May 10, 2021

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
45 L Street NE
Washington, D.C. 20554

Re: Petition for Declaratory Ruling of Missouri Network Alliance, LLC d/b/a Bluebird Network

Dear Ms. Dortch:

Missouri Network Alliance, LLC d/b/a Bluebird Network (“Bluebird”) is filing the attached Petition for Declaratory Ruling seeking preemption of the excessive rights-of-way (“ROW”) fee scheme imposed by the City of Columbia, Missouri (“Columbia” or the “City”).

Bluebird has several current rights-of-way permits, as well as an overarching rights-of-way agreement with the City, through which the City assesses a ROW fee of $1.91 per linear foot, with no cap on the total amount due. As a result of this fee structure, Bluebird’s fee liability will increase by more than six hundred percent following the completion of its network expansion in 2022.

Despite months of attempts to reach an agreement on an alternative fee and permitting arrangement, the City continues to insist on the payment of discriminatory and excessive fees. The City has left Bluebird with no choice but to seek relief from the Commission.

Should you have any questions, please contact the undersigned.

Sincerely,

Joshua S. Turner
Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of )
) Docket No. ______________
Petition of Missouri Network Alliance, LLC d/b/a Bluebird Network for Preemption and Declaratory Ruling Pursuant to Section 253(d) of the Communications Act of 1934

PETITION FOR PREEMPTION AND DECLARATORY RULING PURSUANT TO SECTION 253(D) OF THE COMMUNICATIONS ACT

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May 10, 2021
## TABLE OF CONTENTS

I. INTRODUCTION AND SUMMARY .......................................................................................... 1

II. FACTUAL BACKGROUND .................................................................................................. 4

III. STATUTORY BACKGROUND AND OVERVIEW OF ARGUMENT ..................................... 10

IV. ARGUMENT ........................................................................................................................ 12

   A. The City’s Fee Scheme Violates Section 253(a) of the Communications Act .......... 12

      1. Columbia’s Fee Scheme Imposes Significant Costs to Lay Fiber in the City, Thereby
         Hampering Deployment and Effectively Prohibiting the Provision of Service .......... 12

      2. By Subjecting Similarly Situated Providers to Different Regimes Imposing Lower Fees
         and Less Onerous Permitting Procedures, the City Has Prevented Bluebird from
         Competing in a Fair and Balanced Regulatory Environment ..................................... 18

      3. By Adopting a Fee Regime with No Connection to the City’s Costs, the City Has Per
         Se Violated Section 253(a) ......................................................................................... 22

   B. The Fee Scheme Is Not Saved by Section 253(c) of the Act ........................................ 25

V. CONCLUSION ...................................................................................................................... 28
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Docket No. ______________

PETITION FOR PREEMPTION AND DECLARATORY RULING PURSUANT TO SECTION 253(D) OF THE COMMUNICATIONS ACT

I. INTRODUCTION AND SUMMARY

Pursuant to Section 253(d) of the Communications Act of 1934, as amended (the “Act”), and Section 1.2 of the Federal Communication Commission’s (“FCC” or “Commission”) rules, Missouri Network Alliance, LLC d/b/a Bluebird Network (“Bluebird”) hereby petitions the Commission for a declaratory ruling preempting the excessive, unreasonable, and discriminatory rights-of-way (“ROW”) fee scheme employed by the City of Columbia, Missouri (“City” or “Columbia”). The City’s ROW fee regime violates Section 253 by materially inhibiting Bluebird’s ability to bring competitive broadband services to customers in the City, which will constrain broadband deployment and perpetuate the digital divide.

The City’s scheme runs afoul of Section 253 in three independent ways. First, the fees imposed by the City on Bluebird have a prohibitory effect as a result of their sheer size in relationship to the revenue that Bluebird can expect from its network in Columbia. The City requires Bluebird to pay an annual fee of $1.91 per linear foot for all fiber optic facilities installed within City ROW, with no cap or upper limit on amount. Under this arrangement,

1 47 U.S.C. § 253(d); 47 C.F.R. § 1.2.
Bluebird currently pays the City approximately $75,000 per year in ROW fees for facilities currently installed in the Columbia ROW. However, Bluebird is expanding its fiber network in the City, which will expand competitive broadband services within the City’s boundaries. Bluebird is in the process of deploying significant additional fiber facilities in the City, which will not only meet existing customer demand for wireless backhaul services, but will also provide the network infrastructure necessary to enable Bluebird to expand services to customers within the City, which include medical facilities, schools, libraries, banks, and other important community institutions. This expansion, however, will come at a significant cost: It will increase Bluebird’s ROW fees by more than 630 percent – from $75,000 to more than $550,000 per year. And because revenue does not increase linearly with feet of fiber in the ground, that expanded fee will swallow a 24 percent of Bluebird’s gross revenue in Columbia in fiscal year (FY) 2021 and more than 31 percent of its gross revenue in FY2022.° Fees of this magnitude are a significant barrier to Columbia’s connected future and Bluebird’s participation in the market, and longstanding FCC and judicial precedent confirm that this type of ROW arrangement unlawfully prohibits the provision of service in violation of federal law.

Second, Columbia’s ROW fee scheme violates Section 253(a) because it materially inhibits Bluebird from competing in a fair and balanced regulatory environment by treating broadband competitors in a discriminatory fashion. In contrast to Bluebird – which, to Bluebird’s knowledge, is the only broadband provider in Columbia currently paying ROW fees based on the linear foot size of its broadband network – a number of competing telecommunications carriers pay the City fees based on their telecommunications services

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² M. Morey Decl. ¶ 7.
revenues, while the fees paid by cable operators are based on their video services revenues.iii

Moreover, again to Bluebird’s knowledge, neither cable companies nor other telecommunications providers are subject to the onerous permitting process that applies to Bluebird, which requires that each permit application be heard at a minimum of two city council meetings.iv Thus, unlike Bluebird, other providers of broadband services in Columbia can build out their broadband networks without incurring substantial ROW fees as a precondition to that buildout, and without having to endure months of delay for permit approval.

Third, the City’s ROW fee scheme constitutes an effective prohibition in violation of Section 253(a) because the ROW fees that Bluebird faces bear no relationship to Columbia’s costs to manage the ROW. Under Section 253(a), ROW fees must have some basis in the locality’s costs to avoid causing a per se effective prohibition – a standard that Columbia cannot meet here. Indeed, in addition to burdensome ROW fees, Bluebird must pay Columbia all costs the City conceivably could incur in its management of the ROW, including the City’s costs associated with: (1) “permit related review and inspections”; and (2) repair and restoration of the City’s surface and underground structures in the ROW as well as its streets and roads. Indeed, the ROW Agreement refers to the ROW fee that Columbia imposes on Bluebird as “annual rent,” leaving no doubt that the fee is unrelated to the City’s ROW costs.

iii Bluebird has made multiple requests for the City to produce copies of existing franchise or ROW agreements with other service providers, but these requests have been ignored. M. Morey Decl. ¶ 9.

iv If the City Council adjusts a Bluebird customer location application, the permit application needs to be modified and resubmitted anew, restarting the permit process from the beginning each time. The process restarts regardless of the significance of the adjustment being made. For example, if the City determines that a pole attachment should be located in the southeast corner, rather than the requested northwest corner, Bluebird will be required to resubmit its permit application anew. This causes months of permit approval-related delays.
Bluebird does not take the step of filing this Petition lightly. Bluebird agrees with Acting Chairwoman Rosenworcel about the importance of “work[ing] with cities and states across the country” to “speed the way for 5G service . . . because they are our partners.” The City is one of Bluebird’s customers, and Bluebird has sought to make Columbia a partner in its efforts to expand connectivity in the City. Bluebird has engaged with the City on multiple occasions, proposing alternative fee arrangements that would bring Bluebird’s fee burden closer to what the City charges other communications providers using the ROW while still enabling the City to bring in revenue from Bluebird’s activities. However, the City has been unwilling to work with Bluebird to find a solution and agree on a fee structure more in keeping with what similar jurisdictions charge.

Bluebird respectfully asks the Commission to issue a declaratory ruling holding that the uncapped $1.91 per linear foot ROW fee assessed by the City of Columbia on Bluebird’s broadband facilities is preempted under Section 253(a) of the Act.

II. FACTUAL BACKGROUND

Headquartered in Columbia, Missouri, Bluebird is a fiber-network operator and owner of two data centers, providing Internet access, fiber transport, and tandem services across the

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6 It has now been nearly a month since Bluebird provided, at the City’s request, additional information regarding the fees charged by surrounding jurisdictions, and the City still has not responded—indeed, the City has not offered any substantive response to the proposal that Bluebird first offered in October of last year. See Email from Joshua Turner, Counsel to Bluebird Network, to Nancy Thompson, City of Columbia (Apr. 8, 2021) (“April 2021 Comparables Letter”) Provided as Attachment 3; see also Letter from Sue Schaefer, Director, Business Development, Bluebird Network, to Hon. Mayor Brian Treece, City of Columbia (October 23, 2020) (“October 2020 Proposals Letter”) Provided as Attachment 4.
Midwest, including throughout Missouri. Bluebird’s fiber network spans 10,000 fiber-route miles and provides connectivity to over 74,000 on-net and near-net buildings. The company’s customers include wireless carriers that use Bluebird’s network capacity for backhaul from small cells, 5G nodes, and other facilities; wholesale and enterprise customers; educational and healthcare institutions and providers; and public safety entities.

Bluebird is expanding its fiber network in several communities in Missouri, including Columbia, a city of approximately 121,000 people located in central Missouri. Specifically, Bluebird is in the process of adding more than 60 route miles of fiber optic cable within Columbia as part of a larger Midwest expansion project that will provide access to over 500 additional wireless towers and reach across five states and 28 markets in support of 5G network deployments. The Columbia build is expected to be completed by year end 2022.
In November 2017, Columbia enacted an ordinance authorizing rights-of-way use through multiple types of agreements, including franchises and ROW use agreements (the “ROW Ordinance”). All ROW users not covered by a franchise or other legal authority must enter into a ROW use agreement with the City to obtain authorization for general use of the municipal rights-of-way, unless relying on preexisting ROW use agreements that govern use of specific portions of the ROW.

The ROW Ordinance provides that a ROW user “shall be responsible for all reasonable costs borne by the city that are directly associated with a ROW user’s ROW work permit or use of the rights-of-way thereunder.” The ROW Ordinance further provides for the assessment of permit fees to “reimburse the city for its actual costs incurred and anticipated from the permit, inspections and applicant’s use of the rights-of-way[.].” Despite a reference to a “fee schedule” listed in Chapter 24 of the City Code, no such publicly available schedule exists.

Columbia has imposed a $1.91 per linear foot charge on Bluebird over the years through a series of ROW use agreements, covering individual projects. Under pressure from the City, Bluebird entered into a ROW Agreement in 2020 that included similar fee amounts. Under these fee agreements, Bluebird paid ROW fees of approximately $75,000 for 2020. However,
following the completion of Bluebird’s proposed Columbia expansion, this ROW fee will increase more than sixfold to roughly $552,000/year by the end of 2022.\textsuperscript{23} ROW fees of this magnitude will comprise nearly a third of Bluebird’s expected gross revenues in Columbia—over 30 percent.\textsuperscript{24} And, the ROW fees that Bluebird faces in Columbia stand in stark contrast to other municipalities in Missouri that either do not charge ROW fees at all or cap per linear foot ROW fees at a reasonable dollar amount.\textsuperscript{25}

Other broadband providers in Columbia pay ROW fees based either on their telecommunications services revenues, number of pole attachments, or on their video revenue gross receipts, and do not pay a per foot fee for deploying broadband facilities.\textsuperscript{26} This disparity in ROW fee methodologies has led to a competitive imbalance between broadband providers—an imbalance only exacerbated as Bluebird deploys more fiber in Columbia, which triggers greater ROW fees under the per linear foot methodology. By contrast, because the ROW fees faced by Bluebird’s competitors in Columbia are not based on the linear feet of their networks, they are unaffected by the physical expansion of those networks. For fiscal year 2022, a broadband provider operating under a five percent gross receipts structure would pay the City approximately $88,155 based on revenue like Bluebird’s, while Bluebird will be assessed a per-linear-foot fee of $551,534, resulting in a $463,379 disparity in ROW fees.\textsuperscript{27}

The linear foot ROW fees that Bluebird faces in Columbia are particularly pernicious because they must be paid with the broadband network deployment but before Bluebird receives

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{23} Id.
\item \textsuperscript{24} Id.
\item \textsuperscript{25} M. Morey Decl. ¶ 18; see also April 2021 Comparables Letter.
\item \textsuperscript{26} M. Morey Decl. ¶ 10.
\item \textsuperscript{27} Id.
\end{itemize}
\end{footnotesize}
any customer revenue. By contrast, under the telecommunications services revenues or cable gross receipts methodologies, Bluebird’s competitors in Columbia only pay ROW fees after they successfully sell services to their customers.

Linear foot fees also are often incurred as a result of a strategic build (such as Bluebird’s deployment in Columbia) to attract new customers but before new customers sign up for service. Thus, Bluebird takes on substantial ROW fee liability as it expands its network and must begin paying these fees immediately. Because fees on services or gross receipts are only incurred after revenue has been received, Bluebird’s competitors in Columbia have greater flexibility to undertake strategic network deployments. Bluebird’s competitors can thus bid more effectively on projects and have an easier time winning customers, because they do not face the need to pay upfront costs on new network builds before revenue starts accruing.\textsuperscript{28} The discriminatory effect is especially pronounced when a provider subject to gross receipts ROW fees pays those fees on services such as cable, which allows a provider to repurpose existing infrastructure to compete against Bluebird without incurring additional ROW fees.

In anticipation of its network expansion in Columbia and the corresponding increased ROW fees it would be required to pay, Bluebird attempted to negotiate a more equitable fee arrangement with the City in 2019. Specifically, Bluebird requested that the City assess ROW fees based either on a gross receipts methodology or a per linear foot methodology subject to a reasonable cap for the aggregate network.\textsuperscript{29} In February 2020, the City expressed a lack of interest in negotiating a more flexible arrangement, because in its view a franchise agreement

\textsuperscript{28} Id. ¶ 11.

\textsuperscript{29} Id. ¶ 15.
would “require[] public approval by a vote.” In April 2020, the City cut off further discussions by advising that its legal department had concluded that Bluebird would be required to pay a per linear foot fee. To prevent further delay to its network deployment schedule, Bluebird entered into an ROW use agreement with the city in July 2020, which included a per linear foot fee provision (“ROW Agreement”). Specifically, Section 3 provides “[f]or its use of the street rights-of-way within the City, [Bluebird] shall by the City $1.91 per linear foot annually.”

Subsequent to execution of the ROW Agreement, Bluebird continued to seek more reasonable ROW fees from the City. Bluebird sent Columbia emails and letters on the subject and submitted formal proposals of prospective alternative fee arrangements that would level the competitive playing field. Despite Bluebird’s best efforts to work collaboratively with Columbia to achieve an equitable solution to current fee arrangement, the City has refused to engage in any meaningful way. Indeed, after Bluebird proposed a potential resolution that would have involved fees closer to those charged by other jurisdictions in Missouri, the City asked for additional information on those jurisdictions—and then failed to follow up with Bluebird after the information was provided, and simply sent an invoice instead. The City has now made clear that if Bluebird does not pay this invoice, the City will not authorize any further ROW permits.

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30 Email from Steve Van Matre, Asst. City Counselor, City of Columbia, to Sue Schaefer, Director, Business Development, Bluebird Network LLC (Feb. 3, 2020). Provided as Attachment 5.
32 Columbia, Mo., Ordinance No 024278 To Authorize Right of Use Permit, Fiber Optical Cable, between Bluebird Network LLC and the City of Columbia (July 6, 2020) (“ROW Agreement”). Provided as Attachment 7.
33 Id. § 3.
34 See, e.g., October 2020 Proposals Letter; April 2021 Comparables Letter.
for construction of new facilities.\textsuperscript{35} That will make it impossible for Bluebird to add additional facilities to expand its service, including to health care facilities and other critical infrastructure. As a result, Bluebird has been left with no alternative but to seek relief from the Commission.

\section*{III. STATUTORY BACKGROUND AND OVERVIEW OF ARGUMENT}

In 1996, Congress recognized the need “[t]o promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.”\textsuperscript{36} To serve these important policy objectives, Congress adopted numerous reforms to the Communications Act of 1934, including by adding Section 253. Section 253 reduces barriers to entry and promotes deployment by broadly preempts all “State or local statute or local regulation[s], or other State or local legal requirement[s],” that “prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.”\textsuperscript{37} Section 253(c) saves from preemption legal requirements that collect “fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis[.]”\textsuperscript{38}

Congress further recognized that given the Commission’s expertise in communications technologies and services, the agency has an important role to play in determining the scope of the preemptive statute. Accordingly, Congress included a mechanism for parties to petition the Commission directly pursuant to Section 253(d). Under that provision, “[i]f, after notice and an

\textsuperscript{35} See E-mail from Vineet Kapila, City of Columbia, Missouri, to James Shaw, Bluebird Network (May 3, 2021). Provided as Attachment 8.


\textsuperscript{37} 47 U.S.C. § 253(a).

\textsuperscript{38} Id. § 253(c).
opportunity for public comment, the Commission determines that a State or local government has permitted or imposed any statute, regulation, or legal requirement that violates [Section 253(a)], the Commission shall preempt the enforcement of such statute, regulation, or legal requirement to the extent necessary to correct such violation or inconsistency." Further, as a federal agency interpreting its organic statute, the FCC is entitled to judicial deference in interpreting language in statute such as “have the effect of prohibiting”—and such deference is particularly warranted in this context, where the Commission is interpreting “complex” subject matter within its own policy bailiwick and technical expertise.

Using that express authority, the Commission has weighed in on numerous state and local requirements to ensure that the statute works as intended and preempts unnecessary barriers to deployment. In a 1997 declaratory ruling resolving a Section 253(d) petition, the Commission articulated the standard for assessing whether a requirement causes an effective prohibition in violation of Section 253(a), finding that that the statute does not require that a barred prohibition need not be insurmountable, and that the relevant inquiry is whether the state or local requirement “materially inhibits or limits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment.” That standard—called

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39 Id. § 253(d).

40 “Only a judicial precedent holding that the statute unambiguously forecloses the agency’s interpretation, and therefore contains no gap for the agency to fill, displaces a conflicting agency construction.” Nat’l Cable & Telecomms. Ass’n v. Brand X Internet Servs., 545 U.S. 967, 982-83 (2005).


California Payphone—has guided the Commission and courts alike for more than 20 years in applying Section 253(a), including in the context of excessive and confiscatory fees and requirements that discriminate among providers.

This is not a close case. The conclusion that the City’s $1.91 annual per foot ROW use fee is preempted by Section 253 falls comfortably within precedent long established by the Commission and the courts. The fee scheme violates Section 253(a) because the excessive magnitude of the fee materially inhibits the provision of service, because the discriminatory application of the fee against Bluebird creates an unbalanced legal and regulatory environment, and because the fee at issue bears no relationship to the City’s costs. Because the fee scheme is not reasonable, nondiscriminatory, or competitively neutral, it is not saved by Section 253(c). Section 253(d) thus compels preemption of the City’s ROW fee scheme.

IV. ARGUMENT

A. The City’s Fee Scheme Violates Section 253(a) of the Communications Act.

1. Columbia’s Fee Scheme Imposes Significant Costs to Lay Fiber in the City, Thereby Hampering Deployment and Effectively Prohibiting the Provision of Service.

The Commission has long recognized that financial burdens such as the ROW fees at issue here can effectively prohibit service in violation of Section 253(a) as articulated in California Payphone. For instance, in its 1997 Texas PUC Order, the Commission determined that the imposition of “financial burden[s]” on providers can “have the effect of prohibiting” the

43 Although Section 253(b) provides a preemption safe harbor for “requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers[,]” 47 U.S.C. § 253(b), this is unavailing as Bluebird is not a provider of universal services pursuant to its ROW agreements with the City. Furthermore, the excessive ROW fee arrangement foisted on Bluebird by the City is not “competitively neutral.”
deployment of “telecommunications services.” Likewise, in the Pittencrieff Order issued the same year, the agency acknowledged that even equitably distributed provider fees could constitute an effective prohibition.

Following these early decisions, multiple federal appellate courts found that regulatory fees can violate Section 253(a). In Municipality of Guayanilla, the First Circuit held that a municipality’s action changing its regulatory fee structure from a half-percentage-point municipal license tax to a five percent gross revenue fee constituted a material inhibition in violation of Section 253(a). In City of Santa Fe, the Tenth Circuit held that a conduit fee hike on installation costs raising those fees “by 30 to 59 [percent]” constituted an effective prohibition on the provision of service because it imposed a “substantial increase in costs” for the provider.

In 2018, the Commission issued a Declaratory Ruling and Order endorsing these decisions and addressing municipal fees more directly. In the order, the Commission clarified


45 Petition of Pittencrieff Commc’ns, Inc. for Declaratory Ruling Regarding Preemption of the Tex. Public Utility Regulatory Act, Memorandum Opinion and Order, 13 FCC Rcd 1735, ¶ 32 (1997) (“Pittencrieff Order”); aff’d, Cellular Telecomm. Indus. Ass’n v. FCC, 168 F.3d 1332 (5th Cir. 1999) (“[W]e do not preclude the possibility that even a neutral contribution requirement might under some circumstances effectively prohibit an entity from offering a service[.]”).

46 Puerto Rico Tel. Co. v. Mun. of Guayanilla, 450 F.3d 9, 18 (1st Cir. 2006).

47 Qwest Corp. v. City of Santa Fe, 380 F.3d 1258, 1271 (10th Cir. 2004); see also Zayo Grp., LLC v. Mayor & City Council of Balt., Civ. No. JFM-16-592, 2016 WL 3448261, at *6 (D. Md. June 14, 2016) (carrier’s claim that City’s “sudden and significant” fee increase that more than tripled conduit fees was prohibitive in violation of Section 253(a) survived motion to dismiss).

that “the fees charged by local governments . . . can run afoul of the limits Congress imposed in
the effective prohibition standard embodied in Section[] 253”\textsuperscript{49} and that “even fees that might
seem small in isolation have material and prohibitive effects on deployment, particularly when
considered in the aggregate[.]”\textsuperscript{50} Last year, the Ninth Circuit upheld this aspect of the ruling,
observing that the savings clause in Section 253 does not allow “state and local governments . . .
to make a profit by charging fees above costs.”\textsuperscript{51} And most recently, the Chief of the Wireline
Competition Bureau issued a \textit{Declaratory Ruling} pursuant to Section 253(d) holding that fee
regimes imposed by several Missouri jurisdictions were preempted by Section 253(a) to the
extent these regimes sought to charge Bluebird duplicative fees for its fiber infrastructure located
in City ROW.\textsuperscript{52}

Consistent with this long-standing precedent, a straightforward application of \textit{California
Payphone} compels the conclusion that Columbia’s fee scheme violates Section 253(a). First,
Section 253(a) is plainly applicable to the City’s actions, as the broadband facilities Bluebird is
deploying in Columbia are used to provide “telecommunications services” within the meaning of
the Act, and the City’s imposition of legal requirements through ordinances and related ROW
use agreements are precisely the kind of local requirements contemplated by the statute. The
Commission has expressly held that Section 253’s reference to “other State or local legal
requirement[s]” covers enforceable contractual agreements, including ROW agreements\textsuperscript{53}—and

\textsuperscript{49} \textit{Id. ¶} 43.

\textsuperscript{50} \textit{Id. ¶} 53.

\textsuperscript{51} \textit{City of Portland v. United States}, 969 F.3d 1020, 1039 (9th Cir. 2020).

\textsuperscript{52} \textit{Mo. Network All., LLC d/b/a Bluebird Network and Uniti Leasing MW LLC, Declaratory

\textsuperscript{53} \textit{See Pet. of the State of Minn.}, Memorandum Opinion and Order, 14 FCC Rcd 21697,
21707, ¶¶ 18-19 (1999) (“Minnesota Order”); \textit{see also Sandwich Isles Commc’ns, Inc.,
in fact, this was the precise vehicle by which other Missouri jurisdictions sought to impose the unlawful fees preempted by the *Bluebird Order*.\(^{54}\)

Second, the ROW fees at issue are plainly prohibitory. Pursuant to the ROW Agreement, Bluebird must pay the City $1.91 annually per linear foot for all broadband facilities installed in City ROW, with no cap on the total amount of fees assessed. Following Bluebird’s planned network expansion, Bluebird will owe approximately $552,000 in annual fees for its network, a seven-fold increase in its ROW fees. Furthermore, Bluebird’s ROW fee exposure represents more than 31 percent of Bluebird’s expected customer revenue from the use of those facilities. This amount is more than twelve times larger than the gross revenue fee at issue in *Municipality of Guayanilla*, which the court found effectively prohibited service.\(^{55}\) Further, once Bluebird completes its planned expansion, its fee burden in the City of Columbia will be nearly seven times higher than it is now, thus far surpassing the quadruple increase in fees found to be unlawfully prohibitory in *City of Santa Fe*,\(^{56}\) and the doubling in fees imposed by other Missouri jurisdictions found to be preempted in the *Bluebird Order*.\(^{57}\)

This impending fee burden also vastly outpaces the fees Bluebird incurs in other Missouri jurisdictions: for instance, while Joplin charges a per linear foot ROW fee, the overall fee amount is capped at $96,000 per year.\(^{58}\) Similarly, linear per foot fees in Cameron, Missouri, are

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\(^{54}\) *Bluebird Order* ¶ 19.

\(^{55}\) *Mun. of Guayanilla*, 450 F.3d at 18.

\(^{56}\) *City of Santa Fe*, 380 F.3d at 1271.

\(^{57}\) *Bluebird Order* ¶ 2.

\(^{58}\) M. Morey Decl. ¶ 18.
capped at an aggregate annual fee burden of $48,000.59 Jefferson City, Maryville, Springfield, and St. Joseph charge no ROW use fees at all.60 And while Bluebird does not concede that the fees charged by other jurisdictions are themselves lawful, or that such fees are relevant in determining the legality of Columbia’s exaction, the large discrepancy between Columbia’s regime and that of other jurisdictions is conspicuous.61

The overwhelming fee increase at issue here demonstrates the problematic nature of per foot fees under the material inhibition standard. While per foot fees may be superficially appealing because they are proportional to the quantity of infrastructure a provider deploys, the quantity of infrastructure deployed is not necessarily—and in fact, is often not—proportional to the range of services a provider may offer, the number of customers it can reach, or even the actual impact of the facilities on the rights of way (if any). Here, although Bluebird is expanding its network by laying significant new fiber facilities, the ROW fees it faces from this expansion will increase exponentially and swallow the majority of Bluebird’s anticipated revenue.62

Per foot fee regimes like Columbia’s have a particularly pernicious effect in rural areas, where customers are fewer and far between, and it takes substantially more infrastructure to reach them. A flat, uncapped, per-foot fee on linear infrastructure exacerbates the structural challenge that already exists in providing service to areas with lower population density. By

59  Id.
60  Id.
61  Moreover, the massive increase in costs that Bluebird is experiencing in Columbia is particularly significant when the rest of the ROW Agreement is taken into account. As discussed in Section IV.A.3, infra, Bluebird is subject to numerous other costs and hold harmless obligations related to its deployment and the maintenance of the ROW on top of the significant $1.91/rent the City seeks to charge.
62  Indeed, Bluebird would continue to be obligated to pay per foot fees on these facilities as long as they are in the ground, even if it loses the customer they were built to service.
their nature, ROW fee structures that impose fees in this manner depress buildout and thus not only result in effective prohibition of service in violation of Section 253, but also undermine other important policy objectives of the Commission, including expanding advanced communications services to all Americans.

The impact of the City’s fee regime is not hypothetical. Bluebird is literally in the process of building out its network in Columbia that it will use to sell services to customers pursuant to agreements that do not permit Bluebird to pass through these types of ROW fees.63 If obligated to pay Columbia approximately $552,000 in ROW fees on an annual basis, on top of the other fees and costs imposed by the Agreement, Bluebird has only two options, both of which will materially inhibit broadband deployment in Columbia.

Bluebird could elect to pay Columbia’s exorbitant ROW fees out of its own pocket. Because capital is a finite resource, however, amounts paid to Columbia in the form of excessive ROW fees are unavailable for Bluebird’s use in paying for future broadband network deployments.64

Alternatively, Bluebird could seek to recover Columbia’s outsized ROW fee from its customers in surrounding communities outside Columbia. Because providers must often price services or facilities at the regional or even national level,65 a community like Columbia that exacts a disproportionately large fee in comparison to its costs (and the fees imposed by its neighbors) has the economic effect of forcing providers to pay those fees using general revenue—including revenue derived from other jurisdictions. This is not only prohibitory for the

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63 M. Morey Decl. ¶ 21.
64 Id.
65 Id. ¶ 22.
provider, it is fundamentally unfair to the other communities in which the provider operates, because it in essence requires surrounding jurisdictions to subsidize the fees charged by Columbia.

It is also sustainable only so long as those other communities do not also raise their fees, thereby raising overall prices to consumers. This is precisely why the Commission and courts alike have recognized the need to look to the aggregate impact of a challenged fee, if that fee were imposed nationwide, in determining whether the fee is unlawfully prohibitory.\textsuperscript{66} Section 253 was intended to remove barriers like these and promote deployment, and the Commission should emphasize that it is impermissible for individual jurisdictions to impose such extravagant fees that have a disproportionate, harmful impact on the greater telecommunications ecosystem.

2. By Subjecting Similarly Situated Providers to Different Regimes Imposing Lower Fees and Less Onerous Permitting Procedures, the City Has Prevented Bluebird from Competing in a Fair and Balanced Regulatory Environment.

Columbia’s ROW fee scheme is separately unlawful under Section 253(a) because, to Bluebird’s knowledge, other broadband providers are not subject to this fee, and instead pay fees based on services revenues, pole attachments, or gross receipts. As set forth above, a locality’s regulatory scheme is preempted under Section 253(a) if it prevents service providers from competing in a “fair and balanced legal and regulatory environment.”\textsuperscript{67} A state or local requirement thus effectively prohibits the provision of telecommunications services if it imposes a material competitive disadvantage.\textsuperscript{68} Specifically, a regulatory environment is not “fair and

\textsuperscript{66} See, e.g., Mun. of Guayanilla, 450 F.3d at 17; 2018 Infrastructure Order ¶ 53.

\textsuperscript{67} California Payphone ¶ 31.

\textsuperscript{68} Texas PUC Order ¶ 13.
balanced” when the costs of competing are not neutral, or when one provider’s ability to compete is disproportionately impacted by municipal regulatory requirements.69

In the Western Wireless Declaratory Ruling, the Commission found that a regulatory requirement instituted by the South Dakota Public Utilities Commission that obligated telecommunications providers to offer services throughout an entire designated area in order to receive universal service funding constituted an effective prohibition.70 The FCC determined that, because only incumbent local exchange carriers had service offerings throughout the area, new entrants were at a competitive disadvantage because “a new entrant cannot reasonably be expected to be able to make the substantial financial investment required to provide the supported services in high-cost areas without some assurance that it will be eligible for federal universal service support.”71 Similarly, in City of White Plains, the Second Circuit preempted a municipality from requiring one service provider to pay “a variety of forms of compensation” while not charging another any ongoing fees applicable to all providers.72

In this case, Bluebird is at a clear competitive disadvantage because Bluebird is required to pay significantly more than competing broadband providers for use of the same ROW. Other

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69 See, e.g., W. Wireless Corp. Pet. for Preemption of an Order of the South Dakota Pub. Utils., Declaratory Ruling, 15 FCC Rcd 15168, ¶¶ 10, 12-13 (2000) (“Western Wireless Declaratory Ruling”) (finding that it would be unreasonable for a competitive carrier to compete with an incumbent local exchange carrier in a market that only the incumbent is receiving high cost support in); TCG N.Y., Inc. v. City of White Plains, 305 F.3d 67, 80 (2d Cir. 2002) (“§ 253 does not limit municipalities to charging fees that are “competitively neutral” to the extent permitted by state law; it forbids fees that are not competitively neutral, period, without regard to the municipality’s intent.”); Pittencrief Order ¶ 32.

70 Western Wireless Declaratory Ruling ¶ 13.

71 Id.

72 City of White Plains, 305 F.3d at 80.
providers pay fees based on telecommunications or video revenues.\textsuperscript{73} Indeed, the ROW Agreement expressly recognizes that there are entirely different fee schemes at work in the City, providing that “[a]t any point in the future, should [Bluebird] enter into a franchise agreement with the City and/or be required to pay business license taxes based upon gross receipts, [Bluebird] shall be entitled to a credit for any amount paid as business license taxes or gross receipts taxes.”\textsuperscript{74} However, when Bluebird approached the City about entering into an agreement using a fee regime comparable to that imposed on other providers, the City rejected Bluebird’s proposals. Moreover, even if these other regimes somehow coincidentally resulted in ROW fees of comparable magnitude, Columbia’s ROW fee structure would still be unlawfully discriminatory, as Bluebird is required to pay its fees upfront before any customer revenue is collected, while other providers pay incrementally following the collection of revenue from their customers.

The unequal treatment extends beyond the amount of the fees to the very process used to secure permits for building new facilities. Under the City’s Code, in order to have a permit granted, Bluebird must present the permit application to be read at at least two separate City Council meetings.\textsuperscript{75} In practice, this has resulted in extensive delays, as a result of slow feedback by the City on Bluebird’s applications and procedural idiosyncrasies. For example, when Bluebird submits the permit application, it is reviewed by the Department of Public Works. Once approved as drafted, Bluebird must submit the formal permit request (\textit{e.g.}, three signed

\textsuperscript{73} M. Morey Decl. ¶ 10.
\textsuperscript{74} ROW Ordinance § 3.
\textsuperscript{75} \textit{See} Columbia, Mo., Code of Ordinances pt. 1, art. II, § 15(A) (Feb. 10, 2021), \url{https://library.municode.com/mo/columbia/codes/code_of_ordinances?nodeId=PCH_ARTIITHCO_S15LEPR} (requiring that all ordinances be read three times at least two separate meetings).
copies of the application) to the City Council at least two Thursdays before the next scheduled council meeting (which will be on a Monday)—creating an initial delay of between 12 to 25 days. Therefore, based on the existing City schedule, if Bluebird submitted a permit on April 22 after final approval by Public Works, it would be eligible for first reading on May 17 and second reading on June 7. Then there is an inevitable signature delay before the approved permit is returned to Bluebird and it can begin operations.\textsuperscript{76} Bluebird’s competitors do not have to run this gauntlet and can instead simply get a permit and file as-built maps after construction is complete.\textsuperscript{77} Of course, if Bluebird must build 50-90 days into its service schedule for permit approval, it is at a significant competitive disadvantage to providers that do not have this same constraint. As the Second Circuit has recognized, “extensive delays” in granting approvals prohibit a provider “from providing service for the duration of the delays,” and where these delays are not faced by competitors, present “obstacles” to the ability of the provider “to compete [] on a fair basis.”\textsuperscript{78}

Maintaining a fair and balanced regulatory environment for telecommunications providers has long been a requirement for any local regulatory regime to pass muster under Section 253(a) and \textit{California Payphone}. The competitive neutrality aspect of the statute is particularly important in the current environment, as the technologies that enable connectivity

\textsuperscript{76} M. Morey Decl. ¶ 13.

\textsuperscript{77} As noted above, the City has refused to provide Bluebird with copies of agreements with other providers, but Bluebird is not aware of any other providers having to secure approvals in a similar fashion, i.e., by ordinance adopted by the Council. \textit{See, e.g.,} Ordinance No. 024278 (July 6, 2020), https://gocolumbiamo.legistar.com/LegislationDetail.aspx?ID=4567590&GUID=143F2576-6C2B-4D11-A567-61D754169F74&Options=&Search=. A search of Council actions reveals no similar permits issued for other providers.

\textsuperscript{78} \textit{City of White Plains}, 305 F.3d at 76-77.
are more advanced—and more important to everyday society—than ever before, but the Digital Divide remains stark throughout the nation. Columbia’s differing fee regimes pick winners and losers, entrenching certain providers while preventing others from entering the market, thereby preventing its citizens from enjoying the benefits of competitive services. Columbia’s ROW fee scheme is a paradigmatic example of a regulatory regime that materially inhibits the ability to compete in a fair and balanced legal and regulatory environment, and thus is preempted.

3. By Adopting a Fee Regime with No Connection to the City’s Costs, the City Has Per Se Violated Section 253(a).

Finally, the fee scheme constitutes an effective prohibition in violation of Section 253 not just because of the magnitude and uneven application of the fee, but because the fee has no relationship to Columbia’s costs to manage the ROW. In holding City of Santa Fe’s fee regime preempted in 2004, the Tenth Circuit drew a distinction between the unlawful fees at issue and cost-based exactions: “It is the substantial increase in costs imposed by the excess conduit requirements and the appraisal-based rent that in themselves renders those provisions prohibitive, not the additional cost-based application and registration fees.” Other courts have gone further, holding that any fees unrelated to a carrier’s ROW usage constitute a material inhibition under Section 253(a). While the First Circuit in Municipality of Guayanilla left open the question of whether fees “must be limited to cost recovery,” the Court “agree[d] with the district court’s reasoning that fees should be, at the very least, related to the actual use of rights of way and that

79 City of Santa Fe, 380 F.3d at 1271.
80 See, e.g., AT&T Commc’ns Sw. v. City of Dallas, 8 F. Supp. 2d 582, 593 (N.D. Tex. 1998) (“[T]he City does not have the authority to impose fees on a telecommunications provider except as compensation for use of the City’s [ROW]. Dallas’s requirement that AT&T must pay four percent of the gross revenue from all of its activities in Dallas contradicts the requirements of the [Telecommunications Act].”); XO Mo., Inc. v. City of Md. Heights, 256 F. Supp. 2d 987, 994 (E.D. Mo. 2003) (“The Court adopts the reasoning supporting other courts’ decisions that revenue-based fees are impermissible under the [Telecommunications Act].”).
‘the costs [of maintaining those rights of way] are an essential part of the equation.”81 In other words, the case law supports the proposition that even if a locality were able to charge fees in excess of its costs under Section 253(a), those fees must have some *basis* in the locality’s costs to avoid causing a *per se* effective prohibition.

Columbia’s excessive ROW fee has no relationship to the City’s costs. The ROW Agreement itself makes this clear, as it includes numerous other requirements that collectively recover or require Bluebird to pay for all costs the City conceivably could incur in its management of the ROW. Section 4.2 of the Agreement states that the City’s costs for “permit related review and inspections” are covered by various building and construction fees that are separate and apart from the $1.91 linear foot fee.82 Section 4.5 requires Bluebird, at its own expense, to “protect any and all existing surface or underground structures, fixtures, drainage facilities, sewers, conduits or pipes belonging to the City or any utility previously located within the rights-of-way during construction or maintenance” of its system, and to “repair or restore[]” any City- or third-party-owned “rights-of-way, streets, roads, surface or underground structures, fixtures, drainage facilities, sewers, utility line facilities, conduits or pipes disturbed or damaged by the Company's work, either during initial construction or future maintenance replacement or relocation of the Company's fiber optic lines or any conduit or system.”83

Various other provisions are intended to insulate Columbia from any other costs that may be imposed by Bluebird’s presence in the ROW, including Sections 6 (covering insurance requirements), 7.1 (requiring Bluebird to repair any City utilities damaged by Bluebird), 7.4

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82 ROW Agreement, § 4.2.
83 *Id.* § 4.5.
(requiring that Bluebird bear the costs for repairing any of its own facilities damaged by Columbia’s utility work in the ROW), and 7.5 (indemnifying Columbia for various claims caused by Bluebird and its employees, agents or contractors). And finally, Section 5.7 expressly refers to the ROW fee as “annual rent,” leaving no doubt that the fee is intended to recover something entirely separate from the City’s costs.84

Putting aside that the ROW Agreement entitles the City to recover all its reasonable ROW management costs without resorting to a per linear foot ROW charge, the mere fact that a per foot fee may be proportional to the amount of infrastructure a carrier has deployed does not mean the fee is based on costs, or even that it is a good or appropriate proxy for costs. The deployment of underground fiber optic facilities of a specific footage requires laying conduit and running fiber optic cable through that conduit, a process which can be done all at once, or over the course of a series of construction projects. Thus, for a particular provider’s network, the total number of feet of the deployment will have little if any connection to the costs the city incurred in the course of network deployment. Similarly, numerous variables, including the congestion in the ROW and the presence of other utilities, are far more relevant to ROW maintenance costs than the sheer number of feet of deployment.

A per foot fee is particularly inappropriate where, as here, the municipality discriminatorily applies differing fee regimes and charges similarly situated providers through other mechanisms, such as gross revenue fees. Gross revenue fees suffer from the same legal deficiency as the linear foot fees at issue here, as revenue-based fees likewise have no basis in a city’s costs; they are not an acceptable substitute for recovering compensation for use of the right of way. However, the fact that both of these fee structures are unlawful does not cure the

84 Id. §§ 5.7, 6, 7.1, 7.4, 7.5.
competitive disparity created by using different fees for different carriers. Moreover, the fact that the City charges some providers based on their revenue simply underscores the fact that the City is not approaching ROW fees in a manner that reflects the City’s costs.

Bluebird understands that cities need to recoup their costs associated with permitting, inspection, managing the ROW, and ensuring those ROW are appropriately available for all who use them. Bluebird pays various regulatory fees across the country that allow municipalities to do just that. But there is a line. In adopting Section 253 and saving from its preemptive scope only those fees that recover costs, Congress made its intent clear: cities cannot sacrifice the ability of their residents to obtain competitive communications services in the interest of a pure revenue grab. Thus, the Commission should find that the City’s fees are preempted because they have no basis in the City’s costs.

B. The Fee Scheme Is Not Saved by Section 253(c) of the Act.

The City cannot avail itself of the savings clause in Section 253(c) because its excessive ROW fee scheme is unrelated to maintaining the ROW and because it is neither competitively neutral nor nondiscriminatory. Section 253(c) of the Act provides:

Nothing in this section affects the authority of a State or local government to manage the public [ROW] or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public [ROW] on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government.85

In the Sandwich Isles Order, the Commission held that activities that constitute ROW management include “coordination of construction schedules, determination of insurance, bonding and indemnity requirements, establishment and enforcement of building codes, and

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85 47 U.S.C. § 253(c).
keeping track of various systems using the [ROW] to prevent interference between them.”

Furthermore, federal courts have interpreted “fair and reasonable compensation” under Section 253(c) to mean that any such fees are intended to recoup state or local costs for maintaining ROW, preserving a structure within ROW, or processing an application, license, or permit. Additionally, the Commission has interpreted “competitively neutral and nondiscriminatory” under Section 253(c) to mean that states and localities cannot charge fees on new entrants that they do not also charge on incumbents. Likewise, federal courts have found that this phrase means that local governments cannot charge fees to some providers that they do not also charge to others.

Columbia’s fee regime plainly does not fall under the safe harbor. First, Section 253(c) is not applicable because the City’s linear per foot fee does not constitute fair and reasonable compensation for ROW maintenance. As the Second Circuit has held, Section 253(c) “requires compensation to be reasonable essentially to prevent monopolistic pricing by towns. Without access to local government [ROW], provision of telecommunications service using land lines is

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86 Sandwich Isles Order ¶¶ 22-23 (citing Minnesota Order ¶ 60, n.129).
87 See Mun. of Guayanilla, 450 F.3d at 22 (“[F]ees should be, at the very least, related to the actual use of rights of way and that ‘the costs [of maintaining those rights of way] are an essential part of the equation.’”) (quoting Puerto Rico Tel. Co. v. Mun. of Guayanilla, 354 F. Supp. 2d 107, 114 (D.P.R. 2005)); N.J. Payphone Ass'n, Inc. v. Town of W. N.Y., 130 F. Supp. 2d 631, 638 (D.N.J. 2003) (“[A] fee that does more than make a municipality whole is not compensatory in the literal sense, and risks becoming an economic barrier to entry.”); City of Portland, 969 F.3d at 1039 (“The statute requires that compensation be ‘fair and reasonable;’ this does not mean that state and local governments should be permitted to make a profit by charging fees above costs . . . The FCC's approach to fees is consistent with the language and intent of Section 253(c) and is reasonably explained.”).
89 See City of White Plains, 305 F.3d at 80 (“[A] municipality may not . . . impose a host of compensatory provisions on one service provider without placing any on another.”).
generally infeasible, creating the danger that local governments will exact artificially high rates.\textsuperscript{90} Furthermore, the First Circuit has held that cost evidence is required to determine whether licensing fees are indeed “fair and reasonable,” and the burdens on the municipality’s ROW should be considered.\textsuperscript{91} Similarly, in \textit{Town of West New York}, the District of New Jersey determined that the municipality’s competitive bidding requirement for the installation of payphones was preempted because “a highest bidder arrangement based on commissions generated by an exclusive franchise for all of the payphones in the Town has no logical link at all to costs.”\textsuperscript{92}

Here, the $1.91 linear foot fee is not connected to the costs incurred by Columbia for Bluebird’s use of the ROW. As set forth above, the ROW Agreement contains numerous other provisions covering the costs that the City incurs in the management of its ROW. Further, given the manner in which ROW infrastructure is deployed, the number of linear feet of a deployment is a poor proxy for the cost burden imposed on the City to manage the ROW—to the extent there is any relationship at all. Moreover, the City itself does not consider the fees compensatory of costs, instead viewing the fees as “rent” to be paid on top of other fees and financial burdens covering actual ROW costs.

\textit{Second}, Section 253(c) cannot salvage the Cities’ excessive ROW fee scheme because that scheme is not competitively neutral and nondiscriminatory. The Commission has long held that when a municipal government opts to charge user licensing fees to manage its ROW, it

\begin{footnotesize}
\begin{enumerate}
\item Id. at 79.
\item See \textit{Mun. of Guayanilla}, 450 F.3d at 22-23.
\item \textit{Town of W. N.Y.}, 130 F. Supp. 2d at 638. The Commission similarly has rejected the argument that compensation required in an exclusive ROW access agreement was “fair and reasonable,” on the grounds that “[t]he compensation appears to reflect the value of exclusivity inherent in the Agreement” as opposed to ROW access. \textit{Minnesota Order} ¶ 47.
\end{enumerate}
\end{footnotesize}
cannot charge higher fees for some ROW users compared to others. Federal courts agree. In *City of White Plains*, for example, the Second Circuit preempted a municipality from charging one provider a host of compensatory fees for ROW use while not charging another provider at all “on a forward-looking basis.”

The Cities’ disparate ROW fee regime is precisely the type of arrangement that the FCC and federal courts have disallowed. It cannot be administered in a manner that is competitively neutral because different providers are subject to different requirements, under fee schemes based on entirely different criteria (such as revenues versus number of linear feet of deployment), resulting in vastly different cost burdens. On its face, the City’s conduct falls outside the scope of Section 253(c) because it discriminates among similarly situated providers and is in no way competitively neutral.

Accordingly, the Commission should find that the Cities’ excessive ROW fee scheme violates Section 253(a), is not saved under Section 253(c), and is therefore preempted under Section 253(d).

**V. CONCLUSION**

In light of the foregoing, Bluebird respectfully asks the Commission to grant this petition for declaratory ruling and preempt Columbia’s annual ROW use fee scheme.

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93 *TCI Memorandum Opinion* ¶ 108.

94 *See City of White Plains*, 305 F.3d at 80.

95 Although Section 253(b) provides a preemption safe harbor for “requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers,” this is unavailing as Bluebird is not a provider of universal services pursuant to its ROW agreements with the Cities. Furthermore, the excessive ROW fee arrangement foisted on Bluebird by the Cities is not “competitively neutral” for the reasons stated in this section.
Respectfully submitted,

BLUEBIRD NETWORK

By: /s/ Joshua S. Turner
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Attorneys for Missouri Network Alliance
LLC d/b/a Bluebird Network

May 10, 2021
CERTIFICATE OF SERVICE

I, Joshua S. Turner, hereby certify that on this 10th day of May 2021, I caused copies of the foregoing “Petition for Declaratory Ruling” to be mailed via first-class postage prepaid mail to the following:

Hon. Brian Treece
Mayor, City of Columbia
701 E Broadway
Columbia, Missouri, 65201

Ms. Nancy Thompson
City Counselor, City of Columbia
701 E Broadway
Columbia, Missouri, 65201

/s/ Joshua S. Turner
LIST OF ATTACHMENTS

1. Declaration of Michael C. Morey.


4. Email from Joshua Turner, Counsel to Bluebird Network, to Nancy Thompson, City of Columbia (Apr. 8, 2021) (Attachment 3).


8. Columbia, Mo., Ordinance No 024278 To Authorize Right of Use Permit, Fiber Optical Cable, between Bluebird Network LLC and the City of Columbia (July 6, 2020) (Attachment 7).

9. E-mail from Vineet Kapila, City of Columbia, Missouri, to James Shaw, Bluebird Network (May 3, 2021) (Attachment 8).
Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of )
Petition of Missouri Network Alliance, LLC ) Docket No. ____________
d/b/a Bluebird Network for Preemption and )
Declaratory Ruling Pursuant to Section 253(d) )
of the Communications Act of 1934 )

DEVELOPMENT OF MICHAEL C. MOREY

1. My name is Michael C. Morey. I am submitting this Declaration in support of
Missouri Network Alliance, LLC d/b/a Bluebird Network’s (“Bluebird”) Petition for
Preemption and Declaratory Ruling Pursuant to Section 253(d) of the Communications Act.

2. I am the President and Chief Executive Officer of Bluebird, a position I have
held for approximately nine years. In my current capacity, I oversee all the operations of
Bluebird, whose revenues and workforce have increased significantly since I assumed my
current role in 2012.

3. I have nearly 40 years of experience in the telecommunications industry.
Prior to joining Bluebird, I held a number of corporate leadership positions in the
telecommunications industry, including Vice President of Wholesale at Appia
Communications; President and Chief Executive Officer at Voxitas, a company I founded;
Senior Vice President of Marketing and Sales at NuVox Communications; Regional Vice
President of Electric Lightwave, Inc.; and National Sales Account Manager at AT&T. I
earned my Bachelor of Science in Architecture from the University of Southern California
in 1980, and my Master of Business Administration in Finance & Management from the Marshall School of Business at the University of Southern California in 1982.

4. Bluebird, headquartered in Columbia, Missouri, is a provider of Internet access, fiber transport, tandem services, and data center services. The company’s customer base includes wholesale and enterprise subscribers in several states across the Midwest, including Missouri. Bluebird owns and operates two data centers and a fiber network that spans 10,000 fiber-route miles, providing connectivity to over 74,000 on-net and near-net buildings.

5. Bluebird is currently in the process of deploying new fiber facilities to serve customers in several communities in Missouri, including Columbia, a city of approximately 121,000 people in central Missouri. Specifically, Bluebird is in the process of adding more than 60 route miles of fiber optic cable within Columbia as part of a larger Midwest expansion project that will provide access to over 500 additional wireless towers and reach across five states and 28 markets in support of 5G network deployments. The Columbia build is expected to be completed by year end 2022.

6. Prior to deploying fiber facilities in Columbia, and as required by Columbia’s Municipal Code (as amended by the 2017 ordinance authorizing rights-of-way use through municipal agreements (“ROW Ordinance”)), Bluebird has sought and obtained ROW use permits for the installation, operation, and maintenance of fiber optic cable within the City’s rights-of-way (“ROW Permits”). Copies of the ROW Ordinance and examples of recent ROW Permits are attached as Attachments 1 and 2, respectively.

7. ROW user fees are assessed based on the physical footprint of the Bluebird network within the municipal ROW, on a per-linear-foot basis. Pursuant to provisions in each ROW Permit, Bluebird is required to pay Columbia an annual ROW user fee of $1.91 per linear
foot. Under pressure from the City, Bluebird entered into a larger ROW Agreement in 2020 that included similar fee amounts. Consistent with this obligation, Bluebird paid the City a combined $74,838 in ROW use fees stemming from 3 ROW Permits in 2020. As a result of its strategic buildout in the City over the next two years, Bluebird will be assessed fees of $392,433 in 2021, and $551,534 in 2022 from its collective permits. In Fiscal Year (FY) 2021, ROW user fees will account for almost a quarter of Bluebirds gross revenue in Columbia. By FY 2022, these fees are expected to account for almost a third.

8. Bluebird is obligated to pay this ROW user fee regardless of the number of customers served by its network or revenues generated. These fee regimes are particularly pernicious in rural areas, where customers are fewer and far between, and it takes substantially more infrastructure to reach them. Moreover, Bluebird incurs increased fee liability from the time Bluebird begins constructing its network, even before any additional customers can be served.

9. Although Bluebird has asked for copies of the agreements with other providers, the City has repeatedly refused to provide these agreements, making it impossible for Bluebird to know with certainty what the terms of these agreements might be.

10. Nevertheless, I understand that a number of Bluebird’s competitors in Columbia are assessed fees based on either their telecommunications services revenues, number of pole attachments, or on video revenue gross receipts. Gross revenue fees are assessed only once services have been successfully installed and invoiced to customers. In 2021, a provider paying a 5 percent gross revenue fee would pay the City $81,480 for the use of the municipal ROW based on Bluebird’s revenue numbers, and would pay $88,155 in 2022. That means that Bluebird will be assessed a fee almost five times greater than it would if it were paying 5 percent
of gross revenue for use of the ROW in 2021, and more than six times greater by 2022.

11. This inequality in ROW fee assessment methodologies has resulted in a competitive imbalance between broadband providers in the city of Columbia, which is only exacerbated by Bluebird’s commitment to extend its network and serve more customers within the City. The farther the Bluebird network reaches the greater the disparity in fee obligations between Bluebird and any competitors that are being assessed gross revenue fees.

12. The unequal treatment extends beyond the amount of the fees levied solely against Bluebird, to the very processes used to secure permits for building new facilities. To construct, operate, and maintain its fiber network, Bluebird is required to obtain ROW Permits for each stage of its network deployment. In order to have a ROW Permit granted, Bluebird must present the permit application to be read at at least two separate City Council meetings. In practice, this process has resulted in extensive delays to Bluebird’s deployment efforts as a result of slow feedback from the City on Bluebird’s applications and procedural idiosyncrasies.

13. For example, when Bluebird submits a permit application, it is reviewed by the Department of Public Works. Once approved as drafted, Bluebird must submit the formal permit request (e.g., three signed copies of the application) to the City Council at least two Thursdays before the next scheduled council meeting (which will be on a Monday)—creating an initial delay of between 12 to 25 days. Therefore, based on the existing City schedule, if Bluebird submitted a permit on April 22 after final approval by Public Works, it would be eligible for first reading on May 17 and second reading on June 7. Then there is an inevitable signature delay before the approved permit is returned to Bluebird and it can begin operations.

14. It is my understanding that Bluebird’s competitors do not have to run this gauntlet and can instead simply get a permit and file as-built maps after construction is complete. Since
Bluebird must build 50-90 days into its service schedule for permit approval (after the Department of Public Works has approved the initial application for submission), it is at a significant competitive disadvantage to providers that do not have this same constraint.

15. In anticipation of its network expansion in Columbia, and the corresponding increase in ROW fees and procedural burdens it would incur as a result, Bluebird attempted to negotiate a more equitable arrangement with the City in 2019. Bluebird proposed that the City assess ROW fees based either on a gross receipts methodology or a per linear foot methodology subject to a reasonable cap. A copy of Bluebird’s alternative fee proposal is provided as Attachment 4.

16. In February 2020, the City notified Bluebird that it was not interested in negotiating a more flexible arrangement. Two months later, the City ended all discussions of alternative fee arrangements by advising that its legal department concluded that Bluebird was required to pay a per linear foot fee. A copy of correspondence with the City is provided as Attachments 5 and 6.

17. To prevent further delay to its network deployment schedule, Bluebird entered into a ROW use agreement with the City in July 2020, which included the same per linear foot fee provision that had been included in all prior ROW Permits (“ROW Agreement”). A copy of the ROW Agreement is attached as Attachment 7.

18. Despite the entering into this ROW Agreement, Bluebird has continued its outreach to the City in an attempt to negotiate a more equitable ROW access arrangement. The City has responded only to request that Bluebird provide information about ROW user fees in other Missouri cities. Bluebird, through counsel, provided the City Council examples from (1) Joplin, Missouri which charges a per linear foot ROW fee capped at $96,000 per year, (2)
Cameron, Missouri which charges a per linear foot ROW fee capped at $48,000, and (3) Jefferson City, Maryville, Springfield, and St. Joseph, Missouri which charge no ROW use fees at all. Email from Bluebird Counsel to Nancy Thompson, City Council attached as Attachment 3.

19. To my knowledge, Bluebird is the only telecommunications provider in the City paying linear foot ROW fees for use of the municipal ROW.

20. Excessive ROW fees not only negatively impact the deployment of fiber and growth of Bluebird’s customer base in Columbia, they also reduce Bluebird’s telecommunications service offerings and service expansion across Missouri by rendering further buildout plans financially unrealistic.

21. Many of Bluebird’s customer agreements in Columbia do not permit Bluebird to pass through these types of ROW fees. This means that Bluebird is obligated to pay annual ROW fees out of its own pocket, which may materially inhibit broadband deployment in Columbia over the long term.

22. Alternatively, Bluebird could seek to recover Columbia’s outsized ROW fee from its customers in surrounding communities outside Columbia. However, providers often price services or facilities at the regional or even national level, meaning that a city like Columbia, which exacts a disproportionately large fee, has the economic effect of forcing providers to pay those fees using general revenue—including revenue derived from other jurisdictions. This is not only prohibitory for the provider, it is fundamentally unfair to the other communities in which the provider operates, because it in essence requires surrounding jurisdictions to subsidize the fees charged by Columbia.
23. If other jurisdictions in the State were to embrace the approach to ROW fees espoused by Columbia, Bluebird would be unable to compete in those areas as well. Bluebird could not reasonably expect to recover excessive ROW fees from its existing customers, nor is it reasonable to think that any new customer would be willing to buy services from Bluebird at a price that would have to reflect the cost of these excessive ROW fees.
I, Michael C. Morey, hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Respectfully submitted,

By: [Signature]

Michael C. Morey  
President and CEO  
Bluebird Network  
2005 W. Broadway Bldg. A  
Columbia, MO 65203

May 10, 2021
ATTACHMENT 1
AN ORDINANCE

amending Chapter 24 of the City Code to add a new Article X pertaining to public utility rights-of-way management; and fixing the time when this ordinance shall become effective.

WHEREAS, the City Council of the City of Columbia, Missouri is authorized under its Charter to regulate public rights-of-way and other aspects of development that may affect the public health, safety or welfare, and is additionally authorized under state law to control such matters to protect the public.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF COLUMBIA, MISSOURI, AS FOLLOWS:

SECTION 1. A new Article X of Chapter 24 of the Code of Ordinances of the City of Columbia, Missouri, is hereby enacted as follows:

ARTICLE X. PUBLIC UTILITY RIGHTS-OF-WAY USERS

Sec. 24-166. Policy and definitions.

(a) It shall be the policy of the city to authorize use of the rights-of-way by public utility rights-of-way users in a manner that minimizes interference to the public use and minimizes the burden on the rights-of-way physically and aesthetically to the fullest extent permitted by law. Any use of the rights-of-way by any person shall be subject to the terms and conditions hereof, in addition to all applicable federal, state or local requirements, and nothing herein shall be enforced or interpreted to contravene any superseding law, including but not limited to RSMo. § 67.1830, et seq., to the extent applicable to any given circumstance.

The right granted to a public utility rights-of-way user to use the rights-of-way is limited to the use authorized in accordance with this article. These rights shall grant non-exclusive use only to that right-of-way user, except where otherwise provided herein or when expressly authorized by the city.

(b) The following definitions shall apply to this section, except that where the definitions set forth in RSMo. § 67.1830, as may be amended, are required by law to apply to specific uses of the rights-of-way, such definitions shall apply to such circumstances.
City means the City of Columbia, Missouri, a municipal corporation and any duly authorized representative.

Director means the director of public works of the City of Columbia, Missouri, or the director’s authorized representative, who shall be the primary city official responsible for administration of this article. The director may delegate any or all of the duties hereunder.

Excavation means any act by which earth, asphalt, concrete, sand, gravel, rock or any other material in or on the ground is cut into, dug, uncovered, removed, or otherwise displaced, by means of any tools, equipment or explosives, except that the following shall not be deemed excavation:

(a) Any de minimis displacement or movement of ground caused by pedestrian or vehicular traffic;

(b) The replacement of utility poles and related equipment at the existing general location that does not involve either a street or sidewalk cut; or

(c) Any other activity which does not disturb or displace surface conditions of the earth, asphalt, concrete, sand, gravel, rock or any other material in or on the ground.

Excavation permit means the authorization required to make excavations for the construction, installation, repair or maintenance of any type of facility within the rights-of-way.

Facilities maintenance means construction, alteration, maintenance, installation, storage, or location of facilities installed below, on or aboveground in the public rights-of-way, other than excavation, that also:

1. Causes or threatens to cause any obstruction or interference to any vehicular or pedestrian traffic or traffic lane in the rights-of-way. It shall exclude any minor obstruction or interference due to minimal operations that are less than two (2) hours in duration and during which the ROW User utilizes safety precautions required by the Manual on Uniform Traffic Control Devices (MUTCD);

Involves temporary or permanent storage of materials or equipment on rights-of-way;

3. Causes or reasonably may cause damage or alteration to any public improvement or vegetation within the rights-of-way; or

4. Involves removal, replacement or alteration to any safety feature or requirement within the rights-of-way, including but not limited to removal of
manhole covers, altering lighting, traffic signage or signals, placement or removal of traffic barricades, etc.

5. Facilities Maintenance shall not include routine or other maintenance on poles, boxes, or other facilities that does not result in or qualify under one or more of the conditions described in subparagraphs 1. through 5. herein.

Facilities maintenance permit means the authorization required to perform facilities maintenance within the rights-of-way other than excavations.

Facility means all or any lines, pipes, wires, cables, conduit facilities, poles, towers, vaults, pedestals, boxes, or other equipment owned or controlled by an entity other than the city.

PSC means the Missouri Public Service Commission.

Pavement means the improved surface of the public way with concrete, asphalt, aggregate or other treated materials.

Person means an individual, person or body natural or corporate.

Public easement means any easement for utilities, access, or other use dedicated to the city or in the name of the city irrespective of whether the easement is held in trust by the city for private and public users, and regardless of whether private utilities or others in addition to or other than the city are actually using the easements.

Public improvement means any public project undertaken by the city for the public good.

Public utility means every cable television or video service provider, every pipeline corporation, gas corporation, electrical corporation, rural electric cooperative, telecommunications company, water corporation, heating or refrigerating corporation or sewer corporation under the jurisdiction of the public service commission; every cooperatively owned or operated utility pursuant to Chapter 394, RSMo.; every street light maintenance district; every privately owned utility; and every other entity, regardless of its form of organization or governance, whether for profit or not, which in providing a public utility type of service for members of the general public, utilizes pipes, cables, conduits, wires, optical cables, or other means of transmission, collection or exchange of communications, information, substances, data, or electronic or electrical current or impulses, in the collection, exchange or dissemination of its product or services through the public rights-of-way.

Restoration means returning the right-of-way surface to its original condition, or better.
Reseller service provider means a person providing service within the city that does not have its own facilities in the rights-of-way, but instead uses the rights-of-way by interconnecting with or using the network elements of another right-of-way user utilizing the rights-of-way, and/or by leasing excess capacity from a right-of-way user.

Rights-of-way or ROW means the area on, below or above a public roadway, highway, street or alleyway in which the city has an ownership interest, and including such adjacent areas of such public ways within such ownership interest as made available by the city for rights-of-way use herein, but not including:

1. Easements obtained by utilities or private easements in platted subdivisions or tracts;

   Railroad rights-of-way and ground utilized or acquired for railroad facilities; or

3. Valves, meters, hydrants, poles, pipes, cables, conduits, wires, optical cables, or other means of transmission, collection or exchange of communications, information, substances, data, or electronic or electrical current or impulses utilized by a utility owned or operated by a governmental entity pursuant to Chapter 91, RSMo., or pursuant to a charter form of government.

ROW authorization or authorization means an authorization to use the rights-of-way granted to a right-of-way user by the city as provided in subsection (a)(1)-(4) of section 24-167 of this article.

Rights-of-way user or ROW-user means a public utility owning, controlling, maintaining, constructing, or installing facilities in the public rights-of-way of the city, unless otherwise expressly exempted by law. The term also shall not include the city; provided that the city shall nevertheless comply with all such requirements applicable to ROW-users to the extent such compliance is otherwise required by applicable state or federal law.

ROW work permit or permit means either an excavation permit, or a facilities maintenance permit, or both and shall constitute a “right-of-way permit.”

Service means that function provided to property adjoining the public rights-of-way from a service provider.

Standard specifications means the City of Columbia Street, Storm Sewer, and Sanitary Specifications and Standards, as may be amended, or other successor documents, on file with the director of public works.

Sec. 24-167. Authorization to use rights-of-way required.

(a) Authorization required. Except when otherwise authorized by applicable law, no ROW-user may construct, maintain, own, control or use facilities in the rights-of-way
without authorization of the city as provided herein, and the director shall not issue a ROW
work permit to any ROW-user that has not obtained such authorization from the city.
Authorization to use the rights-of-way shall be approved on a non-discriminatory basis,
provided that the applicant is in compliance with all applicable requirements. Such
authorization shall be deemed to incorporate the terms of this article and other applicable
laws of the city, except as may be expressly stated in such authorization. Reseller service
providers shall not be required to obtain a franchise or agreement, but shall be required to
register with the city on forms provided by the city prior to providing service. Authorization
for use of the right-of-way by a ROW-user may be provided by the city by the following
means:

(1) Franchise. A franchise shall be required from the city in conformance with all
applicable franchise procedures for any ROW-user seeking to use the rights-
of-way for purposes of providing or distribution of electricity, gas, water,
steam, lighting or sewer public utility service in the city, except where
otherwise provided by law. Such franchise may be granted only after
satisfaction of all applicable procedural or substantive requirements
established by city code or other law.

(2) ROW agreement. A ROW agreement, including but not limited to territorial
agreements, authorizing general use of all right-of-way within the city shall be
required for all ROW-users not set forth in subsection (1), irrespective of any
state licensing, franchise or certificate that may also be held by the ROW-
user, except as otherwise required herein or by law. Such agreements shall
conform to all applicable law, but shall not be subject to procedures
applicable to franchises and the city may, if appropriate, approve form
agreements that may be executed by the director after approval by the city
council.

(3) Registration. Any ROW-user expressly exempt by law from being required to
execute a franchise or ROW agreement shall register with the city on forms
provided by the city, which shall require the ROW-user to specifically identify
the law under which the ROW-user claims such exemption. Registrations
under this article shall be valid for no more than five (5) years.

(4) Use permit. Use permits or use agreements authorizing use of specific
portions of the public rights-of-way that were executed prior to enactment of
this article may constitute authorization under this section, but such
authorization shall be limited to the specific portion of rights-of-way set forth
in the permit or agreement.

(b) Nonexclusive use of right-of-way. The authorization granted by the city under
this article shall be for nonexclusive use of the rights-of-way. The city specifically reserves
the right to grant, at any time, such additional authorizations or other rights to use the
rights-of-way for any purpose and to any other person, including itself, as it deems
appropriate, subject to all applicable law. The granting of an authorization to use the rights-
of-way shall not be deemed to create any property interest of any kind in favor of the ROW-user. Any use of the rights-of-way by a ROW-user shall be deemed subordinate to the primary public use by the city.

(c) Lease required for public lands. Unless otherwise provided, use or installation of any facilities in, on or over public lands of the city not constituting rights-of-way shall be permitted only if a lease agreement or other separate written approval has been negotiated and approved by the city with such reasonable terms and conditions as the city may require.

(d) Transferability. Except as provided in this article or as otherwise required by law, no authorization or ROW work permit may be transferred without the written application to and consent of the city based on the requirements and policies of this article and only after satisfaction of all applicable procedural or substantive requirements established by charter or other law. The city shall not unreasonably withhold its consent to transfer as provided herein, but any costs incurred shall be paid by the applicant.

(e) Application for authorization required.

(1) Application. An application for an authorization shall be presented to the director in writing on such forms provided by the city and shall include all such information as is required by this section. The ROW-user shall be responsible for accurately maintaining the information in the application during the term of any authorization and shall be responsible for all costs incurred by the city due to the failure to provide or maintain as accurate any application information required herein.

(2) Application fee. An application fee for such authorization shall be submitted to the city in the amount of five hundred dollars ($500.00), or as otherwise established by the director, to recover any actual costs anticipated and incurred by the city in reviewing, documenting, or negotiating such agreement or franchise, including reasonable legal fees and costs to review compliance of the applicant and any initial proposed facilities and uses, provided that no costs, if any, shall be included if such inclusion is prohibited by law as to that applicant. If the actual costs are thereafter determined to be less than the application fee, such amount shall be returned to the applicant after written request therefrom; if the actual costs reasonably exceed the application fee, applicant shall, after written notice from the city, pay such additional amount prior to issuance by the city of any final approval. Nothing herein shall be construed to prohibit the city from also charging reasonable compensation for use of the public rights-of-way where such a fee is not contrary to applicable law.
a. Approval of franchise or ROW agreement. After submission by the ROW-user of a duly executed and completed application and application fee, and executed franchise or ROW agreement as may be provided by the director, or as modified by the director in review of the specific circumstances of the application, all in conformity with the requirements of this article and all applicable law, the director shall submit such franchise or agreement to the city council for approval. Upon determining compliance with this article, the city council shall authorize execution of the franchise or agreement (or a modified agreement otherwise acceptable to the city consistent with the purposes of this article), and such executed franchise or agreement shall constitute consent to use the public rights-of-way; provided that nothing herein shall preclude the rejection or modification of any executed franchise or agreement submitted to the city to the extent such applicable law does not prohibit such rejection or modification, including where necessary to reasonably and in a uniform or nondiscriminatory manner reflect the distinct engineering, construction, operation, maintenance, public works or safety requirements applicable to the applicant.

b. Approval of registration application. After submission by the ROW-user of a duly executed and completed registration application form and application fee, the director shall review the registration application form for eligibility and completeness. If the registration application form is complete and the ROW-user is eligible to utilize a registration under this section, the director shall approve such registration.

(f) No cause of action. A ROW-user shall have no damages remedy or monetary recourse whatsoever against the city for any loss, cost, expense, or damage arising from any of the provisions or requirements of any authorization, or from the use of the rights-of-way. Nothing herein shall preclude injunctive or declaratory judgment relief where such relief is otherwise entitled under law and the requirements therefor are otherwise satisfied; provided, however, that the validity of an executed franchise or agreement shall not be subject to challenge.

Sec. 24-168. Right-of-way work permits.

(a) Excavation permit. No person shall make an excavation within the rights-of-way without first obtaining an excavation permit from the director. All excavation permits shall expire after thirty (30) days from the date of issuance, unless otherwise specified in the permit.
(b) Facilities maintenance permit; bulk or individual permits. No person shall perform facilities maintenance within the rights-of-way without first obtaining a facilities maintenance permit from the director, except where such facilities maintenance is expressly authorized by an existing valid excavation permit for the applicable maintenance location. In addition to the conditions set forth in section 24-169 of this article, conditions of a facilities maintenance permit shall be as established in the permit and shall include requirements of notice to the city whenever traffic lanes are to be obstructed, manhole covers or safety barriers removed or altered, temporary or other barricades installed, and other events set forth in the permit. All facilities maintenance permits shall expire after thirty (30) days from the date of issuance, unless otherwise specified in the permit.

(1) Bulk facilities maintenance permits. The director may issue bulk facilities maintenance permits covering multiple projects, types of actions or locations during a period of up to one (1) year that may be thereafter performed during that permit year. Where a bulk permit is proposed, the applicant shall provide sufficient information regarding the types of actions and locations to be approved so as to allow the director to condition and ensure compliance with safety and other regulations herein. When circumstances require, a bulk facilities maintenance permit may be issued by the director for a generally defined area or neighborhood.

(2) Work under bulk facilities maintenance permit. Prior to beginning any work under a bulk facilities maintenance permit, a ROW-user shall provide seventy-two (72) hour’s notice to the director of such work, providing the location of the work, anticipated time and duration of the work, and a description of any traffic and pedestrian safety plans applicable to such work. When advance notice is not practicable under the circumstances, the ROW User may notify the director of such work within 48 hours after commencement of the work.

(c) Emergencies. In case of emergency requiring immediate attention to remedy defects, and in order to prevent loss or damage to persons or property, it shall be sufficient that the person making such excavation or performing such facilities maintenance obtain the necessary permit as soon as possible and may proceed without a permit when such permit cannot be obtained before starting such excavation or facilities maintenance. Notice to the city of the emergency shall be provided at the earliest possible time and a permit shall be obtained as soon as reasonably possible, or as otherwise directed by the city.

(d) Application for ROW work permit. Applications for ROW work permits shall be submitted to the director of public works on forms provided by the city for review for compliance with the provisions of this chapter and all other applicable ordinances, codes, rules, and regulations and such application shall include all such plans and drawings necessary to complete such review. Applications for ROW work permits shall be processed within thirty-one (31) days of submission of a completed application, including
all necessary plans and drawings required by the director, unless such time is extended with written consent of the applicant.

(e) Applicable regulations. All ROW-users and persons obtaining an excavation permit or facilities maintenance permit shall be subject to the “permit conditions” in section 24-169 herein and all rules, regulations, policies, resolutions, and ordinances now or hereafter adopted or promulgated by the city in the reasonable exercise of its police power and are subject to all applicable laws, order, rules and regulations adopted by governmental entities now or hereafter having jurisdiction. In addition, the ROW-users shall be subject to all technical specifications, design criteria, policies, resolutions and ordinances now or hereafter adopted or promulgated by the city in the reasonable exercise of its police power relating to permits and fees, sidewalk and pavement cuts, utility location, construction coordination, surface restoration, and other requirements on the use of the rights-of-way. All persons obtaining a ROW work permit under this article shall provide the director certificates of insurance showing proof of liability coverage for personal injury and property damage, as required herein.

(f) Stop work orders. Any ROW-user found to be working without a permit, failing to provide for required safety and traffic control measures, or otherwise violating any requirements herein, may be directed to stop work until the necessary ROW work permit is obtained, the appropriate measures are implemented, or violations are discontinued or remedied in accordance with this article. Any person who shall continue to work within the rights-of-way after issuance of a stop work order shall be guilty of an offense subject to the penalties set forth in section 1-8 of this code.

Sec. 24-169. Permit conditions.

The following conditions shall apply to all ROW work permits issued under this article, unless specifically stated otherwise in the permit, and all work in the rights-of-way by an ROW-user.

(1) City specifications; applicable codes. All restoration of city ROW caused by excavations and facilities maintenance shall comply with the city standard specifications as may be amended from time to time by the authority of the director establishing such specifications and procedures consistent with the requirements and purposes of this chapter. A ROW-user shall perform all excavations or facilities maintenance in full compliance with all applicable engineering codes adopted or approved by the city and in accordance with applicable statutes of the State of Missouri, and the rules and regulations of the PSC and any other local, state or federal agency having jurisdiction over the parties. A ROW-user shall be responsible for all excavations or facilities maintenance done in the rights-of-way, regardless of by whom the excavation or facilities maintenance is performed.

(2) Permit-specific conditions. Each ROW work permit shall be deemed to incorporate the provisions of this article as permit conditions. The director
may also impose additional reasonable conditions upon the issuance of a ROW work permit and the performance of the ROW-user in order to protect the public health, safety and welfare, to ensure the structural integrity of the rights-of-way, to protect the property and safety of other users of the rights-of-way, and to minimize the disruption and inconvenience to the traveling public. Such reasonable conditions may include, but are not limited to:

a. The amount of excavation or facilities maintenance which may occur at one time and the amount of rights-of-way which may be obstructed during construction;

b. The number or size of conduits or other facilities that may be installed by each ROW-user based on the reasonable needs to ensure that no one ROW-user may unreasonably consume a disproportionate amount of the available rights-of-way to deter competition or deprive the public or others of the reasonable use of the rights-of-way;

c. Posting of an additional or larger performance and maintenance bond for additional facilities, except as otherwise provided in section 24-174 hereof, when the established amount is reasonably determined to be insufficient;

d. The design, location, and nature of all facilities based on nondiscriminatory basis in ensuring the safe, efficient and appropriate use of the ROW consistent with this article and applicable law;

e. Reasonable conditions to effectively manage erosion and sediment control; and

f. Other reasonable conditions regarding the timing, safety precautions, or specific implementation of the specific work proposed.

(3) Responsible for costs. A ROW-user shall be responsible for all reasonable costs borne by the city that are directly associated with a ROW-user’s ROW work permit or use of the rights-of-way thereunder.

(4) Stop work orders. Except in cases of an emergency or with approval of the director, no excavation or facilities maintenance may be done in violation of a stop work order issued by the director if, in the director’s determination, conditions are unreasonable for such excavation or facilities maintenance based on standard engineering and construction practices.

(5) No Interference with right-of-way uses. A ROW-user shall not disrupt rights-of-way such that the natural free and clear passage of water through the gutters or other waterways is interfered with. No person may park private vehicles within or next to the facilities maintenance or excavation area,
except for such areas which may be designated and marked as safe areas for vehicle parking in accordance with an approved traffic control plan.

(6) Responsible for subcontractors. If excavation or facilities maintenance is being done for the ROW-user by another person, a subcontractor or otherwise, the ROW-user shall be responsible for ensuring that the excavation or facilities maintenance performed by said person is consistent with ROW-user’s permit and applicable law and ROW-user shall be responsible for promptly correcting acts or omissions by said person.

(7) Minimum impact required; no interference. The ROW-user shall, in the performance of any excavation or facilities maintenance required for the installation, repair, maintenance, relocation and/or removal of any of its facilities, limit all excavations or facilities maintenance to that necessary for efficient operation and so as not to interfere with other users of the rights-of-way.

(8) Open excavations; street-plate bridging. The ROW-user shall not permit an excavation to remain open or facilities maintenance actions to continue in the rights-of-way longer than is necessary to complete the repair or installation or action, and in no event may an excavation or facilities maintenance remain open or continue beyond the expiration of the ROW work permit or any approved extension. Any excavation left open overnight on any thoroughfare or collector type street shall be securely covered. Unless otherwise approved by the director in writing, all excavations shall be filled in or covered at the end of each working day. The ROW-user assumes the sole responsibility for maintaining proper barricades, plates, safety fencing and/or lights as required from the time of opening of the excavation until the excavation is surfaced and opened for travel. Street plate bridging (SPB) to cover open excavations shall be authorized subject to requirements contained in the standard specifications.

(9) Barricades and safety devices. All excavations and facilities maintenance shall be barricaded in such a manner as to protect both pedestrians and vehicular traffic. Such excavations, facilities maintenance and barricades shall be lighted at night with danger signals in such a manner that all traffic may be warned of the existence and location of such excavations, facilities maintenance and barricades. All traffic control devices shall be in compliance with the current version of the Standard Specifications and the Manual of Traffic Control Devices (MUTCD), unless otherwise agreed to by the city. All surplus excavation materials, tools or supplies at the site of the excavation or facilities maintenance shall be barricaded and lighted at night in the manner described in this section. No open excavation may be left in the pavement area without placing street plates over the opening.
(10) Traffic control. Whenever there is an excavation or facilities maintenance by the ROW-user, the ROW-user shall be responsible for providing adequate traffic control to the surrounding area as determined by the director. In the event the excavation or facilities maintenance is not completed in a reasonable period of time, the ROW-user may be liable for actual damages to the city for delay caused by the ROW-user pursuant to this article.

(11) Hours of activity. Non-emergency excavations or facilities maintenance on arterial and collector streets may not be performed during the hours of 7:00 a.m. to 8:30 a.m. and 4:00 p.m. to 6:00 p.m., in order to minimize disruption of traffic flow. The ROW-user shall perform non-emergency excavations or facilities maintenance on the rights-of-way at such times that will allow the least interference with the normal flow of traffic and the peace and quiet of the neighborhood, and work shall be limited to the hours of 7:00 a.m. to 7:00 p.m. on Mondays through Fridays and 9:00 a.m. to 5:00 p.m. on Saturdays; no such work shall performed on Sundays unless approved by the director.

(12) Location of facilities; undergrounding.
   a. All underground mains and service lines with ancillary appurtenances thereto shall, wherever available, be placed in utility easements adjacent to the rights-of-way. If a utility easement or space within a utility easement is not available, whenever practicable, underground mains and service lines with ancillary appurtenances thereto shall be placed between the curb or pavement edge and sidewalk line in the section of the street known as the parkway. Where the pavement and sidewalk occupy the entire street, the underground utilities shall be located under the sidewalk, unless otherwise directed by the city.
   b. Except as provided herein, all facilities constructed after the date of this article shall be placed underground. Facilities may be located aboveground if approved by the director for good cause or as may otherwise be specifically authorized in a franchise or ROW agreement consistent with law. Aboveground facilities may be installed if approved by the director where alternative underground facilities are not technically or economically feasible, or where the imposition of such additional costs of undergrounding on the ROW-user are precluded by applicable law.

(13) Notice of completion. The ROW-user shall notify the office of the director upon completion of the excavation or facilities maintenance authorized by the permit.

(14) Guarantee of work. Every ROW-user to whom an excavation permit has been granted shall guarantee for a period of two (2) years the restoration of the rights-of-way in the area where such ROW-user conducted an excavation
and performed the restoration. Such ROW-user shall guarantee and pay for
the restoration of the rights-of-way against sagging, buckling, deterioration,
and other premature failures of the restoration.

(15) Tree trimming. A ROW-user shall neither remove, cut, nor damage any
trees, or their roots, in and along the rights-of-way of the city except as
authorized by the city pursuant to an approved tree trimming plan authorized
by an excavation or facilities maintenance permit or otherwise authorized
under section 537.340 of the revised statutes of Missouri. The type and
extent of trimming and pruning shall be in accordance with the requirements
of the city as provided in article II of this chapter.

(16) Inspection of permits. Permits issued shall be available by the ROW-user at
all times at the indicated work site and shall be available for inspection by the
director, other city employees and the public.

Sec. 24-170. Inspection and acceptance of excavations.

(a) When an excavation has been made within the limits of any street, alley or
sidewalk and after the same has been properly backfilled, the ROW-user making the
excavation shall notify the director that the same is ready for final repair. The director, or
the director’s duly authorized agent, shall immediately inspect the same, and if it is found
that such excavation has been properly backfilled, the permit holder shall complete the
restoration of the surface of such street, alley or sidewalk, all in accordance with the city’s
standard specifications for street restoration. The judgment of the director, or the director’s
authorized agent, as to when an excavation has been properly backfilled to permit final
repair shall be conclusive.

(b) After inspection and acceptance of excavation by the director, the permit
holder shall be responsible for restoration of the excavation pursuant to the standard
specifications, to be completed prior to expiration of the permit.

(c) If the excavation or other facilities maintenance is not properly completed and
restored by the expiration of the permit, the city may, in addition to all other remedies,
perform the restoration and completion and obtain reimbursement for such costs from the
permit holder or surety, provided that if the city provides an invoice to the permit holder for
such restoration, such invoice shall be paid in not more than thirty (30) days of such
invoice.

Sec. 24-171. Permit denial.

The director may deny an application for a permit if:

(1) The ROW-user, or any persons acting on the behalf of the ROW-user, fails
to provide all the necessary information requested by the city for managing
the public rights-of-way.
(2) The ROW-user, or any persons acting on the behalf of the ROW-user, including contractors or subcontractors, has a history of non-compliance or permitting non-compliance within the city. For purposes of this section, “history of noncompliance or permitting noncompliance within the city” shall include where the ROW-user, or any persons acting on the behalf of the ROW-user, including contractors or subcontractors, has failed to return the public rights-of-way to its previous condition under a previous permit.

(3) The city has provided the ROW-user with a reasonable, competitively neutral, and nondiscriminatory justification for requiring an alternative method for performing the excavation or facilities maintenance identified in the permit application or a reasonable alternative route that will not result in additional installation expense of more than ten percent (10%) to the ROW-user or a declination of service quality.

(4) The city determines that the denial is necessary to protect the public health and safety, provided that the authority of the city does not extend to those items under the jurisdiction of the PSC, such denial shall not interfere with a ROW-user’s right of eminent domain of private property, and such denials shall only be imposed on a competitively neutral and nondiscriminatory basis. In determining whether denial of a permit application is necessary to protect the public health and safety, the director may consider one or more of the following factors:

   a. The extent to which the rights-of-way space where the permit is sought is available, including the consideration of competing demands for the particular space in the rights-of-way, or other general conditions of the rights-of-way.

   b. The applicability of any ordinance, code provision, or other regulations that affect the location of facilities in the rights-of-way.

   c. The degree and nature of disruption to surrounding communities and businesses that will result from the use of that part of the rights-of-way, including whether the issuance of a permit for the particular dates and/or times requested would cause a conflict or interfere with an exhibition, celebration, festival, or any other event.

(5) The area is environmentally sensitive as defined by state statute or federal law or is a historic district designated by city ordinance.

(6) The failure to comply with applicable city ordinances or any other violation, unsafe conditions, or damage or threatened harm to the rights-of-way or public, except where such circumstance would otherwise not constitute a lawful basis for revocation of a Permit.
(a) Permit fee. Every applicant for a ROW work permit shall pay a fee to the city for such permit in accordance with the fee schedule listed in Chapter 24 of the City Code and on file with the director to reimburse the city for its actual costs incurred and anticipated from the permit, inspections and applicant’s use of the rights-of-way, and including the city’s rights-of-way management costs and as may otherwise be permitted by law.

(b) Supplemental review deposit. Where the ROW work permit application requires investigation, inspection, studies, review or other costs in excess of the permit fee to be incurred by the city to reasonably determine, enforce or condition compliance with the applicable requirements, the director may require, subject to other applicable requirements, that an estimated payment for such additional costs be submitted before the application is deemed complete. Any portion of such additional deposit above actual costs incurred by the city therein shall be returned to the applicant upon completion of the application and project upon written request of the applicant.

Sec. 24-173. Map and location.

Where an application is made for a permit by a ROW-user to install, move, or repair its facilities, the applicant shall submit a map or plat of where the excavation or facilities maintenance is to take place. Such plat or map shall be specific as to location and depth of the excavation or facilities maintenance, as to street address or other location. Such notice shall be provided to the city in writing or by any other means approved by director at least three (3) business days in advance of the work, and shall be subject to denial or modification by the director based on public safety or other the requirements in this chapter.

Sec. 24-174. Liability insurance, performance and maintenance bond requirement.

(a) Insurance. Except as provided in this section, each ROW-user shall provide, at its sole expense, and maintain during the term of an agreement or franchise, commercial general liability insurance with a reputable, qualified, and financially sound company licensed to do business in the State of Missouri, and unless otherwise approved by the city, with a rating by Best of not less than “A,” that shall protect the ROW-user, the city, and the city’s officials, officers, and employees from claims which may arise from operations under an agreement or franchise, whether such operations are by the ROW-user, its officers, directors, employees and agents, or any subcontractors of the ROW-user. This liability insurance shall include, but shall not be limited to, protection against claims arising from bodily and personal injury and damage to property, resulting from all ROW-user operations, products, services or use of automobiles, or construction equipment. The amount of insurance for Single Limit Coverage applying to Bodily and Personal Injury and Property Damage shall be at least $3,000,000.00, but in no event less than the individual and combined sovereign immunity limits established by RSMo. § 537.610 for political
subdivisions; provided that nothing herein shall be deemed to waive the city’s sovereign immunity. An endorsement shall be provided which states that the city is listed as an additional insured and stating that the policy shall not be cancelled or materially modified so as to be out of compliance with the requirements of this section, or not renewed without thirty (30) days’ advance written notice of such event being given to the director. If the person is self-insured, it shall provide the city proof of compliance regarding its ability to self-insure and proof of its ability to provide coverage in the above amounts. The insurance requirements in this section or otherwise shall not apply to a ROW-user to the extent and for such period during an agreement or franchise as ROW-user is exempted from such requirements pursuant to RSMo. § 67.1830(6)(a) and has on file with the director an affidavit certifying that ROW-user has twenty-five million dollars ($25,000,000) in net assets and is otherwise therefore so exempted unless otherwise provided by agreement or franchise. The city reserves the right to waive any and all requirements under this section when deemed to be in the public interest.

(b) Performance and maintenance bond. Except as otherwise may be required by law for ROW-users who have on file with the director an affidavit certifying that the ROW-user has twenty-five million dollars ($25,000,000) in net assets and is otherwise therefore so exempted, the person shall at all times during the term of the permit, and for four (4) years thereafter, maintain a performance and maintenance bond in a form approved by the city counselor. The amount of the bond will be five thousand dollars ($5,000.00) or the value of the restoration as determined by the director, whichever is greater, for a term consistent with the term of the permit plus four (4) additional years, conditioned upon the person’s faithful performance of the provisions, terms and conditions conferred by this chapter. Unless otherwise established in the permit, an annual bond in an amount of fifty thousand dollars ($50,000.00) automatically renewed yearly during this period shall satisfy the requirement of this section. The city shall be entitled to recover under the terms of such bond the full amount of any loss and damage occasioned from violation of the permit or provisions of this article.

(c) Proof of compliance. Unless exempt, a copy of a ROW-user’s Liability Insurance Certificate and Performance and Maintenance Bond must be on file with the director.

Sec. 24-175. Facility relocation.

(a) A ROW-user shall promptly remove, relocate or adjust any facilities located in the rights-of-way or in public easements as directed by the director for a public improvement or as necessary to eliminate a threat to public health or safety. Such removal, relocation or adjustment shall be performed by the ROW-user at the ROW-user’s sole expense without expense to the city, its employees, agents, or authorized contractors and shall be specifically subject to rules, regulations and schedules of the city pertaining to such. The ROW-user shall proceed with the removal, relocation, or adjustment of facilities with due diligence upon notice by the director to begin removal, relocation, or adjustment. Where the ROW-user’s facilities are located in whole or in part in private easements, the ROW-user shall promptly relocate the facilities if the city has agreed to compensate the
ROW-user, through the condemnation, purchase process, or other reasonable means for the cost of relocation of the ROW-user’s facilities.

(b) The city shall provide the ROW-user with written notice of required relocations or adjustments, the anticipated bid letting date, if any, of the public improvement, and notice of the deadline for completion of the relocations or adjustments. The ROW-user shall respond within thirty (30) days with any conflicts and a proposed construction schedule for relocation to be completed in not more than sixty (60) days from date of the notice to ROW-user, unless such other schedule is requested and reasonably approved by the director. If facilities cannot be fully relocated within rights-of-way, the ROW-user shall be responsible at its own cost to obtain alternative locations to timely relocate its facilities.

(c) If any facilities are not relocated in accordance with this section, the city or its contractors may relocate the facilities after notice to the ROW-user. The ROW-user and its surety shall be liable to the city for any and all costs incurred by the city. In the event the ROW-user is required to move its facilities in accordance with this section, any ordinary permit fee shall be waived. Failure to comply with the relocation schedule set by the director shall be a separate violation for each day subject to penalties as provided for violation of this article.

(d) The city retains the right to vacate any rights-of-way within the city. The city may condition vacation of its rights-of-way on granting and recording of an acceptable easement authorizing the city to use the vacated area, or a portion thereof, for specific purposes as may be deemed appropriate in the public interest. The city may also condition such vacation on payment of any relocation costs that may result from such vacation. In the event that the vacation of rights-of-way requires relocation of facilities of a ROW-user, such user shall bear all costs of relocation or removal of its facilities unless otherwise provided by the party initiating the vacation. In no event shall the city be obligated to pay for relocation costs due to a vacation of rights-of-way.

Sec. 24-176. Abandoned and unusable facilities.

(a) A ROW-user owning abandoned facilities in the rights-of-way must remove its facilities and replace or restore any damage or disturbance caused by the removal at its own expense. The director may allow underground facilities or portions thereof to remain in place if the director determines that it is in the best interest of public safety to do so.

(b) At such time, the city may take ownership and responsibility of such vacated facilities left in place; or the person shall provide information satisfactory to the city that such person’s obligations for its facilities in the rights-of-way have been lawfully assumed by another authorized entity; or submit to the city a proposal and instruments for transferring ownership of its facilities to the city. If the person proceeds under this section, the city may, at its option, purchase the equipment, require the person, at its own expense, to remove it, or require the person to post a bond in an amount sufficient to reimburse the city for reasonable anticipated costs to be incurred to remove the facilities.
(c) Facilities of a person who fails to comply with this section, and whose facilities remain unused for two (2) years, shall be deemed to be abandoned, after the city has made a good faith effort to contact the person, unless the city receives confirmation that the person intends to use the facilities.

(d) Abandoned facilities are deemed to be a nuisance. The city may exercise any remedies or rights it has at law or in equity, including, but not limited to:

1. Abating the nuisance;
2. Taking possession and ownership of the facility and restoring it to a useable function; or
3. Requiring the removal of the facility by the person.

Sec. 24-177. Revocation of permits.

The city may, after reasonable notice and an opportunity to cure, revoke a permit granted to a ROW-user, without a fee refund, if one or more of the following occurs:

1. A material violation of a provision of this article or a permit, including the violation of any provision of this article or of any additional provisions of a specific permit;
2. An evasion or attempt to evade any material provision of the permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the city or its citizens;
3. A material misrepresentation of fact in the permit application;
4. A failure to complete excavation or facilities maintenance by the date specified in the permit, unless a permit extension is obtained or unless the failure to complete the excavation or facilities maintenance is due to reasons beyond the ROW-user’s control;
5. A failure to correct, within the time specified by the city, excavation or facilities maintenance that does not conform to applicable national safety codes, industry construction standards, or applicable city code provisions or safety codes that are no more stringent than national safety codes or provisions, upon inspection and notification by the city of the faulty condition.

If a permit is revoked, the ROW-user shall also reimburse the city for the city’s reasonable costs, including administrative costs, restoration costs and the costs of collection and reasonable fees incurred in connection with such revocation.
In addition to any other penalties and remedies for violations that may exist in law or equity, any person that violates any provision of this article shall be subject to such penalties as set forth in section 1-8 of this code and including a fine of up to five hundred dollars ($500.00) per day for each and every day the violation exists or continues.

Secs. 179—185. Reserved.

SECTION 2. The historic areas of the City of Columbia, Missouri as designated by local, state or federal historic registrations, including adjacent rights-of-way, shall be hereby considered historic areas for purposes of this ordinance.

SECTION 3. The portions of this ordinance shall be severable. In the event that any portion of this ordinance is found by a court of competent jurisdiction to be invalid, the remaining portions of this ordinance are valid, unless the court finds the valid portions of this ordinance are so essential and inseparably connected with and dependent upon the void portion that it cannot be presumed that the City Council would have enacted the valid portions without the invalid one, or unless the court finds that the valid portions standing alone are incomplete and are incapable of being executed in accordance with the legislative intent.

SECTION 4. This ordinance shall be in full force and effect from and after May 1, 2018.

PASSED this 20th day of November, 2017.

ATTEST:

Sheela Amin
City Clerk

Brian Treece
Mayor and Presiding Officer

APPROVED AS TO FORM:

Nancy Thompson
City Counselor
ATTACHMENT 2
AN ORDINANCE

authorizing a right of use permit with Missouri Network Alliance, LLC, d/b/a Bluebird Network, for the installation and maintenance of fiber optic cable within portions of certain City rights-of-way; and fixing the time when this ordinance shall become effective.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF COLUMBIA, MISSOURI, AS FOLLOWS:

SECTION 1. The City Manager is hereby authorized to execute a right of use permit with Missouri Network Alliance, LLC, d/b/a Bluebird Network, for the installation and maintenance of fiber optic cable within portions of certain City rights-of-way. The form and content of the right of use permit shall be substantially as set forth in "Attachment A" attached hereto and made a part hereof.

SECTION 2. This ordinance shall be in full force and effect from and after its passage.

PASSED this 14th day of January, 2021

ATTEST:

City Clerk

Mayor and Presiding Officer

APPROVED AS TO FORM:

City Counselor
RIGHT OF USE PERMIT
FIBER OPTIC CABLE

THIS RIGHT OF USE PERMIT ("Permit Agreement") is made effective as of the
date that this Permit Agreement is last signed by both parties by and between the City of
Columbia, Missouri, a municipal corporation (hereinafter "City") and Missouri Network
Alliance, LLC dba Bluebird Network (hereinafter "Company").

WHEREAS, Company is in the business of constructing, owning, operating and
maintaining fiber optic telecommunications facilities; and

WHEREAS, Company desires to construct, own, operate and maintain
interexchange and non-switched local exchange telecommunications facilities for its own
profit through the City of Columbia, Missouri by locating a fiber optic line within street
rights-of-way through residential, commercial and industrial zones; and

WHEREAS, City acquires, owns and maintains public street rights-of-way as an
asset and is authorized by law to manage the public rights-of-way; and

WHEREAS, Company understands and agrees that public street rights-of-ways
cost millions of dollars to acquire and annually maintain and improve and are a unique
and physically limited resource requiring proper management and control to minimize the
expense of the use of such rights-of-way and to insure the public welfare; and

WHEREAS, the public street rights-of-way which Company proposes to use is
currently already occupied by electric and local telephone poles and lines, underground
water, sewer, storm drainage and natural gas lines, all of which provide a benefit to the
public and require routine maintenance necessitating access to and use of the rights-of-
way.

NOW, THEREFORE, the parties agree as follows:

1. ROUTE:
Company is granted a right to occupy and use the public street rights-of-way of the
City for a subterranean fiber optic telecommunications cable and no other purpose
along the following alignment:

West from the east side of North Seventh Street just north of Business Loop 70
East, then south along the east side of North Seventh Street south of Business
Loop 70 East to Wilkes Boulevard, then west along the north side of Wilkes
Boulevard to Washington Avenue, then south along the east side of Washington
Avenue to North Fifth Street, continuing south along the east side of North Fifth
Street to East Broadway, continuing south along the east side of South Fifth Street
to Cherry Street, then east along north side of Cherry Street to South Sixth Street,
then north along the east side of South Sixth Street to the alley located between

01-03-2020

1
East Broadway and Cherry Street. Route is defined on “Exhibit A”, containing 6,167 linear feet.

1.1 LIMITATION OF RIGHTS GRANTED
The right to use City street rights-of-way shall not be construed to create or vest in the Company any easement or ownership or property rights in the rights-of-way and is nonexclusive. The City reserves all rights to grant to other persons similar rights, privileges and authority as set out herein. The City may exercise its rights at any time during this permit. In accepting this permit, the Company understands and agrees that any rights granted herein are subject to the police powers of the City and the Company shall comply with all applicable City ordinances.

2. TERM
The term of this permit shall be for ten years from the date of the execution of this Permit Agreement. The permit shall automatically renew for one additional five year period unless it is terminated by one party giving the other notice of its intent to terminate in writing at least six months prior to the expiration of the current term.

2.1 TERMINATION
The Company may terminate the Permit Agreement at any time upon ninety days written notice to the City. The City may terminate the permit upon six months written notice to Company that the Company is in violation or default of the terms of the permit and Company fails or refuses to cure the violation or default within thirty days of the notice. If, after termination of this permit, the Company fails to remove its equipment, facilities or system from the rights-of-way within sixty days, it shall be deemed abandoned by the Company and shall become City property.

3. LINEAR FOOT FEE
For its use of the street rights-of-way within the City, the Company shall pay the City $1.91 per linear foot annually. The linear distance in feet shall be determined by the length of the corridor occupied by the Company as measured by the City. That distance shall be measured by the City from the Company’s plans as the Company or its subcontractors build, lay, drill, or route fiber optic lines or conduits through the City. The Company shall pay the linear foot fee to the City for all conduit or line in the City rights-of-way during the term of this Permit Agreement regardless of whether the fiber optic lines or conduits are actually used or connected to the Company’s system. The City shall notify the Company of the amount due in writing thirty days prior to the date of payment. At any point in the future, should the Company enter into a franchise agreement with the City and/or be required to pay business license taxes based upon gross receipts, the Company shall be entitled to a credit for any amount paid as business license taxes or gross receipts taxes.

3.1 TIME OF PAYMENT
For linear foot fees during the first year of the permit, the Company shall pay the City $500.00 upon the execution of the Permit Agreement by the City and the remainder shall be due upon completion of the Company’s construction through the City or within nine months of the date of the execution of permit by the City. Thereafter, the company shall pay the linear foot fees annually within thirty days written notice by the City. Gross receipts taxes are to be calculated monthly and due within thirty days after the last day of each month.

3.2 LINEAR FOOT FEE INCREASE UPON PERMIT RENEWAL
Upon the renewal of the permit term for an additional five years, the linear foot fee due the City from the Company shall increase by 7.5%.

3.3 NO ACCORD AND SATISFACTION
All payments due under this permit shall be paid in full by the date due. Acceptance by the City of any amounts tendered shall not be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance be construed as a release of any claim the City may have for additional sums payable under the permit or any other provision of the City’s ordinances.

4. CONDITIONS OF CONSTRUCTION IN THE RIGHT-OF-WAY
The Company agrees that its system shall be designed in accordance with standardized good engineering practices and shall conform when applicable with the National Electric Safety Code and all other applicable federal, state and local laws or regulations. The construction of the systems shall be completed in a workmanlike manner and shall be subject at all times to inspection by the City.

4.1 PLANS
Prior to beginning any drilling, trenching, construction or installation work of any kind within the City rights-of-way, the Company shall provide the City Community Development, Public Works and Water and Light Departments with detailed route maps and engineering or construction plans. No work shall begin until the plans are approved and the work is scheduled with the Community Development Department, Building and Site Development Division. All work shall be done in substantial conformity with the plans as approved and shall at all times comply with applicable ordinances and building codes.

4.2 BUILDING PERMITS AND COSTS
No work shall be performed until all required building or construction permits are obtained and the required fees paid. Actual permit fees may not be assessed at the time the permits are taken out. If such is the case, the Company shall agree to pay the required permit fees after assessment and within thirty days written notice by the City.

The Company shall be solely responsible for all costs associated with the construction within the rights-of-way including the cost of all City permits required for such construction. The parties understand and agree that the various City
permits are intended to reimburse the City's costs in undertaking permit related review and inspections.

4.3 UTILITY LOCATES
No excavation, drilling or trenching shall occur within the rights-of-way until utility locates for all utilities have been performed. The Company shall request locates at least 72 hours in advance of all underground work.

4.4 OBSTRUCTION OF THE RIGHT-OF-WAY
The Company shall not obstruct or block any City street, road, alley or rights-of-way during the construction without first obtaining permission from the City.

4.5 PROTECTION OF STRUCTURES, REPAIR OF THE RIGHT-OF-WAY
The Company shall, at its own cost or expense, protect any and all existing surface or underground structures, fixtures, drainage facilities, sewers, conduits or pipes belonging to the City or any utility previously located within the rights-of-way during construction or maintenance of the Company's system, conduit or fiber optic lines.

Any rights-of-way, streets, roads, surface or underground structures, fixtures, drainage facilities, sewers, utility line facilities, conduits or pipes disturbed or damaged by the Company's work, either during initial construction or future maintenance replacement or relocation of the Company's fiber optic lines or any conduit or system, shall be promptly repaired or restored to the City's standards or the standards of the utility owning the disturbed or damaged facilities at the Company's expense. All right-of-way restoration work shall be guaranteed by the Company for a period for four (4) years.

4.6 SAFETY
The Company shall, at its own expense, take all necessary steps to mark its vehicles and equipment so as to prevent accidents in the rights-of-way. Work sites shall be protected by safety cones, barriers, fences, safety lights or other suitable devices. Employees and subcontractors shall wear appropriate safety equipment. No holes, trenches or excavations shall be left unprotected or open to the public. The Company and its contractors shall observe all applicable and appropriate safety codes or regulations.

4.7 DISTANCE FROM GAS, WATER AND SEWER LINES
No fiber optic lines, conduits, or facilities shall be located closer than two feet clear in any direction from any natural gas, water, sanitary sewer or storm sewer line, conduit, pipeline or structure.

4.8 AS BUILT DIAGRAMS
Upon the end of work on the Company's fiber option line or conduit within the City, the Company shall deliver to the Public Works and Water and Light Departments as built diagrams, drawings or maps of Company's fiber optic lines or conduits locating such lines or conduits in plan and profile views with accurate dimension.
5. CONDITIONS OF CONTINUING USE AND OCCUPANCY
During the term of this permit and any renewal thereof, the Company shall, at its own expense, maintain its lines, conduits and system in a safe condition and so as not to interfere with any other utility or facility in the rights-of-way.

5.1 STREET CUTS
The permit does not grant the Company or any of its employees or contractors the right to cut, break, excavate or damage the streets, sidewalks or railroad of the City without the written consent of the City. The Company shall give the City such notice of the need to make cuts, breaks or excavations in the streets or sidewalks as it requires of any person desiring to do such work, and obtain permits and permission to do such work as required by City Code or regulation. All streets, sidewalks or rights-of-way in any way disturbed by the Company shall be replaced or restored to City Standards.

5.2 EMERGENCY WORK
In the event the Company must make emergency repairs to its lines, the Company shall, as soon as possible, but in not case later than 72 hours, obtain the required permissions or permits as set out herein. All cuts, breaks, and excavations in City streets, sidewalks, or rights-of-way shall be protected by safety cones, fences or barriers adequate to prevent injury to the public.

5.3 RIGHT-OF-WAY SUBLEASE
Nothing in this Permit Agreement shall be construed to give the Company the right to sublease or subdivide its right to use the City's rights-of-way and Company shall have no authority or power to do so or to use the rights-of-way for any purpose other than the operation and maintenance of fiber optic lines, conduits or systems. This section shall not be construed so as to prohibit the Company from leasing or subleasing service over its lines within the City's rights-of-way.

5.4 EMINENT DOMAIN
In the event the City, through its City Council, determines that it is necessary to take Company’s property or property interests in this permit for a public purpose, it may acquire that property through eminent domain.

5.5 CITY'S EMERGENCY AUTHORITY
The City may at any time, in case of disaster or other emergency, as determined by the City Manager, or the City Manager's designee in their discretion, excavate, cut or move any of Company's wires, fiber optic lines or facilities without liability to the Company. The City shall give as much notice of such emergency to the Company as it reasonably can under the circumstances of the emergency.

5.6 NEW LINES
If during the term of this permit, Company desires to relocate part or all of the fiber optic lines allowed by this permit, the Company, at its own cost and expense, shall
submit new plans and obtain new construction permits and submit itself to the City's review process and be governed by all restrictions on construction set out elsewhere in this permit or set out in City Code ordinance or regulation. The City shall recalculate the annual fee of this permit taking into account the new or additional alignment of Company's lines or conduit.

5.7 REALIGNMENT OF LINES AT GOVERNMENTAL REQUEST
If during the term of this permit, Company is requested or directed by any governmental agency to relocate or realign its lines, conduits or facilities, it shall do so at its own cost and expense and under the same conditions as if it were realigning said lines, conduits or facilities for its own benefit. If such realignment or relocation reduces the total linear footage in City rights-of-way, the annual rent under this permit shall be adjusted accordingly. If realignment or relocation at governmental request or directive increases the total linear footage in City rights-of-way, the rental under this permit shall not be increased by the additional footage required by the realignment or relocation.

5.8 The Company's fiber optic lines, conduit or cable shall have a "tone line" or similar technology so as to accurately locate the Company's facilities. The Company agrees to join the Missouri "One Call" system and, upon request by the City or any utility, locate its facilities within 48 hours of the request.

6. INSURANCE
During the term of this permit, Company shall obtain and maintain and shall require all of its permitted contractors or subcontractors to obtain and maintain not less than the following insurance:

6.1 COMMERCIAL GENERAL LIABILITY INSURANCE
Commercial general liability insurance including coverage for operations, independent contractors, products-completed operations, property damage from perils of explosion, collapse or damage to underground utilities, commonly known as XCU coverage, broad form property damage on an "occurrence" basis insuring Company and any other interests, including, but not limited to, any associated or subsidiary companies involved in the operation. The liability insurance shall include contractual liability insurance applicable to Company's obligations under this permit.

The liability insurance shall name the City as an additional insured.

The limits of liability shall be no less than $2,000,000 for injury or death to any one person and no less than $10,000,000 for injury or death to two or more persons as a result of any one occurrence and no less than $2,000,000 for property damage as a result of one occurrence, or in lieu thereof, a combined single limit for bodily injury and property damage of no less than $10,000,000. The liability insurance shall include contractual liability insurance applicable to Company's obligations hereunder.
6.2 COMPENSATION INSURANCE
The Company shall take out and maintain during the life of this contract, Employee’s Liability and Workers’ Compensation Insurance for all of their employees employed at the site of the work, and Company shall require all subcontractors similarly to provide Workers’ Compensation Insurance for all of the latter’s employees unless such employees are covered by the protection afforded by the Company. In case any class of employees engaged in hazardous work under this contract at the site of the work is not protected under Missouri’s Workers’ Compensation Statute, the Company shall provide and shall cause each subcontractor to provide Employee’s Liability Insurance for the protection of their employees not otherwise protected.

6.3 AUTOMOBILE PUBLIC LIABILITY AND PROPERTY
The Company shall maintain during the life of this permit, automobile public liability insurance in the amount of not less than $2,000,000.00 combined single limit for any one occurrence and not less than $150,000.00 per individual, covering bodily injury, including accidental death, and property damage, to protect themselves from any and all claims arising from the use of the Company’s own automobiles, teams and trucks; hired automobiles both on and off the site of the work.

6.4 PROOF OF INSURANCE
The Company shall furnish the City with certificates of insurance which name the City as additional insured in the amounts required by the permit and which require a thirty day mandatory cancellation notice to the City.

6.5. SELF-INSURANCE
During the term of the permit and any renewal, the Company may self-insure any or all of the insurance required herein after furnishing documentation satisfactory to the City that the Company has $25,000,000.00 in net assets and does not violate or default the terms of the permit. Any insurance coverage required over its self-insured retention amount shall be maintained through an excess liability carrier satisfactory to the City which must carry an A-6 or better rating as listed in the A.M. Best or equivalent guide.

7. INDEMNIFICATION AND RESPONSIBILITY
The Company understands and agrees that this Permit Agreement to use the rights-of-way is between the City and Company and no other parties. The Company is responsible for all its employees, agents, officers, contractors and subcontractors and in the event of damage or injury arising out of Company’s use or presence in the rights-of-way, the City is entitled to look to the Company for restitution and compensation and the Company shall not assert that the City must look to any Company employee, officer, agent or any of the Company’s contractors, subcontractors or insurers for such payment, restitution or compensation.
7.1 DAMAGE TO CITY OR OTHER UTILITIES
The Company understands and agrees that the right-of-way route proposed by the Company for the Company’s use is currently through a developed City and contains various combinations of water, electric, natural gas, telephone, sanitary sewer, storm sewer and other utilities. The Company agrees that should the Company’s construction, excavation, drilling or work in the rights-of-way result in damage or injury of any kind to the property or facilities of any of the above listed utilities or any other utility, service or company located in the rights-of-way, the Company shall repair or replace, or have repaired or replaced, the damaged or injured portion of the utility property at its own cost or expense.

7.2 CITY PLAN REVIEW, USE OF CITY MAPS, UTILITY LOCATES
The Company understands and agrees that while the City has existing maps and diagrams of the rights-of-way which may be used by the Company, those maps or diagrams which exist may not be accurate or complete and the City does not guarantee that the maps or diagrams will be adequate for Company’s purposes. The use of City maps or diagrams does not release the Company from responsibility for damage or injury to facilities within the rights-of-way nor transfer any responsibility to the City for such damage or injury. Further, the Company agrees and understands that City utilities and facilities within the rights-of-way may have been in place for many years and completely accurate maps and diagrams may not exist for all of these facilities and some lines, pipes, conduits may not be accurately located by existing location means. The fact that the Company may damage or injure an existing utility while relying upon a City locate shall not relieve the Company from fixing or replacing the damaged utility facility at the Company’s cost or expense.

7.3 CITY PLAN APPROVAL, INSPECTION OR GENERAL SUPERVISION
The Company understands and agrees that submission of plans and maps to the city prior to construction, excavation or drilling, the approval of those plans, routing City inspections and City oversight or general supervision of Company’s work does not make the City responsible or relieve the Company from responsibility for any damage or injury Company’s construction, excavation or drilling may cause to its own property or any utility or facility within the rights-of-way.

7.4 UTILITY WORK WITHIN THE RIGHTS-OF-WAY
The Company understands and agrees that utilities currently within the rights-of-way need maintenance from time to time requiring excavation of the rights-of-way. Further, Company understands and agrees that its fiber optic lines, conduits and facilities will overlay or intermingle with existing utility facilities and will not be segregated or restricted to armored or protected space within the rights-of-way greatly enhancing the risk that any excavation within the rights-of-way will break, damage or injure the Company’s property. The Company agrees that if its fiber optic lines, conduits or facilities are broken, damaged or injured in the normal course of business or during an emergency by utility work within the rights-of-way,
it will repair or replace the same at its cost and expense and that it will not seek restitution or compensation from the same from the City or any utility.

7.5 INDEMNIFICATION BY THE COMPANY
Company, its successors or assigns, shall indemnify, defend and hold harmless to the City, its officers, employees from and against any and all claims, demands, costs, damages, losses, liabilities, joint and/or severable expenses of any nature (including reasonable attorney, accountant, and expert fees), judgments, fines, settlements and other amounts ("Claim"), provided that the Claim is caused in whole or in part by any negligent act or omission of the Company, any subcontractor, anyone directly or indirectly employed by any one of them or anyone for whose acts any of them may be liable, and regardless of whether or not the Claim is caused in part by a party indemnified hereunder, and the Claim is relating to or arising from:

a. Any acts, errors, or omissions of Company, its agents, contractors or employees or any negligence or intentional misconduct thereby in the installation, maintenance or operation of the Company’s fiber optic lines, conduits or facilities, or any breach of any obligation or covenant under this permit, or

b. Any personal injury or death of any person or persons, including, without limitation, agents or employees of the City, and any loss, damage, defacement or destruction of property of the City or its licensees, arising out of the incident to the activities, operations or actions of the Company, its agents, contractors or employees.

7.6 SURVIVAL OF INDEMNIFICATION
The provisions of all the paragraphs in section 7 shall survive the termination of the permit.

8. MISCELLANEOUS

8.1 TAXES
The Company shall be responsible for payment of all personal property and other taxes assessed upon and arising from its presence in or use of City’s rights-of-way. The Company’s payment of the permit fee required here shall not be construed as a payment in lieu of any tax.

8.2 ASSIGNMENT
The Company will not assign or transfer this Permit Agreement without the prior written consent of the City. In considering whether to give its permission to an assignment, the City may consider the assets and reputation of the potential assignee and whether the assignee can fulfill the conditions of this Permit Agreement and whether such an assignment would be injurious to the rights-of-way or be in the best interest of the City. No consent shall be required for an
assignment, sublease or other transfer to a parent, subsidiary or to an entity controlled by the Company, under common control with the Company, or controlling the Company. A proposed assignment to any entity which purchases from the Company the equipment shall be subject to the prior consent of the City with the same conditions set out above.

8.3 DESCRIPTION OF SERVICES
Upon execution of this Permit Agreement, the Company shall provide the City with a description of all services offered by the Company within the City. The Company shall describe each separate type of service offered. Any bundled service or item for which the Company has a separate charge shall be considered a separate service. Annually thereafter, the Company shall provide the City with a description of any new service offered by the Company within the City during the preceding year or anticipated to be offered within the coming year.

8.4 RIGHT OF INSPECTION
The City, or it's designated representative, shall have the right to inspect, examine or audit, during normal business hours and upon reasonable notice, all of Company's documents, records or other information that pertains to the compliance of the terms of this Permit Agreement.

8.5 CONTINUING OBLIGATION AND HOLDOVER
In the even the Company continues to operate all or any part of the system after the revocation of the permit or notice to cease operations from the City, the Company shall continue to comply with all applicable provisions of the permit, including, without limitation, all compensation and other payment provisions of the permit, throughout the period of such continued operation, provided that any such continued operation shall in no way be construed as a waiver, renewal, granting or other extension of the permit, nor as a limitation on the remedies, if any, available to City as a result of such continued operation of the Term, including, but not limited to, damages and restitution.

8.6 WAIVER
Failure of the City to require performance of any term of this permit or to takes steps to enforce the terms of this permit at any time shall not be construed a waiver of the City's right to insist upon full performance of the permit or affect the right of the City to enforce the permit. The actual waiver by the City of any breach of any provision hereof shall not be construed as a waiver of any succeeding breach of the same or any other provision of the permit.

8.7 NOTICE
All notices, requests, demands and other communications required under this permit shall be in writing and are effective when deposited in the U.S. Mail certified and postage prepaid, or when sent via overnight delivery, to the address set forth below or as otherwise provided by law:

01-03-2020
For the Company:

Missouri Network Alliance, LLC
Jack Coles, Director of OSP Engineering
800 NW Chipman Road, Suite 5750
Lee's Summit, MO 64063

And

Missouri Network Alliance, LLC
Director of Business Development
800 NW Chipman Road, Suite 5750
Lee's Summit, MO 64063

For the City:

City of Columbia, Missouri
City Manager
701 East Broadway, 2nd Floor
P.O. Box 6015
Columbia, MO 65205-6015

8.8 SEVERABILITY
If any section, subsection, sentence, clause, phrase, or portion of this permit is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions of this permit.

8.9 ENTIRE AGREEMENT
The Permit Agreement constitutes the entire agreement and understanding of the parties. Any amendments to the Permit Agreement must be in writing and executed by both parties. If, however, the City in the future by legislative action adopts a comprehensive right-of-way ordinance, the terms of that ordinance shall apply to and modify this Permit Agreement to the extent any provision of that comprehensive right-of-way ordinance shall conflict with this Permit Agreement.

8.10 AGREEMENT FOR THE BENEFIT OF THE PARTIES
This Permit Agreement is entered into for the benefit of the parties thereto. Nothing in this Permit Agreement shall be construed to be for the personal or private benefit of any third party.

8.11 GOVERNING LAW
This Permit Agreement shall be construed in accordance with the laws of Missouri.

[SIGNATURES ON FOLLOWING PAGES]

01-03-2020
IN WITNESS WHEREOF, the parties execute this Permit Agreement herein as of the date signed below.

CITY OF COLUMBIA, MISSOURI

By: ______________________________
    John Glascock, City Manager

Date: _____________________________

ATTEST:

By: ______________________________
    Sheela Amin, City Clerk

APPROVED AS TO FORM:

By: ______________________________
    Nancy Thompson, City Counselor

STATE OF MISSOURI )
    ss
COUNTY OF BOONE )

On this _______ day of ________________, 20_____ before me appeared John Glascock, to me personally known, who, being by me duly sworn, did say that he is the City Manager of the City of Columbia, Missouri, and that the seal affixed to the foregoing instrument is the corporate seal of the City and that this instrument was signed and sealed on behalf of the City by authority of its City Council and he acknowledged this instrument to be the free act and deed of the City.

IN TESTIMONY WHEREOF, I have hereunto set by hand and affixed my official seal, at my office in Columbia, Boone County, Missouri, the day and year first written above.

________________________
Notary Public

My Commission expires:

01-03-2020
COMPANY:
Missouri Network Alliance dba
Bluebird Network
(Insert Company Name)

By: [Signature]
Title: VP of Engineering
Date: 12/16/2020

ATTEST: (if corporation)

______________________________
Secretary

STATE OF Missouri )
COUNTY OF Cass ) ss

On this 16th day of December, 2020 before me, a notary public of the State of Missouri appeared Douglas Zerr, the V.P. Engineering of said Bluebird Network and known to be to be the person who executed the within agreement on behalf of said corporation and acknowledged to me that he/she executed the same for the purposes therein stated.

Notary Public

My Commission expires:

6/21/2024

[Notary Public Seal]

ROSEMARY F. HUFFMAN
Notary Public, Notary Seal
State of Missouri
Cass County
Commission # 12412090
My Commission Expires 06-21-2024
## Certificate of Liability Insurance

**Certificate Number:** 20-21 COI  
**Revision Number:**

<table>
<thead>
<tr>
<th>Type of Insurance</th>
<th>Policy Number</th>
<th>Policy Eff (MM/DD/YYYY)</th>
<th>Policy Exp (MM/DD/YYYY)</th>
<th>Limits</th>
</tr>
</thead>
</table>
| Commercial General Liability  
  Claims-Made | 1RU0859977 | 03/01/2020 | 03/01/2021 | $1,000,000 |
  Occur | |
  | |
  Genl. Aggregate Limit Applies Per: |
  Policy | | |
  Project | | |
  Other | | |
| Automobile Liability  
  Any Auto Owned  
  Auto Only | 1RU0859977 | 03/01/2020 | 03/01/2021 | $1,000,000 |
  Sched. Autos Only  
  Non-owned Auto Only | |
  | |
| Umbrella Liability  
  Occur | 1CB0859978 | 03/01/2020 | 03/01/2021 | $10,000,000 |
  Claims-Made | |
  Ded | 10,000 | |
  Retention | | |
| Workers Compensation  
  and Employers' Liability  
  Any Proprietor/Partner/Executive Officer/Member Excluded (Mandatory in N/A)  
  (If yes, describe under Description of Operations below) | UB-7K425585-20-15 | 02/28/2020 | 02/28/2021 | $1,000,000 |
  E.L. Each Accident | | |
  E.L. Disease - EA Employee | $1,000,000 |
  E.L. Disease - Policy Limit | $1,000,000 |

**Description of Operations / Locations / Vehicles (ACORD 101, Additional Remarks Schedule, may be attached if more space is required):**  
City of Columbia, Missouri is added additional insured on the commercial general liability insurance as it relates to right-of-way agreement.  
30 day notice of cancellation will be provided. 10 day notice of cancellation will be provided for cancellation due to non-payment.

---

**Certificate Holder**  
City of Columbia, Missouri Purchasing  
701 East Broadway, 5th Floor  
P.O. Box 8015  
Columbia, MO 65205-8015

**Cancellation**  
Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

**Authorized Representative**  

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AN ORDINANCE

authorizing a right of use permit with Missouri Network Alliance, LLC, d/b/a Bluebird Network, for the installation and maintenance of fiber optic cable within portions of certain City rights-of-way; and fixing the time when this ordinance shall become effective.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF COLUMBIA, MISSOURI, AS FOLLOWS:

SECTION 1. The City Manager is hereby authorized to execute a right of use permit with Missouri Network Alliance, LLC, d/b/a Bluebird Network, for the installation and maintenance of fiber optic cable within portions of certain City rights-of-way. The form and content of the right of use permit shall be substantially as set forth in "Attachment A" attached hereto and made a part hereof.

SECTION 2. This ordinance shall be in full force and effect from and after its passage.

PASSED this 3rd day of May, 2021.

ATTEST:

City Clerk

Mayor and Presiding Officer

APPROVED AS TO FORM:

City Counselor
RIGHT OF USE PERMIT
FIBER OPTIC CABLE

THIS RIGHT OF USE PERMIT ("Permit Agreement") is made effective as of the date that this Permit Agreement is last signed by both parties by and between the City of Columbia, Missouri, a municipal corporation (hereinafter "City") and Missouri Network Alliance, LLC dba Bluebird Network (hereinafter "Company").

WHEREAS, Company is in the business of constructing, owning, operating and maintaining fiber optic telecommunications facilities; and

WHEREAS, Company desires to construct, own, operate and maintain interexchange and non-switched local exchange telecommunications facilities for its own profit through the City of Columbia, Missouri by locating a fiber optic line within street rights-of-way through residential, commercial and industrial zones; and

WHEREAS, City acquires, owns and maintains public street rights-of-way as an asset and is authorized by law to manage the public rights-of-way; and

WHEREAS, Company understands and agrees that public street rights-of-ways cost millions of dollars to acquire and annually maintain and improve and are a unique and physically limited resource requiring proper management and control to minimize the expense of the use of such rights-of-way and to insure the public welfare; and

WHEREAS, the public street rights-of-way which Company proposes to use is currently already occupied by electric and local telephone poles and lines, underground water, sewer, storm drainage and natural gas lines, all of which provide a benefit to the public and require routine maintenance necessitating access to and use of the rights-of-way.

NOW, THEREFORE, the parties agree as follows:

1. ROUTE:
Company is granted a right to occupy and use the public street rights-of-way of the City for a subterranean fiber optic telecommunications cable and no other purpose along the following alignment:

1 revision resulting in less footage, 1 removal and 4 additions to the existing 61 Route Segments listed here and defined on "Exhibit A"

Additional footages listed here 2,202' - .417 mi:

Aspen Worley Rogers (7,288') – Revised – Removes 1938'; E Parkway Dr. (1183') Removed – Removes 1183'; Broadway & Garth (1739') – Added; North Rock Quarry Rd. (3043') – Added; Hinkston Rd (164') – Added; Lee St./Roth St. (377') - Added
1.1 LIMITATION OF RIGHTS GRANTED
The right to use City street rights-of-way shall not be construed to create or vest in
the Company any easement or ownership or property rights in the rights-of-way
and is nonexclusive. The City reserves all rights to grant to other persons similar
rights, privileges and authority as set out herein. The City may exercise its rights
at any time during this permit. In accepting this permit, the Company understands
and agrees that any rights granted herein are subject to the police powers of the
City and the Company shall comply with all applicable City ordinances.

2. TERM
The term of this permit shall be for ten years from the date of the execution of this
Permit Agreement. The permit shall automatically renew for one additional five
year period unless it is terminated by one party giving the other notice of its intent
to terminate in writing at least six months prior to the expiration of the current term.

2.1 TERMINATION
The Company may terminate the Permit Agreement at any time upon ninety days
written notice to the City. The City may terminate the permit upon six months
written notice to Company that the Company is in violation or default of the terms
of the permit and Company fails or refuses to cure the violation or default within
thirty days of the notice. If, after termination of this permit, the Company fails
to remove its equipment, facilities or system from the rights-of-way within sixty days,
it shall be deemed abandoned by the Company and shall become City property.

3. LINEAR FOOT FEE
For its use of the street rights-of-way within the City, the Company shall pay the
City $1.91 per linear foot annually. The linear distance in feet shall be determined
by the length of the corridor occupied by the Company as measured by the City.
That distance shall be measured by the City from the Company’s plans as the
Company or its subcontractors build, lay, drill, or route fiber optic lines or conduits
through the City. The Company shall pay the linear foot fee to the City for all
conduit or line in the City rights-of-way during the term of this Permit Agreement
regardless of whether the fiber optic lines or conduits are actually used or
connected to the Company’s system. The City shall notify the Company of the
amount due in writing thirty days prior to the date of payment. At any point in the
future, should the Company enter into a franchise agreement with the City and/or
be required to pay business license taxes based upon gross receipts, the
Company shall be entitled to a credit for any amount paid as business license taxes
or gross receipts taxes.

3.1 TIME OF PAYMENT
For linear foot fees during the first year of the permit, the Company shall pay the
City $500.00 upon the execution of the Permit Agreement by the City and the
remainder shall be due upon completion of the Company’s construction through
the City or within nine months of the date of the execution of permit by the City.
Thereafter, the company shall pay the linear foot fees annually within thirty days written notice by the City. Gross receipts taxes are to be calculated monthly and due within thirty days after the last day of each month.

3.2 LINEAR FOOT FEE INCREASE UPON PERMIT RENEWAL
Upon the renewal of the permit term for an additional five years, the linear foot fee due the City from the Company shall increase by 7.5%.

3.3 NO ACCORD AND SATISFACTION
All payments due under this permit shall be paid in full by the date due. Acceptance by the City of any amounts tendered shall not be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance be construed as a release of any claim the City may have for additional sums payable under the permit or any other provision of the City's ordinances.

4. CONDITIONS OF CONSTRUCTION IN THE RIGHT-OF-WAY
The Company agrees that its system shall be designed in accordance with standardized good engineering practices and shall conform when applicable with the National Electric Safety Code and all other applicable federal, state and local laws or regulations. The construction of the systems shall be completed in a workmanlike manner and shall be subject at all times to inspection by the City.

4.1 PLANS
Prior to beginning any drilling, trenching, construction or installation work of any kind within the City rights-of-way, the Company shall provide the City Community Development, Public Works and Water and Light Departments with detailed route maps and engineering or construction plans. No work shall begin until the plans are approved and the work is scheduled with the Community Development Department, Building and Site Development Division. All work shall be done in substantial conformity with the plans as approved and shall at all times comply with applicable ordinances and building codes.

4.2 BUILDING PERMITS AND COSTS
No work shall be performed until all required building or construction permits are obtained and the required fees paid. Actual permit fees may not be assessed at the time the permits are taken out. If such is the case, the Company shall agree to pay the required permit fees after assessment and within thirty days written notice by the City.

The Company shall be solely responsible for all costs associated with the construction within the rights-of-way including the cost of all City permits required for such construction. The parties understand and agree that the various City permits are intended to reimburse the City's costs in undertaking permit related review and inspections.

4.3 UTILITY LOCATES
No excavation, drilling or trenching shall occur within the rights-of-way until utility locates for all utilities have been performed. The Company shall request locates at least 72 hours in advance of all underground work.

4.4 OBSTRUCTION OF THE RIGHT-OF-WAY
The Company shall not obstruct or block any City street, road, alley or rights-of-way during the construction without first obtaining permission from the City.

4.5 PROTECTION OF STRUCTURES, REPAIR OF THE RIGHT-OF-WAY
The Company shall, at its own cost or expense, protect any and all existing surface or underground structures, fixtures, drainage facilities, sewers, conduits or pipes belonging to the City or any utility previously located within the rights-of-way during construction or maintenance of the Company’s system, conduit or fiber optic lines. Any rights-of-way, streets, roads, surface or underground structures, fixtures, drainage facilities, sewers, utility line facilities, conduits or pipes disturbed or damaged by the Company’s work, either during initial construction or future maintenance replacement or relocation of the Company’s fiber optic lines or any conduit or system, shall be promptly repaired or restored to the City’s standards or the standards of the utility owning the disturbed or damaged facilities at the Company’s expense. All right-of-way restoration work shall be guaranteed by the Company for a period for four (4) years.

4.6 SAFETY
The Company shall, at its own expense, take all necessary steps to mark its vehicles and equipment so as to prevent accidents in the rights-of-way. Work sites shall be protected by safety cones, barriers, fences, safety lights or other suitable devices. Employees and subcontractors shall wear appropriate safety equipment. No holes, trenches or excavations shall be left unprotected or open to the public. The Company and its contractors shall observe all applicable and appropriate safety codes or regulations.

4.7 DISTANCE FROM GAS, WATER AND SEWER LINES
No fiber optic lines, conduits, or facilities shall be located closer than two feet clear in any direction from any natural gas, water, sanitary sewer or storm sewer line, conduit, pipeline or structure.

4.8 AS BUILT DIAGRAMS
Upon the end of work on the Company’s fiber option line or conduit within the City, the Company shall deliver to the Public Works and Water and Light Departments as built diagrams, drawings or maps of Company’s fiber optic lines or conduits locating such lines or conduits in plan and profile views with accurate dimension.

5. CONDITIONS OF CONTINUING USE AND OCCUPANCY
During the term of this permit and any renewal thereof, the Company shall, at its own expense, maintain its lines, conduits and system in a safe condition and so as not to interfere with any other utility or facility in the rights-of-way.

5.1 STREET CUTS
The permit does not grant the Company or any of its employees or contractors the right to cut, break, excavate or damage the streets, sidewalks or railroad of the City without the written consent of the City. The Company shall give the City such notice of the need to make cuts, breaks or excavations in the streets or sidewalks as it requires of any person desiring to do such work, and obtain permits and permission to do such work as required by City Code or regulation. All streets, sidewalks or rights-of-way in any way disturbed by the Company shall be replaced or restored to City Standards.

5.2 EMERGENCY WORK
In the event the Company must make emergency repairs to its lines, the Company shall, as soon as possible, but in no case later than 72 hours, obtain the required permissions or permits as set out herein. All cuts, breaks, and excavations in City streets, sidewalks, or rights-of-way shall be protected by safety cones, fences or barriers adequate to prevent injury to the public.

5.3 RIGHT-OF-WAY SUBLEASE
Nothing in this Permit Agreement shall be construed to give the Company the right to sublease or subdivide its right to use the City's rights-of-way and Company shall have no authority or power to do so or to use the rights-of-way for any purpose other than the operation and maintenance of fiber optic lines, conduits or systems. This section shall not be construed so as to prohibit the Company from leasing or subleasing service over its lines within the City's rights-of-way.

5.4 EMINENT DOMAIN
In the event the City, through its City Council, determines that it is necessary to take Company's property or property interests in this permit for a public purpose, it may acquire that property through eminent domain.

5.5 CITY'S EMERGENCY AUTHORITY
The City may at any time, in case of disaster or other emergency, as determined by the City Manager, or the City Manager's designee in their discretion, excavate, cut or move any of Company's wires, fiber optic lines or facilities without liability to the Company. The City shall give as much notice of such emergency to the Company as it reasonably can under the circumstances of the emergency.

5.6 NEW LINES
If during the term of this permit, Company desires to relocate part or all of the fiber optic lines allowed by this permit, the Company, at its own cost and expense, shall submit new plans and obtain new construction permits and submit itself to the City's review process and be governed by all restrictions on construction set out
elsewhere in this permit or set out in City Code ordinance or regulation. The City shall recalculate the annual fee of this permit taking into account the new or additional alignment of Company's lines or conduit.

5.7 REALIGNMENT OF LINES AT GOVERNMENTAL REQUEST
If during the term of this permit, Company is requested or directed by any governmental agency to relocate or realign its lines, conduits or facilities, it shall do so at its own cost and expense and under the same conditions as if it were realigning said lines, conduits or facilities for its own benefit. If such realignment or relocation reduces the total linear footage in City rights-of-way, the annual rent under this permit shall be adjusted accordingly. If realignment or relocation at governmental request or directive increases the total linear footage in City rights-of-way, the rental under this permit shall not be increased by the additional footage required by the realignment or relocation.

5.8 The Company's fiber optic lines, conduit or cable shall have a "tone line" or similar technology so as to accurately locate the Company's facilities. The Company agrees to join the Missouri "One Call" system and, upon request by the City or any utility, locate its facilities within 48 hours of the request.

6. INSURANCE
During the term of this permit, Company shall obtain and maintain and shall require all of its permitted contractors or subcontractors to obtain and maintain not less than the following insurance:

6.1 COMMERCIAL GENERAL LIABILITY INSURANCE
Commercial general liability insurance including coverage for operations, independent contractors, products-completed operations, property damage from perils of explosion, collapse or damage to underground utilities, commonly known as XCU coverage, broad form property damage on an "occurrence" basis insuring Company and any other interests, including, but not limited to, any associated or subsidiary companies involved in the operation. The liability insurance shall include contractual liability insurance applicable to Company's obligations under this permit.

The liability insurance shall name the City as an additional insured.

The limits of liability shall be no less than $2,000,000 for injury or death to any one person and no less than $10,000,000 for injury or death to two or more persons as a result of any one occurrence and no less than $2,000,000 for property damage as a result of one occurrence, or in lieu thereof, a combined single limit for bodily injury and property damage of no less than $10,000,000. The liability insurance shall include contractual liability insurance applicable to Company's obligations hereunder.
6.2 COMPENSATION INSURANCE
The Company shall take out and maintain during the life of this contract, Employee's Liability and Workers' Compensation Insurance for all of their employees employed at the site of the work, and Company shall require all subcontractors similarly to provide Workers' Compensation Insurance for all of the latter's employees unless such employees are covered by the protection afforded by the Company. In case any class of employees engaged in hazardous work under this contract at the site of the work is not protected under Missouri's Workers' Compensation Statute, the Company shall provide and shall cause each subcontractor to provide Employee's Liability Insurance for the protection of their employees not otherwise protected.

6.3 AUTOMOBILE PUBLIC LIABILITY AND PROPERTY
The Company shall maintain during the life of this permit, automobile public liability insurance in the amount of not less than $2,000,000.00 combined single limit for any one occurrence and not less than $150,000.00 per individual, covering bodily injury, including accidental death, and property damage, to protect themselves from any and all claims arising from the use of the Company's own automobiles, teams and trucks; hired automobiles both on and off the site of the work.

6.4 PROOF OF INSURANCE
The Company shall furnish the City with certificates of insurance which name the City as additional insured in the amounts required by the permit and which require a thirty day mandatory cancellation notice to the City.

6.5 SELF-INSURANCE
During the term of the permit and any renewal, the Company may self-insure any or all of the insurance required herein after furnishing documentation satisfactory to the City that the Company has $25,000,000.00 in net assets and does not violate or default the terms of the permit. Any insurance coverage required over its self-insured retention amount shall be maintained through an excess liability carrier satisfactory to the City which must carry an A-6 or better rating as listed in the A.M. Best or equivalent guide.

7. INDEMNIFICATION AND RESPONSIBILITY
The Company understands and agrees that this Permit Agreement to use the rights-of-way is between the City and Company and no other parties. The Company is responsible for all its employees, agents, officers, contractors and subcontractors and in the event of damage or injury arising out of Company's use or presence in the rights-of-way, the City is entitled to look to the Company for restitution and compensation and the Company shall not assert that the City must look to any Company employee, officer, agent or any of the Company's contractors, subcontractors or insurers for such payment, restitution or compensation.

7.1 DAMAGE TO CITY OR OTHER UTILITIES
The Company understands and agrees that the right-of-way route proposed by the Company for the Company's use is currently through a developed City and contains various combinations of water, electric, natural gas, telephone, sanitary sewer, storm sewer and other utilities. The Company agrees that should the Company's construction, excavation, drilling or work in the rights-of-way result in damage or injury of any kind to the property or facilities of any of the above listed utilities or any other utility, service or company located in the rights-of-way, the Company shall repair or replace, or have repaired or replaced, the damaged or injured portion of the utility property at its own cost or expense.

7.2 CITY PLAN REVIEW, USE OF CITY MAPS, UTILITY LOCATES
The Company understands and agrees that while the City has existing maps and diagrams of the rights-of-way which may be used by the Company, those maps or diagrams which exist may not be accurate or complete and the City does not guarantee that the maps or diagrams will be adequate for Company's purposes. The use of City maps or diagrams does not release the Company from responsibility for damage or injury to facilities within the rights-of-way nor transfer any responsibility to the City for such damage or injury. Further, the Company agrees and understands that City utilities and facilities within the rights-of-way may have been in place for many years and completely accurate maps and diagrams may not exist for all of these facilities and some lines, pipes, conduits may not be accurately located by existing location means. The fact that the Company may damage or injure an existing utility while relying upon a City locate shall not relieve the Company from fixing or replacing the damaged utility facility at the Company's cost or expense.

7.3 CITY PLAN APPROVAL, INSPECTION OR GENERAL SUPERVISION
The Company understands and agrees that submission of plans and maps to the City prior to construction, excavation or drilling, the approval of those plans, routing City inspections and City oversight or general supervision of Company's work does not make the City responsible or relieve the Company from responsibility for any damage or injury Company's construction, excavation or drilling may cause to its own property or any utility or facility within the rights-of-way.

7.4 UTILITY WORK WITHIN THE RIGHTS-OF-WAY
The Company understands and agrees that utilities currently within the rights-of-way need maintenance from time to time requiring excavation of the rights-of-way. Further, Company understands and agrees that its fiber optic lines, conduits and facilities will overlay or intermingle with existing utility facilities and will not be segregated or restricted to armored or protected space within the rights-of-way greatly enhancing the risk that any excavation within the rights-of-way will break, damage or injure the Company's property. The Company agrees that if its fiber optic lines, conduits or facilities are broken, damaged or injured in the normal course of business or during an emergency by utility work within the rights-of-way, it will repair or replace the same at its cost and expense and that it will not seek restitution or compensation from the same from the City or any utility.
7.5 INDEMNIFICATION BY THE COMPANY
Company, its successors or assigns, shall indemnify, defend and hold harmless to the City, its officers, employees from and against any and all claims, demands, costs, damages, losses, liabilities, joint and/or severable expenses of any nature (including reasonable attorney, accountant, and expert fees), judgments, fines, settlements and other amounts ("Claim"), provided that the Claim is caused in whole or in part by any negligent act or omission of the Company, any subcontractor, anyone directly or indirectly employed by any one of them or anyone for whose acts any of them may be liable, and regardless of whether or not the Claim is caused in part by a party indemnified hereunder, and the Claim is relating to or arising from:

a. Any acts, errors, or omissions of Company, its agents, contractors or employees or any negligence or intentional misconduct thereby in the installation, maintenance or operation of the Company's fiber optic lines, conduits or facilities, or any breach of any obligation or covenant under this permit, or

b. Any personal injury or death of any person or persons, including, without limitation, agents or employees of the City, and any loss, damage, defacement or destruction of property of the City or its licensees, arising out of the incident to the activities, operations or actions of the Company, its agents, contractors or employees.

7.6 SURVIVAL OF INDEMNIFICATION
The provisions of all the paragraphs in section 7 shall survive the termination of the permit.

8. MISCELLANEOUS

8.1 TAXES
The Company shall be responsible for payment of all personal property and other taxes assessed upon and arising from its presence in or use of City's rights-of-way. The Company's payment of the permit fee required here shall not be construed as a payment in lieu of any tax.

8.2 ASSIGNMENT
The Company will not assign or transfer this Permit Agreement without the prior written consent of the City. In considering whether to give its permission to an assignment, the City may consider the assets and reputation of the potential assignee and whether the assignee can fulfill the conditions of this Permit Agreement and whether such an assignment would be injurious to the rights-of-way or be in the best interest of the City. No consent shall be required for an assignment, sublease or other transfer to a parent, subsidiary or to an entity controlled by the Company, under common control with the Company, or
controlling the Company. A proposed assignment to any entity which purchases from the Company the equipment shall be subject to the prior consent of the City with the same conditions set out above.

8.3 DESCRIPTION OF SERVICES
Upon execution of this Permit Agreement, the Company shall provide the City with a description of all services offered by the Company within the City. The Company shall describe each separate type of service offered. Any bundled service or item for which the Company has a separate charge shall be considered a separate service. Annually thereafter, the Company shall provide the City with a description of any new service offered by the Company within the City during the preceding year or anticipated to be offered within the coming year.

8.4 RIGHT OF INSPECTION
The City, or its designated representative, shall have the right to inspect, examine or audit, during normal business hours and upon reasonable notice, all of Company's documents, records or other information that pertains to the compliance of the terms of this Permit Agreement.

8.5 CONTINUING OBLIGATION AND HOLDOVER
In the even the Company continues to operate all or any part of the system after the revocation of the permit or notice to cease operations from the City, the Company shall continue to comply with all applicable provisions of the permit, including, without limitation, all compensation and other payment provisions of the permit, throughout the period of such continued operation, provided that any such continued operation shall in no way be construed as a waiver, renewal, granting or other extension of the permit, nor as a limitation on the remedies, if any, available to City as a result of such continued operation of the Term, including, but not limited to, damages and restitution.

8.6 WAIVER
Failure of the City to require performance of any term of this permit or to takes steps to enforce the terms of this permit at any time shall not be construed a waiver of the City's right to insist upon full performance of the permit or affect the right of the City to enforce the permit. The actual waiver by the City of any breach of any provision hereof shall not be construed as a waiver of any succeeding breach of the same or any other provision of the permit.

8.7 NOTICE
All notices, requests, demands and other communications required under this permit shall be in writing and are effective when deposited in the U.S. Mail certified and postage prepaid, or when sent via overnight delivery, to the address set forth below or as otherwise provided by law:
For the Company: Missouri Network Alliance, LLC
Jack Coles, Director of OSP Engineering
800 NW Chipman Road, Suite 5750
Lee's Summit, MO 64063

For the City: City of Columbia, Missouri
City Manager
701 East Broadway, 2nd Floor
P.O. Box 6015
Columbia, MO 65205-6015

8.8 SEVERABILITY
If any section, subsection, sentence, clause, phrase, or portion of this permit is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions of this permit.

8.9 ENTIRE AGREEMENT
The Permit Agreement constitutes the entire agreement and understanding of the parties. Any amendments to the Permit Agreement must be in writing and executed by both parties. If, however, the City in the future by legislative action adopts a comprehensive right-of-way ordinance, the terms of that ordinance shall apply to and modify this Permit Agreement to the extent any provision of that comprehensive right-of-way ordinance shall conflict with this Permit Agreement.

8.10 AGREEMENT FOR THE BENEFIT OF THE PARTIES
This Permit Agreement is entered into for the benefit of the parties thereto. Nothing in this Permit Agreement shall be construed to be for the personal or private benefit of any third party.

8.11 GOVERNING LAW
This Permit Agreement shall be construed in accordance with the laws of Missouri.

[SIGNATURES ON FOLLOWING PAGES]
IN WITNESS WHEREOF, the parties execute this Permit Agreement herein as of the date signed below.

CITY OF COLUMBIA, MISSOURI

By: __________________________ 
John Glascock, City Manager

Date: __________________________

ATTEST:

By: __________________________ 
Sheela Amin, City Clerk

APPROVED AS TO FORM:

By: __________________________ 
Nancy Thompson, City Counselor

STATE OF MISSOURI )
 ) ss
COUNTY OF BOONE )

On this ________ day of __________________, 20________ before me appeared John Glascock, to me personally known, who, being by me duly sworn, did say that he is the City Manager of the City of Columbia, Missouri, and that the seal affixed to the foregoing instrument is the corporate seal of the City and that this instrument was signed and sealed on behalf of the City by authority of its City Council and he acknowledged this instrument to be the free act and deed of the City.

IN TESTIMONY WHEREOF, I have hereunto set by hand and affixed my official seal, at my office in Columbia, Boone County, Missouri, the day and year first written above.

___________________________
Notary Public

My Commission expires:

02-04-2021
COMPANY:

**Blue Bird Network**
(Insert Company Name)

By: [Signature]

Title: [Director, OSP, ENG]

Date: 4-8-2021

ATTEST: (if corporation)

Secretary

STATE OF **Missouri**

COUNTY OF **Boone**

On this 8th day of April, 2021 before me, a notary public of the State of Missouri appeared

[Signature]

Jack Coles, the Director of Engineering OSP of said Bluebird Network and known to be to be the person who executed the within agreement on behalf of said corporation and acknowledged to me that he/she executed the same for the purposes therein stated.

[Signature]

Notary Public

My Commission expires:

ANDREA LANG
Notary Public, Notary Seal
State of Missouri
Boone County
Commission # 19207216
My Commission Expires 04-06-2023

02-04-2021
Overall Current Project Footage = 157,173' = 29.768 mi
Revised footage 159,335' = 30.177 mi
Total addition 2,202'
# CERTIFICATE OF LIABILITY INSURANCE

**THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFER NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED THE INSURED BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE INSURING 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).

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**PRODUCER**

<table>
<thead>
<tr>
<th>NAME</th>
<th>Joanna Mohn</th>
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<tbody>
<tr>
<td>PHONE</td>
<td>(402) 434-7200</td>
</tr>
<tr>
<td>FAX</td>
<td>(402) 434-7272</td>
</tr>
<tr>
<td>ADDRESS</td>
<td><a href="mailto:jmohn@unitelinsurance.com">jmohn@unitelinsurance.com</a></td>
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**INSURE**

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<td>03/01/2021</td>
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**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES**

City of Columbia, Missouri is included as an additional insured with respect to the general liability and auto liability insurance as it relates to right-of-way agreements. Umbrella policy provides for additional uninsured coverage on General & Automobile policies.

30 days notice of cancellation will be provided. 10 day notice of cancellation will be provided for cancellation due to non-payment.

---

**CERTIFICATE HOLDER**

City of Columbia, Missouri Purchasing
701 East Broadway, 5th Floor
P.O. Box 0155
Columbia
MO 65205-0155

**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

---

© 1988-2015 ACORD CORPORATION. All rights reserved.
From: Turner, Joshua <jturner@wiley.law>
Sent: Thursday, April 8, 2021 3:56 PM
To: Nancy Thompson <Nancy.Thompson@como.gov>
Cc: Jorgen Schlemeier <jorgen@molobby.com>; Sue Schaefer <Sue.Schaefer@bluebirdnetwork.com>
Subject: RE: Bluebird Network

Dear Ms. Thompson,

We appreciate Columbia’s commitment to broadband deployment and to encouraging robust 5G buildout. And we welcome the steps that the City has taken in that regard.

However, the fact remains that the City’s substantial fees for ROW use have discouraged Bluebird over the years from deploying more fiber in the City. We are hopeful that this barrier can be eliminated if we can reach an agreement on a reasonable ROW fee methodology.

To your question about other jurisdictions, Bluebird is subject to a patchwork of ROW regulations and fee demands in other cities. We do not necessarily think any of these agreements would serve as a good model outside of those jurisdictions, nor would we concede that any of the fee provisions in the jurisdictions that impose them are permissible under federal law.

However, it is important to note that where these other jurisdictions impose ROW fees based on the per linear feet of Bluebird’s network, the fees are subject to a cap. For example, while Cameron charges $1.80 per mile per year (compared to $1.91 in Columbia), Cameron caps its annual ROW fee at $48,000. Similarly, Joplin charges $1.92 per foot per year but caps that annual fee at $96,000. Thus, the ROW fees charged by Columbia – which are not subject to a cap – are substantially higher than those we pay in any of the jurisdictions in question.

Moreover, because of our smaller footprint in Cameron and Joplin, Bluebird has not reached the cap amount in either jurisdiction; in fact, Bluebird pays substantially less than the cap in both jurisdictions. As a result, the $74,838 in fees that we paid in Columbia last year (before our network expansion) was $10,000 more than we paid in Joplin, the next highest of those cities, and nearly three times the amount we paid to Cameron ($25,452). And it is important to note that the revenue derived from fiber networks does not scale linearly, meaning that each additional foot of fiber optic cable in the right of way does not necessarily result in additional revenue. Instead, revenue is often derived on a per node or per connection basis, meaning that whether it takes 250, 2,500, or 25,000 feet of fiber to reach a particular end point, the revenue is often the same. This makes it particularly difficult to build in a community that imposes an uncapped linear foot fee as Columbia proposes to do.

As you can see, the proposal we’ve suggested would still place Columbia at the top of the list when it comes to ROW compensation, though it would substantially reduce the barrier Bluebird currently faces from the uncapped fees that the City charges now.
Finally, on the subject of encouraging faster broadband deployment, there are other actions that the City can take in addition to reasonable ROW fees. We currently experience lengthy lead times for approval in Columbia for permits; indeed, we have a permit pending now that was submitted in late January and is scheduled for a second hearing in early May. A four-month delay in permitting is substantially longer than we experience in other cities, which can generally approve permits in a few days and do not require multiple council hearings, the way that Columbia does. We hope we can work with you to speed this process up, as well.

Please let me know if you have any additional questions, or if you would like to set up a time to discuss further.

Joshua S. Turner
Attorney at Law
jtturner@wiley.law
Wiley Rein LLP • 1776 K Street NW • Washington, DC 20006
o:  202.719.4807 • m:  703.989.8904
Download V-Card | wiley.law | Bio

From: Nancy Thompson <Nancy.Thompson@como.gov>
Sent: Thursday, April 1, 2021 7:16 PM
To: Turner, Joshua <jtturner@wiley.law>
Cc: Jorgen Schlemeier <jorgen@molobby.com>
Subject: Re: Bluebird Network

I am in receipt of your email. The City of Columbia wants to encourage the development of a robust fiber network and 5G deployment on a universal basis to all of its citizens. The City has been working cooperatively with Bluebird since 2012 to establish a reliable network within the city.

In order to evaluate your request, could you please provide additional information regarding the fees currently paid by Bluebird in the following Missouri cities:

- Joplin,
- Cameron,
- St. Joseph,
- Maryville,
- Jefferson City, and
- Springfield.

If you would also provide copies of any agreements the company has entered into with these municipalities, it would be helpful in preparing an expedited response to your inquiry.

I look forward to working with you.

Nancy Thompson
City Counselor
City of Columbia Law Department
On Wed, Mar 24, 2021 at 7:20 PM Turner, Joshua <jturner@wiley.law> wrote:

Ms. Thompson,

I’m attaching correspondence regarding Bluebird Network and the City of Columbia’s rights of way ordinance. Please feel free to reach out to me if you have any questions or would like to discuss.
March 24, 2021

VIA ELECTRONIC MAIL

Nancy Thompson
City Counselor
City of Columbia
701 E Broadway
Columbia, Missouri, 65201

Re: Missouri Network Alliance, LLC d/b/a Bluebird Network

Dear Ms. Thompson,

Our law firm represents Missouri Network Alliance, LLC d/b/a Bluebird Network (“Bluebird”), which has asked that I follow up with you about the City of Columbia’s (“City” or “Columbia”) rights of way (“ROW”) ordinance and the fees demanded by Columbia for Bluebird’s use of the ROW. Bluebird remains concerned about Columbia’s decision to impose a $1.91 per linear foot fee for access to the City’s ROW. This fee bears no relationship to the actual costs imposed on the City by Bluebird’s use of the ROW, and is fundamentally discriminatory because other, similarly situated entities pay under an entirely different fee structure based on gross revenues. In short, Columbia’s proposed ROW fee is unlawful, and Bluebird will have no choice but to seek appropriate relief if the parties cannot reach an alternative arrangement.

Bluebird has successfully challenged unlawful ROW fees that other Missouri municipalities have sought to impose. For example, in response to a petition filed by Bluebird, the Federal Communications Commission (“FCC”) issued the attached Declaratory Ruling finding that ROW fee arrangements imposed by Cameron, Maryville, and St. Joseph, Missouri violated federal law. The FCC emphasized that it “has long held that a state or local legal requirement that ‘materially inhibits or limits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment’ effectively prohibits the provision of telecommunications services, thereby contravening Congress’ intent to promote the deployment of lower cost, higher quality services to consumers by opening telecommunications markets to competition.” Declaratory Ruling at 1-2.

In that case, the ROW fees that the cities sought to impose on Bluebird would have effectively doubled the cost of ROW access. The FCC determined “that such a dramatic increase in costs for Bluebird’s use of the Network would impose a financial burden that effectively prohibits Bluebird from providing its services in violation of section 253(a) of the Telecommunications Act.” Declaratory Ruling at 2.

Columbia’s ROW fee will have a far greater financial impact on Bluebird than the fees at issue in the Declaratory Ruling. Bluebird annual ROW fees in Columbia were approximately $80,000 at the beginning of 2020; with Bluebird’s network expansion to support customer growth in
Columbia, and under Columbia's ROW arrangement, Bluebird would owe the City approximately $635,000 in ROW fees, an increase of nearly 800 percent. At that level, Bluebird’s ROW fees in Columbia would swallow nearly 70 percent of Bluebird’s gross revenue from the services it provides to customers in the City, far in excess of an amount that would permit Bluebird to continue providing service, let alone keep expanding its facilities.

While federal law permits local jurisdictions to recover “fair and reasonable compensation” for the use of the ROW, the FCC has made clear that, “to constitute fair and reasonable compensation under section 253(c), fees should be, at the very least, related to the actual use of rights of way.” Declaratory Ruling, at 14, n. 106 (citation omitted, emphasis in original). The $1.91 per linear foot per year charge vastly exceeds the type of permissible compensation that the FCC described in the Declaratory Ruling, which would cover activities like “coordination of construction schedules, determination of insurance, bonding and indemnity requirements, establishment and enforcement of building codes, and keeping track of the various systems using the rights-of-way to prevent interference between them.” Id. at 13-14. In fact, Section 4.2 of the Right of Use Permit executed by Columbia makes plain that the City’s costs for “permit related review and inspections” are covered by various building and construction fees that are separate and apart from the $1.91 linear foot fee, and Section 4.5 obligates Bluebird at its own expense to “protect any and all existing surface or underground structures, fixtures, drainage facilities, sewers, conduits or pipes belonging to the City or any utility previously located within the rights-of-way during construction or maintenance” of its system, and to “repair or restore[]” any City- or third-party-owned “rights-of-way, streets, roads, surface or underground structures, fixtures, drainage facilities, sewers, utility line facilities, conduits or pipes disturbed or damaged by the Company’s work, either during initial construction or future maintenance replacement or relocation of the Company’s fiber optic lines or any conduit or system.” Section 5.7 expressly refers to the ROW fee as “annual rent,” leaving no doubt that it is not intended to be compensatory of the City’s costs.

The FCC also noted that federal law requires any compensation for ROW use to be “levied in a way that is ‘competitively neutral,’” and found that discriminatory application of the cities’ compensation requirements was a further basis for holding that these requirements are not permissible under the federal Communications Act. Columbia’s ROW fee suffers from the same defect, in that it applies to some ROW users (such as Bluebird), while other ROW users are assessed entirely different, gross revenue-based fees (which are equally unrelated to actual ROW use).

In an October 23, 2020 letter, Bluebird proposed an alternative ROW fee structure in order to facilitate the company’s ability to continue deploying its facilities in the City while permitting the City to receive an increased annual ROW fee above the amounts that were due under prior agreements between the City and Bluebird. Bluebird remains committed to working with Columbia to devise an approach that is workable for both parties.

However, time is of the essence. If the parties cannot reach an agreement and the City seeks to impose its proposed ROW fees, Bluebird will be forced to seek appropriate relief from the FCC.

1 Various other provisions are intended to insulate Columbia from any other costs that may be imposed by Bluebird’s presence in the ROW, including Sections 6 (covering insurance requirements), 7.1 (requiring Bluebird repair any City utilities damaged by Bluebird), 7.4 (requiring that Bluebird bear the costs for repairing any of its own facilities damaged by Columbia’s utility work in the ROW), and 7.5 (indemnifying Columbia for various claims caused by Bluebird and its employees, agents or contractors).
We would appreciate an indication of whether such an agreement is possible by April 1, 2021; please let us know by then whether you are interested in trying to come to this kind of resolution.

In Bluebird’s view, the matter at issue here can and should still be resolved amicably and expeditiously without FCC intervention. Bluebird’s proposed ROW fee structure is intended to provide a win-win outcome, in which Bluebird would be permitted to bring new communications services to Columbia and the City would be ensured of no less than $100,000 in ROW fees. Bluebird understands the importance of ROW fees to the City and looks forward to finding a resolution that is fair to both parties.

We look forward to hearing from you soon.

Best regards,

/s/ Joshua Turner

Joshua S. Turner

cc. Hon. Brian Treece, Mayor
ATTACHMENT 4
October 23, 2020

Dear Mayor Treece:

Bluebird appreciates being given time to address our permit applications at the City Council meeting on October 19, 2020. We also thank the Council for approving those permits, which will allow Bluebird to begin building fiber to new locations in the City that will support both enterprise customers and 5G wireless technologies.

However, as Bluebird has mentioned previously, the right-of-way (ROW) fees that Bluebird must pay under the City of Columbia’s ordinance are an obstacle to the company’s ability to deploy its facilities in the City. Under the current per linear foot methodology, Bluebird will be paying ROU fees that are excessive as compared to the company’s expected actual revenues for services provided in Columbia, making it uneconomic for Bluebird to compete.

Bluebird understands that the City incurs costs in maintaining the public rights-of-way and is willing to work with the city to come up with an approach that is workable for both Columbia and Bluebird. Instead of the per linear foot model, Bluebird proposes to pay ROW fees in an amount equal to three percent (3%) of Bluebird’s gross annual revenues from originating and terminating transport and dark fiber services provided in Columbia or one hundred thousand dollars ($100,000.00), whichever is greater. The $100,000 amount is approximately $20,000 more in ROW fees that Bluebird historically has paid to the City, which ensures that the City will not receive less in ROW fees than Bluebird is currently paying. It also would ensure that, to the extent Bluebird enjoys increased sales of transport and dark fiber services in Columbia, the City would benefit accordingly.

In Bluebird’s view, this approach is a win-win. It would allow Bluebird to bring new communications services to Columbia and would permit the City to receive increased annual ROW fees, while ensuring that City’s receipt of ROW fees from Bluebird would not be less than $100,000.

It also would avoid a potential scenario under which the City could only recover ROW fees from Bluebird that are commensurate with the City’s ROW costs, which are unlikely to be anywhere close to $100,000. As you know, Bluebird has filed a petition with the Federal Communications Commission requesting preemption of the ordinances of several Missouri cities that seek to recover duplicative, non-cost-based ROW fees. And, various lawsuits have been filed against other cities that attempt to use ROW fees as revenue-generating schemes, including, for example, a complaint recently filed in federal court in New York challenging the City of Rochester’s ROW fees. A ROW agreement between Bluebird and the City consistent with the approach outlined above would avoid these litigation risks.

Bluebird has retained legal counsel who specializes in ROW fees and who is available to discuss Bluebird’s proposed approach with you and the City’s attorneys. Bluebird understands the importance of ROW fees to the City and looks forward to finding a ROW fee resolution that is fair to both parties.

Thank you for your time, and I look forward to hearing from you soon.

Sue Schaefer
ATTACHMENT 5
Thanks Steve. I would think they have gross receipts based agreement as well, which may be closer to what we would be providing.

I appreciate you gathering the information.

Sue Schaefer, Director, Business Development
Bluebird Network LLC | 800 NW Chipman Road, Suite 5750, Lee’s Summit, MO 64063
Office: 816.237.2119 | Cell: 913.461.5198 | Fax: 816.361.8848 | Sue.Schaefer@bluebirdnetwork.com

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ok I know we have a separate agreement with Socket for each pole attachment they need which wouldn’t apply to you. So basically any franchise agreement requires public approval by a vote. Absent a franchise agreement access to the right of way is by right of use permit and charges are by the linear foot for the fiber. In the event you are providing a service to the City of Columbia you would change over to the 5% of gross receipts free and that is set up through the finance department with forms that are filed by the company as the fees are paid. I am still checking but I believe our only agreement with Socket is the pole attachment agreement.

On Mon, Feb 3, 2020 at 11:40 AM Sue Schaefer <Sue.Schaefer@bluebirdnetwork.com> wrote:

Steve,

Our fiber network would all be buried.
Sue Schaefer, Director, Business Development

Bluebird Network LLC | 800 NW Chipman Road, Suite 5750, Lee’s Summit, MO 64063

Office: 816.237.2119 | Cell: 913.461.5198 | Fax: 816.361.8848 | Sue.Schaefer@bluebirdnetwork.com

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---

From: Steve Van Matre <Steve.VanMatre@como.gov>
Sent: Monday, February 3, 2020 10:50 AM
To: Sue Schaefer <Sue.Schaefer@bluebirdnetwork.com>
Subject: Re: Bluebird Services in Columbia

Sue, Would you need to attach to City owned poles or is all your system underground?

On Mon, Feb 3, 2020 at 10:02 AM Sue Schaefer <Sue.Schaefer@bluebirdnetwork.com> wrote:

Thank you Steve
From: Steve Van Matre <Steve.VanMatre@como.gov>
Sent: Monday, February 3, 2020 9:58 AM
To: Sue Schaefer <Sue.Schaefer@bluebirdnetwork.com>
Subject: Re: Bluebird Services in Columbia

Sue, Tad is out of the office this week but I will try to track down a copy of the Socket agreement.

On Fri, Jan 31, 2020 at 3:53 PM Sue Schaefer <Sue.Schaefer@bluebirdnetwork.com> wrote:

Steve and Tad,

Thank you for your time the other. I did get with my CEO, and perhaps the simplest way to relay what Bluebird is considering for services in Columbia is that Bluebird is looking at service similar to what Socket does in Columbia, excluding the residential portion. If you would send me the applicable Socket agreement(s), which covers ROW and gross receipts, I could easily see how potential new Bluebird services would be impacted.
Let me know if there is anything further you need from me in order to see the Socket agreements with the City of Columbia.

Thank you,

Sue Schaefer, Director, Business Development

Bluebird Network LLC | 800 NW Chipman Road, Suite 5750, Lee’s Summit, MO 64063

Office: 816.237.2119 | Cell: 913.461.5198 | Fax: 816.361.8848 | Sue.Schaefer@bluebirdnetwork.com

Because success is all about good connections

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ATTACHMENT 6
From: Sue Schaefer  
Sent: Wednesday, April 22, 2020 3:42 PM  
To: Steve Van Matre <Steve.VanMatre@como.gov>  
Subject: RE: City of Columbia ROW for Bluebird Network

Thank you, Steve. Is there a Council Member, or perhaps the City Manager, who you would suggest I contact? Perhaps someone who focuses more on ROU and broadband development in the city?

Thanks

Sue Schaefer, Director, Business Development  
Bluebird Network LLC | 800 NW Chipman Road, Suite 5750, Lee’s Summit, MO 64063  
Office: 816.237.2119 | Cell: 913.461.5198 | Fax: 816.361.8848 | Sue.Schaefer@bluebirdnetwork.com

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MEF CECP
Sue, I did in fact forward your last message to my supervisor who was going to discuss with the City Manager. I have not heard any response yet. You are certainly free to reach out to any of the council members regarding this matter.

On Wed, Apr 22, 2020 at 2:58 PM Sue Schaefer <Sue.Schaefer@bluebirdnetwork.com> wrote:

Steve,

Have you had a chance to forward the Bluebird request for ROU alternatives or new Ordinance support (e.g. ROU cap)? Is there someone I may talk to forward the discussion process? Bluebird has a lot of ROU required and we need to make sure we are progressing with this.

Thank, and I look forward to hearing from you soon.

Sue Schaefer, Director, Business Development

Bluebird Network LLC | 800 NW Chipman Road, Suite 5750, Lee’s Summit, MO 64063

Office: 816.237.2119 | Cell: 913.461.5198 | Fax: 816.361.8848 | Sue.Schaefer@bluebirdnetwork.com

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Thank you Steve. Please do forward to the appropriate folks. We are available to have a conversation to discuss options.

Let me know what you need from Bluebird to proceed.

Thanks

Sue Schaefer, Director, Business Development
Bluebird Network LLC | 800 NW Chipman Road, Suite 5750, Lee’s Summit, MO 64063
Office: 816.237.2119 | Cell: 913.461.5198 | Fax: 816.361.8848 | Sue.Schaefer@bluebirdnetwork.com

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Sue, I understand your concerns. Neither Vineet nor I have the authority to deviate from the ordinance. I will be happy to forward your concerns up the chain to those who have such authority to discuss alternatives.

On Fri, Apr 17, 2020 at 12:00 PM Sue Schaefer <Sue.Schaefer@bluebirdnetwork.com> wrote:

Steve,

Thanks again for your time in responding to my questions about the ROU fees that would apply to Bluebird’s planned fiber build in Columbia. We recognize that the City has its hands full with the COVID 19 pandemic and understand that public safety is a priority.

That said, the fiber that Bluebird intends to deploy in Columbia is expected to support the next generation of mobile services, including those provided to first responders. Unfortunately, Bluebird’s deployment is threatened by the City of Columbia’s $1.91/year per linear foot ROU fee. With a proposed fiber build of approximately 50-60 miles, Bluebird will face new ROU fees in excess of $600,000 annually once the project is complete – fees that would make the project cost prohibitive.
Equally concerning is that, to Bluebird’s knowledge, none of its competitors is subject to this similar linear foot ROU fee. As a result, the City’s ROU ordinance places Bluebird at a significant competitive disadvantage.

As you may be aware, the Federal Communications Commission ("FCC") is currently considering whether to preempt the ROU ordinances of several other cities in Missouri, including the cities of Cameron, St. Joseph, and Maryville. See Petition of Missouri Network Alliance, LLC d/b/a Bluebird Network and Uniti Leasing MW LLC for Preemption and Declaratory Ruling Pursuant to Section 253(d) of the Communications Act of 1934, Docket No. 20-46. Preemption is being sought because, in Bluebird’s view and the view of most commenters, ROU fees in excess of a municipality’s reasonable costs run afoul of federal law, which also prohibits a municipality from imposing ROU fees on new entrants such as Bluebird when incumbent providers are not subject to such fees.

Bluebird values its relationship with the City of Columbia and is hopeful that a workable solution can be found to address the current situation, which is untenable for Bluebird. One option is for Columbia to adopt a cap on per linear foot ROU fees, as other cities have done. Alternatively, Bluebird should be permitted to pay ROU fees under the same methodology applicable to its competitors, whether based on gross receipts or a per utility pole charge.

We look forward to continued discussions in an effort to resolve this matter. In the meantime, I would appreciate your providing copies of any franchise or ROU agreements with the City of Columbia under which service providers pay the same per linear foot ROU fee that the City seeks to impose upon Bluebird.

Thank you,

Sue Schaefer, Director, Business Development

Bluebird Network LLC | 800 NW Chipman Road, Suite 5750, Lee’s Summit, MO 64063
Office: 816.237.2119 | Cell: 913.461.5198 | Fax: 816.361.8848 | Sue.Schaefer@bluebirdnetwork.com

Because success is all about good connections
From: Sue Schaefer
Sent: Tuesday, April 14, 2020 9:42 AM
To: Steve Van Matre <Steve.VanMatre@como.gov>; Vineet Kapila <vineet.kapila@como.gov>
Subject: RE: City of Columbia ROW for Bluebird Network

Steve,

I appreciate your quick response. I would like to talk with you on these options in person. Is there a time we could discuss?

Thanks

Sue Schaefer, Director, Business Development
Bluebird Network LLC | 800 NW Chipman Road, Suite 5750, Lee’s Summit, MO 64063
Office: 816.237.2119 | Cell: 913.461.5198 | Fax: 816.361.8848 | Sue.Schaefer@bluebirdnetwork.com

Because success is all about good connections
Sue, I believe I mentioned previously we no longer have franchise agreements. Our ordinance for use of ROW falls into one of two fee schedules. The linear foot fee or the gross receipts fee. Vineet and I do not have authority to use any other method. If Bluebird is putting in lines in the ROW to be leased to ATT that would be under the linear foot fee.

On Mon, Apr 13, 2020 at 4:14 PM Sue Schaefer wrote:

Steve,

Missouri Network Alliance dba Bluebird Network is planning on building a large amount of fiber within Columbia, including required ROW from the city. You, Tad and I chatted about this back in February; Bluebird has more details on its plans now and we need to get the permits started. With this in mind, and due to the large amount of linear foot requirements, I would like to talk with you about the ROW agreements. Jamie Scott (with Bluebird) has been working with Vineet on some of these details.

Please give me a call at your earlier convenience.

Thank you and stay safe.
Because success is all about good connections
ATTACHMENT 7
July 14, 2020

Jack Coles, Director of OSP Engineering
Bluebird Network, LLC
800 NW Chipman Road, Suite 5750
Lee’s Summit, MO 64063

RE: Columbia, Missouri
Right of Use Permit for Fiber Optic Cable with Bluebird Network, LLC

Enclosed for your file is an executed copy of the Right of Use Permit to install a fiber optic telecommunications cable within City of Columbia rights-of-way. Also enclosed is a copy of City Ordinance No.024278 approving execution of the Right of Use Permit. As per section 3.1 of the agreement, please send a check in the amount of $500.00 made payable to the City of Columbia and mail to my attention at the following address. The balance for year 1 of the contract will be due upon completion of the construction or within nine months of the permit execution date.

City of Columbia
Attn: Mindy Barnes
Assistant to the Public Works Director
Public Works Department
P. O. Box 6015
Columbia, MO 65205

If you have any questions, please feel free to contact me at Ph# (573) 874-7253.

DEPARTMENT OF PUBLIC WORKS

Mindy Barnes
Assistant to the Public Works Director

Enclosures

c: Vineet Kapila, Building & Site Development
RIGHT OF USE PERMIT
FIBER OPTIC CABLE

THIS RIGHT OF USE PERMIT ("Permit Agreement") is made effective as of the date that this Permit Agreement is last signed by both parties by and between the City of Columbia, Missouri, a municipal corporation (hereinafter "City") and Missouri Network Alliance, LLC dba Bluebird Network (hereinafter "Company").

WHEREAS, Company is in the business of constructing, owning, operating and maintaining fiber optic telecommunications facilities; and

WHEREAS, Company desires to construct, own, operate and maintain interexchange and non-switched local exchange telecommunications facilities for its own profit through the City of Columbia, Missouri by locating a fiber optic line within street rights-of-way through residential, commercial and industrial zones; and

WHEREAS, City acquires, owns and maintains public street rights-of-way as an asset and is authorized by law to manage the public rights-of-way; and

WHEREAS, Company understands and agrees that public street rights-of-ways cost millions of dollars to acquire and annually maintain and improve and are a unique and physically limited resource requiring proper management and control to minimize the expense of the use of such rights-of-way and to insure the public welfare; and

WHEREAS, the public street rights-of-way which Company proposes to use is currently already occupied by electric and local telephone poles and lines, underground water, sewer, storm drainage and natural gas lines, all of which provide a benefit to the public and require routine maintenance necessitating access to and use of the rights-of-way.

NOW, THEREFORE, the parties agree as follows:

1. ROUTE:
Company is granted a right to occupy and use the public street rights-of-way of the City for a subterranean fiber optic telecommunications cable and no other purpose along the following alignment:

58 Route Segments listed here and defined on "Exhibit A"

Overall – 143,745' – 27.224 mi;
Dogwood – 302'; Veterans – Forum Katy – 1755'; Lemone Industrial – 11379'; E Ash – 411'; Cross Kentucky - 67'; Lynwood Dr (1410'); Sycamore Lane (290'); Burrwood / Oakhaven (1383'); Forum (3405'); Green Meadows (5911'); Club Village (600'); John Gary Dr. (311'); Brandon Wds / Cedar Lk / Corporate Lk (3614'); Forum Blvd / Southampton (6410'); West Nifong 2 (1733'); West Nifong (4385'); Campusview / Umc / Norman (3454'); South Rock Quarry (2074'); Nifong (1513'); Keene (4573'); Rock

01-03-2020

1
LIMITATION OF RIGHTS GRANTED

The right to use City street rights-of-way shall not be construed to create or vest in the Company any easement or ownership or property rights in the rights-of-way and is nonexclusive. The City reserves all rights to grant to other persons similar rights, privileges and authority as set out herein. The City may exercise its rights at any time during this permit. In accepting this permit, the Company understands and agrees that any rights granted herein are subject to the police powers of the City and the Company shall comply with all applicable City ordinances.

TERM

The term of this permit shall be for ten years from the date of the execution of this Permit Agreement. The permit shall automatically renew for one additional five year period unless it is terminated by one party giving the other notice of its intent to terminate in writing at least six months prior to the expiration of the current term.

TERMINATION

The Company may terminate the Permit Agreement at any time upon ninety days written notice to the City. The City may terminate the permit upon six months written notice to Company that the Company is in violation or default of the terms of the permit and Company fails or refuses to cure the violation or default within thirty days of the notice. If, after termination of this permit, the Company fails to remove its equipment, facilities or system from the rights-of-way within sixty days, it shall be deemed abandoned by the Company and shall become City property.

LINEAR FOOT FEE

For its use of the street rights-of-way within the City, the Company shall pay the City $1.91 per linear foot annually. The linear distance in feet shall be determined by the length of the corridor occupied by the Company as measured by the City. That distance shall be measured by the City from the Company’s plans as the Company or its subcontractors build, lay, drill, or route fiber optic lines or
conduits through the City. The Company shall pay the linear foot fee to the City for all conduit or line in the City rights-of-way during the term of this Permit Agreement regardless of whether the fiber optic lines or conduits are actually used or connected to the Company's system. The City shall notify the Company of the amount due in writing thirty days prior to the date of payment. At any point in the future, should the Company enter into a franchise agreement with the City and/or be required to pay business license taxes based upon gross receipts, the Company shall be entitled to a credit for any amount paid as business license taxes or gross receipts taxes.

3.1. TIME OF PAYMENT
For linear foot fees during the first year of the permit, the Company shall pay the City $500.00 upon the execution of the Permit Agreement by the City and the remainder shall be due upon completion of the Company's construction through the City or within nine months of the date of the execution of permit by the City. Thereafter, the company shall pay the linear foot fees annually within thirty days written notice by the City. Gross receipts taxes are to be calculated monthly and due within thirty days after the last day of each month.

3.2 LINEAR FOOT FEE INCREASE UPON PERMIT RENEWAL
Upon the renewal of the permit term for an additional five years, the linear foot fee due the City from the Company shall increase by 7.5%.

3.3 NO ACCORD AND SATISFACTION
All payments due under this permit shall be paid in full by the date due. Acceptance by the City of any amounts tendered shall not be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance be construed as a release of any claim the City may have for additional sums payable under the permit or any other provision of the City's ordinances.

4. CONDITIONS OF CONSTRUCTION IN THE RIGHT-OF-WAY
The Company agrees that its system shall be designed in accordance with standardized good engineering practices and shall conform when applicable with the National Electric Safety Code and all other applicable federal, state and local laws or regulations. The construction of the systems shall be completed in a workmanlike manner and shall be subject at all times to inspection by the City.

4.1 PLANS
Prior to beginning any drilling, trenching, construction or installation work of any kind within the City rights-of-way, the Company shall provide the City Community Development, Public Works and Water and Light Departments with detailed route maps and engineering or construction plans. No work shall begin until the plans are approved and the work is scheduled with the Community Development Department, Building and Site Development Division. All work shall be done in
substantial conformity with the plans as approved and shall at all times comply
with applicable ordinances and building codes.

4.2 BUILDING PERMITS AND COSTS
No work shall be performed until all required building or construction permits are
obtained and the required fees paid. Actual permit fees may not be assessed at
the time the permits are taken out. If such is the case, the Company shall agree
to pay the required permit fees after assessment and within thirty days written
notice by the City.

The Company shall be solely responsible for all costs associated with the
construction within the rights-of-way including the cost of all City permits required
for such construction. The parties understand and agree that the various City
permits are intended to reimburse the City's costs in undertaking permit related
review and inspections.

4.3 UTILITY LOCATES
No excavation, drilling or trenching shall occur within the rights-of-way until utility
locates for all utilities have been performed. The Company shall request locates
at least 72 hours in advance of all underground work.

4.4 OBSTRUCTION OF THE RIGHT-OF-WAY
The Company shall not obstruct or block any City street, road, alley or rights-of-
way during the construction without first obtaining permission from the City.

4.5 PROTECTION OF STRUCTURES, REPAIR OF THE RIGHT-OF-WAY
The Company shall, at its own cost or expense, protect any and all existing
surface or underground structures, fixtures, drainage facilities, sewers, conduits
or pipes belonging to the City or any utility previously located within the rights-of-
way during construction or maintenance of the Company's system, conduit or
fiber optic lines.

Any rights-of-way, streets, roads, surface or underground structures, fixtures,
drainage facilities, sewers, utility line facilities, conduits or pipes disturbed or
damaged by the Company's work, either during initial construction or future
maintenance replacement or relocation of the Company's fiber optic lines or any
conduit or system, shall be promptly repaired or restored to the City's standards
or the standards of the utility owning the disturbed or damaged facilities at the
Company's expense. All right-of-way restoration work shall be guaranteed by the
Company for a period for four (4) years.

4.6 SAFETY
The Company shall, at its own expense, take all necessary steps to mark its
vehicles and equipment so as to prevent accidents in the rights-of-way. Work
sites shall be protected by safety cones, barriers, fences, safety lights or other
suitable devices. Employees and subcontractors shall wear appropriate safety
equipment. No holes, trenches or excavations shall be left unprotected or open to the public. The Company and its contractors shall observe all applicable and appropriate safety codes or regulations.

4.7 DISTANCE FROM GAS, WATER AND SEWER LINES
No fiber optic lines, conduits, or facilities shall be located closer than two feet clear in any direction from any natural gas, water, sanitary sewer or storm sewer line, conduit, pipeline or structure.

4.8 AS BUILT DIAGRAMS
Upon the end of work on the Company's fiber option line or conduit within the City, the Company shall deliver to the Public Works and Water and Light Departments as built diagrams, drawings or maps of Company's fiber optic lines or conduits locating such lines or conduits in plan and profile views with accurate dimension.

5. CONDITIONS OF CONTINUING USE AND OCCUPANCY
During the term of this permit and any renewal thereof, the Company shall, at its own expense, maintain its lines, conduits and system in a safe condition and so as not to interfere with any other utility or facility in the rights-of-way.

5.1 STREET CUTS
The permit does not grant the Company or any of its employees or contractors the right to cut, break, excavate or damage the streets, sidewalks or railroad of the City without the written consent of the City. The Company shall give the City such notice of the need to make cuts, breaks or excavations in the streets or sidewalks as it requires of any person desiring to do such work, and obtain permits and permission to do such work as required by City Code or regulation. All streets, sidewalks or rights-of-way in any way disturbed by the Company shall be replaced or restored to City Standards.

5.2 EMERGENCY WORK
In the event the Company must make emergency repairs to its lines, the Company shall, as soon as possible, but in no case later than 72 hours, obtain the required permissions or permits as set out herein. All cuts, breaks, and excavations in City streets, sidewalks, or rights-of-way shall be protected by safety cones, fences or barriers adequate to prevent injury to the public.

5.3 RIGHT-OF-WAY SUBLEASE
Nothing in this Permit Agreement shall be construed to give the Company the right to sublease or subdivide its right to use the City's rights-of-way and Company shall have no authority or power to do so or to use the rights-of-way for any purpose other than the operation and maintenance of fiber optic lines, conduits or systems. This section shall not be construed so as to prohibit the Company from leasing or subleasing service over its lines within the City's rights-of-way.
5.4 EMINENT DOMAIN
In the event the City, through its City Council, determines that it is necessary to take Company’s property or property interests in this permit for a public purpose, it may acquire that property through eminent domain.

5.5 CITY’S EMERGENCY AUTHORITY
The City may at any time, in case of disaster or other emergency, as determined by the City Manager, or the City Manager’s designee in their discretion, excavate, cut or move any of Company’s wires, fiber optic lines or facilities without liability to the Company. The City shall give as much notice of such emergency to the Company as it reasonably can under the circumstances of the emergency.

5.6 NEW LINES
If during the term of this permit, Company desires to relocate part or all of the fiber optic lines allowed by this permit, the Company, at its own cost and expense, shall submit new plans and obtain new construction permits and submit itself to the City’s review process and be governed by all restrictions on construction set out elsewhere in this permit or set out in City Code ordinance or regulation. The City shall recalculate the annual fee of this permit taking into account the new or additional alignment of Company’s lines or conduit.

5.7 REALIGNMENT OF LINES AT GOVERNMENTAL REQUEST
If during the term of this permit, Company is requested or directed by any governmental agency to relocate or realign its lines, conduits or facilities, it shall do so at its own cost and expense and under the same conditions as if it were realigning said lines, conduits or facilities for its own benefit. If such realignment or relocation reduces the total linear footage in City rights-of-way, the annual rent under this permit shall be adjusted accordingly. If realignment or relocation at governmental request or directive increases the total linear footage in City rights-of-way, the rental under this permit shall not be increased by the additional footage required by the realignment or relocation.

5.8 The Company’s fiber optic lines, conduit or cable shall have a “tone line” or similar technology so as to accurately locate the Company’s facilities. The Company agrees to join the Missouri “One Call” system and, upon request by the City or any utility, locate its facilities within 48 hours of the request.

6. INSURANCE
During the term of this permit, Company shall obtain and maintain and shall require all of its permitted contractors or subcontractors to obtain and maintain not less than the following insurance:

6.1 COMMERCIAL GENERAL LIABILITY INSURANCE
Commercial general liability insurance including coverage for operations, independent contractors, products-completed operations, property damage from perils of explosion, collapse or damage to underground utilities, commonly known as XCU coverage, broad form property damage on an “occurrence” basis insuring Company and any other interests, including, but not limited to, any associated or subsidiary companies involved in the operation. The liability insurance shall include contractual liability insurance applicable to Company’s obligations under this permit.

The liability insurance shall name the City as an additional insured.

The limits of liability shall be no less than $2,000,000 for injury or death to any one person and no less than $10,000,000 for injury or death to two or more persons as a result of any one occurrence and no less than $2,000,000 for property damage as a result of one occurrence, or in lieu thereof, a combined single limit for bodily injury and property damage of no less than $10,000,000. The liability insurance shall include contractual liability insurance applicable to Company’s obligations hereunder.

6.2 COMPENSATION INSURANCE
The Company shall take out and maintain during the life of this contract, Employee's Liability and Workers’ Compensation Insurance for all of their employees employed at the site of the work, and Company shall require all subcontractors similarly to provide Workers’ Compensation Insurance for all of the latter's employees unless such employees are covered by the protection afforded by the Company. In case any class of employees engaged in hazardous work under this contract at the site of the work is not protected under Missouri’s Workers’ Compensation Statute, the Company shall provide and shall cause each subcontractor to provide Employee’s Liability Insurance for the protection of their employees not otherwise protected.

6.3 AUTOMOBILE PUBLIC LIABILITY AND PROPERTY
The Company shall maintain during the life of this permit, automobile public liability insurance in the amount of not less than $2,000,000.00 combined single limit for any one occurrence and not less than $150,000.00 per individual, covering bodily injury, including accidental death, and property damage, to protect themselves from any and all claims arising from the use of the Company’s own automobiles, tans and trucks; hired automobiles both on and off the site of the work.

6.4 PROOF OF INSURANCE
The Company shall furnish the City with certificates of insurance which name the City as additional insured in the amounts required by the permit and which require a thirty day mandatory cancellation notice to the City.

6.5. SELF-INSURANCE

01-03-2020
During the term of the permit and any renewal, the Company may self-insure any or all of the insurance required herein after furnishing documentation satisfactory to the City that the Company has $25,000,000.00 in net assets and does not violate or default the terms of the permit. Any insurance coverage required over its self-insured retention amount shall be maintained through an excess liability carrier satisfactory to the City which must carry an A-6 or better rating as listed in the A.M. Best or equivalent guide.

7. INDEMNIFICATION AND RESPONSIBILITY
The Company understands and agrees that this Permit Agreement to use the rights-of-way is between the City and Company and no other parties. The Company is responsible for all its employees, agents, officers, contractors and subcontractors and in the event of damage or injury arising out of Company's use or presence in the rights-of-way, the City is entitled to look to the Company for restitution and compensation and the Company shall not assert that the City must look to any Company employee, officer, agent or any of the Company's contractors, subcontractors or insurers for such payment, restitution or compensation.

7.1 DAMAGE TO CITY OR OTHER UTILITIES
The Company understands and agrees that the right-of-way route proposed by the Company for the Company's use is currently through a developed City and contains various combinations of water, electric, natural gas, telephone, sanitary sewer, storm sewer and other utilities. The Company agrees that should the Company's construction, excavation, drilling or work in the rights-of-way result in damage or injury of any kind to the property or facilities of any of the above listed utilities or any other utility, service or company located in the rights-of-way, the Company shall repair or replace, or have repaired or replaced, the damaged or injured portion of the utility property at its own cost or expense.

7.2 CITY PLAN REVIEW, USE OF CITY MAPS, UTILITY LOCATES
The Company understands and agrees that while the City has existing maps and diagrams of the rights-of-way which may be used by the Company, those maps or diagrams which exist may not be accurate or complete and the City does not guarantee that the maps or diagrams will be adequate for Company's purposes. The use of City maps or diagrams does not release the Company from responsibility for damage or injury to facilities within the rights-of-way nor transfer any responsibility to the City for such damage or injury. Further, the Company agrees and understands that City utilities and facilities within the rights-of-way may have been in place for many years and completely accurate maps and diagrams may not exist for all of these facilities and some lines, pipes, conduits may not be accurately located by existing location means. The fact that the Company may damage or injure an existing utility while relying upon a City locate shall not relieve the Company from fixing or replacing the damaged utility facility at the Company's cost or expense.
7.3 CITY PLAN APPROVAL, INSPECTION OR GENERAL SUPERVISION
The Company understands and agrees that submission of plans and maps to the city prior to construction, excavation or drilling, the approval of those plans, routing City inspections and City oversight or general supervision of Company's work does not make the City responsible or relieve the Company from responsibility for any damage or injury Company's construction, excavation or drilling may cause to its own property or any utility or facility within the rights-of-way.

7.4 UTILITY WORK WITHIN THE RIGHTS-OF-WAY
The Company understands and agrees that utilities currently within the rights-of-way need maintenance from time to time requiring excavation of the rights-of-way. Further, Company understands and agrees that its fiber optic lines, conduits and facilities will overlay or intermingle with existing utility facilities and will not be segregated or restricted to armored or protected space within the rights-of-way greatly enhancing the risk that any excavation within the rights-of-way will break, damage or injure the Company's property. The Company agrees that if its fiber optic lines, conduits or facilities are broken, damaged or injured in the normal course of business or during an emergency by utility work within the rights-of-way, it will repair or replace the same at its cost and expense and that it will not seek restitution or compensation from the same from the City or any utility.

7.5 INDEMNIFICATION BY THE COMPANY
Company, its successors or assigns, shall indemnify, defend and hold harmless to the City, its officers, employees from and against any and all claims, demands, costs, damages, losses, liabilities, joint and/or severable expenses of any nature (including reasonable attorney, accountant, and expert fees), judgments, fines, settlements and other amounts ("Claim"), provided that the Claim is caused in whole or in part by any negligent act or omission of the Company, any subcontractor, anyone directly or indirectly employed by any one of them or anyone for whose acts any of them may be liable, and regardless of whether or not the Claim is caused in part by a party indemnified hereunder, and the Claim is relating to or arising from:

a. Any acts, errors, or omissions of Company, its agents, contractors or employees or any negligence or intentional misconduct thereby in the installation, maintenance or operation of the Company's fiber optic lines, conduits or facilities, or any breach of any obligation or covenant under this permit, or

b. Any personal injury or death of any person or persons, including, without limitation, agents or employees of the City, and any loss, damage, defacement or destruction of property of the City or its licensees, arising out of the incident to the activities, operations or actions of the Company, its agents, contractors or employees.

01-03-2020
7.6 SURVIVAL OF INDEMNIFICATION
   The provisions of all the paragraphs in section 7 shall survive the termination of
   the permit.

8. MISCELLANEOUS

8.1 TAXES
   The Company shall be responsible for payment of all personal property and other
   taxes assessed upon and arising from its presence in or use of City’s rights-of-
   way. The Company’s payment of the permit fee required here shall not be
   construed as a payment in lieu of any tax.

8.2 ASSIGNMENT
   The Company will not assign or transfer this Permit Agreement without the prior
   written consent of the City. In considering whether to give its permission to an
   assignment, the City may consider the assets and reputation of the potential
   assignee and whether the assignee can fulfill the conditions of this Permit
   Agreement and whether such an assignment would be injurious to the rights-of-
   way or be in the best interest of the City. No consent shall be required for an
   assignment, sublease or other transfer to a parent, subsidiary or to an entity
   controlled by the Company, under common control with the Company, or
   controlling the Company. A proposed assignment to any entity which purchases
   from the Company the equipment shall be subject to the prior consent of the City
   with the same conditions set out above.

8.3 DESCRIPTION OF SERVICES
   Upon execution of this Permit Agreement, the Company shall provide the City
   with a description of all services offered by the Company within the City. The
   Company shall describe each separate type of service offered. Any bundled
   service or item for which the Company has a separate charge shall be
   considered a separate service. Annually thereafter, the Company shall provide
   the City with a description of any new service offered by the Company within the
   City during the preceding year or anticipated to be offered within the coming
   year.

8.4 RIGHT OF INSPECTION
   The City, or its designated representative, shall have the right to inspect,
   examine or audit, during normal business hours and upon reasonable notice, all
   of Company’s documents, records or other information that pertains to the
   compliance of the terms of this Permit Agreement.

8.5 CONTINUING OBLIGATION AND HOLDOVER
   In the event the Company continues to operate all or any part of the system after
   the revocation of the permit or notice to cease operations from the City, the
   Company shall continue to comply with all applicable provisions of the permit,
   including, without limitation, all compensation and other payment provisions of
the permit, throughout the period of such continued operation, provided that any
such continued operation shall in no way be construed as a waiver, renewal,
granting or other extension of the permit, nor as a limitation on the remedies, if
any, available to City as a result of such continued operation of the Term,
including, but not limited to, damages and restitution.

8.6 WAIVER
Failure of the City to require performance of any term of this permit or to takes
steps to enforce the terms of this permit at any time shall not be construed a
waiver of the City’s right to insist upon full performance of the permit or affect the
right of the City to enforce the permit. The actual waiver by the City of any breach
of any provision hereof shall not be construed as a waiver of any succeeding
breach of the same or any other provision of the permit.

8.7 NOTICE
All notices, requests, demands and other communications required under this
permit shall be in writing and are effective when deposited in the U.S. Mail
certified and postage prepaid, or when sent via overnight delivery, to the address
set forth below or as otherwise provided by law:

For the Company:
Missouri Network Allinace, LLC
Jack Coles, Director of OSP Engineering
800 NW Chipman Road, Suite 5750
Lee's Summit, MO 64063

For the City:
City of Columbia, Missouri
City Manager
701 East Broadway, 2nd Floor
P.O. Box 6015
Columbia, MO 65205-6015

8.8 SEVERABILITY
If any section, subsection, sentence, clause, phrase, or portion of this permit is,
for any reason, held invalid or unconstitutional by any court of competent
jurisdiction, such portion shall be deemed a separate, distinct, and independent
provision and such holding shall not affect the validity of the remaining portions of
this permit.

8.9 ENTIRE AGREEMENT
The Permit Agreement constitutes the entire agreement and understanding of the
parties. Any amendments to the Permit Agreement must be in writing and
executed by both parties. If, however, the City in the future by legislative action
adopts a comprehensive right-of-way ordinance, the terms of that ordinance shall
apply to and modify this Permit Agreement to the extent any provision of that
comprehensive right-of-way ordinance shall conflict with this Permit Agreement.

8.10 AGREEMENT FOR THE BENEFIT OF THE PARTIES
This Permit Agreement is entered into for the benefit of the parties thereto. Nothing in this Permit Agreement shall be construed to be for the personal or private benefit of any third party.

8.11 GOVERNING LAW
This Permit Agreement shall be construed in accordance with the laws of Missouri.

[SIGNATURES ON FOLLOWING PAGES]
IN WITNESS WHEREOF, the parties execute this Permit Agreement herein as of the date signed below.

CITY OF COLUMBIA, MISSOURI

By: John Glascock, City Manager

Date: July 9, 2020

ATTEST:

By: Shēela Amin, City Clerk

APPROVED AS TO FORM:

By: Nancy Thompson, City Counselor

STATE OF MISSOURI )
COUNTY OF BOONE )

On this 9 day of July, 2020 before me appeared John Glascock, to me personally known, who, being by me duly sworn, did say that he is the City Manager of the City of Columbia, Missouri, and that the seal affixed to the foregoing instrument is the corporate seal of the City and that this instrument was signed and sealed on behalf of the City by authority of its City Council and he acknowledged this instrument to be the free act and deed of the City.

IN TESTIMONY WHEREOF, I have hereunto set by hand and affixed my official seal, at my office in Columbia, Boone County, Missouri, the day and year first written above.

Notary Public

My Commission expires: 1-3-24

HEATHER L COLE
Notary Public - Notary Seal
Boone County - State of Missouri
Commission Number 12287591
My Commission Expires Jan 3, 2024

01-03-2020 13
COMPANY:

Missouri Network Alliance dba Bluebird Network

By: 

Title: Vice President, Engineering

Date: 5-29-2020

ATTEST: (if corporation)

Secretary

STATE OF Missouri )
COUNTY OF Cass ) ss

On this 29th day of May, 2020 before me, a notary public of the State of Missouri, appeared Douglass Zerr, the V.P. of Engineering of said Missouri Network Alliance dba Bluebird Network and known to be the person who executed the within agreement on behalf of said corporation and acknowledged to me that he/she executed the same for the purposes therein stated.

Rosemary L. Huffman
Notary Public

My Commission expires: 06/21/2020

ROSEMARY F. HUFFMAN
Notary Public - Notary Seal
State of Missouri
County of Cass
My Commission Expires June 21, 2020
Commission #12412090

01-03-2020

14

100
Bluebird Petition for Declaratory Ruling

[Map or Diagram Image]
**CERTIFICATE OF LIABILITY INSURANCE**

**Dates (MM/DD/YYYY):** 02/28/2020

**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).

<table>
<thead>
<tr>
<th>PRODUCER</th>
<th>CONTACT NAME</th>
<th>PHONE (AC No. Ext)</th>
<th>TAX (AC No.)</th>
<th>EMAIL</th>
</tr>
</thead>
<tbody>
<tr>
<td>UNITEL</td>
<td>Joanne Mohn</td>
<td>(402) 434-7200</td>
<td>(402) 434-7272</td>
<td><a href="mailto:jmohn@unitelinsurance.com">jmohn@unitelinsurance.com</a></td>
</tr>
</tbody>
</table>

**INSURED:**
BlueBird Network, LLC, DBA: Missouri Network Alliance, LLC
2005 W. Broadway, 8th fl, Ste. 215
Columbia, MO 65203

**CERTIFICATE NUMBER:** 20-21 COI

**COVERAGE:**

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<tr>
<th>BEST</th>
<th>LTR</th>
<th>TYPE OF INSURANCE</th>
<th>ADDITIONAL INSURED (A)</th>
<th>WID</th>
<th>POLICY NUMBER</th>
<th>POLICY ISSUED (MM/DD/YYYY)</th>
<th>POLICY EXPIRED (MM/DD/YYYY)</th>
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<td>03/01/2021</td>
<td>EACH OCCURRENCE $1,000,000</td>
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<td>DAMAGE TO TERTIARY PREMISES (EA occurrence) $2,000,000</td>
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<td>E.L. EACH ACCIDENT $1,000,000</td>
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**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101):** Additional Remarks Schedule may be attached if more space is required.

City of Columbia, Missouri is added additional insured on the commercial general liability insurance as it relates to right-of-way agreement.

30 day notice of cancellation will be provided. 10 day notice of cancellation will be provided for cancellation due to non-payment.

**CERTIFICATE HOLDER:**
City of Columbia, Missouri Purchasing
701 East Broadway, 5th Floor
PO. Box 6015
Columbia, MO 65206-6015

**CANCELLATION:**
SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

**AUTHORIZED REPRESENTATIVE:**

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AN ORDINANCE

authorizing a right of use permit with Missouri Network Alliance, LLC, d/b/a Bluebird Network, for installation and maintenance of fiber optic cable within the City rights-of-way; and fixing the time when this ordinance shall become effective.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF COLUMBIA, MISSOURI, AS FOLLOWS:

SECTION 1. The City Manager is hereby authorized to execute a right of use permit with Missouri Network Alliance, LLC, d/b/a Bluebird Network, for installation and maintenance of fiber optic cable within the City rights-of-way. The form and content of the right of use permit shall be substantially as set forth in "Attachment A" attached hereto and made a part hereof.

SECTION 2. This ordinance shall be in full force and effect from and after its passage.

PASSED this 6th day of July, 2020.

ATTEST:

[Signatures]

APPROVED AS TO FORM:

[Signature]
ATTACHMENT 8
Bluebird needs to comply with the Right of Use Licenses current in place while we continue to work on any potential revisions to the linear foot fee. If there are any recommendations to go forward regarding the LF fee, it will most likely be related to a cap in the total amount of fees; however, calculation of the cap has not yet been determined. If the City agrees to a cap, the existing licenses will need to be revised. Until the agreements are revised, the fees are due and payable under the existing licenses.

Nancy Thompson
City Counselor
City of Columbia Law Department
701 East Broadway
PO Box 6015
Columbia, Missouri 65205
Office: (573) 874-7223
Direct: (573) 874-7227
nancy.thompson@como.gov

On Fri, May 7, 2021 at 10:46 AM Turner, Joshua <jturner@wiley.law> wrote:

Nancy,

We appreciate the City moving forward on the 5/3 permit. There is another permit teed up for the 5/17 meeting that is complete in terms of submissions, but we’re hearing from Engineering that it may not make the agenda as a result of
questions about the status of payment. Engineering thinks these questions may be coming from the Law Department or Public Works, but cannot provide more detail about who is raising concerns.

We are looking forward to continued discussions about how to settle our concerns about the substantial negative impact the City’s rights of way fees will have on our ability to provide service in Columbia. We would like to reach an agreement that both provides the City with adequate compensation and allows Bluebird to expand its operations and provide critical services to customers in Columbia.

However, for these discussions to be productive, Bluebird needs assurance as soon as possible that the City is not going to decline to issue permits while those discussions are continuing.

Thank you, and feel free to give me a call if it would be more convenient.
There is a new right of use agreement on the consent agenda for tonight’s council meeting and I have not been told in advance that it is being pulled from consent. I have not been involved in any conversations regarding the payments.

Nancy Thompson
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Columbia, Missouri  65205
Office:  (573) 874-7223
Direct:  (573) 874-7227
nancy.thompson@como.gov

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On Mon, May 3, 2021 at 11:14 AM Turner, Joshua <jturner@wiley.law> wrote:

Nancy,

We received the following message from the City’s engineering department. It is critical to Bluebird that the permits that are on the City Council’s agenda this evening are granted; these permits have been pending since January and are urgently required, not just for Bluebird, but for Bluebird’s customers (which include medical facilities, among others).

Is the City saying that if the ROW payment is not made today, these permits will not be granted this evening?
Bluebird needs assurance that these permits will be read and approved tonight—please provide clarification of the City’s position as soon as possible.

From: Vineet Kapila <Vineet.Kapila@como.gov>
Sent: Monday, May 3, 2021 10:07 AM
To: Mark McFerren <mark.mcferren@bluebirdnetwork.com>; James Scott <James.Scott@bluebirdnetwork.com>
Subject: Re: ROU License Permit - Westbury Senior Living build

Mark & Jamie,

It sounds like the fees associated with Ordinance #24278 (the first large fiber for AT&T towers) are due. Public Works will need those paid before I can send additional right of uses through. Please let me know if you would like the contact person for the payment information with Public Works.

Thank you,