

VILLAGE OF DOWNERS GROVE
Report for the Village Council Meeting
1/15/2019

SUBJECT:	SUBMITTED BY:
Second Amendment to Right-of-Way Agreement with MCImetro Access Transmission Services Corp. as successor in interest to Wide Open West	Enza Petrarca Village Attorney

SYNOPSIS

A resolution has been prepared to authorize execution of a Second Amendment to a Right-of-Way License Agreement with MCImetro Access Transmission Services Corp. d/b/a Verizon Access to revise certain terms.

STRATEGIC PLAN ALIGNMENT

The goals for 2017-2019 include *Exceptional Municipal Services*.

FISCAL IMPACT

N/A

RECOMMENDATION

Approval on the January 15, 2019 Consent Agenda.

BACKGROUND

In August 2014, the Village and Wide Open West (WOW) for the benefit of Verizon Wireless entered into a license agreement for the use of Village rights-of-way to install aerial fiber optic telecommunications cables on existing ComEd poles. In September 2016, the Village and WOW entered into a First Amendment to the License Agreement to allow WOW to install underground facilities.

In August 2017, MCImetro Access Transmission Services Corp., which is an indirect, wholly-owned subsidiary of Verizon Communications, Inc. purchased assets and liabilities from WOW for its fiber network in the Chicagoland area, including Downers Grove. Accordingly, WOW assigned all of its rights and obligations under the License Agreement and First Amendment to MCImetro. Now, MCImetro is requesting additional amendments to the agreement; namely, to change the term "Licensee" to refer to MCImetro and to amend Section 4 of the Agreement relating to Term and Payments. AS MCImetro d/b/a Verizon is a "Telecommunications Retailer" as defined in the Telecommunications Municipal Infrastructure Maintenance Fee Act, it is not required to pay any right-of-way license fees as long as it timely pays the taxes imposed by the Simplified Municipal Telecommunications Tax Act to the State of Illinois and does not provide cable television programming, which it does not. As such, Section 4 is being amended to reflect that it will not have to pay any further license fees to the Village. WOW paid the license fee through 2024.

ATTACHMENTS

Resolution

Second Amendment to License Agreement

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING EXECUTION OF A SECOND AMENDMENT TO
LICENSE AGREEMENT BETWEEN MCI METRO ACCESS TRANSMISSION SERVICES CORP.
D/B/A VERIZON ACCESS TRANSMISSION SERVICES,
AS SUCCESSOR IN INTEREST TO WIDE OPEN WEST ILLINOIS, LLC
AND THE VILLAGE OF DOWNERS GROVE
FOR USE OF THE VILLAGE RIGHTS-OF-WAY**

BE IT RESOLVED by the Village Council of the Village of Downers Grove, DuPage County, Illinois, as follows:

1. That the form and substance of a certain Second Amendment to License Agreement (the "Agreement"), between the Village of Downers Grove ("Village") and MCI Metro Access Transmission Services Corp. d/b/a Verizon Access Transmission Services, as successor in interest to Wide Open West Illinois, LLC ("Licensee"), to amend certain sections of the License Agreement for telecommunication facilities, as set forth in the form of the Agreement submitted to this meeting with the recommendation of the Village Manager, is hereby approved.
2. That the Village Manager and Village Clerk are hereby respectively authorized and directed for and on behalf of the Village to execute, attest, seal and deliver the Agreement, substantially in the form approved in the foregoing paragraph of this Resolution, together with such changes as the Manager shall deem necessary.
3. That the proper officials, agents and employees of the Village are hereby authorized and directed to take such further action as they may deem necessary or appropriate to perform all obligations and commitments of the Village in accordance with the provisions of the Agreement.
4. That all resolutions or parts of resolutions in conflict with the provisions of this Resolution are hereby repealed.
5. That this Resolution shall be in full force and effect from and after its passage as provided by law.

Mayor

Passed:

Attest: _____
Village Clerk

**SECOND AMENDMENT TO LICENSE AGREEMENT FOR THE USE OF VILLAGE'S
RIGHTS-OF-WAY**

This Second Amendment ("Second Amendment") to License Agreement for the Use of the Village's Rights-of-Way, is entered into between **MCImetro Access Transmission Services Corp.** d/b/a Verizon Access Transmission Services, a Delaware corporation with its principal offices at 600 Hidden Ridge, Irving, Texas 75038 (hereinafter referred to as the "Licensee"), a successor in interest to a fiber optic communications network in the Village of Downers Grove, originally owned by Sigecom, LLC d/b/a WOW! Internet, Cable and Phone, an Illinois limited liability company (hereinafter referred to "WOW") and the **Village of Downers Grove**, an Illinois municipal corporation (hereinafter referred to as the "Village") on the _____ day of January, 2019 ("Effective Date"),

WITNESSETH:

WHEREAS, on August 5, 2014, the Village and WOW entered into that certain Agreement for Use of the Village Rights of Way for installation and operation of aerial fiber only published under Resolution # 2014-41 (the "Agreement"); and

WHEREAS, on September 13, 2016, the Village and WOW entered into a First Amendment to License Agreement for Use of the Village Rights-of-Way to allow installation and operation of underground facilities ("First Amendment"); and

WHEREAS, on December 14, 2017, Licensee purchased from WOW a fiber-optic communications network serving portions of the greater Chicago market and has therefore become a successor of the Agreement in connection with the communications network; and

WHEREAS, the Village finds that entering into this Second Amendment is in the best interests of the Village, its residents, and the public; and

WHEREAS, Licensee and Village (each a "Party" and together "Parties") desire to amend the terms of the Agreement and First Amendment as more specifically set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this Amendment, the Parties agree as follows:

1. Preambles. The preambles set forth hereinabove are incorporated herein as substantive provisions of this Amendment as if fully set forth in this Section 1.

2. Integration of the Amendment. The provisions of this Second Amendment shall be deemed by the Parties to be fully integrated into the Agreement and First Amendment. The Agreement and First Amendment shall remain in full force and effect except to the extent that it is expressly modified by the terms of this Second Amendment. Should any provision of the Agreement or First Amendment conflict with any provision of this Second Amendment, the provisions of this Second Amendment shall control.

Terms capitalized in this Second Amendment and not otherwise defined herein shall have the meanings ascribed to those terms in the Agreement. Terms defined and capitalized herein shall have the meanings ascribed to those terms in this Second Amendment and, to the extent such terms are also defined terms in the Agreement, the definitions of those terms as herein provided shall be deemed to control the interpretation of those terms in the Agreement. The term "Agreement" shall refer to the Agreement, as amended by this Second Amendment.

3. Amendments to the Original Agreement and First Amendment.

The term "Licensee" in the Agreement and First Amendment shall hereinafter refer to "MCImetro Access Transmission Services Corp. d/b/a Verizon Access Transmission Services, a Delaware Corporation with its principal offices at 600 Hidden Ridge, Irving, Texas 75038."

4. Term, Payments

Section 4 of the Agreement is hereby amended by including the following language at the end of Section 4:

"The Term of the Agreement (including Amendment 1) shall be for a period of ten (10) years from the Effective Date of the Amendment. The Agreement may be renewed by mutual agreement of the parties for successive (10) year terms provided the Licensee is in full compliance with the terms and conditions of this Agreement at the time of renewal. Licensee shall make written request for renewal of this Agreement at least sixty (60) days prior to expiration of the current term."

"Notwithstanding anything contained in this Agreement to the contrary, so long as the Licensee exercises and enjoys the rights granted to it hereunder, Licensee shall not be required to pay any additional fees to the Village under this Agreement including for site specific permits, provided (1) Licensee maintains its status as a Telecommunications Retailer under the Telecommunications Municipal Infrastructure Maintenance Fee Act (TMIFMA) (35 ILCS 635) and (2) timely pays the taxes imposed by the Simplified Municipal Telecommunications Tax Act (SMTT) (35 ILCS 636/5) to the State of Illinois and (3) does not provide video subscription service or cable television programming."

Section 6. Notice.

Notices to Licensee under the Agreement must be addressed as follows:

Licensee:

MCImetro Access Transmission Services Corp. d/b/a Verizon
Access Transmission Services
Attn: Franchise Manager
600 Hidden Ridge
Mailcode: HQE02E102
Irving, TX 75038

with a copy (except for invoices) (which copy will not constitute notice) to:

Verizon Business Services, Inc.
1320 N. Courthouse Road, Suite 900
Arlington, VA 22201
Attn: Vice President and Deputy General Counsel

IN WITNESS WHEREOF, the Parties hereto have set their hands and seals the day and year first above written.

Village of Downers Grove

By: _____

Date: _____

**MCImetro Access Transmission Services Corp.
d/b/a Verizon Access Transmission Services**

By: Robert J. Hayes

Robert J. Hayes

Senior Manager – Network Engineering & Operations

Date: 01-08-2019