Ordinance No. 187173

Grant a franchise to Qwest Corporation d/b/a CenturyLink QC for telecommunications services, for a period of 10 years. (Ordinance)

The City of Portland ordains:

Section 1. The Council finds:

1. In July, 2001 the Council adopted Ordinance No. 175757 granting a temporary, revocable permit to Qwest Communications, Inc., to build and operate telecommunications facilities within the City's streets in order to allow Qwest Corporation to continue serving customers within Portland.

2. On April 22, 2010, CenturyLink, Inc. announced it would acquire Qwest in a stock-for-stock transaction. The acquisition of the Qwest shares by CenturyLink, Inc. was reviewed and approved by the Federal Communications Commission on March 18, 2011. The Oregon Public Utility Commission approved the CenturyLink/Qwest merger on March 24, 2011. OPUC Order No. 2011-04, UM 1484. The merger closed on April 1, 2011. Qwest Corporation currently does business under the assumed business name of CenturyLink QC (CenturyLink QC) in Oregon.

3. The Council previously extended the term of the temporary, revocable permit on numerous occasions to allow CenturyLink QC to continue serving customers in Portland. Most recently, the Council adopted Ordinance No. 186886, extending the term of CenturyLink QC's revocable permit, continuously and without interruption, through December 31, 2016.

4. CenturyLink QC operates as a telecommunications utility as defined under ORS 759.005(1), providing, among other things, local telephone service subject to regulatory oversight by the Oregon Public Utility Commission.

Section 2. NATURE AND TERM OF GRANT.

2.1 Grant of Franchise.

(A) The City of Portland, Oregon grants to Qwest Corporation d/b/a CenturyLink QC, a corporation qualified to do business in Oregon, and to its successors and assigns as approved by the City under Section 10, a franchise to construct, operate, repair and maintain a Telecommunications System, with all necessary Facilities, located within the Streets.

(B) Throughout this Franchise, the City of Portland, Oregon, shall be referred to as the "City" and Qwest Corporation d/b/a CenturyLink QC shall be referred to as "Grantee."

(C) Grantee may construct, operate, repair and maintain Grantee's Telecommunications System within the Streets in the manner and under the conditions set forth in this Franchise.

(D) This Franchise does not authorize Grantee to operate a cable system or provide video programming, as defined by 47 U.S.C. § 522.

2.2 Duration of Franchise. The term of this Franchise, and all the rights and obligations pertaining thereto, shall be ten (10) years from the effective date of this Franchise, unless revoked sooner as provided herein.

2.3 Effective Date. The effective date of this Franchise shall be sixty (60) days after passage of the Franchise by the City Council, unless Grantee fails to file an unconditional written acceptance of this Franchise in accordance with Section 14.11, in which event this Franchise shall be null and void. The passage date of this Franchise is set forth on the last page of the original hereof, as stamped by the Council Clerk.

2.4 Franchise Not Exclusive. This Franchise is not exclusive. The City expressly reserves the right to grant franchises, licenses, permits or other similar rights to other Persons, as well as the right in its own name as a municipality, to use the Streets for similar or different purposes allowed Grantee under this Franchise.

2.5 Compliance with Laws. To the extent authorized by law, this Franchise is subject to the Charter of the City of Portland and general ordinance provisions passed pursuant thereto, affecting matters of general City concern and not materially in conflict with existing contractual rights of Grantee, now in effect or hereafter made effective. Section 10-201 through 10-218, inclusive, of the Charter of the City of Portland, (1942 compilation, as revised in part by subsequent amendments), as the same now exist or hereafter are amended by the people of the City, are hereby incorporated by reference and made a part of this Franchise. Nothing in this Franchise shall be deemed to waive the requirements of the various codes and ordinances of the City regarding permits, fees to be paid or the manner of construction.

Section 3. DEFINITIONS.

3.1 Captions. Throughout this Franchise, captions are intended solely to facilitate reading and reference provisions of this Franchise. The captions shall not affect the meaning and interpretation of this Franchise.

3.2 Definitions. For the purpose of this Franchise, the following terms, phrases and their derivations shall have the meanings given below unless the context indicates otherwise. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular include the plural number. The word "shall" is always mandatory and not merely directory.

(A) "City" means the City of Portland, Oregon, a municipal corporation, and all of the territory within its corporate boundaries, as such may change from time to time.

(B) "City Council" means the Council of the City of Portland.

(C) "Duct" means a single enclosed raceway for power or communication lines, conductors, optical fiber, wire or other cable.

(D) "Exchange Access Services" means: (1) telephone exchange access lines or channels which provide local access from the premises of a subscriber in the City to the local telecommunications network to effect the transfer of information; and (2) unless a separate tariff rate is charged therefor, any facility or service provided in connection with the services described in Subsection (D)(1).

(E) "Facility" means any tangible component of Grantee's System.

(F) "Franchise" means this ordinance, as approved by the City Council and accepted by Grantee pursuant to Section 14.11.

(G) "Gross Revenues" means all revenues derived from Exchange Access Services.

(H) "Person" means any natural person, and any individual, sole proprietorship, partnership, association, corporation, cooperative, municipal corporation or other form of organization authorized to do business in the State of Oregon.

(I) "Telecommunications Services" or "Services" shall have the same meaning as provided in ORS 759.005(8) (2013).

(J) "Streets" means the surface of and the space above and below any public street, road, alley or highway within the City, used or intended to be used by the general public, to the extent the City has the right to allow Grantee to use them.

(K) "Telecommunications System" or "System" means all wires, cables, ducts, conduits, vaults, poles, anchors, cabinets, fixtures, transformers and other necessary Facilities owned or used by Grantee for the purpose of providing Services and located in, above or below the Streets excluding ducts, conduits and vaults leased from any other franchisee, licensee or permittee.

(L) "Year," "Annual," or "Annually" means the period consisting of a full calendar year, beginning January 1 and ending December 31, unless otherwise provided in this Franchise.

Section 4. COMPENSATION.

4.1 Amount of Compensation. As compensation for the benefits and privileges under this Franchise, and in consideration of permission to use the Streets, Grantee shall pay as a franchise fee to the City through the duration of this Franchise, an amount equal to seven percent (7%) of Grantee's Gross Revenues. Grantee may deduct from the franchise fees payable under this Section the amount of any payments made or accrued to the City for the period upon which the permit fee is computed, any permit or inspection fee imposed under any Code or ordinance of the City, but excluding the value of any right given by Grantee to the City to use Grantee's poles,

conduits, ducts or other facilities, subject to applicable federal and state laws, consistent with the terms of this Franchise. Grantee may not deduct the fees agreed to be paid the City for street telephone booths.

4.2 Payment of Compensation.

(A) The Franchise Fee payments to the City under Section 4.1 shall be computed based on Grantee's Gross Revenues from each calendar year quarter period (January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31) and payable no later than forty-five (45) days after the end of each calendar quarter.

(B) Payment not received by the City by the due date shall be assessed interest equal to the rate of one percent (1%) per month, compounded monthly. Interest shall be due on the entire late payment from the date on which the payment was due until the date on which the City receives the payment.

(C) Grantee shall set up electronic fund transfer within sixty (60) days of the franchise effective date to submit payments to the City by Automated Clearing House (ACH) payment receipts. The City may approve any written requests from Grantee for waivers from the ACH requirement.

4.3 Reports. Payments pursuant to this Section 4 shall be accompanied by a written report to the City, containing an accurate statement in summarized form, as well as in detail, of Grantee's Gross Revenues and the computation of the payment amount, verified by an officer or other authorized representative of Grantee, setting forth its Gross Revenues according to their accounting subdivisions, and any deductions claimed for the period upon which the payment is computed. Such reports shall be in a form satisfactory to the City.

4.4 Cost of Pre-franchising and Publication. Grantee shall pay the costs of publication of this Franchise and any amendments thereto, if such publication is required by the City Charter.

4.5 Acceptance of Payment and Recomputation. Acceptance of payment pursuant to Section 4 shall not be construed as an accord that the amount paid is, in fact, the correct amount, nor as a release of any claim the City may have for further or additional sums payable. All amounts paid under Section 4 shall be subject to review by the City, provided that only payments which occurred during a period of thirty-six (36) months prior to the date the City notifies Grantee of its intent to perform an audit shall be subject to such audit. Grantee agrees to pay the City for:

(A) Interest on any underpayment of an amount due under Section 4 that is disclosed as the result of an audit, such interest to be calculated at the interest rate pursuant to Section 4.2(B).

(B) A penalty of five percent (5%) of the underpayment shall be due within forty-five (45) days of written notice from the City, if the City's review discloses that Grantee has paid ninety percent (90%) or less of the principal amount owing for the period under audit. The City

will waive this penalty if the City determines that the Grantee has established that the underpayment was due to a clerical error, mistake of fact, or other inadvertence that:

(1) Is manifest from the record or established by documentary evidence;

(2) Does not require the use of judgment or subjective decision making for their correction; or,

(3) Does not amount to an error in the construction of a law.

4.6 Authority to Conduct Financial Reviews.

(A) The City and its agents and representatives shall have authority to arrange for and conduct reviews of any payments under this Franchise, upon no less than thirty (30) days prior written notice to Grantee, and during normal business hours at reasonable locations in the City or the Portland metropolitan area designated by Grantee. The City's thirty (30) day notice shall provide Grantee with a preliminary list of financial documentation requested by the City for review. Following availability being made by Grantee of complete, necessary financial documentation, the City and its agents and representative shall use best efforts to complete any review under this Section 4.6 within sixty (60) days; in any event, any review shall not exceed ninety (90) days unless by mutual consent of the parties. Any financial documentation made available by Grantee to the City for the review shall not be copied or removed from the reasonable locations designated by Grantee, and both the documents and the information contained therein shall be accorded the maximum level of confidential treatment to the extent authorized by Oregon law. The City shall not call for reviews more than once per thirty-six (36) month period.

(B) Grantee agrees to reimburse the City for the reasonable costs of such review if the review discloses that Grantee has paid ninety percent (90%) or less of the fees owing under Section 4 of this Franchise for the period at issue. The City will waive the reimbursement if the City determines that the Grantee has established that the underpayment was due to a clerical error, mistake of fact or other inadvertence that:

(1) Is manifest from the record or established by documentary evidence;

(2) Does not require the use of judgment or subjective decision making for their correction; or,

(3) Does not amount to an error in the construction of a law.

(C) Subject to the requirement set forth in Section 4.6, Grantee shall reimburse the City within forty-five (45) days of receipt of an invoice from the City showing such costs were actually incurred and were directly related to the review.

4.7 Grantee Dispute of Review. Grantee shall have the ability to dispute any determination of underpayment by the City within thirty (30) days of receipt of written notice from the City

related to the review. If Grantee disputes the City's determination of any underpayment under this Franchise, Grantee shall place the disputed amount in an escrow account at a financial institution acceptable to the City with instructions agreed to by the City until final resolution.

4.8 Liability for Licenses and Taxes. Payment of the franchise fee and other financial obligations under this Franchise shall not exempt Grantee from the payment of any license, fee, tax or charge on the business, occupation, property or income of Grantee that may lawfully be imposed by the City, except as may otherwise be provided in the ordinance or ordinances imposing such other license fee, tax or charge.

Section 5. GENERAL FINANCIAL AND INSURANCE PROVISIONS.

5.1 Insurance.

(A) Grantee shall maintain in full force and effect, at its own cost and expense, continuously during this Franchise, insurance and other forms of financial guarantees in accordance with applicable Portland City Code and administrative regulations. Until the time when such implementing administrative regulations are effective, Grantee shall maintain insurance in accordance with the following insurance coverage:

(1) Commercial General Liability Insurance in the amount of two million dollars ($2,000,000) combined single limit for property damage and bodily injury. Such insurance shall cover the construction, operation and maintenance of Grantee's System, and the conduct of Grantee's business in the City to the extent authorized by this Franchise.

(2) Automobile Liability Insurance in the amount of one million dollars ($1,000,000) combined single limit for bodily injury and property damage coverage.

(3) Workers' Compensation Insurance meeting all legal requirements of the State of Oregon.

(4) Employers' Liability Insurance in the following amounts:

(a) Bodily Injury by Accident: one hundred thousand dollars ($100,000); and

(b) Bodily Injury by Disease: one hundred thousand dollars ($100,000) employee limit; five hundred thousand dollars ($500,000) policy limit.

(5) The limits of the insurance as provided in this Section 5.1 shall be subject to any changes as to the maximum limits imposed on municipalities of the State of Oregon during the term of this Franchise.

(B) The City shall be designated as an additional insured under each of the insurance policies required in this Section 5.1 by endorsement on the policies, except Workers' Compensation, Employer's Liability Insurance and Automobile Liability Insurance. The insurance shall be without prejudice to coverage otherwise existing.

(C) Grantee shall not cancel any required insurance policy, nor shall Grantee allow the required insurance to lapse, without obtaining alternative insurance in conformance with this Franchise. For any of the insurance policies identifying the City as an additional insured, as provided under this Section 5.1, Grantee shall notify the City within thirty (30) days of any notice of non-renewal, cancellation or any change in coverage materially adverse to the City. Notices will be provided in accordance with the applicable policies. If the insurance is canceled or materially altered so as to be out of compliance with the requirements of this Section 5.1 during the term of this Franchise, Grantee shall provide a replacement policy.

(D) Unless Grantee opts to follow self-insurance procedures described in Section 5.1(F), each of the required insurance policies shall be with insurers authorized or permitted to do business in the State of Oregon, with an A-: VII or better rating for financial condition and financial performance by Best's Key Rating Guide, Property/Casualty Edition or an equivalent rating entity.

(E) Grantee shall provide the City, within fifteen (15) days of the Effective Date of this Franchise, written evidence of insurance certifying the coverage required, which evidence shall be subject to the approval of the City Attorney's Office as to whether the insurance provided is consistent with the requirements of this Section 5.1. Failure to maintain adequate insurance as required under this Section 5.1 shall be deemed sufficient cause for revocation of this Franchise.

(F) In the alternative to providing written evidence of insurance to the City certifying liability insurance coverage as required in Section 5.1, Grantee may provide the City with an annual statement regarding its self-insurance. Grantee's self-insurance shall provide at least the same amount and scope of coverage for Grantee and the City, its officers, agents and employees, as otherwise required under this Franchise. The adequacy of such self-insurance shall be subject to the City Attorney's review and approval. Upon Grantee's election to provide self-insurance coverage under this Section 5.1(F), any failure by Grantee to maintain adequate self-insurance shall be deemed sufficient cause for the City to declare a revocation of this Franchise under and subject to Section 11.

5.2 Faithful Performance Bond.

(A) Upon the effective date of this Franchise, Grantee shall furnish proof of the posting of a faithful performance bond running to the City, with good and sufficient surety approved by the City, in the penal sum of not less than $100,000, conditioned that Grantee shall well and truly observe, fulfill and perform each term and condition of the Franchise. Such bond shall be maintained by Grantee throughout the term of this Franchise.

(B) Grantee shall pay all premiums charged for the bond, and unless the City Council specifically directs otherwise, shall keep the bond in full force and effect at all times throughout the term of the Franchise, including the later of either

(1) The remaining term of this Franchise; or

(2) If required by the City, the removal of all Grantee's System installed in the City's Streets.

(C) The bond shall contain a provision that it shall not be terminated or otherwise allowed to expire without thirty (30) days prior written notice first being given to the City. The bond is subject to review and approval by the City Attorney as to its adequacy under the requirements of this Section 5.2. During the term of the Franchise, Grantee shall file with the City a duplicate copy of the bond along with written evidence of payment of the required premiums. However, in no event shall the City exercise its rights against the performance bond under Section 5.2 if a bona fide, good faith dispute exists between the City and Grantee.

(D) Subject to the City's prior approval, Grantee may provide an irrevocable letter of credit or equivalent form of financial assurance in lieu of a faithful performance bond. The alternative form of financial assurance shall give the City substantially the same rights and guarantees provided by a faithful performance bond.

Section 6. COVENANT TO INDEMNIFY AND HOLD CITY HARMLESS.

6.1 Indemnification – General. Grantee shall indemnify, defend and hold harmless the City, its officers, agents and employees, from any claims, damages, costs or expenses, including but not limited to reasonable attorney fees, arising from any personal injury or property damage arising out of or by reason of: (1) any construction, excavation, operation maintenance, reconstruction or any other act done under this Franchise, by or for Grantee, its agents or employees, or (2) any neglect or omission of Grantee to keep its System with all necessary Facilities in a reasonably safe condition. Grantee's indemnification obligation shall not extend to liability to the extent caused by the negligence or willful misconduct of the City or its officers, agents, boards or employees or any other third party. The City shall notify Grantee in writing as soon as reasonably practical after receiving written notice of any third-party action or other claim against it. Grantee shall have the sole and absolute right, upon written notice to the City, to defend the claim with counsel of its own choosing. No settlement or compromise of any such claim will be made by Grantee without the prior written approval of the City, which approval shall not be unreasonably withheld, delayed or conditioned. Grantee and its agents, contractors, officers and employees shall consult and cooperate with the City while conducting its defense of the City, and the City shall fully cooperate with Grantee. Such indemnification shall not extend to claims by the City for outages, power quality or other claims by the City related to telecommunications services provided by Grantee to the City, except as may be otherwise provided by law.

6.2 Indemnification – Relocation. Grantee shall indemnify the City for any damages, claims, additional costs or expenses assessed against or payable by the City arising out of or resulting from Grantee's failure to remove, adjust or relocate any of its System with all related Facilities in the Streets in a timely manner in accordance with a relocation schedule consistent with the City Code, furnished to Grantee by the City's duly authorized agent in writing, unless Grantee's failure arises from the City's or the City's contractor's negligence or willful misconduct.

6.3 Indemnification – Hazardous Substances. Grantee agrees to forever indemnify the City, its officers, agents and employees, from and against any claims, costs and expenses of any kind, whether direct or indirect, or pursuant to any state or federal law, statute, regulation or order, for the removal or remediation of any leaks, spills, contamination or residues of Hazardous Substances, directly attributable to Grantee's structures or other Facilities in the Streets. For purposes of this Section 6.3, "Hazardous Substances" shall have the meaning given by ORS 465.200(16) (2013).

Section 7. GENERAL STREET USE AND CONSTRUCTION.

7.1 In General. Grantee shall construct its System in accordance with applicable City regulations and ordinances. The City shall perform its obligations with regard to the System construction in accordance with applicable ordinances and regulations and the City's processes and practices generally made available to all third parties.

7.2 Permits.

(A) Grantee may perform all construction necessary for the operation and maintenance of its System. All construction and maintenance of any and all Facilities within the Streets shall, regardless of who performs the construction, be and remain the responsibility of Grantee. Grantee shall apply for and obtain all permits necessary for construction, maintenance or installation of any such Facilities, and for excavation and laying of any Facilities within the Streets.

(B) Maps.

(1) In accordance with Section 10-209(C) of the Portland City Charter, Grantee shall provide the City Engineer through the permitting process an initial construction schedule for work in the Streets and the estimated total cost of such work when submitting permit applications.

(2) As Grantee undertakes and completes the incremental construction of its System, Grantee shall provide updated "as-built" maps to the City Engineer showing the location of Grantee's installed Facilities in the Streets. Such "as-built" maps shall be on a scale of three thousand five hundred feet (3,500') per inch or whatever scale the City and Grantee agree upon. Grantee's "as-built" maps shall be provided in an electronic format (such as pdf or a successor format) acceptable to the City and Grantee. The level of detail in maps provided by Grantee shall be limited to that which is needed for the City's administration of the Streets in order to protect Grantee's confidential business information and the security of Grantee's System.

7.3 Locates. Grantee shall comply with the requirements of the Oregon Utility Notification Law, ORS Chapter 757 (2013), and the related rules and administrative regulations promulgated thereunder in OAR Chapter 952.

7.4 Restoration of Streets. Grantee's responsibility for maintaining repairs to any Street surface areas disturbed by Grantee's work shall end upon the occurrence of either a reconstruction of the Street in an approved manner by the City (curb to curb) or upon subsequent work at the same location by any other Person franchised, permitted, licensed or otherwise granted authority by the City, whichever occurs first.

7.5 Relocation. Grantee shall relocate its System within the Streets when public convenience requires such change, in compliance with the requirements of applicable Portland City Code and implementing regulations, and the expense thereof shall be paid by Grantee (however payment by Grantee shall in no way limit Grantee's right, if any, to seek reimbursement for such costs from any third-party).

7.6 Acquisition of Facilities. Within thirty (30) days of Grantee's acquisition of Facilities in the Streets, or upon any addition or annexation to the City of any area in which Grantee owns or operates any Facility within the streets, Grantee shall submit to the City a written statement describing all Facilities involved, whether authorized by franchise, license, permit or any other similar form of right granted by the City, and specifying the location of all such acquired Facilities. At the City's sole option, as expressed by ordinance adopted by the City Council, such Facilities shall immediately be subject to the terms of this Franchise, with a reasonable period of time to bring the acquired Facilities into compliance with this Franchise.

7.7 System Installation. Grantee shall not require any customer to install lines or cables in, under or over the Streets in order to connect with or receive Service from Grantee's System, except to the City or any telecommunications provider franchised, permitted or licensed by the City.

7.8 Reservation of City Street Rights. Nothing in this Franchise shall be construed to prevent the City from constructing sewers, grading, paving, repairing and/or altering any Street; laying down, repairing or removing water mains; or constructing or establishing any other public work or improvement. All such work shall be done, insofar as practicable, so as not to injure or prevent the unrestricted use and operation of Grantee's System under this Franchise. However, if any portion of Grantee's System interferes with the construction or repair of any Street or public improvement, including construction, repair or removal of a sewer or water main, the City may direct Grantee to relocate as provided in applicable regulations of the City.

7.9 Street Vacation. Upon receipt of any request for vacation of any Street or portion thereof used by Grantee, the City shall provide Grantee with the standard notice provided for street vacations. If any Street or portion thereof used by Grantee is vacated by the City during the term of this Franchise, unless the City Council specifically reserves to Grantee the right to continue its installation in the vacated Street area or Grantee secures such right from the third party that will have title to the area in which Grantee has its Facilities, Grantee shall, without expense to the City, remove its Facilities from such Street, restore, repair or reconstruct the Street area where such removal has occurred, and place the Street area in such condition as may be required consistent with City Code, which shall be no worse than the condition of such Street immediately prior to removal. In the event of failure, neglect or refusal of Grantee, after thirty (30) days' notice by City Council, to restore, repair, or reconstruct such Street, the City may do such work or cause it to be done, and the cost thereof, as found and declared by City Council, shall be

entered in the Docket of City Liens against any property of Grantee which City may choose, and such lien shall be enforced in like manner and with like effect as other liens entered in such docket. The City shall make reasonable efforts to assist Grantee in identifying potential available alternative locations within the Streets, or, if requested by Grantee, will cooperate with Grantee's efforts to secure an alternate location in the vacated Street area from the third party that shall have ownership after vacation.

7.10 Common Users.

(A) For the purposes of this Section 7.10:

(1) "Attachment" means any wire, optical fiber or other cable, and any related device, apparatus or auxiliary equipment, for the purpose of voice, video or data transmission.

(2) "Conduit Facility" means any structure, or section thereof, containing one or more Ducts, conduits, manholes, handholes or other such facilities in Grantee's Network.

(3) "Licensee" for purposes of this Section 7.10 means any person, firm, corporation, partnership, company, association, joint stock association or cooperatively organized association franchised, licensed or otherwise permitted by the City to use the Streets.

(4) "Surplus Ducts or Conduits" are Conduit Facilities other than those occupied by Grantee or any prior Licensee, one unoccupied duct held by Grantee as an emergency use spare, and other unoccupied ducts that Grantee reasonably expects to use within the next sixty (60) months.

(B) Grantee is a telecommunications utility subject to federal and state regulations, Grantee shall comply with all laws regarding common use of its Facilities within the City's streets by other telecommunications service providers, including providing non-discriminatory terms and conditions for access to poles, ducts and conduits in the Streets. Except as provided in this Franchise or otherwise under state or federal law, Grantee shall not favor itself over any other telecommunications service provider when provisioning access to poles, ducts and conduits in the Streets. The City's use of any of Grantee's Facilities in the Streets as a competitive telecommunications provider shall occur according to federal and state laws.

(C) Grantee acknowledges that the Streets have a finite capacity for containing conduits. Therefore, Grantee agrees that whenever the City Engineer determines it is impracticable to permit construction of an underground duct or conduit system by any other Licensee for non-telecommunications purposes, the City Engineer may require upon reasonable notice and an opportunity to object, that Grantee afford to such Person the right to use Grantee's Surplus Ducts or Conduits in common with Grantee upon reasonable terms and conditions, consistent with Grantee's regulatory rights and obligations under applicable federal and state law, and assuming no safety or engineering concerns exist that cannot reasonably be mitigated or eliminated. If granted, this right of use shall be subject to the terms and conditions of an agreement for use of Surplus Ducts or Conduits entered into by Grantee and the Licensee, and to the safety and reliability of Grantee's System and maintenance requirements. Any agreement governing the

terms and conditions of use of Surplus Ducts or Conduits may, at Grantee's discretion, require use of Grantee's employees or contractors in any work occurring in Grantee's vaults.

(C) If Grantee and the Licensee fail or cannot otherwise agree to fair and equitable terms, conditions and regulations, including but not limited to a conduit rental rate, within a reasonable period of time, Grantee and the Licensee shall enter into non-binding arbitration to determine such terms, conditions and regulations, subject, where applicable, to the jurisdiction of the Oregon Public Utility Commission. In such arbitration, the arbitrators shall determine the conduit rental rate at a fair market rate.

(D) A Licensee occupying part of a conduit or duct shall be deemed to occupy the entire conduit or duct.

(E) Grantee shall give Licensee a minimum of one hundred twenty (120) calendar days written notice of its need to occupy any licensed Conduit Facility or Duct and shall propose that the Licensee take the first feasible action as follows:

(1) Pay revised conduit or duct rent designed to recover the cost of retrofitting the conduit or duct with multiplexing, optical fibers or other space-saving technology sufficient to meet Grantee's space needs;

(2) Pay revised conduit or duct rent designed to recover the cost of new conduit or duct constructed to meet Grantee's space needs;

(3) Vacate the Conduit or Duct that are no longer surplus; or

(4) Construct and maintain sufficient new conduit or duct to meet Grantee's space needs.

(F) When two or more Licensees occupy a portion of Conduit Facility or Duct, the last Licensee to occupy the Conduit Facility or Duct shall be the first to vacate or construct new conduit or duct as directed by Grantee. When Conduit Facility or Duct Rent is revised because of retrofitting, use of space-saving technology or construction of new Conduit Facility or Duct, all Licensees shall bear the increased cost.

(G) All Attachments under this Section 7.10 shall meet local, state and federal clearance and other safety requirements, be adequately grounded and anchored, and meet the provisions of contracts executed between Grantee and the Licensee. Grantee may, at its option, correct any Attachment deficiencies and charge the Licensee for its costs. Each Licensee shall pay Grantee for any fines, fees, damages, or other reasonable costs the Licensee's Attachments cause Grantee to incur.

(H) City will be allowed to access and use Grantee's Surplus Ducts or Conduits for any non-telecommunications purposes without use fees, subject to the same process and other terms applicable to Licensees under Section 7.10 and subject to a separate written agreement between the City and Grantee specifying the terms of such access and usage by the City.

7.11 Discontinuing Use of Facilities. If Grantee decides to discontinue use of Facilities within all or a portion of the Streets and does not intend to use those Facilities again in the future, the City may direct Grantee to remove the Facilities or may permit the Facilities to be left in place as abandoned, which permission shall not be unreasonably withheld or delayed. If Grantee is permitted to abandon its Facilities in place, upon written consent of the City, the ownership of Facilities in the City's Streets shall transfer to the City and Grantee shall have no further obligation therefor. Notwithstanding Grantee's request that any such Facility remain in place, the City Engineer may require Grantee to remove the Facility from the street area or modify the Facility in order to protect the public health and safety or otherwise serve the public interest. The City Engineer may require Grantee to perform a combination of modification and removal of the Facility. Grantee shall complete such removal or modification in accordance with a reasonable schedule set by the City Engineer. Until such time as Grantee removes or modifies the Facility as directed by the City Engineer, or until the rights to and responsibility for the Facility are accepted by another Person having authority to construct and maintain such Facility, Grantee shall be responsible for all necessary repairs and relocations of the Facility, as well as restoration of the Street, in the same manner and degree as if the Facility were in active use, and Grantee shall retain all liability for such Facility.

7.12 Construction and Use of Poles. If Grantee constructs any poles in the Streets, the poles shall be located and maintained in accordance with applicable Portland City Code and implementing regulations.

7.13 Tree Trimming.

(A) When Permits Needed. Upon obtaining a written permit from the City Forester, Grantee may prune or cause to be pruned, using proper utility arboricultural practices and in accordance with such permit, any tree in or overhanging the Streets that interferes with Grantee's Facilities. Except in emergencies or by special written permission of the City Forester, Grantee may not prune trees at a point below 30 feet above sidewalk grade until seven (7) calendar days after written notice has been given to the owner or occupant of the premises abutting the Street in or over which the tree is growing. The owner or occupant shall have seven (7) calendar days from receipt of notice to have such trees pruned by a qualified line clearance arborist at his or her own expense in accordance with Grantee's standards for reliable utility service, provided that the owner or occupant agrees to use tree pruning personnel that are qualified to work in close proximity to power lines. If the owner or occupant fails to do so in compliance with the notice, Grantee may prune such tree at its expense.

(B) Programmatic Permits. The City Forester may, at the City Forester's discretion, waive the notification and single tree permit process and issue a programmatic tree pruning permit if Grantee adequately demonstrates to the City Forester's satisfaction the ability to consistently apply proper utility arboricultural practices to the pruning of trees. Before any programmatic permit may be issued, any contractor of Grantee shall be subject to the approval of the City Forester. The City Forester shall have discretion to cancel the programmatic permit, notification and single tree permit process if, at any time, Grantee or its agents fail to either use

proper utility arboricultural practices or to properly notify the public in accordance with applicable City requirements.

(C) Emergencies. Notwithstanding the permit and notice requirements of this Section 7.13, in the event of an emergency, Grantee may prune a tree or trees as necessary to abate the emergency. For purposes of this subsection, emergencies exist when it is necessary to prune a tree or trees in order for Grantee to restore System operations, or to protect the public from imminent danger, or to prevent the imminent destruction of Facilities.

Section 8. PRIVACY.

Grantee shall comply with applicable federal, state and local laws regarding Subscriber privacy. Grantee will make available to Subscribers a privacy policy discussing its practices with regard to the Services. For the purposes of this Section 8, "Subscriber" means any Person who enters into an agreement with Grantee to subscribe to and is lawfully receiving Services provided by Grantee on Grantee's System.

Section 9. CITY DUCTS IN CONNECTION WITH NEW CONSTRUCTION.

9.1 In connection with new construction of Ducts by Grantee, Grantee will provide additional Duct(s) under the process described in this Section 9:

(A) The City may request that Grantee construct up to two (2) Ducts for the City ("City Ducts") whenever Grantee undertakes planned underground Capital construction, following the Effective Date of the Franchise, for general expansion of its Telecommunications System (as opposed to, for example, unplanned, one-off projects to support a single customer) within the Franchise Area. The parties shall negotiate in good faith when the City identifies that it desires Grantee to construct City Ducts. The City shall not delay or withhold from Grantee the issuance of any necessary permits for construction in the Streets while the City contemplates whether it desires Grantee to construct City Ducts. Grantee acknowledges that all permits for planned, general expansion-type underground construction projects are subject to City's right to request construction of City Ducts consistent with the terms and timelines of this Section 9.

(B) The City and Grantee shall meet at least annually, as convened by the City, to discuss:

(1) Anticipated general Telecommunications System expansion construction projects, including underground Capital projects, planned for the next twenty-four (24) month window of either Party. During these planning meetings, the Parties shall disclose to one another the general routes and scope of such planned projects; and,

(2) Anticipated general Telecommunications System expansion underground construction projects that have moved into the planning and design phase and affecting the Streets within the next twelve (12) month timeframe. In regard to projects within the next twelve (12) month window, if the City identifies that it has a need for City Ducts along the Grantee's planned route, the City will notify Grantee in writing within fifteen (15) business days to request

that Grantee provide a detailed cost estimate of project with the anticipated Incremental costs related to the provision of the City Ducts (which may include a burdened cost charge of up to fifteen percent (15%) for internal labor, engineering and design costs), and an estimated timeline for completion of the project. Grantee shall provide the cost estimate within thirty (30) business days of receipt of the City's request. After receipt of the Grantee's cost estimate, the City shall have fifteen (15) business days to notify Grantee if it desires construction of the City Ducts. During the fifteen (15) business days following the City's receipt of the cost estimate, the City may ask Grantee for additional information relevant to its decision to construct the City Ducts, and Grantee shall timely respond to such information requests.

(C) If, prior to or during construction of the City Ducts, but after the City has elected to have Grantee undertake such construction, Grantee realizes that actual construction costs are likely to exceed one hundred fifteen percent (115%) of the cost estimate, Grantee shall provide the City a revised cost estimate. After receipt of the Grantee's revised cost estimate, the City shall have fifteen (15) business days to notify Grantee if it desires to continue construction of the City Ducts. During the fifteen (15) business days following the City's receipt of the revised cost estimate, the City may ask Grantee for additional information relevant to its decision regarding whether to continue with construction of the City Ducts, and Grantee shall timely respond to such information requests.

(D) Upon completion of construction and proof of Acceptability, Grantee shall provide the City with an invoice. Upon submission by the Grantee of an invoice, and upon certification by the City that the invoice is in accordance with this Section 9 and confirmation by Grantee that the City Ducts have been installed, the City shall reimburse Grantee the amount specified in the invoice within thirty (30) days. Such reimbursement shall not be withheld, delayed, or used to offset any disputed or undisputed amounts owed by Grantee to the City.

9.2 Following receipt of payment from the City, Grantee will provide suitable documentation of the City's ownership of the City Ducts and include location in maps submitted per Section 7.2(B). Thereafter, City will own the City Ducts, including being responsible for maintenance of the City Duct(s).

9.3 For purposes of this Section 9, the following terms, phrases, and their derivations shall have the meanings given in this Subsection:

(A) "Capital" or "Capital Costs" means the expenditure of funds for services, products or other resources, whose useful life can be expected to exceed a period of one (1) year or longer.

(B) "Incremental" costs means the difference between the amount actually expended by Grantee in meeting its obligations under this Franchise that Grantee would not otherwise have expended in order to construct, operate or conduct the business of its Telecommunications System or to meet another obligation of this Franchise and the cost, based on units and quantities, of the City Ducts.

(C) "Acceptability" means confirmation by the City of Grantee having demonstrated the City's ability to use the completed City Ducts through inspection and certification. The process

of inspection and certification shall be performed by pulling a mandrel through each City Duct from end-to-end. The mandrel will conform to industry standards, including an outside diameter of 80% (eighty percent) or more of the inside diameter of the City Duct, and a length 20-30% (twenty to thirty percent) greater than the inside diameter of the City Duct.

9.4 As part of its construction of the City Ducts, Grantee will provide separate access vaults for the City at City's cost, at locations to be determined by the City.

Section 10. CITY'S CONSENT REQUIRED FOR ASSIGNMENT, TRANSFER, MERGER, LEASE OR MORTGAGE OF FRANCHISE.

If Grantee fails to provide written notice to the City within sixty (60) days of any Transfer of this Franchise and unless the City Council consents to such Transfer, this Franchise shall automatically expire without any action by the City. For purposes of this Section 10, "Transfer" means any sale, lease, mortgage, assignment, merger or other form of transfer of this Franchise or of the rights and privileges granted or authorized by this Franchise.

Section 11. FRANCHISE VIOLATIONS AND REMEDIES.

11.1 Remedies for Franchise Violations.

(A) In addition to any rights set out elsewhere in this Franchise, or such other rights as it may possess, the City reserves the right at its discretion to apply any of the following remedies, alone or in combination, in the event Grantee violates any material provision of this Franchise, including but not limited to payment of franchisee fees, submitting timely and accurate reports, providing timely access to records, and maintaining all required insurance and performance bonds.

(1) Impose liquidated damages as provided in Section 11.1(C);

(2) Recover specific damages from all or any part of the security provided pursuant to this Franchise, including without limitation any performance bond, letter of credit or other security, provided, however, the assessment shall be for such amount as the City reasonably determines is necessary to remedy the violation;

(3) Commence litigation seeking recovery of monetary damages or specific performance of this Franchise, as such remedy may be available;

(4) Suspend Grantee's Franchise rights related to the violation, until Grantee corrects or otherwise remedies the violation;

(5) Reduce the duration of the term of this Franchise on such basis as is reasonable; or

(6) Revoke this Franchise.

(B) (1) Grantee shall not be relieved of its obligations to comply promptly with this Franchise by reason of any failure of the City to enforce prompt compliance. The City's failure to enforce shall not constitute a waiver of any term, condition or obligation imposed upon Grantee under this Franchise; nor a waiver of rights by the City or acquiescence in Grantee's conduct. A specific waiver of a particular term, condition or obligation imposed upon Grantee under this Franchise shall not be a waiver of any other or subsequent or future breach of the same or of any other term, condition or obligation. The acts or omissions of affiliates are not beyond Grantee's control, and the knowledge of affiliates shall be imputed to Grantee.

(2) Subject to applicable law, the remedies provided for in this Franchise are cumulative and not exclusive; the exercise of one remedy shall not prevent the exercise of another remedy, or the exercise of any available rights of the City at law or equity.

(C) Liquidated Damages.

(1) The City and Grantee recognize that delays, expense and unique difficulties would be involved in establishing actual losses suffered by the City and the public as a result of Grantee's violation of certain material provisions of this Franchise. In the circumstances identified in this Section 11.1(C)(1), where proof of specific, actual damages would not be feasible, the City and Grantee agree that the City may require Grantee to pay liquidated damages to the City. The parties agree that such amounts are a reasonable estimate by the parties of the harm (including increased costs of administration and other damages difficult to measure) the City and the public would suffer in the event of Grantee's breach of such provisions of this Franchise. City and Grantee agree that the Franchise provisions to which such liquidated damages would apply are:

(a) Failure to send reports, maps, or other requested information or data as required by Sections 4 and 7;

(b) Failure to respond to financial review requests as required by Section 4.6;

(c) Failure to provide or maintain insurance or bonds as required by Section 5; and

(d) Failure to comply with Section 10 in connection with any Transfer as defined in Section 10.

(2) Subject to Grantee's right to notice and the opportunity to cure as provided in Section 11.2, if the City determines that Grantee has violated any of the provisions listed in Section 11.1(C)(1), above, the City may assess liquidated damages of $1,000 on a per violation basis.

(3) The liquidated damage amounts are stated in 2015 dollars and shall be adjusted each year for any increase in the amount of change in the Consumer Price Index for urban wage earners and clerical workers for the Portland, Oregon metropolitan region for the prior year, unadjusted for seasonal variations, as determined by the Bureau of Labor Statistics of the Department of labor and as published in such Bureau of Labor Statistics' Detailed Report

(CPI). The adjustment will be calculated by multiplying the base liquidated damages amount by the ratio of 1) the average CPI for January through June of the current Year, to 2) the average CPI for January through June of the prior Year.

(4) The assessment and recovery of liquidated damages will not constitute a waiver by the City of any other right or remedy it may have under the Franchise or applicable law, including its right to recover from Grantee any additional damages, losses, costs and expenses that are incurred by City by reason of the breach of this Franchise. The assessment and recovery of liquidated damages for a particular violation will substitute for the recovery of actual damages for the period of the assessment.

(5) Each violation of the provisions listed in Section 11.1(C)(1), above, shall be considered a separate violation for which separate liquidated damages may be imposed. Thereafter, if Grantee has not cured or commenced to cure the alleged breach to the satisfaction of the City, the City may pursue any other remedies available under this Franchise or applicable law.

(D) In determining which of the remedies available under this Franchise is appropriate, the City may consider, among other things: (1) the nature and extent of the violation; (2) whether Grantee has had a history of similar violations; (3) the Person burdened by the violation and the cost of remedying the violation; (4) the nature of the remedy required in order to prevent further such violations; and (5) such other factors as the City may deem appropriate.

(E) The City may shorten the term of this Franchise or revoke this Franchise in the manner described in Sections 11.1(A)(5) and (6) upon the occurrence of any of the following acts or events:

(1) Any failure to comply with the requirements of Section 5 of this Franchise, including but not limited to, any failure to provide uninterrupted insurance or performance bonds;

(2) Grantee is found by a court of competent jurisdiction to have practiced any fraud or deceit upon the City; or

(3) Grantee fails to obtain and maintain any permit required by any federal or state regulatory body in order to own and operate the System.

(F) In addition to its other rights and remedies as set forth in this Franchise, and subject to applicable bankruptcy laws, the City shall have the right to revoke this Franchise after the appointment of a receiver or trustee to take over and conduct Grantee's business, or the initiation of receivership, reorganization, insolvency or other similar action or proceeding, unless Grantee, its receiver or trustee timely and fully perform all obligations, until such time as this Franchise is either rejected or assumed by Grantee, its receiver or trustee.

11.2 Notice and Opportunity to Cure.

(A) The City shall give Grantee thirty (30) days prior written notice of its intent to exercise any of its rights under Section 11.1, identifying the reasons for such action.

(B) If Grantee removes or otherwise cures to the satisfaction of the City the asserted violation constituting the stated reason within the thirty (30) day notice period, or if cure is not reasonably possible within the thirty (30) day period and Grantee initiates good faith efforts satisfactory to the City within the thirty (30) day period to cure the asserted violation constituting the stated reason and the efforts continue in good faith, the City shall not exercise its rights under Section 11.1.

(C) If Grantee fails to remove or otherwise cure the asserted violation constituting the stated reason within the thirty (30) day notice period, or if Grantee does not undertake and continue efforts satisfactory to the City to remedy the stated reason, then the City may exercise any or all of the remedies available under Section 11.1 or such other rights as the City may possess.

11.3 Removal of Facilities. If the City has revoked this Franchise as provided in Section 11.1, or if this Franchise has expired without being renewed or extended, or in the event of the City's purchase, lease-purchase, condemnation, acquisition, taking over or holding of plant and equipment, all of Grantee's rights under this Franchise shall immediately cease and be divested. Thereafter, except as provided in this Section, or as otherwise provided by ordinance, Grantee shall at its own expense remove its Facilities from the Streets and restore the Streets to the standards provided in applicable regulations of the City. In the event of a failure by Grantee to properly perform such work, then the City may perform the work and collect the cost thereof from Grantee. The cost thereof shall be a lien upon the system of Grantee and a set-off against any sums owed Grantee by City.

Section 12. RENEGOTIATION.

In the event that any provision of this Franchise becomes invalid or unenforceable and the City Council or Grantee expressly finds that such provision constituted a consideration material to entering into this Franchise, the City and Grantee may mutually agree to renegotiate the terms of this Franchise. The party seeking renegotiation shall serve on the other party written notice of an offer to renegotiate. In the event the other party accepts the offer to renegotiate, the parties shall have ninety (90) days to conduct and complete the renegotiation. If both parties agree to renegotiations under Section 12, the parties shall proceed in good faith and in a manner that is reasonable under the circumstances.

Section 13. EXPIRATION.

Upon the expiration of this Franchise, the City shall have the right, at its election, to: (1) renew or extend Grantee's Franchise; (2) allow the Franchise to expire without further action; or (3) take such further action as the City deems appropriate. Until such time as the City exercises

its rights under this Section 13, Grantee's rights and responsibilities within the City shall be controlled by the terms of this Franchise.

Section 14. MISCELLANEOUS PROVISIONS.

14.1 Severability. If any section, provision or clause of this Franchise is held by a court of competent jurisdiction to be invalid or unenforceable, or is preempted by federal or state laws or regulations, the remainder of this Franchise shall not be affected, unless the City Council determines such section, provision or clause was material to the City's agreement to issue a franchise to Grantee. All provisions concerning indemnity shall survive the revocation of this Franchise for any cause. Expiration or revocation of this Franchise shall not extinguish, prejudice or limit either party's right to enforce this Franchise with respect to any default or defect in performance that has not been corrected.

14.2 Regulation and Nonenforcement by the City. The City Council shall be vested with the power and authority to reasonably regulate the exercise of the privileges permitted by this Franchise in the public interest. Grantee shall not be relieved of its obligations to comply with any of the provisions of this Franchise by reason of any failure of the City to enforce prompt compliance, nor does the City waive or limit any of its rights under this Franchise by reason of such failure or neglect. Services furnished by Grantee under this Franchise shall be rendered using commercially reasonable methods consistent with industry standards.

14.3 Force Majeure.

(A) For the purposes of Section 14.3, the term "Force Majeure" shall mean Acts of God, landslides, earthquakes, lightning, fires, hurricanes, volcanic activity, storms, floods, washouts, droughts, civil disturbances, acts of terrorism or of the public enemy, partial or entire failure of utilities, strikes, explosions, lockouts or other industrial disturbances, insurrections, public riots or other similar events which are not reasonably within the control of the parties hereto.

(B) If Grantee is wholly or partially unable to carry out its obligations under this Franchise as a result of Force Majeure, Grantee shall give the City prompt notice of such Force Majeure, describing the same in reasonable detail, and Grantee's obligations under this Franchise, other than for the payment of monies due, shall not be deemed in violation or default for the duration of the Force Majeure. Grantee agrees to use its best efforts to remedy as soon as possible, under the circumstances, Grantee's inability, by reason of Force Majeure, to carry out its responsibility and duties under this Franchise.

14.4 Choice of Forum. Any litigation between the City and Grantee arising under or regarding this Franchise shall occur, if in the state courts, in the Multnomah County Court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the District of Oregon, Portland.

14.5 Choice of Law. This Franchise shall be governed by and construed in accordance with the laws of the State of Oregon, even if Oregon's choice of law rules would otherwise require application of the law of a different state.

14.6 Notice. Any notice provided for under this Franchise shall be sufficient if in writing and: (1) delivered personally to the following addressee or deposited in the United States mail, postage prepaid, certified mail, return receipt requested; (2) sent by overnight or commercial air courier (such as Federal Express); (3) sent by facsimile transmission, with the original to follow by regular mail; or (4) sent by electronic mail with confirming record of delivery confirmation through electronic mail return-receipt, or by confirmation that the electronic mail was accessed, downloaded or printed. Notice will be deemed to have been adequately given three (3) days following the date of mailing, or immediately if personally served. For service by facsimile or by electronic mail, service will be deemed effective at the beginning of the next working day. Notices shall be addressed as follows, or to such other address as the receiving party specifies in writing:

If to the City:

Office for Community Technology
City of Portland, Oregon
111 SW Columbia Street, Suite 600
Portland, Oregon 97201
Email: ComTech@portlandoregon.gov

With a copy to:

City Attorney's Office
City of Portland
1221 SW 4th Avenue, Room 430
Portland, Oregon 97204

If to Grantee:

CenturyLink
Oregon Local Affairs Department
310 SW Park Avenue
Portland, OR 97205
Karen.Stewart@CenturyLink.com

With a copy to:

CenturyLink
Network Legal Department
1801 California Street, 9th Floor
Denver, CO 80202
Brandon.Porter@CenturyLink.com

14.7 Public Records.

(A) Grantee acknowledges that information submitted by Grantee to the City may be open to public inspection under the Oregon Public Records Law. Grantee is responsible for becoming familiar with and understanding the provisions of the Oregon Public Records Law.

(B) Grantee may identify information submitted to the City as confidential, if Grantee reasonably believes such information is qualified for an exemption recognized under the Oregon Public Records Law. Grantee shall prominently mark each page, or portion thereof, for which it is claiming confidentiality as "Confidential" prior to submitting such information to the City. When submitting such information to the City, Grantee shall submit documentation to the City that specifically identifies the applicable exemption under the Oregon Public Records Law (for example, but not limited to, ORS 192.501(2), (5), (22), (23) (2013)), and stating the reason(s) Grantee believes the information is exempt from public inspection. The City shall take reasonable steps to keep the identified information confidential, acting consistently with the Oregon Public Records Law.

(C) Within five (5) working days of receiving a public records request to inspect any information identified by Grantee as confidential, the City shall provide Grantee with written notice of the request, including a copy of the request. Grantee shall have five (5) working days within which to provide a written response to the City, before the City may disclose any of the requested confidential information. After reviewing Grantee's written response, the City shall determine whether any identifiable exemptions are applicable. If the City determines that it will be necessary to reveal the information consistent with the Oregon Public Records Law, the City shall promptly notify Grantee, and do so at least five (5) working days prior to the information being released. The City shall retain discretion to determine whether to release the requested information in response to any public records request, consistent with the Oregon Public Records Law. Nothing in this Section 14.7 affects Grantee's right to seek legal relief to prevent or remedy the City's release of Grantee's confidential information to the public.

14.8 Franchise Amendment. The City has negotiated this Franchise in good faith, in light of statutory provisions in then in place, and in reliance upon the information provided by Grantee regarding the scope of its authority to offer services associated with its System. In the event that Grantee offers or receives authority to offer services outside the scope of this Franchise that utilize Grantee's Facilities in the Streets, Grantee shall immediately notify the City. Within ninety (90) days of receiving such notice, the City may elect, without limitation, to enter into negotiations with Grantee to revise or amend this Franchise, or to extend separate authority to Grantee for such services to reflect such changed circumstances, or may proceed with early termination of this Franchise. The parties will negotiate in good faith to reach mutual agreement on the lawful means to provide the necessary authority for Grantee to provide such services using Streets.

14.9 Changes in Law or Unenforceability of Franchise Provisions. The parties have entered into this Franchise under the federal and state laws in effect on the effective date of this Franchise. The parties mutually reserve the right to each request modifications to this Franchise to account for changes in the law during the term of this Franchise. Upon written notice from either party, the City and the Grantee shall voluntarily negotiate, in good faith, to modify the terms and conditions of this Franchise to address changes in the law during the term of this Franchise. The parties also reserve the right to request modifications to this Franchise if any material provision of this Franchise becomes, or is declared, invalid or unenforceable.

14.10 Mutual Reservation of Rights. This Franchise shall not be deemed a waiver by Grantee or the City of any legal rights under applicable state or federal law. The parties agree that neither this Franchise nor Grantee's acceptance of it may be used as evidence that Grantee or the City have waived any rights or are estopped from asserting any legal rights.

14.11 Written Acceptance. On or before the thirtieth day after this Franchise becomes effective, Grantee shall file in the Office of the Auditor of the City of Portland a written acceptance of this Franchise, executed by Grantee, meeting the approval of the City Attorney. Any failure on the part of Grantee to file such written acceptance within such time shall be deemed an abandonment and rejection of the rights and privileges conferred hereby and this Franchise shall thereupon be null and void. Such acceptance shall be unqualified (subject to Grantee's Reservation of Rights as specified above) and shall be construed to be an acceptance of all the terms, conditions and restrictions contained in this Franchise.

14.12 Other Authority Superseded. Upon effectiveness of this Franchise, any and all authority to operate previously granted to Grantee by the City is superseded by this Franchise.

Passed by the Council: JUN 10 2015
Mayor Charlie Hales
Prepared by JLi/BWalters
Date Prepared:

Mary Hull Caballero
Auditor of the City of Portland
By Susan Parsons
Deputy

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Agenda No.

ORDINANCE NO. 187173

Title

Grant a franchise to Qwest Corporation d/b/a CenturyLink QC for telecommunications services, for a period of 10 years. (Ordinance)

INTRODUCED BY Commissioner/Auditor: **Mayor Hales**	CLERK USE: DATE FILED MAY 01 2015
COMMISSIONER APPROVAL	Mary Hull Caballero Auditor of the City of Portland
Mayor—Finance and Administration - Hales	By: _____ Deputy
Position 1/Utilities - Fritz	
Position 2/Works - Fish	
Position 3/Affairs - Saltzman	
Position 4/Safety - Novick	**ACTION TAKEN:**
BUREAU APPROVAL	MAY 06 2015 PASSED TO SECOND READING JUN 10 2015 9:30 A.M.
Bureau: OMF/BRFS, Revenue CAO: Fred Miller CFO, Bureau Head: Kenneth L. Rust Division Head: Thomas W. Lannom	
Prepared by: Mary Beth Henry Date Prepared: 4/21/2015	
Impact Statement Completed ☒ Amends Budget ☐	
Portland Policy Document If "Yes" requires City Policy paragraph stated in document. Yes ☐ No ☒	
City Auditor Office Approval: required for Code Ordinances	
City Attorney Approval: required for contract, code, easement, franchise, comp plan, charter	
Council Meeting Date **May 6, 2015**	

AGENDA
TIME CERTAIN ☐ **Start time:** _____ **Total amount of time needed:** _____ (for presentation, testimony and discussion)
CONSENT ☐
REGULAR ☒ **Total amount of time needed:** _____ (for presentation, testimony and discussion)

FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:	YEAS	NAYS
1. Fritz	1. Fritz	✓	
2. Fish	2. Fish	✓	
3. Saltzman	3. Saltzman	✓	
4. Novick	4. Novick	✓	
Hales	Hales	✓	