allow Franchisee to  
7 remove its Communications Facilities where the right to continue to occupy and use  
8 such Public Way or Park Properties is not reserved for Franchisee.

9 **2.5 Conditions Precedent**

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

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

24 **3.0 Relation to Attachment Rights**

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

36 **4.0 Term**

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

39 This Franchise may be automatically renewed for three (3) additional five (5) year terms  
40 provided Franchisee is not in default, is not in arrears with regard to, any amount of Franchise

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1 fees, and provided that Franchisee has not given City notice of Franchisee's intention not to  
2 renew, such notice to be given not less than one hundred twenty (120) days prior to the  
3 expiration of the current Franchise term.

4 **5.0 Franchise Fee**

5 For the right to construct, install, maintain, repair, operate, replace and remove its  
6 Communications Facilities in the Public Way and on Park Properties, Franchisee shall pay to  
7 the City a Franchise Fee in the amount of \$\_\_\_\_\_ per year. Payment shall be made no  
8 later than 30 days following the conclusion of each fiscal 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-incidental use of such Communications  
12 Facilities for a purpose other than 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 may use existing City-owned  
19 Conduit. In the event there is no available City-owned Conduit to meet Franchisee's  
20 requirements, and in the absence of any suitable conduit owned by a Third Party,  
21 Franchisee may, in coordination with the City, cause the construction of additional  
22 Conduit in the Public Way or on Park Properties. Any construction performed  
23 pursuant to this Section shall be consistent with City specification. Franchisee agrees  
24 that title in such property shall transfer to the City upon its substantial completion.  
25 Notwithstanding the foregoing, in the event that the Franchisee elects to use a Third  
26 Party for the installation of fiber and conduit, the City acknowledges and agrees that if  
27 the Third Party possesses a valid franchise agreement with the City, the Third Party's  
28 franchise agreement with the City takes precedence over the above requirements for  
29 causing construction of new conduit in the Public Way or on Park Properties.

30 **7.2 ~~7.1~~ Installation Plan**

31 The installation of Communications Facilities in the Public Way and on Park  
32 Properties shall be made in accordance with plans and specifications approved by the  
33 City and after obtaining all necessary permits for all work in the Public Way or on  
34 Park Properties. Franchisee shall submit to the Baltimore City Department of  
35 Transportation and, when siting on Park Properties, the Department of Recreation and  
36 Parks, an initial installation plan, and any subsequent work plans concerning  
37 installations not addressed in the initial work plan, which shall include fully  
38 dimensioned site plans and specifications that are drawn to scale and show (1) the  
39 specific Communications Facilities; (2) the specific proposed location of such  
40 Communications Facilities (including specific identification of each attachment to a  
41 City-owned or third-party structure located in the Public Way and on Park Properties);

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1 (3) the route of fiber optic cable installed and utilized by the Communications  
2 Facilities only if such fiber optic cable will be installed and owned by the Franchisee  
3 (as distinct from being installed and owned by one of the fiber optic service providers  
4 that has its own franchise with the City, regardless of whether such service provider is  
5 an affiliate of Franchisee; and (4) the proposed type of construction materials for all  
6 structures, and any other details that the City may reasonably request which are also  
7 applicable to other regulated utilities operating within the Public Way or on Park  
8 Properties . Such installation plans may be submitted as part of Franchisee's annual  
9 construction report described in Section 14.

### 10 7.3 Approval by City

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

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

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

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

### 30 8.0 Construction

#### 31 8.1 Compliance with Standards and Specifications

32 All construction and maintenance shall be done in a workmanlike manner, and the  
33 Franchisee shall meet or exceed all construction and service requirements required by  
34 Applicable Law (including, without limitation, this Agreement and the Baltimore City  
35 Code). All work involved in the construction, installation, operation, repair, and  
36 maintenance of the Communications Facilities shall be performed in a safe, thorough,  
37 and reliable manner using materials of good and durable quality. The Franchisee shall  
38 comply with applicable codes and industry standards, including the specifications set  
39 forth in the most recently published edition of the "City of Baltimore Department of  
40 Public Works Specifications for Material, Highways, Bridges, Utilities, and Incidental  
41 Structures (2006)," as amended from time to time ("Green Book"); administrative  
42 orders of the City Department of Transportation, as amended from time to time; the

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1 National Electrical Code, as adopted by the City from time to time; the National  
2 Electrical Safety Code, as adopted by the City from time to time; all rules, standards,  
3 practices, and procedures of the FCC, as amended from time to time; and the  
4 requirements of other utilities whose poles and conduits the Franchisee may use, as  
5 amended from time to time.

6 **8.2 Safety Precautions**

7 **8.2.1 Standard of Care**

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

15 **8.2.2 Protection of Construction Areas**

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

24 **8.2.3. Emergency Notification**

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

30 **8.3 Identification**

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

36 **8.4 Antennas and Towers**

37 Antenna supporting structures and towers shall be designed for the proper loading as  
38 specified in Electronic Industry Association R.S. 222-C Specifications. In addition,  
39 antenna supporting structures and towers shall be designed in accordance with the

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1 International Building Code, as amended, and shall be painted, lighted, erected, and  
2 maintained in accordance with all applicable rules and regulations of the Federal  
3 Aviation Administration and all other Applicable Law.

4 **8.5 Disruption, Interference and Damage**

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

13 **8.6 Materials and Claims**

14 All materials furnished for any work done on the property on which Franchisee's  
15 Communications Facilities are located (the "Franchised Premises") by Franchisee  
16 shall be at Franchisee's sole cost and expense. Franchisee agrees to protect the  
17 Franchised Premises, and City, from all claims of contractors, laborers and material  
18 men claiming by or through the actions or activities of Franchisee. Franchisee shall  
19 promptly pay all contractors and material men. Should any such lien be made or filed,  
20 Franchisee shall cause the same to be discharged and released of record by bond or  
21 otherwise within thirty (30) days after written request by City.

22 **8.7 One Call Notification System**

23 For the Term of this Agreement, Franchisee shall become a full-time, private sector  
24 member of: (A) the DPW Utility Coordinating Committee; and (B) if Franchisee has  
25 installed fiber optic cable to be owned by Franchisee (as distinct from having fiber  
26 optic cabling installed and owned by one of the local fiber optic service providers that  
27 has its own franchise with the City, regardless of whether such service provider is an  
28 affiliate of Franchisee), the One Call Notification System (otherwise known as "Miss  
29 Utility") and shall comply with all of the marking and location verification  
30 requirements of the One Call Notification System.

31 **8.8 No Advertisement**

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

35 **8.9 Inspection by City**

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

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### 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.

#### 12       **9.2    Access to Communications Facilities**

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

#### 26       **9.3    Repair of Public Way and Park Properties**

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

#### 37       **9.4    Appearance**

38          Franchisee shall obtain design and location approvals from the Planning Department  
39          and the Department of Transportation for all attachments that are subject to this  
40          Agreement, which approvals shall be granted or denied on a non-discriminatory basis.  
41          Franchisee shall follow all legally binding Applicable Laws with respect to aesthetics  
42          and appearance for the duration of the Franchise.

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**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**

At its sole and absolute discretion, 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, authorizations and 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 a new pole is approved, the installation and construction of the new pole shall be at Franchisee's sole expense and shall comply with all Applicable Laws ("New Poles"). Any New Poles constructed by Franchisee shall comport with the character of existing poles in the area and otherwise comply with the City's 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

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1 with Franchisee's use of its Communications Facilities. Franchisee shall not be  
2 responsible for maintenance, repair or replacement of City-owned cameras, lights,  
3 light bulbs and equipment or equipment owned by third parties authorized by the City  
4 on the New Poles. Franchisee shall deed New Poles to the City.

### 5 **12.0 Removal and Modification of Communications Facilities During Term**

#### 6 **12.1 Franchisee Right to Remove**

7 During the Term, Franchisee shall have the right to remove from the Public Way and  
8 Park Properties all or any portion of Communications Facilities from time to time,  
9 whether before or after a default under this Franchise, in Franchisee's sole discretion  
10 with prior notice to City. Franchisee, at its own cost and expense, shall promptly  
11 dispose of any materials used and/or generated by any and all removal activities, and  
12 shall promptly repair any damage to the Public Way and Park Properties to their  
13 condition prior to construction and installation of such Communications Facilities by  
14 Franchisee, reasonable wear and tear excepted.

#### 15 **12.2 Removal Due to Public Project**

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

#### 36 **12.3 Removal Due to Termination or Abandonment**

37 Following the termination of the Franchise for any reason, or in the event Franchisee  
38 ceases to operate and abandons the Communications Facilities, Franchisee shall,  
39 within one hundred twenty (120) days, at its sole cost and expense, remove all  
40 Communications Facilities from the Public Way and Park Properties and restore the  
41 area affected by Communications Facilities to its condition prior to the attachment of  
42 the Franchisee's Communications Facilities, reasonable wear and tear excepted, and  
43 further excepting landscaping and related irrigation equipment, or other aesthetic or

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1 design improvements made by Franchisee to the Facility or the adjacent property, or  
2 as otherwise required by the City. Within 90 days of a written request from City,  
3 Franchisee will post a payment bond in the amount of \$500,000.00 to address the  
4 City's cost of removing any Facilities not removed by Franchisee within one hundred  
5 twenty (120) days of termination, and as compensation for any damage to the Public  
6 Way and Park Properties relating to the Communication Facilities, reasonable wear  
7 and tear excepted. Alternatively, upon the request of Franchisee, the City may allow  
8 Franchisee, in the City's sole and absolute discretion, to abandon the  
9 Communications Facilities, or any part thereof, in place and convey it to the City.

10 **13.0 Compliance with Laws**

11 **13.1 Generally**

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

13 **13.2 Permits and Other Authorizations**

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

26 **14.0 Required Reports**

27 **14.1 Annual Construction Report**

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

- 33 A. An updated "as-built" map clearly indicating each Communications Facility,  
34 control box, and associated network route installed by Franchisee or its  
35 contractors in the Public Way or on Park Properties. Specific identification of  
36 attachments to City-owned structures or structures owned by a third party  
37 located in the Public Way or on Park Properties. Specifying owner of  
38 underlying facility (i.e., city, BGE); and
- 39 B. A cumulative written list of the permits that the Franchisee has received from  
40 the City through the last day of the preceding calendar year. The report shall

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1 list the type of permit, the location(s) of the work being performed under the  
2 permit, the date the work started or is projected to start, and the date the work  
3 stopped or is projected to stop. The Franchisee shall omit a permit from this  
4 list after such permit has expired and has not been renewed for three (3)  
5 consecutive months.

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

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

14 **15.0 Default and Remedies**

15 Each of the following events shall constitute a default of this Franchise ("Default"):

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

25 **15.1 Default by Franchisee**

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

35 **15.1.1 Self-Help by City**

36 In the event of any default of this Franchise by Franchisee and upon the  
37 expiration of any applicable cure period set forth in this Franchise, the City  
38 may at any time, after notice, cure the default for the account of and at the  
39 expense of the Franchisee. If City is compelled to pay or elects to pay any

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1 sum of money or to do any act which will require the payment of any sum of  
2 money or is compelled to incur any expense, including reasonable attorneys'  
3 fees in instituting, prosecuting or defending any action to enforce the City's  
4 rights under this Franchise, the sums so paid by City, with all interest, costs  
5 and damages, shall be deemed to be an Additional Franchise fee and shall be  
6 due from the Franchisee to City on the first day of the month following the  
7 incurring of the respective expenses. Upon request by Franchisee, City shall  
8 provide the necessary information for Franchisee to verify all reasonable cost-  
9 based charges incurred.

10 **15.2 Default by City**

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

15 **16.0 City Termination Right**

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

22 **17.0 Radiofrequency Interference**

23 Radiofrequency Interference. Franchisee shall install and operate Communications  
24 Facilities of a type and frequency that will not cause radiofrequency interference to any  
25 FCC-licensed devices or with respect to the City's existing operations. In the event of an  
26 emergency relating to interference, upon notification of such emergency by City,  
27 Franchisee shall disconnect its operations and Communications Facilities from a remote  
28 location. If Franchisee does not promptly disconnect its operations and Communications  
29 Facilities after being notified by the City due to an emergency, City shall be permitted to  
30 disconnect Franchisee's operations and Communications Facilities immediately, whether  
31 such Communications Facilities are located on a City-owned facility or a third-party  
32 facility within the Public Ways or Park Properties. City may perform, or cause to be  
33 performed, upon notice to Franchisee, a technical evaluation to determine the cause of  
34 interference. If, after considering the results of the inspection and tests or any technical  
35 evaluation performed by City, City determines that Franchisee is directly causing  
36 interference to City's operations, City shall promptly notify Franchisee (which notice  
37 shall be made to Franchisee's Network Operations Center at (800) 621-2622) and  
38 Franchisee shall immediately cease interfering with City's operations. If Franchisee fails  
39 to cease its interference with City's operations within twelve (12) hours of such notice,  
40 City shall have the right to take any steps it deems necessary, in its reasonable judgment  
41 and discretion, to cause the interference to cease. Franchisee shall be responsible for all  
42 reasonable and actual payments and/or expenses relating to the City's actions to correct  
43 any interference problems caused by Franchisee.

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

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

### 11 **18.0 MPE Evaluation**

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

### 24 **19.0 Interest**

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

### 29 **20.0 Taxes**

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

### 33 **21.0 Liability and Indemnity**

#### 34 **21.1 Indemnification**

35 Franchisee agrees to indemnify, defend and hold harmless City, its elected/appointed  
36 officials, departments, employees, agents and representatives from any and all claims,  
37 demands, suits and actions including attorneys' fees and court costs, connected  
38 therewith, brought against the City, its elected/appointed officials, departments,  
39 employees, agents and representatives arising as a result of any direct willful, or  
40 negligent act or omission of Franchisee, its agents, officers or employees in

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1 connection with the exercise of Franchisee's rights under this Agreement EXCEPT  
2 for any and all claims, demands, suits and actions, including attorneys' fees and court  
3 costs connected therewith, brought against City or City's elected/appointed officials,  
4 departments, employees, agents and representatives, arising as a result of the sole,  
5 willful, or grossly negligent act or omission of City, its elected/appointed officials,  
6 departments, employees, agents and representatives. This indemnification obligation  
7 shall survive the termination of this Agreement with respect to claims, demands, suits  
8 and actions that arose or accrued during the term of this Agreement.

9 **21.2 Waiver of Claims**

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

14 **21.3 Limitation of the City's Liability**

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

19 **22.0 Insurance**

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

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

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

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

30 Commercial General Liability Insurance at limits of Two Million Dollars  
31 (\$2,000,000.00) per occurrence for claims arising out of bodily injuries or death,  
32 and property damages and Three Million (\$3,000,000) general aggregate including  
33 contractual liability coverage.

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

35 Commercial Automobile Liability with a combined limit of Two Million Dollars  
36 (\$2,000,000.00) each accident for bodily injury and property damages. The  
37 insurance shall cover any owned, non-owned, franchised, or hired automobiles  
38 used in the performance of this Agreement.

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

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

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

6           Coverage is to be in excess of the sum of employers' liability, commercial general  
7           liability and automobile liability insurance required above. Limits of liability  
8           \$4,000,000 each occurrence, \$4,000,000 aggregate.

9           **(f) Environmental Impairment Liability/Pollution Liability.**

10          Coverage with a limit of \$2,000,000 per claim and aggregate covering the  
11          negligent acts and/or omissions of contractor resulting in damage to the  
12          environment from the performance of activities conducted in connection with this  
13          Agreement, including sudden and accidental as well as slow and gradual pollution  
14          releases associated with day to day operations and damage to the environment.

15          **(g) Coverage.**

16          The City, Mayor and City Council of Baltimore (in their official capacities) their  
17          elected/appointed officials, departments, and employees, shall be covered, by  
18          blanket additional insured endorsement, as additional insureds as their interests  
19          may appear under this Agreement with respect to liability arising out of activities  
20          performed by Licensee or its employees in connection with this Agreement.  
21          Insurance shall apply separately to each insured against whom claim is made  
22          and/or lawsuit is brought, except with respect to the limits of the insurer's  
23          liability. To the extent of the Franchisee's negligence, the Franchisee's insurance  
24          coverage shall be primary insurance as respects to the City, its elected/appointed  
25          officials, departments, and employees. Any insurance and/or self-insurance  
26          maintained by City, its elected/appointed officials, departments, and employees  
27          shall not contribute with the Franchisee's insurance or benefit the Franchisee's in  
28          any way to the extent Franchisee is found negligent. Upon receipt of notice from  
29          its insurer(s) Franchisee shall provide the City with forty-five (45) days prior  
30          written notice of cancellation of any coverage required herein. Insurance is to be  
31          placed with insurers with a Best's rating of no less than A:VII, or if not rated with  
32          Best's with minimum surpluses the equivalent of Best's surplus size VII and must  
33          be licensed or approved to do business in the State of Maryland.

34          **(h) Certificate of Insurance; Other Requirements.**

35          Prior to the execution of this Agreement and within ten (10) days of each  
36          insurance policy expiration date during the term of this Agreement, Franchisee  
37          will furnish City with a certificate of insurance ("Certificate"). The Certificate  
38          shall reference this Agreement and insurance waivers of subrogation required by  
39          this Agreement. City shall be given forty-five (45) calendar days advance notice  
40          of cancellation or non-renewal of insurance during the term of this Agreement.

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1           **(i) Limits.**

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

8           **(j) Failure to Maintain Insurance.**

9           Failure of Franchisee to maintain the proper insurance required under this Article  
10          22.0 shall result in termination of this Franchise if the breach is not cured upon  
11          the expiration of any applicable cure period set forth in this Franchise.

12   **23.0 Assignment and Subletting**

13          Franchisee may not assign, or otherwise transfer all or any part of its privilege in this  
14          Franchise without the prior written consent of City which consent shall not be  
15          unreasonably withheld, conditioned or delayed; provided, however, that Franchisee may  
16          assign its privilege to its parent company, any subsidiary or affiliate of it or its parent  
17          company or partners or to any successor-in-interest or entity acquiring fifty-one percent  
18          (51%) or more of its equitable interests or assets in the market defined by the FCC in  
19          which the City of Baltimore is located, subject to the assignee assuming all of  
20          Franchisee's obligations hereunder, and subject to any financing entity's interest, if any,  
21          in this Franchise. Notwithstanding anything to the contrary contained in this Franchise,  
22          Franchisee may assign, mortgage, pledge, hypothecate or otherwise transfer without  
23          consent its interest in Communications Facilities or in this Franchise to any financing  
24          entity, or agent on behalf of any financing entity to whom Franchisee (1) has obligations  
25          for borrowed money or in respect of guaranties thereof, (2) has obligations evidenced by  
26          bonds, debentures, notes or similar instruments, or (3) has obligations under or with  
27          respect to letters of credit, bankers acceptances and similar facilities or in respect of  
28          guaranties thereof. Any such assignment to a financing entity or its agent shall be  
29          subordinate to the terms of this Franchise Agreement.

30   **24.0 Environmental**

31          (a) Except in strict accordance with all applicable laws and regulations, Franchisee shall not  
32          at any time within the Public Way and on Park Properties store, treat, transport or dispose  
33          of any hazardous substance, hazardous waste or oil as defined by the Resource  
34          Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. §§ 6901 et seq.,  
35          Comprehensive Environmental Response, Compensation, and Liability Act of 1980  
36          ("CERCLA"), 42 U.S.C. §§ 9601 et seq., Maryland Environment Article Code Ann.,  
37          Title 4, Sec. 4-401, et seq. and Maryland Environment Article Code Ann., Title 7, subtitle  
38          2.

39          (b) "Environmental Conditions" as used in this Agreement shall mean discovered or  
40          undiscovered contaminants, pollutants, or toxic substances affecting health or the  
41          environment, in any way arising from or related to the subject matter of this Franchise

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1 which could, or do, result in any damage, loss, cost or expense to, or liability, by City to  
2 any person including a government agency or other entity.

3 (c) In addition to all other indemnifications contained herein, Franchisee specifically agrees  
4 to indemnify, reimburse, defend and hold harmless City, its elected/appointed officials,  
5 employees, agents and representatives (“Indemnified Parties”) from and against any and  
6 all losses, costs, liabilities, including but not limited to liabilities, demands, obligations,  
7 claims, suits, actions and expenses, attorneys’ fees, consultant fees and court costs  
8 connected therewith, brought against the Indemnified Parties, or incurred by any of them,  
9 by reason of injury to persons, including death, and damage to property arising out of  
10 Environmental Conditions or resulting from any direct, or indirect, willful, or negligent  
11 acts or omissions of Franchisee, its contractors, agents, or employees arising from  
12 Environmental Conditions, unless solely caused by the negligent act of City.  
13 Notwithstanding anything to the contrary herein, Franchisee agrees to defend, indemnify  
14 and hold harmless the Indemnified Parties from and against all administrative and judicial  
15 actions and rulings, claims, causes of action, demands and liability including, but not  
16 limited to, damages, costs, expenses, assessments, penalties, fines, losses, judgments and  
17 reasonable attorney fees that the Indemnified Parties may suffer or incur due to the  
18 existence of any Hazardous Substances on the Franchised Premises, the Public Way or  
19 Park Properties or migration of any Hazardous Substance to other properties or the  
20 release of any Hazardous Substance into the environment, that arise from the Franchisee’s  
21 and or its representatives activities on the Franchised Premises, the Public Way or Park  
22 Properties. The indemnifications in this section specifically include, without limitation,  
23 costs incurred in connection with any investigation of site conditions or any cleanup,  
24 remedial, removal or restoration work required by any governmental authority. This  
25 provision shall be in addition to, and separate from, any remedies available to City for  
26 breach by the Franchisee of its obligations under any of the provisions of this Agreement  
27 and shall in no way limit any recourse that the City may have at the time against  
28 Franchisee pursuant to any federal, state or local laws. Notwithstanding the foregoing or  
29 any other provision in this Agreement, Franchisee shall not be liable or responsible for  
30 any Environmental Condition, including the release of hazardous substances, that existed  
31 before the execution of this Agreement, or that otherwise does not result from the  
32 activities of Franchisee. The provisions of this Paragraph shall survive the termination or  
33 expiration of this Agreement.

34 (d) City represents to best of its knowledge, without having made inquiry that there is no  
35 Hazardous Substance within the Public Way or Park Properties. Hazardous Substance is  
36 any substance identified as hazardous, toxic or dangerous in any applicable federal, state  
37 or local law or regulation. City shall not introduce or use any Hazardous Substance in the  
38 Public Way or on Park Properties in violation of any applicable law. City shall be  
39 responsible for, and shall promptly conduct any investigation and remediation as required  
40 by any applicable environmental laws, all spills or other releases of any Hazardous  
41 Substance to the extent caused by the City, that have occurred or which may occur in the  
42 Public Way or on Park Properties. City agrees to defend, indemnify and hold harmless  
43 the Franchisee from and against any and all administrative and judicial actions and  
44 rulings, claims, causes of action, demands and liability (collectively, “Claims”) including,  
45 but not limited to, damages, costs, expenses, assessments, penalties, fines, losses,  
46 judgments and reasonable attorney fees that the Franchisee may suffer or incur due to the  
47 existence of any Hazardous Substances in the Public Way or the migration of any  
48 Hazardous Substance to other properties or the release of any Hazardous Substance into

**Council Bill 19-0406**

1 the environment (collectively, "Actions"), arise from the City's activities on the  
2 Franchised Premises to the extent allowable under subsection 5-303 (a), (b) and (c) of the  
3 Courts and Proceedings Article of the Maryland Annotated Code. City agrees to defend,  
4 indemnify and hold Franchisee harmless from Claims resulting from Actions on the  
5 Franchised Premises Property caused by City prior to and during the Initial Term and any  
6 Renewal Term. The indemnifications in this section specifically include, without  
7 limitation, costs incurred in connection with any investigation of site conditions or any  
8 cleanup, remedial, removal or restoration work required by any governmental authority.  
9 This Section shall survive the termination or expiration of this Agreement.

10 **25.0 Notices**

11 All notices, requests, demands, and other communications hereunder shall be in writing and  
12 shall be deemed given if personally delivered or by certified mail, return receipt requested, or  
13 when delivered by commercial courier, provided the courier's regular business is delivery  
14 service and provided further that it guarantees delivery to the addressee by the end of the next  
15 business day following the courier's receipt from the sender, to the following addresses:

16 City: The Mayor and City Council of Baltimore  
17 Department of Transportation  
18 Attn: Director  
19 417 E. Fayette Street, Fifth Floor  
20 Baltimore, Maryland 21202

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

22 Baltimore City Department of Real Estate  
23 Room 304 City Hall  
24 100 North Holliday Street  
25 Baltimore, Maryland 21202  
26 410-396-4768  
27 410-528-1437 (fax)

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

30 Director of Finance  
31 Bureau of Treasury Management  
32 Collections Division  
33 200 N. Holliday Street  
34 Baltimore, Maryland 21202

35 **Franchisee:**

36 Cellco Partnership d/b/a Verizon Wireless  
37 180 Washington Valley Road  
38 Bedminster, New Jersey 07921  
39 Attention: Network Real Estate

**Council Bill 19-0406**

1     **26.0 Franchisee Point of Contact Relating to Facilities**

2     Appropriate Franchisee staff shall be available to the employees of any City department  
3     having jurisdiction over Franchisee's activities twenty-four (24) hours a day, seven (7) days a  
4     week, regarding problems or complaints resulting from the attachment, installation,  
5     operation, maintenance, or removal of Communications Facilities.

6     **27.0 Miscellaneous**

7     **27.1 Incorporation of Prior Agreements**

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

13    **27.2 Non-Waiver**

14    Failure of City to insist on strict performance of any of the conditions, covenants,  
15    terms or provisions of this Franchise or to exercise any of its rights hereunder shall  
16    not waive such rights, but City shall have the rights to enforce such rights at any time  
17    and take such action as might be lawful or authorized hereunder, either in law or  
18    equity. The receipt of any sum paid by Franchisee to City after a breach of this  
19    Franchise shall not be deemed a waiver of such breach unless expressly set forth in  
20    writing.

21    **27.3 Taxes**

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

27    (b) Franchisee shall indemnify City from any and all liability, obligation, damages,  
28    penalties, claims, liens, costs, charges, losses and expenses (including without  
29    limitation, reasonable fees and expenses of attorneys, expert witnesses and  
30    consultants), which may be imposed upon, incurred by or be asserted against City  
31    in relation to the taxes owed or assessed on the Franchised Premises as a result of  
32    Franchisee's use thereof or the installation or maintenance of Franchisee's  
33    Communications Equipment thereon.

34    **27.4 Force Majeure**

35    If either City or Franchisee is prevented or delayed from fulfilling any term or  
36    provision of this Agreement by reason of fire, flood, earthquake, or like acts of nature,  
37    wars, revolution, civil commotion, explosion, acts of terrorism, embargo, acts of the  
38    government in its sovereign capacity, material changes of laws or regulations, labor  
39    difficulties, including without limitation, strikes, slowdowns, picketing or boycotts,

**Council Bill 19-0406**

1 unavailability of equipment of vendor, or any other such cause not attributable to the  
2 negligence or fault of the party delayed in performing the acts required by the  
3 Agreement, then performance of such acts shall be excused for the period of the  
4 unavoidable delay, and the affected party shall endeavor to remove or overcome such  
5 inability as soon as reasonably possible.

6 **27.5 Governing Law; Jurisdiction**

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

12 **27.6 Change in Law and Severability**

13 If any provision or portion thereof of this Agreement is or becomes invalid under any  
14 applicable statute or rule of law, and such invalidity does not materially alter the  
15 essence of this Agreement to either party, such provision shall not render  
16 unenforceable this entire Agreement. Rather, the parties intend that the remaining  
17 provisions shall be administered as if the Agreement did not include the invalid  
18 provision. If, as a result of a change in law by statute, rule, ruling or otherwise, the  
19 total compensation to the City arising as a result of Franchisee's occupation of the  
20 Public Way or Park Properties (including attachments on City-owned facilities  
21 therein) is materially reduced, the Parties agree to negotiate in good faith to amend  
22 this Agreement to ensure that total compensation to the City remains substantially  
23 comparable, to the extent permitted under applicable law.

24 **27.7 Representations**

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

28 **27.8 Amendment**

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

31 **27.9 MBE/WBE Compliance**

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

**Council Bill 19-0406**

1 ("MWBOO"). MWBOO shall administer the provisions of this Section on behalf  
2 of the City, and Franchisee shall comply with MWBOO rules and requirements.

3 (b) Documentation to the City on MBE/WBE Participation. Six (6) months after the  
4 Effective Date and every six (6) months thereafter while upgrade construction  
5 under this Agreement is in progress, and annually thereafter, the Franchisee shall  
6 submit to the City written documentation, including executed contracts, service  
7 agreements and utilization commitment forms, that shall identify the particular  
8 MBEs/WBEs that are (i) contracting directly with the Franchisee; or (ii)  
9 subcontracting with prime contractors who contract directly with Franchisee. The  
10 documentation submitted to the City shall specify the dollar value of the  
11 participation, type of work to be performed, and such other information as the  
12 City may reasonably request.

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

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

**Council Bill 19-0406**

1 **IN WITNESS WHEREOF**, the parties hereto have executed this Agreement in duplicate on the  
2 day and year first 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:** **CELLCO PARTNERSHIP d/b/a VERIZON**  
14 **WIRELESS**

15 \_\_\_\_\_ **BY:** \_\_\_\_\_ (SEAL)

16 **NAME:**

17 **TITLE:**

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

**APPROVED BY THE BOARD OF**  
**ESTIMATES**

20 \_\_\_\_\_

\_\_\_\_\_

21 **CHIEF SOLICITOR**

**CLERK**

**DATE**

Council Bill 19-0406

NOV 04 2019

Certified as duly passed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
President, Baltimore City Council

Certified as duly delivered to His Honor the Mayor,

NOV 04 2019

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Chief Clerk

Approved this 14<sup>th</sup> day of Nov., 2019

\_\_\_\_\_  
Mayor, Baltimore City

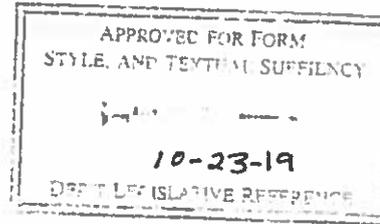
Approved For Form and Legal Sufficiency

This 12 Day of November 2019

\_\_\_\_\_  
Chief Solicitor



AMENDMENTS TO COUNCIL BILL 19-0406  
(1" Reader Copy)



By: Housing and Urban Affairs Committee

Amendment No. 1

On page 7, after line 15, insert

“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 may use existing City-owned Conduit. In the event there is no available City-owned Conduit to meet Franchisee’s requirements, and in the absence of any suitable conduit owned by a Third Party, Franchisee may, in coordination with the City, cause the construction of additional Conduit in the Public Way or on Park Properties. Any construction performed pursuant to this Section shall be consistent with City specification. 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.”;

and, on the same page, in line 16, strike “7.1” and substitute “7.2”.

**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

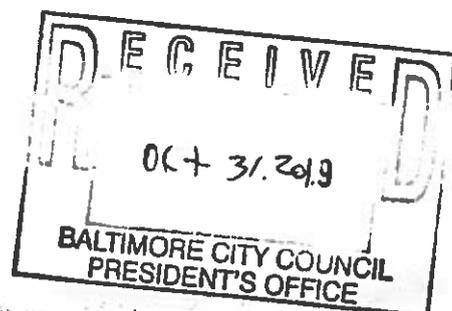
Ladies and Gentlemen:

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

19-0406 - An Ordinance concerning a 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.

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.





சென்னை மாநகராட்சி

சென்னை

சென்னை மாநகராட்சி  
சென்னை

CITY COUNCIL BILL - cont'd

THE LAW DEPARTMENT WISHES TO SUPPLEMENT ITS BILL REPORT DATED AUGUST 16, 2019 TO EXPLAIN AND PROVIDE A PROPOSED AMENDMENT TO COUNCIL BILL 19-0406.

WHEN THE LEGISLATION WAS DRAFTED, THE CITY AND CELLCO WERE UNAWARE THAT CELLCO MAY BE REQUIRED TO CONSTRUCT CERTAIN CONDUIT IN ORDER TO SERVICE THE SMALL WIRELESS FACILITIES PERMITTED BY COUNCIL BILL 19-0406. THE LEGISLATION AS DRAFTED IS SILENT ON THIS MATTER. TO ACCOMMODATE CELLCO'S POTENTIAL NEED FOR CONDUIT, THE AMENDMENT THEREFORE IS NEEDED.

Amendment No. 1

On page 7, after line 15, insert

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 MAY USE EXISTING CITY-OWNED CONDUIT. IN THE EVENT THERE IS NO AVAILABLE CITY-OWNED CONDUIT TO MEET FRANCHISEE'S REQUIREMENTS, AND IN THE ABSENCE OF ANY SUITABLE CONDUIT OWNED BY A THIRD PARTY, FRANCHISEE MAY, IN COORDINATION WITH THE CITY, CAUSE THE CONSTRUCTION OF ADDITIONAL CONDUIT IN THE PUBLIC WAY OR ON PARK PROPERTIES. 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.";



CITY COUNCIL BILL - cont'd

and, on the same page, in line 16, strike "7.1" and substitute "1,2".

THE BALTIMORE CITY OFFICE OF INFORMATION TECHNOLOGY (BCIT) HAS REVIEWED CITY COUNCIL BILL 19-0406 AND IS IN GENERAL SUPPORT BUT WOULD LIKE TO PROVIDE A PROPOSED AMENDMENT TO COUNCIL BILL 19-0406.

WHEN THE LEGISLATION WAS DRAFTED, THE CITY AND CELLCO WERE UNAWARE THAT CELLCO MAY BE REQUIRED TO CONSTRUCT NEW CONDUIT WHEN THERE IS NO CITY OWNED CONDUIT IN THEIR PROPOSED ROUTE IN ORDER TO PROVIDE THE WIRELESS SERVICES PERMITTED BY COUNCIL BILL 19-0406. TO ADDRESS CELLCO'S POTENTIAL NEED FOR CONDUIT CONSTRUCTION, BCIT WOULD LIKE TO PROPOSE AN AMENDMENT TO THE ORIGINAL LEGISLATION.

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 AND 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 AND SHALL INCLUDE AT LEAST TWO ADDITIONAL DUCT BANKS IN THE CONSTRUCTED CONDUIT FOR FUTURE CITY USE. THE FRANCHISE AGREES THAT OWNERSHIP OF THE ADDITIONAL DUCT BANKS WILL BE TRANSFERRED 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.



CITY COUNCIL BILL - cont'd

THE DEPARTMENT OF REAL ESTATE HAS NO OBJECTIONS TO THE PASSAGE OF CITY COUNCIL BILL 19-406 ALTHOUGH 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.

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

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

Attn: Ms. Marquise Goodwin  
Advertising Department

Re: Enclosed Notice CC Bill 19-0406

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:



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 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.

Sincerely,

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

Three days:

BALTIMORE SUN MEDIA

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



**BALTIMORE CITY COUNCIL**  
**Housing and Urban Affairs Committee**  
**VOTING RECORD**

DATE: 10-22-14

BILL#: 19 0407

BILL TITLE: Ordinance - Franchise – New Cingular Wireless PCS

MOTION BY: HENRY                      SECONDED BY: DORSEY

- 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"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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<b>TOTALS</b>	6			

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



<b>FROM</b>	NAME & TITLE	CHRIS RYER, DIRECTOR	CITY of BALTIMORE <b>MEMO</b>	
	AGENCY NAME & ADDRESS	DEPARTMENT OF PLANNING 8 <sup>TH</sup> FLOOR, 417 EAST FAYETTE STREET		
	SUBJECT	CITY COUNCIL BILL #19-0406 / FRANCHISE – CELLCO PARTNERSHIP, D/B/A VERIZON WIRELESS		

DATE:

**TO**

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

October 21, 2019

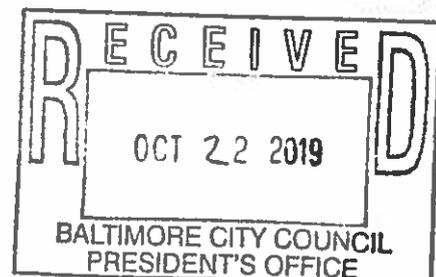
The Department of Planning is in receipt of City Council Bill #19-0406, which is for the purpose of granting a franchise to Cellco Partnership, d/b/a Verizon Wireless, a Delaware general partnership, to construct, install, maintain, repair, operate, relocate, replace, and remove certain Communications 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.

The Department of Planning concurs with the Planning Commission and recommends approval of City Council Bill #19-0406.

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





<p align="center"><b>CITY OF BALTIMORE</b></p> <p align="center"><b>BERNARD C. "JACK" YOUNG,</b> <i>Mayor</i></p>		<p align="center"><b>DEPARTMENT OF RECREATION AND PARKS</b></p> <p>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>
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**DATE:** Tuesday, October 22, 2019

**TO:** Honorable President and Members of the City Council  
**FROM:** Baltimore City Recreation & Parks  
**POSITION:** Support with amendments.  
**Re:** City Council Bill #19-0406

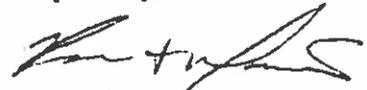
Dear President and City Council Members:

Baltimore City Recreation and Parks (BCRP) has reviewed City Council Bill 19-0406 for the purpose of granting a franchise to Celco 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.

This franchise ordinance and agreement allows Celco Partnership 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.

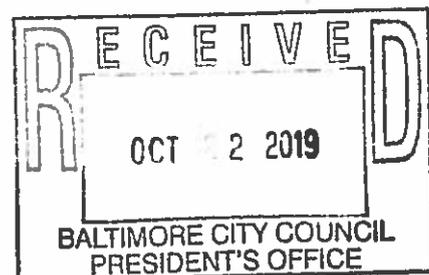
After reviewing City Council Bill 19-0406, we have no objection to the passage of this bill. If you have any questions, please do not hesitate to contact Jenny Morgan at [jenny.morgan@baltimorecity.gov](mailto:jenny.morgan@baltimorecity.gov) or 410-396-7900.

Respectfully,



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

*No obj.*





8

*R. C. C.*

<b>FROM</b>	NAME & TITLE	Robert Cennane, Budget Chief	CITY of BALTIMORE <b>MEMO</b>	
	AGENCY NAME & ADDRESS	Department of Finance Room 432, City Hall (410) 396-4774		
	SUBJECT	CCB 19-0406 – Franchise – Cellco Partnership, d/b/a Verizon Wireless		

**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 19-0406, which grants a franchise to Cellco Partnership 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 19-0406 will allow Cellco Partnership the disposition of Communication facilities and provision of Wireless Services under the terms specified in the agreement. It also permits the Cellco Partnership 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 19-0407, which would grant a franchise agreement to New Cingular Wireless PCS.

**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.

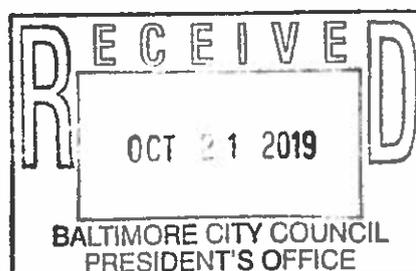
**Conclusion**

This legislation, along with City Council Bill 19-0406, will make the City's franchise agreements with small cell distributors the same and will result in no net financial impact.

**For the reasons stated above, the Department of Finance supports the passage of City Council Bill 19-0406.**

cc: Henry Raymond  
Matthew Stegman  
Nina Themelis

*T*





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: Report- Council Bill 19-0406 (Franchise – Verizon Wireless)

Dear President and City Council Members,

Baltimore City Office of Information Technology (BCIT) has reviewed City Council Bill 19-0406 and is in general support but would like to provide a proposed amendment to Council Bill 19-0406.

When the legislation was drafted, the City and Cellco were unaware that Cellco may be required to construct new conduit when there is no city owned conduit in their proposed route in order to provide the wireless services permitted by Council Bill 19-0406. To address Cellco's potential need for conduit construction, BCIT would like to propose an amendment to the original legislation.

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 and 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 and shall include at least two additional duct banks in the constructed conduit for future City use. The franchise agrees that ownership of the additional duct banks will be transferred to the City upon completion of the construction.

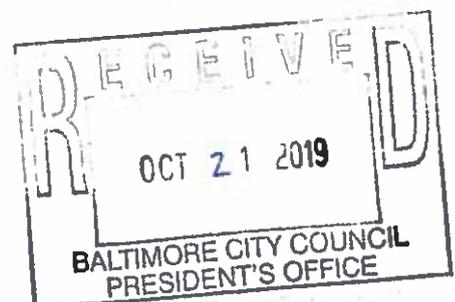
The additional duct banks would allow the city opportunities to provide services in areas that may be difficult to serve. This opportunity could allow the City to provide Wi-Fi in areas hard to reach, CCTV cameras as well as additional lighting. BCIT is hopeful that this amendment will be considered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





FROM	NAME & TITLE	Steve Sharkey, Director	CITY of BALTIMORE  MEMO	
	AGENCY NAME & ADDRESS	Department of Transportation (DOT) 417 E Fayette Street, Room 527		
	SUBJECT	City Council Bill 19-0406		

TO: Mayor Bernard C. "Jack" Young  
TO: Housing & Urban Affairs Committee  
FROM: Department of Transportation  
POSITION: Support  
RE: Council Bill - 19-0406

DATE: 10/10/19

**INTRODUCTION** – Franchise - Cellco Partnership, d/b/a Verizon Wireless

**PURPOSE/PLANS** – 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.

**COMMENTS** – Council Bill 19-0406 looks to formalize a franchise agreement between the City of Baltimore and Cellco Partnership. The franchise agreement would allow for Cellco Partnership to use city right-of-way and park properties to build out their wireless network. Under the franchise agreement, Cellco Partnership 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.

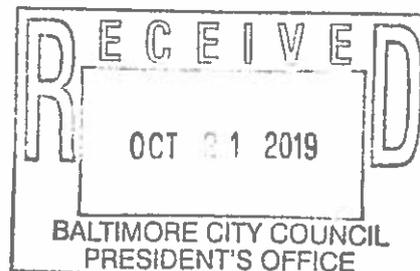
**AGENCY/DEPARTMENT POSITION** – The Department of Transportation supports City Council Bill 19-0406.

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

Sincerely,



Steve Sharkey  
Director



A



<b>FROM</b>	NAME & TITLE	CHRIS RYER, DIRECTOR
	AGENCY NAME & ADDRESS	DEPARTMENT OF PLANNING 8 <sup>TH</sup> FLOOR, 417 EAST FAYETTE STREET
	SUBJECT	CITY COUNCIL BILL #19-0406 / FRANCHISE – CELLCO PARTNERSHIP, D/B/A VERIZON WIRELESS

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 #19-0406, 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.

In its consideration of this Bill, the Planning Commission reviewed the attached staff report, which recommended approval of City Council Bill #19-0406 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 #19-0406 be passed by the City Council.

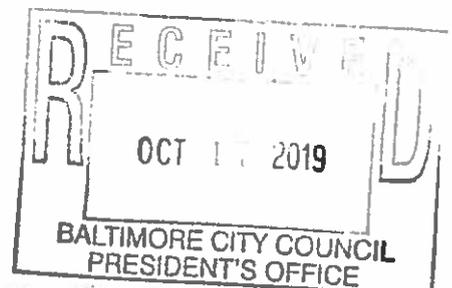
If you have any questions, please contact Mr. Eric Tiso, Division Chief, Land Use and Urban Design Division at 410-396-8358.

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

F







Bernard C. "Jack" Young  
Mayor

## PLANNING COMMISSION

Sean D. Davis, Chairman

### STAFF REPORT



Chris Ryer  
Director

October 3, 2019

**REQUEST:** City Council Bill #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.

**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 Mobilite/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 Verizon Wireless.

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, Cellco Partnership, d/b/a Verizon Wireless (Verizon) seeks the right to install and maintain its own equipment for the benefit of its customers. This request for a franchise will allow Verizon Wireless 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 Verizon Wireless (to include working directly with BGE for power).

Attachment Agreement: The franchise bill itself is a blanket agreement that will permit Verizon Wireless 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 #2019-0406 but rather is a separate document. Verizon Wireless 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 1.3 already covers this*



- 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.



**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 19-0406, Franchise - Cellco Partnership, d/b/a Verizon Wireless**

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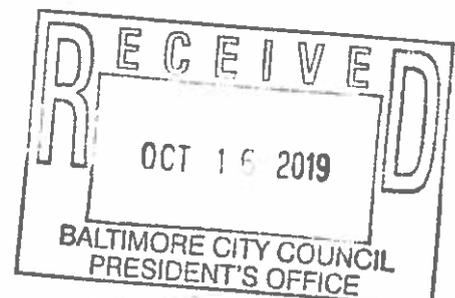
The Department of Housing and Community Development (DHCD) has reviewed City Council Bill 19-0406 for the purpose of granting a franchise to Cellco Partnership, d/b/a Verizon Wireless, a Delaware general partnership, to construct, install, maintain, repair, operate, relocate, replace, and remove certain 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.

This franchise ordinance and agreement allows Cellco Partnership 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. 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 19-0406 and has **no objection** to the passage of the Bill.

MB:sm

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



*No obj*



<b>FROM</b>	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 #19-0406 Franchise – Cellco Partnership, d/b/a Verizon Wireless

CITY of  
BALTIMORE  
**MEMO**

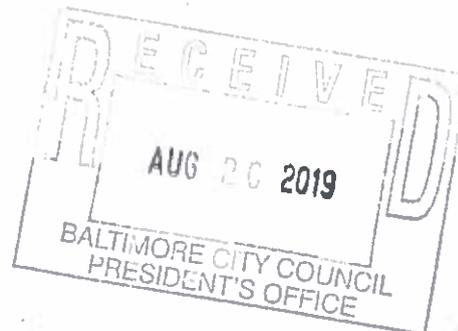


**TO** The Honorable Brandon M. Scott, President  
And All Members of the Baltimore City Council  
City Hall, Room 408

DATE: August 19, 2019

**FOR the purpose of granting a franchise to 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.**

**The Baltimore City Fire Department has no objections to Council Bill 19-0406: Franchise -Cellco Partnership, d/b/a Verizon Wireless. 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.*



<b>F R O M</b>	Name & Title	Walter J. Horton Real Estate Officer	CITY OF BALTIMORE  <b>MEMO</b>	
	Agency Name & Address	Department of Real Estate Room 304 – City Hall 100 N. Holliday Street		
	Subject	City Council Bill 19-0406		

**To:** Housing and Urban Affairs Committee

August 16, 2019

**POSITION:** Support

**INTRODUCTION**

I am herein reporting on City Council Bill 19-0406 introduced by City Council President Scott on behalf of the Administration (Department of Transportation).

**PURPOSE**

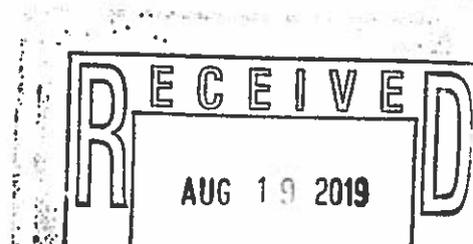
The purpose of the Bill is to grant a franchise to Cellco Partnership, d/b/a Verizon Wireless (Verizon), a Delaware general partnership to construct, install, maintain, repair, operate, relocate, replace and remove certain Communications Facilities (commonly referred to as Distributed Antenna Systems-DAS) 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 obj 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 19-406 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](mailto: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: Supplemental Report - City Council Bill 19-0406 – Franchise – Cellco Partnership,  
d/b/a Verizon Wireless

Dear President and City Council Members:

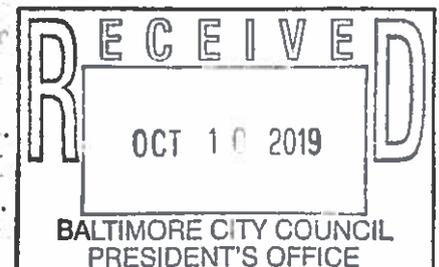
The Law Department wishes to supplement its bill report dated August 16, 2019 to explain and provide a proposed amendment to Council Bill 19-0406.

When the legislation was drafted, the City and Cellco were unaware that Cellco may be required to construct certain conduit in order to service the small wireless facilities permitted by Council Bill 19-0406. The legislation as drafted is silent on this matter. To accommodate Cellco's potential need for conduit, the attached amendment therefore is needed.

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  
with  
Amends



DLR DRAFT I 7OCT19

DLR DRAFT I 7OCT19

AMENDMENTS TO COUNCIL BILL 19-0406  
(1" Reader Copy)

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

Amendment No. 1

On page 7, after line 15, insert

"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 may use existing City-owned Conduit. In the event there is no available City-owned Conduit to meet Franchisee's requirements, and in the absence of any suitable conduit owned by a Third Party, Franchisee may, in coordination with the City, cause the construction of additional Conduit in the Public Way or on Park Properties. 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.";

and, on the same page, in line 16, strike "7.1" and substitute "7.2".



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 19-0406 – Franchise – Cellco Partnership, d/b/a Verizon Wireless

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 19-0406 for form and legal sufficiency. The bill would grant a franchise to Cellco Partnership 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.

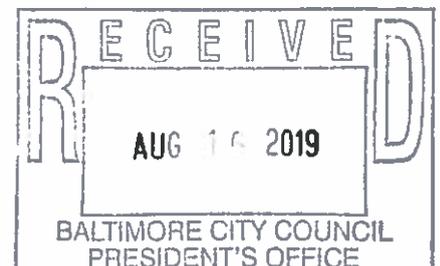
This franchise ordinance and the attached franchise agreement, which is made part of the ordinance, allows Cellco Partnership to use the City rights-of-way and park properties to conduct a business in which wireless antenna will be attached to poles to provide certain communication services. The exercise of this franchise ordinance is conditioned on Cellco Partnership 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 19-406 concerns matters pertaining to Cellco Partnership's 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



F Report #1



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



<b>FROM</b>	<b>NAME &amp; TITLE</b>	Rebecca Woods, Esq., Executive Director <i>RW</i>	<b>CITY OF BALTIMORE</b>  <b>MEMO</b>	
	<b>AGENCY NAME &amp; ADDRESS</b>	Environmental Control Board 1 North Charles Street, 13 <sup>th</sup> Floor, Baltimore, Maryland 21201		
	<b>SUBJECT</b>	City Council Bill # 19-0406 Franchise – Cellco Partnership, d/b/a Verizon Wireless		

DATE:

August 13, 2019

**TO**

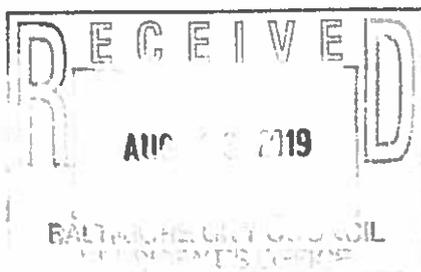
The Honorable President and Members  
of the Baltimore City Council

The Baltimore City Environmental Control Board (ECB) has been requested to review City Council Bill # 19-0406, Franchise – Cellco Partnership, d/b/a Verizon Wireless. The purpose of the bills is to grant 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 to provide for a special effective date.

Specifically, Council Bill # 19-0406 was referred to the ECB because the Franchise Agreement between the Mayor and City Council of Baltimore and Cellco Partnership, d/b/a Verizon Wireless 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.

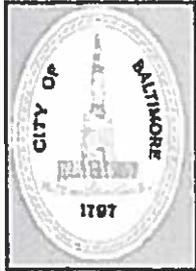
The ECB’s operations have no connection to the storage, treatment, transportation, disposal, and/or investigation or remediation of a spill or release of waste or any otherwise hazardous substance in Baltimore City. Further, ECB’s operations would play no role in the indemnification, reimbursement, and/or 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*



<b>FROM</b>	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 19-0406		

July 29, 2019

**TO:**

Housing and Urban Affairs Committee

**INTRODUCTION**

I am herein reporting on City Council Bill 19-0406 introduced by Council President Scott on behalf of the Administration (Department of Transportation).

**PURPOSE**

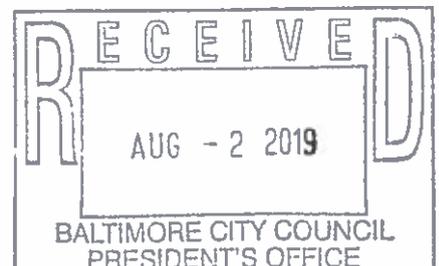
The purpose of the Bill is to grant a franchise to Celco Partnership, d/b/a Verizon Wireless, a Delaware general partnership, to construct, install, maintain, repair, operate, relocate, replace, and remove certain Communications Facilities in and across certain streets and Public Ways and Park Properties, subject to certain terms and conditions; and 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 19-0406, if approved, would grant a franchise to Celco Partnership, d/b/a Verizon Wireless, 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 19-0406 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](mailto:Marcia.Collins@baltimorecity.gov).



Radolph S. Chow, P.E.  
Director

RSC:MMC

*No objection*



**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 - Cellco 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

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



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**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.

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**Further Study**

Was further study requested?

Yes  No

If yes, describe.

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**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  
..... :

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cc: Bill File  
OCS Chrono File





# CITY OF BALTIMORE CITY COUNCIL HEARING ATTENDANCE RECORD

Committee: Housing and Urban Affairs

Chairperson: John Bullock

Date: October 22, 2019

Time: 2:00 PM

Place: Clarence "Du" Burns Chambers

Subject: Ordinance - Franchise - Celco Partnership b/b/a Verizon Wireless

CC Bill Number: 19-0406

**PLEASE PRINT**

**IF YOU WANT TO TESTIFY PLEASE CHECK HERE**



FIRST NAME	LAST NAME	ST. #	ADDRESS/ORGANIZATION NAME	ZIP	EMAIL ADDRESS	TESTIFY	FOR	AGAINST	YES	NO	WHAT IS YOUR POSITION ON THIS BILL?	(*) LOBBYIST : ARE YOU REGISTERED IN THE CITY
John	Doe	100	North Charles Street	21202	Johndoenbmore@yahoo.com	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>
Lisa	Jones		21023 MD Avenue	21018	lisa.jones@mdloyalist.com	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>
Christopher	Davis		UNIV. OF MD		davis@umd.edu	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>
Step J.L.	Carter		MINISTEE CONF OVERBALT			<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>
Carol	Stovers		BOAST ED TRUST			<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>
JACON	PODDON		NATI'L ACTION NET			<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>
MIKE	HILLIARD		HARREL COMY ORG			<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>
ANTHONY	FRASSLEY		DRUID HEIGHTS CDC			<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>
WANDA	BOEST		UPTON PLANNING COM			<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>
<del>WANDA</del>	<del>HALL</del>		PENN North Com Assoc			<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>
<del>WANDA</del>	<del>TILGEMAN</del>		GRE BAST BLK CHPTOR			<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" 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.



CITY OF BALTIMORE

BERNARD C. "JACK" YOUNG, Mayor



OFFICE OF COUNCIL SERVICES

LARRY E. GREENE, Director  
415 City Hall, 100 N. Holliday Street  
Baltimore, Maryland 21202  
410-396-7215 / Fax: 410-545-7596  
email: larry.greene@baltimorecity.gov

## BILL SYNOPSIS

Committee: Housing and Urban Affairs

Bill CC 19-0406

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### Ordinance – Franchise – Celco Partnership d/b/a Verizon Wireless

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*Sponsor: President Scott (The Administration) \**

*Introduced: July 22, 2019*

#### Purpose:

For the purpose of granting a franchise to Celco Partnership, d/b/a Verizon Wireless, a Delaware general partnership, to construct, install, maintain, repair, operate, relocate, replace, and remove 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.

**Effective:** Upon enactment

**Hearing Date/Time/Location:** October 22, 2019 at 2:00 PM in the Council Chambers

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#### Agency Reports

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



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## 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 19-0406 grants a franchise to the entity commonly known as Verizon 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. Verizon is responsible for the maintenance of all devices.
4. Verizon must comply with all existing laws and regulations.

The exact details of the installation and the Franchise Fee will be set by the Board of Estimates prior to final adoption of the bill.

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## Additional Information

**Fiscal Note: Not Available**

**Information Source(s): Bill File**

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

Direct Inquiries to: 410-396-1266



# City of Baltimore

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

## Meeting Agenda - Final

### Housing and Urban Affairs Committee

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Tuesday, October 22, 2019

2:00 PM

Du Burns Council Chamber, 4th floor, City Hall

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19-0406

Rescheduled from 9/24/19

#### **CALL TO ORDER**

#### **INTRODUCTIONS**

#### **ATTENDANCE**

#### **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.

#### **ADJOURNMENT**

**THIS MEETING IS OPEN TO THE PUBLIC**



**CITY OF BALTIMORE  
COUNCIL BILL 19-0406  
(First Reader)**

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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

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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*

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A BILL ENTITLED

1 AN ORDINANCE concerning

2 **Franchise – Cellco Partnership, d/b/a Verizon Wireless**

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

8 BY authority of  
9 Article VIII – Franchises  
10 Baltimore City Charter  
11 (1996 Edition)

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

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

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

**Council Bill 19-0406**

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

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

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

**Council Bill 19-0406**

**BALTIMORE CITY COMMUNICATIONS FACILITIES 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 Cellco Partnership, d/b/a Verizon Wireless, a Delaware general partnership (“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 Service 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 applicable federal, state, and local laws, statutes, codes, ordinances, resolutions, orders, rules and regulations, including but not limited to all 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 the 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

**Council Bill 19-0406**

1 Baltimore city government or any officer, official, employees, or agent of the  
2 Baltimore City government, any designee of the foregoing, or any successor thereto.

3 **1.5** "Conduit" means enclosed underground raceways capable of protecting fiber optic  
4 and other communications cables, including associated individual ducts, inner ducts,  
5 manholes, handholes, vaults, pull-boxes, and trenches.

6 **1.6** "Effective Date" means the date upon which this Agreement is adopted and approved  
7 by the Mayor and City Council of the City.

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

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

22 **1.9** "Franchise Area" shall mean all the area within the boundaries of the City.

23 **1.10** "Park Properties" means the real property controlled by the Department of Recreation  
24 and Parks pursuant to the provisions of Article VII of the City Charter, which includes  
25 parks, zoos, squares, athletic and recreational facilities.

26 **1.11** "Person" means any natural person or any association, firm, partnership, joint venture,  
27 corporation or other legally recognized entity, whether for-profit or not-for-profit.

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

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

37 **2.0 Grant of Franchise**

38 The City grants to Franchisee the nonexclusive right to construct, install, maintain, repair,  
39 operate, replace and remove Communications Facilities within the Public Way and on Park

**Council Bill 19-0406**

1 Properties for the purpose of providing Wireless Services, which shall be exercised at  
2 Franchisee's sole cost and expense, and which shall be subject to all deeds, easements,  
3 dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record  
4 which may affect the Public Way and Park Properties. Nothing in this Agreement shall be  
5 deemed to grant, convey, create or vest in Franchisee a real property interest in land,  
6 including any fee, leasehold interest, or easement.

7 **2.1 Compliance With Law**

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

10 **2.2 No Waiver of Other Permits and Authorizations**

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

19 **2.3 No Interference**

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

30 **2.4 Closing of Public Ways and Park Properties**

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

**Council Bill 19-0406**

1 appropriate, condition its consent to such closing, vacation, or transfer of such Public  
2 Way or Park Properties on the agreement of such private Person to: (i) grant the  
3 Franchisee the right to continue to occupy and use such Public Way or Park  
4 Properties; or (ii) reimburse the Franchisee for its reasonable costs to relocate the  
5 affected part of the Communications Facilities. The City shall provide reasonable  
6 notice to Franchisee of any such closing, vacation, or transfer to allow Franchisee to  
7 remove its Communications Facilities where the right to continue to occupy and use  
8 such Public Way or Park Properties is not reserved for Franchisee.

9 **2.5 Conditions Precedent**

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

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

24 **3.0 Relation to Attachment Rights**

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

36 **4.0 Term**

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

39 This Franchise may be automatically renewed for three (3) additional five (5) year terms  
40 provided Franchisee is not in default, is not in arrears with regard to, any amount of Franchise

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1 fees, and provided that Franchisee has not given City notice of Franchisee's intention not to  
2 renew, such notice to be given not less than one hundred twenty (120) days prior to the  
3 expiration of the current Franchise term.

4 **5.0 Franchise Fee**

5 For the right to construct, install, maintain, repair, operate, replace and remove its  
6 Communications Facilities in the Public Way and on Park Properties, Franchisee shall pay to  
7 the City a Franchise Fee in the amount of \$ \_\_\_\_\_ per year. Payment shall be made no  
8 later than 30 days following the conclusion of each fiscal 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 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 Installation Plan**

17 The installation of Communications Facilities in the Public Way and on Park  
18 Properties shall be made in accordance with plans and specifications approved by the  
19 City and after obtaining all necessary permits for all work in the Public Way or on  
20 Park Properties. Franchisee shall submit to the Baltimore City Department of  
21 Transportation and, when siting on Park Properties, the Department of Recreation and  
22 Parks, an initial installation plan, and any subsequent work plans concerning  
23 installations not addressed in the initial work plan, which shall include fully  
24 dimensioned site plans and specifications that are drawn to scale and show (1) the  
25 specific Communications Facilities; (2) the specific proposed location of such  
26 Communications Facilities (including specific identification of each attachment to a  
27 City-owned or third-party structure located in the Public Way and on Park Properties);  
28 (3) the route of fiber optic cable installed and utilized by the Communications  
29 Facilities only if such fiber optic cable will be installed and owned by the Franchisee  
30 (as distinct from being installed and owned by one of the fiber optic service providers  
31 that has its own franchise with the City, regardless of whether such service provider is  
32 an affiliate of Franchisee; and (4) the proposed type of construction materials for all  
33 structures, and any other details that the City may reasonably request which are also  
34 applicable to other regulated utilities operating within the Public Way or on Park  
35 Properties. Such installation plans may be submitted as part of Franchisee's annual  
36 construction report described in Section 14.

37 **7.3 Approval by City**

38 Franchisee shall not attach, install, maintain, or operate any Communications  
39 Facilities in or on the Public Way or Park Properties until plans for such work have  
40 been approved by the City (which shall not be unreasonably withheld, delayed,  
41 conditioned or denied), and all necessary permits have been properly issued.

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1 Substantial modification to an installation plan (including, for example, a change of  
2 Communications Facilities site) made in the course of construction shall require the  
3 written consent of the City, upon which the City shall act promptly, and may require  
4 modification of an existing or issuance of a new permit.

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

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

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

16 **8.0 Construction**

17 **8.1 Compliance with Standards and Specifications**

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

34 **8.2 Safety Precautions**

35 **8.2.1 Standard of Care**

36 The Franchisee shall employ ordinary care at all times and employ commonly  
37 accepted methods and devices for the prevention of failures and accidents that  
38 are likely to cause damage, injury, or nuisance to the public. In addition, the  
39 Franchisee shall, at its sole cost and expense, undertake all necessary and  
40 appropriate efforts to prevent accidents at its work sites. The Franchisee shall

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1                    comply with the Occupational Safety and Health Act of 1970, (29 U.S.C. §§  
2                    651-78), as amended, and all other Applicable Law.

3                    **8.2.2 Protection of Construction Areas**

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

12                   **8.2.3. Emergency Notification**

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

18                   **8.3 Identification**

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

24                   **8.4 Antennas and Towers**

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

31                   **8.5 Disruption, Interference and Damage**

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

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**8.6 Materials and Claims**

All materials furnished for any work done on the property on which Franchisee's Communications Facilities are located (the "Franchised Premises") by Franchisee shall be at Franchisee's sole cost and expense. Franchisee agrees to protect the Franchised Premises, and City, from all claims of contractors, laborers and material men claiming by or through the actions or activities of Franchisee. 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 DPW Utility Coordinating Committee; and (B) if Franchisee has installed fiber optic cable to be owned by Franchisee (as distinct from having fiber optic cabling installed and owned by one of the local fiber optic service providers that has its own franchise with the City, regardless of whether such service provider is an affiliate of Franchisee), the One Call Notification System (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.

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### 1           **9.2    Access to Communications Facilities**

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

### 15          **9.3    Repair of Public Way and Park Properties**

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

### 26          **9.4    Appearance**

27          Franchisee shall obtain design and location approvals from the Planning Department  
28          and the Department of Transportation for all attachments that are subject to this  
29          Agreement, which approvals shall be granted or denied on a non-discriminatory basis.  
30          Franchisee shall follow all legally binding Applicable Laws with respect to aesthetics  
31          and appearance for the duration of the Franchise.

### 32          **9.5    Graffiti**

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

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**9.6 Performance Bond**

At its sole and absolute discretion, 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, authorizations and 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 a new pole is approved, the installation and construction of the new pole shall be at Franchisee's sole expense and shall comply with all Applicable Laws ("New Poles"). Any New Poles constructed by Franchisee shall comport with the character of existing poles in the area and otherwise comply with the City's 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 New Poles to the City.

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**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, 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 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 Service 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 prior to the attachment of the Franchisee's Communications Facilities, reasonable wear and tear excepted, and further excepting landscaping and related irrigation equipment, or other aesthetic or design improvements made by Franchisee to the Facility or the adjacent property, or as otherwise required by the City. Within 90 days of a written request from City, Franchisee will post a payment bond in the amount of \$500,000.00 to address the City's cost of removing any Facilities not removed by Franchisee within one hundred twenty (120) days of termination, and as compensation for any damage to the Public

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1 Way and Park Properties relating to the Communication Facilities, reasonable wear  
2 and tear excepted. Alternatively, upon the request of Franchisee, the City may allow  
3 Franchisee, in the City's sole and absolute discretion, to abandon the  
4 Communications Facilities, or any part thereof, in place and convey it to the City.

5 **13.0 Compliance with Laws**

6 **13.1 Generally**

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

8 **13.2 Permits and Other Authorizations**

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

21 **14.0 Required Reports**

22 **14.1 Annual Construction Report**

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

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

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

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

9 **15.0 Default and Remedies**

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

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

20 **15.1 Default by Franchisee**

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

30 **15.1.1 Self-Help by City**

31 In the event of any default of this Franchise by Franchisee and upon the  
32 expiration of any applicable cure period set forth in this Franchise, the City  
33 may at any time, after notice, cure the default for the account of and at the  
34 expense of the Franchisee. If City is compelled to pay or elects to pay any  
35 sum of money or to do any act which will require the payment of any sum of  
36 money or is compelled to incur any expense, including reasonable attorneys’  
37 fees in instituting, prosecuting or defending any action to enforce the City’s  
38 rights under this Franchise, the sums so paid by City, with all interest, costs  
39 and damages, shall be deemed to be an Additional Franchise fee and shall be  
40 due from the Franchisee to City on the first day of the month following the

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1           incurring of the respective expenses. Upon request by Franchisee, City shall  
2           provide the necessary information for Franchisee to verify all reasonable cost-  
3           based charges incurred.

4           **15.2 Default by City**

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

9           **16.0 City Termination Right**

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

16          **17.0 Radiofrequency Interference**

17          Radiofrequency Interference. Franchisee shall install and operate Communications  
18          Facilities of a type and frequency that will not cause radiofrequency interference to any  
19          FCC-licensed devices or with respect to the City's existing operations. In the event of an  
20          emergency relating to interference, upon notification of such emergency by City,  
21          Franchisee shall disconnect its operations and Communications Facilities from a remote  
22          location. If Franchisee does not promptly disconnect its operations and Communications  
23          Facilities after being notified by the City due to an emergency, City shall be permitted to  
24          disconnect Franchisee's operations and Communications Facilities immediately, whether  
25          such Communications Facilities are located on a City-owned facility or a third-party  
26          facility within the Public Ways or Park Properties. City may perform, or cause to be  
27          performed, upon notice to Franchisee, a technical evaluation to determine the cause of  
28          interference. If, after considering the results of the inspection and tests or any technical  
29          evaluation performed by City, City determines that Franchisee is directly causing  
30          interference to City's operations, City shall promptly notify Franchisee (which notice  
31          shall be made to Franchisee's Network Operations Center at (800) 621-2622) and  
32          Franchisee shall immediately cease interfering with City's operations. If Franchisee fails  
33          to cease its interference with City's operations within twelve (12) hours of such notice,  
34          City shall have the right to take any steps it deems necessary, in its reasonable judgment  
35          and discretion, to cause the interference to cease. Franchisee shall be responsible for all  
36          reasonable and actual payments and/or expenses relating to the City's actions to correct  
37          any interference problems caused by Franchisee.

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

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

### 6 18.0 MPE Evaluation

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

### 19 19.0 Interest

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

### 24 20.0 Taxes

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

### 28 21.0 Liability and Indemnity

#### 29 21.1 Indemnification

30 Franchisee agrees to indemnify, defend and hold harmless City, its elected/appointed  
31 officials, departments, employees, agents and representatives from any and all claims,  
32 demands, suits and actions including attorneys' fees and court costs, connected  
33 therewith, brought against the City, its elected/appointed officials, departments,  
34 employees, agents and representatives arising as a result of any direct willful, or  
35 negligent act or omission of Franchisee, its agents, officers or employees in  
36 connection with the exercise of Franchisee's rights under this Agreement EXCEPT  
37 for any and all claims, demands, suits and actions, including attorneys' fees and court  
38 costs connected therewith, brought against City or City's elected/appointed officials,  
39 departments, employees, agents and representatives, arising as a result of the sole,  
40 willful, or grossly negligent act or omission of City, its elected/appointed officials,  
41 departments, employees, agents and representatives. This indemnification obligation

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1 shall survive the termination of this Agreement with respect to claims, demands, suits  
2 and actions that arose or accrued during the term of this Agreement.

3 **21.2 Waiver of Claims**

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

8 **21.3 Limitation of the City's Liability**

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

13 **22.0 Insurance**

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

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

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

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

24 Commercial General Liability Insurance at limits of Two Million Dollars  
25 (\$2,000,000.00) per occurrence for claims arising out of bodily injuries or death,  
26 and property damages and Three Million (\$3,000,000) general aggregate including  
27 contractual liability coverage.

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

29 Commercial Automobile Liability with a combined limit of Two Million Dollars  
30 (\$2,000,000.00) each accident for bodily injury and property damages. The  
31 insurance shall cover any owned, non-owned, franchised, or hired automobiles  
32 used in the performance of this Agreement.

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

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

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

2           Coverage is to be in excess of the sum of employers' liability, commercial general  
3           liability and automobile liability insurance required above. Limits of liability  
4           \$4,000,000 each occurrence, \$4,000,000 aggregate.

5           (f) **Environmental Impairment Liability/Pollution Liability.**

6           Coverage with a limit of \$2,000,000 per claim and aggregate covering the  
7           negligent acts and/or omissions of contractor resulting in damage to the  
8           environment from the performance of activities conducted in connection with this  
9           Agreement, including sudden and accidental as well as slow and gradual pollution  
10          releases associated with day to day operations and damage to the environment.

11          (g) **Coverage.**

12          The City, Mayor and City Council of Baltimore (in their official capacities) their  
13          elected/appointed officials, departments, and employees, shall be covered, by  
14          blanket additional insured endorsement, as additional insureds as their interests  
15          may appear under this Agreement with respect to liability arising out of activities  
16          performed by Licensee or its employees in connection with this Agreement.  
17          Insurance shall apply separately to each insured against whom claim is made  
18          and/or lawsuit is brought, except with respect to the limits of the insurer's  
19          liability. To the extent of the Franchisee's negligence, the Franchisee's insurance  
20          coverage shall be primary insurance as respects to the City, its elected/appointed  
21          officials, departments, and employees. Any insurance and/or self-insurance  
22          maintained by City, its elected/appointed officials, departments, and employees  
23          shall not contribute with the Franchisee's insurance or benefit the Franchisee's in  
24          any way to the extent Franchisee is found negligent. Upon receipt of notice from  
25          its insurer(s) Franchisee shall provide the City with forty-five (45) days prior  
26          written notice of cancellation of any coverage required herein. Insurance is to be  
27          placed with insurers with a Best's rating of no less than A:VII, or if not rated with  
28          Best's with minimum surpluses the equivalent of Best's surplus size VII and must  
29          be licensed or approved to do business in the State of Maryland.

30          (h) **Certificate of Insurance; Other Requirements.**

31          Prior to the execution of this Agreement and within ten (10) days of each  
32          insurance policy expiration date during the term of this Agreement, Franchisee  
33          will furnish City with a certificate of insurance ("Certificate"). The Certificate  
34          shall reference this Agreement and insurance waivers of subrogation required by  
35          this Agreement. City shall be given forty-five (45) calendar days advance notice  
36          of cancellation or non-renewal of insurance during the term of this Agreement.

37          (i) **Limits.**

38          The limits of liability set out in this Article 22.0 may be increased or decreased by  
39          mutual consent of the parties, which consent will not be unreasonably withheld by  
40          either party, in the event of any factors or occurrences, including substantial  
41          increases in the level of jury verdicts or judgments or the passage of state, federal,

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1 or other governmental compensation plans, or laws that would materially increase  
2 or decrease Franchisee's exposure to risk.

3 **(j) Failure to Maintain Insurance.**

4 Failure of Franchisee to maintain the proper insurance required under this Article  
5 22.0 shall result in termination of this Franchise if the breach is not cured upon  
6 the expiration of any applicable cure period set forth in this Franchise.

7 **23.0 Assignment and Subletting**

8 Franchisee may not assign, or otherwise transfer all or any part of its privilege in this  
9 Franchise without the prior written consent of City which consent shall not be  
10 unreasonably withheld, conditioned or delayed; provided, however, that Franchisee may  
11 assign its privilege to its parent company, any subsidiary or affiliate of it or its parent  
12 company or partners or to any successor-in-interest or entity acquiring fifty-one percent  
13 (51%) or more of its equitable interests or assets in the market defined by the FCC in  
14 which the City of Baltimore is located, subject to the assignee assuming all of  
15 Franchisee's obligations hereunder, and subject to any financing entity's interest, if any,  
16 in this Franchise. Notwithstanding anything to the contrary contained in this Franchise,  
17 Franchisee may assign, mortgage, pledge, hypothecate or otherwise transfer without  
18 consent its interest in Communications Facilities or in this Franchise to any financing  
19 entity, or agent on behalf of any financing entity to whom Franchisee (1) has obligations  
20 for borrowed money or in respect of guaranties thereof, (2) has obligations evidenced by  
21 bonds, debentures, notes or similar instruments, or (3) has obligations under or with  
22 respect to letters of credit, bankers acceptances and similar facilities or in respect of  
23 guaranties thereof. Any such assignment to a financing entity or its agent shall be  
24 subordinate to the terms of this Franchise Agreement.

25 **24.0 Environmental**

- 26 (a) Except in strict accordance with all applicable laws and regulations, Franchisee shall not  
27 at any time within the Public Way and on Park Properties store, treat, transport or dispose  
28 of any hazardous substance, hazardous waste or oil as defined by the Resource  
29 Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. §§ 6901 et seq.,  
30 Comprehensive Environmental Response, Compensation, and Liability Act of 1980  
31 ("CERCLA"), 42 U.S.C. §§ 9601 et seq., Maryland Environment Article Code Ann.,  
32 Title 4, Sec. 4-401, et seq. and Maryland Environment Article Code Ann., Title 7, subtitle  
33 2.
- 34 (b) "Environmental Conditions" as used in this Agreement shall mean discovered or  
35 undiscovered contaminants, pollutants, or toxic substances affecting health or the  
36 environment, in any way arising from or related to the subject matter of this Franchise  
37 which could, or do, result in any damage, loss, cost or expense to, or liability, by City to  
38 any person including a government agency or other entity.
- 39 (c) In addition to all other indemnifications contained herein, Franchisee specifically agrees  
40 to indemnify, reimburse, defend and hold harmless City, its elected/appointed officials,  
41 employees, agents and representatives ("Indemnified Parties") from and against any and  
42 all losses, costs, liabilities, including but not limited to liabilities, demands, obligations,

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1 claims, suits, actions and expenses, attorneys' fees, consultant fees and court costs  
2 connected therewith, brought against the Indemnified Parties, or incurred by any of them,  
3 by reason of injury to persons, including death, and damage to property arising out of  
4 Environmental Conditions or resulting from any direct, or indirect, willful, or negligent  
5 acts or omissions of Franchisee, its contractors, agents, or employees arising from  
6 Environmental Conditions, unless solely caused by the negligent act of City.  
7 Notwithstanding anything to the contrary herein, Franchisee agrees to defend, indemnify  
8 and hold harmless the Indemnified Parties from and against all administrative and judicial  
9 actions and rulings, claims, causes of action, demands and liability including, but not  
10 limited to, damages, costs, expenses, assessments, penalties, fines, losses, judgments and  
11 reasonable attorney fees that the Indemnified Parties may suffer or incur due to the  
12 existence of any Hazardous Substances on the Franchised Premises, the Public Way or  
13 Park Properties or migration of any Hazardous Substance to other properties or the  
14 release of any Hazardous Substance into the environment, that arise from the Franchisee's  
15 and or its representatives activities on the Franchised Premises, the Public Way or Park  
16 Properties. The indemnifications in this section specifically include, without limitation,  
17 costs incurred in connection with any investigation of site conditions or any cleanup,  
18 remedial, removal or restoration work required by any governmental authority. This  
19 provision shall be in addition to, and separate from, any remedies available to City for  
20 breach by the Franchisee of its obligations under any of the provisions of this Agreement  
21 and shall in no way limit any recourse that the City may have at the time against  
22 Franchisee pursuant to any federal, state or local laws. Notwithstanding the foregoing or  
23 any other provision in this Agreement, Franchisee shall not be liable or responsible for  
24 any Environmental Condition, including the release of hazardous substances, that existed  
25 before the execution of this Agreement, or that otherwise does not result from the  
26 activities of Franchisee. The provisions of this Paragraph shall survive the termination or  
27 expiration of this Agreement.

28 (d) City represents to best of its knowledge, without having made inquiry that there is no  
29 Hazardous Substance within the Public Way or Park Properties. Hazardous Substance is  
30 any substance identified as hazardous, toxic or dangerous in any applicable federal, state  
31 or local law or regulation. City shall not introduce or use any Hazardous Substance in the  
32 Public Way or on Park Properties in violation of any applicable law. City shall be  
33 responsible for, and shall promptly conduct any investigation and remediation as required  
34 by any applicable environmental laws, all spills or other releases of any Hazardous  
35 Substance to the extent caused by the City, that have occurred or which may occur in the  
36 Public Way or on Park Properties. City agrees to defend, indemnify and hold harmless  
37 the Franchisee from and against any and all administrative and judicial actions and  
38 rulings, claims, causes of action, demands and liability (collectively, "Claims") including,  
39 but not limited to, damages, costs, expenses, assessments, penalties, fines, losses,  
40 judgments and reasonable attorney fees that the Franchisee may suffer or incur due to the  
41 existence of any Hazardous Substances in the Public Way or the migration of any  
42 Hazardous Substance to other properties or the release of any Hazardous Substance into  
43 the environment (collectively, "Actions"), arise from the City's activities on the  
44 Franchised Premises to the extent allowable under subsection 5-303 (a), (b) and (c) of the  
45 Courts and Proceedings Article of the Maryland Annotated Code. City agrees to defend,  
46 indemnify and hold Franchisee harmless from Claims resulting from Actions on the  
47 Franchised Premises Property caused by City prior to and during the Initial Term and any  
48 Renewal Term. The indemnifications in this section specifically include, without  
49 limitation, costs incurred in connection with any investigation of site conditions or any

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1 cleanup, remedial, removal or restoration work required by any governmental authority.  
2 This Section shall survive the termination or expiration of this Agreement.

3 **25.0 Notices**

4 All notices, requests, demands, and other communications hereunder shall be in writing and  
5 shall be deemed given if personally delivered or by certified mail, return receipt requested, or  
6 when delivered by commercial courier, provided the courier's regular business is delivery  
7 service and provided further that it guarantees delivery to the addressee by the end of the next  
8 business day following the courier's receipt from the sender, to the following addresses:

9 City: The Mayor and City Council of Baltimore  
10 Department of Transportation  
11 Attn: Director  
12 417 E. Fayette Street, Fifth Floor  
13 Baltimore, Maryland 21202

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

15 Baltimore City Department of Real Estate  
16 Room 304 City Hall  
17 100 North Holliday Street  
18 Baltimore, Maryland 21202  
19 410-396-4768  
20 410-528-1437 (fax)

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

23 Director of Finance  
24 Bureau of Treasury Management  
25 Collections Division  
26 200 N. Holliday Street  
27 Baltimore, Maryland 21202

28 **Franchisee:**

29 Cellco Partnership d/b/a Verizon Wireless  
30 180 Washington Valley Road  
31 Bedminster, New Jersey 07921  
32 Attention: Network Real Estate

33 **26.0 Franchisee Point of Contact Relating to Facilities**

34 Appropriate Franchisee staff shall be available to the employees of any City department  
35 having jurisdiction over Franchisee's activities twenty-four (24) hours a day, seven (7) days a  
36 week, regarding problems or complaints resulting from the attachment, installation,  
37 operation, maintenance, or removal of Communications Facilities.

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1     **27.0   Miscellaneous**

2             **27.1   Incorporation of Prior Agreements**

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

8             **27.2   Non-Waiver**

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

16            **27.3   Taxes**

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

22            (b) Franchisee shall indemnify City from any and all liability, obligation, damages,  
23            penalties, claims, liens, costs, charges, losses and expenses (including without  
24            limitation, reasonable fees and expenses of attorneys, expert witnesses and  
25            consultants), which may be imposed upon, incurred by or be asserted against City  
26            in relation to the taxes owed or assessed on the Franchised Premises as a result of  
27            Franchisee's use thereof or the installation or maintenance of Franchisee's  
28            Communications Equipment thereon.

29            **27.4   Force Majeure**

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

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**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**

If any provision or portion thereof of this Agreement is or becomes invalid under any applicable statute or rule of law, and such invalidity does not materially alter the essence of this Agreement to either party, such provision shall not render unenforceable this entire Agreement. Rather, the parties intend that the remaining provisions shall be administered as if the Agreement did not include the invalid provision. If, as a result of a change in law by statute, rule, ruling or otherwise, the total compensation to the City arising as a result of Franchisee's occupation of the Public Way or Park Properties (including attachments on City-owned facilities therein) is materially reduced, the Parties agree to negotiate in good faith to amend this Agreement to ensure that total compensation to the City remains substantially comparable, to the extent permitted under applicable law.

**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

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1 submit to the City written documentation, including executed contracts, service  
2 agreements and utilization commitment forms, that shall identify the particular  
3 MBEs/WBEs that are (i) contracting directly with the Franchisee; or (ii)  
4 subcontracting with prime contractors who contract directly with Franchisee. The  
5 documentation submitted to the City shall specify the dollar value of the  
6 participation, type of work to be performed, and such other information as the  
7 City may reasonably request.

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

13 (d) Report on MBE/WBE Compliance. Six (6) months after the Effective Date and  
14 every six (6) months thereafter, the Franchisee shall submit to MWBOO a report  
15 on its compliance with this Section. Franchisee may satisfy this requirement by  
16 copying MWBOO on any such report that it files with another City agency on a  
17 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 first 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:** **CELLCO PARTNERSHIP d/b/a VERIZON**  
14 **WIRELESS**

15 \_\_\_\_\_ **BY:** \_\_\_\_\_ **(SEAL)**

16 **NAME:**

17 **TITLE:**

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

**APPROVED BY THE BOARD OF**  
**ESTIMATES**

20 \_\_\_\_\_

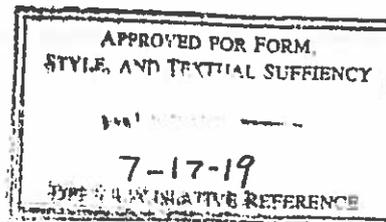
\_\_\_\_\_

21 **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 – 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.

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 Cellco Partnership, d/b/a Verizon Wireless (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 COMMUNICATIONS FACILITIES 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 Cellco Partnership, d/b/a Verizon Wireless, a Delaware general partnership ("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 Service 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 applicable federal, state, and local laws, statutes, codes, ordinances, resolutions, orders, rules and regulations, including but not limited to all 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 the 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, handholes, 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 and 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, antennae, 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 Communications 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 property controlled by the Department of Recreation and Parks pursuant to the provisions of Article VII of the City Charter, which includes 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 Law.

## **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 Council 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 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 its Communications Facilities in the Public Way and on Park Properties, Franchisee shall pay to the City a Franchise Fee in the amount of \$ \_\_\_\_\_ per year. Payment shall be made no later than 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-incidental use of such Communications Facilities for a purpose other than 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 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 or on Park Properties. Franchisee shall submit to the Baltimore City Department of Transportation and, when siting on Park Properties, 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 installed and 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 of Franchisee; and (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 or on 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 with 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 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 Material, 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; 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 documentation including 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 Industry Association 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 on the property on which Franchisee's Communications Facilities are located (the "Franchised Premises") by Franchisee shall be at Franchisee's sole cost and expense. Franchisee agrees to protect the Franchised Premises, and City, from all claims of contractors, laborers and material men claiming by or through the actions or activities of Franchisee. 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 DPW Utility Coordinating Committee; and (B) if Franchisee has installed fiber optic cable to be owned by Franchisee (as distinct from having fiber optic cabling installed and owned by one of the local fiber optic service providers that

has its own franchise with the City, regardless of whether such service provider is an affiliate of Franchisee), the One Call Notification System (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.

#### **9.2 Access to Communications Facilities**

Franchisee shall be given access to each of the Communications Facilities in the Public Way or 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 Facility or bodily harm or property damage, Franchisee shall provide the City with a minimum of three (3) days prior written notice of such maintenance activities, which notice for such maintenance activities may be sent via 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, 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 approvals from the Planning Department and the Department of Transportation for all attachments that are subject to this Agreement, which approvals shall be granted or denied on a non-discriminatory basis. Franchisee shall follow all legally binding Applicable Laws 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**

At its sole and absolute discretion, 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, authorizations and 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 a new pole is approved, the installation and

construction of the new pole shall be at Franchisee's sole expense and shall comply with all Applicable Laws ("New Poles"). Any New Poles constructed by Franchisee shall comport with the character of existing poles in the area and otherwise comply with the City's 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 New Poles 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, 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 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 Service 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 prior to the attachment of the Franchisee's Communications Facilities, reasonable wear and tear excepted, and further excepting landscaping and related irrigation equipment, or other aesthetic or design improvements made by Franchisee to the Facility or the adjacent property, or as otherwise required by the City. Within 90 days of a written request from City, Franchisee will post a payment bond in the amount of \$500,000.00 to address the City's cost of removing any 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 Communication Facilities, reasonable wear and tear excepted. Alternatively, upon the request of Franchisee, 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 Laws.

#### **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 Regulations. 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 (60<sup>th</sup>) 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 information:

- 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, BGE); 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 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.

### **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, 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 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 (which notice shall be made to Franchisee's Network Operations Center at (800) 621-2622) 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 on Parks Properties. The parties agree that the requirement for Franchisee to provide the reports in the previous sentence complies with all Applicable Laws. 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 arising as a result of any direct willful, or negligent act or omission of Franchisee, its agents, officers or employees in

connection with the exercise of Franchisee's rights under this Agreement 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. 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.

**(f) Environmental Impairment Liability/Pollution Liability.**

Coverage with a limit of \$2,000,000 per claim and aggregate covering the negligent acts and/or omissions of contractor resulting in damage to the environment from the performance of activities conducted in connection with this Agreement, including sudden and accidental as well as slow and gradual pollution releases associated with day to day operations and damage to the environment.

**(g) 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 arising out of 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 licensed or approved to do business in the State of Maryland.

**(h) 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.

(i) **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.

(j) **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 which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that Franchisee may assign its privilege to its parent company, any subsidiary or affiliate of it or its parent company or partners or to any successor-in-interest or entity acquiring fifty-one percent (51%) or more of its equitable interests 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.

**24.0 Environmental**

- (a) Except in strict accordance with all applicable laws and regulations, Franchisee shall not at any time within the Public Way and 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 or resulting from any direct, or indirect, willful, or negligent acts or omissions of Franchisee, its contractors, agents, or employees arising from Environmental Conditions, unless solely 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 Franchised Premises, the Public Way or Park Properties 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 Franchised Premises, the Public Way or Park Properties. 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. Notwithstanding the foregoing or any other provision in this Agreement, Franchisee shall not be liable or responsible for any Environmental Condition, including the release of hazardous substances, that existed before the execution of this Agreement, or that otherwise does not result from the activities of Franchisee. The provisions of this Paragraph shall survive the termination or expiration of this Agreement.
- (d) City represents to best of its knowledge, without having made inquiry that there is no Hazardous Substance within the Public Way or 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 on Park Properties in violation of any applicable law. City shall be responsible for, and shall promptly conduct any investigation and remediation as required by any applicable environmental laws, all spills or other releases of any Hazardous Substance to the extent caused by the City, 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 the migration of any Hazardous Substance to other properties or the release of any Hazardous Substance into the environment (collectively, “Actions”), arise from the City’s activities on the Franchised Premises 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 on the Franchised Premises Property caused by City prior to and during the Initial Term and any Renewal Term. 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 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, or when delivered by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, 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:**

Cellco Partnership d/b/a Verizon Wireless  
180 Washington Valley Road  
Bedminster, New Jersey 07921  
Attention: Network Real Estate

## 26.0 Franchisee Point of Contact Relating to 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.

## **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 City 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 City 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 Franchised Premises as a result of Franchisee's use thereof or the installation or maintenance of Franchisee's Communications Equipment thereon.

### **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**

If any provision or portion thereof of this Agreement is or becomes invalid under any applicable statute or rule of law, and such invalidity does not materially alter the essence of this Agreement to either party, such provision shall not render unenforceable this entire Agreement. Rather, the parties intend that the remaining provisions shall be administered as if the Agreement did not include the invalid provision. If, as a result of a change in law by statute, rule, ruling or otherwise, the total compensation to the City arising as a result of Franchisee's occupation of the Public Way or Park Properties (including attachments on City-owned facilities therein) is materially reduced, the Parties agree to negotiate in good faith to amend this Agreement to ensure that total compensation to the City remains substantially comparable, to the extent permitted under applicable law.

#### **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 first 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:**

**CELLCO PARTNERSHIP d/b/a VERIZON  
WIRELESS**

\_\_\_\_\_

**BY:** \_\_\_\_\_ **(SEAL)**

**NAME:**

**TITLE:**

**APPROVED AS TO FORM AND LEGAL  
SUFFICIENCY**

**APPROVED BY THE BOARD OF  
ESTIMATES**

\_\_\_\_\_

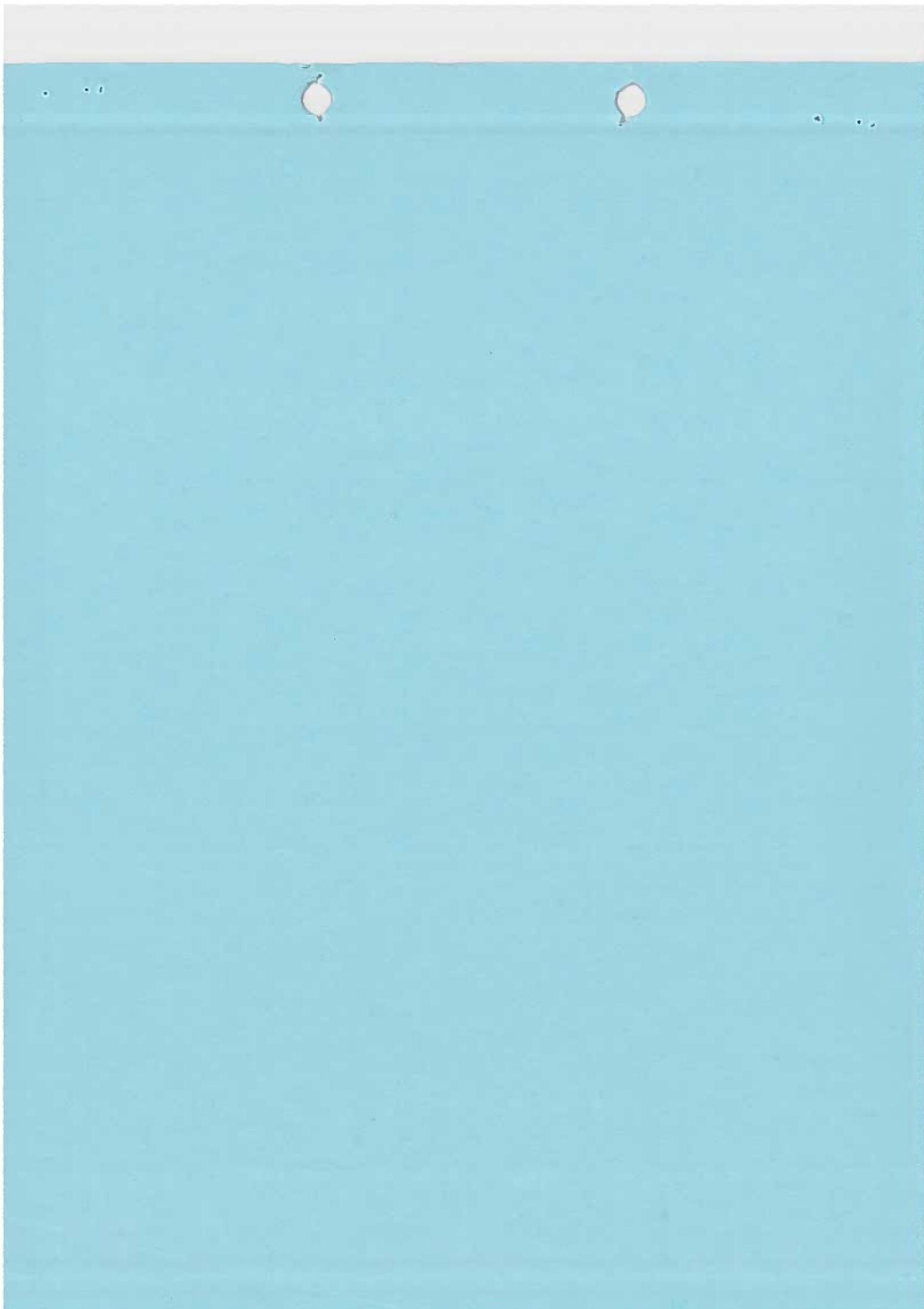
**CHIEF SOLICITOR**

\_\_\_\_\_

**CLERK**

**DATE**





ACTION BY THE CITY COUNCIL

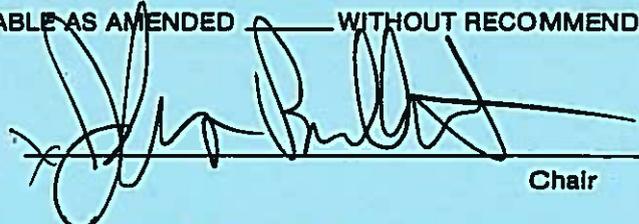
JUL 22 2019  
20

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  
20

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

THIRD READING \_\_\_\_\_ NOV 04 2019  
20

\_\_\_\_\_ 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