



CITY OF KIRKLAND

City Attorney's Office
123 Fifth Avenue, Kirkland, WA 98033 425.587.3030
www.kirklandwa.gov

MEMORANDUM

To: Kurt Triplett, City Manager

From: Brenda Cooper, Chief Information Officer
Oskar Rey, Assistant City Attorney
Kyle Butler, Budget Analyst

Date: February 9, 2015

Subject: Second Reading of Renewal Franchise for Level 3 Communications LLC

RECOMMENDATION:

That the City Council adopts the attached Ordinance, which renews the Franchise of Level 3 Telecommunications LLC ("Level 3").

BACKGROUND DISCUSSION:

On December 7, 1999, the City granted Level 3 a telecommunications franchise that authorized Level 3 to place its facilities in City right of way. The 1999 Franchise had an initial term of ten years with one five year renewal option, which was exercised by the parties. The 1999 Franchise has expired, so a renewal franchise is required.

Franchises are typically granted to telephone, internet, and other communications providers. There are a number of other similar franchises in the city. A telecommunications franchise grants the franchisee the authority to use the city's rights of way to provide telecommunications services. Franchisees may be subject to a variety of fees associated with the act of building facilities in the rights of way, and having these facilities inspected. However, because the services offered are classified as "information services" by the Federal Communications Commission, they are not subject to the type of franchise fee that cable television providers pay. For example, Comcast and Frontier both pay a 5% franchise fee for the cable television portion of their revenue.

The language in the Ordinance reflects updates staff made in 2012 to match current law and to reflect modern terminology. In other ways it is substantially similar to other telecommunications franchises issued by the City to other providers. The franchise has a 10 year term, which will expire in February 2025, if approved at the February 17, 2015, council meeting. It also has a provision for an additional five-year extension. This is the normal term offered to telecommunications franchisees. There are multiple similar franchises in the city, including telecommunication franchises for AboveNet, Astound Broadband, MCI (MFS), MetroNet Fiber Washington, Nextlink, and Time Warner Telecom.

ORDINANCE O-4471

AN ORDINANCE OF THE CITY OF KIRKLAND GRANTING LEVEL 3 COMMUNICATIONS, LLC A NON-EXCLUSIVE FRANCHISE FOR THE TRANSMISSION OF TELECOMMUNICATIONS IN, THROUGH, OVER AND UNDER THE STREET RIGHTS OF WAY OF THE CITY OF KIRKLAND.

1 WHEREAS, LEVEL 3 COMMUNICATIONS, LLC ("Grantee") has
2 requested that the City grant it the right to install, operate and maintain
3 a fiber optic-based telecommunications system within the public rights
4 of way of the City; and
5

6 WHEREAS, the City Council finds it desirable for the welfare of
7 the City and its residents that such a non-exclusive franchise be granted
8 to Grantee; and
9

10 WHEREAS, the City Council has the authority under state law to
11 grant franchises for the use of its street rights of way; and
12

13 WHEREAS, the City is willing to grant the rights requested by
14 Grantee subject to certain terms and conditions.
15

16 NOW, THEREFORE, The City Council of the City of Kirkland
17 does ordain as follows:

18 Section 1. Definitions. Where used in this franchise (the
19 "Franchise") these terms have the following meanings:
20

21 A. "Affiliate" means an entity which owns or controls, is owned
22 or controlled by, or is under common ownership with Grantee.
23

24 B. "City" means the City of Kirkland, a municipal corporation of
25 the State of Washington.
26

27 C. "Facilities" means Grantee's fiber optic cable system
28 constructed and operated within the City's street rights of way, and shall
29 include all cables, wires, conduits, ducts, pedestals and any associated
30 converter, equipment or other facilities within the City's street rights of
31 way, designed and constructed for the purpose of providing
32 telecommunications service.
33

34 D. "Franchise" shall mean the initial authorization or renewal
35 thereof, granted by the City, through this Ordinance, or a subsequently
36 adopted Ordinance, which authorizes construction and operation of the
37 Grantee's facilities for the purpose of offering telecommunications
38 service.

39 E. "Franchise Area" means the present municipal boundaries of
40 the City, and shall include any additions thereto by annexation or other
41 legal means.

42
43 F. "Person" means an individual, partnership, association, joint
44 stock company, trust, corporation, limited liability company or
45 governmental entity.

46
47 G. "Right of Way" means the surface and the space above and
48 below streets, roadways, highways, avenues, courts, lanes, alleys,
49 sidewalks, rights of way and similar public areas, but does not include
50 the portion of the Eastside Rail Corridor (a rail corridor that has been
51 railbanked pursuant to 16 U.S.C. 1247(d)) within the City.

52
53 H. "Telecommunications Service" means any
54 telecommunications service, telecommunications capacity, or dark fiber,
55 provided by the Grantee using its Facilities, either directly or as a carrier
56 for its Affiliates, or any other person engaged in Telecommunications
57 Services, including, but not limited to, the transmission of voice, data or
58 other electronic information, facsimile reproduction, burglar alarm
59 monitoring, meter reading and home shopping, or other subsequently
60 developed technology that carries an electronic signal over fiber optic
61 cable. Telecommunications Service shall also include non-switched,
62 dedicated and private line, high capacity fiber optic transmission
63 services to firms, businesses or institutions within the City. However,
64 Telecommunications Service shall not include the provision of cable
65 television, open video, or similar services, as defined in the
66 Communications Act of 1934, as amended, and the Telecommunications
67 Act of 1996, as amended, for which a separate franchise would be
68 required.

69
70 Section 2. Franchise Area and Authority Granted.

71
72 A. Facilities within Franchise Area. The City does hereby grant
73 to Grantee the right, privilege, authority and franchise to construct,
74 support, attach, connect and stretch Facilities between, maintain, repair,
75 replace, enlarge, operate and use Facilities in, upon, over, under, along
76 and across rights of way in the Franchise Area for purposes of
77 telecommunications service as defined in RCW 82.04.065.

78
79 B. Permission Required to Enter Onto Other City Property.
80 Nothing contained in this Ordinance is to be construed as granting
81 permission to Grantee to go upon any other public place other than
82 rights of way within the Franchise Area in this Ordinance. Permission to
83 go upon any other property owned or controlled by the City must be
84 sought on a case by case basis from the City.

85 C. Compliance with WUTC Regulations. At all times during the
86 term of this Franchise, Grantee shall fully comply with all applicable
87 regulations of the Washington Utilities and Transportation Commission.
88

89 Section 3. Construction and Maintenance.
90

91 A. Grantee's Facilities shall be located, relocated and maintained
92 within the right of way in accordance with Kirkland Municipal Code
93 ("KMC") Chapter 26.36 and so as not to unreasonably interfere with the
94 free and safe passage of pedestrian and vehicular traffic and ingress or
95 egress to or from the abutting property and in accordance with the laws
96 of the State of Washington. Whenever it is necessary for Grantee, in the
97 exercise of its rights under this Franchise, to make any excavation in the
98 right of way, Grantee shall obtain prior approval from the City of Kirkland
99 Public Works Department, pay the applicable permit fees, and obtain
100 any necessary permits for the excavation work pursuant to KMC
101 Title 19 and KMC Chapter 26.24. Upon completion of such excavation,
102 Grantee shall restore the surface of the right of way to the specifications
103 established within the Kirkland Municipal Code and City of Kirkland
104 Public Works Policies and Standards. If Grantee should fail to leave any
105 portion of the excavation in a condition that meets the City's
106 specifications per the KMC and Public Works Policies and Standards, the
107 City may, on five calendar day notice to Grantee, which notice shall not
108 be required in case of an emergency, cause all work necessary to restore
109 the excavation to a safe condition. Grantee shall pay to the City the
110 reasonable cost of such work; which shall include, among other things,
111 the City's overhead in obtaining completion of said work.
112

113 B. Any surface or subsurface failure occurring during the term
114 of this Agreement caused by any excavation by Grantee shall be
115 repaired to the City's specifications, within 30 days, or, upon 5 days
116 written notice to Grantee, the City shall order all work necessary to
117 restore the damaged area to a safe and acceptable condition and
118 Grantee shall pay the reasonable costs of such work to the City,
119 including City overhead.
120

121 C. In the event of an emergency, Grantee may commence such
122 repair and emergency response work as required under the
123 circumstances, provided that Grantee shall notify the City Public Works
124 Director in writing as promptly as possible before such repair or
125 emergency work commences, or as soon thereafter as possible, if
126 advanced notice is not possible. The City may act, at any time, without
127 prior written notice in the case of an emergency, but shall notify Grantee
128 in writing as promptly as possible under the circumstances.
129

130 D. Grantee agrees that if any of its actions under this Franchise
131 materially impair or damage any City property, survey monument, or
132 property owned by a third-party, Grantee will restore, at its own cost

133 and expense, the impaired or damaged property to the same condition
134 as existed prior to such action. Such repair work shall be performed
135 and completed to the reasonable satisfaction of the Public Works
136 Director.

137
138 Section 4. Location and Relocation of Facilities.

139
140 A. Grantee shall place any new Facilities underground where
141 existing telecommunications and cable facilities are located
142 underground. Any new Facilities to be located above-ground shall be
143 placed on existing utility poles. No new utility poles shall be installed in
144 connection with placement of new above-ground facilities.

145
146 B. Grantee recognizes the need for the City to maintain
147 adequate width for installation and maintenance of sanitary sewer,
148 water and storm drainage utilities owned by the City, the Northshore
149 Utility District and other public utility providers. Thus, the City reserves
150 the right to maintain clear zones within the public right-of-way for
151 installation and maintenance of said utilities. The clear zones for each
152 right-of-way segment shall be noted and conditioned with the issuance
153 of each right-of-way permit. If adequate clear zones are unable to be
154 achieved on a particular right-of-way, Grantee shall locate in an
155 alternate right-of-way, obtain easements from private property owners,
156 or propose alternate construction methods which maintain and/or
157 enhance the existing clear zones.

158
159 C. Except as otherwise required by law, Grantee agrees to
160 relocate, remove or reroute its facilities as ordered by the City, at no
161 expense or liability to the City, except as may be required by RCW
162 Chapter 35.99. The City's decision to require the relocation of Grantee's
163 facilities shall be made in a reasonable, uniform and non-discriminatory
164 manner. Pursuant to the provision of Section 5, Grantee agrees to
165 protect and save harmless the City from any customer or third-party
166 claims for service interruption or other losses in connection with any
167 such change or relocation.

168
169 D. If the City determines that a project necessitates the
170 relocation of the Grantee's existing Facilities, then:

171
172 1. Within a reasonable time, which shall be no less than
173 90 days prior to the commencement of the project, the City shall
174 provide the Grantee with written notice requiring relocation;
175 provided that in the event of an emergency beyond the control
176 of the City and which will result in severe financial consequences
177 to the City or its citizens or businesses, the City shall give the
178 Grantee written notice as soon as practicable;

179 2. The City shall provide the Grantee with copies of
180 information for such improvement project and a proposed
181 location for the Grantee's Facilities so that Grantee may relocate
182 its Facilities in other Rights of Way in order to accommodate the
183 project; and

184
185 3. The Grantee shall complete relocation of its Facilities
186 at no charge or expense to the City so as to accommodate the
187 project at least 10 days prior to commencement of the project.
188 In the event of an emergency as described in this Section, the
189 Grantee shall relocate its Facilities within the time period
190 specified by the City.

191
192 E. The Grantee may, after receipt of written notice requesting
193 a relocation of its Facilities, submit to the City written alternatives to
194 such relocation. The City shall evaluate such alternatives and advise
195 the Grantee in writing if one or more of the alternatives are suitable to
196 accommodate the work, which would otherwise necessitate relocation
197 of the Facilities. If so requested by the City, the Grantee shall submit
198 additional information to assist the City in making such evaluation. The
199 City shall give each alternative proposed by the Grantee full and fair
200 consideration, within a reasonable time, so as to allow for the relocation
201 work to be performed in a timely manner. In the event the City
202 ultimately determines that there is no other reasonable alternative, the
203 Grantee shall relocate its Facilities as otherwise provided in this Section.

204
205 F. The provisions of this Section shall in no manner preclude or
206 restrict the Grantee from making any arrangements it may deem
207 appropriate when responding to a request for relocation of its Facilities
208 by any person or entity other than the City, where the Facilities to be
209 constructed by said person or entity are not or will not become City-
210 owned, operated or maintained Facilities; provided, that such
211 arrangements shall not unduly delay a City construction project.

212
213 G. The Grantee shall indemnify, hold harmless and pay the costs
214 of defending the City against any and all claims, suits, actions, damages,
215 or liabilities for delays on City construction projects caused by or arising
216 out of the failure of the Grantee to relocate its Facilities in a timely
217 manner; provided, that the Grantee shall not be responsible for
218 damages due to delays caused by the City or circumstances beyond the
219 control of the Grantee.

220
221 H. In the event that the City orders the Grantee to relocate its
222 Facilities for a project which is primarily for private benefit, the private
223 party or parties causing the need for such project shall reimburse the
224 Grantee for the cost of relocation in the same proportion as their
225 contribution to the total cost of the project.

226 I. In the event of an unforeseen emergency that creates a threat
227 to public safety, health or welfare, the City may require the Grantee to
228 relocate its Facilities at its own expense, any other portion of this Section
229 notwithstanding.

230
231 Section 5. Indemnification.

232
233 A. Grantee shall indemnify, defend and hold the City, its agents,
234 officers, employees, volunteers and assigns harmless from and against
235 any and all claims, demands, liability, loss, cost, damage or expense of
236 any nature whatsoever, including all costs and attorney's fees, made
237 against them on account of injury, sickness, death or damage to persons
238 or property which is caused by or arises out of, in whole or in part, the
239 willful, tortious or negligent acts, failures and/or omissions of Grantee
240 or its agents, servants, employees, contractors, subcontractors or
241 assigns in the construction, operation or maintenance of its Facilities or
242 in exercising the rights granted Grantee in this Franchise; *provided,*
243 *however,* such indemnification shall not extend to injury or damage
244 caused by the negligence or willful misconduct of the City, its agents,
245 officers, employees, volunteers or assigns.

246
247 B. In the event any such claim or demand be presented to or
248 filed with the City, the City shall promptly notify Grantee thereof, and
249 Grantee shall have the right, at its election and at its sole cost and
250 expense, to settle and compromise such claim or demand, provided
251 further, that in the event any suit or action be begun against the City
252 based upon any such claim or demand, the it shall likewise promptly
253 notify Grantee thereof, and Grantee shall have the right, at its election
254 and its sole cost and expense, to settle and compromise such suit or
255 action, or defend the same at its sole cost and expense, by attorneys of
256 its own election.

257
258 Section 6. Default.

259
260 A. If Grantee shall fail to comply with any of the provisions of
261 this Franchise, unless otherwise provided in this Franchise, the City may
262 serve upon Grantee a written order to comply within thirty (30) days
263 from the date such order is received by Grantee. If Grantee is not in
264 compliance with this Franchise after expiration of the thirty (30) day
265 period, the City may act to remedy the violation and may charge the
266 reasonable costs and expenses of such action to Grantee. The City may
267 act without the thirty (30) day notice in case of an emergency. If any
268 failure to comply with this Franchise by Grantee cannot be corrected
269 with due diligence within said thirty (30) day period, then the time within
270 which Grantee may so comply shall be extended for such time as may
271 be reasonably necessary and so long as Grantee works promptly and
272 diligently to effect such compliance. If Grantee is not in compliance with
273 this Franchise, and is not proceeding with due diligence in accordance

274 with this section to correct such failure to comply, then the City may in
275 addition, by ordinance and following written notice to Grantee, declare
276 an immediate forfeiture of this Franchise.
277

278 B. In addition to other remedies provided in this Franchise or
279 otherwise available at law, if Grantee is not in compliance with
280 requirements of the Franchise, and if a good faith dispute does not exist
281 concerning such compliance, the City may place a moratorium on
282 issuance of pending Grantee right-of-way use permits until compliance
283 is achieved.
284

285 Section 7. Nonexclusive Franchise. This franchise is not and
286 shall not be deemed to be an exclusive Franchise. This Franchise shall
287 not in any manner prohibit the City from granting other and further
288 franchises over, upon, and along the Franchise Area. This Franchise
289 shall not prohibit or prevent the City from using the Franchise Area or
290 affect the jurisdiction of the City over the same or any part thereof.
291

292 Section 8. Franchise Term.

293
294 A. This Franchise is and shall remain in full force and effect for
295 a period of ten (10) years from and after the effective date of the
296 Ordinance, provided that the term may be extended for an additional
297 five (5) years upon the agreement of Grantee and the City; and provided
298 further, however, Grantee shall have no rights under this Franchises nor
299 shall Grantee be bound by the terms and conditions of this Franchise
300 unless Grantee shall, within thirty (30) days after the effective date of
301 the Ordinance, file with the City its written acceptance of this Franchise,
302 in a form acceptable to the City Attorney.
303

304 B. If the City and Grantee fail to formally renew this Franchise
305 prior to the expiration of its term or any extension thereof, this Franchise
306 shall automatically continue in full force and effect until renewed or until
307 either party gives written notice at least one hundred eighty (180) days
308 in advance of intent not to renew this Franchise.
309

310 Section 9. Compliance with Codes and Regulations.

311
312 A. The rights, privileges and authority herein granted are
313 subject to and governed by this ordinance and all other applicable
314 ordinances and codes of the City of Kirkland, as they now exist or may
315 hereafter be amended, including but not limited to the provisions of
316 Kirkland Municipal Code Title 26 and Kirkland Municipal Code Chapter
317 5.08. Nothing in this ordinance limits the City's lawful power to exercise
318 its police power to protect the safety and welfare of the general public.
319 Any location, relocation, erection or excavation by Grantee shall be
320 performed by Grantee in accordance with applicable federal, state and
321 city rules and regulations, including the City's Public Works Policies and

322 Standard Plans, and any required permits, licenses or fees, and
323 applicable safety standards then in effect.

324
325 B. In the event that any territory served by Grantee is annexed
326 to the City after the effective date of this Franchise, such territory shall
327 be governed by the terms and conditions contained herein upon the
328 effective date of such annexation.

329
330 Section 10. Undergrounding. New Facilities shall be installed
331 underground pursuant to Section 4 of this Franchise. Grantee
332 acknowledges the City's policy of undergrounding of Facilities within the
333 Franchise Area. Grantee will cooperate with the City in the
334 undergrounding of Grantee's existing Facilities within the Franchise Area.
335 If the during the term of this Franchise, the City shall direct Grantee to
336 underground Facilities within any Franchise Area, such undergrounding
337 shall be at no cost to the City except as may be provided in RCW Chapter
338 35.99. Grantee shall comply with all federal, state, and City regulations
339 on undergrounding. If the City undertakes any street improvement
340 which would otherwise require relocation of Grantee's above-ground
341 facilities, the City may, by written notice to Grantee, direct that Grantee
342 convert any such Facilities to underground Facilities.

343
344 Section 11. Record of Installations and Service.

345
346 A. With respect to excavations by Grantee and the City within
347 the Franchise Area, Grantee and the City shall each comply with its
348 respective obligations pursuant to Chapter 19.122 RCW and any other
349 applicable state law.

350
351 B. Upon written request of the City, Grantee shall provide the
352 City with the most recent update available of any plan of potential
353 improvements to its Facilities within the Franchise Area; provided,
354 however, any such plan so submitted shall be for informational purposes
355 within the Franchise Area, nor shall such plan be construed as a proposal
356 to undertake any specific improvements within the Franchise Area.

357
358 C. As-built drawings and maps of the precise location of any
359 Facilities placed by Grantee in any Right of Way shall be made available
360 by Grantee to the City within 10 (ten) working days of the City's request.
361 These plans and maps shall be provided at no cost to the City and shall
362 include hard copies and/or digital copies in a format specified by the
363 City.

364
365 Section 12. Shared Use of Excavations and Trenches.

366
367 A. If either the City or Grantee shall at any time after installation
368 of the Facilities plan to make excavations in the area covered by this
369 Franchise and as described in this Section, the party planning such

370 excavation shall afford the other, upon receipt of written request to do
 371 so, an opportunity to share such an excavation, *provided that*: (1) such
 372 joint use shall not unreasonably delay the work of the party causing the
 373 excavation to be made or unreasonably increase its costs; (2) such joint
 374 use shall be arranged and accomplished on terms and conditions
 375 satisfactory to both parties. In addition, pursuant to RCW 35.99.070,
 376 the City may request that Grantee install additional conduit, ducts and
 377 related access structures for the City pursuant to contract, under which
 378 Grantee shall recover its incremental costs of providing such facilities to
 379 the City.

380
 381 B. The City reserves the right to not allow open trenching for
 382 five years following a street overlay or improvement project. Grantee
 383 shall be given written notice at least 90 days prior to the commencement
 384 of the project. Required trenching due to an emergency will not be
 385 subject to five year street trenching moratoriums.

386
 387 C. The City reserves the right to require Grantee to joint trench
 388 with other franchisees if both entities are anticipating trenching within
 389 the same franchise area and provided that the terms of this Section are
 390 met.

391
 392 Section 13. Insurance.

393
 394 A. Grantee shall procure and maintain for the duration of this
 395 Franchise, insurance against claims for injuries to persons or damage to
 396 property which may arise from or in connection with the performance
 397 of work under this Franchise by Grantee, its agents, representatives or
 398 employees in the amounts and types set forth below pursuant to KMC
 399 26.40.020:

400
 401 1. Commercial General Liability insurance with limits no
 402 less than \$5,000,000 combined single limit for bodily injury
 403 (including death) and property damage, including premises
 404 operation, products and completed operations and explosion,
 405 collapse and underground coverage extensions;

406
 407 2. Automobile liability for owned, non-owned and hired
 408 vehicles with a combined single limit of three million dollars for each
 409 accident for bodily injury and property damage; and

410
 411 3. Worker's compensation within statutory limits and
 412 employer's liability insurance with limits of not less than one million
 413 dollars for each accident/disease/policy limit.

414
 415 B. Grantee's insurance coverage shall be primary insurance as
 416 respects the City. Any insurance, self-insurance or insurance pool
 417 coverage maintained by the City shall be in excess of Grantee's
 418 insurance and shall not contribute with it.

419 C. Grantee shall furnish the City with certificates of the
420 foregoing insurance coverage or a copy of amendatory endorsements,
421 including but not necessarily limited to the additional insured
422 endorsement.

423
424 D. Grantee shall have the right to self-insure any or all of the
425 above-required insurance. Any such self-insurance is subject to
426 approval by the City.

427
428 E. Grantee's maintenance of insurance as required by this
429 Franchise shall not be construed to limit the liability of Grantee to the
430 coverage provided by such insurance, or otherwise limit City's recourse
431 to any remedy to which the City is otherwise entitled at law or in equity.

432
433 Section 14. Assignment.

434
435 A. All of the provisions, conditions, and requirements herein
436 contained shall be binding upon Grantee, and no right, privilege, license
437 or authorization granted to Grantee hereunder may be assigned or
438 otherwise transferred without the prior written authorization and
439 approval of the City, which the City may not unreasonably withhold.
440 Notwithstanding the foregoing, Grantee, without the consent of, but
441 upon notice to the City, may assign this agreement in whole or in part
442 to: (a) an Affiliate (as defined in this Franchise); (b) a lender for security
443 purposes only; or (c) the surviving entity in the event of a merger or
444 acquisition of substantially all of Grantee's assets.

445
446 B. Grantee may lease the Facilities or any portion thereof to
447 another or provide capacity or bandwidth in its Facilities to another,
448 *provided that:* Grantee at all times retains exclusive control over such
449 Facilities and remains responsible for locating, servicing, repairing,
450 relocating or removing its Facilities pursuant to the terms and conditions
451 of this Franchise.

452
453 Section 15. Abandonment and Removal of Facilities. Upon the
454 expiration, termination, or revocation of the rights granted under this
455 Franchise, the Franchisee shall remove all of its Facilities from the Rights
456 of Way of the City within ninety (90) days of receiving notice from the
457 City's Public Works Director; *provided however,* that the City may permit
458 the Grantee's improvements to be abandoned in place in such a manner
459 as the City may prescribe. Upon permanent abandonment, and
460 Franchisee's agreement to transfer ownership of the Facilities to the
461 City, the Franchisee shall submit to the City a proposal and instruments
462 for transferring ownership to the City. Any such Facilities which are not
463 permitted to be abandoned in place which are not removed within ninety
464 (90) days of receipt of said notice shall automatically become the
465 property of the City; *provided however,* that nothing contained within
466 this Section shall prevent the City from compelling the Grantee to

467 remove any such Facilities through judicial action when the City has not
468 permitted the Franchisee to abandon said Facilities in place.

469 Section 16. Miscellaneous.

470
471
472 A. If any term, provision, condition or portion of this Franchise
473 shall be held to be invalid, such invalidity shall not affect the validity of
474 the remaining portions of this Franchise which shall continue in full force
475 and effect. The headings of sections and paragraphs of this Franchise
476 are for convenience of reference only and are not intended to restrict,
477 affect, or be of any weight in the interpretation or construction of the
478 provisions of such sections or paragraphs.

479
480 B. Grantee shall pay for the City's reasonable administrative
481 costs in drafting and processing this Ordinance and all work related
482 thereto, which payment shall not exceed \$2,000. Grantee shall further
483 be subject to all permit fees associated with activities and the provisions
484 of any such permit, approval, license, agreement or other document,
485 the provisions of this Franchise shall control.

486
487 C. Failure of either party to declare any breach or default under
488 this Franchise or any delay in taking action shall not waive such breach
489 or default, but that party shall have the right to declare any such breach
490 or default at any time. Failure of either party to declare one breach or
491 default does not act as a waiver of that party's right to declare another
492 breach or default.

493
494 Section 17. Notice. Any notice or information required or
495 permitted to be given to the parties under this Franchise may be sent
496 to the following addresses unless otherwise specified:

497		
498	<u>City:</u>	<u>Grantee:</u>
499	City of Kirkland	Level 3 Communications, LLC
500	Public Works Director	Attn: Franchise Administrator
501	123 Fifth Avenue	1025 Eldorado Blvd
502	Kirkland, WA 98033	Broomfield, CO 80021

503
504 With a copy to:
505 Level 3 Communications, LLC
506 Attn: Legal Department
507 1025 Eldorado Blvd
508 Broomfield, CO 80021

509
510
511 Notice shall be deemed given upon receipt in the case of personal
512 delivery, three days after deposit in the United States Mail in the case
513 of regular mail, or the next day in the case of overnight delivery.

514 Section 18. Effective date. This Ordinance, being in compliance
515 with RCW 35A.47.040, shall be in force and effect five days from and
516 after its passage by the Kirkland City Council and publication pursuant
517 to Section 1.08.017 Kirkland Municipal Code in the summary form
518 attached to the original of this ordinance and by this reference approved
519 by the City Council.

520
521 Passed by majority vote of the Kirkland City Council in open
522 meeting this _____ day of _____, 2015.

523
524 Signed in authentication thereof this _____ day of
525 _____, 2015.

MAYOR

Attest:

City Clerk

Approved as to Form:

City Attorney

PUBLICATION SUMMARY
OF ORDINANCE O-4471

AN ORDINANCE OF THE CITY OF KIRKLAND GRANTING LEVEL 3 COMMUNICATIONS, LLC A NON-EXCLUSIVE FRANCHISE FOR THE TRANSMISSION OF TELECOMMUNICATIONS IN, THROUGH, OVER AND UNDER THE STREET RIGHTS OF WAY OF THE CITY OF KIRKLAND.

SECTIONS 1 - 17. Issues a right of way Franchise to Level 3 Communications, LLC for telecommunication purposes and sets forth the terms and conditions of the Franchise.

SECTION 18. Authorizes publication of the ordinance by summary, which summary is approved by the City Council pursuant to Section 1.08.017 Kirkland Municipal Code and establishes the effective date as five days after publication of summary.

The full text of this Ordinance will be mailed without charge to any person upon request made to the City Clerk for the City of Kirkland. The Ordinance was passed by the Kirkland City Council at its meeting on the _____ day of _____, 2015.

I certify that the foregoing is a summary of Ordinance O-4471 approved by the Kirkland City Council for summary publication.

City Clerk