City of Baltimore

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

Legislation Details (With Text)

File #:	19-0407	**Version:**	0	**Name:**	Franchise - New Cingular Wireless PCS
Type:	Ordinance			**Status:**	Enacted
File created:	7/22/2019			**In control:**	City Council
On agenda:				**Final action:**	11/14/2019
Enactment date:				**Enactment #:**	19-314

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

Sponsors: City Council President (Administration)

Indexes: Cingular Wireless PCS, Franchise

Code sections:

Attachments: 1. 19-0407~1st Reader, 2. DPW 19-0407, 3. ECB 19-0407, 4. Law 19-0407 Report1, 5. Real Estate 19-0407, 6. Fire 19-0407, 7. Law 19-0407 Report2, 8. DCHD 19-0407, 9. Planning Commission 19-0407, 10. BCIT 19-0407, 11. DOT 19-0407, 12. Finance 19-0407, 13. Rec and Parks 19-0407, 14. Planning Department 19-0407, 15. 2nd Reader Committee Amendments 19-0407, 16. 19-0407~3rd Reader, 17. Complete Bill File 19-0407

Date	Ver.	Action By	Action	Result
11/18/2019	0	Mayor	Signed by Mayor	
11/4/2019	0	City Council	Approved and Sent to the Mayor	
10/28/2019	0	City Council	3rd Reader, for final passage	
10/28/2019	0	Housing and Urban Affairs Committee	Recommended Favorably with Amendment	
10/22/2019	0	Housing and Urban Affairs Committee	Recommended Favorably with Amendment	Pass
9/23/2019	0	Housing and Urban Affairs Committee	Scheduled for a Public Hearing	
9/9/2019	0	Housing and Urban Affairs Committee	Scheduled for a Public Hearing	
7/25/2019	0	The City Council	Refer to Dept. of Real Estate	
7/25/2019	0	The City Council	Refer to Dept. of Recreation and Parks	
7/25/2019	0	The City Council	Refer to Environmental Control Board	
7/25/2019	0	The City Council	Refer to Dept. of Public Works	
7/25/2019	0	The City Council	Refer to Dept. of Finance	
7/25/2019	0	The City Council	Refer to Fire Department	
7/25/2019	0	The City Council	Refer to Board of Estimates	
7/25/2019	0	The City Council	Refer to Mayor's Office of Information Technology	
7/25/2019	0	The City Council	Refer to City Solicitor	

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7/25/2019	0	The City Council	Refer to Dept. of Planning
7/25/2019	0	The City Council	Refer to Dept. of Housing and Community Development
7/25/2019	0	The City Council	Refer to Dept. of Transportation
7/25/2019	0	The City Council	Refer to Planning Commission
7/22/2019	0	City Council	Assigned
7/22/2019	0	City Council	Introduced

*** Warning:** This is an unofficial, introductory copy of the bill.
The official copy considered by the City Council is the first reader copy.

Introductory*

City of Baltimore
Council Bill

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

A Bill Entitled

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

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

Section 1. Be it ordained by the Mayor and City Council of Baltimore, That a franchise or right is granted to New Cingular Wireless PCS, LLC (the "Grantee"), to construct, install, maintain, repair, operate, relocate, replace and remove certain facilities relating to the provision of Wireless Services in and across certain streets and Public Ways and Park Properties, subject to the terms and conditions of this Ordinance and the Franchise Agreement between the Mayor and City Council of Baltimore and the Grantee, which is attached and made a part of this Ordinance.

Section 2. And be it further ordained, That for the franchise or right granted by this Ordinance (the "Franchise") to become effective, the Grantee must notify the Board of Estimates, within 30 days of the effective date of this Ordinance, that the Grantee accepts the Franchise. The Grantee's failure to so notify the Board of Estimates constitutes a refusal to accept the Franchise, and, in that event, this Ordinance and the Franchise granted by it will be abrogated and of no further effect.

Section 3. And be it further ordained, That also for the Franchise to become effective, the Franchise must be executed and enjoyed by the Grantee within 6 months after the effective date of this Ordinance.

Section 4. And be it further ordained, That the Mayor and City Council of Baltimore expressly reserves the right at all times to exercise, in the interest of the public, full municipal superintendence, regulation, and control over and in respect to all matters connected with the

franchise and not inconsistent with the terms of this Ordinance.

Section 5. And be it further ordained, That this Ordinance takes effect when it is enacted.

Baltimore City Small Cell Franchise Agreement

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

RECITALS

1. The City, pursuant to Article VIII of the City Charter, is authorized to grant and renew non-exclusive franchises for the installation, operation, and maintenance of communications infrastructure on, beneath, above, and within the Public Ways and Park Properties of the City.

2. Franchisee desires to obtain from City as permitted by law, and City as a municipal corporation desires to grant to Franchisee, a franchise for the right to construct, install, maintain, repair, operate, relocate, replace and remove Communications Facilities relating to the provision of Wireless Services in the Public Way and on Park Properties within the City, in a manner consistent with this Agreement.

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

1.0 Definitions

1.1 "Agreement" or "Franchise Agreement" means this Agreement, together with Appendices and Exhibits attached to this Agreement, if any, and any amendments or modifications.

1.2 "Applicable Law" or "Law" means all federal, state, and local laws, statutes, codes, ordinances, resolutions, orders, rules and regulations, including but not limited to all Federal Communications Commission ("FCC") resolutions, orders, rules, and regulations, this Agreement, the Baltimore City Charter, the aesthetic or design standards applicable to Communications Facilities established by the City, and the administrative and judicial decisions interpreting these sources of law.

1.3 "Authorizations" means the permissions Franchisee must have to deploy Communications Facilities and/or provide Wireless Services, which may include franchises; licenses; permits; zoning approvals; variances; exemptions; grants of authority to use private rights of way and/or easements or facilities; agreements to make attachments to poles, ducts, conduits, towers, buildings, rooftops, manholes, and the like; and any other approval of a governmental authority or third persons with respect to (i) the construction, installation, repair, maintenance, operation or use of tangible or intangible property, as the case may be, or (ii) any requirement by a governmental authority for the engagement in a business or enterprise.

1.4 "City" means the Mayor and City Council of Baltimore, Maryland, or, as appropriate in the case of specific provisions of this Agreement, any board, bureau, authority, agency, commission or department of, or any other entity of or acting on behalf of, the Baltimore city government or any officer, official, employees, or agent of the Baltimore City government, any designee of the foregoing, or any successor thereto.

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

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

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

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

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

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

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

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

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

2.0 Grant of Franchise

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

2.1 Compliance With Law

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

2.2 No Waiver of Other Permits and Authorizations

Nothing in this Agreement shall be construed as a waiver of any Applicable Laws (including without limitation) laws, regulations or rules of the City or of the City's right to require the Franchisee to secure the appropriate permits or authorizations, provided that the fees and charges imposed upon

the Franchisee for any such permit or authorization shall be the standard fees or charges generally applicable to all Persons for such permits or authorizations, and any such standard fee or charge shall not be an offset against the compensation or other payment the Franchisee or other person is required to pay the City or any other entity pursuant to this Agreement.

2.3 No Interference

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

2.4 Closing of Public Ways and Park Properties

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

2.5 Conditions Precedent

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

1. Board and Council Action. All necessary approvals of this Agreement by the City shall have been obtained.

2. Insurance. The Franchisee shall have secured its insurance policies as set forth in Section 22 of this Agreement and delivered the certificate of insurance to the City Solicitor, together with evidence that the premium for each of such policies has been paid, that the policies will be in effect on or before the Effective Date, and that the policies are in accordance with this Agreement.

3. Clean Hands Certification. The Franchisee shall have paid all amounts due and owing to the City, including, but not limited to, taxes, fees, fines, penalties and interest.

3.0 Relation to Attachment Rights

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

4.0 Term

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

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

5.0 Franchise Fee

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

6.0 Use of Communications Facilities

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

7.0 Installation Specifications

7.1 Conduit

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

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Notwithstanding the foregoing, in the event that the Franchisee elects to use a Third Party for the installation of fiber and conduit, the City acknowledges and agrees that if the Third Party possesses a valid franchise agreement with the City, the Third Party's franchise agreement with the City takes precedence over the above requirements for causing construction of new conduit in the Public Way or on Park Properties.

7.2 Installation Plan

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

7.3 Approval by City

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

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

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

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

8.0 Construction

8.1 Compliance with Standards and Specifications

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

8.2 Safety Precautions

8.2.1 Standard of Care

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

8.2.2 Protection of Construction Areas

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

8.2.3. Emergency Notification

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

8.3 Identification

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

8.4 Antennas and Towers

Antenna supporting structures and towers shall be designed for the proper loading as specified in Electronic Industries Alliance R.S. 222-C Specifications. In addition, antenna supporting structures

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

8.5 Disruption, Interference and Damage

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

8.6 Materials and Claims

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

8.7 One Call Notification System

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

8.8 No Advertisement

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

8.9 Inspection by City

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

9.0 Maintenance and Repair

9.1 Generally

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

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9.2 Access to Communications Facilities

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

9.3 Repair of Public Way and Park Properties

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

9.4 Appearance

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

9.5 Graffiti

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

9.6 Performance Bond

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

10.0 Electricity Use

Franchisee shall be responsible for obtaining and paying for any and all electrical utility service that

Franchisee requires for the use or maintenance of Communications Facilities. City will reasonably cooperate with Franchisee in an effort by Franchisee to obtain electrical service from a location serving a City facility.

11.0 New Poles; Pole Replacement

11.1 New Poles

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

11.2 City Use of New Poles

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

12.0 Removal and Modification of Communications Facilities During Term

12.1 Franchisee Right to Remove

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

12.2 Removal Due to Public Project

Upon receipt of a written demand from the City pursuant to this Section 12.2, Franchisee, at its sole cost and expense shall remove and relocate any part of the Communications Facilities constructed, installed, used and/or maintained by Franchisee whenever the City reasonably determines that the removal is needed for any of the following purposes: (a) if required for the construction, completion, repair, relocation, or maintenance of a City or other governmental agency project including but not limited to, any change of grade, alignment or width of any street, sidewalk or other public facility; installation of curbs, gutters or landscaping; and construction, maintenance or operation of any underground or aboveground facilities such as sewers, water mains, drains, storm drains, pipes, gas

mains, poles, power lines, telephone lines, cable television lines, and tracks; (b) because the Communications Facilities are reasonably considered to be interfering with or adversely affecting proper operation of City-owned light poles, traffic signals, or other City facilities; or (c) to protect or preserve the public health or safety. The City shall cooperate with Franchisee in relocating any portion of the Communication Facilities removed pursuant to this Section 12.2 in a manner that allows Franchisee to continue providing Services to its customers, including, but not limited to, expediting approval of any necessary permits required for the relocation of Communications Facilities corresponding to that portion relocated under this Section. No permitting or other fees may be charged by the City for a removal occurring under this Section.

12.3 Removal Due to Termination or Abandonment

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

13.0 Compliance with Laws

13.1 Generally

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

13.2 Permits and Other Authorizations

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

14.0 Required Reports

14.1 Annual Construction Report

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

A. An updated "as-built" map clearly indicating each Communications Facility, control box,

and associated network route installed by Franchisee or its contractors in the Public Way or on Park Properties. Specific identification of attachments to City-owned structures or structures owned by a third party located in the Public Way or on Park Properties. Specifying owner of underlying facility (i.e., city, Baltimore Gas and Electric Company); and

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

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

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

15.0 Default and Remedies

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

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

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

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

15.1 Default by Franchisee

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

15.1.1 Self-Help by City

In the event of any default of this Franchise by Franchisee and upon the expiration of any applicable cure period set forth in this Franchise Agreement, the City may at any time, after notice, cure the default for the account of and at the expense of the Franchisee. If City is compelled to pay or elects to pay any sum of money or to do any act which will require the payment of any sum of money or is compelled to incur any expense, including reasonable attorneys' fees in instituting, prosecuting or defending any action to enforce the City's rights

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under this Franchise, the sums so paid by City, with all interest, costs and damages, shall be deemed to be an additional Franchise Fee ("Additional Franchise Fee") and shall be due from the Franchisee to City on the first day of the month following the incurring of the respective expenses. Upon request by Franchisee, City shall provide the necessary information for Franchisee to verify all reasonable cost-based charges incurred.

15.2 Default by City

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

16.0 City Termination Right

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

17.0 Radiofrequency Interference

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

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

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

18.0 MPE Evaluation

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

19.0 Interest

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

20.0 Taxes

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

21.0 Liability and Indemnity

21.1 Indemnification

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

21.2 Waiver of Claims

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

21.3 Limitation of the City's Liability

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

22.0 Insurance

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

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

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

(b) Commercial General Liability Insurance.

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

(c) Automobile Liability Insurance.

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

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

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

(e) Umbrella/Excess Liability Insurance.

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

(f) Coverage.

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

Insurance shall apply separately to each insured against whom claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability. To the extent of the Franchisee's negligence, the Franchisee's insurance coverage shall be primary insurance as respects to the City, its elected/appointed officials, departments, and employees. Any insurance and/or self-insurance maintained by City, its elected/appointed officials, departments, and employees shall not contribute with the Franchisee's insurance or benefit the Franchisee's in any way to the extent Franchisee is found negligent. Upon receipt of notice from its insurer(s) Franchisee shall provide the City with forty-five (45) days prior written notice of cancellation of any coverage required herein. Insurance is to be placed with insurers with a Best's rating of no

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less than A:VII, or if not rated with Best's with minimum surpluses the equivalent of Best's surplus size VII and must be eligible to do business in the State of Maryland.

(g) Certificate of Insurance; Other Requirements.

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

(h) Limits.

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

(i) Failure to Maintain Insurance.

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

23.0 Assignment and Subletting

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

24.0 Environmental

(a) Except in strict accordance with all applicable laws and regulations, Franchisee shall notat any time within the Public Way or on Park Properties store, treat, transport or dispose of any hazardous substance, hazardous waste or oil as defined by the Resource Conservation and Recovery Act of 1976

("RCRA"), 42 U.S.C. §§ 6901 et seq., Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §§ 9601 et seq., Maryland Environment Article Code Ann., Title 4, Sec. 4-401, et seq. and Maryland Environment Article Code Ann.,Title 7, subtitle 2.

(b) "Environmental Conditions" as used in this Agreement shall mean discovered or undiscovered contaminants, pollutants, or toxic substances affecting health or the environment, in any way arising from or related to the subject matter of this Franchise which could, or do, result in any damage, loss, cost or expense to, or liability, by City to any person including a government agency or other entity.

(c) In addition to all other indemnifications contained herein, Franchisee specifically agrees to indemnify, reimburse, defend and hold harmless City, its elected/appointed officials, employees, agents and representatives ("Indemnified Parties") from and against any and all losses, costs, liabilities, including but not limited to liabilities, demands, obligations, claims, suits, actions and expenses, attorneys' fees, consultant fees and court costs connected therewith, brought against the Indemnified Parties, or incurred by any of them, by reason of injury to persons, including death, and damage to property arising out of Environmental Conditions caused by Franchisee or resulting from any direct, or indirect, willful or negligent acts or omissions of Franchisee, its contractors, agents, or employees in connection Environmental Conditions caused by Franchisee, unless such claims are caused by the negligent act of City. Notwithstanding anything to the contrary herein, Franchisee agrees to defend, indemnify and hold harmless the Indemnified Parties from and against all administrative and judicial actions and rulings, claims, causes of action, demands and liability including, but not limited to, damages, costs, expenses, assessments, penalties, fines, losses judgments and reasonable attorney fees that the Indemnified Parties may suffer or incur due to the existence of any hazardous substances on the Franchise Area, in the Public Way or on Parks Property or migration of any hazardous substance to other properties or the release of any hazardous substance into the environment, that arise from the Franchisee's and or its representatives activities on the Franchise Area, the Public Way or Parks Property. The indemnifications in this section specifically include, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any governmental authority. This provision shall be in addition to, and separate from, any remedies available to City for breach by the Franchisee of its obligations under any of the provisions of this Agreement and shall in no way limit any recourse that the City may have at the time against Franchisee pursuant to any federal, state or local laws. The provisions of this section shall survive the termination or expiration of this Agreement.

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

authority. In the event that Franchisee discovers any hazardous substances on, under, or adjacent to the Franchise Area, which presence was not caused by Franchisee, its employees, agent or contractors, Licensee shall immediately notify the City and the City shall have the right to cure the condition within five (5) days from the date of notice. If the City elects not to cure or fails to do so within five (5) days of the notice from Licensee, then Franchisee shall have the right to terminate the Agreement for the impacted portion of the Franchise Area, Public Way or Park Properties, at no cost or liability. This Section shall survive the termination or expiration of this Agreement.

25.0 Notices

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

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

with a copy which shall not constitute legal notice to:

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

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

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

Franchisee:

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

With a required copy to:

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

26.0 Franchisee Point of Contact Relating to Communications Facilities

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

27.0 Miscellaneous

27.1 Incorporation of Prior Agreements

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

27.2 Non-Waiver

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

27.3 Taxes

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

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

27.4 Force Majeure

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

27.5 Governing Law; Jurisdiction

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

27.6 Change in Law and Severability

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

27.7 Representations

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

27.8 Amendment

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

27.9 MBE/WBE Compliance

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

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

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

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

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

ATTEST:

MAYOR AND CITY COUNCIL OF BALTIMORE

_____

BY: _____

CUSTODIAN OF THE CITY SEAL

STEVE SHARKEY
DIRECTOR

DEPARTMENT OF TRANSPORTATION

BY: _____
REGINALD MOORE, DIRECTOR

DEPARTMENT OF RECREATION AND PARKS

WITNESS/ATTEST:

NEW CINGULAR WIRELESS PCS, LLC

BY: AT&T MOBILITY CORPORATION
ITS: MANAGER

_____

BY: _____ **(SEAL)**

NAME:

TITLE:

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