

**ORDINANCE NO. 211**

**AN ORDINANCE REPLACING AND REPEALING ORDINANCE 154 AND ORDINANCE 209, THE CITY OF DETROIT'S FRANCHISE AGREEMENT WITH VERIZON NORTHWEST INC. (FORMERLY GTE NORTHWEST INC.)**

AN ORDINANCE GRANTING TO VERIZON NORTHWEST INC SOMETIMES REFERRED TO AS "GRANTEE", ITS SUCCESSORS AND/OR ASSIGNS, THE FRANCHISE RIGHT AND PRIVILEGE TO PLACE, ERECT, LAY, MAINTAIN AND OPERATE IN, UPON, OVER AND UNDER THE STREETS, ALLEYS, AVENUES, THOROUGHFARES AND PUBLIC HIGHWAYS, PLACES AND GROUNDS WITHIN THE CITY OF DETROIT, POLES, WIRES WHETHER COPPER, FIBER OPTIC OR OTHER TECHNOLOGY, AND OTHER APPLIANCES AND CONDUCTORS FOR ALL TELEPHONE AND OTHER COMMUNICATION PURPOSES; FIXING THE CONSIDERATION TO BE PAID BY SAID GRANTEE UNDER SAID FRANCHISE, THE TERM THEREOF AND THE MODE OF ACCEPTANCE OF SAID GRANT BY SAID GRANTEE, AND DECLARING AN EMERGENCY

**THE CITY OF DETROIT, OREGON ORDAINS AS FOLLOWS:**

**SECTION 1.** There is hereby granted by the City of Detroit ("City") to Verizon Northwest Inc, its successors and/or assigns, the exclusive right and privilege within said City to place, erect, lay, maintain and operate in, upon, over and under the streets, alley, avenues, thoroughfares and public highways within the said City, poles, wires whether copper, fiber optic or other technology and other appliances and conductors for all telephone and other communication purposes. Such wires and other appliances and conductors may be strung upon poles or other fixtures above ground, or at the option of the Grantee, its successors and/or assigns, may be laid underground in pipes or conduits or otherwise protected, and such other apparatus may be used as may be necessary or proper to operate and maintain the same. In locations where aerial or above ground utility facilities (including aerial cable supports) exist as of the effective date of this Franchise, Grantee shall be allowed to overbuild, upgrade, maintain, replace or add to its existing aerial facilities and supporting structures unless all facilities, in such area have been mandated to be placed underground per a plan as outlined by the City in accordance with ORS 758.210 – ORS 758.270. Grantee shall be allowed to place above ground, in locations approved by the City, its fiber distribution hubs, cross connect/digital subscriber line boxes and other cabinet type facilities that are normally placed above ground.

**SECTION 2.** It shall be lawful for Verizon Northwest Inc, its successors and/or assigns to make all needful excavations and erections in any of such streets, alleys, avenues, thoroughfares and public highways, in said City for the purpose of placing, erecting, laying and maintaining poles or other supports or conduits, for said wires whether copper, fiber optic or other technology and appliances and auxiliary apparatus or repairing, renewing or replacing the same. All work, erections, erections of poles and appliances and laying of wires shall be done in compliance with such necessary rules, regulations, ordinances, or orders now in affect. City will enter discussions with Grantee to achieve acceptable solutions to issues identified by Grantee regarding proposed changes to City ordinances, resolutions, rules or orders whenever such discussions are practicable. Grantee must comply with future City ordinances, resolutions, rules and orders that generally apply to the reasonable management of the safety and use of public rights of way within the City. However, by entering this Agreement Grantee is not waiving its right to challenge or otherwise dispute the legality, validity, or enforceability of any changes to City ordinances, resolutions, rules or orders enacted after the effective date of this ordinance. In addition, this ordinance does not require Grantee to comply with existing or future ordinances, resolutions, rules or orders that conflict with any specific provision of this ordinance or that apply only to Grantee.



The word “necessary”, as used in the paragraph shall mean such rules, regulations, ordinances or orders as the City Council may deem necessary to manage the safety of the right of way and to protect the public and any member of the public residing within the City, who might be affected by any excavation work or installation of the Grantee. Grantee shall furnish to City at least annually a certificate of insurance insuring against the risks of personal injury, bodily injury and property damage in the minimum amounts and coverage provided for by City ordinance as of the effective date of this Ordinance, naming City as additional insured against those risks for any act or omission that is not an intentional wrongful act of City and including the following statement: “It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until 30 days after receipt by the City, be registered mail, of a written notice addressed to the City of such intent to cancel or not to renew.” When City determines that the nature and performance of Grantee’s work on Property requires separate assurance that the work will be complete or that the work shall be maintained against defects in material or workmanship, after notice and an opportunity to Grantee to cure any defect, City may require Grantee to furnish City a performance or maintenance bond for the estimated value of all work on the Property for the stated interval to insure compliance by Grantee Northwest Inc with rules, regulations, ordinances and orders of the Council relating to its operations within the City as provided for under this section.

Any act done by any contractor or subcontractor contracting with Grantee shall, for the purpose of this franchise, be deemed to be the act of Grantee.

Prior to commencing ordinary construction, extension, or relocation of any of the Grantee’s conduit facilities or pole leads in the streets or public places within the City, the Grantee shall give the City reasonable advance notice by advising the City’s Engineering and Building Department of the location of the proposed construction, extension or relocation for purposes of utility location in accordance with the Call Before You Dig requirements of the Oregon Revised Statutes. Grantee shall obtain approval from the City Engineer prior to commencement of such construction. Permit applications shall be signed by an authorized representative of Grantee and include a map or blueprint, as maintained in the ordinary course of business, showing the location of all proposed excavations, pipes, conduits or other apparatus. Grantee shall not be required to have the map, blueprint or permit application signed or stamped by a registered or professional engineer. Grantee shall not be required to obtain prior approval or provide notice of construction, permit applications or maps/blueprints for 1) Customer service connections/drops, repairs or maintenance that does not require cutting or breaking of the roadway, curb or sidewalk, and 2) Routine maintenance or repair of Equipment, and the installation of new replacement cables or wires on existing aerial facilities, when the installation, maintenance or repair will not impact vehicular traffic by closing or blocking a lane of vehicular travel for more than two (2) hours.

If requested by the City, Grantee shall furnish City with record drawings as maintained in the ordinary course of business showing Grantee’s facilities within the public right of way in a format (electronic or hard copy) acceptable to City and Grantee within 60 days after such work is complete. Drawings shall be certified by an authorized representative of Grantee and Grantee shall not be required to have the drawings signed or stamped by a registered or professional engineer. While it is not anticipated that the furnishing of record drawings would require disclosure of sensitive proprietary information of Grantee, in the event that such sensitive proprietary information is nevertheless included and Grantee requests confidentiality of such information the City will maintain confidentiality of such sensitive proprietary information to the extent permitted under Oregon Public Records Law including, without limitation, ORS 192.502(4).

**SECTION 3.** Whenever Grantee, its successors and/or assigns, shall disturb any streets, alleys, highways, or other public places for the purposes aforesaid, it shall restore the same to a condition at least equal to the condition which existed prior to construction, unless the City allows Grantee to restore such area to a lesser standard, as soon as practical without unnecessary delay, and failing to do so the City shall



have the right to set a reasonable time within which such repairs and restoration of streets and other public places shall be completed, and to notify Grantee in writing of its time requirement for repair and restoration, and upon failure of such repairs being made by said Grantee, its successors and/or assigns, within the time so reasonably prescribed, the said City may cause such repairs to be made at the expense of said Grantee, its successors and/or assigns after having provided Grantee, its successors or assigns, with written notice and an opportunity to cure. Restoration to the condition that existed before excavation or construction does not require Grantee to restore areas larger than the areas of excavation and construction.

The City may cause the Grantee to relocate, in a like manner, any pole, underground conduit or equipment belonging to the Grantee whenever the relocation is for public necessity, and the cost shall be borne by the Grantee unless such cost is chargeable by law or tariff to another party, necessitated for the benefit of a third party other than the City or for a commercial purpose of the City. Whenever it is a public necessity to remove a pole, underground conduit, or equipment belonging to the Grantee or on which a wire or circuit of the Grantee is stretched or fastened, the Grantee, shall, upon 60 days written notice from the City, meet with City representatives and agree in writing to a plan and date certain to remove such poles, underground conduit, equipment, wire, or circuit at Grantee's expense. If Grantee fails, neglects, or refuses to do so, the City, may remove it at Grantee's expense. "Relocation for public necessity" shall mean removal or relocation to accommodate the construction or reconstruction of transportation roadways that are undertaken and funded by the Oregon Department of Transportation or by the City; it shall not include relocation to accommodate private or third party construction of public infrastructure that is required as a condition of approval of private property development or redevelopment. When facilities are relocated for aesthetic purposes; for commercial purpose of the City or for the benefit of a third party other than the City, the cost shall be borne by the party requesting relocation. "Third party activity" includes any activity conducted under a site/building development permit issued to a private party pursuant to the city code.

**SECTION 4.** Nothing in this ordinance shall be construed in any way to prevent the proper authorities of the City from putting in a sewer system, grading, rocking, paving, repairing, altering or improving any of the streets, alleys, avenues, thoroughfares and public highways, within the City in or upon which the poles, wires, or other conductors of said Grantee shall be placed, but all such work or improvements shall be done, if possible, so as not to obstruct or prevent the free use of said poles, wires, conductors, conducts, pipes or other apparatus.

**SECTION 5.** Whenever it becomes necessary to temporarily rearrange, remove, lower, or raise the wires, cables or other plant of Grantee for the passage of buildings, machinery or other objects, Grantee shall temporarily rearrange, remove, lower or raise its wires, cables or other plant as the necessities of the case require; provided, however, that the person or persons desiring to move any such buildings, machinery or other objects, shall pay the entire actual cost to Grantee of changing, altering, moving, removing or replacing its wires, cables or other plant so as to permit such passage, and shall deposit in advance with Grantee a sum equal to such cost as estimated by Grantee and shall pay all damages and claims of any kind whatsoever, direct or consequential, caused directly or indirectly by the changing, altering, moving, removing or replacing of said wires, cables or other plant, except as may be incurred through the sole negligence of Grantee. Grantee shall be given not less than thirty (30) days written notice by the party desiring to move such building or other objects. Said notice shall detail the route of movement of such building or other objects over and along the streets, alleys, avenues, thoroughfares and public highways and shall bear the approval of the City. Such moving shall be with as much haste as possible and shall not be unnecessarily delayed or cause Grantee unnecessary expense or waste of time. Neither the City nor any of its employees shall be held liable for the consequences of any act done in



connection with the moving of a non-City owned building or non-City owned other object or rearrangement of wires or for the cost of rearranging the wires.

**SECTION 6.** In case it shall be necessary to cut or remove any of the said wires, cables, or other telephone conductors or equipment of the said Grantee, in order to get fire ladders or other apparatus to building during a city conflagration, the City shall not be liable for any damages done to such wires, cables or conductors or equipment.

**SECTION 7.** Grantee shall indemnify, defend and save harmless the City and its officers, agents and employees from any and all claims, damages, cost and expenses to which it or they may be subjected by reason of any wrongful or negligent act or omission of the Grantee, its agents or employees in exercising the rights, privileges and franchise granted by this ordinance. If both the Grantee and the City are found to be partially liable for damages, the Grantee's liability under this section shall not exceed its proportion of negligence or fault. City shall give Grantee prompt notice of any claim (or advance notice of claim) received by City as to which City seeks indemnity from Grantee and shall tender the defense of any such claim to Grantee. The aforementioned indemnity is not applicable to that which is attributable to or arises from the negligence or willful misconduct of the City and its officers, agents and employees. Neither party may bind the other to a settlement of any such claim or to payment of any of the costs of such claim without the written consent of the party to be bound.

**SECTION 8.** In consideration of the rights, privileges and franchise hereby granted, said Grantee, Grantee, its successors and/or assigns, shall pay to the City from and after the date of the acceptance of this franchise, and until its expiration, annually, a maximum of 5% per annum of its gross annual revenue for local exchange service rendered subscriber within the city limits, as defined in ORS 221.515 and 401.710, less net uncollectables Payment of said fee shall be made on or before the 1<sup>st</sup> day of August each and every year for the fiscal year (July 1 thru June 30) preceding, the first annual payment being due on or before August 1, 2008 and such 5% payment made by the Grantee will be accepted by the City from the Grantee, also in payment of any license, privilege or occupation tax or fee for revenue or regulation and in lieu of the free use of construction of telecommunications facilities and equipment or provision of other in-kind facilities or services, or any , registration, franchise application/review/renewal, permit or inspection fees or similar charges for street openings, installations, construction, or for any other purpose now or hereafter to be imposed by the City upon the Grantee during the term of this franchise and provided the Grantee accepts this franchise and makes said payment. All costs and charges associated with a review or audit or the privilege tax payments as specified in this agreement shall be the responsibility of the City. Any audit finding(s) that are mutually agreed to by the parties shall be corrected within 180 days after mutual agreement. Reasonable justification for a review or audit must be provided and mutually agreed upon by both parties. Written notice with reasonable justification for any audit review or other claim shall be provided within three years after the payment has been remitted by Grantee to the City.

**SECTION 9.** In further consideration of the rights and privileges herein granted, the Grantee, its successor and/or assigns hereby grants, to the City the right and privilege to suspend and maintain on poles placed by Grantee, its successors and/or assigns, in the streets, roads, alleys and thoroughfares, such wires as are necessary for the exclusive use of the City for non-commercial fire alarm and police purposes in accordance with the terms and conditions of Grantee's pole attachment or conduit joint use Agreement and applicable law. Any such wiring installations made and to be made by the City shall be made in conformity to the requirements of all applicable Federal, State and City electrical codes and in conformity with standard practices. City agrees to transfer their facilities, at the City's cost, to new poles placed by Grantee within 30 days of notification

**SECTION 10.** The rights, privileges and franchise herein granted shall continue and be in force the period of Fifteen (15) years from and after January 1, 2008.

**SECTION 11.** The Grantee shall file with the Recorder of the City its written acceptance of the rights and franchise hereby granted and the regulations hereby imposed, within sixty (60) days from and after the date when this ordinance shall become effective; and this Ordinance shall become null and void unless such acceptance is so filed. The Grantee shall at all times, fully and faithfully perform all of the terms, provisions and conditions of this Ordinance and all other ordinances and orders of the Council as specified in Section 2 hereof.

**SECTION 12 -** Ordinance No. 154 and Ordinance 209 is repealed and rendered null and void.

**SECTION 13.** Emergency Clause.

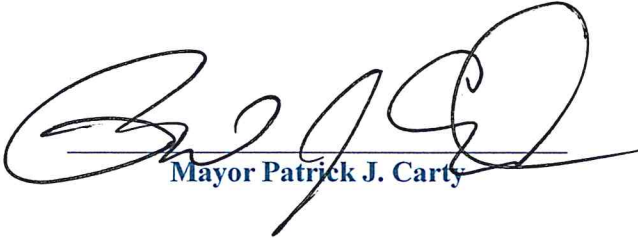
It being necessary for the peace, health, safety and sound development of the City, an emergency is hereby declared to exist. Upon adoption by the Detroit City Council and upon signature by the Mayor, Ordinance No. 211 shall become effective on January 1, 2008.

First read for the record in full on December 11, 2007

Second reading by title only on December 11, 2007

**Passed by the Common Council of the City of Detroit, Oregon and signed by the Mayor this 11<sup>th</sup> day of December, 2007.**

Ayes: 7 Nays: 0 Absent: 0

  
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Mayor Patrick J. Carty

Attest:

  
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Christine Pavoni, City Recorder