

RESOLUTION R-2019-23

A RESOLUTION APPROVING SECOND AMENDMENT TO TELECOMMUNICATIONS LICENSE AGREEMENT BETWEEN SIGECOM, LLC D/B/A WOW! INTERNET, CABLE AND PHONE AND THE CITY OF WHEATON

WHEREAS, THE City of Wheaton, DuPage County, Illinois ("City") is an Illinois Home Rule municipality pursuant to provisions of Article VII, Section 6 of the Illinois Constitution, 1970, and as such, the City may exercise any lawful power and perform any function pertaining to its government and affairs; and

WHEREAS, on or about February 17, 2015 the City and Sigecom entered into a license agreement for installation, operation and maintenance of fiber optic cable ("Original Agreement"); and

WHEREAS, on or about August 1, 2017, Sigecom entered into an Asset Purchase Agreement with MCI Metro Access Transmission Services Corp. ("MCI Metro ") transferring its interest in the license and installations to MCI Metro; and

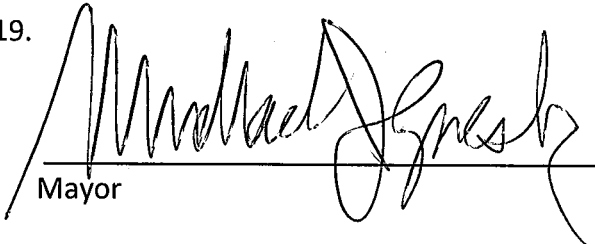
WHEREAS, on or about September 5, 2017, in accordance with Paragraph 18 of the license agreement of February 17, 2015, the City by resolution consented to the transfer between Sigecom and MCI Metro; and

WHEREAS, MCI Metro is a Telecommunications retailer pursuant to the Telecommunications Municipal Infrastructure Maintenance Fee Act (TMIFMA) 35 ILCS 635/10(d), and the Simplified Municipal Telecommunications Tax Act, 35 ILCS 636/5-7; and

WHEREAS, the second amendment hereby approved clarifies the relationship between the City and MCI Metro based on the current law.


NOW, THEREFORE, BE IT RESOLVED by the Mayor and the City Council of the City of Wheaton, DuPage County, Illinois that the Mayor is hereby authorized to sign and the City Clerk is hereby directed to attest, to the Second Amendment Telecommunications License Agreement, including all exhibits (A and A1) , between MCI Metro and the City of Wheaton which is attached hereto and incorporated herein as fully set forth as Exhibit 1.

ADOPTED this 15th day of April 2019.



Mayor

ATTEST:


City Clerk

Ayes:

Roll Call Vote:

Councilman Barbier
Councilwoman Fitch
Mayor Gresk
Councilman Rutledge
Councilman Scalzo
Councilman Sues

Nays:

None

Absent:

Councilman Prendiville

Motion Carried Unanimously

**SECOND AMENDMENT TO TELECOMMUNICATIONS LICENSE AGREEMENT BETWEEN
SIGECOM, LLC D/B/A WOW! INTERNET, CABLE AND PHONE AND THE CITY OF
WHEATON**

This Second Amendment (Second Amendment) to Telecommunications License Agreement, is entered into between MCI Metro 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 City of Wheaton originally owned by Sigecom, LLC d/b/a WOW! Internet, Cable and Phone, an Illinois limited liability company (hereinafter referred to as -WOW") and the City of Wheaton, an Illinois home rule municipality (hereinafter referred to as the "City") on the 16th day of April, 2019 ("Effective Date of Second Amendment")

WITNESSETH:

WHEREAS, THE City of Wheaton, DuPage County, Illinois ("City" is an Illinois Home Rule municipality pursuant to provisions of Article VII, Section 6 of the Illinois Constitution, 1970, and as such, the City may exercise any lawful power and perform any function pertaining to its government and affairs; and

WHEREAS, the City and Sigecom had entered into a telecommunications license agreement on or about February 17, 2015 for installation, operation and maintenance of certain work known as Sprint Tower ("Original Agreement"); and

WHEREAS, the City and Sigecom had entered into an amended telecommunications license agreement on or about October 5, 2015 that superseded the Original Agreement and added additional route segments to its network ("Amended Agreement" or "First Amendment" or "Agreement"); and

WHEREAS, on or about August 1, 2017, Sigecom entered into an Asset Purchase Agreement with MCI Metro Access Transmission Services Corp. ("Verizon") for the telecommunications network described in the Amended Agreement shown in Exhibit A ; and

WHEREAS, on or about September 5, 2017, the City consented to the transfer of the Amended Agreement between Sigecom and the City of Wheaton to Verizon in accordance with Paragraph 18 of said agreement; and

WHEREAS, Licensee is a Telecommunications retailer pursuant to the Telecommunications Municipal Infrastructure Maintenance Fee Act (TMIFMA) 35 ILCS 635/10(d), and the Simplified Municipal Telecommunications Tax Act, 35 ILCS 636/5-7; and

WHEREAS, Licensee and City (each a "Party" and together "Parties") desire to amend the terms of the Amended Agreement as more specifically set forth herein; and

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

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

2. Integration of the Second Amendment. The provisions of this Second Amendment shall be deemed by the Parties to be fully integrated into the Amended Agreement. The Amended Agreement 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 Amended Agreement 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 Amended 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.

3. Amendments to the Amended Agreement.

The term "Licensee" in the Amended Agreement 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. Grant of License.

Section 2 of the Amended Agreement shall be replaced with the following:

"City grants to Licensee its successors and assigns the non-exclusive right to install, maintain, extend, sell, lease the use of and operate a fiber optic telecommunications network within, over or under the public rights-of-way of the City, such proposed "Work" depicted in Exhibits A and A1 be subject to all of the terms and conditions set forth herein, those set forth in Article VIII "Construction of Facilities in the Public Ways" of Chapter 58 "Streets, Sidewalks and other Public Places" of the Wheaton City Code, and all other applicable local, state and federal laws."

5. Term: Payments.

Section 3 of the Amended Agreement shall be replaced with the following:

"Payments: Term. The Licensee shall not pay fees to the City under this Agreement, so long as Licensee maintains its status as a Telecommunications retailer under the Telecommunications Municipal Infrastructure Maintenance Fee Act (TMIFMA) (35 ILCS 635/10(d)) and timely pays the taxes imposed by the Simplified Municipal Telecommunications Tax Act (SMTT) (35 ILCS 636/5) to the State of Illinois

The License granted by the City to Licensee for a telecommunication network identified under Exhibits A and A-1 shall be for a term of ten (10) years from the Effective Date of the Second Amendment. The Amended Agreement may be renewed by mutual agreement of the parties for successive ten (10) years provided that Licensee makes written request for renewal of the Agreement."

6. Notice.

Notices to Licensee under Section 13 of 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: HQE02E 102
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

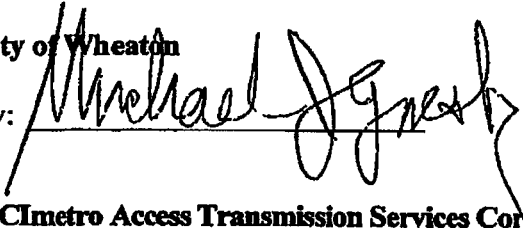
7. Exhibit A.

Exhibit A of the Agreement shall be replaced with Exhibit A 1 attached herewith.

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

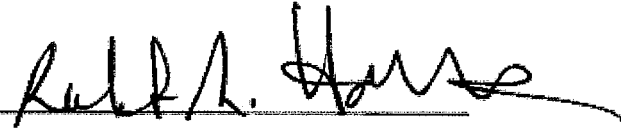
City of Wheaton

By:



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

By:



ROBERT J. HAYES

EXHIBIT A-1

Part I

Project Name	Plan Date	Route	Aerial	Buried	Fee
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(Paid by WOW)

Part II

Project Name	Plan Date	Route	Aerial	Buried
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