

ORDINANCE No. 188167

*Approve settlement of claims with Level 3 Communications, LLC for past due franchise fees (Ordinance)

The City of Portland ordains:

Section 1. The Council finds:

1. In November 1999, the City Council passed an ordinance granting a ten year franchise to Level 3 Communications LLC ("Level 3"), and to its successors and assigns, as approved by the City, to use the City streets to construct, operate and maintain a telecommunications system using the City streets. Ordinance No. 17330. The franchise ordinance became effective in January, 2000. Level 3 filed an acceptance of the franchise grant in November, 1999.
2. The Portland City Council authorized the City Attorney's Office to file suit against Level 3 to recover past due franchise fees and interest. Resolution No. 36639.
3. The City's review of Level 3's franchise fee payments identified irregularities in the amount and methodologies in Level 3's franchise fee payments. The City also identified irregularities concerning the franchise fee payments made by Level 3's subsidiaries, WilTel (fka Williams Communications, Inc.) and FTV Communications, LLC. Level 3 disputed the City's findings.
4. The City separately identified that FTV Communications, LLC had failed to provide ducts to the City when undertaking new construction, as required under Sec. 9.2(A) of the franchise. The City also identified that FTV Communications, LLC had occupied a conduit belonging to the City over the Steel Bridge without authorization from the City. FTV Communications, LLC is a subsidiary entity under the control of Level 3.
5. The parties engaged in negotiations, and representatives of the City and Level 3 have negotiated a global settlement of disputes between the parties, including:
 - a. a resolution of past due disputed franchise fees for Level 3, WilTel and FTV Communications, LLC through December 31, 2014;
 - b. the terms and conditions of an Irrevocable Right of Use (IRU) agreement for conduit in NE Portland (in the vicinity of the Steel Bridge) to Clackamas County in the vicinity of Lawnfield Road (a distance of approximately 58,000 feet), in place of the conduit not otherwise provided to the City in compliance with Sec. 9.2(A) of the franchise
 - c. the terms and conditions of a mutual IRU agreement to exchange Level 3's use of the City's conduit over the Steel Bridge for the City's use of a Level 3 conduit below the Willamette River; and,

- d. the terms and conditions of a franchise for Level 3, which encompasses the facilities of its subsidiaries using the city streets together with its subsidiaries tw telecom, Broadwing Communications, WilTel (fka Williams Communications) and FTV Communications. The franchise ordinance is being filed separately by City staff, in accordance with the formal franchise adoption procedures set forth in the Portland City Charter.
6. Level 3 has provided assurances to the City of its rights to grant IRUs to the City in satisfaction of its obligations under the settlement. The City is entering into the settlement in reliance upon Level 3's assurances.
7. Staff recommends that the City Council approve the settlement agreement to secure the past due franchise fees, avoid potential litigation costs, and achieve legal certainty.
8. Staff recommends that the City Council authorize the two IRU agreements to avoid potential litigation costs, obtain benefits for the City and achieve legal certainty.

NOW, THEREFORE, the Council directs:

- a. The Mayor is authorized to execute a settlement agreement with Level 3 Communications, LLC, attached as Exhibit A to this Ordinance, under which Level 3 Communications, LLC shall pay the City \$2,750,000 in past due franchise fees.
- b. The Mayor is authorized to execute Indefeasible Right to Use Innerduct Agreement for use of Level 3 Communications, LLC's innerduct along the Union Pacific railroad right of way, substantially similar to Exhibit B attached to this Ordinance.
- c. The Mayor is authorized to execute the mutual exchange of Indefeasible Right to Use Innerduct Agreement in which the City and Level 3 Communications, LLC will exchange use of conduits owned by the other party, substantially similar to Exhibit C attached to this Ordinance.

Section 2. The Council declares that an emergency exists because the public interest would be served through the prompt and final resolution of the parties' dispute; therefore, this Ordinance shall be in force and effect from and after its passage by the Council.

188167

Passed by the Council: DEC 21 2016

Mary Hull Caballero
Auditor of the City of Portland

By:


Deputy

Mayor Charlie Hales
Prepared by: JLi/BEWalters
December 5, 2016

2140

1437
Agenda No.
ORDINANCE NO. 188167
Title

*Approve settlement of claims with Level 3 Communications, LLC (Ordinance)
for past due franchise fees

<p>INTRODUCED BY Commissioner/Auditor: Mayor Hales</p> <p>COMMISSIONER APPROVAL <i>[Signature]</i> Mayor—Finance and Administration - Hales</p> <p>Position 1/Utilities - Fritz</p> <p>Position 2/Works - Fish</p> <p>Position 3/Affairs - Saltzman</p> <p>Position 4/Safety - Novick</p> <p>BUREAU APPROVAL Bureau: OMF/BRFS, Revenue CAO: Fred Miller CFO, Bureau Head: Kenneth L. Rust Division Head: Thomas W. Lannom <i>[Signature]</i></p> <p>Prepared by: Jennifer Li Date Prepared: 12/7/2016</p> <p>Impact Statement Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/></p> <p>Portland Policy Document If "Yes" requires City Policy paragraph stated in document. Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>City Auditor Office Approval: required for Code Ordinances</p> <p>City Attorney Approval: required for contract, code, easement, franchise, comp plan, charter</p> <p>Council Meeting Date: December 21, 2016 <i>[Signature]</i></p>	<p style="text-align: right;">DEC 13 2016</p> <p>CLERK USE: DATE FILED _____</p> <p style="text-align: right;">Mary Hull Caballero Auditor of the City of Portland</p> <p>By: <i>[Signature]</i> _____ Deputy</p> <p>ACTION TAKEN:</p>
---	---

AGENDA
<p>TIME CERTAIN <input type="checkbox"/></p> <p>Start time: _____</p> <p>Total amount of time needed: _____ (for presentation, testimony and discussion)</p>
<p>CONSENT <input type="checkbox"/></p>
<p>REGULAR <input checked="" type="checkbox"/></p> <p>Total amount of time needed: 10 (for presentation, testimony and discussion)</p>

FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:		
		YEAS	NAYS
1. Fritz	1. Fritz	✓	
2. Fish	2. Fish	✓	
3. Saltzman	3. Saltzman	✓	
4. Novick	4. Novick	✓	
Hales	Hales	_____	_____