



**CITY OF KIRKLAND**  
**Department of Finance & Administration**  
**123 Fifth Avenue, Kirkland, WA 98033 425.587.3100**  
**www.kirklandwa.gov**

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## **MEMORANDUM**

**To:** Kurt Triplett, City Manager

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

**Date:** September 30, 2015

**Subject:** Second Reading of Renewal Franchise for XO Communications Services, LLC

### RECOMMENDATION:

That the City Council adopt the attached ordinance, which renews the Franchise of XO Communications Services, LLC ("XOCS"). This is the second reading of the ordinance—the first reading occurred at the September 15, 2015 Council Meeting. This ordinance will be adopted by approval of the consent calendar.

### BACKGROUND DISCUSSION:

On March 26, 2000, the City granted Nextlink, now operating as XOCS, a telecommunications franchise that authorized XOCS to place its facilities in City right of way. The 2000 Franchise had an initial term of ten years with one five year renewal option, which was exercised by the parties. The 2000 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 right 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 ten year term, which will expire in October 2025, if approved at the October 6, 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

telecommunications franchises for AboveNet, Astound Broadband, Level 3, MCI (MFS), and MetroNet Fiber Washington.

Under RCW 35A.47.040, the City Council may not adopt a franchise until five days after its introduction. The first reading of the attached Ordinance was approved on the consent calendar on the September 15, 2015 meeting. Since there were no proposed changes, the second reading of the Ordinance is for the purpose of final adoption.

ORDINANCE O-4492

AN ORDINANCE OF THE CITY OF KIRKLAND GRANTING XO COMMUNICATIONS SERVICES, 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, XO COMMUNICATIONS SERVICES, LLC ("Grantee")  
2 has requested that the City grant it the right to install, operate and  
3 maintain a fiber optic-based telecommunications system within the  
4 public rights 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 does  
17 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 XO Communications Services, LLC  
22 ("Grantee") on behalf of itself and its XO operating affiliates to the  
23 extent such operating affiliate(s) directly provides Telecommunications  
24 Service(s) hereunder.

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

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

35  
36           D. "Franchise" shall mean the initial authorization or renewal  
37 thereof, granted by the City, through this Ordinance, or a subsequently  
38 adopted Ordinance, which authorizes construction and operation of the

39 Grantee’s facilities for the purpose of offering telecommunications  
40 service.

41  
42 E. “Franchise Area” means the present municipal boundaries of  
43 the City, and shall include any additions thereto by annexation or other  
44 legal means.

45  
46 F. “Person” means an individual, partnership, association, joint  
47 stock company, trust, corporation, limited liability company or  
48 governmental entity.

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

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

72  
73 Section 2. Franchise Area and Authority Granted.

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

81  
82 B. Permission Required to Enter Onto Other City Property.  
83 Nothing contained in this Ordinance is to be construed as granting  
84 permission to Grantee to go upon any other public place other than  
85 rights of way within the Franchise Area in this Ordinance. Permission to

86 go upon any other property owned or controlled by the City must be  
87 sought on a case by case basis from the City.

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

92  
93 Section 3. Construction and Maintenance.

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

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

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

134 D. Grantee agrees that if any of its actions under this Franchise  
135 materially impair or damage any City property, survey monument, or  
136 property owned by a third-party, Grantee will restore, at its own cost  
137 and expense, the impaired or damaged property to the same condition  
138 as existed prior to such action. Such repair work shall be performed  
139 and completed to the reasonable satisfaction of the Public Works  
140 Director.

141

142 Section 4. Location and Relocation of Facilities.

143

144 A. Grantee shall place any new Facilities underground where  
145 existing telecommunications and cable facilities are located  
146 underground. Any new Facilities to be located above-ground shall be  
147 placed on existing utility poles. No new utility poles shall be installed in  
148 connection with placement of new above-ground facilities.

149

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

162

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

172

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

175

- 176 1. Within a reasonable time, which shall be no less than 90  
177 days prior to the commencement of the project, the City shall  
178 provide the Grantee with written notice requiring relocation;  
179 provided that in the event of an emergency beyond the control  
180 of the City and which will result in severe financial consequences

181 to the City or its citizens or businesses, the City shall give the  
182 Grantee written notice as soon as practicable;

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

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

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

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

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

225  
226 H. In the event that the City orders the Grantee to relocate its  
227 Facilities for a project which is primarily for private benefit, the private  
228 party or parties causing the need for such project shall reimburse the

229 Grantee for the cost of relocation in the same proportion as their  
230 contribution to the total cost of the project.

231

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

236

237 Section 5. Indemnification.

238

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

252

253 B. In the event any such claim or demand be presented to or  
254 filed with the City, the City shall promptly notify Grantee thereof, and  
255 Grantee shall have the right, at its election and at its sole cost and  
256 expense, to settle and compromise such claim or demand, provided  
257 further, that in the event any suit or action be begun against the City  
258 based upon any such claim or demand, the City shall likewise promptly  
259 notify Grantee thereof, and Grantee shall have the right, at its election  
260 and its sole cost and expense, to settle and compromise such suit or  
261 action, or defend the same at its sole cost and expense, by attorneys of  
262 its own election.

263

264 Section 6. Default.

265

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

277 be reasonably necessary and so long as Grantee works promptly and  
278 diligently to effect such compliance. If Grantee is not in compliance with  
279 this Franchise, and is not proceeding with due diligence in accordance  
280 with this section to correct such failure to comply, then the City may in  
281 addition, by ordinance and following written notice to Grantee, declare  
282 an immediate forfeiture of this Franchise.

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

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

297  
298 Section 8. Franchise Term.

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

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

315  
316 Section 9. Compliance with Codes and Regulations.

317  
318 A. The rights, privileges and authority herein granted are  
319 subject to and governed by this ordinance and all other applicable  
320 ordinances and codes of the City of Kirkland, as they now exist or may  
321 hereafter be amended, including but not limited to the provisions of  
322 Kirkland Municipal Code Title 26 and Kirkland Municipal Code Chapter  
323 5.08. Nothing in this ordinance limits the City's lawful power to exercise  
324 its police power to protect the safety and welfare of the general public.

325 Any location, relocation, erection or excavation by Grantee shall be  
326 performed by Grantee in accordance with applicable federal, state and  
327 city rules and regulations, including the City's Public Works Policies and  
328 Standard Plans, and any required permits, licenses or fees, and  
329 applicable safety standards then in effect.

330

331 B. In the event that any territory served by Grantee is annexed  
332 to the City after the effective date of this Franchise, such territory shall  
333 be governed by the terms and conditions contained herein upon the  
334 effective date of such annexation.

335

336 Section 10. Undergrounding. New Facilities shall be installed  
337 underground pursuant to Section 4 of this Franchise. Grantee  
338 acknowledges the City's policy of undergrounding of Facilities within the  
339 Franchise Area. Grantee will cooperate with the City in the  
340 undergrounding of Grantee's existing Facilities within the Franchise Area.  
341 If during the term of this Franchise, the City shall direct Grantee to  
342 underground Facilities within any Franchise Area, such undergrounding  
343 shall be at no cost to the City except as may be provided in RCW Chapter  
344 35.99. Grantee shall comply with all federal, state, and City regulations  
345 on undergrounding. If the City undertakes any street improvement  
346 which would otherwise require relocation of Grantee's above-ground  
347 facilities, the City may, by written notice to Grantee, direct that Grantee  
348 convert any such Facilities to underground Facilities.

349

350 Section 11. Record of Installations and Service.

351

352 A. With respect to excavations by Grantee and the City within  
353 the Franchise Area, Grantee and the City shall each comply with its  
354 respective obligations pursuant to Chapter 19.122 RCW and any other  
355 applicable state law.

356

357 B. Upon written request of the City, Grantee shall provide the  
358 City with the most recent update available of any plan of potential  
359 improvements to its Facilities within the Franchise Area; provided,  
360 however, any such plan so submitted shall be for informational purposes  
361 within the Franchise Area, nor shall such plan be construed as a proposal  
362 to undertake any specific improvements within the Franchise Area.

363

364 C. As-built drawings and maps of the precise location of any  
365 Facilities placed by Grantee in any Right of Way shall be made available  
366 by Grantee to the City within 10 (ten) working days of the City's request.  
367 These plans and maps shall be provided at no cost to the City and shall  
368 include hard copies and/or digital copies in a format specified by the  
369 City.

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Section 12. Shared Use of Excavations.

A. Grantee and the City shall exercise best efforts to coordinate construction work either may undertake within the Franchise Area so as to promote the orderly and expeditious performance and completion of such work as a whole. Such efforts shall include, at a minimum, reasonable and diligent efforts to keep the other party and other utilities within the Franchise Area informed of its intent to undertake such construction work. Grantee and the City shall further exercise best efforts to minimize any delay or hindrance to any construction work undertaken by themselves or other utilities within the Franchise Area.

B. If at any time, or from time to time, either Grantee, the City, or another franchisee, shall cause excavations to be made within the Franchise Area, the party causing such excavation to be made shall afford the others, upon receipt of a written request to do so, an opportunity to use such excavation, provided that:

(1) Such joint use shall not unreasonably delay the work of the party causing the excavation to be made;

(2) Such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties. The parties shall each cooperate with other utilities in the Franchise Area to minimize hindrance or delay in construction.

C. In addition, pursuant to RCW 35.99.070, the City may request that Grantee install additional conduit, ducts and related access structures for the City pursuant to contract, under which Grantee shall recover its incremental costs of providing such facilities to the City.

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

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

Section 13. Insurance.

A. Grantee shall procure and maintain for the duration of this Franchise, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of work under this Franchise by Grantee, its agents, representatives or

418 employees in the amounts and types set forth below pursuant to KMC  
419 26.40.020:

420  
421 1. Commercial General Liability insurance with limits no  
422 less than \$5,000,000 combined single limit for bodily injury  
423 (including death) and property damage, including premises  
424 operation, products and completed operations and explosion,  
425 collapse and underground coverage extensions;

426  
427 2. Automobile liability for owned, non-owned and hired  
428 vehicles with a combined single limit of three million dollars for  
429 each accident for bodily injury and property damage; and

430  
431 3. Worker's compensation within statutory limits and  
432 employer's liability insurance with limits of not less than one  
433 million dollars for each accident/disease/policy limit.

434  
435 B. Grantee's insurance coverage shall be primary insurance as  
436 respects the City. Any insurance, self-insurance or insurance pool  
437 coverage maintained by the City shall be in excess of Grantee's  
438 insurance and shall not contribute with it.

439  
440 C. Grantee shall furnish the City with certificates of the  
441 foregoing insurance coverage or a copy of amendatory endorsements,  
442 including but not necessarily limited to the additional insured  
443 endorsement.

444  
445 D. Grantee shall have the right to self-insure any or all of the  
446 above-required insurance. Any such self-insurance is subject to  
447 approval by the City.

448  
449 E. Grantee's maintenance of insurance as required by this  
450 Franchise shall not be construed to limit the liability of Grantee to the  
451 coverage provided by such insurance, or otherwise limit City's recourse  
452 to any remedy to which the City is otherwise entitled at law or in equity.

453  
454 Section 14. Assignment.

455  
456 A. All of the provisions, conditions, and requirements herein  
457 contained shall be binding upon Grantee, and no right, privilege, license  
458 or authorization granted to Grantee hereunder may be assigned or  
459 otherwise transferred without the prior written authorization and  
460 approval of the City, which the City may not unreasonably withhold.  
461 Notwithstanding the foregoing, Grantee, without the consent of, but  
462 upon notice to the City, may assign this agreement in whole or in part  
463 to: (a) an Affiliate (as defined in this Franchise); (b) a lender for security  
464 purposes only; or (c) the surviving entity in the event of a merger or  
465 acquisition of substantially all of Grantee's assets.

466 B. Grantee may lease the Facilities or any portion thereof to  
467 another or provide capacity or bandwidth in its Facilities to another,  
468 *provided that:* Grantee at all times retains exclusive control over such  
469 Facilities and remains responsible for locating, servicing, repairing,  
470 relocating or removing its Facilities pursuant to the terms and conditions  
471 of this Franchise.

472  
473 Section 15. Abandonment and Removal of Facilities. Upon the  
474 expiration, termination, or revocation of the rights granted under this  
475 Franchise, the Franchisee shall remove all of its Facilities from the Rights  
476 of Way of the City within ninety (90) days of receiving notice from the  
477 City's Public Works Director; *provided however,* that the City may permit  
478 the Grantee's improvements to be abandoned in place in such a manner  
479 as the City may prescribe. Upon permanent abandonment, and  
480 Franchisee's agreement to transfer ownership of the Facilities to the  
481 City, the Franchisee shall submit to the City a proposal and instruments  
482 for transferring ownership to the City. Any such Facilities which are not  
483 permitted to be abandoned in place which are not removed within ninety  
484 (90) days of receipt of said notice shall automatically become the  
485 property of the City; *provided however,* that nothing contained within  
486 this Section shall prevent the City from compelling the Grantee to  
487 remove any such Facilities through judicial action when the City has not  
488 permitted the Franchisee to abandon said Facilities in place.

489  
490 Section 16. Miscellaneous.

491  
492 A. If any term, provision, condition or portion of this Franchise  
493 shall be held to be invalid, such invalidity shall not affect the validity of  
494 the remaining portions of this Franchise which shall continue in full force  
495 and effect. The headings of sections and paragraphs of this Franchise  
496 are for convenience of reference only and are not intended to restrict,  
497 affect, or be of any weight in the interpretation or construction of the  
498 provisions of such sections or paragraphs.

499  
500 B. Grantee shall pay for the City's reasonable administrative  
501 costs in drafting and processing this Ordinance and all work related  
502 thereto, which payment shall not exceed \$2,000. Grantee shall further  
503 be subject to all permit fees associated with activities and the provisions  
504 of any such permit, approval, license, agreement or other document,  
505 the provisions of this Franchise shall control.

506  
507 C. Failure of either party to declare any breach or default under  
508 this Franchise or any delay in taking action shall not waive such breach  
509 or default, but that party shall have the right to declare any such breach  
510 or default at any time. Failure of either party to declare one breach or  
511 default does not act as a waiver of that party's right to declare another  
512 breach or default.



PUBLICATION SUMMARY  
OF ORDINANCE O-4492

AN ORDINANCE OF THE CITY OF KIRKLAND GRANTING XO COMMUNICATIONS SERVICES, 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 XO Communications Services, 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 \_\_\_\_\_ approved by the Kirkland City Council for summary publication.

\_\_\_\_\_  
City Clerk