


RESOLUTION NO. R-14-16

**A RESOLUTION AUTHORIZING EXECUTION OF A LICENSE AGREEMENT
BETWEEN WIDOPENWEST ILLINOIS, LLC AND THE VILLAGE OF CAMPTON
HILLS
FOR USE OF THE VILLAGE RIGHTS-OF-WAY**

BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF CAMPTON HILLS, Kane County, Illinois, as follows:

1. That a certain License Agreement (the "Agreement"), between the Village of CAMPTON HILLS ("Village") and WideOpenWest Illinois, LLC ("Licensee"), to utilize portions of the public rights-of-way within Village boundaries solely for the purpose of installing and operating fiber optic telecommunications cables, as set forth in the Agreement attached to this Resolution, is hereby approved.
2. That the President and Village Clerk are hereby respectively authorized, for and on behalf of the Village, to execute, attest, seal and deliver the Agreement, substantially in the form approved in the foregoing paragraph of this Resolution, together with such non-substantive changes as the President shall deem necessary.
3. That the proper officials, agents and employees of the Village are hereby authorized to take such further action as they may deem necessary or appropriate to perform all obligations and commitments of the Village in accordance with the provisions of the Agreement.
4. That all resolutions or parts of resolutions in conflict with the provisions of this Resolution are hereby repealed.
5. That this Resolution shall be in full force and effect from and after its passage and approval as provided by law.



Village President

Passed: Ayes – Trustees Andersen, Blecker, George and Millette
Nays – Trustee Kopec
Absent – Trustee Lenkaitis Jr

Attest: 

Village Clerk

**LICENSE AGREEMENT FOR THE USE OF VILLAGE RIGHTS-OF-WAY
BETWEEN WIDOPENWEST ILLINOIS, LLC AND THE VILLAGE OF
CAMPTON HILLS**

This License Agreement (“Agreement”) is entered into on the 16th day of December 2014 (“Effective Date”), by and between the Village of CAMPTON HILLS, an Illinois municipal corporation (hereinafter referred to as the “Village”) and WideOpenWest Illinois, LLC, a Delaware limited liability company (hereinafter referred to as the “Licensee”).

- A. WHEREAS, the Village is the exclusive owner of certain public rights-of-way and has common law rights and easements as to other rights of way, giving the Village jurisdiction over such rights of way (collectively, either the “public rights-of-way” or “Village ROWs”) and has approved official standards for construction of facilities on the public rights-of-way; and
- B. WHEREAS, the Licensee holds an Illinois State-wide cable franchise authority and operates a cable system as set forth in 47 U.S.C. §522 of the Cable Communications Polity Act of 1984, as amended from time to time, throughout part of the State of Illinois, and Licensee’s affiliated telephone company, Sigecom, LLC, holds a certificate of authority with the Illinois Commerce Commission; and
- C. WHEREAS, Licensee desires to utilize portions of the public rights-of-way within the boundaries of the Village (the “ROW’s”) for the limited purpose of installation and maintenance of fiber optic telecommunications cables, which will be installed on (a) existing utility poles located within the ROWs, or (b) underground in any areas of the Village where electric and communication utility service currently is, or in the future becomes, underground; and
- D. WHEREAS, Licensee is not delivering cable service to residents of the Village, and instead is providing fiber optic telecommunications services for the benefit of Verizon Wireless and other potential business customers; and
- E. WHEREAS, in consideration of the payment of a license fee, the Village is willing to allow Licensee to utilize the ROWs for such purposes, subject to the provisions of this Agreement; and
- F. WHEREAS, the Village has the authority to enter into this Agreement pursuant to the powers granted it by Article VII, Section 10(a) of the Illinois Constitution of 1970, and finds that entering into this Agreement is in the best interests of the Village, its residents, and the public; and
- G. WHEREAS, Licensee is authorized and empowered to enter into this Agreement and to perform the covenants and promises herein made and undertaken.

NOW, THEREFORE, in consideration of the mutual consideration exchanged between the parties as set forth herein, the sufficiency and receipt of which are mutually acknowledged, the parties agree as follow:

1. **Recitals.** The above-stated Recitals are true and correct and hereby are incorporated into this Agreement as though fully set forth herein.

2. **Grant of License.** For and in consideration of the mutual covenants herein, and subject to the terms and conditions set forth herein and compliance with all Federal, State and local laws and regulations, the Village hereby grants a non-exclusive revocable license (“License”) to Licensee to allow Licensee to construct, use, operate, own and maintain a fiber optic and coaxial line (the “System”) within the Village’s ROWs identified herein, above or below ground as provided in Recital C. The License granted by this Agreement shall not convey any right, title or interest (including leasehold interest) in the ROWs, but shall be deemed to be a license only to use and occupy the ROWs for the limited purposes stated herein.

3. **Location and Description of Licensee’s System.** Licensee’s System, for which this License herein is granted, consists of the following:

A portion of the system will proceed along McDonald Road from just west of Falcon’s Trail, west to about 39W569 McDonald Road. Another portion of the system will proceed along McDonald Road from about 41W320 McDonald Road to just east of 41W897 McDonald Road. Another portion will begin just west of 42W794 McDonald Road west to IL RT 47. (As shown in Exhibit “A”.)

The portion of Licensee’s System in Village ROWs shall run an aggregate distance of approximately 10,651 lineal feet (9726’ aerial and 925’ underground) and is depicted in Exhibit “A”. Subsequent changes and/or extension to this initial aggregate distance which do not exceed 500 lineal feet shall require Licensee to follow standard Village permitting and inspection procedures but will not require amendment to this License Agreement; extensions which in the aggregate exceed 500 lineal feet shall require payment of an additional license fee of \$2.00 per each 10 lineal feet or portion thereof. The Entire fiber network will be considered part of this Agreement for purposes of Effective Date and Term. In the event of Annexation by the Village of ROWs which include Licensee’s systems, such annexed ROWs shall constitute an extension for the purpose of this Agreement.

4. **Term; Payments.** The License granted by the Village to Licensee shall be for a period of ten (10) years from the Effective Date of this Agreement (the “Initial Term”). For the first year of the Initial Term, which shall be for the period from the date of this Agreement through November 30, 2015. Licensee shall pay an annual license fee in the amount of Two Thousand Dollars and No Cents (\$2,000.00) to the Village with the first such payment due prior to the issuance of any permits and subsequent payments due on December 1 of each year beginning on December 1, 2015 in the amount of \$2,000 per year, increased by 3% per year, compounded

annually and adjusted for increases, if any, in lineal footage as provided in Section 3 of this Agreement. This Agreement may be renewed by mutual agreement of the parties for successive ten (10) year terms provided the Licensee is in full compliance with the terms and conditions of this Agreement at the time of renewal. Licensee shall make written request for renewal of this Agreement at least sixty (60) days prior to expiration of the current term. Unless otherwise provided by law, each renewal shall be subject to a License Fee that will be determined at the time of each renewal but shall be based on the initial license fee, increased by 3% per year, compounded for each year after December 1, 2015. In the event the parties cannot agree upon an amount for the License Fee for a renewal term, this Agreement shall terminate and Licensee shall remove its System from all Village ROWs and restore all ROWs as required herein.

5. **Use of ROWs.** In its use of the ROWs and any work to be performed therein, Licensee shall comply with all applicable laws, ordinances, regulation and requirements of federal, state, county and local regulatory authorities, including the applicable provisions of the CAMPTON HILLS Municipal Code.

The License and the grant of authority conferred in Section 2 above are non-exclusive. The Licensee shall respect the rights and property of Village and other authorized users of streets, sidewalks, easements, power poles, street light poles, vaults, conduits and rights-of-way and adjacent property owners.

6. **Permits.** Licensee shall pay all required permit and other fees and obtain all necessary and required permits from the Village for its System prior to performing any work on its System within Village ROWs. Licensee shall also post such necessary security for its work as required by Village ordinance. In addition, Licensee shall deposit with the Village Five Thousand Dollars (\$5,000.00) as a Cost Reimbursement Fund which shall be used to reimburse the Village for administrative, legal, engineering and consulting fees incurred by the Village in reviewing and approving the initial permit. The Licensee applies for any subsequent permits, on each occasion, the Cost Reimbursement Fund shall be restored to Five Thousand Dollars (\$5,000.00). Upon completion of all work, the entire unexpended balance of the Cost Reimbursement Fund shall be refunded to Licensee.

7. **Maintenance.** Maintenance of the System with the ROWs shall be the responsibility of Licensee. The System shall be maintained in good and safe condition and in a manner that complies with all applicable federal, state, county and local laws, regulations and policies. The Village reserves the right to enter upon and repair any or all damage to the areas surrounding the licensed premises, and if such damage is caused by Licensee, then the actual, reasonable and documented cost of such repair shall be the responsibility of the Licensee.

Notwithstanding any provisions to the contrary herein, in the event of an unexpected repair or emergency, Licensee may access the ROWs and commence such Emergency Maintenance work as required under the circumstances, provided Licensee shall give notice to the Village as promptly as reasonably possible and shall comply with the requirements for Emergency Maintenance set forth in the Village ordinances.

8. **Restoration of ROWs.** Within ten (10) days after initial construction operations have been completed or after repair, relocation or removal of the System, Licensee shall grade and restore all areas disturbed or damaged by construction operations to a condition substantially similar to that which existed prior to the work. All disturbed or damaged grass areas shall be restored with sod.

In the event Licensee fails, in a timely manner, to restore any disturbances or make any and all repairs to the ROWs or other Village property, the Village may make or cause to be made such restoration or repairs at the expense of Licensee. Upon written demand and receipt by Licensee of all invoices and documentation supporting the actual costs incurred by the Village, or demand payment from the security posted by the Licensee, which payment must be received by the Village within thirty (30) days of demand and receipt by Licensee of all invoices and documentation supporting the actual costs incurred by the Village.

9. **Damage to Licensee's System.** Unless directly and proximately caused by the willful, intentional or malicious acts of the Village, the village shall not be liable for and Licensee expressly waives all claims for any damage to or loss of Licensee's System within the ROWs.

10. **Licensee's Form of Business Disclosure.** Licensee agrees to complete and maintain on file with the Village a current Disclosure Affidavit, in the form attached as Exhibit "B" to this Agreement.

11. **No Transfer or Assignment.** This Agreement shall be binding upon and shall inure to the benefit of the parties and their successors and assigns. During the term of this Agreement, Licensee acknowledges and agrees that it does not have the right or authority to transfer or assign this Agreement or any interest herein without the prior written consent of the Village, which will not be reasonably withheld or delayed; provided, however, this Agreement may be assigned by the Licensee without consent to an affiliate, or to a successor in connection with a merger, reorganization or sale of all or substantially all of Licensee's assets or ownership.

12. **Indemnity/Hold Harmless.** To the fullest extent permitted by law, Licensee shall defend, indemnify, keep and hold harmless the Village and its officials, officers, employees and agents from and against all injuries, deaths, losses, damages, claims, demands, suits, liabilities, judgments, costs and expenses, including reasonable attorneys' fees, which may arise out of, or result from, directly or indirectly, any acts or omissions or from the reckless or willful misconduct of Licensee, its affiliates, officers, employees, agents, contractors or subcontractors in the installation, operation, relocation, repair, maintenance or removal of the System or Licensee's use of ROWs, and in providing or offering service over the System.

Licensee shall at its own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising therefrom or incurred in connection therewith, and, if any judgment shall be rendered against the Village in any such action, Licensee shall, at its own expense, satisfy and discharge the same. This Agreement shall not be construed as requiring the Licensee to indemnify the Village for its own negligence. The indemnification required hereunder shall not be limited by the amount of the insurance to be maintained hereunder.

13. **Insurance.** Licensee shall maintain, at its own expense, the following minimum levels of insurance until the Systems is removed from the ROWs and the ROWs have been properly restored as required herein:

1. Workers Compensation – Statutory Limits
2. Employers Liability - \$1,000,000 per employee and \$1,000,000 per accident
3. Commercial General Liability, including premises-operations, explosion, collapse, and underground hazard (commonly referred to as "X", "C", and

“U” coverages) and products-completed operations coverage with limits not less than:

- a. Five million dollars (\$5,000,000) for bodily injury or death to each person
 - b. Five million dollars (\$5,000,000) for property damage resulting from any one accident; and
 - c. Five million dollars (\$5,000,000) for all other types of liability
4. Automobile Liability for all owned, hired and non-owned automobiles - \$1,000,000 each accident

If the Licensee is not providing such insurance to protect the contractors and subcontractors performing the work, then such contractors and subcontractors shall comply with this section.

Prior to commencing work on the System described herein, Licensee shall furnish the Village with the appropriate Certificates of Insurance, and applicable policy endorsements. Licensee shall have Commercial General Liability, Automobile Liability, and Umbrella/Excess Liability policies endorsed to add the “Village of CAMPTON HILLS, its officers, officials, agents and employees” as “additional insureds”. Such insurance afforded to the Village shall be endorsed to provide that the insurance provided under each policy shall be Primary and Non-Contributory.

Commercial General Liability Insurance required under this section shall be written on an occurrence form and shall include coverage for Products/Completed Operations, Personal Injury with Employment Exclusion (if any) deleted, Blanket XCU and Blanket Contractual Liability insurance applicable to defense and indemnity obligations. The limit must be on a “Per Project Basis”. Commercial General Liability, Employers Liability and Automobile Liability Insurance may be arranged under single policies for full minimum limits required, or by a combination of underlying policies with the balance provided by Umbrella and/or Excess Liability policies. Workers’ Compensation coverage shall include a waiver of subrogation against the Village.

All insurance provided pursuant to this section shall be affected under valid and enforceable policies, issued by insurers legally able to conduct business with Licensee in the State of Illinois. (All insurance carriers shall be rated “A-“ or better and of a class size “X” or higher by A.M. Best Company)

All insurance policies shall contain a provision that coverages and limits afforded hereunder shall not be cancelled, materially changed, non-renewed or restrictive modifications added, without thirty (30) days prior written notice to the Village. Renewal certificates shall be provided to the Village not less than five (5) days prior to the expiration date of any of the required policies. All Certificates of Insurance shall be in a form acceptable to the Village and shall provide satisfactory evidence of compliance with all insurance requirements. The Village shall have the right to examine any policy required and evidenced by the Certificate of Insurance.

14. **Security.** Prior to performing work in the ROWs, Licensee shall establish a security fund in an amount determined by the Village Administrator or another designee, which shall be provided to the Village in the form of a Construction Bond. This security requirement shall not exceed \$50,000. This shall serve as security for the purposes set forth above including but not limited to the installation of the System in compliance with applicable plans, permits, technical codes and standards, the proper location of the System as specified by the Village,

restoration of ROWs and other property affected by the construction or to satisfy any claims or damages.

15. **Termination.** This Agreement may be terminated by Licensee at any time during the term, and for any reason, by the giving of thirty (30) days advance written notice to the Village of its intention to terminate, provided that Licensee is not in default in any obligation to the Village. This Agreement may be terminated by the Village only for the following reasons:

- A. A material violation of the terms of this Agreement where Licensee fails to cure such material violation within thirty (30) days after receipt of written notice by Village which identifies the violation.
- B. The material failure of Licensee to comply with all applicable local, State and Federal laws, rules, regulations in any way governing or applying to Licensee's System.
- C. Licensee made fraudulent, false, misrepresenting, or materially incomplete statements in seeking this Agreement or in the permit application.
- D. Construction of its System contrary to the plans and specifications approved by the Village.
- E. The Licensee has been adjudged to be bankrupt, has a receiver appointed for it, makes an assignment for the benefit of creditors, or has a significant amount of its property sold under the execution or other legal process or is seized by creditors.
- F. The Licensee transfers this License without Village approval as required herein.
- G. The Licensee ceases its business operations, or otherwise abandons the System, unless such abandonment is temporary due to events beyond the reasonable control of Licensee.
- H. Licensee's physical presence or presence of Licensee's System on, over, above, along, upon, under, across or within the ROW's presents a direct or imminent threat to the public health, safety or welfare.
- I. Failure to provide the required traffic control; and to respond to requests from the Village to correct such deficiencies within a reasonable time.

Upon the termination of this License, whether by either party and for whatever reason, Licensee shall remove Licensee's System from the Village's ROWs within thirty (30) days of such termination, and shall perform all restoration work to the ROWs as required by Village ordinances and policies.

16. **Amendments.** This Agreement represents the entire agreement between the parties. No oral changes or modifications of this Agreement shall be permitted or allowed. Changes or modifications to this Agreement shall be made only in writing and upon necessary and proper signature of the Licensee and the Village.

17. **Severability.** In the event that any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provisions hereto.

18. **Governing Law; Venue.** This Agreement shall be governed, interpreted and construed in accordance with the laws of the State of Illinois. The venue for any dispute between the parties shall be the then current location of the central civil courthouse, _____, Kane County, Illinois, or the United States District Court for the Northern District of Illinois.

19. **Taxes.** Nothing contained in this Agreement shall be construed to exempt Licensee from any fee, tax, property tax levy or assessment which is or may be hereafter lawfully imposed, and Licensee shall be responsible for the payment of any taxes assessed relative to its use of the ROW's or its operation of the System.

20. **No Waiver.** The waiver by one party of any breach of this Agreement or the failure of one party to enforce at any time, or for any period of time, any of the provisions hereof will be limited to the particular instance and will not operate or be deemed to waive any future breaches of this Agreement and will not be construed to be a waiver of any provision except for the particular instance.

21. **Notice.** Any notice will be in writing and will be deemed to be effectively served when deposited in the mail by certified Mail, Return Receipt Request, and by First Class Mail, both with sufficient postage affixed, or by recognized overnight delivery service, and addressed to the party at the address set forth below.. Notices shall be addressed to designated representatives of both parties as follows:

If to Village: Village of CAMPTON HILLS
Attn: Village Clerk
40W270 LaFox Road, Suite B
Campton Hills, IL 60175

With a copy to: Village President
Village of Campton Hills
40W270 LaFox Road, Suite B
Campton Hills, IL 60175

If to Licensee: WideOpenWest Illinois, LLC
Attn: Business Manager
1674 Frontenac Rd
Naperville, IL 60563

IN WITNESS THEREOF, the parties have signed below, effective as of the Effective Date, by their duly authorized representatives.

VILLAGE:

VILLAGE OF CAMPTON HILLS

By: Patty J. Smith
Its: President Patty J. Smith
Attest: [Signature]
Interim Village Clerk

LICENSEE:

WIDEOPENWEST ILLINOIS, LLC

By: [Signature]
Its: SVP

EXHIBIT "A"

LOCATIONS OF RIGHTS-OF-WAY FOR LICENSEE'S SYSTEM

A portion of the system will proceed along McDonald Road from just west of Falcon's Trail, west to about 39W569 McDonald Road. Another portion of the system will proceed along McDonald Road from about 41W320 McDonald Road to just east of 41W897 McDonald Road. Another portion will begin just west of 42W794 McDonald Road west to IL RT 47.

The portion of Licensee's System in Village ROWs shall run an aggregate distance of approximately 10,651 lineal feet (9726' aerial and 925' underground). Changes and/or extension to this initial aggregate distance shall require Licensee to follow standard Village permitting and inspection procedures but will not require amendment to this License Agreement. Entire fiber network will be considered part of this Agreement for purposes of Effective Date and Term.

Further details contained in Attachment 1 which is included with the permit application.

EXHIBIT "B"

(NOTE: This Affidavit must be completely filled out and signed by the Licensee or a determination that the contract is exempt from any section must be obtained.)

I. **BUSINESS STATUS STATEMENT**

I, the undersigned, being duly sworn, do state as follows:

A. WideOpenWest Illinois, LLC (hereafter "Licensee") is a:

(Place mark in front of appropriate type of business)

_____ Corporation (if a C-Corporation, complete B)

_____ Partnership (if a Partnership, complete C)

_____ Individual Proprietorship (if an individual, complete D)

_____ Limited Liability Corporation (if an LLC, Complete C)

B. **CORPORATION**

The State of incorporation is: _____

The Registered agent of the corporation in Illinois is:

Name

Address

City, State, Zip

Telephone

The Corporate Officers are as follows:

President: _____

Vice President: _____

Secretary: _____

Treasurer: _____

C. **PARTNERSHIP OR LLC**

The partners or members are as follows: (Attach additional sheets if needed)

WideOpenWest Illinois LLC is operated locally at:
1674 Frontenac Rd
Naperville, IL 60563

WideopenWest Illinois, LLC is wholly owned by
WideOpenWest Finance, LLC
7887 E. Belleview Ave Suite 1000
Englewood, CO 80111

The entity with ultimate controlling interest is:
Avista Capital Partners
65 E 55th St 18th Floor
New York, NY 10022

D. INDIVIDUAL PROPRIETORSHIP

The business address is:

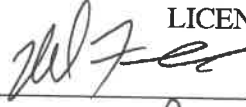
Telephone: _____

My home address is:

Telephone: _____

E. Under penalty of perjury, WideOpenWest Illinois, LLC
Licensee's Name

Certifies that 04-3561698 is its correct Federal Taxpayer Identification Number or in the case of an individual or sole proprietorship, Social Security Number.

By:  LICENSEE

Its: SVP

Subscribed and sworn to before me this _____ day of _____, 20__.

Notary Public



August 17, 2017

Village of Campton Hills
40W270 LaFox Road
Suite B
Campton Hills, IL 60175
Attn: Village Clerk

RE: CONSENT TO ASSIGNMENT

Dear Sir or Madam:

We are excited to inform you that on August 1, 2017, WideOpenWest, Inc. (“WOW”) entered into an Asset Purchase Agreement with MCIMetro Access Transmission Services Corp. (“Verizon”), an indirect, wholly-owned subsidiary of Verizon Communications, Inc. (NYSE: VZ), pursuant to which Verizon agreed to acquire certain assets, and to assume certain liabilities, from WOW that are related to its fiber network in the area of Chicago, Illinois (the “Transaction”). In connection therewith, at the closing of the Transaction, WOW is to assign all of its rights and obligations arising on or after the closing under the License Agreement, dated as of March 30, 2016, by and between the Village of Campton Hills and WideOpenWest Illinois, LLC, a copy of which is attached hereto as Exhibit A (the “Agreement”), to Verizon or one of its affiliates. The Transaction is subject to customary closing conditions and is expected to close early in the first quarter of 2018.

Your consent to the assignment of the Agreement in connection with the Transaction may be required. Therefore, we kindly request that you sign below to consent to the assignment of the Agreement to Verizon or one of its affiliates and to acknowledge that the Agreement will remain in full force and effect following the consummation of the Transaction and that neither the assignment of the Agreement nor the consummation of the Transaction will be deemed to constitute, or be construed as, a breach of the Agreement or entitle you to any payments or compensation.

Please return a signed copy of this consent to me via e-mail at Craig.Martin@wowinc.com by September 1, 2017.

If you have any questions, please do not hesitate to contact me at the e-mail above or (269) 567-4200.

Yours very truly,

Craig Martin
General Counsel

cc: Village President
Village of Campton Hills
40W270 LaFox Road, Suite B
Campton Hills, IL 60175

Acknowledged and Agreed:

VILLAGE OF CAMPTON HILLS

By: *Amy Blum*
Name: *HARRY Blecker*
Title: *President*