

**SETTLEMENT AND RELEASE AGREEMENT**

This Settlement and Release Agreement ("Agreement"), effective as of this \_\_\_\_ day of \_\_\_\_\_, 2015 ("Effective Date"), is made by and between Level 3 Communications, LLC, ("Level 3") , and The City of Greensboro, North Carolina, ("City"), a municipal corporation duly created, organized, and existing under and by virtue of the laws of the State of North Carolina ( "the Parties").

**WHEREAS**, Level 3, and the City entered into a Franchise Agreement dated April 18, 2000 ("Level 3 Franchise Agreement"); and

**WHEREAS**, WilTel Communications, LLC, (formerly known as VYVX, Inc.) ("WilTel"), and the City entered into a Franchise Agreement dated February 3, 1998 ("WilTel Franchise Agreement"); and

**WHEREAS**, TelCove Operations, LLC (formerly known as Adelphia Business Solutions of North Carolina, LP.) ("TelCove") and the City entered into a Franchise Agreement dated March 7, 2000 as amended by Amendment No. 1 to Franchise Agreement dated July 18, 2006 ("the Telcove Franchise Agreement"); and

**WHEREAS**, tw telecom of north carolina l.p. (formerly known as Time Warner Telecom of North Carolina, L.P.) ("tw") entered into a Franchise Agreement dated May 2, 2000 ("tw Franchise Agreement"); and

**WHEREAS**, WilTel, TelCove and tw are all affiliates by acquisition or merger of Level 3. Level 3, TelCove, WilTel and tw are collectively referred as the "Affiliates." The Level 3 Franchise Agreement, WilTel Franchise Agreement, TelCove Franchise Agreement and tw Franchise Agreement are collectively referred to as the Affiliate Franchise Agreements; and

**WHEREAS**, The Affiliates are disputing various Franchise Fees and other charges for which the City has invoiced the Affiliates under the Affiliate Franchise Agreements ("Dispute"). Level 3 has authority to act on behalf of all Affiliates to resolve the Dispute; and

**NOW THEREFORE**, for and in consideration of the covenants and promises hereinafter contained, and other good and valuable consideration, receipt and sufficiency of which is hereby expressly acknowledged by each of the parties herein, the Parties agree as follows:

1. Agreed Settlement Amount. The Parties herein agree that Level 3 shall pay the City the amount of \$255,674.50, consisting of \$55,674.50 which represents Wiltel Franchise Fees for the 2014-2015 fiscal year and \$200,000 which represents Franchise Fees owed by tw. Full payment of \$255,674.50 in accordance with the remaining terms and conditions of this Agreement shall be deemed a full satisfaction and settlement of all matters in dispute between the parties heretofore existing. The payment schedule shall be as follows:

- a. Within ten (10) days of execution of this Agreement, Level 3 shall pay to the City \$155,674.50, which is \$55,674.50 (from WilTel) plus the first installment of \$100,000.00 (from tw).
  - b. By May 31, 2016, Level 3 shall pay the final installment of \$100,000.00 (from tw).
  - c. By June 30, 2015, Level 3 shall pay \$8,249.68, which is the delta between the end of their current contractual fiscal period and the new contractual period of July 1 – June 30. This payment shall cover the remaining Franchise Fee on the 2015-2016 fiscal year.
  - d. By June 30, 2015 Level 3 shall pay the 2016-2017 Franchise Fee, the amount of which is determined by the linear foot occupation within City rights-of-way, which currently is \$29,535.00 for 98,450 linear feet.
2. Subject to City Council approval, the Parties agree to enter into a new Franchise Agreement beginning July 1, 2015 (for the term July 1, 2016 through June 30, 2017) at the rate of \$.30 per linear foot, unless there is a change in applicable law, regulation, decision, rule or order by any federal, state or local governmental body or court that changes the Franchise Fee, or other term of this Settlement and Release, in which case Level 3 agrees that it will pay the changed Franchise Fee.
3. The July 1, 2015 Franchise Agreement and all subsequent annual permits arising out of the July 1, 2015 Franchise Agreement shall encompass all Affiliate Franchise Agreements, and any and all affiliated letters or negotiations either in writing or stated orally associated with the Affiliated Franchise Agreements.
4. The total linear feet for the Level 3 Franchise Agreement as of July 1, 2015 is 98,450 linear feet. The Franchise Fee remaining on the 2015-2016 fiscal year is \$8,249.69, which shall be paid by June 30, 2015 as outlined in 1c above. The Franchise Fee based on the linear footage for the fiscal year 2016-2017 is \$29,535.00, which is based on 98,450 linear feet. The total linear footage will be adjusted yearly through the regular process. The first pre-payment of the annual linear footage fee and all subsequent pre-payments shall be paid by June 30 of each year, beginning on June 30, 2015. The contract year runs from July 1 through June 30 of each year.
5. Level 3 agrees that if it acquires any telecom company that locates utilities within the City's rights-of-way, Level 3 will notify both the Greensboro City Attorney's office and the Greensboro Franchise Administrator by email and certified mail for the purpose of bringing the acquired company into compliance with Greensboro's Code of Ordinances Chapter 28.1, including negotiating paying any past-due fees that the acquired company may owe to the City.

6. The term for the July 1, 2015 Level 3 Franchise Agreement is ten (10) years from the Effective Date with an option for Level 3 to renew for an additional five (5) year period by notifying the City in writing sixty (60) days prior to the end of the term.
7. The Parties agree that as of the Effective Date, the Level 3 Franchise Agreement will replace and supersede the WilTel Franchise Agreement, the TelCove Franchise Agreement and the tw Franchise Agreement. The superseded franchise agreements will have no further force or effect as of the Effective Date.
8. The current Level 3 Franchise Agreement is hereby modified as follows:
  - a. As of the Effective Date, the Level 3 Franchise Agreement will encompass all Affiliate Franchise Agreements, and any and all affiliated letters or negotiations either in writing or stated orally associated with the Affiliated Franchise Agreements.
  - b. The reference to the Franchise Fee of \$1.75 per linear foot is hereby removed and replaced with a \$.30 per linear foot Franchise Fee as of July 1, 2015 for aerial and underground occupancy of City right of way effective as of the Effective Date and continuing for the entire term of the Level 3 Franchise Agreement.
  - c. To the extent that City offers Franchise Fees to such other franchisees under Chapter 28.1 that are more favorable to such franchisees than the Franchise Fee charged to Level 3, City shall be obligated to modify the Franchise Fee based upon such favored prices. Such adjustment of the Franchise Fee shall be retroactive to the date upon which City offers such rates to other comparable franchisees. In the event of any change in applicable law, regulation, decision, rule or order by any federal, state or local governmental body or court that changes the Franchise Fee or other term of this Settlement and Release, Level 3 agrees that it will pay the changed Franchise Fee.
9. Waiver and Compromise of Claims. The Parties hereby expressly waive and assume the risk of any and all claims for damages or otherwise which exist as of this date, and which in any way relate to each other, and all causes of action which have been asserted or which could have been asserted as a result of the Dispute, whether such is or was known, suspected to exist or unknown, whether through ignorance, oversight, error, negligence or otherwise, and which if known would materially affect any decision to enter into this Agreement. The Parties further agrees that this Agreement is executed as a complete compromise of matters involving disputed issues of law and fact and assumes the risk that the facts or law are otherwise than may be believed.
10. Warranty to Execute Release. The Parties herein each represent and warrant that no other person or entity has or ever has had any interest, right or otherwise in or was entitled to assert the claims, demands, obligations or causes of action referred to herein, and that each of them has not sold, assigned, transferred, conveyed, or otherwise disposed of any of the claims, demands, obligations or causes of action referred to herein.

11. Release. For and in consideration of the foregoing, each Party hereby releases the other and its respective parents, subsidiaries, affiliates, predecessors, successors and assigns, as well as its respective past and present officers, directors, employees, agents and attorneys, from any and all past or present debts, liabilities, obligations, causes of action, expenses and attorneys' fees of every nature, character and description ("Claims") whether known or unknown arising out of or relating to the Dispute.
12. No Admission of Liability. The parties acknowledge and agree that this Agreement is a settlement of disputed claims between the parties and does not constitute or imply any admission of liability or wrongdoing on the part of the City or Level 3, or their respective officers, directors, attorneys, shareholders, agents, representatives, employees, subsidiaries, affiliates, partners, predecessors, and successors in interest.
13. Successors and Assigns. This Settlement and Release Agreement shall be a fully binding and complete settlement between the Parties and their heirs, successors and assigns and shall inure to the benefit of, and shall be enforceable by, the successors and assigns of each of the parties hereto. Neither party may assign either this Agreement or any of its rights, interest or obligations hereunder without the prior written approval of the other party.
14. Representation by Counsel. The Parties herein represent that each of them has been accorded adequate opportunity to obtain counsel to advise, represent and assist upon the matters herein, and that each party has entered into this Agreement knowingly, voluntarily and freely. The Parties waive any objection based upon or arising out of any failure of a party to obtain counsel and enter this Agreement and its terms after due reflection and consideration of the advice of counsel concerning all material facts and law at issue. The Parties expressly agree that the terms and conditions of this Agreement are the result of fair bargain and exchange, and the representation of either of the Parties by counsel upon the matters herein shall not be construed as unfair advantage in the formation of this Agreement.
15. Entire Agreement and Amendment. This Settlement and Release Agreement contains the entire agreement regarding the matters set forth herein. The Settlement and Release Agreement shall not be modified or amended except by an instrument in writing signed by an authorized representative of the parties herein.
16. Governing Law. This Settlement and Release Agreement shall be construed and interpreted in accordance with the laws of the State of North Carolina, which parties agree shall be the sole and exclusive jurisdiction for any suit or cause of action based upon or arising out of this Agreement. The parties further agree that the venue for any suit or cause of action based upon or arising out of the Agreement shall be Guilford County, North Carolina.

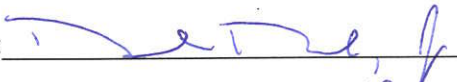
17. Additional Documents. The Parties agree to cooperate fully with the other and to execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to fully effect and give force to the terms and intent of this Release.
18. Counterparts. This Agreement may be executed simultaneously in one or more counterparts, and each such counterpart shall be deemed to be an original instrument, but all such counterparts together shall constitute one and the same instrument.
19. Severability. If, after the date hereof, any provision of the Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable under present or future law, the remaining provisions of this Agreement shall be fully enforceable.
20. Authority. The Parties herein represent that their respective signatories herein below are expressly and impliedly authorized to execute this document on behalf of the legal entity, if any, in which the signatory purports to represent.

IN WITNESS WHEREOF, the parties have caused this Settlement and Release Agreement to be executed by their duly authorized representatives this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

CITY OF GREENSBORO, NC

LEVEL 3 COMMUNICATIONS, LLC.

By: \_\_\_\_\_

By:  \_\_\_\_\_

Title: \_\_\_\_\_

Title (must be President or VP) VP Legal

Printed Name: \_\_\_\_\_

Printed Name: Daniel T. Dolan

Attest:

Attest:

\_\_\_\_\_  
City Clerk

  
\_\_\_\_\_  
~~Secretary~~ or Assistant Secretary

Corporate Seal:

This instrument has been pre-audited in the manner  
required by the Local Government Budget and Fiscal Control Act

\_\_\_\_\_  
Deputy Finance Officer

Approved as to form by:

\_\_\_\_\_  
City Attorney





GREENSBORO CITY OF  
P O BOX 26120  
GREENSBORO, NC 27402-6120  
United States



No. **3843956**  
VENDOR NO: 228248

[illegible]

12967 **THANK YOU** 0.00  
PLEASE DETACH AND RETAIN THIS STATEMENT AS YOUR RECORD OF PAYMENT

REMOVE DOCUMENT ALONG THIS PERFORATION

Sumit

BACK OF THIS DOCUMENT CONTAINS AN ARTIFICIAL WATERMARK - HOLD AT ANGLE TO VIEW.

1100384395611 1:0929045541:15008068214211

SEE REVERSE SIDE FOR OPENING INSTRUCTIONS

Level 3 Communications LLC  
1025 Eldorado Blvd  
Broomfield, CO 80021

CITY OF GREENSBORO  
PO BOX 26120  
GREENSBORO, NC 27402-6120  
United States



**Level 3 Communications, LLC**

DATE 11-JUN-15 CUST. ACCT. NO.

VENDOR NAME CITY OF GREENSBORO

No. **3843954**  
VENDOR NO: 228248

INVOICE NO.	INVOICE DATE	DESCRIPTION	DISCOUNT AMT	NET AMT
08-JUN-2015	08-JUN-15	TELCOVE TRUE UP FIS	0.00	3785.80
28	25839	528	P1	12965

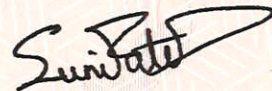
THANK YOU

0.00

3785.80

PLEASE DETACH AND RETAIN THIS STATEMENT AS YOUR RECORD OF PAYMENT

REMOVE DOCUMENT ALONG THIS PERFORATION

**Level 3 Communications, LLC**1025 Eldorado Blvd  
Broomfield, CO 80021US Bank  
Havre, Montana 59401  
24-Hour Banking 1-800-673-3555  
93-455/929No. **3843954**CHECK DATE 11-JUN-15  
CHECK NUMBER 3843954  
CHECK AMOUNT \$3785.80PAY Three Thousand Seven Hundred Eighty-Five And 80/100 Dollars  
TO THE  
ORDER OF CITY OF GREENSBOROPO BOX 26120  
GREENSBORO, NC 27402-6120  
United States

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Level 3 Communications LLC  
1025 Eldorado Blvd  
Broomfield, CO 80021CITY OF GREENSBORO  
PO BOX 26120  
GREENSBORO, NC 27402-6120  
United States



**Level 3 Communications, LLC**

DATE 11-JUN-15 CUST. ACCT. NO.

VENDOR NAME CITY OF GREENSBORO

No. **3843955**  
VENDOR NO: 228248

INVOICE NO.	INVOICE DATE	DESCRIPTION	DISCOUNT AMT	NET AMT
08-JUN-2015A	08-JUN-15	TRUE UP PAYMENT LEV	0.00	487.13
29	25840	528	P1	12966
THANK YOU			0.00	487.13

PLEASE DETACH AND RETAIN THIS STATEMENT AS YOUR RECORD OF PAYMENT

REMOVE DOCUMENT ALONG THIS PERFORATION

**Level 3 Communications, LLC**1025 Eldorado Blvd  
Broomfield, CO 80021US Bank  
Havre, Montana 59401  
24-Hour Banking 1-800-673-3555  
93-455/929No. **3843955**CHECK DATE 11-JUN-15  
CHECK NUMBER 3843955  
CHECK AMOUNT \$487.13**PAY** Four Hundred Eighty-Seven And 13/100 Dollars  
TO THE  
ORDER OF CITY OF GREENSBOROPO BOX 26120  
GREENSBORO, NC 27402-6120  
United States

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Level 3 Communications LLC  
1025 Eldorado Blvd  
Broomfield, CO 80021CITY OF GREENSBORO  
PO BOX 26120  
GREENSBORO, NC 27402-6120  
United States



**Level 3 Communications, LLC**

DATE 11-JUN-15 CUST. ACCT. NO.

VENDOR NAME CITY OF GREENSBORO

No. **3843957**  
VENDOR NO: 228248

INVOICE NO.	INVOICE DATE	DESCRIPTION	DISCOUNT AMT	NET AMT
08-JUN-2015C	08-JUN-15	WITEL TRUE UP FISC	0.00	3976.75
31	25842	528	P1	12968

THANK YOU

0.00

3976.75

PLEASE DETACH AND RETAIN THIS STATEMENT AS YOUR RECORD OF PAYMENT

REMOVE DOCUMENT ALONG THIS PERFORATION

**Level 3 Communications, LLC**1025 Eldorado Blvd  
Broomfield, CO 80021US Bank  
Havre, Montana 59401  
24-Hour Banking 1-800-673-3555  
93-455/929No. **3843957**CHECK DATE 11-JUN-15  
CHECK NUMBER 3843957  
CHECK AMOUNT \$3976.75**PAY** Three Thousand Nine Hundred Seventy-Six And 75/100 Dollars  
**TO THE**  
**ORDER OF** CITY OF GREENSBOROPO BOX 26120  
GREENSBORO, NC 27402-6120  
United States

BACK OF THIS DOCUMENT CONTAINS AN ARTIFICIAL WATERMARK - HOLD AT ANGLE TO VIEW.

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