

BILL NO. BL2018-1125 (VERCHER) – This ordinance would authorize the Metropolitan Department of Law to compromise and settle its claims against Teleport Communications America, LLC (Teleport) for unpaid right-of-way franchise fees and all expenses related to litigation of such claims; and authorizing the establishment of a franchise arrangement with Teleport.

Metro brought a lawsuit against Teleport, formerly TCG Midsouth, Inc. (TCG), in 2002, which is currently pending in Davidson County Chancery Court. The lawsuit relates to disputes between Metro and Teleport concerning the telecommunications franchise (the “Franchise”) issued by Metro to TCG by Ordinance No. O97-913 in September 1997. The Franchise was later assigned to Teleport. The Franchise incorporates Ordinance No. O94-913, codified at Metro Code of Laws Sec. 6.26.010 *et seq.* This Franchise expired on its own terms on September 29, 2012. In the lawsuit, Metro brought claims seeking to enforce certain terms of the Franchise or to otherwise collect compensation from Teleport for use of the public rights-of-way. Teleport brought counterclaims and/or defenses asserting that the monetary and in-kind compensation provisions of the Franchise are unenforceable.

The resolution under consideration would authorize the Department of Law to settle Metro’s claims against Teleport for unpaid right-of-way franchise fees and for all expenses incurred in the litigation concerning those claims. The Settlement Agreement is attached to the Resolution as Exhibit A. Pursuant to the Settlement Agreement, Teleport would agree to pay \$1,750,000 to Metro in one lump sum within ten (10) days after the Settlement Agreement is executed and approved by the Council. Teleport would agree to pay an additional \$10,000 annual franchise fee effective January 1, 2018, and each year for so long as Teleport, its assigns, or successors- in-interest operate as a telecommunications provider in Davidson County. If a new franchise fee is adopted by Metro by general ordinance, Teleport would be subject to the payment terms of that ordinance. An additional provision provides that, for seven years from the effective date of the Settlement Agreement, if both a new franchise fee is adopted by general ordinance, and any telecommunications provider operating within the public rights-of-way within Metro is subject to a different fee structure than Teleport, Teleport can pay the least of (1) the current general ordinance, (2) \$10,000, or (3) Teleport’s annual fees, calculated under the methodology applicable to the other telecommunications provider.

Fiscal Note: Teleport would make a lump-sum payment of \$1,750,000 (one million seven hundred fifty thousand dollars) to Metro. Effective January 1, 2018, Teleport would begin paying an annual franchise fee of \$10,000 (ten thousand dollars).