

ORDINANCE NO. 2018-02

ORDINANCE GRANTING A FRANCHISE TO MCIMETRO ACCESS TRANSMISSION SERVICES CORP. D/B/A/ VERIZON ACCESS TRANSMISSION SERVICES, A DELAWARE CORPORATION, TO USE PUBLIC RIGHTS OF WAY WITHIN THE CITY TO CONDUCT A TELECOMMUNICATIONS BUSINESS

THE CITY OF FOREST GROVE ORDAINS AS FOLLOWS:

Section 1: The City of Forest Grove (City) grants to MCImetro Access Transmission Services Corp. d/b/a/ Verizon Access Transmission Services, a Delaware Corporation (“Grantee”), its successors and assigns, the privilege to place, erect, lay, maintain and operate in, upon, under and over public rights of way within the City poles, wires, cables, fiber optics, conduit and other appliances and conductors (collectively, facilities) for the transmission of light, electricity, or other impulses for telecommunications purposes, including the provision of telecommunications, private line, and internet access services (collectively, telecommunications services). As used in this ordinance, telecommunications services shall include Grantee’s lease of all or part of its facilities to affiliates or third parties, provided that Grantee shall retain ownership of its facilities. Such facilities may be strung upon poles and other fixtures above ground or may be laid underground in pipes and conduits or otherwise protected. Whenever possible for new development, underground facilities will use a common trench located by the Forest Grove Light & Power Department. This ordinance does not grant Grantee authority to use its facilities to provide cable services or any other non-telecommunications services, nor does it authorize Grantee to install wireless antenna, facilities or equipment of any kind within the rights of way. This ordinance is subject to, and Grantee agrees to comply with, applicable state, federal and City laws, rules, regulations, ordinances, resolutions or orders now in effect or adopted after this ordinance takes effect, and to any attachment agreement required by the Forest Grove Light & Power Department.

Section 2: Subject to the provisions of this ordinance, Grantee is granted authority to make all needed and necessary excavation in any public right of way. All excavation and construction work must comply with City ordinances, resolutions, rules and orders now in effect or that take effect during the term of this franchise. City will enter discussions with Grantee to achieve acceptable solutions to issues identified by Grantee regarding proposed changes to City ordinances, resolutions, rules or orders whenever such discussions are practicable. Grantee does not waive its right to challenge the legality, validity or enforceability of any changes to City ordinances, resolutions, rules or orders adopted after this ordinance takes effect. This ordinance does not require Grantee to comply with future ordinances, resolutions, rules or orders that apply only to Grantee.

Section 3: Whenever Grantee disturbs any public right of way for the purpose of excavation or construction, it must restore as soon as practicable the public right of way to at least as good condition as existed prior to excavation or construction, as directed by City. If Grantee fails to restore the public right of way within a reasonable time after receipt of written notice from City or fails to do so as directed by City, then City will make such restoration and Grantee must reimburse City for the costs of such restoration.

Section 4: This ordinance does not limit the authority of the City to sewer, grade, pave, and repair, alter or improve any public right of way in or upon which Grantee may place facilities. To the extent possible all such City work or improvements will be done in a manner that does not obstruct or prevent the free use of Grantee’s facilities. The City shall have the right to cause

Grantee to temporarily or permanently move or remove any facilities located in the public right of way whenever the City determines the relocation or removal thereof is in the public interest, and the expense thereof shall be paid by Grantee.

Section 5: Whenever it becomes necessary to temporarily rearrange, remove, lower or raise Grantee's facilities for the passage of buildings, machinery or other objects, Grantee will temporarily rearrange, remove, lower or raise its facilities as required by City. The person moving any such buildings, machinery or other objects must pay the entire actual cost to Grantee of changing, altering, moving, removing or replacing its facilities so as to permit such passage. The person must deposit in advance with Grantee a sum equal to the cost as estimated by Grantee and must pay all damages and claims of any kind, direct or consequential, caused directly or indirectly by the changing, altering, moving, removing or replacing of facilities, except damages or claims resulting from the sole negligence of Grantee. Grantee will be given not less than 15 days written notice by the person desiring to move a building or other object. This notice must state the route of movement of such building or other objects over and along the public rights of way and must be approved by the City. Such moving must be done as quickly as possible without unnecessary delay to limit expense and inconvenience to Grantee.

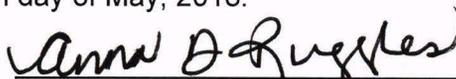
Section 6: As consideration for the use of City's public rights-of-way, Grantee shall remit to City an annual fee of five percent (5%) of its gross revenues earned, less bad debts, from the operation of the facilities and/or provision of telecommunications services within the City. The privilege tax shall be payable semi-annually on or before March 15 for the six-month period ending December 31, and September 15 for the six-month period ending June 30, and the first and last payments must be for that fractional part of the calendar year during which this franchise is in effect. City shall have the right, upon 48 hours' notice and during normal business hours, to conduct or cause to be conducted an audit of gross revenues as defined herein for the purpose of ascertaining whether Grantee's franchise fee payments have met the requirements of this franchise. Grantee shall pay any underpayment due to the City following audit within thirty (30) days after written notice to Grantee.

Section 7: The privileges and franchise granted will continue and be in full force for a period of five (5) years from the date of enactment of this ordinance. The franchise will be automatically renewed for an additional five years unless the City notifies Grantee in writing at least 90 days prior to the termination date of the franchise of its intent to terminate the franchise or renegotiate provisions of the franchise. This ordinance does not grant a franchise unless it is accepted in writing by Grantee within sixty (60) days after its enactment.

Section 8: This ordinance is effective 30 days following its enactment by the City Council.

PRESENTED AND PASSED the first reading this 23rd day of April, 2018.

PASSED the second reading this 14th day of May, 2018.



Anna D. Ruggles, City Recorder

APPROVED by the Mayor this 14th day of May, 2018.



Peter B. Truax, Mayor

TO THE CITY COUNCIL OF THE CITY OF FOREST GROVE, OREGON:

MCImetro Access Transmission Services Corp. d/b/a/ Verizon Access Transmission Services, a Delaware Corporation, hereby unconditionally accepts the right, privilege and franchise granted unto it, its successors and assigns, by that certain franchise passed by the City Council of the City of Forest Grove, Oregon, on the 14th day of May, 2018, designated as Ordinance No. 2018-02 and entitled:

"ORDINANCE GRANTING A FRANCHISE TO MCIMETRO ACCESS TRANSMISSION SERVICES CORP. D/B/A/ VERIZON ACCESS TRANSMISSION SERVICES, A DELAWARE CORPORATION, TO USE PUBLIC RIGHTS OF WAY WITHIN THE CITY TO CONDUCT A TELECOMMUNICATIONS BUSINESS"

DATED this _____ day of _____, 2018

By: _____

Title: _____

Receipt of within and foregoing acceptance by _____ is hereby acknowledged on this _____ day of _____, 2018.

CITY OF FOREST GROVE, OREGON

By: _____

Title: _____

Attested: _____

Date: MAY 14, 2018

Agenda Item: 7.

Subject: CONTINUE PUBLIC HEARING FROM APRIL 23, 2018: SECOND READING OF ORDINANCE NO. 2018-02 GRANTING A FRANCHISE TO MCIMETRO ACCESS TRANSMISSION SERVICES CORP. D/B/A/ VERIZON ACCESS TRANSMISSION SERVICES, A DELAWARE CORPORATION, TO USE PUBLIC RIGHTS-OF-WAY WITHIN THE CITY TO CONDUCT A TELECOMMUNICATIONS BUSINESS

CITY COUNCIL MEETING

Request to Testify at Public Hearing

Public Hearings – Public hearings are held on each matter required by state law or City policy. Anyone wishing to testify should sign-in for the Public Hearing prior to the meeting. The Mayor or presiding officer will review the complete hearing instructions prior to testimony. The Mayor or presiding officer will call the individual or group by the name given on the sign-in form. When addressing the Mayor and Council, please move to the witness table (center front of the room). Each person should speak clearly into the microphone and must state their first and last name and provided a mailing address for the record. All testimony is electronically recorded. In the interest of time, Public Hearing testimony is limited to three minutes unless the Mayor or presiding officer grants an extension. Written or oral testimony is heard prior to any Council action.

Please sign-in below to testify.

PROPONENTS: (Please print legibly)

First & Last Name:

Address:

City, State & Zip Code:

OPPONENTS: (Please print legibly)

First & Last Name:

Address:

City, State & Zip Code:

OTHERS: (Please print legibly)

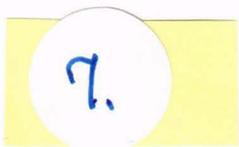
First & Last Name:

Address:

City, State & Zip Code:

Scott Kistler

2325 A St 97116



FIRST READING:

ORDINANCE NO. 2018-02

ORDINANCE GRANTING A FRANCHISE TO MCIMETRO ACCESS TRANSMISSION SERVICES CORP. D/B/A/ VERIZON ACCESS TRANSMISSION SERVICES, A DELAWARE CORPORATION, TO USE PUBLIC RIGHTS OF WAY WITHIN THE CITY TO CONDUCT A TELECOMMUNICATIONS BUSINESS

THE CITY OF FOREST GROVE ORDAINS AS FOLLOWS:

Section 1: The City of Forest Grove (City) grants to MCImetro Access Transmission Services Corp. d/b/a/ Verizon Access Transmission Services, a Delaware Corporation (“Grantee”), its successors and assigns, the privilege to place, erect, lay, maintain and operate in, upon, under and over public rights of way within the City poles, wires, cables, fiber optics, conduit and other appliances and conductors (collectively, facilities) for the transmission of light, electricity, or other impulses for telecommunications purposes, including the provision of telecommunications, private line, and internet access services (collectively, telecommunications services). As used in this ordinance, telecommunications services shall include Grantee’s lease of all or part of its facilities to affiliates or third parties, provided that Grantee shall retain ownership of its facilities. Such facilities may be strung upon poles and other fixtures above ground or may be laid underground in pipes and conduits or otherwise protected. Whenever possible for new development, underground facilities will use a common trench located by the Forest Grove Light & Power Department. This ordinance does not grant Grantee authority to use its facilities to provide cable services or any other non-telecommunications services, nor does it authorize Grantee to install wireless antenna, facilities or equipment of any kind within the rights of way. This ordinance is subject to, and Grantee agrees to comply with, applicable state, federal and City laws, rules, regulations, ordinances, resolutions or orders now in effect or adopted after this ordinance takes effect, and to any attachment agreement required by the Forest Grove Light & Power Department.

Section 2: Subject to the provisions of this ordinance, Grantee is granted authority to make all needed and necessary excavation in any public right of way. All excavation and construction work must comply with City ordinances, resolutions, rules and orders now in effect or that take effect during the term of this franchise. City will enter discussions with Grantee to achieve acceptable solutions to issues identified by Grantee regarding proposed changes to City ordinances, resolutions, rules or orders whenever such discussions are practicable. Grantee does not waive its right to challenge the legality, validity or enforceability of any changes to City ordinances, resolutions, rules or orders adopted after this ordinance takes effect. This ordinance does not require Grantee to comply with future ordinances, resolutions, rules or orders that apply only to Grantee.

Section 3: Whenever Grantee disturbs any public right of way for the purpose of excavation or construction, it must restore as soon as practicable the public right of way to at least as good condition as existed prior to excavation or construction, as directed by City. If Grantee fails to restore the public right of way within a reasonable time after receipt of written notice from City or fails to do so as directed by City, then City will make such restoration and Grantee must reimburse City for the costs of such restoration.

Section 4: This ordinance does not limit the authority of the City to sewer, grade, pave, and repair, alter or improve any public right of way in or upon which Grantee may place facilities. To the extent possible all such City work or improvements will be done in a manner that does

not obstruct or prevent the free use of Grantee's facilities. The City shall have the right to cause Grantee to temporarily or permanently move or remove any facilities located in the public right of way whenever the City determines the relocation or removal thereof is in the public interest, and the expense thereof shall be paid by Grantee.

Section 5: Whenever it becomes necessary to temporarily rearrange, remove, lower or raise Grantee's facilities for the passage of buildings, machinery or other objects, Grantee will temporarily rearrange, remove, lower or raise its facilities as required by City. The person moving any such buildings, machinery or other objects must pay the entire actual cost to Grantee of changing, altering, moving, removing or replacing its facilities so as to permit such passage. The person must deposit in advance with Grantee a sum equal to the cost as estimated by Grantee and must pay all damages and claims of any kind, direct or consequential, caused directly or indirectly by the changing, altering, moving, removing or replacing of facilities, except damages or claims resulting from the sole negligence of Grantee. Grantee will be given not less than 15 days written notice by the person desiring to move a building or other object. This notice must state the route of movement of such building or other objects over and along the public rights of way and must be approved by the City. Such moving must be done as quickly as possible without unnecessary delay to limit expense and inconvenience to Grantee.

Section 6: As consideration for the use of City's public rights-of-way, Grantee shall remit to City an annual fee of five percent (5%) of its gross revenues earned, less bad debts, from the operation of the facilities and/or provision of telecommunications services within the City. The privilege tax shall be payable semi-annually on or before March 15 for the six-month period ending December 31, and September 15 for the six-month period ending June 30, and the first and last payments must be for that fractional part of the calendar year during which this franchise is in effect. City shall have the right, upon 48 hours' notice and during normal business hours, to conduct or cause to be conducted an audit of gross revenues as defined herein for the purpose of ascertaining whether Grantee's franchise fee payments have met the requirements of this franchise. Grantee shall pay any underpayment due to the City following audit within thirty (30) days after written notice to Grantee.

Section 7: The privileges and franchise granted will continue and be in full force for a period of five (5) years from the date of enactment of this ordinance. The franchise will be automatically renewed for an additional five years unless the City notifies Grantee in writing at least 90 days prior to the termination date of the franchise of its intent to terminate the franchise or renegotiate provisions of the franchise. This ordinance does not grant a franchise unless it is accepted in writing by Grantee within sixty (60) days after its enactment.

Section 8: This ordinance is effective 30 days following its enactment by the City Council.

PRESENTED AND PASSED the first reading this 23rd day of April, 2018.

PASSED the second reading this 14th day of May, 2018.

Anna D. Ruggles, City Recorder

APPROVED by the Mayor this 14th day of May, 2018.

Peter B. Truax, Mayor

TO THE CITY COUNCIL OF THE CITY OF FOREST GROVE, OREGON:

MCImetro Access Transmission Services Corp. d/b/a/ Verizon Access Transmission Services, a Delaware Corporation, hereby unconditionally accepts the right, privilege and franchise granted unto it, its successors and assigns, by that certain franchise passed by the City Council of the City of Forest Grove, Oregon, on the 14th day of May, 2018, designated as Ordinance No. 2018-02 and entitled:

"ORDINANCE GRANTING A FRANCHISE TO MCIMETRO ACCESS TRANSMISSION SERVICES CORP. D/B/A/ VERIZON ACCESS TRANSMISSION SERVICES, A DELAWARE CORPORATION, TO USE PUBLIC RIGHTS OF WAY WITHIN THE CITY TO CONDUCT A TELECOMMUNICATIONS BUSINESS"

DATED this _____ day of _____, 2018

By: _____

Title: _____

Receipt of within and foregoing acceptance by _____ is hereby acknowledged on this _____ day of _____, 2018.

CITY OF FOREST GROVE, OREGON

By: _____

Title: _____

Attested: _____



A place where families and businesses thrive.

CITY RECORDER USE ONLY:	
AGENDA ITEM #:	7
MEETING DATE:	4/23/18
FINAL ACTION:	5/14/18
	ORD 2018-02

CITY COUNCIL STAFF REPORT

FIRST READING:

TO: City Council

FROM: Jesse VanderZanden, City Manager

MEETING DATE: April 23, 2018

PROJECT TEAM: Paul Downey, Director of Administrative Services

SUBJECT TITLE: Ordinance Granting a Franchise to MCImetro to Conduct a Telecommunication Business

ACTION REQUESTED:

<input checked="" type="checkbox"/> Ordinance	<input type="checkbox"/> Order	<input type="checkbox"/> Resolution	<input type="checkbox"/> Motion	<input type="checkbox"/> Informational
---	--------------------------------	-------------------------------------	---------------------------------	--

X all that apply

ISSUE STATEMENT: MCImetro Access Transmission Services Corp. d/b/a/ Verizon Access Transmission Services (MCI) is requesting a franchise to operate a telecommunications business within the City limits. City Attorney and City Staff have prepared a franchise agreement based on prior telecommunications franchises approved by the City for Council consideration.

BACKGROUND: MCI is requesting a franchise from the City as it plans to expand cellular transmission capacity by placing small cell towers in high data areas around the City. MCI wants to install small cell towers and fiber optic cables within the public right-of-way to accomplish its purpose. Small cell towers are smaller antennas and supporting hardware installed on City-owned light and/or power poles. If this franchise is granted, MCI will still need to negotiate pole attachment agreements with the City before the small cell towers can be installed.

The proposed franchise agreement will be a non-exclusive franchise meaning that other companies can provide the same services. The length of the franchise is proposed to be five years with an automatic one-time renewal unless the City notifies MCI at least ninety days prior to the expiration of the franchise that it intends to terminate or renegotiate the franchise. Staff will be proposing a right-of-way ordinance in the coming months that is intended over time to replace franchise agreements. This franchise does not grant MCI the authority to provide cable services which would have to be negotiated separately with the Metropolitan Area Communications Commission.

FISCAL IMPACT: The franchise fee will be an annual fee of five percent (5%) of its gross revenues earned, less bad debts, from the operation of the facilities and/or provision of telecommunications services within the City. Since the intent of MCI is only providing small cell towers in the City, staff does not anticipate franchise revenue from this as it is difficult to determine revenue on an activity which is part of the transmission network and not from services offered

within the City. To receive revenue from MCI's use of the public right-of-way, staff will propose a general attachment fee as a form of franchise revenue and the City's pole attachment fee charged by the Light and Power Department when MCI requests pole attachment agreements.

STAFF RECOMMENDATION: Staff recommends that the City Council approve the attached ordinance.

ATTACHMENT(s): Ordinance Granting a Franchise to MCImetro Transmission Services



A place where families and businesses thrive.

ORDINANCE NO. 2018-02 GRANTING A FRANCHISE TO MCIMETRO ACCESS TRANSMISSION SERVICES CORP. D/B/A/ VERIZON ACCESS TRANSMISSION SERVICES, A DELAWARE CORPORATION, TO USE PUBLIC RIGHTS-OF-WAY WITHIN THE CITY TO CONDUCT A TELECOMMUNICATIONS BUSINESS

NOTICE IS HEREBY GIVEN that the Forest Grove City Council will hold a Public Hearing on **Monday, April 23, 2018, at 7:00 p.m.** or thereafter, in the Community Auditorium, 1915 Main Street, Forest Grove, to consider adopting an ordinance granting a franchise to MCImetro Access Transmission Services, d/b/a Verizon Access Transmission Services, to use city public rights-of-way to conduct a telecommunications business. The proposed ordinance, if enacted by the City Council, would take effect 30 days immediately after enactment unless City Council declares an emergency.

This hearing is open to the public and interested parties are encouraged to attend and provide testimony. A copy of the staff report and proposed ordinance are available for inspection prior to the hearing at the City Recorder's Office or by visiting the City's website at www.forestgrove-or.gov. For further information, please call the City Recorder's Office at 503.992.3235.

**Anna D. Ruggles, CMC, City Recorder
City of Forest Grove**

(Public Hearing Notice)

Date: APRIL 23, 2018

Agenda Item: 7.

Subject: PUBLIC HEARING AND FIRST READING OF ORDINANCE NO. 2018-02 GRANTING A FRANCHISE TO MCIMETRO ACCESS TRANSMISSION SERVICES CORP. D/B/A/ VERIZON ACCESS TRANSMISSION SERVICES, A DELAWARE CORPORATION, TO USE PUBLIC RIGHTS-OF-WAY WITHIN THE CITY TO CONDUCT A TELECOMMUNICATIONS BUSINESS

CITY COUNCIL MEETING

Request to Testify at Public Hearing

Public Hearings – Public hearings are held on each matter required by state law or City policy. Anyone wishing to testify should sign-in for the Public Hearing prior to the meeting. The Mayor or presiding officer will review the complete hearing instructions prior to testimony. The Mayor or presiding officer will call the individual or group by the name given on the sign-in form. When addressing the Mayor and Council, please move to the witness table (center front of the room). Each person should speak clearly into the microphone and must state their first and last name and provided a mailing address for the record. All testimony is electronically recorded. In the interest of time, Public Hearing testimony is limited to three minutes unless the Mayor or presiding officer grants an extension. Written or oral testimony is heard prior to any Council action.

Please sign-in below to testify.

PROPONENTS: *(Please print legibly)*

First & Last Name:

Address:

City, State & Zip Code:

OPPONENTS: *(Please print legibly)*

First & Last Name:

Address:

City, State & Zip Code:

OTHERS: *(Please print legibly)*

First & Last Name:

Address:

City, State & Zip Code:

If full, please use Page 2: