

ORDINANCE NO.: 2011-098

To Grant to Sprint Communications Company, L.P., its Successors and Assigns the Right, Power and Authority to Construct, Install, Maintain and Operate In, Over, Upon and Under the Streets and Public Places of the City of Columbia, its Lines, Poles, Wires, Cables and other Telecommunications Facilities to Render Telecommunications Service to Its Customers in the Limits of the City of Columbia for Such Period as Provided Herein; and to Provide for the Payment of Compensation for the Use of the Streets and Public Places

WHEREAS, Sprint Communications Company, L.P., has requested consent of the City of Columbia to use the streets and public places of the municipality to construct, maintain, and operate its facilities for use in providing telecommunications services to its customers within the municipality for its own business purposes and profit; and,

WHEREAS, other telecommunications providers either have or are likely to seek a similar consent; and,

WHEREAS, it is the policy of the municipality to permit such entry into to the corporate limits and such use of the streets and public places for the provision of telecommunication services, subject to the duty and authority of the municipality to manage its streets, public property and rights-of-way, and to require fair and reasonable compensation from telecommunications providers for the use thereof on a competitively neutral and nondiscriminatory basis and to publicly disclose the amount of compensation; NOW, THEREFORE,

BE IT ORDAINED by the Mayor and City Council of the City of Columbia this 20th day of December, 2011, as follows:

Section 1: As used in this ordinance, the word "Company" means Sprint Communications Company, L.P., a corporation organized and existing under the laws of the State of South Carolina and duly authorized to do business in South Carolina, its successors and assigns.

Section 2: As used in this ordinance, the word "Municipality" means the City of Columbia, South Carolina.

Section 3: As used in this ordinance, the term "Telecommunications Services" has the meaning and definition given to that same term by S.C. Code Ann. Section 58-9-220 (1) (1999); provided, however, for purposes of this ordinance, the term "Telecommunications Services" does not include cable television. Cable television services may only be provided in the municipal limits pursuant to a separate franchise pursuant to 42 USC 542.

Section 4: The non-exclusive right, power and authority is hereby granted and vested in the Company to construct, maintain, and operate in, over, under, and upon the streets, alleys, bridges, rights-of-way and other public places of the Municipality, its lines, poles, wires, cables, and other telecommunications facilities and to use those facilities to render Telecommunication Services to its customers within the corporate limits of the Municipality.

Section 5: Prior to the commencement or continuation of any construction or operation in the corporate limits of the Municipality, the Company shall be duly authorized to do business in South Carolina and shall have received any necessary certificate of public convenience and necessity or other required authority from the South Carolina Public Service Commission or the Federal Energy Regulatory Commission. Evidence that such authority has been acquired or that it is not required will be filed with the Municipality.

Section 6: All work upon the streets and public places of the Municipality shall be in accordance with all applicable standards, codes, and ordinances, and will be done under the general supervision of the Mayor and Council of the Municipality. All new construction will, wherever practicable, be placed underground. Any necessary aboveground construction will, wherever practicable, utilize existing utility poles. No street, alley, bridge, right-of-way or other public place used by the Company shall be obstructed longer than necessary during its work of construction or repair, and shall be restored to the same good order and condition as when said work was commenced. No part of any street, alley, bridge, right-of-way, or other public place of the Municipality, including any public drain, sewer, catch basin, water pipe, pavement or other public improvement, shall be damaged. However, should any such damage occur, the Company shall repair the same as promptly as possible, and, in default thereof, the Municipality may make such repairs and charge the reasonable cost thereof to and collect the same from the Company. The Company shall save the Municipality harmless from all liability or damage (including judgments, decrees, court costs, and defense costs) arising out of the Company's operations within the corporate limits of the Municipality, the exercise of the privileges granted to the Company by this ordinance, or the acts or omissions of the Company's employees, contractors, or agents.

Section 7: In consideration of the grant of authority to utilize the streets and public places of the Municipality for

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the provision of Telecommunication Services, and in accordance with applicable laws and ordinances, the Company shall pay such franchise fees, business license taxes, and administrative fees as are presently permitted by Article 20 of Chapter 9 of Title 58 of the 1976 Code of Laws of South Carolina, as enacted in 1999, and as may be enacted and imposed by the Municipality. The Company shall also pay all such ad valorem taxes, service fees, sales taxes, or other taxes and fees as may now or hereafter be lawfully imposed on other businesses within the Municipality. Provided, however, that in the event that Article 20 of Chapter 9 of Title 58 of the 1976 Code of Laws of South Carolina, as enacted in 1999, or other laws governing franchise fees, business license taxes and/or other fees with respect to Telecommunication Services shall be substantially modified by subsequent legislation or court decision, the provisions herein contained shall be brought into conformity with the changes in the applicable law by appropriate amendment to this ordinance. If the limitations on the amount of franchise fees, administrative fees, and business license taxes on providers of Retail Telecommunications Services presently contained in said statute shall be removed or modified, the Municipality will be free, by amendment to this ordinance, to impose such fair, reasonable, competitively neutral, and non-discriminatory fees and taxes as may then be permitted by that statute or by such applicable South Carolina and federal law as may then govern.

Section 8: Except as specifically provided herein, or otherwise mandated by law, the privilege granted to the Company by this ordinance does not exempt or excuse the Company from the police power and all other municipal authority and laws including, but not limited to, those relating to zoning, permitting, traffic control, construction and excavation, planning, aesthetics, and the environment.

Section 9: The non-exclusive franchise and consent granted by this ordinance shall be in force and effect for an initial term of five (5) years, and shall continue in force and effect thereafter until properly terminated by either party. Either party may terminate the contract at the end of its initial five-year term, or at any time thereafter, by giving written notice of its intention to do so no less than two (2) years before the proposed date of termination. It is understood and agreed that the decision of whether to renew or to terminate this franchise pursuant to this Section shall be made by those elected officials then in office under such circumstances as may then obtain, and that the Company has no reasonable expectation of renewal or non-termination.

Section 10: This franchise and consent ordinance is subject to the Constitution and laws of the State of South Carolina. In conforming this ordinance to the requirements of S.C. Code Ann. Section 58-9-2200 et. seq. as enacted by the General Assembly of South Carolina in 1999, the Municipality does not concede or imply that the General Assembly has the authority to restrict by general law the powers denied to the General Assembly and reserved to the municipalities of South Carolina by Article VIII Section 15 of the Constitution of South Carolina.

This ordinance is effective as of final reading.

Requested by:

Sprint Communications Company, L.P.


MAYOR

Approved by:


City Manager

Approved as to form:


City Attorney

ATTEST:


City Clerk

Introduced: 12/13/2011

Final Reading: 12/20/2011