

# EUGENE CITY COUNCIL

## AGENDA ITEM SUMMARY



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Action: An Ordinance Granting to MCI Communications Services, Inc., a Non-Exclusive Franchise to Use the Public-Way to Construct and Maintain Public Communications Facilities within the City of Eugene

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Meeting Date: November 24, 2014  
Department: Central Services  
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Agenda Item Number: 3  
Staff Contact: Pam Berrian  
Contact Telephone Number: 541-682-5590

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### ISSUE STATEMENT

The council is being asked to take action on a request by MCI Communications, a wholly-owned subsidiary of Verizon Communications for a long-term, non-exclusive franchise for use of the public rights-of-way (ROW) for telecommunications purposes. At this time, MCI is occupying less than 1,000 linear feet of public rights-of-way as a pass-through or long-haul carrier, and MCI attests that it does not service Eugene customers. Ordinance 20083, relating to ROW licensing and gross revenue-based fees and taxes do not apply to pass-through, long-haul providers with no Eugene customers. The Eugene City Charter provides authority in this instance to grant use and determine a fee structure through a franchise adopted by the City Council.

### BACKGROUND

The Eugene City Council has infrequently adopted similar agreements with authorized pass-through rights-of-way (ROW) users that fall outside the scope of Ordinance 20083 ROW Licensing procedures. These have included Burlington Northern Santa Fe Railroad, Level 3 Communications, and Williams Communications. Currently, Oregon state statutes allow franchise terms of up to 20 years. Generally, elements of the franchise are negotiated where local, state, or federal law is silent, such as, in this case, per-foot fees for a pass-through carrier.

Staff is proposing a 20-year franchise with three five-year openers allowing re-negotiation of terms and conditions, at an annual franchise fee of \$4 per linear foot. Of public rights-of-way used. This rate is consistent with treatment of similar providers. The annual franchise fee will be applied to the ROW linear feet occupied and contains a provision that transitions the franchise to an Ordinance 20083 License should the facilities be utilized in the provision of billed services to Eugene customers.

A public hearing on this matter was held by the City Council on November 17, 2014.

## **RELATED CITY POLICIES**

The Eugene City Council has a long history of granting franchises for the use of the public-way whereby users make agreements relating to conditions of use and fees. Chapter 10 of the City Charter outlines procedures for franchising.

Telecommunications Ordinance 20083 standardizes and streamlines those procedures into a licensing function, but pass-through carriers with no Eugene customers are not currently addressed in that ordinance. In the proposed franchise ordinance, staff incorporated pertinent Eugene Code provisions such as conditions for construction and maintenance of the ROW. Staff considers the negotiated fee reasonable. The City Attorney reviewed the franchise language for consistency with accepted municipal standards and protections. MCI is responsible for obtaining and paying for any necessary street construction permits from the City should it reduce or increase its use of the ROW.

## **COUNCIL OPTIONS**

1. The City Council can postpone action and cite conditions required for approval.
2. The City Council can deny the ordinance and cite its reasons for denial.
3. The City Council can adopt the ordinance.

## **CITY MANAGER'S RECOMMENDATION**

The City Manager recommends adoption of the ordinance.

## **SUGGESTED MOTION**

Move to adopt Council Bill 5132, an ordinance granting to MCI Communications Services, Inc., a non-exclusive franchise to use the public way to construct and maintain public communications facilities within the City of Eugene.

## **ATTACHMENTS**

- A. Draft Franchise Ordinance

## **FOR MORE INFORMATION**

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