

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Action on Ordinance No. 971 - Authorizing a One-Year Extension to the Right-of-Way Franchise with Frontier Communications Northwest (dba Ziplly Fiber) 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:	Jim Hammond, City Manager's Office
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, 2022. The franchise was originally granted to Verizon Northwest Inc. (Verizon) via Ordinance No. 522 and was then transferred to Frontier Communications Corporation via Resolution No. 289. The franchise was then transferred to NW Fiber via Resolution No. 443, which was adopted on September 16, 2019.

The City had begun franchise negotiations with Frontier Communications Corporation prior to NW Fiber's acquisition. Once the City received notice that they would be acquired by NW Fiber, the City learned that NW Fiber– which is the holding company for franchisee Frontier Communications Northwest, LLC (dba Ziplly Fiber) – was unable to begin franchise negotiations and received a one-year extension of the existing franchise pursuant to Ordinance No. 938. Ziplly Fiber is now seeking an additional extension of one year due to a significant decline in cable subscribership, which has prompted a need for in-depth analysis of the appropriate terms and conditions for a shrinking franchise.

Proposed Ordinance No. 971 would provide this one-year extension to the existing franchise agreement and would terminate November 4, 2023, 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. Tonight, Council is scheduled to take action on proposed Ordinance No. 971.

RESOURCE/FINANCIAL IMPACT:

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

RECOMMENDATION

Staff recommends that Council adopt proposed Ordinance No. 971 granting a limited franchise extension to Frontier Communications Northwest, LLC (dba Zply Fiber).

Approved By: City Manager ***DT*** City Attorney ***JA-T***

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 Northwest Fiber LLC (NW Fiber) to construct, maintain, operate, replace, and repair a cable system within the City expires November 4, 2022. The franchise was originally granted to Verizon Northwest Inc. (Verizon) via Ordinance No. 522 and was most recently extended by Ordinance No. 938. The franchise expires November 4, 2022.

The City Council granted the cable franchise to Verizon on October 27, 2008 via Ordinance No. 522 for a term of 12 years. More information can be found in this [staff report](#). Frontier Communications Corporation 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 Communications Corporation via [Resolution No. 289](#). More information can be found in this [staff report](#).

On May 28, 2019, Frontier Communication Corporation entered into a purchase agreement with NW Fiber and became the successor-in-interest to the assets of Frontier Communications Corporation, which prompted a transfer of Frontier Communications Corporation's franchise to NW Fiber via [Resolution No. 443](#). More information can be found in this [staff report](#). NW Fiber is now the holding corporation to Frontier Communications Northwest, LLC (dba Ziplly Fiber).

Prior to NW Fiber's acquisition of Frontier Communication Corporation, the City had begun franchise negotiations with Frontier Communications Corporation. Once the City received notice that Frontier Communications Corporation would be acquired by NW Fiber, the City attempted to start franchise negotiations with NW Fiber. Even with the previous extensions, NW Fiber is not yet able to begin franchise negotiations and have asked for an additional one-year extension of the existing franchise due to a significant decline in cable subscribership that has prompted a need for in-depth analysis of the appropriate terms and conditions for a shrinking franchise.

DISCUSSION

Proposed Ordinance No. 971 (Attachment A) would provide a one-year extension to the existing Ziplly Fiber franchise agreement. All terms and conditions of the proposed one-year extension are unchanged from the existing franchise except the term (length of the agreement) term, which is extended by one year and would terminate November 4, 2023, or upon the effective date of a new franchise, whichever occurs first.

The City Council discussed proposed Ordinance No. 917 on October 10, 2022 and directed staff to bring the proposed Ordinance back to Council for adoption tonight. The staff report for the October 10th Council discussion can be found at the following link: <http://cosweb.ci.shoreline.wa.us/uploads/attachments/cck/council/staffreports/2022/staffreport101022-8c.pdf>.

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 Ziplly Fiber 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 Ziplly Fiber. Federal law allows only for regulation of cable television services.

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 Ziplly Fiber is a relatively 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 has not done a complete analysis of service charges, though the City is aware that Ziplly Fiber has increased their "Local Programming Fee" in the year since purchasing the cable system from Frontier Communications Corporation.

Staff remains optimistic that negotiations will go smoothly with Ziplly Fiber in the year ahead. Frontier Communications Corporation, the previous provider, was in substantial compliance with the criteria identified in SMC Section 12.25.070, and Ziplly Fiber has continued to be in compliance in their first three years of operations in Shoreline. Staff has been in regular communications with Ziplly Fiber staff over the years and understand the significant change in the cable market facing Ziplly Fiber. As Ziplly Fiber has been in compliance and continues to communicate future intent with the City, staff believe this additional 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 Frontier Communications Northwest, LLC (dba Ziplly Fiber) will continue under this one-year extension of the existing franchise agreement.

RECOMMENDATION

Staff recommends that Council adopt proposed Ordinance No. 971 granting a limited franchise extension to Frontier Communications Northwest, LLC (dba Ziplly Fiber).

ATTACHMENTS

Attachment A: Proposed Ordinance No. 971

ORDINANCE NO. 971

AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON EXTENDING THE FRANCHISE GRANTED BY ORDINANCE NO. 522, AND AS EXTENDED BY ORDINANCE NOS. 905 AND 938, FOR A NON-EXCLUSIVE FRANCHISE TO FRONTIER COMMUNICATIONS NORTHWEST, LLC (DBA ZIPLY FIBER) 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, since then this franchise has been transferred to Frontier Communications Northwest, LLC (dba Ziplly Fiber); and

WHEREAS, in October 2020 and again in October 2021, the City Council extended the Franchise in one (1) year increments to allow for continued negotiations, with the Franchise now terminating on November 4, 2022 and

WHEREAS, Frontier Communications Northwest, LLC (dba Ziplly Fiber) has encountered a significant decline in cable subscribership, which has prompted a need for in-depth analysis of the market and an assessment of the appropriate terms and conditions for a franchise; and

WHEREAS, by providing an additional one-year extension of the Franchise granted by Ordinance No. 522, as extended, the City and Frontier Communications Northwest, LLC (dba Ziplly Fiber) 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 Frontier Communications Northwest, LLC (dba Ziplly Fiber) 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. Amendment - Extension. Section 1 of Ordinance No. 522, as extended by Ordinance No. 905 and Ordinance No. 938, granting a non-exclusive franchise to Verizon Northwest, Inc. now transferred to Frontier Communications Northwest, LLC (dba Ziplly Fiber), 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, as extended by Ordinance No. 905 and Ordinance No. 938, 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, 2022 and terminating at 11:59 p.m. Pacific Time on November 4, 2023, and shall grant Frontier Communications Northwest, LLC (dba Ziplly Fiber) 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, 2022, to 11:59 p.m. Pacific Time on November 4, 2023.

Section 2. Terms and Conditions of Non-Exclusive Franchise Granted by Ordinance No. 522, as extended by Ordinance No. 905 and Ordinance No. 938, Remain the Same. Except as specifically provided in this Ordinance, the terms and conditions of the non-exclusive franchise granted to Frontier Communications Northwest, LLC (dba Ziplly Fiber) by Ordinance No. 522, as extended by Ordinance No. 905 and Ordinance No. 938, 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 Frontier Communications Northwest, LLC (dba Ziplly Fiber). No later than 11:59 p.m. PST, November 4, 2022, Frontier Communications Northwest, LLC (dba Ziplly Fiber) shall accept in writing the extension authorized by this Ordinance and the continuation of the non-exclusive franchise granted by Ordinance No. 522, as extended by Ordinance No. 905 and Ordinance No. 938. If Frontier Communications Northwest, LLC (dba Ziplly Fiber) fails to provide written acceptance, this Ordinance shall become null and void and the franchise granted by Ordinance No. 522, as extended by Ordinance No. 905 and Ordinance No. 938, 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 Frontier Communications Northwest, LLC (dba Ziplly Fiber). If accepted by Frontier Communications Northwest, LLC (dba Ziplly Fiber) as provided in Section 3 above, this Ordinance

shall take effect at 12:01 am Pacific Time on November 5, 2022. Otherwise, this Ordinance and the franchise granted by Ordinance No. 522, as extended by Ordinance No. 905 and Ordinance No. 938, shall become null and void as of 11:59 pm Pacific Time on November 4, 2022.

PASSED BY THE CITY COUNCIL ON OCTOBER 24, 2022.

Mayor Keith Scully

ATTEST:

APPROVED AS TO FORM:

Jessica Simulcik-Smith
City Clerk

Julie Ainsworth-Taylor
Assistant City Attorney
On behalf of
Margaret King
City Attorney

Date of Publication: , 2022
Effective Date: , 2022

Section 3 Acceptance Date: , 2022