

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Adoption of Resolution No. 450 - Approving Transfer of a Telecommunications Franchise from Electric Lightwave, LLC to Zayo Group, LLC
DEPARTMENT:	City Manager's Office
PRESENTED BY:	Christina Arcidy, Management Analyst
ACTION:	<input type="checkbox"/> Ordinance <input checked="" type="checkbox"/> Resolution <input type="checkbox"/> Motion <input type="checkbox"/> Discussion <input type="checkbox"/> Public Hearing

PROBLEM/ISSUE STATEMENT:

On March 1, 2017, Electric Lightwave, LLC (ELI) entered into a purchase agreement with Zayo Group, LLC (Zayo). As a result, Zayo became successor-in-interest to the assets of ELI. In order for Zayo to operate, maintain, repair and further construct the telecommunications system established by ELI in the City of Shoreline, the City Council must approve the request to transfer the franchise agreement to Zayo from ELI. Proposed Resolution No. 450 approves this transfer and assigns the Franchise Agreement from ELI to Zayo; confirms Zayo's acceptance of all the rights and responsibilities established by the terms and conditions of the franchise; and confirms that the terms and conditions of the existing agreement continue in full force and effect. Tonight, Council is scheduled to adopt proposed Resolution No. 450.

RESOURCE/FINANCIAL IMPACT:

There is no financial impact to the City of Shoreline. Under state law, the City is precluded from imposing franchise fees, other than costs of administration, upon telecommunication companies and service providers, as defined in RCW 35.99.010, for use of the right-of-way. Alternatively, the City would potentially be able to collect utility taxes based on gross revenue generated in Shoreline but not until Zayo collects gross revenues from retail customers. However, given that there are no end-users of Zayo's system in Shoreline, the City cannot collect any utility taxes from Zayo's subscribers. If Zayo provides services to subscribers within the City in the future, Zayo shall become subject to the City's utility tax as set forth in Shoreline Municipal Code Chapter 3.32.

RECOMMENDATION

Staff recommends that the City Council adopt Resolution No. 450 which would grant a transfer of control of the telecommunications franchise granted to Electric Lightwave, LLC to Zayo Group, LLC.

Approved By: City Manager **JN** City Attorney **MK**

BACKGROUND

Fiber optic telecommunications firms which use the City's rights-of-way for maintenance of their fiber telecommunications systems are required to have a non-exclusive franchise with the City. Shoreline Municipal Code (SMC) section 12.25.030 states that "it shall be unlawful to construct, install, maintain or operate any facility in, on, above, or below the public right-of-way without a valid franchise agreement obtained pursuant to the provision of this chapter."

On July 10, 2006, the City Council adopted Ordinance No. 432, granting a non-exclusive telecommunications franchise to Electric Lightwave, LLC (ELI). The staff report from this Council meeting can be viewed at the following link:

<http://cosweb.ci.shoreline.wa.us/uploads/attachments/cck/council/staffreports/2006/staffreport071006-7d.pdf>.

On November 13, 2006, the City Council amended the ELI franchise with Ordinance No. 450. The staff report from this Council meeting can be viewed at the following link:

<http://cosweb.ci.shoreline.wa.us/uploads/attachments/cck/council/staffreports/2006/staffreport111306-7d.pdf>.

On March 1, 2017, ELI merged with Zayo and became successor-in-interest to the assets of ELI. As such, the City's franchise with ELI should be transferred to Zayo. The franchise for the telecommunications system to be transferred to Zayo has no end-user customers in Shoreline, as their fiber cable runs the length of Aurora Avenue N., underground, as a "pass through." Zayo confirms that it provides no voice, cable, video, residential or end user service.

DISCUSSION

Because Zayo holds an existing franchise with the City, is seeking the transfer an existing franchise, and is not an applicant for a new franchise, a number of requirements in the City's Municipal Code do not apply. However, staff reviewed much of the same information required of a new franchisee in order to determine Zayo's ability to operate, maintain, repair, and further construct the telecommunications system in Shoreline. Staff's analysis of these qualification is as follows:

Financial

- Zayo meets the financial qualifications necessary to carry out the franchise:
 - Zayo will be owned by Zayo Group Holdings, Inc.
 - Zayo has completed and integrated 45 acquisitions as of June 30, 2019.
 - Zayo has never filed for relief under any provision of the bankruptcy laws of the United States, have had an involuntary petition against them pursuant to the Bankruptcy Code, been the subject of any state law insolvency proceeding such as a transfer for the benefit of creditors, have had a franchise agreement revoked, have been found guilty by any federal, state, or municipal court or administrative agency in the United

- States, of a) violation of a security, or antitrust law; or b) felony or any other crime involving moral turpitude.
- A report of independent auditors of the company's financial statements found no issues.

Technical

- Zayo meets the technical qualifications necessary to assume control of the franchise:
 - Zayo has an experienced management team with substantial industry experience in managing and designing fiber network and network-neutral colocation and interconnection facilities
 - The management team has significant experience acquiring and integrating bandwidth infrastructure and assets.

Legal

- Zayo meets the legal qualifications necessary to assume control of the franchise:
 - The current ELI franchise will remain intact and no portions of the document will be amended. Zayo will be held to and comply with all the legal obligations currently mandated of ELI.
 - Zayo will conduct business in accordance with all applicable laws, rules, and regulations, and currently holds all the licenses, certificates and/or other regulatory authorizations required.

Granting of Franchise Transfer

Proposed Resolution No. 450 would approve this transfer and assign the Franchise Agreement from ELI to Zayo; confirm Zayo's acceptance of all the rights and responsibilities established by the terms and conditions of the franchise; and confirm that the terms and conditions of the existing agreement continue in full force and effect.

RESOURCE/FINANCIAL IMPACT

There is no financial impact to the City of Shoreline. Under state law, the City is precluded from imposing franchise fees, other than costs of administration, upon telecommunication companies and service providers, as defined in RCW 35.99.010, for use of the right-of-way. Alternatively, the City would potentially be able to collect utility taxes based on gross revenue generated in Shoreline but not until Zayo collects gross revenues from retail customers. However, given that there are no end-users of Zayo's system in Shoreline, the City cannot collect any utility taxes from Zayo's subscribers. If Zayo provides services to subscribers within the City in the future, Zayo shall become subject to the City's utility tax as set forth in Shoreline Municipal Code Chapter 3.32.

RECOMMENDATION

Staff recommends that the City Council adopt Resolution No. 450 which would grant a transfer of control of the telecommunications franchise granted to Electric Lightwave, LLC to Zayo Group, LLC.

ATTACHMENT

Attachment A: Resolution No. 450, Transferring Control of the Telecommunications Franchise Granted to Electric Lightwave, LLC to Zayo Group, LLC.

RESOLUTION NO. 450

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHORELINE, WASHINGTON, CONSENTING TO THE TRANSFER OF CONTROL OF THE TELECOMMUNICATIONS FRANCHISE GRANTED IN ORDINANCE NO. 432.

WHEREAS, on July 10, 2006, the City Council adopted Ordinance No. 432, granting a 10-year Franchise with two (2) successive five-year renewals to Electric Lightwave, LLC (“ELI”), with the Franchise effective until July 24, 2026; and

WHEREAS, on September 14, 2009, the City Council adopted Ordinance No. 450 amending the terms of Ordinance No. 432; and

WHEREAS, on March 1, 2017, Zayo Group, LLC (“Zayo”) entered into a Purchase Agreement with ELI by which Zayo acquired one hundred percent of the ownership interest of ELI and, pursuant to the Purchase Agreement, the ultimate control and performance of the Franchise is to transfer to Zayo; and

WHEREAS, pursuant to Section 31 of the ELI Franchise, ELI has requested written consent by the City for the transfer of control; and

WHEREAS, the City Council considered the transfer and all applicable and relevant factors, and deems it to be in furtherance of the public interest and welfare of its citizens to consent to the transfer request, subject to appropriate conditions;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SHORELINE, WASHINGTON, HEREBY RESOLVES:

Section 1. Consent Approved. The City of Shoreline, as the franchise authority, consents to the transfer of control from Electric Lightwave, LLC to Zayo Group, LLC as set forth above. Upon the effective date of this Resolution, Zayo Group, LLC shall be responsible for and comply with all of the terms and conditions of the Franchise granted by Ordinance No. 432, as amended by Ordinance No. 450.

Section 2. Franchise in Full Force and Effect. The City of Shoreline confirms the Franchise granted by Ordinance No. 432, as amended by Ordinance No 450, is in full force and effect and expires on November 24, 2026.

Section 3. Effective Date of Consent and Notice. This Resolution shall be deemed effective upon adoption.

Section 4. Severability. If any one or more sections, subsections, or sentences of this Resolution are held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this Resolution and the same shall remain in full force and effect.

Section 5. Effective Date of Resolution. This Resolution shall take effect and be in full force immediately upon passage by the City Council.

ADOPTED BY THE CITY COUNCIL ON JANUARY 13, 2020.

Mayor

ATTEST:

Jessica Simulcik Smith
City Clerk