

1 Intrastate Wireline Telecommunications Services provided by the Company and billed to its end
2 user customers, in both respects, within the corporate limits of the City and from operation of the
3 Company’s Network installed pursuant to this Agreement. Gross Revenue shall be calculated in
4 accordance with Generally Accepted Accounting Principles and means all consideration of any
5 kind or nature, including without limitation cash, credit, property, and in-kind contributions,
6 services, or goods derived by the holder of a Certificate of Franchise Authority from the operation
7 of telecommunications service on a Fiber Optic Network within the City. Gross Revenue *does not*
8 *include*: (i) Any revenue not actually received even if billed, such as bad debt; (ii) any tax of general
9 applicability imposed upon the Company; (iii) any regulatory-required fees or surcharges collected
10 from customers as well as amounts reflecting cost-recovery of regulatory fees and surcharges (iv)
11 those revenues that the Company has received or will receive from another Telecommunications
12 Service Provider and upon which the other Telecommunications Service Provider has paid or will
13 pay a Franchise Fee; and (v) revenues that the Company has received from its corporate parent,
14 subsidiary, or affiliate.

15 **“Public Right-of-Way or City Right-of-Way”** shall mean streets, avenues, alleys, bridges,
16 viaducts, easements, grounds and other public places owned or controlled by, leased or granted to,
17 or otherwise under the jurisdiction and regulation of the City as provided by the laws of the State
18 of Arkansas as amended.

19 **“Small Wireless Facility”** as defined in Little Rock, Ark., Ordinance No. 21,423 (June 6, 2017)
20 means a wireless facility that meets both of the following qualifications: (1) each Antenna is located
21 inside an enclosure of no more than six (6) cubic-feet in volume, or, in the case of an antenna that
22 has exposed elements, the Antenna and all of its exposed elements could fit within an imaginary
23 enclosure of not more than six (6) cubic-feet in volume; and, (2) all other wireless equipment
24 associated with the facility is cumulatively no more than twenty-eight (28) cubic-feet in volume.
25 The following types of ancillary equipment are not included in the calculation of equipment
26 volume: electric meter, concealment elements, telecommunications demarcations box, ground-
27 based enclosures, grounding equipment, power transfer switch, cut-off switch, and vertical cable
28 runs for the connection of power and other services. For this definition of Small Wireless Facility
29 within this Franchise, the term Antenna means communication equipment that transmits or receives
30 electromagnetic radio frequency signals used in the provision of wireless services. Nothing in this
31 Franchise shall be read to excuse the Company from any regulatory approval or permit required for
32 the deployment of a Small Wireless Facility.

33 **Section 2. City Grant of Authority.**

34 (a) **Grant of Franchise.** The Company is hereby granted a Franchise (“the Franchise”) to
35 occupy and use the public rights-of-way and airways within and belonging to the City in order to

1 construct, operate, maintain, upgrade, repair and remove a Fiber Optic Network in, under, over and
2 along the public right-of-way, subject to the terms and conditions of this ordinance.

3 (b) ***Term of Franchise.*** This Franchise shall commence thirty (30) days from the date the Little
4 Rock Board of Directors passes an ordinance approving the Franchise and shall continue in force
5 in accordance with A.C.A § 14-200-103 unless the Franchise is terminated as the result of the
6 occurrence of an Event of Default or abandonment in accordance with the terms herein, or upon
7 agreement of the parties if a term less than that set forth in Ark. Code Ann. § 14-200-103 is provided
8 by Arkansas State Law, or if there is a ruling under Arkansas State law that a Fiber Optic Franchise
9 is not to be treated as a utility; provided, that absent an Event of Default or abandonment, no single
10 term of the Franchise shall be for a period of less than five (5) years from the effective date of this
11 ordinance.

12 (c) ***Nonexclusive Franchise.*** The Franchise is not exclusive. Except as expressly provided
13 herein, nothing in this Franchise shall limit, or otherwise restrict, the right of the City to enter into
14 similar agreements with other companies for the use of the City's rights-of-way.

15 (d) ***Scope of Franchise.*** The scope of the Franchise awarded pursuant to this ordinance is
16 limited to the incorporated area of the City. The City and the Company agree that entrance into this
17 Agreement is without prejudice to any positions that either may have taken previously, or may take
18 in the future, in any legislative, regulatory, judicial or other public forum addressing any matters,
19 including matters related to the same types of arrangements covered in this Franchise. This
20 Franchise shall not give the Company any right to use any property or public rights-of-way
21 dedicated to the exclusive use of a utility within the City unless expressly agreed to by such utility.

22 (e) ***Process for Renewal of Franchise.*** Absent an Event of Default or abandonment, and
23 assuming the successful and satisfactory compliance with the terms of this Franchise, the City and
24 the Company anticipate that the Franchise will be renewed at the end of any term as set forth in
25 Section 1 (b) of this ordinance for the same term as the previous Franchise. Prior to any renewal,
26 the following process shall be followed:

27 (i) Not less than 120 days prior to the end of the term of the Franchise, the Company
28 shall notify the City in writing of its intention to seek renewal of the Franchise;

29 (ii) Upon receipt of such a written intention, the City shall schedule a public hearing
30 to be held not later than sixty (60) days prior to the end of the term of the Franchise for the
31 purpose of seeking public input on the issue of renewal from all interested persons limited
32 to the issue of compliance with the terms of the Franchise by the Company;

33 (iii) If, as a result of these hearings, the City determines, in its sole discretion, that any
34 significant problems have occurred, the Company shall be required to respond to these
35 concerns in writing within ten (10) days of written notice by the City;

1 (iv) If the City is satisfied with the answers to these inquiries, or if the City determines,
2 within its sole discretion, that there have been no significant problems then the City shall
3 announce not less than thirty (30) days prior to the end of the term of this Franchise its
4 intent to renew the Franchise and shall, by resolution, state an intended term for such
5 renewal;

6 (v) All other terms and conditions are subject to renegotiation and an ordinance
7 adopting a new agreement shall be enacted prior to the end of the term of this Franchise,
8 provided the parties may agree in writing to extend the initial term in order to finalize any
9 ongoing negotiations, and provided further, that should the Company fail to negotiate in
10 good faith this shall be deemed an Event of Default which, in such case, permits the City
11 to take such action as permitted in Section 7 of this Franchise

12 (f) ***Reservation of Authority.***

13 (i) The City reserves the right to perform any necessary public works or make any
14 necessary public improvements to the City's rights-of-way during the term of this
15 Franchise. If, as a result of any such action by the City, or by any action authorized by the
16 City for the benefit of the public good, relocation of any of the Company's conduit or other
17 facilities is required, such relocation shall be accomplished at the sole expense of the
18 Company. Nothing in this Franchise shall be deemed a waiver of the right of the City to
19 require the Company to comply with all applicable zoning and other applicable regulatory
20 ordinances or to pay any reasonable permit fees or to seek appropriate authorizations from
21 the Company to perform any work in connection with the Franchise. Should the City close,
22 eliminate, or discontinue the use of any City rights-of-way during the term of this
23 Franchise, or any renewal term, this Franchise shall cease with respect to such right-of-
24 way upon the date of final action by the City with respect to the closure, elimination or
25 discontinuance of such street or City rights-of-way, provided the Company shall be
26 provided notice of the City's intent to do so and to appear and state its position on such
27 City abandonment of right-of-way.

28 (ii) In all cases where there is a likelihood that the Company may be required to
29 relocate, or change the route of or reposition its poles, lines, or conduits, the City shall give
30 notice, in the form of written plans, at a Utility Coordination Meeting called by the City to
31 discuss such plans. The meeting, at which the relocation plans are discussed, shall be held
32 at least thirty (30) days before relocation is required. The City shall not be entitled to be
33 paid its cost and expense for any such relocation, or any damages incurred as a result of
34 such relocation, unless such expenses are reimbursable or payable to the City, directly or
35 indirectly, but nothing shall obligate the City to pay any cost or expense unless and until

1 the City actually receives funds from the State of Arkansas, the United States, or any
2 governmental agency of either, for the express purpose of payment of costs and expenses
3 incurred by the relocation. Nothing in this Franchise is intended to eliminate or waive any
4 right that the Company may have to reimbursement under applicable law or the terms of
5 any public funding grant for a project.

6 (g) **Notice of Intention to Construct.** The City has a vested interest in assuring that any
7 disruption of the flow of traffic, or the digging or creation of a trench in any of the streets, be kept
8 to a minimum. In order to facilitate this interest, the City and the Company agree as follows:

9 (i) Upon application of the Company, or on behalf of the Company, for a construction
10 permit to open the street, the City shall provide notice to all utility and any Fiber Optic
11 Network. During such time not to exceed fifteen (15) days from the date of the application,
12 the City shall withhold approval of any such permits so that any other utility that desires to
13 do so will be allowed to ask to simultaneously lay conduct, or other appropriate equipment
14 in, or adjoining, any trench opened by the Company. The City may extend this time period
15 for emergency situations if the City or a utility or order of a Fiber Optic Network so desires.

16 The Company shall permit that utility or Fiber Optic Network to do so provided:

17 (A) The other utility or Fiber Optic Network shares in the cost of opening and
18 repairing any trench; and,

19 (B) The desire of the other utility or Fiber Optic Network to so participate does
20 not unnecessarily delay the Company's construction schedule.

21 (ii) The Company agrees that if, pursuant to a similar application from other utilities
22 or another Fiber Optic Network, it receives notice from the City of a request for a permit
23 to open the streets, the Company shall determine whether to participate in the opening of
24 any such trench by that utility or Fiber Optic Network and shall participate in such a project
25 pursuant to the terms of this subsection.

26 (iii) For purposes of this subsection, "utility" means any gas provider, cable television
27 company, electric service provider, interexchange, long distance or local exchange
28 Telecommunications Services Provider, Central Arkansas Water, Little Rock Water
29 Reclamation Commission, Little Rock Ambulance Authority, Little Rock Airport
30 Commission, Little Rock Port Authority, or any other entity laying pipes, cables, conduits,
31 or wire on, over, or beneath City rights-of-way and that has a Franchise with the City.

32 **Section 3. Construction Requirements.**

33 (a) **Quality.** All work involved in the construction, operation, maintenance, repair, upgrade,
34 and removal of the Fiber Optic Network that is permitted by this Franchise shall be performed in a
35 safe, thorough, reliable manner using materials of good and durable quality in accordance with

1 Generally Accepted Construction Standards, and in compliance with all of the applicable
2 ordinances of the City and laws and regulations of any governmental entity having jurisdiction. If,
3 at any time, it is determined by the City that any part of the Fiber Optic Network is harmful to the
4 health of safety of any person, then the Company shall, at its own cost and expense, promptly
5 correct all such conditions. For purposes of this subsection, promptly shall mean twenty-four (24)
6 hours, or a longer period of time *if and only if* additional time is granted in writing by the City.

7 (b) **Construction Requirements.**

8 (i) Before the Company constructs, extends, makes major repairs to or replaces its
9 Fiber Optic Network (not including lateral connections that provide minimal interference
10 with flow of traffic on City rights-of-way for which permits have been properly issued), it
11 shall file with the City's Public Works Department, a written work description, including
12 scale drawings, digital location data showing the Fiber Optic Network's existing and
13 planned location and, if applicable, estimated depth of any facilities. The description and
14 map shall also include information concerning the Company's fiber access Points of
15 Presence ("POP"). The plans will be reviewed by the City and any comments will be
16 provided to the Company within ten (10) business days. The City agrees to expedite its
17 review when conditions warrant. When an emergency occurs, the Company shall perform
18 needed repairs to its Fiber Optic Network in the City right-of-way and shall notify the
19 Public Works Department within twenty-four (24) hours following such emergency
20 repairs.

21 (ii) Any construction project shall be completed within 180 days from the date that
22 the Public Works Department properly issues any necessary permits, provided that the City
23 may allow reasonable extensions due to weather or Acts of God, or other reasonable
24 circumstances that justify an extension of the project target completion date.

25 (iii) If the City requires the Company to remove, alter, change, adapt or conform its
26 Fiber Optic Network to enable any other person or entity, except the City, to use, or to use
27 with greater convenience, the City right-of-way, the Company shall be obligated to make
28 such changes to its Fiber Optic Network only if said person or entity pays the Company or
29 posts an appropriate bond if required by the Company, to reimburse the Company for any
30 loss and expense which will be caused by or which will arise out of such changes to the
31 Company's Fiber Optic Network. **THE CITY SHALL NOT BE LIABLE FOR ANY
32 REIMBURSEMENT, LOSS, OR EXPENSE WHICH IS CAUSED BY OR WHICH
33 ARISES OUT OF CHANGES TO THE COMPANY'S FIBER OPTIC NETWORK.**

34 (c) **No Liability to Company.** Neither the City nor its officers, employees, agents, attorneys,
35 consultants or independent contractors shall have any liability to the Company as a result of any

1 disruption or damages to the Fiber Optic Network that occur as a result of or in connection with
2 any protection, breaking through, movement, removal, alteration, or relocation of any part of the
3 Fiber Optic Network by or on behalf of the Company or the City in connection with any emergency
4 public work of any nature whatsoever, improvement, alteration of municipal structure, any change
5 in the grade or line of any street, or the elimination, discontinuation, or closing of any street, as
6 provided for in this Franchise; except, however, the City shall reasonably attempt to avoid any
7 damage to the Company's Fiber Optic Network and shall provide reasonable notice to the Company
8 so as to allow the Company to protect its Network. Nothing in this agreement shall limit the City's
9 liability for gross negligence or willful misconduct of City Officials or Agents.

10 **Section 4. Compensation to the City.**

11 (a) **Franchise Fees – Amount.**

12 (i) The Company shall pay to the City Franchise Fees beginning with the quarterly
13 payment immediately following the date upon which the Company begins to receive Gross
14 Revenue, an amount equal to 5% of Gross Revenue as defined in this Franchise. Because
15 it is not clear that Gross Revenues will be available for some time, as a means to ensure
16 the citizens of Little Rock are compensated for the use of their property, the Company, in
17 addition to Gross Revenue Franchise Fee shall also make an in-kind Franchise payment as
18 outlined in (e) below.

19 (ii) The payment of a Franchise Fee by the Company in no way limits the right of the
20 City to charge reasonable fees for any permits the Company is required to obtain for any
21 construction project; nor does the payment of a Franchise Fee preclude the right of the City
22 to assess a reasonable Business License Fee on the Company.

23 (b) **Franchise Fee – Payment.** All such payments of Franchise Fees required by this section
24 shall be made quarterly and, in any event, no later than fifteen (15) days after March 31st, June 30th,
25 September 30th, and December 31st of each year.

26 (c) **Franchise Fees Subject to Audit: Remedy for Underpayment by the Company.** The
27 Company shall provide business records which shall be sufficient for the City to verify the accuracy
28 of the Franchise Fees upon reasonable request by the City, but no more often than annually. No
29 acceptance of any Franchise Fee payment by the City shall be construed as an accord and
30 satisfaction that the amount paid is in fact the correct amount, nor shall acceptance be deemed a
31 release of any claim the City may have for further or additional sums payable pursuant to this
32 Franchise. All amounts shall be subject to audit and recomputation by the City in accordance with
33 the provisions of this Franchise.

1 (d) **Authority to Pass Franchise Fee Payments on to System End Users.** To the extent
2 permitted by law, the Company is permitted to collect any Franchise Fee assessed by the City from
3 its customer.

4 (e) **In-Kind Consideration for the City.**

5 (1) The Company shall provide the City, without charge, and solely for the City's
6 municipal purposes:

7 (i) Eight (8) dark fibers (four (4) pairs) in all City right-of-way where the Company
8 deploys at least 288 fiber strands, whether underground or aerial (the "City Fibers").

9 (ii) The Company shall create a maximum of twenty (20) splice points at the
10 request of the City among existing the Company access points. The City shall
11 reimburse the Company, at the Company's cost, for any splice points requested by the
12 City beyond twenty (20).

13 (iii) The Company shall perform all splicing of the City lateral cables to the City
14 Fibers. The City shall reimburse the Company, at the Company's cost of any splicing
15 (beyond the first twenty (20) splice points).

16 (iv) The Company shall provide ongoing repair and maintenance of the City Fibers
17 at the Company's cost.

18 (2) At any time during the term of the Franchise, the parties may mutually-agree for the
19 Company to provide an in-kind exchange consisting of one (11) or more the Company services
20 (such intelligent traffic, video, lighting, pedestrian safety, shot spotter, or indoor Wi-Fi) in-lieu
21 of part or all of any consideration otherwise due by the Company under the agreement.

22 **Section 5. Oversight Regulation.**

23 (a) **City's Right of Oversight.** The City shall have the right to oversee and periodically
24 inspect the construction, operation, maintenance and upgrade of the Fiber Optic Network, and
25 all parts of the same, in accordance with the provisions of this Franchise and applicable law.
26 The City reserve the right to adopt such rules, regulations, orders, or other directives governing
27 the Company's construction and maintenance of the Fiber Optic Network as it shall find
28 necessary or appropriate in the exercise of its Police Power, and such other orders as the City
29 shall find necessary or appropriate pursuant to and in furtherance of the purposes of this
30 franchise. The Company expressly agrees to comply with all lawful rules, regulations, orders,
31 or other directives issued pursuant to this section. No rule, regulation, order, or other directive
32 issued pursuant to this section shall constitute an amendment of this Franchise.

33 (b) **Proprietary Information as Property of Company.** The City and the Company
34 recognize that in order to comply with all the terms and conditions of this Franchise it may, on
35 occasion, be necessary for the Company to provide the City access to certain proprietary

1 information. To the extent that such information is individually noted and marked
2 “PROPRIETARY” and/or “CONFIDENTIAL” by the Company, the City acknowledges that
3 such information will always be considered to be in the sole custody and control of the
4 Company, that the information will only be reviewed by the City and, that despite the
5 immediate location of such material, the Company shall never be deemed to have provided it
6 to the City for the City’s possession and control nor to include such information as a part of
7 any public record. In the absence of a court order issued by a court of competent jurisdiction,
8 or a subpoena duly issued according to law, should any person request access to such
9 information upon the basis of State or Federal Freedom of Information Laws, the City shall
10 immediately return the information to the Company with notice of the request, shall refuse
11 access to the records to the requesting party, and shall complete any necessary review at the
12 Company office listed below. Nothing in this Franchise should be considered to mean that in
13 the event it is necessary for purposes of litigation, State or Federal Public Finance Laws, or
14 otherwise, for the City to publish information, the City is waiving any right to request
15 publication or to comply with any appropriate order, statute, regulation, subpoena or request
16 for publication of such material.

17 **Section 6. *Restrictions as to Assignments and Other Transfers.*** The Company may assign, sell, or
18 transfer in any manner, in whole or in part, its right, title or interest in any part of the Fiber Optic Network,
19 provided the Company shall give written notice to the City within thirty (30) calendar days of the closing
20 of such a transaction, and provided further that the new owner or assignee is duly authorized by the state to
21 own and operate the Fiber Optic Network. The Company shall have the right to mortgage or pledge a
22 portion or all of the Fiber Optic Network in order to secure financing of the Company’s operations obtained
23 in the ordinary course of business. Notwithstanding the foregoing, no mortgage or pledge entered into by
24 the Company shall relieve any person including the Mortgagor or pledger, of any of the terms and conditions
25 of this Agreement. Should any person, including the Company, default or otherwise be deemed in violation
26 of the terms of this Franchise, the City shall be permitted to exercise all its rights, privileges and remedies
27 pursuant to this Franchise.

28 **Section 7. *Specific Rights and Remedies.***

29 (a) ***Nonexclusive Remedies.*** The City and the Company agree that the other party shall have
30 the specific rights and remedies set forth in this Franchise. These rights and remedies are in addition
31 to and cumulative with any and all other rights or remedies, express or implied now or hereafter
32 available at law or in equity in order to enforce the provisions of this Franchise. Such rights and
33 remedies shall not be exclusive, but each and every right and remedy specifically provided or
34 otherwise existing or given may be exercised from time to time and as often and in such order as
35 may be deemed expedient. The exercise of one (1) or more rights or remedies shall not be deemed

1 a waiver of or acquiescence to any default. The exercise of any such right or remedy shall not
2 release the other party from its obligations or any liability under this Franchise, except as expressly
3 provided for in this Franchise or as necessary to avoid duplicative recovery by the Company or any
4 Guarantor.

5 (b) **Events of Default.** The Company agrees that an Event of Default shall include, but shall
6 not be limited to, any of the following acts or failures to act by the Company or any employee,
7 agent, or assignee of the Company:

8 (i) Failure to obtain any applicable permits from the City before construction or
9 making material expansions in the Fiber Optic Network;

10 (ii) Failure to supply insurance, bonds, or letters of credit as may be required by the
11 City to assure the proper completion of any restoration or repair performed pursuant to the
12 franchise;

13 (iii) Failure to make any of the payments set forth in this Franchise;

14 (iv) Failure to pay any permit fees, or substantial failure to comply with any
15 applicable rules, regulations, orders or directives of the City as set forth in this Franchise;

16 (v) Failure to give notice to the City of assignment, sale or transfer of the Fiber Optic
17 Network;

18 (vi) Refusal to relocate any aspect of the Fiber Network Franchise as required by the
19 City for a municipal purpose consistent with applicable ordinances of City, when given
20 written direction to do so by the City Manager, even one performed in conjunction with
21 the State of Arkansas, the Federal Government, another governmental subdivision, or any
22 such combination; for purposes of this subsection, “refusal” shall mean Verizon’s failure
23 to commence a meaningful response to the City’s notice within thirty (30) days of the
24 receipt of the letter from the City Manager, and further means the reasonable and
25 expeditious continued progress on the relocation of facilities so the City project may
26 proceed without delay.

27 (vii) Refusal to cooperate with a City Franchise Fee Audit in accordance with the
28 provisions of this Franchise, whether conducted by City personnel or by personnel or third-
29 parties hired by the City, including, but not limited to, the failure to provide access to
30 financial records of the company within thirty (30) calendar days of a request for such
31 records.

32 (c) **City Action Upon Occurrence of an Event of Default.** Upon the occurrence of an Event
33 of Default and in accordance with the procedures provided for in this ordinance, the City may:

34 (i) Require the Company to take such actions as necessary to cure the Event of
35 Default; or,

1 (ii) Seek money damages from the Company as compensation for such Event of
2 Default; or,

3 (iii) Declare an abandonment of the Franchise and revoke and terminate the franchise,
4 following notice of the Event of Default and failure to cure.

5 (d) ***Procedure to Follow upon Default.*** The City shall exercise the rights set forth in this
6 section in accordance with the following procedures:

7 (i) The City Manager shall notify the Company, in writing, of an alleged Event of
8 Default. This written notice shall set forth with reasonable specificity the facts the City
9 believes are the basis for declaring that an Event of Default has occurred. The Company
10 shall, within thirty (30) business days of the date of the notice is postmarked, e-mailed, or
11 otherwise noted to have been delivered, or such additional time as the City Manager may
12 specify in the notice, cure the alleged Event of Default, or, in writing, present for review
13 by the City Manager a reasonable time frame and method to cure the Event of Default. The
14 Company, in lieu of the cure of the Event of Default as set forth, may present written facts
15 and arguments as to why the Company disagrees that an Event of Default has occurred.

16 (ii) If the Company presents a written response that challenges whether an Event of
17 Default has occurred, the City Manager shall within ten (10) calendar days review the
18 submitted materials and determine again whether an Event of Default has occurred. If the
19 City Manager reaffirms that an Event of Default has occurred, the Company shall be
20 notified in writing of this decision and shall, within thirty (30) calendar days, cure the
21 alleged Event of Default, provided the Company may immediately request, and the City
22 Manager may provide, for a reasonable extension of time for the cure of the Event of
23 Default for good cause shown. The determination of good cause is solely within the
24 discretion of the City.

25 (iii) If the Company still fails to cure the Event of Default so declared pursuant to this
26 section within the time permitted by the City Manager, the City Manager shall notify the
27 Board of Directors and an ordinance to revoke the Franchise and require the Company to
28 remove all facilities associated with the Fiber Optic Network within thirty (30) days of the
29 passage of the ordinance repealing the Franchise.

30 (e) ***Procedure to Follow upon Default with Relation to Sections 7 (b) (v) and (vi).***
31 Notwithstanding any other provision of this ordinance, if the Event of Default by the Company is
32 covered by Section 7 (b) (v) or Section 7 (b) (vi) of this ordinance, the time frames set forth in these
33 subsections shall be followed. At the end of the times frames enumerated, if the Company has not
34 cured the Event of Default, then the City Manager shall proceed pursuant to Section 7 (d) (iii).

1 (f) **Removal.** IN ADDITION TO THE RIGHTS UNDER THIS SECTION, THE CITY,
2 UPON ANY TERMINATION, MAY, AT ITS SOLE DISCRETION, DIRECT THE
3 COMPANY TO REMOVE, AT THE COMPANY'S SOLE COST AND EXPENSE, ANY
4 AND ALL OF THE FIBER OPTIC NETWORK THAT IS THE SUBJECT OF THIS
5 ORDINANCE FROM THE CITY RIGHT-OF-WAY IF THE FAILURE TO REMOVE THE
6 FIBER OPTIC NETWORK WILL, WITHIN THE SOLE DISCRETION OF THE CITY,
7 ENDANGER THE PUBLIC HEALTH AND WELFARE OR OTHERWISE ADVERSELY
8 AFFECT THE PUBLIC INTEREST, SUBJECT TO THE FOLLOWING:

9 (i) The City may determine that removal of buried fiber optic cable or conduit is not
10 necessary;

11 (ii) In removing any part of the Fiber Optic Network, the Company shall refill and
12 compact, at its own expense, any excavation that shall be made by it and shall leave all
13 City right-of-way in as good a condition as that prevailing, in the sole opinion of the City,
14 as that prevailing prior to the Company's removal of the Fiber Optic Network;

15 (iii) The City shall have the right to inspect and approve the conditions of the City
16 right-of-way after removal has occurred;

17 (iv) The removal shall commence within thirty (30) business days of an order to
18 remove issued by the City Manager;

19 (v) Prior to the City's exercise of this right, the Company's mortgagees, pledgees, or
20 other persons providing financing to the Company shall have the right to cure the
21 Company's default under this Agreement. The City acknowledges that its right to direct
22 the Company to remove the Fiber Optic Network provided for in this Franchise shall be
23 subject and subordinate to the rights of the Company's mortgagee, pledgee, or other person
24 providing financing to the Company, as described in the written documents evidencing the
25 financing or the security for the financing, provided that such mortgagee, creditor, pledgee,
26 or other person providing financing to the City complies with each and every term and
27 condition of this Franchise.

28 (e) **Consent Not a Waiver.** The grant or waiver of any one or more of the consents required
29 by this Franchise shall not render unnecessary any subsequent consent, nor shall the grant of any
30 such consent constitute a waiver of any other rights of the City or the Company.

31 **Section 8. Subsequent Action.**

32 (a) **Current Enforceability of Agreement.** The City and the Company agree that the execution
33 of this Franchise and the terms and conditions are valid in their entirety.

34 (b) **Indemnification.** The Company shall indemnify and hold harmless the City and all of its
35 officers, agents, and employees from all suits, actions, or claims of any character, style and

1 description brought for or on account of any injuries or damages, including death, received or
2 sustained by any person or any property occasioned by, arising out of, or in connection with the
3 grossly negligent or negligent acts or omissions of the Company regarding the erection,
4 construction, location, replacement, reconstructions, maintenance, repair, or operation of the Fiber
5 Optic Network, and the Company shall pay any judgments, interest, and costs which may be
6 obtained against the City arising out of such injury or damage. If the Franchise granted by this
7 ordinance is terminated, abandoned, or is not renewed, and the Company does not remove its
8 facilities from the City right-of-way, the Company shall continue to indemnify and hold harmless
9 the City pursuant to this section as long as its facilities are located in the City right-of-way.

10 **Section 9. Insurance Requirements.** The Company shall maintain the following insurance coverages
11 and the respective policies shall cover all risks related to the use and occupancy of the City right-of-way
12 and all other risks associated with this Franchise.

13 (a) **Description of Insurance and Limits.**

14 (i) **Commercial General Liability Insurance.** Two Million Dollars (\$2,000,000.00)
15 per occurrence coverage which shall include the following: premises operations;
16 independent contractors; products/completed operations; personal and advertising injury;
17 contractual liability; explosion/collapse/underground property damage. This insurance
18 shall be provided on an occurrence basis and be as comprehensive as the current Insurance
19 Services Office (ISO) Policy.

20 (ii) **Commercial Automobile Liability Insurance.** One Million Dollars
21 (\$1,000,000.00) combined single-limit each accident for bodily injury and property
22 damage covering all hired, owned, non-owned, or borrowed vehicles.

23 (iii) **Pollution Liability.** One Million Dollars (\$1,000,000.00) per occurrence covering
24 claims arising from gradual emissions and sudden accidents. Clean-up and defense costs
25 shall be covered.

26 (iv) **Workers Compensation Insurance Statutory Limits.** Employer's Liability Five
27 Hundred Thousand Dollars (\$500,000.00) for each accident/disease-each
28 employee/disease-policy limit.

29 (b) **Other Insurance Related Requirements**

30 (i) The City shall be included as an additional insured as their interest may appear
31 under this Agreement, by blanket additional insured endorsement, except workers
32 compensation and employer's liability;

33 (ii) Applicable insurance policies shall include a waiver of subrogation in favor of the
34 City;

1 (iii) Insurers shall be rated “A-: VII” or better by A.M Best and such companies shall
2 be authorized to do business and be in good standing in the State of Arkansas.

3 (iv) The City shall be notified within a minimum of thirty (30) days prior to the
4 insurer’s action in the event of cancellation, non-renewal or material change coverage
5 regarding any policy providing insurance coverage required in this Franchise.

6 (v) Limits of insurance required in Subsection (a) of this section shall be available
7 for claims arising out of this Franchise with the City.

8 (vi) Certificates of Insurance shall be provided by the Company to the City prior to
9 commencement of operations pursuant to this Franchise. Any failures on the part of the
10 City to request such documentation shall not be construed as a waiver of the specified
11 insurance requirements.

12 (vii) The City shall be entitled, upon reasonable request, to review (but not possess)
13 the insurance policies including endorsements to the policies and, at its discretion, to
14 require proof of payment for policy premiums.

15 (viii) The City reserves the right to review and revise the insurance requirements
16 specified in this Franchise and requirement the company to comply with any such revisions
17 within thirty (30) days of official notice from the City provided that such changes are made
18 applicable at the same time to all similarly situated carriers.

19 (ix) The City shall not be responsible for paying the cost of insurance required by the
20 Franchise.

21 (x) “Other insurance,” as referenced in any policy of insurance providing coverages
22 required by this Franchise shall not apply to the City.

23 (xi) The Company shall agree to either require its contractors to maintain the same
24 insurance coverages and limits that are specific in this Franchise or such coverage on the
25 Company’s contractors shall be provided by the Company.

26 **Section 10. *Miscellaneous Issues.***

27 (a) ***Controlling Law.*** This Franchise shall be determined according to the laws of the State of
28 Arkansas and venue and jurisdiction to challenge, contest, review, or otherwise subject its terms
29 and conditions to litigation shall occur in Little Rock, Pulaski County, Arkansas, or in the United
30 States District Court for the Eastern District of Arkansas.

31 (b) ***Captions.*** The captions given to various provisions of this Franchise are for purposes of
32 convenience only and are to have no impact upon the interpretation of any such provisions.

33 (c) ***Entire Agreement.*** This Franchise, with its exhibits, comprises the entire agreement
34 between the City and the Company for purposes of this Franchise, provided, that any modification

1 to Little Rock, Ark., Rev. Code 2-350 to -357 (1988) – the City Utility Relocation Policy – may be
2 applied to this Franchise.

3 (d) **Nondiscrimination.** The Company agrees to comply with all applicable local, State and
4 Federal Laws and regulations the prohibit discrimination against any individual on the basis of race,
5 color, creed, religion, sex, national origin, age, disability, marital status, sexual orientation, gender
6 identity, or genetic information. Further, the Company agrees to comply with Title VI of the Civil
7 Rights Act of 1964 (42 U.S.C. § 2000d and following, 78 Stat. 252) and its applicable statutory,
8 regulatory authorities, other pertinent directives, circulars, policy, memoranda, and guidance
9 prohibiting discrimination on the basis for race, color national origin, age, sex and disability and
10 give assurance that it will promptly take any measures necessary to assure such compliance at any
11 site, or as a part of any project, that triggers that applicability of Title VI.

12 (e) **Burden of Proof.** In any disagreement upon the terms and conditions of this Franchise,
13 the Company shall bear the burden to demonstrate that it is in compliance with each term and
14 condition of the Franchise for all purposes.

15 (r) **No Coercion.** The Company and the City enter into this Franchise Agreement willingly
16 and voluntarily and without any coercion, undue influence, or duress.

17 (g) **Multiple Originals.** This Franchise may be executed in any number of copies and any
18 fully executed copy of this Franchise shall be deemed an original for purposes of authentication or
19 presentation in evidence before any court, administrative tribunal, or alternative dispute resolution
20 proceeding.

21 (h) **Notice.** Any notice or communication required in the administration of this Franchise shall
22 be sent by any method which assures overnight delivery and shall be addressed as follows:

23 (i) **For the City of Little Rock**

24 City Manager
25 500 West Markham Street, Room 203
26 Little Rock, Arkansas 72201

27 with a copy delivered to:

28 Office of the City Attorney
29 500 West Markham Street, Suite 310
30 Little Rock, Arkansas 72201

31 And

32 Office of the Treasury Manager
33 500 West Markham Street, Suite 100
34 Little Rock, Arkansas 72201
35

1 (ii) ***For the Company***

2 MCImetro Access Transmission Services Corporation
3 d/b/a Verizon Access Transmission Services
4 Attn: Franchise Manager
5 600 Hidden Ridge
6 Irving, TX 75038

7 With a copy delivered to (except for invoices):

8 Verizon
9 Attn: Vice-President and Deputy General Counsel, Network Services
10 1320 North Courthouse Road, Suite 900
11 Arlington, VA 22201

12 Invoices:

13 Verizon
14 Attn: Contract Administration
15 6929 North Lakewood Avenue, MD 5.3-4009
16 Tulsa, OK 74117
17

18 (iii) The City and the Company may, from time to time, designate a different person
19 or entity for notice by letter to the primary parties listed immediately above.

20 (iv) For purposes of notice, delivery to the primary party named is sufficient to
21 establish that the required notice has been accomplished, and such delivery to those copied
22 with the notice is not required to establish that notice has been accomplished.

23 (i) ***Access to Legal Counsel.*** The parties agree that each individual party has had independent
24 access to legal counsel as to the terms and conditions of this Franchise; therefore, no party shall be
25 entitled to any presumption based upon which party drafted the terms and conditions of this
26 Franchise.

27 (h) ***No Barrier to Competition.*** The parties agree that the terms and conditions of this
28 Franchise are reasonable, fair and equitable, and comply with all local, State and Federal Laws and
29 regulations; further, that nothing in the terms of this Franchise in any way constitutes a barrier to
30 competition.

31 (i) ***Change in Law.*** Notwithstanding any other term of condition set forth above, the parties
32 agree that should there be a significant change in the law that would govern a Franchise for a Fiber
33 Optic Network, the parties shall upon, the request of either the City or the Company, within forty-
34 five (45) days of such request, sit down to discuss and negotiate any necessary modifications of
35 this Franchise occasioned by such change in law.

36 (j) ***Signatories for Acceptance of Terms & Conditions of the Franchise.*** Exhibit A to this
37 Franchise is a signatory page for the City and for the Company to execute and represents that the

1 parties agree to the terms and conditions set forth within this ordinance, and that the persons
2 executing this Exhibit have the authority of the City and of the Company to do so.

3 **Section 11. Severability.** In the event any title, section, paragraph, item, sentence, clause, phrase, or
4 word of this ordinance is declared or adjudged to be invalid or unconstitutional, such declaration or
5 adjudication shall not affect the remaining portions of the ordinance which shall remain in full force and
6 effect as if the portion so declared or adjudged invalid or unconstitutional was not originally a part of the
7 ordinance.

8 **Section 12. Anniversary Review.** No sooner than the first anniversary of the grant of this Franchise
9 and not more than once in any twenty-four (24)-month period, upon the request of City in its sole and
10 absolute discretion, Company and City shall meet and review the terms of this ordinance, and any concerns
11 or issues raised in respect thereof, and negotiate in good faith any modifications as the parties may
12 determine, in good faith, are necessary to address such concerns or issues.

13 **Section 13. Repealer.** All laws, ordinances, resolutions, or parts of the same that are inconsistent with
14 the provisions of this ordinance are hereby repealed to the extent of such inconsistency.

15 **Section 14. Subsequent Ordinance; Effect on Competition; Limited Waiver.** The parties understand
16 and acknowledge that terms in this Franchise, including the definition of Gross Revenues, are based on
17 existing Franchise Arrangements between the City and other similar providers. The parties further
18 understand and acknowledge that the City intends to update and modernize its Franchise Requirements to
19 conform with changes in the industry. Upon such time as the City has enacted a new Ordinance of General
20 Applicability that contains a definition of Gross Revenues or other lawful rental obligation or Franchise
21 Fee for use of the right-of-way for telecommunications and other services provided by means of fiber-optic
22 cables in the rights-of-way, but not including cable service as defined in 47 USC § 522, and such ordinance
23 is effective and enforceable, the terms of this Agreement shall be deemed to be automatically conformed to
24 such new framework without the need of any further action by either party, provided that the terms of the
25 ordinance must be effective and enforceable against other such providers for it to alter the terms and
26 conditions of this Agreement. Each party shall cooperate with the other in executing an amendment or
27 other instrument reflecting such implementation, as either party desires. In connection therewith, Company
28 waives and relinquishes any claim that the Franchise Fee collected under this Agreement for time periods
29 prior to the effective date of such new ordinance is an illegal exaction, and waives and relinquishes any
30 claim to any refund thereof to which it otherwise might be entitled by way of such a finding.

31 **PASSED: September 4, 2018**

32 **ATTEST:**

APPROVED:

33
34 _____
35 **Susan Langley, City Clerk**

_____ **Mark Stodola, Mayor**

1 **APPROVED AS TO LEGAL FORM:**

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4 **Thomas M. Carpenter, City Attorney**

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1 **EXHIBIT A**

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3 **EXECUTION OF FRANCHISE AGREEMENT**

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5 WHEREUPON, the City and the Company, acting through their duly authorized officers and pursuant
6 to appropriate authority granted by their respective governing bodies, do hereby execute this Franchise.
7

8 **CITY OF LITTLE ROCK, ARKANSAS**

**MCIMETRO ACCESS TRANSMISSION
SERVICES CORPORATION**

9
10
11
12 **By:** _____
13 **Bruce T. Moore, City Manager**

By: _____

Title: _____

14
15
16
17 **Date:** _____

Date: _____

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19 **ATTEST:**

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23 **Date;** _____

Date: _____

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CITY ACKNOWLEDGMENT

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STATE OF ARKANSAS)

) ss

COUNTY OF PULASKI)

I, _____, a Notary Public in and for Pulaski County, Arkansas, do hereby certify that Bruce T. Moore, personally known to me as the City Manager for the City of Little Rock, Arkansas, and Susan Langley, personally known to me as the City Clerk for the City of Little Rock, Arkansas, appeared before me this ____ day of September, 2018, in personally and severally acknowledged that as the City Manager and City Clerk they signed and sealed this instrument and caused the seal of the Board of Directors of the City of Little Rock, Arkansas, as their free and voluntary act and deed of said City of Little Rock, Arkansas, for the uses and purposes therein set forth.

Given under my hand and notarial seal this ____ day of September, 2018.

Notary Public

My Commission Expires:
(Seal)

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1 **COMPANY ACKNOWLEDGMENT**

2
3 **STATE OF _____)**

4 **) ss**

5 **COUNTY OF _____)**

6
7 **BE IT REMEMBERED**, that on this day before the undersigned, a Notary Public within and for the
8 County aforesaid, duly commissioned and acting, appeared in person
9 _____ and _____ to me well known, who
10 stated that they were the _____ and _____ of the company
11 executing this instrument, and were duly authorized in their respective capacities to execute the foregoing
12 instrument for the name and behalf of said company, and further stated that they had executed the same for
13 the consideration and purposes mentioned in the Franchise as set forth. Given under my hand and
14 notarial seal this ____ day of September, 2018.

15 **WITNESS** my hand and seal as such Notary Public on this ____ day of September, 2018.

16
17 _____
18 **Notary Public**

19
20 **My Commission Expires:**

21 **(Seal)**

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