

ORDINANCE NO. 2295

AN ORDINANCE OF THE CITY OF REDMOND, WASHINGTON, GRANTING TO T-MOBILE WEST CORPORATION A NON-EXCLUSIVE FRANCHISE FOR FIVE (5) YEARS, TO ATTACH, INSTALL, OPERATE, AND MAINTAIN A TELECOMMUNICATIONS SYSTEM IN, ON, OVER, UPON, ALONG, AND ACROSS CERTAIN DESIGNATED PUBLIC RIGHTS-OF-WAY OF THE CITY OF REDMOND, WASHINGTON, PRESCRIBING CERTAIN RIGHTS, DUTIES, TERMS, AND CONDITIONS WITH RESPECT THERETO, AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, T-Mobile West Corporation (hereinafter "the Franchisee") has requested that the City of Redmond (hereinafter "the City") grant it the right to install, operate and maintain a wireless telecommunications system within the public ways of the City; and

WHEREAS, the City Council has found it desirable for the welfare of the City and its residents that such a non-exclusive franchise be granted to the Franchisee; and

WHEREAS, the City Council has the authority under RCW 35A.47.040 to grant franchises for the use of its streets and other public properties, and under RCW 47.24.020 (8) to grant franchises for the use of non-limited access state highways within City limits; and

WHEREAS, the City has the authority under RCW Chapter 35.99 to grant, issue or deny master permits and use permits for the use of the right-of-way for telecommunications services; and

WHEREAS, the City is willing to grant the rights requested subject to certain terms and conditions, NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF REDMOND, WASHINGTON DO
ORDAIN AS FOLLOWS:

Section 1. Authority Granted. The City hereby grants to the Franchisee, its heirs, successors, legal representatives, and assigns, subject to the terms and conditions hereinafter set forth, the right, privilege, and authority to construct, operate, maintain, replace, and use all necessary equipment and facilities thereto for the wireless telecommunications facilities described in Exhibit A, which is attached hereto and incorporated by this reference. The Franchisee is authorized to place its telecommunications facilities in, under, on, across, over, through, along, or below the public ways of the City which are designated in Exhibit A and the plans attached thereto or as subsequently approved by the City, and to provide telecommunications services to persons located within the City. Provided, however, that the Franchisee shall apply for and obtain a Right-of-Way Use Permit pursuant to RMC Chapter 12.14.810 prior to site-specific location and installation of any and all such telecommunications facilities, as referred to in Section 9 below.

Section 2. Grant Limited to Occupation and Service. This Franchise merely authorizes Franchisee to occupy and use public ways and offer wireless telecommunications services within the City. As described in Section 9, Work in Public Ways, construction is not authorized without the appropriate land use permits. This Franchise does not and shall not convey any right to Franchisee to install its facilities on, under, over, across, or to otherwise use City-owned or leased properties of any kind outside of the area shown on Exhibit A or to install facilities on, under, over, across or otherwise use any City owned or leased property other than public roads, streets, avenues, alleys and highways. Nothing contained herein shall be construed to grant or convey any right, title, or interest in the public ways of the City to the Franchisee. No substantive expansions, additions to or modifications or relocation of any of the facilities shall be permitted

without first having received prior authorization from the City through an amendment to this Franchise. Written determination by the City granting or denying any proposed amendment to this Franchise shall not be unreasonably withheld or delayed. Under this Franchise, the facilities shall not be used for cable television, cable internet or wireline telephone services.

Section 3. Terms, Conditions, and Provisions of RMC Chapter 12.14 Incorporated by Reference. The terms, conditions, and provisions of RMC Chapter 12.14 are incorporated herein by reference. All rights granted hereunder are subject to the terms, conditions, and requirements of RMC Chapter 12.14 unless this Franchise specifically provides to the contrary. In the event that a conflict exists between the terms of this Franchise and the terms of RMC Chapter 12.14, the terms of this Franchise shall control.

Section 4. Term of Franchise. The term of this Franchise shall be for a period of 5 years from the effective date set forth in Section 41, below, unless sooner terminated. This Franchise may be renewed pursuant to the provisions of RMC Section 12.14.260, as said Section presently exists or is hereafter amended.

Section 5. Non-Exclusive Grant. This Franchise shall not in any manner prevent the City from entering into other similar agreements or franchises in, under, on, across, over, through, along or below any public ways of the City or other City-owned properties, nor from exercising such other powers and authorities granted to the City by law. Further, this Franchise shall in no way prevent or prohibit the City from using any of its public ways or other City-owned properties or affect its jurisdiction over them or any part of them, and the City shall retain power to make all necessary changes, relocations, repairs, maintenance, establishment, improvements, and dedication of the same as the City may deem fit, including the dedication, establishment, maintenance, and improvement of all new public ways and other City-owned properties of every Ordinance No. 2295

type and description.

Section 6. Relocation of Telecommunications Facilities.

A. The Franchisee agrees and covenants, to protect, support, temporarily disconnect, relocate, or remove from any public ways any of its telecommunications facilities when so required by the Public Works Director by reason of traffic conditions and public safety, dedications of new public ways and the establishment and improvement thereof, widening and improvement of existing public ways, street vacations, freeway construction, change or establishment of street grade, or the construction of any public improvement or structure by any governmental agency acting in a governmental capacity; provided that the Franchisee shall in all such cases have the privilege to temporarily bypass, at a location approved by the Public Works Director, any section of cable or any other facility required to be temporarily disconnected or removed. Except as otherwise provided by state law, the cost and expense to protect, support, temporarily disconnect, relocate or remove the Franchisee's facilities from public ways shall be borne solely by the Franchisee.

B. Upon request of the Public Works Director, and in order to facilitate the design of City street and right-of-way improvements, the Franchisee agrees to, at its sole cost and expense, locate, and if reasonably determined necessary by the City, to excavate and expose its telecommunications facilities for inspection so that the location of the same may be taken into account in the improvement design. The decision as to whether said facilities need to be relocated in order to accommodate the City's improvements shall be made by the Public Works Director upon review of the location and construction of the Franchisee's facilities.

C. If the Public Works Director determines that the project necessitates relocation of the Franchisee's facilities, the City shall:

1. Within a reasonable time, which shall be no less than 30 days, prior to the commencement of such improvement project, provide the Franchisee with written notice requiring such relocation; provided, however, that in the event of an emergency posing a threat to the public safety or welfare, or in the event of an emergency beyond the control of the City and which will result in severe financial consequences to the City, the City shall give the Franchisee written notice as soon as practicable; and

2. Provide the Franchisee with copies of pertinent information for such improvement project and a proposed location for the Franchisee's facilities so that the Franchisee may relocate its facilities in other public ways in order to accommodate such improvement project. After receipt of such notice and such pertinent information, the Franchisee shall complete relocation of its facilities so as to accommodate the improvement project at least 10 days prior to commencement of the project.

D. The Franchisee may, after receipt of written notice requesting a relocation of its facilities, submit to the City written alternatives to such relocation. The City shall evaluate such alternatives and advise the Franchisee in writing if one or more of the alternatives are suitable to accommodate the work which would otherwise necessitate relocation of the facilities. If so requested by the City, the Franchisee shall submit additional relevant information to assist the City in making such evaluation. The City shall give each alternative proposed by the Franchisee full and fair consideration, within a reasonable time so as to allow for the relocation work to be performed in a timely manner. In the event the City ultimately determines that there is no other reasonable alternative, the Franchisee shall relocate its facilities as otherwise provided in this Section.

E. The provisions of this Section shall survive the expiration, revocation, or termination of this Franchise; provided that relocation shall not be required after expiration of this Franchise if the City consents to the Franchisee abandoning its facilities in place.

F. The provisions of this Section shall in no manner preclude or restrict the Franchisee from making any arrangements it may deem appropriate when responding to a request for relocation of its facilities by any person or entity other than the City, where the facilities to be

constructed by said person or entity are not or will not become City-owned, operated or maintained facilities provided that such arrangements do not unduly delay a City construction project.

G. The Franchisee will indemnify, hold harmless, and pay the costs of defending the City against any and all claims, suits, actions, damages, or liabilities for delays on City construction projects caused by or arising out of the failure of the Franchisee to relocate its facilities in a timely manner; provided, that the Franchisee shall not be responsible for damages due to delays caused by circumstances beyond the control of the Franchisee. The indemnity provisions of this Section shall survive the expiration, revocation, or termination of this Franchisee.

Section 7. Undergrounding of Facilities.

A. The undergrounding requirements of this Section shall apply where the Franchisee's facilities consist of cable or any other facilities which are capable of being placed underground. This Section shall not apply to antennas or other facilities which are required to remain above ground in order to be functional; provided, however, all other facilities and equipment capable of being installed underground must be undergrounded by Franchisee.

B. The Franchisee shall not be permitted to erect poles or to run or suspend wires, cables or other facilities thereon, but shall lay such wires, cables or other facilities underground in the manner required by the City. The Franchisee acknowledges and agrees the City may, at any time in the future, require the conversion of the Franchisee's existing above-ground and/or aerial facilities to underground installation at the Franchisee's expense as provided by the RMC and RCDG 20D.220.10, or as such Sections may hereafter be amended.

C. Whenever the City requires the undergrounding of above-ground and/or aerial utilities in any area of the City which the City has the legal authority to require to underground without the payment of costs under any tariff, the Franchisee shall underground its

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above-ground and/or aerial facilities in the manner specified by the City, concurrently with and in the area of all the other affected utilities. The location of any such relocated and underground utilities shall be approved by the City. The Franchisee shall underground its facilities at its own expense, but the Franchisee is encouraged to contact and agree with other affected utilities so that all costs for common trenching, common utility vaults and other costs not specifically attributable to the undergrounding of any particular facility are borne fairly and proportionately by all the utilities involved in the underground project. The provisions of this section shall survive the expiration, revocation, or termination of this Franchise. Nothing in this paragraph shall be construed as requiring the City to pay any costs of undergrounding any of the Franchisee's facilities.

Section 8. The Franchisee's Maps and Records. After construction is complete, the Franchisee shall provide the City with accurate copies of all as-built plans, maps, and records. These plans, maps, and records shall be provided at no cost to the City, and shall conform to the requirements of RMC Section 12.14.930. At such time as Franchisee develops or employs Geographic Information System ("GIS") technology, Franchisee shall submit information in digital GIS format, showing the location of its facilities.

Section 9. Work in Public Ways.

A. During any period of relocation, construction, or maintenance, all surface structures, if any, shall be erected and used in such places and positions within said public ways and other public properties so as to interfere as little as possible with the free passage of traffic and the free use of adjoining property, and the Franchisee shall at all times post and maintain proper barricades and comply with all applicable safety regulations during such period of construction as required by the ordinances of the City or the laws of the State of Washington, including RCW 39.04.180 for the construction of trench safety systems.

B. Whenever the Franchisee shall commence any work within a public way, regardless of whether excavation is required, it shall apply to the City for a Right-of-Way Use Permit to do so and, in addition, shall give the City at least 10 working days notice of the Franchisee's intent to commence work in the public ways. The Franchisee shall file plans or maps with the City showing the proposed location of its telecommunications facilities and pay all duly established permit and inspection fees associated with the processing of the permit. In no case shall any work commence within any public way without said permit, except as otherwise provided in this Franchise. During the progress of the work, the Franchisee shall not unnecessarily obstruct the passage or proper use of the public ways, and all work by the Franchisee in any area covered by this Franchise and as described in this Section shall be performed in accordance with City of Redmond Public Works Construction Standards and warranted for a period of 1 year.

C. If either the City or the Franchisee shall at any time plan to make excavations in any area covered by this Franchise and as described in this Section, the party planning such excavation shall afford the other, upon receipt of a written request to do so, an opportunity to share such excavation, PROVIDED THAT:

1. Such joint use shall not unreasonably delay the work of the party causing the excavation to be made;
2. Such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties; and
3. Either party may deny such request for safety reasons.

D. The joint use provisions of this Section shall apply only to joint use by the City and the Franchisee. Nothing in this Section is intended to require the Franchisee to afford other similar users the opportunity to share the Franchisee's excavations. The provisions of this Section shall survive the expiration, revocation, or termination of this Franchise.

E. In the event City desires to design new streets or intersections, renovate existing streets, or make any other public improvements, Franchisee shall at the City's reasonable request, provide the location of Franchisee's underground facilities by either field markings or by locating the facilities on the City's design drawings, and shall provide all other reasonable cooperation and assistance to the City.

Section 10. Restoration after Construction.

A. The Franchisee shall, after installation, construction, relocation, maintenance, removal, or repair of its telecommunications facilities within the public ways, restore the surface of said public ways and any other City-owned property which may be disturbed by the work, to at least the same condition the public way or City-owned property was in immediately prior to any such installation, construction, relocation, maintenance, or repair. The Public Works Director shall have final approval of the condition of such public ways and City-owned property after restoration. All survey monuments which are to be disturbed or displaced by such work shall be referenced and restored, as per WAC 332-120, as the same now exists or may hereafter be amended, and all pertinent federal, state and local standards and specifications, including, but not limited to, the City of Redmond Benchmark System's second order, first class specifications. The Franchisee agrees to promptly complete all restoration work and to promptly repair any damage caused by such work to the public ways or other affected area at its sole cost and expense according to the time and terms specified in the Right-of-Way Use Permit issued by the City and in Chapter 12.08 of the Redmond Municipal Code, as the same now exists or as it may hereafter be amended or superseded. The provisions of this Section shall survive the expiration, revocation, or termination by other means of this Franchise. All work by the Franchisee pursuant to this Section shall be performed in accordance with City of Redmond Public Works construction standards and Ordinance No. 2295

warranted for a period of one (1) year. In the event the Franchisee does not repair a right-of-way or an improvement in or to a right-of-way, the City may repair the damage and shall be reimbursed within ten (10) days of submitting an invoice to Franchisee.

B. The Franchisee shall not excavate for a distance of more than one hundred feet (100'), or a length otherwise approved by the City, without immediately backfilling and compacting to surface grade and City standards. Backfilled trench areas within a driving lane must be patched, either temporarily or permanently, before the end of the work day in which they have been opened. Trench areas within the public ways, but not within a driving lane, must also be patched within the time limits specified by the City on the Right-of-Way Use Permit. Final surface restoration shall be completed within thirty (30) days and shall be equal to or better than the surface condition prior to permit issuance.

C. Any asphalt overlay during the five (5) year-period immediately prior to the date of permit application shall not be open cut by Franchisee unless required by an emergency. Franchisee shall install new asphalt overlay on any street that is open cut, whether in an emergency or otherwise, according to the following standards:

1. For a parallel (longitudinal) open cut confined to one lane that does not come within two feet of another lane, the Franchisee shall install new asphalt overlay for the entire lane for the length of the open cut plus an additional five feet from both ends of the open cut. If within two feet of another lane, the Franchisee shall install new asphalt overlay for both lanes for the length of the open cut plus an additional five feet from both ends of the open cut. In either case the length of the overlay shall be a minimum of fifty feet.

2. For a perpendicular (transverse) open cut, the Franchisee shall install new asphalt overlay for all lanes affected by the open cut, including lanes within two feet of either end of the open cut, for a minimum of fifty feet (twenty-five feet in each direction).

3. Installation of new asphalt overlay by the Franchisee shall include a 2" grind for the length of the prescribed overlay.

D. Franchisee shall comply with RMC Section 12.14.930 and shall also provide to the
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City, if so requested by the City, plans stamped by a Professional Engineer licensed by the State of Washington showing the "as built" location of the facilities.

Section 11. Emergency Work -- Permit Waiver. In the event of any emergency in which any of the Franchisee's telecommunications facilities located in, above, or under any public way breaks, are damaged, or if the Franchisee's construction area is otherwise in such a condition as to immediately endanger the property, life, health, or safety of any individual, the Franchisee shall immediately take the proper emergency measures to repair its facilities, to cure or remedy the dangerous conditions for the protection of property, life, health, or safety of individuals without first applying for and obtaining a permit as required by this Franchise. However, this shall not relieve the Franchisee from the requirement of notifying the City of the emergency work and obtaining any permits necessary for this purpose after the emergency work. The Franchisee shall notify the City by telephone immediately upon learning of the emergency and shall apply for all required permits not later than the second succeeding day during which the Redmond City Hall is open for business. The City will endeavor to notify Franchisee as soon as possible of any emergency that requires the City to turn off Franchisee's equipment.

Section 12. Dangerous Conditions, Authority for City to Abate. Whenever construction, installation, or excavation of telecommunications facilities authorized by this Franchise has caused or contributed to a condition that appears to substantially impair the lateral support of the adjoining public way, street, or public place, or endangers the public, street utilities, or City-owned property, the Public Works Director may direct the Franchisee, at the Franchisee's own expense, to take action to protect the public, adjacent public places, City-owned property, streets, utilities, and public ways. Such action may include compliance within a prescribed time.

In the event that the Franchisee fails or refuses to promptly take the actions directed
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by the City, or fails to fully comply with such directions, or if emergency conditions exist which require immediate action, the City may enter upon the property and take such actions as are necessary to protect the public, the adjacent streets, utilities, public ways, to maintain the lateral support thereof, or actions regarded as necessary safety precautions; and the Franchisee shall be liable to the City for the costs thereof. The provisions of this Section shall survive the expiration, revocation, or termination by other means of this Franchise.

Section 13. Recovery of Costs. The Franchisee shall be subject to all permit fees associated with activities undertaken through the authority granted in this Franchise or under the laws of the City. Where the City incurs reasonable costs and expenses for which a fee is not established, including but not limited to attorneys, consultants, City Staff, and City Attorney's Office, in connection with the review, inspection, or supervision of activities undertaken through the authority granted in this Franchise or any ordinances relating to the subject, the Franchisee shall reimburse the City directly for any and all costs after receiving an invoice documenting said costs and expenses in sufficient detail to demonstrate that they were reasonably necessary to perform the aforementioned actions.

In addition to the above, the Franchisee shall promptly reimburse the City for any and all costs the City reasonably incurs in response to any emergency involving the Franchisee's telecommunications facilities.

Franchisee shall within thirty (30) days after written demand reimburse the City upon submittal by the City of an itemized billing by project of costs and expenses associated with matters referred to in this Section 13, and for the Franchisee's proportionate share of all actual, identified expenses incurred by the City in planning, constructing, installing, repairing or altering any City facility as the result of the presence in the right-of-way of the Franchisee's facilities. Such Ordinance No. 2295

costs and expenses shall include but not be limited to the Franchisee's proportionate cost of City personnel assigned to oversee or engage in any work in the public ways as the result of the presence of the Franchisee's facility in the public ways. Such costs and expenses shall also include the Franchisee's proportionate share of any time spent reviewing construction plans in order to either accomplish the relocation of the Franchisee's facilities or the routing or rerouting of any utilities so as not to interfere with the Franchisee's facilities.

The time of City employees shall be charged at their respective rate of salary, including overtime if applicable, plus benefits and overhead. Any other costs will be billed proportionately on an actual cost basis. All billings will be itemized so as to specifically identify the costs and expenses for each project for which the City claims reimbursement. A charge for the actual costs incurred in preparing the billing may also be included in said billing. The billing may be on an annual basis or sooner, but the City shall provide the Franchisee with the City's itemization of costs at the conclusion of each project for information purposes.

Section 14. City's Reservation of Rights. Pursuant to RCW Section 35.21.860, the City is precluded from imposing a fee on a "telephone business" as defined in RCW 82.04.065, except for administrative expenses or any applicable tax authorized by RCW 35.21.865. This Franchise is premised upon the City and Franchisee's understanding that the activities proposed by the Franchisee constitute a "telephone business." As such, the rights granted under this Franchise are not conditioned upon payment of compensation in addition to reimbursement for administrative costs as set forth in Section 13 herein and payment of the utility tax set forth in RMC Chapter 5.44. The City hereby reserves its right to impose a fee on the Franchisee, to the extent authorized by law, for purposes other than to recover its administrative expenses, if the Franchisee's operations are not those of a "telephone business" as defined in RCW 82.04.065, if the Franchisee's operations are

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now those of a telephone business and change in the future, or if statutory prohibitions on the imposition of such fees are removed. The City also reserves its right to require that the Franchisee obtain a separate agreement for its change in use, which agreement may include provisions intended to regulate the Franchisee's operations, as allowed under applicable law.

Section 15. Coordination of Construction. In accordance with RMC 12.14.660, Franchisee shall coordinate its construction activities and joint trenching activities.

Section 16. Indemnification and Waiver.

A. Franchisee hereby releases, covenants not to bring suit and agrees to indemnify, defend and hold harmless the City, its elected and appointed officers, officials, employees, agents, engineers, consultants, volunteers and representatives from any and all claims, costs, judgments, awards or liability to any person arising from injury, sickness, or death of any person or damage to property:

1. For which the negligent acts or omissions of Franchisee, its agents, servants, officers or employees in performing the activities authorized by this Franchise are the proximate cause;
2. By virtue of Franchisee's exercise of the rights granted herein;
3. By virtue of the City's permitting Franchisee's use of the City's public ways or other public property;
4. Based upon the City's inspection or lack of inspection of work performed by Franchisee, its agents and servants, officers or employees in connection with work authorized on the facility or property over which the City has control, pursuant to this Franchise or pursuant to any other permit or approval issued in connection with this Franchise;
5. Arising as a result of the negligent acts or omissions of Franchisee, its agents, servants, officers or employees in barricading, instituting trench safety systems or providing other adequate warnings of any excavation, construction, or work upon the facility, in any public way, or other public place in performance of work or services permitted under this Franchise;

6. Based upon radio frequency emissions or radiation emitted from Franchisee's equipment located upon the facility, regardless of whether Franchisee's equipment complies with applicable federal statutes and/or FCC regulations related thereto.

B. Franchisee's indemnification obligations pursuant to Subsection A of this Section shall include assuming potential liability for actions brought by Franchisee's own employees and the employees of Franchisee's agents, representatives, contractors, and subcontractors even though Franchisee might be immune under Title 51 RCW from direct suit brought by such employees. It is expressly agreed and understood that this assumption of potential liability for actions brought by the aforementioned employees is with respect to claims against the City arising by virtue of Franchisee's exercise of the rights set forth in this Franchise. The obligations of Franchisee under this Subsection B have been mutually negotiated by the parties hereto, and Franchisee acknowledges that the City would not enter into this Franchise without Franchisee's waiver thereof. To the extent required to provide this indemnification and this indemnification only, Franchisee waives its immunity under Title 51 RCW as provided in RCW 4.24.115.

C. Inspection or acceptance by the City of any work performed by Franchisee at the time of completion of construction shall not be grounds for avoidance of any of these covenants of indemnification. Provided that Franchisee has been given prompt written notice by the City of any such claim, said indemnification obligations shall also extend to claims which are not reduced to a suit and any claims which may be compromised prior to the culmination of any litigation or the institution of any litigation. In the event any action or proceeding shall be brought against the City resulting from Franchisee's operations hereunder, Franchisee shall, at Franchisee's sole cost and expense, resist and defend the same provided, however, that Franchisee shall not admit liability in

any such manner on behalf of the City without the written consent of the City. Nothing herein shall be deemed to prevent City from cooperating with Franchisee and participating in the defense of any litigation with City's own counsel. Franchisee shall pay all expenses incurred by City in response to any such actions, suits or proceedings. These expenses shall include all out-of-pocket expenses such as attorneys' fees and shall also include the reasonable value of any services rendered by the City Attorney's Office, and the actual expenses of City's agents, employees, consultants and expert witnesses and disbursements and liabilities incurred by the City in connection with such suits, actions or proceedings. The City has the right to defend or participate in the defense of any such claim, and has the right to approve any settlement or other compromise of any such claim.

D. In the event that Franchisee refuses the tender of defense in any suit or any claim, said tender having been made pursuant to this Section, and said refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter) to have been a wrongful refusal on the part of Franchisee, then Franchisee shall pay all of the City's costs for defense of the action for which tender was refused, including all reasonable expert witness fees and reasonable attorneys' fees. The Franchisee shall also pay the reasonable costs of the City and reasonable attorneys' fees incurred by the City in bringing any action to recover under this Subsection.

E. The obligations of Franchisee under the indemnification provisions of this Section shall apply regardless of whether liability for damages arising out of bodily injury to persons or damages to property were caused or contributed to by the concurrent negligence of the City, its officers, agents, employees or contractors. The provisions of this Section, however, are not to be construed to require the Franchisee to hold harmless, defend or indemnify the City as to any claim, demand, suit or action which arises out of the sole negligence of the City. In the event that a

court of competent jurisdiction determines that this Franchise is subject to the provisions of RCW 4.24.115, the parties agree that the indemnity provisions hereunder shall be deemed amended to provide that the Franchisee's obligation to indemnify the City hereunder shall extend only to the extent of Franchisee's negligence.

F. Notwithstanding any other provisions of this Section, Franchisee assumes the risk of damage to its telecommunications facilities located in the public ways and upon City-owned property from activities conducted by the City, its officers, agents, employees and contractors, except to the extent any such damage or destruction is caused by or arises from the sole negligence, any willful or malicious action on the part of the City, its officers, agents, employees or contractors. Franchisee releases and waives any and all such claims against the City, its officers, agents, employees and contractors. Franchisee further agrees to indemnify, hold harmless and defend the City against any claims for damages, including, but not limited to, business interruption damages and lost profits, brought by or under users of Franchisee's facilities as the result of any interruption of service due to damage or destruction of Franchisee's facilities caused by or arising out of activities conducted by the City, its officers, agents, employees or contractors, except to the extent any such damage or destruction is caused by or arises from the sole negligence or any willful or malicious actions on the part of the City, its officers, agents, employees or contractors.

G. The provisions of this Section shall survive the expiration, revocation, or termination of this Franchise.

Section 17. Insurance. The Franchisee shall procure and maintain for the duration of the Franchise, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of the rights, privileges and authority granted hereunder to the Franchisee, its agents, representatives or employees. Prior to the Ordinance No. 2295

commencement of any work or installation of any facilities pursuant to this Franchise, the Franchisee shall provide to the City for its inspection an insurance certificate, together with an endorsement copy, naming the City, its officers, elected officials, agents, employees, representatives, engineers, consultants and volunteers as additional insureds under the Commercial General Liability, Automobile Liability and Comprehensive Form policies, and such insurance certificate shall evidence:

- A. Comprehensive general liability insurance, written on an occurrence basis, with limits not less than:
 - (1) \$2,000,000.00 for bodily injury or death to each person;
 - (2) \$2,000,000.00 for property damage resulting from any one accident;
 - and
 - (3) \$2,000,000.00 for all other types of liability;
- B. Automobile liability for owned, non-owned and hired vehicles with a limit of \$2,000,000.00 for each person and \$2,000,000.00 for each accident;
- C. Worker's compensation within statutory limits and employer's liability insurance with limits of not less than \$1,000,000.00; and
- D. Comprehensive Form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than \$2,000,000.00.

The liability insurance policies required by this Section shall be maintained by the Franchisee throughout the term of this Franchise, and such other period of time during which the Franchisee is operating without a Franchise hereunder, or is engaged in the removal of its telecommunications facilities. Failure to maintain such insurance shall be grounds for Franchise cancellation. Any deductibles or self-insured retentions must be declared to and approved by the City. Payment of deductibles and self-insured retentions shall be the sole responsibility of the Franchisee and must be declared to and approved by the City. The insurance certificate required by this Section shall contain a clause stating that coverage shall apply separately to each insured

against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. The Franchisee's insurance shall be primary insurance with respect to the City, its elected and appointed officers, officials, employees, agents, representatives, engineers, consultants, and volunteers. Any insurance maintained by the City, its elected and appointed officers, officials, employees, consultants, agents, representatives, engineers and volunteers shall be in excess of the Franchisee's insurance and shall not contribute with Franchisee's insurance.

In addition to the coverage requirements set forth in this Section, each such insurance policy and insurance certificate shall contain the following endorsement and cancellation clause:

"Should any of the required policies be cancelled or reduced as to coverage before the expiration date thereof, the issuing company will mail sixty (60) days written notice to the certificate holder, the City of Redmond, the named additional insured"

Within thirty (30) days after receipt by the City of said notice, and in no event later than fifteen (15) days prior to said cancellation or intent not to renew, the Franchisee shall obtain and furnish to the City a replacement insurance certificate meeting the requirements of this Section.

Section 18. Abandonment and Removal of the Franchisee's Facilities. Upon the expiration, termination, or revocation of the rights granted under this Franchise, and consistent with the provisions of RMC Chapter 12.14, the Franchisee shall remove all of its telecommunications facilities from the public ways of the City within 90 days of receiving notice from the Public Works Director. Except as specifically provided by RMC Chapter 12.14, the Franchisee shall not be allowed to abandon any of its telecommunications facilities within the public ways of the City or upon City-owned property.

Section 19. Commencement of Construction. Construction of the facilities

contemplated by this Franchise shall commence no later than one year after the effective date of this Franchise; provided that such time limit shall not apply to delays caused by acts of God, strikes, eminent domain litigation or other occurrences over which the Franchisee has no control.

Section 20. Restoration Bond. Per RMC Section 12.14.650, before undertaking any of the work, installation, improvements, construction, repair, relocation, removal or maintenance authorized or required by this Franchise, the Franchisee shall furnish a performance bond written by a corporate surety acceptable to the City equal to at least 100% of the estimated cost of completing or removing the Franchisee's telecommunications equipment and facilities and restoring the public ways of the City to their pre-construction condition. Said bond shall be required to remain in full force until sixty (60) days after completion of the construction or removal of the Franchisee's facilities. The Franchisee shall warrant all such construction, improvements, and/or restoration work for a period of one (1) year. The purpose of this Bond is to guarantee completion or removal of partially completed and/or nonconforming telecommunications facilities and other improvements installed by Franchisee, or removal of such facilities upon expiration, termination, or revocation of this Franchise, and to fully restore the public ways to its pre-construction condition.

Section 21. Security Fund. Before undertaking any of the work, installation, improvements, construction, repair, relocation or maintenance authorized by this Franchise, the Franchisee shall establish a permanent security fund in the amount of \$10,000 00 to guarantee the full and complete performance of the requirements of this Franchise, the requirements of RMC Chapter 12.14, and to guarantee payment of any costs, expenses, damages, or loss the City pays or incurs, including civil penalties, because of any failure attributable to the Franchisee to comply with the codes, ordinances, rules, regulations, or permits of the City. Prior to withdrawal of any funds

from the security fund, the City shall comply with the provisions of RMC Section 12.14.640 as that section presently exists or is hereafter amended. The Franchisee may provide, in lieu of a cash security deposit to the City, an unconditional letter of credit made out to the City, or bond in the amount of ten-thousand dollars (\$10,000.00) to secure performance under this Franchise. The letter of credit or bond shall be in a form acceptable to the City Attorney.

Section 22. Modification. Subject to the provisions of RMC Section 12.14.250, the City and the Franchisee hereby reserve the right to alter, amend or modify the terms and conditions of this Franchise upon written agreement of both parties to such alteration, amendment or modification.

Section 23. Forfeiture and Revocation. The rights granted under this Franchise may be revoked or forfeited as provided in RMC Chapter 12.14 as said Chapter presently exists or is hereafter amended. The failure of the City to insist upon strict performance of any of the covenants and agreements of this Franchise or to exercise any option herein conferred in any one or more instances, shall not be construed to be a waiver or relinquishment of any such covenant, agreement or option or any other covenant, agreement or option.

Section 24. Remedies to Enforce Compliance. In addition to other processes and remedies set forth herein, if Franchisee shall fail to comply with any of the provisions of this Franchise, the City may serve a written notice to Franchisee ordering such compliance and except as otherwise provided herein or Chapter 12.14. Franchisee shall have thirty (30) days from Franchisee's receipt of such notice in which to comply. In addition to any other remedy provided in this Franchise or within RMC Chapter 12.14, the City reserves the right to pursue any remedy to compel or force the Franchisee and/or its successors and assigns to comply with the terms hereof, and the pursuit of any right or remedy by the City shall not prevent the City from thereafter

declaring a forfeiture or revocation for breach of the conditions herein. Any remedies provided for under the terms of this Franchise are not intended to be exclusive but shall be cumulative with all other remedies available to the City at law, in equity or by statute.

Section 25. City Ordinances and Regulations. Nothing herein shall be deemed to direct or restrict the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of this Franchise, including any valid ordinance made in the exercise of its police powers in the interest of public safety and for the welfare of the public. The City shall have the authority at all times to control by appropriate regulations the location, elevation, manner of construction and maintenance of any telecommunications facilities by the Franchisee, and the Franchisee shall promptly conform with all such regulations, unless compliance would cause the Franchisee to violate other requirements of law.

Section 26. Survival. All of the provisions, conditions and requirements of Sections 6, Relocation of Telecommunications Facilities; 7, Undergrounding of Facilities; 9, Work in Public Ways; 10, Restoration after Construction; 12, Dangerous Conditions, Authority for City to Abate; 16, Indemnification and Waiver; 17, Insurance; and 18, Abandonment and Removal of the Franchisee's Facilities, of this Franchise shall be in addition to any and all other obligations and liabilities the Franchisee may have to the City at common law, by statute, or by contract, and shall survive the expiration or termination of this Franchise, and any renewals or extensions thereof. All of the provisions, conditions, regulations and requirements contained in this Franchise shall further be binding upon the heirs, successors, executors, administrators, legal representatives and assigns of the Franchisee and all privileges, as well as all obligations and liabilities of the Franchisee shall inure to its heirs, successors and assigns equally as if they were specifically mentioned wherever the Franchisee is named herein.

Section 27. Non-Severability. Each term and condition of this Franchise is an integral part of the consideration given by each party and as such, the terms and conditions of this Franchise are not severable. If any section, sentence, clause or phrase of this Franchise should be held to be invalid or unconstitutional by a court of competent jurisdiction, this Franchise shall terminate unless suitable replacement terms can be agreed to by the parties.

Section 28. Assignment. This Franchise may not be assigned or transferred except as provided in RMC Chapter 12.14, except that the Franchisee may freely assign this Franchise in whole or in part to a parent, subsidiary, or affiliated corporation or as part of any corporate financing, reorganization or refinancing. In the case of transfer or assignment as security by mortgage or other security instrument in whole or in part to secure indebtedness, such consent shall not be required unless and until the secured party elects to realize upon the collateral. The Franchisee shall provide prompt, written notice to the City of any such transfer or assignment.

Section 29. Notice. Any notice or information required or permitted to be given to the parties under this Franchise may be sent to the following addresses unless otherwise specified:

City:
City of Redmond
Director of Public Works
15670 N.E. 85th Street
P.O. Box 97010
Mail Stop CHPWE
Redmond, WA 98073-9710

Franchisee:
T-Mobile West Corporation
ATTN: Lease Administration
19807 North Creek Parkway North, Suite 101
Bothell, WA 98011

Section 30. Entire Agreement. Except for the terms and conditions of applicable and future laws, ordinances, rules, regulations and other City land use approvals, authorizations or permits or related communications, this Franchise constitutes the entire understanding and agreement between the parties as to the subject matter herein and no other agreements or Ordinance No. 2295

understandings, written or otherwise, shall be binding upon the parties upon execution of this Franchise. With respect to the area affected by this Franchise, this Franchise supersedes all previous franchises and agreements between the parties and any such agreements are hereby cancelled.

Section 31. Eminent Domain. The existence of this Franchise shall not preclude the City from acquiring by condemnation, in accordance with applicable law, all or a portion of Franchisee's facilities for the fair market value thereof. In determining the value of such facilities, no value shall be attributed to the right to occupy the area conferred by this Franchise.

Section 32. Vacation. If at any time the City, by ordinance, vacates all or any portion of the area affected by this Franchise, the City will not be liable for any damages or loss to the Franchisee by reason of such vacation. The City shall notify Franchisee in writing not less than sixty (60) days before vacating all or any portion of such area. The City may, after sixty (60) days written notice to Franchisee, terminate this Franchise with respect to such vacated area.

Section 33. Acceptance. Within 60 days after the passage and approval of this ordinance, this Franchise may be accepted by Franchisee filing with the City Clerk an unconditional written acceptance thereof. Failure of the Franchisee to so accept this franchise within said period of time shall be deemed a rejection thereof, and the rights and privileges herein granted shall, after the expiration of the 60 day period, absolutely cease and determine, unless the time period is extended by ordinance duly passed for that purpose.

Section 34. Lights, Signs and Symbols. All lights, signs or symbols placed by the Franchisee shall be subject to the prior approval of the City. In the event Franchisee shall place lights, signs or symbols where they are visible from the street and not acceptable to the City, the City may demand the immediate removal of such lights, signs or symbols and the refusal of Franchisee to comply with such demand within twenty-four (24) hours will constitute a breach of

this Franchise, thereby entitling the City to exercise any available legal remedy and to remove the lights, signs or symbols.

Section 35. Compliance with All Applicable Laws. Franchisee agrees to comply with all present and future federal, state and local laws, ordinances, rules and regulations. This Franchise is subject to ordinances of general applicability enacted pursuant to the City's police powers. Franchisee further agrees to save and hold the City harmless from damage, loss or expense arising out of the said use or work, unless caused by the City's sole negligence and to remove all liens or encumbrances arising as a result of said use or work. Franchisee shall at its own expense maintain its facilities in a safe condition, in good repair and in a manner suitable to the City. Additionally, Franchisee shall keep its facilities free of debris and anything of a dangerous, noxious or offensive nature or which would create a hazard or undue vibration, heat, noise or any interference with City services.

Section 36. Attorneys' Fees. If a suit or other action is instituted in connection with any controversy arising out of this Franchise, the prevailing party shall be entitled to recover all of its costs and expenses, including such sum as the Court may judge as reasonable for attorneys' fees, costs, expenses and attorneys' fees upon appeal of any judgment or ruling.

Section 37. Hazardous Substances. Franchisee shall not introduce or use any hazardous substances (chemical or waste) in violation of any applicable law or regulation, nor shall Franchisee allow any of its agents, contractors or any other person under its control to do the same. Franchisee will be solely responsible for and will defend, indemnify, and hold the City, its agents and employees harmless from and against any and all direct claims, costs and liabilities including reasonable attorneys' fees and costs, arising out of or in connection with the cleanup or restoration of the property associated with Franchisee's use, storage, or disposal of hazardous substances or the use, storage or disposal of such substances by Franchisee's agents, contractors or other persons

acting under Franchisee's control.

Section 38. Licenses, Fees and Taxes. Prior to constructing any improvements, Franchisee shall obtain a Business License from the City and a Telecommunications Business Registration if required by the RMC. Franchisee shall pay promptly and before they become delinquent all taxes on all personal property and improvements owned or placed by Franchisee and shall pay all license fees and public utility charges relating to the conduct of its business; shall pay for all permits, licenses and zoning approvals, shall pay any other applicable tax unless documentation of exemption is provided to the City and shall pay utility taxes and Business License fees imposed by the City.

Section 39. Notice of Tariff Changes. The Franchisee shall, when making application for any changes in tariffs affecting the provisions of this Franchise, notify the City in writing of the application and provide the Public Works Director with a copy of the submitted application within three days of filing with the Washington Utilities and Transportation Commission or other regulatory body. The Franchisee shall further provide the Public Works Director with a copy of any actual approved tariff change affecting the provisions of this Franchise.

Section 40. Miscellaneous.

A. City and Franchisee respectively represent that its signatory is duly authorized and has full right, power and authority to execute this Franchise.

B. This Franchise shall be construed in accordance with the laws of the State of Washington.

C. Section captions and headings are intended solely to facilitate the reading thereof. Such captions and headings shall not affect the meaning or interpretation of the text herein.

D. Where the context so requires, the singular shall include the plural and the plural includes the singular.

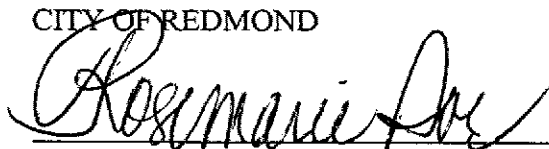
E. Franchisee shall be responsible for obtaining all other necessary approvals, authorizations and agreements from any party or entity and it is acknowledged and agreed that the City is making no representation, warranty or covenant whether any of the foregoing approvals, authorizations or agreements are required or have been obtained by Franchisee from any person or entity.

F. This Franchisee may be enforced at both law and equity.

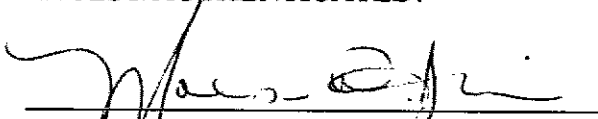
G. This Franchise may be executed in duplicate counterparts, each of which shall be deemed an original.

H. Franchisee acknowledges that it, and not the City, shall be responsible for the premises and equipment's compliance with all marking and lighting requirements of the FAA and the FCC. Franchisee shall indemnify and hold the City harmless from any fines or other liabilities caused by Franchisee's failure to comply with such requirements. Should the Franchisee or the City be cited by either the FCC or the FAA because the premises or the Franchisee's equipment is not in compliance and should Franchisee fail to cure the conditions of noncompliance within the timeframe allowed by the citing agency, the City may either terminate this Franchise immediately on notice to Franchisee or proceed to cure the conditions of noncompliance at Franchisee's expense.

Section 41. Effective Date. This ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect five days after passage and publication of an approved summary thereof consisting of the title.

CITY OF REDMOND

MAYOR ROSEMARIE IVES

ATTEST/AUTHENTICATED:



CITY CLERK, MALISA FILES

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

By: 

JAMES E. HANEY

FILED WITH THE CITY CLERK:	August 3, 2006
PASSED BY THE CITY COUNCIL:	August 8, 2006
SIGNED BY THE MAYOR:	August 9, 2006
PUBLISHED:	August 14, 2006
EFFECTIVE DATE:	August 19, 2006
ORDINANCE NO. <u>2295</u>	

ACCEPTANCE

The undersigned hereby accepts all the rights and privileges of the above granted Franchise and acknowledges that such rights and privileges are subject to and limited by all of the terms, conditions and obligations contained therein.

DATED this ____ day of _____, 2006.

By: _____

Print Name: _____

Its: _____