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October 11, 2017

Via Email:
Lmalina@ktjlaw.com
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Mr. Lance Malina
Ms. Mallory Milluzzi
Klein, Thorpe and Jenkins, Ltd.
20 N. Wacker Drive
Suite 1660
Chicago, IL 60606-2903

Re: World Class Wireless - City of Aurora Master License Agreement

Dear Lance and Mallory:

Pursuant to our telephone conference and your follow up email on Tuesday, October 3, 2017, our proposed edits to the City of Aurora Master License Agreement are set out in the attached document. In order to make our comments more focused, we prepared an outline that sets out the topic by sub-section, the proposed changes in redline, and the reason for the change.

As we discussed, there are major differences between the treatment of Licensees on City Ways and City property as compared to locating Communication Facilities on private property. You have made a number of changes that reflect these differences, but there are still some areas of the Agreement that need some further modification.

By setting these out in our outline, we believe this will allow you to more clearly see the provisions that are still of concern. Although this is not exactly the form in which you sent us the template, it seemed the best way to present our client's continuing concerns.

We also wish to note that our client submitted the revised plans yesterday to address the setback and any other issues raised by the City on the prior submittal. Hopefully, the plans are now complete. Thank you for your kind attention to these matters. We look forward to your response.

DyKEMA

Mr. Lance Malina
Ms. Mallory Malluzzi
October 11, 2017
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Very truly yours,

DYKEMA GOSSETT PLLC

/s/Bruce L. Goldsmith

Bruce L. Goldsmith

BLGO
Attachment

cc: World Class Wireless

**WORLD CLASS WIRELESS COMMENTS TO
LICENSE AGREEMENT FOR PRIVATE PROPERTY**

**THE PURPOSE OF THIS DOCUMENT IS TO HIGHLIGHT THE DIFFERENCES IN
LICENSING OBJECTIVES BETWEEN A LICENSE TO A PRIVATE PROPERTY
OWNER AS COMPARED TO A LICENSE TO USE THE City WAYS OR CITY
PROPERTY**

World Class Wireless, LLC respectfully submits these comments and proposed revisions to the draft License Agreement. The draft License Agreement seems like a reasonable framework for regulating the licensing of the use of the City’s public rights of way and other City property for the attachment of use of Communication Facilities. However, the conditions that are appropriate to impose for someone seeking permission to use public property are, in many instances, not appropriate to impose on a private landowner’s use of its own property. WCW appreciates the efforts that the City has made to address a number of these issues in the draft. The comments below are intended to address the major areas where clean-up is still needed to distinguish between the proper treatment of the use of private property, as opposed to public property. If the City Council has any questions about these proposed revisions, we would welcome the opportunity to answer any such questions.

SECTION	PROPOSED CHANGES IN REDLINE	REASON
3.1.1 Topic: Reasons the License term will not renew	The Communications Licensee or City has not provided written notice of its intent to terminate the Agreement no less than sixty (60) <u>one-hundred eighty (180)</u> days prior to the expiration of the initial term; and	The City should have no reason to terminate a license on private property unless Licensee is in default, which is already addressed elsewhere. Otherwise, the License should automatically renew unless Licensee chooses to terminate.
3.3.1 Topic: Events upon Termination	Remove the Communications Licensee’s Communications Facilities from the City Ways or other property at its sole cost and expense within sixty (60) days from the expiration date, otherwise, <u>if the Communications Facility is located on the City Way,</u> the City may at its discretion re-purpose (if located on the City Ways) or remove said facility pursuant to Section 10.9 herein; or	The City cannot “repurpose” a Communication Facility on private property against the desires of the land owner. Thus, the ability to repurpose should apply only to facilities in the City Way, This same change should be applied wherever “repurpose” rights are referenced.
3.3.2 Topic:	Without cost or charge to the City abandon the Communications Licensee’s Communications Facilities	Same issue. See explanation for Section 3.3.1 re “repurpose”

<p>Events upon Termination</p>	<p>in place, but only if the City first approves the proposed abandonment, in writing; including conditions applicable to the abandonment, or, <u>if the Communications Facility is located on the City Way,</u> -the City may at its discretion re-purpose (if located on the City Ways) or remove said facility pursuant to Section 10.9 herein; or</p>	
<p>3.4.1 Topic: Termination</p>	<p>A termination for cause means 1) The Communications Licensee fails to cure a material default of this Agreement within thirty (30) days after it receives the City’s notice of default, or, if the default can be cured and such cure reasonably requires more than thirty (30) days to achieve, fails to commence and thereafter diligently continue such cure to completion within the specified <u>a reasonable period of time</u>; or 3) In the event the Communications Licensee installs or causes to be installed an Unauthorized Communication Site of the Communications Licensee proceeds to another agency, court or venue to secure permission to install or cause to be installed an <u>Unauthorized Communication Site</u>, the City shall have the right to immediately terminate this agreement.</p>	<p>Subparagraph 1 uses the term “specified period” which is not defined. It would be more appropriate to use the term “reasonable period of time” which has a recognized meaning in the case law.</p> <p>The redacted section of Subparagraph 3 would deprive a private owner of availing <u>itself</u> of state or federally regulated rights. If the City is preempted, this should not void the License.</p>
<p>4.2.1 Topic: Scope of Site-Specific Permit</p>	<p>License Only. Nothing in this Agreement or in a Site-Specific Permit shall be deemed to grant, convey, create, or vest in the Communications Licensee a property right or perpetual interest in City-owned land or in the City Ways including, without limitation, any fee interest, leasehold interest, easement, or franchise right. This Agreement however, does not limit the Licensee’s rights over its private property. Any interpretation of this</p>	<p>The general point of preserving the City’s interests is fine. However, a private property owner is still entitled to be given easements necessary to access utilities or other facilities in the City Ways.</p>

	<p>license or a Site-Specific Permit by a Court, which would purport to create any fee, leasehold, easement, or franchise interest in the Communications Licensee over City-Ways shall, twenty-four (24) hours after such determination, result in the Communications Licensee's forfeiture of any and all rights under this Agreement or any Site-Specific Permit. <u>For the avoidance of doubt, this does not apply to -, except such easements granted by the City in connection with this Agreement to allow access to utilities or facilities in the public right of way.</u></p>	
<p>4.2.3 Topic: Scope of Site-Specific Permit</p>	<p>Modification of Site-Specific Permit. The City may for consideration of the public health, safety, and welfare including, without limitation: safety, reliability, security, and engineering reasons, terminate or otherwise modify the scope of the Communications Licensee's non-exclusive Site-Specific Permits, <u>with respect to Communications Facilities located in the City Ways,</u> upon sixty (60) days written notice to the Communications Licensee. If the City exercises its rights under this subsection it will use reasonable efforts to find one or more alternative locations for the Communications Licensee to install its Communications Facilities.</p>	<p>There are no public health or safety reasons that should apply to a Communication Facility on private property that would lead to a modification of the Site Specific Permit. This might happen on shared poles or City structures on the City Ways.</p>
<p>5.1 Topic: Other Rights And Obligations Of Licensee</p>	<p>General. During the term of this Agreement, <u>should Communications Licensee wish to materially modify the form, fit, or function of any Communications Facility,</u> Communications Licensee may request, in writing, the City's approval and authorization to add, attach, install, move, repair, replace, or otherwise <u>materially</u> alter or change</p>	<p>Minor changes, including replacement or repairs of like-for-like equipment, -should not require further approval for Communication Facilities on private property, as long as those changes do not materially alter the Site Specific Permit.</p>

	the Communications Licensee’s Communications Facilities in a manner consistent with this Agreement. All written requests for this purpose shall be filed with the City Representative, who may revise the Site-Specific Permit for such work subject to appropriate reasonable conditions.	
5.4 Topic: Routine Work	Routine Work. Except in emergencies requiring restoration within twenty-four (24) hours of loss of function of the Communications Licensee’s Communications Facilities, the Communications Licensee shall give not less than ten (10) days written notice to the City Representative whenever the Communications Licensee intends to perform any work on or about the City Ways or City Facilities or on Poles- located on City owned property . The City Representative’s permission to perform the work shall not be unreasonably withheld or delayed.	Similar to 5.1 above, an owner of private property should be able to make emergency and routine repairs or maintenance without notice to the City. Notice would be necessary when working in the City Ways, which would already be covered by a right of way permit.
6.3 Topic: Fees	Annual License Fee. The Communications Licensees shall pay, on an annual basis, an Annual License Fee for each Site-Specific Location as determined by the City Representative based on the amount listed on the Fee schedule set forth in Appendix A. ... Communications Licensee’s failure to remove within the time required will authorize the City at its discretion to re-purpose (if located on the City Ways) or remove said facility pursuant to Section 10.9 herein.	As the City is not seeking to recover costs with regard to the siting of a Communications Facility on private property, WCW suggests that the fee should not change. The qualification in the redline relates to the “repurpose” language in Section 3.3.1
6.6 Topic: Non- Payment of Fees	Failure to Pay. Communications Licensee’s failure to pay any costs or Annual License Fees under this Agreement within thirty (30) days of the due date shall constitute a material	See explanation for “repurpose” language in Section 3.3.1

	default. ... Communications Licensee's failure to remove within the time required will authorize the City at its discretion to re-purpose (if located on the City Ways) or remove said facility pursuant to Section 10.9 herein.	
7.5 Topic: Permit in City Ways	Site-Specific Permit Issuance in City Ways. The approval of the Site-Specific Permit Application requesting to attach to a City pole, or to install a new pole in a City Way , shall authorize Communications Licensee to proceed to obtain all generally applicable, ministerial permits that are required of all occupants of the Public Rights-of-Way, if required (collectively, "ROW Permit")....	This whole section is clearly drafted to deal with Communications Facilities in the City Ways or on City poles, and City structures, not facilities on private property.
8.1 Topic: Installment and Replacement of Communications Facilities	Provision of Personal Communication Service. -City Ways or other property (other than private property owned by the Communication Licensee, where access rights are presumed) may be used by Communications Licensee, seven (7) days a week, twenty-four (24) hours a day, only for the attachment, installation, construction, use, maintenance, operation, repair, reinstallation, reattachment, modification, replacement, removal and upgrade of Communications Facilities approved by a Site-Specific Permit by Communications Licensee from time to time for Communication Services and not for any other purpose whatsoever. This Agreement shall include new types of Communications Facilities that may evolve or be adopted using wireless technologies. Communications Licensee shall, at its expense, comply with all applicable federal, state, and local laws, ordinances, rules and regulations in connection with the use of City Ways	A private property owner does not need the City's permission to access its privately held property with 24/7 rights as it already has those rights by virtue of its property ownership.

	or other property.	
8.2 Topic: Co-location	<p>Co-Location. Communications Licensee shall exercise all reasonable efforts to locate its Communications Facilities on or within existing structures or Poles. Licensee shall not install new Licensee Poles in a City Way or other <u>City</u> property unless Communications Licensee demonstrates that alleither <u>all</u> of the following criteria are satisfied: (1) Communications Licensee certifies that a new Pole in the City Way or other property are necessary to fill a coverage or <u>capacity</u> gap in Communications Services, <u>and</u> (2) there are no other existing structures in the City Way or other property or buildings near the City Way or other property that are available and capable of supporting the Communications Licensee's Communications Facilities. However <u>But, if Licensee is locating its Communication Facility on privately held property, the Licensee need only demonstrate that it has a business need to locate its Communication Facility at such location. that there is a business case for the exclusive use of the privately held Communication Facility., or (3) other business use of the Communications Licensee necessitates exclusive use of the Pole or structure.</u></p>	Colocation does not work for certain kinds of use like WCW's, where the Communications Facility is for one business purpose or has peculiar technical advantages no available on a colocation site.
8.4.1 Topic: Installation on New Poles	<p>Allow for the maximum number of antenna co-locations on the new Pole, which the Communications Licensee shall make available at a fair market rate. However <u>But, this requirement shall not apply to a Communication Facility on private propertyly held land if the Pole has only enough space to accommodate Communication</u></p>	The Pole/Structure WCW is seeking to permit is a small facility only capable of meeting WCW's specific business requirements. Section 8.4.1 clearly envisions larger Poles that could be multi-purposed.

	<u>Licensee's current and planned future needs</u> uses or if such co-location would be competitively disadvantageous to <u>Communication Licensee</u> does not desire to provide access to unrelated third parties.	
8.7 Topic: Cooperation	Licensee Cooperation. Communications Licensee shall fully cooperate with the City, its franchisees, or any prior communications licensees occupying the City Way during the installation and operation of its Communications Facilities so as to minimize conflicts, avoid damage, and threats to the public property, health, safety and welfare. The Communications Licensee shall not trim or cut trees, shrubbery or other vegetation <u>on City Ways</u> without authorization from the City Representative.	Licensees are required to landscape the Communication Facilities on their private property and should not need City authorization to maintain such landscaping. This is no different than other maintenance requirements for private property owners.
8.15 Topic: Location	Location of Communications Licensee's Communications Facilities. A granted Site-Specific Permit shall not extend to any pole or conduit to which the attachment and/or installation of the Communications Licensee's Communications Facilities would result in the forfeiture of the rights by the City or the imposition of additional obligations or liabilities upon the City. If the existence of the Communications Licensee's Communications Facilities in or on City Ways would result in a forfeiture, the Licensee at its sole cost and expense shall promptly remove the Communications Licensee's Communications Facilities within sixty (60) days from the date of written notice from the City demanding the removal. If the Communications Licensee's Communications Facilities are not timely removed, the City may	Same comment regarding "repurpose" as in Section 3.1

	at its discretion re-purpose (if located on City property) or remove said facility pursuant to Section 10.9 herein.	
10.8 Topic: Security	Letter of Credit Security. Prior to the commencement of any work with respect to a Tower (as defined in Chapter 19 of the City of Aurora Code of Ordinances) under this Agreement, the Communications Licensee shall post a Restoration LOC and a Removal LOC for each Site-Specific Location that will contain a Tower in an amount not less than the amount listed on the Fee schedule set forth in Appendix A.	There should be a <i>de minimus</i> threshold for private property owners where no security is required. If the City wants security on every Licensee, WCW would prefer making a cash deposit with the City as small letters of credit are cumbersome to secure.
13.4 Topic: Assignment	Assignment. This Agreement is personal to only the Communications Licensee and no other Entity. The Communications Licensee may not directly or indirectly assign, transfer, or convey to another Entity this Agreement, or any of the rights and obligations of the Communications Licensee established by this Agreement without written approval of the City.... The preceding sentences of this Section 14.2 notwithstanding, the Communications Licensee may assign or transfer this Agreement to its parent corporation or any subsidiary corporation or affiliate or successor in interest, provided that such parent corporation, subsidiary corporation, affiliate, or successor in interest first agrees, in writing, to be fully bound by this Agreement and the exhibits and to assume all of the Communications Licensee's obligations and liabilities hereunder, whether arising before or after the date of such assignment or transfer. The City Representative shall be notified of assignment or transfer. Notwithstanding the foregoing, if Licensee sells or otherwise transfers all or substantially all of its assets,	Unless the transferee is unfit to hold a License, Licensee ought to be able to transfer its License as long as the transferee agrees to comply with the terms of the License.

then, upon the provision of written notice to the City, Licensee may assign or otherwise transfer this Agreement and the rights and obligations hereunder without the approval of the City so long as the transferee is not statutorily unfit to hold such a license. For the avoidance of doubt, if Licensee owns the underlying land at any site specific location, the mere sale or other transfer of the land shall not affect this License. ~~However, the underlying land may also be assignedtransferred, subject to any successor in interest without authorization from the Citytransferee agreeing to assume the responsibilities under the License.~~