

CITY OF COLLEGE PLACE ORDINANCE NO. 1072

**AN ORDINANCE OF THE CITY OF COLLEGE PLACE, WASHINGTON,
APPROVING TRANSFER OF A FRANCHISE FROM
SPECTRUM NETWORKS, INC., TO NORTHWEST OPEN ACCESS
NETWORK (NOANET) WITH CONDITIONS AND ESTABLISHING AN
EFFECTIVE DATE**

Whereas, the City of College Place, Washington (“the City”), has granted a fiber optic cable franchise (“the Franchise”) to Spectrum Networks, Inc. (“Spectrum”), a copy of which is attached hereto as Exhibit “A”; and

Whereas, Spectrum has sold its assets related to the operation of the Franchise (“the Sale”) to Northwest Open Access Network (“NoaNet”) and wishes to assign and transfer its rights, privileges and authority under the Franchise to NoaNet (“the Transfer”); and

Whereas, following the Transfer of Spectrum’s rights, privileges and authority under the Franchise NoaNet will be responsible for the performance of the Franchise; and

Whereas, Spectrum and NoaNet have requested that the City consent to the Transfer of the Franchise to NoaNet; and

Whereas, Section 24 of Ordinance 1039 governing assignment or transfer of the Franchise provides as follows:

Section 24: Assignment or Transfer.

Franchisee's rights, privileges, and authority under this franchise, and ownership or working control of facilities constructed or installed pursuant to this franchise, may not, directly or indirectly, be transferred, assigned or disposed of by sale, lease, merger, consolidation or other act of franchisee, by operation of law or otherwise, except as provided herein, or without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. In the case of a merger, consolidation, sale of all or substantially all of franchisee's assets or other business combination, the City shall not withhold or delay its approval as long as franchisee complies with the requirements in this Section 24. Any transfer, assignment or disposal of franchisee's rights, privileges, and authority under this franchise, or ownership or working control of facilities constructed or installed pursuant to this franchise, may be subject to the following reasonable conditions:

A. Absent extraordinary and unforeseeable circumstances, no facility shall be assigned, transferred, or disposed of before construction of the facility has been completed and restoration has been performed to the satisfaction of the City.

B. Franchisee and the proposed assignee or transferee shall provide and certify the following information to the City not less than ninety (90) days prior to the proposed date of assignment, transfer, or disposal:

1. Complete information setting forth the nature, terms and condition of the proposed assignment, transfer, or disposal;

2. Any other information reasonably required by the City directly related to the standards set forth in subsection 24(C) below; and

3. A transfer application fee in an amount to be determined by the City to recover actual administrative costs directly related to receiving and approving the proposed assignment, transfer, or disposal, not to exceed (i) five thousand dollars (\$5,000) in the case of any assignment, transfer or other disposition within twelve (12) months after the effective date of this franchise, and (ii) five hundred dollars (\$500.00) in the case of any assignment, transfer or other disposition later than twelve (12) months after the effective date of this franchise.

C. No assignment, transfer, or disposal may be made or shall be approved unless the assignee or transferee has the legal, technical, financial, and other requisite qualifications to operate, maintain, repair, and remove facilities constructed or installed pursuant to this franchise and to comply with the terms and conditions of this franchise.

D. Any transfer, assignment, or disposal of rights, privileges, and authority under this franchise or ownership or working control of facilities constructed or installed pursuant to this franchise, without prior written approval of the City pursuant to this section shall be void and is cause for termination of this franchise.

E. Any transactions which singularly or collectively result in a change of 50% or more of the ownership or working control of the franchisee, of the ownership or working control of affiliated entities having ownership or working control of franchisee shall be considered an assignment or transfer requiring City approval. Transactions between affiliated entities are not exempt from City approval. A franchisee shall promptly notify the City prior to any proposed change in, or transfer of, or acquisition by any other party of control of franchisee. Every change, transfer, or acquisition of control of a franchisee shall cause a review of the proposed transfer. City approval shall not be required for mortgaging purposes or if said transfer is from franchisee to another person controlled by franchisee.

F. It is understood that franchisee intends to sell, lease or license capacity on its network to third-party Internet service providers or other entities that will provide service to end users. Accordingly, the sale, lease or license of franchisee's network capacity, not involving transfer of ownership or working control of facilities constructed or installed pursuant to this franchise, shall not be deemed a transfer, assignment or disposal subject to section 24.

G. All terms and conditions of this franchise shall be binding upon all successors and assigns of franchisee and all persons who obtain ownership or working control of any facility constructed or installed pursuant to this franchise.

and

Whereas, the City is willing to consent to the Transfer, subject to: (1) satisfactory compliance with the provisions of Section 24 of Ordinance 1039; and (2) the submission of all appropriate approvals from applicable state and federal regulatory authorities; and

Whereas, NoaNet has indicated that it is willing to unconditionally accept the terms of the Franchise and to comply with any other agreements existing between the Spectrum and the City, including that certain Agreement for Lease of Ground for Conduit Runway between Spectrum and the City dated October 18, 2010, a copy of which is attached hereto as Exhibit "B."

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

Section 1. The City hereby consents to the Transfer in accordance Ordinance 1039, subject to and contingent upon the following conditions:

a. NoaNet and Spectrum shall provide and certify the following information to the City within thirty (30) days:

1. Complete information setting forth the nature, terms and condition of the assignment, transfer, or disposal.
2. Information sufficient to establish and confirm that NoaNet possesses the legal, technical, financial, and other requisite qualifications to operate, maintain, repair, and remove facilities constructed or installed pursuant to this franchise and to comply with the terms and conditions of this franchise.
3. NoaNet pay to the City a transfer application fee in the amount of \$500.00.
4. The submission of all appropriate approvals from applicable state and federal regulatory authorities.
5. NoaNet's unconditional acceptance and assumption of the Franchise contained in Ordinance 1039 and the terms thereof (Exhibit "A").
6. NoaNet's unconditional acceptance and assumption of any and all agreements that the City has with Spectrum, including that certain Agreement for Lease of Ground for Conduit Runway between Spectrum and the City dated October 18, 2010 (Exhibit "B").

Section 2: In all respects and without exception NoaNet shall, upon satisfaction of the foregoing conditions contained in Section 1 of this ordinance and the issuance of final consent to the transfer by the City, assume all duties, rights, responsibilities, privileges and authority under

the Franchise and shall abide by all terms of the Franchise granted by the City to Spectrum and agrees and acknowledges that the transfer of the Franchise will not affect, diminish, impair or supersede the binding nature of the Franchise and any other valid ordinances, resolutions, and agreements applicable to the operation of a fiber optic cable system in the City of College Place and NoaNet shall continue to meet all obligations under the Franchise. NoaNet agrees, subject to the Franchise, that NoaNet shall comply with all lawful and applicable provisions related to fiber optic cable service of the College Place Municipal Code and all related applicable federal and state laws, and lawful orders, contracts, agreements, commitments, side letter (s), Franchise amendments and regulatory actions.

Section 3. In the event that the Sale of Spectrum's assets in College Place to NoaNet does not close for any reason; or in the event approval is not granted by applicable state and federal regulatory entities; or in the event that the Transfer closes on terms substantially or materially different from the information furnished the City required by Section 1.a.1.; or in the event NoaNet does not accept each and every condition of this Ordinance and Ordinance 1039; then the consent provided for herein shall be null and void, and the City shall be deemed to have disapproved the Transfer and all remedies under the existing Spectrum franchise and applicable laws shall remain and be available to the City.

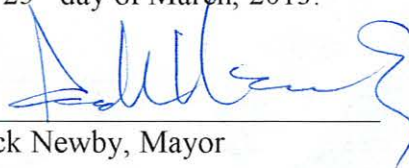
Section 4. By giving it's conditional consent to the transfer of Spectrum's franchise to NoaNet, the City does not waive or release any rights of the City in and to the streets as provided by state law and the College Place Municipal Code, nor does the City waive or release any claim or issue of non-compliance it may have, known or unknown, now or in the future, against Spectrum, NoaNet or any successor in interest to the franchise.

Section 5. The City shall not amend, revoke or otherwise alter this Ordinance without providing reasonable prior notice to the NoaNet.

Section 6. If any section, sentence, clause or phrase of this ordinance shall be held to be invalid or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 7. This ordinance shall take effect and be fully in force five (5) days after publication of a summary hereof consisting of the title.

Adopted by the College Place City Council this 25th day of March, 2013.



Rick Newby, Mayor

Attest:



Sarah K. Scott, City Clerk

Approved as to Form:



Charles B. Phillips, City Attorney

ACCEPTANCE

The provisions of this Ordinance, Ordinance 1039 and that certain Agreement for Lease of Ground for Conduit Runway between Spectrum and the City dated October 18, 2010, are hereby accepted by NoaNet. By accepting these items NoaNet covenants and agrees to perform and be bound by each and all of the terms of the conditions imposed by these ordinances and such lease and all other applicable ordinances of the City once final consent to the Transfer has issued.

By: 

Printed Name: CHRIS WALKER

Title: TELECOMMUNICATIONS DIRECTOR