

LICENSE AND FRANCHISE AGREEMENT

THIS AGREEMENT (the Agreement) is dated this 25 day of October, 2021, by and between the Town of Vienna, a Virginia municipal corporation (Town) and Level 3 Communications, LLC (Franchisee).

Section 1. In consideration of the terms hereof, the payment of required right-of-way user fees by Franchisee to the Town, the annual payment rate as proscribed by Virginia Code Section 56-468.1 as compensation to the Town for the use of certain Town streets to run underground fiber conduit through the Town, and other good and valuable consideration, the Town awards to Franchisee, its successors and assigns, for the term of five (5) years and subject to the conditions and limitations described herein, a nonexclusive franchise to use the streets, alleys, rights-of-way, and public places of the Town as shown on the drawing attached as Exhibit A (as the same may hereafter be modified subject to the Town's permitting process) (the Drawing). Exhibit A is hereby defined as "Critical Infrastructure Information" as that term is used in Va. Code Section 2.2-3705.2(14). Exhibit A, as amended, shall be given confidential treatment by the Town and the Town expressly agrees not to release Exhibit A or the contents thereof to third parties. The purpose of this grant is to allow Franchisee's construction and/or maintenance of a system of conduits, ducts, mains, and pipes and such other underground facilities for which permits may be issued by the Town (collectively referred to as the facilities) for the purposes of placing there the Franchisee's wires, cables and appurtenances thereto for running a telecommunications system throughout the Town to provide telecommunication service and access lines to customers in the Town. Franchisee will place all facilities underground unless it is not technically feasible to do so as agreed to by the Town. The

Town acknowledges that the permission granted here extends to and includes the existing facilities of Franchisee and its affiliate company Level 3 Telecom of Virginia, LLC, which acquired the assets of American Communications Services of Virginia, Inc. The combined facilities are depicted in Exhibit A.

Section 2. All facilities, under or along streets, alleys, rights-of-way, and public places of the Town authorized by this Agreement to be placed and constructed, shall be located underground and as shown on the Drawing (Exhibit A), attached and incorporated by reference. Prior to construction in and under the streets, alleys, rights-of-way, and public places of the Town, Franchisee shall obtain approval from the Town of Franchisee's plans, showing the location of the proposed facilities. Any approval shall be in the form of an excavation permit. If such facilities by the Franchisee are already in existence, Franchisee is authorized to use those facilities. When such plans have been approved, the plans, and any subsequent modifications to them agreed to by the Town, shall be effective and binding to the same extent as if they were set out fully in this Agreement.

Section 3. Franchisee agrees to relocate, at its own expense, within one hundred and twenty (120) days of written notification from the Town, all facilities which, in the reasonable discretion of the Town using recognized engineering standards, interfere, disturb or conflict with the operation, relocation, improvement, repair, construction or maintenance of present or future streets, alleys, rights-of-way, public grounds, storm drainage systems, sewer systems, water mains or other public facilities.

Franchisee shall relocate the facilities using like construction, or better, if technological advances warrant such, to such places designated by the Town. The Town shall use reasonable good faith efforts to designate locations for any relocated facilities that

will permit Franchisee to continue to serve its existing customers. Any Town permits needed as a result of a relocation request by the Town, however, shall be at no cost to Franchisee. All facilities shall be relocated underground.

Section 4. In the event Franchisee permits any unaffiliated third party telecommunications provider to connect Access Lines, as defined in § 56-468.1A of the Code of Virginia, to Franchisee's facilities located in the Town's rights-of-way for the purpose of providing telecommunications service, whether by capacity agreement, joint use agreement, common use agreement or any other method whatsoever, Franchisee shall notify the Town as soon as reasonably practical of the date on which and the party to which such permission was given in such manner so as to enable Town to assess such third party with access fees to which Town may be entitled. In the event Franchisee rents or leases its Access Lines to a third party user and fails to notify Town to the end that Town is unable to collect access fees to which it is otherwise entitled, Franchisee will remain responsible for payment to the Town of the Public Right-of-Way Use Fee (as defined in § 56-468.1 of the Code of Virginia) on such rented or leased Access Lines.

Section 5. If Franchisee shall, in the construction, operation, replacement, maintenance, removal or repair of its facilities, damage any pavement, street, alley, sidewalk, sewer, water or other pipe or other public property (collectively Public Facilities) belonging to the Town, Franchisee shall promptly repair the same at its own cost and expense.

Franchisee shall immediately notify the Town Manager and the appropriate public safety agency (e.g., fire department) of any damage or injury to any Public Facilities caused by work authorized pursuant to the Franchise and without limiting the obligations

Town, the Town, at its option, may terminate the Franchise. However, such thirty-day period will be extended for an additional period of time as is reasonable under the circumstances if Franchisee's non-compliance cannot reasonably be cured within the thirty-day period and if Franchisee has commenced a cure within such period and continues to diligently pursue such cure.

Section 8. If this Agreement is terminated for default, Franchisee shall convey to the Town all right, title and interest that Franchisee has in any streets, alleys, rights-of-way, and public ground. Franchisee shall bear the full costs of such conveyances. Additionally, Franchisee shall release any and all permits provided by the Town to construct its facilities.

Section 9. This Franchise is not assignable or transferable without the express written permission of the Town. However, Franchisee may assign, transfer or sublet its rights, without the consent of the Town, to any person or entity that controls, is controlled by or is under common control with the Franchisee, or pursuant to any financing, merger or reorganization of Franchisee resulting in an otherwise legal and statutorily acceptable successor, provided the Town is advised of the action within thirty (30) days form the date of assignment, transfer or sublet. Any successor(s) or assignees in whole or in part of Franchisee shall be bound by all of the terms and conditions of this Franchise and shall be subject to all provisions, obligations, stipulations and penalties here prescribed.

Section 10. The rights, privileges and duties here granted shall continue for five (5) years after the effective date. The effective date shall be the date of the Town's adoption of the required ordinance approving this Franchise. Prior to the expiration of this Agreement, the parties may make a good faith effort to negotiate and enter into a new

Franchise Agreement upon reasonable terms and conditions. The Town retains the absolute right to purchase the facilities, pursuant to condemnation proceedings or otherwise pursuant to law for the fair market value of the facilities upon the expiration or termination of this Agreement. Unless released by the Town, Franchisee shall remove all its facilities from the streets, alleys and public places of the Town at the expense of Franchisee as soon as possible after the expiration, termination or abandonment of this Agreement, or by such reasonable time to be prescribed by the Town Council. The Town may abandon such facilities without removal upon approval.

Section 11. Upon the effective date hereof, Franchisee shall provide a letter of credit or enter into a bond in the sum of Twenty Five Thousand Dollars (\$25,000.00), with good and sufficient surety, acceptable to the Town Attorney, conditioned to the effect that Franchisee will construct and maintain, or if constructed, will maintain, the facilities in good order throughout the term of the grant, and (subject to the cure rights set forth in Section 7 hereof) will comply with this Agreement in all respects. Subject to Section 13 hereof, this Agreement shall be void if Franchisee does not obtain (or has not obtained) an initial permit for installation of facilities within thirty-six (36) months after the date of Town's adoption of the approving ordinance. In the event of any noncompliance with any of the terms of this Agreement by Franchisee, the Town is caused to draw upon said bond or letter of credit thereby reducing the principal amount thereof, Franchisee shall immediately cause the said bond or letter of credit to be restored to and maintained at the principal sum of \$25,000.00. Town reserves the right to require an increase in such bond or letter of credit not to exceed \$100,000.00 at such time as Franchisee expands its

operation to actually provide access lines within the Town so as to require placement of additional underground lines and conduit.

Section 12. This Agreement was accepted in the Commonwealth of Virginia and shall be governed by the laws thereof, which laws shall prevail in the event of any conflict of laws.

Section 13. Any notice to be given under this Agreement shall be mailed or delivered to the Town of Vienna, Attention: Town Manager, 127 Center Street, South, Vienna, Virginia 22180 and to Franchisee, Level 3 Communications, LLC Attn: NIS ROW, 1025 Eldorado Blvd, Broomfield, Colorado, 80021, registered or certified mail, if mailed, return receipt requested, with postage prepaid, or by courier service, if delivered, with signed evidence of receipt; and shall be deemed delivered when received or refused by the addressee. The parties may change these addresses by like notice.

Section 14. Notwithstanding the foregoing, the parties and each of them shall be excused from performing hereunder so long as performance is prevented or delayed by *Force Majeure*.

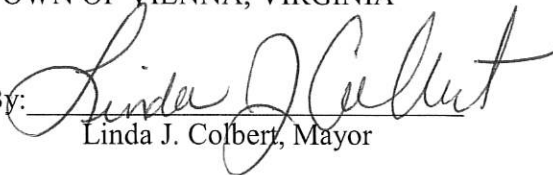
Level 3 Communications, LLC

By: 

Date of Acceptance

10/25/2021

TOWN OF VIENNA, VIRGINIA

By: 
Linda J. Colbert, Mayor

ATTEST:

Shelley Kozlowski
Melanie J. Clark, Clerk
Shelley Kozlowski, Deputy Clerk

APPROVED AS TO FORM:

[Signature]
Steven D. Briglia, Town Attorney