

ORDINANCE NO. 3915

AN ORDINANCE OF THE CITY OF EDMONDS, WASHINGTON, CONSENTING TO THE ASSIGNMENT OF THE NON-EXCLUSIVE FRANCHISE GRANTED TO METROMEDIA FIBER NETWORK SERVICES, INC., PURSUANT TO ORDINANCE NO. 3295, TO ZAYO GROUP.

WHEREAS, the City of Edmonds, Washington (the “City”), by action of its City Council on February 2, 2000, and effective on February 14, 2000, enacted Ordinance No. 3295 (the “Franchise”) granting a non-exclusive franchise to Metromedia Fiber Network Services, Inc. (“Metromedia”); and

WHEREAS, pursuant to Section 32, of said Franchise an Acceptance of the Franchise was duly executed by Metromedia, creating a contract between the City and Metromedia; and

WHEREAS, Metromedia was acquired by AboveNet, which was then acquired by Zayo Group (“Zayo”); and

WHEREAS, Zayo has submitted a written request to the City pursuant to Section 26 of the Franchise asking the City to approve the assignment of the Franchise from Metromedia to Zayo; and

WHEREAS, the City has reviewed the written request to transfer the Franchise and in reliance on the representations made by Zayo is willing to grant its consent to the assignment from Metromedia to Zayo, subject to the conditions contained herein.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EDMONDS, WASHINGTON DO ORDAIN AS FOLLOWS:

Section 1. Conditional Approval. The City’s consent of the assignment of the Franchise granted pursuant to Ordinance No. 3295 to Zayo is hereby GRANTED in accordance with the Franchise and applicable law, subject to the following conditions:

1. Each of the foregoing recitals are hereby incorporated by reference; and
2. Within thirty (30) days of enactment of this Ordinance, Zayo shall execute the Acceptance of Ordinance No. 3295 and 3915, attached hereto as Exhibit A; and
3. Zayo will continue to be bound by all the commitments, duties, and obligations, present and continuing, embodied in the Franchise and applicable laws, regulations, codes, standards and decisions; and
4. The City’s consent to the assignment does not amend or alter the Franchise or any requirements therein in any way, and all provisions of the Franchise remain in full force and effect and are enforceable in accordance with their terms and with applicable law; and

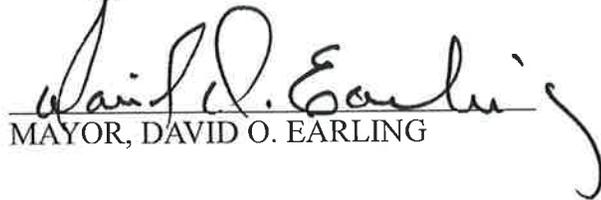
5. The City reserves all of its rights with respect to the Zayo's compliance with the terms, conditions, requirements and obligations set forth in the Franchise and applicable laws, regulations, codes and standards; and

Section 2. Termination. Failure to comply with the conditions listed in Section 1 (Conditional Approval) shall result in the immediate termination of this Ordinance.

Section 3. Non-Waiver. This Ordinance shall not be construed to grant or imply the City Council's consent to any subsequent transfer or assignment of the Franchise, or any other transaction that may require the City's consent under the Franchise, or applicable law. The City reserves all its rights with regard to any such transactions.

Section 4. 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 5 days after the passage and publication of an approved summary thereof consisting of the title.

CITY OF EDMONDS


MAYOR, DAVID O. EARLING

ATTEST/AUTHENTICATED:


CITY CLERK SANDRA S. CHASE

APPROVED AS TO FROM:
OFFICE OF THE CITY ATTORNEY:

By: 
JEFF TARADAY

FILED WITH THE CITY CLERK: 03-15-2013
PASSED BY THE CITY COUNCIL: 03-19-2013
PUBLISHED: 03-24-2013
EFFECTIVE DATE: 03-29-2013
ORDINANCE NO.: 3915

SUMMARY ORDINANCE NO. 3915

of the City of Edmonds, Washington

On the 19th day of March, 2013, the City Council of the City of Edmonds, passed Ordinance No. 3915. A summary of the content of said ordinance, consisting of the title, provides as follows:

AN ORDINANCE OF THE CITY OF EDMONDS, WASHINGTON,
CONSENTING TO THE ASSIGNMENT OF THE NON-EXCLUSIVE
FRANCHISE GRANTED TO METROMEDIA FIBER NETWORK SERVICES,
INC., PURSUANT TO ORDINANCE NO. 3295, TO ZAYO GROUP.

The full text of this Ordinance will be mailed upon request.

DATED this 20th day of March, 2013.



City Clerk, Sandra S. Chase

ORDINANCE NO. 3295

AN ORDINANCE OF THE CITY OF EDMONDS, WASHINGTON, GRANTING TO METROMEDIA FIBER NETWORK SERVICES, INC., A NON-EXCLUSIVE FRANCHISE TO INSTALL, OPERATE, AND MAINTAIN A MULTIPLE CONDUIT FIBER OPTIC TELECOMMUNICATIONS SYSTEM IN, ON, OVER, UPON, ALONG, AND ACROSS THE PUBLIC RIGHTS-OF-WAY OF THE CITY OF EDMONDS, WASHINGTON, PRESCRIBING CERTAIN RIGHTS, DUTIES, TERMS, AND CONDITIONS WITH RESPECT THERETO, AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, Metromedia Fiber Network Services, Inc. has requested that the City grant it the right to install, operate, and maintain a multiple conduit fiber optic 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

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 EDMONDS, WASHINGTON DO ORDAIN
AS FOLLOWS:

Section 1. Definitions. For the purposes of this Franchise, the following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number.

a. "Affiliate" means an entity which owns or controls, is owned or controlled by, or is under common ownership with the Franchisee.

- b. "City" means the City of Edmonds, Washington.
- c. "Communication Service" shall mean any telecommunications services, telecommunications capacity, or dark fiber, provided by the Franchisee using its Communication System or Facilities, either directly or as a carrier for its subsidiaries, Affiliates, or any other person engaged in Communication Services, including, but not limited to, the transmission of voice, data or other electronic information, facsimile reproduction, burglar alarm monitoring, meter reading and home shopping, or other subsequently developed technology that carries an electronic signal over fiber optic cable. Communication Service shall also include non-switched, dedicated and private line, high capacity fiber optic transmission services to firms, businesses or institutions within the City. However, Communications Services shall not include the provision of cable television, open video, or similar services, as defined in the Communications Act of 1934, as amended, for which a separate franchise would be required.
- d. "Communication System" or "Facilities" shall mean the Franchisee's multiple conduit fiber optic cable system constructed and operated within the City's Public Way, and shall include all cables, wires, conduits, ducts, pedestals, and any associated converter, equipment, or other facilities within the City's Public Way, designed and constructed for the purpose of providing Communication Service.
- e. "FCC" means the Federal Communications Commission, or any successor governmental entity hereto.
- f. "Franchise" shall mean the initial authorization, or renewal thereof, granted by the City, through this franchise Ordinance, or a subsequently adopted franchise Ordinance, which authorizes construction and operation of the Franchisee's Communication System and associated Facilities for the purpose of offering Communication Service.
- g. "Franchisee" means Metromedia Fiber Network Services, Inc., a Delaware corporation, or the lawful successor, transferee, or assignee thereof.
- h. "Person" means an individual, partnership, association, joint stock company, trust, corporation, or governmental entity.
- i. "Public Way" shall mean the surface of, and any space above or below, any public street, highway, freeway, bridge, path, alley, court, boulevard, sidewalk, parkway, lane, drive, circle, or other public right-of-way, including, but not limited to, public utility easements, utility strips, or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the City in the Service Area, which shall entitle the City and the Franchisee the use thereof for the purpose of installing, operating, repairing, and maintaining the

Communication System. Public Way shall also mean any easement now or hereafter held by the City within the Service Area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way, which within their proper use and meaning entitle the City and the Franchisee to the use thereof for the purposes of installing or transmitting the Franchisee's Communication Service over wires, cable, conductors, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the Communication System.

j. "Service Area" means the present municipal boundaries of the City, and shall include any additions thereto by annexation or other legal means.

Section 2. 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 acquire, construct, operate, maintain, replace, use, install, remove, repair, reconstruct, inspect, sell, lease, transfer or to otherwise utilize in any lawful manner, all necessary equipment and Facilities thereto for the Franchisee's Communication System, and to provide Communication Service to persons located within the City.

Section 3. Construction Permits Required.

A. Prior to site-specific location and installation of any portion of its communication Facilities within a Public Way, the Franchisee shall apply for and obtain a Construction Permit pursuant to ECDC Chapter 18.60. In addition to any criteria set forth in ECDC Chapter 18.60, the Development Services Director shall apply the following criteria in the issuance or denial of a Construction Permit application:

1. Whether the Franchisee has received all requisite licenses, certificates, and authorizations from applicable federal, state, and local agencies with jurisdiction over the activities proposed by the Franchisee;
2. Whether there is sufficient capacity in the Public Way to accommodate the Franchisee's proposed Facilities;
3. The capacity of the Public Ways to accommodate additional utility, cable, and telecommunications Facilities if the Construction Permit is granted;
4. The damage or disruption, if any, of public or private Facilities, improvements, service, travel or landscaping if the Construction Permit is granted;
5. The public interest in minimizing the cost and disruption of construction within the Public Ways; and

6. The availability of alternate routes and/or locations for the proposed Facilities.

B. Unless otherwise provided in said Permit, the Franchisee shall give the City at least 48 hours 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 communication 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.

Section 4. Grant Limited to Occupation. 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, nor shall anything contained herein constitute a warranty of title.

Section 5. Term of Franchise. The first term of this Franchise shall be for a period of five (5) years from the date of acceptance as set forth in Section 32, unless sooner terminated. This Franchise shall automatically renew for two (2) additional five (5) year terms. Provided, however, that either party may notify the other of its desire to renegotiate any of the terms set forth herein or of its desire to add to or delete any such terms not later than 180 days prior to expiration of the initial term hereof or any subsequent renewal terms. If either party makes such a request, this Franchise shall not renew unless and until the City and Franchisee reach agreement on said modification, addition, and/or deletion, and said agreement is approved by ordinance of the City Council. In the event that agreement cannot be reached, this Franchise shall terminate at the end of the then current term. Nothing in this Section prevents the parties from reaching agreement on renewal earlier than the time periods indicated.

Section 6. Non-Exclusive Grant. This Franchise shall not in any manner prevent the City from entering into other similar agreements or granting other or further franchises in, under, on, across, over, through, along or below any of said Public Ways of the City. However, the City shall not permit any such future franchisee to physically interfere with the Franchisee's communication Facilities. In the event that such physical interference or disruption occurs, the Development Services Director may assist the Franchisee and such subsequent franchisee in resolving the dispute. Further, this Franchise shall in no way prevent or prohibit the City from using any of its Public Ways 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, improvement, dedication of the same as the City may deem fit, including the dedication, establishment, maintenance, and improvement of all new Public Ways, all in compliance with this Franchise.

Section 7. Relocation of Communication System.

A. The Franchisee agrees and covenants, at its sole cost and expense, to protect, support, temporarily disconnect, relocate, or remove from any Public Way any portion of its

communication Facilities when so required by the Development Services Director by reason of traffic conditions, 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 cases have the privilege to temporarily bypass, in the authorized portion of the same public way upon approval by the Development Services Director, any section of cable or any other facility required to be temporarily disconnected or removed.

Upon the reasonable request of the Development Services 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 portions of its communication Facilities for inspection so that the location of same may be taken into account in the improvement design, PROVIDED that, Franchisee shall not be required to excavate and expose its Facilities unless the Franchisee's as-built plans and maps of its Facilities submitted pursuant to Section 9 of this Franchise are reasonably determined by the Development Services Director to be inadequate for purposes of this paragraph. The decision to relocate said Facilities in order to accommodate the City's improvements shall be made by the Development Services Director upon review of the location and construction of the Franchisee's Facilities.

If the Development Services Director determines that the project necessitates the relocation of the Franchisee's then existing 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 an emergency posing a threat to public safety, health 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 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.
3. The Franchisee shall complete relocation of its Facilities at no charge or expense to the City so as to accommodate the improvement project at least 10 days prior to commencement of the project. In the event of an emergency as described herein, the Franchisee shall relocate its Facilities within the time period specified by the Development Services Director.

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 is suitable to accommodate the work, which would otherwise necessitate relocation of the Facilities. If so requested by the City, the Franchisee shall submit additional 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.

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.

B. 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 the City or circumstances beyond the control of the Franchisee.

Section 8. Undergrounding of Facilities. Consistent with ECDC Chapter 18.05, all of Franchisee's facilities shall be placed under-ground.

Section 9. The Franchisee's Maps and Records. After construction is complete, the Franchisee shall provide the City with accurate copies of all as-built plans and maps in a form and content prescribed by the Development Services Director. These plans and maps shall be provided at no cost to the City, and shall include hard copies and digital copies in a format specified by the Development Services Director.

Section 10. Work in Public Ways. 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. 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.

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 Edmonds Public Works Construction Standards and warranted for a period of one year.

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

- A. Such joint use shall not unreasonably delay the work of the party causing the excavation to be made or unreasonably increase its costs;
- B. Such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties; and
- C. Either party may deny such request for safety reasons or if their respective uses of the trench are incompatible.

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.

Section 11. Restoration after Construction. The Franchisee shall, after installation, construction, relocation, maintenance, removal, or repair of its communication Facilities within the Public Ways, restore the surface of said Public Ways and any other City-owned property that 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, reasonable wear and tear excepted. The Public Works Department shall have final approval of the condition of such Public Ways and City-owned property after restoration, all in accordance with the Edmonds Municipal Code and Public Works Construction standards. 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. 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 Construction Permit issued by the City all in accordance with the applicable provisions of the Edmonds Municipal Code, as the same now exists or as it may hereafter be amended or superseded. All work and restoration by the Franchisee pursuant to this Section shall be performed in accord with City of Edmonds Public Works Construction standards and warranted for a period of one year.

Section 12. Emergency Work – Permit Waiver. In the event of any emergency in which any of the Franchisee's communication Facilities located in, above, or under any Public Way break, 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 Edmonds City Hall is open for business.

Section 13. Dangerous Conditions, Authority for City to Abate. Whenever construction, installation, or excavation of the communication 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 Development Services Director may reasonably require 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 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 reasonable costs thereof.

Section 14. 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 costs and expenses for review, inspection, or supervision of activities undertaken through the authority granted in this Franchise or any ordinances relating to the subject for which a permit fee is not established, the Franchisee shall reimburse the City directly for any and all reasonable costs, after receipt of an itemized bill.

In addition to the above, the Franchisee shall promptly reimburse the City for any and all reasonable costs the City incurs in response to any emergency involving the Franchisee's communication Facilities, after receipt of an itemized bill.

The time of City employees shall be charged at their respective rate of salary, including overtime if applicable, plus benefits and a reasonable overhead. All billings will be itemized as to specifically identify the costs and expenses for each project for which the City claims reimbursement. The billing may be on an annual basis, but the City shall provide the Franchisee with the City's itemization of costs at the conclusion of each project for information purposes.

Section 15. Consideration. Pursuant to RCW 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 14 herein, payment of the grant fee set forth in Section 16, and payment of any applicable local utility tax applicable to Franchisee's operations. 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 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. Franchisee reserves its right to contest: (i) Any and all fee(s) imposed by the City on Franchisee and, (ii) any separate agreement(s) the City requires Franchisee to obtain.

Section 16. Grant Fee. As additional consideration for the right and privileges granted hereunder, the Franchisee agrees to pay, at the time of acceptance of this Franchise, a one-time grant fee of One Thousand Dollars (\$1,000.00) to defray the City's legal and administrative costs and expenses associated with negotiating and approving this Franchise, provided that such expenses shall not be included in the reimbursement provisions set forth in Section 14 of this Franchise.

Section 17. Indemnification and Waiver.

A. Franchisee hereby releases, covenants not to bring suit and agrees to indemnify, defend and hold harmless the City, its officers, employees, agents and representatives from any and all claims, costs, judgements, 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 the Franchisee's exercise of the rights granted herein;
3. By virtue of the City permitting Franchisee use of the City's Public Ways or other public property;
4. Based on 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 Public Ways 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 Public Ways, in any Public Way, or other public place in performance of work or services permitted under this Franchise.

B. The provisions of Subsection A of this Section shall apply to claims by Franchisee's own employees and the employees of the Franchisee's agents, representatives, contractors, and subcontractors to which Franchisee might otherwise be immune under Title 51 RCW. This waiver of immunity under Title 51 RCW has been mutually negotiated by the parties hereto, and Franchisee acknowledges that the City would not enter into this Franchise without Franchisee's waiver thereof.

C. Inspection or acceptance by the City of any work performed by the 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 extend to claims which are not reduced to a suit and any claims which may be compromised with Franchisee's consent prior to the culmination of any litigation or the institution of any litigation. 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, provided that Franchisee shall not be liable for such settlement or other compromise unless it has consented thereto.

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 the matter), to have been a wrongful refusal on the part of the Franchisee, then Franchisee shall pay all of the City's costs for defense of the action, including all reasonable expert witness fees, reasonable attorney's fees, the reasonable costs of the City, and reasonable fees of recovering 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 City, its officers, agents, employees or contractors except to the extent that such claims, actions, damages, costs, expenses, and attorneys fees were caused by the sole negligence or any willful, malicious, or criminal act on the part of the City, its officers, agents, employees or contractors. In the event that a court of competent jurisdiction determines that this Franchise is subject to the provisions RCW 4.24.115, the parties agree that the indemnity provisions hereunder shall be deemed amended to conform to said statute and liability shall be allocated as provided therein.

F. Notwithstanding any other provisions of this Section, Franchisee assumes the risk of damage to its communication Facilities located in the Public Ways and upon City-owned

property from such 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 or any willful, malicious, or criminal act 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 or 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.

Section 18. Insurance. The Franchisee shall procure and maintain 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. The Franchisee shall provide to the City, for its inspection, an insurance certificate naming the City as an additional insured as its respective interests may appear prior to the commencement of any work or installation of any Facilities pursuant to this Franchise. Such insurance certificate shall evidence:

A. Comprehensive general liability insurance, written on an occurrence basis, including contractual liability coverage, with limits, inclusive of umbrella or excess liability coverage, not less than:

- (1) \$3,000,000.00 for bodily injury or death to each person; and
- (2) \$3,000,000.00 for property damage resulting from any one accident.

B. Automobile liability for owned, non-owned and hired vehicles with a limit, inclusive of umbrella or excess liability coverage, of \$3,000,000.00 for each person and \$3,000,000.00 for each accident.

C. Worker's compensation within statutory limits and employer's liability insurance with limits, inclusive of umbrella or excess liability coverages, of not less than \$1,000,000.00.

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 Communication System. Payment of deductibles and self-insured retentions shall be the sole responsibility of the Franchisee. The insurance certificate required by this Section shall contain a clause stating that the coverage shall apply separately to each insured against whom a 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. Any insurance maintained by the City, its officers, officials, employees, consultants, agents, and volunteers shall be in excess of the Franchisee's insurance and shall not contribute with it.

In addition to the coverage requirements set forth in this Section, the insurance certificate required by this Section shall contain language which provides that the policy may not be cancelled, reduced in coverage, nor the intention not to renew be stated until at least 30 days after receipt by the City of written notice of the same via U.S. mail. Within 15 days after receipt by the City of said notice, and in no event later than 5 days prior to said cancellation or non-renewal, the Franchisee shall obtain and furnish to the City replacement insurance certificate(s) meeting the requirements of this Section

Section 19. Abandonment and Removal of the Franchisee's Communication Facilities.

Upon the expiration, termination, or revocation of the rights granted under this Franchise, the Franchisee shall remove all of its communications Facilities from the Public Ways of the City within 90 days of receiving notice from the Development Services Director. Provided, however, that the City may permit the Franchisee's improvements to be abandoned in place in such a manner as the City may prescribe. Upon permanent abandonment, and Franchisee's agreement to transfer ownership of the communication Facilities to the City, the Franchisee shall submit to the City a proposal and instruments for transferring ownership to the City. Any such Facilities which are not permitted to be abandoned in place which are not removed within ninety (90) days of receipt of said notice shall automatically become the property of the City. Provided, however, that nothing contained within this Section shall prevent the City from compelling the Franchisee to remove any such Facilities through judicial action when the City has not permitted the Franchisee to abandon said Facilities in place.

Section 20. Construction Bond. Before undertaking any of the work, installation, improvements, construction, repair, relocation or maintenance authorized by this Franchise, other than installation of fiber optic cable within existing conduits where such placement does not involve cutting or otherwise disrupting the surface of Public Ways, the Franchisee shall furnish a street repair or sidewalk bond written by a corporate surety acceptable to the City equal to at least 125% of the estimated cost of restoring the Public Ways of the City to the pre-construction condition required by Section 11 of this Franchise. Said bond shall be required to remain in full force until 60 days after completion of the construction of Grantee's communication Facilities and other improvements from the Public Ways of the City, and said bond, or separate bond acceptable to the City, shall warrant all such restoration work for a period of one year. In the event that a bond issued to meet the requirements of this Section is canceled by the surety, after proper notice and pursuant to the terms of said bond, Franchisee shall, prior to expiration of said bond, be responsible for obtaining a replacement bond which complies with the terms of this Section.

Section 21. Modification. The City and the Franchisee hereby reserve the right to alter, amend or modify the terms and conditions of this Franchise upon the written agreement of both

parties to such alteration, amendment or modification. Said modifications shall be approved by the City by ordinance and accepted by the Franchisee consistent with Section 32 hereof.

Section 22. Forfeiture and Revocation. If the Franchisee willfully violates or fails to comply with any of the material provisions of this Franchise, or through willful misconduct or gross negligence fails to heed or comply with any notice given the Franchisee by the City under the provisions of this Franchise, then the Franchisee shall, at the election of the City Council, forfeit all rights conferred hereunder and this Franchise may be revoked, terminated or annulled by the City Council after a hearing held upon reasonable written notice to Franchisee. The City Council may decide, after consideration of the reasons for the Franchisee's failure to comply with the Franchise, to allow the Franchisee additional time to cure before such termination or revocation. The City may elect, in lieu of the above, and without prejudice to any of its other legal rights and remedies, to obtain an order from the superior court having jurisdiction compelling the Franchisee to comply with the provisions of this Franchise and to recover reasonable and documented damages and costs incurred by the City by reason of the Franchisee's failure to comply.

Section 23. 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 locations, elevation, manner or construction and maintenance of any 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 the law.

Section 24. Survival. All of the provisions, conditions, and requirements 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. The provisions, conditions, and requirements of Sections 7, Relocation of Communication System; 8, Undergrounding of Facilities; 10, Work in Public Ways; 11, Restoration after Construction; 13, Dangerous Conditions, Authority for City to Abate; 17, Indemnification and Waiver; 18, Insurance; and 19, Abandonment and Removal of the Franchisee's Communication Facilities, shall survive the expiration or termination of this Franchise, and any renewals or extensions thereof and remain effective until such time as the Franchisee removes its communication Facilities from the Public Ways, transfers ownership of said Facilities to a third party, or abandons said System in place, all as provided herein. 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 25. Severability. In any section, sentence, clause, or phrase of this Franchise should be held to be invalid or unconstitutional by a court of competent jurisdiction, such

invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this Franchise.

Section 26. Assignment. This agreement may not be assigned or transferred without the written approval of the City, which approval shall not be unreasonably withheld or delayed, except that the Franchisee may freely assign this Franchise in whole or 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 assignment.

Franchisee may, without the prior written consent of the City: (i) Lease the Facilities, or any portion thereof, to another; (ii) grant an Indefeasible Right of User Interest in the Facilities, or any portion thereof, to another; or (iii) offer or provide capacity or bandwidth in its Facilities to another, PROVIDED THAT: Franchisee at all times retains exclusive control over such Facilities and remains responsible for locating, servicing, repairing, relocating or removing its Facilities pursuant to the terms and conditions of this Franchise.

Section 27. 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 Edmonds
Development Services Director
121 5th Avenue North
Edmonds, WA 98020
771-0220
Fax: (425) 771-0221

Franchisee:

Metromedia Fiber Network Services, Inc.
V.P. Legal Affairs
One North Lexington Ave.
White Plains, N.Y. 10601 Telephone: (425)
Telephone: (201) 531-8000

Notice shall be deemed given upon receipt in the case of personal delivery, three days after deposit in the United States Mail in the case of regular mail, or the next day in the case of overnight delivery.

Section 28. Entire Franchise. This Franchise constitutes the entire understanding and agreement between the parties as to the subject matter herein and no other agreements or understandings, written or otherwise, shall be binding upon the parties upon approval and acceptance of this Franchise.

Section 29. Attorney's Fees. If any suit or other action is instituted in connection with any controversy arising under this Franchise, the prevailing party shall be entitled to recover all of its costs and expenses including such sum as the court may judge reasonable for attorney's fees, including fees upon appeal of any judgement or ruling.

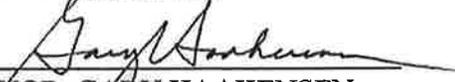
Section 30. Non-waiver. Failure of the City to declare any such breach or default immediately upon the occurrence thereof, or delay in taking any action in connection therewith, shall not waive such breach or default, but the City shall have the right to declare any such breach or default at any time. Failure of the City to declare one breach or default does not act as a waiver of the City's right to declare another breach or default.

Section 31. Governing Law/Venue. This Franchise shall be governed by and construed in accordance with the laws of the state of Washington. The venue and jurisdiction over any dispute related to this Franchise shall be with the Snohomish County Superior Court.

Section 32. Acceptance. This Franchise shall be accepted by Franchisee by its filing with the City Clerk an unconditional written acceptance thereof.

Section 33. 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 5 days after the passage and publication of an approved summary thereof consisting of the title.

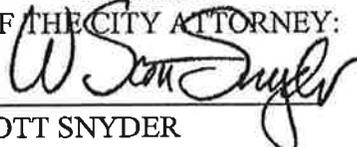
CITY OF EDMONDS


MAYOR, GARY HAAKENSEN

ATTEST/AUTHENTICATED:


CITY CLERK SANDRA S. CHASE

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

By: 
W. SCOTT SNYDER

FILED WITH THE CITY CLERK:	01/28/2000
PASSED BY THE CITY COUNCIL:	02/01/2000
PUBLISHED:	02/09/2000
EFFECTIVE DATE:	02/14/2000
ORDINANCE NO.:	3295

SUMMARY ORDINANCE NO. 3295

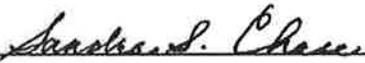
of the City of Edmonds, Washington

On the 1st day of February, 2000, the City Council of the City of Edmonds, passed Ordinance No. 3295. A summary of the content of said ordinance, consisting of the title, provides as follows:

AN ORDINANCE OF THE CITY OF EDMONDS, WASHINGTON, GRANTING TO METROMEDIA FIBER NETWORK SERVICES, INC., A NON-EXCLUSIVE FRANCHISE TO INSTALL, OPERATE, AND MAINTAIN A MULTIPLE CONDUIT FIBER OPTIC TELECOMMUNICATIONS SYSTEM IN, ON, OVER, UPON, ALONG, AND ACROSS THE PUBLIC RIGHTS-OF-WAY OF THE CITY OF EDMONDS, WASHINGTON, PRESCRIBING CERTAIN RIGHTS, DUTIES, TERMS, AND CONDITIONS WITH RESPECT THERETO, AND ESTABLISHING AN EFFECTIVE DATE.

The full text of this Ordinance will be mailed upon request.

DATED this 2nd day of February, 2000.



City Clerk, Sandra S. Chase

ACCEPTANCE OF ORDINANCE NO. 3295 AND 3915

WHEREAS, the City of Edmonds, Washington (the “City”), by action of its City Council on February 2, 2000, and effective on February 14, 2000, enacted Ordinance No. 3295 (the “Franchise”) granting a non-exclusive franchise to Metromedia Fiber Network Services, Inc. (“Metromedia”); and

WHEREAS, pursuant to Section 32, of said Franchise an Acceptance of the Franchise was duly executed by Metromedia, creating a contract between the City and Metromedia; and

WHEREAS, Metromedia was acquired by AboveNet, which was then acquired by Zayo Group (“Zayo”); and

WHEREAS, Zayo has submitted a written request to the City pursuant to Section 26 of the Franchise asking the City to approve the assignment of the Franchise from Metromedia to Zayo; and

WHEREAS, the City conditionally approved the assignment through the enactment of Ordinance No. 3915 on March 19, 2013 and effective on March 29, 2013; and

WHEREAS, Ordinance No. 3915 requires that Zayo comply with Section 32 of the Franchise by filing with the City Clerk an unconditional written acceptance of the Franchise.

NOW, THEREFORE, Zayo and its successors, heirs, assigns and transferees desires to accept, be bound by and to faithfully observe all of the lawful terms and conditions set forth in the Franchise and Ordinance No. 3915. By executing this Acceptance, Zayo and its successors, heirs, assigns and transferees make the following representations, agreements, warranties and guarantees to the City:

1. Zayo, its successors, heirs, assigns and transferees desires to accept, be bound by and to faithfully observe or guarantee all of the terms and conditions set forth in the Franchise and Ordinance No. 3915.
2. Zayo agrees that it has undertaken to be bound by all surviving lawful commitments and agreements previously made to the City by Metromedia, its subsidiaries or predecessors.
3. Zayo, its successors, heirs, assigns and transferees agree that the prior Acceptance executed by Metromedia shall be incorporated herein by reference; that, in addition, all surviving lawful terms and conditions of the prior acceptance shall continue to remain in full force and effect and shall continue to be binding commitments on the part of Zayo and its successors, heirs, assigns and transferees.
4. Zayo, its successors, heirs, assigns and transferees agree that all agreements, representations, guaranties and warranties set forth herein shall be binding upon any subsequent successors, heirs, assigns and transferees, if any.

5. Zayo, its successors, heirs, assigns and transferees each acknowledge that they are subject to the City's right to exercise its lawful police power, subject to the provisions of Edmonds City Code.

6. Zayo, its successors, heirs, assigns and transferees agree that they will fully comply with all lawful bonding, insurance and letter of credit requirements in the Franchise.

7. This Acceptance and Guarantee shall be read in conjunction with, but not amend or supersede any provisions set forth in the Franchise.

Dated: _____

ZAYO GROUP

By: _____

Its: _____

Affidavit of Publication

STATE OF WASHINGTON,
COUNTY OF SNOHOMISH

} S.S.

SUMMARY OF ORDINANCE NO. 3915
of the City of Edmonds, Washington

On the 19th day of March, 2013, the City Council of the City of Edmonds, passed Ordinance No. 3915. A summary of the content of said ordinance, consisting of the title, provides as follows:

ORDINANCE NO. 3915

AN ORDINANCE OF THE CITY OF EDMONDS, WASHINGTON, CONSENTING TO THE ASSIGNMENT OF THE NON-EXCLUSIVE FRANCHISE GRANTED TO METROMEDIA FIBER NETWORK SERVICES, INC., PURSUANT TO ORDINANCE NO. 3295, TO ZAYO GROUP.

The full text of this Ordinance will be mailed upon request.
DATED this 20th day of March, 2013.

CITY CLERK, SANDRA S. CHASE

Published: March 24, 2013.

The undersigned, being first duly sworn on oath deposes and says that she is Principal Clerk of THE HERALD, a daily newspaper printed and published in the City of Everett, County of Snohomish, and State of Washington; that said newspaper is a newspaper of general circulation in said County and State; that said newspaper has been approved as a legal newspaper by order of the Superior Court of Snohomish County and that the notice

Summary of Ordinance No. 3915

a printed copy of which is hereunto attached, was published in said newspaper proper and not in supplement form, in the regular and entire edition of said paper on the following days and times, namely:

March 24, 2013

and that said newspaper was regularly distributed to its subscribers during all of said period.

Karen E. Zorn

Principal Clerk

Subscribed and sworn to before me this

25th

day of March, 2013

Diana L. Hendrix

Notary Public in and for the State of Washington, residing at Everett, Snohomish County.

