



CITY OF KIRKLAND
Information Technology Department
123 Fifth Avenue, Kirkland, WA 98033 425.587.3050
www.ci.kirkland.wa.us

MEMORANDUM

To: Dave Ramsay, City Manager

From: Janice Perry, MultiMedia Communications Manager
Brenda Cooper, Chief information Officer

Date: October 6, 2009

Subject: Response to Verizon Northwest Inc. Letter Regarding Title 26 Code Amendments

RECOMMENDATION

City Council authorizes the Mayor to sign the attached letter to Stoel Rives representing Verizon Northwest Inc.

BACKGROUND DISCUSSION

At Council's September 1st City Council meeting the attached letter was presented by Mr. Steding representing Verizon Northwest Inc. Staff and our legal team that worked on Title 26 Amendments reviewed and considered the comments presented by Verizon and have developed the attached response. Staff recommends Council authorize the signing of the letter in response to the September 1st letter.



600 University Street, Suite 3600
Seattle, Washington 98101
main 206.624.0900
fax 206.386.7500
www.stoel.com

September 1, 2009

DOUGLAS J. STEDING
Direct (206) 386-7626
djsteding@stoel.com

VIA HAND DELIVERY

Kirkland City Council
123 5th Avenue
Kirkland, WA 98033

Re: Proposed Ordinances 4205, 4206, 4207 Amending Title 26 to the Kirkland Municipal Code

Dear Council Members:

On behalf of our client, Verizon Northwest Inc., we appreciate the opportunity to comment on the above-referenced ordinances.

As the staff report indicates, Verizon commented on the proposed right-of-way provisions (4205) during development of the proposed ordinance and several of our comments were incorporated into the draft that is before you tonight. However, a number of our comments were not incorporated, and as a result, many of the proposed ordinance provisions continue to fail to recognize the preemptive effect of state and federal law on a number of subjects. For example, and as detailed in comments provided previously by Verizon, many proposed provisions fail to recognize the broad scope of the statewide grant of rights-of-way authority for Verizon in Washington, are counter to express provisions of the Revised Code of Washington and would impermissibly infringe upon the exclusive authority of the Washington Utilities and Transportation Commission. Verizon would like to take this opportunity to reiterate those comments, which were previously provided in detail to the Staff.

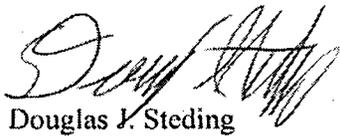
We have not provided comments on the proposed franchising and consumer protection ordinances (4206 and 4207) because they do not apply to Verizon. As provided in the franchise agreement, the franchise terms agreed upon by Verizon and the City control over conflicting ordinance provisions. Because the franchise agreement occupies the field of cable regulations applicable to Verizon, the ordinance provisions are not applicable to Verizon.



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Thank you again for this opportunity to address these matters on behalf of Verizon.

Very truly yours,


Douglas J. Steding

DRAFT

October 7, 2009

Douglas J. Steding
Stoel Rives
600 University Street, Suite 3600
Seattle, Washington 98101

Dear Mr. Steding:

This is to acknowledge receipt of your letter on behalf of your client, Verizon Northwest Inc., ("Verizon") to the Kirkland City Council, dated September 1, 2009.

As you may recall, the City separated Title 26 into three titles – cable, consumer protection and communications right of way. They became Title 30, 31 and 26 respectively when they were approved by the City Council on September 1, 2009. Our final ordinances reflect a number of the suggestions made by Verizon during the comment phase and we appreciate Verizon's participation in that process. However, our legal advisor on this matter disputes a number of your assertions as described below:

"We strongly disagree with the assertion in Verizon's letter that the ordinances are inconsistent with state and federal law because the City Council did not adopt all of Verizon's proposed changes. We also disagree with their assertion that the franchising and consumer protection ordinances do not apply to Verizon. We recognize, as Verizon does, that the franchise terms control over conflicting ordinance provisions but to the extent there is no conflict, the ordinances do apply to Verizon."

Thank you again for your participation in the process.

Sincerely,
Kirkland City Council

By James Lauinger, Mayor