

TELECOMMUNICATIONS FRANCHISE AGREEMENT

ARTICLE I – DEFINITIONS

Section 1. General Interpretation.

For the purpose of this Franchise, and except as defined specifically below, the terms, phrases, words and their derivations herein shall have the meaning given in the Telecommunications Ordinance. Words not otherwise defined shall be given their common and ordinary meaning. When consistent with the context, words used in the singular number include the plural number, words in the plural number include the singular number, and words used in the present tense include the future tense.

Section 2. Specific Definitions.

- A. **"Agency"** means any governmental agency or quasi-governmental agency other than the County, including the FCC and the WUTC.
- B. **"County"** means the County of Pierce, Washington, and its lawful designees.
- C. **"County Property"** means any real property owned by the County whether in fee or other ownership, estate or interest.
- D. **"Effective Date"** means the date identified in Article XXII, Section 4 herein.
- E. **"Facilities"** means the equipment and facilities used in the provision of Services hereunder to be installed and operated by Grantee.
- F. **"FCC"** means the Federal Communications Commission.
- G. **"Fee"** means any assessment, license, charge, fee, imposition, tax (but excluding any utility users' tax or occupation tax), or levy lawfully imposed by any governmental body.
- H. **"Franchise"** means the non-exclusive authorization granted herein and pursuant to the Telecommunications Ordinance to use County rights-of-way to construct, operate, and maintain Grantee's Facilities.
- I. **"Franchised Service Area"** means the unincorporated County limits.
- J. **"Grantee"** means Mobilitie, LLC and its agents, employees, lawful transferees, successors, and/or assigns.
- K. **"Laws"** means any and all judicial decisions and any and all federal, state and local statutes, constitutions, ordinances, resolutions, regulations, rules, tariffs, administrative orders, certificates, orders, or other requirements of the County or other Agency having jurisdiction over the parties to this Franchise, in effect at the time of execution of this Franchise and thereafter.
- L. **"Month"** means a calendar month.
- M. **"Network Telephone Service"** means the Provision of access to the local telephone network, local telephone switching service, toll service, or otherwise providing telephonic, data, video conferencing or similar communication or transmission services for hire via a local network, line, channel or similar communication or transmission system. Network Telephone Service includes intrastate or interstate services and specifically excludes cable television or open video system service, broadcast services, or other multi-channel video services.
- N. **"Person"** means an individual, a corporation, a limited liability company, a general or limited partnership, a sole proprietorship, a joint venture, a business trust, or any other form of business association.
- O. **"Provision"** means any clause, condition, covenant, qualification, restriction, reservation, term, or other stipulation in this Franchise that defines or otherwise controls, establishes, or



- limits the performance required or permitted by this Franchise. All provisions, whether covenants or conditions, shall be deemed to be both covenants and conditions.
- P. **"Public Facility"** means any tower, water tower, building, pole or other structure which the County owns or controls.
 - Q. **"Public Way"** means and includes the surface of and space above and below any real property in the County in which the County has an ownership interest or interest as trustee for the public, including but not limited to, all public streets, highways, roads, alleys, sidewalks, tunnels, viaducts, bridges, subways or skyways or any other public place or property under control of the County, and any public or utility easements established, dedicated, or devoted for public utility purposes.
 - R. **"Rights-of-Way"** means all County Property and Public Ways, located within any road right-of-way, outside incorporated cities and towns and not designated as state highways, which have been opened and used as public ways of travel and have been maintain by the County as opened County roads.
 - S. **"Services"** means the Telecommunications Services provided through or in connection with the network constructed, operated and maintained by Grantee, as authorized herein.
 - T. **"SONET"** is an acronym for Synchronous Optical Network, which provides the transmission of light signals over optical fiber and allows different fiber systems or networks to interconnect efficiently and accurately.
 - U. **"Telecommunications Network"** or **"Network"** means all of Grantee's Facilities used in the provision of Services in County, taken together as a unified system.
 - V. **"Telecommunications Ordinance"** or **"Ordinance"** means Pierce County Code Chapter 12.34 which sets forth terms and conditions applicable to any and all franchised cable and telecommunications providers making use of public rights-of-way in County
 - W. **"WUTC"** means the Washington Utilities and Transportation Commission.

ARTICLE II – FRANCHISE

Section 1. Grant of Broadband Telecommunications Franchise.

- A. Grant of Franchise. Subject to obtaining any permits as are required under the County's Charter or Code or other applicable Laws (and subject to Grantee obtaining any additional necessary agreements, approvals, or authorizations from any entity which owns poles or any other third party rights), the County hereby grants on a non-exclusive basis as provided in Pierce County Code (PCC) 12.34.420, authorization for Grantee to attach, install, operate, maintain, remove, reattach, reinstall, relocate, upgrade and replace Facilities within the Rights-of-Way in unincorporated Pierce County for the purposes of providing Services to Persons located within or (without) the limits of the County. Exhibit 1 represents the initial phase of the location of the network which Grantee intends to install. Any work performed pursuant to the rights granted under this Franchise may, at the County's option, be subject to the prior review and approval of the Director of Public Works and Utilities. During the term of this Franchise, the location of Facilities installed by Grantee or its designee shall be disclosed, in writing, to the County by Grantee within ten days before its installation, removal, or relocation. Such disclosures shall be incorporated in Exhibit 1 by way of a modification to this Franchise Agreement and shall not change except upon submittal of a revised Exhibit 1, and a written request for a modification of the number and/or location of such Facilities. Revised Exhibit 1 and request for modification shall be subject to the review and approval of the Director of Public Works and Utilities. This Franchise grants authority to construct and maintain Facilities in Public Ways. This Franchise is granted pursuant to the terms and conditions contained in Chapter 12.34 PCC. All provisions of Chapter 12.34 PCC except as may be explicitly set-forth in this Agreement, are hereby incorporated by reference.



- 1 B. Compliance. The County has determined that this Franchise, taken as a whole, offers no
2 more or less favorable terms than those required of existing similarly situated Grantee(s) in
3 the County.
- 4 C. Costs Related to Exercise of Franchise. Any and all rights expressly granted to Grantee
5 under this Franchise shall be exercised at Grantee's sole cost and expense, shall be
6 subject to the prior and continuing right of the County to use any and all parts of the Rights-
7 of-Way or Public Facilities or property, non-exclusively or concurrently, with any other
8 Person, and further shall be subject to County's police powers and all deeds, easements,
9 dedications, conditions, covenants, restrictions, encumbrances and claims of title which
10 may affect the Rights-of-Way, or Public Facilities now or hereafter existing. Nothing in this
11 Franchise shall be deemed to grant, convey, create, or vest a real property interest in land
12 to or in Grantee, including any fee or leasehold interest or easement rights.
- 13 D. No Interference. Except as expressly permitted by applicable Laws or this Franchise, in the
14 performance and exercise of its rights and obligations under this Franchise, Grantee shall
15 not interfere in any manner with the existence and operation of any and all private property
16 and Rights-of-Way, sanitary sewers, water mains, storm drains, gas mains, poles, aerial or
17 underground electric and telephone wires, cable television and other telecommunications,
18 utility and municipal property without the express written approval of the owner or owners of
19 the affected property or properties. The County shall ensure that a similar binding obligation
20 of non-interference is imposed upon all other grantees occupying the Rights-of-Way.
21 Further the County will assist in resolving disputes among occupiers of the Rights-of-Way.
22 In the event Grantee experiences any prohibited interference, Grantee shall notify the
23 County of such interference and the County and Grantee shall then work cooperatively to
24 eliminate such interference. In resolving such disputes, the County shall give priority to the
25 occupant who was first in time at the particular location where the interference is being
26 experienced, unless doing so would impose undue hardship upon the newcomer.
- 27 E. Compliance with Laws. Grantee shall comply with all Laws in the exercise and
28 performance of its rights and obligations under this Franchise. If required by Law, Grantee
29 shall obtain all required approvals from the appropriate governing authorities.

30
31 **Section 2. Acceptance of Franchise.**

- 32 A. Franchise Acceptance Procedures. This Franchise and the rights, privileges, and authority
33 granted hereby shall take effect provided that Grantee complies with the acceptance
34 procedures detailed herein.
- 35 B. Grantee to Have No Recourse. Except as provided in this Franchise, the County shall not
36 be liable, unless directly and proximately caused by the willful, intentional or malicious acts
37 of the County, for any damage to or loss of any facility within the Right-of-Way as a result of
38 or in connection with any public works, public improvements, construction, excavation,
39 grading, filling, or work of any kind in the Right-of-Way by or on behalf of the County.
- 40 C. Acceptance of Power and Authority of County. Grantee expressly acknowledges by
41 acceptance of this Franchise that:
- 42 (1) It has relied upon its own investigation and understanding of the power and authority of
43 the County to grant and enforce the Franchise;
- 44 (2) It has not been induced to enter into this Franchise arrangement by any understanding
45 or promise or other statement, whether verbal or written, by or on behalf of the
46 County concerning any term or condition of the Franchise that is not specifically
47 included herein;
- 48 (3) It has carefully read the terms and conditions contained herein and of the Ordinance
49 and that Grantee is willing to and does accept all the obligations of such terms and
50 conditions to the extent not inconsistent with state or federal law
- 51 (4) The matters contained in Grantee's Application and all subsequent applications or
52 proposals for extensions or renewals of the Franchise, and as stated in any and all



1 other presentations to County, except as inconsistent with law, regulations or local
2 ordinance, are incorporated into this Franchise as though set out verbatim.
3
4

5 **Section 3. Limitations on Authority.**

- 6 A. Subject to Other Requirements. Grantee's right to operate and maintain its
7 Telecommunications Network is subject to the terms, conditions, and requirements of
8 Chapter 12.34 PCC, this Franchise, the County Charter and Code, and all applicable Laws,
9 and Grantee's right to construct, erect, install or modify its Telecommunications Network is
10 specifically subject to the requirement that Grantee obtain Permits as set forth in Chapter
11 12.34 PCC; and obtain all required permits for, and otherwise comply with, all applicable
12 land use and zoning regulations which control development on property contiguous to the
13 right-of-way containing the proposed Facilities site.
14 B. After-Acquired Facilities. Grantee expressly acknowledges and agrees, by acceptance of
15 this Franchise, that Facilities and appurtenances in Public Ways which are subsequently
16 acquired by the Grantee and which (if acquired prior to this original Franchise grant) would
17 have been subject to this Franchise and the permitting authority related thereto shall be
18 subject to the Provisions of this Franchise and all Permits related thereto.
19 C. Privileges Must be Specific. No privilege or exemption is granted or conferred by this
20 Franchise except as may be specifically prescribed.
21

22 **Section 4. Non-Exclusive Franchises.**

23 This Franchise is non-exclusive pursuant to Section 12.34.420 PCC. County reserves the right
24 to grant additional Franchises to any Person at any time. Any Franchise granted pursuant to
25 the Telecommunications Ordinance shall confer and impose substantially similar rights and
26 obligations on functionally equivalent services.
27

28 **Section 5. Amendments.**

29 This Franchise may be amended only upon the mutual written consent of County and Grantee
30 or in the exercise of the County's police power authority or other explicit authority pursuant to
31 applicable laws.
32

33 **Section 6. Service of Notice.**

34 Except as otherwise specifically provided herein, any notices required or permitted to be given
35 under this Franchise shall be deemed to be properly served when deposited with the United
36 States Postal Service, postage paid, certified or registered mail, or via nationally recognized
37 overnight carrier, and addressed to the party to receive same, or at such other address of which
38 the party to receive the notice shall have designated in the Franchise.
39

40 NOTICES TO THE County shall be addressed to all of the following:
41

42 Pierce County Executive's Office
43 930 Tacoma Avenue South, Room 737
44 Tacoma, WA 98402-2100
45

46 With Copy to:

47
48 Director, Public Works and Utilities
49 Pierce County Public Works and Utilities
50 Tacoma Mall Plaza
51 2702 South 42nd Street, Ste 201
52 Tacoma, WA 98409-7322



1
2 Clerk of Pierce County Council
3 930 Tacoma Avenue South, Room 1046
4 Tacoma, WA 98402
5

6 NOTICES TO THE COMPANY shall be addressed to all of the following:

7 Mobilitie, LLC
8 2220 University Drive
9 Newport Beach, CA 92660
10

11
12
13 With a copy sent to:

14 Mobilitie, LLC
15 2220 University Drive
16 Newport Beach, CA 92660
17 Attention: Legal Department
18
19

20 **Section 7. Franchise Review.**

- 21 A. Regular Review. The County may initiate periodic reviews of Grantee's Franchise
22 performance. Such reviews shall occur no more than once every three years beginning on
23 the third anniversary of the effective date of this Franchise. However, there shall be no
24 remedies or presumptions resulting from the County's failure to conduct any such periodic
25 reviews. Either County or Grantee may submit proposals for modification of Franchise
26 obligations during such review or at any other time during the term of the Franchise;
27 B. Other Review. Nothing herein shall be construed to prohibit the County and the Grantee
28 from engaging in a continuous review of the performance of Grantee, and County may
29 initiate or Grantee request a public hearing on any issue related to compliance with the
30 Franchise or any Permit related thereto.
31

32 **ARTICLE III - TERM OF FRANCHISE**
33

34 This Franchise shall be in full force and effect, unless sooner terminated pursuant to the
35 Ordinance or the terms and conditions contained herein, for a period of five years from the
36 Effective Date. In addition, the Grantee may terminate this Franchise at any time upon at least
37 thirty (30) days written notice to the County.
38

39 **ARTICLE IV - FEES AND CONSIDERATION**
40

41 Pierce County specifically reserves the right to exercise authority it has to annually fix by
42 ordinance a fair and reasonable compensation for the use of its property. If Pierce County
43 elects to exercise such authority, Grantee will receive written notice ("Compensation Notice")
44 not less than 60 days prior to its effective date and provide an opportunity to comment.
45 Acceptance of Pierce County's definition, terms, and/or formula identified in the Compensation
46 Notice will occur if the Grantee accepts in writing within sixty days of receipt of the
47 compensation Notice; in which case the applicable ordinance that the Pierce County Council
48 passes will be determinative. Rejection by the Grantee shall be deemed grounds for
49 termination of the Franchise. Any subsequently enacted compensation terms will be applied on
50 a competitively neutral and non-discriminatory basis, and in compliance with county, state and
51 federal laws.
52



1 **Section 1.** Grantee's payment obligation with regard to any Facility shall terminate upon
2 removal of that Facility from the Right-of-Way. The County shall refund to Grantee within sixty
3 (60) days of receiving notice of removal and restoration, the prorated portion of the annual
4 payment for each removed Facility.

5
6 **Section 2.** Grantee shall provide notice to the County when permitting another communications
7 provider to collocate on Grantee's facilities.

8
9 **Section 3.** In the event one or more of the Grantee's Facilities are out of service due to a
10 relocation pursuant to Article IX, the County shall give the Grantee a credit equal to the prorated
11 value of the time the Facility or Facilities are out of service on the next year's annual payment.

12
13 **Section 4.** The amount of the annual payment for any partial year shall be prorated.
14

15
16 **ARTICLE V - FACILITIES OR NETWORK ABANDONMENT**
17

18 In the event that any Facilities or the Network is abandoned and are no longer placed in service
19 for a period of one hundred eighty (180) consecutive days or more, Grantee shall promptly
20 notify the County. Upon ninety (90) days written notice from the County, Grantee shall promptly
21 remove such Facility or Facilities and restore the Right-of-Way to its condition prior to the
22 placement of the Facilities, all at the Grantee's sole cost and expense.

23 Regardless of whether Grantee has notified the County of abandonment, in case of actual
24 abandonment the County may remove the facilities upon 90 days written notice and grantee will
25 be responsible for the costs of removal. If Grantee fails to remove the Facilities and restore the
26 Right-of-Way as required by the County, the County shall be entitled to remove the Facilities
27 and restore the Right-of-Way at Grantee's sole cost and expense or accept the transfer of
28 ownership of the same to the County, consent for which transfer is hereby expressly given by
29 Grantee. The County shall not exercise its option hereunder to remove or transfer ownership of
30 Facilities, unless and until the county first gives fifteen days prior written notice to Grantee to
31 remove the Facilities. If Grantee shall fail to remove the Facilities as required by the County,
32 the County shall be entitled to remove the Facilities at Grantee's sole cost and expense.
33 Grantee shall execute such documents of title as will convey all right, title and interest in the
34 event of transfer.

35
36 **ARTICLE VI - REPAIR AND REPLACEMENT OF DAMAGES**
37

38 Grantee is responsible for locating and avoiding all utilities within the Right-of-Way or in private
39 property and is responsible for any costs to repair or replace any damage caused by the
40 construction or location of Facilities, to the sole satisfaction of the County to the extent such
41 damage is caused by and the fault of the Grantee.
42

43 **ARTICLE VII – REIMBURSEMENT**
44

45 Grantee shall reimburse the County within ninety (90) days after receipt of an invoice for all
46 reasonable amounts paid and costs incurred by the County in relation to this Franchise for
47 enforcement thereof. Reasonable supporting documentation evidencing such amounts paid
48 and costs incurred shall accompany all invoices. Except in cases of emergency, the County
49 shall advise Grantee of the cost thereof in advance of performing any work for which it will seek
50 reimbursement from Grantee.
51
52



1
2
3 **ARTICLE VIII – DEFAULT**

4 Grantee shall be in default under this Franchise upon the occurrence of any of the following events:

- 5 1. Grantee's violation of material terms or provisions of Chapter 12.34 PCC, this
6 Franchise, or any applicable Laws.
7 2. Grantee's failure to pay reimbursements for County-incurred costs relating to this
8 Franchise or the Fees or any other payments required hereunder when due, and such
9 failure continues for thirty (30) days after written notice is given to Grantee, provided
10 the County shall not be required to give written notice more than twice during any
11 twelve Month period. After notice has been given twice during any twelve Month
12 period, Grantee shall be deemed to be in default, without the requirement of notice and
13 the opportunity to cure, for any subsequent failure to pay amounts due hereunder
14 during the same twelve month period if such failure continues for thirty (30) days after
15 the same becomes due.
16 3. Upon Grantee's failure to perform any other obligation under this Franchise or cure any
17 failure of performance within thirty days after notice of such failure or demand for cure
18 is given by the County to Grantee (or, if such failure of performance is not curable
19 within thirty days in the reasonable determination of County, if the defaulting party fails
20 to commence such cure within thirty days and fails to thereafter diligently pursue such
21 cure to completion).
22 4. Grantee becomes insolvent, liquidates, is adjudicated as bankrupt, makes an
23 assignment for the benefit of creditors, invokes any provision of law for the relief of
24 debtors, or initiates any proceeding seeking protection from its creditors.

25
26 **ARTICLE IX - REMOVAL AND RELOCATION OF FACILITIES**

27
28 **Section 1. Facilities Relocation.**

29 Upon the receipt of a demand by the County, within ninety (90) days, or in the event of an
30 emergency, upon such shorter notice period as the County deems reasonable under the
31 circumstances, Grantee, at its sole cost and expense, shall remove or relocate any Facilities, if
32 and when the removal or relocation of such Facilities is made necessary by the County acting
33 pursuant to any lawful governmental or proprietary purpose, including, without limitation,
34 engaging in any lawful change of grade, alignment or width of any Rights-of-Way in the County
35 pursuant to any concern regarding health, safety and welfare, or in the installation or
36 replacement of any street light pole.

37
38 **Section 2. Relocation Costs.**

39 Whenever the removal or relocation of Facilities is required under this Franchise or otherwise by
40 order of County, and such removal or relocation shall cause the Rights-of-Way to be damaged,
41 Grantee, at no cost and expense to the County, shall promptly repair and return the Rights-of-
42 Way, in which the Facilities is located, to the same condition as existed prior to such work in the
43 determination of County. If Grantee fails to comply with this requirement, then the County shall
44 have the option of performing or causing to be performed such reasonable and necessary work
45 and charge Grantee for the actual cost incurred by County. Upon the receipt of a demand for
46 payment by the County, Grantee shall reimburse the County for such costs within ninety (90)
47 days.

48
49 **Section 3. Relocation for Third Parties.**

50
51 If during the term of this Franchise any person or entity other than Pierce County (hereinafter
52 "Third Party") requests the relocation of Grantee's Facilities to accommodate work within the



1 Rights-of-Way to be undertaken by or on behalf of such Third Party, and the County determines
2 that such relocation of Grantee's Facilities is in the public interest and is necessary, then the
3 County may, in its discretion, grant such Third Party request. In such event, upon written notice
4 to the Grantee from the County, Grantee shall, at the expense of the Third Party upon terms
5 acceptable to Grantee, relocate its Facilities within the Franchise Area to accommodate the
6 work of such Third Party.

7
8 **ARTICLE X – INSURANCE**
9

10 **Section 1. Insurance Requirement.**

- 11 A. Insurance Certificate. Grantee shall obtain insurance of a quality and amounts as required
12 in Section 12.34.630 PCC, and as detailed below and shall file the required original
13 certificate(s) of insurance with endorsements with the County, subject to the County's prior
14 approval, which shall clearly state:
- 15 (1) Policy number; name of insurance company; name, address, and telephone number of
16 the agent or authorized representative; name, address, and telephone number of
17 insured; project name and address; policy expiration date; and specific coverage
18 amount; and
 - 19 (2) That thirty days prior written notice of cancellation is required to the County; and
 - 20 (3) That Grantee's insurance is primary with respect to any other valid or collectible
21 insurance that the County may possess, including any self-insured retentions the
22 County may possess, and any other insurance the County does possess shall be
23 considered excess insurance only and shall not be required to be contributory with this
24 insurance.
- 25 B. Coverage. Grantee shall maintain liability insurance in amounts as detailed in Subsection
26 D (below). Such liability insurance shall be kept in full force and effect by a Grantee during
27 the existence of this Franchise and all renewals and extensions thereof and thereafter until
28 of all Grantee's Facilities have been removed from the Right-of-Way should such removal
29 be required by the County or undertaken by the Grantee, whichever is later. Any
30 contractors of Grantee performing on behalf of Grantee pursuant to this Franchise shall
31 also be insured as required herein and name County as an additional insured. The limits of
32 liability can be satisfied by primary and umbrella insurance policies.
- 33 C. Failure to Procure. Grantee acknowledges and agrees, by acceptance of this Franchise,
34 that failure to procure or maintain the required insurance shall constitute a material breach
35 of this Franchise and that the County may immediately suspend operations under the
36 Franchise, terminate the Franchise, or, at its discretion, procure or renew such insurance to
37 protect the County's interests and be reimbursed by such Grantee for all reasonable
38 premiums paid in connection therewith.
- 39 D. Insurance Amounts. The Grantee shall maintain throughout the term of this Franchise, or
40 until all Grantee's Facilities are removed from the Rights-of-Way, whichever is longer,
41 Workers' Compensation coverage and liability insurance in the minimum amounts of:
- 42 1. Commercial General Liability insurance - public liability including premises, products,
43 and complete operations.
 - 44 (a) Bodily injury and Property Damage liability with limits not less than \$10,000,000
45 each occurrence,
 - 46 (b) Personally Injury - \$10,000,000 each occurrence
 - 47 (c) Commercial General Liability Insurance shall include Pierce County, its
48 employees, officers, and elected officials as additional insured for both ongoing
49 and completed operations using Insurance Services Office forms CG2010(04-13)
50 and CG2037(04-13) or the equivalent.
 - 51 (d) Such insurance shall be primary and non-contributory over any insurance or self-
52 insurance maintained by the Pierce County.



- 1 (f) Such insurance shall contain a Waiver of Subrogation in favor of Pierce County
 2 2. Commercial - Automobile Liability Insurance including owned, non-owned, and hired
 3 vehicles.
 4 (a) Bodily injury liability and Property damage with limits not less than - \$3,000,000
 5 each occurrence and \$10,000,000 aggregate,
 6 (b)
 7 3. Employer's Liability with limits not less than \$1,000.000 each employee and
 8 \$10,000,000 aggregate.
 9 4. Excess or Umbrella Liability Insurance with limits not less than \$10,000,000 each
 10 occurrence and \$10,000,000 aggregate. Excess or Umbrella Liability policy shall
 11 provide coverage in excess of Commercial General Liability, Commercial
 12 Automobile Liability and Employer's Liability.
 13 5. Workers' Compensation within statutory limits and employer's liability insurance with
 14 limits of not less than \$1,000,000.
 15 E. General. Grantee agrees that with respect to the above required insurance contracts,
 16 related certificates will contain the following required provisions:
 17 (1) The County shall be named as additional insured as to all applicable coverage.
 18 (2) Contracts shall provide for thirty day notices to the County prior to cancellation,
 19 revocation, non-renewal, or material change.
 20

21 **Section 2. Policy Limitations.**

22 "Cross liability," "severability of interest" or "separation of insureds" clauses shall be made a part
 23 of the commercial general liability and business automobile liability policies.
 24

25 **Section 3. Mailing of Insurance Certificate.**

26 The certificate(s) of insurance reflecting the above requirements and notices shall be mailed to:
 27 Mark Maenhout, Risk Manager
 28 Pierce County Risk Management Department
 29 955 Tacoma Avenue South, Suite 303
 30 Tacoma, WA 98402-2160
 31

32 **Section 4. Insurance Provider.**

33 Any insurance provider of Grantee shall be admitted and authorized to do business in
 34 Washington and shall be rated at least A: X in A.M. Best and Company's Insurance Guide.
 35

36 **ARTICLE XI - COUNTY'S RIGHT TO ACT**

37
 38 In the event Grantee fails to perform any obligation, under this Franchise the County shall have
 39 the right, but no obligation or duty, to take action that Grantee has failed to take, after giving at
 40 least thirty days' notice, in advance of taking such action, except in the event of an emergency,
 41 as determined by the County, in which case no advance notice shall be required. In the event
 42 County takes such action, Grantee shall promptly pay to the County upon demand, the sum or
 43 sums expended or incurred by the County to take such action which demand shall include
 44 reasonable supporting documentation evidencing such sum or sums. Any such action taken by
 45 the County shall not by itself constitute a waiver by the County of Grantee's default or the
 46 County's remedies on account of such default.
 47

48 **ARTICLE XII - TERMINATION OF FRANCHISE**

49 **Section 1. Termination.**

50 In addition to the Provisions of PCC Section 12.34.646, this Franchise may be terminated upon
 51 a default hereof as provided in this Franchise. A termination of this Franchise because of
 52



1 Grantee's default shall not prejudice any other remedy for breach of contract, damages, non-
2 payment or otherwise, which the County has under this Franchise or under law.

3
4 **Section 2. Notice.**

5 This Franchise may be terminated by the County in accordance with the Provisions of Sections
6 12.34.648 and 12.34.650 PCC after notice, an opportunity to cure, and a hearing as provided
7 therein.

8
9 **Section 3. Time to Cure.**

10 Upon notice of a violation or default under this Franchise, Grantee shall have thirty days in
11 which to cure such violation or default. The time for Grantee to correct any violation, default or
12 liability, shall be extended by County if the necessary action to correct such violation, default or
13 liability is of such a nature or character as to require more than thirty days within which to
14 perform, provided Grantee provides written notice that it requires more than thirty days to
15 correct such violations or defaults liability, commences the corrective action within the thirty
16 days period, and thereafter uses reasonable diligence to correct the violation, default, or liability.

17
18 **Section 4. Removal.**

19 Upon termination of this Franchise for any reason, subject to County's lien rights, as provided by
20 Washington law or other applicable laws, Grantee shall remove all of its Network and related
21 Facilities, personal property, and any other improvements installed by Grantee and restore all
22 property to the same condition existing prior to usage by Grantee within one hundred eighty
23 (180) days following termination. In the event Grantee fails to do so, the County may remove
24 Grantee's Facilities, personal property, and improvements and charge Grantee the reasonable
25 expense of removal and restoration. Except as provided herein, Grantee shall be deemed to
26 have abandoned to the County at no cost or expense to County any of its Facilities, personal
27 property or other improvements which it has failed to remove from the Rights-of-way within the
28 one hundred eighty (180) days following termination, unless such removal is prohibited because
29 of the County's exercise of its lien rights or unless the County grants in writing a longer period
30 for removal. In the event of an abandonment, the County may remove Grantee's Facilities,
31 personal property and improvements and charge Grantee the reasonable expense of removal
32 and restoration. Grantee shall further reimburse to the County pursuant to Article VII for all
33 costs of cleanup associated with any leakage or contamination from such facilities whether such
34 leakage or contamination occurs prior to or in the course of such removal.

35
36
37 **Section 5. Lesser Sanctions.**

38 Additionally, the County may impose a lesser sanction pursuant to Section 12.34.652 PCC.

39
40 **ARTICLE XIII - GENERAL TERMS**

41
42 **Section 1. Reports and Records of the Grantee.**

43
44 Reports Required. Grantee shall supply, upon request and at no cost, any information,
45 including maps requested by the County Executive, County Engineer, or Director of
46 Transportation as it relates to the physical aspects of Grantee's facilities in the Rights-of-Way.
47 Said information may be requested in hard copy and/or electronic format compatible with
48 County's databases, including a GIS system if compatible with Grantee's existing system.

49
50 **Section 2. Enforcement and Administration by County.**

51 The County, through the office of the County Executive, shall have continuing regulatory
52 jurisdiction and supervision over the occupancy of the Rights-of-Way pursuant to this Franchise,



1 and may from time to time adopt such reasonable rules and regulations as it may deem
2 necessary; provided that, any County permits or approvals for Facilities shall be governed by
3 the applicable County ordinances, rules, and regulations in effect at the time Grantee submits a
4 complete application for such permits and other approvals.

5
6 **Section 3. Failure to Enforce.**

7 The Grantee shall not be excused from complying with any of the terms and conditions of this
8 Franchise by any failure of the County upon one or more occasions to insist upon or to seek
9 compliance with any of such terms or conditions.

10
11 **ARTICLE XIV – INSPECTION**

12
13 The County maintains the right to inspect and approve of, at Grantee's expense, all of Grantee's
14 facility installations in the Rights-of-Way for ROW management and life-safety issues, but not
15 including the visual or aesthetic impacts of any facility for which a valid zoning permit has been
16 issued. In addition, the County Engineer may require Grantee to furnish certification from
17 Grantee's engineer (so long as such engineer's certifications are accepted by the Washington
18 State Department of Transportation or the Federal Rural Utilities Service and if such
19 certifications are not so acceptable, then by an independent, qualified engineer) that the
20 facilities are constructed and operated in accordance with good engineering practice and are
21 reasonably secure against damage and injury.

22
23 **ARTICLE XV - PERMITS, INITIAL SERVICE AREA**
24 **AND CONSTRUCTION STANDARDS**

25
26 **Section 1. Initial Service Area and General Standards.**

- 27 A. Permits. Grantee shall comply with Section 12.34.600 PCC. In addition thereto, Grantee
28 shall apply for a construction Permit prior to beginning any work in a Public Way or Right-of-
29 Way generally including the opening of any street in the County, and shall comply with
30 Chapters 12.34 and 12.32, and 17B.10.100 PCC. No work, other than emergency work,
31 shall commence without such Permit pursuant to Section 12.34.710 PCC. Emergency
32 repairs shall be made immediately with notice to the County no later than five business days
33 after the repair is initiated. Grantee shall further comply with Sections 12.34.700, 12.34.705,
34 and 12.34.715 PCC, which generally apply to construction standards, construction codes,
35 utility Right-of-Way permits, and applications.
- 36 B. Network Planning. The Grantee and the County shall make reasonable good faith efforts to
37 advise each other of plans and programs, both long and short range, for the placement of
38 Facilities in Rights-of-Way, and other Public Property which might affect the other party or
39 require its coordination.
- 40 C. Limited Access. The County reserves the right to limit or exclude Grantee's access to a
41 specific route, public right-of-way, or other location when there is inadequate space, a
42 pavement cutting moratorium, unnecessary damage to public property, interference with
43 County utilities, or for any other reason determined by the County Executive or designee, or
44 the County Engineer to be necessary for management and preservation of the Rights-of-
45 Way.
- 46 D. Facilities Placement. Grantee will comply with Sections 12.34.725, 12.34.730 and
47 12.34.735 PCC and shall obtain a Permit pursuant to the Ordinance for each separate
48 Facility requiring work or construction in public Rights-of-Way or other public property, and
49 shall comply with all terms of such Permit(s). Additionally, the siting of all of Grantee's
50 facilities located within the Right-of-Way shall comply with the zoning code and development
51 regulations and construction-related permits, e.g., building, electrical, etc., in effect at the
52 time of the submittal of a complete application to the designated county department, which



1 control development on property contiguous to that portion of any right-of-way on which
2 Grantee proposes to site Facilities. Grantee's Facilities may require additional project
3 permits and approvals under County land use codes and development regulations.

- 4 E. Additional Accommodations. In addition, the County Executive or designee may determine,
5 in the exercise of reasonable discretion, when and where reasonable accommodations shall
6 be made by Grantee to the County for public needs or, where requested, other third party
7 needs, how such accommodation should be made, and a reasonable apportionment of any
8 expenses of the same; PROVIDED, that this Franchise creates no third party beneficial
9 interests or enforceable contractual right to require the County to order such
10 accommodation. Notwithstanding the foregoing, it remains the responsibility of the Grantee
11 to anticipate and avoid conflicts with other right-of-way occupants or users, other utilities,
12 franchises or permittees. Except as provided in Article II, Section 1(D), the County assumes
13 no responsibility for such conflicts.
- 14 F. Notice of Work. Grantee shall provide notice of non-emergency work as provided in
15 Sections 12.34.606, 12.32.110, 12.04.030, and 17B10.100 PCC. The Grantee shall provide
16 notice of emergency work as provided in Article XV, Section A, above.
- 17 G. Removal of Facilities. Removal of Grantee's Facilities shall be in accordance with Sections
18 12.34.612 and 12.34.614 PCC.
- 19 H. Coordination of Construction Activities. Work shall be coordinated in accordance with
20 Sections 12.34.640 and 12.32 PCC.

21
22 **Section 2. Undergrounding.**

23
24 In those areas of County where the transmission or distribution facilities of the local exchange
25 carrier and/or the electric utility are underground, or hereafter place underground, Grantee shall
26 likewise construct or relocate, operate and maintain that portion of its Network in the area
27 underground upon County approval. Further, consistent with any general municipal
28 undergrounding policy or program now or hereafter developed, the county may require
29 Grantee's participation in municipally imposed undergrounding or related requirement. Grantee
30 agrees to coordinate its underground installation and planning activities with the County's
31 underground plan and policies. Such undergrounding in any event shall be at Grantee's
32 expense.

33
34 **ARTICLE XVI - INDEMNIFICATION**

35
36 **Section 1. Indemnification.**

37 The Grantee agrees to defend, indemnify, and hold harmless Pierce County, its appointed and
38 elected officers and employees, from and against all damages, losses and expenses, including
39 reasonable attorneys' fees and costs of suit or defense, arising out of, resulting from, or alleged
40 to arise out of or result from the acts, omissions, failure to act, or misconduct of the Grantee or
41 its affiliates, officers, employees, agents, contractors, or subcontractors in the construction,
42 operation, maintenance, repair, or removal of its facilities and in providing or offering services
43 over the Facilities, or from physical contact with facilities or supporting structures, whether such
44 acts or omissions are authorized, allowed, or prohibited under this Franchise or the Ordinance.

45
46 If the claim, suit, or action for injuries, death, or damages as provided for in the preceding
47 paragraphs of this contract is caused by or results from the concurrent negligence of

- 48 (a) The indemnitee or the indemnitee's agents or employees and
49 (b) The indemnitor or the indemnitor's agents or employees,
50 the indemnity provisions provided for in the preceding paragraphs of this contract shall be valid
51 and enforceable only to the extent of the indemnitor's negligence.



1 Grantee specifically and expressly waives any immunity under Industrial Insurance Title 51
2 RCW, and acknowledges that this waiver was mutually negotiated by the parties herein.

3
4 **Section 2. No Responsibility for Loss.**

5 The County shall not be responsible for any damages, losses, or liability of any kind arising from
6 the issuance or approval by the County of a permit, license, or franchise to any third party.

7
8 **Section 3. Breach.**

9 The waiver of any breach or violation of any Provision of this Franchise shall not be deemed to
10 be a waiver or a continuing waiver of any subsequent breach or violation of the same or any
11 other Provision of this Franchise.

12
13 **Section 4. Intervention.**

14 If the County otherwise has the right to intervene, Grantee expressly acknowledges and agrees,
15 by acceptance of this Franchise, not to oppose such intervention by the County in any suit or
16 proceeding to which the Grantee is a party related to the Franchise.

17
18 **ARTICLE XVII – BONDS**

19
20 **Section 1. Bond Requirement.**

21 Pursuant to Section 12.34.638 PCC, during construction of new or additional facilities in the
22 rights-of-way, Grantee, or its contractor, shall furnish a Bond equal to at least 100% of the
23 estimated cost of restoring the rights of way to substantially the same condition as existed prior
24 to Grantee's construction, or such other amount as may be determined to be appropriate by the
25 County Engineer under Chapter 12.32 PCC for the particular class of work being permitted.

26
27 **Section 2. Rights Cumulative.**

28 The rights reserved by County with respect to the Performance Bond are in addition to all other
29 rights County may have under the Ordinance or a Franchise or any other law. County may,
30 from year to year, in its sole discretion, reduce the amount of the bond.

31
32 **Section 3. Time to Cure.**

33 Upon notice of a violation under this Franchise, grantee shall have thirty days in which to cure
34 such violation. The time for Grantee to correct any violation, default or liability, shall be
35 extended by County if the necessary action to correct such violation, default or liability is of such
36 a nature or character as to require more than thirty days within which to perform, provided
37 Grantee provides written notice that it requires more than thirty days to correct such violations or
38 liability, commences the corrective action within the thirty days period and thereafter uses
39 reasonable diligence to correct the violation, default or liability.

40
41 **Section 4. Franchise Termination Costs or Damages.**

42 In the event this Franchise is canceled or terminated by reason of default of the Grantee or
43 otherwise revoked, County shall be entitled to collect from the Bond that amount which is
44 attributable to any damages sustained by County. The Grantee, however, shall be entitled to
45 the return of such Bond, or portion thereof, as remains nine Months after the expiration of the
46 term of the Franchise.

47
48 **Section 5. Performance Required.**

49 Neither the Provisions of this Section nor any bond accepted by the County pursuant thereto,
50 nor any damages recovered by the County thereunder shall be construed to excuse faithful
51 performance by a Grantee or limit the liability of a Grantee for damages, to the full amount of the



1 bond. The rights reserved by the County with respect to the bonds herein are in addition to all
2 other rights and remedies the County may have under this Franchise or any other law.

3
4 **Section 4. Change in Surety.**

5 If, at any time during the term of this Franchise, the condition of the corporate surety shall
6 change in such a manner as to render the bond unsatisfactory to the Pierce County Risk
7 Manager, the Grantee shall replace such bond by a bond of like amount, similarly conditioned,
8 issued by a corporate surety satisfactory to the Risk Manager.

9
10 **ARTICLE XVIII - PROOF OF INSURANCE**

11
12 Grantee shall furnish proof to the County Executive that a satisfactory insurance policy and
13 bonds have been obtained. A certificate of insurance and the Bond, along with written
14 evidence of payment of the required premiums, shall be filed and maintained with the County
15 Risk Manager.

16
17 **ARTICLE XIX - ASSIGNMENT OR TRANSFER OF GRANT
18 AND FRANCHISE RENEWAL**

19
20 **Section 1. Transferee Must Be Signatory.**

21 In no event shall a transfer, assignment, or disposal of ownership or control be effective without
22 the transferee acknowledging the obligations under the Ordinance, becoming a signatory to this
23 Franchise and assuming all rights and obligations hereunder, and assuming all other rights and
24 obligations of the transferor to the County. Notwithstanding the foregoing, this Franchise may
25 be assigned to any party controlling, controlled by or under common control with Grantee,
26 provided that such assignee assumes all rights and obligations hereunder in writing and
27 becomes a signatory to this Franchise.

28
29 **Section 2. Franchise Renewal.**

30 The Grantee may seek renewal of this Franchise, and County shall review such request for
31 renewal in accordance with Sections 12.34.460, 12.34.465, and 12.34.470 of the Pierce County
32 Code and applicable laws.

33
34 **ARTICLE XXI - CHARTER LANGUAGE ADDED**

35 Grantee acknowledges that Pierce County Charter Section 9.20 Franchises provides in part:
36 "All franchises shall be subject to the right of the County), or the people acting for themselves
37 through the referendum, to repeal for cause, amend, or modify the franchise in the interest of
38 the public".

39
40 **ARTICLE XXII - MISCELLANEOUS**

41
42 **Section 1. Previous Rights Abandoned.**

43 This Franchise supersedes any and all other rights, privileges, powers, immunities, and
44 authorities owned, possessed, controlled, or exercisable pursuant to any previous Franchise
45 granted to Grantee in the County.

46
47 **Section 2. Severability.**

48 If any section, subsection, sentence, clause, phrase, or portion of this Franchise is for any
49 reason held to be invalid or unconstitutional by any court or administrative agency of competent
50 jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and
51 such holding shall not affect the validity of the remaining portions thereof. In such event, the
52 parties mutually agree to make any amendments to this Franchise or other applicable



1 agreements necessary to effectuate the intention of this Franchise. In the event that such
2 amendments are barred by any legal requirements governing any party, the parties shall use
3 their best efforts to otherwise avoid prejudice to the respective parties' interests, and to
4 implement changes to effectuate the intent in entering into this Franchise. Should the County,
5 in its sole discretion, determine that the severed portions substantially alter the Franchise so
6 that the original intent and purpose of this Franchise no longer exists, the County may, in its
7 discretion, terminate this Franchise without cost or penalty.

8
9 **Section 3. Applicable Law.**

10 The Franchise is governed by the Laws of the State of Washington, and venue for any
11 enforcement litigation shall be in Pierce County Superior Court. In case of conflict or ambiguity
12 between this Franchise and Grantee's Request or Application, this Franchise shall be
13 controlling.

14
15 **Section 4. Effective Date.**

16 The Provisions of this Franchise shall be effective upon the written acceptance of this Franchise
17 by the Grantee, signed by its proper officers, and filed with the Clerk of the Pierce County
18 Council within sixty days of execution of the Franchise by the County Executive, and recorded
19 with the Pierce County Auditor in accordance with RCW 36.55.080.

20
21 **Section 5. Limitation.**

22 Unless explicitly stated in the Franchise, nothing in this Franchise shall be construed or
23 interpreted in any manner as limiting, relinquishing, or waiving any rights of ownership enjoyed
24 by the County in any Rights-of-Way or any Public Facilities, or in any manner limiting,
25 relinquishing, or waiving the County's control over the operation and maintenance of the Rights-
26 of-Way or any Public Facilities or in any manner limiting, relinquishing, or waiving lawful
27 governmental rights that the County possesses.

28
29 **Section 6. Non-Waiver.**

30 Excuse by County of strict performance of any Provision of this Franchise shall not be a waiver
31 or prejudice the County's right to require strict performance of the same or any other Provision
32 in the future.

33
34 **Section 7. Integration.**

35 This Franchise contains the entire understanding between the parties with respect to the subject
36 matter herein. There are no representations, agreements, or understandings (whether written
37 or oral) between or among the parties relating to the subject matter of this Franchise which are
38 not fully expressed herein. The Telecommunications Ordinance, all Exhibits referred to in this
39 Franchise, and any addenda, attachments, and schedules which may, from time to time, be
40 referred to in any duly executed amendment to this Franchise, are by such reference
41 incorporated in this Franchise and shall be deemed to be a part of this Franchise.

42
43 **Section 8. Franchise Subject to Future Ordinance(s).**

44 Grantee acknowledges that the County may develop additional rules, regulations, and
45 specifications for the use of the Rights-of-Way and/or Public Facilities, and Grantee agrees that
46 such rules, regulations, and specifications, when finalized and to the extent not preempted by
47 federal or state law, shall govern Grantee's activities hereunder as if they were in effect at the
48 time this Franchise was executed by the County; provided that, no subsequently enacted rule,
49 regulation, or specification ,may retroactively place Grantee in violation thereof.



1 **Section 9. No Warranties.**

2 Grantee shall be responsible for obtaining all necessary approvals, authorizations, and
3 agreements from any party or entity and it is acknowledged and agreed that the County is
4 making no representation, warranty, or covenant whether any of such approvals, authorizations,
5 or agreements are required or have been obtained by Grantee from any Person or entity.
6

7 **Section 10. Recording.**

8 This Franchise shall be recorded with the Pierce County Auditor as provided in RCW 36.55.080.
9 The Provisions and terms of this Franchise are agreed to and hereby accepted. County and
10 Grantee each respectively represent that their signatory is duly authorized and has full right,
11 power and authority to execute this Franchise.
12

13 **Section 11. Acceptance.**

14 The Grantee shall provide full acceptance of this Franchise and all its terms and conditions, by
15 filing a signed copy of the Franchise with the designated County official. This requirement shall
16 be a condition precedent to the Franchise taking effect. If Grantee does not provide a signed
17 copy of the Franchise as set forth in this Section, this Franchise shall be null and void.
18

19 **Section 12. Authorization.**

20 The undersigned respectively represent and warrant that its signatory is a duly authorized and
21 empowered to sign this Franchise Agreement.
22

23 **IN WITNESS WHEREOF**, the parties hereto have caused this Franchise Agreement to be
24 executed as of the _____ day of _____, 2016.
25

26 COUNTY OF PIERCE
27

28
29 By _____
30 Pat McCarthy
31 Its COUNTY EXECUTIVE

32 Attest:
33
34

35 _____
36 Name
37

38
39 MOBILITIE, LLC
40

41
42 _____
43 Name
44

45
46 _____
47 Title
48

49 Witness:
50
51

52 _____
Name

