



Date: May 28, 2015

To: Thomas J. Bonfield, City Manager
Through: W. Bowman Ferguson, Deputy City Manager
From: Marvin G. Williams, Director of Public Works
Subject: Telecommunication License Agreement with Frontier Communication of the Carolinas, LLC

Executive Summary

Frontier Communication of the Carolinas, LLC proposes to install and maintain Telecommunications Facilities within City limits. A license agreement is required when private utilities, such as conduits and fiber optic cable, are installed in the public right-of-way within the City limits. Pursuant to Section 62-57 of the City of Durham Code of Ordinances, Frontier Communication of the Carolinas, LLC seeks approval of the Telecommunication License Agreement from City Council.

This Telecommunications License would only permit Frontier Communication of the Carolinas, LLC, upon obtaining required approvals and permits, to place its Telecommunications Facilities in those portions of the public right-of-way approved by the City.

Recommendation

To authorize the City Manager to enter into a license agreement with Frontier Communication of the Carolinas, LLC for installation of Telecommunications Facilities within public right-of-way located within City limits.

Background

General Telephone Company of the Southeast (part of GTE Corporation) obtained from the City of Durham a 30-year Telephone Franchise on July 18, 1983. This company became Verizon Communications after a merger with Bell Atlantic in 2000. Verizon sold it in 2010 to Frontier. Frontier Communication of the Carolinas, LLC operated under the original franchise until it expired July in 2013 and is now seeking a Telecommunication License to continue operating in the City

Frontier Communication of the Carolinas, LLC proposes to install and maintain Telecommunications Facilities within City limits. Per Section 62-57 Franchises and Licenses of the City of Durham Code of Ordinances, a Telecommunication License may be granted to construct and maintain equipment that transmits/communicates between points specified by the User and provides services that are regulated under the Federal Telecommunications Act of 1996 and are not subject to a franchise agreement. A separate excavation permit from the City's Public Works Department is required for the actual construction of the Telecommunication Facilities.

The Telecommunication License Agreement and the required performance bond are perpetual in nature. The Telecommunication License Agreement can be terminated if a superseding

Telecommunications Franchise or license is executed by the City and the Licensee or if it's forfeited. The City reserves the right to declare a forfeiture of the Telecommunication License Agreement in the event that the Licensee does not comply with any material provision of the Telecommunication License Agreement and does not fix such non-compliance after been notified by the City.

The City is responsible for ensuring that current and future providers of Telecommunications Services will have access to the public right-of-way in accordance with Section 253 of the Federal Communications Act, 47 U.S.C. § 253. This License does not confer an exclusive right or privilege to occupy or use the public right-of-way for delivery of Telecommunications Service. The City reserves all rights to use the public right-of-way for any purpose not prohibited by law, including the provision of Telecommunications Services, and all rights to grant authorizations to use the public right-of-way to any other providers of Telecommunications Services.

Issues/Analysis

Any feature in the right-of-way has the potential to pose a hazard to the public, and to increase liability to the licensee. To the extent not prohibited by law, the Licensee shall defend, indemnify, and save harmless the City from and against all Charges to the extent that they arise from, in connection with, or out of this License, or as a result of Licensee's action or inaction in constructing, operating, or maintaining its Telecommunications Facilities in the City of Durham, or from, in connection with, or out of any claim brought by any reseller, lessee or other user of Licensee's Telecommunications Facilities, as a result of any damage to Licensee's Telecommunications Facilities by the City that occurs as a result of or in connection with any public improvements.

Alternatives

City Council can choose not to approve the request.

Financial Impact

The Licensee will assume the cost of installation, maintenance, and repair, including the cost of repairs to the street and pavement associated with the installation, maintenance, and repair of the Telecommunications Facilities.

SDBE Summary

The SDBE Summary is not applicable for this update.