

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Adoption of Ordinance No. 905 - Authorizing a One-Year Extension to the Right-of-Way Franchise with Northwest Fiber LLC (dba Ziplly) Originally Granted to Verizon Northwest Inc. (Ordinance No. 522) to Construct, Maintain, Operate, Replace, and Repair a Cable System Over, Along, Under, and Through Designated Public Rights-of-way in the City of Shoreline
DEPARTMENT:	City Manager's Office
PRESENTED BY:	Christina Arcidy, Management Analyst
ACTION:	<input checked="" type="checkbox"/> Ordinance <input type="checkbox"/> Resolution <input type="checkbox"/> Motion <input type="checkbox"/> Discussion <input type="checkbox"/> Public Hearing

PROBLEM/ISSUE STATEMENT:

As per Shoreline Municipal Code (SMC) Section 12.25.010, all utilities using the City's rights-of-way for operation and maintenance of their facilities are required to have a non-exclusive franchise with the City. The City's existing non-exclusive right-of-way franchise with Northwest Fiber LLC (NW Fiber) to construct, maintain, operate, replace, and repair a cable system within the City expires November 4, 2020. The franchise was originally granted to Verizon Northwest Inc. (Verizon) via Ordinance No. 522 and was then transferred to Frontier Communications Corporation (Frontier) via Resolution No. 289. The franchise was then transferred to NW Fiber via Resolution No. 443, which was adopted on September 16, 2019.

Prior to NW Fiber's acquisition of Frontier, the City had begun franchise negotiations with Frontier. Once the City received notice that Frontier would be acquired by NW Fiber, the City attempted to start franchise negotiations with NW Fiber. NW Fiber is not yet able to begin franchise negotiations and have asked for an extension of the existing franchise.

Proposed Ordinance No. 905 would provide a one-year extension to the existing franchise agreement with NW Fiber and would terminate November 4, 2021, or upon the effective date of a new franchise, whichever occurs first. All terms and conditions of the proposed one-year extension are unchanged from the existing franchise; only the term (length of the agreement) has been changed, which would allow staff the time needed to negotiate a new long-term franchise agreement for cable service in the City.

Proposed Ordinance No. 905 was discussed with the City Council on October 5, 2020. Council was supportive of the proposed one-year franchise extension and directed staff to bring back proposed Ordinance No. 905 on tonight's consent calendar for adoption.

RESOURCE/FINANCIAL IMPACT:

This franchise extension will have no financial impact to the City. The fees and taxes that the City currently receives from NW Fiber will continue under this one-year extension of the existing franchise agreement.

RECOMMENDATION

Staff recommends that Council adopt Ordinance No. 905 granting a one-year extension of the non-exclusive franchise to Northwest Fiber, LLC.

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

BACKGROUND

As per Shoreline Municipal Code (SMC) Section 12.25.010, all utilities using the City's rights-of-way for operation and maintenance of their facilities are required to have a non-exclusive franchise with the City. The City's existing non-exclusive right-of-way franchise with NW Fiber (dba Ziplly), granted by Ordinance No. 522, expires November 6, 2020.

Council granted this cable franchise to Verizon Northwest Inc. (Verizon) on October 27, 2008 for a term of twelve (12) years. Frontier Communications Corporation (Frontier) then bought the Verizon wireline services in 14 Western States, including Washington, in 2009. Council subsequently granted a requested transfer of the franchise from Verizon to Frontier via [Resolution No. 289](#). On May 28, 2019, Frontier entered into a purchase agreement with NW Fiber and became the successor-in-interest to the assets of Frontier, which prompted a transfer of Frontier's franchise to NW Fiber via [Resolution No. 443](#).

Prior to NW Fiber's acquisition of Frontier, the City had begun franchise negotiations with Frontier. Once the City received notice that Frontier would be acquired by NW Fiber, the City attempted to start franchise negotiations with NW Fiber. NW Fiber is not yet able to begin franchise negotiations and have asked for a one-year extension of the existing franchise.

Proposed Ordinance No. 905, which would provide this one-year extension to the existing franchise agreement with NW Fiber, was discussed with the City Council on October 5, 2020. The staff report for this Council discussion can be found at the following link:

<http://cosweb.ci.shoreline.wa.us/uploads/attachments/cck/council/staffreports/2020/staffreport100520-8c.pdf>.

Council was supportive of the proposed one-year franchise extension and directed staff to bring back proposed Ordinance No. 905 on tonight's consent calendar for adoption.

DISCUSSION

As noted above, proposed Ordinance No. 905 (Attachment A) would provide a one-year extension to the existing franchise agreement with NW Fiber. All terms and conditions of the proposed one-year extension are unchanged from the existing franchise except for the term, which is extended by one year and would terminate November 4, 2021, or upon the effective date of a new franchise, whichever occurs first.

New Franchise Agreement Consideration

While a competitive cable provider may apply for a franchise at any time, the City must go through the renewal process with each existing cable operator. The City cannot deny renewal to an existing cable operator except for specific criteria set forth in the Cable Act.

As a reminder, the City cannot tell a cable operator which television programs to carry or regulate non-cable services. Cable operators have First Amendment protections, so the City has very limited authority to regulate the type of cable channels carried or the content of cable television programming Comcast makes available in Shoreline. The City does not have authority to regulate non-cable services (e.g., high-speed Internet access and telephone service) provided by NW Fiber. Federal law allows only for regulation of cable television services.

The Shoreline Municipal Code (SMC) section 12.25.070 identifies the considerations the City should review when renewing a right-of-way franchise, which are consistent with the [Cable Act of 1984](#) (47 U.S.C. § 546). These considerations include:

1. The applicant's past service record in the city and in other communities.
2. The nature of the proposed facilities and services.
3. The proposed area of service.
4. The proposed rates (if applicable).
5. Whether the proposal would serve the public needs and the overall interests of the city residents.
6. That the applicant has substantially complied with the material terms of the existing franchise.
7. The quality of the applicant's service, response to consumer complaints, and billing practices.
8. That the applicant has the financial, legal, and technical ability to provide the services, facilities, and equipment as set forth in the application.
9. The applicant's proposal is reasonable to meet the future community needs and interests, taking into account the cost of meeting such needs and interests.

Due to the substantial capital investment required to construct a modern cable system, the Cable Act gives cable companies certain advantages in renewing their franchises. The law limits the City's ability to deny renewal of a cable franchise. Even where the City can regulate, the federal government has established provisions that may limit the City's authority.

While NW Fiber is a new cable provider company, the executive board and staff have worked in the industry for many years in the Puget Sound region. They have shared their interest in building a better fiber network for the region, though no plans have yet been made available to extend service within Shoreline. Staff is cautiously optimistic that negotiations will go smoothly with NW Fiber in the year ahead. Frontier, the previous provider was in substantial compliance with the criteria identified in SMC Section 12.25.070, which is why staff believe this one-year extension to the franchise should be granted.

RESOURCE/FINANCIAL IMPACT

This franchise extension will have no financial impact to the City. The fees and taxes that the City currently receives from NW Fiber will continue under this one-year extension of the existing franchise agreement.

RECOMMENDATION

Staff recommends that Council adopt Ordinance No. 905 granting a one-year extension of the non-exclusive franchise to Northwest Fiber, LLC.

ATTACHMENTS

Attachment A: Proposed Ordinance No. 905, Authorizing a One-Year Extension to the Right-of-Way Franchise with Northwest Fiber LLC (dba Ziplly) Originally Granted to Verizon Northwest Inc. (Ordinance 522) to Construct, Maintain, Operate, Replace, and Repair a Cable System Over, Along, Under, and Through Designated Public Rights-of-way in the City of Shoreline

ORDINANCE NO. 905

AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON EXTENDING AND RESTATING THE FRANCHISE GRANTED TO VERIZON NORTHWEST INC. AND SUBSEQUENTLY TRANSFERRED TO NORTHWEST FIBER LLC BY ORDINANCE NO. 522 FOR A NON-EXCLUSIVE FRANCHISE TO CONSTRUCT, MAINTAIN, OPERATE, AND REPAIR A CABLE SYSTEM IN, ON, ACROSS, OVER, ALONG, UNDER, UPON, THROUGH, AND BELOW PUBLIC RIGHTS-OF-WAY OF THE CITY OF SHORELINE, WASHINGTON TO PROVIDE CABLE SERVICES.

WHEREAS, on October 27, 2008, pursuant to RCW 35A.11.020, RCW 35A.47.040, and Chapter 12.25 SMC, the Shoreline City Council passed Ordinance No. 522 granting a twelve-year non-exclusive franchise for a cable system within the public-rights-of-way of the City to Verizon Northwest, Inc; and

WHEREAS, the term of the Franchise granted by Ordinance No. 522 expires on November 4, 2020; and

WHEREAS, with the passage of Resolution No. 289, the franchise was transferred to Frontier Communications Corporation and, with the passage of Resolution No. 443, the franchise was transferred to Northwest Fiber LLC; and

WHEREAS, the City and Northwest Fiber LLC are currently negotiating a new franchise agreement but such negotiations are still on-going, having been impacted by the recent acquisition of Frontier by Northwest Fiber LLC, and may continue beyond the November 4, 2020 expiration date of the current franchise; and

WHEREAS, by providing a one-year extension of the Franchise granted by Ordinance No. 522, the City and Northwest Fiber LLC will be able to complete negotiations that benefit the residents of the City of Shoreline; and

WHEREAS, the City Council finds that it is in the best interests of the health, safety, and welfare of the residents of the City of Shoreline to grant a one-year non-exclusive franchise to Northwest Fiber LLC for a cable system within the City rights-of-way to allow for productive negotiations to occur;

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

Section 1. Ordinance No. 522 Amended. Section 1 of Ordinance No. 522, granting a non-exclusive franchise to Verizon Northwest, Inc. now transferred to Northwest Fiber LLC, is hereby amended to provide for a one (1) year extension of the franchise:

Section 1. Grant of Franchise. The second sentence of this section is amended to read:

Subject to the provisions in Ordinance No. 522, the term of the franchise shall be extended for a period of one (1) year, beginning at 12:01 a.m. Pacific Time on November 5, 2020 and terminating at 11:59 p.m. Pacific Time on November 4, 2021, and shall grant Northwest Fiber LLC the right, privilege, and authority to construct, maintain, operate, and repair a cable system in, on, across, over, along, under, upon, through, and below the public rights-of-way to provide cable services in the City of Shoreline, all as provided in Exhibit A.

Exhibit A – Cable Franchise Agreement. Section 2.3. Term. This subsection is amended to read:

The amended and extended term of the Franchise granted hereunder shall be from 12:01 a.m. Pacific Time on November 5, 2020 to 11:59 p.m. Pacific Time on November 4, 2021.

Section 2. Terms and Conditions of Non-Exclusive Franchise Granted by Ordinance No. 522 Remain the Same. Except as specifically provided in this Ordinance, the terms and conditions of the non-exclusive franchise granted to Northwest Fiber LLC by Ordinance No. 522, including Exhibit A Cable Franchise Agreement, continue in full force and effect.

Section 3. Directions to City Clerk. The City Clerk is hereby authorized and directed to forward certified copies of this Ordinance to Northwest Fiber. No later than 11:59 p.m. PST, November 4, 2020, Northwest Fiber LLC shall accept in writing the extension authorized by this Ordinance and the continuation of the non-exclusive franchise granted by Ordinance No. 522. If Northwest Fiber LLC fails to provide written acceptance, this Ordinance shall become null and void and the franchise granted by Ordinance No. 522 shall expire.

Section 4. Corrections by City Clerk or Code Reviser. Upon approval of the City Attorney, the City Clerk and/or the Code Reviser are authorized to make necessary corrections to this Ordinance, including the corrections of scrivener or clerical errors; references to other local, state, or federal laws, codes, rules, or regulations; or ordinance numbering and section/subsection numbering and references.

Section 5. Severability. Should any section, subsection, paragraph, sentence, clause, or phrase of this Ordinance or its application to any person or situation be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this Ordinance or its application to any person or situation.

Section 6. Publication and Effective Date. In accordance with state law, a summary of this Ordinance shall be published in the official newspaper. The cost of such publication shall be borne by Northwest Fiber LLC. If accepted by Northwest Fiber LLC as provided in Section 3 above, this Ordinance shall take effect at 12:01 am Pacific Time on November 5, 2020. Otherwise, this Ordinance and the franchise granted by Ordinance No. 522 shall become null and void as of 11:59 pm Pacific Time on November 4, 2020.

PASSED BY THE CITY COUNCIL ON OCTOBER 19, 2020.

Mayor Will Hall

ATTEST:

APPROVED AS TO FORM:

Jessica Simulcik Smith
City Clerk

Margaret King
City Attorney

Date of Publication: , 2020
Effective Date: , 2020