



Committee: Directly to Council
Committee Review: N/A
Staff: Christine Wellons, Legislative Attorney
Purpose: Final action – vote expected

AGENDA ITEM 3H
January 18, 2022
Action

SUBJECT

Resolution to Grant a Franchise for Use of Public Right-of-Way to Cellco Partnership d/b/a Verizon Wireless

Lead Sponsors: Council President at the request of the County Executive

EXPECTED ATTENDEES

None

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

- The Council is expected to vote on whether to adopt a resolution to grant a franchise for use of the public right of way to Cellco Partnership d/b/a Verizon Wireless

DESCRIPTION/ISSUE

The resolution would grant to Cellco Partnership d/b/a Verizon Wireless a franchise to use the public right-of-way under certain conditions. The County Executive has recommended the approval of the franchise under the conditions set forth in a franchise agreement signed by the franchisee. The terms of the agreement are attached to, and incorporated by reference into, the resolution.

This report contains:

Staff Memorandum	Pages 1-4
Resolution (including attachments)	©1
Memorandum from County Executive	©21

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MEMORANDUM

January 13, 2022

TO: County Council

FROM: Christine Wellons, Legislative Attorney

SUBJECT: Resolution to grant a franchise to Cellco Partnership d/b/a Verizon Wireless to use the public right-of-way

At the request of the County Executive, the Council President sponsored the introduction of a resolution on December 14, 2021 that would grant a franchise to Cellco d/b/a Verizon Wireless to use the public right-of-way pursuant to Chapter 49 of the County Code.

On November 8, 2021, the County Executive recommended to the Council the grant of the franchise, pursuant to the terms of a proposed franchise agreement (©4) negotiated between Cellco and the County (through the Office of the County Attorney with assistance from outside counsel).

Under Chapter 49 of the County Code, the County Council has the authority to grant a franchise for use of the public right of way if: (1) certain notice and other procedural requirements under Chapter 49 are met; and (2) the Council finds that granting the franchise is “expedient and proper”. (Sec. 49-21).

The procedural requirements under Chapter 49 include that the prospective franchisee must:

- publish notice of each application for any franchise once a week for 3 successive weeks in one or more newspapers of general circulation in the County, specifying:
 - the essential terms of the proposed franchise;
 - the compensation the County will receive, which may take the form of in-kind goods and services as well as cash payments; and
 - the location, character, and extent of the use of the right-of-way.

The prospective franchisee met these public notice requirements. See © 20.

Regarding the value of a proposed franchise, the County Executive or a designee must investigate the value of the proposed franchise and the adequacy of the compensation proposed to be paid for it. Sec. 49-20. In this case, the County Executive has explained that:

Pursuant to the Federal Communications Commission (FCC) Small Cell Order, the franchise requires Cellco Partnership to pay the safe harbor annual right-of-way fee permitted by the FCC of \$270.00 and reserves the County’s authority to adjust the fee at any time based on a study of the County’s actual costs, or should applicable law permit, to charge a fee that is not cost-based.

Chapter 49 further provides that: “If any taxpayer, or any property owner whose property right may be affected, files an objection to the granting of the franchise in writing with the County Executive within 10 days after the last notice required...the County Executive or a designee must hold a hearing within 15 days after the objection is filed on the proposed franchise and any objections to it.” Sec. 49-21. The County Executive has explained that no timely objections were received and, thus, a public hearing was not required in this case.

The main terms of the proposed franchise include:

- a 15-year term for the franchise;
- the granting of non-exclusive, non-transferable rights to Cellco, subject to local, state, and federal law, to use the public right of way, in certain circumstances, exclusively for the purpose of providing personal wireless services;
- the payment of a fee from Cellco to the County in the amount of \$270 per annum per Cellco facility in the right of way (adjusted annually for CPI);
- a preservation of the right of the County to adjust the fees at any time if, based on a study of its actual costs, the County determines that an adjusted fee is a reasonable approximation of costs; and
- standard provisions requiring insurance, bonding, indemnification of the County, and termination of the franchise.

As required under Section 49-22 of the Code, the “Council must not part with,” and “expressly reserve[s], the right and duty at all times to exercise full municipal control and regulation in respect to all matters connected with the franchise not inconsistent with its terms.”

If the Council finds that the franchise is “expedient and proper,” it may grant the franchise under Chapter 49 and the terms of the enclosed resolution. **Council staff recommends adoption of the resolution.**

Next step: Council vote on whether to adopt the enclosed Resolution to grant a franchise to Cellco Partnership d/b/a Verizon Wireless to use the public right of-way.

<u>This packet includes:</u>	<u>Circle</u>
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Resolution No.: _____
Introduced: December 14, 2021
Adopted: _____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY MARYLAND

Lead Sponsor: Council President at the request of the County Executive

Subject: Grant of franchise to Cellco Partnership d/b/a Verizon Wireless to use the public right-of-way.

Background

1. Sections 49-20 and 49-21 of the County Code provide that the County Council may grant a franchise for use of the public right-of-way after:
 - a) the franchise applicant publishes notice of the application once a week for three consecutive weeks in a newspaper of general circulation in the County;
 - b) the County Executive investigates the value of the franchise and the adequacy of the proposed compensation the applicant will pay to the County;
 - c) the Executive holds a hearing on the application if any taxpayer or affected property owner objects to the franchise within 10 days after the last notice of the application is published;
 - d) the Executive makes a written recommendation to the Council about the franchise, including findings about the value of the franchise, any response to objections that have been raised, and any other relevant issues; and
 - e) the Council decides that the franchise is expedient and proper.
2. On July 21, July 28, and August 4, 2021, Cellco Partnership d/b/a Verizon Wireless published notice of its application for a franchise to use the public right-of-way. The Executive received no objections to the franchise by the statutory deadline and was therefore not required to conduct a hearing on the franchise application.
3. On November 8, 2021 the Council received the Executive's recommendation to grant a franchise to Cellco Partnership d/b/a Verizon Wireless and a proposed franchise agreement.

Action

The County Council for Montgomery County Maryland approves the following resolution:

The County Council finds that granting a franchise to Celco Partnership d/b/a Verizon Wireless for use of the public right-of-way is expedient and proper. The Council grants the franchise under the terms of the attached franchise agreement, the terms of which are incorporated herein by reference.

This is a correct copy of Council action.

Selena Mendy Singleton, Esq., Clerk of the Council

FRANCHISE AGREEMENT (FOR SMALL WIRELESS FACILITIES)

The County Council for Montgomery County, Maryland, having approved by Resolution No. _____ dated the _____ day of _____, 2021, a franchise ("Franchise") to construct and maintain Facilities in the Public Right-of-Way, this franchise agreement ("Franchise Agreement") is made as of this _____ day of _____, 2021, by and between Montgomery County, Maryland, a body corporate and politic (hereafter the "County"), and Cellco Partnership, a Delaware general partnership d/b/a Verizon Wireless with its principal offices at One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey 07920 (Telephone number 866-862-4404) ("Cellco").

RECITALS

WHEREAS, under Maryland and County laws, the County has the right and power to regulate the time, location, and manner of attachment, installation, operation, and maintenance of telecommunications facilities in the Public Right-of-Way within the limits of the County; and

WHEREAS, Cellco wishes to construct, install, operate, and maintain Facilities within the Public Right-of-Way; and

WHEREAS, Cellco has made application to the County for a franchise to construct, install, operate, and maintain the Facilities in, under, over, and upon the Public Right-of-Way of the County, pursuant to Chapter 49 of the Montgomery County Code 2014, as amended; and

WHEREAS, Cellco has caused said franchise application to be published once a week for three consecutive weeks in one or more newspapers having general circulation in the County, setting forth the location, character and extent of the franchise sought, and stating the terms and compensation to be received therefor; and

WHEREAS, it appears to Montgomery County that the granting of the requested franchise is proper pursuant to Chapter 49 of the Montgomery County Code 2014, as amended.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, this Franchise Agreement is entered into by and between the parties subject to the following terms and conditions:

1. DEFINITIONS.

For the purposes of this Agreement, the following words, terms, phrases, and their derivations shall have the meanings given herein. The word "shall" is always mandatory.

1.1 "Agreement" means this Franchise Agreement.

1.2 "CAO" means the Chief Administrative Officer of the County or authorized designee.

1.3 "County" means Montgomery County, Maryland.

1.4 "Effective Date" means the date of the County Council resolution approving this Agreement.

1.5 "Facility" means an antenna and equipment, switches, wiring, cabling, power sources, shelters or cabinets associated with that antenna located at the same fixed location as the antenna which facility constitutes a small wireless facility, as defined at 47 C.F.R. Sec. 1.6002 or successor regulation, and is placed by Cellco in the Public Right-of-Way and used or useful in providing Services.

1.6 "FCC" means the Federal Communications Commission.

1.7 "Law" means any judicial decision, statute, constitution, ordinance, regulation, tariff, or other applicable legal requirement of the United States Government, State, or County in effect either on the Effective Date or at any time during the presence of Facilities in the Public Right-of-Way.

1.8 "Cellco" means Cellco Partnership, a Delaware general partnership d/b/a Verizon Wireless, and its lawful successors, assigns, and transferees. Cellco is a wireless communications carrier licensed by the FCC.

1.9 "Person" means an individual, a corporation, a limited liability company, a general or limited partnership, a sole proprietorship, a joint venture, a business trust, and any other form of business association or organization of any kind.

1.10 "Public Right-of-Way" or "Right-of-Way" means any location in, upon, above, along, across, under, and over the public streets, roads, lanes, courts, ways, alleys, boulevards, sidewalks, or similar property, now or hereafter held by or dedicated to the County for public use.

1.11 "Services" means personal wireless services and any commingled information services provided via the same Facility, but does not include cable service as defined at 47 U.S.C. §522(6).

2. TERM.

This Agreement shall be for a term of fifteen (15) years, unless it is earlier terminated by either party in accordance with the provisions herein, and shall commence on the Effective Date. This Agreement and any permits issued hereunder are subject to any present and future legislation or resolution that may be enacted by the County Council.

3. SCOPE OF FRANCHISE.

3.1 Any and all rights expressly granted to Cellco under this Agreement, which shall be exercised at Cellco's sole cost and expense, shall be subject to the prior and continuing right of the County to use any and all parts of the Public Right-of-Way, exclusively or concurrently, with any other Persons, and further shall be subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title which may affect the Public Right-of-Way. Nothing in this Agreement shall be deemed to grant, convey, create, or vest a real

property interest in land in Cellco, including any fee, leasehold interest, or easement. The County makes no representations or warranties with respect to the title to the Public Right-of-Way or the nature of the County's interest in the Public Right-of-Way. If there are other interests in the Public Right-of-Way, Cellco must obtain the necessary consent for its use from each Person who holds any such interest. Cellco must indemnify and hold the County harmless from any claims or costs arising out of or related to a takings claim or other legal action by reason of Cellco's use of the Public Right-of-Way.

3.2 Subject to applicable Federal, State and County Law and County consent, and Cellco entering into a lease or license agreement with the County for the use of County-owned street light poles or other such County-owned property, the County hereby grants a non-exclusive right to Cellco to occupy the Public Right-of-Way to construct, reconstruct, attach, install, operate, maintain, locate, move, remove, reattach, reinstall, relocate, and replace Facilities on County-owned street light poles, or other such County-owned property located in the Public Right-of-Way, for the provision of Services. The grant of the right to occupy the Public-Right-of-Way when attaching to County-owned property does not obligate County to replace any pole or other County-owned equipment to accommodate the Facilities. The County reserves the discretion to approve the attachment to and manner of installation of any of the Facilities on County-owned street light poles.

3.3 Subject to applicable Federal, State and County Law, the County hereby further authorizes Cellco to occupy the Public Right-of-Way to construct, reconstruct, attach, install, operate, maintain, locate, move, remove, reattach, reinstall, relocate, and replace its Facilities in or on new poles placed and owned by Cellco, and existing or replacement poles or other property owned by public utility companies or other property owners located within the Public Right-of-Way as may be permitted by the public utility company or property owner, for the provision of Services. To the extent required by Law, Cellco shall obtain permission from the individual utility or property owner prior to or at the time that Cellco undertakes any of the activities permitted by this Agreement. Upon request, Cellco shall provide documentation of said permission to the County. The installation of a new Cellco owned pole in the Public Right-of-Way must be in compliance with County law, including the Montgomery County Zoning Ordinance.

3.4 No Facilities may be attached to County-owned or controlled streetlight fixtures, streetlight bracket arms, or traffic signals.

3.5 Without limiting any other requirement of County Law, prior to undertaking any construction activity, Cellco shall provide reasonable advance notice to affected property owners as required by Law, and obtain all permits and other authorizations required by County Law.

3.6 After receiving County permit approvals, Cellco shall disclose to the County, in writing, its schedule for the installation and the location of the proposed Facilities at least fifteen (15) days prior to the construction, reconstruction, attachment, installation, location, reattachment, reinstallation, or relocation of the Facilities, excluding maintenance and repairs (including replacement of equipment with substantially similar equipment). The written disclosure from Cellco must include any drawings and diagrams depicting the location of the

proposed facilities and the manner of their installation that were not provided to the County during the permit review process.

3.7 Except as permitted by applicable Law or this Agreement, in the performance and exercise of its rights and obligations under this Agreement, Cellco shall not interfere in any manner with the existence and operation of any public and private rights-of-way, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electric and telephone wires, electroliners, cable television, and other telecommunications, utility, and County or municipal property without the express written approval of the owners or users of the affected property. This Agreement is not such an approval.

3.8 Cellco shall comply with all applicable Law, including the "Miss Utility" law and applicable electrical codes, in the exercise and performance of its rights and obligations under this Agreement. Cellco hereby acknowledges that the rights granted by this Agreement are subject to the police powers of the County.

3.9 Cellco represents and agrees that the Facilities subject to this Agreement will be used exclusively for the rendering of Services and no other purpose, except to the extent that Cellco is required by State or Federal authorities, in the proper exercise of their jurisdiction over such matters, to make the Facilities available for use by third parties.

3.10 The rights granted herein are not divisible or assignable, and Cellco may not permit any other person, other than a person holding a small wireless facilities franchise from the County, to own any part of the Facilities or permit any other person other than a person holding a small wireless facilities franchise from the County or Cellco's contractors, to construct, reconstruct, attach, install, operate, maintain, locate, move, remove, reattach, reinstall, relocate, and replace Facilities in the Public Right-of-Way or to own any part of the Facilities.

4. FEES AND TAXES.

4.1 The compensation set forth herein is for use of the Right-of-Way for Facilities owned solely by Cellco and used for the provision of Services. Cellco may use the Public Right-of-Way to provide additional services only by an express amendment to this agreement, or by separate franchise agreement with the County for Public Right-of-Way use. Cellco may not permit any other person to place equipment that the person owns or controls as part of that Facility without the express authorization of the County, and the payment of an additional fee to, the County as described below.

4.2 Without limiting the foregoing, the fees provided for in this Section are not in lieu of any fee or tax to which Cellco may be subject, or relieve Cellco of any obligation to collect and remit any tax in accordance with applicable Law. It is not in lieu of fees that may apply to any other person that owns any portion of the Facilities.

4.3 Cellco shall pay, consistent with applicable Federal, State and County law \$270.00 per annum per Facility for occupancy of the Public Right-of-Way by Cellco to provide the Services. This amount shall be adjusted annually based on the percentage increase in the annual average CPI-U for Washington-Arlington-Alexandria, DC-VA-MD-WV (or, if there is no such index, the U.S. Bureau of Labor Statistics Index covering the smallest geographical area

that includes Montgomery County), with the [2020] annual average serving as the reference period and with the first adjustment being made for the calendar year 2022.

4.4 Cellco must remove the Facilities within the timeline specified in Section 5.3 after termination of this Agreement. The County may, at its option, increase any of the fees charged by 2.5 times if Cellco does not remove its Facilities with this timeline.

4.5 The annual rent due for each Facility shall be paid in accordance with this paragraph. On the first day of the month following approval of any Facility, Cellco shall pay to the County the amount owed per annum (as adjusted by CPI) for the approved Facility multiplied by a percentage equal to the number of remaining months in the calendar year divided by 12. Thereafter, on December 31 of every year, Cellco shall pay County the annual rent owed for the Facility for the following calendar year.

4.6 The acceptance of any payments shall not be treated as an accord or satisfaction. Upon reasonable notice by the County to audit Cellco's books and records, Cellco shall produce its books and records for review at the County's offices, or in such other manner acceptable to the County necessary to determine whether the fees owed under this Agreement are being paid. The County may also inspect Facilities to ensure that the fees owed under this Agreement are being paid. If an audit or inspection shows that Cellco has underpaid the amount due hereunder by 5% or more for any year reviewed, the cost of the audit or inspection shall be paid by Cellco.

4.7 The County will charge interest on any late payment at the statutory interest rate on judgments under State law, or if there is no such rate, the prime rate charged by the bank the County uses as its main depository, plus 3%.

4.8 The County may adjust these fees at any time if, based on a study of its actual costs, the County determines that an adjusted fee is a reasonable approximation of costs.

4.9 Should applicable Law permit the County to charge a fee that is not cost-based, the County may adopt any lawful fee, and apply it to Cellco after providing Cellco thirty (30) days' notice.

4.10 Cellco shall reimburse the County within thirty (30) days of the receipt of a written request in accordance with Section 9, for all reasonable expenses relating to the preparation, issuance, implementation and administration of this Agreement, not to exceed Two Thousand Dollars (\$2,000) in the aggregate. The reimbursement is a one-time fee related to the initial issuance of the Franchise Agreement.

5. REMOVAL AND RELOCATION OF THE FACILITIES.

5.1 Cellco understands and acknowledges that the County may require Cellco to remove and relocate the Facilities. At the County's request, Cellco shall remove and relocate the Facilities, at Cellco's sole cost and expense:

5.1.1 Within ninety (90) days after receipt of prior written notice, to facilitate or accommodate the construction, completion, repair, relocation, or maintenance of a County or other governmental project, facility, or service;

5.1.2 Immediately where County determines it is necessary to protect or preserve the public health, safety, or welfare.

5.1.3 Cellco must obtain all permits and approvals required by the County before removing or relocating the Facilities. If Cellco fails to remove or relocate the Facilities as requested by the County in accordance with this paragraph, the County shall be entitled to remove or relocate the Facilities at Cellco's sole cost and expense. The County will extend the time for Cellco to perform if the County does not timely process any Cellco permit applications.

5.2 The County reserves the right to remove or repair any property upon which the Facilities have been directly placed and, except where County determines that more rapid removal or repair is required to protect or preserve the public health, safety, or welfare, the County shall provide at least ninety (90) days' prior written notice to Cellco of the County's intent to remove or repair that property.

5.3 If any part of the Facilities subject to this Agreement is abandoned by not being used in the provision of Services for a period of six (6) months or more, Cellco promptly shall notify the County, and Cellco must, at Cellco's sole cost and expense, promptly remove the abandoned part of the Facilities or dedicate the same to the County. The County shall issue notice to Cellco as to whether it requires removal or dedication of any part of the Facilities, within thirty (30) days of notice of abandonment. Cellco must, within thirty (30) days of that notice, at the County's request, either execute such documents of title as will convey all right, title, and interest in the abandoned Facilities, or remove the Facilities. If any permits are required for removal of the Facilities, Cellco must apply for the permits within thirty (30) days of the notice of removal, and remove the Facilities within thirty (30) days of issuance of all required County permits and approvals required by the County. If Cellco shall fail to satisfy any of its obligations under this paragraph, the County shall be entitled to remove any part of the Facilities at Cellco's sole cost and expense.

5.4 Whenever the construction, reconstruction, attachment, installation, location, removal, reattachment, reinstallation, replacement, or relocation of the Facilities is performed by Cellco under this Agreement, and such construction, reconstruction, attachment, installation, location, removal, reattachment, reinstallation, replacement or relocation shall cause the Public Right-of-Way to be damaged, Cellco, at its sole cost and expense, promptly shall repair and return the Public Right-of-Way in which the Facilities are located to its previous condition. If Cellco does not repair the site as required, then the County shall have the option to perform or cause to be performed such reasonable and necessary work on behalf of Cellco and charge Cellco for the actual costs incurred by the County, or in accordance with any applicable fee schedule of the County. Upon the receipt of a demand for payment by the County, Cellco shall reimburse the County for such costs within thirty (30) days of Cellco's receipt of such demand.

6. CONSTRUCTION PERMIT AND SECURITY DEPOSIT.

6.1 If the construction, reconstruction, attachment, installation, location, removal, reattachment, reinstallation, replacement, or relocation of the Facilities shall require any construction work in the Public Right-of-Way, Cellco shall apply for the appropriate street

opening and other permits required by Law. Cellco shall perform such construction work (including, by way of example, and not limitation, restoration) as required by the permits and in accordance with all applicable Law.

6.2 Within thirty (30) days of the completion of any construction, reconstruction, attachment, installation, location, removal, reattachment, reinstallation, replacement, or relocation work, Cellco promptly shall furnish to the County, in hard copy and electronic format or other format reasonably acceptable to the County, suitable documentation containing a full set of drawings showing, in detail, the exact location of the Facilities in the Public Right-of-Way.

6.3 Cellco shall deposit or file with the County a cash security deposit, a surety bond acceptable to the County Attorney, or letter of credit acceptable to the County Attorney within thirty (30) days of the Effective Date, in the amount of Fifty Thousand Dollars (\$50,000) as security for the faithful performance by Cellco of the provisions of this Agreement and the Laws. If Cellco fails to pay the County any taxes, fees, costs or expenses within sixty (60) days of receipt of notice to pay from the County, or fails to comply with any provision of this Agreement or the Laws that can be remedied by an expenditure from the security fund, then the County may proceed to immediately withdraw the amount thereof or proceed against the surety bond or the letter of credit. Such action by the County is in addition to any other remedy provided to the County by this Agreement or the Laws. If the Franchise is terminated or revoked for cause by the County, the security deposit, the surety bond, or the letter of credit shall become the property of the County, unless there are no outstanding defaults or County claims, or moneys owed to the County, in which case, Cellco may request that the County return the security deposit, the surety bond, or the letter of credit to Cellco.

7. INDEMNIFICATION AND WAIVER.

7.1 Cellco agrees at its sole cost and expense to indemnify, protect, defend and hold harmless the County, the county executive, county council members, officers, employees, and agents, from and against any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and cleanup actions of any kind, all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorney's fees and costs of defense arising directly or indirectly, in whole or in part, out of the activities or Facilities described in this Agreement of Cellco, its officers, employees, agents, consultants, attorneys, and contractors, except to the extent arising from or caused by the gross negligence or willful misconduct of the County, the county executive, county council members, officers, employees, agents, or contractors. Any damage to County property caused by Cellco or its contractors must be repaired by Cellco at its cost, including any damage caused by contact or stray voltage.

7.2 The waiver by either party of any breach or violation of any provision of this Agreement shall not be deemed to be a waiver or a continuing waiver of any subsequent breach or violation of the same or any other provision of this Agreement.

7.3 Cellco waives any and all claims, demands, causes of action, and rights it may assert against the County on account of any loss, damage, or injury to the Facilities arising in any manner from its occupancy of the Public Right-of-Way or arising from the installation,

maintenance, replacement, or relocation of any County-owned facility in the Public Right-of-Way (except to the extent caused by or arising from the gross negligence or willful misconduct of the County). The County is not liable for any damage to Facilities caused by the acts of third parties. The County is not obligated to replace or repair any pole or County facility or property that is damaged, whether or not essential to the Facilities. Nothing herein shall be construed to waive the County's governmental immunity.

8. INSURANCE.

8.1 Cellco shall carry and maintain at all times during the term of this Agreement commercial general liability insurance and commercial automobile liability insurance protecting Cellco and the County via the additional insured provision, in an amount of two million dollars (\$2,000,000) (including any combination of umbrella or excess coverage if needed to meet the limits required) per occurrence (combined single limit), including bodily injury and property damage, and two million dollars (\$2,000,000) (including any combination of umbrella or excess coverage if needed to meet the limits required) aggregate, for personal injury, products-completed operations and independent contractors, per each occurrence resulting from Cellco's performance pursuant to this Agreement. General liability insurance must include coverage for damage or claims related to radiofrequency emissions. Such insurance shall name the County, the county executive, its council members, officers, and employees agents and contractors as additional insured for any liability arising out of Cellco's performance pursuant to this Agreement, or suitable additional-insured endorsement acceptable to the County. Coverage shall be provided in accordance with the limits specified and the provisions indicated herein. Claims-made policies are not acceptable. Such insurance shall not be canceled or materially altered to reduce coverage until the County has received at least thirty (30) days advance written notice of such cancellation or change. Cellco shall be responsible for notifying the County of such change or cancellation and obtaining replacement coverage prior to cancellation, or prior to a change that results in non-compliance with this Section and providing proof that replacement coverage has been obtained prior to such cancellation or change.

8.2 Cellco, within thirty (30) days of the Effective Date of this Agreement, shall file with the County the required original certificate(s) of insurance with required endorsements with the County. The certificates and endorsements are, subject to the County's approval, and approval is required prior to any rights granted to Cellco becoming effective. The documentation shall clearly state all of the following:

8.2.1 Policy number; name of insurance company; name, address, and telephone number of the agent or authorized representative of the same; the name, address, and telephone number of insured; project name and address; policy expiration date; and specific coverage amounts. Each policy of insurance required by this Agreement shall be issued by a responsible insurance company qualified and authorized to do business in the State of Maryland.

8.2.2 Cellco's insurance is primary to any insurance that the County may possess, including any self-insured retentions the County may have, and any other insurance the County does possess shall not be required to contribute with this insurance.]

8.3 The certificate(s) of insurance with the required endorsements and notices shall be mailed to:

Risk Management Division
Montgomery County, Maryland
Executive Office Building
101 Monroe Street, 15th Floor
Rockville, Maryland 20850

8.4 Cellco shall carry and maintain at all times during the term of this Agreement statutory workers' compensation and employer's liability insurance in an amount of five hundred thousand dollars (\$500,000) or such other amounts if required by Maryland law, and furnish the County with a certificate of insurance showing proof of such coverage.

8.5 Any deductibles or self-insured retentions must be stated on the certificate(s) of insurance, which shall be sent to and approved by the County prior to the execution of this Agreement.

9. NOTICES AND BOND DELIVERY.

9.1 All notices which shall or may be given pursuant to this Agreement shall be in writing and delivered personally or transmitted: (i) through the United States mail, by registered or certified mail, postage prepaid; (ii) by means of prepaid overnight delivery service; or (iii) by facsimile transmission, if followed by a hard copy of the same delivered through the U.S. mail or by overnight delivery service as just described, as follows:

County: Chief Administrative Officer
Executive Office Building
101 Monroe Street
Rockville, Maryland 20850

With a copy to: Director, Department of Transportation
101 Monroe Street
Rockville, Maryland 20850

Cellco: Cellco Partnership d/b/a Verizon Wireless
180 Washington Valley Road
Bedminster, New Jersey 07921
Attention: Network Real Estate

Notices shall be deemed given when properly sent and received, refused or returned undelivered. Either party may from time to time designate any other address for this purpose by written notice to the other party in the manner set forth above.

Any bond must be delivered or mailed to:

Director, Department of Permitting Services

2425 Reddie Drive, 7th Floor
Wheaton, Md. 20902

10. TERMINATION AND DEFAULT.

10.1 This Agreement may be terminated by either party upon thirty (30) days' prior written notice to the other party upon a default of any material covenant or term hereof by the other party, which default is not cured within thirty (30) days of receipt of written notice of default (or, if such default is not curable within thirty (30) days, if the defaulting party fails to commence such cure within thirty (30) days or thereafter fails to diligently prosecute such cure to completion), provided that the grace period for any monetary default is ten (10) business days from receipt of notice.

10.2 The County reserves the right to revoke the Franchise, subject to reasonable notice and the opportunity to cure as set forth in Section 10.1 for a material breach of the Franchise, including, but not limited to the following: (i) non-payment of franchise fees, (ii) failure to comply with the provisions of the Laws and this Agreement, (iii) use of the Public Rights-of-Way in violation of this Agreement, and (iv) misreporting any required compensation amount.

10.3 The right to terminate is in addition to the right of the County to terminate any permit, license, lease or other authorization for failure to comply with the terms thereof.

10.4 Each party retains all of its rights to enforce this Agreement. The County reserves the right to seek injunctive relief, mandamus, or any other appropriate relief as may be necessary to enforce or correct a violation of the provisions of the Law or this Agreement. All of Celco's duties to County under this Agreement continue until all the Facilities (a) have been removed, and all work associated with removal completed; or (b) (for those Facilities where the County is accepting title pursuant to Section 5.3), title documents have been executed by the parties.

11. MISCELLANEOUS PROVISIONS.

11.1 Celco shall not transfer or assign the Franchise or Facilities, or any interest in, any part thereof, without the express prior written consent of the County, which consent shall not be unreasonably withheld, conditioned, or delayed. A change in the control of Celco, or Celco's parent company shall be treated as a transfer or assignment of the Franchise or Facilities for purposes of this section. "Control" includes working control, however exercised. Celco shall give the County prior written notice of any proposed assignment or transfer for which the County's consent is required hereunder. The County Council shall give Celco written approval or disapproval of any such proposed assignment or transfer within a reasonable time period not to exceed ninety (90) days after the County Council receives Celco's request therefor, and the County Council's failure to approve or disapprove any such request within such ninety (90) day period shall be deemed an approval. Celco shall provide all information and documents reasonably requested by the County relating to the assignment or transfer.

11.2 Cellco understands that this Agreement does not provide Cellco with exclusive use of the Public Right-of-Way and that the County shall have the right to permit other providers of telecommunications systems to install equipment or devices in the Public Right-of-Way.

11.3 This Agreement contains the entire understanding between the parties with respect to the subject matter herein and supersedes all prior understandings and agreements, whether written or oral. There are no representations, agreements or understandings (whether oral or written) between or among the parties relating to the subject matter of this Agreement which are not fully expressed herein.

11.4 This Agreement may not be amended except pursuant to a written instrument signed by both parties.

11.5 If any one or more of the provisions of this Agreement shall be held by a court of competent jurisdiction in a final judicial action to be void, voidable, or unenforceable, such provision(s) shall be deemed severable from the remaining provisions of this Agreement and shall in no way affect the validity of the remaining portions of this Agreement.

11.6 Cellco shall be available to the staff employees of any County department having jurisdiction over Cellco activities 24 hours a day, 7 days a week, regarding problems or complaints resulting from the construction, reconstruction, installation, location, removal, reattachment, reinstallation, or relocation of the Facilities. The County may contact Cellco by telephone at 800-852-2671 regarding such problems or complaints. Cellco shall provide prior written notice to the County as provided for in this Agreement in the event such telephone number changes at any time.

11.7 This Agreement shall be governed by and construed in accordance with the laws of the State of Maryland, without reference to its conflicts of law principles. In the event that suit is brought by a party to this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of Maryland, or in the United States District Court of Maryland, Southern Division. All exhibits referred to in this Agreement and any addenda, attachments, and schedules which may, from time to time, be referred to in any duly executed amendment to this Agreement are by such reference incorporated in this Agreement and shall be deemed a part of this Agreement.

11.8 This Agreement is binding upon the successors and assigns of the parties hereto.

11.9 Cellco acknowledges that the County may develop rules, regulations, and specifications that apply to the construction, reconstruction, attachment, movement, placement, installation, location, removal, reattachment, reinstallation, replacement, or relocation of the Facilities in the Public Right-of-Way, and such rules, regulations, and specifications, when finalized, shall govern Cellco's activities hereunder as if they were in effect at the time the Agreement was executed.

11.10 Cellco agrees to comply with the non-discrimination in employment policies in County contracts as required by Section 11B-33 and Section 27-19 of the Montgomery County Code 2014, as amended, as well as all other applicable state and federal laws and regulations regarding employment discrimination. Cellco assures the County that, in accordance with

applicable law, it does not, and agrees that it will not discriminate in any manner on the basis of age, color, creed, national origin, race, religious belief, sexual preference, or handicap.

11.11 Cellco represents that it has not retained anyone to solicit or secure this Agreement from Montgomery County, Maryland, upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for bona fide employees or a bona fide established commercial selling or leasing agency maintained by Cellco for the purpose of securing business or an attorney rendering a professional legal service consistent with applicable canons of ethics.

11.12 Cellco understands that, unless authorized under Section 11B-52 and Chapter 19A of the Montgomery County Code 2014, as amended, it is unlawful for any person transacting business with the County to employ a public employee for employment contemporaneous with his or her public employment.

11.13 It is expressly understood that the County shall not be construed or held to be a partner or associate of Cellco in the conduct of Cellco's business.

11.14 In any case where the approval or consent of one party hereto is required, requested or otherwise to be given under this Agreement, such party shall not unreasonably condition, delay or withhold its approval or consent.

11.15 Nothing in this agreement shall impair, diminish, supersede, or otherwise affect any authority or remedy that the County may have against Cellco or any other Person, such as another current or former franchisee. This franchise is granted to Cellco subject to any such authority or remedy, even if the exercise of that authority or remedy affects the Facilities. Cellco agrees to cooperate with the County in any action to enforce County law or any franchise agreement against another Person.

WITNESS:

MONTGOMERY COUNTY, MARYLAND
Approved by the Montgomery County
Council pursuant to Resolution No. _____

Selena Singleton, Clerk of the Council

Gabriel Albornoz, President
Montgomery County Council

The Provisions of this Agreement are agreed to and hereby accepted.

WITNESS:

CELLCO PARTNERSHIP
d/b/a Verizon Wireless

Melissa Ford

[Signature]
By: *Thomas J. O'Malley*

Title: *Director Network Engineering*

Approved as to form and legality

Clifford Royalty

Clifford Royalty (per advice of BBK)/11/2/21



CERTIFICATE OF LIABILITY INSURANCE

DATE(MM/DD/YYYY)
09/16/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Aon Risk Services Northeast, Inc. New York NY Office One Liberty Plaza 165 Broadway, Suite 3201 New York NY 10006 USA	CONTACT NAME:	
	PHONE (A/C. No. Ext.): (866) 283-7122	FAX (A/C. No.): (800) 363-0105
	E-MAIL ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	NAIC #
INSURED Cellco Partnership dba Verizon Wireless 1095 Avenue of the Americas New York NY 10036 USA	INSURER A: AIU Insurance Company	19399
	INSURER B: National Union Fire Ins Co of Pittsburgh	19445
	INSURER C:	
	INSURER D:	
	INSURER E:	
	INSURER F:	

Holder Identifier :

COVERAGES**CERTIFICATE NUMBER:** 570089173779**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

Limits shown are as requested

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
B	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> XCU Coverage is Included GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:			1728890	06/30/2021	06/30/2022	EACH OCCURRENCE \$2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$2,000,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$2,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000
B	AUTOMOBILE LIABILITY			4594298 AOS	06/30/2021	06/30/2022	COMBINED SINGLE LIMIT (Ea accident) \$2,000,000
B	<input checked="" type="checkbox"/> ANY AUTO			4594299 MA	06/30/2021	06/30/2022	BODILY INJURY (Per person)
B	<input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS			4594300 VA	06/30/2021	06/30/2022	BODILY INJURY (Per accident)
B	<input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY			See Next Page	06/30/2021	06/30/2022	PROPERTY DAMAGE (Per accident)
	UMBRELLA LIAB <input type="checkbox"/> OCCUR						EACH OCCURRENCE
	EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE						AGGREGATE
	<input type="checkbox"/> DED <input type="checkbox"/> RETENTION						
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR / PARTNER / EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	16393209 AOS 16393206 CA	06/30/2021 06/30/2021	06/30/2022 06/30/2022	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE-EA EMPLOYEE \$1,000,000 E.L. DISEASE-POLICY LIMIT \$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Policy does not exclude RMF/EMF coverage subject to all other policy terms, conditions and exclusions. The County Council for Montgomery County, the county executive, its council members, officers, employees, agents and contractors are included as Additional Insured with respect to the General Liability and Automobile Liability policies.

CERTIFICATE HOLDER**CANCELLATION**

The County Council for Montgomery County Maryland, Executive Office Building 101 Monroe Street, 15th Floor Rockville MD 20850 USA	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE <i>Aon Risk Services Northeast, Inc.</i>

Certificate No : 570089173779



ADDITIONAL REMARKS SCHEDULE

Page _ of _

AGENCY Aon Risk Services Northeast, Inc.		NAMED INSURED Cellco Partnership dba Verizon Wireless	
POLICY NUMBER See Certificate Number: 570089173779			
CARRIER See Certificate Number: 570089173779	NAIC CODE	EFFECTIVE DATE:	

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: ACORD 25 **FORM TITLE:** Certificate of Liability Insurance

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER	
INSURER	
INSURER	
INSURER	

ADDITIONAL POLICIES If a policy below does not include limit information, refer to the corresponding policy on the ACORD certificate form for policy limits.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS	
	AUTOMOBILE LIABILITY							
B				4594301 NH - Primary	06/30/2021	06/30/2022		
B				4594302 NH - Excess	06/30/2021	06/30/2022		
	WORKERS COMPENSATION							
A		N/A		16393207 NY	06/30/2021	06/30/2022		
A		N/A		16393208 WI	06/30/2021	06/30/2022		
A		N/A		16393205 NJ, TX, VA	06/30/2021	06/30/2022		

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED - DESIGNATED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):
<p>ANY PERSON OR ORGANIZATION WHOM YOU BECOME OBLIGATED TO INCLUDE AS AN ADDITIONAL INSURED AS A RESULT OF ANY CONTRACT OR AGREEMENT YOU HAVE ENTERED INTO.</p>
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

1. In the performance of your ongoing operations; or
2. In connection with your premises owned by or rented to you.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or

agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable limits of insurance;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

ENDORSEMENT

This endorsement, effective 12:01 A.M. 06/30/2021 forms a part of

Policy No. CA 459-42-98 issued to VERIZON COMMUNICATIONS INC.

by NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED - WHERE REQUIRED UNDER CONTRACT OR AGREEMENT

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

SCHEDULE

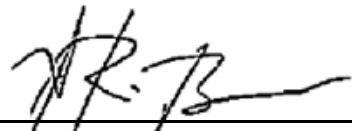
ADDITIONAL INSURED:

ANY PERSON OR ORGANIZATION FOR WHOM YOU ARE CONTRACTUALLY BOUND TO PROVIDE ADDITIONAL INSURED STATUS, BUT ONLY TO THE EXTENT OF SUCH PERSON'S OR ORGANIZATION'S LIABILITY ARISING OUT OF THE USE OF A COVERED "AUTO".

I. SECTION II - COVERED AUTOS LIABILITY COVERAGE, A. Coverage, 1. - Who Is Insured, is amended to add:

- d. Any person or organization, shown in the schedule above, to whom you become obligated to include as an additional insured under this policy, as a result of any contract or agreement you enter into which requires you to furnish insurance to that person or organization of the type provided by this policy, but only with respect to liability arising out of use of a covered "auto". However, the insurance provided will not exceed the lesser of:

- (1) The coverage and/or limits of this policy, or
- (2) The coverage and/or limits required by said contract or agreement.



AUTHORIZED REPRESENTATIVE

Affidavit of Publication

AD # 00052296

STATE OF Maryland
COUNTY OF Montgomery

To Wit:

I hereby certify that on the 4th day of August 2021, before me, the subscriber, Ulonda Perkins, a notary public, that the matters of facts set forth are true. Shalique Jones, who being duly sworn according to law, and oath says that she is an authorized agent of The Washington Times, L.L.C., publisher of

The Washington Times

Circulated daily, in the State of

Maryland, County of Montgomery, and that the advertisement, of which the annexed is a true copy, was published in said newspaper 3 time(s) on the following

July 21, 2021

July 28, 2021

August 04, 2021



Total Cost: \$605.88

As witness, my hand and notarial seal.

ULONDA A. PERKINS
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires December 14, 2023

PUBLIC NOTICE

Proposed Award by Montgomery County, Maryland
of Non Exclusive Franchise to Cellico Partnership
d/b/a Verizon Wireless

Cellico Partnership (Verizon Wireless) has submitted an application for a non-exclusive franchise in Montgomery County, Maryland to attach, install, operate, construct and maintain telecommunications facilities within the Public Rights-of-Way throughout the County for the purpose of operating its wireless telecommunications system. The facilities may be installed on new or existing structures and below ground.

Verizon Wireless has proposed to pay Montgomery County's reasonable expenses relating to the preparation, issuance, implementation and administration of this agreement, not to exceed two thousand dollars (\$2,000.00) in the aggregate. Verizon Wireless has proposed to pay \$270 per annum per small wireless facility for occupancy of the Public Right-of-Way, which shall be adjustable annually based on the percentage increase in the relevant annual average price index. The proposed term of the franchise agreement is fifteen (15) years.

Any objection to the proposed granting of the franchise by the County must be filed, in writing, with the County Executive by the close of business on **August 13, 2021** at the Executive Office Building, 2nd Floor, 101 Monroe Street, Rockville, Maryland 20850. Copies of the proposed franchise agreement are available at the Office of the County Attorney, 101 Monroe Street, 3rd Floor, Rockville, Maryland 20850.

July 21, 2021
August 4, 2021
Ad#52296




OFFICE OF THE COUNTY EXECUTIVE

Marc Elrich
County Executive

MEMORANDUM

November 8, 2021

TO: Tom Hucker, President
Montgomery County Council

FROM: Marc Elrich, County Executive 

SUBJECT: Right of Way Franchise Agreement for Cellco Partnership d/b/a Verizon Wireless

I am transmitting to you a proposed franchise agreement with Cellco Partnership d/b/a Verizon Wireless. I recommend approval of the agreement.

The proposed franchise is for a fifteen-year term. Pursuant to the Federal Communications Commission (FCC) Small Cell Order, the franchise requires Cellco Partnership to pay the safe harbor annual right-of-way fee permitted by the FCC of \$270.00 and reserves the County's authority to adjust the fee at any time based on a study of the County's actual costs, or should applicable law permit, to charge a fee that is not cost-based. Cellco Partnership published notice of the franchise application. Objections are required to be filed within 10 days after the last advertisement was published. One objection was received after the deadline and no objections were submitted by the deadline. Under these circumstances, no hearing is required by the Council Executive for the franchise agreement.

Mitsuko Herrera, Policy, Planning and Special Project Director at Department of Technology & Enterprise Business Services (TEBS) is available to assist you in the matter.

Enclosure: Cellco Franchise Agreement, Cellco Certificate of Insurance, and Affidavit of Publication of Notice of the Franchise

cc: Gail M. Roper, Director, Department of Technology & Enterprise Business Services (TEBS)