

ORDINANCE 3458

AN ORDINANCE OF THE CITY OF KIRKLAND GRANTING STARCOM SERVICE CORPORATION, A WASHINGTON CORPORATION, THE RIGHT, PRIVILEGE, AUTHORITY AND FRANCHISE TO CONSTRUCT, AND MAINTAIN, REPAIR, REPLACE, OPERATE UPON, OVER, UNDER, ALONG AND ACROSS THE FRANCHISE AREA FOR PURPOSES OF ITS TELECOMMUNICATION BUSINESS.

Be it ordained by the City Council of the City of Kirkland as follows:

Section 1. Definitions. Where used in this franchise (the "Franchise") these terms have the following meanings:

A. "Starcom" means Starcom Service Corporation, a Washington corporation, and its respective successors and assigns.

B. "City" means the City of Kirkland, a municipal corporation of the State of Washington, and its respective successors and assigns.

C. "Franchise Area" means the following intersections:

Intersection	Distance (feet)
132nd Place NE	24
Totem Lake Boulevard	100
NE 124th Street	70
120th Avenue NE	80
NE 112th Street	55
110th Avenue NE	45
7th Avenue	30
Kirkland Way	60
6th Street South	90
NE 68th Street	60
NE 52nd Street	40

Total 654

and any other right-of-way within the City necessary to accomplish relocation of Facilities pursuant to Section 4 of this Ordinance.

D. "Facilities" means wires, lines, conduits, cables, vaults, duct runs, and all necessary or convenient facilities and appurtenances thereto.

E. "Ordinance" means this Ordinance No. 3458, which sets forth the terms and conditions of this Franchise.

Section 2.

A. Facilities within Franchise Area. The City does hereby grant to Starcom the right, privilege, authority and franchise to:

1. Construct, support, attach, connect and stretch Facilities between, maintain, repair, replace, enlarge, operate and use Facilities in, upon, under, along and across the Franchise Area for purposes of its telecommunications business.

B. Permission Required to Enter Onto Other City Property. Nothing contained in this Ordinance is to be construed as granting permission to Starcom to go upon any other public place other than those types of public places specifically designated as the Franchise Area in this Ordinance. Permission to go upon any other property owned or controlled by the City must be sought on a case by case basis from the City.

C. Compliance with WUTC Regulations. At all times during the term of this Franchise, Starcom shall fully comply with all applicable regulations of the Washington Utilities and Transportation Commission.

Section 3. Non-interference of Facilities.

A. Starcom's Facilities shall be located, relocated and maintained within the Franchise Area so as not to unreasonably interfere with the free and safe passage of pedestrian and vehicular traffic and ingress or egress to or from the abutting property and in accordance with the laws of the State of Washington. Whenever it is necessary for Starcom, in the exercise of its rights under this Franchise, to make any excavation in the Franchise Area, Starcom shall, upon completion of such excavation, restore the surface of the Franchise Area, to the specifications established within the City of Kirkland Public Works Policies and Standards and in accordance with standards of general applicability imposed by the City by ordinance or administrative order. If Starcom should fail to leave any portion of any Franchise Area so excavated in a condition that meets the City's specifications per the Public Works Policies and Standards, the City may after notice of not less than five days to Starcom, which notice shall not be required in case of an emergency, order any and all work considered necessary to restore to a safe condition that portion of the Franchise area so excavated, and Starcom shall pay to the City the reasonable cost of such work; which shall include among other things, the overhead expense of the City in obtaining completion of said work.

B. Any surface or subsurface failure occurring during the term of this Agreement and caused by any excavation by Starcom shall be repaired to the City's specifications, within 30 days or upon 5 days written notice to Starcom, the City shall order all work necessary to restore the damaged area to a safe and acceptable condition and Starcom shall pay the reasonable costs of such work to the City.

Section 4. Relocation of Facilities.

A. Whenever the City causes the grading or widening of the Franchise Area or undertakes construction of any water, sewer or storm drainage line, lighting, signalization, sidewalk improvement, pedestrian amenities, or other public street improvement (for purposes other than those described in Section 4(B) below) and such project requires the relocation of Starcom's then existing Facilities within the Franchise Area, the City shall:

1. Provide Starcom, at least 90 days prior to the commencement of such project, written notice that a project is expected to require relocation; and

2. Provide Starcom with reasonable plans and specifications for such grading or widening.

After receipt of such notice and such plans and specifications, Starcom shall relocate such Facilities within the Franchise Area at no charge to the City so as to accommodate such street improvement project. The City shall cooperate with Starcom to designate a substitute location for its Facilities within the Franchise Area. City will establish a date by which Facilities will be relocated, which date will be not less than 60 days after written notice to Starcom as to the facility to be relocated. Starcom must finish relocation of each such Facility by the date so established.

B. Whenever any person or entity, other than the City, requires the relocation of Starcom's Facilities to accommodate the work of such person or entity within the Franchise Area; or, whenever the City requires the relocation of Starcom's Facilities within the Franchise Area for the benefit of any person or entity other than the City, then Starcom shall have the right as a condition of such relocation to require such person or entity to:

1. make payment to Starcom, at a time and upon terms acceptable to Starcom, for any and all costs and expense incurred by Starcom in the relocation of Starcom's Facilities; and

2. indemnify and save Starcom harmless from any and all claims and demands made against it on account of injury or damage to the person or property of another arising out of or in conjunction with the relocation of Starcom's Facilities to the extent such injury or damage is caused by the negligence of the person or entity requesting the relocation of Starcom's Facilities or other negligence of the agents, servants or employees of the person or entity requesting the relocation of Starcom's Facilities.

C. Any condition or requirement imposed by the City upon any person or entity (including, without limitation, any condition or requirement imposed pursuant to any contract or in conjunction with approvals or permits for zoning, land use, construction or development) which necessitates the relocation of Starcom's Facilities within the Franchise Area shall be subject to the provisions of subsection 4.B. However, in the event the City reasonably determines (and promptly notifies Starcom in writing of such determination) that the primary purpose of imposing such condition or requirement upon such person or entity which necessitates such relocation is to cause the construction of an improvement on the City's behalf and in a manner consistent with City-approved improvement plans (as described in 4.A above) within a segment of the Franchise Area then:

Starcom shall require only those costs and expenses incurred by Starcom in integrating and connecting such relocated Facilities with Starcom's other Facilities to be paid to Starcom by such person or entity, and Starcom shall otherwise relocate its Facilities within such

segment of the Franchise Area in accordance with the provisions of subsection 4(A) above.

D. This Section 4 shall govern all relocations of Starcom's Facilities required in accordance with this Franchise. Nothing in this Section 4 shall require Starcom to bear any cost or expense in connection with the location or relocation of any Facilities existing under benefit of easement or other rights not arising under this Franchise.

E. Starcom recognizes the need for the City to maintain adequate width for installation and maintenance of City owned and/or Northshore Utility District owned utilities such as, but not limited to, sanitary sewer, water, and storm drainage. Thus, the City reserves the right to maintain clear zones within the public right-of-way for installation and maintenance of said utilities. The clear zones for each right-of-way segment shall be noted and conditioned with the issuance of each right-of-way permit. In any case, the clear zones shall be no more than as follows; reduction of these clear zones shall be approved on a case by case basis by the Director of Public Works:

Sanitary Sewer Mains

10 feet each side of sewer mains less than 8 feet deep
 15 feet each side of sewer mains 8 feet to 15 feet deep
 20 feet each side of sewer mains greater than 15 feet deep

Water Mains

7.5 feet each side of water mains less than 5' deep
 10 feet each side of water mains greater than 5' deep

Storm Drainage

5 feet each side of storm drainage mains less than 5' deep
 7.5 feet each side of storm drainage mains 5' to 10 feet deep
 10 feet each side of storm drainage mains greater than 10 feet deep

Starcom's utility lines generally transverse intersections perpendicular to City utility lines. In turn, If adequate clear zones are unable to be achieved within a particular right-of-way, Starcom shall propose an alignment that maximizes the listed clear zones.

Section 5. Indemnification. Starcom shall indemnify, defend and hold the City, its agents, officers, employees, volunteers and assigns harmless from and against any and all claims, demands, liability, loss, cost, damage or expense of any nature whatsoever, including all costs and attorney's fees, made against them on account of injury, sickness, death or damage to persons or property which is caused by or arises out of, in whole or in part, the willful, tortuous or negligent acts, failures and/or omissions of Starcom or its agents, servants, employees, contractors, subcontractors or assigns in the construction, operation or maintenance of its Facilities or in exercising the rights granted Starcom in this Franchise. Provided, however, such indemnification shall not extend to injury or damage caused by the negligence or willful misconduct of the City, its agents, officers, employees, volunteers or assigns.

In the event any such claim or demand be presented to or filed with the City, the City shall promptly notify Starcom thereof, and Starcom shall have the right, at its election and at its sole cost and expense, to settle and compromise such claim or demand, provided further, that in the event any suit or action be begun against the City based upon any such claim or demand, the City shall likewise promptly notify Starcom thereof, and Starcom shall have the right, at its election and its sole cost and expense, to settle and compromise such suit or action, or defend the same at its sole cost and expense, by attorneys of its own election.

Section 6. Default. If Starcom shall fail to comply with any of the provisions of this Franchise, unless otherwise provided for herein, the City may serve upon Starcom a written order to so comply within thirty (30) days from the date such order is received by Starcom. If Starcom is not in compliance with this Franchise after expiration of said thirty (30) day period, the City may act to remedy the violation and may charge the costs and expenses of such action to Starcom. The City may act without the thirty (30) day notice in case of an emergency provided that the City may act to remedy the situation but shall give notice to Starcom and cooperate with Starcom to minimize the impact on the services Starcom provides to its customers. The City may in addition, by ordinance, declare an immediate forfeiture of this Franchise if Starcom is not in substantial compliance within thirty (30) days following receipt of written order, provided, however, if any failure to comply with this Franchise by Starcom cannot be corrected with due diligence within said thirty (30) day period (Starcom's obligation to comply and to proceed with due diligence being subject to unavoidable delays and events beyond its control), then the time within which Starcom may so comply shall be extended for such time as may be reasonably necessary and so long as Starcom commences promptly and diligently to effect such compliance.

In addition to other remedies provided herein, if Starcom is not in compliance with requirements of the Franchise, and if a good faith dispute does not exist concerning such compliance, the City may place a moratorium on issuance of pending Starcom right-of-way use permits until compliance is achieved.

Section 7. Nonexclusive Franchise. This franchise is not and shall not be deemed to be an exclusive Franchise. This Franchise shall not in any manner prohibit the City from granting other and further franchises over, upon, and along the Franchise Area which do not interfere with Starcom's rights under this Franchise. This Franchise shall not prohibit or prevent the City from using the Franchise Area or affect the jurisdiction of the City over the same or any part thereof.

Section 8. Franchise Term. This Franchise is and shall remain in full force and effect for a period of fifteen (15) years from and after the effective date of the Ordinance, provided that the term may be extended for an additional five (5) years upon the agreement of Starcom and the City; and provided further, however, Starcom shall have no rights under this Franchise nor shall Starcom be bound by the terms and conditions of this Franchise unless Starcom shall, within thirty (30) days after the effective date of the Ordinance, file with the

City its written acceptance of this Franchise, in a form acceptable to the City Attorney.

Section 9. Compliance with codes and regulations.

A. The rights, privileges and authority herein granted are subject to and governed by this ordinance and all other applicable ordinances and codes of the City of Kirkland, as they now exist or may hereafter be amended. Nothing in this ordinance limits the City's lawful power to exercise its police power to protect the safety and welfare of the general public. Any location, relocation, erection or excavation by Starcom shall be performed by Starcom in accordance with applicable federal, state and city rules and regulations, including the City Public Works Policies and Standard Plans, and any required permits, licenses or fees, and applicable safety standards then in effect.

B. Upon written inquiry, Starcom shall provide a specific reference to either the federal, state, or local law or the W.U.T.C. order or action establishing a basis for Starcom's actions related to a specific franchise issue.

C. In the event that any territory served by Starcom is annexed to the City after the effective date of this Franchise, such territory shall be governed by the terms and conditions contained herein upon the effective date of such annexation.

D. In the event that the City should take over the ownership of the Burlington Northern Railroad right-of-way, an amended franchise ordinance shall be completed in reasonable time period, but not more than (1) year, following the transfer of ownership.

E. In the event that the City obtains authority to located City-owned utilities or other street or pedestrian improvements within the Burlington Northern Railroad right-of-way, Starcom shall reasonably accommodate the said City facilities.

Section 10. Location of Facilities. All facilities to be installed within the franchise area shall be installed underground.

Section 11. Record of Installations and Service. With respect to excavations by Starcom and the City within the Franchise Area, Starcom and the City shall each comply with its respective obligations pursuant to Chapter 19.122 RCW and any other applicable state law.

Upon written request of the City, Starcom shall provide the City with the most recent update available of any plan of potential improvements to its Facilities within the Franchise Area; provided, however, any such plan so submitted shall be for informational purposes within the Franchise Area, nor shall such plan be construed as a proposal to undertake any specific improvements within the Franchise Area.

As built drawings of the precise location of any Facilities placed by Starcom in any street, alley, avenue, highway, easement, etc., shall be made available to the City within thirty (30) working days of request.

Section 12. City Access. This section is based on the Starcom utility line alignment in Kirkland consisting of crossing streets. The City acknowledges that Starcom does not presently provide, nor does it presently intend to provide telecommunications services to retail customers. Indeed, Starcom's current legal authority does not permit the provision of telecommunications services to retail customers. Should Starcom's strategy and authority change such that it provides services directly to retail or government customers in the U.S., it will so advise the City and, with representatives of the City, attempt to negotiate terms of an agreement for the provision of such services on the same basis as Starcom negotiates agreements with other units of government in the state of Washington.

Section 13. Insurance. Starcom shall maintain in full force and effect throughout the term of this Franchise, a minimum of One Million Dollars (\$1,000,000.00) liability insurance for property damage and bodily injury.

The City shall be named as an additional insured on any policy of liability insurance obtained by Starcom for the purpose of complying with the requirements of this section if and to the extent that:

A. Starcom's insurance carrier is willing to name the City as an additional insured without prejudice, in any way, to the rights and coverages afforded Starcom by such policy of insurance;

B. Naming the City as an additional insured on such policy of insurance does not cause the cost to Starcom of maintaining such insurance to be increased.

In satisfying the insurance requirements set forth in this section, Starcom may self-insure against such risks in such amounts as are consistent with good utility practice. Starcom shall provide the City with sufficient written evidence, upon request, that such insurance (or self-insurance) is being so maintained by Starcom. Such written evidence shall include, to the extent available from Starcom's insurance carrier, a written certificate of insurance with respect to any insurance maintained by Starcom in compliance with this Section.

Section 14. Tariff Changes. If Starcom shall file, pursuant to Chapter 80.28 RCW, with the Washington Utilities and Transportation Commission (or its successor) any tariff affecting the City's rights arising under this Franchise, Starcom shall give the City Clerk written notice thereof within five (5) days of the date of such filing.

Section 15. Assignment. All of the provisions, conditions, and requirements herein contained shall be binding upon Starcom, and no right, privilege, license or authorization granted to Starcom hereunder may be assigned or otherwise transferred without the prior written authorization and approval of the City, which the City may not unreasonably withhold. Notwithstanding the foregoing, Starcom may assign this agreement to an affiliate or subsidiary without the consent of, but upon notice to the City.

Section 16. Miscellaneous. If any term, provision, condition or portion of this Franchise shall be held to be invalid, such invalidity shall not affect the validity of the remaining portions of this Franchise

which shall continue in full force and effect. The headings of sections and paragraphs of this Franchise are for convenience of reference only and are not intended to restrict, affect or be of any weight in the interpretation or construction of the provisions of such sections of paragraphs.

Starcom shall pay for the City's reasonable administrative costs, not to exceed \$2000.00, in drafting and processing this franchise agreement and all work related thereto. In addition, Starcom shall pay to the City a franchise fee consisting of a fixed fee of \$9000.00 for the initial term of the franchise with payment before commencement of construction.

Starcom shall further be subject to all permit fees associated with activities undertaken through the authority granted in this franchise ordinance or under the laws of the City. Where the City incurs cost and expenses for review, inspection, or supervision of activities undertaken through the authority granted in this franchise or any ordinances relating to the subject for which a permit fee is not established, Starcom shall pay such costs and expenses directly to the City. Last, Starcom shall promptly reimburse the City for any and all costs it reasonably incurs in response to any emergency involving Starcom's facilities.

City has the right, but not the obligation, to remove Starcom's Facilities from the Franchise Area at Starcom's expense if: (1) Starcom's Facilities are abandoned; or (2) in the event the Franchise is terminated and Starcom does not remove such Facilities; provided that, Starcom is given at least (30) days written notice before proceeding with the removal of such Facilities.

This Franchise may be amended only by written instrument, signed by both parties, which specifically states that it is an amendment to this Franchise, and is approved and executed in accordance with the laws of the State of Washington. Without limiting the generality of the foregoing, this Franchise (including, without limitation, Section 5 above) shall govern and supersede and shall not be changed, modified, deleted, added to, supplemented or otherwise amended by any permit, approval, license, agreement or other document required by or obtained from the City in conjunction with the exercise (or failure to exercise) by Starcom of any and all rights, benefits, privileges, obligations, or duties in and under this Franchise, unless such permit, approval, license, agreement or document specifically:

A. references this Franchise; and

B. states that it supersedes this Franchise to the extent it contains terms and conditions which change, modify, delete, add to, supplement or otherwise amend the terms and conditions of this Franchise.

In the event of any conflict or inconsistency between the provisions of this Franchise and the provisions of any such permit, approval, license, agreement or other document, the provisions of this Franchise shall control.


This Franchise is subject to the provisions of any applicable tariff now or hereafter on file with the Washington Utilities and Trans-

portation Commission or its successor. In the event of any conflict of inconsistency between the provisions of this Franchise and such tariff, the provisions of such tariff shall control.

Section 17. Effective date. This Ordinance, being in compliance with RCW 35A.47.040, shall be in force and effect five days from and after its passage by the Kirkland City Council and publication pursuant to Section 1.08.017 Kirkland Municipal Code in the summary form attached to the original of this ordinance and by this reference approved by the City Council. Any notices given to Starcom pursuant to this Ordinance shall be effective when received (if sent by facsimile transmission, when properly transmitted with answer back) by Starcom Service Corporation, 555 West Hastings Street, Suite 2770, Vancouver, B.C., V6B 4N5 CANADA (fax: (604) 688-4485) and to Sessions & Co., P.S., 505 Madison, Suite 300, Seattle, WA 98104-1138 USA (fax: (206) 587-4041). Such notice addresses and facsimile transmission numbers may be changed by notice to the City.

Passed by majority vote of the Kirkland City Council in regular, open meeting this 7th day of March, 1995.

Signed in authentication thereof this 7th day of March, 1995.



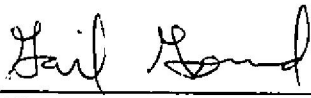
MAYOR

Attest:



DEPUTY City Clerk

Approved as to Form:



City Attorney

STARCOM2.AUG/RJ:ct

PUBLICATION SUMMARY OF ORDINANCE NO. 3458

AN ORDINANCE OF THE CITY OF KIRKLAND GRANTING STARCOM SERVICE CORPORATION, THE RIGHT, PRIVILEGE, AUTHORITY AND FRANCHISE TO CONSTRUCT, AND MAINTAIN, REPAIR, REPLACE, OPERATE UPON, OVER, UNDER, ALONG AND ACROSS THE FRANCHISE AREA FOR PURPOSES OF ITS TELECOMMUNICATIONS BUSINESS.

Sections 1-13. Provide for the grant to Starcom Service Corporation of a franchise for a telephone business for fifteen years on specified terms and conditions.

Sections 14-16. Set forth administrative provisions for the franchise and concerning its legal effect.

Section 17. 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 regular meeting on the 7th day of March, 1995.

I certify that the foregoing is a summary of Ordinance 3458 approved by the Kirkland City Council for summary publication.

DEPUTY J. Bloney
City Clerk

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