

ORDINANCE GRANTING A FRANCHISE TO USE THE STREETS AND OTHER PUBLIC  
LANDS OF THE CITY OF HARRISONBURG FOR THE OPERATION OF A  
FIBER OPTIC NETWORK

BE IT ORDAINED, by the City Council of the City of Harrisonburg, Virginia, that a non-exclusive franchise be granted pursuant to statute, and in accordance with Harrisonburg City Code Section 2-1-11.

Section 1. The right is hereby granted to

\_\_\_\_\_, organized and existing under the laws of the Commonwealth of Virginia, its successors and permitted assigns ("Grantee"), for the term and subject to the conditions and limitations set forth herein, to use and occupy the streets, alleys, and sidewalks (collectively "Public Property") of the City of Harrisonburg, Virginia ("City"), as it now exists in downtown Harrisonburg, namely Main Street between Bruce Street and East Market Street, for the construction, maintenance and operation, in, under, along and through said streets, alleys and sidewalks, a system of equipment, appurtenances, and other fixtures, and facilities (collectively, the "Facilities") necessary for conducting a fiber optic network for all public and private customers, in, to and through the downtown area of the City. This franchise is non-exclusive and the City reserves the right to award other franchises in the fiber optic network field within the City. The facilities shall be installed as part of the City's Main Street Streetscape Project.

Section 2. The materials to be used, and the manner of construction and repair to be followed under this ordinance shall be such as are commonly used in comparable circumstances and shall conform to the City's Design and Construction Standards Manual along

with any other state or federal construction standards that may relate to an a fiber optic network (the "Standards"), and shall be constructed in accordance with the City's plans for its Main Street Streetscape Project (the "Plans").

Section 3. All Facilities authorized by this ordinance shall be located at reasonably suitable and convenient points as shown on the Plans. Facilities of the Grantee already in existence at the date of this ordinance shall be deemed authorized by, and covered by, the terms, conditions and limitations of this ordinance. The Plans shall be effective and binding to the same extent as if they were set out fully and at length in this ordinance. No changes shall be made to the Plans without the prior approval of the City and all construction or maintenance work contemplated by the Plans shall be made substantially in accordance therewith.

Section 4. Prior to commencing any construction, maintenance, removal, repair or relocation (collectively "Work") within the Public Property of the City, other than emergency repairs performed in accordance with this ordinance, the Grantee shall obtain a permit or other required approvals from the City to do such work. Maintenance or repair of an emergency nature, the prior approval of which by the City is impractical, may be performed without a permit under guidelines mutually agreed upon between the City and the Grantee. The location of any fiber optic equipment, and the relocation of any existing or future equipment must be approved by the City in its sole discretion. The Grantee shall conform strictly to the terms of all permit or other approval requirements, including without limitation those which may relate to public safety, public convenience, and time limitations.

Section 5. All Work done under this ordinance shall conform to the Standards and the Plans and shall be performed in such a manner as to not interfere unreasonably with the

normal use of the Public Property of the City or to unnecessarily obstruct vehicular and pedestrian travel. All Work done under this ordinance shall be performed in such a manner as to not (i) cut or otherwise damage trees and shrubbery, whether public or private, to any extent greater than reasonably necessary, (ii) interfere with the operation of, or damage, underground property, plant or equipment of the City, the Commonwealth of Virginia, or any other public utility, or (iii) interfere with the ability of a user to connect with water and sewage facilities or other public utility facilities which may now or hereafter be installed by the City or any other public utility.

Section 6. Upon request of the City Council, the Grantee agrees to relocate to a reasonable location, at its sole expense, all Facilities which in the reasonable judgment of the City, interfere, disturb or conflict with the operation, relocation, improvement, repair, construction, or maintenance of present or future streets, alleys, rights-of-way, public lands, and electric, water, storm drainage and sanitary sewerage systems. If the Grantee refuses to so relocate, or fails to so relocate the Facilities in a timely manner, after fifteen days' notice in writing to the Grantee, the City may make or cause to be made the requested changes in the location of the Facilities and collect the costs thereof from the Grantee. Any permits and approvals required as a result of such a request by the City under this section shall be issued at no cost to the Grantee.

Section 7. The Grantee, at its sole cost, shall promptly replace, relay, repair and restore as nearly as possible to its original condition any Public Property of the City disturbed or damaged in the performance of any Work hereunder. If the Grantee fails to do so, after fifteen

days' notice in writing to the Grantee, the City may replace, relay, repair or restore the damaged or disturbed Public Property and collect the costs thereof from the Grantee.

Section 8. By accepting this ordinance and franchise the Grantee agrees, on behalf of itself and its successors and permitted assigns, at all times to save, defend, keep harmless and indemnify the City, its employees, elected officials, and agents, from any and all liabilities, claims, damages, losses, costs or expenses to which they may be subjected, or which may be asserted against any of them on account of personal injury or property damage suffered by anyone and relating in any way to, or arising out of any Work performed, whether or not permitted hereunder, or out of the exercise of any right or privilege granted by this franchise, or the performance of any duty hereby imposed. If a claim is made, or suit brought against the City, its employees, elected officials or agents, either independently or jointly with the Grantee, alleging conduct as to which the indemnification obligation hereof would apply, the Grantee will pay the costs and expenses of defending such claim or suit, and if a final money judgment is obtained against an indemnified party, the Grantee shall pay such judgment promptly. With respect to any claim or suit in which the Grantee undertakes to defend and indemnify the City, its employees, elected officials or agents, the Grantee shall have the right to select legal counsel and to approve any proposed offer of settlement or compromise of such claim or suit. Upon the grant of the franchise, the Grantee shall obtain and keep in effect a policy or policies of liability insurance covering its undertakings hereunder, issued by a company or companies licensed to do business in the Commonwealth of Virginia, in an amount of amounts deemed adequate by the City Manager, and shall file the certificate or certificates thereof in the office of the City Clerk.

Section 9. This franchise is granted under the express condition that the Grantee

shall provide adequate and efficient fiber optic network services to the citizens of the City in compliance with the terms, conditions and limitations hereof, and shall maintain in good and safe condition in accordance with all applicable Standards. All Facilities necessary for providing a fiber optic network services in the City, subject to the jurisdiction of the State Corporation Commission of Virginia, if required, and the rates, terms and conditions of service filed with and approved by said Commission. Implementation of the wireless network shall be done as follows:

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In the event the Grantee does not comply substantially with the terms of this ordinance, the City, at its option after written notice to the Grantee and a public hearing, may terminate this ordinance; provided, however, that no such termination shall be made until the City shall have given the Grantee written notice of any failure of the Grantee to comply hereunder and Grantee shall have failed to cure such failure within a reasonable period of time.

Section 10. The right of the City to impose permit fees for work and any lawful franchise, license, property or other tax upon the Grantee or the franchise herein granted and upon properties constructed or installed by the Grantee hereunder shall not be deemed to be waived, abridged or in any way affected by this ordinance.

Section 11. This franchise may not be sold, transferred, or assigned, in whole or in part, by the Grantee, nor shall the Grantee permit any other party to use this franchise or its Facilities, without the prior written approval of the City; provided, however, that this franchise may be assigned without the consent of, but with notice to the City, to a parent, subsidiary, or affiliate of the Grantee if the assignee expressly assumes all obligations of the Grantee hereunder, and provided, further, that the Grantee in that event shall not be released from any obligation hereof or liability incurred hereunder.

Section 12. This franchise and the rights and privileges hereby granted and conferred shall not become effective unless and until the Grantee shall have filed with the City Clerk a bond in favor of the City in the sum of \$10,000.00 with good and sufficient surety, approved by the City Attorney, conditioned to the effect that the Grantee will construct, operate and maintain the Facilities provided for herein, will replace, repair and restore any Public Property disturbed or damaged by the Grantee and will comply with the terms, conditions, and limitations of this franchise in all respects.

Section 13. This franchise and the rights and privileges hereby granted and conferred are further conditioned upon the Grantee obtaining from the State Corporation Commission of Virginia, if necessary, and keeping in effect, such certificate of public convenience and necessity as may be required by law for operation of the Facilities hereunder.

Section 14. Grantee will accept the franchise within thirty days after the adoption of the ordinance granting the same. Such acceptance shall be in writing, endorsed on a copy of the franchise ordinance, signed by a proper official of the Grantee duly authorized so to do.

Section 15. Upon the acceptance of this franchise by the Grantee, it shall pay to the City the costs and expenses incurred by the City in connection with the grant of this franchise, including advertising costs.

Section 16. Upon the acceptance of this franchise by the Grantee, it shall pay to the City a franchise fee of

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The franchise fee shall be compensation for the use of its Public Property and the costs and expenses incurred by the City in connection with its obligations hereunder.

Section 17. The rights, privileges and duties granted hereby shall be reviewed by the City every five (5) years and this franchise shall expire twenty-five (25) years from the date of passage of this ordinance, unless the Grantee is not staying current with technology and providing the fiber optic network as proposed by this ordinance. Upon the expiration of this franchise, the City shall have the option, among other things, to purchase the Facilities and all other physical properties, easements and appurtenances owned, operated and used by the Grantee within the City as of that date, at a fair valuation to be ascertained by three appraisers or arbitrators, which valuation, however, shall not include any allowance for the value of this franchise. One of such appraisers or arbitrators shall be chosen by the City and one by the Grantee, and two thus chosen shall select the third. The judgment of a majority of said appraisers or arbitrators shall be final and binding on the City and the Grantee. In the event the City desires to exercise the foregoing option, it shall give to the Grantee written notice of its

intention so to do at least six months prior to the expiration of this franchise. Nothing contained herein shall be deemed to enlarge or diminish the rights of the City or acquire the Facilities through the exercise of the power of eminent domain or as otherwise may be permitted by law.

Section 18. The Grantee, by execution hereof by its duly authorized officer accepts the terms, conditions and limitations of this ordinance.

Section 19. This ordinance shall be in force from the date of its passage.

ADOPTED and APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

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MAYOR

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CLERK OF THE COUNCIL