

ORDINANCE O-4790

AN ORDINANCE OF THE CITY OF KIRKLAND GRANTING CENTURYLINK COMMUNICATIONS, LLC, A DELAWARE LIMITED LIABILITY COMPANY, A NON-EXCLUSIVE COMMUNICATIONS MASTER USE PERMIT FOR THE RIGHT, PRIVILEGE, AND AUTHORITY TO MAKE USE OF THE PERMIT AREA FOR WIRELINE COMMUNICATIONS PURPOSES.

1 WHEREAS, Qwest Communications Company LLC, installed and
2 operated certain wireline facilities in the City's right-of-way under two
3 Terminable Right-of-way Use Permits; one at 10210 NE Points Dr dated
4 May 5, 2009, and the other on NE 124th St from 134th Ct NE to Willows
5 Rd dated November 29, 2012 (collectively, "the Qwest Permits"); and
6

7 WHEREAS, On April 1, 2014, Qwest Communications Company,
8 LLC became a wholly-owned subsidiary of CenturyLink, Inc. and
9 changed its name to CenturyLink Communications, LLC ("Grantee"); and
10

11 WHEREAS, the Qwest Permits will be or have expired and
12 Grantee wishes to continue use of the right-of-way in these locations;
13 and
14

15 WHEREAS, Grantee has requested that the City grant it the right
16 via this Communications Master Use Permit ("CMUP") to install, operate
17 and maintain a wireline communications system within all of the public
18 rights-of-way of the City and, if granted, this CMUP would obviate the
19 need for issuance of any further Terminable Right-of-way Use Permits
20 to Grantee; and
21

22 WHEREAS, the City Council finds it desirable for the welfare of
23 the City and its residents that such a non-exclusive CMUP be granted to
24 Grantee; and
25

26 WHEREAS, the City Council has the authority under state and
27 local law to grant permits for the use of its street rights-of-way for
28 telecommunications purposes; and
29

30 WHEREAS, the City is willing to grant the rights requested by
31 Grantee subject to certain terms and conditions.
32

33 NOW, THEREFORE, The City Council of the City of Kirkland
34 do ordain as follows:

35 Section 1. Definitions. For purposes of this Communications
36 Master Use Permit (the "Permit"), the terms defined in Kirkland
37 Municipal Code ("KMC") 26.08.020 shall apply. In addition, the terms
38 below have the following meanings:

39 A. "Affiliate" means an entity which owns or controls, is owned
40 or controlled by, or is under common ownership with Grantee.

41
42 B. "City" means the City of Kirkland, a municipal corporation of
43 the State of Washington.

44
45 C. "Communications Master Use Permit" shall mean the initial
46 authorization or renewal thereof, granted by the City, through this
47 Ordinance, or a subsequently adopted Ordinance, which authorizes the
48 use of rights-of-way in the Permit Area for construction and operation
49 of the Grantee's facilities for the purpose of offering communications
50 service.

51
52 D. "Communications Service" means any communications
53 service, including, but not limited to telecommunications and
54 communications services as defined by federal and state law,
55 communications capacity, or dark fiber, provided by the Grantee using
56 its Facilities, either directly or as a carrier for its Affiliates, or any other
57 person engaged in Communications Services, including, but not limited
58 to, the transmission of voice, data or other electronic information,
59 facsimile reproduction, burglar alarm monitoring, meter reading and
60 home shopping, or other subsequently developed technology that
61 carries an electronic signal over fiber optic cable. Communications
62 Service shall also include non-switched, dedicated and private line, high
63 capacity fiber optic transmission services to firms, businesses or
64 institutions within the City. However, Communications Service shall not
65 include the provision of cable television, open video, or similar services,
66 as defined in the Communications Act of 1934, as amended, and the
67 Telecommunications Act of 1996, as amended, for which a separate
68 Master Permit would be required.

69
70 E. "Facilities" means all appurtenances or tangible things
71 owned, leased, operated, or licensed by the Grantee, including but not
72 limited to the plant, equipment, and property used in the provision of
73 communication and telecommunication services and not owned by the
74 City, including but not limited to cables, existing and replacement poles,
75 wires, pipe, duct runs, conduits, cabinets, manholes, handholes
76 pedestals, vaults, and all related appurtenances placed in, on, or under
77 the public rights-of-way.

78
79 F. "Permit Area" means the present municipal boundaries of the
80 City, and shall include any additions thereto by annexation or other legal
81 means during the term of the permit.

82
83 G. "Person" means an individual, partnership, association, joint
84 stock company, trust, corporation, limited liability company or
85 governmental entity.

86 H. "Rights-of-way" means land acquired or dedicated for public
87 roads and streets. It does not include (1) state highways; (2) structures,
88 including poles and conduits located within the right-of-way; (3)
89 federally granted trust lands or forest board trust lands; (4) lands owned
90 or managed by the state Parks and Recreation Commission; (5) federally
91 granted railroad rights-of-way acquired under 43 U.S.C. 912 and related
92 provisions of federal law that are not open for motor vehicle use; or (6)
93 parks or other public property not used as a public right-of-way,
94 including the Cross Kirkland Corridor.

95
96 Section 2. Permit Area and Authority Granted.
97

98 A. Facilities within Permit Area. The City does hereby grant to
99 Grantee the right, privilege, authority, and Permit to use rights-of-way
100 in the Permit Area to construct, support, attach, connect, and stretch
101 Facilities between, maintain, repair, replace, enlarge, operate and use
102 Facilities in, upon, over, under, along and across rights-of-way in the
103 Permit Area for purposes of communications services.
104

105 B. Permission Required to Enter onto Other City Property.
106 Nothing contained in this Ordinance is to be construed as granting
107 permission to Grantee to go upon any other public place other than
108 rights-of-way within the Permit Area in this Ordinance. Permission to
109 go upon any other property owned or controlled by the City must be
110 sought on a case-by-case basis from the City.
111

112 C. Compliance with WUTC Regulations. At all times during the
113 term of this Permit, Grantee shall fully comply with all applicable
114 regulations of the Washington Utilities and Transportation Commission.
115

116 Section 3. Construction and Maintenance.
117

118 A. Grantee's Facilities shall be located, relocated, and
119 maintained within the Permit Area so as not to unreasonably interfere
120 with the free and safe passage of pedestrian and vehicular traffic and
121 ingress or egress to or from the abutting property and in accordance
122 with the laws of the State of Washington. Whenever it is necessary for
123 Grantee, in the exercise of its rights under this Permit, to make any
124 excavation in the right-of-way, Grantee shall obtain prior approval from
125 the City of Kirkland Public Works Department, pay the applicable permit
126 fees, and obtain any necessary permits for the excavation work, except
127 in an emergency repair situation in which the Grantee requires
128 immediate access in order to complete the required maintenance.
129 Grantee shall notify the City of such activity as soon as possible
130 thereafter. Grantee shall meet the City's specifications per the Kirkland
131 Municipal Code ("KMC") and the Public Works Pre-Approved Plans and
132 Policies.

133 Section 4. Location and Relocation of Facilities.

134
135 A. Except for Facilities that by their nature must be placed at or
136 above ground level, Grantee shall place any new Facilities underground
137 where existing telecommunications and cable facilities are located
138 underground. Any new wireline Facilities to be located above-ground
139 shall be placed on existing utility poles or their replacements. No
140 additional new (not replacement) utility poles shall be installed in
141 connection with placement of new above-ground facilities.

142
143 B. Except as otherwise required by law, including RCW
144 35.99.060, Grantee agrees to relocate, remove, or reroute its facilities
145 as ordered by the City, at no expense or liability to the City, except as
146 may be required by KMC 26.36.050. The City's decision to require the
147 relocation of Grantee's facilities shall be made in a reasonable, uniform,
148 and non-discriminatory manner. Pursuant to the provision of Section 5,
149 Grantee agrees to protect and save harmless the City from any customer
150 or third-party claims for service interruption or other losses in
151 connection with any such change or relocation.

152
153 C. The Grantee shall indemnify, hold harmless and pay the costs
154 of defending the City against any and all claims, suits, actions, damages,
155 or liabilities for delays on City construction projects to the extent caused
156 by or arising out of the failure of the Grantee to relocate its Facilities in
157 a timely manner; provided, that the Grantee shall not be responsible for
158 damages due to delays caused solely by the City or circumstances
159 beyond the control of the Grantee.

160
161 D. In the event that the City orders the Grantee to relocate its
162 Facilities for a project which is primarily for private benefit, the private
163 party or parties causing the need for such project shall reimburse the
164 Grantee for the cost of relocation in the same proportion as their
165 contribution to the total cost of the project, pursuant to RCW
166 35.99.060(4).

167
168 E. In the event of an unforeseen emergency that creates a
169 threat to public safety, health or welfare, the City may require the
170 Grantee to relocate its Facilities at its own expense, any other portion
171 of this Section notwithstanding.

172
173 Section 5. Indemnification.

174
175 A. Grantee agrees to indemnify, defend, and hold the City
176 harmless as set forth in KMC 26.40.030. In addition, to the extent
177 permitted by law, Grantee shall indemnify, defend and hold the City, its
178 agents, officers, employees, volunteers and assigns harmless from and
179 against any and all claims, demands, liability, loss, cost, damage or
180 expense of any nature whatsoever, including all costs and attorney's

181 fees, made against them on account of injury, sickness, death or
182 damage to persons or property which is caused by or arising out of, in
183 whole or in part, the willful, tortious or negligent acts, failures and/or
184 omissions of Grantee or its agents, servants, employees, contractors,
185 subcontractors or assigns in the construction, operation or maintenance
186 of its Facilities or in exercising the rights granted Grantee in this Permit;
187 *provided, however,* such indemnification shall not extend to injury or
188 damage caused solely by the negligence or willful misconduct of the
189 City, its agents, officers, employees, volunteers or assigns.
190 Notwithstanding the foregoing or any other provision of the Permit, in
191 the event such requirement for indemnification is subject to the
192 provisions of RCW 4.24.115, then such section shall control Grantee's
193 indemnification obligations.

194
195 B. In the event any such claim or demand be presented to or
196 filed with the City, the City shall promptly notify Grantee thereof, and
197 Grantee shall have the right, at its election and at its sole cost and
198 expense, to settle and compromise such claim or demand, provided
199 further, that in the event any suit or action be begun against the City
200 based upon any such claim or demand, the it shall likewise promptly
201 notify Grantee thereof, and Grantee shall have the right, at its election
202 and its sole cost and expense, to settle and compromise such suit or
203 action, or defend the same at its sole cost and expense, by attorneys of
204 its own election.

205
206 Section 6. Default.

207
208 A. If Grantee shall fail to comply with any of the provisions of
209 this Permit, unless otherwise provided in this Permit, the City may, in
210 addition to the remedies provided in KMC Chapter 26.44, serve upon
211 Grantee a written order to comply within thirty (30) days from the date
212 such order is received by Grantee. If Grantee is not in compliance with
213 this Permit after expiration of the thirty (30) day period, the City may
214 act to remedy the violation and may charge the reasonable costs and
215 expenses of such action to Grantee. The City may act without the thirty
216 (30) day notice in case of an emergency. If any failure to comply with
217 this Permit by Grantee cannot be corrected with due diligence within
218 said thirty (30) day period, then the time within which Grantee may so
219 comply shall be extended for such time as may be reasonably necessary
220 and so long as Grantee works promptly and diligently to effect such
221 compliance. If Grantee is not in compliance with this Permit, and is not
222 proceeding with due diligence in accordance with this section to correct
223 such failure to comply, then the City may in addition, by ordinance and
224 following written notice to Grantee, declare an immediate forfeiture of
225 this Permit.

226 B. In addition to other remedies provided in KMC Chapter 26.44,
227 this Permit, or otherwise available at law, if Grantee is not in compliance

228 with requirements of the Permit, and if a good faith dispute does not
229 exist concerning such compliance, the City may withhold issuance of
230 pending Grantee right-of-way use permits until compliance is achieved.

231
232 Section 7. Nonexclusive Permit. This Permit is not and shall not
233 be deemed to be an exclusive Permit. This Permit shall not in any
234 manner prohibit the City from granting other and further Permits over,
235 upon, and along the Permit Area. This Permit shall not prohibit or
236 prevent the City from using the Permit Area or affect the jurisdiction of
237 the City over the same or any part thereof.

238
239 Section 8. Permit Term.

240
241 A. This Permit is and shall remain in full force and effect for a
242 period of ten (10) years from and after the effective date of the
243 Ordinance, provided that the term may be extended for two additional
244 five (5) year periods upon the mutual written agreement of Grantee and
245 the City.

246
247 B. If the City and Grantee fail to formally renew this Permit prior
248 to the expiration of its term or any extension thereof, this Permit shall
249 automatically continue in full force and effect until renewed or until
250 either party gives written notice at least one hundred eighty (180) days
251 in advance of intent to terminate this Permit.

252
253 Section 9. Compliance with Codes and Regulations.

254
255 A. The rights, privileges and authority herein granted are
256 subject to and governed by this ordinance and all other applicable
257 ordinances and codes of the City of Kirkland, as they now exist or may
258 hereafter be amended, including but not limited to the provisions of
259 Kirkland Municipal Code Title 26, Title 19, Title 5, and Kirkland Zoning
260 Code Title 117. Nothing in this ordinance limits the City's lawful power
261 to exercise its police power to protect the safety and welfare of the
262 general public. Any location, relocation, erection, or excavation by
263 Grantee shall be performed by Grantee in accordance with applicable
264 federal, state and city rules and regulations, including the City's Public
265 Works Pre-Approved Plans and Policies, and any required permits,
266 licenses or fees, and applicable safety standards then in effect.

267
268 B. In the event that any territory served by Grantee is annexed
269 to the City after the effective date of this Permit, such territory shall be
270 governed by the terms and conditions contained herein upon the
271 effective date of such annexation.

272 Section 10. Undergrounding. New Facilities shall be installed
273 underground pursuant to Section 4 of this Permit. Grantee
274 acknowledges the City's policy of undergrounding of Facilities within the

275 Permit Area. Grantee will cooperate with the City in the undergrounding
276 of Grantee's existing Facilities within the Permit Area. If, during the
277 term of this Permit, the City shall direct Grantee to underground
278 Facilities within any Permit Area, the costs for such undergrounding shall
279 be at no cost to the City, except as may be provided in RCW Chapter
280 35.99. Grantee shall comply with all federal, state, and City regulations
281 on undergrounding. If the City undertakes any street improvement
282 which would otherwise require relocation of Grantee's above-ground
283 facilities, the City may, by written notice to Grantee, direct that Grantee
284 convert any such Facilities to underground Facilities.

285

286 Section 11. Record of Installations and Service.

287

288 A. With respect to excavations by Grantee and the City within
289 the Permit Area, Grantee and the City shall each comply with its
290 respective obligations pursuant to Chapter 19.122 RCW and any other
291 applicable state law.

292

293 B. The Grantee's and the City's representatives will meet as
294 needed for the purpose of exchanging information and documents
295 regarding future construction within the City, with a view toward
296 coordinating their respective activities. Documents and information to
297 be exchanged shall include, without limitation, engineering drawings or
298 other detailed maps of the proposed locations of construction. All
299 documents provided for review by Grantee to City shall be returned to
300 the Grantee without making copies for the City.

301

302 C. As-built drawings and maps of the precise location of any
303 Facilities placed by Grantee in any Right-of-way shall be made available
304 by Grantee to the City within 10 (ten) working days of the City's request.
305 These plans and maps shall be provided at no cost to the City and shall
306 include hard copies and/or digital copies in a format specified by the
307 City. Such as-built drawings and maps shall be considered confidential
308 trade secrets and treated as confidential by the City to the extent
309 authorized by City code and state law.

310

311 Section 12. Shared Use of Excavations and Trenches.

312

313 A. If either the City or Grantee shall at any time after installation
314 of the Facilities plan to make excavations in the area covered by this
315 Permit and as described in this Section, the party planning such
316 excavation shall afford the other, upon receipt of written request to do
317 so, an opportunity to share such an excavation, *provided that*: (1) such
318 joint use shall not unreasonably delay the work of the party causing the
319 excavation to be made or unreasonably increase its costs; (2) such joint
320 use shall be arranged and accomplished on terms and conditions
321 satisfactory to both parties. In addition, pursuant to RCW 35.99.070,
322 the City may request that Grantee install additional conduit, ducts and

323 related access structures for the City pursuant to contract, under which
324 Grantee shall recover its incremental costs of providing such facilities to
325 the City.

326
327 B. The City reserves the right to require Grantee to joint trench
328 with other Permittees if both entities are anticipating trenching within
329 the same general area and provided that the terms of this Section are
330 met.

331
332 Section 13. Insurance.

333
334 A. Grantee shall procure and maintain for the duration of this
335 Permit, insurance against claims for injuries to persons or damage to
336 property which may arise from or in connection with the performance
337 of work under this Permit by Grantee, its agents, representatives or
338 employees in the amounts and types set forth in KMC 26.40.020.

339
340 B. Grantee's insurance coverage shall be primary insurance as
341 respects the City. Any insurance, self-insurance or insurance pool
342 coverage maintained by the City shall be in excess of Grantee's
343 insurance and shall not contribute with it.

344
345 C. Grantee shall furnish the City with certificates of the
346 foregoing insurance coverage or a copy of amendatory endorsements,
347 including but not necessarily limited to the additional insured
348 endorsement.

349
350 D. Grantee shall have the right to self-insure any or all of the
351 above-required insurance. Any such self-insurance is subject to
352 approval by the City.

353
354 E. Grantee's maintenance of insurance as required by this
355 Permit shall not be construed to limit the liability of Grantee to the
356 coverage provided by such insurance, or otherwise limit City's recourse
357 to any remedy to which the City is otherwise entitled at law or in equity.

358
359 Section 14. Assignment.

360
361 A. All of the provisions, conditions, and requirements herein
362 contained shall be binding upon Grantee, and no right, privilege, license
363 or authorization granted to Grantee hereunder may be assigned or
364 otherwise transferred without the prior written authorization and
365 approval of the City, which the City may not unreasonably withhold.
366 Notwithstanding the foregoing, Grantee, without the consent of, but
367 with notice to the City, may assign this agreement in whole or in part
368 to: (a) an Affiliate (as defined in this Permit); or (b) the surviving entity
369 in the event of a merger or acquisition of substantially all of Grantee's
370 assets.

371 B. Grantee may lease the Facilities or any portion thereof to
372 another or provide capacity or bandwidth in its Facilities to another,
373 *provided that:* Grantee at all times retains exclusive control over such
374 Facilities and remains responsible for locating, servicing, repairing,
375 relocating or removing its Facilities pursuant to the terms and conditions
376 of this Permit.
377

378 Section 15. Abandonment and Removal of Facilities. Grantee's
379 Facilities may be considered abandoned pursuant to KMC 26.20.105. In
380 the event of abandonment, the parties shall refer to their options in KMC
381 26.20.105.
382

383 Section 16. Miscellaneous.
384

385 A. If any term, provision, condition, or portion of this Permit
386 shall be held to be invalid, such invalidity shall not affect the validity of
387 the remaining portions of this Permit which shall continue in full force
388 and effect. The headings of sections and paragraphs of this Permit are
389 for convenience of reference only and are not intended to restrict,
390 affect, or be of any weight in the interpretation or construction of the
391 provisions of such sections or paragraphs.
392

393 B. Grantee shall pay for the City's reasonable, actual, and
394 documented administrative costs in drafting and processing this
395 Ordinance and all work related thereto. Grantee shall further be subject
396 to all permit fees associated with activities and the provisions of any
397 such permit, approval, license, agreement or other document, the
398 provisions of this Permit shall control.
399

400 C. Failure of either party to declare any breach or default under
401 this Permit or any delay in taking action shall not waive such breach or
402 default, but that party shall have the right to declare any such breach
403 or default at any time. Failure of either party to declare one breach or
404 default does not act as a waiver of that party's right to declare another
405 breach or default.
406

407 Section 17. Notice. Any notice or information required or
408 permitted to be given to the parties under this Permit may be sent to
409 the following addresses unless otherwise specified:
410

411 City:
412

413 City of Kirkland
414 Director of Public Works
415 123 Fifth Ave.
416 Kirkland, WA 98033

417 Grantee:
418 CenturyLink
419 C/O Lumen
420 Attn: NIS/ROW
421 1025 Eldorado Blvd.
422 Broomfield, CO 80021
423

424 Notice shall be deemed given upon receipt in the case of personal
425 delivery, three days after deposit in the United States Mail in the case
426 of regular mail, or the next day in the case of overnight delivery.
427

428 Section 18. Effective date. This Ordinance, being in compliance
429 with RCW 35A.47.040, shall be in force and effect five days from and
430 after its passage by the Kirkland City Council and publication pursuant
431 to Section 1.08.017 Kirkland Municipal Code in the summary form
432 attached to the original of this ordinance and by this reference approved
433 by the City Council.
434

435 Passed by majority vote of the Kirkland City Council in open
436 meeting this 05 day of April, 2022.
437

438 Signed in authentication thereof this 05 day of April, 2022.



Penny Sweet, Mayor

Attest:



Kathi Anderson, City Clerk

Approved as to Form:



Kevin Raymond, City Attorney

Publication Date: 4/11/2022

PUBLICATION SUMMARY
OF ORDINANCE NO. 4790

AN ORDINANCE OF THE CITY OF KIRKLAND GRANTING CENTURYLINK COMMUNICATIONS, LLC, A DELAWARE LIMITED LIABILITY COMPANY, A NON-EXCLUSIVE COMMUNICATIONS MASTER USE PERMIT FOR THE RIGHT, PRIVILEGE, AND AUTHORITY TO MAKE USE OF THE PERMIT AREA FOR WIRELINE COMMUNICATIONS PURPOSES.

SECTIONS 1 - 17. Issues a non-exclusive Communications Master Use Permit to CenturyLink Communications, LLC for wireline communications purposes and sets forth the terms and conditions of the Permit.

SECTION 18. Authorizes publication of the ordinance by summary, which summary is approved by the City Council pursuant to Section 1.08.017 Kirkland Municipal Code and establishes the effective date as five days after publication of summary.

The full text of this Ordinance will be mailed without charge to any person upon request made to the City Clerk for the City of Kirkland. The Ordinance was passed by the Kirkland City Council at its meeting on the 05 day of April, 2022.

I certify that the foregoing is a summary of Ordinance 4790 approved by the Kirkland City Council for summary publication.



Kathi Anderson, City Clerk