

**Clerks Note:** The originally posted resolution did not contain a copy of the franchise agreement with CenturyLink Communications, LLC.

**CORRECTED COPY**

Resolution No.:	<u>20-213</u>
Introduced:	<u>June 13, 2023</u>
Adopted:	<u>June 20, 2023</u>

**COUNTY COUNCIL  
FOR MONTGOMERY COUNTY MARYLAND**

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

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**SUBJECT:** Resolution to Approve a Franchise Agreement with CenturyLink Communications, LLC for Use of the Public Right-of-Way for Non-cable Wireline Facilities

**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 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; and
  - c) 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.
2. On November 13, November 20, and November 27, 2023, CenturyLink Communications, LLC 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 May 12, 2023, the Council received the Executive's recommendation to grant a franchise to CenturyLink Communications, LLC under a proposed franchise agreement.

**Action**

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

The County 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.

A handwritten signature in black ink, appearing to read 'Sara', is written above a horizontal line.

Sara R. Tenenbaum  
Clerk of the Council

**FRANCHISE AGREEMENT (FOR NON-CABLE WIRELINE FACILITIES)**

The County Council for Montgomery County, Maryland, having approved by Resolution No. 20-213 dated the 20 day of June, 2023, a franchise ("Franchise") to construct and maintain Facilities in the Public Right-of-Way, this franchise agreement ("Franchise Agreement") is made as of this 20 day of June, 2023, by and between Montgomery County, Maryland, a body corporate and politic (hereafter the "County"), and CenturyLink Communications, LLC ("CenturyLink"), a Delaware corporation.

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

WHEREAS, CenturyLink 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, CenturyLink 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 "Affiliate" of a Person means a corporation, partnership, limited partnership, limited liability company, or similar entity that controls, is controlled by, or is under common control with the Person.

1.2 "Agreement" means this Franchise Agreement.

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

1.4 “CenturyLink” means CenturyLink Communications LLC, a Delaware limited liability company.

1.5 “County” means Montgomery County, Maryland.

1.6 “Effective Date” means the date of the County Council resolution approving this Agreement.

1.7 “Facility” means fiber optic cables, conduits, converters, splice boxes, cabinets, handholds, manholes, vaults, equipment, drains, surface location markers, appurtenances, and related facilities located or to be located by CenturyLink in the Public Right-of-Way and used or useful for providing Services. Without limitation, the term expressly does not include a cable system, open video system, an antenna, base station or antenna facility as those terms are defined under federal laws and regulations.

1.8 “FCC” means the Federal Communications Commission.

1.9 “Gross Revenues” means all revenues and other consideration derived by CenturyLink or its Affiliates, or any other person, from Services provided in the County and from the use, operation, lease, or license of all or part of the Facilities, including but not limited to all revenues and consideration derived from co-location agreements. “Gross Revenues” does not include the local, state, or federal taxes or surcharges collected by CenturyLink that have been billed to a Subscriber and separately stated on such bill.

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

1.11 “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.

1.12 “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.

1.13 “Services” means the provision, using the Facilities, of any telecommunications service or commingled information service, but expressly excludes cable service as defined at 47 U.S.C. §522(6), provision of service via open video system pursuant to 47 U.S.C. § 571, or provision of wireless services.

## **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 CenturyLink under this Agreement, which shall be exercised at CenturyLink'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 CenturyLink, 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, CenturyLink must obtain the necessary consent for its use from each Person who holds any such interest. CenturyLink must indemnify and hold the County harmless from any claims or costs arising out of or related to a staking's claim or other legal action by reason of CenturyLink's use of the Public Right-of-Way.

3.2 The County hereby grants a non-exclusive right to CenturyLink to construct, reconstruct, install, operate, maintain, locate, move, remove, reattach, reinstall, relocate, and replace the Facilities in or upon, under, above, and across the Public Right-of-Way, in accordance with County law for use in the provision of Services to Persons located inside or outside the County.

3.3 Subject to County Law, the County hereby further authorizes CenturyLink 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 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, CenturyLink shall obtain permission from the individual utility or property owner prior to the time that CenturyLink undertakes any of the activities permitted by this Agreement. Upon request, CenturyLink shall provide documentation of said permission to the County.

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, CenturyLink 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, CenturyLink 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, reinstall, or relocation of the Facilities, excluding maintenance and repairs

(including replacement of equipment with substantially similar equipment). The written disclosure from CenturyLink 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 permit review.

3.7 Except as permitted by applicable Law or this Agreement, in the performance and exercise of its rights and obligations under this Agreement, CenturyLink shall not interfere in any manner with the existence and operation of any public and private right-of-way, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electric and telephone wires, electroliers, 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 CenturyLink shall comply with all applicable Law, including the "Miss Utility" law and applicable building and electrical codes, in the exercise and performance of its rights and obligations under this Agreement. CenturyLink hereby acknowledges that the rights granted by this Agreement are subject to the police powers of the County.

3.9 CenturyLink 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 CenturyLink is required by State or Federal authorities, in the proper exercise of their jurisdiction, to make the Facilities available for use by third parties.

3.10 The rights granted herein are not divisible or assignable, and CenturyLink may not permit any other person, other than CenturyLink's contractors, or a person holding a non-cable wireline franchise from the County, 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 CenturyLink and used for the provision of Services. CenturyLink may use the Public Right-of-Way to provide additional services or other facilities only by an express amendment to this agreement, or by separate franchise agreement with the County for Public Right-of-Way use.

4.2 Without limiting the foregoing, the fees provided for in this Section are not in lieu of any fee or tax to which CenturyLink may be subject or relieve CenturyLink of any obligation to collect and remit any tax in accordance with applicable Law.

4.3 The County is not presently seeking monetary compensation for CenturyLink's use and occupation of the Public Right-of-Way to provide the Services, except that it may charge CenturyLink, for any costs that CenturyLink requires it to incur, including the fee for negotiating this Franchise (pursuant to section 4.8), and for all permitting fees, inspection fees, and the costs of moving County property to permit the installation or maintenance of the Facilities. CenturyLink shall pay compensation for use and occupancy of the Public Right-of-Way to provide the Services as the County may establish which, at the County's option, and to the extent

permitted by law, may be based on the costs to the County of maintaining and acquiring the Public Right-of-Way, or up to five (5) per cent of the Gross Revenues derived from the operation of the Facilities to provide the Services, or a per footage fee (which fee may be on linear, square or cubic footage basis) that equates to fees charged to utilities or cable systems for use of the Public Right-of-Way, or reflects the value of the particular property used or proposed to be used; or such other amount approved by the County Council.

4.4 County will provide CenturyLink at least six (6) months' notice before assessing fees under subsection 4.3. The County shall be entitled to the maximum compensation permitted under applicable law after providing the notice required by this subsection. If a fee is imposed, CenturyLink must pay the fee every six (6) months.

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

4.6 CenturyLink will maintain books and records appropriate to permit the County to determine compliance with this Agreement, including the amount owed by CenturyLink. The acceptance of any payments shall not be treated as an accord or satisfaction. Upon reasonable notice by the County to audit CenturyLink's books and records, CenturyLink 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 CenturyLink 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 CenturyLink.

4.7 Interest will be charged 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 CenturyLink 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 CenturyLink understands and acknowledges that the County may require CenturyLink to remove and relocate the Facilities. At the County's request, CenturyLink shall remove and relocate the Facilities, at CenturyLink's sole cost and expense :

5.1.1 Within thirty (30) 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 CenturyLink must obtain all permits and approvals required by the County before removing or relocating the Facilities. If CenturyLink 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 CenturyLink's sole cost and expense.

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 CenturyLink 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, CenturyLink promptly shall notify the County, and CenturyLink must, at CenturyLink'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 CenturyLink as to whether it requires removal or dedication of any part of the Facilities, within thirty (30) days of notice of abandonment. CenturyLink 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, CenturyLink 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 CenturyLink shall fail to satisfy any of its obligations under this paragraph, the County shall be entitled to remove any part of the Facilities at CenturyLink'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 CenturyLink 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, CenturyLink, 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 CenturyLink 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 CenturyLink and charge CenturyLink 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, CenturyLink shall reimburse the County for such costs within thirty (30) days of CenturyLink'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, CenturyLink shall apply for the appropriate street opening and other permits required by Law. CenturyLink 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, CenturyLink 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 CenturyLink 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 CenturyLink of the provisions of this Agreement and the Laws. If CenturyLink 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, CenturyLink may request that the County return the security deposit, the surety bond, or the letter of credit to CenturyLink.

## **7. INDEMNIFICATION AND WAIVER.**

7.1 CenturyLink 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 of CenturyLink, its officers, employees, agents, consultants, attorneys, and contractors, described in this Agreement, 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 CenturyLink or its contractors must be repaired by CenturyLink 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 CenturyLink 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 CenturyLink shall carry and maintain at all times during the term of this Agreement commercial general liability insurance and commercial automobile liability insurance protecting CenturyLink 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 CenturyLink's performance pursuant to this Agreement. General liability insurance must include coverage for damage or claims related to radio frequency 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 CenturyLink'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. CenturyLink 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 CenturyLink, 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 CenturyLink becoming effective. The documentation shall clearly state 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 CenturyLink'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, 15<sup>th</sup> Floor  
Rockville, Maryland 20850

8.4 CenturyLink 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:	Technology and Enterprise Business Solutions 100 Maryland Avenue, Suite 2600 Rockville, Maryland 20850 Attn: Chief Broadband Officer
CenturyLink:	CenturyLink Communications, LLC 1025 Eldorado Blvd Mail Stop 31A-A18 Broomfield, CO 80021

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, 7<sup>th</sup> Floor  
Wheaton MD 20904

## **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 subsection 10.1 for a material breach of the Franchise, including, but not limited to the following: (i) non-payment of fees, (ii) failure to comply with the provisions of the Laws and this Agreement, (iii) use of the Public Right-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, including 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 CenturyLink'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 subsection 5.3), title documents have been executed by the parties.

## **11. MISCELLANEOUS PROVISIONS.**

11.1 CenturyLink 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 CenturyLink, or CenturyLink'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. CenturyLink 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 CenturyLink 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 CenturyLink'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. CenturyLink shall provide all information and documents reasonably requested by the County relating to the assignment or transfer.

11.2 CenturyLink understands that this Agreement does not provide CenturyLink 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 CenturyLink shall be available to the staff employees of any County department having jurisdiction over CenturyLink 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 CenturyLink by telephone at 866-864-2255 regarding such problems or complaints. CenturyLink 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 CenturyLink 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 CenturyLink's activities hereunder as if they were in effect at the time the Agreement was executed.

11.10 CenturyLink 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. CenturyLink 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 CenturyLink 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 CenturyLink for the purpose of securing business or an attorney rendering a professional legal service consistent with applicable canons of ethics.

11.12 CenturyLink 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 CenturyLink in the conduct of CenturyLink'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 CenturyLink or any other Person, such as another current or former CenturyLink. This franchise is granted to CenturyLink subject to any such authority or remedy, even if the exercise of that authority or remedy affects the system. CenturyLink agrees to cooperate with the County in any action to enforce County law or any franchise agreement against another Person.

**WITNESS:**

**MONTGOMERY COUNTY,  
MARYLAND**

\_\_\_\_\_  
Judy Rupp, Clerk of the Council

\_\_\_\_\_  
Evan Glass, President  
Montgomery County Council

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

**WITNESS:**

**CENTURYLINK COMMUNICATIONS,  
LLC**

*Alyssa C. Kersulis*  
Alyssa C. Kersulis, witness

By: *Danett Kennedy*  
Danett Kennedy

Title: *Senior Manager*  
Sr. Manager NIS

Date: *03/20/23*

**Approved as to form and legality:**

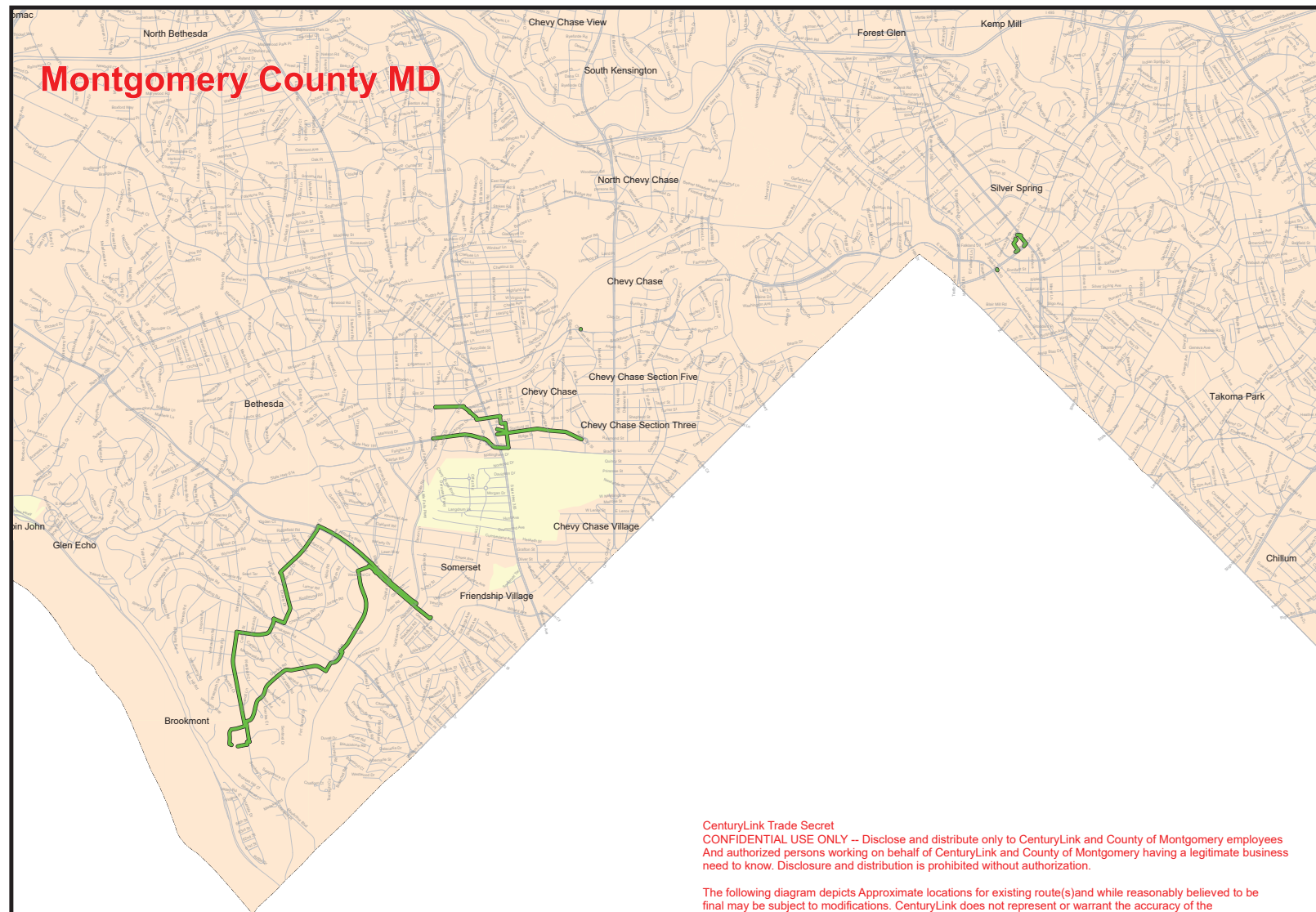
*Clifford Royalty*

May 10, 2023

\_\_\_\_\_  
Clifford Royalty, Chief  
Division of Zoning, Land Use & Economic Development  
Office of the County Attorney  
Montgomery County, Maryland

\_\_\_\_\_  
Date

## Montgomery County MD



CenturyLink Trade Secret

CONFIDENTIAL USE ONLY -- Disclose and distribute only to CenturyLink and County of Montgomery employees and authorized persons working on behalf of CenturyLink and County of Montgomery having a legitimate business need to know. Disclosure and distribution is prohibited without authorization.

The following diagram depicts Approximate locations for existing route(s) and while reasonably believed to be final may be subject to modifications. CenturyLink does not represent or warrant the accuracy of the fiber route and has not made physical verification. This map depicts the vicinity of the route based on our inventory records.

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# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

08/29/2022

**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).**

<b>PRODUCER</b> Marsh USA Inc. CA License #0437153 1301 5th Avenue, Suite 1900 Seattle, WA 98101-2682 Attn: Seattle.certrequest@marsh.com / Fax: 212-948-4326 CN102197661-STND-ALL-22-23	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td colspan="2"><b>CONTACT NAME:</b> ...</td> </tr> <tr> <td><b>PHONE (A/C, No. Ext):</b></td> <td><b>FAX (A/C, No):</b></td> </tr> <tr> <td colspan="2"><b>E-MAIL ADDRESS:</b></td> </tr> <tr> <td colspan="2" style="text-align: center;"><b>INSURER(S) AFFORDING COVERAGE</b></td> </tr> <tr> <td><b>INSURER A:</b> Greenwich Insurance Company</td> <td><b>NAIC #</b> 22322</td> </tr> <tr> <td><b>INSURER B:</b> XL Specialty Insurance Co.</td> <td>37885</td> </tr> <tr> <td><b>INSURER C:</b> Allianz Underwriters Ins Co</td> <td>36420</td> </tr> <tr> <td><b>INSURER D:</b></td> <td></td> </tr> <tr> <td><b>INSURER E:</b></td> <td></td> </tr> <tr> <td><b>INSURER F:</b></td> <td></td> </tr> </table>	<b>CONTACT NAME:</b> ...		<b>PHONE (A/C, No. Ext):</b>	<b>FAX (A/C, No):</b>	<b>E-MAIL ADDRESS:</b>		<b>INSURER(S) AFFORDING COVERAGE</b>		<b>INSURER A:</b> Greenwich Insurance Company	<b>NAIC #</b> 22322	<b>INSURER B:</b> XL Specialty Insurance Co.	37885	<b>INSURER C:</b> Allianz Underwriters Ins Co	36420	<b>INSURER D:</b>		<b>INSURER E:</b>		<b>INSURER F:</b>	
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<b>INSURER E:</b>																					
<b>INSURER F:</b>																					
<b>INSURED</b> Lumen Technologies, Inc. and all subsidiaries, including but not limited to: Qwest Corporation Embarq Corporation Level 3 Communications, LLC and CenturyLink Communications, LLC 100 CenturyLink Dr.																					

**COVERAGES****CERTIFICATE NUMBER:**

SEA-003741064-07

**REVISION NUMBER:** 3

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.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> <b>CONTRACTUAL LIABILITY</b> GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	X	X	RGD500033310	09/01/2022	09/01/2023	EACH OCCURRENCE \$ 3,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 3,000,000 GENERAL AGGREGATE \$ 15,000,000 PRODUCTS - COMP/OP AGG \$ 15,000,000 \$
A	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	X	X	RAD500033410 Auto Physical Damage - Self Insured	09/01/2022	09/01/2023	COMBINED SINGLE LIMIT (Ea accident) \$ 2,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
C	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$	X	X	U5Z000023220	09/01/2022	09/01/2023	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 \$
B	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input checked="" type="checkbox"/> Y <input type="checkbox"/> N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		X	RWD500032910 (AOS)	09/01/2022	09/01/2023	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER
B				RWR500033010 (WI)	09/01/2022	09/01/2023	E.L. EACH ACCIDENT \$ 1,000,000
B				RWE500033110 (WA)	09/01/2022	09/01/2023	E.L. DISEASE - EA EMPLOYEE \$ 1,000,000
B				RWE500033210 (OH)	09/01/2022	09/01/2023	E.L. DISEASE - POLICY LIMIT \$ 1,000,000
C	Technology E&O incl. Cyber/Privacy Liability			U5Z000022330	09/01/2022	09/01/2023	Each Claim/Aggregate \$ 10,000,000 Retention \$ 5,000,000

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

Montgomery County, Maryland, its elected and appointed officials, officers, consultants, agents and employees are included as Additional Insured as respects their interest in the operations of the Named Insured as required by contract or agreement regarding General Liability, Auto Liability, and Umbrella Liability.

**CERTIFICATE HOLDER****CANCELLATION**

Montgomery County, Maryland Attn: Mary Wright 101 Rockville Pike Rockville, MD 20850	<p><b>SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.</b></p> <p><b>AUTHORIZED REPRESENTATIVE</b>          of Marsh USA Inc</p> <p style="text-align: right;"><i>Katherine J. Stephen</i></p>
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AGENCY CUSTOMER ID: CN102197661

LOC #: Seattle



## ADDITIONAL REMARKS SCHEDULE

Page 2 of 2

<b>AGENCY</b> Marsh USA Inc.		<b>NAMED INSURED</b> Lumen Technologies, Inc. and all subsidiaries, including but not limited to: Qwest Corporation Embarq Corporation Level 3 Communications, LLC and CenturyLink Communications, LLC	
<b>POLICY NUMBER</b>		100 CenturyLink Dr.	
<b>CARRIER</b>	<b>NAIC CODE</b>	<b>EFFECTIVE DATE:</b>	

### ADDITIONAL REMARKS

**THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,**

**FORM NUMBER:** 25 **FORM TITLE:** Certificate of Liability Insurance

#### ----- GENERAL LIABILITY -----

Automatic Additional Insured's Primary Coverage

Additional Insured as respects your interest in the operations of the Named Insured as required by contract or agreement.

Coverage provided by the above General Liability policy shall be primary and is limited to liability arising out of Named Insured's ownership and/or operations. Any insurance carried by the additional insured shall not be contributory insurance.

Waiver of Transfer of Rights of Recovery Against Others to Us (Waiver of Subrogation) – any person or organization with whom you have entered into a contract or agreement, or by statute, law or code of ordinance. Separation of Insureds Applies. Insurance covers incidents that occur within 50' of railroad property, any railroad exclusions have been deleted per endorsement CG2417.

#### ----- AUTOMOBILE LIABILITY -----

Any person or organization you are required in a written contract, agreement, statute, law or code of ordinances provided the "bodily injury" or "property damage" occurs subsequent to the executive of the contract, agreement, statute, law or code of ordinances.

Lessor - Additional Insured and Loss Payee - All Lessors

Waiver of Transfer of Rights of Recovery Against Others to Us (Waiver of Subrogation) – Any person or organization with whom you have waived prior to the "accident" or the "loss" under a contract with that person or organization, or under statute, law or code of ordinances.

#### ----- WORKERS COMPENSATION AND EMPLOYERS LIABILITY AND EXCESS WORKERS COMPENSATION AND EMPLOYERS LIABILITY (OH & WA - SELF-INSURED - \$1,000,000 RETENTION) -----

Waiver of Our Right to Recover from others Endorsement – Where required by written agreement signed prior to loss, or required by statute, law or code of ordinances executed prior to loss.

#### ----- EXCESS/UMBRELLA -----

Coverage applies per occurrence. Additional Insured as respects your interest in the operations of the Named Insured as required by contract or agreement.

Waiver of Transfer of Rights of Recovery Against Others to Us (Waiver of Subrogation) - Any person or organization with whom you have entered into a contract or agreement, but only to the extent required by such contract or agreement. Separation of Insureds Applies.

#### ----- COMMERCIAL CRIME - FIDELITY BOND -----

Carrier: XL Specialty Insurance Company

Policy Number: ELU18499022

Effective Dates: 09/01/2022 - 09/01/2023

Deductible: \$2,500,000

Each Occurrence: \$15,000,000

#### ----- U.S. PROPERTY -----

Carrier: Allianz Underwriters Insurance Company

Policy Number: U5Z000023220

Effective Dates: 09/01/2022 - 09/01/2023

Limit: \$25,000,000

Deductible: \$25,000,000

Property Coverage: "All Risk" of Direct Physical Loss or Damage to All Real and Personal Property, including Boiler & Machinery, Earthquake, Flood and Wind - Replacement Cost Basis, and Business Interruption - Actual Loss Sustained.

Loss Payee or mortgagee as required by written contract/loan agreement to the the extent of your insurable interest. Waiver of Subrogation - Any person or organization whom you have entered into a contract or agreement, but only to the extent required by such contract or agreement. Other deductibles may apply as per policy terms and conditions.

# The Washington Post

Questions or comments regarding your proof should be directed to your account representative. If you do not know your account representative, please use the appropriate number below.

(202) 334-4710 - Automotive  
(202) 334-7029 - Merchandise  
(202) 334-5800 - Real Estate

(202) 334-5787 - Business Opportunities  
(202) 334-4122 - Paid Death Notices  
(202) 334-6200 - Classified Advertising

(202) 334-4101 - Jobs  
(202) 334-5725 - Property Management  
(202) 334-7007 - Legal Notices

## Classified Ad Proof

BP Account # 2010313234

Ad Number 12401510

BP Name CENTURYLINK COMMUNICATIONS LLC

Advertiser # 2010313234

Purchase/Insertion Order #

Advertiser Name CENTURYLINK COMMUNICATIONS LLC

Start Date Nov 13, 2022

End Date Nov 27, 2022

Number of Insertions 3

Ad Size

1

CO

X

3.608

"

Keyword

PUBLIC NOTICE Proposed Award by Montgom

50

LINES

Price \$2467.50

Content Component and Description

820

Official Notices

Sales Rep

GIDDENSNE

Date Ad Proof is Generated

Nov 17, 2022

System Message

Special Instructions

**Preview For Order #** 12401510

**PUBLIC NOTICE Proposed Award by Montgomery County, Maryland of Non-Exclusive Franchise to CenturyLink Communications, LLC.** CenturyLink Communications, LLC has submitted an application for a non-exclusive franchise in Montgomery County, Maryland to construct, install, operate, and maintain the telecommunication facilities within the Public Right-of-Way throughout the County, pursuant to Chapter 49 of the Montgomery County Code 2014, as amended, for the purpose of operating its telecommunications system. CenturyLink has proposed to pay Montgomery County's reasonable expenses, including the fee for negotiating this Franchise, and for all permitting fees, inspection fees, and the costs of moving County property to permit the installation or maintenance of the Facilities to the extent provided by law. CenturyLink shall pay compensation for use and occupancy of the Public Right-of-Way. The franchise agreement shall be for a term of 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 December 7, 2022 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, Rockville, Maryland 20850. For further information, contact CenturyLink at CenturyLink Communications, LLC 1025 Eldorado Blvd. Broomfield, CO 80021, Attn: NIS/ROW