



SEATTLE CITY COUNCIL

Legislative Summary

CB 118643

Record No.: CB 118643

Type: Ordinance (Ord)

Status: Passed

Version: 1

125023

In Control: City Clerk

File Created: 02/19/2016

Final Action: 04/14/2016

Title: AN ORDINANCE granting Qwest Corporation, d.b.a. CenturyLink QC, permission to maintain and operate an at-grade fiber hut on the north side of Northwest 105th Street, east of 8th Avenue Northwest, and north of Alderbrook Place Northwest, for a ten-year term, renewable for two successive ten-year terms; specifying the conditions under which this permit is granted; providing for the acceptance of the permit and conditions; and ratifying and confirming certain prior acts.

Date

Notes:

Filed with City Clerk:

Mayor's Signature:

Sponsors: O'Brien

Vetoed by Mayor:

Veto Overridden:

Veto Sustained:

Attachments:

Drafter: amy.gray@seattle.gov

Filing Requirements/Dept Action:

History of Legislative File

Legal Notice Published:

Yes

No

Version:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	Mayor	03/14/2016	Mayor's leg transmitted to Council	City Clerk			
	Action Text:		The Council Bill (CB) was Mayor's leg transmitted to Council. to the City Clerk				
	Notes:						
1	City Clerk	03/16/2016	sent for review	Council President's Office			
	Action Text:		The Council Bill (CB) was sent for review. to the Council President's Office				
	Notes:						
1	Council President's Office	03/18/2016	sent for review	Sustainability and Transportation Committee			
	Action Text:		The Council Bill (CB) was sent for review. to the Sustainability and Transportation Committee				

- 1 Full Council 04/04/2016 referred Sustainability and Transportation Committee
Action Text: The Council Bill (CB) was referred. to the Sustainability and Transportation Committee
Notes:
- 1 Sustainability and Transportation Committee 04/05/2016 pass Pass
Action Text: The Committee recommends that Full Council pass the Council Bill (CB).
In Favor: 3 Chair O'Brien, Vice Chair Johnson, Juarez
Opposed: 0
Abstain: 1 Burgess
- 1 Full Council 04/11/2016 passed Pass
Action Text: The Council Bill (CB) was passed by the following vote, and the President signed the Bill:
In Favor: 8 Councilmember Bagshaw, Councilmember Burgess, Councilmember González , Council President Harrell, Councilmember Herbold, Councilmember Johnson, Councilmember Juarez, Councilmember O'Brien
Opposed: 0
- 1 City Clerk 04/12/2016 submitted for Mayor's signature Mayor
Action Text: The Council Bill (CB) was submitted for Mayor's signature. to the Mayor
Notes:
- 1 Mayor 04/14/2016 Signed
Action Text: The Council Bill (CB) was Signed.
Notes:
- 1 Mayor 04/14/2016 returned City Clerk
Action Text: The Council Bill (CB) was returned. to the City Clerk
Notes:
- 1 City Clerk 04/14/2016 attested by City Clerk
Action Text: The Ordinance (Ord) was attested by City Clerk.
Notes:
-

CITY OF SEATTLE

ORDINANCE 125023

COUNCIL BILL 118643

AN ORDINANCE granting Qwest Corporation, d.b.a. CenturyLink QC, permission to maintain and operate an at-grade fiber hut on the north side of Northwest 105th Street, east of 8th Avenue Northwest, and north of Alderbrook Place Northwest, for a ten-year term, renewable for two successive ten-year terms; specifying the conditions under which this permit is granted; providing for the acceptance of the permit and conditions; and ratifying and confirming certain prior acts.

WHEREAS, Qwest Corporation, d.b.a. CenturyLink QC, has applied for permission to maintain an existing fiber hut at Northwest 105th Street, east of 8th Avenue Northwest; and

WHEREAS, the fiber hut is 9' 8" x 6' 5" x 8' 3", with the walls made of metal, and houses telecommunications equipment that provides internet and telephone services to subscribers; and

WHEREAS, by Ordinance 111820, the City of Seattle ("City") granted permission to the Pacific Northwest Bell Telephone Company to construct, maintain, and operate the fiber hut on the north side of Northwest 105th Street, east of 8th Avenue Northwest, and north of Alderbrook Place Northwest; and

WHEREAS, the Pacific Northwest Bell Telephone Company changed its corporate name to U.S. West Communications in 1991, and Qwest Corporation acquired U.S. West Communication in 2000; and

WHEREAS, the permission authorized by Ordinance 111820, as amended by Resolution 27535 and Resolution 27858, and Ordinance 119533, as amended by Ordinance 121855, expired on September 7, 2014; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

1 Section 1. **Permission.** Subject to the terms and conditions of this ordinance, the City of
2 Seattle (“City”) grants permission (also referred to in this ordinance as a permit) to Qwest
3 Corporation d.b.a. CenturyLink QC, and its successors and assigns as approved by the Director
4 of the Seattle Department of Transportation (“Director”) according to Section 14 of this
5 ordinance (the party named above and each such approved successor and assign is referred to as
6 “Permittee”), to maintain, and operate an existing fiber hut, including all related appurtenances
7 (“fiber hut”) on the north side of Northwest 105th Street, east of 8th Avenue Northwest , and
8 north of Alderbrook Place Northwest, adjacent in whole or in part to the property legally
9 described as:

10 Lots 8 and 9, Block 1, Ryburg's replat of Delano Park, according to the plat thereof
11 recorded in Volume 34 of plats, page(s) 25, in King County, Washington; except the west 100
12 feet thereof

13 for the purposes of housing telecommunications equipment that provides internet and
14 telephone services to subscribers. The fiber hut is 9' 8" x 6' 5" x 8' 3" with the walls made of
15 metal.

16 Section 2. **Term.** The permission granted to Permittee is for a term of ten years starting
17 on September 8, 2014 and ending at 11:59 p.m. on September 7, 2024. Upon written application
18 made by the Permittee at least 180 days before expiration of the term, the Director or the City
19 Council may renew the permit twice, each time for a successive ten-year term, subject to the
20 right of the City to require the removal of the fiber hut or to revise by ordinance any of the terms
21 and conditions of the permission granted by this ordinance. The total term of the permission,
22 including renewals, shall not exceed 30 years. The Permittee shall submit any application for a
23 new permission no later than 180 days prior to the expiration of the then-existing term.

1 Section 3. **Protection of utilities.** The permission granted is subject to the Permittee
2 bearing the expense of any protection, support, or relocation of existing utilities deemed
3 necessary by the owners of the utilities, and the Permittee being responsible for any damage to
4 the utilities due to the construction, repair, reconstruction, maintenance, operation, or removal of
5 the fiber hut and for any consequential damages that may result from any damage to utilities or
6 interruption in service caused by any of the foregoing.

7 Section 4. **Removal for public use or for cause.** The permission granted is subject to use
8 of the street right-of-way or other public place (collectively, public place) by the City and the
9 public for travel, utility purposes, and other public uses or benefits. The City expressly reserves
10 the right to deny renewal, or terminate the permission at any time prior to expiration of the initial
11 term or any renewal term, and require the Permittee to remove the fiber hut, or any part thereof
12 or installation on the public place, at the Permittee's sole cost and expense in the event that:

13 (a) the City Council determines by ordinance that the space occupied by the fiber hut
14 is necessary for any public use or benefit or that the fiber hut interferes with any public
15 use or benefit; or

16 (b) the Director determines that use of the fiber hut has been abandoned; or

17 (c) the Director determines that any term or condition of this ordinance has been
18 violated, and the violation has not been corrected by the Permittee by the compliance date
19 after a written request by the City to correct the violation (unless a notice to correct is not
20 required due to an immediate threat to the health or safety of the public).

21 A City Council determination that the space is needed for, or the fiber hut interferes with, a
22 public use or benefit is conclusive and final without any right of the Permittee to resort to the
23 courts to adjudicate the matter.

1 Section 5. **Permittee's obligation to remove and restore.** If the permission granted is
2 not renewed at the expiration of a term, or if the permission expires without an application for a
3 new permission being granted, or if the City terminates the permission, then within 90 days after
4 the expiration or termination of the permission, or prior to any earlier date stated in an ordinance
5 or order requiring removal of the fiber hut, the Permittee shall, at its own expense, remove the
6 fiber hut and all of the Permittee's equipment and property from the public place and replace and
7 restore all portions of the public place that may have been disturbed for any part of the fiber hut
8 in as good condition for public use as existed prior to construction of the fiber hut and in at least
9 as good condition in all respects as the abutting portions of the public place as required by
10 Seattle Department of Transportation (SDOT) right-of-way restoration standards.

11 Failure to remove the fiber hut as required by this section is a violation of Chapter 15.90
12 of the Seattle Municipal Code (SMC) or successor provision; however, applicability of Chapter
13 15.90 does not eliminate any remedies available to the City under this ordinance or any other
14 authority. If the Permittee does not timely fulfill its obligations under this section, the City may
15 in its sole discretion remove the fiber hut and restore the public place at the Permittee's expense,
16 and collect such expense in any manner provided by law.

17 Upon the Permittee's completion of removal and restoration in accordance with this
18 section, or upon the City's completion of the removal and restoration and the Permittee's
19 payment to the City for the City's removal and restoration costs, the Director shall then issue a
20 certification that the Permittee has fulfilled its removal and restoration obligations under this
21 ordinance. Upon prior notice to the Permittee and entry of written findings that it is in the public
22 interest, the Director may, in the Director's sole discretion, conditionally or absolutely excuse the
23 Permittee from compliance with all or any of the Permittee's obligations under this section.

1 Section 6. **Repair or reconstruction.** The fiber hut shall remain the exclusive
2 responsibility of the Permittee and the Permittee shall maintain the fiber hut in good and safe
3 condition for the protection of the public. The Permittee shall not reconstruct or repair the fiber
4 hut except in strict accordance with plans and specifications approved by the Director. The
5 Director may, in the Director's judgment, order the fiber hut reconstructed or repaired at the
6 Permittee's cost and expense because of: the deterioration or unsafe condition of the fiber hut; the
7 installation, construction, reconstruction, maintenance, operation, or repair of any municipally-
8 owned public utilities; or any other cause.

9 Section 7. **Failure to correct unsafe condition.** After written notice to the Permittee and
10 failure of the Permittee to correct an unsafe condition within the time stated in the notice, the
11 Director may order the fiber hut be closed or removed at the Permittee's expense if the Director
12 deems that the fiber hut has become unsafe or creates a risk of injury to the public. If there is an
13 immediate threat to the health or safety of the public, a notice to correct is not required.

14 Section 8. **Continuing obligations.** Notwithstanding termination or expiration of the
15 permission granted, or closure or removal of the fiber hut, the Permittee shall remain bound by
16 all of its obligations under this ordinance until the Director has issued a certification that the
17 Permittee has fulfilled its removal and restoration obligations under Section 5 of this ordinance.
18 Notwithstanding the issuance of that certification, the Permittee shall continue to be bound by
19 the obligations in Section 5 of this ordinance and shall remain liable for any unpaid fees assessed
20 under Section 17 of this ordinance.

21 Section 9. **Release, hold harmless, indemnification, and duty to defend.** The
22 Permittee, by accepting the terms of this ordinance, releases the City, its officials, officers,
23 employees, and agents from any and all claims, actions, suits, liability, loss, costs, expense,

1 attorneys' fees, or damages of every kind and description arising out of or by reason of the fiber
2 hut or this ordinance, including but not limited to claims resulting from injury, damage, or loss to
3 the Permittee or the Permittee's property.

4 The Permittee agrees to at all times defend, indemnify, and hold harmless the City, its
5 officials, officers, employees, and agents from and against all claims, actions, suits, liability,
6 loss, costs, expense, attorneys' fees, or damages of every kind and description, excepting only
7 damages that may result from the sole negligence of the City, that may accrue to, be asserted by,
8 or be suffered by any person or property including, without limitation, damage, death, or injury
9 to members of the public or to the Permittee's officers, agents, employees, contractors, invitees,
10 tenants, tenants' invitees, licensees, or successors and assigns, arising out of or by reason of:

11 (a) the existence, condition, construction, reconstruction, modification, maintenance,
12 operation, use, or removal of the fiber hut or any portion thereof, or the use, occupation, or
13 restoration of the public place or any portion thereof by the Permittee or any other person or
14 entity;

15 (b) anything that has been done or may at any time be done by the Permittee by reason of
16 this ordinance; or

17 (c) the Permittee failing or refusing to strictly comply with every provision of this
18 ordinance; or arising out of or by reason of the fiber hut or this ordinance in any other way.

19 If any suit, action, or claim of the nature described above is filed, instituted, or begun
20 against the City, the Permittee shall upon notice from the City defend the City, with counsel
21 acceptable to the City, at the sole cost and expense of the Permittee, and if a judgment is
22 rendered against the City in any suit or action, the Permittee shall fully satisfy the judgment
23 within 90 days after the action or suit has been finally determined, if determined adversely to the

1 City. If it is determined by a court of competent jurisdiction that Revised Code of Washington
2 (RCW) 4.24.115 applies to this ordinance, then in the event claims or damages are caused by or
3 result from the concurrent negligence of the City, its agents, contractors, or employees, and the
4 Permittee, its agents, contractors, or employees, this indemnity provision shall be valid and
5 enforceable only to the extent of the negligence of the Permittee or the Permittee's agents,
6 contractors, or employees.

7 Section 10. **Insurance.** For as long as the Permittee exercises any permission granted by
8 this ordinance and until the Director has issued a certification that the Permittee has fulfilled its
9 removal and restoration obligations under Section 5 of this ordinance, the Permittee shall obtain
10 and maintain in full force and effect, at its own expense, insurance and/or self-insurance that
11 protects the Permittee and the City from claims and risks of loss from perils that can be insured
12 against under commercial general liability (CGL) insurance policies in conjunction with:

- 13 (a) construction, reconstruction, modification, operation, maintenance, use, existence, or
14 removal of the fiber hut or any portion thereof, as well as restoration of any disturbed
15 areas of the public place in connection with removal of the fiber hut;
- 16 (b) the Permittee's activity upon or the use or occupation of the public place described in
17 Section 1 of this ordinance; and
- 18 (c) claims and risks in connection with activities performed by the Permittee by virtue of
19 the permission granted by this ordinance.

20 Minimum insurance requirements are CGL insurance written on an occurrence form at least as
21 broad as the Insurance Services Office (ISO) CG 00 01. The City requires insurance coverage to
22 be placed with an insurer admitted and licensed to conduct business in Washington State or with
23 a surplus lines carrier pursuant to chapter 48.15 RCW. If coverage is placed with any other

1 insurer or is partially or wholly self-insured, such insurer(s) or self-insurance is subject to
2 approval by the City's Risk Manager.

3 Minimum limits of liability shall be \$2,000,000 per Occurrence; \$4,000,000 General
4 Aggregate; \$2,000,000 Products/Completed Operations Aggregate, including Premises
5 Operation; Personal/Advertising Injury; Contractual Liability. Coverage shall include the "City
6 of Seattle, its officers, officials, employees and agents" as additional insureds for primary and
7 non-contributory limits of liability subject to a Separation of Insureds clause.

8 Within 60 days after the effective date of this ordinance, the Permittee shall provide to
9 the City, or cause to be provided, certification of insurance coverage including an actual copy of
10 the blanket or designated additional insured policy provision per the ISO CG 20 12 endorsement
11 or equivalent. The insurance coverage certification shall be delivered or sent to the Director or to
12 SDOT at an address as the Director may specify in writing from time to time. The Permittee shall
13 provide a certified complete copy of the insurance policy to the City promptly upon request.

14 If the Permittee is self-insured, a letter of certification from the Corporate Risk Manager
15 may be submitted in lieu of the insurance coverage certification required by this ordinance, if
16 approved in writing by the City's Risk Manager. The letter of certification must provide all
17 information required by the City's Risk Manager and document, to the satisfaction of the City's
18 Risk Manager, that self-insurance equivalent to the insurance requirements of this ordinance is in
19 force. After a self-insurance certification is approved, the City may from time to time
20 subsequently require updated or additional information. The approved self-insured Permittee
21 must provide 30 days' prior notice of any cancellation or material adverse financial condition of
22 its self-insurance program. The City may at any time revoke approval of self-insurance and
23 require the Permittee to obtain and maintain insurance as specified in this ordinance.

1 In the event that the Permittee assigns or transfers the permission granted by this
2 ordinance, the Permittee shall maintain in effect the insurance required under this section until
3 the Director has approved the assignment or transfer pursuant to Section 14 of this ordinance.

4 Section 11. **Contractor insurance.** The Permittee shall contractually require that any and
5 all of its contractors performing work on any premises contemplated by this permit name the
6 “City of Seattle, its officers, officials, employees and agents” as additional insureds for primary
7 and non-contributory limits of liability on all CGL, Automobile and Pollution liability insurance
8 and/or self-insurance. The Permittee shall also include in all contract documents with its
9 contractors a third-party beneficiary provision extending to the City construction indemnities and
10 warranties granted to the Permittee.

11 Section 12. **Performance bond.** Within 60 days after the effective date of this ordinance,
12 the Permittee shall deliver to the Director for filing with the City Clerk a sufficient bond
13 executed by a surety company authorized and qualified to do business in the State of Washington
14 that is: in the amount of \$15,000, and conditioned with a requirement that the Permittee shall
15 comply with every provision of this ordinance and with every order the Director issues under this
16 ordinance. The Permittee shall ensure that the bond remains in effect until the Director has issued
17 a certification that the Permittee has fulfilled its removal and restoration obligations under
18 Section 5 of this ordinance. An irrevocable letter of credit approved by the Director in
19 consultation with the City Attorney’s Office may be substituted for the bond. In the event that
20 the Permittee assigns or transfers the permission granted by this ordinance, the Permittee shall
21 maintain in effect the bond or letter of credit required under this section until the Director has
22 approved the assignment or transfer pursuant to Section 14 of this ordinance.

1 Section 13. **Adjustment of insurance and bond requirements.** The Director may adjust
2 minimum liability insurance levels and surety bond requirements during the term of this
3 permission. If the Director determines that an adjustment is necessary to fully protect the
4 interests of the City, the Director shall notify the Permittee of the new requirements in writing.
5 The Permittee shall, within 60 days of the date of the notice, provide proof of the adjusted
6 insurance and surety bond levels to the Director.

7 Section 14. **Consent for and conditions of assignment or transfer.** The permission
8 granted by this ordinance shall not be assignable or transferable by operation of law; nor shall the
9 Permittee transfer, assign, mortgage, pledge or encumber the same without the Director's
10 consent, which the Director shall not unreasonably refuse. The Director may approve assignment
11 or transfer of the permission granted by this ordinance to a successor entity only if the successor
12 or assignee has accepted in writing all of the terms and conditions of the permission granted by
13 this ordinance; has provided, at the time of the acceptance, the bond and certification of
14 insurance coverage required under this ordinance; and has paid any fees due under Section 17 of
15 this ordinance. Upon the Director's approval of an assignment or transfer, the rights and
16 obligations conferred on the Permittee by this ordinance shall be conferred on the successors and
17 assigns. Any person or entity seeking approval for an assignment or transfer of the permission
18 granted by this ordinance shall provide the Director with a description of the current and
19 anticipated use of the fiber hut.

20 Section 15. **Inspection fees.** The Permittee shall, as provided by SMC Chapter 15.76 or
21 successor provision, pay the City the amounts charged by the City to inspect the fiber hut during
22 construction, reconstruction, repair, annual safety inspections, and at other times deemed
23 necessary by the City. An inspection or approval of the fiber hut by the City shall not be construed

1 as a representation, warranty, or assurance to the Permittee or any other person as to the safety,
2 soundness, or condition of the fiber hut. Any failure by the City to require correction of any defect
3 or condition shall not in any way limit the responsibility or liability of the Permittee.

4 Section 16. **Inspection reports.** The Permittee shall submit to the Director, or to SDOT
5 at an address specified by the Director, an inspection report that:

- 6 (a) describes the physical dimensions and condition of all load-bearing elements;
- 7 (b) describes any damages or possible repairs to any element of the fiber hut;
- 8 (c) prioritizes all repairs and establishes a timeframe for making repairs; and
- 9 (d) is stamped by a professional structural engineer licensed in the State of
10 Washington.

11 A report meeting the foregoing requirements shall be submitted within 60 days after the effective
12 date of this ordinance. In the event of a natural disaster or other event that may have damaged the
13 fiber hut, the Director may require that additional reports be submitted by a date established by
14 the Director. The Permittee has the duty of inspecting and maintaining the fiber hut. The
15 responsibility to submit structural inspection reports required by the Director does not waive or
16 alter any of the Permittee's other obligations under this ordinance. The receipt of any reports by
17 the Director shall not create any duties on the part of the Director. Any failure by the Director to
18 require a report, or to require action after receipt of any report, shall not waive or limit the
19 obligations of the Permittee.

20 Section 17. **Annual fee.** Beginning on September 8, 2014, and annually thereafter, the
21 Permittee shall promptly pay to the City, upon statements or invoices issued by the Director, an
22 annual fee of \$202.09 or as adjusted annually thereafter, for the privileges granted by this
23 ordinance.

1 Adjustments to the annual fee shall be made in accordance with a term permit fee
2 schedule adopted by the City Council and may be made every year. In the absence of a schedule,
3 the Director may only increase or decrease the previous year's fee to reflect any inflationary
4 changes so as to charge the fee in constant dollar terms. This adjustment will be calculated by
5 adjusting the previous year's fee by the percentage change between the two most recent year-end
6 values available for the Consumer Price Index for the Seattle-Tacoma-Bremerton Area, All
7 Urban Consumers, All Products, Not Seasonally Adjusted. All payments shall be made to the
8 City Finance Director for credit to the Transportation Operating Fund.

9 Section 18. **Compliance with other laws.** Permittee shall construct, maintain and operate
10 the fiber hut in compliance with all applicable federal, state, County and City laws and
11 regulations. Without limitation, in all matters pertaining to the fiber hut, the Permittee shall
12 comply with the City's laws prohibiting discrimination in employment and contracting including
13 the Seattle Fair Employment Practices Ordinance, SMC Chapter 14.04, and the Fair Contracting
14 Practices code, SMC Chapter 14.10 (or successor provisions).

15 Section 19. **Acceptance of terms and conditions.** The Permittee shall deliver to the
16 Director its written signed acceptance of the terms of this ordinance within 60 days after the
17 effective date of this ordinance. The Director shall file the written acceptance with the City
18 Clerk. If no such acceptance is received within that 60-day period, the privileges conferred by
19 this ordinance shall be deemed declined or abandoned and the permission granted deemed lapsed
20 and forfeited and the Permittee shall, at its own expense, remove the fiber hut and all of the
21 Permittee's equipment and property and replace and restore all portions of the public place as
22 provided in Section 5 of this ordinance.

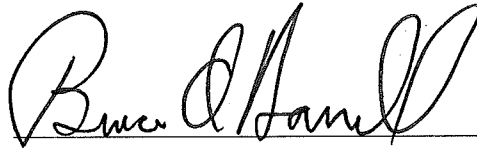
1 Section 20. **Obligations run with the Property.** The obligations and conditions imposed
2 on the Permittee by this ordinance are covenants that bind the Permittee's heirs, successors, and
3 assigns regardless of whether the Director has approved an assignment or transfer of the
4 permission granted by this ordinance. The Permittee shall, within 60 days of the effective date of
5 this ordinance, and prior to conveying any interest in the encroachments or improvements that
6 are the subject of this ordinance, deliver to the Director on a form supplied by the Director, a
7 covenant agreement imposing the obligations and conditions in this ordinance, signed and
8 acknowledged by the Permittee, and recorded with the King County Recorder's Office. The
9 Director shall file the recorded covenant agreement with the City Clerk. The covenant agreement
10 shall reference this ordinance by its ordinance number.

11 Section 21. **Section titles.** Section titles are for convenient reference only and do not
12 modify or limit the text of a section.

13 Section 22. **Ratify and confirm.** Any act consistent with the authority of this ordinance
14 taken after its passage and prior to its effective date is ratified and confirmed.
15

1 Section 23. This ordinance shall take effect and be in force 30 days after its approval by
2 the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it
3 shall take effect as provided by Seattle Municipal Code Section 1.04.020.

4 Passed by the City Council the 11th day of April, 2016, and
5 signed by me in open session in authentication of its passage this
6 11th day of April, 2016.

7 

8
9 President _____ of the City Council

10
11 Approved by me this 14th day of April, 2016.

12 

13
14 Edward B. Murray, Mayor

15
16 Filed by me this 14th day of April, 2016.

17 

18
19 Monica Martinez Simmons, City Clerk

20
21
22 (Seal)
23